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THE

ENGLISH AND EMPIRE DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS.

CUMULATIVE SUPPLEMENT

In this Volume the new English Cases reported up to 1st January, 1938, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.

ALL ENGLAND LAW REPORTS

References to cases subsequent to January, 1936, are followed by a citation to the above series of Reports. Thus:

Green v. *Berliner*, [1936] 1 All E.R. 199.

THE
ENGLISH AND EMPIRE
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CUMULATIVE SUPPLEMENT

BRINGING THE WORK UP TO

1938

BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE PREVIOUS SUPPLEMENTS, AND, IN ADDITION, ALL THE NEW CASES AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL

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LONDON

BUTTERWORTH & CO. (PUBLISHERS), LTD.

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1938

PRINTED IN GREAT BRITAIN

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PUBLISHERS' PREFACE.

THE new series of law reports commenced in 1936, the All England Law Reports Annotated, continues to supply the profession with a number of valuable decisions not reported in any other series. These are digested in this Supplement of the "English and Empire Digest" and provide precedents for various points not otherwise covered by authority.

The right to damages for shortened expectation of life given by the Law Reform (Miscellaneous Provisions) Act, 1934, has now been considered by the House of Lords in *Rose* v. *Ford*, NEGLIGENCE, No. 953c, and a decision given in favour of the survivorship of this cause of action. The amount of damages under this head has also been considered in *Roach* v. *Yates*, NEGLIGENCE, No. 835b, where the plaintiff had become a lunatic, and in *Trubyfield* v. *Great Western Ry. Co.*, NEGLIGENCE, No. 953g, a case of injury to a young child.

Attention may be drawn to two important decisions of the House of Lords, *Andrews* v. *Director of Public Prosecutions*, STREET TRAFFIC, No. 222f; and *Fender* v. *Mildmay*, CONTRACT, No. 2190b. The first relates to the proper direction to be given to the jury on a charge of manslaughter by the dangerous driving of a motor car; and the second, relating to the validity of a promise to marry by a married person, given after a decree nisi, contains a valuable review of the doctrine of public policy.

Two other cases of interest are *Melksham Urban District Council* v. *Wiltshire County Council*, HIGHWAYS, No. 645a, the first decision under the Restriction of Ribbon Development Act, 1935, and *King* v. *Bull*, TELEGRAPHS, No. 61a, which decided a point of some importance in regard to modern blocks of flats, namely, that where a central wireless is installed licences must be taken out by the individual tenants in order to comply with the Wireless Telegraphy Act, 1904.

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ALIENS	Aliens
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BANKERS AND BANKING	Bank.
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BASTARDY	Basty.
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BANKRUPTCY AND INSOLVENCY	Bkpcy.
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BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS	B. of Exch.
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CONFLICT OF LAWS	Confl.
CONSTITUTIONAL LAW	Const. L.

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COUNTY COURTS	Cty. Cts.
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MORTGAGE	Mtge.
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TRUSTS AND TRUSTEES	Trusts
VALUERS AND APPRAISERS	Vlrs.
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WILLS	Wills
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PLEADING	Pldg.
PRACTICE AND NEW PROCEDURE	Pract.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.*, [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. J.	Australian Law Journal	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeal Reports, 27 vols., 1876—1900	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)	Scot.
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
All.	New Brunswick Reports (Allen)	Can.
All E. R. (preceded by date)	All England Law Reports, 1936—(current)	Eng.
Alta. L. R.	Alberta Law Reports	Can.
Amb.	Ambler's Reports, Chancery, 1 vol., 1716—1783	Eng.
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	Eng.
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng
App. Ct. Rep.	Appeal Court Reports	N.Z.
App. D.	South African Law Reports, Appellate Division	S. Af.
Architects' L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Argus L. R.	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (*e.g.*, [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Supp. Vol.	Ind.
B. R. A.	Butterworths' Rating Appeals, 4 vols., 1913—1931	Eng.
B. W. C. C.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr.	Bacon's Abridgment	Eng.
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.

Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R. ...	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn.	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng.
Bar. & Aust.	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch.	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741 ...	Eng.
Barn. K. B.	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw.	Beawes's Lex Mercatoria	Eng.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess. ...	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol. ...	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec. ...	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben.	Benloe's Reports, Common Pleas, fol., 1 vol., 1357—1579 ...	Eng.
Benl.	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol., 1440—1627	Eng.
Ber.	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834 ...	Eng.
Bing. N. C.	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840 ...	Eng.
Biss. & Sm.	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas. ...	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch. ...	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com.	Blackstone's Commentaries	Eng.
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S.	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom. ...	Bombay High Court Reports	Ind.
Bom. A. C.	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca.	Bombay Reports, Crown Cases	Ind.
Bom. O. C.	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R. ...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bott.	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827 ...	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas. ...	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr.	Sir R. Brooke's Abridgement	Eng.
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C.	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800 ...	Eng.
Bro. Supp. to Mor. ...	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822	Eng.
Brod. & F.	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush. ...	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866	Eng.
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715 ...	Scot.

Buch.	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741	Eng.
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
C. A.	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856—1865	Eng.
C. B. R.	Canadian Bankruptcy Reports Annotated, 1920—(current)	Can.
C. C. C.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—1913	Eng.
C. L. Ch.	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N.	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can.
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] A. C.	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N.	Calcutta Weekly Notes	Ind.
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas.	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas.	Cameron's Supreme Court Cases	Can.
Cam. Prac.	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. C. C.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
Can. Com. Cas.	Commercial Law Reports of Canada, 4 vols., 1901—1905	Can.
Can. Crim. Cas.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
Can. Gaz.	Canadian Gazette	Can.
Can. Ry. Cas.	Canadian Railway Cases	Can.
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L.	Carrington's Treatise on Criminal Law	Can.
Card. Doc. Ann.	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716	Eng.
Carl.	New Brunswick Reports (Carleton)	Can.
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	Eng.
Cart.	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B.	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1685—1727	Eng.
Cas. *temp.* Finch	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680	Eng.
Cas. *temp.* King	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733	Eng.
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737	Eng.
Cass. Dig.	Cassells' Digest	Can.
Ch. (preceded by date)	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)	Eng.
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875	Eng.
Ch. Cas. in Ch.	Choyce Cases in Chancery, 1557—1606	Eng.
Ch. Ch.	Upper Canada Chancery Chambers Reports	Can.
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890	Eng.
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
Char. Cham. Cas.	Charley's Chamber Cases, 2 vols., 1875—1876	Eng.
Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
Chip.	New Brunswick Reports (Chipman)	Can.

Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822 ...	Eng.
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846	Eng.
Cl. & Sc. Dr. Cas. ...	Clark and Scully's Drainage Cases	Can.
Clay.	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent.	Coke's Entries	Eng.
Co. Inst.	Coke's Institutes	Eng.
Co. L. J.	Colonial Law Journal	N.Z.
Co. Litt.	Coke on Littleton (1 Inst.)	Eng.
Co. Rep.	Coke's Reports, 13 parts, 1572—1616	Eng.
Coch.	Nova Scotia Reports (Cochran)	Can.
Cockb. & Rowe ...	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	Eng.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas.	Commercial Cases, 1895—(current)	Eng.
Com. Dig.	Comyns' Digest	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig.	Congdon's Digest	Can.
Const	Const's edition of Bott's Poor Laws, 3 vols., 1807	Eng.
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	Ir.
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg. ...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	Eng.
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	Eng.
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. *temp.* Brough. ...	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834	Eng.
Coop. *temp.* Cott. ...	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	Eng.
Cor.	Coryton's Reports	Ind.
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819	Eng.
Correspondances Jud. ...	Correspondances Judiciaires	Can.
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ...	Scot.
Cout.	Coutlees' Unreported Cases	Can.
Cout. Dig.	Coutlees' Digest	Can.
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	Eng.
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)	Eng.
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797	Eng.
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	Eng.
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ...	Eng.
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1908—(current)	Eng.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	Eng.
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C. ...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas. ...	Cresswell's Insolvency Cases, 1 vol., 1827—1829	Eng.
Cripps' Church Cas. ...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	Eng.
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	Eng.
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	Eng.
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625	Eng.
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.	Eng.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	Eng.
D.	Duxbury's Reports of the High Court of the South African Republic	S. Af.
D. C. A.	Dorion's Queen's Bench Reports	Can.
D. L. R.	Dominion Law Reports	Can.

Dal.	Dalison's Reports, Common Pleas, fol., 1 vol., 1546—1574	Eng.
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot.
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823	Eng.
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829	Eng.
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844	Eng.
Dav. Ir.	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611	Ir.
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816	Eng.
Day	Day's Election Cases, 1 vol., 1892—1893	Eng.
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857	Eng.
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840	Eng.
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835	Eng.
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858	Eng.
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856	Eng.
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832	Scot.
De G.	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848	Eng.
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859	Eng.
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852	Eng.
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862	Eng.
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865	Eng.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857	Eng.
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835	Eng.
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852	Eng.
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798	Eng.
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677	Scot.
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822	Eng.
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837	Eng.
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776	Eng.
Doug. K. B.	Douglas' Reports, King's Bench, 4 vols., 1778—1785	Eng.
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818	Eng.
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832	Eng.
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849	Eng.
Dow. & Ry. K. B.	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827	Eng.
Dow. & Ry. M. C.	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827	Eng.
Dow. & Ry. N. P.	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823	Eng.
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841	Eng.
Dowl. N. S.	Dowling's Practice Reports, New Series, 2 vols., 1841—1843	Eng.
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841	Ir.
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843	Ir.
Dra.	Draper's King's Bench Reports	Can.
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859	Eng.
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865	Eng.
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841	Eng.
Drury *temp.* Nap.	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859	Ir.
Drury *temp.* Sug.	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844	Ir.
Dugd. Orig.	Dugdale's Origines Juridiciales	Eng.
Dunl. (Ct. of Sess.)	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862	Scot.
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754	Eng.
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642	Scot.
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581	Eng.
E. & A.	Upper Canada Error and Appeal	Can.
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858	Eng.
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861	Eng.
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860	Eng.
E. D. C.	Reports of the Eastern Districts Court (Cape) from 1880	S. Af.
E. D. L.	South African Law Reports, Eastern Districts Local Division	S. Af.
E. L. R.	Eastern Law Reporter	Can.
E. R. (or Eng. Rep.)	English Reports	Eng.
E. R.	Ontario Election Reports	Can.
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825	Eng.

East	East's Reports, King's Bench, 16 vols., 1800—1812	Eng.
East, P. C.	East's Pleas of the Crown	Eng.
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766	Eng.
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812	Eng.
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	Scot.
Emden's B. C.	Emden's Building Contracts, Building Leases and Building Statutes	Eng.
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858	Eng.
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...	Eng.
Eq. Rep.	Equity Reports, 3 vols., 1853—1855	Eng.
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	Eng.
Ex. C. R.	Exchequer Court Reports	Can.
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...	Eng.
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	Eng.
Exch. C. R.	Exchequer Court Reports	Can.
F. (Ct. of Sess.) ...	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols., 1898—1906	Scot.
F.	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	S. Af.
F. & F.	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. L. J. (Can.)	Canada Fortnightly Law Journal	Can.
F. N. D.	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...	S. Af.
Fac. Coll.	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	Scot.
Falc.	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751	Scot.
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	Eng.
Fenton	Fenton, Important Judgments	N.Z.
Ferg.	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev. ...	Fitzherbert's Natura Brevium	Eng.
Fitz-G.	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842	Ir.
Fonbl.	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...	Eng.
For.	Forrest's Reports, Exchequer, 1 vol., 1800—1801	Eng.
Forb.	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	Scot.
Fort. De Laud. ...	Fortesque, De Laudibus Legum Angliæ	Eng.
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736	Eng.
Fost.	Foster's Crown Cases, 1 vol., 1708—1760	Eng.
Fount.	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	Scot.
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	Ir.
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	Eng.
Fras.	Fraser (Simon), Election Cases, 2 vols., 1793	Eng.
Freem. Ch.	Freeman's Reports, Chancery, 1 vol., 1660—1706	Eng.
Freem. K. B.	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704	Eng.
G.	Gregorowski's Reports of the High Court of the Orange Free State from 1883	S. Af.
G. & R.	Nova Scotia Reports (Geldert & Russell)	Can.
G. I. Dig.	General Index Digest	Can.
G. W. D.	South African Law Reports, Griqualand West Local Division	S. Af.
G. W. L.	South African Law Reports, Griqualand West Local Division	S. Af.
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	Eng.
Gale	Gale's Reports, Exchequer, 2 vols., 1835—1836	Eng.
Gaz. L. R.	New Zealand Gazette Law Reports	N.Z.
Geld. Dig.	Geldert's Digest	Can.
Gib. Cod. ...	Gibson's Codex Juris Ecclesiastici Anglicani	Eng.
Giff.	Giffard's Reports, Chancery, 5 vols., 1857—1865	Eng.
Gilb. ...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...	Eng.
,, C. P. ...	Gilbert's History and Practice of the Court of Common Pleas	Eng.
Gilb. Ch.	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	Eng.
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	Scot.
...	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
...	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...	Eng.
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624	Eng.
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832	Ir.

Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	Eng.
Gouldsb.	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	Eng.
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	Eng.
Gr.	Upper Canada Chancery (Grant)	Can.
Griffin's Patent Cases	Griffin's Patent Cases, 1884—1887	Eng.
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824	Eng.
H.	Hertzog's Reports of the High Court of the South African Republic, 1893	S. Af.
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	Eng.
H. & N.	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	Eng.
H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850	Eng.
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (*e.g.*, [1915] H. B. R.)	Eng.
H. C.	Reports of the High Court of Griqualand West	S. Af.
H. E. C.	Hodgin's Election Reports	Can.
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866	Eng.
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838	Eng.
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821	Eng.
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	Eng.
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	Scot.
Hale, C. L.	Hale's Common Law	Eng
Hale, P. C.	Hale's Pleas of the Crown, 2 vols.	Eng.
Han.	New Brunswick Reports (Hannay)	Can.
Har. & Ruth.	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	Eng.
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	Eng.
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	Scot.
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	Eng.
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853	
Hawk. P. C.	Hawkins's Pleas of the Crown, 2 vols.	
Hay	Hay's Reports	
Hay & Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832	Ir.
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	Ir.
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	Eng.
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631	Eng.
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625	Eng.
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	Eng.
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834	Ir.
Holt, Adm.	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	Eng.
Holt, Eq.	W. Holt's Equity Reports, 2 vols., 1845	Eng.
Holt, K. B.	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	Eng.
Holt, N. P.	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	Eng.
Home, Ct. of Sess.	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	Scot.
Hong Kong L. R.	Hong Kong Law Reports	Hong Kong
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	Eng.
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	Eng.
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	Eng.
Hov. Supp.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	Eng.
How. C.	Howard's Chancery Practice	Ir.
How. C. S.	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	Ir.
How. E. E.	Howard's Equity Exchequer	Ir.
How. P. L.	Howard on the Popery Laws	Ir.
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	Ir.
Hudson's B. C.	Hudson on Building Contracts, 2 vols.	Eng.
Hume	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	Scot.
Hut.	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638	Eng.
Hy. Bl.	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	Eng.
Hyde	Hyde's Reports	Ind.
I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866	Ir.
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867	Ir.
I. Eq. R.	Irish Equity Reports, 18 vols., 1838—1851	Ir

I. L. R.	Irish Law Reports, 13 vols., 1838—1851	Ir.
I. L. R. (Vol.) All. ...	Indian Law Reports, Allahabad	Ind.
I. L. R. (Vol.) Bom. ...	Indian Law Reports, Bombay	Ind.
I. L. R. (Vol.) Calc. ...	Indian Law Reports, Calcutta	Ind.
I. L. R. (Vol.) Lah. ...	Indian Law Reports, Lahore	Ind.
I. L. R. (Vol.) Mad. ...	Indian Law Reports, Madras	Ind.
I. L. R. (Vol.) Pat.	Indian Law Reports, Patna	Ind.
I. L. R. (Vol.) Ran.	Indian Law Reports, Rangoon	Ind.
I. L. T.	Irish Law Times, 1867—(current)	Ir.
I. L. T. Jo.	Irish Law Times Journal, 1867,—(current)	Ir.
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.*, [1894] 1 I. R.)	Ir.
I. R. (Vol.) C. L. ...	Irish Reports, Common Law, 11 vols., 1866—1877	Ir.
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877	Ir.
I. R., R. & L.	Irish Reports, Registry Appeals in the Court of Exchequer Chamber and Appeals in the Court for Land Cases Reserved, 1 vol., 1868—1876	Ir.
Ind. Awards	Industrial Awards Recommendations	N.Z.
Ind. Jur. N. S.	Indian Jurist, New Series	Ind.
Ind. Jur. O. S.	Indian Jurist, Old Series	Ind.
Ir. Cir. Rep.	Reports of Irish Circuit Cases, 1 vol., 1841—1843	Ir.
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866...	Ir.
Ir. L. Rec. 1st ser. ...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831 ...	Ir.
Ir. L. Rec. N. S. ...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838 ...	Ir.
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867 ...	Scot.
J. Bridg.	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	Eng.
J. D. R.	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	S. Af.
J. P.	Justice of the Peace, 1837—(current)	Eng.
J. P. Jo.	Justice of the Peace (Weekly Notes of Cases)	Eng.
J. R.	Jurist Reports	N.Z.
J. R. N. S.	Jurist Reports, New Series	N.Z.
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852 ...	Scot.
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823	Eng.
Jac. & W.	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821 ...	Eng.
James	Nova Scotia Reports (James)	Can.
Jebb & B.	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol. 1841—1842	Ir.
Jebb & S.	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	Ir.
Jebb, C. C.	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840 ...	Ir.
Jebb, Cr. & Pr. Cas. ...	Jebb's Crown and Presentment Cases	Ir.
Jenk.	Jenkins' Reports, 1 vol., 1220—1623	Eng.
Jo. & Car.	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	Ir.
Jo. & Lat.	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	Ir.
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838 ...	Ir.
John.	Johnson's Reports, Chancery, 1 vol., 1858—1860	Eng.
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	Eng.
Jur.	Jurist Reports, 18 vols., 1837—1854	Eng.
Jur. N. S.	Jurist Reports, New Series, 12 vols., 1855—1867	Eng.
K.	Kotze's Reports of the High Court of the Transvaal Province 1877—1881	S. Af.
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862 ...	Eng.
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1853—1858 ...	Eng.
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)	Eng.
Kames, Dict. Dec. ...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	Scot.
Kames, Rem. Dec. ...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	Scot.
Kames, Sel. Dec . .	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	Scot.
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854	Eng.
Keb.	Keble's Reports, fol., 3 vols., 1661—1677	Eng.
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838	Eng.
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578 ...	Eng.
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng.
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734...	Eng.
	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759 ...	Eng.
Keny. Ch.	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.
Kerr .	New Brunswick Reports (Kerr)	Can.

Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App. ...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908 ...	Eng.
L. & G. *temp.* Plunk. ...	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. *temp.* Sugd. ...	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz. ...	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
L. C. L. J.	Lower Canada Law Journal	Can.
L. C. R.	Lower Canada Reports	Can.
L. G. R.	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. C. P.	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B. ...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A. ...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. Af.
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875...	Eng.
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App. ...	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div. ...	Law Reports, Scotch and Divorce Appeals, House of Lords 2 vols., 1866—1875	Eng.
L. T.	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	La Themis	Can.
Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Laws. Reg. Cas. ...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
Leach	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
Lee *temp.* Hard. ...	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738	

Leg. Rep.	Legal Reporter	Ir.
Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	Eng.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 10 vols., 1914—1924	Eng.
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	Ir.
Lords Journals	Journals of the House of Lords	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	Eng.
Lumley, P. L. C.	Lumley's Poor Law Cases, 2 vols., 1834—1842	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	Eng.
M. C. C.	Mining Commissioner's Cases	Can.
M. C. R.	Montreal Condensed Reports	Can.
M. H. C. R.	Madras High Court Reports	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench	Can.
M. L. R. (Vol.) S. C.	Montreal Law Reports, Superior Court	Can.
M. M. Cas.	Martin's Reports of Mining Cases	Can.
M. P. R.	Maritime Provinces Reports	Can.
Mac.	Macassey's New Zealand Reports	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	Eng.
M'Cle.	M'Cleland's Reports, Exchequer, 1 vol., 1824	Eng.
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	Eng.
Mad.	Madras High Court Reports	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1822	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	Eng.
Madox	Madox's Formulare Anglicanum	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	Eng.
Man. & Ry. M. C.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	Eng.
Man. L. J.	Manitoba Law Journal	Can.
Man. L. R.	Manitoba Law Reports	Can.
Man. R. *temp.* Wood	Manitoba Reports *temp.* Wood	Can.
Manns.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	Eng.
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	Eng.
	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	Eng.
	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	Eng.
Marsh.	Marshall's Reports	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	Eng.
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891	Eng.

Reports included in this Work and their Abbreviations.

... ...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817	
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	
Mod. Rep.	Modern Reports, 12 vols., 1669—1755	
Mol. ...	Molloy's Report's, Chancery (Ireland), 3 vols., 1808—1831 ...	Ir.
Mont. ...	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	
Mont. & A.	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	
Mont. & B.	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	
Mont. & Ch.	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1833—1840	
Mont. & M. ...	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830	
Mont. D. & De G. ...	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	
Moo. & P.	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng.
Moo. & S.	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	Eng.
Moo. Ind. App. ...	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng.
Moo. P. C. C.	Moore's Privy Council Cases, 15 vols., 1836—1863	Eng.
Moo. P. C. C. N. S. ...	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng.
Mood. & M.	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830 ...	Eng.
Mood. & R.	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng.
Mood. C. C.	Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng.
Moore, C. P.	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827 ...	Eng.
Moore, K. B.	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	Eng.
Mor. Dict.	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	Scot.
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	Eng.
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	Eng.
Mun. Rep.	Municipal Reports	Can.
Murd. Epit.	Murdoch's Epitome	Can.
Murp. & H.	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837 ...	Eng.
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot.
My. & Cr.	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841 ...	Eng.
My. & K.	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835 ...	Eng.
N. A. C.	Native Appeal Cases	S. Af.
N. & S.	Nichols and Stop's Reports (Tasmania)	Tasmania
N. B. Dig.	New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep.	New Brunswick Equity Reports	Can.
N. B. R.	New Brunswick Reports	Can.
N. B. R. (All.)	New Brunswick Reports (Allen)	Can.
N. B. R. (Ber.)	New Brunswick Reports (Berton)	Can.
N. B. R. (Carl.) ...	New Brunswick Reports (Carleton)	Can.
N. B. R. (Chip.) ...	New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.) ...	New Brunswick Reports (Hannay)	Can.
N. B. R. (Kerr) ...	New Brunswick Reports (Kerr)	Can.
N. B. R. (P. & B.) ...	New Brunswick Reports (Pugsley and Burbidge)	Can.
N. B. R. (P. & T.) ...	New Brunswick Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.) ...	New Brunswick Reports (Pugsley)	Can.
N. B. R. (Tru.) ...	New Brunswick Reports (Trueman)	Can.
N. I. (preceded by date)	Northern Ireland Law Reports, 1925—(current) (*e.g.*, [1925] N.I.)	Ir.
N. L. R.	Natal Law Reports	S. Af.
N. P. D.	South African Law Reports, Natal Provincial Division ...	S. Af.
N. S. R.	Nova Scotia Reports	Can.
N. S. R. (Coch.) ...	Nova Scotia Reports (Cochran)	Can.
N. S. R. (G. & O.) ...	Nova Scotia Reports (Geldert and Oxley)	Can.
N. S. R. (G. & R.) ...	Nova Scotia Reports (Geldert and Russell)	Can.
N. S. R. (James) ...	Nova Scotia Reports (James)	Can.
N. S. R. (Old.)	Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.) ...	Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G.) ...	Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.) ...	Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad. ...	New South Wales Reports, Admiralty	Aus.
N. S. W. B.	New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas. ...	New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq.	New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtn. Cas.	New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R.	New South Wales Law Reports	Aus.
N. S. W. Land App. Cts.	New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R. (Eq.)	New South Wales Supreme Court Reports (Equity)	Aus.
N. S. W. S. C. R. (L.) ...	New South Wales Supreme Court Reports (Law)	Aus.
N. S. W. S. C. R. N. S.	New South Wales Supreme Court Reports, New Series ...	Aus.
N. S. W. W. N. ...	New South Wales Weekly Notes	Aus.
N. W.	North-Western Provinces High Court Reports	Ind.
N. W. T. R.	North-West Territories Reports	Can.
N. Z. Jur.	New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law	New Zealand Jurist Mining Law	N.Z.

N. Z. Jur. N. S.	New Zealand Jurist, New Series	N.Z.
N. Z. L. J.	New Zealand Law Journal	N.Z.
N. Z. L. R.	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A.	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.
Nev. & M. K. B.	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C.	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B.	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C.	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837	Eng.
New Mag. Cas.	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850	Eng.
New Pract. Cas.	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.
New Rep.	New Reports, 6 vols., 1862—1865	Eng.
New Sess. Cas.	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851	Eng.
Nfld. L. R.	Newfoundland Reports	Nfld.
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793	Eng.
Notes of Cases	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850	Eng.
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649	Eng.
O. B. & F.	Ollivier Bell and Fitzgerald's Reports	N.Z.
O. B. S. P.	Old Bailey Session Papers	Eng.
O. Bridg.	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666	Eng.
O. F. S.	Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R.	Ontario Law Reports	Can.
O'M. & H.	O'Malley and Hardcastle's Election Cases, 1869—(current)	Eng.
O. P. D.	South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R.	Ontario Reports	Can.
O. R. (preceded by date)	Ontario Reports, since 1931 (*e.g.* [1931] O. R.)	Can.
O. R.	Official Reports of the South African Republic, 1894—1899	S. Af.
O. R. C.	Reports of the High Court of the Orange River Colony	S. Af.
O. S.	Upper Canada Queen's Bench, Old Series	Can.
O. W. N.	Ontario Weekly Notes	Can.
O. W. R.	Ontario Weekly Reporter	Can.
Old.	Nova Scotia Reports (Oldrights)	Can.
Ont. Dig.	Digest of Ontario Case Law, 4 vols., 1823—1900	Can.
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614	Eng.
P. (preceded by date)	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)	Eng.
P. & B.	New Brunswick Reports (Pugsley and Burbidge)	Can.
P. & T.	New Brunswick Law Reports (Pugsley and Trueman)	Can.
P. Cas.	Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922	Eng. & Col.
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890	Eng.
P. E. I.	Prince Edward Island Reports	Can.
P. R.	Ontario Practice	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735	Eng.
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629	Eng.
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717	Eng.
Pat. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	Scot.
Pater. App.	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794	Eng.
Peake, Add. Cas.	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812	Eng.
Peck.	Peckwell's Election Cases, 2 vols., 1803—1806	Eng.
Pelham	Pelham (S. A.) Reports	Aus.
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833	Eng.
Per. C. S.	Perrault's Counseil Superieur	Can.
Per. P.	Perrault's Prévosté de Quebec, 1726—1756	Can.
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849	Eng.
Phil. El. Cas.	Philipps' Election Cases, 1 vol., 1780	Eng.
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821	Eng.
Phillim. Eccl. Jud.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip.	Phipson's Digest of Natal Reports, 1858—1859	S. Af.
Pig. & R.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845	Eng.
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624	Scot.
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I.	Eng.
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682	Eng.
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627	Eng.
Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1843—1856	Eng.

Pratt	Pratt's Supplement to Bott's Poor Laws, 1833	Eng.
Prec. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722	Eng.
Price	Price's Reports, Exchequer, 13 vols., 1814—1824	Eng.
Price	Price's Mining Commissioners' Cases	Can.
Pug.	New Brunswick Reports (Pugsley)	Can.
Py. R.	Pykes' Lower Canada Reports	Can.
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q. B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	Eng.
Q. J. P.	Queensland Justice of Peace Reports	Aus.
Q. L. J.	Queensland Law Journal and Reports, 11 vols., 1879—1901	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor, 1876—1878	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. C.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. C. R.	Queensland Supreme Court Reports, 5 vols., 1860—1881	Aus.
Q. S. R.	Queensland State Reports, 6 vols., 1902—1906	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	S. Af.
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesley)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas.	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. *temp.* H.	Ridgeway's Reports *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1707—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	Eng.
Rom.	Romilly's Notes of Cases, 1 part, 1767—1787	Eng.
Roscoe's B. C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
& M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	Eng.

Russ. & Ry. ...	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	
Rus. E. R. ...	Russell's Election Reports...	Can.
Ry. & Can. Cas.	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas.	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M. ...	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ...	Eng.
Ryde & K. Rat. App. ..	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904 ...	
Ryde, Rat. App. ...	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.
S.	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J.	South African Law Journal	S. Af.
S. A. L. R.	South Australian Law Reports	Aus.
S. A. L. R.	South African Law Reports	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—1892	S. Af.
S. A. S. R.	South Australian State Reports, since 1921 (*e.g.*, [1921] S. A. S. R.)	Aus.
S. C.	Reports of the Supreme Court of the Cape of Good Hope from 1880	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 (*e.g.*, [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 (*e.g.*, [1906] S. C. (J.))	Scot.
S. C. R.	Canada, Supreme Court Reports	Can.
S. L. T.	Scots Law Times, 1893 (current)	Scot.
S. Q. R.	Queensland State Reports	Aus.
S. R.	Reports of the High Court of Southern Rhodesia	S. Af.
S. R. C.	Stuart's Lower Canada Reports	Can.
S. R. N. S. W.	New South Wales, State Reports	Aus.
S. R. Q.	Queensland Reports, Supreme Court	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports	Can.
S. W. A.	South-West Africa Law Reports	S.-W. Af.
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	Eng.
Sask. L. R.	Saskatchewan Law Reports	Can.
Sau. & Sc.	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	Eng.
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873	Scot.
Sc. L. R.	Scottish Law Reporter, 61 vols., 1865—1924	Scot.
Sc. R. R.	Scots Revised Reports	Scot.
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	Ir.
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840	Eng.
Scott, N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	Eng.
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	Eng.
Selwyn's N. P.	Selwyn's Abridgement of the Law of Nisi Prius	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sett. & Rem.	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1685—1727	Eng.
Sh. (Ct. of Sess.) ...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	Scot.
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	Scot.
Sh. Just.	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch.	Sheppard's Touchstone of Common Assurances	
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695	
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699... ...	
	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	

Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	Eng.
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	Eng.
Smith, L. C.	Smith's Leading Cases, 2 vols.	Eng.
Smith, Reg. Cas. ...	C. L. Smith's Registration Cases, 1895—(current)	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (*e.g.*, [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	Eng.
State Tr.	State Trials, 34 vols., 1163—1820	Eng.
State Tr. N. S. ...	State Trials, New Series, 8 vols., 1820—1858	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ...	Can.
Stockton...	Stockton's Vice-Admiralty Report and Digest	Can.
Story	Story's Commentaries on Equity Jurisprudence	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	Scot.
Stuart	Sessions Cases (Stuart)	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S. ...	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw.	Swabey's Report, Admiralty, 1 vol., 1855—1859	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	S. Af.
T. L. R.	The Times Law Reports, 1884—(current)	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law Reports, Transvaal Provincial Division ...	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909 ...	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	Eng.
Tas. L. R.	Tasmanian Law Reports	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas.	Tax Cases, 1875—(current)	Eng.
Tay.	Taylor's King's Bench Reports	Can.
Temp. Wood	Manitoba Reports *temp.* Wood	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ...	Eng.
Terr. L. R.	Territories Law Reports	Can.
Thom.	Nova Scotia Reports (Thomson)	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town St. Tr.	Townsend, Modern State Trials	Eng.
Trem. P. C.	Tremaine Pleas of the Crown, 1 vol., 1667	Eng.
Trist. ...	Tristram's Consistory Judgments, 1 vol., 1872—1890	Eng.
Tru.	New Brunswick Reports (Trueman)	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. C. Real Prop.	Tudor's Leading Cases on Real Property	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist	Can.
U. C. L. J. N. S. ...	Canada Law Journal, New Series, 1865—(current)	Can.

U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
U. C. R.	Upper Canada Reports, Queen's Bench	Can.
Udal	Fiji Law Reports (Udal)	Fiji.
V. L. R.	Victorian Law Reports	Aus.
V. R.	Victorian Reports	Aus.
V. R. (Adm.)	Victorian Reports (Admiralty)	Aus.
V. R. (Eq.)	Victorian Reports (Equity)	Aus.
V. R. (Law)	Victorian Reports (Law)	Aus.
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	Eng.
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	Eng.
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719	Eng.
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	Ir.
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	Eng.
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	Eng.
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756	Eng.
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.	Eng.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	Eng.
W.	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	S. Af.
W. A. L. R.	West Australian Law Reports	Aus.
W. A'B. & W.	Webb, A'Beckett and Williams' Victorian Reports	Aus.
W. & W.	Wyatt and Webb	Aus.
W. C. C.	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	Eng.
W. H. C.	South African Law Reports, Witwatersrand High Court	S. Af.
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	Eng.
W. L. D.	South African Law Reports, Witwatersrand Local Division	S. Af.
W. L. R.	Western Law Reporter	Can.
W. L. T.	Western Law Times	Can.
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current) (*e.g.*, [1866] W. N.)	Eng.
W. N.	Calcutta Weekly Notes	Ind.
W. R.	Weekly Reporter, 54 vols., 1852—1906	Eng.
W. R.	Sutherland's Weekly Reporter	Ind.
W. R.	Weekly Reporter, reporting cases in the Cape Provincial Division	S. Af.
W. W. & A'B.	Wyatt, Webb and A'Beckett	Aus.
W. W. R.	Western Weekly Reports	Can.
Wallis by Lyne	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	Ir.
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855	Eng.
Welsh, Reg. Cas.	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	Ir.
Went. Off. Ex.	Wentworth's Office and Duty of Executors	Eng.
West	West's Reports, House of Lords, 1 vol., 1839—1841	Eng.
West *temp.* Hard.	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740	Eng.
West. Tithe Cas.	Western's London Tithe Cases, 1 vol., 1592—1822	Eng.
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	Scot.
White & Tud. L. C.	White and Tudor's Leading Cases in Equity, 2 vols.	Eng.
Wight	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	Eng.
Will. Woll. & Dav.	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	Eng.
Will. Woll. & H.	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	Eng.
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758	Eng.
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	Eng.
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	Eng.
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	Scot.
Wils. Ch.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	Eng.
Wils. Ex.	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	Eng.
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	Eng.
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	Eng.
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	Eng.
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.	Eng.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	Eng.
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	Eng.
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	Eng.
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	Eng.
Y. A. D.	Young's Vice-Admiralty Reports	Can.

Y. & C. Ch. Cas ...	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	Eng.
Y. & C. Ex.	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	Eng.
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols.. 1826—1830 ...	Eng.
Y. B.	Year Books	Eng.
Y. B. (Rolls Series)	Year Books (Rolls Series)	Eng.
Y. B. (Sel. Soc.)...	Year Books (Selden Society)	Eng.
Y. S. C. P. ...	Yearly Practice of the Supreme Court	Eng.
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613 ...	Eng.
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832 ...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xv—xxxi, *ante.*)

A.-G.	for Attorney-General.
Act.	„ Actiengesellschaft.
Add.	„ Additional.
Admlty.	„ Admiralty.
Affd.	„ Affirmed.
Affg.	„ Affirming.
Akt.	„ Aktiengesellschaft; Aktiebolaget; Aktieselskabet.
Alta.	„ Alberta.
Anon.	„ Anonymous.
Apld.	„ Applied.
Appct.	„ Applicant.
Appln.	„ Application.
Appln.	„ Application to Register a Trade Mark.
Applt.	„ Appellant.
Apprvd.	„ Approved.
Arbn.	„ Arbitration.
Archbp.	„ Archbishop.
Art.	„ Article.
Ass. Tax Case	„ Assessed Tax Case.
Assce.	„ Assurance.
Assocn.	„ Association.
B. C.	„ Borough Council.
B. C.	„ British Columbia.
Bkpcy.	„ Bankruptcy.
Bkpt.	„ Bankrupt.
Bldg. Soc.	„ Building Society.
Bp.	„ Bishop.
C. A.	„ Court of Appeal.
C. & S. L. Ry. Co.	„ City & South London Railway Co.
C. C. A.	„ Court of Criminal Appeal.
C. C. R.	„ County Court Rules.
C. C. R.	„ Court of Crown Cases Reserved.
C. L. P. Act.	„ Common Law Procedure Act.
C. L. Ry. Co.	„ Central London Railway Co.
C. O. R.	„ Crown Office Rules.
C. S. U. C.	„ Consolidated Statutes of Upper Canada.
Ca. sa.	„ *Capias ad satisfaciendum.*
Cale. Ry. Co.	„ Caledonian Railway Co.
Ch.	„ Chancery.
Ch. Div.	„ Chancery Division.
Co.	„ Company.
Co-op. Assocn.	„ Co-operative Supply Association.
Comrs.	„ Commissioners.
Consd.	„ Considered.
Corpn.	„ Corporation.
Ct.	„ Court.
Ct. of Ch.	„ Court of Chancery.
Ct. of Eq	„ Court of Equity.
Ct. of R	„ Court of Review.
D. C.	„ Divisional Court.
Dbtd.	„ Doubted.

Deft.	for Defendant.
Distd.	„ Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex. Ch.	„ Exchequer Chamber.
Ex p.	„ *Ex parte.*
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Fi. fa.	„ *Fieri facias.*
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co.	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdns.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
K. B. Div.	„ King's Bench Division.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. E. Ry. Co.	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. M. & S. Ry. Co.	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Man.	„ Manitoba.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B.	„ New Brunswick.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.

N. S.	for Nova Scotia.
N. W. P.	,, North-West Provinces.
N. W. T.	,, North-West Territories.
Ont.	,, Ontario.
Ord.	,, Order.
Overd.	,, Overruled.
P. C.	,, Privy Council.
P. E. I.	,, Prince Edward Island.
Petn.	,, Petition or Election Petition.
Pltf.	,, Plaintiff.
Q. B. Div.	,, Queen's Bench Division.
Qu.	,, *Quære.*
Que.	,, Quebec.
R. C.	,, Rural Council.
R. D. C.	,, Rural District Council.
R. S. A.	Rural Sanitary Authority.
R. S. C.	Revised Statutes of Canada.
S. C.	Rules of the Supreme Court, 1883.
Refd.	Referred.
Regn. of Trade Mk.	Registration of Trade Mark.
Regr. of Trade Mks.	Registrar of Trade Marks.
Resp.	Respondent.
Restg.	Restoring.
Revsd.	Reversed.
Revsg.	Reversing.
Ry. Co.	Rail. Co. or Railway Co.
S. C.	,, Same Case.
S. C. (name of colony following)	,, Supreme Court of a Colony.
S. E.	,, Settled Estates.
S. E. & C. Ry. Co.	,, South Eastern & Chatham Railway Co.
S. E. Ry. Co.	,, South Eastern Railway Co.
S. P.	,, Same Point.
S.S.	Steamship.
Sask.	Saskatchewan.
Sched.	Schedule.
Sci. fa.	*Scire facias.*
Sect.	Section.
Set. Land Act	Settled Land Act.
Settlmt.	Settlement.
Soc.	Society.
Soc. Anon.	Anonyme, etc.
Solr.	Solicitor.
Trade Mk.	Trade Mark.
Tram. Co.	Tramways Company.
U. C.	Urban Council.
U. D. C.	Urban District Council.
U. S. A.	United States of America.
Union Assmt. Com.	Union Assessment Committee.
Urban S. A.	Urban Sanitary Authority.
V.-C.	,, Vice-Chancellor.
Workmen's Comp. Act	,, Workmen's Compensation Act.
Y. T.	,, Yukon Territory.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

"APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.

"APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.

"CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.

"DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.

"DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.

"EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.

"EXTENDED" (Extd.).—Compare "APPLIED," *supra*.

"FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.

"NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.

"OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.

"REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.

"MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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ACTION.

Part I.—Definitions.

1. Before this case add :-
See, now, Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225.

10. *Add. Annotation :*—**Consd.** De La Rue *v.* Hernu, Peron & Stockwell, Ltd., [1936] 2 K. B. 164.

After this case add :—
——.]—*See* HUSBAND & WIFE, No. 2291a, *post.*

11. *Add. Citation :—on appeal, sub nom.* ROYAL ; HALL CO. *v.* ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.

Add. Annotation :—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

18. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwick U. D. C., [1930] 1 K. B. 334.

18a. Appeal from Divisional Court—On case stated by quarter sessions—Derating appeal.]—By Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225, an action is defined as a civil proceeding begun by writ, " or in such other manner as may be prescribed by rules of Court." By R. S. C., Ord. 58, r. 15, an appeal from any order, whether final or interlocutory, in any matter not being an action, shall be brought within 14 days after perfecting :—*Held :* as an appeal from the decision of a Div. Ct., on a case stated by quarter sessions on an appeal from an assessment committee on a question of derating, is an appeal in a matter which is not an " action " as above defined, the time for bringing the appeal is limited to 14 days.—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40 ; 101 L. J. K. B. 8 ; 145 L. T. 592 ; 95 J. P. 186 ; 47 T. L. R. 468 ; 29 L. G. R. 576 ; (1926-31), 2 B. R. A. 846, C. A. ; *on appeal from* S. C. *sub nom.* WEST DERBY REVENUE OFFICER *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY REVENUE OFFICER, WEST DERBY REVENUE OFFICER *v.* MERSEY DOCKS & HARBOUR BOARD (1931), 47 T. L. R. 237, D. C.

Annotation :—**Folld.** Wilkinson (Taunton Revenue Officer) *v.* Sibley & Donovan (1931), 101 L. J. K. B. 26.

18b. —— —— ——.]—The appeal began with a preliminary objection by counsel for resps. that the appeal was out of time, because fourteen days' notice had not been given. In the Mersey Docks cases (No. 18a, *ante*) that we have just concluded, we unfortunately spent two or three hours in considering whether the time was fourteen days or six weeks. The reasons for our decision will appear wher at some later time we give the considered judgment in the Mersey Docks case, but I have the authority of my brothers for stating that at present, for reasons which will appear in the Mersey Docks judgment, the majority of the ct. is of opinion that the time, is fourteen days (SCRUTTON, L.J.).—WILKINSON (TAUNTON REVENUE OFFICER) *v.* SIBLEY & DONOVAN, [1932] 1 K. B. 194 ; 101 L. J. K. B. 26 ; 146 L. T. 1 ; 95 J. P. 208 ; 29 L. G. R. 633 ; 2 B. R. A. 926, C. A.

27. *Add. Annotation :*—**Consd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), Ltd. (1929), 141 L. T. 590.

29. *Add. Annotation :*—**Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

30. *Add. Annotations :*—**Apprvd.** Craigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344. **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

31. *Add. Annotations :*—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

35a. Criminal prosecution — Administration of Justice Act, 1920 (c. 81), s. 15.]—By above sect., "where, for the purpose of disposing of any action or other matter which is being tried by a judge with a jury in any ct. in England or Wales, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone " :—*Held :* the words " any action or other matter " include a criminal prosecution.—R. *v.* HAMMER, [1923] 2 K. B. 786 ; 92 L. J. K. B. 1045 ; 129 L. T. 479 ; 87 J. P. 194 ; 39 T. L. R. 670 ; 68 Sol. Jo. 120 ; 17 Cr. App. Rep. 142 ; 27 Cox, C. C. 458, C. C. A.

36. *Add. Annotation :—As to* (1) **Apld.** *Re* Debtor, [1929] 2 Ch. 146.

42. *Add. Annotation :*—**Dbtd.** *Re* Thomson's Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

48a. Summons—Real Property Limitation Act, 1833 (c. 27).]—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtge. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an " action or suit " for the recovery of " interest in respect of money charged upon or payable out of land " within sect. 42 of the above Act.—*Re* THOMSON'S MORTGAGE

TRUSTS, THOMSON *v.* BRUTY, [1920] 1 Ch. 508; 89 L. J. Ch. 213; 123 L. T. 138; 64 Sol. Jo. 375.

64. *Add. Annotation :*—**Refd.** Thomson's Mortgage Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

64a. **Summons—Real Property Limitation Act, 1833 (c. 27).**]—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON *v.* BRUTY, No. 48a, *ante*.

71. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

74. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

82. *Add. Annotations :*—**Consd.** *Re* Jauncey, Bird *v.* Arnold, [1926] Ch. 471. **Refd.** Dennerley *v.* Prestwich U. D. C. [1930] 1 K. B. 334; Weld *v.* Petre, [1929] 1 Ch. 33.

87. *Annotations :*—**Consd.** Robinson *v.* R., [1921] 3 K. B. 183. **Refd.** Chester *v.* Bateson, [1920] 1 K. B. 829; R. *v.* Hammer, [1923] 2 K. B.

89. *Annotation :*—**Refd.** First National Reinsurance *v.* Greenfield, [1921] 2 K. B. 260.

90. For "under the above sect." read "under Married Women's Property Act, 1893 (c. 63), s 2"

Add. Annotation :—**Apld.** *Re* Emery, Emery *v.* Emery, [1923] P. 184.

—— ——.]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council has been paid. The Defence of the Realm Losses Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 48), was passed :—*Held :* (1) the appeal was not a "proceeding instituted" within sect. 1 of the Act; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay.—ROBINSON (J.) & Co. *v.* R., [1921] 3 K. B. 183; 90 L. J. K. B. 1177; 125 L. T. 675; 37 T. L. R. 698, C. A.

Annotation :—*As to* (1) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

90b. —— ——.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs.—*Re* EMERY, EMERY *v.* EMERY, [1923] P. 184; 92 L. J. P. 138; 39 T. L. R. 713; *sub nom. In the Goods of* EMERY, EMERY *v.* EMERY, 130 L. T. 127.

104. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

PART I. SECT. 1, SUB-SECT. 5.

sa. *Action—Claim for damages & injunction—Transfer of Land Act*, 1893 (*No.* 14), *s.* 117.]—The term "action at law" in the above sect. embrances an action of the nature of a suit in equity, *e.g.* a claim for an injunction & damages in respect of trespass to & interference with a right of way.—STRELITZ BROTHERS *v.* BRITNALL (1912), 15 W. A. L. R. 12.—**AUS.**

sb. —— *Divorce petition—Insolvency Act*, 1915 (*No.* 2671), *s.* 174.]—The word "action" in the above sect. does not include a proceeding by petition in divorce.—*Re* HARVEY, [1920] V. L. R. 142.—**AUS.**

sc. —— *Petition of right.*]—A petition of right is not an "action." The definitions of "actions" in Judicature Act & rules are merely a conventional method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—MILLAR *v.* R., [1921] 49 O. L. R. 93; 19 O. W. N. 458; 58 D. L. R. 585.—**CAN.**

—— *In insurance policy—Suit in* ——.]—The word "action" contained in a policy of insurance issued by an English co. corresponds in meaning to the word "suit" in India.—MAYA DAS BHAGAT *v.* COMMERCIAL UNION ASSURANCE CO., LTD., I. L. R., [1937] 1 Cal. 541.—**IND.**

sd. *Proceeding in action—Application for relief against distraint—War Relief Act.*]—The above Act empowers a judge of the Supreme Ct. to dispense with the restrictions therein contained. Applt. distrained against resp. under a mtge. notwithstanding that resp. was within the protection of the Act. Resp. applied to a county ct. judge as "local judge" of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act :—*Held :* the local judge had no jurisdiction, as the proceeding was not a proceeding in an "action," as required under the wording of the Ord. in Council, June 16, 1906. Resp.'s proper remedy against applt. was by injunction to restrain applt. from invading his rights under the Act.—HANNA *v.* COSTERTON, [1919] 1 W.W.R. 930; 44 D. L. R. 478.—**CAN.**

se. *Proceeding — Canadian National Railways Act, s.* 15.]—A writ of garnishment attaching moneys owed by the Canadian National Railway Corpn. to a judgment debtor in its employment is a "proceeding" within Canadian National Railways Act, s. 15, & may therefore issue "without a fiat" from the Crown.—CANADIAN NATIONAL RY. Co. *v.* CROTEAU & CLICHE, [1925] S. C. R. 384.—**CAN.**

sf. *Suit or proceeding—Meaning dependent on context of statute.*]—The words "suits" & "proceedings" have different meanings in different statutes, & it is not possible to lay down a general rule which would be applicable to all cases. In each particular case the question has to be examined in reference to the context, & that meaning is to be preferred which will best fit in with it.—KIRPA SINGH *v.* AJAIPAL SINGH (1928), I. L. R. 10 Lah. 165.—**IND.**

sg. *Suit or action—Application by curator bonis.*]—An application by the curator *bonis* of a person who has been declared incapable of managing his affairs for the appointment of a curator *ad litem* & for leave to institute proceedings to set aside the marriage of such a person is a civil suit or action within South Africa Act, s. 103.—MITCHELL *v.* MITCHELL, [1930] App. D. 217.—**S. AF.**

sh. ——.]—The essential feature of a "suit or action" under sect. 50 of the Charter of Justice or under sect. 39 of Transvaal Proclamation 14 of 1902, or of a "suit" under sect. 24 of Cape Act 35 of 1896, is that it is a proceeding in which one party sues for or claims something from another, & no proceeding which lacks this feature, such as requestration proceedings or an application for the winding up of a co., can be properly described as a "suit or action" or as a "suit" under any of these sects.—COLLETT *v.* PRIEST, [1931] A. D. 290.—**S. AF.**

si. *Case.*]—The word "case" in Civil Procedure Code, s. 115, does not necessarily mean a suit, but can mean a proceeding.—BHOLA NATH *v.* RAGHUNATH DAS MITHAN LAL (1929), I. L. R. 51 All. 1010.—**IND.**

PART I. SECT. 2, SUB-SECT. 1.

104 ii. ——.]—The expression "a cause of action" in Supreme Ct. Act, 1915 (No. 2733), s. 141, means the particular act or omission occasioning the injury complained of, & so giving rise to pltf.'s claim, not every fact material to be proved in order to entitle pltf. to succeed.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

104 iii. ——.]—The "cause of action" in District Cts. Act, R. S. S., 1920 (c. 40), s. 29, means the whole cause of action, including every material fact which pltf. must allege & prove to give him a right to judgment, & therefore if the whole cause of

106. *Add. Annotations :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

107. *Add. Annotations :*—**Apld.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

114. *Add. Annotation :*—**Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

116a. —— **Claim for damages—Right to prior general declaration.**]—Where the substantial object of an action is damages & not the ascertainment of a common right for future guidance, pltfs. ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result.—JONES *v.* CORY BROTHERS & CO., LTD., THOMAS *v.* GREAT MOUNTAIN COLLIERIES CO., LTD. (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "**new subsidence**" read "**recurring tort.**"

118. *Add. Annotations :*—*As to* (1) **Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116. *Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

122. *Add. Annotations :*—**Apld.** Wilson *v.* United Counties Bank, [1920] A. C. 102. **Consd.** Ord *v.* Ord, [1923] 2 K. B. 432. **Apld.** The Koursk, [1924] P. 140. **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Debenham *v.* Perkins (1925), 133 L. T. 252; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90.

125. *Add. Annotation :—Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

129. *Add. Annotations :—As to* (1) **Refd.** Ord *v.* Ord, [1923] 2 K. B. 432. *As to* (2) **Refd.** Mackenzie Kennedy *v.* Air Council, [1927] 2 K. B. 517.

136. *Add. Annotations :*—**Refd.** Ord *v.* Ord (1923), 92 L. J. K. B. 859; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co. [1936] 1 All E. R. 13.

144. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

145. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

147. *Add. Annotations :—As to* (1) **Expld.** Courtenay *v.* Earle (1850), 10 C. B. 73. **Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

a district ct. action did not arise in one judicial district the action should be brought in that district where deft. or one of several defts. resides or carries on business. Notwithstanding sect. 2, sub-sect. 2 (2), of the Act providing that in the Act unless there is something in the subject or context repugnant thereto the expressions "cause" & "action" shall respectively have the same meaning as the same expressions have in King's Bench Act, the words "the cause of action" in sect. 29 should not be construed in the same way as in King's Bench Act, s. 35, because in sect. 29 "there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly conferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & procedure in a superior ct.—HOWELL *v.* WARNER, [1921] 3 W. W. R. 587.—**CAN.**

106 iii. *S. P.* SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

106 iv. ——.]—The only definition of "cause of action" that will work, if it has to be applied to cases of all kinds, is the entire set of facts that gives rise to an enforceable claim.—ENGINEERING SUPPLIES, LTD. *v.* DHANDHANIA & CO. (1930), I. L. R. 58 Calc. 539.—**IND.**

106v. ——.]—The meaning of the phrase "cause of action" as defined in the English cts. & accepted in India, is that it comprises every fact which it would be necessary for pltf. to prove, if traversed, in order to support his right to the judgment of the ct.; everything which, if not proved, renders pltf. unable to sustain his action must be part of the cause of action.—GUARDIAN ASSURANCE CO. *v.* SHIVA [illegible] I. L. R [illegible]

PART I. SECT. 2, SUB-SECT. 2.—A.

sj. *Sale of goods—To be delivered at place named—Payment to be made elsewhere.*]—Dett., in Perth, gave to B., who was agent for pltf., a written order for certain goods at a price. This order B. transmitted to his principal in Melbourne, who declined it, but authorised B. to inform deft. that pltf. would accept the order at increased prices, added in ink on the original order. These new prices were subsequently submitted by B. to deft., who agreed to take certain of the goods at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. Pltf. shipped the goods to deft. in Perth, who refused to accept the draft, alleging inferiority of the goods:—*Held:* the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made f.o.b. Melbourne, there was not a cause of action arising within Victoria.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

—.]—A "cause of action" on a breach of contract includes the contract & its breach. If a purchaser of machinery promises to pay the purchase price to the vendor at M., but signs the agreement & receives the machinery at W. the vendor's cause of action for the purchaser's failure to pay cannot be said to arise at M.—WESTERN CANADA AUTO TRACTOR CO., LTD. *v.* BJARNASON, [1920] 1 W. W. R. 621.—**CAN.**

sl. —— —— ——.]—Pltf. sold & delivered a motor car to deft. at Prince Albert, & deft. gave lien notes therefor signed at Prince Albert but payable at Saskatoon:—*Held:* the suit for balance due thereon was properly entered in the Saskatoon judicial district as the "cause of action" arose there.—OLMSTEAD *v.* SCOTT, [1921] 1 W. W. R. 1033.—**CAN.**

sm. *Contract—Where act or omission giving cause of complaint occurs.*]—A "cause of action" as applied to actions in the Ct. of King's Bench & for the purposes of King's Bench Act, R. S., 1920 (c. 39), s. 35, arises where, with regard to a contract, the act or omission of deft. occurs which gives pltf. his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior cts.—ST. LOUIS RURAL MUNICIPALITY *v.* MARKHAM, [1921] 1 W. W. R. 950.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—B.

sn. *Breach of trust—Failure to account.*]—The wrong of a sale of land in breach of trust & the wrong of a failure to account are entirely different things; & in this case there was a joinder of different causes of action, in which the different defts. were not all interested. An order was made requiring pltf. to elect upon which cause of action he would proceed.—THOMAS *v.* DAY (Alta.) (1912), 21 W. L. R. 244; 2 W. W. R. 133; 4 D. L. R. 238.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—C.

wi. —— *Account by agent.*]—In a suit based upon an alleged agency, responsible for accounts & refund, it is the general agency with liability to account & refund the balance which is the cause of action, & not each separate act of payment or collection. Any individual act of collection cannot therefore be said to be a part of the cause of action so as to confer jurisdiction on the ct.—SHAH SANKALCHAND *v.* AMBALAL NAGINDAS (1929), I. L. R. Bom. 192.—**IND.**

PART I. SECT. 2, SUB-SECT. 5.—B.

141 ii. —— ——.]—Though deft. on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers under Criminal Code, s. 748:—*Held:* deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—A *v.* DULEBA, [1924] 3 D. L. R. [illegible], 2 W. W. R. 1177; 20 Alta. L. R. 493.—**CAN.**

-.]—In the ordinary case of possible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.

Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour :—*Held :* the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise their defence.—*Re* CLAY, CLAY *v.* BOOTH, *Re* A DEED OF INDEMNITY, [1919] 1 Ch. 66 ; 88 L. J. Ch. 40 ; 119 L. T. 754 ; 63 Sol. Jo. 23, C. A.

Annotations :—**Consd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C 437. **Refd.** Ruislip-Northwood U. D. C. *v.* Lee (1931), 145 L. T. 208 ; Thomas *v.* A.-G., [1936] 2 All E. R. 1325.

Declaratory judgments generally, *see* JUDGMENTS.

157. *Add. Annotation :*—**Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

176. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo, A. M. Luther *v.* Sagor, [1921] 1 K. B. 456 ; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

179. *Add. Annotations :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388 ; Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

180. *Add. Annotation :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

Part II.—In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Everett *v.* Ryder (1926), 135 L. T. 302. **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343. **Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956 ; Simmonds *v.* Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616 ; Manton *v.* Brocklebank, [1923] 2 K. B. 212.

187a. ——.]—Where a person has a sole exclusive right, which is infringed upon, if an action of trespass will not lie, he may have an action of the case, for the law will not permit a man who has a right to be without a remedy. —WHITCHURCH *v.* HIDE (1742), 2 Atk. 391 ; 26 E. R. 636. L. C.

191. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406 ; Place *v.* Searle, [1932] 2 K. B. 497.

194. *Add. Annotations :*—**Consd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316.

197. *Add. Annotations :*—**Apld.** R. *v.* Poplar B. C. (No. 1), [1922] 1 K. B. 72. **Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 148 L. T. 180.

198. *Add. Annotations :*—**Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254 ; Layzell *v.* Thompson (1926), 43 T. L. R. 58.

199. *Add. Annotation :*—**Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

205. *Add. Annotations :*—**Folld.** Janvier *v.* Sweeney, [1919] 2 K. B. 316. **Consd.** Hambrook *v* Stokes (1924), 41 T. L. R. 125. **Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

205a. Injury to health caused by false statement.]—The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—JANVIER *v.* SWEENEY, [1919] 2 K. B. 316 ; 88 L. J. K. B. 1231 ; 121 L. T. 179 ; 35 T. L. R. 360 ; 63 Sol. Jo. 430, C. A.

Annotation :—**Consd.** Hambrook *v.* Stokes, [1925] 1 K. B. 141.

205b. Mental shock caused by negligence.]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES

PART I. SECT. 2, SUB-SECT. 6.—C.

sq. *Cause of action deemed to exist by statute.*]—If the Legislature, acting within the ambit of its authority, has decreed that a person who in law had no cause of action at the time he issued a writ shall nevertheless be deemed to have had a cause of action at that time, the ct. must give effect to the legislation by holding that the action is properly founded.—PORTEOUS *v.* NORTH VANCOUVER BOARD OF SCHOOL TRUSTEES, [1935] 2 W. W. R. 280 ; 50 B. C. R. 78.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

sn. *Act per se injurious—Lawful act on own land.*]—Where the unavoidable consequence of a lawful act done by a person on his own land, such as the erection of a mill dam, is to injure his neighbour, an action lies for such injury : but not if such act *per se* would not be necessarily or probably injurious, but becomes so from a cause not under the control of either party.—PETERS *v.* DEVINNEY (1857), 6 C. P. 389.—**CAN.**

so. *Expulsion from caste.*]—A wrongful expulsion from caste gives rise to a cause of action for damages.—[illegible] SAH *v.* KANNAMMA BAI [illegible] R. 65 Mad. 727.—**IND.**

BROTHERS, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

206a. —— ——.]—If the law casts any public duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures.—FERGUSON *v.* KINNOULL (EARL) (1842), 9 Cl. & Fin. 251; 4 State Tr. N. S. 785; 8 E. R. 412, H. L.

Annotations :—**Refd.** Heriots Hospital, Feoffees *v.* Ross (1846), 12 Cl. & Fin. 507; Rogers *v.* Rajendro Dutt (1860), 8 Moo. Ind. App. 103; Sinclair *v.* Broughton & Government of India (1882), 47 L. T. 170; Allen *v.* Flood, [1898] A. C. 1.

215. *Add. Annotations :*—**Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539; Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Wilson *v.* United Counties Bank, [1920] A. C. 102.

217. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper Ltd., [1919] A. C. 368.

220. *Add Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

221. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

224. *Add. Annotations :*—**Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

231. *Annotation :*—**Distd.** The Zelo, [1922] P. 9.

235. *Add. Annotation :*—**Apld.** Sorrell *v.* Smith, [1925] A. C. 700

238. *Add. Annotation :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey (1930), 99 L. J. Ch. 337.

239. *Add. Annotations :*—**Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163; More *v.* Weaver, [1928] 2 K. B. 520.

240. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

241. *Add. Annotations :*—**Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Sorrell *v.* Smith, [1925] A. C. 700.

242. *Add. Annotations :*—**Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; FARR *v.* Butters Bros. & Co., [1932] 2 K. B. 606; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

243a. —— —— ——.]—ST. NEDEPORT (PRIOR) *v.* WESTON (1443), Y. B. 22 Hen. 6, fo. 14, pl. 23.

Annotations :—**Consd.** Huzzey *v.* Field (1835), 5 Tyr. 855; Hammerton *v.* Dysart, [1916] 1 A. C. 57. **Refd.** Churchman *v.* Tunstal (1659), Hard. 162; Pain *v.* Partridge (1691), Holt, K. B. 6; Newton *v.* Cubitt (1862), 12 C. B. N. S. 32; Hopkins *v.* G. N. Ry. (1877), 2 Q. B. D. 224; Cowes U. C. *v.* Southampton Isle of Wight & South of England Royal Mail Steam Packet Co., [1905] 2 K. B. 287; General Estates Co. *v.* Beaver, [1914] 3 K. B. 918.

246. *Add. Annotations :*—**Consd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254. **Refd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

247. *Add. Annotations :*—**Refd.** Goddard *v.* Watford Co-op. Soc. (1924), 41 R. P. C. 218; Lyons (J.) & Co., Ltd. *v.* Lyons (J.) (1931), 49 R. P. C. 188.

249. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Sorrell *v.* Smith, [1924] 1 Ch. 506. **Apld.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28; Thompson *v.* British Medical Assocn. (N.S.W. Branch), [1924] A. C. 764. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** Evans *v.* Heathcote, [1918] 1 K. B. 418; Thomas *v.* Moore, [1918] 1 K. B. 555; Davies *v.* Thomas, [1920] 2 Ch. 189; Rawlings *v.* General Trading Co., [1921] 1 K. B. 635; Brimelow *v.* Casson, [1924] 1 Ch. 302; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

249a. —— —— **Unlawful means used.**]—A single person or a body of persons commits an actionable wrong if he or they inflict actual

PART II. SECT. 1, SUB-SECT. 4.

216 iii. —— ——.]—An action for damages for a misrepresentation on a sale of goods was dismissed on the ground that there was no evidence on which damages could be assessed On appeal the trial judge's view, as to the absence of evidence of damages, was sustained, but it was held that as a breach of warranty had been shown pltf. was entitled to a judgment for nominal damages, but that since the action was one for the recovery of substantial damages & not merely to assert a legal right there should be no costs of the trial or appeal to either party.—SMITH *v.* WARD, [1928] 4 D. L. R. 850; [1928] 3 W. W. R. 341; 37 Man. L. R. 528.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

237 iii. ——.]—Pltfs. complained that defts. dug holes in the beach upon their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from pltfs.' lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to pltfs.' lands. Pltfs. contended that it was wrongfully detained by defts. :—*Held :* pltfs. had no cause of action, as the sand could not be considered a chattel upon its severance by the wind from its original situs, if shifting sand could be said to have a situs.—BREMNER *v.* BLEAKLEY, [1924] 2 D. L. R. 202; 54 O. L. R. 243; *revsg.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—**CAN.**

so. *Mental suffering insufficient.*]—Mental suffering caused by a deft. will not support an action for damages in the absence of some *injuria* to pltf.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; [1931] 1 D. L. R. 676.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

sq. *Police watch on business premises.*]—In an action brought by a woman against a chief constable, to recover damages for injury to her reputation & business resulting from defender's alleged illegal actings, it appeared that defender, after endeavouring without success to communicate with one of his inspectors who, having gone on holiday, had, in breach of police regulations, not left his proper address, had received information regarding the movements of pursuer & the inspector which led him to suspect that the latter was sheltering in pursuer's house. As pursuer refused to answer any question regarding the inspector, defender directed a watch for the inspector to be kept on pursuer's house. This watch was maintained day & night for five days by police constables stationed in private property & in a lane adjacent to pursuer's house & grounds. Pursuer's property was not entered, & the movements of pursuer & callers at her house were not, except on rare occasions, interfered with :—*Held :* the protection given by law to police & other public officials while acting in the exercise of their duty extended to cases where, as here, a chief constable was acting under powers vested in him for the maintenance of discipline within his police force; &, accordingly, as defendor's actings here were privileged, pursuer was bound, but had failed, to prove that defender had acted maliciously & without probable cause.—ROBERTSON *v.* KEITH, [1936] S. C. 29.—**SCOT.**

st. *False statement causing injury to business.*]—An injury to business resulting from a false statement that only deft.'s brand of corn syrup was used to feed the famous Dionne quintuplets, whereas pltf.'s make was also used, is a good cause of action.—CANADIAN STARCH CO. *v.* ST. LAWRENCE STARCH CO., [1936] 2 D. L. R. 142; O. R. 261; 65 Can. C. C. 270.—**CAN.**

damage upon another by the intentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the unlawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against pltfs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of pltfs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott pltfs. suffered pecuniary loss in the exercise of their profession :—*Held :* pltfs. had a good cause of action against all defts. for damages.—PRATT *v.* BRITISH MEDICAL ASSOCN., [1919] 1 K. B. 244 ; 88 L. J. K. B. 628 ; 120 L. T. 41 ; 35 T. L. R. 14 ; 63 Sol. Jo. 84.

Annotations :—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129 ; Davies *v.* Thomas, [1920] 1 Ch. 217 ; Hodges *v.* Webb, [1920] 2 Ch. 70 ; Said *v.* Butt, [1920] 3 K. B. 497 ; Sorrell *v.* Smith, [1925] A. C. 700 ; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

250. *Annotations :*—**Consd.** Valentine *v.* Hyde, [1919] 2 Ch. 129. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244 ; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

251. *Add. Annotation :*—**Refd.** Spalding *v.* Gamage (1918), 35 R. P. C. 101.

253. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244 ; Valentine *v.* Hyde, [1919] 2 Ch. 129. **Apld.** Davies *v.* Thomas, [1920] 2 Ch. 189. **Consd.** Hodges *v.* Webb, [1920] 2 Ch. 70 ; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40 ; White *v.* Riley, [1921] 1 Ch. 1 ; Sorrell *v.* Smith, [1923] 2 Ch. 32. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Refd.** Wolstenholme *v.* Ariss, [1920] 2 Ch. 403 ; Sorrell *v.* Smith, [1924] 1 Ch. 506 ; Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293 ; Place *v.* Searle, [1932] 2 K. B. 497 ; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. **Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

255. *Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

256. *Add. Annotations :*—**Distd.** The Zelo, [1922] P. 9. **Apld.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. **Consd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

257a. ——.]—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Pltfs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with pltfs. :—*Held :* assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform ; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—LONG *v.* SMITHSON (1918), 88 L. J. K. B. 223 ; 118 L. T. 678 ; 62 Sol. Jo. 472, D. C.

Annotation :—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

258. *Annotations :*—**Consd.** Pontardawe R.D.C. *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

PART II. SECT. 3, SUB-SECT. 2.—B.

253 ii. ——.]—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would-be employers, such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778 ; 3 W. W. R. 524.—CAN.

256 ii. ——.]—Pltf. co., a manufacturer of newsprint, brought this action against other manufacturers of the same articles for a declaration that such of defts. as supplied less than their proper share of newsprint to Canadian publishers during the years 1918 & 1919, were liable to pay to pltf. co. the loss suffered by it in supplying more than its proper share during the two years & asked for an account & payment. The claim was based upon an alleged agreement between the parties & also upon orders alleged to have been made by the Paper Comptroller appointed by the Canadian Government in Nov. 1917 :—*Held :* although pltf. co. sustained a substantial loss of profit by reason of its having been compelled by the Government to supply the Western Canadian publishers with newsprint at prices fixed by the Comptroller when it could have been sold to limited states customers at higher prices, & was thus compelled to bear the burden, which should have been shared by some of defts. the ct. had no jurisdiction to compel an adjustment of pltf. co.'s claim by those defts. who shirked their fair share of the burden.—FORT FRANCES PULP CO. *v.* SPANISH RIVER PULP CO., [1928] 1 D. L. R. 753 ; 61 O. L. R. 512 ; *affd.*, [1929] 4 D. L. R. 192 ; 64 O. L. R. 148 ; *revsd.*, [1931] 2 D. L. R. 97, P. C.—CAN.

257 i. ——.]—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778 ; 3 W. W. R. 524.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—C.

258 ii. —— *Heightened fence.*]—Applt. & resp. owned & resided upon adjoining properties. In 1925 resp. erected an 8 ft. iron fence or hoarding on the boundary between the properties. In 1929 resp. raised the fence to a height of 18 ft. in order to shield his lavatory from the view of an attic window which applt. had erected. On the day the work of heightening was started applt. notified resp. that, as the fence could not be erected without a trespass being committed, he would sue for damages if the work were proceeded with. A few days later applt. obtained an interdict restraining resp. from trespassing on his land. Applt. then instituted the present action, claiming damages on the ground that resp. had maliciously by himself, his servants and/or workmen trespassed upon the land for the purpose of erecting a hoarding on the boundary. It was proved that on one occasion a

259a. —— **Damage by rats.**]—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers:—*Held:* in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., pltf. could not maintain an action for damages.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

261. *Add. Annotations:*—**Refd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Bleachers Assocn., Ltd. & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council, [1933] Ch. 356.

262. *Add. Annotations:*—**Apld.** The Molière (1924), 41 T. L. R. 154. **Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354. **Distd.** Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** Kent *v.* Atkinson, [1923] P. 142; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

263. *Add. Annotations:*—**Refd.** Kent *v.* Atkinson, [1923] P. 142; Rose *v.* Ford, [1937] 3 All E. R. 359.

264. *Add. Annotations:*—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461; Kent *v.* Atkinson, [1923] P. 142.

265. *Add. Annotations:*—**Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223; The Minerva (1933), 49 T. L. R. 563; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

266. *Add. Annotations:*—**Consd.** Bradford Corpn. *v.* Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354; Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** Baker *v.* Dalgleish S.S. Co., [1922] 1 K. B. 36; The Edison, [1932] P. 52; A.-G. *v.* Valle-Jones, [1935] 2 K. B. 209; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

267. *Add. Annotation:*—**Consd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

268. *Annotations:*—**Consd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520. **Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

274a. Procuring judgment for debt already paid—No malice.]—Pltf., a chemist, owed defts. a debt of £3 11*s.* 4*d.*, & paid it. Defts. overlooked the fact of this payment & issued civil process against pltf. who, when served, pointed out to defts. their mistake. Defts. apologised & wrote: "We are immediately communicating with our agency." On the day of trial defts., the then pltfs., appeared by a solr. & obtained judgment for £3 11*s.* 4*d.* Pltf., the then deft., did not attend or appear. The fact of the judgment was published in a county newspaper. About eight months later the judgment, at the instance of the present pltf. was set aside. Pltf. brought an action claiming (*inter alia*) damages in tort against defts. for procuring this judgment. Pltf. in his evidence stated that his profits during the year following the judgment were diminished by £95, & during the next year by £105. He attributed this falling off to the judgment & its publication:—*Held:* the cause of action in tort, if any, was the malicious issue of civil process against pltf. There was no evidence of malice, & the supposed damages were irrecoverable.—CORBETT *v.* BURGE, WARREN & RIDGLEY, LTD. (1932), 48 T. L. R. 626.

274b. Injurious falsehood detrimental to business—No malice.]—An action for injurious falsehood does not lie without proof of actual malice in the sense of a wrongful intention to injure pltf.

A statement false in fact, & detrimental to pltf.'s business though not defamatory, will therefore not support such an action if it was made in the belief, even a careless belief, that it was true, & without any indirect motive of hostility to pltf.—BALDEN *v.* SHORTER, [1933] 1 Ch. 427; 102 L. J. Ch. 191; 148 L. T. 471; 77 Sol. Jo. 138.

283. *Add. Annotation:*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

296. *Annotation:*—**Apld.** Webster *v.* Harrison, Townsend (1920), 89 L. J. K. B. 1077.

303. *Add. Annotation:*—**Refd.** *Re* Wavertree, Rutherford *v.* Walker, [1933] Ch. 837.

303a. Breach of contract—Onus of proof.]—The burden of proving that a breach of contract falls within the principle of *de minimis non curat lex* is on the party seeking to excuse the breach.—RONAASEN (E. A.) & SON *v.* ARCOS, LTD. (1932), 48 T. L. R. 356; 37 Com. Cas. 291, C. A.; *affd. sub nom.* ARCOS, LTD. *v.* RONAASEN (E. A.) & SON, [1933] A. C. 470, H. L.

304. *Add. Annotation:*—**Refd.** Everett *v.* Ryder (1926), 135 L. T. 302.

310. *Annotations:*—*Generally*, **Refd.** A.-G. *v.* Sewell (1918), 88 L. J. K. B. 425; Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

piece of timber fell upon applt.'s land & was immediately removed by the workmen:—*Held:* (1) although the heightening of the fence depreciated the value of applt.'s property, applt. could not recover damages, even if the work had been done maliciously; (2) as resp. had not trespassed under a claim of right & had not insolently or defiantly insisted upon going on applt.'s land, applt. was not entitled to succeed.

v. FROST, [1930] W. L. R.

AF.

PART II. SECT. 3, SUB-SECT. 2.—E.

n i. —— —— *Expulsion from membership of Church.*]—TOEWS *v.* ISAAC (No. 2), [1931] 2 W. W. R. 48; 39 Man. L. R. 436; 2 D. L. R. 819.—CAN.

sp. *Goods claimed from tenant—Refusal of access by landlord.*]—BONNELL *v.* FERRIS, [1929] 1 D. L. R. 540; 60 N. S. R. 297.—CAN.

sq. *Interference with privacy.*]—A right to privacy is not an inherent right of a party & can arise only by express usage, by grant or by special permission. Where, therefore, pltf. brought a suit for the closing of certain windows opened by deft. in a newly constructed second storey of his house which was adjoining pltf.'s on the ground that the female apartments of pltf.'s house were overlooked & his privacy was destroyed:—*Held:* pltf.'s claim could not succeed.—KESHO SAHU *v.* MUSAMMAT MUKTAKIMAN (1931), I. L. R. 10 Pat. 280.—IND.

320. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Apld.** *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. **Consd.** Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; *Re* Collier, [1930] 2 Ch. 37; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

322. *Add. Annotation :*—**Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

323. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89.

325. *Add. Annotations :*—**Consd.** Wylie *v.* Lawrence Wright Music Co. (1932), 96 J. P. 156. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

326. *Add. Annotations :*—**Apld.** Wild *v.* Simpson, [1919] 2 K. B. 544. **Consd.** Lipton *v.* Powell, [1921] 2 K. B. 51. **Apld.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Haseldine *v.* Hosken, [1933] 1 K. B. 822; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

328. *Add. Annotation :*—**Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

328a. —— **Immoral relationship continued in reliance on fraudulent misrepresentation.**]—*Semble :* an agreement between a married man & an unmarried woman, who knows that he is married, that they will marry if & when he obtains a decree of nullity of his marriage, is illegal & void as being contrary to public policy.

Semble : where an unmarried woman, in reliance on representations by a married man that he can obtain a decree of nullity of his marriage & will marry her thereafter, enters into an immoral association with him & thereby suffers damage, she cannot, on the representations proving to have been false, maintain against him an action for deceit, being herself a party to the immoral association.—SIVEYER *v.* ALLISON, [1935] 2 K. B. 403; 104 L. J. K. B. 597; 153 L. T. 239; 51 T. L. R. 534; 79 Sol. Jo. 479.

332. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

333. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

335. *Add. Annotations :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg. *v.* Sadler & Moore, [1937] 2 K. B. 158.

Part III.—Who may Sue and be Sued.

338. *Add. Annotation :*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.

340. *Add. Annotations :*—**Refd.** The Coaster (1922), 91 L. J. P. 145; Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308; Allgemeine Versicherungs-Gesellschaft Helvertia *v.* German Property Administrator, [1931] 1 K. B. 672; Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401.

344. *Add. Annotation :*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

345. *Add. Annotations :*—**Refd.** *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10; Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402; Ridley *v.* Lee, [1935] Ch. 591.

354. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

360. *Add. Annotation :* — **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

360a. **Recognised, if acknowledged here.**]—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—SOVIET SOCIALIST REPUBLICS UNION *v.* ONOU (1925), 69 Sol. Jo. 676.

363. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

366a. —— **Action by procurator—Validity of appointment.**]—Pltf., the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft. :—*Held :* (1) no man can make a procurator for another; therefore the King could not make a procurator for all or any of his subjects; (2) the office of ambassador did not include a procuration private, but public for the King, nor for any several subject, otherwise than as it concerned the King.—ACUNA *v.* BINGLEY (1616), Hob. 78, 113; 80 E. R. 263.

Annotations :—As to (2) **Consd.** Hullett *v.* Spain (1828), 2 Bli. N. S. 31. **Foll.** Penedo *v.* Johnson (1873), 22 W. R. 103. *Generally,* **Refd.** Brunswick *v.* Hanover (1844), 13 L. J. Ch. 107.

366b. —— **Action by minister plenipotentiary.**]—A demurrer allowed to a bill filed by the agent duly authorised, & minister plenipotentiary of a foreign state, in respect of

PART II. SECT. 5.

325 iv. —— *Agreement to ... third party.*]—Pltf. was in a position to give evidence that one B. was implicated with him in the illegal manufacture of alcohol. Deft. L., who was alleged to be acting not only on his own behalf but also on behalf of his co-defts., all of whom were said to have reasons for wishing to be revenged on B., agreed with pltf. to pay him for said evidence on the conviction of B., the remuneration to be on a sliding scale in accordance with the severity of the sentence obtained by pltf.'s evidence. Part payment was made under the contract & pltf. sued for the balance; B. having been convicted :—*Held :* the contract was unlawful as against public policy, &, therefore, unenforceable.—SYMINGTON *v.* VANCOUVER BREWERIES, LTD. & RIEFEL, [1931] 1 W. W. R. 410; 43 B. C. R. 388; 1 D. L. R. 935; *affd.,* [1930] 3 W. W. R. 19; 4 D. L. R. 1023.—CAN.

rights of such state, on the ground that the state was not properly represented.—SCHNEIDER *v.* LIZARDI (1846), 9 Beav. 461; 15 L. J. Ch. 435; 50 E. R. 421.

Annotation :—**Follid.** Penedo (Baron) *v.* Johnson (1873), 29 L. T. 452.

366c. —— **Claim under unregistered bill of sale.**]—To a bill filed by the Chargé d'Affaires of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed.—PENEDO (BARON) *v.* JOHNSON (1873), 29 L. T. 452; 22 W. R. 103.

368. *Annotation :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

372. *Add. Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

375. *Annotations :*—**Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

376. *Add. Annotation :*—*As to* (2) **Follid.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376a. —— ——.]—A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.

A foreign State sued to restrain dealing with, & for the appointment of a new trustee of, funds lodged in England in the names of a trustee for pltfs. & a trustee for defts. who held a concession from pltfs. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out.—SOUTH AFRICAN REPUBLIC *v.* COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD, [1898] 1 Ch. 190; 77 L. T. 555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

Annotations :—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Tervaete, [1922] P. 259; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376b. —— ——.]—In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the Chargé d'Affaires of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of pltfs., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Pltfs. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim :—*Held :* although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—SOVIET REPUBLICS UNION *v.* BELAIEW (1925), 134 L. T. 64; 42 T. L. R. 21.

383. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

387. *Add. Annotations :*—**Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government & Colonies Crown Agents (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

387a. —— **Notwithstanding restrictions on exercise of sovereign rights.**]—(1) It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1889 (c. 49), so far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan

& the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King:—*Held:* (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations:—As to (1) **Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824. *As to* (3) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

388. *Annotation:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

389. *Add. Annotation:*—**Consd.** Soviet Republic Union *v.* Belaiew (1925), 42 T. L. R. 21.

390. *Add. Annotations:*—**Consd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. **Refd.** The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

392. *Add. Annotations:*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333.

392a. —— ——.]—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.

In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs The Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order *nisi* to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State:—*Held:* (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction. —DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

393. *Add. Annotations:*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

393a. —— ——.]—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—COMPANIA MERCANTIL ARGENTINA *v.* UNITED STATES SHIPPING BOARD (1924), 93 L. J. K. B. 816; 131 L. T. 388; 40 T. L. R. 601; 68 Sol. Jo. 666, C. A.

393b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

393c. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

394. *Add. Annotations:*—**Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

403. *Add. Annotation:—Generally*, **Refd.** Soviet Republics Union *v.* Belaiew (1925), 134 L. T. 64.

406. *Add. Annotations:*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96; Compania Mercantil Argentina *v.* United States Ship-

407a. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

407b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

409. *Add. Annotations:*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

Part IV.—Conditions Precedent to Action.

412. *Add. Annotation:*—**Apld.** Cipriani *v.* Burnett, [1933] A. C. 83.

412a. —— ——.]—A contract may make the award of a specified tribunal a condition precedent to an action at law without doing so in terms.

The tickets sold for a sweepstake in connection with a race meeting in Trinidad

stated: "This ticket is sold subject to the condition that in the event of any dispute arising with respect to any matters connected with the drawing of the sweepstake, or the awarding of the prizes, the decision of the stewards of the Trinidad Turf Club thereon shall be accepted as final":—*Held:* the terms of the ticket, having regard to the circumstances belonging to it, made a decision by the stewards a condition precedent to any action to recover the stakes.—CIPRIANI *v.* BURNETT, [1933] A. C. 83; 102 L. J. P. C. 118; 148 L. T. 148, P. C.

425. *Add. Annotations:*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

428. *Add. Annotation:*—**Refd.** Bradford Old Bank, Ltd. *v.* Sutcliffe (1918), 34 T. L. R. 619.

430. *Add. Annotations:*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

434. *Add. Annotations:*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

436. *Add. Citation:*—11 L. J. Q. B. 87.

448. *Add. Annotation:*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

461. *Add. Annotations:*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

462. *Add. Annotation:*—*As to* (1) **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

463. *Add Annotation:*—**Consd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

480. Add "For full anns., *see* S. C., No. 176, *ante*."

Part V.—Suspension of Right of Action.

491. *Add. Annotation:*—**Dbtd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

496. *Add. Annotations:*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38; Flint *v.* Lovell, [1935] 1 K. B. 354.

497. *Add. Annotation:*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

497a. —— ——.]—If the party know that he has been robbed of the goods, he must, in order to obtain restitution, first prosecute the felon.—HARRIS *v.* SHAW (1736), Lee *temp.* Hard. 349; 95 E. R. 226.

Annotation:—**Refd.** Wells *v.* Abrahams (1872), L. R. 7 Q. B. 554.

PART IV. SECT. 2.

80. *Consent of supervisors—Construction of local Act—Action by "creditor"—Who is.*]—Sect. 4 of c. 73, 1927, an Act respecting the City of Swift Current, provides that during a certain period no "creditor" shall commence a "suit, action or other proceeding" against the city without the written consent of the "supervisors," & sect. 2 defines "creditor" as a person, firm, etc., "now having, or who may hereafter have, any action, cause of action, debt, account, covenant, contract, claim or demand whatsoever, against the city":—*Held:* definition of "creditor" is wide enough to include a person having a cause of action founded only on tort.—BEISWANGER *v.* SWIFT CURRENT, [1930] 3 W. W. R. 519; [1931] 1 D. L. R. 407; 25 S. L. R. 141; 12 C. B. R. 133; *affg.*, [1930] 4 D. L. R. 1031; 2 W. W. R. 59; 24 S. L. R. 453.—**CAN.**

81. *Debt Adjustment Board—Action founded on tort—Action to set aside conveyance on ground of fraud.*]—An action to set aside a transfer of property on the ground that it was obtained by undue influence, duress & fraud is not one founded upon a tort, &, therefore, does not fall within sect. 11 (2) of Debt Adjustment Act, 1933, which excludes an action founded on tort from the operation of the Act.—CLARK *v.* CAYEN, [1935] 2 W. W. R. 18.—**CAN.**

82. —— —— *Action for recovery of possession.*]—*Held:* no permit necessary under sect. 7 (1) of Debt Adjustment Act, 1934. Such proceedings are not an "action or suit," & therefore the application of sect. 7 (1) is not excluded by the exception in sect. 7 (2) of any "action or suit which is founded on tort." Therefore, compliance with sect. 7 (1) is a condition precedent to the initiation of such proceedings.—SELZLER *v.* KARY, [1935] 2 W. W. R. 25; 5 F. L. J. (Can.) 21.—**CAN.**

83. —— —— ——.]—In proceedings under Landlord & Tenant Act, R.S.S., 1930, for a writ of possession held that the tenant had the right to have the issues tried whether the landlord having discontinued its first action for foreclosure, had the right to proceed in a second action for foreclosure without obtaining a new permit from the Debt Adjustment Board & whether the permit for the first action was of any value to the landlord; and these matters should not be tried in a summary way & that, in the exercise of the discretion conferred by sect. 53 (3) of said Act, the writ of possession should be refused.—*Re* GREAT-WEST LIFE ASSURANCE CO. & LANSKAIL, [1937] 1 W. W. R. 77.—**CAN.**

83a. —— —— *Action for negligence under Vehicles Act,* 1935.]—An action against the owner of a motor car based on the liability imposed on him by sect. 72 of Vehicles Act, 1932, is an action "founded on tort," within sect. 7 (2) (*b*) of Debt Adjustment Act, 1934.

An action against a husband who is sued jointly with his wife for her negligence in driving a motor car is, also, an action "founded on tort."—DAVIDNER *v.* SCHUSTER & MRAZEK, RIESENBERG *v.* SCHUSTER & MRAZEK, [1936] 1 W. W. R. 45; 1 D. L. R. 560.—**CAN.**

83b. —— *Action for statutory claim—Action against insurer.*]—An action brought under sect. 222*d* of Saskatchewan Insurance Act, as amended by 1933, c. 22, by an injured person against the insurer on an automobile policy, is an "action for a statutory claim," within the meaning of sect. 7 (1) of Debt Adjustment Act, 1934, & not a "proceeding on a contract made or entered into by the debtor." within sect. 7 (2) (*b*) thereof, & is, therefore, one which cannot be brought without the consent of the Debt Adjustment Board or the notice required by sect. 7.—LANDA *v.* TRAVELERS INSURANCE CO., [1936] 2 W. W. R. 100; 2 D. L. R. 732.—**CAN.**

83c. —— *Consent to anything done—Relation back.*]—Debt Adjustment Act, 1933, s. 6 (2), provides that "the consent of the Board under this section whenever given shall relate back to anything done in the action or other proceedings in respect to which the permit is given":—*Held:* this provision is not restricted to actions begun before the Act came into force; &, therefore, the plea that the permit in this case was not given until after the defence was filed was not sustained.—BOW ISLAND *v.* HALPIN, [1936] 1 W. W. R. 401; 2 D. L. R. 237.—**CAN.**

83d. —— *Non-compliance with Act—Effect on proceedings.*]—The effect of Debt Adjustment Act, 1934, is that where its provisions as to the steps to be taken before bringing action are not complied with the proceedings are null & void.—EDWARDS *v.* GROSSER & GLASS, LTD., [1936] 3 W. W. R. 670.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.

498 ii. —— —— *Claim under Criminal Injuries Code of Ireland.*]—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—TYLER *v.* CORK COUNTY COUNCIL, [1921] 2 I. R. 8.—**IR.**

499 i. —— ——.]—A criminal charge was laid by pltf. bank against deft. in

83e. —— —— ——. *Under Landlord & Tenant Act, R.S.S.,* 1930.]—Proceedings under Landlord & Tenant Act, R.S.S., 1930, against an overholding tenant are proceedings for "recovery of possession of land"

83f. —— —— *Who is "resident home owner."*]—TROYAN *v.* PARK, [1936] 3 W. W. R. 258.—**CAN.**

505a. —— —— —— **Felony depending upon intent—Intent not proved.**]—YARDY *v.* GREENWOOD (1935), 79 Sol. Jo. 363.

507. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

516. *Add. Annotations :*—**Consd.** Yardy *v.* Greenwood (1935), 79 Sol. Jo. 363. **Refd.** Canvey Island Comrs. *v.* Preedy (1921), 91 L. J. Ch. 203.

523. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

526. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

540. *Add. Annotations :*—**Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Samuel *v.* Dumas, [1924] A. C. 431; Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73.

Part VIII.—Maintenance and Champerty.

549. *Add. Annotations :*—**Expld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

551. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

552. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

respect of $1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltfs. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft., which had not been prosecuted to conviction or acquittal, pltfs. should not have been allowed to proceed with the action, but should have been non-suited :—*Held :* as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—STANDARD BANK OF CANADA *v.* SHUEN WAH, [1919] 1 W. W. R. 586; 26 B. C. R. 441.—**CAN.**

499 ii. —— ——.]—Where, in an action for assault & battery, pltf. proves that the injury caused grievous bodily harm, pltf. will be nonsuited unless it appears that proceedings have been taken against deft. for the criminal offence.—SCHOHL *v.* KAY (1862), 10 N. B. R. (5 All.) 244.—**CAN.**

504 iii. —— —— —— ——.]—No hard & fast rule can be laid down to indicate the considerations by which a ct. ought to be guided in considering the question of the stay of a criminal proceeding, pending the disposal of a civil suit, & each case must be determined upon its own facts. Even if some or all the matters materially in issue are the same, that in itself cannot be a reason for staying the criminal proceedings. One test is whether the prosecution is public or private. Where it is public the ct. as a rule would not stay criminal proceedings.—GOPALCHANDRA CHARRAVARTI *v.* KING EMPEROR (1929), I. L. R. 57; Calc. 558.—**IND.**

504 iv. —— —— ——.]—The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct. may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action, the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—CARLISLE *v.* ORR (No. 2), [1918] 2 I. R. 442.—**IR.**

504 v. —— —— ——.]—On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover $99 for wages; on Aug. 30, defts. counterclaimed in the division ct. action for money & tickets a mounting to $202.74, "fraudulently & without colour of right" converted by pltf. to his own use, the subject of conversion being the same as that in respect of which the criminal charge was made; on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up; he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—*Held :* the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—*Re* BRYANT *v.* CITY DAIRY CO. (1921), 64 D. L. R. 283; 37 Can. Crim. Cas. 405; 50 O. L. R. 40.—**CAN.**

504 vi. —— —— ——.]—The rule that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended until after prosecution does not apply where the offences disclosed by the civil action are offences under the Code, or, if only common law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY MILLS & CO., LTD., [1930] 1 W. W. R. 680; 3 D. L. R. 758; 26 Alta. L. R. 150; 54 Can. C. C. 181.—**CAN.**

504 vii. —— —— ——.]—ILLINGWORTH *v.* COYLE, [1933] 3 W. W. R. 607; 48 B. C. R. 81.—**CAN.**

504 viii. —— —— ——.]—Stay of civil proceedings for criminal negligence pending criminal proceedings is a matter of discretion, not of right.—JOHNSON *v.* SHEILLS, [1935] 2 D. L. R. 806.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.

sm. *Injury incidental to felony.*]—*Held :* the rule, that civil proceedings based upon felonious acts of deft. should be stayed until deft. had been prosecuted, did not apply where injury resulted to a person only incidentally to the felony, &, in any event, the rule did not apply to actions based upon sect. 3 of Compensation to Relatives Act, 1897.—CARR *v.* BAKER (1936), 36 S. R. N. S. W. 301; 53 N. S. W. W. N. 110.—**AUS.**

PART V. SECT. 4, SUB-SECT. 3.—C.

sp. *Civil action against company—Prosecution of directors.*]—On appeal from an order staying a civil action against an incorporated co. until a criminal prosecution against certain officers thereof should be disposed of :—*Held :* the appeal should be allowed.—MACKEE *v.* SOLLOWAY, MILLS & CO., LTD. (No. 3), [1931] 2 W. W. R. 926; 4 D. L. R. 417; 44 B. C. R. 401; 57 C. C. C. 103.—**CAN.**

sr. *Civil action against society—Prosecution of trustees.*]—*Held :* civil action should not be stayed.—KOZLOWSKI *v.* WORKERS' BENEVOLENT SOCIETY OF CANADA (No. 2), [1933] 3 W. W. R. 566; [1934] 1 D. L. R. 237; 41 Man. L. R. 488.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—D.

sz. *Abolition of distinction between felonies & misdemeanors—Action against company—Prosecution of directors.*]—Even if the rule, that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended or may be stayed until the person who committed the injury has been prosecuted, is in force in Alberta, it is inapplicable where the civil action is against an incorporated company & a stay thereof is asked for on the ground that criminal proceedings are pending against directors of the co. on charges identical with those which might be based on the facts which may be disclosed in the civil action, but there is nothing alleged in the latter action to show that said directors are individually connected with or have a knowledge of the facts alleged in that action. Since said rule under the law of England was applicable where the prosecution was for a felony but not where it was for a misdemeanor, & the distinction between felonies & misdemeanors has been abolished with respect to offences against the Criminal Code, the rule does not apply where the offences disclosed by the civil action are offences under the Code or, if only common-law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY, MILLS & CO., LTD., [1930] 1 W. W. R. 680; 3 D. L. R. 758; 26 Alta. L. R. 150; 54 Can. C. C. 181.—**CAN.**

556. *Add. Citation :*—After " [1917] 2 K. B. 564, C. A." add " *On appeal,* [1919] A. C. 368, H. L.," & after " 560 " add " 561a, 719a." *Add Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

557. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

:—**Consd.** Neville *v.* London " Newspaper, [1919] A. C. 368.

559. *Add. Annotations :*—**Consd.** Neville *v.* London Express " Newspaper, [1919] A. C. 368. **Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

560. For the existing paragraph substitute the following paragraph :—

—— ——.]—(1) The success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.

(2) An action for damages for maintenance will not lie in the absence of proof of special damage.—NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., [1919] A. C. 368 ; 88 L. J. K. B. 282 ; 120 L. T. 299 ; 35 T. L. R. 167 ; 63 Sol. Jo. 213, H. L.

Annotations :—As to (2) **Folld.** Hickman *v.* Kent or Romney Marsh Sheepbreeders Assocn. (1920), 37 T. L. R. 163. **Apld.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721. *Generally,* **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544 ; Ellis *v.* Torrington, [1920] 1 K. B. 399 ; Haseldine *v.* Hosken, [1933] 1 K. B. 822 ; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

561. *Annotation :—As to* (2) **Refd.** Mackey *v.* Monks (Preston), [1918] A. C. 59.

561a. Special damage—Necessity to prove.]—NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., No. 560, *ante.*

561b. —— ——.]—Pltf., a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counterclaimed against pltf. for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counterclaim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. Pltf. then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held :* (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species ;* (2) pltf. had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN. (1920), as reported in 151 L. T. Jo. 5, C. A.

566. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

569. *Add. Annotation :*—**Consd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

576. *Annotations :*—For " For full anns., *see* " read " **Mentd.** Williams *v.* Page (No. 4) (1859), 28 Beav. 148."

577. *Add. Annotation :*—**Consd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

583. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

584a. Special damage—Necessity to prove.]—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN., No. 561b, *ante.*

585. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

589. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

590. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

592. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

593a. —— ——.]—UTTLEY *v.* HOOPER & Co. (1935), 79 Sol. Jo. 542.

594. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

598a. —— —— **Percentage.**]—Pltf. was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, &, while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount, the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of pltf. in that action. Deft. lost the action, & his solr. sued him for the costs :—*Held :* pltf. could not recover as (1) (BANKES, L.J.) the agreement was champertous, & its effect was to make it an essential part of pltf.'s cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of pltf. in the previous action ;

PART VIII. SECT. 1, SUB-SECT. 3.

581 ix. —— ——.]—One, D., died sonless in 1843, leaving him surviving three widows, the last of whom died in 1894. The widows had from time to time made numerous alienations of portions of their husband's estate to defts., most of the transactions being evidenced by registered deeds. In 1906, the present suit for possession was brought by A., a collateral of D. & certain assignees from A., to whom he, after the death of the last surviving widow, had transferred a share in the property in consideration of their agreeing to supply funds for the litigation to recover back the land from the alienees :—*Held :* the English rules against champerty & maintenance are not in force in India, & agreements to finance litigation on condition of a promise to share in its fruits are not against public policy or void & can be enforced, unless they are extortionate or otherwise inequitable.—THAKAR SINGH *v.* UTTAM KAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

594 vii. —— —— ——.]—The English law of champerty is not in force in India & fair agreements to share property in litigation with others in consideration of their supplying the funds for carrying on suits are not opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—INDAR SINGH *v.* MUNSHI (1919), I. L. R. 1 Lah. 124.—**IND.**

594 viii. — ——.]—An agreement to contribute towards the costs of a law suit in consideration of receiving a share in the result of the suit :—*Held :* on the facts to be not champertous.—FELLOWS-SMITH *v.* SHANKS , 46 N. L. R. 168.—**S. AF.**

COUNTY HOTEL & WINE CO. *v.* LONDON & NORTH WESTERN RY. CO., [1918] 2 K. B. 251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. L.

607. *Add. Annotations :—As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399.

617a. Lease of tithes—With covenant to take legal proceedings for recovery of tithes.]—Agreement to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise :—*Held :* not to be within Statute of Maintenance, 1540 (c. 9).—WHITE *v.* GARDNER (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

621. *Add. Annotations :*—**Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

621a. —— —— **Dilapidations.**]—A freehold messuage & tenement were the subject of the following leases : (*a*) a head lease which expired on Dec. 25, 1917; (*b*) an underlease which expired on Dec. 18, 1917; (*c*) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf. who had been a tenant to deft. of the same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the lessee's covenants therein :—*Held :* the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—ELLIS *v.* TORRINGTON, [1920] 1 K. B. 399; 89 L. J. K. B. 369; 122 L. T. 361; 36 T. L. R. 82, C. A.

Annotation :—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

634. *Add. Annotation :*—**Consd.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

635. *Add. Annotations :—As to* (1) **Refd.** Ellis *v.* Torrington, [1920] 1 K. B. 399. *As to* (2) **Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Refd.** Earle (1925), Ltd. *v.* Hemsworth R. D. C. (1928), 140 L. T. 69. *Generally*, **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 758.

636. *Add. Annotations :*—**Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637. *Add. Annotations :—As to* (1) **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637a. —— **Actions for infringement of copyright—Society for protection of copyright interests of members.**]—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the members after the deduction of expenses. The assignments were real & substantial transactions, & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members :—*Held :* the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltfs. were entitled to succeed.—PERFORMING RIGHTS SOCIETY, LTD. *v.* THOMPSON (1918), 34 T. L. R. 351.

637b. Assignment of judgment.]—In an action of assumpsit to pay money in consideration

PART VIII. SECT. 2, SUB-SECT. 3.

620 i. *Purchase of lands in litigation—Pending actions relating to property purchased — Specific performance.*]—Pltfs. having filed a bill for specific performance of a contract by one R. to sell a certain mine to them, it was agreed between pltfs. & T., one of the now defts., pending such suit, that certain persons should purchase said mine from pltfs.; that they should deposit the money required for the security for costs which pltfs. had been ordered to give in said suit & pay all costs incurred or to be incurred therein & allot to each of pltfs. a twentieth share therein, if they should succeed in getting a title through the suit; & that they would settle all claims of Messrs. E. & G. against pltfs. Pltfs. having sued defts. on the last-mentioned covenant :—*Held :* the agreement was void for champerty & maintenance, & they therefore could not recover.—CARR *v.* TANNAHILL (1870), 30 U. C. R. 217.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.

627 ii. ——.]—By an absolute assignment of a debt in writing & under seal the assignor, alleging that deft. was indebted to him in a sum in excess of $1,000, agreed to assign & did assign the claim absolutely to pltf. in consideration of the payment of $200, & mutual covenants were entered into to the effect that if the debt owing to the assignor did not amount to $1,000 the assignor would give to the assignee, pltf. in the present action, a rebate *pro rata*, & if the claim exceeded the sum of $1,000, in that event, the assignee would pay to the assignor the same proportion of such excess :—*Held :* the assignment in question was not champertous.—GREENSTEIN *v.* C. H. Co., [1933] O. R. 41; 1 D. L. R. 411; 59 C. C. C. 155.—**CAN.**

634 ii. —— *Subject to litigation—Conveyance valid.*]—By reason of the erection of the Quinze Lake Dam, & the consequent raising of the level of the water in the lake, parts of certain properties in the neighbourhood were flooded. The Crown expropriated the right so to flood these properties including the one in question herein, which at the time of the expropriation belonged to V. Subsequently V. sold the property to H. together with V.'s right to recover the compensation from the Crown for all damages caused him by the flooding & expropriation. The Crown exhibited an information acknowledging liability & seeking to have the amount of the compensation fixed, & made H. deft. :—*Held :* the assignment from V. to H. was not an assignment of litigious rights.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

ADMIRALTY.

Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation :*—**Consd.** The Fagernes, [1926] P. 185.

12a. —— ——.]—DORRINGTON'S CASE (1615), Moore, K. B. 916 ; 72 E. R. 995.

12b. —— ——.]—MARTIN *v.* GREEN (1664), 1 Keb. 730 ; 83 E. R. 1210.

25. *Citations :*—For "THE LORD COCHRANE" read "DUNCAN *v.* M'CALMONT."

38. *Annotations :*—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Navigation Co. (1869), L. R. 4 Exch. 238 ; The Warsaw, [1898] P. 127."

39. *Add. Citations :*—(1862), 15 Moo. P. C. C. 304 ; 5 L. T. 558 ; 10 W. R. 124 ; 1 Mar. L. C. 177 ; 15 E. R. 509, P. C.

Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Stettin (1863), Brown. & Lush. 199 ; The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Steam Navigation Co. (1869), L. R. 4 Exch. 238 ; The Moselle (1874), 32 L. T. 570 ; The Vesta (1882), 7 P. D. 240 ; The Bristol City, [1902] P. 10 ; The Cayo Bonito, [1903] P. 203."

40. *Citations :*—Add after the words "on another point" "*sub nom.* THE ARGOS (CARGO EX), GAUDET *v.* BROWN, THE HEWSONS, GEIPEL *v.* CORNFORTH."

Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** Purkis *v.* Flower (1873), 43 L. J. Q. B. 33 ; Flower *v.* Bradley (1874), 44 L. J. Ex. 1 ; G. N. Ry. *v.* Swaffield (1874), L. R. 9 Exch. 132 ; Gunnestad *v.* Price, Fullmore *v.* Wait (1875), L. R. 10 Exch. 65 ; The Alina (1880), 5 Ex. D. 227 ; Allen *v.* Garbutt (1880), 6 Q. B. D. 165 , The Rona (1882), 7 P. D. 247 ; R. *v.* Southend County Court Judge (1884), 13 Q. B. D. 142 ; The County of Durham, [1891] P. 1 ; R. *v.* City of London Court Judge, [1892] 1 Q. B. 273 ; The Theodora, [1897] P. 279 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470."

41. *Add. Annotations :*—**Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514 ; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129 ; Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88 ; Service *v.* Sundell (1929), 45 T. L. R. 569.

46. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

59. *Add. Annotation :*—**Refd.** The Beldis, [1936] P. 51.

65. *Add. Annotations :*—**N.F.** The Beldis, [1936] P. 51. **Refd.** The Minerva (1933), 49 T. L. R. 563.

66. *Add. Annotations :*—**Refd.** The Llandovery Castle, [1920] P. 119 ; The Jupiter, [1924] P. 236.

66a. —— ——.]—An action *in rem* was brought in a county ct. having Admiralty jurisdiction by pltfs. against defts. the owners of the Norwegian S.S. *Beldis*, for £27 4*s.* 6*d.* payable by defts. to pltfs. under an arbitrator's award in respect of overpayment of chartered freight. The arbn. was held by virtue of a clause in a charterparty relating, not to the *Beldis*, but to the S.S. *Belfri*, another ship belonging to defts. Defts. failed to appear & judgment was entered against them by default. Thereupon the present applts., who held a mtge. on the *Beldis*, intervened, & by agreement an issue was submitted to the county ct. judge as to "whether pltfs.' action *in rem* against the S.S. *Beldis* is maintainable in view of the fact that pltfs.' claim in this action arose out of a charterparty of the S.S. *Belfri* belonging to the same owners.'

PART I. SECT. 4, SUB-SECT. 1.

66a. *Equitable jurisdiction.*]—M. obtained judgment for wages, etc., against the *A.*, the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been wired by applt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused : —*Held :* while the Admlty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as applt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should not be interfered with.—MCBRIDE *v.* DARRELL (1920), 20 Exch. C. R. 274.—**CAN.**

PART I. SECT. 5.

66b. *Action in rem—Tort committed by master—Recovery of damages.*]—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault. —LOUPIDES *v.* THE SCHOONER CALIMERIS (1921), 69 D. L. R. 138 ; 20 Exch. C. R. 331.—**CAN.**

66c. —— —— ——.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort ; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] 1 C. P. D. 136.—**S. AF.**

66d. —— *Master's claim for damages —& interest on wages in arrear— Whether enforceable by action in rem.*]—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem* ; (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—**S. AF.**

The county ct. judge decided in favour of pltfs. upon a dictum of the Ct. of Appeal in regard to procedure *in rem* in *The Henrich Björn*, No. 65, that "the arrest need not be of the ship in question, but may be of any property of deft. within the realm." The interveners appealed. On appeal, the ct. raised the question whether, apart from the point for decision in the agreed issue, the issue itself was not based on a misconception, as it asserted that pltfs.' action arose out of a charterparty, whereas it appeared to be based upon an award. By County Cts. Admlty. Jurisdiction Amendment Act, 1869 (c. 51), s. 2 (1), any county ct. appointed to have Admlty. jurisdiction "shall have jurisdiction . . . to try . . . any claim arising out of any agreement made in relation to the use or hire of any ship . . . ":—*Held:* (1) the cause of action alleged was an ordinary common law claim for payment of money under an award & was not within the jurisdiction conferred by the Act of 1869; but (in case the ct.'s interpretation of the words "arising out of any agreement," etc., should be held by the House of Lords to be wrong); (2) the dictum in *The Henrich Björn* was *obiter*, was not therefore binding, and was erroneous; the procedure *in rem* either in the Admlty. Ct. or in the county ct. does not permit the arrest of a ship or other property of a deft. unconnected with the cause of action; & on both grounds the appeal must be allowed.—THE BELDIS, [1936] P. 51; 106 L. J. P. 22; 154 L. T. 680; 52 T. L. R. 195; 18 Asp. M. L. C. 598, C. A.

70. *Add. Annotations:*—**Consd.** The St. George, [1926] P. 217. **Refd.** The Tervaete, [1922] P. 259; The Colorado, [1923] P. 102; The Sylvan Arrow, [1923] P. 220; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

82a. ——.]—THE TUBANTIA, No. 594a, *post.*

87a. ——.]—*Held:* barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—THE HARLOW, [1922] P. 175; 91 L. J. P. 119; 126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

Annotations:—**Consd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724; The Champion, [1934] P. 1.

89. *Add. Annotations:*—*As to* (1) **Apld.** The Harlow, [1922] P. 175. **Distd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724. **Consd.** The Champion, [1934] P. 1.

115. *Add. Annotation:*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

125. *Add. Annotations:*—**Refd.** The Fagernes, [1926] P. 185; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

126. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

130. *Add. Annotation:*—**Apld.** The Porto Alexandre (1919), 89 L. J. P. 97.

130a. Yacht authorised to fly White Ensign.]—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admlty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time:—*Held:* the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—H.M.S. GLATTON, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations:*—**Apld.** The Crimdon (1918), 35 T. L. R. 81. **Refd.** The Gagara, [1919] P. 95; The Porto Alexandre (1919), 89 L. J. P. 97; The Tervaete, [1922] P. 197; France Fenwick *v.* R. (1926), 43 T. L. R. 18.

131a. ——.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—THE CRIMDON (1918), 35 T. L. R. 81.

Annotation:—**Consd.** The Porto Alexandre (1919), 89 L. J. P. 97.

134. *Add. Annotation:*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

135. *Add. Annotation:*—**Refd.** The Tervaete, [1922] P. 197.

140. *Add. Annotations:*—**Apld.** The Crimdon, (1918), 35 T. L. R. 81; The Gagara, [1919] P. 95. **Folld.** The Porto Alexandre, [1920] P. 30. **Apld.** The Tervaete, [1922] P. 259. **Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1923), 93 L. J. P. 156; The Sylvan Arrow, [1923] P. 220; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433; The Kafiristan, [1937] P. 63.

141. *Add. Annotations:*—**Refd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

141a. ——.]—THE CRIMDON, No. 131a, *ante.*

141b. —— **Government not formally recognised.**]—Pltfs., Esthonian subjects, the owners of two sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership assocn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under

PART I. SECT. 6, SUB-SECT. 1.—B. (b).

82 i. *Torts committed on high seas.*]—The Exch. Ct. of Canada in Admlty. has jurisdiction to entertain an action against a ship arrested in Canadian waters for a tort committed on the high seas.—COMMERCIAL PACIFIC CABLE CO. *v.* THE PRINCE ALBERT (B.C.), [1926] 4 D. L. R. 543; [1926] 3 W. W. R. 309.—CAN.

PART I. SECT. 6, SUB-SECT. 1.—C.

sf. *Vessel built for show.*]—A vessel built for show & not for transportation is a "ship" within admlty. law & is subject to seizure for towage.—NEVILLE CANNERIES, LTD. *v.* SANTA MARIA (1917), 16 Exch. C. R. 481; 36 D. L. R. 619.—CAN.

sg. *Conservatory attachment of barge—Concurrent jurisdictions of Superior Court & Admiralty Court.*]—GIRARD *v.* GARIEPY (1916), Q. R. 49 S. C. 284.—CAN.

PART I. SECT. 6, SUB-SECT. 3.—B.

141 i. *Ship requisitioned by foreign Government.*]—*Held:* not liable to arrest.—THE EOLO, [1918] 2 I. R. 78.—IR.

protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been "formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State:—*Held:* (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—THE ANNETTE, THE DORA, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

Annotations:—*As to* (2) **Refd.** The Jupiter, [1924] P. 236; The Jupiter (No. 2), [1925] P. 69.

141c. —— **Trading.**]—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals.—THE PORTO ALEXANDRE, [1920] P. 30; 89 L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

Annotations:—**Refd.** The Tervaete, [1922] P. 259; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

—.]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pltfs.' steamship. After the vessel had been released from requisition pltfs. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that "at the time when the collision is alleged to have taken place the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out" above. On the hearing of this question as a preliminary point of law:—*Held:* defts. had surrendered their vessel to the United States Govt. under compulsion; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pltfs.—THE SYLVAN ARROW, [1923] P. 220; 92 L. J. P. 119; 130 L. T. 157; 39 T. L. R. 655; 16 Asp. M. L. C. 244.

141e. ——.]—COMPANIA NAVIERA VASCONGADA *v.* THE CRISTINA; THE CRISTINA, [1937] 4 All E. R. 313; 81 Sol. Jo. 941, C. A.

142. *Add. Annotations:*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 92 L. J. K. B. 816; The Beldis, [1936] P. 51.

142a. —— ——.]—THE PORTO ALEXANDRE, No. 141c, *ante*.

142b. ——.]—On a motion to set aside a writ *in rem* claiming possession of a vessel in the possession of the Esthonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Esthonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Esthonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt.:—*Held:* to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Esthonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts.; & the writ & all subsequent proceedings must be set aside.—THE GAGARA, [1919] P. 95; 88 L. J. P. 101; 122 L. T. 498; 35 T. L. R. 259; 63 Sol. Jo. 301; 14 Asp. M. L. C. 547, C. A.

Annotations:—**Folld.** The Jupiter, [1924] P. 236. **Refd.** The Annette, The Dora, [1919] P. 105.

142c. —— **Subsequent sale to private owner.**]—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem*.—THE TERVAETE, [1922] P. 259; 91 L. J. P. 213; 128 L. T. 176; 38 T. L. R. 825; 67 Sol. Jo. 98; 16 Asp. M. L. C. 48, C. A.

Annotations:—**Refd.** The Colorado, [1923] P. 102; The Meandros, [1925] P. 61; The Stream Fisher, [1927] P. 73.

142d. ——.]—Pltfs., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against "the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State:—*Held:* the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impleading the sovereign State, &, although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the

142 i. *Vessel of foreign Sovereign—Trading.*]—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident she was on a voyage in the interest of the Govt. of Indo-China:—*Held:* the *I.* could not be lawfully arrested. *Semble:* a sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—BROWN, JR. *v.* S.S. INDO-CHINE (1921), 21 Exch. C. R. 406.—CAN.

writ must be set aside.—THE JUPITER, [1924] P. 236; 93 L. J. P. 156; 132 L. T. 624; 40 T. L. R. 815; 16 Asp. M. L. C. 447, C. A.

143a. Vessel alleged to belong to foreign Government under decree of nationalisation.]—THE JUPITER (No. 2), No. 171a, *post*.

147. *Add. Annotations:—As to* (1) **Apld.** The Meandros, [1925] P. 61. **Consd.** The Castor (1932), 48 T. L. R. 604.

147a. —— Owners liable though possession of vessel transferred—Ship requisitioned.]—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt. during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of pltfs.' salvage ship. After the vessel had been returned to her owners she was arrested by pltfs. in an action *in rem*:—*Held*: the terms of requisition did not dispossess defts. of their property in the vessel; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt.; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to pltfs. for salvage.—THE MEANDROS, [1925] P. 61; 94 L. J. P. 37; 132 L. T. 750; 41 T. L. R. 236; 16 Asp. M. L. C. 476.

Annotation:—**Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

149. *Add. Annotation:—As to* (1) & (2) **Apld.** The Meandros, [1925] P. 61.

150. *Add. Annotation:*—**Refd.** The Sylvan Arrow, [1923] P. 220.

159. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation:*—**Refd.** The Annette, The Dora, [1919] P. 105.

170a. —— ——.]—THE ANNETTE, THE DORA, No. 141b, *ante*.

171. *Add. Annotation:*—**Refd.** The Annette, The Dora, [1919] P. 105.

—— ——.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*," claiming possession. The Italian co. entered an appearance & moved to set aside the writ:—*Held*: (1) there is no established rule that the Admlty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both parties or with the consent of the accredited representative of the country to which the vessel belongs; the matter is one for the discretion of the ct.; (2) the proceedings did not implead the Soviet Govt. directly or indirectly; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial; (4) the motion to set aside the writ failed.—THE JUPITER (No. 2), [1925] P. 69; 94 L. J. P. 59; 133 L. T. 85; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation:*—**Refd.** The Annette, The Dora, [1919] P. 105.

248a. ——.]—(1) The Admlty. Ct. has jurisdiction, under sect. 3 of the above Act, to take cognisance of mtge. claims relating to a ship if the ship or proceeds are under arrest of the ct. at the time when the proceedings are instituted, notwithstanding that the mtge. is not a legal mtge.

(2) A party who intervenes in, & defends, an action *in rem* cannot set up defences which the owners of the ship could not have set up had they appeared & defended.—THE BYZANTION (1922), 127 L. T. 756; 38 T. L. R. 744; 16 Asp. M. L. C. 19.

254. *Add. Annotation:—As to* (2) **Consd.** The Lord Strathcona, [1925] P. 143.

254a. —— Right of charterer—To dispute validity of mortgage.]—Pltfs. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltfs. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel

PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—PACIFIC GREAT EASTERN RY. CO. *v.* THE CLINTON (1918), 21 Exch. C. R. 169; 27 B. C. R. 400; [1919] 1 W. W. R. 947.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act*, 1861 (*c.* 10)—*Mortgage registered abroad.*]—Action *in rem*, to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Deft. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing F. moved to amend, which amendment was in substance an allegation that deft. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action:—*Held*: (1) the ct. was without jurisdiction to entertain the claim; (2) the amendment could not be allowed.—

& ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltfs. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid:—*Held:* the interveners had no *locus standi* to dispute the validity of the mtges., but were only entitled to be heard on the question whether pltfs. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—THE LORD STRATHCONA, [1925] P. 143; 95 L. J. P. 5; 133 L. T. 765; 41 T. L. R. 638; 69 Sol. Jo. 762; 16 Asp. M. L. C. 536.

262. *Add. Annotation:*—**Refd.** The St. George, [1926] P. 217.

267. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

269. *Add. Annotation:*—**Consd.** The St. George, [1926] P. 217.

276. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

277. *Add. Annotation:*—**Refd.** The St. George, [1926] P. 217.

278. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

283. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

286. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

288. *Add. Annotation:*—**Refd.** The James W. Elwell, [1921] P. 351.

289. *Add. Annotation:*—**Refd.** The St. George, [1926] P. 217.

291. *Add. Annotation:—Generally,* **Refd.** The St. George, [1926] P. 217.

300. *Add. Annotation:*—**Refd.** The St. George, [1926] P. 217.

304. *Add. Citation:*—166 E. R. 973; *on appeal* (1851), 8 Moo. P. C. C. 459, P. C.

Add. Annotations:—**Follid.** The Hamburg (1864), 2 Moo. P. C. C. N. S. 289. **Consd.** The Gaetano & Maria (1881), 7 P. D. 1. **Refd.** Segredo (otherwise Eliza Cornish) (1853), 1 Ecc. & Ad. 36; The Rajah of Cochin (1859), Sw. 473; Lloyd *v.* Guibert (1865), L. R. 1 Q. B. 115; The St. George, [1926] P. 217.

315. *Add. Annotations:*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171; The Njegos, [1936] P. 90; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500.

322. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

328a. —— —— **Default of appearance.**]—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—*Held:* it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—THE MAGGIE A. (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.

329. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

331. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

334. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

335. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

336. *Add. Citation:*—*sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.

Add. Annotations:—**Refd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356; Northcote *v.* Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236.

337. *Add. Annotation:—As to* (5) **Refd.** The Mogileff, [1921] P. 236.

338. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. —— ——.]—A vessel was seized by a mtgee. when it was being repaired by pltf. in pltf.'s yard. Pltf. brought action in the Admlty. Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—*Held:* the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—MARTIN *v.* THE SEA FOAM (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1181.—**CAN.**

327 i b. —— ——.]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.* S. C. *sub nom.* WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

327 i c. —— ——.]—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

327 iii. —— ——.]—*Held:* work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—**CAN.**

327 iv. —— *"Building" any ship.*]—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, No. 327 iii., *ante.*—**CAN.**

329 ii. —— —— *Ship on colonial register—Actual owner foreigner.*]—The *C.* was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessaries:—*Held:* as the home port of the *C.* was really San Francisco where the true owner was domiciled, she was a foreign vessel, & the ct. had jurisdiction.—HALEY *v.* S.S. COMOX, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—**CAN.**

a i. —— ——.]—Pltf. claimed $1,562.99 for work done & materials furnished for the *S.* while at Amos, P.Q. The vessel was arrested, & J., of Amos, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, & at the date of institution of the action the registered owner was S., of Smiths Falls, Ont. The vessel was not under arrest of the ct. at the time of the institution of the cause:—*Held:* the ct. had no jurisdiction to entertain the claim.—CIE DES BOIS-DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

a ii. —— —— *Ship under arrest.*]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

a iii. —— ——.]—*Held:* the ship not being a foreign vessel & its owner being domiciled in Canada, the ct. had no jurisdiction on a claim for necessaries.—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

338a. —— —— ——.]—THE MOGILEFF, No. 352c,

343. *Add. Annotations :*—**Consd.** The Minerva (1933), 49 T. L. R. 563. **Refd.** The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68.

346. *Add. Annotations:*—**Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

347. *Add. Annotations :*—**Consd.** The British Trade [1924] P. 104; The Minerva (1933), 49 T. L. R. 563.

352. *Add. Annotation :*—**Refd.** The Mogileff, [1921] P. 236.

352a. —— —— ——.]—The agent for a foreign ship, being also part owner, may recover against the ship for necessaries supplied.—THE WEST FRIESLAND (1859), Sw. 454; 5 Jur. N. S. 658; 166 E. R. 1213; *on appeal* (1860), Sw. 456, P. C.

Annotations :—**Apld.** The Underwriter (1868), 25 L. T. 279. **Consd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356. **Dbtd.** Northcote *v.* The Henrich Björn, The Henrich Björn (1886), 11 App. Cas. 270. **Consd.** The Mogileff, [1921] P. 236. **Refd.** The Riga (1872), L. R. 3 A. & E. 516; The El Salto (1908), 25 T. L. R. 99; Foong Tai *v.* Buchheister, [1908] A. C. 458; The Stream Fisher, [1927]

352b. —— ——.]—A person who has made advances in order to supply necessaries to a ship on the credit of the ship may sue *in rem* to recover those advances, although the *res* may belong to a person or persons who are not liable *in personam* as debtor or debtors for the sum so sought to be recovered.

An agent may sue for necessaries supplied under Admlty. Ct. Act, 1861 (c. 10), s. 5, & does not lose his right so to sue by giving credit in the account furnished to his principal for sums received.—FOONG TAI & CO. *v.* BUCHHEISTER & CO., [1908] A. C. 458; 78 L. J. P. C. 31; 99 L. T. 526; 11 Asp. M. L. C. 122, P. C.

Annotations :—**Consd.** The Mogileff, [1921] P. 236. **Refd.** El Salto (1908), 25 T. L. R. 99.

352c. —— ——.]—*Primâ facie*, persons who have advanced money for necessaries on behalf of a foreign ship are entitled to sue *in rem*; &, although it may be inferred from the course of business between the principal & agent that the agent has agreed to look to the personal liability of the principal, & that the advances must be treated as items of a mercantile account to be adjusted in accordance of the agency agreement

[illegible] the date of the [illegible] independent action in *assumpsit* in the subject-matter of the claim.—THE MOGILEFF, [1921] P. 236; 90 L. J. P. 329; 37 T. L. R. 549; 65 Sol. Jo. 581.

Annotation :—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

368a. Wrongful dismissal.]—(1) A shipmaster or seaman suing under Admlty. Ct. Act, 1861 (c. 10), on a special contract of service has no maritime lien in respect of damages for wrongful dismissal, inasmuch as such a suit could not have been brought under the ancient jurisdiction of the High Ct. of Admlty.

(2) *Semble :* the maritime lien which a seaman suing under the ordinary mariner's contract has in respect of wages is not limited to the wages earned while actually on board the ship, but extends to wages due after a wrongful determination of the contract of service.—THE BRITISH TRADE, [1924] P. 104; 93 L. J. P. 33; 130 L. T. 827; 40 T. L. R. 292; 16 Asp. M. L. C. 296.

398. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

401. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

415. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

417a. ——.]—THE BRITISH TRADE, No. 368a, *ante*.

429. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

PART II. SECT. 5, SUB-SECT. 1.—B.

343 i. *No maritime lien.*]—A claim for the supply of necessaries to a ship does not constitute a maritime lien thereon.—CIE DES BOIS DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

348 i. *Maritime lien—Created by foreign law—Whether enforceable in Exchequer Court of Canada.*]—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

348 ii. —— —— ——.]—STRANDHILL *v.* WALTER W. HODDER CO., [1926] 4 D. L. R. 801.—**CAN.**

348 iii. —— —— ——.]—BAKER, CARVER & MORELL INC. *v.* ASTORIA, [1927] 4 D. L. R. 1022.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

357 i. *Action by default—Proof of claim—Right to proceed ex parte.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—**AUS.**

PART II. SECT. 6.

358 i. *Extent of jurisdiction—Towage performed in connection with repairs—Not at owner's special request.*]—Towage performed in connection with repairs, not at the owner's special request, is not within the purview of claims & demands for services in the nature of towage" within Admlty. Ct. Act, 1840 (c. 65), s. 6, as would give the ct. jurisdiction over the claim; neither a claim for towage nor for necessaries is the subject of a maritime lien.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

PART II. SECT. 7, SUB-SECT. 1.—C.

386 ii. —— *Claim by master for wages & damages—Payable pari passu.*]—A British ship was attached to satisfy various creditors *in rem* including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—**S. AF.**

PART II. SECT. 7, SUB-SECT 2.—A (b).

sk. *Shipping Act, 1906, s. 191—Limits of jurisdiction.*]—A seaman sued for $134 :—*Held :* this being under $200, the action must be dismissed under the above sect., with costs.—OSTROM *v.* THE MIYAKO, [1924] 2 D. L. R. 200; [1924] Exch. C. R. 96; 1 W. W. R. 1098; 34 B. C. R. 4.—**CAN.**

PART II. SECT. 7, SUB-SECT. 2.—B.

sl. *Assignee of wages.*]—The maritime lien attaching to a seaman's wages is personal to the seaman & not transferable.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sm. *Person not having signed articles—Nor having lived on board.*]—*Held :* claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sn. *Person voluntarily paying wages.*]—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

430. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430a. —— **Pilotage Act, 1913 (c. 31), s. 49.**]—The High Ct. of Admlty. & its successor, the present Admlty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect., of taking proceedings in a ct. of summary jurisdiction. *Qu.:* whether there is a maritime lien in respect of pilotage dues.—THE AMBATIELOS, THE CEPHALONIA, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation :*—**Refd.** The Ambatielos. The Cephalonia, [1923] P. 68.

435. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

449. *Add. Annotation :*—**Refd.** The Stream Fisher, [1927] P. 73.

459. *Add. Annotation :*—*As to* (1) **Consd.** The Colorado, [1923] P. 102.

460. *Add. Annotation :*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

468. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

470. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

471. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

480. *Add. Annotations :*—*As to* (1) **Consd.** The Minerva (1933), 49 T. L. R. 563; The Champion, [1934] P. 1; The Bedlis, [1936] P. 51.

481. *Add. Annotation :*—**Refd.** The Bedlis, [1936] P. 51.

483. *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis, [1922] P. 92. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9.

484a. —— —— **Obstruction in dock.**]—Defts.' steamship, a Norwegian vessel, while docking in the Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred "in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ :—*Held :* the claim was for "damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (iv), & was properly commenced by a writ *in rem*.—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 148 L. T. 60; 48 T. L. R. 619; 18 Asp. M. L. C. 347.

Annotation :—**Consd.** The Minerva (1933), 49 T. L. R. 563.

486a. Damage by part of ship—Derrick.]—After pltfs.' grain elevator, which had been used to discharge a cargo of grain from defts.' steamship *M.*, had been dismantled, & while the half of the elevator which remained on board the steamship was being hoisted, by means of the steamship's derrick & tackle, back on board pltfs.' elevator barge *New Perseverance*, the wire span of the derrick broke & the half-elevator fell on to the deck of the barge, whereby both barge and half-elevator sustained damage. Pltfs. proceeded *in rem* against the *M.* for the damage, but the Liverpool District Registrar ordered the writ in the action to be set aside & the action dismissed on the ground that there was no jurisdiction to arrest defts.' ship in the circumstances. On appeal by pltfs. :—*Held :* the operation of Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (iii), was not confined to cases where the damage received by a ship was also done by a ship, with the ship as the operating cause, & pltfs. were entitled to prosecute their claim *in rem* or *in personam* as for damage received by a ship; damage done by part of a ship—*i.e.*, a derrick—was sufficient to satisfy the words of para. (iv) & pltfs. were also entitled to proceed *in rem* or *in personam* as for damage done by a ship; & the order of the District Registrar must be set aside.—THE MINERVA, [1933] P. 224; 102 L. J. P. 129; 149 L. T. 567; 49 T. L. R. 563; 18 Asp. M. L. C. 426.

489. *Add. Annotations :*—**Consd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345. **Refd.** The Stream Fisher, [1927] P. 73.

490. *Add. Annotation :*—*Generally*, **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

491. *Add. Annotation :*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

493. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

494. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

PART II. SECT. 7, SUB-SECT. 3.—A.

452 iii. —— *Contract made abroad.*]—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

454 vi. —— —— ——.]—A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the ship. Deft. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed :—*Held :* (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—ROULEAU *v.* S.S. ALEDO, [1923] Exch. C. R. 10.—**CAN.**

PART II. SECT. 7, SUB-SECT. 3.—B.

458 i. *Conflict of laws—Application of law of litigants' country.*]—Admlty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the country of the litigants.—JACOBSON *v.* FORT MORGAN (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—D.

b i. —— *Oil pumped from ship.*]—Pltfs. were the owners of a large number of live lobsters lying in crates in the waters of the Strait of Canso, N.S., for refreshment purposes, while being transferred from Magdalene Islands, P.Q., to Gloucester, Mass. Deft. steamer ran aground in the Strait of Canso & in order to lighten the ship a large part of its cargo of oil was pumped into the waters of the strait. Pltf. claimed this was carried by the winds & tide to the resting place of the lobsters, causing damage to the lobsters, crates & connecting lines. Pltf. Outhouse also claimed for loss of freight. Deft. contended that the ct. was with-

504. *Add. Annotation :*—**Refd.** The Tervaete, [1922] P. 259.

510. *Add. Annotation :—As to* (2) **Apld.** The Goulandris, [1927] P. 182.

512. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

518. *Add. Annotations :*—**Consd.** The Minerva (1933), 49 T. L. R. 563. **Refd.** McColl v. Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154.

After this case add :—*See, now.* Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49) s. 22 (2).

518a. —— —— ——.]—In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal :—*Held :* the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admlty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admlty. rules as to division of loss had no application to such a claim, & sect. 3 of that Act, which provided for contribution between the owners of wrongdoing vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—THE MOLIÈRE, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.

518b. Application of Maritime Conventions Act, 1911 (c. 57).]—THE MOLIÈRE, No. 518a, *ante.*

519. *Add. Annotations :—As to* (1) **Consd.** Oliver v. Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** The Koursk, [1924] P. 140. *As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154. *Generally,* **Refd.** The Vectis, [1929] P. 204.

521. *Add. Citation :*—[1909] P. 176.
Add. Annotation :—As to (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523. *Add. Annotation :—As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523a. —— ——.]—THE MOLIÈRE, No. 518a, *ante.*

528. *Add. Annotation :*—**Refd.** The Sheaf Brook, [1926] P. 61.

541. *Add. Annotations :—Generally,* **Refd.** Ireland v. Southdown S.S. Co. (1926), 136 L. T. 412; Lewis v. Dreyfus (1926), 31 Com. Cas. 239.

541a. —— —— —— **Indorsee of document acknowledging receipt of goods for shipment.**]—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c 111), above sect.

Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pltfs. claimed as consignees or indorsees of bills of lading for non-delivery of goods agreed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltfs., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder :—*Held :* (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltfs. convenient, the view of the full Bench of the Supreme Ct. that pltfs. could properly be joined under the rules locally applicable should not be interfered with.—MARLBOROUGH HILL, SHIP v. COWAN & SONS, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R. 190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

Annotation :—As to (1) **Distd.** Diamond Alkali Export Corpn. v. Bourgeois, [1921] 3 K. B. 443.

546. *Add. Annotation :*—**Refd.** Marlborough Hill, Ship v. Cowan, [1921] 1 A. C. 444.

560. After this case add :—*See* Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), ss. 22 (1) (*a*) (xii), 33 (2).

562. *Add. Annotation :*—**Refd.** The Sheaf Brook, [1926] P. 61.

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out jurisdiction to entertain the action : —*Held :* damage by a ship means damage done by those in charge of a ship, with the ship as the noxious instrument.—OUTHOUSE & HIMMELMAN v. THE THORSHAVN, [1935] Ex. C. R. 120; 4 D. L. R. 628.—**CAN.**

80. *Removal of barge.*]—Pltfs.' barge, with no one on board, was lying at a berth next to a pier & moored to it. The crew of deft. ship removed the barge from her berth, which was then occupied by the ship, the barge being placed outside the ship in a foul berth, as a result of which the barge suffered damage. Pltf. brought an action *in rem* to recover the amount of the damage : —*Held :* the improper navigation of deft. ship carried out by her master's orders made her the instrument causing the damage to the barge, & the claim for such damage may be enforced by an action *in rem.*—LINCOLN PULPWOOD CO., LTD. v. THE RIO CASMA, [1935] Ex. C. R. 123; 2 D. L. R. 41.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A.

512 v. —— ——.]—Pltf., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable :—*Held :* the damage done was not " by " the barge, but " on " the barge, & was not such damage as gave pltf. a remedy *in rem.*—MULVEY v. THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—**CAN.**

PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act,* 1861 (c. 10), *s.* 6—*No breach of duty—Contract with shippers imposing no obligation on ship.*]—Pltfs. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltfs., who claimed damages for breach of contract for non-delivery, & at their request a warrant to arrest the ship & her cargo was issued :—*Held :* (1) pltfs. not having been shown to be " the owners, or consignees or assignees " of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside : (2) the contract referred to in the

565a. Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)—Owner domiciled in England—Application to transfer action to King's Bench Division.]—(1) Pltfs., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div.:—*Held:* s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (ATKIN, L.J.).—THE SHEAF BROOK, [1926] P. 61; 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

Annotation:—As to (1) **Distd.** The Eskbridge, [1931] P. 51.

571. *Add. Annotations:*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449; The Napier Star, [1933] P. 136.

578. *Add. Annotation:*—**Refd.** The Wilhelmina, [1923] P. 112.

579a. Ship injured in dock—Dockowners repairing ship—In dock belonging to others.]—By the negligence of pltfs.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltfs. were held liable in damages. Pltfs. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston:—*Held:* the liability being in no way connected with the fact that pltfs. were dockowners, they were not entitled to a decree of limitation of liability.—THE CITY OF EDINBURGH, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 234, C. A.

Annotations:—**Distd.** The Ruapehu (1926), 42 T. L. R. 708. S.S. Ruapehu *v.* Green & Silley Weir, [1927] A.C.

579b. —— ——.]—Pltfs., owners of a dry dock sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltfs.' servants while the vessel was being repaired by them in the dry dock:—*Held:* while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, *i.e.*, the damage must be in some way connected with the ownership of the dock.—RUAPEHU, [1927] P. 47; 96 L. J. P. 18; 136 L. T. 146; 42 T. L. R. 708; 17 Asp. M. L. C. 138, C. A.; *affd. sub nom.* (OWNERS) *v.* GREEN (R. & H.) & LTD., THE RUAPEHU, [1927] A. C. 523; 96 L. J. P. 90; 137 L. T. 353; 43 T. L. R. 402; 71 Sol. Jo. 330; 32 Com. Cas. 323; 17 Asp. M. L. C. 270, H. L.; *subsequent proceedings* (1929), 45 T. L. R. 657.

Annotations:—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same (1927), 97 L. J. K. B. 193; The Ruapehu (No. 2), [1929] P. 305.

593. *Citations:*—For "36 L. T. 361" read "6 L. T. 361."

594a. —— —— **Rival salvors—Injunction to restrain act on high seas.**]—In 1922 pltfs. fitted out an expedition to salve cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltfs. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltfs.' diving operations, tried to secure possession of the wreck & cargo, & either prevent further work on the part of pltfs. or establish themselves with pltfs. in concurrent occupation:—*Held:* (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admlty.; (2) pltfs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby pltfs. might be prevented or hindered in the carrying on of their salvage operations.—THE TUBANTIA, [1924] P. 78; 93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

595a. —— **Services on land.**] — THE LAPWING (1839), 8 L. T. 440.

596a. ——.]—Two causes of salvage against a vessel were consolidated upon motion by defts., & with the consent of all parties. On a petition being subsequently filed, defts. moved for its dismissal, with costs & damages, on the ground that the value of the property salved was under £1,000:—*Held:* the proceedings of defts. in reference to the consolidation must be construed as an agreement which gave the ct. jurisdiction under Admlty. Jurisdiction Act, 1868 (c. 71), s. 9.

Semble: under Admlty. Jurisdiction Act, 1868 (c. 71), s. 6, the ct. of Admlty. has discretion to take cognisance of cases of salvage, though the value of the property salved be under £1,000.—THE HERMAN WEDEL (1870), 39 L. J. Adm. 30; 23 L. T. 876; 3 Mar. L. C. 530.

above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—LAVALLEE *v.* THE ISTAR, [1923] Exch. C. R. 212.—**CAN.**

584 ii. —— *Goods shipped from Canadian port.*]—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—**CAN.**

598. After this case insert, "Prize salvage, *see* PRIZE LAW."

603. *Add. Annotation :*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

606. *Add. Annotations :*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

611. *Add. Annotation :*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

613. *Add. Annotations :*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

617. *Add. Annotation :*—**Consd.** Bradley *v.* Newsom, [1919] A. C. 16.

619. *Add. Annotation :*—*As to* (1) **Refd.** Bradley *v.* Newsom, [1919] A. C. 16.

622. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

642a. ——.]—R. *v.* MILLER (1823), 1 Hag. Adm. 197 ; 166 E. R. 71.

648a. **Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.**]—A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admlty., & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1894 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she entitled to be registered as a British *Held :* as the Lords Comrs. of the Admlty. had merely temporary possession of the ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admlty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—THE ST. TUDNO, [1918] P. 174 ; 87 L. J. P. 105 ; 34 T. L. R. 357 ; 62 Sol. Jo. 521.

649. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

650a. —— **Injunction.**]—THE TUBANTIA, No. 594a, *ante*.

650b. **Res under jurisdiction of Prize Court.**]—THE ST. TUDNO, No. 648a, *ante*.

663a. **No jurisdiction—Judicature (Consolidation) Act, 1925 (c. 49), s. 22—Action for freight—Owner domiciled in England.**]—Pltfs., shipowners domiciled in England, instituted an action *in rem* against cargo owners for freight in respect of the carriage of the cargo in the ship. By Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (xii), the High Court shall in Admiralty matters have jurisdiction in respect of any claim arising out of an agreement relating to the carriage of goods in a ship, "unless it is shown to the ct. that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England" :—*Held :* although under the sect. pltfs. who are British shipowners domiciled in this country are in a less favourable position than foreign shipowners, the sect. was general in its scope & could not be construed as applicable only to deft. shipowners against whom a claim is made, & the ct. had no jurisdiction to entertain the action.—THE ESKBRIDGE, [1931] P. 51 ; 100 L. J. P. 50 ; 144 L. T. 624 ; 47 T. L. R. 235 ; 18 Asp. M. L. C. 207.

Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. —— **Issue—Res not within jurisdiction.**]—(1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be within the jurisdiction of the ct. ; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or salvage actions the proceedings must be commenced within two years of the cause of action, is complied with if the writ is issued within two years ; the sect. does not contemplate that the arrest of the *res* constitutes the commencement of the proceedings.

(2) In general, the ct. will not grant an

PART II. SECT. 11, SUB-SECT. 2.—B.

608 i. *Action in rem—Or in personam.*]—The first & most proper remedy for the recovery of salvage is *in rem*.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154 ; 56 Sc. L. R. 100.—SCOT.

PART II. SECT. 16.

654 i. *Exception to jurisdiction—Made after trial.*]—An objection to the jurisdiction will hold good even if made after the trial.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

sf. *Forcible possession of .....*]—An action *in rem* lies against a ship for forcibly taking possession of another's berth.—LINCOLN PULPWOOD CO. *v.* THE RIO CASMA, [1935] Ex. C. R. 123 ; 2 D. L. R. 41.—CAN.

PART III. SECT. 1, SUB-SECT. 1.—A. (a).

668 i. —— *Amendment—Increase of amount.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed :—*Held :* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the amendment.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—CAN.

extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—THE ESPANOLETO, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

668b. —— **Motion to set aside—Facts in dispute.**]—In an action *in rem* for damage by collision defts. moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. Pltfs. did not admit the facts set out in defts.' affidavit in support of the motion:—*Held:* the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of defts. to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—THE SYLVAN ARROW, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 448; 39 T. L. R. 25; 16 Asp. M. L. C. 115.

669. *Add. Annotation:—As to* (1) **Consd.** The Joannis Vatis, [1922] P. 92.

672a. —— —— **Defendant blaming another ship.**]—Pltfs. claimed damages from defts., owners of the *W.*, in respect of a collision between the *W.* & barges belonging to pltfs. The owners of the *W.* denied liability, alleging by letter to pltfs. that the collision was caused by the negligence of the *A.* An action was commenced between the owners of the *W.* & the owners of the *A.*, in which the owners of the *A.* admitted liability for the collision. The owners of the *A.* agreed pltfs.' damages, but refused to pay the costs of the action by pltfs. against the *W.*, which had then been prosecuted to the stage of filing pltfs.' preliminary act:—*Held:* pltfs. were entitled to amend their writ by adding the owners of the *A.* as defts. The case came within the principle of R. S. C., Ord. 16, r. 11, that no cause should be defeated by the non-joinder of parties, & in the circumstances it would have been a misuse of the discretion of the ct. to refuse to allow a party to exercise that right. The proper course would have been for pltfs. to have added both parties as defts. in the alternative.—THE W. H. RANDALL, [1928] P. 41; 97 L. J. P. 42; 138 L. T. 459; 17 Asp. M. L. C. 397, C. A.

673. *Add. Annotations:*—**Consd.** The Creteforest, [1920] P. 111; Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

682a. —— **Motion to set aside acceptance & undertaking to appear & put in bail—Mistake as to authority.**]—Motion dismissed.—THE GERTRUD (1927), 138 L. T. 239; 44 T. L. R. 1; 17 Asp. M. L. C. 343.

683a. **Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.**]—THE ESPANOLETO, No. 668a, *ante*.

697. *Add. Annotation:*—**Refd.** The Point Breeze, [1928] P. 135.

700a. **Right to arrest—Ship under requisition.**]—Pltfs.' steamship & defts.' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held:* there could be no effective arrest of the vessel while she was under requisition.—THE LARGO LAW (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.

700b. —— **Ship seized under writ of fieri facias.**]—A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admlty. marshal in an action *in rem* for necessaries. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held:* the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem*.—THE JAMES W. ELWELL, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

701. *Add. Annotation:*—**Consd.** The James W. Elwell, [1921] P. 351.

673 i. *Parties—Joinder of plaintiffs—After judgment.*]—In the course of a trial in the Admlty. Ct. pltf. was allowed to amend by adding a party pltf., but failed to amend formally pursuant to the order & entered the formal judgment with only the original pltf. named therein, & proceeded to assess damages before the registrar:—*Held:* in the circumstances pltf. had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—EVANS, COLEMAN & EVANS, LTD. *v.* THE ROMAN PRINCE, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 155.—**CAN.**

673 ii. —— *Nonjoinder.*]—There being no special rule in this Ct. dealing with the joinder of parties, the practice & procedure of the High Court of Justice in England, obtains, & the claimant herein was entitled to bring the present action in his own name alone, without joining his co-owners or their assignees. Misjoinder or non-joinder cannot now defeat a claim.—MACKAY *v.* R., [1928] Exch. C. R. 149; *affd.*, [1930] S. C. R. 130; 1 D. L. R. 1005.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A. (a).

701 iii. —— *Creditor's action—Claim for building, equipping or repairing.*]—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admlty. Ct. acquires immediate & irrevocable jurisdiction over, any claim for building, equipping or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given to prove without doubt the status of pltf. in that original action.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—**CAN.**

701 iv. —— *Repairs continued after arrest.*]—Resps. contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of applts., who claimed for earlier repairs & necessaries. After the arrest the ship was left in the actual possession of resps., who continued to do the repair work contracted for without the sanction of the ct. but in good faith:—*Held:* resps. should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—MONTREAL DRY DOCKS & SHIP REPAIRING CO., LTD. *v.* HALIFAX SHIPYARDS, LTD.,

[1920] 3 W. W. R. 25; 54 D. L. R. 185; 60 S. C. R. 359.—CAN.

d. Read now "706a i."

706a ii. —— —— *Mistake in sum claimed—Cost of repairs exceeding estimate.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the *B.*:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against pltfs.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—CAN.

706a iii. —— —— *Dismissal of claim for salvage—Appeal.*]—Where a claim for salvage against a ship has been dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—THE FREIYA *v.* THE R. S. (1921), 63 D. L. R. 687; 21 Exch. C. R. 147; 30 B. C. R. 132; [1921] 2 W. W. R. 749.—CAN.

706a iv. —— *Unnecessary where ship already under arrest.*] — The *A.* was under arrest by process of the ct., in a joint action for master's & seaman's wages, when she was re-arrested by pltfs., under three separate warrants, in actions for necessaries & supplies furnished to the *A.* in the port of C., to which she belonged, & the owners of which were domiciled in Canada:—*Held:* the ship being under arrest of the ct., this ct. had jurisdiction in the matter, but the issuing of warrants & the re-arrest was unnecessary.—STEWART & CO., LTD. *v.* THE AMLA, [1929] 4 D. L. R. 719; Ex. C. R. 192.—CAN.

sp. *Attachment to found jurisdiction—Both parties domiciled outside jurisdiction—Res within jurisdiction.*]—Where a co. alleged that it intended to bring an Admlty. action *in rem* for damage occasioned to its vessel through the negligent handling of resp. co. whilst in the territorial waters of the Union, & it appeared that both the cos. were domiciled outside the Union, the attachment of the vessel was ordered, such order to be suspended on security being provided in an amount greater than the sum claimed as damages.—S.S. KERATOS *v.* S.S. FABIAN, [1921] C. P. D. 148.—S. AF.

PART III. SECT. 1, SUB-SECT. 2.—A. (b).

st. *Mala fide arrest—Abuse of process of court—Rights of other claimants.*]—A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted:—*Held:* these facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other claimants could support their suits on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—A.

a i. —— —— *Court without jurisdiction.*]—In the absence of jurisdiction existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem.* Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties.—MULVEY *v.* THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

a ii. —— —— ——.]—A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if, in fact, the ct. has no jurisdiction over the subject-matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

764 iii. ——.]—In Admlty. where deft. wishes to raise an objection to the jurisdiction of the ct. in a case where the ct. has jurisdiction over the subject-matter, he should appear under protest whether the action be *in rem*, or *in personam*.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873; Ex. C. R. 194.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—A.

sw. *Bail—Who accepted as bail—Company carrying on business of surety-ship.*]—*Re* 251 BARS OF SILVER *v.* CANADIAN SALVAGE ASSOCN. (No. 2) (1915), 15 Exch. C. R. 370.—CAN.

780. *Add. Annotations:*—**Refd.** The Consul Olsson, [1920] P. 43; The Castor (1932), 48 T. L. R. 604.

780a. —— —— ——.]—THE SAN ONOFRE, No. 780b, *post.*

780b. —— —— **Effect of contractual arrangement between owner & charterer.**] — (1) The Admlty. marshal appraised a salved steamship at the sum of £369,841. On an application to vary or set aside the appraisement on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £160,000 :—*Held:* for purposes of appraisement of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisement by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisement will be allowed.—THE SAN ONOFRE, [1917] P. 96; 86 L. J. P. 103; 116 L. T. 800; 14 Asp. M. L. C. 74.

Annotations:—*As to* (2) **Consd.** The Consul Olsson, [1920] P. 43. *Generally,* **Refd.** The Castor (1932), 48 T. L. R. 604.

781a. **Nature of bail.**]—THE BORRE, No. 781b, *post.*

781b. **Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.**] —On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to pltfs.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., pltfs. could arrest her. Pltfs.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, pltfs. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & pltfs. estimated her value at £4,500 :—*Held:* (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail; (2) pltfs. had not waived their rights under the undertaking by arresting the vessel; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920; (4) nature of bail discussed.—THE BORRE, [1921] P. 390; 91 L. J. P. 1; 125 L. T. 576; 37 T. L. R. 638; 55 Sol. Jo. 715; 15 Asp. M. L. C. 334.

781c. —— **When value of ship ascertained.**]—THE BORRE, No. 781b, *ante.*

781d. —— **Sale of ship—Effect on undertaking.**]—In June, 1930, a firm of Norwegian shipowners, being threatened with an action *in rem* by cargo owners in respect of damage & short delivery, to avoid arrest of the ship, instructed their solrs. to give an undertaking to accept service, appear & provide bail. No writ was issued, the ship left the jurisdiction, & when she returned several months later she was encumbered with liens. On Jan. 6, 1931, she was sold by order of the ct. On Mar. 2 the solrs. took out an originating summons, & moved the ct. for an order that they were no longer bound by their undertaking. On Mar. 14 the cargo owners issued their writ *in rem*, but the solrs. refused to accept service pending the hearing of the motion :—*Held:* the undertaking, which was plain in its terms, enabled the ship to leave the jurisdiction without being arrested, & the fact that she was subsequently sold was immaterial; there had not been undue delay in issuing the writ having regard to all the circumstances; & the solrs. remained bound by their undertaking.—THE RING, [1931] P. 58; 100 L. J. P. 118; 145 L. T. 166; 47 T. L. R. 384; 18 Asp. M. L. C. 238.

781e. **Liability limited to amount of bail—No second action if bail insufficient—Action in personam — For interest & costs.**] — THE JOANNIS VATIS (No. 2), No. 706a, *ante.*

781f. **Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.**]—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo *v.* the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given, pay themselves the amount of their own damage as shipowners in priority to all other claimants, & that the non-assenting cargo owners had no right to share in the fund :—*Held:* (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—THE JOANNIS VATIS, [1922] P. 92; 91 L. J. P. 182; 126 L. T. 718; 15 Asp. M. L. C. 506, C. A.

—— **Several salvage actions.**]—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of

various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessaries were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £889 :—*Held :* the bail for cargo & freight did not constitute a fund in which all the salvors could share ; the undertaking was given in one action only, & pltfs. in that action, in which the total values were £1,217, could treat $\frac{327}{1217}$ of £1,000 as bail representing the cargo & freight.—THE RUSSLAND, [1924] P. 55 ; 93 L. J. P. 18 ; 130 L. T. 763 ; 40 T. L. R. 232 ; 68 Sol. Jo. 324 ; 16 Asp. M. L. C. 288.

781h. **Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.**] —If, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship & that the collision happened without their actual fault or privity, will, if these facts are not denied by pltf. shipowners, be entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if pltfs. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—THE CHARLOTTE, [1920] P. 78 ; 89 L. J. P. 62 ; 123 L. T. 685 ; 36 T. L. R. 204 ; 64 Sol. Jo. 276 ; 15 Asp. M. L. C. 98.

781j. **Effect of bail — Release of ship.**] — THE POINT BREEZE, No. 706b, *ante*.

796. *Add. Annotation :*—**Refd.** The Consul Olsson, [1920] P. 43.

806. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

808. *Add. Annotation :*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

810. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

812a. —— —— **Position of third party.**]—In an action *in rem*, pltf. cargo-owners having arrested the ship belonging to the first defts., the ship was released on the first defts. providing bail in the sum of £1,300. Subsequently the charterers of the ship were added as second defts. Pltfs. succeeded in their claim against the charterers but not against the shipowners. The charterers, however, in third party proceedings, succeeded on their claim for an indemnity against the first defts., & applied that the bail furnished by the first defts. might be available to meet their (the second defts.') claim under the indemnity :—*Held :* the proper course for the second defts. to have pursued would have been to sue out a warrant of arrest on their own claim, when the question of their right to arrest on a claim for an indemnity could have been challenged if the first defts. so desired ; & in the absence of such proceedings no precedent could be found for the suggestion that the second defts., as pltfs. in the third party proceedings, had any right, after judgment delivered, to an order that bail put in to answer another party's claim should be made available to answer their own claim. —THE ROBERTA (1937), 53 T. L. R. 1048.

829. *Add. Annotation :*—*As to* (1) **Distd.** Bradley *v.* Newsom, [1919] A. C. 16.

831. *Add. Annotation :*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

834. *Add. Annotation :*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

836. *Add. Annotation :*—**Apld.** The Lalandia, [1933] P. 56.

837. *Add. Annotations :*—*As to* (1) **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

837a. —— —— —— ——.]—Pltfs., the owners of a vessel damaged in collision with a vessel owned by defts., a foreign corpn., served a writ upon a member of an English firm, E. M. & Co., who acted as defts.' agents. The writ was served at E. M. & Co.'s London offices. Defts. moved to set aside the writ & services on the ground that they were not resident within the jurisdiction. It appeared that E. M. & Co. were one of deft.'s agents in this country for the booking of freight, issue of passenger tickets, & the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, & they had no concern with the management of deft. corpn. The only name appearing on the door of E. M. & Co.'s offices was their own name, but upon the window of the ground floor their name was exhibited as agents for deft. corpn. together with the names of other foreign shipping cos. for whom E. M. & Co. acted :—*Held :* E. M. & Co. were a firm who " sold " & did not " make " contracts on behalf of defts., & that defts. did their business in this country " through " E. M. & Co. & not " by " them ; defts., accordingly, were not resident within the jurisdiction & that the writ & service must be set aside.—THE LALANDIA, [1933] P. 56 ; 102 L. J. P. 11 ; 148 L. T. 97 ; 49 T. L. R. 69 ; 18 Asp. M. L. C. 351.

Annotation :—**Folld.** The Holstein, [1936] 2 All. E. R. 1660.

837b. —— —— —— ——.]—In a collision case where the procedure *in rem* was not available it was sought in an action brought *in personam* against a foreign shipping co. to effect service of the writ through London agents. The agents were general agents for shipping cos. & the foreign co. in question had no financial interest in the firm nor was any of their staff assigned exclusively to the business of the foreign co. The remuneration was wholly by commission :—*Held :* service

on such general agents was bad.—THE HOLSTEIN, [1936] 2 All E. R. 1660; 155 L. T. 466.

839. *Add. Annotation:*—**Reld.** The Fagernes, [illegible]. 185.

840. *Add. Annotation:*—**Reld.** The Fagernes, [illegible] P. [illegible]

842. *Add. Annotation:*—**Reld.** The Fagernes, [1926] P. 185.

843. *Add. Annotations:*—*As to* (1) **Reld.** Reading Trust *v.* Spero, Spero *v.* Reading Trust, [1930] 1 K. B. 492. *As to* (2) **Reld.** Johnson *v.* Taylor, [1920] A. C. 144.

843a. —— —— —— ——.]—A British ship, coming down the Elbe, came into collision with another British ship, which, in turn, came into collision with a German vessel. The agents at Hamburg of the first British ship & the owners of the German vessel exchanged letters of guarantee; but the owners of the German vessel did not commence legal proceedings in Germany against the owners of the two British ships until after the owners of the first British ship had commenced an action *in personam* in this country against the owners of the other British ship & the owners of the German vessel. On an application to discharge an order giving the owners of the first British ship leave under R. S. C., Ord. 11, r. 1 (*g*), to serve notice of the writ on the owners of the German vessel out of the jurisdiction:—*Held:* the order ought not to have been made, for there had not been any unreasonable delay on the part of the owners of the German vessel in following up, by legal proceedings, the original cross letters of guarantee.—THE HAGEN, [1908] P. 189; 77 L. J. P. 124; 98 L. T. 891; 24 T. L. R. 411; 52 Sol. Jo. 335; 11 Asp. M. L. C. 66, C. A.

Annotations:—**Reld.** The Fagernes, [1926] P. 185; Schintz, *Re*, Schintz *v.* Warr, [1926] Ch. 710; Kroch *v.* Rossell et Compagnie Societe des Personnes a Responsibilite, Ltd., Kroch *v.* Societo en Commandite Par Actions Le Petit Parisien, [1937] 1 All E. R. 725.

855. *Add. Annotation:*—**Reld.** The Creteforest, [1920] P. 111.

856a. ——.]—(1) In a consolidated salvage action the tender by defts. of a lump sum to answer several claims of salvors is a valid tender; but, where defts. have adopted this course, they run the risk that the ct. may hold that it was reasonable for pltfs. to proceed to trial although the tender is upheld.

In a consolidated salvage suit where the owners of two tugs, separately owned, joined in one writ, & the masters & crews in another, defts. tendered a lump sum which the ct. upheld, but as defts.' affidavit of values was only handed to pltfs. on the day of the trial:—*Held:* (2) pltfs., the tug owners, who had been given the conduct of the consolidated action, were entitled to their costs; (3) the interests of the masters & crews being identical with those of the owners, the masters & crews were not entitled to be separately represented at the expense of defts. Observations on the desirability, except in very special circumstances, of masters & crews joining in one action with the owners.—THE CRETEFOREST, [1920] P. 111; 89 L. J. P. 136; 123 L. T. 591; 36 T. L. R. 367; 15 Asp. M. L. C. [illegible]

857. *Add. Annotation:*—**Reld.** The Creteforest, [1920] P. 111.

864. *Add. Annotation:*—**Reld.** The Creteforest, [1920] P. 111.

874a. —— —— ——.]—THE SHEAF BROOK, No. 565a, *ante*.

876. After this case add:—
Exercise of jurisdiction by all Divisions.]—*See, now*, Administration of Justice Act, 1928 (c. 26), s. 6.

876a. Transfer by Court of Appeal—Necessity for consent of Presidents of both Divisions.]—THE SHEAF BROOK, No. 565a, *ante*.

890. *Add. Annotation:*—*As to* (1) & (2) **Consd.** El Oso (1925), 133 L. T. [illegible]

892. *Add. Annotation:*—*As to* (1) & (2) **Expld.** The El Oso (1925), 133 L. T. 269.

893. *Add. Annotation:*—**Reld.** The El Oso (1925), 133 L. T. 269.

894a. —— **Action between parties whose vessels have not been in collision with each other.**]—Where the parties to a damage action are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R. S. C., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admlty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.—THE EL OSO (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

Annotation:—**Consd.** The Carlston & The Balcombe, [1926] P. 82.

894b. Who entitled to — Co-defendant.] — A collision took place between the *C.* & the *B.*, & subsequently the *C.* collided with pltfs.' vessel. Pltfs. issued a writ *in rem* against the owners of the *C.*, & the usual preliminary acts were filed by both parties. In their defence the owners of the *C.* blamed the *B.*, & pltfs. added the owners of the *B.* as second defts. Thereupon the owners of the *C.* obtained an order that the owners of the *B.* should forthwith file a preliminary act:—*Held:* (1) the only parties entitled as against second defts. to a preliminary act were pltfs., & they would be so entitled when they had

PART III. SECT. 3, SUB-SECT. 1.

sz. *Joinder of actions in rem & in*

COAST S.S. CO. *v.* MONTREAL PORTATION CO. & THE MARY —— MONTREAL TRANSPORTATION CO. THE BUCKEYE STATE (1909), 12 C. R. 429.—CAN.

sc. *Salvage actions in rem & in personam.*]—Salvage action *in rem* & *in personam* may be joined in one action.—BRUCE LINDSAY BROS. *v.* "BRUCE HUDSON," [1937] Ex. C. R. 81; 1 D. L. R. 84.—CAN.

PART III. SECT. 5, SUB-SECT. 1.

sa. *Object.*]—The object of a preliminary act is to obtain a statement *facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.—LE BLANC *v.* THE EMILIEN BURKE (1919), 19 Exch. C. R. 24; 46 D. L. R. 59.—CAN.

filed a preliminary act against second defts.; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become pltfs. & issue a writ against second defts., & the order must be set aside; (2) if it were a matter of discretion, the guiding principle, that of mutuality, would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—THE CARLSTON, THE BALCOMBE, [1926] P. 82; 95 L. J. P. 51; 134 L. T. 766; 42 T. L. R. 312; 17 Asp. M. L. C. 33.

897a. —— **Course & speed of vessel.**]—In cases of collisions between ships at anchor it is not sufficient in answer to par. 7 of the preliminary act, which asks the course & speed of the vessel when the other was first seen, to reply " at anchor." The heading of the vessel should also be given.—THE MACROOM (1927), 137 L. T. 418; 71 Sol. Jo. 472; 17 Asp. M. L. C. 288.

898. *Add. Annotation:*—**Consd.** The Lady Belle (1933), 49 T. L. R. 595.

899a. Admissibility—Against party making.]—Two steamships came into collision in fine, clear weather. They had been on crossing courses, involving risk of collision, & pltfs.' vessel, having the other ship on her own starboard side, had a duty under art. 19 of the collision regulations to keep out of the way. Under art. 21 of the regulations there was a corresponding duty on defts.' vessel to keep her course & speed, but a note to art. 21 provides that, when for any reason the " stand-on " vessel finds herself so close that collision cannot be avoided by the action of the " giving-way " vessel, she also shall take such action as will best aid to avert collision. Pltfs. admitted that their ship took no action at all to keep out of the way & was partly to blame, but they contended that deft. vessel was also to blame for breach of the note to art. 21. In their preliminary act defts. stated that their vessel kept her course & speed up to the collision, & in their defence & counterclaim they added that they so acted " as the best means of avoiding collision or minimising its effect." At the trial pltfs. called no evidence & the defts. submitted there was no case for them to answer: —*Held:* the admissions in defts.' preliminary act were evidence which could rightly be used against them, although the point was not, perhaps, of very great importance, because the same admissions were made in the ship's logs, which were indisputably evidence.—THE LADY BELLE, [1933] P. 275; 102 L. J. P. 134; 150 L. T. 117; 49 T. L. R. 595; 18 Asp. M. L. C. 451.

908. *Add. Annotation:*—*As to* (1) **Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

914a. —— **Raising new claim—Effect of.**]—THE HIGHLAND GLEN (1927), 164 L. T. Jo. 480, C. A.

916. *Add. Annotations:*—**Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183. **Consd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

936. *Add. Citation:*—*on appeal* (1853), 8 Moo. P. C. C. 482, P. C.

952. *Add. Annotation:*—**Refd.** The San Onofre (1922), 92 L. J. P. 17.

969. *Add. Annotation:*—**Refd.** The Saxicava, [1924] P. 131.

969a. —— **Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.**]—A notice of counterclaim contained in correspondence passing between pltf.'s & deft.'s solrs. is not sufficient to " set up " a counterclaim within R. S. C., Ord. 21, r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.—THE SAXICAVA, [1924] P. 131; 93 L. J. P. 66; 131 L. T. 342; 40 T. L. R. 334; 68 Sol. Jo. 666; 16 Asp. M. L. C. 324, C. A.

970a. —— ——.]—Two foreign vessels, a barque & a ship, came into collision, when the barque was sunk. The ship was arrested in a cause of damage by the owners of the barque, & when the cause was ready for hearing, the owners of the ship commenced a cross action against them, to which they gave no appearance. On a motion to dismiss the original action unless an appearance & bail were given by the owners of the barque:—*Held:* the barque being sunk, the ct. had no jurisdiction to compel the owners to give bail, & must reject the motion.—THE CARLYLE (1858), 30 L. T. O. S. 278; 6 W. R. 197.

Annotation:—**Refd.** Chapman *v.* Royal Netherlands Steam Navigation Co. (1879), 4 P. D. 157.

979. *Add. Annotation:*—**Refd.** The Baarn, [1933] P. 251.

979a. —— —— **Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante.*

979b. —— ——.]—I had occasion, recently, when trying a salvage action in which there had been a tender, to express my view that the fact that the amount of the tender was made known to the ct. before it had determined its award hampered the ct. in its judicial capacity; & that it was better, if a tender were made, that the amount of the tender should not be made known to the ct. until it had exercised its judicial discretion in arriving at what would be a reasonable sum to award, because the question of costs, a serious one, depends upon whether the amount of the award is or is not in excess of the tender. . . . Having expressed my view as to what I thought to be advisable, namely, that the amount should not be stated in the defence, the case of the *U. C.* has arisen, a salvage case, & is now before me on summons; & I thought it desirable, in view of what has taken place, that my view upon this question should be stated publicly, so that it might be recorded for the information of all concerned. I have thought it right, as I have suggested a variation of what has apparently been the custom & practice of this ct., to speak to the President about it, & he agreed with my view of the case, that putting the amount into the defence in a salvage action was embarrassing to the judge. Upon inquiry, however, it appears that this is such a very old practice, that in the

President's view it is not advisable to alter it. The result is that I make no alteration in the existing practice, & dismiss the appeal summons (BARGRAVE DEANE, J.).—THE UPTON CASTLE, [1912] W. N. 84.

1001. *Add. Annotation :*—**Refd.** The Creteforest, [1920] P. 111.

1001a. —— **Tender of lump sum—Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante.*

1023. *Add. Annotations :*—**Apld.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673. **Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385: Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

1027a. —— —— ——.]—Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action *in rem* against defts., "the owners of the steamship *N.*" Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the *N.* was owned by the French Govt., & was not subject to arrest :—*Held :* the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—THE NEPTUNE, [1919] P. 17; 88 L. J. P. 94.

1032. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1046. *Add. Annotation :*—**Refd.** The Shropshire (1922), 127 L. T. 487.

1047a. —— **For disposing fairly of cause—For saving costs.**]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides :—*Held :* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1062a. —— **Confidential report by master.**]—Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel. The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltfs.' vessel. Pltfs. claimed to have this report produced to them :—*Held :* the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production. —THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotations :—**Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1062b. —— **Officers' reports.**]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery :—*Held :* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY

PART III. SECT. 8, SUB-SECT. 2.—A.

998 ii. —— *Rejection of tender—Acceptance of increased tender after amendment of claim at trial.*]—In an action for salvage services, pltf. claimed $20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when deft. paid into ct. $2,000 & tendered it to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & deft. increased his tender to $4,000, which was accepted : —*Held :* (1) deft. should in any event have the costs of & consequent upon the amendment granted at the trial; (2) as to the accepted tender, the increased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf.; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—THE PASCHENA *v.* THE GRIFF, [1925] 2 W. W. R. 676.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.

sb. *Plaintiff resident out of jurisdiction —Foreign ship.*]—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—WRANGELL *v.* THE STEEL SCIENTIST, [1924] 3 D. L. R. 49; [1924] Exch C. R. 136; 2 W. W. R. 493; 34 B. C. R.

PART III. SECT. 10, SUB-SECT. 1.—A. (a).

sc. *Examination for discovery—In lieu of interrogatories—When ordered—Use of.*]—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—POINT ANNE QUARRIES *v.* S.S. M. F. WHALEN (1921), 68 D. L. R. 627; 20 Exch. C. R. 483.—**CAN.**

PART III. SECT. 11, SUB-SECT. 1

sd. *Proof of claim—Right to proceed ex parte—Order for sale of res.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—**AUS.**

OF BAR 34 L. T. 576; 70 Sol. Jo. 1044;

Annotation:—**Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1075. For "For full anns., *see* PRACTICE & PROCEDURE," read "*Add. Annotation:*—*As to* (1) **Refd.** Dawson *v.* Shepherd (1880), evidence on commission—Discouraged.]—THE AUGUSTA (1909), 26 T. L. R. 98.

1107a. —— —— ——.]—Where suits of rival salvors come on for hearing at the same time the right to begin must depend upon the circumstances of each case.—THE WILLEM III. (1871), L. R. 3 A. & E. 487; 25 L. T. 386; 1 Asp. M. L. C. N. S. 129.

1112a. Right of reply.]—Allowed in all cases.—THE RJUKAN (1866), 14 W. R. 973.

1114a. —— **Damage due to collision.**] — In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3 Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *primâ facie* was to be regarded as a consequence of the negligence causing the collision.—THE PALUDINA, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, C. A.; *affd. sub nom.* S.S. SINGLETON ABBEY *v.* S.S. PALUDINA, [1927] A. C. 16; 17 Asp. M. L. C. 117, H. L.

Annotations:—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Kite, [1933] P. 154; The Stranna, [1937] P. 130.

1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]—Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held:* pltfs. were entitled to put in the logs of defts.' vessel with danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, *e.g.* the displacement of certain tugs.—THE WOODARRA (1921), 38 T. L. R. 160; 66 Sol. Jo. 183.

Annotation:—**Consd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]—In a case where salvage services had been requisitioned & the amount in dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the attendance of the Elder Brethren being dispensed with:—*Held:* the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—THE RIVER FISHER (1923), 39 T. L. R. 233.

1152c. Lighthouse log — Admissible — Although facts admitted.]—The *Cornish Rose* was in the English Channel, unable to steam or to steer & in danger of becoming even more helpless. The *Finland* brought her into safety after twenty-two hours hard work. The facts were admitted upon the pleadings & pltfs. sought to put in defts.' log in support of the inferences which they desired to draw as to the nature of the services. On the other side it was desirable to check these inferences by the entries in the logs of the Lizard & Land's End lighthouses:—*Held:* although the facts were admitted there was no objection to the admission of the logs for this purpose.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1152d. Report of pilot.] — The *Esbjerg* was leaving & the *Prinses Juliana* was arriving at Harwich Harbour, both vessels being in charge of a pilot, when a collision occurred. The pilot of the *Prinses Juliana* was not called as a witness, although he had been subpœnaed by the owners of the *Esbjerg*. The owners of the *Esbjerg*, sought to put in the report of that pilot made to Trinity House after the accident:—*Held:* such report was inadmissible.—THE PRINSES JULIANA, ESBJERG OWNERS *v.* PRINSES JULIANA OWNERS, [1936] P. 139; [1936] 1 All E. R. 685; 105 L. J. P. 58; 155 L. T. 261; 52 T. L. R. 296; 18 Asp. M. L. C. 614.

1167. Before this case insert "*See, further,* EVIDENCE, Vol. XXII., p. 94."

PART III. SECT. 14, SUB-SECT. 3.—A.

ss. *Log books—Independent log kept by mate.*]—*Held:* not admissible.—*v.* THE AINOKO (1894), 4 Exch. C. R.

sl. *Manuscript notes made by master.*]—In the circumstances rejected as evidence as part of the ship's log.—THE ANDREW KELLY *v.* THE COMMODORE, [1919] 1 W. W. R. 1059; 19 Exch. C. R. 70; 48 D. L. R. 213.—**CAN.**

sk. *Salvage action — Attendance of master & crew.*]—It is proper to have the master & crew before the ct. in an action for salvage.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (1918), 18 Exch. C. R. 168.—**CAN.**

PART III. SECT. 14, SUB-SECT. 3.—B. (a).

sl. *Journal of lighthouse keeper—Evidence as to weather.*]—The diary or journal of a lighthouse keeper, duly returned to the agent of the National Dept. of Marine at Victoria, allowed in evidence as "an official book kept under competent authority" to show the conditions of sea weather in the locality.—SMITH *v.* THE RACE ROCK (1932), 45 B. C. R. 522.—**CAN.**

PART III. SECT. 14, SUB-SECT. 3.—B. (a).

sm. *Evidence of persons on boom—Collision.*]—Action by pltf. to recover damages suffered by it by reason of deft.'s ship coming into collision with one of its booms of logs:—*Held:* it is next to impossible for one on a moving vessel, unless he is in a position to see her from stem to stern & at the same time maintain a complete & commanding view of the shore, to follow the course, speed or evolutions in the manœuvres of a vessel; & pltf.'s witnesses being some on the boom & some on land overlooking the *locus* of the accident were in a better

1185a. —— **Photographs — Calculation as to locality of collision—Absence of expert evidence.**]—In an action arising out of a collision in Sydney harbour between the ships *C. & St. A.*, there were in evidence three photographs, taken from a third moving ship, showing the colliding ships just before, during, & after the collision, with the frontage of the harbour as background. The point in the harbour at which collision occurred was material. The trial judge, basing his judgment solely upon the other evidence in the case, held that the *St. A.* was to blame. The appellate ct. gave the owners of that ship leave to adduce upon an appeal by them the evidence of three land surveyors based upon the photographs. They used the alignment of pairs of objects which they identified in the backgrounds to fix the position of the camera when each photograph was taken, & then by reference to the background localised the collision. These results were shown by a diagram. The appellate ct., accepting the result so arrived at, reversed the decision of the trial judge, stating, however, that apart from the new evidence they agreed with it:—*Held:* the skill or science needed to produce an accurate result by the process adopted was not that of a land surveyor, & in the absence of expert evidence the reversal of the decision of the trial judge was not warranted.—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632; 100 L. J. P. C. 73; 144 L. T. 601; 47 T. L. R. 245; 18 Asp. M. L. C. 196, P. C.

1187. For "For full anns., *see* PLEADING," read "For full anns., *see* EVIDENCE."

1196. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1198a. —— —— **Between assessors advising lower court & appellate court—Duty of appellate court.**]—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—AUSTRALIA (OWNERS) *v.* NAUTILUS (OWNERS),, THE AUSTRALIA [1972] A. C. 145; 95 L. J. P. 145; 135 L. T. 576; 42 T. L. R. 614; 32 Com. Cas. 82; 17 Asp. M. L. C. 86, H. L.

Annotations:—**Folld.** The Tovarisch, [1930] P. 1; The Otranto, [1930] P. 110. **Refd.** Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529.

1198b. —— —— —— ——.] — ARTEMISIA (OWNERS) *v.* DOUGLAS (OWNERS) (1925), [1927] A. C. 164, H. L.

Annotation:—**Consd.** Australia (Owners) *v.* Nautilus (Cargo Owners), [1927] A. C. 145.

1198c. —— —— —— ——.]—We are the judges, & we are to regard the gentlemen who assist us, & the gentlemen who assisted the judge below, as witnesses, & we are to form our opinion, as judges, on the combined evidence of the four witnesses, & not take the view that because the two witnesses whom we see contradict the two witnesses whom we have not seen; we should follow the witnesses whom we see rather than the witnesses whom we do not see (SCRUTTON, L.J.).—THE TOVARISCH, [1930] P. 1; 99 L. J. P. 23; 142 L. T. 372; 46 T. L. R. 125; 18 Asp. M. L. C. 58, C. A.; *affd. on other grounds*, [1931] A. C. 121, H. L.

1198d. —— —— —— ——.]—My duty is to exercise my own judgment, paying due regard to the advice given by the Elder Brethren in the ct. below as well as to that given to us by our assessors (LAWRENCE, L.J.).—THE OTRANTO, [1930] P. 110; 99 L. J. P. 82; 142 L. T. 544, C. A.; *revsd. on other grounds*, [1931] A. C. 194, H. L.

1199. *Add. Annotation:* — **Consd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1200a. Presence of — Dispensed with — Salvage action — Amount in dispute small.] — THE RIVER FISHER, No. 1152b, *ante*.

1201. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), [1927] A. C. 145.

1204. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1206. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1223a. —— —— **Admission of liability & agreement to refer.**]—THE BAARN, No. 1403a, *post*.

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position to follow the course of the vessel than were those on board the same.—VANCOUVER ORIENT EXPORT CO., LTD. *v.* THE ANGLO-PERUVIAN, [1931] Ex. C. R. 127.—**CAN.**

sn. *Evidence of navigators—Collision—Greater weight than evidence of outsiders.*]—ODFJELL A/S *v.* S.S. VESUVIO & SOCIETA ANONIMA PER L'INDUSTRIA E IL COMMERCIO MARITIMO *v.* S.S. OLDER, [1930] Ex. C. R. 207; [1931] 2 D. L. R. 34.—**CAN.**

PART III. SECT. 14, SUB-SECT. 4.—A.

1196 iii. —— ——.]—Two ships collided on a very bad night. The collision was caused by the *M.*, which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors:—*Held:* it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, &, on the ground that the evidence did not establish the fault, the *M.* assoilzied.—CAMBO SHIPPING CO., LTD. (ROSSETTI (OWNERS)) *v.* DAMPSKIBSSELSKABET MAGNUS, [1920] S. C. 26; 57 Sc. L. R. 59.—**SCOT.**

1201 iii. ——.]—*Held:* evidence of experiments with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39.—**CAN.**

1201 iv. ——.]—In Admlty. cases where the ct has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) *v.* ANGLO NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS)), [1923] S. C. 526; 60 Sc. L. R. 333.—**SCOT.**

sl. *Duty of judge to keep note of questions submitted to & answers given by nautical assessor—Nautical Assessors (Scotland) Act*, 1894 (c. 40), *s.* 3.]—S.S. ROWAN *v.* S.S. CLAN MALCOLM, [1923] S. C. 317.—**SCOT.**

1224. *Add. Annotation :—As to* (2) **Refd.** The Disperser, [1920] P. 228.

1237a. —— **Action against two separate parti One party only held to blame—Costs of plaintiff.**]—(1) A pltf. who, being in reasonable doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—THE SVEIN JARL (1923), 129 L. T. 255 ; 16 Asp. M. L. C. 159.

Annotation :—**Distd.** The W. H. Randall, [1928] P. 41.

1237b. —— —— —— ——.]—THE THAMES III. & THE K. B. S. (1928), 166 L. T. Jo. 52.

1258. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1261. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1262. For "*see* S. C. No. 1266, *post*," read "*see* S. C. No. 131, *ante*."

1267a. Unnecessary intervention in mortgagees' action—Liability for costs.]—THE ATHENIC (1931), 48 T. L. R. 158.

1277. *Add. Citation :—sub nom.* THE COMMODORE, 1 Ecc. & Ad. 175, n.

1280a. —— ——.]—THE INNISFAIL, THE SECRET (1876), 35 L. T. 819 ; 3 Asp. M. L. C. 337.

1283. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1284. *Add. Annotation :*—**Consd.** The Modica, [1926] P. 72.

1284a. —— —— —— ——.] — Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—THE MODICA, [1926] P. 72 ; 95 L. J. P. 100 ; 135 L. T. 61 ; 17 Asp. M. L. C. 30.

Annotation :—**Refd.** The Young Sid, [1929] P. 109.

1284b. —— —— —— ——.]—Where defts. were three-fourths to blame & pltfs. one-fourth to blame, the ct. ordered defts. to pay one-half of pltfs.' costs.—THE ROBERT KOEPPEN, [1926] P. 81, n.

Annotation :—**Refd.** The Modica, [1926] P. 72.

1286. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1286a. Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.]—Pltfs. & defts.' vessels, navigating without lights in accordance with Admlty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for pltfs. on the counterclaim. On the question of costs :—*Held :* as nearly eighteen months had elapsed before pltfs. commenced proceedings, during which time defts. had taken no steps to recover their damages from pltfs., it appeared that there would have been no litigation if pltfs. had not issued their writ, &, therefore, there must be judgment for defts. on the claim with costs, & for pltfs. with costs on the counterclaim, & not, as contended by pltfs., no costs on either side.—THE CARDIFF HALL, [1918] P. 56 ; 87 L. J. P. 113 ; 119 L. T. 156 ; 14 Asp. M. L. C. 328.

1297a. —— ——.]—THE HOPPER No. 21, [1903] W. N. 114.

1298a. —— —— **Unsuccessful counterclaim.**]—THE SVEIN JARL, No. 1237a, *ante*.

1298b. Costs of separate issues.]—In an action for damage by collision, in which defts. filed a defence & counterclaim, the question of negligence was first tried, & was decided against defts. Subsequently the question whether pltfs. had suffered any damage by reason of the collision was determined in favour of defts., for whom judgment was entered on the claim, judgment being entered for pltfs. on the counterclaim :—*Held :* although defts. were entitled to the general costs of the action, pltfs. must have the costs relating to the question of negligence, & the

PART III. SECT. 16, SUB-SECT. 1.

1239 ii. —— —— ——.]—A master suing for wages & disbursements is bound to furnish accounts before bringing his action, otherwise he will not be entitled to his costs.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873 ; Ex. C. R. 194.—**CAN.**

PART III. SECT. 16, SUB-SECT. 3.—A.

bi. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* THE B.B. (1914), 17 D. L. R. 757 ; 15 Exch. C. R. 389 ; 6 W. W. R. 711.—**CAN.**

sm. *Expenses of bail bond—Not recoverable as costs.*]—The expense of procuring a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being part of the expenses of process.—ELLERMANS WILSON LINE, LTD. *v.* NORTHERN LIGHTHOUSES COMRS. 1920), 58 Sc. L. R. 29.—**SCOT.**

sn. *Awarded to salvors.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154 ; 56 Sc. L. R. 100.—**SCOT.**

so. *Fees of appraiser acting as marshal's substitute—Special arrangement.*]—THE PASCHENA *v.* THE GRIFF (1925), 36 B. C. R. 30.—**CAN.**

sb. *Possession fees—Marshal in possession under several warrants.*]—Where a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed.—SIMBACK *v.* THE SAGA, CARLSSON *v.* THE SAGA (1899), 6 B. C. R. 522.—**CAN.**

PART III. SECT. 16, SUB-SECT. 4.—A.

1279 i. *Inevitable accident—Costs follow event.*]—The rule as to costs is the same in the Exchequer Ct. of Canada in Admlty. as it is in the Admlty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC *v.* THE SEA LION, [1919] 2 W. W. R. 411. **CAN.**

1283 iii. —— ——.]—Where two vessels came into collision & both vessels were held to blame, no costs were granted to either party.—R. *v.* THE ARGYLLSHIRE, [1922] St. R. Qd. 186.—**AUS.**

1283 iv. —— ——.]—Where the ct. found that both parties were to blame :—*Held :* each delinquent should bear his own costs.—B. W. B. NAVIGATION CO. *v.* THE KILTUISH, BARNET LIGHTERAGE CO. *v.* THE KILTUISH (1922), 67 D. L. R. 525 ; [1922] 2 W. W. R. 959.—**CAN.**

costs, if any, occasioned by the unsuccessful counterclaim.—THE ADAMS (1919), 88 L. J. P. 129.

1299. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1300a. *S. P.* THE ELEANOR & NANCY (1837), 5 L. T. 241.

1304a. *S.P.* THE ARGO *v.* THE EMMA HEYN (1856), 5 L. T. 122.

1309. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1351a. —— **Judgment for less than amount of offer refused by salvors.**]—THE HEDWIG (1853), 1 Ecc. & Ad. 19; 164 E. R. 11; *sub nom.* THE HÆDWIG, 17 Jur. 977.

1377. *Add. Annotations :*—**Refd.** The Minerva (1933), 49 T. L. R. 563; The Champion, [1934] P. 1; The Beldis, [1936] P. 51.

1402a. Failure to file vouchers—Damage action by Soviet Government.]—The Russian Govt., pltfs. in an action for damage by collision, were ordered by the ct. to file vouchers in support of their claim within a specified time, "otherwise, they be precluded from giving evidence in support thereof." Thereupon, pltfs. filed a bundle of documents, which referred only to a few of the items of their claim, & at the reference the registrar ruled that only those items which were supported by vouchers should be allowed to be the subject of proof in the claim, & that no evidence should be allowed to be given in support of the other items. On an appeal from this decision :—*Held :* the ct. had to bear in mind that the Russian nation had elected to carry on their business in a method entirely different from that in which business was conducted by the rest of the civilised world, with the result that when they came into that ct. they were handicapped to an unusual degree in supporting their claim; &, therefore, although the documents which, in the present case, they had produced in the way of vouchers fell immensely short of being a fair & full notice to the defts. of the case which pltfs. sought to make, in the circumstances justice would be done by allowing pltfs. to give evidence in support of all items of which, in the judgment of the registrar, they gave fair & full particulars to defts. as to the nature of their claim.—THE MARTE (1933), 149 L. T. 383; 49 T. L. R. 363; 18 Asp. M. L. C. 402.

1403a. Agreement for reference to Registrar—Effect of subsequent payment out of jurisdiction—In foreign currency.]—In proceedings for collision damage instituted by the owners of a Chilean steamship against the owners of a Dutch steamship the latter, through their solrs., undertook to appear, & in due course gave bail in an agreed sum. Later defts. made a formal admission of liability, & that admission, signed by the respective solrs. for the parties, was filed in the Admiralty Registry, together with a consent to a reference to assess pltfs.' claim. Pltfs., in compliance with an order to that effect, duly filed their claim & vouchers, but before a date had been fixed for the reference defts. obtained in the Chilean cts. an order permitting them to make payment by depositing in a named Chilean bank a sum in pesos considerably in excess of pltfs.' claim quantified in pesos. This payment was refused by pltfs., the Chilean currency having fallen heavily & the export of pesos being prohibited by Chilean law. On a motion by defts. for an order dismissing the action on the ground that they had satisfied the claim by payment :—*Held :* there was no final decision by the Chilean cts. that the payment in depreciated pesos was sufficient while proceedings were pending in England, & therefore the motion failed.—THE BAARN, [1933] P. 251; 102 L. J. P. 120; 150 L. T. 50; 49 T. L. R. 554; 18 Asp. M. L. C. 434, C. A.

1403b. —— —— ——.]—A Chilean vessel owned by pltfs. received damage through being run into by a Dutch vessel owned by defts. The Dutch vessel was arrested in England, & her owners put in bail, admitted liability, & consented to a reference to assess the damages. The admission & consent were filed in the registry & became an Order of Ct. The Chilean vessel was repaired in Chile, & pltfs. filed their claim & vouchers comprising (*inter alia*) some 70,000 Chilean pesos in respect of repairs & detention, quantified into sterling for the purposes of the claim at a little over £1,500. Defts. alleged that under Chilean law a debtor could make a valid payment, even against the will of the creditor, by depositing the amount owed in a Chilean bank in the name of the creditor, &, the exchange value of the peso having fallen, defts. deposited in a bank in Chile 80,000 pesos in pltfs.' name, an amount which defts. alleged was sufficient to cover the whole claim with interest.

LANGTON, J., held that the deposit, so far as it related to the claim in respect of repairs & detention, was a good discharge, & that the reference in respect of these items must be stayed. On appeal, SCRUTTON & ROMER, L.JJ., held that the deposit was not a good payment in satisfaction of the damages & that the reference must proceed; but GREER, L.J., said that in his opinion the registrar should treat the deposit as a payment on account of the sums expended & lost in pesos. The damages in question were agreed at £1,581, & it was further agreed at the reference (*a*) that the deposit, on the rate of exchange applicable at the time the pesos were expended & lost, was equivalent to £1,409 3*s.* 11*d.*, but (*b*) that owing to the

PART III. SECT. 16, SUB-SECT. 5.—A. (a).

1322 i. *General costs — Excessive claim.*]—In a suit claiming remuneration for salvage services rendered, the claim was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of pltfs., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—STUART *v.* COLUMBIA RIVER (1921), 21 S. R. N. S. W. 674.—AUS.

1323 iii. —— ——.]—Salvors arrested a ship against which they were claiming salvage amounting to £47,500, & they refused to release the ship except upon obtaining security to the extent of £37,500. The arresters ultimately obtained decree for £4,800 as salvage, with modified expenses against defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000 :—*Held :* the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—ST. CLAIR *v.* AUDNEY, [1922] S. C. 85.—SCOT.

si. *Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* ART. DURBAN HANSEN, [1919] S C 154; 56 Sc. L. R. 100.—SCOT.

action of the Chilean Exchange Control Commission it was impossible to purchase sterling, & (*c*) that defts. could at any time obtain possession of the pesos from the bank in Chile & that pltfs. did not claim them. The registrar held that a foreign deft. sued for damages in this country could not satisfy the claim by offering to pay in foreign currency; that the deposit did not affect the proceedings instituted here; & that pltfs. were entitled to £1,581 & interest. Defts. moved in objection to the report.

BATESON, J., confirmed the report, not only for the reasons given by the registrar, but also because, on the view he took of the judgments of SCRUTTON & ROMER, L.JJ., the question whether the deposit could be taken into account had already been decided. Defts. appealed:—*Held:* the appeal failed; (*per* CUR.) on the ground that on the previous judgments of the majority of the Ct. of Appeal defts. were precluded from raising the question that the deposit was to be treated as a sum paid on account of the damages in this country; (*per* SCRUTTON & MAUGHAM, L.JJ.) on the additional ground that a deposit which could not be converted into sterling could not satisfy or reduce damages payable in sterling; (*per* MAUGHAM, L.J.) on the ground that procedure in an action brought in this country must be governed by the *lex fori* & that the deposit in pesos was not a valid payment according to English law.—THE BAARN (No. 2), [1934] P. 171; 103 L. J. P. 149; 152 L. T. 439; 18 Asp. M. L. C. 506, C. A.

1405a. —— —— —— **Expert evidence.**]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—THE STEADFAST (1922), 39 T. L. R. 96.

1406a. Reasons should be stated.]—(1) In cases of collisions in which foreign ships are involved, the report of the registrar should state the reasons which have actuated the tribunal in allowing or disallowing large amounts, in order that the foreign interests concerned may appreciate what has been done.

(2) The registrar & merchants are in very much the same position as a jury except that they give their reasons. So far as their reasons involve legal considerations they can be questioned. So far as they are findings of fact it takes a strong case to disturb them, but where it is clear that they have made mistakes or that the evidence does not support their conclusions, the ct. has always retained the power to alter their report, & it is obviously right that the ct. should maintain such a control (SCRUTTON, L.J.).—THE ST. CHARLES (1927), 138 L. T. 456; 17 Asp. M. L. C. 399, C. A.

1413. *Add. Annotation:*—**Refd.** The Kingsway. [1918] P. 344.

1422a. —— ——.]—THE ST. CHARLES, No. 1406a, *ante*.

1428. *Add. Citations:*—Brown. & Lush. 436; 34 L. J. P. M. & A. 113; 12 L. T. 619; 2 Mar. L. C. 221.

Add. Annotations:—**Consd.** The Thuringia (1871), 41 L. J. Adm. 20. **Refd.** The Kingsway, [1918] P. 344; Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

1433. *Add. Annotations:*—**Refd.** The Kingsway, [1918] P. 344; *Re* Mersey Docks & Admiralty Comrs., [1920] 3 K. B. 223; Admiralty Comrs. *v.* S.S. Valeria, [1922] 2 A. C. 242; Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655; The West Wales, [1932] P. 165.

1439. *Citation:*—For "[1916] A. C. 38," read "[1917] A. C. 38."

1440. *Add. Annotation:*—**Refd.** The Baarn (1933), 150 L. T. 50.

1447. *Add. Annotation:*—**Apld.** The Young Sid, [1929] P. 190.

1452. *Add. Annotation:*—*As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1471. *Add. Annotation:*—**Refd.** The Young Sid, [1929] P. 190.

1478. *Add. Annotations:*—**Refd.** The Glenfinlas, [1918] P. 363, n.; The London Corpn., [1935] P. 70.

1482. *Add. Annotations:*—**Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449; The Napier Star, [1933] P. 136. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

1483a. ——.]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners:—*Held:* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on that payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

PART III. SECT. 17, SUB-SECT. 2.—C. (c).

1437 i. *Correction of report—Registrar proceeding on wrong principle.*]—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 18 Exch. C. R. 210; 44 D. L. R. 716.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

1480 i. *Awarded from date of loss.*]—Interest in Admlty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the collision, from the dates of such payments.—CANADIAN DREDGING CO. *v.* NORTHERN NAVIGATION CO. (Ont.), [1924] Exch. C. R. 163.—**CAN.**

In the Admlty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill after completion, in the absence of legal excuse for non-payment.—WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W. W. R. 930; 34 B. C. R. 1; *on ab nom.* THE PACIFICO *v.* MARINE RAILWAY & SHIP-CO., [1925] 2 D. L. R. 102.—

1484. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1487a. No expenditure or loss incurred.]—On a reference to assess damages by collision interest is not awarded upon the sums allowed in respect of estimated repairs & estimated demurrage which will be incurred *in futuro : i.e.*, upon items of the claim in respect of which no expenditure or loss has been incurred at the date of the reference.—THE NAPIER STAR, [1933] P. 136 ; 102 L. J. P. 57 ; 149 L. T. 359 ; 49 T. L. R. 342 ; 18 Asp. M. L. C. 400.

1489a. —— —— Claim by foreign Government.]—(1) By Finnish law 2½ per cent. of the sale price of a Finnish vessel sold out of Finnish nationality is taken by the Finnish Govt. :—*Held :* the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem*.

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—THE EVA, [1921] P. 454 ; 91 L. J. P. 17 ; 126 L. T. 223 ; 37 T. L. R. 920 ; 15 Asp. M. L. C. 424.

1492. *Add. Annotations :—Generally,* **Refd.** The Stream Fisher, [1927] P. 73 ; The Beldis, [1936] P. 51.

1492a. —— After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.]—In a mtge. action *in rem* pltfs., mtgees., in Jan. 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees. ; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that pltfs. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Pltfs. took out a summons for further security :—*Held :* although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting pltfs.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses ; the case must be referred to the registrar to find what amount should be given & what was the amount of pltfs.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18 ; 95 L. J. P. 168 ; 134 L. T. 511 ; 17 Asp. M. L. C. 24.

1493. *Add. Annotations :*—**Consd.** The Kronprinz Olav, [1921] P. 52. **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1493a. —— Unascertained liability—Right of court to delay distribution.]—THE KRONPRINZ OLAV, No. 1551a, *post*.

1496. *Add. Annotation :*—**Consd.** The Stream Fisher, [1927] P. 73.

1497a. —— Motion for payment in default action—Necessity for notice.]—THE EVA, No. 1489a, *ante*.

1497b. —— Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.]—A vessel whilst under arrest in a necessaries action was damaged by the negligent navigation of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12*s*. was admitted. On a motion by pltfs. in the necessaries action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12*s*. by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct. : —*Held :* claimants could not credit themselves with £21 12*s*., but must pay that sum into the fund in ct.—THE MAGGIE A. (1923), 155 L. T. Jo. 191.

1497c. —— Priorities—Several collisions.]—Where there has been more than one collision with the same vessel the maritime liens arising thereout, apart from laches, rank *pari passu* & not in the order of the dates of the respective collisions.—THE STREAM FISHER, [1927] P. 73 ; 96 L. J. P. 29 ; 136 L. T. 189 ; 17 Asp. M. L. C. 159.

Maritime liens generally, *see* SHIPPING.

1499. *Add. Annotations :—As to* (2) **Consd.** The Beldis, [1936] P. 51. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213 ; The Point Breeze, [1928] P. 135.

1500. *Add. Annotations :—As to* (2) **Consd.** The Beldis, [1936] P. 51. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213 ; The Point Breeze, [1928] P. 135.

1501. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1502. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1504. *Add. Annotations :*—**N.F.** The Volant (1842), 1 Wm. Rob. 383. **Consd.** The Mary Caroline (1848), 6 Notes of Cases, 536. **Refd.** The

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PART III. SECT. 18, SUB-SECT. 3.

st. *Sale of ship—By marshal—Not licensed as auctioneer—Right to fees.*]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—HERNANDEZ *v.* THE BAMFIELD (1921), 21 Exch. C. R. 166 ; 30 B. C. R. 161 ; [1921] 3 W. W. R. 69.—CAN.

PART III. SECT. 18, SUB-SECT. 4.

1495 iv. —— *Claim by assignee of foreign shipowner.*]—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee of the reputed owner who lived in California :—*Held :* the application should be adjourned & published in Victoria & Vancouver by notice & advertisement for one month, the notice to be posted in the registry & served upon the collector of customs & the American Consul at Vancouver —THE SPEEDWAY (1925), 35 B. C. R. 319.—CAN.

Mellona (1848), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 590.

1505. *Add. Annotation :*—**Refd.** The Point Breeze, [1928] P. 135.

1507. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1508. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1519a. **Expenses of witnesses—Though not called.**]—Where a charge for the attendance of such a witness was allowed, because counsel in advising on evidence thought that the witness was necessary :—*Held :* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

1520a. —— **Measure of compensation.**]—While it has always been the practice, owing to the nature of their calling, to allow seafaring witnesses to be detained on shore to give evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted reasonably in incurring the expense or whether he ought not to have examined the witness on commission.

A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his *subpœna ;* & the wages he is earning may afford an important indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance.—THE IBIS VI, [1921] P. 255; 90 L. J. P. 289; 125 L. T. 378; 37 T. L. R. 557; 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.

Annotation :—**Expld.** The Ibis VI (No. 2), [1922] P. 4.

1520b. —— ——.]—The mate of pltfs.' fishing vessel, through being detained ashore for twenty-five days to give evidence at the trial of a collision action, was prevented from sailing on a voyage on which he would have earned £280 as his share of the catch. Pltfs., who were successful in the action, paid the witness the £280, &, on taxation, the assistant-registrar allowed the item in pltfs.' bill of costs as chargeable against defts. Defts. appealed, & the matter ultimately went to the Ct. of Appeal, which laid down certain guiding principles as to allowances to witnesses & sent the case back for reassessment. On reconsideration the assistant-registrar allowed the sum of £250, & defts. again appealed :—*Held :* the assistant-registrar had properly applied the directions given by LORD STERNDALE, M.R., in which WARRINGTON, L.J., concurred, namely, that the amount to be awarded should be "the reasonable compensation to a person of the class of the witness, taking into account all the circumstances & considering the wages which the witness was earning about the time of detention not as an absolute measure, but an important indication & guide of what is fair. The fact that all persons are under an obligation to give evidence when called upon should also not be ignored." The appeal therefore failed.—THE IBIS VI (No. 2), [1922] P. 4; 91 L. J. P. 44; 126 L. T. 256; 38 T. L. R. 55; 15 Asp. M. L. C. 427.

1520c. **Substitute for witness.**]—The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—THE MASSILIA, [1926] P. 180; 95 L. J. P. 109; 135 L. T. 671; 42 T. L. R. 551; 17 Asp. M. L. C. 109.

1521a. **Costs of obtaining statements from independent witnesses—Discontinuance of action.**]—In a collision action, before pltfs. had filed their preliminary act or statement of claim, defts. took statements from independent witnesses on other vessels. Pltfs. shortly afterwards discontinued the action. On the taxation of defts.' bill of costs the assistant registrar disallowed the costs of obtaining these statements, on the ground that there was "a well-settled principle of taxation that a party is only entitled as against his opponent to incur such costs or expenses as will enable him to conduct his case at the stage which the proceedings have reached, & not incur expenses in anticipation of matter, which, as events turn out, never arise" :—*Held :* R. S. C., Ord. 65, r. 27 (29), was not limited in the way stated by the assistant registrar; if solrs. could compel the discontinuance of an action by collecting the necessary evidence, they were entitled to do so, & the costs in question were not prematurely incurred, & defts. were entitled to recover them from pltfs. on taxation.—THE CHANNEL QUEEN, [1928] P. 157; 97 L. J. P. 97; 139 L. T. 336; 44 T. L. R. 505; 17 Asp. M. L. C. 484.

1521b. **Fee of average adjusters — Numerous claims.**]—On a reference to assess damages arising out of a collision, the claims of cargo owners against the fund paid into ct. by the owners of the wrongdoing ship, who had limited their liability, were presented to the registrar in the form of an average statement. On taxation, a fee of £1,000 was allowed to the average adjusters in respect of the preparation of the claims. On a summons to review this item :—*Held :* where, as in the present case, there were a number of claims to be dealt with, an average statement was a method of proof to which there was no objection in principle, involving as it did less expense than would be incurred in the preparation of many affidavits or in calling a number of witnesses from overseas; it was irrevelant that the claimants had employed the same adjusters to prepare their claims in general average against underwriters; & the fee of £1,000 was rightly allowed.—THE

NORMANSTAR, [1929] P. 283; 98 L. J. P. 152; 141 L. T. 463; 45 T. L. R. 554; 18 Asp. M. L. C. 53.

1526. *Add. Annotation:*—**Expld.** The Ibis VI, [1921] P. 255.

1527. *Add. Annotation:*—**Expld.** The Ibis VI, [1921] P. 255.

1536a. —— **"To persons claiming to have sustained damage"—Appearance at trial—Right to be heard.**]—In an action of limitation of liability pltfs., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T.* had commenced an action against pltfs., but had taken no step other than appearance at the trial in the limitation suit:—*Held:* the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—CORY LIGHTERAGE, LTD. *v.* DALTON (OWNERS), THE HARLOW (1922), 153 L. T. Jo. 121.

1538. *Add. Citation:*—4 Asp. M. L. C. 27, n.
Add. Annotation:—**Reld.** The Vigilant, [1921] P. 312.

1541a. —— —— **Waiver of.**]—In an action of limitation of liability under M. S. Act, 1894 (c. 60), s. 503, pltfs. did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision, in respect of which judgment had been given against pltfs. in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation:—*Held:* a decree might be granted without requiring pltf. to file the usual affidavit.—THE COIMBRA (1923), 130 L. T. 512; 16 Asp. M. L. C. 288.

1544. *Add. Annotation:*—*As to* (2) **Reld.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1547. *Add. Annotation:*—*As to* (2) **Reld.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1548. *Add. Annotation:*—*As to* (2) **Consd.** The Coaster (1922), 91 L. J. P. 145.

1548a. —— —— ——.]—Pltf. in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—THE COASTER (1922), 91 L. J. P. 145; 127 L. T. 153; 38 T. L. R. 511; 15 Asp. M. L. C. 560.

1551a. —— **Unascertained liability—Right of plaintiffs in limitation suit to claim against fund.**]—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admlty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that pltfs. were entitled to receive a moiety of the amount of their damage from defts. Thereupon defts., the owners of the *O.*, commenced a limitation action against the owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. Pltfs., the owners of the *O.*, appealed:—*Held:* (1) pltfs. had no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained; (2) limitation proceedings do not contemplate claims by pltfs., & the owners of the *O.* could not file a claim against the fund in their own right; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow pltfs. to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust the distribution of the fund so that pltfs. might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—THE KRONPRINZ OLAV, [1921] P. 52; 90 L. J. P. 398; 125 L. T. 684; 15 Asp. M. L. C. 312, C. A.

Annotation:—*As to* (3) **Consd.** The Coaster (1922), 91 L. J. P. 145.

III. SECT. 20, SUB-SECT. 1.

SX. *Rate of interest.*]—In the absence of any rule in this State governing the rate of interest in cases to which Merchant Shipping Act, 1894, s. 503, apply, the practice of the Admlty. Ct. in England must be followed.—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461; 47 N. S. W. W. N. 170, 191.—AUS.

1553a. —— ——.]—The usual rule by which the successful pltfs. in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by defts. Nor ought pltfs. to recover their costs of giving bail in excess of the amount of their statutory liability.—CHARLOTTE (OWNERS) *v.* THEORY (LATE) (OWNERS), THE CHARLOTTE (1921), 153 L. T. Jo. 69.

1553b. *S. P.* THE KATHLEEN (1925), [1927] P. 63, n.; 69 Sol. Jo. 574.

1554. Delete "For full anns., *see* PRACTICE & PROCEDURE."

Part IV.—Appeals.

SUB-SECT. 1.—FROM COUNTY COURTS AND THE CITY OF LONDON COURT (p. 230).

See, now, Administration of Justice (Appeals) Act, 1934 (c. 40), s. 2 (1).

1581. *Citations :*—For "(1878)" read "(1877)."

1596. For "**No appeal**" read "**Right of appeal.**" *Add. Annotation :*—**Consd.** The Royal Star (1927), 97 L. J. P. 49.

1597a. —— **Master censured but certificate not dealt with.**]—A master, who has been censured in respect of a casualty to his ship by a colonial ct. of inquiry, but has not had his certificate (British) cancelled or suspended, probably has a right of appeal under M. S. Act, 1894 (c. 60), s. 478, but certainly has the right under M. S. Act, 1906 (c. 48), s. 66, as being "a person having an interest" in the inquiry, who has appeared at the hearing, & is "affected by the decision of the ct."—THE ROYAL STAR, [1928] P. 48; 97 L. J. P. 49; 138 L. T. 558; 44 T. L. R. 163; 17 Asp. M. L. C. 417, D. C.; *subsequent proceedings,* [1928] P. 144, D. C.

1599. After this case add :—

-.]—*See* Shipping Casualties & Appeals & Re-hearing Rules, 1923, r. 20H.

1600a. ——.]—A British master holding a Board of Trade certificate received a notice of investigation calling upon him to appear before a Wreck Comr.'s Ct. appointed "to inquire into the causes which led to the casualty [the stranding of his vessel] & into all the facts connected therewith." The notice contained no other statement of the questions intended to be raised, & no charges were specifically formulated against the master before or at the inquiry that he was in fault in connection with any of the matters on which he was examined. The ct. found the master guilty of an error of judgment in taking wrong helm action & in failing to stop & take soundings, & suspended his certificate for three months. The master appealed :—*Held :* the master, having had no notice of the charges on which he had been found in fault, had not had an opportunity of making his defence, & the decision of the Wreck Comr.'s Ct. must be quashed & the certificate restored free from suspension.—THE CHELSTON, [1920] P. 400; 90 L. J. P. 77; 124 L. T. 223; 36 T. L. R. 688; 15 Asp. M. L. C. 158, D. C.

1603a. —— ——.]—THE THROSTLEGARTH (1899), cited, [1906] P. at p. 312.

Annotation :—**Consd.** The Carlisle, [1906] P. 301.

1603b. —— ——.]—THE GRECIAN (1902), [1928] P. 146, n., D. C.

1604a. —— —— **Preliminary motion—As to right of appeal.**]—The governor of a colony ordered an inquiry to be held into the stranding of a

did not deem it necessary to deal with his certificate. The master served notice of appeal on the Board of Trade, but the Board took the view that no appeal lay unless the officer's certificate had been suspended or cancelled. A motion to determine, as a preliminary point, the question of the right to appeal was decided by the Div. Ct. in the master's favour, & at the subsequent hearing of the appeal the master was held not to have been guilty of the acts of negligence attributed to him :—*Held :* (1) as a matter of principle, as the Board of Trade had not ordered the inquiry, & merely appeared on the appeal in discharge of a public duty, costs ought not to be awarded against the Board; (2) the question of the right to appeal, contested by the Board, raised a matter of public interest, & the master was entitled to the costs of the preliminary motion.—THE ROYAL STAR (No. 2), [1928] P. 144; 97 L. J. P. 107; 44 T. L. R. 408; 17 Asp. M. L. C. 417, D. C.

1610. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1611a. —— —— **Costs.**]—THE YOUNG SID, No. 1696a, *post.*

1613a. —— **Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.**]—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time :—*Held :* as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—THE OTTOKAR, [1921] W. N. 266, C. A.

Annotation :—**Apld.** London S.S. & Trading Corpn. *v.* Russian Volunteer Fleet (1926), 135 L. T. 607.

1620a. —— —— **Advice to be in writing.**]—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the asses-

PART IV. SECT. 2, SUB-SECT. 1.

1612 i. *Who can appeal—Collision—Both vessels to blame.*]—*Held :* where a judgment holds both vessels to blame for a collision, & where each party is actively claiming against the other for damages, it is open to each to appeal from such judgment by a separate & distinct appeal. In such a case each must serve notice of appeal & give security to the other for costs of his appeal.—CANADA ATLANTIC TRANSIT CO. *v.* EASTERN SS. CO., LTD. (Ont. Adm.), [1928] Ex. C. R. 60.—CAN.

sors should be elicited by written questions, so that these questions & the answers may be available in the House of Lords.—MELANIE (OWNERS) *v.* SAN ONOFRE (OWNERS) (1919), 35 T. L. R. 507; 63 Sol. Jo. 552; [1927] A. C. 162, n.; *subsequent proceedings*, [1925] A. C. 246, H. L.

1622. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1635. *Add. Annotations :*—**Consd.** *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57; *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

1640. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642a. —— ——.]—Observations of LORD SUMNER on the practice of the Ct. of Appeal in reviewing decisions of the Admlty. Ct. depending on the credibility of witnesses.—S.S. HONTESTROOM *v.* S.S. SAGAPORACK, S.S. HONTESTROOM *v.* S.S. DURHAM CASTLE, [1927] A. C. 37; 95 L. J. P. 153; 136 L. T. 33; 17 Asp. M. L. C. 123; *sub nom.* THE SAGAPORACK, THE HONTESTROOM, 42 T. L. R. 741. H. L

—— Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291. **Refd.** The Backworth, [1927] P. 256; Powell *v.* Streatham Manor Nursing Home, [1935] A. C. 243.

1644a. Decision of court below not interfered with —Joinder of plaintiffs convenient—& within rules locally applicable—Action in rem.]—HILL, SHIP *v.* COWAN & SONS, No. 541a, *ante*.

1646. *Add. Annotations :*—**Apld.** The Kingsway, [1918] P. 344. **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1648. *Add. Annotations :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1649. *Add. Annotations :*—**Consd.** S.S. Hontestroom *v.* S.S. Sagaporack, S.S. Hontestroom *v.* S.S. Durham Castle, [1927] A. C. 37. **Refd.** Powell *v.* Streatham Manor Nursing Home, [1935] A. C. 243.

1655a. —— **Failure to consider important matter —Maritime Conventions Act, 1911 (c. 57).**]—Where a judge sitting in Admlty. has apportioned the blame between two wrongdoing vessels in accordance with sect. 1 of the above Act, the Ct. of Appeal, if it finds that he has not taken into consideration at all an obviously important matter, is bound to review his decision as to the apportionment of blame in the same way as it would if it had differed with him on the facts & had found that one of the vessels was more blameworthy as regards matters in respect of which she was not held to blame in the ct. below.—THE CLARA CAMUS (1925), 134 L. T. 50; 16 Asp. M. L. C. 570, C. A.; *revsd.* on other grounds (1926), 136 L. T. 291; 17 Asp. M. L. C. 171, H. L.

1682. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1687. *Add. Annotation :*—**Refd.** The Stentor. [1934] P. 133.

1691. *Add. Annotation :—As to* (1) **Refd.** The Modica, [1926] P. 72.

1694. *Citations :*—For "P. D. 218" read "8 P. D.

Add. Annotation :—**Refd.** The Modica, [1926] P. 72.

1695. *Citation :*—For "27 T. L. R. 1" read "27 T. L. R. 398."

Add. Citation :—on appeal, sub nom. HERO (OWNERS) *v.* LORD HIGH ADMIRAL OF UNITED KINGDOM (COMRS. FOR EXECUTING THE OFFICE OF), [1912] A. C. 300, H. L.

1695a. —— —— —— ——.]—CANTON (OWNERS) *v.* RHESUS (OWNERS), [1928] W. N. 214; 31 Lloyd, L. R. 289, H. L.

Annotation :—**Expld.** The Young Sid, [1929] P. 190.

1696. *Add. Annotation :*—**Consd.** S.S. Canton *v.* S.S. Rhesus, [1928] W. N. 214.

1696a. —— —— —— ——.]—On appeal from a judgment in a collision action in which the judge of the county ct. had found both vessels to blame in the proportions of two-thirds & one-third, the Div. Ct. reversed the judgment to the extent of holding the vessels to blame in equal degrees, & applts. were given the costs of the appeal. Resps. in the Div. Ct. appealed on the question of costs :—*Held :* by R. S. C., 1883, Ord. 65, r. 1, the question of costs is left in the unfettered discretion of the ct. or judge, & unless the judge can be shown to have taken into consideration matters which are immaterial to the issue his decision is unappealable.—THE YOUNG SID, [1929] P. 190; 98 L. J. P. 97; 141 L. T. 234; 45 T. L. R. 389; 18 Asp. M. L. C. 22, C. A.

Annotation :—**Refd.** The Stentor, [1934] P. 133.

1697a. —— **Appeal & cross-appeal dismissed—No apportionment.**]—In an action of damage by collision pltfs.' vessel was held four-fifths to blame & defts.' vessel one-fifth to blame. Defts. appealed & pltfs. cross-appealed. The Ct. of Appeal dismissed both appeal & cross-appeal with costs. On taxation pltfs.' bill of costs of £802 14*s.* 6*d.* was taxed down to £755 17*s.* 9*d.* The bill of costs of defts.. the unsuccessful applts.. lodged for taxation at

PART IV. SECT. 4, SUB-SECT. 1.

sa. *In estimating weight of evidence—Witnesses not heard in court below.*]—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 19 Exch. C. R. 116; 48 D. L. R. 461.—CAN.

sb. —— *Witnesses heard in court below.*]—Where the local judge in Admlty. has seen & heard the witnesses & was assisted by two assessors, the Exchequer Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of the opinion that such decision is clearly erroneous.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.

PART IV. SECT. 4, SUB-SECT. 3.—A.

1660 ii. —— —— ——.]—The amount of salvage reward is in the discretion of the ct., &, unless the same is excessive, an appellate tribunal ought not to interfere.—SHIP SENECA *v.* MACDONALD, [1923] Exch. C. R. 177; *affg.*, [1923] Exch. C. R. 13.—CAN.

£1,935 10*s.* 1*d.*, of which a moiety was claimed from pltfs., was taxed down to £91 4*s.* 11*d.* on the ground that, beyond a possible slight prolongation of the hearing & a few small items in connection with the notice of the cross-appeal, defts.' costs had not been increased by reason of the cross-appeal. On a summons for a review of the taxation of the bills, BATESON, J., held that the bills must go back to the assistant registrar for apportionment of the costs of each side between the appeal & the cross-appeal, with reference to the actual course taken & the time properly occupied on the hearing of the appeals. Pltfs. appealed :—*Held :* the learned judge was wrong in applying the principle of apportionment ; in the absence of a special order the principle of no apportionment laid down as to claim & counterclaim cases in *Medway Oil & Storage Co.* v. *Continental Contractors, Ltd.*, [1929] A. C. 88, applied ; & defts. (resps. to the cross-appeal) were only entitled to the extra costs which they had incurred by reason of the cross-appeal.—THE STENTOR, [1934] P. 133 ; 103 L. J. P. 105 ; 152 L. T. 450 ; 18 Asp. M. L. C. 490, C. A.

1698. *Add. Annotation :*—**Refd.** Nestor S.S. Owners *v.* Mungana S.S. Owners, The Mungana, [1936] 3 All E. R. 670.

1708. *Add. Annotations :*—**Apld.** The Young Sid (1928), 45 T. L. R. 138. **Refd.** The Young Sid, [1929] P. 190.

Part V.—Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation :*—14 Asp. M. L. C. 21.

1715. *Add. Annotation :*—**Consd.** The Beldis, [1936] P. 51.

1717. *Add. Citations :—sub nom. Re* PERFECT *v.* POYNTER, R. *v.* ESSEX COUNTY COURT JUDGE, 53 L. J. Q. B. 423 ; *sub nom.* R. *v.* ABDY, 32 W. R. 754.

1720a. —— **Action on arbitration award relating to freight.**]—THE BELDIS, No. 66a, *ante.*

1722. *Add. Annotations :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450. **Consd.** The Champion, [1934] P. 1.

1723a. —— ——.]—A collision took place in the Thames between the dumb barge *H.* & the steamer *C.* Proceedings were commenced by the owners of *H.* in the High Ct., but the action was subsequently settled, the owners of the *H.* accepting £48 10*s.* in satisfaction of their claim. Defts. objected to payment of pltfs.' costs on the High Ct. scale, on the ground that the matter was within the Admlty. jurisdiction of the county ct., where the action should have been commenced :—*Held :* pltfs. were warranted in commencing proceedings in the High Ct. & were entitled to have their costs taxed on the High Ct. scale.—THE NORFOLK COAST (1922), 153 L. T. Jo. 450.

Annotation :—**Consd.** The Champion, [1934] P. 1.

1724a. —— **Between ship & dumb barge in tow.**]—While in tow of a tug, pltfs.' dumb barge, which was fitted with rowing chocks & a rudder, was brought into collision with defts.' tug. Pltfs. brought an action in respect of the damage on the Admiralty side of the City of London Ct., & defts. moved to set aside the proceedings on the ground that the barge was not a ship & accordingly the ct. had no jurisdiction to entertain the action. The judge held that as at the material time the barge was not being propelled by oars she was to be regarded as a ship & that accordingly the ct. had jurisdiction to entertain the claim. Defts. appealed :—*Held :* the appeal failed ; (*a*) *per* BATESON, J., on the ground that the decision of the ct. below that the barge was to be regarded as a ship was right ; but (*b*) (*per* CUR.), even if the barge was not to be regarded as a ship, the decision could be supported on a ground not argued in the ct. below, viz., that the old Ct. of Admlty. would have had jurisdiction to try a case of collision between two vessels in which one of the vessels involved was a ship ; subject to a pecuniary limitation the same jurisdiction was conferred on county cts. by County Cts. Admlty. Jurisdiction Act, 1868 (c. 71), & County Cts. Admlty. Jurisdiction Amendment Act, 1869 (c. 51), merely enlarged the jurisdiction to include cases of damage to ships caused otherwise than by collision & did not restrict the words of sect. 3 of the earlier Act.—THE CHAMPION, [1934] P. 1 ; 103 L. J. P. 9 ; 150 L. T. 318 ; 18 Asp. M. L. C. 453 ; *sub nom.* THE JAMES AND THE CHAMPION, 50 T. L. R. 39, D. C.

Annotation :—**Consd.** The Beldis, [1936] P. 51.

1725. *Add. Annotations :*—**Consd.** The Champion, [1934] P. 1 ; The Beldis, [1936] P. 51.

1727. *Add. Annotation :*—**Consd.** The Champion, [1934] P. 1.

1728. *Add. Annotations :—As to* (1) **Consd.** The Minerva (1933), 49 T. L. R. 563 ; The Champion, [1934] P. 1 ; The Beldis, [1936] P. 51.

1732. *Add. Annotation :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1737. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

1738. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

1750. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

1751. *Add. Annotation :—As to* (2) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1752. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1757. After this case add :—
See, now, County Courts Act, 1919 (c. 73), s. 13, Sched.

1766. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1789. After this case add:—
See, now, Liverpool Corporation Act, 1921 (c. lxxiv.), s. 260; Liverpool Ct. of Passage Rules, 1934, r. 36.

1794. *Add. Citation:*—13 Moo. P. C. C. 132; 15 E. R. 50.
Add. Annotation:—**Refd.** The Yuri Maru, The Woron [1927] A. C. 906.

1794a. —— **That of High Court before 1890.**]—(1) The effect of Colonial Cts. of Admlty. Act, 1890 (c. 27), s. 2 (2), is to limit the jurisdiction of colonial cts. of admlty. established under the Act to the admlty. jurisdiction of the High Ct. of England, as it existed at the passing of the Act; the extension of the admlty. jurisdiction of the High Ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 22, does not apply to colonial cts. of admlty.
(2) The Exch. Ct. of Canada has not, under sect. 22 (1) (xii) of the above Act of 1925, jurisdiction *in rem* to try an action for damages for breach of a charterparty.—THE YURI MARU, THE WORON, [1927] A. C. 906; 43 T. L. R. 698; *sub nom.* SNIA VISCOSA SOCIETA, ETC. *v.* S.S. YURI MARU, CANADIAN AMERICAN SHIPPING CO. *v.* S.S. WORAN, 96 L. J. P. C. 137; 137 L. T. 747; 71 Sol. Jo. 649; 17 Asp. M. L. C. 322, P. C.

1795. *Add. Annotation:*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1798. *Add. Annotations:*—*As to* (2) **Refd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401; Freshwater *v.* Bulmer Rayon Co., [1933] 1 Ch. 162.

1799a. ——.]—THE VROUW DOROTHEA (1754), cited 2 Ch. Rob. at p. 246; 165 E. R. at p. 304.

1802. After this case add:—
——.]—*See* Colonial Courts of Admiralty Act, 1890 (c. 27), ss. 4, 7, *&, now,* Statute of Westminster, 1931, s. 6.

1811a. —— **Action in rem for damages for breach of charterparty.**]—THE YURI MARU, THE WORON, No. 1794a, *ante.*

PART V. SECT. 5.

a i. —— *Plea of forum non conveniens.*]—Circumstances in which plea sustained.—SOCIÉTÉ DU GAZ DE PARIS *v.* SOCIÉTÉ ANONYME DE NAVIGATION "LES ARMATEURS FRANÇAIS," [1926] S. C. (H. L.) 13.—SCOT.

a ii. —— ——.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—SCOT.

sc. *Jurisdiction of Sheriff Court—Sheriff Courts (Scotland) Act,* 1907 (*c.* 51), *ss.* 4, 6.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—**SCOT.**

PART V. SECT. 7, SUB-SECT. 1.

c i. —— *Necessaries.*]—A claim for necessaries can be enforced in a colonial admiralty ct. by a suit *in rem.*—THE HEIWA MARU *v.* BIRD & CO. (1923), 1 L. R. 1 Ran. 78.—**IND.**

PART V. SECT. 7, SUB-SECT. 2.

c (p. 253) i. —— ——.]—Although the Exch. Ct. of Canada on its Admlty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admlty.—ROBILLARD *v.* THE ST. ROCH & CHARLAND (1921), 62 D. L. R. 145; 21 Exch. C. R. 132.—**CAN.**

c (p. 253) ii. —— —— *Necessaries—Ship not "under arrest."*]—Where a ship is not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for repairs or necessaries supplied to the ship.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

c (p. 253) iii. —— —— *Claim for damages for death of husband—Effect of Maritime Conventions Act,* 1914.]—Pltf.'s husband was killed in a collision between the *C.* & a boat in which he, with another man, was engaged in fishing. Pltf. took action *in rem* in the Exchequer Ct. in Admiralty to recover damages:—*Held:* the Exchequer Ct. had no jurisdiction to hear & determine the present action, & the Maritime Conventions Act, 1914, did not so enlarge the jurisdiction of the Exchequer Ct. in Admiralty, as existing under the Admiralty Court Act, 1861, as to give jurisdiction in actions like the present.—THE CATALA *v.* DAGSLAND (B. C.), [1928] 3 D. L. R. 334; [1928] Exch. C. R. 83.—**CAN.**

c (p. 253) iv. —— —— *Collision—Damages to cruiser.*]—The action is one for damages resulting from a collision between pltf.'s boat & that of deft. The ct. found that the collision was due to the negligence of deft.:—*Held:* the Exchequer Ct. has original jurisdiction in such a case by virtue of Exchequer Court Act, 1927, s. 30 (*d*).—R. *v.* JERRY PETITE, [1933] Ex. C. R. 186.—**CAN.**

f (p. 253) i. —— —— —— ——.]—Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than $200, the Exch. Ct. in Admlty. is without jurisdiction.—KOUAME *v.* S.S. MAPLECOURT (1921), 21 Exch C. R. 226.—**CAN.**

f (p. 253) ii. —— —— —— ——.]—*Held:* subject to the exceptions mentioned in R. S. C., 1927, c. 186, s. 349, no suit or proceedings for recovery of wages under the sum of $200 can be instituted by seamen or apprentices in the Exchequer Ct. of Canada on its Admiralty side.—COFFIN & O'FLYNN *v.* THE PROTOCO, [1930] Ex. C. R. 153; 2 D. L. R. 421; 1 W. W. R. 558; 42 B. C. R. 347.—**CAN.**

sd. —— —— *Stevedores's claim.*]—Pltfs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract:—*Held:* (1) the admlty. jurisdiction of the ct. was no greater than the admlty. jurisdiction of the High Ct. of England; (2) upon the facts the ct. had no jurisdiction to entertain the action.—WOLFE *v.* S.S. CLEARPOOL (1920), 20 Exch. C. R. 153.—**CAN.**

se. —— —— ——.]—The Exch. Ct. of Canada has jurisdiction over stevedores claims.—J. P. FERNS *v.* THE INGELBY, [1923] Exch. C. R. 208.—**CAN.**

—— —— *Maritime lien—Created by foreign law.*]—*See* Nos. 348 i–iii, *ante.*

sf. —— —— *Appellate jurisdiction—Necessity for leave to appeal—Interlocutory judgment.*]—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admlty. or from the Judge of the Exch. Ct.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (No. 1) (1918), 17 Exch. C. R. 155.—**CAN.**

sg. *S. P. Re* 251 BARS OF SILVER & SEA INSURANCE CO. *v.* CANADIAN SALVAGE ASSOCN. (1915), 15 Exch. C. R. 367.—**CAN.**

sk. —— —— —— —— ——.]—(1) Where by statute an appeal is given to the Exch. Ct. of Canada from an interlocutory judgment or order, upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.
(2) The judgment of a local judge of admlty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—**CAN.**

sl. —— —— —— —— *Appeal as to costs.*]—*Semble:* appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—**CAN.**

sm. —— —— —— *No jurisdiction to hear appeal from Commissioner's Court under Canada Shipping Act.*]—R. *v.* PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN.**

—— —— *Transfer of action from one admiralty district to another.*]—*See* cases t i, w i, *post.*

sk. —— —— *Salvage.*]—Exchequer Ct. sitting in admiralty is a Ct. of Record & has jurisdiction *in rem* in salvage claims where the *res* was within the jurisdiction when the action was begun.—SIN-MAC LINES *v.* THE "HURON," [1936] 3 D. L. R. 189.—**CAN.**

sn. —— *Exercise of jurisdiction—Appellate jurisdiction—Questions of fact.*]—Where the local judge in admlty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards

pure questions of fact, unless it is firmly of opinion that such decision is erroneous.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39 ; 56 D. L. R. 440 ; (1921), 20 Exch. C. R. 450 ; 63 D. L. R. 543.—**CAN.**

sp. —— —— —— *Dismissal of appeal for want of prosecution.*]—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 70 D. L. R. 16 ; 21 Exch. C. R. 426.—**CAN.**

st. —— —— —— *Application for retention of bail bond in court or for re-arrest of ship.*]—Application dismissed.—EMPIRE STEVEDORING CO., LTD. *v.* THE EMPRESS OF JAPAN, [1927] 2 D. L. R. 985 ; 38 B. C. R. 438.—**CAN.**

ti. —— —— *Transfer of action—Convenience.*]—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—JOHNSON *v.* THE CHARLES S. NEFF (1918), 21 Exch. C. R. 171.—**CAN.**

wi. —— —— —— —.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admlty. district to another without the application having first been made before the local judge. —JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (NO. 2) (1918), 17 Exch. C. R. 158.—**CAN.**

sv. *Nova Scotia—Supreme Court of—Collision in harbour in province.*]—SMITH *v.* FECAMPOIS (N. S.), [1929] 2 D. L. R. 925.—**CAN.**

PART V. SECT. 7, SUB-SECT. 3.

sw. *High Court.*]—The High Ct. is a colonial ct. of Admlty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—SHARP (JOHN) & SONS, LTD. *v.* THE KATHERINE MACKALL (1924), 34 C. L. R. 420.—**AUS.**

sx. *Application of Carriage of Goods by Sea Act, 1924.*]—In an action on a bill of lading in the Admlty. jurisdiction of the Supreme Court under Admiralty Courts Act, 1861, s. 6, for damage to goods in transit from the United Kingdom, the rights of the parties are governed by the rules contained in the Sched. to the Carriage of Goods by Sea Act, 1924.—PARKE, LACEY, HARDIE, LTD. *v.* THE CLAN MACFADYEN (1929), 30 S. R. N. S. W. 438 ; 47 N. S. W. W. N. 160.—**AUS.**

PART V. SECT. 7, SUB-SECT. 5.

ri. —— —— *Tort of master within jurisdiction.*]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tort feasor or his goods, & to try an action based upon the tort ; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

sz. —— *Action in rem—Necessaries—What law applicable.*]—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessaries in priority to prior mtgees. of the vessel the law to be applied is English admlty. law & not Roman-Dutch Law.—CROOKS & CO. *v.* AGRICULTURAL CO-OPERATIVE UNION, LTD., [1922] App. D. 423 ; 42 N. L. R. 216.—**S. AF.**

AERIAL NAVIGATION.

See STREET AND AERIAL TRAFFIC.

AFFRAY.

See CRIMINAL LAW.

AGENCY.

Part I.—The Relation of Agency.

1. *Add. Annotation :*—**Consd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

2. *Add. Annotation :*—**Refd.** Petrie *v.* Red Bank Manufacturing Co. (1935), 28 B. W. C. C. 423.

5. *Add. Annotation :*—**Consd.** Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401.

15. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

16. *Add. Annotations :*—**Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Boynton *v.* Richardson (1924), 69 Sol. Jo. 107; Wisbech R. C. *v.* Ward, [1928] 2 K. B. 1.

19. *Add. Annotation :*—*As to* (2) **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

21. *Add Citation :*—8 T. L. R. 194.
Add. Annotation :—**Refd.** Taylor *v.* Davies, [1920] A. C. 636.

27. *Add. Annotation :*—**Refd.** Petrie *v.* Red Bank Manufacturing Co. (1935), 28 B. W. C. C. 423.

28. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

29. *Add. Annotations :*—**Consd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66. **Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

Part II.—Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.

40. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.

42. After this case add :—*See, now,* Law of Property Act, 1922 (c. 16), s. 128 (3).

68. *Add. Annotations :*—*Generally,* **Refd.** *Re* Ellis, [1925] 1 Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

69. For "**Dramatic Copyright Act, 1888,**" read "**Dramatic Copyright Act, 1833.**"

86. *Add. Annotation :*—**Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.

88. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

90. *Add. Annotation :*—**Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929 2 K. B. 397.

91. *Add. Annotations :*—**Apprvd.** Civilian War Claimants Assocn. *v.* R., [1932] A. C. 14. **Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109. **Refd.** Wigg *v.* A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88.

91a. ——.]—By the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her allies, & moneys were received by the Crown under this article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression during the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Govt., that these claims had been duly verified by the Govt., & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims

PART I.

1 ii. —— ——.]—The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on behalf of the other called the principal, & consents so to act.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

2 i. ——.]—*Held :* in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRIDGEFORD *v.* DIXON, [1918] E. D. L. 156.—**S. AF.**

5 i. For "**AUS.**" read "**S. AF.**"

8a. *Agent distinguished from—Joint* The distinction between the position of a joint adventurer & an ordinary agent buying for his principal with the understanding that he is to be remunerated for his services, pointed out.—SUTTON *v.* FORST (1924), 55 O. L. R. 281.—**CAN.**

ai. —— ——.]—Where a consignee of goods for sale is authorised to sell them at a certain minimum price & told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent.—REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

26 iv. —— ——.]—GIER *v.* VAN AALST (Alta.) (1914), 28 W. L. R. 876.—**CAN.**

27 viii. For "**AUS.**" read "**S. AF**"

27 xii. —— ——.]—Defts. gave to pltf. a written order to ship goods from England on account of defts., & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order :—*Held :* the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS *v.* ROOPE, [1922] N. Z. L. R. 549.—**N.Z.**

27 xiii. —— ——.]—PIESSE *v.* TASMANIAN, ETC. CO-OPERATIVE ASSOCN., LTD. (1919), 15 Tas. L. R. 67.—**AUS.**

h i. —— *Shipping manager to marketing association.*]—PEAREN *v.* SASKATCHEWAN LIVESTOCK CO-OPERATIVE MARKETING ASSOCN., LTD., [1930] 2 D. L. R. 63.—**CAN.**

had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of the claimants:—*Held:* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 75 Sol. Jo. 813, H. L.

Annotation:—**Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

91b. Foreign sovereign power.]—In the agreement dated Dec. 28, 1929, between the British & German Govts. as to the liquidation of German properties, & the agreement concluded with Germany at the Hague Conference, both ratified in May, 1930, there is nothing to show that the German Govt. was thereby expressly or by necessary implication purporting to act as agent or trustee on behalf of its nationals so as to give its nationals a right of action.

The relation of trustee or agent which is alleged to exist between a Sovereign Power & the subjects of that Sovereign Power in the negotiation & conclusion of a treaty is one which cannot exist in any State like ours &, I may add, in any State like that which now exists in Germany (MAUGHAM, J.).—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, [1933] 1 Ch. 439; 102 L. J. Ch. 156; 148 L. T. 468; 49 T. L. R. 109; 76 Sol. Jo. 919.

Part III.—Classes of Agents.

127. *Add. Annotation:*—**Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

127a. ——.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs. The first defts. were unable to deliver the goods. In an action for damages:—*Held:* as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—NOUVELLES HUILERIES ANVERSOISES S. A. *v.* MANN (H. C.) & Co. (1924), 40 T. L. R. 804.

Part IV.—Formation and Evidence of the Contract of Agency.

133. *Add. Annotation:*—*As to* (1) **Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.

147. *Add. Annotation:*—*Generally,* **Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

PART III.

8b. *Mercantile agent—Automobile dealer.*]—HARE & CHASE, LTD. *v.* COMMERCIAL FINANCE CORPN., LTD. (1928), 62 O. L. R. 601.—**CAN.**

108 i. *Broker.*]—A broker is an agent of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem*.—JACOBS LEVITATZ & BRAUDE *v.* KROONSTAD ROLLER MILLS, [1921] O. P. D. 38.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 1.

149 iii. —— —— *Statute of Alberta,* 1906 (c. 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on; he named terms before he can claim his commission.—KING *v.* SOHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

149 iv. —— —— *Real Estate Commission Act, R.S.A.,* 1922 (c. 139), *s.* 2.]—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by the parties thereto subject to such legal or equitable defences available to either of them as the agent who effected the agreement cannot be held accountable for.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

149 v. —— *Auctioneers & Commission Agents' Act,* 1922, *s.* 23—*Sufficiency of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—CANNIFFE *v.* HOWIE, [1925] S. R. Q. 121; 19 Q. J. P. 57.—**AUS.**

149 vi. —— —— ——.]—So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting such intention on his part.—SKIPPER *v.* SYRMIS, [1925] S. R. Q. 129; 19 Q. J. P. 47.—**AUS.**

149 vii. —— —— ——.]—ROACH *v.* HOUGH, [1926] S. R. Q. 24; 20 Q. J. P. 113.—**AUS.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xlv a–1664 xlv l, *post.*

g 1. —— *Land Agents Act,* 1912—*When applicable.*]—Deft. intimated to pltf. that he had been instructed to sell a property by private sale. Pltf., an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the

156. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

157. *Add. Annotations :*—**Apld.** Grindell *v.* Bass, [1920] 2 Ch. 487. **Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590 ; Raingold *v.* Bromley, [1931] 2 Ch. 307.

164a. Counsel — Signing pleadings.] — B., the owner of freehold premises, agreed to sell them to E., but there was no memorandum in writing to satisfy Stat. Frauds. B. then agreed to sell the premises to G., & a valid contract was executed, which B. did not perform. G. brought an action for specific performance against B., who by her defence signed by counsel pleaded the contract with E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action ; & E., by a counterclaim, claimed specific performance of his agreement :—*Held :* counsel was the duly authorised agent of B. to sign the pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—GRINDELL *v.* BASS, [1920] 2 Ch. 487 ; 89 L. J. Ch. 591 ; 124 L. T. 211 ; 36 T. L. R. 867.

Annotation :— **Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

165. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

166. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

176a. ——.]—CHANDLER & Co. *v.* WINCHESTER (1930), 74 Sol. Jo. 353.

179. *Add. Annotation :*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

182. *Add. Annotation :*—*As to* (1) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

184. *Add. Annotation :*—**Refd.** *Re* Wilson, Wilson *v.* Bland, [1937] 3 All E. R. 297.

188. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

188a. —— —— ——.]—N. & B. were the holders by novation of a licence from pltf. co., to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf., co., subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 188. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all

owner of the property to deft. in the event of a sale being effected. Deft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question :—*Held :* the arrangement between the parties was not one of a series nor the commencement of a series of transactions, but a solitary transaction, & pltf. was not a land agent within the above Act.—COOKE *v.* WALLACE (1914), 33 N. Z. L. R. 1054.—**N.Z.**

g ii. —— —— ——.]—Land Agents Act, 1912, s. 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—CLIFTON *v.* JOHNSTONE, [1921] N. Z. L. R. 35.—**N.Z.**

g iii. —— —— *Effect of.*]—The effect of Land Agents Act, 1912, s. 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

g iv. —— —— *Form of appointment.*]—An appointment of a land agent under s. 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

g v. —— *Land Agents Act*, 1921—*Form of appointment—Need not be in writing.*]—OLIVER *v.* DICKINSON, [1927] N. Z. L. R. 411.—**N.Z.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva–1664 xivl, *post*.

PART IV. SECT. 3, SUB-SECT. 1.

171 iv. ——.]—The *onus* of establishing the authority of an agent is upon the person who seeks to bind the principal.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52 ; 49 D. L. R. 528 ; 30 Man. L. R. 46.—**CAN.**

176 iv. For "**AUS.**" read "**S. AF.**"

176 v. —— *Claim to goods of principal—In possession of third party.*]—If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner.—CRAIG *v.* MCCREATH, [1922] 2 W. W. R. 1276.—**CAN.**

176 vi. ——.]—PLUMB *v.* W. C. MACDONALD REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD. (1924), 27 O. W. N. 365.—**CAN.**

176 vii. ——.]—When actual authority of an alleged agent has been negatived, a pltf. seeking to hold the alleged principal liable on the basis of ostensible authority either must show a holding out by the principal of the alleged agent as such or must give proof of some custom on which ostensible agency can be predicated.—ROBIN LINE S.S. CO. *v.* CANADIAN STEVEDORING CO., SEAS SHIPPING CO. *v.* CANADIAN STEVEDORING Co., [1928] 3 D. L. R. 856 ; [1928] S. C. R. 423.—**CAN.**

pi. —— ——.]—Possession solely cannot be evidence of both agency & authority, & the fact that one man is with another does not necessarily make one the agent for the other.—TURNER *v.* BEATON (P. E. I.) (1908), 4 E. L. R. 325.—**CAN.**

177 v. ——]—If A. has entered into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—VASELENAK *v.* VASELENAK, [1921] 1 W. W. R. 889 ; 57 D. L. R. 37 ; 16 Alta. L. R. 256.—**CAN.**

177 vi. ——.]—A husband obtained from his wife authority to act on her behalf :—*Held :* it was competent to prove the authority by parol evidence.—WALKER *v.* HENDRY, [1925] S. C. 855.—**SCOT.**

177 vii. ——.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no special description or assertion of property the agency may be proved by parol.—MUSSON *v.* HEAD, [1926] 1 D. L. R. 965 ; 58 O. L. R. 210.—**CAN.**

q i. ——.]—ANDERSON *v.* CAMERON (1857), 6 Gr. 285.—**CAN.**

q ii. ——.]—WHITTAKER *v.* TAYLOR (Alta.) (1911), 19 W. L. R. 662 ; 1 W. W. R. 259.—**CAN.**

q iii. ——.]—CROWN LUMBER CO. *v.* SAULSBERRY (Alta.) (1913), 23 W. L. R. 877 ; 11 D. L. R. 17 ; 4 W. W. R. 168.—**CAN.**

orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally:—*Held:* N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B., & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292; 99 L. J. K. B. 687; 143 L. T. 471; [1929-30] B. & C. R. 223.

189. *Add. Citation:*—21 J. P. 4.

Add. Annotations:—*As to* (1) **Consd.** Kemp *v.* Elisha, [1918] 1 K. B. 228. *As to* (2) **Refd.** Bygraves *v.* Dicker, [1923] 2 K. B. 585.

192. *Add. Annotations:*—*As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

196. *Add. Annotations:*—**Distd.** Keeling *v.* Pearl Assce. (1923), 129 L. T. 573. **Consd.** Paxman *v.* Union Assce. Soc. (1923), 39 T. L. R. 424. **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

203. *Add. Annotations:*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

SECT. 4.—**AGENCY OF NECESSITY** (Vol. I., p. 293).

For "*See* HUSBAND & WIFE; SHIPPING & NAVIGATION," substitute as follows:—

215a. Extent of doctrine.]—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer. Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bonâ fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority:—*Held:* the agent had failed to establish agency of necessity because (*a*) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, &, moreover, they had steadily increased in value, & (*b*) the agent had not acted *bonâ fide* in selling the skins.—PRAGER *v.* BLATSPIEL, STAMP & HEACOCK, LTD., [1924] 1 K. B. 566; 93 L. J. K. B. 410; 130 L. T. 672; 40 T. L. R. 287; 68 Sol. Jo. 460.

Annotation:—**Consd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

See, also, original volume, p. 319, No. 390.

215b. —— **Repayment to agent of necessity.**]—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

215c. ——.]—Observations by SCRUTTON, L.J., on the limits of the doctrine.—JEBARA *v.* OTTOMAN BANK, [1927] 2 K. B. 254; 96 L. J. K. B. 581; 137 L. T. 101; 43 T. L. R. 369; 32 Com. Cas. 228, C. A.; *on appeal, sub nom.* OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269, H. L.

Power to delegate in cases of supervening necessity.]—*See* original volume, pp. 390, 391, Nos. 939-942.

Authority of carrier of goods—Land carrier.]—*See* CARRIERS, Vol. VIII., pp. 26, 35, Nos. 151, 201.

—— **Master of ship.**]—*See* SHIPPING & NAVIGATION.

Authority of wife to pledge husband's credit.]—*See* HUSBAND & WIFE.

Acceptance of bill of exchange for honour of drawer.]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 415, 416.

Part V.—Authority of the Agent.

246. *Add. Annotations:*—**Refd.** Ralli *v.* Compañia Naviera Sota y Aznar, [1920] 2 K. B. 287; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137; Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500; St. Pierre *v.* South American Stores (Gath & Chaves), Ltd. & Chilean Stores (Gath & Chaves), Ltd., [1937] 3 All E. R. 349.

PART IV. SECT. 3, SUB-SECT. 2.

200 iii. ——.]—LISTER *v.* BILLY, [1930] 1 W. W. R. 828; 3 D. L. R. 635; 38 Man. L. R. 610.—**CAN.**

sc. *Person entering into contract "acting on behalf of another."*]—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement, that he entered into it as the agent of that other.—LIND *v.* SPICER BROTHERS (AFRICA), LTD., [1917] App. D. 147.—**S. AF.**

PART V. SECT. 2, SUB-SECT. 1.

240 v. —— *Effect of ratification clause.*]—Where the whole object of a ratification clause is to carry on business in the principal's name, & the acts to be ratified, even when excessive, are specifically said to be acts done in the principal's name, the clause cannot be construed to change the whole nature of the power by making the attorney the universal agent of his ——.—BANK OF TORONTO *v.* ——N, [1927] 4 D. L. R. 328; 3 W. W. R. 10.—**CAN.**

272. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

281. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

288. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

294. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

296a. —— —— **Property held on trust for sale.**]—The two pltfs. having, as joint tenants, bought land which by Law of Property Act, 1925 (c. 20), s. 36, became vested in them on the statutory trusts for sale, agreed to sell it to deft., & the conveyance was executed by one pltf. in person & by an attorney on behalf of the other pltf. The power of attorney was expressed to give "the sole & absolute control of all my property real & personal of every description situate & being at Bury & elsewhere in the County of Lancaster & whether owned by me solely or jointly with any other person or persons." Deft. declined to accept the conveyance on the ground that a trustee for sale could not delegate the execution of the trust to his attorney. In an action for specific performance :—*Held :* the words used in the power of attorney applied only to property held in beneficial ownership & not to property

247 i. *General powers—Limited by recital.*]—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom.—GRAHAM *v.* MANDERS (1918), 53 I. L. T. 5.—**IR.**

248 ix. —— ——.]—ARPIN *v.* LECLAIRE, [1930] 2 D. L. R. 427.—**CAN.**

258 iii. —— ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

t. (p. 301) For "(1886)" read "(1873)."

277 iv. —— —— ——.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the exercise of such a power is strictly necessary to carry out the express purpose of the instrument or the acts specifically authorised thereby.—ANDREWS *v.* SINCLAIR, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—**CAN.**

277 v. —— —— ——.]—A bare power of attorney to make & indorse notes, cheques, etc., does not authorise the attorney to raise loans on his principal's credit for the principal himself or for the attorney's own accommodation or for a third party; nor is such authority conferred by a general power given the attorney to do all "other acts & things for the purpose of carrying on any business in my name." The power to borrow money must be conferred in express terms, & when this power is alleged to be based on a power of attorney, the document must be read strictly.—BANK OF TORONTO *v.* MATHESON (Sask.), [1927] 4 D. L. R. 328; [1927] 3 W. W. R. 10.—**CAN.**

283 ii. —— —— ——.]—Applt. co. gave to H., customs broker, a power of attorney "to transact all business which" applt. co. "may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do. . . ." Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties on goods imported by applt. co., these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash :—*Held :* (1) it was within the scope of the power of attorney given to H. by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co.; (2) it was not within the scope of the power of attorney that he should direct the application of balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—CANADIAN PACIFIC RY. CO. *v.* R. (1917), 55 S. C. R. 374; 37 D. L. R. 719.—**CAN.**

283 iii. —— —— *Power to withdraw from bank.*]—A joint savings account with a bank was opened in the names of pltf. & her husband. After the death of the husband pltf. gave her solr. a power of attorney, by which he was authorised to withdraw money from banks or individuals & to deposit same in any other bank or other place. In pursuance of the oral instructions of the solr., & on production of the power of attorney & a certified copy of letters probate of the husband's will, the bank paid over the balance of the account to the husband's exors. :—*Held :* the bank had acted rightly.—Ross *v.* CANADIAN BANK OF COMMERCE (Alta.), [1927] 3 D. L. R. 1056; [1927] 3 W. W. R. 182.—**CAN.**

287 i. *See, also,* No. 287 vi., *post.*

287 iv. —— —— *Power to discharge.*]—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection with his real property, a discharge of mtge. was not named as one of the instruments :—*Held :* the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*Re* LAND TITLES ACT, *Re* REGISTRATION OF A POWER OF ATTORNEY, [1918] 2 W. W. R. 947.—**CAN.**

287 v. —— —— ——.]—The discharge of a mtge. was executed under a power which, after authorising the attorney to sell the principal's lands & give receipts for the consideration money, gave power, upon payment of all or any debts, to give proper & sufficient acquittances & discharges for same :—*Held :* sufficient authority to sign the statutory certificate.—LEE *v.* MORROW (1866), 25 U. C. R. 604.—**CAN.**

287 vi. —— —— *Power to give—To secure unpaid purchase-money.*]—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount remaining unpaid :—*Held :* authorised by the agent's power of attorney.—DINSMORE *v.* PHILIP, [1918] 3 W. W. R. 457.—**CAN.**

287 vii. —— —— *Power to invest on second mortgage.*]—A power of attorney authorised the attorney "to lend on mtge., charge or lien of real estate any money belonging to" the principal :—*Held :* the attorney was authorised by the power to lend money on the security of a second mtge.—MCCUTCHEON *v.* REGISTRAR OF TITLES, [1927] V. L. R. 93; 48 A. L. T. 137.—**AUS.**

sd. —— *Property—Power to transfer to himself.*]—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name :—*Held :* the wife was entitled to have the transfer to her husband set aside.—ELFORD *v.* ELFORD (1922), 69 D. L. R. 284; 64 S. C. R. 125; [1922] 3 W. W. R. 339; *affg.* 61 D. L. R. 40; 14 Sask. L. R. 363.—**CAN.**

295 vii. —— —— *Power to sign contract.*]—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him "full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa." The power then proceeded in the following words "& in particular but without prejudice to the foregoing generality" to give particular instances of acts that the agent was empowered to perform :—*Held :* under the power the agent was authorised to sign the written contract of sale.—MEASROCK *v.* NEW SCOTLAND LAND CO., LTD., LIQUIDATOR, [1922] App. D. 237.—**S. AF.**

se. —— *Trading licence—Power to apply for.*]—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex facie* good, but which later was declared void. H. applied for a new licence, but it was objected that he had no authority to make the application :—*Held :* the power of attorney was sufficient authority to H. for the purpose.—HAFFIZE *v.* JACOBSON (1919), 40 N. L. R. 322.—**S. AF.**

sf. *Power granted by corporation to officials for time being—Registrar entitled to require proof that persons executing power hold office.*]—*Re* —— TITLES ACT, ROYAL TRUST CO.'S CASE, [1921] 3 W. W. R. 246.—**CAN.**

sh. *Power in blank—Authority to fill in terms—Estoppel of grantor.*]—The grantor of a power of attorney signed in blank is estopped in proceedings between himself & a third party from denying the grantee's authority to fill in the terms appearing in the completed power & subsequently acted upon by such third party.—SUTTER *v.* SCHEEPERS, [1932] App. D. 165.—**S. AF.**

held on a trust for sale, & the action failed.—GREEN *v.* WHITEHEAD, [1930] 1 Ch. 38; 99 L. J. Ch. 153; 142 L. T. 1; 46 T. L. R. 11, C. A.

300a. Effect of notice that powers exceeded.]—A power of attorney contained a provision that "the principal ratifies & confirms & agrees to ratify & confirm whatsoever the attorney shall do or purports to do by virtue of these presents":—*Held:* this provision did not preclude the principal from objecting to a dealing with his property by a person who had notice in ordinary circumstances that the agent was exceeding his authority, actual & ostensible.—MIDLAND BANK, LTD. *v.* RECKITT, [1933] A. C. 1; 102 L. J. K. B. 297; 148 L. T. 374; 48 T. L. R. 271; 76 Sol. Jo. 165; 37 Com. Cas. 202, H. L.

308a. Salesman—Authority to cancel sale.]—A salesman employed at a salary of £3 a week & 1½ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—LECKENBY *v.* WOLMAN, [1921] W. N. 100.

315. *Add. Annotation:*—**Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

323. *Add. Annotation:*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

332a. —— ——.]—Pltf. gave a power of attorney to T. & authorised him, in relation to pltf.'s affairs, to draw cheques on pltf.'s account at the bank without restriction. T. in fraud of pltf. drew a cheque on pltf.'s account, in favour of defts. in part-payment for a motor-car which T. had obtained from them for his own purposes on the hire-purchase system. Defts. knew that the cheque was drawn by T. as agent for pltf. In an action by pltf. to recover from defts. the proceeds of the cheque:—*Held:* as defts. knew that T. was paying his own debt to them with pltf.'s money, & as T. had no authority to pay his own debts therewith, pltf. was entitled to recover.—RECKITT *v.* BARNETT, PEMBROKE & SLATER, LTD., [1929] A. C. 176; 98 L. J. K. B. 136; 140 L. T. 208; 45 T. L. R. 36; 34 Com. Cas. 126, H. L.

Annotations:—**Apld.** Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

332b. —— ——.]—Pltf. gave to one T., who was a solr., a power of attorney & authorised him to draw cheques on his, pltf.'s, behalf. T. was also acting as solr. for deft. & obtained from her a cheque for nearly £5,000 for the discharge of certain liabilities of which T. had informed her. At that time deft.'s banking account was, though deft. was not aware of it, about £1,500 short of the amount of the cheque & T. drew a bearer cheque for £1,500 on pltf.'s account & paid it into deft.'s account, the cheque showing on its face that it was drawn by T. as attorney for pltf. T. was thus enabled to cash deft.'s cheque. Pltf., on ascertaining the facts, brought this action against deft. for a declaration that he was entitled to recover from her the proceeds of the £1,500 cheque:—*Held:* as deft.'s bank had notice on the face of the £1,500 cheque that it represented money belonging to pltf., & as they had received it as agents for deft. & had credited it to her account, pltf. was entitled to succeed.—RECKITT *v.* NUNBURNHOLME (1929), 45 T. L. R. 629.

338. *Add. Annotation:*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

338a. —— Authority to sign for business purposes.]—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated:—*Held:* applt. bank was not entitled to debit the bank cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions as to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—AUSTRALIAN BANK OF COMMERCE *v.* PEREL, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. 586, P. C.

370. *Add. Annotations:*—*As to* (1) **Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

371. *Add. Annotations:*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777; Guildford Trust *v.* Goss (1927), 136 L. T. 725.

373. *Add. Annotation:*—*As to* (1) **Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

PART V. SECT. 3, SUB-SECT. 1.

s1. *Agent obtaining transfer of property to principal—Authority to transfer property to third party.*]—Applt. sold to D. land, a portion of which he had not obtained transfer. Applt. instructed resp., an attorney, to put the matter through; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D.:—*Held:* resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—STANTON *v.* ALLPORT, [1923] E. D. L. 155.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 2.

s2. *Grain market usage—Right of broker to close out customer.*]—RUSSELL *v.* CANADA WEST GRAIN CO., [1925] 3 W. W. R. 508.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. —— *Authority to draw cheques in principal's name—Agent drawing cheques to repay personal losses.*]—If a co.'s branch manager, whose powers include receiving money, depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for his own personal business, misappropriates its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was authorised to draw cheques for these commissions.—LONDON GUARANTEE, ETC., CO. *v.* ABRAMS & KOVSKY, [1923] 2 W. W. R. 1006.—**CAN.**

379. *Add. Annotations :*—**Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1928] A. C. 777. **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

382. *Add. Annotation :*—**Refd.** Underwood *v.* Liverpool Bank, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

386. *Add. Annotations :*—*As to* (2) **Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292. *As to* (3) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

387. *Add. Annotations :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

388. *Add. Annotations :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

390. *Add. Annotations :*—**Consd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

399. For "bought note" in catchwords read "sold note."

406. *Add. Annotation :*—*As to* (1) **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

426. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

427. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

433. *Add. Annotation :*—**Consd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

434. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

436. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

PART V. SECT. 3, SUB-SECT. 5.

379 ii. —— —— ——.]—Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of inquiring as to the limitations of the agent's authority.—MAHAN *v.* MANNESS, [1918] 2 W. W. R. 191; 28 Man. L. R. 470; 40 D. L. R. 136.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A.

397 ii. —— *Authority as such—Contract not completed.*]—KERSHAW *v.* UNITED ARTISTS (Man.), [1926] 1 D. L. R. 738.—**CAN.**

398 ii. —— *Authority to sign contract—Contract providing for payment of price by instalments.*]—Defts. signed & gave to an agent a document in the following terms:—"We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to pltf. for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,250 within three months, & £3,450 within six months, possession to be given after the second payment £2,250 at the end of the three months. There was no provision for interest on the balance:—*Held :* the document signed by defts. was not an authority to the agent to sign a contract containing the above terms as to payment.—BOYD *v.* O'CONNOR, [1923] V. L. R. 603.—**AUS.**

398 iii. —— —— *Contract containing penalty clause.*]—*Held :* the existence of the penalty clause, which was not covered by the agent's instructions, & was not separable from the remainder of the contract, justified the principal in repudiating the agent's action, & the contract must be set aside.—DU PREEZ *v.* LAIRD, [1927] App. D. 21.—**S. AF.**

q i. —— *General authority.*]—Pltf. contracted with defts. to purchase & deliver potatoes at an agreed price per bushel. The farmers from whom the potatoes were to be purchased required cash payments, & defts. agreed to make advances to put pltf. in funds for this purpose. Defts. were not prompt in providing funds, & pltf. complained of the delay which hampered him in buying, &, in order to induce him to carry out the contract, defts.' agent offered an advance of 25 cents per bushel on the contract price for four cart loads of potatoes:—*Held :* the agent on the spot, looking after defts.' interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.—LEGACY *v.* DAVISON (1919), 52 N. S. R. 543.—**CAN.**

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held :* O. had no actual or apparent authority to vary the written contract by substituting a later date for delivery."

sk. *Agent agreeing to payment of compensation to purchaser if transaction not completed—Authority to sell.*]—A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement.—THOMPSON *v.* LYNNE, [1921] 1 W. W. R. 238; 56 D. L. R. 729.—**CAN.**

sl. *Salesman making reduction in price.*]—*Held :* principal not bound.—MASON & DEAN, LTD. *v.* UDOVIN, [1925] 1 D. L. R. 353; 57 N. S. R. 445.—**CAN.**

sm. *Solicitor's clerk giving undertaking as to withdrawal of Registrar-General's caveat—Authority as such.*]—*Held :* the solr. was personally bound by the undertaking.—HAWKINS *v.* GADEN (1925), 37 C. L. R. 183; 26 S. R. N. S. W. 382; [1926] Argus L. R. 109.—**AUS.**

PART V. SECT. 3, SUB-SECT. 8.—A.

423 iv. —— *Express authority to let on weekly tenancy—Lease granted for long term.*]—Pltf. was the owner of premises let to a weekly tenant. When the tenant left she recommended deft. to pltf. as a tenant. Pltf. never saw deft., but pltf.'s husband arranged some form of lease with him, & thereafter collected the rent, which was paid monthly, on behalf of pltf. & with her authority. In an action of ejectment deft. alleged that pltf.'s husband had given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. Pltf. denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease:—*Held :* the fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.—VOGE *v.* KERR (1919), 19 N. S. W. L. R. 34; 36 N. S. W. W. N. 19.—**AUS.**

427 ii. —— *Authority to find purchaser or tenant.*]—Deft. wrote to a land agent as follows:—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the terms mentioned by deft., & signed it on deft.'s behalf:—*Held :* deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.—QUICK *v.* WINTER, [1920] N. Z. L. R. 98.—**N.Z.**

sn. *Law agent—Authority to collect rents & manage property.*]—A law agent, even though he may be employed to collect the rents & attend to the repairs of a property has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it.—DANISH DAIRY CO. *v.* GILLESPIE, [1922] S. C. 656.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 8.—B.

433 i. *Agent—Without authority—Notice ratified.*]—A notice to quit must be such that the tenant may safely act on it at the time of receiving it. A notice by an unauthorised agent, therefore, cannot be made good by an adoption of it by the principal after the proper time for giving it.—SHAIK ABDOOL *v.* JUMA MUSJID TRUST (1929), 50 N. L. R. 75.—**S. AF.**

442. *Add. Annotation :*—**Refd.** *Re* Knight & Hubbard's Underlease, Hubbard *v.* Highton, [1923] 1 Ch. 130.

464. *Add. Annotation :—As to* (1) **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

465. *Add. Annotation :—As to* (1) **Refd.** Savill *v.* Harben (1919), 89 L. J. K. B. 47.

467. *Add. Annotation :*—**Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

468. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

469. *Add. Annotations :—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

472. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

477. *Add. Annotations :*—**Consd.** Folkes *v.* King, [1923] 1 K. B. 282; Lowther *v.* Harris (1926), 43 T. L. R. 24. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

481a. —— **Person living in house of hirer of goods.**]—STROHMENGER *v.* ATTENBOROUGH (1894), 11 T. L. R. 7, D. C.

483a. —— **Agent intrusted with motor car—To sell to specified person.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *post.*

484. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485. *Add. Annotation :—As to* (2) **Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485a. —— —— —— **Improper sale.**]—Pltf. was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could obtain £525 for the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P., who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact :—*Held :* (1) although P.'s authority was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, &, as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—LOWTHER *v.* HARRIS, [1927] 1 K. B. 393; 96 L. J. K. B. 170; 136 L. T. 377; 43 T. L. R. 24.

Annotations :—As to (1) **Distd.** Budberg *v.* Jerwood & Ward (1934), 51 T. L. R. 99. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

487. *Add. Annotations :—As to* (1) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24. *As to* (2) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680.

488. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

489. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

489a. —— **Purchaser under hire-purchase agreement.**]—H., a dealer in motor vehicles, & defts., a finance co., entered into a transaction for the sale of a motor lorry by H. to defts. & the letting of the lorry by defts. to H. on an agreement in the form of a hire-purchase agreement. The transaction was carried out by means of the printed forms used by defts. in their business, which were more appropriate to a case in which they bought a vehicle & let it on hire-purchase to a third party, than to the present case. H. being in possession of the lorry then fraudulently sold it to pltfs., who were not aware of the previous transaction between H. & defts. The payments due from H. to defts. under the hire-purchase agreement between them having fallen into arrear, defts. resumed possession of the lorry & refused to deliver it to pltfs. at their request. Pltfs. thereupon brought an action against defts. claiming delivery up of the lorry or damages for its detention :—*Held :* H. was not in possession of the lorry as a "mercantile agent" within Factors Act, 1889 (c. 45), s. 2 (1), but as a bailee, & therefore the sale of the lorry by him to pltfs. was not rendered valid as against defts. by that sub-sect.—STAFFS MOTOR GUARANTEE, LTD. *v.* BRITISH WAGON CO., LTD., [1934] 2 K. B. 305; 103 L. J. K. B. 613; 151 L. T. 396.

Annotation :—**Distd.** Union Transport Finance, Ltd. *v.* Ballardie, [1937] 1 K. B. 510.

489b. —— **One customer—Necessity for business relationship.**]—A person may be a "mercantile agent" although he has only one customer. To come within that designation he must act in the particular transaction in a business capacity & not simply as a friend of the owner of the goods.—BUDBERG *v.* JERWOOD & WARD (1934), 51 T. L. R. 99; 78 Sol. Jo. 878.

489c. —— **Pledge of documents—Surrender of documents to pledgor on trust for sale.**]—Pltfs., who had advanced money to S. & Co.

PART V. SECT. 3, SUB-SECT. 9.

80. *Bank manager consenting to addition of bank as plaintiff—General authority as such.*]—A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.—KUSCH *v.* PEAT (1922), 63 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revsg.* 15 Sask. L. R. 324.—CAN.

PART V. SECT. 3, SUB-SECT. 10.—A. (a) i.

sg. *Factors Act, R. S. O.*, 1927—*Agent for sale of jewellery company.*]—The agent of a jewellery co. to whom jewellery is entrusted to sell for cash or under a conditional sale agreement, is a "mercantile agent" within Factors Act, R. S. O., 1927.—PEOPLES CREDIT JEWELLERS, LTD. *v.* [illegible]N, [1933] 1 D. L. R. 598; 59 C. C. C. 161.—CAN.

on the security of documents relating to merchandise, surrendered the documents to S. & Co. to enable them to sell the merchandise as trustees for pltfs., a course of business which had been adopted by the parties for some years. S. & Co., unknown to pltfs., pledged the documents with defts. who acted in good faith & without knowing that the transaction was not in order. Pltfs. having sued defts. for the return of the documents or damages for their detention or conversion :—*Held :* pltfs.' claim failed, since they were owners of the goods represented by the documents within Factors Act, 1889 (c. 45), s. 2 (1), as being in a position to give instructions for, & assent to, a sale of the goods & the persons to whom, or in trust for whom, the proceeds of the sale were payable, & S. & Co. were their mercantile agents within the sub-sect. in possession of the documents with their consent, so that the pledge of the documents by S. & Co. to defts. in the ordinary course of their business was as valid as if S. & Co. had been expressly authorised by pltfs. to make the same.—LLOYDS BANK, LTD. *v.* BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCN., [1937] 2 K. B. 631 ; [1937] 3 All E. R. 312 ; 106 L. J. K. B. 897 ; 157 L. T. 38 ; 53 T. L. R. 840 ; 81 Sol. Jo. 612 ; 42 Com. Cas. 342.

490a. Act of 1889—Goods let on hire to employee of seller.—On May 17, 1935, T., a branch manager of pltf. co., bought for & on behalf of the co. from C. a motor-car which was forthwith let on hire under a hire-purchase agreement to F., an employee of C., who was not in a financial position to buy a car on any terms. C. T. & F. all knew that the hire-purchase transaction was not genuine in the sense that it was never intended that F.'s part in it should be a real one or that the car should be delivered to F., either by its physical transfer to his custody or by C. submitting to hold it as his bailee. C. made such payments to pltf. co. as were made under the agreement between the co. & F., &, although F. had agreed not to change the permanent garage of the vehicle, which was expressed to be at his mother's residence, nor to part with its possession or control, & had signed a document acknowledging that he had received delivery of the car, the car remained in C.'s garage, in his possession, & under his control. On Aug. 9, 1935, C. let the car on hire under a further hire-purchase agreement to deft., who took it in good faith & without notice of the transaction between C. & T. In an action by pltf. co. to recover the car from deft. :—*Held :* that C., having sold the car to pltf. co., had continued in possession of it within Factors Act, 1889 (c. 45), s. 8, with the result that the delivery or transfer by C. of the car to deft. had the same effect as if C. had been expressly authorised by pltf. co. to make the same, & pltf. co. could not, therefore, succeed in the action.—UNION TRANSPORT FINANCE, LTD. *v.* BALLARDIE, [1937] 1 K. B. 510 ; [1937] 1 All E. R. 420 ; 106 L. J. K. B. 268 ; 156 L. T. 142 ; 53 T. L. R. 240 ; 81 Sol. Jo. 159.

492. *Add. Annotation :—As to* (1) **Distd.** Laurie & Morewood *v.* Dudin, [1925] 2 K. B. 383.

494. *Add. Annotation :—As to* (3) **Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

495. *Add. Annotations :—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282 ; Lake *v.* Simmons, [1926] 2 K. B. 51. **Refd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577 ; Lowther *v.* Harris (1926), 43 T. L. R. 24. *Generally*, **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576 ; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. **Refd.** Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

495a. Act of 1889—Agent obtaining possession by trick—Authority to sell—At specified price.]—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated & the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car against deft. :—*Held :* (1) deft. acquired a good title by virtue of 1889 Act, s. 2 ; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser ; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—FOLKES *v.* KING, [1923] 1 K. B. 282 ; 92 L. J. K. B. 125 ; 128 L. T.

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vi.

sp. *Dealer in possession of goods—Course of business to sell.*]—Pltf., a financing co., took an assignment of an agreement between motor car dealers & their manager for the conditional sale of a motor car. The agreement & the assignment were duly registered. Pltf. left the car in the possession of the dealers knowing that it would be on the latter's premises for the purpose of re-sale. The manager effected a sale of the car to deft., who paid the dealers therefor knowing nothing of pltf.'s claim & believing he was buying from the dealers :—*Held :* deft. was protected by sect. 60 (1) of Sale of Goods Act, R. S. B. C., 1924, c. 225, & had a good title to the car.—COMMERCIAL ——— (BRITISH COLUMBIA), LTD. *v.* JOHNSON, [1930] 2 W. W. R. 444 ; 4 D. L. R. 509 ; 43 B. C. R. 61 ; *affd.*, [1931] 1 W. W. R. 420 ; 1 D. L. R. 861 ; 43 B. C. R. 381.—**CAN.**

sq. ——— ———.]—The purchaser of a car from a mercantile agent, gets a good title, if he purchases in good faith & without knowledge that the owner of the car took a chattel mtge. from the agent.—JENSEN *v.* HARRISON, [1933] 3 D. L. R. 319 ; 3 W. W. R. 369 ; 47 B. C. R. 43.—**CAN.**

sr. ——— *Purchase by salesman.*]—After a salesman, employed by a co. which sold motor cars at retail, had used one of its cars for demonstration purposes, he was induced by the president & manager of the company to buy the car. The co. when it purchased the car had been "financed" by an acceptance corpn. to which it gave as security a lien note & a chattel mtge. On an interpleader issue following the seizure of the car by the acceptance corpn. the salesman attacked the mtge. on the ground that it was not executed under the seal of the co. &, in the alternative, claimed to be a *bonâ fide* purchaser without notice of the mtge. or lien agreement registered against the car :—*Held :* the mtge. was not invalidated by the lack of seal but the claimant was entitled to succeed on his alternative claim, under the principle embodied in sect. 3 of Factors Act, R. S. A., 1922.—*Re* INDUSTRIAL ACCEPTANCE CORPN., LTD., SERVICE GARAGE, LTD. & THOMAS, [1933] 1 W. W. R. 24 ; 2 D. L. R. 798.—**CAN.**

405 ; 39 T. L. R. 77 ; 67 Sol. Jo. 227 ; 28 Com. Cas. 110 ; 86 J. P. Jo. 552, C. A.

Annotations :—As to (1) **Apld.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. *As to* (2) **Distd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577. **Consd.** Lake *v.* Simmons, [1926] 2 K. B. 51 ; Lowther *v.* Harris, [1927] 1 K. B. 393. *As to* (3) **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

495b. —— —— —— **To specified person—Sale to third party.**]—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention ;—*Held :* (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto ; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a " mercantile agent," &, if he was, the sale by him was not a sale in the ordinary course of his business as a mercantile agent, within that sub-section ; &, further, because defts. had failed to satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car ; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary.—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., [1923] 1 K. B. 577 ; 92 L. J. K. B. 553 ; 129 L. T. 146 ; 39 T. L. R. 150 ; 67 Sol. Jo. 300.

Annotations :—As to (1) **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

498. *Add. Annotation :—As to* (1) **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

500. *Add. Annotation :*—**Consd.** Folkes *v.* King, [1923] 1 K. B. 282.

502. *Add. Annotation :*—**Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd. (1934), 151 L. T. 124.

505a. —— **Agent intrusted with motor car to sell to specified person—Sale to third party.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

507a. —— **Onus of proof.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

517. *Add. Annotation :—Generally,* **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

520. *Add. Annotation :—As to* (1) **Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

529. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

530. *Add. Annotations :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

561. *Add. Annotation :*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd. & Chilean Stores (Gath & Chaves), Ltd., [1937] 3 All E. R. 349.

582. *Add. Annotation :*—**Refd.** Pearl Mill Co. *v.* Ivy Tannery Co., [1919] 1 K. B. 78.

586. *Add. Annotation :—As to* (1) **Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

589a. Caretaker.]—FORDER (J. C.) & SON, LTD. *v.* HARTINGTON (1929), 73 Sol. Jo. 850.

590. *Add. Annotation :*—**Refd.** Coldingham Parish Council *v.* Smith, [1918] 2 K. B. 90.

591. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vii.

sv. *Act of* 1889—" *When acting in ordinary course of business " defined.*]—The expression " when acting in the ordinary course of business of a mercantile agent," means when acting within business hours, at a proper place of business, & in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689 ; 63 D. L. R. 529 ; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 10.—A. (a) viii.

st. *Act of* 1889—*Necessity for proof of mala fides of purchaser.*]—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged purchaser thereof from the agent for wrongful conversion, & deft. relies on [the above Act] the actual payment of money by deft. to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, *i.e.* a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing only on the question of good faith, & proof of the dishonesty of the agent is not sufficient ; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689 ; 63 D. L. R. 529 ; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 11.

573 i. *Agent—Authority to buy at discretion—Secret limitations.*]—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the samples, this is a holding out that the agent has authority to make the contracts, & the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—REED & KEAST *v.* MCKENZIE CO., LTD., [1921] 3 W. W. R. 72.—**CAN.**

sa. *Manager of branch office—Authority as such.*]—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office is reasonably led to suppose that the branch has authority to give the order, the co. will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—FARM PRODUCTS, LTD. *v.* MACLEOD FLOURING MILLS, LTD., [1918] 3 W. W. R. 1035 ; 14 Alta. L. R. 128 ; 43 D. L. R. 770.—**CAN.**

605. *Add. Annotation :*—**Refd.** Miss Gray, Ltd. *v.* Cathcart (1922), 38 T. L. R. 562.

608a. Tenant of public-house—Not being licensee—Holding out.]—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency : —*Held :* where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it ; the tenant was not in fact deft.'s agent ; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to act to their detriment.—MACFISHERIES, LTD. *v.* HARRISON (1924), 93 L. J. K. B. 811 ; 132 L. T. 22 ; 88 J. P. 154 ; 40 T. L. R. 709 ; 69 Sol. Jo. 89.

627. *Add. Annotation :*—**Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

645a. ——.]—BEALE *v.* MOULS (1847), 10 Q. B. 976 ; 5 Ry. & Can. Cas. 105 ; 16 L. J. Q. B. 410 ; 11 Jur. 845 ; 116 E. R. 370.

Annotation :—**Refd.** Newton *v.* Belcher (1848), 6 Ry. & Can. Cas. 38.

646. *Add. Citation :—sub nom. Re* WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., *Ex p.* COTTLE, 14 Jur. 703.

Add. Annotation :—**Apld.** *Re* Direct Exeter, Plymouth & Devenport Ry. Co., *Ex p.* Roberts (1850), 2 H. & Tw. 392.

656. After this case insert " *See, also,* COMPANIES, Vol. IX., p. 53, Nos. 116 *et seq.*"

664. After this case insert " *See, also,* COMPANIES, Vol. IX., pp. 44, 53, Nos. 61–63, 110."

704a. Mess committee—Goods ordered by secretary.]—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary : —*Held :* the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—LASCELLES *v.* RATHBUN (1919), 35 T. L. R. 347 ; 63 Sol. Jo. 410, C. A.

710a. *S.P.* BONHAM *v.* MAYCOCK (1928), 138 L. T. 736 ; 44 T. L. R. 387 ; 72 Sol. Jo. 254.

711. *Add. Annotation :*—**Dbtd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

712. *Add. Annotation :*—**Expld.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714. *Add. Annotation :*—**Consd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714a. —— ——.]—Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.—BUTWICK *v.* GRANT, [1924] 2 K. B. 483 ; 93 L. J. K. B. 972 ; 131 L. T. 476, D. C.

718. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

738. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

740. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

741. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

744. *Add. Annotations :*—**Apld.** Bradford *v.* Price (1923), 92 L. J. K. B. 871. **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

PART V. SECT. 3, SUB-SECT. 12.—A.

sb. *Member of syndicate acting for syndicate.*]—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others :—*Held :* defts. other than C. were not liable to pltf.—MCLAUGHLIN *v.* GENTLES (1920), 46 O. L. R. 477 ; 51 D. L. R. 383 ; 17 O. W. N. 245.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—B. (c).

sc. *Committee of unincorporated association—Employment by.*]—*Held :* the committee were under no personal liability to the employee for his salary. —GRAHAM *v.* CARPENTER (1926), 28 W. A. L. R. 66.—**AUS.**

PART V. SECT. 3, SUB-SECT. 13.—A.

sd. *Agent—Holding out.*]—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's agent. The *onus* is on the debtor to prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—CARR *v.* FRY & MCCUNE, [1924] 4 D. L. R. 735.—**CAN.**

711 v. —— —— *Right to receive deposit.*]—An agent for sale has no implied authority as such to receive a deposit.—PEARSON *v.* WILSON (1917), Q. W. *N.* 49 ; 11 Q. J. P. 105.—**AUS.**

711 vi. —— —— ——.]—Pltf. made an offer to D., as agent for L., to purchase land of L. for $5,000, & with the offer paid $200 to D. as a deposit. In an action for return of the $200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D. & told him to make an offer through D. ; that D. procured from pltf. a written offer to purchase at $5,000, paying part only in cash, & that offer was refused by L. ; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused :—*Held :* D. had authority to receive an offer, &, as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107 ; 47 D. L. R. 713 ; 15 O. W. N. 278.—**CAN.**

se. *Person obtaining possession of bill of lading—Intervention between shipper & consignee.*]—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee. —STEWART *v.* RICHARDSON SONS & CO., LTD., [1920] 3 W. W. R. 134 ; 53 D. L. R 625 ; 30 Man. L. R. 481.—**CAN.**

PART V. SECT. 3, SUB-SECT. 13.—B.

746 i. *Agent.*]—An agent authorised to receive money for his principal may not receive anything but money ; but, if he receives a cheque on a bank, & the amount of the cheque is paid to the agent before his authority is

747a. —— **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order**].—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds: —*Held:* as W. was authorised by pltfs. to receive payment in cash for coal supplied. & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwithstanding that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—BRADFORD & SONS *v.* PRICE BROTHERS (1923), 92 L. J. K. B. 871; 129 L. T. 408; 39 T. L. R. 272.

750. *Add. Annotation:*—**Consd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

751. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

752. *Add. Annotations:*—*As to* (3) **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Bradford *v.* Price (1923), 92 L. J. K. B. 871.

754. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

768. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

769. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

773. *Add. Annotation:*—*As to* (1) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

778. *Add. Annotation:*—*As to* (2) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

781. *Add. Annotations:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871; Butwick *v.* Grant, [1924] 2 K. B. 483.

786. *Add. Annotation:*—**Refd.** Fettes *v.* Robertson (1921), 37 T. L. R. 581.

798. *Add. Annotations:*—**Consd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

809. *Annotations:*—For "For full anns., *see* LANDLORD & TENANT," read "For full anns., *see* SALE OF LAND."

Add. Annotation:—*As to* (3) **Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

810. *Annotations:*—For full anns., *see* S. C. No. 1192, *post.*

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revoked, that is a good payment to his principal.—DELORY *v.* GUYETT (1920), 47 O. L. R. 137; 52 D. L. R. 506 17 O. W. N. 474.—**CAN.**

746 ii. ——.]—If one is authorised to sell anything for another, the presumption is that he is to sell for cash, unless there is something to show to the contrary.—WATSON *v.* CADILLAC MOTOR SALES CO., LTD., [1920] 3 W. W. R. 107.—**CAN.**

ai. —— *Authority to collect debts—Cashing cheques received.*]—A clerk employed in the business of the Canadian Govt. elevators, whose express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered:—*Held:* to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such cheque.—R. *v.* ROYAL BANK OF CANADA, [1920] 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—**CAN.**

PART V. SECT. 3, SUB-SECT. 15.

804 i. *Agent—Implied authority from circumstances—Husband authorised to purchase stock for wife.*]—The fact that a husband was authorised to act, & has acted, as his wife's agent in the purchase of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it; & even assuming that the rules of the stock exchange subject to which the order to purchase was placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either express or implied, to receive the money.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—**CAN.**

808 v. —— —— *Break in market.*]—Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumstances or the custom of a particular trade known to both parties to give the words a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3:—*Held:* the agent was justified in selling without further instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fixing the price.—GEARHART *v.* QUAKER OATS CO., [1919] 3 W. W. R. 888.—**CAN.**

809 ii a. —— —— ——.]—Deft. wired to S., a land agent: "Bed-rock, £13,250 net, £400 down, stock & furniture at valuation." S. replied, "Your wire says £400 down; suppose you mean £4,000, wire us giving authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price." S. replied, "Have sold in accordance with your wire, freehold for £13,750, stock & furniture at valuation, showing you £13,250 net, £4,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid": —*Held:* S. had no authority to sell on the terms on which he did sell.—PRINGLE *v.* MCKAY, [1922] N. Z. L. R. 818.—**N.Z.**

815 iii a. —— —— —— ——.]—GEARHART *v.* QUAKER OATS CO. (1918), 42 D. L. R. 791.—**CAN.**

815 iii b. —— —— —— ——.]—A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825 & telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf. mentioned £925 as the amount of offer. Pltf. telegraphed his acceptance without naming an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf. for execution a month later he learned about the mistake in the telegram for the first time & refused to complete:—*Held:* the specific authority originally given to the agent did not authorise the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price.—SHORTAL *v.* BUCHANAN, [1920] N. Z. L. R. 103.—**N.Z.**

815 v. —— —— ——.]—Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltfs. & C. it was provided that he had no authority to make any representation as to pltfs.' properties other than those contained in their printed matter, & that he should have authority to accept offers for the purchase of lots according to pltfs.' price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltfs.' office & induced deft. to buy two of the lots, upon the express agreement that pltfs. would resell the lots not later than Aug. 1914, at a profit of $100 on each lot; G informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning, & heard what G. said; C. told G. that he should not have said that pltfs. would resell the lots; but, according to the testimony of G., C. himself was not called as a witness, C. ratified the representation made in his name & ostensibly by his authority:—*Held:* C., as general manager, had ostensible authority to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager.—CANADIAN GENERAL SECURITIES CO., LTD. *v.* GEORGE (1918), 42 O. L. R. 560; 13 O. W. N. 355; 14 O. W. N. 71; 43 D. L. R. 20.—**CAN.**

817 ii. —— *Implied authority.*]—A broker who had purchased corn on margin for a customer:—*Held:* justified in selling on the customer failing

823. *Add. Annotations :*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

828. *Add. Annotations :*—*As to* (1) **Distd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167. **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *Generally*, **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

829. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

833. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

834. *Add. Annotation :*—*As to* (1) **Consd.** Keen *v.* Mear, [1920] 2 Ch. 574.

834a. —— ——.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—LEWCOCK *v.* BROMLEY (1920), 127 L. T. 116; 37 T. L. R. 48; 65 Sol. Jo. 75.

834b. —— ——.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, *e.g.* as to title with which it is no part of an estate agent's duty to deal.—KEEN *v.* MEAR, [1920] 2 Ch. 574; 89 L. J. Ch. 513; 124 L. T. 19.

836. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

836a. —— ——.]—KEEN *v.* MEAR, No. 834b, *ante*.

836b. —— —— **Authority alleged to be limited to state price.**]—Action for specific performance of a contract alleged to have been entered into by letters between pltfs. & H. & R., estate agents, whom pltfs. alleged were agents for the first deft. for the sale to pltfs. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltfs. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltfs. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltfs. stating that their client would not accept £400, & that "we are now authorised to close with you if you will increase your offer to £450." Pltfs., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first deft. that, as instructed by her husband, they had offered the property to pltfs. for £450, & that pltfs. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450 :—*Held :* the agents had authority to conclude the contract, & pltfs. were entitled to judgment for specific performance of it.—ALLEN & Co., LTD. *v.* WHITEMAN (1920), 89 L. J. Ch. 534; 123 L. T. 773; 64 Sol. Jo. 727.

837. *Add. Annotation :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck (1920), 37 T. L. R. 76.

838a. —— ——.]—The mere relation of principal & factor confers, ordinarily, an authority to sell at such times & for such prices as the factor may, in the exercise of his discretion, think best for his employer; but if he receive the goods subject to any special instructions, he is bound to obey them.—SMART *v.* SANDARS (1846), 3 C. B. 380; 16 L. J. C. P. 39; 7 L. T. O. S. 339; 10 Jur. 841; 136 E. R. 152.

Annotations :—**Refd.** Campanari *v.* Woodburn (1854), 15 C. B. 400; Siebel *v.* Springfield (1863), 3 New Rep. 36; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585.

840. For existing citations read "(1848), 5 C. B. 895; 17 L. J. C. P. 258; 11 L. T. O. S. 178; 12 Jur. 751; 136 E. R. 1132."

to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a "room trader" & dealer on a larger scale in the broker's office.—MALOOF *v.* BICKELL, [1920] 1 W. W. R. 407; 50 D. L. R. 590; 17 O. W. N. 294; 59 S. C. R. 429.—**CAN.**

817 iii. —— *Authority to find purchaser.*]—On Jan. 20, 1920, deft. handed to his brokers a letter in these terms: "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft. :—*Held :* the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—PURNA CHANDRA DUTT *v.* INDRA CHANDRA ROY (1921), I. L. R. 49 Calc. 389.—**IND.**

821 i. —— *General authority—Sale in own name.*]—*Held :* position of pltfs. being that of brokers, in selling in their own name they acted beyond the scope of their authority.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

838 xiii a. —— *Instructions to procure purchaser at specified sum.*]—In negotiations for the sale of property a notification by a principal to his that he will accept a purat a specified sum will not authorise the agent to conclude a contract.—CARNEY *v.* FAIR (1920), 54 I. L. T. 61.—**IR.**

sk. *Solicitor — Authority to receive tenders—Tenders to be sent either to agent or principal.*]—Exors. gave instructions to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors.; this latter the solrs. did not do. A tender was received by the solrs. & forwarded by them to the exors. & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who made the first tender :—*Held :* the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—DEANS *v.* ORR (1922), 63 D. L. R. 720.—**CAN.**

845a. —— **Authority to discount bill.**]—If an agent employed by the indorsees of a bill to get it discounted warrant it to be a good one, his employers are bound by his act, & are liable to refund if the bill be afterwards dishonoured by the acceptor.—FENN *v.* HARRISON (1791), 4 Term Rep. 177 ; 100 E. R. 959.

Annotations :—**Refd.** Fydell *v.* Clark (1796), 1 Esp. 447 ; Lyon *v.* Mells (1804), 1 Smith, K. B. 478 ; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615 ; Royal Albert Hall Corpn. *v.* Winchelsea (1891), 7 T. L. R. 362.

850. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

860. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

872. *Add. Citations :*—*affd.*, [1918] A. C. 626 ; 87 L. J. K. B. 1158 ; 119 L. T. 446 ; 34 T. L. R. 518 ; 62 Sol. Jo. 665, H. L.

Add. Annotations :—**Refd.** Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

883a. Salesman — Authority to cancel sale.]—LECKENBY *v.* WOLMAN, No. 308a, *ante*.

885a. Grant of sole selling agency—Power of grantee to extend privilege—Extension to company controlled by agent.] — The firm of R. & Co., one of applts., were the sole agents in the Island of Mauritius of the F. Co. of Canada for the sale of F. motor cars & F. spare parts. With the concurrence of said F. co. R. & Co. entered into an identical agreement with each of three garages under which said garages were given the exclusive right to sell F. spare parts in the Island. The agreements reserved, however, to R. & Co. the right to extend the same privileges to two other garages to be chosen by R. & Co. One of said three garage cos., a co. of which the three partners of R. & Co. were directors, went into voluntary liquidation ; &, at the instance of R. & Co., a new co., to wit, resp., was formed, independent entirely of R. & Co. The new co. took over the stock-in-trade of the co. in liquidation & its sub-agency business in F. spare parts. Later, R. & Co. formed another co., the F. Service Station Co., Ltd., one of applts., & conceded to it the privilege of selling F. spare parts within the Island. In the shares of this new co., the then four members of R. & Co., took & retained a controlling interest, the remaining shares being held by their relatives or employees. To this co. the firm of R. & Co. gave the right, in effect, to be & represent itself as being the F. retail distributor in the Island, not only for the sale of F. parts but also for F. cars :—*Held :* R. & Co. were not entitled under the agreement to choose themselves as one of the garages to whom the privileges of the agreement might be extended, &, consequently, what the firm could not do itself it could not do through a co. controlled by it, & the course adopted by the firm in forming applt. co. was not less damaging to the three other garages than would have been the similar activities of the firm itself. An injunction was granted to the resp. restraining R. & Co. from conceding to the F. Service Station Co., Ltd., the privilege of selling F. spare parts within the Island.—AUTO CAR & SPORT EQUIPMENT CO., LTD. *v.* FORD SERVICE STATION CO., LTD., [1931] 3 W. W. R. 363, P. C.

897. For "For full anns., *see* ESTOPPEL," read "For full anns., *see* DEEDS, Vol. XVII., p. 216, No. 285."

Part VI.—Delegation.

906. *Add. Annotations :*—**Apld.** Tarn *v* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. I R. 53. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

PART V. SECT. 3, SUB-SECT. 17.

sl. *Agent forbidding purchaser to use machinery only partly paid for—Authority as such.*]—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority. —ROBERT BELL ENGINE & THRESHER CO. *v.* FARQUHARSON, [1918] 1 W. W. R. 924 ; 11 Sask L. R. 81 ; 39 D. L. R. 625. —**CAN.**

sm. *Real estate agent—Authority to describe property.*]—A real estate agent employed to find a purchaser has implied authority to describe to an intending purchaser the property offered for sale & to state any facts or circumstances which may affect its value.—HUGG *v.* LOW (Sask.), [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

sn. *Manager of farm—Authority to engage labour—& sell produce.*]—A manager of a farm or estate may engage labour to do the necessary work thereon, or he may sell the produce, & then the owner will be bound by the representations made by the manager as to such produce.—RAVENE PLANTATIONS, LTD. *v.* ESTATE ABREY, [1928] App. D. 143.—**S. AF.**

sp. *Authority to invest funds—Funds used in own business.*]—M. P. M. MURUGAPPA CHETTI *v.* MADRAS OFFICIAL ASSIGNEE (1937), 81 Sol. Jo. 785, P. C.—**IND.**

PART VI. SECT. 1.

906 iii. —— ——.]—GRIMMER *v.* MERCHANTS & MANUFACTURERS FIRE INSURANCE CO., [1932] 2 D. L. R. 621 ; 4 M. P. R. 582.—**CAN.**

906 iv. —— *Mother managing daughter's property.*]—Where a person employs another relying upon his peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another.

Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected :—*Held :* she could not delegate that trust & appoint her husband to perform the duties of her agency.—ROBINSON *v.* LONG, [1923] 3 D. L. R.

906 v. —— *Manager of property.*]—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execution.—BONNERJI *v.* SITANATH DAS (1921), 49 L. R. Ind. App. 46 ; I. L. R. 49 Calc. 325.—**IND.**

so. *Agreement to assist agent—Remuneration—Construction of contract.*]—Deft., a real-estate agent, with whom a printing & lithographing business had been listed for sale, asked pltf. who had practical knowledge of the latter class of business, to assist him in finding a purchaser, & said to pltf. : " If this deal comes off we will split a nice piece of change " :—*Held :* there was a contract between the parties that the commission if earned by their joint efforts would be divided ; in the absence of any local or trade meaning to the contrary, the meaning of the words quoted was that the

918. *Add. Annotation :*—**Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

922. *Add. Annotations :*—**Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

926. *Add. Annotations :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

941. *Add. Annotation :*—*As to* (1) **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

942. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

944. *Add. Annotations :*—**Refd.** Prager *v.* Blatspiel, Stamp *v.* Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

945a. ——.]—Pltfs., who were financially interested in goods to be shipped to B., employed defts., B. Bank, who, in turn, employed sub-agents to collect the proceeds. Pltfs. wrote to defts. : " We beg to hand you herewith the undermentioned bills for collection, subject to the deduction of commission & expenses & to the condition mentioned." That condition was : " Collections are undertaken at depositor's risk only on the understanding that no liability whatever attaches to the bank in connection therewith or with the storage and insurance of the relative goods." In the margin of the document under the heading " Instructions " was the following : " Documents to be surrendered against payment : if goods are not taken up, please do your best on our behalf to warehouse & insure them against fire." This document was received by the deft. bank, who acted upon it. Goods to which the bills related were destroyed by fire at the Customs House, B., when uninsured. Pltfs. alleged that their loss was due to negligence on the part of the deft. bank & (or) their sub-agents in omitting to insure the goods. It was contended for pltfs. that the clause providing that no liability should attach to deft. bank must be disregarded, as being repugnant to the contractual duty undertaken by the defts. to do their best to warehouse & insure the goods against fire. The action was brought by the C. P. Assocn. against B. Bank & the A.-P. Co., their sub-agents :—*Held :* although in certain cases where the employment of a sub-agent was authorised the agent might be impliedly authorised to create privity of contract between the principal & the sub-agent, there was no general rule of English law that such authority should be implied when a sub-agency was authorised. In the present case no such authority was to be implied & the claim against the sub-agents failed.—CALICO PRINTERS' ASSOCN., LTD. *v.* BARCLAYS BANK (1931), 145 L. T. 51 ; 36 Com. Cas. 197, C. A.

955. *Add. Annotations :*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. *Generally*, **Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780.

957. *Add. Annotation :*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

964. *Add. Annotation :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

966. *Add. Annotations :*—**Consd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

975. *Add. Annotation :*—**Consd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind, Coope *v.* Same, [1920] 2 K. B. 487.

977. *Add. Annotation :*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

980a. —— ——.] — NATIONAL EMPLOYERS' MUTUAL GENERAL INSURANCE ASSOCN., LTD. *v.* ELPHINSTONE, [1929] W. N. 135.

981a. —— **Failure to give proper instructions to sub-agent.**]—SELLER *v.* WORK (1801), Marshall on Marine Insurance, 4th ed., p. 243.

Part VII.—Ratification.

987. *Add. Annotation :*—**Consd.** *Re* Becket, Purnell *v.* Paine, [1918] 2 Ch. 72.

989. *Add. Annotation :*—**Refd.** The Zigurds (No. 4), 48 T. L. R. 563.

989a. —— ——.]—Resps.' manager, without their authority & fraudulently, obtained from their bankers, in exchange for cheques drawn by resps. upon the bankers, drafts for equivalent amounts drawn by the bankers upon themselves, payable to bearer, & crossed

division would be an equal one ; &, therefore, pltf. having rendered assistance in bringing about the sale which was made was entitled to judgment for half the commission.—JAMES *v.* FERRIS, [1932] 1 W. W. R. 250 ; 1 D. L. R. 472 ; 44 B. C. R. 522.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

943 iii. —— ——.]—If an agent for sale of grain to whom the goods are consigned or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.—HINCHCLIFFE *v.* BAIRD & BOTTERELL, [1920] 3 W. W. R. 159 ; 53 D. L. R. 451 ; 30 Man. L. R. 520.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

964 v. —— —— *Contract with sub-agent approved by principal.*]—Where a co. had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its behalf with a sub-agent :—*Held :* the co. was liable to the sub-agent for commission due under his contract.—BERGMAN *v.* CANADIAN FARM IMP. CO., [1924] 1 D. L. R. 350.—**CAN.**

PART VI. SECT. 4.

976 vii. —— *Funds received by sub-agent.*]—Every agent who employs a sub-agent is liable to the principal for money received by the sub-agent to the principal's use, & is responsible to the principal for the negligence & other breaches of duty of the sub-agent in the course of his employment.—HOOLE *v.* ROYAL TRUST CO., [1931] 3 D. L. R. 426.—**CAN.**

" not negotiable." These drafts the manager paid to an account which he had with applts., & they collected the amounts. Resps. sued applts. for damages for conversion of the drafts :—*Held :* the action failed, since resps. could not ratify the act of their manager in obtaining the drafts, so as to have a title to sue, without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.—UNION BANK OF AUSTRALIA *v.* MCCLINTOCK, [1922] 1 A. C. 240 ; 91 L. J. P. C. 108 ; 126 L. T. 588, P. C.

Annotation :—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

Compare No. 338a, *ante.*

994. *Add. Annotation :—As to* (3) & (4) **Apprvd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

995. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

995a. —— ——.] Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that the pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51 ; 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotations :—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367 ; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

998. *Add. Annotations :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586 ; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

1001a. Offer accepted by agent subject to ratification—Withdrawal before ratification.]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a quorum & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract ; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later " to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* on the facts the members of the deputation did not warrant their authority to bind the board, & their acceptance of deft.'s offer was subject to ratification by the board ; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455 ; 100 L. J. Ch. 87 ; 144 L. T. 545.

1005. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

PART VII. SECT. 2.

990 i a. —— ——.]—In a contract for sale of land, if the seller fraudulently simulates his wife's signature this vitiates the contract, & she cannot ratify her signature.—BECKMAN *v.* WALLACE (1913), 13 D. L. R. 540.—**CAN.**

PART VII. SECT. 3.

1002 ii. ——.]—FARRELL & SONS *v.* POUPORE LUMBER CO., [1935] D. L. R. 783.—**CAN.**

1006 v a. —— ——.] — H. was tenant to P. of lands held under a lease which expired on Sept. 29, 1880. P. brought an ejectment to recover possession of the lands, & for mesne rates, & after he was in a position to mark judgment, an agreement was entered into in Nov. 1884, between H. & P., by which P. agreed to grant a lease to H. for 31 years from Sept. 29, 1884, H. paying £860 on or before Dec. 15, as & for mesne rates up to that date, & for costs, & that H. should be at liberty to sell subject to the landlord's approval. H. not having paid such sum of £860, judgment for possession was entered on Dec. 16. After the entry of the judgment negotiations took place between P. & D. who had taken the lands temporarily for grazing from H. for a lease of the said lands to D., & on Jan. 2, 1885, D. paid P. £860, & the following day signed a proposal for a lease for 35 years from Sept. 29, 1884, at the yearly rent of £200. P. was only tenant for life of the lands, & could not take a fine, & there was no mention in the agreement with D. of the payment by him of the £860. On Jan. 6, 1885, the writ in the present action was issued by P. against H. claiming £1,000 damages for mesne profits from the expiration of the lease on Sept. 29, 1880, & in the alternative £1,000 for use & occupation. H. by his defence claimed the benefit of the payment by D. of the £860, & by leave of the judge at the trial paid 6*d.* into ct. on the count in trespass. At the trial P.'s agent deposed that he told D. that whoever gave him £860 would get the land. D., who was examined for H., deposed that he knew £860 was claimed from H. for arrears of rent & costs, & that he was willing to pay that sum on getting a good lease. The question left to the jury was " whether the £860 was paid by D. & received by P. as for the rent of the farm due by H." They found that it was, & that the 6*d.* lodged in ct. was sufficient :—*Held :* there was evidence proper to be

1009. *Add. Annotations :*—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203; The Joannis Vatis (1921), 91 L. J. P. 182; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Robinson *v.* Midland Bank (1925), 41 T. L. R. 402; Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1013. *Add. Annotation :*—**Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

1018. *Add. Annotation :*—**Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

1019. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1022. *Add. Annotations :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455. **Consd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1026. *Add. Annotation :*—**Refd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1027. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1028. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1029. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1033. *Add. Annotation :*—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1033a. —— After issue of notice to abate—Before institution of proceedings.] — By a bye-law of the city council of W., which was the sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 76), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation, on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1) :—*Held :* as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—R. *v.* CHAPMAN, *Ex p.* ARLIDGE, [1918] 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

Annotation :—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

submitted to the jury that the £860 was paid by D. & received by H. as & for the arrears of rent & costs, & that it was competent for H. to adopt & claim the benefit of the payment as a defence to the present action.—PURCELL *v.* HENDERSON (1885), L. R. 16 Ir. 213, 466.—**IR.**

1006 v b. —— ——.]—A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—REIMER *v.* ROSEN, [1918] 1 W. W. R. 425.—**CAN.**

1006 w c. —— ——.]—A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some unnamed principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies.—MCCALLUM *v.* COHOE (1918), 44 O. L. R. 497; 46 D. L. R. 733; 15 O. W. N. 262.—**CAN.**

1006 v d. —— ——.]—Pltf. & F. were customers of defts.' bank & F. was, unknown to pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for $2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the $2,500 before the undertaking by K., written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch manager. The bank received the money by pltf.'s cheque payable to order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deft. bank had ratified the acts of K. & were liable :—*Held :* it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—BRASSETH *v.* ROYAL BANK OF CANADA (1922), 67 D. L. R. 740.—**CAN.**

PART VII. SECT. 5.

1037 vii. ——.]—In order that a person may be deemed to have ratified an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—WHEELER *v.* HISEY (1918)

1040. *Add. Annotations :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1046. *Add. Annotation :*—**Refd.** Burnham-on-Sea Urban District Council *v.* Channing, [1933] W. N. 61.

1079. *Add. Annotation :—As to* (1) **Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1098. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

1102. *Add. Annotations :*—**Consd.** *Re* Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

1104a. —— ——.]—If goods in the city of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser. Five days considered too long a period for this purpose.—HODGSON *v.* DAVIES (1810), 2 Camp. 530 ; 170 E. R. 1241, N. P.

Annotations :—**Refd.** Maxwell *v.* Deare (1854), 23 L. T. O. S. 1 ; Humfrey *v.* Dale (1857), 7 E. & B. 266.

1105. *Add. Annotation :*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1109. *Add. Annotation :—As o* (2) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1123. *Add. Annotation :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

1128. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1129. *Add. Annotation :*— **Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1138. *Add. Annotation :—As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

1146. *Add. Annotation :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

1153. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1160. *Add. Annotation :—As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

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42 O. L. R. 654 ; 14 O. W. N. 150 ; 43 D. L. R. 92.—**CAN.**

1037 viii. ——.]—The agent of defts. hired pltfs., but exceeded his authority in regard to the terms of hire :—*Held :* defts. were not estopped, by accepting pltfs.' services, from disputing pltfs.' claim for wages, defts. having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—ROY *v.* ST. JOHN LUMBER CO., FISHER *v.* ST. JOHN LUMBER CO. (1919), 46 N. B. R. 120.—**CAN.**

1037 ix. ——.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1037 x. ——.]—A grain broker placed, according to his practice, a written confirmation of a purchase of grain made for a customer in a rack which was in the broker's office & had been pointed out to the customer, & the confirmation remained there for a month. The broker knew the customer's street address. The customer had not instructed the broker to make the purchase in question :—*Held :* the confirmation did not affect the customer with notice of or liability for the transaction.—MELLINIUK *v.* MORRISON & KELLY, LTD., [1930] 1 W. W. R. 602 ; 1 D. L. R. 984.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.

1044 vii. ——.] — In considering whether a person is bound by the acts of an ostensible agent which are alleged to have been ratified, the distinction is to be observed between a ratification to be implied from conduct showing an intention to ratify & an estoppel to deny ratification, the case, that is, where, without a conscious intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—MCKAY *v.* TUDHOPE ANDERSON CO., LTD., [1918] 3 W. W. R. 994 ; 44 D. L. R. 100 ; 14 Alta. L. R. 131.—**CAN.**

1044 viii. ——.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635 ; 56 D. L. R. 729 ; 14 Sask. L. R. 282.—**CAN.**

1044 ix. ——.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal has placed himself by some act or omission of his own in a position which compels him to accept the contract & carry out its terms ; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the purchaser directly or by circumstances of publicity which reached him & upon which he acted.—ZEREBESKY *v.* POWELL, [1921] 3 W. W. R. 528.—**CAN.**

1044 x. ——.]—ABBOTT *v.* MCDOUGALL & COWANS (Man.), [1928] 1 D. L. R. 295 ; [1927] 3 W. W. R. 816.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.

1086 i. *Purchase — Acceptance of goods bought.*]—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—BONTEX IMPORTING CO. *v.* PANAR (1922), 63 D. L. R. 200 ; [1922] 1 W. W. R. 128.—**CAN.**

1100 iv. —— —— *Paid by cheque of unauthorised agent.*]—S. took part in the negotiations for the sale of an engine by applt. to resp., but was not applt.'s agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S., thinking that he was applt.'s agent, & a few days later S. told applt. that he had received the money but could not pay it over then, & offered to pay interest on it, to which applt. agreed. After several applications from applt. S. handed him a cheque for the balance shown to be due in an accompanying statement, in which S. debited himself with interest & took credit for commission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money :—*Held :* applt.'s acceptance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—MCEWAN *v.* JOHNSTONE, [1918] N. Z. L. R. 49.—**N.Z.**

so. —— *Demand for payment over of deposit.*]—Where an agent had no authority to sell on the terms on which he did sell :—*Held :* a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—PRINGLE *v.* M'KAY, [1922] N. Z. L. R. 818.—**N.Z.**

1104 iii a. —— ——.]—Where a principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an agent on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

sk. *Acknowledgment of order.*]—An acknowledgment of an order given to an agent who is acting in excess of his authority is not ratification.—MCISAAC *v.* FRASER MACHINE & MOTOR CO., LTD. (1910), 44 N. S. R. 290.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.

1127 i. *On person alleging ratification.*]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635 ; 56 D. L. R. 729 ; 14 Sask. L. R. 282.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 1.

1122 iii. ——.]—An act done by a person on behalf of another person, but without that other person's authority or knowledge, & subsequently ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—GREAT WEST FARMS, LTD. *v.* HANSBERGER, [1924] 1 D. L. R. 185.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 2.

st. *Trading goods—Agent for sale.*]—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange become the principal's property.—REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565 ; [1925] 2 W. W. R. 402 ; 19 Sask. L. R. 492.—**CAN.**

Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240.

1176. *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240 ; Maskell *v.* Hill, [1921] 3 K. B. 157.

1192. *Add. Annotation :*—*As to* (3) **Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

1196. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1206. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Apld.** Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Westminster Bank *v.* Hilton (1926), 136 L. T. 315. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187 ; Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226 ; Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330 ; Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1208. *Add. Citation :*—13 Asp. M. L. C. 463.

1208a. —— ——.]—Vale (J.) & Co. *v.* Van Oppen & Co., Ltd. (1921), 37 T. L. R. 367.

1211. *Add. Annotations :*—**Apld.** Weigall *v.* Runciman (1916), 13 Asp. M. L. C. 463. **Refd.** Finn *v.* Shelton Iron, Steel & Coal Co. (1921), 131 L. T. 213.

1218. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1231. *Add. Annotation :*—**Refd.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283.

1238a. Duties of sole agent.]—Pltf. co., who had the sole export agency for a certain brand of whisky in Australasia, made a contract with deft. co., whereby the latter became the sole agent in New South Wales for the sale of that whisky. By a clause in this contract, deft. co. agreed to devote the principal part of their energies, so far as Scotch whisky was concerned, by means of themselves, their travellers, & others, to pushing the sale of this whisky in bulk throughout New South Wales. They were, however, not precluded from selling proprietary brands of whisky in response to orders therefor, nor from disposing of their stocks of such whiskies. Pltf. co. became dissatisfied with the volume of orders received from deft. co., & sued them for breach of contract. It was also a term of the contract that pltf. co. should supply, *inter alia*, all corks for the bottling of the whisky, but, by a substituted agreement, deft. co. used a form of stopper which had a lead liner, & a quantity of whisky was thereby rendered unfit for sale :—*Held :* (1) deft. co. was under an obligation vigorously to promote the sale of the whisky exported by pltf. co., & to sell as much of that whisky as they could throughout the whole period of the contract, such obligation being subject to their rights under the contract to sell their existing stocks of whisky, & to supply proprietary brands in response to orders therefor. The obligation under the contract was not satisfied by inaction & merely not preferring other brands ; (2) deft. co. had broken their contract, in that they had not made a steady effort to sell the whisky supplied by pltf. co., nor had they done their best to promote its sales in their tied & managed houses. Further, their travellers had solicited orders for other brands ; (3) it was a breach of the contract to allow the exhibition of advertisements, in tied & managed houses, of competing proprietary brands ; though they would be permitted to stock such brands, & to include them in their lists of brands stocked ; (4) there was no implied warranty on the part of deft. co. that the stoppers were free from defect, but, from the relationship between the parties, who were both concerned with the reputation & success of this particular whisky, there was an obligation upon deft. co. to use reasonable care in the matter, & this they had not done.—Davis (B.), Ltd. *v.* Tooth & Co., Ltd., [1937] 4 All E. R. 118 ; 81 Sol. Jo. 881, P. C.

1243a. —— Extent of liability.]—Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interested. In a letter of instructions to deft. pltf.

PART VIII. SECT. 2, SUB-SECT. 1.—A.

1164 v. —— —— *Goods not in accordance with order.*]—Defts. gave to pltf. a written order to ship from England on account of defts. one thousand two-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in performance of this order. Two lots were shipped & delivered to defts. who paid for them. Delivery of the last lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by defts. on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size :—*Held :* pltf. was under a duty to purchase goods for defts. of the description ordered, & his failure to do so amounted to a breach of duty.—Builters *v.* Roope, [1922] N. Z. L. R. 549.—**N.Z.**

1188 ii. —— ——.]—Wheat held by defts. for pltfs. was on pltfs.' order shipped by defts. from M. to A. Pltfs. telegraphed instructing defts. to sell at once. Defts. wrote saying that until the cars arrived at A. they were unable to sell. They at once, however, tried to sell & after ten days did so :—*Held :* they were justified in selling at the price then obtainable & without receiving further instructions.—Jackson *v.* Saskatchewan Co-operative Elevator Co., Ltd., [1919] 3 W. W. R. 572.—**CAN.**

sw. *Failure to read contract of agency.*]—A person signing a contract of agency by which he takes over goods is bound by a term requiring him to insure, whether he reads the contract or not.—Gray-Campbell, Ltd. *v.* Flynn, [1923] 1 D. C. R. 51.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A. (a).

1214 iv. —— *Negligent misrepresentation.*]—An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—Young *v.* Tassell, [1918] N. Z. L. R. 924.—**N.Z.**

1214 v. ——.]—The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—Brown *v.* Thornes, [1920] N. Z. L. R. 306.—**N.Z.**

PART VIII. SECT. 2, SUB-SECT. 2.—A. (b).

sb. *Agent liable for failure to give information.*]—Phillips *v.* Barns (1937), 81 Sol. Jo. 814, P. C.—**IND.**

inserted libellous statements concerning two officials of the co. Deft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it, & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions:—*Held:* pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—WELD-BLUNDELL *v.* STEPHENS, [1920] A. C. 956; 89 L. J. K. B. 705; 123 L. T. 593; 36 T. L. R. 640; 64 Sol. Jo. 529, H. L.

Annotations:—**Consd.** *Re* Polemis & Furness Withy, [1921] 3 K. B. 560; A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328; Harnett *v.* Bond, [1924] 2 K. B. 517; Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** Proops *v.* Chaplin (1920), 37 T. L. R. 112; Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; The San Onofre, [1922] P. 243; Adelaide S.S. Co. *v.* R., [1923] 1 K. B. 59; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Hambrook *v.* Stokes, [1925] 1 K. B. 141; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

1243b. —— ——.]—Accountants, employed to prepare balance-sheets from the books of a firm, stated the amount of "cash at the bank" as it appeared in the books, without examining the bank pass-book, or obtaining any statement in reference thereto from the bank, or informing the firm that they had not done so. The entries in the books were falsely made by a fraudulent clerk, whose defalcations were not discovered, as they would have been if the entries in the books had been checked by reference to the pass-book:—*Held:* (1) the accountants were negligent; (2) they were liable in damages for the amount of the defalcations of each year which would have been discovered if the proper steps had been taken as to the pass-book.—FOX & SON *v.* MORRISH, GRANT & Co. (1918), 35 T. L. R. 126; 63 Sol. Jo. 193.

1250. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce, [1925] Ch. 407.

1251. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

After this case add "*See, generally,* COMPANIES, Vol. IX., pp. 553 *et seq.*"

1263a. ——.]—Agents employed to sell land are generally employed to obtain the best purchase price reasonably obtainable. Their duty to their principal does not cease when they have procured an offer to purchase which he accepts subject to contract. It is still their duty to inform him of any offer which they receive at a higher price than that so accepted, & they remain subject to this duty until final contracts of sale & purchase have been signed & exchanged.

The owner of house property employed a firm of house agents to sell the property. They gave particulars to a tenant of the property, among other persons, & procured an offer from a prospective purchaser. They communicated this offer to the owner, & he accepted it subject to contract. The tenant then made an offer to the agents to purchase the property from the prospective purchaser at an increased price. In the *bonâ fide* belief that they had performed their duty as agents to the owner when he had accepted the offer of the prospective purchaser subject to contract, they omitted to inform the owner of

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1245 iv. —— ——.]—A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were communicated to the lender:—*Held:* while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent legal advice.—WERNHAM *v.* M'LEAN, BAIRD & NEILSON, [1925] S. C. 407.—**SCOT.**

sv. Customs broker.]—WOLSELY TOOL & MOTOR CAR CO. *v.* JACKSON POTTS & Co. (1915), 7 O. W. N. 617; 8 O. W. N. 311; 33 O. L. R. 96, 587.—**CAN.**

1260 i. *Factor.*]—Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—UNITED GRAIN GROWERS, LTD. *v.* MABEY, [1925] 1 D. L. R. 301; [1925] 1 W. W. R. 19.—**CAN.**

1260 ii. ——.]—Where an elevator company advances money on the security of grain delivered to it in storage which it is authorised by the contract between it & the borrower to sell without notice at any time it deems itself unsecure, the co. is not, in the absence of an express agreement to that effect, restricted to resorting to the pledged grain to obtain repayment, but can sue on the implied promise to repay which is ordinarily incident to a loan; &, moreover, the co. is not obliged to sell the grain &, if it does sell it, cannot be held to have been negligent &, therefore, liable to the borrower merely because it did not sell at a time when it could have received a higher price than it did receive.—PATTERSON (N. M.) & Co., LTD. *v.* CARNDUFF, [1931] 2 W. W. R. 221.—**CAN.**

1262 ii. —— *Extent of duties.*]—If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *primâ facie* liable to account for it. Evidence sufficient to excuse him from liability would in some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims damages against the agent for lost or damaged articles the question of liability may be directly involved in regard to each article, & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—CARLILE *v.* NORTHERN TRUSTS Co., [1924] 2 W. W. R. 961.—**CAN.**

1262 iii. —— ——.]—A house agent, employed to look after the renting of a furnished house, must keep a proper inventory of the furniture & check it over carefully with each incoming & outgoing tenant, & he must exercise care in seeing that tenants to whom he rents the house are the proper sort of persons to occupy it; but, in the absence of a special contract, the agent is not a guarantor of the rent, or bound to pay the taxes, or to notify the owner so as to prevent a sale of the house for non-payment thereof.—HYLAND *v.* COSTERTON (B. C.), [1927] 1 D. L. R. 1166; [1927] 1 W. W. R. 340.—**CAN.**

the offer of the tenant. Afterwards final contracts for the sale & purchase of the property were signed & exchanged by & between the owner & the prospective purchaser. The owner then brought an action against the agents for damages for breach of duty in not disclosing to him the offer of the tenant before the contracts were signed & exchanged. The agents counterclaimed for commission on the sale of the property:—*Held:* the obligation of the agents to the owner was not fully performed when he had accepted the offer subject to contract but continued until final contracts were exchanged; this obligation involved a duty to communicate to him the offer of the tenant; having committed a breach of this duty they were liable in an action for damages, & the measure of damages was the difference between the price named in the contracts & the price offered by the tenant; also in the circumstances the agents were entitled to their commission.

There may well be breaches of duty which do not go to the whole contract, & which would not prevent the agent from recovering his remuneration; & as in this case it is found that the agents acted in good faith, & as the transaction was completed & applt. has had the benefit of it, he must pay the commission (ATKIN, L.J.). — KEPPEL *v.* WHEELER, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

Annotations:—**Folld.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157. **Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606. **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436; Musson *v.* Moxley, [1936] 1 All E. R. 64.

1265. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1267. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Everett *v.* Griffiths, [1920] 3 K. B. 163.

1269. *Add. Annotations:*—**Apld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Pratt *v.* Patrick, [1924] 1 K. B. 488.

1279. For "For full anns., *see* PRACTICE & PROCEDURE," read "For full anns., *see* EXECUTORS, p. 745, No. 7745."

1288. Delete "For full anns., *see* EQUITY."

1304. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1311. *Add. Annotations:*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

1315. *Add. Annotation:*—**Refd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

1316. *Add. Annotation:*—**Consd.** The Mogiliff, [1921] P. 236.

1318. *Add. Annotations:*—*As to* (1) **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557; Bartlam *v.* Evans, [1936] 1 K. B. 202.

1346. *Add. Annotation:*—**Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1264 ii. —— *Acting for vendor & purchaser—Payment of rents to vendor after notice of claim by purchaser.*]—Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents &, after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto:—*Held:* he was personally liable to the purchaser therefor.—DE KOCK *v.* FINCHAM (1902), 19 S. C. 136.—**S. AF.**

1264 iii. —— *Advice as to values.*]—Pltf. employed defts. who were land agents, to dispose of certain land, & they induced him to exchange his property for certain other lands which were less in value than those of pltf. Pltf. was in humble circumstances & of little business experience:—*Held:* it was the duty of defts. to see that an inadequate consideration was not accepted for the disposal of pltf.'s property without advising him as to values. This duty obtains, notwithstanding that the agent may be acting as agent for both parties to the exchange transaction.—HOW *v.* CARMAN, [1931] S. A. S. R. 413.—**AUS.**

sw. *Wool broker.*]—A wool broker, in cases where he receives wool from a customer upon which a limit has been placed, is not in law bound to indicate to the customer the state of the market from time to time, so as to be liable in damages if he fails to do so.—FERREIRA *v.* GINGELL, [1921] E. D. L. 374.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 2.—C.

1269 vii. ——.]—Deft., an insurance broker, gratuitously procured policies from American cos.:—*Held:* as it was not shown that deft. was in any way negligent, or that he knew or ought to have known of the invalidity of the policies, deft. was not liable.—DIMITROFF *v.* GONDER (1924), 56 O. L. R. 119.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (a).

ti. —— *Purser employed on ship by railway company—Money advanced by company to enable ship to be procured.*]—*Held:* the co. were not liable to account to the shipowner for money received by the purser & not paid over, for he was accountable to the shipowner.—VANEVERY *v.* BUFFALO & LAKE HURON RY. CO. (1861), 20 U. C. R. 630.—**CAN.**

1276 i. *Failure to keep accounts—Liability for charges of accountant preparing accounts.*]—Deft., employed by pltf. to administer his affairs, exhibited gross negligence in carrying out his trust. He failed to keep proper books or records of pltf.'s affairs or to render accounts. Pltf. was compelled to employ accountants to prepare accounts between the parties:—*Held:* pltf. was entitled to claim the charges of two accountants for preparing accounts between the parties as damages due to deft.'s negligence, which deft. should have contemplated as the natural result of such negligence.—MEAD *v.* CLARKE, [1922] E. D. L. 49.—**S. AF.**

sx. *No duty to account to minor—Agent appointed by guardian.*]—An agent appointed by the guardian of a minor is not liable to account to the minor for his acts, even though he received properties belonging to the minor.—RAMATHAN CHETTIAR *v.* MUTHIAH CHETTY (1919), I. L. R. 43 Mad. 429.—**IND.**

sy. *Accounts framed on wrong basis—& containing incorrect items.*]—Deft. was employed by pltfs., the exors. of an estate, to administer the estate on their behalf. Pltfs. having sued deft. for an account:—*Held:* as the accounts rendered by deft. were framed on a wrong basis as between principal & agent & were incorrect in certain particulars, deft. must render an account within fourteen days.—KRIGE *v.* VAN DIJK'S EXECUTORS, [1918] App. D. 110.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (e).

1326 i. *Agent for sale—Principal's intention to defraud creditors known to agent.*]—Where goods were delivered to agents for sale, & the principal, to the knowledge of the agents, intended to defraud his creditors by making away with the proceeds of the sale:—*Held:* (1) the principal in suing the agents for an account of the goods so delivered to them was not relying on an illegal contract & was entitled to succeed; (2) the agents were not absolved from the duty of accounting to the principal by the fact that the goods had been delivered to the agents on a Sunday.—RUSKIN *v.* WASSERMAN, [1917] W. L. D. 174.—**S. AF.**

1326 ii. —— *Goods delivered to agent on Sunday.*]—RUSKIN *v.* WASSERMAN, No. 1326 i., *ante*.—**S. AF.**

1326 iii. ——.]—LESLIE *v.* MORRISON (1858), 16 U. C. R. 318.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (f).

gi. —— *Particulars.*]—In an action which was substantially one claiming a general account in reality on the basis of agency:—*Held:* an application by the agent for particulars of sums alleged to have been converted should be refused.—SHORT *v.* LAMBE, [1925] 1 I. R. 135.—**IR.**

1352. *Add. Annotation :*—**Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

1356. *Add. Annotation :—As to* (1) **Refd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1360. *Add. Annotation :*—**Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

1385a. ——.]—FIELD *v.* ALLEN (1842), 9 M. & W. 694; 152 E. R. 294.

1385b. Whether agent may set up jus tertii.]—An engagement of marriage having been entered into between pltf. & the daughter of one J., the engaged parties chose a house in which to live after they were married, & J. handed to pltf. a cheque for the deposit on the price of the house as a gift conditional upon the marriage taking place. Pltf. paid that cheque into his own bank account & handed his own cheque for the same amount to the house agent of the vendor. Pltf. engaged deft., who was J.'s son-in-law, to act as his solr. in the purchase of the house. The engagement having afterwards been broken off, & the negotiations for the house discontinued, the house agent of the vendor sent a cheque to deft. for the amount of the repaid deposit. J. requested deft. to account for the sum to him as being his property, & on that ground the deft. declined to pay it to pltf. J. then made a gift of the sum to deft. In an action by pltf. against deft. claiming the sum as money had & received by deft. to the use of pltf., deft. by way of defence relied with the consent & authority of J. upon the latter's claim & right to the sum :—*Held :* in the circumstances the *jus tertii* of J. did not avail deft. as a defence to the action.

In the case of *Biddle* v. *Bond* (1865), 6 B. & S. 225, it was decided that to an action by a bailor of goods, which had been wrongfully though not fraudulently acquired by him, against the bailee for the proceeds of sale of the goods, the bailee was entitled to set up the *jus tertii* of the true owner of the goods as an answer to the action :—*Held :* the principle of that case is limited to actions for the recovery of property bailed, & apparently to actions of that kind in which the bailor has wrongfully obtained the property, & cannot be extended to enable an agent, in an action against him by his principal for the recovery of money held by him on behalf of the latter, to set up by way of defence the *jus tertii* of the true owner of the money.—BLAUSTEIN *v.* MALTZ, MITCHELL & Co., [1937] 2 K. B. 142; [1937] 1 All E. R. 497; 106 L. J. K. B. 471; 156 L. T. 316; 53 T. L. R. 397; 81 Sol. Jo. 177, C. A.

1386. *Add. Citations :—sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118; 5 Nev. & M. K. B. 669; 4 L. J. K. B. 189.

1396. *Annotations :*—For "Bridger *v.* Savage (1885), 12 Q. B. D. 363" read "Bridger *v.* Savage (1885), 15 Q. B. D. 363."

Add. Annotation :—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

1422. *Add. Annotation :—As to* (1) **Refd.** Baker *v.* Lloyd's Bank, [1920] 8 K. B. 322.

1425. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

1426a. Proceeds of sale of goods—Goods consigned by commission agents for principal—Right of

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PART VIII. SECT. 2, SUB-SECT. 3.—B. (b).

1352 ii. ——— ———.]—Where fiduciary relations have subsisted between the parties, a ct. will not re-open accounts which have long been settled between the parties, unless pltf. can show definitely at least one fraudulent omission or insertion in the accounts.—PURAN MAL *v.* FORD, MACDONALD & Co., LTD. (1919), I. L. R. 41 All. 635.—**IND.**

1352 iii. ——— ———.]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 3.—C.

1361 i. *Circumstances in which right arises.*]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (a).

1379 i. *Deposit on purchase paid to land agent.*]—A licensed land agent who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission, but must account to his principal for the whole of such deposit.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1379 ii. ——.]—Where a deposit on a sale of land is paid to a land agent he holds it, unless otherwise stipulated as agreed, for the vendor, & must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but the commission does not include commission which is made irrecoverable by law.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

sz. *Money paid to agent by members of syndicate for purchase of land—Claim by one member of syndicate for return of subscription on rescission of sale.*]—Pltf., who had joined with a number of other persons in the purchase of a farm, subscribed £50 which was, with other subscriptions, deposited with deft. to be by him paid out in reduction of the purchase-price. The sale of the farm having been cancelled, to a claim by pltf. for the return of his subscription deft. raised the defence that he had been instructed by the syndicate not to pay over the money received by him but to hold it for another purpose :—*Held :* the defence raised could not succeed.—MANGENA *v.* MOYATUSI, [1918] App. D. 650. —**S. AF.**

sa. *Profits received in foreign currency—Rate of exchange in favour of principal.*]—CUTTEN *v.* BICKELL (1925), 57 O. L. R. 113; *affd.*, [1926] 1 D. L. R. 353.—**CAN.**

sb. *Commission received by sub-agent from principal—Right of agent to recover from sub-agent.*]—Pltf. listed with deft. as a sub-agent the lands of a certain principal, agreeing to pay deft. 25 cents an acre for finding a purchaser. Deft. unknown to pltf. communicated directly with the principal, obtained a listing of the lands from him & effected a sale thereof, deducting the commission :—*Held :* pltf. was entitled to recover from deft. the commission less the sum of 25 cents per acre.—OSWALT *v.* KING, [1919] 3 W. W. R. 72.—**CAN.**

sc. *Venue.*]—It is settled law that a suit by a principal against a commission agent who has agreed to execute an order placed with him by correspondence must be instituted at the place where the commission agent carries on his business & that a principal cannot sue him at the place from where he sent his order.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (c).

1396 ii. ——.]—Assuming a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person as being the agent of their principal to receive it :—*Held :* the principal could recover such proceeds from the agent.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—**CAN.**

1396 iii. —— *Dealings on grain exchange.*]—In an action against an agent to recover money received by him from a third party on behalf of his principal he cannot resist the principal's claim on the ground of illegality or criminality in the transaction on account of which the payment was made to him as agent, if the alleged invalidity or illegality did not enter into the relations between him & his principal. Applying the above principle :—*Held :* pltf. was entitled to recover moneys in the hands of deft. which had been received by the latter, as agent for pltf., from grain brokers through whom deft. had conducted buying & selling transactions on a grain exchange on behalf of pltf.—HOLDING *v.* WOOD, [1932] 1 W. W. R. 612.—**CAN.**

agent to set off claims against consignors.]—In 1917 pltf. & F., merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to defts., as their agents, who knew that pltf. & F. were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the Ukraine—the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* &, recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by pltf. & by F. became inextricably mixed, with the result that F. assigned all his rights in his consignment to pltf., & notice of the assignment was given to defts. Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to pltf. & F. The bristles consigned to defts. were sold by them in 1920, & pltf. demanded payment of the amount of the proceeds, less the amount of defts.' commission, but defts. refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that defts. were entitled to set off against pltf.'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & pltf. in 1923 brought this action:—*Held:* (1) assuming that the bank at Odessa was an effective bank up to the time when the bank was closed, the bank's instructions to defts., followed by the transfer of the bank's rights to pltf. & F. & the transfer of F.'s rights to pltf., made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by defts. was without the authority of the bank, & in that case the bank's title had gone. In either case pltf. as a disclosed or undisclosed principal was entitled to the proceeds, less defts.' commission with interest from the date of the demand.—DORF *v.* NEUMANN, LUEBECK & Co. (1924), 40 T. L. R. 405.

1430. *Add. Annotation:*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

1431. *Add. Annotation:*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

1437. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

1438a. —— **Unless jus tertii set up.**]—An agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute his principal's title, unless he proves a better title in a third person & that he is defending on behalf, & with the authority, of that third person.—BHAWANI SINGH (RAJA) *v.* MAULVI MISBAH-UD-DIN (1929), 56 L. R. Ind. App. 170, P. C.

1452. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1459. *Add. Annotations:*—*Generally*, **Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1460. *Add. Annotation:*—**Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1467. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1920] 3 K. B. 30.

1482. *Add. Annotations:*—**Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372. **Consd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

1484. *Add. Annotation:*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

1486. *Add. Annotation:*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

1490. *Add. Annotations:*—**Refd.** Dutton, Massey (Liverpool) *v.* Dutton, Massey (1923), 40 R. P. C. 413; Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

1491. *Add. Annotation:*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1492. *Add. Annotation:*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

PART VIII. SECT. 2, SUB-SECT. 5.

sd. *General rule.*]—Where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf, the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage.—LALMAN *v.* CHINTAMANI (1918), I. L. R. 41 All. 254.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 7.—A.

1463 i. *Agent purchasing for his Specific performance granted* it was shown by evidence had agreed to attend & buy in a property offered for sale by auction, as the agent of pltf. & for his benefit:—*Held:* notwithstanding that the Statute of Frauds had been set up as a defence, & there was not any writing evidencing the agreement, pltf. was entitled to a decree to carry out the agreement.—ROSS *v.* SCOTT (1875), 22 Gr. 29.—**CAN.**

1464 v a. —— ——.]—Pltf. supplied money for the purchase of land of which deft. took the deed in his own name. In an action to have deft. declared a trustee & for the recovery of mesne profits the defence was that the purchase price was furnished by pltf. with the intention that the land should be deft.'s & that pltf. should have a home with deft. during her lifetime:—*Held:* pltf. was entitled to judgment.—ENNOS *v.* MCLEAN (1919), 52 N. S. R. 485.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 7.—B.

sa. *Investment — Mortgage — Failure to inquire as to discharge of liens.*]—*Held:* agent liable for negligence.—LEFEVRE *v.* ANDREWS, [1932] 1 W. W. R. 122; 1 D. L. R. 805; 44 B. C. R. 516.—**CAN.**

1494. *Add. Annotation :*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

1495. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1501a. Agent wrongfully acting for other principals —Liability of party inducing agent to commit breach of duty.]—Resps. employed D. as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., & supplied him with forms of contract bearing their firm name as buyers. D. agreed not to act as buying agent for anybody except resps. & another firm. Applt., who knew the position as between D. & resps., induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight D. handed 300,000 lbs. to resps., & tendered the balance to applt., but he repudiated the arrangement, the market having fallen heavily. Resps. having also repudiated liability, one of the vendors, with whom D. had contracted upon resps.' form, was held to be entitled to damages from resps. as having held out D. as their agent. Resps. claimed to recover over from applt. :—*Held :* resps. were so entitled, applt. having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—JASPERSON *v.* DOMINION TOBACCO CO., [1923] A. C. 709; 92 L. J. P. C. 190 ; 129 L. T. 771, P. C.

1501b. Distributing agent for film producers—Block-booking film with others—Sum for hire thereby reduced.]—HERBERT WILCOX PRODUCTIONS, LTD. *v.* FIRST NATIONAL PICTURES, LTD. (1930), 74 Sol. Jo. 353.

1501c. Agent acting for both parties—Company with separate departments as agent.] —Pltfs., a trading co., carried on an estate agency & a building business in separate buildings. Deft. employed pltfs., through their estate agency, to find a purchaser for real property, & they found C., who agreed to purchase the property subject to contract & a surveyor's report. C. employed pltfs., through their building department, to inspect the drains of the property & to make an estimate for putting them in order. As a result of the report C. claimed a reduction in the purchase-price. Subsequently after complaint by deft., pltfs. discovered that they had been acting in this way for both the potential vendor & purchaser, &, by their solrs., offered deft. to invite the purchaser to obtain an independent survey of the drains. Deft. did not accept the offer, but completed the sale at a reduction of the agreed price, the reduction being due to the work required to be done upon the drains. Pltfs. sued deft. for commission on the sale :—*Held :* (1) pltfs. had acted in good faith, & deft. had in fact suffered no damage, as C. would in any event have secured a report on the drains, & any competent person would have recommended an expenditure on the drains of more than the reduction in the purchase-price ; (2) pltfs. constituted one person in law, however, many businesses they might carry on, & in acting as they did they committed a breach of their duty as agents of their principal, but as deft. with full knowledge of the breach of duty on the part of pltfs. had completed the contract at the reduced price, pltfs. were entitled to commission. Vendor, with full knowledge of their action on behalf of the purchaser, had refused the offer of pltfs. to stand aside that C. might have the drains tested by another firm, & had concluded the sale at the reduced price.—HARRODS, LTD. *v.* LEMON, [1931] 2 K. B. 157 ; 100 L. J. K. B. 219 ; 144 L. T. 657 ; 47 T. L. R. 248 ; 75 Sol. Jo. 119, C. A.

1504. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1505. *Add. Annotation :*—*As to* (1) **Refd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

1506. *Add. Annotation :*—**Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

1508. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1509. *Add. Annotations :*—**Refd.** Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543.

1513. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1517. *Citations :*—For "[1894] 1 Ch. 416" read "[1894] 1 Ch. 616."

Add. Annotation :—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

1518. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1520. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1526. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. *As to* (2) **Refd.** Wright *v.* Morgan, [1926] A. C. 788.

1529a. —— Unless full disclosure—Sufficiency of disclosure.]—Deft. bought shares in the B. Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpcy. claimed the balance then due on the account from deft. :—*Held :* E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded.—ELLIS & CO.'S TRUSTEE *v.* WATSHAM (1923), 155 L. T. Jo. 363.

PART VIII. SECT. 2, SUB-SECT. 9.—A. 1i. —— *Agent lending money to persons to whom agent not authorised to lend.*]—A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908).—MUTHIAH CHETTY *v.* ALAGAPPA CHETTY (1917), I. L. R. 41 Mad. 1.—IND.

1533. *Add. Annotations :*—**Refd.** *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100; *Re* Etic, [1928] Ch. 861.

1550a. —— **Broker.**]—Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts of cotton of the same description. The broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding :—*Held :* the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed.—CHRISTOFORIDES *v.* TERRY, [1924] A. C. 566; 93 L. J. K. B. 481; 131 L. T. 84; 40 T. L. R. 485, H. L.

1552. *Add. Annotations :—Generally,* **Consd.** Solloway *v.* Johnson, [1934] A. C. 193. **Refd.** Christoforides *v.* Terry, [1934] A. C. 566.

1553. *Add. Annotation :*—**Apld.** Christoforides *v.* Terry, [1924] A. C. 566.

1558a. —— ——.]—IMESON *v.* LISTER (1920), 149 L. T. Jo. 446.

1561. *Add. Annotations :—As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally,* **Refd.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1571. *Add. Annotation :*—**Refd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

1580. *Add. Annotation :*—**Refd.** Hocker *v.* Waller (1924), 29 Com. Cas. 296.

1584. *Add. Annotations : — Generally,* **Mentd.** London County & Westminster Bank *v.* Tompkins, [1918] 1 K. B. 515; Ellis' Trustee *v.* Dixon-Johnson, [1924] 1 Ch. 342.

PART VIII. SECT. 2, SUB-SECT. 10.

1530 i. —— *Remedies of principal—Principal may repudiate or adopt transaction.*]—A principal who discovers that he has purchased his agent's own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 11.

1542 vi. ——.]—An agent employed to sell goods cannot himself purchase such goods at a sale by public auction. —OSRY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

1542 vii. ——.]—JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

1550 ii. —— ——.]—PALMER *v.* CHRISTIE (Y. T.) (1905), 2 W. L. R. 561.—**CAN.**

1565 i. —— —— —— *No confirmation without knowledge.*]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circstances abandoned his rights.—OSRY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 13.

1572 ii. ——.]—In pursuance of an agreement defts. obtained for pltf. a mtge. of £100,000 at 5 per cent., but without pltf.'s knowledge entered into an agreement with the mtgee. by which, in consideration of a commission of ½ per cent. per annum to be paid to them by the mtgee. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgee. £2,500, being £250 each half-year during the term of the mtge. In an action by pltf. against defts. to recover the £2,500 as being a secret profit made by them while acting as his agent :—*Held :* pltf. was entitled to payment to him of the £2,500.—KEOGH *v.* DALGETY & CO. (1916), 22 C. L. R. 402.—**AUS.**

1572 iii. ——.]—An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

1572 iv. ——.]—Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests conflict with his duty.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

1572 v. ——.]—A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtge. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge or consent of A. obtained & retained a commission from the purchaser for raising the bond :—*Held :* such commission was a secret profit, & B. in concealing it had acted dishonestly towards A.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

se. —— *Agent receiving present.*]—Disclosure, after completion of a sale of land, by the vendor to certain directors of a purchasing co., who were concerned in the negotiations for the purchase, of his intention, afterwards carried out, to make a money present to the purchaser's manager & agent, who took the principal part in the negotiations, & assent thereto by such directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses.—BENDIGO, ETC. Co. *v.* CUNNINGHAM, [1919] V. L. R. 387.—**AUS.**

sf. —— *Agent entering into contract with principal.*]—If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal.—ACHUTHA, NAIDU *v.* OAKLEY, BOWDEN & CO. (1922), I. L. R. 45 Mad. 1005.—**IND.**

sg. —— *Agent for sale artificially inflating rates.*]—An agent for sale of goods cannot, while actually selling or making settlements on foot of such transactions, make any secret profit for himself, or for persons with whom he is associated, by artificially inflating the rates & then settling on the basis of those rates.—MATHRA DAS-JAGAN NATH *v.* JIWAN MAL-GIAN CHAND (1927), 1 L. R. 9 Lah. 7.—**IND.**

1581 iii. —— ——.]—There are cases where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his clear knowledge is deemed to waive his right to profits by his implied consent. —UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1581 iv. —— ——.]—Pltf. signed a written agreement by which he agreed to pay deft. 2½ per cent. on £2,500 if deft. sold property for that sum, & authorised deft. to keep any amount paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by deft. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller :—*Held :* as the commission obtained from the purchaser by deft. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly honest, & he had not forfeited his right to be paid a commission by pltf.—STANTON *v.* HUMPHREY, [1923] E. D. L. 419.—**S. AF.**

—— —— *Remedies of principal—Principal may repudiate transaction—Not after affirming transaction.*]—UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1590 vi. —— —— ——.]—KILLEEN *v.* BUTLER (N. S.), [1929] 1 D. L. R. 52.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 14

1594 iii. ——.]—*Held :* pltf. could not recover any commission, because he was in a position where his interest was opposed to that of his principal,

1603. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1607. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1608a. —— ——.]—A hotel broker, who is acting as the vendor's agent for reward, is not entitled to enter into a second agency of the like kind on behalf of the purchaser, unless this arrangement is assented to with full knowledge by the original principal.—FULLWOOD *v.* HURLEY, [1928] 1 K. B. 498; 96 L. J. K. B. 976; 138 L. T. 49; 43 T. L. R. 745, C. A.

Annotation :—**Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1608b. —— **Although no pecuniary loss to employer.**]—(1) An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment. (2) The rule as to secret profits is applicable in spite of the fact that no pecuniary interest of the employer is involved.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743; 45 T. L. R. 609; 73 Sol. Jo. 514.

1616. *Add. Annotation :*—*As to* (2) **Consd.** Harrods, LTD. *v.* LEMON, [1931] 2 K. B. 157.

1621. *Add. Annotation :*—*Generally*, **Consd. A.-G.** *v.* Goddard (1929), 98 L. J. K. B. 743.

1623. *Add. Annotation :*—*As to* (2) **Apld.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1626. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1626a. —— **Crown servant.**]—A.-G. *v.* GODDARD, No. 1608b, *ante*.

1627. *Add. Annotation :*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1632. *Add. Annotations :*—*As to* (1) **Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267. *As to* (2) **Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. **Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234. *As to* (3) **Refd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1635. *Add. Annotations :*—**Apld.** Alexander *v.* Webber, [1922] 1 K. B. 642; *Re* A Debtor, [1927] 2 Ch. 367.

so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—D'ARCY *v.* LAND (1920), 47 N. B. R. 203; 52 D. L. R. 660.—**CAN.**

1594 iv. ——.]—Pltfs. sued to recover five Victory Bonds, or the proceeds thereof, handed by them to deft. H., a real-estate agent, in payment of the purchase-price of property owned jointly by the defts. Pltfs. alleged that H., knowing that they were relying, because of inexperience, on his advice had induced them to give him the bonds for investment in the property without disclosing his interest therein, & the ground pressed on the ct. for their return was that a fiduciary relationship arising from agency existed between them & H. which put him under the burden of establishing the perfect fairness of the transaction, although it was nowhere distinctly alleged that they had employed him as their agent to buy the property :—*Held :* H. never was pltf.'s agent, &, moreover, that he had fully disclosed his interest in the property before the sale. The dismissal of the action was, therefore, upheld.—HENDERSON *v.* HAMILTON, [1929] 1 D. L. R. 721; 1 W. W. R. 336; 38 Man. L. R. 67.—**CAN.**

1594 v. ——.]—The rule that where an agent for the sale of land is, without the knowledge of his principal, to receive a commission from the purchaser he cannot recover a commission from his principal applies to the case of an exchange of properties even though the two owners have listed them with the same agent.—OLIVER *v.* KEMP, [1929] 4 D. L. R. 1045; 3 W. W. R. 369; 38 Man. L. R. 310.—**CAN.**

sj. —— *Agent to raise money advancing sum himself.*]—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mtges., at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary; the fact of the rates of interest being specified prevents a conflict of interest & duty in the agent.—DALGETY *v.* GRAY, [1919] V. L. R. 586.—**AUS.**

m i. ——.]—The rules applicable to agents for the sale of land do not apply to a middleman employed merely to bring the vendor & purchaser together to enable them to make their own bargain; neither such a middleman nor the vendor is obliged to inform the purchaser of the payment by the vendor of a commission for introducing the purchaser.—CLARK *v.* HEPWORTH, [1918] 1 W. W. R. 147; 39 D. L. R. 395; 55 S. C. R. 614.—**CAN.**

m ii. ——.]—SMITH *v.* COMTOIS, [1927] 4 D. L. R. 832; [1927] S. C. R. 590.—**CAN.**

m iii. ——.]—The fact that an agent employed by one person to effect an exchange of properties is, after bringing it about, rewarded by the other party for doing so does not in itself constitute him the agent of the latter, though it may be some evidence that he was.—BROVEY *v.* BULL (Alta.), [1927] 4 D. L. R. 992; [1927] 3 W. W. R. 513.—**CAN.**

sk. —— *Agent having option to purchase.*]—GUNNING *v.* LUSBY (No. 1) (1922), 68 D. L. R. 89; 55 N. S. R. 84; *affd.*, [1925] 1 D. L. R. 101.—**CAN.**

sl. *Partner of agent to buy one of trustee vendors—Purchaser suffering no damage.*]—WOOLWORTH (F. W.) CO., LTD. *v.* POOLEY (1925), 35 B. C. R. 386.—**CAN.**

1599 i. *Joint adventurers.*]—GROSCH *v.* LOVERIDGE, SMITH *v.* LOVERIDGE (Ont.), [1930] 1 D. L. R. 309.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 15.—A.

1601 i a. ——.]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—FOSTER *v.* REAUME, [1924] 2 D. L. R. 951; *revsg.*, [1923] 4 D. L. R. 51; 54 O. L. R. 245.—**CAN.**

1608 vi. ——.]—Where an agent accepted commission from both parties & in consideration thereof his principal, since deceased, signed an agreement to pay the agent a reduced commission :—*Held :* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., LTD., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 15.—B.

sm. *Agent to do repairs—Agent doing work himself.*]—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repairs yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission :—*Held :* as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—SHERRARD *v.* BARRON, [1923] 1 I. R. 21.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 15.—D.

1635 iii. ——.]—Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—DAVIES *v.* DONALD, [1923] C. P. D. 295.—**S. AF.**

1635 iv. ——.]—A private arrangement between an agent on a commission basis & an employee of his principal whereunder the agent is to give the employee a rebate on certain of his commissions is ground for repudiating the contract; unless, possibly, where it can be shown that the arrangement did not conflict with the principal's interests.—COUTTS *v.* ACME MANUFACTURING CO., LTD., [1931] 3 D. L. R.

Add. Annotation :—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

Add. Annotation :—Generally, **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1638a. —— ——.]—Pltf. agreed to purchase a motor car from deft., & in accordance with the agreement he paid a deposit. Pltf. afterwards purported to repudiate the contract, wrongfully, as the judge found. During the pendency of an action by him for the recovery of the deposit pltf. died, & his exors. were substituted as pltfs., & they then discovered that at the time the contract was entered into deft. had promised, without the knowledge of pltf., to give pltf.'s chauffeur a share of the profit on the sale of the car if pltf. bought it. On the ground of that secret arrangement the exors. now sought to avoid the contract & to recover the deposit :—*Held :* the surreptitious dealing between deft. & pltf.'s chauffeur was a fraud on pltf. ; the fact that pltf., when he purported to repudiate the contract, was not aware of the fraud, did not prevent his exors. from now relying upon it ; & they were entitled on the ground of the fraud to avoid the contract & to recover the deposit.—ALEXANDER *v.* WEBBER, [1922] 1 K. B. 642 ; 91 L. J. K. B. 320 ; 126 L. T. 512 ; 38 T. L. R. 42.

1640. *Citation :*—For "BARTRAM *v.* LLOYD, No. 1607, *ante*," read "BARTRAM *v.* LLOYD (1904), 90 L. T. 357, C. A."

Add. Annotation :—Generally, **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1640a. ——.]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, &, without the knowledge or consent of A., paid L. a commission ; —*Held :* the payment of the commission to L. by B. rendered the contract voidable, if not void, against A.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367 ; 96 L. J. Ch. 381 ; 137 L. T. 507 ; [1927] B. & C. R. 127, C. A.

1643. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1649. *Add. Annotation :—As to* (1) **Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226.

1662. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1664. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

440 ; *affd.*, [1931] 3 W. W. R. 273 ; 4 D. L. R. 803 ; 40 Man. L. R. 9.—**CAN.**

q 1. —— *Defendant ignorant that commission payable by plaintiff.*]—On appeal from a judgment decreeing specific performance of an agreement for the exchange of lands, which had been brought about by agents, who acted for both parties, applt. relied especially on the defence that the agents had, without her knowledge, received a commission from both parties :—*Held :* the evidence failed to show that deft. knew that a commission was payable by pltf. to the agents, what evidence there was being to the contrary, & the appeal was allowed & the action dismissed.—MOORE *v.* JOHNSTON, [1934] 1 W. W. R. 815 ; 2 D. L. R. 679.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—A.

1664 xiv a. ——.]—Pltf. not allowed to recover commission on exchange of deft.'s land, as there was no agreement in writing to pay such commission as required by Alberta Stat. 1906, c. 27.—NUNNELEY *v.* BLATT, [1919] 2 W. W. R. 699 ; 47 D. L. R. 254.—**CAN.**

1664 xiv b. ——.]—Alberta Stat. 1906, c. 27, applies only to the case of a vendor's agent & does not apply to a commission or other remuneration claimed by a purchaser's agent.—POTTER *v.* LANDEN, [1920] 3 W. W. R. 1075.—**CAN.**

1664 xiv c. ——.]—Under an oral agency agreement an agent claimed commission for selling at a lump sum certain property. Shortly before the trial, Alberta Stat. 1906, c. 27, was amended :—*Held :* (1) the amending Act did not apply to an agreement made before its passing ; (2) the agent was entitled to compensation, fixed at the commission rate on the fair proportionate value of the goods, for sale of the chattels.—FILTEAU & DE ROUSSY *v.* NESBITT, [1920] 2 W. W. R. 892 ; 53 D. L. R. 514 ; 15 Alta. L. R. 522.—**CAN.**

1664 xiv d. ——.]—An agreement for the exchange of lands was on a principal form on one side of a sheet of paper, [illegible] two parts, the one called the offer & the other the acceptance, the one being placed immediately above the other ; the lower part only was signed by deft., & the upper was signed only by the person with whom deft. was making the exchange. The upper part contained a clause by which the person signing was to pay "the regular commission" ; & the lower part, signed by deft., contained the words : "I agree to pay a commission on $26,000 at 2½ per cent" on execution of the agreement to pltf. :—*Held :* the agreement to pay pltf. a commission did not satisfy Stat. Frauds, s. 13, as enacted by 6 Geo. 5, c. 24, s. 19, & amended by 8 Geo. 5, c. 20, s. 58, for the agreement was not in writing separate from the sale agreement, & an action for the commission could not be maintained.—DAVIS *v.* BEGGS (1919), 46 O. L. R. 169 ; 17 O. W. N. 63.—**CAN.**

1664 xiv e. ——.]—*Held :* the agreement to pay a commission, in order to be separate from the sale-agreement, need not be on a separate piece of paper.—HAYGARTH *v.* WEBB (1923), 54 O. L. R. 172.—**CAN.**

1664 xiv f. ——.]—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107 ; 47 D. L. R. 713 ; 15 O. W. N. 278.—**CAN.**

1664 xiv g. ——.]—*Held :* an addition to Stat. Frauds was not retrospective, & was no bar to an action based upon an agreement not in writing entered into before its enactment.

An Act which is a bar to an action to recover an agent's commission unless the agreement therefor be in writing is also a bar, where such agreement is not in writing, to an action by him to recover damages from his principal for preventing him from earning the commission.—SMITH *v.* UPPER CANADA COLLEGE, [1921] 1 W. W. R. 1154 ; 57 D. L. R. 648 ; 61 S. C. R. 413.—**CAN.**

1664 xiv h. —— *Construction of agreement.*]—MCINTYRE & CO. *v.* LAW, [1918] 2 W. W. R. 359 ; 13 Alta. L. R. 273 ; 40 D. L. R. 231.—**CAN.**

1664 xiv j. ——.]—Land Agents Act, 1912, s. 13, prevents a land agent from recovering commission under an oral agreement extending the period fixed for his authority by the document creating it.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD., [1918] N. Z. L. R. 119.—**N.Z.**

1664 xiv k. ——.]—Land Agents Act, 1912, s. 13, covers every action for remuneration for or in respect of the sale of land ; & the fact that an agent is not employed to sell land but only to find a purchaser does not exclude the operation of the sect.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD. (No. 2), [1919] N. Z. L. R. 65.—**N.Z.**

1664 xiv l. ——.]—The effect of Land Agents Act, 1912, s. 13, is to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xvi a. —— ——.]—MCLAUGHLIN & CO. *v.* BIRKS, [1925] 3 D. L. R. 968 ; [1925] S. L. R. 690.—**CAN.**

1664 xxi. —— *Agent acting for syndicate—Also member of syndicate.*]—Where an agent is interested himself, along with others, in a transaction which is being carried through by him, he *primâ facie* is not entitled to charge his co-adventurers any commission.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xxii. —— *Soldier Settlement Act*, 1919 (c. 71), *s.* 61.]—A real estate agent entitled to his commission on a sale made before the coming into operation of the above Act.—ROWLANDS & JOHNSTONE *v.* HOLLAND (1920), 53 D. L. R. 652.—**CAN.**

1664 xxiii. —— ——.]—Deft. listed lands with pltf. for sale, & pltf. negotiated with three soldiers, although, apparently, pltf. did not get into touch with the soldiers until after July 7, 1919, when the above Act came into force. Eventually the land was sold direct by the Soldier Settlement Board to the soldiers & pltf. claimed commission from deft. :—*Held :* pltf. not entitled to commission.—TODD *v.* POTVIN, [1922] 1 W. W. R. 479 ; 63 D. L. R. 233 ; 17 Alta. L. R. 226.—**CAN.**

1664 xxiv. —— ——.]—Lands were listed with the Soldier Settlement Board at the specified price of $3,800. Deft. agreed to purchase at $3,800. The Board refused to pay more than $3,200. Deft. then arranged with the owner that the latter should trans-

1669. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670a. —— ——.]—PYKE *v.* DAY (1844), 2 L. T. O. S. 286.

1683. *Add. Annotation :*—**Expld. & Distd.** Patent Castings Syndicate *v.* Etherington, [1919] 2 Ch. 254.

for the lands to the Board for $3,200, which was subsequently done, & he agreed to give, & did give, his promissory notes for the difference as part of the consideration & as in increase in price : —*Held :* the above sect. did not apply. —FLOWER *v.* SANDERSON, [1922] 3 W. W. R. 464 —**CAN.**

1664 xxv. ——.]—*In order to found a legal claim for commission there must not only be a causal, but also a contractual, relation between the introduction & the ultimate transaction of sale. Where there is no employment to sell express or implied, there can be no claim to remuneration.* —WEEDEN *v.* TURNER (1922), 68 D. L. R. 748 ; [1922] 3 W. W. R. 623. —**CAN.**

1664 xxvi. ——.]—MORRIS *v.* WALTON (1914). 28 W. L. R. 547 ; 18 D. L. R. 655 ; 24 Man. L. R. 361.— **CAN.**

1664 xxvii. ——.]—ECCLESTONE *v.* UNION MINING & MILLING CO., [1932] 3 D.L.R. 514 ; 45 B. C. R. 297.—**CAN.**

1664 xxviii. ——.]—An agent is not entitled to receive commission after he has ceased to be an agent unless the principal has so agreed.—GROVER *v.* STIRLING BONDING CO., [1935] 3 D. L. R. 181.—**CAN.**

1669 i. —— *Contract may be express or implied.*]—In an action to recover remuneration on a *quantum meruit* basis for procuring a purchaser for deft.'s oil leases :—*Held :* although pltf. had at first acted as a volunteer on his own initiative, the benefit of pltf.'s introduction of the purchaser had been completed at deft.'s implied request, & since deft. had accepted the purchaser & profited by pltf.'s services, pltf. was entitled to be remunerated on the ground of an implied contract to pay therefor.—JOHNSON *v.* FORBES, [1931] 2 W. W. R. 819 ; 2 D. L. R. 940 ; *revsd.* (1932), 1 D. L. R. 219 ; [1931] 3 W. W. R. 757 ; 26 Alta. L. R. 268.— **CAN.**

1671 viii. —— —— ——.]—In the absence of an express contract as to the commission which a real estate agent is to receive, he is entitled to a reasonable remuneration having regard to the circumstances of the particular case. The fact that the agents in a certain town have established a custom among themselves as to the rate of commission, does not render such custom binding upon those who do business with them in the absence of notice, express or implied, that the charges for their services are to be based on such custom.—GARLAND *v.* NEWMAN (1922), 66 D. L. R. 770 ; 32 Man. L. R. 1 ; [1922] 1 W. W. R. 867.—**CAN.**

1671 ix. —— —— *When implied contract negatived.*]—Deft. advertised his business for sale in a local newspaper. The following day pltfs., having seen the advertisement, called on deft. & inquired the price. Pltfs. then entered into communication with A., who ultimately bought the business : —*Held :* deft. had never considered that he was employing pltfs. to act as his agents, & pltfs. had failed to prove any implied contract by deft. to remunerate them.—CHAPPLE *v.* MOSS, [1920] 22 W. A. L. R. 74.—**AUS.**

1671 x. —— —— ——.]—Pltf. was asked by defts. to find a purchaser for a wagon, & he succeeded in introducing to defts. H., who bought the wagon from them. Defts. denied that it was agreed that pltf. should be paid a commission, but it was admitted that they knew that he received com-

——— for wagons sold by him. H. stated that he was sent to defts. by pltf. & would not have bought the wagon if he had not been persuaded by pltf. to do so :—*Held :* an agreement to pay commission was implied.— NICHOLAS *v.* DUMOULIN (1919), 46 D. L. R. 687.—**CAN.**

1671 xi. —— —— ——.]—*An implied contract to pay a real estate agent a commission for his services if he found a purchaser for a property is negatived by the fact that the owner refused to list the property with him, although she gave him the terms upon which she was willing to sell.*—TOLLEY & CO. *v.* SKUCE (1922), 63 D. L. R. 602.—**CAN.**

1671 xii. —— —— ——.]—*It is not a general principle of law that whenever a man, having found out from the owner of property the terms upon which it can be sold or leased, produces a third party who will buy or lease on those terms, he thereby & without more entitles himself to payment of a commission by such owner. There must be, in addition to this, an intimation to the owner that a commission would be expected from him in the event of a sale or lease being effected upon the terms stated. The intimation of expectancy of a commission not negatived by the owner who permits the other to go to the trouble of finding a customer in the expectation of earning a commission, may well be a fact from which a promise to pay a commission may be inferred. A mere volunteer who acts as a go-between between buyer & seller & ultimately produces a sale cannot upon that fact alone found a legal claim for commission, nor can a third party, who acting for a possible purchaser, obtains from a property owner terms of sale or lease, & thus brings about a completed transaction upon those identical terms, legally claim a commission from the owner in the absence of some promise to pay a commission, either express or implied.*—CHAMBERLIN *v.* MAW (1922), 68 D. L. R. 754 ; [1922] 1 W. W. R. 299.—**CAN.**

1679 iv. —— *Out of what fund payable.*]—The agent is entitled to pay himself his commission out of any money paid to him by his principal, without any appropriation by the latter. The right, however, does not extend to any sum paid to the agent by some third person on behalf of the principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R 586.—**N.Z.**

1679 v. —— —— *Deposit on sale of land.*]—A licensed land agent, who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1679 vi. —— —— ——.]—When a deposit on a sale of land is paid to a land agent he must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale ; but commission which is made irrecoverable by law is not a just allowance deductible by the agent.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R 558.—**N.Z.**

sn. *Amount of remuneration—Sale of mortgaged property—As if free from incumbrances.*]—Resp. placed a farm in the hands of applts. for sale or exchange & undertook, should a sale or exchange be effected by them, to pay commission at specified rates. Applts. found a purchaser for the property & an agreement was executed whereby resp. agreed to sell the property "as if free from incumbrances." Applts. sued for commission on the full value of resp.'s property unincumbered, but the magistrate held them entitled only to commission on the value of the equity of redemption :—*Held :* commission was payable on the gross price of the property sold.—KNYVETT & PRATT *v.* SUISTED, [1918] N. Z. L. R. 53.—**N.Z.**

so. *Necessity for compliance with Land Agents Act,* 1922.]—Pltf., who was a land agent, received instructions from deft. to sell deft.'s property, & obtained a buyer at the price authorised, who paid pltf. a deposit of £200. On the same day that pltf. sold the property deft. sold it to another buyer & in effect repudiated the contract of sale effected by pltf. on his behalf. On the repudiation of the contract pltf. utilised the deposit of £200 received from his purchaser in the purchase of another property by the first buyer. Pltf. notwithstanding that he did not forward the deposit, with the signed contract to deft., less his commission, sued deft. for commission on the sale. Deft. applied for a nonsuit on the ground that pltf. had not complied with the provisions of Land Agents Act, 1922, s. 8, deducting his commission from the deposit, & handing the balance to deft. The magistrate having nonsuited pltf. :— *Held :* sect. 8 deals with the application of trust moneys & if the deal was going through it was the duty of pltf. as agent to act in compliance with it, but if the deal was not going through, if there had been repudiation as the magistrate found sect. 8 had no application. Pltf. was accordingly entitled to payment of his commission. —BALLANTYNE *v.* CLOUTT (1927), 29 W. A. L. R. 93.—**AUS.**

1684 ia. —— ——.] —HAMEL *v.* PATENAUDE, [1925] 4 D. L. R. 1071 ; [1925] S. C. R. 493 ; *revsg.*, [1925] 4 D. L. R. 577 ; Q. R. 35 K. B. 333.— **CAN.**

1684 vi. —— ——.]—A distributor of machinery wrote its agent with reference to a prospective sale at $1,200 as follows : "Your commission 10 per cent. if we finance, 25 per cent. if you handle cash basis " :—*Held :* the phrase "handle cash basis " could not be given an alleged trade meaning that the agent should buy from his principal & resell to the prospective purchaser & assume full responsibility to him.— TRENWITH, LTD. *v.* JARVIS ELECTRIC CO., LTD. (B. C.), [1929] 4 D. L. R. 400 ; 2 W. W. R. 489.—**CAN.**

1684 vii. —— ——.]—A real-estate agent having earned a commission for procuring a purchaser of farm lands entered into an agreement with the vendors by which they undertook to pay him part of the commission in cash and a percentage of the balance each year "as it is paid off by the purchaser on the contract." Nothing was stated as to what would happen should the purchaser fail to make his payments or if the vendors should determine the contract. The vendors, having become dissatisfied with the purchaser, determined the contract of sale by agreement with the purchaser :—*Held :* the agent was entitled to recover the full amount of the commission.—LEVENICK EDDY & EDDY, [1931] 2 W. W. R.

1687. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

1687a. —— Commission on sale.]—(1) Although commissions on sales are usually paid by the vendor, an express bargain may throw the commission upon the purchaser.

(2) Where an agent is employed to make inquiries about a particular business with a view to his employer's acquiring it, on the terms of his being paid by the purchaser a commission on the purchase price if business is transacted, & where the parties are brought together through his agency, he is entitled to commission, even where the actual purchase is ultimately effected through the intervention of another agent, provided that his services are really instrumental in bringing about the transaction.—Bow's Emporium Ltd. *v.* Brett (A. R.) & Co., Ltd. (1927), 44 T. L. R. 194, H. L.

1699a. Agent for sale of lottery ticket—Sale by principal.]—Nash *v.* Shepheard (1931), 75 Sol. Jo. 331.

1684 viii. —— ——.]—Pltf. who as agent for defts. had procured a purchaser on the crop-payment plan for two sections of land owned by defts. agreed in writing to accept $1,280 as his commission, payable, as to $500 thereof, on Nov. 1, 1930, "if N. (the purchaser) farms under said purchase agreement, & delivers your grain," &, as to the remaining $780 "in the fall of 1931 under the same conditions of N. farming, & delivering the crop to you the same as 1930." Pltf. had recommended N. to defts. as a man fit & competent to perform his contract with them, but in the fall of 1930 his position was such that he was unable to carry on &, in consideration of a quit-claim deed, he was released from his contract. He had farmed the land in 1930, & delivered one-half share of the crop harvested by him to defts., but he did not summerfallow according to the terms of the contract, or pay the taxes or the interest on the unpaid purchase-money, & he negligently allowed 125 acres of standing crop to go to waste :—*Held :* the condition of pltf.'s right to the commission was, not merely the purchaser's delivery of deft.'s share of the grain grown on the land ; but also his farming the land in accordance with the terms of his purchase agreement, &, as he had not done so in 1930, pltf. was not entitled to the $500, nor to the additional $750.—Broatch *v.* Vermont Loan & Trust Co., [1931] 2 W. W. R. 775.—**CAN.**

1684 ix. —— *Sufficiency of—Statute of Frauds—Commission on sale of land.*]—Rice & Sons *v.* Toronto Harbour Commission (1935), 2 D. L. R. 481 ; O. R. 243.—**CAN.**

sp. *Action for commission on sale—Defence denying sale—Effect.*]—When in an action for commission on a sale the principal's pleadings deny the agreement for sale, such denial indicates his repudiation of the agreement to pay the agent, &, under the doctrine of anticipatory breach, the latter, on proving his right to the commission, is entitled to judgment for the whole amount thereof, even though under the agreement it was to be paid in instalments at dates which are yet *in futuro*.—Hanton *v.* Stedman, [1925] 1 W. W. R. 642.—**CAN.**

sq. —— *Tariff rate of Estate Agents Institute.*]—Plein & Co. *v.* Jacobson & Son, [1928] App. D. 25.—**S. AF.**

sr. *Commission—Meaning of.*]—The word "commission" may quite properly, both from a legal & commercial point of view, be employed as denoting a lump sum which represents no percentage on anything.—Campbell *v.* National Trust Co., Ltd., [1931] 1 W. W. R. 465 ; 1 D. L. R. 705.—**CAN.**

ss. *Voluntary agent.*]—A voluntary agent is not entitled to commission although he brings about a sale, if there is no employment as agent & no ratification.—Haffner *v.* Northern Trusts Co. (1910), 14 W. L. R. 403.—**CAN.**

sv. *Solicitor acting as real estate broker.*]—Safer *v.* Rotstein, [1937] 3 W. W. R. 332.—**CAN.**

sw. *Registration—When necessary.*]—The fact that a real estate agent who is required by sect. 32 of The Security Frauds Prevention Act, 1929, as amended, to be registered thereunder, becomes registered before bringing an action to recover a commission on a transaction which took place before he was registered, does not enable him to maintain the action.—McCrea *v.* Belanger, [1936] 2 W. W. R. 202 ; 3 D. L. R. 65 ; 66 Can. C. C. 293 ; 44 Man. L. R. 197.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1. B. (a).

1693 vii. ——.]—A sale of land directly by the owner, after it had been listed for sale with a broker, does not entitle the latter to his commission, merely because it happened to be sold to a purchaser with whom he had negotiated in a previous transaction.—Gilbert Brothers *v.* McDill (1917), 36 D. L. R. 324.—**CAN.**

1693 viii. ——.]—Where a person discovers that another is considering the purchase of a piece of land & then ascertains from the owner that he will sell & pay a commission, but does not afterwards communicate with the prospective buyer, & the latter & the owner complete the sale themselves, there is no commission payable by the owner.—Langton *v.* Nicholson, [1918] 1 W. W. R. 908.—**CAN.**

1693 ix. ——.]—An agent for the sale of coal who had merely interviewed a customer & notified his principal that he had done so :—*Held :* not entitled to a commission on an order given about two months later direct to the principal, & after an inspection of the coal by the customer.—Bond *v.* Sturgeon Consolidated Collieries, Ltd., [1918] 2 W. W. R. 912 ; 41 D. L. R. 147.—**CAN.**

1693 x. ——.]—In the absence of a special agreement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to a commission where the owner sells to a purchaser whom he himself has found. Where the owner found the person who subsequently purchased, although the agent subsequently spoke to the same person, the agent was not allowed the commission.—Barager *v.* Wallace, [1919] 2 W. W. R. 858 ; 48 D. L. R. 158 ; 12 Sask. L. R. 301.—**CAN.**

1693 xi. ——.]—Where an agent spoke to one about certain land & the latter refused to buy, but some time afterwards, hearing through another channel that the land could be rented, went to the owner's place for the purpose of renting it & was induced by the owner to buy it :—*Held :* the agent was not entitled to commission.—Taylor *v.* Rabbitts, [1920] 1 W. W. R. 1024 ; 53 D. L. R. 59 ; 13 Sask. L. R. 198.—**CAN.**

1693 xii. ——.]—Deft. desired to acquire or gain control of certain shares in a co. Pltf. outlined to him a plan, & for carrying out the arrangement one-third of the shares were to be given to pltf. Pltf. worked on the undertaking & made considerable progress, but before the scheme was carried out deft. obtained what he wanted in other ways & without making use of pltf.'s services :—*Held :* pltf. could not recover the agreed commission.—MacIntyre *v.* Miller (1922), 70 D. L. R. 218 ; [1922] 3 W. W. R. 529.—**CAN.**

1693 xiii. ——.]—As a general rule & in the absence of any stipulation to the contrary a principal, who employs a house agent on commission to find a purchaser for a house, retains the right as against the house agent of selling the house to a third party, who has not been introduced by the house agent directly or through another agent at any time before a proper offer is brought to him by the house agent. If by so selling he prevents the house agent from earning his proper commission he is not liable in damages, for the act of selling is a rightful act as against the house agent.—Boose *v.* Zeederberg & Duncan, [1918] C. P. D. 283.—**S. AF.**

1693 xiv. ——.]—An auctioneer was employed to sell property by auction on condition that if the reserve price was not reached no commission was to be charged. The reserve price not being reached, the property was not sold. A prospective purchaser, who was present at the auction & who knew who the owner of the property was, was about to approach the owner after the conclusion of the auction with a view to negotiating for the purchase of the property when the auctioneer formally introduced them. After protracted negotiations the prospective purchaser bought the property :—*Held :* the auctioneer's agency terminated the moment he failed to sell by auction.—Martin *v.* Currie, [1921] T. P. D. 50.—**S. AF.**

1693 xv. ——.]—Deft. listed his property with pltfs., real estate agents, for sale at a fixed price & on named terms. Pltfs. mentioned the property to one F., who thereafter negotiated with deft. for the purchase of the property, & concealed from him the fact that pltfs. had sent him. Deft., then, without any knowledge of pltfs.' intervention, sold to F., on terms less advantageous to himself than those contemplated in the agreement between pltfs. & himself. There was nothing in the circumstances to put deft. upon his inquiry as to whether pltfs. had sent F. to him :—*Held :* pltfs. could recover neither a commission on the sale nor anything for their services by way of *quantum meruit*.—Elvin *v.* Clough (1908), 7 W. L. R. 762 ; 8 W. L. R. 590.—**CAN.**

1693 xvi. ——.]—In an action for an agent's commission on the sale of a farm by deft. to one C. held that pltf. could not recover ; because he had not been instrumental in bringing the parties together, C. having been discovered by deft., & because pltf.'s employment with respect to C. was of a special character under the terms of which he was not to be entitled to a commission unless he succeed in selling the land to C. on the terms stated ; he failed to secure an offer from C. & deft. sold to C. direct.—Wiebe *v.* Garvey, [1930] 2 W. W. R. 468 ; 3 D. L. R. 992 ; 24 S. L. R. 554.—**CAN.**

1700 iv. ——.]—If the seller has

1705a. ——.]—Where an agent is instructed, but not as sole agent, to sell a house, & he procures an offer to purchase "subject to contract," & that offer is accepted by the vendor "subject to contract," but the sale subsequently goes off owing to the vendor's opened negotiations with a proposed buyer, but the negotiations are broken off, & later the buyer renews the same through an agent, the agent is entitled to commission.—FITZGERALD *v.* BUCKLEY, [1924] 4 D. L. R. 38; *affg.* 25 O. W. N. 538.—**CAN.**

1702 xxxix. ——.]—H. agreed with S., who had certain properties in his hands for sale, that he should receive half of the commission if he effected a sale. At the time a likely purchaser, C., was known to both parties. H. pressed C. to purchase, but after a time, as a matter of policy, let the matter drop, intending to approach C. again on a fitting occasion. In the meantime a member of S.'s staff indirectly approached C., who decided to purchase:—*Held:* H. had established a chain of causation between his efforts & the result, & he was entitled to half the commission.—HEALY *v.* SAUNDERS (1921), 17 Tas. L. R. 32.—**AUS.**

1702 xl. ——.]—Pltf. as agent for the owner of certain property introduced it to A. The owner was asking £17 17*s.* per week. Pltf. gave A. the key, on which was a label bearing only the name of the owner. A. told pltf. the property was unsuitable, & returned the key. About a fortnight later A., through seeing the owner's name on the label & consulting the telephone directory, discovered the owner's address, & met him to discuss the letting of the property, but did not tell him that she had seen pltf. After negotiations between A. & the owner extending over some days the owner agreed to let the property to A. for twelve months at £13 13*s.* per week:—*Held:* pltf. was entitled to commission.—SYMONS *v.* CALLIL, [1923] V. L. R. 49.—**AUS.**

1702 xli. ——.]—Deft. gave to pltfs. written authority to sell her land on terms, one of which was "price, very lowest, £10,000." Pltfs. brought the property under the notice of A., who got into personal communication with deft. & decided that it would suit him in every way, except as to price. After a delay of some weeks deft. & A. resumed negotiations, which led to a sale of the property to A. for £7,300:—*Held:* the relation of buyer & seller was really brought about by pltfs., who were entitled to commission.—BIRTCHNELL *v.* MORRIS, [1913] V. L. R. 201.—**AUS.**

1702 xlii. ——.]—Agent:—*Held:* entitled to recover commission.—GAMBLE *v.* EXCELSIOR LIFE ASSURANCE CO. (1917), 36 D. L. R. 592.—**CAN**

1702 xliii. ——.]—In 1913, deft. co. employed pltfs., brokers, to sell its lumber property at a minimum price of $110,000.00, & agreed to pay a commission on the purchase price. During the remainder of that year & the whole of 1914, pltfs. were working on this proposition, but failed to effect a sale. In 1915 the selling price was reduced to $75,000.00. In 1916, deft. co. sold to a purchaser introduced by pltfs. for $65,000.00:—*Held:* pltfs. were entitled to commission on the purchase price.—JARDINE *v.* PRESCOTT LUMBER CO., LTD., (1917), 44 N. B. R. 505.—**CAN**

1702 xliv. ——.]—Where land is listed with a real estate agent for sale & is afterwards sold by the vendor directly to a purchaser introduced by the agent, the latter is entitled to his commission, even though the terms of sale given in the listing as the basis on which the agent is to negotiate are not strictly adhered to.—KING *v.* SCHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

1702 xlv. ——.]—NUNNELLY *v.* ONSUM, [1921] 1 W. W. R. 506: 56 D. L. R. 599; 16 Alta. L. R. 455.—**CAN.**

1702 xlvi. ——.]—Deft. agreed to pay pltfs. commission on the sale of certain land, & agreed that it was an exclusive listing, subject to notice of withdrawal, which was not given. Pltfs. submitted the land to P. on terms of the listing & introduced P. to deft., who later, without pltfs.' knowledge or consent, entered into an agreement with P. for sale of the land & of certain chattels used in farming it. The price of the land was somewhat less, & the cash payment considerably less, than as given in the listing:—*Held:* pltf. was wrongfully deprived of the right which the listing gave him to earn his commission.—GILBERT BROTHERS, LTD. *v.* KEISER (1922), 69 D. L. R. 713; [1922] 2 W. W. R. 1228.—**CAN.**

1702 xlvii. ——.]—Agent:—*Held:* not entitled to recover commission.—KENNEDY *v.* VICTORY LAND & TIMBER CO., [1922] 3 W. W. R. 145; 68 D. L. R. 201; *revsd.*, [1922] 3 W. W. R. 683; 70 D. L. R. 868.—**CAN.**

1702 xlviii. ——.]—If the relation of buyer & seller is really brought about by the act of the agent, he is entitled to a commission although the actual sale has not been effected by him, but he must show that some act of his was the *causa causans* or the efficient cause of the sale.—BUNTING *v.* HOVLAND & WATKINS (1923), 33 B. C. R. 291.—**CAN.**

1702 xlix. ——.]—Deft. wishing to sell his house placed it in an agent's hands, fixing a net price. The agent introduced P. but negotiations failing, deft. cancelled the agent's instruction to sell. Some time later deft. & P. agreed upon terms & a sale resulted:—*Held:* commission was payable on the amount P. first offered through the agent.—FRASER *v.* HARRISON, [1924] 1 D. L. R. 765; 56 N. S. R. 431.—**CAN.**

1702 l. ——.]—Pltf. procured A., B., & C. to enter into an agreement to purchase deft.'s mineral claims on certain terms of payment, upon which pltf. was to receive a commission as payments were made from time to time. Under this agreement a portion of the purchase price was paid & pltf. got his commission, but the agreement was afterwards cancelled. Subsequently E., who had advanced to A. a considerable part of the money paid by him under the agreement, entered into an agreement direct with deft. to purchase the claims paying $10,000 down, & pltf. sought to recover commission on that sum:—*Held:* pltf. was not the effective cause of the sale.—OLSEN *v.* PEARSON, [1924] 1 D. L. R. 1097.—**CAN.**

1702 li. ——.]—R. M. BUCHANAN CO., LTD. *v.* EBY, [1927] 2 D. L. R. 819; [1927] 1 W. W. R. 929; 21 Sask. L. R. 438.—**CAN.**

1702 lii. ——.]—NICHOLSON *v.* BUSE (Alta.), [1927] 3 W. W. R. 799.—**CAN.**

1702 liii. ——.]—An agent gave G. a card to view certain property. After inspection G. decided not to buy as the price was too high. Some months later G. saw a "for sale" notice on the property which reminded him that he had previously inspected the property. He then, without further communication with the agent, negotiated with the owner direct & purchased for a smaller amount:—*Held:* the *causa causans* of the sale was the previous introduction through the agent who was entitled to his commission on the lower purchase price.—DOYLE *v.* GIBBON, [1919] T. P. D. 220.—**S. AF.**

1702 liv. ——.]—Certain property given for sale by the owner to an auctioneer at a fixed commission was not sold, the reserve not being reached, & was thereafter given to the auctioneer for sale privately. L., on passing the property, saw a notice up referring intending purchasers to R., but being aware of the fact that the auctioneer had been selling the property went to the auctioneer, who referred him to the owner. L. thereupon went direct to the owner & bought the property after having told him that he came on his own behalf & not at the instance of any agent:—*Held:* the auctioneer was entitled to his commission.—TREGASKES *v.* MEIKLE, [1922] T. P. D. 317.—**S. AF.**

1702 lv. ——.]—Where a vendor concludes a contract of sale with a party with whom his real estate agent has been negotiating in ignorance that he is such a party, the agent is entitled to his commission if the circumstances are such that the vendor ought to have made inquiries which would at once have revealed the facts.—GRIFFITHS *v.* ANDERSON, [1925] 4 D. L. R. 976.—**CAN.**

1702 lvi. ——.]—NELSON *v.* HIRSCHBORN, [1927] App. D. 190.—**S AF.**

1702 lvii. ——.]—TRENWITH *v.* INTERNATIONAL HARVESTER CO. (B.C.), [1928] 2 D. L. R. 121.—**CAN.**

1702 lviii. ——.]—A real estate agent who brings his principal into relations with the actual purchaser is the effective cause of the sale & entitled to his commission, although the principal sells behind his back & the price paid by the purchaser is less than the sum at first demanded by the principal. In the present case wherein the purchase-money was paid into deft. bank, a creditor of the vendors, under an arrangement under which it undertook to pay the agent his commission out of the sums paid in, held that the fact that the property was first transferred to the bank's manager who afterwards transferred it to the purchaser introduced by the agent did not take away the agent's right to the commission, since the transfer to the manager was taken merely to secure, in the interests of the bank & the other creditors of the vendors, a sale to said purchaser; &, moreover, the agent was entitled to succeed against the bank on the ground that, whether the sale originally contemplated *i.e.*, that from the vendors direct to said purchaser, was or was not called off, the bank's manager had agreed that the bank would pay the agent the commission if the transfer from the manager to said purchaser went through.—LADD *v.* BANQUE CANADIENNE NATIONALE (Man.), [1928] 2 W. W. R. 272.—**CAN.**

1702 lix. ——.]—The agent is entitled to commission if he has been the means of bringing the parties together, although he may not actually have introduced them to each other, & although the actual sale has not been effected by him.—BRETT & CO., LTD. *v.* BOW'S EMPORIUM, LTD., [1928] S. C. (H. L.) 19.—**SCOT.**

1702 lx. ——.]—The owner of a property of 1,698 acres, put it into the hands of an estate agent with the following instructions: "Price £1 per acre, or lease for a term of three years with option of purchase at 2*s.* per acre. I hereby authorise you to sell the above property." The agent obtained a lessee for three years, with an option of purchase at £1,682. Shortly before the expiration of the lease, the lessee

obtaining a better offer through another person, the agent cannot recover commission from the vendor as there is no binding contract of sale, & he cannot recover damages from the vendor, as the vendor has not committed any breach of contract whereby the agent was prevented from earning his commission.—RAYMOND *v.* WOOTEN (1931), 47 T. L. R. 606 ; 75 Sol. Jo. 645, D. C.

Annotations :—**Dbtd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Apld.** Musson *v.* Moxley, [1936] 1 All E. R. 64.

1705b. ——.]—OAKHILL *v.* COWEN (1934), 78 Sol. Jo. 337.

1706a. —— ——.]—BOW'S EMPORIUM, LTD. *v.* BRETT (A. R.) & Co., LTD., No. 1687a, *ante*.

asked the agent to try & get an extension of the option for twelve months, &, on the latter's advice, visited the owner for that purpose, the agent at the same time writing to the owner informing him of the proposed visit. An extension of the lease was granted, but the price of the option was increased to £1,800. The lessee exercised this option, & became the purchaser of the property :—*Held* : there was evidence sufficient to justify a finding that the agent was the efficient cause of the sale, & that therefore he was entitled to commission thereon.—UPJOHN *v.* ILLINGWORTH (1928), 29 S. R. N. S. W. 4 ; 46 N. S. W. W. N. 5. —**AUS.**

1702 lxi. ——.]—GREAVES *v.* SALISBURY (Sask.), [1929] 3 D. L. R. 289.—**CAN.**

1702 lxii. ——.]—SIMONITE *v.* MOXAM, [1929] 1 D. L. R. 825 ; 1 W. W. R. 513 ; 38 Man. L. R. 113 ; *affd.*, [1930] S. C. R. 334 ; 2 D. L. R. 991.—**CAN.**

1702 lxiii. ——.]—If an owner has contracted to pay a commission to an agent if the latter finds a purchaser, & the relation of buyer & seller is really brought about by some act of the agent, he is entitled to the commission although the actual sale has not been effected by him.—GRAVES *v.* MCLEAN, [1931] 2 W. W. R. 895.—**CAN.**

1702 lxiv. ——.]—KEIFER *v.* ENDERS, [1931] 3 D. L. R. 189.—**CAN.**

1702 lxv. ——.]—EASTERN REALTY CO. *v.* WOODWORTH (1932), 5 M. P. R. 511.—**CAN.**

sr. —— *Purchaser acting behind agent's back.*]—*Held* : principal liable to pay full commission on conclusion of a contract of sale with the purchaser. —MERRITT *v.* DOHERTY, [1925] 3 D. L. R. 797.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B (b).

1703 x. ——.]—One of two real estate agents with whom property was listed for sale :—*Held* : entitled to commission on a sale initiated by him but completed by the other agent, to whom the purchaser made known his wish to buy the property after it had been brought to his attention by pltf.—GRIFFITHS *v.* ANDERSON, [1926] 2 D. L. R. 657 ; [1926] 1 W. W. R. 956 ; 35 Man. L. R. 480.—**CAN.**

1703 xi. ——.]—Deft. placed a property in the hands of several agents, including pltf., for sale. Pltf. found a purchaser who was willing to pay the price as ultimately fixed for the property, & despatched a telegram stating that fact to deft. Before deft. received the telegram, however, he had in fact sold the property to another person through another agent. In an action by pltf. for commission :—*Held* : he had not complied with the implied condition attached to the promise to pay commission, namely, that he should find an able & willing purchaser & introduce him to the vendor before the vendor had in fact sold the property to some other person, & was therefore not entitled to recover commission.—DAINTON *v.* CHIVERS, [1928] V. L. R. 555 ; 49 A. L. T. 299 ; [1928] Argus L. R. 394.—**AUS.**

1706 ix. Delete the words " & entitled to commission."

1706 xiii. —— ——.]—Pltf. introduced to deft. A., who wished to purchase a property for his son, B. Deft.'s house was eventually transferred to the trustees of C.'s estate, in which A.'s family was interested, & the purchase-money was paid by the trustees at the instance of A. Deft. alleged that another agent, though aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale :—*Held* : the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. *v.* COTTON (1919), 15 Tas. L. R. 17.—**AUS.**

1706 xiv. —— ——.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE *v.* HOLDEN (1920), 40 D. L. R. 386.—**CAN.**

1706 xv. —— ——.]—The commission on a sale of real estate was given by the ct. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN *v.* SNELGROVE & GARDEN, [1921] 1 W. W. R. 305 ; 14 Sask. L. R. 69 ; 57 D. L. R. 283.—**CAN.**

1706 xvi. —— ——.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly with him resulting in a purchaser being obtained. B. continued his services, which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry :—*Held* : B. entitled to commission.—GREER *v.* GODSON, [1921] 2 W. W. R. 209 ; 60 S. C. R. 653 ; 56 D. L. R. 696.—**CAN.**

1706 xvii. —— ——.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties failed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co. :—*Held* : pltf. was not entitled to commission.—NEVE *v.* LEESON, [1921] 1 W. W. R. 904.—**CAN.**

1706 xviii. —— ——.]—After pltfs., with whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it :—*Held* : pltfs. were entitled to commission.—BROOK & ALLISON *v.* HENDRICKS (1922), 66 D. L. R. 826 ; 15 Sask. L. R. 439 ; [1922] 2 W. W. R. 580.—**CAN.**

1706 xix. —— ——.]—Deft. listed a property with pltfs. with instructions to find a purchaser at the price of $5,000. A month later deft. listed the property with another broker at $1,750, the second broker having his offices across the hall from pltfs.' offices in the same building. Pltfs. interested S. in the property & brought her to view it. Shortly after S. went to pltfs.' offices with a view to purchasing, & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at $4,750. She went into pltfs.' offices, discussed the sale but went out without making the purchase, crossed the hall & purchased the property from the second broker at $4,750 :—*Held* : pltfs. were entitled to their commission —TURNER, MEAKIN & CO. *v.* FIELD (1923), 33 B. C. R. 56.—**CAN.**

1706 xx. —— ——.]—CARR *v.* LA DRECHE, [1927] 2 D. L. R. 480 ; [1927] 1 W. W. R. 574 ; 38 B. C. R. 97.—**CAN.**

1706 xxi. —— ——]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf. :—*Held* : pltf.'s right to commission depended on the terms of his authority, & this did not authorise any commission on the sale of the stock.—ROWE *v.* BUTLER, [1921] N. Z. L. R. 437.—**N.Z.**

1706 xxii. —— ——.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also agreed to let pltf. know should he be prepared to sell his house for a smaller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded :—*Held* : pltf. was entitled to the commission agreed upon.—VAN DER WALT *v.* HOFMEYR, [1920] C. P. D. 50.—**S. AF.**

1706 xxiii. —— ——.]—A. agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D. :—*Held* : B. was not entitled to commission.—GODDARD *v.* ARNOLD, [1922] T. P. D. 167.—**S. AF.**

1706 xxiv. —— ——.]—WALLACE *v.* WESTERMAN (B. C.), [1928] 3 D. L. R. 939.—**CAN.**

1706 xxv. —— ——.]—KORCHINSKI *v.* NATIONAL TRUST CO., MCDOUGALL *v.* NATIONAL TRUST CO. (Alta.), [1929] 1 D. L. R. 268.—**CAN.**

1706 xxvi. —— ——.]—BELL-IRVING *v.* MACAULAY NICOLLS, LTD., [1931] S. C. R. 276 ; [1931] 1 D. L. R. 381 ; *revg.*, [1930] 2 D. L. R. 326 ; 42 B. C. R. 140.—**CAN.**

1707 ii. ——.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale :—*Held* : the one who first through his advertisement attracted & interviewed

1711. *Add. Annotation :—As to* (1) **Consd.** Price, Davis *v.* Smith (1929), 141 L. T. 490.

1718. *Add. Annotations :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. *Generally*, **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1726. *Add. Annotations :*—**Refd.** Houlder Howard *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1738. *Add. Annotation :*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

1739. *Citations :*—For the existing citations substitute as follows :—

(1887), as reported in 58 L. T. 96; 3 T. L. R. 836, H. L

Annotations :—For "**Mentd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595," read "**Refd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595."

Add. Annotations :—As to (2) **Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490. **Distd.** Mote *v.* Gould (1935), 152 L. T. 347. *Generally*, **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577.

1740. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1741. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1746. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

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the purchaser & directed him to the owner was the efficient cause of the sale & entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—BUFFET *v.* WALLER & LAZARNICK, [1920] 2 W. W. R. 404; 52 D. L. R. 499; 30 Man. L. R. 437.—**CAN.**

1707 iii. —— *Loan broker.*]—The office of a loan broker is to bring together the borrower & the lender who is willing to open negotiations on a reasonable basis, & when he has done that, he has done all that is necessary for him to do & earn his commission.—VASAUJI MOOLJI *v.* KARSONDAS TEJPAL (1927), I. L. R. 52 Bom. 627.—**IND.**

1716 vii. ——.]—A broker, employed by a house owner to find a purchaser for the house, is entitled to receive the remuneration agreed upon, when the sale takes place in favour of a purchaser introduced by the broker, although the actual negotiation or completion of the sale may not have taken place through the direct intervention of the broker.—ROOPJI & SONS *v.* DYER MEAKER & CO. (1930), I. L. R. 52 All. 688.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (c).

t. i. *S. P.* SATCHIDINANDA DUTT *v.* NRITYA NATH MITTER (1923), I. L. R. 50 Calc. 878.—**IND.**

t ii. ——.]—Where a land agent is employed to sell or exchange the property of his client, & commission is to be paid to him when he has "effected" a sale or exchange of such property, his right to commission accrues when he procures a valid contract for the sale or exchange of such property.—NIGRO *v.* WILSON, [1924] N. Z. L. R. 834.—**N.Z.**

1722 i. *Completion of entire contract.*]—GREER *v.* GODSON (1918), 40 D. L. R. 218.—**CAN.**

c i. —— ——.]—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale :—*Held :* pltf. was entitled to the commission.—DONER *v.* LOOSE, [1920] 2 W. W. R. 388; 53 D. L. R. 39; 30 Man. L. R. 350.—**CAN.**

c ii. —— ——.]—When an estate agent is employed on the ordinary terms as to commission to find a purchaser of land, & he introduces a purchaser with whom the principal enters into a contract of sale, the agent is *prima facie* entitled to his commission.—MACARTHUR & MACLEOD PTY., LTD. *v.* CAREY, [1931] V. L. R. 269; Argus L. R. 261.—**AUS.**

st. —— *Commission payable on receipt of purchase-money—Payment by promissory notes.*]—An agreement provided that commission was "to become due & payable when the purchase-money or any part thereof has been paid" :—*Held :* defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—CROSS *v.* WOOD (1921), 64 D. L. R. 105; 50 O. L. R. 15.—**CAN.**

sa. —— *Commission payable for services already rendered.*]—When it has been definitely agreed to pay an agent commission for his services in negotiating a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—CARMICHAEL *v.* BOWERS (1922), 67 D. L. R. 515.—**CAN.**

sb. ——.]—*Held :* pltf.'s claim was not affected by changes made in the agreement between purchaser & defts. If defts. saw fit to vary the terms of the agreement & accept property in lieu of cash, that should not prevent pltf. from obtaining payment of his commission, which he earned when he procured a binding agreement for he sale of the property.—CRAWFORD *v.* IMPERIAL TRUST CO. OF CAN., [1929] 4 D. L. R. 913; 64 O. L. R. 433.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (a).

1729 iii. —— *Sale of remainder of land.*]—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations deft. repeatedly urged pltf to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer :—*Held :* deft. was not entitled to commission on the sale.—MCANDREW *v.* GRAY (1920), 20 S. R. N. S. W. 635.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (b).

sw. *Transaction similar — Further sale.*]—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for £25,000 he was to receive £5,000. In 1914 through the instrumentality of pltf. the lease was transferred to S. &, on payment by S. of £5,000, pltf. received £1,000 as commission. In 1919 A. & S. sold the lease to T. for £14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T. :—*Held :* pltf. was not entitled to commission.—DEWDNEY *v.* MATHESON, [1923] S. A. S. R. 105.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—D.

sa. *Agent to obtain money for project—Expansion & modification of proposal.*]—*Held :* the agent was entitled to recover commission.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593; S. C. R. 314; *varying*, [1925] 3 D. L. R. 757.—**CAN.**

sb. *Agent to procure loan to third party—Loan raised by third party.*]—Pltf. claimed a commission of 1 per cent. from deft. on the ground that the latter had requested him to raise a loan of £27,500, subsequently increased to £35,000, not on behalf of deft. but on behalf of one F. It was admitted that deft. had sold a certain property to F. for a sum of £45,000, £10,000 to be paid in cash & the balance to be secured by a bond over the property; through pltf.'s efforts the manager of a certain insurance co. was prepared to advance £27,500 to F. on a first mtge. over the property & that thereafter a sum of £35,000 was in fact advanced by the insurance co. upon that security, together with certain additional securities. Deft. denied that he had made the contract alleged with pltf. & stated that the real arrangement between them was that pltf. should raise a loan of £27,500 on behalf of deft. himself & not for F., & further, that if F. paid off the whole amount of the purchase price in cash pltf. was not entitled to any commission whatever, & that F. had personally raised on his own behalf a loan of £35,000 not on the security of the property alone but on additional securities belonging to him. At the trial pltf. applied for leave to amend his declaration so as to base his claim on a mandate to raise a loan of £27,000 only. The trial ct. refused to grant the amendment & held pltf. had earned commission on £35,000, the sum actually advanced to F., but as pltf. had declared himself satisfied with £275 awarded the latter amount. Deft. having appealed :—*Held :* commission of 1 per cent. was promised pltf. by deft. if the former was instrumental in obtaining a loan of £27,500 from the insurance co. to F.; further, in view of application for amendment, which should have been granted, it was unnecessary to consider whether pltf. was entitled to commission on the whole sum advanced. &, as on the facts, it was clear that £27,500 would have been advanced on the property alone, the fact that £35,000 had been lent

1746a. Agent to sell property—Agent himself buying property—With consent of principal.]—Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—HOCKER *v.* WALLER (1924), 29 Com. Cas. 296.

1746b. —— At stated price—Sale at lower price—With consent of principal.]—PRICE, DAVIES & Co. *v.* SMITH, No. 1780a, *post.*

1748. *Add. Annotation :*—**Distd.** Mote *v.* Gould (1935), 152 L. T. 347.

1751. *Add. Annotation :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1751a. ——.]—Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to pltfs. a commission note in these terms: "We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same :—*Held :* (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable ; (2) the latter claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit.*—HOWARD-HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. CO., [1923] 1 K. B. 110 ; 92 L. J. K. B. 233 ; 128 L. T. 347 ; 38 T. L. R. 757 ; 66 Sol. Jo. 682 ; 16 Asp. M. L. C. 95 ; 28 Com. Cas. 15.

Annotations :—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1752a. Commission payable on sale—Long lease upon the property, together with additional security, did not debar pltf. from recovering commission on £27,500.—SAMMEL *v.* JACOBS & Co., [1928] App. D. 353.—**S. AF.**

sc. *Agent to sell—Third party entering into partnership with principal.*]—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C. :—*Held :* as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—BORDER *v.* EDLEY, [1920] O. P. D. 19.—**S. AF.**

p i. —— ——.]—Pltfs. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltfs. offered $35,000 commission should pltfs. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber had been logged :—*Held :* the sale was not a sale within the contract.—RORAY *v.* NIMPKISH LAKE LOGGING CO., LTD., & GARLAND, [1919] 2 W. W. R. 105.—**CAN.**

y i. —— ——.]—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £600 :—*Held :* as the buyer offered less than £800, pltf. was not entitled to commission.—ROBINSON *v.* EVES, [1917] S. A. L. R. 71.—**AUS.**

y ii. —— ——.]—*Held :* as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—PRENTICE *v.* MERRICK, [1917] 3 W. W. R. 1060 ; 24 B. C. R. 432 ; 38 D. L. R. 388.—**CAN.**

y iii. —— ——.]—An owner in Apr. listed with an agent certain land for sale at $35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for $30 an acre on a small cash payment :—*Held :* in order to earn his commission the agent had to obtain a purchaser for the land & crop at $35 per acre.—FITCHELL *v.* LAWTON, [1919] 3 W. W. R. 728 ; 49 D. L. R. 185.—**CAN.**

y iv. —— ——.]—Deft. listed his farm with pltfs. for sale at $38 an acre. Deft. sold the land at $37 an acre to one introduced by pltfs. :—*Held :* pltfs. were entitled to commission.—SMITH *v.* WRIGHT, [1919] 3 W. W. R. 1094 ; 49 D. L. R. 408 ; 12 Sask. L. R. 491.—**CAN.**

y v. —— ——.]—When a proprietor goes to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—PALMER *v.* HARVEY (1922), 65 D. L. R. 769 ; 15 Sask. L. R. 152 ; 1 W. W. R. 231 ; *affg.* (1920), 55 D. L. R. 703 ; 14 Sask. L. R. 19.—**CAN.**

y vi. —— ——.]—Where the contract is that the agent is not to be paid a commission unless he procures a purchaser at a specified figure, the fact that a sale is made by the owner at a lower price does not entitle the agent to remuneration by way of *quantum meruit.*—GRIFFITH *v.* FREDERICKSON, [1926] 4 D. L. R. 50 ; [1926] 2 W. W. R. 680 ; 36 Man. L. R. 54.—**CAN.**

y vii. —— ——.]—WEAVER *v.* DIXSON, [1928] 4 D. L. R. 226 ; 62 O. L. R. 419.—**CAN.**

y viii. —— ——.]—WEIR *v.* GRAND, [1931] 1 D. L. R. 581 ; 66 O. L. R. 245.—**CAN.**

sd. —— *Third party taking land in a trade.*]—Agents who had been promised a commission should they obtain a purchaser for land at a certain price :—*Held :* not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—BROWN *v.* PATCHELL, [1919] 3 W. W. R. 701 ; 49 D. L. R. 158.—**CAN.**

se. *Agent to exchange—Exchange of other properties.*]—A real estate agent is entitled to his commission on an exchange of properties where he brings the parties together & engages actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—DUNN *v.* SINCLAIR, [1923] 1 D. L. R. 426.—**CAN.**

sf. *Agent to obtain signature of wife—Obtaining signature of husband.*]—Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband :—*Held :* as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—SMITH & SMITH *v.* DINGLE & HOLMES, [1923] 3 D. L. R. 68 ; 3 W. W. R. 49.—**CAN.**

effected—No general employment.]—Pltf., who was not an estate agent, but occasionally acted as such, informed deft. he & some friends (including one S.) might purchase certain property which deft. was offering for sale, & deft. named a price of £25,000. Later pltf. told deft. that he was not going on as a principal, & in Dec. 1933, deft.'s solrs. wrote to pltf.: "Our client instructs us to say that if S. or the people he represents purchase this property at the price of £25,000 he will be quite willing to pay you the usual scale commission." The property was not sold, but in Oct. 1934, a building lease for 99 years was entered into between deft. & a co. represented by S. at a ground rent of £1,250 *per annum*, which was worth twenty to twenty-three years' purchase, namely, £25,000 to £28,750. Pltf. brought an action in which he claimed scale commission from deft.:—*Held:* as there had been no general employment of pltf., nor had deft. promised to pay pltf. something for any purchaser he might introduce, pltf., who had done no more than bring deft. & S. together, was not entitled to recover.—MOTE *v.* GOULD (1935), 152 L. T. 347.

1754. *Add. Annotations:*—**Expld. & Apld.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All. E. R. 1066; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

1755. *Add. Annotations:*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bental, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1755a. ——.]—Pltfs., who were estate agents, were instructed by defts. to find a purchaser for certain property "subject to contract." Pltfs. later wrote to defts. in these terms: "With reference to our conversation . . . we confirm your acceptance of the offer made by . . . Major H., to purchase the freehold of this property subject to contract. . . . We take this opportunity of confirming that in the event of the sale materialising we shall look to you for payment of the usual scale commission." Defts. replied as follows: "We have to acknowledge receipt of your letter . . . & confirm our telephone conversation with you . . . to accept the offer . . . for this property, subject to contract. . . . We also confirm that, in the event of this sale being satisfactorily completed, we shall pay you the usual scale of commission." An engrossment of the contract was signed by Major H., but defts. then refused to proceed, whereupon pltfs. claimed commission or, alternatively, damages for breach of an implied term that defts. would do nothing to prevent pltfs. earning their commission. It was found as a fact that Major H. was ready & willing to buy the property:—*Held:* although in an agreement "subject to contract," the matter, as between vendor & purchaser, must be deemed to remain in negotiation until contracts are exchanged, there must, as between pltfs. & defts., be implied a term that if the purchaser introduced by pltfs. was ready & able to complete the contract, defts. would not by refusing to complete prevent pltfs. from earning their commission, & as defts. had without just excuse refused to complete, they were liable to pltfs. in damages, the proper measure of which in the circumstances was the amount of commission pltfs. would have earned had the transaction been completed.—TROLLOPE (GEORGE) & SONS *v.* MARTYN BROS., [1934] 2 K. B. 436; 103 L. J. K. B. 634; 152 L. T. 88; 50 T. L. R. 544; 78 Sol. Jo. 568; 40 Com. Cas. 53, C. A.

Annotations:—**Consd.** Oakhill *v.* Cowan (1934), 78 Sol. Jo. 337; Musson *v.* Moxley, [1936] 1 All E. R. 64; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476. **Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1755b. ——.]—Pltfs., who were estate agents, were instructed by deft. to find a purchaser for certain property belonging to him, part of which he informed them was let to a tenant at £180 *per annum*. Pltfs. found an intending purchaser "subject to contract," but after negotiations had proceeded for some time deft. informed pltfs. that although the lease of the part of the premises referred to stated the rent to be £180, he had verbally allowed the tenant to pay £145 only, & would decline to go back on this arrangement. On becoming aware of this the intending purchasers declined to proceed unless the purchase-price was reduced, & as this was not agreed to by deft. the transaction went off. On a claim by pltfs. to recover commission or damages for breach of contract the county ct. judge gave judgment in their favour for the full amount they would have earned as commission if the transaction had gone through. On appeal:—*Held:* before an

PART VIII. SECT. 3, SUB-SECT. 1.—E. (a).

1754 xix. ——. *Principal altering date for giving possession.*]—An agent with whom land has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner insisting on a date for giving of possession later than that at first stated.—HIGGINS *v.* MITCHELL, [1921] 1 W. W. R. 252; 57 D. L. R. 288; 31 Man. L. R. 60.—**CAN.**

1754 xx. ——.]—Deft.:—*Held:* liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—BALLS *v.* MCGREGOR (1922), 68 D. L. R. 718; 32 Man. L. R. 196; [1922] 2 W. W. R. 1247; *affs.*, 66 D. L. R. 696.—**CAN.**

1754 xxi. ——.]—Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction:—*Held:* the *onus* of proof was on the agent suing for commission.—REGINA BROKERAGE & INVESTMENT CO. *v.* KIETNER (1922), 70 D. L. R. 75; [1922] 3 W. W. R. 657.—**CAN.**

1754 xxii. —— *Agent taking undue advantage of principal.*]—A real estate dealer, who acted for a foreigner with an imperfect knowledge of English, took an undue advantage of his principal in representing an improvident transaction to be a very desirable one, which he should enter into in substitution for an exchange which had fallen through. The principal having repudiated the second transaction, the ct. refused to allow the agent the commission he would have obtained thereunder had it been completed, but allowed him commission on a *quantum meruit* based on the amount of commission contemplated by the first transaction. — BURNS *v.* MINCHAU (Alta.), [1926] 3 W. W. R. 791.—**CAN.**

1754 xxiii. ——.]—TURNER MEAKIN & CO. *v.* CALEDONIA & BRITISH COLUMBIA MORTGAGE CO., LTD., [1927] 2 D. L. R. 395; 38 B. C. R. 103.—**CAN.**

award of damages could be made equal to the commission pltfs. would have earned had the transaction gone through, it must be found as a fact that but for the action of deft. a binding contract with the purchaser would have been entered into; on the facts of this case this could not be said inasmuch as, except as to the price, none of the terms had been agreed; & therefore there must be a new trial to ascertain what damage pltfs. had actually suffered by being deprived of the chance of earning their commission.—TROLLOPE (GEORGE) & SONS *v.* CAPLAN, [1936] 2 K. B. 382; [1936] 2 All E. R. 842; 105 L. J. K. B. 819; 155 L. T. 365; 52 T. L. R. 630; 41 Com. Cas. 325, C. A.

Annotations :—**Consd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1755c. ——.]—Deft. verbally agreed to employ pltf., an estate agent, to sell certain property. On July 14, 1935, pltf. obtained an offer from W. & Co. to purchase the property & he communicated this offer to deft., who accepted it by letter on July 6, 1935, subject to a contract being signed & a deposit being paid within "say 10 days." W. & Co. wrote on July 18, 1935, expressing willingness to pay a deposit, but only upon the contract being signed. No deposit was paid & on July 30, 1935, deft. repudiated the contract. In an action for commission alleged to be payable on the introduction of a willing purchaser :—*Held :* (1) on the evidence the condition as to the payment of a deposit within ten days had not been waived by deft.; (2) deft. was entitled to repudiate the sale upon the failure of the intended purchaser to pay the deposit within 10 days; (3) if the condition had been waived pltf.'s claim would have succeeded on the principle that where an agreement is "subject to contract" an agent is entitled to damages in lieu of commission in the event of non-completion of the contract due to default on the part of the vendor. —MUSSON *v.* MOXLEY, [1936] 1 All E. R. 64; 80 Sol. Jo. 128.

1755d. ——.]—An agent for the sale of 3 shops in course of erection by builders secured an agreement for the purchase of the same upon certain terms agreed to by the builders who were in fact the vendors. When the agreement was mentioned to the solr. for the persons financing the builders, he refused to allow the sale to go on, upon the ground that it was completely one-sided & too advantageous to the buyer. The builders then refused to go on with the sale & the agent sued for his commission :—*Held :* the fact that upon further consideration the bargain is far too favourable for the purchaser is not a just excuse for refusing to proceed with the sale, & the agents were entitled to damages for the loss of the opportunity of earning their commission, & such damages ought to be assessed at half the amount of the commission.—BAMPTON (RONALD) & PARTNERS *v.* GARNER & SONS, LTD., [1937] 3 All E. R. 438; 81 Sol. Jo. 749.

1755e. ——.]—An agent procured an agreement for the sale of shares for the sum of £200,000, upon which he was entitled to £16,000 commission. The condition of his agreement with deft. co. was: "in the event of our making the purchase." The negotiations were continued up to the day for completion, when the purchase was not completed by reason of the purchasers requiring certain further arrangements which the vendor was held entitled to refuse to consider :—*Held :* (1) there was an implied term in the agreement with the agent that the purchasers would not by their wilful default prevent him from earning the commission, & the purchasers had made such wilful default; (2) the measure of damages was the full amount of the commission, as the agreement to purchase was complete in every respect, & was not the subject of any further negotiation or inquiry into title.—KAHN *v.* AIRCRAFT INDUSTRIES CORPN., LTD., [1937] 3 All E. R. 476; 81 Sol. Jo. 610, C. A.

1759. *Add. Annotations :*—**Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842. **Refd.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1761. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1763. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1764. *Add. Annotation :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1758 viii. ——.]—Deft. having a property for sale, gave an authority to pltf. in the following terms: "I hereby authorise you to sell my property, for the price of £2,600 nett. Any amount over & above this figure to be paid to you as commission on the sale." Pltf. found a purchaser who entered into a contract to purchase for £2,750. The bargain went off, however, owing to the purchaser's insistence on the removal of some restrictive covenants, which deft. was unable to effect :—*Held :* pltf. having found a purchaser, & having brought about a contract for sale at a price of £2,750, was entitled to the sum of £150 by way of commission, & the subsequent failure of the transaction, through no default on his part, did not deprive him of his right to recover that amount from deft.—PEACOCK *v.* TARLETON (1928), 28 S. R. N. S. W. 561; 45 N. S. W. W. N. 164.—**AUS.**

sk. *Principal refusing to compete with other buyers.*]—Pltfs. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltfs. advanced deft. $2,000 to buy lambs. When the time for taking delivery of the lambs arrived, pltfs. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for :—*Held :* pltfs. had defaulted & were estopped from saying that deft. did not complete his contract.—NEW ENGLAND DRESSED MEAT & WOOL CO. *v.* PATRICK BROTHERS, [1923] 1 D. L. R. 153.—**CAN.**

1763 i. *Principal declining to accept loan.*]—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment of the money under the loan :—he was entitled to his commission.—WHITESIDE *v.* WALLACE SHIPYARDS, LTD. (1919), 27 B. C. R. 40; 45 O. L. R. 434.—**CAN.**

1766 v. ——.]—SMITH *v.* UPPER CANADA COLLEGE (1920), 48 O. L. R. 120; 54 D. L. R. 548; 18 O. W. N. 370.—**CAN.**

1766 vi. ——.]—Pltf., a ship & general broker, sold to N. a ship on deft.'s behalf. The purchase price was £140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. £20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract :—*Held :* upon the cancellation of the contract of sale, pltf.'s right under his special contract with deft. was determined & his claim for commission failed.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

sl. *Principal not negotiating in faith.*]—Where under an

1767. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1768. *Add. Annotations :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842.

1768a. Principal selling ship to charterers—During currency of charter.]—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period :—*Held :* it was not an implied term of the contract that the shipowners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—FRENCH (L.) & Co. *v.* LEESTON SHIPPING Co., [1922] A. C. 451 ; 91 L. J. K. B. 655 ; 127 L. T. 169 ; 38 T. L. R. 459 ; 15 Asp. M. L. C. 544 ; 27 Com. Cas. 257, H. L.

Annotations :—**Folld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Expld.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1769. *Add. Annotations :*—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1770. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1771. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1775. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bentall, Horsley Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1776. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1776a. —— **" Private treaty " sale.**]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employ-

to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—McINTYRE & Co. *v.* LAW, [1918] 2 W. W. R. 359 ; 13 Alta. L. R. 273 ; 40 D. L. R. 231.—**CAN.**

sm. *Principal selling ship to charterers —Commission payable under charter.*]—Pltfs. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission :—*Held :* pltfs. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but, especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—ROXBURGH *v.* OROSBY & Co., [1918] V. L. R. 118.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (b).

1770 iii. ——.]—ROSTEIN *v.* CANADIAN NATIONAL STEAMSHIP Co., LTD. (1934), 49 B. C. R. 105.—**CAN.**

b i. ——.]—*Held :* the agent was not entitled to commission.—FLANAGAN *v.* CHAPMAN, [1926] 1 D. L. R. 159 ; 58 O. L. R. 94.—**CAN.**

e i. ——.]—Deft, who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of $250, & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the $250 :—*Held :* deft. was entitled to retain the $250, but was not entitled to anything further.—DE WOLF *v.* DELMAGE (1922), 65 D. L. R. 42 ; 17 Alta. L. R. 441 ; [1922] 1 W. W. R. 1129.—**CAN.**

e ii. ——.]—A broker, commissioned to obtain a purchaser for a piece of land, found a purchaser, who failed to complete the sale within a fixed period owing to his inability to pay ready money. The principal entered into a new arrangement direct with the purchaser, & such new arrangement was subsequently rescinded by the principal :—*Held :* the broker was not entitled to commission.—FOUCAR & Co. *v.* MUDALIAR (1923), I. L. R. 2 Ran. 45.—**IND.**

e iii. ——.]—M. placed a property in the hands of G., a commission agent, for sale or exchange. G. obtained a person who was willing to buy provided M. would accept as part payment of the price certain properties owned by him. There was a restrictive covenant upon one of the latter properties which the other party was unable to remove when called upon to do so by M. As a result thereof the contract was mutually rescinded :—*Held :* although the purchaser was willing, he was not able to pay the contract price, & therefore that G. was not entitled to recover commission from M.—GILFORD *v.* MCLEAN (1929), 29 S. R. N. S. W. 336 ; 46 N. S. W. W. N. 132.—**AUS.**

f i. ——.]—W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value equivalent to the amount of the unpaid purchase price of the shares :—*Held :* W. had not received payment for the shares, & the commission was not earned.—CECIL *v.* WETTLAUFER, [1923] S. C. R. 69 ; 1 D. L. R. 352 ; *affg.* 20 O. W. N. 260.—**CAN.**

li. ——.]—PROGRESSIVE AGENCY *v.* BENNETT, [1928] N. Z. L. R. 100.—**N.Z.**

sn. *Third party repudiating contract.*]—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract :—*Held :* the agent who negotiated the contract was entitled to commission on the sale.—BOND *v.* DAWSON, [1923] St. R. Qd. 63.—**AUS.**

sp. ——.]—Where a purchaser repudiated the agreement of sale, the vendor acquiescing :—*Held :* pltfs. as agents were not entitled to commission.—MOTOR FARMING & DEVELOPMENT Co. & DAVIDSON *v.* SMITH, [1923] 2 D. L. R. 1178 ; 1 W. W. R. 1469.—**CAN.**

st. ——.]—Pltf. employed deft. to find a purchaser for certain land, & agreed to pay him commission if he succeeded. Deft. found persons willing to take an option, & he prepared an option agreement which was entered into by the parties. The purchase price was $3,000, & the cash payment was $300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this $300 to deft., who paid pltf. $150, retaining the balance, $150, as his commission on the whole purchase price. The purchasers refused to carry out the purchase :—*Held :* pltf. was entitled to the $150 retained by deft. as commission.—CARLSON *v.* THOMPSON, [1923] 3 W. W. R. 869.—**CAN.**

sa. ——.]—Pltf. entered into the following sale agreement with deft. :—" I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Deft. found a purchaser, entered into an agreement of

ment being that commission is payable to him on the purchase price on sales by "private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms, he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been completed.—KNIGHT, FRANK & RUTLEY *v.* GORDON (1923), 39 T. L. R. 399.

1776b. ——.]—JAMES *v.* SMITH (1921), [1931] 2 K. B. 317, n.; 100 L. J. K. B. 585, n.; 145 L. T. 457, n., C. A.

Annotations:—**Consd.** Martin *v.* Perry & Daw (1931), 47 T. L. R. 377. **Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 140 L. T. 376; Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1776c. —— **Onus of proof.**]—Pltf. put his business in the hands of defts., estate agents, to find a purchaser, commission being payable "on a sale being effected." Defts. found a purchaser R., who paid a deposit to defts. as agents for pltf., & entered into a binding contract with pltf. to purchase the business. For reasons, of which no evidence was given by defts., R. did not complete. Pltf. thereupon claimed the above deposit from defts. Defts. admitted the claim, but counterclaimed a larger sum as commission:—*Held:* defts., to be entitled to commission, were bound to introduce a purchaser ready, willing & able to complete; the onus of showing that R. was such a purchaser lay on them, & they had failed to discharge that onus, & were consequently not entitled to commission.—MARTIN *v.* PERRY & DAW, [1931] 2 K. B. 310; 100 L. J. K. B. 582; 145 L. T. 455; 47 T. L. R. 377; 75 Sol. Jo. 259.

Annotation:—**Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1780a. ——.]—Pltfs. D. & Co., who were partnership agents, claimed to recover from deft. the sum of £92 10*s.*, being the balance of commission on the sale of deft.'s business premises at T., effected by pltfs. Deft. had advertised the property for sale, & pltfs. had sent him a "particular form" which was in blank, except the words: "I hereby instruct you to sell my business premises as per particulars above, which I declare to be correct, & agree to pay you a commission 5 per cent. on the total price paid by the purchaser & appoint you agents," which, as pltfs. alleged, they had inserted on the form before sending it to deft. On July 8, 1928, deft. filled in the form & returned it to pltfs., but he subsequently denied that the above words were on the form when he signed it. A firm of G. & Co., estate agents, believing that they had secured a likely customer for the property, communicated with pltfs. & sent their representative, P., to them, & pltfs. introduced P. to deft. Deft. alleged that P. had been introduced to him as a purchaser, but pltfs. contended that he had been introduced to deft. as another agent who would be likely to find a purchaser. Ultimately P. found a purchaser in one T., who agreed to pay £4,000 for deft.'s property. In the "particulars form" deft. had stated: "Lowest price for goodwill, fixtures, & fittings, £4,500," but he eventually accepted £4,000. Meanwhile pltfs. & G. & Co. had agreed to share the commission. Deft. subsequently paid commission amounting to £107 10*s.* to G. & Co. As this amount was £92 10*s* short of £200, the 5 per cent. commission on £4,000, pltfs. on Nov. 2, 1928, issued a writ claiming the balance from deft. The completion of the purchase did not take place until Nov. 15, 1928, & deft. contended (*inter alia*) that he was not liable to pay commission until he had received the purchase price. The jury found (*a*) that the words in relation to the 5 per cent. commission were in the particulars form of July 8, 1928, when deft. signed it, (*b*) that the property was sold to T. through the instrumentality of pltfs., & (*c*) that G. & Co. were not acting as sub-agents for pltfs.:—*Held:* (1) pltfs. were not to be deprived of their commission by reason of the fact that the property was ultimately sold for £4,000 instead of the £4,500 asked by deft. in the particulars form; (2) the jury's findings that the words about 5 per cent. commissions were in the document when deft. signed it, the property was sold through the instrumentality of the pltfs., & that G. & Co. were acting as sub-agents for pltfs., could not be interfered with; & (3) although pltfs. had done all the work required to entitle them to their commission, they were not in a position to claim payment of their commission until the purchase was completed, & as the writ was issued thirteen days before the date of the actual completion of the purchase, it was issued too soon & the action failed.—PRICE, DAVIES & CO. *v.* SMITH (1929), 141 L. T. 490; 45 T. L. R. 542; 73 Sol. Jo. 401, C. A.

1782. *Add. Annotation:*—*Generally*, **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

sale with him, & a deposit of $200 was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed:—*Held:* the sale never having been completed, deft. was not entitled to any commission.—LEAMAN *v.* LAWTON (1923), 51 N. B. R. 110.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (e).

sb. *Agent himself paying deposit—To prevent sale of land until definite purchaser secured.*]—Where an agent for sale of land paid his principal $200, leading the principal to believe it was paid as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be secured:—*Held:* the agent was not entitled to any commission.—CRERER & PATTERSON *v.* BRAYBROOK, [1919] 3 W. W. R. 422.—**CAN.**

1780 ix. —— *Agreement to pay commission on work done.*]—Pltf., who was employed by deft. to sell a station property & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay to pltf. a certain sum "representing commission due to" pltf. "on these transactions." The sale & leasing were never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right:—*Held:* pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—FRY *v.* BYRNE (1917), 23 C. L. R. 589.—**AUS.**

1783. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1784. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1785. *Add. Annotations :*—**Apprvd. & Apld.** French *v.* Leeston Shipping Co., [1922] 1 A. C. 451. **Refd.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

1786. *Add. Citation :*—23 Com. Cas. 121.
Add. Annotation :—**Consd.** Affréteurs Réunis Soc. Anon. *v.* Leopold Walford (London), [1919] A. C. 801.

1786a. —— **No hire earned—Special clause in charterparty.**]—A clause in a time charterparty provided that " a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty :—*Held :* (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners; (2) a custom by which commission was payable only if hire was earned under the charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME *v.* LEOPOLD WALFORD (LONDON), LTD., [1919] A. C. 801; 88 L. J. K. B. 861; 121 L. T. 393; 35 T. L. R. 542; 14 Asp. M. L. C. 451; 24 Com. Cas. 268, H. L.; *affg.* S. C. *sub nom.* LEOPOLD WALFORD (LONDON) *v.* AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME, [1918] 2 K. B. 498, C. A.

Annotations :—*As to* (1) **Consd.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York [1933] A. C. 70.

1791. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 L. T. R. 99; Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

1791a. ——.]—HOWARD HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. Co., No. 1751a, *ante*.

1793. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1784 iv. ——.]—Deft. placed a property in the hands of pltf., a commission agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Deft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out :—*Held :* pltf. was not entitled to any commission or other remuneration from deft.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

1784 v. ——.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. C. R. 107; [1922] 3 W. W. R. 388.—**CAN.**

sc. *Agent abandoning negotiations.*]—*Held :* not entitled to commission.—HALES *v.* THOMSON (Man.), [1927] 3 W. W. R. 156; *affd.*, [1928] 1 W. W. R. 127.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (d).

1787 ii. ——.]—A claim upon a *quantum meruit* for services as agent in respect of certain properties disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected; in suing upon a *quantum meruit*, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—WEEDEN *v.* TURNER (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—**CAN.**

1789 i. *No right where express con-* ——.]—Where a contract of agency stipulates the circumstances in which the agent will be entitled to a commission, compensation by way of *quantum meruit* will not be allowed in circumstances where no commission can be claimed; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

1789 ii. —— *Claim based on usage*]. —Where an agent's claim was based on a usage :—*Held :* a special contract arose between the parties, & a *quantum meruit* was excluded.—SAMSON *v.* MCKAY, [1923] N. Z. L. R. 40.—**N.Z.**

1789 iii. ——.]—ELLIOTT *v.* WARBURTON, [1925] 4 D. L. R. 1070.—**CAN.**

1789 iv. ——.]—A writing was signed by deft. agreeing to pay pltf. $200 upon the " due completion of the exchange." An agreement for an exchange was obtained by pltf., but there was no " due completion of the exchange " :—*Held :* as the special agreement made the commission payable upon an event which did not happen, no recovery as upon a *quantum meruit* could be had.—PRICE *v.* HABERMAN, [1931] 4 D. L. R. 251; O. R. 421.—**CAN.**

1793 ii. ——.]—Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of $80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at $60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off :—*Held :* there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a *quantum meruit* basis.—BANNERMANN *v.* BRADLEY, [1919] 3 W. W. R. 952.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—F.

1802 ii. ——.]—FLETCHER *v.* CAMPBELL (1913), 29 O. L. R. 501.—**CAN.**

1802 iii. ——.]—Where the agent is to be paid out of the purchase money & the sale falls through, the only money the principal receives being the deposit, the agent cannot recover. The deposit is merely a guarantee of performance.—FLETCHER *v.* CAMPBELL (1913), 29 O. L. R. 501.—**CAN.**

w i. ——.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—CLAVELLE *v.* RUSSELL, [1918] 1 W. W. R. 900; 40 D. L. R. 61; 11 Sask. L. R. 111.—**CAN.**

w ii. —— *Agreement as to payment of commission obtained by agent by misrepresentation as to nature of document.*] —*Held :* the principal was not bound by such agreement.—TAYLOR *v.* SMITH, [1926] V. L. R. 100; 47 A. L. T. 122; *affd.*, [1926] V. L. R. 271.—**AUS.**

sd. *Commission payable out of purchase-money — Total purchase-money paid into bank—Disclaimer by seller of interest in sum agreed to be paid to agent.*] —An agent for the sale of goods was authorised to ask a price which would give him a certain amount for his own benefit. The buyer paid the total purchase price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the agent have. The buyer then claimed that amount as his :—*Held :* the money belonged to the agent.—DEVALL *v.* GORMAN, CLANCEY & GRINDLEY, LTD., [1918] 3 W. W. R. 221; 42 D. L. R. 573.—**CAN.**

se. —— *No purchase-money paid.*] —Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received :—*Held :* the principal was not liable.—THORNDYKE-TRENHOLME REALTY CO. *v.* LYALL SHIPBUILDING CO., [1921] 3 W. W. R. 333; 59 D. L. R. 490.—**CAN.**

sf. —— *Purchase-money payable in instalments—Failure to keep up instalments.*] —An agreement between vendors of land & their agents stated that, whereas the agents had procured purchasers for certain parcels of the vendor's land, the vendor agrees to pay the agents a commission of a specified amount & interest in instalments, said

1812. *Add. Annotations :*—**Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842.

1813. *Add. Annotation :*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813a. —— —— **Contract of sole agency—Property to be left in agent's hands for specified period.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813b. —— —— ——.]—Deft., the owner of property, appointed pltfs., who were estate agents, his "sole agents for the sale of the property" for a stipulated period, it being agreed that, if pltfs. introduced a purchaser, they should receive a commission of 5 per cent. on the purchase price. During the period of the agency deft. negotiated personally & quite apart from pltfs. with a purchaser who had never had any communication with pltfs. & whom pltfs. did not know. The result of the negotiations was that the property was sold to this purchaser. Pltfs. thereupon claimed from deft. damages for breach of contract on the ground that, in selling the property direct to the purchaser, he had acted in breach of his contract with them & had thereby deprived them of their commission :—*Held :* (1) pltfs. were not entitled to damages, as the contract contained no express prohibition against a sale by deft.

instalments of principal & interest to be made out of, & to be a certain percentage of, the moneys to be collected annually from the purchasers. No provision was made as to what was to happen if the purchasers should default in their payments before the agents had received the full amount of their commission. This contingency occurred, owing to the fact that the purchasers, who abandoned their contract, were financially worthless :—*Held :* in the absence of a provision providing for said contingency, the agents were entitled to recover the full commission agreed upon.—WESTERN COLONIZERS, LTD. *v.* BURSAW, [1931] 2 D. L. R. 379; 25 S. L. R. 243; 1 W. W. R. 188.—**CAN.**

sg. —— —— ——.]—Deft. gave a written listing to pltf., a real-estate agent, for the sale of his farm at a certain price, the terms to be a certain cash payment & the balance on half-crop payments. The commission was stated to be "five per cent. on all sales." Pltf. being unable to find a purchaser willing to make the cash payment, then introduced a father & son to whom deft. agreed to sell the farm for a certain price to be paid by yearly payments of principal & interest "out of a half-share of the crop." Deft. then agreed in writing to pay the plaintiff a commission of a certain amount payable partly in cash within two weeks, "the balance by paying 25 per cent. of all money paid by said purchaser on principal as soon as the same are received." Deft. made the cash payment to pltf., & also other payments which amounted to 25 per cent. of all he ever received from the purchasers on principal. The purchasers being unable to meet their obligations, deft. took proceedings against them & the land reverted to him, nothing having been paid by the purchasers on the principal within the preceding three years. Pltf. then sued for the balance due him on the basis of a 5 per cent. commission :—*Held :* the meaning of the second agreement was that it was a condition precedent to deft.'s liability to pay any commission, over & above the cash payment, that instalments of capital should first be paid by the purchasers.—LEVENICK *v.* TURNBULL, [1932] 1 W. W. R. 74; 1 D. L. R. 620; 40 Man. L. R. 134.—**CAN.**

sh. ——.]—PRECISION MACH. & FDRY., LTD. *v.* INDUSTRIAL SECURITIES, LTD. (Alta.), [1929] 4 D. L. R. 241.—**CAN.**

sj. *Commission payable out of profit on resale—Resale at large nominal profit—No part of purchase-money paid.*]—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of $1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of purchase & went out of possession of the land :—*Held :* the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—HANTON *v.* ROYAL TRUST CO., [1923] 3 D. L. R. 809; 2 W. W. R. 1046.—**CAN.**

sk. *Commission payable out of specified instalment—Instalment not paid.*]—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the purchase price payable on a specified date :—*Held :* the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410 : 2 W. W. R. 631 : 34 Man. L. R. 239.—**CAN.**

sm. *Sale of land on crop payment plan — Commission payable out of vendor's share of crop—Provision for cesser of right to commission on termination of agreement.*]—LESLIE *v.* GRAHAM, [1929] 3 D. L. R. 712 : W. W. R. 65; 23 S. L. R. 605.—**CAN.**

sn. *Agent working under commission & drawing account arrangement.*]—*Semble :* unless an agreement between the parties provides otherwise, where an agent is working on a commission basis & his employer allows him a drawing account against his commissions the employer cannot, after the relationship is terminated, collect from the agent anything beyond the commissions he has earned.—ROBOTHAM *v.* DOMINION MOTOR CO. & KICKLEY, [1931] 1 W. W. R. 373.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 viii. —— *Option to purchase.*]—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over $29,000. After the option had lapsed he introduced to the owner a purchaser of the land at $35,000 :—*Held :* A. was not entitled to the excess over $29,000, but could only recover *quantum meruit*.—ACKLES *v.* BEATTY (1919), 59 S. C. R. 640; 52 D. L. R. 691.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—K.

1i. —— ——.]—An agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—SMITH (JUDGE) *v.* RENFREY, [1920] 22 W. A. L. R. 61.—**AUS.**

1ii. —— ——.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a *quantum meruit*.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. L. R. 107; [1922] 3 W. W. R. 388.—**CAN.**

mi. —— *Principal's implied right to sell himself.*]—Where the owner of property puts it in the hands of an agent for sale upon commission, there is, in default of stipulations to the contrary in the contract of agency, a right in the owner to deal with his property, without liability to the agent, so long as the agent's mandate is not performed.—DONOWA *v.* WEBSTER (1929), 29 S. R. N. S. W. 318; 46 N. S. W. W. N. 124.—**AUS.**

mii. —— ——.]—An agency agreement for the sale of a farm contained the following clause : "Your agency to hold until one month after being notified in writing by me that it shall cease, but for not less than a year from date. If a sale is made through any person during your acting as such agent, you are to be paid the aforesaid commission." Two years elapsed but no purchaser was found. Without giving any notice to terminate the agreement, deft. then sold the farm, without the intervention of any other agent or person :—*Held :* as the sale was not made "through any person" pltf. was not entitled to commission.—BARKLEY *v.* BUSH, [1929] 3 D. L. R. 360; 63 O. L. R. 678.—**CAN.**

ni. ——.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for $7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft. himself sold the property to M. for $7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for $7,500 cash, & the offer was accompanied by a cheque for $1,000; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the B. offer & cheque :—*Held :* pltf. was entitled to recover the agreed payment for his services.—GORMAN *v.* YOUNG (1921), 64 D. L. R. 51; 49 O. L. R. 162.—**CAN.**

sp. *Sub-agent—Appointed by person expecting appointment as agent.*]—A co. which expected to be appointed agents for the Govt. of Western Australia, agreed to employ W as sub-agent. The co. failed to secure the appointment & terminated W.'s employment :—*Held :* the co. warranted that they would be appointed govt. agents, & they were liable to W.—OCKERBY & CO., LTD. *v.* WATSON (1918), 25 C. L. R. 431.—**AUS.**

himself, & the implication of such a prohibition was not necessary to give business efficacy to the transaction; (2) on the terms of the contract, pltfs. could not recover commission at the agreed rate on the purchase price received by deft., as they had failed to introduce the purchaser, nor could they recover on a *quantum meruit*.—BENTALL, HORSLEY & BALDRY *v.* VICARY, [1931] 1 K. B. 253; 100 L. J. K. B. 201; 144 L. T. 365; 47 T. L. R. 99; 74 Sol. Jo. 862.

Annotations :—As to (1) **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. *Generally*, **Refd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

1820. *Add. Citation :—affd.* C. A. "*Times*," 1890.

*Add. Annotation :—***Consd.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829. *Add. Annotation :—As to* (2) **Folld.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829a. —— ——.]—Deft. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat orders, whether they were actually handed to pltf. or posted direct to deft. :—*Held :* the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.—CRAMB *v.* GOODWIN (1919), 35 T. L. R. 477; 63 Sol. Jo. 496, C. A.

1832. *Add. Annotation :—***Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1833. *Add. Citations :—Affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290, H. L.

*Add. Annotations :—***Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; Rodriguez *v.* Speyer, [1919] A. C. 59.

1834. *Add. Annotation :—***Distd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1835. *Add. Annotation :—***Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

PART VIII. SECT. 3, SUB-SECT. 1.—L. (a).

1818 i. *Insurance agent—Commission on premiums paid after termination of agency.*]—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—EMPIRE OF INDIA LIFE ASSURANCE CO., BOMBAY *v.* NANU AYYAR (1920), I. L. R. 44 Mad. 170.—**IND.**

1818 ii. —— ——.]—The question whether an insurance agent, who is compensated by commissions on renewal premiums, is entitled to commissions on such premiums paid after the termination of his agency, depends to a great extent on the language of his contract with his employer. If such contract contains no provisions on the subject & the agency is terminated without his fault, the agent is entitled to commissions on renewal premiums paid thereafter; if, however, the agent voluntarily resigns his agency, or is discharged for good acuse, the rule seems to be otherwise.—BERRY *v.* CONFEDERATION LIFE ASSOCN. (Can.), [1927] 3 D. L. R. 945.—**CAN.**

1818 iii. —— ——.]—The question whether an insurance agent is entitled to commissions on renewal premiums paid after the termination of his employment is governed by the terms of the contract between him & his co. If the contract between the agent & the insurance co. contains no provision on the subject, the agent is entitled, in case the agency is terminated by the co. without fault on his part, to the commissions on renewal premiums which the contract secures to him, as part of his compensation, although such premiums may be paid after the termination of the agency.—FINGARD *v.* MERCHANTS CASUALTY INSCE. CO., [1928] 2 W. W. R. 609.—**CAN.**

u i. —— *Commission on sales made before termination of agency—Deliveries & payments made after termination.*]—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission "on the gross amount of all sales made by" defts. "under this agreement":—*Held :* pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.—WILSON *v.* ATLAS COAL CO., LTD., [1923] 2 W. W. R. 890.—**CAN.**

sq. *Agent to obtain permit to sell beer in certain area—Entitled to commission on subsequent sales in area.*]—JOHNSON *v.* MEDICINE HAT BREWING CO., LTD., [1927] 2 D. L. R. 231; [1927] 1 W. W. R. 486; 22 Alta. L. R. 476.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (c).

sr. *Agent leaving employment voluntarily.*]—Pltf. was employed by a collection agency in soliciting business on a commission basis: the commission which it was agreed he was to receive being 50 per cent. of that earned by his employers on any business which he introduced. No period of employment was mentioned when he was engaged; the evidence of the manager of the employers was that pltf. was to be paid said commission "just while he was in our employment." The employers furnished the office accommodation & paid the staff :—*Held :* pltf. was not entitled to the commission on moneys coming in after he had left deft.'s employment.—SWARTZ *v.* SHRAGGE, [1932] 1 W. W. R. 797; 2 D. L. R. 724; 40 Man. L. R. 242.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (a).

st. *Land agent—Land Agents Act*, 1912.]—A person who, not being licensed as a land agent, obtains an appointment from a vendor to act as such is guilty of an offence under s. 14 of the above Act, & cannot maintain an action against his principal for commission; & the defect is not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.—NELSON *v.* CROSBY, [1919] N. Z. L. R. 369.—**N.Z.**

sv. —— ——.]—Land Agents Act, 1912, s. 13 (*a*), ought to be construed as meaning that the land agent must possess a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action arose at the time the agent was in possession of a licence.—JOHNSTONE *v.* GOODSON, [1920] N. Z. L. R. 883.—**N.Z.**

x i. —— *Real Estate Agents Licensing Act.*]—Pltf., a store-keeper, brought about the sale of deft.'s land to another person. In an action for commission: —*Held :* s. 21 of the above Act did not apply to individual transactions.—GOODALL *v.* COUSINS, [1923] 3 D. L. R. 718; 32 B. C. R. 440.—**CAN.**

x ii. —— —— *Licence obtained before completion of sale.*]—Agent entitled to commission.—CUDWORTH *v.* EDDY, [1927] 1 W. W. R. 583; 37 B. C. R. 407.—**CAN.**

x iii. —— —— *Unlicenced employee.*]—Pltf., a real estate agent, sued for a commission on a sale, which had resulted from the introduction of the buyer to the seller by pltf.'s employee, who was found to be the efficient cause of the sale, although deft. completed it through agent. Pltf. had been duly licenced under above Act, at & from the time of the listing; his employee, however, was not licenced under above Act when he introduced the buyer & conducted the negotiations although he obtained his licence before the sale was made :—*Held :* under above Act his employee's lack of a licence while he was doing the work rendered the work illegal & prevented pltf. from recovering the commission.—ANDERSON *v.* LAKE (B. C.), [1928] 4 D. L. R. 220; [1928] 3 W. W. R. 136.—**CAN.**

sa. *Agent not registered—Security Frauds Prevention Act.*]—In an action to recover compensation for obtaining a buyer for deft.'s farm :—*Held :* since all that pltf. did in the matter within Winnipeg was to secure from deft. the information & authority which enabled him to assure the persons who afterwards bought the farm that a purchase was within their reach, his claim was not barred by the amendment of 1930 to Security Frauds Prevention Act, 1929, although he was registered as a real-estate agent thereunder.—KRUEGER *v.* NATIONAL TRUST CO., LTD., [1931] 1 W. W. R. 725.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (b).

sb. *Member of Parliament effecting sale—Sale to Government.*]—Pltfs., land agents, were employed by deft. to

1848a. ——.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser :—*Held :* as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got elsewhere, the action failed.—HEATH *v.* PARKINSON (1926), 136 L. T. 128; 42 T. L. R. 693; 70 Sol. Jo. 798.

1852. *Add. Annotation :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19.

1852a. ——.]—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, & agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the pur-

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bring about a sale of deft.'s property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their representative on the terms that he should receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale :—*Held :* the transaction was contrary to public policy, & pltfs.' action failed.—HORNE *v.* BARBER (1920), 27 C. L. R. 493.—**AUS.**

sc. —— *Consent of Government necessary.*]—A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale :—*Held :* he was not entitled to a commission for his services, the agreement being void on the ground of public policy.—CLEMENTS *v.* COUGHLAN (1924), 34 B. C. R. 401.—**CAN.**

sd. *Sale under Discharged Soldiers Settlement Act,* 1919 (*No.* 3039)—*Member of advisory committee agent of vendor.*]—A land agent, who was also a member of an advisory committee, constituted under s. 35 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of such land, & acted throughout *bond fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee :—*Held :* the contract was void as being against public policy, & the agent's claim for commission failed.—WOON *v.* LITTLE, [1922] V. L. R. 11.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (c).

se. *Agent returning deposit to purchaser.*]—Resps. were employed as agents to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application of purchaser, paid him back the deposit without communicating with applt. :—*Held :* resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—BUCHANAN *v.* NEALE, [1920] N. Z. L. R. 889.—**N.Z.**

sf. *Failure to make binding contract.*]—Where pltfs., acting as brokers, failed to make a contract binding on both parties :—*Held :* they were not entitled to commission.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

sh. *Failure to subdivide land as agreed.*]—In an action for a share of profits, where agent has failed to subdivide the land as agreed, the onus is on him to show that deft. relieved him of this duty.—CRUIKSHANK & BRIEN *v.* IRVING (1913), 6 D. L. R. 237.—**CAN.**

1841 iva. —— ——.]—MACK *v.* MCLEOD, [1925] 2 D. L. R. 1201.—**CAN.**

1841 vi. —— *Secret agreement to pool commissions.*]—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—DALY *v.* KELIHER, [1921] 2 W. W. R. 192.—**CAN.**

1841 vii. —— *Agent acting for both parties—Rules of Real Estate Exchange.*]—Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission :—*Held :* (1) she was not liable for commission; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the usual commission on a sale, did not legally entitle the agent to recover such half from her.—HACKNEY *v.* LYNE, [1925] 4 D. L. R. 861; [1925] 3 W. W. R. 614.—**CAN.**

1841 viii. —— ——.]—If a vendor with full knowledge of the facts agrees to pay commission to a purchaser's agent, he will be bound by his contract, but the *onus* is on the agent to show clearly that the vendor knew that he was acting in a dual capacity & assented to that state of affairs.—MOILER *v.* FORGE (1927), 27 S. R. N. S. W. 69; 44 N. S. W. W. N. 42.—**AUS.**

1850 iiia. —— —— *Fraudulent representations inducing listing.*]—Agent not entitled to commission.—SLETTO *v.* ADAMS, [1927] 1 D. L. R. 547; [1927] 1 W. W. R. 12; 22 Alta. L. R. 333.—**CAN.**

1850 vii. —— *Agent to sell acting for other principals—Breach of contract.*]—A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought & sold such goods on his own account :—*Held :* the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obtempered the contract.—GRAHAM & CO. *v.* UNITED TURKEY RED., ETC. CO., LTD., [1922] S. C. 533; 59 Sc. L. R. 420.—**SCOT.**

1850 viii. —— *Inducing principal to sell at undervalue.*]—Where an owner of land requests an agent to find a purchaser at a price not less than a stated amount the agency is a general one & the agent stands in a fiduciary relation to his principal; & if he endeavours to get the latter to sell at a price less than that which he knows the purchaser found by him is willing to pay he is acting in bad faith &, therefore, disentitles himself to a commission even though the sale is finally made at the full price which said purchaser was willing to pay.—LAFRENIERE *v.* BOUFFARD (Sask.), [1929] 4 D. L. R. 183; 2 W. W. R. 602.—**CAN.**

1852 vii. ——.]—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty, & disentitles him to any remuneration or commission.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

1852 viii. ——.]—Where an agent effects a sale by way of exchange, he cannot recover the commission his principal has agreed to pay if he has failed to disclose to his principal that he is also acting as agent for & is to be remunerated by the other party in the same transaction, notwithstanding that the non-disclosure was without fraudulent intent.—BARNETT (C. M.) & SON *v.* BOYLE BROS., [1932] N. Z. L. R. 1087.—**N.Z.**

chase was effected, pltfs. had arranged with the vendors to take commission from them on the sale :—*Held :* pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts. —RHODES *v.* MACALISTER (1923), 29 Com. Cas. 19, C. A.

1853a. Agent acting in good faith.]—KEPPEL *v.* WHEELER, No. 1263a, *ante*.

1853b. No damage suffered by principal.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

1853c. Waiver of breach.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

1862. *Add. Annotations :*—**Apld.** Adams *v.* Morgan, [1933] 2 K. B. 234. **Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1872a. Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to super-tax on profits made within period.]—Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account of & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf. was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts. : —*Held :* pltf., as agent of defts., was entitled to be indemnified by them in respect of the amount of super-tax paid by him, although defts. as a limited co. would not be liable to pay super-tax.—ADAMS *v.* MORGAN & CO., [1924] 1 K. B. 751 ; 93 L. J. K. B. 382 ; 130 L. T. 792 ; 40 T. L. R. 70 ; 68 Sol. Jo. 348, C. A.

1875. *Add. Annotation :*—**Consd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

1878. *Add. Annotation :—As to* (2) **Refd.** Weld-Blundell *v.* Stephens, [1919] 1. K. B. 520.

1886. *Add. Annotations :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234 ; Britannia Hygienic Laundry Co. *v.* Thornycroft (1925), 94 L. J. K. B. 858.

1908. *Add. Annotation :*—**Consd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

1914. *Add. Annotation :—Generally,* **Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

1941. *Add. Annotation :*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

1944. *Add. Annotations :*—**Distd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592. **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Distd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

PART VIII. SECT. 3, SUB-SECT. 1.—M. (d).

sj. *Agent selling at less than listed price.*]—An agent for the sale of goods is not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727 ; 13 Alta. L. R. 126 ; 38 D. L. R. 333.—**CAN.**

sk. *No commission on land not sold.*] —Deft.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf. :—*Held :* pltf. had not shown the performance of any services which entitled him to commission.—DUNN *v.* GRAF (1922), 66 D. L. R. 713.—**CAN.**

sl. *No commission on goods "taken back."*]—*Held :* goods "taken back" included goods "repossessed" on t.—COWIE *v.* SAWYER-MASSEY 5), 34 W. L. R. 274 ; 10 254.—**CAN.**

sm. *Sale of homestead—Necessity for wife's consent.*]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965 ; 21 Sask. L. R. 435.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

1873 i. *In general.*]—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third party, the principal must indemnify the innocent agent.—VICTORIA SCHOOL TRUSTEES *v.* MUIRHEAD & MANN (1895), 4 B. C. R. 148.—**CAN.**

bi. —— *Loss through delay in delivery.*]—E. & Co., commission agents, entered into a contract with defts. under which they undertook to purchase & ship goods "on account & risk" of defts., & E. & Co. shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On defts.' refusal to accept the goods they were sold :—*Held :* E. & Co. were entitled to recover damages for breach of contract.—MEREDITH *v.* ABDULLA (SAHIB) (1918), I. L. R. 41 Mad. 1060.—**IND.**

sn. *Broker buying wheat to meet deliveries.*]—Brokers were instructed by their principal to sell wheat for future delivery :—*Held :* when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—CANADIAN GRAIN CO., LTD. *v.* NICHOL, [1920] 3 W. W. R. 127 ; 53 D. L. R. 375 ; 13 Sask. L. R. 30.—**CAN.**

so. *Dealings in grain futures—Broker with knowledge of illegality of transactions—Broker not entitled to recover balance due from customer.*]—TOPPER GRAIN CO. *v.* MANTZ (Alta.), [1926] 2 D. L. R. 712 ; [1926] 2 W. W. R. 140. —**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (b).

1905 ii. —— —— ——.]—JONES *v.* BURGESS (1914), 43 N. B. R. 126.—**CAN.**

sp. *Forwarding agent acting in accordance with ordinary duty.*]—Defts., forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 defts. cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to defts. instructing them to keep the goods for sale in Durban. Defts. on the instructions of pltf. had the trucks stopped & returned to Durban. Defts. in order to obtain delivery of the goods paid the railway charges & upon pltf.'s refusal to reimburse them declined to hand the goods over to pltf. :—*Held :* defts. in railing the goods without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of special instructions to the contrary defts. were justified in so railing the goods.—PATEL *v.* KEELER & CO., [1923] App. D. 506.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (e).

sq. *Contract for delivery of grain—Actual delivery necessary—Duty of broker to prove contract not illegal.*]—HANSEN *v.* LEICHTZIER, [1925] 4 D. L. R. 1008.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

sr. *Agent assuming liability to third party.*]—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it :—*Held :* as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against him for another.—DICKINSON *v.* RURAL MUNICIPALITY OF STONEHAGUE, [1920] 1 W. W. R. 235 ; 50 D. L. R. 383 ; 13 Sask. L. R. 1.—**CAN.**

Add. Annotations :—**Apld.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Distd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592.

1946. *Add. Annotations :*—*As to* (2) **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539. *Generally*, **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315 ; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

1947. *Add. Annotation :*—**Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1947a. ——.]—By a contract in writing deft. appointed pltfs. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltfs. were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltfs. or not, & deft. agreed with pltfs. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltfs. in respect of the sales of his goods. Before the expiry of the three years deft. broke these undertakings & then wrote to pltfs. cancelling the agreement :—*Held :* as it was a necessary implication from the terms of the contract that pltfs. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as deft. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to such purported cancellation.—WARREN & Co. *v.* AGDESHMAN (1922), 38 T. L. R. 588.

1947b. ——.]—RAYMOND *v.* WOOTEN, No. 1705a, *ante*.

1947c. ——.]—TROLLOPE (GEO.) & SONS *v.* MARTYN BROS., No. 1755a, *ante*.

1948. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

1950. *Add. Annotation :*—*As to* (2) **Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

1951a. ——.]—By an agreement made between pltf. & a limited co., which carried on business in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay ; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years :—*Held :* the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business ; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—REIGATE *v.* UNION MANUFACTURING CO. (RAMSBOTTOM), [1918] 1 K. B. 592 ; 87 L. J. K. B. 724 ; 118 L. T. 479, C. A.

Annotations :—**Apld.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1 ; *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

1952. *Add. Annotations :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842 ; Kahn *v.* Aircraft Industries Corpn.,

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PART VIII. SECT. 3, SUB-SECT. 3.—A. (a).

1946 i. *Principal bound to enable agent to earn commission.*]—By agreement dated Aug. 17, 1929, R. appointed C. his sole agent to sell a certain publication in Australia on a commission basis. The agreement provided, *inter alia*, that the agency should commence on the date C. & R. arrived in Australia, & that it could be determined by either R. or C. on the happening of certain specified events. None of those events in fact happened. The parties came to Australia & the business of the agency was embarked upon. In Jan. 1930, R. went into partnership with S. in the business of booksellers. On Mar. 15, 1930, R. gave C. six months' notice of the termination of the agency agreement of Aug. 17, 1929. On Aug. 1, 1930, R. & S. entered into an agreement with a co. for the sale to it of the goodwill & assets of their business including the agency rights. After Aug. 1, 1930, R. did not accept any new orders from C. under the agreement of Aug. 17, 1929. C. did not know of the agreement of Aug. 1, 1930, until after Sept. 15, 1930, up to which date he regarded himself as still employed by R. He took orders for the co. & received commission from it. From Sept. 15, 1930, he was refused further employment by R. He thereupon sought to recover damages from R. for his wrongful determination of the agreement :—*Held :* a term could not be implied into the agency agreement that R. could terminate the agency at any time by ceasing to carry on his business, & C. was entitled to recover from R. such damages as he sustained by reason of the wrongful determination of the agreement.—COULTER *v.* READHEAD (1931), 31 S. R. N. S. W. 432 ; 48 N. S. W. W. N. 161.—**AUS.**

Ltd., [1937] 3 All E. R. 476. **Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1953. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1957. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 : Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1961. *Add. Annotation :*—**Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267.

1974. *Add. Annotations :—As to* (1) **Consd.** Mortimer *v.* Beckett, [1920] 1 Ch. 571. *As to* (2) **Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571.

1980. *Add. Annotations :—As to* (2) **Consd.** Martin *v.* Stout, [1925] A. C. 359. **Refd.** Oppenheimer *v.* Louis Rosenthal & Co., A. G., [1937] 1 All E. R. 23.

2005. *Add. Annotation :—As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

2025. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2029. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, *Ex p.* Trustee (1920), 89 L. J. K. B. 725.

2052. *Add. Annotation :*—**Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

2056. *Add. Annotation :*—**Refd.** Booth S.S. Co. *v.* Cargo Fleet Iron Co. (1916), 13 Asp. M. L. C. 451.

2082. *Add. Annotations :*—**Dbtd. & Expld.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99. **Consd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

2083. *Add. Annotation :*—**Distd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083a. —— —— **Sale by principal himself.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083b. —— —— ——.]—BENTALL, HORSLEY & BALDRY *v.* VICARY, No. 1813b. *ante.*

Compare SALE OF GOODS, No. 1399a, *post.*

2083c. Agreement for commission although transaction not completed.]—TREDINNICK *v.* BROWNE (1921), cited 47 T. L. R. at p. 101.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

PART VIII. SECT. 3, SUB-SECT 3. —B.

1959 ii. For this number read "1967 i."

1967 ii. —— ——.]—In a five years' agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the agent failed to reach the stipulated turnover, & the merchants terminated the agreement. The value of the sales effected by the agent had in fact materially exceeded the stipulated figure, but the value of the goods actually delivered by him fell short of it, owing to the failure of the merchants to supply him with the full amount of goods ordered by him. The merchants, who were not manufacturers, were dependent on delivery to themselves by the manufacturers, &, owing to war conditions, they were themselves unable to obtain the full supplies they required. They had, however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement :—*Held :* defts. were not entitled to terminate the agreement.—DOWLING *v.* METHVEN, SONS & CO., LTD., [1921] S. C. 948 ; 59 Sc. L. R. 7.—**SCOT.**

1978 iii. —— ——.]—Pltf. & defts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of defts.' goods in British Columbia. In the letter from defts. setting out the proposed terms of agreement were the words " this offer to be firm for one year." Defts. broke the agency agreement during the first year :—*Held :* pltf. was entitled to damages on the basis of loss of profits on two years contract, as being reasonable in all the circumstances.—MACDONALD *v.* CASEIN, LTD., [1919] 1 W. W. R. 293.—**CAN.**

1978 iv. —— ——.]—In 1911 resps. agreed to employ applts. as under-brokers for the business of a co. during the subsistence of an agreement which they themselves had as brokers to the co. : the latter agreement was for five years. In Aug. 1912, resps. wrongfully determined the agreement with applts. On Dec. 2, 1912, resps., *bonâ fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to, the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages : — *Held :* the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—LACHMANDAS, KHANDELWAL *v.* RAGHUMULL (1919), L. R. 46 Ind. App. 314; 24 C. W. N. 577.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 8.

2083 ii. —— *Breach of covenant.*]—By an instrument by way of security the grantor transferred to the grantee by way of mtge. (*a*) certain stock specifically described in the sched. ; (*b*) all stock depasturing on the lands of the grantor ; (*c*) " all stock which may now or shall at any time hereafter during the continuance of this security belong to the grantor, wherever the same may be depasturing or kept, & all the natural increase of such stock," but did not expressly mention the natural increase of stock in (*a*) or (*b*). The grantee was by the instrument appointed sole agent of the grantor to effect all sales of produce, stock, & chattels which the grantor might require or desire to sell. The grantor, without obtaining the grantee's consent, sold to deft. in the ordinary course of business certain lambs the natural increase of the stock specifically described in the sched., & the grantee (pltf.) sought to recover possession of the same or their value :—*Held :* the appointment of the grantee as sole agent to sell did not negative the implied power of sale, & the sale, although it might be a breach of covenant, gave to the purchaser a good title to the lambs, & the sole agent's remedy was for damages for breach of contract.—NEW ZEALAND FARMERS' CO-OPERATIVE ASSOCN. OF CANTERBURY, LTD. *v.* CANTERBURY FROZEN MEAT & DAIRY-PRODUCE EXPORT CO., LTD., [1932] N. Z. L. R. 381.—**N.Z.**

2083a i. —— *Sale by principal himself.*]—A sole agent for a definite period is entitled to his commission on sale within the period, notwithstanding a prior sale by the principal of which the agent had no notice.—DE WOLFE *v.* TWOHIG (1932), 6 M. P. R. 505.—**CAN.**

sm. *Sale by principal.*]—A declaration alleged that deft. was possessed of a certain property & entered into an agreement under his hand with pltf. wherein, for valuable consideration, he gave pltf. " the sole selling agency " of the property, " such option to expire at " a certain time : & in breach of this agreement, deft. sold the property " otherwise than through the agency of pltf." On demurrer to this declaration :—*Held :* as the declaration did not allege that the sale of the property was by an agent other than pltf., there should be judgment for deft. on the demurrer.—HEFFERNAN *v.* HANSFORD (1936), 53 N. S. W. W. N. 76.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 2.

st. *Liability of principals to indemnify agent—Release of co-principal.*]—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been released.—MALOWANY *v.* PASEMKO, [1919] 1 W. W. R. 553.—**CAN.**

Part IX.—Relations between Principal and Third Parties.

2096. *Add. Annotations :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

2098. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2106. *Add. Annotations :*—**Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189; Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

2109. *Add. Annotation :*—*As to* (1) **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2118. *Add. Annotations :*—**Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

2120. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2125a. Action for specific performance—Effect of non-disclosure of principal.]—Pltf. procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance :—*Held :* the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.

2126a. —— Sold by agent—Effect of misrepresentation as to being principal.]—G., employed as a traveller by a firm of builders, owed deft. £17 for goods sold. He asked deft. to buy timber from him, telling him that he had left the employment of the builders & had set up as a timber merchant on his own account, & deft. agreed to order timber from him on the terms that G.'s debt of £17 should be set off against the price. G. had not set up in business on his own account, but was employed by pltf. as an agent for sale on commission. Timber was delivered to deft. with invoices & letters bearing the name, address, & description of pltf., which G. told deft. were his own trade name, address, & description. Pltf. brought an action in the county ct. for the price of the timber, & the county ct. judge found that deft. honestly believed that the name, address, & description on the invoices & letters were those of G., but that deft. was put upon inquiry by the invoices & letters, & had notice that G. was not selling as a principal but only as an agent for pltf., & he gave judgment for pltf. for the price of the timber :—*Held :* deft. had no more than constructive notice that pltf. was the principal of G., & in the circumstances constructive notice was not equivalent to actual notice; deft. had made no contract with pltf., & was entitled to judgment.—GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

2130a. —— —— Sub-underwriting agreement.]—Pltf., at the suggestion of M., who was a director of E. co. in Nov. 1927, was minded to underwrite shares in deft. co. about to be offered for public subscription. It had not then been started, but its object was to acquire

PART IX. SECT. 2, SUB-SECT. 1.

b 1. —— *Goods sold—Knowledge of purchaser.*]—M. left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority :—*Held :* the written authority & the request for personal payment should have put the purchaser upon inquiry.—MULLER *v.* (1923), 44 N. L. R. 69.—**S. AF.**

2105 ii. —— ——.]—Where an agent is entrusted by his principal with money to buy goods, the money will be considered trust funds in his hands & the principal has the same interest in the goods when bought as he had in the funds producing them. If the goods so bought are mixed with those of the agent, the principal has an equitable title to a quantity to be taken from the mass, equivalent to the money advanced which has been used in the purchase.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD., [1931] 3 W. W. R. 79.—**CAN.**

2106 i. *Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.*]—Money received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1923), 4 C. B. R. 379; [1923] 3 W. W. R. 257.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.—A.

2120 viii. ——.]—J., as agent of pltf., advanced sums to deft. in consideration of deft.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Deft. stated that J. had recruited him to work for some person whose name was not given. Deft. contended in an action for refund of the advance that pltf. could not sue without cession of action from K. :—*Held :* pltf. had a right of action against deft.—GADLELA *v.* MOUNTJOY, [1921] E. D. L. 151.—**S. AF.**

sa. *Action for money paid under contract.*]—Pltf., desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A., whereby A. was to enter into contracts with three builders for the construction of the vessels, called "building contracts," & at the same time into contracts with pltf., called the "vessels contracts" providing for the payment for vessels, the nature of their construction & due delivery thereof. The "building contract" & the "vessel contract" each expressly stated that a copy of the other was attached to & made a part of it. By the "building contract" deft. covenanted to build the vessels according to the terms of the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & deft. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who proceeded with the construction of the vessels. Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, deft. gave notice terminating the contract. Pltf. having brought action for repayment by deft. of money paid on account of the vessels, less such expenses as deft. had incurred by virtue of the contract :—*Held :* pltf. had no right of action.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO., VAN HEMELRYCK *v.* NORTHERN CONSTRUCTION CO., VAN HEMELRYCK *v.* PACIFIC CONSTRUCTION CO. (1920), 29 B. C. R. 39; 55 D. L. R. 589.—**CAN.**

& carry on as going concerns eight greyhound racecourses. An underwriting agreement was entered into by trustees for deft. co. & B. co. & a draft prospectus was prepared therein referred to. On the following day M. & O. offered to sub-underwrite 12,000 shares, & sent a cheque for £600 to B. co., which was accepted by them on Dec. 8. On Dec. 12, the co. was incorporated, the underwriting agreement ratified, & a similar prospectus signed by the directors, which, on Dec. 19, was issued to the public. The response not being sufficient, the balance of shares was issued to the underwriters or sub-underwriters. One of such allotments was for 8,160 to M. & O. as sub-underwriters. A number of sub-underwriters had repudiated their agreements on Dec. 16, but this was not known to the directors when they went to allotment on Dec. 17. Subsequently these 8,160 were renounced in favour of pltf. The consequence of the failure of some of the underwriting agreements was that two of the racecourses, representing about two-fifths of the estimated profits, could not be acquired. In these circumstances, this action was brought for rescission on the ground of material misrepresentations in the prospectus. Defts. denied these, & claimed for the balance due. They submitted that, the contract having been made with agents for an undisclosed principal, he could not recover:—*Held:* pltf. could not establish his case on the basis of principal & agent, as in such a case as this an undisclosed principal could not be substituted for the persons contracting; all the rights of the agents under the contract with the co. did not pass to pltf. by virtue of the agents' renunciation & nomination of pltf., & though there was a contract between pltf. & the co. it was not a contract based on the prospectus.—COLLINS *v.* ASSOCIATED GREYHOUNDS RACECOURSES, LTD., [1930] 1 Ch. 1; 99 L. J. Ch. 52; 141 L. T. 529; 45 T. L. R. 519.

2139a. Agent acting in his own interest.]—Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted *bonâ fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—HAMBRO *v.* BURNAND, [1904] 2 K. B. 10; 73 L. J. K. B. 669; 90 L. T. 803; 52 W. R. 583; 20 T. L. R. 398; 48 Sol. Jo. 369; 9 Com. Cas. 251, C. A.; *revsg.*, [1903] 2 K. B. 399.

Annotations:—**Consd.** Willis, Faber *v.* Joyce (1911), 104 L. T. 576; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** British Marine Mutual Insce. Assocn. *v.* Draffen, Read & Morgan (1903), 47 Sol. Jo. 672; Ruben *v.* Great Fingall Consolidated, [1904] 2 K. B. 712; Malcolm, Brunker *v.* Waterhouse (1908), 24 T. L. R. 854; Lloyd *v.* Grace, Smith, [1912] A. C. 716; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2139b. Account stated & signed by agent.]—In Mar. 1918, a tank steamer was damaged by fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment & conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay the balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltfs. & materials supplied at the request of defts., &, in the alternative, claimed the balance as being the amount found due from defts. to pltfs. on accounts stated between them & contained in an account signed by defts. by their agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltfs., or that he in fact purported to agree such amount, or that the account constituted an account stated:—*Held:* the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, &, there being no ground for re-opening the account, pltfs. were entitled to judgment.—CAMILLO TANK S.S. CO., LTD. *v.* ALEXANDRIA ENGINEERING WORKS (1921), 38 T. L. R. 134, H. L.

Annotations:—**Consd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332.

2147a. —— ——.]—A member of the Stock Exchange was indebted to defts. He became a defaulter on the Stock Exchange, & the liquidation of his affairs was undertaken by pltf. as official assignee. For the purposes of the liquidation he was authorised by pltf. to sell, & accordingly sold, certain shares

PART IX. SECT. 3, SUB-SECT. 1.—B.

2134 i. *General rule.*]—BOLUS & CO., LTD. *v.* INGLIS BROTHERS, LTD., [1924] N. Z. L. R. 164.—**N.Z.**

2134 ii. ——.]—Principal is bound by the act of the agent within the scope of his authority.—O.K. LADIES' GARMENT CO. *v.* EDGECOMBE (1934), 9 M. P. R. 27.—**CAN.**

2135 ii. ——.]—Deft., owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights:—*Held:* the agent's promises to the contestants were the promises of deft. as principal, & deft. was liable as principal.—ROSS *v.* KOBOLD, [1924] 1 D. L. R. 750; 1 W. W. R. 428; 34 Man. L. R. 111.—**CAN.**

sb. *Contract in agent's name—Under seal.*]—Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by defts. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain clearing, irrigating & tree-planting, B. acting as their agent in the supervision thereof. B. was to receive commission on sales made, should he not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him:—*Held:* the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—HITCHCOCK *v.* COLUMBIA VALLEY LAND CO., LTD., [1919] 2 W. W. R. 969; 48 D. L. R.

standing in his name to defts., who were not members of the Stock Exchange, but who knew his position & that of pltf. as official assignee. Pltf. having sued defts. for the price of the shares:—*Held:* the action was maintainable, & defts. were not entitled to a set-off in respect of their debt.—RICHARDSON *v.* STORMONT, TODD & Co., [1900] 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451; 16 T. L. R. 224; 5 Com. Cas. 134, C. A.

Annotations:—**Apld.** Lomas *v.* Graves, [1904] 2 K. B. 557. **Refd.** *Re* Halstead, *Ex p.* Richardson, [1917] 1 K. B. 695.

2168. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2172. *Add. Annotations:*—**Refd.** Norbury Natzio *v.* Griffiths, [1918] 2 K. B. 369; Rodriguez *v.* Speyer, [1919] A. C. 59; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2177. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2182. *Add. Annotation:*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

2183. *Add. Annotations:*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2184. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2188. *Add. Annotation:*—*As to* (3) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2193. *Add. Annotation:*—**Consd.** Bennett *v.* White-, [1926] 2 K. B. 380.

2194. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2195. *Add. Annotations:*—**Apld.** Parr *v.* Snell, [1923] 1 K. B. 1; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Moore *v.* Flanagan, [1920] 1 K. B. 919; Clarkson *v.* Davies, [1923] A. C. 100; Duffner *v.* Bowyer (1924), 40 T. L. R. 700; The Koursk, [1924] P 140; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

2197. *Add. Annotations:*—**Follid.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919. **Apld.** London General Omnibus Co. *v.* Pope (1922), 38 T. L. R. 270. **Refd.** Duffner *v.* Bowyer (1924), 40 T. L. R. 700; Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197; Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68.

2198. *Add. Annotation:*—*As to* (1) **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

2199. *Add. Annotations:*—*As to* (1) **Refd.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919; Parr *v.* Snell, [1923] 1 K. B. 1; Pirie *v.* Richardson, [1927] 1 K. B. 448.

2201. After this case insert "Res judicata generally, *see* ESTOPPEL, Vol. XXI., pp. 159 *et seq.*, 198 *et seq.*"

2205a. —— **Acceptance of payment from principal —After receiving order against agent.**]—Resp. was employed by the debtor, who was acting for a co., but who was himself personally liable on the contract. While the contract was running, a receiving order was made against the debtor, but he was not adjudicated bkpt., the receiving order being discharged & an order being made approving a composition of 20s. in the pound. After the breach of contract by the debtor resp. took the salary offered to him by the co., & a proof put in by resp. for damages for the breach was rejected by the trustee of the composition on the ground that resp. had elected to look to the co. for the fulfilment of the contract:—*Held:* resp. had not, by his conduct, finally elected in law to look to the co. for the fulfilment of the contract, & the proof ought to be allowed.—*Ex p.* PITT (1923), 40 T. L. R. 5, C. A.

PART IX. SECT. 3, SUB-SECT. 2.—F. (a).

2172 ii. ——.]—GLADUE *v.* WALCH, No. 2510 xiv., *post.*—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (c).

q i. —— ——.]—P., acting as agent, purchased food for M.'s poultry farm from pltf. with whom he had a running account upon which from time to time he made payments. Pltf. brought action against P. for the balance of the account, but before entering judgment obtained an order adding M. as a party deft.:—*Held:* the agent not having been sued on to judgment, pltf. may pursue the principal.—VANCOUVER MILLING & GRAIN Co. *v.* PERKINS & MCLEOD (1930), 42 B. C. R. 557.—**CAN.**

2194 v. ——.]—M., without disclosing the fact that he was acting as agent for the Crown, purchased hay from A., & was sued for a balance of the purchase price. At the trial that fact became known to A., but he nevertheless proceeded with the case & recovered judgment against M.:—*Held:* A., having elected to proceed to judgment against M., could not afterwards sue the Crown.—DESROISERS *v.* R. (1919), 18 Exch. C. R. 461.—**CAN.**

2194 vi. ——.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & also brought a counter-action for damages in respect of breach of contract. The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners were not the registered owners of the steamship, as had up to that time been assumed, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue":—*Held:* by prosecuting their own action to decree, the engineers had elected to treat defts. as their debtors in the sg. *Action for wages against husband & wife—Consent judgment against husband—Subsequent action for later wages against wife.*]—*Held:* election was conclusive & the remedy against the wife not available.—GARDINER *v.* CHAPPLE, [1932] 4 D. L. R. 804.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (d).

2206 i. *Election to sue one discharges other.*]—MURRAY *v.* DELTA COPPER Co., LTD., [1925] 4 D. L. R. 1061.—**CAN.**

2206 ii. ——.]—Deft. co., owner of certain lands, gave an option to purchase to one M., one of the terms of the sale being that he should immediately have the lands ploughed. Deft. H., who was president of deft. co., got in touch with pltf. with reference to the ploughing, & after they had taken a view of the land with M. pltf. entered into an agreement with H. to plough the land for $9 per acre. Pltf. proceeded with the work & received money from M. on account of the ploughing, although he knew nothing as to M. having an option to

[1923] S. C. 472.—**SCOT.**

2233. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

2245. *Add. Annotations :—As to* (1) **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59. *As to* (2) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316 ; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244 ; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211. *Generally*, **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826 ; Reckitt *v.* Barnett, Pembroke & Salter, [1928] 2 K. B. 244 ; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128 ; London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2246. *Add. Annotations :* — **Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226 ; Rand *v.* Craig, [1919] 1 Ch. 1 ; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244 ; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299 ; Underwood *v.* Bank of Liverpool. Same *v.* Barclays Bank, [1924] 1 K. B. 775 ; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934) 150 L. T. 211 ; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2248. *Add. Annotation :*—**Refd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2253. *Add. Annotations :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2254. *Add. Annotation :*—**Refd.** London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2255. *Add. Annotations :*—**Refd.** London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2258a. ——.]—Upon a draft agreement for the sale of certain blocks of flats the intending purchasers asked : " Are all the tenants' rents paid punctually & without dispute ? "

purchase. While the work was in progress M. threw up the option. Pltf. continued his work to completion. Pltf. recovered judgment against the co. & H. for the balance due :—*Held :* the judgment against H. should stand, but it should be dismissed as against the co.—DENNIS *v.* INDEPENDENT LANDS, LTD. (1930), 43 B. C. R. 65.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—A.

2245 v. ——.]—Resp. had taken fire insurance policies in several cos., amongst which were applt. co. & the F. Co., both represented by D. as their agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing him entitled to $2,864.45 as against the F. Co., & to $1,841.45 & $2,861.60, as against applt. co., under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp. that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. co. two drafts, payable to the order of resp. D. obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co. :—*Held :* in the fraud practised upon resp., D. was acting within the scope of his agency so as to make his fraud that of his principals, applt. co. ; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG *v.* MARTIN, [1924] 3 D. L. R. 1012 ; S. C. R. 348 ; *affg.*, [1923] 4 D. L. R. 574 ; 3 W. W. R. 897 ; 19 Alta. L. R. 786 ; *affg.*, [1923] 3 D. L. R. 220.—**CAN.**

2245 vi. ——.]—POPE *v.* PICTOU STEAMBOAT CO. (1865), 6 N. S. R. (2 Old.) 18.—**CAN.**

2245 vii. ——.]—PARTAB NARAIN *v.* JUTE MILLS (1927), I. L. R. 50 All. 29.—**IND.**

2246 ii. —— ——.]—Pltf., believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank. Defts., being notified of shipment, paid the bank, procured the bills of lading, disposed of the grain & settled with Z. for the proceeds :—*Held :* defts. were liable to pltf. for conversion for the value of the grain.—LENO *v.* SIMPSON-HEPWORTH CO., LTD., [1919] 1 W. W. R. 721 ; 45 D. L. R. 285.—**CAN.**

2246 iii. —— ——.]—A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.—DINABANDHU SAHA *v.* ABDUL LATIF MOLLA (1912), I. L. R. 50 Calc. 258.—**IND.**

2246 iv. —— ——.]—Pltf., after negotiations with a sales agent of deft. co., signed at the co.'s office a contract form for the purchase of a motor-car & paid to the agent the purchase price in full. The receipt therefore, expressed to be for " held cash," was signed by the agent personally. The contract form contained the words " Not binding until accepted by management," & the space for the manager's signature was not filled in. Pltf. did not want immediate delivery of the car, & the agent wrote on the form, " The agreement to be held until car wanted." In purported compliance with said offer to purchase, the agent delivered to pltf. a car belonging to the agent subject to a lien under which it was afterwards seized & sold. The agent had meanwhile disappeared with pltf.'s money, & the co. refused pltf.'s demand for a car, the manager saying that he knew nothing of the transaction. Pltf. then sued the co. to recover the money paid to the agent :—*Held :* pltf. was entitled to judgment.—OLSHANSKY *v.* DOMINION MOTOR CO., [1929] 1 D. L. R. 854 ; 1 W. W. R. 404 ; 38 Man. L. R. 56.—**CAN.**

2253 iv. —— ——.]—Pltfs., who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L. induced deft. to purchase lots for $3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him $1,500 as the cash payment. L. brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for $3,000 of which $1,000 was payable in cash, which sum only be paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him :—*Held :* pltfs. were liable for the additional $500 of cash payment fraudulently contracted for & received by L.—DENTON *v.* GOODMAN, [1922] 1 W. W. R. 117 ; 62 D. L. R. 559.—**CAN.**

2253 v. —— *Agent added as co-defendant.*]—The agent of pltf., the vendor, made false representations without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Deft., on discovering that the representations were false, refused to complete the transaction &, on being sued by pltf. for such non-performance, brought a counterclaim for rescission & damage, & joined the agent as co-defendant :—*Held :* the agent was rightly made co-defendant.—ROTHWELL *v.* ATTWOOD, [1923] 4 D. L. R. 734 ; *revsd.*, [1924] 1 D. L. R. 43.—**CAN.**

Reply was made upon the draft under the signature of one D., the managing director & solr. to the vendor co.: "There are no disputes & rents are paid promptly with very few immaterial exceptions." The reply had in fact been made by R., managing conveyancing clerk to D. in his professional capacity, on information obtained from A., property manager to the vendors. The representation as to the punctuality of rents was not incorporated in the agreement which was duly completed. In eleven cases the rents were not paid promptly. In an action by the purchasers for damages for fraudulent misrepresentation or alternatively for breach of warranty the learned judge found that there was no fraud, but he found that there had been a breach of warranty. On appeal: —*Held:* (1) in the absence of evidence that the parties entered into, or intended to enter into a collateral contract, there was no warranty of which there could be a breach; (2) the statement to R. by A. of that which was untrue to his knowledge, & the innocent use by R. of such untrue information to induce the purchasers to act to their detriment, amounted to fraudulent misrepresentation on the part of the vendor co.—LONDON COUNTY FREEHOLD & LEASEHOLD PROPERTIES, LTD. *v.* BERKELEY PROPERTY & INVESTMENT CO., LTD., [1936] 2 All E. R. 1039; 155 L. T. 190; 80 Sol. Jo. 652, C. A.

Annotation:—As to (2) **Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2267. *Add. Annotation:*—**Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

2268. *Add. Annotations:*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826.

2272. *Add. Annotation:*—**Refd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2273a. Liability for fraudulent preference by agent.]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts., it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principals under a contract other than the S. contract, & the other to the extent of £647 in payment of goods delivered by S. & Co. on credit terms not then expired:—*Held:* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* DRABBLE BROS., [1930] 2 Ch. 211; 99 L. J. Ch. 345; 143 L. T. 337; 74 Sol. Jo. 464; [1931] B. & C. R. 200, C. A.

2280. *Add. Annotations:*—**Distd.** Dyster *v.* Randall, [1926] Ch. 932. **Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

2282. *Add. Annotations:*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128; London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2284. *Add. Annotations:*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Distd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; **Consd.** Slingsby *v.* District Bank, Ltd. (1931). 48 T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com

PART IX. SECT. 4, SUB-SECT. 1.—A.

2282 vii. —— —— *Negligence of agent's employee.*]—An agent is not personally responsible for damage done by the negligence of those employed by him in the service of his principal, but the principal or those actually employed only are liable.—WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—CAN.

2282 viii. —— ——.]—Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment:—*Held:* deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf.—BEGG *v.* HAGAN, [1921] N. Z. L. R. 220.—N.Z.

Cas. 247. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank *v.* Chartered Bank of India, Australia & China [1929] 1 K. B. 40; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2286. *Add. Annotations :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762. **Refd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Soanes *v.* L. & S. W. Ry. (1919), 88 L. J. K. B. 524; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211.

2287. *Add. Annotation :*—**Refd.** The Sylvan Arrow. [1923] P. 220.

2287a. —— **Forgery.**]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co. or order " & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or order "; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* pltfs. had not held out J. C. as having authority to draw cheques on their behalf so as to estop them from asserting the fact that a document drawn by him & purporting to be a cheque signed by them had been materially altered by him after signature without their authority & was a forgery.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 48 T. L. R. 114; 37 Com. Cas. 39, C. A.

2292. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2294. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

2295. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452.

2309. *Add. Annotation :*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

2317. *Add. Annotations :*—**Apld.** Pratt *v.* Patrick, [1924] 1 K. B. 488. **Consd.** Parker *v.* Miller (1926), 42 T. L. R. 408; Brooke *v.* Bool, [1928] 2 K. B. 578.

PART IX. SECT. 4, SUB-SECT. 1.—B.

2299 i. *Funds received for investment—By local manager of bank—Improvident investment.*]—Two persons who formed the local advisory board of deft. co. purchased on defts.' behalf for $7,000 the balance unpaid under an agreement for sale of subdivided property, which amounted to about $7,500 taking the assignment in their own name " as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested money. Having $5,000 of pltf.'s money on hand he invested it by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour to the extent of $5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money :—*Held :* pltf. was entitled to recover.—MCCRINDLE *v.* LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—C.

2317 ii a. —— ——.]—A motor bicycle, the property of deft., which was ridden by R., deft.'s brother, injured pltfs. Deft.'s brother had general permission to ride the motor bicycle for himself or for deft., but he was never in deft.'s employment. The jury found that the rider was acting as the agent or servant of deft. in the management of the motor bicycle at the time of the accident :—*Held :* the jury's findings & verdict must stand.—THOMPSON *v.* REYNOLDS, GIBSON *v.* REYNOLDS, [1926] N. 131.—**IR.**

2317 ii b. —— ——.]—DRISCOLL *v.* COLLETTI, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

2317 ii c. —— ——.]—A man was knocked down & killed by a motor car owned by deft. whilst it was being driven by his son. The car was kept in a garage on deft.'s property which adjoined the son's home. Deft. was not licensed to drive & had never been seen driving the car, which on many occasions was driven by the son, who worked with his father. The accident took place whilst the car was proceeding in the direction of the homes of deft. & his son :—*Held :* the evidence was not sufficient to establish as between deft. & his son the relationship of principal & agent.—GOLDMAN *v.* BARNFIELD (1927), 27 S. R. N. S. W. 405; 44 N. S. W. W. N. 147.—**AUS.**

2317 ii d. —— ——.]—Pltf. collided with deft.'s motor car, which was driven by J., a son of deft., & sustained serious injuries. In answers to interrogatories deft. admitted that she was the registered owner of the motor car; that her son C. & her daughter H. were licensed drivers; that she had purchased the car for pleasure; that she paid for all the petrol & oil; that her son J. resided with her; that she paid the rent for a lock-up garage, the key of which was kept by her son C. A witness stated that he saw J. driving his mother's car more than once prior to the day of the accident. Deft. denied that she knew that J. had a key of the garage in his possession on the day of the accident, or that she knew he had access to the key, & stated that she never at any time gave J. permission to drive her car, & that he never drove it to her knowledge :—*Held :* if the answer of the jury that J. at the time of the accident was driving the car with the implied authority of deft., amounted to a finding of agency, it must be set aside, on the ground that there was no evidence to support it.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

2317 ii e. —— ——.]—A motor car owned by deft. was, at the time of an accident, being driven by a person to whom it had been lent by him :—*Held :* the mere proof of deft.'s ownership of the car was not of itself sufficient to establish a *primâ facie* case of liability on his part.—FERGUSON *v.* WAGNER (1926), 27 S. R. N. S. W. 9; 44 N. S. W. W. N. 22.—**AUS.**

2317 ii f. —— ——.]—EVANOFF *v.* WINKLER & KELLY, [1931] 2 W. W. R. 576; 2 D. L. R. 932; *affd.*, [1931] 3 W. W. R. 177; 4 D. L. R. 919; 26 Alta. L. R. 40.—**CAN.**

2318. *Add. Annotations :—As to* (1) **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488. *As to* (2) **Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

2318a. —— ——.]—Deft. was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued deft. under Fatal Accidents Act, 1846 (c. 93), for damages :—*Held :* as deft. was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—PRATT *v.* PATRICK, [1924] 1 K. B. 488 ; 93 L. J. K. B. 174 ; 130 L. T. 735 ; 40 T. L. R. 227 ; 68 Sol. Jo. 387 ; 22 L. G. R. 185.

2318b. —— **Search for escape of gas.**]—A landlord of a lock-up shop, occupied by a tenant, had the tenant's authority to visit the premises at night. The landlord occupied the adjoining premises, & a lodger, who had no authority to enter the shop himself, complained to him of a smell of escaping gas coming from the shop. The landlord & the lodger went into the shop together, & the landlord commenced a search for the escape of gas with a naked light, which the lodger continued. Owing to the lodger's negligent conduct, an explosion was caused, resulting in damage to the tenant's goods on the premises :—*Held :* the landlord was liable for the damage on the ground (*inter alia*) of agency.—BROOKE *v.* BOOL, [1928] 2 K. B. 578 ; 97 L. J. K. B. 511 ; 139 L. T. 376 ; 44 T. L. R. 531 ; 72 Sol. Jo. 354, D. C.

Annotation :—**Apld.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

v. Lee Kim Soo, [1925] A. C. 550.

2336. *Add. Annotations :—As to* (1) **Refd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294. *Generally*, **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2337a. Imprisonment by foreign sovereign—Procured by principal.]—Trespass lies for procuring by awe, fear, & influence, & contrary to his own inclination, a sovereign independent absolute prince to imprison pltf.—RAFAEL *v.* VERELST (1776), 2 Wm. Bl. 1055 ; 96 E. R. 621.

Annotations :—**Refd.** West *v.* Smallwood (1838), 6 Dowl. 580 ; Companhia de Mocambique *v.* British South Africa Co., De Sousa *v.* Same, [1892] 2 Q. B. 358.

2339. *Add. Annotations :—As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1 ; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

2339a. Fence—Omission to.]—Where, upon the diversion of a turnpike road after the new road had been completed, but before the old road was stopped up, the trustees, by the permission of B., broke down his fence to make a passage from the new road to the close of A., but did not put up a gate or fence to protect the latter close :—*Held :* the trustees were wrong-doers, & B. was responsible for their acts.—WINTER *v.* CHARTER (1829), 3 Y. & J. 308 ; 2 Man. & Ry. M. C. 177 ; 148 E. R. 1197.

2405. *Add. Annotation :*—**Refd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

2415. *Add. Annotation :*—**Refd.** Newsholme *v.* Road Transport & General Insce. (1928), 45 T. L. R. 123.

2317 ii g. —— —— *Allowing third party to drive contrary to instructions—Principal not liable.*]—WAINIO *v.* BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

2317 ii h. —— —— *Liability of person in control of driver.*]—If there is some one in a motor car who, although not driving it, has the right to control the driver he is under a duty to exercise that right & his failure to do so may render him equally liable with the driver for damages caused by the latter's negligence, even though said person is not the owner of the car.—RADFR *v.* MCLELLAN (Alta.), [1929] 1 D. L. R. 577 ; 1 W. W. R. 64.—**CAN.**

2317 ii j. —— —— *Wife of owner.*]—SHORTT *v.* WONG (Sask.), [1929] 4 D. L. R. 677 ; 3 W. W. R. 72.—**CAN.**

2317 ii k. ——.]—When a mere licence is given to another to drive one's car, & that other in driving it injures some person, the owner, apart from legislation, is not responsible for damages.—HOWARD *v.* HENDERSON (1929), 41 B. C. R. 441.—**CAN.**

2317 ii l. —— ——.]—In an action resulting from a motor-car accident in the state of Washington when deft. T.'s car was being driven by the deft. M. :—*Held :* the accident was due to the utter recklessness of M. ; he was under T.'s control although T. was asleep at the time of the accident ; the relationship between T. & pltfs. who were passengers in the car was a "host-guest" relationship, *i.e.*, that of invitor & invitee ; under the law of Washington, as well as of British Columbia, pltfs. had on said findings a *primâ facie* right to recover against both defts. ; & therefore, since neither the defence that pltfs. & defts. were engaged in a joint adventure nor the defence of contributory negligence was sustained, pltfs. were entitled to damages against both defts.—WILLIAMS *v.* TANG & MITCHELL, BAKER *v.* TANG & MITCHELL, [1933] 2 W. W. R. 113 ; 47 B. C. R. 81.—**CAN.**

2317 ii m. —— —— *Vehicle driven by co-owner.*]—One of two joint-owners of a motor car was guilty of negligent driving whereby pltf., who were guests in the car, were injured. At the time of the accident the other joint owner was seated on the front seat beside the driver. During the journey they had been driving alternately, & the one not driving assisted the driver occasionally by applying the emergency brake when necessary :—*Held :* the co-owners were jointly liable to pltfs.—HAMMER & LUTHMER *v.* HAMMER & LUTHMER, [1929] 3 D. L. R. 273 ; 2 W. W. R. 130 ; 41 B. C. R. 55.—**CAN.**

2317 ii n. —— ——.]—When a motor car is being driven by the owner's friend & the owner is in the car, the owner is in control, & in the absence of proof that he has abandoned his rights & duties of control by contract or otherwise he is liable as principal for damage caused by the negligence of the driver.—RINGROSE *v.* HUNTER (1933), N. L. R. 442.—**S. AF.**

2317 ii o. —— ——.]—When a motor-car is being driven by the owner's friend & the owner is in the car, the owner is in control, & in the absence of proof that he has abandoned his rights & duties of control by contract or otherwise he is liable as principal for damage caused by the negligence of the driver.—RINGROSE *v.* HUNTER, [1933] N. L. R. 442.—**S. AF.**

2319 i. Add "*revsd., sub nom.* MURRAY *v.* JENKINS (1898), 28 S. C. R. 565.—**CAN.**," and delete the word "**AUS.**"

PART IX. SECT. 5, SUB-SECT. 2.—B.

2384 i. —— ——.]—A letter from an agent to his principal which is merely a narrative of an interview between the agent & a third party, if admissible in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.—SWAN *v.* MILLER, [1919] 1 I. R. 151.—**IR.**

PART IX. SECT. 8, SUB-SECT. 1.—B.

2396 ii. —— *Not to agent's interest to disclose.*]—Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS CO. *v.* BOMBAY BANKING CO., LTD. (1919), 24 C. W. N. 469.—**IND.**

2408 ii. —— ——.]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY, [1921] 3 W. W. R. 658.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B.

2428 iv. ——.]—QUEBEC FEDERATED CO-OP. CO. *v.* FARMERS FENCE CO., [1925] 2 D. L. R. 574 ; *affg.* Q. R. 37 K. B. 345.—**CAN.**

2436. *Add. Annotation :—Generally,* **Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

2446. *Add. Annotation :*—**Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

2448. *Add. Annotation :*—**Refd.** Edwards *v.* Porter McNeall *v.* Hawes, [1923] 2 K. B. 538.

2455. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part X.—Relations between Agent and Third Parties.

2457. *Add. Annotations :—As to* (1) **Folld.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

2461a. ——.]—Applts., acting as *del credere* agents on behalf of a firm of timber exporters in Finland sold a cargo of timber to resp. Thereupon applts., in accordance with the contract of agency, paid the exporters the price of the timber, less their commission. In accordance with the contract of sale resp. accepted two bills of exchange drawn by applts. for the price of the timber. Subsequently resp. rightfully rejected the timber. On presentation of the bills of exchange resp. dishonoured his acceptances & applts. then brought this action to recover upon the bills of exchange :—*Held :* (1) applts. were not trustees or agents of the exporters in any way that would prevent them recovering on the bills of exchange ; (2) the handing over of the shipping documents was good consideration for resp.'s acceptance of the bills ; (3) there was no failure of consideration for the bills which were not affected by the failure of the consideration under the contract for the sale of timber & applts. were entitled to recover.—CHURCHILL & SIM *v.* GODDARD, [1937] 1 K. B. 92 ; [1936] 1 All E. R. 675 ; 154 L. T. 586 ; 52 T. L. R. 356 ; 80 Sol. Jo. 285 ; 41 Com. Cas. 309, C. A.

PART IX. SECT. 6, SUB-SECT. 3.

sc. *In general.*] — By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters covered by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist.—WATSON *v.* POWELL, [1921] 2 W. W. R. 128 ; 14 Sask. L. R. 424 ; 58 D. L. R. 615.—**CAN.**

sd. *Owner leasing arm to former manager.*]—When an owner of land has permitted his employee to manage a farm & to dispose of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. *v.* WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467 ; 32 Man. L. R. 76 ; [1922] 2 W. W. R. 162.—**CAN.**

sf. *Agent accepting goods after revocation.*]—Applts., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory. In 1917 V. had authority to accept chicory on behalf of applts., but when applts. entered into a contract with resps. for the 1918–1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to applts. at Durban ; but it was rejected by applts. as being unsound in terms of the contract. Prior to the sending off of this consignment, applts. had notified all the farmers by circular that they would reject any chicory not "tip-top," & charge rallage & storage to the senders :—*Held :* the circulars should have put resps. on inquiry as to V.'s authority.—ELLIS BROWN *v.* VAN ROOYEN, [1920] E. D. L. 81.—**S. AF.**

sg. *Agent contracting after revocation.*]—Deft. authorised his wife to sell land, but before the contract with pltf. was concluded he revoked his wife's authority. The revocation was not communicated to pltf. :—*Held :* deft. was bound by the contract entered into by his agent with pltf.—WILLIAMS *v.* WEST, [1921] E. D. L. 352.—**S. AF.**

sh. *Lapse of time putting third party on inquiry.*]—Applt., a contractor, had obtained a contract to work the O. quarry for a municipality, one of the terms being that he should not transfer any of the work to other persons without the consent of the engineer of the municipality. During the period June to Sept. 1926, resp., in response to orders given over the telephone from the quarry, supplied applt. at the quarry with coal to the value of £35, which amount was duly paid by applt. Thereafter no further coal was ordered until Jan. 1928, when certain further orders were received by resp. over the telephone for coal to be delivered at the quarry. The coal was delivered & the delivery notes were signed on behalf of the O. quarry. At this time applt. was no longer at the quarry, but had sublet the contract to S. & G. Applt. had not given notice in any form of this fact. After delivery of portion of the coal, resp. inquired from the municipal engineer whether the contract had been sublet, & upon receiving an answer in the negative supplied further coal to the quarry, making no attempt to communicate with applt. It was not disputed that orders had been given for the coal by S. & G., & that as between themselves & applt. they had no authority to bind the latter's credit :—*Held :* assuming S. & G. professed to act on applt.'s behalf, applt. could not have reasonably foreseen that a tradesman from whom he had ordered goods some eighteen months before over the telephone would act upon further telephone orders without communicating with him, & he was therefore not estopped from denying the authority of S. & G. to find his credit.—MONZOLI *v.* SMITH, [1929] A. D. 382.—**S. AF.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a) i.

2457 i. *Agent cannot sue.*]—Pltf. sent to defts. a quotation for goods, written on paper headed, "Niels Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote : "All orders are booked on the understanding that my principals are given the option of shipping by steamer or sailing vessel." Defts. gave pltf. an order. Pltf. wrote to defts. saying : "I have cabled the order over to-day & I hope soon to be able to give upon cable acceptance." Subsequently he wrote : "I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Pltf.'s letters were all signed "Niels Storaker" without any qualification :—*Held :* pltf. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—STORAKER *v.* SOUTHOUSE & LONG, LTD. (1920), 20 S. R. N. S. W. 190.—**AUS.**

2457 ii. ——.]—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through "your distributors," contained an agreement to pay them (the distributors) at their office & provided that "this order to be binding shall be accepted by them." The distributors supplied the books, & sued for the price :—*Held :* the action was not maintainable.—WISE *v.* KERR, [1925] 1 W. W. R. 849 ; 35 B. C. R. 161.—**CAN.**

2457 iii. ——.—BARKLEY *v.* WINNYCHUK (Alta.), [1926] 4 D. L. R. 538 ; [1926] 3 W. W. R. 327.—**CAN.**

2467 i. *Agent real principal.*]—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it. even though he is the real principal, unless the other party has affirmed the contract with knowledge of the fact.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a) ii.

2471 vi. —— *Father & son.*]—A person acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father telephones for a physician to come & attend his father's servant who is ill, raises no presump-

2473. *Add. Annotation :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2474a. ——.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into " between G. T. G. & Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by " the charterers," & at the end of the charterparty the following stipulation was added in writing : " Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The charterparty was signed as follows : " For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co. :—*Held :* (1) the K. Coal Co. were not by reason of the form of the signature made liable upon the charterparty ; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—KIMBER COAL CO. *v.* STONE & ROLFE, LTD., [1926] A. C. 414 ; 95 L. J. K. B. 601 ; 135 L. T. 161 ; 42 T. L. R. 430 ; 31 Com. Cas. 333 ; 17 Asp. M. L. C. 37, H. L.

2476a. ——.]—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, No. 188a, *ante.*

2482a. Person selling " as agent for " named principal.]—JAMES (ARTHUR) & CO. *v.* JOHN WESTON & CO., LTD. (1929), 73 Sol. Jo. 484.

2487a. ——.]—Pltf., a builder, did work on the order of H., a director of a co. for which pltf. had previously done work on H.'s order. As the work proceeded pltf. prepared estimates & addressed them to the co. whose name he had entered in his books. When the work was finished he was paid a sum on account, but when trying to get payment of the balance he was told that the work had not been ordered on behalf of the co., but for other principals. Thereupon he sued H. The judge found that H. impliedly undertook personal liability for the work, that pltf. gave credit to the co. up to a certain date, but did so under a mistaken impression, & that he never gave exclusive credit to them in such a way as to bind himself to look to them, & that he never gave credit to H. before the work was completed :—*Held :* H. was liable for the balance.—GARDINER *v.* HEADING, [1928] 2 K. B. 284 ; 97 L. J. K. B. 766 ; 139 L. T. 449, C. A.

2501. *Add. Annotations :*—**Refd.** Phillips *v.* Brooks, [1919] 2 K. B. 243 ; Said *v.* Butt, [1920] 3 K. B. 497 ; Lake *v.* Simmons, [1927] A. C. 487.

2502. *Add. Annotation :*—**Consd.** Dyster *v.* Randall, [1926] Ch. 932.

2504. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

tion that the son agrees to pay for such services.—BLEECKER *v.* STUTSMAN, [1920] 3 W. W. R. 644 ; 54 D. L. R. 662.—**CAN.**

2483 i. *Agent real principal.*]—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only :—*Held :* deft. was liable as the real vendor.—PETERSON *v.* CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041 ; 67 D. L. R. 38.—**CAN.**

sk. *Contract for work & labour.*]—After judgment by default on common counts for work & labour, etc., deft. may show on the execution of writ of inquiry that he contracted merely as agent of the person to whom the credit was given.—FALLS *v.* SARGENT (1846), 3 Kerr. 248.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b) ii.

e i. ——.]—Every person who in making a contract discloses the existence, but not the name, of the principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975 ; 43 D. L. R. 757.—**CAN.**

e ii. *Name disclosed by third party.*]—Under Indian Contract Act, s. 230, pltfs. as agents for an undisclosed principal, could personally enforce the contract. The expression " where the agent does not disclose the name of the principal " does not apply to a case where the name of the principal is disclosed not by the agent, but by a third party.—KAPURJI MAGNIRAM *v.* PANAJI DERICHAND (1928), I. L. R. 53 Bom. 110.—**IND.**

2492 i. *Agent real principal.*]—Where the owner in equity signs a contract for the sale of land " as agent for the owner " evidence is admissible to show that the person so contracting is the owner, & he is entitled to sue the purchaser without having given him notice prior to action brought that he was the principal, & not the agent.—*v.* BRADFORD, [1927] S. A. S. R. 152.—**AUS.**

sl. *Person contracting for "buyer."*]—In pursuance of authority given by deft. his agents purchased sheep for pltf. In none of the telegrams between pltf. & deft.'s agents by which the purchase was arranged was deft. named, but the last telegram from the agents contained the words " Buyer confirms sale ":—*Held :* the words " Buyer confirms sale " shewed that deft.'s agents were contracting as agents, & relieved them from personal liability on the contract.—MURRAY *v.* HOPKINS, [1919] N. Z. L. R. 689.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) i.

2497 v. ——.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

2497 vi. —— *Agent real principal.*]—Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

2497 vii. —— *Damage suffered by principal.*]—In an action against shipowners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered owners of the ship, but merely acted as managers for a co. which owned her :—*Held :* as pltfs. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves.—CRAIG & CO. *v.* BLACKATER, [1923] S. C. 472.—**SCOT**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) ii.

2510 xiv. ——.]—Where a person makes a contract in his own name without disclosing either the name or existence of a principal, he is primarily liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975 ; 43 D. L. R. 757.—**CAN.**

2510 xv. ——.]—In an action for the hire of a dredge obtained by deft. M. from pltf., relief was sought against deft. J. as undisclosed principal : —*Held :* suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed.—NOVA SCOTIA DREDGING CO., LTD. *v.* MUSGRAVE & CO. (1918), 52 N. S. R. 71 ; 40 D. L. R. 589.—**CAN.**

2510 xvi. ——.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS *v.* SWIFT CANADIAN CO., [1923] 3 D. L. R. 997.—**CAN.**

2510 xvii. ——.]—LITCHFIELD *v.* SASKATCHEWAN & BATTLE RIVER LAND & DEVELOPING CO. (Sask.) (1908), 7 W. L. R. 475.—**CAN.**

2510 xviii. ——.]—WEST *v.* DILLICAN, No. 2497 v., *ante.*—**N.Z.**

2510 xix. ——.]—MCCREA *v.* BARHAN-JENKINS COMMISSION CO. & RABY, [1930] 2 W. W. R. 52 ; 3 D. L. R. 481 ; 24 Alta. L. R. 521.—**CAN.**

2510 xx. ——.]—Agent is personally liable for the price of goods unless he can prove that the vendor knew he was the agent of someone else. —SBROCCHI *v.* MOSS, [1934] 4 D. L. R. 80 ; 7 M. P. R. 485.—**CAN.**

2510 xxi. ——.]—R., a shorthand writer, supplied L., a solr., with notes of evidence taken at the hearing of an inquiry before a certain commission. L., who, at the inquiry, was acting for several clients, ordered the notes verbally but, when doing so, did not state specifically that he was ordering them on behalf of any of his clients.

2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] — A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against the undisclosed principal, even though such judgment is still unsatisfied. — LONDON GENERAL OMNIBUS CO., LTD. *v.* POPE (1922), 38 T. L. R. 270.

2531. *Add. Annotations :—As to* (1) **Refd.** Ariadne S.S. Co. *v.* KcKelvie, [1922] 1 K. B. 518. *As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2537. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2542. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2543. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2544. *Add. Annotation :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2545. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546. *Add. Annotations :—As to* (1) **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 5118; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Apprvd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546a. —— —— Unnamed principal.]—Appelts., pltfs. in the action, were English timber brokers. In Oct. 1929, they, as brokers acting on behalf of a foreign seller, sold to resp., an English buyer, a quantity of timber. The contract of sale was signed by applts. as brokers & was expressed to be made "on account of our principals," but the name of the seller was not disclosed. Delivery was to be made by instalments, & the first instalment was accepted & paid for by resp. without question. The second instalment was then delivered, but before paying for it resp. discovered that the seller was a merchant at D. with whom he had previously been in litigation & against whom he had a judgment which was still unsatisfied. Resp. thereupon refused to pay for the second instalment but offered to set off the price against so much of his unsatisfied judgment. Applts. had meanwhile paid the foreign seller themselves & had obtained the documents from him, and they brought this action in their own name to recover the price from resp. :— *Held :* dismissing the appeal (1) as applts. had only signed the contract in their capacity as brokers they had not themselves either rights or liabilities under it; & (2) on the evidence there was no custom in the trade under which the ct. could imply an independent contract by the buyer to become liable to pay the brokers instead of their principals.—FLATAU, DICK & Co. *v.* KEEPING (1931), 36 Com. Cas. 243, C. A.

Annotation :—As to (2) **Refd.** Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

2549. *Add. Annotation :—As to* (2) **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2549a. —— —— Agents also described as charterers.]—A charterparty was expressed to be made "between T. H. S. & Co., agents for the owners" of a steamer, "& J. McK. & Co., charterers," & was signed "For & on behalf of J. McK. & Co. (as agents), J. A. McK." The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge :—*Held :* defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—UNIVERSAL STEAM NAVIGATION CO. *v.* MCKELVIE (J.) & CO., [1923] A. C. 492; 92 L. J. K. B. 647; 129 L. T. 395; 39 T. L. R. 480; 67 Sol. Jo. 593; 16 Asp. M. L. C. 184; 28 Com. Cas. 353, H. L.; *affg.* S. C. *sub nom.* ARIADNE S.S. CO., LTD. *v.* MCKELVIE (J.) & CO., [1922] 1 K. B. 518, C. A.

Annotations :—**Consd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2553. *Add. Annotation :*—**Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2559. For "2 C. & P. 145" read "2 C. & P. 124."

2563. *Add. Annotations :—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (3) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2564. *Add. Annotations :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

2566. *Add. Annotations :*—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2567. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2571. *Add. Annotations :*—**Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2575. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

R. sued L. for the price of the notes. At the hearing the presiding judge held that he was not satisfied that a custom, under which, in the circumstances, L. would be liable, had been proved, & granted a non-suit. On appeal :— *Held :* the true question for determination was whether the contract between the parties was such that deft., when ordering the notes, made it clear that he was not to be personally liable. Therefore, the non-suit should be set aside.—RUTTER *v.* LINTON (1935), 35. S. R. N. S. W. 132; 52 N. S. W. W. N. 13.—AUS.

2576. *Add. Annotation :*—**Expld.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2577. *Add. Annotation :—As to* (1) **Refd.** Westacott *v.* Hahn, [1918] 1 K. B. 495.

2583. *Add Annotation :—As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2584. *Add. Annotation :*—**Refd.** The Lizzie, [1919] P. 22.

2585. *Add. Annotation :—As to* (1) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2591. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2594. *Add. Annotation :—As to* (2) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2595. *Add. Annotation :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203.

2597. *Add. Annotation :—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2599. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2606. *Add. Annotations :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203. **Refd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247; Collins *v.* Associated Greyhound Racecourses, [1930] 1 Ch. 1.

2608. *Add. Annotations :—Generally,* **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

2609. *Add. Citations :* — REDERIAKTIEBOLAGET ARGONAUT *v.* HANI, [1918] 2 K. B. 247; 87 L. J. K. B. 999; *sub nom.* ARGONAUT *v.* HANI, 14 Asp. M. L. C. 310.

Add. Annotation :—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203.

2609a. ——.]—The description in a charterparty of one of the contracting parties as " charterer " does not, of itself, designate him as the only person to fill that position.

An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as " charterer," & objection was taken to the admission of evidence that pltfs. were in fact the charterers, on the ground that such evidence would contradict the written contract :—*Held :* the evidence was admissible.—DRUGHORN (F.), LTD. *v.* REDERIAKTIEBOLAGET TRANS-ATLANTIC, [1919] A. C. 203; 88 L. J. K. B. 233; 120 L. T. 70; 35 T. L. R. 73; 63 Sol. Jo. 99; 14 Asp. M. L. C. 400; 24 Com. Cas. 45, H. L.; *affg.* S. C. *sub nom.* REDERI AKT. TRANS-ATLANTIC *v.* DRUGHORN, [1918] 1 K. B. 394, C. A.

Annotation :—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2610. *Add. Annotation :—As to* (2) **Refd.** Keen *v.* Mear (1920), 124 L. T. 19.

2613. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102; Harmer *v.* Armstrong, [1934] Ch. 65.

2620. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2629. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2634. Before this case, after " *See, now,* Bills of Exchange Act, 1882 (c. 61), s. 26," add " *generally,* BILLS OF EXCHANGE, Vol. VI., pp. 112–114."

2635. *Add. Annotations :* —**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2639. *Add. Annotation :*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

Add. Annotations :—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2658. *Add. Citations :—sub nom.* CREW *v.* PETIT, 3 Nev. & M. K. B. 456; 2 Nev. & M. M. C. 309.

Add. Annotation :—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2664. *Add. Annotation :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2665. *Add. Annotations :*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2666. *Add. Annotation :—Generally,* **Refd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

PART X. SECT. 1, SUB-SECT. 1.—B. (c) i.

2591 iii. ——.]—Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as agent for her husband, & expressly purported as owner to contract for payment to pltf. of the commission on the sale thereof :—*Held :* parol evidence was not admissible in an action against the husband to show that she was in fact acting as agent.—KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201; 25 O. W. N. 333.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (c) ii.

2598 ii. ——.]—Where a contract is entered into by an agent in his own name & the terms thereof clearly indicate personal liability the agent is personally bound by the contract, regardless of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—CURRIE *v.* RURAL MUNICIPALITY OF WREFORD, No. 280, & LASHER, [1918] 1 W. W. R. 315; 39 D. L. R. 516; 11 Sask. L. R. 22.—**CAN.**

sm. —— *Sale of shares.*]—An investor purchased from a chartered accountant 150 shares in a co., paid the price therefor, & received from the chartered accountant a receipt, which acknowledged payment of the price of 150 shares & concluded with those words: " the transfer for which will be sent you for signature in due course." In an action at the instance of the purchaser against the chartered accountant for transfer of the shares or repayment of the price deft. denied liability, averring that his position in the transaction was merely that of an agent for a disclosed principal :—*Held :* on the terms of the receipt deft. was personally liable to implement the contract of sale, & it was incompetent for him to adduce parol evidence to show, in contradiction of its terms, that he was merely an agent.—LINDSAY *v.* CRAIG, [1919] S. C. 139; 56 Sc. L. R. 93; [1918] 2 S. L. T. 321.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.—C.

b i. —— ——.]—A clause in a document under seal purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.—B. (b).

si. *General rule.*]—The name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on the back of the document. A promissory note was signed by a chetty who was alleged to be the agent of applt. firm. The chetty signed it in his own name & it contained no promise by applt. firm to repay the loan :—*Held :* the firm was not liable.—P. R. M. P. R. CHETTYAR *v.* MUNIYANDI SERVAI (1932), I. L. R. 10 Ran. 257.—**IND.**

2686. *Add. Annotations :*—**Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226; Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

2695. *Add. Annotations :*—*As to* (1) **Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. *Generally*, **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2701. *Add. Annotation :*—**Consd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2712. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

2726. *Add. Annotations :*—*As to* (2) **Refd.** Public Works Comrs *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Generally*, **Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

2726a. Minister of Health—For breach of contract.]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), " The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name " :—*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86; 101 L. J. Ch. 81; 146 L. T. 231; 47 T. L. R. 439.

2727. *Add. Annotations :*—**Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2729. *Add. Annotations :*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2731. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar. [1921] 2 A. C. 262.

2732. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2733a. —— **For declaration as to meaning of contract.**]—By a contract made between pltfs. & the Secretary of State for War the Secretary of State hired from pltfs. a steam engine & hay press upon the terms that the engine should be used only for the purpose of working the press. Pltfs. brought an action against deft., who was Secretary of State for War at the date of the writ, but at the date of the contract did not nor did he now hold that office, alleging that deft. had improperly used the engine for other than the specified purposes, & claiming a declaration that pltfs. were entitled to compensation for the improper use of the engine, & certain other declarations as to the construction & meaning of the contract :—*Held :* the action was not maintainable. It could no more be

PART X. SECT. 1, SUB-SECT. 4.—B. (a).

sn. *Failure of foreign principal to perform contract.*]—Defts., acting on behalf of a foreign shipowner, who proposed to establish a service from Halifax to Havana & other southern ports, contracted in their own name with pltf. to provide space on the ship for a shipment of timber to be carried from Halifax to Buenos Ayres. The proposed service was abandoned by the shipowner, so that the contract entered into by defts. could not be performed :—*Held :* there having been failure on defts.' part to disclose that they were merely acting in the capacity of agents for a foreign principal, they were liable to pltf. for damages resulting from cancellation of the ship's sailing.—SHEPARD & MORSE LUMBER CO. INCORPORATED *v.* MATHERS (I. H.) & SON, [1926] 2 D. L. R. 457; 58 N. S. R. 466.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.—E.

2709 iii. —— *Principal undisclosed—Principal no right to sue.*]—COHEN *v.* DOMINION ATLANTIC RY. CO. (1931), 3 M. P. R. 495; *affd.*, [1931] S. C. R. 715; [1932] 2 D. L. R. 815.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

2712 ii. —— *On behalf of unincorporated body.*]—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law. —FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

2712 iii. —— —— .]—A person cannot be the agent of a projected but actually as yet non-existent co., & the co. when formed cannot take advantage of any contract entered into by a person purporting to act as its agent, whether by attempted ratification or otherwise; but a person may make a provisional contract not to become binding—*i.e.* not to be a contract at all—unless & until the co. becomes entitled to commence business.—HUDSON-MATTAGAMI EXPLORATION MINING CO. *v.* WETTLAUFER BROTHERS, LTD., [1928] 3 D. L. R. 661; 62 O. L. R. 387.—**CAN.**

2712 iv. —— ——.]—A co. cannot be bound by any contract made on its behalf before it comes into existence, nor can it, subsequent to its formation, ratify such a contract.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

sp. *Bill of exchange accepted—In name of non-existent company.*] — Deft., a member of a firm, H. & S., represented & warranted to pltf. that H. & S. Co., Ltd., were an incorporated co. & that he was authorised by it to accept a bill of exchange as its agent. He accepted a draft in the name of the co. & pltf. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co. :—*Held :* deft., by his acceptance of the draft in the name of a non-existing corpn., warranted & represented that there was such a corpn. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs & expenses incurred by pltf. in endeavouring to collect same from H. & S. Co., Ltd.—BANK OF NOVA SCOTIA *v.* HATFIELD (1920), 48 N. B. R. 13; 58 D. L. R. 136.—**CAN.**

sq. *Purchase of goods on behalf of firm—Firm having disposed of business.*] —Pltfs., owners of an apple orchard, were visited by C., acting for deft. co., who represented to pltfs. that he was buying on behalf of N. & L., a firm which had been well-known to pltfs. in previous years as buyers of apples, & was represented to pltfs. by C., as " all right, solid as a rock " & " had been running since 1847." A paper was produced & signed by pltfs. containing particulars of the proposed sale & purporting to be made between pltfs., as sellers, & N. & L., or their agents, as buyers. Pltfs. delivered their apples to deft., & received payment on account in cheques of deft. co. At the time of the transaction N. & L. had gone out of business, having disposed of the same to another co., which after changing its name several times had gone into liquidation :—*Held :* deft. co. was liable to pltfs. for the balance remaining unpaid on account of the sale.—BRENNAN *v.* BERWICK FRUIT CO., [1928] 1 D. L. R. 548; 59 N. S. R. 510.—**CAN.**

PART X. SECT. 1, SUB-SECT. 6.—A. (a).

2730 i. *Secretary of State for India—Contract for supply of goods by Commanding Officer—Contract ultra vires.*] —Pltf. having entered into a contract for the supply of horses' food with the officer commanding the depot of a cavalry regiment, sued the Secretary of State for the balance due to him under the contract :—*Held :* an officer commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf, of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

sr. *Who is Crown servant or agent—Contractor.*]—Resp. co. entered into a contract with the Minister of Railways & Canals, as representing the Crown, for the enlargement of the L. Canal. Applt. co. had obtained under a lease from the Govt. the right to lay & maintain a gas main across the *solum* of the canal. Clause 6 of the lease stipulated that, in the event of its gas main being from any cause injured, applt. co. was to have no claim or demand against " His Majesty, His servants or agents." During the execution of the contract, a break occurred in the gas main, & applt. co. claimed damages alleging negligence of the resp. co. in dredging the bed of the canal :—*Held :* resp. co. was not a " servant " or an " agent " within the contemplation of clause 6 of the lease & was therefore liable in damages.—MONTREAL LIGHT, HEAT & POWER CO. *v.* QUINLAN & ROBERTSON, LTD., [1929] 3 D. L. R. 568; S. C. R. 385; *revg.*, 44 Que. K. B. 230; *affg.*, 63 Que. S. C. 436; 31 Rev. Leg. 450.—**CAN.**

brought against a servant of the Crown for a declaration as to what the contract meant than for substantive relief upon the contract itself.—HOSIER BROTHERS *v.* DERBY (EARL), [1918] 2 K. B. 671 ; 87 L. J. K. B. 1009 ; 119 L. T. 351 ; 34 T. L. R. 477, C. A.

2734. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2740a. —— —— **To mess.**]— BROWN *v.* DOYLE (1788), 3 Camp. 51, n. ; 170 E. R. 1302.

2742a. —— —— **On order of secretary of mess committee.**]—LASCELLES *v.* RATHBUN, No. 704a, *ante.*

2748. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2749. *Add. Annotations :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538 ; Edwards *v.* Porter (1924), 41 T. L. R. 57. **Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2751. *Add. Annotation :*—**Refd.** Edwards *v.* Porter. McNeall *v.* Hawes, [1923] 2 K. B. 538.

2752. *Add. Annotations :*—**Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616. **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2753. *Citations :*—For " P. C." read " H. L."

2753a. —— **Sale of goods—Principal not entitled to sell.**]—Where an agent purports to make a contract for a principal to buy goods, whether ascertained or not, or to sell unascertained goods, disclosing the fact that he is acting as agent, but not disclosing the name of his principal, he is personally liable to the purchaser if it afterwards appear that the principal had no right to sell, it being presumed that the purchaser would be unwilling to contract solely with an unknown man. But this presumption does not exist where a specific chattel is so sold, it being impossible to suppose that a purchaser would impose or an agent accept such a liability.—BENTON *v.* CAMPBELL, PARKER & CO., [1925] 2 K. B. 410 ; 94 L. J. K. B. 881 : 134 L. T. 60 ; 89 J. P. 187 ; 41 T. L. R. 662 ; 69 Sol. Jo. 842. D. C.

2755a. Authority to compromise action.]—T., who owned a paper, formed a co. with a capital of £500 in £1 shares, & transferred his paper to the co. in consideration of the allotment to him of the 500 shares. T. gave Miss P., who was the editor of the paper, 475 shares, retaining 25 shares himself. T. & Miss P. were the directors of, & the only shareholders in, the co. Defts. published in one of their papers two articles which T. considered to be a libel upon himself & the co. to which he had transferred his paper. T. & the co. commenced actions for libel against defts. There was a meeting between T. & H., a representative of defts., with the object of settling the litigation, & eventually terms of settlement were arranged on Oct. 10, 1932, & initialled by T. & H. The terms, which were headed with the names of two actions, provided : " I accept the sum of 1,000 guineas on account of costs & expenses incurred in full discharge & settlement of my claims against " defts. " & the claims of the " co. " & the officers of that co., arising out of the articles published in the *Daily Mail* . . . & I will forthwith instruct my solrs. to serve notice of discontinuance, or to take such other steps or to agree to such other steps being taken to end the proceedings now pending." Provision was also made for a letter in the terms of an agreed draft to be written to T. by H. Pltf. co. & Miss P. did not agree to the proposed settlement, although defts. were ready & willing to carry out the settlement, & the actions proceeded to trial. Defts. counterclaimed against T. for breach of warranty of authority. The jury returned a verdict for both T. & pltf. co., & judgment was entered for each of pltfs. with costs. The Ct. of Appeal, however, held that the alleged libel was not a libel on pltf. co., & set aside the judgment in favour of pltf. co. The judge at the trial held that T. represented & warranted that he had authority to settle the action on behalf of pltf. co., whereas in fact he had no such authority, & defts. were entitled to an inquiry as to the damages they had thereby sustained. Defts. appealed (*inter alia*) by leave of the trial judge, on the question of costs in both actions. Pltf. T. appealed against the judgment against him for damages for breach of warranty of authority on the ground that he had never represented that he had authority to settle the action on behalf of pltf. co., & because the transaction relied on in the counterclaim was only an executory accord giving rise to no rights :—*Held :* inasmuch as T. warranted that he had the authority that he professed to have, whereas in fact he had not that authority, he had

PART X. SECT. 1, SUB-SECT. 7.—A.

2748 v. ——.]—In an action for breach of warranty of authority, the cause of action is the breach of the express or implied promise of the person who assumes to act as agent that he has authority so to act, the consideration necessary to make that promise binding being found in the action of the other party in entering into the contract. Pltf. in such an action need not establish that he believed deft.'s representation that he had authority, though it must appear that he acted in reliance upon it.—LEGGO *v.* BROWN, [1923] V. L. R. 440. —**AUS.**

2748 vi. ——.]—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1932] 2 D. L. R. 45.—**CAN.**

2748 vii. ——.]—Deft., who at the time was president & majority shareholder of the R. co., signed in the name of the co. a contract with pltf. for the sale & installation of an oil burner for the purpose of heating a building which was owned by deft. & rented to the R. co. The burner was installed, but the co. denied liability on the contract &, after setting up a defence to an action thereon, went into bkpcy. Pltf. then sued the present deft. for damages for breach of warranty of authority. The judge held that deft. was the real purchaser & gave judgment against him for the purchase price ; leave being given to pltf. to amend the statement of claim to accord with the evidence & the judgment. Deft. appealed & pltf. cross-appealed for judgment for breach of warranty of authority :—*Held :* the appeal should be allowed on the grounds that deft. was not the real purchaser & pltf. had not made out a case against him of breach of warranty of authority.—FESS OIL BURNERS OF CANADA, LTD. *v.* HUTCHINGS, [1933] 2 W. W. R. 141 ; [1934] 1 D. L. R. 335 ; 41 Man. L. R. 307.—**CAN.**

st. *Liability for return of deposit.*]—Where a person, falsely representing himself to be the agent for the owner of certain land, entered into a contract for the sale thereof, & received a deposit on account of the purchase money, but the vendee could not obtain specific performance of the contract :—*Held :* his remedy against the agent for the return of the deposit was at law, & that a bill for that purpose would not lie.—GRAHAM *v.* POWELL (1868), 15 Gr. 327.—**CAN.**

broken his warranty & was liable in damages. —BRITISH RUSSIAN GAZETTE & TRADE OUTLOOK, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD.; TALBOT *v.* ASSOCIATED NEWSPAPERS, LTD., [1933] 2 K. B. 616; 102 L. J. K. B. 775; 149 L. T. 545, C. A.

2757. *Add. Annotation :—As to* (1) **Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2761. *Add. Annotation :—As to* (3) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2763. *Add. Annotations :—As to* (1) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538; Edwards *v.* Porter (1924), 41 T. L. R. 57. *As to* (2) **Refd.** *Re* Wingfields, [1923] 2 K. B. 112.

2764. *Add. Annotations :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120; Watts *v.* Official Solicitor, [1936] 1 All E. R. 249.

2769. *Add. Citation :*—13 Asp. M. L. C. 463.

2775a. —— **Acceptance subject to ratification.**]—WATSON *v.* DAVIES, No. 1001a, *ante*.

2777. *Add. Annotations :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538. **Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2780. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2788. *Add. Annotation :*—**Refd.** Smith *v.* Buskell, Buskell *v.* Smith & G. W. Ry., [1919] 2 K. B. 362.

2791. *Add. Annotation :*—**Refd.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

2792. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2795. *Add. Annotations :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538; Edwards *v.* Porter (1924), 41 T. L. R. 57; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

2807. *Add. Annotation :*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504.

2812. *Add. Annotation :—A to* (2) **Refd.** Archangel Saw Mills *v.* Baring & A.-G., Steam Saw Mills *v.* Baring & A.-G. (1921), 37 T. L. R. 857.

2814a. **Agent receiving proceeds of sale of goods for credit of foreign Government.**]—In 1917 pltfs., under licence from the Russian Imperial Govt. exported timber to this country, &, in accordance with the conditions of the licence, paid the purchases money received by them for the timber to deft. bankers for the credit of the Russian Govt. They then became entitled to receive from the Govt. in Russia an equivalent amount in roubles at a fixed rate of exchange. In Mar. 1917, the Imperial Govt. was overthrown by a revolution, & was succeeded by a Provisional Govt., which in its turn, was, on Nov. 7, 1917, displaced by the Bolshevists, who, on Dec. 13, forcibly dissolved the Constituent Assembly & established a Soviet Republic. Pltfs. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltfs. in the second action before Nov. 7, & the other by pltfs. in the first action on Nov. 9, at which date they did not know of the Bolshevist revolution. Pltfs. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltfs. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it : —*Held :* (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives ; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltfs. & an order of the ct.—STEAM SAW MILLS CO. *v.* BARING BROTHERS & CO., ARCHANGEL SAW MILLS CO. *v.* BARING BROTHERS & CO., [1922] 1 Ch. 244; 91 L. J. Ch. 325; 126 L. T. 403; 38 T. L. R. 200; 66 Sol. Jo. 170, C. A.

Annotation :—**Refd.** Home & Colonial Insco. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

2815. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2818. *Add. Annotations :*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

PART X. SECT. 1, SUB-SECT. 7.—B

2765 i. *Third party in error as to actual scope of agent's authority.*]—Deft., as agent of absentee landlords, instructed pltf., a solr., to distrain for rent on certain goods. A claim was made to the goods by a chattel mtgee., whose right was contested by pltf. under instructions from deft., whose authority for such proceedings was later repudiated by the landlords :—*Held :* pltf. could recover from deft. his costs of the interpleader proceedings upon a warranty of authority.—CUNLIFFE *v.* PLANTA, [1920] 3 W. W. R. 898; 54 D. L. R. 196.—**CAN.**

PART X. SECT. 1, SUB-SECT. 8.—A. (a).

2808 iii. —— *Subject to special terms.*]—Pltf. listed land with defts. for sale. Defts. secured a prospective purchaser, receiving from him $1,000 as deposit & gave a receipt out the terms of sale & concluding thus : "Money to be refunded if Gray Estate fail to deliver, as per agreement." The purchaser refused to complete :—*Held :* defts. in their receipt undertook an obligation to the purchaser to hold the deposit on his behalf, & pltf. could not recover the money from defts. as if it had been received by them simply & solely on her behalf.—GRAY *v.* MURCHISON (1922), 70 D. L. R. 7; [1922] 3 W. W. R. 545.—**CAN.**

2808 iv. ——.]—Where a person who has offered, through the agent of an owner of land, to buy the land for cash pays the agent a deposit on the proposed purchase-price on the condition that the money shall be held pending the execution of a transfer by the owner, then living abroad, & that, if the transfer is not executed & returned, the money will be handed back to the payer, the agent is bound to so hold the money & return it if he cannot procure the transfer.—BELL *v.* KROHN, [1931] 2 W. W. R. 701.—**CAN.**

2808 v. —— *Larceny from purchaser.*]—An agent converting to his own use a deposit on sale is guilty of larceny from the purchaser.—R. *v.* SPEIGAL, [1932] 4 D. L. R. 709; 58 C. C. C. 297.—**CAN.**

2809 i a. —— —— ——.]—Where a vendor has agreed to pay a commission to his agent & has agreed that the amount received by the agent as a deposit from the purchaser should be retained by the agent in part payment of such commission & has given security for the balance, the deposit must be treated as paid over to the vendor, & in an action for money had & received it is only from the vendor that it can be recovered.—BRUNSTETTER *v.* ZUSHING, [1918] 3 W. W R. 546.—**CAN.**

2825. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

2826. *Add. Annotations :*—**Apld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452. **Distd.** Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244. **Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2828. *Add. Annotations :*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2831. *Add. Annotation :*—**Consd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

2834. *Add. Annotation :—As to* (1) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2837. *Add. Annotation :*—**Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

2839. *Add. Annotations :*—**Refd.** Marshall Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2841. *Add. Annotations :*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; Jones *v.* Waring & Gillow, [1926] A. C. 670; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

2842. *Add. Annotation :—As to* (3) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422. *Generally*, **Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2851. *Add. Annotation :*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

2866. *Add. Annotation :*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671.

2867. *Add. Annotation :*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26.

2877. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2882. *Add. Annotation :*—**Dbtd.** & **Distd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

2888. *Add. Annotations :*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

2895. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

2899 *Add. Annotation :*—**Refd.** McCreagh *v.* Judd, [1923] W. N. 174.

2924. *Add. Annotation :*—**Refd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind Coope *v.* Same, [1920] 2 K. B. 487.

2926. *Add. Annotation :*—**Consd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

2940. *Add. Annotations :*—**Consd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Leitch (William) & Co. *v.* Leydon; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33; Savory (G. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530; The Arpad, [1934] P. 189.

2943. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2951. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

2953. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2964. *Add. Annotation :*—**Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

PART X. SECT. 1, SUB-SECT. 8.—A. (b) ii.

2828 v. ——.]—If a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—BANQUE D'HOCHELAGA *v.* MARSHALL, [1921] 2 W. W. R. 496; 31 Man. L. R. 242.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—A. (b).

2918 i. *General rule.*]—Where a third party has suffered loss or injury he has no right of action against an agent personally unless the agent has been guilty of a wrong or a breach of trust.—WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (a).

2944 i. *Agent holding goods for principal—Absolute refusal to true owner.*]—A servant or agent can be sued for conversion of a chattel mtge. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—ADVANCE RUMELY THRESHER CO., INCORPORATED *v.* SERVICE, [1919] 2 W. W. R. 647; 12 Sask. L. R. 294.—**CAN.**

sr. *Breach of trust.*]—Under an agreement between pltf. finance co. & deft. co. which was a retail dealer in motor cars, the former co. financed for the latter co. certain shipments of cars consigned by the manufacturers, under bills of lading with draft attached, to the deft. co. By the terms of said agreement deft. co. covenanted not to sell, mtge., etc., the cars without first having paid in cash the unpaid balance of the purchase-price, & to hold the cars in trust for pltf. until their price had been paid in full, & by the latter clause deft. co. also expressly admitted that until such amount was paid it had no right or title in the cars. The cars were never in the possession of pltf., nor did pltf. have any dealings with the manufacturers with respect to them. The agreement was signed for deft. co. by deft., M., its president; & through him deft. co. sold the cars without having made the payments called for by the agreement. Pltf. sued both defts. for damages for conversion. The defence of the co. was struck out & the action proceeded against M.:—*Held:* by the agreement deft. co. became at least a trustee for pltf., & that the sale of the cars in violation of the agreement was a breach of the trust, for which deft. M., as well as deft. co., was liable in damages.—DEALERS FINANCE CORPN., LTD. *v.* MASTERSON MOTORS, LTD. & MASTERSON, [1931] 1 W. W. R. 214; 4 D. L. R. 730; *revsg.*, [1931] 1 W. W. R. 194; 25 S. L. R. 240.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (b).

2950 i. *Misrepresentations — Reckless.*]—Deft., as agent for the owner, induced pltf. to purchase a grocery business. Pltf. claimed damages from deft. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by deft. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business:—*Held:* the jury was justified in treating deft.'s statements as definite representations & in concluding that they were made to induce & did induce, pltf. to buy the business.—EASTERBROOK *v.* HOPKINS, [1918] N. Z. L. R. 428.—**N.Z.**

Part XI.—Duration and Termination of Agency.

2989. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3002. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3004. *Add. Annotation :*—**Refd.** *In the Estate of* Dinshaw, [1930] P. 180.

3005. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3014. *Add. Annotation :*—**Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

3025. *Add. Annotation :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

3027. *Add. Annotation :*—*As to* (1) **Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3027a. —— —— **Agent not interned.**]—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract :—*Held :* the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—SCHOSTALL *v.* JOHNSON (1919), 36 T. L. R. 75.

3028. *Add. Citations :*—*affd.*, [1918] A. C. 239 ; 87 L. J. K. B. 416 ; 118 L. T. 126 ; 34 T. L. R. 206 ; 62 Sol. Jo. 290, H. L.

Add. Annotations :—*As to* (1) **Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260. *As to* (2) **Distd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331 ; Rodriguez *v.* Speyer, [1919] A. C. 59.

3029. *Add. Annotation :*—*As to* (2) **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331.

3030. *Add. Annotation :*—**Refd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3031. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

3040a. —— ——.]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated : "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2*s.* 6*d.* per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause : "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares

PART XI. SECT. 2, SUB-SECT. 1.—A.

2965 vii. ——.]—In an ordinary house agent's agreement the principal may revoke the agent's authority at any time before the agent has fully performed what he was authorised to do.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

2965 viii. ——.]—A contract of agency can in the absence of a term, express or implied to the contrary, be terminated at the will of either party.—POLLARD *v.* GIBSON, [1924] 4 D. L. R. 354 ; 55 O. L. R. 424 ; *varying*, 54 O. L. R. 419.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.—B.

2976 vi. —— *Loss of subject-matter.*]—Deft., the purchaser under an agreement for the sale of timber limits, listed the property with B. for sale. B. introduced C. as a prospective purchaser. Deft. being unable to meet the payments due under his agreement gave his vendors a quit-claim deed & they gave him an option to purchase again. This option expired, & deft. discontinued all negotiations for about nine months. He then obtained another option, &, having made another agreement with the owners to purchase, then affected a sale to C. Pltf., who was an assignee of B., claimed a commission on this sale :—*Held :* deft.'s contract with B. was determined when deft. lost the property, &, when after the lapse of the nine months, deft. again obtained an interest in it he was free to deal with C. or any one else on his own account.—CURTIS *v.* CRUICKSHANK, [1929] 2 D. L. R. 35 ; 1 W. W. R. 851 ; 40 B. C. R. 546.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

st. *Death of principal—Power to convey land.*]—*Held :* under a power of attorney executed by M., who died in 1919, her attorney could execute a valid transfer of her land, after her death.—*Re* MCCARTY (1920), 53 D. L. R. 249 ; 47 O. L. R. 285.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 4.

3015 i. *General rule.*]—On June 19, 1925, C. appointed P. her attorney by a power of attorney under seal, which was expressed to come into operation when C. was incapacitated through illness from attending to business. The deed purported to confer on P. wide powers of management in respect of C.'s estate, & in particular a power to sell C.'s personal estate & withdraw money from her bank account & employ it for any of the purposes mentioned in the deed. On Sept. 9, 1925, C. was certified to be insane, & thereafter until her death on Apr. 27, 1928, she was unable to manage her affairs :—*Held :* the power of attorney became void on the supervention of C.'s insanity.—*Re* COLEMAN, *Ex p.* PROPSTING (1931), 24 Tas. L. R. 77.—**AUS.**

which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held:* the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re* OLYMPIC REINSURANCE CO., POLE'S CASE, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.

See, generally, COMPANIES, Vol. IX., pp. 182 *et seq.*

3041a. —— Agent having sole selling rights of manufacture.]—ELLIS STERLING BOOK KEEPING MACHINES, LTD. *v.* ELLIS AI WRITING CO. (1930), 74 Sol. Jo. 2

3051. *Add. Annotation:*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

3057. *Add. Annotations:*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

PART XI. SECT. 4, SUB-SECT. 3.

3045 iii. —— ——.]—*Held:* a mere authority to sell was not rendered irrevocable, either by reason of its express terms or from valuable consideration having been given. — MAHOOD *v.* GEANGE, [1927] N. Z. L. R. 780.—**N.Z.**

AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3 :—

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

Part I.—Definitions.

Add the following cross-references :—"**Market garden.**"]—*See* Nos. 267b, 267c, *post*.
"**Agricultural holding.**"]—*See* No. 30f, *post*.

Part II.—Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations :*—**Refd.** Croft *v.* Blay, [1919] 1 Ch. 277; Simmons *v.* Crossley, [1922] 2 K. B. 95.

19. *Add. Annotations :—As to* (2) **Refd.** *Re* Bebington's Tenancy, Bebington *v* Wildman, [1921] 1 Ch. 559; Fordree *v.* Barrell (1931), 95 J. P. 141.

24a. Agriculture Act, 1920 (c. 76), s. 28—To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to either party to determine it on six months' notice at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy.—EDELL *v.* DULIEU, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.

24b. Agricultural Holdings Act, 1923 (c. 9), s. 25 (1).]—The above sub-sect. applies to a notice to quit given by a tenant, as well as to a notice to quit given by a landlord.—FLATHER *v.* HOOD (1928), 44 T. L. R. 698; 72 Sol. Jo. 468.

29a. Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the

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PART I.

sa. "*Agriculturist*"—*Saskatchewan Co-operative Elevator Company Acts.*]—*Re* COMPANIES WINDING UP ACT, *Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. (Sask.), [1927] 4 D. L. R. 804; [1927] 3 W. W. R. 269.—**CAN.**

sd. "*Market garden.*"—*Not experimental bulb growing establishment.*]—WATTERS *v.* HUNTER, [1927] S. C. 310.—**SCOT.**

se. —— *Whether "holding" includes "part of a holding."*]—*Held :* in the construction of Market Gardeners Compensation (Scotland) Act, 1897 (c. 22), the term "holding" includes "part of a holding," & consequently sect. 4 of the Act applies where part of a farm, held under an ordinary agricultural lease, had been cultivated as a market garden prior to the commencement of the Act.—CALLANDER *v.* SMITH (1900), 37 Sc. L. R. 890.—**SCOT.**

sf. "*Agricultural holding.*"]—Two enclosures of "permanent grass park" 10 & 3¼ acres in extent, on which there were no buildings, were used by the tenant, a dairykeeper, for the grazing & feeding of 5 cows & 1 horse. In his dairy business, which had existed before he got the enclosures, he sold the milk produced by his own 5 cows, & the milk, which he bought of other 10 cows belonging to neighbouring farmers. The horse was used for the purpose of the holding & for conveying the milk to market :—*Held :* the subjects were not "held for the purpose of a business or calling not primarily agricultural or pastoral," within Small Landholders (Scotland) Act, 1911 (c. 49), s. 26 (3) (*g*), & consequently were not excluded from the operation of the Act.—HOWATSON *v.* M'CLYMONT (1914), 51 Sc. L. R. 153.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—A.

fi. —— *Unregistered.*]—In an action of removing from an agricultural holding it was admitted that a removal notice had been sent by unregistered letter & had been received. It was also conceded that the provisions of Removal Terms (Scotland) Act, 1886, did not apply :—*Held :* under rule 113 of Sheriff Cts. (Scotland) Act, a landlord was entitled to adopt any one of the three methods of giving notice there set forth, but must adopt one or other of them; &, accordingly, the notice of intention to bring the tenancy to an end sent by unregistered letter was invalid.—DEPARTMENT OF AGRICULTURE FOR SCOTLAND *v.* GOODFELLOW, [1931] S. C. 556.—**SCOT.**

sk. *Joint tenants in possession by tacit relocation—Notice to terminate given by one tenant.*]—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to prevent renewal of the lease by tacit relocation :—*Held :* (1) the notice necessary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—GRAHAM *v.* STIRLING, [1922] S. C. 90.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—B.

sp. *Statutory provisions—Contracting out.*]—Parties to a lease of agricultural subjects cannot contract out of the statutory provisions with regard to notice of termination of the tenancy. —DUGUID *v.* MUIRHEAD, [1926] S. C. 1078.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 6.

29a i. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings (Scotland) Act*, 1923 (c. 10), *s.* 15.]—*Held :* not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

termination of the tenancy" within the above sect.—SIMPSON *v.* BATEY, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo. 754, C. A.

Annotations:—**Expld.** R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238.

29b. —— —— ——.]—In Agricultural Holdings Act, 1923 (c. 9), s. 16 (1), which specifies the various kinds of question, difference, or claim to be determined by arbn. under the Act, the words "arising out of the termination of the tenancy of the holding" apply to a question, difference, or claim of any of the kinds previously mentioned in the sub-sect., &, consequently, no question, difference, or claim of any of these kinds can arise for determination by arbn. under the Act until after the termination of the tenancy.

The landlord of an agricultural holding gave to the tenant a notice to quit on a certain day. The landlord alleged that before that day the notice to quit was withdrawn by mutual consent. The tenant denied that he ever consented to a withdrawal of the notice to quit, & continued to occupy the holding after that day. Subsequently, on the application of the tenant the Minister of Agriculture & Fisheries appointed an arbitrator to determine in accordance with Agricultural Holdings Act, 1923, the following claims, questions, or differences between the parties—namely, (*a*) whether the tenancy had been determined by the notice to quit; (*b*) whether the tenant was entitled to compensation for disturbance, &, if so, the amount thereof; & (*c*) the amount of the compensation to the tenant for improvements & certain other matters:—*Held:* questions such as these were not questions which under sect. 16 (1) of the Act should be determined by arbn. in accordance with the Act, unless were questions "arising out of the termination of the tenancy"; that inasmuch as it did not appear that the tenancy had been terminated by the notice to quit or otherwise, these questions could not be said to arise out of the termination of the tenancy, & consequently that the arbitrator should be prohibited from proceeding with the arbn.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29c. —— **Whether condition precedent to arbitration—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.**]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Folld.** Harrison *v.* Ridgway (1925), 133 L. T. 238. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29d. —— —— ——.]—The determination of the tenancy is a condition precedent to the right to have a dispute within above sect. decided by arbn. Where the tenancy has not been determined, the county ct. has jurisdiction to try the issue.—HARRISON *v.* RIDGWAY (1925), 133 L. T. 238; 23 L. G. R. 434, D. C.

Annotation:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

30a. **Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63)—Application of Act.**]—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although the sale is only as to a part.—ROBINSON *v.* NESBITT (1920), 64 Sol. Jo. 291.

Annotation:—*Generally*, **Apprvd.** Blay *v.* Dadswell, [1922] 1 K. B. 632.

30b. —— **Contract for sale after passing of Act—Notice by one person—Sale by another.**]—ROBINSON *v.* NESBITT, No. 30a, *ante*.

30c. —— —— **Sale requiring consent of several parties—Consent of some parties given after passing of Act.**]—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held:* the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—BROOKS *v.* BLOOR (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.

30d. —— —— **Sale to tenant.**]—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1, are amending & not merely declaratory, & are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—BLAY *v.* DADSWELL, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.

Annotation:—*As to* (1) **Refd.** Rigby *v.* Waugh's Exors. (1931), 100 L. J. K. B. 259.

30e. **Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by**

st. *Lessor selling farm under power in lease—Purchaser put in possession—Sale not completed.*]—*Held:* pltf. having sold the farm, & put purchaser in possession to the knowledge of deft., the latter might conclude that pltf. had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to withdraw from the agreement to purchase did not affect deft.'s rights or reinstate the lease.—RINK *v.* MILOS, [1918] 2 W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—**CAN.**

sz. *Contract for share farming—No provision as to duration.*]—Deft. cropped pltf.'s land on shares in 1917, & in 1918 agreed to do so again. Pltf. was trying to sell the land, as deft. knew, & during the summer sold it. No time had been fixed for deft. to give up possession:—*Held:* deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—FLETCHER *v.* LYONS, [1919] 3 W. W. R. 381; 48 D. L. R. 365.—**CAN.**

one for part of farm.]—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltfs., subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltfs. jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltfs. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltfs. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held:* as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltfs.' land, & pltfs. were entitled to the declaration which they asked & to an order for possession of their land.—ROCHESTER & CHATHAM JOINT SEWERAGE BOARD *v.* CLINCH, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 139.

30f. —— **To what holdings applicable—Holding let for horse breeding.**]—A holding let for the breeding of pedigree horses is not necessarily an agricultural holding within Agricultural Holdings Act, 1923 (c. 9).

A lessor sold to pltf. the freehold of certain property subject to a lease to deft. The lease described the property as the P. stud farm; it contained covenants to repair, varnish, & distemper paddock boxes, stables, & coach-house, to graze down turf by stocking & moving, & not to use the premises otherwise than as a stud farm: & the schedule contained a description of the stud farm. The tenancy was due to expire by effluxion of time shortly after the sale to pltf., but deft. refused to give vacant possession, alleging that the lease created an "agricultural holding" within Agricultural Holdings Act, 1923 (c. 9), & that the holding had not been terminated by twelve months' notice, as required by sect. 23 of that Act. Upon a summons by pltf. for a declaration that the lease did not create a holding within the meaning of that Act, & that no notice was required for the termination of deft.'s tenancy:—*Held:* the main purpose of the letting was the breeding of race-horses, &, although there were in most of the fields plots of grass or portions of pasture land, the holding was not "wholly pastoral," & therefore Agricultural Holdings Act, 1923 (c. 9), s. 23, did not apply.—*Re* JOEL'S LEASE, BERWICK *v.* BAIRD, [1930] 2 Ch. 359; 99 L. J. Ch. 529; 143 L. T. 765; 46 T. L. R. 424.

30g. —— **Sale of holding—Agreement that notice to quit shall be valid—Form.**]—The agreement of a tenant from year to year of a holding, by writing, that a notice to quit shall be valid, within sect. 26 (1) of 1923 Act need not be in the express words of the sub-sect. Where the landlords of such a holding gave the tenant notice to quit stating that they contemplated selling the property, a reply by the tenant acknowledging the receipt of the notice to quit & continuing: "We are sorry to leave & will give you possession of the farm & buildings" on the dates mentioned in the notice to quit, was held an agreement, by writing, that the notice to quit should be valid within the sub-sect.—RIGBY *v.* WAUGH'S EXORS. (1931), 100 L. J. K. B. 259; 145 L. T. 137, C. A.

Part III.—Covenants and Customs of the Country.

32. *Add. Annotation:*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

35. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

36. *Add. Annotation:*—**Apld.** Cheater *v.* Cater [1918] 1 K. B. 247.

39. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

56a. —— —— **Grass land laid down by tenant.**]—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described as consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commencement of his tenancy. In an action by pltf. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held:* (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but

PART III. SECT. 1, SUB-SECT. 1.

8a. *In crop-payment agreement—Essence of contract.*]—The covenants to cultivate under a crop-payment purchase are of the essence of the contract, & go to the root of the performance of the contract by the purchaser.—WEIST *v.* SMITH (Sask.), [1927] 1 D. L. R. 448; [1927] 1 W. W. R. 280.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

80. *Covenant to rid land of weeds—Breach—Relief from forfeiture.*]—Relief was granted due to exceptional weather conditions, etc.—WARNER *v.* LINAHAN, [1919] 2 W. W. R. 94.—**CAN.**

extended to the grass land in dispute & pltf. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—CLARKE-JERVOISE *v.* SCUTT, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotation:*—**Consd.** Cole *v.* Kelly, [1920] 2 K. B. 106.

69. For "that relation existing between him & the other tenants in common" read "that relation not existing between him & the other tenants in common."

80. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

103. *Add. Annotation:*—**Refd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

106. *Add. Annotation:*—*As to* (1) **Refd.** Clarke-Jervoise *v.* Scutt, [1920] 1 Ch. 382.

107a. *S. P.* AYLET *v.* DODD (1741), 2 Atk. 238; 26 E. R. 547.

Annotation:—**Refd.** Denton *v.* Richmond (1833), 3 Tyr. 630.

117. *Add. Annotation:*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

117a. —— **Grass land laid down by tenant.**]—CLARKE-JERVOISE *v.* SCUTT, No. 56a, *ante*.

140. *Add. Annotations:*—**Refd.** Raikes *v.* Ogle, [1921] 1 K. B. 576; Brakspear *v.* Barton, [1924] 2 K. B. 88.

164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country. *Semble:* agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case:—

166a. Tenant to perform "team-work" for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, "at the rate of one day's team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same." In ejectment for a forfeiture:—*Held:* (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B. Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work.—MARLBOROUGH (DUKE) *v.* OSBORN (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.

173a. Right of vendor to reimbursement from purchaser.]—By an agreement for the sale of real estate it was provided that if from any cause whatever other than wilful default on the part of the vendors the purchase was not completed on Jan. 2, 1899, the purchase-money should bear interest at 5 per cent. A dispute arose about the wording of the conveyance, & the purchase was not completed on the day fixed; the purchaser brought an action for specific performance, & the judge held that the vendors had been wrong in the dispute & gave judgment for specific performance with costs. After the commencement of the action one of the farms agreed to be sold fell vacant. The vendors did not let it, but occupied it themselves, paid the valuation of the outgoing tenant, & farmed the land:—*Held:* under the account of rents & profits directed by the order for specific performance, which was not on the footing of wilful default, the vendors were entitled to be allowed what they had paid for the valuation & the expenses of realising the crops, but not for the losses incurred in farming.—BENNETT *v.* STONE, [1902] 1 Ch. 226; 71 L. J. Ch. 60; 85 L. T. 753; 50 W. R. 118; 46 Sol. Jo. 151; *affd.*, [1903] 1 Ch. 509, C. A.

Annotation:—**Refd.** *Re* Bayley-Worthington & Cohen's Contract, [1909] 1 Ch. 648.

175a. Agreement to pay interest on amount of incoming valuation & on quitting to leave equal value of tenant rights.]—*Held:* not to create a personal debt to the lessor, but to

PART III. SECT. 2, SUB-SECT. 3.—B.

e i. —— ——.]—Applt. alleged that he was prevented from summer-fallowing by an excessive quantity of water being on the land:—*Held:* resp. was entitled to $133 damages.—HUNT *v.* WEIBERG (1921), 67 D. L. R. 777.—**CAN.**

e ii. —— *Or to crop—Breach.*]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres:—*Held:* if the lessee could not, or did not choose to crop, he must summer-fallow; "crop" within the covenant in the lease included a green crop.—STEFFES *v.* SMITH (1921), 66 D. L.R. 452; 17 Alta. L. R. 366; [1922] 1 W. W. R. 70.—**CAN.**

e iii. —— *& to break land—Breach—Measure of damages.*]—The measure of damages is the value of the additional work necessary to do the summer-fallowing & breaking.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

120 iv. —— —— ——.]—AINLEY *v.* LOWEY (Sask.), [1926] 1 D. L. R. 73.—**CAN.**

sd. *Miscropping — Claim for damages during tenancy—How determined.*]—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arbn., but falls to be determined by the ct. in an ordinary action.—WESTWOOD *v.* BARNETT, [1925] S. C. 624.—**SCOT.**

now, Small Landholders & Agricultural Holdings (Scotland) Act, 1931 (c. 44), s. 32.

PART III. SECT. 2, SUB-SECT. 16.

se. *Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.*]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract:—*Held:* the time for the exercise of the option was upon the settlement of accounts when the contract was terminated.—DICKIE *v.* SPARE (1921), 62 D. L. R.

enure for the benefit of a subsequent landlord.—WAGSTAFF *v.* CLINTON (1883), 1 Cab. & El. ...

194. *Add. Annotations :*—**Consd.** Bradbury *v.* Grimble (1920), 124 L. T. 189. **Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

Part V.—Compensation.

226a. —— ——.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

227a. Assignee of farming stock or other agricultural assets—Under Agricultural Credits Act, 1928 (c. 43).]—The tenant of an agricultural holding by a charge under Agricultural Credits Act, 1928 (c. 43), dated Apr. 29, 1933, charged in favour of a bank his farming stock & other agricultural assets as defined in sect. 5 (7) of 1928 Act. The charge was duly registered & became a fixed charge on Oct. 14, 1933. The tenant quitted the holding on Oct. 11, 1933, & subsequently became bkpt. The bank made a claim to the whole of the sums due from the landlords to the tenant at the termination of the tenancy free from deductions. The landlords disputed the right of the bank to make the claim, & in any event claimed to deduct from any sums to which the tenant was entitled at his outgoing all sums due from him in respect of arrears of rent & dilapidations. An arbitrator was appointed by both parties under the provisions of Agricultural Holdings Act, 1923 (c. 9). At the arbn. the landlords contended that the bank were not the tenants of the holding within the definition of " tenant " in sect. 57 (1) of 1923 Act, & that there could be no arbn. under that Act between the landlords & the bank. The arbitrator stated a special case, & a county ct. judge held that the bank never were tenants of the holding within Agricultural Holdings Act, 1923 (c. 9), the charge, on which the arbn. was based, did not vest the land or the benefit of the contract of tenancy in the bank, & sect. 16 (1) of 1923 Act only provided for an arbn. between landlord & tenant, & therefore there was no valid submission to arbn. On an appeal by the bank :—*Held :* the definition of " tenant " in sect. 57 (1) of 1923 Act did not include a mere assign of " farming stock & other agricultural assets " or a person who was the assign of a right to compensation under 1923 Act, & therefore the bank were not entitled to proceed to arbn. with the landlords.—ECCLESIASTICAL COMRS. FOR ENGLAND *v.* NATIONAL PROVINCIAL BANK, LTD., [1935] 1 K. B. 566; 104 L. J. K. B. 352; 153 L. T. 23; 51 T. L. R. 377; 79 Sol. Jo. 305, C. A.

229. *Add. Annotations :*—**Refd.** Bradshaw *v.* Bird, [1920] 3 K. B. 144; Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.]—By an agreement dated Dec. 24, 1915, made under seal, pltfs. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10*s.* a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed " to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17*s.* 6*d.*, & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17*s.* 6*d.* under the agreement of Dec. 24, 1915. Deft. pleaded that pltfs.' cause of action had arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought " within six years next after the cause of such action or suit " :—*Held :* pltfs.' cause of action against deft. did not arise on Feb. 2, 1916, when

PART III. SECT. 3, SUB-SECT. 7.

s1. *General rule—No right to compensation.*]—At common law a tenant is not entitled on quitting to any compensation for permanent improvements made by him during his tenancy on the premises leased.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—A.

sg. *Improvements made in mistaken belief as to ownership of land.*]—Under the statute law of Ontario, in order that the occupant of any land may be entitled to compensation for " lasting " improvements on the land he must show that the improvements were made " under the belief that the land was his own," & a tenant recognising another as the owner by the payment of rent to him is not entitled upon the lease being terminated to any compensation for any improvements made by him.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28; *affd.*, [1931] S. C. R. 210; 1 D. L. R. 628.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B.

229 i. *Purchaser.*]—An estate was sold with entry to the purchaser at Martinmas 1922, & on the same date an existing lease of the lands terminated, & the tenant gave up possession. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture who appointed an arbiter :—*Held :* the " landlord " liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the " landlord " at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted. —— *v.* HOWAT, [1925] S. C. 484.—**SCOT.**

deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred. — CHESHIRE COUNTY COUNCIL *v.* HOPLEY (1923), 130 L. T. 123; 21 L. G. R. 524

Annotation:—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

232. *Add. Annotations:*—**Consd.** *Re* Russell & Harding (1922), 128 L. T. 476; *Re* Joel's Lease, Berwick *v.* Baird, [1930] 2 Ch. 359.

233. *Add. Annotation:*—**Refd.** *Re* Masters & Duveen, [1923] 2 K. B. 729.

237a. Agricultural Holdings Act, 1908, s. 1 (1) Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.]—A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made:—*Held:* he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—HUCKELL *v.* SAINTEY, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

237b. Agricultural Holdings Act, 1923 (c. 9)—Arable laid down as temporary pasture.]—A tenant farmer, who held a farm by successive tenancies beginning in 1912, in 1918 & in 1925 under different landlords, in each case with an undertaking by him not to convert any part of the farm, which in 1912 was all permanent pasture, into tillage, was in 1917 required to plough up two of his fields under reg. 2 (*m*) of the Defence of the Realm Regulations. These two arable fields were in 1919 laid down by the tenant as temporary pasture. On a claim by the tenant, who had left the farm in 1930 on a notice to quit by the present landlord who had purchased the farm in 1929, for disturbance under sect. 12 of the Agricultural Holdings Act, 1923 (c. 9), s. 12, he included particulars for an improvement of laying down those two arable fields as temporary pasture:—*Held:* the claim was enforceable as coming within the exact words of Sched. I., Part III., para. 28, of 1923 Act. The tenancy was to be deemed to have commenced for this purpose from 1918, that being the date when a new tenancy commenced with arable fields on the farm.—WARE *v.* DAVIES (1931), 101 L. J. K. B. 1; 146 L. T. 130, C. A.

239. *Add. Annotation:*—*As to* (2) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

242a. Agricultural Holdings Act, 1908—Attempted exclusion of statutory compensation.]—*Re* MASTERS & DUVEEN, No. 267a, *post.*

252a. Effect of Agricultural Holdings Act, 1923 (c. 9), s. 16—On jurisdiction of court.]—LOWTHER *v.* CLIFFORD, No. 267c, *post.*

252b. ——— ———.]—FARROW *v.* ORTTEWELL, No. 266r, *post.*

PART V. SECT. 3, SUB-SECT. 1.—D.

237 vii a. ——— ——— ———.]—Where a landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (*a*) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722 58 Sc. L. R. 488.—**SCOT.**

237 ix. ——— *Tenant laying down temporary pasture.*]—The fact that an arbiter finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722; 58 Sc. L. R. 488.—**SCOT.**

sg. *Agricultural Holdings (Scotland) Act,* 1923 (c. 10), *s.* 1 (1)—*Lease entered into before Jan.* 1, 1921—*Adoption of one of alternative obligations in lease.*]—A lease entered into before Jan. 1, 1921, bound the tenant to adopt one of two rotations of cropping. The tenant adopted one of the prescribed rotations, with the result that he made an improvement upon his holding within Sched. I. of above Act. On quitting the holding at the termination of his tenancy he claimed compensation for the improvement from the landlords:—*Held:* he was entitled to compensation as for a voluntary improvement, in respect that he was not required by the lease to execute the particular improvement but was merely bound to adopt one or other of two prescribed methods of cultivation.—GIBSON *v.* SHERRET, [1928] S. C. 493.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—G.

sh. *Agricultural Holdings (Scotland) Act,* 1908 (*c.* 64)—*Sufficiency of notice.*]—A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures & feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (a).

sj. *Agricultural Holdings (Scotland) Act,* 1923 (*c.* 10)—*"Question or difference"—What amounts to.*]—The purchaser of a farm, who became proprietor as at Whit-Sunday 1928, had entered into an agreement on May 7, 1928, with the tenant, that, in consideration of the tenant vacating the farm by June 30, 1928, the purchaser would (*inter alia*) take over at valuation certain crops, stock, & implements. The parties thereafter executed a submission to two arbiters & an oversman, by whom a valuation was made. In an action at the instance of the tenant against the new proprietor for sums due under the valuation:—*Held:* the submission did not involve any question or difference within Agricultural Holdings (Scotland) Act, 1923, s. 15 (1), in respect (*a*) that the new proprietor's obligation to take over the tenant's crops, stock, & implements arose, not "out of the termination of the tenancy," but from an express agreement between the parties; & (*b*) that, on May 7, 1928, the date when the agreement to take over at valuation was entered into by the parties, the relationship of "landlord" & "tenant" did not exist between them; &, accordingly, the submission was not incompetent because it did not take the form, required by sect. 16 (1) of the Act of submission to a single arbiter.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sk. ——— *Effect of submission.*]—*Held:* when both parties to an agricultural valuation allow arbn. proceedings to be carried on by a method which is not in strict conformity with the provisions of Agricultural Holdings (Scotland) Act, 1923, s. 16, & the arbiter has issued his award, they are barred *personali exceptione* from objecting to the competence of the proceedings.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (b).

254 i. *Award—Particulars not specified in.*]—The proprietor of a farm & the outgoing tenant, entered into a submission, whereby they referred the valuation of certain crops, stocks, & implements, agreed to be taken over by the proprietor, to two arbiters, & to an oversman to be appointed by the arbiters to act in the event of their differing in opinion. An award was issued signed by the two arbiters & the oversman, which contained nothing to show in respect of which, if any, of the items under valuation the arbiters had differed in their estimate, thereby rendering necessary a devolution on the oversman:—*Held:* the valuation belonged to a class of arbn. where a rigid conformity with formal procedure was not exacted; &, accordingly, that the award was not invalid because it did not distinguish between items valued by the arbiters alone & items upon which the decision of the oversman had been rendered necessary.

255. *Add. Annotations :*—**Consd.** Simpson *v.* Crowle, [1921] 3 K. B. 243 ; Smythe *v.* Wiles, [1921] 2 K. B. 66. **Refd.** St. Magnus, etc., Parochial Church Council *v.* London Diocese (Chancellor), [1923] P. 38; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

259. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Ellesmere *v.* I. R. Comrs. (1918), 88 L. J. K. B. 337 ; Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

264. After this case add as follows :—
See, further, Sect. 3, sub-sect. 3*b*, *post*.

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.

See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.

See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).]—*Held :* the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise ; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land :—*Held :* (1) the landlord's claim was not barred by sect. 19 of the above Act ; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy ; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice therefore in time.—*Re* ARDEN & RUT [1923] 2 K. B. 865 ; 130 L. T. 51 ; *sub nom.* ARDEN *v.* RUTTER, 92 L. J. K. B. 894, C. A.

Annotations :—*As to* (1) **Consd.** Olive *v.* Paynter, [1932] 2 K. B. 666. **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

264b. —— —— Agricultural Holdings Act, 1923 (c. 9), s. 16 (2)—Claims independent of Agricultural Holdings Acts.]—As the term of a lease of an agricultural holding was coming to an end the lessee made a claim in respect of tenant right, & the lessor made various counterclaims in respect of dilapidations. An arbitrator appointed under Agricultural Holdings Act, 1923 (c. 9), to settle all matters & questions between the parties in respect of the holding, stated a case under sect. 16 (4), for the opinion of the county ct. in which he found that particulars of some of the lessor's claims were given within two months of the end of the lease, but that particulars of others of the claims were not given within that time. The claims related in whole or in part to acts & omissions which were in fact breaches of agreements in the lease. The county ct. judge held that the arbitrator could only entertain those claims of which particulars were given within the two months : —*Held :* the provision in sect. 16 (2) of the Act, barring claims unless particulars are given within the time therein specified, does not apply to claims arising from breaches of the agreement of tenancy & giving ground for actions at law independently of the Agricultural Holdings Acts, & the arbitrator must deal with those claims without attributing importance to the fact that particulars thereof were not given within the time specified in the sub-sect.

With regard to the sufficiency of the particulars, I am of opinion that in the present case, as in most other cases, that is a question of fact which the arbitrator should decide for himself (SCRUTTON, J.).—OLIVE *v.* PAYNTER, [1932] 2 K. B. 666 ; 101 L. J. K. B. 786 ; 148 L. T. 65, C. A.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

265a. —— Right to compensation—Tenant holding over after notice to quit.]—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejectment he furnished details of his claim for compensation :—

CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

si. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act*, 1923 (*c.* 10), *s.* 15.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was illegal :—*Held :* the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64).]—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a common law arbn.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

257 ii. —— —— ——.]—Charges for preparing & adjusting a special case fall to be dealt with by the arbiter.—THOMSON *v.* GALLOWAY, [1919] S. C. 611; 56 Sc. L. R. 521. —**SCOT.**

PART V. SECT. 3, SUB-SECT. 2.

sl. *Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64)—*What questions arbitrator must determine.*]—Under s. 10 of the above Act it falls to the arbiter to determine questions connected with the time & validity of notices to quit & notices to claim compensation.—COWDRAY *v.* FERRIES, [1919] S. C. (H. L.) 27.—**SCOT.**

sm. *Agriculture Act*, 1920 (*c.* 76), *s.* 10 —*Claim exceeding one year's rent—Damage proved less than one year's rent.*]—A tenant claimed compensation for disturbance to an amount exceeding one year's rent, & the claim went to arbn., in which it was proved that the damage sustained by him was less than one year's rent :—*Held :* the minimum amount of compensation payable to a tenant under **Agriculture Act, 1920**

the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—CAVE *v.* PAGE (1923), 67 Sol. Jo. 659, C. A.

265b. —— **Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.**]—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed:—*Held:* (1) the purchaser was the "landlord" within the Acts; (2) the notice of intention to claim compensation was rightly given to him; (3) he was liable to pay compensation.—BRADSHAW *v.* BIRD, [1920] 3 K. B. 144; 90 L. J. K. B. 221; 123 L. T. 703, C. A.

Annotations:—As to (1) **Expld.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally,* **Consd.** Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282; Tombs *v.* Turvey (1923), 93 L. J. K. B. 785.

265c. —— —— —— **Person entitled to rents at end of tenancy.**]—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (*b*), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—DALE *v.* HATFIELD CHASE CORPN., [1922] 2 K. B. 282; 92 L. J. K. B. 237; 128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

Annotations:—As to (2) **Consd.** Tombs *v.* Turvey (1923), 93 L. J. K. B. 785. **Refd.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally,* **Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

266a. —— **Notice of claim—To whom given—Purchaser entitled to rents.**]—BRADSHAW *v.* BIRD, No. 265b, *ante.*

266b. —— —— —— **Landlord—Subsequent alienation of reversion.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266c. —— **Reasonable opportunity of making valuation—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266d. —— **Commencement of "proceedings"—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266e. **Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.**]—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2*s.* On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy":—*Held:* having regard to sect. 10 of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*Re* PERRETT & BENNETT-STANFORD, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 849; *sub nom.* PERRETT *v.* BENNETT-STANFORD, 66 Sol. Jo. 680, C. A.

266f. —— —— **Ejectment proceedings following notice to quit.**]—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act:—*Held:* if the tenant was ejected, the ejectment was in

(c. 76), s. 10, was an amount equal to one year's rent; &, although as the matter had gone to arbn. a "dispute" had not been avoided, the tenant was still entitled to one year's rent & was not limited to the amount of damage actually proved.—M'HARG *v.* SPEIRS, [1924] S. C. 272.—**SCOT.**

sn. —— *Loss from error in valuation of waygoing grain crop.*]—Under the lease of a farm the landlord took over the waygoing crop of grain from the outgoing tenant at flars prices, the quantity of the growing crop being ascertained by arbn. After threshing it was found that the quantity had been underestimated by the arbiters. The outgoing tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm produce, a sum representing the difference between the price he had received & the price of the actual quantity threshed:—*Held:* the loss was not "directly attributable to the quitting of the holding," but had arisen from an error of the arbiters.—MCGREGOR *v.* BOARD OF AGRICULTURE FOR SCOTLAND [1925] S. C. 613.—**SCOT.**

sp. *Agricultural Holdings (Scotland) Act,* 1923 (*c.* 10)—*Refusal of landlord to take over stock—Claim for loss on sale.*]—The tenant of a farm received notice to quit. Having taken over another farm with a bound stock, he sold his sheep at a displenishing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value:—*Held:* the loss was directly attributable to the quitting of the holding under sect. 12 (6) of above Act.—KESWICK *v.* WRIGHT, [1924] S. C. 766.—**SCOT.**

sq. —— *Tenant holding over after notice to quit—No right to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—**SCOT.**

sr. —— *Ejectment proceedings following notice to quit—Whether tenant entitled to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—**SCOT.**

consequence of the notice to quit, &, therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled to compensation under sect. 10 of the Act.—MILLS *v.* ROSE (1923), 68 Sol. Jo. 420, C. A.

266g. —— —— **Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.**]—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding:—*Held:* he was not entitled to compensation for disturbance under sect. 10.—AGRICULTURE & FISHERIES MINISTER *v.* DEAN, [1924] 1 K. B. 851; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

Annotations:—**Consd.** Westlake *v.* Page, [1926] 1 K. B. 298; *Re* O'Connor & Brewin's Arbitration, [1933] 1 K. B. 20; Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366. **Refd.** Selleck *v.* Hellens (1928), 98 L. J. K. B. 214.

266h. —— **Notice of claim—Time for giving—"Termination of tenancy"—Tenancy of different parts of holding expiring at different times.**]—A landlord let a farm, according to the custom of the country, upon a yearly tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm:—*Held:* the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble:* the proviso to sect. 18 (2) of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the cesser of the agreement of tenancy, under a new agreement.—SWINBURNE *v.* ANDREWS, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

Annotation:—**Consd.** *Re* Arden & Rutter, [1923] 2 K. B. 865.

266i. —— —— **Given under Act subsequently repealed—Necessity for notice under repealing Act.**]—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan. 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (*b*) thereof:—*Held:* not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—HAMILTON-GELL *v.* WHITE, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

Annotation:—**Consd.** Briggs *v.* Dryden, Talbot *v.* Vickers, [1925] 2 K. B. 667.

See, now, A. H. Act, 1923, s. 12.

266j. Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.]—(1) A landlord of a holding gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be fixed by arbn. The tenant did not agree to arbn.:—*Held:* the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—WESTLAKE *v.* PAGE, [1926] 1 K. B. 299; 95 L. J. K. B. 456; 134 L. T. 612, C. A.

266k. —— **Amount of compensation—Tenant holding two or more holdings.**]—WESTLAKE *v.* PAGE, No. 266j, *ante.*

266l. —— —— **Minimum—One year's rent.**]—*Re* O'CONNOR & BREWIN'S ARBITRATION, No. 266bb, *post.*

266la. —— —— **Expenses of preparation of claim.**]—DUNSTAN *v.* BENNEY, [1937] 4 All E. R. 510; 54 T. L. R. 167; 81 Sol. Jo. 1039, C. A.

266m. —— **Liability to pay compensation—"Landlord"—Agreement for sale—Whether purchaser entitled to rents.**]—In July, 1924, the owner of an estate, which included a farm in the occupation of tenants, agreed to sell the farm to a purchaser, who agreed to pay the purchase money in Oct. 1924. The agreement was subject to conditions of sale, by one of which the purchaser agreed to pay the balance of the purchase money on the day named in the contract, & in that respect time was to be of the essence of the contract; & it was further agreed that "all rents & periodical outgoings" should be "apportioned up to the completion," & added to or deducted from the purchase money as the case might require. On Sept. 23, 1924, notice was given to the tenants to quit the farm on Sept. 29, 1925. The purchase was not in fact completed until Oct. 1925:—*Held:* (1) "completion" in the condition of sale meant actual completion, & not the date named for completion; (2) on Sept. 29, 1925, the vendor was the "person entitled

to receive the rents & profits" of the farm within sect. 57, & he, & not the purchaser. was the "landlord" within sect. 12 & th person to pay compensation to the tenants.—RICHARDS *v.* PRYSE, [1927] 2 K. B. 76; 96 L. J. K. B. 743; 137 L. T. 170, C. A.

266n. —— **Notice of claim—By whom given—Joint tenancy.**]—W., who had been tenant of a farm for many years, entered into negotiations with his landlord to have his tenancy agreement, upon the termination thereof, transferred to himself & B., & as the result of those negotiations W. became joint tenant of the farm with B. at the request of, & for the protection of, the landlord Upon the termination of W.'s tenancy B paid W. for the tenant right & also provided the whole of the finance necessary for carrying on the farm. On Feb. 21, 1924, W. alone gave notice to quit. On Mar. 21, 1924, the landlord served notice to quit upon both tenants, upon the ground that they were not cultivating the farm according to the rules of good husbandry. Thereupon B. gave notice to the landlord of his intention to claim compensation:—*Held:* (1) the notice given by B., being the one of the joint tenants who owned the household goods & agricultural implements & had suffered loss by their removal or sale upon the expiration of the joint tenancy, was sufficient to give the arbitrator jurisdiction; (2) it being the object of sect. 12 (7) (*b*) of the above Act that the landlord should have notice of what compensation was claimed against him, it would, in the case of a joint tenancy, be a great hardship upon the tenant who had a proper & valid claim for compensation which was to be defeated because his joint tenant, who had no such claim, had not joined in the notice.—HOWSON *v.* BUXTON (1928), 97 L. J. K. B. 749; 139 L. T. 504, C. A.

266o. —— **Notice to quit—Reason must be stated—Effect of notice giving alternative reasons.**]—A tenant in giving a notice to quit under sect. 12 (3) of above Act, on account of the landlord's refusal or failure to agree to the tenant's demand for arbn. as to the rent of the holding, is, as a condition precedent to his right to compensation for disturbance, bound to state correctly the reason for the notice which in fact exists, but he may put himself right by putting his notice in the alternative by stating that the notice given was either for the reason that the landlord had refused or that he had within a reasonable time failed to agree to the demand made on him by the tenant for arbn.

Where the landlord had within a reasonable time failed to agree to such a demand but had not refused to do so & the notice to quit wrongly stated that it was given by reason of the landlord's refusal to agree:—*Held:* the tenant could not succeed in his claim for compensation for disturbance.—SELLECK *v.* HELLENS (1928), 98 L. J. K. B. 214; 140 L. T. 353; 45 T. L. R. 179; 73 Sol. Jo. 76, C. A.

266p. —— —— —— **Form of notice.**]—The landlord of a holding served on the tenant notice to quit in the following form: "In accordance with sect. 12 (1) (*a*) & (*b*) of Agricultural Holdings Act, 1923 (c. 9), we hereby as agents for" the landlord "give you notice to quit," etc. The tenant, in accordance with this notice having quitted the holding, claimed compensation for disturbance, contending that the notice did not sufficiently state that it was given for any of the reasons specified in sect. 12 (1) of the Act, or did not specify for which of those reasons it was given:—*Held:* the notice to quit sufficiently stated that it was given for the reasons indicated in sect. 12 (1) (*a*) & (*b*), & was an effective notice to bar the tenant's claim to compensation if the allegations were sustained.—*Re* DIGBY & PENNY, [1932] 2 K. B. 491; 101 L. J. K. B. 615; 147 L. T. 221; 48 T. L. R. 403, C. A.

266q. —— —— —— **Reasons in accompanying letter.**]—A notice to quit under 1923 Act may be validly contained in two documents—one a formal notice to quit & the other an accompanying document which refers to that formal notice & states as the reason for giving it one or more of the causes set out in sect. 12 (1) of the Act.—TURTON *v.* TURNBULL, [1934] 2 K. B. 197; 103 L. J. K. B. 598; 151 L. T. 265; 78 Sol. Jo. 367, C. A.

266r. —— —— **By purchaser before completion—Estoppel.**]—Pltf. was the tenant of two farms on a yearly tenancy. The owner of the property died in 1928, & on July 17, 1930, his personal representatives agreed to sell deft. the farms. The date fixed for completion was Sept. 15, 1930, but the purchase was not completed till Oct. 30, 1930. Meanwhile deft. had on Oct. 9, 1930, sent to pltf. a notice to quit the premises on Oct. 11, 1931, & pltf. duly gave up possession on that date. Deft. disputed pltf.'s claim to compensation under Agricultural Holdings Act, 1923 (c. 9), on the ground that the notice to quit was invalid, because the purchase was completed only after the notice was given. Pltf. therefore brought proceedings claiming declarations that the notice to quit was valid; that, if not, deft. was estopped from denying its validity; & that he was entitled to compensation under the Act:—*Held:* (1) on the facts the pltf. was estopped from denying the validity of the notice to quit; (2) the ct. had jurisdiction to determine the matters at issue, notwithstanding the provisions for arbn. contained in sect. 16 of the Act.—FARROW *v.* ORTTEWELL, [1933] 1 Ch. 480; 102 L. J. Ch. 133; 149 L. T. 101; 49 T. L. R. 251, C. A.

266s. —— **Determination of rent—Notice of application for arbitration—Effect of delay.**]—On Jan. 16, 1929, the tenant of an agricultural holding made to the landlord a demand in writing for arbn. under Agricultural Holdings Act, 1923 (c. 9), as to the rent to be paid for the holding as from Apr. 6, 1930, the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the demand for arbn. The landlord consented to the matter being referred to arbn., but after a long delay, due to the fault of the landlord & his advisers, he refused to concur in the appointment of an arbitrator, to take part in the arbn. or to recognise the award. At the request of the tenant the Minister of Agriculture appointed an arbitrator who, on Sept. 23, 1931, made an award fixing a reduced rent for the holding as from Apr. 6 1930:—*Held:* the award was good & enforceable as between the parties.—GRUNDY

v. HEWSON, [1933] 1 K. B. 787; 102 L. J. K. B. 398; 149 L. T. 212; 49 T. L. R. 346; 77 Sol. Jo. 216.

266t. —— —— Validity of award.]—GRUNDY *v.* HEWSON, No. 266s, *ante*.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

266u. Corn Production Act, 1917 (c. 46), s. 9 (9)—Who is person interested—Tenant.]—(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the notice the owner agreed to let the land to a tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions:—*Held:* the tenant was a "person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred; & the tenant came within the words of the sub-sect. "who suffers any loss by reason of the exercise of the powers conferred by this sect." & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant:—*Held:* in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in:—*Held:* the assessment should not be based on the loss, if any, in each year separately; (BANKES, L.J.) the arbitrator should take the experience of the two years, setting off any profit in one year against any loss in the other; (SCRUTTON & ATKIN, L.JJ.) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, [1921] 1 K. B. 281; 90 L. J. K. B. 228: 124 L. T. 407; 85 J. P. 89; 18 L. G. R. 790, C. A.

266v. —— Separate notices as to parts of two farms—Occupied by one tenant—Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266u, *ante*.

266w. —— Separate claims by tenant for two successive years—Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266u, *ante*.

266x. —— Award—Jurisdiction of court to remit—Award bad on face for ambiguity or uncertainty.]—In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbns. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889.—MURRAY *v.* DALTON (1920), 90 L. J. K. B. 401; 124 L. T. 762; 37 T. L. R. 234; 65 Sol. Jo. 155, D. C.

Annotation:—Reid. *Re* Jones & Carter, [1922] 2 Ch. 599.

Control of food in wartime generally, *see* FOOD & DRUGS, Vol. XXV., pp. 132 *et seq*.

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

266y. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should use the demised premises for farming purposes. The tenant subsequently, with the permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908:—*Held:* the ct. must have regard to the substance of what had been done; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a "holding" within the Act.—*Re* RUSSELL & HARDING (1922), 128 L. T. 476; 39 T. L. R. 92; 67 Sol. Jo. 123, C. A.

—— Compensation for improvements—Under Agricultural Holdings Act, 1908.] — *See* original volume, p. 42, Nos. 230–232.

266z. Notice of claim—To whom given—Purchaser—Taking subject to existing tenancies.]—Applt. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29, 1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the deter-

PART V. SECT. 3, SUB-SECT. 3a. ***et. Agricultural Holdings (Scotland) Act, 1908 (c. 64)—Appeal—Whether maintainable from opinion of sheriff on case stated—Claim under Corn Production Act, 1917 (c. 46).***]—JOHNSON-FERGUSON *v.* BOARD OF [1921] S. C. 103; 58 Sc. L. R. 96.—SCOT.

mination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held:* the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—TOMBS *v.* TURVEY (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

— **For compensation for improvements—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 46, Nos. 245-250.

— **For compensation to landlord for deterioration.**]—*See* Nos. 264a, 264b, *ante*.

For compensation for disturbance—Under Agricultural Holdings Act, 1908.]—*See* original volume, p. 48, No. 266; & Nos. 265b, 265c, *ante*.

—— —— **Under Agriculture Act, 1920 (c. 76).**]—*See* Nos. 266h, 266i, *ante*.

266aa. Particulars of claim—Sufficiency.]—*Held:* having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of "particulars" was not intended to be construed strictly, &, for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—JONES *v.* EVANS, [1923] 1 K. B. 12; 92 L. J. K. B. 35; 128 L. T. 228, C. A.

Annotations:—**Apld.** *Re* Agricultural Holdings Act, 1923, O'Connor *v.* Brewin (1932), 76 Sol. Jo. 511. **Consd.** Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366. **Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

266bb. —— ——.]—(1) A tenancy having been determined by notice to quit expiring on Sept. 29, 1930, the tenant gave notice of, amongst others, a claim for disturbance, & on Nov. 20, 1930, furnished particulars in which particulars of claim for disturbance were "Disturbance for two years' rent £514":—*Held:* no sufficient particulars had been delivered & therefore the claim was barred.

(2) Where the tenant proves he has directly suffered loss the minimum amount of damages is one year's rent.—*Re* O'CONNOR & BREWIN'S ARBITRATION, [1933] 1 K. B. 20; 101 L. J. K. B. 706; *sub nom. Re* AGRICULTURAL HOLDINGS ACT, 1923, O'CONNOR *v.* BREWIN, 147 L. T. 386; 76 Sol. Jo. 511, C. A.

Annotation:—*As to* (1) **Folld.** Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366.

266cc. —— —— **Question of fact.**]—OLIVE *v.* PAYNTER, No. 264b, *ante*.

266dd. —— ——.]—On Mar. 19, 1931, the tenant of an agricultural holding was served by his landlord with a notice to quit expiring on Apr. 6, 1932. On Nov. 23, 1931, during the currency of the notice to quit the tenant gave notice to his landlord of his intention to make a claim for compensation for disturbance under sect. 12 of A. H. Act, 1923, "for loss or expense directly attributable to my quitting the holding which I may unavoidably incur upon or in connection with the sale or removal of my household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, including any expenses reasonably incurred by me in my claim for compensation." On Apr. 6, 1932, the tenant quitted the holding. On May 21, 1932, he gave notice under sect. 16 (2) of the Act, that the amount of his claim for disturbance was "one year's rent, viz.: Two hundred & twenty-five pounds (£225)." The county court judge held that the particulars were sufficient:—*Held:* no sufficient particulars had been delivered & therefore that the claim was barred, on the grounds: (1) the notice of Nov. 23, 1931, was merely a notice that a claim would be made & not a rendering of particulars, & (2) the notice of May 21, 1932, although it quantified the claim at the minimum sum to which the tenant was entitled under sect. 12 (6) of the Act, did not furnish particulars of some loss or expense to which the tenant had been put.—SPRECKLEY *v.* LEICESTERSHIRE COUNTY COUNCIL, [1934] 1 K. B. 366; 103 L. J. K. B. 200; 150 L. T. 9, C. A.

266ee. Award—Setting aside—Jurisdiction of court—Error on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re* JONES & CARTER, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

Annotation:—**Consd.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

266ff. —— —— **Time for notice of motion to set aside.**]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds.

PART V. SECT. 3, SUB-SECT. 3b.

266aa i. *Particulars of claim—Sufficiency—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (2).*]—By a letter, written on receipt of a notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock; & by a second letter, written within two months after the termination of the tenancy, in which he referred to his former letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the amount of the claim would be intimated when the exact shortage was determined:—*Held:* (1) in view of the severity of the penalty attached to non-compliance, the requirements of the above sub-sect. were sufficiently complied with if fair notice was given to the opposite party of the nature of the claim against him & of the case he had to meet; (2) the letters gave such notice, although they did not state the legal basis of the claim or its actual amount.—MONT ROSE (DUKE) *v.* HART, [1925] S. C. 160.—**SCOT.**

ss. *Agricultural Holdings (Scotland) Act, 1908 (c. 64)—Appeal—Decision of court on case stated—Binding on arbitrator.*]—MITCHELL-GILL *v.* BUCHAN, [1921] S. C. 390; 58 Sc. L. R. 371.—**SCOT.**

There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held:* the words "principles of practice" in County Cts. Act, 1888 (c. 43), s. 164, did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a "principle of practice" within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—McCreagh *v.* Frearson (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.

266gg. —— Order directing arbitrator to state special case—Appeal lies to Divisional Court.] —Stevens *v.* Downham, Isle of Ely (Feoffees of Poor Lands), [1926] W. N. 168.

266hh. —— No power to order arbitrator to state special case on question not within submission to arbitration.] — Stevens *v.* Downham, Isle of Ely (Feoffees of Poor Lands), [1926] W. N. 168.

Of compensation for improvements—Under Agricultural Holdings Act, 1908.] — *See* original volume, p. 47, No. 254–256.

266jj. Recovery of compensation agreed or awarded —In what court.]—A. H. Act, 1923, s. 19, does not give exclusive jurisdiction to the county ct. in all cases & prevent an action from being brought to recover the sum in the High Ct., when it is in excess of the amount ordinarily recoverable in the county ct.—Horrell *v.* St. John of Bletso (Lord), [1928] 2 K. B. 616; *sub nom.* Horrell *v.* Bletso, 97 L. J. K. B. 655; 139 L. T. 400.

266kk. Costs—Agreement as to—Validity.]—The parties to an arbn. under A. H. Act, 1923, agreed beforehand that the successful party should have costs on the High Ct. scale. The agreement was not communicated to the arbitrator, who gave his award in favour of the landlord, & awarded that each party should pay his own costs. In an action by the landlord to enforce the agreement the judge gave judgment for the tenants, on the ground that the Act gave discretion to the arbitrator as to costs:—*Held:* the agreement was valid & enforceable.—Mansfield *v.* Robinson, [1928] 2 K. B. 353; 97 L. J. K. B. 466; 139 L. T. 349; 92 J. P. 126; 44 T. L. R. 518, D. C.

267a. —— "Treated as a market garden."]—(1) *Held:* the word "treated" in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of govening their rights in respect of the holding as a market garden.

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as "market gardener" of the other part, it was agreed (clause 1): that the landlord should let & the tenant should take the farm therein described for the term of one year from Sept. 19, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in general practice in the neighbourhood, & was not to cut down, grub up, or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional rent in respect of the fruit trees so supplied. Clause 11 contained the following proviso: "That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof": —*Held:* (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act, because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re* Masters & Duveen, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom.* Masters *v.* Duveen, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

Annotation:—As to (1) **Consd.** Saunders-Jacob *v.* Yates, [1933] 2 K. B. 240.

267b. Market garden—What is—Garden of country house—Sale of produce.]—The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden.—Bickerdike *v.* Lucy, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 84 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

Annotation:—**Refd.** Lowther *v.* Clifford (1925), 90 J. P. 55.

267c. —— ——.]—Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb:—*Held:* (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 54 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arbn. in that sect. (3) *Semble:* sect. 16 deals with procedure.—Lowther *v.* Clifford, [1927] 1 K. B. 130; 95 L. J. K. B. 576; 135 L. T.

200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 544; 24 L. G. R. 231, C. A.

Annotations:—As to (2) **Folld.** Olive *v.* Paynter, [1932] 2 K. B. 666. *As to* (3) **Consd.** Farrow *v.* Orttewell, [1933] Ch. 480. **Refd.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

267d. "Let or treated as a market garden"—Part of premises treated as market garden.]—By lease made in 1904 a private residence at Sunbury, Middlesex, with gardens, pleasure grounds, & meadow lands, being about 27 acres in all, was demised to deft.'s predecessor in title for twenty-eight years at a yearly rent of £126. The lessee covenanted to keep the premises in repair & not to commit waste. He also covenanted not to occupy use or employ the premises for any trade except that of a nurseryman, market gardener, florist or farmer, without the written consent of the lessors. The lessee during the term ploughed up the grass land & cultivated it as a market garden. In 1924 deft., in whom the term was then vested, let the house & garden on a yearly tenancy, but continued to cultivate the rest of the land as a market garden. On the termination of the lease in 1931, the reversioners brought an action for damages for waste & for declarations that neither the demised premises nor any part thereof constituted a "holding" or "market garden" within Agricultural Holdings Act, 1923 (c. 9):—*Held:* the premises, excluding the house & grounds let in 1924, constituted a separate holding under the Act; they were let upon an agreement in writing made after Jan. 1, 1896, which provided that the holding should "be let or treated as a market garden"; it was therefore a "market garden" within sects. 48, 57 of the Act, & the claim failed.—SAUNDERS-JACOB *v.* YATES, [1933] 2 K. B. 240; 102 L. J. K. B. 417; 149 L. T. 209, C. A.

Part VI.—Fixtures.

268. *Add. Annotations:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242. **Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

268a. —— Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out of Act.]—A. H. Act, 1908, contains no prohibition against the parties to a lease or tenancy contracting themselves out of the provisions of sect. 21 of the Act, & it is therefore competent to them to do so.

A lease of a farm contained a covenant by the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held:* the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—PREMIER DAIRIES *v.* GARLICK, [1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

268b. —— —— No notice by tenant of intention to remove—Claim by tenant for loss on removal.]—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908, s. 11.—*Re* HARVEY & MANN (1920), 89 L. J. K. B. 687; *sub nom. Re* MANN & HARVEY, 123 L. T. 242, C. A.

268c. —— Purchase by landlord—Agricultural Holdings Act, 1923 (c. 9), s. 22—Validity of award.]—HASSALL *v.* CHOLMONDELEY (1935), 79 Sol. Jo. 522.

271. *Add. Annotation:*—**Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

273. *Add. Annotations:—As to* (3) **Refd.** Vaudeville Electric Cinema *v.* Muriset, [1923] 2 Ch. 74; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

275. *Add. Annotation:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242.

276. *Add. Annotation:—As to* (4) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

277. *Add. Annotation:—As to* (1) **Refd.** *Re* Rogerstone Brick & Stone Co., Southall *v.* Wescomb, [1919] 1 Ch. 110.

PART VI.

m i. ——.]—Where a lease of farm land provides that the lessee shall have the right, within a specified time after the expiration of the term, to remove any fence which he may have erected during his occupancy, & he erects a fence consisting of strands of wire carried on wooden pickets, the pickets & wire become part of the land, subject to the lessee's contractual right to sever them, thereby restoring them to the condition of chattels, & to remove them.—CHERRY *v.* BREDIN (Sask.), [1927] 3 D. L. R. 326; [1927] 2 W. W. R. 314.—**CAN.**

n. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

n (p. 49) i. —— *Windmill & stable windows.*]—A windmill, wire fencing & windows in a stable, erected or furnished by a tenant of agricultural land:—*Held:* in view of the degree of annexation & the object of the annexation, to be removable by the tenant.—CARSCALLEN *v.* LEESON (Alta.), [1927] 4 D. L. R. 797; [1927] 3 W. W. R. 425.—**CAN.**

t. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

Part VIII.—Growing Crops and Crops, Emblements, and Gleaning.

NOTE.—*Stat. Frauds, s. 4, is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 40.

280. *Add. Annotations :*—**Refd.** Richards *v.* Davies, [1921] 1 Ch. 90 ; Back *v.* Daniels (1924), 69 Sol. Jo. 160.

286. *Add. Annotation :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

288. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

289. *Add. Annotation :*—**Refd.** Elmes *v.* Trembath (1934), 19 Tax Cas. 72.

296. *Add. Annotations :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174 ; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

298. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

299. *Add. Annotation :*—**Folld.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

299a. ——.]—L., the tenant from year to year of a farm in the county of Durham belonging to Lord Eldon, agreed by his tenancy agreement not to dispose of any hay, etc., that was grown or brought on the farm, but to consume such hay, etc., by stock on the farm & in the proper manner. In May, July & Oct. 1932, L. entered into three contracts for the sale to H., a firm of hay dealers, of eight stacks of hay standing on the farm. The contracts provided for the sale of the hay at various prices per ton " put

PART VIII. SECT. 1.

280 i. *Sale—Interest in land—Passing before severance—Statute of Frauds—Grass.*]—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

286 ii. As a general rule a contract for the sale of standing timber which is not to be severed immediately is a sale of an interest in land.—HANDY *v.* CARRUTHERS (1893), 25 O. R. 279.—**CAN.**

286 iii. ——.]—MCKENZIE *v.* HARVEY & BLANCHARD, [1930] 1 D. L. R. 547.—**CAN.**

286 iv. ——.]—MACMILLAN *v.* MCDONALD, [1930] 1 D. L. R. 667.—**CAN.**

286 v. ——.]—*Held :* sale of timber for the removal of which the purchaser was to have as much time as he desired, was the sale of an interest in land.—KELLY PIANO CO. *v.* NASH (1931), 44 B. C. R. 14.—**CAN.**

286 vi. —— *Dependent on terms of contract.*]—The question whether a contract relating to timber constitutes a sale of chattels or relates to an interest in land depends on the terms of the contract. A contract for the sale of standing timber to be cut & removed by the buyer, who is given " as much time as he desires " to remove it, is one which deals with an interest in land within the meaning of sect. 34 of Land Registry Act, R. S. B. C., 1924, &, therefore, it is one which must be registered thereunder in order to pass such interest.—CARLSON *v.* DUNCAN, [1931] 2 W. W. R. 343 ; 3 D. L. R. 570 ; 44 B. C. R. 14.—**CAN.**

286 vii. —— " *Orchard or fruit lands "—Soldier's Settlement Act.*]—*Held :* the sale of " orchard or fruit lands," mentioned in sect. 59 (*c*) of Soldier's Settlement Act, 1919, though providing for a valuation of the trees apart from the land, is nevertheless a sale of " orchard or fruit lands," which is not personal property. An intention in a statute to depart from a common law rule would need to be expressed with the utmost clarity, & sect. 59 (*c*) does not pretend to enact that planted & growing fruit trees are to be treated as chattels or personal property.—MCCLELLAN *v.* R., [1932] Ex. C. R. 18 ; *on appeal*, [1932] S. C. R. 617 ; 4 D. L. R. 79.—**CAN.**

b i. ——.]—MESSERVEY *v.* CENTRAL CANADA CANNING CO., [1923] 4 D. L. R. 1202 ; 3 W. W. R. 365.—**CAN.**

b ii. ——.]—By an agreement in writing pltf. contracted (*inter alia*) to sell to deft. 14 acres of swedes & 16 acres of turnips for 1931 feed. Subsequently, on account of the lateness of the season, the parties verbally agreed that the 14 acres intended to be sown in swedes should be sown in turnips. The crop became infected with a disease & deft. did not put his sheep on to eat any part of the crop. Pltf. required the use of the 30 acres for cultivating for the 1932 harvest, & alleging that he was prevented from so doing by deft.'s neglect to clear off the turnips, claimed £20 damages for breach of contract in addition to £180 purchase price :—*Held :* the crops were "goods" within Sale of Goods Act, 1908, & the second contract, being oral, was unenforceable.—SCULLY *v.* SOUTH, [1931] N. Z. L. R. 1187.—**N.Z.**

e i. ——.]—Crops growing at the completion of a sale of land pass to the purchaser, unless there be a stipulation to the contrary.—ANDERSON *v.* STASIUK, [1926] 1 D. L. R 347 ; [1926] 1 W. W. R. 107 ; 20 Sask. L. R. 269.—**CAN.**

e ii. —— *Sale by mortgagee.*]—A conveyance by a mtgee. under a power of sale entitles the purchaser to the growing crops.—DYCK *v.* DYCK, [1926] 3 W. W. R. 762 ; [1927] 1 D. L. R. 458 ; 36 Man. L. R. 210.—**CAN.**

e iii. ——.]—Growing crops are " goods " within Sale of Goods Act when there is an agreement that they are to be severed under the contract of sale ; but, otherwise, they are part of the land & pass with it.—SHEWCHUK *v.* SEAFRED, [1927] 3 D. L. R. 280 ; [1927] 2 W. W. R. 207 ; 36 Man. L. R. 469.—**CAN.**

e iv. —— *Right of vendor to crop on cancellation of contract—Who entitled to cut crops.*]—A provision in an agreement for the sale of land that the vendor, on becoming entitled to cancel the contract, shall have the right to enter into possession & to possess " the growing crop," does not give him any right to crops that have been cut & which thereby became chattels.—CANADIAN PACIFIC RY. CO. *v.* STEWART (Sask.), [1927] 3 D. L. R. 555 ; [1927] 2 W. W. R. 385.—**CAN.**

f i. *Permit to cut hay—Cancellation if land leased.*]—*Held :* the permit was not cancelled by only a part of the land being leased.—DECOCK *v.* BARRAGER (1909), 19 Man. L. R. 34.—**CAN.**

g ii. —— *Interest in land.*]—A contract under which an owner of land gives another the right to cut & remove the wild hay to be grown on the land is a contract concerning an interest in land & within sect. 4 of Stat. Frauds.—VAN BERKEL *v.* DE FOORT, [1933] 1 W. W. R. 125 ; 1 D. L. R. 652.—**CAN.**

g iii. —— *Oral agreement—Part performance.*]—Permitting haystacks to remain on land is not a sufficient part performance of an oral contract to permit the cutting of hay to take the case out of the Statute of Frauds.—VAN BERKEL *v.* DE FOORT, [1933] 1 D. L. R. 652 ; 1 W. W. R. 125 ; 41 Man. L. R. 19.—**CAN.**

p i. —— *Right of devisee to crops sown by share tenant—& growing at testator's death.*]—*Held :* as testator's interest in the wheat while growing arose out of the agreement, which amounted to a severance of the crop from the land, the money payable for testator's share in the crop fell into the residue of the estate.—*Re* BURGIN, [1922] V. L. R. 686.—**AUS.**

p ii. —— *Cost of threshing.*]—A lessor on the crop-payment plan agreed to pay one-half the cost of threshing :—*Held :* he was liable for one-half of the cost of hauling the sheaves from the stook to the thresher.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768 ; 32 Man. L. R. 356 ; [1922] 2 W. W. R. 616.—**CAN.**

p iii. —— *Failure of lessor to supply seed—Measure of damages.*]—BEAMAN *v.* TULLY (Sask.), [1927] 4 D. L. R. 143 ; [1927] 2 W. W. R. 953.—**CAN.**

p iv —— *Crop-payment covenant—On whom binding.*]—*Held :* binding only on the purchaser & his successors in interest under the covenant.—*Re* SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD., *Re* SENGER & HOUCK (Sask.), [1927] 4 D. L. R. 1090 ; [1927] 3 W. W. R. 547.—**CAN.**

sf. *Licence to sow crop—Implied right to benefit from crop—Condition precedent.*]—Where a licence to fallow was given by A. & fallowing was done & a crop put in on the land by B., but the evidence also showed that such licence, although coupled with an interest, depended on an express condition that the licencee should have the benefit of the crop only if a contract for the sale of the land was completed, on the contract not being completed :—*Held :* the licence, although coupled with an interest, did not confer any right to the crop on the licencee. Also, on the evidence, apart from the express condition, there was an implied condition to the same effect. Further, on the evidence, the condition was a condition precedent.—FERRES *v.* COPE, [1928] S. A. S. R. 415.—**AUS.**

free on rails. . . . Cutting & tieing to be done by Hedley Bros. Delivery of same to be taken when convenient, & only good marketable hay clear of mould to be delivered in a dry condition." H. paid L. at the time of entering into the contracts the estimated value of the stacks of hay. At the time L. entered into these contracts he was still the tenant of the farm & could not in the ordinary course determine his tenancy before May 13, 1934. In Oct. 1932, however, L. asked to be allowed to terminate his tenancy on May 13, 1933, & on Nov. 18, 1932, the landlord's agent agreed that the tenancy should terminate on May 13, 1933. In Jan. 1933, the landlord's agent informed H. that L.'s tenancy agreement would terminate on May 13, 1933, & that the hay would not be allowed to be removed from the farm. On Feb. 13, 1933, the landlord levied a distress upon the farm for arrears of rent. The bailiff found that H. were in process of cutting into the eight stacks of hay & taking the hay away, & notwithstanding the presence of the bailiff they removed all the hay in the eight stacks. On Feb. 14, 1933, H. served upon the landlord a declaration under Law of Distress Amendment Act, 1908 (c. 53), s. 1, that the tenant had no right of property or beneficial interest in the goods distrained. The landlord, thereupon, brought an action against H. alleging that their acts amounted to poundbreach & claiming treble damages therefor; in the alternative the landlord claimed £102 damages for the removal of the hay contrary to Sale of Farming Stock Act, 1816 (c. 50), s. 11. At the trial it was proved that it was a common practice in the hay market for dealers to buy hay in stacks, sometimes for a lump sum, & sometimes for a price per ton, & that purchases of stacks, even though weight & price necessarily remained to be determined at the time of delivery, were regarded by all persons interested in the market as passing the property in the stacks to the buyers at the time of the bargain:—*Held:* Sale of Farming Stock Act, 1816 (c. 50), s. 11, has not been impliedly repealed by the Agricultural Holdings Act, 1923 (c. 9); L. was not freed from his obligation under his tenancy agreement not to dispose of any hay grown on the farm but to consume it by stock on the farm by Act of 1923 (c. 9), s. 30 (1), as there was no evidence that he had made adequate provision to return to the holding the full equivalent manurial value to the holding of crops sold off or removed from the holding, & further the hay had been removed from the farm in the year before L. quitted the holding. He ought, therefore, not to have disposed of the hay otherwise than as provided for in his tenancy agreement. The purchasers of the hay stood in L.'s shoes & had therefore committed a breach of the Act of 1816, & the landlords were therefore entitled to damages for the removal of the hay.—ELDON (LORD) *v.* HEDLEY BROS., [1935] 2 K. B. 1; 104 L. J. K. B. 334; 152 L. T. 507; 51 T. L. R. 313; 79 Sol. Jo. 270, C. A.

304. *Add. Annotations:*—**Consd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. **Expld. & Distd.** *Re* Wait, [1927] 1 Ch. 606.

310a. —— ——.]—The owner of the herbage may maintain trespass *quare clausum fregit.*—PICKETT *v.* BUTLER (1844), 3 L. T. O. S. 39, 183.

311a. *S. P.* ARCHER *v.* SADLER (1859), 1 F. & F. 481, N. P.

311b. —— ——.]—At an auction sale of grass & crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes:—*Held:* the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from maintaining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—WELLAWAY *v.* COURTIER, [1918] 1 K. B. 200; 87 L. J. K. B. 299; 118 L. T. 256; 34 T. L. R. 115; 62 Sol. Jo. 161, D. C.

Annotation:—Richards *v.* Davies, [1921] 1 Ch. 90.

315. *Add. Annotations:*—*As to* (1) **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; Gurney *v.* Houghton (1920), 123 L. T. 706; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; Newcastle Breweries *v.* R., [1920] 1 K. B. 854; Shutler *v.* Rolfe (1920), 36 T. L. R. 828; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

317. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

332a. —— **Not lessee for life.**]—KNEVIT *v.* POOLE (1601), Gouldsb. 143; Cro. Eliz. 463; 75 E. R. 1053.

Part IX.—Trees and Timber.

352a. —— —— ——.]—*Re* TOWER'S CONTRACT, [1924] W. N. 331.

366. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

392. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

395. *Add. Citation:*—15 W. R. 640.

396. *Add. Annotations:*—**Refd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Brooke *v.* Bool, [1928] 2 K. B. 578; Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

PART VIII. SECT. 2.

g i. —— *Tenant whose estate forfeited.*]—A tenant whose term is ended because of his own default resulting in a forfeiture is not entitled to the crops growing at the time of the default.—SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382; 3 D. L. R. 959.—CAN.

402. *Add. Annotations :*—**Reld.** Chowood, Ltd. *v.* Lyall (1930), 143 L. T. 546 ; Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

404. *Add. Annotations :*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Reld.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

405. *Add. Annotations :*—*As to* (1) **Reld.** Noble *v.* Harrison, [1926] 2 K. B. 332. *As to* (2) **Reld.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (3) **Reld.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (4) **Consd.** Collins *v.* Amphlett (1919), 89 L. J. Ch. 101. **Reld.** Mills *v.* Brooker, [1919] 1 K. B. 555 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

406. *Add. Annotations :*—**Consd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101. **Reld.** Mills *v.* Brooker, [1919] 1 K. B. 555 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Noble *v.* Harrison, [1926] 2 K. B. 332.

406a. —— —— **Right to appropriate fruit.**]—Where the branches of fruit trees growing near their owner's boundary overhang the land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—MILLS *v.* BROOKER, [1919] 1 K. B. 555 ; 88 L. J. K. B. 950 ; 121 L. T. 254 ; 35 T. L. R. 261 ; 63 Sol. Jo. 431 ; 17 L. G. R. 238, D. C.

Annotation :—**Reld.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

407. *Add. Annotation :*—**Reld.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

412. *Add. Annotation :*—**Reld.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

418. *Add. Annotation :*—**Reld.** Musgrove *v.* Pandelis, [1919] 2 K. B. 43.

419. *Add. Annotation :*—**Reld.** Derry *v.* Sanders [1919] 1 K. B. 223.

479a. ——.]—A tenant in fee simple in possession of real estates, with an executory gift over, is not impeachable for waste.—*Re* HANBURY'S SETTLED ESTATES, [1913] 2 Ch. 357 ; 82 L. J. Ch. 428 ; 109 L. T. 358 ; 29 T. L. R. 621 ; 57 Sol. Jo. 646.

484. Before this case add "*See, also,* ECCLESIASTICAL LAW, Vol. XIX., p. 511."
Add. Annotation :—**Reld.** Stockman *v.* Whither (1614), 1 Roll. Rep. 86.

518a. ——.]—BILLINGSLEY (LADY) *v.* (1612), 2 Bulst. 5 ; 80 E. R. 912.

519. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Reld.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

527. *Add. Annotation :*—**Reld.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

533. *Add. Annotations :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Reld.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

534. *Add. Annotation :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

552. *Add. Annotations :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Reld.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

591. *Add. Annotation :*—**Reld.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

602. *Add. Annotations :*—**Reld.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424, Horlick *v.* Scully, [1927] 2 Ch. 150

615. *Add. Annotations :*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Reld.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

633a. No right to sell timber during life of tenant for life unimpeachable for waste.]—WALLER & PETTY *v.* SANDS (1632), Cro. Car. 274 ; 79 E. R. 839.

PART IX. SECT. 2, SUB-SECT. 1.

403 iii. —— —— *Property in severed portion.*]—Where W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver the cut portion to L.—LOVEROCK *v.* WEBB (1921), 70 D. L. R. 748 ; 30 B. C. R. 327.—**CAN.**

403 iv. ——.]—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—DE VILLIERS *v.* O'SULLIVAN (1883), 2 S. C. 251.—**S. AF.**

403 v. —— ——.]—A person is entitled to cut off those portions of trees growing on his neighbour's land which overhang his land.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

403 vi. *S. P.* MAUNG PO THAUNG *v.* MA GYI (1923), I. L. R. 1 Ran. 281.—**IND.**

407 ii a. —— ——.]—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining landowner for damages for the cutting by the municipality of trees on the highway.—A.-G. FOR BRITISH COLUMBIA & WATT *v.* SAANICH CORPN., [1921] 1 W. W. R. 471 ; 56 D. L. R. 482.—**CAN.**

407 ii a. —— ——.]—A person can obtain an injunction to remove the overhanging portions of trees though he may not be able to prove any damage.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

sb. *Leaves blown on to neighbour's land —Polluting water—Trees not noxious & planted for shelter.*]—*Held :* the rule in *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, did not apply.—MATTHEWS *v.* FORGIE, [1917] N. Z. L. R. 921.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 7.

510 i. *Mortgagee.*]—The mtgee. of a term for years being in possession will, at the suit of the mtgor., be restrained from felling timber, although he may have obtained the consent of the reversioner.—CHISHOLM *v.* SHELDON (1850), 1 Gr. 318.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

518 i. *General rules.*]—GOULIN *v.* CALDWELL (1867), 13 Gr. 493.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B.

528 i. *Cannot enter & cut trees.*]—A landlord is not entitled to enter upon the holding of his tenant & cut down trees there without the tenant's consent.—KAMALKRISHNA SANYAL *v.* MADHUSUDAN CHAUDHURI (1929), I. L. R. 57 Calc. 344.—**IND.**

PART IX. SECT. 2, SUB-SECT. 9.—C.

555 ii. —— *Lessee on wild or unimproved land.*]—ATTORNEY-GENERAL OF NOVA SCOTIA *v.* MCDOUGALL, [1930] 2 D. L. R. 479.—**CAN.**

sc. *Right to cut trees for securing profitable enjoyment of land.*]—A tenant may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, &, in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the timber is done for the purpose of making an immediate profit out of the timber, & without any regard to the improvement of the land, there is no implied grant to the tenant to cut & sell the timber.
In the absence of any such grant, the property in the timber when cut vests immediately in the person entitled to the first estate of inheritance in fee or in tail.—HIRAWANU *v.* GARDNER, [1926] N. Z. L. R. 48 ; *revsd.* on the facts, *sub nom.* GARDNER *v.* HIRAWANU, [1927] A. C. 388 ; 96 L. J. P. C. 53 ; 136 L. T. 613 ; 43 T. L. R. 198—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 10.—E. (a).

649 i. *Tenant for life unimpeachable—Trees taken compulsorily by overruling authority.*]—*Held :* the money given by way of compensation must be applied by the trustees as part of the corpus of the estate.—GAGE & ROPER *v.* PIGOTT & DE JENNER, [1919] 1 I. R. 23.—**IR.**

652. *Add. Annotation :*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] Ch. 500.

652a. —— —— ——.]—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers thereinafter declared, with remainders as therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement :—*Held :* the proceeds of sale of the timber belonged to A.

(2) At the date of the contract for the sale of land & at the date of the conveyance, part of the timber, to the value of about £500, remained uncut :—*Held :* although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement ; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), [1923] 1 Ch. 500 ; 92 L. J. Ch. 423 ; 128 L. T. 792 ; 67 Sol. Jo. 439.

656. *Add. Annotation :*— *As to* (4) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

661a. —— —— ——.] — *Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), No. 652a, *ante*.

671. *Add. Annotations :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750 ; *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

680. *Add. Annotation :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

696. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

711. *Add. Annotation :*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500.

712. *Add. Annotations :*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

736. *Add. Citation :—sub nom.* STEWKLEY *v.* BUTLER (1615), Moore, K. B. 880 ; 72 E. R. 970.

Add. Annotation :—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

739. *Add. Annotations :—As to* (1) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98 n. **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459 ; Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569 ; *Re* Wait, [1926] Ch. 962 ; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427. *As to* (2) **Refd.** Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101.

744. *Add. Annotation :*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

745. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

757. *Add. Annotation :*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

759. *Add. Annotation :*—**Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

769. *Add. Annotations :—As to* (2) **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works. [1922] 2 K. B. 185 ; Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

781a. Exception of timber—Limitation on time for cutting.]—ELLIS *v.* NOAKES, [1932] 2 Ch. 98, n. ; 101 L. J. Ch. 409, n. ; 147 L. T. 453, n.

Annotation :—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81.

808. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

PART IX. SECT. 2, SUB-SECT. 11.

682 i. *Rights inter se—Cutting down trees.*]—If one joint owner of land cuts timber on it adversely to his co-tenant, they become joint owners of the timber. The wrongful act of cutting does not divest the tenant of his interest in the property.—GODARD *v.* TUCK (1866), 6 All. 370.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 16.

sk. *Purchaser under covenant to erect frame dwelling.*]—*Held :* entitled, under the agreement for purchase, to take standing trees to complete the building. —GIBBONS *v.* RIDDLE, [1926] 3 D. L. R. 76 ; 58 O. L. R. 627.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 3.

736 ii. ——.]—The owner of real estate sold all the hemlock bark thereon :—*Held :* the purchaser had a right to fell the trees.—HATCH *v.* FICK (1857), 5 Gr. 651.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.

804 i. *Contract to take timber by valuation—Valuation by joint valuers—Subsequent valuation by valuers of vendor.*]—Deft. agreed to purchase all merchantable timber whether "standing or down" on four lots belonging to pltf. at $7 per M., deft. to do his own logging & take the timber off. After logging for two years, deft. decided to cease work & as some merchantable timber remained the parties agreed that two cruisers, one appointed by each party, should estimate the quantity left & deft. should pay pltf. $7 per M. for what remained. The cruisers reported, but pltf. being dissatisfied with their finding, had two of his own cruisers to make an estimate & they found that more than double the amount of merchantable timber remained. On examination, the joint cruisers admitted they did not cruise two of the lots, as these lots had been logged by deft. & they concluded, without examination, there was no merchantable timber there. Pltf.'s own cruisers reported that there were 80,000 feet of "down" timber on these two lots which were merchantable. Pltf.'s action to recover the value of the remaining timber as found by his own cruisers was dismissed :—*Held :* the joint cruise was such a partial estimate of the remaining timber that it could not be regarded as a cruise contemplated by the parties, & it was not binding.—REINSETH *v.* NICOLA PINE MILLS, LTD. & MCDOUGALL, [1928] 1 D. L. R. 93 ; 39 B. C. R. 151.—**CAN.**

807 ii. —— *Construction—Time for removal of timber.*]—M. conveyed to B. all the timber on his land, with a right for B. at all reasonable times during —— years to enter & cut & remove same :—*Held :* the instrument did not convey to B. the fee simple in the standing timber, but only gave him the right to cut & remove it within a reasonable time.—BEATTY *v.* MATHEWSON (1908), 40 S. C. R. 557.—**CAN.**

807 iii. —— —— *Terms of payment.*] —O'BRIEN *v.* MACKINTOSH (1903), 34 S. C. R. 169.—**CAN.**

810. *Add. Annotations:—As to* (2) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n. **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459; Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

Confiscation by foreign State—Frustration.]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held:* the contract was not an executed contract on the part of the vendors at the date when it was signed, & the property in the timber had not passed, to the purchaser; the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

810 ii. —— *Rights of purchaser.*]—Under a contract for the sale by the owner of land of the timber growing on it, with "the use of all roads & passes," & permission to erect saw-mills on the land, the purchaser was held not entitled (*a*) to use a saw-mill erected by him on the land for the purpose of manufacturing sleepers or brush-heads out of portion of the timber; (*b*) to remove the timber by a mode of traction which injured the roads through the land so as to render them incapable of use by the owner of the land; (*c*) to hold sales of the timber by public auction on the land; (*d*) to leave timber or branches on the land longer than was reasonably necessary. The purchaser under such a contract held entitled (*a*) to lay down & work a railway on the land for the purpose of removing the timber; (*b*) to make gaps in walls & fences for the purpose of removing the timber, subject to the duty of restoring the walls & fences.—RUDD *v.* REA, [1921] 1 I. R. 223; *affd.*, [1923] 1 I. R. 55.—**IR.**

si. *Sale of timber—On land sold to third party—Failure to remove timber.*]—*Held:* no action lay at the instance of the purchaser of the land against the purchaser of the timber for any supposed breach of duty in not removing the timber, as the only ground of action was on the contract, which did not vest in the purchaser of the land.—RAE *v.* RANKIN (1844), 2 Kerr, 453.—**CAN.**

sm. —— *Subsequent verbal agreement to let made timber remain on land—Validity.*]—HEDLEY *v.* SCISSONS (1873), 33 U. C. R. 215.—**CAN.**

sn. —— *By locatee — Subsequent patent to third party—No reservation of timber.*]—LANGMAID *v.* MICKLE (1888), 16 O. R. 111.—**CAN.**

sp. — — —— *Before issue of patent.*]—*Held:* the locatee was not, nor anyone claiming under him, after its issue, estopped from denying the validity of the sale.—CHAPIEWSKI *v.* CAMPBELL (1898), 29 O. R. 343.—**CAN.**

sr. —— —— —— *Effect of* 31 *Vict.* c. 8 *&* 37 *Vict.* c. 23 (*O.*).]—HUTCHINSON *v.* BEATTY (1876), 40 U. C. R. 135.—**CAN.**

sw. —— *On limit—Duty of vendor to maintain title for reasonable time for removal of timber.*]—CAINE *v.* SCHULTZ, [1927] 1 W. W. R. 600; 38 B. C. R. 332.—**CAN.**

sx. ——*Accepted order for timber —Whether property passes.*]—B. drew an order on deft., a pond-keeper, in favour of R. for five hundred tons of pine timber, which deft. accepted & credited R. with the timber in account. R. afterwards assigned all his property to pltf.:—*Held:* in the absence of any proof of title to the timber in B., or that he had delivered it to deft., or of any usage in the timber trade relative to such acceptances, no property vested in R. by the acceptance in any specific five hundred tons of timber, & the action could not be maintained.—POLLOK *v.* FISHER (1849), 6 N. B. R. (1 All.) 515.—**CAN.**

sy. —— *Non-payment of Crown dues —Right to damages.*]—EDSELL *v.* HAMELL (1865), 16 C. P. 93.—**CAN.**

sz. —— *Right to cut timber during specified period—Time for removal extended—Interference by vendor.*]—Deft. having sold to pltfs. the right to cut & remove within two years the fir timber on a certain section of land, & the time for the removal of the timber having been extended by a subsequent agreement:—*Held:* pltfs. were entitled to an injunction restraining deft. from interfering, within said extended period, with the removal of the timber which pltfs. had cut prior to the expiration of the two years from the date of the original agreement.—RIDLEY & RIDLEY *v.* BARCLAY (B. C.), [1928] 4 D. L. R. 79; [1928] 3 W. W. R. 62.—**CAN.**

sa. —— *Value fixed on estimate of vendor's agent—Deficiency in quantity—Rescission.*]—Where an agreement for the purchase of timber licences for a certain sum was found to have been arrived at on the basis that the timber was being sold & bought at so much per thousand feet, & it was found that the purchaser had entered into the agreement relying on estimates, exhibited by the vendors' agent, & made up by a firm of timber-cruisers employed by them, showing the total number of feet of timber covered by the licences, & it was, afterwards, established, by a cruise made for the purchaser, that there was a shortage of about one-third as between the actual quantity of timber & said estimates:—*Held:* the purchaser was entitled, even though there was no fraud, to rescission of the agreement.—FUKUKAWA & QUEEN CHARLOTTE TIMBER HOLDING CO., LTD. *v.* AMERICAN TIMBER HOLDING CO.. AMERICAN TIMBER HOLDING CO. *v.* FUKUKAWA (B. C.), [1928] 3 D. L. R. 44; [1928] 2 W. W. R. 37.—**CAN.**

sb. —— *Ascertainment of quantity.*]—DOUCET *v.* SYDNEY LUMBERING CO. (N. B.), [1928] 2 D. L. R. 513.—**CAN.**

sc. ——*Sale of licence by holder—Title to cut all timber except that sold by purchaser—Effect of agreement on third party without notice.*]—Where the holders of a licence for a timber berth agreed to sell it subject to the condition that they were to retain title to all the lumber cut thereon except that sold & delivered by the purchasers in the ordinary course of the latter's business, & they put the purchasers in possession of the berth under circumstances which would lead all persons without knowledge of the terms of the agreement to assume that the purchasers were the owners of the lumber:—*Held:* the vendors could not maintain their claim to the cut lumber as against those who had innocently bought it for value from said purchasers even though all the lumber so bought had not yet been delivered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* EDMONTON LUMBER CO., LTD., [1930] 2 W. W. R. 97; *sub nom.* BEAR CREEK LUMBER CO. *v.* EDMONTON LUMBER CO. & ROSS SMITH LUMBER CO., [1930] 3 D. L. R. 406; 11 C. B. R. 376.—**CAN.**

sd. —— *During season—Timber from particular lot.*]—In a contract for the sale of wood during a season, extrinsic evidence was admitted to show that the contract was for wood cut exclusively from a particular lot.—DOYLE *v.* MERSEY PAPER CO., LTD., [1934] 2 D. L. R. 296; 7 M. P. R. 287.—**CAN.**

se. *Licence to cut timber—Whether interest in land—Statute of Frauds.*]—A licence to cut a quantity of timber within certain prescribed limits, & to remove the same, does not convey any interest in lands under Stat. Frauds, or give any property in the standing trees.—KERR *v.* CONNELL (1836), Ber. 233.—**CAN.**

sf. —— *Trees reserved in clearing land.*]—Where a locatee of lands, in clearing a portion thereof, reserved twenty-six pine trees thereon, thinking that they would be useful for building, but had previously erected a permanent house & stable, & put up fences, & had enough timber left for building a barn without reserving these trees:—*Held:* by thus reserving these trees, the locatee left them the property of the Crown, & a licencee of timber under the Crown had a right to cut & remove them.—PARKER *v.* MAXWELL (1887), 14 O. R. 239.—**CAN.**

sf. —— *Land subject of free grant—Interference with rights of patentee.*]—LAKEFIELD LUMBER & MANUFACTURING CO. *v.* SHARP (1891), 19 S. C. R. 657.—**CAN.**

sg. —— *Reservation of right to cut timber for public works—Railway.*]—Pltf. held a licence from the Crown under the Crown Lands' Act for the purpose of cutting timber on certain lands defined in the licence. In the said licence was a reservation to the public, with the permission of the Crown, to go in at any time on the said lands & cut down timber for public works":—*Held:* the interpretation of the words "public works" or "public purposes" in the Crown Lands' Act, or the instruments issued under that Act, cannot be so construed as to be applicable to the building of a "railroad."—PHILLIPS *v.* REID (1899), 8 Nfld. L. R. 241.—**NFLD.**

sh. —— *Forfeiture for breach of*

810b. Sale of timber with right to remove—Whether right to remove amounts to condition.]—On a sale of timber or an exception of timber together with a right to get it, it is not necessary to treat the words conferring the right as a condition of the sale or exception.

A conveyance of woodland contained an exception of timber with full right & liberty for the vendor to enter upon the woodland at all times up to a fixed date & to fell & remove the timber:—*Held:* the property in timber not removed after the fixed date remained vested in the vendor.—ELLIS *v.* NOAKES, [1932] 2 Ch. 98, n.; 101 L. J. Ch. 409, n.; 147 L. T. 453, n.

Annotation:—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 61.

814. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

828. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750; *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

842. *Add. Citations:*—119 L. T. 596; 62 Sol. Jo. 716, C. A.

846a. *S. P.* OSBORNE *v.* OSBORNE (*circa* 1814), cited in 19 Ves. at p. 422; 34 E. R. at p. 574, L. C.

Annotations:—**Folld.** Wickham *v.* Wickham (1815), 19 Ves. 419. **Refd.** Tooker *v.* Annesley (1832), 5 Sim. 235.

851. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

856. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

874. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

884a. *S. P.* MATTHEW *v.* CRASSE (1613), as reported in 2 Bulst. 89; 80 E. R. 983.

894a. —— —— Tenant for years unimpeachable for waste.]—Lessee for years *sans* waste cannot pull down trees that are a defence or ornament to the house.—LONDON (BP.) *v.* WEB (1718), as reported in 1 P. Wms. 527; 24 E. R. 501.

Annotation:—**Refd.** Chamberlayne *v.* Dummer (1792), 3 Bro. C. C. 549.

928. *Add. Annotation:*—*As to* (1) & (2) **Consd.** Wheeler *v.* Keeble (1914), Ltd., [1920] 1 Ch. 57.

944a. —— —— Trees excepted.]—If a lessee cuts down the trees excepted out of his lease, the lessor shall have trespass *vi et armis* against him.—PERCY'S CASE (1609), 13 Co. Rep. 60; Ley, 20; 77 E. R. 1470.

949. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

951. *Add. Annotation:*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

—.]—ALDERMAN *v.* BANNISTER (1826), 4 L. J. O. S. Ch. 126.

970. *Add. Annotations:*—**Consd.** Baldock *v.* Westminster City Council (1918), 88 L. J. K. B. 502; Sheppard *v.* Glossop Corpn., [1921] 3 K. B. 132. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681

970a. —— Omnibus company with right to cut trees—Injury to passenger.]—Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TRINDER *v.* GREAT WESTERN RY. CO. (1919), 35 T. L. R. 291.

970b. —— Overhanging trees.]—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection:—*Held:* deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no

covenant—Waiver.]—A timber license over an area in Newfoundland for ninety-nine years was issued in 1915 under the local Crown Lands Act, 1903, as amended in 1911, the licensee agreeing to pay an annual rent & royalties. The license provided that it was subject to the express condition that the licensee should erect a saw mill or pulp factory to be completed by 1920, also to the conditions of the Act, & that if the licensee should make default in performing "any of the conditions herein contained" the license should be null & void. One of the conditions in the Act was that a licensee was to work the licensed area in a *bonâ fide* manner, & operate the mill or factory erected, in each year; but that condition was not set out in the license. The Act, as amended in 1911, provided for forfeiture only for non-payment of rent or royalties; for any breach of the other conditions the licensee was to be liable to a penalty not exceeding $10,000, & a penalty not exceeding $100 for every day the breach continued. By an amending Act of 1918 a breach of any condition was made a cause of forfeiture. The licensee & his assign did nothing under the license except to pay the rent. Rent paid in 1928 was accepted, but was returned later. In 1930 the Crown sued for a declaration that the license was null & void, or was forfeited, & for penalties & damages:—*Held:* (1) the license was subsisting, because (*a*) the provision that upon relevant default it was to be void was to be treated as making it merely voidable at the option of the Crown; (*b*) the words "conditions herein contained" meant the conditions set out, & did not include the incorporated statutory conditions; (*c*) the condition set out as to the erection of a mill or factory had been broken once & for all in 1920, & forfeiture on that account had been waived by the acceptance of rent in 1928, & there had not been any later breach of a condition for which there was a right of forfeiture, as the Act of 1918 applied only to licenses issued after it was passed; (2) damages could not be recovered, as there was no contractual obligation by the licensee to perform the conditions, nor daily penalties, as there was no continuing breach; but, by agreement, the case should be remitted for the trial ct. to decide the amount of lump sum penalty to be imposed.—JARDINE *v.* A.-G. FOR NEWFOUNDLAND, [1932] A. C. 275; 101 L. J. P. C. 70; 146 L. T. 393; 48 T. L. R. 199, P. C.—**NFLD.**

sj —— Grant by licensee—Whether grantee liable for royalties.]—Deft. bank was sued for royalties alleged to be due from it, under sect. 127 (1) of Forest Act, R.S.B.C., 1924, with respect to timber cut upon Crown lands held under timber licences. The timber had been cut under an agreement between deft. & a lumber co., whereby deft., as licensee, had granted to the co. the right to enter upon the lands to cut, remove & carry away therefrom, "for the co.'s own use & benefit" all the timber & trees situate & growing thereon:—*Held:* the royalties were payable by the lumber co., not by deft.—A.-G. FOR BRITISH COLUMBIA *v.* BANK OF MONTREAL, [1934] 1 W. W. R. 359; 2 D. L. R. 348; 47 B. C. R. 555.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 1.

922 vi. ——.]—LAWRENCE *v.* JUDGE (1851), 2 Gr. 301.—**CAN.**

PART IX. SECT. 10.

970 i. Read now "**970b i.**"

970 ii. Read now "**970b ii.**"

absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—NOBLE *v.* HARRISON, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188; 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

Part X.—Fertilisers, Feeding Stuffs and Seeds.

NOTE.—*Fertilisers & Feeding Stuffs Act*, 1906 (*c.* 27), *was repealed by Fertilisers & Feeding Stuffs Act*, 1926 (*c.* 45).

971a. Feeding stuffs—Act of 1906, s. 1 (4).]—In Sept. 1922, pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2*s.* 6*d.* a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together with dust & dirt & other odds & ends & string:—*Held:* the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—PULLING *v.* LIDBETTER, LTD., [1924] 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 88 J. P. 83; 68 Sol. Jo. 615; 22 L. G. R. 456, C. A.

973. *Add. Annotation:*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

974a. —— —— ——.]—A seller who in fact delivers a false invoice commits an offence under sect. 6 (1) (*b*) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—HARVEY & CO. *v.* HEREFORDSHIRE COUNTY COUNCIL, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195; 18 L. G. R. 470, D. C.

975a. —— **Sending of sample to seller—Act of 1906, s. 3 (3).**]—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (*a*) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—VAUGHAN *v.* GRINDELL, [1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. C. 5, D. C.

977. *Add. Annotation:*—*As to* (2) **Refd.** Harvey *v.* Herefordshire County Council, [1920] 2 K. B. 395.

978a. —— **Effect of—"Reasonable excuse."**]—(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of his default is to protect the purchasers of fertilisers, the effect of non-compliance the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no "reasonable excuse" within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble:* neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression "without prejudice to any civil liability" in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—ANDERSON, LTD. *v.* DANIEL, [1924] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

Annotation:—As to (2) **Consd.** Pulling *v.* Lidbetter (1924), 93 L. J. K. B. 542.

978b. —— **Fertilizers & Feeding Stuffs Act, 1926 (c. 45)—Implied warranty of fitness—Sale for purpose of resale.**]—Pltfs. bought from defts., both being cattle food merchants, a quantity of linseed cake. Defts. sold in their own name, but they were in fact acting in the transaction as brokers for a bank to whom the goods had been hypothecated as security for certain bills of exchange which had been refused acceptance by the drawees. The sale note stated (*inter alia*) that the cake was sold "*tel quel*," & that the analysis, for which defts. said they accepted no responsibility, showed that the cake was "castor free." Pltfs. resold portions of the cake to their customers as food for cattle. It then appeared on further analysis that portions of the cake contained castor seed, a constituent injurious to cattle; & in fact cattle which were fed on some of the cake were injured. Claims were thereupon made upon pltfs. by their purchasers in respect of the damage so caused to their cattle, & pltfs. then claimed damages from defts., including in their claim the amounts they had to pay to the sub-purchasers:—*Held:* (1) the sale of the cake by defts. to pltfs. was a sale for use as food for cattle, within sect. 2 (2) of above Act, notwithstanding that pltfs. themselves did not intend to use the cake for that purpose but intended to resell it to those who would so use it; (2) the sale, though in fact effected by defts. on behalf of the bank, was not a sale "in exercise of a statutory power to enforce a right or to satisfy a claim or lien," within sect. 24 of above Act, so as to be exempt from the operation of the Act; (3) pltfs. were entitled to damages from defts. for the breach of the statutory warranty, & were entitled to include in those damages the amounts they were liable to pa[illegible] to their sub-purchasers.—DOBELL (G. C[illegible]

CO., LTD. *v.* BARBER & GARRATT, [1931] 1 K. B. 219; 100 L. J. K. B. 65; 144 L. T. 266; 47 T. L. R. 66; 74 Sol. Jo. 836; 36 Com. Cas. 87, C. A.

978c. —— —— —— **Sale to satisfy lien.**]—DOBELL (C. G.) & CO., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

978d. —— —— —— **Measure of damages for breach—Sale for purpose of resale to knowledge of vendor.**]—DOBELL (C. G.) & CO., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

979. *Add. Annotations* :—**Consd.** Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice (1918), 88 L. J. K. B. 422; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

Part XI.—Miscellaneous.

SECT. 11.—AGRICULTURAL RETURNS.

See Agricultural Returns Act, 1925 (c. 39), & case, *infra*.

SECT. 12.—AGRICULTURAL CREDITS.

See Agricultural Credits Act, 1928 (c. 43); Agricultural Credits Act, 1932 (c. 35).

979a. Restrictions on enforcement of charge—When charge enforced.]—A bank, having advanced money to a farmer on an agricultural charge within Agricultural Credits Act, 1928 (c. 43), in the year 1930 called in the money & threatened a sale, but did not until after Jan. 1, 1931, appoint an agent for sale or proceed to a sale :—*Held* : the bank's charge was not enforced until after Jan. 1, 1931, & accordingly the restrictive provisions of Agricultural Credits Act, 1928 (c. 43), s. 12, which applied only until Jan. 1, 1931, did not govern the case, & the bank was therefore entitled to retain out of the proceeds of sale the whole amount of its debt without regard to those restrictive provisions.—*Re* JONES (JOHN), *Ex p.* NATIONAL PROVINCIAL BANK, [1932] 1 Ch. 548; 147 L. T. 60; *sub nom. Re* JONES, NATIONAL PROVINCIAL BANK *v.* OFFICIAL RECEIVER, 101 L. J. Ch. 173; 76 Sol. Jo. 111; [1931] B. & C. R. 132, D. C.

979b. Chargee—Whether "tenant" within Agricultural Holdings Act, 1923 (c. 9).]—ECCLESIASTICAL COMRS. FOR ENGLAND *v.* NATIONAL PROVINCIAL BANK, LTD., No. 227a, *ante*.

SECT. 13.—AGRICULTURAL MARKETING.

See Agricultural Marketing Acts, 1931 (c. 42); 1933 (c. 31); (No. 2) 1933 (c. 1).

979c. Validity of Scheme—Power to "buy" product—What amounts to purchase.]—Agricultural Marketing Act, 1931 (c. 42), provides that schemes may be framed & boards constituted for the marketing & disposal of agricultural produce, &, by sect. 5, a scheme may empower the board "to buy the regulated product, to produce such commodities from that product as may be specified in the scheme, & to sell, grade, pack, store, adapt for sale, insure, advertise & transport the regulated product." A board elected by hop growers framed a scheme by which all hops were to be sold through their agency, &, after paying expenses, etc., the money so received was to be pooled & divided amongst the growers according to the value of the produce taken from each one :—*Held* : although the 1931 Act authorised the board to "buy" the regulated product, the taking, pooling, sale & division constituted what in fact was a purchase from the producer & a sale on his behalf, & the scheme was therefore not an infringement of the terms of the Act.—R. *v.* MINISTER OF AGRICULTURE & FISHERIES, *Ex p.* BERRY (1932), 101 L. J. K. B. 561; 147 L. T. 326; 96 J. P. 447; 48 T. L. R. 572; 30 L. G. R. 333, C. A.

979d. Hops—"Owner occupier"—Who is—Not lessee.]—An "owner occupier" of land within proviso (*a*) to para. 46*c* of Hops Marketing Scheme (Amendment) Order, 1934, is a producer who owns the land in fee simple, & does not include a leaseholder.—AMOS *v.* HOPS MARKETING BOARD (1935), 154 L. T. 62; 52 T. L. R. 69; 79 Sol. Jo. 987.

979e. Potatoes—Validity of charge.]—Pltfs. were the Board constituted under S. R. & O., 1933, No. 1186, to administer the Potato Marketing Scheme. Under the scheme they had power to charge any registered producer who exceeded his "basic potato acreage," if such excess was likely in the opinion of the Board to increase their expenditure. The Board in 1934 passed a resolution that their expenditure was likely to be increased if in that year the potato acreage of any registered producer exceeded his basic potato acreage. The resolution then proceeded thus : "& whereas in the opinion of the Board each registered producer ought to contribute the sum of £5 per acre in respect of each acre of his excess acreage towards defraying such increased expenditure, . . . the Board hereby require every registered producer to pay to the Board on or before Aug. 1, 1934, the sum of £5 per acre in respect of each acre by which his potato acreage for the year 1934 exceeds his basic potato acreage" :—*Held* : this was not dealing with the registered producers collectively, but with each one separately. The

PART XI. SECT. 10.

c i. —— *Under licence—Under Forest Act.*]—A.-G. FOR BRITISH COLUMBIA *v.* ROBERTSON, [1924] 1 D. L. R. 1090; [1924] 1 W. W. R. 1155; 33 B. C. R. 325.—**CAN.**

h i. —— *Right of Crown to sue for expenses.*]—The Crown in the right of the Dominion may sue under Forest Act, R.S.B.C., 1924 (c. 93), s. 114, to recover expenses incurred by officials of the Dominion Forest Branch in controlling & extinguishing a fire on deft.'s property.—R. *v.* SWANSTROM, [1925] 3 D. L. R. 79; [1925] 1 W. W. R. 713.—**CAN.**

PART XI. SECT. 11.

sa. *Occupier—Who is.*]—A cattle dealer received from the owner of certain parks the right to graze animals on the parks from time to time between May 15 & Nov. 15. He had no other connection with the parks :—*Held* : the dealer's relation to the parks was not of a sufficiently permanent nature to constitute him an "occupier" in the sense of Agricultural Returns Act, 1925 (c. 39), s. 1 (1), & accordingly, he was under no obligation to make a return required by the dept. under the Act in respect of the parks.—YENDALL *v.* ALLAN, [1934] S. C. (J.) 56.—**SCOT.**

charge of the registered producers was not an arbitrary one, but a proper exercise of the power vested in the Board.—POTATO MARKETING BOARD *v.* HARLOW, [1936] 1 All E. R. 489; 80 Sol. Jo. 347.

—— **Return to Board—Whether privileged from production.**]—*See* EVIDENCE, No. 4085a, *post.*

979f. Pigs—Calculation of bonus—Construction of producer's contract.]—*Re* PIGS MARKETING BOARD, 1936 BONUS SCHEME, PIGS MARKETING BOARD *v.* BAILEY & SONS, LTD. (1937), 53 T. L. R. 1019; 81 Sol. Jo. 716.

SECT. 14.—WHEAT.

See Wheat Act, 1932 (c. 24).

979g. Middlings—Whether flour or offals—Effect of Wheat Act, 1932 (c. 24).]—The Wheat Commission, as empowered by Wheat Act, 1932 (c. 24), demanded quota payments from applts. in respect of fifteen consignments of certain goods produced by the milling of wheat imported by the applts. from Germany & described by them as wheat offals known in the trade as "middlings" to be used as animal or poultry food. The Commission contended that the alleged wheat offals contained a percentage of flour in excess of that permitted by the Act, & were therefore liable to quota payment. Payment of the quota on each consignment was made under protest by applts. who thereafter brought an action against the Commission to recover the money thus paid on the ground that the imported goods were not flour, but wheat offals exempt from liability under the Act. The Commission alleged that: (i) the consignments consisted of flour within the Act; (ii) no action lay against the Commission because provision was made by the Act & the bye-laws made thereunder by the Commission for the matters in dispute to be determined by arbn. to which, in accordance with the bye-law in question, the Arbn. Act, 1889, should not apply; and (iii) the payments in respect of three of the consignments having been made more than six months before the commencement of the action, the claim for recovery thereof was barred by the Public Authorities Protection Act, 1893 (c. 61):—*Held:* (1) Wheat Act, 1932 (c. 24), contained no express words ousting the jurisdiction of the ct., & resps. therefore exceeded their powers by making a bye-law that every dispute as to whether any substance was flour should be determined by arbn. to which Arbitration Act, 1889, should not apply; (2) applts. having proved that all the consignments consisted of wheat offals & not of flour within the Act, they were not liable to make any quota payments; (3) as resps. were a public authority the quota payments made by applts. in respect of three of the consignments were not recoverable on the ground that applts. did not sue for their recovery within six months of payment as required by Public Authorities Protection Act, 1893 (c. 61).—PAUL (R. & W.), LTD. *v.* WHEAT COMMISSION, [1937] A. C. 139; [1936] 2 All E. R. 1243; 105 L. J. K. B. 563; 155 L. T. 305; 52 T. L. R. 702; 80 Sol. Jo. 753, H. L.

979h. Ouster of jurisdiction of court—Validity of bye-law.]—PAUL (R. & W.), LTD. *v.* WHEAT COMMISSION, No. 979g, *ante.*

979j. Wheat Commission—Application of Public Authorities Protection Act.]—PAUL (R. & W.,) LTD. *v.* WHEAT COMMISSION, No. 979g, *ante.*

PART XI. SECT. 15.

sb. *Farmers' Creditors Arrangement Act—Reduction of debt—Grounds for application—Poor quality of land.*]—CRISPIN, [1935] 1 W. W. R. 281.—**CAN.**

sd. —— —— —— *Drought.*]—Debts should not be reduced under Farmers' Creditors Arrangement Act, 1934 (Dom.), on the assumption that drought conditions are to continue indefinitely.—*Re* DAHL, [1935] 1 W. W. R. 288.—**CAN.**

sf. —— *Object of Act.*]—*Re* WEIS, [1935] 1 W. W. R. 566.—**CAN.**

sh. —— *Who is "farmer"—Company.*]—*Re* MARSHALL BROS., LTD., [1935] 1 W. W. R. 80.—**CAN.**

sk. —— ——.]—A debtor whose farm was actually worked & managed by another person under an agreement with the debtor, held not to be a "farmer."—*Re* LANTZIUS, [1936] 1 W. W. R. 373.—**CAN.**

sl. —— —— *Administrator.*]—*Re* BOERS, [1936] 2 W. W. R. 47.—**CAN.**

so. —— —— ——.]—The administrator of the estate of a deceased farmer is not entitled to make in said capacity a proposal under the Act.—*Re* HOCKLEY, [1936] 2 W. W. R. 268.—**CAN.**

sq. —— ——.]—A debtor, about 79 years old, who had been a rancher & farmer for many years & had never had any other occupation, leased his farm. Under the terms of the lease he lived in a house on the land. He did no work on the land himself, but hoped that his health would permit him to supervise the farming operations on the termination of the lease, & he had given a solr. a power-of-attorney covering all his interests in the meantime:—*Held:* he was a "farmer" within the Act.—*Re* WRIGHT, [1936] 1 W. W. R. 467; 6 F. L. J. (Can.), 20.—**CAN.**

st. —— *Application to farmers only.*]—NATIONAL TRUST CO. *v.* POWERS, [1935] 4 D. L. R. 626; O. R. 490; 5 F. L. J. (Can.), 132.—**CAN.**

sw. —— *Applicant lessee—No proposal by lessor.*]—*Re* DIMMITT, [1935] 1 W. W. R. 303.—**CAN.**

sz. —— *Approval of composition—Jurisdiction of District Court.*]—The District Ct. has jurisdiction to hear an application for the approval of a composition accepted by the statutory majority of creditors under Farmers' Creditors Arrangement Act, 1934 (Dom.).—*Re* PECK, [1935] 1 W. W. R. 603; 5 F. L. J. (Can.), 35.—**CAN.**

sb. —— *Debtor protected by Debt Adjustment Act.*]—It is not in the public interest to permit a debtor protected by the provincial Debt Adjustment Act to ascertain what benefits he can obtain under Farmers' Creditors Arrangement Act, 1934, & then to elect whether to accept such benefits or to continue under the protection of the provincial Act.—*Re* WEESE, [1935] 1 W. W. R. 620.—**CAN.**

sd. —— *What terms imposed by Board.*]—*Re* JORGENSEN, [1935] 1 W. W. R. 300.—**CAN.**

se. —— ——.]—*Re* PROCTOR, [1936] 2 W. W. R. 437.—**CAN.**

sf. —— *Whether binding on municipalities & school districts.*]—*Re* GILBERT, [1935] 2 W. W. R. 464.—**CAN.**

sz. —— *Order for disposition of money received.*]—*Re* MARTIN, [1935] 3 W. W. R. 484.—**CAN.**

sb. —— ——.] —*Re* HOLSTEIN, [1936] 2 W. W. R. 417.—**CAN.**

sd. —— *Default by debtor.*]—The provisions of Bkpcy. Act, R.S.C., 1927, for enforcing against a defaulting debtor the terms of a binding proposal under that Act or for penalising him for such default or annulling a proposal apply in a like situation, *mutatis mutandis*, to a proposal under Farmers' Creditors Arrangement Act.—*Re* GRAMS, [1936] 1 W. W. R. 471; 6 F. L. J. (Can.), 19.—**CAN.**

sg. —— ——.]—A debtor who has elected to claim relief under Farmers' Creditors Arrangement Act, & who has defaulted in complying with the terms of a proposal confirmed & filed by the Board of Review, cannot then claim the protection of Debt Adjustment Act, 1933 (Alta.).—*Re* POPONOFF, ALLEN *v.* TRUSTS & GUARANTEE CO., LTD., [1936] 1 W. W. R. 699.—**CAN.**

sh. —— ——.]—On default by a debtor in complying with a proposal confirmed by the Board of Review under Farmers' Creditors Arrangement Act, 1934, a creditor cannot sue on the original debt without having had the proposal annulled under the provisions of said Act.—MINNEAPOLIS THRESHING MACHINE CO. *v.* MOONEY, [1936] 3 W. W. R. 569.—**CAN.**

sj. —— ——.]—A farmer defaulted in paying an instalment of principal & interest called for by a proposal formulated & confirmed by a Board of Review. The default was due to a partial crop failure & to a consequent misconception by a farmer of his duties under the Act. A mtgee. applied under sect. 121 of Real Property Act, 1934, to the district registrar for an order for sale to enforce the debt so reduced & adjusted by the board:—*Held:* the mtgee. was entitled to have the registrar read its mtges. as amended by the confirmed proposal & then proceed to deal with the application in the usual way.—MANITOBA FARM LOANS ASSOCN. *v.* WINNIPEG LAND TITLES OFFICE REGISTRAR, [1937] 1 W. W. R. 513.—**CAN.**

sk. —— *Appeal—Extension of time.*]—An application to extend the time for appealing from an order made by a judge under Farmers' Creditors Arrangement Act, dismissed.—POIRIER *v.* NORTH AMERICAN LIFE ASSURANCE Co., [1936] 1 W. W. R. 654.—**CAN.**

so. —— ——.]—On default by a debtor in complying with a proposal confirmed by a board of review under Farmers' Creditors Arrangement Act, 1934, c. 53 (Dom.) a mtgee. must obtain an annulment of the proposal before applying for foreclosure, even though he seeks foreclosure to enforce the terms proposed by the Board & not those of the original mtge.; or he may apply to have the debtor declared a bkpt.—NORTH OF SCOTLAND CANADIAN MORTGAGE Co., LTD. *v.* BAK & STOBBE, [1937] 1 W. W. R. 767; *revsd.* [1937] 2 W. W. R. 540.—**CAN.**

sq. —— ——.]—On an application under sect. 19 (2) of Bankruptcy Act, to have a farmer adjudged bkpt. & for a receiving order, it was found that he had defaulted in the payment of an instalment due under a proposal formulated & confirmed by a Board of Review & in carrying out the terms of the proposal; & that the default was not due to any causes beyond his control; & that the proposal could not proceed without injustice and delay to his creditors, because of his wilful & continued failure & refusal to carry out the provisions of the proposal:—*Held:* the proposal should be annulled; the farmer be adjudged a bkpt.; a receiving order be made against him; & appct. be given the costs of the application.—*Re* SEIB, [1937] 1 W. W. R. 762.—**CAN.**

ss. —— ——.]—On default by a purchaser under an agreement for the sale of land in carrying out the terms of a proposal confirmed by a Board of Review, the vendor is entitled, without obtaining an annulment of the proposal, to sue for the usual remedies under the agreement, where, at least, he is satisfied to accept the reduced amount of the debt as fixed by the board's order.—ALLEN *v.* TRUSTS & GUARANTEE Co., LTD., [1937] 2 W. W. R. 257.—**CAN.**

sv. —— —— *From Board of Review.*]—A Board of Review under Farmers' Creditors Arrangement Act, 1934, amended by 1935, s. 5, is an administrative tribunal & not a ct.; & no appeal lies from a proposal formulated & confirmed by it.—KERR *v.* WIENS, [1937] 1 W. W. R. 535; 6 F. L. J. (Can.) 260.—**CAN.**

sx. —— —— ——.]—No appeal lies from a proposal formulated & confirmed by a Board of Review.—*Re* PETERS, HUDSON'S BAY CO. *v.* PETERS, [1937] 1 W. W. R. 787.—**CAN.**

sm. —— *Debtor unable to carry out any proposal.*]—In view of all the circumstances of the debtor's affairs, the Board concluded that the debtors could not carry out any reasonable proposal, except such as would be equivalent to a winding-up in bkpcy. & recommended to the debtors that an assignment in bkpcy. would be the better course for them to take.—*Re* KJELLANDER & KJELLANDER, [1936] 2 W. W. R. 49.—**CAN.**

sp. —— *Application for leave to realise security—Necessity for good ground.*]—*Re* FOUNTAIN, [1936] 2 W. W. R. 360.—**CAN.**

st. —— *Land held subject to payment of legacies.*]—*Re* MACKERACHER, [1936] 2 W. W. R. 271.—**CAN.**

sw. —— *Effect of death of debtor.*]—*Re* HUMBERT, [1936] 2 W. W. R. 272.—**CAN.**

sz. —— *Stay of foreclosure action—Failure to comply with order of Board.*]—Where a foreclosure action is stayed during proposals for payment under Farmers' Creditors Arrangement Act, 1934 (Can.), it will be ordered to proceed if the mtgor. fails to comply with an order of the Board of Review.—SARGESON *v.* MULLETT (1935), 4 D. L. R. 523.—**CAN.**

sd. —— *Constitutional validity.*]—Farmers' Creditors Arrangement Act, is *intra vires* of the Parliament of Canada.—*Re* FARMERS' CREDITORS ARRANGEMENT ACT, 1934 & AMENDING ACT, 1935, REFERENCE, [1936] S. C. R. 384; 3 D. L. R. 610.—**CAN.**

se. —— ——.]—Farmers' Creditors Arrangement Act, 1934 (Can.), is *intra vires.*—*Re* FRASER & MINIELLY, [1936] 2 D. L. R. 281; O. R. 191.—**CAN.**

sf. —— *Variation of mortgage—Effect of.*]—A mtge. was executed by a farmer M. & also be deft. K. On an application by M. under Farmers' Creditors Arrangement Act, 1934, an order was made reducing as to him the amount of the principal & the rate of interest under said mtge. & providing for future payments by a division of future crops between M. & the mtgee. K. was not present or represented or considered when the order was made. The mtgee. then sued K. on the covenants in the mtge.:—*Held:* said order had no effect on K.'s liability.—INTERNATIONAL LOAN CO. *v.* KOTNIUK, [1936] 3 W. W. R. 481; 4 D. L. R. 764; 44 Man. L. R. 387; 6 F. L. J. (Can.) 148.—**CAN.**

sk. —— *Effect of Act on default after order nisi on agreement for sale.*]—*Re* PETERS, [1936] 3 W. W. R. 44.—**CAN.**

sl. —— ——.]—On an application made under sect. 42 of Farmers' Creditors Arrangement Act, 1934, by an official receiver at the request of a creditor who had obtained an order *nisi* in an action for cancellation of an agreement for the sale of land:—*Held:* the order *nisi* in question was not a bar to the debtor making a proposal for a composition, extension of time or scheme of arrangement under the Act.—*Re* DESCHAMPS, [1937] 1 W. W. R. 739.—**CAN.**

sm. —— *Debtor assignee from purchaser of land—No consent to assignment by vendor.*]—Where a purchaser under an agreement for the sale of land assigned the agreement, without having obtained the approval of the vendor, & the agreement provided that no assignment would be valid unless approved & countersigned by the vendors or their agent:—*Held:* the vendors were not in the position of a creditor of the assignee & therefore the Board had no jurisdiction, on the assignee's application, to deal in any way with the amount owing the vendors with respect to the land.—*Re* GESS, [1936] 3 W. W. R. 172.—**CAN.**

sp. —— *Farmer owning unfarmed land.*]—It is not the purpose of Farmers' Creditors Arrangement Act, 1934, to assist a farmer to retain land which he is not farming & which constitutes a liability in the way of taxes & interest on securities.—*Re* RYSON, [1936] 3 W. W. R. 171.—**CAN.**

sr. —— *Sale of mortgaged chattels by mortgagor pending proposal—No purposal — Interpleader.*]—Pending the hearing of an application to a Board of Review, to formulate a proposal the farmer sold at auction chattels which he had mtged. to a bank. The official receiver obtained an order for the payment of the proceeds of the sale to him. The Board declined to formulate a proposal, & the moneys paid to the receiver were claimed by the bank, & also by the farmer as exemptions. Exemptions Act, R.S.S., 1930, gives a mtgor. the right to exemptions in case of a seizure under the mtge. Under an interpleader order the moneys were paid into ct. and the bank applied for an order for payment out:—*Held:* the bank was entitled to the order.—*Re* REID, [1937] 1 W. W. R. 546.—**CAN.**

sv. —— *Refusal to formulate proposal—Right of farmer to make second proposal.*]—The fact that the Board of Review under Farmers' Creditors Arrangement Act, 1934, has refused to formulate a proposal does not prevent the farmer from making a second proposal where the conditions have changed since said refusal.—*Re* DRAPER & PRATT, [1937] 1 W. W. R. 136; 44 Man. L. R. 441.—**CAN.**

sx. —— *Filing proposal—Effect.*]—Filing a proposal does not operate as a complete stay of proceedings for 90 days & leave to proceed may properly be granted.—SEXTON *v.* SMITH, [1937] 1 D. L. R. 334; 11 M. P. R. 136; 6 F. L. J. (Can.) 197.—**CAN.**

sz. —— *Effect of Bankruptcy Act.*]—NEWTON *v.* MACKLIN, [1937] 2 W. W. R. 395.—**CAN.**

AIR COUNCIL.

See PUBLIC AUTHORITIES.

AIR FORCES.

See ROYAL FORCES.

AIR NAVIGATION.

See STREET AND AERIAL TRAFFIC.

ALIENS.

Part I.—What Constitutes Alienage.

-The 1914 Act was amended by British Nationality & Status of Aliens Acts, 1918 (c. 38); 1922 (c. 44); 1933 (c. 49).

1. *Add. Annotations :*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348. **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** The Tervaete (1922), 128 L. T. 176.

13. *Add. Annotation :—As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

13a. —— ——.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that " all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following persons (*inter alios*) should be deemed to have become British subjects by virtue thereof : " any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." Resp., an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration :—*Held :* if there were any difference between " resident " & " ordinarily resident " the latter became the test by virtue of the interpretative Order of 1917 ; but on the facts resp. was both " resident " & " ordinarily resident " in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicil ; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—GOUT *v.* CIMITIAN, [1922] 1 A. C. 105 ; 91 L. J. P. C. 18 ; 38 T. L. R. 100 ; *sub nom.* GOUT *v.* CIMITIAN, CIMITIAN *v.* GOUT, 126 L. T. 293, P. C.

14. *Add. Annotations :*—**Refd.** Markwald *v.* A.-G., [1920] 1 Ch. 348 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

20. *Annotations :*—For " *Re* Goodman's Trust (1881), 7 Ch. D. 266 " read " *Re* Goodman's Trust (1881), 17 Ch. D. 266." **Apld.** Abraham *v.* A.-G., [1934] P. 17.

20a. —— —— —— **Legitimation by subsequent marriage—Effect of Legitimacy Act, 1926 (c. 60).**]—The meaning of the term " father " as applied in Statutes extending from 1730 to 1926 to the parentage of those who are entitled to the status of natural born subjects of the Crown & to be regarded as of British nationality is limited to a father whose children are legitimate at the date of birth. *Legitimatio per subsequens matrimonium* cannot be imported into these Statutes under Legitimacy Act, 1926 (c. 60).

Legitimacy Act, 1926 (c. 60), does not *ipso facto* by the mere use of the terms father & mother confer upon either parent or child a lawful or legitimate character. A petitioner seeking a declaration pursuant to that Act that he is of British nationality must show that his father was a natural-born subject, & if in the circumstances existing at the date of his birth petitioner according to our law has not had a lawful father, he is not entitled to the benefits of legislation providing for a declaration of his status as a natural-born subject of the Crown.—ABRAHAM (B. & J.) *v.* A.-G., [1934] P. 17 ; 102 L. J. P. 115 ; 149 L. T. 539 ; 77 Sol. Jo. 665.

29. *Add. Citation :*—25 Cox, C. C. 622, D. C.

43. *Add. Annotations :*—**Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

49a. Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.]—(1) Pltf. having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality :—*Held :* he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.

PART I. SECT. 1.

1 iii. —— *Birth in Native Indian State.*]—The subject of a Native Indian State is an alien.—MAHOMED & SON *v.* IMMIGRANTS APPEAL BOARD (1918), 38 N. L. R. 7.—S. AF.

10 iv. —— ——.]—Applt., who was by birth a Bavarian subject, in 1881 became a burgher of the Orange Free State, but in 1883 left the Free State & did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years :—*Held :* as at the time of the annexation of the Orange Free State & Transvaal in 1902 applt. did not become a British subject either as being a burgher of the Orange Free State or as a resident in the Transvaal, he was by inference still a Bavarian [1919] App. D., 336.—S. AF.

PART I. SECT. 3.

49a i. *Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.*]—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—S. AF.

ss. *American domicile—When Free State established.*]—*Held :* as S. was admittedly domiciled in the United States of America on Dec. 6, 1922, the date of the coming into operation of the Constitution of the Irish Free State, he was not one of the original citizens of the Irish Free State, having regard to Art. 3 of that Constitution ; &, inasmuch as the law with reference to the future acquisition of citizenship contemplated by the said Article has not yet been enacted, S. did not at any subsequent period become a citizen of the Irish Free State. Further, S. was not a British subject, as he ceased to be such by sect. 6 of Naturalisation Act, 1870 (c. 14), when he became naturalised as a citizen of the United States of America.—BRADFIELD *v.* SWANTON, [1931] I. R. 446.—IR.

(2) Statelessness is not unrecognised by the municipal law of this country.

(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—STOECK *v.* PUBLIC TRUSTEE, [1921] 2 Ch. 67; 90 L. J. Ch. 386; 125 L. T. 851; 37 T. L. R. 666; 65 Sol. Jo. 605.

Annotations:—As to (3) **Folld.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533. *Generally*, **Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

49b. —— —— —— **Burden of proof.**]—(1) In 1893 pltfs. were admittedly German nationals, & on the *bonâ fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, deft. was in possession of their London property as custodian. In an action to obtain release of their property:—*Held:* the *onus* was on pltfs. to show that they had lost their original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Pltfs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, &, in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893 to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 29, 1923, the Birkenfeld Govt. after inquiry as to the period of pltfs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period:—*Held:* (2) the certificates, which were admittedly only *primâ facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on pltfs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, pltfs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by pltfs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., pltfs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—HAHN *v.* PUBLIC TRUSTEE, [1925] Ch. 715; 95 L. J. Ch 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824.

49c. —— —— **British subject marrying German —& naturalised as German during war.**]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts, &, subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1919, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent:—*Held:* (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian; (3) as the question raised was one that might affect a large section of the British public the A.-G. was a proper party to the proceedings.—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 966; 66 Sol. Jo. (W. R.) 3.

Annotation:—As to (1) **Apprvd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

49d. —— —— ——.]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English

49 ii. —— —— *By what law decided.*]—Questions of nationality must be determined by the municipal law of the country concerned.—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—S. AF.

limited co. :—*Held :* under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850 ; 91 L. J. Ch. 791 ; 128 L. T. 85 ; 38 T. L. R. 852 ; 66 Sol. Jo. 709, C. A.

Annotation :—**Refd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

49e. —— —— **Dual nationality.**]—KRAMER *v.* A.-G., No. 215j, *post.*

49f. —— —— —— **Austrian acquiring new nationality.**]—An Austrian granted citizenship of the Czechoslovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—ROTHSCHILD *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1923] 2 Ch. 542 ; 93 L. J. Ch. 508 ; 130 L. T. 175 ; 68 Sol. Jo. 40.

Annotations :—**Folld.** Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175. **Consd.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65.

—— —— **Czechoslovakian corporation.**]—Under the Treaty of St. Germain, which came into force on July 16, 1920, a Czechoslovakian corpn., as well as an individual, can acquire *ipso facto* Czechoslovakian nationality, & the property of such a corpn. within the territory of Great Britain at that date is entitled to the benefit of the exemption provided by art. 249 (b) of the Treaty from liability to the charge in favour of the administrator of Austrian property created by that art. & Treaty of Peace (Austria) Order, 1920, s. 1 (ix).—BOHEMIAN UNION BANK *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] 2 Ch. 175 ; 96 L. J. Ch. 365 ; 137 L T. 271 ; 43 T. L. R. 356 ; 71 Sol. Jo. 431.

—— —— **Hungarian.**]—(1) The expression "nationals of the former Kingdom of Hungary" in Treaty of Peace (Hungary) Order, 1921, s. 1 (ix), means persons who were Hungarian nationals on Oct. 28, 1918, when the Austrian Empire ceased to exist by the deposition of the Emperor.

(2) Where the administrator of Hungarian property has determined that he is not satisfied that a national of the former Kingdom of Hungary has acquired *ipso facto* in accordance with the Treaty the nationality of an Allied or Associated Power, the ct. cannot go behind the decision of the administrator & investigate the question anew.—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1927), 44 T. L. R. 65.

491. —— —— **By what law decided.**]—STOECK *v.* PUBLIC TRUSTEE, No. 49a, *ante.*

49j. —— —— ——.] — *Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante.*

49k. —— —— **Decision of administrator—Whether final.**]—By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that "persons who within six months of the coming into force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph." The annex to arts. 249 & 250 sanctioned the imposition of a charge on such property, rights or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that "for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression 'national of the former Austrian Empire,' does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power" :—*Held :* where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has "shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order," go behind the decision of the administrator & investigate independently the question of nationality.—REITZES DE MARIENWERT *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1924] 2 Ch. 282 ; 93 L. J. Ch. 587 ; 132 L. T. 42 ; 40 T. L. R. 698 ; 68 Sol. Jo. 644, C. A.

Annotations :—**Folld.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65. **Refd.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 345.

491. —— —— —— ——.]—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR, No. 49h, *ante.*

Part II.—Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add. Annotation :*—**Refd.** The Wilhelmina, [1923] P. 112.

61. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

63. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

65a. —— **Detention of property—Ratification by Crown—Citizen of friendly State personally hostile to Crown.**]—(1) It is not a good defence to an action of tort brought by a friendly alien resident in the United Kingdom against an officer of the Crown in respect of the wrongful seizure & detention of the alien's property that the seizure & detention have been adopted & ratified by the Crown as an act of State.

Pltf., who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, &, on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police authorities, the seizure & detention being subsequently ratified by the Chief Secretary for Ireland. In an action by pltf. against the Chief Comr. of the Police for the recovery of the money, deft. pleaded that pltf. was an alien & that the money was detained by direction of the Crown as an act of State :—*Held :* the plea was bad & pltf. was entitled to judgment.

(2) *Semble :* the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *amy* until the Crown withdraws its protection.—JOHNSTONE *v.* PEDLAR, [1921] 2 A. C. 262; 90 L. J. P. C. 181; 125 L. T. 809; 37 T. L. R. 870; 65 Sol. Jo. 679; 27 Cox, C. C. 68, H. L.

Annotation :—As to (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

70. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

73. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd. (1935), 154 L. T. 31.

79. *Add. Annotation :*—**Folld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

82. *Add. Annotation :*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

85. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

91. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

92. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

94. *Add. Annotation :*—**Dbtd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add "*&, generally*, COPYRIGHT, Vol. XIII., pp. 180–182."

114. *Add. Annotations :*—**Consd.** *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

116. *Add. Citations :*—Sty. 20, 40, 75; 1 Roll. Abr. 19b.

Add. Annotations :—As to (1) **Consd.** Du Hourmelin *v.* Sheldon (1838), 1 Beav. 79; Barrow *v.* Wadkin (1858), 27 L. J. Ch. 129. **Refd.** A.-G. *v.* Sands (1670), Freem. Ch. 129; A.-G. *v.* Duplessis (1752), Park. 144; Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177; Rittson *v.* Stordy (1855), 3 Sm. & G. 230; Sharp *v.* St. Sauveur (1871), 7 Ch. App. 343. *As to* (2) **Refd.** Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177.

119a. —— —— ——.]—A devise of land to trustees, upon trust to sell & invest the proceeds in the public funds upon trust for persons some of whom were aliens :—*Held :* the aliens did not take any interest or estate which the Crown could lay claim to.—DE HOURMELIN *v.* SHELDON, DE HOURMELIN *v.* A.-G. (1839), 4 Jur. 116.

140a. Member of Stock Exchange.]—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of applt.

PART II. SECT. 2, SUB-SECT. 1.

74 i. *Trade mark—Alien resident abroad — Company.*]—In an action for infringement of trade mark defts. pleaded *inter alia* (*a*) that pltf. co. not being registered or licensed under the laws of any of the Provinces of Canada or under the laws of the Dominion of Canada has no right to protection of its trade mark against imitation thereof; (*b*) pltf. co. by using the said trade mark in connection with its products has done so in violation of the provisions of Food & Drugs Act of Canada, & the regulations made thereunder :—*Held :* (1) Dominion Cos. Act does not require a friendly alien, either a natural or an artificial person, to take out a licence before asserting any legal right in ct.; (2) Canadian Naturalization Act provides that an alien may take, acquire, hold & dispose of real & personal property of every description in the same manner in all respects as a natural born British subject; (3) the provisions of the International Convention for the Protection of Industrial Property as revised at Washington in 1914 recognise the right of pltf. to institute this action as freely as a Canadian owner of a trade mark; (4) at common law the alien has such a right.—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—CAN.

sa. *Non-resident alien—Leave to sue in formâ pauperis.*]—The Supreme Ct. of Alberta has jurisdiction to grant leave to a non-resident alien to sue in *formâ pauperis*.—AUGUSTINO *v.* CANADIAN NORTH-WESTERN RY. CO. (Alta.), [1927] 4 D. L. R. 609; [1927] 3 W. W. R. 321; *revsd.* [1928] 1 W. W. R. 481; 23 Alta. L. R. 351.—CAN.

PART II. SECT. 7, SUB-SECT. 2.

129 i. *Right to hold & dispose—Law 3 of 1885—Act 35 of 1908—Company with Asiatic shareholders.*]—Law 3 of 1885 & Act 35 of 1908 do not apply to joint stock cos., even though their shares are held by Asiatics.—DADOO *v.* KRUGERS DORP, [1920] App. D. 530.—S. AF.

PART II. SECT. 8.

132 i. *Civil office of trust—Town inspector.*]—The office of town inspector is one of trust which an alien is ineligible to hold.—R. *v.* HEIGHTON (1) (1922), 69 D. L. R. 386; 55 N. S. R. (G. & R.) 512.—CAN.

132 ii. *S. P.* R. *v.* HEIGHTON (2) (1922), 69 D. L. R. 396; 55 N. S. R. (G. & R.) 527.—CAN.

who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee applt., first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. Applt. impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations:—*Held:* the decision of the committee had proceeded solely upon the ground of applt.'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.—WEINBERGER *v.* INGLIS, [1919] A. C. 606; 88 L. J. Ch. 287; 121 L. T. 65; 35 T. L. R. 399; 63 Sol. Jo. 461, H. L.

Annotation:—**Refd.** Cookson *v.* Harewood (1932), 146 L. T. 550, n.

See, further,

Part III.—Aliens in Time of War.

Add. Annotation:—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

146. *Add. Annotation:*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

155. *Add. Annotation:*—**Apld.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

156a. —— ——.]—A man who, having a business & commercial domicil in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicil of residence so far as he is able, cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property.—THE ANTWERPEN, [1919] P. 252, n.; 89 L. J. P. 26, n.

156b. —— ——.]—An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in respect of the property of the German pltf.:—*Held:* as the German subject was not residing nor carrying on business in an enemy State, the action was maintainable, & the sequestrator was not a necessary party.—*Re* SUTHERLAND (DUCHESS), BECHOFF & CO. *v.* BUBNA (1921), 65 Sol. Jo. 513.

157. *Add. Annotations:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

161. *Citation:*—For "[1916] A. C. 421" read "[1916] 1 A. C. 421."
Add. Annotation:—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

162. *Add. Annotations:*—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67. *As to* (2) **Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

163. *Add. Annotation:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

166. *Add. Citation:*—*subsequent proceedings* (1921), 65 Sol. Jo. 513.

168. *Add. Citation:*—1 Br. & Col. Pr. Cas. 605.

183. *Add. Annotation:*—**Refd.** The Lützow, [1918] A. C. 435.

187. *Add. Annotations:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

189. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

192. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

195. *Add. Annotations:*—*As to* (1) **Consd.** The Poona (1915), 84 L. J. P. 150; The St. Tudno, [1916] P. 291; *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1923] 2 K. B. 630; Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** R. *v.* L. C. C., *Ex p.* London & Provincial Electric Theatres, [1915] 2 K. B. 466;

PART III. SECT. 1, SUB-SECT. 1.

151 ii. —— ——.]—The subject of an alien State at war with His Majesty, who resides in the province of Quebec & has submitted to the laws of that country, is not an alien enemy.—RAGUSZ *v.* MONTREAL HARBOUR COMRS. (1916), 18 Q. P. R. 98; Q. R. 26 K. B. 87.—**CAN.**

Place of residence & on trade.]—"Enemy" means a person, of whatever nationality, who resides or carries on business in enemy territory.—LAMPEL *v.* BERGER (1917), 40 O. L. R. 165; 38 D. L. R. 47.—**CAN.**

155 ii. —— ——.]—The question whether a person is an alien enemy is determined not by his nationality, but by the place where he resides or carries on business.—REVENTLOW-—— *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. ——; 15 Alta. L. R. 204.—**CAN.**

155 iii. —— ——.]—A Mission Society, the headquarters of which were in Germany, held property in Natal & had an agent there for the management of its property & interests:—*Held:* (1) the society was resident in Germany & was an alien enemy; (2) a person's place of business, though one test, is not the sole test of his enemy character.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

155 iv. —— ——.]—An "alien enemy" does not mean a subject of a State at war with this country but a person of any nationality who resides or carries on business in an enemy country.—MALCOMESS *v.* DURBAN TOWN COUNCIL (1917), 38 N. L. R. 275.—**S. AF.**

s1. *Who is an "enemy" within Treaty of Peace (Germany) Order, 1920, s. 32.*]—BAUMFELDER *v.* SECRETARY OF STATE OF CANADA, [1927] Exch. C. R. ——.

PART III. SECT. 1, SUB-SECT. 2.

s2. *Widow of naturalised British subject—Return to foreign country after death of husband.*]—Resp., a German subject by birth, married a naturalised British subject in Cape Colony. After the death of her husband in 1901 resp. returned to Germany where she resided until 1915, & then removed to Switzerland:—*Held:* resp. was not an enemy under Act 39 of 1916.—THE TREASURY *v.* HANF, [1919] App. D. 50.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.

193 iii. ——.]—A person who voluntarily resides in a hostile country for a substantial period of time acquires the disability attaching to an enemy during that period even if he is a British subject, unless such residence is with the consent of the Crown.—HAJI AH JON *v.* ABDUL JALIL KHAN (1920), I. L. R. 1 Lah. 276.—**IND.**

Clapham S.S. Co. *v.* Handels-en-Transport-Maatschappij Vulcaan of Rotterdam, [1917] 2 K. B. 639; Continho Caro *v.* Vermont, [1917] 2 K. B. 587; Elders & Fyffes *v.* Hamburg Amerikanische Packetfahrt Act., Elders & Fyffes *v.* Hamburg Columbien Bananen Act. (1918), 34 T. L. R. 275; *Re* British Incandescent Mantle Works (1923), 129 L. T. 126; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1925] A. C. 112; Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (2) **Consd.** The St. Tudno, [1916] P. 291. **Apld.** The Hamborn, [1919] A. C. 993. **Consd.** The Noordam (No. 2), [1919] P. 255; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. **Refd.** The Vesta, [1920] P. 385; I. R. Comrs. *v.* Sansom (1921), 8 Tax Cas. 20. *As to* (3) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (4) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. *As to* (5) **Consd.** Rio Tinto Co. *v.* Ertel Bieber (1917), 116 L. T. 810; Tingley *v.* Müller, [1917] 2 Ch. 144; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Stevenson *v.* Akt. für Cartonnagen Industrie, [1918] A. C. 239. **Refd.** *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260; Rodriguez *v.* Speyer, [1919] A. C. 59; *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56; Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

195a. —— ——.]—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., No. 405a, *post*.

198. *Add. Annotations:*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

198a. ——.]—In Jan. 1914, pltfs. entered into a contract with defts., who were a co. incorporated under the laws of Belgium & had their registered office at Antwerp, to sell to them manganese ore deliverable in certain quantities during the second half of 1914 & the three following years alongside steamer in Bombay. In Sept. 1914, when the German armies were threatening Antwerp, the managing director of deft. co. removed all the co.'s goods & the money in bank to London & came himself to London, & there, without any formal authority from the co., carried on business in his own name, but for the benefit of the co. After the German occupation of Antwerp the German authorities placed the co. under compulsory administration. During the German occupation, meetings of the directors & shareholders were held at which formal business was transacted. These meetings were held so as to comply with Belgian law & to keep the co. in existence. The co. also collected & paid debts due to & owing by it in order to prevent the German authorities from winding up the co. & investing the uncalled capital in German War Loan, & with the like object it created a debt against its uncalled capital in favour of its bankers for the purpose of paying arrears of dividend on its preference shares. Pltfs. contended that the co. was an enemy, & they claimed a declaration that the contract was dissolved & was no longer binding on them:—*Held:* pltfs. were entitled to the declaration claimed; though acts which were necessary merely for the purpose of keeping the co. in existence might not amount to "carrying on business" within the Proclamation of Sept. 14, 1915, the collection of debts & discharge of liabilities with the intention of continuing the business amounted to a "carrying on business," & constituted the co. an "enemy" within the Proclamation.—CENTRAL INDIA MINING CO. *v.* SOCIÉTÉ COLONIALE ANVERSOISE, [1920] 1 K. B. 753; 89 L. J. K. B. 769; 122 L. T. 451; 36 T. L. R. 88, C. A.

198b. ——.]—Germany was in effective military occupation of Brussels & the greater part of Belgium at the date of an order for winding up the business carried on in this country by a German bank, of which a Belgian bank carrying on business in Brussels was an unsecured creditor:—*Held:* the Belgian bank was a creditor who was not an enemy within Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1 (3).—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 291; 90 L. J. Ch. 449; 126 L. T. 20; 37 T. L. R. 912; 65 Sol. Jo. 781.

198c. Registered in allied country—Government overthrown—Non-recognition of usurping Government.]—Pltfs., an insurance co. with its registered office at Petrograd & a branch office in England, in Apr. 1917, entered into a reinsurance treaty with defts., an English insurance co., whereby pltfs. reinsured part of the risks of defts. At the end of the first year there was a balance in favour of pltfs. In an action to recover the amount of the balance defts. pleaded that as the Bolshevists had in Nov. 1917, usurped supreme power in Russia, & as the British Govt. was carrying on warlike operations against them pltfs. were alien enemies, & that owing to the entire suspension of business in Petrograd by reason of the usurpation the basis of the contract had been destroyed:—*Held:* as the Bolshevist Govt. had not been recognised by this country as the Russian Govt., & as pltfs. had not adhered to the Bolshevists pltfs. were not alien enemies; & as defts. with knowledge of the facts had continued to treat the contract as alive by crediting pltfs. with premiums & debiting them with losses, the Bolshevist revolution had not so destroyed the basis of the contract as to put an end to it, & pltfs. were entitled to recover. —EASTERN CARRYING INSURANCE CO. *v.* NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO., LTD. (1919), 35 T. L. R. 292.

199. *Add. Citation:*—1 P. Cas. 75.

201. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

202. *Add. Annotation:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

204. *Add. Annotation:*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

205. *Add. Annotation:*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

207. *Add. Annotations:*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

208. *Add. Citation:*—1 P. Cas. 75.

Add. Annotations:—**Refd.** The Achilles, [1919] P. 340; *Re* Certain Craft Captured on Victoria Nyanza, [1919] P. 83; The Orteric, [1920] A. C. 724; The Vesta, etc., [1921] 1 A. C. 774; The Anichab, etc., [1922] 1 A. C. 235.

208a. —— —— —— **Effect of Trading with Enemy Acts, 1914-1916.**]—(1) Under the common law of England the Crown has always had &, subject to the effect of the above Acts, still has the right to seize & forfeit private property, including choses in action & equitable interests therein, found in this Kingdom belonging to subjects of an enemy State. That right has not been abandoned by desuetude. The powers conferred by the above Acts, however, are so inconsistent with the exercise of the common law right of forfeiture that that right must be treated as being thereby, at least temporarily, superseded.

(2) In order to complete the title of the Crown to property so seized an inquisition of office must be held before the conclusion of peace. — *Re* FERDINAND, EX-TSAR OF BULGARIA, [1921] 1 Ch. 107; 90 L. J. Ch. 1, C. A.

209. *Add. Annotation:* — **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

215a. Treaties of Peace & consequent Orders—What property subject to charge under—Right to assessment of damages in collision action.]—Before the outbreak of war, defts., the German owners of the steamship *M.*, recovered judgment against the British ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon pltfs. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:—*Held:* (1) defts.' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although defts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive defts. of their right to proceed to a reference, or to prevent pltfs. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—THE MARIE GARTZ, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. —— —— **Debt—Due to German.**]—Clause 14 of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German national, & is therefore an "enemy debt"

PART III. SECT. 2, SUB-SECT. 2.—A.

206 ii. (p. 147) For "VAN ZYH *v.* PIENMAN" read "VAN ZIJL *v.* PIENAAR."

sb. *Shares held by enemy subject—Vested in Public Trustee—Power to sell.*]—*Held:* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11 (2), which empowered the A.-G. to authorise the Public Trustee to sell shares in a co. transferred to him as being held by an alien enemy, was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4, & was within the defence power of the Commonwealth.—BURKARD *v.* OAKLEY (1918), 25 C. L. R. 422.—**AUS.**

sc. ——————.]—*Held:* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11, authorised the sale of shares transferred to the Public Trustee, notwithstanding that some beneficial interest in the shares was held by a person not an enemy subject, & was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4.—BURKARD *v.* OAKLEY 1920), 27 C. L. R. 520.—**AUS.**

212 i. *Patent in name of alien enemy—Royalties paid by licensee during suspension of patent—Who entitled to.*]—*Held:* (1) royalties paid by the licensee from the date of his licence up to the expiration of six months from the ending of the war, *i.e.*, to Jan. 10, 1920, were not sums belonging to an enemy, & were not properly in the hands of the custodian; (2) royalties paid or to be paid after June 10, 1920, were properly paid or payable in the hands of the custodian as a debt due to an enemy.—*Re* SYNTHETIC DRUG CO., [1925] Exch. C. R. 196.—**CAN.**

215 i. *Licensed to trade for limited purposes—Banking transactions.*]—The London agency of a German bank, which at the outbreak of war in 1914 became an enemy, held a bill, drawn by a German subject & accepted by a Scotsman, which had been sent from Germany for collection. It had been the practice of the bank that, if bills so sent were dishonoured, no legal proceedings were taken against acceptors in Great Britain, but the bills were retransmitted to the German office so that proceedings might be taken in the German cts. against the German indorsers. Licences covering the whole period of the war were issued to the London agency, empowering it to carry on banking business under supervision, to the extent of completing current transactions, so as to make its realisable assets available to its creditors, "so far as those transactions would in ordinary course have been carried out through" the London establishment. The bill having been dishonoured on presentation, was retained by the London agency, which debited the German office with the amount, & filed a letter, which owing to war conditions could not be sent, to the German office intimating the circumstances. In an action on the bill brought in 1922 by the Public Trustee against the Scottish acceptor:—*Held:* as an action on the bill was not a transaction that would in ordinary course have been carried out through the London agency, the licences conferred no right to sue.—PUBLIC TRUSTEE *v.* DAVIDSON, [1925] S. C. 451.—**SCOT.**

215 ii. Substitute this number for **215 i.** in original volume.

215b i. *Treaty of Peace & consequent Orders—What property subject to charge under—"Debts"—What are.*]—(1) Deposits of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—SECRETARY OF STATE OF CANADA *v.* NEITZKE, SECRETARY OF STATE OF CANADA *v.* WIEHMAYER (1921), 68 D. L. R. 443; 62 S. C. R. 262; *varying*, 20 Exch. C. R. 219.—**CAN.**

215b ii. —— —— —— *Due to German.*]—At the outbreak of war between England & Germany in 1914 defts., as agent, held certain goods on behalf of an enemy subject, which goods, on the instructions of his principal, the agent realised between the outbreak of war & Mar. 30, 1915, with the result that he held, as the proceeds of realisation, a sum of £964 6*s.* 9*d.* Prior to the war defts.'s engagement had been at a salary of

within Treaty of Versailles & Treaty of Peace Order, 1919.—CLEARING OFFICE CONTROLLER *v.* EDWARDS & CO. (BREAD STREET), LTD., [1923] W. N. 245.

215c. —— —— **Trust estate—Accumulations of interest.**]—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante*.

215d. —— —— —— ——.]—*Re* HALLENSTEIN, HALSTED *v.* BLANK, No. 237c, *post*.

215e. —— —— —— **Accumulations of annuities.**]—By his will a testator, who died on Jan. 14, 1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held:* (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio;* (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re* LEVINSTEIN, LEVINSTEIN *v.* LEVINSTEIN, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

Annotations:—As to (3) **Follds.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 633; *Re* Biedermann, Best *v.* Wertheim, [1922] 1 Ch. 31.

215f. —— —— —— ——.]—A testator, whose domicil was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, &, as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants, & those interested under the will in the trust fund, were German nationals:—*Held:* the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom.—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

215g. —— —— —— ——.]—Under the trusts of a marriage settlement of 1908 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—*Held:* both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), &, notwithstanding the infants' personal incapacity, were caught by the charge.—*Re* NEUBURGER'S SETTLEMENT, FORESHEW *v.* PUBLIC TRUSTEE, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 129 L. T. 735; 67 Sol. Jo. 500.

215h. —— —— **Accumulations of annuities.**]—By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held:* (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 16, 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re* BIEDERMANN, BEST *v.* WERTHEIM, [1922] 1 Ch. 31; 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; *on appeal*, [1922] 2 Ch. 771, C. A.

—— —— —— **Trust estate.**]—*See* Nos. 215e—215g, *ante*.

Shares in English company.]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

£5 per week. Pltf., as a public trustee, under Trading with the Enemy Act, 1914-16 (Fed.), claimed the moneys in the hands of deft.:—*Held:* the claim of pltf. was not defeated by reason of the Treaty of Peace, inasmuch as at the date of the declaration of war deft. was a German national, & the debt sued for, therefore, did not arise out of a transaction or contract made by a national of one power with a national of an opposing power.—TRUSTEE *v.* SHERWOOD, [1928] W. A. L. R. 112.—

215i. —— —— *Bearer shares & debentures in Transvaal mining company.*]—RANDFONTEIN ESTATES GOLD MINING CO., LTD. *v.* CUSTODIAN OF D.

215j. —— —— **Property in England.**]—A person of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a " German national " within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order.—KRAMER *v.* A.-G., [1923] A. C. 528; 92 L. J. Ch. 333; 129 L. T. 390; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg.* S. C. *sub nom.* FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850, C. A.

Annotation :—**Refd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

215k. —— —— —— **Subject to restraint on anticipation.**]—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation.—PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *revsg.* S. C. *sub nom. Re* RUSH, WARRE *v.* RUSH, [1923] 1 Ch. 56, C. A.

Annotations :—**Refd.** *Re* Neuburger's Settlmt., Foreshew *v.* Public Trustee, [1923] 1 Ch. 508; Sutherland *v.* German Property Administrator (1933), 149 L. T. 47.

215l. —— —— —— **Belonging to foreign bank in liquidation.**]—Pltfs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 249 of that Treaty provided that " subject to any contrary stipulation " in the Treaty, the British Govt. might retain & liquidate the property in this country of " nationals of the former Austrian Empire " which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Pltfs. claimed that art. 206 was a " contrary stipulation " within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property :—*Held :* there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—LUXARDO *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 546; 68 Sol. Jo. 737, C. A.

215m. —— —— —— **No enforceable agreement relating to property—Application of foreign law.**]—A man of German birth by an agreement of Apr. 4, 1899, at which date he was a naturalised American, undertook to provide

215j i. —— —— *Property in Australia—Subject to restraint on anticipation.*]—The words " all property, rights & interests " appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers & Germany are wide enough to include an estate for life of a married woman, being a German national, still under coverture subject to a restraint on anticipation.—COWPER *v.* FRANKENBERG (1921), 21 S. R. N. S. W. 388.—**AUS.**

sd. —— —— *Rights of German nationals in testator's undisposed of property.*]—The rights of German nationals in testator's property undisposed of by his will are subject to the charge created by Regulations of Jan. 28, 1920, par. 20 (1).—*Re* MITCHNER, [1922] St. R. Qd. 39.—**AUS.**

se. —— —— —— *Administration of trusts in Germany.*]—*Re* MITCHNER. UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* A.-G. FOR COMMONWEALTH OF AUSTRALIA, [1927] S. R. Q. 279.—**AUS.**

sf. —— —— *Contingent interest.*]—By a settlement certain property was settled on T. for life, & contingently on their surviving him, on (*inter alia*), two German nationals. In Apr. 1925, after the death of T., one of these executed a document effecting either a renunciation of her interest in the settlement of an appointment of it to a British subject :—*Held :* assuming the interest dealt with was a contingent interest, it was property within Treaty of Peace Regulations, reg. 20. The document was ineffective by reason of the Treaty of Peace & regs. 20 & 21 made thereunder.—*Re* NICKEL, HOMS. A. S. R. 148.—**AUS.**

sg. —— *Rights acquired under vesting orders made under Trading with Enemy Acts not affected.*]—SECRETARY OF STATE OF CANADA *v.* GREENSHIELDS, LTD., [1925] Exch. C. R. 29.—**CAN.**

sh. —— *Property passing to Custodian—Shares vested in Alien Property Custodian for United States.*]—Certain " securities," shares, note certificates & stocks, listed & dealt in on recognised stock exchanges, & the certificates for which were held in the United States, being owned by enemy nationals, were, upon demand of the Alien Property Custodian of the United States, surrendered to him or to others for him, in 1918, under the War legislation of that country, & were subsequently transferred to him on the books of the said cos., or new certificates issued. In regard to one of the above cos. no vesting order was ever obtained by the Canadian Custodian, but as to the others vesting orders were obtained subsequent to the action by the American Custodian, namely, in 1919, but none of the " securities " were ever transferred to him nor is it in evidence that such orders were served on the cos. :—*Held :* (1) the beneficial ownership in or title to the securities herein was in him who held the paper, & that it is the law of the place where the paper was that determined who was the holder. The contention that certificates of securities are but evidence of ownership, is not inconsistent with the idea that an assignment & delivery of the certificates carries the title and property in the securities; (2) under the Canadian Consolidated Orders enemy property was not automatically confiscated, but the owners' enjoyment thereof was suspended until the restoration of peace, &, subject to any legislation to the contrary or anything to the contrary contained in the Treaty of Peace, such enemy was then entitled to his property, or if liquidated, to its proceeds. It was only the transfer of securities by or on behalf of an enemy that was prohibited by the publication of these Orders; (3) under the Peace Order only two classes of enemy property passed to Canada : (*a*) property in Canada belonging to an enemy on Jan. 10, 1920, & not in the possession or control of the Custodian, & (*b*) enemy property in the possession & control of the Custodian on that date; (4) there was nothing to be found in the Canadian War Measures prohibiting or avoiding the transfers of the securities in issue as made by the American Custodian; on Jan. 10, 1920, the property, right or interest in the securities mentioned & the title to the same did not belong to an enemy, & was not at that date in the control or possession of the Canadian Custodian; & the property, right or interest in such securities & the title to the same belonged to the Alien Property Custodian of the United States.—SECRETARY OF STATE OF CANADA *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & TORONTO POWER CO., LTD., & SECRETARY OF STATE OF CANADA AS CUSTODIAN OF ENEMY PROPERTY *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & MONTREAL, CITY OF, [1930] Ex. C. R. 75; 3 D. L. R. 81; *affd.*, [1931] S. C. R. 170; 1 D. L. R. 890.—**CAN.**

two of his sons, naturalised British subjects, with the necessary capital to establish a business in London. The agreement, under which he handed to his sons for that purpose for 20 years certain American securities valued at over nine million marks, further provided (*inter alia*), that after the father's death, but not in any event until after the expiration of 20 years from the date of the agreement, the two brothers should divide the value of the securities—the fund representing the securities having been in law throughout in this country—equally between themselves & their brother & their four sisters & the descendants of such of them as might previously have died. By his will the father later stipulated that if through political or other crises the two sons were not able to distribute the funds promptly in Apr. 1919—20 years from the date of the agreement—they should be entitled to wait until such time as they were in a position to do so. Acting under that testamentary provision the two sons prolonged the period under the agreement to Dec. 1927, but in Nov. 1927, the present applts., German nationals, who were two of their sisters & six children of a deceased sister, instituted proceedings claiming that they possessed beneficial shares in the securities which constituted them creditors of their two brothers. They further alleged that the Administrator of German Property in this country, who came in as a party claiming that applts.' interests constituted "property, rights, and interests" in this country within Treaty of Peace Order, 1919, had no claim upon the property. The question whether applts. enjoyed rights under the agreement of Apr. 4, 1899, admittedly depended on the construction & effect of the agreement on applying the law of the Saxon Civil Code :—*Held :* under the German law it was only on proving both an intention on the part of the promisor to be bound to the third parties & the adoption of the contract by the third parties that they could become parties to the contract, & in the present case neither by intention in the agreement itself nor by adoption did the applts. possess rights under the agreement, & whatever claims existed under it could only be enforced against the two brothers who were parties to it by a duly constituted representative in this country of the estate of the father. According to German law applts. had no interest except as members of the community of heirs, & inasmuch as there had been no partition of the estate no member of that community of heirs had any right to any specific asset or share, & the action was misconceived.—HARTMANN *v.* KONIG (1933), 50 T. L. R. 114, H. L.

215n. —— —— **Policy money—Payable in England.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German nationals, & as such were subject to the charge created by Treaty of Peace Order, 1919, s. 1 (xvi) :—*Held :* (1) there was nothing in art. 299 of s. V. of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV. ; (2) inasmuch as a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable. Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, &, that being so, they were situate within His Majesty's Dominions & became subject to the charge.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101 ; 93 L. J. Ch. 449 ; 131 L. T. 438 ; 40 T. L. R. 430 ; 68 Sol. Jo. 477, C. A.

Annotations :—As to (2) **Consd.** I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

215o. —— —— **Share of enemy partner in firm.**]—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—FRIED *v.* GERMAN PROPERTY ADMINISTRATOR, [1925] Ch. 757 ; 95 L. J. Ch. 4 ; 134 L. T. 376 ; 69 Sol. Jo. 707.

Annotation :—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

215p. —— —— **Chose in action.**]—In Feb. 1912, three parcels of goods were shipped in a British steamship from Baltimore for Hamburg. The ship sailed & was never heard of again. The goods were insured with M., who were German nationals carrying on business in New York. The assured claimed against M., & some time before Nov. 1918, were paid by M. for a total loss ; whereupon the bills of lading were handed over to M. by the assured.

Actions on the contract of carriage against the shipowners were commenced in England for the benefit of M. & other insurers by the owners of the goods & damages were recovered, of which the sum of £4,538, being that portion which corresponded with M.'s share in the insurance, was claimed by deft. to be subject in his hands to the charge created by the Treaty of Peace Order, 1919. On Nov. 18, 1918, after the outbreak of war between the United States & Germany & after proceedings had been commenced in England, pltf., in pursuance of the American Trading with the Enemy Act, 1917, & executive Orders made thereunder, made a demand upon M., the effect of which was to vest in him as Alien Property Custodian all the property, rights, claims & assets of M. within the United States. In an action by pltf. claiming payment by deft. of the said sum of £4,538 so recovered by M. & in the hands of deft. as Administrator of German Property :—*Held :* (1) on the crucial date, Nov. 18, 1918, M. had by subrogation an equitable interest as against the owners of the goods in the right of action which those owners had for the loss of their goods to the extent that was necessary to recoup to M. the amount paid on the policies of insurance ; (2) that right of action came within the general rule that choses in action must be taken to be situate in the country where they are properly enforceable ; (3) notwithstanding the fact that the bills of lading & other documents relating to the claim against the shipowners were at the material time in the hands of pltf. in the United States as Alien Property Custodian, the *situs* of the right of action was in England, & therefore the sum recovered for M. therein passed to deft. & not to pltf.—SUTHERLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1934] 1 K. B. 423 ; 103 L. J. K. B. 244 ; 150 L. T. 247 ; 50 T. L. R. 107, C. A.

215q. —— Joint decisions of Clearing Offices—Effect.]—In 1913 defts. had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified, The notice then continued as follows : " In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, &, after the expiry of the time for appealing, pltf., the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the cts. of this country on the same principle as either a foreign judgment or an award is enforced :—*Held :* under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an arbn., so as themselves to be enforceable by action, & therefore the action failed.—CLEARING OFFICE CONTROLLER *v.* WEIR & Co. (1925), 95 L. J. K. B. 88 ; 133 L. T. 701 ; 41 T. L. R. 603 ; 69 Sol. Jo. 809 ; 22 Lloyd, L. R. 280, C. A. ; *affd.* (1926), 135 L. T. 705 ; 42 T. L. R. 697, H. L.

215r. —— Whether administrator agent of Crown.]—WEINER *v.* USTAV (1927), cited 100 L. J. K. B. 385, C. A.

Annotation :—**Apld.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383.

215s. —— Action against administrator—Whether Attorney-General necessary party.] — The A.-G. is not a necessary party to an action against the administrator of Hungarian property in which the substantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—GROEBEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1925), 70 Sol. Jo. 345.

215t. —— Action by administrator—Statute of Limitations not applicable.]—In collecting debts due to subjects of ex-enemy countries, the Administrators appointed under the Peace Treaties are acting as agents of the Crown, & therefore no Statute of Limitation runs against them.—HUNGARIAN PROPERTY ADMINISTRATOR *v.* FINEGOLD (1931), 100 L. J. K. B. 383 ; 144 L. T. 670 ; 47 T. L. R. 288 ; 75 Sol. Jo. 191.

215u. —— —— ——.]—By Treaty of Peace (Austria) Order, 1920, clause (x), para. (*ee*), " Where the property right or interest subject to the charge consists of any sum of money due to an Austrian national . . . it shall be payable to the Administrator, &

shall be paid to him on demand, & the Administrator shall have power to enforce the payment thereof, & for that purpose shall have all such rights & powers as if he were the creditor" :—*Held :* where at the date when a debt becomes payable to the Administrator it is not statute-barred as against the original creditor, it cannot afterwards, as against the Administrator, become statute-barred, inasmuch as the Administrator is the agent of the Crown, & as the above para. does not modify the general rule that the Crown is not bound by the Statute of Limitations.—AUSTRIAN PROPERTY ADMINISTRATOR *v.* RUSSIAN BANK FOR FOREIGN TRADE (1932), 48 T. L. R. 37, C. A.

Annotation :—**Refd.** Holland *v.* German Property Administrator, [1937] 2 All E. R. 807.

215v. —— **Effect of London Agreement—Whether German Government trustee or agent for German nationals.**]—The Administrator of German Property brought in 1931 an action; for a declaration that moneys in the United Kingdom in the hands of the trustees of a will proved in 1871 were subject to the charge created by art. 1 (xvi.) of Treaty of Peace Order, 1919, & the Amendment Orders, 1920–1924. Defts. to the action were the trustees & the three children, all German nationals, of a daughter of the testator who had married a German national in 1877 & had remained a German national until her death in 1927 :—*Held :* (1) as the result of the Treaty of Peace with Germany, the Treaty of Peace Act, 1919, & the Treaty of Peace Order, 1919, the property of German nationals which was in the United Kingdom at the date of the coming into force of the treaty was taken from them, & can be returned to them only by a conveyance or transfer; (2) in the agreement dated Dec. 28, 1929, between the British & German Governments as to the liquidation of German properties, & the agreement concluded with Germany at the Hague Conference, both ratified in May, 1930, there is nothing to show that the German Government was thereby expressly or by necessary implication purporting to act as agent or trustee on behalf of its nationals so as to give its nationals a right of action.—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, [1933] Ch. 439; 102 L. J. Ch. 156; 148 L. T. 468; 49 T. L. R. 109; 76 Sol. Jo. 919.

Annotation :—**Refd.** Holland *v.* German Property Administrator, [1937] 2 All E. R. 807.

215w. —— **Transfer of property of German nationals to administrator—Complete transfer of ownership.**]—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, No. 215v, *ante*.

215x. —— —— **Liability of trustees for payment of income to German national.**]—Subject to a life interest for B., trustees held part of a trust fund in trust for D. for life with remainder to her children. D., an Englishwoman married to an Englishman, at all material times lived with her family in Germany. B. died in 1917 & thereafter there was no communication between D. & her relatives in England, some of whom were the trustees, until 1927, when the trustees were informed that D. & her family had adopted German nationality during the war. D.'s income from the trust fund had been paid regularly since the end of the war into a bank in England at which D. kept an account, & continued to be so paid until D. died in 1934. The fact of D.'s German nationality was then communicated to the Administrator of German Property, who claimed against the trustees the amount of the income received by D. from 1927, when the trustees first heard of D.'s change of nationality, to Aug. 31, 1929, when all German-owned property which had been under the control of the administrator was released. Other claims had been made, but were abandoned during the hearing. The administrator claimed that the Treaty of Peace Order, 1919 (as amended), s. 1 (17) (*ccc*) & (*e*), effected a statutory assignment to the administrator of D.'s life interest, that after 1927 it became the duty of the trustees to pay the income thereafter accruing to the administrator, & that in paying such income to D., the trustees committed a breach of trust & that they were accordingly accountable to the administrator as the rightful beneficiary for the income thus wrongly paid to D. The trustees, in addition to denying that there was a statutory assignment, pleaded that they acted honestly & reasonably within the Trustee Act, 1925 (c. 19), s. 61, & ought fairly to be excused :—*Held :* (1) the Treaty of Peace Order, 1919, as amended, did not effect a statutory assignment of D.'s life interest; (2) if there were such a statutory assignment, the trustees ought, in the circumstances of the case & notwithstanding that they ought to have known the illegality of paying income to a German national, fairly to be excused for their breach of trust.—HOLLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1937] 2 All E. R. 807; 156 L. T. 373; 81 Sol. Jo. 434, C. A.

219. *Citations :*—For "*Re* HEGELBERG" read "*Re* HAGELBERG."

219a. —— —— ——.]—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re* DRESDNER BANK (LONDON AGENCY) (1920), 64 Sol. Jo. 426.

—— —— —— **Effect of Treaty of Peace.**]—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

(2) The date at which the enemy or non-enemy character of creditors is to be determined is the date of the winding-up order.—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

219c. —— —— —— **Who are creditors.**]—On the outbreak of war three enemy banks in the City were closed, but were afterwards re-

opened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal:—*Held:* the claims for salary & for damages were not debts of a London business payable under the above Act, & the applications failed.—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640; 35 T. L. R. 736.

Annotation:—**Consd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

220. *Add. Annotations:*—**Consd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421. **Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

221. *Add. Annotations:*—**Refd.** *Re* Dieckmann (1917), 117 L. T. 713; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

221a. —— —— **Liability of third party to put business in funds to meet bills.**]—In June, 1914, defts. by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Defts. provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the Dresdner Bank in London to be wound up, & appointed a controller to wind up the business, with power to collect all moneys owing to the bank & to bring actions in the name of the bank:—*Held:* (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; defts.' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & defts. were liable to repay pltfs. the money paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London Agency) was not an action in the name of a branch of that bank but an action in name of the Dresdner Bank, & the of the words "London Agency," beir descriptive, did not change pltfs. from the Dresdner Bank into something unknown to the law as a legal person.—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

222. *Add. Annotation:*—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223. *Add. Annotations:*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223a. —— —— —— **Action in name of business—Addition of words "London Agency."**]—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, No. 221a, *ante*.

223b. —— —— —— **After Treaty of Peace.**]—The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article, are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of deft.:—*Held:* the action was properly brought; & a motion by deft. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed.—MEYER & CO. *v.* FABER, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 531.

223c. —— —— **General position of controller.**]—*Re* VULCAAN COAL CO., HARRISON *v.* HARBOTTLE, No. 223f, *post*.

223d. —— —— ——.]—At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 105) & 1918 (c. 31), sued, in the name of the firm, the British partner for the balance of assets. Deft. contended that he had himself claims

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

223 i. *Amending Act of* 1916, *s.* 1—*Business ordered to be wound up—Sale of stock—Rights of consignors of stock supplied on sale or return.*]—The business of an alien enemy bookseller was ordered to be wound up, upon application by the controller under the above sect.:—*Held:* he was entitled to sell the whole stock, but if there were identifiable consignments of unsold stock on sale or return from persons with whom he could communicate, he must return or store them at consignors' expense.—*Re* THOMSON, *Ex p.* [1918] 1 S. L. T. 137.—SCOT.

sj. *Trading with Enemy Acts,* 1914-1916—*Business ordered to be wound up—Power of controller to apply.*]—*Held:* s. 9H of the 1914-16 Acts authorised the Minister for Trade & Customs to confer upon a controller powers under which the right of that controller to apply to the High Ct. was not to be measured by the standard laid down with regard to similar applications by a liquidator.—BROKEN HILL PROPRIETARY CO., LTD. *v.* WARNOCK (1922), 30 C. L. R. 362.—AUS.

sk. *Enemy Trading Act, X of* 1916—*Business ordered to be wound up—Powers of controller.*]—WOLF *v.* DADYBA (1919), I. L. R. 44 Bom. 631.—IND.

against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets :—*Held :* under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled deft. to the taking of accounts between himself & the other partners.—MEYER & Co. *v.* FABER (No. 2), [1923] 2 Ch. 421 ; 93 L. J. Ch. 17 ; 129 L. T. 490 ; 39 T. L. R. 550 ; *sub nom.* MEYER & Co. *v.* FABER, MEYER & Co. *v.* ELDER, 67 Sol. Jo. 576, C. A.

223e. —— —— **Dismissal of manager by controller —Claim by manager for salary & damages for wrongful dismissal.**]—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, No. 219c, *ante.*

223f. —— —— —— **Claim by manager to retain money as against controller.**]—A controller appointed by the Board of Trade under sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum.* On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement :—*Held :* the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re* VULCAAN COAL CO., HARRISON *v.* HARBOTTLE, [1922] 2 Ch. 60 ; 91 L. J. Ch. 491 ; 127 L. T. 274 ; 66 Sol. Jo. 423.

Annotation :—**Dbtd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223g. —— —— **Sale of business by controller— Damages for breach of contract.**]—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business :—*Held :* although at the outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, &, although it was in consequence of the winding-up order that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re* BRITISH INCANDESCENT MANTLE WORKS, LTD. (1923), 129 L. T. 126 ; 39 T. L. R. 244 ; 67 Sol. Jo. 517.

224. *Add. Annotations :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60 ; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

226. *Add. Citation :*—[1917] H. B. R. 243.

PART III. SECT. 2, SUB-SECT. 2.—B. (b).

230 ii. —— —— *Proof of enemy's interest in property.*]—A British subject applied to the ct. to make a vesting order vesting in the custodian for Scotland a ship & £20,000, the freight earned by the ship while under requisition of the Admlty. He averred that the enemy firm, & the two partners thereof, were " the owners or at least part-owners of the " ship :—*Held :* appct. had failed to aver a sufficient interest of the enemy firm & its partners in the ship to make s. 4 (1) of the above Act applicable.—BURRELL *v.* MAASHAVEN S.S. CO., LTD. (1919), 56 Sc. L. R. 434.—**SCOT.**

230 iii. —— —— *Instalments of purchase price of ship—Paid to builder by enemy—Ship requisitioned by Admiralty.*]—Scottish shipbuilders contracted to build a ship for Austrian shipowners. On the declaration of war between Great Britain & Austria the vessel was nearing completion, & the purchasers had paid instalments of the price amounting to £79,732. On Feb. 17, 1915, the Admlty. requisitioned the ship as she then stood at the price of £86,000, but it was not until July 30, 1917, that the Admlty. paid the builders that sum, & they refused to pay any interest from the date of requisition. On Dec. 1, 1917, the Board of Trade pronounced an order vesting the sum of £79,732, with interest from the date of receipt of the instalments, in the custodian for Scotland under the above Act :—*Held :* the custodian was entitled to decree for £79,732 with interest from the date of the interlocutor of the First Division.—PENNEY *v.* CLYDE, [1920] S. C. (H. L.) 68.—**SCOT.**

231. *War Measures Act*, 1914 (c. 2) —*What property can be vested—Trust funds—Agreement by beneficiaries as to disposition of fund.*]—By the will of W., a citizen of the United States, who died in 1916 resident there, the residue of his estate was given to a trustee for the sole use & benefit of the wife & daughter, share & share alike. His daughter was married to a German national, & was residing in Germany at the time of her father's death. W.'s widow was a citizen of the United States. Early in 1917, an agreement was made by the trustee & the wife & daughter, pursuant to clause 11 of the will, by which, in effect, it was agreed that the whole of the assets in Ontario should be allocated to the widow. In May, 1919, an application was made to the ct., by the Secretary of State for Canada, for an order vesting in the custodian appointed under Consolidated Orders respecting Trading with the Enemy, 1916, one-half of the assets situated in Ontario of the estate of W., on the ground that the said half belonged to or was held or managed for or on behalf of W.'s daughter, who was an enemy. The motion was made under Consolidated Order 28, which was passed pursuant to the above Act :—*Held :* it was appropriate & expedient to make the order asked for.—*Re* WALKER (1919), 46 O. L. R. 86 ; 16 O. W. N. 328.—**CAN.**

234 i. For " 234 i " read " 236 i."

sm. *Trading with Enemy Acts*, 1914-1916—*Powers & duties of custodian—Payment of mortgage debt—Form of order—Costs.*]—Where, under s. 9 D (2) of the 1914-16 Acts the Public Trustee is authorised to pay out of the property paid to him in respect of an enemy subject a mtge. debt & interest due by him, the order should provide that the mtgee. should execute a proper discharge of the mtge. & deliver up upon oath to the Public Trustee all titles & other documents relating to the land mortgaged. The costs of a motion for an order under sect. 9 D (2), of the Public Trustee & of the enemy subject were allowed out of the property in the hands of the Public Trustee. Form of order stated.—*Re* SCHURR (1920), 27 C. L. R. 442.—**AUS.**

sn. —— *Recovery of enemy debt—Effect of Treaty of Peace & subsequent Orders.*]—Before the war, F., a German firm, sent to W. Co. in Canada goods on consignment for sale on commission. During the war W. Co. sold the goods &, shortly afterwards, sold its assets to C. Co. which assumed W. Co.'s liabilities, including the liability to F. In June, 1920, C. Co., having notice of competing claims by F. & its sequestrator in France, for the amount of said liability, applied for & obtained from the master in chambers, in the Supreme Ct. of Ontario, an order for the payment of the amount into ct. In November, 1925, P., as attorney for F., & the Custodian of Alien Enemy Property each applied for payment to himself of the money in ct. :—*Held :* the Custodian was entitled to the money ; it represented an enemy " debt " owing by a debtor in Canada & recoverable by the Custodian under the regulations of Treaty of Peace (Germany) Order, 1920, Part I.—CUSTODIAN OF ALIEN ENEMY PROPERTY *v.* PASSAVANT, [1928] 3 D. L. R. 5 ; [1928] S. C. R. 242.—**CAN.**

235a. —— —— —— **To wind up partnership—Parties.**]—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltfs. in the action:—*Held:* in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—PUBLIC TRUSTEE *v.* ELDER, [1926] Ch. 776; 95 L. J. Ch. 519; 135 L. T. 589, C. A.

236. *Add. Annotation:*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

236a. —— —— —— **Effect of Treaty of Peace & consequent Orders.**]—By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re* NIERHAUS, [1921] 1 Ch. 269; 91 L. J. Ch. 107; 36 T. L. R. 425; 64 Sol. Jo. 426.

Annotation:—**Refd.** *Re* National Bank für Deutschland, *Re* Anglo-Austrian Bank, [1921] 1 Ch. 284.

236b. —— —— —— ——.]—At the outbreak of war a debt was due from a German bank to the London agency of an Austrian bank. Vesting orders were made, under which the property in England of the German bank was vested in the custodian. An order had been made, under which the business of the London agency was wound up & a controller appointed. The controller applied to the ct. to give directions under the powers conferred by sect. 5 (1) or (2) of the above Act that the debt should be paid out of the property vested in the custodian:—*Held:* even if the power still subsisted under those subsects. to direct such payment to persons who were not British nationals under the Treaty of Peace, such power was discretionary & the ct. would not exercise it, except in very special circumstances, but would leave such debts to be dealt with under the Order in Council to be made at the termination of the war under sect. 5 (1) of the Act.—*Re* NATIONAL BANK FÜR DEUTSCHLAND, *Re* ANGLO-AUSTRIAN BANK, [1921] 1 Ch. 284; 90 L. J. Ch. 15; 123 L. T. 647.

237. *Add. Annotation:*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

237a. —— —— **Release of funds in favour of British creditors—Mode of distribution.**]—Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions:—*Held:* the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re* WISKEMANN, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 349; [1923] B. & C. R. 28.

237b. —— **Right to dividends—On shares held by alien enemies.**]—An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & final dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course:—*Held:* the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—ARAMAYO FRANCKE MINES, LTD. *v.* PUBLIC TRUSTEE, [1922] 2 A. C. 406; 91 L. J. Ch. 643; 127 L. T. 661; 38 T. L. R. 756; 66 Sol. Jo. 611, H. L.; *affg.* S. C. *sub nom.* *Re* ARAMAYO FRANCKE MINES, LTD., [1921] 1 Ch. 675, C. A.

237c. —— —— **Part of trust income—Payable to enemy.**]—(1) *Held:* sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale thereof were to go in equal shares to his children; & he directed his trustees to retain the share of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same,

if payable to her absolutely or any part thereof, might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter, & subject thereto the daughter's share was to be held in trust for her children & issue as therein mentioned, One of the testator's daughters had intermarried with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000 :—*Held :* the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re* HALLENSTEIN, HALSTED *v.* BLANK, [1922] 1 Ch. 355 ; 91 L. J. Ch. 420 ; 127 L. T. 58 ; 38 T. L. R. 313 ; 66 Sol. Jo. 299.

237d. —— **Liability of custodian for super tax.**]—Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.

When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment :—*Held :* (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M. ; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, &, therefore, he was not liable to be assessed to super tax ; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt under sect. 5 (2).—*Re* MÜNSTER, [1920] 1 Ch. 268 ; [illegible] J. Ch. 138 ; 36 T. L. R. 173 ; 64 Sol. Jo. 309.

As to (1) **Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

—— —— **Application to court—Rectification of register of shareholders.**]—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in correspondence they had the books of the co., but that all the directors & secretary had resigned :—*Held :* the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re* MANIHOT RUBBER PLANTATIONS, LTD. (1919), 63 Sol. Jo. 827.

240. *Add. Citation :*—[1918-19] B. & C. R. 171.

Add. Annotation :—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

241. *Add. Annotations :*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753 ; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

253. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

254. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

256. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

257. *Add. Annotation :*—*As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

259. *Add. Annotations :*—**Follid.** Krauss *v.* Krauss & Orbach (1919), 35 T. L. R. 637. **Refd.** Procurator in Egypt *v.* Deutsches Kohlen Depot Gesellschaft, [1919] A. C. 291.

260. *Add. Annotations :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

261. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

261a. —— —— **Suit for dissolution of marriage.**]—An alien enemy, who has been registered

PART III. SECT. 2, SUB-SECT. 3.—A.

250 vii. —— *Plaintiff compelled to sue to establish caveat.*]—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any person on his behalf until peace is restored.

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a *caveat*, thereby compelling him to proceed to establish it, the owner, if an alien enemy, should be treated, to some extent at least, as in the position of an alien enemy who is deft. to an action. Therefore the action should not be dismissed on the ground that pltf. is an alien enemy, for therefrom a discharge of an order continuing the *caveat* & a discharge of the *caveat* would follow.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546 ; 37 D. L. R. 394 ; *affd.*, [1920] 1 W. W. R. 578 ; 52 D. L. R. 266 ; 15 Alta. L. R. 204.—**CAN.**

250 viii. ——.]—An alien enemy cannot enforce civil rights in a British ct. during the period of hostilities.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

256 i. For " Proclamation of August 13, 1914 " read " Proclamation of August 15, 1914."

256 iv. —— —— ——.]—An alien resident in Ontario, although his [illegible] is at war with ours, so long as he conducts himself peaceably, & is within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—KRISTO *v.* HOLLINGER CONSOLIDATED GOLD MINES, LTD. (1918), 41 O. L. R. 51 ; 13 O. W. N. 206.—**CAN.**

256 v. —— —— *Christian Armenian.*]—The cts. of the province of Quebec are open to a Christian Armenian specially exempted under Order in Council of Nov. 20, 1914.—SAP *v.* PICARD (1919), 20 Q. P. R. 179.—**CAN.**

1 i. *Action under Families Compensation Act.*]—An action brought under the above Act, for the benefit of the mother of deceased, she being an alien enemy, cannot be maintained.—CREMIDAS *v.* BRITISH COLUMBIA ELECTRIC RY. CO., W. W. R. 549.—**CAN.**

as such & is domiciled in England, has a right to bring a petition for the dissolution of his marriage.—KRAUSS (OTHERWISE DES SALLES D'EPINOIX) *v.* KRAUSS (OTHERWISE DES SALLES D'EPINOIX) & ORBACH (1919), 35 T. L. R. 637; 63 Sol. Jo. 760.

276. *Add. Annotation :*—**Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

280. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

Delete the cross-reference following this case.

280a. Effect of peace—Treaties of Peace & consequent Orders—Right to sue after restoration of peace—Cause of action arising during war.]—In an action for infringement defts. alleged (*inter alia*) that, at all material times, pltf. had been residing or carrying on business in Germany; that, having regard to the Treaty of Peace, art. 309, or, alternatively, under the common law, he could not sue; & that, at the dates of the alleged infringements, the patent had been vested in the custodian under Trading with the Enemy Amendment Act, 1916 (c. 105), & pltf. could not maintain the action :—*Held :* pltf. could not maintain the action because (1) at the date of the alleged infringement, he had been a "hostile person" within the General Vesting Order made under Trading with the Enemy Amendment Act, 1916, & the patent had been vested in the custodian, & the Divesting Order had not transferred to pltf. a right of action that had accrued to the custodian; (2) the case fell within the Treaty of Peace, art. 309.—WILDERMAN *v.* BERK (F. W.) & Co., [1925] Ch. 116; 94 L. J. Ch. 136; 132 L. T. 534; 41 T. L. R. 50; 42 R. P. C. 79.

.]—*See, also,* original volume, Nos. 202, 269, 270.

280b. —— —— —— Debt incurred by neutral.]—Deft., a Norwegian subject, living in England, incurred a debt to pltfs., an Austrian co., before the outbreak of war. After the Treaty of Peace pltfs. sued deft. for the amount :—*Held :* although the claim was against a neutral subject, yet, as Treaty of Peace Order, s. 7, made the debt payable to the administrator & transferred to him all the rights of the creditors, pltfs. had no right to bring the action.—JOSEF INWALD ACT. *v.* PFEIFFER (1927), 43 T. L. R. 399, C. A.; *affd.* (1928), 44 T. L. R. 352; 72 Sol. Jo. 205,

Annotations :—**Expld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109. **Refd.** Hollar Property Administrator, [1937] 2 All E. R.

288. *Add. Annotation :* — **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

291. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

293. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

295. For "but not to a counterclaim," read "but not a counterclaim."

Citation :—For "34 R. P. C. 332" read "34 R. P. C. 339."

297. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

299. For existing citations read :—

[1915] 3 K. B. 154; 84 L. J. K. B. 1806; 113 L. T. 596; 31 T. L. R. 464, C. A.

Add. Annotation :—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

300. For "No. 299, *ante*," read "(1914), 31 T. L. R. 83; 59 Sol. Jo. 147."

Add. Annotation :—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Annotations :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107. **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

304. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

306. *Add. Citations :*—[1919] A. C. 59; 88 L. J. K. B. 147, H. L.

310. *Add. Annotation :*—*As to* (1) **Apprvd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

313. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

316. *Add. Annotations :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. *As to* (2) **Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

318. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

320. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

322. *Add. Annotation :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

329. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

274 iii. —— —— *War Measures Act.*]—PERLMAN *v.* PICHE (1918), Q. R. 54 S. C. 170; 41 D. L. R. 147; 24 R. de J. 438.—**CAN.**

276 ii. —— —— ——.]—A man of Austro-Hungarian nationality came to Canada after the outbreak of the war, & registered as an alien enemy. In violation of the law, he left Canada without an *exeat*, & on his return was prosecuted & fined. In Dec. 1917, he was arrested under the immigration officer's warrant. His application for a writ of *habeas corpus* was refused on the following grounds: (1) he was an alien enemy, & could not, without the King's protection, sue in His Majesty's ct.; (2) he was not within the proclamation conferring protection upon alien enemies; (3) had he been within the protection of the proclamation, he lost his right by violation of the terms upon which protection was granted; (4) the ct. had no right to deal with the application without the consent of the Minister of Justice.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—C.

292 ii. ——.]—An alien enemy, who is sued by a British subject in a British ct. is entitled to be heard in defence.—UNION BANK *v.* LOHMANN, [1919] V. L. R. 418.—**AUS.**

292 iii. ——.]—An alien enemy who is sued has a right to defend the action & to appeal against any decision, final or interlocutory, that may be given against him.

Where a municipality served notice on the owner of land, sold for taxes, to take proceedings on a *caveat*, thereby compelling him to proceed to establish it :—*Held :* the owner, being an alien enemy, should be treated as being in the position of an alien enemy defending an action, & the action should not be dismissed.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, [1920] 1 W. W. R. 577; 52 D. L. R. 266; 15 Alta. L. R. 204; *affg.*, [1917] 3 W. W. R. 546; 37 D. L. R. 394.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—D.

304 i. *Proceedings by partnership—Enemy partners.*]—If one of the partners in a firm is an alien enemy, neither he nor his partner, who does not bear an enemy character, can recover money owing to the firm.—HAJI ALI JON *v.* ABDUL JALIL KHAN (1920), I. L. R. 1 Lah. 276.—**IND.**

Part IV.—Trading and Communicating with the Enemy.

332. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

336. *Add. Citation :—sub nom.* R. *v.* DE LA MOTTE (1781), 21 State Tr. 687.

347. *Add. Annotation :*—**Consd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

351. After the words " was void " at the end of the paragraph in original volume add "; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of peace."

359. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

363. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

370. *Add. Annotation :*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

371. *Add. Annotations :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Jebara *v.* Ottoman Bank, [1927] 2 K. B 254.

374. *Add. Citation :*—13 Asp. M. L. C. 484.

375a. —— **Deportation order.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

376. *Add. Annotation : — As to* (1) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

379. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

383. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

389a. —— **What amounts to "assignment"—Abandonment by enemy insured to neutral insurer.**]—In 1916 a firm in Germany despatched to a firm in Lima, both consignors & consignees being at that date enemies within the meaning of the Trading with the Enemy Acts, a parcel of diamonds by a Dutch steamship sailing from Amsterdam, the diamonds being insured against war and other risks with a Swiss insurance co. The British authorities, acting under the Reprisals Order of Mar. 11, 1915, required the Dutch vessel to put in to Kirkwall, where her cargo was examined, & the diamonds being found they were in due course placed in the custody of the Marshal of the Prize Ct., which, in Feb. 1918, ordered their detention & sale. After that order was made, but before the sale was carried out, the assured gave notice of abandonment of the diamonds & ceded all their rights therein to the insurance co., which accepted the notice & paid the assured as for a total loss. In 1919 the diamonds were sold, & the proceeds were ordered by the Prize Ct. to be handed to the predecessor in title of the Administrator of German property to be dealt with in accordance with the provisions of the Treaty of Versailles & the Treaty of Peace Order, 1919. The Swiss insurance co. claiming that as a result of the abandonment to them by the assured the diamonds became their property, now sued the Administrator of German Property to recover the proceeds of the sale :—*Held :* the action was not maintainable, inasmuch as (1) the notice of abandonment & its acceptance constituted an " assignment " within " Act B.," s. 6 (1); (2) the proceeds of sale of the diamonds constituted a " chose in action " within the same sub-sect.; & (3) the Administrator of German Property, as representing the Crown, was entitled to rely on the provisions of that sub-sect. as precluding the insurance co. from recovering.—ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, [1931] 1 K. B. 672; 100 L. J. K. B. 290; 144 L. T. 705, C. A.

389b. —— **What amounts to " chose in action "—Proceeds of sale of goods abandoned to neutral insurer.**] — ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, No. 389a, *ante.*

392. *Add. Citation :*—1 Br. & Col Pr. Cas. 605.

392a. **" Proc. A," par. 7—Goods sent to enemy agent for sale.**]—Applts., who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy :—*Held :* the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applts.' agent was for the purpose of " Proc. A," an " enemy " & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—SALTI ET FILS *v.* PROCURATOR-GENERAL, [1919] A. C. 968; 88 L. J. P. 209; 121 L. T. 459; 35 T. L. R. 679; 14 Asp. M. L. C. 460, P. C.

395. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

PART IV. SECT. 2.

365 l. For " VAN ZYL *v.* PRENAAR " read " VAN ZIJL *v.* PIENAAR."

PART IV. SECT. 3, SUB-SECT. 1.

390 l. " *Act B.," s. 6—Assignment of chose in action to British firm—In payment of debt.*]—An Austrian firm was indebted to a London firm at the commencement of the war. On Sept. 25, 1914, the Austrian firm wrote a letter purporting to be an assignment to the London firm of a debt due to them by B. The letter contained an enclosure signed by the Austrian firm addressed to B. amounting to a notice of assignment of the debt. In the following December the London firm forwarded it to B. :—*Held :* as the transaction of Sept. 25 amounted to a valid equitable assignment of a chose in action for valuable consideration, it was not illegal as contravening the above sect.—GRUNDY *v.* BROADBENT, [1918] 1 I. R. 433.—IR.

sn. *Proclamation of December* 12, 1914—*Taking delivery of goods from enemy ships in neutral ports.*]—Pltfs. were a British bank carrying on business in London & Bombay. Defts. were a firm of merchants, British subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts. in favour of pltfs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay just before the outbreak of war, & in order to evade capture left Bombay & took shelter in a neutral port. The bill was presented for payment on the due date with the shipping documents attached but was dishonoured by non-payment. Pltfs. filed a suit on Sept. 30, 1915, to recover the amount due on the bill :—*Held :* pltfs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—MOTISHAW & CO. *v.* MERCANTILE BANK OF INDIA (1916), I. L. R. 41 Bom. 566. —IND.

402. *Add. Annotations :—As to* (1) **Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

—— ——.]—Pltf. was a British subject carrying on business as an exporter of Manchester goods to Turkey. At the outbreak of war between Great Britain & Turkey deft. bank, a Turkish subject, was the holder of sight bills for the invoice amount in sterling of goods consigned by pltf. to Beyrout, which had arrived there shortly before the outbreak of war, & were subsequently delivered to the customers by deft. bank against payment in piastres. At the conclusion of the war deft. bank claimed the right to pay to pltf. an amount in sterling representing the then value of the piastres which they had received in payment for the goods. Pltf. claimed to be paid the sterling amount of the bills, or, in the alternative, damages for their conversion :—*Held :* (1) as the bank in Beyrout accepted the payment in lawful money from the Syrian merchant & handed over the goods, it constituted itself, as in a question with the drawer, debtor for the sterling amount on the face of the bill ; (2) it was not every contract that was abrogated by the war ; it was only a contract which was still executory & which for its execution required intercourse between the British subject & the enemy, & as the contract had been partially carried out, the bills had been indorsed, & the bank had been handed them together with the indorsed bills of lading, from that a subsidiary contract arose, namely, that on payment of the bills the shipping documents should be handed over, to execute which no intercourse between a British subject & the enemy was necessary ; & the bank was entitled to do what it did, & there could be no question of conversion, & having constituted themselves debtors in sterling, in sterling they must pay. —Ottoman Bank *v.* Jebara, [1928] A. C. 269 ; 97 L. J. K. B. 502 ; 139 L. T. 194 ; 44 T. L. R. 525 ; 72 Sol. Jo. 516 ; 33 Com. Cas. 260, H. L. ; *revsg.* S. C. *sub nom.* Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254, C. A.

Annotation :—As to (2) **Refd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

403. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

405a. —— —— ——.]—For many years there existed in Germany works for the manufacture of dyestuffs (Farbenfabriken), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import

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PART IV. SECT. 4.

402 v. —— —— *Repayment of instalments.*]—In Apr., 1914, the A. co. contracted to construct machinery for the B co. by Dec. 31, 1914. Progress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914-1916, s. 9H, requiring the B. co. to be wound up, & appointing C. controller. The contract was never completed :—*Held :* the contract became null & void as from the commencement of the war, & neither the B. co. nor C. was entitled to recover from the A. co. any portion of the sum paid as progress payments.—*Re* Continental (1919), 27 C. L. R. 194.—**AUS.**

402 v. —— —— ——.]—A contract between a British firm & an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4,620 was paid to account of the whole when war broke out & it became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed & sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods :—*Held :* (1) the contract was dissolved by the outbreak of war ; (2) the sum paid to account of the price of the goods belonged to the buyers & was validly arrested in the hands of the sellers.—Davis & Primrose, Ltd. *v.* Clyde Shipbuilding & Engineering Co., Ltd. (1918), 56 Sc. L. R. 24.—**SCOT.**

402 vi. —— —— ——.]—In May, 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid :—*Held :* as the instalment had been paid as part of the price of the engines, & as the engines had not been delivered owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—Cantiere *v.* Clyde, [1923] S. C. (H. L.) 105 : 60 Sc. L. R. 635.—**SCOT.**

402 vii. —— —— *Enemy Contracts Annulment Act,* 1915.]—A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of payment were varied :—*Held :* the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.—Broken Hill Proprietary Co., Ltd. *v.* Warnock (1922), 30 C. L. R. 362.—**AUS.**

402 viii. —— ——.]—On Feb. 2, 1914, deft. firm agreed to sell to pltfs, steel bars under a c.i.f. contract free Hooghly. The goods were shipped on July 2, 1914, per a German steamer, which was subsequently captured with her cargo & condemned by the Prize Ct. :—*Held :* the contract under which the goods would be delivered in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—Madhoram Hurdeo Das *v.* Sett (1917), I. L. R. 45 Calc. 28.—**IND.**

405 i. —— —— *Effect of suspensory clause.*]—By a contract made after the outbreak of war with Germany to supply German dyes, deft. was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war. The ship & the dyes therein were seized & condemned by a Prize Ct. :—*Held :* (1) the contract was unenforceable ; (2) the Royal Proclamation of Sept. 8, 1914, put an end to the contract.—Abdul Razack *v.* Khandi Row (1918), I. L. R. 41 Mad 225.—**IND.**

sp *Debtor of alien enemy—Payment of interest in respect of transaction entered into before outbreak of war—Right to repayment.*]—Where a person indebted to an alien enemy had paid interest in respect of a transaction entered into before the outbreak of hostilities & sought a refund of the amount paid for the period between the outbreak of hostilities & the date of a licence to trade obtained by the enemy firm :—*Held :* he was not entitled to such refund, as there was on suspension of interest in respect of

goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the registration of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new *régime* was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such fire, as accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (*a*) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, & because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (*b*) that owing to the suspension clause no right to damages had yet arisen; (*c*) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held:* (1) at the date of the outbreak of war B. Co. assumed enemy character, &, accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., [1921] 2 Ch. 331; 91 L. J. Ch. 133; 126 L. T. 466.

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such transactions during that period.—VALLI MAHOMED ABU *v.* BERTHOLD REIF (1919), I. L. R. 44 Bom. 1.—**IND.**

sq. *Erection of machinery—Replacement of defective parts.*]—In Mar. 1913, resps. contracted to supply & erect certain machinery for applt. In Mar. 1914, the machinery was erected, & in June, 1914, it broke down. By an agreement made in Jan. 1915, resps. agreed to replace the defective parts, & did so in Apr. 1915. Shortly afterwards the machinery again broke down. In July, 1915, resps. were declared to be a co. "managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of persons of enemy nationality":—*Held:* the agreement of Jan. 1915, &, subject to the exception in Enemy Contracts Annulment Act, 1915, s. 3 (5), the agreement of Mar. 1913, were null & void.—SYDNEY MUNICIPAL COUNCIL *v.* AUSTRALIAN METAL CO., LTD. (1926), 37 C. L. R. 550.—**AUS.**

406. *Add. Citations:*—*affd. sub nom.* FRIED KRUPP AKT. *v.* ORCONERA IRON ORE CO., LTD. (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 234, H. L.

408. *Add. Annotations:*—*As to* (1) **Folld.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Central India Mining Co. *v.* Soc. Colonial Anversoise, [1920] 1 K. B. 753; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 38 T. L. R. 739; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

409. *Add. Annotation:*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

409a. —— —— **Effect of Treaties of Peace & consequent Orders.**]—ROWE BROTHERS & CO., LTD. *v.* LINDGENS (1920), 36 T. L. R. 247. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65

412. *Add. Annotation:*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

412a. Insurance policy—Effect of Treaties of Peace & consequent Orders.]—EXCESS INSURANCE CO., LTD. *v.* MATHEWS (1925), 31 Com. Cas. 43.

413. *Add. Annotation:*—*As to* (2) **Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

416. *Add. Annotations:*—**Consd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

418. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

419a. —— **Property otherwise subject to confiscation.**]—THE DEERGARDEN (1747), cited in 1 Ch. Rob. at p. 202; THE ST. PHILIP (1747), cited in 8 Term Rep. at p. 556; THE ELIZABETH (1749), cited in 1 Ch. Rob. at p. 202; THE LADY JANE (1749), cited in 1 Ch. Rob. at p. 202; THE RINGENDE JACOB (1750), cited in 1 Ch. Rob. at p. 202; THE JUFFROUW LOUISA MARGARETHA (1781), cited in 1 Ch. Rob. at p. 203; THE COMPTE DE WOHRONZOFF (1781), cited in 1 Ch. Rob. at p. 205; THE EXPEDITE VAN ROTERDAM (1782), cited in 1 Ch. Rob. at p. 206; THE BELLA GUIDITA (1785), cited in 1 Ch. Rob. at p. 207; THE EENIGHEID (1795), cited in 1 Ch. Rob. at p. 210; THE FORTUNA (1795), cited in 1 Ch. Rob. at p. 212; THE FREEDEN (1795), cited in 1 Ch. Rob. at p. 213; THE WILLIAM (1795), cited in 1 Ch. Rob. at p. 214.

-.]—*See, also,* Nos. 369-371, *ante.*

424. *Add. Annotation:*—**Refd.** Johnstone Pedlar, [1921] 2 A. C. 262.

425. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

429. *Add. Annotation:*—*As to* (1) & (2) **Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

440a. ——.]—LA FLORA (1805), 6 Ch. Rob. 1; 1 Eng. Pr. Cas. 515; 165 E. R. 828.

445. *Add. Annotation:*—*As to* (1) **Refd.** The Rannveig, [1922] 1 A. C. 97.

460. *Add. Annotation:*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

493a. —— ——.]—Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage is *bonâ fide* begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident over which the assured have no control.—GRONING *v.* CROCKETT (1811), 3 Camp. 83; 170 E. R. 1313, N. P.

Part V.—Acquisition of British Nationality.

515. Before this case add "*See* note to Part I., *ante.*"

520. *Add. Citation:*—26 Cox, C. C. 211, D. C. *Add. Annotation:*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348.

520a. —— ——.]—A natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights, powers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a liege

PART IV. SECT. 5, SUB-SECT. 1.

420 i. *Necessity for licence—How given—Approval of contract by officer entrusted to grant licence.*]—*Held:* the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the prerogative to grant licences to trade with the enemy was an answer to prosecutions for trading with the enemy.—DONOHOE *v.* SCHROEDER (1918), 22 C. L. R. 362.—**AUS.**

PART V. SECT. 3.

518 ii. —— —— *Child naturalised by subsequent m.....* Sect. 10 (5) of the above Act does not apply to an infant whose mother by her subsequent marriage to a naturalised British subject has herself become a British subject but has not, while a widow, obtained a certificate of naturalisation in the United Kingdom.—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—**AUS.**

st. *Commonwealth Naturalisation Acts,* 1903-1917, *s* 10—*Effect—Step-child of man naturalised under Naturalisation Act,* 1870 (*c.* 14).]—The above sect. does not apply to a child whose mother has married a man who was naturalised under Naturalisation Act, 1870 (c. 14).—JERGER *v.* PEARCE (1920), 27 C. L. R.

ss. *Naturalisation Act, R. S. C.,* 1906 (*c.* 77)—*Status of naturalised persons.*]—An alien naturalised in Canada under the above Act acquires the status of a British subject.—*Re* SOLVANG, [1918] 3 W. W. R. 876; 43 D. L. R. 549.—**CAN.**

v i. *Naturalisation Acts—Fitness of applicant—Previous conviction.*]—The fact that appct. had several years before undergone a sentence of imprisonment in default of paying a fine for supplying intoxicating liquor to an Indian is not a bar to his claim for naturalisation under the above Acts.—*Re* BRESNIK (1920), 58 D. L. R. 233; 34 Can. Crim. Cas. 167.—**CAN.**

subject of His Majesty the King, & entitled to the protection of His Majesty the King in all parts of His Majesty's Kingdom & Dominions:—*Held:* neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—MARKWALD *v.* A.-G., [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 239, C. A.

Part VI.—Loss of British Nationality.

532. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

533. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 523; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

536. *Add. Citation:*—26 Cox, C. C. 177, D. C.

537. *Add. Citations:*—16 L. G. R. 764; 26 Cox, C. C. 244, D. C.

538. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 533; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850; Kramer *v.* A.-G., [1923] A. C. 528.

538a. —— **British woman marrying alien—In time of war.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

541. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

PART VI.

sb. *Revocation—Whether reasons need be stated.*]—A revocation of a certificate of naturalisation need not state the reasons of the Governor-General.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sc. —— *Effect of Treaty of Peace with Germany.*]—Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a natural-born German subject.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sd. *Declaration of intention to become citizen of foreign State.*]—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—NEWMAN (or NEUMAN) *v.* BRADSHAW, [1917] 1 W. W. R. 1223; 23 B. C. R. 492.—**CAN.**

534 i. *British Nationality & Status of Aliens Act*, 1914 (*c.* 17)—*Declaration of alienage—Effect on liability under Military Service Acts.*]—A natural-born British subject who is also an American subject, & has been duly called up under Military Service Act, 1916, ss. 3, 11, is not relieved from his obligation to serve by a declaration of alienage under British Nationality & Status of Aliens Act, 1914 (c. 17).—*Re* HORNE, [1919] N. Z. L. R. 190.—**N.Z.**

PART VIII.

540 ix. —— *Son of domiciled Chinaman.*]—The domicil gained by a Chinaman in Canada was held not available for the benefit of his son, twelve years of age, who had lived his lifetime in China, so as to give the son Canadian domicil.—*Re* WONG SUEY MONG, [1921] 3 W. W. R. 122.—**CAN.**

540 x. —— *Son of naturalised Russian.*]—A Russian, an insane person, was held for deportation under Immigration Act (Consolidation), s. 3. His release was applied for on the ground that his father had been resident in Canada for a number of years & had been naturalised there, & that the domicil of the father applied to the son:—*Held:* the son had no domicil in Canada & was expressly prohibited from landing under the Immigration Act.—*Re* LIPSTEIN, [1923] 2 D. L. R. 1055; 56 N. S. R. (G. & R.) 292.—**CAN.**

e (p. 193) **i.** —— ——.]—A deportation order made by an immigration officer, when there is no Board of Inquiry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

sf. *Immigration Act*, 1901-1920—*Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete.*]—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—GABRIEL *v.* AH MOOK (1924), 34 C. L. R. 591; 31 Argus L. R. 84.—**AUS.**

sj. —— —— *Person born in Australia returning from abroad.*]—Where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the above Act depends on whether he is as a fact coming back to Australia as to his home.—DONOHOE *v.* WONG SAU (1925), 36 C. L. R. 404.—**AUS.**

sk. —— *Application to immigration after date of enactment.*]—Applt., an alleged prohibited immigrant, entered the Commonwealth not later than the year 1906 & the dictation test, which he failed to pass, was applied to him in the year 1930. No substantive evidence was adduced that applt. had evaded an officer, the only evidence of this fact being the averment thereof contained in the information:—*Held:* s. 5 (1) (*a*) of Immigration Act, 1901-1925, only operates & applies to immigrants who enter Australia after the date of its enactment.—AH YOU *v.* GLEESON (1929), 43 C. L. R. 589; 4 A. L. J. 160; (1930), Argus L. R. 273.—**AUS.**

sm. —— *European language—What is.*]—The expression "an European language" in Immigration Restriction Act, 1901, s. 3 (*a*), means a standard form of speech recognised as the received & ordinary means of communication among the inhabitants of an European community for all purposes of the social body. Scottish Gaelic is not such a language.—R. *v.* WILSON, *Ex p.* KISCH (1935), 52 C. L. R. 234; 8 A. L. J. 348; 41 Argus L. R. 130.—**AUS.**

e (p. 194) **i.** —— —— "*Landing*"—*What is.*]—"Landing" is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—R. *v.* FONG SOON, [1919] 1 W. W. R. 486; 45 D. L. R. 78; 31 Can. Crim. Cas. 78.—**CAN.**

sl. —— *Whether repugnant to Immigration Act*, 1910 (*c.* 27).]—The powers & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to the former Act, & do not apply.—*Re* IMMIGRATION ACT, ft. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271; 47 D. L. R. 538.—**CAN.**

sm. —— ——.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

sn. *Chinese Immigration Act*, 1923 (*c.* 38)—*Deportation order—Appeal from—Person not Canadian citizen or having no Canadian domicil.*]—*Held:* the ct. had no jurisdiction to interfere.—*Re* YEE FOO, [1925] 2 D. L. R. 1131;

541a. Alien " found in the United Kingdom " after leave refused—Alien landed in custody of Irish Free State police.]—A French subject landed in the United Kingdom on Mar. 14, 1933, with a French passport, which was endorsed with conditions prohibiting her employment in the United Kingdom. On Mar. 22 those conditions were varied by a

44 Can. Crim. Cas. 17; 56 O. L. R. 669.—**CAN.**

sp. *S.P. Re* YOUNG SUE HING (1926), 37 B. C. R. 227; [1926] 2 W. W. R. 374.—**CAN.**

sq. —— —— ——.]—*Certiorari* in general lies with respect to an order for deportation made under sect. 26 of the above Act; & sect. 38 is no bar to its application to such orders when made without or in excess of jurisdiction or in violation of the essentials of justice. —*Re* LOW HONG HING, [1926] 3 D. L. R. 692; [1926] 2 W. W. R. 597; 46 Can. Crim. Cas. 65; 37 B. C. R. 295.—**CAN.**

sr. —— *Alien allowed to land pending inquiry—Omission to obtain deposit as security.*]—*Held:* not equivalent to an assent to the alien being landed.—R. *v.* LEE CHOW YING, [1927] 1 W. W. R. 527; 47 Can. Crim. Cas. 203; 38 B. C. R. 241.—**CAN.**

ss. —— *Certificate obtained by fraud—Conclusive.*]—When the Controller of Chinese Immigration has concluded after inquiry that a Chinaman is entitled to enter Canada & has permitted him to land & given him the certificate provided for in sect. 17 of above Act, the Controller has exhausted his jurisdiction & even though it is afterwards discovered that a fraud has been committed on him, the Chinaman's right to be in Canada can be contested only before a judge as provided in sect. 17 of above Act.—R. *v.* CHIN SACK, [1928] 1 D. L. R. 779; [1928] 1 W. W. R. 618; 49 Can. Crim. Cas. 43; 39 B. C. R. 223.—**CAN.**

st. —— *Habeas corpus—Right of person claiming Canadian birth.*]—Chinese Immigration Act, 1923, c. 38, s. 38, enacts inferentially that anyone claiming Canadian birth has a right to apply for relief by way of *habeas corpus* from the Comptroller's decision.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

sw. *Chinese Immigration Act*, 1927 (*c.* 95)—*Decision as to validity of certificate—No appeal.*]—*Ex p.* CHIN SHACK (B. C.) (1928), 50 Can. Crim. Cas. 137.—**CAN.**

sx. —— *Previous deportation—Bar to admission.*]—*Re* LIM COOIE FOO, [1931] 1 W. W. R. 233; *revsg.*, [1930] 1 W. W. R. 894; 53 Can. C. C. 357; 42 B. C. R. 496; *sub nom.* R. *v.* LIM COOIE FOO (1930), 54 Can. C. C. 383; 43 B. C. R. 54.—**CAN.**

sy. —— *Habeas corpus—Order for examination—Appeal from.*]—R. *v.* LEE MOON KOO, [1931] 1 W. W. R. 571; 55 Can. C. C. 188; 43 B. C. R. 458.—**CAN.**

sm. —— *Certificate—Effect of decision as to validity.*]—When the validity of a certificate under Chinese Immigration Act, 1927, s. 17, has been decided by the ct., it is binding upon the controller, & his act on registering an alien out is ministerial & not judicial.—*Re* CHINESE IMMIGRATION ACT, & CHIN SACK (1931), 45 B. C. R. 3.—**CAN.**

so. —— *Validity of deportation order.*]—An order for deportation will be upheld, although the procedure laid down by Chinese Immigration Act, 1927, s. 10 (2), is not strictly followed, if an opportunity to retain counsel is given, & no injustice is done.—R. *v.* JUNG SUEY MEE (1932), 46 B. C. R. 533.—**CAN.**

q (p. 195) **i.** —— *Detention for return to country not specified in order—After admittance refused by country specified in order.*]—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India:—*Held:* he was illegally detained & was entitled to his discharge. —*Re* SANTA SINGH, [1924] 3 D. L. R. 1088; 3 W. W. R. 164; 34 B. C. R. 190.—**CAN.**

q (p. 195) **ii.** —— *Attempting to land forbidden person.*]—R. *v.* PALANGIO (1912), 22 O. W. R. 540; 3 O. W. N. 1440; 4 D. L. R. 611.—**CAN.**

so. —— *Whether repugnant to Chinese Immigration Act, R. S. C.*, 1906 (*c.* 95).]—*Re* IMMIGRATION ACT. R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271.—**CAN.**

sa. —— *Proceedings under — Not criminal proceedings.*]—R. *v.* ALAMAZOFF, [1919] 3 W. W. R. 281; 47 D. L. R. 533.—**CAN.**

sb. —— —— ——.]—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

sc. —— —— ——.]—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

t (p. 195) **i.** —— —— *Person not Canadian citizen or having Canadian domicil.*]—The ct. cannot interfere with what is done is by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicil.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

t (p. 195) **ii.** —— —— —— ——.]—Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under s. 23 of the above Act. Appct. had not shown that he was a Canadian citizen or had Canadian domicil.—R. *v.* SCHOPPELREI, [1919] 3 W. W. R. 322.—**CAN.**

t (p. 195) **iii.** —— —— —— ——.]—The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicil.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156; *revsg.* 59 D. L. R. 626; 36 Can. Crim. Cas. 405; 30 B. C. R. 70.—**CAN.**

t (p. 195) **iv.** —— —— ——.]—*Habeas corpus* will lie in respect of a deportation order made by an immigration officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appct. to the Minister of the Interior under s. 19 of the above Act has been unsuccessful.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

t (p. 195) **v.** —— —— ——.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of *habeas corpus.*—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

t (p. 195) **vi.** —— —— ——.]—An appeal lies in *habeas corpus* proceedings where a person is detained under the above Act.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

t (p. 195) **vii.** —— —— ——.]—An appeal lies to the Ct. of Appeal from an order made in *habeas corpus* proceedings releasing a person detained under the above Act.—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

v (p. 195) **i.** —— —— —— *Chinese immigrant.*]—Under s. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—*Re* WONG SIT KIT, [1921] 3 W. W. R. 116.—**CAN.**

v (p. 195) **ii.** —— —— ——.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—*Re* WONG SUEY MONG, [1921] 3 W. W. R. 122.—**CAN.**

sd. *Immigration Amendment Act*, 1919 (*c.* 25)—*Not retrospective.*]—*Re* IMMIGRATION ACT & SANTA SINGH, [1920] 2 W. W. R. 999.—**CAN.**

se. —— *Appointment of immigration officer—Sufficiency.*]—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sf. —— *Deportation order — Form of order.*]—Where an order only stated " P. C. 23 " as the reason for deportation:—*Held:* such an order was defective.—R. *v.* LANTALUM, *Ex p.* OFFMAN (1921), 62 D. L. R. 223; 35 Can. Crim. Cas. 295; 48 N. B. R. 448. —**CAN.**

sg. —— —— *Amendment of order.*]—An order of deportation, insufficient in form as not showing jurisdiction, may be amended by the immigration officer.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sh. *Immigration Law* (*R. S. C.*, 1927, *c.* 93)—*Right to annul expulsion order.*]—The tribunals have not power or jurisdiction to annul an expulsion order made against an immigrant on the strength of the immigration law even if they think the officials charged with administering the said law have not applied their orders correctly.—YERSHEMSKY *v.* MOQUIN (1928), Q. R. 45 K. B. 166.—**CAN.**

sa. —— *Right of illiterate relatives to admission—Effect of disqualification.*]—M., an immigrant from Japan in 1914, subsequently obtained a certificate of naturalisation as a Canadian citizen. In 1928 his wife & two children on arriving at Victoria from Japan were refused entry on the ground that they had not in their possession a valid passport issued in & by the Government of the country of which they were citizens as required by order in council pursuant to sect. 3 (i) of the Immigration Act. On *habeas corpus* proceedings appcts. claimed that notwithstanding their not having a passport they were entitled to admission into Canada by virtue of sect. 3 (*l*) of the Immigration Act:—*Held:* sect. 3 (*l*) is restricted to the question of illiteracy of relatives of an admitted immigrant, & when otherwise disqualified such persons are prohibited from entering Canada. — *Re* TOKU NISHI (1928), 41 B. C. R. 199.—**CAN.**

sb. —— *Warrant of deportation need not be addressed to officer where alien detained.*]—*Re* MAH FUNG (1930), 54 Can. C. C. 374.—**CAN.**

sr. *Validity of deportation order —What must be stated.*]—An order for deportation made by a Board of Inquiry under sect. 33 (7) of Immigration Act, 1927, which states that it was made because the deportee had entered Canada surreptitiously is not invalid because it does not also state that the Board found that he was not a Canadian citizen and did not have Canadian domicile.—R. *v.* TAKHAR, [1931] 3 W. W. R. 37; 56 Can. C. C. 376; 44

condition requiring her departure from the United Kingdom on that day. She went forthwith to the Irish Free State. An order for her deportation therefrom was made by the executive authorities of the Irish Free State, & on Apr. 20 she was brought to Holyhead in the custody of the Irish Free State police & there handed over to the

B. C. R. 360; [1932] 1 D. L. R. 332.—**CAN.**

sl. —— —— ——.]—In a deportation order the reasons for the deportation must be clearly stated. It is not sufficient to state as a reason that the deportee's entry was effected contrary to sect. 35 (7) of the Immigration Act. If not sufficiently stated the deportee is entitled to be discharged on *habeas corpus*.—*Re* MUNETAKA SAMEJIMA, [1931] 3 W. W. R. 56; 44 B. C. R. 317.—**CAN.**

sv. —— —— *No fair hearing—Habeas corpus.*]—*Re* VEREGIN, [1933] 2 W. W. R. 409.—**CAN.**

sw. —— —— —— —— *Costs.*]—Application of K. B. Rule 961.—VEREGIN *v.* SMITH, [1934] 1 W. W. R. 351.—**CAN.**

sg. —— *Defective deportation order quashed—No power of amendment.*]—The Board of Inquiry when a deportation order is found defective on its face, has the right to recall it & substitute therefor an order in proper form, so long as the defective order had not been acted upon. Even after it has been served on the person in custody & constitutes the return made to a writ of *habeas corpus*, it may still by leave of the ct. or judge, be amended, or another order substituted for it, so as to make it conform to the finding of the Board. But after a deportation order which is not in accordance with the Act has been quashed by a ct. having jurisdiction, it cannot be amended for there is nothing to amend, the order of the Board no longer existing.—MUNETAKA SAMEJIMA *v.* R., [1932] S. C. R. 640; 4 D. L. R. 246; 58 C. C. C. 300.—**CAN.**

sv. —— *Prisoner in gaol pending deportation—Five months after termination of sentence—Grant of habeas corpus.*]—R. *v.* STACHOW, [1932] 2 W. W. R 698.—**CAN.**

sx. —— *Deportation "forthwith"—Effect of delay in obtaining passport.*]—Where in proceedings under sects. 40 & 42 of Immigration Act, R. S. C., 1927, an inquiry has been held & the deportation of the immigrant has been duly ordered, the fact that there is a long delay before a passport, promptly applied for, can be obtained from the immigrant's country does not render the order ineffective on the ground that sects. 42 (3) & 19 (2) of the Act require such person to be deported "forthwith."—*Re* JANOCZKA, [1932] 3 W. W. R. 29; [1933] 1 D. L. R. 123; 40 Man. L. R. 494; 58 C. C. C. 328.—**CAN.**

sy. —— —— *Meaning of.*]—*Re* POLL, [1937] 3 W. W. R. 136.—**CAN.**

sz. —— *Sufficiency of procedure.*]—Following a complaint under sect. 40 of Immigration Act, R. S. C., 1927, an investigation by a Board of Inquiry was held on which it was shown that the immigrant had been a public charge on the city of Winnipeg & the decision of the Board was that he be deported on the ground that he was not a Canadian citizen or a person having Canadian domicile & had become "in Canada a public charge": —*Held:* although the decision of the Board on such an inquiry must be accompanied by full reasons yet in the present case there had been ample particularity because to be a public charge on the city of Winnipeg is to be "in Canada, a public charge," & since the deportee admitted the truth of the complaint there was no defence which could be offered which would be effective. *Munetaka Samejima* v. *R.*, [1932] S. C. R. 640, does not call for greater particularity than was furnished in the present case. The fact that no papers were served upon the deportee before or during the inquiry is not objectionable where ample notice is given orally, especially in the case of a deportee unable to read English.—*Re* NAUMIEC, [1932] 3 W. W. R. 693; 40 Man. L. R. 622.—**CAN.**

sa. —— *Right to writ of habeas corpus.*]—Broadly speaking, every alien who has been admitted into & is actually in Canada & who has been taken into custody on a charge for which he may be deported, is entitled to the benefit of the writ of *habeas corpus* to test in ct. if his detention is according to law.—VAARO & WOROZCYT *v.* R., [1933] S. C. R. 36; 1 D. L. R. 359; 59 C. C. C. 1; *affd.* (1932), 5 M. P. A. 151; 58 C. C. C. 161.—**CAN.**

sc. —— *"Expiration" of sentence—Pardon.*]—The sentence or term of imprisonment of a convict released by pardon has not "expired" within Immigration Act, 1927, s. 43.—*Re* VEREGIN, [1933] 2 D. L. R. 362; 41 Man. L. R. 306; 60 C. C. C. 118.—**CAN.**

sd. —— —— ——.]—The sentence or term of imprisonment of a convict released by pardon has "expired" within Immigration Act, 1927, s. 43. —*Re* ROYAL PREROGATIVE OF MERCY IN DEPORTATION PROCEEDINGS, [1933] 2 D. L. R. 248; S. C. R. 269; 59 C. C. C. 301.—**CAN.**

se. —— *Detention of Canadian—No liability for false arrest.*]—The fact that a person taken into custody & investigated under an order of the Deputy Minister of Immigration made pursuant to a complaint under sect. 42 of Immigration Act, R.S.C., 1927, is found to be a Canadian citizen by birth &, therefore, not subject to deportation as an undesirable immigrant, does not render the Deputy Minister liable in an action for false arrest & imprisonment, even though the complaint did not give the full particulars called for by sect. 41.—WADE (OR ANDERSON) *v.* EGAN, [1934] 3 W. W. R. 219; [1935] 1 D. L. R. 542; 62 C. C. C. 260; *affd.*, 3 D. L. R. 756; 64 C. C. C. 21; 43 Man. L. R. 295.—**CAN.**

sf. —— *Deportation order—Appeal from dismissal of habeas corpus petition—Bail.*]—Applt., against whom a deportation order had been made, under sect. 42 of Immigration Act, R.S.C., 1927, & who had sought unsuccessfully by *habeas corpus* proceedings to be set at liberty & had then appealed to the Ct. of Appeal from the dismissal of his *habeas corpus* petition, now applied to be let out on bail pending the hearing of the appeal:— *Held:* there is no power in the cts. to grant bail in such a case.—R. *v.* COLEMAN, [1935] 3 W. W. R. 161; 4 D. L. R. 444; 64 C. C. C. 251; 43 Man. L. R. 380.—**CAN.**

sg. *Opium & Narcotic Drugs Acts—Proceedings under—Not criminal proceedings.*]—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—**CAN.**

sk. —— *Conviction under—No order against deportation—Power to make subsequent order.*]—There is no power to make an order except at the time of conviction.—*Re* JOE FONG (1923), 53 O. L. R. 493; 24 O. W. N. 39.—**CAN.**

sl. —— —— —— ——.]—An order against deportation made subsequently is invalid.—R. *v.* LEE PARK, [1924] 4 D. L. R. 883; 3 W. W. R. 490.—**CAN.**

sn. —— —— —— *Necessity for order.*]—Since under Opium & Narcotic Drug Act, 1923, s. 25, deportation follows automatically in the case of the conviction of an alien under sect. 4 (*d*), it is not necessary for a formal order for deportation to be made in such a case.—R. *v.* WOO FONG TOY (B.C.), [1926] 3 W. W. R. 703.—**CAN.**

so. —— —— —— *Validity of warrant.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* GAN, [1925] 3 W. W. R. 783.—**CAN.**

sp. —— —— *Subsequent detention for deportation—Validity.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10*b*:—*Held:* the purpose of s. 10*b* was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5*a*.—R. *v.* HOW, [1923] 4 D. L. R. 1007; 56 N. S. R. (G. & R.) 372.—**CAN.**

sl. —— —— —— ——.]—*Re* SUE SUN POY (No. 2), [1932] 3 W. W. R. 220.—**CAN.**

sm. —— —— —— ——.]—R. *v.* LOW KEE; R. *v.* WONG KIT CHOW, [1937] 3 W. W. R. 97.—**CAN.**

sq. —— —— —— *Application for release.*]—Where an alien has been convicted under s. 5*a* (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10*b*, he is not entitled to release on *habeas corpus* on the ground of having Canadian domicil within Immigration Act, s. 43.— R. *v.* CHANG SONG, [1924] 1 D. L. R. 1161; 1 W. W. R. 778; 42 Can. Crim. Cas. 8; 33 B. C. R. 176.—**CAN.**

sr. —— —— —— ——.]—A warrant of deportation regular on its face having issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in *habeas corpus* proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—R. *v.* CHOW TONG (1924), 34 B. C. R. 12.—**CAN.**

ss. —— —— —— ——.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a ground for granting a writ of *habeas corpus*.— R. *v.* GEE DEW (No. 3), [1924] 3 D. L. R. 186; 2 W. W. R. 793; 42 Can. Crim. Cas. 213; 33 B. C. R. 548.—**CAN.**

sv. —— —— —— ——.]—*Held:* *habeas corpus* proceedings were proceedings "arising out of a criminal charge," & within the exception to the jurisdiction of the Supreme Ct. of Canada under Supreme Ct. Act, R. S. C., 1906, s. 36.—JUNGO LEE *v.* R., [1927] 1 D. L. R. 721; 46 Can. Crim. Cas. 329; [1926] S. C. R. 652—**CAN.**

sw. —— —— —— —— *Appeal.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. 10*b*. A writ of *habeas corpus* was granted & accused ordered to be discharged from custody. On appeal the order was sustained.—*Re* MAH SHIN SHONG, *Re* SING YIM HONG, [1923] 4 D. L. R. 844; 39 Can. Crim. Cas. 401; 32 B. C. R. 176; [1923] 1 W. W. R. 1365.—**CAN.**

sx. —— —— —— —— ——.]—Where an alien on the termination of his imprisonment, imposed on con-

viction under the 1911 Act, is detained pending deportation & he applies for *habeas corpus*, but is refused release, an appeal from such refusal lies to the Ct. of Appeal.—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—CAN.

sg. —— —— —— —— ——.]—If the inquiry directed by sect. 26 of Opium & Narcotic Drug Act, 1929, to be held in accordance with the provision of Immigration Act, R. S. C., 1927, in the case of an alien convicted of certain offences under the former Act, is held before the term of the prisoner's sentence has expired, it is premature; & an order made thereon is a nullity. The Ct. of Appeal of British Columbia has jurisdiction to hear an appeal from the dismissal of a *habeas corpus* application arising out of a deportation order based on such an inquiry.—R. *v.* SUE SUN POY (No. 1), [1932] 3 W. W. R. 212; 4 D. L. R. 721; 46 B. C. R. 321; 58 C. C. C. 338.—CAN.

sy. —— —— —— *Validity of warrant of deportation.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* JUNGO LEE (1926), 46 Can. Crim. Cas. 92; 37 B. C. R. 318; [1926] 2 W. W. R. 734.—CAN.

sz. *Chinese Exclusion Act*, 1904 (c. 37) (*Cape*)—*Deportation after conviction—Effect of exemption certificate.*]—Applts., being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment:—*Held:* not to be exempted under s. 2 (*e*) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.—AH YET *v.* UNION GOVERNMENT, [1921] App. D. 97.—S. AF.

sa. *Act 22 of 1913—Prohibited immigrant—Asiatic—Holding qualifications for residence.*]—The entry of applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (*a*) of the above Act:—*Held:* he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—DESAI *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 277.—S. AF.

sb. —— —— *Indian returning after temporary residence in India—Domicil certificate not acquired before departure to India.*]—Applt., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicil, but that certificate was illegally refused. Applt.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915:—*Held:* applt.'s visit to India was for a special or temporary purpose; the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—KAJEE *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 42.—S. AF.

sc. —— —— —— *Domicil certificate acquired before departure to India.*]—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1899 he obtained a certificate of domicil. In 1902 immigrant went back to India. Recently he returned to Natal but was refused admission as being a prohibited immigrant under the above Act:—*Held:* the certificate conferred upon him rights, which were not restricted by the above Act, & there was no intention on the part of immigrant to abandon his domicil in Natal.—*Re* RUNGASAMY CHETTY (1917), 38 N. L. R. 42.—S. AF.

sd. —— —— —— *Domicil certificate acquired by deceased parent.*]—K., the possessor of a certificate of domicil under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920:—*Held:* N. had no such right under s. 5 (*g*) of the above Act, as he had no father domiciled in Natal.—NATHOO *v.* IMMIGRANTS' APPEAL BOARD (1921), 42 N. L. R. 30.—S. AF.

se. —— —— *Second wife of Mohammedan.*]—Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant.—MARIAM & MAHOMED *v.* IMMIGRANTS' APPEAL BOARD (1918), 39 N. L. R. 382.—S. AF.

sf. —— —— *Sons of domiciled parents—Resident in another province.*—M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, but formerly resident in Natal, & holding certificates of domicil under the above Act, were declared prohibited immigrants in Natal, neither M. or Y. having ever been resident in Natal save for temporary purposes during which periods their parents remained in the Transvaal.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER (1921), 42 N. L. R. 337.—S. AF.

sg. —— —— —— *Parent resident in India.*]—Applt. was born in India, in 1913, of a woman who was recognised as the wife of an Indian, S., but who had never been in the Union. S. had entered the Transvaal in 1907 & had, thereafter, acquired a domicile of choice in the Tranvaal, but in 1919 had returned to India, & had since not been in the Union. Save that there was evidence that S. was undergoing medical treatment in India, there was no explanation of his long stay there. He had shares to the value of £4,000 in a business in the Transvaal but had apparently never taken any active part in the business. Applt., aged 12, arrived in the Union & claimed a right to enter the Union under Act 22 of 1913, s. 5 (*g*). On appeal from a judgment of a Provincial Div. in a case stated by the Immigrants Appeal Board:—*Held:* assuming the onus rested upon the immigration officer, the Board was entitled to find that S. had abandoned his Transvaal domicile, &, therefore, applt. was a prohibited immigrant.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER, [1929] App. D. 190.—S. AF.

sh. —— *Deportation under—Conviction obtained without Union.*]—A person not born in the Union of South Africa who is convicted of an offence under s. 4 (1) (*b*) of the above Act is liable to be deported under s. 22, whether the conviction took place within or without the Union.—COLLINGWOOD *v.* UNION GOVERNMENT, [1917] App. D. 550.—S. AF.

si. —— *Boarding ship before examination of immigrants completed.*]—Where a person was convicted of being on board a ship before the general examination of immigrants had been completed, & stated in defence that notice to the master of the ship had been given:—*Held:* he was rightly convicted.—ANGLIA *v.* R. (1918), 39 N. L. R. 147.—S. AF.

sk. —— *Decision of immigration authority—Jurisdiction of court to interfere.*]—The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently.—UNION GOVERNMENT *v.* FAKIR, [1923] App. D. 466.—S. AF.

sl. —— —— ——.]—Appct., an Asiatic, had been declared by the immigration officer of Natal to be a prohibited immigrant On application to the ct. for an order restraining his deportation:—*Held:* as the immigration officer had not acted outside his jurisdiction or *malâ fide*, the ct. had no jurisdiction to make the order prayed.—NARAINSAMY *v.* PRINCIPAL IMMIGRATION OFFICER, [1923] App. D. 673.—S. AF.

sm. —— *Requirement of immigration officer—Effect.*]—When an immigration officer requires a person to make & sign a declaration under sect. 19 (1) (*a*) of Act 22, 1913, his requirement becomes a requirement of the Act, & failure to comply therewith is an offence under sect. 27 (*d*).—R. *v.* LAUGHTON, [1930] N. L. R. 47.—S. AF.

sn. *Immigration & Indian Relief Act, 37 of 1927, s. 5—Retrospective.*]—PRINCIPAL IMMIGRATION OFFICER *v.* PURSHOTAM, [1928] App. D. 435.—S. AF.

so. *Indian Immigration Act*, 1891 (*Natal*)—*Liability of employers for medical attendance on Indian immigrants.*]—Employers were held liable under the above Act for medical attendance on Indian immigrants, who, after being free, had not re-indentured, themselves & for their descendants.—INDIAN IMMIGRATION TRUST BOARD OF NATAL *v.* GOVINDSAMY (1920), 37 T. L. R. 128.—S. AF.

544. *Add. Annotations :—As to* (2) **Folld.** R. *v.* Shaffner (1920), 14 Cr. App. Rep. 131 ; R. *v* Rogoff (1924), 18 Cr. App. Rep. 1.

544a. —— —— —— —— **Family domiciled in England.**]—R. *v.* ROGOFF (1924), 18 Cr. App. Rep. 1, C. C. A.

547. *Add. Annotation :*—**Folld.** R. *v.* Gilbert (1921), 16 Cr. App. Rep. 34.

548a. —— —— —— **Unnecessary aggravation of sentence involved.**]—R. *v.* IRVING (1920), 15 Cr. App. Rep. 61, C. C. A.

551. *Add. Annotations* :—**Consd.** Eshugbayi Eleko *v.* Nigeria Govt., [1931] A. C. 662. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209 ; R. *v.* Brixton Prison, *Ex p.* Bloom (1920), 90 L. J. K. B. 574 ; R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

551a. —— —— ——.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State " if he deems it to be conducive to the public good " to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.—R. *v.* LEMAN STREET POLICE STATION INSPECTOR, *Ex p.* VENICOFF, R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* VENICOFF, [1920] 3 K. B. 72 ; 89 L. J. K. B. 1200 ; 23 L. T. 573 ; 84 J. P. 222 ; 36 T. L. R. 677, D. C.

Annotation :—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

553. *Add. Annotations :—As to* (1) **Consd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209.

553a. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Power of expulsion in time of peace.**]—Appct. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appct. Upon an application for a writ of *habeas corpus :—Held :* the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1920, art. 12.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* BLOOM (1920), 90 L. J. K. B. 574 ; 124 L. T. 375 ; 85 J. P. 87 ; 19 L. G. R. 62 ; 26 Cox, C. C. 687, D. C.

553b. —— —— ——.]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SUGARMAN (1922), 127 L. T. 27 ; 86 J. P. 75 ; 38 T. L. R. 325 ; 27 Cox, C. C. 208, D. C.

553c. —— —— —— **Form of order by Secretary of State.**]—The making of an order for the deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—R. *v.* HOME SECRETARY, *Ex p.* BRESSLER (1924), 131 L. T. 386 ; 88 J. P. 89 ; 68 Sol. Jo. 646 ; 22 L. G. R. 460 ; 27 Cox, C. C. 655, C. A.

553d. —— —— **Recommendation for deportation —Right of appeal.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *post*.

553e. —— —— —— **Stateless aliens.**]—Two aliens found guilty at the County of London Sessions of receiving stolen goods were natives of the late Russian Empire. At the date of their trial they were not recognised as nationals by the U.S.S.R., & were therefore stateless. The Deputy-Chairman of the London Sessions recommended that they should be deported. He knew that the recommendation could not be carried out, but intended by it to direct the attention of the Secretary of State to the question of whether he should make an order under Aliens Order, 1920, Art. 11, imposing restrictions on the activities of the prisoners in this country :—*Held :* the Deputy-Chairman had no jurisdiction to recommend deportation in these circumstances, & his recommendation should be quashed.—R. *v.* GOLDFARB, R. *v.* SZCZENSLIVE, [1936] 1 All E. R. 169 ; 154 L. T. 408 ; 100 J. P. 120 ; 52 T. L. R. 254 ; 80 Sol. Jo. 267 ; 25 Cr. App. Rep. 161 ; 34 L. G. R. 184 ; 30 Cox, C. C. 360, C. C. A.

552 i. *Aliens Restriction Order*, 1915 —*Power of expulsion in war time—Validity of Order—Power to specify destination.*]—*Held :* par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914-1916, s. 6 ; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his subsequent arrest & detention & the placing him on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth ; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—FERRANDO *v.* PEARCE (1918), 25 C. L. R. 241.—**AUS.**

sp. —— —— *Necessity of communication of deportation order to alien.* —Par. 25 of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436. —**AUS.**

sr. —— —— *Form of deportation order.*]—Such order need not be in any particular form.—JERGER *v.* PEARCE (1920), 28 C. L. R. 588. —**AUS.**

sw. *Aliens Restriction Order*, 1916 —*Power of expulsion in war time—Subject of allied State liable for military service.*]—The Minister having ordered the deportation of an Italian subject for military service, the ct. refused an application for a rule *nisi* for *habeas corpus*, the matter being in the Minister's discretion under the above Order.—*Ex p.* MAGGI (1918), 18 S. R. N. S. W. 150.—**AUS.**

Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation:*—26 Cox, C. C. 16, D. C.

558a. —— —— —— **Aliens Order, 1920.**]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—RODDA *v.* GODFREY (1926), 95 L. J. K. B. 704; 90 J. P. 111; 42 T. L. R. 473; 24 L. G. R. 311; 28 Cox, C. C. 209, D. C.

558b. —— —— —— ——.]—The fact that the keeper of any premises to which the above Order of 1920, art. 7, applies knows that a person staying at such premises is a British subject, does not excuse compliance with the obligation to require such person to sign a statement as to his nationality.—WILLIAMS *v.* JONES, [1928] 2 K. B. 227; 97 L. J. K. B. 606; 139 L. T. 167; 92 J. P. 79; 44 T. L. R. 511; 26 L. G. R. 318; 28 Cox, C. C. 505, D. C.

558c. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.**]—Resp., who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business resp. continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against resp. for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information:—*Held:* the justices were right, as resp. had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—BRUNNING *v.* KOLLROSS, [1923] 1 K. B. 311; 92 L. J. K. B. 323; 128 L. T. 600; 87 J. P. 41; 39 T. L. R. 129; 67 Sol. Jo. 278; 21 L. G. R. 108; 27 Cox, C. C. 383, D. C.

558d. —— —— —— **Addition of "& Co."**]—An alien uses a name "other than that by which he was ordinarily known" on Aug. 4, 1914, contrary to sect. 7 (1) of the Act of 1919, if he adds to the name by which he was ordinarily known on that date the words "& Co."—EVANS *v.* PIAUNEAU, [1927] 2 K. B. 374; 96 L. J. K. B. 734; 137 L. T. 482; 91 J. P. 97; 43 T. L. R. 524; 25 L. G. R. 321; 28 Cox, C. C. 410, D. C.

558e. —— —— **Prosecution under—Whether offences triable on indictment.**]—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.

(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.

(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—R. *v.* KAKELO, [1923] 2 K. B. 793; 92 L. J. K. B. 997; 129 L. T. 477; 87 J. P. 184; 39 T. L. R. 671; 68 Sol. Jo. 41; 27 Cox, C. C. 454; 17 Cr. App. Rep. 150, C. C. A.

558f. —— —— —— **Proof of Order.**]—R. *v.* KAKELO, No. 558e, *ante*.

558g. —— —— —— **Proof of alienage.**]—R. *v.* KAKELO, No. 558e, *ante*.

558h. —— —— —— **Appeal—Effect of ambiguous plea.**]—Appct. was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked "Are you an Egyptian?" to which he answered "Yes." He was then asked "Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going?" to which he answered "No." Thereupon the magistrate entered a plea of guilty & sentenced appct. to imprisonment for one month & recommended the making of a deportation order against him:—*Held:* appct. had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, &, therefore, he had a right of appeal to quarter sessions by virtue of those sections.—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, [1921] 2 K. B. 473; 90 L. J. K. B. 818; 125 L. T. 310; 85 J. P. 189; 37 T. L. R. 611; 19 L. G. R. 461; 26 Cox, C. C. 747, D. C.

558i. —— —— —— —— **From recommendation for deportation.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *ante*.

PART IX.

sx. *Registration—No proof of no permanent place of residence.*

was convicted for neglect to register as an enemy alien. There was no evidence that deft. had no permanent place of residence in Canada:—*Held:* the charge could not succeed.—R. *v.* HACKMAN (1919), 44 O. L. R. 224; 15 O. W. N. 190.—CAN.

558j. —— **Aliens Order, 1920—Effect on acquisition of English domicile.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities imposed by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* the provisions of the Act of 1914 & the Order of 1920 did not preclude petitioner from acquiring an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9; 101 L. J. P. 4; 146 L. T. 121; 48 T. L. R. 94; 75 Sol. Jo. 868, C. A.

558k. —— —— **Prosecution under—Effect of receiving inadmissible evidence.**]—At the trial of applt. who was a British subject by birth, for an offence against art. 6, para. 1 (*a*) of Aliens Order, 1920, & for making an untrue statement for the purpose of procuring a passport, the prosecution endeavoured to prove by means of a photostatic copy of a certificate of naturalisation authenticated by the seal of the United States of America that applt. had lost his British nationality. Applt. was convicted on both charges, & on appeal it was conceded by the Crown that the document ought not to have been admitted in evidence, inasmuch as the mode of authenticating the document did not fulfil the requirements of Evidence Act, 1851 (c. 99), s. 7 :—*Held :* though the prosecution might have proceeded at the trial on the basis that under Aliens Restriction Act, 1914 (c. 12), s. 1 (4), the burden of proving that he was not an alien lay on applt., they had not taken this course, but had themselves accepted the burden of proof & endeavoured to discharge it by putting in evidence an inadmissible document, & accordingly the conviction must be quashed.—R. *v.* BEADON (1933), 24 Cr. App. Rep. 59, C. C. A.

559. *Add. Annotation :* — **Refd.** Ronnfeldt *v.* Phillips (1918), 35 T. L. R. 46.

560. *Add. Annotations :*—**Consd.** Ernest *v.* Metropolitan Police Comr. (1919), 89 L. J. K. B. 42. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; *Re* De Keyser's Royal Hotel, De Keyser's Royal Hotel *v.* R., [1919] 2 Ch. 197; Chester *v.* Bateson, [1920] 1 K. B. 829; Fowle *v.* Monsell (1920), 90 L. J. K. B. 105; Gurney *v.* Houghton (1920), 123 L. T. 706; Hudsons' Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; R. *v.* Leman Street Police Station Inspector, *Ex p.* Venicoff, [1920] 3 K. B. 72; R. *v.* Wormwood Scrubbs Prison, [1920] 2 K. B. 305; Shutler *v.* Rolfe (1920), 36 T. L. R. 828; R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Mentd.** Bro vn *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565.

561. *Add. Annotations :*—**Refd.** R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361. **Mentd.** *Re* Clifford & O'Sullivan, [1921] 2 A. C. 470; Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

561a. —— **Restrictions as to change of name—Validity.**]—Applt., a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Realm Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so :—*Held :* reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—ERNEST *v.* METROPOLITAN POLICE COMR. (1919), 89 L. J. K. B. 42; 121 L. T. 222; 83 J. P. 182; 35 T. L. R. 512; 17 L. G. R. 448; 26 Cox, C. C. 458, D. C.

563. *Add. Citation :*—26 Cox, C. C. 58, D. C.

ALKALI WORKS.

See INSURANCE; PUBLIC HEALTH.

ALLOTMENT OF SHARES.

See COMPANIES.

AMICUS CURIÆ.

See BARRISTERS; CRIMINAL LAW.

ANIMALS.

Part II.—Property in Animals.

20. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

32. *Add. Annotation :*—**Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

34. *Add. Annotations :*—*As to* (3) **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Refd.** Granby *v.* Bakewell U. D. C. (1928), 87 J. P. 105 ; Peech *v.* Best (1930), 99 L. J. K. B. 537 ; Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

43. *Add. Annotation :*—**Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

44. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

45. *Add. Annotations :*—**Refd.** The Tubantia, [1924] P. 78 ; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

46. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

65. *Add. Annotation :*—**Refd.** Farey *v.* Welch (1929), 28 Cox, C. C. 604.

67a. —— **Unlawful taking—Larceny Act, 1861 (c. 96), s. 23—Necessity for mens rea.**]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeons taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

Annotation :—**Expld. & Dbtd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

73. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

80. *Add. Annotation :*—**Refd.** Farey *v.* Welch, [1929] 1 K. B. 388.

90. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation :*—**Apld.** Barnard *v.* Evans, [1925] 2 K. B. 794.

107. *Add. Annotation :*—**Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

109. *Add. Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

116. *Add. Annotations :*—**Consd.** Barnard *v.* Evans, [1925] 2 K. K. 794 ; Cotterill *v.* Penn, [1936] 1 K. B. 53.

117. *Add. Annotation :*—**Refd.** Nye *v.* Niblett (1917), 87 L. J. K. B. 590.

119. *Add. Annotations :*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388. **Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

PART II. SECT. 1, SUB-SECT. 1.

a. *Camel.*]—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals.—NADA SHAH *v.* SLEEMAN (1917), 19 W. A. L. R. 119.—**AUS.**

sg. *Ranch-bred fox.*]—*Held :* a domestic animal.—EBERS *v.* MACEACHERN, [1932] 3 D. L. R. 415 ; 4 M. P. R. 333.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

sk. *Steer—What amounts to stealing.*]—R. *v.* WOOD, [1934] 1 W. W. R. 191.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. —— —— ——.]—A fox born & reared in captivity escaped & was killed by defts. upon a stranger's land a week later :—*Held :* the fox was an animal *feræ naturæ ;* pltf.'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by defts. ; there was no immediate pursuit, nor was there *animus revertendi.*—CAMPBELL *v.* HEDLEY (1917), 39 O. L. R. 528 ; 37 D. L. R. 289.—**CAN.**

50 ii. —— *Damage to hives.*]—A bee is not an animal within Criminal Law Consolidation Act, 1876 (S. A.), s. 119.—R. *v.* NITSCHKE, [1928] S. A. S. R. 229.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.

74 ii. —— *Animal killed by trespasser.*]—When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property, & the latter, either himself or by his duly authorised agent, is entitled to demand &, if refused, seize the carcass, & such persons as help him to exercise his right are doing no wrong ; but as against any other person, the killer has a right to retain possession of the carcass.—R. *v.* ARTU RANTRA (1924), I. L. R. 3 Pat. 549.—**IND.**

PART II. SECT. 3.

sb. *As between husband & wife—Wife's cattle on husband's farm.*]—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or manager, but as his own business, & the offspring of the original stock are treated in the same way & sold from time to time & the proceeds invested in other stock, the increase of the original animals & the animals bought from the proceeds of the sale cannot be claimed by the wife.—MINAKER *v.* HADDEN, [1917] 3 W. W. R. 774.—**CAN.**

sc. *Brood of tame & domestic animals—Belongs to owner of dam or mother.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808 ; [1927] W. W. R. 429.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B.

103 iii. —— *No actual interference with sheep.*]—The accused was prosecuted under sect. 537 (*a*) of the Criminal Code for the killing of a dog. It was admitted that the dog was shot & killed by the accused while on accused's premises. The accused alleged that the dog was chasing & worrying his cattle :—*Held :* no danger to sheep being involved, Sheep Protection & Dog Licensing Act, R.S.S., 1930, s. 3 (c) did not afford a defence ; & the accused must prove that he fired the shot either because the dog was molesting his cattle or because he had reasonable apprehension that it was about to injure his cattle & he believed they could be protected in no other way ; the mere fact that the dog was trespassing was no excuse. On the evidence the defence failed.—R. (STEEL) *v.* STEWART, [1937] 1 W. W. R. 400.—**CAN.**

sd. *Straying bull tied up during night—Released & driven away next day—Subsequently found dying.*]—Deft. tied up over night a bull which had strayed on his premises, to prevent it damaging his cows & released it next day & drove it away. In the evening it was found castrated near the boundary of deft.'s farm & died the next day. In an action for damages :—*Held :* deft.'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, pltf. could not succeed.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585 ; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—C.

104 ii. ——.]—The making use of dogs to drive away trespassing cattle is not wrongful where in doing so the cattle are not wilfully or negligently injured.—CHALEFOUR *v.* CRETIEN, [1930] 2 W. W. R. 77.—**CAN.**

86. *Claim against custodian of animal—Onus of proof as to absence of negligence.*]—The *onus* is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585; 3 W. W. R. 308.—**CAN.**

126 v. —— ——.]—Pltf.'s cow died from choking over an onion from a dump of culled onions which deft. had dumped in the space occupied by an "A" fence between the adjoining fields of pltf. & deft. It was found that the onions were closer to deft.'s side of the fence than to pltf.'s, & there was a break in the rail on pltf.'s side through which the cow got access to them & that if it had not been broken the accident would not have happened:—*Held:* as it was the duty of pltf. to keep his side of the fence in repair the cow was a trespasser, &, therefore, deft. was not liable for its loss.—SCHNEIDER *v.* HEE FONG, [1935] 1 W. W. R. 366; 2 D. L. R. 812.—**CAN.**

132 ii a. —— *Animal falling in well—Animal lawfully at large.*]—Pltf.'s horse while lawfully running at large was killed by falling into an open well on deft.'s land. Deft., who knew of the open well, was residing outside the province, the land being occupied by a tenant:—*Held:* deft.'s breach of Open Wells Act gave pltf. a right of action "on a tort committed within the jurisdiction," justifying allowance of the issue of a writ for service on deft. *ex juris.*—BROTHERSON *v.* KENNEDY, [1919] 2 W. W. R. 803; 47 D. L. R. 131; 12 Sask. L. R. 304.—**CAN.**

132 ii b. —— —— *What is an "open well."*]—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it occurred does not prove it such, nor does the fact that the material of the covering was seven years old.—DRYSDALE *v.* REID, [1920] 3 W. W. R. 832.—**CAN.**

132 ii c. —— —— *Animal unlawfully at large.*]—Owners of such animals have no right of action where they are killed or injured by falling into an open well.—DILLE *v.* GREAT WEST LIFE ASSURANCE CO., [1926] 3 D. L. R. 339; [1926] 2 W. W. R. 342; 20 Sask. L. R. 545.—**CAN.**

132 ii d. —— —— —— ——.]—Where pltf. proves that his stock strayed on to deft.'s premises & there fell into a well & was killed, he has established a *prima facie* violation of the Act, & where deft.'s only explanation is that he erected a protection reasonably sufficient to keep animals away from the well, but that the animal in question somehow or other got into the well, he has not rebutted the *prima facie* case, especially where the circumstances justify the inference that the animal got through the protection by doing that which animals are wont to do.—PITMAN *v.* BROWN, [1925] 3 D. L. R. 61; [1925] 2 W. W. R. 36; 19 Sask. L. R. 362.—**CAN.**

132 ii e. —— —— *Ignorance of owner as to existence of well.*]—An owner of land on which there is an open well contrary to statute cannot rid himself of liability for damages caused thereby by pleading that he did not know it was there.—HUDSON *v.* SILZER (Sask.), [1919] 3 W. W. R. 575; 49 D. L. R. 125.—**CAN.**

132 iii a. —— ——.]—The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was held to be a misfeasance which rendered the municipality liable for the loss of a horse which plunged into the ditch & was killed.—HOWELL *v.* WILTON RURAL MUNICIPALITY NO. 472 (1922), 66 D. L. R. 321; 15 Sask. L. R. 427; [1922] 2 W. W. R. 568.—**CAN.**

132 iv. —— *Animal falling in excavation.*]—Deft. & pltf. were neighbours. Pltf.'s cow while running at large fell into an excavation on deft.'s land:—*Held:* pltf. could not recover damages.—PITTZEN *v.* SHOKLUK, [1921] 2 W. W. R. 686; 16 Alta. L. R. 482.—**CAN.**

132 v. —— ——.]—The owner or occupier of land will be liable in damages for any loss of stock resulting from failure to guard against access to an excavation.—KELLOGG *v.* DAPPEN (1922), 69 D. L. R. 528; [1922] 3 W. W. R. 573.—**CAN.**

132 vi. —— —— *Cellar of unused house.*]—Deft. owned unfenced land on which was an unused open house with a cellar beneath. Pltf.'s horse, running at large, got into the house, &, while there, one of its feet broke through the floor above the cellar &, being unable to withdraw it, it died:—*Held:* the animals must take the land as they find it, & Open Wells Act did not apply.—WRUBLESKI *v.* LOFT, [1923] 2 W. W. R. 764.—**CAN.**

z i. —— ——.]—Where there is a bye-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway, & injured thereon.—CHASE *v.* COLERIDGE, [1917] 2 W. W. R. 736.—**CAN.**

z ii. —— *On racecourse—Injury to racehorse.*]—Applt.'s racehorse was injured on resp.'s racecourse by a splinter from a stake used to flag off a portion of the regular course, which had become dangerous owing to heavy rain:—*Held:* resp. having taken proper steps to ensure that the course was as safe as reasonable care & skill could make it, & the risk not being in the nature of a "trap," no liability attached for the injury.—WACKROW *v.* TAKAPUNA JOCKEY CLUB, [1928] N. Z. L. R. 249.—**N.Z.**

137 xiii. —— —— ——.]—The mere fact that a government railway line passing through pastoral country is unfenced cannot be taken as an implied permission by the Transport Comrs. for stock of adjoining landowners to be upon, or to cross, such line. An animal straying on such a railway line is a trespasser, & the only duty owed by the Transport Comrs. to the owner of the animal is not recklessly to disregard its presence, or intentionally to inflict injury upon it.—NEW SOUTH WALES TRANSPORT COMRS. *v.* BAKTON, [1933] Argus L. R. 228; 6 A. L. J. 459; 49 C. L. R. 114; 33 S. R. N. S. W. 507; 50 N. S. W. W. N. 230.—**AUS.**

137 xiv. —— —— *Negligence of owner.*]—An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of pltf.—NELSON *v.* GRAND TRUNK PACIFIC RY. CO. (1920), 51 D. L. R. 141.—**CAN.**

k i. *Grain left accessible to stock—Injury from eating—Grain escaping from granary.*]—Where animals straying upon the premises were injured by consuming grain which had escaped from a granary through no fault of the grower:—*Held:* deft. was not liable under Open Wells Act, R. S. S. (c 124), s. 3.—HILL *v.* MALLACH, [1918] 1 W. W. R. 10; 10 Sask. L. R. 419; 37 D. L. R. 709.—**CAN.**

k ii. —— —— *Animal lawfully at large.*]—Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—WATSON *v.* GUILLAUME, [1918] 2 W. W. R. 1047; 11 Sask. L. R. 348; 42 D. L. R. 380.—**CAN.**

k iii. —— —— —— *Granary reasonably fit for grain.*]—*Held:* defts. were not liable for damages for injury to pltfs.' horses, while lawfully running at large, caused by eating wheat which had run from a granary on defts.' premises, in view of the jury's finding that the granary was reasonably fit for storing the wheat as against animals running at large.—GLENN & BABB *v.* SCHOFIELD, [1928] 2 D. L. R. 319; [1928] S. C. R. 208.—**CAN.**

k iv. —— —— *Animal trespassing.*]—If grain be left in such an unguarded condition as to permit of horses being attracted by it & eating it to their injury, the owner of the grain will be liable for the resulting damage, even though the horses are trespassers.—FULTON *v.* RANDALL, GEE & MITCHELL, LTD., [1918] 3 W. W. R. 331.—**CAN.**

k v. —— —— ——.]—A person who allows threshed grain to be accessible to stock, is liable in damages for the death of an animal resulting therefrom, even though the animal was unlawfully at large, unless the owner of the animal when turning it at large knew that such grain was accessible to stock.—HAWORTH *v.* WEBB (1922), 65 D. L. R. 174; 15 Sask. L. R. 275; [1922] 1 W. W. R. 1070.—**CAN.**

k vi. —— —— ——.]—Pltf. alleged that deft. while engaged in seeding left out in his unfenced ploughed field an unprotected waggon box which contained wheat & that pltf.'s horse while lawfully running at large gorged

139. *Add. Annotations :*—**Consd.** Dunster *v.* Hollis, [1918] 2 K. B. 795. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

140. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

145. *Add. Annotation :*—*As to* (1) **Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

145a. Animal killed—Meaning of "external & visible injury."]—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy. The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained :—*Held :* (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible ; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—BURRIDGE & SON *v.* HAINES (F. H.) & SONS, LTD. (1918), 87 L. J. K. B. 641 ; 118 L. T. 681 ; 62 Sol. Jo. 521, D. C.

itself with the wheat & died :—*Held :* deft. was not liable.—MUSSELMAN *v.* ZIMMERMAN (1922), 66 D. L. R. 350; [1922] 2 W. W. R. 640.—**CAN.**

k vii. —— —— ——.]—The result of an action under Open Wells Act, R. S. S., 1920 (c. 169), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S. 1920 (c. 124).—WENTZALL *v.* PERKS, [1924] 3 W. W. R. 876.—**CAN.**

k viii. —— —— *Grain mixed with poisonous substance.*]—No liability attaches to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—DAWSON *v.* PARADISE MINE & CANADIAN PACIFIC RY. CO., [1919] 1 W. W. R. 499.—**CAN.**

k ix. —— ——.]—The obligation imposed by Open Wells, etc., Act, R. S. S., 1920 (c. 160), s. 4, is an absolute one, & where another's animals have been injured as the result of threshed grain being accessible to them, the fact that the granary in question was reasonably fit for the storage of grain as against animals running at large is no defence.—SCHOFIELD *v.* GLENN & BABB, [1927] 3 D. L. R. 188 ; [1927] 2 W. W. R. 183 ; 21 Sask. L. R. 494.—**CAN.**

n i. —— *Running into animal using highway.*]—Deft., while driving his automobile at dusk at twenty-five miles an hour with his lights on, ran into pltf.'s cow which he had not seen until very close to it. He was held liable in damages.—JOHNSON *v.* GIFFEN (1921), 62 D. L. R. 635 ; [1921] 3 W. W. R. 596.—**CAN.**

n ii. —— ——.]—PAWLUK *v.* FRIESEN, [1930] 2 D. L. R. 991.—**CAN.**

pi. —— *Turkeys at large on highway.*]—CRONSBERRY *v.* PETERSON (1936), 5 F. L. J. (Can.), 309.—**CAN.**

p ii. —— *Running over cow drinking from gutter.*]—A motorist, colliding with a cow which had stopped to drink from a gutter while being driven from pasture, is liable for damages on the principle of *res ipsa loquitur*.—CROWLEY *v.* GARDNER, [1936] 3 D. L. R. 795.—**CAN.**

w i. —— *Liability of boatowner for act of repairer.*]—A boatowner employed a joiner to repair his boats. The paint scrapings were left lying on the ground, & poisoned a cow that was grazing on the pasture :—*Held :* it was the boatowner's duty to see that the paint scrapings were removed, & he was liable in damages for the cow's death.—STEWART *v.* ADAMS, [1920] S. C. 129 ; 57 Sc. L. R. 83.—**SCOT.**

w ii. —— *Animals lawfully at large—Whether poison hidden trap.*]—Poison which deft. had put in bags on his unfenced land & carefully covered with manure, & which, without his knowledge, became exposed & caused the death of pltf.'s cattle lawfully at large, which entered on the land :—*Held :* not to constitute a hidden trap.—WINMILL & THOMAS *v.* COLLINS (Sask.), [1927] 3 W. W. R. 325 ; *revsd.*, [1928] 2 D. L. R. 353 ; 1 W. W. R. 705 ; 22 S. L. R. 422.—**CAN.**

w iii. —— —— ——.]—Pltf. & deft. were farmers & occupied adjoining lands separated by a three-strand wire line fence, secured by posts. Deft.'s servant in the course of spreading grasshopper poison on deft.'s land, left an open bag of the composition on the ground at five feet distance from the fence. A horse & a number of cattle, property of pltf., pasturing on his land, were attracted by the smell of the poison, which consists in part of bran & salt, & having broken down one of the strands, were able from pltf.'s land to reach the bag, &, eating the poison, they died. Pltf. sought to hold deft. liable for negligence. Deft. & his servant knew that the mixture was poisonous to horses & cattle, & that pltf.'s horse & cattle were loose on pltf.'s land. Whether they knew that the poison was an allurement to cattle was not gone into. Judgment for pltf. Deft. appealed :—*Held :* the appeal should be allowed & the action dismissed.—PEROZEK *v.* SINCLAIR, [1933] 2 W. W. R. 484 ; 4 D. L. R. 317 ; 41 Man. L. R. 263.—**CAN.**

141 i. *Wrong quantity in poisonous dip—Animals poisoned.*]—Pltf. alleged that the death of his sheep was due to the presence of an excess of arsenic in powder manufactured & sold by defts. which he had added, together with more than the quantity of water specified in defts.' printed instructions, to a solution through which the sheep had already been passed without injury :—*Held :* pltf. had not proved that the death of the sheep was due to an excess of arsenic in the powder.—COOPER *v.* VISSER, [1920] App. D. 111. —**S. AF.**

PART III. SECT. 1, SUB-SECT. 1.—G.

c i. —— ——.]—A claimant has a right of action to compel council & valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation ; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—HOGLE *v.* ERNESTTOWN TOWNSHIP (1918), 41 O. L. R. 394 ; 13 O. W. N. 347 ; 41 D. L. R. 123.—**CAN.**

c ii. —— —— *Mandamus.*]—The direction to the municipal council to award compensation under the Act of 1914 is mandatory ; & they may by *mandamus* be required to obey the statute.—NOBLE *v.* ESQUESING TOWNSHIP (1918), 41 O. L. R. 400 ; 13 O. W. N. 339 ; 41 D. L. R. 99.—**CAN.**

c iii. —— —— ——.]—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—HUDSON & HARDY *v.* BIDDULPH TOWNSHIP (1920), 46 O. L. R. 216.—**CAN.**

sf. —— *Wanton killing of unlicensed dog.*]—Notwithstanding the Act of 1917, B. C., s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly.—WILGRESS *v.* RITCHIE, [1920] 2 W. W. R. 421 ; 52 D. L. R. 543.—**CAN.**

sg. *Stock-brands Act, R. S. B. C.*, 1924 — *Offence against.*]—R. *ex rel* MAXSON *v.* DOBBIN (B. C.), [1929] 3 W. W. R. 176 ; 52 Can. Crim. Cas. 342.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—H.

sh. *Damage to mare in foal.*]—An unborn animal, while it remains *in utero*, has no independent existence as a chattel. In an action for negligence owing to an injury suffered by a mare in foal, which caused her death & prevented the foal from being born alive, the injury assessed damages on the basis of the mare & foal as separate chattels :—*Held :* the true measure of damages was for the mare in foal & not for the mare & foal separately, &, therefore, there must be a new trial.—BELL *v.* THOMPSON (1934), 34 S. R. N. S. W. 431 ; 51 N. S. W. W. N. 138.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.

sk. *Stray Animals Act, 1920 (c. 124)—Meaning of animal—Turkey.*]—Since turkeys are not included under the words "animal" or "animals" in above Act an owner of a turkey, who enters upon another's land to get the turkey after it has strayed thereon commits a trespass.—SORLIE *v.* MCKEE, [1927] 1 D. L. R. 249 ; [1927] 1 W. W. R. 56 ; 21 Sask. L. R. 330.—**CAN.**

sm. *Authorised round-up—Liability for trespass.*]—A person who is authorised by the Minister to conduct a round-up in pursuance of a petition therefor under sect. 125 (3) of Domestic Animals (Unorganised Territory) Act, 1924, is personally liable for a trespass committed in the course of the conduct of the round-up. The liability imposed by said sub-sect. (3) is both joint & several on each one of the signers of the petition. The fact that some of the required number of the

151. After this case add "*See, also,* CONSTITUTIONAL LAW, Vol. XI., p. 589; COPYHOLDS, Vol. XIII., pp. 21 *et seq.*"

154. *Add. Citation :*—17 C. B. N. S. 251, n.

Add. Annotations :—**Refd.** Read *v.* Edwards (1864), 17 C. B. N. S. 245; Gayler & Pope *v.* Davies (1924), 93 L. J. K. B. 702.

156a. ——.]—MANTON *v.* BROCKLEBANK, No. 258a, *post.*

156b. ——.]—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *primâ facie* evidence of negligence on the part of the owner.—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., [1924] 2 K. B. 75; 93 L. J. K. B. 702; 131 L. T. 507; 40 T. L. R. 591; 68 Sol. Jo. 685.

Annotation :—Generally, **Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

159. *Add. Citation :*—62 Sol. Jo. 161.

Add. Annotation :—As to (1) **Refd.** Richards *v.* Davies, [1921] 1 Ch. 90.

162. After this case add "*See, now,* Dogs Act, 1906 (c. 32), s. 1 (1) (3)."

163a. Cat killing pigeons.]—The owner of a cat is not bound to keep it from straying into a neighbour's land.

A cat belongs to the class of animals *mansuetæ naturæ.* For mischief done by it in following the common instincts of its kind, its owner is not liable. To make him liable he must have knowledge of some vicious propensity beyond those common instincts. Therefore where a cat strayed from its owner's land into the land of a neighbour & killed fowls & pigeons kept there :—*Held :* the owner of the cat was not liable.—BUCKLE *v.* HOLMES, [1926] 2 K. B. 125; 95 L. J. K. B. 547; 134 L. T. 743; 90 J. P. 109; 42 T. L. R. 369; 70 Sol. Jo. 464, C. A

Annotation :—**Refd.** Cutler *v.* United Dairies (London), Ltd. [1933] 2 K. B. 297.

166. *Add Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

167. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

168. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

17 . —— —— ——.]—ANON. (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19.

Annotations :—**Refd.** Right *v.* Barnard (1674), Freem. K. B. 379; Ricketts *v.* East & West India Docks, etc., Ry. (1852), 12 C. B. 160.

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signatures to the petition are forgeries & the consent of the Minister was therefore obtained by deception does not relieve the actual signers of it from responsibility for the wrongful conduct of the round-up.—JONES *v.* WALKER, [1932] 3 W. W. R. 327.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A.

154 ix. ——.]—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—**CAN.**

154 x. —— *To remove cattle—Under Domestic Animals Act, R. S. A.,* 1922 (c. 67), *s.* 64.]—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra-municipal area which has not been closed under s. 8 of the above Act, & none of the lands have ever been within a municipal or pound district, & if A.'s cattle stray on to B.'s lands & B. gives notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a permanent removal.—R. (GAGAN) *v.* HILLMER, [1923] 3 W. W. R. 660.—**CAN.**

157 i. —— *Default of plaintiff leaving property unprotected.*]—There is no liability for cattle straying on to land open on two sides, & not therefore protected by a lawful fence as required by Trespass Act, R.S.B.C., 1924, s. 14. —MACDONALD-BUCHANAN *v.* JOHNSON, [1934] 1 D. L. R. 216.—**CAN.**

176 iii. —— —— ——.]—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance & repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages. —ARMSTRONG *v.* THOMPSON, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—**CAN.**

h i. —— ——.]—A horse belonging to applt. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull. The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908 :—*Held :* there was no evidence of negligence by resp. towards applt. & without proof of *scienter* damages were not recoverable.—EDWARDS *v.* RAWLINS, [1924] N. Z. L. R. 333.—**N.Z.**

l i. ——.]—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run. —KOCH *v.* GRAND TRUNK PACIFIC BRANCH LINES CO., [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—**CAN.**

l ii. ——.]—Damage caused by a bull running at large contrary to Entire Animals Ordinance, s. 4, is recoverable though the property damaged is not surrounded by a lawful fence.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

l iii. ——.]—The owner of cattle rightfully running at large is not liable for damage to crops done by them on unfenced land.—MCKAY *v.* LOUCKS, [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—**CAN.**

l iv. ——.]—Animals are not running at large when in charge of a herdsman. —R. *v.* PETERSON, [1920] 1 W. W. R. 506; 51 D. L. R. 104; 32 Can. Crim. Cas. 218.—**CAN.**

l v. ——.]—CLEARY *v.* HITE, [1921] 3 W. W. R. 130.—**CAN.**

l vi. ——.]—Pltf. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to pltf.'s land & ate up his grain which was, to deft.'s knowledge, lying in stooks thereon :—*Held :* deft. was liable in damages.—DOBROLOWSKI *v.* DANYLUK, [1921] 2 W. W. R. 729.—**CAN.**

l vii. ——.]—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within Stray Animals Act.—R. *v.* BRADY, [1921] 3 W. W. R. 396.—**CAN.**

l viii. ——.]—Under Animals Act, R. S. B. C., 1924 (c. 11), s. 11, the owner of an animal unlawfully at large is liable for personal injuries committed by it when running at large, as well as for injury to property.—JACOBSON *v.* SCHNEIDER, [1927] 1 D. L. R. 1006; [1927] 2 W. W. R. 257; 38 B. C. R. 83.—**CAN.**

l ix. ——.]—Trespass Act, 1924, c. 260, s. 14, dealing with animals straying into lands unprotected by a lawful fence, does not apply to animals, in this instance swine, which by Animals Act, 1924, c. 11, s. 3, are absolutely prohibited from being at large.—BISHOP *v.* LIDEN, [1929] 1 D. L. R. 998; 1 W. W. R. 402; 40 B. C. R. 556.—**CAN.**

lx. ——.]—*Semble :* animals which break out of one enclosure into an adjoining enclosure belonging to another person are at large within Stray Animals Act, R.S.S., 1930.—SINCLAIR *v.* KENNEDY, [1936] 3 W. W. R. 641.—**CAN.**

n i. —— ——.]—Where a municipal bye-law is passed pursuant to Stray Animals Act, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

n ii. —— ——.]—A municipality passed a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of Municipal Act, Man., s. 602 (d) :—*Held :* the effect of the first-mentioned

180. *Add. Annotations :—As to* (1) **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

181. After this case add " *See, also,* Vol. VII., pp. 281, 282."

183. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

187. *Add Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

188a. **Cat trespassing.**]—BUCKLE *v.* HOLMES, No. 163a, *ante.*

194. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

195. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656; Sycamore *v.* Ley (1932), 147 L. T. 342; Knott *v.* London County Council, [1934] 1 K. B. 126; Deen *v.* Davies, [1935] 2 K. B. 282.

197. *Add. Annotation :*—**Consd.** Arneil *v.* Paterson, [1931] A. C. 560. (So far as I understand the facts, I do not think the headnote in *Piper* v. *Winnifrith* is justified by the facts as found, nor is it justified by anything I find in the judgment, *per* VISCOUNT HAILSHAM.)

197a. —— —— **Liability of each owner for whole damage.**]—Two dogs, the property of different owners, acting in concert, attacked a flock of sheep & injured several. An action of damages brought under this Act by the owners of the sheep against the respective owners of the dogs, craving for a joint & several decree against the defenders, was defended by one defender only, who claimed that he was liable for one-half only of the damage :—*Held :* when once liability under the Act was established, the ordinary measure of damages had to be applied; in law each of the dogs occasioned the whole of the damage as the result of the two dogs acting together, & consequently each owner was responsible for the whole.—ARNEIL *v.* PATERSON, [1931] A. C. 560; 100 L. J. P. C. 161; 145 L. T. 393; 47 T. L. R. 441; 75 Sol. Jo. 424, H. L.

bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages caused by them when so running at large, & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any competent ct. in consequence of any trespass :—*Held :* that provision gave no right of action taken away by the other bye-law provision.—JUKES *v.* MISKELLY, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057.—**CAN.**

194 i. —— *Remoteness of damage.*]—Damages for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle.—WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 44 D. L. R.

194 ii. —— ——.]—Where a heifer was thoroughbred & registered & its owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence upon the strain of subsequent offspring was held too remote & uncertain to be considered.—MCLEAN *v.* BRETT, [1919] W. W. R. 521; 49 D. L. R. 162.—**CAN.**

—.]—Deft.'s trespassing "scrub" bull served young purebred heifer :—*Held :* was entitled to damages for the creased value of the heifer caused her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to "throw back" to the first bull in future breeding.—COUSINS *v.* GREAVES, [1920] 3 W. W. R. 702; 54 D. L. R. 650.—**CAN.**

194 iv. —— ——.]—Deft. negligently allowed his mare to escape & trespass in another's field where she kicked & injured a farm boy while she was being ejected :—*Held :* the injury was not too remote.—HARRISON *v.* ARMSTRONG (1917), 51 I. L. T. 38.—**IR.**

195 iii. —— ——.]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

195 iv. —— ——.]—Deft.'s cattle trespassed on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons :—*Held :* pltf. could not recover damages, as the injury was not an ordinary consequence of the trespass; the damages claimed were too remote, & the proximate cause of the injury was pltf.'s action in approaching the animal on foot which he should not have done.—HATTON *v.* MORTON, [1921] 2 W. W. R. 803.—**CAN.**

197 ia. —— —— ——.]—A sheep owner cannot join the owners of trespassing dogs as defts. in one action for damages for the loss of his sheep.—MCDERMOTT *v.* HUDSON (1920), 16 Tas. L. R. 21.—**AUS.**

197 ib. —— —— —— *Onus of damage done by each dog.*]—A sheep were worried by 5 dogs, of which resp.'s dog & one belonging to an unidentified owner were shot. In an action in the magistrates' ct. resp. was ordered to pay one-fifth of the total damages. There was no direct evidence as to the precise extent of resp.'s dog's depredations as distinguished from those of the other 4 dogs :—*Held :* allowing the appeal, & awarding as against resp. the total damages assessed, if 2 or more dogs belonging to different owners go together & jointly partake in a raid on sheep, then such raid is a joint affair, & on proof of this it lies on the owner of each dog to establish affirmatively the particular part of the damage his dog did, & to establish also that his dog acted independently of the others, & not in concert with them.—LANKSHEAR *v.* FAIR, [1930] N. Z. L. R. 347.—**N.Z.**

197 iv. —— —— ——.]—Where damage is done by animals belonging to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—PIXLEY *v.* BEDFORD, [1918] 2 W. W. R. 1055; 11 Sask. L. R. 345; 42 D. L. R. 560.—**CAN.**

197 v. —— —— ——.]—The owners of different animals were held liable as joint tortfeasors for destruction of —AUTHOUSE *v.* BESANA, [1919] W. R. 725; 49 D. L. R. 158.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

200 ii. ——.]—Where by deft.'s negligence his four-horse team ran away & pltf. ran out to stop them & received injuries :—*Held :* pltf. could not recover damages as he failed to show that any person was in when he tried to stop the h , [1919] 3 W. W. R. 825.—**CAN.**

200 iii. ——.]—A horse owned by deft. co., attached to a bread-wagon, ran away upon a city street & came in contact with a truck upon which pltf. was standing, causing him to fall to

201. *Add. Annotation :* — **Consd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

202. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

203. *Add. Annotations :*—**Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Ellor *v.* Selfridge & Co., Ltd. (1930), 46 T. L. R. 236; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

204. *Add. Annotations :—As to* (1) **Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

205. *Add. Annotations :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Deen *v.* Davies, [1935] 2 K. B. 282.

205a. —— —— **Attempt to stop horse—Volenti non fit injuria.**]—A horse belonging to defts. & attached to one of their vans was seen by pltf. running past his house without the driver. It entered a field immediately adjoining, & separated by a hedge from, pltf.'s garden, & the driver, who had followed it, was trying to pacify it, but as it continued very restive, the driver, who was excited, shouted "Help, help!" whereupon pltf. went over the hedge & attempted to hold the horse, but it suddenly reared & threw him to the ground causing him serious injuries, in respect of which he sued defts. There was evidence that the horse had bolted once, if not twice, before. The jury found (*a*) that pltf. did not freely & voluntarily, with full knowledge of the nature of the risk he ran, impliedly agree to incur it; (*b*) that defts. were guilty of negligence in employing the horse to draw the van; & (*c*) that negligence was the cause of the accident :—*Held :* the negligence (if any) of defts. in employing the horse could not be said to be the cause of the accident, inasmuch as there was a *novus actus interveniens*—namely, pltf.'s attempt to hold the horse, which he must have known was attended with risk, & therefore that the principle of *volenti non fit injuria* applied & precluded the pltf. from recovering.

Per SCRUTTON, L.J.: If a horse bolts in a highway & a bystander tries to stop it & is injured, the owner of the horse is under no legal liability to the injured person.

Per SLESSER, L.J.: If a man sees his child in great peril in the street from a runaway horse, &, moved by paternal affection, dashes out & is injured in attempting to stop the horse, it may in those circumstances well be said that there is in law no *novus actus interveniens*. — CUTLER *v.* UNITED DAIRIES (LONDON), LTD., [1933] 2 K. B. 297; 102 L. J. K. B. 663; 149 L. T. 436, C. A.

Annotation :—**Distd.** Haynes *v.* Harwood & Son, [1935] 1 K. B. 146.

205b. —— —— —— ——.]—Pltf., a police constable, was on duty inside a police station in a street in which, at the material time, were a large number of people, including children. Seeing defts.' runaway horses with a van attached coming down the street he rushed out & eventually stopped them, sustaining injuries in consequence, in respect of which he claimed damages :—*Held :* (1) on the evidence defts.' servant was guilty of negligence in leaving the horses unattended in a busy street; (2) as defts. must or ought to have contemplated that some one might attempt to stop the horses in an endeavour to prevent injury to life & limb, & as the police were under a general duty to intervene to protect life & property, the act of, & injuries to, pltf. were the natural & probable consequences of defts.' negligence; (3) the maxim "*volenti non fit injuria*" did not apply to prevent pltf. recovering.—HAYNES *v.* HARWOOD, [1935] 1 K. B. 146; 104 L. J. K. B. 63; 152 L. T. 121; 51 T. L. R. 100; 78 Sol. Jo. 801, C. A.

Annotations :—As to (3) **Distd.** Sylvester *v.* Chapman, Ltd. (1935), 79 Sol. Jo. 777. **Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

206a. —— ——.]—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., No. 156b, *ante*.

207. *Add. Annotation :*—**Refd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

208. *Add. Annotations :*—**Consd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Distd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125. **Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101. **Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459; Weld-Blundell *v.* Stephens, [1920] A. C. 956.

Add. Annotations :—**Consd.** Paul *v.* G. E. Ry (1920), 36 T. L. R. 344; Hargrove *v.* Burn (1929), 46 T. L. R. 59. **Apprvd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73. **Distd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514; Saies *v.* Bristol Petroleum Co. *v.* G. W. Ry. (1920), 90 L. J. K. B. 1289; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; The Vectis, [1929] P. 204;

the pavement & sustain serious injuries :—*Held :* there was no evidence of negligence. The accident was clearly the result of the horse running ——, & there was no evidence that it was wild or vicious or had any tendency to run away before the accident. —CANIVET *v.* BROWN'S BREAD, LTD., [1930] 1 D. L. R. 519; 64 O. L. R. 580.—**CAN.**

206 x. —— —— *Mechanical precautions for control of horse.*]—TUCKER *v.* HENNESSEY, [1918] V. L. R. 56.—**AUS.**

z i. —— —— ——.]—A two-horse light trolly used for delivering ice was left unattended by the driver in a public road while he delivered ice. The wheel was chained & the reins tied to a swingle-bar. While the driver was in a shop on the roadside the horses were startled by a boy on a bicycle riding over a piece of paper. The driver saw the horses move off, ran out of the shop, & a few seconds later caught the reins. The horses were then trotting, but on one of the horses striking the driver on the leg, he released his hold on the reins. The horses then bolted & collided with a stationary vehicle :—*Held :* the driver had not been guilty of negligence.—OTTEWILL *v.* ALASKA ICE CREAM CO., LTD., [1928] S. A. S. R. 107.—**AUS.**

w i. —— ——.]—It is negligence for a man mounted on a bicycle to drive loose horses at 6.15 a.m. along the streets of a populated district, urging them round corners at a fast trot.—BARRETT *v.* HARDIE & THOMPSON, LTD., [1924] N. Z. L. R. 228.—**N.Z.**

y i. *Restive horse — Negligence.*] — Pltf. was driving a motor car when he was held up by the traffic police. Deft.'s driver pulled up his horse & cart between the car & the footpath, & the horse became restive & backed into the motor car, occasioning damage to it. The horse had not previously been known to be restive, & was usually quiet, & the driver was unable to say what had frightened the horse. The driver was not in any way negligent in the manner in which he looked after the horse :—*Held :* there was no evidence of negligence on the part of the driver of the horse or of deft.—SARTORI *v.* REYNOLDS, LTD. (1927), 29 W. A. L. R. 32.—**AUS.**

The Chatwood, [1930] P. 272 1; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

216. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

218. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes, [1926] 2 K. B. 125; Sycamore *v.* Ley (1932), 147 L. T. 342; Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

219a. Dog left inside motor car.]—Deft. parked his saloon car in a street with its back against the pavement. The car was left shut with a dog inside it. There was no evidence that the dog had a vicious propensity. When pltf., who had parked his car near deft.'s car, was walking past deft.'s car the dog, which had been barking & jumping about the car, jumped up against the window in the rear of deft.'s car, smashing a panel, whereby a glass splinter flew out & entered pltf.'s eye, with the result that pltf. lost his eye. In an action for damages for personal injuries :—*Held :* the danger of a piece of glass being knocked by a dog out of a small window at the back of the car, & of a splinter of glass hitting a passer-by on the pavement, was such an unlooked-for event that no reasonable man could say that a person ought to be convicted of negligence for not taking any precautions against it. A person must guard against a reasonable probability of danger; he was not bound to guard against a fantastic possibility.—FARDON *v.* HARCOURT-RIVINGTON (1932), 146 L. T. 391; 48 T. L. R. 215; 76 Sol. Jo. 81, H. L.

Annotations :—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Fryer *v.* Salford Corpn., [1937] 1 All E. R. 617; Woodman *v.* Richardson & Concrete, Ltd., [1937] 3 All E. R. 866.

219b. ——.]—Where a pltf., aged five, when leaning over a motor car, stationary upon the highway, which she had been warned by her father not to approach, after a general warning by deft., the owner of the car, to the children accustomed to play nearby, was bitten by a dog owned by deft., confined to the car by a leash so that it could project its nose only 3 inches over the rim of the door, & where the evidence that the dog was of a ferocious disposition towards mankind, & that deft. knew of it, was so slight that no reasonable jury could act upon it :—*Held :* judgment must be entered for deft.

Per SCRUTTON & LAWRENCE, L.JJ.—The doctrine of *scienter*, applicable to the liability of the owner of a dog let run in the street, was applicable also to the liability of the owner of a dog confined in a motor car.

Per GREER, L.J.—The owner of a dog might be liable to a person bitten, apart from any *scienter*, if he placed it in such a position & under such circumstances as rendered it likely that the dog would get excited, would lose its temper, & would cause damage to persons lawfully passing along the highway. But here deft. had tied up the dog in the way proved, had warned the children of the neighbourhood, & this warning had been expressly conveyed to pltf. Had pltf. not been so expressly warned, his Lordship stated that he did not know what his view would have been.—SYCAMORE *v.* LEY (1932), 147 L. T. 342, C. A.

Annotation :—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

219c. Dog with lead trailing—Nuisance.]—Deft., walking with a dog on a long lead, held the lead so loosely that the dog escaped from her control & chased a cat. In doing so, the lead became entangled with pltf.'s legs & she, a woman of 73 years of age, was thrown & injured :—*Held :* a dog with a long lead loose upon the road is a nuisance & pltf. was entitled to succeed. Pltf. was also entitled to succeed upon the ground of the negligence of deft.—PITCHER *v.* MARTIN, [1937] 3 All E. R. 918; 53 T. L. R. 903; 81 Sol. Jo. 670.

220. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

222. *Add. Annotations :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *Generally*, **Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

226. *Add. Annotations :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

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215 iii. —— *Liability of dog owner.*]—Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways :—*Held :* deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—BIRDSALL *v.* MERRITT (1917), 38 O. L. R. 587; 35 D. L. R. 260.—**CAN.**

215 iv. —— —— *Scienter.*]—Deft.'s dog jumped from an automobile & ran at pltf.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to deft.'s knowledge, the mischievous propensity of doing such acts, & deft. was held liable in damages.—SPAT *v.* HODGSON, [1919] 3 W. W. R. 210.—**CAN.**

221 ii. —— ——.]—In Saskatchewan the principles of the common law govern liability for damage done by a bull when at large, with the exception that there is no difference, as there apparently is in England, between the case of damage on a highway & damage on private property. Therefore, although there is a statutory prohibition against allowing bulls to run at large, yet, in the absence of evidence that the bull in question was vicious or possessed characteristics different from those of bulls generally, there is no liability in damages for damage done by it when at large unless the damage was such as might reasonably have been anticipated as the result of its being at large.—RICHARDSON *v.* DORN, [1937] 1 W. W. R. 143.—**CAN.**

224 iv. —— ——.]—KOCH *v.* SNYDER (1936), 6 F. L. J. (Can.), 5.—**CAN.**

225 iii. —— ——.]—Pltf.'s motor car collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner; the car was overturned & pltf. sustained injury. There was no negligence in the driving or management of the car :—*Held :* deft. was not liable to pltf.—HALL *v.* WIGHTMAN, [1926] N. 92.—**IR.**

225 iv. —— ——.]—*Held :* permitting one's cattle to run at large on a provincial highway being forbidden by Highway Improvement Act, 1927, s. 73, the presence of the calves on the road was unlawful, quite as much so as if forbidden by a municipal bye-law; &, where an animal is unlawfully upon a highway in this Province, the owner is liable in damages for any injury which is the natural result of the unlawful straying.—MCMILLAN *v.* WALLACE, [1929] 3 D. L. R. 367; 64 O. L. R. 4.—**CAN.**

225 v. —— ——.]—The owner of a cattle farm in Southern Rhodesia, a cattle country with large open spaces, is not negligent if he allows his cattle to roam over his farm though such cattle may stray on a public road running across the farm, & if a bull in his possession & accompanying such cattle injures a person lawfully using the road, the owner of the farm is not liable unless he knew or ought to have known that the bull was vicious.—MOUBRAY *v.* SYFRET (1935), App. D. 199.—**S. AF.**

226 i. —— *Sheep—Defective fence—Natural propensity.*]—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, &, in any event, in allowing his sheep to graze upon the road :—*Held :* the accident was not the natural & probable result of the negligence alleged.—FRAZER *v.* PATE, [1923] S. C. 748; 60 Sc. L. R. 470.—**SCOT.**

226a. —— **Duty of owner.**]—No duty is cast upon the owner of an animal *mansuetæ naturæ*, which is being depastured on land adjoining the highway, to prevent it from straying on the highway, unless it is known to be of vicious habit. But a person who brings an animal on the highway must take reasonable care to prevent it from doing damage to other persons thereon. What constitutes reasonable care is a question of fact in each case, & the standard of reasonable care may not be the same in the country as in a town. In this respect the duty to the public is the same in the case of one who leaves an animal in the street, & of one who places it in a stable or yard adjoining the street without taking proper steps to prevent it from straying into the street, where it would naturally go. In either case the owner is liable for the conduct of the animal if he puts it in a position in which it is likely to cause damage to persons lawfully using the highway.—DEEN *v.* DAVIES, [1935] 2 K. B. 282; 104 L. J. K. B. 540; 153 L. T. 90; 51 T. L. R. 398; 79 Sol. Jo. 381, C. A.

230. *Add. Annotation :*—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

234. *Add. Annotations :*—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

235. *Add. Annotation :—As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

238. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

239. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Cockburn *v.* Smith, [1924] 2 K. B. 119; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Booth *v.* Thomas (1925), 42 T. L. R. 114; Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Glanville *v.* Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656; Sycamore *v.* Ley (1932), 147 L. T. 342; Knott *v.* London County Council, [1934] 1 K. B. 126; Deen *v.* Davies, [1935] 2 K. B. 282.

240. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

243. *Add. Annotations :*—**Consd.** Sycamore *v.* Ley (1932), 147 L. T. 342. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes (1925), 95 L. J. K. B. 158.

244. *Add. Annotations :—As to* (2) **Apld.** Sylvester *v.* Chapman, Ltd. (1935), 79 Sol. Jo. 777. **Consd.** Sycamore *v.* Ley (1932), 147 L. T. 342.

244a. Leopard—Confined in cage—Volenti non fit injuria.]—SYLVESTER *v.* CHAPMAN, LTD (1935), 79 Sol. Jo. 777.

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sk. *Animals running "at large"—Dog—Biting pedestrian.*]—The owner is liable in damages only if he knew that the dog was viciously disposed.—BOWEN *v.* LIGHTFOOT, [1920] 2 W. W. R. 153; 52 D. L. R. 305; 30 Man. L. R. 337.—**CAN.**

sl. —— *Horses — Collision with motor car.*]—The owner is *primâ facie* liable only for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the highway.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

so. *Animals driven on highway—Negligence of motorist.*]—Animals are legally on a highway when being driven along, & a motorist must use due care, & cannot recover damages for injury if he does not.—HAGGERTY *v.* MCINTOSH (1935), 3 D. L. R. 262; O. R. 325; 5 F. L. J. (Can.), 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—D.

sm. *Person in unfenced garden—Cow escaping from railway yard.*]—The animal knocked down & injured pltf., but was not vicious, but nervous & excitable :—*Held :* pltf.'s action to recover damages for her injuries failed.—STREET *v.* CRAIG (1920), 48 O. L. R. 324; 56 D. L. R. 105.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

q i. —— ——.]—Applt. kept about seventy hives of bees on a small piece of land adjoining resp.'s farm. While resps. were reaping close to the apiary, bees in great numbers attacked resps. & their horses, causing serious injuries. In an action for damages, the magistrate found as a fact that applt. was guilty of negligence; &, further, apart from negligence, the liability of a bee-keeper was coextensive with the liability of a person keeping on his land water, wild & dangerous animals, or poisonous fumes. From this judgment deft. appealed :—*Held :* (1) Apiaries Act, 1927, being restrictive & not permissive, does not exempt a registered apiarist from common-law liability for injuries inflicted by his bees; (2) applt. was guilty of negligence in keeping so many hives of bees on the boundary, & this negligence was the effective cause of the injury & damage.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

sn. *Husky.*]—An animal which is the result of a cross between a dog & a wolf must be considered as essentially a wild animal, & a person in charge thereof will be responsible for injury done by it to a human being.—TEMPLE *v.* ELVERY (Sask.), [1926] 3 W. W. R. 652.—**CAN.**

sp. *Steer.*]—The rule that an owner of an animal of an ordinarily quiet nature is liable for the vicious acts thereof only if he knew that the animal was accustomed or likely to commit such acts, applies to an action for damages for personal injuries caused by an attack by a steer.—ROSENTHAL *v.* HESS (Sask.), [1927] 1 D. L. R. 493; [1927] 1 W. W. R. 15.—**CAN.**

sr. *Animal trespassing—Injury to owner of land while being driven off.*]—A boar was trespassing on resp.'s land, &, while being driven off by him & after being hit by him with a batten, suddenly turned upon & tossed him, causing injury :—*Held :* the injury was not the natural & ordinary consequence of the trespass, as it is not ordinarily in the nature of a boar *domitæ naturæ* to attack a human being, &, on the facts, there was insufficient proof of *scienter*.—MARK *v.* BARKLA, [1935] N. Z. L. R. 347.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

245 i. *Vicious animals in general—Duty to keep under control.*]—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 ii. —— ——.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 iii. —— ——.] — Liability attaches to the owner if, knowing of the mischievous tendencies of his dog, he neglects reasonable precautions to prevent such tendencies causing damage.

Pltf. walking in the street was passing deft.'s house, when his dog rushed out, knocked her down, & injured her. At the trial of an action for damages for her injury, the jury found that deft. knew that the dog was of a vicious disposition & assessed damages to pltf. :—*Held :* there was evidence to sustain the jury's finding, deft.'s wife, who was in control of the dog, having knowledge of its propensity to rush out & jump at persons passing.— NORTON *v.* FITZGERALD, [1928] 3 D. L. R. 474; 62 O. L. R. 314.—**CAN.**

245 iv. —— ——.]—The owner of a domestic animal, *e.g.* a bull, unlawfully at large contrary to a statute is not liable for personal injuries committed by it, even though it was at large through the negligence of the owner, unless the statute so provides

246a. Bull attacking cow—Bull in auction yard.]—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured:—*Held:* there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—HINCKES *v.* HARRIS (1921), 65 Sol. Jo. 781.

250. *Add. Annotations:*—**Expld.** Knott *v.* London County Council (1933), 49 T. L. R. 403. **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

254a. —— Person in control of dog liable—Not owner of premises.]—Pltf. was a charwoman who was employed as a cleaner at a school owned by defts., the London County Council, & was bitten by a dog, an Airedale, while doing her work at the school. The dog belonged to & was under the control of the school-keeper, who lived on the school premises, & was forbidden to keep any domestic animal except a cat or a dog. He kept the dog in question as a pet, & not as a watch-dog or otherwise for the benefit of defts. The school-keeper was aware that the dog had formerly attacked a boy, & the county ct. judge found as a fact that he knew the dog to be accustomed to attack mankind. Defts. did not know that the school-keeper had a dog. In an action by pltf. for keeping a dog which was known to be of a fierce & mischievous nature & accustomed to attack & bite mankind:—*Held:* the knowledge of the school-keeper that the dog was accustomed to attack mankind was not acquired by him as the servant of defts., & pltf. showed no cause of action against them.

Per LORD WRIGHT: "I think both the common law & the Legislature in Dogs Act, 1906 (c. 32), have recognised that a dog, which has been described as 'a familiar animal,' is naturally so associated with a particular master that responsibility for its acts should depend on ownership or possession & control."—KNOTT *v.* LONDON COUNTY COUNCIL, [1934] 1 K. B. 126; 103 L. J. K. B. 100; 150 L. T. 91; 97 J. P. 335; 50 T. L. R. 55; 31 L. G. R. 395, C. A.

254a. ——.]—LENG *v.* DODGSHON (1935), 79 Sol. Jo. 127.

255. *Add. Annotation:*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

258a. Mare attacking horse—Strange mare turned into field with horse.]—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.

Deft. put a mare into a field in which there was a horse belonging to pltf. without notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge:—*Held:* (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher* v. *Rylands* (*see* No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, &, having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—MANTON *v.* BROCKLEBANK, [1923] 2 K. B. 212; 92 L. J. K. B. 624; 129 L. T. 135; 39 T. L. R. 344; 67 Sol. Jo. 455, C. A.

Annotations:—*As to* (2) **Apld.** Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98; Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

260. *Add. Citations:*—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.
Add. Annotation:—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

261. *Add. Annotations:*—*As to* (1) **Expld.** Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459. *As to* (2) **Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74; Manton *v.* Brocklebank, [1923] 1 K. B. 406.

264. *Add. Annotations:*—*As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431. *As to* (2) **Refd.** Baker *v.* James, [1921] 2 K. B. 674; Letang *v.* Ottawa Electric Ry., [1926] A. C. 725; Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

270a. —— Mare kicking horse.]—MANTON *v.* BROCKLEBANK, No. 258a, *ante*.

or the injuries were such as might reasonably be expected to be the natural result of the animal in question being at large.—PARKEN *v.* COLE, [1931] 1 W. W. R. 9; 1 D. L. R. 811; 25 Alta. L. R. 157.—**CAN.**

246 iii. ——.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ground, was driven back, escaped through a gate, ran through the streets of the city, & injured pltf.:—*Held:* the bullock on emerging from the railway wagon had displayed its wild condition to deft.'s servants in such a way as to deprive them of the benefit of the doctrine of the *primâ facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *feræ naturæ* had fallen on deft. & his servants.—HOWARD *v.* BERGIN, O'CONNOR & CO., [1925] 2 I. R. 110, 118.—**IR.**

250 i. —— *Failure to keep same off premises.*]—If a party harbours a dog, or allows it to remain about his premises, with a knowledge of its vicious character, he is liable for injuries caused by it, though he is not the owner.—WOOD *v.* VAUGHAN (1889), 28 N. B. R. 472.—**CAN.**

o i. ——.]—It is negligence on the part of the owner of a stallion, whose disposition towards mares is known to him to be dangerous, not to take reasonable care to prevent the stallion from being in an enclosure in which, as he is aware, mares belonging to other persons are or may be running, & he will be liable in damages if injury ensues.—MATHESON *v.* STUCKEY, [1921] V. L. R. 637.—**AUS.**

252 i. —— *Warning to person injured—Volenti non fit injuria.*]—A person keeping a dog liable to bite humans is responsible for it unless a warning is given of such a character as to involve the doctrine of *volenti non fit injuria*.—TAYLOR *v.* ALEXANDER, [1935] 4 D. L. R. 131; O. R. 406.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (d).

a i. —— ——.]—In proceedings under Sheep Protection Act, s. 13, it is not necessary for the owner of the killed or injured animal to prove that the dog which inflicted the injury complained of had a previous mischievous propensity.—R. *ex rel* BIGRIGG *v.* WILLIAMS, [1930] 1 W. W. R. 292; 2 D. L. R. 493; 53 Can. C. C. 88; 42 C. C. R. 175; *revsg.*, [1929] 1 W. W. R. 802; 52 Can. C. C. 323.—**CAN.**

273. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

274. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. **Apld.** Buckle *v.* Holmes (1925), 95 L. J. K. B. 158. **Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773; **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

274a. —— ——.]—The owner of a dog, which was a well-behaved dog, & against whose character nothing was known :—*Held :* not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—HINES *v.* TOUSLEY (1926), 95 L. J. K. B. 773; 135 L. T. 296; 70 Sol. Jo. 732; 19 B. W. C. C. 216, C. A.

275. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes, [1926] 2 K. B. 125; Sycamore *v.* Ley (1932), 147 L. T. 342; Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

277. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

285. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

291. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

292. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

294. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

299a. Dog biting child—Previous biting of another child.]—PACY *v.* FIELD (1937), 81 Sol. Jo. 160.

301a. Dog biting cattle—Furious disposition—Previous biting of cattle.]—*Held :* no evidence of *scienter*.—THOMAS *v.* MORGAN (1835), 2 Cr. M. & R. 496; 1 Gale, 172; 5 Tyr. 1085; 5 L. J. Ex. 64; 150 E. R. 214.

Annotations :—**Refd.** Owen *v.* Knight (1837), 5 Scott, 307 May *v.* Burdett (1846), 9 Q. B. 101.

305a. Horse biting man—Previous biting of horses.]—The fact that the owner of a horse knew that it was accustomed to bite other horses is not sufficient to establish his liability for its biting a human being.—GLANVILLE *v.* SUTTON & Co., LTD., [1928] 1 K. B. 571; 97 L. J. K. B. 166; 138 L. T. 336; 44 T. L. R. 98, D. C.

306. *Add. Annotation :*—**Refd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

325. *Add. Annotation :*—*As to* (2) **Apld.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

325a. Rats—Damage to crops.]—Defts. carried on the business of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity :—*Held :* no cause of action had been established against defts.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

328a. —— ——.]—R. *v.* FAIRBANK (1850), 15 L. T. O. S. 259; *sub nom.* R. *v.* HULL JJ., 14 J. P. Jo. 384.

PART III. SECT. 2, SUB-SECT. 3.

p i. —— —— *To order dog to be kept under control—Person in charge of dog.*]—WALKER *v.* BRANDER, [1920] S. C. (J.) 20; 57 Sc. L. R. 651.—**SCOT.**

d i. —— —— *Whether proceedings civil or criminal.*]—The summary proceedings, before a justice of the peace, authorised by sect. 13 of Sheep Protection Act, 1926-27, for the recovery of damages for the loss of or injury to sheep, etc., killed or injured by a dog, are entirely civil in character, although the Summary Convictions Act is made applicable thereto.—R. (THRELKELD) *v.* SMITH & STEWART, [1935] 1 W. W. R. 601; 49 B. C. R. 550.—**CAN.**

sq. *Registration of Dogs Act*, 1914—*Presumption as to keeping.*]—There is no presumption raised by sect. 9 of above Act, that a dog has been kept at a particular place within a district. Evidence of such keeping must be given.—FOREMAN *v.* SMITH, [1927] S. A. S. R. 366.—**AUS.**

st. *Dog & Goat Act (N. S. W.)*, 1898, *s.* 19—*Dog jumping up & biting over fence.*]—Applt. while looking over resp.'s fence from a public footpath placed his hand on the top of the fence. Resp.'s dog, from inside resp.'s premises, jumped up & bit applt.'s hand, inflicting serious injury :—*Held :* applt. was entitled under Dog & Goat Act, 1898, s. 19, to recover damages for the injury received.—SIMPSON *v.* BANNERMAN, [1932] Argus L. R. 374; A. L. J. 189.—**AUS.**

sv. *Dog Registration Act*, 1908, *s.* 27.]—C., a blind man, went to visit a friend & chained his dog upon the veranda with a very short chain. H., also as a visitor, walked up the flight of concrete steps to the veranda in felt slippers. As she reached the top step the dog suddenly becoming aware of her approach sprang towards her & attempted to bite her, but was unable to do so as the chain was too short. H., thinking the dog could reach her, moved back, lost her balance, fell down the steps, and sustained injuries. In an action by H. :—*Held :* sect. 27 does not place upon dog-owners in New Zealand an absolute liability for all damages, direct or indirect done by their dogs; the fact that the Legislature has dispensed with the necessity of proof of *scienter*, & proof of negligence on the owner's part to impose liability on a dog-owner for injury done by his dog, does not mean that all dogs are to be deemed dangerous animals & in the same class as wild beasts; sect. 27 takes away from a dog-owner the benefit of the common law exemption from liability for trespass injuries caused by his dog; it is still open to the dog-owner, if he can, to establish one or other of the defences open to persons who harbour animals of evil disposition—*e.g.*, want of negligence on his part; the injury to pltf. was due to accident, & not to any negligence on the part of deft.

The judge drew attention to the fact that, as in England proof of *scienter* brings a domestic animal into category of wild animals, the English cases dealing with injuries inflicted by wild animals are applicable to cases of injuries by dogs in New Zealand by reason of the abolition in the Dominion of the necessity of proof of *scienter* in cases of injuries inflicted by dogs.—CHITTENDEN *v.* HALE, [1933] N. Z. L. R. 836.—**N.Z.**

sw. *Destruction of unlicensed dogs—Validity of bye-law.*]—Resp. municipality was empowered by statute to pass bye-laws "for restraining, prohibiting & regulating the running at large of dogs, for imposing a tax on the owners, possessors or harbourers of dogs, & for impounding, selling or killing dogs running at large in contravention of the bye-laws." A bye-law imposed a licence of $20 on dogs wholly or in part of the breed known as police dogs, of $4 on male dogs of any other breed & of $10 on female dogs of any other breed; & provided that an unlicensed dog shall be liable to be destroyed, & that an owner or harbourer of an unlicensed dog should be liable on summary conviction to a fine &, in default of payment, to imprisonment :—*Held :* the bye-law was valid & must stand except in so far as it provide (1) for the killing of unlicensed dogs for any other reason than that they are found running at large; & (2) for the imprisonment of any convicted offender under the bye-law for default of payment of fine imposed on such conviction; & those two provisions must be quashed.—*Re* SHOAL LAKE VILLAGE BY-LAW, 192, [1933] 3 W. W. R. 185; *affd.* [1934] 1 W. W. R. 245; 2 D. L. R. 493; 41 Man. L. R. 649.—**CAN.**

sy. *Discrimination between breeds of licensed dogs—Validity of bye-law.*]—Under a statute authorising municipal bye-laws imposing a tax on the owners, etc., of dogs :—*Held :* a dog-licensing bye-law was not invalid because it imposed a higher licence fee for dogs of the breed known as police dogs than for other breeds of dogs or because it imposed a higher fee for female dogs than for male dogs.—*Re* SMEATON & SHOAL LAKE VILLAGE BY-LAW 192, [1934] 1 W. W. R. 245; 2 D. L. R 493; 41 Man. L. R. 649.—**CAN.**

332. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

332a. —— —— —— **Proof that infraction of bye-law caused nuisance not necessary.**]—TONG STREET LOCAL BOARD *v.* SEED (1874), 39 J. P. 278.

——.]—*See, also*, No. 331, *ante*.

333a. —— —— **Metropolis Management Act, 1862 (c. 102), s. 73—Proof of actual nuisance necessary.**]—CHELSEA VESTRY *v.* KING (1864), 17 C. B. N. S. 625 ; 5 New Rep. 85 ; 34 L. J. M. C. 9 ; 11 L. T. 419 ; 29 J. P. 39 ; 10 Jur. N. S. 1150 ; 13 W. R. 157 ; 144 E. R. 250.

338. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

339. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

Part IV.—Agistment.

342. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

342. After this case add "Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40."

342a. —— **Whether breach of covenant not to underlet.**]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep—*i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.

Semble : agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90 ; 89 L. J. Ch. 601 ; 124 L. T. 238 ; 65 Sol. Jo. 44.

343. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

344. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

346. *Add. Annotation :*—**Refd.** Weld-Blundell Stephens, [1920] A. C. 956.

346a. —— **Animal stolen—Duty of agister.**]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing ; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without

PART III. SECT. 2, SUB-SECT. 4.

337 i. *Horses—Noise from stables.*]—Though a livery stable is constructed with all modern improvements for drainage & ventilation, if offensive odour therefrom, & the noise made by the horses, are a source of annoyance & inconvenience to the neighbouring residents, the proprietor is liable in damages for the injury caused thereby. —DRYSDALE *v.* DUGAS (1896), 26 S. C. R. 20.—**CAN.**

340 i. —— *Smell from stables.*]—DRYSDALE *v.* DUGAS, No. 337 i. *ante*.—**CAN.**

341 i. *Bees Hiving in building—Duty of occupier.*]—The occupier of a building is in general under no duty to take steps to eradicate a swarm of bees which have hived in the roof of the building.—WASSERMAN *v.* UNION GOVERNMENT, [1934] A. D. 228.—**AF.**

PART IV.

b i. —— *Construction.*]—By a contract for agistment pltf. agreed to make available certain properties for the agistment of deft.'s sheep. The terms of payment were 1½*d.* per head per week, £500 to be paid when the sheep arrived, £500 in six months, & the balance when the sheep were removed : —*Held :* the payment contemplated by the contract was 1½*d.* per head per week, according to the number of sheep on the properties from time to time ; the contract was one for making available the area of land agreed on for the sheep, & included the taking care of the sheep agisted at the above remuneration while they were in pltf.'s custody.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

c i. —— *Whether agister liable to supply water.*]—Pltf. having bought horses from deft., the latter agreed at pltf.'s request to winter them. The terms of the agreement were set out in a letter from deft. to pltf. in which deft. said : "I will winter them as usual, that is, bring them in straw 3 times a week." The horses were given no water by deft. & pltf. sued for damages, the horses being in poorer condition when he took delivery of them than they would have been had they been watered :—*Held :* in view of the terms of said letter & all the facts of the case, deft. was under no obligation to supply water.—RUDGE *v.* STAUFFER, [1929] 1 W. W. R. 46 ; 23 Alta. L. R. 628.—**CAN.**

344 xii. —— *Loss of animals.*]—Pltf. was the owner of a mare which he delivered to deft. for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with blackboys. After the mare had remained in the paddock for some time, pltf. requested the delivery of the mare in two months' time. Deft. made endeavours to find the mare, but only saw it on one occasion, & thereafter made many attempts to locate the mare, but without success : —*Held :* deft. was not liable to pltf. for the value of the mare, there being no evidence of negligence.—ROBINSON *v.* WATERS (1920), 22 W. A. L. R. 66.—**AUS.**

344 xiii. —— —— *Failure to detect loss within reasonable time.*]—A large number of sheep were lost, & there was evidence rendering it probable that these had been driven off the run :—*Held :* an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a reasonable time was clear evidence of negligence.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

344 xiv. —— ——.]—An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all reasonable precautions against its disappearance.—COMSTOCK *v.* ASHCROFT ESTATES, LTD., [1917] 1 W. W. R. 1412 ; 23 B. C. R. 4761.—**CAN.**

344 xv. —— —— *Onus of negativing negligence.*]—In case of loss of animals while in the care of an agister, the *onus* is on him to show circumstances negativing negligence on his part.—MCCAULEY *v.* HUBER, [1920] 3 W. W. R. 123 ; 54 D. L. R. 150.—**CAN.**

344 xvi. —— —— ——.]—A contract of agistment is one in the nature of a contract of bailment for the benefit of both bailor & bailee. The agister is not an insurer of the animals but, in the absence of a special contract limiting his common-law liability, is liable for their loss or injury caused by his neglect to take such reasonable care of them as a careful man would exercise in dealing with his own property ; & if they are lost or injured while in his custody the onus is on him to show that the loss or injury did not result from such neglect.—RATHWELL *v.* SHANKOFF, [1933] 3 W. W. R. 629.—**CAN.**

344 xvii. —— *Agister not insurer—What amounts to negligence.*]—POTTS *v.* SMAIL (Alta.), [1928] 1 D. L. R. 208 ; [1927] 3 W. W. R. 619.—**CAN.**

xr. —— *Failure to provide food & water.*]—Where horses have been delivered into the custody of an owner of pasture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—METX *v.* MARSHALL (1922), 70 D. L. R. 14 ; [1922] 3 W. W. R. 660.—**CAN.**

his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery:—*Held:* he was liable for their loss.—COLDMAN *v.* HILL, [1919] 1 K. B. 443; 88 L. J. K. B. 491; 120 L. T. 412; 35 T. L. R. 146; 63 Sol. Jo. 166, C. A.

347. *Add. Annotation:*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

Part V.—Hiring.

371. *Add. Annotation:*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

373. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

377. *Add. Annotation:*—*As to* (4) **Refd.** Kemp *v.* Elisha, [1918] 1 K. B. 228.

378. *Add. Annotation:*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Part VI.—Sale and Exchange of Animals.

384. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

390a. —— —— **Resale of horse at loss—Form of action.**]—A vendor gave a warranty of sound workable condition on the sale of a horse, The warranty was fulfilled, but the purchaser wrongfully refused delivery, & returned the horse. The vendor then put it up at auction

356 iii. ——.]—An agister has no lien, in the absence of special agreement, upon the animals he agists.—*Re* JORGENSON, [1923] 2 W. W. R. 600.—**CAN.**

356 iv. —— *Or statute.*]—An agister has a lien on the pastured animals under Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—SPARLING *v.* WARD, [1925] 2 D. L. R. 922: [1925] 2 W. W. R. 181.—**CAN.**

362 i. —— *For malicious injury.*]—Appt. had cattle on his land under grazing contracts with the owners. These cattle were maliciously driven off the lands & injured:—*Held:* appt. as bailee in possession could claim compensation for the cattle entrusted to his care.—WORTHINGTON *v.* TIPPERARY COUNTY COUNCIL, [1920] 2 I. R. 233; 54 I. L. R. 77.—**IR.**

PART V.

369 xv. —— —— —— ——.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the *onus* of proof in a claim for damages for negligence is on deft. The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such injury.—REINSETH *v.* CAMPBELL (1920), 52 D. L. R. 357.—**CAN.**

369 xvi. —— —— —— ——.]—Where a person hires an animal & it dies while in his custody, the *onus* is upon him to establish that he took care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—MURRAY *v.* COLLINS, [1920] 2 W. W. R. 845; 53 D. L. R. 120.—**CAN.**

369 xvii. —— —— ——.]—Deft. hired a horse from pltf. to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. Deft. drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. Deft. hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lamer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There was no evidence as to what caused the horse's lameness. There was no evidence that there was, between the place where the horse fell lame & T. any suitable place in which the horse could have been placed & cared for, or where deft. could have hired another horse to continue the return journey:—*Held:* as the lameness when it first developed on the return journey was not shown to have been of a more serious nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, deft. could not be held guilty of negligence until he had travelled a sufficient distance to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—GAGNON *v.* LANGIS (1920), 48 N. B. R. 76.—**CAN.**

374 ii. —— *Bill of sale granted by bailee—Rights of grantee.*]—A., the owner of twenty-seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to applt. a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter applt. seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure:—*Held:* it had not been shown that the cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—NORFOLK CO-OPERATIVE DAIRY CO., LTD. *v.* ALLEN, [1924] N. Z. L. R. 136.—**N.Z.**

374 ii. —— *Loss by bailee—Negligence.*]—In an action for the value of a horse which was lost after it had been hired to deft. under an agreement whereby the latter undertook to take "good care in every way" thereof, it appeared that the horse, which was unbroken, was received by deft. & put into a pasture belonging to a neighbour of deft., & deft. went to see it every other day The pasture was surrounded by a fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While deft. was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring:—*Held:* deft. had taken sufficiently good care of the horse & was not liable for its loss.—ZIMMERMAN *v.* ARCHER (1922), 63 D. L. R. 399; [1922] 2 W. W. R. 524.—**CAN.**

380 i. *Contract — Covering mare — Damages for breach.*]—Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—SINCLAIR *v.* WALKER, [1917] 2 W. W. R. 321.—**CAN.**

PART VI. SECT. 1.

t i. —— —— —— *Action by purchaser for damages—What damages recoverable.*]—PERRY *v.* KIDD (1909), 12 W. L. R. 9.—**CAN.**

t ii. —— *Sale of bull—Bull sterile.*]—At an auction sale advertised "as pedigree stock sale" resp. purchased from applt. a bull described in the sale catalogue under the heading "Jersey Bulls" as "Lot 78, Bull Harbour Light." The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by resp., claiming damages:—*Held:* as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, resp. was without remedy.—DELL *v.* [1924] N. Z. L. R. 1270.—**N.Z.**

t ii. —— *Sale of horse as gelding—Horse in fact a "rigot"—Whether failure of implied condition on sale of goods by description.*]—TWAITES *v.* MORRISON (Alta.), [1918] 3 W. W. R. 349; 43 D. L. R. 73.—**CAN.**

t iv. —— *Default by purchaser—Resale by vendor.*]—*Held:* (1) money paid, not as a deposit, but on account

as " in dispute," & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price :—*Held :* (1) this was not the proper form of action ; (2) the action must be for damages ; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse " in dispute," & without warranty, & quite different from the original contract conditions ; (4) pltf. was not entitled to more than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction.—MACKLIN *v.* NEWBURY SANITARY LAUNDRY (1919), 63 Sol. Jo. 337, D. C.

390b. —— **Rescission by vendor—Vendor liable for keep during period animal kept by purchaser.**]—KING *v.* PRICE (1816), 2 Chit. 416.

391. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367.

401. *Add. Annotation :* — **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

409. *Add. Annotation :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Canada Atlantic Grain Export Co. *v.* Eilers (1929), 35 Com. Cas. 90.

410. *Add. Annotations :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Baldry *v.* Marshall, [1925] 1 K. B. 260.

416. *Add. Annotation :*—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

416a. **As to pedigree of horse.**]—A receipt described a horse as " got by Cheshire Cheese, warranted sound " :—*Held :* the statement that the horse was got by was a mere representation.—DICKENSON *v.* GAPP (1821), cited in 1 Moo. & S. at p. 78.

Annotation :—**Follg.** Budd *v.* Fairmaner (1831), 1 Moo. & S. 74.

430. *Add. Citations :*—171 E. R. 90 ; *sub nom.* ELTON *v.* JORDAN, 1 Stark. 127, N. P.

467. For " 99 E. R. 136 " read " 99 E. R. 1016."

474. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

476a. —— ——.]—A., as agent of B., sold a mare to C., & having no express authority from B. to warrant her, refused to do so, but, at the time of the sale, told C. that " if the mare was not all right she was not his." C. thereupon paid the price, which was received by B. The mare proving unsound, C. returned her to A., & sued B. for a return of the money :—*Held :* the proper question to leave to the jury was whether it was part of the contract that the mare should be returned if she proved unsound.—FOSTER *v.* SMITH (1856), 18 C. B. 156 ; 20 J. P. 438 ; 139 E. R. 1326.

486a. ——.]—HARE *v.* TAYLOR (1837), 1 Jur. 261.

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of the purchase-price, must be returned to the purchaser ; (2) having elected to treat the contract as at an end, instead of suing for damages for breach, the vendor was not entitled to recover anything for the care of the animals from the time fixed by the contract for delivery until he resold.—BALDWIN *v.* BRIANGER, [1920] 1 W. W. R. 216 ; 50 D. L. R. 540 ; 13 Alta. L. R. 27.—**CAN.**

zi. —— ——.]—*Held :* oral evidence that it was part of the agreement for sale of a stallion that the pedigree papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written agreement, was not admissible.—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

396 vi. —— ——.]—An auctioneer in selling a horse said : " Here is a horse about nine years old " in presence of the vendor who did not contradict it. A note given for the balance of the price had indorsed thereon : " Given for one bay mare nine years old." The purchaser believed the horse was of that age :—*Held :* the statement amounted to a warranty, & the vendor was bound thereby.—ALLEN *v.* SMITH, [1920] 3 W. W. R. 645.—**CAN.**

410 i. In para. for " an " read " no."

410 iv. —— —— ——.]—Pltf. purchased a horse from deft. which deft. warranted to be suitable for the general purposes of a farmer & sound in every respect. The trial judge found that there was a defect in the horse which could not be discovered by an ordinary examination at the time of the sale & that the horse was not suitable for the purpose for which it was required : —*Held :* the findings of the trial judge must be accepted.—MARTELL *v.* PRINGLE (1920), 53 N. S. R. 502.—**CAN.**

sr. *Sale of male animal—Under Livestock Purchase & Sale Act, R.S.S.*, 1920 (c. 125)—*No implied warranty that animal capable of reproducing type & colour.*]—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

420 ii. ——.]— EISENHAUER *v.* MACKAY (N. S.) (1911), 9 E. L. R. 304.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—A.

438 i. *Sound—Meaning of term—Seeds of disease at date of sale.*]—At an auction sale the auctioneer said : " Would you let this good sound mare go for that money ? " The mare was diseased at the time. No fraud was proved :—*Held :* one who was induced by the statement to bid for & purchase the mare was entitled to rescission on the ground of misrepresentation.—ANDERSON *v.* KENNEDY, [1920] 1 W. W. R. 25 ; 50 D. L. R. 105 ; 13 Sask. L. R. 38.—**CAN.**

459 i. *Warranty relating to future—Dairy cattle warranted " to calve at proper time & correct in teats only."*]—A dairy cow, due to calve within a fortnight, was bought at a cattle market under the following warranty : " Dairy cattle are warranted to calve at their proper time & correct in their teats only." The cow calved at her proper time, but, owing to disease which appeared in her teats, her milk supply was defective : —*Held :* (1) the warranty applied to the period of calving, & guaranteed, against the ordinary risks of that period, that the cow's teats would then be capable of performing their function of giving milk ; (2) as the disease from which the cow suffered had not been proved to be due either to negligence on pursuer's part or to external accident, the guarantee applied.—KYLE *v.* SIM, [1925] S. C. 425.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 4.—A.

st. *Rescission—Affirmance of contract after notice of misrepresentation.*]—A purchaser of a mare was not allowed rescission on the ground of what the ct. found was an innocent misrepresentation as to her being in foal to a celebrated stallion, because after discovery that the mare was not in foal he repeatedly attempted to get her in foal by breeding her to another stallion, this being held to amount to an affirmance of the contract.—MONTICELLO STATE BANK *v.* GUEST, [1920] 3 W. W. R. 14.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—B.

g i. —— ——.]—In an action on promissory notes given for the price of a stallion, an alleged breach of warranty does not justify a defence of failure of consideration. Deft. must claim under the breach of warranty setting it up in diminution of the price, or in an action for damages.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

sv. *Cheque given for price—Whether breach of warranty a defence.*]—MYKLEBUST *v.* GALEY (Sask.) (1919), 46 D. L. R. 699.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—C.

484 ii. —— *Effect of—On other remedies of purchaser.*]—A condition for return of a horse in as good condition as when sold & the substitution of another horse of equal value prevents the purchaser from resorting to any other form of remedy, unless he can show that he returned the horse in good condition & the vendor failed to substitute as agreed.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

485 ii. —— *Purchaser not liable for cost of keep after repudiation of contract.*]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—D.

486 ix. —— ——.]—A written contract entered into in Mar. 1928, for the

Part VII.—Carriage of Animals.

517. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

518. *Add Annotation :—As to* (2) **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

522. *Add. Annotations :*—**Refd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186; L. &. N. W. Ry. *v.* Hudson, [1920] A. C. 324.

526. *Add. Annotations :*—**Refd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720; Monk *v.* Warbey, [1935] 1 K. B. 75.

530. For "**Expenses reasonably—Incurred in disinfecting,**" etc., read "**Expenses reasonably incurred—In disinfecting,**" etc.

531. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

535. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

542. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

544. *Add. Annotation :—Generally,* **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

sale of a stallion provided that the only "guarantee" by which the seller bound himself was that the horse was serviceably sound as a serving stallion, and it also provided that if the horse "after a fair trial on sure breeding mares" should prove not to be so sound the buyer would return it to the seller & receive another horse of equal value in exchange, but that the seller should not be bound by "the conditions of this guarantee" unless the buyer submitted a monthly report in writing showing the condition of the horse, etc., & that the contract should expire & the seller be released from any further obligation to the buyer after Apr. 1, 1929, except in the event of the death of the horse within three years. In an action, begun after Apr. 1, 1929, for the balance of the purchase-price the buyer claimed a set-off for damages for loss of service fees which he would have earned with the horse had it been as guaranteed & counter claimed for the excess of said damages over the amount of pltf.'s claim :—*Held :* deft.'s only remedy for the difference between the purchase-price & the actual value of the horse was that expressly agreed to in the contract, viz. the return of the horse and the taking of another in its place, said provision, however, did not affect his right to sue for other damages, such as loss of service fees, which he had suffered up to Apr. 1, 1929, through the breach of the guarantee, but that his failure to submit the monthly report provided for in the contract would preclude him from recovering said other damages, & the trial judge's conclusion that there had been a reasonable compliance with that requirement could not be sustained.—HEAD *v.* LINTON, [1930] 2 W. W. R. 369; 24 S. L. R. 596.—**CAN.**

486 x. ——.]—The measure of damage in an action for breach of warranty of a bull is the difference between the value at the time of delivery to the buyer & the value it would have had if it had answered to the warranty.—WARD *v.* ROSSER (1920), 54 D. L. R. 531.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—E.

sw. *Proof of breach at time of sale necessary—Sufficiency of evidence.*]—WESTWOOD *v.* MCMILLAN (Sask.), [1920] 2 W. W. R. 857; 53 D. L. R. 317.—**CAN.**

sx. —— ——.]—AHEIR *v.* CAPLETTE [1926] 3 D. L. R. 346; [1926] 2 W. W. R. 346; 20 Sask. L. R. 549.—**CAN.**

sy. ——.]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 3.

sz. *Live Stock Pedigree Act,* 1927 (*c.* 121)—*False registration of animal—What amounts to.*]—An application for registration of a transfer of ownership of an animal is not an application for the registration of the animal. Moreover, where the statements made in the former application are true with respect to the animal mentioned therein there is no offence under sect. 17 of above Act although the animal which was in fact sold was not the animal named in said application.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.—A.

528 i. —— *Animals poisoned—No affirmative evidence.*]—Pltf. shipped horses by defts.' railway. On arrival at destination, some of the horses had died & others were sick & died soon after. It was subsequently established that they died of arsenic poison. An action against deft. railway co. for negligence was dismissed, as there was no evidence connecting the cause of injury with any alleged negligence. The cause of the damage was purely a matter of speculation, & certain provisions of the contract were a complete answer to pltf.'s claim that the damages arose from defts.' negligence. —TURNER *v.* CANADIAN PACIFIC RY. Co. (1922), 66 D. L. R. 31; [1922] 2 W. W. R. 858.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

532 i. *Declaration of value — Requisites of.*]—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 541 i, *post.*—**IR.**

541 i. *Carrier exempted from liability "in any case" above declared value.*]—A railway co. made conditions limiting their liability for loss of or damage to any live stock delivered to them for transit beyond the value, in the case of horses, of £50, unless a higher value was declared in writing at the time of delivery, & a percentage of 1½ per cent. paid on the value, so declared, in excess of the above-named sum. A race horse, exceeding £50 in value, was delivered to the co. for transit by the sender's groom, who informed the booking clerk that he had got "a very valuable 'chaser, worth about £1,000," a figure arrived at by the groom himself from casual gossip. The clerk gave the groom the co.'s form of "consignment note & waybill" for live stock, & the groom filled it in for carriage at the ordinary rate, & signed it, with full knowledge of its contents. The horse having been injured in transit :—*Held :* (1) the above conditions were not unreasonable; (2) the contract of carriage, which was signed by the groom under a direction by his employer that the horse was to be carried at the ordinary rate, exempted the co. from liability for any greater amount than £50; (3) in order to make the co. liable for the full value of the horse, the declaration of value must have been made with the intention of paying the higher rate, & the statement of value made by the groom to the booking clerk was insufficient.—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1926] I. R. 106.—**IR.**

sa. *Shipper undertaking obligation to "feed" & "water" animals—Obligation of supplying feed & water.*]—The obligation to furnish the feed & water is upon the shipper.—KNIGHT-WATSON RANCHING Co. *v.* CANADIAN PACIFIC RY. Co. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *revsg.*, 14 Sask. L. R. 5.—**CAN.**

sb. *Carrier under no liability "unless written notice delivered at point of delivery"—Sufficiency of notice.*]—KNIGHT-WATSON RANCHING Co. *v.* CANADIAN PACIFIC RY. Co. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788: *revsg.*, 14 Sask. L. R. 5.—**CAN.**

PART VII. SECT. 2

si. —— *Train run in contravention of Lord's Day Act.*]—Pltf. shipped goods, including horses, by defts.' line, & signed a special contract providing that defts. should not be liable for any loss or damages in respect of the live stock by reason of injury except such as might arise from a collision, & should in no case be responsible for any amount exceeding certain small sums named. Pltf. accompanied his goods, & the train was lawfully proceeding on a Sunday, notwithstanding the Lord's Day Act, when a collision occurred with one of defts.' trains, which was being run unlawfully because in contravention of that Act, & some of the horses & other goods of pltf. were destroyed or damaged. Pltf. sued in tort for the amount of his loss, claiming much more than the limited amounts stated in the special contract. Defts. set up the special contract :—*Held :* the provision of the contract limiting the liability of defts. in the case of a collision to a stated sum did not sustain the defence, because that provision must be taken not to have contemplated a collision occurring by reason of the breach of a statute distinctly prohibiting & making unlawful the act which caused the collision.—RISE *v.* CANADIAN PACIFIC RY. Co. (1910), 14 W. L. R. 635.—**CAN.**

Part VIII.—Wild Birds.

563a. —— —— —— **Birds lawfully taken elsewhere.**]—Applt. was charged under Wild Birds Protection Act, 1880 (c. 35), s. 3, as extended under s. 8 in the county of London by the Wild Birds Protection (Administrative County of London) Order, 1909, par. 4, with having in his possession some goldfinches recently taken. The magistrate found that the charge was proved & dismissed it under the Probation of Offenders Act, 1907 (c. 17), ordering applt. to pay the costs. The birds were lawfully caught in Ireland on or immediately before Dec. 3, 1918, &, after being kept there for upwards of a month to enable them to recover their condition, & travel safely, were sent to applt. in London by post. They were found in applt.'s possession in a wild & terrified state on Jan. 15, 1919 :—*Held :* the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—HARRIS *v.* LUCAS, [1919] 2 K. B. 291 ; 88 L. J. K. B. 1082 ; 121 L. T. 317 ; 83 J. P. 208 ; 35 T. L. R. 486 ; 17 L. G. R. 421 ; 26 Cox, C. C. 468, D. C.

564. *Add. Annotation :*—**Apld.** Harris *v.* Lucas, [1919] 2 K. B. 291.

After this case add :—

-.]—*See, now,* Protection of Birds Act, 1933 (c. 52).

Part X.—Cruelty to and Killing, Maiming, and Wounding Animals.

NOTE.—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14); Protection of Animals Act, 1927 (c. 27); Protection of Animals (Cruelty to Dogs) Act, 1933 (c. 17); Protection of Animals Act, 1934 (c. 21). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

572a. **Shooting trespassing dog—No attempt to drive dog away before shooting.**]—A farm labourer shot at a dog which was trespassing on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary :—*Held :* he was guilty of " cruelly ill-treating " the dog within Protection of Animals Act, 1911 (c. 27), s. 1.—BARNARD *v.* EVANS, [1925] 2 K. B. 794 ; 94 L. J. K. B. 932 ; 133 L. T. 829 ; 89 J. P. 165 ; 41 T. L. R. 682 ; 28 Cox, C. C. 69, D. C.

574. *Add. Annotation :*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

576. *Add. Annotation :*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

587. *Add. Annotation :*—*As to* (1) & (2) **Reld.** Jenkins *v.* Ash (1929), 45 T. L. R. 479.

587a. —— **Liberation in exhausted condition.**]—On a prosecution of A. & G. for cruelly ill-treating a live wild rabbit contrary to Protection of Animals Act, 1911 (c. 27), s. 1, it appeared that A. had dangled the rabbit by its hind legs three or four yards away from two greyhounds, held in leash by G., & that the greyhounds having been taken thirty or forty yards away, the rabbit had been thrown on the ground, where it had remained, only hopping a couple of yards when flicked by a hat. The magistrate held that there was no cruel ill-treatment within the sect. ; that what had been done by resps. was ordinary coursing & so protected by sect. 1 (3) (*b*), & that there was no evidence of the rabbit having been liberated in an injured, mutilated, or exhausted condition. On appeal :—*Held :* all the evidence showed that there had been cruel ill-treatment of the rabbit & that the rabbit had been liberated

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PART VII.

556 ii. —— *Reduced into possession—Action for damages for shooting.*]—Pltf., a squatter on the foreshore of a lake, held entitled to damages for the shooting, on the land & water close to his shack, of a number of Canada geese which had been hatched from eggs he had collected on an island in the lake, it being clear that the geese were not in a state of nature & had been reduced to possession. Game Act, 1932, s. 3, had no application, since it applies to birds which are wild by nature & whilst in a state of nature ; & the geese in question were not in a state of nature.—KASTANIUK *v.* SARSONS [1935] 2 W. W. R. 415.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

574 ii. —— *Failure to remove from animal broken pieces of instrument.*]—Resp. undertook to treat a horse, & inserted into the animal's urethra a catheter, which broke, & the horse was returned to its owner with the broken pieces left in the urethra :—*Held :* (1) if resp. allowed the broken pieces of the catheter to remain in the urethra for an unreasonable time, without taking any steps to alleviate the pain or without taking any steps to secure their removal, he unreasonably caused unnecessary pain ; (2) resp. was under a duty to inform the owner of the horse within a reasonable time that the fragments were in the animal's urethra. —MARTIN *v.* CARPENTER, [1925] S. A. S. R. 421.—**AUS.**

sc. *Abandoning horse in street—Horse found starving—Whether owner exercising control.*]—*Held :* accused could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (*a*), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—R. *v.* NAZIR WAZIR (1919), I. L. R. 44 Bom. 159.—**IND.**

sd. *Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*]—*Held :* the master's want of knowledge was no defence. —M'LAREN *v.* SMITH, [1923] S. C. (J.) 91.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.

se. *Carrying cranes by train—With eyes stitched up.*]—*Held :* accused had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (*b*), for the cruelty was caused by the persons who stitched up the eyes & not by the manner or position in which the birds were carried in the train.—R. *v.* IBRAHIM MEER SHIKAR (1917), I. L. R. 41 Bom. 654.—**IND.**

sg. *Keeping deer in captivity—No right to redelivery of deer.*]—It is illegal to keep a deer in captivity, & there is therefore no right of action for redelivery against the officers of the Department of Mines & Forests.—MARSHALL *v.* MUNROE, [1933] 2 D. L. R. 201 ; 6 M. P. R. 255.—**CAN.**

in an exhausted condition. On this ground & also on the ground that the cruel ill-treatment occurred before the rabbit was liberated for the purpose of being coursed or hunted, resps. had not brought themselves within the protection given by the sect. to the coursing or hunting of any captive animal.—JENKINS *v.* ASH (1929), 141 L. T. 591; 93 J. P. 229; 45 T. L. R. 479; 27 L. G. R. 537; 28 Cox, C. C. 665, D. C.

587b. —— **Ill-treatment before liberation.**]—JENKINS *v.* ASH, No. 587a, *ante*.

595. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

602. *Add. Annotation :*—**Consd.** White *v.* Fox & Dawes (1932), 48 T. L. R. 641.

602a. —— —— **Not domestic animal.**]—WHITE *v.* FOX & DAWES (1932), 48 T. L. R. 641, D. C.

604. After this case add :—

Dog—Disqualification for ownership.]—*See* Protection of Animals (Cruelty to Dogs) Act, 1933 (c. 17).

613. *Add. Annotation :*—**Refd.** R. *v.* Wood, *Ex p.* Farwell (1918), 87 L. J. K. B. 913.

625. After this case add "*See* Animals (Anæsthetics) Act, 1919 (c. 54)."

651. *Add. Citation :*—26 Cox, C. C. 113.

653. *Add. Annotations :*—**Consd.** Cotterill *v.* Penn [1936] 1 K. B. 53. **Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

654. *Add. Annotations :*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388. **Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

656. *Add. Annotation :*—**Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

Part XI.—Diseased Animals.

657. *Add. Annotation :*—**Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

659. *Add. Citation :*—88 L. J. K. B. 263.

664. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

688a. —— **Transit of Animals (Amendment) Order, 1930—Meaning of "consecutive journeys."**]—Transit of Animals (Amendment) Order, 1930, art. 1, enacts, among other things, that any road vehicle used for the conveyance of animals the property of a dealer or in connection with the trade or business of a dealer shall, as soon as practicable after each occasion on which it is so used, and before any other animal is placed in it, be cleansed and disinfected as therein mentioned, "Provided that in the case of a vehicle . . . making consecutive journeys on any one day between the same two points, the requisites of this article shall be deemed to be sufficiently complied with if the vehicle is cleansed & disinfected . . . as soon as practicable after the completion of the last of such consecutive journeys" :—*Held :* on the construction of the Order, the expression "consecutive journeys . . . between the same two points" in the proviso to art. 1 does not mean consecutive journeys in the same direction between the two points, the return journey counting as distinct, but consecutive journeys in either direction, & the vehicle need not be cleansed & disinfected until the completion of the last of its consecutive journeys in either direction.—NETHAWAY *v.* BREWER, [1931] 2 K. B. 459; 100 L. J. K. B. 524; 145 L. T. 191; 95 J. P. 159; 75 Sol. Jo. 359; 29 L. G. R. 489; 29 Cox, C. C. 305, D. C.

690a. —— **"Double dipping"—Meaning.**]—*Held :* the words "double dipped" meant twice dipped & not dipped for a second time after the first prescribed dipping.—ADAMS *v.* GALLOWAY (1925), 23 L. G. R. 588, D. C.

PART X. SECT. 1, SUB-SECT. 3.

81. *Commitment for trial for overdriving—Jurisdiction of one justice.*]—R. *v.* NELSON (1916), 28 Can. Crim. Cas. 276.—CAN.

PART XI. SECT. 1.

662 vi. ——.]—A contract for the sale of animals affected with a contagious or infectious disease is an offence against R. S. C. 1906 (c. 75), s. 38, whether or not the seller knows that the animals are so affected.—BALDWIN *v.* SNOOK, [1918] 2 W. W. R. 314; 40 D. L. R. 433.—CAN.

662 vii. ——.]—On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question is fairly common in the neighbourhood, the buyer knows that the animal is suffering from some complaint, although not the particular nature of it, & the buyer refuses to complete the sale until he has had the animal in his possession a certain time.

The Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), does not give a right of action to a buyer of animals who suffers damage from a sale which is illegal under that Act.—O'MEALEY *v.* SWARTZ, [1918] 3 W. W. R. 98.—CAN.

662 viii. ——.]—In view of Orders in Council authorised under s. 38k exempting tuberculosis from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 38, *Baldwin* v. *Snook*, No. 662 vi., *ante*, was held not applicable to support a defence of illegal sale of cattle.—WOOD, WEILLER & MCCARTHY, LTD. *v.* VALCOUR, [1921] 2 W. W. R. 32.—CAN.

662 ix. ——.]—Where animals are exposed for sale by a vendor & he knows that they are infected with a contagious disease he is liable to a penalty under Animal Contagious Diseases Act, & if he effects a sale of the animals under such circumstances the sale is illegal & void. If in addition to the breach of his statutory duty the vendor makes false representations as to the condition of the animals & thereby induces a person to purchase them, the latter is entitled to succeed in an action for any resulting damages sustained by him, & in any event he is entitled to recover any money paid by him to the vendor on the illegal contract, he not being in *pari delicto* with the vendor.—LONG *v.* ZLATNICK (1922), 70 D. L. R. 88; [1922] 3 W. W. R. 687.—CAN.

PART XI. SECT. 2, SUB-SECT. 2.

690 ii. —— *Validity of notice—Blank form issued by Government Veterinary Officer—Day & hour filled in by Inspector.*]—KAJEE *v.* R., [1930] N. L. R. 55.—S. AF.

PART XI. SECT. 2, SUB-SECT. 3.

sk. *Hogs fed on garbage—Under licence waiving compensation—Disease necessitating slaughter—Onus of proof of cause of disease.*]—A. obtained a licence to feed his hogs on garbage obtained from outside, which licence contained the following words: "In consideration of the granting of a licence to me I hereby agree . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, unless it can be shown that the infection came from some other source than garbage feeding" :—*Held :* the *onus* of proving that the cholera in question came from some other source than garbage feeding was upon suppliant.—ALDERSON *v.* R. (1922), 65 D. L. R. 398; 21 Exch. C. R. 359.—CAN.

694a. Compensation—On commercial basis of valuation—Failure to object—Valuation binding.]—By Diseases of Animals Act, 1894 (c. 57), s. 15 (2), " The Board shall for animals slaughtered under this section pay compensation as follows : (i) Where the animal slaughtered was affected with foot-&-mouth disease the compensation shall be the value of the animal immediately before it became so affected. (ii) In every other case the compensation shall be the value of the animal immediately before it was slaughtered."

Pltf. was the owner of a herd of pedigree Friesian cattle which became infected with foot-&-mouth disease, & the Minister of Agriculture & Fisheries provisionally decided that it was not a case for slaughter, but was a case for isolation which would have caused expense to pltf. together with possible risk of losing his stock. Subsequently, however, after certain conversations between the Govt. inspector & pltf. the Minister decided to have the cattle valued & slaughtered. The cattle were valued on behalf of the Minister on a commercial & not a pedigree basis at £993, & notice of this valuation was given to pltf. & he signed the valuation form. The cattle were accordingly slaughtered on the following day & pltf. was paid the sum of £993. Pltf. did not give within 14 days, as required by clause 39 of Animals (Transit & General) Order, 1912, a counter-notice that he disputed the valuation. Afterwards pltf. claimed from the Minister the difference between the £993 & the pedigree value. The latter was agreed at the trial to be £2,162. The claim was based (*inter alia*) on the provision in s. 15 (2) that " the value " of the slaughtered animals should be paid as compensation :—*Held :* as pltf. & the Minister had agreed that the valuation should be on a commercial basis, the agreement was binding & the claim of pltf. failed.—BLIGH *v.* MINISTER OF AGRICULTURE & FISHERIES (1931), 47 T. L. R. 492.

697. *Add. Annotation :*—**Consd.** Tees Conservancy Comrs. *v.* James, [1935] Ch. 544.

699. *Add. Annotation :—As to* (1) **Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397.

700. *Add. Annotation :*—**Refd.** Fisher *v.* Oldham Borough Corpn. (1930), 143 L. T. 281.

705a. —— —— Burden of proof—Diseases of Animals Act, 1894 (c. 57), ss. 4 (1), 57 (1).]—A farmer who was summoned under Diseases of Animals Act, 1894 (c. 57), s. 4, for not giving notice with all practicable speed to a constable of the fact that two of his cows were suffering from foot & mouth disease, contended before the justices that as there was no evidence that he knew before the day on which he gave notice that the animals were affected, he had discharged the onus which lay upon him under sect. 4 by giving notice on that date. The justices accepted this contention, & dismissed the summons :—*Held :* this contention was in direct conflict with sect. 57 of the Act, which cast on the accused the onus of proving absence of knowledge, & that the justices ought to have convicted.—WILSON *v.* YATES (1927), 91 J. P. 188 ; 44 T. L. R. 25 ; 25 L. G. R. 514, D. C.

NOTE.—It has been found desirable to add the following Part :-

Part XII.—Breeding of Animals.

Statutory control—Horse breeding.]—*See* Horse Breeding Act, 1918 (c. 13).

Hire of stallion's services—Right of lien on mare —For expense of covering.]—*See* original volume, p. 257, No. 380.

Increase in animals—Who entitled to.]—*See* original volume, pp. 212, 213.

PART XI. SECT. 2, SUB-SECT. 5.

sl. *Power to make bye-law—Prohibiting admission of infected animals into municipality.*]—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act.—R. *v.* MOULD, [1920] 2 W. W. R. 540 ; 52 D. L. R. 302.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 6.

gi. —— *Proof of scienter.*]—On a prosecution under Cattle Disease Act, Ireland, 29 & 30 Vict. c. 4, & 33 & 34 Vict. c. 36, & the Orders of the Privy Council, " knowledge " that the cattle are diseased is part of the offence & must be proved by the prosecutor.—[illegible] *v.* EWERS (1873), I. R. 7 C. L. 226.—**IR.**

—— *Certificate of veterinary surgeon—No proof of authenticity—Whether admissible.*]—In a prosecution for failure to give notice of the existence of swine fever in contravention of the Act, the prosecutor produced a certificate bearing to be signed by a veterinary surgeon, certifying the existence of the disease at accused's premises. No evidence was led to prove the authenticity of the certificate, which was not attested, or to prove that the grantor held the office of veterinary inspector under the Act. The justices sustained an objection to the admission of the certificate as evidence :—*Held :* the certificate was admissible as evidence, in terms of Diseases of Animals Act, 1894, s. 44 (5), without proof of its authenticity or of the grantor's qualifications, at all events in the absence of specific challenge on these points by the accused at the trial.—HENDERSON *v.* WARDROPE, [1932] S. C. (J.) 18.—**SCOT.**

PART XII.

sm. *Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act,* 1916.]—At the trial of an action by a person, who was the owner of a stallion, against the members of the [illegible] of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that pltf. was not actual owner but had control & management of the animal :—*Held :* he was entitled to maintain the action.—DUTTON *v.* EVANS (1920), 16 Tas. L. R. 45.—**AUS.**

Hire of stallion's services—Liability of owner of stallion—Injury to mare.]—*See* Vol. II., p. 220, cases q, r.

—— —— *Mare improperly served by stallion.*]—*See* Vol. II., p. 220, cases s, t, u.

sp. —— —— *Breach of contract.*]—SINCLAIR *v.* WALKER, No. 380 l., *ante.*—**CAN.**

sr. *Warranty of fitness by agent—Liability of principal.*]—In an action for breach of warranty as to fitness for breeding on the sale of a horse :—*Held :* on the facts vendor was an agent only, & his principal was liable upon the warranty.—SIM *v.* GOOD (1916), 9 S. L. R. 273 ; 30 D. L. R. 554.—**CAN.**

ARBITRATION.

Part I.—The Submission.

8. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

7. *Add. Annotation :—As to* (1) **Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

14. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

24. *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co *v.* R., [1920] 2 K. B. 214.

26. *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co. *v.* R., [1920] 2 K. B. 214.

26a. ——.]—It is not necessary that both parties should have signed the written agreement (BANKES, L.J.). — ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.

26b. —— **Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.**]—In 1913 a patent was granted for "Improvements in winches for operating the rope of a duplex derrick." Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.'s service, the co. should have pltf.'s licence to make & sell windlasses under the patent, at a reasonable royalty, &, failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf.:—*Held :* pltf. had pro that the agreement for a licence had been made; he was entitled to a reasonable royalty; &, as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—FLEMING *v.* DOIG (J. S.) (GRIMSBY), LTD. (1921), 38 R. P. C. 57.

36b. **Reference under National Health Insurance Regulations of Insurance Commissioners.**]—By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, "any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be referred to the Comrs." By reg. 51 of the regulations, "Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive." A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action: —*Held :* the action must be stayed

PART I. SECT. 2.

d i. —— —— *Informal extension of written submission amounting to new parol submission.*]—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon:—*Held :* a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 13 O. W. N. —. **CAN.**

—— —— *Signature of one of ... of documents—Forming part of agreement.*]—A submission or written agreement to submit differences to arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the ment is sufficient to bind the person so signing to the submission contained in the agreement.—SUKHAMAL BANSIDHAR *v.* BABN LAL KEDIN & CO. (1920), I. L. R. 42 All. 525.—**IND.**

e i. —— *Must not be contrary to public policy.*]—If it is an implied term of a reference to arbn., & of an *ekranama* pursuant to the award, that a complaint that a non-compoundable offence under the Penal Code has been committed shall not be proceeded with, the consideration is unlawful on the ground of public policy, & the award & *ekranama* are therefore unenforceable: that is so irrespective of whether in law a prosecution has been commenced.—KAMINI KUMAR BASU *v.* BIRENDRA NATH BASU (1929), 57 L. R. Ind. App. 117, P. C.—**IND.**

l i. —— *General requisites.*]—An award made by arbitrators is not invalid on the ground that in the reference to arbn. the actual dispute is stated merely in general terms, when the award itself shows that the nature of the dispute was properly explained to the arbitrators.—RAM BAHADUR SEN *v.* MAHANATH GANESH BHAGAT (1923), I. L. R. 2 Pat. 554.—**IND.**

l ii. ——]—A submission to arbn. according to the above sect. is a submission which provides that either party in case of a dispute arising on the contract is at liberty to take the necessary steps to get the dispute decided by arbn.—BURJOR *v.* ELLERMAN CITY LINES, LTD. (1925), I. L. R. 49 Bom. 854.—**IND.**

l iii. —— *Written agreement to submit.*]—A submission to arbn. under Indian Arbn. Act need not be signed by both parties. All that is required is a written agreement to submit, & acting upon it.—RADHA KANTA DAS *v.* BAERLIEN BROTHERS (1928), I. L. R. 56 Calc. 118.—**IND.**

PART I. SECT. 3, SUB-SECT. 1.

sa. *Appointment of appraisers—Under arrangement separate from policy.*]—*Held :* not to constitute a submission to arbn., but a provision for appraisement.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—**CAN.**

L.J. & SARGANT, J.) upon the ground that there was a "submission" to arbn. within the Act of 1889, s. 27 (BANKES, L.J.), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—CLEMENTS *v.* COUNTY OF DEVON INSURANCE COMMITTEE, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.

39. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

40. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

41. ***Add. Annotation :*—Consd.** O'Rourke *v.* Darbishire, [1920] A. C. 581.

42. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

43. *Add. Annotation :*—**Refd.** Wyndham *v.* son, [1937] 3 All E. R. 677.

44a. —— —— **Appeal.**]—Where proceedings are taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree or the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—PISANI *v.* A.-G. FOR GIBRALTAR (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

Annotation :—**Consd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

44b. —— —— **Enforcement.**]—Pltf. issued a writ in the Ch. Div. claiming an account & payment of all sums due to her under a contract entered into by pltf. with deft. An order was accordingly made for an account. At the request of both parties, the master gave a decision on a matter which was not covered by the judge's order for an account, & he issued a certificate to the effect that a certain sum was due from deft. to pltf. Deft. sought to have the certificate discharged or varied by a judge of the Ch. Div., but the judge treated the certificate as a nullity, on the ground that the master had no power to consider matters not within the scope of the original order for an account. Pltf. then sought unsuccessfully to enforce the master's certificate, asking for the payment of the sum alleged to be due to her. Pltf. then brought an action in the K. B. Div. claiming payment of the amount awarded by the master :—*Held :* as both parties had requested the master to decide a matter not covered by the order for an account, the master's certificate was in the nature of an award by an arbitrator, & therefore binding upon the parties.—WYNDHAM *v.* JACKSON, [1937] 3 All E. R. 677; 157 L. T. 305; 53 T. L. R. 921; 81 Sol. Jo. 717.

45. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

53. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

53a. —— ——.]—BOYNTON *v.* RICHARDSON, No. 71a, *post.*

66. *Add. Annotations :*—**Consd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121; Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

68. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

70. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

71. *Add. Annotations :* — **Apld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Wisbech R. C. *v.* Ward, [1928] 2 K. B.

71a. **Surveyor's certificate—Valuation of timber—Liability for negligence.**]—A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber :—*Held :* the surveyors were in the position of quasi-arbitrators, & the action failed.—BOYNTON *v.* RICHARDSON (1924), 69 Sol. Jo. 107.

PART I. SECT. 3, SUB-SECT. 2.

42 iii. —— ——.]—In an action of slander the parties agreed to trial before a judge & seven jurymen instead of the requisite eight. A verdict was given for pltf. Deft. appealed :—*Held :* the ct. had acted as an arbitrator, & no appeal lay.—LOANE *v.* BLACK, [1925] 3 D. L. R. 940.—**CAN.**

42 iv. —— ——.]—*Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

51 ii. ——.]—Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission; their decision was to be binding & conclusive on both parties & not subject to appeal; they could view the property & call such witnesses & take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision :—*Held :* this agreement did not provide for a judicial arbn. but for a valuation merely.—CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. *v.* MASSIE (1914), 50 S. C. R. 409.—**CAN.**

m i. *Assessing loss by theft & fire—Appointment of appraisers under arrangement separate from policy.*]—*Held :* a provision for appraisement, & not a submission to arbn.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—**CAN.**

n i. *S. P.* IRWIN *v.* CAMPBELL (1914), 32 O. L. R. 48.—**CAN.**

PART I. SECT. 4.

t i. *S.P.* JNAUENDRA NATH BAGCHI *v.* SURES CHANDRA ROY (1927), I. L. R. 6 Pat. 556.—**IND.**

v i. ——.]—The selection of a guardian cannot be referred to arbn., as it is not a matter of private interest between parties.—PALANIANDI CHETTI *v.* ADAIKALAM CHETTI (1923), I. L. R. 47 Mad. 459.—**IND.**

ss. *Construction of agreement—Involving point of law.*]—By an agreement between the N. B. Ry. Co. & the F. Ry. Co. it was provided that, in the event of an Act of Parliament being obtained & the capital being subscribed, a line of railway should be constructed by the F. Co., & thereafter by terms. It was further provided that the N. B. Co. should be bound to contribute to the F. Co. a sum sufficient to make up a dividend of 4 per cent. on the "paid-up share capital" of the F. Co., & that all questions which might arise between the parties in relation to the agreement, or the import or meaning thereof, or the carrying out of the same, should be referred to arbn. in terms of Railway Companies Arbitration Act, 1859. The line of railway was thereafter constructed & worked in terms of the agreement. In an action at the instance of the N. B. Co. against the F. Co., concluding for declarator *(inter alia)* that the pursuers were freed & relieved of all liability to make up the dividend of the F. Co. to 4 per cent., & that the articles of the agreement thereanent were null & of no effect, the pursuers averred that the *ex facie* capital of defenders' co. was not the "paid-up share capital" on which the dividend had been guaranteed in respect that defenders had raised that capital in a manner which was illegal & *ultra vires* of their statutory authority, the pursuers maintained that this depended on a legal interpretation of matters outwith the agreement, & consequently that the clause

78. *Add. Annotation :*—**Refd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

79. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

80. *Add. Annotations :*—**Refd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304 ; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331 ; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

125. *Add. Annotation :* — **Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

135a. ——.]—By a contract made between an Italian buyer & English sellers it was provided as follows : " Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Pltf. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counterclaimed to enforce the award :—*Held :* (1) the words " to be settled by arbn. in London in the usual way " meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been settled " in the usual way " ; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—SCRIMAGLIO *v.* THORNETT & FEHR (1924), 131 L. T. 174 ; 40 T. L. R. 320 ; 68 Sol. Jo. 630 ; 29 Com. Cas. 175, C. A.

141. *Add. Annotations :*—**Refd.** Phœnix Insce. of Hartford *v.* De Monchy (1929), 141 L. T. 439 ; The Njegos, [1936] P. 90.

141a. —— ——.]—Pltfs. Danish & Norwegian merchants, to whom, as endorsees of the bills of lading, the property in part of a cargo of grain had passed, claimed in respect of short delivery from defts., the owners of the Yugo-Slavian steamship *N.* By a charterparty entered into in London by an English registered co. as agents for defts., & the London branch of a Paris firm as agents for the charterers, an Argentine co., the *N.* was chartered to load the grain in the River Plate for delivery at Scandinavian ports. The charterers were the shippers. The charterparty was in English on the Chamber of Shipping River Plate (" Centrocon ") form. The bills of lading, in an English form & in the English language, incorporated " all the terms, conditions & exceptions " of the charterparty " including the negligence clause." The charterparty contained the usual English arbn. clause. The cargo was damaged by fire on board the *N.* due, as pltfs. alleged, to the ship being unseaworthy. Defts., who counterclaimed for a general average contribution, in an amended defence pleaded that the law governing the bills of lading contract was Yugo-Slavian law, the law of the flag, under which it was alleged that, if they had exercised due diligence to keep the ship seaworthy, the exceptions in the charterparty would apply without the implied warranty of seaworthiness. It was admitted that the proper law of the charterparty was English law. The question of the law applicable to the bills of lading was tried as a preliminary issue :—*Held :* (1) the arbn. clause, which would have been decisive as to the application of English law, was not incorporated into the bills of lading ; but (2) those clauses, which were incorporated, & particularly the exceptions clause, could not be isolated from their context & incorporated without any indication of the proper law of the contract from which they were taken ; (3) the inference was that sensible business men must have intended that the bills of lading should be read with the English interpretation attaching to the charterparty ; & (4) both on what should be presumed to be the intention of the parties & on the ground of business efficacy the proper law of the contract was English & not Yugo-Slavian law.—THE NJEGOS, [1936] P. 90 ; 105 L. J. P. 49 ; 155 L. T. 109 ; 52 T. L. R. 216 ; 18 Asp. M. L. C. 609 ; *sub nom.* NJEGOS CARGO OWNERS *v.* NJEGOS OWNERS, 41 Com. Cas. 149.

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of arbn. did not apply, & that the question raised in the action fell to be decided by the Ct. of Session :—*Held :* the arbn. clause was a general clause, by which the parties had contracted themselves out of the jurisdiction of the ct. as to anything which fell within the clause : the questions raised were questions of the construction of the agreement, &, accordingly, must be determined by the arbiter, even although their determinations depended upon the question of *ultra vires* & although it involved a point of law.—NORTH BRITISH RY. CO. *v.* NEWBURGH & NORTH FIFE RY. CO., [1911] S. C. 710.—**SCOT.**

sm. *Liability for & amount of alimony.*]—*Held :* proper subjects for arbn.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195 ; 130 W. N. 245.—**CAN.**

sp. *Right to receiver & injunction.*]—*Held :* not a matter to refer.—SURENDRA KUMAR ROY CHOWDHURY *v.* SUSHIL KUMAR ROY CHOWDHURY (1927), I. L. R. 55 Calc. 249.—**IND.**

PART I. SECT. 5.

st. *Reference by Crown—By whom signed.*]—DOMINION BUILDING CORPN., LTD. *v.* R., [1927] 2 D. L. R. 510, [1927] Exch. C. R. 79.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

137 ii. ——.]—Where a submission to arbn. is made subject to Arbn. Act, R.S.A., 1922 (c. 98), the provisions of that Act must be held to be applicable in so far as they can reasonably be applied.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684 ; [1925] 3 W. W. R. 493.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.

145 v. —— ——.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability :—*Held :* the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

145 vi. —— ——.]—Insurers alleged that material misrepresentations were made by the insured in his proposal, & that consequently the policy was void under clause 7 of the policy, & that therefore a dispute had arisen which, under clause 12 of the policy, should be referred to arbn. :—*Held :* the question of misrepresentation was within the arbn. clause in the policy.—RICHARDSON *v.* ARMY, NAVY, & GENERAL ASSURANCE ASSOCN., LTD., [1924] 2 I. R. 96.—**IR.**

145 vii. —— ——.]—F. insured a motor char-a-banc with deft. co. The policy contained the usual clause as to wilful misstatements, & a clause that any dispute . . . " as to the extent & meaning " of the policy should be referred to arbn. The co. repudiated a claim by F. on the ground that non-disclosure by him of material facts had rendered it null & void, but in an

146. *Add. Annotations:*—**Consd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Distd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337; Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952. **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586; Locker & Woolf, Ltd. *v.* Western Australian Insurance Co. (1935), 79 Sol. Jo. 574.

147. *Add. Annotations:*—**Consd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 49 T. L. R. 224. **Refd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

147a. —— ——.]—In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration "which proposal & declaration warranted to be true it is agreed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void"; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then "unless notice in writing of such increased risk is given to the co. . . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, "If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they required the dispute to be referred to arbn. under condition 11. In an action on the policy:—*Held:* (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the action.—WOODALL *v.* PEARL ASSURANCE CO., [1919] 1 K. B. 593; 88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125; 63 Sol. Jo. 352; 24 Com. Cas. 237, C. A.

Annotations:—*As to* (2) **Apld.** Freshwater *v.* Western Australian Insce. Co. (1932), 102 L. J. K. B. 75. **Consd.** Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 49 T. L. R. 224. **Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

action by F. the co. moved to stay the proceedings & to refer to arbn.:—*Held:* the contract having been repudiated the dispute was not one as to the extent & meaning of the policy, & not being otherwise within the arbn. clause could not be referred to arbn.—FUREY *v.* EAGLE, STAR & BRITISH DOMINIONS INSCE. CO. (1922), 56 I. L. T. 23.—**IR.**

e. *Revsd.*, [1909] W. N. 161.—**SCOT.**

e i. —— ——.]—The parties in framing a contract may insert a clause binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn. clause.—SANDERSON & SON *v.* ARMOUR & CO., LTD. (1922), 91 L. J. P. C. 167; 127 L. T. 597; [1922] S. C. (H. L.) 117; 59 Sc. L. R. 268.—**SCOT.**

e ii. —— ——.]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

e iii. —— ——.]—Where a contract contains an arbn. clause, & one of the parties seeks to avoid the contract, the dispute is referable to arbn. if the avoidance of the contract arises out of the terms of the contract itself. Where, however, a party seeks to avoid the contract for reasons *dehors* it, the arbn. clause cannot be resorted to as it, together with the other terms of the contract, is set aside. In other words, a party cannot rely on a term of the contract to repudiate it, & still say the arbn. clause should not apply. If he relies on a contract he must rely on it for all purposes.—INDIA ELECTRIC CO. *v.* GENERAL ELECTRIC TRADING CO. (1929), I. L. R. 53 Bom. 573.—**IND.**

s i. —— *Performance of contract prevented by Government.*]—A firm agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, "or any other unforeseen circumstances" & included provisions for the shipment of delayed cargoes as soon as possible, subject to a right of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms: "Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales:—*Held:* on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly fell to be determined by arbn.—SCOTT & SONS *v.* DEL SEL, [1923] S. C. (H. L.) 37.—**SCOT.**

s ii. —— *Contract cancelled.*]—If a contract is cancelled, an arbn. clause falls with such cancellation.—COX TOWING LINE *v.* DUNFIELD & CO. (1922), 68 D. L. R. 133.—**CAN.**

s iii. —— *Existence of dispute.*]—The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—STANDARD INSURANCE CO. *v.* SCANDRETT (1923), 23 S. R. N. S. W. 254; 40 N. S. W. W. N. 22.—**AUS.**

s iv. —— ——.]—The existence of a dispute is an essential condition for the jurisdiction of arbitrators.—UTTAM CHAND SALIGRAM *v.* JEWA MAMOOJI (1919), I. L. R. 46 Calc. 534.—**IND.**

147b. —— ——.]—Where an insurance co. alleges that a claim under an indemnity policy is invalidated by reason of the non-disclosure of a material fact, & where the policy contains an arbn. clause, the co. can at the same time insist that the claimants must under the arbn. clause proceed to arbn. in lieu of bringing an action to enforce the claim.—STEVENS & SONS *v.* TIMBER & GENERAL MUTUAL ACCIDENT INSURANCE ASSOCN., LTD. (1933), 102 L. J. K. B. 337; 148 L. T. 515; 49 T. L. R. 224; 77 Sol. Jo. 116, C. A.

Annotations :—**Consd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952. **Refd.** Jones *v.* Birch Bros., Ltd., [1933] 2 K. B. 597.

Compare original volume, p. 356, No. 293.

153. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

155. *Add. Annotations :—As to* (1) **Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; The Njegos, [1936] P. 90. *As to* (2) **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

156. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

164. *Add. Annotation :*—**Consd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

164a. ——.]—By two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in England, & were not examined at the port of landing, but were sold by applt. to sub-purchasers. More than three days after the goods had been landed applt. wrote to resps. complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps. took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., & that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract :—*Held :* the awards were a bar to the action.—AYSCOUGH *v.* SHEED THOMSON & CO. (1924), 93 L. J. K. B. 924; 131 L. T. 610; 40 T. L. R. 707; 30 Com. Cas. 23, H. L.; *affg.* (1923), 92 L. J. K. B. 878, C. A.

Annotation :—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

165a. Arbitrator to be appointed within limited time.]—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued : "Any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, &, by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law :—*Held :* (1) the arbn. clause was not open to objection on the ground that it ousted the jurisdiction of the ct.; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & CO., [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 534; 66 Sol. Jo. 437; 15 Asp. M. L. C. 566; 27 Com. Cas. 311, H. L.; *varying* S. C. *sub nom.* DREYFUS & CO. *v.* ATLANTIC SHIPPING & TRADING CO. (1921), 37 T. L. R. 417, C. A.

Annotations :—As to (1) **Distd. & Expld.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. *As to* (2) **Distd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. **Refd.** Cosmopolitan Shipping Co. *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

165b. ——.]—A charterparty contained a clause providing that all disputes arising out of the contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so appointed the claim was to be deemed to be waived & absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An

153 lv. —— *Lease in dispute.*]—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the parties." In arbn. proceedings the issue between the parties was not the validity of a notice to quit but the question whether the tenant was possessing under the lease or under a new bargain :—*Held :* as the lease itself was in dispute, the arbn. clause in the lease did not apply.—HOTH *v.* COWAN, [1926] S. C. 58.—SCOT.

sb. *Clause in broker's note—Rules applicable to members only.*]—Flour was sold by defts. to pltf. under contracts in broker's notes which contained a condition that the rules & regulations of the S. Assocn. should apply. The rules of the assocn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the assocn., having sued defts. for damages for breach of contract :—*Held :* as the rules referring to arbn. were applicable only to disputes between members of the assocn., an application for a stay of proceedings must be dismissed.—LEVIN *v.* BERG, ETC., [1921] App. D. 78.—S. AF.

PART I. SECT. 6, SUB-SECT. 4.

b. *Revsd.*, [1909] W. N. 161.—SCOT.

award was made in their favour, the shipowners not appearing :—*Held :* although the loss was caused by unseaworthiness, &, consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—FORD (H.) & Co. *v.* COMPAGNIE FURNESS (FRANCE), [1922] 2 K. B. 797 ; 92 L. J. K. B. 88 ; 128 L. T. 286 ; 16 Asp. M. L. C. 102, D. C.

165c. ——.]—Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination" ; that any disputes arising out of the contract should be settled by arbn. ; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else :—*Held :* the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—PINNOCK BROTHERS *v.* LEWIS & PEAT, LTD., [1923] 1 K. B. 690 ; 92 L. J. K. B. 695 ; 129 L. T. 320 ; 39 T. L. R. 212 ; 67 Sol. Jo. 501 ; 28 Com. Cas. 210.

Annotations :—**Distd.** AYSCOUGH *v.* Sheed Thomson (1924), 93 L. J. K. B. 924. **Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

165d. ——.]—Pltfs. chartered their ship to defts. to carry grain, the charterparty providing that all disputes should be referred to arbn. & that claimant's arbitrator must be "appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." Before completion of discharge defts. made various payments to pltfs. on account of freight, & on final discharge pltfs. claimed that £568 was still owing for freight. Defts. admitted that £416 was still owing for freight, but they set up a counterclaim for £581 for short delivery & refused to pay the £416 until their counterclaim was met. Neither party referred the matter to arbn., & more than three months after final discharge pltfs. brought an action for £568 balance of freight & defts. counterclaimed £581 for short delivery :—*Held :* though pltfs. could not recover the £568, as the claim for it ought to have been taken to arbn., yet they could recover the £416 about which there had never been any dispute, but the counterclaim, as it was always in dispute, was barred by the arbn. clause.—BEDE STEAM SHIPPING CO., LTD. *v.* BUNGE Y BORN LIMITADA S.A. (1927), 43 T. L. R. 374.

167. *Add. Annotations :*—**Distd.** Crediton Gas Co. *v.* Crediton U. D. C., [1928] 1 Ch. 447. **Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

168. *Add. Annotation :*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

172. *Add. Annotation :*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

234. *Add. Citation :*—2 Hudson's B. C. 4th ed. 100. *Add. Annotations :*—**Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

237a. "If any dispute as to the agreement or any matter or thing therein or intention or construction thereof."]—Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, & the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, & the contract contained a clause that if any dispute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbn. : —*Held :* such dispute came within the clause,

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PART I. SECT. 6, SUB-SECT. 7.—A.

166 iv. ——.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it ; he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251 ; 18 O. W. N. 53.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—C.

8a. *Whether disputes within arbitration clause.*]—On an application for a stay of proceedings in an action on an insurance policy covering loss of profits suffered by reason of a fire which destroyed pltfs.' merchandise, on the ground that the instrument upon which the action was brought contained a stipulation that "if any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value & amount, & the proportion thereof, if any, to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, & independently of all other questions, be submitted to arbn.," etc., an order was made staying proceedings in the action until completion of an arbn. pursuant to said stipulation :—*Held :* it was the intention of the parties to refer to arbn. not only the disputes between them, but also the question whether these disputes fell within the arbn. clause, & in the circumstances of this case, where no serious question of law arose, the issues ought to be decided by arbn.—FAMOUS CLOAK & SUIT CO. *v.* PHŒNIX ASSCE. CO. (1931), 44 B. C. R. 120.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—D.

8a(p.343)1. *"Any difference"—Partnership dispute—Claim for damages.*]—A clause in a deed of partnership provided that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pltf. sued deft. for damages suffered through the fraudulent acts of deft. in breach of his duty as a partner :—*Held :* such a claim fell within the terms of the arbn. clause.—WALTERS *v.* ALLISON (1922), 43 N. L. R. 238.—**S. AF.**

& was not a dispute debors the contract.—DE LA GARDE *v.* WORSNOP & Co., [1928] Ch. 17; 96 L. J. Ch. 446; 137 L. T. 475; 71 Sol. Jo. 604.

238a. "**All loss.**"]—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, & for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pltf. should recover, among other sums, "all loss to pltf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pltf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts moved to set aside or vary an award made:—*Held:* (1) under the words "all loss" there was jurisdiction to award to pltf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—A.-G. FOR MANITOBA *v.* KELLY, [1922] 1 A. C. 268; 91 L. J. P. C. 101; 126 L. T. 711; 38 T. L. R. 281, P. C.

Annotations:—*As to* (2) **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** Hirji Mulji Cheong Yue S.S. Co., [1926] A. C. 497; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

240. *Add. Annotation:*—**Refd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

254. *Add. Annotations:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610. **Apprvd.** Ramdutt Ramkissen Das *v.* Sassoon (1929). 98 L. J. P. C. 58. **Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

254a. ——.]—Unless the submission otherwise provides, the Crown is entitled, in arbn. proceedings, to rely upon the defence of the above Act.—CAYZER, IRVINE & Co. *v.* BOARD OF TRADE (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *revsd.* on other grounds, *sub nom.* BOARD OF TRADE *v.* CAYZER, IRVINE & Co., [1927] A. C. 610, H. L.

Annotations:—**Consd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

254b. ——.]—Although above Act does not in terms apply to arbns. it is an implied term of a contract which contains an arbn. clause that the arbitrator must decide the dispute according to the existing law of contract, & every defence open in a ct. of law can be equally proponed for the arbitrator's decision, & consequently in an arbn. above Act can be pleaded.—RAMDUTT RAMKISSEN DAS *v.* SASSOON (E. D.) & Co. (1929), 98 L. J. P. C. 58; 140 L. T. 542; 45 T. L. R. 205, P. C.

Annotation:—**Consd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

255. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

263. *Add. Annotations:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478; Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Refd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75; Cipriani *v* Burnett, [1933] A. C. 83; Israelson *v.* Dawson (Port of Manchester Insurance Co., Ltd.), [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

265. *Add. Annotation:*—**Refd.** Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352.

265a. —— —— **Action on charterparty.**]—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & Co., No. 165a, *ante*.

269. *Add. Annotation:*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

273. *Add. Annotation:*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

278. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

288. *Add. Annotation:*—**Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

290. *Add. Annotations:*—**Apld.** Woodall *v.* Pearl

PART I. SECT. 7.

r i. ——.]—GROTHE *v.* MONTREAL CORPN., [1924] 4 D. L. R. 401.—**CAN.**

sc. *Waiver of right to immediate appraisal—Repossession by vendor of farm implement—Farm Implement Act, R.S.S.* 1920 (c. 128), *s.* 24.]—*Ite* GRAY TRACTOR CO. OF CANADA & VAN TROYEN, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. 202.—**CAN.**

PART I. SECT. 8.

263 vii. —— ——.]—An agreement to refer a dispute to arbn. does not oust the jurisdiction of the ct.—BHOWANIDAS RAMGOBIND *v.* PANNACHAND LUCHMIPAT (1924), I. L. R. 52 Calc. 453.—**IND.**

288 i. *Statutory reference—Jurisdiction* ——]—When the rules of an registered under Primary Producers' Co-operative Assocns. Acts, 1923 to 1926, provide for the settlement of disputes between the association & any of its members by arbitration, a magistrate's ct. has no jurisdiction to entertain an action by a member against the association for moneys claimed to be due for milk supplied, & the association cannot waive its right to this statutory remedy.—KUHL *v.* THE MACLAGAN VALLEY CO-OPERATIVE DAIRY ASSOCN., LTD. (1929), S. R. (Q.) 49; 23 Q. J. P. 17.—**AUS.**

PART I. SECT. 9, SUB-SECT. 1.

290 v. —— *Reference of disputed claim under policy.*]—Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the making of an award a condition precedent to any right of action on the policy, & requiring the action to be brought within three months after such award, are valid.—WEBB *v.* QUEENSLAND INSURANCE CO., LTD., [1920] N. Z. L. R. 118.—**N.Z.**

290 vi. —— ——.]—On an application by way of motion by pltf. co. to restrain deft. from proceeding with his action, which by agreement was dealt with as if made by originating summons for the construction of the policy, removed into the Ct. of Appeal for argument:—*Held:* pltf. co. was entitled to a declaration that it was a condition precedent to the liability of the co. to pay, & of deft. to recover any sum under the policy that the amount payable by the co. in respect to the accident should be determined by arbn.—UNITED INSURANCE CO. *v.* ARTHUR, [1929] N. Z. L. R. 33.—**N.Z.**

Assce., [1919] 1 K. B. 593. **Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. **Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75. **Expld.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586. **Refd.** Hill *v.* South Staffordshire Ry. (1865), 12 L. T. 63; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Cipriani *v.* Burnett, [1933] A. C. 83; Israelson *v.* Dawson (Port of Manchester Insurance Co., Ltd.), [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

293. *Add. Annotation :*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

294a. —— **Effect of Third Parties (Rights against Insurers) Act, 1930 (c. 25).**]—Pltf. was injured in a motor accident & recovered judgment against C. & H. for £300 damages for negligence. H. subsequently became bkpt. At the time of the accident H. was insured with deft. co. against third party risks. The policy of insurance contained the usual arbn. clause making an award a condition precedent to bringing an action on the policy. Pltf. issued a writ against deft. co. contending that under Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1, & Road Traffic Act, 1930 (c. 43), s. 36 (4), they were accountable to him for the amount of the judgment. Deft. co. thereupon took out a summons to stay the action on the ground that under the arbn. clause the obtaining of an award was a condition precedent to bringing the action. SWIFT, J., dismissed the summons & directed that the summons should be put into the New Procedure List. On appeal by deft. co. :—*Held :* the rights of deft. co. under the policy were not affected by either of the Acts of 1930, & deft. co. was therefore entitled to rely on the arbn. clause, which made it a condition precedent to bringing an action that an award should first be obtained.—FRESHWATER *v.* WESTERN AUSTRALIAN ASSURANCE CO., LTD., [1933] 1 K. B. 515; 102 L. J. K. B. 75; 148 L. T. 275; 49 T. L. R. 131; 76 Sol. Jo. 888, C. A.

—— **Effect of Road Traffic Act, 1930 (c. 43).**] —FRESHWATER *v.* WESTERN AUSTRALIAN ASSURANCE CO., LTD., No. 294a, *ante*.

294c. —— ——.]—Deft. B., who owned a motor-car, took out a third-party insurance policy containing the clause, " In the event of any difference arising between the co. & the insured under this policy the same shall be referred to arbn.," with the addition, known as the addition in *Scott* v. *Avery*, " & the obtaining of an award shall be a condition precedent to the liability of the co. under this policy." B.'s car was involved in a collision with a motor omnibus, & pltf. who was a passenger on the omnibus, brought an action for personal injuries against B. & the omnibus proprietors. B. referred the claim to the insurance co. & they repudiated liability, & B. thereupon instituted third-party proceedings against them. On a motion by the insurance co. that the third-party proceedings should be stayed on the ground of the inclusion of the above clause in the policy, B. contended that by reason of Road Traffic Act, 1930 (c. 43), s. 38, the clause had no effect. The judge ordered a stay. On appeal :—*Held :* the arbn. clause, even with the addition in *Scott* v. *Avery*, was unaffected by sect. 38, & even if the addition was avoided for certain purposes by sect. 38, the addition was severable & the first part of the clause was unaffected by the sect., & the judge had rightly exercised his discretion to order a stay.—JONES *v.* BIRCH BROS., LTD., [1933] 2 K. B. 597; 102 L. J. K. B. 746; 149 L. T. 507; 49 T. L. R. 586, C. A.

299. *Add. Annotation :*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

300. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

301. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

302. *Add. Annotations :*—*As to* (1) **Folld.** Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73. **Apld.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

302a. Reference of disputes under charterparty—No action maintainable till after arbitration.]—WILLIAMS & MORDEY *v.* MULLER (W. H.) & CO. (LONDON), LTD. (1924), 18 Lloyd, L. R. 50.

303. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

305. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146.

305a. Provision for fixing valuation of buildings by reference to arbitration.] — Applt. let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase " by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no

PART I. SECT. 9, SUB SECT. 2.

295 v. ——.]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

308 v. For " 4 I. C. L. R. 17 " read

ad. *Reference of disputes at port of loading—No action " elsewhere " till after arbitration.*]—*Held :* the clause prohibited the bringing of an action on such a dispute outside the province in which the port of loading was situated.—COX TOWING LINE *v.* DUNFIELD & CO. (1922), 68 D. L. R. 133.—**CAN.**

ae. *Provision for fixing price of goods.*] —Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be " hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to " determine the price for the winter fish & the price so determined shall be paid " by deft. to pltf. :—*Held :* the fixing of the price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—VIDAL *v.* ROBINSON (WILLIAM) CO., LTD.; STEVENS *v.* ROBINSON (WILLIAM) CO., [illegible] CO., LTD., [1925] 1 D. L. R. 1001.—**CAN.**

arbn. :—*Held :* the action failed, since the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—HALLEN *v.* SPARTH, [1923] A. C. 684 ; 92 L. J. P. C. 181 ; 129 L. T. 803, P. C.

306. *Add. Annotations :*—**Consd.** Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58. **Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

310a. Jurisdiction of arbitrator—Dismissal of action on ground that award is condition precedent.]—When an action on a contract has been dismissed upon a contention by deft. that an award is a condition precedent to the right to sue, & the claim is then submitted to arbn., deft. is precluded from contending that the award is bad in that the arbitrators had not jurisdiction to construe the contract, but only to determine the sum, if any, due.—SOUTH BRITISH INSURANCE CO. *v.* GAUCI BROTHERS & Co., [1928] A. C. 352 ; 97 L. J. P. C. 101 ; 139 L. T. 362, P. C.

316a. Petition of right.]—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

Held : (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not to be stayed.—ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., [1920] 2 K. B. 214 ; 89 L. J. K. B. 570 ; 122 L. T. 731 ; 84 J. P. 121 ; 14 Asp. M. L. C. 584, C. A.

Annotation :—As to (1) **Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

324. To the existing paragraph, after the last words " being known " add as follows :—; (4) although the ct. had jurisdiction to appoint a receiver pending a reference to arbn., it was not proper to do so unless a special case was made, as the course of liquidation before the tribunal chosen by the parties themselves would thereby be interfered with.

336a. —— **Assignees of contract.**]—ASPELL *v.* SEYMOUR, [1929] W. N. 152, C. A.

338. *Add. Annotation :*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

339. *Add. Annotation :*—**Folld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

343. *Add. Annotation :*—**Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

350a. ——.]—LAW *v.* GARRETT, No. 324, *ante.*

355. *Add. Annotations :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371; Freshwater *v.* Western Australian Assurance Co., [1933] 1 K. B. 515.

362. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

367. *Add. Annotation :*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

PART I. SECT. 10, SUB-SECT. 3.—C.

c i. ——.]—A clause in a policy of fire insurance whereby the parties agreed that, if any difference should arise as to the amount of loss, it should be submitted to arbn., but which did not provide that the determination of the insurer's liability should be postponed until the loss had been ascertained :—*Held :* not to be a reason for staying an action by the insured on the policy.—GRANCHUK *v.* SPRINGFIELD FIRE & MARINE INSURANCE CO., [1925] 1 D. L. R. 857 ; [1925] 1 W. W. R. 272 ; 35 Man. L. R. 139.—**CAN.**

sf. *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Agreement to refer to foreign court.*]—Sect. 6 of the above Act enables deft. to take advantage of an agreement to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement providing for the reference of any disputes which may arise to the decision of a foreign ct. is a submission within s. 6.—BRAND *v.* NATIONAL LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

sg. *Arbitration abortive.*]—Where an arbn. proves abortive & an action is brought with respect to the matter arbitrated, the objection that the parties should be compelled to resort to arbn. should be taken at the commencement of the action.—BERGE *v.* ——, [1927] 3 W. W. R. 811.—**CAN.**

sh. *Alberta Co-operative Associations Act—Dispute arising out of marketing agreement.*]—KEAY *v.* ALBERTA CO-OPERATIVE WHEAT PRODUCERS, LTD. & ALBERTA POOL ELEVATORS, LTD., [1929] 3 D. L. R. 858 ; S. C. R. 616 ; *affg.* with variation, [1929] 1 D. L. R. 949 ; 1 W. W. R. 413 ; *revg.*, [1929] 1 D. L. R. 515 ; 1 W. W. R. 96.—**CAN.**

si. *Arbitration Act, R. S. S.*, 1930, *s.* 7.]—On an application under Arbitration Act, R. S. S., 1930, *s.* 7, for a stay of proceedings in an action, on the ground that the parties had agreed to refer the difference between them to arbn. the onus is upon applt. where the material shows a *primâ facie* right to a stay, to show that the case is not a fit one for arbn. or that the respondent has lost his right to arbitrate. In the present case, an action by the insured upon a policy of fire insurance which contained statutory condition 17 of sect. 146 of Saskatchewan Insurance Act, R. S. S., 1930 :—*Held :* as the matter to be tried in the action fell squarely within said condition & there was no suggestion in the material that an arbn. would result in either of the parties not getting substantial justice, said onus had not been discharged.—ALTWASSER *v.* HOME INSURANCE CO. OF NEW YORK, [1933] 2 W. W. R. 46.—**CAN.**

PART I. SECT. 10, SUB-SECT. 5.

339 iii. ——.]—When the ct. has been apprised that a suit has been instituted in contravention of an arbn. agreement, the ct. has a discretion to stay the suit. The burden lies on pltf. to show that some sufficient reason exists why the matter should not be referred to arbn.—DINABANDHU JANA *v.* DURGAPRASAD JANA (1919), I. L. R. 46 Calc. 1041.—**IND.**

m (p. 366) **i.** —— *Arbitrator unable to enforce discovery—& attendance of witnesses.*]—A mere possibility that the arbitrators may not be able to enforce discovery & the attendance of witnesses is no ground for refusing the order of stay.—RANEE GUNGE COAL ASSOCN., LTD. *v.* TATA IRON & STEEL CO., LTD. (1928), I. L. R. 53 Bom. 271.—**IND.**

349 i. *Power to appoint* Where on account of an arbn. clause the ct. stays proceedings pending before itself, it retains jurisdiction to deal with a prayer for an injunction or for a receiver.—SURENDRA KUMAR ROY CHOWDHURY *v.* SUSHIL KUMAR ROY CHOWDHURY (1927), I. L. R. 55 Calc. 249.—**IND.**

PART I. SECT. 10, SUB-SECT. 6.—C.

361 i. *Surveyor of one party.*]—A contract provided that every dispute which might arise between the parties touching the construction of the contract, or as to the rights or liabilities of either party thereunder, should be referred to defts.' surveyor, whose decision should be final :—*Held :* if questions would come before him for decision in which he would be a necessary witness defts.' surveyor would be disqualified from acting as arbitrator, but as, in the circumstances, he would not be a necessary witness, he was not disqualified, although he had already expressed an opinion in favour of defts. —HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—**IR.**

363 ii. ——.]—When a personal interest which may conflict with duty exists, an arbitrator is disqualified ; & the inference necessary to disqualify is more easily drawn by reason of the relationship between the arbitrator & one of the contracting parties.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251 ; 18 O. W. N. 58.—**CAN.**

PART I. SECT. 10, SUB-SECT. 6.—D.

369 i. *Only question one of ——.*]—*Held :* the question should be determined in the course of the action itself. —GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

372. *Add. Annotation:—As to* (1) **Apld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

372a. ——.]—Pltfs. agreed with defts. to execute railway works at prices contained in schedules amounting to £359,383 0*s.* 10*d.*, & with the addition thereto of 10 per cent. for "general contingencies," amounting in the aggregate to £395,321 6*s.* 11*d.*, & there was incorporated in the contract a letter from defts. accepting pltfs.' tender for that sum. The contract provided for the payment by monthly instalments on the certificate of defts.' engineer at the rate of 90 per cent. of the value of the work actually executed, the remaining 10 per cent. to be treated as a retention fund, & further provided that any question arising between the parties in connection with the contract, or as to the construction or meaning of the contract, should be referred to the decision of an engineer to be agreed upon, or, failing agreement, to be nominated by the President for the time being of the Institute of Civil Engineers, & such submission should be deemed a submission to arbn. within the Act of 1889. An originating summons having been taken out by pltfs. for the determination of the question whether upon the true construction of the contract, for the purpose of the monthly payments to be made to pltfs. thereunder, the value of the work executed was to be ascertained by adding to the prices contained in the schedules a proportionate amount of the sum therein provided for "general contingencies." defts. moved for a stay of proceedings under the summons:—*Held:* there was a clear & definite contract between the parties that the matter in dispute should be referred to an arbitrator as being a person who possessed the necessary technical knowledge for dealing with the subject-matter of the contract; if the ct. allowed the action to proceed evidence would be necessary in order to put the ct. in a position to determine the technical meaning of the expression "general contingencies" & a number of other expressions used in the contract; the meaning of those expressions in an engineering contract would be perfectly familiar & would present no difficulty to the engineer to whom the parties had agreed to refer the decision of their disputes; the case was not one which involved a simple question of law, & pltfs. had not discharged the *onus* of showing that the dispute was one which ought not to be referred to arbn., & the arbn. ought to proceed.—METROPOLITAN TUNNEL & PUBLIC WORKS *v.* LONDON ELECTRIC RY. CO., [1926] Ch. 371; 95 L. J. Ch. 246; 135 L. T. 35, C. A.

379a. **Matters in dispute including important constitutional question.**] — ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., No. 316a, *ante*.

380. *Add. Annotations:*—**Consd.** Smith *v.* Martin, [1925] 1 K. B. 745. **Refd.** Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352.

383. *Add. Annotation:—As to* (1) **Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

386a. **Existence of contract.**]—A motorist, on Aug. 15, 1935, signed a proposal form for motor car insurance. The premium in respect of the insurance was not paid, & the policy was not issued, but cover notes were issued from time to time. On Oct. 2, 1935, after the expiration of the last cover note, the motorist was involved in an accident & incurred certain liabilities. The premium in respect of the insurance was paid on Oct. 29, 1935, & a policy dated as from that date was duly issued. The motorist issued a writ claiming (*inter alia*) a declaration that a binding contract of insurance existed between the insurance co. & himself on Oct. 2, 1935. The insurance co. applied for a stay of the action on the ground that the issue fell within the arbn. clause in the policy:—*Held:* since, if the issue were referred to arbn., a finding by the arbitrator that there was no contract in existence as at the date of the accident, would be a finding that the arbn. clause never existed & that the arbitrator never had jurisdiction to deal with the matter, the issue was a proper one to be tried in the cts.—TOLLER *v.* LAW ACCIDENT INSURANCE SOCIETY, LTD., [1936] 2 All E. R. 952; 80 Sol. Jo. 633, C. A.

373 i. *Questions of law inter alia.*]—An agreement for the supply of electric energy by pltf. co. to deft. co. provided that the adjustment of all disputes should be submitted to three arbitrators. Disputes having arisen, there was an arbitration & an award. Further disputes subsequently arising, this action was brought to recover a sum of money alleged to be due under the agreement; & deft. co. moved under Arbn. Act, 1927 (c. 97), s. 7, to stay proceedings:—*Held:* as the questions which had to be determined were mixed questions of law & fact, the ct.'s discretion should be exercised by refusing the motion & allowing the action to proceed.—M. J. O'BRIEN, LTD. *v.* SEAMAN KENI CO., [1928] 3 D. L. R. 43; 62 O. L. R. 160.—CAN.

373 ii. ——.]—Arbitrators are competent to determine points of law as well as questions of the construction of an agreement. It is erroneous to apply English decisions subsequent to the English Arbn. Act of 1889, without qualification, to cases of stay under the Indian Arbn. Act, 1899. The principles of decisions in England which, since the English Arbn. Act of 1889, make the cts. there reluctant to stay the suit where the main point in dispute is a question of law, because such a question must ultimately return by way of a case stated to the ct. for decision, should not be applied for refusing a stay under Indian Arbn. Act, 1899, s. 19.—RANEE GUNGE COAL ASSOCN., LTD. *v.* TATA IRON & STEEL CO., LTD. (1928), I. L. R. 53 Bom. 271.—IND.

373 iii. ——.]—DESLAURIERS *v.* HIMMELMAN SHIPPING CO. (N.S.), [1929] 2 D. L. R. 360.—CAN.

374 iii. ——.]—An important question of law being involved, the ct. in the exercise of its discretion, refused to stay the action.—RICHARDSON *v.* ARMY, NAVY & GENERAL ASSURANCE ASSOCN., LTD., [1924] 2 I. R. 96.—IR.

374 iv. ——.]—ANGLO-PERSIAN OIL CO., LTD. (MADRAS) *v.* PANCHAPAKESA AIYAR (1923), I. L. R. 47 Mad. 164.—IND.

sk. *Fundamental questions of law.*]—On motion by defts. to stay the proceedings, & to refer the matters in dispute to defts.' surveyor:—*Held:* fundamental questions of law were involved which should be tried in an action. Motion refused.—HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—IR.

PART I. SECT. 10, SUB-SECT. 6.—E

376 vi. ——.]—In an action for specific performance of a contract, deft. applied for stay of proceedings under an arbn. clause:—*Held:* the dispute going to the making of the contract was not within the arbn. clause, & stay refused.—MCINTOSH *v.* LAYFIELD, [1919] 1 W. W. R. 590.—CAN.

376 vii. ——.]—On a motion by defts. to stay proceedings & to refer the matters in dispute to arbn.:—*Held:* the matters in dispute were outside the arbn. clause, & motion refused.—HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—IR.

383 i a. ——.]—The cts. should be reluctant to permit an appeal to them by one of the parties to an agreement to refer questions that may arise between them to a domestic forum rather than the ordinary cts., when the agreement is couched in wide terms.—STOKES-STEPHENS OIL CO. *v.* MCNAUGHT, [1918] 2 W. W. R. 124.—CAN.

383 i b. ——.]—JOHNSON *v.* HERRON CARTAGE CO., [1931] 2 D. L. R. 900.—CAN.

391. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

397. *Add. Annotation :*—**Consd.** Mundy *v.* Butterley Co., [1932] 2 Ch. 227.

400. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

402a. Summons for discovery.]—A party to a written contract containing an agreement to refer disputes to arbn. was sued for breach of the contract. He was unaware that the contract contained an agreement to refer. Pltfs. in the action took out a summons for discovery. Deft. asked for discovery also, & an order for mutual discovery was made. He then became aware of the agreement to refer & applied for a stay of proceedings in the action :—*Held :* he had taken a step in the proceedings within the Act of 1889, s. 4, & therefore was not entitled to a stay.—PARKER, GAINES & CO. *v.* TURPIN, [1918] 1 K. B. 358 ; 87 L. J. K. B. 357 ; 118 L. T. 346 ; 62 Sol. Jo. 331, D. C.

407. *Add. Annotation :*—**Refd.** Mundy *v.* Butterley Co., [1932] 2 Ch. 227.

408a. Granting of fiat—Petition of right.]—ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., No. 316a, *ante*.

424. *Add. Annotations :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602 ; Offer *v.* Minister of Health, [1936] 1 K. B. 40.

456. *Add. Annotation :*—**Apld.** Cipriani *v.* Burnett, [1933] A. C. 83.

472. *Add. Annotation :*—**Consd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

498. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

503. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

523. *Add. Annotation :*—**Apprvd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

A. By Death (p. 393).

See, now, Arbitration Act, 1934 (c. 14), s. 1.

523a. Appeal from refusal to revoke.] — An appeal from a judge at chambers refusing to revoke a submission to arbn. is in a matter of practice & procedure & therefore lies to the Ct. of Appeal & not to a Div. Ct.—SIMBRO TRADING CO. *v.* POSOGRAPH (PARENT) CORPN., [1929] 2 K. B. 266 ; 98 L. J. K. B. 631 ; 141 L. T. 395 ; 73 Sol. Jo. 384, C. A.

548. *Add. Annotation :* — **Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

C. By Bankruptcy (p. 397).

See, now, Arbitration Act, 1934 (c. 14), s. 2.

565. After this case, following "*D. By Lunacy.*—*See* case *infra*," add as follows :—

E. Other Cases.

565a. Frustration of adventure—Charterparty containing arbitration clause.]—Resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award :—*Held :* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction.—HIRJI MULJI *v.* CHEONG YUE S.S. CO., [1926] A. C. 497 ; 95 L. J. P. C. 121 ; 134 L. T. 737 ; 42 T. L. R. 359 ; 31 Com. Cas. 199 ; 17 Asp. M. L. C. 8, P. C.

Annotations :—**Distd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 446. **Refd.** Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337 ; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

PART I. SECT. 10, SUB-SECT. 7.

a1. *After appearance.*]—An application must be made after appearance, & where appearance is not requisite the application may be made at any time before taking any other step in the proceedings.—HARRISON, ETC. *v.* CRESPIN, [1921] V. L. R. 643.—**AUS.**

e i. ——.]—The application for a stay is too late if made after delivery of the defence.—BRAND *v.* NATIONAL LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

f i. ——.]—An application for stay of proceedings before deft. has filed his written statement or taken any other step in the suit does not constitute taking a step in the proceedings within Arbn. Act, s. 19, so as to operate as a bar.—JOYLALL & CO. *v.* GOPIRAM BHOTICA (1920), I. L. R. 47 Calc. 611.—**IND.**

395 i. *Summons for particulars.*]—A demand for particulars & an extension of time for defence constitute a "step in the proceeding."—DUFFERIN PAVING CO., LTD. *v.* G. A. FULLER CO. OF CANADA, LTD., [1935] 1 D. L. R. 538 ; O. R. 21.—**CAN.**

396 i. *Security for costs.*]—Defts. were held to be precluded from moving for an order staying proceedings in an action, by having previously issued & served an order for security for costs.—HEISTEIN & SONS *v.* POLSON IRON WORKS, LTD., [1920] 46 O. L. R. 285.—**CAN.**

398 i. *Summons for directions.*]—If a party on a summons for directions takes objection, this is a "step in the action" & prevents him applying for a stay of the action, although he may say at the time he intends to apply for a stay.—BUCKLEY *v.* QUEEN INSURANCE CO., [1923] 3 D. L. R. 163.—**CAN.**

sm. *Application for adjournment.*]—*Held :* the mere application for an adjournment of the summons was not a "step in the proceedings" sufficient in itself to disentitle the lessors to apply to have the matters in dispute referred to arbn.—O'SHAUGHNESSY *v.* QUICK SERVICE STATIONS, LTD., [1928] V. L. R. 405 ; 49 A. L. T. 279.—**AUS.**

PART I. SECT. 11.

417 iii. —— ——.]—The ct. has no jurisdiction to restrain a deft. from beginning arbn. proceedings outside the agreement to refer, however futile & annoying they may be.—RAMDAS KHATAN & CO. *v.* ATLAS MILLS CO. (1930), I. L. R. 55 Bom. 659.—**IND.**

424 viii. For "BELLOR YOUNG OR FARRELL *v.* ARNOTT" read "BELL OR YOUNG OR FARRELL *v.* ARNOTT."

PART I. SECT. 12, SUB-SECT. 1.

429 ii. For "6 I. C. L. R. 504," read "I. R. 6 C. L. 504."

PART I. SECT. 12, SUB-SECT. 2.

441 i. *Powers & duty of court.*]—An arbn. as to the value of property became abortive because of the failure of the persons appointed to act as arbitrators to agree :—*Held :* it was the duty of the ct. in working out a contract which provided for such arbn. to receive evidence of such value & to decide the question.—CALGARY CITY *v.* BLOW, [1925] 3 D. L. R. 1165 ; 1925] 3 W. W. R. 225.—**CAN.**

an. *Award set aside—Agreement to refer not exhausted.*]—An arbn., ending in an award which is set aside as being invalid, is an abortive arbn., & the agreement to refer is not exhausted

PART I. SECT. 13, SUB-SECT. 1.—B.

494 ii. —— *Submission by Crown in right of Dominion.*]—Ontario Arbn. Act, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—GAUTHIER *v.* R. (1916), 56 S. C. R. 176 ; 40 D. L. R. 353.—**CAN.**

Part II.—The Arbitrators and Umpire.

584. *Add. Annotation :—As to* (1) **Refd.** Oil Products Trading Co. *v.* Société Anonyme Société de Gestion D'Entreprises Coloniales (1934), 150 L. T. 475.

618a. **Necessity for notice to parties.**]—A contract for the sale of goods was entered into "subject to the customary terms & conditions & subject to the rules & regulations of the London Metal Exchange, in so far as these rules & regulations do not conflict with the provisions of this contract." A dispute having arisen, the matter was referred to two arbitrators, who formed the view that it was necessary to appoint a third. The appointment of the third arbitrator was made without any communication to the parties, who became aware of it only upon receiving the award. The rules of the London Metal Exchange provide that arbitrators may, after giving notice of their appointment, proceed in the absence of either or both parties. The award was sought to be set aside, because no notice of the appointment of the third arbitrator was given to the parties, & it was argued against this contention that the third arbitrator was, by virtue of the Arbn. Act, 1934 (c. 14), s. 4 (1), an umpire, & there was a custom for arbitrators to appoint an umpire without any notice to the parties to the arbn. :—*Held :* the practice of appointing an umpire or of his acting in the arbn. without notice to the parties could not bind the parties in the present case, as it was wholly inconsistent with the rules of the London Metal Exchange.—*Re* ARBITRATION BETWEEN BRITISH METAL CORPN., LTD. & LUDLOW BROS. (1913), LTD., [1937] 4 All E. R. 154.

B. Under Arbitration Act, 1889 *(c.* 49), *s.* 5.

626a. **Who may apply—Only party to submission.**]—A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner ; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general partners ; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889, s. 5, asking that some fit & proper person might be appointed to act as arbitrator :—*Held :* only a party to the submission could make an application under sect. 5, & F. was not a party.—*Re* FRANKLIN & ARBITRATION, [1929] 1 Ch. 238 ; 98 L. J. Ch. 101 ; 140 L. T. 403.

627. After this case insert, " *See, now,* Administration of Justice Act, 1920 (c. 81), s. 16."

629. *Add. Annotation :—As to* (3) **Distd.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

629a. —— **Discretion of court to refuse to appoint except upon terms.**]—On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, &, on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator :—*Held :* in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re* BJORNSTAD & OUSE SHIPPING CO., [1924] 2 K. B. 673 ; *sub nom.* BJORNSTAD *v.* OUSE SHIPPING CO., 93 L. J. K. B. 977 ; 131 L. T. 663 ; 40 T. L. R. 636 ; 68 Sol. Jo. 754 ; 30 Com. Cas. 14, C. A.

630. *Add. Annotations :—As to* (1) **Folld.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Expld.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

630a. —— —— ——.]—A contract for the sale of goods was entered into between B., the

PART II. SECT. 1, SUB-SECT. 1.

579 x a. —— ——.]—FINO *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 369.—S. AF.

579 xii a. —— ——.]—SWANSON *v.* BOARD OF LAND & WORKS, [1928] V. L. R. 283 ; 49 A. L. T. 217 ; R. 186.—AUS.

(P. E. I.), [1927] 2 D. L. R. 51.—CAN.

PART II. SECT. 1, SUB-SECT. 2.—A.

n. Add as follows :—*Revsd. sub nom.* INVERNESS RY. & COAL CO. *v.* MCISAAC (1905), 37 S. C. R. 134.—CAN.

o i. —— *Objection to—Whether maintainable.*]—Where an agreement with an incorporated club provides that it shall be compensated for damage from the acts which the agreement authorises the other party to perform, it is not open to such party to object that notice of the appointment, in pursuance of the agreement, of the club's arbitrator is not properly signed.—*Re* WINNIPEG GOLF CLUB *v.* HUTCHINGS (Man.), 4 D. L. R. 1188 ; [1926] 3 R. 443.—CAN.

PART II. SECT. 1, SUB-SECT. 2.—B.

y ii. —— ——.]—A motion to appoint an arbitrator under s. 8 of the above Act on the refusal of the municipality to appoint its arbitrator, on the ground of lack of jurisdiction.—GOLD *v.* SOUTH [1918] 3 W. W. R. 585.—

See, also, Vol. II., p. 409, case n.

PART II. SECT. 1, SUB-SECT. 4.

618 i. *Time for appointment.*]—SYNOD OF HURON *v.* FERGUSON (1924), 56 O. L. R. 161.—CAN.

an. *Three names suggested in notice*

[1930] 3 D. L. R. 672.—CAN.

PART II. SECT. 1, SUB-SECT. 5.

so. *Original nominee incapable of acting.*]—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself incapable of acting.—*Re* WEILER BROTHERS & CITY OF VICTORIA CORPN. (1917), 24 B. C. R. —CAN.

seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods submitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5:—*Held:* it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. C. Ord. 54, r. 23, &, consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—RICHARDSONS & BRADLEY & Co. *v.* BERNHARD, [1925] 2 K. B. 121; 94 L. J. K. B. 691; 133 L. T. 234, D. C.

SECT. 3.—TIME FOR APPOINTMENT AND COMMENCEMENT OF UMPIRE'S AUTHORITY (p. 413).

See, now, Arbitration Act, 1934 (c. 14), s. 5.

696. *Add. Annotation:*—**Refd.** Paterson *v.* Ardrossan Harbour Co. (1926), 19 B. W. C. C. 621.

704. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

791. *Add. Annotation:*—**Refd.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

793. *Add. Annotation:*—**Refd.** Wisbech R. C. *v.* Ward (1927), 138 L. T. 308.

794. *Add. Annotations:*—*As to* (1) **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463. *As to* (2) **Folld.** Boynton *v.* Richardson (1924). 69 Sol. Jo. 107.

Part III.—The Hearing.

816a. —— **Act of 1889, s. 2, Sched. I. (f)—Against Crown—"Subject to any legal objection."**]—(1) In an arbn. for the determination of disputes under a contract between the Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (*f*), incorporated in sect. 2 of the above Act, or otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (*f*), incorporated in sect. 2 of the above Act, the words "subject to any legal objection" apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall "do all other things which . . . the arbitrators or umpire may require."—*Re* SOCIÉTÉ LES RÉUNIS & SHIPPING CONTROLLER, [1921] 3 K. B. 1; *sub nom.* SOCIÉTÉ LES AFFRÉTEURS RÉUNIS *v.* SHIPPING CONTROLLER, 90 L. J. K. B. 812; 124 L. T. 727; 37 T. L. R. 460, D. C.

Annotation:—As to (2) **Refd.** Kursell *v* Timber Operators & Contractors, [1923] 2 K. B. 202.

Discovery against the Crown generally, *see* DISCOVERY, Vol. XVIII., p. 60.

817. *Add. Annotations:*—**Consd.** *Re* Soc. Les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

817a. —— **Power of arbitrator to order—Reference by consent out of court.**]—In a reference by consent out of ct. under the Act of 1889,

PART II. SECT. 1, SUB-SECT. 6.—C.

d (p. 408) i. —— *Vancouver Incorporation Act.*]—SPENCER *v.* CITY OF VANCOUVER (1922), 68 D. L. R. 747; 30 B. C. R. 382; [1922] 1 W. W. R. 779.—CAN.

d (p. 408) ii. —— —— *Costs of application.*]—A Supreme Ct. judge in appointing an arbitrator is acting as *persona designata*, & has no jurisdiction under s. 133 (9) of the above Act to award costs.—MATTE *v.* VANCOUVER (CITY), [1917] 2 W. W. R. 53.—CAN.

n i. —— ——.]—B *v.* HOME INSURANCE CO., [1927] 2 D. L. R. 585; [1927] 2 W. W. R. 456; 38 B. C. R. 270; *revsd.* [1929] [illegible] S. C. R. 436.—CAN.

o i. —— *Party declining to appoint—*[illegible] 99, 129.]—SOUTH [illegible] A. C. 352; 97 L. J. P. C.

sp. *Arbitrator incapable* [illegible] *of America—Arbitration Act,* 1909. Where an arbitrator had removed his residence to Buffalo, N.Y., & was not expected to return:—*Held:* the appointment of a new arbitrator was justified as the first was "incapable of acting" within s. 7 of the above Act.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—CAN.

sq. *Appointment on dissolution of company—Failure of company to* [illegible] —*Re* MERSEY HYDRAULIC CO. [1929] 2 D. L. R. 799.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

sr. *Arbitrator a barrister.*]—SCHOOL DISTRICT ST. BONIFACE *v.* MACDONALD, [1927] 2. D. L. R. 735.—CAN.

sv. *By statute—Exclusion by agreement.*]—Although sects. 18 & 19 of Arbn. Act, R.S.S., 1930, which govern the fees of arbitrators, permit the exclusion of Scheds. B. & C., such exclusion must be by an agreement in writing under sect. 20; &, except as so provided in sect. 20, the application of sects. 18, 19, 20 & 24 cannot be excluded by agreement between the [illegible] PROVINCE, [1937] 2 W. W. R.

PART II. SECT. 5, SUB-SECT. 4.

sz. *Action for return of excess paid—Payment by one cheque to arbitrators jointly—Form of judgment.*]—The judgment should be against each deft. for the sum received by him in excess of the amount to which he was entitled.—CANADIAN NORTHERN RY. CO. *v.* OUSLEY, [1918] 2 W. W. R. 1005; 11 Sask. L. R. 282; 42 D. L. R. 772.—CAN.

PART II. SECT. 7.

t (p. 431) i. —— *Right of court to stay action.*]—On an application to stay a suit instituted in respect of a dispute which was previously referred to the arbn. of two gentlemen chosen by both parties, but one of whom refused to act, it was held by the original ct. that the ct. had no power to appoint an arbitrator in place of the arbitrator who refused & staying the suit would lead the parties to an infructuous arbn.:—*Held:* the ct. had such power, but the application for stay should be dismissed on the merits of the case.—GENERAL ELECTRIC TRADING CO. *v.* STEMANS (INDIA), LTD. (1928), I. L. R. 56 Calc. 84

the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (*f*) of the Act.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, LTD., [1923] 2 K. B. 202; 92 L. J. K. B. 607; 129 L. T. 21; 87 J. P. 79; 39 T. L. R. 419; 67 Sol. Jo. 557; 28 Com. Cas. 376, D. C.

823. After this case add:—

—.]—*See, now*, Arbitration Act, 1934 (c. 14), s. 8 (1), Sched. I.

830. *Add. Annotation:*—**Refd.** Ricketts *v.* Gurney (1819), 7 Price, 699.

830a. —— ——.]—On an application to the Ct. of Exch. on the same facts as set out in No. 830:—*Held:* the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—RICKETTS *v.* GURNEY (1819), 7 Price, 699; 1 Chit. 682; 146 E. R. 1106.

Annotation:—**Refd.** Spencer *v.* Newton (1837), 1 Nev. & P. K. B. 818.

835. *Add. Annotations:*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

836. *Add. Annotation:*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

840. *Add. Annotation:*—**Refd.** R. *v.* Sullivan, [1923] 1 K. B. 47; R. *v.* Harris, [1927] 2 K. B. 587

841a. Whether entitled to act as advocate for party appointing him.]—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—ROFF *v.* BRITISH & FRENCH CHEMICAL MANUFACTURING CO. & GIBSON, [1918] 2 K. B. 677; 87 L. J. K. B. 996; 119 L. T. 436; 34 T. L. Ry. 485; 62 Sol. Jo. 620, C. A.

841b. ——.]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post*.

862. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

874. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

888a. —— —— **Agreement to dispense with notice.**]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post*.

905a. —— **Award sent back for amendment.**]—Where an award is sent back to the arbitrator to be amended, he is not bound to give the parties notice to attend him thereon.—HOWETT *v.* CLEMENTS, CLEMENTS *v.* HOWETT (1845), 1 C. B. 128; 135 E. R. 485; *previous proceedings* (1844), 7 Man. & G. 1044.

Annotation:—**Consd.** Davies *v.* Pratt (1855), 17 C. B. 183.

906. *Add. Annotations:*—*As to* (1) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, 1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174. *As to* (2) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, [1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

939. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

941. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

943. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

949a. ——.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date "to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only question to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by himself or his representative, but his foreman was present to point out & give information

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PART III. SECT. 2, SUB-SECT. 1.

835 vi. ——.]—In a mercantile reference to arbn., it is an implied term of the contract that the arbitrators must decide the dispute according to the existing law of contract, & that every defence which would have been open in a ct. of law, including limitation, can be raised, unless that defence has been excluded by agreement of the parties.—RAMDUTT RAMKISSENDASS *v.* E. D. SASSOON & CO. (1929), I. L. R. 56 Calc. 1048.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.

t i. ——.]—*Re* SMITH & PLYMPTON (TOWNSHIP) (1886), 12 O. R. 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

883 iii. —— ——.]—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—UDAICHAND PANNA LALL *v.* DEBIBUX JEWANRAM (1920), I. L. R. 47 Calc. 951.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—A.

g i. —— ——.]—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—LACHMI NARAIN *v.* SHEONATH PONDE (1919), I. L. R. 42 All. 185.—**IND.**

p i. —— ——.]—In an agricultural reference when the general question submitted was a matter depending upon opinion:—*Held:* the oversman, himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of hearing evidence.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 8.—B.

938 v. ——.]—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—*Re* SNIDER & MILLER'S ARBITRATION, [1924] 4 D. L. R. 813; 3 W. W. R. 226.—**CAN.**

938 vi. ——.]—One of the parties to an arbn. sought reduction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or being represented:—*Held:* as the arbiter had decided the question in that party's favour, he had suffered no injustice, & reduction refused.—BLACK *v.* WILLIAMS & CO. (WISHAW), LTD., [1924] S. C. (H. L.) 22.—**SCOT.**

938 vii. ——.]—An arbitrator heard evidence from one party in the absence of his opponent, & also took evidence in the absence of both parties. The award was consequently set aside by the ct.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

938 viii. —— *By umpire.*]—Arbitrators having differed, the matter was submitted to an umpire, who made inquiries in the absence of deft., but denied that he had recorded any evidence at the time:—*Held:* in making these inquiries the umpire was guilty of misconduct.—ABDUL HAMID *v.* MUHAMMAD AFZAL (1927), I. L. R. 8 Lah. 329.—**IND.**

about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required: —*Held:* the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re* O'CONOR & WHITLAW'S ARBITRATION (1919), 88 L. J. K. B. 1242, C. A.

—.]—In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside:—*Held:* the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—RAMSDEN (W.) & Co. *v.* JACOBS, [1922] 1 K. B. 640; 91 L. J. K. B. 432; 126 L. T. 409; 26 Com. Cas. 287, D. C.

949c. —— **Evidence immaterial.**]—It is misconduct which may justify the setting aside of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—ROYAL COMMISSION ON SUGAR SUPPLY *v.* KWIK-HOO-TONG TRADING SOCIETY (1922), 38 T. L. R. 684, D. C.; *subsequent proceedings, sub nom.* KWIK-HOO-TONG TRADING SOCIETY *v.* ROYAL COMMISSION ON SUGAR SUPPLY (1923), 129 L. T. 500.

952. *Add. Annotation:*—**Reld.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

955. *Add. Annotation:*—**Reld.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

956. *Add. Annotation:*—**Reld.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

960. *Add. Annotations:*—**Reld.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684; Mercer *v.* Reid (1931), 47 T. L. R. 574.

962a. —— **Small reduction of amount payable——Award upheld.**]—MERCER *v.* REID (1931), 47 T. L. R. 574; 75 Sol. Jo. 589, D. C.; *affd.*, 48 T. L. R. 33, C. A.

963. *Add. Annotation:*—**Reld.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

964. *Add. Annotation:*—**Reld.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

969. *Add. Annotation:*—**Folld.** Caven *v.* Canadian Ry. (1925), 133 L. T. 774.

1000. *Add. Annotation:*—**Reld.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

1022a. —— —— ——.]—In commercial arbns. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire:—*Held:* there was no evidence of misconduct by the umpire, & the motion failed.

In arbn. proceedings *primâ facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct. would give effect to their agreement (ATKIN, L.J.).—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS) (1921), 37 T. L. R. 961, C. A.

Annotation:—**Reld.** Bourgeois *v.* Weddell, [1924] 1 K. B. 539.

1023a. **Right to call arbitrator as witness.**]—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings:—*Held:* as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted

959 v. ——.]—An award was set aside because, in considering the same after the hearing, an arbitrator, in the absence of & without notice to the parties, interviewed & got information from one who had been a witness on the hearing.—*Re* YUKON GOLD CO. & MORRAU, [1921] 1 W. W. R. 760; 57 D. L. R. 229.—CAN.

959 vi. ——.]—Where the arbitrator had taken evidence in the absence of both parties:—*Held:* the award should be set aside.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—S. AF.

PART III. SECT. 2, SUB-SECT. 8.—C.

968 x. *S. P.* LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., V. L. R. 427.—AUS.

PART III. SECT. 2, SUB-SECT.

975 v. —— —— *Waiver.*]—The award in question herein was also objected to on the ground that the arbitrators permitted expert testimony to be given on behalf of one of the parties by more than three expert witnesses, contrary to Manitoba Evidence Act, s. 7:—*Held:* it was not shown that more than three witnesses called by said party were experts; & even if more than three of them were experts the other party by failing to object to their evidence at the hearing & by himself calling more than three experts had waived the right to raise the objection.—*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522; [1928] 2 W. W. R. 224; 37 Man. L. R. 341.—CAN.

as arbitrator.—BOURGEOIS *v.* WEDDELL & Co., [1924] 1 K. B. 539; 93 L. J. K. B. 232; 130 L. T. 635; 40 T. L. R. 261; 68 Sol. Jo. 421; 29 Com. Cas. 152; 88 J. P. Jo. 25, D. C.

SUB-SECT. 1 (p. 456).—STATEMENT OF SPECIAL CASE DURING REFERENCE.

Arbitration Act, 1889, s. 19, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 94.

1034. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1035. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036a. —— —— ——.]—A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn.; & by r. 19: "Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing :—*Held :* r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—CZARNIKOW *v.* ROTH, SCHMIDT & Co., [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

1037. *Add. Annotations :*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1039a. —— **Well-defined question of law must be formulated.**]—An arbitrator should not state a special case except upon some well-defined questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—WILLIAMS *v.* MANISSAIJAN FRÈRES (1923), 29 Com. Cas. 42, C. A.

Annotation :—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1047. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1049. *Add. Citation :*—*On appeal*, [1914] 1 Ch. 300, C. A.

1051a. —— **Application to stay proceedings—Until security for costs given.**]—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt. then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn. :—*Held :* so far as concerned the summons for a case to be stated the Govt. was in the position of a pltf., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—DUFF DEVELOPMENT CO., LTD. *v.* KELANTAN GOVERNMENT (1925), 41 T. L. R. 375; *sub nom. Re* DUFF DEVELOPMENT CO., LTD. & KELANTAN GOVERNMENT, 69 S. Jo. 491.

1052. *Add. Annotation :*—**N.F.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

1053. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375. **Refd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

1054. *Add. Annotation :*—**Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1055. *Add. Annotations :*—*As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1056. *Add. Annotations :*—**Consd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49. **Refd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Cogstad *v.* Newsum, [1921] 2 A. C. 528; Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375.

PART III. SECT. 3, SUB-SECT. 1.

1034 v. —— *Arbitration Act, R. S. O.*, 1914 (c. 65).]—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re* TORONTO GENERAL TRUSTS CORPN. & MCCONKEY (1918), 41 O. L. R. 314; 13 O. W. N. 281.—CAN.

1034 v i. ——.]—An arbitrator is not *functus officio* until his award has been actually made and the power given him and the ct. under said sect. 15 of Arbn. Act, R. S. A. 1922, to state a case for the opinion of the ct. may be exercised "at any stage of the proceedings," *i.e.* at any stage before the proceedings have come to an end by a completed award.—*Re* JAMIESON CONSTRUCTION CO., LTD., & EDMONTON CITY, [1930] 3 W. W. R. 23; 4 D. L. R. 58.—CAN.

m i. ——.]—A case stated by arbitrators, under Arbn. Act, R. S. O., 1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re* MCCONKEY'S ARBITRATION (1918), 42 O. L. R. 380; 14 O. W. N. 31; 43 D. L. R. 732.—CAN.

1056 ii. —— ——.]—The appeal was from the pronouncement of the Ct. of Appeal for Ontario, given in exercise of that ct.'s jurisdiction under sect. 26 of Arbn. Act, R. S. O., 1927,

1057. *Add. Annotations :*—**Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1058a. —— —— —— ——.]—A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators &, if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words: "The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct." :—*Held :* this was not a final award; the case was, therefore, stated under sect. 19 & no appeal lay to the Ct. of Appeal. —COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., [1921] 2 A. C. 528 90 L. J. K. B. 1293; 85 J. P. 253; 37 T. L. R. 995; 19 L. G. R. 581; 27 Com. Cas. 11; *sub nom. Re* COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD., 126 L. T. 65; 15 Asp. M. L. C. 369, H. L.; *affg.* S. C. *sub nom. Re* COGSTAD & Co. & NEWSUM, SONS & Co., [1921] 1 K. B. 87, C. A.; *previous proceedings, sub nom.* LORD (OWNERS) *v.* NEWSUM, SONS & Co., LTD., [1920] 1 K. B. 846.

Annotation :—**Expld. & Distd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1059. *Add. Annotations :*—**Consd.** *Re* Wulff & Dreyfus (1917), 117 L. T. 583; *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193; Barton *v.* Blackburn (1933), 150 L. T. 327. **Refd.** *Re* Olympia Oil & Cake Co. & MacAndrew Moreland, [1918] 2 K. B. 771; *Re* Parsons & Brixham Fishing Smack Insce. Soc. (1918), 62 Sol. Jo. 384; Westacott *v.* Hahn, [1918] 1 K. B. 495; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Northwood *v.* L. C. C. (1927), 137 L. T. 49; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590; Bedwas Navigation Colliery Co. (1921). Ltd. *v.* South Wales Coal Mines Scheme Executive Board (1934), 151 L. T. 420.

1067. *Add. Annotation :*—*As to* (1) **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1067a. Finality—Request to court to vary if award wrong in law.]—Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had committed a breach of the charterparty, he made an award in favour of the charterers & assessed the damages & costs payable by the owners to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand" :—*Held :* the award was a complete & final award under sect. 7 of the Act of 1889.—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

1069a. Subject-matter of commercial nature—May be transferred to & heard in Commercial Court.]—PRACTICE NOTE, [1927] W. N. 258.

1070. For "**Burden of proof on party disputing award**" read "**Right to begin—Burden of proof on party disputing award.**"

1071. For "—— " read "—— ——."

1071a. —— Award in alternative form—Party claiming damages entitled to begin.]—PATRICK & Co. *v.* RUSSO-BRITISH GRAIN EXPORT Co., LTD. (1927), 43 T. L. R. 724.

1071b. Case stated on unstamped document—Struck out.]—SYMINGTON & Co. *v.* UNION INSURANCE SOCIETY OF CANTON (1927), 164 L. T. Jo. 390.

1073. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1077. *Citation :*—For existing citations read "as reported in [1915] 2 K. B. 393, n."

1082. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1083. *Add. Annotation :*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

in answer to certain questions of law submitted to it by the arbitrator, arising in the course of a reference to determine the amount of compensation from applt. city to be awarded to resp. for alleged damages resulting from resp.'s lands being injuriously affected by certain works :—*Held :* this ct. had not jurisdiction to entertain the appeal, as the pronouncement of the Ct. of Appeal was not a final ment in the sense that it boun parties to it & concluded them from taking exception to any ultimate award by the arbitrator founded thereon.—LONDON CORPN. *v.* HOLEPROOF HOSIERY CO. OF CANADA, LTD., [1933] S. C. R. 349; 3 D. L. R. 657.—**CAN.**

1059 1. —— —— *Where erroneous award can be set aside.*]—Although an appeal cannot be brought upon an opinion of the ct. given to arbitrators, who have consulted the ct. on a point of law arising in the course of the arbn. proceedings, yet the award expressed to be based upon such opinion & incorporating same, if the opinion is erroneous, may be set aside & referred back to the arbitrators as being based on an error of law apparent upon the face of the award.—*Re* BRECHIN & DRAPERY IMPORTING Co., LTD., [1928] N. Z. L. R. 241.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 2.—**D.**

sa. *Duty of court.*]—*Re* EDMONTON & JAMIESON CONSTRUCTION Co., [1931] 1 D. L. R. 1011.—**CAN.**

1083a. Act of 1889, s. 7—Appeal lies to Court of Appeal.]—COOSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., No. 1058a, *ante*.

1083b. Loss of right to appeal—Acceptance of award.]—In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, applts. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then appealed from the decision of the judge & contended that the second award was the right one:—*Held:* having demanded & accepted payment under the first award applts. were precluded from contending that it was wrong.—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

Part IV.—The Award.

1086. *Add. Annotations:*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

1100. *Add. Annotation:*—**Mentd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

1107a. —— Award signed by all three as arbitrators.]—Under a submission to arbn. each of the two parties could appoint an arbitrator, & the arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word "arbitrators":—*Held:* the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—BENABU & Co. *v.* PRODUCE BROKERS Co., LTD. (1921), 37 T. L. R. 609; *on appeal*, 37 T. L. R. 851, C. A.

1125a. ——.]—An award is published when the arbitrator gives the parties notice that it may be had on payment of his charges; whether they be reasonable or not.—MACARTHUR *v.* CAMPBELL (1833), 5 B. & Ad. 518; 2 Nev. & M. K. B. 444; 4 L. J. K. B. 25; 110 E. R. 882; *subsequent proceedings* (1834), 2 Ad. & El. 52.

Annotations:—**Dbtd.** Brooke *v.* Mitchell (1840), 8 Dowl. 392. **Reld.** Allenby *v.* Proudlock (1835), 4 Dowl. 54; Sherry *v.* Okes (1835), 1 Har. & W. 119; Moore *v.* Darley (1845), 1 C. B. 445; Paxton *v.* Great North of England Ry. Co. (1846), 8 Q. B. 938; Roberts *v.* Eberhardt (1857), 3 C. B. N. S. 482.

1139a. Reference to pleadings.]—By an agreement appcts. were to act as consulting engineers in connection with a certain coal refining process owned by resps. While the plant for the working of the process was being erected, a dispute arose, resps. wanting appcts. to attend every day at the site of the plant & appcts. considering this to be no part of their duty. Resps. thereupon terminated the agreement & the matter was referred to arbn. Appcts. pleaded that the termination of the agreement was unjustified; resps. pleaded that appcts. should have attended every day & that they had been guilty of negligence in respect of certain matters set out in the counterclaim. The arbitrator found the termination of the agreement to be unjustified & also negligence on the part of applts. in respect of the matters set out in the counterclaim, & he awarded applts. damages after setting off an unspecified amount for damages for negligence. Resps. moved to set aside the award on the ground of error of law apparent on the face of it. At the hearing resps. contended that the whole of the pleadings in the arbitration were admissible. Resps. contended that for the purpose of deciding whether there was an error of law apparent on the face of the award, the ct. could not look at any document except the award itself. Resps. further contended that the arbitrator had committed an error in law

PART IV. SECT. 2.

1092 ii a. —— —— —— *Other dissenting.*]—Where a submission to arbn. before three arbitrators provides that any two of them can make an award, &, after discussion & the taking of his opinion, one of the three refuses to concur in the award, the other two have the right to sign it in his absence.—*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522; [1928] 2 W. W. R. 224; 37 Man. L. R. 341.—CAN.

Majority award

Alberta Insurance Act, R. S. A., 1922 (*c.* 171).]—On a submission to an arbn. of three persons under statutory condition No. 22 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—GLASGOW UNDERWRITERS *v.* SMITH, [1924] 4 D. L. R. 801; [1924] S. C. R. 531, [illegible]; 1 D. L. R. 187; 1 W. W. R. 155; 20 Alta. L. R. 114.—CAN.

w i. —— —— ——.]—*Held:* the award was valid.—*Re* BALDWIN & WILLINSKY, [1925] 1 D. L. R. 1177; [illegible] O. L. R. 296.—CAN.

1100 v. —— *Award by one.*]—*Held:* valid.—*Re* NATIONAL TRUST Co. & MUNICIPAL DISTRICT OF VALE, [1925] 3 D. L. R. 459.—CAN.

1104 i. *Award by umpire—Appointed by arbitrators without authority.*]—The decision of a chairman to whom arbitrators have referred is not a binding award, since he is not an umpire within Arbn. Act, R. S. N. S., 1923.—SILBERT *v.* DAVID, [1933] 3 D. L. R. 463; 6 M. P. R. 544.—CAN.

1106 ia. —— ——.]—*Held:* binding.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

1109 viii. —— ——.]—Where the arbitrators did not meet together & sign the formal document in the presence of each other:—*Semble:* the award was invalid.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

1109 ix. —— ——.]—RYE FARM Co. *v.* BRITISH OAK INSURANCE Co., LTD., [1924] 3 D. L. R. 706; 3 [illegible] 16.—CAN.

PART IV. SECT. 5.

1125 x. ——.]—An award made upon an arbn. under Municipal Act is published when notice thereof is given by the arbitrators to the municipality.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—CAN.

PART IV. SECT. 6, SUB-SECT. 1.

sg. *Power of court to require statement of reasons.*]—The power conferred on the ct. by Arbn. Act, R.S.O., 1927, s. 25, to direct arbitrators to state their reasons for their decisions & their findings of fact & law is limited to a situation where an appeal from the [illegible] the opinion of the ct.; the power cannot be invoked in aid of a motion to set aside an award which is not the subject of appeal.—DOMINION NATURAL GAS Co., LTD. *v.* UNITED GAS & FUEL Co. OF HAMILTON, LTD., [1935] O. 1.—CAN.

in deciding that the negligence found did not afford sufficient ground for the termination of the agreement, & further that on the true consideration of the agreement, the refusal to attend daily was as a matter of law a sufficient ground for the termination of the agreement:—*Held:* (1) inasmuch as the arbitrator in his award referred to certain paragraphs in the counterclaim, such paragraphs ought, in considering whether there was an error on the face of the award, to be regarded as forming part of the award; (2) whether misconduct justifies dismissal is a question of fact, & the arbitrator's decision was final; (3) the right to terminate the agreement because appcts. refused to attend daily was a question specifically submitted to the arbitrator & the ct. could not interfere with his decision, even if the question was a question of law.—HITCHINS *v.* BRITISH COAL REFINING PROCESSES, LTD., [1936] 2 All E. R. 191; 80 Sol. Jo. 367, D. C.

1139b. Contract referred to in terms of reference.]—Where a letter to an arbitrator contains the terms of reference agreed between the parties to a dispute, & in it the arbitrator is requested to take into consideration the conditions of the contract between the parties relating to the work out of which the dispute arises, the conditions do not thereby become incorporated with & form part of the award, & cannot therefore be looked at in proceedings in which it is sought to set aside the arbitrator's award on an allegation that it contains an error in law on the face of it.—JOHN GILL CONTRACTORS, LTD. *v.* BROMLEY TRADING CO., LTD. (1936), 52 T. L. R. 452; *sub nom.* BROMLEY TRADING CO., LTD. *v.* JOHN GILL CONTRACTORS, LTD., 80 Sol. Jo. 449, D. C.

1152a. —— Existence of written contract—Signature by one party only.]—(1) To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not constitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.

(2) In the case of a decision of a Div. Ct. setting aside the award of an arbitrator for error of law & as being bad on the face of it, the leave of that ct. or of the Ct. of Appeal to appeal from the decision is not necessary, as Supreme Ct. of Judicature (Procedure) Act, 1894 (c. 16), s. 1 (1) (*b*), has no application.—RUF (T. A.) & Co. *v.* PAUWELS, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 33 Sol. Jo. 372, C. A.

1182. *Add. Annotations:*—**Refd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315; Robert (A.) Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

1187. *Add. Annotation:*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1188. *Add. Annotations:*—**Refd.** Lebeaupin *v.* Crispin (1920), 124 L. T. 124; Sheik Moham mad Habib Ullah *v.* Bird (1921), 37 T. L. R. 405.

1246. In cross-ref. after this case add "Nos. 1291, 1321."

1247. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

1263. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1288. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1291. *Add. Citation:*—7 Mod. Rep. 345.

1326. *Add. Annotation:*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

PART IV. SECT. 8, SUB-SECT. 1.

1155 i. *Must conform to submission.*]—The awards in these cases, making special provision with regard to the repairing & keeping up a mill-dam, etc., were held bad as beyond the submission & power of the arbitrators.—*Re* HALEY & ENNIS (1854), 1 P. R. 173.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—A.

1161 xi. ——.]—The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.—PORTER *v.* PORTER (1921), 55 I. L. T. 206.—**IR.**

PART IV. SECT. 8, SUB-SECT. 2.—B.

s i. ——.]—*Held:* the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date of taking possession.—TORONTO CITY CORPN. *v.* TORONTO RY. CORPN., [1925] A. C. 177, P. C.—**CAN.**

ss. *Reference of "accuracy" & "justice" of accounts.*]—*Held:* the arbitrator was appointed to adjust the accounts between the parties on a fair & equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—FISHER *v.* MATSON & Co., MATSON & Co. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

PART IV. SECT. 8, SUB-SECT. 2.—C.

1185 ii. —— *Award dismissing claim for short delivery.*]—*Held:* words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—GHAMANDI LAL-NARAIN DAS *v.* CHURANJI LAL-POKHAR MAL (1923), I. L. R. 4 Lah. 168.—**IND.**

1188 i. *Submission of any question arising under contract—Award giving damages for non-delivery.*]—Where a contract provided for a reference to arbn. of any question arising under it:—*Held:* the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re* BEAVER WOOD FIBRE CO., LTD., & AMERICAN FOREST PRODUCTS CORPN., [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. 281.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—G.

g (p. 479) **i.** —— *Valuation to be fixed as in open market—Absence of any market.*]—CANADIAN PACIFIC RY. CO. *v.* WINDEBANK, [1917] 3 W. W. R. 99.—**CAN.**

q i. ——.]—The points for decision on a submission to arbn. were on which partner rested the responsibility for the causes necessitating dissolution, & on which condition the partnership should be dissolved:—*Held:* this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re* ARBITRATION ACT, *Re* GUYOT & VIGOURET & AWARD MADE BY GOSSELIN, [1919] 3 W. W. R. 957.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. —— *Delivery of goods "in fair proportion to all imports."*]—*Held:* the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—THOMPSON, MEGGITT & Co., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 3.—E.

sb. *Award of sum subject to variation—"Good & special reasons."*]—NOBLE *v.* CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. (1918), 21 Can. Ry. Cas. 380.—**CAN.**

sc. *Award for payment for working to "estimated" depth.*]—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled:—*Held:* the amount of the contract-price & credits allowed could be ascertained by evidence, & the use of the word "estimated" in the award was definite & amounted to a fixing of the depth at 2,400 feet.—MCNAUGHT *v.* STOKES-STEPHENS OIL CO., LTD., [1919] 1 W. W. R. 952.—**CAN.**

1357a. —— ——.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.) SONS & Co., No. 1058a, *ante*.

1357b. —— ——.]—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA, No. 1067a, *ante*.

1358. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

1361. *Add. Citations :*—88 L. J. K. B. 227 ; 119 L. T. 553 ; 83 J. P. 9.

Add. Annotation :—**Refd.** *Re* Fiscel & Mann & Cook, [1919] 2 K. B. 431.

1361a. —— ——.]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law involved in it if notice of intention to apply to the ct. was given before a date specified ; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper :—*Held :* the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—LYON (J. L.) & Co., LTD. *v.* HADDOCK, PARKER & Co., [1919] W. N. 11.

1415a. —— —— **Reserved for consideration if required.**]—*Re* O'CONOR & WHITLAW'S ARBITRATION, No. 949a, *ante*.

1421. *Add. Annotation :*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

1435a. ——.]—(1) Where parties submitted all matters in difference to arbn., & the award, after reciting the submission, awarded that a certain sum was due & owing from one party to the other :—*Held :* the award must be intended to be made on all the matters referred.

(2) It appeared by affidavit that the claims of one of the parties consisted of items for money due, & also for prospective damages, in consequence of a contract between the parties being put an end to by the other side, but as it also appeared that each of the claims was investigated before the arbitrators :—*Held :* a general finding was sufficient that a balance was due to one of the parties.

(3) Where on a reference one of the parties admits the claim of the other, but seeks to reduce the balance by a set-off, it is sufficient for the award to state that a sum is owing to one side or the other, without further noticing the set-off.—*Re* CROYDON CANAL CO. (1839), 1 Per. & Dav. 391.

1461. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1467. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925], 1 K. B. 720.

1468. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925], 1 K. B. 720.

1472. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1473. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1477. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1497. *Add. Annotation :*—**Consd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1506. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1511. *Add. Annotation :*—**Refd.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774.

1516a. ——.]—*Re* CROYDON CANAL CO., No. 1435a, *ante*.

1593a. —— ——.]—A.-G. FOR MANITOBA *v.* KELLY, No. 238a, *ante*.

1598. *Add. Annotations :*—**Distd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

1598a. —— ——.]—Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that " all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award :—*Held :* it was bad as disclosing an error in law on the face of it ; &, having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside.—PARSONS *v.* BRIXHAM FISHING SMACK

PART IV. SECT. 8, SUB-SECT. 3.—L.

1356 i. *Award settling dispute—Alternative if court should decide differently.*]—An arbitrator awarded a certain sum, &, in the event of the Supreme Ct. determining that certain views expressed by him in his reasons were erroneous, a certain larger sum :—*Held :* in the absence of any such determination the alternative award did not come into operation, & the award was not thereby rendered uncertain.—MELBOURNE HARBOUR TRUST COMRS. *v.* HANCOCK, [1927] V. L. R. 418 ; 39 C. L. R. 570 ; [1927] Argus L. R. 245.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate matters—One award.*]—*Held :* the award must be referred to the arbitrator to draw up two awards.—*Re* DREYFUS & S. A. MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

PART IV. SECT. 10.

1520 v. ——.]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—CITY OF SWIFT CURRENT *v.* LESLIE, [1920] 1 W. W. R. 467 ; 52 D. L. R. 532.—**CAN.**

1541 ii. ——.]—An award contained two directions :—*Held :* the two directions could not be severed, &, although the first direction was valid, the second direction being invalid judgment must be entered for deft.—THOMPSON, MEGGITT & Co., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125 ; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. —— ——.]—The ct. has jurisdiction to set aside an award where an error of law appears on the face of it.—*Re* CASSWELL & Co., LTD. & DONALD & JACOBS, LTD., [1921] N. Z. L. R. 368.—**N.Z.**

1594 iii. —— ——.]—SALEH MAHOMED UMER DOOSAL *v.* NATHOOMAL KESSAMAL (1927), 54 L. R. Ind. App. 427 ; I. L. R. 55 Calc. 126.—**IND.**

1594 iv. ——.]——In determining whether an agreement to abide by the result of an arbn. is binding, a distinction is to be drawn between the case where parties to a contract generally refer their " differences " arising therefrom & the case where a specific question of fact or law is submitted. In the former case the fact that the arbitrator was wrong in point of law is ground for setting the award aside.—*Re* WOOD & MAL—— Co., LTD. (B. C.), [1928] 4 D. L. 511 ; [1928] 2 W. W. R. 674.—**CAN.**

ANCE CO., LTD. (1918), 118 L. T. 600; 14 Asp. M. L. C. 307; *sub nom. Re* PARSONS & BRIXHAM FISHING SMACK INSURANCE CO., LTD., 62 Sol. Jo. 384, D. C.

1598b. —— ——.]—An error in law on the face of an award means that one can find in the award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—CHAMPSEY BHARA & CO. *v.* JIVRAJ BALLOO SPINNING & WEAVING CO., [1923] A. C. 480; 92 L. J. P. C. 163; 129 L. T. 166; 39 T. L. R. 253, P. C.

Annotations:—**Follid.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452. **Refd.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

1599. *Add. Annotations:*—**Consd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Northwood *v.* L. C. C. (1927), 137 L. T. 49; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193; Barton *v.* Blackburn (1933), 150 L. T. 327; Bedwas Navigation Colliery Co. (1921), Ltd. *v.* South Wales Coal Mines Scheme Executive Board (1934). 151 L. T. 420.

1603a. —— **Immaterial to decision.**]—BUERGER & CO. *v.* BARNETT, No. 1822a, *post.*

1603b. —— **Reference on question of law.**]—Where a specific question of law has been submitted to an arbitrator's decision & he has decided it wrongly, that alone is not a sufficient ground for setting aside the award. Where, however, a question of law has not been specifically referred to him, but its determination becomes necessary in the decision of the matters which have been referred, & he makes a mistake apparent on the face of his award, then the award can be set aside on the ground that it contains an error of law apparent on the face of it.—ABSALOM (F. R.), LTD. *v.* GREAT WESTERN (LONDON) GARDEN VILLAGE SOCIETY, LTD., [1933] A. C. 592; 102 L. J. K. B. 648; 149 L. T. 198; 49 T. L. R. 350, H. L.

Annotations:—**Consd.** Barton *v.* Blackburn (1933), 150 L. T. 327; Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191. **Expld. & Distd.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

1603c. —— ——.]—Two firms amalgamated, & by clause 15 of the Articles of Partnership: "The shares of profits payable to the said partners as hereinbefore provided shall be reviewed & if necessary revised as on Sept. 30, 1923, & again as on Sept. 30, 1926, in such manner as may be mutually agreed upon, & in case of disagreement as shall be settled by the special arbitrator hereinafter referred to." By clause 41 the special arbitrator was appointed, & by clause 42 the Articles were to be deemed a submission to arbn. under the Arbn. Act, 1889. The partners did not agree upon whether there should be a review & revision on Sept. 30, 1926, & the dispute continued till the partnership terminated by effluxion of time on Sept. 30, 1929. Provision was made in the deed of dissolution for the exchange of a statement & counter-statement of the contentions of the parties with facts & figures & full particulars, on which the contentions were based, & if the parties failed to agree within two weeks of the delivery of the counter-statement, the dispute was to be referred to the special arbitrator under clauses 15, 41 & 42 of the Articles. The statement & counter-statement raised questions of law & of fact & of mixed law & fact. The dispute was referred to the special arbitrator, before whom the parties appeared in July, 1930, when he gave directions for discovery & adjourned. The parties in Dec. 1930, agreed that certain questions of law raised by certain of the partners in their counter-statement should be decided, with the assistance of a Chancery King's Counsel sitting as assessor, at a preliminary hearing. They also agreed that "either party shall have the same right of appeal in relation to any decision of the arbitrator at the preliminary hearing as such party would have had if there had been no preliminary hearing at all, & the points of law had been argued & determined upon the same occasion as the merits of the dispute." The special arbitrator having heard the parties, stated under the order of the ct. a special case on the questions of law under sect. 19 of Arbn. Act, 1889, which came before FARWELL, J., & the arbitrator stated the conclusions of FARWELL, J., upon the face of the award:—*Held:* by SCRUTTON, L.J., & ROCHE, J.—LAWRENCE, L.J., dissenting—this was a case where a dispute was referred to an arbitrator in the decision of which questions of law became material & accordingly the ct. could interfere if error in law appeared on the face of the award; *per* LAWRENCE, L.J., dissenting: In this case specific questions of law were referred to the special arbitrator for decision, as distinct from questions of law which became material in deciding disputes which were referred to him under clause 15. They were also questions of law which could not have been decided in arbitration proceedings under clause 15 in the absence of an express agreement between the parties to that effect, & therefore they could not be termed properly questions of law incidental to the determination of a dispute which had arisen under clause 15. Accordingly, though error in law might appear on the face of the award, the ct. could not interfere; also by SCRUTTON, L.J., & ROCHE, J. (*a*) clause 15 of the articles was not too vague or uncertain to be enforceable in law, or to be capable of judicial meaning or construction; & (*b*) the question whether or not a revision was necessary was a matter within the scope of the arbn. & accordingly the special arbitrator had jurisdiction. Accordingly the special arbitrator having held the contrary under the direction of

1599 i. —— *In special case submitted to High Court.*]—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., No. 1059 i, *ante.*—N.Z.

FARWELL, J., & these errors appearing on the face of the award, it must be set aside, & the case remitted to him to consider on the merits. —BARTON *v.* BLACKBURN (1933), 150 L. T. 327, C. A.

1614. *Add. Annotation :*—**Consd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1622. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

1624. *Add. Annotations :*—**Expld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644a. ——.] — Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a question of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award ; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—KELANTAN GOVERNMENT *v.* DUFF DEVELOPMENT CO., [1923] A. C. 395 ; 129 L. T. 356 ; 39 T. L. R. 337 ; 67 Sol. Jo. 437, H. L. ; *previous proceedings, sub nom.* DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385, C. A.

Annotations :—**Consd.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Apld.** Barton *v.* Blackburn (1933), 150 L. T. 327.

1645. *Add. Annotations :*—*As to* (1) **Apprvd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590. **Apld.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Consd.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1647. *Add. Annotations :*—**Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Refd.** Barton *v.* Blackburn (1933), 150 L. T. 327 ; Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191 ; John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

1667. *Add. Annotation :*—**Consd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1668a. —— —— **Act of 1889, s. 7 (c).**]—An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award :—*Held :* inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an "accidental slip or omission" entitling him to amend his award under the above sect., & the amended award must be set aside.—SUTHERLAND & CO. *v.* HANNEVIG BROTHERS, LTD., [1921] 1 K. B. 336 ; 90 L. J. K. B. 225 ; 37 T. L. R. 102 ; *sub nom. Re* SUTHERLAND & CO. & HANNEVIG BROTHERS, LTD., 125 L. T. 281 ; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation :*—**Refd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1604 ii. —— *Apparent on face of award.*]—*Held :* the mistake rendered the award invalid.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995 ; 56 O. L. R. 35 ; *affd.*, 57 O. L. R. 603 ; *affd.*, [1927] S. C. R. 251.—**CAN.**

1606 vii. —— *Omission to mention agreed disposition of property.*]—*Held :* the arbitrator was entitled to supply the omission by an addition to the award.—DEBRET *v.* DEBRET, [1917] 3 W. W. R. 503 ; 10 Sask. L. R. 366.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all matters in dispute.*]—*Held :* the parties were bound by the arbitrator's award however erroneous in law it might be. —NATIONAL MORTGAGE & AGENCY CO., LTD. *v.* BRAID & CO., [1923] N. Z. L. R. 933.—**N.Z.**

1626 ii. *Reference of all differences—Several questions of law involved.*]—Where all differences have been referred to an arbitrator, the rule that a wrong decision of the arbitrator on a question of law is final & cannot be reviewed unless the error appears in the award itself or in a document, contemporaneous & forming part of the award, applies to any number of questions of law which may be specifically referred in the same reference, & does not apply merely where the question of law is the sole question referred. An award will not be set aside where the error occurs not in the award itself, but in a contemporaneous document setting out the reasons for the award, & which the arbitrator has expressly stated is not to be deemed to be part of the award.—STEANS *v.* MALING & CO., LTD., [1931] N. Z. L. R. 312.—**N.Z.**

1630 vi. ——.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., LTD. (NO. 3) (1919), 14 Alta. L. R. 148.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B. (b).

1649 vii. ——.]—It is no ground for setting aside an award that an examination of the materials before the arbitrator discloses that his findings are unsupported by, or against, the weight of evidence.—LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., [1926] V. L. R. 427.—**AUS.**

1649 viii. ——.]—An appellate ct. will not interfere with a finding of arbitrators on a question of fact.—SPARKS *v.* CANADIAN NATIONAL RAILWAY, [1934] 1 D. L. R. 798.—**CAN.**

PART IV., SECT. 13, SUB-SECT. 3.

1665 iii. For "SANDFORD *v.* SANDFORD" read "SANFORD *v.* SANFORD."

1665 iv a. —— ——.]—Where an arbitrator has made an award in respect of a claim involving the proof of a number of items, an affidavit of the arbitrator setting out the items in respect of which he has made his award, & the amount he awarded in respect of each item of the claim, is inadmissable in evidence.—HALLIGAN *v.* LAWSON (1922), 22 S. R., N. S. W. 501 ; 39 N. S. W. W. N. 204.—**AUS.**

1666 iii. —— —— *Effect of statute—Arbitration Act*, 1914 (*c.* 65).]—*Held :* the arbitrator had power to amend his award under s. 10 (*c*) of the above Act. —*Re* WHITE & CITY OF TORONTO (1917), 38 O. L. R. 337.—**CAN.**

1671 vii. —— *Unless award not truly stating arbitrator's opinion.*]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

1671 viii. —— *Power to increase amount.*]—The amount awarded by an arbitrator may, upon consideration of the evidence, be increased by the appellate ct.—LAKE ERIE & NORTHERN RY. CO. *v.* BRANTFORD GOLF & COUNTRY CLUB (1918), 21 Can. Ry. Cas. 360 ; 32 D. L. R. 219.—**CAN.**

1674a. Stranger cannot alter.]—An award by an umpire is not vitiated by a mistake in the recital of the award, in the Christian name of one of the original arbitrators who had appointed the umpire. Such mistake not being material, an alteration made by a stranger subsequently to the publication of the award, by striking out the wrong & inserting the right Christian name, does not vitiate the award, but leaves it in the state in which it was before such alteration.—TREW *v.* BURTON (1833), 1 Cr. & M. 533; 3 Tyr. 559; 2 L. J. Ex. 236; 149 E. R. 511.

1698. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1701a. —— Liability to cross-examination.]—In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor :—*Held :* as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for arriving at the reduction in the turnover of claimants due solely to the fire.—RECHER & CO. *v.* NORTH BRITISH & MERCANTILE INSURANCE CO., [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827, D. C.

1722a. —— Reference to umpire by arbitrators—Custom of the tallow trade.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.*, the London Oil & Tallow Trades Assocn. The umpire awarded that defts.' claim failed & that they were to pay the costs of the arbn. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final :—*Held :* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & CO., LTD. *v.* PILOT TRADING CO., LTD. (1929), 45 T. L. R. 214.

1731a. —— Question of law.]—HITCHINS *v.* BRITISH COAL REFINING PROCESSES, LTD., No. 1139a, *ante*.

1735. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

1738. After this case add "**Personal representative.**]—*See* Vol. XXIV., p. 621, Nos. 6508, 6509, & *compare* original volume, pp. 393 *et seq.*"

1751. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1757. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

1758. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1760. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

1761. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

PART IV. SECT. 15, SUB-SECT. 2.—A. (b).

1723 xi. —— *Damages — Unless wrong principle followed.*]—LAKE ERIE & NORTHERN RY. CO. *v.* MUIR (1918), 21 Can. Ry. Cas. 350.—**CAN.**

PART IV. SECT. 15, SUB-SECT. 2.—A. (c).

n i. ——.]—Where arbn. proceedings are initiated by a provincial railway co. & much of the evidence is received before an amalgamation of the co. with a Dominion railway co. is effected & the proceedings are allowed to proceed after the amalgamation, until practically all that remained to be done is the making of the award, the Dominion co. is bound by the award made as a result of such proceedings.—HANEY *v.* CANADIAN NORTHERN RY. CO., [1917] 3 W. W. R. 105; 36 D. L. R. 674.—**CAN.**

PART IV. SECT. 15, SUB-SECT. 2.—D.

sd. *Jurisdiction of court ordering reference.*]—Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take evidence & file their award, counsel for both parties taking no objection to the regularity of the proceedings, the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—HALL *v.* ELECTRIC COMRS. OF LAWRENCETOWN, [1921] 54 N. S. R. 283; 57 D. L. R. 535.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 1.

a i. —— *Compulsory reference—Subsequent voluntary submission.*]—*Held :* the award of the arbitrator was not open to review by the ct.—

1799a. —— Single judge of High Court.]—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & CO., LTD., No. 1960a, *post*.

1802a. Denial of submission.]—Motion to set aside an award. Appcts. were general merchants dealing particularly in oil, & resps. were a co. carrying on business in Belgium with no authorised agents in this country & they also dealt in oil. D. of Paris, with whom the appcts. did a regular business, about Nov. 23, 1932, without consulting appcts. made an arrangement with resps. for appcts. to purchase from resps. 150 tons of palm oil. Resps. never sent a contract to appcts., who never signed any contract with resps. D. was never an agent for appcts. Appcts. repudiated any contract being made. The matter was referred to arbn. by resps. in accordance with conditions of sale endorsed upon the alleged contract of the Liverpool United General Produce Assocn., Ltd. The award, dated Apr. 21, 1933, adjudged the appcts. to pay £800 to resps. as damages for breach of the alleged contract. Appcts. disputed the validity of the award, alleging that the real issue in dispute was whether there was a contract between them & resps. containing the alleged submission to arbn. Appcts. now sought to set aside the award on the ground that the arbitrators had purported to find the existence of a contract containing the alleged submission to arbn., but they had no jurisdiction as no submission had been signed by appcts. :—*Held :* the application to set aside the award was based upon the fact that there was one, & there could only be an award if there was a submission to arbn. Appcts.' case was that there was no submission & therefore there was no jurisdiction for the ct. to set aside an award which it was denied existed. The ct. would, however, stand over this appeal & direct appcts. to bring an action for a declaration that the award was null & void & on the decision of that action this appeal would be heard.—OIL PRODUCTS TRADING CO., LTD. *v.* SOCIÉTÉ ANONYME SOCIÉTÉ DE GESTION D'ENTREPRISES COLONIALES (1934), 150 L. T. 475, D. C.

1822. *Add. Annotations :*—Refd. Buerger *v.* Barnett (1919), 89 L. J. K. B. 161 ; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1822a. —— Question to be raised immaterial.]—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—BUERGER & CO. *v.* BARNETT (1919), 89 L. J. K. B. 161 ; 120 L. T. 570 ; 35 T. L. R. 260 ; 63 Sol. Jo. 391, D. C.

1822b. ——.]—When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re* FISCHEL & CO. & MANN & COOK, [1919] 2 K. B. 431 ; 121 L. T. 275 ; *sub nom.* FISCHEL & CO. *v.* MANN & COOK, 88 L. J. K. B. 1173, D. C.

1825a. Disregarding statute passed after hearing but before issue of award.] — (1) Resps. ROYAL COMMISSION OF WHEAT SUPPLIES *v.* USHER & CO., LTD., [1920] 2 I. R. 483.—**IR.**

a ii. ——.]—LACOSTE *v.* CEDARS RAPIDS MANUFACTURING & POWER CO., [1928] 2 D. L. R. 1.—**CAN.**

a iii. ——.]—Under its inherent jurisdiction, the power of the ct. to set aside an award depends on whether it is "bad on its face" or on some ground which is more or less an extension of the same principle.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511 ; [1928] 2 W. W. R. 674.—**CAN.**

1786 i a. —— *Appellate Division of Supreme Court.*]—An appeal from or a motion to set aside or remit an award must be to the Appellate Div. of the Supreme Ct.—SNIDER *v.* MILLER, [1924] 2 D. L. R. 617 ; 1 W. W. R. 1163 ; 20 Alta. L. R. 237 ; *affg.*, [1924] 1 D. L. R. 198 ; [1923] 3 W. W. R. 1376.—**CAN.**

1802 iii. —— ——.]—In a submission to arbn. the parties thereto agreed that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties :—*Held :* this agreement was void as against public policy. —BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995 ; 56 O. L. R. 35.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 2.—A.

c i. ——.]—Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence which surround judicial procedure were not strictly adhered to.—MAURIG SHWE HPU *v.* U MIN NYUN (1925), I. L. R. 3 Ran. 387.—**IND.**

l (p. 547). For "**IND.**" read. "**CEYLON.**"

se. *Award reciting order of reference not fixing time for delivery of award.*]—*Held :* an award which recited an order of reference not fixing a time for delivery of the award was *primâ facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the omission from having that effect.—YAMIKE KWEKU *v.* ANNOR ADJAYE, [1926] A. C. 755 ; 95 L. J. P. C. 157 ; 135 L. T. 642.—**GOLD COAST.**

PART IV. SECT. 16, SUB-SECT. 2.—B.

w (p. 548) i. —— ——.]—The misconduct referred to in Arbn. Act, s. 14 (2) is "legal misconduct." In determining whether there was "legal misconduct" on the part of the arbitrator which would justify the setting the award aside, the ct. may look at the evidence adduced before him, in order to ascertain whether he acted on evidence which was wholly inadmissible & which went to the root of the question before him.

While in the present case, an arbn. as to the loss suffered by the seller of goods because of their non-acceptance by the buyer, the arbitrator was held to have erred in allowing the seller to "split" his case, yet, as he had exercised a discretion in the matter & no substantial injustice was occasioned thereby, the course adopted did not invalidate the award.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511 ; [1928] 2 W. W. R. 674.—**CAN.**

y (p. 548) For "**IND.**" read "**CAN.**"

c i. —— *Refusal to state case.*]—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the parties to do so is *primâ facie* technical misconduct for which his award may be set aside.—FISHER *v.* MATSON & CO., MATSON & CO. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

1811 ii a. ——.]—Where in a paving contract with a city the city's engineer is made arbitrator, he must guard against being unduly influenced by his employers ; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* CITY OF REGINA, [1920] 1 W. W. R. 311 ; 50 D. L. R. 93 ; 13 Alta. L. R. 94.—**CAN.**

sf. *Keeping answers secret.*]—Where arbitrators have not disposed of all the questions submitted to them, but have deliberately agreed not to disclose & to keep secret their answers to specific questions put to them, there is such misconduct as requires the ct. to set aside the award instead of remitting it.—*Re* BIDEN & THOMPSON, [1932] 1 W. W. R. 843.—**CAN.**

to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration:—*Held:* whether or not the arbitrator was aware of the Act, he had applied its principles, &, consequently, there was no misconduct; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognisance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.).—OSMOND *v.* WOOLLEY (1917), 87 L. J. K. B. 822; 118 L. T. 29; 34 T. L. R. 133, D. C.

1826. *Add. Annotations:*—**Reld.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054; Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58.

1827. *Add. Annotation:*—**Reld.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

1839a. Surprise.]—It is no ground for setting aside an award that the unsuccessful party suffered a surprise; as an arbitrator would have power to postpone the proceedings upon any reasonable application for that purpose. —SOLOMON *v.* SOLOMON (1859), 28 L. J. Ex. 129.

1839b. —— What amounts to.]—OSMOND *v.* WOOLLEY, No. 1825a, *ante*.

1846. *Add. Annotation:*—**Reld.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

1850a. —— Objection to authority of arbitrator to determine dispute.]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in the policies. Claimant was the sole shareholder in the co. & was also a creditor of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim:—*Held:* claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—MACAURA *v.* NORTHERN ASSURANCE CO., [1925] A. C. 619; 94 L. J. P. C. 154; 133 L. T. 152; 41 T. L. R. 447; 69 Sol. Jo. 777; 31 Com. Cas. 10, H. L.

Annotation:—**Consd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

1851a. —— ——.]—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), No. 1083b, *ante*.

1855. *Add. Annotation:*—**Reld.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

1857a. By motion.]—Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per* CUR.).—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196, P. C.

Annotation:—**Apld.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

1857b. ——.]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante*.

1857c. —— Entered in special paper.]—A motion to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper. —*Re* COWAN BROTHERS, LTD. & RYMER (HENRY) & CO., [1919] W. N. 140, D. C.

1869. *Add. Annotation:*—**Reld.** *Re* Campbell (1919), 88 L. J. Ch. 519.

PART IV. SECT. 16, SUB-SECT. 2.—D.

sg. *Excess of jurisdiction.*]—The ct. has jurisdiction to set aside any award which purports to exercise jurisdiction beyond that given by the authorising Act & the submission made pursuant thereto.—*Re* BRITISH COLUMBIA MINISTER OF PUBLIC WORKS & TIPPING, [1931] 2 W. W. R. 835; 44 B. C. R. 321.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 3.

1852 i a. —— ——.]—SCOTIA CONSTRUCTION CO., LTD. *v.* HALIFAX CITY, [1935] S. C. R. 124.—**CAN.**

1852 xi. —— *Consent to extension of time for making award.*]—*Held:* the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—POWIS *v.* VANCOUVER (CITY), RAMAGE *v.* VANCOUVER (CITY) (1917), 23 B. C. R. 180. —**CAN.**

1852 xii. ——.] — Where applts. went on with an arbn. without objection after an irregularity had occurred:—*Held:* they were precluded from seeking to set aside the award on the ground of the irregularity. — U GUNAWA *v.* U PYINNYADIPA (1923), I. L. R. 1 Ran. 15.—**IND.**

1852 xiii. ——.]—A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock:—*Held:* pursuer having full knowledge of the nature of the stock that was tendered to him, & having accepted the stock & dealt with it as if it was his own, was barred from objecting to the award of the oversman.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—**SCOT.**

sh. *Award following opinion of court on case stated.*]—*Held:* the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—*Re* MCCONKEY'S ARBITRATION (1920), 17 O. W. N. 329; 47 O. L. R. 411.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 4.—C.

1898 i. *Grounds for extension—Not mistake of counsel on question of law or practice.*]—On a motion to extend the time for making an application to set aside an award:—*Held:* where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—**CAN.**

1912a. —— **Failure to apply within time limit.**]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1912b. —— ——.]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante.*

1923a. Evidence of arbitrator.]—Where, on the hearing of a motion to set aside the award of arbitrators, it is found impossible otherwise to ascertain the material facts of the case, the ct. can, & will, accede to an application by a party for leave to call the arbitrators as witnesses in regard to these facts.—LEISERACH *v.* SCHALIT, SCHALIT *v.* LEISERACH, [1934] 2 K. B. 353; 103 L. J. K. B. 608; 151 L. T. 398, D. C.

1925. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1937. *Add. Annotation :*—**Distd.** Stanton *v.* Laws, [1934] W. N. 130.

1937a. Whether leave to appeal necessary.]—RUF (T. A.) & Co. *v.* PAUWELS, No. 1152a, *ante.*

1943. *Add. Annotations :*—**Apld.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

1950a. Misconduct.] — OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1954a. ——.]—Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, [1921] 1 K. B. 391; 90 L. J. K. B. 316; 124 L. T. 604; *sub nom.* BECKER, SHILLAN & Co. *v.* BARRY BROTHERS, 37 T. L. R. 101, D. C.

Annotations :—**Consd.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Larrinaga *v.* Soc. Franco-Américaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1960a. —— **By motion—Before single judge of High Court.**]—A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case.—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & Co., LTD. (1918), 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.

Annotation :—**Folld.** *Re* Cowan & Rymer, [1919] W. N. 140.

1960b. ——.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1981. For the paragraph in original volume substitute the following paragraph :—
Foreign award — Whether enforceable as judgment of foreign court.]—An award in a foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—MERRIFIELD, ZIEGLER & Co. LIVERPOOL COTTON ASSOCN., LTD. (1911), 105 L. T. 97; 55 Sol. Jo. 581.

Annotation :—**Refd.** Harrop *v.* Harrop, [1920] 3 K. B. 386.

1981a. —— **Action on—By what law contract governed.**] — Pltfs., an insurance co. in London, & defts., an insurance co. in Norway, entered into a written contract headed "Reinsurance contract—Marine Insurance." The contract was not stamped as a policy, but it contained the usual terms of a reinsurance treaty, pltfs. being the reinsured & defts. the reinsurers, & there was a clause providing that in the event of disputes an arbn. should take place in Norway. The contract was signed by pltfs. in Norway & by defts. in London & was stamped with an English sixpenny stamp, but not in accordance with the English law as to contracts of marine insurance, but it was valid by the law of Norway. An arbn. under the contract was held in Norway & an award was issued in favour of pltfs. In an action on the award defts. submitted that the law applicable to the whole contract must be the law of England, & that, since the contract neither was a policy as required by English law nor was properly stamped as such a policy, pltfs. could not recover on the award :—*Held :* as the action was brought on the award, & as the proper inference from the provision as to the arbn. being held in Norway was that the parties intended the law of Norway to govern the contract, pltfs. were entitled to recover the sum awarded.—NORSKE ATLAS INSURANCE CO., LTD. *v.* LONDON GENERAL INSURANCE CO., LTD. (1927), 43 T. L. R. 541.

Annotation :—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

1981b. —— —— **Service out of the jurisdiction.**] —On Nov. 19, 1929, a charterparty was

sg. *Within term following publication.*]—An award must be moved against within the term following its publication, or within the period which such term formerly occupied.—KEAN *v.* EDWARDS (1888), 12 P. R. 625.—CAN.

sj. *Under Consolidated Municipal Act*, 1922, *ss.* 333, 345 (1).]—*Re* VAHEY & CARLETON COUNTY, [1924] 4 D. L. R. 1055; 56 O. L.

PART IV. SECT. 16, SUB-SECT. 4.—D.

sk. *Limited to evidence taken down in writing by arbitrator.*]—*Re* NEW BRUNSWICK GAS & OILFIELDS, LTD. & NEW BRUNSWICK ELECTRIC POWER MITTEE (N.B.), [1926] 2 D. L. R. 1 CAN.

PART IV. SECT. 16, SUB-SECT. 4.—F.

y (p. 561). For "WADE AND OTHERS (No. 2) (1909)" read "WADE *v.* HARDLEY (No. 2) (1910)."

PART IV. SECT. 17, SUB-SECT. 1.

sl. *Under Arbitration Act*, 1927 (c. 97), *s.* 11.]—The power conferred by above sect. is conferred upon "the ct." & may be exercised by a judge sitting in ct.; that does not weekly ct.; & a judge having the parties before him at a trial may, of his own motion, in a proper case, remit the matter to the arbitrators.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—CAN.

PART IV. SECT. 17, SUB-SECT. 2.

sm. *Under* 2 *Edw.* 7, *c.* 107, *ss.* 12, 21—*Grounds for*

Re COLEMAN & TORONTO & NIAGARA POWER CO. (1917), 40 O. L. R. 130; 38 D. L. R. 65.—CAN.

PART IV. SECT. 17, SUB-SECT. 3.

sn i. ——.]—Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—*Re* FOX & CONSOLIDATED MINING & SMELTING CO. OF CANADA, [1925] 1 D. L. R. 245; [1924] 3 W. W. R. 861.—CAN.

sn ii. —— *Arbitrators alleging mistake.*]—The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award.—ROBINS *v.* ANDREWS, [1923] 2 D. L. R. 353; 1 W. W. R. 963.—CAN.

made in London which provided that any dispute arising during the execution of the charterparty should be settled by arbn. in Hamburg. In 1931, disputes arose between the parties which were submitted to arbn. in Hamburg, & an award made against deft. for £20,913 13*s.* 7*d.*, payment to be made in English currency. On Nov. 29, 1932, pltfs., who were a German firm, obtained *ex parte* an order that they should be at liberty to issue a writ against deft., who was residing in France, claiming the amount due & payable under the award, & to serve notice of the writ on deft. in France. On Jan. 5, 1933, deft. applied to have that order set aside, but the application was dismissed. On appeal:—*Held:* (1) the order for service out of the jurisdiction was properly made under R. S. C., Ord. 11, r. 1 (*e*), as the action based on the award was for the enforcement of a contract made within the jurisdiction, namely, the submission to arbn. contained in the charterparty; but (2) the order could not be supported on the ground that the breach of contract was committed within the jurisdiction, as the award had not required payment in England, & the ordinary rule therefore applied that the debtor must seek out his creditors, the German firm, at their place of business & pay them there.

(3) Authorities on the question whether in an action on an award the action is founded on the award or on the agreement to submit the differences from which the award results discussed. *Qu.:* whether an action may be brought upon an implied contract in the award itself.—BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, [1933] 1 K. B. 753; 102 L. J. K. B. 360; 148 L. T. 540, C. A.

1985. After this case add "*See, now*, R. S. C., Ord. 11, r. 8a."

1985a. Grounds for granting or refusing order—Objection to award.]—Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order under the sect. should be made giving leave to proceed summarily under the award.—*Re* BOKS & CO. & PETERS, RUSHTON & CO., [1919] 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. —— Award against Crown.]—An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused.—GRECH *v.* BOARD OF TRADE (1923), 92 L. J. K. B. 956; 130 L. T. 15; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

1986. *Add. Annotations:*—**Distd.** Richardsons Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Follid.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

1992. *Add. Annotation:*—**Refd.** The Beldis, [1936] P. 51.

2043. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2043a. Nature of action.]— BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, No. 1981b, *ante*.

2045. *Add. Annotation:*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2046. *Add. Annotation:*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2056a. ——.]—OPPENHEIM & CO. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

2059. *Add. Annotation:*—**Refd.** Joachimson Swiss Bank Corpn., [1921] 3 K. B. 110.

2060. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2092a. ——.]—On a motion for an attachment for not performing an award, the ct. will not discuss objections to the award, not apparent on the face of it; as, that the arbitrator was partial, or that matters were brought before him, the reference being of all matters in difference, which are not disposed of by the award.—MACARTHUR *v.* CAMPBELL (1834), 2 Ad. & El. 52; 4 Nev. & M. K. B. 208; 4 L. J. K. B. 25; 111 E. R. 21; *previous proceedings* (1834), 5 B. & Ad. 518.

Annotations:—**Consd.** Wright *v.* Graham (1848), 3 Exch. 131. **Refd.** Smith *v.* Troup (1849), 7 C. B. 757; Davies *v.* Pratt (1855), 17 C. B. 183.

2162. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2165. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2166. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

PART IV. SECT. 19, SUB-SECT. 4.—C.

2050 iii a. —— ——.]—B., an arbitrator, in the absence of & without notice to one of the parties, made an award:—*Held:* although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award.—TOURANGEAU *v.* SANDWICH WEST TOWNSHIP, [1920] 48 O. L. R. 306; 56 D. L. R. 83.—**CAN.**

2050 iii b. —.]—I[illegible] in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence.—OPPENHEIM & Co. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—**IND.**

2050 iii c. —— ——.]—An award duly made in England under the English Act of 1889 can be enforced by a suit in an Indian ct., & cannot be set aside by an Indian ct. on any ground of misconduct or irregularity on the part of the arbitrator.—JOHN BATT & CO. (LONDON) *v.* KANOOLAL & CO. (1925), I. L. R. 53 Calc. 65.—**IND.**

2056 i. *Not irregularity in conduct of arbitrators.*]—Arbitrators appointed, but not in writing for the purpose of winding up the affairs of a partnership between pltf. & deft. met & went over such papers as were available at the moment, heard what each of the partners had to say & reached a conclusion which they stated at the meeting. The arbitrators took no oath of office, & two witnesses were sworn. A day or two after the meeting, one of the arbitrators prepared & signed a memorandum headed "Report of Arbitrators," stating the conclusion that the balance due to pltf. was a certain sum. This memorandum was taken by pltf. to the other arbitrators, each of whom signed it. This action was brought upon the memorandum as upon an award. Deft. pleaded the award was irregular & illegal, in that no evidence was taken under oath, the arbitrators were not sworn, or legally appointed, deft. was not permitted to give his evidence, & although he objected, the award was given without his being heard. Deft. also counterclaimed for moneys paid to pltf., etc.:—*Held:* the objections pleaded ought to have been taken on a motion to set aside the award, & were not available as a defence to the action.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—**CAN.**

PART IV. SECT. 19, SUB-SECT. 8.

p i. —— ——.]—The procedure by action upon an award is one that ought to be pursued where the objections raised are such as to render the validity of the award a matter of doubt. The summary method provided by Arbn.

2187. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2187a. Discretion of arbitrator—Must be exercised judicially.]—An arbitrator's discretion as to costs must be exercised judicially.—LLOYD DEL PACIFICO *v.* BOARD OF TRADE (1930), 46 T. L. R. 476; 35 Com. Cas. 325.

2213. *Add. Annotation :*—**Consd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

2244. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2326. *Add. Annotation :*—*As to* (1) **Refd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2331. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2332. *Add. Annotations :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717. **Refd.** Terry *v.* Gould (No. 2) (1924), 69 Sol. Jo. 212; Weber *v.* Birkett, [1925] 1 K. B. 720.

2336. *Add. Annotation :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2340. *Add. Annotations :*—**Consd.** Keen *v.* Towler (1924), 41 T. L. R. 86. **Apld.** King *v.* Sunday Pictorial Newspapers (1920) (1924), 133 L. T. 397.

2344. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2352. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2353. *Add. Annotation :*—**Consd.** Williams *v.* Jones, [1926] 1 K. B. 255.

2354. *Add. Annotation :*—*As to* (1) **Consd.** Williams *v.* Jones, [1926] 2 K. B. 37.

2355a. —— Whether more than one issue—R. S. C., Ord. 65, r. 2.]—WILLIAMS *v.* JONES (STANLEY) & Co., [1926] 2 K. B. 37; 95 L. J. K. B. 471; 134 L. T. 652; 70 Sol. Jo. 463, C. A.

2358. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2361a. —— Award not providing for costs of parties.]—*Re* BECKER, SHILLAN & CO. & BARRY BROTHERS, No. 1954a, *ante*.

Part V.—References by Order of Court.

SECT. 1 (p. 613).—**REFERENCES FOR INQUIRY AND REPORT.**

See, now, S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 88, 92.

2448. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2451. Before this case add "Arbitration Act, 1889, s. 15, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90."

Act of enforcing awards is to be used only in reasonably clear cases.—WONG SOON *v.* GAREB, [1936] 1 W. W. R. 270; 1 D. L. R. 605; 63 C. C. C. 174; 50 B. C. R. 310.—**CAN.**

sn. *What defences available.*]—Applts. brought an action against the Commonwealth to recover money due under two contracts. While the action was pending the A.-G. of the Commonwealth agreed to submit to arbn. the matters in dispute between the parties. This agreement recited the making of the two contracts. The arbitrator having made his award in favour of the Commonwealth, applts. moved to set aside the award or to remit it to the arbitrator on certain grounds, none of which related to the validity of either of the contracts. That motion was dismissed. On an application by the Commonwealth for leave to enforce the award :—*Held :* applts. were not entitled to challenge the validity of the two contracts or the authority of the A.-G. to make the agreement for arbn. —KIDMAN *v.* COMMONWEALTH OF AUSTRALIA (1925), 37 C. L. R. 233; 26 S. R. N. S. W. 379; 43 N. S. W. W. N. 11; [1926] Argus L. R. 118.—**AUS.**

so. *Arbitration Act*, 1909, *s.* 13—*Award merely determining rights.*]—The above sect. does not authorise a judge to give leave to issue execution directly on an award which merely determines rights, but says nothing as to the amount to which the successful party is entitled.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—**CAN.**

sp. *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Award under Municipal Act.*]—Arbn. Act, R. S. M., 1913 (c. 9), applies to awards under Municipal Act unless expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench & enforced accordingly.—SWEINSSON *v.* RURAL MUNICIPALITY OF CHARLESWOOD, [1917], 3 W. W. R. 201; 36 D. L. R. 32.—**CAN.**

sq. *Decree—Failure to accept award.*]—Where in a suit parties have referred their difference to arbn. without an order of the ct. & an award is made, a decree in terms of the award can be passed by the ct. under Civil Procedure Code, Ord. XVIII., r. 3, although the parties do not accept the award.—SUBBARAJU *v.* VENKATRAMARAJU (1928), I. L. R. 51 Mad. 800.—**IND.**

sg. *Motion to have award made order of court—Whether necessary.*]—*Re* COFFEY ESTATE, [1935] 3 W. W. R. 287.—**CAN.**

PART IV. SECT. 20, SUB-SECT. 1.—D. (b).

1 i. —— *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Greater Winnipeg Water District Act*, 1913 (c. 22).]—*Re* IVERSON & GREATER WINNIPEG WATER DISTRICT, [1921] 1 W. W. R. 621; 57 D. L. R. 184; 30 Man. L. R. 98.—**CAN.**

1 ii. —— *Arbitration Act*, 1908.]—An order provided that the costs of the reference & award should be within the discretion of the arbitrator under & subject to the above Act :—*Held :* the discretion of arbitrators with regard to costs was not limited by the principles which the cts. apply.—TYNAN *v.* FORBES, [1921] N. Z. L. R. 738.—**N.Z.**

PART IV. SECT. 20, SUB-SECT. 3.

z i. —— *Includes costs of counterclaim.*]—KIRK *v.* KIRK (1897), 40 N. S. R. 600.—**CAN.**

sk. "*Costs of attendance of*" *party—Party attending with several witnesses—Costs of witnesses not included.*]—MCQUEEN *v.* VANCOUVER ISLAND POWER CO., LTD. (1925), 35 B. C. R. 558.—**CAN.**

PART IV. SECT. 20, SUB-SECT. 6.

st. *Power of arbitrator to fix counsel's fees.*]—On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

sv. *Power of arbitrator to postpone taxation.*]—An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

2395 vii. —— ——.]—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary :—*Held :* as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the accessory charges should have been allowed.—GARLICK & CO. *v.* POYNTON (1917), 38 N. L. R. 59.—**S. AF.**

2414 viii. ——.]—NEW BRUNSWICK ELECTRIC POWER COMMISSION *v.* QUINTON, [1924] 4 D. L. R. 345.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

2440 i. *Any question arising in cause—Questions which must arise.*]—The power given by sect. 14 of Arbn. Act, 1908, to the ct. or a judge to "refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee" is limited to the reference of specific questions which must necessarily be decided in the cause or matter & does not justify a reference of "all questions in dispute in an action other than matters of law or the issue of fraud," as that may involve the reference of questions that it may prove unnecessary to decide.—MOIR *v.* WHITE, [1934] N. Z. L. R. 674; G. L. R. 514.—**N.Z.**

PART V. SECT. 1, SUB-SECT. 4.

a i. —— "*Acting*" *Deputy Registrar of Supreme Court.*]—*Held :* while the validity of the appointment was doubtful, yet as the above officer had

2455. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2458. Before this case add " Arbitration Act, 1889, s. 13 (2), is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 88 (2)."

2459. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2475. For cross-reference after this case read " *See now*, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (3)."

SECT. 2 (p. 619).—**REFERENCES FOR TRIAL.**

See, now, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 89.

2485. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2511. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2554. Before this case add " Arbitration Act, 1889, ss. 16, 17, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 91, 92."

2557. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202. *As to* (2) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202; Light *v.* West, [1926] 2 K. B. 238.

2567. Delete cross-reference before this case.

2575. Before this case add " *See, now*, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (2)."

2580a. No power to alter his own order.]—Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently.—BENTLEY *v.* O'SULLIVAN (1925), 133 L. T. 189; 41 T. L. R. 374; 69 Sol. Jo. 509, D. C.

2580b. Power to set aside his own order.]—In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by pltfs. before the judge in chambers. The judge referred to the official referee the application to set aside his own judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial; & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside his own judgment:—*Held:* (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by pltfs. on the appeal; (2) as under R. S. C., Ord. 36, r. 50, the official referee had " the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words " save as herein provided, no application for a new trial before a referee shall be made " at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct.—LONDON STEAMSHIP & TRADING CORPN., LTD. *v.* RUSSIAN VOLUNTEER FLEET (1926), 135 L. T. 607; 42 T. L. R. 632; 70 Sol. Jo. 838, D. C.

2593. *Add. Annotation:*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

2599. *Add. Citation:*—46 L. J. Q. B. 136.

2603. *Add. Annotations:*—*As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **N.F.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

2611a. —— **Costs.**]—In an action upon a contract in the High Ct. judgment was given for pltf. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10*s.* & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon pltf.'s application, ordered the costs to be taxed on the High Ct. scale:—*Held:* in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined.—LIGHT *v.* WEST (WILLIAM) & SONS, LTD., [1926] 2 K. B. 238; 95 L. J. K. B. 557; 134 L. T. 693; 42 T. L. R. 311; 70 Sol. Jo. 404, C. A.

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acted since his appointment, a judge of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—FUSARELLI *v.* IOCO TOWNSITE CO., [1922] 1 W. W. R. 1238.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.

p (p. 616) i. —— —— —— *Alberta Rules, r.* 312.]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060, [1926] 3 W. W. R. 617.—**CAN.**

z i. —— —— ——.]—*Re* COCHRAN'S TRUSTS (No. 2) (1919), 52 N. S. R. 278.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.

2474 ii. ——.]—AVORY & SON *v.* PARKS (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—D.

sw. *Under Alberta Rules.*]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

o i. —— *Action on building contract.*]—HOUSE REPAIR & SERVICE CO. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—E.

l i. ——.]—An order made by a judge in the exercise of his discretion, referring an action to arbn. under Ord. 97, will not be interfered with by the Ct. of Appeal, unless it is manifest that the order will operate to defeat the rights of, or cause injustice to, one or other of the parties.—TYLORS (AUSTRALIA), LTD. *v.* MACGROARTY, [1928] St. R. Qd. 371.—**AUS.**

PART V. SECT. 2, SUB-SECT. 6.

sy. *Time for appeal—Extension of time—When granted.*]—An application was refused for extension of time for appeal from a matter in a referee's report, the report, although not finally confirmed, having been dealt with nearly two months before, & the reason for extension & merits of appeal being, in the circumstances, insufficient.—JAMIESON *v.* JAMIESON, [1921] 1 W. W. R. 63.—**CAN.**

PART V. SECT. 3.

sz. *Scope of reference—Not facts in issue & determined by court.*]—FOSTER *v.* REAUMÉ, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—**CAN.**

Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2618. *Add. Annotation :*—**Consd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

Part VII.—Foreign Arbitrations.

See Arbitration Clauses (Protocol) Act, 1924 (c. 39); Arbitration (Foreign Awards) Act, 1930 (c. 15); Arbitration Act, 1934 (c. 14).

2619a. Submission—What amounts to.]—By an agreement between an English co. & a Luxembourg co. it was agreed that any disputes arising from the objects thereof should be settled by arbn. Differences having arisen the English co. commenced an action in the English cts. claiming to enforce the agreement, but this action was discontinued. Correspondence ensued, in which the English co. stated that it had chosen its arbitrator & setting out the questions to be submitted, & calling upon the Luxembourg co. to name its arbitrator & state the questions it desired to be submitted to arbitration. The Luxembourg co. appointed an arbitrator & stated that it would allege that the claim of the English co. was inadmissible & then put in a counterclaim to the original action. The English co. moved to stay all proceedings in the counterclaim pursuant to Arbn. Clauses (Protocol) Act, 1924 (c. 39), s. 1, as amended by Arbn. (Foreign Awards) Act, 1930 (c. 15), s. 8, or alternatively pursuant to Arbn. Act, 1889 (c. 49). The Luxembourg co. opposed the motion contending that (i) there had been no "submission made in pursuance of an agreement to which the protocol applies" within sect. 1 of the Act of 1924; (ii) as certain terms as to times stated in the agreement had not been strictly complied with, the ct. was entitled to find that by effluxion of time the arbn. clause had become inoperative; (iii) as the agreement was in the nature of an appointment of an agent & the agency had been discontinued, the agreement itself had become inoperative & the arbn. clause with it; (iv) part of the counterclaim which alleged a conspiracy was outside the agreement & must be excluded from the stay; (v) as the English co., by issuing a writ, had elected to enforce its rights before an English tribunal, it could not then claim to enforce the arbn. clause; & (vi) Arbn. Act, 1934 (c. 14), s. 14, had restored the discretion of the ct. to order an arbn. agreement to cease to have effect & that this was a proper case for the ct. to exercise that discretion :—*Held :* (1) the naming of their respective arbitrators & the constitution of the arbn. tribunal was a "submission" in pursuance of the agreement within sect. 1 of the Act of 1924; (2) any non-compliance with the terms as to times stated in the agreement had been waived by the parties coming together & being at one as to the constitution of the arbn. tribunal; (3) until all matters in dispute under the agreement had been duly settled, the agreement was still operative, notwithstanding that the relations, which the agreement had originally brought into being, had been discontinued; (4) the claim for damages for conspiracy was not a matter to which the arbn. provisions of the agreement extended & should be excluded from any stay; (5) the Luxembourg co. by its own conduct in sharing in the constitution of the arbn. tribunal had waived any right it may have had as a result of the election by the English co.; (6) assuming that sect. 14 of the Act of 1934 applied, this was not a case in which the discretion of the ct. ought to be applied, & a stay should be ordered.—RADIO PUBLICITY (UNIVERSAL), LTD. *v.* COMPAGNIE LUXEMBOURGEOISE DE RADIODIFUSION, [1936] 2 All E. R. 721.

2619b. Stay—When ordered.]—RADIO PUBLICITY (UNIVERSAL), LTD. *v.* COMPAGNIE LUXEMBOURGEOISE DE RADIODIFUSION, No. 2619a, *ante*.

ARMS AND AMMUNITION.

Carrying — — *See* CRIMINAL LAW.
Gun Licences — ,, REVENUE.
Sale of — — ,, TRADE AND TRADE UNIONS.

ARTIFICIAL CREAM.

See FOOD AND DRUGS.

ASSISTANCE, WRIT OF.

See EXECUTION.

AUCTION AND AUCTIONEERS.

Part I.—Definitions.

1. *Citations :*—For " 1 Dav. 111 " read " 1 Dow. 111, H. L."

Part II.—Auctioneer's Licence.

15a. **Use of initials "A.A.I."**]—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G., & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) " after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the carrying on of such business within the borough of P. or in the town of G." In Sept. 1920, pltfs. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as " C. Lovegrove, A.A.I., Estate Agent," the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer : —*Held :* deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer.—BOWLER *v.* LOVEGROVE [1921] 1 Ch. 642 ; 90 L. J. Ch. 356 ; 124 L. T. 695 ; 37 T. L. R. 424 ; 65 Sol. Jo. 397.

Annotation :—**Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

Part III.—Authority of Auctioneer.

20. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

43. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

46. After this case add :— —— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

56. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

57. *Add. Annotations :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Chaney *v.* Maclow, [1929] 1 Ch. 461. **Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

58. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

59. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

63. *Add. Annotation :*—**Apld.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

63a. —— —— ——.]—A freehold house was knocked down to deft. as the highest bidder, but he afterwards refused to sign the contract because one of the conditions of sale required the purchaser to pay certain road-making charges. On the same day the auctioneer, as soon as he was informed of deft.'s refusal, signed the contract as deft.'s agent. In an action by the vendor for specific performance, the judge held in the circumstances the auctioneer's signature could fairly be said to be part of the transaction of sale, & there was a memorandum in writing sufficient to satisfy Law of Property Act, 1925 (c. 20), s. 40 :—*Held :* an auctioneer had authority to sign a memorandum sufficient to satisfy the Act, provided he signed it at such a time & in such circumstances that the signature could fairly be said to be part of the transaction of sale, & as the question whether this condition was satisfied was a question of fact, the judge's decision that there was a valid memorandum must be affirmed.—CHANEY *v.* MACLOW, [1929] 1 Ch. 461 ; 98 L. J. Ch. 345 ; 140 L. T. 312 ; 45 T. L. R. 135 ; 73 Sol. Jo. 26, C. A.

65. *Add. Annotation :*—**Distd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

66. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

67. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

PART I.

b i. —— *Who is—Person conducting Dutch auction.*]—A person conducting a Dutch auction is acting as an auctioneer within Auctioneers' Act, 1921, s. 3.—CARROLL *v.* SOLOMON, [1931] W. A. L. R. 82.—**AUS.**

PART II.

ss. *Acquisition of provincial licence—Necessity for municipal licence.*]—A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlers' Act, R. S. A., 1922 (c. 39), may be compelled to take out a municipal licence.—R. (MORRIS) *v.* STIMMEL, [1923] 4 D. L. R. 955 ; 3 W. W. R. 1185.—**CAN.**

sb. —— —— *Power of city—Cannot arbitrarily refuse licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—**CAN.**

sc. —— —— —— *Cannot arbitrarily revoke licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—**CAN.**

c i. —— —— *Auctioneer licensed by province.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—**CAN.**

sd. *Licensing & Bankrupt Sales in City of St. John Act, N. B.*, 1924 (c. 75)—*When fee of $500 payable.*]—PAGE *v.* ST. JOHN'S CORPN. (N. B.), [1926] 2 D. L. R. 414.—**CAN.**

PART III. SECT. 1.

24 i. *To receive purchase price—By bill of exchange.*]—An auctioneer cannot without authority from his client take payment otherwise than in cash, & if he takes a bill of exchange, & afterwards does not pay the vendor, the purchaser is not discharged.—BOOTHMAN *v.* BYRNE (1923), 57 I. L. T. 36.—**IR.**

68. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

71. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

75. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

76a. —— **Entry of purchaser's name—Auctioneer's name printed on catalogue.**]—Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground that the lot in question had been the subject of a " knock-out " to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 4 (1) :—*Held :* (1) the existence of a " knock-out " did not afford any defence to the action ; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover.—COHEN *v.* ROCHE, [1927] 1 K. B. 169; 95 L. J. K. B. 945 ; 136 L. T. 219 ; 42 T. L. R. 674 ; 70 Sol. Jo. 942.

Part IV.—Conduct of the Sale.

—— ——.]—In a sale of certain property by auction, deft. was declared to be the highest bidder, & he subsequently signed a written contract stating that he was in fact the purchaser of the property. The sale was subject to certain special conditions, clause 1 of which stated that the property was also sold subject to the National Conditions of Sale, & by clause 2 it was stipulated that in the event of the property remaining unsold or being bought in by the vendors, the vendors should be entitled to withdraw another lot from the sale. Clause 1 of the National Conditions of Sale provided that subject (*inter alia*) to the vendors bidding up to a reserve price, the highest bidder should be the purchaser. In an action by pltfs. for specific performance of the agreement by deft. to purchase the property, deft. pleaded (*a*) that he had agreed to bid at the sale merely as a puffer or dummy bidder on behalf of the vendors, & (*b*) that the vendors had employed other puffers to bid on their behalf & that this employment was contrary to Sale of Land by Auction Act, 1867 (c. 48), s. 6, & also to the conditions of sale. Deft. at the trial contended that the sale was in fact one without reserve & therefore the vendors were precluded from bidding either by themselves or an agent by reason of the provisions of sect. 5 of the Act :—*Held :* (1) deft. in bidding for the property was bidding for himself & not as a dummy bidder for pltfs. ; (2) the sale was subject to a reserve price ; & (3) there was no contravention of Sale of Land by Auction Act, 1867 (c. 48), s. 6 ; (4) Sale of Land by Auction Act, 1867 (c. 48), s. 5, does not require that the words " with reserve " or " without reserve " & no others should be used in the particulars or conditions of sale. The requirements of the section are satisfied so long as it is made plain, in whatever words may be chosen, that the sale is subject to a reserve.—HILLS & GRANT, LTD. *v.* HODSON, [1934] Ch. 53 ; 103 L. J. Ch. 17 ; 150 L. T. 16.

82. *Add. Annotation :*—*As to* (1) **Distd.** Hills & Grant, Ltd. *v.* Hodson, [1934] Ch. 53.

82a. **Sale below reserve price—Vendor bidding personally.**]—NARRAMORE *v.* FULLER, HALL & FOULSHAM (1932), 76 Sol. Jo. 289.

82b. **Notice that sale without reserve—Requirements of Sales by Auction Act, 1867 (c. 48), s. 5.**]—HILLS & GRANT, LTD. *v.* HODSON, No. 81a, *ante*.

134. *Add. Annotation :*—**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350.

145. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

148. *Add. Annotation :*—**Apld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

149. *Add. Annotation :*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

150. *Add. Annotation :*—**Consd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

After this case add :—

-.]—*See, now,* Auctions (Bidding Agreements) Act, 1927 (c. 12).

PART IV. SECT. 3, SUB-SECT. 2.

se. *Sale " without reserve " — Burden of proof.*]—The *onus* of proving that a sale by auction was " without reserve " is upon the person alleging it. In case of doubt the presumption is that the auction was one with reserve. NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—S. AF.

PART IV. SECT. 5.

a i. —— *Sale for cash—Bidder unable to pay cash.*]—*Held :* no sale had been effected.—DENIS *v.* MORINVILLE CORPN. (Alta.), [1917] 2 W. W. R. 323 ; 34 D. L. R. 724.—CAN.

c i. —— *Not affected by verbal statements made by vendor's clerk at sale.*]—CURRIER *v.* CROSBY (1877), 17 N. B. R. (1 P. & B.) 464.—CAN.

PART IV. SECT. 7.

sf. *Refusal of bidder to pay—Sale of goods seized under execution—Sheriff entitled to sell goods again.*]—HALIFAX AUTOMOBILE CO. *v.* DREW, [1924] 1 D. L. R. 891 ; 57 N. S. R. 1.—CAN.

PART IV. SECT. 9.

148 vi. ——.]—A combination among intending purchasers at an unreserved auction sale to stifle competition by not bidding against one another is a fraud against the seller, & the auctioneer is not bound to recognise a bid by a member of such a combination.—NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—S. AF.

151 i. *Knock-out sale—Enforcement of agreement between parties.*]—GRANT *v.* WHITZMAN (1921), 55 N. S. R. 16.—CAN.

n i. ——.]—Sale declared void.—FOY *v.* MERRICK (1860), 8 Gr. 323.—CAN.

n ii. ——.]—*Held :* the legal estate passed by the conveyance, & if it was sought to impeach it, the case must be taken into equity.—RAYNES *v.* CROWDER (1864), 14 C. P. 111.—CAN.

n iii. ——.]—A sale will not be set aside on the ground that a party was prevented from bidding by promises made to him by the purchaser. Such fact, if established, would constitute the purchaser a trustee for him, & would be subject for a suit.—BROOK *v.* SAUL (1867), 2 Ch. Ch. 145.—CAN.

151a. —— ——.]—At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held:* the agreement was not illegal, & judgment should be entered for pltf.—RAWLINGS *v.* GENERAL TRADING CO., [1921] 1 K. B. 635; 90 L. J. K. B. 404; 124 L. T. 562; 37 T. L. R. 252; 65 Sol. Jo. 220; 26 Com. Cas. 171, C. A.

Annotation:—**Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

151b. —— ——.]—COHEN *v.* ROCHE, No. 76a, *ante*.

152. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

153. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

155a. ——.]—A purchaser alleged by his answer to a suit for specific performance, that he acted as a puffer in bidding for one lot, & also as puffer in bidding for another lot, which was knocked down to him; & that he therefore purchased the lot, & signed the agreement for the purchase, as the agent of the vendor; but the statement in his depositions of the circumstances attending the signature was somewhat different from that in his answer, & he had signed an order on his attorney for payment of the deposit money:—*Held:* there was not sufficient evidence of agency, & deft. was held to have purchased on his own account.

Taking into consideration the signature by deft. of the memorandum of agreement, the contradiction between his answer & his examination, & his having given an order for the deposit in his own name, & on his own agent, it is impossible to contend that he purchased as the agent of pltf. (TURNER, V.-C.).—BENNETT *v.* SMITH (1852), 20 L. T. O. S. 28; 16 Jur. 421.

Part V.—Deposit.

171a. **Failure to require deposit—Whether breach of contract with vendor.**]—Pltfs. entrusted to defts., who were auctioneers, a suit of armour for sale by auction. One of the conditions of sale was that the buyer should pay down 10*s.* in the £ or more if required in part payment of the purchase-money, in default of which the lot might be put up again & resold. By another condition, on the failure of a buyer to comply with any of the conditions, the money deposited in part payment was to be forfeited. One B., who had previously bought for an American millionaire, bid at the auction & the armour was knocked down to him. The auctioneers did not ask B. for a deposit, as they assumed that he was acting for the millionaire for whom he had acted before. The millionaire afterwards repudiated B.'s authority, & B., when asked to take the armour, could not pay for it. Consequently the sale was not carried out. In an action by the sellers against the auctioneers for breach of contract to procure the buyer to pay the deposit:—*Held:* there was no negligence or breach of duty on the part of the auctioneers in exercising their judgment, in the circumstances, by not enforcing the conditions of sale as to a deposit, &, since on the evidence the armour would not have been sold if it had been put up again, there were no damages, & the action failed.—CYRIL ANRADE, LTD. *v.* SOTHEBY & CO. (1931), 47 T. L. R. 244; 75 Sol. Jo. 120.

191a. —— —— **Order for repayment under Law of Property Act, 1925 (c. 20), s. 49.**]—Leasehold shops described in the particulars of sale as "Valuable business premises" were put up for sale by auction, subject to special conditions of sale & also to the National Conditions of Sale, by one of which, namely, the sixth, it was stipulated that the leases or copies thereof might be examined at the office of the vendors' solicitors before the sale & that the purchaser, whether or not he inspected the same, should be deemed to have bought with notice of the contents thereof. Deft. only became aware of the sale on the day when it was held &, having on that day been supplied by the auctioneers with the particulars & special conditions, but not with the National Conditions, & relying upon the truth of the description in the particulars, he bid at the sale and was declared to be the highest bidder thereat. He then signed the usual form of memorandum to the effect above stated & paid a deposit to the auctioneers. In the course of investigating the title it came to deft.'s knowledge for the first time that the leases under which the properties were held were subject to covenants which prohibited any other trade or business than that of a ladies' outfitter, fancy draper & manufacturer of ladies' clothing from being carried on upon the properties. In consequence of the existence of those restrictive covenants & the failure of pltfs. to procure their removal or the licence of the lessors to use the properties for the purposes of any business, deft. refused to complete the purchase. In an action by the vendors for specific performance in which deft. counterclaimed rescission of the contract & to recover his deposit:—*Held:* (1) a shop which could be used for one purpose only was not fairly described as "valuable business premises"; & (2) such a misleading representation by pltfs. in their particulars of sale disentitled them, notwithstanding the sixth condition, to the assistance of the ct. to compel deft., who purchased in reliance upon the truth of such representation, to

specifically perform his part of a contract for a consideration different from that which he was led to expect. The action was dismissed; & deft. was declared to be entitled to give a valid receipt to the auctioneers for the deposit.—CHARLES HUNT, LTD. *v.* PALMER, [1931] 2 Ch. 287; 100 L. J. Ch. 356; 145 L. T. 630; 75 Sol. Jo. 525.

Annotations :—As to (2) **Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34; Bellotti *v.* Chequers Developments, Ltd., [1936] 1 All E. R. 89.

192. *Add. Annotation :*—**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350.

Part VII.—Rights and Duties in Relation to Vendor.

218. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

219. *Add. Annotations :*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

225. *Add. Annotation :*—**Consd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

240. *Add. Annotation :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

242a. **Sale stopped by vendor.**]—DAVIES *v.* DAWS, DAWS *v.* DAVIES (1930), 74 Sol. Jo. 663.

246. *Add. Annotation :*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

255. *Add. Annotations :*—**Consd.** London Corpn. *v.* Lyons Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78. **Refd.** Page *v.* Sully (1919), 63 Sol. Jo. 55; Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

257. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

260. *Add. Annotation :*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

263. *Add. Annotation :*—**Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

268. *Add. Annotation :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

Part VIII.—Rights and Liabilities in Relation to Purchaser.

278. *Add. Annotations :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55; London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

280a. —— **Option to resell on purchaser's default.**]—Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing: "The lot to be taken away & paid for the day after sale," & "upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot was knocked down to him. He afterwards endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale :—*Held :* the words "all lots uncleared shall be resold" did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser.—ROBINSON, FISHER & HARDING *v.* BEHAR, [1927] 1 K. B. 513; 96 L. J. K. B. 150; 136 L. T. 284; 91 J. P. 59; 43 T. L. R. 66, D. C.

282. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

289. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293a. —— ——.]—PAGE *v.* SULLY, No. 301a, *post.*

295. *Add. Annotation :*—**Distd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

296. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

PART VII. SECT. 1.

t i. —— *Disappearance of purchaser —Lot not resold.*]—Pltf. instructed defts. to sell his household furniture by public auction for cash without reserve. At the auction a suite of furniture was put up for sale, & after some bidding was knocked down to B. for £9 5*s.* B. went away, ostensibly to get the money, but did not return, & she could not be traced subsequently. The furniture was not removed & defts. asked pltf. what they should do with it, but he refused to give any directions as to its disposal. Pltf. then sued defts. for £9 5*s.*, the price of goods sold & delivered or, alternatively, as damages for negligence :—*Held :* the first claim could not be sustained in law & there had been no negligence on the part of defts.—ASHENDEN & CO. *v.* DORNEY, [1930] W. A. L. R. 111.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 2.

240 ii. ——.]—*Re* MCCOLL, MCCOLL *v.* MCCOLL (1881), 8 P. R. 480.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

296 iii. —— ——.]—Pltf. & C. entered into a hire-purchase agreement in respect of a motor car. After making his first payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W. :—*Held :* the name of the vendor having been disclosed to the purchaser at the sale W. was not responsible to the buyer.—ARCHIBALD *v.* WASHER & CO. & KINNERNEY, [1923] N. Z. L. R. 165.—**N.Z.**

m i. —— —— ——.]—A house & premises were put up for sale by public auction, but no sale was effected. Subsequently a sale by private treaty was made & the original conditions of sale were signed by the purchaser. The purchaser paid the auctioneer the auction fees provided for by the conditions of sale. The purchase subsequently fell through owing to the vendor's inability to get certain mtgees. to join in the sale :—*Held :* the purchaser was not entitled to recover the auction fees paid by him to the auctioneer.—M'NULTY *v.* (1917), 52 I. L. T. 43.—**IR.**

301a. Non-delivery—Goods included in a lot by mistake.]—In the catalogue of a sale by auction a lot marked 103 to 109* was included, being various bundles of paper. Item 109* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to pltf., & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being "By order of J. S. & others." The buyer brought an action for damages against the auctioneer: —*Held:* the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery; & the fact that the buyer accidentally learned of the ownership of lot 109* was not material.—PAGE *v.* SULLY (1918), 63 Sol. Jo. 55, D. C.

307. *Add. Annotation:*—**Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

309. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

311. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

312a. ——.]—An auctioneer who sells a chattel on behalf of a principal does not by the mere fact of sale warrant his principal's right to sell.—BENTON *v.* CAMPBELL, PARKER & CO., [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.

Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotations:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

326. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

337. *Add. Annotations:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752; Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

AUDIENCE, RIGHT OF.

See BARRISTERS; SOLICITORS.

AUSTRALIA, COMMONWEALTH OF.

See DEPENDENCIES AND DOMINIONS.

BAILMENT.

Part I.—In General.

1. *Add. Annotations :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353 ; Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

4. *Add. Annotation :*—**Refd.** Union Transport Finance, Ltd. *v.* Ballardie, [1937] 1 K. B. 510.

6. *Add. Annotation :*—**Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

13a. —— —— **Car park.**]—The owner of a motor car left it on a private parking ground, & on payment of 1*s.* received from the attendant a ticket headed " Seaway Car Park, Car Park Ticket " & containing a receipt for 1*s.*, followed by the provision : " The proprietors do not take any responsibility for the safe custody of any cars or articles therein nor for any damage to the cars or articles however caused . . . all cars being left in all respects entirely at their owners' risk." Later when the owner returned for his car the attendant told him he had just given it to the owner's friend. The man who had so obtained the car had neither the ticket nor the key to the car, which was locked ; but he was able to get his hand through the windscreen & free the car. The car was never recovered, & the owner brought these proceedings against the proprietors of the car park for damages. The negligence of the attendant was admitted, but liability denied :—*Held :* (1) the relation between the proprietors & the owner of the car was that of licensors & licensee, & therefore the proprietors were under no liability whatever in regard to the car ; (2) what had been done by the attendant did not amount to a misdelivery of the car ; (3) even if the relationship between the parties was such as to constitute a contract of bailment & the act of the attendant amount to a misdelivery of the car, the conditions on the ticket relieved the proprietors of all liability ; (4) no term could be implied in the contract (if any) between the parties that the car should not be parted with without production of the ticket.—ASHBY *v.* TOLHURST, [1937] 2 K. B. 242 ; [1937] 2 All E. R. 837 ; 106 L. J. K. B. 783 ; 156 L. T. 518 ; 53 T. L. R. 770 ; 81 Sol. Jo. 419, C. A.

16. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

38. *Add. Annotation :*—**Refd.** Van Oppen *v.* Tredegars (1921), 37 T. L. R. 504.

Part II.—Gratuitous Bailment.

43. *Add. Citation :*—Palm. 381. *Annotation :*—**Refd.** Hill *v.* Vaux, 1 Ld. Raym. 227.

46. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R.

PART I. SECT. 1.

8k. *Person obtaining possession & control of goods without owner's consent.*]—To constitute a bailment it is sufficient if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereafter retains possession & control for him with his consent.—MAKOWER, MCBEATH & CO., PROPRIETARY, LTD. *v.* DALGETY & CO., LTD., [1921] V. L. R. 365.—**AUS.**

13 i. —— *Licence to occupy floor space.*]—Deft. was owner of a private garage, & rented to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose :—*Held :* deft. was not bailee of pltf.'s car.—LESSER *v.* JONES, [1920] 47 N. B. R. 318.—**CAN.**

14 i. —— *Goods left at cloak-room—Ball organised by committee.*]—The committee hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration paid by the committee. When resp. presented his numbered ticket corresponding to the number placed on his coat it was found that another coat had been substituted for his :—*Held :* as regards the caretaker, there was no implied contract between him & resp. As regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—CORBETT *v.* JAMIESON, [1923] N. Z. L. R. 374.—**N.Z.**

30 i. —— *Cab driver & cab proprietor.*]—A taxi-cab co. hired cabs to drivers under a contract which purported to create the relation of bailor & bailee as between the letter & the hirer. The letting was for a period of twenty-four hours. At the termination of the hiring the driver was to return the cab immediately to the co.'s garage in good order & condition. If he so desired the driver could use the co.'s garage telephone, uniform & greasing & inspection services. He supplied his own petrol, but had to buy it from the co. He was to keep the cab in his own personal custody & was not to allow any other person to drive it. The cab was to be used exclusively for the carriage of passengers for hire. A right to inspect the cab was reserved to the co.'s servants. The driver agreed to pay as rent for the cab a certain sum at the conclusion of the hiring, such sum being a fixed percentage of the amount earned by him as fares during the hiring, the balance belonged to the driver. He had no specific right to a renewal of the agreement ; but each day he took out a cab a contract embodying the above provisions was executed by him :—*Held :* the contract was one of bailment & not partnership.—CHECKER TAXICAB CO. STONE, [1930] N. Z. L. R. 169.—**N.Z.**

30 ii. —— *Delivery of mineral-water bottles—Charge for detention of empties.*]—Pltfs. sold mineral-water in bottles branded with their name. The course of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them, pltfs. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist :—*Held :* the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender.—CANTRELL & COCHRANE *v.* NEESON, [1926] N. I. 107.—**IR.**

PART I. SECT. 2.

8m. *General rule.*]—A man cannot be made a bailee of goods against his will.—MCCUTCHEON *v.* LIGHTFOOT, [1930] S. C. R. 108 ; 1 D. L. R. 995 ; *aff.* [1929] 1 D. L. R. 971 ; 1 W. W. 694 ; 38 Man. L. R. 160 ; *revg.*, [1928] 2 W. W. R. 240.—**CAN.**

38 ii. ——.]—LONG *v.* R. (1922), 63 D. L. R. 134 ; 21 Exch. C. R. 264.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

8o. *Timber sold remaining in mill yards—Warehouse receipt given to buyer.*]—*Held :* seller gratuitous bailee for buyer.—FERGUSON *v.* EYER (1918), 43 O. L. R. 190.—**CAN.**

40 iii. —— *Valuables of bathers left with caretaker of bathing-shed.*]—Applts.

517; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

47. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42.

50. *Add. Annotations :*—**Refd.** The Santa Catharina (1919), 88 L. J. P. 170; The Cairnsmore, The Gunda, [1921] 1 A. C. 439; The Canadia (1922), 127 L. T. 499.

50a. —— ——.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that "No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal :—*Held :* defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—WILLIAMS *v.* CURZON SYNDICATE, LTD. (1919), 35 T. L. R. 475, C. A.

Annotation :—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

52. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

64. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

65. *Add. Annotation :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

67. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Distd.** City of Baroda (Cargo Owners *v.* Hall Line (1926), 42 T. L. R. 717.

69a. Loss of goods.]—An innkeeper is not liable in trover for the loss of articles deposited in his house for the purpose of being forwarded by a carrier.—WILLIAMS *v.* GESSE (1837), 3 Bing. N. C. 849; 7 C. & P. 777; 3 Hodg. 131; 5 Scott, 56, 57; 132 E. R. 637.

Annotation :—**Refd.** Wilkinson *v.* Verity (1871), L. R. 6 C. P. 206.

70. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

75. *Add. Annotations :*—*As to* (2) **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359. *Generally*, **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; Smith *v.* G. W. Ry. (1920), 37 T. L. R. 117; *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

77. *Add. Citation :*—15 Jur. 1079.

were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably stolen :—*Held :* the fact by undertaking the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would constitute a consideration.—TIMARU BOROUGH COUNCIL *v.* BOULTON, [1924] N. Z. L. R. 365.—**N.Z.**

40 iv. —— ——.]—Pltf. hired a locker at deft.'s bathing sheds in which to place his clothes & effects & which was securely locked before he proceeded to bathe. Subsequently on opening the locker it was found to be empty. In an action based upon a contract of bailment the judge expressly found that there was no one continuously employed on duty in the locker room during the absence of pltf. & returned a verdict for pltf. for the value of the articles placed in the locker :—*Held :* inasmuch as there had been no finding of facts from which any duty owed by deft. to pltf. would arise there must be a new trial.—GREENWOOD *v.* WAVERLEY MUNICIPALITY COUNCIL (1928), 28 S. R. N. S. W. 219; 45 N. S. W. W. N. 59.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.

47 ii. —— ——.]—Pltf. on leaving a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On calling for the bag he found contents had been stolen :—*Held :* the hotelkeeper was a gratuitous bailee & had exercised the reasonable care of a prudent man.—BREWER *v.* CALORI (1921), 29 B. C. R. 457.—**CAN.**

47 iii. —— ——.]—GIBSON *v.* WILSON & DOWNER (1922), 67 D. L. R. 410.—**CAN.**

47 iv. —— ——.]—The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.—MUMFORD *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

47 v. —— —— *Cloak-room— Of school.*]—Boards of Education are not insurers of school children's clothing; they are responsible for its loss or injury only when it is caused by their negligence.—STEVENSON *v.* TORONTO BOARD OF EDUCATION (1919), 46 O. L. R. 146: 17 O. W. N. 52.—**CAN.**

47 vi. —— —— —— *Of racing club.*]—Resp. sued applts., a racing club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same :—*Held :* there was a want of care on the part of applts. in discharging the duty they had accepted.—WELLINGTON RACING CLUB *v.* SYMONS, [1923] N. Z. L. R. 1.—**N.Z.**

g i. —— ——.]—The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that "it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."—ANDREW *v.* GRIFFIN, [1918] 1 W. W. R. 274; *affd.*, [1918] 1 W. W. R. 532.—**CAN.**

59 iii. —— ——.]—Defts. having by mistake removed a suit case from a railway carriage, took the most speedy means of restoring the suit case to the owner by placing it on a steamer about to leave for a point on the railway :—*Held :* (1) defts. as bailees without reward were bound to use as much diligence in dealing with the goods in their possession as they would in dealing with their own; (2) in delivering the suit case to a fireman on the steamer to be delivered to the mate, defts. failed to acquit themselves of the responsibility resting upon them.—MCCOWAN *v.* MCCULLOCH, [1926] 1 D. L. R. 312; 58 N. S. R. 320.—**CAN.**

65 iv. —— ——.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *primâ facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—MUMFORD *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

77 i. *Rights of finder against all but true owner—Money found in shop.*]—Deft. was a shopkeeper, & pltf., a salesman in the shop, picked up from the floor a roll of banknotes, & handed it to deft., who caused inquiry to be made for the owner. No claim was made, & deft. kept the notes :—*Held :* the property was "lost," & as against all other persons than the owner, the finder became the substantial owner of the thing found by him, & pltf. was not, by reason of being in the employment of deft., deprived of his rights as a finder.—HAYNEN *v.* MUNDLE, 22 C. L. T. 152.—**CAN.**

77 ii. —— —— *Or in bank.*]—A clerk in a bank noticed lying on a desk, used by patrons of the bank in the public portion of the premises, a wallet containing money, & handed it over to the manager for the rightful owner, who never was discovered or appeared

88. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

90a. —— **Liability where goods recovered by owner.**]—Trover & conversion lies for goods found & converted although they come afterwards to the hands of the party that lost them (ROLL, C.J.).—GOWR *v.* —— (1651), Sty. 261 ; 82 E. R. 695.

91. *Add. Annotations :*—**Refd.** Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81 ; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33.

96. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** The Empress (1922), 92 L. J. P. 42.

100. *Add. Citations :*—*sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189.

103a. *S. P.* PARRY *v.* ROBERTS (1835), 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189 ; 111 E. R. 358 ; *sub nom.* BARRY *v.* ROBERTS, 1 H. & W. 242.

106. *Add. Citation :*—*sub nom.* ANON., Cary, 9.

Add. Annotation :—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

107. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson, [1932] A. C. 562.

108. *Add. Annotation :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

118. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

122. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

123a. —— ——.]—If I have a load of hay, & another will come & mingle his hay with mine, in this case I may well take & detain the whole (CROKE, J.).—DOWGLAS *v.* KENDALL (1610), as reported in 1 Bulst. 93 ; 80 E. R. 792.

125a. *S. P.* PRICE *v.* GROOM (1848), 11 L. T. O. S. 475, N. P. ; *on appeal*, 2 Exch. 542.

131. *Add. Annotation :*—**Consd.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

131a. —— **Distinct chattels.**]—The doctrine of confusion of property does not apply to distinct chattels like chairs & tables, but to commodities such as corn, wine, oil & the like, of which there can be a commingling of substance (BRAMWELL, B.).—SMITH *v.* TORR (1862), 3 F. & F. 505.

Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; The Empress (1922), 92 L. J. P. 42 ; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

136. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

137. *Add. Annotations :*—**Consd.** Winkworth *v.* Raven, [1931] 1 K. B. 652. **Refd.** Coldman *v.* Hill (1918), 88 L. J. K. B. 491 ; Welden *v.* Smith, [1924] A. C. 484.

140. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

to claim it :—*Held :* the money was not "lost."—HEDDLE *v.* BANK OF HAMILTON (1912), 17 B. C. R. 306.—**CAN.**

PART II. SECT. 3.

108 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—BIJOU MOTOR PARLORS *v.* KEEL, [1918] 1 W. W. R. 706 ; 39 D. L. R. 410.—**CAN.**

108 ii. —— —— *Onus to negative negligence.*]—Pltf. loaned deft. his traction engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke :—*Held :* the *onus* was on deft. to negative negligence on his part, &, not having discharged this *onus*, he was liable in damages.—SMITH *v.* MOATS, [1921] 1 W. W. R. 268 ; 56 D. L. R. 415 ; 14 Sask. L. R. 37.—**CAN.**

108 iii. —— ——.]—ANDERSON *v.* ROYER (Sask.), [1928] 3 D. L. R. 248.—**CAN.**

108 iv. —— ——.]—Defts. having delivered their motor-truck to pltfs. to be repaired, pltfs. lent defts. a truck for the time their own was under repair. The borrowed truck was injured while being driven by defts.' servant, & pltfs. sued for damages, alleging negligence :—*Held :* defts. were gratuitious bailees, the bailment being for their sole benefit, & the *onus* was upon them to prove that they were not guilty of even slight negligence.—RIVERDALE GARAGE, LTD. *v.* BARRETT BROS., [1930] 4 D. L. R. 429 ; 65 O. L. R. 616.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

133 ii. —— *Not liable for theft—Motor car left at garage—Garage under repair.*] — FOURNIER *v.* MCKENNA (1921), 57 D. L. R. 725 ; 54 N. S. R. 479.—**CAN.**

135 ii. —— ——.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous bailee. It is part of the accommodation for which the keeper of the restaurant receives his recompense from his customers. The bailee in such a case is bound to exercise ordinary diligence in caring for the articles entrusted to him & is liable in case of failure to do so.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

136 iii. —— —— *Stable keeper.*]—Pltf.'s mare, kept for him in an open stall in deft.'s stable, was kicked by a horse, which was kept in the adjoining open stall, & had broken his halter shank during the night & got loose :—*Held :* as it was not proved that the horse had ever broken a halter shank before, or that the shank was not as strong as halter shanks usually were, deft. was not liable.—TEMPLETON *v.* WADDINGTON (1904), 24 C. L. T. Occ. N. 151 ; 14 Man. L. R. 495.—**CAN.**

136 iv. —— *Liability for acts of servants.*]—A motor car was entrusted by its owners to garage proprietors for safe custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his employers' instructions & without their knowledge. While being driven by the night watchman the car collided with another car & was damaged :—*Held :* as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for the servant's failure in performance.—CENTRAL MOTORS, GLASGOW, LTD. *v.* CESSNOCK GARAGE & MOTOR CO., [1925] S. C. 796.—**SCOT.**

136 v. —— ——.]—Pltf., a customer of deft., left his motor-car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car :—*Held :* deft., as master, was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94 ; 63 O. L. R. 143.—**CAN.**

Refd. Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22; Rutter *v.* Palmer, [1922] 2 K. B. 87; Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

140a. —— **Car driven "at customer's sole risk."**]—The owner of a motor car deposited the car for sale on commission with deft., the keeper of a garage, upon the terms of a printed document containing the clause: "Customers' cars are driven by our staff at customers' sole risk." The car was sent out by deft. in charge of one of his drivers to be shown to a prospective purchaser, & was injured owing to the negligence of the driver: —*Held:* the above clause protected deft. from liability for the negligence of his servants.—RUTTER *v.* PALMER, [1922] 2 K. B. 87; 91 L. J. K. B. 657; 127 L. T. 419; 38 T. L. R. 555; 66 Sol. Jo. 576, C. A.

Annotations:—**Apld.** Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 T. L. 286. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Durnford *v.* G. W. Rly. (1927), 43 T. L. R. 527; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

No liability for any accident or damage —Whether bailee liable for negligence.]—Pltf., the owner of a steam trawler, sent the trawler to be examined on a slipway belonging to deft. co., who were ship repairers. A clause in the contract under which defts. allowed the use of their slipway provided that "All persons using the slipway must do so at their own risk & no liability whatever shall attach to the co. for any accident or damage done to or by any vessel either in taking her to the slip or when on it or when launching from it. . . ." The trawler was put on the cradle & was drawn out of the water, but suddenly she fell over on her side & was damaged. In an action for negligence: —*Held:* the above clause, though it did not expressly mention negligence, protected defts. from liability.—REYNOLDS *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD. (1922), 38 T. L. R. 429, C. A.

Annotations:—**Distd.** Forbes, Abbott & Lennard *v.* Great Western Ry. (1927), 96 L. J. K. B. 995. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

141. *Add. Annotation:*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

142. *Add. Annotation:*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

143. *Add. Annotations:*—**Consd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

144. *Add. Annotations:*—**Consd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

145. *Add. Annotation:*—**Consd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

148. *Add. Annotation:*—**Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 147 L. T. 313.

159. *Add. Citation:*—88 L. J. K. B. 55.
Annotation:—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

163. *Add. Annotations:*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426. **Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** The Cap Palos, [1921] P. 458; L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; The Refrigerant, [1925] P. 130; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249; A/S. Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

141 iv. —— ——.]—Where a bailee for reward, or a person who is under the same legal obligations as such a bailee, is sued for the loss of goods, the *onus* of proving that the loss did not occur through any want of reasonable care on the part of deft. or his employees is upon deft.—MAKOWER, MCBEATH & CO., PROPRIETARY, LTD. *v.* DALGETY & CO., LTD., [1921] V. L. R. 365.—**AUS.**

141 v. —— ——.]—The burden is on pltf. in the first instance to establish negligence, but where the loss is established or the goods are not returned, a sufficient case is raised against the bailee to put him upon his defence. The law in such case presumes negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *prima facie* case against him he will be held liable for the consequences of his neglect.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

141 vi. —— ——.]—CAMMAERT *v.* GRASSWOLD (Alta.), [1926] 2 D. L. R. 1062.—**CAN.**

141 vii. —— ——.]—Where goods stored with a bailee for reward are damaged while under his charge the *onus* is on him of showing that he took all reasonable care to prevent such damage. In an action against a garage proprietor for damage to a motor car caused by a fire of unknown origin which broke out in the garage in which the car was stored some hours after the apparent complete extinguishment of a previous fire which had occurred on the evening prior to the morning on which the fire in question herein started:—*Held:* the finding of the trial judge that the proprietor had discharged the *onus* on him of disproving negligence was warranted by the evidence &, therefore, should be sustained.—ROMANO *v.* COLUMBIA MOTORS, LTD., [1930] 1 W. W. R. 159; 1 D. L. R. 815; 42 B. C. R. 168; *affg.*, [1929] 4 D. L. R. 1064; 2 W. W. R. 636.—**CAN.**

8a. *Goods stored in unsuitable temperature.*]—Deft. held liable for storing meat in a room used for storing beer, which requires a different temperature.—RINEHART *v.* INLAND ICE & COLD STORAGE CO. (1935), 2 D. L. R. 803.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

157 iv. —— *Ship received in dry dock—Injury by water when moored in unsafe place.*]—PORTER & SONS *v.* MUIR BROS. DRY DOCK CO., [1929] 2 D. L. R. 561; 63 O. L. R. 437.—**CAN.**

161 vi. Read now "**163a i.**"

161 vii. Read now "**163a ii.**"

163a iii. —— .]—Pltf. placed apples in the cool stores of deft. The apples were in good order & condition when they were placed in the store. Several months later the apples were taken out of the store considerably damaged & deteriorated:—*Held:* it was the duty of deft. being a bailee for reward to provide a cool

163a. —— **Evidence of negligence—Failure to examine goods periodically.**]—Resps.' wheat was stored at applts.' warehouse, which was allowed to become congested with grain of various kinds, including maize, which had a special tendency to heat, & applts. were in consequence unable to fulfil the obligation they were under to resps. to execute their orders to turn & cool as expeditiously as they were bound to do. Resps.' wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat:—*Held:* applts. were liable.—LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. *v.* CHARLTON & BAGSHAW (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation:*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

168. *Add. Annotations:—Generally,* **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; The Arpad, [1934] P. 189.

170. *Add. Annotation:*—**Refd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

171. *Add. Annotation:*—**Consd.** Engel *v.* Lancashire & General Assce. (1925), 41 T. L. R. 408.

184. *Add. Annotation:*—**Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

187. *Add. Annotation:*—**Apld.** Caldecutt *v.* Piesse (1932), 49 T. L. R. 26.

190. For "**Company not responsible for package over £10,**" read "**Company not responsible for package over stated value.**"

Add. Annotation:—**Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

192. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426.

192a. —— **Loss of luggage left outside cloak-room.**]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

Pltf. took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1*d.* per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but pltf. made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told pltf. to leave it there as he would put it away. When pltf. returned to claim the bicycle it could not be found. In an action by pltf. against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that pltf. knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give pltf. notice of the condition; & it was not found & there was no evidence to show that pltf.'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen:—*Held:* (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented from relying upon it, inasmuch as it was not so extravagant as to imply that pltf.'s assent to it had been obtained by fraud, or so irrevelant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered

store fit for the purpose intended, & to maintain the proper temperature & proper circulation of cold air in the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit; & as fruit was liable to be injuriously affected by failure to perform any of these duties, & might become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, &, if indications of deterioration were observed, to notify pltfs., &, if necessary & practicable, to take steps to protect the goods from further damage.—AURORA TRADING CO., LTD. & JACKSON *v.* NELSON FREEZING CO., LTD., [1922] N. Z. L. R. 662.—**N.Z.**

163a iv. —— —— *Failure to inspect premises—Defective wharf.*]—*Held:* the collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been used in inspection.—FURNESS WITHY CO., LTD. *v.* AHLIN (1918), 42 D. L. R. 97.—**CAN.**

sp. *Delivery to purchaser without production of lake-bills of lading.*]—*Held:* defts., an elevator co., to whom the goods had been shipped for storage, were liable.—NORTHERN GRAIN CO., LTD. *v.* GODERICH ELEVATOR & TRANSIT CO., LTD., [1926] 1 D. L. R. 297; [1926] S. C. R. 120.—**CAN.**

172 ii. ——.]—Pltf. delivered goods to defts., a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the contents of any piece or package is limited to the sum of $50, unless the value thereof is made known at the time of storage & receipted for in the schedule; an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of defts.' servants, the goods were included in a shipment of other goods & sent to England. Some of pltf.'s goods were lost, & others damaged:—*Held:* the amount which pltf. was entitled to recover was limited by the clause of the warehouse contract.—MAUNSELL *v.* CAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD., [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—**CAN.**

172 iii. ——.]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant fire, or any other cause whatsoever other than theft":—*Held:* the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—BALLINGALL & SON *v.* DUNDEE ICE & COLD STORAGE CO. [1924] S. C. 238.—**SCOT.**

for defts.—GIBAUD *v.* GREAT EASTERN RY. CO., [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

Annotations:—As to (2) **Consd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Refd.** Armour *v.* Walford (London), [1921] 3 K. B. 473; The Cap Palos, [1921] P. 458; Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Buerger *v.* Cunard S. S. Co., [1925] 2 K. B. 646: The Refrigerant, [1925] P. 130. *Generally*, **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co. (1933), 149 L. T. 603; Ashby *v.* Tolhurst, [1937] 2 K. B. 242; A/S. Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

194. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

195a. —— —— ——.]—DOVER *v.* MILLS (1831), 5 C. & P. 175; 172 E. R. 928, N. P.

Annotation:—**Refd.** Colepeppre *v.* Good (1832), 5 C. & P. 380.

197. *Add. Annotations:*—**Expld. & Distd.** Thompson *v.* London, Midland & Scottish Ry. Co., [1930] 1 K. B. 41. **Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Apld.** Ehinger *v.* S. E. & C. Ry. & The Pullman Car Co. (1922), 38 T. L. R. 678; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

198. *Add. Annotations:*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

201. *Add. Annotations:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Alexander *v.* Rayson, [1936] 1 K. B. 169.

203. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

207. *Add. Annotation:—As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

211. *Add. Annotations:*—**Refd.** Geddling *v.* Marsh, [1920] 1 K. B. 668; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415.

212. *Add. Annotation:* — **Apld.** Point Anne Quarries *v.* The M. F. Whalen (1922), 39 T. L. R. 37.

215. *Add. Annotations:*—**Consd.** The Kate, [1935] P. 100. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell C. (G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

216a. Duty to keep in repair.]—Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to become worse than it was at the time the contract was made (BRETT, L.J.).—ROBERTSON *v.* AMAZON TUG & LIGHTERAGE CO. (1881), as reported in 7 Q. B. D., at p. 606, C. A.

Annotations:—**Refd.** The West Cock, [1911] P. 208; The Glenmorven, [1913] P. 141.

218. *Add. Annotations:*—**Folld.** Mintz *v.* Silverton (1920), 36 T. L. R. 399. **Refd.** Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475.

218a. Agreement to insure chattel—Against "all risks."]—Defts. hired a crane-barge from pltfs., one of the terms of the contract being that pltfs. would insure the crane against all risks, defts. paying the premium. Pltfs. took out a policy covering, as they thought, all risks. The crane, when proceeding to lift a load, broke away from its bedplate & fell over & was damaged. It was then found that the accident was not covered by the policy, & defts. refused to pay for the damage. In an action for breach of contract:—*Held:* though defts. had failed to discharge the *onus* which was upon them, of proving that what happened was not the result of negligence by their servants, yet, as the agreement in regard to insurance was intended to be an arrangement for the benefit of both parties, & as the accident came within the description "all risks" & defts. had stipulated that they were not to bear those risks, the action failed.—BRICE & SONS *v.* CHRISTIANI & NIELSEN (1928), 44 T. L. R. 335; 72 Sol. Jo. 172.

223. *Add. Annotation:—As to* (1) **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine. American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

224. For the existing paragraph substitute as follows:—**Obligation to keep in repair—Agreement for redelivery in good working order.**]—SCHRODER *v.* WARD, No. 237, *post.*

226. *Add. Annotations:*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

227. *Add. Annotations:*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42.

232. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

233. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

238a. —— **Hire of electric cooker—No alteration or addition to be made—What amounts to.**]—EGHAM-STAINES ELECTRICITY CO., LTD. *v.* GAS LIGHT & COKE CO. (1937), 81 Sol. Jo. 649.

241. *Add. Annotation:*—**Folld.** Taylor *v.* Thompson (1929), 69 L. Jo. 116.

PART III. SECT. 2, SUB-SECT. 3.—A.

231 iv. ——.]—A bailee is not liable for damages done to a chattel through the negligence of his servant where the servant at the time the injury was done was not acting in the course of his employment.—SOUTH ISLAND MOTORS, LTD. *v.* THACKER, [1931] N. Z. L. R. 1104.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 1.

ss. *What amounts to hire-purchase agreement.*]—In order that an agreement may be classed as a hire-purchase agreement, the hirer's right to exercise his option to purchase need not be unfettered, unqualified, & absolute.—BROADLEY *v.* CHECKER CAB CO. (AUSTRALIA), LTD. (1931), 48 N. S. W. W. N. 44.—**AUS.**

241 vi. ——.]—Pltf. handed over nine motor lorries to deft., receiving from him Rs.5,000 upon the terms of a written agreement, the material parts of which were as follows:—"I have to-day agreed to sell to you on the hire-purchase system for Rs.25,000 my nine lorries . . . in consideration of payment as under. In case of failure to pay any of the instalments on due date, previous payments will be considered null & void, & the lorries are not considered as sold until the final payment has been received. The purchaser has no right to mortgage or dispose of any lorries until the full amount has been paid & [pltf.] or his nominee has the right to seize the lorries

244a. ——.]—AUTOMOBILE & GENERAL CORPN., LTD. *v.* MORRIS (1929), 73 Sol. Jo. 451.

244b. ——.]—TAYLOR *v.* THOMPSON (1930), 69 L. Jo. 116; 169 L. T. Jo. 101; [1930] W. N. 16.

244c. —— **Sale of Goods Act, 1893 (c. 71), s. 1.**]—Pltfs. negotiated by letter with defts. for the purchase of a certain machine. A letter from defts., which contained an estimate, stated that the estimate was subject to conconditions printed thereon. One of the conditions provided that: "In lieu of any warranty or condition implied by law, we guarantee that the materials . . . are of the best quality," & that defts. would replace any part broken or unduly worn within 12 months. After further negotiations defts. sent to pltf. a hire-purchase agreement expressed in a covering letter to be drawn up in accordance with the terms stated in the letter above mentioned. The hire-purchase agreement provided that: "This agreement embodies the entire agreement as to the hiring of the machinery." There was in the agreement no exclusion of any warranty or condition. The hire-purchase agreement was duly entered into. The machine proved unsatisfactory & pltfs. brought an action for breach of warranty. The judge held that the correspondence formed no part of the contract between the parties & he gave judgment for pltfs.:—*Held:* (1) upon the evidence the correspondence formed part of the contract between the parties; (2) defts.' liability for warranty & condition was excluded by the correspondence & pltfs. could not succeed in their action; (3) since the hire-purchase agreement was an irrevocable agreement to sell on the part of the owner, it was a contract for the sale of goods within Sale of Goods Act, 1893 (c. 71), s. 1, & the statutory warranties & conditions would be implied.—FELSTON TILE CO., LTD. *v.* WINGET, LTD., [1936] 3 All E. R. 473, C. A.

245. *Add. Annotations:*—**Distd.** Taylor *v.* Thompson (1929), 69 L. Jo. 116. **Consd.** Lewis *v.* Thomas, [1919] 1 K. B. 319; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536; Modern Light Cars, Ltd. *v.* Seals (1933), 49 T. L. R. 503; Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

247a. What amounts to hire purchase agreement.]—The purchaser of a motor car entered into an agreement with the vendors, motor traders, under which she signed a promissory note covering 24 monthly instalments payable under the agreement. That promissory note, which was stated in the agreement to be given & received not as payment of the monthly instalments but as collateral security for the due payment thereof, was made payable to the vendors, indorsed by them, & subsequently discounted with a banking co. The purchaser of the motor car, contrary to the terms of the agreement & during its currency, sold the motor car to a third party, from whom it was bought by deft. On a claim by the original vendors claiming damages from the deft. for conversion of the motor car:—*Held:* the agreement between pltfs. & the original purchaser was a hire-purchase agreement; that the promissory note was given by way of collateral security only, & not by way of payment, conditional or other; & pltfs. were therefore entitled to recover possession of the motor car.—MODERN LIGHT CARS, LTD. *v.* SEALS, [1934] 1 K. B. 32; 102 L. J. K. B. 680; 149 L. T. 285; 49 T. L. R. 503; 77 Sol. Jo. 420.

wherever they may be. The consideration money is to be paid as under. As against the payment of Rs.5,000 I have to-day given to you delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name":—*Held:* the agreement was an agreement for sale.—COLE *v.* NANALAL MORARJI DARE (1924), I. L. R. 49 Bom. 172.—**IND.**

241 vii. ——.]—Applt., which was a co. carrying on the business of selling new & secondhand motor cars, accepted an order from resp. for a motor car, which was written upon one of applt.'s order forms, the order describing the same but not stating in the description whether it was to be a new or a second-hand car. In the order resp. agreed to pay a deposit & the balance of the purchase money by instalments & to execute applt.'s usual form of hire-purchase agreement. On the order form it was stated that all new cars were sold subject to a guarantee which was set out, which did not include a guarantee that the car was new; & that no guarantee was given with second-hand cars. Resp. also signed applt.'s usual form of hire-purchase agreement, by which the co. agreed to let & the hirer to take the car described therein, the description being similar to that in the order form, & repeated the provisions as to guarantee above referred to; & this agreement excluded any implied "warranty undertaking or agreement other than is herein set forth." The car delivered by applt. to resp. was not new:—*Held:* the contract between the parties was constituted by the order & the hire-purchase agreement; & that, when read together, they constituted an agreement for the sale, & not merely for the hire, of the car.—MARCUS CLARK (AUSTRALIA), LTD. *v.* BROWN (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—**AUS.**

241 viii. ——.]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract:—*Held:* the agreement though in form is one of hire, its object is to provide for a contract of sale in which security to the seller is provided for due payment of the purchase price.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

241 ix. ——.]—When it is clear from the agreement that the party taking the chattel, called the hirer or lessee, has to pay the full amount of consideration mentioned in the agreement, even though the payment is by instalments, & that amount is sufficient to cover the purchase price of the chattel, or when it is clear from the agreement that the hirer or lessee cannot at any time during the period mentioned in the agreement return the chattel to the other party called the owner, or lessor, & absolve himself from the obligation to make further payment, the agreement is really an agreement for sale & not for hire.

If the hirer is not bound to pay the full amount of the purchase price, or if he can terminate the hiring at any time by delivering the chattel to the other party, the agreement is in form & in substance an agreement for hire, & all that the hirer has obtained is an option to purchase.—BHIMJI *v.* BOMBAY TRUST CORPN., LTD. (1929), I. L. R. 54 Bom. 381.—**IND.**

245 iii. ——.]—The essential feature of a true hire-purchase agreement, as distinguished from a sale, is that the hirer should have a right to terminate the agreement at his pleasure.—MAHABALEE PRASAD *v.* PALMER (1932), I. L. R. 54; All. 781.—**IND.**

247 i. —— *Sale of Goods Act*, 1895—*Option only.*]—A hire-purchase agreement conferring an option to return the goods is not an agreement to sell within Sale of Goods Act, 1895, s. 14. Such a contract is one of bailment of a chattel, & the warranty of fitness is of the nature implied in that form of contract. Notwithstanding that the option to return a chattel cannot be exercised until after payment of the penultimate instalment of hire, a contract of hire-purchase so expressed is not an agreement to sell.—KLOSE *v.* DUNCAN & FRASER, LTD., [1928] S. A. S. R. 139.—**AUS.**

248 vi. —— —— *What is payment.*]—Under a hire-purchase agreement the hirers made an initial payment & gave to the owners bills of exchange for the total amount of the monthly payments as collateral security. These bills were subsequently discounted by the

249. *Add. Annotation :*—**Consd.** Modern Light Cars, Ltd. *v.* Seals (1933), 49 T. L. R. 503.

252a. Delivery—Refusal of hirer to take delivery—Remedy of owner.]—Under a hire-purchase agreement deft. agreed to hire from pltfs. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract refused to accept delivery of the register. Pltfs. issued a default summons in the county ct. for rent accrued due up to the date of the summons :—*Held :* no actual debt had been incurred & the action was not maintainable, pltfs.' remedy being in damages only.—NATIONAL CASH REGISTER CO. *v.* STANLEY, [1921] 3 K. B. 292 ; 90 L. J. K. B. 1220 ; 125 L. T. 765 ; 37 T. L. R. 776 ; 65 Sol. Jo. 643, D. C.

254. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

255. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

257. *Add. Annotation :*—**Apld.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

258. *Add. Annotation :*—**Distd.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

258a. —— Recovery of unpaid instalments.]—On a claim by the owner of furniture for unpaid instalments :—*Held :* as the agreement with the hirer was for the sale of the furniture, the property not to pass to him until all the instalments had been paid, & the owner had resumed possession of it & dealt with it in such a way as to put it out of his power to return it to the hirer, he was disentitled from claiming part of the purchase price, & the proper remedy was to sue for damages for breach of contract.—A.-G. *v.* PRITCHARD (1928), 97 L. J. K. B. 561 ; 44 T. L. R. 490.

261. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

262. *Add. Citation :*—119 L. T. 632.

Add. Annotations :—*As to* (1) **Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. *As to* (2) **Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

262a. —— —— ——.]—Pltfs. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement pltfs. might, without any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bonâ fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, pltfs., on ascertaining the facts, claimed damages from deft. for conversion :—*Held :* the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as pltfs. had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as pltfs. were not entitled to the possession of the piano until they elected to put an end to the agreement there was no conversion by deft.—NELSON MURDOCH & Co. *v.* WOOD (1921), 126 L. T. 745 ; 38 T. L. R. 23 ; 66 Sol. Jo. (W. R.) 6 D. C. ; *revsd.* on other grounds (1922), 38 T. L. R. 393, C. A.

264. After " the owner can maintain an action for conversion against the purchaser " add " , as the hirer has not ' agreed to buy ' the goods within Factors Act, 1889 (c. 45), s. 9."

Add. Annotation :—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

268a. Ownership at time of agreement—Necessity for.]—Pltfs. were " hire-purchase dealers." Their business consisted in purchasing motor cars from the owners thereof for cash & letting them out to would-be purchasers on hire-purchase agreements. At the request of deft. pltfs. purchased a motor from K., & on Nov. 12, 1931, entered into a hire-purchase agreement in respect of that car with deft. In the hire-purchase agreement pltfs. were called " the owners " & deft. was called " the hirer." The agreement provided (*inter alia*) for the payment by the hirer of a deposit of £95 " in consideration of the option of purchase hereinafter contained." The usual provision was made for the payment of rent by monthly instalments, & it was agreed that if the hirer desired to terminate the hire, or if the owners terminated the hire or retook the car for non-performance of any terms of the agreement, the hirer should pay such sum as, with the deposit & instalments already paid, would make a total of £235 " by way of compensation for depreciation of the said motor." There was

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owners :—*Held :* no conditional payment, & the property in the goods remained in the owners.—*Re* RANKIN & SHILIDAY, [1927] N. 162.—**IR.**

PART III. SECT. 3, SUB-SECT. 2.

251 ii. —— *Initial payment at commencement of hiring—Whether payment in advance or first instalment.*]—AUTO SUPPLY CO., LTD. *v.* RAGHUNATHA CHETTY (1929), I. L. R. 52 Mad. 829.—**IND.**

259 ii. ——.]—ROGERS *v.* NANAIMO MOTORS, LTD. (1926), 37 B. C. R. 326.—**CAN.**

264 v. —— ——.]—Pltf. & C. entered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W. :—*Held :* both defts. were liable to pltf.—ARCHIBALD *v.* WASHER & Co. & KINNERNEY, [1923] N. Z. L. R. 165.—**N.Z.**

sa. *Seizure by owner on default by hirer—Goods of third party attached to chattel—Conversion by owner.*]—M. had hired to W. a motor lorry with solid tyres. These became worn out, & B. fitted new tyres to the lorry under a hire-purchase agreement with W. Subsequently W. made default under his hiring agreement with M., who seized the lorry & refused to hand over the tyres to B. The tyres were detachable only by means of special machinery which M. did not possess :—*Held :* B. was entitled to possession of the tyres, & could succeed against M. in an action for detinue.—BERGOUGNAN *v.* BRITISH MOTORS, LTD. (1929), 30 S. R. N. S. W. 61 ; 47 N. S. W. W. N. 10.—**AUS.**

so. *Wrongful repossession by owner—Measure of damages.*]—Pltf., who was then share farming, hired from deft. a harvester with the option of purchase. When he still had to pay £83 if he wished to complete his purchase he gave up farming & went mining for gold. He left the machine with a neighbour for safe custody, & deft. wrongfully re-possessed it, & after doing some necessary repairs, resold it for £62, which was the best price possible. Pltf. claimed to be entitled to substantial damages for conversion assessed in accordance with the rules laid down in *Liesbosch (Owners)* v. *S.S. Edison (Owners)*, [1933] A. C. 448 :—*Held :* as pltf. had abandoned farming the harvester was not a factor in his business as a going concern, & he was entitled to nominal damages only.—MIZZA *v.* MCKAY-MASSEY HARRIS (H. V.) PTY., LTD., [1935] W. A. L. R. 87.—**AUS.**

the usual option to the hirer to become the purchaser of the car on completing the payment of instalments totalling with the deposit (which was to become the absolute property of the owners, & for which credit was to be given only in the event of the purchase being completed or the depreciation money becoming payable) £309 5*s.* 6*d.*, or by payment at any time after the execution of the agreement of the outstanding balance of that amount, " but unless & until such purchase has been so effected the motor shall be & remain the sole & absolute property of the owners, & the hirer a mere bailee thereof." Deft. paid the deposit of £95 to K., who gave credit for it to pltfs. against the purchase price paid by them. Deft. then made default in payment of the first instalment of rent. Pltfs. retook the car & sued deft. in the Mayor's & City of London Ct. for £100 (being the £235 depreciation money, less the £95 deposit, & £40 abandoned to bring the claim within the jurisdiction of the ct.). After action brought it was discovered that K. had no title to the car, of which he had obtained possession dishonestly. The car was claimed by the true owners, who were then bought out by pltfs. Deft. contended that it was a condition of the contract that pltfs. were the owners of the car at the date of the hire-purchase agreement, & could give deft. a valid option of purchase. That condition being broken he contended that he was under no liability to the pltfs., & he counterclaimed for the return of the deposit of £95 (which pltfs. had never actually received, since it had merely reduced the amount out of which they were swindled by K.). Judgment having been entered in the ct. below for deft. on the claim & counterclaim, pltfs. appealed:—*Held:* on the true construction of the agreement there was an express condition that pltfs. were the owners of the motor car & entitled to give deft. an option to purchase it; that condition was broken, & the judgment on the claim was therefore right. As to the counterclaim the deposit was expressly stated to be " in consideration of the option of purchase," which pltfs. were never in a position to give. The consideration had therefore wholly failed, & the defendant had also rightly succeeded on the counterclaim.

Qu.: whether, if the defective title of ptlfs. had not been discovered until a number of instalments of rent had been paid & deft. had had the use of the motor car for a substantial part of the contemplated period, he could have recovered the whole of the instalments paid without deduction for use & occupation.

Per GODDARD, J. Apart from the express condition in this agreement, it is an implied condition (& not merely a warranty) of any hire-purchase agreement, that the persons letting the chattel are the owners of it at the date when the agreement is entered into, & not merely that they will become the owners before the option to purchase is exercised. Moreover, the doctrine that a bailee is estopped from denying his bailor's title unless evicted by title paramount does not apply to hire-purchase, where the bailment of hire is coupled with an element of sale.—KARFLEX, LTD. *v.* POOLE, [1933] 2 K. B. 251; 102 L. J. K. B. 475; 149 L. T. 140; 49 T. L. R. 418, D. C.

268b. —— ——.]—MERCANTILE UNION GUARANTEE CORPN., LTD. *v.* WHEATLEY, [1937] 4 All E. R. 713; 54 T. L. R. 151; 81 Sol. Jo. 1002.

271a. —— ——.]—DASH *v.* FAULKNER (1886), 2 T. L. R. 255.

—— —— **Breach of agreement as to method of redelivery — Goods stolen — Measure of damages.**]—BOOTH *v.* WELLBY (1928), 165 L. T. Jo. 213, C. A.

274a. Materials supplied by bailee—Implied warranty of fitness for purpose.]—Pltfs. entrusted a motor-car for repair to defts., who were garage proprietors & repairers of motor-cars. In the course of repairing the car defts. obtained from the makers of the car, & fitted, six new connecting rods. One of

PART III. SECT. 4.

269 i a. —— —— ——.]—*Held:* a firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they had sub-contracted to beat it, there being no *delectus personæ* in such a contract as to bar them from employing a sub-contractor, & no negligence in the selection of the sub-contractor.—STEVENSON & SONS *v.* MAULE & SON, [1920] S. C. 335; 57 Sc. L. R. 284.—SCOT.

269 iv. —— —— ——.]—On leaving his motor car at deft.'s garage for the purpose of having it repaired pltf. signed a " work order," at the end of which there appeared in small type the following: " this co. does not assume in any way any liability whatever either for cars left with us for repair, storage or other purposes, or while being driven by our employees." Pltf. did not call for his car as soon as it was repaired & deft. put it in storage, but failed to remove the water from the radiator with the consequence that it froze & damaged the car:—*Held:* the above special clause in the work order exonerated deft. from liability whether pltf. had read it or not.—WALDEN *v.* HANEY GARAGE, LTD., [1928] 1 D. L. R. 688; [1928] 1 W. W. R. 371; 39 B. C. R. 413.—CAN.

269 v. —— —— ——.]—Pltf. left his motor car at the garage of deft., a garage proprietor & motor mechanic, & instructed him to adjust the headlights of the car. In the garage was exhibited a notice, seen by pltf., " Cars garaged & driven at owner's risk—Every care but no responsibility." Deft. drove the car on the road to test the headlights, when a collision caused by deft.'s negligence damaged the car:—*Held:* the notice applied to the driving of the car during which the damage occurred, but did not amount to an unequivocal & unambiguous notification to pltf. that the car was being accepted by deft. on terms that deft. was not to be liable for the consequences of his own negligence in driving, & therefore deft. was responsible.—MORAN *v.* LIPSCOMBE (1929), V. L. R. 10; 1929 A. L. R. 38.—AUS.

269 vi. —— ——.]—An automobile left with deft. to be repaired & parked by deft. in an open shed at the rear of the repair shop, with the key in the ignition lock, & with no one in attendance for some 20 minutes to half an hour to protect it, was stolen and damaged. In an action to recover the cost of the repairs necessitated by the damage it suffered while in the hands of the thief or thieves:—*Held:* deft. had been negligent & was, therefore, liable.—RUTHERFORD & MCDONALD'S ORPHEUM GARAGE *v.* STEWART-WARNER SALES CO., LTD., [1935] 3 W. W. R. 472; 50 B. C. R. 256.—CAN.

270 i. —— —— *Liability for acts of servant.*]—A master is liable for the conduct of his servant whom he selects & puts in his place to discharge the duty he has undertaken, & this law is applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is liable to the bailor.

Pltf., a customer of deft., left his motor car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction " upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car:—*Held:* deft. as master was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94; 63 O. L. R. 143.—CAN

these rods had a latent defect, which defts. could not by reasonable care or skill have discovered, & it broke, causing extensive damage to the engine. Pltfs. brought an action in the county ct. claiming damages from defts., but the county ct. judge gave judgment for defts. on the ground that he was not prepared to hold, in the absence of direct authority, that in a contract for work done & materials supplied there was an absolute warranty that the materials supplied were fit for the purpose. Pltfs. appealed:—*Held:* the warranty implied in a contract for work done & materials supplied as to the fitness of the materials was not less than that implied in a contract for sale of goods—namely, an absolute warranty of fitness. But that warranty might be excluded if it appeared that the person giving the order did so in such a form as to show that he did not rely on the contractor's skill & judgment. The case must therefore go back to the county ct. judge for him to determine on the evidence whether the implied warranty was in fact excluded or not.—MYERS (G. H.) & Co. *v.* BRENT CROSS SERVICE Co., [1934] 1 K. B. 46; 103 L. J. K. B. 123; 150 L. T. 96, D. C.

Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations:*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

280. *Add. Annotations:*—**Consd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

285. *Add. Annotations:*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098; The Jupiter (No. 3) (1927), 137 L. T. 333.

286. *Add. Annotation:*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

287. *Add. Annotations:*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

290. *Add. Annotation:*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

296. *Add. Annotations:*—**Distd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223; Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172.

298. *Add. Citation:*—19 Q. B. D. 68.
Add. Annotations:—**Consd.** Flatau *v.* Sawyer (1892), 8 T. L. R. 656. **Refd.** Sarat Chunder Dey *v.* Chunder Lala (1892), 56 J. P. 741; H. *v.* H., [1928] P. 206.

299. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin (1925), 134 L. T. 309.

300. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

304a. ——.]—Defts., warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to pltfs., giving to the latter a delivery order which they lodged with defts. Defts. did not object to the order, nor did they make any acknowledgment to pltfs. of their title:—*Held:* the mere receipt of the delivery order by defts. without objection did not estop them from denying that pltfs. were the owners of the 200 quarters.—LAURIE & MOREWOOD *v.* DUDIN & SONS, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotations:—**Consd.** Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172; *Re* Wait, [1927] 1 Ch. 606.

304b. ——.]—WAIT & JAMES *v.* MIDLAND BANK (1926), 31 Com. Cas. 172.

306. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

309. *Add. Annotations:*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

312. *Add. Annotations:*—**Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

313. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

317. *Add. Annotation:*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

318a. —— ——.]—SINGER & Co., LTD. *v.* FOULKES (D. E.) & Co., LTD. (1931), 75 Sol. Jo. 603.

319a. Completion of work—Goods sent to tradesman for work to be done.]—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease

PART IV. SECT. 1, SUB-SECT. 1.

275 ii. ——.]—The law imposes an obligation upon a bailee to restore the article bailed to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—PATERSON *v.* MILLER, [1923] V. L. R. 36.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 7.

316 ii. —— ——.]—S. sold certain sheep to D. Under the contract of sale, on a fixed date, a count & *pro formâ* delivery was to be given, & such delivery was to be taken only upon payment in cash of the full amount of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., in payment were met & satisfied, the sheep were to remain the sole & absolute property of S. During the period between the *pro formâ* delivery & payment the sheep were to be in charge of D. D. sold the sheep though payment to S. in accordance with the terms of the contract had not been made:—*Held:* under the terms of the contract, S. had a right to immediate possession of the sheep.—SCOTTON *v.* BRIDGE & Co., LTD. (1919), 19 N. S. W. L. R. 70.—**AUS.**

as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—MITCHELL *v.* DAVIS (1920), 37 T. L. R. 68.

322. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

325. *Add. Citation :*—119 L. T. 632.

Add. Annotations :—**Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

329a. —— —— **After termination of bailment.**]—*Semble :* a bailor cannot maintain trover against his bailee until after the term of the bailment has expired.—UPHAM *v.* GOULSTONE (1843), 2 L. T. O. S. 166.

333a. —— —— **Loss of goods without negligence—Involuntary bailee.**]—If involuntary bailees of property, without negligence, do something which results in the loss of the property by the owner thereof, they are not liable for conversion.—ELVIN & POWELL, LTD. *v.* PLUMMER RODDIS, LTD. (1933), 50 T. L. R. 158 ; 78 Sol. Jo. 48.

336. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Refd.** City of Baroda (Cargo Owners) *v.* Hall Line (1926), 42 T. L. R. 717.

338. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Apld.** Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R. 517. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

339. *Add. Annotation :*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

339a. **Right of sale—On non-payment of charges—Storage of goods.**]—Defts., a firm of warehousemen, received a quantity of furniture from pltf. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to pltf., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds :—*Held :* defts. were entitled to sell the whole of the goods, & it was not unreasonable that they should do so, & they had done nothing actionable in selling.—WILLETT'S *v.* CHAPLIN & Co. (1923), 39 T. L. R. 222.

340. *Add. Annotations :*—**Apld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886. **Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

348. *Add. Annotation :*—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

350. *Add. Annotations :*—**Consd.** Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

357. *Add. Annotations :*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

371. *Add. Annotations :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945. **Refd.** The Arpad, [1934] P. 189.

372. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

372 *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126. **Apld.** The Joannis Vatis, [1922] P. 92 ; The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

374a. *S. P.* BROWN *v.* HAND-IN-HAND FIRE INSURANCE SOCIETY (1895), 11 T. L. R. 538 ; 39 Sol. Jo. 672.

374b. —— —— **With interest from date of loss.**]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners :—*Held :* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date ; but inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126 ; 37 T. L. R. 116.

379. *Add. Annotations :*—**Apld.** The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127 ; Wilston S.S. Co. *v.* Andrew Weir (1925), 31 Com. Cas. 111.

381. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

382. *Add. Annotation :*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

PART IV. SECT. 2, SUB-SECT. 1.

344 v a. —— —— ——.]—WALL *v.* PORTER, [1930] 3 D. L. R. 343.—CAN.

354 iii. —— —— *Joint negligence of bailee & third party.*]—A. entrusted his motor car to C. for repairs. While the car was being tested by C. it came into collision with a lorry belonging to B. In an action for damages brought by A. against B., the jury found that the driver of the lorry had driven at an excessive speed, & that the driver of the motor car was negligent in not keeping a proper look-out.: —*Held :* the doctrine of identification of bailor & bailee was not applicable in relation to liability for negligence. WELLWOOD *v.* KING (ALEXANDER), D., [1921] 2 I. R. 274.—IR.

354 iv. —— ——.]—A bailor is not so far identified with his bailee as to be prevented from recovering damages against a third person with respect to injuries to the subject-matter of the bailment resulting from the negligence of the third person & the contributory negligence of the bailee.—KRAHN *v.* BELL, [1930] 2 W. W. R. 146 ; 4 D. L. R. 480 ; 24 S. L. R. 365.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

376 ii. —— *Proceeds of sale paid to fictitious owner.*]—The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send the furniture for sale by deft., who was to account to the owner for it. Deft. sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner :—*Held :* pltf. could not maintain an action against deft. either for conversion or for money had & received.—GRACE BROTHERS, LTD. *v.* LAWSON (1922), 31 C. L. R. 130.—AUS.

390a. —— Purchaser—Bailment by seller—Effect of exemptions clause in contract of bailment.] —When goods in a warehouse are sold & the seller gives the buyer a delivery note addressed to the warehouseman, which the buyer accepts, the buyer becomes assignee of the contract between the seller & the warehouseman & is bound by its terms. Where, therefore, the contract between the seller & the warehouseman contained a clause exempting the latter from liability for negligence causing injury to the goods, & the goods were in fact injured while in the warehouse through the alleged negligence of the warehouseman :— *Held :* the warehouseman was entitled to rely on the exemptions clause as a defence to an action claiming damages for negligence brought against him by the buyer.—H. M. F. HUMPHREY, LTD. *v.* BAXTER, HOARE & CO., LTD. (1933), 149 L. T. 603 ; 77 Sol. Jo. 540.

392. *Add. Annotations :*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

PART IV. SECT. 2, SUB-SECT. 3.

383 i. *Negligence of hirer in use of* [illegible] *v.* (Ont.), [1927] 4 D. L.

383 ii. ——.]—A bailor is not responsible for the negligence of his bailee.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

BANKERS AND BANKING.

Part I.—Constitution and General Position of Banks.

4a. **Restraint of transfer—Practice.**]—An application under 39 & 40 Geo. III., c. 36, to restrain the Bank from making a transfer without making them parties, must be upon notice to defts., or on affidavit, as in cases of waste. —A.-G. *v.* GALE (1802), 6 Ves. 772, n.; 31 E. R. 1301.

9a. —— —— **To foreign trustees.**]—Demurrer allowed to a bill by the Bank of England for an injunction against the action of an exor. claiming a transfer of stock. Considering the stock as specifically bequeathed (which was doubtful) to trustees in France upon special trusts, if the exor. cannot maintain the action upon the nature of the bequest, or as having assented, the injunction is unnecessary; if he can, upon his title to the stock, to be applied as the other property, there is no equity.—BANK OF ENGLAND *v.* LUNN (1809), 15 Ves. 569; 33 E. R. 870.

23. *Add. Annotation:*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

38a. —— —— **Court of Chancery Act, 1841 (c. 5), s. 4.**]—CHAMBERLAIN & SPROAT *v.* WALL & LLOYD (1920), 150 L. T. Jo. 387.

56. *Add. Annotations:*—**Distd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Koch *v.* Dicks, [1932] W. N. 156; Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

57. *Add. Annotation:*—*As to* (2) **Consd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

—— ——.]—SNOW *v.* LEATHAM (1826), 2 C. & P. 314; 172 E. R. 141, N. P.

Annotation:—**Refd.** Slater *v.* West (1828), 3 C. & P. 325.

98. *Add. Annotation:*—**Consd.** Bailey *v.* Bailey, [1926] Ch. 758.

106. *Citations:*—For "3 L. T. M. C. 84" read "3 L. J. M. C. 84."

107. After this case add:—

-.]—*See, now,* Savings Bank Act, 1920 (c. 12), s. 1, & Savings Bank Act, 1929 (c. 27), s. 10, Sched.

112a. **"Dispute"—Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.**] —*Held:* (1) the words "any person claiming to be entitled to any money deposited in such savings bank" in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect.; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—BAILEY *v.* BAILEY, [1926] Ch. 758; 95 L. J. Ch. 470; 135 L. T. 431; 42 T. L. R. 502, C. A.

112b. **Nomination to deposit—Invalid nomination—Recovery of money paid under.**]—P., who had money to his credit in the Post Office Savings Bank, signed a nomination form by which he left the money to deft. The name of a witness appeared on the form, but P. had not signed the form in his presence as required by the regulations. After P.'s death, as the form appeared on the face of it to be valid, the Postmaster-General paid the money to deft. Pltf., having taken out letters of administration of P.'s estate, claimed the money from deft., as money received by him to the use of pltf.:—*Held:* the form was invalid, & the position of deft. was the same as if he had received payment under a will afterwards held invalid, & pltf. was entitled to recover.—PEARMAN *v.* CHARLTON (1928), 44 T. L. R. 517; 72 Sol. Jo. 368.

SECT. 6*a*.—**MUNICIPAL SAVINGS BANKS.**

112c. **Nomination to deposit—Regulations—Power of bank to alter.**]—A. had a sum of money on deposit at a municipal savings bank, which he purported to nominate to his two daughters under the regulations relating to deposits in savings banks. A. died intestate, & an application was made by one of his next of kin for a declaration that the nomination was void, on the ground that there was a limit as to nominations by depositors under the special Act of the corpn. whose bank it was, & that, even though by later regulations the corpn. had purported to abandon this limitation, such a nomination was *ultra vires* the special Act & void:—*Held:* regulations as to nominations could be made by the corpn. under their special Act similar to those indicated in Savings Banks Act, 1887 (c. 40), with such modifications, including abolition of the maximum, as might be considered necessary; the limit laid down could be abolished under these regulations & such abolition need not abrogate the whole matter, & the nomination by deceased was good.—*Re* KIMBER, VALE *v.* ROCKMAN, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

128. *Add. Annotation:*—**Refd.** *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

128a. —— **To act as sole judicial trustee with remuneration.**]—A bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of "a person" under Judicial Trustee Act, 1896 (c. 35).—*Re* COHEN, COHEN *v.* COHEN (1918), 62 Sol. Jo. 682.

PART I. SECT. 6.

111 i. *Savings bank book—Notice of loss—Meaning of "lost."*]—A rule of the Savings Bank of South Australia which by the Savings Bank Act, 1875, has the same force as if inserted in the Act, provides that if a pass-book be lost, notice in writing shall forthwith be given to the bank:—*Held:* a stolen pass-book is lost within the meaning of the rule.—MICHAIL *v.* SAVINGS BANK OF SOUTH A [1930] S. A. S. R. 60.—**AUS.**

t. Read now "**112a i.**"

156. *Add. Citation :—sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

159. *Add. Citation :*—18 Jur. 885.

166. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

169. *Add. Annotations :*—**Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

203. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

215a. *S. P.* FRY *v.* RUSSELL (1858), 3 C. B. N. S. 665 ; 140 E. R. 902 ; *sub nom.* FRY *v.* RUSSELL, POWIS *v.* BUTLER, 27 L. J. C. P. 153 ; 4 Jur. N. S. 193.

226. *Add. Citation :*—1 De G. F. & J. 17.

SECT. 8.—**FOREIGN AND BRITISH OVERSEAS BANKS** (Vol. III., p. 159).

For " *See* COMPANIES " read as follows :—

230a. Credit notes of Russian State Bank—Rights of holders.]—MARSHALL *v.* GRINBAUM (1921), 37 T. L. R. 913.

Foreign companies.]—*See* COMPANIES, Vol. X., pp. 1198–1209.

231. *Add. Annotations :—As to* (4) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321 ; Anchor Donaldson *v.* Crossland, [1929] A. C. 297.

PART I. SECT. 7, SUB-SECT. 3.

y i. —— ——.]—R. *v.* BARNARD (1925), 44 Can. Crim. Cas. 137 ; 57 O. L. R. 397.—**CAN.**

y ii. —— ——.]—R. *v.* SMITH (1925), 44 Can. Crim. Cas. 361 ; 57 O. L. R. 383.—**CAN.**

y iii. —— ——.]—R. *v.* GOUGH (1925), 44 Can. Crim. Cas. 122 ; 57 O. L. R. 426.—**CAN.**

sg. *Qualification—Bank of Canada.*]—Bank of Canada Act, 1934 (Dom.), provides, by sect. 10 (2), that the permanent directors of the bank shall be selected from diversified occupations. By sect. 43, the Governor in Council is directed to make bye-laws with respect to, *inter alia*, " the nomination of directors . . . & what constitutes such nomination " ; & a bye-law made pursuant thereto provided that the persons to be declared elected should be (*a*) the two persons receiving the two greatest number of votes among the candidates whose " chief occupation is in primary industry," (*b*) the two persons receiving the two greatest number of votes among the candidates whose " chief occupation is in commerce or manufacturing," (*c*) the three persons receiving the greatest & two next greatest number of votes among the candidates whose " chief occupation is other than in primary industry, commerce or manufacturing." Deft. W., who was nominated for election as a director, was described on the list of nominees as an " accountant," but on the list of shareholders his description was " merchant." Pltf., a shareholder, who alleged that W. was in fact a merchant & not an accountant, &, therefore, that he could be nominated under category (*b*) only, & who sued for a declaration that he was ineligible under (*c*), obtained a mandatory order requiring W. to withdraw his acceptance of his nomination :—*Held :* the question of W.'s proper category was one of fact which could be tried properly only at the trial of the action & since the evidence supporting the order did not establish that pltf. was clearly right he could not be said to be entitled to an injunction, &, on " the balance of convenience " it should be dissolved.—BAIN *v.* BANK OF CANADA & WOODWARD, [1935] 3 W. W. R. 25 ; 4 D. L. R. 112 ; 50 B. C. R. 138.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—B.

214 ix. —— *By administrator to next of kin.*]—CLARKSON *v.* MCLEAN (1918), 42 O. L. R. 1 ; 13 O. W. N. 373.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—C.

ss. *Dividends payable after shareholder's death—Belong to legatees.*]—BRYSON *v.* BRYSON (1927), Q. R. 65 S. C. 112.—**CAN.**

PART I. SECT. 7, SUB-SECT. 5.

u i. —— *Appointment of interim liquidator—Notwithstanding curator appointed.*]—*Re* HOME BANK OF CANADA (Ont.), [1923] 4 D. L. R. 891.—**CAN.**

x i. *Pensions fund society—Right of members to fund.*]—Where the merger or winding up of a bank constitutes a cessation of employment & a pensions fund society has been founded in accordance with Pension Fund Societies Act, R. S. C., 1906 (c. 123), members, ex-members & pensioners rank for distribution of the funds of the society according to the byelaws of the society regardless of the general law unless the bye-laws make no provision for the case in question.—*Re* SOCIETE DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL *v.* LEMOINE, [1925] 4 D. L. R. 97 ; [1925] S. C. R. 698 ; *affd.*, [1926] 3 D. L. R. 988.—**CAN.**

b (p. 157) i. —— *Bank not properly incorporated—Effect upon position of shareholders.*]—*Re* HOME BANK OF CANADA, [1927] 1 D. L. R. 871 ; 59 D. L. R. 654 ; 8 C. B. R. 143.—**CAN.**

j i. —— *Debt to party liable as surety.*]—In the winding up of a bank a person liable to the bank as surety may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—CLARKSON *v.* ROBINET, [1925] 4 D. L. R. 778 ; *varying*, 26 O. W. N. 466.—**CAN.**

j ii. —— *Debt to party liable as partner.*]—A partner, with his co-partner, was sued by the liquidators of an insolvent bank for a partnership debt, for which he had pledged his individual deposit in the bank :—*Held :* he was entitled to have his separate deposit applied, either as a set-off in the action, or against the partnership debt.—CLARKSON *v.* SMITH & GOLDBERG, [1926] 1 D. L. R. 509 ; 58 O. L. R. 241.—**CAN.**

j iii. ——.]—CLARKSON & HOME BANK OF CANADA *v.* LANCASTER (1927), 38 B. C. R. 217.—**CAN.**

223 i. *Liability to contribute—Trustee.*]—*Held :* not personally liable, as the will was sufficiently " named " in the books of the bank in connection with the actual holding.—*Re* HOME BANK OF CANADA, NATIONAL TRUST CO.'S CASE (1925), 57 O. L. R. 27 ; 5 C. B. R. 644 ; *affg.* 5 C. B. R. 318.—**CAN.**

sb. *Action by bank—Security for costs.*]—Order made.—HOME BANK *v.* HAMONA FARMERS ASSOCN., [1927] 1 W. W. R. 528 ; 21 Sask. L. R. 420.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.

a (p. 159) i. —— ——.]—CUNNINGHAM *v.* NORTHERN BANKING CO., LTD., [1923] N. I. 112.—**IR.**

ss. *Right to give consent for adding bank as party.*]—A local manager of a bank has authority to give the consent in writing required by Rules of Ct., r. 41, for the adding of a pltf.—KUSCH *v.* PEAT, [1922] 2 W. W. R. 174 ; 63 D. L. R. 408 ; 15 Sask. L. R. 324.—**CAN.**

f (p. 160) i. —— ——.]—The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by him was good, & the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, &, relying on such assurance, permitted his position as against the maker of the cheque to be altered to his prejudice. On the failure of the maker to provide funds to meet the cheque :—*Held :* the bank was estopped from denying that the customer paid in the amount represented by the cheque.—BANQUE D'HOCHELAGA *v.* BRUNET, [1925] 2 W. W. R. 447.—**CAN.**

f (p. 160) ii. —— ——.]—The acceptance of a cheque by a local bank manager is binding on the bank, although at the time the drawer has insufficient funds to meet it.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433 ; [1926] S. C. R. 76.—**CAN.**

235 iii. —— *Liability of bank.*]—R., a branch manager of deft. bank, suggested to pltf. that some part of pltf.'s moneys on deposit with the bank should be invested, stating that an investment could be found which would return interest at 8 per cent. For the purpose of such an investment, pltf. handed to R. two cheques, one payable to cash on bearer, & the other payable to self or bearer & indorsed by pltf. R. used the money for his own purposes. Pltf. sought to recover the amount from the bank. This ct. found on the evidence : that pltf. believed, & R. intended him to believe, that R., in making the proposal, was acting as agent of the bank ; that pltf. believed he was placing his money at the disposal of the bank, & R. was fully aware of this ; that unrestricted discretion was committed by pltf. to R. as to the nature of the investment :—*Held :* the bank was not liable. In this transaction R. was not doing something of a kind that, as agent of the bank, he was authorised to do, in the sense that such a transaction would fall within the general scope of his employment.—ROYAL BANK OF CANADA *v.* MACK, [1932] S. C. R. 188 ; 1 D. L. R. 753.—**CAN.**

235 iv. —— ——.]—The manager of a local branch of deft. bank suggested an investment to pltf. who had an account in the savings bank dept. Pltf. signed a cheque payable to cash on bearer for the amount required & gave it to the manager to complete the

237. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

239. *Add. Annotations :*—*As to* (2) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826. *Generally*, **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

247. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

263. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part II.—Business of Banking.

264. *Add. Citation :*—*sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

270a. Cheque presented after business hours—Right of bank to deal with cheque.]—Pltf. had an account with defts.' branch, the closing hour of which was 3 p.m. Pltf. drew a cheque in favour of W., & handed it to W. at such an hour that it was impossible for him to present it for payment before 3 p.m. He did, in fact, present it for payment shortly after 3 o'clock, & received payment. Later in the day pltf. decided to stop payment of the cheque, & sent his son to the bank at the hour of opening on the following morning, but he then found that the money had already been paid :—*Held :* a bank is entitled to deal with a cheque within a reasonable business margin after their advertised time of closing, & in cashing the cheque defts. had acted within their rights.—BAINES *v.* NATIONAL PROVINCIAL BANK, LTD. (1927), 96 L. J. K. B. 801; 137 L. T. 631 ; 32 Com. Cas. 216.

272. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

274. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41.

274a. —— Bank stopping payment before final clearance of cheque received for collection.]—*Re* FARROW'S BANK, LTD., No. 479a, *post.*

275. *Add. Annotation :*—**Refd.** Garrard *v.* James, [1925] Ch. 616.

276. *Add. Annotation :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

276a. —— —— —— At branch where account kept.]—In the absence of special agreement, it is an implied term of the contract between a bank & its customer that the promise of the bank to repay a balance is a promise to repay it at the branch of the bank where the account is kept & not till after demand at that branch. The obligation of the bank is local, although after local demand & refusal to pay the bank is liable to be sued wherever it can be served. When local demand must be met by payment in a foreign currency the remedy available in an English ct. for refusal to pay is a cause of action in damages for breach of contract & not for debt.—RICHARDSON *v.* RICHARDSON, [1927] P. 228 ; 96 L. J. P. 125 ; 137 L. T. 492 ; 43 T. L. R. 631 ; 71 Sol. Jo. 695.

investment, when he approved of it. Some time later the manager told pltf. that the investment was unsatisfactory & that the money was still in the bank. About two months after he was given the cheque the manager paid it into his own account to cover shortages for money he had taken from the bank. In an action to recover the amount of the cheque from the bank :—*Held :* the bank cannot take advantage of its own manager's improper use of the cheque to make good his thefts from it, & pltf. was entitled to judgment. —MCDONALD *v.* ROYAL BANK OF CANADA (1929), 41 B. C. R. 450.—**CAN.**

245 i. *Guaranteeing repayment of loan—Made by third party to customer.*]—*Held :* not within the ostensible authority of a local branch manager of a bank.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52 ; 49 D. L. R. 528 ; 30 Man. L. R. 46.—**CAN.**

248 ii. —— *Delivery up of keys to purchaser from customer without getting cheque.*]—Pltf. sold his business & agreed to assign to the purchasers the lease of the premises upon which the business was carried on. Pltf. sent the keys of the premises to deft. C., manager of a branch of deft. bank, in a letter, in which he requested C. to hand the keys to W., one of the purchasers, upon receiving from W. a cheque for a named sum. C., without getting the cheque, gave up the keys to the landlord of the premises, who handed them to W. :—*Held :* (1) C. had failed to carry out the terms of his instructions ; (2) the keys were sent to C. in his capacity as manager, & the transaction was within the scope of his authority as such ; (3) the *onus* of proving damage was on pltf., & he had not satisfied it.—GARBER *v.* UNION BANK OF CANADA (1919), 46 O. L. R. 129; 17 O. W. N. 16.—**CAN.**

250 ii a. —— —— ——.]—As the terms of Mercantile Law (Scotland) Amendment Act, 1856 (c. 60), s. 6, are unequivocal & unambiguous, they cannot be construed as relating only to the case where the representations are founded on as the basis of a substantive action, but must equally apply where they are founded on in defence.—UNION BANK OF SCOTLAND *v.* TAYLOR, [1925] S. C. 835.—**SCOT.**

sd. *Agreeing to forward bankers draft.*]—*Held :* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7 ; 69 D. L. R. 130 —**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

b i. ——.]—BRANDON *v.* BANK OF MONTREAL, [1926] 4 D. L. R. 182 ; 59 O. L. R. 268.—**CAN.**

275 va. —— —— ——.]—A deposit of money in a bank to meet a draft is not payment of the draft. The money so deposited must be appropriated by the depositor thereof to the draft. Where the bank is authorised so to appropriate the money it acts in doing so as agent of the depositor, &, if it fails to carry out its duties as such agent, the loss falls on its principal. It is possible for a bank while acting as agent of the drawer of a draft for the purpose of collecting it to act also as agent of the drawee in appropriating the money.—BRANTFORD CORDAGE CO. *v.* MILNE, [1925] 1 D. L. R. 862 ; [1925] 1 W. W. R. 911 ; 35 Man. L. R. 17 ; *affg.*, [1925] 1 D. L. R. 92 ; [1925] 1 W. W. R. 442.—**CAN.**

275 vii. —— —— *In Canadian paper in American bank—In what currency payable by bank.*]—*Held :* pltf.'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to repay the exact amount of money which was received on deposit. Whether amounts of deposits repayable in Canadian or American currency discussed.—SHEPPARD *v.* FIRST INTERNATIONAL BANK OF SWEET GRASS, [1924] 1 D. L. R. 582 ; 1 W. W. R. 290.—**CAN.**

275 viii. —— —— *Cheque delivered to bank to be cashed.*]—The fact that the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791 ; 11 Sask. L. R. 218.—**CAN.**

277. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

277a. —— **Duration—Notice to close & transfer account—No notice to transferee.**]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed ; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served ; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE, [1933] 1 K. B. 47 ; 102 L. J. K. B. 16 ; 147 L. T. 231 ; 48 T. L. R. 578 ; 76 Sol. Jo. 494, C. A.

277b. **Order to transfer account—No notice to transferee.**]—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE, No. 277a, *ante*.

281. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

282. *Add. Annotations :*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

282a. **Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.**]—Pltf. brought an action against deft. bank for £125,000, money had & received by defts. to his use. Pltf.'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by pltf., for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with pltf.'s wife in compromising circumstances, & that the proceeds were shared between the conspirators, whom defts. alleged to include, among others, pltf., pltf.'s wife, & H. & N. Pltf. & his wife denied that they took part in any conspiracy, & pltf. said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, pltf., passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It was to recover the difference between these two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with pltf.'s wife, but that pltf. & his wife were not parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary :—*Held :* pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—ROBINSON *v.* MIDLAND BANK, LTD. (1925), 41 T. L. R. 402 ; 69 Sol. Jo. 428, 792, C. A.

—— **Effect of mere book entries.**] — In dealings between banker & customer, where it is sought to treat a mere book entry as a payment, some other circumstances must be present & relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or a communication of the making of the entry to the customer & an acting upon it by him ; there must be, in effect, both a payment by one party & a receipt by the other, or an alteration in the position of the customer in whose favour the book entry was made.—BRITISH & NORTH EUROPEAN BANK, LTD. *v.* ZALZSTEIN, [1927] 2 K. B. 92 ; 96 L. J. K. B. 539 ; 137 L. T. 127 ; 43 T. L. R. 299.

289a. —— **Bills specifically appropriated to one account—Payment of proceeds to other account.**]—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—GREENHALGH (W. P.) & SONS *v.* UNION BANK OF MANCHESTER, [1924] 2 K. B. 153 ; 93 L. J. K. B. 844 ; 131 L. T. 637.

292. *Add. Annotations :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683 ; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

292a. —— —— ——.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 88 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the subsect. is negligence in collecting the cheque, not in opening the account. The test is

284 ii. —— *Moneys held to manager's own account.*]—BLENKHORN *v.* ROYAL BANK (1929), 60 N. S. R. 388.—**CAN.**

289 ii. —— ——.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different departments of the bank for the purpose of meeting his indebtedness to the bank without notifying him or obtaining his consent thereto.—WALLINDER *v.* IMPERIAL BANK OF CANADA, [1925] 4 D. L. R. 390 ; [1925] 3 W. W. R. 409.—**CAN.**

whether the paying in of any given cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required is that derived from the practice of bankers. —TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK [1920] A. C. 683; L. J. P. C. 181; 123 L. T. 34; 36 T. L. R. 305, P. C.

Annotations :—As to (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344. *As to* (2) **Apld.** Hampstead Grdns. *v.* Barclays Bank (1923), 39 T. L. R. 229. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

292b. —— Another bank for whom cheque collected—Bills of Exchange Act, 1882 (c. 61), s. 82.]—(1) The word "customer" in the above sect. applies to another bank for whom the bank, which relies on the protection of the sect., collects a cheque.

(2) The words "receives payment" in the sect. apply to a bank which receives payment as a collecting bank.—IMPORTERS CO. *v.* WESTMINSTER BANK, [1927] 2 K. B. 297; 96 L. J. K. B. 919; 137 L. T. 693; 43 T. L. R. 639; 32 Com. Cas. 369, C. A.

293. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560; Jones *v.* Waring & Gillow, [1926] A. C. 670.

298a. Remittance sent abroad on request—Obligation of bank.]—Pltfs., customers of defts., bankers in London, instructed them to transmit money to a person in Rumania, & defts. sent a cheque by registered post to him personally. The cheque never reached him, but someone apparently put on it a forged indorsement of his name, & it was eventually cleared through a bank in Poland, & defts. debited pltfs. with the amount. In an action for negligence pltfs. alleged that defts. should have sent the cheque by a letter which was insured in addition to being registered :—*Held :* as the loss of a cheque was a rare occurrence, & as the standard of defts.' duty should not be measured by a consideration of all the precautions which subsequent events might suggest, the action failed.—OSE GESELLSCHAFT, ETC. *v.* JEWISH COLONIAL TRUST (1927), 43 T. L. R. 398.

298b. Bank instructed to transfer sum to second bank—To be held to credit of third—Third non-existent—Claim for return by customer of first bank.]—In June, 1918, pltf., who was then a banker in Odessa, had a large credit with a Swiss bank at Basle & he instructed that bank to transfer to defts., who were an English bank, £18,044 to be held by defts. to the credit of a bank in Petrograd. On hearing from the Basle bank defts. credited the money to the Petrograd bank in their books on account of pltf., & they notified the Petrograd bank, but their communication was returned & there was no evidence that it was ever received by the Petrograd bank. About 1930 pltf. became aware that the money was still with defts. & he claimed a declaration that they held it as trustees for him :—*Held :* the only party who were defts.' customers were the Swiss bank, & as there was no contract between pltf. & defts. the action failed.—ASCHKENASY *v.* MIDLAND BANK, LTD. (1934), 51 T. L. R. 34; 78 Sol. Jo. 783, C. A.

300. *Add. Annotations :*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

301. *Add. Annotations :*—**Consd.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

302. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Citation :*—63 Sol. Jo. 246.

304. *Add. Annotations :*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

293 i. *Drawing cheque—Customer's duty to bank.*]—A customer of a bank owes a duty to the bank in drawing cheques to take reasonable & ordinary precautions against the amount of the cheque being raised by forgery, & if as the natural & probable result of the neglect of those precautions the amount is so increased the customer must bear the loss as between himself & the bank. The duty of a customer to draw up his cheque without negligence is the same with respect to a cheque on a savings account as in the case of a cheque on a current account.—WILL *v.* BANK OF MONTREAL, [1931] 2 W. W. R. 364; 3 D. L. R. 526.—**CAN.**

sd. *Unauthorised withdrawal of sum from account by manager—Onus of proof of repayment.*]—F., a local branch bank manager, took without authority certain sums from S.'s account in the bank. S. having died, his exors. sued the bank & F. to recover these sums :—*Held :* on the evidence, defts. had not acquitted themselves of the *onus* of establishing repayment, & pltfs. were entitled to recover.—STEWART *v.* ROYAL BANK OF CANADA & FRASER, [1930] S. C. R. 544; 4 D. L. R. 694; *revg.*, [1930] 2 D. L. R. 617; 1 M. P. R. 302.—**CAN.**

PART II. SECT. 1, SUB-SECT. 3.—A.

301 ii. —— ——.]—For certain limited purposes a branch bank may be treated as a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—**CAN.**

ss. *Forwarding to another branch documents for collection—Negligence.*]—Where a branch office of a bank, in the usual course of banking business for reward, sends to another office of the bank for collection on behalf of a customer negotiable documents of debts, such as participation certificates issued by the Canadian Wheat Board, which, having been indorsed by the producer, are, in effect, made payable to bearer on surrender thereof, & whose terms deny responsibility in the Wheat Board with respect to indorsements, &, failing to receive a return letter of acknowledgment, the sending office makes no inquiry of the receiving office as to the safety of the documents until after the lapse of six weeks, it is guilty of negligence. The bank is still more guilty of negligence, when, having made the belated inquiry & learned that the documents have not been received at the other office it fails to take immediate steps in the quickest manner available to warn the debtor liable under the documents of the loss thereof, & thus stop payment to any unauthorised person.—NELSON *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 1330.—**CAN.**

303 i. —— —— ——.]—GARBIOCH CANADIAN BANK OF COMMERCE W. W. R. 185.—**CAN.**

306. *Add. Annotation :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

310. *Add. Annotations :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Mentd.** *Re* Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99.

311. *Add. Annotation :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

312. *Add. Annotation :*—*Generally*, **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

After this case add, *See* Law of Property Act, 1925 (c. 20), s. 136 (1).

317. *Add. Annotations :*—*As to* (1) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. *Generally*, **Refd.** Richardson *v.* Richardson, [1927] P. 228 ; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

321a. —— **Operation as revocation of direction to transfer account—Before notice to transferee.** —Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestvo Komseverputj (Bureau) & Bank for Russian Trade, Ltd., No. 277a, *ante*.

321b. —— **Client account of solicitor.**]—In compliance with Solicitors Act, 1933 (c. 24), & Rules, pltf., a solr., opened a client account at a branch of defts.' bank. Money received from a client, to be applied in payment of rent & costs payable by the client to a third party, was paid into that account, & a cheque was duly drawn by pltf. on that account, & sent to the solr. acting for the third party. Before that cheque was presented a garnishee order *nisi* was served on the bank in respect of debts owing or accruing due from the bank to pltf. When the cheque was presented the bank marked it " Refer to drawer," & returned it unpaid :—*Held :* (1) money standing to the credit of the client account was a debt owing from the bank to pltf., in whose name the account was opened, & the garnishee order *nisi* bound that debt in the hands of the bank. The bank was, therefore, justified in returning the cheque unpaid ; (2) in the circumstances, the words " Refer to drawer " marked on the cheque were not libellous.—Plunkett *v.* Barclays Bank, Ltd., [1936] 2 K. B. 107 ; [1936] 1 All E. R. 653 ; 105 L. J. K. B. 379 ; 154 L. T. 465 ; 52 T. L. R. 353 ; 80 Sol. Jo. 225.

330. *Add. Citation :*—40 L. T. 404.

331. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

332. *Add. Annotations :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333. *Add. Annotations :*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

333a. —— **Payment into account under belief that customer alive—Liability to refund.**]—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—Admiralty Comrs. *v.* National Provincial & Union Bank of England, Ltd. (1922), 127 L. T. 452 ; 38 T. L. R. 492 ; 66 Sol. Jo. 422.

333b. Pension paid to bank on forged certificate given to bank.]—G., a retired officer in the colonial customs service & in receipt of a pension, from 1916 to 1926 collected his pension from deft. bank, with which he had an account, coming to the bank in person. In 1926 G. changed his place of residence & thereafter collected his pension by post through deft. bank by means of receipt forms sent direct to him by pltfs. The receipt form included a certificate that the pensioner was still alive. G. died in 1929 & from then up to 1935, when his widow died, the pension was collected by means of forged receipt forms, the certificates being duly filled up by an alleged medical practitioner. The certificate might be signed by the bank or by a person of certain named categories including medical practitioners. Pltfs., the Crown agents for the Colonies, then sued to recover from deft. bank the amount so paid since 1929 :—*Held :* the certificate not being signed by the bank it did not amount to a warranty by the bank that G. was still alive, & the bank was, in the circumstances, entitled to rely upon the certificate as being true. The amount paid as pension was therefore not recoverable.—Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3

PART II. SECT. 1, SUB-SECT. 4.

317 ix a. —— —— ——.]—Moneys in a joint banking account to the credit of the judgment debtor & another person may be garnished by the judgment creditor.—Empire Fertilizers, Ltd. *v.* Cioci, [1934] 4 D. L. R. 804.—**CAN.**

317 xi. —— ——.]—Moneys deposited by a judgment debtor in the State Savings Bank of Victoria may be attached by garnishee proceedings. Service of the garnishee order *nisi* on the bank is a sufficient demand to satisfy any right which the bank may have to receive a demand for payment as a condition precedent to its liability. —Chubb *v.* Emery, [1933] V. L. R. 125 ; Argus L. R. 182.—**AUS.**

317 xii. —— *Money on deposit with branch of local bank.*]—Money on deposit with an English branch of a local bank does not constitute a debt recoverable within the jurisdiction, & is, therefore, not liable to be attached by proceedings under Part XX. of Common Law Procedure Act, 1899.—Melville Island, Ltd. *v.* Richards (1933), 50 N. S. W. W. N. 41.—**AUS.**

317 xiii. —— *Account in trade name.*]—Where an individual keeps his bank account under a trade name & is sued & his banker is garnisheed, it is for the bankers to satisfy themselves that the judgment debtor named is the person keeping such account, & if satisfied beyond reasonable doubt that the right fund is being garnisheed to pay it into ct.—Smith *v.* Gautsche, [1917] 2 W. W. R. 225 ; 23 B. C. R. 455.—**CAN.**

317 xiv. —— *Banking company in liquidation—Declaration of dividend by liquidator.*]—An order had been made for the winding up of a banking co. & for the appointment of a liquidator. At the date of the order a customer of the bank had moneys standing to his credit in its books. In the course of the liquidation the liquidator gave notice of his intention to pay a dividend of 5*s.* in the £ :—*Held :* even assuming that the notice given by the liquidator amounted to the declaration of a dividend, the declaration did not create a " debt owing or accruing " to the customer by or from the banking co. so as to be attachable by a judgment creditor of the customer in garnishee proceedings, under the Justices Act, 1928, s. 126, against the banking co.—National Bank of Australasia, Ltd. *v.* Norris, [1932] V. L. R. 485 ; Argus L. R. 423.—**AUS.**

All E. R. 55; 156 L. T. 531; 53 T. L. R. 713.

334. *Add. Annotations :*—**Consd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189. **Refd.** Bradford Old Bank *v.* Sutcliffe (1918), 88 L. J. K. B. 85; Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365; Philadelphia National Bank *v.* Price, [1937] 3 All E. R. 391.

338a. —— Joint account—Including proceeds of theft.]—THE ADMIRALTY *v.* MILLS (1908), *Times*, Oct. 29.

338b. Necessity for demand—Whether condition precedent to action against banker on account.]—Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.—JOACHIMSON *v.* SWISS BANK CORPN., [1921] 3 K. B. 110; 90 L. J. K. B. 973; 125 L. T. 338; 37 T. L. R. 534; 65 Sol. Jo. 434; 26 Com. Cas. 196, C. A.

Annotations :—**Consd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 38 T. L. R. 492; Richardson *v.* Richardson, [1927] P. 228; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263. **Refd.** *Re* British American Continental Bank, Credit General Leigeois' Claim, [1922] 2 Ch. 589; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

342. *Add. Annotation :*—*Generally*, **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

342a. —— Account in credit—Reasonable notice.]—In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case. When a banking account, opened by pltfs. with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by pltfs. that it became in respect to subscriptions to the scheme a part thereof :—*Held :* a month's notice by defts. to discontinue the account was not, in the circumstances of the case, sufficient, but an injunction restraining defts. from closing the account must be refused.—PROSPERITY, LTD. *v.* LLOYDS BANK, LTD. (1923), 39 T. L. R. 372.

342b. Existence of account—Proof of—Effect of non-existence of entry in material books.]—DOUGLASS *v.* LLOYDS BANK, No. 403a, *post.*

344. *Add. Annotation :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

347. *Add. Citation :*—*affg.* S. C. *sub nom. Re* GROSS, *Ex p.* ADAIR (1871), 24 L. T. 198.

353. *Add. Annotation :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

358. *Add. Annotation :*—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

359. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

363. *Add. Annotations :*—**Consd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. **Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

364. *Add. Annotations :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653. Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

368. *Add. Annotations :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

380a. Payment of principal's money to own account—Bank without notice—Retention against overdraft.]—*Re* SANGSTER, GREEN *v.* MOCKETT (1894), 10 T. L. R. 184.

381a. Trust moneys credited to private account—Liability of bank.]—Resp. bank agreed with applts. to furnish applts.' agent with cash in exchange for drafts upon applts. The cash, as resps. knew, was to be used in paying for grain to be purchased for applts. by their agent. In numerous cases resps. instead of giving the agent cash credited the drafts, wholly or in part, to the agent's private account which was generally overdrawn. Applts. sued resps. to recover the aggregate amount, with interest, of specified drafts, or parts of drafts which had been thus applied; the agent was not joined as a party. Resps. alleged but did not prove that the agent had paid for grain by cheques on his private account. The Ct. of Appeal

PART II. SECT. 2, SUB-SECT. 1.

334 v. ——.]—Pltf. made a promissory note in favour of S., which was dishonoured on presentment. Both banked with defts., to whom S. was indebted on overdraft for a greater sum than the amount of the note. Subsequently pltf. paid £100 into his account, & defts. immediately, without reference to pltf., paid the note for £119 19*s.* 10*d.* & debited pltf.'s account with the amount by which his funds in the hands of defts. were insufficient to meet the note :—*Held :* defts. were at liberty to apply whatever funds of pltf. they had in hand in satisfaction, *pro tanto*, of the note of which they were the holders for value.—BELL *v.* UNION BANK, [1923] N. Z. L. R. 379.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 2.—A.

338. *Repayment of advance by cheque—On trust account—Knowledge of bank—Liability.*]—ATCHISON *v.* DOMINION BANK, [1935] 3 W. W. R. 97.—**CAN.**

TAILERS' TRUST CO., LTD. *v.* DOMINION BANK, [1935] 3 W. W. R. 165.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

351. *Right of bank to refuse to pay.*]—In order to hold a banker justified in refusing to pay a demand of his customer the customer being an exor., & drawing a cheque as exor., there must in the first place be some misapplication, some breach of trust intended by the exor., & there must in the second place be proof that the bankers are privy to the intent to make their misapplication of the trust funds. If it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privity with the breach of trust that is about to be committed.—STANDARD BANK *v.* ESTATE VAN RHYN, [1925] App. D. 266.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 3.—A.

371 i. *Joint account of persons not partners—Cheque drawn & countermanded by one after decease of other—Payment by bank—No right of action in survivor.*]—RADCLIFFE *v.* BANK OF MONTREAL, [1919] 2 W. W. R. 887.—**CAN.**

371 ii. —— *Subsequent claim by one to whole account—Position of bank.*]—Where a bank deposit is made in the name of either of two persons it is a notification that either one may deal with the funds & that the account will be subject to the control of either of them in the absence of special directions. But upon a subsequent notice to the bank by one of such persons that he claims it all, the bank in dealing with the money thereafter in any way affecting such claim acts at its own risk.—HILL *v.* HOCHLAGA BANK, [1921] 3 W. W. R. 430.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

g. Add "*on appeal*, [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C."

ordered an account to ascertain what loss applts. had sustained :—*Held :* resps. having been parties to a misapplication of trust funds, applts. were entitled to judgment for the amount sued for.—BRITISH AMERICA ELEVATOR CO. *v.* BANK OF BRITISH NORTH AMERICA, [1919] A. C. 658 ; 88 L. J. P. C. 118 ; 121 L. T. 100, P. C.

Annotation :—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

387a. —— —— ——.]—For some years before 1919 one U., a merchant, had a banking account at defts.' bank. In that year he converted himself into a limited co., all the shares being allotted to himself except one, which was held by his wife. A debenture in the form of a floating charge over the assets of the co. was issued to a creditor of U. as a security for his debt. The arts. of assocn. of the co. incorporated Table A. by par. 71 of which the business of the co. is to be managed by the directors. By the arts. U. was appointed sole director. After the formation of the co. U. kept on his private banking account with defts. as before, they having notice that his business had been transferred to the co. The co. had a separate account, which was kept at another bank, but defts. had no knowledge of that fact. U., as sole director, became possessed of a number of cheques, some crossed & others uncrossed, drawn in favour of the co. He indorsed them "A.L.U., Ltd.—A.L.U. sole director," & paid them into his own account with defts. instead of paying them in to the co.'s account with the other bank. Defts., without inquiring whether the co. had a separate banking account, collected the cheques & credited U. with the proceeds, which he misappropriated. When doing so they treated him as being identical with the co., as he owned all the shares, & overlooked the materiality of the cheques being drawn in the co.'s favour & not in his. In an action brought by the co. on behalf of the debenture-holder for conversion of the cheques :—*Held :* (1) defts. were precluded from setting up that U., when paying the cheques in to his own account, was acting within the scope of his apparent authority as agent of the co., upon two grounds : first, that the act of an agent paying his principal's cheques into his own account was so unusual as to put them on inquiry, that they ought to have inquired whether the co. had a separate banking account, &, if it had, why the cheques were not paid in to that account, & that their failure to make that inquiry amounted to negligence ; &, secondly, that U. when paying in the cheques did not purport to act as the co.'s agent, but as being himself the co., & that defts. so treated him ; (2) with respect to the cheques which were crossed the omission to inquire about the co.'s banking account disentitled defts. as collecting bankers to the protection afforded by Bills of Exchange Act, 1882, (c. 61), s. 82.

A customer of a bank paid into his account some cheques to which he had no title. Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank and him that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after the bank had received the proceeds :—*Held :* (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value ; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon. —UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, [1924] 1 K. B. 775 ; 93 L. J. K. B. 690 ; 131 L. T. 271 ; 40 T. L. R. 302 ; 68 Sol. Jo. 716 ; 29 Com. Cas. 182, C. A.

Annotations :—*As to* (1) **Apld.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67 ; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450 ; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264 ; Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811 ; E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555. *As to* (2) **Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Redf.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402. *Generally*, **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583.

389. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Banque Belge pour l'Etranger (Soc. Anon.) *v.* Hambrouck, Spanoghe (1920), 123 L. T. 405.

391. *Add. Annotations :*—**Distd.** *Re* Harrison, Day *v.* Harrison (1920), 90 L. J. Ch. 186. **Consd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

391a. —— —— **Cheques drawn by wife on bank manager's advice—Title of wife to balance.**] —A husband, in 1908 transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing

the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held:* the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his own property.—*Re* HARRISON, DAY *v.* HARRISON (1920), 90 L. J. Ch. 186.

402. *Add. Annotations:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

402a. Effect of need for notice of withdrawal.]—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re* GLENDINNING, STEEL *v.* GLENDINNING (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

403a. Loss of right to repayment—Laches.]—In May, 1866, one F. deposited £6,000 with a Birmingham branch of deft. bank, upon the terms that he could withdraw the money at any time on giving fourteen days' notice, & that interest should be paid on it at the rate of 6 per cent. for the first three months, & thereafter at the current bank rate for the time being. In Aug. 1866, the bank repaid £2,500 of the £6,000 with interest due to that date, & a note of the payment was indorsed on the deposit receipt. In Nov. 1866, a further indorsement was made showing that all interest then due had been paid, but after that date there was no record of any further payment by the bank of either principal or interest & no record of any demand by F. for payment. F. died in 1893. In 1927 a relative of F. discovered the deposit receipt amongst some old papers, & sent it to the surviving exor. & trustee of F.'s will. He gave deft. bank formal notice to pay the £3,500, balance of the principal £6,000, together with interest, in fourteen days. The bank refused to pay, on the ground that it must be presumed that the deposit must have been repaid long ago. The exor. then brought this action to enforce payment, & the bank pleaded presumption of payment; & although they refused to plead Stat. Limitations, they claimed relief on the ground that F. & his representatives had been guilty of laches:—*Held:* although defts. could not produce evidence of repayment, the proper inference from all the circumstances was that that money must have been repaid, & the action therefore failed. Bankers' Books Evidence Act, 1879 (c. 11), s. 3, makes an entry in bankers' books *primâ facie* evidence of an account.

Qu.: whether the non-existence of any entry in material books is *primâ facie* evidence of the non-existence of an alleged account.—DOUGLASS *v.* LLOYDS BANK, LTD. (1929), 34 Com. Cas. 263.

404. *Add. Annotation:*—**Refd.** Sockalingam Chettiar *v.* Ramanayake, [1937] A. C. 230.

409. *Add. Annotation:*—**Apld.** *Re* Westerton, Public Trustee *v.* Gray (1919), 122 L. T. 264.

409a. Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee.]—About a year before his death, which happened in 1917, testator handed to his landlady, G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held:* there was a valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25 (6).—*Re* WESTERTON, PUBLIC TRUSTEE *v.* GRAY, [1919] 2 Ch. 104; 88 L. J. Ch. 392; 122 L. T. 264; 63 Sol. Jo. 410.

Annotation:—**Apprvd. & Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

412. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

425. For "SAUNDERSON *v.* BOWES," read "SANDERSON *v.* BOWES."

Add. Annotation:—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

PART II. SECT. 3, SUB-SECT. 1.

c i. —— —— ——.]—A deposit having been made in a bank by a woman in the joint names of herself & her niece, to whom she was *in loco parentis:*—*Held:* joint ownership constituted, with benefit of survivorship.—BOURQUE *v.* LANDRY (1936), 10 M. P. R. 108; 5 F. L. J. (Can.) 293.—**CAN.**

c ii. —— —— ——.]—The presumption that moneys deposited by a husband in the joint names of himself & his wife are then joint property does not apply in the case of a mother & son; there is in such a case a presumption of a resulting trust in favour of the mother.—FIDLER *v.* BARNES (1936), 11 M. P. R. 254.—**CAN.**

sg. *Deposit by factor—Principal's money — Whether bank liable to principal.*]—Where a deposit is made by a factor of his principal's money to his own credit, to the knowledge of the bank, the bank is not liable to the principal on the bkpcy. of the factor.—M. A. HANNA CO. *v.* PROVINCIAL BANK OF CANADA, [1934] 2 D. L. R. 471; *affd.*, [1935] S. C. R. 144; 1 D. L. R. 545.—**CAN.**

sl. *Deposit account opened by agent—Extent of agent's authority not disclosed to bank—Misappropriation by agent—Liability of bank.*]—Where an account was opened in deft. bank in pltf.'s name by pltf.'s agent but the only knowledge the bank had of the limitations placed by pltf. on the agent's operation of the account or of the business which he was managing for pltf. was contained in a letter from pltf. instructing the bank that it was "a deposit account only & from time to time remittances will be forwarded to us by credit advices alone":—*Held:* the bank was not liable for misappropriation by the agent on the ground of negligence or connivance in the breach of his instructions in permitting him to open & draw cheques upon another account which he opened in his own name entitled "Trust Account No. 2," & in which to the knowledge of the bank he deposited a part of the proceeds of said business.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* ROYAL BANK OF CANADA, [1935] 1 W. W. R. 551.—**CAN.**

so. *Deposit account of guarantor—Default by customer whose debt guaranteed.*]—A banker is not entitled to apply the money of a customer, standing to the customer's credit in the books of the bank upon a deposit account without the authority, express or implied, of that customer, in discharge of the indebtedness to the bank of another customer whose debt has been guaranteed by the depositor.—BANK OF ENGLAND *v.* MARTIN, [1937] I. R. 189.—**IR.**

431. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

453. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

454. *Add. Annotation :*—**Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

456. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

456a. Contract to print notes—Notes printed without authority—Liability to bank.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud pltfs. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion :—*Held :* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214 ; 75 Sol. Jo. 81 ; *on appeal* (1931), 100 L. J. K. B. 465, C. A. ; [1932] A. C. 452, H. L.

456b. —— —— **Measure of damages.**]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the bank for other notes. The bank had an exclusive license to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the bank was due to their own voluntary action in paying the unauthorised notes ; (*b*) that the loss to the bank was limited to the cost of printing & paper in regard to the new issue :—*Held :* (1) the loss arose naturally from the breach of contract ; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes together with the cost of printing the genuine notes withdrawn.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, [1932] A. C. 452 ; 101 L. J. K. B. 417 ; 147 L. T. 101 ; 48 T. L. R. 404 ; 76 Sol. Jo. 327, H. L.

Annotation :—**Refd.** The Edison (1932), 147 L. T. 141.

479. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

479a. Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance.]—(1) Where a customer pays a crossed cheque into his bank, the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re* FARROW'S BANK, LTD., [1923] 1 Ch. 41 ; 92 L. J. Ch. 153 ; 128 L. T. 332 ; 67 Sol. Jo. 78 ; [1925] B. & C. R. 8, C. A.

479b. —— ——.]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

PART II. SECT. 4, SUB-SECT. 3.

ag. *Money paid to retire draft—Failure of purpose for which draft paid—Liability of bank to refund.*]—*Held :* pltfs. could recover from the bank the amount paid by them to retire the draft.—GIBBONS & CARNES *v.* ROYAL BANK OF CANADA, 1921] 2 W. W. R. 370.—**CAN.**

aj. *Delay in transmitting draft—Transaction not part of manager's duty—Liability of bank.*]—*Held :* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7 : 69 D. L. R. 130.—**CAN.**

ak. *Payment of draft on forged indorsement—Liability of bank.*]—Where payment of a draft was made to the wrong person on the forged signature of the payee & the payee never received the money :—*Held :* the customer was entitled to the return from the bank of the moneys paid for the draft.—PORTEOUS *v.* PORTEOUS, [1932] 3 D. L. R. 562 ; O. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

463 i. —— *Stoppage of bank-cheque for debt—Debt not paid.*]—UNION BANK OF CANADA *v.* NETTLETON (1924) 55 O. L. R. 643.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

ai. ——.]—A co. drew bills of exchange upon customers to whom they had supplied goods & who accepted the bills. The co. indorsed the bills in blank, & delivered them to a bank for collection. The co. went into liquidation. Its current account with the bank was overdrawn to a large amount. In the liquidation the bank claimed that they were owners of the bills, & that they were not bound to value & deduct the obligations in the bills for the purpose of a ranking. The bank's

484. *Add. Annotations :*—**Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

485. *Add. Annotation :*—**Consd.** Calico Printers' Association, Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

487. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

493. *Add. Annotations :*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

500. *Add. Annotation :—Generally,* **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

507. *Add. Annotation :*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

527a. What is negligence—Defective title of customer—Statutory protection of banker.]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 691d, *post.*

537. *Add. Annotations :*—**Consd.** Barclay *v.* Malcolm (1925), 133 L. T. 512; Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

538. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

538a. ——.] — A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done :—*Held :* in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Annotation :—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 K. B. 645.

540. *Add. Annotation :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

544. *Add. Annotations :*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

544a. —— —— ——.]—A bye-law of applt. co. authorised its secretary-treasurer jointly with any director to sign cheques drawn upon its bank account. A series of cheques payable to one of the directors were fraudulently signed by the director jointly with the secretary-treasurer, & after indorsement were placed by resp. bank to the credit of an account which the director had with them. Resps. collected the cheques from applts.' bank in the usual course of business. In order that there should be to the credit of applts.' account sufficient to meet each of the cheques, the director in each case fraudulently drew a cheque upon one of various other accounts upon which he had authority to draw, & paid it into applts.' account. Applts. sued resps. to recover the aggregate amount of the cheques collected by them :—*Held :* the action failed, because (1) resps. had not knowledge, either by the form of the cheques collected or otherwise, that they were improperly drawn on applts.' account, & could not recover the money as having been held by their bankers in trust for them, & (2) applts. had suffered no loss, & the ct. could not investigate applts.' liability to persons not parties to the action in respect of the cheques placed to applts.' credit.—CORPORATION AGENCIES *v.* HOME BANK OF CANADA, [1927] A. C. 318; 96 L. J. P. C. 63, P. C.

Annotations :—As to (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176.

545a. Transfer to own account by agent—In breach of power of attorney—Liability of bank.]—Resp., a widow, who had a deposit account with applt. bank, desired that A., a close friend of resp. & her husband, should attend to the investment of her money, & with the sole object of making arrangement for such investment at a higher rate of interest than the ordinary bank rate on deposits, she executed a power of attorney in A.'s favour on June 24, 1929, using a printed form in very wide terms supplied by applt. bank. At that time resp. had $13,081 credited to her account. A. also had had for a considerable time an account in the same branch of the bank which had generally showed a debit balance; & at the date of the execution of the power of attorney his debit balance exceeded $8,000. On June 29, 1929, A., purporting to act under the power of attorney, transferred from resp.'s account to his own account $8,500, which, together with a small sum of his own, was sufficient to discharge the whole of his debt to applt. bank. The assistant manager of the bank took from A. a promissory note payable to resp. on demand with interest at 7 per cent. *per annum,* but did not ask on her behalf for security, although applts. had had a mtge. as security for their debt, nor did they communicate in any way with resp. or her solr. In 1931 resp. took a promissory note from A.

lien over the proceeds of the bills was admitted :—*Held :* the bills, having been indorsed & delivered to the bank for the limited purpose of collection, remained assets of the co., over which the bank held a mere right in security in virtue of their lien, & the obligations under the bills must be valued & deducted for the purposes of a ranking.—CLYDESDALE BANK, LTD. *v.* SENIOR (JAMES ALLAN) & SON LIQUIDATORS, [1926] S. C. 235.—SCOT.

PART II. SECT. 8, SUB-SECT. 2.—A.

538 i. *Constructive payment—Cheque & credit slip stamped "paid."*]—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

for the sum transferred & interest, & in 1932 having changed her solrs. she demanded payment from applt. bank of the amount of $8,500, & on applts.' refusal resp. commenced an action for the recovery of that sum :—*Held :* (1) the transfer of the money by A. to his own account made him a constructive trustee for resp. of the amount transferred ; (2) the bank having concurred in the transfer for their own benefit became subject to a similar fiduciary obligation ; (3) any delay or silence on resp.'s part had not prejudiced the bank & there was no defence of estoppel ; (4) there was no question of ratification since A. had not in transferring the money acted or purported to act as agent of resp. ; (5) the liability of A. & the bank was not joint, & resp. was at liberty to sue either or both subject only to the limitation that she could not recover more than the total sum due to her.—IMPERIAL BANK OF CANADA *v.* BEGLEY, [1936] 2 All E. R. 367, P. C.

546a. —— —— **Cheques paid to customer's creditors.**] — Deft. bank negligently, & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only. All the cheques were paid to the co.'s trade creditors :—*Held :* (1) the bank being put on inquiry & being negligent, as the jury found, were not entitled to assume that a signature purporting to be that of a new director was that of a person duly appointed ; (2) whether pltf. co.'s account was in credit or in debit at the time of the payments to trade creditors, the bank were, on the equits able doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment, entitled to credit for the cheque-paid in discharge of the debts of pltf. co. ; (3) an inquiry should be ordered into the circumstances of payment of each cheque.—LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48 ; 97 L. J. K. B. 1 ; 137 L. T. 443 ; 43 T. L. R. 449.

Annotation :—As to (2) & (3) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

546b. Issue of bank drafts to customer's agent—Agent without proper authority—Negligence.] —A co. instructed its bankers in writing that any two of four named persons, of whom three were directors & the fourth was an accountant in the co.'s employment, had authority to draw cheques & sign orders for payments on its behalf. The co. from time to time required drafts payable in New York to remit to creditors there. The course of business was that the accountant attended at the bank with a cheque, duly signed by two of the named persons, payable to the bankers' order for the sum for which the draft was required, but without any further document or written instructions ; having filled up a requisition note giving particulars of the draft required, including the name of the payee, he was handed a draft in accordance with those particulars. In Jan. 1922, it was first discovered that on 41 out of 106 occasions upon which drafts had been so purchased since Nov. 1918, the accountant, having entered his own name in the requisition note, had obtained drafts payable to himself, & had misappropriated the proceeds, covering his fraud by false entries in the company's books. The resps. having paid the co. under a policy guaranteeing the fidelity of the accountant, sued the bankers (applts.) in respect of the loss after the date of the policy : —*Held :* the bankers had acted negligently in issuing the drafts without authority in accordance with the company's instructions, & were liable in damages in respect thereof ; the frequent repetition of the same irregular procedure afforded no defence either by way of estoppel, ratification or otherwise.—BANK OF MONTREAL *v.* DOMINION GRESHAM GUARANTEE & CASUALTY CO., LTD., [1930] A. C. 659 ; 99 L. J. P. C. 202 ; 144 L. T. 6 ; 46 T. L. R. 575 ; 36 Com. Cas. 28, P. C.

Annotations :—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

548. *Add. Annotations :*—**Refd.** Brown *v.* Swan 37 T. L. R. 787 ; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

549. *Add. Annotation :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

PART II. SECT. 8, SUB-SECT. 2.—B.

545 i. *To clerk—Notice of limitation of authority.*]—A clerk's express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all moneys collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft. bank cashed such a cheque on it, paying the clerk the proceeds :—*Held :* the bank was negligent as inquiry should have been made as to the clerk's authority & the unusual act of a business firm cashing such a cheque, especially of a large amount, & a certain discrepancy between the name of the payee in the cheque & the name in the indorsement should have aroused suspicion.—R. *v.* ROYAL BANK OF CANADA (1920), 1 W. W. R. 198 ; 50 D. L. R. 293 ; 30 Man. L. R. 104.—**CAN.**

545 ii. —— ——.]—HAYES *v.* STANDARD BANK, [1927] 3 D. L. R. 336 ; 60 O. L. R. 461 ; *revsd.*, [1928] 2 D. L. R. 898 ; 62 O. L. R. 186.—**CAN.**

545 iii. *Effect of signing "verification slip."*]—RUTHERFORD *v.* ROYAL BANK OF CANADA, [1932] S. C. R. 131 ; 2 D. L. R. 332.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—C.

548 i. *Cheque drawn on one branch—Payment at another—Dishonour on presentation.*]—A bank, which pays a cheque at any branch except that at which the customer keeps his account, must be assumed to have paid it not on the credit of the customer but on the indorsement itself.

A. drew a cheque in favour of B. upon the Bank C., D. branch, & B. indorsed it for collection in favour of L., who received payment from the P. branch of the bank, which sent the cheque on to the D. branch. The latter dishonoured the cheque, whereon the P. branch gave notice of dishonour & instituted a suit against B. & L. for the recovery of the sum paid. The defence was (*inter alia*) that the cheque having been discharged by payment there was no power left in the P. branch to give notice of dishonour :—*Held :* the payment by the P. branch did not operate as a discharge of the cheque, the payment having been made not on the credit of A. but on the credit of B. &, therefore, pltf. was entitled to recover the sum from defts. —RAJA JOYTI PRASAD SINGH DES BAHADUR *v.* CHOTA NAGPUR BANKING ASSOCN. (1928), I. L. R. 8 Pat. 413.—**IND.**

sk. *Effect of confirmation by telephone.*]—The accountant of a bank called up defts.' office by telephone, an automatic telephone, which rang number required direct without the necessity of calling a "central" operator. A woman's voice answered &, the accountant asking for the manager, a man's voice answered. The accountant then stated that it was the bank speaking & that the bank had a certain amount of money to pay over for the F. Co. "under protest," & the man at the other end of the wire said "All right":—*Held :* this constituted a notice to defts. that the money was available at the bank, & that it was not necessary the person spoken to should be identified.—FIDELITY OIL & GAS CO. *v.* JANSE DRILLING CO. (Alta.) (1916), 34 W. L. R. 370 ; 10 W. W. R. 533.—**CAN.**

PART II. SECT. 8, SUB-SECT. 3.—A.

549 iii. —— *Money advanced on holding security.*]—

550. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102 ; Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

552. *Add. Annotation :*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238.

554. *Add. Annotation :*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

557. *Add. Annotations :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

565. *Add. Annotation :*—*As to* (1) **Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108.

567. *Add. Annotation :*—**Consd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

567a. —— **Whether libellous.**]—PLUNKETT *v.* BARCLAYS BANK, LTD., No. 321b, *ante*.

569. *Add. Annotations :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvennoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Richardson *v.* Richardson, [1927] P. 228; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

574. *Add. Annotation :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

579. *Add. Annotations :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367 ; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

585. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

589. *Add. Annotation :*—**Consd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

589a. —— **Mistake in telegram—Duty of bank to make inquiry.**]—Pltf., who had an account with defts., on July 31, 1924, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a cheque numbered 117,283 had already been presented & honoured. In an action for negligence :—*Held :* the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—WESTMINSTER BANK, LTD. *v.* HILTON (1926), 136 L. T. 315; 43 T. L. R. 124 ; 70 Sol. Jo. 1196 ; *sub nom.* HILTON *v.* WESTMINSTER BANK, LTD., 162 L. T. Jo. 450, H. L.

592. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

594. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

595. *Add. Annotation :*—*As to* (2) **Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

600a. Presentment over counter—Duty of bank to pay.]—Pltfs., a partnership firm at Liverpool, sold goods to the P. Co. & drew upon the co. a bill for a large amount payable in three months in payment for the goods. The P. Co. accepted the bill payable at deft. bank at Liverpool, where they kept their account. Shortly before the bill became payable the co., who were then overdrawn at deft. bank, asked that bank to order payment of the bill & charge to the account of the co. Defts. were willing to act upon this advice, because they had an arrangement for a running overdraft with the co., & the bill was within the limits of that overdraft. When the bill became due it was brought by W., a servant of pltfs., to a partner of pltf. firm, who, at W.'s request, indorsed the bill in blank. W., instead of taking the bill to pltfs.' bank for the purpose

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FINUCANE *v.* STANDARD BANK OF CANADA, [1921] 3 W. W. R. 314 ; 62 S. C. R. 110 ; 59 D. L. R. 465.—**CAN.**

y i. —— *Dishonour of cheques payable to self.*]—A demand made personally by a customer upon his banker for payment is a two-party transaction. The refusal of payment cannot give rise to the implication of defamation of the customer to a third party, which necessarily arises when a trader's cheque, drawn or indorsed in favour of a third party, is presented by the holder & dishonoured by the banker. Judgment for pltf. for £250 set aside, & judgment entered for defts., defts. having admitted liability to pay pltf. nominal damages & having paid £10 into ct.—KINLAN *v.* ULSTER BANK, LTD., [1928] I. R. 171.—**IR.**

PART II. SECT. 8, SUB-SECT. 3.—B.

573 ii. ——.]—A banker is not obliged to pay a cheque when there are no assets belonging to the customer in his hands ; & the countermanding of a cheque by a customer in whose account there are funds sufficient to meet it cannot do more than cause the obligation to pay, which otherwise existed, to cease to exist.—PUNJAB INDUSTRIAL AGENCY, LTD. *v.* MERCANTILE BANK OF INDIA, LTD. (1929), I. L. R. 11 Lah. 667.—**IND.**

PART II. SECT. 8, SUB-SECT. 3.—D.

583 i. *Dishonour by country bank—Failure to return cheque by return of post—Clearing-house rules.*]—When a cheque is passed through the clearing-house in Melbourne & not returned dishonoured within the time allowed by the rules of the clearing-house for the return of dishonoured cheques, its payment to the collecting bank must on the expiration of that time be regarded as complete. Pltf. paid into his account at a country branch of deft. bank a cheque drawn upon a Melbourne branch of another bank. The cheque was passed through the Melbourne clearing-house, where, on the settlement of balances, its amount was credited to deft. bank by the bank upon which it was drawn. After the expiration of the time allowed by the rules of the clearing-house for the return of dishonoured cheques had expired, the cheque was returned dishonoured to deft. bank. Notwithstanding that the rules provided that any stale return might be rejected, deft. bank credited the bank upon which the cheque was drawn with its amount :—*Held :* deft. bank had, as agent for pltf., received payment of the cheque, & was therefore liable to pltf. for its amount as money had & received to his use.—RIEDELL *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1931] V. L. R. 382 ; Argus L. R. 285.—**AUS.**

PART II. SECT. 8, SUB-

sl. *Payment after notice of countermand—Liability of bank.*]—GARRIOCH *v.* CANADIAN BANK OF COMMERCE, [1919] 3 W. W. R. 185.—**CAN.**

589 i. *By telegram—Payment after notice of countermand—Negligence.*]—*Held :* defts. were guilty of a breach of duty as bankers.—READE *v.* ROYAL BANK OF IRELAND, LTD., [1922] 2 I. R. 22.—**IR.**

sm. *By notice of death.*]—The duty & authority of a bank to pay a cheque cease on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025 ; 53 D. L. R. 351.—**CAN.**

sn. ——.]—It is not the death of the customer, but notice of his death, that operates as a revocation of the authority of a bank to pay the customer's cheque.—KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372 ; 18 O. W. N. 138.—**CAN.**

so. ——.]—WINNIPEG SAVINGS BANK (TRUSTEE) *v.* KENNY, [1924] 1 D. L. R. 953.—**CAN.**

of collection through the clearing house, presented the bill for payment over the counter to deft. bank & received the money, which he then fraudulently converted & stole. Pltfs. sued defts. to recover the amount of the bill on the grounds of negligence, money had & received, & conversion of the bill. Evidence was given at the trial that there is an almost universal custom at Liverpool that trade bills should be presented through the clearing house for payment to the bank at which they were accepted payable, but evidence was also given that presentation of such bills over the counter, though most unusual, was not irregular :—*Held :* deft. bank were not liable to pltfs. (1) on the ground of negligence, because no privity of contract existed between defts. & pltfs., & defts. owed no duty to pltfs. ; (2) on the ground of money had & received, because the drawing of the bill did not amount to an assignment in favour of the payee of funds of the drawee, as the acceptors had no funds to meet the bill, which was paid out of a loan by defts., & the advice to pay the bill sent by the acceptors to defts. gave no rights to pltfs. as against defts. ; (3) defts. were not liable to pltfs. for the conversion of the bill, because the bill was a negotiable instrument, & they paid it in good faith without notice of any defect in title & in accordance with the law merchant. A bank was not bound to make inquiries merely because a bill indorsed in blank or an open cheque was presented for payment over the counter. According to the law merchant such presentation, although unusual, was always recognised as due presentation, sufficient to require the bankers to pay, in the absence of very special circumstances of suspicion.—AUCHTERONI & Co. *v.* MIDLAND BANK, LTD., [1928] 2 K. B. 294 ; 97 L. J. K. B. 625 ; 139 L. T. 344 ; 44 T. L. R. 441 ; 72 Sol. Jo. 337 ; 33 Com. Cas. 345.

603. *Add. Annotation :*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

615. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

617. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102 ; Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

624. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

625. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

626. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

627. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

629. *Add. Citation :*—88 L. J. K. B. 55.
Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

629a. —— —— **Space left between name of payee & words "or order."**]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co.
or order " & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or order " ; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing-house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* (1) the cheque had been " materially altered " within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque ; (2) for the same reason defts. could not rely on sect. 80 of the Act ; (3) assuming the description of the payees, " J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of " C. & P." without any reference to " J. P. & Co." was irregular & invalid & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act ; (4) in leaving a blank space between the names of the payees & the words " or order " pltfs. were not guilty of any breach of duty towards defts.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544 ; 101 L. J. K. B. 281 ; 146 L. T. 377 ; 48 T. L. R. 114 ; 37 Com. Cas. 39, C. A.

631. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

634. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

634a. —— —— **Customer silent—Estoppel.**]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the

account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51 ; 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotations :—**Consd.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612. **Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

635. *Add. Annotation :*—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

639a. Payment to third party without valuable consideration—Right of bank to recover.]—Deft. H. having possessed himself of crossed cheques which were drawn on pltf. bank in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited H. with the amounts. H. drew out these amounts & paid some of the money without valuable consideration to deft. S., who in turn paid into her account with deft. bank a portion of what she so received. S. had no notice of any defect in H.'s title, & she never paid into her account with deft. bank any money except money which was part of the proceeds of H.'s frauds. In an action for a declaration that the money standing to the credit of S. with deft. bank was the property of pltf. bank :—*Held :* on the assumption that H. obtained a voidable title to the proceeds of the cheques, yet pltf. bank had established their right to the money claimed, as it was capable of being traced.—BANQUE BELGE POUR L'ETRANGER *v.* HAMBROUCK, [1921] 1 K. B. 321 ; 90 L. J. K. B. 322 ; 37 T. L. R. 76 ; 65 Sol. Jo. 74 ; 26 Com. Cas. 72, C. A.

Annotation :—**Expld.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

640. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

644. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

646. *Add. Annotation :*—*As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

647a. Alteration of payee.]—Pltfs., exors. of one T., deceased, employed a solr., one C., of a firm C. & P. to act for them in matters relating to deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers ; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words "*per* C. & P.," & then indorsed the cheque with the words "C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts. :—*Held :* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed. If, however, the cheque remained a valid one defts. had dealt with it without negligence & were protected by Bills of Exchange Act, 1882 (c. 61), s. 82, & for that reason also the claim failed.—SLINGSBY *v.* WESTMINSTER BANK, LTD. (No. 2), [1931] 2 K. B. 583 ; 101 L. J. K. B. 291, n. ; 146 L. T. 89 ; 47 T. L. R. 1 ; 36 Com. Cas. 61.

Annotation :—**Overd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

647b. ——.]—SLINGSBY *v.* THE DISTRICT BANK, No. 629a, *ante*.

649. *Add. Annotations :*—**Consd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

652. *Add. Annotation :*—**Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

655. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

PART II. SECT. 10.

635 ii a. —— —— ——.]—In an action by a customer of deft. bank to recover the aggregate amount of a number of cheques forged by a confidential clerk employed by the customer, which were paid by the bank & charged to the customer's account, the fraud being skilfully concealed from both customer & bank :—*Held :* with the exception of certain cheques bearing genuine signatures, the amounts of which were raised by the clerk, there was no negligence on the part of either the customer or the bank in failing to discover the frauds.—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326 ; 34 D. L. R. 743.—**CAN.**

635 ii b. —— —— ——.]—A customer of a bank was estopped from denying that certain forged cheques were signed by him or by his authority, by reason of his conduct in not having notified the bank when he learned of the forgery of previous cheques on his account by the same person.—CABANA *v.* BANK OF MONTREAL, [1934] 3 W. W. R. 969.—**CAN.**

637 i. —— —— *Debited in pass book —Book returned unexamined.*]—The negligence of a customer, who, by failing to examine her pass book, does not discover that there has been an unauthorised withdrawal from her account :—*Held :* not to give rise to an estoppel or prevent the recovery from the bank of further moneys subsequently paid out by the bank in good faith on similar cheques.—ABBOTT *v.* BANK OF TORONTO ; ABBOTT *v.* BANK OF MONTREAL, [1934] 3 D. L. R. 256 ; O. R. 396.—**CAN.**

658. *Add. Annotations :* — **Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

663. *Add. Annotations :*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

666. In paragraph, for " protected by Bills of Exchange Act, 1882 (c. 61), s. 19," read " protected by Stamp Act, 1853 (c. 59), s. 19." *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

667. *Add Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India (1927), 44 T. L. R. 165.

668a. —— —— —— ——,] — M., who was secretary & managing director of pltf. co., represented that he had bought goods for them from W., & the co. drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to W., & handing them to M. as manager that he might hand them to W. M., instead of doing so, paid the cheques with forged indorsements into his own account with deft. bank which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including M., of pltf. co. M. applied the money received from the cheques with the exception of about £272 for W., paying out of the proceeds of five cheques " to order " for £62 10*s.* each four sums of £60 from his private account to W. One cheque, dated May 27, 1918, for £97 10*s.*, which was payable to " self or order " & signed by M. & a co-director, was refused by the bank, & came back to them after such refusal with M.'s name written in after the word " self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value :— *Held :* (1) the *onus* of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10*s.* each ; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account ; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors ; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10*s.* ; (5) there must be judgment for pltf. co. for £2 10*s.* on four of the cheques " to order " for £62 10*s.*, £62 10*s.* on the fifth cheque for the same amount, & £97 10*s.* on the cheque of May 27, 1918, making an aggregate amount of £170.—SOUCHETTE, LTD. *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD. (1920), 36 T. L. R. 195.

670. *Add. Annotations :*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297 ; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

671. *Add. Citation :—sub nom.* MATHEWS *v.* WILLIAMS, BROWN & Co., 10 R. 210.

672. *Add. Annotation :—As to* (2) **Refd.** Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

672a. —— **Collection for another bank.**] — IMPORTERS Co. *v.* WESTMINSTER BANK, No. 292b, *ante.*

673. *Add. Annotations :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683 ; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

674. *Add. Annotations :—As to* (2) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

676. *Add. Annotations :*—**Apld.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Consd.** *Re* Farrows' Bank, [1923] 1 Ch. 41 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346 ; Sutters *v.* Briggs, [1922] 1 A. C. 1 ; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297 ; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 73.

677. *Add. Annotations :*—**Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346 ; Sutters *v.* Briggs, [1922] 1 A. C. 1 ; *Re* Farrow's Bank, [1923] 1 Ch. 41 ; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

679. *Add. Annotation :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680. *Add. Annotation :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680a. " Receives payment "—Collecting bank.]—IMPORTERS Co. *v.* WESTMINSTER BANK, No. 292b, *ante.*

680b. Payment in ordinary course of business—Bills of Exchange Act, 1882 (c. 61), s. 60—Stamp Act, 1853 (c. 59), s. 19.]—Pltfs., as managers of a convalescent home, kept an account with deft. bank. Pltfs. employed a secretary of the committee which managed the home, who kept his personal account with deft. bank. By a series of frauds, the secretary misappropriated cheques amounting to over £4,000, which were the property of pltfs. & which he contrived to have placed to his account with deft. bank in the following manner. The cheques, which were crossed, were all properly signed by pltfs.' proper officers, & in most cases were drawn to people who had supplied goods to the home, in which cases the secretary forged an indorsement, or procured a forged indorsement of the payee, & paid the cheques into deft. bank, asking the bank to credit his

account with the amount of the cheques. In other cases, the secretary procured cheques to be drawn in payment of forged invoices in favour of fictitious persons, & in these cases the indorsements were similarly forged, & the amounts of the cheques credited to the secretary's account. In an action for conversion, deft. bank pleaded: (i.) that the payees were non-existent persons, & that the secretary was the bearer of the cheques; (ii.) that it had paid the cheques in good faith in the ordinary course of business, & was protected by Bills of Exchange Act, 1882 (c. 61), & Stamp Act, 1853 (c. 59); & (iii.) that the cheques were crossed, & that it received payment thereof for a customer in good faith, & without negligence:—*Held:* (1) (MACKINNON, L.J., dissenting) as a receiving bank deft. bank had been guilty of conversion, &, as it had been found by the judge to have acted negligently, it was not protected by Bills of Exchange Act, 1882 (c. 61), s. 82. Deft. bank was therefore liable to pltfs. for the amount of the cheques converted during the six years prior to the action; (2) each transaction was a separate one, & the bank was not entitled to plead that, as the system had been going on for some time, the cheques received during the six years prior to the action had been received without negligence on the part of the bank; (3) (MACKINNON, L.J., making no reference to this point) Stamp Act, 1853 (c. 59), s. 19, is impliedly repealed by Bills of Exchange Act, 1882 (c. 61), s. 60; (4) *per* SLESSER & MACKINNON, L.JJ.: a bank can act negligently, & yet be acting in the ordinary course of business; (5) *per* GREER, L.J.: Bills of Exchange Act, 1882 (c. 61), s. 60, protects a bank only when that bank is merely a paying bank, & is not a bank which receives the cheque for collection. *Per* SLESSER, L.J.: deft. bank as paying bank was to be deemed to have paid the cheque in the ordinary course of business, & was protected by sect. 60.—CARPENTERS CO. *v.* BRITISH MUTUAL BANKING CO., LTD., [1937] 3 All E. R. 811; 157 L. T. 329; 53 T. L. R. 1040; 81 Sol. Jo. 701; 43 Com. Cas. 38, C. A.

681. Before this case add "*See, also,* Nos. 674-680."

684. *Add. Annotations:*—**Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

685. *Add. Annotation:*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

687. *Add. Annotations:*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank [1924] 1 K. B. 775; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

687a. —— —— ——.]—L., who was the chief accountant at the Bombay branch of pltf. bank, & was authorised to sign cheques on their behalf, had by a system of fraud procured the signature by another official of the branch of cheques payable to deft. bank. Those cheques were then sent to deft. bank for collection, with instructions written by L. on the bank's letter paper requesting deft. bank to place the proceeds of the cheques to the credit of a joint account which L. had opened at deft. bank in the name of himself & his wife. Those instructions having been carried out, the proceeds of the cheques were then collected by L. promptly after they had been paid in. It appeared from the account itself that it was generally in small credit until the arrival of each fraudulent cheque, & there was a failure on the part of deft. bank to make inquiries of pltf. bank as to the regularity of the transactions:—*Held:* (1) each cheque taken by itself was "issued," being signed & dealt with by persons having ostensible authority to sign & issue it, but the accompanying instructions, signed by L. alone, gave notice of irregularity which destroyed the "holding in due course"; (2) deft. bank were not entitled to rely on Indian Negotiable Instruments Act, s. 131. as their title as holders was defective through notice, so that they were not "true owners" within the sect.; (3) deft. bank had failed to discharge the burden of showing that they had collected without negligence. Examination of L.'s account should have put them on inquiry as to the source from which these payments were made, & pltfs. were entitled to succeed in their claim for conversion; (4) defts. could not set off the amount of the cheques repaid to pltfs. against the amount of the converted cheques.—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, [1929] 1 K. B. 40; 97 L. J. K. B. 609; 139 L. T. 126; 44 T. L. R. 534; 33 Com. Cas. 306, C. A.

Annotations:—As to (3) **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

687b. —— —— ——.]—One T., a solr., had from a client a power of attorney entitling T. to draw cheques on the client's banking account & to apply the moneys for the purposes of his client. T. for his own purposes fraudulently drew 15 cheques on his client's account with the B. bank, signing the cheques by using a rubber stamp which had on the upper line the name of the client & on the lower line "his attorney" & by placing his own signature between the lines. T. then paid the cheques into his own account with the M. bank, defts., with whom he had an overdraft. On discovering the facts the client brought an action against defts. for damages for conversion of the cheques, & defts. relied on Bills of Exchange Act, 1882 (c. 61), s. 82, alleging that the cheques were crossed cheques & that they had received payment of them in good faith & without negligence. During the proceedings T.'s client died, & the proceedings were continued by the client's exors. as pltfs. It was admitted that defts. had acted in good faith:—*Held:* except in the case of two of the cheques defts. in presenting & receiving payment for the cheques, had converted them, & as defts. had from the form of the cheques notice as to the money not being T.'s money, they were negligent in making no inquiry as to T.'s authority to make these payments into his own account,

& therefore the action succeeded.—MIDLAND BANK, LTD. *v.* RECKITT, [1933] A. C. 1; 102 L. J. K. B. 297; 148 L. T. 374; 48 T. L. R. 271; 76 Sol. Jo. 165; 37 Com. Cas. 202, H. L.

Annotation:—**Consd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

689. *Add. Annotation:*—*As to* (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

690. *Add. Annotations:*—*As to* (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. *Generally*, **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 423.

691. *Add. Annotation:*—*As to* (2) **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691a. —— —— **Cheque payable to & indorsed by public official.**]—A banker to whom a private customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to "The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries, or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of defts.' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against defts. for damages for conversion of the cheques:—*Held:* the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of defts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore defts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—ROSS *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

Annotations:—**Dbtd.** Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173. **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691b. —— —— **Cheque payable to company.**]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

—— —— ——.]—In 1922 pltfs. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltfs. a crossed cheque for £8,000. That

PART II. SECT. 12, SUB-SECT. 3.

691 i. *What is negligence—Defective title of customer—Collection for stranger.*] —A man unknown to a banker was permitted to open an account with the bank by paying in a deposit of £5 in notes & four crossed cheques for collection, such cheques being made payable to a number or bearer & marked "bank," or "not negotiable," or "bank not negotiable." Without making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for collection four other crossed cheques, including one drawn by pltf. payable to a number or bearer to which the man who paid it in had no title. These four cheques were collected by the bank almost without inquiry:—*Held:* the circumstances in which the account was opened was such as to put the bank upon inquiry; the duty of inquiry extended to the transactions of the next day & in the absence of reasonable inquiry the bank was guilty of negligence.—LONDON BANK OF AUSTRALIA, LTD. *v.* KENDALL (1920), 28 C. L. R. 401.—AUS.

691 ii. —— —— ——.]—MASON *v.* SAVINGS BANK OF SOUTH AUSTRALIA, [1925] S. A. S. R. 198.—AUS.

691 iii. —— ——.]—Pltf.'s manager, S., had general authority to draw cheques on pltf.'s account. S. drew & signed a cheque on pltf.'s account for £250 odd in favour of "A. or bearer"; the amount, date & payee's name was also in the handwriting of S. The cheque was crossed generally "Not negotiable." The cheque was on one of pltf.'s cheque forms. This cheque was paid by S. into his account with deft. bank a few hours after it appeared to have been signed. The teller on S. handing in the cheque, asked S. which his title was & received an assurance from S. that "it was all right." S. was well known & of good repute in the district, & had had an account with deft. bank for some time, & during the previous six months several cheques in his favour signed by him, drawn on pltf.'s account, had been paid in & not been queried. Over a year later S. drew & signed a further cheque on one of pltf.'s forms on pltf.'s account for £358 odd in favour of "V. or bearer." The cheque & transaction were similar to the other cheque except that the date, name of payee & payee & amount were not in S.'s handwriting. A similar query was made by the teller, & answered in much the same way. In the interval five directors' cheques signed by S. had been paid in payable to himself or bearer. Other than the inquiry made by the teller of S. no inquiries were made by the deft. The cheques were in fact drawn by S. without authority & the proceeds were misappropriated by him. In an action for damages for conversion:—*Held:* there was a conversion in each case. Also, as the bank had not acted without negligence, it was not protected by sect. 88 of Bills of Exchange Act, 1909.—BENNETT & FISHER, LTD. *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1930] S. A. S. R. 26.—AUS.

691 iv. ——.]—Where a banker claims the protection of sect. 88 (1) of Bills of Exchange Act, 1909–1912, the test of negligence is whether the transaction of paying in the cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubts in the banker's mind & caused him to make inquiry.—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* BEATTY, [1931] S. R. (Q.) 291.—AUS.

cheque was duly received at pltfs.' office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltfs., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "for & on behalf of B. & Co. T. B. director," & was paid into the account of B. & Co. at a branch of defts.; & subsequently by arrangement between defts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltfs. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltfs. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £450 against J. & £10,450 against B. The money was not paid, & pltfs. brought an action against defts. for conversion of the £8,000 cheque:—*Held:* there was clear evidence of negligence on the part of defts., & Bills of Exchange Act, 1882 (c. 61), s. 82, gave no defence to the claim.—LONDON & MONTROSE SHIPBUILDING & REPAIRING CO., LTD. *v.* BARCLAYS BANK (1926), 31 Com. Cas. 182, C. A.

691d. —— —— **Dividend warrant for War Loan.**] —The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed "& Co. Not negotiable" & being expressed to be "A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount:—*Held:* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a "cheque"; (2) the word "dividends" in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock, & (3) as defts. had not been guilty of any negligence they were, on both grounds, protected by Bills of Exchange Act, 1882 (c. 61), s. 82, & the action failed.—SLINGSBY *v.* WESTMINSTER BANK, LTD., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations:—**Dbtd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

691e. —— —— **Sufficiency of inquiries—Breach of regulations.**]—T., a motor trader in Bristol, had an account with deft. bank. He induced pltfs., a hire-purchase finance firm, to make out a cheque to W. & Co. for £189 5*s.*, which cheque was crossed & marked not negotiable in print. T., having forged the indorsement of W. & Co. upon it, then added his own indorsement to it & paid it into his own account. The cashier asked T., if he had obtained the cheque from W. & Co., to which question he replied in the affirmative. The cashier then inspected T.'s account & saw there were considerable dealings between him & W. & Co. T. then volunteered the information that he had bought a car from W. & Co., & sold it to a customer of his, & mentioned a cheque for £484 10*s.* which had passed through his account in favour of W. & Co., & led the cashier to believe that a hire-purchase arrangement had been entered into with pltfs. in respect of a car bought from W. & Co. & sold to one of his customers. Deft. bank's regulations require such a cheque to be dealt with by the branch manager, & not by the cashier. The cheque was not brought to the branch manager's notice, nor did the cashier by inquiry discover, as the fact was, that many cheques drawn by T. on his account had been dishonoured, or honoured only after repeated presentation. The bank made no inquiry of W. & Co. respecting the cheque. Pltfs. sued the bank for the conversion of the cheque:—*Held:* (1) a breach of the bank's own regulations was not conclusive proof that the cashier made insufficient inquiry, nor is a customer entitled to require literal performance of such regulations; (2) the past banking history of T. was such that the bank should have made further inquiry, possibly by reference to the drawer or the payee of the cheque.—MOTOR TRADERS GUARANTEE CORPN., LTD. *v.* MIDLAND BANK, LTD., [1937] 4 All E. R. 90; 157 L. T. 498; 54 T. L. R. 10; 81 Sol. Jo. 865.

692a. ——.] —TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK, No. 292a, *ante.*

692b. —— **Question of fact.**] — The question whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer:—*Held:* that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect.—HAMPSTEAD GUARDIANS *v.* BARCLAYS BANK, LTD. (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

692c. ——.]—SLINGSBY *v.* WESTMINSTER BANK (No. 2), No. 647a, *ante.*

692d. —— **Failure to require particulars of cheques paid in.**]—It was the practice of bankers having a head office in London & various branch offices in London & elsewhere to accept at their head office cheques for the credit of an account at any one of their branch offices & to accept at any one of their branch offices cheques for the credit of an account at any other branch office. A firm of London stockbrokers were in the habit of signing crossed cheques which were intended to be applied in payment of jobbers' accounts, & which in accordance with a rule of the London Stock Exchange were crossed & made payable to bearer. They had in their employment two clerks, P. & S. P. had an account at one country branch of the bank. The wife of S. had an account at another country branch. The manager of country branch No. 1 knew that P. was a stockbroker's clerk, but did not know &

did not ask the name of his employers. The manager of country branch No. 2 knew nothing of S. Both P. & Mrs. S. had, when opening their accounts, given references which appeared satisfactory to the respective branch managers. P. stole many of the cheques signed as above, & handed them in at one or other of the bankers' London branches, making out paying-in slips which represented that the cheques were paid in by the payees & directed payment to be made to the credit of P.'s account at country branch No. 1. S. also stole many of the cheques & handed them in at the bankers' head office, making out paying-in slips directing payment to be made to the account of Mrs. S. at country branch No. 2. The stolen cheques were in each case received by the London office & sent to the Clearing House. The paying-in slips were sent to the country branch, no mention being made of the names of the drawers. The amounts of the cheques were without question credited as directed by the paying-in slips. Written rules formulated by the bankers for the direction of their managers provided, among other things, that no new current account should be opened without knowledge of, or full inquiry into, the circumstances & character of the customer; there was also a rule, not written but generally recognised, that banks do not take payments in, without inquiry, of cheques drawn by a firm in favour of a third party & paid in by a person, other than the payee, who is or ought to be known to be an employee of the drawing firm. The stockbrokers sued the bankers for conversion of the stolen cheques. The bankers pleaded Bills of Exchange Act, 1882 (c. 61), s. 82, & alleged that they had in good faith & without negligence received payment of the cheques for their customers P. & Mrs. S.:—*Held:* (1) the practice of the bankers was defective in that the branch which received the cheques in the first instance never informed the crediting branch of the names of the drawers of the cheques; (2) the managers of the crediting branches had omitted to make sufficient inquiries when accepting P. & Mrs. S. as customers; in these circumstances the bankers had failed to prove that they had acted without negligence, & consequently that they were liable; (3) *Semble*, by Ct. of Appeal, neither P. nor Mrs. S. was a "customer" within the true meaning of sect. 82, inasmuch as neither had an account at the City offices into which the cheques were paid. —LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., [1933] A. C. 201; 102 L. J. K. B. 224; 49 T. L. R. 116; 38 Com. Cas. 115; *sub nom.* SAVORY & Co. *v.* LLOYDS BANK, LTD., 148 L. T. 291, H. L.

Annotation:—Generally, **Refd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

692e. —— **Failure to inquire as to employment or occupation of customer.**]—LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., No. 692d, *ante*.

692f. Who is "customer."]—LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., No. 692d, *ante*.

Banker's drafts.]—*See* Bills of Exchange Act (1882) Amendment Act, 1932 (c. 44).

693. *Add. Annotation:*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

Add. Annotations:—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

696. *Add. Annotation:*—**Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

703. *Add. Annotations:*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

704. *Add. Annotation:—As to* (2) **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

706. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

708. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

713. *Add. Annotation:*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

728. *Add. Annotation:*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

734. *Add. Annotations:*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244; Jones *v.* Waring & Gillow, [1926] A. C. 670.

735. *Add. Annotation:—As to* (2) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

748. *Add. Annotation:*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

PART II. SECT. 13, SUB-SECT. 1.

696 i. *Passing to & fro of—Effect.*]—*Qu.*: whether the return of a bank's pass book without comment constitutes a stated & settled account & operates as an estoppel precluding the customer from disputing the entries therein to the prejudice of the bank.—BATAKRISHNA PRAMANIK *v.* BHOWANIPUR BANKING CORPN., LTD. (1931), I. L. R. 59 Calc. 662.—**IND.**

699 iii. —— ——.]—BHARAT NATIONAL BANK *v.* BANARJE DAS (1923), I. L. R. 5 Lah. 129.—**IND.**

sp. *Signing vouchers as to correctness of account in pass-book—Estoppel.*]—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326; 34 D. L. R. 743.—**CAN.**

st. —— ——.]—Monthly vouchers regularly signed by a bank's customer as to the correctness of his account as it stood from time to time & given in exchange for cancelled cheques, were held to be fatal to his contention that certain cheques had not been credited to him.—UNION BANK OF CANADA *v.* WOOD, [1920] 3 W. W. R. 173.—**CAN.**

sw. —— ——.]—CAMPBELL *v.* IMPERIAL BANK, [1924] 4 D. L. R. 289; 55 O. L. R. 318.—**CAN.**

713 ii. —— —— ——.]—The delivery of a pass-book cannot constitute a *donatio mortis causâ* so as to give the donee title to the money represented by it.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—**CAN.**

PART II. SECT. 16.

a i ——.]—A document in the form of a letter written by a bank was as follows:—"We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on G. & Co., of London, to the extent of £16,875 on the following conditions: bills to be drawn payable three months after sight & to be accompanied by

752. *Add. Annotations :*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711; Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

753. *Add. Annotation :*—**Consd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

756. *Add. Annotation :*—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

756a. Credit conditional on tender of approved insurance policy—What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft :—*Held :* the certificate was not an "approved insurance policy" within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—SCOTT (DONALD H.) & CO., LTD. *v.* BARCLAYS BANK, LTD., [1923] 2 K. B. 1; 92 L. J. K. B. 772; 129 L. T. 108; 39 T. L. R. 198; 67 Sol. Jo. 456; 28 Com. Cas. 253, C. A.

Annotations :—**Refd.** Harper *v.* Mackechnie, [1925] 2 K. B. 423; Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692; Sassoon *v.* International Banking Corpn., [1927] A. C. 711; De Monchy *v.* Phœnix Insce. Co. of Hartford (1928), 138 L. T. 703.

756b. Irrevocable letter of credit—Payment for goods—Refusal of bank to pay invoices—Liability of bank to seller.]—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers :—*Held :* the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—URQUHART LINDSAY & CO. *v.* EASTERN BANK, LTD., [1922] 1 K. B. 318; 91 L. J. K. B. 274; 126 L. T. 534; 27 Com. Cas. 124.

Annotation :—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

756c. Revocable letter of credit—Duty of bank to give notice of withdrawal.]—A firm in W., who wished to buy a quantity of asbestos sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the duty of defts. to give to pltfs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of defts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to defts. on the application for payment on the second occasion was a bill of lading which defts. alleged was out of order, but which, according to pltfs., was in exactly the same terms as the former bill of lading accepted by defts. without objection :—*Held :* (1) a letter in the form of that written by defts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on defts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—CAPE ASBESTOS CO., LTD. *v.* LLOYDS BANK, LTD., [1921] W. N. 274.

proper shipping documents representing shipment of two thousand bales of jute of a particular mark from Calcutta to Antwerp, during Nov., Dec. 1920." Among the conditions, the two following were the important :—(a) "Please note that this advice does not release you from the liability attaching to the drawer of a bill of exchange"; (b) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit" :—*Held :* the document was not an ordinary banker's letter of credit.—CHANDANMULL BENGANEY *v.* NATIONAL BANK OF INDIA, LTD. (1923), I. L. R. 51 Calc. 43.—IND.

760. *Add. Annotations :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

767. *Add. Annotations :*—**Consd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262. **Refd.** National Provident Institution *v.* Brown, Brown *v.* National Provident Institution, Provident Mutual Life Assce. Assocn. *v.* Ogston, Ogston *v.* Provident Mutual Life Assce. Assocn. (1921), 8 Tax Cas. 57.

768. *Add. Annotation :*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

779. *Add. Annotation :*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

790. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

798. *Add. Annotation :*—**Refd.** Humphrey *v.* Wilson (1929), 141 L. T. 469.

803a. —— ——.]—Three shareholders in a shipbuilding co., which was heavily indebted to a bank, agreed to purchase certain shares in a steel co. which belonged to the shipbuilding co. & were held by the bank as security. The price of the shares was £69,750, & the bank agreed to advance £39,750, "on joint loan" to the three purchasers, the balance being provided by them in equal portions. The shares were thereafter to be held by the bank in security of the sum advanced. The purchasers paid for the shares by granting their individual cheques to the sellers for £10,000 each, & by drawing joint cheques, signed by them all. on the bank for the £39,750 advanced. The bank paid this amount to the sellers, & opened a joint overdraft account in name of the three purchasers. The purchasers were not customers of the bank. The value of the shares having fallen, the bank intimated to one of the three purchasers that it held him liable for the whole amount of the loan. He thereupon brought an action concluding for declarator that he was liable only for one-third of the amount of the loan, & that, on payment thereof, he was entitled to receive a transfer of one-third of the shares held in security by the bank :—*Held :* (1) the pursuer was liable for one-third only, in respect (*a*) that the purchasers were not jointly & severally liable, as drawers of the joint cheques, to the bank as a holder in due course, seeing that the cheques had been paid by the bank as drawee & were thus no longer subsisting documents of debt; & (*b*) that the loan was constituted by the agreement to advance it which imposed only a joint liability, & not by the cheques which were merely part of the machinery for carrying out the transaction; but (2) the pursuer was not entitled to receive a transfer of one-third of the shares, in respect that the bank, under the arrangement for the pledge of the shares, was entitled to treat the whole of the shares deposited as being security for the whole of the amount advanced.—COATS *v.* UNION BANK OF SCOTLAND, LTD., [1929] S. C. 114 (H. L.).

805. *Add. Annotations :*—*As to* (1) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *As to* (2) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

809. *Add. Citations :*—88 L. J. K. B. 85; 119 L. T. 727.

818a. —— **Capitalisation of unpaid interest on advance.**]—To secure a co.'s indebtedness to a bank, resps. from time to time gave guarantees to the bank. From 1920 onwards the co. was indebted to the bank continuously, & the interest on the amount owing from time to time was debited half-yearly to the co.'s account. On Nov. 17, 1926, when the co. had become completely insolvent, resps. satisfied the whole indebtedness to the bank by means of a loan from the bank to resps. personally. Resps. claimed repayment of income tax under Income Tax Act, 1918 (c. 40), s. 36 (1), on the part of the total sum paid amounting to £17,861 16*s.* 5*d.*, which represented interest debited half-yearly to the co.'s account with the bank :—*Held :* the interest due each half-year which, upon the failure of the co. to pay it, was, according to the regular practice of bankers, added to the capital sum advanced, was thereby capitalised & could not thereafter be treated as interest paid under the sub-sect.—INLAND REVENUE COMRS. *v.* HOLDER, [1931] 2 K. B. 81; 100 L. J. K. B. 439; 145 L. T. 193; 47 T. L. R. 330, C. A.; *on appeal, sub nom.* HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624, H. L.

Annotations :—**Follds.** Fenton's Trustee *v.* I. R. Comrs., [1936] 1 All E. R. 116. **Consd.** I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179. **Refd.** Carnarvon (Earl) *v.* I. R. Comrs. (1935), 19 Tax Cas. 455; Marland *v.* I. R. Comrs. (1934), 19 Tax Cas. 467.

820. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179.

PART II. SECT. 19.

82. *Unauthorised application of proceeds—In payment of borrower's debts to other customers—Right to damages.*]—After crediting pltf. with the proceeds of a note which it discounted for him, deft. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him :—*Held :* pltf. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—MARSH *v.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 486; 63 D. L. R. 659; 15 Sask. L. R. 201.—CAN.

PART II. SECT. 20, SUB-SECT. 1.

809 i. *Discharge of overdraft—Tender of cheque—What amounts to acceptance.*]—*Held :* the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—BURT *v.* NATIONAL BANK OF SOUTH AFRICA, LTD., [1921] APP. D. 59.—S. AF.

PART II. SECT. 20, SUB-SECT. 2.

822 iv. —— ——.]—A bank's customer conveyed certain lands, by way of mtge., as security for the money which had been advanced to him. The mtge. deed provided that the interest payable by the mtgor. was to be "at the said bank's current rate & calculated according to the custom of the bankers." As a matter of fact compound interest had been paid during the lifetime of the mtgor. In a suit for the administration of the estate of the mtgor. the bank claimed to be entitled to compound interest on the mtge. debt until date of payment :—*Held :* after the death of the mtgor. the relationship of banker & customer came to an end, & thereafter the deft. bore simple interest only.—MORGAN *v.* ROE (1911), 46 I. L. T. 41, C. A.—IR.

y i. —— —— ——.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agreement is not entirely void, & the customer

828. *Add. Annotations :*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422; I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

829. *Delete citation & add the following para. & citation :*—

Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

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remains liable to pay interest at the rate of 5 per cent.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD. (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—**CAN.**

y ii. —— —— ——.]—The stipulation by a bank for an illegal rate of interest merely avoids the rate & not the entire contract for interest.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

y iii. —— —— ——.]—Pltf. was indebted to deft. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—DEGROW *v.* UNION BANK OF CANADA (1922), 63 D. L. R. 688.—**CAN.**

y iv. —— —— ——.]—Where a bank contracts for 8 per cent. interest it can only collect the legal rate of 5 per cent.—BANK OF MONTREAL *v.* HOLOBOFF, [1923] 3 W. W. R. 645.—**CAN.**

y v. —— —— ——.]—A provision in a guarantee given a bank that any account settled or stated by or between the bank & its customer may be adduced by the bank as conclusive evidence against the guarantor, cannot be held binding on the guarantor, when there is included in the amount so stated interest charges at a rate in excess of the maximum legal rate allowed under Bank Act.—ROYAL BANK OF CANADA *v.* MCBRIDE, [1927] 1 D. L. R. 909; [1927] 1 W. W. R. 245; 21 Sask. L. R. 417.—**CAN.**

y vi. —— —— ——.]—Where interest on a loan has been charged up to a borrower's current account at a rate in excess of 7 per cent. & such charges have been included in the statements furnished him from month to month, &, without making any objection thereto, he has signed & returned such statements as satisfactory, he cannot complain, in an action to recover the loan & interest, that the charges for interest at that rate were illegal.—ROYAL BANK OF CANADA *v.* DOTEN (Alta.), [1927] 3 D. L. R. 305; [1927] 2 W. W. R. 670.—**CAN.**

y vii. —— —— *Whether charged.*]—Upon the return of a dishonoured bill, the drawer would again draw for the same amount, & pltf. bank would discount the bill as before, & if the second bill came back dishonoured it would again be charged in full to the drawer's account :—*Held :* there was no breach of Bank Act, s. 91.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 85; 59 O. L. R. 1.—**CAN.**

y viii. —— —— *Acquiescence—Whether guarantor bound.*]—When a bank has charged a borrower interest at a rate beyond that permitted by the Bank Act the principle that if the borrower voluntarily pays the excess he cannot recover it back extends to the borrower's voluntary assent to anything which is equivalent to payment of interest at that rate; & if at the date of a guarantee given the bank the actual amount guaranteed includes such excess interest & the borrower has so recognized the propriety of the excess charge that it must be considered voluntarily "paid," it is not afterwards open to the guarantor to say that as against him the accounts must be re-opened & such voluntary payments rescinded.—BANQUE CANADIENNE NATIONALE *v.* SHRAGGE (Man.), [1929] 3 W. W. R. 676; [1930] 1 D. L. R. 590.—**CAN.**

y ix. —— —— —— *Giving renewal note.*]—Where a customer has given a bank a note bearing a rate of interest higher than 7 per cent. & has renewed it with a note for an amount inclusive of the interest accrued at said rate such renewal note has the same effect as payment would have had with respect to the matter of interest, *i.e.*, the customer cannot complain in an action to recover the loan & interest that the rate of interest was illegal.—CANADIAN BANK OF COMMERCE *v.* POSTMAN & POSTMAN, [1931] 3 W. W. R. 737.—**CAN.**

sa. *Raising rate of interest—Whether customer bound.*]—The mere sending of a notice that the interest charged on overdrafts against security held by the bank has been raised, is not of itself sufficient to render a customer liable to pay the enhanced rate, but where, after receiving such a notice, the customer borrows more money from the bank, the bank is justified in charging him interest at the enhanced rate.—GADDAR MAL *v.* TATA INDUSTRIAL BANK, LTD., BOMBAY (1927), I. L. R. 49 All. 674.—**IND.**

PART II. SECT. 21, SUB-SECT. 1.

d i. —— *Liability contracted after execution of mortgage.*]—A mtge. to a bank cannot be a valid security for a liability contracted subsequently to its execution.—*Re* EDMONTON BREWING & MALTING CO., LTD. (NO. 2), [1918] 3 W. W. R. 988; 43 D. L. R. 748.—**CAN.**

n. Add " *affd.*, 58 S. C. R. 448."

n i. —— *Bank Act*, 1934.]—The prohibition in Bank Act, 1934, s. 75 (2) (c) against the taking of security on land is only against the taking of the security to secure future advances at a time when no advance has been made; it does not apply when additional security is taken after an advance has once been made.—CANADIAN BANK OF COMMERCE *v.* YORKSHIRE & CANADIAN TRUST, LTD., [1937] 2 W. W. R. 474.—**CAN.**

sm. *Unauthorised loan by bank—Right to sue.*]—Though under its memorandum of assocn. a bank is precluded from lending money on mtges. yet, where money has been lent by the bank on a mtge., it is entitled to sue for & realise the money so lent.—AHMED SAIT *v.* BANK OF MYSORE (1929), I. L. R. 53 Mad. 771.—**IND.**

PART II. SECT. 21, SUB-SECT. 2.

o i. ——.]—QUEBEC BANK *v.* PHILLIPS, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—**CAN.**

PART II. SECT. 21, SUB-SECT. 3.

837 i. *Promissory note—Bank parting with possession—Right to recover.*]—Where a promissory note which had been pledged by the holder thereof to his bank as collateral security was lost by the bank :—*Held :* the bank was liable to him for the value thereof, which was *primâ facie* its face value.—ROYAL BANK OF CANADA *v.* TALBOT, [1928] 3 D. L. R. 157; [1928] 2 W. W. R. 190; 34 Alta. L. R. 395.—**CAN.**

r i. —— —— *Money advanced partly on security of land.*]—A bank may recover upon a promissory note notwithstanding that the moneys were advanced upon the security in part of lands.—ROYAL BANK OF CANADA *v.* GOLD, [1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—**CAN.**

a i. —— —— *New note given by maker—Rights of bank.*]—*Held :* the bank was entitled to recover on the note.—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 26.—**CAN.**

a ii. —— —— *Conversion of specific security into general security.*]—*Held :* as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course.—BANK OF MONTREAL *v.* NORMANDIN, [1925] 3 D. L. R. 975; [1925] S. C. R. 687.—**CAN.**

f i. —— *Obtained to cover overdraft—Alleged fraud of manager.*]—Pltf. alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part.—BRASSETH *v.* ROYAL BANK OF CANADA (1921), 67 D. L. R. 740.—**CAN.**

f ii. —— *Renewal—Effect of.*]—The renewal by defts. of a promissory note given to pltf. bank as security for a loan :—*Held :* not to estop them from setting up the defence that the bank had received & misapplied the proceeds of goods covered by a lien note which they had assigned to the bank as collateral security, such proceeds having been paid into the bank by the maker of the lien note.—CANADIAN BANK OF COMMERCE *v.* REID, [1925] 3 D. L. R. 509; [1925] 1 W. W. R. 1080; 21 Alta. L. R. 337.—**CAN.**

sp. *Repayment of advance by cheque—On trust account—Knowledge of bank—Liability.*]—Where a bank which had made loans to a trust co. on which, in pursuance of the arrangement between it & the co., repayments were being made by the application of balances standing from time to time to the credit of the co.'s general account, was found on the evidence to have had express notice that cheques drawn on the account, in another bank, of pltf. estate, of which the co. was then exor., & deposited in the co.'s said general account, represented the moneys of the estate, & knew that payments received from the co. on its debt must represent, in part at least, the proceeds of said cheques, & concurred in the intention of the co. to so apply them :—*Held :* the bank was liable to the estate for the amount of the cheques, with interest from the dates when they were deposited in the co.'s account.—ATCHISON *v.* DOMINION BANK, [1935] 3 W. W. R. 97.—**CAN.**

sq. —— —— —— ——.]—Pltf. co., which had been appointed administrator of an estate after the original administrator, a trust co., went into liquidation, sued for restitution of moneys of the estate which had been received by deft. bank from said trust co. through a breach of trust to which, it was alleged, the bank was a party. It was found that moneys of the estate had been deposited in the trust co.'s general account in the bank, & that a cheque drawn on that account had been given the bank in settlement of notes due by the co. :—*Held :* under all the circumstances, the bank must be taken to have known that the co. was using trust funds for its own purposes, including its payments to the bank, & to have been put upon inquiry every time it received or was offered a cheque from the general account to be applied on the debts

844. *Citations:*—For "61 L. J. Ch. 732" read "61 L. J. Ch. 723."

Add. Annotations:—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

846a. —— —— Bank entitled to hold securities not merely for specific advance but for balance of whole account between broker & bank.]—TINDALL *v.* BARNETTS & HOARE (1887), 3 T. L. R. 476.

862a. Shares held by bank as security for joint loan to three persons—Several liability—Whether one borrower entitled to transfer of one-third of the shares on payment of his proportion.]—COATS *v.* UNION BANK OF SCOTLAND, LTD., No. 803a, *ante*.

owing to it by the trust co. The bank was, therefore, liable. The knowledge of or notice to such officials of the bank's branch, where the trust co. had its account, as accountants, ledger keepers or receiving tellers would be the knowledge of or notice to the bank.—RETAILERS' TRUST CO., LTD. *v.* DOMINION BANK, [1935] 3 W. W. R. 165.—**CAN.**

PART II. SECT. 21, SUB-SECT. 4.

844 iii. —— —— —— *Rights of customer.*]—A stockbroker, having in his possession shares belonging to a customer, pledged to him for a specific & definite purpose, has no right, in the absence of agreement with the customer, or some established custom binding upon the customer, to repledge the shares for more than the amount due to him; & where there has been such a repledge the customer is entitled, as against the broker's creditors, to the redelivery of the shares, which have not been disposed of by the bank, free from any claim of the trustee in bkpcy. of the broker's estate.—HAGGART *v.* TRUSTS & GUARANTEE CO., [1930] 2 D. L. R. 127; 65 O. L. R. 23; 11 C. B. R. 163.—**CAN.**

847 v a. —— —— —— ——.]—Shares in pltf.'s name were endorsed by him in blank without restriction & handed to his brokers as security on account of a purchase of other shares which he directed them to make. The brokers, although they had not carried out pltf.'s order to buy, hypothecated pltf.'s said shares with deft. bank. In an action against the bank & the brokers, in bkpcy. for conversion:—*Held:* in the absence of evidence that the bank had notice of a lack of capacity in the brokers to deal with the shares & of evidence pointing to a lack of good faith in the bank in the transaction, pltf. was estopped by his conduct in so endorsing the shares from asserting title to them as against the bank, even though there was fraud on the part of the brokers.—ROBINSON *v.* BANK OF TORONTO & CLARK (R. P.) & CO., [1932] 2 W. W. R. 91; 45 B. C. R. 518.—**CAN.**

m i. —— *Stock registered in name of bank's nominee—Identity of shares not preserved—Rights of owner.*]—A customer, who had a secured loan account with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain the specific shares unless realised for reduction of the loan & to retransfer the identical shares on repayment of the loan:—*Held:* defenders had acted according to their usual practice, which was known to & approved by the firm of stockbrokers whom pursuer had employed as her agents in the transactions, & she was barred from insisting in the action.—CRERAR *v.* BANK OF SCOTLAND, [1922] S. C. (H. L.) 137; 59 Sc. L. R. 312.—**SCOT.**

p i. *Shares of company—Sale by bank before default—Measure of damages.*]—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—**CAN.**

857 ii. *Shares deposited by customer—Defect in title—Rights of bank.*]—Share certificates endorsed in blank held to be negotiable instruments transferable by delivery. Pltf. agreed to take a certain number of its shares from a stock-brokerage co. which had acted as his brokers, provided certain conditions were complied with, &, as a guarantee of his performance of the agreement if said conditions should be fulfilled, transferred to the co. certain other shares owned by him with a certificate of transfer on the back thereof signed by him, the name of the transferee being left blank. The co.'s bank, having demanded further security from it before it would pay a cheque drawn by the co., the co. delivered to it pltf.'s said shares as security.—PATRICK *v.* ROYAL BANK OF CANADA, [1932] 2 W. W. R. 257; 3 D. L. R. 532; 45 B. C. R. 437.—**CAN.**

861 i. *Bearer securities—Presumed to belong to depositing customer.*]—BANK OF MONTREAL *v.* ISBELL, [1925] 2 D. L. R. 30; *revsg.* 26 O. W. N. 263.—**CAN.**

sy. *Pledge by administrator or trustee in breach of trust—Bank without notice—Liability.*]—In an action brought by the beneficiaries of the estate of a deceased against a bank pltfs. alleged that the administrator of the estate, which was a co. which had become bkpt. & had been wound up, had hypothecated to the bank for the co.'s debt securities which the bank knew or should have known belonged to the estate, but that, although the officials of the bank, because of the information which they had, were put upon inquiry, they had deliberately closed their eyes. The hypothecation notes with respect to some at least of said securities contained descriptions which were held sufficient to inform the bank:—*Held:* if the bank were to-day holding these securities for a debt of the co. to them, there would be no doubt that it could not hold them for moneys advanced after such notice. But that was not the situation in question. The securities were disposed of by redemption or sale years ago & the proceeds went to the co. If the moneys were misapplied by the co., there is no principle of law on which the bank could be held to be liable simply because it at one time held the securities as security.—WHITE *v.* DOMINION BANK, [1934] 3 W. W. R. 93; *revsd.*, [1934] 3 W. W. R. 386; [1935] 1 D. L. R. 42; 42 Man. L. R. 400.—**CAN.**

sz. —— —— ——.]—In order to hold a bank liable where a trustee has used trust funds in reducing his personal debt to the bank, the bank having no notice of the trust, it is necessary to prove fraud on the part of the trustee & that the bank was a party to that fraud. If the bank was put upon inquiry & deliberately closed its eyes, that would be fraud.—MCPHERSON *v.* DOMINION BANK, [1935] 2 W. W. R. 1; *affd.*, [1935] 3 W. W. R. 390; [1936] 1 D. L. R. 268; 43 Man. L. R. 415.—**CAN.**

sa. *Bonds—Validity of charge—No certification by trustee.*]—The deposit of bonds with a bank as collateral creates a valid equitable charge notwithstanding the absence of certification by the trustee required by the bond.—*Re* CADWELL'S, LTD., TRUSTEE *v.* ROYAL BANK, [1934] 2 D. L. R. 341; O. R. 178.—**CAN.**

sb. *Advance to son—Representation by father that son entitled to shares.*]—Upon the representation of a father that his son was entitled to an interest in certain shares in a co. standing in the name of another son, a bank lent money to the son:—*Held:* the bank was entitled to a declaration of its debtor's right to certain of such shares over which the father had control.—ROYAL BANK *v.* POPE, [1917] 2 W. W. R. 1; 11 Alta. L. R. 68.—**CAN.**

sd. *Advance to executor.*]—A bank is put upon inquiry if it accepts a pledge of certificates in such circumstances that it has notice that the pledgor may be pledging part of an estate for which he is exor. If it fails to make inquiry it will be estopped from making any claim against the estate.—CARTWRIGHT *v.* LYSTER & BANK OF NOVA SCOTIA, [1934] 2 D. L. R. 166; O. R. 161.—**CAN.**

PART II. SECT. 21, SUB-SECT. 6.

h (p. 277) **i.** —— *Indorsed by shipper to bank—Bank to apply part of proceeds to payment of promissory note.*]—*Held:* no violation of Bank Act, s. 90.—ROYAL BANK OF CANADA *v.* WYE, [1926] 4 D. L. R. 262; [1926] 2 W. W. R. 780; 36 Man. L. R. 14.—**CAN.**

h (p. 277) **ii.** —— *Bank taking bailee's receipt from parties for whom goods shipped—Duty of bank not to impair security.*]—SALTERS (JOSEPH) SONS, LTD. *v.* BANK OF NOVA SCOTIA, [1926] 1 D. L. R. 581; 58 N. S. R. 389.—**CAN.**

q (p. 280) **i.** —— *Chattel mortgage to secure past debt—Subsequent mortgage of land—Right to enforce chattel mortgage.*]—*Held:* (1) the mtge. was not contrary to Bank Act; (2) the fact that a mtge. on land was afterwards given to the bank did not prevent it from realising first on the chattel mtge.—PIPER *v.* CANADIAN BANK OF COMMERCE, [1922] 1 W. W. R. 121.—**CAN.**

q (p. 280) **ii.** —— ——.]—A. obtained advances & delivered to the bank storage tickets for wheat in elevators:—*Held:* the security of the warehouse receipts would not cover past advances.—YOUNG *v.* DENCHER, BANK OF TORONTO *v.* ADAMES, [1923] 1 D. L. R. 432; 18 Alta. L. R. 496; [1923] 1 W. W. R. 136.—**CAN.**

q (p. 280) **iii.** —— *Chattel mortgage as security for loan—Whether crops of following year chargeable.*]—Security on grain given to a bank in Oct. 1921, in respect of advances made in the spring of 1920, held invalid in respect of the 1921 crop.—NORTH AMERICAN LUMBER CO., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

q (p. 280) **iv.** —— *Lease of chattels to secure advances.*]—*Held:* the lease was invalid, the bank not having the power under Bank Act to take a lease of chattels as security.—BANK OF MONTREAL *v.* HUESTON (1922), 69 D. L. R. 208; 51 O. L. R. 584.—**CAN.**

q (p. 280) **v.** —— *Lien agreements on goods—Valid.*]—*Re* CANADIAN HART PRODUCTS, LTD. (TRUSTEE) *v.* ROYAL BANK, [1924] 4 D. L. R. 225; 54 O. L. R. 293; 4 C. B. R. 211.—**CAN.**

865. *Add. Annotations :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211. **Consd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

865a. Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised :—*Held :* the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211 ; 91 L. J. Ch. 797 ; 127 L. T. 434 ; 38 T. L. R. 611 ; 66 Sol. Jo. 486 ; [1922] B. & C. R. 190.

Annotations :—**Consd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

865b. Pledge of receipts for goods—Fraudulent second pledge by pledgor Conversion—Estoppel.]—MERCANTILE BANK OF INDIA, LTD. *v.* CENTRAL BANK OF INDIA (1937), 54 T. L. R. 208 ; 81 Sol. Jo. 1020, P. C.

q (p. 280) **vi.** —— *Warehouse receipt for goods on leased premises—Valid.*]—*Re* J. STANLEY WEDLOCK, LTD. (P. E. I.), [1926] 2 D. L. R. 263 ; 7 C. B. R. 147.—**CAN.**

o (p. 281) **i.** *S. P.* BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964 ; [1926] 2 W. W. R. 771 ; 36 Man. L. R. 1.—**CAN.**

o (p. 281) **i.** —— —— —— *Whether purchaser owner within sect.* 88.]—An agreement for the sale of timber licences together with all the timber thereon gave the purchaser the right to cut & remove the timber & provided that the purchase-price should be payable in instalments & that the property in the licences & all timber cut therefrom should remain in the vendors until fully paid for by the purchasers. The agreement was not registered under Conditional Sales Act. Security on the timber cut by the purchasers & remaining on the timber berths was given under sect. 88 of the Bank Act by the purchaser to the applt. bank. The purchaser became bkpt., the cut timber was taken possession of by its trustee, & sold under an order of the ct. & the proceeds thereof were claimed by the bank & also by the vendors, to whom a balance was owing under the agreement. The bank had had no notice of the vendors' claim & had not inquired as to the purchaser's title, but all parties had acted in good faith :—*Held :* at the time of the assignment to the bank the purchaser was the "owner" of the timber within sect. 88 & had possession thereof within the meaning of that word in Sched. C. to said sect. ; & the agreement between the purchaser & the vendors was one within Conditional Sales Act. The bank's claim was therefore sustained.—ROYAL BANK OF CANADA *v.* HODGES (B. C.), [1930] 1 D. L. R. 397 ; [1929] 3 W. W. R. 605 ; 42 B. C. R. 44 ; *revg.*, [1929] 2 W. W. R. 202.—**CAN.**

s (p. 282) **i.** —— —— ——.]—ROYAL BANK OF CANADA *v.* MCLENNAN, [1931] 1 D. L. R. 981.—**CAN.**

s (p. 282) **ii.** —— —— *Grower of roses for sale as cut flowers—Whether "wholesale dealer."*]—A co. growing roses & selling the cut flowers held not to be a wholesale purchaser of, or dealer in the products of agriculture. —MACPHERSON *v.* LONDON LOAN ASSETS, LTD., [1931] 2 D. L. R. 630; O. R. 109 ; 12 C. B. R. 302.—**CAN.**

sa. *Security on crop to be grown—Priority over claim by vendor under crop-payment agreement.*]—GOEBEL *v.* CANADIAN BANK OF COMMERCE, [1921] 3 W. W. R. 81 ; 14 Sask. L. R. 451.—**CAN.**

sb. *Security invalid under Bank Acts—Sale of goods to third party—Bank not entitled to follow goods or proceeds.*]—HAWKER *v.* ROYAL BANK OF CANADA (1921), 59 D. L. R. 674.—**CAN.**

so. *Title of bank as against municipal lien for taxes.*]—*Re* ELECTRICAL FITTINGS & FOUNDRY CO., LTD. (Ont.), [1926] 1 D. L. R. 752; 58 O. L. R. 364.—**CAN.**

sd. ——.]—Where a debtor has given security to a bank on chattels under sect. 88 of Bank Act, & has subsequently made an assignment for benefit of creditors, the bank is entitled to the proceeds of sale of the goods in priority to the claim of the municipality for arrears of land taxes under Assessment Act, R.S.O., 1927, s. 112.—*Re* JAMES STEELE, LTD., [1934] O. R. 98 ; 2 D. L. R. 130.—**CAN.**

sf. *Wheat tickets—Sale in breach of instructions—Measure of damages.*]—A borrower from a bank gave it as collateral security an assignment of wheat tickets on the terms that the bank was to sell the wheat on deft.'s instructions & apply the proceeds in reduction of his loan. The borrower later on instructed the bank to sell when wheat should reach $1 per bushel at Fort William ; & the bank's manager agreed to carry out these instructions. The market-price at Fort William reached said price some weeks afterwards ; but no sale was made, although it was admitted that the wheat could have been sold at that time :—*Held :* the borrower was entitled to damages & the measure thereof was the market-price at the time when the bank should have sold the wheat ; & not, as held on the trial, at the date when the borrower learned that his instructions had not been complied with.—BANK OF TORONTO *v.* SIMONSON, [1932] 2 W. W. R. 102.—**CAN.**

PART II. SECT. 21, SUB-SECT. 7.

sl. *Assignment of mortgage—Or of agreement for sale of land—As additional security—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160 ; 4 C. B. R. 477.—**CAN.**

so. *Assignment of debts present & future & all contracts & securities—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160 ; 4 C. B. R. 477.—**CAN.**

sd. —— *Subsequent assignment to creditor—Duty of bank to account—Interest.*]—Book debts were assigned as security to deft. bank. Subsequently they were assigned to pltf. subject to the assignment to the bank. The bank realised under its assignment :—*Held :* pltf. was entitled to an accounting from the bank in detail, & the bank could not, as against pltf., charge a higher rate of interest than permitted under Bank Act.—ROBERTSON (JOHN) & SON, LTD. *v.* CANADIAN BANK OF COMMERCE, [1920] 2 W. W. R. 1003.—**CAN.**

sh. *Assignment of money due under agreement for sale of land—Valid.*]—*Re* SHAW, [1925] 3 D. L. R. 1205 ; 5 C. B. R. 825.—**CAN.**

sj. *Common law assignment of money—Subsequent security under Bank Act—Property passed by assignment—Validity of security immaterial.*]—IMPERIAL BANK *v.* WESTERN SUPPLY & EQUIPMENT CO. (1918), 39 D. L. R. 803.—**CAN.**

PART II. SECT. 21, SUB-SECT. 8.

sk. *Fire insurance policies.*]—A bank may, under s. 75 (1) (*d*) of the Bank Act take as security the obligations of fire insurance companies to pay indemnities stipulated for in fire insurance policies.—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67 ; [1929] 4 D. L. R. 1028 ; *affg.*, 47 Que. K. B. 383 ; 10 C. B. R. 212.—**CAN.**

sl. *Prohibited security—Money lent thereunder recoverable.*]—A bank may recover money lent upon a prohibited security although it cannot enforce the security.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

sm. *Authorised securities under Bank Act, s.* 88—*Whether authorised forms must be used.*]—A bank took what purported to be a security under sect. 88 of Bank Act on live stock of a rancher, but used Form C. instead of Form E. :—*Held :* the document was in form to the like effect as Form E., & constituted a valid security. —ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524 ; 2 D. L. R. 12.—**CAN.**

sp. —— *Position of bank.*]—A bank taking security under Bank Act, 1927, s. 88, is a mtgee. only, & not an absolute owner.—BANK OF MONTREAL *v.* GUARANTY SILK DYEING & FINISHING CO., LTD., [1934] 4 D. L. R. 394 ; O. R. 625 ; *on appeal*, [1935] 4 D. L. R. 483 ; O. R. 493.—**CAN.**

sq. *Assignment of goods covered by lien note—Right to recover on note.*]—The fact that the assignment of property covered by a lien note given to a bank is invalid is no bar to the right to recover upon the note itself.—THIEN *v.* BANK OF BRITISH NORTH AMERICA (1912), 1 W. W. R. 795 ; 20 W. L. R. 192 ; 4 Alta. L. R. 228 ; 4 D. L. R. 388.—**CAN.**

PART II. SECT. 22, SUB-SECT. 1.—A.

n i. —— ——.]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 81.—**IR.**

865c. Whether charge or trust created.]—MERCANTILE BANK OF INDIA, LTD. *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, & STRAUSS & CO., LTD. (No. 2), [1937] 4 All E. R. 651.

877. After this case add:—

Agricultural charge — Enforcement.] — *See* AGRICULTURE, No. 979a, *ante*.

878a. —— ——.] — Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract or circumstances that show an implied contract inconsistent with the lien.—LONDON CHARTERED BANK OF AUSTRALASIA *v.* WHITE (1879), 4 App. Cas. 413; 48 L. J. P. C. 75, P. C.

883. *Add. Annotation:—Generally,* **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

921. *Add. Annotation:*—**Followed.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

921a. —— —— ——.]—Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of £19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums:—*Held:* the bank's claim was right on both points.—BAKER *v.* LLOYDS BANK, [1920] 2 K. B. 322; 89 L. J. K. B. 912; 123 L. T. 330; [1920] B. & C. R. 128.

921b. —— —— **Balance of proceeds of sale of shares—Held as security for advances.**]—BAKER *v.* LLOYDS BANK, No. 921a, *ante*.

923. *Add. Annotations:*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

925. *Add. Annotation:*—**Refd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

926. *Add. Annotation:*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

930a. —— **Liability for negligent payment of cheque—No right to set off sums recovered from customer by party defrauded.**]—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, No. 687a, *ante*.

932. *Add. Annotation:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

932a. —— **Joint & several guarantee—Termination.**]—By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank: it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee:—*Held:* (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it; (2) the increase in the rate of interest did not discharge the

sr. *Lien on goods not in existence—Bank Act, s.* 88.]—The owner of a timber licence, who proposes to go into the forest to cut down the trees & transform them into what is commercially known as pulpwood & who may require financial assistance from a bank before the pulpwood is produced in its commercial form, can give the bank which assists him a valid lien on the finished product, although not in existence as such at the time of the loan.—LANDRY PULPWOOD CO., LTD. *v.* LA BANQUE CANADIENNE NATIONALE, [1928] 1 D. L. R. 493; [1927] S. C. R. 605.—**CAN.**

PART II. SECT. 22, SUB-SECT. 1.—F.

so. *Pledged to third party—Duty of bank to disclose lien.*]—*Held:* such a duty existed.—LAZARD BROTHERS & CO. *v.* UNION BANK OF CANADA (1920), 47 O. L. R. 608; 18 O. W. N. 290; 51 D. L. R. 636.—**CAN.**

PART II. SECT. 22, SUB-SECT. 2.

—— —— —— —— —— to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the indebtedness of the customer on the note.—ROY *v.* CANADIAN BANK OF COMMERCE (1918), 24 B. C. R. 397; 38 D. L. R. 742.—**CAN.**

930 i. *Set-off or counterclaim—Balance on current account—Right to set off undue promissory note.*]—Where at the date of the death of a customer of a bank there was a deposit to his credit the bank cannot on the maturing, after his death, of promissory notes made or endorsed by him to the bank, set off the amount thereof against the deposit.—TRUSTS & GUARANTEE CO., LTD. *v.* ROYAL BANK OF CANADA, [1931] 1 W. W. R. 689; 2 D. L. R. 601.—**CAN.**

sp. *Bank cashing cheque—Holder indebted to bank.*]—A bank, to which a cheque has been delivered to be cashed, has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—**CAN.**

st. *Debt not recoverable — Statute-barred.*]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, inasmuch as there is no specific property on which a lien can operate; the only right of the bank is a right of set-off, but such a right cannot be exercised where a debt is statute-barred & not recoverable.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 136.—**IR.**

sv. *Bank acting as clearing house—Right of set-off against insolvent bank.*]—*Re* HOME BANK OF CANADA, [1931] 1 D. L. R. 589; 66 O. L. R. 264; 12 C. B. R. 513.—**CAN.**

PART II. SECT. 23.

932 i. *Continuing guarantee — Consideration—Whether fresh transaction after guarantee given necessary.*]—A guarantee given by deft. to pltf. bank for the benefit of a firm which was already heavily indebted to the bank provided that in consideration of the bank "agreeing or continuing" to deal with A. Bros., herein referred to as "the customer," in the way of its business as a bank," deft. undertook that the amount of the guarantee would be paid to the bank at the times & in the manner specified:—*Held:* the words "continuing to deal . . . in the way of its business as a bank" must involve some *bonâ fide* fresh transaction between the bank & the firm, it being impossible to restrict these words to merely keeping the firm's account open, that is, merely receiving payment from any one who chose to pay in money to the bank to the firm's credit; &, since the bank had not continued to deal with the firm in the way its covenant called for, the guarantor had not received the consideration on which his covenant was based &, therefore, was not

guarantors, but they were liable for the principal sum advanced & for such interest as the debtor was legally to pay.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659; 35 T. L. R. 1, P. C.

Annotation:—As to (2) **Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1920), 95 L. J. Ch. 487.

934. *Add. Annotation:*—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

938. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

961. *Add. Annotation:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

966. *Add. Annotation:*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

974. *Add. Annotation:*—**Consd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

978. *Add. Annotation:*—**Refd.** Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

985. *Add. Annotation:* — **Consd.** Tournier *v.* ENGLAND, [1924] 1 K. B. 461; 93 L. J. K. B. 449; 130 L. T. 682; 40 T. L. R. 214; 68 Sol. Jo. 441; 29 Com. Cas. 129, C. A.

986. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

Annotation:—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

986a. —— —— **Without consent of customer.**]—It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

Pltf. was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of pltf., who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. That information defts. disclosed to third persons: —*Held:* that disclosure constituted a breach of defts.' duty to pltf., for though the information was acquired not through pltf.'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of pltf.'s account &

986b. —— **Extent of duty to inquirer.**]—Where for business purposes inquiry is made of a bank as to the stability of a customer of the bank, the only duty, if any, owed by the bank to the inquirer is a duty, in giving a reply, not to be negligent.—BATTS COMBE

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bound to perform it.—ROYAL BANK OF CANADA *v.* SALVATORI, [1928] 3 W. W. R. 501, P. C.—**CAN.**

932 ii. —— —— ——.]—A guarantee is to receive its application from the state of facts as shown in evidence. In an action on a guarantee given a bank:—*Held:* although the wording of the guarantee was exactly the same as that of the guarantee in *Royal Bank of Canada v. Salvatori*, [1928] 3 W. W. R. 501, yet that case was distinguishable because the circumstances out of which the guarantee arose therein were very different from those in the present case; there was no failure of consideration in the present case & the bank was entitled to judgment.—ROYAL BANK OF CANADA *v.* MILLS, [1932] 3 W. W. R. 283; 4 D. L. R. 574; 26 Alta. L. R. 453.—**CAN.**

935 i. *Whether surety released—Increase in rate of interest.*]—*Held:* an increase in the rate of interest charged by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659.—**CAN.**

935 ii. *S. P.* MERCHANTS BANK OF CANADA *v.* BUSH, [1918] 2 W. W. R. 574, 631.—**CAN.**

935 iii. —— *Taking new security from principal debtor.*]—BANK OF NEW ZEALAND *v.* BAKER, [1926] N. Z. L. R. 462.—**N.Z.**

935 iv. —— *Note indorsed as security for specific purpose—General hypothecation of note by creditor to bank.*]—*Held:* surety released.—GORDON *v.* HEBBLEWHITE, [1927] 1 D. L. R. 817; [1927] S. C. R. 29.—**CAN.**

sw. *Account settled between bank & customer—How far binding on surety of customer.*]—Even if a certificate given by a customer of a bank of the correctness of the condition of his account as stated therein constitutes an account stated between the bank & its customer, yet such certificate cannot be conclusive as against the surety of the customer.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD., [1917] 1 W. W. R. 1177.—**CAN.**

sx. —— —— *Special agreement to accept account.*]—An express provision in the guarantee given to the bank that the stating, settling or admission of an account between the creditor & the bank should be conclusive evidence against the sureties cannot be effective to prevent the sureties from objecting to illegal charges, nor to charges, which though not illegal, were improper to the knowledge of the bank.—NORTHERN CROWN BANK *v.* WOODCRAFTS, LTD., [1917] 1 W. W. R. 1205; 33 D. L. R. 367.—**CAN.**

sz. *Advance also secured by crop to be grown—Right of surety to proceeds of crop.*]—Where a bank advances money for the purchase of seed grain on the security of the crop to be grown therefrom & also procures the signature of a surety to the borrower's note, the surety has a right to have any money realised out of the crop appropriated to the reduction of the debt for which he became surety in priority to all other claims of the bank against the borrower. —PROUDLOCK *v.* CANADIAN BANK OF COMMERCE, [1925] 2 W. W. R. 150; 19 Sask. L. R. 413.—**CAN.**

sa. *Arrangement between debtor & surety—Drafted by bank's solicitor—Effect on bank as creditor.*]—IMPERIAL BANK OF CANADA *v.* HANCOCK, [1930] 3 W. W. R. 398; [1931] 1 D. L. R. 426.—**CAN.**

PART II. SECT. 25.

957 ii. —— *Rights of bank.*]—A cheque on the S. Bank, which was indorsed by the payee to the H. Bank, was deposited & applied against his overdraft after the H. Bank had suspended payment at its head office, but before notice thereof reached the local branch in which the cheque was deposited:—*Held:* the H. Bank was entitled to enforce payment of the cheque from the drawer.—SULLIVAN *v.* HOME BANK OF CANADA, [1927] 1 D. L. R. 1097; S. C. R. 115.—**CAN.**

957 iii. *Collection of bills for customer —Money received—Rights of customer.*] —Where a branch of resp. bank had received bills from applts. for collection & remittance of the proceeds, & after collection but prior to remitting the bank suspended payment:—*Held:* (1) applts., having employed the bank as a whole in a fiduciary capacity, were entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment: (2) applts. were not entitled to a prior charge on the bank's general assets.—SHAW WALLACE & CO. *v.* AMRITSAR NATIONAL BANK (IN LIQUIDATION) (1926), I. L. R. 7 Lah. 155.—**IND.**

PART II. SECT. 26.

985 ii. —— ——.]—Neither the assignee of the equity of redemption of property mortgaged to a bank, nor a surety who has mortgaged property by way of collateral security to a bank is entitled to obtain from the bank the same full account that the bank is obliged to give its customer. A guarantor of a customer's account with a bank is not entitled to demand from the bank a copy of the account but is entitled to demand from the bank information as to the balance then owing, the rate of interest charged, & the amount, if any, realised by the bank in respect of collateral securities. —ROSS *v.* BANK OF NEW SOUTH WALES (1928), 28 S. R. N. S. W. 539; 45 N. S. W. W. N. 117.—**AUS.**

QUARRY CO. *v.* BARCLAYS BANK, LTD. (1931), 48 T. L. R. 4.

987. *Add. Annotation :* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

990a. Disclosing any other information relating to customer.]—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 986a, *ante.*

1008a. —— **Primâ facie evidence of account.**]—DOUGLASS *v.* LLOYDS BANK, LTD., No. 403a, *ante.*

1010. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1011. *Add. Annotation :*—**Refd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1012. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1012a. —— —— **Entries tending to incriminate.**]—On an application under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, for leave to inspect & take copies of entries in a banker's books before the trial of an action, the ct. is guided by the general rules regulating the inspection of documents before trial. Therefore if resp. to the application, being a party to the action, objects in proper form that the entries tend to incriminate him, the ct. will not grant the leave applied for.—WATERHOUSE *v.* BARKER, [1924] 2 K. B. 759 ; 93 L. J. K. B. 897 ; 132 L. T. 15 ; 40 T. L. R. 805 ; 69 Sol. Jo. 51, C. A.

1012b. —— ——.]—Where, under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, an order is made for the inspection of a judgment debtor's account with a banker, the ct. has power to make the order extend to the banking account of a person other than debtor, if the account of that other person was controlled by debtor & was used by debtor for his or her own purposes.—IRONMONGER & Co. *v.* DYNE (1928), 44 T. L. R. 579, C. A.

1013. For "ss. 2 & 5" read "ss. 2–5."

Add. Annotation :—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1016. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1017. *Add. Annotation :—As to* (1) **Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1018. *Add. Annotations :*—**Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1019. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1022. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

PART II. SECT. 28, SUB-SECT. 1.

994 vii. —— —— *Whereabouts of clerk making entry unknown.*]—The production by one of the directors of pltf. bank of the actual ledger containing the overdraft account in suit, with proof of the manner in which it had been posted up, & the further fact that the whereabouts of the men who made the actual entries were no longer known :—*Held :* sufficient to render the book relevant under Evidence Act, s. 32.—BHAIRAT NATIONAL BANK, LTD., DELHI *v.* BISHAN LAL (1931), I. L. R. 13 Lah. 448.—**IND.**

1004 iv. —— —— ——.]—An order to inspect the books of a bank relating to the account of a person not party to the litigation will seldom or never be exercised except where such account is in form or substance really the account of a party to the litigation, or is kept on his behalf, so that entries in it would be evidence against him at the trial. In any case, no such order will be made unless the third party has been given an opportunity to attend the hearing of the application.—JAMES *v.* MABIN (No. 3), [1929] N. Z. L. R. 899.—**N.Z.**

PART II. SECT. 28, SUB-SECT. 2.

1015 v. —— *What are "legal proceedings."*]—A Comr. issued a summons to the manager of a bank, requiring him to attend before a Royal Commission & give evidence, & to produce the ledgers containing the accounts of certain persons, & also all cheques drawn on the accounts & all deposit slips affecting such accounts. Later, on being informed of the difficulty in producing the ledgers, the Comr. made a verbal order to the bank to produce copies of the entries in accordance with Bankers' Books Evidence Act :—*Held :* the proceedings before the Commission were not "legal proceedings" within the meaning of Bankers' Books Evidence Act, & the verbal order was invalid ; but the summons was valid.—MCCORMACK *v* CAMPBELL (1930), S. R. (Q.) 228.—**AUS**

sa. *Pay-in slips.*]—A bank retaining pay-in slips which have accompanied payments into a customer's account does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262 ; 49 A. L. T. 194 ; [1928] Argus L. R. 169.—**AUS.**

BARRISTERS.

16a. —— **Procured by fraud—Duty of Benchers.**] —The Benchers of the Inns of Court owe a duty to the public in respect of admission to the Bar: therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222; 75 Sol. Jo. 121; 22 Cr. App. Rep. 160, C. C. A.

31. *Add. Annotation:*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

46. *Add. Annotation:*—**Consd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931) (1933), 102 L. J. Ch. 348.

50a. ——.]—All motions before the ct. must be made by counsel.—DRAKE *v.* MORGAN (1858), 27 L. J. P. & M. 3; 4 Jur. N. S. 32.

51. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

66a. Before Parliamentary Commission.] —BELFAST RIOTS COMMISSION CASE (1886), 21 L. Jo. 556.

71. *Add. Annotation:*—**Refd. Marson *v.* Unmack,** [1923] P. 163.

84. After this case add the following cross-reference: *See, further,* JUDGMENTS, Vol. XXX., pp. 203 *et seq.*

SECT. 1, SUB-SECT. 1.

b i. —— *Nature of duties devolving upon.*]—The discharge of the duties under Law Society Act, now R. S. O., 1914, c. 157 is not a matter of mere private concern, but one affecting the public, having to do with the well-being of the society in maintaining the standards which should prevail in the legal profession; &, unless in a case of manifest wrong, there should be no interference with the society's exercise of its statutory powers.—HALL *v.* BALL (1923), 54 O. L. R. 147.—**CAN.**

SECT. 1, SUB-SECT. 2.—A.

11 ii. For "(1905), S. C. 221" read "[1905] T. S. 221."

11 iii. —— *Without examination—Managing clerk to solicitor.*]—In Law Practitioners Act, 1908, s. 5, the words "managing clerk to a solr." must be taken in the strict sense to mean one who has control & supervision of other clerks in the solr.'s employ.—*Re* [1918] N. Z. L. R. 561.—**N.Z.**

c i. —— *Qualification—English barrister.*]—Appct. sought admission as an advocate on the ground that he was admitted as a barrister in England & had passed an examination in Natal statute law & practice as required by the proviso to Ord. 32, r. 38. The Law Society opposed on the ground that it was necessary for appct. also to have passed the examination in Union statute law required by sect. 2 of Act 19, 1921:—*Held:* as appct.'s qualification acquired outside the Union would not have entitled him to admission in Natal, sect. 2 of Act 19, 1921, did not apply to him.—*Ex p.* ROBINSON (1930), 51 N. L. R. 305.—**S. AF.**

Cambridge degree.]—Appct., who held the degree of LL.B. of the University of Cambridge, applied under sect. 1 of Act 19, 1921, for admission as an Advocate, relying upon G. N., No. 1475 of 1925, under which the Chief Justice & Judges of the App. Div. decided that the examination in Roman-Dutch Law in connection with the degree of LL.B. of the University of Cambridge should be an adequate examination in Roman-Dutch Law within sect. 2 of the Act:—*Held:* applct. was entitled to admission.—*Ex p.* HALL (1931), 52 N. L. R. 118.—**S. AF.**

15 iia. —— ——.]—The ct. will not grant *mandamus* to compel Benchers of a Law Society to admit an individual as member with a view to his qualifying himself to be called to the Bar.—*Re* HAGEL & LAW SOCIETY OF BRITISH COLUMBIA (1922), 31 B. C. R. 75.—**CAN.**

SECT. 1, SUB-SECT. 2.—B.

25 iii. —— —— —— *Duty of tribunal to come to a finding.*]—Where the High Ct. did not think fit summarily to reject a complaint made against an advocate, & was obliged, therefore, to refer the case for inquiry to the Bar Council, & the tribunal, after certain evidence had been taken on affidavits, on the intimation of complainant's solr. that he withdrew the complaint reported "in these circumstances the inquiry cannot be further proceeded with, the ct. referred the matter back to the tribunal, holding that the Act required the tribunal to come to a finding."—*Re* BAR COUNCILS ACT (1929), 1. L. R. 57 Calc. 724.—**IND.**

si. *Effect of entry on roll of advocates—Right of retired judge to practise in High Court.*]—After his retirement from the position of a judge of the High Ct. at Patna, India, applt. with a view to resuming practice at the Bar of that ct. applied to have his name entered on the roll of advocates as required by Indian Bar Councils Act, 1926. The judges, by a majority, held that he was entitled to be so enrolled under that Act, but added that in view of the fact that he had been a permanent judge of that ct. they refused to allow [illegible] to appear in the cts. of the province. On appeal against that refusal:—*Held:* by being entered on the roll of advocates applt. had established a statutory right to practise of the Indian Bar Councils Act, 1926, s. 14 (1) providing that, "An advocate shall be entitled as of right to practise . . . in the High Ct. of which he is an advocate. . . ."—PRAFULLA RANJAN DAS *v.* PATNA HIGH COURT JUDGES (1930), 47 T. L. R. 98, P. C.—**IND.**

SECT. 2, SUB-SECT. 1.—D.

u i. *Before High Court of Madras—Exercising insolvency jurisdiction—Right to "act."*]—Advocates, enrolled in the High Ct. of Madras, under Indian Bar Councils Act (I of 1926) are, by virtue of sects. 2 (*a*), 8 & 14 of the Act, entitled not only to appear & plead, but also to "act" in the insolvency jurisdiction of the High Ct. Insolvency Rules of the High Ct., r. 128, which allowed advocates only to appear & plead in that jurisdiction, is no longer in force.—*Re* POWERS OF ADVOCATES (1928), I. L. R. 52 Mad. 92.—**IND.**

sa. *Natal—Qualification acquired outside Natal.*]—A person admitted as an attorney in Natal by virtue of qualifications acquired elsewhere than in Natal is not entitled to appear as counsel in the Supreme Ct. or to practise as an advocate until he has served under articles in Natal for at least 18 months.—INCORPORATED LAW SOCIETY *v.* POSEMAN (1929), 50 N. L. R. 318.—**S. AF.**

SECT. 2 SUB-SECT. 7.—A.

sb. *Barrister of five years' standing—What consitutes.*]—*Held:* applt., who had been called to the Bar more than five years, but had never practised as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7).—MCCAWLEY *v.* R. (1918), 26 C. L. R. 9.—**AUS.**

SECT. 3, SUB-SECT. 1.—A.

g. For "IR." at the end of this case read "SIERRA LEONE."

sc. *For conviction for perjury in England—Disbarment in England—How far binding on Indian court.*]—*Held:* (1) the loss of the privilege of being a barrister in England, though the only qualification for admission in India as an advocate, did not necessarily entail disbarment in the High Ct. (2) Suspension for one year ordered in this case.—*Re* AN ADVOCATE (1923), I. L. R. 46 Mad. 903.—**IND.**

sd. *Professional misconduct—Under Pleaders' Act—Canvassing for work.*]—S., a district pleader, holding a Sanad for the Surat District, sent circular postcards to the public under his signature as a High Ct. pleader stating that he had been authorised by the District Ct. to examine Wakf properties & to issue certificates. In fact all that he had been authorised to do was to examine accounts for certain specific Wakf properties on his separate application in each case, but was not authorised to audit the accounts of Wakf properties generally:—*Held:* it was improper conduct on the part of S. to issue such postcards & to canvass for the auditing work in the way that he did & accordingly he was guilty of an offence under Pleaders' Act, s. 26.—GOVERNMENT PLEADER *v.* SIDDICK (1929), I. L. R. 53 Bom. 640.—**IND.**

se. —— *Extent of jurisdiction.*]—No power to exercise inherent disciplinary jurisdiction over legal practitioners, independently of the Legal Practitioners Act & the Indian Bar Councils Act, now exists in the High Ct. in respect of their professional or other misconduct. No disciplinary power over legal practitioners or power to punish for contempt outside the Indian Penal Code is vested in the subordinate cts.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sf *Procedure of High Court—Under Bar Councils Act,* 1926.]—As from

110. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

148a. ——.]—On an indictment for rape, prisoner ought to be defended by counsel.—R. *v.* HANCOCK (1931), *as reported in* 23 Cr. App. Rep. 16, C. C. A.

155a. Under Poor Prisoners' Defence Act, 1930 (c. 32).]—R. *v.* TIDMARSH (1931), 23 Cr. App. Rep. 79, C. C. A.

162a. —— **Right of junior counsel settling pleadings to lead another junior counsel.**]—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar :—*Held :* junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—DOUGLAS *v.* ASSOCIATED NEWSPAPERS, LTD. (1922), 67 Sol. Jo. 48.

173a. —— **Position of.**]—A barrister practising in Bristol & a barrister practising in London, or, rather one having chambers in both places, is not practising separate professions ; he is still a practising barrister. The profession of a practising barrister is that of a barrister practising in the courts of Great Britain, & wherever he is called upon to go, there he acts as a practising barrister. I think it is quite impossible to regard a change of chambers from one town to another as a relevant fact. Now, as to the fact of the barrister becoming a King's Counsel, I do not think the matter can be dealt with by construing the King's patent, or by considering it in a technical manner, but by regarding what, *de facto*, is the state of affairs which arises when a barrister becomes a King's Counsel. No doubt at one time he was considered to hold an office ; he was paid a salary & could not appear against the Crown without a licence. What happens now is that the Sovereign confers a titular rank which is recognised in the cts. by giving the holder precedence, a seat within the Bar, & by entitling him to wear a silk gown. On the other hand, by the practice of the profession, he abstains from doing certain classes of work which he did before appointment. But he is still acting in the same way as before, practising the art of advocacy. All he does is to limit the part he takes therein, but he carries on the work of advocacy still, though in a higher degree. I do not think that there can be any distinction between the different cases where junior barristers become King's Counsel ; the position involved is quite simple & all must come under the same head. Both the junior barrister & the King's Counsel carry on the same profession, but the latter occupy a higher rank or degree within it (ROWLATT, J.).—SELDON (F. E.) *v.* CROOM-JOHNSON ; SELDON (F. E.) *v.* BRUCE THOMAS, [1932] 1 K. B. 759 ; 101 L. J. K. B. 358 ; 147 L. T. 72 ; 48 T. L. R. 304 ; 76 Sol. Jo. 273 ; 16 Tax Cas. 740.

191. *Add. Annotation :*—**Apld.** *Re* Morgan, Brown *v.* Jones (1927), 71 Sol. Jo. 650.

191a. —— ——.]—Where trustees are represented by the same firm of solrs. & one of them is interested in the trust fund beneficially, it is *primâ facie* the solrs.' duty to employ separate counsel to represent the independent trustee, in order that the ct. may have the assistance of such separate counsel.—*Re* MORGAN, BROWN *v.* JONES (1927), 71 Sol. Jo. 650.

220a. —— **Of junior counsel—Proportionate to fee of leader.**]—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re* PARK, BOTT *v.* CHESTER (1921), 66 Sol. Jo. (W. R.) 2.

June 1, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by Bar Councils Act, 1926, ss. 10 *et seq.* To proceed under sect. 10, the High Ct. is required, by sub-sect. (2) of that sect., if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or, after consultation with the Bar Council, to refer it to the ct. of a District judge. Similar powers of reference are given where the ct., instead of acting on a complaint, acts on its own motion. But in either event, it is necessary for the case to be either referred to the Bar Council, or at any rate for the Bar Council to be consulted.—*Re* A VAKIL OF AZAMGARH (1928), I. L. R. 51 All. 76.—**IND.**

sg. *Under Legal Practitioners Act,* s. 12.]—The discretion of the High Ct., in each particular case under sect. 12, is absolute, & it can let off a pleader with an admonition or suspend him or strike him off the rolls.—*Re* A PLEADER (1929), I. L. R. 57 Calc. 337. —**IND.**

sh. *Acts in furtherance of civil disobedience movement.*]—Where a legal practitioner, being a member of the civil disobedience movement commits illegal acts in furtherance of that movement, he brings himself within the disciplinary jurisdiction of the High Ct.—*Re* PLEADER RAMGOBIND SINHA, (1932), I. L. R. 11 Pat. 365.—**IND.**

SECT. 5, SUB-SECT. 1.—A. (g).

188 i. *Party proposing employment—Proceeding against previous client.*]—Appct., an advocate, allowed resp. to give him instructions in full without warning him that the other side had approached him to represent them in the matter & that he had not declined the offer. He, however, was not retained by resp. & the brief of the other side being offered to him, accepted the same :—*Held :* whilst the action of resp. did not amount to professional misconduct, the case came within the ambit of the rule that counsel ought not to accept a brief against a party, even though that party refuses to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of the confidence & applt. was rightly refused permission by the trial ct. to appear in the suit.—U. KO KO GYI *v.* U SAN MYA (1930), I. L. R. 8 Ran. 446.—**IND.**

190 iii. —— ——.]—A legal practitioner may change sides, but, if, as in this case, such conduct is likely to cause mischief or reasonable misapprehension in the mind of his late client, the ct. would not allow the advocate to appear for the other party. —MAUNG SEIN GYI *v.* MANECKJEE (1929), I. L. R. 8 Ran. 44.—**IND.**

SECT. 5, SUB-SECT. 2.

206 vi. —— ——.]—Where a pleader sued to recover from his client a sum of money as remuneration for his services as a pleader, on the basis of a verbal agreement entered into with his client, or, if the agreement was held to be invalid, on the basis of *quantum meruit :—Held :* though the agreement was void under Legal Practitioners Act, s. 28, the pleader was entitled to reasonable compensation for work & labour done by him on behalf of the client.—THANGAMMAL AYIYAR *v.* KRISHNAN (1929), I. L. R. 53 Mad. 309.—**IND.**

217 i. *Amount of fees—Application of "two-thirds" rule in India.*]—The amount of fees allowed to junior counsel must be adjusted by the Taxing Master according to two-thirds of the amount allowed to senior counsel. —*Re* GOPALCHANDRA SINGHA (1930), I. L. R. 58 Calc. 505.—**IND.**

221 ix a. —— —— *India—English barrister.*]—A barrister of England, enrolled as an advocate of the Allahabad High Ct. & practising in that ct. or in cts. subordinate to it, can bring a suit against his client for recovery of his fees settled for his professional services in acting & pleading for his client.—NIHAL CHAND SHASTRI *v.* DILAWAR KHAN (1933), I. L. R. 55 All. 570.—**IND.**

227. *Add. Annotation :*—**Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681.

228a. —— —— **Right to prove against estate of deceased solicitor.**]—Counsel has no right to prove for his fees in the administration of the insolvent estate of a deceased solr. in a case where the client reimbursed the solr. the amount of the fees upon the faith of the solr.'s false representation that he had in fact paid them to counsel.—*Re* SANDIFORD (NO. 2), ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1935] Ch. 681; 104 L. J. Ch. 335; 154 L. T. 7.

230. *Add. Annotation :*—**Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681.

242. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

291. *Add. Annotations :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474. **Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

300. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

311. *Add. Annotation :*—**Refd.** L. *v.* L., [1931] P. 63.

323a. Express instructions given to solicitor.]—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up :—*Held :* the case must be restored to the list for hearing.—SHEPHERD *v.* ROBINSON, [1919] 1 K. B. 474; 88 L. J. K. B. 873; 120 L. T. 492; 35 T. L. R. 220, C. A.

Annotation :—**Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

324. *Add. Annotation :*—**Distd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

326. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

331. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

335. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

347a. —— **Whether evidence for opposite party.**]—The judge at a trial will not take the facts from the opening of the counsel on the opposite side.—MACHELL *v.* ELLIS (1845), 1 Car. & Kir. 682.

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221 xi. —— ——.]—ARMOUR *v.* DINNER (1899), 4 Terr. L. R. 30.—**CAN.**

sh. *" Normal " fees—Fees in big & difficult cases.*]—*Held :* both are just such fees as a practising law-agent finds sufficient in order to command the services of competent counsel in cases of a similar character.—CALEDONIAN RY. CO. *v.* GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. *v.* SAME, [1922] S. C. 299.—**SCOT.**

sl. *Counsel engaged by commissioners under Public Inquiries Act, 1929—Reasonable compensation—Petition of right.*]—Where comrs. appointed under Public Inquiries Act, 1929, by the Lieutenant-Governor in Council are authorised by their commission to engage the services of counsel to assist them in their inquiry, & acting on that authority they do engage counsel, it must be taken that in so engaging counsel they are acting on behalf of the Lieutenant-Governor in Council & that, in the absence of an express agreement with the counsel as to their remuneration, there is an implied agreement with the Crown that they will be given reasonable compensation for their services. If such compensation be not paid the counsel may proceed by petition of right to recover it.

In the present case :—*Held :* a letter from the comrs. to the A.-G. advising paying of counsel fees of a certain amount was, under the circumstances, evidence of the opinion of the commissioners as to what would be a fair & reasonable compensation for the commission counsel; the counsel at the trial had agreed that the comrs. if called to testify would state what they had stated in the letter.—HOGARTH *v.* R., [1934] 2 W. W. R. 340.—**CAN.**

SECT. 5, SUB-SECT. 4.

238 ii. ——.]—There is no hard & fast rule rendering counsel in a cause incompetent as a witness in that cause. —R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

252 xiv. ——.]—GRADY *v.* WAITE, [1930] 1 D. L. R. 838; 1 M. P. R. 116. —**CAN.**

SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on judge in notice of appeal—On instructions of client.*]—*Held :* this conduct was highly improper.—JACOB & CO. *v.* RASH BEHARI GHOSE (1920), I. L. R. 47 Calc. 828.—**IND**

274 ii. —— *Refusal to take brief.*]—The refusal of a lawyer to take up a brief for a member of the public, simply & solely on the ground that he would be appearing against a brother practitioner, who was the litigating party on the other side, or putting forward untrue excuses, when the real reason is a disinclination to appear against a brother practitioner, is professional misconduct; that is, it is a breach of the duty which the acceptance of the status of an advocate demands from every man who becomes an advocate.—MUHAMMAD INAYAT ALI *v.* EMPEROR (1929), I. L. R. 51 All. 892. —**IND.**

SECT. 5, SUB-SECT. 7.—C. i. (b).

291 i. *General rule.*]—Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.—MUTHIAH CHETTIAR *v.* MUTHU K. R. A. KAROPPAN CHETTI (1927), I. L. R. 50 Mad. 786.—**IND.**

291 ii. ——.]—An advocate, admitted to practise by the appropriate ct. in India, when briefed in a suit, including a suit in the ct. of a subordinate judge, has the implied authority of his client to settle the suit by a compromise. If he is briefed in an interlocutory matter he has implied authority to settle the whole suit where it appears that the intention was to place him in the same position, & to arm him with the same authority, as though he had been briefed to conduct the whole suit.—SOURENDRA NATH MITRA *v.* TARUBALA DASI (1930), 46 T. L. R. 191; 57 L. R. Ind. App. 133, P. C.—**IND.**

294 i. *Power presumed—Counsel apparently properly instructed—Party's agent present without protest.*]—NILMONE CHAUDHURI *v.* KEDAR NATH DAGA (1922), I. L. R. 1 Pat. 489.—**IND.**

300 iv. ——.]—A settlement within the apparent general authority of counsel :—*Held :* binding.—B. N. SEN & BROTHERS *v.* CHUNI LAL DUTT & CO. (1923), I. L. R. 51 Calc. 385.—**IND.**

301 i. *Authority to compromise out of court.*]—A compromise effected by counsel on behalf of his client out of ct., & not assented to by his client, is only binding upon the client if it is expressly authorised or subsequently ratified by the client or by his agent authorised in that behalf.—ASKARAU CHOUTMAL *v.* EAST INDIAN RY. CO. (1925), I. L. R. 52 Calc. 386.—**IND.**

301 ii. ——.]—The fact that negotiations for compromise between counsel took place before the hearing of the suit commenced, or were carried on outside the ct., does not vitiate the agreement.—JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

sc. *Effect of client's presence in court.*]—Mere presence in ct. of the client, when he does not make his presence known to the counsel, does not affect the ostensible authority of the counsel, who can compromise the suit without consulting the client. — GHASIRAM GOENKA *v.* HARIBUX GOBARDHANDAS (1931), I. L. R. 59 Calc. 31.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iii.

t i. ——.]—The general authority of counsel to compromise a suit does not extend beyond matters in the suit. —JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. ——.]—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters :—*Held :* if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

SECT. 5, SUB-SECT. 8.

sa. *Counsel must not combine functions of advocate & witness.*]—CAIRNS *v.* CAIRNS, [1931] 3 W. W. R. 335; 4 D. L. R. 819; 26 Alta. L. R. 69.—**CAN.**

SECT. 5, SUB-SECT. 10.

e i. ——.]—In an action for damages for breach of contract, certain admissions were made by counsel for both

356a. Whether binding at second trial.]—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a ca[illegible] man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in, & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that "deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered:—*Held:* the above admission was not to be binding at the second trial.—DAWSON *v.* GREAT CENTRAL RY. CO. (1919), 88 L. J. K. B. 1177; 121 L. T. 263; 12 B. W. C. C. 163, C. A.

376. *Add. Annotation:*—**Distd.** Stanton *v.* Laws, [1934] W. N. 130.

383a. Duty to assist court—By citing all relevant authorities.]—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the attention of counsel, in order that they in turn may bring it to the attention of the House.—GLEBE SUGAR REFINING CO., LTD. *v.* GREENOCK PORT & HARBOURS TRUSTEES, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.

383b. Duty to disclose adultery of petitioner in suit for dissolution of marriage.]—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if they are aware of it.—ABRAHAM *v.* ABRAHAM & HARDING (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.

Disclosure of petitioner's adultery in suits for dissolution of marriage generally, *see* HUSBAND & WIFE.

389. *Add. Annotation:*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249.

After this case add, *See, also,* NEGLIGENCE, Nos. 842, 842a.

408a. —— ——.]—PRACTICE NOTE, [1920] W. N. 34.

—— ——.]—The House of Lords has a prior claim to the attendance of counsel over other cts., & before absenting himself counsel ought to have made an application for leave to be absent.—ABRAM S.S. CO. *v.* WESTVILLE SHIPPING CO. (1923), as reported in 67 Sol. Jo. 535, H. L.

453. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Wilson *v.* United Counties Bank, [1920] A. C. 102; Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Barber *v.* Pigden, [1937] 1 K. B. 664.

463. *Add. Annotation:*—**Refd.** Barber *v.* Pigden, [1937] 1 K. B. 664.

465. *Add. Annotation:*—**Consd.** De Freville *v.* Dill (1927), 43 T. L. R. 431.

480. *Add. Annotation:*—**Refd.** Harte *v.* Williams, [1934] 1 K. B. 201.

parties & put in at the trial by consent: —*Held:* deft. was bound by the admissions made by counsel on his behalf.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—CAN.

SECT. 6, SUB-SECT. 1.

383 i. —— *Should not make scandalous charges.*]—Members of the legal profession are under no duty to their clients to make grave & scandalous charges against either judges or the opposite parties on their client's mere wish. They are responsible to the ct. for the fair & honest conduct of the case. They are not mere agents of the man who pays them, but are acting in the administration of justice. —*Re* DIVARKA PRASAD MITHAL (1923), I. L. R. 46 All 121.—**IND.**

383 ii. —— *Duty as regards offensive questions.*]—An advocate should exercise his own discretion before putting an offensive question.—M. BANERJEE *v.* ANUKUL CHANDRA MITRA (1927), I. L. R. 55 Calc. 85.—**IND.**

si. May criticise questions submitted to jury—After asking for direction & calling no evidence.]—STEELE *v.* BELFAST CORPN., [1920] 2 I. R. 125, 133.—**IR.**

SECT. 6, SUB-SECT. 5.

429 ii. —— ——.]—*Re* DIVARKA PRASAD MITHAL, No. 383 i., *ante.*—**IND.**

439 ii. —— —— ——.]—In an action of damages for breach of promise of marriage defender made a tender of £100 & expenses, which was not accepted by pursuer. The jury having awarded the pursuer the sum of £75, she moved for a new trial on the ground that counsel for defender, in addressing the jury, had used words which represented that an award of £50 would carry the expenses of the action. The ct., holding that there had been no intention to mislead the jury, & that the words used did not necessarily bear the meaning put upon them by pursuer, & had not prevented the trial from being a fair one, refused to grant a new trial.—REEKIE *v.* M'KINVEN, [1921] S. C. 733.—**SCOT.**

BASTARDY.

Part I.—The Presumption of Legitimacy.

2. *Add. Annotations :*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Warren *v.* Warren, [1925] P. 107.

3. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Farman *v.* Farman (1924), 40 T. L. R. 823.

4. *Add. Annotations :*—**Consd.** Mart *v.* Mart, [1926] P. 24 ; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

11. *Add. Annotation :*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

12. *Add. Annotations :*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Gaskill *v.* Gaskill, [1921] P. 425 ; Russell *v.* Russell, [1924] A. C. 687.

17. *Add. Annotations :*—**Apld.** Warren *v.* Warren, [1925] P. 107. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

20. *Add. Annotation :*—**Refd.** Andrews *v.* Andrews & Chalmers (1924), 40 T. L. R. 873.

22. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687 ; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400 ; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395.

22a. —— —— ——.]—In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with petitioner.—ANDREWS *v.* ANDREWS & CHALMERS, [1924] P. 255 ; 93 L. J. P. 137 ; 132 L. T. 400 ; 40 T. L. R. 873.

Annotations :—**Refd.** Mart *v.* Mart, [1926] P. 24 ; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395.

-.]—STEWART *v.* STEWART, No. 65e, *post.*

22c. **Deed of separation—Whether access presumed.**]—The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—MART *v.* MART, [1926] P. 24 ; 95 L. J. P. 29 ; 134 L. T. 446 ; 42 T. L. R. 253.

Annotations :—**Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573. **N.F.** *Re* Bromage, Public Trustee *v.* Cuthbert, 1935] Ch. 605. **Foll.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

PART I. SECT. 2.*

7 v. —— ——.]—*Held :* " born out of wedlock " within Children of Unmarried Parents Act, 1921 (c. 54), s. 13, & the husband may show by his own evidence & that of his wife that they had in fact no intercourse at such time as would make his parentage possible.—*Re* DUCKWORTH & SKINKLE (1924), 55 O. L. R. 272.—**CAN.**

Wife divorced woman.]—Where a Hindu woman was married to S. in Oct. 1903, was divorced by him in June 1904, married T. in July 1904, & gave birth to a son in Sept. 1904 :—*Held :* there was no proof that T. could not have had access to her at any time when the son could have been begotten, & the son should be held to be the legitimate son of T.—SETHU *v.* PALAIN (1925), I. L. R. 49 Mad. 553.—**IND**

12 iv. —— *Irrebuttable presumption.*]—Once access of, or intercourse by, a husband is proved, no evidence will be allowed to show that the child is not the child of the husband. The circumstance that the wife had intercourse with several at that time makes no difference.—JAGANNATHA MUDALI *v.* CHINNASWAMI CHETTI (1932), I. L. R. 55 Mad. 243.—**IND.**

14 i. —— —— *Even where wife adulteress.*]—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873 ; 57 O. L. R. 297. —**CAN.**

22c i. *Deed of separation—Presumption of non-access.*]—The legal presumption of access & of the legitimacy of a child of the spouses born during marriage is rebutted by its conception during the operation of a decree of the ct. pronouncing their separation, or during a period when the spouses are living apart under a deed of separation ; & the evidence of either spouse to negative legitimacy is, therefore, admissible.—MCINTOSH *v.* MCINTOSH, [1934] N. Z. L. R. Supp. 132 ; G. L. R. 357.—**N.Z.**

sc. *Child of Chinese resident in Straits Settlements & " t 'sip."*]—According to the Chinese law of marriage, which is applied in Penang in the case of Chinese residents, a Chinaman may have secondary wives (sometimes called " t 'sips ") who have the status of wives & whose children are legitimate. Although some sort of ceremony is usual when a " t 'sip " is taken, proof of the performance of a ceremony is not essential to establish the relationship. Deceased resp. for twenty-six years lived & was maintained in the house of a Chinese merchant in Penang, & bore him children. One child who survived the father was referred to in his will as " my daughter," & her name appeared upon his tombstone. The resp. had been recognised by the Chinaman & by his primary wife as occupying in his household the position of a secondary wife :—*Held :* deceased resp. was a secondary wife, whether or not the performance of a ceremony was proved, & under the practice in Penang (which was not questioned in the appeal) she was entitled, upon the death of the Chinaman partially intestate, to share as a widow.—CHEANG THYE PHIN *v.* TAN AH LOY, [1920] A. C. 369 ; 89 L. J. P. C. 44 ; 122 L. T. 593, P. C.—**STRAITS SETTLEMENTS.**

sd. ——.]—Regarded as legitimate & entitled to inherit equally with children by the " t 'sai " (primary wife).—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529 ; 95 L. J. P. C. 94 ; 135 L. T. 170.—**STRAITS SETTLEMENTS.**

se. ——.]—The Chinese custom of legitimation of a natural son by subsequent recognition is not part of the law of the Straits Settlements in relation to Chinese people there domiciled ; nor does recognition as a son raise a presumption that the son's mother was a " t 'sip," or secondary wife. The modifications of the law of England which obtain in the Colony in its application to the various alien races established there arise from the necessity of preventing the injustice or oppression which otherwise would ensue. It is from that necessity that the status of " t 'sips," & consequently the legitimacy of their offspring, have been recognised ; but there are no grounds which would justify treating an illegitimate natural son as legitimated by the mere fact of subsequent recognition.—KHOO HOOI LEONG *v.* KHOO CHONG YEOK, [1930] A. C. 346 ; 99 L. J. P. C. 129 ; 143 L. T. 25, P. C.—**STRAITS SETTLEMENTS.**

sf. *Child of Mahomedan & his servant —Acknowledgment of child by father as his son.*]—The son of a Mahomedan by a female servant in his house claimed a declaration of his legitimacy. The parents had continuously cohabited for many years, & the father on several occasions had acknowledged plff. as his son. There was some evidence of a *nikah* marriage :—*Held :* evidence that other members of the father's class had illegitimate children by servants was inadmissible to rebut the presumption of legitimacy arising from the acknowledgments, & though the fact that the mother unlike the father's other wives was not *parda-nishin* was one to be considered, it was insufficient to interfere with the presumption of law or the balance of proof of the fact of legitimacy.—MOHABBAT ALI KHAN *v.* MAHOMED IBRAHIM KHAN (1929), 56 L. R. Ind. App. 201.—**IND.**

22d. —— ——.]—If a husband & wife are not living together but are living separate & apart under a separation deed, the presumption of the legitimacy of children of a married woman born while the marriage is still continuing is not thereby rendered inapplicable. If therefore the wife gives birth to children while the separation continues, these children will *primâ facie* be legitimate. To rebut the presumption of legitimacy, proof of absence of sexual intercourse between the husband & wife at the material time must be conclusive.

A husband & wife having entered into a separation deed, agreed to live separate & apart. They separated, & at all material times lived apart on terms of estrangement & hostility. Some time after the deed of separation had been entered into & while so living apart, the wife, who was then living with E. H., gave birth to a child. This child was registered as the child of E. H. & the wife. There was no evidence that the husband knew of the existence of this child but it was proved that he was never asked to provide for it or acknowledge it in any way. Some years afterwards another child was born while the wife was living with A. A. & was registered as the child of A. A. & the wife. A question having arisen whether these children might be entitled under the terms of a gift in a will for the children of the husband & the wife on their attaining twenty-one or in the case of daughters on marriage, an originating summons was taken out for the purpose (*inter alia*) of determining this question:—*Held:* both children were according to the evidence illegitimate & not entitled to the gifts in question.—*Re* BROMAGE, PUBLIC TRUSTEE *v.* CUTHBERT, [1935] Ch. 605; 104 L. J. Ch. 299; 153 L. T. 313; 51 T. L. R. 408; 79 Sol. Jo. 418.

Annotation:—**N.F.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

22e. —— ——.]—The execution of a deed of separation, together with evidence that it was acted upon by the parties, is sufficient to rebut the legal presumption of access & of the legitimacy of a child born during marriage, in the case of a child conceived during a period when the spouses are living apart under the deed.—STAFFORD *v.* KIDD, [1937] 1 K. B. 395; [1936] 3 All E. R. 1023; 106 L. J. K. B. 193; 156 L. T. 75; 101 J. P. 68; 53 T. L. R. 169; 81 Sol. Jo. 16; 35 L. G. R. 97; 30 Cox, C. C. 532, D. C.

22f. Oral agreement for separation—Whether presumption of access ousted.]—COLLIS *v.* COLLIS & THOMAS (1933), 77 Sol. Jo. 573.

—.]—HASLAM *v.* CRON, OLIVANT'S (1871), 19 W. R. 968.

25. *Add. Annotations:*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Farman *v.* Farman (1924), 40 T. L. R. 823.

Add. Annotation:—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

35. *Add. Annotations:*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

36. *Add. Annotations:*—**Apld.** Best *v.* Best & McKinley, [1920] P. 75; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

42. *Add. Annotation:*—**Consd.** Gaskill *v.* Gaskil (1921), 126 L. T. 115.

43. *Add. Annotation:*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

43a. —— —— —— ——.]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—GASKILL *v.* GASKILL, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.

Annotation:—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

46. *Add. Annotation:*—**Refd.** Warren *v.* Warren, [1925] P. 107.

49. *Add. Annotations:*—**Apld.** Gaskill *v.* Gaskill, [1921] P. 425. **Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

54. *Add. Annotations:*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

56. *Add. Annotation:*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

PART I. SECT. 3.

49 iii. —— *Illicit intercourse with paramour.*]—*Held:* evidence of pltf. should not have been received to bastardise her child, & as there was no admissible evidence that the child was illegitimate, it must be taken that pltf.'s husband was the father.—KIJKO *v.* BACZYZSKI (1921), 67 D. L. R. 46; 51 O. L. R. 225.—**CAN.**

PART I. SECT. 4.

56 vii. —— ——.]—The evidence of a man & his wife, given for the purpose of bastardising a child born during wedlock, & at a time consistent with lawful conception, is not admissible.—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—**CAN.**

56 viii. —— ——.]—A husband sued his wife for divorce on the ground of adultery, which she denied. The wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father:—*Held:* (1) the husband's evidence as to non-access was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving that the child was not an adultrine child, but the *onus* of proof remained upon the husband.—SURMON *v.* SURMON, [1926] App. D. 47.—**S. AF.**

56 ix. —— ——.]—Evidence of adultery does not bastardise issue, unless it amounts to evidence of non-access by the husband at about the time when the child might have been begotten.—JUSTICE *v.* JUSTICE, [1925] S. A. S. R. 278.—**AUS.**

56 x. —— ——.]—AARNES *v.* AARNES, [1929] 2 D. L. R. 298; 1 W. W. R. 894; 23 S. L. R. 503.—**CAN.**

56 xi. —— ——.]—*Held:* the evidence of spouses was admissible to bastardise a child born during wedlock; the rule to the contrary, applied in *Russell* v. *Russell*, No. 70a, not being part of the law of Scotland.—BURMAN *v.* BURMAN, [1930] S. C. 262.—**SCOT.**

56 xii. —— ——.]—In Indian law a wife is a competent witness to prove access or non-access by her husband.—MAYANDI ASARI *v.* SAMI ASARI (1932), I. L. R. 55 Mad. 292.—**IND.**

56 xiii. —— ——.]—The presumption of legitimacy which arises when a child is born in wedlock can be met only by some kind of definite proof that sexual intercourse between husband & wife did not or could not take place at the time the woman conceived. Evidence that the child has physical characteristics which suggest Mongolian paternity is not in itself sufficient to constitute such proof where the mother & her husband are Europeans. The testimony of a parent of the child is not admissible to prove that the child is illegitimate.—AH CHUCK *v.* NEEDHAM, [1931] N. Z. L. R. 559.—**N.Z.**

56 xiv. —— —— *Nullity suit.*]—The rule in *Russell* v. *Russell* applies

57. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

58. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Distd.** Holland *v.* Holland, [1925] P. 101. **Refd.** Warren *v.* Warren, [1925] P. 107 ; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

59. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

60. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

61. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

63. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

64. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

—— —— ——.]—Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband :—*Held :* apart from resp.'s identification, there was no evidence of non-access by the husband, & since *Russell* v. *Russell*, No. 70a, *post*, such evidence could not be given by the wife.—BROWN *v.* LEECH (1924), 94 L. J. K. B. 48 ; 132 L. T. 205 ; 88 J. P. 208 ; 41 T. L. R. 89, D. C.

—— **Child still-born.**]—The rule laid down by the House of Lords in *Russell v. Russell*, No. 70a, *post*, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—HOLLAND *v.* HOLLAND, [1925] P. 101 ; 94 L. J. P. 64 ; 133 L. T. 318 ; 41 T. L. R. 431.

65c. —— —— ——.]—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—WARREN *v.* WARREN, [1925] P. 107 ; 94 L. J. P. 68 ; 133 L. T. 352 ; 41 T. L. R. 599 ; 69 Sol. Jo. 725.

Annotation :—**Consd.** Rimmer *v.* Rimmer (1930), 46 T. L. R. 624, n.

65d. —— —— ——.]—Where a husband took out a summons asking that an order for maintenance should be discharged, on the ground that the wife had committed adultery :—*Held :* evidence of the husband of non-access to bastardise his child was not admissible.—BOSTON *v.* BOSTON (1928), 138 L. T. 647 ; 92 J. P. 44 ; 26 L. G. R. 133, D. C.

Annotation :—**Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94.

65e. —— —— —— **Effect of separation order.**]—A maintenance order having been made against a husband in 1929 on the ground of desertion, including a non-cohabitation clause, the husband in Nov. 1931, took out a summons for discharge or variation of the order on the ground that since the order made in 1929, the wife had committed adultery. The proof of adultery submitted to the Bench was the husband's evidence of the birth to his wife on Oct. 27, 1931, of a child of which he could not be the father by reason of his non-access. The magistrates refused to admit the evidence, on the ground that they were debarred from so doing by the decision in *Russell* v. *Russell*, No. 70a, & declined to vary the order. The husband appealed :—*Held :* the magistrates' view that the husband must be presumed to be the father of the child born in Oct. 1931, was wrong. The separation order had the force of a judicial separation, & therefore there was no presumption of law that appct. was the father of the child. The magistrates had been in error in excluding the evidence of non-access. The appeal succeeded, & the order would be set aside so far as the allowance to the wife was concerned.—STEWART *v.* STEWART (1932), 146 L. T. 407 ; 96 J. P. 94 ; 76 Sol. Jo. 96 ; 30 L. G. R. 104 ; 29 Cox, C. C. 438, D. C.

Annotation :—**Refd.** Natborny *v.* Natborny (1932), 101 L. J. P. 58.

66. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

67. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

68. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

70a. —— —— ——.]—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses.—RUSSELL *v.* RUSSELL, [1924] A. C. 687 ; 93 L. J. P. 97 ; 131 L. T. 482 ; 40 T. L. R. 713 ; 68 Sol. Jo. 682, H. L.

Annotations :—**Apld.** Brown *v.* Leech (1924), 94 L. J. K. B. 48. **Consd.** Farman *v.* Farman (1924), 40 T. L. R. 823. **Distd.** Warren *v.* Warren, [1925] P. 107. **Consd.** Mart *v.* Mart, [1926] P. 24 ; *Re* A. B.'s Petn., [1928] P. 25. **Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94. **Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573. **Dist.** Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49 ; *Re* Harmer's Estate, Public Trustee *v.* A.-G., [1937] 1 All E. R. 130. **Consd.** Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400 ; Holland *v.* Holland, [1925] P. 101 ; Selby *v.* Atkins (1926), 135 L. T. 45 ; S. *v.* S. & P. (1927), 44 T. L. R. 52 ; Inverclyde *v.* Inverclyde, [1931] P. 29 ; Grubb *v.* Grubb (1934), 150 L. T. 420 ; Snowman *v.* Snowman (1934), 50 T. L. R. 445 ; Russell *v.* Russell, [1935] P. 39.

in nullity suits. Thus, when on the hearing of a wife's petition for nullity on the ground of her husband's impotence *quoad hanc*, it was disclosed that a child had been born during wedlock, the evidence of the spouses tending to bastardise such child was inadmissible.—G. *v.* G., [1934] N. Z. L. R. 246.—N.Z.

56 XV. —— —— *Premature* ..... —In an action by a husband for divorce on the ground of adultery medical evidence was led that deft. had been delivered of a *fœtus* some 3 or 3½ months old :—*Held :* the evidence of the husband of non-access by him to his wife at such times as would render it impossible for him to have been the father was admissible, as such evidence could not bastardise a child born or to be born *stante* —JOHNSON *v.* JOHNSON N. L. R. 107.—S. AF.

-.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 198.

Evidence in matrimonial suits generally, *see* HUSBAND & WIFE.

71. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395.

72. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

73. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

73a. —— —— ——.]—Although, as decided in *Russell* v. *Russell,* No. 70a, *ante,* neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence *aliunde.*—FARMAN *v.* FARMAN (1924), 40 T. L. R. 823.

74. *Add. Annotation :*—**Expld.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605.

76. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

79a. Statutory declaration by wife—For rectification of birth register—Not admissible.]—In proceedings for the rescission of a decree *nisi* there was tendered in evidence a statutory declaration by the wife, made for the purpose of rectifying a birth register by the deletion of the name of the husband as the father of a child born to her some sixteen months after a maintenance order :—*Held :* such a declaration was not admissible by reason of the rule in *Russell* v. *Russell,* No. 70a, *ante.*—RIMMER *v.* RIMMER (1930), 144 L. T. 96; 46 T. L. R. 624, n.

Annotations :—**Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573; Stafford *v.* Kidd, [1937] 1 K. B. 395.

79b. Statement in will—By father.]—A testator & his wife were married in 1847. M. H. was born in 1850, & in the birth certificate the parents were given as testator & his wife. Upon the death of M. H., the legacy duty for which the present trustee of a resettlement of the funds subject to the trusts of testator's will became chargeable would be 1 per cent. if M. H. were the legitimate daughter of testator & 10 per cent. if she were a stranger in blood. The Inland Revenue contended that M. H. was not legitimate & sought to prove this by the evidence of : (i.) testator's will in which he always referred to M. H. as his "daughter or reputed daughter," (ii.) the acts & statements of the exors. of testator's will who had, on the death of testator, paid legacy duty on the bequests to M. H. on the footing that she was a stranger in blood, & (iii.) an affidavit sworn by a grandson of testator as to the reputation in the family with regard to the legitimacy of M. H. :—*Held :* (1) the statements in testator's will were not excluded by the rule in *Russell* v. *Russell,* that rule being limited to evidence of non-intercourse between spouses; (2) upon a consideration of the evidence, the *primâ facie* presumption of legitimacy arising from the birth certificate was displaced & the illegitimacy of M. H. was established. Legacy duty was therefore payable at the rate of 10 per cent.—*Re* HAMER'S ESTATE, PUBLIC TRUSTEE *v.* A.-G., [1937] 1 All E. R. 130; 53 T. L. R. 275; 81 Sol. Jo. 99.

80. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395.

82. *Add. Annotation :*—**Apld.** Elliott *v.* Albert, [1934] 1 K. B. 650.

83. *Add. Annotations :*—**Refd.** Holland *v.* Holland, [1925] P. 101; Warren *v.* Warren, [1925] P. 107; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

84. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

85. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor (1926), 134 L. T. 430.

89. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

90a. —— **Allegation of bigamous marriage——Conclusive evidence required.**]—HAYWARD *v.* HAYWARD (1928), 72 Sol. Jo. 469.

91. *Add. Annotation :*—**Consd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

95. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

96. *Add. Citation :*—*previous proceedings* (1861), 2 Sw. & Tr. 465.

97. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

75 i. —— —— *Whether admissible to prove access before marriage.*]—There is no rule of law that evidence negativing intercourse before marriage is inadmissible to disprove the paternity of a child born in wedlock but conceived before marriage.—MCLEAN *v.* —— [1931] N. Z. L. R. 167.—**N.Z.**

79a i. *Statement to district registrar of births.*]—A statement as to the particulars of the birth of an illegitimate child signed by its mother, a married woman, before the district registrar of births, is not admissible evidence against her to prove her adultery as it is evidence tending to bastardise the child.—JESSOP *v.* JESSOP (1931), 48 N. S. W. W. N. 78.—**AUS.**

92 i. *Evidence as to legitimacy—Declaration in matter of pedigree—By deceased member of family—By father.*]—A husband or wife is entitled to give evidence as to events prior to their marriage even though such evidence may have the effect of bastardising a child born in wedlock. Upon an application by A. for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916, it appeared that A. was born about seven weeks after the marriage of his mother with M. Declarations by M., who was deceased, were tendered in evidence to show that, although M. had been intimate with his wife about four months before their marriage, A. was not his son, & that his wife had admitted that fact :—*Held :* the evidence was not rendered inadmissible by reason of the rule laid down in *Russell* v. *Russell,* No. 70a, & the declarations of M. were admissible as evidence to prove matters of pedigree.—*Re* MACKAY (1928), 28 S. R. N. S. W. 404; 45 N. S. W. W. N. 106.—**AUS.**

Part II.—Mode of Determining Question of Legitimacy.

SUB-SECT. 1 (p. 369.)

Legitimacy Declaration Act, 1858, *is now replaced, except as to sect.* 3, *by S. C. J. (Consolidation) Act*, 1925, *s.* 188.

111. For " a person who has no interest in opposing a petition will not be cited," read " a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."

Add. Citation :—1 New Rep. 107, 378.

121. *Add. Annotation :*—**Apld.** Rutter *v.* Rutter, [1921] P. 136.

127. After this case add :—

—.]—*See note to Sub-sect.* 1, *supra.*

129a. —— **Issue directed at same time as main suit.**]—DEAR *v.* DEAR & CLARK (1936), 80 Sol. Jo. 657.

130a. Under Legitimacy Act, 1926 (c. 60)—Parties.]—*Held :* in a suit, to which only a husband & wife were parties, the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of the above Act.—BEDNALL *v.* BEDNALL & SHIVUSSAWA, [1927] P. 225 ; 96 L. J. P. 150 ; 137 L. T. 632 ; 43 T. L. R. 599 ; 71 Sol. Jo. 453.

Annotations :—**Apld.** Green *v.* Green, [1929] P. 101. **Refd.** Jones *v.* Jones (1929), 98 L. J. P. 74.

130b. —— ——.]—The ct. has no jurisdiction to make an order for custody in divorce proceedings in the case of a child of the parties who was born before their marriage & had not been declared legitimate in accordance with Legitimacy Act, 1926 (c. 60). Such an order for custody would imply a declaration of legitimacy, which cannot be made by the ct. in proceedings in which the child & other persons interested are not represented.—GREEN *v.* GREEN, [1929] P. 101 ; 98 L. J. P. 58 ; 140 L. T. 93 ; *sub nom.* G. *v.* G., 45 T. L. R. 7 ; 73 Sol. Jo. 111.

Annotations :—**Folld.** Jones *v.* Jones (1929), 98 L. J. P. 74. **Refd.** *Re* Carroll, [1931] 1 K. B. 317 ; Lindsay *v.* Lindsay, [1934] P. 162.

130c. —— ——.]—If a child is born to a couple who afterwards marry, & is re-registered on the authority of the Registrar-General under the rules provided in pursuance of Legitimacy Act, 1926 (c. 60), as legitimated, & if the mother of the child subsequently secures a divorce, the ct. has no jurisdiction to grant her an order for the custody of the child, because such an order would imply a declaration of the legitimacy in proceedings in which the child & other parties interested are not parties.—JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192 ; 29 Cox, C. C. 33.

130d. —— **Petition on behalf of several persons—Procedure.**]—A petition for legitimation can only be presented by the party to be legitimated. Persons having a common interest must proceed by separate petitions, but leave may be obtained for them to be heard together with one set of affidavits & one body of evidence. Interested parties must be brought before the ct. Notice of the proposed petition must be given to the A.-G. one month before filing.—*Re* A. B.'s PETITION (1927), 96 L. J. P. 155 ; 138 L. T. 64 ; *sub nom. Re* CLAYTON'S PETITION, 43 T. L. R. 659 ; 71 Sol. Jo. 543.

130e. —— **Hearing — Whether in camerâ.**] — A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ.*—GREENWAY *v.* A.-G. (1927), 44 T. L. R. 124 ; 71 Sol. Jo. 882 ; *sub nom. Re* A. B.'s PETITION, 97 L. J. P. 104 ; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208.

Annotation :—**Refd.** *Re* Lowe, Stewart *v.* Lowe, [1929] 2 Ch. 210.

Hearsay evidence—Admissibility.] —The rule in pedigree cases that declarations of deceased relatives made *ante litem motam* are admissible in evidence extends to proceedings under Legitimacy Act, 1926 (c. 60). The declarations are admissible in the latter class of proceedings in spite of the fact that the legal relationship of the declarant to the party sought to be legitimated is incidentally part of the subject-matter for decision. Although the party sought to be legitimated is *filius nullius* until decree & therefore before decree can have no relations, the result of excluding the declarations would be to take away by a rule of evidence the benefit that the statute intended to confer upon persons whose birth has been originally illegitimate apart from the operation of the statute.

The true construction to be placed upon the limitation *ante litem motam* in cases of legitimation is not a reference to the commencement of proceedings under the statute but the origination of controversy in the family in which legitimation is sought sufficient to create bias in the minds of its members at the moment of their declarations which are subsequently put forward as evidence.—*Re* DAVY, [1935] P. 1 ; *sub nom.* DAVY *v.* A.-G., 103 L. J. P. 115 ; 151 L. T. 562 ; 50 T. L. R. 588 ; 78 Sol. Jo. 618.

130g. —— **Costs—Of Attorney-General.**]—On this petition under Legitimacy Act, 1926 (c. 60), for a declaration of legitimacy *per subsequens matrimonium*, where the declaration was made as prayed, the application of counsel for the A.-G. that petitioner should pay the A.-G.'s costs was granted. Counsel stated that the A.-G.'s instructions were to use discretion as to the particular cases of that kind in which costs should be claimed.—CUNLIFFE *v.* A.-G. (1934), 103 L. J. P. 114 ; 50 T. L. R. 596, n. ; 78 Sol. Jo. 520.

PART II. SECT. 2, SUB-SECT. 1.

sj. *Jurisdiction of court.*]—*Held :* Legitimacy Declaration Act, 1858 (Imp.), gives the ct. jurisdiction to make a declaration of legitimacy upon a direct application for that purpose.—*Re* G., [1922] 1 W. W. R. 978 ; D. L. R. 365 ; 17 Alta L. R. 473. **CAN.**

Part III.—Legitimation by Subsequent Marriage.

132. *Add. Annotations :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

134. *Add. Annotation :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

135. *Add. Annotation :*—**Consd.** Abraham (B. & J.) *v.* A.-G., [1934] P. 17.

136. *Add. Annotation :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

138. *Add. Annotation :*—**Refd.** Bryce *v.* Bryce, [1933] P. 83.

141a. —— —— —— **Germany.**]—*Re* ASKEW, MARJORIBANKS *v.* ASKEW, No. 152a, *post.*

142a. Under Legitimacy Act, 1926 (c. 60)—Parent married to third party when petitioner born—Petitioner with foreign domicile.]—Though the Legitimacy Act, 1926 (c. 60), does not in general permit the legitimation of a person born before the marriage of his parents if either parent was married to a third person when the illegitimate person was born, this restriction does not apply when the person seeking to be declared legitimate is domiciled abroad, & when by the law of the domicile he would be legitimated *per subsequens matrimonium.* In this case the infant petitioner & his father, a British subject, were domiciled in Germany. When the petitioner was born there was a subsisting marriage between his father & a woman not the petitioner's mother. The father was divorced in Germany, & married the mother of his son. By German law petitioner was thereby legitimated :—*Held :* under the joint operation of Legitimacy Act, 1926 (c. 60), ss. 2, 8, the infant petitioner was entitled to a declaration of legitimacy.—COLLINS *v.* A.-G. (1931), 145 L. T. 551 ; 47 T. L. R. 484 ; 75 Sol. Jo. 616.

142b. —— —— **Marriage subsequently declared void for incapacity.**]—A man went through a form of marriage with a woman in 1909. Another woman, then unmarried, bore him a child in Apr. 1929. The man was granted in May, 1929, a decree of nullity of the 1909 union on the ground of the woman's incapacity. He married the mother of his child in Nov. 1929, after the decree of nullity had been made absolute. On a petition for a declaration of legitimacy on behalf of the child it was held that, as the retrospective effect of the decree of nullity was to declare that there had been no marriage in 1909 at all, the man was in fact free to marry when the child was born in Apr. 1929, & the child was entitled under the Legitimacy Act, 1926, to the declaration sought.—NEWBOULD *v.* A.-G., [1931] P. 75 ; 100 L. J. P. 54 ; 144 L. T. 728 ; 47 T. L. R. 297 ; 75 Sol. Jo. 174.

Annotation :—**Consd.** Siveyer *v.* Allison, [1935] 2 K B. 403.

142c. —— **Court must be satisfied as to parentage.**]—Where a petition for a declaration of legitimacy under Legitimacy Act, 1926 (c. 60), was presented on behalf of a young woman of unsound mind who was entitled to an estate of some £11,000, the ct. was not satisfied with the proof of parentage adduced, & dismissed the petition.—S. (OTHERWISE U.) *v.* A.-G. (1931), 146 L. T. 144 ; 48 T. L. R. 66.

144a. —— —— —— ——.]—*Qu. :* whether a child, born in Scotland, of parents domiciled there, who at the time of his birth were not married, but who afterwards intermarried in Scotland, neither having in the meantime married any other person, can take as heir lands of his father in England.

It is said that the *lex loci rei sitæ* must govern the succession to real estate. Undoubtedly it must (LORD BROUGHAM, C.).—DOE d. BIRTWHISTLE *v.* VARDILL (1835), 2 Cl. & Fin. 571 ; 9 Bli. (N. S.) 32 ; 6 E. R. 1270.

148. *Add. Annotation :*—**Refd.** Abraham (B. & J.) *v.* A.-G., [1934] P. 17.

152a. On exercise of power of appointment.]—For the purpose of the exercise of a power of appointment a child which is legitimate by the *lex domicilii* will be treated as legitimate by the English Cts.

Under an English marriage settlement of 1893, funds were settled on trust for J., the husband, who was the settlor, his wife F., & the issue of the marriage, but in the event of a future marriage the husband had power to appoint part of the funds to the children of that marriage. There were issue of the first marriage, two children. About 1909 J. separated from F., who lived in Switzerland with her two children until her death in 1918. J. had acquired a German domicil before 1911, & his first marriage was dissolved in June, 1911, by a ct. in Germany having jurisdiction, the decree *nisi* being made absolute on July 27, 1911. On Apr. 20, 1912, J. married his second wife A., with whom he had cohabited since 1909. M., their acknowledged daughter, had been born on Jan. 30, 1911, at Zurich, & by German law the marriage gave her the status of legitimacy. By deed poll, dated June 13, 1913, J. purported to revoke the trusts relating to a portion of the trust funds under the marriage settlement of 1893, & appointed the income of that portion after his death to A., & after her death he appointed the capital to M. J. died in 1929 :—*Held :* (1) the *lex domicilii,*

PART III. SECT. 1.

sk. *Subsequent marriage of parents in England—Child acquiring domicil in Ontario—Ontario Legitimation Act,* 1921 (c. 53).]—W. was born out of wedlock in England ; his parents subsequently married in England ; & W. went to Ontario when twenty-four years of age, & acquired a domicil in Ontario :—*Held :* W. was legitimate.—*Re* W., [1925] 2 D. L. R. 1177 : 56 O. L. R. 611.—**CAN.**

142a i. *Under Legitimacy Act,* 1926 c. 60).]—M.'s parents were not married until two years after her birth. Their marriage took place in England in 1876, her father being domiciled in England. M. became legitimate in England by virtue of the British Legitimacy Act, 1926 (c. 60). M. claimed to be one of the lawful next-of-kin of her father's sister, who died intestate on Aug. 9, 1930, & whose estate was the subject of administration proceedings in the Irish Free State :—*Held :* M.'s claim was good ; the question of legitimacy was one of status, & status depended on the law of domicile, & M. was legitimate in England on Aug. 9, 1930, & she was also legitimate in the Irish Free State, her legitimacy not being dependent on the Legitimacy Act, 1931 (No. 13 of 1931) of the Irish Free State.—*Re* HAGERBAUM, [1933] I. R. 198.—**IR.**

that is German law, was applicable; (2) the *lex domicilii*, in its widest sense being recognised by the English Cts., M. was a legitimate child of J.; & (3) J. had validly exercised the power of appointment in favour of M.—*Re* ASKEW, MARJORIBANKS *v.* ASKEW, [1930] 2 Ch. 259; 99 L. J. Ch. 466; 143 L. T. 616; 46 T. L. R. 539.

152b. **Under Legitimacy Act, 1926 (c. 60)—Death after marriage of parents—Before operative date of Act—Rights of issue.**]—M. had two illegitimate children, a son & a daughter, by L., whom she subsequently married in 1905. The son died in 1919 leaving issue. L. died in 1919. M. died in 1928 intestate:—*Held:* the son having died before above Act came into force, his issue took no share of M.'s estate.—*Re* LOWE, STEWART *v.* LOWE, [1929] 2 Ch. 210; 98 L. J. Ch. 440; 141 L. T. 428; 45 T. L. R. 484.

152c. —— **Meaning of "disposition."**]—The first deft. was a person legitimated by Legitimacy Act, 1926 (c. 60); & as her parents were married in 1915, the date of legitimation was Jan. 1, 1927, being the date when the Act came into operation. The will of her grandfather who died in 1922, after a life interest to her father, gave certain funds to be shared between the "children" of her father who should survive that father. The father died in 1928. Under Legitimacy Act, 1926 (c. 60), she was entitled to take as a "child" in respect of any "disposition" coming into operation on or after Jan. 1, 1927. On the one hand it was contended that the will was the "disposition," & as this came into operation in 1922 she could not take; &, on the other hand, it was contended that the bequest was the "disposition," &, as this was contingent, it did not come into operation until 1928 upon the happening of the contingency:—*Held:* the "disposition" was the will & such legitimated person did not take under the gift to "children."—*Re* HEPWORTH, RASTALL *v.* HEPWORTH, [1936] Ch. 750; [1936] 2 All E. R. 1159; 105 L. J. Ch. 380; 155 L. T. 250; 52 T. L. R. 694; 80 Sol. Jo. 672.

SECT. 3.—**UNDER LEGITIMACY ACT, 1926 (c. 60).**

Mode of determining legitimacy.]—*See* Nos. 130a–130g, *ante.*

Effect of Act—On rights of succession to intestate.]—*See* No. 152b, *ante.*

Intestate of unsound mind.]—*See* DESCENT, No. 283c, *post.*

On right to take under will.]—*See* No. 152c, *ante.*

On nationality.]—*See* ALIENS, No. 20a, *ante.*

Conditions of legitimation.]—*See* Nos. 142a, 142b, 142c, *ante.*

Part IV.—Legal Position of Bastard.

157. *Add. Annotation:*—**Consd.** *Re* Phillips, *Re* Howard, Charter *v.* Ferguson, [1919] 1 Ch. 128

161. *Add. Annotations:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

162. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

163. After this case add:—

—— ——.]—*See, now,* Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (1).

166. *Add. Annotations:*—**Refd.** Papadopoulos *v.* Papapopoulos, [1930] P. 55; *Re* Ross, Ross *v.* Waterfield, [1930] 1 Ch. 377.

After this case add:—

Right to succeed to mother on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

170. After this case add:—

Right of mother to succeed on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

178. *Add. Annotation:*—**Consd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

179. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

Part V.—Rights and Liabilities towards the Bastard.

199. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

200. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204a. *S. P. Ex p.* EMERSON (1895), 11 T. L. R. 218, D. C.

PART IV. SECT. 1.

154 i. *Nullius filius—Extent of rule.*]—*Held:* does not prevail in a ct. of eq.—*Re* CONNOR, [1919] 1 I. R. 361.—IR.

PART IV. SECT. 2, SUB-SECT. 2.—A. (b).

167 iii. —— *Right of Crown to escheat not affected—Although intestate legitimatised per subsequens matrimonium.*]—*Re* W., [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—CAN.

PART V. SECT. 1.

198 i. *Father's right to custody—Father maintaining child.*]—*Held:* 1 & 2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented by the mother, & the father was *prima facie* entitled to the custody of the child.—*Re* GAVAGAN, [1922] 1 I. R. 148.—IR.

205 vi a. —— —— —— ——.]—WALTER *v.* CULBERTSON, [1921] S. C. 490; 58 Sc. L. R. 401.—SCOT.

205 ix a. ——

Held: a parent should not be [illegible] of the custody of an infant [illegible] shown that the parent has [illegible] or deserted it, or that his conduct has been such as to disentitle him to its custody, or that he has allowed it to be brought up by anoti[illegible] that person's expense.—.

206. *Add. Annotation :*—**Consd.** Green *v.* Green, [1929] P. 101.

207. *Add. Annotations :*—**Consd.** Green *v.* Green, [1929] P. 101 ; *Re* Carroll, [1931] 1 K. B. 317.

208. *Citation :*—For "*subsequent proceedings*" read "*on appeal.*"
Add. Annotation :—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

210a. *S. P.* R. *v.* CLAYDON (1859), 34 L. T. O. S. 46.

211. *Add. Annotation :*—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

214. *Add. Annotation :*—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

215. *Add. Annotation :*—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

225. *Add. Annotations :*—**Consd.** *Re* Carroll, [1931] 1 K. B. 317. **Reld.** Green *v.* Green, [1929] P. 101.

226. *Add. Annotations :*—**Folld.** *Re* Carroll, [1931] 1 K. B. 317. **Reld.** Green *v.* Green, [1920] P. 101.

226a. —— ——.]—In determining the question of the custody of an illegitimate child, too young to have any views of its own, where the character of the mother is not attacked, it is the duty of the ct. to give effect to the wishes of the mother with regard to the religion & education of her child, because, according to the whole tenor of the authorities, unless the character of the mother is such that her wishes with regard to those matters may be disregarded, the mother has a legal right to require that her child shall be brought up in her religion in which the child has been baptised. So far as religious education is concerned, the authorities require the ct. to give the gravest consideration to the wishes of the parents ; in the case of an illegitimate child, of the mother. —*Re* CARROLL (J. M.), [1931] 1 K. B. 317 ; 100 L. J. K. B. 113 ; 144 L. T. 383 ; 95 J. P. 25 ; 47 T. L. R. 125 ; 75 Sol. Jo. 98 ; 29 L. G. R. 152, C. A.

227. *Add. Annotation :*—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

228. *Add. Annotation :*—**Reld.** *Re* Carroll, [1931] 1 K. B. 317.

241a. —— **Permanent maintenance.**] — (1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.

(2) The right to a posthumous affiliation order is a cause of action unknown in England. —*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, [1921] 1 Ch. 522 ; 90 L. J. Ch. 314 ; 124 L. T. 658 ; 65 Sol. Jo. 435.

Part VI.—Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

262. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

1 W. W. R. 853 ; 63 D. L. R. 430 ; 17 Alta. L. R. 493.—**CAN.**

sl. "*Neglected child*"—*Who is.*]—An illegitimate child whose mother is unable to maintain it is a "neglected child" within Children's Protection Act (Ontario), although cared & provided for by a third party.—*Re* S. (1919), 45 O. L. R. 46.—**CAN.**

sm. *Equal Guardianship of Infants Act, R. S. B. C.*, 1924 (*c.* 101)—*Not applicable to illegitimate child*].—*Re* S., *Re* EQUAL GUARDIANSHIP OF INFANTS ACT, [1927] 2 D. L. R. 91 ; [1927] 1 W. W. R. 441 ; 38 B. C. R. 285.—**CAN.**

PART V. SECT. 3.

227 ii. —— —— ——.]—In the case of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is living, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent as to the religion of a child, the ct. is bound solely to pay regard to the welfare of the child.—*Re* CONNOR, [1919] 1 I. R. 361.—**IR.**

PART V. SECT. 4.

p i. —— —— *Child born before Children of Unmarried Parents Act*, 1921 (*Ont.*) (*c.* 54).]—*Held :* the father is not liable to be prosecuted.—R. *v.* O'DONNELL (1923), 39 Can. Crim. Cas. 94.—**CAN.**

sn. *Municipality—Child over six—Child Welfare Act, C. A.*, 1924 *&* 1927.] —CARTIER RURAL MUNICIPALITY *v.* DIRECTOR OF CHILD WELFARE, [1931] 2 D. L. R. 845 ; 2 W. W. R. 7 ; 39 Man. L. R. 429.—**CAN.**

so. *Illegitimate Children's Act*, 1927 —*Object of Act—Protection of child.*]—MCLELLAN *v.* TURNER (1929), 1 M. P. R. 279.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

253 ii. ——.]—Under Children of Unmarried Parents Act, 1921, the father of an illegitimate child is liable for the maintenance & care of the mother before, at, & after the birth of the child, notwithstanding that the child is still-born.—*Re* KIRKPATRICK & MOROUGHAN, [1927] 3 D. L. R. 546 ; 60 O. L. R. 495.—**CAN.**

sp. *Birth before passing of Children of Unmarried Parents Act*, 1923 (*c.* 50) (*Alta.*).]—The above Act applies, where its conditions are complied with, to a child born before the Act was passed or came into operation.—ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 488 ; [1925] 1 W. W. R. 1019 ; 21 Alta. L. R. 100 ; *affg.* [1925] 1 W. W. R. 543.—**CAN.**

sq. *Birth before passing of Child Welfare Act*, 1927.]—The liability which sect. 145 of Child Welfare Act, 1927, c. 60, imposes on the father of an illegitimate child to contribute to its maintenance extends to the maintenance of a child born before the Act came into force.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417 ; 4 D. L. R. 884 ; 24 S. L. R. 534.—**CAN.**

sr. *Birth outside Alberta—Children of Unmarried Parents Act*, 1923 (*c.* 50) (*Alta.*) *applicable.*]—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604 ; [1925] 1 W. W. R. 1113 ; 21 Alta. L. R. 75.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

st. *Application for preliminary expenses—Proof of pregnancy—Sufficiency.*]—On the hearing of an application for preliminary expenses under Child Welfare Act, 1923, the only evidence to prove that the woman was quick with child was a medical certificate which was in the following terms : "I have this day examined W. & find that she is pregnant. I estimate the period of gestation as about 4½ to 5 months" :—*Held :* this did not amount to proof that she was quick with child as required by Child Welfare Act, 1923, s. 70, & the magistrate had no jurisdiction to make an order.—*Ex p.* FAHEY (1929), 29 S. R. N. S. W. 352 ; 46 N. S. W. W. N. 135.—**AUS.**

sv. *Whether mother must be unmarried.*] —The mother of an illegitimate child has the right to apply under Child Welfare Act, 1924, for a summons or warrant against the alleged father only if she is unmarried. Under the law of England as it stood on July 15, 1870, a husband is responsible for the maintenance of all the children of his wife born before her marriage to him, whether they were legitimate or illegitimate ; and that *semble* is the law of Manitoba.—LANG *v.* DAVIS, [1930] 1 W. W. R. 1 ; 2 D. L. R. 571.—**CAN.**

sb. —— *Widow.*]—A widow is an "unmarried woman" within sect. 41

262a. —— —— **Under separation order.**]—An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subsequently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child:—*Held:* the mother was a "single woman" within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole*.—BOYCE *v.* Cox, [1922] 1 K. B. 149; 91 L. J. K. B. 122; 126 L. T. 254; 85 J. P. 279; 38 T. L. R. 51; 66 Sol. Jo. 142; 20 L. G. R. 686; 27 Cox, C. C. 139, D. C.

263. *Annotations:*—For "R. *v.* Suffolk JJ. (1884), 12 J. P. 426" read "R. *v.* Suffolk JJ. (1848), 12 J. P. 426."

Add. Annotation:—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

264. *Add. Annotation:*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

267. *Add. Citation:*—26 Cox, C. C. 129.

274. After this case add:—

Marriage of person under sixteen.]—*See* Age of Marriage Act, 1929 (c. 36), s. 2.

274a. —— **After death of father.**]—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, No. 241a, *ante*.

278a. —— ——.]—(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child:—*Held:* the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dismissed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order.—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 382; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 194; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation:*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer (1924), 88 J. P. Jo. 701.

285. *Add. Annotation:*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

290. After this case add:—

—— ——.]—*See, now*, Bastardy Act, 1923 (c. 23), s. 1.

293. *Add. Annotation:*—**Apld.** Williams *v.* Letheren, [1919] 2 K. B. 262.

of Child Welfare Act, C. A., 1924.—HAWRYSH *v.* REPA, [1933] 1 D. L. R. 776; 1 W. W. R. 122; 41 Man. L. R. 31; 59 C. C. C. 217.—**CAN.**

sd. —— *Divorced woman.*]—A woman who has been married & divorced & who is not now married is a "single woman" within the definition of "mother" in Children of Unmarried Parents Act, R.S.B.C., 1924, & is, therefore, entitled to prosecute affiliation proceedings thereunder.—DODD *v.* WILCOX, [1936] 1 W. W. R. 98; [1935] 4 D. L. R. 797; 64 Can. C. C. 238.—**CAN.**

sf. ——.]—A child born of a married woman may be held to be "born out of wedlock" within sect. 11 (*a*) of Children of Unmarried Parents Act, 1923, & an affiliation order may be granted on her complaint.—K. *v.* K., [1937] 2 W. W. R. 678.—**CAN.**

PART VI. SECT. 2.

271 iii. —— *Limitation of action—What amounts to gift.*]—The making of a gift, in the present case a pair of shoes, by the alleged father to an illegitimate child is not a payment of "money for the maintenance of the child" within the limitation section of Child Welfare Act, R. S. S., 1930.—CAMRUD *v.* HENDRY, [1935] 2 W. W. R. 655.—**CAN.**

sw. *Who may lay complaint—Children of Unmarried Parents Act*, 1923 (c. 50) (*Alta.*).]—The deputy A.-G. of Alberta may authorise another person to act for the Superintendent of Neglected & Dependent Children in laying a complaint under the above Act. Such authorisation may be sufficiently given by telegram.—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—**CAN.**

sx. —— ——.]—A complaint in question was laid by an inspector in the child welfare branch of the department of the A.-G.; & his authority to lay it, which was attached to the complaint, purported to be conferred by the "Acting Deputy Attorney-General":—*Held:* sect. 11 of Public Service Act, R.S.A., 1922, & sect. 26 of Interpretation Act, R.S.A., 1922, were sufficiently comprehensive to confer on the Acting Deputy A.-G. the authority to instruct the inspector to lay the information for & in the place of the superintendent of child welfare.—FLETCHER *v.* NAHAYOWSKY, [1935] 3 W. W. R. 193; 4 D. L. R. 383; 64 Can. C. C. 296; 5 F. L. J. (Can.) 148.—**CAN.**

a i. —— ——.]—Where the affidavit filed by the mother stated that deft. was the father of the child, not "really the father" as required by Children of Unmarried Parents Act, s. 26:—*Held:* the omission of the word "really" was fatal, & the action should be dismissed.—LANCASTER *v.* VAUGHAN (No. 2) (1924), 33 B. C. R. 440.—**CAN.**

sy. *Right to apply for maintenance—Notwithstanding agreement between mother & father.*]—*Held:* such an agreement does not bar another person's right of action under Child Welfare Act, 1927.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417; 4 D. L. R. 884; 24 S. L. R. 534.—**CAN.**

sz. —— *Previous nullity decree—Whether res judicata.*]—In affiliation proceedings under Child Welfare Act, R.S.S., 1930, resp. raised the preliminary objections of *lis alibi pendens & res judicata*, the facts being: in an action in the King's Bench he had obtained a decree that the marriage solemnised between him & the complainant herein, of which the child in question herein was an issue, was null & void. The complainant herein had counterclaimed in said action for the custody of said child & the other children of the alleged marriage & for an order for permanent maintenance by the pltf. of herself & said children. The counterclaim was dismissed. Subsequently on a second issue as to the custody of the child in question herein it was ordered that the deft. in the action, the complainant herein, should have the custody of the child:—*Held:* the question of the maintenance of the child in question herein had not been tried or determined in the King's Bench &, therefore, that question was not *res judicata*.—WASILENKO *v.* WASILENKO, [1937] 1 W. W. R. 129.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

299 i. *Amendment of summons—Where two possible fathers.*]—Where an information was laid under sect. 112 of Child Welfare Act, 1927, & the magistrate after hearing the evidence, instead of discharging the alleged putative father or making an order of filiation, complied with the request of counsel for complainant to "amend" the information so as to bring it within sect. 135 of the Act, relating to informations against possible fathers, & adjourned the hearing:—*Held:* what purported to be an amendment was really the taking of a new information

306a. *S. P.* DELOMBRE *v.* FOUQUAULT (1909), 44 L. Jo. 263.

318. *Add. Annotation :*—Reld. Thomas *v.* Jones, [1920] 2 K. B. 399.

& the alleged putative father was thereupon entitled to an order discharging him as putative father.—WESTFALL *v.* BONNER, [1931] 1 W. W. R. 124; 2 D. L. R. 779; 25 S. L. R. 182; *revsg.*, [1930] W. W. R. 525; 4 D. L. R. 584; 24 S. L. R. 583.—**CAN.**

PART VI. SECT. 4.

ci. *Before whom—Judge of any county or district court in Ontario.*]—*Held :* to be the effect of Children of Unmarried Parents Act, 1921, & Children of Unmarried Parents Act, R. S. O., 1927, as amended by 19 Geo. V., c. 23, s. 10.—*Re* GRAWBARGER & MOYER, [1930] 4 D. L. R. 651; 65 O. L. R. 491; *affg.*, [1930] 1 D. L. R. 856; 64 O. L. R. 630.—**CAN.**

c ii. —— *Justice of Province where child chargeable.*]—A justice has jurisdiction over a complaint by a married female pauper expecting to be delivered of an illegitimate child likely to be chargeable to the Province, although she has a settlement in another Province.—*Re* MONCTON, RODENHIZER *v.* STEEVES, [1934] 1 D. L. R. 651; 61 C. C. C. 383.—**CAN.**

g (p. 394) **i.** —— *Children of Unmarried Parents Act*, 1927, *s.* 21—*Whether retrospective.*]—A proceeding to obtain an affiliation order against A. as the father of an illegitimate child borne by W. on Oct. 13, 1925, was commenced under the provisions of Children of Unmarried Parents Act, 1921, & continued after Children of Unmarried Parents Act, 1927, came into force upon receiving the royal assent on Apr. 5, 1927. Some evidence was taken in June, 1927, & on June 29 an order was pronounced by a county ct. judge declaring A. to be the father of the child :—*Held :* above sect. which was different in terms from sect. 25 of the earlier statute, was applicable to the proceeding though not in force when it was commenced. Above sect. providing that no order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence, is an enactment governing procedure only, & had effect from the time of its coming into force with respect to any order made thereafter, & whether or not the proceeding was commenced before or after the enactment came into force.—*Re* WICKS & ARMSTRONG, [1928] 2 D. L. R. 210; 49 Can. Crim. Cas. 281; 61 O. L. R. 667.—**CAN.**

g (p. 394) **ii.** —— *That husband not father—Illegitimate Children Act, R.S.N.S.*, 1923.]—A married informant may give evidence in bastardy proceedings under Illegitimate Children's Act, R.S.N.S., 1923, that her husband was not the father of her child.—HANTSPORT TOWN *v.* PULSIFER, [1933] 4 D. L. R. 518; 6 M. P. R. 530; 60 C. C. C. 249.—**CAN.**

317 xii. Add "*revsd. sub nom.* RIDLEY *v.* WHIPP, 22 C. L. R. 381."

317 xii a. —— —— ——.]—An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 19, of the evidence of complainant that deft. was the father of her child.—FROST *v.* ALLEN (1919), 15 Tas. L. R. 12.—**AUS.**

317 xii b. —— —— ——.]—Resp., an expectant mother, alleging she was with child by the applt. lodged a complaint against him for the payment by him of the preliminary expenses provided for by sect. 69 of Child Welfare Act. The evidence relied upon by resp. in corroboration was claimed by her to show opportunity for intercourse under circumstances rendering it probable that the opportunity had been availed of. This evidence was: that the applt. & resp. were known to be on affectionate terms with one another for a long time, that they were known to be alone together on many occasions for long periods of time & that at a party on the date of alleged intercourse they went away for some considerable time, & were later near midnight found seated together in the back of a motor car :—*Held :* having regard to present day conditions, & the degree of freedom allowed to young men & women, an inference could not properly be drawn from the evidence that advantage had been taken of the opportunity that presented itself, & there was no evidence in corroboration of the resp.'s allegations.—*Re* MORRIS, *Ex p.* BROWN (1932), 32 S. R. N. S. W. 165; 49 N. S. W. W. N. 67.—**AUS.**

317 xvi a. —— —— ——.]—In affiliation proceedings under Child Welfare Act, C.A., 1924 :—*Held :* complainant's evidence had been sufficiently corroborated.—TRACH *v.* MATIASHYN, [1935] 3 W. W. R. 588.—**CAN.**

317 xxxiii a. —— —— ——.]—In an action by P. against L. for lying-in & medical expenses & aliment for her illegitimate child, L. denied on oath P.'s allegation of seduction :—*Held :* the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—DU PLESSIS *v.* LEVY (1925), 46 N. L. R. 249.—**S. AF.**

317 xxxiii b. —— —— ——.]—A denial of a conversation testified to by independent evidence :—*Held :* an implied admission which vested the evidence with a quality it did not previously possess, & corroboration of the mother's evidence in a material particular.—PITTMAN *v.* BYRNE, [1926] S. A. S. R. 207.—**AUS.**

317 xxxiii c. —— —— ——.]—Evidence of a false denial by deft. is not corroboration; where such denial is not of facts establishing, or connected with, opportunities for intercourse at the critical time, & there is no evidence of opportunity, on the occasions referred to, which can cause the denial to give any particular colour to facts which have no suggestive significance.—MORRISON *v.* TAYLOR, [1927] V. L. R. 62; [1927] Argus L. R. 30.—**AUS.**

317 xxxiii d. —— —— ——.]—The requirement of corroboration in a bastardy case does not import the necessity for independent testimony which establishes the fact of intercourse at a time when the child might have been conceived. Proof of a guilty affection extending over or into the actual period may justify the inference of intercourse without any definite proof of opportunity during that period. It is desirable, if not essential, that the corroboration of the mother's evidence should extend to cover the date of birth of the child.—STANDFIELD *v.* BYRNE (1929), S. A. S. R. 352.—**AUS.**

317 xxxiii e. —— —— ——.]—R. *v.* MOORE (1927), 38 B. C. R. 425.—**CAN.**

317 xxxiii f. —— —— ——.]—LUCIER *v.* OULLETTE (Sask.), [1928] 3 W. W. R. 597.—**CAN.**

317 xxxiii g. —— —— ——.]—ARNOTT *v.* BARBOUR, [1935] 2 W. W. R. 513; 3 D. L. R. 289; 63 C. C. C. 390; 5 F. L. J. (Can.) 99.—**CAN.**

317 xxxiii h. —— —— ——.]—VEREBIOFF *v.* MOOJELSKI, [1936] 3 W. W. R. 591.—**CAN.**

317 xxxviii a. —— —— ——.]—On a complaint that deft. had left his illegitimate child without adequate means of support, evidence was given by the complainant that deft. was the father of the child. Letters which pltf. swore she had received from deft., & which pointed to sexual intercourse at a relevant period, were admitted without objection. In one of these letters reference was made to the enclosure of £2. In another the writer acknowledged the receipt of letters from the complainant. Deft.'s solr. tendered letters written by the complainant to deft. in one of which reference was made to the receipt of money from deft. Complainant's solr. also rendered a letter written to him by deft.'s solr., in which it was admitted, though paternity was denied, that deft. had contributed towards the support of a prior illegitimate child of which the complainant was also the mother :—*Held :* there was sufficient corroboration of the mother's oath that deft. was the father of her child.—CALLAN *v.* HARTY, *Ex p.* HARTY (1928), 22 Q. J. P. 78.—**AUS.**

317 xxxviii b. —— —— ——.]—The conduct & words of applt. herein upon receipt of a letter from resp.'s solr. charging applt. with being the father of resp.'s child :—*Held :* to constitute an "act which affords evidence of acknowledgment of paternity," within Children of Unmarried Parents Act. Also, the mother's evidence as to the paternity of the child had been "corroborated by some other material evidence."—DUNHAM *v.* BRADNER, [1934] 3 W. W. R. 67; 4 D. L. R. 514; 48 B. C. R. 503; 62 C. C. C. 163.—**CAN.**

317 xliii. —— —— ——.]—*Semble :* the mere admission by deft. of intercourse after the date fixed for conception is not corroboration on an affiliation charge.—WADE *v.* ALDERMAN, [1934] S. A. S. R. 108.—**AUS.**

317 xlv a. —— —— ——.]—Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—RIDLEY *v.* WHIPP (1916), 22 C. L. R. 381.—**AUS.**

317 xlv b. —— —— ——.]—On the hearing of a complaint under Illegitimate Children's Act, R.S.M., 1913 (c. 92), the corroboration of the mother's evidence required to support a filiation order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. denies circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—BARTLEY *v.* GALL, [1925] 3 D. L. R. 585; [1925] 2 W. W. R. 669; 35 Man. L. R. 200.—**CAN.**

317 xlv c. —— —— —— *No proof of receipt of letters.*]—SIEVEWRIGHT *v.* KRONEVITT, [1932] 1 W. W. R. 837; 2 D. L. R. 809; 26 Alta. L. R. 298.—**CAN.**

317 xlv d. —— —— —— *Failure of defendant to call evidence or give evidence himself.*]—*Held :* deft.'s conduct did not afford corroboration of pltf.'s case.—FADDES *v.* M'NEISH, [1923] S. C. 443.—**SCOT.**

317 xlv e. —— —— —— *Misconduct prior to possible time of conception.*]—In affiliation cases evidence is admissible of misconduct by deft. with the person on whose behalf the

321. *Add. Annotation :*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

322. *Add. Annotations :—As to* (2) **Distd.** Jones *v.* Thomas, [1934] 1 K. B. 323. *Generally*, **Refd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

323. *Add. Annotation :*—**Consd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

325a. —— —— ——.]—Applt. was charged on complaint preferred by resp. with being the father of a bastard child of resp. Applt. was a farmer & a bachelor. Resp. was his housekeeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. Applt. admitted that during those five weeks & two days he never asked resp. who was the father of her child. Resp. in her evidence said that during that time, though she did not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply :—*Held :* the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—THOMAS *v.* JONES, [1921] 1 K. B. 22 ; 90 L. J. K. B. 49 ; 124 L. T. 179 ; 85 J. P. 38 ; 36 T. L. R. 872, C. A.

Annotations :—**Consd.** Jones *v.* Thomas, [1934] 1 K. B. 323. **Refd.** R. *v.* Atkinson (1934), 24 Cr. App. Rep. 123.

325b. —— —— —— **Letters from respondent—Evidence of complainant as to handwriting.**]—JOHNSON *v.* PRITCHARD (1933), 97 J. P. Jo. 754 ; 176 L. T. Jo. 389, D. C.

325c. —— —— ——.]—A false statement made by the alleged father before the hearing of the complaint in affiliation proceedings is not necessarily corroboration of the woman's evidence in any material particular as required by Bastardy Laws Amendment Act, 1872 (c. 65), s. 4.—JONES *v.* THOMAS, [1934] 1 K. B. 323 ; 103 L. J. K. B. 113 ; 150 L. T. 216 ; 98 J. P. 41 ; 31 L. G. R. 424 ; 30 Cox, C. C. 47, D. C.

330. After this case add :—

—— —— ——.]—*See, now*, Poor Law Act, 1927 (c. 14) ; Bastardy (Witness Process) Act, 1929 (c. 38).

334. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

337a. Affiliation proceedings—Effect of previous acquittal of respondent of carnal knowledge of complainant.]—On an affiliation summons it was proved that resp. had been acquitted at the assizes on a charge of unlawful carnal knowledge of complainant, & the justices held that they were bound by the decision at assizes & stopped the case :—*Held :* the case must go back for the justices to determine as a whole. It was legitimate for them to take into account the fact that complainant's story had failed to convince the jury, but if, after hearing the evidence they thought her story true, they ought to find accordingly.—PACKER *v.* CLAYTON (1932), 97 J. P. 14 ; 31 L. G. R. 98, D. C.

345. *Add. Citation :*—2 L. M. & P. 130.

358a. —— ——.]—An order of bastardy stated to be made upon the oath of the wife, as otherwise, is good ; for it will be presumed

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order is sought previous to the period when the conception must have occurred.—MUNRO *v.* KRAUSE, [1931] 2 W. W. R. 685 ; 4 D. L. R. 120 ; 56 Can. C. C. 311; 25 Alta. L. R. 486.—**CAN.**

317 xlix a. —— —— ——.]—In an action of affiliation it was proved that pursuer had sexual intercourse with the defender between Dec. 7 & Dec. 14, & that she had previously, between Nov. 7 & Nov. 20, had sexual intercourse with another man. She menstruated normally from Dec. 1 to Dec. 6. The child was born on Sept. 4, a date consistent with the paternity of either man. The medical evidence established that menstruation after conception was very uncommon, but not impossible :—*Held :* the pursuer had sufficiently instructed that defender was the father of her child.—SINCLAIR *v.* RANKIN, [1921] S. C. 933 ; 58 Sc. L. R. 624.—**SCOT.**

317 xlix b. —— —— ——.]—Mere promiscuity of sexual intercourse without evidence that such intercourse takes place as a means of gain does not justify a finding that a woman is a common prostitute.—NICHOLLE *v.* PADDICK, [1927] S. A. S. R. 595.—**AUS.**

q (p. 398) **i.** —— ——.]—In an action of affiliation & aliment the proof disclosed that pursuer's child was born on Sept. 20, 1932. Defender admitted having had connection with pursuer on Nov. 19, 1931, 306 days before the birth of the child. Pursuer alleged that connection also took place on Dec. 12, 1931, but this alleged act of connection was held not to be proved. Pursuer admitted having had a menstrual period about Dec. 6 or Dec. 7, 1931. There was no evidence pointing to any other man as the father of pursuer's child :—*Held :* as the period of 306 days elapsing between the last proved act of connection & the birth of the child was not an impossible period of gestation, the presumption, in the absence of evidence to the contrary, was that defender was the father of the child ; & further, that defender had failed to displace this presumption ; & decree granted.—JAMIESON *v.* DOBIE, [1935] S. C. 415.—**SCOT.**

b (p. 399) **i.** —— *After prescribed period.*]—Where an application for an application order is made within the prescribed period, but no appointment is served, it must be deemed abandoned & a second application after the prescribed period is invalid.—*Re* STONE & REYNOLDS, [1934] 2 D. L. R. 70 ; O. R. 173.—**CAN.**

PART VI. SECT. 5.

g i. —— *No evidence of means & expenses.*]—An order made under Children of Unmarried Parents Act, 1923 (c. 50) (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child.—ANDERTON *v.* SEROKA, [1926] 2 D. L. R. 912 ; [1925] 2 W. W. R. 433 ; 21 Alta. L. R. 362.—**CAN.**

g ii. —— *Variation of order.*]—Where the mother craved an increase because of the cost of living due to the war :—*Held :* the amount of inlying expenses be unaltered, but decree granted for 4*s.* 6*d.* per week, in name of aliment, permission being granted to deft. to apply to the ct. should a change of circumstances arise.—FORBES *v.* MATTHEW, [1919] S. C. 242 ; 56 Sc. L. R. 137.—**SCOT.**

g iii. ——.]—The true criterion in Scotland is, not the rank or financial position of the parties, but the support beyond want which must be accorded to an illegitimate child.—FRASER *v.* CAMPBELL, [1927] S. C. 589.—**SCOT.**

g iv. —— *Effect of Illegitimate Children's Act, R.S.N.S.*, 1923, *Pt. II.*]—Cts. trying actions for maintenance cannot, by means of Illegitimate Children's Act, R.S.N.S., 1923, Pt. II., order payment of maintenance of a sum in excess of their ordinary jurisdiction.—LAKE *v.* WILCOX, [1934] 2 D. L. R. 139 ; 7 M. P. R. 298 ; 61 C. C. C. 394.—**CAN.**

348 i a. ——.]—Under Illegitimate Children's Act, R.S.N.S., 1923, s. 12, one found to be the putative father must pay the sum fixed by the order, or give a bond.—OVERSEERS OF POOR *v.* RONDEAU, [1937] 1 D. L. R. 801.—**CAN.**

348 ii a. —— ——.]—An order of filiation required the putative father to pay a sum or give a bond. He gave the bond on appeal—*Held :* not a fulfilment of the order, & imprisonment justified.—*Re* RONDEAU (1937), 11 M. P. R. 362.—**CAN.**

that the non-access of the husband was proved by competent witnesses on oath other than the wife; or if proved by her also, that the judgment of the justices was founded on the other proof.—R. *v.* LUFFE (1807), 8 East, 193; 103 E. R. 316.

Annotations:—**Refd.** R. *v.* Kea (1809), 11 East, 132; R. *v.* Hartington (1816), 4 M. & S. 559; Head *v.* Head (1823), 1 Sim. & St. 150; R. *v.* Sourton (1836), 2 Har. & W. 209; Morris *v.* Davies (1836-7), 5 Cl. & Fin. 163; R. *v.* King's Lynn Recorder (1846), 3 Dow. & L. 725; R. *v.* Shipperbottom (1847), 10 Q. B. 514; Ormerod *v.* Chadwick (1847), 16 M. & W. 367; R. *v.* Collingwood (1848), 12 Q. B. 681; R. *v.* Grafton (1848), 3 New Mag. Cas. 2; R. *v.* Pilkington (1853), 2 E. & B. 546; Legge *v.* Edmonds (1855), 25 L. J. Ch. 125; *Ex p.* Turnock *v.* Turnock & Turnock (1867), 36 L. J. P. & M. 85; *Re* Parson's Trust (1868), 18 L. T. 704; R. *v.* Suffolk Justices (1848), 12 J. P. 426; Jones *v.* Davies, [1901] 1 K. B. 118; Webb *v.* Murrel (1904), 68 J. P. 104; Brown *v.* Leech (1924), 94 L. J. K. B. 48; Russell *v.* Russell, [1924] A. C. 687.

365a. Revocation of order—Mother convicted of perjury.]—BATCHELOR *v.* SMITH (1935), 79 Sol. Jo. 49, D. C.

366a. Variation of order—Adjudication of paternity—"Fresh evidence."]—On the application of resp., justices made an order adjudging that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity:—*Held:* (1) the justices were right; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—COLCHESTER *v.* PECK, [1926] 2 K. B. 366; 95 L. J. K. B. 1038; 135 L. T. 32; 90 J. P. 130; 42 T. L. R. 535; 28 Cox, C. C. 225, D. C.

Annotations:—*As to* (1) **Follid.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191. **Consd.** Batchelor *v.* Smith (1935), 79 Sol. Jo. 49.

366b. —— —— ——.]—(1) Criminal Justice Administration Act, 1914 (c. 38), s. 30 (3), while empowering justices to deal generally with an existing bastardy order, does not enable them to revoke that part of the order which consists of the adjudication of paternity.

(2) "Fresh evidence" must be of such a character that not merely is it relevant, but of such importance that it would have affected the judgment of any one if they had had the opportunity of hearing it at the original hearing of the case.—R. *v.* COPESTAKE, *Ex p.* WILKINSON, [1927] 1 K. B. 468, 96 L. J. K. B. 65; 136 L. T. 100; 90 J. P. 191; 24 L. G. R. 562, C. A.

Annotations:—*As to* (1) **Consd.** Batchelor *v.* Smith (1935), 72 Sol. Jo. 49. *As to* (2) **Consd.** Nicholson *v.* Inverforth (1935), 79 Sol. Jo. 816.

367. *Add. Annotation:*—**Refd.** Grocock *v.* Grocock, [1920] 1 K. B. 1.

367a. —— Justices' discretion.]—Under 1872 Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—GROCOCK *v.* GROCOCK, [1920] 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

Annotation:—**Refd.** Colchester *v.* Peck, [1926] 2 K. B. 366.

368. *Add. Annotation:*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

371. *Add. Annotation:*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

372a. —— Application for warrant—Jurisdiction of justices to question validity of affiliation order.]—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, No. 278a, *ante*.

375. *Add. Annotation:*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

379. *Add. Annotations:*—*As to* (1) **Apld.** Grocock *v.* Grocock, [1920] 1 K. B. 1. **Expld.** Colchester *v.* Peck, [1926] 2 K. B. 366.

384. *Add. Citation:*—*sub nom.* R. *v.* SMITH, 55 L. J. M. C. 147.

389. *Add. Annotation:*—**Refd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

395. *Add. Annotation:*—**Refd.** Marsland *v.* Taggart, [1928] 2 K. B. 447.

398. After this case add:-

—*See, now,* Summary Jurisdiction Act, 1879 (c. 49), ss. 35, 47.

PART VI. SECT. 6.

371 ii. ——.]—Where, upon an application under sect. 128 (*b*) of Child Welfare Act, R.S.S., 1930, the putative father did not show that efforts had been made by him to comply with the filiation order & the evidence showed that he had treated it with contempt & had paid not the slightest attention to its terms, an order of imprisonment was directed.—WERCHOLA *v.* FORNALIUK, [1934] 2 W. W. R. 643.—**CAN.**

st. *Imprisonment—Failure to pay aliment—Offer by father to maintain child in his home.*]—In an application under Civil Imprisonment (Scotland) Act, 1882, s. 4, by the mother of two illegitimate daughters for warrant to imprison the father, in respect of his failure to obtemper a charge proceeding upon a decree for payment of aliment until the children respectively attained fourteen years of age, the Sheriff, notwithstanding an offer by the father, a married man, to maintain the children, who were then over ten years of age, in his own home, granted warrant of imprisonment. The father, having sought to suspend the charge & warrant, the mother contended that his offer of maintenance should not be entertained, in respect that, under the decree for aliment which was still current, his obligation could only be discharged by money payments:—*Held:* (1) a father's option at common law to maintain his illegitimate child in his home, if a boy after the age of seven, & if a girl after the age of ten, was not excluded by the fact that at the date of such an offer of maintenance a decree against him for aliment was still current; (2) in view of the *bonâ fide* offer of maintenance here made, the complainer was not a person wilfully refusing to pay aliment within Civil Imprisonment (Scotland) Act, 1882, s. 4, & charge & warrant suspended.—MACDONALD *v.* DENOON, [1929] S. C. 172.—**SCOT.**

sw. —— *Effect.*]—A filiation order under Child Welfare Act, C. A., 1924, c. 30, provided that, in the event of the accused failing to give the bond or making the cash payment required of him by the order, he should be committed to gaol for 12 months. On appealing from the order the accused, not wishing to go to gaol pending the hearing of the appeal, gave the bond provided for by sect. 68 (*b*) of said Act. His appeal was dismissed; &, none of the directions of the filiation order having been complied with, his bondsmen delivered him into custody, & he was committed to gaol & served the prescribed term. An action was then brought by the mother on the bond given in respect to the appeal:—*Held:* the serving of the term of imprisonment did not satisfy his obligations on the filiation order & pltf. was held entitled to judgment; but she could not recover more than the amount presently in default under said order.—BOYAK *v.* KOBYLANSKI, [1929] 1 D. L. R. 867; 1 W. W. R. 364; 38 Man. L. R. 89.—**CAN.**

403a. —— —— **New evidence.**]—Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child:—*Held:* the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter

PART VI. SECT. 7, SUB-SECT. 2.

400 ii. —— —— *Irregularity or illegality in proceedings.*]—Illegitimate Children's Act, R.S.S. 1920 (c. 156), s. 10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the superior ct. be refused.—DWYER *v.* BULBECK, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391.—**CAN.**

r i. —— —— *Refusal to vary or rescind order.*]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, appt. is entitled to a prerogative writ of *mandamus* to compel him to do so.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

y i. —— ——.]—Notice of an appeal from an order of filiation made under Child Welfare Act, C. A., 1924, c. 30, was given within 10 days of the making & date of the formal order. The judge had three days previously, & after the hearing, endorsed on the information an entry which included the words, "Remanded until Friday," "Filiation order granted." At the adjourned sitting he made another such entry which repeated & supplemented the previous entry, & he then signed & dated the formal order. On the appeal, the county ct. judge held that said first entry constituted the order provided for in sect. 750 (*b*) of the Criminal Code, made applicable by sect. 70 of the Child Welfare Act, & sustained the preliminary objection that the notice of appeal had not been filed within 10 days "after the conviction or order." An application for *mandamus* was dismissed. On appeal therefrom:—*Held:* the appeal should be allowed & a *mandamus* issued as prayed for.—DANIELSON *v.* THORDARSON, [1930] 3 W. W. R. 104; [1931] 1 D. L. R. 199; 39 Man. L. R. 182.—**CAN.**

y ii. —— *Grounds for allowing appeal.*]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence before the magistrate, as to the paternity of the child:—*Held:* the appeal from the county ct. judge must be dismissed.—MULGRAVE *v.* CLANCEY (1925), 58 N. S. R. 105.—**CAN.**

y iii. —— *At what place.*]—In a complaint under Children of Unmarried Parents Act, R. S. B. C., 1924 (c. 34), s. 7 (1), "the cause" of the complaint within Summary Convictions Act, R. S. B. C., 1924 (c. 245), s. 77, is the seduction & not the birth of the child; & an appeal from the dismissal of the complaint is properly taken to the county ct. nearest the place where the seduction occurred.—FERGUSON *v.* TAYLOR (B. C.), [1926] 3 W. W. R. 203; 46 Can. Crim. Cas. 149.—**CAN.**

y iv. *Not to Court of Appeal—From Juvenile Court judge under Child Welfare Act.*]—*Re* KWASNICKI & LAMONT, [1932] 2 W. W. R. 428; 3 D. L. R. 270; 40 Man. L. R. 555; 58 C. C. C. 368.—**CAN.**

y v. —— *From King's Bench Judge under Child Welfare Act (Sask.).*]—OLSON *v.* POLLARD, [1933] 3 W. W. R. 679.—**CAN.**

d i. —— *Under Illegitimate Children's Act, R. S. S.*, 1920 (*c.* 156).]—An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or varied by him on the application of the putative father under s. 10.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

sx. *Compliance with order—Whether condition precedent to appeal.*]—It is not a condition precedent to the bringing of an appeal by a deft. from an order under Children of Unmarried Parents Act, 1924 (c. 34), as amended, that proof be furnished that he has complied with the terms of the order.—HYNES *v.* ALTON (B. C.), [1928] 3 W. W. R. 261.—**CAN.**

sy. *To Supreme Court—What court may consider.*]—In an appeal on a point of law under Destitute Persons Act, 1910, from an affiliation order, on the ground that complainant's evidence was not corroborated in a material particular as required by sect. 10 of that Act, the magistrate's notes of evidence should be incorporated in & form part of the case on appeal, & the discretion to admit evidence under sect. 68 of the Act not strictly legally admissible belongs solely to the magistrate & is not controllable by the Supreme Ct. The latter ct., however, is entitled to have regard to the nature of such evidence, once admitted, when considering whether the evidence submitted as corroborative may be regarded as such, its proper function on an appeal on a point of law being to determine whether there was evidence which was corroborative; & if there was such evidence, it is not for the Appellate Ct. but for the magistrate to determine whether or not the evidence satisfied him. *Qu.*: whether the Appellate Ct. on appeal on a point of law is entitled to treat as corroborative evidence not relied on by the magistrate as corroborative.—ANSON *v.* PARKER, [1928] N. Z. L. R. 490.—**N.Z.**

sa. —— *Failure to appear before county court.*]—Failure to appear before the county ct. on appeal from an affiliation order made by justices estops deft. from appealing to the Supreme Ct.—OVERSEERS OF POOR *v.* CAMERON, [1934] 2 D. L. R. 445; 7 M. P. R. 540.—**CAN.**

sf. *Right to serve second notice of appeal—Prior appeal dismissed for lack of proof of jurisdiction.*]—Applt. appealed from a conviction under Children of Unmarried Parents Act, R. S. B. C., 1924, c. 34. A prior appeal was dismissed because of lack of proof of a point going to the jurisdiction of the ct.:—*Held:* the time allowed by the Act for appealing not having expired, applt. had a right to serve another notice of appeal & —— prove his right to appeal.—HYNES *v.* ALTON (B. C.), [1929] 1 W. W. R. 863; 52 Can. C. C. 333.—**CAN.**

sd. *Notice of appeal—Contents.*]—Notice of appeal under Children of Unmarried Parents Act Amendment Act, 1927, s. 6 (2) (*c*), must designate the proper sittings at which the appeal should be heard, & irregularity is fatal to the appeal.—OGILVIE *v.* FINLEY (1931), 45 B. C. R. 76.—*Sub nom.* R. *v.* OGILVIE, *Re* OGILVIE *v.* FINLEY (1931), 57 C. C. C. 195.—**CAN.**

sk. —— ——.]—An appeal from the dismissal of an information laid by an unmarried woman under Child Welfare Act against the alleged putative father was dismissed on the grounds that the notice of appeal was invalid in that it stated that the appeal was to a county ct. other than the proper county ct. & it did not set forth with reasonable certainty the order appealed from. On appeal:—*Held:* the appeal should be allowed & the appeal to the county ct. judge remitted to him for hearing.—SYWACK *v.* HRUBENIUK, [1937] 1 W. W. R. 225; 1 D. L. R. 785; 67 C. C. C. 395; 44 Man. L. R. 507.—**CAN.**

so. —— *To Superintendent of Neglected Children—When necessary.*]—Notice to the Superintendent of Neglected Children under Children of Unmarried Parents Act, R.S.B.C., 1924, need only be given on commencement of proceedings, & not on appeal.—MYLLYMAKI *v.* ARNOLD (1935), 63 C. C. C. 366.—**CAN.**

sq. *Application by ratepayer—Whether appeal by mother lies.*]—An application by a ratepayer of a poor district for a filiation order having been dismissed, the mother has no right of appeal.—NORTH BROOKFIELD OVERSEERS *v.* MEISNER (1934), 64 C. C. C. 117.—**CAN.**

st. *Dismissal of appeal in county court—Whether mandamus lies.*]—A conviction in affiliation proceedings under Child Welfare Act, 1936, was appealed to the county ct. The judge dismissed the appeal. Applt. then moved in the King's Bench for a *mandamus* directing the county ct. judge to hear & determine the appeal. DONOVAN, J., refused the *mandamus*, & on appeal from his order:—*Held:* the appeal should be dismissed.—R. (CLEAVER) *v.* STACPOOLE, *Re* RAFTER, [1937] 1 W. W. R. 251; 1 D. L. R. 788; 67 C. C. C. 398.—**CAN.**

sv. *From county court.*]—An appeal to the county ct. from a filiation & maintenance order was dismissed for want of jurisdiction on the ground that the proceedings were not in order. Applt. then moved for a *mandamus*. It was refused on the ground that Child Welfare Act, 1936, s. 65, now gives a right of appeal from the county ct. Applt. then moved for a certificate that an appeal to the Ct. of Appeal was justified. It was objected that he was too late & that the time for a[illegible] should not be extended:—*Held:* in view of the continuous effect of a filiation order & the fact that appt. had explained the delay & had at all times exhibited a *bond fide* intention to appeal, the time for so applying should be extended & the motion remitted.—R. *v.* CLEAVER, *Re* RAFTER, [1937] 1 W. W. R. 557.—**CAN.**

sessions, to which, owing to lapse of time, an appeal could not be made.—R. *v.* MARKHAM, *Ex p.* MARSH (1923), 67 Sol. Jo. 518.

403b. —— —— **Sufficiency of corroboration.**]—On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms: "On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child":—*Held:* the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices, was a matter to be decided by the justices &, even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—R. *v.* LINCOLNSHIRE JJ., *Ex p.* BRETT, [1926] 2 K. B. 192; 95 L. J. K. B. 827; 135 L. T. 141; 90 J. P. 149; 28 Cox, C. C. 178, C. A.

BANKRUPTCY AND INSOLVENCY.

Part I.—Bankruptcy Jurisdiction.

4. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

15. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

27. *Add. Annotation :*—**Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

40a. —— —— **How derived.**]—*Re* PRIOR, *Ex p.* PRIOR, No. 1548a, *post.*

60. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79. **Apld.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

69. *Add. Annotation :*—**Refd.** R. *v.* Customs & Excise Comrs., [1928], A. C. 402.

79a. —— —— **Dependent on intention.**]—*Ex p.* BLACKMORE (1801), 6 Ves. 3 ; 31 E. R. 909, L. C.

Annotation :—**Refd.** *Re* Bryant, *Ex p.* Paterson (1813), 1 Rose, 402.

79b. —— **Actor.**]—It is certain that no actor, nor any person exhibiting gymnastic feats in public, nor even the proprietor of a theatre, would be a trader within the meaning of the Bkpcy. Act (KELLY, C.B.).—SPEAK *v.* POWELL (1873), L. R. 9 Exch. 25 ; 43 L. J. M. C. 19 ; 29 L. T. 434.

160a. —— —— ——.]—A surgeon dispensing his own medicines :—*Held :* a trader within the bkpt. law.—NICHOLSON *v.* COOPER (1858), 31 L. T. O. S. 184.

177. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

190a. Theatrical proprietor.]—SPEAK *v.* POWELL No. 79b, *ante.*

196. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors [1936] 1 All E. R. 875.

199. *Add. Annotation :*—**Folld.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

207a. Business abroad—Branch in England—Assignment for benefit of creditors operating by foreign law.]—A foreigner resident abroad but trading in England does not commit an act of bkpcy. within 1914 Act, s. 1 (1) (*a*), (2), by executing abroad a deed of assignment of his property for the benefit of his creditors generally, & intended to operate according to the law of that foreigner's domicil.—*Re* DEBTORS (No. 836 of 1935), [1936] Ch. 622 ; 105 L. J. Ch. 265 ; *sub nom. Re* DEBTORS (No. 836 of 1935), PETITIONING CREDITOR *v.* DEBTORS, [1936] 1 All E. R. 875 ; 154 L. T. 592 ; 52 T. L. R. 478 ; 80 Sol. Jo. 404 ; [1936-7] B. & C. R. 75, C. A.

218a. *S. P.* R. *v.* COLE (1698), 12 Mod. Rep. 243 ; 1 Ld. Raym. 443 ; Holt, K. B. 360 ; 88 E. R. 1293.

Annotation :—**Refd.** Belton *v.* Hodges (1832), 9 Bing. 365.

218b. *S. P. Re* COOKE, *Ex p.* ADAM (1813), as reported in 1 Ves. & B. 493 ; 2 Rose, 36 ; 35 E. R. 191.

Annotation :—**Refd.** *Re* Smedley (1864), 10 L. T. 432.

223a. —— ——.]—A person who buys goods under age cannot, when he comes of age, be bkpt. in respect of them.—WHITLOCK'S CASE (1725), Cas. *temp.* King, 46 ; 25 E. R. 215.

224. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226a. ——.]—(1) In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition. (2) *Qu. :* whether if a receiving order & order of adjudication are made in such a case the official receiver can deduct his costs of obtaining the rescission & annulment of

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PART I. SECT. 1.

4 ii. ——.]—IMPERIAL BANK OF CANADA *v.* BARBER, [1921] 20 O. W. N. 282 ; 59 D. L. R. 523 ; 1 C. B. R. 485. —**CAN.**

20 iii. —— ——.]—Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force.—*Re* MCKAY (1921), 51 O. L. R. 86 ; 2 C. B. R. 59 ; 64 D. L. R. 699.—**CAN.**

PART I. SECT. 2.

40 i. *Registrar—General powers & jurisdiction.*]—The registrar was held to have no jurisdiction to assess the damages sustained by a firm of traders by reason of an interim receiving order made upon the petition of a co. & afterwards rescinded. While the registrar has jurisdiction under Bkpcy. Act, s. 159 (*f*), to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers by the registrar, his jurisdiction is confined solely to those cases, & does not extend to cases that are by the rules required to be heard by a judge.—*Re* STUART & SUTTERBY, [1930] 2 D. L. R. 689 ; 65 O. L. R. 154 ; 11 C. B. R. 279 ; *affd.*, [1931] 1 D. L. R. 754 ; 66 O. L. R. 427 ; 12 C. B. R. 267.—**CAN.**

40 ii. —— ——.]—A summary motion was made by the trustee of a bkpt.'s estate for an order declaring that he was entitled, as against two claimants, to the proceeds of the sale of certain goods. The motion was made returnable before the judge in bkpcy. ; but the registrar, assuming that he had the jurisdiction of a judge in bkpcy., without any authority from the judge, & without the consent of the parties, assumed to hear & determine the application, & made a declaratory order :—*Held :* the registrar had not the jurisdiction which he assumed to exercise.—*Re* BARTRAM, [1930] 3 D. L. R. 146 ; 65 O. L. R. 182 ; 11 C. B. R. 345.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

121 ii. —— —— *Debts of former business unpaid.*]—A person who ceases to carry on his business & becomes a farmer is not a person "engaged solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkpcy. Act, s. 3 (1).—*Re* GARTRELL, *Ex p.* KEARNS, [1923] 3 D. L. R. 406 ; [1923] 2 W. W. R. 855 ; 4 C. B. R. 103.—**CAN.**

121 iii. —— —— *Also dealing in wood.*]—PETIT *v.* GIRARD, [1931] 2 D. L. R. 991.—**CAN.**

those orders out of the assets.—*Re* A. & M., [1926] Ch. 274; 70 Sol. Jo. 607; *sub nom. Re* L. A. & B. F. M., *Ex p.* OFFICIAL RECEIVER *v.* THE DEBTORS, 95 L. J. Ch. 258; 134 L. T. 539; [1926] B. & C. R. 19, D. C.

230. *Add. Annotations :*—**Apld.** *Re* A. & M., [1926] Ch. 274. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120.

235. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

SUB-SECT. 6.—MARRIED WOMEN.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1 (*d*).

263. For "*Held :* she was subject . . . under 1883 Act, s. 24" read, "*Held :* such power of appointment was not separate property within Married Women's Property Act, 1882, s. 1 (5), & she could not be directed to appoint to her trustee in bkpcy. under 1883 Act, s. 24."

Add. Annotations :—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283. **Refd.** *Re* Armstrong, *Ex p.* Boyd (1888), 21 Q. B. D. 264.

265. *Add. Annotation :*—**Refd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

267. *Add. Annotations : — As to* (1) **Apld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

274. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 15 of 1936), Debtor *v.* Petitioning Creditor & Official Receiver, [1936] 2 All E. R. 1493.

274a. —— **What is—Professional artiste producing scenæ.**]—The debtor, a married woman & professional singer, had up to May, 1925, been engaged in musical comedy, but had subsequently produced scenæ & vocal acts at various music halls. In the production of these scenæ she had required certain accessories in the way of dresses, etc., in respect of which she had incurred liabilities. On the hearing of a petition against her for a receiving order a number of contracts with music-hall proprietors were put in evidence, from which it appeared that in consideration of a fixed sum per week she undertook to sing & to engage & pay one or more singers to assist her in the production of her scenæ, & also to provide & pay an accompanist. The registrar dismissed the petition on the grounds that Bkpcy. Act, 1914 (c. 59), s. 125, did not include profession or occupation under the term "business"; that "trade" & "business" were *ejusdem generis* & intended to bring within the scope of the Act women who were actually trading or carrying on a business in the nature of a trade, & that the fact that the debtor was assisted by another singer & a pianist did not make her any the less a professional artist than when she acted on the stage. On appeal :—*Held :* the debtor was carrying on a continuous occupation for the purpose of making profits by entering into contracts under which she bound herself to produce scenæ on the stage & to provide the necessary accessories in the way of assistant singers & accompanist, & that in those circumstances she could properly be described as carrying on a business within sect. 125.—*Re* A DEBTOR (No. 3 of 1926), [1927] 1 Ch. 97; 135 L. T. 689; [1926] B. & C. R. 86, C. A.

Annotations :—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237. **Refd.** *Re* Bankruptcy Notice (No. 292 of 1928) (1928), 44 T. L. R. 533.

274b. —— —— **Engaging in speculative transactions.**]—A series of speculative transactions by a married woman, if they involve the making of genuine commercial contracts extending over a long period of time, may amount to carrying on a "business" within 1914 Act, s. 125 (1), so as to make her subject to the bkpcy. laws.—*Re* BANKRUPTCY NOTICE (NO. 292 OF 1928) (1928), 44 T. L. R. 533, C. A.

Annotation :—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237.

274c. —— **Effect of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 4 (1) (c)—Receiving order made before passing of Act.**]—The debtor, a married woman, had a series of speculative Stock Exchange transactions with the petitioning creditors extending over a period of eighteen months which resulted in a debt to them of £3,500, in respect of which they obtained judgment against her. The petitioning creditors petitioned for a receiving order. The debtor disputed the petition on the ground that she was a married woman who was not carrying on a trade or business within the meaning of sect. 125 of 1914 Act. The Registrar held that the transactions in which the debtor had been engaged constituted the carrying on by her of a business within sect. 125 & made a receiving order against her. The debtor appealed. Before the hearing of the appeal Law Reform (Married Women & Tortfeasors)

PART I. SECT. 3, SUB-SECT. 5.

sb. *Lunatic so found—Assignment through committee.*]—The ct. may make an order authorising an assignment under the Bkpcy. Act to be made by an insolvent lunatic through his committee.—*Re* BUCHNER, [1936] 1 D. L. R. 459; O. R. 25.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

266 i. *Judgment debt—Bankruptcy Act,* 1908, *s.* 26 (*f*).]—A bkpcy. notice under the above sub-sect. cannot be issued against a married woman against whom a creditor has recovered a judgment.—*Re* WALKER, *Ex p.* HINKEY, [1927] N. Z. L. R. 81.—**N.Z.**

267 i. *Carrying on business.*]—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

267 ii. —— *In partnership with husband.*]—*Held :* debtor was not carrying on business separately from her husband, & her adjudication in bkpcy. was irregular.—*Re* SCOTT (1924), 20 Tas. L. R. 43.—**AUS.**

267 iii. —— *Debts unpaid after sale of business—Receiving order may be made.*]—A married woman carried on a trade separately from her husband. Having incurred debts, & being unable to meet her creditors, on Feb. 9, 1929, she filed a petition for arrangement & was granted the protection of the ct. on Mar. 1. She was unable to carry out her proposal to pay twenty shillings in the pound, & eventually on July 26, her petition was dismissed, & thereby an act of bankruptcy was committed. On Oct. 30 she was adjudicated a bkpt. on the petition of two of her creditors, wherein she was described as a married woman carrying on a trade separately from her husband, in respect of debts undischarged at the date of the petition. She applied to have this adjudication set aside on the ground that she was not such a trader on the date of adjudication. She stated that during the progress of the arrangement matter she found that she was unable to get any further credit & closed down & went out of trade on Mar. 23, & had not since carried on any trade :—*Held :* there was ample evidence that the debts in respect of which adjudication was sought were trade debts for goods supplied incurred by her while she was carrying on a trade separately from her husband, & the fact of her having trade debts undischarged at the date of the petition was evidence from which it could be inferred that she was still carrying on her trade.—*Re* SOMERS, [1930] I. R. 1.—**IR.**

Act, 1935 (c. 30), was passed :—*Held :* (1) the Registrar was right in holding that the transactions in question constituted the carrying on by the debtor of a business within the sect. ; it was true that an occasional speculation, even if such a speculation was repeated at intervals over a period, might not amount to " carrying on a business " for the purposes of sect. 125, but, if over a considerable period such dealings were repeatedly carried on in order to make a profit & were as frequent & systematic as those in the present case, they might properly be held to constitute the carrying on of a business by the married woman. It was a question in each case of fact & degree ; (2) also, having regard to sect. 38 (2) of Interpretation Act, 1889 (c. 63), inasmuch as the receiving order was made by the Registrar before the passing of 1935 Act, it remained valid notwithstanding sect. 4 (1) (*c*) of the latter Act.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 490 of 1935), [1936] Ch. 237 ; 105 L. J. Ch. 129 ; 154 L. T. 44 ; 52 T. L. R. 70 ; 79 Sol. Jo. 839 ; [1934–5] B. & C. R. 329, C. A.

274d. —— ——.]—The debtor was a married woman who had been carrying on a business of letting furnished flats. She brought an action against the man who later became the petitioning creditor for the return of goods which, it was alleged, she had used in her business. On July 23, 1935, judgment was given to the effect that the goods were the property of the petitioning creditor & the action was dismissed with costs. These costs were taxed at £48 & later by the addition of interest the debt was increased. Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), came into operation on Aug. 2, 1935 : —*Held :* (1) Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), had no application to this case ; (2) having regard to the terms of the judgment of July 23, 1935, it could not be maintained that the debt was incurred in the course of the debtor's business or in the getting in of the assets thereof, & a receiving order made by the registrar must be discharged.—*Re* DEBTOR (No. 15 of 1936), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1936] 2 All E. R. 1493 ; 80 Sol. Jo. 755.

274e. —— ——.]—*Re* DEBTOR, *Ex p.* CADBURY BROS., LTD. (1936), 80 Sol. Jo. 144, C. A.

274f. —— ——.]—On Sept. 7, 1933, the petitioning creditor guaranteed the banking account of the debtor, a married woman not carrying on a trade or business, up to a limited amount. On Aug. 2, 1935, the Act came into operation. In Jan. 1936, the bank called on the guarantor to pay under the guarantee & on Feb. 21 the guarantor did so. On May 28 the guarantor obtained judgment against the debtor in respect of the sum so paid. The debtor having failed to comply with a bkpcy. notice issued in respect of this debt the guarantor served her with a bkpcy. petition. The Registrar refused to make a receiving order. On appeal :—*Held :* the implied undertaking of the principal debtor to repay the money paid on her behalf to the bank arose at the time of the guarantee ; the obligation of the guarantor, though for a time at common law inchoate & unenforceable, had its origin in 1933 before the passing of the Act of 1935 ; it followed, therefore, that the contract or obligation in respect of which judgment was given existed before the passing of that Act & consequently that the married woman debtor, not being a trader, could not be made bkpt.—*Re* DEBTOR (No. 627 OF 1936), [1937] Ch. 156 ; [1937] 1 All E. R. 1 ; 106 L. J. Ch. 172 ; 53 T. L. R. 191 ; 81 Sol. Jo. 57 ; [1936–7] B. & C. R. 121 ; *sub nom. Re* DEBTOR (NO. 627 OF 1936), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 156 L. T. 95, C. A.

274g. —— **Speculation.**]—*Re* DEBTOR, *Ex p.* DEBTOR (NO. 490 OF 1935), No. 274c, *ante*.

276. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

285. *Add. Annotation :*—**Consd.** Food Controller *v.* Cork, [1923] A. C. 647.

286. *Add. Annotations :*—**Consd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

312. *Add. Annotation :*—**Consd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

PART I. SECT. 3, SUB-SECT. 7.

287 ii. ——.]—A petition in bkpcy. may be presented & a receiving order made under Bkpcy. Act, R.S.C., 1927, against the representative of a deceased person.—*Re* ROMBOUGH ESTATE, [1933] 3 W. W. R. 396.—**CAN.**

287 iii. ——.]—A receiving order may be made under Bkpcy. Act, R.S.C., 1927, against an exor. *qua* exor., even though the petition was not launched until after the death of testator.—YORKSHIRE INSURANCE CO. *v.* BANK OF TORONTO, [1934] 1 W. W. R. 416 ; 2 D. L. R. 65 ; 48 B. C. R. 1.—**CAN.**

287 iv. ——.]—A receiving order under Bkpcy. Act cannot be made against personal representatives when no proceedings were commenced against deceased.—*Re* CAVICCHI, [1935] 2 D. L. R. 64 ; 8 M. P. R. 386.—**CAN.**

sg. *Assignee of debt—Assigned by debtor with consent of creditor.*]—*Re* STAR FLOORING CO., [1924] 3 D. L. R. 269 ; 4 C. B. R. 679.—**CAN.**

sk. *Ecclesiastical bodies.*]—Ecclesiastical bodies or institutions are not included within the ambit of a bkpcy. statute essentially designed for the administration of the property of persons or corpns. carrying on business. The Bkpcy. Act was never intended to apply to a parish or church or other religious body.—SARRAZIN *v.* LES CURÉ MARGUILLIERS DE L'ŒUVRE ET FABRIQUE DE LA PAROISSE DE ST-GABRIEL DE BRANDON, [1935] S. C. R. 419 ; 3 D. L. R. 554.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

c i. *To deal with prosecution of fraudulent debtors.*]—Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence &, if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—R. *v.* GOLDHAMMER, [1924] 3 D. L. R. 1007 ; Q. R. 36 K. B. 507 ; 5 C. B. R. 127.—**CAN.**

sb. *Under Bankruptcy Act,* 1919 (*c.* 36)—*To order stay of execution—Until receiving order dealt with.*]—*Held :* the ct. had such power.—*Re* THOMPSON POWDER CO., *Re* WINDING-UP ACT, [1923] 1 D. L. R. 496 ; 3 C. B. R. 481.—**CAN.**

sc. *Under Bankruptcy Act, s.* 63.]—The jurisdiction conferred by Bkpcy. Act, s. 63, is confined to the administration of the bkpt.'s estate, & does not extend to persons or matters outside the Act.

The trustee in bkpcy. of R.'s estate moved for an order declaring that T. was a general partner of R. or that T. had wrongfully obtained from the firm of R. Bros. of which R. had been a member a certain sum of money :—*Held :* the trustee did not represent the firm of R. Bros., the authorised assignment having been executed by R. only, & the Bkpcy. Ct. had no jurisdiction to try the questions raised by the trustee's motion.—*Re* REYNOLDS, [1928] 3 D. L. R. 562 ; 62 O. L. R. 360 ; 10 C. B. R. 127.—**CAN.**

sd. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*]—*Held :* jurisdiction could not be excluded by a plea of payment by mistake of law.—DEMPSEY *v.* PIPER, [1921] N. Z. L. R. 753.—**N.Z.**

331. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

333. *Add. Annotations :* — **Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43. **Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

369. *Add. Annotation :*—**Refd.** *Re* Horder, *Ex p.* Trustee, [1936] 2 All E. R. 1479.

371a. —— **Indemnity.**]—The trustee in bkpcy. of a certain bkpt. alleged that the bkpt. had incurred a number of his debts on behalf of resps. & he applied by motion in bkpcy. for a judgment against them to indemnify the bkpt.'s estate against such debts. Resps. objected that the case ought to be tried by the common law cts. in the usual manner :— *Held :* notwithstanding the wide jurisdiction conferred upon the ct. in bkpcy. by 1914 Act, s. 105, the practice has grown up of leaving to the ordinary tribunal cases which did not raise bkpcy. points, & in the present case the ordinary procedure ought to be adopted.—*Re* HORDER, *Ex p.* TRUSTEE, [1936] Ch. 744 ; [1936] 2 All E. R. 1479 ; 105 L. J. Ch. 382 ; 80 Sol. Jo. 672 ; [1936–7] B. & C. R. 102.

388. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1922] 2 Ch. 470.

389. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1922] 2 Ch. 470.

, —— —— ——, — debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotland) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re* A DEBTOR (No. 199 OF 1922), [1922] 2 Ch. 470 ; 91 L. J. Ch. 577 ; 127 L. T. 832 ; 38 T. L. R. 683 ; 66 Sol. Jo. 521 ; [1922] B. & C. R. 151, C. A.

390a. —— —— —— —— ——.]—*Re* A DEBTOR (No. 737 OF 1928). No. 957a, *post.*

395a. What is a British Court—Jerusalem District Court.]—The High Ct., being satisfied by evidence that the Jerusalem District Ct. was a British ct. having jurisdiction in bkpcy. within sect. 122 of 1914 Act, made an order requesting that ct. & all other cts. in Palestine having jurisdiction in bkpcy. to aid the High Ct. to effect service of a notice of motion upon a resp. resident within its jurisdiction, & to aid in other matters in connection therewith.—*Re* GREGORY (MAUNDY) (No. 396 of 1933), TRUSTEE *v.* JERUSALEM (PATRIARCH) (No. 2) (1934), 103 L. J. Ch. 267 ; [1934] B. & C. R. 63.

PART I. SECT. 4, SUB-SECT. 2.

se. —— *Superior Court.*]—The Superior Ct. sitting in any provincial judicial district has jurisdiction to hear a petition in bkpcy. served upon a debtor residing & doing business in any part of the province.—BOILY *v.* MCNULTY, [1928] 1 D. L. R. 926 ; [1928] S. C. R. 182 ; 8 C. B. R. 565.—**CAN.**

PART I. SECT. 4, SUB-SECT. 4.

348 ii. —— —— ——.]—The jurisdiction of the Bkpcy. Ct. is confined to the administration by the trustee of the bkpt.'s estate & does not extend to persons or matters outside the Bkpcy. Act ; therefore a claim by the trustee with respect to the estate against a stranger to the estate is not subject to the Bkpcy. Ct.'s jurisdiction.—STOBIE FORLONG ASSETS, LTD. *v.* BECK, [1932] 1 W. W. R. 822.—**CAN.**

363 i. —— *With intent to defeat creditors.*]—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his assets, the ct. will order repayment of such money.—*Re* COHEN & SWEIGMAN, *Ex p.* ROSENBERG, [1925] 1 D. L. R. 248 ; 5 C. B. R. 346.—**CAN.**

PART I. SECT. 5.

388 xiv. —— *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*]—A petition was presented by the official receiver appointed by the Ct. of Chile in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilian sequestration, to authorise petitioner to sell Scottish heritage belonging to deceased's estate, & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to abide the orders of the ct.. but refused, as unnecessary, the crave of the petition for authority to uplift the proceeds of the policies of assurance.—ARAYA *v.* COGHILL, [1921] S. C. 462 ; 58 Sc. L. R. 395.—**SCOT.**

PART I. SECT. 7.

392 iii a. —— *Whether enforceable in Saskatchewan—Necessity for notice to interested parties.*]—*Qu. :* whether the words "British Ct." in Imperial Bkpcy. Act, 1914 (c. 59), s. 122, include a Canadian Ct. exercising bkpcy. jurisdiction, & whether the provisions of said Act apply to immovables in Canada. Even if said words & provisions do so apply, an application to the Saskatchewan Ct. of K. B., by a trustee in bkpcy. appointed in England, for an order giving effect to an order made there under sect. 122 will not be heard if due & proper notice of the application has not been given to all persons interested in the relief sought thereby.—*Re* GRAHAM (Sask.), [1928] 4 D. L. R. 375 ; [1928] 3 W. W. R. 8 ; 10 C. B R. 171.—**CAN.**

392 iii b. —— ——.]—The words, in Bkpcy. Act, 1914, s. 122, "every British Court elsewhere having jurisdiction in bkpcy," include the Saskatchewan Ct. of King's Bench, &, therefore, the English trustee is entitled to obtain therefrom an order in aid of an order made by the English Ct. under said sect.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353 ; 1 W. W. R. 309 ; 23 S. L. R. 297 ; 10 C. B. R. 340.—**CAN.**

392 ix. —— *Whether enforceable in Irish Free State.*]—Where a person, having real & personal estate in the Irish Free State, was adjudicated a bkpt. in England, & the ct. having bkpcy. jurisdiction in England ordered that a request for the assistance of the ct. having bkpcy. jurisdiction in the Irish Free State be made, & the official receiver in bkpcy. in England having applied to the High Court of Justice in the Irish Free State pursuant to such order for a declaration that the said property became vested in the official receiver as the trustee in the bkpcy. by virtue of the adjudication :—*Held :* the official receiver was entitled to such order, & the bkpcy. ct. of the Irish Free State & its officers, including the official assignee, should act in aid of, & auxiliary to, the English bkpcy. ct.—*Re* BULLEN, [1930] I. R. 82.—**IR.**

o. For "*Order of Canadian Provincial Court—Where good throughout Canada,*" read "*Order of provincial court—Good throughout Union.*"

o i. —— *No request of other provincial court—Subsequent motion to remedy omission.*]—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission. — *Re* LEGACE & LEPINAY, [1922] 3 W. W. R. 284 ; 70 D. L. R. 867.—**CAN.**

Part II.—Acts of Bankruptcy.

401. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

409. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

410. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

421. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

427. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428. *Add. Citations :—sub nom. Re* PHILLIPS, *Ex p.* PHILLIPS, 69 L. J. Q. B. 604 ; 82 L. T. 691 ; 44 Sol. Jo. 469 ; 7 Mans. 277, D. C.

434a. —— —— —— ——.]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER (1920), 90 L. J. K. B. 204 ; [1920] B. & C. R. 156.

SUB-SECT. 2 (p. 52).

NOTE.—13 Eliz. c. 5 is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

438. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

451. *Add. Citation :*—1 Sm. & G. 246, n. ; 65 E. R. 106.

454a. —— ——.]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9*s.* 2*d.* for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s solr., & his bill of costs amounted to £217 10*s.* 1*d.*, & that B. had undertaken to pay to a bank certain moneys due to them by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6*s.* 11*d.* for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921 :—*Held :* on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (*b*). —*Re* PRIOR, *Ex p.* TRUSTEE, [1922] B. & C. R. 1, C. A.

468. *Add. Annotations :*—**Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253. **Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

469. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

471. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515 ; *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Moyle, *Ex p.* Trustee, [1924] B. & C. R. 22 ; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765 ; Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252 ; *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

471a. —— **Defeat or delay of creditors necessary consequence of sale or charge.**]—*Re* SIMMS, No. 596a, *post.*

479. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

485. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

487. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

488. *Add. Annotations :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22. **Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

489. *Add. Annotation :*—**Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

491. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

501. *Add Annotation :*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

PART II. SECT. 1.

sf. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*]—*Held :* such partner could not be joined as a party in bkpcy. proceedings against the partnership.—*Re* STANDARD COOPERAGE CO., [1924] 2 D. L. R. 703 ; 4 C. B. R. 673.—CAN.

PART II. SECT. 2, SUB-SECT. 1.

402 iii. ——.]—An insolvent debtors' disposition of his property for the benefit of his creditors is not void under sect. 9 (7) of the Bkpcy. Act where it is not a conveyance or assignment, in the proper sense of the term, by which the whole of his property is vested in a trustee or trustees for the benefit of his creditors generally.—BLACK *v.* BELIVEAU & NEWTON, [1929] 3 D. L. R. 356 ; 2 W. W. R. 176 ; 38 Man. L. R. 222 ; 10 C. B. R. 577.—CAN.

423 ii. —— *Assignment by debtor without property—Valid.*]—JONES *v.* BOUTILLIER, [1932] 2 D. L. R. 708.—CAN.

sg. *Assignment where no assets—To procure stay of action—Abuse of Bankruptcy Act.*]—*Re* COULL, [1932] 1 D. L. R. 381 ; 5 M. P. R. 395.—CAN.

PART II. SECT. 2, SUB-SECT. 2.—A.

457 i. —— *Transfer of property to near relatives—In return for promissory notes—Not included in statement of affairs.*]—An intent to defraud creditors presumed from the above transfer which took place within six months of the bkpcy.—R. *v.* TESSIER (1921), 62 D. L. R. 479 37 Can. Crim. Cas. 375. —CAN.

502. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

533. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p* Miles, [1921] 3 K. B. 628.

534. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

539. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

544. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

550. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

552. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

555. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

558. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

567. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

580. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

590. *Citations :*—For "21 W. R. 422" read "21 W. R. 402."

595. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

596a. —— **In private company formed by debtor & his solicitor.**]—The transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, constitutes an act of bkpcy., if the necessary consequence of the transfer will be to defeat or delay his creditors. The bkpt. was carrying on an increasing business as a builder, but was in need of further capital. He had creditors for some £28,000, & in addition he owed B.'s bank about £6,500. In pursuance of an arrangement with L.'s bank, but without notice to any of the creditors, L.'s bank took over the bkpt.'s account from B.'s bank, paying off to B.'s bank the overdraft of £6,500; & a few days later, on Jan. 9, 1929, a private limited co. was formed of which the bkpt. & his solr. were the only directors. There was a contemporaneous agreement for sale to the co. of substantially the whole of the bkpt.'s assets for £17,000 to be satisfied by the issue to the bkpt. of 17,000 £1 shares, the co. undertaking to pay the bkpt.'s liabilities. On Jan. 14 the necessary assignments to the co. were executed, & a debenture for £12,500 was sealed in favour of L.'s bank. On Jan. 17 the bkpt.'s overdraft on L.'s bank was paid off by a transfer from a new account opened by L.'s bank in favour of the co. Upon the formation of the co. & the issue of the debenture becoming known, the bkpt.'s creditors began to press, & some of them were paid off in full. On Feb. 27, 1929, the bkpt. committed an act of bkpcy. by failing to comply with a bkpcy. notice. On Mar. 8 a petition was presented, & on May 9 a receiving order was made, & adjudication followed on May 23. Upon a motion by the trustee for a declaration that the sale agreement of Jan. 9 was void by 1914 Act, s. 1 (1) (*b*), & for ancillary relief :—*Held :* (1) the agreement was a fraudulent transfer [illegible] assets of the bkpt. [illegible] creditors, & as the trustee's title related back to the act of bkpcy. & overrode that of the co., the co. must account to the trustee for such of the assets as had come to the hands of the co. or of any person by the order or for the use of the co. The substitution in the place of a going business & substantial business assets of (*a*) shares in a private co. which has taken over the debtor's assets & liabilities, & (*b*) a right of action by the debtor against the co. on its covenant to discharge his liabilities must necessarily have the result of delaying creditors, & the substituted assets could not be treated as an equivalent which the creditors could reach as satisfactorily as the assets transferred; (2) 1914 Act, s. 45, protects only transactions which are *bonâ fide;* &, as the knowledge of the bkpt. & his solr. of the facts which stamped it in law as a fraudulent transfer was the knowledge of the co., sect. 45 afforded no defence, even although the parties might have thought the transfer to be in the best interest of the creditors.—*Re* SIMMS, [1930] 2 Ch. 22; 99 L. J. Ch. 235; 46 T. L. R. 258; [1929] B. & C. R. 129; *sub nom. Re* SIMMS, *Ex p.* TRUSTEE, 143 L. T. 326.

598. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Simms, [1930] 2 Ch. 22.

599. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

600. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. *As to* (2) **Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628; *Re* Simms, [1930] 2 Ch. 22.

601. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

669a. —— ——.]—Where a trader went to his neighbour & told him that he expected to be arrested, & while he remained there was informed that a sheriff's officer was going towards his house, upon which he concealed himself in the back room & desired his neighbour to watch, & when told that the officer had gone past his house & had left the street, immediately returned home :—*Held :* this was an act of bkpcy. of "otherwise absenting himself to the intent to delay creditors" although it appeared not only that no creditor was delayed, but that none could possibly be delayed.—CHENOWETH *v.* HAY (1813), 1 M. & S. 676; 2 Rose, 137; 105 E. R. 252.

Annotations :—**Consd.** Gimmingham *v.* Laing (1816), 2 Marsh. 236. **Refd.** Toleman *v.* Jones (1824), 9 Moore, C. P. 24; Rouch *v.* Great Western Ry. Co. (1840), 1 Q. B. 51.

PART II. SECT. 2, SUB-SECT. 8.

q 1. ——.]—In a judgment by default recovered against a husband & wife it was declared pltf. should be entitled to recover against defts. jointly & severally the sums therein specified; but it was ordered that execution be limited to the free separate property of the wife. Notwithstanding the precise & restricted terms of the judgment, a *præcipe* was lodged for a writ of sale directed against the real & personal property of both defts. The writ of sale followed the language of the *præcipe* & a return of *nulla bona* was later made against both defts. On a petition to have the husband adjudicated bkpt. upon the ground of his having committed an available act of bkpcy. within Bkpcy. Act, 1908, s. 26 (*j*) :—*Held :* the writ of sale & the return thereto were irregular & ineffectual as against the husband, the ct. had no power in the present pro-

763. *Add. Annotation :*—**Refd.** *Re* Gunsbourg [1920] 2 K. B. 426.

778. *Add. Annotation :*—**Refd.** Bracia Czeczowiczka *v.* Markus, Bracia Czeczowiczka *v.* Loy, [1936] 1 All E. R. 944.

779. *Add. Annotation :*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

787. *Add. Annotation :*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

788. *Add. Annotation :*—**Consd.** *Re* Debtor, [1929] 1 Ch. 170.

797a. Creditor who has assented to deed of arrangement—Deed void for want of registration.]—On June 11, 1921, applt. co. recovered judgment against debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than applt. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the agreement of Apr. 18, 1922, the five creditors agreed to the dismissal of their petitions & signed letters dated Apr. 17, 1922, which were all in the same form, & contained a statement that it was understood that it was not intended to register the agreement as a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their scheduled debts or attempt to set aside the agreement. On July 18, 1922, applt. co. signed a letter of assent in the same terms, which was also dated Apr. 17, 1922, & agreed to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain. Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal :—*Held :* (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument, was also itself void ; (2) as debtor & all the creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; 93 L. J. Ch. 497 ; 68 Sol. Jo. 458 ; [1924] B. & C. R. 188 ; *sub nom. Re* A Bankruptcy Notice (No. 62 of 1924), *Ex p.* Petitioning Creditors *v.* Debtor, 131 L. T. 307, C. A.

Annotation :—As to (2) **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

Compare Nos. 8778a, 8782d, *post*, & original volume, p. 160, No. 1498.

800. *Add. Annotation :*—**Folld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

800a. Change in judgment creditor — Judgment obtained by firm — No leave to issue execution.]—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re* Hill, *Ex p.* Holt & Co , [1921] 2 K. B. 831 ; 90 L. J. K. B. 734 ; 125 L. T. 736 ; [1921] B. & C. R. 12.

804a. —— —— Notice not good against partners not served.]—*Re* Debtors (No. 807 of 1922), *Ex p.* Debtor, No. 887a, *post*.

805. *Add. Annotation :*—**Apld.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

806. *Add. Annotation :*—**Apprvd.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

811. *Add. Annotation :*—**Consd.** *Re* Debtor (1920), 90 L. J. K. B. 513.

828. *Add. Annotation :*—**Expld.** *Re* A Debtor, [1929] 2 Ch. 146.

830. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1929] 2 Ch. 146.

830a. ——.]—Where a bkpcy. notice was issued against the co-resp. in a divorce suit for failure to comply with an order, made before decree absolute, requiring him to pay the costs of the petitioner to the latter's solrs., for lodgment of the money in ct. :—*Held :* the bkpcy. notice was bad & the receiving order made thereon ought to be discharged because (1) it was not issued in the name of petitioner, the real creditor, but in that of his solrs. ; (2) the decree not having been made absolute at the date of the order, the incidence of the costs was still open to revision, & the creditor, therefore, had not obtained a " final " judgment or order within 1914 Act, s. 1 (1) (*g*).—*Re* A Debtor (No. 76 of 1929), [1929] 2 Ch. 146 ; 98 L. J. Ch. 334 ; 141 L. T. 250 ; 45 T. L. R. 403 ; 73 Sol. Jo. 299 ; [1929] B. & C. R. 48, C. A.

Annotation :—As to (1) **Consd.** Mason *v.* Mason & Cottrell (1933), 49 T. L. R. 458.

ceedings to amend the judgment as entered, & no act of bkpcy. had been established as against the husband upon which an order of adjudication could properly be made.—*Re* Green, A Debtor, [1928] N. Z. L. R. 531.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 10.—A. (c).

797a i. *Creditor who has assented to deed of arrangement—Deed void.*]—A debtor being insolvent to the knowledge of his creditors agreed with them to assign all his property to an attorney, to realise upon & distribute the proceeds. In it the creditors undertook not to institute any ct. proceedings against the debtor. One creditor becoming dissatisfied with the arrangement presented a petition in bkpcy. :—*Held :* the debtor being insolvent, the assignment was null & void under Bkpcy. Act, R. S. C., 1927, s. 9 (7), & the petitioning creditor was not estopped under the agreement from [illegible] a petition.—*Re* Brown, [1932] O. R. 453 ; 3 D. L. R. 305.—**CAN.**

PART II. SECT. 2, SUB-SECT. 10.—A.

n. For " *Held :* the objection was sustainable " read " *Held :* the objection was not sustainable."

sg. *Costs of unsuccessful execution not included.*]—*Re* Eva, [1927] N. Z. L. R. 652.—**N.Z.**

851a. Judgment including excessive interest within Moneylenders Act, 1927 (c. 21).]—The provisions of Moneylenders Act, 1927 (c. 21), s. 9, do not prevent a moneylender who has obtained judgment for a debt which includes interest at a rate exceeding 5 per cent. *per annum* from serving a bkpcy. notice upon the debtor requiring payment of the judgment debt.

A moneylender presented a bkpcy. petition against his debtor upon which a receiving order was made, though the act of bkpcy. relied upon in the petition was non-compliance with a bkpcy. notice requiring the judgment debtor to pay the judgment debt, which in fact included interest at a rate amounting to 270 per cent. *per annum*:—*Held*: the receiving order was rightly made.—*Re* A DEBTOR (247 OF 1930), [1930] 2 Ch. 239; 99 L. J. Ch. 356; 143 L. T. 292; *sub nom.* DEBTOR *v.* PETITIONING CREDITORS, [1929] B. & C. R. 184, C. A.

857. *Add. Annotation*:—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

866. *Add. Annotation*:—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

870. *Add. Annotation*:—**Refd.** *Re* A Debtor, [1929] 2 Ch. 146.

871. *Add. Annotation*:—**Refd.** Lyons *v.* Collins, [1936] 3 All E. R. 788.

875. *Add. Citation*:—15 Mans. 304.
Add. Annotation:—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

875a. —— Judgment to pay creditor—Notice to pay registrar of county court.]—(1) Where a county ct. judgment in form or effect directs payment to be made to the creditor the bkpcy. notice founded on it properly requires payment to be made to the creditor instead of to the registrar.

(2) The Practice Regulation of Feb. 18, 1890, which requires every notice of motion by way of appeal from a county ct. to state the grounds of the appeal, does not preclude an applt. from relying upon a point not taken in the ct. below, if the ct. thinks fit to give leave to raise the new point.—*Re* A DEBTOR (No. 16 OF 1922), *Ex p.* THE DEBTOR (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

887a. —— Partner—Not at principal place of business.]—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

887b. —— —— ——.]—Where judgment for a debt has been recovered against a firm & a bkpcy. notice in the usual form & following the judgment has been served on one of the partners only at a place other than the principal place of business of the firm & has not been complied with, a receiving order can properly be made against that partner on the judgment creditor's petition.—*Re* DEBTOR (No. 24 of 1935), [1936] Ch. 292; 105 L. J. Ch. 364; 154 L. T. 234; 80 Sol. Jo. 54; [1936–7] B. & C. R. 93, C. A.

—— **When justified.**]—The debtor, an aviator, against whom the creditors had obtained judgment for a debt, three days later left England on a flight to Australia & back. The creditors thereupon obtained from a registrar in bkpcy. an order for substituted service of a bkpcy. notice on the debtor by registered letter addressed to him at his place of business in London & also to him care of his solrs. The bkpcy. notice required compliance with its provisions within seven days:—*Held*: (1) the case was not one in which an order for substituted service ought to have been made, as it was improbable in the circumstances that the service of the notice would come to the knowledge of the debtor within the time limited by the notice for compliance with its requirements; (2) the debtor's solrs. were not sufficient agents for receiving the notice, as it was for the debtor himself & not his solrs. to decide within the seven days whether he would pay the debt.—*Re* JUDGMENT DEBTOR (No. 1539 OF 1936), [1937] Ch. 137; 106 L. J. Ch. 183; [1936–7] B. & C. R. 135; *sub nom. Re* JUDGMENT DEBTOR (No. 1539 OF 1936), JUDGMENT DEBTOR *v.* JUDGMENT CREDITOR, [1936] 3 All E. R. 767; 156 L. T. 16; 53 T. L. R. 144; 80 Sol. Jo. 1035, C. A.

Annotation:—**Consd.** *Re* De Cespedes, Debtor *v.* Petitioning Creditor & Official Receiver, [1937] 2 All E. R. 572.

889b. ——.]—The debtor, an alien who had become domiciled in England, had purchased the lease of a house in London which he assigned to his mother in 1928. The debtor lived in the house & paid the rates. In Apr. 1936, the debtor took up a permanent residence in France, but visited England from time to time on business. A bkpcy. notice was issued against him on Aug. 24, 1936, & an order for substituted service of this notice was made on Aug. 27, 1936. The affidavit in support of the application for substituted service stated that on Aug. 24 a clerk to the solrs. for the petitioning creditor, having been informed that the debtor's solrs. could not facilitate service of the bkpcy. notice, had attended at the house above mentioned to serve the debtor, but had been unable to obtain a reply; that a registered letter addressed to the debtor at the same house had been sent on the same day; & that the clerk had attended at the house again on Aug. 27 & had been unable to obtain a reply. The affidavit did not state that the debtor was not within the jurisdiction, nor that service by post would not reach him, nor that there was any reason to think that the house mentioned was the place at which the debtor would be found:—*Held*: the affidavit was not one on which an order for substituted service ought properly to have been made.—*Re* DE CESPEDES, DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1937] 2 All E. R. 572; 156 L. T. 471, C. A.

898. *Add. Annotation*:—**Consd.** *Re* **Debtor,** *Ex p.* **Debtor, [1918–19] B. & C. R. 221.**

PART II. SECT. 2, SUB-SECT. 10.—C. ah. *Time of service—Service out of time.*]—A debtor summons was served on bkpt. two days too late:—*Held*: the condition of bkpcy. prior to the filing of a petition necessarily involved an act of bkpcy. which the ct. would assume was a proper ground for the adjudication.—*Re* GORHAM, [1924] 2 L. R. 46.—IR.

919. *Add. Annotation :*—**Refd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

923a. —— **Issue of second notice by same creditor.**]—Creditors having obtained judgment issued a bkpcy. notice for £945 & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh bkpcy. notice about two months later for £857, &, that notice not having been complied with within seven days, a petition based on the fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice :—*Held :* (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of debtors to make any payment in compliance with the fresh notice or otherwise deal with their property ; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re* DEBTORS (NO. 771 OF 1926) (1926), 43 T. L. R. 9 ; 70 Sol. Jo. 1089 ; *sub nom. Re* FREDERICKE & WHITWORTH, *Ex p.* HIBBARD, [1927] 1 Ch. 253 ; 96 L. J. Ch. 70 ; 136 L. T. 268 ; [1926] B. & C. R. 156, C. A.

929. *Add. Annotation :*— **Refd.** Bracia Czeczowiczka *v.* Markus, Bracia Czeczowiczka *v.* Loy, [1936] 1 All E. R. 944.

929a. —— —— **Onus of proof.**]—(1) Before the war, the creditors, a Polish firm, sold to the debtors, an Austrian firm, trading in East Africa, certain cotton goods. The period of credit had not expired on the outbreak of the war ; but the debtors being enemy nationals were interned & their African business & property was lost to them. After the war they had a claim against the German Govt., but had then become nationals of Czechoslovakia. In 1924 the debtors returned to East Africa, & in the same year the creditors sued them in Vienna & obtained judgment against them. In 1925 the debtors obtained an award from the Mixed German Czechoslovak Arbitral Tribunal against the German State for a large sum & in the same year the creditors obtained an attachment on the "alleged debtors' claim against the Reich Settling Office." In 1932 the creditors obtained judgment for their debt in Kenya & in 1933 they caused the debtors to be served with two bkpcy. notices. The bkpcy. law in Kenya on this point is the same as in England under 1914 Act. The debtors sought to have the orders set aside on the ground that by attaching the award in Germany the creditors had prevented them satisfying the judgment : —*Held :* the onus was on the debtors to prove affirmatively that the claim in respect of which the bkpcy. notice was issued could & would have been paid but for some act or omission of the creditor & they had entirely failed to prove any such case.

(2) It was contended that the attachment orders in Berlin were a form of execution & it was, therefore, improper to issue the bkpcy. notices :—*Held :* the attachment orders were not a form of execution & could not be an execution upon the Kenya decree obtained after the orders. The attachment orders having proved abortive, were not a bar to the issue of the notices.

(3) In Kenya the procedure in execution follows the Indian Code, & arrest & imprisonment is the normal form of execution. There being some evidence of means & that the debtors had refused to pay some part of the debt when they had the means to pay, a receiving order was made in lieu of committal :—*Held :* the order was rightly made as the English decisions under the Debtors Act, 1869, did not apply.—BRACIA CZECZOWICZKA *v.* MARKUS, BRACIA CZECZOWICZKA *v.* LOY, [1936] 1 All E. R. 944 ; 80 Sol. Jo. 508, P. C.

929b. —— —— **Foreign attachment order.**]—BRACIA CZECZOWICZKA *v.* MARCUS, BRACIA CZECZOWICZKA *v.* LOY, No. 929a, *ante.*

938. *Add. Annotations :*—**Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9 ; *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253 ; *Re* Bankruptcy Notice (No. 171 of 1934), [1934] Ch. 431.

940a. Claim in Chancery for declaration of charge.]—In a pending action in the Chancery Div. a debtor claimed a declaration that he was entitled to a charge on the proceeds of certain property in the hands of trustees in priority to the creditor. In a subsequent action in the K. B. D. brought by the creditor against the debtor in respect of a different transaction the creditor obtained judgment in respect of which he issued a bkpcy. notice. On an application by the debtor under sect. 1 (1) (*g*), of 1914 Act, to have the bkpcy. notice set aside :—*Held :* the claim in the Chancery action was not a "counterclaim, set-off or cross-demand" within the sub-sect., & was not therefore a ground for setting aside the bkpcy. notice.—*Re* BANKRUPTCY NOTICE (NO. 171 OF 1934), [1934] Ch. 431 ; 103 L. J. Ch. 253 ; 78 Sol. Jo. 297 ; [1934] B. & C. R. 43 ; *sub nom. Re* JUDGMENT DEBTOR (NO. 171 OF 1934), 151 L. T. 107 ; 50 T. L. R. 333, C. A.

940b. Affidavit filed by debtor—Day fixed for hearing—Form of order.]—Rule 140, sub-r. 2, provides that there shall be endorsed on every bkpcy. notice an intimation to the debtor that if he has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, & which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar. Rule 141 provides that the filing of "such affidavit" shall operate as an application to set aside the bkpcy. notice & then states the procedure to be followed.

On May 25, 1934, judgment creditors for £2,727 issued a bkpcy. notice against the judgment debtor. On May 31 the debtor filed an affidavit in which he alleged that he had a cross demand for two sums amounting

Must be mutual & in same right.]—*Re* ANDERSON, *Ex p.* ALEXANDER (1927), 27 S. R. N. S. W. 296 ; 44 N. S. W. W. N. 69.—AUS.

together to £1,500. The Registrar marked the application "Fix a day—Motion—No Stay," & appointed June 28 for the hearing. A stay having been refused, the act of bkpcy. became complete on June 4, & on June 5 the judgment creditors presented a bkpcy. petition founded on that act of bkpcy. On June 21 the debtor's application was dismissed & on June 28 a receiving order was made. On appeal by the debtor:—*Held:* receiving order was properly made; there had been no compliance by the debtor with r. 140, as the affidavit on the face of it showed that the cross demand did not equal or exceed the amount of the judgment debt, & therefore the procedure provided by r. 141 for dealing with a bkpcy. notice did not come into operation, & the case must be treated as if no affidavit under r. 140 had in fact been filed. Also, the Registrar, if he thought, as he appeared to have done, that the affidavit did not satisfy r. 140, ought to have marked the application "Affidavit not sufficient—No case raised" & not to have taken seisin of the matter.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 523 OF 1934), [1935] Ch. 347; 104 L. J. Ch. 217; 152 L. T. 297; [1934-5] B. & C. R. 189, C. A.

942. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

953. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

954. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 362.

957. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

957a. Statement to agent of creditors of insolvency in foreign country.]—A debtor informed a person acting for some creditors in England (*a*) that he owed debts to a very much larger amount in Switzerland; (*b*) that bkpcy. proceedings had been initiated against him there; (*c*) that he intended to offer his Swiss creditors £1,000, which was all the money he had; (*d*) that if the Swiss creditors accepted that, he intended to offer his English creditors 5*s.* in the £1, payment to be spread over a number of years. The creditors proceeded against the debtor, alleging that he had committed an act of bkpcy. under 1914 Act, s. 1 (1) (*h*). A receiving order having been made, the debtor appealed:—*Held:* (1) the statements made by the debtor were not a mere discussion of his affairs, but a "notice" to his creditors that he had suspended or was about to suspend payment within the sect.; (2) the debtor being in England, there being creditors in England, & the jurisdiction here being undoubted, it was not necessary to suspend the making of a receiving order here. The Swiss proceedings could be considered from time to time, & a stay in the proceedings here ordered, if advisable.—*Re* A DEBTOR (No. 737 OF 1928), [1929] 1 Ch. 362; 98 L. J. Ch. 38; 140 L. T. 266; [1928] B. & C. R. 130, C. A.

959. *Add. Annotation:*—**Consd. & Apld.** *Re* A Debtor, [1929] 1 Ch. 362.

963. *Add. Annotations:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689; *Re* A Debtor, [1927] 1 Ch. 97.

971. *Add. Annotation:*—**Expld.** *Re* A Debtor, [1929] 1 Ch. 362.

972. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 362.

PART II. SECT. 2, SUB-SECT. 11.—A.

st. *Whether binding on partner.*]—A partner gave notice of suspension of payment to his firm's creditors:—*Held:* the notice did not affect another alleged partner who had neither expressly nor impliedly authorised this notice.—ABDUL SATTAR *v.* V. E. A. R. M. CHETTYAR FIRM (1932), I. L. R. 10 Rang. 215.—**IND.**

PART II. SECT. 2, SUB-SECT. 11.—B.

sw. *Statement of inability to pay debts.*]—Notice of suspension of payment of debts must be a specific & deliberate act on the part of the debtor, & the suspension, actual or intimated, must apply to all the creditors. It is something different from a notice of inability to pay his debts.—M. S. M. M. CHETTYAR FIRM *v.* P. MOODAHAR (1932), I. L. R. 11 Rang. 96.—**IND.**

PART II. SECT. 2, SUB-SECT. 12.

sj. *Defaults.*]—Defaults more than six months before presentation of a bkpcy. petition followed by demands for payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re* RAITBLAT, [1925] 3 D. L. R. 446; 5 C. B. R. 765; *affg.*, [1925] 2 D. L. R. 1219; 5 C. B. R. 714.—**CAN.**

sk. *Failure to meet series of promissory notes.*]—*Held:* an act of bkpcy.—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—**CAN.**

sl. *Failure to meet liabilities as they become due.*]—The words "ceases to meet his liabilities as they become due" do not mean that when in any single case debtor makes default in payment of a debt as & when due he commits an act of bkpcy., but a failure "to meet his liabilities as they become due" in some wider sense.—*Re* CANADIAN CAP CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 617: 53 O. L. R. 506; 4 C. B. R. 185.—**CAN.**

sm. ——.]—Where there were repeated defaults by a debtor in fulfilling promises to pay made within three months preceding a petition in bankruptcy: *Held:* an order adjudging the debtor a bkpt., on the ground that it had ceased to meet its liabilities generally as they became due, should be affirmed.—*Re* SHELLBROOK STORE, LTD., [1931] 2 W. W. R. 646.—**CAN.**

sn. ——.]—The words "ceases to meet his liabilities as they become due" do not include a continuing default.—BROWN *v.* KELLY-DOUGLAS & CO., [1923] 1 W. W. R. 1340; [1923] 2 D. L. R. 738; 32 B. C. R. 143.—**CAN.**

so. *Mere insolvency.*]—Insolvency in itself, without an admission of insolvency, is not a ground for the filing of a petition to adjudge a debtor a bkpt.; it must appear that he has committed an act of bkptcy.—*Re* KRONSON, [1931] 3 W. W. R. 22.—**CAN.**

sf. *Failure to meet debts.*]—A debtor's failure to meet his liabilities as they become due is an act of bkpcy.—*Re* MARCUS, [1936] 3 D. L. R. 42; 10 M. P. R. 357; 6 F. L. J. (Can.) 53.—**CAN.**

sh. *Receiving order in lieu of committal—Kenya.*]—In Kenya the procedure in execution follows the Indian Code, & arrest & imprisonment is the normal form of execution. There being some evidence of means & that the debtors had refused to pay some part of the debt when they had the means to pay, a receiving order was made in lieu of committal:—*Held:* the order was rightly made as the English decisions under Debtors Act, 1869 (c. 62), did not apply.—BRACIA CZECZOWICZKA *v.* MARKUS, BRACIA CZECZOWICZKA *v.* LOY, [1936] 1 All E. R. 944; 80 Sol. Jo. 508, P. C.—**KENYA.**

PART II. SECT. 4.

m i. —— *Not statement showing insolvency prepared by creditors' agent.*]—*Re* TENENBEIN, *Re* BANKRUPTCY ACT (Man.), [1927] 4 D. L. R. 270; [1927] 2 W. W. R. 374—**CAN.**

m ii. ——.]—*Re* SHIRLEY (N. B.), [1927] 2 D. L. R. 969; 8 C. B. R. 235; *affd.*, [1928] 1 D. L. R. 350; 8 C. B. R. 612.—**CAN.**

Part III.—Petition.

997a. —— **Proceedings by public officer or agent—Necessity for affidavit of authority.**]—Where a bkpcy. petition presented by a co. under Bkpcy. Act, 1883 (c. 52), s. 148, was not accompanied by the affidavit required by r. 258 of the Bkpcy. Rules, 1886, stating that the person presenting the petition was the authorised public officer or agent of such co. :—*Held :* the petition was rightly refused. —*Re* CRIPPS, ROSS & Co., *Ex p.* ROSS (1888), *as reported in* 5 Morr. 226.

1007a. —— ——.]—*Re* AYRE, *Ex p.* POTTS (1840), 10 L. J. Bcy. 26.

1016a. —— **Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).**]—A landlord obtained judgment against his tenant for £204 in respect of rent & fire insurance, & served on him a bkpcy. notice. The notice was not complied with, & a petition for a receiving order was presented. While the petition was pending, the landlord, as the premises were sublet, served on the subtenants a notice, under sect. 6 of the above Act, to pay their rents directly to him, & from one subtenant he received £62, the debt being thus reduced by that amount. A receiving order was afterwards made :—*Held :* as the claim still amounted to more than £50 the landlord had not, by exercising his powers under the above Act, precluded himself from proceeding under the bkpcy. notice in the normal way.—*Re* A DEBTOR (No. 549 of 1928), [1929] 1 Ch. 170 ; 98 L. J. Ch. 35 ; 140 L. T. 165 , 45 T. L. R. 10 ; 72 Sol. Jo. 727 ; [1928] B. & C. R. 125, C. A.

1019a. Solicitor—Petition based on order for payment of costs to client.]—*Re* A DEBTOR (No. 76 of 1929), No. 830a, *ante.*

1025. After this case add, "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 36–43."

1043. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

1045. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1071a. —— —— Under voidable contract.]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, & without the knowledge or consent of A. paid L. a commission. B. recovered judgment against A. for the amount of the promissory note in default of appearance, & issued a bkpcy. notice based on the judgment, & A. having failed to comply with the bkpcy. notice, B. presented a bkpcy. petition against him. On the hearing of the petition before the registrar it appeared for the first time that a commission had been paid by B. to L. :—*Held :* the act of bkpcy. was founded on a contract which was voidable by A., & the ct. ought not, within 1914 Act, s. 5 (3), to be satisfied with the proof of B.'s debt, & the receiving order must be rescinded.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367 ; 96 L. J. Ch. 381 ; 137 L. T. 507 ; [1927] B. & C. R. 127, C. A.

1048. *Add. Annotation :*—*As to* (1) **Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1050. *Add. Annotation :*—**Folld.** *Re* Debtors, [1927] 1 Ch. 19.

1051a. ——.]—A debt to be a good petitioning creditor's debt must be a liquidated sum, payable either immediately or at some certain future time at the date of the act of bkpcy. It is not sufficient that the debt should have become a liquidated sum in the interval between the act of bkpcy. & the presentation of the petition.—*Re* DEBTORS (No. 669 of 1926), [1927] 1 Ch. 19 ; 96 L. J. Ch. 33 ; 136 L. T. 182, C. A.

1065. *Add. Annotation :*—**Consd.** *Re* Debtors, [1927] 1 Ch. 19.

1066. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1067. *Add. Annotation :*—**Apld.** *Re* Debtor, *Ex p.* Lawrence, [1928] Ch. 665.

1077a. Tender before bankrupty notice—Whether creditor bound to accept.]—On Jan. 3, 1928, a creditor obtained judgment for £47, in respect of two overdue instalments of a debt, leaving the remaining £23 instalment, which only became due between the date of the

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PART III. SECT. 1, SUB-SECT. 1.—A.

b i. —— ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

b ii. *S.P. Ex p.* GARBUTT (1925), 46 N. L. R. 57.—**S. AF.**

991 ii. —— *Unlicensed company.*]—Extra Provincial Corpns. Act cannot & is not intended to affect the right of an unlicensed foreign corpn. to institute proceedings under Bkpcy. Act.—*R.* SOCIETY SHIRT Co., [1932] 1 D. L. R. 561 ; O. R. 104.—**CAN.**

998 ii. —— *No evidence when debt accrued—Motion unopposed.*]—*Held :* petitioners were entitled to the relief which they claimed.—FISHER *v.* WILKIE, LTD., [1920] 19 O. W. N. 251 ; 59 D. L. R. 502 ; 1 C. B. R. 376.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

1026 ii. ——.]—Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re* CANADIAN CHOCOLATE CO., [1924] 2 D. L. R. 508.—**CAN.**

1026 iii. ——.]—A bkpcy. ct. should not proceed with a petition on a disputed debt until the ordinary cts. have settled the disputed question.—*Re* WHISTLE Co., [1925] 1 D. L. R. 1110 ; 5 C. B. R. 495.—**CAN.**

s i. *Debt contracted before Bankruptcy Act, 1919, in operation.*]—A receiving order against a co. under the above Act may be based upon a debt owing to the co. by reason of its having undertaken, after the Act came into operation, the liabilities incurred by a firm before the Act came into operation. —*Re* STEWART MERCANTILE CO., LTD. [1921] 1 W. W. R. 740 ; 59 D. L. R. 412 ; 1 C. B. R 367.—**CAN.**

s ii. —— *Judgment founded on cause of action partly arising before Act in operation.*]—*Held :* such judgment was sufficient either as an available act of bkpcy., or as constituting a debt upon which to found a bkpcy. petition. —*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

s iii. ——.]—Such a debt cannot be used as a ground for a bkpcy. petition.—*Re* SUTTON, [1924] 4 D. L. R. 315 ; 5 C. B. R. 75.—**CAN.**

sn. *Debt contracted in province in which company not licensed to trade—No residential qualification.*]—When a co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. have purchased raw furs when in that province does not confer on it a sufficient residential qualification to enable a bkpcy. petition to be presented against it in that province.—*Re* ROBINSON (R. S.) & SON, LTD., [1923] 1 D. L. R. 691 ; 3 C. B. R. 537.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—C. (a).

1050 iv. ——]—It is sufficient if the debt is actually owing, though not actually due or payable.—*Re* TUNNELL, LTD., *Ex p.* WILLS & ANDERSON, [1923] 4 D. L. R. 1018.—**CAN.**

writ & the judgment, untouched by the judgment. On Jan. 9, in response to the creditor's invitation, debtor tendered the £23 in cash, but the tender was refused. On Jan. 27 the creditor filed a bkpcy. notice in respect of the £47 judgment debt, & on Feb. 16 he filed a petition based on the two debts, & on non-compliance with the bkpcy. notice :—*Held :* though the two debts were still owing & amounted to over £50, so that the creditor was formally entitled to present a petition under 1914 Act, s. 4 (1), nevertheless the refusal before the bkpcy. notice of the £23 offered at his invitation, & refused only in order to keep the total debt over £50, was " sufficient cause " within sect. 5 (3) for making no order on the petition.—*Re* DEBTOR, *Ex p.* LAWRENCE (No. 21 OF 1928), [1928] Ch. 665 ; *sub nom. Re* DEBTOR (No. 21 OF 1928), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 97 L. J. Ch. 255 ; *sub nom. Re* DEBTOR, *Ex p.* LAWRENCE, 139 L. T. 519, D. C.

1078. *Add. Annotation :*—**Consd.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

1110a. —— —— **Note given for illegal consideration—Bonâ fide holder without notice.**]—Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re* A DEBTOR (No. 4 OF 1922), *Ex p.* PETITIONING CREDITOR, [1922] B. & C. R. 116, C. A.

1127. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146. **Refd.** *Re* A Debtor, [1927] 1 Ch. 19 ; Mason *v.* Mason & Cottrell, [1933] P. 199.

1135. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1156a. **Failure to comply with bankruptcy notice—Right to petition not confined to creditor serving notice.**]—When an act of bkpcy. has been committed by the failure of a debtor to comply with a bkpcy. summons, any creditor may avail himself of it for the purpose of presenting a bkpcy. petition against the debtor ; the right to petition is not limited to the creditor who has served the bkpcy. notice.—*Re* HASTINGS, *Ex p.* DEARLE (1884), 14 Q. B. D. 184 ; 54 L. J. Q. B. 74 ; 33 W. R. 440 ; 1 Morr. 281, C. A.

1167. *Add. Annotation :*—**Refd.** Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1175. *Add. Annotation :*—**Dbtd.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1177a. —— —— —— **Delay in presenting petition.**] —*Re* CARR, *Ex p.* JACOBS, No. 1178a, *post.*

1177b. —— —— —— ——.]—A creditor, by his agent, attended a meeting of creditors held on Nov. 4, 1901, at which a resolution was carried approving a deed of assignment for the benefit of creditors. The agent neither assented nor dissented, but stated that he must consult his principal, & expressly reserved his right to take bkpcy. proceedings. On Nov. 30, he wrote to the trustee under the deed saying he was not satisfied with the debtor's affairs, & that he still reserved his right to take steps in bkpcy. The trustee in reply asked him if he intended to proceed in bkpcy. to do so at once in order to save trouble & expense. No further communication was made to the trustee till after the filing of the petition on Jan. 27, 1902. The petition was dismissed on the authority of *Re Carr ; Ex p. Jacobs*, No. 1178a :—*Held :* there had been no acquiescence or unexplained delay. The case of *Re Carr ; Ex p. Jacobs*, No. 1178a, only applies to the case of a petitioning creditor who has been " sitting on the rail."—*Re* DAY, *Ex p.* HAMMOND (1902), 86 L. T. 238 ; 50 W. R. 448 ; 18 T. L. R. 442 ; 46 Sol. Jo. 361, D. C.

Annotation :—**Consd.** *Re* Beesley (1913), 109 L. T. 910.

1177c. —— —— —— ——.]—On July 22, 1913, B. executed a deed of assignment for the benefit of his creditors, & on Aug. 12 called a meeting of his creditors to approve the deed. At this meeting J., the secretary of S., Ltd., one of the creditors, & N., solr. for S., Ltd., were present, but they did not vote upon the resolutions, & expressed themselves dissatisfied with the deed. Subsequently S., Ltd., on being requested to assent to the deed, notified the trustee on Sept. 2 that they declined to assent ; & on Oct. 18 they presented a petition against B., alleging as the act of bkpcy. the deed of July 22 :—*Held :* (1) there had been no assent, express or implied, on the part of the petitioning creditors, such as to disentitle them to set up the deed as an available act of bkpcy., upon which a petition could be founded ; (2) in view of the decision in *Re Day, Ex p. Hammond*, No. 1177b, the case of *Re Carr ; Ex p. Jacobs*, No. 1178a, could no longer be relied upon as an authority for the proposition that an unexplained delay in presenting a petition might amount to acquiescence in a deed.—*Re* BEESLEY (1913), 109 L. T. 910, D. C.

1177d. —— —— ——.]—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, &, later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment :—*Held :* there was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* NEWBURYS, LTD. (1926), 95 L. J. Ch. 199 ; [1926] B. & C. R. 23.

1177e. —— —— ——.]—If in bkpcy. proceedings the execution of a deed of assignment is relied on by a creditor as an act of bkpcy. by a debtor & as a ground for the making of a receiving order, the ct. may dismiss the petition & refuse to grant the petitioning

PART III. SECT. 1, SUB-SECT. 2.—G. so. *Order for alimony.*]—Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony :—*Held :* the order did not create a debt within Bkpcy. Act, s. 44.—*Re* FREEDMAN, [1924] 3 D. L. R. 517 ; 55 O. L. R. 206 ; 5 O. B. R. R. 47.—CAN.

creditor relief if it appears that he was himself a participator or sharer in bringing the deed into existence.

At a meeting of the creditors of a debtor, it was suggested that a deed of arrangement should be entered into by the debtor. One of the creditors, who was present throughout the proceedings, acquiesced in the proposal that his own name should be added to those to serve on the proposed committee of inspection, & in this sense he took part in the procedure which led up to the execution of the deed:—*Held:* the fact that the petitioning creditor himself took part in the proceedings which led up to the execution of the deed, constituted a sufficient cause within sect. 5 (3) of 1914 Act, for dismissing the petition for a receiving order & that a receiving order made by the registrar of the county ct. must be discharged.—*Re* DEBTOR (No. 11 OF 1935), [1936] Ch. 165; 105 L. J. Ch. 146; 154 L. T. 397; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER (No. 11 OF 1935), [1934–5] B. & C. R. 322, D. C.

1177f. —— —— ——.]—*Re* DEBTOR (No. 5 OF 1936), [1936] Ch. 728; 105 L. J. Ch. 375; *sub nom. Re* DEBTOR (No. 5 OF 1936), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1936–7] B. & C. R. 16.

1178. *Add. Annotations:*—**Apld.** *Re* Debtor, [1936] Ch. 165. **Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditors, [1924] B. & C. R. 105; *Re* Debtor (No. 5 of 1936), [1936] Ch. 728; Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1178a. —— —— ——.]—There is no duty cast on a creditor who receives notice of a deed of assignment for the benefit of creditors to express his dissent; nor does mere attendance at a meeting of creditors where such a deed is agreed to amount to approval. An unexplained delay of two months in presenting a petition or expressing dissent from the deed amounts to acquiescence.—*Re* CARR, *Ex p.* JACOBS (1901), 85 L. T. 552 50 W. R. 336, D. C.

Annotations:—**Distd.** *Re* Day, *Ex p.* Hammond (1902), 86 L. T. 238. **N.F.** *Re* Beesley (1913), 109 L. T. 910.

1178b. —— —— ——.]—*Re* BEESLEY, No. 1177c, *ante.*

1178c. —— —— **Failure to dissent from deed of assignment.**]—*Re* CARR, *Ex p.* JACOBS, No. 1178a, *ante.*

1179. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1179a. —— —— **Attendance at meeting of committee of inspection.**]—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be represented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr. attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy.:—*Held:* on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 24 OF 1924) (1924), 94 L. J. Ch. 42; [1924] B. & C. R. 105, D. C.

1180. *Add. Annotations:*—**Refd.** *Re* Debtor, [1936] Ch. 165; *Re* Debtor (No. 5 of 1936), [1936] Ch. 728.

1182. *Add. Annotations:*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199. **Refd.** Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1210. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1211. *Add. Citation:*—39 L. J. Bcy. 46.

1217. *Add. Citation:*—29 W. R. 268.

1234. *Add. Annotation:*—**Apprvd.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

1253a. —— **Secretary duly authorised to present petition.**]—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition:—*Held:* the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning; there was no defect or irregularity &, even if there were, it would come within 1914 Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re* MARSDEN, *Ex p.* SELLERS (E. H.) & SONS, LTD. (1921), 91 L. J. Ch. 318; 126 L. T. 408; [1921] B. & C. R. 188, D. C.

1274a. —— **True copy of bankruptcy notice not made exhibit to affidavit.**]—An original bkpcy. notice on the file of the county ct. was in Form No. 6 in the Appendix of Forms to the

PART III. SECT. 1, SUB-SECT. 4.

1202 i. *Within six months—When time begins to run—Ceasing to meet* [illegible]—Where A. had failed to [illegible]ities on their due dates eighteen months prior to the presentation of the [illegible] mere continuance of [illegible] not be said to be an act of bkpcy. occurring within six months before the [illegible] v. KELLY-DOUGLAS & Co., [1923] 2 D. L. R. 738; 32 B. C. R. 143; [1923] 1 W. W. R. 1340.—**CAN.**

1202 ii. —— *Continuing state of bankruptcy.*]—The limitation period for presenting a petition does not apply where a permanent state of bkpcy. exists for a period more than six months before & down to the time of presenting a petition.—*Re* RAYNER, 1935] 2 D. L. R. 542; 8 M. P. R. 369.

PART III. SECT. 3, SUB-SECT. 1.—**B**

u i. —— —— ——.]—All members of the firm must be named in a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

1261 i. —— *On partners.*]—All members of the firm must be served with a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

Bkpcy. Rules, 1915, intituled " In the High Court of Justice, In Bankruptcy," & was sealed with the county ct. seal, the Form not being adapted in any way to the form of bkpcy. notice to be issued by a county ct. On an appeal from a receiving order, the Div. Ct. discovered that the original bkpcy. notice was in Form No. 6, & the affidavit of service exhibited a copy of the bkpcy. notice sealed with the seal of the county ct. which was not a true copy of the original bkpcy. notice. The ct. held that the bkpcy. notice was bad, allowed the appeal, rescinded the receiving order, dismissed the petition & set aside the bkpcy. notice.—*Re* EVANS, DAVIES *v.* EVANS, [1931] B. & C. R. 48, D. C.

1286a. —— —— **Details of debt—Petition by money-lender.**]—Money-lenders' Act. 1927 (c. 21), s. 9 (2), applies to loans made before, as well as to those made after, the Act.—*Re* DEBTOR (No. 99 OF 1928) (1928), 97 L. J. Ch. 250; 139 L. T. 234; 72 Sol. Jo. 335; [1928] B. & C. R. 40, C. A.

1286b. Affidavit sworn before act of bankruptcy committed—Petition sealed & filed after act of bankruptcy.]—Where an affidavit verifying the statements contained in a petition was sworn & the petition was signed a day before the act of bkpcy. alleged in the petition was committed, & all the facts alleged were duly proved on the hearing of the petition:—*Held:* no " substantial injustice " had been caused to the debtor by the defect or irregularity, so as to vitiate the subsequent proceedings.—*Re* DEBTOR (No. 49 OF 1932), *Ex p.* DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER (1933), 102 L. J. Ch. 143; [1933] B. & C. R. 53.

1287a. —— **To require proof—Although debt & act of bankruptcy admitted.**]—Bkpcy. being a matter which affects not only the debtor & his creditors but also the general public, a duty is imposed upon the ct. to see that all the requirements of the 1914 Act & rules have been observed. Where therefore a petition in bkpcy. is presented by money-lenders it is the duty of the Registrar before making a receiving order to satisfy himself that all the requirements of sect. 5 (2) of 1914 Act, r. 171 of Bkpcy. Rules, 1915, & Moneylenders Act, 1927 (c. 21), s. 10, have been complied with. Admission or consent by any one of the parties that this has been done is not sufficient. On an appeal the Registrar should furnish the Ct. of Appeal with a full note of the proceedings before him showing that these requirements have not been overlooked.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 591 OF 1934), [1935] Ch. 353; 104 L. J. Ch. 228; [1934-5] B. & C. R. 234; *sub nom. Re* DEBTOR (No. 591 OF 1934), *Ex p.* DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 152 L. T. 368; *sub nom. Re* DEBTOR, 51 T. L. R. 277, C. A.

1313. *Add. Citation:*—68 L. T. 589.

1326. *Add. Annotation:*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1332. *Add. Annotation:*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 203.

1345. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 170.

1347. *Add. Annotation:*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1347a. —— ——.]—The registrar in bkpcy. possesses the widest discretion in respect of granting adjournments of the hearing of petitions, the only limit that the law imposes upon him being that he should exercise a judicial discretion.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITOR (1920), 89 L. J. K. B. 432; [1920] B. & C. R. 1, D.

1357. *Add. Annotation:*—**Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1357a. —— —— **Reasonable prospect of satisfaction of debts.**]—Where a debtor applies for the adjournment of a petition, the ct. should be satisfied that there is a reasonable prospect of the debts being satisfied, & the ct. should be put in possession of every possible information as to the position of debtor, & as to the position of the negotiations which, it is said, will result in obtaining funds for the payment of his debts.—*Re* BOWEN, *Ex p.* THE DEBTOR, [1924] B. & C. R. 32, C. A.

1366. *Add. Annotation:*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1366a. Agreement to withdraw—Bill of exchange given in consideration of—Void.]—DAVIS *v.* HOLDING (1836), 1 M. & W. 159; 1 Gale, 380; Tyr. & Gr. 371; 5 L. J. Ex. 102; 150 E. R. 388.

Annotations:—**Refd.** Belcher *v.* Sambourne (1844), 6 Q. B. 414; Smith *v.* Salzmann (1854), 9 Exch. 535; Whitmore *v.* Farley (1881), 14 Cox, C. C. 617.

1367a. —— **After receiving order made.**]—A creditor who presented a petition in bkpcy.

1275 ii. —— *By whom—Solicitor.*]—*Re* X. (1920), 59 D. L. R. 617; 1 C. B. R. 459.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

1277 va. —— ——.]—*Semble:* the affidavit required by sect. 4 (2) of Bankruptcy Act, R. S. C., 1927, c. 11, in verification of a creditor's petition must be made by petitioner, except in cases under rule 32, *viz.* those where petitioner is a corpn.—*Re* MCKAY OIL CO., [1930] 1 W. W. R. 56; 2 D. L. R. 643; 11 C. B. R. 248.—**CAN.**

PART III. SECT. 3, SUB-SECT.

1334 iii. —— *Position of creditor.*]—A creditor who had petitioned for sequestration of the estates of his debtor proposed to abandon his petition before sequestration had been awarded. Another creditor thereupon lodged a minute craving to be sisted as a party to the petition. The Lord Ordinary sisted him, & six weeks later, on his petition, granted sequestration. Vouchers, admittedly sufficient to substantiate the creditor's debt, were exhibited to the Lord Ordinary before he granted sequestration, & were subsequently lodged in process, but these particular vouchers had not been produced when the creditor was sisted. Thereafter the debtor presented a petition for recall of the sequestration on the ground that the proceedings were *ab initio* void, in respect that the sisted creditor had not fulfilled the statutory procedure for obtaining sequestration laid down in Bkpcy. (Scotland) Act, 1913, s. 20, in that he had failed timeously to lodge in process the necessary evidence of his debt:—*Held:* a creditor craving to be sisted in terms of Bkpcy. (Scotland) Act, 1913, s. 33, as petitioner to a petition for sequestration did not need to to follow out the statutory procedure prescribed by sect. 20 as essential in the case of an original petitioner, it being sufficient if such sisted creditor, before the award of sequestration was made, satisfied the Lord Ordinary as to the existence of his debt.—STEWART *v.* WETHERDAIR, LTD., [1928] S. C. 577.—**SCOT.**

PART III. SECT. 3, SUB-SECT. 10.

a i. ——.]—The creditor, who, under sect. 35 of Bkpcy. Act, 1924-30, is substituted for a petitioning creditor who has failed to " proceed with due diligence on his petition " must be a person whose debt was in existence at the time of the act of bkpcy. alleged in the petition.—MCNAMARA *v.* LANGFORD (1932), 45 C. L. R. 267; 5 A. B. C. 8.—**AUS.**

against debtor failed to disclose a charge which had been given him by debtor some years previously. The registrar allowed the creditor to amend his petition after a receiving order had been made :—*Held :* apart from amending the petition, it was doubtful whether the receiving order could be set aside on the ground of the omission to state the security ; but there was power to amend the petition even after the making of the receiving order.—*Re* A DEBTOR (No. 1507 OF 1921), [1922] 2 K. B. 109 ; 91 L. J. Ch. 471 ; 127 L. T. 344 ; 38 T. L. R. 574 ; 66 Sol. Jo. 472 ; [1922] B. & C. R. 9, C. A.

Annotation :—**Consd.** *Re* Small, Westminster Bank, Ltd. *v.* Trustee, [1934] Ch. 541.

1378a. —— To remove name of debtor—Proceedings against partnership—One partner a company—Winding up.]—*Re* DOBREE & CO., No. 3793a, *post.*

Part IV.—Receiving Order.

1451a. —— To make order against partners—Act of bankruptcy by other partners.] — *Re* GOWLAND BROTHERS, *Ex p.* PROCTER SHOTTON (1928), 65 L. Jo. 378, D. C.

1453. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1454. *Add. Annotation :*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1462. *Add. Annotation :*—**Expld. & Distd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1467. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1482. *Citations :*—For " 54 L. Jo. 444 ; 148 L. T. Jo. 178 " read " 89 L. J. K. B. 40."

1483a. Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.]—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors' meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy. :—*Held :* on the facts, petitioning creditors' obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute " sufficient cause " for the dismissal of the petition.—*Re* A DEBTOR (No. 13 OF 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.

1483b. Previous receiving order made by another court.]—Where a receiving order has been made in one ct., a second order should not be made in another ct. simply to enable the petitioning creditor to get his costs ; but in a proper case a second order may be made.—*Re* DEBTOR (No. 415 OF 1935) (1935), 79 Sol. Jo. 921, C. A.

1483c. Petition by moneylender—Tender of all sums due except postponed interest.]—Petitioners, who were moneylenders, presented bkpcy. petition against the debtor. In their petition the claim was stated to be in respect of specified sums due on two promissory notes & interest at 5 per cent. The claim further stated " & we also have a claim for interest on the said two promissory notes which is postponed interest under sect. 9 (1) of Moneylenders Act, 1927 (c. 21)." On the petition coming before the Registrar the debtor tendered to the petitioning creditors the principal due on the promissory notes with 5 per cent. interest but not the postponed interest. This tender was refused, & the Registrar made a receiving order against the debtor. On appeal :—*Held :* under sect. 9 (1) of Moneylenders Act, 1927 (c. 21), the right of a moneylender to recover interest in excess of 5 per cent. was not destroyed but merely postponed for the purposes mentioned in the sub-sect. The tender made by the debtor did not include

PART III. SECT. 3, SUB-SECT. 12.

1379 iii. —— ——.]—*Re* LITTLE, [1925] 1 D. L. R. 395 ; 56 O. L. R. 196 ; 5 C. B. R. 244 ; *revsg.*, [1924] 2 D. L. R. 1172.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B.

1408 ii. ——.]—Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province :—*Held :* this was a reasonable course to pursue. —*Re* FAIRWEATHERS, *Ex p.* MONTREAL (CITY) (1921), 2 C. B. R. 342.—**CAN.**

PART IV. SECT. 1.

1459 ii. —— *Authorised assignment made before conditions of composition deed fulfilled.*]—*Re* LIPSON, [1923] 3 D. L. R. 1171 ; (1922), 52 O. L. R. 352 ; 2 C. B. R. 488.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

a. Read now " **1461 i.**"

1461 ii. *Authorised assignment between service & hearing of bankruptcy petition.*]—Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice of hearing.—*Re* CROTEAU & CLARK CO., LTD., [1920] 48 O. L. R. 359 ; 55 D. L. R. 413 ; 1 C. B. R. 364.—**CAN.**

1461 iii. —— *After but on same day as presentation of petition & appointment of interim receiver.*]—Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re* PROGRESSIVE FARMERS CO., LTD., [1921] 3 W. W. R. 265 ; 1 C. B. R. 551.—**CAN.**

1461 iv. ——.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but without prejudice to its being renewed if any necessity should arise.—*Re* WATERHOUSE (THOMAS) & CO. (1921), 4 D. L. R. 518 ; 50 O. L. R. 476.—**CAN.**

1464 i. *No other creditor — Other facilities for realising debt.*]—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

sp. *Debtor in position to pay.*]—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

ii. ——.]—The ct. refused an order sequestrating a debtor's estate when it was clear that the sequestration would not be for the benefit of the creditors.—FINDLAY *v.* BEETAR (1921), 42 N. L. R. 19.—**S. AF.**

the whole sum which the moneylenders might ultimately recover, as it did not include the postponed interest which they might receive in the event of the other creditors being paid in full. They were therefore justified in refusing the tender & the receiving order was rightly made.—*Re* DEBTOR (No. 231 OF 1936), [1937] Ch. 181; 106 L. J. Ch. 189; 53 T. L. R. 108; 80 Sol. Jo. 974; [1936–7] B. & C. R. 113; *sub nom. Re* DEBTOR (No. 231 OF 1936), DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, [1936] 3 All E. R. 641; 156 L. T. 9, C. A.

1488. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1489. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1490. *Add. Annotation :*—**Consd.** *Re* Debtor, [1928] Ch. 199.

1491. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1491a. —— ——.]—Debtor furnished a friend with a cheque for £500 as a deposit in connection with the underwriting of shares by a co. in which the friend was interested. The cheque was dishonoured & judgment obtained against debtor for £500 & £14 6*s.* costs. In Dec. 1926, the judgment creditors petitioned for a receiving order against debtor in respect of the judgment debt. From time to time arrangements were made for adjourning the petition, but in Mar. 1927, the petitioning creditors intimated that the conditions on which they would agree to the petition being dismissed were that debtor should pay £100 & provide a guarantee for payment of the balance of the debt & also agree to pay to them the costs of their proceedings against the underwriters as between solr. & client, & the costs of their proceedings against debtor, also as between solr. & client. Payment of the costs of proceedings against the underwriters was refused, but payment by debtor of solr. & client costs was agreed to, & sums of £50 & £144 were paid & the petition dismissed. In July petitioners again commenced proceedings for a receiving order in respect of a sum ascertained by deducting from the original debt & interest & costs as between solr. & client the payments of £50 & £144. A receiving order having been made :—*Held :* the acts of petitioners in seeking to obtain payment of their costs in the proceedings against the underwriters & in obtaining payment debtor of their solr. & client costs amoun to extortion & an abuse of the process of the ct., & the case fell within 1914 Act, s. 5 (3), as being one where the ct. was satisfied that for sufficient cause no receiving order ought to be made, & the receiving order must be discharged.—*Re* DEBTOR (No. 883 OF 1927), [1928] Ch. 199; 97 L. J. Ch. 120; 138 L. T. 440; 72 Sol. Jo. 85; [1928] B. & C. R. 1, C. A.

1492. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1493. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1494. *Add. Annotation :*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1495. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1496. *Add. Annotation :*—**Refd.** *Re* Debtor, *Ex p.* Debtor, [1918–19] B. & C. R. 221.

1498. After this case add "*Compare* No. 797a, *ante.*"

1498a. **Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).**]—*Re* A DEBTOR, No. 1016a, *ante.*

1500. *Add. Annotations :*—**Distd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* A. & M., [1926] Ch. 274. **Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

1500a. **Order against firm "other than" partner not served with bankruptcy notice.**]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *ante.*

1508. *Add. Annotations :*—**Apld.** *Re* A Debtor, [1922] 2 K. B. 109. **Consd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120; **Refd.** *Re* A. & M., [1926] Ch. 274.

1513. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1920] 1 K. B. 461.

1515a. —— —— **Application opposed by official receiver.**]—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination, the registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re* A DEBTOR (No. 446 OF 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 64 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom. Re* A DEBTOR, *Ex p.* THE DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 122 L. T. 354, C. A.

1519a. —— —— **All debts paid in full.**]—*Re* A DEBTOR (No. 446 OF 1918), No. 1515a, *ante.*

1520. *Add. Citations :*—[1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 354; [1920] B. & C. R. 31.

1538a. —— ——.]—Every ct. exercising bkpcy. jurisdiction, under sect. 108 (1) of 1914 Act, may rescind its orders, but the discretion to rescind a receiving order should only be exercised in exceptional circumstances & upon full disclosure of all material facts. These facts may only be ascertainable by the public examination of the debtor & the publicity resulting from bkpcy. proceedings. —*Re* DEBTOR (No. 5 OF 1936), *Ex p.* OFFICIAL RECEIVER (1937), 106 L. J. Ch. 225; [1936–7] B. & C. R. 187, C. A.

1539a. —— —— **Unequal treatment of creditors.**] —A debtor against whom a receiving order had been made came to the following arrangement with his four creditors. The petitioning creditor was paid in full, another had accepted £50 in full satisfaction of a debt of £135, & the other two had given a release, although they had not been paid anything. The debtor applied to have the receiving order rescinded. The registrar in his discretion refused the application :—*Held :* the ct. will only in exceptional cases interfere with the registrar's discretion. The unequal treatment of the creditors was a strong ground for refusing to interfere in such a matter.—*Re* DEBTOR (No. 994 OF 1935), DEBTOR *v.*

OFFICIAL RECEIVER, [1936] 1 All E. R. 794; 80 Sol. Jo. 344, C. A.

1541a. —— —— Failure to disclose security.]—*Re* A DEBTOR (No. 1507 OF 1921), No. 1367a, *ante*.

1542. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 994 of 1935), Debtor *v.* Official Receiver, [1936] 1 All E. R. 794.

1545a. —— Sequestration in Scotland.] — *Re* A DEBTOR (No. 199 OF 1922), No. 389a, *ante*.

1548a. —— —— Power to make charging order on balance of funds in court.]—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor, A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver:—*Held:* (1) the registrar had jurisdiction to make the order; (2) the registrar's jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re* PRIOR, *Ex p.* PRIOR, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR (No. 718 OF 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.

1551. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 994 of 1935), Debtor *v.* Official Receiver, [1936] 1 All E. R. 794.

1552. *Add. Annotation:*—**Folld.** Harman *v.* Official Receiver, [1934] A. C. 245.

1552a. —— Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.] — Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, *i.e.* from Dec. 1, 1923, to Jan. 1, 1924, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having [illegible] broken his undertaking by not compl[illegible] the insurance on his life, the Ct. of App[illegible] rescinded their order, with the result t[illegible] the receiving order stood as originally made by the registrar.—*Re* A DEBTOR, *Ex p.* THE DEBTOR (No. 1088 OF 1923), [1924] B. & C. R. 1, C. A.

Annotation:—**Consd.** Harman *v.* Layton-Bennett (1935), 79 Sol. Jo. 108.

1552b. —— From order restoring adjudication order—To House of Lords without leave of Court of Appeal.]—Applt. was adjudicated a bkpt. on Aug. 22, 1932. On Oct. 24, 1932, the Ct. of Appeal allowed an appeal from the order of adjudication upon certain terms, & ordered that the application for adjudication be adjourned. One of the terms not having been complied with applt. moved the Ct. of Appeal to vary its order, but on Feb. 10, 1933, the Ct. of Appeal rescinded its order of Oct. 24, 1932, & restored the order of adjudication so as to have effect from Aug. 22, 1932. The Ct. of Appeal refused applt. leave to appeal from its order of Feb. 10, 1933. Nevertheless he appealed, & the objection was taken that under sect. 108 (2) (*b*) of Bkpcy. Act, 1914, the appeal was not competent, as it was an appeal "in bkpcy. matters" & leave to appeal had been refused. The order of Feb. 10, 1933, purported to be made "in bkpcy. matters" & applt. so treated it in his petition of appeal to the House of Lords. The cts. having jurisdiction in bkpcy., which under sect. 108 (1) of 1914 Act might review, rescind, or vary any order made by them under their bankruptcy jurisdiction, were by sect. 96 confined to the High Ct. & county cts., & it was alleged that therefore the Ct. of Appeal had no power to exercise that jurisdiction of reviewing, rescinding, or varying its order:—*Held:* if the order was a complete nullity the House could not deal with it, but if it were to be regarded as an order of the Ct. of Appeal it fell within the provisions of sect. 108 (2) (*b*), which expressly limited the jurisdiction of the House in respect of orders made "in bkpcy. matters" where leave to appeal had been refused by the Ct. of Appeal. Appeal dismissed as incompetent.—HARMAN *v.* OFFICIAL RECEIVER, PETITIONING CREDITORS & TRUSTEE, [1934] A. C. 245; 103 L. J. Ch. 158; 150 L. T. 501; 50 T. L. R. 238; 78 Sol. Jo. 192; [1934] B. & C. R. 25, H. L.

1552c. —— —— —— Application for declaration that order void.]—HARMAN *v.* LAYTON-BENNETT (1935), 79 Sol. Jo. 108, C. A.

PART IV. SECT. 5.

1541 iv. —— *Order based on statement of former president &* F. G. WRIGHT & CO., LTD., [1937] 3 W. W. R. 404.—**CAN.**

PART IV. SECT. 6.

1554 i. *In general—Debtor consenting to order.*]—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order.—*Re* LALONDE, [1924] 1 D. L. R. 1018; 55 O. L. R. 279; 4 C. B. R. 416.—**CAN.**

ss. *On person holding himself out as member of partnership.*]—A receiving order made against a partnership will include a person who has held himself out as a member thereof. —*Re* MAIN CLOAK CO., [1925] 1 D. L. R. 290.—**CAN.**

st. *On power to proceed on judgment summons.*]—Sect. 24 of Bkpcy. Act, R. S. C., 1927 c. 11, provides that when a receiving order or an authorised assignment is made no creditor to whom the debtor is indebted in respect of a debt provable in bkpcy. shall have any remedy against the property or person of the debtor except with the leave of the ct. Pltf. herein, a judgment creditor of deft., applied to the judge in Bkptcy. for leave to proceed to obtain an order committing deft. to gaol for non-compliance with an order directing him to pay a monthly sum on account of pltf.'s

1561. Add the following para. :—

Therefore, where a debtor had been arrested under an order of the Ch. Div. made after the date of a receiving order pronounced before, but not drawn up & signed by the registrar (Bkpcy. Rules, 1883, r. 153, App., Forms 29 & 30) until after the arrest, he was ordered to be discharged, notwithstanding that he had by his counsel submitted to the order of attachment.

1569. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1570. *Add. Annotation :*—**Apld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

1579a. —— **Effect of—On transactions pending appeal from receiving order.**] —*Re* WIGZELL, *Ex p.* HART, No. 1893a, *post*.

Part V.—Adjudication Order.

1586a. —— ——.]—An appeal against a decision of a registrar, approving a proposal for a scheme of arrangement, having been allowed, the Ct. of Appeal, upon the application of the official receiver, adjudged the debtor bkpt. under Bkpcy. Act, 1883 (c. 52), s. 20, & Bkpcy. Rules, 1886, s. 191.—*Re* BURR, *Ex p.* BOARD OF TRADE, [1892] 2 Q. B. 467 ; 61 L. J. Q. B. 591 ; 66 L. T. 553 ; 8 T. L. R. 515 ; 9 Morr. 133, C. A.

1603. *Add. Annotations :*—**Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

1619. *Add. Citation :*—11 Cox, C. C. 360.

1620. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1624. *Add. Annotation :*—**Consd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1625. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1636. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1637. *Add. Annotation :*—**Dbtd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1638. After this case add "**On duty to maintain wife.**]—*See* HUSBAND & WIFE, No. 595a."

1640. Add the following para. :—

A debtor entitled to land in Middlesex was adjudged bkpt., & an order was made under sect. 121 of 1883 Act, that his estate should be administered in a summary way, so that no appointment of a trustee was made. He never disclosed to the official receiver the fact of his having the land, & he subsequently mortgaged it to a mtgee. who forthwith registered his mtge. :—*Held :* the title of the official receiver was not postponed to that of mtgee. by reason of the order of adjudication not having been registered.—*Re* CALCOTT & ELVIN'S CONTRACT, [1898] 2 Ch. 460.

1642. *Add. Citation :*—39 L. J. Bcy. 46.

1647. *Add. Annotation :*—**Refd.** Holden *v.* Southwark Corpn., [1921] 1 Ch. 550.

1650. After this case add :—

-.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

1656. *Add. Annotation :*—**Consd.** *Re* Boulton, *Ex p.* Moncrieff *v.* Official Receiver (1926), 135 L. T. 461.

1657a. —— —— ——.]—The partners of a firm, which was heavily indebted to the firm's bankers, formed a limited co. to take over the debt. They then, with the consent of the principal creditors of the firm, gave the bank a joint & several guarantee for payment of the transferred debt & of any sums due to the bank from the co. Upon the subsequent bkpcy. of the firm & the individual partners : —*Held :* (1) bkpts. had by the guarantee contracted a " debt provable in the bkpcy. without having at the time of contracting it any reasonable or probable ground of expectation of being able to pay it " within 1914 Act, s. 26 (3) (*d*), which covered not only a new & original debt, but also a debt in renewal of or in substitution for a previously existing debt, & their discharge must be suspended for a period of two years ; (2) the ct., upon the particular facts of the case, granted each partner a certificate that his bkpcy. was " caused by misfortune without any misconduct on his part," the certificate to operate when the discharge took effect. Circumstances which may constitute " misfortune without any misconduct " within sect. 26 (4), discussed. — *Re* BOULTON BROTHERS & Co., [1927] 1 Ch. 79 ; *sub nom. Re* BOULTON BROTHERS & Co., *Ex p.* MONCRIEFF *v.* OFFICIAL RECEIVER, 96 L. J. Ch. 90 ; [1927] B. & C. R. 1, C. A.

1666. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

1667. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

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judgment. The day before the application deft made an assignment in bkpcy. The application was opposed by deft. through his solr., & also by the custodian :—*Held :* the judge had exercised a proper discretion in refusing to grant leave to proceed.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 1 W. W. R. 198 ; 2 D. L. R. 77 ; 24 S. L. R. 290 ; 11 C. B. R. 227.—**CAN.**

PART IV. SECT. 7.

1575 ii. —— *To enable debtor to pay.*] —A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

PART V. SECT. 1.

d i. —— —— *Want of assets.*]—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re* BARAKAT, [1920] N. Z. L. R. 134.—**N.Z.**

1598 iii. —— ——.]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates :—*Held :* in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—COOK *v.* M'DOUGALL, [1923] S. C. 86.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

sv. *On chattel mortgage by debtor.*]—The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt must be determined as at the time of such adjudication.—*Re* SAUNDERS ALBERTA COLLIERIES, LTD., [1925] 3 D. L. R. 323 ; [1925] 2 W. W. R. 122 ; 5 C. B. R. 727.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.

3 (p. 188) **i.** —— *In filing petition—Creditor prejudiced.*]—*Re* HASTIE, [1926] N. Z. L. R. 428.—**N.Z.**

1669. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam (1929), 98 L. J. K. B. 537.

1670. *Citation :*—For "26 L. J. Bcy. 29" read "86 L J. Bcy. 29."

Add. Annotation :—As to (1) **Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

1731. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1735. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1766. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1771. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1775a. —— Surplus assets after payment of composition.]—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets : —*Held :* although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, *i.e.* the surplus after satisfying the composition, would, by necessary implication, revest in debtor.—FLOWER *v.* LYME REGIS CORPN., [1921] 1 K. B. 488 ; 90 L. J. K. B. 355 ; 124 L. T. 463 ; 37 T. L. R. 145 ; 65 Sol. Jo. 133 ; [1920] B. & C. R. 138, C. A.

1781. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

Part VI.—Official Receiver, Special Manager, and Interim Receiver.

1808a. On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.]—An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order ; but bkpt.'s estate, including any after-acquired property, remains vested in his trustee in bkpcy.—*Re* SARJEANT, [1923] 2 Ch. 302 ; 129 L. T. 825 ; *sub nom. Re* SARJEANT, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 626 ; [1923] B. & C. R. 63.

, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

1826. *Add. Annotation : —* **Refd.** *Re* A Debtor, [1920] 1 K. B. 461.

1853. *Add. Annotations : —* **Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163 ; Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

1879a. Application by receiver for annulment of adjudication—Whether receiver entitled to costs.]—*Re* A. & M., No. 226a, *ante*.

Part VII.—The Trustee and Committee of Inspection.

1889. *Add. Annotations :*—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79. **Apld.** *Re* Sandiford (No. 2), Italo-Canadian Corpn. *v.* Sandiford, [1935] Ch. 681. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; *Re* Wait, [1927] 1 Ch. 606.

1890. *Add. Annotations : —* **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1893. *Add. Citations :*—122 L. T. 35 ; [1918-19] B. & C. R. 249.

Add. Annotations :—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B.

PART VI. SECT. 8.

sw. *When court will appoint.*]—Petitioner must convince the ct. that an interim receiver is necessary to protect the creditors' interests.—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577.—**CAN.**

m i. ——.]—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577. —**CAN.**

sz. *Order of appointment containing undertaking as to damages by petitioning creditor—Undertaking not discharged on termination of appointment.*]—*Re* JACKSON, [1926] 1 D. L. R. 1189 ; 58 O. L. R. 482.—**CAN.**

a. *Order appointing—Not appealable.*]—RAMSAY GLASS CO. *v.* ROYAL BANK OF CANADA, [1931] 2 D. L. R. 759.—**CAN.**

sb. *Powers of custodian—Sale of perishable goods—Must be p[illegible] perishable.*]—*Re* WEBBER, [D. L. R. 269 ; 2 M. P. R. 513 ; 12 C. B. R. 274.—**CAN.**

sc. —— *Disposition of shares.*]—*Re* ESTATE OF H. K. REED & CO., LTD. (No. 1), [1930] 3 W. W. R. 98 ; 4 D. L. R. 841 ; 12 C. B. R. 31.—**CAN.**

PART VII. SECT. 1.

sd. *Representative of creditors—To enforce rights.*]—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

1893a. —— Duty not to take advantage of mistake of fact.]—A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which he had collected from his debtors, & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been made against bkpt. The trustee in bkpcy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee:—*Held:* (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (*a*), the property of his trustee in bkpcy.; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46; (3) there was nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re* WIGZELL, *Ex p.* HART, [1921] 2 K. B. 835; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE, 90 L. J. K. B. 897; [1921] B. & C. R. 42; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD., 125 L. T. 361; *sub nom. Re* WIGZELL, HART *v.* BARCLAYS BANK, 37 T. L. R. 526; 65 Sol. Jo. 493, C. A.

Annotations:—*As to* (2) **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. *As to* (3) **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

-.]—*See* Bankruptcy (Amendment) Act, 1926 (c. 7), s. 4.

1894a. —— Duty to recover statutory debt.]—In 1919 debtor paid deft., a bookmaker, various cheques for bets lost on horse racing, & these cheques were cleared through various banks, as holders. On Aug. 30, 1920, debtor was adjudicated bkpt. & on Mar. 30, 1921, his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all cts. must apply the rule in *Re Condon, Ex p. James*, No. 60, *ante*:—*Held:* the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutters* v. *Briggs* (*see* GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon, Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—SCRANTON'S TRUSTEE *v.* PEARSE, [1922] 2 Ch. 87; 91 L. J. Ch. 579; 127 L. T. 698; 38 T. L. R. 629; 66 Sol. Jo. 503; [1922] B. & C. R. 52, C. A.

Annotation:—**Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1894b. —— Duty to act equitably—Recovery of money paid to bankrupt with approval of official receiver.]—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924. W. was a promoter of boxing contests & had in view at the date of the presentation of the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles:—*Held:* A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so

given, but even if he were not so bound & even if A. exceeded his powers the trustee could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re* WILSON, *Ex p.* SALAMAN, [1926] Ch. 21; 95 L. J. Ch. 58; 133 L. T. 814; 70 Sol. Jo. 65; [1925] B. & C. R. 96.

1894c. —— **Extent of duty.**]—G. contracted with M. & Co. that they should build upon his land four greenhouses at a price of approximately £1,100, with the proviso that he was not to be bound by such contract unless he obtained a loan sufficient to meet his obligation under the contract. M. & Co. introduced G. to the Agricultural Mtge. Corpn., & a sufficient loan by the Corpn. to G. was arranged.

The work having been carried out to the satisfaction of all parties, M. & Co. wrote to the Corpn. requesting payment by them of the £1,153 14*s.*, & the Corpn. expressed their willingness to pay M. & Co. upon receipt of G.'s permission. M. & Co. sent a form of permission to G. for his signature, but on the very day of its arrival a receiving order was made against G. The trustee in G.'s bkpcy. was able to sell the land at an enhanced price by virtue of the presence on it of the four greenhouses. M. & Co. then sought to restrain the trustee from dividing £1,153 14*s.*, part of the proceeds of sale of the said land among the creditors generally & claimed the said sum for themselves in full:—*Held:* as M. & Co. at the date of the receiving order had no right to receive the loan from the Corpn. without the consent of G., the said sum was divisible between the general creditors. The facts did not warrant the application of the doctrine of *Re Condon, Ex p. James*, No. 1889, as M. & Co. by their own failure to obtain a charge to secure their debt were in the position of unsecured creditors.—*Re* GOZZETT, *Ex p.* MESSENGER & Co., LTD. *v.* TRUSTEE, [1936] 1 All. E. R. 79; 80 Sol. Jo. 146, C. A.

1895. *Add. Annotations:*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

1896. *Add. Annotations:*—**Consd.** *Re* Stokes, *Ex p* Mellish, [1919] 2 K. B. 256; *Re* Thellusson *Ex p.* Abdy, [1919] 2 K. B. 735.

1961a. —— **Suspension of bankruptcy—Death of trustee.**]—Where proceedings in a bkpcy. have been suspended by a resolution of the creditors, passed under 1861 Act, s. 110, & the trustee appointed by the creditors to wind up the estate & effects of the bkpt. has died, the Ct. of Ch. has jurisdiction, under the Trustee Acts, to appoint new trustees.—*Re* RAPHAEL'S TRUST ESTATE (1870), L. R. 9 Eq. 233; 39 L. J. Ch. 200; 18 W. R. 247.

1966a. —— **Refusal to convene creditors' meetings.**]—*Re* BURN (J.), *Ex p.* DAWSON (E. W. de V.), MCCLELLAN (H. T.) & TRUSTEE, No. 6318a, *post.*

1966b. —— **In regard to convening meeting of creditors.**]—(1) Creditors who, pursuant to 1914 Act, s. 79, have required the trustee or official receiver to convene a meeting of creditors for the purpose of passing specified resolutions, cannot obtain an order from the ct. compelling the trustee or official receiver to comply with such requisition if the ct. is of opinion that no useful purpose would be served thereby. A trustee is entitled to apply to the ct. for directions under sect. 79 (3) as to whether a meeting ought to be called or not in compliance with a requisition of creditors to convene it.

(2) The ct. is not bound to hear a creditor in opposition to a bkpt.'s application for discharge if satisfied that its attention has been called to all the facts & arguments necessary to enable the ct. to come to a proper decision.—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2) (1931), 101 L. J. Ch. 113; [1931] B. & C. R. 108.

PART VII. SECT. 2, SUB-SECT. 2.

1911 ii. —— ——.]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

k i. —— *Not secured creditor who has not valued security.*]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

1943 i. *Who may appeal against decision on election—Custodian not being creditor.*]—The custodian appointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.—*Re* MCCOUBREY, [1924] 2 D. L. R. 1126; [1924] 2 W. W. R. 348; 4 C. B. R. 642.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 6.

1959 ii. —— *Conflict of interest & duty.*]—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re* SHAW (WALTER W.) CO., LTD., [1922] 3 W. W. R. 119; 68 D. L. R. 616.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.

sb. *To employ bankrupt at remuneration—Approbation of court.*]—*Held:* the employment of bkpt. & the terms of his employment, including his remuneration, must have the approbation of the ct.; the subsequent approbation is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re* MACKAY, MCGUINNESS *v.* HOLLINGSHEAD (1921), 55 I. L. T. 89.—**IR.**

sc. *To accept tenders.*]—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922). 65 D. L. R. 136.—**CAN.**

sd. *To dispose of property.*]—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

se. *To dispose of shares—Application for direction of court.*]—*Re* ESTATE OF H. K. REED & CO., LTD. (No. 2), [1930] 3 W. W. R. 158; 4 D. L. R. 923; 12 C. B. R. 33.—**CAN.**

sf. *To lease.*]—On a motion under sect. 84 of Bkpcy. Act by a secured creditor to reverse the trustee's act or decision, authorised by the creditors & inspectors, in leasing the plant of the bkpt. for the current year:—*Held:* a trustee in bkpcy. has no power to lease under sect. 43 of Bkpcy. Act & the lease was accordingly set aside.—SECHART FISHERIES, LTD., *Re* EDWARD RENNEBERG & SONS CO. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (B. C.), [1929] 4 D. L. R. 536; 2 W. W. R. 413; 10 C. B. R. 565.—**CAN.**

1983 i. *Payment—Power to make—To complete contract.*]—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held:* the trustee might pay the last instalment & retain the goods.—*Re* LEMIEUX & COPPING MOTOR DISTRI-

2007a. —— —— **Without order of court for delivery of accounts.**]—The ct. has jurisdiction under 1914 Act, s. 105 (5), to make an immediate & unconditional order for the committal of a trustee of a deed of arrangement for non-compliance with an order of the Board of Trade made in pursuance of Deeds of Arrangement Act, 1914 (c. 47), s. 13, to transmit an account of his receipts & payments as such trustee.—*Re* ALLEN, [1935] Ch. 74; 152 L. T. 328; *sub nom. Re* ALLEN, *Ex p.* BOARD OF TRADE *v.* NELSON, 104 L. J. Ch. 204; [1934] B. & C. R. 99.

2028a. —— ——.]—Where a trustee in bkpcy. with the sanction of the committee of inspection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of " where the client & others are interested in a common fund," *i.e.* bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of the trustee. But where the trustee has honestly sanctioned an expenditure which is not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1921] 1 K. B. 344; 90 L. J. K. B. 246; 124 L. T. 572; [1920] B. & C. R. 171.

2114. *Add. Annotations:*—**Apld.** *Re* Burn, *Ex p.* Dawson (E. N. de V.), McClellan (H. T.) & Trustee, [1932] 1 Ch. 247. **Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. 440.

2158. *Add. Annotation:*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

BUTORIES (1922), 69 D. L. R. 105; 1 C. B. R. 464.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—A.

jj. —— *Some creditors not notified.*]—If the trustee discovers that he has failed to send to some of the creditors a notice intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—**CAN.**

2001 i. *To realise to best advantage—Acceptance of tenders.*]—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158. —**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—B. (b).

2008 ii a. —— *Accountant—Charge for clerk's time.*]—Where an accountant's work is indispensable a trustee under Bkpcy. Act may be allowed to charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But payments made to the trustee's firm for the work of its employees must be disallowed as disbursements. — *Re* BRYANT, ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799. —**CAN.**

sg. *Costs incurred before appointment of inspectors.*]—Solrs.' costs for services rendered prior to the appointment of inspectors are not taxable against the estate.—*Re* STONEBERG (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1328.—**CAN.**

sh. *Salaries of regular employees.*]—A custodian or trustee in bkpcy. cannot recover as disbursements, the salaries paid its regular employees.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—B. (c).

gi. ——.]—The taxation of a trustee in bkpcy.'s bill of fees & disbursements will be reopened when it appears *primâ facie* that improper items have been included. Proof that the taxing master did not understand how far the inspectors had approved the accounts will establish such a *primâ facie* case.—*Re* J. STANLEY WEDLOCK, LTD., [1925] 2 D. L. R. 566; 5 C. B. R. 62.6—**CAN.**

2031 i. *Basis of taxation of solicitor's charges—Amount of costs limited.*]—*Re* MESSERVEYS, LTD., [1924] 1 D. L. R. 1037; 4 C. B. R. 493.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C. (a).

2035 i. *Order for payment—When granted—Proceeds of sale handed over to debtor.*]—Where debtor parts with property to a trustee who, in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the money which he received as a result of such sale.—CAMERON *v.* MOSELEY, [1923] 3 D. L. R. 267.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—H.

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale.*]—*Re* DAVIES FOOTWEAR CO., UNDERHILLS, LTD., *v.* BARBER (1923), 53 O. L. R. 467; 4 C. B. R. 131.—**CAN.**

sl. *Effect of Bankruptcy Act*, 1914, s. 80.]—Above sect. is not intended to confer a general jurisdiction upon the Ct. of Bkpcy. to set aside such a sale & thereby affect rights acquired by purchasers.—*Re* CHIRNSIDE; DIGBY *v.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. (1929), V. L. R. 217.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

2125 iv a. —— —— *"Cash receipts."*]—The trustee is to be confined to five per cent. of the cash receipts in all circumstances, unless the inspectors in writing increase the amount & the ct. approves.—*Re* BRYANT ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799; *varying* [1925] 1 D. L. R. 847; 5 C. B. R. 393.—**CAN.**

2125 iv b. —— —— —— *Meaning.*]—*Re* JOHNSTON, [1925] 4 D. L. R. 226. —**CAN.**

2125 iv c. —— ——.]—Bkpcy. Act, 1927 (c. 11), s. 85, does not recognise 5 per cent. of the cash receipts as the ordinary commission allowable to a trustee in bkpcy.; but merely fixes 5 per cent. as the limit of the charge to be allowed, except with the approval in writing of the inspectors & of the ct. Under the circumstances in the present case a commission of 3 per cent. on both the receipts & on the cash received by the trustee under a composition agreement was held to be reasonable.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—**CAN.**

sm. *Right to priority — Over Crown debts.*]—The trustee is entitled to be paid his fees & expenses in priority to the Crown.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—**CAN.**

sn. —— *Over claims for taxes.*]—A. trustee in bkpcy. is entitled to retain his fees & expenses out of the estate in priority to the Crown's claim for sales taxes.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

so. —— ——.]—The claim of the trustee in bkpcy. for his expenses is payable in priority to the taxes owing by debtor to a municipality.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

sp. —— ——.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act. —*Re* DAVIS, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—**CAN.**

sr. —— *Over claims by landlord.*]—If the landlord's claim arose anterior to that of the Crown's claim for taxes, the trustee's claim for his fees & expenses will count after the landlord's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—**CAN.**

Priority of debts generally, *see* cases in Part XII., *post.*

q i. *Power of court to enforce payment.*]—The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—MEN'S ATTIRE REGISTERED *v.* HART (1922), 68 D. L. R. 193; 2 C. B. R. 534.—**CAN.**

sv. *Non-payment of fees—Whether ground for setting aside composition.*]—LAKE ST. JOSEPH HOTEL *v* GROSLEAU (1928), Q. R. 45 K. B. 118; 10 C. B. R. 14.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—B. (b).

sw. *Duty to obtain indemnity—Value of estate uncertain.*]—Where there is any doubt as to the value of the estate an authorised trustee should before proceeding with its administration, obtain an indemnity from the creditors.—*Re* GUMP (1921), 69 D. L. R. 202; 51 O. L. R. 118; 2 C. B. R. 56.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.—B.

2159 i. *Receiver handing over assets to trustee—Whether lien for charges—Whether locus standi to impeach management of trustee.*]—*Held:* (1) the interim receiver's fees & expenses were a first charge upon the assets, & should be paid in priority to other fees & expenses, in the administration thereof;

2176. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2264a. ——.]—A trustee having persistently disregarded the directions of the Board of Trade to send his accounts for audit the Board of Trade removed him. His accounts were sent in shortly after his removal, & it was not alleged that he had been guilty of any misappropriation or other irregularity. The creditors by ordinary resolution disapproved of the trustee's removal, & the trustee appealed to the High Ct. The ct. held, on the facts, that the Board of Trade's decision to remove the trustee was right. The motion was accordingly dismissed with costs.—*Re* ROTHMAN & ALLANSWICK, *Ex p.* RUBENS *v.* BOARD OF TRADE, [1934-5] B. & C. R. 224.

2288. *Add. Annotation :*—**Refd.** *Re* Bulmer, Greaves *v.* I. R. Comrs., [1937] 1 All E. R. 323.

2293a. —— **Holder of proxy from company.**]—At the date of the receiving order the bkpt. had on deposit with a bank certain preference & ordinary shares which had been deposited by him by way of security for a loan. A creditor for a large sum of money, a limited co., was appointed one of the members of the committee of inspection in the bkpcy. The co., being unable to act personally, appointed applt., who was its chairman, to act as its general proxy on the committee. In the course of the bkpcy. the applt., whilst so acting, purchased some of the deposited shares from the bank without any knowledge that the person who had deposited the shares was the bkpt. & that the equity of redemption in them formed part of his estate. Applt. subsequently sold some of these shares :—*Held :* applt. must in the circumstances of the case be treated as a member of the committee of inspection & was therefore in a fiduciary relation to the bkpt.'s estate. He was therefore precluded on general equitable principles from entering into the present transaction, which was therefore void against the trustee in bkpcy. As, however, the transaction was entered into by applt. in ignorance that the shares formed part of the bkpt.'s estate, the ct., whilst ordering him to hand over to the trustee in bkpcy. the shares retained by him (subject to his lien for the price paid by him), would not order him to replace the shares sold by him but would be content to require him to account for the purchase money actually received for the shares which he had resold.

The validity of the appointment of a limited co. as a member of a committee of inspection doubted.—*Re* BULMER, *Ex p.* GREAVES, [1937] Ch. 499 ; *sub nom. Re* BULMER, GREAVES *v.* INLAND REVENUE COMRS., [1937] 1 All E. R. 323 ; 106 L. J. Ch. 268 ; 156 L. T. 178 ; 53 T. L. R. 303 ; 81 Sol. Jo. 117 ; [1936-7] B. & C. R. 196, C. A.

2299a. Resolution of—Proof of.]—*Re* OGUS (1936), 80 Sol. Jo. 425 ; *sub nom.* PRACTICE NOTE, [1936] W. N. 160.

Part VIII.—Proof of Debts.

2344. *Add. Annotation :*—**Consd.** *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.

2353. *Citations :*—Delete " 1 L. J. Bcy. 44."

2385. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A. ; *revsg.* (1886), 17 Q. B. D. 770.

Add. Annotations :—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936]

(2) no one except the creditors can attack the trustee upon the ground that he has mismanaged the estate.—*Re* GUMP (1921), 69 D. L. R. 202 ; 51 O. L. R. 118 ; 2 C. B. R. 56.—**CAN.**

2159 ii. —— ——.]—Before the making of the receiving order debtor co. made an assignment to T., an authorised trustee, who had no knowledge that a bkpcy. petition had been filed before the assignment :—*Held :* T. having acted innocently, ought to receive remuneration for his services, which must be treated as an expenditure of the trustee, ranking ahead of the claim of the Crown.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111 ; 51 O. L. R. 287 ; 2 C. B. R. 138.—**CAN.**

sx. *Bankrupt insured for benefit of creditor—Policy moneys held in trust for creditor.*]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396 ; 8 C. B. R. 616. —**CAN.**

sy. *Trustee carrying on business—Liability for goods supplied.*]—*Re* ALLIED OIL & GAS CO., SMITH *v.* TRUSTEE (Ont.), [1928] 2 D. L. R. 986 ; 10 C. B. R. 69.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 1.—B.

sz. *Who may vote—Wife of bankrupt.*]—Bkpcy. (Scotland) Act, 1913, s. 60, enacts that the wife of the bkpt. shall not be entitled to vote in the election of the trustee, but that in all other respects she may be ranked as a creditor. Sect. 71 enacts that a majority in number & value of the creditors, present at any meeting duly called for the purpose, may remove the trustee :—*Held :* the wife of the bkpt. was not entitled to vote for the removal of the trustee in respect that the removal of the trustee was nothing more than a step in the procedure for electing a new trustee.—MACNAUGHT *v.* SIEVWRIGHT, [1928] S. C. 687.—**SCOT.**

PART VII. SECT. 9, SUB-SECT. 1.—C. (a).

sa. *For good cause.*]—If a trustee in bkpcy. acts throughout with the consent of the creditors, & if his appointment as trustee is confirmed at a general meeting of creditors, there can be no grounds for dismissing him from office.—LANGLOIS *v.* LEMIRE, *Re* GARDNER (1922), 65 D. L. R. 128.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.

2285 i. *Revocation of order of release—To enable trustee to administer after-acquired property—Estate administered in ignorance of existence of property.*]—*Re* WATSON (1927), 61 O. L. R. 173.—**CAN.**

PART VII. SECT. 10.

sg. *Must be appointed by creditors.*]—The creditors of a bkpt. have no power to delegate their power to appoint inspectors of the estate.—BANQUE CANADIENNE NATIONALE *v.* MUTUAL LIFE INSURANCE CO. OF NEW YORK & SHRAGGE, [1933] 1 W. W. R. 508.—**CAN.**

sm. *Power—To override creditors' instructions to trustee.*]—Where at a creditors' first meeting they instruct the trustee to give priority to certain claims :—*Semble :* it is not competent for the inspectors to override such instructions.—*Re* OLYMPIA CAFE CO., LTD., *Ex p.* BEDALI, [1927] 1 D. L. R. 907 ; [1927] 1 W. W. R. 131.—**CAN.**

sp. *Exercise of powers—Must act personally.*]—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

2298 i. —— *To consent to appointment of solicitor—No particular form necessary—Must be specific.*]—*Re* BRYANT, ISARD & CO. (Ont.), [1926] 4 D. L. R. 440 ; 7 C. B. R. 594 ; *varying*, [1925] 1 D. L. R. 34 ; 7 C. B. R. 93.—**CAN.**

PART VII. SECT. 11.

sd. *Authorised trustee acting for estate without authority.*]—R. was appointed an authorised trustee in bkpcy. F. another authorised trustee, made an arrangement with R. whereby he purported to transfer to R. the administration of an estate & R. proceeded to deal with the estate as if he had become authorised trustee. In an action upon a security bond given by R. :—*Held :* the security required by the Act applies only to an authorised trustee in bkpcy. after his appointment as trustee of an estate ; R. did not act as an authorised trustee under the Act ; therefore defts. co. never became liable for his misconduct.—MULVEY *v.* GENERAL ACCIDENT ASSCE. CO., [1930] 2 D. L. R. 657 ; 65 O. L. R. 110 ; 11 C. B. R. 273.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

m i. —— *Meaning of.*]—MCALLISTER & MCALLISTER *v.* ORROCK, [1937] 3 W. W. R. 267.—**CAN.**

2385 ii. —— *Bankruptcy Act, s.* **44**), —The above sect. does not give persons

Ch. 216. **Refd.** *Baker v. Lloyd's Bank, [1920] 2 K. B. 322.*

2392. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

2415. *Add. Citation :*—1 Ves. & B. 112.

2419a. Forbearance to prove on agreement by F. claiming repayment of a loan. Before judgment could be obtained a receiving order was made against F. In consideration of M.B.C. Co. foregoing its right to prove in the bkpcy. of F., C. promised to pay to M.B.C. Co. on demand the amount of the loan. No part of this sum was paid, & M.B.C. Co. obtained judgment against C. in respect of it. A receiving order was then made against C. M.B.C. Co. tendered a proof in the bkpcy. of C., but the trustee rejected it :—*Held :* the giving up by M.B.C. Co. of its right to prove in the bkpcy. of F. was good consideration for the promise by C. to pay the amount agreed, & M.B.C. Co. were entitled to prove in the bkpcy. of C.—*Re* CUTHBERT, *Ex p.* MONNOYER BRITISH CONSTRUCTION CO., LTD. v. TRUSTEE, [1936] 1 All E. R. 342.

2429. *Add. Citation :*—15 L. J. Bcy. 9.

2453. *Add. Annotation :*—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

2458. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2463. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A. ; *revsg.* (1886), 17 Q. B. D. 770

Add. Annotations :—**Apld.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216. **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

2467. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

2503. *Add. Annotation :*—**Expld.** *Re* Houlder, *[1929] 1 Ch. 205.*

2509. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2514a. —In Aug. 1921, two borrowers [illegible] sureties borrowed £20,000 from an insurance co. The loan was secured by the joint & several covenant of the borrowers & the sureties & by a mtge. & further charge on the borrowers' life policies. The loan was repayable by instalments spread over five years, but, if a borrower or surety became bkpt., it was immediately repayable. On Jan. 10, 1924, a receiving order was made against one surety, H., on his own petition, & on Jan. 25 he was adjudicated bkpt. At the date of the receiving order the amount due to the insurance co. as creditors was £8,000 principal & £249 interest, & on Jan. 13, 1926, they put in a proof for that amount in H.'s bkpcy. Between the date of the receiving order & the proof, however, the creditors had received some £5,372 made up of £4,910 payments of principal & interest by the other sureties & £462 credited *ex gratia* as the surrender value of the policies which had really lapsed. The trustee in bkpcy. applied to reduce the proof by £5372 :—*Held :* as each surety was liable for the whole debt due at the date of the receiving order, the creditors were entitled to prove for the full amount in the surety H.'s bkpcy. without giving credit for any sums received from the other co-sureties since that date, provided that they did not in the whole recover more than 20*s.* in the pound.—*Re* HOULDER, [1929] 1 Ch. 205 ; *sub nom. Re* HOULDER, *Ex p.* RABBIDGE *v.* EAGLE STAR DOMINIONS INSURANCE CO., 98 L. J. Ch. 12 ; 140 L. T. 325 ; [1928] B. & C. R. 114.

2545. *Add. Annotation :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176 ; (1922), 52 O. L. R. 225 ; 2 C. B. R. 599.—**CAN.**

se. *Debt due from association prohibited from dealing on credit system.*]—*Held :* not provable.—*Re* KELVINGTON GRAIN GROWERS' CO-OPERATIVE ASSOCN., [1924] 1 D. L. R. 249.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B.

2427 i. *Bankruptcy of purchaser—Part delivery before bankruptcy—Cancellation of contract.*]—The insolvent co. agreed to buy sugar, to be delivered in fixed monthly instalments. After certain deliveries had been made the sugar co. intimated that there would be no more deliveries until the outstanding account for previous deliveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender :—*Held :* the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim dam for the failure to call for delivery d each of the preceding months.—ROCKLAND COCOA & CHOCOLATE CO. (1921), 64 D. L. R. 644 ; 51 O. L. R. 19 ; 2 C. B. R. 43.—**CAN.**

2428 i. —— *Resale by vendor—Proof for loss on resale.*]—*Held :* the vendors could prove for such damages as they would have been entitled to recover against the insolvent for the breach of the contract.—*Re* HACHBORN (1922), 67 D. L. R. 227 ; 51 O. L. R. 312 ; 2 C. B. R. 224.—**CAN.**

2438 i. —— *Payment in foreign currency.*]—*Held :* the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency.—*Re* MCKAY (1922), 52 O. L. R. 466 ; 3 C. B. R. 462.—**CAN.**

2438 ii. —— *Goods not reasonably fit for required purpose.*]—*Held :* the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.—*Re* SCOTLAND WOOLLEN MILLS CO., [1923] 2 D. L. R. 274 ; 3 C. B. R. 636.—**CAN.**

si. *Sale & purchase in bulk.*]—Claim of purchaser to rank on estate of vendor disallowed.—*Re* WHITE, [1925] 1 D. L. R. 1189 ; 58 N. S. R. 1 ; 5 C. B. R. 511.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—C.

2448 iv. —— —— *For full amount of rent due—Notwithstanding agreement for reduction of rent in consideration of compromise—Compromise not carried out.*]—*Re* MARTINS, LTD. (N. S.), [1926] 2 D. L. R. 685 ; 7 C. B. R. 485.—**CAN.**

2465 i. *Proof by sub-tenant—Against tenant—Failure to obtain renewal.*]—Sub-tenant who has failed to obtain further sub-lease owing to bkpcy. of tenant & disclaimer by trustee is entitled to rank as a creditor for damages against the estate of the tenant.—*Re* SCHULTE-UNITED, LTD., [1934] 4 D. L. R. 51 ; O. R. 453.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

2481 iv. —— *Contingent on survivorship of wife.*]—*Re* LAING (1921), 64 D. L. R. 637 ; 51 O. L. R. 11 ; 2 C. B. R. 38.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iii.

2526 ii. ——.]—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986 ; *affd.* 25 O. W. N. 359.—**CAN.**

ii. ——.]—*Held :* the surety could not rank on the estate before the creditor had been paid in full.—*Re* COUGHLIN & CO., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 4 D. L. R. 971 ; 3 W. W. R. 1177.—**CAN.**

2545 iii. ——.]—The contingent liability of a surety who has not been called on to pay is a debt provable on the bkpcy. of the principal debtor.—*Re* FROMENT, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AGRICULTURE, [1925] 3 D. L. R. 377 ; [1925] 2 W. W. R. 415 ; 5 C. B. R. 765.—**CAN.**

2545 iv. ——.]—A surety who has not paid or been excused becomes on the insolvency of the principal debtor

2546. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2557. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

2560. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2591. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2597. *Add. Citation :*—15 L. J. Bcy. 9.

2646. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2647. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2649. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2650. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2703. *Add. Annotation :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2721a. —— Against general partner—Bankruptcy of limited partnership.]—X. was the sole general partner in two limited partnerships, Firm A. & Firm B. By May 12, 1931, five bills of exchange had been drawn on Firm B., who accepted them by X. as managing partner. Receiving orders were subsequently made against both firms on X.'s petition, & in each case X. was adjudicated bankrupt :—*Held :* the holders of the bills were entitled to prove in the Firm A. bkpcy. —*Re* BARNARD, MARTINS BANK *v.* TRUSTEE, [1932] 1 Ch. 269 ; 101 L. J. Ch. 43 ; 146 L. T. 191 ; [1931] B. & C. R. 73.

2770. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2771. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2791a. Apportionment of dividend.]—The covenantor by deed covenanted to pay an annuity to trustees for the benefit of his son, &, in certain events, for the benefit of other persons. The covenantor became bkpt. & the trustees lodged proof for the amount of arrears of annuity together with a sum which represented the capitalised value of the annuity. Proof was admitted for a smaller sum & a dividend declared & paid. The question was whether the whole of the dividend was payable to the annuitant & if not how it was to be apportioned :—*Held :* the dividend must be apportioned in the ratio which the arrears of annuity bore to the total proof lodged. The portion representing arrears should be paid to the annuitant & the balance invested in the purchase of an annuity to be administered by the trustees in accordance with the trusts declared in the deed.—*Re* BEECHAM'S SETTLEMENT, JOHNSON *v.* BEECHAM, [1934] Ch. 183 ; 103 L. J. Ch. 33 ; 150 L. T. 351.

2806. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2807. *Add. Citations:—sub nom. Re* DODDS, *Ex p.* VAUGHAN'S EXORS., 25 Q. B. D. 529 ; 62 L. T. 837 ; 39 W. R. 125 ; 6 T. L. R. 293 ; 7 Morr, 199.

2810. *Add. Annotation :*—**Refd.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2811. *Add. Annotation :*—**Refd.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2812. *Add. Annotations :*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681. **N.F.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2815. *Add. Annotations :*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313. **Folld.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669. **Refd.** Campbell *v.* Campbell, [1922] P. 187.

2829. *Add. Annotation :*—**Refd.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

2851a. For what amount company may prove—Shares reissued.]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture & the shares are subsequently sold & re-allotted to other persons with the result of a loss to the co. the co. on the subsequent bkpcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the re-allotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable.—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48 ; 99 L. J. Ch. 209 ; 143 L. T. 425 ; [1929] B. & C. R. 141.

2901. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

2902. *Add. Annotations :*—**Apld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

2902a. —— ——.]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he

a conditional creditor, & may as such prove his claim against the insolvent estate.—ROSSOUW, ETC. *v.* HODGSON, [1925] App. D. 97.—**S. AF.**

sg. *Creditor agreeing to pay off debt due to another creditor—Agreement not carried out.*]—*Held :* the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.—*Re* BENSON-JOHNSTON, LTD., [1924] 4 D. L. R. 575 ; 5 C. B. R. 196 ; *affd.* [1925] 1 D. L. R. 999 ; 5 C. B. R. 414.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iv.

2560 i. *Co-surety's liability to contribution.*]—A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—*Re* FROMENT, ALBERTA LUMBER CO. ALBERTA DEPARTMENT OF AGRI. [1925] 3 D. L. R. 377 ; [1925] 2 W. W. R. 415 ; 5 C. B. R. 765.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—F. (b) i.

2666 i. *Proof for aggregate sum of several bills.*]—The liability of an endorser arises in respect of each individual note & a bank cannot make a general claim against a bkpt. estate as endorser of a large number of notes. —*Re* HAYES, MCKAY & SHARP, LTD. (1934), 7 M. P. R. 535.—**CAN.**

then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons as the spouses should nominate; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract contained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him:—*Held:* (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the articles did not operate under the well settled doctrine as a complete equitable assignment of that property, as the persons to whom the property was contracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3); (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy.—*Re* DENT, *Ex p.* TRUSTEE, [1923] 1 Ch. 113; 92 L. J. Ch. 106; 67 Sol. Jo. 32; [1922] B. & C. R. 137.

2905a. —— **Gift by father to children—Investment in father's firm—Bankruptcy of firm.**]—*Re* AIREY (EDWARD) & SONS, *Ex p.* AIREY (H. W.) & AIREY (P. B.) (1931), 72 L. Jo. 25, D. C.

2934. *Add. Annotation:*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2955. *Add. Annotation:*—**Distd.** *Re* Pitchford, [1924] 2 Ch. 260.

2978a. Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy—Proof in bankruptcy for amount claimed in action.]—On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 29, 1923, pltf. lodged a further proof for £46 17*s.* 9*d.* for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £46 17*s.* 9*d.*, should be admitted subject to taxation. On the appeal of the official receiver:—*Held:* (1) as pltf. had obtained no judgment dealing either with his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action; (2) (ASTBURY, J.) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable.—*Re* PITCHFORD, [1924] 2 Ch. 260; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER, 93 L. J. Ch. 541; [1924] B. & C. R. 118; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER *v.* HALL, 131 L. T. 669, D. C.

2983. *Add. Annotation:*—**Refd.** *Re* Pitchford, [1924] 2 Ch. 260.

2989. *Add. Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

2991. *Add. Annotation:*—*As to* (1) **Refd.** Abraham *v.* Buckley, [1924] 1 K. B. 903.

2993. *Add Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

3001. *Add. Citation:*—*sub nom.* R. *v.* SUSSEX JJ., 14 J. P. Jo. 224.

3003a. Second bankruptcy—Proof by trustee in first bankruptcy—Debts must have been proved in first bankruptcy.]—*Re* COOMBES, *Ex p.* OFFICIAL RECEIVER *v.* TRUSTEE (1935), 51 T. L. R. 258, D. C.

PART VIII. SECT. 4, SUB-SECT. 3.—**L. 2903 i.** *Continuing contracts generally—Debtor failing to complete.*]—*Held:* the creditors were entitled to be paid the damages sustained in respect of the unexpired portions of the contract.—*Re* MCKAY (1922), 52 O. L. R. 466; 3 C. B. R. 462.—**CAN.**

2905 i. *Loan.*]—*Re* NODEN, HALLETT & JOHNSTON, *Ex p.* JOHNSTON (Ont.), [1927] 3 D. L. R. 700; 8 C. B. R. 295; *affd.* [1928] 2 D. L. R. 686; 10 C. B. R. 211.—**CAN.**

sh. *Agency—Bankruptcy of stock brokers—Proof for shares.*]—*Re* ROBERTSON, *Re* WEATHERHEAD, [1931] 2 D. L. R. 995; [1930] 3 W. W. R. 599; 43 B. C. R. 232; 12 C. B. R. 117.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7·

sa. *Costs of solicitors retained to oppose granting of receiving order.*]—*Held:* the solrs. were entitled to rank upon the estate of debtor for the amount of their costs so incurred.—*Re* TUNNELL, LTD., [1924] 4 D. L. R. 862; 56 O. L. R. 110; 5 C. B. R. 73.—

3029a. Necessity for stamp—Duty of trustees.]—When an unstamped proof of debt in respect whereof a fee is payable is received by a trustee, it is his duty to point out to the creditor that he has omitted to affix to it the bkpcy. stamp, value 1*s.* 6*d.*, required by Table A of the Scale of Fees, & to inform him that, in the absence of the stamp, the proof cannot be dealt with as a proof of debt against the estate.—*Re* BROWN, BORIANI *v.* TRUSTEE (1934), 103 L. J. Ch. 105; [1933] B. & C. R. 212.

3029b. —— ——.]—When an unstamped proof of debt, in respect whereof a fee is payable, is received by a trustee, it is his duty to point out to the creditor that he has omitted to affix to it the bkpcy. stamp, value 1*s.* 6*d.*, required by Table A of the Scale of Fees, & to inform him that in the absence of the stamp the proof cannot be dealt with as a proof of debt against the estate.—PRACTICE NOTE, [1934] W. N. 11; 177 L. T. Jo. 44.

3038. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367.

3049. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

3050. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

3052a. —— —— **Parties represented by independent counsel.**]—Although the ct. has power to go behind a judgment or compromise, in order to ascertain whether a petition founded thereon has been properly presented, it will not do so where the parties were represented by independent counsel at the time of such judgment or compromise, unless there is evidence that counsel acted improperly or without full knowledge of the facts.—*Re* DEBTOR, [1929] 1 Ch. 125; 140 L. T. 136; *sub nom. Re* DEBTOR (NO. 27 OF 1927), *Ex p.* DEBTOR *v.* PETITIONING CREDITOR (1928), 97 L. J. Ch. 167; [1928] B. & C. R. 34, D. C.

Annotation :—**Apprvd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

3054. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

3058. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. Co., [1930] 1 Ch. 102.

3059. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3105a. Creditor money-lender—Contract harsh & unconscionable.]—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re* ARMSTRONG, *Ex p.* LIPTON (1926), 95 L. J. Ch. 184; [1926] B. & C. R. 21.

3134. *Add. Citations :—sub nom. Re* BYROM, *Ex p.* ECKERSLEY, 22 L. J. Bcy. 27; 17 Jur. 198.

3140. *Add. Annotations :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19; Mason *v.* Mason & Cottrell, [1933] P. 199.

PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. —— *Name & description of declarant.*]—It is sufficient if the initials of the christian names & the full surname be given, & words setting forth the occupation or station in life of the declarant.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R 587.—**CAN.**

3018 vi. —— *Omission of "make oath & say"—Effect of substitution of words having same meaning.*]—The declaration should not be rejected for such variance.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3018 vii. —— *Statement of account—Sufficiency of statement.*]—The statement of account is *primâ facie* properly referred to in a declaration only when it is "annexed & marked 'A.'" If, however, the statement is a proper one & is annexed to the declaration, though not so marked, & from an examination thereof in conjunction with the declaration or from other circumstances, it may reasonably be concluded that the statement is that referred to, it may be admitted.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3020 i. —— *Proof on behalf of corporation.*]—(1) The declarant need not expressly describe himself as one of the classes authorised to make the declaration.

(2) Where the declaration does not state that the deponent has knowledge of the facts deposed to it is objectionable & should be rejected.—*Re* [illegible]IREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3j. *Interlineations & erasures.*]—Although the declaration contains interlineations & erasures not duly initialed, it may be received, in the discretion of the official receiver, chairman, or trustee, if he is satisfied that the change was made before the declaration was sworn.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3024 ii. ——.]—It is sufficient if made before a person authorised to take affidavits under Canada Evidence Act, R. S. C., 1906 (c. 145), s. 36.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 2.

3k. *Necessity for filing claim.*]—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re* CONTINENTAL PUBLISHING CO., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 1.

3035 iv a. —— —— ——.]—*Re* UNION, INDIAN SUGAR MILLS CO., LTD. *v.* BRIJ LAL, JAGANNATH (1927), I. L. R. 49 All. 728.—**IND.**

3035 vi. —— ——.]—The judge has power to inquire into the consideration for the judgment debt.—*Re* ALLAN GRAIN GROWERS' CO-OPERATIVE ASSOCN., *Ex p.* ROBINSON, LITTLE & CO. (1922), 65 D. L. R. 347; 15 Sask. L. R. 295; [1922] 2 W. W. R. 142.—**CAN.**

3057 i. —— *Except in regard to assessed taxes.*]—Judgment was recovered by the A.-G. of the Irish Free State against R. for excess profits duty in respect of the four accounting periods ending Dec. 31, 1917, 1918, 1919, 1920. The assessments were made by the revenue officials of the Irish Free State subsequent to Mar. 31, 1923. On the petition of the A.-G., R. was adjudged bkpt.:—*Held :* the position behind the judgment could be examined to determine the question whether the A.-G. was a competent petitioning creditor in respect of the amount of the duties.—*Re* READE, [1927] I. R. 31.—**IR.**

PART VIII. SECT. 7, SUB-SECT. 2.

3071 ii. —— *After commencement of proceedings.*]—The mother of a bkpt. claimed to be ranked in his sequestration in respect of two loans alleged to have been made by her to him before his insolvency. At the date of sequestration no writ existed establishing the loans, but in support of her claim for a ranking the claimant produced, among other evidence, a holograph acknowledgment of the loans granted by the bkpt. after sequestration. The other evidence was by itself insufficient to prove the loans:—*Held :* bkpt.'s holograph acknowledgment, having been granted after sequestration, could not be used as evidence establishing the loans; & claim rejected.—CARMICHAEL'S TRUSTEE *v.* CARMICHAEL, [1929] S. C. 265.—**SCOT.**

3l. *Proof by relative of bankrupt—Necessity for corroboration.*]—Where a relative of a bankrupt is claiming against the bkpt.'s estate he should, in order to make out a *primâ facie* case, adduce some corroborative evidence of the existence of the debt.—*Re* MORRIS, *Re* SHAUGHNESSEY, [1930] 1 W. W. R. 673.—**CAN.**

3m. —— ——.]—WRIGHT *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1930] 2 W. W. R. 293; 4 D. L. R. 1026; 11 C. B. R. 432.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 2.

3075 i. *Effect of delay.*]—The authority conferred on a trustee in bkpcy. by Bkpcy. Act, 1927, c. 11, s. 127 (2), to disallow a creditor's claim may be lost by undue delay in giving the claimant the notice of disallowance called for by said sect., especially where the claimant, if required to undertake the burden of proving his claim after such delay, would be seriously prejudiced by the delay; but, although in such a case the trustee is held by reason of the delay to have admitted the proof

3152a. —— —— ——.]—The effect o bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, [illegible] that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re* BARLEY, [1923] 1 Ch. 177; *sub nom. Re* BARLEY, *Ex p.* HARRISON, 92 L. J. Ch. 419; [1922] B. & C. R. 258.

3172. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3173a. Debt arising out of harsh & unconscionable contract—Creditor money-lender.]—*Re* ARMSTRONG, *Ex p.* LIPTON, No. 3105a, *ante*.

3200. *Add. Annotations :*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

3210. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3210a. ——.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was entitled to, & upon an application to the ct. his proof was reduced :—*Held :* in the absence of any rule in bkpcy., the well-known principle of equity, that a beneficiary who has been overpaid is not entitled to receive any further payment out of the common fund, until the payments to the other beneficiaries are levelled up to the amount received by the overpaid beneficiary, was applicable with the result that the overpaid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.

The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSEL, M.R., in *Re Tait. Ex p. Harper* (*see* No. 3210), contain any statement inconsistent with that application of the principle.—*Re* SEARLE, HOARE & Co., [1924] 2 Ch. 325; 68 Sol. Jo. 755; *sub nom. Re* SEARLE, HOARE & Co., *Ex p.* TRUSTEE, 93 L. J. Ch. 571; 132 L. T. 21; [1924] B. & C. R. 114.

3220a. —— —— ——.]—Where a petition is presented under sect. 130 of 1914 Act, & petitioners have, by inadvertence, omitted, both in the petition & in the proof, to value a security of considerable substance, but greatly below the value of the debt, the ct. has jurisdiction to give leave to amend the petition & the proof by valuing the security.—*Re* SMALL, WESTMINSTER BANK *v.* TRUSTEE, [1934] Ch. 541; 103 L. J. Ch. 305; 151 L. T. 200; [1934] B. & C. R. 1.

3222. *Add. Citation :*—[1918–19] B. & C. R. 276.

3224. *Add. Annotation :*—**Refd.** *Re* Maxson, *Ex p.* Trustee (1919), 88 L. J. K. B. 54.

3261. *Add. Annotation :*—**Expld. & Distd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

of the claim, he may be permitted to apply to expunge or modify the proof.—*Re* BADGER'S ESTATE, OSTRANDER & Co., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (Sask.), [1930] 2 D. L. R. 88; [1929] 3 W. W. R. 568; 24 S. L. R. 229; 11 C. B. R. 118.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 5.

3147 ii. —— —— *To direct issue.*]—*Held :* the bkpcy. judge had power to direct an issue to be tried.—INTERPROVINCIAL FLOUR MILLS, LTD. *v.* WESTERN TRUST Co., [1923] 2 D. L. R. 361; 16 Sask. L. R. 401; [1923] 1 W. W. R. 1068.—**CAN.**

3147 iii. —— —— *To adjudicate summarily.*]—The jurisdiction of the ct. to summarily adjudicate upon the rights of parties on an appeal under sect. 127 (4) of Bkpcy. Act, R. S. C., 1927, & r. 139, is limited to cases of claims for debt within the Act as to which there has been proper proof filed with, and which claims have been disallowed by, the trustee, & does not extend to cases in which there is a claim to property adverse to the title or rights of the trustee. In the latter cases the proper procedure to have the rights of the parties determined is under Bkpcy. rule 142, by notice of motion, upon the return of which if necessary the ct. may direct an issue or pleadings.—SAKER & SAKER *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1931] 3 W. W. R. 175.—**CAN.**

3157 i. —— *Evidence.*]—The authorised trustee, or claimant, may use as evidence the whole or any part of examinations of directors of debtor corpn. taken under Bkpcy. Act, s. 56.—*Re* CHRISTIE GRANT, LTD., [1921] 3 W. W. R. 264; 1 C. B. R. 489.—**CAN.**

3157 ii. *S. P. Re* DUMFERMLINE TRADING Co., *Ex p.* RELIABLE TRADING Co. (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—**CAN.**

t i. —— *Jurisdiction of judge in bankruptcy.*]—*Re* MARITIME EDUCATION Co. POWELL & MERSEREAU *v.* AMERICAN HYDRO CARBON Co., [1930] 1 D. L. R. 733; 1 M. P. R. 481; 11 C. B. R. 338.—**CAN.**

t ii. —— ——.]—*Re* MARITIME EDUCATION Co., AMERICAN HYDRO CARBON Co. *v.* CLAYTON-KENNEDY, [1930] 1 D. L. R. 642; 1 M. P. R. 452; 11 C. B. R. 333; *affg.* 10 C. B. R. 425.—**CAN.**

t iii. —— *No right to substitute new claim on appeal.*]—*Re* MANITOBA METAL & HEATING Co., [1931] 3 W. W. R. 771.—**CAN.**

PART VIII. SECT. 10.

3218 ii. —— —— ——.]—The creditor was allowed to amend his claim & set out the security which he held.—STERLING CLOTHING Co. *v.* MEN'S ATTIRE REGISTERED (1922), 66 D. L. R. 358; 2 C. B. R. 535.—**CAN.**

3218 iii. —— *Proof made on footing of holding security—Security invalid.*]—Claimant was allowed to amend his claim.—*Re* DUMFERMLINE TRADING Co., *Ex p.* RELIABLE TRADING Co. (1922), 66 D. L. R. 813, W. W. R. 1274.—**CAN.**

3236 ii. —— ——.]—J., who was adjudicated bkpt. on Sept. 16, 1927, was indebted to the U. Bank. Prior to the adjudication the bank had registered judgment mtges. against two farms belonging to the bkpt. The bank estimated the value of such security & proved as unsecured creditors for the balance of their debt. Subsequently as a result of the bkpt.'s criminal acts the value of the farms was so depreciated that they failed to realise the amount at which they had been assessed by the bank. The Official Assignee had recovered sufficient assets to pay all the unsecured creditors twenty shillings in the pound :—*Held :* the U. Bank were entitled to amend their proof of debt by increasing the amount thereof.—*Re* JOHNSTON, [1929] N. I. 103.—**IR.**

e i. ——.]—*Re* MCKINNON'S, LTD., [1935] 1 W. W. R. 111; 2 D. L. R. 801.—**CAN.**

PART VIII. SECT. 12.

sl. *Claim rejected in part—Right of creditor to appeal.*]—A creditor received a notice from the trustee disallowing part of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but he cashed the cheque :—*Held :* the creditor was not thereby debarred from appealing from the disallowance by the trustee.—*Re* COHEN & SWEIGMAN, *Ex p.* GELMAN, [1925] 4 D. L. R. 359.—**CAN.**

sm. *Claim of Crown rejected—Position of Crown.*]—*Re* WARDFOLD MANUFACTURING Co., [1926] 3 D. L. R. 333; 59 O. L. R. 1[illegible]

3264a. —— —— **Dividend received.**]—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were the trustees in the bkpcy., were added as defts. The vendors afterwards proved for the price of the goods sold in the bkpcy. & received a dividend:—*Held:* they had elected to affirm the contract of sale, & the action could not be maintained.—KIN TYE LOONG *v.* SETH (1920), 89 L. J. P. C. 113; 123 L. T. 639; [1920] B. & C. R. 89, P. C.

Part IX.—Secured Creditors.

3334. *Add. Annotation:*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3352. *Add. Annotation:*—**Follid.** *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

3355. *Add. Annotation:*—**Consd.** *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

3355a. —— **1914 Act, s. 4 (2).**]—Where deft. in an action pays money into ct. in satisfaction under R. S. C., Ord. 52, r. 1, & pltf. subsequently obtains judgment for a larger sum, pltf. is a secured creditor to the extent of the payment into ct. Accordingly, if pltf. refuses to take the money out of ct. but presents a bkpcy. petition for the full amount of his debt & costs without mentioning his security in the petition, as required by Bkpcy. Act, 1914 (c. 59), s. 4 (2), the petition will be dismissed.—*Re* DEBTOR, *Ex p.* PETITIONING CREDITORS (NO. 5 OF 1932) (1932), 101 L. J. Ch. 372; [1931] B. & C. R. 245.

3360. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

3365a. ——.]—*Re* BUEB, *Ex p.* TRUSTEE (1927), 64 L. Jo. 476; 164 L. T. Jo. 408.

3375a. Deposit of securities—To secure joint debt of firm—Debts due under separate personal guarantees of partners.]—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or value any security which if not retained

PART IX. SECT. 1.

3332 iv. —— *Appeal from decision of referee—Forbidding creditor to enforce security.*]—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

b i. *To advise as to validity of lien.*]—A judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re* BECK, [1921] 3 W. W. R. 150.—**CAN.**

PART IX. SECT. 2.

sn. *Assignment of unpaid purchase-money under farm sale agreement to secure balance of purchase price of other property.*]—*Held:* pltf. was a secured creditor.—ANDERSON *v.* SERGE, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1260; 18 Sask. L. R. 255.—**CAN.**

so. *Lease of property on crop-payment plan.*]—Lessor held a secured creditor in respect of rent.—*Re* TURNER (1922), 65 D. L. R. 130; 15 Sask. L. R. 381; [1922] 2 W. W. R. 414.—**CAN.**

sp. ——.]—*Held:* the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwithstanding a provision in the lease whereby the lessee's share of the crop was to be applied in payment of debts owing by the lessee to the lessor outside of the lease.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708.—**CAN.**

sq. *Purchase of property by third party—Agreement to transfer on repayment.*]—*Held:* the purchaser was a secured creditor.—*Re* BOURGEOIS, [1923] 2 W. W. R. 204; 3 C. B. R. 841.—**CAN.**

sr. *Judgment recovered before assignment—After passing of Bankruptcy Act, 1919.*]—*Held:* the assignment took precedence over the judgment.—PARKER-EAKINS CO. *v.* ROYAL BANK OF CANADA (1922), 65 D. L.

ss. ——.]—*Re* AYLWARD, *Ex p.* MCMILLAN (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—**CAN.**

m (p. 357) i. ——.]—*Re* TABATA (R. & Co., [1933] 1 W. W. R. 29.—**CAN.**

3347 ii. *Seizure of goods under lien notes—Acquired with knowledge of insolvency—By holder of unregistered bill of sale.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.*, 24 O. W. N. 513.—**CAN.**

3347 iii. ——.]—Where by a provincial statute certain creditors are given a right of distress similar to that of a landlord for rent, & an actual distraint is made thereunder before the making by the debtor of an assignment in bkpcy., the creditor is a secured creditor within Bkpcy. Act.—*Re* GARRY CAFETERIA (Man.), [1928] 1 W. W. R. 139; 8 C. B. R. 604.—**CAN.**

t (p. 358) i. ——.]—The term "secured creditor" in Bkpcy. Act, s. 9, includes a creditor who has obtained a charging order against a fund in ct.—*Re* KAPLAN, MCLEAN (J. J. H.) ESTATE CO. *v.* NEWTON (Man.), [1926] 3 W. W. R. 593.—**CAN.**

t (p. 358) ii. *S. P.* BORTOLUZZI *v.* KAPLAN (Man.), [1927] 1 D. L. R. 183.—**CAN.**

sw. *Distress.*]—When a landlord distrains he becomes a secured creditor under Bkpcy. Act, but, in Alberta, his rights & priorities are not governed by that Act, but are subject to Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

3360 i. *Appointment of receiver.*]—An order appointing a receiver:—*Held:* not to be a charge, & a judgment creditor of bkpt. not by virtue of the order a secured creditor.—*Re* PETERSON, *Re* HOLLOWAY, [1925] 4 D. L. R. 1042; [1925] 3 W. W. R. 708.—**CAN.**

sx. *Judgment for tolls for water supplied by municipality.*]—*Held:* the city of K. was, by virtue of the charge given it by Water Act, B.C., 1914, s. 151, a secured creditor.—*Re* KAMLOOPS COPPER CO., *Ex p.* KAMLOOPS, [1925] 3 D. L. R. 896; [1925] 2 W. W. R. 733; 35 B. C. R. 243.—**CAN.**

s (p. 360) i. —— —— *Joint & several note.*]—*Held:* the holder of the notes was not a secured creditor.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108; 50 D. L. R. 125; 13 Sask. L. R. 85.—**CAN.**

j (p. 361) i. —— ——.]—Where the vendor under an agreement for the sale of land assigned all his interest in the land & in the moneys owing under the agreement & gave the assignee a transfer of the land, which the latter registered, & guaranteed the assignee against default by the purchasers, the transaction being an absolute sale of the land & the debt:—*Held:* on the bkpcy. of the vendor after the purchasers had defaulted & the assignee had demanded payment from the vendor, the assignee was not a "secured creditor" within Bkpcy. Act, s. 2 (ii.).—*Re* BUCK ESTATE, MATHER *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1933] 1 W. W. R. 526; 2 D. L. R. 790.—**CAN.**

t (p. 362) i. *Lien upon mining lands for wages.*]—*Held:* claimants were not secured creditors.—*Re* REEVE DOBIE MINES, WAGE-EARNERS CLAIM (1921), 64 D. L. R. 534; 50 O. L. R. 499; 1 C. B. R. 540.—**CAN.**

sy. *Wife taking security for money advanced to husband for business purposes.*]—HAW *v.* HAW'S OFFICIAL ASSIGNEE, [1927] N. Z. L. R. 366.—**N.Z.**

sc. *Execution against property subject to conditional sale agreement.*]—Where a conditional sale agreement is void as against execution creditors of the purchaser because of non-compliance with the requirements of Conditional Sales Act, R.S.A., 1922, the fact that the purchaser makes an assignment in bkpcy. does not deprive an execution creditor of the right he otherwise would have to realise his claim out of the vendor's interest.—CROWN COAL CO., LTD. *v.* SWANSON LUMBER CO., LTD. & CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1935] 2 W. W. R. 487.—**CAN.**

sf. *Conditional sale.*]—Conditional vendor held not a secured creditor within Bkpcy. Act.—*Re* FARLEY GRANT, [1936] 1 D. L. R.

by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed :—*Held :* as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, &, therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING Co., [1924] 2 Ch. 199 ; 93 L. J. Ch. 547 ; 131 L. T. 622 ; 68 Sol. Jo. 536 ; [1924] B. & C. R. 129, C. A.

3378. Add the following paragraph :—

" Also, under the circumstances N. was a party to the fraud, & his debentures were not a charge upon the property of S. in the hands of the trustee."

3383a. ——.]—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING Co., No. 3375a, *ante.*

3412. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1922] 2 K. B. 109. **Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525 ; *Re* Small, Westminster Bank, Ltd. *v.* Trustee, [1934] Ch. 541.

3505. *Add. Annotations :*—**Consd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

3532. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3534. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3535. *Add. Annotations :*—**Apld.** *Re* Houlder, [1929]

PART IX. SECT. 3.

h i. ——.]—An assignment under Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—WHITE & Co. *v.* THE IONIA (1922), 69 D. L. R. 94 ; 20 Exch. C. R. 327.—**CAN.**

h ii. ——.]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—*Re* ORZY, [1924] 1 D. L. R. 250 ; 53 O. L. R. 323 ; 3 C. B. R. 737.—**CAN.**

h iii. ——.]—The rights of secured creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his security shall not, if legal, be interfered with or vacated.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

h iv. ——.]—*Re* DUMAIS (1927), Q. R. 44 K. B. 79.—**CAN.**

3383 xxi. —— *Mortgage on vessel—Right to enforce security in admiralty court.*]—*Held :* an assignment under Bkpcy. Act did not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty.—WHITE & Co., LTD. *v.* THE IONIA, [1921] 20 Exch. C. R. 327 ; 1 C. B. R. 415.—**CAN.**

3383 xxii. —— *Security not realising sufficient to satisfy debt—Right to prove for balance.*]—If a creditor fails to file his claim in accordance with Bkpcy. Act, s. 46, he cannot proceed against the insolvent, after a composition has been confirmed, for payment of the composition dividend on the unrealised portion of his secured debt.—DALEY & MORIN *v.* FOGEL (1922), 68 D. L. R. 772.—**CAN.**

3386 iv. ——.] — *Held :* a vendor secured by a lien note might seize the goods & obtain an order for sale, though he had not proved in the bkpcy.—*Re* EMPIRE TRACTION Co., LTD., [1920] 3 W. W. R. 515.—**CAN.**

3386 v. ——.]—A secured creditor may proceed to realise his security independently of any bkpcy. or winding-up proceedings.—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689 ; 2 C. B. R. 494.—**CAN.**

sz. *Right to sue under Fraudulent Preferences Act, R. S. S.*, 1920 (*c.* 204).] —If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474 ; [1925] 1 W. W. R. 87 ; 19 Sask. L. R. 207 ; 5 C. B. R. 448.—**CAN.**

sa. *Settlement of claim by trustee & secured creditor.*] — *Held :* creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary.—*Re* MARTIN MILK PRODUCTS, [1926] 1 D. L. R. 533 ; 5 C. B. R. 281.—**CAN.**

sb. *Sufficiency of security—Presumption.*]—In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim —ANDERSON *v.* SERGE, [1924] 1 W. W. R. 1260 ; [1924] 2 D. L. R. 1018 ; 18 Sask. L. R. 255.—**CAN.**

sd. *Debt secured on property subject to Increase of Rent & Mortgage Restriction Act.*]—*Held:* the circumstance that a security subject was a property to which Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, applied did not affect the right of the creditor to value his security & claim for unsecured balances, in respect (*a*) that the Act of 1920 had not repealed the provisions of Bkpcy. (Scotland) Act, 1913, conferring that right on creditors ; (*b*) that, as the trustee in bkpcy. was not a person "deriving title under" the original mtgor. within sect. 12 (1) (*f*) of 1920 Act, but was administering the estate for behoof of the creditors in virtue of his judicial act & warrant, he was not entitled to found upon sect. 7 of 1920 Act as a ground for rejecting the claim ; & (*c*) that, in any event, as the affect of sequestration was to divest the bkpt. of his property & thus prevent fulfilment by him of the conditions enumerated in sect. 7 of 1920 Act, the creditor could no longer be debarred from enforcing his security. WOOD *v.* MACKAY'S TRUSTEE, [1930] S. C. 93.—**SCOT.**

PART IX. SECT. 4, SUB-SECT. 2.

q i. —— *Guarantee by third party.*]—A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 46 (3), & the creditor is not called upon to value the security.—*Re* COUGHLIN & Co., *Ex p.* GUARANTEE Co. OF NORTH AMERICA, [1923] 3 W. W. R. 1177 ; 4 D. L. R. 971.—**CAN.**

sc. *Effect of—On creditor's rights against sureties.*]—Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—KUPROSKI *v.* ROYAL BANK OF CANADA, [1926] 3 D. L. R. 801 ; [1926] S. C. R. 532 ; 7 C. B. R. 499.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 3.

e i. —— ——.]—Where a trustee took possession of goods upon which liens were held by virtue of an oral election to redeem at a valuation :—*Held :* he could not contend that it was invalid because not in writing.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743 ; 53 O. L. R. 45 ; 3 C. B. R. 695.—**CAN.**

g. i —— ——.]—A creditor whose security was a vendor's lien under an agreement for the sale of land was notified by the receiver, within 30 days after the receiver had been called upon to elect under sect. 109 of Bkpcy. Act, R.S.C., 1927, that the trustee did not intend to redeem or to require the security to be realised. Then, & within said 30 days, the creditor moved for a vesting order & for an order for immediate possession & a writ of possession :—*Held :* in view of the fact that the official receiver had elected not to redeem, it was not necessary for the creditor to have waited until the 30 days had elapsed before applying for the vesting order, & he was entitled to the vesting order. —*Re* BLAIS, [1936] 2 W. W. R. 510.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 4.—A.

sf. *No right to writ of possession.*]—*Re* BLAIS (1936), 6 F. L. J. (Can.) 5.—**CAN.**

1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3558. *Add. Citation :—sub nom. Re* EMETT, *Ex p.* ANDREWS, 1 Madd. 573.

Add. Annotations :—**Refd.** Dalby *v.* India & London Life Assce. (1854), 18 Jur. 1024; Crompton *v.* Huber (1855), 25 L. T. O. S. 43.

Part X.—Mutual Credit and Set-off in Bankruptcy.

3561. *Add. Annotations :*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3562. *Add. Annotations :*—**Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 539; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; *Re* City Life Assce. (1925), 42 T. L. R. 45.

3562a. —— **1914 Act, s. 31.**]—The right of set-off is not one which depends upon the volition of either party, but upon an absolute statutory rule. Sect. 31 of the Bkpcy. Act, 1914, is directory in form & requires that its terms should be put in force (LORD HANWORTH, M.R.).—*Re* CITY EQUITABLE FIRE INSCE. CO. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

3566a. —— ——.]—*Ex p.* EDWARDS (1745), 1 Atk. 100; 26 E. R. 66, L. C.

Annotation :—**Refd.** *Ex p.* Quinten (1796), 3 Ves. 248.

3580. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

3598. *Add. Annotations :*—**Apld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3599. *Add. Annotation :*—**Expld.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

3612. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

3625. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3631. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

3637a. Equitable debt—Against legal debt.]—Bkpcy. jurisdiction proceeds upon equitable principles & draws no distinction between equitable & legal rights for the purposes of administration; & deft. is entitled under 1914 Act, s. 31, to set off against a legal debt claimed by a trustee in bkpcy. an equitable debt due to himfrom bkpt., both debts being in existence before the date of the receiving order.—MATHIESON'S TRUSTEE *v.* BURRUP, MATHIESON & Co., [1927] 1 Ch. 562; 96 L. J. Ch. 148; 136 L. T. 796; [1927] B. & C. R. 47.

3648. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554.

3650. *Add. Annotation :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3652. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3653. *Add. Annotations :* — **Folld.** Paddy *v.* Clutton, [1920] 2 Ch. 554. **Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3654. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3655. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410.

PART IX. SECT. 4, SUB-SECT. 4.—B.

sh. *Necessity for.*]—Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security.—IMPERIAL LUMBER CO. *v.* JOHNSON, [1923] 1 D. L. R. 1125; 1 W. W. R. 920; 3 C. B. R. 707.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.—D.

3500 v. —— ——.]—A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation :—*Held :* the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—**CAN.**

3500 vi. ——.]—A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading :—*Held :* the bank was entitled to be repaid such shortage by the trustee.—*Re* ADANAC GRAIN CO., LTD., [1922] 1 W. W. R. 849; 66 D. L. R. 772; 31 Man. L. R 480.—**CAN.**

3500 vii. —— *Right to payment in full.*]—A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands :—*Held :* A. & B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re* TURKETINE'S ESTATE, [1920] 1 I. R. 23.—**IR.**

se. *Claim partly unsecured—Appropriation of payments to unsecured claim not permissible.*]—MOORE *v.* WILLIAMS (A. R.) MACHINERY CO., LTD., [1925] 2 D. L. R. 1009.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—B. (c).

3600 v. —— —— *Rebates on insurance premiums.*]—Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos. to the broker :—*Held :* the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.—*Re* FAIRWEATHERS, LTD. (1921), 67 D. L. R. 590; 51 O. L. R. 438; 2 C. B. R. 202.—**CAN.**

3600 vi. —— —— *Creditor for services rendered—Debtor for goods delivered by bankrupt—Agreement for services to be paid for by supply of goods.*]—*Held :* there was a right of set-off.—*Re* MCMURTRY & Co., *Ex p.* JAMES (M. A.) & SONS, [1924] 1 D. L. R. 737.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent—Against sum due for grass seed.*]—*Held :* the landlord could exercise the right of set-off.—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—**CAN.**

3648 iii. —— ——.]—If shares in a co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re* ANDERSON, [1924] N. Z. L. R. 1163.—**N.Z.**

3656. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3656a. —— ——.]—F. having guaranteed advances by certain banks to the T. Assocn. in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. The banks had proved against F.'s estate under the guarantees but nothing had been paid to them :—*Held :* inasmuch as none of these sums had in fact been paid by F. or his trustee to the banks the trustee was not entitled, under 1914 Act, s. 31, to set off F.'s contingent liability under the guarantees against the sums due by him to the Assocn.—*Re* FENTON, *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1931] 1 Ch. 85 ; 99 L. J. Ch. 358 ; 143 L. T. 273 ; 46 T. L. R. 478 ; 74 Sol. Jo. 387 ; [1929] B. & C. R. 189, C. A.

Annotation :—**Consd.** *Re* Fenton (No. 2) *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3660. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3661. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

3662. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3663. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3665. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3667. *Add. Annotations :*—**Distd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3672. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3678. *Add. Annotations :*— **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554 ; *Re* National Benefit Assce., [1924] 2 Ch. 339. **Apld.** *Re* City Life Assce. (1925), 42 T. L. R. 45, **Consd.** *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293, C. A. ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3679. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3680. *Add. Annotations :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3689. *Add. Annotations :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* City Equitable Fire Insurance Co., Ltd., [1930] 2 Ch. 293.

3695. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3696a. Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.]—Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of title to various bonds & shares, including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought to be adjusted under the mutual credits clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee :—*Held :* the brokers could not have maintained an action for their debt if they were not in a position to hand over the shares against payment, & the trustee in bkpcy. had no higher right ; no question of set-off arose under the mutual credits clause of 1914 Act, the right of deft. being to a return of the shares *in specie ;* & in the special circumstances of the case the order of the judge was correct.—ELLIS & CO.'S TRUSTEE *v.* DIXON-JOHNSON, [1925] A. C. 489 ; 94 L. J. Ch. 221 ; 133 L. T. 60 ; 41 T. L. R. 336 ; 69 Sol. Jo. 395 ; [1925] B. & C. R. 54, H. L.

3697. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3702. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3707. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3708. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3714. *Add. Annotations :—As to* (2) **Consd.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3719. *Add. Annotations :*— **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554 ; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339 ; *Re* City Life Assce. (1925), 42 T. L. R. 45 ; *Re* City Equitable Fire Insurance Co. (2),

sm. *Claim by creditor to share of profits in business—Claim by insolvent for damages for breach of contract to purchase business.*]—*Held :* the case was one of mutual dealings.—JEFFERY *v.* RANGOON OFFICIAL ASSIGNEE (1927), I. L. R. 6 Ran. 46.—IND.

[1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3727. *Add. Annotation:*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3739. *Add. Annotations:* — **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *Re* City Life Assce. (1925), 42 T. L. R. 45; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3740. *Add. Annotations:*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Refd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

3740a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held:* applt. had not, at the date of the receiving order, any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator.—*Re* A Debtor (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* Mumford, Debtor *v.* Petitioning Creditor, *Ex p.* Official Receiver, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

3741. *Add. Annotations:*—**Expld. & Distd.** *Re* Fowler (B. P.), Ltd., [1937] 3 All E. R. 781. **Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3746. *Add. Annotation:*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3750a. —— ——.]—Groom *v.* West (1838), 8 Ad. & El. 758; 1 Per. & Dav. 19; 1 Will. Woll. & H. 638; 8 L. J. Q. B. 25; 112 E. R. 1025; *sub nom.* Goom *v.* West, 2 Jur. 940.

3769. *Add. Annotations:*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825. **Consd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677. **Apld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3776. *Add. Annotation:*—**Apld.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

3776a. —— —— ——.]—By deed dated Mar. 16, 1906, L. bound himself by covenant to pay an annuity of £108 to C. from & after the death of her husband (which occurred on Nov. 13, 1923); & F., the father of the covenantor, guaranteed payment of the annuity. On Aug. 21, 1911, F. died; &, under his will, L. became entitled on the death of testator's widow to a one-fifth share of the ultimate residue of his estate. On Oct. 17, 1929, L. was adjudicated bkpt. On Oct. 30 C. proved in the bkpcy., & early in 1930 her proof was admitted for the sum of £673 17*s.* 8*d.*, & she received by way of dividend in respect thereof £134 15*s.* 7*d.* Ignoring that proof, the exors. proceeded to pay certain instalments of the annuity amounting to £344 9*s.* 10*d.*, & on Sept. 8, 1932, they expended the sum of £849 on the purchase for her of an annuity of £108.

On Jan. 18, 1931, the widow of F. died, & thereupon the trustee in bkpcy. became entitled to payment of the share of the bkpt. in the residuary estate of F., subject to such right as the exors. had to have the estate of the surety indemnified out of the share therein of L., the principal debtor, against any claim upon that estate by C. In this action the trustee in bkpcy. claimed a declaration that the exors. were not entitled (as they claimed to be) to retain out of the said share of the bkpt., on account of any unsatisfied liability of the bkpt., as the principal debtor, to indemnify the estate of the surety, any sum in excess of the sum of £539 2*s.* 1*d.*, being the amount of C.'s proof less the dividends of £134 15*s.* 7*d.*:—*Held:* on the principle recognised in *In re Melton*, the exors. were, notwithstanding the bkpcy., entitled to apply the share in their hands of the principal debtor in discharging his obligation to indemnify the estate of their testator, the surety; & that, having regard to the fact that C. proved in the bkpcy., they were entitled to retain out of that share the sum for which C. proved less the amount received by her by way of dividend, but were not entitled to retain any sum in excess thereof.—*Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235; 103 L. J. Ch. 81; 150 L. T. 235; [1933] B. & C. R. 204.

3781a.—— **Property conveyed to settlement trustees—Against unpaid sum covenanted to be brought into settlement.**]—Upon the marriage of the bkpt. in 1802, the estate of the wife, consisting of freehold, copyhold & leasehold lands, were conveyed to the use of the bkpt. & his heirs, who covenanted with the trustees within six months after the marriage, to pay to them £4,000 upon the trustes of the settlement. The trustees never demanded payment. In 1806 the bkpt. sold part of the freehold premises, & he & his wife levied a fine of the whole, declaring the uses of that part which was sold to the purchaser, but without making any declaration as to the remainder. In 1812 the bkpt. conveyed all his estates to trustees for the benefit of his creditors. In 1813 the bkpt. covenanted that he & his wife would levy a fine to the uses declared in the deed of 1812, & a fine was levied accordingly. The wife never surrendered the copyhold premises pursuant to the settlement 1802. In 1814 the commission issued, & the husband was declared a bkpt., his execution of the trust deed 1812 being the act of bkpcy. The trustees of the settlement proved the £4,000 under the commission & signed the bkpt.'s certificate:—*Held:* the trustees on behalf of the wife & children of the pkpt., had a lien upon the estates thereby conveyed & remaining unsold by the bkpt. to the amount of the £4,000.—

Re DICKEN, *Ex p.* DICKEN (1817), Buck. 115, L. C.

Annotations:—Consd. *Re* Sewell, White *v.* Sewell, [1909] 1 Ch. 806; Stammers *v.* Elliott (1868), 3 Ch. App. 195.

3781b. —— Dividend—Against sums paid by debtor on contract of guarantee.]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidator of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported in *Re Fenton, Ex p. Fenton Textile Assocn., Ltd.*, No. 3656a, *ante*, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof:—*Held:* (1) the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings; & (2) the claim by the trustee to withhold the payment of any part of the dividends payable in respect of the Assocn.'s proof failed. The rule against double proof afforded an answer to the trustee's claim to retain the dividends on the admitted proof of the Assocn. so long as any part of the debt due to the banks remained unsatisfied.—*Re* FENTON (No. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (No. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

Part XI.—Joint and Separate Estates—Bankruptcy of Firm or Partner.

3793a. One partner a company—Compulsory winding up—Rights of trustee.]—Where a receiving order was made against a firm consisting of an individual & a co., & subsequently an order was made for the compulsory winding up of the co., & liquidators were appointed, the ct. directed that the administration of the bkpcy. should be conducted by the trustee in bkpcy. & that assets collected by the special manager who had been appointed in the bkpcy. should be handed over to the trustee in bkpcy. Leave was given to amend the proceedings by making the petition & receiving order against the partners "other than the co."—*Re* DOBREE & CO., [1929] B. & C. R. 1.

3832a. Claim under covenant void against creditors—Postponed to claims of joint creditors of partnership—& of creditors against separate estate.]—*Re* CUMMING & WEST, *Ex p.* NEILSON & CRAIG *v.* TRUSTEE, No. 7155a, *post.*

3866a. —— —— ——.]—Applying the following well-settled principle of bkpcy., that, just as a debtor may not, when proving against the assets, compete with his own creditors, so a partner of a debtor may not compete with that debtor's creditors, so long as there are any creditors of the debtor not fully satisfied, to whom the partner is under liability. Where the assets of the bkpt. are sufficient to satisfy in full the statutory interest on the amounts due to the separate & joint creditors respectively, but are not sufficient to pay, in addition thereto, the amount due to a partner of the debtor, the separate & joint creditors are upon the proper construction of 1914 Act, sect. 33 (8), entitled, in priority to the partner of the bkpt., to be paid the statutory interest in full on their respective debts proved in the bkpcy.—*Re* HOWES, [1934] Ch. 49; 150 L. T. 95;

PART X. SECT. 5, SUB-SECT. 1.

3784 i. *How right to retain lost—Proof against bankrupt.*]—*Re* LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

PART XI. SECT. 1.

3788 v. ——.]—The separate creditors must be satisfied in full before the partnership creditors can rank, & as to partnership assets, the partnership creditors must first be satisfied in full before the separate creditors can rank.—*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—CAN.

3788 vi. ——.]—*Re* DAUM & PLAETZER, *Ex p.* MONROE (Ont.), [1927] 4 D. L. R. 744; 8 C. B. R. 446.—CAN.

sp. *Effect of authorised assignment by firm.*]—An authorised assignment by a firm operates as an assignment also of the separate estate of each partner.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487.—CAN.

st. Motion by trustee to have debtor declared partner in bankrupt firm—Debtor entitled to be heard.]—*Re* POLLARD, [1925] 4 D. L. R. 370.—CAN.

PART XI. SECT. 3, SUB-SECT 2.—C.

sz. Money paid by partner under partnership agreement on death of bankrupt partner to deceased's estate.]—*Re* ENGELAND (Ont.), [1926] 4 D. L. R. 1029.—CAN.

[1933] B. & C. R. 133 ; *sub nom.* HOWES, *Re*, TRUSTEE *v.* GILL & REIGATE, LTD., 102 L. J. Ch. 346.

3900. *Add. Annotations :*—**Refd.** *Re* Biddulph, *Ex p.* Burton (1843), 3 Mont. D. & De G. 364 ; Stroud *v.* Gwyer (1860), 28 Beav. 130.

3945a. Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.] —T. & M., partners in a firm, had been adjudged bkpt. ; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm ; & a subsequent receiving order was made against M. under which he was again adjudged bkpt. :—*Held :* under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities of the firm could be proved in the subsequent bkpcy. of M. by the trustee in the first bkpcy. —*Re* MOSS, *Ex p.* EVERITT (1923), 93 L. J. Ch. 98 ; [1923] B. & C. R. 135.

3981a. Meaning of "solvent."]—*Re* BEAUCHAMP BROS., No. 4116a, *post.*

4019. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4030. *Add. Annotation :*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4069. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426 ; Moore *v.* Flanagan, [1920] 1 K. B. 919.

4102a. —— —— Separate personal guarantees of partners.]—*Re* DUTTON, MASSEY & CO., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., No. 3375a, *ante.*

4108. *Add. Annotation :*—**Consd.** *Re* Dutton, Massey, *Ex p.* Manchester & Liverpool District Banking Co., [1924] 2 Ch. 199.

4116a. Right to administration of partnership assets.]—(1) Where a partnership has been dissolved by the bkpcy. of one partner, the general rule that the solvent partner is entitled to have the administration of the partnership assets does not apply when such solvent partner is an infant, but, *semble*, such solvent infant partner may apply to the ct. by an adult next friend to have such administration. (2) Whoever the liquidating person is, whether the solvent partner or the trustee as representing the bkpt. partner, he holds the partnership assets in trust for discharging the partnership liabilities, & if, to the knowledge of any one dealing with the liquidating person, there has been any misapplication of such assets, the person so dealing is accountable for any part of the assets which he may have received.

(3) I suppose that so long as the members of this partnership were solvent—I mean by "solvent" were not judicially declared bkpt. . . . (VAUGHAN WILLIAMS, J.) —*Re* BEAUCHAMP BROTHERS. *Ex p.* CARR (1896), 75 L. T. 315 ; 3 Mans. 207.

4152a. Right to follow assets misapplied—Against party with notice of breach of trust.]—*Re* BEAUCHAMP BROTHERS, *Ex p.* CARR, No. 4116a, *ante.*

4165. *Add. Annotation :*—**Distd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4167. *Add. Annotation :*—**Consd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4169. *Add. Annotation :*—**Refd.** *Re* Howes, *Ex p.* Trustee, [1934] 1 Ch. 49.

4172. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4183. *Add. Annotation :*—**Refd.** *Re* Howes, *Ex p.* Trustee, [1934] 1 Ch. 49.

4186a. —— —— Share of deceased partner ascertained before adjudication.]—The rule that in the bkpcy. of a firm the exors. of a deceased partner may not prove in competition with the creditors of his surviving partners may be inapplicable when the share of the deceased partner has been ascertained before the adjudication in bkpcy., & no joint liability can be shown to exist. On the death of a partner in a London firm a sum was found due to his estate from the surviving partners in respect of his share in the business, & certain claims & accounts between the deceased partner & another firm in Dundee, of which during his life he was also a partner, & which firm was after the death of the deceased partner a creditor of the London firm, were also compromised & settled by his exors. before the bkpcy. of the London firm :—*Held :* the proof of a debt put in by the deceased partner's exors. in the bkpcy. of the London firm ought to be admitted.—*Re* DOUGLAS, *Ex p.* DOUGLAS' (JAMES) EXECUTORS, [1930] 1 Ch. 342 ; 142 L. T. 379 ; [1929] B. & C. R. 76 ; *sub nom. Re* DOUGLAS, DOUGLAS & HILL *v.* MYERS (J. E.), 99 L. J. Ch. 97.

4217. *Add. Annotations :*—**Apld.** Houghton *v.* Nothard, Lowe & Wills, [1928] A. C. 1. **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

Part XII.—Priority of Debts.

4279. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4281a. —— **"Local rate"—Land drainage rate.**]—A land drainage rate levied by a drainage board constituted under Land Drainage Acts, 1861 (c. 133), & 1918 (c. 17), is a local rate entitled to preferential payment within 1914 Act, s. 33 (1) (*a*).—*Re* ELLWOOD, [1927] 1 Ch. 455; *sub nom. Re* ELLWOOD, *Ex p.* RIVER DEE DRAINAGE BOARD *v.* HOOSON, 96 L. J. Ch. 170; 136 L. T. 696; [1927] B. & C. R. 53, D. C.

4284. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART XII. SECT. 1, SUB-SECT. 3.

sb. *Claim by Workmen's Compensation Board—For arrears of payment of assessments.*]—Claim refused.—WORKMEN'S COMPENSATION BOARD *v.* EDGAR, [1924] 3 D. L. R. 273; [1924] 2 W. W. R. 566; 20 Alta. L. R. 385.—**CAN.**

sc. —— *Extent of priority.*]—*Re* SYER, *Ex p.* WORKMEN'S COMPENSATION BOARD (Ont.), [1927] 3 D. L. R. 802; 8 C. B. R. 275.—**CAN.**

sd. ——.]—Applt. held as trustee for debenture holders a blanket mtge. on the property of a bkpt. which crystallised when the bkpcy. order was made & thereupon became a specific charge upon the property. The bkpt. owed the Workmen's Compensation Board on an assessment for fees due to the Board & applt. claimed priority for the mtge. in the distribution of the bkpt.'s assets :—*Held :* the Board was not entitled to priority over applt.'s charge.—DINNING *v.* WORKMEN'S COMPENSATION BOARD, [1932] 1 W. W. R. 136; 1 D. L. R. 373.—**CAN.**

se. ——.]—WORKMEN'S COMPENSATION BOARD & DINNING *v.* NICHOLS, [1932] 2 W. W. R. 325; 3 D. L. R. 385; 45 B. C. R. 241.—**CAN.**

sf. ——.]—The lien of the Workmen's Compensation Board will be defeated on sale of the assets by the trustee, where no steps have been taken to enforce the lien, the security has not been surrendered, & no statutory declaration under Bkpcy. Act, s. 107, has been filed.—*Re* MOTOR BODIES, LTD., WORKMEN'S COMPENSATION BOARD *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1932] 3 D. L. R. 272; 5 M. P. R. 309.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 4.

sd. *General rule.*]—The Crown has a prerogative right to be paid upon a distribution in bkpcy. in priority to other unsecured creditors, but it is merely a right of preference in the administration of the estate.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

sf. ——.]—Where the Crown is an unsecured creditor for taxes owing by bkpt., the Crown will take preference over all other secured creditors in respect of those taxes.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

sj. ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

sk. *Trustee entitled to set off payment of taxes against claim of landlord for arrears of rent.*]—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—**CAN.**

4280 ii. —— —— *Water rate.*]—*Re* AN ARRANGING DEBTOR, [1921] 2 I. R. 1.—**IR.**

4280 iii. —— *Light rates.*]—*Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 W. W. R. 129; [1924] 1 D. L. R. 260; 18 Sask. L. R.—**CAN.**

4280 iv. —— *Electric power rates.*]—*Re* DECKER'S DELICATESSEN, [1925] 1 D. L. R. 652; 56 O. L. R. 140; 5 C. B. R. 208.—**CAN.**

4280 v. —— *Crown Timber Act*, 1927 (c. 38), *s.* 2 (1).]—The word "rates" in above sub-sect. means the price which any licencee is required to pay for the timber to be cut under his licence, & does not mean the "taxes, rates, or assessments" which under Bkpcy. Act, 1927 (c. 11), s. 125, may be levied or imposed upon the debtor or upon any property of a bkpt. under any law, Dominion or of the Province.—*Re* HARDY, [1929] 1 D. L. R. 300, 63 O. L. R. 246; 10 C. B. R. 288.—**CAN.**

b i. —— ——.]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—**CAN.**

b ii. —— ——.]—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* EDMONTON CITY, [1925] 2 D. L. R. 525; [1925] 1 W. W. R. 747; 21 Alta. L. R. 160; 5 C. B. R. 587.—**CAN.**

b iii. —— *Municipal taxes.*]—*Re* CANADA PRESERVING CO. (Ont.), [1928] 2 D. L. R. 529; 10 C. B. R. 63.—**CAN.**

b iv. —— —— *Necessity for notice of claim.*]—The provisions of sect. 112 (11) of Assessment Act, R. S. O., 1927, as to notice of amount due for taxes, are, by sect. 125 of Bkpcy. Act, 1927, made part of the Bkpcy. Act.—*Re* CANADIAN HORSESHOE CO., [1931] O. R. 402; 12 C. B. R. 485.—**CAN.**

ci. —— *Business taxes.*]—*Re* WEST (F. E.) & CO. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c ii. —— ——.]—Where a township or municipality is, by a provincial statute, made a preferred creditor in respect of business taxes, this preference disappears when the statute is repealed by a dominion statute.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

c iii. —— ——.]—A municipal corpn. is not entitled by Bkpcy. Act, s. 51 (6), to priority over other creditors of bkpt., for business taxes in respect of which no distress has been made.—*Re* CECILIAN CO. (1922), 69 D. L. R. 679; 51 O. L. R. 649; 2 C. B. R. 510.—**CAN.**

c iv. —— ——.]—A city is in respect of business tax a secured creditor.—*Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 D. L. R. 260; [1924] 1 W. W. R. 129; 18 Sask. L. R. 3.—**CAN.**

c v. —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

c vi. —— *Dominion taxes—Over taxes due to municipality.*]—*Held :* Dominion taxes preferred.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

c vii. —— *Income tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c viii. —— ——.]—*Held :* balance of income tax entitled to priority.—*Re* ORR, [1924] 2 I. R. 120.—**IR.**

c ix. —— ——.]—R. *v.* LITEWICK & COLE (1921), 20 Exch. C. R. 293.—**CAN.**

cx. —— ——]—*Re* KINGSTON AUTO WRECKERS, LTD. (1935), 5 F. L. J. (Can.) 148.—**CAN.**

c xi. —— *Poll tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c xii. —— *Sales taxes.*]—*Held :* the Crown was entitled to priority over all other unsecured creditors in respect of sales taxes.—*Re* WEST (F. E.) & CO. (1921), 68 D. L. R. 772; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c xiii. —— ——.]—*Held :* a creditor could not rank as a secured creditor in priority to the claim of the Crown for taxes on sales of goods to debtor.—*Re* NICHOLSON SALES & SERVICE CORPN., [1924] 3 D. L. R. 593; 4 C. B. R. 692.—**CAN.**

—— *War revenue taxes.*]—*See* cases in Part XII., Sect. 1, sub-sect. 6, *post.*

c xiv. —— *Taxes assessed prior to assignment.*]—*Held :* the city had a preferential lien on the goods of the assignor for the above taxes.—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

d i. ——.]—*Held :* debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—*Re* HARRISON (1922), 69 D. L. R. 658; 51 O. L. R. 634; 2 C. B. R. 360.—**CAN.**

d ii. ——.]—*Re* LAURANCE (1923), 55 O. L. R. 196; 4 C. B. R. 349.—**CAN.**

d iii. ——.]—Where a landlord has distrained prior to bkpcy. of the tenant & there are taxes owing, & subsequent to bkpcy. the municipality gives the notice required by sect. 112 (11) of Assessment Act, R. S. O., 1927, the municipality is entitled to rank for its claim upon the proceeds of the distress, in priority to the claim of the landlord for three months' accelerated rent.—*Re* PATERSON (D. S.) CO., [1932] O. R. 432; 3 D. L. R. 279.—**CAN.**

si. *Claim of inspector of taxation.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

sp. *Necessity for notice—Notice to custodian—Custodian becoming trustee.*]—Notice to a custodian who afterwards becomes trustee in bkpcy. is sufficient notice to make a claim for taxes a preferred claim in bkpcy.—*Re* ZIMMON, OTTAWA *v.* TREW, [1936] 3 D. L. R. 326.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 5.

sr. *Bias of court in favour of creditor.*]—The right of a creditor for arrears of wages to stand as a preferred creditor will be construed by the ct. with a bias in favour of the creditor.—*Re* CORSON SHOE CO., [1924] 1 D. L. R. 555.—**CAN.**

4285 ix. —— *After judgment recovered.*]—The claim of a wage-earner to priority for his wages remains a claim for wages even after judgment has been recovered.—BALL *v.* THORNE (1920), 46 O. L. R. 261; 50 D. L. R. 85.—**CAN.**

4285 x. —— *Earned within three months of bankruptcy.*]—*Held :* a workman could only rank as a preferred creditor for wages earned within three months of the bkpcy.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN**

4285 xi. —— ——.]—*Held :* the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or

4288. After this case add :-

——.]—*See, also*, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 2.

4295a. —— —— **Helping employer to perfect invention—Under agreement for payment out of profits.**]—Where a clerk assisted his master in perfecting an invention, for which a patent had been obtained, upon an agreement to be paid out of the profits, but which agreement had no reference to his duties as clerk :—*Held :* he was not precluded from proving for his remuneration as a clerk, or from receiving three months' salary in full.—*Re* ELLINS, *Ex p.* HICKIN (1850), 3 De G. & Sm. 662 ; 19 L. J. Bcy. 8 ; 14 L. T. O. S. 469 ; 14 Jur. 405 ; 64 E. R. 651.

4298. *Add. Annotation :*—**Consd.** Moriarty *v.* Regent's Garage & Engineering Co. (1920), 90 L. J. K. B. 783.

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salaries in respect of services rendered to bkpt. co. during the three months before the date of the assignment.—*Re* EASTERN ONTARIO MILK PRODUCTS Co., [1923] 1 D. L. R. 591 ; 52 O. L. R. 67 ; 21 O. W. N. 483.—**CAN.**

4285 xii. —— ——.]—*Held :* a claim for wages was not entitled to priority not being earned within three months immediately preceding the receiving order.—*Re* CONTINENTAL PUBLISHING Co., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339 ; 4 C. B. R. 343.—**CAN.**

4285 xiii. *S. P. Re* OLYMPIA CAFE Co., LTD., *Ex p.* BEDALI (Man.), [1927] 1 D. L. R. 907 ; [1927] 1 W. W. R. 131.—**CAN.**

4285 xiv. —— —— *Commission payable when goods shipped—Services rendered more than three months before bankruptcy—Goods shipped within three months of bankruptcy.*]—*Held :* the salesman could not rank as a preferred creditor in respect of such commission. —*Re* HERCULES RUBBER Co., *Ex p.* ALLAN, [1924] 1 D. L. R. 999 ; 4 C. B. R. 555.—**CAN.**

4285 xv. —— *Allowance for expenses.*]—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re* CORSON SHOE Co., [1924] 1 D. L. R. 555.—**CAN.**

4285 xvi. —— *Truck driver furnishing truck, gas & oil—Priority for time only.*]—*Held :* an independent contractor in regard to the supply of the truck & so entitled to priority in respect of his services only.—*Re* SEXTON, [1931] 1 D. L. R. 657 ; 66 O. L. R. 313 ; 12 C. B. R. 45.—**CAN.**

4289 i a. —— —— ——.]—A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price :—*Held :* not entitled to priority. —*Re* SPECIALITY BAGS, LTD., [1923] 1 D. L. R. 827 ; 53 O. L. R. 355 ; 3 C. B. R. 617.—**CAN.**

4289 i b. —— ——.]—*Re*® VANCOUVER DRESS Co., LTD., [1931] 3 W. W. R. 220 ; 44 B. C. R. 283.—**CAN.**

4292 i. —— *Accountant — Monthly salary—Part time employment.*]—*Held :* he was a servant & entitled to rank as a preferred creditor.—*Re* GORDEAN FURNITURE Co., *Ex p.* SLADDEN, [1923] 4 D. L. R. 1198 ; [1923] 3 W. W. R. 630.—**CAN.**

4298 i. —— *Company official — Director.*]—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re* EASTERN ONTARIO MILK PRODUCTS Co., [1923] 1 D. L. R. 591 ; 21 O. W. N. 483 ; 52 O. L. R. 67.—**CAN.**

sp. *Brother of bankrupt.*]—The amendment to the Bkpcy. Act, 1927, made in 1932, by which a brother of the bkpt. can no longer claim for wages as a preferred creditor, does not apply where the assignment for benefit of creditors took place before the 1932 amendment but the distribution is subsequent to the Act.—*Re* MAHON, [1935] 1 D. L. R. 416.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 6.

h i. ——.]—The preferential rights of a landlord are restricted as provided by Landlord & Tenant Act, s. 38, & a landlord cannot claim to rank as a preferred creditor in respect of sums voluntarily paid by him for taxes owing by bkpt.—*Re* CRYSTAL, [1926] 2 D. L. R. 840 ; 59 O. L. R. 44.—**CAN.**

h ii. —— *Under Landlord's Rights (Bankruptcy) Act*, 1924 (c. 12) (*Alta.*), s. 3.]—The above sect. entitles a landlord to priority to the extent of the amount limited thereby over all bkpt.'s secured creditors, including the Crown.—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

h iii. —— *Cannot be deprived of preferential lien—Except by agreement.*] —*Re* MILNER, *Ex p.* FORBES (Ont.), [1926] 2 D. L. R. 988 ; 7 C. B. R. 319.—**CAN.**

s i. —— —— —— *Special covenant.*] —*Held :* notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MONKA (1924), 34 B. C. R. 99.—**CAN.**

sn. *Arrears of rent—Priority over —War revenue taxes.*]—*Re* SOLOMONS BOCHNER FUR Co., [1924] 1 D. L. R. 685 ; 53 O. L. R. 497 ; 24 O. W. N. 42. —**CAN.**

sp. —— —— ——.]—The Crown claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

sq. —— —— *Sales tax.*]—*Re* CALCUS Co., LTD., *Ex p.* MCGUIRE, [1925] 3 D. L. R. 809 ; 57 O. L. R. 272 ; 5 C. B. R. 763, *revsg.*, [1925] 2 D. L. R. 246.—**CAN.**

sr. —— —— *Taxes due under Income War Tax Act*, 1917.]—*Re* HUMBERSTONE COAL Co., LTD., *Ex p.* NATIONAL TRUST Co., LTD., [1925] 3 D. L. R. 154 ; [1925] 2 W. W. R. 68 ; 5 C. B. R. 719 ; *revsg.*, [1925] 1 W. W. R. 964 ; 5 C. B. R. 639.—**CAN.**

ss. —— —— *Fees & expenses of trustee.*]—The trustee's claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim will count after the landlord's & will precede the Crown's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

su. —— *Three months' rent accrued prior to bankruptcy—Construed as "accrued due next prior."*]—*Re* CLAMAN'S, LTD., [1932] 1 W. W. R. 413 ; 45 B. C. R. 474.—**CAN.**

sa. —— —— *Effect of acceleration clause.*]—The effect of sect. 126 of Bkpcy. Act, R. S. C., 1927, is that in Saskatchewan the rights of a landlord on the bkpcy. of a tenant are governed by sects. 42-48 of Landlord & Tenant Act, R. S. S., 1930. Where, therefore, no rent is accrued at the date of the assignment in bkpcy. a landlord in Saskatchewan is not entitled on the distribution of the property of the bkpt. to a prior claim for three months' rent. A provision in a lease that in the event of the bkpcy. of the tenant the rent for a certain period will be accelerated & become due at once cannot be relied on to prevent the assets of the bkpt. tenant from being distributed according to the bkpcy. laws.—NEW REGINA TRADING Co., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1934] S. C. R. 47 ; 1 D. L. R. 630.—**CAN.**

sb. ——.]—MACNEIL (JAMES H.) & SONS *v.* WRIGHT (1933), 7 M. P. R. 101.—**CAN.**

sc. —— *Priority over claim for fees— & liability for workmen's compensation.*] —In distribution the landlord's claim for rent under Landlord & Tenant Act, 1927, s. 37, has priority over the expenses & fees of the custodian & trustee, & over the liability of the debtor under Workmen's Compensation Act, R.S.O., 1927.—*Re* BOLUS, *Ex p.* WORKMEN'S COMPENSATION BOARD & JEFFERS, [1934] 2 D. L. R. 609 ; O. R. 231.—**CAN.**

sd. *Landlord mortgagee—Mortgagor attorned tenant.*]—By virtue of Bkpcy. Act, s. 126, sect. 3 of Landlord's Rights (Bkpcy.) Act, 1924, of Alberta, & sect. 105 of Land Titles Act of Alberta, a mtgee. to whom the mtgor. has attorned as tenant is entitled on the bkpcy. of the mtgor. to be paid out of the proceeds of the distrainable assets in the lands of the trustee, in priority to all other debts, for three months' arrears of rent, & the costs of distress, if any.—*Re* PORTER & CANADIAN BANK OF COMMERCE, [1930] 1 W. W. R. 61 ; [1930] 1 D. L. R. 909 ; 11 C. B. R. 219.—**CAN.**

st. *Covenant by tenant to pay taxes & other expenses.*]—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & costs of heating the premises.—*Re* STANLEY MILLS Co. (1924), 27 O. W. N. 123 ; *affg.*, [1924] 3 D. L. R. 40 ; 4 C. B. R. 655.—**CAN.**

sl. *Costs of distress.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159 ; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 9.

f i. —— —— *Debt not being debt for taxes, rates or assessments.*]—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re* CARDSTON U. F. A. CO-OPERATIVE ASSOCN., LTD., *Re* PROVINCE OF ALBERTA, [1925] 4 D. L. R. 897 ; [1925] 3 W. W. R. 651.—**CAN.**

f ii. —— —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

r i. —— *Sales taxes.*]—Sales taxes

4334. After this case add:—

Health Insurance & Unemployment Insurance contributions.]—*See* National Health Insurance Act, 1924 (c. 38), ss. 4–9, 133, & Unemployment Insurance Act, 1920 (c. 30), ss. 5, 26 (4).

4334a. Wife—In respect of annuity for maintenance of husband's household.]—Where an annuity is secured to a wife by an antenuptial settlement to be expended in maintaining the husband's household, the wife cannot, on the husband's bkpcy., claim to be paid the amount in preference to the other creditors.—BIRKETT *v.* PURDOM, [1895] A. C. 371; 11 R. 184, H. L.

4335a. —— —— Bond to secure annuity taken in payment.]—Where a woman lends money to [illegible] him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re* SLADE, CREWKERNE UNITED BREWERIES, LTD. *v.* SLADE, [1921] 1 Ch. 160; 89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

4336. *Add. Annotations:*—**Consd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160. **Distd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534.

due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re* WEST (F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

r i a. —— ——.]—12 & 13 Geo. V. (c. 47), amending Special War Revenue Act, 1915, & by sect. 17 making the taxes to which it refers a lien or charge upon the property of a debtor in favour of the Crown, & directing that this lien shall prevail, notwithstanding the provisions of the Bkpcy. Act, does not in terms repeal the Bkpcy. Act; & the repeal of sect. 17, in 1925, by 15 & 16 Geo. V. (c. 26), s. 9, leaves the prerogative right to prior payment in a case of bkpcy. untouched. By sects. 86 & 51 of the Bkpcy. Act, the Crown has surrendered its prerogative to be paid debts due to it in priority to debts due to a subject, save only debts that fall within sect. 51, subsect. 6.—*Re* MOORE (D.) Co., LTD., [1928] 1 D. L. R. 383; 61 O. L. R. 434; 8 C. B. R. 338, 479.—**CAN.**

r i b. —— ——.]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396; 8 C. B. R. 616.—**CAN.**

r i c. —— ——.]—*Re* A. PUCCINI & Co., [1929] 2 D. L. R. 558; 63 O. L. R. 522; 10 C. B. R. 408.—**CAN.**

r i d. —— ——.]—*Re* TYRER Co., [1930] 4 D. L. R. 320; 11 C. B. R. 479.—**CAN.**

r i e. —— *Sales tax, income tax & corporation tax.*]—The claim of the Crown in right of the Dominion to sales tax, & income tax, & in right of the Province to corpn. tax, rank *pari passu* in priority to all other creditors.—*Re* NAVILLA ICE CREAM CO., LTD., [1934] 4 D. L. R. 741; O. R. 772.—**CAN.**

r ii. —— *Charge against goods admitted as settler's effects.*]—*Held:* to take priority over the lien for costs given an execution creditor.—*Re* WILEY, *Re* ANTHONY SALT CO., *Re* CROWN'S CUSTOMS DUTIES CLAIM, [1925] 4 D. L. R. 790; [1925] 3 W. W. R. 683.—**GAN.**

r iii. —— *Health Insurance contributions.*]—On a claim for arrears due in respect of Health Insurance contributions, alleged to be recoverable as Crown debts ranking next after the usual preferential payments:—*Held:* Health Insurance contributions were recoverable only as a civil debt.—*Re* LINDSAY, [1926] N. 128.—**IR.**

r iv. —— *Debt due to Land Commission.*]—*Held:* a preferential debt.—*Re* MALONEY, [1926] I. R. 202.—**IR.**

r v. —— *Contributions under Unemployment Insurance Acts.*]—*Held:* as regards the contributions payable under Unemployment Insurance Act, 1920, by a bkpt. in respect of employed persons, the Minister for Industry & Commerce (to whom all the powers & duties of the Minister of Labour under the Act have been transferred) is entitled to claim, not only the priority given by sect. 26 (5) of the Act to the four months' contributions immediately prior to the date of adjudication but is also entitled to claim priority to ordinary creditors in respect of the anterior arrears of contributions, since they must be placed in the same category as Crown debts.—*Re* HENNESSY, [1932] I. R. 11.—**IR.**

r vi. —— ——.]—W., an arranging debtor, effected a composition with his creditors whereby 5*s.* in the £ was to be paid on all his unsecured debts & on such portion of his partly secured debts as should not be covered by security. The composition was payable in three equal instalments at four, eight, & twelve months respectively, from the date of confirmation of the offer, the first instalment being secured by the promissory note of the debtor alone & the subsequent instalments being secured by joint & several promissory notes of the debtor & one surety:—*Held:* such a "bill composition" was a "distribution of the property" of the arranging debtor within Preferential Payments in Bkpcy. (Ireland) Act, 1889 (c. 60), s. 4, & accordingly the Ministry for Industry & Commerce was entitled by virtue of the Crown prerogative to be paid all arrears of the debtor's contributions to the unemployment fund, other than arrears accruing during the four months prior to the confirmation of the offer, in priority to all other debts.—*Re* W., AN ARRANGING DEBTOR, [1933] I. R. 202.—**IR.**

s a. *Surety paying Crown debt.*]—A surety who has paid the indebtedness of the principal debtor to the Crown is entitled to stand in the same position as the Crown & to exercise its remedies for the recovery of the debt.—*Re* PATHE FRERES PHONOGRAPH CO. OF CANADA (1921), 64 D. L. R. 628; 50 O. L. R. 644; 2 C. B. R. 21.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 10.

Fees & expenses of trustee.]—*See* cases in Part VII., Sect. 5, sub-sect. 2, A., *ante.*

t i. —— ——.]—CRAWFORD & Co. *v.* HUNTERS & Co. (1817), 1 Nfld. L. R. 43.—**NFLD.**

t ii. —— ——.]—FERGUS & GLEN INSOLVENT ESTATE (1831) 2 Nfld. L. R. 27.—**NFLD.**

4331 i. *Judgment creditor—Registered certificate of judgment.*]—A judgment creditor of a bkpt., who has registered a certificate of judgment with the district registrar, is not entitled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re* YAWOSKI (1922), 66 D. L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—**CAN.**

d i. —— ——.]—*Held:* the trustee must pay the sheriff's fees & charges, including poundage & the costs of the execution creditor in priority to all other charges or claims.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

e i. ——.]—The property of C., Ltd., was destroyed by fire in July, 1930, & on Aug. 27 the co. became bkpt. $29,404 was received on certain fire insurance policies held by the co. One I. had previously sold timber to the co. in which he still retained an interest. When the fire occurred I. advanced $15,000 to the co. on July 30, & by agreement with the co. took as security an assignment of the first $15,000 which should become payable to the co. on the insurance policies. The assignment was not registered under Assignment of Book Accounts Act:—*Held:* in view of sect. 2 of the 1930 Amendment registration was not necessary, as the money was "growing due under a specified contract," & I. was entitled to priority in respect of $15,000.—*Re* CAMPBELL RIVER MILLS, LTD., [1931] 2 D. L. R. 946; 43 B. C. R. 477; *on appeal*, 44 B. C. R. 412.—**CAN.**

s b. *Costs of action continued by trustee—With authority of court.*]—*Held:* costs incurred after the insolvency preferred.—MYERSON *v.* GREEN & HOMES (1922), 68 D. L. R. 209.—**CAN.**

m i. *Price of goods supplied to debtor—With approval of trustee—For continuation of business after bankruptcy.*]—*Held:* accounts for such goods preferred.—*Re* MORRIS, [1923] 3 D. L. R. 848; 53 O. L. R. 36.—**CAN.**

s c. *Money-lender.*]—In no case can a person who lends money to another before the latter's bkpcy. rank as a preferred creditor for the money so loaned.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN.**

s d. *Solicitor—Costs of preparing authorised assignment.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363; 8 C. B. R. 258.—**CAN.**

s e. *Arrears of maintenance of lunatic.*]—A person of unsound mind having died insolvent, arrears due for maintenance to the institution where he had been kept were allowed after debts due to the Crown, & in priority to the taxed costs of his committee.—*Re* MAGUIRE, [1923] 1 I. R. 108.—**IR.**

s g. *Surety.*]—A surety who has been released by the creditor on payment of a portion of the debt is not entitled to rank in preference to the creditor on the bkpcy. of the debtor.—*Re* WALKER & Co., *Re* HARTLEN, [1935] 1 D. L. R. 347.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 1.

4335 viii. —— —— *Payment of debt by wife as surety for husband.*]—*Held:* wife not a deferred creditor.—*Re* BARRON, *Ex p.* BARRON, [1924] 4 D. L. R. 1307; 4 C. B. R. 624.—**CAN.**

4338. *Add. Annotation :*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

4342. *Add. Annotations :*—**Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

4345. *Add. Annotation :*—**Refd.** Dennistoun *v.* Dennistoun (1925), 69 Sol. Jo. 477.

4353. *Add. Annotation :*—**Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

4353a. —— —— Debt left on deposit with debtors.]—A creditor for a sum of £100,000 of a firm of merchant bankers in May, 1918, agreed with the debtors to leave the debt on deposit with them until Jan. 1932, at interest, with commission to be paid to nominees of the creditor—namely, O. & his family ; & it was further agreed that O. should be credited with a share of the firm's profits, which in fact he subsequently drew from the firm. In July, 1920, the debt was, by the direction of the creditor, transferred in the books of the debtors to F., who agreed with the debtors to leave the debt on deposit with them until Jan. 1932, upon the conditions expressed in the former agreement, as if F.'s name had been inserted therein instead of the name of the original creditor. On Feb. 24, 1926, F. transferred the debt in equity to O., & on Mar. 2, 1926, the debtors had notice of that assignment. On Mar. 15, 1926, a receiving order was made against the debtors on their own petition, & shortly afterwards they were adjudicated bkpts. Between Mar. 2, 1926, & the date of that order F. became indebted to the firm in the sum of £15,000 for moneys expended by the firm between those dates in taking up accommodation bills drawn by F. on & accepted by the firm for which, as between F. & the firm, F. through not having supplied the necessary funds, was liable, F.'s liability arising in every case from contractual liabilities undertaken by F. towards the firm at dates earlier than Mar. 2, 1926 :—*Held :* upon the proper construction of the agreement of May, 1918, the creditor did not advance money to the debtors on a contract that she should receive a share of the profits of their business within Partnership Act, 1890 (c. 39), s. 2 (3) (*d*), with the result that O.'s proof for the £100,000 was not liable to be postponed to the claims of the other creditors.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES (VISCONDE), [1929] 1 Ch. 221 ; 98 L. J. Ch. 211 ; 140 L. T. 587 ; [1928] B. & C. R. 188.

4357. *Add. Annotations :*—**Consd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534. **Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

Part XIII.—Distribution of Estate and Payment of Dividends.

4366a. Agreement for distribution contrary to bankruptcy laws—Void.]—STAINES *v.* WAINWRIGHT (1839), 6 Bing. N. C. 174 ; 8 Scott, 280 ; 9 L. J. C. P. 107 ; 133 E. R. 68.

Annotation :—**Distd.** Prince *v.* Haworth, [1905] 2 K. B. 768.

4372a. Creditors for annual interest—Appropriation of dividends.]—In cases where the Official Receiver is acting as trustee, an arrangement exists between the Board of Inland Revenue & the Bkpcy. Dept. whereby creditors for annual interest are entitled to prove gross, & to appropriate any dividends received in the bkpcy. against principal until 20*s.* in the £ thereon has been paid. Such arrangement was not intended to apply only where the trustee is an Official Receiver, but also to outside trustees, & is likewise applicable to cases of composition or schemes of arrangement under the Bkpcy. Acts.—*Re* BEECHAM WELLES *v.* TRUSTEE, [1934] B. & C. R. 138.

4377a. Final dividend—Duty to give notice—Sufficiency of proof of posting.]—On Jan. 30, 1933, the trustee in bkpcy. wrote to the creditors asking for a proof of their debt. On Feb. 24, the trustee wrote again saying that he understood that the creditors had a charge upon certain land of the bkpt. & asked for particulars. The creditors replied with some details of the charge, but put in no proof. In Nov. 1935, the creditors wrote again, & in Feb. 1936, a proof was put in. The creditors denied that they had received the statutory notice under 1914 Act, s. 67, which the trustee proved he had posted on Dec. 10, 1933. The creditors alleged as the reason for their delay that they believed a negotiation was in progress for the sale of the land :—*Held :* (1) proof of posting was sufficient compliance with sect. 67, & the creditors were not entitled to claim ; (2) in the exceptional circumstances of the case the creditors should be given seven days in which to establish the claim upon paying the costs of the motion.—*Re* PAVYER, BROWN, SON & VARDY *v.* TRUSTEE, [1936] 1 All E. R. 568 ; *sub nom. Re* PAVYER, *Ex p.* BROWN, SON & VARDY *v.* TRUSTEE, 52 T. L. R. 383.

4403. *Add. Annotations :*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** *Re* Gurwiez, *Ex p.* Trustee (1919), 88 L. J. K. B. 740 ; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745 ; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

PART XII. SECT. 2, SUB-SECT. 3.

ss. *Agreement to postpone "personal" claims—Whether claim on mortgage included.*]—BIRKETT *v.* SHERWIN-WILLIAMS, [1931] 3 D. L. R. 485.—**CAN.**

PART XIII. SECT. 1.

4361 ii. —— —— *Lex loci applicable to debt situated in another Province.*]—When a party is made bkpt. in one Province the law applicable to the divisibility of a debt situated in another Province is the law of the latter Province. A dividend is situated at the head office of the banking co. declaring it.—*Re* SAWTELL, *Ex p.* MONTREAL BANK, [1933] 2 D. L. R. 392 ; O. R. 295.—**CAN.**

4432. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Reld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4433. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

4484a. —— **Proof subsequently reduced.**]—*Re* SEARLE, HOARE & Co., No. 3210a, *ante*.

4487. *Add. Annotation :*—**Reld.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

4494. *Add. Annotation :*—**Reld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718.

Part XIV.—Administration in Bankruptcy of Estates of deceased Insolvents.

4545. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

4547. *Add. Annotation :*—**Reld.** *Re* Sarjeant, [1923] 2 Ch. 302.

4549. *Add. Annotation :*—**Reld.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4551. *Add. Annotation :*—**Reld.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4555a. —— —— **Adjudication before death.**]—Debts incurred for necessaries by a bkpt. after adjudication, & also funeral expenses to a reasonable amount, may properly be paid out of money accumulated by the bkpt. since the adjudication.

The sect. does not deprive the bkpt. of those fruits of his personal exertions which are necessary to enable him to live; in other words it is only the surplus over & above that which vests in the trustee (TOMLIN, J.).—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, [1929] 1 Ch. 647; 98 L. J. Ch. 403; 141 L. T. 319; [1929] B. & C. R. 63.

4556. *Add. Annotations :*—**Reld.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4559a. —— **Administration of estate of undischarged bankrupt—Right to after-acquired property.**]—*Re* SARJEANT, No. 1808a, *ante*.

—— —— ——.]—*See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

Part XVI.—Miscellaneous Practice and Procedure.

4578a. Motion to declare property part of bankrupt's estate—Who may appear.]—On the hearing of an application by the trustee in the bkpcy. to declare certain property alleged to have been transferred by the bkpt. to resps. to be part of the bkpt.'s estate, objection was taken to the motion being heard on the ground that certain of the property claimed by the trustee had been sold by resps. to the parties taking the objection, & that no notice of motion had been served upon them :—*Held :* the objection must fail; any order made upon the motion would affect only the right of the trustee & resps., & would not affect the rights of any other person; & the parties taking the objection had no *locus standi* to be heard.—*Re* VON WEISSENFELD, *Ex p.* HENDRY (1892), 9 Morr. 30.

Annotation :—**Reld.** *Re* Hirth, *Ex p.* Official Receiver (1899), 68 L. J. Q. B. 287.

4578b. Appearance of infant on motion—Appointment of guardian ad litem.]—(1) Where it is desired to bring an infant before the ct. the proper course is to apply for the appointment of a guardian *ad litem* for that purpose.

(2) Where, on an appeal from a County Ct., the Div. Ct. in bkpcy. directs such appeal to stand over in order that certain persons, some of whom are infants, may be made parties, it would appear that application for the appointment of a guardian *ad litem* should be made to the County Ct.—*Re* LOWNDES, *Ex p.* TRUSTEE (1887), 3 Morr. 216.

Annotation :—*As to* (1) **Folld.** *Re* Dent, *Ex p.* Trustee (1922), 92 L. J. Ch. 106.

4585. *Add. Annotation :*—**Expld.** *Re* Gay, Trustee *v.* Bennett & Georges Tiard (1931), 101 L. J. Ch. 127.

(That case did not decide the point. The headnote is inaccurate. It ought not to have been reported, *per* FARWELL, J.)

4586a. —— ——.]—A notice of motion seeking personal relief against a foreigner cannot be served out of the jurisdiction, & in such a case the ct. cannot give leave to serve resp. abroad.—*Re* GAY, TRUSTEE *v.* BENNETT, (A. A.) & GEORGES TIARD (1931), 101 L. J. Ch. 127; [1931] B. & C. R. 45.

4594. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

PART XIII. SECT. 6.

sf. *Refund—Action in county court to recover money paid in error.*]—*Held :* not maintainable, it not being open to the judge to go behind the declared dividend.—MCLENNAN *v.* CARTER, [1927] 1 D. L. R. 375; 59 N. S. R. 64.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

sg. *Time of insolvency.*]—Upon a petition for the administration in bkpcy. of a deceased debtor's estate it is sufficient to establish that the estate was insolvent at the date of the hearing of the petition.—*Re* NONMUS (ALFRED) (1929), 29 S. R. N. S. W. 330; 46 N. S. W. W. N. 111; 1 A. B. C. 39.—**AUS.**

PART XVI. SECT. 3, SUB-SECT. 1.

4606 l. *Part of examination.*]—A portion merely of an examination under Bkpcy. Act of a person alleged to have property of debtor in his possession cannot be admitted in evidence in collateral proceedings.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—**CAN.**

d 1. —— ——.]—Powers under Presidency Towns Insolvency Act, s. 36, are not to be used when parties are in litigation, as an extra method of discovery in addition to the ample facilities for discovery enjoyed by ordinary litigants under the Code of Civil Procedure.—SARAT KUMAR RAY

4612a. Primâ facie evidence of fraudulent preference—No right to appeal reserving right to call rebutting evidence.]—Where a trustee in bkpcy. has called evidence in support of a charge of fraudulent preference by the bkpt., resp. must elect either to call rebutting evidence, or to conclude his case on the footing that the evidence given is the only evidence. He cannot by agreement with his opponent & by leave of the county ct. judge obtain an adjournment & lodge an appeal, reserving the right to call rebutting evidence in case the appeal should result in favour of the trustee.—*Re* MOYNIHAN, *Ex p.* TRUSTEE, [1930] 2 Ch. 356; 99 L. J. Ch. 26; 143 L. T. 703; [1929] B. & C. R. 116, D. C.

4613a. —— Objection by one party.]—PRACTICE NOTE, [1899] W. N. 121.

4633. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4637. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4637a. Admission at preliminary examination—On criminal charge of misappropriating funds.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div. the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words :—*Held :* the admissions in the preliminary examination in bkpcy. were not admissions made "in any compulsory examination or deposition before any court on the hearing of any matter in bkpcy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701; 45 T. L. R. 357; 21 Cr. App. Rep. 85; 28 Cox, C. C. 610, C. C. A.

4638. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4638a. Deposition—Admissibility against deponent in other proceedings.]—A deposition of a witness, taken in the Ct. of Bkpcy. for one purpose, & filed, may be used against him as an admission in any other proceeding in the matter of the same bkpcy.—*Re* COOPER, *Ex p.* HALL (1882), 19 Ch. D. 580; 51 L. J. Ch. 556; 46 L. T. 549, C. A.

Annotation :—**Refd.** Bevis *v.* Bevis, [1935] P. 86.

4665. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665a. —— Necessary before other side entitled to refer to contents.]—On June 29, 1923, resps., having received from bkpt. an order for goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash; & the question was then raised whether the trustee had the right, which he claimed, to read those statements as admissions by resps. of the absence of pressure & of the entirely voluntary nature of the payment :—*Held :* (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the reason for such payment is unexplained, a *primâ facie* case of fraudulent preference is established; therefore, the trustee having proved a *primâ facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application.—*Re* COHEN, *Ex p.* TRUSTEE, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924]B. & C. R. 143; *sub nom. Re* COHEN, *Ex p.* TRUSTEE *v.* SNOW (W. R.) & Co., 69 Sol. Jo. 35, C. A.

Annotations :—*As to* (2) **Distd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Expld.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. (I do not think that the headnote in *In re Cohen* accurately sets out what is the result of that case, *per* Lord HANWORTH, M.R.). **Dbtd.** Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252.

4671. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

v. NABIN CHANDRA RAM SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

PART XVI. SECT. 3, SUB-SECT. 2.

s]. *Motion for trial of bankruptcy action—Adjournment to take oral evi-*

FULTON, [1925] 4 D. L. R. 1001.—**CAN.**

PART XVI. SECT. 4.

sk. *Ex parte order—Rescission—Non-disclosure of true state of aff*

Re GORDON BROTHERS, LTD., (Ont.) [1926] 3 D. L. R. 131; 7 C. B. R. 576.—**CAN.**

PART XVI. SECT. 5, SUB-SECT. 1.

j i. —— —— ——.]—*Held :* as the work done by the solr. in collecting the debts due to debtor was of real benefit

4704a. —— —— —— **Whether barred by laps of time.**]—In the circumstances:—*Held:* a solr.'s petition that his bill might be paid was not barred by the fact that the items occurred more than six years before the demand for payment.—*Re* FISHER, *Ex p.* BRUTTON (1845), De G. 116; 1 New Pract. Cas. 159; 14 L. J. Bcy. 15; 4 L. T. O. S. 321; 9 Jur. 96.

4705. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

4714a. Direction as to costs as between trustee & claimant against estate—Should not be included in order settling rights of parties.]—It is not, as a general rule, necessary or desirable that the order which determines a contest between a trustee & a person making claims against the estate should contain any direction as to the manner in which the costs of the trustee or costs which he is ordered to pay should be dealt with as between the trustee & the estate.—"PRACTICE NOTE" (1930), 47 T. L. R. 88; *sub nom. Re* SIMMS, *Ex p.* QUAIFE (A. E.), [1929-30] B. & C. R. 275.

4719. *Add. Annotation:*—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

4755a. —— **Fees for leading counsel—Opposition to approval of composition scheme.**]—A debtor commenced an action against three creditors, who were represented by the same solrs., & on the hearing of an application to approve a scheme of composition separate counsel were engaged for each. The position of one of the creditors, if the scheme had been approved, would have been far more serious than that of the other two, & the solrs. engaged a leading counsel to appear for him. The application was dismissed, & the registrar ordered that the costs of the proceedings be taxed & paid out of the bkpt.'s estate. The taxing master, being of opinion that there should be no discrimination between the three creditors, disallowed the whole of the costs incurred in briefing leading counsel:—*Held:* the taxing master ought to have considered the position of each creditor separately &, in the circumstances of the case, have allowed the costs of briefing leading counsel.—*Re* POTTS, *Ex p.* EPSTEIN *v.* TRUSTEE & BANKRUPT, [1935] Ch. 334; 104 L. J. Ch. 49; 152 L. T. 456; [1934] B. & C. R. 142.

4771a. —— ——.]—WILLASEY *v.* MASHITER (1834), 3 My. & K. 293; 40 E. R. 112.

4772a. —— ——.]—WHALLEY *v.* WILLIAMSON (1843), 6 Man. & G. 269; 6 Scott, N. R. 948; 134 E. R. 894.

4772b. —— ——.]—SHEA *v.* BOSCHETTI, *Re* PEILE (1858), 25 Beav. 561; 53 E. R. 751.

SECT. 6.—**OTHER CASES.**

4790a. Bankruptcy matter in which infant interested—Chancery practice relating to infants applicable.]—"PRACTICE NOTE," [1930] W. N. 254; [1931] B. & C. R. 44.

Part XVII.—Appeals.

4794. *Add. Annotations:*—**Folld.** *Re* Andrews, Official Receiver (Trustee) *v.* Standard Range & Foundry Co., [1936] 2 All E. R. 750. **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

4794a. —— —— ——.]—In a bkpcy. matter the county ct. judge stated a case for the opinion of the High Ct. on three questions. The case was argued before a judge in the Ch. Div., who held that the first question was concluded by previous decisions of that division, & the second & third questions did not therefore arise. The operative part of the order as drawn up dealt only with costs:—*Held:* this was a decision of the High Ct. & not of the county ct. within 1914 Act, s. 108 (2), & an appeal therefrom lay to the Ct. of Appeal.—*Re* ANDREWS, *Ex p.* OFFICIAL RECEIVER (TRUSTEE) *v.* STANDARD RANGE & FOUNDRY CO., LTD., [1936] 2 All E. R. 750; 80 Sol. Jo. 594, C. A.

4808a. Who is "person aggrieved."]—A person

to his estate, & was done with the tacit sanction of the ct., the costs of the solr. should be paid to him out of the money lodged by him with the official assignee.—*Re* MALONEY, [1928] I. R. 155.—**IR.**

sn. *Of successful application for recovery of property intrusted to bankrupt—Payable out of estate.*]—*Re* NEVILLE & GREEN (Ont.), [1926] 3 D. L. R. 407; 7 C. B. R. 631; *varying*, [1926] 2 D. L. R. 1025.—**CAN.**

so. *Of proceedings under the Act—Costs of action by trustee.*]—*Re* ASH ESTATE, [1934] 1 W. W. R. 540.—**CAN.**

sp. *Rights of solicitor—Amount of fees—Estate not realised by trustee.*]—*Re* CAPLAN, [1925] 3 D. L. R. 964; 5 C. B. R. 826.—**CAN.**

sq. *Levy for expenses—On what payments made.*]—The provision for a levy for expenses of superintendent in Bkpcy. Act, s. 126A, on all payments made by the trustee extends only to payments made by the trustee as such & in the course of the administration.—*Re* COLONIAL MANUFACTURING CO., *Ex p.* BANK OF NOVA SCOTIA, [1934] 1 D. L. R. 703; O. R. 116.—**CAN.**

sd. *Fees of trustee's solicitor—Limitation.*]—Bkpcy. Act, 1927, s. 162, does not limit the amount of the fees payable to the trustee's solr. but only the amount they may be increased by the inspectors.—*Re* LINTON & SINCLAIR CO.'S ESTATE, [1937] 1 D. L. R. 137; 11 M. P. R. 203.—**CAN.**

PART XVII. SECT. 1.

sr. *From registrar in insolvency—To judge exercising insolvency jurisdiction—Order for attendance of witness.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

ss. *From judge in insolvency—To Divisional Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

sv. *From Divisional Bench—To Full Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

sw. *To Supreme Court—When appeal lies.*]—In bkpcy. matters an appeal from the Appeal Ct. to the Supreme Ct. only lies in matters of general importance which are open to doubt.—*Re* SCHULTE-UNITED, LTD., [1934] 4 D. L. R. 252.—**CAN.**

sx. ——.]—The competency of the Supreme Ct. of Canada in bkpcy. proceedings is to be looked for exclusively in the Bkpcy. Act, & the rules properly made under it; it is not controlled by the sects. of the Supreme Ct. Act dealing with the Ct.'s ordinary jurisdiction.—*Re* COLLINGS, *Ex p.* COLLINGS & MURPHY (No. 1), [1936] S. C. R. 609; 1 D. L. R. 225.—**CAN.**

PART XVII. SECT. 2.

sz. *Order involving amount exceeding $500.*]—An appeal lies on the question whether a creditor for an amount over $500 shall be entitled to rank on bkpt.'s estate as a secured creditor or merely as an ordinary creditor, being an appeal involving an amount exceeding $500.—APEX LUMBER CO. *v.* JOHNSTONE, [1925] 3 D. L. R. 1050; [1925] 3 W. W. R. 360.—**CAN.**

sa. *Order on question of procedure.*]—No appeal lies from a decision on a question of procedure.—WINTER *v.* CAPILANO TIMBER CO. (1926), 37 B. C. R. 91; [1926] 2 W. W. R. 536.—**CAN.**

who alleges himself to be a creditor under a bkpcy., but who has omitted for several years to prove his debt in the regular way, is not a "person aggrieved" within Bkpcy. Act, 1869 (c. 71), s. 71, by the refusal to make an order the result of which, if made, would be to increase the assets available for the creditors, & is, therefore, not entitled to appeal from the refusal.—*Re* WOODS, *Ex p.* DITTON (1879), 11 Ch. D. 56; 40 L. T. 297; 27 W. R. 401, C. A.

Annotations:—**Expld.** *Re* Sidebotham, *Ex p.* Sidebotham (1880), 14 Ch. D. 458, C. A. **Distd.** *Re* Langtry, *Ex p.* Stephenson (1894), 63 L. J. Q. B. 570.

4808b. ——.]—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE, No. 6318a, *post.*

4817. *Add. Annotation:*—**Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

4818. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4819. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4836. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

4850. *Add. Annotation:*—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

4851a. —— **From refusal of application.**]—On Dec. 31, 1935, a secured creditor gave notice to a trustee in bkpcy. calling upon him to exercise his right of election under 1914 Act, Sched. II., r. 13 (*c*). In June, 1936, the trustee applied for an extension of the time within which to exercise his election. The application was dismissed on June 25, 1936, & the trustee was ordered to pay the creditors' costs. After some correspondence the order was drawn up dismissing the application & containing provisions by which the trustee should be reimbursed out of the estate for the costs which he had been ordered to pay. On Aug. 5, 1936, notice of appeal was given. The creditors raised a preliminary objection that the notice of appeal was out of time under Bkpcy. Rules, 1915, r. 130. The trustee contended that the direction as to costs had the effect of making the order a compound & not a simple order, & that he was entitled to see the order before making up his mind as to an appeal:—*Held:* the refusal of the application for extension of time was a simple refusal & the appeal ought to have been brought within 21 days of such refusal.—*Re* BULMER, INLAND REVENUE COMRS. & TRUSTEE *v.* NATIONAL PROVINCIAL BANK, LTD., [1936] 3 All E. R. 366; 80 Sol. Jo. 993.

4857. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4860. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4869. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4873. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4876. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4888. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4894. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4901a. —— —— **Two receiving orders—Separate appeals.**]—Where receiving orders have been made in two separate cts. & appeals are presented against each, the Ct. of Appeal will in a proper case dispense with security for costs in one of the appeals.—*Re* DEBTOR [1934-5] B. & C. R. 212, C. A.

4907a. —— —— —— **Appeal by Poor Person.**]—On an appeal by a poor person from the

PART XVII. SECT. 3.

4815 i. *Application for leave—Within what time—Extension of time—Leave to appeal to Supreme Court of Canada.*]—*Re* HUDSON FASHION SHOPPE, LTD., *Ex p.* ROYAL DRESS CO., [1926] 1 D. L. R. 515; 58 O. L. R. 298.—**CAN.**

sc. *Grounds for granting leave—Landlord's preferential claim for rent endangered—By claim of Crown—Under War Revenue Act,* 1915.]—*Re* CALCUS CO., LTD., [1925] 2 D. L. R. 228; 5 C. B. R. 514.—**CAN.**

sd. —— *Question of great importance & general interest.*]—BOILY *v.* MCNULTY, [1927] 2 D. L. R. 1010; [1927] S. C. R. 275.—**CAN.**

se. —— *Whether hotel-keeper "trader" within Landlord & Tenant Act, C. S. N. B.,* 1903 (*c.* 153), *s.* 47.]—*Re* HOTEL DUNLOP, LTD., QUINN *v.* GUERNSEY, [1927] 1 D. L. R. 810; [1927] S. C. R. 134.—**CAN.**

sj. —— *Question of construction.*]—*Held:* leave to appeal should be granted. Among other questions, the meaning of the word "settlements" in Bkpcy. Act, s. 60, appears to be involved in this appeal, the point being whether this word should receive the same construction as that given to it under the English Bkpcy Act, 1914 (c. 59), s. 42.—GARSON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1928] 3 D. L. R. 937; [1928] S. C. R. 419; 10 C. B. R. 203.—**CAN.**

sk. —— *Order adjudging debtor bankrupt.*]—A judge of the Supreme Ct. of Canada is competent, under sect. 174 of Bkpcy. Act, to grant leave to appeal from the judgment of an appellate ct. affirming an order rendered by a bkpcy. ct. by which a debtor was adjudged a bkpt. Even although no actual amount may be in controversy, such an appeal involves the future rights both of the creditor & of the debtor, which are directly affected by the bkpcy. proceedings following as a consequence of the order.—DUBROFSKI *v.* VIGER CO. & PERRAS, [1933] S. C. R. 218; 4 D. L. R. 66.—**CAN.**

sm. *Appeal to Supreme Court—What is "proceeding."*]—Pltf.'s tenant made an assignment under Bkpcy. Act, R. S. C., 1927, & deft. was appointed trustee. Pltf. claimed the amount of three months' rent & obtained leave, under sect. 24 of Bkpcy. Act, to commence an action in the King's Bench Ct., Sask. Pltf. recovered judgment at trial, which was reversed by the Ct. of Appeal, which dismissed its action. Pltf. appealed to the Supreme Ct. of Canada. Deft. moved to quash the appeal for want of jurisdiction, on the ground that the judgment appealed from was in a proceeding under Bkpcy. Act & no special leave to appeal had been obtained under sect. 174 thereof:—*Held:* the motion to quash should be dismissed; said sect. 174 had no application, the action not falling within the description therein, "proceedings under this Act."—NEW REGINA TRADING CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1933] S. C. R. 453; [1933] 1 W. W. R. 492; 4 D. L. R. 812.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 3.

4855 ii. ——.]—Where an application to a judge of this ct for leave to appeal from a judgment of a provincial ct. of appeal in a matter arising under the Bkpcy. Act is made within the thirty days specified by Bkpcy. Rule 72, or where the specified fourteen days notice has not been given to the adverse party, the application must be dismissed; the judge has no power to extend the time.—*Re* NORTH SHORE TRADING CO., PROVIDENCE WASHINGTON ASSCE. CO. *v.* GAGNON & CLOUTIER, [1928] 2 D. L. R. 136; [1928] S. C. R. 180; 10 C. B. R. 181.—**CAN.**

4855 iii. ——.]—The Supreme Ct. of Nova Scotia *en banc* cannot, nor can a judge of the Supreme Ct. of Canada, extend the time fixed by Bkpcy. Rule 72 for an application to be made to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct.—*Re* WEBBER, VALINSKY *v.* BACON, [1931] S. C. R. 498.—**CAN.**

4855 iv. ——.]—*Re* WEBBER (No. 2), [1931] 4 D. L. R. 244.—**CAN.**

4855 v. ——.]—The judge sitting in bkpcy. from whose decision an appeal was taken to the Appeal Ct. under sect. 174 of the Bkpcy. Act has power, under s. 163 (5) of the Act, to extend the time limited by Bkpcy. Rule 72 for applying to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct., under sect. 174 (2), from the Appeal Ct.'s decision.—*Re* SMITH & HOGAN, LTD., INDUSTRIAL ACCEPTANCE CORPN., LTD., & CANADIAN ACCEPTANCE CORPN., LTD. *v.* CANADA PERMANENT TRUST CO., [1931] S. C. R. 652.—**CAN.**

4862 i. *Grounds for extending time—Necessity for special circumstances.*]—*Re* MCKINNON'S, LTD. (NO. 2), [1935] 1 W. W. R. 248.—**CAN.**

dismissal of a motion in bkpcy., the deposit pursuant to Bkpcy. Rules, r. 131, must be paid before the appeal is entered. The exception of bkpcy. proceedings in R. S. C., Ord. 16, r. 22, is imported into r. 31F.—*Re* DEBTOR (1932), 74 L. Jo. 291.—C. A.

4910. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

4911. *Add. Annotation :*—**Consd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931) (1933), 102 L. J. Ch. 348.

4914a. —— **Point not taken in court below.**] *Re* DEBTOR (No. 16 OF 1922), *ante p.* THE DEBTOR, No. 875a, *ante*.

SECT. 10.—**OTHER CASES.**

4970a. Appeal from county court—Documents to be supplied.]—PRACTICE NOTE, [1932] W. N. 172 ; 174 L. T. Jo. 46.

Part XVIII.—Order of Discharge.

To statutory cross-reference add :—" See, also, Bkpcy. (Amendment) Act, 1914 (c. 7), s. 1."

4996a. —— **Discretion of court to hear creditor.**]—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2), No. 1966b, *ante*.

5023. *Add. Annotation :*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5035a. Payment of money in consideration of—Void.]—A., an insolvent, having petitioned the ct. for the relief of insolvent debtors to be discharged out of custody ; & having been brought up before that ct. to be examined, was opposed by B., a creditor, & remanded to a future day. Before that day arrived, C., who acted as the attorney of A., in consideration of B.'s withdrawing his opposition to A.'s discharge, undertook that B. should be the sole assignee of A.'s estate, & should receive £100 out of it within three weeks from his appointment :—*Held :* this agreement was contrary to the policy of the insolvent act, & therefore void.—MURRAY *v.* REEVES (1828), 8 B. & C. 421 ; 2 Man. & Ry. K. B. 423 ; Dan. & Ll. 161 ; 108 E. R. 1099 ; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348.

Annotations :—**Apld.** Hall *v.* Dyson (1852), 17 Q. B. 785. **Consd.** Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour *v.* King (1833), 3 Tyr. 581.

5035b. —— ——.]—An agreement by the attorney of an insolvent with one of the creditors, who has given notice of opposition to the insolvent's discharge, to pay such creditor's certain sum of money in consideration that he will withdraw his opposition, is void ; such consideration being contrary to the policy of the Insolvent Debtors Act, & a fraud upon the other creditors, although it do not appear that the money is to be paid out of the insolvent's funds.—HALL *v.* DYSON (1852), 17 Q. B. 785 ; 21 L. J. Q. B. 224 ; 18 L. T. O. S. 63, 223 ; 16 Jur. 270 ; 117 E. R. 1481.

Annotations :—**Consd.** McKewan *v.* Sanderson (1873), L. R. 15 Eq. 229 ; McKewan *v.* Sanderson, [1875] L. R. 20 Eq. 65 ; Levita's Claim, [1894] 3 Ch. 365. **Refd.** Hills *v.* Mitson (1853), 8 Exch. 751 ; Lound *v.* Grimwade (1888), 39 Ch. D. 605 ; Kearley *v.* Thomson (1890), 24 Q. B. D. 742 ; Windhill L. B. of Health *v.* Vint (1890), 63 L. T. 366.

5038a. ——.]—A bill of exchange given to buy off opposition to bkpt.'s last examination & the allowance of the certificate :—*Held :* void *ab initio*.—REEVES *v.* HAWKES (1862), 6 L. T. 53.

5039a. ——.]—*Held :* a fraud on other creditors.—ROGERS *v.* KINGSTON (1825), 2 Bing. 441 ; 10 Moore, C. P. 97 ; 3 L. J. O. S. C. P. 77 ; 130 E. R. 376.

Annotation :—**Refd.** Sweenie *v.* Sharp (1826), 12 Moore, C. P. 163.

5039b. ——.]—*Held :* the agreement was illegal.—HILLS *v.* MITSON (1853), 8 Exch. 751 ; 22 L. J. Ex. 273 ; 155 E. R. 1555.

Annotation :—**Refd.** Lound *v.* Grimwade (1888), 39 Ch. D. 605.

PART XVII. SECT. 9.

a i. ——.]—Upon appeals to this ct. in bkpcy. matters the tariff which applies is that provided for in the Rules of this ct., & contained in Form 1. set out in the sched. thereto ; & the costs of said application for leave should be taxed according to that tariff, & not according to the tariff prevailing in the bkpcy. cts. The judge hearing said application was not empowered to adjudicate otherwise.—*Re* COLLINGS, *Ex p.* COLLINGS & MURPHY (No. 2), [1936] S. C. R. 613 ; 1 D. L. R. 409.—**CAN.**

sk. *Jurisdiction of Court of Appeal of British Columbia.*]—The above ct. when acting as an appeal ct. in bkpcy. has complete jurisdiction over costs.—*Re* KWONG TAI CHONG CO. (ASSIGNMENT OF) (1922), 65 D. L. R. 132 ; [1922] 2 W. W. R. 229 ; *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE, 31 B. C. R. 40.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 1.

5013 i. *Whose interests court must consider—Public interests.*]—On considering the application of a debtor for his discharge under Bkpcy. Act, regard must be had not only to the interests of bkpt. & his creditors, but also to the interests of the public.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201 ; [1923] 1 W. W. R. 966 ; 3 C. B. R. 734.—**CAN.**

5014 i. —— *Bankrupt.*]—*Re* JONES, [1926] N. Z. L. R. 318.—**N.Z.**

d i. —— *Reasons of trustee's report.*]—*Re* MCKENZIE (Man.), [1926] 4 D. L. R. 210.—**CAN.**

5018 iii. —— ——.]—It is the policy of the Legislature that normally an insolvent on giving up the whole of his property should be a free man again. But in considering an application by an insolvent for his discharge the ct. must have regard to the interest of the community at large. Where the insolvent has preyed on the public & is still likely to do so if freed from insolvency, & during his insolvency has disregarded the interests of his creditors & has deliberately withheld information from the Official Assignee which it was his duty to disclose, the ct. should refuse to grant him a discharge.—E. A. MAMSA *v.* M. E. MAJID (1931), I. L. R. 9 Ran. 333.—**IND.**

PART XVIII. SECT. 3, SUB-SECT. 2.

ii. ——.]—The granting or refusing of a discharge to a bkpt. or the imposition of terms with respect to it are matters for the exercise of judicial discretion ; therefore an appellate ct. will hesitate to interfere with an order made upon reasonable grounds, but it may moderate the conditions imposed if they appear too onerous.—*Re* LOBEL, [1929] 1 D. L. R. 986 ; 1 W. W. R. 326 ; 38 Man. L. R. 48 ; 10 C. B. R. 350.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 1.—B.

g i. —— *Insolvency due to world conditions after War—No possibility of payment of debts.*]—*Re* RAFUSE (N. S.), [1929] 4 D. L. R. 321 ; 10 C. B. R. 570.—**CAN.**

sp. *Bankruptcy arising out of judgment for personal injuries.*]—In applying sects. 142 & 143 of Bkpcy. Act, R.S.C., 1927, if the liability for the judgment which brought about the authorised assignment arose from circumstances for which the assignor cannot justly be held responsible the ct. has power to grant a discharge ; but if it has arisen from circumstances

5039a. *S. P.* HUMPHREYS *v.* WELLING (1862), 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.

5043. *Add. Annotations :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Reld.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

5050. *Add. Annotation :*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5052. After this case add "*See, also*, Nos. 1654-1657a, *ante*."

5093a. —— **Meaning of "debt."**]—*Re* BOULTON BROTHERS & Co., No. 1657a, *ante*.

5176. Before this case add, "*See, now*, Bkpcy (Amendment) Act, 1926 (c. 7), s. 1 (2)."

5262. *Add. Annotation :*—*As to* (2) **Reld.** *Re* Kutner, [1921] 3 K. B. 93.

5264a. —— **Condition suspending discharge until larger dividend than ten shillings in the pound paid.**]—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10*s.* in the pound—in this case 15*s.* in the pound—has been paid to his creditors.—*Re* KUTNER, [1921] 3 K. B. 93; 90 L. J. K. B. 1264; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom. Re* KUTNER, *Ex p.* DEBTOR *v.* OFFICIAL RECEIVER, 65 Sol. Jo. 604, C. A.

5283. *Add. Annotation :*—**Reld.** *Re* Barley, [1923] 1 Ch. 177.

5328. *Add. Annotation :*—**Reld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] 1 Ch. 97.

5352a. —— —— **Illegal agreement with creditor—**

5367. *Add. Citation :*—*sub nom. Re* MERCHANT TRADERS' SHIP, LOAN & INSURANCE ASSOCN., *Ex p.* CHAPPELL, 19 L. T. O. S. 29.

5380. *Add. Annotation :*—**Reld.** Holmes *v. Watt* [1935] 2 K. B. 300.

5387. *Add. Annotation :*—**Reld.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

5387a. On forfeiture clause—Conditional discharge.]—(1) The discharge from bkpcy. of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.

(2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re* CLARK, CLARK *v.* CLARK, [1926] Ch. 833; 95 L. J. Ch. 325; 135 L. T. 666; 70 Sol. Jo. 344; [1926] B. & C. R. 77.

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for which he can justly be held responsible there is no power to grant an unconditional discharge. A judgment for personal injuries caused by a deliberate assault must be held to have arisen from circumstances for which the assignor should justly be held responsible.—*Re* LITZ, [1937] 2 W. W. R. 27.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 1.—C. (b) ii.

5073 ii. —— ——.]—The test as to whether a debtor's book-keeping methods are those usual & proper in the business carried on by him is whether debtor can at any time tell therefrom just how he stands to his assets & liabilities.—*Re* MORDEN (1922), 66 D. L. R. 332; [1922] 1 W. W. R. 519; 2 C. B. R. 189.—**CAN.**

5081 ii. ——.]—Even when a debtor pays less than fifty cents in the dollar to unsecured creditors & has not kept proper books of account, he may obtain his discharge if the bkpcy. appears to have been an honest one & he produces reasonable excuses for his failure to keep account books.—*Re* COVINGTON, [1923] 4 D. L. R. 946.—**CAN.**

5081 iii. ——.]—*Re* NEWSOME (Ont.), [1927] 3 D. L. R. 828; 8 C. B. R. 279.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 2.

p (p. 570) **i.** —— ——.]—Discharge may be suspended for a fraud not connected with the bkpcy.—*Re* JOHNSTON, [1935] 3 D. L. R. 115.—**CAN.**

p (p. 570) **ii.** —— ——.]—Discharge may be refused for any fraud & not necessarily a fraud within Bkpcy. Act.—*Re* CAMPBELL, [1935] 3 D. L. R. 233; O.R. 303.—**CAN.**

r i. —— *Until payment of specified dividend.*]—On an application by a bkpt. for an order of discharge the ct. found that the conduct of the debtor prior to & leading up to the assignment had been characterised by various facts of the kind enumerated in sect. 143 of the Bkpcy. Act, & refused an immediate or unconditional discharge; but, while entertaining grave doubts whether appt. was entitled to any discharge at all, made an order suspending the discharge until a dividend of not less than 50 cents on the dollar had been paid to the creditors.—*Re* RUNNER (Man.), [1928] 1 W. W. R. 930.—**CAN.**

5238 i. *For what period—Not less than minimum period—Misconduct.*]—*Re* MCCORMACK (Ont.), [1927] 2 D. L. R. 492; 8 C. B. R. 211.—**CAN.**

z i. —— ——.]—Debtor had misrepresented his financial position for the purpose of obtaining credit. The ct. fixed the time for discharge at three years from the date of the order.—*Re* THIESSEN, [1924] 1 D. L. R. 588; [1924] 1 W. W. R. 197; 34 Man. L. R. 125.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 3.

g i. —— *Order for payment out of salary.*]—In exercising the discretion given him by sect. 142 (1) of Bkpcy. Act, R. S. C., 1927, with respect to the salary of a bkpt. a judge in bkpcy. should not make the fulfilment of an order against the debtor's salary a condition of his discharge unless it is clearly established that the salary is more than what the debtor needs for the support of himself & his family.—MASON *v.* CANADIAN BANK OF COMMERCE, [1932] 1 W. W. R. 373.—**CAN.**

5269 iii. —— ——.]—Where the assets of the assignors, a partnership, were not equal to fifty cents in the dollar on their unsecured liabilities, & the ct. was not fully satisfied with explanations on certain matters given by a partner asking for his discharge, an order was made for his discharge on his consenting to judgment against him.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—**CAN.**

5269 iv. —— ——.]—*Re* FLETCHER & FLETCHER (Sask.), [1930] 1 D. L. R. 218; 11 C. B. R. 70; [1929] 3 W. W. R. 175.—**CAN.**

PART XVIII. SECT. 6.

g i. —— *Creditor without notice of insolvency.*]—The ct., on the application of a creditor, annulled the composition order & the discharge & made a receiving order.—*Re* MCKAY, *Ex p.* MASON, [1924] 4 D. L. R. 307; 5 C. B. R. 81.—**CAN.**

PART XVIII. SECT. 7, SUB-SECT. 2.—B.

t i. ——.]—An action against discharged bkpts. for return of the price of a bond & damages for misrepresentation prior to the bkpcy. will not be dismissed unless the bkpt. can show that the claim was one provable under sect. 104 of Bkpcy. Act & was not released by discharge within sect. 147 (1) (*b*).—BOLAND *v.* JOHNSON, [1934] 1 D. L. R. 672; O. R. 108.—**CAN.**

PART XVIII. SECT. 7, SUB-SECT. 2.—D.

sl. *Liability for necessaries—Medical expenses.*]—*Held :* debtor's discharge did not free him from liability to pay for necessaries which included medical expenses.—*Re* REYNOLDS, [1924] 4 D. L. R. 104; 5 C. B. R. 69.—**CAN.**

sm. ——.]—Bkpcy. Act, s. 147 (*d*), has no application to the supply of a retail grocer by a wholesale grocer, or to the supply of groceries to a lumberman for use in camp.—*Re* BLADES, [1933] 1 D. L. R. 473.—**CAN.**

sp. *Liability to reimburse surety.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay :—*Held :* the order of discharge was a bar to the suit.—GANGADHAR *v.* KANHAI (1928), I. L. R. 50 All. 606.—**IND.**

5397. *Add. Citations :*—*Bail Ct. Cas.* 151 ; 17 *Jur.* 165.

5399a. Revives debt.]—HATT *v.* VERDIER (1770), 2 Wm. Bl. 724 ; 96 E. R. 425.

5399b. *S. P.* BEST *v.* BARKER (1782), 8 Price, 533, n. ; 146 E. R. 1286 ; *sub nom.* BEST *v.* BARBER, 3 Doug. K. B. 188.

Annotations :—**Consd.** Wilson *v.* Kemp (1815), 3 M. & S. 595. **Apld.** Sweenie *v.* Sharp (1826), 12 Moore C. P. 163. **Refd.** Blackbourn *v.* Ogle (1820), 8 Price, 526 ; Drew *v.* Jefferies (1820), 8 Price, 531.

5402a. *S. P.* HORTON *v.* MOGGRIDGE (1816), 6 Taunt. 503 ; 128 E. R. 1154.

5424a. *S. P.* TURNER *v.* SCHOMBERG (1745), 2 Stra. 1233 ; 93 E. R. 1152.

Annotation :—**Folld.** Bailey *v.* Dillon (1759), 2 Burr. 736.

5424b. *S. P.* WILSON *v.* KEMP (1815), 3 M. & S. 595 ; 105 E. R. 733.

Annotations :—**N.F.** Blackbourn *v.* Ogle (1820), 8 Price 526. **Consd.** *Re* Ganderer (1822), 1 L. J. O. S. K. B. 16 ; Peers *v.* Gadderer (1822), 1 B. & C. 116.

5455. *Add. Annotation :*—**Refd.** Indian & General Investment Trust *v.* Borax Consolidated, [1920] 1 K. B. 539.

5457. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

Part XIX.—Statement of Affairs and Discovery of Property.

5460. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

5475. *Citations :*—For "24 Q. B. D. 406" read "24 Q. B. D. 466."

5475a. —— —— —— **Letter returned marked "gone away."**]—Bkpt. cannot escape service of an order of the ct. by leaving his last known address, & there is nothing in 1914 Act, nor in Bkpcy. Rules, to say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked "gone away," a warrant was ordered to be issued for his arrest.—*Re* LEVY (1924), 68 Sol. Jo. 419; *sub nom. Re* LEVY, *Ex p.* OFFICIAL RECEIVER, [1924] B. & C. R. 19, D. C.

5482. *Add. Citation :*—*sub nom. Re* TEMPLE, *Ex p.* TEMPLE, 2 Rose, 22.

5495a. —— —— —— ——.]—The object of the public examination of debtor is not merely to obtain a full & complete disclosure of his assets & the facts relating to the bkpcy. in the interests of his creditors, but is also for the protection of the public ; & debtor is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself.

In the course of his public examination debtor refused to answer a question on the ground that he might thereby incriminate himself. On the case coming on before the judge he interviewed debtor in his private room & on his return into ct. stated (1) that he was not satisfied that an answer to the question would result in further assets or secure rights for the creditors, & (2) that he was satisfied that there were serious personal reasons why it would be to debtor's detriment to answer the question in public :—*Held :* neither of the reasons given by the judge for declining to order debtor to answer the question was a sufficient reason.—*Re* PAGET, *Ex p.* OFFICIAL RECEIVER, [1927] 2 Ch. 85 ; 96 L. J. Ch. 377 ; 137 L. T. 369 ; 43 T. L. R. 455 ; 71 Sol. Jo. 489 ; [1927] B. & C. R. 118, C. A.

Annotation :—**Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5496. —— —— —— **Answers disclosing secret formulas for manufacturing proprietary articles.**]—*Re* KEENE, No. 5811a, *post.*

5496. For "—— —— **All matters considered on application for discharge**" read "—— —— —— **All matters considered on application for discharge.**"

Add. Annotations :—**Folld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5499a. —— —— —— **Questions as to loss of property.**]—*Held :* though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (*c*), the jury had still to consider whether deft. knowingly & with intent to deceive or to evade the Act either made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—R. *v.* PHILLIPS (1921), 85 J. P. 120.

5499b. —— —— —— **Questions in the public interest.**]—In Nov. 1927, the debtor, who had practically no capital of his own, suffered judgment for an injunction & costs for selling lamps in infringement of a patent. In Aug. 1928, the debtor was adjudicated bkpt. on the patentees' petition for non-payment of those costs. At his public examination on Oct. 19, the bkpt., who was admittedly still dealing in electrical goods, on being asked by the registrar where he had obtained the lamps that he sold when he was in business, refused to answer the question :—*Held :* as it was not clear that the disclosure of the source of supply might not lead to the disclosure of further assets, *e.g.* claims to commission or otherwise, or might not be in the public interest, by enabling the supply of infringing lamps to be stopped at its source, the bkpt. must answer the question.—*Re* JAWETT, [1929] 1 Ch. 108 ; 98 L. J. Ch. 7 ; 140 L. T. 176 ; [1928] B. & C. R. 78.

5505. *Add. Annotations :*—**Refd.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85 ; *Re* Jawett, [1929] 1 Ch. 108.

5506a. —— **Issue of subpœna to produce documents.**]—*Re* WILSON, *Ex p.* DEBTOR, [1936–7] B. & C. R. 23.

5512. *Add. Annotation :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

5519. For existing paragraph read—

"The jurisdiction conferred on the ct. by 1883 Act, s. 27, to order that any person, who if in England would be liable to be brought before it under the sect. shall be examined in Scotland or Ireland, " or in any other place out of England," must be read with some limitation & does not extend to places abroad which are not within the jurisdiction of the British Crown."

5523a. —— **After discharge.**]—The power given to the ct. by 1914 Act, sect. 25, to order the attendance for examination of the bkpt. & persons capable of giving information respecting the bkpt., his dealings or property is not limited to the duration of the bkpcy., but survives the effective discharge of the bkpt.—*Re* COULSON, *Ex p.* OFFICIAL RECEIVER (TRUSTEE), [1934] Ch. 45; 103 L. J. Ch. 31; 150 L. T. 5; 77 Sol. Jo. 749; [1933] B. & C. R. 173, C. A.

5543. *Add. Annotation :*—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

5562. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

5562a. —— **As to compromise of proceedings between bankrupt & third party.**]—W., who had deposited with the debtor bonds of the value of £30,000 & shortly before his death had made a demand for their return to him with which the debtor refused to comply, died on July 12, 1930. On Feb. 23, 1931, the exors. of W.'s will brought an action against the debtor claiming the return of the bonds. In Nov. 1931, pltfs. discovered correspondence which disclosed the fact that the debtor had made proposals to W. for obtaining for him an honour from His Majesty, & they communicated this to deft.'s solrs. On Jan. 14, 1932, a compromise of the action was arranged between counsel under which the debtor consented to return the value of the bonds, & by Jan. 1933, this was in fact done. On May 23, 1933, the debtor was adjudicated bkpt. In the bkpcy. N., one of W.'s exors. & the surviving pltf. in the action, was, under 1914 Act, s. 25, summoned to give evidence & produce documents relating to the deposit of the bonds with the bkpt. N. was asked whether, after reading the correspondence between W. & the bkpt., he understood that the transaction related to some trafficking in honours. On the advice of his counsel N. refused to answer the question. The matter was accordingly reported by the registrar to CLAUSON, J., who on June 11, 1934, made an order directing N. to answer the question. On appeal :—*Held :* as the compromise was not impugned by any documents, materials or evidence before the ct. & thus stood good & binding, it would not be right to compel an answer from the witness in respect of a matter to which he was not *primâ facie* shown to be a party or privy. The ct. must deem the witness capable of giving information on some grounds that appeared to have a foundation. It ought not to lend itself to a mere fishing inquiry based upon the trustee's hope to build up some case as to which there was before the ct. no information showing that the witness was implicated.—*Re* GREGORY (MAUNDY), *Ex p.* NORTON, [1935] Ch. 65; 78 Sol. Jo. 550; *sub nom. Re* GREGORY (MAUNDY), TRUSTEE *v.* NORTON, 104 L. J. Ch. 1; [1934] B. & C. R. 165; *sub nom. Re* GREGORY (MAUNDY), *Ex p.* NORTON *v.* TRUSTEE, 152 L. T. 58, C. A.

5591a. Admission of indebtedness—Need not be in writing.]—An admission of indebtedness is not required to be in writing before the ct. can make an order for payment under 1914 Act, sect. 25 (4). Where the application for an order is made by the trustee it need not be verified by affidavit.—*Re* PARREN, *Ex p.* TRUSTEE, [1933] B. & C. R. 170.

5591b. —— **Application for order for payment—How made.**]—*Re* PARREN, *Ex p.* TRUSTEE, No. 5591a, *ante*.

5634. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492, C. A.

5649. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

Part XX.—Property Available for Distribution amongst Creditors.

5684. For the words "**Admission or rejection of proofs.**]—*See, generally*, Part VIII., *ante*," following this case, read "Admission or rejection of proofs, *see, generally*, Part VIII., *ante*."

5696. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

5738a. Definition of property—1914 Act, s. 167—What included—Passport.] — A passport issued by the British Passport Office on behalf

PART XX. SECT. 2.

b i. —— *Trustee ignorant of existence of property.*]—Deft. in replevin pleaded property in himself. He had assigned all his property to trustees for the benefit of his creditors, but kept possession of the goods in question, & the trustees did not know of their existence :—*Held :* the general property in the goods passed to the trustees.—MCINTOSH *v.* HASTINGS (1865), 11 N. B. R. (6 All.) 234.—**CAN.**

5689 iv. —— —— *Registered judgment as security for loan.*]—A judgment by confession given by a person who is at the time solvent as security for a present advance of money & recorded to bind lands under Nova Scotia Registry Act, R. S., 1900 (c. 137), s. 16, is a valid security as against the authorised assignee under an assignment in bkpcy. subsequently made.—*Re* RHODENIZER ESTATE & NOVA SCOTIA TRUST CO., [1923] 1 D. L. R. 1055; 56 N. S. R. 179.—**CAN.**

5713 v. ——.]—The authorised trustee is not entitled to possession or control of any property by lien agreements for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re* ALIOTIS & CLIRIS (1921), 63 D. L. R. 346; 55 N. S. R. 64.—**CAN.**

5713 vi. —— *Lease granted to bankrupt free of rent—Stipulation that lease not seizable by creditors.*]—*Held :* the property could not be used for the benefit of bkpt.'s creditors.—LEGAULT *v.* DUFRESNE (1922), 66 D. L. R. 136.—**CAN.**

5713 vii. —— ——.]—As an ... only vests the property of debtor in the assignee subject to the rights of secured creditors, it can only affect the equity of redemption in the property.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within above sect., & where a bkpt. has passed his public examination & has not been guilty of any misconduct & desires to go abroad to earn his living the ct. will, in a proper case, direct the passport to be handed to the bkpt.—*Re* SUWALKSY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

5747. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

5749. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5754. *Add. Annotations :*—**Apld.** *Re* Collins, [1925. Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

5760. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5760a. —— **Money paid in compliance with subsequent bankruptcy notice.**]—*Re* DEBTORS (No. 771 of 1926), No. 923a, *ante*.

5761. *Add Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

5766. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5766a. —— —— ——.]—A debtor made certain payments to the solrs. who were acting for him in bkpcy. proceedings. One payment was made before the receiving order was made, & two payments were made for the purpose of prosecuting an appeal against the receiving order, including £20 in respect of security for costs. The appeal was dismissed & the trustee sought to recover from the solrs. the whole of the payments made to them by the debtor after the date of the receiving order & so much of the first payment as exceeded the amount properly applicable to the costs & disbursements of the bankruptcy proceedings :—*Held :* the sums claimed by the trustee were properly recoverable.—*Re* POLLOCK, OFFICIAL RECEIVER *v.* HASLIP, JACKSON, [1936] 3 All E. R. 157; 155 L. T. 532; 53 T. L. R. 47; 80 Sol. Jo. 915; [1936–7] B. & C. R. 24.

5769. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5769a. —— —— **Costs after date of receiving order.**]—The ct. will not extend the practice of allowing a solr. acting for a debtor to retain, as against the trustee in the bkpcy., moneys *bonâ fide* paid by the debtor for costs of resisting the bkpcy. proceedings, so as to apply to moneys paid to him by the debtor after the date of the receiving order for costs of an appeal against it.—*Re* DEBTOR (No. 490 of 1935), [1937] Ch. 92; 106 L. J. Ch. 193; 156 L. T. 234; [1936–7] B. & C. R. 192.

5775a.——.]—On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bonâ fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser :—*Held :* the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re* GUNSBOURG, [1920] 2 K. B. 426; *sub nom. Re* GUNSBOURG, *Ex p.* TRUSTEE, 89 L. J. K. B. 725; [1920] B. & C. R. 50; *sub nom. Re* GUNSBOURG, *Ex p.* COOK, 123 L. T. 353; 36 T. L. R. 485; 64 Sol. Jo. 498, C. A.

Annotations :—**Apld.** *Re* Dombrowski, *Ex p.* Trustee (1923), 92 L. J. Ch. 415. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

5775b. ——.]—Bkpt., when he was hopelessly insolvent, transferred his business to a one-man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act :—*Held :* although resps. were *bonâ fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re* DOMBROWSKI, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 415; [1923] B. & C. R. 32.

Annotation :—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

5776. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5776a. —— **Whether fraction of day regarded.**]—In order to make out an act of bkpcy. by lying in prison for two months, the whole of the day of arrest may be taken into the account. But a portion of the day maybeconsidered for the purpose of showing a valid act to have been done by the bkpt. before the bkpcy. Goods of the bkpt. having been delivered to a purchaser on the day on which the bkpt. went to prison, & paid for the next day, the payment will be defeated by the relation of the act of bkpcy., by lying in prison for two months, to the day of the arrest.—SAUNDERSON *v.* GREGG (1821), 3 Stark. 72; 171 E. R. 771, N. P.

Annotations :—**Consd.** Hill *v.* Farnell (1829), 9 B. & C. 45. **Refd.** Connan *v.* Denew (1833), 3 L. J. C. P. 65.

PART XX. SECT. 3, SUB-SECT. 2. 3a. *Under Canadian Bankruptcy Act.*]—The English Acts & the Canadian Act distinguished as to the time to which the trustee's title relates back.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 3 C. B. R. 23.—CAN.

5785. *Add. Annotation :*—**Refd.** *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

5786. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

5786a. Fraudulent transfer to private company.]—*Re* SIMMS, No. 596a, *ante.*

5798. To the cross-reference before this case add "*see, also,* COUNTY COURTS, Vol. XIII., p. 498, No. 488."

5804. *Add. Annotation :*—*As to* (1) **Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5805. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5807a. Balance of sequestrator's account in registry.]—*Re* LITTLE HALLINGBURY, ESSEX (1837), 1 Curt. 556 ; 163 E. R. 195.

5811a. —— Secret formulas for manufacturing proprietary articles.]—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose them would be a breach of his agreement with his brother :—*Held :* the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee.—*Re* KEENE, [1922] 2 Ch. 475 ; 91 L. J. Ch. 484 ; 127 L. T. 831 ; 38 T. L. R. 663 ; 66 Sol. Jo. 503 ; [1922] B. & C. R. 103, C. A.

5821a. Life interest in remainder.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

5826a. ——.]—*Re* CLARK, CLARK *v.* CLARK, No. 5387a, *ante.*

5827. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris [illegible] Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5831. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5835. *Add. Annotation :*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5838a. Termination of protective trust—Trustee Act, 1925 (c. 19), s. 33—Debt owed to estate—Application of income for maintenance.]—A testatrix guaranteed her son's loan account at a bank. She then made a will appointing him one of her exors. & giving him a legacy of £100 & a protected life interest in the income of her residuary estate. She then guaranteed the son's overdraft on his current account. On each occasion the son charged his estate & interest in a public-house to secure such sum as testatrix might be called upon to pay. The estate of testatrix was about to be called upon to pay a sum of over £5,000. The son after the death of testatrix executed a deed of assignment for the benefit of his creditors :—*Held :* (1) the fact that testatrix required security for the repayment of the debt after the execution of her will showed an intention not to release the debt, & the son was liable to the estate in the amount which would have to be paid to the bank ; (2) notwithstanding that the debt or some part might remain unpaid, the trustees of the will were entitled to pay in their discretion such part of the income as they might think necessary for the son's maintenance & support.—*Re* EISER'S WILL TRUSTS, FOGG *v.* EASTWOOD, [1937] 1 All E. R. 244.

5845. *Add. Annotations :*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. ; *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5850. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5851. *Add. Annotation :*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5855. *Add. Annotation :*—**Refd.** *Re* Salting, Baillie-Hamilton *v.* Morgan, [1932] 2 Ch. 57.

5858. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5859a. —— of property partly of bankrupt & partly of third party—Good to extent of third

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PART XX. SECT. 4, SUB-SECT. 1.—E.

80. *Money placed in bank to credit of bankrupt.*]—*Held :* the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re* LONGMORE, *Ex p.* ROYAL BANK & RIDER, [1923] 2 D. L. R. 873 ; 3 C. B. R. 818.—**CAN.**

81. *Money from sale of chattels—Sold under void bills of sale.*]—The ct. made an order for payment to the official assignee of the value of the chattels seized & sold by the moneylender.—TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) *v.* GOLDSTEIN (1921), 29 C. L. R. 377 ; 21 S. R. N. S. W. 695 ; 38 N. S. W. W. N. 170.—**AUS.**

82. *Money paid in circumstances giving bankrupt no right of recovery.*]—*Held :* the assignment did not vest the moneys so paid in the trustee.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1922), 68 D. L. R. 757 ; [1922] 2 W. W. R. 280.—**CAN.**

83. *Money supplied to provide bail for bankrupt.*]—*Held :* the money never was the property of bkpt.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922). 68 D. L. R. 222 ; 2 C. B. R. 521.—**CAN.**

84. *Money illegally paid to solicitors by former trustee.*]—The ct. ordered the solrs.' bill to be retaxed & a reference to be made to inquire into the validity of the solrs.' retainer.—*Re* BRYANT ISARD & CO., [1924] 3 D. L. R. 487 ; 5 C. B. R. 6.—**CAN.**

85. *Money from sale by lender of securities for loan—Customer's securities wrongfully deposited with lender by bankrupt.*]—Circumstances in which :—*Held :* the money so paid to the trustee belonged to the customer.—*Re* THOMPSON, SONS & CO., NEWTON *v.* HAMILTON, [1927] 1 D. L. R. 943 ; [1927] 1 W. W. R. 308 ; 36 Man. L. R. 312.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 2.—D. (a).

5846 iii —— ——.]—A., by will, inherited property which was declared by the will to be unseizable, but he was given power to dispose of it :—*Held :* A. could not assert the unseizable quality of his property in bkpcy. proceedings.—CRAIG *v.* KENNEDY (1922), 68 D. L. R. 78 ; 2 C. B. R. 528.—**CAN.**

c i. —— *Clause forfeiting deposit on lessee's bankruptcy.*]—*Re* ABRAHAM (1925), 59 O. L. R. 164 ; [1926] 3 D. L. R. 971.—**CAN.**

5861a. In mortgage—Whether void as against bankruptcy laws.]—A provision in a mtge. to the effect that, if the mtgor. is made bkpt., a larger sum shall be paid to the mtgee. than would have been paid had the mtgor. not been made bkpt., is void, as being in contravention of the bkpcy. laws, & the security held by the mtgee. will be, notwithstanding such provision, a security for the amount actually advanced & no more.—*Re* JOHNS, WORRELL *v.* JOHNS, [1928] 1 Ch. 737; 97 L. J. Ch. 346; 139 L. T. 333; 72 Sol. Jo. 486; [1928] B. & C. R. 50.

5865. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5867. *Add. Annotation :*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5869. *Add. Annotation :*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5870. *Add. Annotation :*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

5872. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5884. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5885. *Add. Annotation :*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5890. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5897. *Add. Annotation :*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5898. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5899. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5902a. "On bankruptcy or until he suffered any act or thing or any event happened whereby he would be deprived of right to receive income"—Order of Probate Court setting apart whole income for children of beneficiary.]—In 1887, C. settled the proceeds of property as to the income upon himself for life determinable on his bkpcy. or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of C.'s marriage, it was ordered that the trustees should set apart the whole of the income of the settled funds

5909a. "Shall do some act" whereby income would be assigned—Authority to ... to trustee of composition scheme—No notification of authority to trustee.]—B. was entitled to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for his issue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix's will "until further notice" to pay to the trustee under the scheme "the income now due or to accrue due" to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter:—*Held:* in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.'s interest in testatrix's estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable.—*Re* HAMILTON, FITZGEORGE *v.* FITZGEORGE (1921), 124 L. T. 737, C. A.

5913. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5916. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5918. *Add. Annotation :*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid (1933), 175 L. T. Jo. 400.

5920. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922. *Add. Annotation :*—**Distd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922a. "By any deed or document anticipate, charge, assign, or otherwise dispose of"—Debtor presenting bankruptcy petition.]—*Held:* the forfeiture clause had not taken effect.—*Re* GRIFFITHS, JONES *v.* JENKINS,

for advance on mortgage.]—*Held:* on the charge being given by applt. the interest appointed to him became forfeited.—MCQUADE *v.* MORGAN (1927), 39 C. L. R. 222; [1927] Argus L. R. 258; 1 A. L. T. 61.—**AUS.**

[1926] Ch. 1007; 95 L. J. Ch. 429; 136 L. T. 57; 70 Sol. Jo. 735; [1926] B. & C. R. 56.

5924. *Add. Annotation:*—**Expld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5925. *Add. Annotation:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5931. *Add. Annotations:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932. *Add. Annotation:*—**Apld.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932a. —— Bankruptcy before death of testator.]—Testator directed that if an annuitant should become bkpt. or insolvent he should forfeit the annuity:—*Semble:* such a direction applied only to future events, & no forfeiture would be incurred by an insolvency during testator's lifetime.—*Re* DRAPER (1888), 57 L. J. Ch. 942; 58 L. T. 942; 36 W. R. 783.

Annotation:—**Folld.** *Re* Strange, Lamb *v.* Bossi Leu (1916), 60 Sol. Jo. 640.

5932b. "Until he shall forfeit same in case of bankruptcy"—Existing bankruptcy known to testator.]—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, No. 5936a, *post.*

5933. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5934. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5935. *Add. Annotation:*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch 291.

5935a. —— Bankruptcy at & after determination of prior life interest—Annulled after income payable.]—B. was bequeathed an interest during his life in the income of testator's residuary estate, & by his will testator directed that, if any beneficiary thereunder should become bkpt., such beneficiary should forfeit his share which should thereupon devolve as provided for in the event of his death. Testator died in 1910 & on Apr. 16, 1914, B. was adjudicated bkpt. On Dec. 14, 1925, B.'s life interest fell into possession, & on Apr. 7, 1926, he procured the annulment of his bkpcy. Between Dec. 14, 1925, & the date of the annulment the trustees received income in respect of the residuary estate, but dealt only with such part as did not include the income in respect of B.'s interest, no payment being made in respect of that by them:—*Held:* as after Dec. 14, 1925, the trustees received sums in respect of the income of testator's estate which they could have been asked to hand over to the trustee in the bkpcy. of B. before the annulment of his bkpcy., there existed something upon which the forfeiture could operate, the test being whether there was any actual income of the share which could be treated by the trustees as payable to, or retained for, or appropriated for, the residuary legatee, & the annulment was not in time to prevent the operation of the forfeiture clause.—*Re* FORDER, FORDER *v.* FORDER, [1927] 2 Ch. 291; 96 L. J. Ch. 314; 137 L. T. 538; [1927] B. & C. R. 84, C. A.

5936. *Add. Annotations:*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5936a. "Unless he attempts to become bankrupt"—Whether applicable to bankruptcy in invitum or generally.]—Testator, by his will dated Dec. 21, 1911, devise & personal estate to his to sell & convert with power to pos proceeded: "Out of my estate trustees to pay to my son H. an £156 to be paid monthly, unless he to assign it or to become bkpt. In events it shall be entirely optional with trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated." Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or "until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.," in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 24, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate:—*Held:* (1) the words "unless he attempts to become bkpt." in the will must be read in their strict grammatical sense & as so read did not apply to a bkpcy. *in invitum* or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy.; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes* v. *Meredith*, No. 5932, *ante*, to the past bkpcy. of H., & there was no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, [1920] 2 Ch. 304; 89 L. J. Ch. 525; 123 L. T. 735; 36 T. L. R. 674, C. A.

5936b. "Become vested or charged"—Assignment of "whole means & estate."]—A testator, who died in 1932, bequeathed his residuary estate to trustees in trust to pay the income thereof to his wife, F. P., for life, & after her death to raise thereout a fund the income of

which, in the events which happened, they were directed to pay to F. H. during his life, "if at the time of this present trust taking effect in possession no act or event shall have happened whereby the life interest . . . if belonging to him absolutely, would have become vested in or charged in favour of some other persons or person. . . ." A discretionary trust in favour of F. H. his wife & issue was created in the event of failure of the trust during his life. In 1933 F. H. being temporarily resident in Scotland, though domiciled in England, executed a deed assigning to a trustee for the benefit of his creditors "my whole means & estate, heritable and moveable, real and personal, wherever situated, now pertaining & belonging or due & indebted to me or over which I may have any power of disposal or to which I may succeed during the subsistence of this trust." This deed was never registered in accordance with the Deeds of Arrangement Act, 1914 (c. 47), s. 2. F. P. died in 1936:—*Held:* (1) the terms of the deed were wide enough to cover the interest of F. H. under the will; (2) inasmuch as on the true construction of the deed the law intended to be applied in dealing with it was the law of Scotland, which did not require registration, it was not void for want of registration in accordance with Deeds of Arrangement Act, 1914 (c. 47); (3) accordingly, there had been forfeiture of the life interest of F. H. & the discretionary trust came into force.—*Re* PILKINGTON'S WILL TRUSTS, PILKINGTON *v.* HARRISON, [1937] Ch. 574; [1937] 3 All E. R. 213; 106 L. J. Ch. 360; 157 L. T. 132; 53 T. L. R. 745; 81 Sol. Jo. 459.

5953. *Add. Annotation:*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

5958. *Add. Annotations:*—**Consd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410; *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105. **Distd.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

PART XX. SECT. 4, SUB-SECT. 2.—E.

5957 iii. ——.]—Pltf. in Feb. 1930, recovered judgment against deft. in respect of injuries sustained on July 14, 1928, in a collision with a motor lorry driven by deft.'s servant. On Jan. 31, 1929, deft. assigned "all his real & personal estate" to trustees for the benefit of his creditors, such assignment being executed as creditor by the insurance co. with which he held a policy indemnifying him against third party risks:—*Held:* deft.'s right to indemnity by the insurance co. having arisen prior to the assignment, passed as a chose in action to the trustee under the deed, & pltf. had no legal or equitable right to the insurance moneys.—SMITH *v.* HORLOR, [1930] N. Z. L. R. 537.—**N.Z.**

Premium paid by bankrupt.]—Where payments due to a co. issuing a policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least:—*Held:* the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.—LONDON & LANCASHIRE INSURANCE CO., LTD. *v.* FISHER, [1924] N. Z. L. R. 1286.—**N.Z.**

5958a. ——.]—H., who had taken out a policy of insurance in deft. co. against third party risks, was involved in an accident whereby C. was seriously injured by H.'s motor car. C. commenced proceedings against H. for damages, but before obtaining judgment H. was adjudicated bkpt. & the official receiver was appointed the trustee in the bkpcy. The trustee informed the co., in reply to a question put by them, that he did not propose to take any part in C.'s action against H. H. subsequently purported for an agreed sum to release the co. from their liability under the policy to indemnify him in respect of any judgment obtained against him by C. Shortly afterwards C. obtained judgment against H. for damages for the injuries sustained by him. Subsequently H. committed a second act of bkpcy. & was adjudicated bkpt. for the second time, & a trustee was appointed. In an action brought by the two trustees jointly for a declaration (*inter alia*) that deft. co. were liable to indemnify H. & or pltfs. against the damages awarded to C. & that the agreement by which H. purported to release the co. was null & void:—*Held:* (1) the benefit of the indemnity vested in the trustee under the first bkpcy., notwithstanding that C.'s claim, being one in respect of a tort for which judgment was not obtained till after the commencement of the first bkpcy., was not provable in such bkpcy.; (2) the benefit of the indemnity having vested in the trustee in the first bkpcy., his right thereto could not be affected by any subsequent agreement between deft. co. & H.; (3) the trustee in the first bkpcy. was not estopped by his refusal to take part in C.'s action against H. from asserting his claim against deft. co.—HOOD'S TRUSTEES *v.* SOUTHERN UNION GENERAL INSURANCE CO. OF AUSTRALASIA, [1928] Ch. 793; 97 L. J. Ch. 467; 139 L. T. 536; [1928] B. & C. R. 95, C. A.

-.]—*See, now,* Third Party (Rights Against Insurers) Act, 1930 (c. 25).

5960. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

5961 iii. —— *Property transferred before assignment in bankruptcy.*]—A trustee in bkpcy. is not entitled to recover insurance on a building burned after the assignment in bkpcy., but which stood on land transferred prior to the assignment.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* WINNIPEG FIRE UNDERWRITERS' AGENCY (Alta.), [1926] 3 D. L. R. 528; [1926] 2 W. W. R. 541.—**CAN.**

5961 iv. —— *Policy effected outside jurisdiction.*]—Life Insurance Act, 1908, s. 65 (2), (3), protecting life insurance policies from creditors of the assured, applies not only to such policies effected in New Zealand, but also to policies which have been effected in another country with a co. not carrying on business in New Zealand & are possessed by a person domiciled in New Zealand at the date of his death.—*Re* LYON, LYON *v.* PUBLIC TRUSTEE, [1934] N. Z. L. R. 296; G. L. R. 237; *affd. sub nom.* PUBLIC TRUSTEE *v.* LYON, [1936] A. C. 166, P. C.—**N.Z.**

5967 ii. —— *In action of tort.*]—Damages for personal injuries do not vest in the trustee in bkpcy.—*Re* HOLLISTER (Ont.), [1926] 3 D. L. R. 707; 7 C. B. R. 629.—**CAN.**

h i. *Sums due by way of differences—Transactions closed by special resolution of Stock Exchange.*]—Sums which have become due, in the ordinary course of business from one certified broker to another, by way of differences in respect of Stock Exchange transactions entered into between the parties, as members of the Bombay Native Share & Stock Brokers' Association, form part of the estate of the creditor broker, which passes to his assignee in the case of his insolvency, under Presidency Towns Insolvency Act (III. of 1909), ss. 17 & 52.—KAIKUSHROO TALYARKHAN *v.* BAI GULAB (1928), I. L. R. 53 Bom. 508.—**IND.**

h ii. *Sums due from bankrupt commission agent—Right to recover from principals—Subject to rights of third party.*]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability:—*Held:* he could recover the said amount even though the agents, having gone into liquidation, had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—**IND.**

sq. Rights under contract—Cancellation before receiving order.]—*Held:*

6012a. —— —— **Husband surviving wife.**]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured " for the benefit of his wife " in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors., administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899 :—*Held :* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband ; with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble : Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37 ; 143 L. T. 329 ; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXECUTORS, 99 L. J. Ch. 241 ; [1929] B. & C. R. 173.

Annotation :—**Dbtd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

6052. *Add. Annotation :*—**Reld.** *Re* Pennington & Owen, [1925] Ch. 825.

6074. *Add. Annotation :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

6092a. —— ——.]—*Re* BOWDEN (LADY), TRUSTEE *v.* BANKRUPT, [1937] 4 All E. R. 635 ; 54 T. L. R. 219, C. A.

6098a. —— **In Irish Free State—In possession of Irish creditors—Claim to lien.**]—Where creditors resident & domiciled in the Irish Free State were in possession of chattels belonging to an English bkpt. on which the creditors claimed a lien, which the trustee admitted, for moneys owing to them by the bkpt., the Div. Ct. were of opinion that, as between the creditors & the trustee, the creditors were entitled to realise their security by the sale of the chattels. But, save as aforesaid, the ct. refused to make any special order declaring a lien on or directing the sale of the chattels, or any order which the High Ct. of the Irish Free State could be asked to enforce by an order in aid.—*Re* SYKES, CLOGHRAN STUD FARM CO. *v.* TRUSTEE (1932), 101 L. J. Ch. 298 ; [1931] B. & C. R. 215, D. C.

6108. *Add. Annotation :*—**Apld.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394.

6111. *Add. Annotation :*—**Consd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation :*—**Apld.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115a. —— **Bankruptcy abroad.**]—Testator by his will declared himself to be residing in London, & domiciled in England. He subquently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a " syndic " was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French " syndic " the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's administration action in England, K., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French " syndic " now claimed that the assets in this country should be transferred to him, admitting that if his application was successful the costs of administration here would have to be deducted :—*Held :* a bkpcy. order having been made by a French ct. of competent jurisdiction the " syndic " was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.—*Re* BURKE, KING *v.* TERRY (1919), 54 L. Jo. 430 ; 148 L. T. Jo. 175.

Annotation :—**Reld.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re* DOLLAR TAXI CO., *Ex p.* TRUSTEE, [1924] 3 D. L. R. 97 ; 4 C. B. R. 667.—**CAN.**

sr. *Proceeds of company's assets—Sold by directors—To discharge personal guarantees of directors.*]—*Held :* the transaction was not fraudulent.—*Re* UNITED EXHIBITORS, [1925] 3 D. L. R. 446 ; 5 C. B. R. 779.—**CAN.**

ss. *Gratuity payable by employer.*]—*Held :* a gratuity which is promised to be paid by a railway co., at its discretion, to its employee, at the conclusion of his service, is not in the nature of a recoverable debt but is only a gift which is not completed until it has passed out of the hands of the donor, & cannot therefore be seized by the creditor.—SECRETARY OF STATE *v.* JAMUNA DAS (1932), I. L. R. 11 Pat. 584.—**IND.**

PART XX. SECT. 4, SUB-SECT. 3.—B.

sv. *Proceeds of sale—Bill of sale given by husband to wife—To secure loan by wife.*]—*Held :* the proceeds derived from realisation of the security effected after an act of bkpcy., but before actual adjudication, were money lent to the husband by the wife for the purpose of his trade or business at the date of bkpcy., &, as such, assets in the husband's estate.—*Re* HAW, [1926] N. Z. L. R. 558.—**N.Z.**

sw. *Chattels in ostensible possession of husband—Onus of proof.*]—*Held :* the *onus* was on the wife to prove that they were her property.—*Re* MCELLAND'S ESTATE, [1923] 4 D. L. R. 395 ; 3 C. B. R. 849.—**CAN.**

sz. *Money lent to husband for business purposes.*]—Money lent by a married woman to her husband for the purposes of a business carried on by him is assets of his estate in bkpcy.—*Re* HOLLAND, [1933] 1 D. L. R. 607.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 6.—A.

tt. —— —— *Property part of estate of lunatic under care of court.*]—Lands being real estate, situate in the Irish Free State, devolved upon a person as heir-at-law who had been an undischarged bkpt. in England since the year 1924. The person who died possessed of the property had been a lunatic under the care of the ct. in the Irish Free State. In the winding up of the lunatic's estate by the Chief Justice in Lunacy the rents of the real estate of the lunatic which had accrued after her death were claimed respectively by the Official Receiver in England & the Official Assignee in the Irish Free State for the benefit of the creditors in the respective bkpcies. :—*Held :* the only effective vesting order before the ct. was that made in the Irish bkpcy. matter, the land in question had not become vested in the Official Receiver in England merely by the operation of the English vesting declaration, but it was competent for the Irish ct., exercising bkpcy. jurisdiction, if requested to do so, to make that vesting declaration effective.—*Re* CORBALLIS, [1929] I. R. 266.—**IR.**

6103 v. —— ——.]—Land in Canada owned by a bkpt. at the time he is adjudicated a bkpt. under the English Bkpcy. Act, 1914, c. 59, vests in his trustee under the English bkpcy. proceedings.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353 ; 1 W. W. R. 309 ; 23 S. L. R. 297 ; 10 C. B. R. 340.—**CAN.**

6115b. —— ——.]—In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. 1913, & employed clerks & other persons. The partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee: —*Held:* (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard; (3) subject to the decision of other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wherever situate, & to the appointment of a receiver.—BERGEREM *v.* MARSH (1921), 91 L. J. K. B. 80; 125 L. T. 630; [1921] B. & C. R. 195.

6116. For catchword "**Real property in England**" read "**Immovables in England.**"

6116a. —— **Bankruptcy abroad.**]—Although an assignment of a bkpt.'s property to the representative of his creditors under the bkpcy. law of a foreign country (other than Scotland, Ireland, or British India) is not & does not operate as an assignment of any immovables of the bkpt. situate in England, nevertheless an English ct. has jurisdiction in such case to appoint a receiver to the bkpt.'s English property for the benefit of his creditors.—*Re* KOOPERMAN, [1928] B. & C. R. 49; 72 Sol. Jo. 400.

Annotation:—**Folld.** *Re* Osborn, *Ex p.* Trustee (1932), 74 L. Jo. 134.

6116b. —— **Bankruptcy outside England—Immovable property in England—Bankruptcy in Isle of Man.**]—Where a person was adjudged bkpt. in the Isle of Man & an order was made by that ct. seeking the aid of the High Ct. for the purpose of getting in movable & immovable property in England for distribution in the bkpcy. & the trustee in bkpcy. moved the High Ct. to give effect to such order pursuant to Bkpcy. Act, 1914 (c. 59), s. 122:—*Held:* (1) the High Ct. is bound to give such assistance as it can, but has a discretion as to what assistance it ought to give, & can impose such conditions & require such undertakings as it may think proper in each particular case; (2) where land in England does not vest in the trustee in bkpcy. of another country, the Bkpcy. Ct. has no jurisdiction to make a vesting order, but may appoint the trustee in bkpcy. to be receiver of the rents & profits with liberty to sell & deal with the proceeds of sale as trustee in the bkpcy. or, where mtgees. sell, may appoint the trustee in bkpcy. to be receiver of the surplus proceeds of sale.—*Re* OSBORN, *Ex p.* TRUSTEE, [1931–32] B. & C. R. 189.

6121. *Add. Annotations:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

6123. *Add. Annotation:*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

PART XX. SECT. 4, SUB-SECT. 6.—B. (b).

r i. —— ——.]—Although a foreign Bkpcy. Act cannot, of its own force, operate beyond the country which enacted it, yet private international law & the comity of nations operating on the general principles relating to movable property will recognise its extra-territorial effect, so far at least as it deals with personal property, especially where, as in the case of the U.S. Bkpcy. Act, the Act does not expressly confine itself to property within the United States, but extends to "all property" of bkpt.; & the fact that the U.S. Bkpcy. Act is given effect in Canada only by comity of nations is not a ground for holding that it should be given no greater effect in Canada than would be given to the Canadian Bkpcy. Act in the United States.—WILLIAMS *v.* RICE (Man.), [1926] 3 D. L. R. 225; [1926] 2 W. W. R. 192.—**CAN.**

t (p. 693) i. —— —— *Immovables.*]—Bkpcy. in the United States does not affect immovables in Ontario.—MARINE TRUST CO. *v.* WEINIG, [1935] 3 D. L. R. 282.—**CAN.**

y i. —— *Property in British India.*]—Upon a foreign ct. adjudicating a person an insolvent, the only property in British India which vests in the receiver by virtue of private international law is such movable property as the insolvent was free to assign to the receiver at the date of the adjudication.

The District Ct. at Secunderabad adjudicated persons insolvents under Provincial Insolvency Act, 1907. Jurisdiction is exercised at Secunderabad, & the above Act there applied, by Orders made by the Governor-General in Council under Foreign Jurisdiction Act, 1890, & Indian (Foreign Jurisdiction) Order, 1902. The insolvents were holders of a decree of the Madras High Ct., which, before the adjudication, had been attached by that Ct. in execution proceedings. By sect. 64 of the Code of Civil Procedure, 1908, any private transfer of the attached decree was void against claims under the attachment:—*Held:* the District Ct. at Secunderabad was a foreign ct.; accordingly, the adjudication operated in British India only under private international law &, having regard to sect. 64 of the Code, did not affect the rights of the attaching creditor; it was unnecessary to consider whether the attachment created a charge, or conferred title.—ANANTAPADMANABHASWAMI *v.* SECUNDERABAD OFFICIAL RECEIVER, [1933] A. C. 394; 102 L. J. P. C. 77; 149 L. T. 54; 49 T. L. R. 316, P. C.—**IND.**

sa. *Insolvency in South Africa—Property in Ireland.*]—By an order of the Supreme Ct. of the Union of South Africa the estate of an insolvent was sequestrated for the benefit of his creditors; subsequently a trustee of the estate was elected, & was declared entitled to administer the estate in accordance with Insolvency Act, 1916. The insolvent was entitled to certain freehold & leasehold property in Ireland. Under the law of the Union of South Africa the trustee was entitled to the immovable property of the insolvent situate in Ireland, so far as such right did not conflict with the law in Ireland. The Supreme Ct. of South Africa having requested the Irish ct. to act in its aid, the trustee applied for an order vesting the property in him:—*Held:* he was entitled to such order.—*Re* BOLTON, [1920] 2 I. R. 324.—**IR.**

sc. *Bankruptcy in Straits Settlements—Immovables in British India.*]—*Held:* the Straits Settlements Bkpcy. Ordinance No. 44 had no binding force in British India where the immovable property was situated & therefore the adjudication at Penang had no effect on such property.—AIYASWAMY CHETTY *v.* MADRAS OFFICIAL ASSIGNEE (1933), I. L. R. 57 Mad. 616.—**IND.**

PART XX. SECT. 4, SUB-SECT. 7.

6122 i. *Payments to accrue under building contract.*]—B., who had engaged in a partnership with deft. K. in a contract for the construction of certain works, on June 8, 1927, assigned to pltf. "all my profits up to the sum of £500 plus 10 per cent. interest" that were to accrue to him from the said partnership for the said contract. He was adjudicated bkpt. on an act of bkpcy. committed on June 17 of the same year, of which, however, pltf. had no notice. In an action by pltf. against the official assignee & deft. K. to recover the amount of the assignment:—*Held:* it having been established that on June 17, 1927, the date to which the bkpcy. related back, no profit had been earned by B. to which the assignment could attach, & as the assignment could not give a good title

6124. *Add. Annotation :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

6126. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6128. *Add. Annotations :*—**Apld.** Cotton *v.* Heyl, [1930] 1 Ch. 510. **Consd.** *Re* Wait, [1927] 1 Ch. 606 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503. **Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

6128a. —— **1914 Act, s. 43—Sales agreement between manufacturer & company—To secure loan.**]—Being short of liquid capital, the debtor, who was a manufacturer of furniture, approached A. for assistance. A. agreed to help him & for this purpose a co. was incorporated on Sept. 1, 1933, with a capital of 100 shares of £1 each, of which A. held ninety-eight, his clerk one, & the debtor one. On the same date the debtor entered into an agreement with the co. by which the co. agreed to buy for cash goods manufactured by him up to a total amount of £7,000, the price to be 10 per cent. less than the prices that any of certain specified customers had agreed to pay for them, & the goods to be invoiced to the customers in the name of the co. The agreement also provided that the debtor should not sell goods to any person other than the co., that he should repay to the co. any part of the price of goods so purchased which the customer failed to pay, & that the co. should not make a profit of more than £2,500 in any one year. Notices were issued to customers that for the future sales would be effected through the co. On Feb. 5, 1934, a receiving order was made against the debtor, & on Feb. 19 he was adjudicated a bkpt. The question arose whether the agreement was void as against the trustees in bkpcy. so that the sums remaining due from customers at the beginning of the bkpcy. formed part of the debtor's estate :—*Held :* the agreement was not void either as an unregistered bill of sale or as an assignment of future book debts within 1914 Act, s. 43.—*Re* Lovegrove. *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464 ; 104 L. J. Ch. 282 ; [1934-5] B. & C. R. 262 ; *sub nom. Re* Lovegrove, *Ex p.* Applestone *v.* Trustees, 152 L. T. 480 ; 79 Sol. Jo. 145 ; *sub nom. Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd. *v.* Trustees, 51 T. L. R. 248, C. A.

6129. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6129a. ——.]—*Re* Collins, No. 6659a, *post.*

6135. *Add. Annotation :*—**Apld.** *Re* Caines Mortgage Trusts, [1918–19] B. & C. R. 297.

6138a. Trust fund invested in partnership—Bankruptcy of firm.]—In 1919 a sum of Rs.10,000, lying with a firm belonging to resp.'s uncle, was directed by the father of resp. to be invested in the firm in the name of resp., who was then a minor, the money to be handed over to the resp. on his attaining twenty-one. The interest on the investment in the meantime was to be paid to the father. In 1925 the members of the firm were adjudicated insolvent & their estate & effects vested in the Official Assignee :—*Held :* the Rs.10,000, being admitted to be a trust in the hands of the firm, must be taken to have remained a part of the assets of that business & to have been there at the date of the insolvency, & upon such insolvency passed to the Official Assignee subject to a charge in favour of resp.—Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432, P. C.

6150a. —— **Transfer of shares bought for client.**]—A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A. :—*Held :* it was " property held by bkpt. on trust " within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—Barber & Sons *v.* Rigley (1922), 38 T. L. R. 650 ; 66 Sol. Jo. 577.

as against the official assignee to profits accruing after the commencement of the bkpcy. pltf. could not succeed against the official assignee, nor could he recover against K., who was bound by law to pay the official assignee bkpt.'s share of the profits of the contract.—Hewitt *v.* Official Assignee of Barnes & Keeble, [1930] N. Z. L. R. 416.—**N.Z.**

6124 i. —— *Retention money.*]—*Held :* moneys already earned by the assignor, although not already due & payable to him, could be assigned by him, & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applicable to retention money kept back in respect of progress payments under a building contract.—Official Assignee *v.* Sharpe, [1921] N. Z. L. R. 460.—**N.Z.**

6128 i. *Book debts—Assignment to incorporated bank.*]—*Held :* the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpcy. Act, s. 30, but was valid.—Sapera Tobacco Co. *v.* Royal Bank of Canada (1922), 63 D. L. R. 58 ; 2 C. B. R. 309 ; 52 O. L. R. 131.—**CAN.**

6128 ii. —— *Assignment not registered—No provincial legislation providing for registration.*]—*Held :* assignment void as against trustee in bkpcy.—Royal Bank of Canada *v.* Eastern Trust Co., [1923] 1 D. L. R. 498 ; [1923] S. C. R. 177.—**CAN.**

6128 iii. *Future book debts.*]—*Re* Gordon Store, Ltd., *Ex p.* Standard Bank, [1923] 4 D. L. R. 279 ; 3 C. B. R. 816.—**CAN.**

6128 iv. ——.]—To be valid against a trustee in bkpcy. any assignment of future book debts must be rigidly according to Bkpcy. Act, s. 30.—*Re* Walton, [1924] 4 D. L. R. 706 ; 5 C. B. R. 112.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 1.

6133 iv. ——.]—*Re* Standard Imports, Ltd., *Ex p.* Canadian Express Co. (1922), 68 D. L. R. 396 ; 2 C. B. R. 206.—**CAN.**

6133 v. ——.]—*Re* Wilson (Ont.), [1926] 1 D. L. R. 584 ; 7 C. B. R. 437.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—A.

6139 iv. —— ——.]—As against an assignee in bkpcy. one who has as principal consigned goods to bkpt. under an agency contract by which the property did not pass to bkpt. may recover the goods or the proceeds thereof, provided & so far as they can be identified.—*Re* Cocks Estate & Consort Trading Co. (1922), 65 D. L. R. 778 ; [1921] 3 W. W. R. 434.—**CAN.**

6139 v. —— *Money entrusted to.*]—*Held :* the payer could only rank as a preferred creditor if the trust money could be traced to a particular fund.—*Re* Dominion Ticket, etc. Corpn., *Ex p.* Aker, [1924] 2 D. L. R. 807.—**CAN.**

6150 i. *Broker—Securities sold for client—Proceeds paid into broker's general account.*]—*Held :* as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it & could only sue for breach of contract.—Dalphe *v.* Fairbanks, Gosselin & Co. (1922), 66 D. L. R. 335 ; 2 C. B. R. 524.—**CAN.**

6208a. ——.] — In the circumstances (*see* No. 6208):—*Held:* C. had a lien on the goods for his debt.—BURN *v.* CARVALHO (1834), 7 Sim. 109; 58 E. R. 777; *subsequent proceedings* (1839), 4 My. & Cr. 690, L. C.

Annotations:—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375.

6215. *Add. Annotation:*—**Dbtd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

6263. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6270. *Add. Annotation:*—**Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6272. *Add. Annotations:*—*As to* (1) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432. *As to* (2) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606.

6277. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6279. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6295a. **Life interest** [illegible] **third bankruptcy—Right of trustee under previous bankruptcies.**]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

6296. *Add. Annotations:*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137. **Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

6296a. —— **Police pension.**]—The provision in Police Pensions Act, 1921 (c. 31), s. 14 (1), that on the pensioner's bkpcy. his pension "shall not pass to any trustee or other person" acting on the creditors' behalf merely excludes the pension from being property that vests in the trustee under 1914 Act, s. 18 (1). It does not prevent the ct. from making an order under 1914 Act, s. 51 (2), for payment of all or part of the [illegible]ion to the trustee for the creditors' benefit. This sect. applies to property whether or not vested in the trustee, & the order does not effect any vesting.—*Re* GARRETT, [1930] 2 Ch. 137; 46 T. L. R. 464; *sub nom. Re* GARRETT, OFFICIAL RECEIVER & TRUSTEE *v.* THE BANKRUPT, 99 L. J. Ch. 341; 143 L. T. 402; [1929] B. & C. R. 177.

Annotation:—**Apprvd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

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s b. *Sole beneficiary—Widow's claim o share of estate.*]—Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole beneficiary under the husband's will.—*Re* MCINTYRE, [1925] 4 D. L. R. 127; [1925] 3 W. W. R. 172.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—B.

p i. —— *Sum held for investment.*]—In 1919 a sum of Rs.10,000 was left in the hands of a firm of jewellers for investment in their business at a fixed rate of interest in the name of resp., to whom the Rs.10,000 was to be paid on his attaining twenty-one years. In 1925 the members of the firm were adjudicated insolvents under Presidency Towns Insolvency Act, 1909. By sect. 52 (1) (*a*) of that Act property held in trust by an insolvent is excluded from the divisible assets. It has been admitted that the transaction of 1919 constituted a trust in favour of resp., & it was not alleged that the Rs.10,000 had not been invested in the business, or that it had been lost, or ceased to exist before the insolvency:—*Held:* the assets of the firm vested in the official assignee subject to a charge for the Rs.10,000 in favour of resp. The right of a beneficiary to follow a trust fund does not depend upon whether the fund has been properly or improperly disposed of.—OFFICIAL ASSIGNEE *v.* BHAT (1933), 60 L. R. Ind. App. 203.—**IND.**

s c. *Specific purpose—Stock certificate deposited with agent—For sale.*]—Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name:—*Held:* the trustee must return the shares.—DENMAN *v.* TOUSAW, HART & ANDERSON & BELL TELEPHONE CO. (1922), 66 D. L. R. 572.—**CAN.**

s d. —— —— ——.]—*Held:* it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—MCKAY *v.* TURGEON (1922), 67 D. L. R. 607.—**CAN.**

s f. *Unemployment relief tax deducted from wages.*]—Money collected by an employer of labour by deduction of unemployment relief tax from his employees' wages forms by statute a debtor & creditor account between him & the Crown, & any such amount unpaid by him on his bkpcy. passes to the Official Assignee & is divisible among his creditors, including the Crown.—*Re* BEAMISH, *Ex p.* R., [1935] N. Z. L. R. 356.—**N.Z.**

PART XX. SECT. 5, SUB-SECT. 4.—A.

6261 i. *General rule—Fund undistinguishable.*]—In order to give rise to a right to follow moneys as trust moneys mixed with the trustee's personal moneys there must have existed a trust fund capable of being identified & followed.—*Re* CHRISTIE GRANT, LTD., *Ex p.* CANADIAN EXPRESS CO., [1923] 1 D. L. R. 505; 32 Man. L. R. 375; [1922] 3 W. W. R. 1161.—**CAN.**

6261 ii. *S.P.* OGILVIE FLOUR MILLS CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 4 D. L. R. 969; [1925] 3 W. W. R. 586.—**CAN.**

6267 i. *Agent to sell goods—Right to proceeds of sale.*]—Money received by a commission agent from sales of his customers' property is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity. & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestuis que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

PART XX. SECT. 6.

6283 i. "*Working tools*" — *Law agent's library.*]—*Held:* law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary "working tools."—PENELL *v.* ELGIN, [1926] S. C. 9.—**SCOT.**

h i. —— ——.]—*Re* TRENWITH, [1922] 3 W. W. R. 1205.—**CAN.**

h ii. —— *Effect of mortgage.*]—Where the owner of an urban homestead mortgages it, the exemption rights of the owner are confined to the equity of redemption.—*Re* BELL, [1922] 1 W. W. R. 1015; 67 D. L. R. 66; 32 Man. L. R. 9 at p. 13.—**CAN.**

h iii. —— "*Building occupied*"—*By debtor.*]—Debtor was the registered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood & household furniture. The store & dwelling had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only:—*Held:* the property was within Exemptions Act, s. 2, cl. 10, & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re* SKEELE, [1923] 1 D. L. R. 589; [1923] 1 W. W. R. 117; 3 C. B. R. 589.—**CAN.**

h iv. —— —— *By partner—Partnership property.*]—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is occupied as a home by one of the partners.—*Re* DOBROVITCH, DOBROVITCH *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 1 D. L. R. 21; [1924] 3 W. W. R. 681.—**CAN.**

h v. —— *Exempt from seizure under execution.*]—*Held:* not property divisible amongst bkpt.'s creditors.—TRADERS TRUST CO. *v.* COHEN (Man.), [1927] 3 W. W. R. 473.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—A. (a).

6286 iii. ——.]—The after-acquired property of a debtor is available among creditors under a receiving order but not under an authorised assignment.—*Re* LIPSON, [1923] 3 D. L. R. 1171; 52 O. L. R. 352; 2 C. B. R. 488.—**CAN.**

6291 iv a. —— —— *Under intestacy.*]—*Held:* to vest in the trustee.—*Re* LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—**CAN.**

6293 v. —— ——.]—An insolvent has power to dispose of any property he may acquire after being declared insolvent, & all persons dealing with him *bonâ fide* & for a consideration will be discharged from making a further payment to the official assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.—CHHOTE LAL *v.* KEDAR NATH (1924), I. L. R. 46 All. 565.—**IND.**

6298. *Citations :*—For " CHIPPENDALE *v.* TOMLINSON (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406 " read " CHIPPENDALL *v.* TOMLINSON (1785), 4 Doug. K. B. 318 ; 1 Cooke's Bankrupt Laws, 8th ed., p. 428 ; 99 E. R. 900."

Add. Annotations :—**Distd.** Beckham *v.* Drake (1849), 2 H. L. Cas. 579. **Consd.** *Re* Roberts, [1900] 1 Q. B. 122. **Refd.** *Re* Elswood (1855), 26 L. T. O. S. 96 ; Wadling *v.* Oliphant (1875), 1 Q. B. D. 145.

6315. *Add. Annotation :*—**Apld.** *Re* Walter, Slocock *v.* Official Receiver, [1929] 1 Ch. 647.

6316a. —— **Application of 1914 Act, s. 38.**]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555a, *ante*.

6318a. Refusal of application for payment by trustee—Whether creditor may appeal.]—(1) In a bkpcy. where an application has been made by the trustee under 1914 Act, s. 51 (2), for the payment to the trustee out of the personal earnings of the bkpt. of such weekly sums as the ct. might direct, & the application has been refused, a creditor is not entitled to appeal under 1914 Act, s. 108 (2), from the refusal as being a " person aggrieved."

(2) Under 1914 Act, s. 105, the ct. having jurisdiction in bkpcy. has the widest possible powers. If, therefore, creditors, in pursuance of a resolution passed at a creditors' meeting, request the trustee or official receiver by virtue of 1914 Act, s. 79 (2), to summon meetings, & the trustee or official receiver refuse to comply with their request, the ct. has ample jurisdiction to decline to order the trustee to carry out the creditors' request to convene the meeting if it considers that the holding thereof would serve no useful purpose & would only result in a useless waste of the assets in the bkpcy. The function of the ct. in such a case is not merely ministerial.—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE, [1932] 1 Ch. 247 ; 146 L. T. 386 ; [1931] B. & C. R. 103 ; *sub nom. Re* BURN, DAWSON *v.* BANKRUPT, 101 L. J. Ch. 110.

6324. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6331. *Add. Citation :—sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

6334. *Citations :*—For " [1918] 2 Ch. 389 " read " [1918] 2 Ch. 339."

6347. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

6348. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6352. *Add. Annotation :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6353a. Liability of after-acquired property for necessaries.]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555a, *ante*.

6366. *Add. Annotations :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Cohen, *Ex p.* Official Receiver, [1919] 2 K. B. 271 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6390a. Property acquired between two insolvencies—Assignees under second insolvency entitled.]—CURTIS *v.* SHEFFIELD (1836), 8 Sim. 176 ; 5 L. J. Ch. 377 ; 59 E. R. 70.

Annotation :—**Consd.** *Re* Clagetts Estate, Fordham *v.* Clagett (1882), 20 Ch. D. 637.

6395. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6398. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6401a. —— **To husband & wife jointly.**] — A settlor by a voluntary settlement made in 1913 directed the trustees to whom he had transferred certain securities to accumulate & invest the income thereof subject to a proviso under which the settlor reserved to himself power, by notice given to the trustees, to require the income of any year or the residue of such income remaining uninvested to be paid as to one moiety to himself & as to the other moiety to a lady who afterwards became his wife, or if she should then be dead to require the whole income of such year or of the residue of such year to be paid to the settlor, with trusts after the death of the survivor of them in favour of the settlor's children therein named. In Jan. 1927, the settlor gave notice to pltf. as trustee that he required the whole income for that year to be paid as to one moiety to himself & as to the other moiety to his wife. In Aug. 1927, the settlor was adjudicated bkpt. :—*Held :* the power was indivisible, & could not be exercised by the settlor " for his own benefit " within 1914 Act, s. 38 (*b*), but only for the joint benefit of himself & his wife, & therefore did not vest in his trustee in bkpcy.—*Re* TAYLOR'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE *v.* TAYLOR, [1929] 1 Ch. 435 ; 98 L. J. Ch. 142 ; 140 L. T. 553 ; [1929] B. & C. R. 15.

6415. *Add. Annotation :—As to* (2) **Refd.** Watson *v.* Haggitt (1927), 44 T. L. R. 90.

PART XX. SECT 7. SUB-SECT. 1.—A. (b).

6298 iii. ——.]—The evidence of a bkpt. was that he was employed in selling goods for a co., that he was, when examined in Oct. 1927, special representative of the co. on the basis that he was to receive a salary & a guarantee of a certain amount together with a bonus on anything over that amount : but this arrangement was to cease on Nov. 1, 1927, & he expected to make arrangements to sell on a commission basis :—*Held :* applying the English law without deciding whether, under Canadian Bkpcy. Act, subsequent salary, income, or compensation is ever assets for the trustee, the bkpt.'s future earnings, not being a fixed salary, could not be applied for the benefit of his creditors.—*Re* RUNG, [1929] 1 D. L. R. 300 ; 62 O. L. R. 557 ; 10 C. B. R. 1.—**CAN.**

si. *Agreement between trustee, bankrupt & employer—Interference by court.*] —*Re* LOUNSBURY (N. B.), [1927] 4 D. L. R. 1040.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

vi. —— *Application to bankruptcy by authorised assignment.*]—*Re* GADSBY, *Ex p.* WHITE & ELLIOTT, [1925] 3 D. L. R. 1159.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 3.

6381 ii. —— ——.]—A person who had been declared bkpt. & whose insolvent estate had been fully administered, but who did not obtain his discharge, went into business & acquired certain assets. The person who had administered the estate as authorised trustee applied to the registrar in bkpcy. for directions :—*Held :* there was no power in the ct. to appoint or continue apptc. as trustee & he had no status to make the application.—*Re* HERMAN, [1930] 2 D. L. R. 471 ; 65 O. L. R. 43 ; 11 C. B. R. 239 ; *affg.*, 10 C. B. R. 379 ; *revg.*, 10 C. B. R. 323.—**CAN.**

PART XX. SECT. 9, SUB-SECT. 1.

6416 i. " *Goods,*" " *goods & chattels* "—*Goods of third party—Intermingled with bankrupt's property by third party.*]—*Held :* the entire property became assets to satisfy the creditors.—*Re* PROGRESSIVE FARMERS, *Re* HOLDEN NATIONAL CO.'S CLAIM (1921), 62 D. L. R. 631 ; 2 C. B. R. 551.—**CAN.**

6444a. —— ——.]—A lessee erects trade fixtures, firmly attached to the freehold, but removable as between himself & the landlord. He then mortgages the premises by way of demise, by the same description as that in the lease, & without referring to the new erections; the sum secured being a floating balance, limited to an amount greater than the premises would be worth, without the fixtures. He becomes bkpt.:—*Held:* the mtgee. was entitled to the fixtures.—*Re* WEST, *Ex p.* BENTLEY (1842), 2 Mont. D. & De G. 591; 6 Jur. 719.

Annotations:—**Consd.** *Re* Mackie, *Ex p.* Tagart (1847), De G. 531; Walmsley *v.* Milne (1859), 7 C. B. N. S. 115.

6449. *Add. Citation:*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation:—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6463. *Add. Annotation:*—**Refd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402.

6464. *Add. Annotations:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672; Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

6477. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6483. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6507a. —— **In name of agent—Delivery orders in hands of buyers.**]—Bkpt., who carried on business as a merchant, had for some years dealt with pltfs. in vacuum flasks, which came from Germany. The bills of lading in respect of the goods were made out "to order" & the charges were paid by S., a forwarding agent employed by bkpt. The goods on arrival were stored at a wharf in the name, & for the account, of S. When a sale had taken place S. signed a delivery order which bkpt. handed to the buyers against payment for the goods. Between Aug. 3 & Sept. 7, 1927, pltfs. purchased a number of cases of vacuum flasks & paid bkpt. for them prior to the commencement of the bkpcy., the receiving order being made on Sept. 24. Bkpt., upon payment being made for the goods, handed to pltfs. delivery orders for the goods signed by S. & addressed to the wharfingers. These delivery orders had not been presented at the wharf at the date of the bkpcy., & when they were presented shortly afterwards the wharfingers, acting on S.'s instructions, refused to deliver the goods. The trustee in bkpcy. claimed that the goods were in the possession, order or disposition of bkpt. at the date of the receiving order & formed part of bkpt.'s estate under 1914 Act, s. 38 (*c*):—*Held:* pltfs. had not by their conduct in any way induced a belief that the goods were in the possession, order or disposition of bkpt. in such circumstances that he was the reputed owner thereof, & the trustee was not entitled to the goods as forming part of bkpt.'s estate.—SIMEONS (C.) & Co. *v.* DURAND'S TRUSTEE, [1928] 2 K. B. 66; 97 L. J. K. B. 537; 138 L. T. 612; [1928] B. & C. R. 19.

6514. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6515. *Add. Annotations:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6516a. —— —— **On business premises.**]—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, *e.g.* a wholesale grocer.—*Re* TABOR, *Ex p.* CORK, [1920] 1 K. B. 808; *sub nom. Re* TABOR, *Ex p.* TRUSTEE, 89 L. J. K. B. 352; 122 L. T. 799; 36 T. L. R. 191; [1919] B. & C. R. 299.

Annotations:—**Folld.** *Re* Kaufman Segal & Domb, *Ex* Trustee, [1923] 2 Ch. 89. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6519. *Add. Annotations:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6523. *Add. Annotation:*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

6525. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6561. *Add. Annotation:*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6613. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6614. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

PART XX. SECT. 9, SUB-SECT. 3.—B. (a).

sg. *Pledge without delivery—Indian Contract Act.*]—A railway receipt, providing that delivery of the consigned goods is to be made upon the receipt being given up by the consignee, or by a person whom he names by indorsement thereon, is a document of title within Indian Contract Act, 1872, s. 178 (for which a new section was substituted by the amending Act IV. of 1930), & a pledge of a railway receipt operated under the repealed section as a pledge of the goods. The pledgee does not release the pledge by handing the receipt to the pledgor in order that he may collect the goods from the railway co. & place them in a warehouse upon behalf of the pledgee. Goods so pledged are not in the possession, order or disposition of the pledgor within sect. 52 (2) (c) of the Presidency-towns Insolvency Act, 1909, even where the railway receipt has been handed to the pledgor for the purpose above stated. Further, where the owner of goods hands to a bank indorsed railway receipts relating thereto as security for an advance (even without a formal letter of hypothecation), there is constituted, in the absence of evidence to the contrary, an equitable charge upon the goods which is binding between the owner & the bank without notice to those having custody of the goods; upon a subsequent insolvency of the owner the assignee takes no higher right than the owner had at the commencement of the insolvency.—MADRAS OFFICIAL ASSIGNEE *v.* MERCANTILE BANK OF INDIA, LTD., [1935] A. C. 53; 104 L. J. P. C. 1; 152 L. T. 170; 40 Com. Cas. 143, P. C.—**IND.**

PART XX. SECT. 9, SUB-SECT. 3.—B. (b) i.

6621 ii. —— *Second mortgage of.*]—In 1905, C. the owner of a life policy of assurance, mortgaged it to the insurance co. In Apr. 1907, C. mortgaged the policy & the lands to B., who gave no notice to the co. till Nov. 1920. In June, 1907, C. was adjudicated bkpt.

6625. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6647. *Add. Citations :—sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.
Add. Annotation :—**Refd.** Graham *v.* (1853), 2 C. L. R. 10.

6657. *Add. Annotation :*—**Consd.** *Re* Collins, [1925] Ch. 556.

6659. *Add. Annotation :*—**Apld.** *Re* Collins, [1925] Ch. 556.

6659a. —— ——.]—For some years before his bkpcy. a surveyor & assessment specialist with a staff of clerks had entered into contracts with clients for personal service in the latter capacity. Under these contracts he had to value his clients' properties for rating purposes & give expert evidence on their appeals, his remuneration being a percentage of the reduction of their assessments when obtained. He mortgaged these contracts & the sums to become due on completion thereof to a mtgee., who by special arrangement with the mtgor. gave no notice to the clients so as not to imperil the mtgor 's business position, the mtgor. being allowed to collect the fees when due in his own name & hand them over to the mtgee. At the date of the mtgor.'s bkpcy., some fees (*a*) were due on completed contracts, but some fees (*b*) were still unearned. The trustee employed bkpt. & some of his staff to carry out the uncompleted contracts & earn fees (*b*) :—*Held :* (1) though the work to be done under the contracts required a certain amount of technical skill on which bkpt.'s clients relied, it was nevertheless part of bkpt.'s business, so that the fees (*a*) due at the date of the bkpcy. were due to him " in the course of his trade or business " & being in his order & disposition by the consent of the mtgee. belonged to the trustee under 1914 Act, s. 38 (*c*) ; (2) the mtge. of fees (*b*) earned since the bkpcy. was inoperative against the trustee.—*Re* COLLINS, [1925] 1 Ch. 556 ; 133 L. T. 479 ; *sub nom. Re* COLLINS, *Ex p.* SALAMAN (TRUSTEE), 95 L. J. Ch. 55 ; [1925] B. & C. R. 90.

6663. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

6689. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6696. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

6701. *Add. Annotations :*—**Folld.** Birmingham Banking Co. (Official Liquidators) *v.* Carter (1872), 20 W. R. 354. **Refd.** Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T. 737 ; *Re* Pooley, *Ex p.* Rabbinge (1878), 38 L. T. 663.

6706. *Add. Annotation :*—**Refd.** Simeons Durand's Trustee, [1928] 2 K. B. 66.

6708a. —— **Same day as act of bankruptcy.**]—Though a bkpt. may be up to the ears in insolvency, notice at any fractional period of the day on which the act of bkpcy. is committed, is sufficient to take the case out of the clause of reputed ownership ; if the notice be given before the act of bkpcy. is in fact committed (SIR GEORGE ROSE).—*Re* RICHARDSON, *Ex p.* RICHARDSON (1839), 3 Deac. 496 ; Mont. & Ch. 43, C. of R.

Annotations :—**Refd.** *Re* Worcester, *Ex p.* Agra Bank (1868), 3 Ch. App. 555 ; Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426.

6735. *Add. Annotation :*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6742. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6744. *Add. Annotation :*—**Distd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6745. *Add. Annotations :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857 ; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6745a. Whether mere visible employment of goods in trade or business sufficient.]—(1) In order that goods may come within 1914 Act, s. 38 (*c*), the consent or permission of the true owner must be given not only to their being in the possession, order or disposition of bkpt., but also to their being used in his trade or business. (2) In order that goods may be in the possession, order or disposition of bkpt. in his trade or business within the clause they must be not merely visibly employed in his trade or business, but acquired & used for the purposes of the business.—LAMB *v.* WRIGHT & Co., [1924] 1 K. B. 857 ; 93 L. J. K B. 366 ; 130 L. T. 703 ; 40 T. L. R. 290 ; 68 Sol. Jo. 479 ; [1924] B. & C. R. 386.—CAN.

6745b. Fees due on completed contracts to surveyor & assessment specialist.]—*Re* COLLINS, No. 6659a, *ante.*

6746. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6751a. Must be given both to possession & to use in trade or business.]—LAMB *v.* WRIGHT & Co., No. 6745a, *ante.*

6762. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6773. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

6777. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

6794. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6798. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6802a. —— —— ——.]—In Jan. 1922, G. purchased from bkpts. certain chattels used by them in their business as clothiers, & subse-

In 1915 the insurance co. were paid the amount due on their mtge. & handed the policy to the assignees. In 1920 the assignees surrendered the policy to the insurance co., & received its surrender value, & B. applied for payment of the amount due to him on his mtge. :—*Held :* the equity of redemption in the mtge. was " goods & chattels " within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. " in the possession, order, or disposition of bkpt." by the consent & permission of the true owner.—*Re* CLANCARTY, [1921] 2 I. R. 377.—IR.

PART XX. SECT. 9, SUB-SECT. 5.—A.

6752 i. *Delivery of goods to trustee—After notice stopping goods in transitu—Withdrawal of notice on* [illegible] the trustee could not rely on a withdrawal so induced.—*Re* ROBERTS, [1924] 1 D. L. R. 386.—CAN.

PART XX. SECT. 9, SUB-SECT. 6.—A

6799 ii. —— ——.]—Where there was no immediate delivery of a car to the purchaser nor any change of possession :—*Held :* the sale & transfer were void as against the trustees. —FITZGERALD *v.* MCMORROW, [1923] 3 D. L. R. 619 ; 52 O. L. R. 383 ; 4 C. B. R. 29.—CAN.

quently in consideration of the option to purchase & the hire-rent agreed upon let them on hire to bkpts. at a monthly rental. The chattels consisted of cutting tables, work tables, machines, stools, etc. The agreement was determinable in the event (*inter alia*) of a receiving order in bkpcy. being made against the hirers, upon which all payments made by the hirers were forfeitable & the chattels were to be delivered to the owner. On Sept. 6, 1922, a receiving order was made against the hirers; on Sept. 21 they were adjudicated bkpt., & on Sept. 25 a trustee in the bkpcy. was appointed. On motion by the trustee for a declaration that the chattels formed part of the estate of bkpts. as being in their order & disposition with the consent of the true owner:—*Held:* there was no proof of a general custom of hiring out chattels such as were specified in the agreement, nor was such a custom recognised by the cts. The inference of ownership was inevitable that by reason of the possession & user of the goods in the trade or business of the trader they "must" be the property of bkpts.—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, [1923] 2 Ch. 89; 92 L. J. Ch. 218; 128 L. T. 650; 67 Sol. Jo. 333; [1923] B. & C. R. 1.

6818. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6819. *Add. Annotations:*—**Distd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6821. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6824. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6853. *Add. Annotation:*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6856. *Add. Annotation:*—*As to* (2) **Consd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858. *Add. Annotation:*—**Refd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858a. ——.]—A trader carried on the business of selling & hiring out of pianos largely by means of hire-purchase agreements, by each of which the trader agreed to let on hire a piano, & in consideration the hirer agreed to pay the trader a sum of £4 on the date of hiring & £1 monthly so long as the hirer continued the hiring. The trader agreed that if the hirer should punctually pay him a specified total sum in these instalments, the piano was to become the absolute property of the hirer, but that until then it was to continue the trader's sole property. Early in 1930 the trader entered into a number of trader's agreements by which he agreed to deposit the hire-purchase agreements with the G. Co., Ltd., & on demand to assign to that co. or its nominees the full benefit of those agreements, & in the meantime to hold them on trust for the G. Co. & its nominees. The G. Co. subsequently assigned the benefit of the trader's agreements to pltf. No notice of the assignment was given until after the trader was adjudicated bkpt. on July 23, 1930:—*Held:* the monthly sums which, after the commencement of the bkpcy., had or would become payable in advance under the hire-purchase agreements, if the hirer continued the hiring, were "debts . . . growing due to the bkpt. in the course of his trade or business" within Bkpcy. Act, 1914, s. 38 (*c*), & were therefore properly divisible among the bkpt.'s creditors as being things in action "at the commencement of the bkpcy. in the possession, order or disposition of the bkpt., in his trade or business, by the consent & permission of the true owner" within that sect.—BLAKEY *v.* PENDLEBURY PROPERTY TRUSTEES, [1931] 2 Ch. 255; 100 L. J. Ch. 399; 145 L. T. 524; 47 T. L. R. 503; [1931] B. & C. R. 29, C. A.

Annotation:—**Consd.** Latham *v.* Goldsbury (1933), 49 T. L. R. 258.

6858b. Judgment debt.]—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J. gave notice to S. of the assignment On Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appct. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors:—*Held:* (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was, notwithstanding its conversion into a judg-

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6820 iv. —— *Driving car.*]—The mere driving of other persons in a motor car for pleasure does not justify the inference that the driver must be the owner. Where it is proved that the possession giving rise to the reputation of ownership by the bkpt. was not with the consent of the true owner, which is a question of fact to be determined by the circumstances of each case, the Official Assignee cannot claim the property as passing to him.—*Re* MCKAY, COWIE *v.* OFFICIAL ASSIGNEE, [1933] N. Z. L. R. Supp. 190.—N.Z.

ment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors; (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, &, apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes; (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

6858c. Sums deposited with brewers—By tenant of licensed premises.]—A tenant of licensed premises deposited with the brewers, his landlords, sums to secure the due payment of all amounts becoming due from him to them, whether for rent, goods supplied, or otherwise. He lodged the deposit receipts with his bank as security for his overdraft, which was also guaranteed by G. G. having paid off the overdraft, was subrogated to the rights of the bank, which thereafter held the deposit receipts on his behalf. A receiving order in bkpcy. was made against the tenant on his own petition, & six days later the bank, for the first time, gave notice to the brewers of the charge on the receipts. The balance remaining due from the brewers to the tenant was claimed both by G. & by the trustee in bkpcy. who alleged that it was a debt growing due to the bkpt. & in his possession, order or disposition at the date of the receiving order:—*Held:* the balance of the sums deposited with the brewers was a debt growing due to the bkpt. at the date of the receiving order, & such a debt could be, & in this case was, in the possession, order or disposition of the bkpt. in his trade or business, by the consent & permission of the true owner, under such circumstances that he was the reputed owner thereof.—LATHAM *v.* GOLDSBURY, [1933] 1 K. B. 844; 102 L. J. K. B. 401; 148 L. T. 528; 49 T. L. R. 258; [1933] B. & C. R. 86.

6859. *Add. Annotations:*—**N.F.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6863. *Citations:*—For "5 Ch. App. 520" read "8 Ch. App. 520."

Add. Annotation:—**Refd.** Latham *v.* Goldbury (1933), 49 T. L. R. 258.

6867. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6868. *Add. Annotation:*—**Follid.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6869. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6873. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6879. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6879a. Clothiers—Custom to hire machines.]—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, No. 6802a, *ante.*

6881. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Follid.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6881a. —— —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante.*

6882a. —— —— **Antique furniture.**]—A custom exists in the antique furniture trade to deliver goods to a dealer on approval. In the event of the bkpcy. of such dealer, goods upon his premises are not in his order & disposition within 1914 Act, s. 38.—*Re* FORD, *Ex p.* TRUSTEE, RESTALL, BROWN & CLENNELL'S CASE, [1929] 1 Ch. 134; 140 L. T. 275; 72 Sol. Jo. 517; *sub nom. Re* FORD, *Ex p.* TRUSTEE *v.* RESTELL, BROWN & Co., 97 L. J. Ch. 334; [1928] B. & C. R. 55; *sub nom. Re* FORD, *Ex p.* HAWKINS, 44 T. L. R. 643.

Annotation:—**Apld.** *Re* Ford, *Ex p.* Trustee, Powell's Case, [1929] 1 Ch. 137.

6882b. —— —— —— **Sent by private customer.**]—No trade custom exists of private customers sending articles of furniture to retail dealers for sale on commission or otherwise so notorious as to exempt such articles from the operation of the doctrine of reputed ownership in the event of the bkpcy. of the dealer. But, where such a customer left a table with a retail dealer to be sold on the terms that the dealer should retain the surplus, if any, over an agreed minimum price & upon the bkpcy. of the dealer the table was exposed on his premises with other furniture for sale:—*Held:* as the effect of the custom which was established in *Re Ford, Ex p. Trustee,*

PART XX. SECT. 9, SUB-SECT. 8.—A.

6859 i. *Duty of court—To take notice of alleged custom.*]—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation.—*Re* TORRENS, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—**IR.**

PART XX. SECT. 9, SUB-SECT. 8.—B.

8a. *Undertaker — Custom to hire hearses & funeral carriages.*]—*Re* TORRENS, No. 6859 i., *ante.*—**IR.**

PART XX. SECT. 10, SUB-SECT. 3.—B.

1 (p. 809) i. JOHNSON, LTD. *v.* VICTORIA MINES, LTD. (B. C.), [1930] 1 D. L. R. 57; 10 C. B. R. 23; [1929] 2 W. W. R. 511.—**CAN.**

b (p. 810). Add "*affd. sub nom.* MARTIN *v.* FOWLER, 46 S. C. R. 119."

[illegible] 99; 2 C. B. R. 547.—**CAN.**

Restall, Brown & Clennell's Case, No. 6882a, *ante*, was to prevent the reputation of ownership from attaching to any of the furniture so exposed, the table, which was not distinguished from the other articles of furniture, was not in the bkpt.'s possession in such circumstances that he was the reputed owner thereof.—*Re* FORD, *Ex p.* TRUSTEE, POWELL'S CASE, [1929] 1 Ch. 137; 140 L. T. 276; 72 Sol. Jo. 517; *sub nom. Re* FORD, TRUSTEE *v.* POWELL, 98 L. J. Ch. 144; [1928] B. & C. R. 56.

6885. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6888. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6889. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6890. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6890a. —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante*.

6898. *Add. Annotations:*—**Refd.** French *v.* Gething [1922] 1 K. B. 236; Latham *v.* Goldsbury (1933), 49 T. L. R. 258.

6911. *Add. Annotation:*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912. *Add. Annotation:*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912a. —— **Goods sold in interpleader action—Proceeds in court.**] — *Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post*.

6915. *Add. Annotation:*— **Consd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6916a. —— —— ——.]—*Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post*.

6918. *Add. Annotations:*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791. **Apld.** *Re* Brelsford, [1932] 1 Ch. 24. **Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918a. —— —— **Subsequent withdrawal & return of nulla bona.**]—On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £144, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3:—*Held:* the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.

Quære, whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re* FAIRLEY, [1922] 2 Ch. 791; *sub nom. Re* FAIRLEY, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 140; [1922] B. & C. R. 127; *sub nom. Re* FAIRLEY, *Ex p.* LOW & BONAR, LTD., 38 T. L. R. 893, D. C.

Annotation:—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918b. —— ——.]—On Sept. 17, 1928, resps. recovered judgment in the High Ct. for £215 & costs. On the following day the sheriff levied execution on the goods of the debtor under a writ of *fi. fa.* issued by resps. to enforce their judgment. On Sept. 24, 1928, it was agreed in writing between resps. & the debtor that in consideration of resps. withdrawing execution, the debtor should pay to resps. £15 on account of the debt & costs & the balance thereof by monthly instalments, the debtor undertaking, in case of default in payment of any of the agreed instalments, to authorise the sheriff to retake possession. In pursuance of the agreement the £15 & the costs of the execution were paid; whereupon the sheriff withdrew. Up to Oct. 22, 1929, the amount paid in respect of the instalments was £63 & no more, & on Jan. 10, 1930, the sheriff entered a second time into possession to levy execution for the balance of the debt remaining unpaid. On Jan. 13, 1930, while the sheriff was in possession, a receiving order was made against the debtor on his own petition filed on the same day, & he was adjudicated bkpt. On Jan. 14 resps. received notice of the receiving order. On Jan. 16, 1930, the official receiver, as trustee in the bkpcy., claimed from resps. payment of the two sums so received by them, amounting together to £78, as forming part of bkpt.'s estate available for the general body of his creditors, & on Mar. 12, 1931, issued a notice of motion to enforce his claim. On the hearing of the motion before the judge of the Nottingham county ct., on Apr. 30, 1931, a special case was stated under 1914 Act, s. 100 (3), for the opinion of the High Ct., whether resps. were entitled to retain or were bound to account for & pay to the trustee in bkpcy. the two sums of £15 & £63 so received by them or either of those sums:—*Held:* both sums so received by resps. were, within 1914 Act, s. 40, benefits of the execution for which they were liable to account to the trustee in bkpcy.—*Re* BRELSFORD, [1932] 1 Ch. 24; 146 L. T. 160; *sub nom. Re* BRELSFORD, OFFICIAL RECEIVER & TRUSTEE *v.* SHELL MEX, LTD., 100 L. J. Ch. 365; [1931] B. & C. R. 21.

Annotations:—**Folld.** *Re* Kern (P. E. & B. E.), [1932] 1 Ch. 555. **Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918c. —— ——.]—Sect. 40 of 1914 Act, which enacts that an execution creditor shall not be entitled to retain the benefit of the execution against the trustee in bkpcy., unless he has completed the execution before the date of the receiving order, is a substantive enactment, & the right of the trustee thereunder is not limited to benefits of execution received by the execution creditor after the date to

which the trustee's title to the bkpt.'s property relates back under sect. 37 of 1914 Act.—*Re* KERN (P. E. & B. E.), [1932] 1 Ch. 555; 146 L. T. 570; *sub nom. Re* KERN (P. E. & B. E.), THOMAS HENRY, LTD. *v.* TRUSTEE, 101 L. J. Ch. 257; [1931] B. & C. R. 150.

Annotation :—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6919. ***Add. Annotation :*—Consd.** ***Re*** **Fairley, [1922] 2 Ch. 791.**

6920. ***Add. Annotations :—As to*** **(1) Consd.** ***Re*** Fairley, [1922] 2 Ch. 791; *Re* Godwin, *Ex p.* Trustee *v.* Morris, *Re* Godwin, *Ex p.* Trustee *v.* British Reinforced Concrete Engineering Co., [1935] Ch. 213. **Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70; *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450. *Generally*, **Refd.** *Re* Brelsford, [1932] 1 Ch. 24.

6920a. —— ——.]—On June 1, 1932, a creditor obtained a judgment against the bkpt. for £111 1*s*. On June 16 the judgment creditor caused execution to be levied against the bkpt.'s goods for £121 6*s*. 6*d*. & costs of execution. The sheriff went into possession. On July 2 the bkpt. paid to the judgment creditor a sum of £60, & on July 8 a further sum of £60, & on July 22 he paid to the judgment creditor a further sum of £13 9*s*. 3*d*., making in all the total sum of £133 9*s*. 3*d*., being the full amount due under the judgment, together with the costs of the execution. On Aug. 3, 1932, the judgment creditor instructed the sheriff to withdraw, which he did on the same date, his costs being paid by the judgment creditor. The withdrawal was unconditional & no power of re-entry was reserved. On Nov. 21, 1932, the bkpt. filed his own petition, & a receiving order was made against him on that date. On Dec. 6 he was adjudged bkpt. The trustee in bkpcy. moved in the county ct. for: (*a*) a declaration that the payments made by the bkpt. to the judgment creditor were void as against the trustee by virtue of 1914 Act, ss. 40, 41; (*b*) an order that the judgment creditor should repay to the trustee in bkpcy. the sums paid to him by the bkpt. by virtue of the same sections. The county ct. judge dismissed the application & the trustee appealed :—*Held :* dismissing the appeal, the phrase "the benefit of the execution" in sect. 40 (1), referred solely to the protection obtained by an execution creditor by reason of the issue of a writ of *fi. fa.* & its delivery to the sheriff, & did not include any payments to an execution creditor whether by the sheriff or by the judgment creditor; the section related only to executions which were in fact in existence at one or other of the appropriate dates mentioned in the section, & had no reference to an execution which had been unconditionally withdrawn before any of those dates.—*Re* GODWIN, *Ex p.* TRUSTEE *v.* MORRIS, *Re* GODWIN, *Ex p.* TRUSTEE *v.* BRITISH REINFORCED CONCRETE ENGINEERING CO., [1935] Ch. 213; 104 L. J. Ch. 189; 152 L. T. 392; 51 T. L. R. 118; 78 Sol. Jo. 930; [1934] B. & C. R. 101, D. C.

Annotations :—**Consd.** *Re* **Samuels,** *Ex p.* **Trustee** *v.* **Tee (J. H. S.), [1935] Ch. 341; Folld.** *Re* **Andrews, Official Receiver (Trustee)** *v.* **Standard Range & Foundry Co., [1936] 2 All E. R. 750.**

6920b. —— —— **Sheriff reserving right to re-enter.**]—A judgment creditor having seized a debtor's goods under a writ of *fi. fa.*, an arrangement was come to between the judgment creditor & the debtor in order to avoid a sale. In pursuance of that arrangement the sheriff withdrew, reserving a right of re-entry. Under the arrangement the debtor paid various sums to the judgment creditor in part payment of the debt & in satisfaction of the sheriff's fees. Subsequently the debtor filed his own petition & a receiving order was made against him. At the date of the receiving order the debt had not been paid in full & the sheriff had the power of re-entry :—*Held :* the sums paid by the debtor before the date of the receiving order were not for the "benefit of execution" within 1914 Act, s. 40, & the judgment creditor was entitled to retain them as against the trustee in bkpcy.—*Re* SAMUELS, *Ex p.* TRUSTEE *v.* TEE, [1935] Ch. 341; 104 L. J. Ch. 197; 152 L. T. 454; 51 T. L. R. 169; [1934] B. & C. R. 158.

Annotation :—**Folld.** *Re* Andrews, Official Receiver (Trustee) *v.* Standard Range & Foundry Co., [1936] 2 All E. R. 750.

6920c. —— ——.]—A judgment creditor having seized a debtor's goods under a writ of *fi. fa.*, an arrangement was come to between the judgment creditor & the debtor in order to avoid a sale. In pursuance of that arrangement the sheriff withdraw from possession, reserving the right of re-entry. Under the arrangement the debtor paid various sums to the judgment creditor in part payment of the debt & in satisfaction of the sheriff's fees. The debtor having failed to continue his payments the sheriff re-entered into possession under his power of re-entry. Subsequently the debtor filed his own petition & a receiving order was made against him, & later he became bkpt. At the date of the receiving order the debt had not been paid in full :—*Held :* the words "the benefit of the execution" in sect. 40 (1) of 1914 Act, did not refer to moneys actually received by the creditor in whole or partial satisfaction of his debt, whether under or in consequence of an execution or not, but they referred to the charge which the creditor obtained by the issue of the execution, & to the extent that by the payment of money that charge had been reduced or abrogated there was *pro tanto* no benefit of the execution to be considered. The benefit of the execution could only refer to the charge still remaining under the still subsisting execution for the balance of the debt. Therefore, the sums paid by the debtor before the date of the receiving order were not "the benefit of the execution" within sect. 40 (1), & the judgment creditor was entitled to retain them as against the trustee in the bkpcy.—*Re* ANDREW, *Ex p.* OFFICIAL RECEIVER (TRUSTEE) (No. 2), [1937] Ch. 122; 106 L. J. Ch. 195; 80 Sol. Jo. 932; [1936-7] B. & C. R. 205; *sub nom. Re* ANDREW, OFFICIAL RECEIVER *v.* STANDARD [illegible] & FOUNDRY CO., LTD. (No. 2), [1936] 3 All E. R. 450; 155 L. T. 586; 53 T. L. R. 90, C. A.

6921. ***Add. Annotation :*—Consd.** ***Re*** **Fairley, [1922] 2 Ch. 791.**

6939. *Add. Annotation :*—**Refd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6941. *Add. Annotations :*—**Refd.** *Re* Godwin, *Ex p.* Trustee *v.* Morris, *Re* Godwin, *Ex p.* Trustee *v.* British Reinforced Concrete Engineering Co., [1935] Ch. 213 ; *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6947. *Add. Annotation :*—**Apld.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

6952a. —— —— **Registrar of county court & sheriff same person—Notice received in capacity of registrar.**]—The condition of service within the fourteen days limited by 1914 Act, s. 41 (2), of notice on the sheriff of a bkpcy. petition having been presented is sufficiently complied with, so as to entitle the official receiver to be paid the moneys retained by the sheriff, if during that period he has acquired knowledge of the presentation of a petition.

M., who held the office of high bailiff of a county ct., in pursuance of 1914 Act, s. 41 (2), retained the moneys paid to him to avoid a sale of the debtor's goods. Before the expiration of the prescribed period of retention a bkpcy. petition was presented by the debtor & a receiving order thereon was signed by M., who then held the office of registrar of the same ct. of which he was also high bailiff. A formal notice in writing was sent by the official receiver to M. of the presentation of the petition & of the making of the receiving order, which was not received until after the fourteen days had expired :—*Held :* knowledge of the presentation of the petition acquired by M. as registrar constituted a sufficient compliance with the requirement of s. 41 (2), of service of notice upon him as high bailiff, with the result that the official receiver was entitled to be paid the moneys in the hands of the high bailiff.—*Re* HARRIS, [1931] 1 Ch. 138 ; 99 L. J. Ch. 448 ; 144 L. T. 232 ; [1929] B. & C. R. 211, D. C.

—— —— —— ——.]—*See, now,* Bkpcy. Rules, 1915, r. 323B.

6954. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6955. *Add. Annotation :*—**Refd.** *Re* Fairley, [1922] 2 Ch. 791.

6961. *Add. Annotations :*—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606 ; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283.

6964. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

6965. *Add. Annotation :*—**Consd.** *Re* Sarjeant, [1923] 2 Ch. 302.

6965a. **"Any other petition"—Notice not given within fourteen days.**]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money :—*Held :* the words in 1914 Act, s. 41 (2), "or on any other petition of which the sheriff has notice," were not to be qualified by the addition of the words "within the said fourteen days" so as to permit the sheriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen days, then he must hold to see whether an order would be made on that other petition, or on any petition.—LATTER *v.* JUCKES & PAGE, [1927] 1 K. B. 17 ; 96 L. J. K. B. 137 ; 136 L. T. 177 ; 42 T. L. R. 723 ; 70 Sol. Jo. 905 ; [1926] B. & C. R. 133, C. A.

6966. *Add. Annotation :*—**Refd.** *Re* British Salicylates, [1918–19] B. & C. R. 160.

6979. *Add. Annotation :*—**Refd.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

6995. *Add. Annotation :*—**Consd.** *Re* Woods (Bristol), Ltd., [1931] 2 Ch. 320.

6998a. *S. P.* BLOXHOLM *v.* OLDHAM (1750), cited in 1 Burr. at p. 22 ; 97 E. R. 168.

Annotation :—**Consd.** Balme *v.* Hutton (1831), 2 Cr. & J. 19.

7000a. *S. P.* BELCHER *v.* MAGNAY (1843), 12 M. & W. 102 ; 1 Dow. & L. 441 ; 13 L. J. Ex. 49 ; 2 L. T. O. S. 124 ; 7 Jur. 1160 ; 152 E. R. 1128.

Annotations :—**Refd.** Cheston *v.* Gibbs (1843), 12 M. & W. 111 ; Edwards *v.* Evans (1843), 2 L. T. O. S. 75.

PART XX. SECT. 10, SUB-SECT. 4.—A.

6934 ii. —— *Bankruptcy Act, s.* 11 (3).]—Until a sheriff with whom a writ of execution has been placed receives a copy of the assignment by debtor as provided by the above sect. "or publication of notice in the *Gazette* as provided by the Act," he is not safe in not attaching debtor's goods. A statement made by the solr. for the assignee to a sheriff's officer that an assignment has been made, does not amount to notice to the sheriff, & is not a ground for depriving him of the costs of a levy made after such statement.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077 ; 2 C. B. R. 579.—**CAN.**

6934 iii. —— *Extra Judicial Seizures Act, R. S. A.,* 1922 (*c.* 96).]—Bkpcy. Act, 1919, s. 11 (3), does not apply to property seized under the above Act.—*Re* HAMILTON & OAKES. [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

sc. Duty of sheriff to retain costs.]—Where at the time of an authorised assignment the sheriff had in his hands the proceeds of an execution sale of the debtor's property, he errs in paying over those proceeds to the trustee without first subtracting the costs, & the trustee should return the amount of the costs to the sheriff.—*Re* BELL'S ESTATE, [1934] 2 W. W. R. 417.—**CAN.**

PART XX. SECT. 10, SUB-SECT. 4.—C.

6983 iii. ——.]—While a sheriff is not entitled to poundage unless he has obtained some money for the execution creditor, yet r. 495 contemplates that the sheriff is to receive something, even though no money has been realised by him, since it provides that he is to be entitled to poundage "or such less sum as a judge may deem reasonable."—MOROSCHAN *v.* MOROSCHAN, [1921] 2 W. W. R. 147 ; 14 Sask. L. R. 233 ; 59 D. L. R. 353 ; 1 C. B. R. 493.—**CAN.**

6983 iv. —— *Seizure after authorised assignment.*]—TOWERS *v.* SOLOMON, [1923] 1 W. W. R. 1184 ; 3 C. B. R. 806.—**CAN.**

6990 i. *Possession money—Sheriff continuing in possession—After notice of assignment.*]—The costs to which the execution creditor is entitled are the costs of execution up to the time notice of the assignment is given the sheriff.—BAKER *v.* RICHARDS, [1918] 2 W. W. R. 902 ; *affd.* 59 S. C. R. 656 ; 49 D. L. R. 684.—**CAN.**

7006a. —— Sale after bankruptcy—Of goods sufficient to satisfy two executions—One delivered after bankruptcy.]—*Held:* the assignees might recover in trover for such of the goods as were sold after the sheriff had raised money enough to satisfy the first execution.—STEAD *v.* GASCOIGNE (1818), 8 Taunt. 527; 129 E. R. 488.

Annotations:—**Refd.** Giles *v.* Grover (1832), 9 Bing. 128; Batchelor *v.* Vyse (1834), 4 Moo. & S. 552; Aldred *v.* Constable (1844), 6 Q. B. 370.

7008a. —— Stay of proceedings—When ordered.]—GIBSON *v.* HUMPHREY (1833), 1 Cr. & M. 544; 2 Dowl. 68; 3 Tyr. 588; 2 L. J. Ex. 234; 149 E. R. 516, Ex. Ch.

Annotation:—**Refd.** Moon *v.* Raphael (1835), 2 Bing. N. C. 310.

7030. *Add. Citation:*—*affg.* S. C. *sub nom.* R. *v.* EDWARDS (1853), 9 Exch. 32.

7032. *Add. Annotation:*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369.

7042a. —— 6 Geo. 4, c. 16, s. 81—Two calendar months—Computation.]—By above sect. all executions, etc., executed or levied more than two calendar months before the issuing of the commission, are valid. Deft., the sheriff, seized the goods of W. on Aug. 13, in execution, upon a judgment on a warrant of attorney at the suit of pltf., at about eleven o'clock, & at about one on Oct. 13 a commission of bkpcy. issued against W.:—*Held:* (1) the ct. would take notice of the fraction of a day, in putting a construction upon that [illegible] that more than two calendar months had elapsed; (2) the day of issuing the commission was to be included in the computation.—GODSON *v.* SANCTUARY (1832), 4 B. & Ad. 255; 1 Nev. & M. K. B. 52; 2 L. J. K. B. 19; 110 E. R. 451.

Annotations:—*As to* (1) **Refd.** R. *v.* Middlesex JJ. (1845), 3 Dow. & L. 109. *As to* (2) **Refd.** Whitmore *v.* Robertson (1841), 11 L. J. Ex. 43; Skey *v.* Carter (1843), 11 M. & W. 571; Whitmore *v.* Greene (1844), 2 Dow. & L. 174.

7058. *Add. Annotation:*—**Refd.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

7063. *Add. Annotations:*—*As to* (1) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 101 L. J. Ch. 401; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

7070. *Add. Annotation:*—**Refd.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. [illegible]

7079. *Add. Citation:*—*sub nom. Re* PLUMMER, *Ex p.* TRUSTEE, 69 L. J. Q. B. 936; 48 W. R. 634; 44 Sol. Jo. 572; 7 Mans. 367, C. A.

Add Annotation:—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7085. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7086. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7087. *Add. Citation:* — *subsequent proceedings* (1805), 11 Ves. 377.

7089a. Declaration of trust without consideration—Credit in account of money to wife.]—*Held:* not binding on bkpt.'s creditors.—*Re* SMITH, *Ex p.* SMITH (1812), 1 Rose, 208.

Annotation:—**Consd.** Parsons *v.* Coke (1858), 27 L. J. Ch. 828.

7091. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7094. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

PART XX. SECT. 10, SUB-SECT. 8.

y (p. 830) i. —— —— *Memorandum that title subject to costs of prior execution.*]—On an assignment under Bkpcy. Act, where there are executions recorded against land of the assignor, the registrar of land titles, in making transmission of title to the assignee, should make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of registration & sheriff's fees of all the executions.—*Re* LAND TITLES ACT, SASKATCHEWAN GENERAL TRUST CORPN., LTD.'S CASE, [1923] 3 W. W. R. 628.—**CAN.**

7069 i. *Garnishee order.*]—A debt was attached by a garnishee order under a judgment which was still subsisting:—*Held:* a receiving order under Bkpcy. Act, s. 11, did not rank in priority to such garnishment.—*Re* BLOUIN, GAGNON *v.* GRAIN & PROVISION CO., [1924] 1 D. L. R. 332; Q. R. 35 K. B. 161.—**CAN.**

d (p. 837) i. —— *Priority.*]—A creditor has priority for costs of execution once the writ is placed in the hands of the sheriff.—*Re* FERGUSON, [1935] 2 D. L. R. 473; O. R. 223.—**CAN.**

sf. *Payment by contractor to prevent removal & sale by sheriff of sub-contractor's plant & materials—Bankruptcy of sub-contractor—Effect of.*]—*Re* STEWART (Ont.), [1926] 2 D. L. R. 1043; 7 C. B. R. 680.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 1.

7078 ii. —— *Bankruptcy Act, s.* 29.]—"Settlement" in the above sect. discussed.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

7078 iii. *S. P.* TRADERS TRUST CO. *v.* COHEN (Man.), [1927] 3 W. W. R. 473.—**CAN.**

7086 ii a. —— ——.] —*Held:* a gift not being hedged about with conditions was not a settlement within Bkpcy. Act, 1908, s. 75.—BRAITHWAITE *v.* BRAITHWAITE, [1923] N. Z. L. R. 1186.—**N.Z.**

j i. —— ——.]—Where insured, under a policy of life insurance, declares it to be for the benefit of his wife, the trust created is not invalidated by his subsequent insolvency, & creditors of insured have no rights which would interfere with the rights of his wife even though the endowment policy matures during the life of insured.—BANK OF BRITISH NORTH AMERICA *v.* EDGECOMBE (1919), 46 N. B. R. 105.—**CAN.**

sg. *Conveyance of property to wife & sons.*]—Where a transfer in the nature of a settlement was made for the purpose of defeating creditors:—*Held:* though it would not be set aside, yet the creditors might seek payment of their claims out of the property transferred.—KIEHL *v.* FUSSEL (1922), 68 D. L. R. 780.—**CAN.**

r i. *Purchase of property & investment of money in wife's name.*]—Where property had been acquired & money invested by a husband in the name of his wife for the purpose of defeating his creditors:—*Held:* the property belonged to the husband, & the proceeds received by the wife from a sale of furniture owned by the husband should be paid to a receiver.—MCCURDY *v.* NEVE (1923), 51 N. B. R. 123.—**CAN.**

sj. *Declaration of trust in favour of wife—In pursuance of alleged antenuptial settlement.*]—*Held:* a settlement within Bkpcy. Act, s. 29 (1), & null & void.—*Re* ALIOTIS & CLIRIS, [1923] 1 D. L. R. 348; 56 N. S. R. 43; 3 C. B. R. 600.—**CAN.**

sk. *Settlement on creditor.*]—On Jan. 29, 1925, J., being in embarrassed circumstances & indebted, amongst others, to M. for £1,200, settled certain land on M., & another upon trust for herself & her only child during her life & after her death for her child absolutely. A private meeting of J.'s creditors was held on Apr. 22, 1925, & a committee appointed to investigate her affairs, & it was agreed to accept £200 from M. to be distributed among the creditors in full payment of their debts. Some of the creditors, including the R. Co., refused to carry out this arrangement, but on the faith that it would be carried out, J., on Apr. 28, paid M. £100 on account of his debt. On June 5 the debtor filed a petition for liquidation, but before the meeting on June 24 the R. Co. served a debtor's summons. The R. Co. had notice of the meeting for June 24, but did not attend. This meeting was attended by creditors whose indebtedness was about two-thirds of the total sum. They unanimously passed a resolution for liquidation by arrangement, & appointed a trustee. On the hearing of an application by the debtor & the trustee to dismiss the debtor's summons it was held that the application must be dismissed, but as the creditors who absented themselves from the liquidation meeting should have & could have attended it, they must pay the costs. The bkpcy. proceedings were continued, & a trustee appointed. The trustee then applied to have the settlement to M. delivered up to be cancelled & for repayment of the £100 paid to M. on Apr. 28, 1925:—*Held:* the settlement was not made in good faith & must be delivered up. The payment of £100 to M. was a fraudulent preference, & it must be repaid to the trustee.—*Re* JEFFREYS (1925), 21 Tas. L. R. 31.—**AUS.**

7096a. Settlement of property in exercise of general power of appointment.]—*Held:* not within 1914 Act, s. 42.—*Re* MATHIESON, [1927] 1 Ch. 283; 71 Sol. Jo. 18; *sub nom. Re* MATHIESON, MOORE (TRUSTEE) *v.* MATHIESON, 96 L. J. Ch. 104; [1927] B. & C. R. 30; *sub nom. Re* MATHIESON, *Ex p.* TRUSTEE, 136 L. T. 528, C. A.

7096b. Property accruing "after marriage in right of wife."]—Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to 1914 Act, s. 42.—*Re* BOWER WILLIAMS, *Ex p.* TRUSTEE, [1927] 1 Ch. 441; 96 L. J. Ch. 136; 136 L. T. 752; 43 T. L. R. 225; 71 Sol. Jo. 122; [1927] B. & C. R. 21, C. A.

7098. *Add. Annotation:*—**Refd.** Jagger *v.* Jagger, [1926] P. 93.

7104. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94. *As to* (2) **Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7104a. —— Plaintiff in compromised action against settlor.]—*Re* COLE (A. V. & M. E. M. A.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, No. 7121a, *post.*

7105. *Add. Annotation:*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

7106. *Add. Annotation:*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7109. *Add. Annotation:*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7113a. —— Gift by brother to sister.]—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920. "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7*s.* 4*d.* for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant to pay into ct. £600 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & the execution creditors. Pursuant to the order the sheriff sold the goods on Apr. 28, 1920, & on May 20, 1920, paid the sum of £202 12*s.* 2*d.* into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him:—*Held:* (1) the deed of gift was a voluntary settlement &, being made within two years of the bkpcy., was void (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title.—*Re* CHIANDETTI, *Ex p.* TRUSTEE (1921), 91 L. J. K. B. 70; 37 T. L. R. 984; [1921] B. & C. R. 82.

7118. *Add. Annotation:*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7119a. —— Donee taking over liability for mortgage debt.]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge.; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary settlement under 1914 Act, s. 42:—*Held:* there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re* CHARTERS, *Ex p.* TRUSTEE, [1923] B. & C. R. 94.

7121a. —— Compromise of action.]—A *bonâ fide* compromise of a *bonâ fide* action claiming rights against a deft.'s property is valuable consideration within 1914 Act, s. 42, for a settlement of that property made by deft. under that compromise, & pltf. is the purchaser within that sect. It is not the business of the Ct. of Bkpcy. before which the settlement is subsequently impeached to consider whether the action could possibly have succeeded if fought out to a finish.—*Re* COLE (A. V. & M. E. M.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, [1931] 2 Ch. 174; 100 L. J. Ch. 316; 145 L. T. 484; [1931] B. & C. R. 7.

Annotation:—**Consd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

7122. *Add. Citation:*—*sub nom. Re* MACDONALD, *Ex p.* MCCULLUM, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

PART XX. SECT. 11, SUB-SECT. 2.

h 1. —— *Purchased by husband for wife—To trustee during minority of wife—Transfer to wife at majority.*]—*Held:* not a settlement on the wife in consideration of marriage & void as the trustee.—*Re* ESTATE, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 3.

7107 iii. —— *Question of fact.*]—*Re* GRANT (N. S.), [1926] 1 D. L. R. 681; 7 C. B. R. 254.—**CAN.**

s1. *Good faith—Onus of proof.*]—*Re* (N. S.), [1929] 1 D. L. R. 528; 10 C. B. R. 311.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 4.

y 1. —— *Onus of proof.*]—Bkpcy. Ordinance of the Straits Settlements,

7125. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7127. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7129. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Mathieson, [1927] 1 Ch. 283.

7133. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7134. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7135. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7136. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7138. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7142. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7147. *Add. Annotation :*—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

7148. *Add. Annotations :*—**Consd.** *Re* Baker, *Ex p.* Trustee *v.* Baker & Arnold, [1936] Ch. 61. **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7149a. Settlor having power to raise sum in excess of debts.]—On Mar. 19, 1932, the settlor executed a voluntary deed of settlement by which he assigned all his interests under two wills to trustees upon certain trusts. By clause 5 he gave himself power at any time to raise the sum of £150 without the consent of the trustees. At the date of the settlement his debts did not exceed £100. On Feb. 22, 1935, he was adjudicated bkpt.:—*Held :* the deed was not void under sect. 42 (1) of 1914 Act, against the trustee in bkpcy.—*Re* Baker, [1906] Ch. 61; 105 L. J. Ch. 33; 154 L. T. 101; *sub nom. Re* Baker, *Ex p.* Trustee *v.* Baker & Arnold, [1934–5] B. & C. R. 214.

7153a. ——.]—*Re* Dent, *Ex p.* Trustee, No. 2902a, *ante.*

7155a. Covenant to pay premiums on life policy.]—A. & B. were traders in partnership. In 1927 both partners were adjudicated bankrupt. In 1910, A. on his marriage had executed an ante-nuptial settlement, by which he (*inter alia*) covenanted with the trustees of the settlement to keep up a life policy on his life then existing & to pay the premiums, etc. On the bkpcy. of the two partners the trustees of the settlement lodged a proof in the bkpcy. of A. with regard to the covenant to keep up the policy, for a sum that was arrived at by commuting in a single payment the annual premiums payable to keep up the policy & to make it fully paid. The trustee in bkpcy. rejected the proof on the ground that under 1914 Act, s. 42 (2), their claim was postponed until all the other creditors for valuable consideration in money or money's worth had been satisfied, & he alleged that the assets available would not be sufficient:—*Held :* the covenant fell within 1914 Act, s. 42 (2), & the trustee was right in rejecting the proof, as being a claim for something which was only provable after the other creditors for valuable consideration in money or money's worth had been satisfied, & also having regard to 1914 Act, ss. 33 (6); 42 (2), & 63 (1), the right of the trustees to put in a proof must depend on all the creditors of the partnership between A. & B., the joint creditors of the partnership, as well as the separate creditors of A., being first satisfied.—*Re* Cumming & West, *Ex p.* Neilson & Craig *v.* Trustee, [1929] 1 Ch. 534; 141 L. T. 61; *sub nom. Re* Cumming, *Ex p.* Neilson & Craig *v.* Adamson (Trustee), 98 L. J. Ch. 83; [1929] B. & C. R. 4.

7156. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7158. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7159. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch 283.

7161a. Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.]—*Re* Dent, *Ex p.* Trustee, No. 2902a, *ante.*

7164. *Add. Annotation :*—**Apprvd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. D. 515.

7165. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7166a. —— ——.]—To constitute a fraudulent preference three conditions must be fulfilled; (1) that the payment is made by a person unable to pay his debts as they become due from his own money; (2) that it in fact prefers one creditor over others; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment

s. 50 (1), provides that: "Any settlement of property, not being . . . a settlement made in favour of a purchaser . . . in good faith & for valuable consideration, . . . shall, if the settlor becomes bkpt. within two years after the date of the settlement, be absolutely void as against the official assignee"; & by sect. 50 (3): "'Settlement' for the purposes of this sect. includes any conveyance or transfer of property . . .":—*Held :* upon the true construction of the above sect. the onus is upon the official assignee to prove that a conveyance which he is seeking to set aside thereunder was not made in good faith & for valuable consideration.—Chear Soo Tuan, Official Assignee of the Estate of *v.* Khoo Saw Cheow, [1931] A. C. 67; 100 L. J. P. C. 45; 144 L. T. 130; [1929–30] B. & C. R. 270, P. C.—**STRAITS SETTLEMENTS.**

PART XX. SECT. 12, SUB-SECT. 1.

7164 iii a. ——.]—To establish a fraudulent preference by an insolvent debtor where bkpcy. has supervened within three months of the transfer of the property to the creditor, the following conditions must be fulfilled: (*a*) the debtor must have acted with a view to giving that creditor a preference over the other creditors—*i.e.*, that the real dominant & substantial motive was the desire to prefer the particular creditor; & (*b*) the creditor must have accepted the transfer with knowledge that the intention of the debtor was a desire to prefer the particular creditor.—*Re* Burns, *Ex p.* Official Assignee in Bankruptcy, [1934] N. Z. L. R. 99; G. L. R. 364.—**N.Z.**

7164 x. ——.]—A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the part of debtor to prefer.—Burns *v.* Royal Bank of Canada, Burns *v.* Graham (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—**CAN.**

7164 xi. ——.]—Where the delivery of goods was not a disposition in the ordinary course of business & the effect was to prefer defts.:—*Held :* it should be set aside.—Jacobson, etc. *v.* Jacobson, etc. (1920), App. D. 75.—**S. AF.**

7164 xii. ——.]—The intention to give a preference is an intention in fact, & must be an intention entertained by the debtor. There can be no intention to prefer if the payment is made in the ordinary course of business.—Canadian Credit Men's Assn., Ltd. *v.* Jenkins, [1928] 3 D. L. R. 139; 62 O. L. R. 281; 10 C. B. R. 77.—**CAN.**

is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT (1926), 134 L. T. 765.

7171. *Add. Annotation :*—**Reld.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172. *Add. Annotation :*—**Reld.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172a. —— ——.]—(1) Debtor was adjudged bkpt. on his own petition on July 6, 1923, & for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2*s.* in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20*s.* in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor :—*Held :* the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bkpt.

(2) In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer.—*Re* HOYLE, *Ex p.* TRUSTEE, [1924] B. & C. R. 22, D. C.

7167 i. *revsd.* (1915), 51 S. C. R. 554.

7167 xvi. —— ——.]—Where a mtgee. knew the mtgor. could not meet his current liabilities but believed he had more than sufficient property to pay his debts, & the conveyances were not made to give the mtgee. an unjust preference, who acted *bonâ fide* & without intent to delay creditors :—*Held :* the mtge. was valid.—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—**CAN.**

7167 xvii. —— ——.]—Knowledge that debtor has ceased to be able to meet his liabilities as they become due will render payments within three months of the bkpcy. by debtor to a creditor fraudulent & voidable as against the trustee in bkpcy.—STEVENSON *v.* TAYLOR, *Re* CANADIAN CAP CO., LTD. (1922), 70 D. L. R. 853.—**CAN.**

7167 xviii. —— ——.]—Where certain transactions were impeached as being preferential :—*Held :* the *primâ facie* presumption of their invalidity had not been rebutted by showing that they were made as required by Bkpcy. Act, s. 32, since they were made with knowledge on the part of the creditor that debtor was "insolvent," as defined by sect. 2 (*i*), & therefore were not made in good faith.—*Re* LONGMORE (1922), 52 O. L. R. 570; 3 C. B. R. 200.—**CAN.**

7167 xix. —— ——.]—Where three partners bought out the fourth & took $1500 from A. for a quarter share in the partnership, & subsequently A. advanced $400 on the security of a chattel mtge. knowing the firm was insolvent :—*Held :* the mtge. was void as against creditors.—*Re* UNITY MANUFACTURING CO., MOORE'S CLAIM, [1923] 1 D. L. R. 84; 3 C. B. R. 396.—**CAN.**

7167 xx. —— ——.]—A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

7167 xxi. —— ——.]—To make a security given a creditor a fraudulent preference under Fraudulent Preferences Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be innocent of any fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of debtor.—WOLFE *v.* SMITH & BRUER, [1923] 3 D. L. R. 54; [1923] 3 W. W. R. 375.—**CAN.**

7167 xxii. —— ——.]—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

7167 xxiii. —— ——.]—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—**CAN.**

7167 xxiv. —— ——.]—*Re* VOGUE FUR SHOP, LTD., *Ex p.* PAQUET CO., [1925] 1 D. L. R. 785; 5 C. B. R. 386.—**CAN.**

7167 xxv. —— ——.]—*Re* FULTON, [1926] 2 D. L. R. 277; 58 O. L. R. 400.—**CAN.**

7167 xxvi. —— ——.]—*Re* CUDNEY (Ont.), [1928] 1 D. L. R. 699; 8 C. B. R. 559.—**CAN.**

7167 xxvii. —— —— *Circumstances putting creditor on enquiry.*]—*Re* MCQUILLAN, *Ex p.* ROYAL BANK (Ont.), [1928] 2 D. L. R. 331; 10 C. B. R. 73.—**CAN.**

g i. —— *Valuable consideration not given.*]—Lack of consideration will usually imply a suggestion that a conveyance was made unduly to prefer one creditor, & where the result of such conveyance is that the grantor's creditors will be defrauded the conveyance will be set aside without proof, apart from the nature of the conveyance itself, of the fraudulent intent of the grantor & the grantee.—DOTY *v.* MARKS, [1924] 3 D. L. R. 687; 55 O. L. R. 147.—**CAN.**

g ii. —— *Security taken.*]—A person who makes a *bonâ fide* advance to another person or company when it is on the eve of insolvency & takes security therefor does not thereby come within sect. 64 of Bkpcy. Act relating to preferred creditors, if, at least, he is not at the time already a creditor; & even one who is already a creditor may, in special circumstances, make such an advance & take a valid security therefor as well as for his pre-existing debt. Moreover, if a preferred creditor within the meaning of the Act did not take his security with the intent of procuring a preference to himself over other creditors the transaction stands.—*Re* BRITISH COLUMBIA BOND CORPN., LTD. & LANG, [1931] 1 W. W. R. 286; [1931] 2 D. L. R. 985; 43 B. C. R. 481; 12 C. B. R. 213.—**CAN.**

7169 iii. —— *Transactions between relatives.*]—Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required.—BROWN *v.* BULMER (1922), 65 D. L. R. 180.—**CAN.**

7169 iv. —— ——.]—In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bonâ fide* for full value.—WAGNER *v.* HARTOWS, [1923] 1 D. L. R. 186; [1922] 3 W. W. R. 1050.—**CAN.**

7169 v. —— ——.]—*Re* READY & CASS, [1924] 2 D. L. R. 528; 33 B. C. R. 371.—**CAN.**

7169 vi. ——.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three months debtor was made bkpt. :—*Held : primâ facie* this agreement constituted a fraudulent preference which the creditors preferred must rebut.—*Re* DALE & CARROLL, [1924] 4 D. L. R. 597; 5 C. B. R. 139.—**CAN.**

7169 vii. ——.]—The *onus* of proof of an intention by debtor to prefer a particular creditor lies on the official assignee.—*Re* HARDY (NO. 2), [1922] N. Z. L. R. 613.—**N.Z.**

7172 i. —— *What must be proved.*]—B., who was in possession of business premises under a lease not in writing from pltf., made an assignment to deft. co. for the benefit of creditors, & on the same day executed a surrender of the lease :—*Held :* as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with property in fraud of creditors.—BELL *v.* CHARTERED TRUST & EXECUTOR CO., CHARTERED TRUST & EXECUTOR CO. *v.* BELL & BURSEY (1919), 46 O. L. R. 192; 49 D. L. R. 113; 17 O. W. N. 88.—**CAN.**

7173 i. "*Transfer.*"]—A mtge. under Sask. Land Titles Act is a "transfer" within the meaning of Bkpcy. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtge. shall have effect as security but shall not operate as a transfer of the land thereby charged.—*Re* CARSON, [1922] 1 W. W. R. 204; 2 C. B. R. 187; 63 D. L. R. 352; 15 Sask. L. R. 94.—**CAN.**

7173 ii. ——.]—*Re* MARITIME RADIO CORPN., LTD. (N. B.), [1927] 2 D. L. R. 450; 8 C. B. R. 153.—**CAN.**

sd. *Assignment & Preferences Act, R.S.O.*, 1927—*Superseded by Bankruptcy Act.*]—Assignments & Preferences Act, R.S.O., 1927, is now superseded by the Bkpcy. Act, & cannot be resorted to in respect of preferential transactions.—*Re* TRENWITH, [1934] 3 D. L. R. 195; O. R. 326.—**CAN.**

sf. *Effect of Bankruptcy Act—On Fraudulent Preferences Act, R.S.B.C.*]—A debtor who had not yet been adjudged a bkpt. or made an authorised assignment returned his stock on hand

7176a. —— Preference by agent of debtor.]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts. it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals, & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principal, under a contract other than the S. contracts & the other to the extent of £647 in payment for goods delivered by S. & Co. on credit terms not then expired :—*Held :* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* DRABBLE BROS., [1930] 2 Ch. 211 ; 99 L. J. Ch. 345 ; 143 L. T. 337 ; 74 Sol. Jo. 464 ; [1931] B. & C. R. 200, C. A.

7177. *Add. Citation :*—40 L. T. 404.

7181. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

7183a. Payment to agent of creditor — Whether payment to "person in trust for creditor."]—*Re* MORANT, *Ex p.* TRUSTEES, No. 7414a, *post.*

7183b. "Surety or guarantor"—Who is.]—*Re* CONLEY, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD. ; *Re* CONLEY, *Ex p.* TRUSTEE *v.* LLOYDS BANK, LTD., [1937] 4 All E. R. 438 ; 54 T. L. R. 158.

7185a. Payment of overdraft—Preference of guarantor.]—The father of the bkpt. had guaranteed the payment of the overdraft of the bkpt. whether on his business or private account up to £2,000, which was the permitted amount of overdraft by applt. bank. In Mar. 1932, the bkpt. was in obvious financial difficulties & was aware of his insolvency. He carried on business until Oct. 1932, but on Oct. 11 he gave notice that he was about to suspend payment, & on Oct. 22 a petition in bkpcy. was presented against him. On Nov. 23 a receiving order was made, & on Dec. 9 he was adjudicated bkpt. The overdraft had been over £2,000, but by Sept. 12, 1932, was reduced to just below that sum. After Sept. 12 he drew cheques in favour of his creditors, but paid in cheques of greater amount, & at the date of the petition in bkpcy. he had reduced his business & private accounts' overdraft to £1,301 15*s.* 7*d.* In May, June, July & to deft. co., the creditor from which he had bought it. Pltfs., judgment creditors, sought to set aside the transfer under Fraudulent Preferences Act, R.S.B.C., 1924. Deft. contended that said Act had ceased to be operative since the passing of Bkpcy. Act, R.S.C., 1927 :—*Held :* assuming for the purposes of the argument that the debtor was in insolvent circumstances when the transfer complained of was made & that the transfer was "with a view of giving" deft. co. a preference over other creditors, pltfs. were, under the circumstances, entitled to invoke the provisions of Fraudulent Preferences Act.—GARD *v.* YATES, [1936] 1 W. W. R. 212 ; 2 D. L. R. 50 ; 50 B. C. R. 353.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 2.

7174 vii. —— *Transfer in bank books.*]—The transfer of a sum of money from the current account of a co. to the liability account of the co. in the books of the bank, thus reducing the liability of the co. to the bank by the same amount, when the manager of the bank was aware that the co. was insolvent & on the verge of being declared bkpt. :—*Held :* not a set-off or payment by the debtor, & therefore not a fraudulent preference.—*Re* SUTCLIFFE & SONS, LTD., [1933] O. R. 120 ; 1 D. L. R. 562.—**CAN.**

m i. *Property conveyed to creditor by registered conveyance—Unregistered re-conveyance to debtor without notice.*]—*Held :* property must pass to the trustee in bkpcy.—*Re* MCCUAIG & BRAY, [1924] 3 D. L. R. 44 ; 2 W. W. R. 373 ; 4 C. B. R. 660.—**CAN.**

m ii. *Property covered by Exemptions Act.*]—Sect. 64 of Bkpcy. Act, R. S. C., 1927, which provides that preferential conveyances to creditors within three months prior to an authorised assignment shall be deemed fraudulent & void as against the trustee, does not apply to dealings by the debtor with his exempt property.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* UMBEL & GILLESPIE GRAIN CO., LTD., [1931] 3 W. W. R. 145.—**CAN.**

ss. *Provision in fire insurance policy for payment to bank.*]—A provision in a fire insurance policy that the amount of the loss shall be payable to a bank does not operate as an assignment of the policy to the bank, nor can it be said, in the circumstances of the case, to constitute an illegal preference under Bkpcy. Act, 1927 (c. 12).—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67 ; [1929] 4 D. L. R. 1028 ; *affg.*, 47 Que. K. B. 383 ; 10 C. B. R. 212.—**CAN.**

sb. *Effect of Bankruptcy Act—On Assignments & Preferences Act (Ont.).*]—In a proceeding in bkpcy. in Ontario, the trustee in bkpcy. may invoke the aid of the ct. to set aside as preferential a transaction between the bkpt. & a creditor which took place more than three months before the making of the authorised assignment or receiving order, upon the ground that the transaction was preferential under Assignments & Preferences Act, R. S. O., 1927, & the trustee in bkpcy. is a person entitled to set up the provisions of that Act & attack the transaction.—*Re* POMMIER, [1930] 4 D. L. R. 113 ; 65 O. L. R. 415 ; 11 C. B. R. 449.—**CAN.**

sc. *Promissory note.*]—Where a payee of a promissory note negotiates it before maturity to a creditor in settlement of a debt, & within three months of said transfer of the note the payee is adjudicated a bkpt. or makes an authorised assignment under Bkpcy. Act, R. S. C., 1927, the transfer should not, upon the application of the trustee in bkpcy., be set aside as a fraudulent preference under sect. 64 of said Act, when the maker of the notes indicates that he has good defences, legal & equitable, to a claim or an action by the payee, or his or its representative, the trustee in bkpcy. for payment, & also insists upon his right of set-off against such a claim or in such an action for an undisclosed & unascertained amount, & the ct. is unable to determine whether or not the setting aside of the transfer will be of benefit to the creditors whose claims in whole or in part are unsecured.—*Re* SHANNON (H. S.) & Co., LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* SNIDER & DUNCAN, [1932] 1 W. W. R. 12.—**CAN.**

Aug. 1932, the bkpt. paid out of his account to trade creditors considerably larger sums than in Sept. The trustee in bkpcy. claimed that in so reducing the overdraft, after he knew he was insolvent, he had fraudulently preferred the bank & the guarantor to the general body of his creditors, & claimed that the difference of £698 4*s.* 5*d.* was payable to him, the trustee, on behalf of the other creditors. CLAUSON, J., held that there had been a fraudulent preference of the bank & that there should be repayment:—*Held:* the onus was on those who claimed that there had been a fraudulent preference to establish that the debtor's real intention was to prefer, &, to establish that, a dominant intent to prefer must be shown, & where there was not direct evidence & more than one explanation the intent to prefer could not be inferred. The account after Sept. 12, 1932, continued to be operated in the same way as before that date, payments being made out of it to trade creditors & sums paid in, the only course that a business man could pursue, therefore there was no evidence of a dominant intent to prefer.—*Re* LYONS, *Ex p.* BARCLAYS BANK, LTD. *v.* TRUSTEE (1934), 152 L. T. 201; 51 T. L. R. 24; 78 Sol. Jo. 754; [1934–5] B. & C. R. 174, C. A.

7220a. —— ——.]—A. being in difficulties, & having been served with writs by several of his creditors, applied to defts., who were attorneys, for their advice & assistance. After several ineffectual attempts to make an arrangement, it was finally resolved, at a meeting of the creditors, that A.'s property should be immediately sold; thereupon A. employed an auctioneer for that purpose, & directed him to pay the balance of the proceeds, after deducting his own charges, to defts., which was accordingly done. Another meeting of the creditors took place, at which 5*s.* in the pound was offered, which being refused, A. went to prison, & obtained his discharge under the Insolvent Act. Defts. claimed to retain a portion of the money paid to them by the auctioneer in discharge of their bill of costs:—*Held:* this was not a voluntary transfer in favour of a particular creditor, within sect. 32 of above Act.—WAINWRIGHT *v.* CLEMENT (1838), 4 M. & W. 385; 1 Horn & H. 395; 8 L. J. Ex. 25; 3 Jur. 266; 150 E. R. 1478.

PART XX. SECT. 12, SUB-SECT. 3.

7186 vi. ——.]—In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy.—*Re* LINNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

7216 vii. —— ——.]—Payments made & goods returned by a retailer to a creditor, a wholesaler, within three months of the former's bkpcy., the payments being for goods delivered during that period or for goods delivered previously the credit for which had expired during said period:—*Held:* not to be a preference within sect. 64 of Bkpcy. Act, R.S.C., 1927.—*Re* COLQUHOUN & SON, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD., [1937] 1 W. W. R. 222.—**CAN.**

1 (p. 863) **i.** —— *Creditor having made inquiries.*]—Where in fulfilment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the creditor, who had made the fullest inquiries into the financial position of debtor & had failed to discover his insolvency:—*Held:* the giving of the lien note could not be construed as a fraudulent preference.—*Re* HUGHES MUSIC SALES CO., CO-OPERATIVE MUSIC SUPPLY CO. *v.* GOLD MEDAL FURNITURE MANUFACTURING CO., [1924] 2 D. L. R. 706; 4 C. B. R. 565. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—A.

r (p. 865) **i.** —— ——.]—If the ordinary result of a transaction is to prefer one creditor to another, even though there is no intention to prefer, it is void against the trustee. It is not necessary, in such a case to establish anything in the nature of fraud, & provided the effect of the transaction is to diminish the property of the debtor available for division among the creditors, it falls within sect. 95 of Commonwealth Bkpcy. Act, 1924–1929.—*Re* MAZOR, *Ex p.* REES, E. SACHS & CO., [1931] S. R. (Q.) 19; 2 A. B. C. 237.—**AUS.**

t (p. 865) **i.** —— *Creditor with knowledge of insolvency.*]—Actual intent to defraud creditors necessary, although creditor aware of debtor's insolvency.—HICKERSON *v.* PARRINGTON (1892), 18 A. R. 635.—**CAN.**

w i. ——.]—The *bona fides* of a transaction is negatived if the creditor who receives payments from debtor has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent when he made the payments will not render such payments a fraudulent preference.—*Re* SPEAL, *Ex p.* LUCAS, [1924] 1 D. L. R. 191.—**CAN.**

c (p. 865) **i.** ——.]—To constitute a preference under Bkpcy. Act, s. 31, there must be a common or concurrent view, *i.e.* intent on the part of debtor & the creditor to create a preference.—*Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—**CAN.**

c (p. 865) **ii.** ——.]—*Re* GOLDSTEIN, [1923] 1 D. L. R. 864; 53 O. L. R. 60. —**CAN.**

c (p. 865) **iii.** ——.]—The intention of debtor to yield to the dictates of his conscience & to fear the consequence of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference.—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683. —**CAN.**

c (p. 865) **iv.** ——.]—To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B.:—*Held:* as the money paid by C. never became assets in the hands of B., the transaction could not be set aside.—*Re* NIAGARA HATS, LTD., TRUSTEE *v.* BANK OF MONTREAL, [1924] 4 D. L. R. 953.—**CAN.**

c (p. 865) **v.** ——.]—If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent perference & may be set aside by the trustee.—*Re* ROSEDALE PRODUCE CO., *Ex p.* MCGOWAN, [1924] 1 D. L. R. 321; 4 C. B. R. 277.—**CAN.**

c (p. 865) **vi.** ——.]—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1926] 3 D. L. R. 684; [1926] S. C. R. 621; 7 C. B. R. 639.—**CAN.**

c (p. 865) **vii.** ——.]—A payment made by debtor to a creditor within three months of an assignment in bkpcy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708; 34 Man. L. R. 534; 5 C. B. R. 293; *revsg.*, [1924] 4 D. L. R. 309; [1924] 3 W. W. R. 147; 5 C. B. R. 87. —**CAN.**

c (p. 865) **viii.** ——.]—*Re* STEEVES, NOVA SCOTIA TRUST CO. *v.* BISHOP, [1925] 2 D. L. R. 233; 5 C. B. R. 554.—**CAN.**

c (p. 865) **ix.** ——.]—Where the trustee in bkpcy. of a partnership seeks to set aside a transfer, charge, or payment as a preference, the trustee must show that such transfer, charge or payment was made by the firm to a firm creditor with concurrent intent on the part of both the debtors & their creditor that, as a result of such transaction, the creditor should obtain a preference over other creditors of the firm.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

c (p. 865) **x.** ——.]—*Re* BOAK (GEO. E.) & SON (N. S.), [1926] 1 D. L. R. 1179; 7 C. B. R. 477.—**CAN.**

c (p. 865) **xi.** ——.]—*Re* DEMERY (Ont.), [1926] 2 D. L. R. 120; 7 C. B. R. 271.—**CAN.**

c (p. 865) **xii.** ——.]—*Re* KINNIBURGH (Ont.), [1927] 3 D. L. R. 748; 8 C. B. R. 303.—**CAN.**

c (p. 865) **xiii.** ——.]—ROBINSON *v.* MCCAULEY (Man.) (1913), 24 W. L. R. 617; 4 W. W. R. 930; 13 D. L. R. 437.—**CAN.**

c (p. 865) **xiv.** ——.]—BANK OF MONTREAL *v.* SHEAN, [1931] 4 D. L. R. 305; O. R. 489; 12 C. B. R. 479.—**CAN.**

7224 viii. —— —— ——.]—Preference must be given voluntarily by debtor, & where a creditor demands a transfer or a mtge., such a demand imports pressure & will be sufficient to rebut the suggestion of preferring that creditor.—COPP *v.* WILLIAMS 1923), 65 D. L. R. 377.—**CAN.**

7224 ix. —— —— ——.]—Security given by an insolvent debtor to a

7225. *Add. Citation :*—12 L. T. 22.
Add. Annotation :—**Consd.** *Re* Stanton, [1929] 1 Ch. 180.

7225a. —— ——.]—*Re* COHEN, *Ex p.* TRUSTEE, No. 4665a,

7228. *Add. Annotations :*—**Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1; *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7236. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7237. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7237a. —— **Payment in fact giving preference.**]—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT, No. 7166a, *ante*.

7238. *Add. Annotations :*—**Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

7239. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7249. *Add. Citation :*—12 L. T. 22.
Add. Annotation :—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

7261a.—— ——.]—In order to constitute "pressure," it is not necessary that legal proceedings should have been resorted to, for, if the pressure was such that it overweighed the bkpt.'s own inclination, & induced him to pay against his will, that would be sufficient pressure within the meaning of the bkpt. laws.—GREEN & COX *v.* BRADFIELD (1844), 1 Car. & Kir. 449; 174 E. R. 887.

7267. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7267a. ——.]—*Re* HOYLE, *Ex p.* TRUSTEE, No. 7172a, *ante*.

7268. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7270. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

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creditor with intent to give him a preference over other creditors is void: but the existence of the intent may be negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. When the idea of giving the security originates with the debtor, pressure plays no part in the transaction.—GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—**CAN.**

p (p. 866) **i.** —— *Bankruptcy Act*, 1908, *s.* 79 (3).]—"Good faith" in the above sub-sect. means absence of knowledge that a preference was intended.—*Re* LINNEY (H.) & Co., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

7228 x. ——.]—A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor :—*Held :* there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid.—*Re* GOLDSTEIN, [1923] 1 D. L. R. 864; 53 O. L. R. 60.—**CAN.**

7228 xi. ——.]—There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, some benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference.—OFFICIAL ASSIGNEE *v.* WAIRARAPA FARMERS' CO-OPERATIVE SOCIETY, LTD., [1925] N. Z. L. R. 1.—**N.Z.**

7235 ii. —— ——.]—Where an assignment of a book debt had been made within three months preceding the authorised assignment :—*Held :* the burden of establishing that it was not a preference was cast upon the assignee-creditor, & evidence of pressure would be of no avail to support the transaction.—*Re* WEBB (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—**CAN.**

7235 iii. —— ——.]—*Re* PROGRESSIVE FARMERS CO., *Ex p.* BROWN BROTHERS & BURNSTAD, LTD., [1923] 1 W. W. R. 833; 3 C. B. R. 702.—**CAN.**

a (p. 868) **i.** —— ——.]—Where a debtor agreed with a creditor that he should have some special advantage if debtor became bkpt., & the result was to avoid a distribution under Bkpcy. Act of bkpt.'s property :—*Held :* the agreement was void.—*Re* WETMORE, *Ex p.* BAIRD & PETERS, [1924] 4 D. L. R. 66.—**CAN.**

d (p. 868) **i.** —— —— ——.]—Although a previous agreement to give security may serve to rebut the intention to prefer in giving security by one in insolvent circumstances, if the transaction is attacked after sixty days, yet under Assignments Act, ss. 39 & 41, if the giving of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a result.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 2 W. W. R. 855; 12 Sask. L. R. 298.—**CAN.**

d (p. 868) **ii.** —— —— ——.]—Pltf. co., a creditor of a trading firm, obtained from their debtors a chattel mtge. & an assignment of book-debts. The firm afterwards made an assignment to deft. for the benefit of creditors. Pltf. co. sought to establish its priority over the assignment to deft. :—*Held :* as deft.'s assignment was not made within sixty days after the transaction with pltf. co., & the transaction was not attacked within sixty days, there was no statutory presumption of invalidity under Assignments & Preferences Act, R. S. O. 1914 (c. 134), s. 5.—CRAIG (W. G.) & Co., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—**CAN.**

d (p. 868) **iii.** —— —— ——.]—A conveyance attacked as a preference within sixty days of its execution is void, regardless of the intent in giving it & of the pressure exerted to obtain it, if at the time of its execution debtor was in insolvent circumstances or unable to pay his debts in full & the conveyance had the effect of giving a preference, as defined by Assignments Act, R. S. M., 1913 (c. 12), s. 42, over the execution creditor attacking it.—TROTTER *v.* PEDLAR, [1921] 1 W. W. R. 233; 56 D. L. R. 717.—**CAN.**

o (p. 869) **i.** —— —— ——.]—The statutory presumption of intent to prefer cannot be rebutted by proof that the debtor had no desire to prefer, but simply yielded to the pressure applied by the creditor.—PELLATT & PELLATT, LTD. *v.* MCLEAN, [1929] 3 D. L. R. 82; 63 O. L. R. 552.—**CAN.**

p (p. 869) **i.** —— *Transaction within three months of insolvency.*]—BRISCOE *v.* STANDARD BANK (1923), 53 O. L. R. 623; 3 C. B. R. 863.—**CAN.**

p (p. 869) **ii.** —— ——.]—If a creditor knows debtor is insolvent before he enters into a transaction with him & the effect is to give to that creditor a preference, it makes no difference what was the motive, view, or interest of debtor if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re* LAVINE, [1924] 3 D. L. R. 318; 4 C. B. R. 664.—**CAN.**

p (p. 869) **iii.** —— ——.]—*Held :* a creditor to whom bkpt. had made certain payments within three months prior to the assignment had not met the presumption that such payments were preferential, & such payments were fraudulent & void.—*Re* BLACK & WHITE HAT SHOP, LTD., NEWTON *v.* FINESILVER, [1925] 4 D. L. R. 245; [1925] 2 W. W. R. 782.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—B.

sk. *Pressure — Must be actual.*]—"Pressure," in Bkpcy. Act, s. 31 (2), means actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure.—*Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—**CAN.**

sl. —— ——.]—The absence of fraudulent intention in the circumstances in which the fund is taken does not constitute "pressure" within Bkpcy. Act, s. 31 (2).—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—**CAN.**

7258 vi. —— ——.]—GRANT *v.* VAN NORMAN (1882), 7 A. R. 526.—**CAN.**

7258 vii. —— ——.]—MANSOOKHLAL DOLATCHAND & Co. *v.* NAGARDASS MOOLCHAND (1928), I. L. R. 6 Ran. 536.—**IND.**

7271 viii. ——.]—Evidence disclosing a dominant motive such as fear of prosecution or disgrace, impelling debtor to give the security, is admissible to rebut the *primâ facie* presumption raised by Bkpcy. Act, s. 31 (2).—*Re* BELL (1922), 67 D. L. R. 66; 32 Man. L. R. 9; [1922] 1 W. W. R. 1015.—**CAN.**

7307 iii. —— ——.]—BROCKLESBY *v.* FREEDMAN-ELLIS, [1932] 1 D. L. R. 187; O. R. 56; *revsd. on facts*, [1932] 2 D. L. R. 818; O. R. 439.—**CAN.**

7310 i. *revsd.* (1915), 51 S. C. R. 554.

PART XX. SECT. 12, SUB-SECT. 4.—C.

m i. ——.]—Moneys improperly drawn by an exor. from the funds of

7318. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515 ; *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22 ; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765 ; Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252 ; *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

7323. *Add. Citation :—sub nom.* MORGAN *v.* BAKER, 2 Jur. 1068.

7334. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7337. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 134 L. T. 765.

7339a. Agreement to assign interests—In consideration of advance—No memorandum of agreement within Statute of Frauds.]—By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment :—*Held :* the assignment, notwithstanding the failure of bkpt. to set up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re* DAVIES, *Ex p.* MILES, [1921] 3 K. B. 628 ; *sub nom. Re* DAVIES, *Ex p.* TRUSTEE, 91 L. J. K. B. 81 ; [1921] B. & C. R. 92.

7340. *Add. Annotation :*—**Apld.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7359. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7360. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7361a. —— ——.]—A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within Cos. (Consolidation) Act, 1908 (c. 69), s. 210, & a preliminary objection being raised that in any event no order for repayment could be made :—*Held :* (1) the real object of the insertion of the words " or any surety or guarantor for the debt due to such creditor," in Bkpcy. Act, 1914 (c. 59), s. 44 (1), was to enable the trustee to recover the payment from the person actually preferred ; (2) the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148 ; 94 L. J. Ch. 187 ; 133 L. T. 37 ; 69 Sol. Jo. 36 ; [1925] B. & C. R. 1.

Annotation :—**Consd.** *Re* Lyons *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

7365. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

7393. *Add. Annotation :*—**Refd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

7393a. Payment of proceeds of sale of shares—

testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt. :—*Held :* the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a " creditor " of the exor. within the sect., though in some sense a creditor.—*Re* CARSON, [1924] 4 D. L. R. 492 ; 55 O. L. R. 649 ; 4 C. B. R. 683. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—E.

r (p. 889) i. *Security to cover advance & past debt.*]—A security given for such a purpose :—*Held :* to be given for valuable consideration & *bonâ fide*, & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—BANQUE D'HOCHELAGA *v.* JEANNOTTE, [1923] 1 W. W. R. 28 ; 16 Sask. L. R. 523.—**CAN.**

7347 v. ——.]—An incorporated co., being in fact insolvent, made in favour of its president, a creditor, as guarantor, a mtge. on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt. :—*Held :* the transaction was free from any taint of fraud ; the co. entered into it for the sole object & in the *bonâ fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—BURNS *v.* ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608 ; 51 O. L. R. 564 ; 2 C. B. R. 241.—**CAN.**

7347 vi. ——.]—A debtor gave a creditor a mtge. & the effect of that was to give the mtgee. a preference :—*Held :* when the mtge. was created, as debtor had not been sued by his creditors & his sole reason for giving the mtge. was that he might continue his business & pay off his other creditors, this was not a fraudulent preference.—*Re* BARTER, [1923] 1 D. L. R. 919 ; 3 C. B. R. 631.—**CAN.**

7347 vii. ——.]—A preference to be fraudulent must be given with the intention of creating rights additional to those possessed by other creditors, & where a preference is given not to give one creditor an unfair advantage over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpcy. on the part of debtor, such a preference is not fraudulent within Bkpcy. Act.—*Re* BUCHANNAN, [1923] 1 D. L. R. 391 ; 3 C. B. R. 427.—**CAN.**

7347 viii. ——.]—CANADIAN BANK OF COMMERCE *v.* TREACY, [1924] 2 W. W. R. 193 ; 2 D. L. R. 759.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—F.

7359 ii. ——.]—The trustee in bkpcy. of H. under an authorised assignment sought to recover payments made by H., when in a hopeless state of insolvency, for the purpose, as his creditors, defts., knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary assignment, & some were made after the assignment :—*Held :* defts. had not at the times of payment notice of any " available act of bkpcy." committed by H. ; the transactions were all before Bkpcy. Act, 1921 (c. 17), s. 3, but the payments were not made " in good faith." —BRISCOE *v.* MOLSONS BANK (1922), 69 D. L. R. 675 ; 51 O. L. R. 644.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—G.

7381 iv. —— ——.]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24 ; 7 C. B. R. 689.—**CAN.**

7388 ii. —— *Conveyance of property for past consideration—Creditor with knowledge of existence of other creditors.*] —*Re* DAVID, [1925] 4 D. L. R. 1046 ; *affg.*, [1925] 1 D. L. R. 164 ; 5 C B. R. 323.—**CAN.**

sm. *Sale by creditor—Collusive sale —Payment of proceeds of sale to creditor.*]—*Held :* the transaction must be set aside for it was not really only a " payment of money to a creditor," saved out of the general provisions of Assignments & Preferences Act ; R. S. O. 1914 (c. 134), by sect. 6. The transaction was substantially an appropriation of goods in part payment of a preferred creditor's claim, & the proceeds of the sale could be reached by the assignee under sect. 13.—MACFIE *v.* CATER (1921), 64 D. L. R. 511 ; 50 O. L. R. 452.—**CAN.**

sn. *Cheque obtained from debtor—Three days before bankruptcy—Accepted by bank on day of bankruptcy.*]—*Held :* a cheque does not operate as an assignment of the funds of drawer in the hands of the person on whom it is drawn ; & unless payment was made by the drawee before the assignment it was not a payment protected by Assignments & Preferences Act, s. 6 (1) ; but if paid before the assignment it was a payment in cash at the date when the cheque was paid by the bank.—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING Co. (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

Payment before transfer.]—Certain stock-brokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called " a put through " by which a jobber lends his name as purchaser, but no money is paid :—*Held :* the payment was made without pressure & was a fraudulent preference.—*Re* FELLOWES, O'BRIEN, GORDON & TOOTAL (CARRYING ON BUSINESS AS ELLIS & Co.) (1924), 68 Sol. Jo. 478.

7396. *Add. Annotations :*—**Consd.** *Re* M. I.. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7404. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7411. *Add. Annotation :*—**N.F.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7411a. ——.]—Early in 1936 S. had a banking account at each of two branches of resp. bank. The account at one of the branches had been dormant since Oct. 1935, & stood in debit as an overdraft secured by a guarantee. On Mar. 17, 1936, a petition in bkpcy. was presented against S. on an act of bkpcy. committed that same day. At all material times the bank was admittedly entirely ignorant of the fact that any petition was pending or that any act of bkpcy. had been committed. From towards the end of 1935 the manager of the branch at which S. had an overdraft had been pressing S. & the guarantor to pay off the overdraft. Pending the petition, S. sought to obtain an overdraft at the other branch, but the manager was not prepared to grant an overdraft, unless the overdraft at the first branch was first cleared off. On May 5, 1936, before the adjourned hearing of the petition, S. obtained an advance from a moneylender with which he paid off the overdraft at the first branch, & the guarantee was returned to the guarantor. S. then obtained an overdraft at the second branch. A receiving order was made against S. on July 27, 1936. The trustee in bkpcy., asserting that his title related back to Mar. 17, 1936, claimed that the money paid in discharge of the first overdraft was the trustee's money, & he claimed its return :—*Held :* in the circumstances the bank was protected by sect. 45 of 1914 Act, & the trustee was not entitled to recover the sum paid to the bank in discharge of the first overdraft.—*Re* SEYMOUR, *Ex p.* TRUSTEE, [1937] Ch. 668, *sub. nom. Re* SEYMOUR, TRUSTEE *v.* BARCLAYS BANK, LTD., [1937] 3 All E. R. 499 ; 106 L. J. Ch. 367 ; 157 L. T. 472 ; 53 T. L. R. 940 ; 81 Sol. Jo. 629 ; [1936–7] B. & C. R. 178.

7414a. —— **Payment to agent of creditor—Agent paying over sum to principal in course of**

7395 iii. —— *Mortgagee party to fraud.*]—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference :—*Held :* void under Assignments for Benefit of Creditors Act, 1898 (P. E. 1) (c. 4), & might be set aside as against the trustee in bkpcy.—CAMPBELL *v.* GALLANT, CROCKETT & ROYAL BANK OF CANADA, *Re* MILLIGAN ESTATE (1922), 70 D. L. R. 320.—**CAN.**

a (p. 901) **i.** *Assignment for creditors.*]—Creditors who take under a composition affecting substantially the whole of debtor's property are entitled to the protection of Bkpcy. Act, s. 82, as against the official assignee, upon debtor shortly afterwards being adjudicated bkpt., provided the payment was before adjudication & that the creditors had not at the time of such payment notice of any available act of bkpcy. committed before that time & acted in good faith.—*Re* COCHRANE, [1925] N. Z. L. R. 15.—**N.Z.**

so. *Dissolution of partnership—Act injurious to partnership creditors—Preference given to separate creditors.*]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24 ; 7 C. B. R. 689.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 5.

7407 i. *How time calculated—Assignment executed but not filed—Subsequent re-execution & filing.*]—An authorised assignment dated, executed, & delivered on Aug. 11, was re-executed on Sept. 11, & then filed :—*Held :* the assignment was not revocable at the will of assignor ; as soon as the trustee accepted the assignment it took effect as of the day of its original execution. —*Re* LONGMORE (1922), 52 O. L. R. 570 3 C. B. R. 200.—**CAN.**

f i. —— *Law of Ontario.*]—A chattel mtge. impeached as a fraudulent preference under r. 120 by the trustee was made more than three months before the assignment to the trustee :—*Held :* although the chattel mtge. did not come within Bkpcy. Act, s. 31, the trustee could attack it as fraudulent under the laws of Ontario quite apart from the Act.—*Re* DAVISON, [1923] 4 D. L. R. 1049 ; 52 O. L. R. 244.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 6.

m (p. 903). For " —— *In what court proceedings may be taken* " read " *In what court proceedings may be taken.*"

m (p. 903) **i.** ——.]—The fact that a fraudulent transfer was made in a province other than that in which the authorised assignment was made, does not deprive the ct. of the latter province with original jurisdiction with respect to the authorised assignment of jurisdiction to set aside the fraudulent transfer.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *revsd.*, [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

7412 ii. —— *Prior assignment of same property to same parties.*]—The fact of a prior assignment does not affect the right to set aside a later assignment of the same property to the same parties, & the setting aside of the later assignment does not affect rights under the prior assignment.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 123 ; 13 Sask. L. R. 85.—**CAN.**

7412 iii. —— *Denial by transferee that property belongs to bankrupt.*]—The words " property belonging to debtor " in Bkpcy. Act, s. 56 (8), have practically the same meaning as " property of debtor " used in sect. 25, & include property of debtor which has been dealt with by himself by transfer to a creditor, & the fact that an alleged fraudulent transferee from bkpt. does not admit that the property in question belongs to bkpt. does not prevent an application being brought under the above sect. & Bkpcy. Rule 120, for the delivery of the property to the trustee.—*Re* HOULDING, [1921] 2 W. W. R. 521 ; 14 Sask. L. R. 277 ; 59 D. L. R 238.—**CAN.**

7412 iv. —— *Discharge of bankrupt's liability by transaction.*]—A trustee in bkpcy. has no right to set aside a transfer made by bkpt. to a creditor whereby bkpt.'s liability to the creditor is discharged, even though the transfer amounts to a fraudulent preference.—*Re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418.—**CAN.**

7412 v. —— *As against the Crown.*]—The provisions of Bkpcy. Act, 1908, relating to fraudulent preference do not bind the Crown. — OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265. —**N.Z.**

7413 viii. —— *Person claiming property in question as owner & not as creditor not proper party.*]—*Re* STERNBERG, *Ex p.* TRIEFUS & STRIPP, LTD., [1925] 2 D. L. R. 203 ; 5 C. B. R. 237 ; *varying*, [1924] 2 D. L. R. 492 ; 4 C. B. R. 528.—**CAN.**

7414 iv. —— ——.]—In Assignments Act, R. S. S. 1909 (c. 142), s. 39, " sixty days thereafter " means sixty days after the date of the conveyance & not after the date of some prior agreement upon which such conveyance may have been made, & " such transaction " means the conveyance & not such prior agreement.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 123 ; 13 Sask. L. R. 85.—**CAN.**

w (p. 904) **i.** —— *After settlement by trustee of preferred creditor's claim.*]—*Re* TAYLOR (Ont.), [1926] 2 D. L. R. 877 ; 7 C. B. R. 550.—**CAN.**

sp. —— *Note given by purchaser of debtor's stock-in-trade indorsed to creditor—Note in hands of bonâ fide holder for value.*]—*Held :* the creditor could not be compelled to share ratably with the other creditors.—ROBERTSON *v.* HOLLAND (1888), 16 O. R. 532.—**CAN.**

sq. *Position of trustee — Cannot approbate & reprobate — Promissory notes transferred to & discounted by* [illegible] (1929) 52 O. L. R. 519 ; [illegible]

st. —— *Estoppel by conduct.*]—S. made a bill of sale of certain chattels to deft. in order to protect the chattels against his creditors. Shortly afterwards S. made an assignment under Bkpcy. Act to plff., who later sold at public auction the assets of S. not included in the bill of sale. On the same occasion the auctioneer sold, on

business.]—A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a "person in trust for any creditor," within 1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has received on behalf of his principal, greater than his liability in a case where money has been paid to him for the use of his principal in circumstances which entitle the person paying it to recover it back, even though it should turn out that, in fact, the payment constituted a fraudulent preference within the sect.

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921, debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference:—*Held:* (1) C. & B. received the money merely as agents of & for the use of the creditors in the ordinary course of their employment, & not as "persons in trust for any creditor" within 1914 Act, s. 44; (2) the circumstances under which the money was received & paid over precluded appcts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble:* (3) the personal liability of a person to whom payment has been made "in trust for any creditor" under 1914 Act, s. 44, must depend upon the facts of each case; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re* MORANT, *Ex p.* TRUSTEES, [1924] 1 Ch. 79; 93 L. J. Ch. 104; 130 L. T. 398; [1923] B. & C. R. 145.

7416. *Add. Annotation:*—**Refd.** *Re* Yagerphone, Ltd., [1935] Ch. 392.

7420. *Add. Citation:*—10 B. & S. 371.

7428. *Add. Annotations:*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

7430. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7438. *Add. Annotation:*—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7438a. —— ——.]—A father, having a power of appointment over a fund in favour of his children, agreed with his son to pay his debts, & then to appoint to him a portion of the fund equal to the amount of his debts, which he was then to hand over to the father. The father paid the debts, & made the appointment, when the son became bkpt.:—*Held:* the trustee had no right to the fund appointed.—*Re* ANGERSTEIN, *Ex p.* ANGERSTEIN (1874), 9 Ch. App. 479; 43 L. J. Bcy. 131; 30 L. T. 446; 22 W. R. 581, L. JJ.

7440. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7442. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7443. *Add. Annotation:*—**Consd.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7446. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7447. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7449. *Add. Annotation:*—**Refd.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7483a. —— **1914 Act, s. 45.**]—*Re* WETHERED, *Ex p.* SALAMAN, No. 6858b, *ante*.

7490. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7503a. —— **1914 Act, s. 45—Transfer to private company formed by debtor & his solicitor.**]—*Re* SIMMS, No. 596a, *ante*.

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instructions of S., the chattels included in the bill of sale & paid the proceeds to S. who left Canada without paying them to deft.:—*Held:* pltf., having refrained from attacking the bill of sale earlier & having allowed the sale to proceed & the moneys to be paid to S., it was too late to hold deft. liable.—*Re* STEVENS, IMPERIAL CANADIAN TRUST CO., LTD. *v.* NORTH AMERICAN LUMBER & SUPPLY CO., LTD., [1924] 2 W. W. R. 245; 4 C. B. R. 632; [1924] 2 D. L. R. 104.—**CAN.**

sw. *Avoidance of transfer fraudulent under general laws.*]—The right of a trustee in bkpcy. to take proceedings to avoid a transfer made by bkpt. which is in fraud of his creditors under general laws is impliedly authorised by Bkpcy. Act & the rules thereunder.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

1 (p. 906) i. —— —— —— *Bankruptcy Act, s.* 35—*Bankruptcy Rules, r.* 120.]—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 341; *revsd.*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 1.

7430 v. ——.]—MERCHANTS BANK OF CANADA *v.* KEN MCCLARY & CO., [1921] 1 W. W. R. 940; 14 Sask. L. R. 187.—**CAN.**

sz. *Payment of wages.*]—Pltf., trustee in bkpcy. of the property of a co., sued defts. who were the directors & officers of the co., & the only shareholders except their wives, to recover sums of money withdrawn by defts. from the funds of the co. Defts. had earned a large part of the sums withdrawn as employees of the co.:—*Held:* pltf. co. as trustee had no *locus standi* to maintain the action; its right was no greater than the right of the co. which it represented; the bkpt. co. could not recover payments actually made by it for wages, nor could its trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* REAUME, [1931] 4 D. L. R. 450; O. R. 398; 12 C. B. R. 429.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—A. (a).

sa. *Failure to make proper inquiries.*]—By Bkpcy. Act a creditor who takes a mtge. & fails to make the proper inquiries will be held to have knowledge of the insolvency of the mtgor. at the

7520. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7521. *Add. Annotation :*—**Refd.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

7543. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7546a. —— **That bankruptcy notice served on debtor—& of petitioning creditor's intention to take bankruptcy proceedings.**]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor :—*Held :* a mere statement of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, &, falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794 ; 95 L. J. Ch. 303 ; 135 L. T. 321 ; 42 T. L. R. 525 ; 70 Sol. Jo. 708 ; [1926] B. & C. R. 26.

7574. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7577. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

7594. *Add. Annotations :*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137 ; *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7595. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7598. *Add. Annotations :*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137. **Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7599. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7600. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7601. *Add. Citation :*—*revsg.* S. C. *sub nom. Re* WIX, *Ex p.* CHATTERBY, 29 W. R. 400.

7603a. —— **Employee of company—Refusal of company to pay—Termination of employment alleged.**]—Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, " managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £416 13*s.* 4*d.* due under the agreement from the co. &/or its managing director to bkpt. be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp. :—*Held :* in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—*Re* LAVEY, *Ex p.* TRUSTEE, [1920] 1 K. B. 674 ; 89 L. J. K. B. 24 ; 122 L. T. 592 ; [1920] B. & C. R. 43 ; *subsequent proceedings*, [1920] B. & C. R. 186.

7603b. —— **Maintenance.**]—*Held :* the jurisdiction of the ct. to make an order under sect. 51 (2) of 1914 Act was not confined to property which vested in the trustee under the Act on an order of adjudication being made ; maintenance ordered to be paid by the Divorce Ct. to a bkpt. during the joint lives of himself & her former husband was " income " within the sub-sect. ; & the ct. had jurisdiction to direct that a part of that maintenance (the amount to be fixed by the Registrar) should be paid to the trustee for the benefit of the bkpt.'s creditors.—*Re* LANDAU, *Ex p.* TRUSTEE, [1934] Ch. 549 ; 103 L. J. Ch. 294 ; 50 T. L. R. 403 ; 78 Sol. Jo. 430 ; [1934] B. & C. R. 84 ; *sub nom. Re*

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time of giving the mtge., & the mtge. will be set aside as a fraudulent preference.—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

sb. ——.]—Where the circumstances under which a debt is paid are such that a strong suspicion would arise in the mind of an ordinary business man as to the *bona fides* of the payment, the payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference. —*Re* STERNBERG (1924), 27 O. W. N. 212 ; *varying*, [1924] 2 D. L. R. 492 ; 4 C. B. R. 528.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—A. (b).

sc. *General rule.*]—When a person knows of an act of bkpcy. or wilfully refrains from making such inquiries as would give him such knowledge, or where the facts are such that an act of bkpcy. had been committed, such a person will be deemed to have notice.—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

7537 iv. —— *That debtor financially embarrassed.*]—*Held :* not of itself knowledge of insolvency.—*Re* WEBB (1921), 64 D. L. R. 633 ; 51 O. L. R. 5 ; 2 C. B. R. 16.—**CAN.**

7537 v. —— *That debtor hard pressed for money.*]—*Held :* not sufficient to infer that a creditor had constructive notice of an act of bkpcy.—*Re* ROBBINS, *Ex p.* ROOT, [1924] 3 D. L. R. 90 ; 4 C. B. R. 670.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—C.

7581 vi. —— ——.]—Every payment made by bkpt. within a short time of his bkpcy. is regarded with suspicion by the ct. as likely to be a fraudulent preference. The *onus* is on the payee to show that he had no knowledge of an available act of bkpcy., actual or constructive, that he gave some consideration for the payment & that he was actuated by no fraudulent motive in accepting such payment.—*Re* HOWARD GRAHAM & CO., *Ex p.* GRAHAM, [1923] 2 D. L. R. 1024 ; 3 C. B. R. 855.—**CAN.**

7581 vii. —— ——.]—*Re* GROCERY SPECIALTY CO., *Re* SHULMAN, [1923] 2 D. L. R. 316 ; 3 C. B. R. 46 ; *affd.*, 24 O. W. N. 90.—**CAN.**

PART XX. SECT. 15.

7599 i. *Salary or income—Member of Legislative Assembly.*]—The annual allowance of a member of the Legislative Assembly of New South Wales, paid to him pursuant to the Constitution Act (N. S. W.), 1902, s. 28, is within the operation of the Bkpcy. Act (Federal), 1924–30, s. 101, of which is valid. Further, the Ct. of Bkpcy. properly exercised its discretionary power under s. 101, in ordering a bkpt. member of the Legislative Assembly to pay portion of his allowance to the Official Receiver.—STUART-ROBERTSON *v.* LLOYD, [1932] Argus L. R. 369 ; 6 A. L. J. 144.—**AUS.**

7601 ii. —— *Fixed annual salary payable weekly.*]—A fixed annual salary payable in weekly instalments to a bkpt. debtor constitutes property of the bkpt. within Bkpcy. Act, R. S. C., 1927, s. 23.—CLARKSON *v.* TODD, [1934] 2 D. L. R. 316 ; S. C. R. 230 ; *revsg.* S. C. *sub nom. Re* TOD, [1933] 1 D. L. R. 422 ; O. R. 519.—**CAN.**

LANDAU, *Ex p.* TRUSTEE *v.* BANKRUPT, 151 L. T. 190, C. A.

7607. *Add. Annotation :*—**Refd.** *Re* Landau, *Ex p* Trustee, [1934] Ch. 549.

7607a. —— **Police pension—Notwithstanding Police Pensions Act, 1921 (c. 31), s. 14 (1).**]—*Re* GARRETT, No. 6296a, *ante*.

7610. *Add. Annotation :*—**Refd.** Nixon *v.* A.-G. [1931] A. C. 184.

7612. *Add. Annotation :*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137.

7615a. Application of 1914 Act, s. 51 (2)—Immaterial whether property vested in trustee.]—*Re* GARRETT, No. 6296a, *ante*.

7615b. Effect of order—No vesting.]—*Re* GARRETT, No. 6296a, *ante*.

7626. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

7638. *Add. Annotations :*—**Refd.** *Re* Leeds & Batley Breweries & Bradbury's Lease, Bradbury *v.* Grimble, [1920] 2 Ch. 548; McIlroy *v.* Clements (1923), 67 Sol. Jo. 402; Rider *v.* Ford, [1923] 1 Ch. 541.

7639a. Contract for sale of goods.]—HUSSEY *v.* FIDDALL (1699), 12 Mod. Rep. 324; Holt, K. B. 95; 3 Salk, 59; 88 E. R. 1353.

Annotation :—**Refd.** Hitchin *v.* Campbell (1772), 2 Wm. Bl. 827.

7648a. —— **Assuming management of farm.**]—*Held :*—a sufficient election to take the term.—THOMAS *v.* PEMBERTON (1816), 7 Taunt. 206; 129 E. R. 83.

7648b. —— **Milking cows.**]—*Held :* assignees having allowed bkpt.'s cows to remain upon the demised premises for two days & ordered them to be milked there, thereby became tenants to the lessor.—WELCH *v.* MYERS (1816), 4 Camp. 368; 171 E. R. 117, N. P.

7649a. —— ——.]—Where assignees put a term up to auction, to ascertain whether it was of value, without giving themselves out to be the proprietors, &, there being no bidders, interfered no further in the matter, & never received rents :—*Held :* they were not answerable in covenant to the lessor.—TURNER *v.* RICHARDSON (1806), 7 East, 335; 3 Smith, K. B. 330; 103 E. R. 129.

Annotations :—**Consd.** Copeland *v.* Stephens (1818), 1 B. & Ald. 593. **Distd.** Hanson *v.* Stevenson (1818), 1 B. & Ald. 303. **Refd.** Hancock *v.* Welsh (1816), 1 Stark. 347; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348; Goodwin *v.* Noble (1857), 8 E. & B. 587.

612; Titterton *v.* Cooper (1882), 9 Q. B. D. 473. **Refd.** Hill *v.* Doble (1818), 2 Moore, C. P. 342; Williams *v.* Bosanquet (1819), 1 Brod. & Bing. 238; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348; Wollaston *v.* Hakewill (1841), 3 Man. & G. 297; Mackley *v.* Pattenden (1861), 30 L. J. Q. B. 225; Levi *v.* Ayers (1878), 3 App. Cas. 842; Hill *v.* East & West India Dock Co. (1884), 9 App. Cas. 448.

7649b. *S. P.* CARTER *v.* WARNE, No. 9026a, *post*.

7649c. —— ——.]—Where assignees for the purpose of preventing a distress paid arrears of rent due, at the same time intimating to the landlord that they did not mean to [illegible] to the lease unless it could be advantageously disposed of, & the effects were soon after sold & the lease was at the same time put up to sale by order of the assignees, but there were no bidders for it :—*Held :* they were not liable to the landlord as assignees of the lease.—WHEELER *v.* BRAMAH (1813), 3 Camp. 340; 170 E. R. 1404.

7650a. —— **Carrying on business for benefit of creditors.**]—Where the assignee kept bkpt. in the premises, carrying on the business for the benefit of the creditors from Nov. 15, 1823, until Apr. following, but on Dec. 22, 1823, had disclaimed the lease by letter to the landlord :—*Held :* the assignee, notwithstanding such disclaimer, had elected to accept the lease.—CLARK *v.* HUME (1825), Ry. & M. 207; 171 E. R. 995.

7652a. —— —— **To prevent distress.**]—WHEELER *v.* BRAMAH, No. 7649c, *ante*.

7653a. —— ——.]—*Held :* to amount to an acceptance of the lease.—PAGE *v.* GODDEN (1818), 2 Stark. 309; 171 E. R 655.

7670a. —— ——.]—CARTWRIGHT *v.* GLOVER (1861), 2 Giff. 620; 30 L. J. Ch. 324; 3 L. T. 880; 7 Jur. N. S. 857; 9 W. R. 408; 66 E. R. 260.

Annotation :—**Refd.** Wilson *v.* Wallani (1880), 5 Ex. D. 155.

7681a. —— **Statutory tenancy—Under Rent Restriction Acts.**]—PARKINSON *v.* NOEL, No. 7782b, *post*.

7681b. —— —— ——.]—A statutory tenancy under the Rent Restriction Acts is not "property" of the statutory tenant within sect. 167 of the 1914 Act, &, therefore, it does not pass to his trustee in bkpcy. under sect. 63 of that Act, & is not extinguished on a disclaimer of it by the latter.—SUTTON *v.* DORF, [1932] 2 K. B. 304; 101 L. J. K. B. 536; 47 L. T. 171; 96 J. P. 259; 48 T. L. R. 430; 76 Sol. Jo. 359; 30 L. G. R. 312.

7689. *Add. Citation :*—*sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

7689a. Shares—Subject to equitable charge.]—The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a

PART XX. SECT. 16, SUB-SECT. 1.

1 i. —— *Right of trustee to give notice of intention to retain—Acceptance of rent by lessors.*]—*Held :* Bkpcy. Act, s. 13 (15), extends sect. 52 (5) to all cases where proceedings are taken under sect. 13 so as to enable either trustee or debtor himself to overcome the forfeiture & elect to retain the demised premises for the whole or any part of the term. If this construction of the Act was wrong, the lessors had waived their rights by acceptance of rent with full knowledge of the circumstances & notice of election to retain.—*Re* MCKAY (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 5.—A.

7666 i. *Right to disclaim—Lease.*]—OFFICE SPECIALTY MANUFACTURING CO. *v.* EASTERN TRUST CO., [1931] 3 M. P. R. 526.—**CAN.**

7672 i. *Within what time—Extension of time—Power of court to grant.*]—*Re* ROGERS (DECEASED) (1926), 26 S. R. N. S. W. 526; 43 N. S. W. W. N. 143.—**AUS.**

7676 i. *Sufficiency of disclaimer — Delay in taking decisive steps.*]—By virtue of Bkpcy. Act, s. 52, when the trustee does not decide, within a month after the bkpcy., to retain premises held under a tenancy not yet expired, this is taken to be a disclaimer of the premises & puts an end to the tenancy & also to a subtenancy created by the tenant.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

7676 ii. —— *Verbal disclaimer—No consent of creditors.*]—*Held :* the assignee could not make a disclaimer of a debt without the consent of the creditors.—BROWNE *v.* SIDNEY MILLS, LTD., [1920] 28 B. C. R. 73.—**CAN.**

vesting order, bkpt.'s name remained on the register:—*Held:* (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu.:* whether a trustee can disclaim unincumbered fully paid shares. —WISE *v.* LANSDELL, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

7692. *Add. Annotation:*—**Refd.** *Re* Wait, [1926] Ch. 962.

7693a. **Sub-contract for sale of land—Contract for purchase of land need not be disclaimed.**]—Where a person, who is subsequently adjudicated bkpt., has entered into a contract for the purchase of land & into a sub-contract to sell the same land with a building thereon to be erected by him, his trustee in bkpcy. is entitled to disclaim the sub-contract of sale without being obliged to disclaim the contract of purchase. If the sub-purchaser has paid a deposit he has a lien upon such interest in the land as bkpt. possessed before his bkpcy., including the right, if any, to specific performance of the contract of purchase of the land; he may also prove in the bkpcy. for any damage for breach of the agreement to build, but he is not entitled to specific performance of the contract to build, & his equity is subject to the overriding equity of the original vendor.—*Re* GOUGH, HANNING *v.* LOWE (1927), 96 L. J. Ch. 239; 71 Sol. Jo. 470; [1927] B. & C. R. 137, D. C.

7702. *Add Annotation:*—**Distd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7704. *Add. Annotations:*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7707. *Add. Annotation:*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7735. *Add. Citations:*—*sub nom. Re* WEGG, *Ex p.* HANBURY, 12 L. J. Bcy. 43; *sub nom. Re* WEGG, *Ex p.* BANBURY, 7 Jur. 660.

7751. *Add. Annotations:*—**Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756. *Add. Annotation:*—**Consd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756a. —— —— **Right to compensation.**]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

7764a. —— Liability for rates for period of occupation until disclaimer.]—Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—*Re* LISTER, BRADFORD OVERSEERS & CORPN. *v.* DURRANCE (1925), 95 L. J. Ch. 145; 42 T. L. R. 143; 89 J. P. Jo. 692, C. A.; *sub nom. Re* LISTER, *Ex p.* BRADFORD OVERSEERS & BRADFORD CORPN., [1926] Ch. 149; *sub nom. Re* LISTER, *Ex p.* BRADFORD OVERSEERS & CORPN. *v.* DURRANCE, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5.

7769. *Add. Annotations:* — **Refd.** Harrison *v.* Holland, [1921] 3 K. B. 297; Chillingworth *v.* Esche, [1923] 1 Ch. 576.

7770. *Add. Annotation:*—*As to* (1) **Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7778. *Add. Annotations:* — **Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7778a. —— ——.]—After a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised revests in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to revest any interest in the lease in debtor.—*Re* HYAMS, *Ex p.* LINDSAY *v.* HYAMS (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

7780. *Add. Annotation:*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7782a. —— **Rights as to statutory tenancy—Under Rent Restriction Acts.**]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, &, consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—REEVES *v.* DAVIES, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

Annotations:—**Consd.** Roe *v.* Russell, [1928] 2 K. B. 117. **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Parkinson *v.* Noel, [1923] 1 K. B. 117.

7782b. —— —— ——.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft.

PART XX. SECT. 16, SUB-SECT. 5.—E.

7761 i. *On trustee—Right to remove fixtures.*]—Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for the benefit of creditors to deft., who gave a disclaimer:—*Held:* the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by (Trusts Deeds Act, s. 55 (1).—WINTERMUTE *v.* TAYLOR, [1919] 2 W. W. R. 882.—**CAN.**

ii. *On creditors—Disclaimer of assets.*]—A secured creditor put in a claim against bkpt.'s estate for certain assets, which assets the trustee disclaimed:—*Held:* the ct. could not order the trustee to accept those assets as part of the estate.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—**CAN.**

7770 ii. —— *Right to possession.*]—A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest:—*Held:* the landlord was entitled to an order for possession.—*Re* ABUBAKER HAJI ABDULLA (1924), I. L. R. 48 Bom. 580.—**IND.**

retained possession of it after the expiration of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits:—*Held:* (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the benefit of deft., & consequently pltfs. were entitled to judgment.—PARKINSON *v.* NOEL, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

Annotations:—As to (1) **Consd.** Keeves *v.* Dean, Nunn *v.* Pellegrini, [1923] 2 K. B. 804. **Expld.** Lovibond *v.* Vincent, [1929] 1 K. B. 687. **Overd.** Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. *As to* (2) **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Roe *v.* Russell, [1928] 2 K. B. 117.

7782c. —— —— ——.]—SUTTON *v.* DORF, No. 7681b, *ante*.

7789a. On mortgagee — Of shares — Bankrupt's name still on register.]—WISE *v.* LANSDELL, No. 7689a, *ante*.

7791. *Add. Annotations:*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7793. *Add. Annotations:*—**Folld.** Morris & Sons, Ltd. *v.* Jeffreys (1932), 148 L. T. 56. **Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7793a. —— —— ——.]—Disclaimer of a lease by a trustee in bkpcy. operates as a discharge of a surety for payment of the rent, notwithstanding that part of the demised premises have been sublet before the bkpcy. The lessee of certain premises was adjudicated a bkpt., & his trustee, acting in pursuance of the powers conferred on him by Bkpcy. Act, 1914 (c. 59), s. 54, disclaimed the lease. Prior to the bkpcy., the lessee had sublet a portion of the premises. Deft. had guaranteed the payment of the rent, & the lessors claimed from him sums equal to the rent which would have accrued if the lease had still been in existence:—*Held:* the disclaimer discharged the surety, on the ground that if the surety were called on to pay he would have a right of proof against bkpt.'s estate, whereas the intention of sect. 54 was that the bkpt. & his property should be released from all liability.—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 148 L. T. 56; 49 T. L. R. 76.

7801a. —— ——.]—NAISH *v.* TATLOCK (1794), 2 Hy. Bl. 319; 126 E. R. 573.

Annotations:—**Consd.** Vincent *v.* Godson (1853), 1 Sm. & G. 384. **Refd.** How *v.* Kennet (1835), 3 Ad. & El. 659.

7801b. —— ——.]—BEARD *v.* DAVIDSON (1843), 1 L. T. O. S. 646.

7811. *Add. Annotation:*—**Consd.** *Re* Farrow's Bank, [1921] 2 Ch. 164.

7821. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7832. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7835. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7836. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7848. *Add. Annotation:*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7854. *Add. Annotation:*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7854a. —— —— **Joint tenants.**]—A landlord who has proved in the bkpcy. of one of two joint tenants of premises for arrears of rent is entitled to levy a distress on goods of the other tenant on the premises for the same arrears, at any rate so long as no dividend has been paid to him in the bkpcy.

Semble: a distress can properly be levied on the tenant's own goods for arrears of rent already proved for in his bkpcy. so long as no dividend has been received by the landlord in the bkpcy. It is not until a dividend is being paid that the landlord is put to his election between the two remedies.—HOLMES *v.* WATT, [1935] 2 K. B. 300; 104 L. J. K. B. 654; 153 L. T. 58, C. A.

7854b. —— —— **No dividend received.**]—HOLMES *v.* WATT, No. 7854a, *ante*.

7787 iii. ——.]—A disclaimer of a lease by an assignee for the benefit of creditors:—*Held:* to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—KERR *v.* CAPITAL GROCERY, LTD., [1921] 1 W. W. R. 1221; 59 D. L. R. 388; 1 C. B. R. 490.—**CAN.**

7788 i. —— *Liability to ejectment.*]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 43, but contests the action & allows it to proceed to judgment, he cannot then present a petition invoking his rights.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 6.

7815 i. *In what cases—Trustee electing not to take.*]—The order for possession under Bkpt. & Insolvent Act, 1857 (Ir.), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *primâ facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect. being to protect the landlord from being left with a bkpt. tenant.—*Re* KEANE (1922), 57 I. L. T. 5.—**IR.**

PART XX. SECT. 17, SUB-SECT. 1.

c i. ——.]—The debtor co., before its authorised assignment in bkpcy., was indebted to its landlord for rent. The landlord distrained for rent, & the debtor's goods on the demised premises were under seizure by the landlord & in its possession when the debtor's assignment became effective, & a custodian was appointed:—*Held:* the landlord was at that time a secured creditor, within Bkpcy. Act, & the custodian, as custodian, never came into possession of the goods under distress for rent.—*Re* PATERSON (D. S.) & Co., [1931] O. R. 777; 12 C. B. R. 433.—**CAN.**

7847 ii. ——.]—A landlord cannot distrain for rent after the making of a receiving order.—*Re* JENNY LIND CANDY SHOPS, LTD., [1935] O. R. 119.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 3.

se. *Property claimed by lienholders & mortgagees.*]—*Held:* the prohibition in Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3, as to distress for rent not applicable to above property, the estate having no beneficial interest therein.—*Re* HAMILTON & OAKES, [1928] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 4.

r i. ——.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re* WORK & DAY ESTATE, [1921] 2 W. W. R. 94; 58 D. L. R. 377; 1 C. B. R. 553.—**CAN.**

7867a. One year's rent due before registration of composition deed.]—WILLIAMS *v.* CADBURY (1867), L. R. 2 C. P. 453; 36 L. J. C. P. 233; 16 L. T. 354; 15 W. R. 905.

Annotations :—**Distd.** Selby *v.* Greaves (1868), L. R. 3 C. P. 594. **Folld.** *Re* Douglas, *Ex p.* Ryder (1871), 6 Ch. App. 413.

7868. *Add. Annotation :*—**Apld.** *Re* Wells, [1929] 2 Ch. 269.

7869. After this case add :—

——.]—*See* Bkpcy. Act, 1914 (c. 59), s. 35 (1).

7869a. ——.]—The lessee of a farm, in respect of which the rent was payable quarterly, died intestate in 1928, & his administratrix entered into possession. Subsequently an order for administration was made in respect of the estate of the lessee, which was insolvent. At the date of the order one quarter's rent was unpaid. A receiver was appointed, & ultimately the lessor, three quarters' rent being by that time due to him, took out a summons, in the administration action, for the purpose of ascertaining whether, having regard to Administration of Estates Act, 1925 (c. 23), s. 34 (1), which applied the law of bkpcy. to the administration of insolvent estates, he was entitled to distrain on the property :—*Held :* there was nothing in 1914 Act which interfered with the landlord's right to distrain, & he was entitled to distrain for the three quarters' rent.—*Re* WELLS, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323; [1929] B. & C. R. 119.

7873. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7878. *Add. Annotation :*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

7913. *Add. Citation :*—12 L. T. 25.

7931a. ——.]—Assignees of a bkpt. agreed to sell a part of his estate, & filed a bill for specific performance. It turned out that the estate was vested in an assignee under a previous insolvency. After the master had made his report, upon a reference as to title, the assignee in insolvency offered to concur in the sale :—*Held :* a good title could be made.—SIDEBOTHAM *v.* BARRINGTON (1841), 4 Beav. 110; 10 L. J. Ch. 302; 5 Jur. 429; 49 E. R. 280.

Annotation :—**Refd.** Fraser *v.* Wood (1845), 8 Beav. 339.

7949. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch 667.

7950. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

7950a. —— ——.]—If bkpt. join with his trustee in selling the goodwill & business previously carried on by bkpt., & agrees with the purchaser not to carry on a similar business within a prescribed district, such agreement is binding on him.—BUXTON & HIGH PEAK PUBLISHING & GENERAL PRINTING CO. *v.* MITCHELL (1885), 1 Cab. & El. 527.

Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

7968a. —— ——.]—*Qu. :* whether the assignee of an insolvent can maintain an action against an attorney for negligence in preparing a lease for the insolvent, whereby he failed to obtain possession of the premises demised.—DELAFIELD *v.* FREEMAN (1829), 6 Bing. 294; 3 Moo. & P. 704; 8 L. J. O. S. C. P. 70; 130 E. R. 1293.

7974. Delete the words "the damage suffered, if any . . . claim should be made."

7984. *Add. Annotation :*—**Consd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

7992. *Add. Annotation :*—*As to* (1) **Refd.** Ellis *v.* Torrington (1919), 89 L. J. K. B. 369.

PART XX. SECT. 17, SUB-SECT. 5.

7866 vii. —— —— —— .]—A landlord claimed, in bkpcy. proceedings, the same priority in respect of taxes as for the rent :—*Held :* while a mere covenant to pay taxes is not a covenant to pay rent, the parties to a lease can stipulate that the taxes which the lessee covenants to pay shall be deemed to be rent & may be recovered in the same way; & the landlord has the same priority in respect of the unpaid taxes as he has in respect of rent fixed by the *reddendum*.—*Re* NATIONAL PIANO CO., [1931] 3 D. L. R. 298; 66 O. L. R. 303; 12 C. B. R. 52.—**CAN.**

7868 ii. ——.]—*Re* WILLIAMSON (1927), 38 B. C. R. 479.—**CAN.**

d i. —— *Goods seized by landlord—Liability for costs of seizure.*]—*Held :* the trustee was entitled to the possession of the goods without paying the costs of the seizure.—GARDNER *v.* GUY STREET GARAGE (1922), 70 D. L. R. 57.—**CAN.**

sg. *Distraint before assignment—Effect of Landlord & Tenant Act, 1931 (Man), s. 45—Preferential lien limited to three months' arrears.*]—Sect. 12 of Distress Act, R.S.M., 1913, has not been impliedly repealed by Landlord & Tenant Act, 1931, but, even if it has been in spite of an order pronounced upon him, the landlord's rights are curtailed to the same extent by sect. 45 (1) of the latter Act. "The preferential lien of the landlord for rent," within sect. 45 (1), includes his claim as a secured creditor created by a distress made before the assignment.—*Re* MURRAY (G. W.) & CO., LTD., [1934] 3 W. W. R. 491. **CAN.**

PART XX. SECT. 18, SUB-SECT. 1.

7907 v —— *Bond—Purchased by bankrupt from trust of which bankrupt sole trustee—Refusal to assign—Person appointed to assign.*]—The estate of bkpt., who was serving a sentence of penal servitude, included an interest amounting to £50 in a bond & disposition in security. He had bought the interest from a trust in which he was sole trustee, but he had never had the title transferred from himself as trustee to himself as an individual. The borrower offered to repay the loan on receipt of a valid discharge, but he would not accept a discharge signed by the trustee in bkpcy. The trustee, therefore, prepared an assignation of the bond by bkpt. to himself, but bkpt. refused to sign it, & persisted in his refusal in the Sheriff Ct. No pains could follow, as bkpt. was already in prison. The trustee then presented a petition craving the ct. to authorise the clerk of ct. to sign the assignation on bkpt.'s behalf. The parties interested in the execution of the assignation in the manner proposed having lodged in process letters of consent thereto, the ct., in view of the small sum involved, granted the prayer of the petition.—PENNELL'S TRUSTEE, [1928] S. C. 605. —**SCOT.**

PART XX. SECT. 18, SUB-SECT. 2.

h i. —— *Nature of trustee's title.*]—DOE d. RANKIN *v.* ANDREWS (1883), 22 N. B. R. 425.—**CAN.**

sf. *Interference by court.*]—*Re* GOLDBERG (Ont.), [1927] 4 D. L. R. 775; 8 C. B. R. 463.—**CAN.**

PART XX. SECT. 18, SUB-SECT. 4.

sg. *Inadequacy of price—Whether ground for rescission.*]—The ct., under the circumstances of the case, refused, upon the application of a debtor who had assigned all his property in trust for his creditors, to set aside a sale made by the trustees, on the ground of inadequacy of price.—LINTON *v.* MICHIE (1859), 7 Gr. 182.—**CAN.**

8000. *Add. Annotation :*—**Reld.** *Re* Horder, *Ex p.* Trustee, [1936] 2 All E. R. 1479.

8002. After this case add " *See, now,* Order of the Lord Chancellor, dated Aug. 15, 1921, [1921] W. N. 362."

8024a. Against receiver for debenture-holders—Act of bankruptcy consisting in sale of property to company.]—On Jan. 9, 1929, S., a builder, assigned his business & assets to a limited co. in consideration of shares in the co. On Jan. 14, 1929, the co. issued debentures charged on its assets & undertaking. On Feb. 14, 1929, a receiver was appointed by the debenture-holders. On May 23, 1929, S. was adjudicated a bkpt., & on May 27, 1929, a trustee in bkpcy. was appointed. On Apr. 15, 1930, an order was made by CLAUSON, J., upon a motion by the trustee against the co. & the debenture holders declaring that the assignment of Jan. 9, 1929, was fraudulent & void & an act of bkpcy. & that the assets of the bkpt. purported to be thereby assigned formed part of his estate & vested in the trustee for the benefit of his creditors ; & the co. was ordered to deliver up to the trustee or to account to him for such of the assets as had come to the hands of the co. or of any person by the order or for the use of the co. The receiver on taking possession converted to his own use chattels of the bkpt. consisting of plant & machinery, motor vans & office furniture & carried on the bkpt.'s business of a builder, in the course of which he completed a number of current building contracts & received payment thereunder from the building owners. On Dec. 23, 1931, the trustee elected to treat the receiver as a trespasser & claimed that the receiver (who by leave of the ct. was made a resp. to the motion of the trustee in place of the debenture-holders) by so taking possession, intermeddling with or trespassing on the assets, contracts & possessory rights which passed to him was a trespasser &/or guilty of conversion &/or interference with the trustee's contractual rights & was liable in damages for the value of all the assets & for the net moneys paid by the building owners under the building contracts as money had & received to his use. The receiver did not dispute his liability to account to the trustee for the sum of £2,600, the value of the chattels which he had converted to his use, but resisted the trustee's claim to recover as damages for their conversion a sum equal to the profits that would have accrued to him from the building contracts but for the acts of the receiver :—*Held :* the trustee having elected to treat the receiver as a wrongdoer in completing the contracts was not entitled to treat the contracts as having been kept alive for his benefit or to call upon the receiver to account for the profits realised by such completion as special damages for conversion or as damages for wrongfully intermeddling with the contracts between the bkpt. & the building owners ; also the profits made by the receiver on the contracts completed by him could not on the facts of the case be treated as money had & received to

PART XXI. SECT. 3, SUB-SECT. 1.

k (p. 977) **i.** —— *Production of power of attorney.*]—A trustee resident in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney :—*Held :* production not necessary.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922), 66 D. L. R. 330.—**CAN.**

sh. *Duty to sue in official name.*]—Pltf., in his official capacity as trustee in bkpcy., used his own name instead of his official title in an action :—*Held :* to avoid any difficulty the action should be treated as an issue directed under Bkpcy. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpcy. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—FITZGERALD *v.* MCMORROW, [1923] 4 D. L. R. 619 ; 52 O. L. R. 383 ; 3 C. B. R. 29.—**CAN.**

7998 ii. ——.]—Except in those cases where a creditor is authorised under Bkpcy. Act, s. 35, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356.—**CAN.**

8000 iii. —— *Proceedings begun in wrong court—Transfer of proceedings.*]—Where proceedings had been commenced in the wrong ct. :—*Held :* the proceedings should be continued under Bkpcy. Act, r. 120 ; & an order transferring the proceedings to the bkpcy. side should be made if necessary.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 3 W. W. R. 209 ; 68 D. L. R. 762.—**CAN.**

8000 iv. —— *Application at chambers for declaration—Matter within jurisdiction of Bankruptcy Court.*]—Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpcy. in the summary way provided by r. 120 :—*Held :* the application must be referred to the judge in bkpcy. to be dealt with by him, an *interim* injunction to stand in the meantime.—EASTERN TRUST CO. *v.* LLOYD MANUFACTURING CO., [1923] 2 D. L. R. 852 ; 56 N. S. R. 246 ; 3 C. B. R. 710.—**CAN.**

8000 v. —— *Action to set aside settlement made by bankrupt.*]—A trustee in bkpcy. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of deft. & voidable under Bkpcy. Act, s. 29 :—*Held :* the action was improperly taken ; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take the form of an issue or trial ; the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—STILLWATER LUMBER & SHINGLE CO. *v.* CANADA LUMBER & TIMBER CO., [1923] 2 D. L. R. 900 ; 32 B. C. R. 81 ; [1923] 1 W. W. R. 1333.—**CAN.**

8000 vi. —— *Proceedings to set aside sale or transfer by bankrupt.*]—An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B.—*Re* VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCN.'S TRUSTEE *v.* BRUMWELL & ROYAL BANK, [1924] 3 D. L. R. 803 ; [1924] 3 W. W. R. 54 ; 5 C. B. R. 94.—**CAN.**

8000 vii. —— *Appellate court—Appeal against judgment in favour of bankrupt—Judgment assigned by bankrupt to third party.*]—*Held :* the trustee in bkpcy. had a right to resume the action in the interest of the estate.—FREEDMAN *v.* HART. *Re* BAITTLE (1922), 68 D. L. R. 288 ; 2 C. B. R.

sj. *Assent of inspectors—Whether necessary—Motion for directions.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363 ; 8 C. B. R. 258.—**CAN.**

sk. *Application for interim injunction—Undertaking as to damages.*]—*Held :* should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—BRENNER'S TRUSTEE *v.* BRENNER, [1923] 3 D. L. R. 1097 ; 52 O. L. R. 374 ; 3 C. B. R. 84.—**CAN.**

sl. *Right to take proceedings under State Bankruptcy Act—Effect of Federal Act.*]—Prior to the date of the commencement of the Bkpcy. Act, 1924-1928, an order for the sequestration of the estate of P. was made in the Bkpcy. Ct. of this State. Subsequently to that date the official assignee had taken out a notice of motion under Bkpcy. Act, 1898, s. 134, claiming against E. certain property as part of the bankrupt's estate :—*Held :* the official assignee had, under the State Bankruptcy Act, prior to the commencement of the Bankruptcy Act, 1924-1928, acquired the right, & had a duty imposed on him, to institute the proceedings under sect. 134 of the State Act.—*Re* PARSONS (1928), 28 S. R. N. S. W. 575 ; 45 N. S. W. W. N. 158.—**AUS.**

PART XXI. SECT. 3, SUB-SECT. 2.

sm. *Against holder of lien note on chattels—Description of chattels alleged insufficient.*]—*Held :* the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—*Re* GAUDREAU, *Ex p.* CARRUTHERS (1922), 68 D. L. R. 783.—**CAN.**

the use of the trustee.—*Re* SIMMS, *Ex p.* TRUSTEE, [1934] Ch. 1; 103 L. J. Ch. 67; [1933] B. & C. R. 176; *sub nom. Re* SIMMS, *Ex p.* TRUSTEE *v.* WILLIAMS, SIMMS, LTD. & GILLETT, 149 L. T. 463, C. A.

Annotation :—**Refd.** Joly *v.* Pinhoe Nurseries, Ltd., [1936] 1 All E. R. 841.

8025a. —— **Sale of goods—After making of vesting order.**]—FORD *v.* DABBS (1843), 5 Man. & G. 309; 6 Scott, N. R. 192; 12 L. J. C. P. 134; 134 E. R. 583.

Annotations :—**Refd.** Williams *v.* Chambers (1847), 10 Q. B. 337; Jackson *v.* Burnham (1852), 8 Exch. 173.

8033. *Add. Annotation :*—**Refd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410.

8040a. —— ——.]—A. was in possession, on Oct. 23, 1847, of barges which had belonged to the bkpt. On Oct. 29, A. sold to B. A flat issued Nov. 4 on an act of bkpcy. committed Nov. 3. The barges were demanded from A. in Mar. 1848 :—*Held :* the assignees could not maintain trover against A. upon counts stating the possession of the assignees & a conversion pending their title.—STANFIELD *v.* STAFFE (1849), 13 L. T. O. S. 489.

8044. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8064. *Add. Annotation :*—**Refd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8067. *Add. Annotation :*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

8081. *Add. Annotation :*—**Refd.** L. *v.* L. (1934), 50 T. L. R. 441.

8089. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8092. *Add. Annotations :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371; Sullivan *v.* Constable (1932), 48 T. L. R. 267.

8097. *Add. Annotation :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545.

8104a. —— **Costs of carrying out order of court.**]—Upon a motion by a trustee in bkpcy. to which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation :—*Held :* the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order &

8028 ii. —— *Action already brought by bankrupt.*]—*Held :* it might be continued by the trustee.—BRENNER *v.* AMERICAN METAL CO., [1920] 19 O. W. N. 239; 55 D. L. R. 702; 1 C. B. R. 375.—**CAN.**

8034 ii. —— *Unpaid purchase price of shares—Sold by broker.*]—Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt. :—*Held :* the trustee was entitled to sue the purchaser for the price of the shares.—FINLAYSON *v.* BALFOUR, WHITE & CO., *Re* THORNTON DAVIDSON & CO. (1922), 70 D. L. R. 66.—**CAN.**

sn. *Action to recover money paid by bankrupt in breach of trust.*]—The trustee in bkpcy. has no right of action, at least without authority from the *cestuis que trust*, to recover trust money which was held by bkpt. & paid by him in breach of trust to others.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 2 W. W. R. 280; 68 D. L. R. 757.—**CAN.**

k i. *Proceedings to recover land acquired collusively by third party.*]—TRUSTEE, ETC. *v.* PARUK (1921), 42 N. L. R. 1.—**S. AF.**

l i. *Proceedings to set aside writ—Issued by mortgagee to enforce security.*]—An assignment under Bkpcy. Act does not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

so. *Proceedings to impeach sale of goods under Bulk Sales Act*, 1917.]—*Re* PACKER, [1927] 3 D. L. R. 330; 60 O. L. R. 402.—**CAN.**

sp. *Proceedings to recover debts—Presidency Towns Insolvency Act.*]—Presidency Towns Insolvency Act, s. 7, is not limited in its scope to matters in which the official assignee, by the operation of the insolvency law, claims a higher title than what the insolvent himself would have had, & the official assignee is entitled to proceed by way of motion under sect. 7 in cases where he has a money claim against strangers to the insolvency, the only limitation placed on the jurisdiction of the Insolvency Ct. being that, when once the official assignee has summoned a witness, under sect. 36 of the Act, & that witness disputes his indebtedness, the official assignee has no option but to proceed by way of suit. Where the official assignee, standing in no higher position by reason of the special provisions of the insolvency law than the bkpt. himself, seeks to recover a debt which is not admitted, it is a matter of discretion for the judge sitting in insolvency whether in any given case he should deal with such a claim in the Insolvency Ct. or refer it to the machinery of the ordinary cts.—OFFICIAL ASSIGNEE *v.* NARASIMHA MUDALIAR (1929), I. L. R. 52 Mad. 717.—**IND.**

sq. *Action under Deaths by Accident Compensation Act*, 1908.]—The statutory rights of action, given to a person by Deaths by Accident Compensation Act, 1908, does not in the event of such person's bkpcy. pass to the official assignee under Bkpcy. Act, 1908, s. 61.—*Re* RICHTER, [1929] N. Z. L. R. 364.—**N.Z.**

PART XXI. SECT. 3, SUB-SECT. 6.

8099 v. —— —— ——.]—BURNS *v.* GRAHAM, [1923] 4 D. L. R. 1111; 53 O. L. R. 226; 4 C. B. R. 190.—**CAN.**

8099 vi. —— —— —— *Action commenced without obtaining indemnity from creditors.*]—*Held :* if it were necessary under Bkpcy. Act, s. 68 (2), & r. 54, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets.—THORNE *v.* CANADIAN STEERING WHEEL CO., [1923] 4 D. L. R. 1127; 52 O. L. R. 460; 2 C. B. R. 445.—**CAN.**

8099 vii. —— ——.] — *Held :* Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . ., shall be in the discretion of the ct." The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re* KWONG TAI CHONG CO.'S ASSIGNMENT (1922), 65 D. L. R. 132; [1922] 2 W. W. R. 229, *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE (1922), 31 B. C. R. 40.—**CAN.**

was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be included.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1920] 3 K. B. 625; 90 L. J. K. B. 31; [1920] B. & C. R. 182; *subsequent proceedings*, [1921] 1 K. B. 344.

8104b. —— **Costs of transcript of shorthand notes of evidence.**]—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees accordingly. On motion for a review of taxation:—*Held:* having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, &, accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re* MARKS, *Ex p.* VANN, [1923] B. & C. R. 92.

8114. *Add. Annotation:*—**Refd.** *Re* Wait, [1926] Ch. 962.

8138a. —— —— **After-acquired property.**]—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.

8168a. *S. P.* MATTHEWS *v.* DICKINSON (1817), 7 Taunt. 399; 1 Moore, C. P. 104; 129 E. R. 160.

Annotation:—**Consd.** Whitworth *v.* Hall (1831), 2 B. & Ad. 695.

8172a. ——.]—OWEN *v.* LAVERY (1900), 16 T. L. 375, C. A.

8195. *Add. Annotations:*—**Distd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200. **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8200. *Add. Annotations:*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545. **Refd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166.

8276a. —— **Action for specific performance of agreement—Time for disclaiming agreement unexpired.**]—PUTTOCK *v.* DAINTRY (1894), 38 Sol. Jo. 273.

8281a. —— **To apply for judgment in default of defence—Draft minutes to be shown to official receiver.**]—Where after action brought a receiving order in bkpcy. was made against deft., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit.—HATTON *v.* DENISON (1926), 70 Sol. Jo. 565.

8290a. —— **Defendant making substantial counterclaim.**]—An action against a deft. who makes

PART XXI. SECT. 4.

8105 iv. ——.]—If a creditor desires to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpcy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpcy. ct. in another province. When the cts. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.—*Re* BRYANT, ISARD & Co., [1924] 1 D. L. R. 217; 4 C. B. R. 317.—**CAN.**

8132 iii. —— ——.]—*Re* PENTICTON HOTEL CO., LTD., [1937] 3 W. W. R. 36.—**CAN.**

sr. *Action to recover possession—Of partly built ship—For purpose of completion.*]—A judge of the Bkpcy. Ct. may grant an application for recovery from the trustee in bkpcy. of possession of ships partly built & materials in connection therewith, & the necessary portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpcy. had been taken possession of by appct., & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpcy. Act, comes within the words "any other person aggrieved by any act or decision of the trustee" in sect. 39.—R. *v.* HODGES, [1921] 2 W. W. R. 388; 1 C. B. R. 530.—**CAN.**

st. *Action for goods sold & delivered.*]—*Held:* may be brought in the name of the original creditor, notwithstanding that he has made an assignment for the general benefit of his creditors.—KRIENKE *v.* SCHA [1919] 1 W. W. R. 990.—**CAN.**

PART XXI. SECT. 5, SUB-SECT. 1.—C.

h i. —— ——.]—*Held:* bkpt. had no right of action, such right being vested solely in the official assignee.—TIMMINGS *v* TREADGOLD, [1923] N. Z. L. R. 73.—**N.Z.**

PART XXI. SECT. 6, SUB-SECT. 1.

member of bankrupt firm.]—*Held:* after an authorised assignment no such action could be brought against bkpt. without leave.—*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—**CAN.**

f i. —— *Bankruptcy Act Amendment Act*, 1923 (*c.* 31), *s.* 10.]—*Re* CANADIAN HART PRODUCTS, [1927] 2 D. L. R. 359; 60 O. L. R. 219.—**CAN.**

f ii. —— *By Canadian creditor in foreign court.*]—*Held:* the Superior Ct. of Quebec sitting in bkpcy. had power to stay proceedings instituted in the United States by a Canadian creditor.—*Re* MOUNT ROYAL LUMBER & FLOORING CO., MORGAN LUMBER CO. *v.* SCOTT, [1927] 2 D. L. R. 866; Q. R. 42 K. B. 277.—**CAN.**

f iii. ——.]—PRIBAG *v.* DWORSHIK, [1929] 4 D. L. R. 1067; 1 W. W. R. 238; 38 Man. L. R. 25; 10 C. B. R. 294.—**CAN.**

f iv. —— *Cancellation of assignment before trial.*]—In an action of debt, pltf. may show that an assignment in bkpcy., which had been pleaded as a defence, had been cancelled before the trial.—FORBES *v.* RAFUSE, [1934] 3 D. L. R. 734.—**CAN.**

sg. *Leave of court—When necessary.*]—*Re* DUGGAN, [1931] 3 D. L. R. 815.—**CAN.**

sh. —— ——.]—WHITTEN & Co. *v.* COWPER, [1932] 2 D. L. R. 240.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—A.

8237 vii. ——.]—A trustee to whom an assignment has been made under Bkpcy. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bk proceedings are concerned. But trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee.—*Re* BRENNER (N.) & Co., LTD., [1921] 49 O. L. R. 71; 58 D. L. R. 640; 19 O. W. N. 445.—**CAN.**

Personal liability.]—Where Rule 54 (3) applies, failure or neglect by the trustee to anticipate & provide against costs being allowed by the ct. to deft. may be considered justification for not relieving the trustee of his personal liability for the costs.—NEWTON *v.* ST. JEAN BAPTISTE PARISH, [1933] 2 W. W. R. 270.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—B.

m i. ——.]—Where an assignee in insolvency elects, under Insolvency Act, 1915, s. 176, to abandon a common law action commenced by the insolvent prior to his insolvency, the action may be stayed until further order by the ct., but should not be dismissed, as a dismissal of the action might be pleaded in bar as *res judicata* in a future action by the insolvent, should such an action be commenced by him after he has obtained his certificate of discharge.—MILLANE *v.* PRESIDENT, ETC., OF SHIRE OF HEIDELBERG, [1928] V. L. R. 52; [1928] Argus L. R. 5.—**AUS.**

a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—FRANCO *v.* DUTTO, [1923] W. N. 40.

8304. *Annotations :*—For " *Re* Somes, Stewart *v.* Somes (1895), 73 L. J. 359 " read " *Re* Somes, Stewart *v.* Somes (1895), 73 L. T. 359."

8306. *Add. Citations :—previous proceedings, sub nom. Re* SOMES, STEWART *v.* SOMES (1895), 73 L. T. 359, C. A.

8331. *Annotation :*—For " **Mentd.** *Re* Bagley, [1911] 1 K. B. 317, C. A.," read " **N.F.** *Re* Bagley, [1911] 1 K. B. 317."

8332. For " *Held :* it was necessary," etc., read " *Held :* it was not necessary," etc.

Part XXII.—The Debtors Acts and Bankruptcy Offences Generally.

8335. *Add. Annotation :*—**Dbtd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8348. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8378. *Add. Annotation :* — **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8398a. Equitable assignor—Undertaking to pay specific sum out of moneys to be received.]—An action for the grant to pltf. by deft. of his proprietary interests in an invention was compromised by an order on certain terms. One of the terms was an undertaking by deft. to pay pltf. a sum of £1,000 forthwith, which was duly paid, & a further sum of £4,000 out of the first moneys received by deft. on a future sale of his rights in the invention. No time for the payment of the sum in question was fixed by the undertaking. At the date of the order pltf. was aware that deft. had already disposed of half his rights. Pltf. having learnt that deft. had agreed to sell the remaining half interest in these rights to one G. for a sum immediately payable & the balance by deferred payments & that he had used the amount received for his own purposes in breach, as the ct. found as a fact, of his undertaking, moved the ct. for the committal of deft. or the issue of a writ of attachment :—*Held :* (1) the undertaking to pay the £4,000, being an undertaking to pay a specific sum out of the moneys to be received in respect of a future sale, constituted a good equitable assignment thereof, & by dealing with the moneys received in disregard of the undertaking deft. had committed a breach of his fiduciary duty to pltf. The act of deft. therefore brought the case within the third exception to Debtors Act, 1869 (c. 62), s. 4 ; (2) the undertaking to pay out of the first moneys received could not be construed as an order to pay forthwith or within a fixed time after receipt within R. S. C., Ord. 41, r. 5, & therefore the order for committal or for leave to issue a writ of attachment could not be made. The ct., however, fixed a time for the payment of the moneys remaining due.—COTTON *v.* HEYL, [1930] 1 Ch. 510 ; 99 L. J. Ch. 289 ; 143 L. T. 16.

Annotation :—As to (1) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

8408. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

8435. *Add. Annotation :*—**Consd.** *Re* Whaley, *Ex p.* Official Receiver, [1921] 2 K. B. 623.

8435a. Motion to commit by official receiver acting as trustee—Necessity for affidavit.]—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of them to pay £4 a week out of their respective

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PART XXI. SECT. 8.

n i. —— *Order giving creditor right to bring proceedings—Appeal from.*]—A judge sitting in bkpcy. having granted a petition by resp., under Bkpcy. Act, s. 35, to be authorised to take certain proceedings in the name of the trustee, but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & one not subject to the control of that ct. :—*Held :* special leave to appeal to the Supreme Ct. of Canada should not be granted.—MERCHANTS BANK OF CANADA *v.* ANGERS (1921), 67 D. L. R. 604 ; 62 S. C. R. 354.—**CAN.**

q i. —— —— *To set aside preferential transactions—Rights of creditors not joining in action.*]—*Held :* creditors attacking transactions, & taking all the risk, cannot be compelled, in the event of success, to share the fruits of their success with those creditors who declined to share the risk.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

r i. —— —— *To proceed with appeal—To Privy Council.*]—Where one creditor applied for & obtained an order under Bkpcy. Act, s. 35, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit :—*Held :* an appeal to the Privy Council did not lie.—*Re* ANDREW MOTHERWELL OF CANADA, LTD. (1924), 55 O. L. R. 294 ; 5 C. B. R. 107.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 1.

l i. —— 1924 *Act—Right to discharge —Discretion of court.*]—PING LEE *v.* PAUL WISE, [1929] 3 D. L. R. 410 ; 2 W. W. R. 376 ; 52 Can. C. C. 15 ; 41 B. C. R. 64.—**CAN.**

l ii. ——————.]—On an application for discharge from custody under sect. 7 of Arrest & Imprisonment for Debt Act, R. S. B. C., 1924, if the ct. is satisfied that deft. had no intention of quitting the province at the time the writ of *capias* was issued, he should be discharged.—THOMPSON *v.* SCOLLARD 1930), 41 B. C. R. 206.—**CAN.**

sy. *Exemption of Indians from arrest for debt—R. S. C.*, 1927, *ss.* 102-105.]—*Ex p.* TENASSE, [1931] 1 D. L. R. 806 ; 2 M. P. R. 523.—**CAN.**

sz. *Review of order.*]—It is open to a judge who has granted an *ex parte* order under s. 3 of Arrest & Imprisonment for Debt Act, R.S.B.C., 1924, to review it at large, i.e., as to irregularities or as to the merits, upon all the materials that were before him when he granted it or upon new ones.—MIT SINGH *v.* GILL, [1936] 1 W. W. R. 396 ; 2 D. L. R. 43 ; 65 C. C. C. 263 ; 50 B. C. R. 332.—**CAN.**

se. *Who may be liable to arrest—Necessity for residence.*]—A former resident of the Province of Prince Edward Island is not liable to arrest for evasion of debt if he returns for a temporary visit.—CAMPBELL *v.* CAMPBELL, [1936] 1 D. L. R. 236.—**CAN.**

sf. *Affidavit—Contents.*]—An affidavit for capias must state the amount of the debt & how it was contracted, & must show a good cause of action.—DYKES *v.* MANDEVILLE, [1936] 3 D. L. R. 434 ; 10 M. P. R. 363 ; 66 Can. C. C. 289 ; 6 F. L. J. (Can.) 69.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6. —A.

sh. *Duty of debtor to attend & make disclosure.*]—On appeal by the debtor from an order requiring her to pay a certain amount per month, the debtor having asked that a much smaller amount be substituted therefor :—*Held :* under the circumstances, all the materials for coming to a decision as to the debtor's ability to pay were not before the ct., & the order should have directed the debtor to attend again at her own expense & make satisfactory disclosure. The order was, therefore, set aside & one for the further attendance of the debtor substituted.—ROYAL BANK OF CANADA *v.* DIAMOND, [1930] 1 W. W. R. 809 ; 3 D. L. R. 810 ; 38 Man. L. R. 585.—**CAN.**

salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least £200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly £25 out of his salary to the official receiver during the bkpcy., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined. Appeals from these orders were dismissed by the Ct. of Appeal. Bkpts. having made default in payment of instalments under the orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver:—*Held:* the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, [1921] 2 K. B. 623; 125 L. T. 511; *sub nom. Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, *Re* SCOTT, *Ex p.* OFFICIAL RECEIVER, 90 L. J. K. B. 892; 37 T. L. R. 645; [1921] B. & C. R. 1.

8439a. —— Application by agent for unincorporated association.]—In an action by pltf. against an unincorporated body & seventeen named persons described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy.; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons:—*Held:* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order; (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCN. (1930), 143 L. T. 334; 46 T. L. R. 422, D. C.

8445a. Form of application—Enforcement of Divorce Court order—Affidavit of service.]—When application is made for the issue of a judgment summons to enforce a Divorce Ct. order appct. must state in his application, & be prepared, if necessary, to prove, that the order has been served on resp. & the affidavit of service filed as required by Matrimonial Causes Rules, 1924, r. 79.—PRACTICE NOTE, [1931] W. N. 184; 172 L. T. Jo. 76; [1931] B. & C. R. 44.

8447. *Add. Annotation:*—**Refd.** Smythe *v.* Wiles, [1921] 2 K. B. 66.

8448a. Summonses against co-respondent — For damages & for costs—Priority.]—Where damages & costs are awarded against a co-resp. & petitioner takes out two judgment summonses against him, one in respect of the costs & the other in respect of the damages, an order will go in respect of the payment of costs first.—*Re* WINTER, *Ex p.* WILLIAMS (1927), 44 T. L. R. 41; 71 Sol. Jo. 1002.

8449. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146.

8451. *Add. Annotation:*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8451a. —— Notes — Necessity for leave.]—PRACTICE NOTE, No. 8484a, *post.*

8459. *Add. Annotations:*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313. **Folld.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

8463. *Add. Annotations:*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57; Green *v.* Weatherill, [1929] 2 Ch. 213; Townshend *v.* Child (1932), 48 T. L. R. 575; MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8464. After this case add:—

——.]—*See, now,* Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1 (*d*).

8467. *Add. Annotation:*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8471. *Add. Annotations:*—**Consd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524. **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400; *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480.

8475. *Add. Annotation:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8479. *Add. Annotations:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400; *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8480. *Add. Annotation:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8484. *Add. Annotations:*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400. **Apld.** *Re* Blanchard *Ex p.* Blanchard (1932), 48 T. L. R. 480. **Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

PART XXII. SECT. 1, SUB-SECT. 6.—B.

8459 ii. ——.]—Permanent alimony, even though in arrears, is not a debt within Arrest & Imprisonment for Debt Act, R. S. B. C., 1924, s. 3.—MCKAY *v.* MCKAY, [1933] 2 W. W. R. 78; 47 B. C. R. 241.—**CAN.**

8a. *Who may make order for payment —Not local master.*]—BEAVER LUMBER CO., LTD. *v.* BRENNER, [1929] 2 D. L. R. 640; 1 W. W. R. 583; 23 S. L. R. 319. —**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6.—C.

p. i. —— —— *Death of creditor—Right of administrators.*]—On the death of a judgment creditor, his administrators must be added as pltfs. before they can examine the judgment debtor. —MCPHAIL *v.* WINSLOW, [1935] 2 D. L. R. 777; 8 M. P. R. 552.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6.—D.

8b. *Attachment in default of payment —Notwithstanding assignment in bankruptcy.*]—*Re* GLENCROSS, JONES *v.* GLENCROSS (N. B.), [1929] 2 D. L. R. —.—**CAN.**

8484a. ——.]—(1) An instalment order made pursuant to Debtors Act, 1869 (c. 62), s. 5, shall be drawn up forthwith & notice thereof given by pltf. to deft. by registered post at the last-known address of deft.

(2) The notice shall state the amount of the debt due, the costs of the summons, the amount & the period of the instalments & the day of the week or month on which the first instalment is directed to be paid.

(3) Any subsequent application for the issue of a committal summons shall be accompanied by a certified copy of the said notice to deft. together with a statement that no proceedings have been taken in respect of the instalment order, or in respect of the judgment or order on which it is founded in any ct. of inferior jurisdiction.

(4) No office copy or other copy of the order, or notes of the hearings made in judgment summons proceeding shall be made without the special leave of the judge.—PRACTICE NOTE, [1934] W. N. 72; 177 L. T. Jo. 241; 77 L. Jo. 239; [1934] B. & C. R. 13.

8484b. Notice of order.]—PRACTICE NOTE, No. 8484a, *ante*.

8484c. Copy of order—Necessity for leave.]—PRACTICE NOTE, No. 8484a, *ante*.

8485. *Add. Annotations:*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400. **Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8486. *Add. Annotations:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400; *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8487. *Add. Annotation:*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8494a. —— **Non-payment of alimony.**]—It is not the province of the Ct. of Ch. to enforce by committal orders for payment of alimony made by the Divorce Div. Therefore, where a wife moved to commit her husband for non-compliance with an order to pay her £5 a week, of which some £400 were in arrear:—*Held:* to make a committal order at once in such a case was not the usual practice of the Ch. Div., & the right order was that the husband should pay £3 a week towards payment of the arrears, the order made by the Divorce Div. still remaining in force.—*Re* BLANCHARD, *Ex p.* BLANCHARD (1932), 101 L. J. Ch. 313; 147 L. T. 222; 48 T. L. R. 480; 76 Sol. Jo. 459, C. A.

—— —— **Jurisdiction of Divorce Division.**]—*See, now*, Debtors Act (Matrimonial Causes) Jurisdiction Order, 1932, R. S. & O., 1932. No. 503.

8494b. —— **General principles.**]—*Re* JUDGMENT DEBTOR (1935), 51 T. L. R. 524; 79 Sol. Jo. 625; [1934–5] B. & C. R. 197.

8496a. —— **Evidence of means—Sufficiency of evidence.**]—Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—NESOM *v.* METCALFE, [1921] 1 K. B. 400; 90 L. J. K. B. 273; 124 L. T. 606; 37 T. L. R. 111, D. C.

8496b. —— **Documents accompanying.**]—PRACTICE NOTE, No. 8484a, *ante*.

8499a. —— —— **Sufficiency of evidence of debtor's means.**] — Prohibition refused.]—EDWARD *v.* WYVILL (1885), 2 T. L. R. 210, C. A.

8501. *Add. Annotations:*—**Apld.** *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480. **Consd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524. **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8506. *Add. Annotations:*—**Apld.** Morriss *v.* Winter, [1930] 1 K. B. 243. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

8513. *Add. Annotation:*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8521. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ *Ex p.* L. C. C., [1925] 2 K. B. 43.

SECT. 3 (p. 1044).—**BANKRUPTCY OFFENCES.**

See, also, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 5.

8534a. —— **Intent to defraud—Burden of proof.**]—On the hearing of a charge against bkpt. under 1919 Act, s. 154 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of it after or within six months before the presentation of the petition; but proof that during that period deft. has concealed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to defraud.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

PART. XXII. SECT. 1, SUB-SECT. 6—E.

sd. *Stay of proceedings—Antecedent action by debtor against creditor.*]—MORRISON *v.* MULRY, [1935] 1 W. W. R. 423; 49 B. C. R. 326.—CAN.

PART XXII. SECT. 2.

k i. —— ——.]—TOOLE *v.* HENNEBERRY (P. E. I.), [1928] 3 D. L. R. 38.—CAN.

k ii. ——.] — Fraudulent Debtors Arrest Act, R. S. O., 1914 (c. 83), enacts that before a writ of *ca. sa.* will be issued, it must be shown that debtor has been guilty of an intent to defraud his creditors. Where debtor had assigned all his property for the benefit of his creditors & then left Ontario & had subsequently returned with the object of settling pltf.'s claim & had resided unmolested in Ontario for some time:—*Held:* no fraudulent intent shown.—CANADA LUMBER CO. *v.* GAFFNEY, [1923] 4 D. L. R. 594.—CAN.

k iii. —— *Under Absconding Debtors' Act, R. S. O.*, 1877 (c. 68)—*Debt must be due when writ issued.*]—KYLE *v.* BARNES (1883), 10 P. R. 20.—CAN.

sd. *Attachment of aeroplane temporarily landed—For debt incurred in foreign domicil of parties—Invalid.*]—WILLIAMS *v.* COLUMBIA AIRWAYS, [1931] 2 D. L. R. 823.—CAN.

PART XXII. SECT. 3, SUB-SECT. 1.

8534 iv. —— *Prosecution—In what court.*]—Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bkpcy. had power to act in such a case:—*Held:* since the offence was an indictable offence it ought to be prosecuted & carried on under the Criminal Code

8557a. Failure to keep account books.]—Under 1914 Act, s. 158, as amended by Bkpcy. (Amendment) Act, 1926 (c. 7), s. 7, an omission to keep books of account though "honest" may not be "excusable."—R. *v.* DANDRIDGE (1931), 22 Cr. App. Rep. 156; [1931] B. & C. R. 40, C. C. A.

8565a. —— —— ——.] —— R. *v.* DORRINGTON (1927), 20 Cr. App. Rep. 1, C. C. A.

8587a. —— Obligation to disclose bankruptcy absolute.]—The obligation imposed by 1914 Act, s. 155 (*a*), on an undischarged bkpt. to disclose his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—R. *v.* LEINSTER (DUKE), [1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 87 J. P. 191; 40 T. L. R. 33; 68 Sol. Jo. 211; 27 Cox, C. C. 574; 17 Cr. App. Rep. 176; [1924] B. & C. R. 78, C. C. A.

8590a. —— Sale of land & business to bankrupt—Purchase money payable by instalments.]—Pltfs. entered into a contract with deft. for the sale to him of the whole issued share capital of a private co. & of certain freehold premises. The contract provided that the purchase price or any unpaid part thereof should carry interest at 2½ per cent. *per annum* from the date of completion & should be payable by weekly instalments of principal & interest of not less that £3, & if any such instalment should be in arrear for fourteen days the unpaid balance of the purchase money should become immediately payable & should be secured by a legal charge upon the freehold property. Pltfs. asked for rescission of the contract by reason of the fact that the purchaser concealed from them until after the execution of the contract the fact that he was an undischarged bkpt.:—*Held:* the entering into a contract in this form by an undischarged bkpt. is an obtaining of credit within sect. 155 of 1914 Act, & a contract so entered into by an undischarged bkpt. without disclosure of the fact that he is an undischarged bkpt. is unenforceable by him. Pltfs. were, therefore, entitled to an order for rescission of the contract & costs of the action.—DE CHOISY *v.* HYNES, [1937] 4 All E. R. 54; 81 Sol. Jo. 883.

8593a. Time for giving information of bankruptcy.]—If an undischarged bkpt. gives information to a creditor a reasonable time before he obtains credit from him he is not within Bkpcy. Act, 1914 (c. 59), s. 155. The information need not necessarily be given at the moment of obtaining the credit.—*R. v.* ZEITLIN (1932), 23 Cr. App. Rep. 163; [1933] B. & C. R. 69, C. C. A.

8633a. Bankrupt guilty of gambling—Severity of sentence.]—R. *v.* BREWIN (1926), 19 Cr. App. Rep. 154, C. C. A.

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like any other offence of a criminal nature, & motion dismissed.—R. *v.* ROY, [1923] 2 D. L. R. 1182; 39 Can. Crim. Cas. 347; 4 C. B. R. 90.—**CAN.**

8534 v. —— *Who may be liable.*]—Applts., one being the manager & the other an employee of a bkpt. co. were convicted for having concealed & fraudulently removed goods belonging to the bkpt., contrary to sect. 191 of Bkpcy. Act. The ground of appeal was that no other person than the bkpt. could be indicted for any offence under that section:—*Held:* affirming that conviction, the offences created by sect. 191 of Bkpcy. Act were offences within sect. 69 of the Criminal Code. —SIMCOVITCH *v.* R., [1935] S. C. R. 26; 1 D. L. R. 769; 63 C. C. C. 701.—**CAN.**

q i. —— *Prosecution an abuse of process.*]—Where criminal proceedings against a debtor for fraudulent concealment are not taken in vindication of public justice but wholly because of his refusal to comply with a demand from his creditors to "dig up the money or take the consequences," the prosecution is an abuse of process which the cts. cannot countenance. The criminal cts. are not to be held *in terrorem* over alleged debtors.—R. *v.* BELL (B. C.), [1929] 3 D. L. R. 931; 2 W. W. R. 399; 51 Can. Crim. Cas. 388.—**CAN.**

t i. —— —— ——.]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his property "in order to defeat, delay or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—OUTLER *v.* CHIFFEY, [1921] 1 W. W. R. 686.—**CAN.**

t ii. —— —— ——.]—Affidavits used on an application for a writ of attachment under Absconding Debtors Act, R. S. S., 1920 (c. 58), s. 3, alleging that defts. were "badly involved" & "financially embarrassed," setting out a newspaper advertisement by defts. of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with defts. that they were attempting to sell with intent to defraud creditors:—*Held:* insufficient to justify granting the application.—CANADIAN BANK OF COMMERCE *v.* KENZIE, [1923] 2 W. W. R. 993.—**CAN.**

t iii. —— —— ——.]—*Held:* the affidavit of pltf. stating merely that he had good reason to believe & did verily believe that deft. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of such beliefs," as required by the K. B. Div. Rules.—DOW *v.* DAYMENT, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—**CAN.**

t iv. —— ——.]—On a prosecution under the Criminal Code, s. 417, the intent & not the effect is to be looked at, &, where the effect of a conveyance is merely to prefer one creditor over another, the intent to prefer not being an intent to defraud, there is no offence. —R. *v.* CREW, [1926] 4 D. L. R. 841; 46 Can. Crim. Cas. 123; 59 O. L. R. 201.—**CAN.**

e i. —— *Giving undue preference.*]—A. convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors:—*Held:* the conviction should be sustained.—R. *v.* ISMAIL (1920), App. D. 316.—**S. AF.**

sg. *Making false statement—After adjudication.*]—An officer of a corpn. may be convicted of making a false statement, even after adjudication, for the purpose of influencing creditors to accept a composition.—R. *v.* MINDEN, [1935] 4 D. L. R. 309; O. R. 486; 64 C. C. C. 309.—**CAN.**

PART XXII. SECT. 3, SUB-SECT. 2.

8544 ii. —— *Insolvency Act, 32 of 1916, s. 136 (3).*]—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—R. *v.* ABRAHAMSON (1920), App. D. 283.—**S. AF.**

PART XXII. SECT. 3, SUB-SECT. 3.

8555 ii. ——.]—PARAK *v.* R. (1919), 40 N. L. R. 328.—**S. AF.**

PART. XXII. SECT. 3, SUB-SECT. 4.

so. *Obtaining repaired car by fraud.*]—The criminal intent involved in the offence created by the sub-sect., is the intent to cheat another out of a position of economic safety into the position of risk involved in giving credit; it is not an intent to defraud another of some material thing. The prisoner delivered a motor car to the prosecutor for repair. By means of false representations the prisoner induced the prosecutor to allow him to take away the repaired car without immediate payment:—*Held:* an offence under the sub-section was established, & it was not necessary to prove an intent to defraud the prosecutor of the money due for the repairs. —R. *v.* KELLY, [1934] V. L. R. 29; 40 Argus. L. R. 6.—**AUS.**

PART XXII. SECT. 3, SUB-SECT. 6.

sv. *Procedure for commencing & carrying on prosecution.*]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the informa-

Part XXIII.—Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations :*—**Apld.** *Re* Ellis, [1925] Ch. 564. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8645a. —— To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed.]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & " the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, hereinafter called ' the creditors ' " of the fourth part. Applt., who refused to consent to the deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that he had no jurisdiction under the sect. to entertain it. On appeal :—*Held :* (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3 ; (2) applt. was not a creditor entitled to the benefit of the deed ; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category ; (3) applt.'s claim was not for the enforcement of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed.—*Re* Ellis, [1925] Ch. 564 ; 41 T. L. R. 474 ; *sub nom. Re* Ellis, *Ex p.* Myttenaere, 94 L. J. Ch. 239 ; [1925] B. & C. R. 81 ; *sub nom. Re* A Deed of Arrangement (No. 9 of 1924), 133 L. T. 306, C. A.

8645b. Under 1914 (Deeds) Act, s. 11—To extend time for giving security by trustee.]—The registrar has no jurisdiction to extend the period of seven days, allowed by above sect. within which the trustee under a deed of arrangement must give security in the prescribed manner.—*Re* Early, Smith & Pavey, *Ex p.* Trustee (1928), 98 L. J. Ch. 34 ; [1928] B. & C. R. 113.

8653a. Proposal in writing under 1914 Act, s. 16—Necessity for signature by debtor.] — At a meeting of creditors of a debtor against whom a receiving order had been made a proposal for a scheme of composition was submitted on behalf of the debtor. The proposal was not signed by the debtor himself but by his solrs. On behalf of the debtor a certificate by an eminent physician was exhibited to an affidavit, in which it was stated that the debtor was " still so seriously ill as to make it quite impossible for him to discuss any matters of business, & that any attempt to explain to him business details or proceedings would have a serious & possibly a fatal effect upon him " :—*Held :* no proposal for a composition had been lodged by the debtor within 1914 Act, s. 16 (1) ; the words " signed by him " were explicit ; there was no ground for altering the words of the statute or giving to the statute a judicial interpretation which would in effect be an amendment or alteration of its plain terms.—*Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70 ; 47 T. L. R. 19 ; 74 Sol. Jo. 735 ; *sub nom.* Blucher (Prince), *Re*, Debtor *v.* Official Receiver, 100 L. J. Ch. 292 ; 144 L. T. 152 ; [1931] B. & C. R. 1, C. A.

8665. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

tion, hold the preliminary investigation & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—R. (Emery) *v.* Roy, [1923] 2 W. W. R. 400.—**CAN.**

sy. *Application for leave to prosecute.*]—R. *v.* Marcovitz & Applebaum, [1932] 4 D. L. R. 335 ; 58 C. C. C. 355.—**CAN.**

sc. ——.]—Order for leave to proceed under sect. 195 of Bkpcy. Act is not a condition precedent to prosecution under sect. 191 (*o*) of Bkpcy. Act.—R. *v.* Feldman, [1933] 2 D. L. R. 257 ; O. R. 254 ; 59 C. C. C. 330.—**CAN.**

sf. *Right of creditor to lay charge.*]—A creditor may lay a charge, although the Bkpcy. Act provides for an order for prosecution by the ct. on the report of the trustee.—Rivest *v.* R., 4 D. L. R. 587 ; 62 C. C. C. 155.

PART XXIII. SECT. 3, SUB-SECT. 1.

sw. *Meeting duly summoned not held —Meeting held on following day—No proper adjournment of first meeting.*]—*Held :* the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re* Wholesale Grocers, Ltd., [1923] 2 D. L. R. 491 ; 3 C. B. R. 650.—**CAN.**

PART XXIII. SECT. 3, SUB-SECT. 2.

m i. —— *Wife of bankrupt.*]—The wife of bkpt. is not barred by her status as wife from voting on a resolution to wind up her husband's estate under a deed of arrangement, although the effect of the resolution is to prevent the election of a trustee.—Macnaught *v.* Sievwright, [1927] S. C. 285.—**SCOT.**

8677 ii. —— —— —— *Proxy for company.*]—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn. ; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *prima facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote.—*Re* [illegible] & Greenshields, [illegible] 1227 ; [1924] 3 W. W. R. 587.

8682 i. —— *In respect of what debts —Unliquidated damages.*]—Where there is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re* Andrew Motherwell [illegible]

8683a. —— Chairman not bound by decision of previous chairman.]—*Held:* on the construction of Sched. I., rule 14 of 1914 Act, the decision of the chairman of the first meeting to admit or reject a proof for the purpose of voting is not binding, & that the chairman at each subsequent meeting has the power to admit or reject the proof.—*Re* POTTS, *Ex p.* ETABLISSEMENTS CALLOT & DE SCHRIJVER *v.* LEONARD TUBBS & CO. & OFFICIAL RECEIVER, [1934] Ch. 356; 103 L. J. Ch. 115; 150 L. T. 456; 50 T. L. R. 193; 78 Sol. Jo. 103; [1933] B. & C. R. 217.

8758. *Add. Annotation:*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

8764. *Add. Annotation:*—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

8768. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8771a. Unstamped deed—Admissibility in evidence—To prove non-registration.]—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER, No. 434a, *ante.*

8772a. Under 1914 (Deeds) Act—Necessity for assent of majority of creditors—How majority calculated.]—A debtor gave his sister a power of attorney authorising her to execute a deed of arrangement for the benefit of his creditors & to make any affidavit necessary for registering the deed. The deed was accordingly executed by her as his attorney under the power, & she also made the affidavit required by 1914 (Deeds) Act, s. 5 (1), to be made " by the debtor " on the registration of the deed stating the total estimated amount of property & liabilities included under the deed & the names & addresses of the creditors. There were ninety-six creditors in all, of whom sixty-eight were for sums over £10; twenty-five of the sixty-eight did not assent to the deed within the time required by the Act; forty-three with debts over £10 & twenty-eight with debts under £10 assented. The debtor escaped bkpcy. proceedings by reason of the execution of the deed & afterwards recognised it & concurred in the trustee acting under it. He subsequently made an application for a declaration that the deed was void. No creditor was made a party to the application, it being addressed to the trustee of the deed alone:—*Held:* (1) the deed had received the assent of the majority of creditors in number within sect. 3 (5) of the Act, inasmuch as for the purpose of the section creditors whose debts amount to sums not exceeding £10 are not to be reckoned either in calculating the total number of creditors or the majority in number; (2) inasmuch as the creditors did not, under the power of attorney, gain any control over the debtor's property or business, it was not in itself a deed of arrangement within sect. 1 (2) (*e*) of the Act, which required registration in order to be valid.—*Re* WILSON, [1916] 1 K. B. 382; 85 L. J. K. B. 329; 114 L. T. 32; 32 T. L. R. 86; 60 Sol. Jo. 90; [1916] H. B. R. 17, D. C.

8778a. —— ——.]—In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905, & July, 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover the interest so that an amount exceeding the original debt was still owing to appct. In

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[1923] 4 D. L. R. 986; *affd.*, 25 O. W. N. 359.—**CAN.**

8682 ii. —— —— ——.]—*Held:* valuation by the ct. a condition precedent.—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—**CAN.**

8684 iv. ——.]—Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c. 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than $25, but as regards voting, creditors whose claims are less than $25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than $25 may vote.—*Re* BLUEBIRD FASHION SHOPS, LTD., [1921] 59 D. L. R. 549.—**CAN.**

8a. *Appeal from decision of chairman—Rights of creditor who has not filed proof at time of meeting.*]—A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor has not delayed unreasonably in making it.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

8b. —— *On technical grounds—Necessity to raise objection before decision given—Discretion of court.*]—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

8c. —— *Application by creditor to be added or substituted as appellant.*]—Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non joinder or non-substitution.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

8d. —— *That creditor entitled to vote—Objection at meeting.*]—*Held:* not a condition precedent—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—**CAN.**

8f. *Method of voting—Corporations.*]—Corpns. must vote at meetings of creditors by depositing signed proxies with the custodian, under Bkpcy. Act, ss. 99 (1), 101 (1).—*Re* CARRIE, [1936] 1 D. L. R. 455; O. R. 28.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 1.

8k. *Effect of.*]—A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re* LIPSON, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—**CAN.**

8m. ——.]—*Held:* a judicial hypothec upon real assets of debtor, resulting from registration, was postponed to an authorised assignment subsequently made by debtor for the benefit of his creditors.—ROYAL BANK OF CANADA *v.* LARUE, [1928] A. C. 187; 97 L. J. P. C. 49; 138 L. T. 562; *affd.* S. C. *sub. nom.* BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] S. C. R. 218.—**CAN.**

8p. *Authorised assignment by partner on behalf of firm—No authority by other partner.*]—*Held:* invalid.—*Re* SQUIRES BROTHERS, [1922] 3 W. W. R. 30; 68 D. L. R. 571.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 2.—A.

8t. *Under Bankruptcy Act—Deed of assignment.*]—The title of an assignee is not complete as against third persons until registration.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077; 2 O. B. R. 579.—**CAN.**

Feb. 1919, an administration order under 1914 Act, s. 130, was made upon a creditor's petition for the administration of deceased debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £465 8*s*. 3*d*. which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £465 8*s*. 3*d*. was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement: —*Held:* (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition; (2) not having been registered it was void under sect. 5 of the Act; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8*s*. 3*d*. to the use of the official receiver as the representative of debtor, & was bound to repay it to him; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his representative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance due to him was therefore barred.—*Re* LEE, *Ex p.* GRUNWALDT, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

Annotations:—As to (3), (4), (5) & (6) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Reld.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8782a. —— Assignment of property to trustees for benefit of creditors—Assignment not to be registered.]—*Re* A BANKRUPTCY NOTICE, No 797a, *ante*.

8782b. —— Authority to realise trader's estate & to apply proceeds in payment of creditors.]—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*":—*Held:* (1) not an "assignment of property" within sect. 1 (2) (*a*) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—LIPTON (B.), LTD. *v.* BELL, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom.* LIPTON (B.), LTD. *v.* BELL, HAYES *v.* BELL, 93 L. J. K. B. 563; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

8782c. —— Document discharging debtor—Constituting assignment for benefit of creditors generally.]—Pltf.'s claim was for £148, the amount of two bills of exchange drawn by pltf., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft accepted the following terms for the settlement of all debts owing by deft. to them: "(1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M. undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general creditors. I agree to these terms":—*Held:* the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—LANDSBERG *v.* MENDEL, [1924] W. N. 46.

8782d. —— Deed of arrangement made by insolvent debtor.]—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltfs., a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, &, acting under legal advice, debtor did not register the deed. After paying his trade creditors, including pltfs., a small portion of the composition, debtor sold his business & entered into another scheme of arrangement with his creditors, to which pltfs. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition:—*Held:* (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (*b*), &, not

PART XXIII. SECT. 5, SUB-SECT. 2.—B.

8a. *Necessity for.*]—An assignment under Bkpcy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a.—*Re* LAND TITLES ACT, *Re* CITY GARAGE & MACHINE CO., LTD., [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 412.—CAN.

being registered, was void; (2) pltfs., who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltfs. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estoppel as applicable to deeds of arrangement considered. — HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD (1925), 134 L. T. 82; 42 T. L. R. 52.

8782e. —— **Power of attorney by debtor—Authorising third party to execute deed of arrangement.**]—*Re* WILSON, No. 8772a, *ante*.

8782f. —— **Deed by debtor resident in Scotland.**]—*Re* PILKINGTON'S WILL TRUSTS, PILKINGTON *v.* HARRISON, No. 5936b, *ante*.

8787. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8788. *Add. Annotation:*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8789. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

8869a. —— **Creditor with contingent claim.**]—C., a debtor, in Oct. 1936, entered into a deed of arrangement with his creditors under which a certain lease, of which he was an assignee, was not assigned by was to be held by him on trust for the trustee of the deed. In the assignment of the lease to C. there was a covenant by him with the assignors (who were appct. & one D.) & with each of them to pay the rent & perform & observe the covenants on the part of the lessee & to keep the assignors effectually indemnified against all actions claims & demands whatsoever by reason or on account of the non-payment of the rent or the breach, non-performance or non-observance of the covenants or conditions or any of them. The lease had been assigned to appct. & D. by the original lessees, & in the deed of assignment to appct. & D. there was a covenant with the original lessees to the effect that the covenants implied by Law of Property Act, 1925 (c. 20), s. 77 (1), para. (*c*), should be incorporated in the deed—namely (*inter alia*) at all times to perform & observe the covenants contained in the original lease, & to keep the original lessees indemnified in respect of any breach of such covenants. Appct. had assented to the deed of arrangement entered into by the debtor with his creditors, but the deed did not contain any provision, in the trusts for the distribution of the debtor's property among the creditors, incorporating the bkpcy. provisions relating to the distribution of the property & assets of a bkpt. Appct. claimed to be a creditor of the debtor under the terms of the deed of arrangement. He alleged that he might be called upon by virtue of the covenants incorporated in the assignment to him to indemnify the original lessees (the assignors to him) against any liability they might be under to the lessors, & that, if he

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PART XXIII. SECT. 6, SUB-SECT. 1.—A.

8811 i. —— —— *Non-assenting creditors not opposing.*]—*Re* HOWE, [1921] 20 O. W. N. 244; 59 D. L. R. 457; 1 C. B. R. 482.—**CAN.**

8810 i. —— *Reasonable security provided.*]—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re* GARDNER, *Ex p.* CROFT & SONS, LTD., [1921] 19 O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—**CAN.**

8811 i. *Whether bound to refuse to approve—Fraudulent conduct.*]—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution.—*Re* CHMELNITSKY, [1922] 3 W. W. R. 114; 68 D. L. R. 492.—**CAN.**

8811 sb. *Power of registrar—Limited to approval or rejection.*]—The Bkpcy. Act contains no provision which enables the ct. to modify or change the proposal: it must either approve or reject the same.—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773; 66 O. L. R. 394.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 1.—B.

8825 ii. —— ——.]—Where the judge refused to sanction an arrangement on the ground that there was evidence of reckless, not to say dishonest, trading on debtor's part for some years previously, & he adjudged debtor bkpt.:—*Held:* on the facts, there was no sufficient ground for overruling the wishes of the majority of the creditors accepting debtor's proposal for an arrangement, & the order of adjudication must be discharged. Principles which should guide the ct. in dealing with arrangements under Irish Bkpt. & Insolvent Act, 1857 (c. 60), considered.—*Re* C., [1926] I. R. 14.—**IR.**

PART XXIII. SECT. 6, SUB-SECT 2.

8843 iv. ——.]—In special circumstances under Bkpcy. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside.—ROSENTHAL *v.* HOPE & HART (1922), 67 D. L. R. 628; 24 Q. P. R. 120.—**CAN.**

a i. —— *Prior to bankruptcy.*]—Paras. *q.* & *r.* of sect. 191 of Bkpcy. Act, referring to false statements in writing, apply to false statements which the debtor may have made after he had been adjudged bkpt. Therefore, the refusal by the Bkpcy. Ct. to approve a proposal of compromise, on the ground that the debtor had knowingly made false statements to resp. bank, but prior to his bkpcy., was not justified under sect. 16 (2) of the Act.—ELECTRIC MOTOR & MACHINERY CO., LTD. *v.* DUCLOS & BANK OF MONTREAL, [1932] S. C. R. 634; 4 D. L. R. 81.—**CAN.**

sf. *Absence of information & undervaluation.*]—*Held:* the proposal was not "reasonable & proper."—*Re* GASTON, [1922] 2 I. R. 179.—**IR.**

sh. *Composition giving discharge against all creditors & persons not in bankruptcy.*]—A proposed composition with a bkpt.'s creditors which provides for the discharge of, not only all the provable debts of the bkpt., but also of all claims of whatsoever nature of all creditors against the bkpt. & also against persons who are not in bkpcy. (in the present instance, the directors, officers & employees of the bkpt. co.) is not one which the ct. can approve; at least, in the absence of the personal assent thereto of every creditor. Nor will such a composition be approved in part only, *i.e.* as to that portion which releases only the bkpt. with respect to his provable debts, where the effect of doing so would be to give a guarantor of performance of the composition only part of that which he stipulated for as consideration for his guarantee.—*Re* KERN AGENCIES, LTD. (No. 2), [1931] 2 W. W. R. 633.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 5.

8860 ii. —— ——.]—*Re* C., No. 8825 ii, *ante*.—**IR.**

8865 i. —— *Enhanced value of assets.*]—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the assets. An opposing creditor then applied for an order setting aside the arrangement:—*Held:* a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud.—*Re* Q., AN ARRANGING DEBTOR, [1923] 2 I. R. 89.—**IR.**

sk. *Who may appeal—Trustee.*]—An appeal lies by a trustee in bkpcy. from an order refusing to approve a proposal for a composition with creditors.—*Re* KERN AGENCIES, LTD., [1931] 1 W. W. R. 629; 2 D. L. R. 614.—**CAN.**

were to be so called on, the debtor in his turn would be liable to indemnify him, & claimed that such a contingent liability on the part of the debtor was a " debt " within the meaning of the deed of arrangement, & that he (appct.) was a " creditor " of the debtor within the meaning of the deed in respect thereof :—*Held :* there was nothing in the deed of arrangement which would enable the ct. to construe the words " creditors," " debtors " or " debts " in the deed in any wider sense than was ordinarily attributed to those words in order to bring any one who might have a contingent or future claim against the debtor within the scope of the deed. The motion therefore would be dismissed.—*Re* CASSE, *Ex p.* ROBINSON *v.* TRUSTEE, [1937] Ch. 405 ; 106 L. J. Ch. 343 ; *sub nom. Re* CASSE, ROBINSON *v.* GRIGG, [1937] 2 All E. R. 710 ; 157 L. T. 528 ; [1936–7] B. & C. R. 155.

8872. *Add. Annotations :*—**Apld.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007 ; I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

8882a. ——.]—FLOWER *v.* LYME REGIS CORPN., No. 1775a, *ante*.

8923. *Add. Annotation :*—**Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

8929a. —— Debtor expecting execution—Deed valid.]—BOWEN *v.* BRAMIDGE (1833), 6 C. & P. 140.

8929b. —— Execution paid out by debtor—Money not recoverable by trustee.]—BOYLE *v.* BLACKSTOCK (1863), 8 L. T. 641.

8933a. —— & sale of effects thereunder by trustees —Property protected—Although purchaser allowing debtor to retain possession.]—LEONARD *v.* BAKER (1813), 1 M. & S. 251 ; 105 E. R. 94.

Annotation :—**Reld.** Latimer *v.* Batson (1825), 4 B. & C. 652.

8933b. —— —— —— Although balance unsold remaining in debtor's possession.]—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676 ; 129 E. R. 547 ; *sub nom.* WOODHAM *v.* BALDOCK, 3 Moore, C. P. 11.

Annotations :—**Reld.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299 ; Hickman *v.* Cox (1858), 30 L. T. O. S. 279 ; Barker *v.* Furlong, [1891] 2 Ch. 172.

8933c. ——.]—*Held :* from the date of the deed of assignment the trustee was the legal owner of debtor's property, & the possession taken by him was effectual, so that there was no property of debtor which the sheriff could seize.—NORTH EASTERN RY. CO. *v.* SPARK (1877), 37 L. T. 143.

8965a. *S. P. Re* PRICE'S TRUST DEED (1868), L. R. 6 Eq. 460 ; 19 L. T. 113 ; 16 W. R. 997.

:—**Apld.** *Re* Raphael's Trust Estate (1870), L. R. 9 Eq. 233. **Reld.** Bell *v.* Bird (1868), L. R. 6 Eq. 635.

8970a. Restraint of trustee from acting—Injunction.]—IZARD *v.* COLBRON (1824), 13 Price, 327 ; M'Cle. 181 ; 147 E. R. 1006.

8977a. To grant preferential treatment.]—On Apr. 21, 1933, the debtor executed a deed of arrangement in favour of a trustee & his creditors. The deed did not contain a trust for the payment by way of preference of those persons who would be preferential creditors if the debtor were in bkpcy. At the date of the execution of the deed an employee of the debtor was receiving compensation at the rate of £1 3*s.* 10*d.* per week under an award made pursuant to the Workmen's Compensation Act, 1925 (c. 84). On May 22, 1933, the trustee of the deed wrote, through his solrs., to the employee's solrs. that he would treat the employee's claim to compensation as a preferential claim. Later he was advised that he was not entitled to grant any preferential treatment. He then brought the matter before the county ct. The county ct.

PART XXIII. SECT. 8, SUB-SECT. 3.—A.

k (p. 1090) **i.** ——.]—*Re* COBOURG FELT CO., *Ex p.* WEAVER, [1925] 2 D. L. R. 997 ; 5 C. B. R. 622.—**CAN.**

t (p. 1090) **i.** —— *Homstead lands—Claim of exemption not filed—Sale of homestead lands.*]—P., in Jan. 1912, executed an assignment for the benefit of his creditors of all his property except two lots of land on which he & his family lived, the value of which did not exceed $1,500 ; & this assignment was duly registered by the assignees. By transfer dated in Apr. 1912, P. transferred all his right, title & interest in the two homestead lots to pltf., for value ; & P.'s claim to the lots as exempt from seizure & sale under execution was admitted in writing by his assignees. P., however, did not file a claim of exemption within thirty days of the registration of the assignment ; & the registrar refused to register the transfers, on the ground that P. had no right to deal with the land, because of his failure to file a claim of exemption within thirty days under Land Titles Act, R. S. Sask. 1909, c. 41, s. 117 :—*Held :* this statutory provision was not applicable, in the circumstances stated, the registrar should be directed, under Land Titles Act, s. 150, to register the transfers as if the assignment had not been registered.—LEACH *v.* HAULTAIN (——), 24 W. L. R. 154 ; 4 W. W. R. 84 ; 11 D. L. R. 238.—**CAN.**

al. *Judgment.*]—Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser under an agreement of sale with the assignor has entered into to protect the assignor against his (the purchaser's) default under the agreement, &, if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment.—*Re* HIRSCH *v.* ALTON, INTERIOR TRUST CO. *v.* MACKENZIE, [1925] 4 D. L. R. 695 ; [1925] 1 W. W. R. 429 ; 34 Man. L. R. 650 ; 5 C. B. R. 545.—**CAN.**

ao. *Assigned property—Collection Act, R. S. N. S.*, 1923 (*c.* 232).]—*Re* POLSON, TRUSTEE *v.* THOMPSON & SUTHERLAND, LTD., [1926] 1 D. L. R. 330 ; 58 N. S. R. 345.—**CAN.**

PART XXIII. SECT. 8, SUB-SECT. 3.—B.

8935 ii. —— —— ——.]—ROSS JOHNSON, LTD. *v.* VICTORIA MINES, LTD., [1930] 1 D. L. R. 57 ; 41 B. C. R. 321 ; 11 C. B. R. 23 ; [1929] 2 W. W. R. 511.—**CAN.**

[illegible] ii. —— ——.]—Payment into ct. under a garnishee summons, under Alberta practice, is not payment to the garnishing creditor under Bkpcy. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment.—WESTERN CANAD[illegible] LTD. *v.* WHITE BAKERY, [1921] 1 W. W. R. 828 ; 59 D. L. R. 621 ; 1 C. B. R. 390.—**CAN.**

PART XXIII. SECT. 9, SUB-SECT. 1.—C.

sp. *To fix date of creditors' meetings.*]—When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors' meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal.—LEFAIVRE & GAGNON *v.* DE LISLE (1922), 66 D. L. R. 264.—**CAN.**

sq. *To apply to court—For approval of composition arrangement.*]—*Re* SHAW (1920), 59 D. L. R. 619 ; 1 C. B. R. 368. —**CAN.**

sr. —— *For directions.*]—A trustee has the right to apply to the ct. for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re* GELLER BROTHERS, [1924] 2 D. L. R. 590 ; 54 O. L. R. 283 ; 4 C. B. R. 108.—**CAN.**

ss. *To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*]—An authorised assignee or trustee in bkpcy. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mtge. Act, even although the transaction was complete before Bkpcy. Act came into force.—[illegible]G *v.* CANADIAN CREDIT MEN'S ASSOCN., LTD., [1921] 2

judge ordered that the trustee should admit the employee as a creditor under the deed & treat him as a preferential creditor pursuant to Deeds of Arrangement Act, 1914 (c. 47), s. 17, as if the estate of the debtor were being administered in bkpcy. The trustee appealed :—*Held :* (1) the order was not in correct form, because the employee could not be treated as a preferential creditor by virtue of sect. 17 of the Deeds of Arrangement Act, 1914 (c. 47), s. 17 ; (2) the trustee was entitled, by virtue of Trustee Act, 1925 (c. 19), s. 15 (*f*), to grant the employee preferential treatment, & he was bound by the letter of May 22, 1933, to do so.—*Re* SHENTON, [1935] Ch. 651 ; 153 L. T. 343 ; *sub nom. Re* SHENTON, *Ex p.* BATES, 104 L. J. Ch. 311 ; *sub nom. Re* SHENTON, BATES *v.* HARRIS, [1934–5] B. & C. R. 201.

Annotation :—Generally, **Refd.** *Re* Moss, Westminster Corpn. *v.* Reubens, [1935] W. N. 171.

9022. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9023. *Add. Annotations :*— **Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9024. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9025a. Claim for royalties.]—N. & B. were the holders by novation of a licence from pltf. co. to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf. co. subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 9024. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally :—*Held :* the deed of inspectorship did not constitute a partnership between N. & B. & their creditors, or between N. & B. & the inspector & the committee, also N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B. & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292 ; 99 L. J. K. B. 687 ; 143 L. T. 471 ; [1929–30] B. & C. R. 223.

9026a. —— Putting up property for sale.]—Assignees of debtor's property, in trust for the creditors, may put up a lease for sale, to try whether it can be made beneficial, without rendering themselves chargeable as assignees of the lease.—CARTER *v.* WARNE (1830), 4 C. & P. 191 ; Mood & M. 479, N. P.

Annotations :—**Consd.** How *v.* Kennet (1835), 3 Ad. & El. 659 ; White *v.* Hunt (1870), L. R. 6 Exch. 32.

9028a. For rates—Money distributed among unsecured creditors.]—*Re* MOSS, WESTMINSTER CORPN. *v.* REUBENS, [1935] W. N. 171 ; 180 L. T. Jo. 310.

9032a. ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9034. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

9034a. ——.]—*Re* LAMPLOUGH (CLARKSON), *Ex p.* HARDING (1835), 4 Deac. & Ch. 793, Ct. of R.

9035. *Add. Annotation :*—**Apprvd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

9074. *Add. Annotation :*—**Refd.** Goldfarb *v.* Bartlett & Kremer, [1920] 1 K. B. 639.

9094. *Add. Annotation :*—**Refd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

9109a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9115a. ——.]—It would be an obvious fraud on the other creditors who agree to accept a composition payable *pro rata* to all if one creditor was enabled by a secret bargain to obtain a better advantage for himself (DAVEY, L.J.).—MURRAY *v.* REEVES (1828), 8 B. & C. 421 ; 2 Man. & Ry. K. B. 423 ; Dan. & Ll. 161 ;

W. W. R. 899 ; 14 Sask. L R 356.—**CAN.**

Ex p.

ROYAL BANK OF CANADA, [1922] 1 W. W. R. 1241 ; 66 D. L. R. 800 ; 15 Sask. L. R. 165.—**CAN.**

PART XXIII. SECT. 10, SUB-SECT. 2.—A.

sy. *Assignment to creditor to secure advances—Retention of amount by assignee in excess of amount paid to creditors.*]—Pltf. having become insolvent, made an assignment for the benefit of creditors, whereupon one of the creditors was appointed assignee. The business was reconveyed to pltf. on his undertaking to pay a composition on the amount of his indebtedness for the payment of which another of defts. became surety, & pltf. subsequently executed several assignments to defts. to secure advances. Defts. having taken possession under the last-mentioned assignments, the matters in difference between pltf. & defts. were referred to a master, with instructions to " take an account & report the sum due from either party to the other of them." The master having reported (*inter alia*) that defts., after paying the other creditors of pltf. their respective claims at the rate of sixty-two & a half cents on the dollar, had paid to themselves the full amount of their claim, & that being of opinion that defts. were not entitled to any greater rate of dividend on their claim than that paid to the other creditors, he had disallowed the surplus with interest, & had credited the same to pltf. :—*Held :* the decision of the Supreme Ct. of Nova Scotia, confirming the report of the master on the reference must be reversed on the ground that the master had exceeded his authority & reported on matters not ref rred to him.—DOULL *v.* MCILREITH (1886), 19 N. S. R. (7 R. & G.) 341 ; 7 C. L. T. 406 ; *revsd.* (1887), 14 S. C. R. 73.—**CAN.**

108 E. R. 1099; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348, C. A.

Annotations :—**Consd.** *Re* McHenry, McDermott *v.* Boyd, Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour *v.* King (1833), 3 Tyr. 581; Hall *v.* Dyson (1852), 17 Q. B. 785.

9181a. Assent by assignor of debt—Not sufficient assent.]—PINDER *v.* COQUI (1866), 15 W. R. 22.

9198a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9198b. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante*.
Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.

9204a. —— **Assent by branch of company—Whether whole company bound.**]—Pltfs. were a large co. with branches at L. & B. Defts. had dealings with both branches & on Aug. 20, 1936, owed £2 4*s*. 5*d*. to the L. branch & £59 2*s*. 8*d*. to the B. branch. On that date, being in difficulties, defts. executed a deed of assignment to a trustee for the benefit of their creditors. Pltfs.' agent at L. in response to a circular letter from the trustee assented to the deed, but their agent at B. subsequently refused to assent & pltfs. sued defts. for £59 2*s*. 8*d*. :—*Held* : the assent in respect of the L. debt was an assent binding pltfs. in respect of all debts due to them: & it was not open to them afterwards, either through their agent at B. or otherwise, to dissent.—DUNLOP RUBBER CO., LTD. *v.* HAIGH & SON, [1937] 1 K. B. 347; [1936] 3 All E. R. 381; 106 L. J. K. B. 166; 155 L. T. 579; 53 T. L. R. 98; 80 Sol. Jo. 933; [1936–7] B. & C. R. 149.

9229a. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante*.

9231. *Add. Annotation* :—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

9234a. —— **Dealings with trustee—Estoppel.**]—Defts. executed a deed of arrangement for the benefit of their creditors. The trustee under the deed sent a circular letter to all defts.' creditors, announcing the deed, & undertaking to pay for goods ordered for current purposes. A statement of account was also asked for. The pltf. co., which was a creditor, duly sent its account, & from time to time supplied to the trustee, & received payment for, further goods. In an action for the balance of the price of goods sold to defts. before the deed of arrangement, the judge held that pltf. co. by its conduct was bound by the deed of arrangement, & was estopped, not only from relying upon the deed as an act of bkpcy., but also from bringing the action :—*Held* : defts. could not rely upon an estoppel, but pltf. co. by its conduct had assented to the deed of arrangement, &, therefore, could not succeed in the action.—WESTON (VICTOR) (FABRICS), LTD. *v.* MORGENSTERNS, [1937] 3 All E. R. 769; 81 Sol. Jo. 684, C. A.

9253a. *S. P.* CECIL *v.* PLAISTOW (1794), 1 Anst. 202; 145 E. R. 844.

Annotation :—**Apld.** Britten *v.* Hughes (1829), 5 Bing. 460.

9311a. Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.]—*Re* ELLIS, No. 8645a, *ante*.

9313a. ——.]—A debtor executed a deed of arrangement, & after his death the trustee of the deed, having discharged all the debts, had a considerable surplus in his hands :—*Held* : there being no provision, express or implied, in the deed for the payment of interest on the debts, the creditors were not entitled to interest, &, the surplus, after payment of the trustee's costs & expenses, belonged to the legal personal representatives of the deceased debtor.—*Re* RISSIK, [1936] Ch. 68; 105 L. J. Ch. 40; 154 L. T. 100; *sub nom. Re* RISSIK, *Ex p.* TRUSTEE UNDER DEED OF ASSIGNMENT *v.* DEBTOR & SCHWEDER & Co., [1934–5] B. & C. R. 208.

9453. *Add. Annotation* :—*As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

9486. *Add. Annotation* :—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

9532. *Add. Annotation* :—**Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9538a. —— ——.]—A. instituted a suit against B. & C. respecting a sum of £4,000. D. also was made a party to the suit; but, having no interest, he disclaimed. A., B. & C. afterwards came to a compromise, in pursuance of which they executed a deed, assigning the £4,000 to trustees in trust to pay to D. his costs of the suit, & to divide the rest of the fund amongst A., B. & C. D., though he was not a party, either to the compromise or to the deed, filed a bill against A., B. & C. & the trustees, to compel a performance of the trusts & payment of his costs. A demurrer by C., for want of equity, was allowed.—GIBBS *v.* GLAMIS (1841), 11 Sim. 584; 59 E. R. 999; *sub nom.* GIBBS *v.* GIBBON, 5 Jur. 378, L. C.

Annotations :—**Consd.** Steele *v.* Murphy (1841), 3 Moo. P. C. C. 445; Synnot *v.* Simpson (1854), 5 H. L. Cas. 121.

PART XXIII. SECT. 10, SUB-SECT. 2. —C. (a).

s (p. 1133) **i.** —— *As regards priority of subsequent creditors.*]—*Re* THOUN, [1925] 4 D. L. R. 242.—**CAN.**

9213 ii. —— *Out of assets in schedule.*] —Under a document signed by one A. & three of his creditors, applt. was appointed to take control on A.'s behalf of certain of his assets enumerated in an annexed schedule & to dispose of them for the benefit of the three creditors. The latter portion of the document was as follows: "& we the undersigned creditors of the said A. do hereby agree to accept as full settlement of the claims we have against him such *pro rata* share as may be found due in respect of the sale of the said assets, & we agree to pay the said applt. the usual commission on all assets realised: applt. having taken possession of the assets & having sold some of them, resp., one of the creditors who had signed the document, in an action against applt., complained that applt. had awarded a preference to one M. a creditor who had signed the document in respect of his claim which was based on two mtge. bonds referred to in the schedule of assets, & that applt. had failed to award resp. a *pro rata* share of the proceeds of the assets realised. It was common cause that if M. was entitled to the preference, resp., an unsecured creditor, would get nothing. The C. P. D. ordered applt. to amend his account by striking out the preference awarded to M. & distributing the proceeds of the assets among the creditors *pro rata* according to the respective amounts of their claims. Extrinsic evidence showing that the parties never intended that the secured creditors should abandon their preference had been led subject to subsequent decision as to its admissibility, but was held by the cts. below to be inadmissible, on the ground that the document was not ambiguous :—*Held* : the words "*pro rata* share" meant that the three creditors were to look to the proceeds of the assets in the schedule alone for the settlement of their claims, if the assets did not realise the full amount of their debts, that they had reference not to the respective claims of the creditors but to the proportion that the proceeds bore to the total amount of the debts & that there was nothing in the document to show that preferences were to be given up.—SWANEPOEL *v.* VAN HEERDEN, [1928] App. D. 15.—**S. AF.**

9538b. —— —— **Provisions coming into operation after death of debtor.**]—The doctrine of *Garrard* v. *Lauderdale* (*Lord*), No. 9536, *ante*, does not apply to provisions for creditors which do not come into operation till after the death of the settlor.—*Re* FITZGERALD'S SETTLEMENT, FITZGERALD *v.* WHITE (1887), 37 Ch. D. 18; 57 L. J. Ch. 594; 57 L. T. 706; 36 W. R. 385, C. A.

Annotation :—**Apld.** Priestley *v.* Ellis, [1897] 1 Ch. 489.

9540a. —— ——.]—A., on going abroad, granted & assigned to B. freehold & personal property upon trusts for management & realisation, & for payment of A.'s debts & of the surplus to A.; the deed contained full powers for settling demands. B. communicated with the creditors upon the subject of the trust :—*Held :* the creditors did not thereby acquire any right to sue the trustee for the purpose of having the trusts performed.—CORNTHWAITE *v.* FRITH (1851), 4 De G. & Sm. 552; 64 E. R. 954.

9543. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

9546. *Add. Annotation :*—**N.F.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

9547. *Add. Annotation :*—**Distd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9549. *Add. Annotation :*—**Refd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9575. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576a. ——.]—A debtor, who has assigned his business & goodwill to a trustee for the benefit of creditors, is not precluded, in the absence of express stipulation to the contrary, from soliciting the customers of the old business, notwithstanding that the deed of assignment contains a covenant by him to aid to the utmost of his power the realisation of the property assigned & the distribution of the proceeds thereof amongst the creditors In such a case debtor cannot be restrained from canvassing the customers, nor can a third person be restrained from instigating debtor to do so.—FAREY *v.* COOPER, [1927] 2 K. B. 384; 96 L. J. K. B. 1046; 137 L. T. 720; 43 T. L. R. 803, C. A.

9619. *Add. Annotations :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART XXIII. SECT. 12, SUB-SECT. 1.

9612 iii. ——.]—Where conveyances made by the assignee for the benefit of creditors to pltfs. were made & accepted in satisfaction of pltfs.' claim against debtor :—*Held :* deft. was thereby freed from liability as surety.—UNION BANK OF CANADA *v.* MAKEPEACE (1919), 44 O. L. R. 202; 15 O. W. N. 179; 46 D. L. R. 193.—**CAN.**

sb. *Variation by registrar—Discharge of surety.*]—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773; 66 O. L. R. 394.—**CAN.**

BENEFICIAL ASSOCIATIONS.

See FRIENDLY SOCIETIES.

BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Part I.—In General.

10. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

13. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1.

14. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

14a. —— —— ——.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38 ; 95 L. J. Ch. 104 ; 134 L. T. 121 ; 70 Sol. Jo. 64, C. A.

Annotation :—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 K. B. 645.

37. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569 ; Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Shotts Iron Co. *v.* Curran, [1929] A. C. 409.

Part II.—Requirements of Form.

81. *Add. Annotation :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

82. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

95. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

144. *Add. Annotation :*—**Consd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

PART I. SECT. 1.

14 i. —— *Revocable mandate—Revoked by death.*]—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025 ; 53 D. L. R. 351.—**CAN.**

14 ii. *S. P.* KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372 ; 18 O. W. N. 138.—**CAN.**

s i. ——.]—Its nature & negotiability discussed.—CHAMPAKLAL GOPALDAS *v.* KESHRICHAND NAGANMAL (1925), I. L. R. 50 Bom. 765.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.

sa. *Note made by married woman—of restraint upon anticipation.*]—Held a promissory note was made by a married woman :—*Held :* the promissory note was in fact, as well as in form, a valid unconditional promise on the part of the maker to pay a sum certain in money. Effect of Married Women's Property Act, R. S. O., 1914 (c. 149), ss. 4 (2), 5 (2), discussed.—ANDERSON *v.* MCLAREN, [1924] 4 D. L. R. 1076 ; 56 O. L. R. 26.—**CAN.**

r i. —— ——.]—An instrument is not a negotiable promissory note where there is not an unconditional promise, as required by Bills of Exchange Act, s. 176.—*Re* MITCHELL & UNION BANK OF CANADA, [1923] 4 D. L. R. 1132 ; 52 O. L. R. 523, *revsg. sub nom. Re* STEVENS & MITCHELL, 21 O. W. N. 331.—**CAN.**

r ii. —— ——.]—Where a cheque was drawn & given under the condition that it was not to become effective unless a loan was granted by a certain bank :—*Held :* the cheque could not be detached from the condition, &, the condition not having been fulfilled, the cheque could not be recovered on.—JONES *v.* THOMAS & NORMAN (1922), 65 D. L. R. 491.—**CAN.**

r ii. —— ——.]—There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose & was not payable until the happening of a certain specific event which, so far, had not yet happened.—BHOGI RAM *v.* KISHORI LAL (1928), I. L. R. 50 All. 754.—**IND.**

s i. —— ——.]—Where a written promise to pay a specified sum of money at a certain time after date also contains the words "with the privilege of renewals," the instrument is not a promissory note within the meaning of sect. 176 of Bills of Exchange Act, R. S. C., 1927.—ROSS *v.* EMPIRE CONSTRUCTION & INVESTMENT CO., LTD., [1932] 1 W. W. R. 714 ; 40 Man. L. R. 225 ; 3 D. L. R. 167.—**CAN.**

58 i. *Promise to pay or do something else.*]—If under the terms of a written promise to pay a sum of money the obligation may be discharged in part, or in full, by the rendering of services, the promise is not an unconditional one to pay a sum certain &, therefore, the document is not a promissory note.—STANDARD TRUSTS CO. *v.* LAVALLEY, [1930] 3 W. W. R. 305 ; [1931] D. L. R. —— Alta. L. R. 1 ; *affd.*, [1931] S. C. R. 595 ; 4 D. L. R. 634.—**CAN.**

60 vii. —— *Payment on account of specified contract.*]—WILSON *v.* PELLETIER (N. B.), [1928] 1 D. L. R. 716.—**CAN.**

79 i. *As per memorandum of agreement—Memorandum meaningless.*]—*Held :* there was a good promissory note.—CANADIAN BANK OF COMMERCE *v.* LIVINGSTON (P. E. I.) (1909), 6 E. L. R. 459.—**CAN.**

sf. *Collateral conditional agreement.*]—The delivery of a promissory note to the payee subject to a collateral agreement by the payee not to enforce his rights until certain requests of the maker have been complied with does not make the note any less an unconditional promise in writing.—WESTCOTT *v.* LUTHER, [1933] 2 D. L. R. 369 ; S. C. R. 251.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

f i. —— *Admission by solicitor of maker.*]—ARBUTHNOT *v.* CAMPBELL (No. 2), [1931] 1 W. W. R. 240.—**CAN.**

h i. —— —— *Alleged maker denying signature.*]—Where an expert on handwriting said deft.'s signatures were genuine, but the judge held, after seeing enlargements of them, that they were forged :—*Held :* the absence of any evidence by pltf. & the uncertain nature of the other evidence justified the judge in dismissing the action.—EASTERN TOWNSHIPS INVESTMENTS CO. *v.* MCLENNAN (1919), 29 B. C. R. 1.—**CAN.**

PART II. SECT. 1, SUB-SECT 3.

sb. *"Sixty days after sight"—Sum certain with interest for indefinite period.*]—*Held :* the document was not a bill of exchange.—ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787 ; 31 C. L. R. 46.—**AUS.**

sc. *Cheque payable to "Ministre de la Voirie"—No time for payment stated.*]—An instrument in the form of a cheque drawn upon B. by A. payable to the order of the "Ministre de la Voirie" :—*Held :* not "payable on demand" & not a "cheque" within Bills of Exchange Act, s. 165.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433 ; [1926] S. C. R. 76.—**CAN.**

sd. *Promise to pay by instalments—*

—— **Or order.**]—The directors of pltf. co., being desirous of paying £250 to the L. & W. Corpn. for services rendered, drew a document in the form of a cheque for that amount on their account with deft. bank & delivered the document to B., a director of the L. & W. Corpn. The document was partly printed & partly in writing. The printed form was suitable for being filled in to make a cheque payable to order. It contained the blank space for the name of the payee to be filled in, followed by the printed words " or order." The document was made out in the form " Pay cash or order," the word " cash " being in writing. The document was not crossed & was never endorsed. It was paid into B.'s banking account & presented to deft. bank in the ordinary way of bank accounting, & was duly paid. In the result, the sum of £250 passed from the account of pltf. co. with deft. bank to the L. & W. Corpn., & deft. bank debited pltf. co.'s account with that sum & interest. Subsequently, a compulsory winding up order was made against pltf. co. on the petition of the Board of Trade, presented a few days before the above transactions took place. The liquidator of pltf. co. contended that the document was a cheque payable to order & required endorsement, & that as it had not been endorsed, deft. bank had no authority to pay the money as they did :—*Held :* the document could not be described as a cheque, because it was not a bill of exchange within 1882 Act, s. 73. The word " cash " could not be described as a " specified person." The document was not payable either to a specified person or to bearer, &, therefore, failed to satisfy 1882 Act, s. 7, which required that there must be a payee. The document must therefore be construed in accordance with the apparent intention of those who drew it. The printed words " or order," being inconsistent with the apparent intention of the drawers, must be neglected in favour of the written word " cash." Therefore, the document was a good direction to the bank to pay £250 to bearer. Deft. bank having paid the money in accordance with that direction, the action failed.—NORTH & SOUTH INSURANCE CORPN., LTD. *v.* NATIONAL PROVINCIAL BANK, LTD., [1936] 1 K. B. 328 ; 105 L. J. K. B. 163 ; 154 L. T. 255 ; 52 T. L. R. 71 ; 80 Sol. Jo. 111 ; 41 Com. Cas. 80.

191. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

205. *Add. Annotations :*—**Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Refd.** Derbyshire Territorial Army Association *v.* South-East Derbyshire Assessment Committee (1935), 99 J. P. 260.

207. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

208. *Add. Annotation :*—**Apld.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

209a. —— —— ——.]—*Pltf.*, who was a Pole, *& could not read English* unless it was printed, *bought goods from one* A. Cohen, & certain cheques were made out in favour of " A. Cohen " by a clerk in the employment of pltf. & were signed by pltf. The clerk afterwards forged the name of the payee by inserting " S " before " A. Cohen " & forged the indorsement & got the cheques cashed by deft., who obtained payment for the cheques on presentation. In an action for money received by deft. to the use of pltf. :—*Held :* as the cheques were, before signature, made out to a real creditor & not to a fictitious person pltf. was entitled to recover.—GOLDMAN *v.* COX (1924), 40 T. L. R. 744 ; 69 Sol. Jo. 10, C. A.

Annotation :—**Refd.** Slingsby *v.* District Bank Ltd. (1931), 47 T. L. R. 587.

213. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

215. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; McDonald *v.* Nash, [1924] A. C. 625.

217. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

218. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

240. *Add. Annotations :*—**Apld.** Mason *v.* Lack (1929), 140 L. T. 696. **Refd.** Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

240a. ——.]—An instrument purporting to be a bill of exchange was drawn by pltf. At the time when deft. accepted it there was no other name upon it, the only indication of a name being that it was payable at a certain bank at which, in fact, deft. had no account. On a claim by pltf. for the amount of the alleged bill :—*Held :* (1) since the document was not signed by the person giving it & addressed to the person who was to pay it, it was neither upon the authorities nor within 1882 Act, s. 3, a valid bill of exchange ; (2) it was a good promissory note upon which, after amendment of the statement of claim, pltf. was entitled to recover.—MASON *v.* LACK (1929), 140 L. T. 696 ; 45 T. L. R. 363 ; 73 Sol. Jo. 284.

Annotation :—*As to* (2) **Refd.** Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

241. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

After future date.]—MOTOR FINANCE CO. *v.* HARMS, [1930] 3 W. W. R. 302 ; 4 D. L. R. 1014.—**CAN.**

sf. " *After* 12 *months after date.*"]—A promise to pay " after 12 months after date " is indefinite as to time of payment, & is not therefore a promissory note within the Bills of Exchange Act.—GAUDET *v.* CORNEAU, [1936] 1 D. L. R. 754 ; 11 M. P. R. 96.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

g (p. 25) **i.** —— —— ——.]—A note for a sum with interest " & all costs & a reasonable attorney's fee if placed in the hands of an attorney for collection " is not expressed to be for a " sum certain in money " within Bills of Exchange Act, R.S.C., 1927, & is therefore not a promissory note.—TEMPLE TERRACE ASSETS CO. *v.* WHYNOT, [1934] 1 D. L. R. 124.—**CAN.**

k (p. 25) **i.** —— —— —— *At stated rate for uncertain time.*]—*Held :* the document was not a bill of exchange.—ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787 ; 31 C. L. R. 46.—**AUS.**

152 iii. —— —— *Error in calculation of instalment.*]—CONTINENTAL GUARANTY CORPN. OF CANADA *v.* VANCE, [1928] 1 D. L. R. 1134.—**CAN.**

152 iv. —— ——.]—The fact that an instrument in the form of a promissory note contained a promise by the payee written on the back thereof to accept payments by stated instalments :—*Held :* not to prevent it from being a true promissory note.—JACKSON *v.* DIGNEY, [1931] 1 D. L. R. 542 ; [1930] 3 W. W. R. 460 ; 39 Man. L. R. 201.—**CAN.**

242. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

242a. —— **Cheque drawn by Government official on Bank of England—Dividend warrant for interest on War Loan.**]—The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed " & Co. Not negotiable " & being expressed to be " A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount :—*Held :* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a " cheque "; (2) the word " dividends " in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock.—SLINGSBY *v.* WESTMINSTER BANK, LTD., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations :—Generally, **Refd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544; Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

251. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

252. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

254. *Add. Annotations :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696; Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

255. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

260. *Add. Annotation :*—**Expld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

273. *Add. Annotation :*—**Refd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

292a. —— —— **Interest to be charged thereon.**]—Pltf. deposited the sum of Rs.43,900 with defts. & received a deposit receipt in the following form : " This receipt is hereby executed by [defts.] for Rs.43,900 . . . received from [a firm] for & on behalf of [pltf.]. This amount to be payable after two years. Interest at the rate of Rs. 5–4–0 per cent. per year to be charged." This document was stamped as a receipt :—*Held :* the document was a deposit receipt & not a promissory note. It evidenced the deposit of the sum mentioned & that it was to be repayable on demand after the expiration of two years from its date.—AKBAR KHAN *v.* ATTAR SINGH, [1936] 2 All E. R. 545; 80 Sol. Jo. 718, P. C.

292b. **Memorandum for purchase of goods.**]—*Held :* an agreement, & not a promissory note.—ELLIS *v.* ELLIS (1820), Gow, 216, N. P.

295a. **Statement of sum borrowed & received—" Which I promise never to repay."**]—*Held :* pltf. was well entitled upon the lending on one side, & the borrowing on the other, notwithstanding the words in the conclusion of the note.—ANON. (*circa* 1716), cited in 2 Atk. at p. 32; 26 E. R. 416, N.

Annotation :—**Refd.** Simpson *v.* Vaughan (1739), 2 Atk. 31.

297a. **Acceptance of bill without drawer or drawee.**]—MASON *v.* LACK, No. 240a, *ante*.

Part III.—Classification of Instruments.

341. *Add. Annotations :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

PART II. SECT. 2, SUB-SECT. 2.

252 i. —— *Bill accepted.*]—An instrument purporting to be a promissory note, in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon by a third party. A person who thus endorses an acceptance thereby admits himself to be a drawee & becomes liable under it, even though he is not named as a drawee, provided acceptance by him is not inconsistent with the address on the bill of exchange. The acceptor having signified his acceptance is estopped from contending that he is not the drawee.—JOGESHCHANDRA DHAR *v.* MAHAMMAD IBRAHIM (1929), I. L. R. 57 Calc. 695.—**IND.**

PART II. SECT. 4, SUB-SECT. 1.

ai. —— ——.]—NORTHERN LUMBER CO., LTD. *v.* BLEICH, NICHOLS & SHEPARD (Sask.), [1929] 4 D. L. R. 274; 2 W. W. R. 538; *revg.*, [1929] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

ad. *Promissory note for interest in patent right—Form of indorsement.*]—GALLAGHER *v.* MURPHY (Ont.), [1928] 4 D. L. R. 618; *revsd.*, [1929] 2 D. L. R. 124; S. C. R. 288.—**CAN.**

PART II. SECT. 5.

1 i. —— *Followed by lien agreement.*]—A document which satisfies the statutory definition of a promissory note is not prevented from being a true promissory note by the fact that it is followed on the same paper by a collateral agreement, if such agreement does not qualify the obligation of the maker of the note or restrict the note's negotiability.—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 2 W. W. R. 128; 4 D. L. R. 148; 24 S. L. R. 473.—**CAN.**

PART II. SECT. 6.

324 iii. ——.]—A promissory note given for the debt of a third person without consideration is not enforceable at the suit of the payee. The only difference between such a note & a mere simple agreement is that the note imports consideration &, therefore, unless the maker negatives all possible consideration the payee is entitled to recover on the implied consideration.—BEAVER LUMBER CO., LTD. *v.* MAESS (DESROCHES), [1933] 2 W. W. R. 601.—**CAN.**

PART III. SECT. 1.

se. *Cheque payable to " cash or order."*]—*Held :* payable to bearer.—JUDMAIER *v.* STANDARD BANK OF CANADA (Alta.), [1927] 1 W. W. R. 270.—**CAN.**

PART III. SECT. 3.

sg. *Drawn on resident in British India—Wherever drawn.*]—A bill of exchange drawn upon a resident of British India is an inland instrument irrespective of the place where it was drawn.—KIDSTON (A.-G.) & Co. *v.* SETH BROS. (1929), I. L. R. 57 Calc. 730.—**IND.**

Part V.—Computation of Time of Payment.

441a. —— —— —— ——.] — Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—SCHAVERIEN *v.* MORRIS (1921), 37 T. L. R. 366.

Part VI.—Acceptance.

456. *Add. Annotation:*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

468. *Add. Annotations:*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625.

502a. —— **Acceptance subject to terms of contract —Negotiability destroyed.**]—LONDON & NORTHERN TRADING CO., LTD. *v.* ARCOS, LTD., No. 2158a, *post.*

508a. —— ——.]—Defts., merchants in London, were in the habit of purchasing goods for G., a merchant at Petersburg, which they consigned to pltf., his agent at Hamburg, & they drew bills to the amount, pursuant to the credit established for them. In such course of business, they consigned Brazil sugars & indigo to pltf. for G. & other merchants at Petersburg, & transmitted the bills of lading, & drew bills to the amount; upon which pltf. informed them, that he protected their drafts to the amount of all the goods consigned to the merchants at Petersburg, except those consigned to G.; that he accepted the draft for the amount of such goods provisionally, under the guarantee of defts., inasmuch as the sugars against which the bill was drawn were not, as ordered by his principal, Havannah, to the amount of which he was authorised to accept, but Brazil, respecting which he had no directions; that he would communicate with his principal on the subject, & inform defts. of the result. Such communication being made, G. at Petersburg, confirmed the order for the Brazil sugars, & directed pltf. to accept to their amount, & release defts. from their guarantee. Pltf. also informed defts. of their drafts, drawn on him against goods, being confirmed & acknowledged by other merchants at Petersburg, for whose account they were drawn. Upon the bkpcy. of G. & an action by pltf. against defts., for the amount of the bill which he had paid:—*Held:* pltf. was to be considered as having accepted the bill, not for the account of defts. until he, the acceptor, was in funds, but in reference to the confirmation of the order for the Brazil, instead of the Havannah sugars; which confirmation being given, his claim was upon the bkpt. at Petersburg, not upon defts., against whom, consequently, no action could be maintained.—LOHMANN *v.* ROUGEMONT (1840), 6 Bing. N. C. 253; 8 Scott, 520; 9 L. J. C. P. 158; 133 E. R. 100.

545. *Add. Annotation:*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

Part VII.—Inchoate Instruments.

555. *Add. Annotation:*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

563. *Add. Annotation:*—**Refd.** Smith *v.* Wood

564a. —— **Authority to indorse.**]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser:—*Held:* Act, 1882 (c. 61), s. 20, pltfs. had authority to complete the bills by adding their own indorsement, & the fact that pltfs. wrote their name underneath, instead of above, that of deft. was no answer to pltfs.' claim; (2) although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, Stat. Frauds could

PART V.

419 iv. ——.]—A promissory note payable on demand is payable immediately. The issue of a statement of claim demanding payment is a sufficient demand as against a maker, even though the note is expressed to be payable at a particular place; although in that case pltf. may be deprived of costs if the maker is sued without previous demand & can show, the burden being upon him, that he was prejudiced by the fact that demand for payment was not made at the place specified.—ROYAL BANK OF CANADA *v.* DWIGANS, [1933] 1 W. W. R. 672; 3 D. L. R. 178.—CAN.

PART VI. SECT. 2.

sm. *Acceptance by wife.*]—*Held:* not binding on husband.—ECCLES *v.* MERCHANTS BANK OF CANADA, 3 D. L. R. 1103; 52 O. L. R. 138.—CAN.

PART VI. SECT. 3, SUB-SECT. 1.

sp. *Indorsement "will accept on arrival of goods."*]—*Held:* the words when applied to a bill on demand meant "will pay," & no further acceptance was necessary.—HUMPHREYS *v.* TAYLOR, [1921] N. Z. L. R. 343.—N.Z.

not be set up as an answer to a claim under bills.—McCall Bros., Ltd. *v.* Harvey, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

565. *Add. Annotations:*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** Lickbarrow *v.* Mason (1793), 6 East, 20, n.

567a. ——.]—*Re* Gooch, *Ex p.* Judd, No. 2096a, *post.*

567b. ——.]—McDonald (Gerald) & Co. *v.* Nash & Co., No. 2096b, *post.*

567c. No drawee—Name of wrong drawee inserted—Alteration with consent of drawer.]—M. drew two documents in the form of bills of exchange, but addressed to no one, for £1,000 & £500, respectively, payable ninety days after date. Deft. was induced, by fraud, to sign a form of acceptance written across each document. M. then took the documents to pltf. & requested him to get them discounted at his (pltf.'s) bank. Pltf., by mistake, inserted M.'s name as addressee on both documents, & took them to his bank, who, however, ultimately declined to discount them. M. then asked pltf. to discount them for him. Before doing so, pltf., in the presence of, & with the consent of M., crossed out M.'s name as addressee & substituted that of deft. Pltf., as *bonâ fide* holder for value without notice of any fraud, subsequently presented the documents to the deft., who refused to pay:—*Held:* (1) the insertion of deft.'s name as addressee was within sect. 20 of 1882 Act, & made the documents good bills of exchange on which deft. could be sued; (2) there was no material alteration within sect. 64 of that Act; (3) if the documents were not good bills of exchange, they were promissory notes on which deft. could be sued by a *bonâ fide* holder for value without notice.—Haseldine *v.* Winstanley, [1936] 2 K. B. 101; [1936] 1 All E. R. 137; 105 L. J. K. B. 391; 154 L. T. 406; 80 Sol. Jo. 206.

568a. —— **Effect of 1882 Act, s. 12.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. In intended pursuance of the agreement two documents undated, & purporting to be bills of exchange, though written upon unstamped paper, were sent to L.; both were headed "London"; one was drawn by F., accepted by A., & indorsed by F., & was for £5,500, payable ninety days after date; the other not signed by any one as drawer; it was accepted by A. & by D. & M., & was for £4,812 payable ninety days after date. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order. The so-called bills of exchange for £5,500 & £4,812 were sent to L., who was at Lausanne. He struck out "London" & substituted "Lausanne," added Dec. 3 as the date of each, & signed his name as the drawer of the second, & stamped them both as foreign bills:—*Held:* (1) the so-called bill for £5,500, being drawn, accepted & indorsed in this country on unstamped paper, was void by Stamp Act, 1891 (c. 39), ss. 2, 37 (2), 38 (1); (2) the so-called bill for £4,812 though valid in other respects, as a foreign bill, notwithstanding 1882 Act, s. 64, was invalidated by L. having added a date not in accordance with the contract, & was not protected by 1882 Act, s. 12.—Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C.

Annotation:—*As to* (2) **Distd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

577a. —— ——.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the

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PART VII. SECT. 1.

566 vi. —— *& place of payment.*]—Where instead of handing over a note, applt.'s solr. filled in a place for payment, & discounted it with resp. & kept the money, & resp. filled in his own name as payee, & the note was not paid at maturity & no notice of dishonour was given to applt.:—*Held:* the solr. had no authority to negotiate the note, & resp. had no authority to fill in his name as payee, & he could not recover from applt.—Knust *v.* Abbot, [1923] N. Z. L. R. 1072.—**N.Z.**

drawer for signature.—DUNN (M.), JEFFERSON (1925), 69 Sol. Jo. 695, 725.

584. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

585. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

587. *Add. Annotation :*—**Dbtd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

588a. —— **Particular purpose—Fraudulent use for another purpose.**]—A cheque was signed in blank by one of the partners in a syndicate, in the belief that the stamp of the syndicate would be subsequently affixed & the cheque used for the ordinary business of the syndicate. It was made payable to another partner, & was indorsed by a third partner, who believed the same as the drawer, as well as by the payee. The payee, in fraud of the other two partners, did not affix the stamp of the syndicate & used the cheque for the purpose of raising a loan from money-lenders, for which he gave a promissory note binding him to repay an agreed sum by monthly instalments. When one of the instalments fell due, the cheque was tendered in payment & was dishonoured upon presentation, & the money-lenders then sued the drawer & the indorser :—*Held :* the drawer & indorser were liable on the cheque, as there had been nothing to put pltfs. on inquiry whether a fraud was being perpetrated by the payee, & as both defts., when signing the document, had intended that the document should be negotiated as a cheque, the cheque could not be regarded as a document given in escrow.—GUILDFORD TRUST, LTD. *v.* GOSS (1927), 136 L. T. 725 ; 43 T. L. R 167.

Part VIII.—Delivery.

595. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

596. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

643. *Add. Annotation :*—**Expld & Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

663. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation :*—**Refd.** Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 450.

691a. —— ——.]—*Re* ADANSONIA FIBRE CO., MILES' CLAIM (1874), 9 Ch. App. 635 ; 43 L. J. Ch. 732 ; 31 L. T. 9 ; 22 W. R. 8— L. JJ.

Annotation :—**Consd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

691b. ——.]—FLEMING *v.* MCNAIR (1812), cited in 3 Dow, at p. 229 ; 3 E. R. 1048, H. L.

Annotations :—**Consd.** Davison *v.* Robertson (1815), 3 Dow, 218. **N.F.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

692a. —— ——.]—In order to take a case out of the principle, that every partner in a mercantile or ordinary trading partnership is liable upon bills, drawn by a partner in the recognised trading business of the firm, for a transaction incident to the business of the firm, although such partner's name does not appear upon the face of the instrument, & although he be a sleeping & secret partner, it must be established that the holder of the bills knew, at the time he received them, that the transaction was a private contract not within the scope of the partnership.—BUNARSEE DASS *v.* GHOLAM HOSSEIN (1870), 13 Moo. Ind. App. 358 ; 20 E. R. 585, P. C.

693a. —— ——.]—SUTTON *v.* GREGORY (1797), Peake, Add. Cas. 150 ; 170 E. R. 226, N. P.

694a. —— —— ——.]—If one partner draw or indorse a bill in the partnership name, it will *primâ facie* bind the firm, although passed by the partner to a separate creditor in discharge of his own debt, unless there be evidence of covin between such separate debtor & creditor, or at least of the want of authority either express or to be implied, in the debtor partner to give the joint security of the firm

PART VIII. SECT. 3, SUB-SECT. 1.

598 ii. ——.]—Extrinsic evidence is always admissible to show delivery in escrow.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.—A.

611 viii. ——.]—Oral evidence is not admissible to show an agreement contemporaneous with the making of a note that the liability of the maker is contingent on the happening of some event.—RUTHENIAN FARMERS ELEVATOR CO. *v.* GNIAZDOSKI, [1922] 3 W. W. R. 19 ; 68 D. L. R. 656 ; 32 Man. L. R 322.—**CAN.**

611 ix. ——.]—MCNEILL *v.* STEWART, [1932] 1 D. L. R. 607 ; 3 M. P. R. 581. —**CAN.**

628 i. —— *Until death of maker.*]—BONHAM *v.* BONHAM (1920), 48 O. L. R. 434 ; 57 D. L. R. 459 ; 19 O. W. N. 268.—**CAN.**

637 iv. ——.]—Evidence of alleged conditions attached to the payment of a promissory note, *e.g.* payment out of a particular fund, is not admissible, as it would vary the terms of the written document.—GUGGISBERG *v.* WEBER, [1924] 1 D. L. R. 335 ; 1 W. W. R. 137 ; 18 Sask. L. R. 6.—**CAN.**

638 i. *Excluding liability if goods rejected.*]—An action by payee against the maker of a promissory note given for the price of goods was dismissed, on the ground that deft. had exercised, as under a contemporaneous oral agreement he was entitled to do, the right of rejecting & returning the goods.—NATIONAL MANUFACTURING CO. *v.* STEPA, [1922] 1 W. W. R. 814 ; 65 D. L. R. 284 ; 17 Alta. L. R. 398.—**CAN.**

PART IX. SECT. 1.

o i. —— *Knowledge of acceptor.*]—In an action on a promissory note it is enough to show that the acceptor had such knowledge as to put him on inquiry as to the maker's mental incompetency.—GRANT *v.* IMPERIAL TRUST, [1935] 3 D. L. R. 660.—**CAN.**

o ii. ——.]—MCNAB *v.* IMPERIAL TRUST CO., [1935] 4 D. L. R. 570.—**CAN.**

PART IX. SECT. 2.

t (p. 96) i. ——.]—POPE *v.* FRASER, [1923] 3 W. W. R. 754.—**CAN.**

for his separate debt.—RIDLEY *v.* TAYLOR (1810), 13 East, 175; 104 E. R. 336.

Annotations:—**Consd.** Frankland *v.* M'Gusty (1830), 1 Knapp, 274; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615. **Distd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278. **Refd.** Lloyd *v.* Ashby (1825), 2 C. & P. 138; Wintle *v.* Crowther (1831), 1 Cr. & J. 316; *Re* Riches, *Ex p.* Darlington District Joint Stock Banking Co. (1865), 34 L. J. Bcy. 10.

694b. —— —— ——.]—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless pltf. can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.—FRANKLAND *v.* M'GUSTY (1830), 1 Knapp, 274; 12 E. R. 324, P. C.

Annotations:—**Consd.** *Re* Wardley & Hodson, *Ex p.* Thorpe (1836), 2 Deac. 16. **Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278.

694c. —— **Note made for self & partner—Partner bound.**]—LANE *v.* WILLIAMS (1692), 2 Vern. 277; 23 E. R. 779; *subsequent proceedings* (1693), 2 Vern. 292.

Annotations:—**Consd.** Devaynes *v.* Noble, Sleech's Case (1816), 1 Mer. 539. **Refd.** Bank of Australasia *v.* Breillat (1847), 6 Moo. P. C. C. 152.

694d. —— —— ——.]—SMITH *v.* JERVES & BAILY (1727), 2 Ld. Raym. 1484; 92 E. R. 464; *sub nom.* SMITH *v.* BAILY, 11 Mod. Rep. 401.

695a. —— —— **With addition of partnership name—Firm bound.**]—GALWAY (LORD) *v.* MATTHEW & SMITHSON (1808), 1 Camp. 403; 170 E. R. 1000, N. P.; *subsequent proceedings, sub nom.* GALLWAY (LORD) *v.* MATHEW & SMITHSON, 10 East, 264.

Annotations:—**Consd.** Rooth *v.* Quin & Janney (1819), 7 Price, 193. **Apld.** *Re* Clarke, *Ex p.* Buckler (1844), 3 L. T. O. S. 284.

696a. —— ——.]—In an action against partners on a bill of exchange, it is no legal objection that the bill has been drawn or indorsed by one in his own name only. The liability of the parties may be collected from their course of business & other circumstances, showing that the partner who drew or indorsed had authority to bind the partnership by that mode of drawing or indorsing. Nor is it sufficient for the other partners to show that, in the particular instance, the partner who drew or indorsed the bill in question violated his private instructions in so doing.—SOUTH CAROLINA BANK *v.* CASE (1828), 8 B. & C. 427; 2 Man. & Ry. K. B. 459; 108 E. R. 1101; *sub nom.* SOUTH CAROLINA BANK *v.* CASE, BECKETT *v.* SAME, Dan. & Ll. 103; 6 L. J. O. S. K. B. 364.

Annotations:—**Expld.** Smith *v.* Craven (1831), 1 Cr. & J. 500. **Dbtd.** Nicholson *v.* Ricketts (1860), 2 E. & E. 497. **Consd.** *Re* Adansonia Fibre Co., Miles' Claim (1874), 9 9 Ch. App. 635; Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109. **Refd.** Vere *v.* Ashby (1829), 10 B. & C. 288; Beckham *v.* Knight (1838), 4 Bing. N. C. 243; Trueman *v.* Loder (1840), 11 Ad. & El. 589.

698a. —— —— **After dissolution.**]—A bill drawn & accepted after dissolution of partnership, though dated before, does not bind the retiring partner.—WRIGHT *v.* PULHAM (1816), 2 Chit. 121; *sub nom.* WRIGHTSON *v.* PULLAN, 1 Stark. 375; 171 E. R. 501.

701a. —— —— ——.]—A bill, though drawn on a partnership, & accepted by one of the partners, if for a separate debt of one of them, shall not bind the partnership, if the party knew the consideration of the bill. *Aliter*, if in the hands of a *bonâ fide* indorsee without notice.—WELLS *v.* MASTERMAN (1799), 2 Esp. 731; 170 E. R. 512, N. P.

Annotations:—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; Ellston *v.* Deacon (1866), L. R. 2 C. P. 20.

701b. —— —— ——.]—A partnership acceptance, given in discharge of the several debt of one of two partners, cannot be proved against the joint estate, by a person who took it in discharge of such several debt, though it was left for acceptance at the house of business of the partnership, & thence returned accepted, unless the holder makes out that it was accepted in the partnership name, with the knowledge & assent of the other partner.—*Re* O'NEILL, *Ex p.* GOULDING (1829), 8 L. J. O. S. Ch. 19, L. C.

Annotations:—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; *Re* Riches & Marshall's Trust Deed, *Ex p.* Darlington, etc., Banking Co. (1865), 4 De G. J. & Sm. 581.

702a. —— —— **Bill not addressed to partnership address.**]—Deft., a cheesemonger at A., carried on at W. the hosiery trade in partnership with C., but in his own name. C. accepted, in the name of deft., a bill of exchange drawn for goods supplied to the partnership, & which was addressed to deft. at A.:—*Held:* the acceptance was binding on deft., although the bill was not addressed to the place where the partnership business was carried on.—STEPHENS *v.* REYNOLDS (1860), 5 H. & N. 513; 29 L. J. Ex. 278; 2 L. T. 222; 157 E. R. 1283; *subsequent proceedings*, 2 F. & F. 147.

Annotations:—**Consd.** Yorkshire Banking Co. *v.* Beatson (1), Leeds & County Banking Co. *v.* Same (1879), 4 C. P. D. 204. **Refd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

709a. —— —— **Not for partnership purposes—Firm not bound.**]—SHEPPARD *v.* DRY (1840), cited in Byles on Bills, 18th ed., p. 56, n. (*l*).

713a. —— —— **For private debt—Firm not bound.**]—ARDEN *v.* SHARPE & GILSON (1797), 2 Esp. 524; 170 E. R. 442, N. P.

713b. —— —— ——.]—RIDLEY *v.* TAYLOR, No. 694a, *ante*.

713c. —— **Bill or note indorsed by partner in own name.**]—SOUTH CAROLINA BANK *v.* CASE, No. 696a, *ante*.

722. *Add. Annotation:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

726. *Add. Annotations:*—**Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

734. *Add. Annotations:*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

737. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

738. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

PART IX. SECT. 3.

k 1. —— ——.]—The maker of a promissory note whose signature is forged is not liable to the holder, when the latter has notified him that payment is demanded & he has not replied to the holder, who had suffered no prejudice.—INDUSTRIAL ACCEPTANCE CORPN. *v.* LUNENBERG OUTFITTING CO., [1934] 2 D. L. R. 558.—**CAN.**

746. *Add. Annotations :*—**Consd.** Goldman *v.* Cox (1924), 40 T. L. R. 423; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

755. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Reckitt *v.* Barnett, Pembroke & Slater, [1928], 2 K. B. 244.

757. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1927] 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

759. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

763a. —— —— **" Directors " added after signatures—Acceptance by company—Drawer requiring indorsement by directors.**]—A bill of exchange addressed to a limited co. was accepted in the following form: " Accepted payable at the W. Bank—A.B. & C.D., directors—Fashions Fair Exhibition, Ltd." The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back, " Fashions Fair Exhibition, Ltd. A.B. & C.D., directors," & one of them when returning the accepted bill drew attention in his letter to the fact that it was " duly indorsed by two directors of the co. as requested by you." In an action against A.B. & C.D. as indorsers of the bill :—*Held :* (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of defts. was to be adopted; (2) even if the indorsement stood by itself, as defts.' signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word " directors " must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters which passed between the parties on the subject of the indorsement, from which it was to be inferred that defts. by indorsing intended to guarantee the payment of the bill.—ELLIOTT *v.* BAX-IRONSIDE, [1925] 2 K. B. 301; 94 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

Annotation :—*As to* (1) **Consd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

763b. —— —— **" Receiver " added after signature.**]—Pltf., who had been appointed receiver on behalf of the debenture-holders of a co., sued defts. as acceptors of bills of exchange, which were signed by " R., Receiver, F. Ltd." as drawer. They had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be " clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves " :—*Held :* (1) the above were not " surrounding circumstances " from which the intention of the parties could be inferred, & such intention must be gathered from the terms of the document alone; (2) the words " Receiver, F. Ltd." were words of description only, & the bills did not purport to have been drawn on behalf of the co.; (3) pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

Part X.—Consideration.

772. *Add. Annotations :*—*As to* (1) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; *Re* Cuthbert, *Ex p.* Monnoyer British Construction Co. *v.* Trustees, [1936] 1 All E. R. 342.

773. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

PART IX. SECT. 5.

763 v a. —— —— **" President " & " Mgr." added after signatures.**]—*Held :* the individual defts. were personally liable on the note.—LOCZKA *v.* RUTHENIAN FARMERS' CO-OPERATIVE CO., LTD., [1922] 2 W. W. R. 782; 68 D. L. R. 535; 32 Man. L. R. 137.—CAN.

763 v b. —— —— **" Pres." & " Secy." added after signatures.**]—Whether those signing a promissory note signed it as officials of a limited co. or as individuals, is a question of intent, & the intent must be gathered from the face of the document itself, & where, on a series of notes made to the same person at one time, a rubber stamp containing the name of the co. & two lines was impressed on the notes & the signers signed on the two lines & added the words " Pres." & " Secy." after their signatures & were in fact the president & secretary of the co. respectively :—*Held :* the notes were made by the co.—SCHAFFER *v.* TUBBY, SMITH & CO., LTD., [1924] 1 D. L. R. 468; 1 W. W. R. 213.—CAN.

763 v c. —— —— **" Director " & " Secretary " added after signatures.**]—A promissory note was granted in the following terms: " Four months after date we promise to pay. . . [C. D.] Director, [E. F.] Secretary. The Fraserburgh Empire Ltd." The body of the note & the words appended to the signatures had all been written by the same person, not one of the signatories, before signature :—*Held :* the two signatories were personally liable.—BREBNER *v.* HENDERSON, [1925] S. C. 643.—SCOT.

763 v d. —— —— *Proprietor* " *added after* ——. A suit was brought on three hundis running in the following form : " 55 days after date I promise to pay S. C. F.. or order the sum of R.'s 600, c— for value received in cash (signed) G. V. A., Managing Proprietor, G. & B. Friends, S. Rd. Bombay No. 4 " :—*Held :* the only person liable on these hundis was G. V. A. who had signed them & not any alleged firm passing under the name of G. & B. Friends, & the words Managing Proprietor, etc., were merely added as a description of his occupation & business address.—SITARAM KRISHNA PADHYE *v.* CHINANDAS FATEHCHAND (1928), I. L. R. 52 Bom. 640.—IND.

797. *Add. Annotation :*—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

801. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

803. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416; Bartlam *v.* Evans, [1936] 1 K. B. 202.

823. *Add. Annotation :*—**Refd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

826a. ——.]—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD., No. 843a, *post.*

833. *Add. Annotation :*—**Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

837. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

843a. Fraudulent pledge of debentures—Surrender for renewal—Rights of pledgee.]—A man, entrusted with certain debenture securities for the purpose of collecting the interest on behalf of the owners, by means of forged endorsements pledged all the debentures with his bankers to secure his own indebtedness. Later the debentures, which constituted negotiable instruments, were surrendered by the bank to the issuing authority, who exchanged them for new debentures of the same total value. All the new instruments were issued directly to & in the name of the surrendering bank, & clear of all previous endorsements. The original securities were then cancelled & retained by the makers. Later the said bank at the request of the pledgor of the securities endorsed the new instruments over to another bank, the present respondents, to whom he had transferred his loan account. On a claim by the owners of the original tures, the present applts., for the delivery to them of the new instruments by resp. bank :—*Held :* there was nothing in the circumstances of the transaction to put resps. on inquiry. The issue by the makers of the "renewal" debentures constituted in effect a new contract between them & the first bank, &, resp. bank being the holders in due course of those instruments, applts. had no right of action against them. The "renewals" were in form & in substance new & independent obligations in substitution for those under the surrendered instruments.—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD. (1931), 47 T. L. R. 611, P. C.

862. *Add. Annotation :*—**Expld.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

PART X. SECT. 1, SUB-SECT. 3.

795 i. *Forbearance to sue—Surety.*]—*Held :* the giving of a note to avoid suit contituted deft. a principal debtor, & his equities as a surety were gone.—ALLIANCE TRUST CO. *v.* JOHNSON, [1920] 2 W. W. R. 800; 15 Alta. L. R. 479.—**CAN.**

795 ii. —— *Note given by vice-president of company & wife.*]—Defts., husband & wife, were respectively vice-president & president of a co. which was indebted to pltf. co. & was unable to make payment. Defts. made a joint & several promissory note in favour of pltf. co., payable on demand, for the amount of the debtor co.'s indebtedness. This was done at the solicitation of K., a representative of pltf. co., who said that he would not sue "them" so long as they showed a disposition to pay :—*Held :* by "them" K. meant the debtor co.; forbearance to sue upon the demand note was a sufficient consideration for the giving of it; & the wife deft. was liable upon it.—CITIES SERVICE OIL CO. *v.* RUBEL, [1931] 2 D. L. R. 183; 66 O. L. R. 475.—**CAN.**

795 iii. —— *Husband—Note given by wife.*]—Forbearance to press for payment or extension of credit is valuable consideration for a promissory note given by the debtor's wife to the creditor.—VICTOR *v.* GALLEN, [1937] 2 D. L. R. 99; 11 M. P. R. 155.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

q i. —— ——.]—*Held :* the forbearance or extension of time limited for the balance of payments which R. obtained by the giving of the note was valuable consideration within the meaning of the common law of England or under sect. 53 of Bills of Exchange Act, R. S. C., 1927.—*Re* ROSS, HUTCHISON *v.* ROYAL INSTITUTION FOR ADVANCEMENT OF LEARNING, [1932] S. C. R. 57; [1931] 4 D. L. R. 689.—**CAN.**

st. *Extension of credit.*]—FULLER & Co. *v.* HOLLAND (N. S.) (1910), 9 E. L. R. 110.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

sv. *Sale of improvements by quit-claim deed.*]—DUBE *v.* MORNEAULT (1920), 48 N. B. R. 200; 55 D. L. R. 512.—**CAN.**

sx. *Giving credit.*]—In an action upon promissory notes made by defts. husband & wife, in favour of pltfs. wholesale merchants, it appeared that in Mar. 1921, the wife deft. who had been carrying on a retail business, made an assignment under the Bkpcy. Act, & shortly afterwards made a proposal to compound her debts at 35 cents in the dollar, to be paid in ten equal monthly instalments. The composition was duly approved by the ct. Pltfs. were among the creditors. The debtor did not complete the composition payments within the times proposed, & the final payment was not made until Aug. 1923. After the composition was approved, the debtor continued to do business, & made some purchases from pltfs. In Sept. 1922, the debtor proposed to buy a large quantity from pltfs. on credit, but pltfs. refused to give credit for the quantity desired unless defts. would make some settlement of the old debt, *i.e.* the unpaid balance of pltfs.' compound claim. Defts. thereupon signed the promissory notes now sued upon, delivered them to pltfs., & received a new supply of goods upon the credit they desired :—*Held :* the notes were not made for the accommodation of pltfs.; but, though representing a compromised debt, were in fact made in consideration of the giving of credit in respect of the new sale, & that was sufficient consideration to support the notes & to render defts. liable.—CHAMANDY BROTHERS, LTD. *v.* ALBERT, [1923] 2 D. L. R. 577; 62 O. L. R. 105; 10 C. B. R. 32.—**CAN.**

sy. *Delivery up of void bill.*]—Valuable consideration for a bill of exchange may consist in the delivery up of another bill which the person taking the former bill was entitled to keep, even though the bill delivered up was void.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—**CAN.**

sz. *Credit given to third party.*]—B., having an unauthorised loan from applt. bank, of which he was a director, & wishing that it should cease to appear in the books, persuaded the first resp. to sign a promissory note for Rs. 20,000, dated Dec. 22, 1917, in favour of the bank; B. promised that he would himself pay the principal & interest. The note was credited by the bank to B., the first resp. receiving no part of the money. On Dec. 23, 1918, B. paid to the bank a sum out of which the bank allocated Rs. 908 to the payment of the interest due upon the note. B. had notice of that allocation & adopted it in his own books. On Aug. 9, 1921, applt. bank sued the first resp. upon the note :—*Held :* the first resp. was liable on the note. The giving of credit by the bank to B. was consideration.—NATIONAL BANK OF UPPER INDIA *v.* BANSIDHAR (1929), L. R. 57 Ind. App. 1, P. C.—**IND.**

sa. *Note given for price of car—To father of vendor—Father "backing" son in business — Absence of consideration.*]—MCLEAN *v.* MCDOUGALL, [1930] 1 D. L. R. 713; 1 M. P. R. 77.—**CAN.**

PART X. SECT. 2.

844 ii. ——.]—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART X. SECT. 3.

855 i. *Liability of accommodating party—Not entitled to notice of dishonour.*]—CODVILLE CO. *v.* JORDAN, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—**CAN.**

856 vi. —— —— —— *Subsequent indorser not entitled to benefit of collateral security.*]—SMITH *v.* FRALICK (1856), 5 Gr. 612.—**CAN.**

sb. *Right of accommodating party—To sue—On warehouse receipt indorsed by accommodated party.*]—*Held :* pltf. could not recover, for there was no debt contracted at the time of the indorsement.—COOKBURN *v.* SYLVESTER (1877), 1 A. R. 471.—**CAN.**

sd. *Evidence.*]—LERNER *v.* FRANCO-CANADIAN IMPORT CO., LTD. (1934), 7 M. P. R. 439.—**CAN.**

868. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

895. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

896a. —— **Under 1882 Act, s. 21 (2)—Payee.**]—The original payee of a cheque is not a " holder in due course " within the above sect. —JONES (R. E.), LTD. *v.* WARING & GILLOW, LTD., [1926] A. C. 670 ; 95 L. J. K. B. 913 ; 135 L. T. 548 ; 42 T. L. R. 644 ; 70 Sol. Jo. 756 ; 32 Com. Cas. 8, H. L.

Annotation :—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

897. *Add. Annotation :*—**Apprvd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

899. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

901. *Add. Annotation :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

902. *Add. Annotations :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787 ; Robinson *v.* Marsh, [1921] 2 K. B. 640.

917. *Add. Annotations :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

922. *Add. Annotation :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

935. *Add. Annotation :*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

942. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

943. *Add. Annotations :*—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

945. *Add. Annotations :*—**Refd.** Maskell *v.* Hill, [1921] 3 K. B. 157 ; Humphery *v.* Wilson (1929), 141 L. T. 469.

946a. Compounding felony.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160 ; 5 Vin. Abr. 408, pl. 20 ; 22 E. R. 136, L. C.

PART X. SECT. 5.

896 iv. —— ——.]—UNION BANK OF CANADA *v.* ANTONIOU, [1921] 1 W. W. R. 649 ; 56 D. L. R. 338 ; 61 S. C. R. 253.—**CAN.**

896 v. —— ——.]—WEICKER *v.* MORTIMER, [1922] 2 W. W. R. 725 ; 15 Sask. L. R. 436.—**CAN.**

896 vi. —— ——.]—ALLAHABAD BANK, LTD., LAHORE *v.* RATTAN CHAND CHAWLA (1927), I. L. R. 8 Lah. 702.—**IND.**

897 vi. —— ——.]—GUNNS, LTD. *v.* WARK, [1924] 1 D. L. R. 377 ; 51 N. B. R. 292.—**CAN.**

897 vii. —— ——.]—MARSHALL *v.* ROGERS, [1924] 1 D. L. R. 888.—**CAN.**

897 viii. —— ——.]—The original payee of a cheque is not a holder in due course.—JOHNSON *v.* JOHNSON, [1928] 2 D. L. R. 531, 912 ; [1928] 1 W. W. R. 774 ; [1928] 2 W. W. R. 63 ; 23 Alta. L. R. 388.—**CAN.**

907 i. " *Complete & regular on face of it*"—*Instrument signed in blank.*]—A party who knows that a note has been signed in blank & negotiated to him before being filled out is not a holder in due course.—SAVARD *v.* TREMBLAY (1922), Q. R. 34 K. B. 458. —**CAN.**

913 iii. —— ——.]—Pltf. purchased a 1916 model motor-truck from G. A cash payment was made on account & promissory notes given for the balance. G. assigned the agreement & notes to defts. for valuable consideration, of which pltf. had due notice. Later pltf. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes : —*Held :* defts. were holders of the notes in due course & had discharged any *onus* for the fraudulent conduct of G. of which they had no notice.—FRASER *v.* MCGREGOR, JOHNSTON & THOMAS, LTD. (1922), 31 B. C. R. 306. —**CAN.**

913 iv. —— ——.]—BANK OF AUSTRALASIA *v.* CURTIS, [1927] N. Z. L. R. 247.—**N.Z.**

916 vi. —— ——.]—In order for a person to whom a bill or note is negotiated to be affected with notice of a defect in the title of the person negotiating it he must have knowledge of the facts or a suspicion of something wrong combined with a wilful neglect of the means of knowledge.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93 ; [1928] 2 W. W. R. 55.—**CAN.**

notes for $1,000 & $2,000 were endorsed by defts. respectively for the accommodation of a co. which was a customer of pltf. bank, pursuant to an arrangement made at a conference between the manager of the co., one of defts., & the local manager of pltf. bank, whereby the proceeds of the notes, when endorsed, were to be applied in reduction of a balance due by the co. upon a purchase of land, & that the notes should not be used until the co. had raised a sum of $1,000 to make up the sum of $4,000 to be paid upon the land purchase. Defts. endorsed the notes upon these conditions. The notes were not discounted by pltf. bank, but were pledged to the bank by the co. as collateral security for advances made to the co. The co. never raised the $1,000 necessary to complete the payment of $4,000 :—*Held :* the local manager of the bank had full notice & knowledge of the arrangement, & when he accepted the notes as pledge he was not acting in good faith & pltf. bank was therefore not a holder in due course.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

n (p. 140) **i.** —— *Notice that transferor not entitled to transfer.*]—Defts. entered into a hire-purchase agreement with the H. Co. in respect of a motor car, & gave promissory notes as collateral security, but not in payment of the instalments payable thereunder. It was a term of the hire-purchase agreement, that defts. should be entitled to determine the hiring by returning the car to the H. Co. &, thereupon, the H. Co. was obliged to surrender all promissory notes given by defts., & not then due. Pltf., in course of an arrangement for financing the H. Co.'s transactions, paid the H. Co. an agreed price for the car, & the H. Co. indorsed deft.'s promissory notes & delivered them to pltf. Thereafter, defts. proposed, in lieu of the instalments, to pay £150 at once, & the residue of the consideration in a single deferred payment. The H. Co. sought to retire the promissory notes held by the pltf., but as the parties could not agree as to the rebate for payment in anticipation of the due dates, nothing eventuated. The H. Co., however, accepted the £150, & later, the balance of the consideration, from defts., & met each note held by pltf. as it fell due, until it went into liquidation. Pltf.'s representative was aware, in another capacity, of what had occurred between the other parties. Pltf. having brought an action against defts. on the promissory notes still held by it :—*Held :* it was a part of the bargain between defts. & the H. Co. that the promissory notes should not be discounted ; of this pltf. was aware ; pltf. was not a holder in due course, & could not recover.—AUTOMOBILE FINANCE CO. OF AUSTRALIA *v.* HENDERSON (1930), 23 Tas. L. R. 9.—**AUS.**

g (p. 141) **i.** —— ——.]—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

k (p. 141) **i.** —— *Private arrangement between parties—Not expressed on face of instrument.*]—An open letter of credit was granted to W., trader, on the guarantee of T. & M., merchants, upon an agreement, not expressed in the letter, that W. should buy produce & consign bills of lading & policy of insurance endorsed to T. & M., as security. W., in fraud & violation of their agreement, drew bills under the letter, & indorsed for value to the Merchants Bank of Halifax, who had no notice of the above agreement :—*Held :* a negotiable instrument is not to be affected by any private arrangement which the parties to it do not choose to put upon the face of the document. If it were intended to limit W. in the use of the letter of credit as between him & the world at large, to a use for mercantile purposes connected with the purchase of the produce, it would have been very easy to have expressed on the face of the letter of credit that it was to be accepted if presented accompanied by bills of lading & policy of insurance. — MERCHANTS BANK OF HALIFAX *v.* WINTER (1898), 8 Nfld. L. R. 30.—**NFLD.**

PART X. SECT. 6, SUB-SECT. 2.—A.

940 i. *Smuggling.*]—WALLBRIDGE *v.* FOLLETT (1846), 2 U. C. R. 280.—**CAN.**

940 ii. ——.]—The seller of smuggled goods cannot collect a note given for the price thereof as such transaction is contrary to public policy.—BEAULIEU *v.* OUELLETT (1936), 65 C. C. C. 355.—**CAN.**

942 i. *Gaming—Gambling in grain futures.*]—Promissory note unenforceable.—BANK OF TORONTO *v.* SWEENEY, BANK OF TORONTO *v.* COCHRANE, BANK OF TORONTO *v.* BORYS, [1927] 2 W. W. R. 597 ; 21 Sask. L. R. 670.—**CAN.**

946 iii. ——.]—MACWILLIAMS *v.* HIGGINS, [1927] 2 D. L. R. 781 ; [1927] 1 W. W. R. 772 ; 36 Man. L. R. 458.—**CAN.**

960. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh. [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1.

964. *Add. Annotation :*—**Apld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

971. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

991. *Add. Annotation :—As to* (1) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

995. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1033. *Add. Annotations :*—**Folld.** Low *v.* Fry (1935), 152 L. T. 585. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1033a. —— —— ——.]—By an agreement entered into orally between the parties pltf. agreed to sell a house for £800 to deft., who thereupon handed to pltf. a cheque made payable to him for £450 as part purchase price. There was no memorandum or note of the agreement in writing to satisfy the terms of sect. 40 of the Law of Property Act, 1925 (c. 20), s. 40. Subsequently, deft. repudiated the agreement & stopped the cheque, which was dishonoured. Pltf. sued deft. on the cheque. There was no evidence that pltf. had not always remained able & willing to convey the property to deft. :—*Held :* pltf. could recover on the cheque.—Low *v.* Fry (1935), 152 L. T. 585 ; 51 T. L. R. 322.

1037. *Annotations :*—Delete " Barwick *v.* S. E. & C. Ry. Cos., [1920] 2 K. B. 387 ; Bombay & Persia Steam Navigation Co. *v.* MacLay, [1920] 3 K. B. 402 ; Markwald *v.* A.-G., [1920] 1 Ch. 348."

Add. Annotations :—**Refd.** Maclaine *v.* Eccott (1924), 132 L. T. 173 ; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1038. *Add. Annotations :*—**Refd.** The Penelope, [1928] P. 180 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

Add. Annotations :—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Churchill & Sim *v.* Goddard, [1937] 1 K. B. 92.

1053. *Add. Annotations :*—**Distd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1054. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1054a. —— —— ——.]—Guildford Trust, Ltd. *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171.

1086a. ——.]—Where in an action for the payment of a sum alleged to be due to pltf. upon a promissory note deft. pleaded that there was no consideration for the note :—*Held :* (1) inadequacy of consideration affords no relevant answer to a demand upon a pro-

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946 iv. ——.]—Promissory note unenforceable. The fact that the magistrate consented to the withdrawal of the charge is immaterial.—Becker *v.* Bachman (Alta.), [1927] 2 D. L. R. 1144 ; [1927] 2 W. W. R. 32.—**CAN.**

l i. ——.]—Moneys due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by suit.—Kalikumari Baishnabi *v.* Manomohinee Baishnabi (1935), I. L. R. 63 Cal. 445.—**IND.**

m. Read now " **946a i.**"

n i. *Transaction in breach of licensing laws.*]—*Held :* pltfs. could not recover on bills of exchange given in payment for intoxicating liquors sold by their agent in a local option district.—Wilson Co. *v.* Mayflower Bottling Co. (N. S.) (1913), 13 E. L. R. 489 ; 14 D. L. R. 711.—**CAN.**

n ii. ——.]—*Held :* there was no legal consideration for the cheque on which pltf. sued, & he could not recover.—Skale *v.* Becker, [1926] 1 D. L. R. 723 ; 59 O. L. R. 551.—**CAN.**

PART X. SECT. 6, SUB-SECT. 2.—B.

958 iv. —— ——.]—M. drew a cheque, crossed " not negotiable," & payable to D. or order, & delivered it to D. in payment of money won from him by D. under a wagering contract. D. indorsed the cheque to R. but upon presentment to M. for payment it was dishonoured :—*Held :* the cheque having been given for a consideration which by virtue of Gaming & Betting Act, 1912, was not illegal but merely void, D. had acquired a good title to it, & therefore that R. was entitled to recover its value from M.—Roberts *v.* Malouf (1929), 29 S. R. N. S. W. 179 ; 46 N. S. W. W. N. 61.—**AUS.**

s i. —— ——.]—A promissory note given to a creditor in order to procure his consent to an assignment in contravention of Act 32, 1916, s. 141 (*b*), is not by reason of that fact alone void in the hands of a person not a party to it, who, subsequently to the illegality, gives value for it in good faith.—Valayathan *v.* Five Roses Tea & Coffee Works (1931), 52 N. L. R. 143.—**S. AF.**

sb. *Amount recoverable.*]—Where the consideration for a promissory note as between the maker & payee was illegal & judgment is recovered thereon against the maker by a holder in due course who took it from the payee as collateral security for a debt, the amount of the judgment should be limited to the amount of the transferees' present indebtedness to the holder The same result follows even though the original transaction was not illegal, where the maker has already paid the amount of the note to the payee.—Royal Bank of Canada *v.* Grobe & Walbridge (Alta.), [1928] 3 D. L. R. 93 ; [1928] 2 W. W. R. 55.—**CAN.**

PART X. SECT. 7.

993 v. —— —— *Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.*]—Monticello State Bank *v.* Killoran, [1920] 3 W. W. R. 542.—**CAN.**

PART X. SECT. 8, SUB-SECT. 1.

s i. —— *Verbal agreement that note to be operative only on happening of specified event.*]—Dennis *v.* Ivey & Boyce, [1920] 3 W. W. R. 744.—**CAN.**

s ii. —— *Note given to show fictitious assets—Estoppel of maker.*]—Hay *v.* Allen, [1921] 1 W. W. R. 33.—**CAN.**

s iii. ——.]—Klotz *v.* Jouan, [1925] 3 D. L. R. 105.—**CAN.**

s iv. ——.]—Devlin *v.* Moore's Mills Creamery, Ltd. (N. B.), [1927] 3 D. L. R. 479.—**CAN.**

PART X. SECT. 8, SUB-SECT. 2.

1040 ii. —— —— ——.]—The maker of a post-dated cheque the consideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.—Union Bank of Canada *v.* Tattersall, [1920] 2 W. W. R. 497 ; 52 D. L. R. 407 ; 15 Alta. L. R. 350.—**CAN.**

q (p. 164) **i.** —— —— —— *Withdrawal of retainer.*]—The rule that partial failure of consideration for a promissory note is a defence *pro tanto*, as against an immediate party, only when the amount of the note referable to such partial failure is ascertained & liquidated, was applied herein to an action on a note given a solr. on being retained to conduct the defence to a charge which was withdrawn before the date set for trial, but with respect to which the solr. prepared for trial.—Krauss *v.* Luciuk, [1928] 1 D. L. R. 1132 ; [1928] 1 W. W. R. 184 ; 22 Sask. L. R. 374.—**CAN.**

PART X. SECT. 9, SUB-SECT. 1.

sd. *General rule.*]—In an action against the maker of a promissory note by an alleged holder in due course deft. has the right to plead fraud of the payee.—Arbuthnot *v.* Campbell, [1930] 2 W. W. R. 275.—**CAN.**

1053 iii. —— ——.]—Royal Bank *v.* Wannamaker (Ont.), [1929] 4 D. L. R. 999.—**CAN.**

1059 xv. ——.]—Where notes were nullities for fraud, & the signer was not estopped by any negligence on her part :—*Held :* the third party, although a holder in due course, had no right to recover from her.—Dunshea *v.* Kesteven, [1922] N. Z. L. R. 1032.—**N.Z.**

1059 xvi. ——.]—Where there was a defect in the payee's title, of which the indorsee had notice :—*Held :* he was not entitled to recover.—Darrock *v.* Burns (1927), 48 N. L. R. 320.—**S. AF.**

1059 xvii. ——.] — McTavish *v.* Cotswold School District, [1931] 3 W. W. R. 623.—**CAN.**

PART X. SECT. 9, SUB-SECT. 2.

1073 i. —— *Husband & wife.*]—Fryers & Co., Ltd. *v.* Steeves (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

missory note; (2) it is not for the ct. to inquire into the adequacy of the consideration for the note, but to consider whether or not there had or had not been any consideration given; (3) the burden of proof that no consideration had been given was on deft.—ADIB EL HINNAWI *v.* YACOUB FAHMI ABU EL HUDA EL FARUQI, [1936] 1 All E. R. 638, P. C.

1093. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1132. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

Part XI.—Negotiation and Transfer.

1155. *Add. Annotation :*—*As to* (2) **Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

1161. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1163. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1169. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

1178. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1188. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1189. *Add. Annotation :*—**Dbtd.** Mascarenhas *v.* Mercantile Bank of India, Ltd., Da Silva *v.* Mercantile Bank of India, Ltd. (1931), 47 T. L. R. 611.

1190. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1196. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1248. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1250. *Add. Annotations :*—**Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

1254a. —— ——.]—A testator gave a promissory note to G., saying he wished to provide otherwise than by will, for pltf. & afterwards made his will, appointing G., with others, his exor., & to whom, after payment of legacies, he bequeathed a moiety of his personal estate. G. having made some payments on account to the pltf. afterwards denied her title :—*Held :* he was a trustee of the note for pltf.—LLOYD *v.* CHUNE (1860), 2 Giff. 441; 3 L. T. 366; 6 Jur. N. S. 1365; 66 E. R. 184.

Annotation :—**Expld.** *Re* Whitaker (1889), 42 Ch. D. 119.

PART X. SECT. 10, SUB-SECT. 1.

1093 l. Add "*varied*, [1917] 1 W. W. R. 1177."

sf. *Question for jury.*]—Pltf. sued upon two promissory notes made by deft. to L. & transferred, after maturity, & not for value, to pltf. They were renewals for the balance unpaid of a previous note from deft. to L. There was conflicting evidence as to the reason & consideration for giving the original note. L. asserted that the note was given for the amount owing to him by deft. on a loan. Deft. asserted that the note was for L.'s accommodation; that the loan from L., asserted by L. to have been made to deft., had in fact been made to one R., that subsequently L. wanted the money, R. could not then pay, that deft. gave the note, for the same amount as that owing by R., to enable L. to raise money, but received no consideration, that it was agreed that deft. was not to be called upon to pay the note or any renewals, & that the note or any renewals would not be negotiated after maturity. The trial judge withdrew the case from the jury :—*Held :* there the questions whether the note was given simply for L.'s accommodation or in consideration of a debt due by deft. or by R., & whether there was an agreement, as alleged by deft., that the note should not be negotiated after maturity, should have been submitted to the jury.—GLESBY *v.* MITCHELL, [1932] S. C. R. 260; 1 D. L. R. 641; *affg.*, [1931] 2 D. L. R. 675; 3 M. P. R. 507.—**CAN.**

PART X. SECT. 10, SUB-SECT. 2.—B. (a).

1096 ix. —— ——.]—**Fraud is no defence where an action on a note is brought by a holder in due course. It merely shifts the burden to pltf. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.**—CANADIAN BANK OF COMMERCE *v.* PEEBLES, [1924] 1 D. L. R. 225.—**CAN.**

1096 x. —— ——.]—D. sued T. on a promissory note which had been given by T. to F. & which had been indorsed by F. to D. T.'s defence was that the note had been obtained from him by fraud & that D. had notice of the fraud when it was endorsed to him. D. proved the indorsement of the note to him & closed his case. T. then established in his case that the note had been obtained from him by fraud. D. in reply, gave evidence of the circumstances under which the note was indorsed to him; this evidence was not very clear or definite. He was cross-examined at length, & it was shown that his recollection was deficient in some respects. The trial judge directed a verdict for D. & the jury gave a verdict for D. accordingly without leaving the box :—*Held :* upon proof by T. that the note had been obtained by fraud, sect. 35 of Bills of Exchange Act cast the burden upon D. of proving that value had in good faith been given by him for the bill, & the trial judge should have left that issue to the jury.—DOUGLAS *v.* TIERNAN (1932), 32 S. R. N. S. W. 149; 49 N. S. W. W. N. 31.—**AUS.**

on dant.]—*Held :* the onus of proof of illegality was cast on defts. by sect. 30 of the Bills of Exchange Act, 1908, & the principle laid down in *Talbot* v. *von Boris*, No. 1114, *viz.*, that the provision of sect. 30 (2) of the Bills of Exchange Act, 1882 (Imperial), & of the New Zealand Act of 1908, does not apply to a case where the holder seeking to enforce the instrument is the person to whom it was originally delivered & in whose possession it remains, was not affected by the decision in *Jones (R. E.), Ltd.* v. *Waring & Gillow*, No. 896a.—COX & WALSH *v.* BURTON, [1933] N. Z. L. R. 249.—**N.Z.**

PART XI. SECT. 4.

g (p. 185) **i.** —— ——.]—To be the holder of a promissory note & entitled to sue on it in his own name, pltf. must be either the payee or the indorsee in possession of the note.—BARNEY *v.* LAUZON, [1923] 2 W. W. R. 19.—**CAN.**

m (p. 188) **i.** —— —— —— *Assignment to evade counterclaim.*]—Deft. made a note in favour of C., who lost it. C. made an assignment of it to J. in order that J. might bring an action thereon & so prevent deft. bringing a counterclaim against C. Just before trial the note was found & indorsed to J. :—*Held :* C. must be joined as pltf., & deft. allowed ot bring in his counterclaim.—JONES & COLQUHOUN *v.* FINCH (1922), 66 D. L. R. 822.—**CAN.**

m (p. 188) **ii.** —— —— *Indorsement in consideration of advances—Advances repaid.*]—*Held :* an action might be brought either in the name of the indorser or holder.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

m (p. 188) **iii.** —— —— " *On account of*" *payee.*]—An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed pltf. to amend by adding the indorsee as co-pltf., deft. having objected that pltf. had no right of action; & judgment was given for the indorsee, but costs were given deft. against the payee, the original pltf. Deft. appealed on the grounds that no amendment should have been allowed, & pltf. was not entitled to judgment. Appeal dismissed.—JACKSON MACHINES, LTD. *v.* MICHALUCK, [1922] 2 W. W. R. 572; 67 D. —— 82; 15 Sask. L. R. 467.—**CAN.**

d (p. 189) **i.**—*Payee of cheque.*]—BELCHER *v.* DIXON, [1923] N. Z. L. R.

1306. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1312. *Add. Annotation :*—**Consd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

1314a. Rubber stamp—Various names—Intention of indorser.]—Thomas Cook & Son, Ltd., carried on a tourist & ticket business, & Thomas Cook & Son (Bankers), Ltd., an allied but quite separate co., carried on a money-changing business in the same room. An employee of pltf. co., having in his possession in the course of his employment certain cheques drawn in favour of pltf. co., obtained that co.'s indorsement upon them, wrote above the indorsement " Pay to the order of Messrs. Thos. Cook & Son, Ltd." & gave the cheques to Thomas Cook & Son (Bankers), Ltd., in exchange for foreign currency. The cheques were then further indorsed by Thomas Cook & Son (Bankers), Ltd., by means of a rubber stamp " *per pro* Thos. Cook & Son. *per pro* Thos. Cook & Son, Ltd. *per pro* Thos. Cook & Son (Bankers), Ltd." & countersigned in the usual way. In an action for conversion of the cheques, pltf. co. contended that either Thomas Cook & Son, Ltd., was liable because that co. had converted the cheques & had not given value for them, or that Thomas Cook & Son (Bankers), Ltd., was liable because it gave value for the cheques when Thomas Cook & Son, Ltd., in whose favour they were indorsed, had not indorsed them :—*Held :* when pltf. co.'s employee wrote the words " Pay to the order of Messrs. Thos. Cook & Son, Ltd." he intended the cheques to pass to Thomas Cook & Son (Bankers), Ltd., in exchange for the foreign currency, & although he misdescribed that co., the cheques were in law indorsed to that co. Thomas Cook & Son (Bankers), Ltd., had given value for the cheques & neither deft. co. was liable.—BIRD & Co. (LONDON), LTD. *v.* COOK (THOMAS) & SON, LTD., & COOK (THOMAS) & SON (BANKERS), LTD., [1937] 2 All E. R. 227 ; 156 L. T. 415.

1318. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1319. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1322. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

1324. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1334. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

PART XI. SECT. 9.

s i. —— *Bank selling assets to another bank.*]—Where one bank sells its assets to another bank under Bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a promissory note, part of the assets acquired, notwithstanding that the note has not been indorsed by the selling bank as required by Bills of Exchange Act.—BANK OF MONTREAL *v.* IRVINE & FEINSTEIN, [1924] 3 D. L. R. 752 ; 2 W. W. R. 1047.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 1.

sg. " *Indorsed* " *written opposite signature.*]—A promissory note was signed by W. & M. on the face of the note & opposite M.'s signature the word " indorsed " was written by a salesman in the service of pltf. co., to which the note was made payable :—*Held :* M. did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word " indorsed " was merely a memorandum intended to show that M. was a surety.—GORRIE (A. D.) Co., LTD. *v.* WHITFIELD & MICHAUD (1920), 48 O. L. R. 605 ; 58 D. L. R. 326 ; 19 O. W. N. 336.—**CAN.**

sh. " *I hereby assign the moneys payable under the within note.*"]—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 4 D. L. R. 148 ; 2 W. W. R. 128 ; 24 S. L. R. 473.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 2.

k i. —— *Of company.*]—If a co. authorises that its bank may accept for deposit cheques " purporting to be indorsed by any one director or the secretary or treasurer," an indorsement is good which is made by one who is a director & secretary though he does not purport to sign as director or secretary.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497 ; 52 D. L. R. 407 ; 15 Alta. L. R. 350.—**CAN.**

k ii. —— ——.]—BRECHT *v.* HEFFEL, [1923] 3 D. L. R. 40 ; 2 W. W. R. 1135.—**CAN.**

k iii. —— ——.]—IMPERIAL BANK OF CANADA *v.* DENNIS, [1925] 3 D. L. R. 488 ; 57 O. L. R. 203.—**CAN.**

k iv. —— ——.]—FIDELITY TRUST CO. *v.* TERMINAL LAND & INVESTMENT CO. (Ont.), [1927] 4 D. L. R. 532.—**CAN.**

sj. *Member of syndicate.*]—An indorsement by one of the members of a syndicate, carrying on the business of travelling a stallion, in the syndicate's name of a promissory note made payable to the syndicate or its order :—*Held :* to be a valid indorsement.—RILEY *v.* REED, [1925] 2 D. L. R. 737 ; [1925] 2 W. W. R. 286 ; 19 Sask. L. R. 366.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 3.—A.

1311 i. *Must be written on instrument —Writing on face of note.*]—Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280 ; 66 D. L. R. 673.—**CAN.**

sk. —— *Allonge.*]—Before finding that a sheet of paper is an allonge to a promissory note, the ct. should scrutinise the evidence & material with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—BARNEY *v.* LAUZON, [1923] 3 D. L. R. 140 ; 2 W. W. R. 19.—**CAN.**

1313 i. *Must be signed—Name misspelt—In cheque—Name properly spelt in indorsement.*]—Although the word " limited " be omitted from a payee co.'s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—UNION BANK OF CANADA *v.* TATTERSALL, 1920] 2 W. W. R. 497 ; 52 D. L. R. 407 ; 15 Alta. L. R. 350.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 3.—E.

sl. *After advance made—Relation back.*]—*Held :* the indorsement related back to the time when the note was given & the money paid.—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 4.

1356 i. —— " *Pay to order of M. Bank to credit of* " *payee.*]—*Held :* a restrictive indorsement, & the indorsee & holder is not entitled to recover from the maker, who has paid in good faith the amount of the note to the payee.—MERCHANTS BANK OF CANADA *v.* BRETT, [1923] 2 D. L. R. 264 ; 32 Man. L. R. 529 ; [1923] 1 W. W. R. 607.—**CAN.**

r i. —— ——.]—O'DONOGHUE *v.* HEMBROFF (1871), 19 Gr. 95.—**CAN.**

t i. —— *Right to make equitable assignment.*]—A bill of exchange payable to the order of A. only & endorsed by A. payable to B. only, cannot be further negotiated by mere endorsement. Such a case is one to which sect. 68 of Bills of Exchange Act, 1927, applies. But there may be an assignment of such a bill by B. under the rules governing the assignment of choses in action.—DEALERS FINANCE CORPN., LTD. *v.* SEDGWICK, [1932] 1 D. L. R. 71 ; 2 W. W. R. 598 ; *revsg.*, [1931] 1 D. L. R. 1014 ; 1 W. W. R. 164.—**CAN.**

PART XI. SECT. 16.

1366 ii a. —— ——.]—The right which the transferee for value of a bill has under Bills of Exchange Act, s. 61 (1), to have the endorsement of the transferor does not oblige the transferor to give an unqualified endorsement unless there is some contract or equity which requires him to assume personal responsibility on the bill.—SCOTT *v.* FERGUSON, [1929] 3 D. L. R. 705 ; 2 W. W. R. 37 ; 23 S. L. R. 512.—**CAN.**

PART XI. SECT. 17.

1367 iii. —— *Apparent cancellation of indorsement.*]—*Held :* it is for the holder to prove in order to establish his title by reason of Bills of Exchange Act, ss. 143, 144, that the apparent cancellation was not intended to be one.—ROYAL BANK OF CANADA *v.* ALLEN, [1919] 3 W. W. R. 1063 ; 49 D. L. R. 572 ; 15 Alta. L. R. 171.—**CAN.**

Part XII.—General Duties of Holder.

1397. *Add. Annotations :*—**Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437; Sassoon *v.* International Banking Corpn., [1927] A. C. 711; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1407. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1459. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1461. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1463. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1477. After this case add "**Bill accepted payable at bank—Presentment over counter—Validity.**] —*See* BANKERS, No. 600a, *ante*."

1529. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1531. For "SAUNDERSON *v.* BOWES" read "SANDERSON *v.* BOWES."

Add. Annotation :—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1542. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1546. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1548a. —— —— —— **Bill treated as promissory note.**]—On Mar. 23, 1920, the branch of the British Trade Corpn., Ltd., at Batoum, drew a document in the following form: "At sight pay this sole exchange to the order of Mr. B. L. Mailoff the sum of one thousand pounds sterling value received which place to account No. 2." The document was signed "For the British Trade Corpn." by the manager & accountant, & it was addressed at the foot "To the British Trade Corpn., 13, Austin Friars, London, E.C." By successive indorsements pltf. became the holder, & on Dec. 20, 1923, his agents presented the document at the London offices of the corpn. Payment was refused, as it was required that the indorsements should have a banker's certification. On Nov. 23, 1926, a special resolution was passed for the voluntary winding up of the corpn. in connection with an amalgamation with the Anglo-Austrian Bank, Ltd. On Apr. 6, 1931, pltf. sought to prove in the winding up for £1,000 in respect of the document, but the liquidator rejected the proof on the ground that it was barred by the Statute of Limitations, as more than six years had elapsed since the date of the document before the winding-up resolution. The holder took out a summons claiming to have his proof admitted and he elected to treat the document as a promissory note :—*Held :* the document when treated as a promissory note did not need to be presented for payment in order to render the maker liable, because, in order that a place of payment should be specified "in the body" of the note within sect. 87, sub-sect. 1, it must be embodied in the actual terms of the contract for payment. Time therefore began to run under the Statute of Limitations as from the date of the document, & it was barred before the date of the winding-up resolution.—*Re* BRITISH TRADE CORPN., LTD., [1932] 2 Ch. 1; 101 L. J. Ch. 273; 147 L. T. 46, C. A.

1549. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1581. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

PART XII. SECT 2, SUB-SECT. 1.

h i. —— *Cheque drawn on foreign trust company.*]—A cheque drawn on a foreign trust co. is a bill of exchange & must be presented for payment within a reasonable time after endorsement.—PROVINCIAL BANK *v.* BELLEFLEUR, [1936] 1 D. L. R. 795.—**CAN.**

1405 xiii. ——.]—RAM SARUP *v.* HARDHO PRASAD (1927), I. L. R. 50 All. 309.—**IND.**

1405 xiv. ——.]—The liability of the maker of a promissory note depends upon presentment, if the note is payable on demand at a particular place.—CORPORATION SECURITIES, LTD. *v.* ROYAL BANK, [1935] 2 D. L. R. 173.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (b).

1432 iii. ——.]—Cheque in circulation six months :—*Held :* an unreasonable time & not recoverable.—BALLEM *v.* FRIED, [1923] 4 D. L. R. 1203.—**CAN.**

1434 ii. —— *Cheque mislaid—Delay not causing damage.*]—*Held :* the drawer was not discharged by the cheque not having been presented within a reasonable time.—KING & BOYD *v.* PORTER, [1925] N. 107.—**IR.**

PART XII. SECT. 2, SUB-SECT. 7.—B. (a).

1530 xxv. —— —— —— *Acceleration of date of payment.*]—(1) A promissory note in the body of it made payable at a particular place must be presented for payment there, before an action thereon is brought against the maker. (2) The fact that the date of payment has been accelerated by virtue of a collateral agreement does not render presentment unnecessary.—MORGAN *v.* SHAW, [1926] 1 D. L. R. 828; [1926] 1 W. W. R. 483; 36 B. C. R. 454.—**CAN.**

1530 xxvi. —— —— ——.]—Presentation of promissory notes at the place of payment is not necessary to make makers liable thereon.—SCHONEMEIER *v.* KING & JARDINE (1929), 50 B. C. R. 174.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 9.

1563 ii. —— *Specified place having ceased to exist.*]—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55; 17 O. W. N. 427.—**CAN.**

w i. —— *Agreement for extension of time.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—**CAN.**

sm. *Payee without funds.*]—*Held :* non-presentment of a cheque did not affect the holder's right to recover, there being evidence that the maker had not funds to meet it & no evidence of damage to him through non-presentment.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sn. *Not by waiver of notice of non-payment & protest.*]—ROYAL BANK OF CANADA *v.* MCNAUGHTON, [1931] 3 D. L. R. 233.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 10.

g i. ——.]—GUNSOLLY *v.* ENGSTROM, [1924] 2 W. W. R. 382.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 11.

p i. ——.]—Owing to the long period of time before presenting a note for payment, & in the absence of evidence of the circumstances under which it was given & indorsed :—*Held :* the indorser was discharged.—BANK OF MONTREAL *v.* MCNEILL & MCNEILL, [1924] 2 W. W. R. 165; 33 B. C. R. 263.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 1.

1625 ii. —— *Surety for note signing below maker.*]—Pltf. sued the two defts. on a promissory note, dated Dec. 1, 1926, whereby they promised to pay pltf. or order $1,000 with interest at 5 per cent. one year after date. Deft. R. signed the note as accommodation to deft. A., & pltf. knew this. A. did not defend. When the note fell due it was not presented to A. & no notice was given to R. that the note had not been paid. In Oct. 1928, the note not being paid, R. told pltf. he would not be surety any longer :—*Held :* it was of no consequence that R. signed not on the back of the note, but on its face, beneath the name of A., & he was liable upon the note as an endorser, & so was entitled to avail himself of the defences of non-presentation for payment, & non-receipt of notice of dishonour.—KUPFERSCHMIDT *v.* AMMONEIT & RUSSWURM, [1931] 4 D. L. R. 550; O. R. 678; *affd.*, [1932] 4 D. L. R. 720.—**CAN.**

1625 iii. ——.]—Notice of dishonour must be given to an endorser, although, from the position of his

1638. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

1715. *Add. Annotations :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1839. *Add. Annotation :*—**Refd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1851. *Add. Annotation :* — **Refd.** The Hayle, [1929] P. 275.

1877. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

Part XIII.—Liability of Parties.

1933. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

1991. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

1993. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1994. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

2004. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

2032a. —— —— ——.]—The acceptor supra protest of a bill of exchange, for the honour of the drawer, is, like the drawer himself, estopped from denying that the bill is a valid bill; &, consequently, it is not competent to him to set up as a defence to an action against him by an indorsee, that the payee is a fictitious person, & that he was ignorant of that fact at the time he accepted the bill.—PHILLIPS *v.* IM. THURN (1865), 18 C. B. N. S. 694; 144 E. R. 617.

2040a. —— ——.]—DUNN (M.), LTD. *v.* JEFFERSON, No. 577a, *ante*.

2049a. On bills drawn against confirmed credit—Bills not presented to bank.]—Applts., merchants at Calcutta, sold goods to merchants in London at c.i.f. price, payment by drafts against a confirmed credit, to be opened by the buyers. On shipment of the goods applts. drew on the buyers bills payable to resps., who negotiated them with notice that they were drawn against a confirmed credit opened by the buyers with the E. Bank. Applts. handed to resps. with the bills the shipping documents, also a memorandum describing the bills as D/A, *i.e.*, documents against acceptance, drafts. Resps. handed the documents to the buyers against their acceptances, which were dishonoured upon maturity. Resps. sued applts. as drawers of the bills:—*Held:* resps. were entitled & bound to treat the description of the bills as D/A drafts as a direction to hand the documents to the drawers on their acceptance, & applts. had no defence, set-off or counterclaim in respect of the loss of the rights which they would have had under the confirmed credit, if the documents had been handed to the E. Bank for presentation.—SASSOON (M. A.) & SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. C.

signature, he appears to be a maker.—BOISVERT *v.* LAVALLEE, [1935] 2 D. L. R. 412.—**CAN.**

so. *To accommodation maker — Of promissory note.*]—*Held:* he is not entitled to notice of dishonour, even though it be known to the payee that he is such a maker.—CODVILLE CO. *v.* JORDAN, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—**CAN.**

sq. —— ——.]—An accommodation maker of a promissory note when sued on the note by the payee cannot raise the defence that he was not given due notice of dishonour upon non-payment.—FRY *v.* JOHNSTON & GRIFFITH, [1932] 4 D. L. R. 416; O. R. 667.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—A.

sg. *By telephone.*]—A telephone conversation with a person representing himself to be the indorser, & not denied in evidence by the indorser, is sufficient notice of dishonour.—NOYES BROS., LTD. *v.* OATES, [1933] S. R. (Q.) 112.—**AUS.**

PART XII. SECT. 4, SUB-SECT. 6.—B.

sk. *"Deposited in any post office"—Placed in rural mail box on gate.*]—A notice of dishonour mailed in a rural mail box at pltf.'s gate to be collected by the rural mail carrier & delivered to the post office is not "deposited in any post office" within Bills of Exchange Act, 1927, s. 103.—TRAFTON *v.* GRIMMER, [1936] 3 D. L. R. 379.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—C.

d i. —— —— ——.]—A letter in the following terms: "We humbly demand from you £550, being amount owing on a promissory note made by F. & indorsed by you to the C. Co., & of which we are the holders":—*Held:* a sufficient notice of dishonour.—NEES *v.* BOTTING, [1928] N. Z. L. R. 209.—**N.Z.**

1807 i. —— *Name of indorser wrongly stated.*]—*Held:* under Bills of Exchange Act, s. 106, notice of dishonour was dispensed with.—BROCK & PATTERSON, LTD. *v.* CROCKETT, [1923] 4 D. L. R. 1204; 56 N. S. R. 132.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 8.—B.

1869 iii. —— —— *Express promise.*]—An express promise to pay with full knowledge of the facts & when the indorser is aware that he has had no notice of dishonour is a waiver of his right to notice.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138; 1 W. W. R. 877.—**CAN.**

1874 i. —— —— *Coupled with request for time.*]—*Held:* sufficient to hold him liable for payment notwithstanding the previous failure to give the statutory notice of dishonour.—IMPERIAL BANK *v.* TRUSTS & GUARANTEE CO., [1921] 1 W. W. R. 801; 57 D. L. R. 693; 16 Alta. L. R. 343.—**CAN.**

s i. —— —— ——.]—If there is no express promise, yet there may be such an admission of liability as to warrant the ct. in inferring that notice was actually received, & for this purpose it is not enough to show merely that the indorser did not repudiate his liability.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138; 1 W. W. R. 877.—**CAN.**

1884 i. —— *Agreement postponing time of payment—Between maker & indorser.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 8.—D.

1933 iv. ——.]—ROYAL BANK OF CANADA *v.* MCEACHERN (Sask.), [1929] 4 D. L. R. 978; 3 W. W. R. 380.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 9.

1937 i. *On liability of—Indorser.*]—If no notice of dishonour is given to the indorser, he is discharged from his liability as against the payee.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—**CAN.**

1937 ii. —— ——.]—ARMSTRONG-LOGAN AGENCY, LTD. *v.* EHMANN, [1923] 3 W. W. R. 806.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 1.—A.

1946 i. *General rule.*]—Where the notes are "foreign bills" under Bills of Exchange Act, s. 25, protest upon non-payment is necessary to hold the indorser.—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55; 17 O. W. N. 427.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 1.—B.

o i. —— —— ——.]—BANK OF TORONTO *v.* BENNETT (1925), 57 O. L. R. 326.—**CAN.**

PART XIII. SECT. 1.

1994 i. *Cheque—Not equitable assignment.*]—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING CO. (1921), 64 D. L. R. 88; 49 O. L. R. 166.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.

1996 v. ——.]—CLARKSON *v.* LAWSON (1856), 14 U. C. R. 67.—**CAN.**

2060. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2066. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2070. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2082. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

2088. *Add. Annotations :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2090. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2092. *Add. Annotations :*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593.

2093a. —— **Order of indorsements immaterial—Intention of parties considered.**]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completing them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser :—*Held :* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.* BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188; 100 L. J. K. B. 386; 145 L. T. 48; 47 T. L. R. 380; 36 Com. Cas. 270.

Annotation :—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2093b. —— —— ——.]—MCCALL BROS., LTD. *v.* HARGREAVES, No. 564a, *ante*.

2094. *Add. Annotation :*—**Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2095. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096. *Add. Annotations :*—**Distd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625. **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096a. —— —— ——.]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £450 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in cash to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpcy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal :—*Held :* (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was

PART XIII. SECT. 3, SUB-SECT. 1.

2051 i. *Cheque—To payee—Conversion by agent of payee.*]—Where payee permits an agent to cash a cheque, & he converts the proceeds, the maker is

488.—**CAN.**

2052 ii. —— ——.]—LEE *v.* ——, [1924] 4 D. L. R. 369; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.

sd. *Unqualified signature—Intention.*]—On the sale of a motor car to a co., the vendor was handed a cheque in payment. The cheque was signed for & on behalf of the co. by a director, & also bore upon its face deft.'s signature without any words indicating the capacity in which he signed. Deft. signed the cheque intending by his signature to certify that the cheque was drawn for a proper payment. The vendor took the cheque without forming any opinion as to deft.'s liability thereon, & presented it for payment. The cheque was dishonoured :—*Held :* deft. was not estopped from showing the intention with which he signed the cheque, &, since he had not signed with the intention of drawing the cheque either for himself or for the co., he was not liable as a drawer.—AMALGAMATED HANDWORK MANUFACTURERS CO. *v.* COLE, [1935] V. L. R. 103; 41 Argus L. R. 119.—**AUS.**

PART XIII. SECT. 4, SUB-SECT. 1.—A

2058 v. ——.]—An indorsement does not conclusively establish a liability to pay, but indorsement is *prima facie* evidence of an agreement to p —LEE *v.* BLAKE, [1924] 4 D. L. 639; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 2

2085 vi. —— *Indorsement obtained by misrepresentation of drawer—Negligence of indorser.*]—HANCOCK & CO., LTD. *v.* JOHNSTONE, [1923] N. Z. L. R. 639.—

rightly made.—*Re* GOOCH, *Ex p.* JUDD. [1921] 2 K. B. 593; 90 L. J. K. B. 932; 125 L. T. 583; [1921] B. & C. R. 100, C. A.

to (1) **Apld.** McDonald *v.* Nash, [1924] A. C. 625; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. *As to* (2) **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2096b. —— —— ——.]—In May, 1920, applts. sold to A. & Co. 19,000 cases of tinned soup at the price of 10*s.* per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps., who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between applts., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by applts. on A. & Co. payable six months after date to applts.' order, & that applts., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by applts. on A. & Co. expressed to be payable to applts.' order, & were accepted by A. & Co & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom applts. should direct payment. Resps. then handed the bills to applts. in exchange for the delivery orders. One bill having been discharged, applts. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Applts. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by applts. to recover the amount of the bills against resps. as indorsers:—*Held:* (1) on the facts resps. must be taken to have intended to make themselves liable to applts. on the bills; (2) the bills, when handed to applts., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by applts. above the signature of resps., & applts. had implied authority to fill in their name as payees, as they did, over the name of resps.; & when so filled up, the bills became retrospectively enforceable.—MCDONALD (GERALD) & CO. *v.* NASH & CO., [1924] A. C. 625; 93 L. J. K. B. 610; 131 L. T. 428; 40 T. L. R. 530; 68 Sol. Jo. 594; 29 Com. Cas. 313, H. L.

——— *As to* (1) **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. *As to* (2) **Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Reld.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 459.

2097 *Add. Annotations:*—**Apld.** *Re* Gooch, Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Reld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2103. *Add. Annotations:*—**Reld.** McDonald *v.* Nash, [1924] A. C. 625; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2118. *Add. Annotations:*—**Reld.** The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486; Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

2136. *Add. Annotation:*—**Reld.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2142. *Add. Annotation:*—**Reld.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2143. *Add. Annotation:*—**Reld.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2151. *Add. Annotation:*—**Reld.** Holmes *v.* Watt, [1935] 2 K. B. 300.

2158a. Breach of agreement to accept—Market value of bill.]—Applts. & resps. had entered into a series of contracts for the purchase & sale of timber. Disputes had arisen with reference to the performance of those contracts, & on Aug. 2, 1931, the parties met & entered into a fresh contract with a view to the settlement of a particular dispute. The fresh contract provided (*inter alia*) for the acceptance by the resps. of bills of exchange for £70,000. Subsequently resps. on instructions from their principals, refused to carry out their agreement to accept bills. Applts. brought this action, claiming £70,000 or specific performance of the agreement, & resps. raised various matters by way of counterclaim. BATESON, J., by whom the action was tried, gave judgment for applts. for £70,000 & decided in favour of the resps. on part of the counterclaim. On appeal from that judgment the Ct. of Appeal ordered a new trial & stated that the bills to be accepted by the resps. under the contract of Aug. 2, 1931, should have been accepted subject to the terms of the contract so that a discounter of the bills would have notice of the terms of that contract & would be bound by them. There was nothing in the contract requiring that the acceptances should be in any way qualified, although there was an independent stipulation that if the resps. should so require the bills should be renewed. Applts. now appealed to the House of Lords:—*Held:* acceptance quali-

PART XIII. SECT. 6.

2098 v. —— ——.]—PARKER WOOD & CO., LTD. *v.* RICHARDS (1925), 46 N. L. R. 277.—**S. AF.**

2098 vi. —— ——.]—R. signed promissory notes in favour of H. S. also signed the notes below [illegible] signature as "surety & co-debtor *in solidum*"—*Held* liability was that of a surety & not of a joint maker with R.—SHUTER *v.* RIDGWAY (1926), 47 N. L. R. 149.—**S. AF.**

2099 i. —— ——.]—A person who has placed his signature on a promissory note below that of the maker in the place where the maker usually signs, without adding anything to indicate that he has signed as indorser only, will be held to be a maker unless there is competent evidence to prove that he was not.—TRIGGS *v.* ENGLISH, [1924] 4 D. L. R. 937; 3 W. W. R. 566.—**CAN.**

2101 xxii. —— —— ——.]—A person who has placed his signature on the back of a promissory note, before delivery to or indorsement by the payee, is liable as surety under an *aval*, & is not in the position of an ordinary indorser.—MOTI & CO. *v.* CASSIM'S TRUSTEE, [1924] App. D. 720.—**S. AF.**

2101 xxiii. —— —— ——.]—A person who indorses his name on a promissory note before negotiation thereof is not an indorser, but an *aval* or surety for the maker.—CASSIMJEE *v.* MAHARAJ (1925), 46 N. L. R. 151.—**S. AF.**

PART XIII. SECT. 10.

1 i. —— —— *Note signed by surety before principal—Liable as* [illegible]

1 i. —— ——.]—RICHTER *v.* BARTLEY & MIKELSON (Sask.), [1928] 4 D. L. R. 919; [1928] 3 W. W. R. 513.—**CAN.**

fied as directed by the Ct. of Appeal would destroy the character of the bills as negotiable bills of exchange, & on this point the appeal must be allowed. But as the true measure of damages for breach of contract to accept bills was not the face value of the bills but their market value, the sum of £70,000 awarded to applts. by BATESON, J., must be reduced to £65,000, which the evidence showed to have been the market value of the bills; & execution must be stayed until the sum due from applts. to resps. on the counterclaim should have been determined. —LONDON & NORTHERN TRADING CO., LTD. *v.* ARCOS, LTD. (1933), 38 Com. Cas. 242, H. L.

2161. *Add. Annotations :*—**N.F.** Uliendahl *v.* Pankhurst Wright (1923), 39 T. L. R. 628; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166. **Refd.** *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466.

2169. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

2205a. —— —— —— **Illegality of payment during war.**]—Bills of exchange which were accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured :—*Held :* as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—BIEDERMANN *v.* ALLHAUSEN & CO. (1921), 37 T. L. R. 662.

2225. *Add. Annotation :*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

2249. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

Part XIV.—Discharge.

2280. *Add. Annotations :*—**Consd.** Morley Moore, [1936] 2 All E. R. 79. **Refd.** Soc des Hôtels Le Touquet Paris-Plage Cummings, [1922] 1 K. B. 451.

2308. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2314. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2318a. Agreement to pay money—Consideration uncertain.]—A beneficiary under testator's will was a debtor of his who had owed him money under a promissory note given in 1877, & had, in 1882, entered into an agreement with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained :—*Held :* (1) there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement; (2) there was no presumption that the money still due under the agreement had been forgone by testator.—WOODCOCK *v.* EAMES (1925), 69 Sol. Jo. 444.

2362. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2364. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2368. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2370. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

PART XIII. SECT. 11, SUB-SECT. 2.—A.

2172 x. ——.]—Interest is recoverable as damages on a dishonoured cheque.—MOHAN SINGH *v.* KIRPA, MOHAN SINGH *v.* SHAND, [1936] 1 W. W. R. 559; 50 B. C. R. 399.—**CAN.**

2175 iii. —— ——.]—GANPAT TUKARAM MALI *v.* SOPANA TUKARAM MALI (1927), I. L. R. 52 Bom. 88.—**IND.**

2177 ii. —— ——.]—PUBLIC TRUSTEE *v.* GLADSTONE, [1921] N. Z. L. R. 224.—**N.Z.**

PART XIII. SECT. 11, SUB-SECT. 2.—D.

t i. —— *Legal rate payable after maturity.*]—Where a promissory note provides for the payment of interest at a certain rate "until paid," interest at said rate is payable only until the note is due, & thereafter interest can be recovered at the legal rate only. In order to enable interest at a particular rate to be recovered after maturity, the note must provide in unequivocal terms for payment at that rate after maturity. A demand note which provides for the payment of a certain rate of interest "until paid" carries interest at that rate until payment is demanded and refused; & thereafter at the legal rate.—BEAVER LUMBER CO., LTD. *v.* HOPFAUF, [1932] 1 W. W. R. 357.—**CAN.**

so. *Reasonable rate—Not agreed rate—Promissory note inadmissible for want of stamp.*]—*Held :* where a promissory note is inadmissible in evidence for want of stamp, & the creditor sues for the money lent as on the original contract of loan, he may claim a reasonable rate of interest, but he cannot claim at the rate stated in the promissory note.—ISMAIL HOOSAIN MAMSA *v.* K. PURBHUBHAI (1928), I. L. R. 6 Ran. 415.—**IND.**

PART XIII. SECT. 11, SUB-SECT. 3.

2227 iii. ——.]—*Held :* as defts., the makers of the note, were bound without protest, the notarial fees could not be recovered from them.—GOWANS *v.* CROCKER PRESS CO. (1920), 46 O. L. R. 24; 50 O. L. R. 58.—**CAN.**

PART XIV. SECT. 1.

b. Add "*Revsd.* on other grounds, 56 S. C. R. 165."

PART XIV. SECT. 2, SUB-SECT. 4.

j i. *Mortgage to secure present & future advances—Given during currency of note.*]—*Held :* the mtge. not being strictly coextensive with the note, the remedy on the note was not merged in the mtge., & deft. was liable.—O'NEILL *v.* LYE, [1923] N. Z. L. R. 1039.—**N.Z.**

sp. *Payment under garnishment proceedings by judgment creditor of payee.*]—*Held :* in the circumstances no answer to the indorsee's claim.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sr. *Notes given to secure advances—Made in prepayment of purchase-money—Delivery of goods.*]—*Held :* the payees were entitled to recover the balance due on the first note given prior to the contract, but as regards the notes given subsequently the goods delivered must be credited against the advances made, & the plea of payment must prevail.—TYRER CO. *v.* EUREKA [illegible] (1922), 55 N. S. R. 441.—**CAN.**

st. *Note due to deceased—Not sale of goods to executor personally.*]—MCKENZIE *v.* MCDONALD (P. E. I.), [1927] 2 D. L. R. 67.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 10.

q i. —— ——.]—DAVIDSON CO-OPERATIVE ASSOCN., LTD. *v.* WEBBER (Sask.), [1928] 4 D. L. R. 732; 3 W. W. R. 426.—**CAN.**

2391. *Add. Annotation :*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2393. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2393a. Joint maker appointed holder's executor.]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof :—*Held :* the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was at common law that the debt was discharged by release at the date of the death of testator, & in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501 ; 97 L. J. K. B. 400 ; 139 L. T. 119; 44 T. L. R. 483 ; 72 Sol. Jo. 319, D. C.

2414. *Add. Annotation :*—**Consd.** *Re* Gordon (John) (1931), 75 Sol. Jo. 869.

2414a. —— —— Entry in account book—"All lost."]—*Re* GORDON (JOHN) (1931), 75 Sol. Jo. 869.

2416a. —— —— Verbal agreement for acceptance of composition.]—Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill :—*Held :* upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor &, therefore, pltf. was entitled to recover the full amount of the bill.—RIMALT *v.* CARTWRIGHT (1924), 93 L. J. K. B. 823 ; 132 L. T. 40 ; 40 T. L. R. 803 ; 68 Sol. Jo. 788 ; [1924] B. & C. R. 239, C. A.

2450. *Add. Annotation :*—**Refd.** Koch *v.* Dicks [1933] 1 K. B. 307.

2455a. —— ——.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

2462a. —— Inland bill altered to foreign bill.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

2462b. —— ——.]—The alteration of a complete bill of exchange, without the knowledge or consent of the acceptor, by changing the place of drawing from a place within, to a place outside, the British Islands, so that the bill becomes a foreign instead of an inland bill, is a material alteration within Bills of Exchange Act, 1882 (c. 61), s. 64, & the bill is thereby avoided.—KOCH *v.* DICKS, [1933] 1 K. B. 307 ; 102 L. J. K. B. 97 ; 148 L. T. 208 ; 49 T. L. R. 24 ; 38 Com. Cas. 66, C. A.

2473. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

2475. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2475a. —— Addition of " per " another party.]—Pltfs., exors. of one Turner, deceased, employed a solr., one C., of a firm C. & P., to act for them in matters relating to the deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers ; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words " per C. & P.," & then indorsed the cheque with the words " C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts. :—*Held :* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed.—SLINGSBY *v.* WESTMINSTER BANK (No. 2), [1931] 2 K. B. 583 ; 101 L. J. K. B.

PART XIV. SECT. 4.

2401 i. *At what time—Before maturity—No necessity for evidence of discharge to be in writing.*]—LYONS *v.* SMITH, [1922] 3 W. W. R. 684 ; 70 D. L. R. 101.—**CAN.**

PART XIV. SECT. 6.

2401 iv. *Surrender to maker for cancellation.*]—A woman, payee of a promissory note, told her husband, who was her exor. & was also the father of the maker of the note, to give it to the maker. The next day she died. The note was destroyed by the maker :—*Held :* his liability was extinguished.—*Re* ILLSLEY, [1931] 2 D. L. R. 799 ; 3 M. P. R. 441.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

2451 v. —— ——.]—Bills of exchange, payable some sixty, some ninety, & some one hundred & twenty days after sight, drawn on applts., were indorsed for value to resps. who duly stamped them, and after acceptance noted in the corner of each bill the date for presentation. The parties to the bills having mutually agreed that the dates of payment should be postponed, resps. altered the dates so noted, but without making any alteration in the bills as originally drawn. On presentation for payment at the extended dates the bills were dishonoured by applts. :—*Held :* there had been no discharge of the bills by material alteration, nor was a new stamping necessary under Indian Stamp Act, 1899, ss. 14, 35 ; & applts. remained liable.—PESTONJI (H.) & CO. *v.* COX & CO. (1928), 55 L. R. Ind. App. 353.—**IND.**

2458 ii. —— —— *Deceased.*]—*Held :* a material alteration.—BELLAMY *v.* PORTER (1913), 13 D. L. R. 278 ; 4 O. W. N. 1171 ; 28 O. L. R. 572.—**CAN.**

2475 iii. —— *Additional payee.*]—The list of possible material alterations set out in Bills of Exchange Act, 1927, s. 146, is not exhaustive. The addition by one maker of a promissory note of the name of the payee's wife as additional payee was accordingly held to be material, since the business effect of the instrument was thereby altered. —GILL *v.* DOEY, [1934] 3 D. L. R. 274 ; O. R. 406.—**CAN.**

291, n.; 146 L. T. 89; 47 T. L. R. 1; 36 Com. Cas. 61.

Annotation :—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

2475b. —— ——.]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000 part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form "Pay J. P. & Co. or order" & was drawn on pltfs.' deposit account with the defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words "per C. & P." in the blank space between the payees' name & the words "or order"; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* (1) the cheque had been "materially altered" within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque; (2) for the same reason defts. could not rely on sect. 80 of the Act; (3) assuming the description of the payees, "J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of "C. & P." without any reference to "J. P. & Co." was irregular & invalid, & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act; (4) the additions & alterations referred to in the proviso to sect. 79 (2) of the Act are additions to & alterations in the original crossing of a crossed cheque & not to or in the body of a cheque.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 48 T. L. R. 114; 37 Com. Cas. 39.

2481. *Add. Annotation :*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

2484. *Add. Annotations :*—**Distd.** Hong Kong & Shanghai Bank *v.* Loo Lee Shi, [1928] A. C. 181. **Apld.** Koch *v.* Dicks, [1932] W. N. 156. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373.

2485a. ——].—A banknote issued by applt. bank, payable to bearer on demand, was accidentally mutilated. The bank declined to pay on presentation of a document which was proved to have been patched together from the fragments. This document, though it did not show the number of the note, showed clearly its other main features :—*Held :* as the identity of the document as a note of the bank was established, & it contained all the elements necessary to render it valid & effectual as a negotiable instrument, the bank was liable to pay the holder.—HONG KONG & SHANGHAI BANK *v.* LO LEE SHI, [1928] A. C. 181; 97 L. J. P. C. 35; 138 L. T. 529; 44 T. L. R. 233; 72 Sol. Jo. 68, P. C.

2493a. Alteration of name of drawee.]—HASELDINE *v.* WINSTANLEY, No. 567c, *ante*.

SUB-SECT. 4.—WHETHER APPARENT (Vol. VI., p. 383).

After "*See* 1882 Act, s. 64 (1)" add the following case :—

2513a. General rule.]—An alteration is "apparent" within 1882 Act, s. 64 (1), if it is of such a kind that it would be observed & noticed by an intending holder scrutinising the document which he contemplates taking with reasonable care.—WOOLLATT *v.* STANLEY (1928), 138 L. T. 620.

2515. *Add. Annotation :*—*Generally* **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2518. *Add. Annotations :*—**Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

2553. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2555. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2559. *Add. Annotation :*—*As to* (2) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART XIV. SECT. 7, SUB-SECT. 4.

sk. *Addition of place of payment.*]—A promissory note which at the side of the place of signature bore the printed words "Payable at," was delivered by the maker without any place of payment added. Without the authority or assent of the maker, the payee subsequently added a place of payment & negotiated the note to pltf. It was apparent on the face of the note that the place of payment was written by a hand other than the maker's. Pltf. sued the maker on the note :—*Held :* the alteration was not apparent, within proviso to sect. 69 (1) of Bills of Exchange Act, 1909–1932, & the maker was liable on the note.—AUTOMOBILE FINANCE CO. OF AUSTRALIA, LTD. *v.* LAW, [1934] V. L. R. 17.—**AUS.**

PART XIV. SECT. 9.

2558 i. —— *Release of one.*]—In an action on a promissory note by the original payee against two joint makers, it is no defence for one of the makers, in the absence of any writing or delivery up of the note, to allege that he has been verbally released by the payee.—GOODMAN *v.* ARMSTRONG (1926), 47 N. L. R. 452.—**S. AF.**

2559 iii. —— —— ——.]—BUECKERT *v.* FRIESEN, [1927] 2 D. L. R. 873; [1927] 1 W. W. R. 825; 36 Man. L. R. 462.—**CAN.**

PART XIV. SECT. 10, SUB-SECT. 2.—A.

2600 viii. —— ——.]—If the holder of a promissory note has, without the knowledge or consent of an indorser of the note, agreed to give an extension of time for payment to the maker while the note is still current, the indorser is thereupon discharged from liability.—LIEBENBERG ESTATE *v.* STANDARD BANK OF SOUTH AFRICA, LTD., [1927] App. D. 502.—**S. AF.**

r. For existing para. read :—

"An indorsement on the back of a note of the payment of interest up to a future date beyond the maturity of the note, in the absence of evidence of mistake, is to be deemed an extension of time for the payment of the note to such date, so as to discharge a party thereto who is merely a surety for the payment thereof."

PART XIV. SECT. 10, SUB-SECT. 2.—B.

sb. *To party accommodated—Note renewed by one joint maker.*]—In an action for contribution between joint

2666. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2677. *Add. Annotation :*—**Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

2682. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2686. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

Part XVI.—Lost, Stolen, and Destroyed Instruments.

2752. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

Part XVIII.—Conflict of Laws.

2779. *Add. Annotations :*—**Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789; Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2781. *Add. Annotations :*—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

2783. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

2784. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2789. *Add. Annotations :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2790. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2791a. —— **Validity of indorsement—Liability of acceptor in England.**]—A bill of exchange was drawn in France by E. upon resps. in London to the order of M. It was sent to London, was accepted by resps. payable at a London bank, & returned to France, where it was indorsed by E. in his own name, on behalf, & with the authority, of M., to applts. On presentation for payment, resps. refused to meet it on the ground that it did not bear the indorsement of M., the payee, but merely the indorsement of E. In an action on the bill against resps. as acceptors evidence was given that by French law an indorsement might be validly made by a duly authorised agent signing his own name :—*Held :* applts. as indorsees obtained a good title to the bill by virtue of 1882 Act, s. 72, & were entitled to recover the amount thereof from resps. as acceptors.—KOECHLIN ET CIE. *v.* KESTENBAUM BROTHERS, [1927] 1 K. B. 889; 96 L. J. K. B. 675; 137 L. T. 216; 43 T. L. R. 352; 32 Com. Cas. 267, C. A.

2792. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2794. *Add. Annotations :*—**Apld.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Refd.** Repub-

makers of a promissory note :—*Held :* the renewal of the note by one surety & the surrender of the original note to the party accommodated released the other surety, since it gave time to the principal debtor.—RUSSELL *v.* ARNOLD (1922), 53 O. L. R. 114.—**CAN.**

sd. —— *By holder without notice of nature of note.*]—If the holder of an accommodation note having no notice of its true character at the time of his taking the note, but after notice thereof gives indulgence to the payee (the party accommodated), he does not thereby discharge the maker (the accommodation party).—BANK OF HINDUSTAN, LTD., MADRAS *v.* GOVINDARAJULU NAIDU (1933), I. L. R. 57 Mad. 482.—**IND.**

PART XIV. SECT. 11.

o i. —— *First note destroyed.*]—*Held :* the original indebtedness was discharged & the second note was not a renewal but a satisfaction.—CRISTAL *v.* SIMOVITCH (1922), 70 D. L. R. 861.—**CAN.**

2633 viii. —— ——.]—*Re* THOMPSON, [1931] 4 D. L. R. 573; O. R. 714; 12 C. B. R. 498.—**CAN.**

r i. ——.]—The taking of a renewal note, where the original note is retained by the holder, does not of itself discharge the indebtedness represented by the original note, but merely suspends the right of action thereon during the currency of the renewal.—ROYAL BANK *v.* HOGG, [1930] 2 D. L. R. 488; 64 O. L. R. 653.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 1.

2639 i a. —— ——.]—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also discharged.—HARRIS *v.* LERNER, [1924] 2 D. L. R. 518; 30 R. L. N. S. 63.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 3.

sv. *Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collection.*]—Premium-notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by G. & indorsed by F. Pltf. entrusted some of these notes to G. for collection, & G. failed to pay over all that he collected :—*Held :* both G. & F. were liable.—ROUTLEY *v.* GORMAN & CORAN (1920), 47 O. L. R. 420; 18 O. W. N. [illegible].

PART XIV. SECT. 12, SUB-SECT. 5.

2684 vii a. ——.]—Two persons signed a promissory note, being in fact accommodation parties. One paid in full at maturity, without notice of dishonour :—*Held :* entitled to contribution.—FOX *v.* TORONTO GENERAL TRUSTS CORPN., [1934] 4 D. L. R. 759; O. R. 671.—**CAN.**

PART XVI. SECT. 3.

sw. *Instrument taken in good faith.*—Pltf. bought stolen bearer bonds in good faith :—*Held :* pltf. had acquired a good title.—GAREY *v.* DOMINION MANUFACTURERS, LTD., [1925] 1 D. L. R. 99; 56 O. L. R. 159.—**CAN.**

PART XVIII. SECT. 4.

q i. —— *Note drawn & payable in Victoria—In consideration of purchase of land in New South Wales.*]—Applt., who had agreed to buy certain land in New South Wales, made default in payment of interest on the outstanding balance of purchase money. After negotiations between applt. & the vendor's agent, the former gave a promissory note, payable to the agent, for the amount due. The note was issued & payable in Victoria : [illegible] the governing law of the note was that of Victoria &, therefore, it was not affected by Moratorium Act, 1930-1931 (N.S.W.).—WRAGGE *v.* SIMS COOPER & CO. (AUSTRALIA) PROPRIETARY, LTD. (1934), 50 C. L. R. 483; 40 Argus L. R. 64.—**AUS.**

lica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2812. *Add. Annotations :*—**Consd.** De Beeche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148. **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

2813. *Add. Annotation :*—**Consd.** Société Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933), 77 Sol. Jo. 800.

2816a. —— Bill drawn accepted and payable in Germany.]—SOCIETE ANONYME METALLURGIQUE DE PRAYON, TROOZ, BELGIUM *v.* KOPPEL (1933), 77 Sol. Jo. 800.

2816b. —— Bills drawn in Russia—Payable in sterling in London.]—In Oct. 1915, in order to rehabilitate Russian credit in London, an arrangement was made by the Bank of England, with the authority of the Treasury, under which approved Russian banks were to draw three months' sterling bills & remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks & accepting houses, who agreed to renew the bills until one year after the termination of the War, the Banque de l'Etat undertaking to provide to meet the acceptances on maturity. Imperial Russian Treasury Bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. No accepting house was to be liable for more than £100,000, unless otherwise agreed. In pursuance of this arrangement the Russio-Asiastic Bank in 1916 drew 151 bills of exchange on twenty-one accepting houses maturing in Feb. & Mar. 1918, which were prevented through Baring Bros. & Co. as agents for the Banque de l'Etat & accepted by the banks & financial houses under a form of agreement with the Banque de l'Etat which carried out the above arrangement more completely ; & authorised the issue by the Treasury of sterling Treasury Bills of the Imperial Russian Government to the amount of the acceptances to cover any default in payment on maturity. In Jan. 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer bonds to the accepting houses to the amount thereof. Notice of the assignment was despatched by the Bank of England to the Russo-Asiatic Bank in Petrograd, but according to the evidence never reached its destination in consequence of the Bolshevist revolution in Russia. By a decree issued by the Soviet Government in Dec. 1917, all private banks in Russia were abolished & the whole of their assets transferred to a State Bank. The Russo-Asiatic Bank, whose head office was in Petrograd, was one of the banks so abolished. Its London branch was opened in 1908 & was ordered to be wound up by the ct. in 1926, under sect. 338 of Cos. Act, 1929. The Bank of England, on behalf of the Crown, lodged a proof of debt in the liquidation for £752,500, proceeds of the above named bills. The liquidator rejected the proof of the Bank of England on several grounds, the most important being that the claim was barred by the Statutes of Limitation :—*Held :* (1) the bills had been assigned to the Bank of England with the authority & on behalf of the Crown, & had passed to the Bank an equitable title to all the rights under the agreements made with the acceptors, including the right of action for breach of contract, if the bills were not paid at maturity ; (2) the obligation being to pay in sterling in London at maturity the debt was located in England & not in Russia, & therefore English law must be applied ; (3) that the Russian Imperial Treasury bills were only a collateral security & being of no value at any material time were not a discharge of the debt ; (4) on the evidence of experts & documents, the Russo-Asiastic Bank ceased to have any corporate existence in Russia as the result of decrees of the Soviet Government on or before Jan. 26, 1918, a date before the bills matured, & as from that date there was no debtor who could be sued. Stat. Limitations therefore was no defence to the application, & the Bank of England was entitled to be admitted to prove for the debt in the winding-up of the London branch of resp. bank. There being no evidence, however, that notice of the assignment had reached the drawers, the assignors must be joined in the application.—*Re* RUSSO-ASIATIC BANK, *Re* RUSSIAN BANK FOR FOREIGN TRADE, [1934] Ch. 720 ; 103 L. J. Ch. 336 ; 152 L. T. 142 ; 78 Sol. Jo. 647 ; [1934] B. & C. R. 71.

2819a. Foreign usage—Evidence of—Admissibility.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable: " Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as " the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & documents of any other nature requiring the transfer of funds from Chile or *vice versa*." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first class bills on London. The evidence accepted was that " payable in Chile in first class bills on London " had a special mercantile meaning in Chile—namely, " bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London " & these were known technically as F.C.L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F.C.L. bills came within the mischief of the Chilean legislation :—*Held :* (1) the conditions precedent to the admissibility of evidence as to the meaning in Chile of first class bills on

London had been fulfilled—namely, the evidence did not conflict with a statutory definition, was of a usage common to the place in question & expounded without contradicting the terms of the contract: (2) though witnesses could be called to prove foreign law, the ct. was at liberty to look at a translation of the passages in question & to consider what was their proper meaning, but the ct. would have regard not only to its own view of the foreign law but to the interpretation put upon it by a competent foreign authority; (3) the Chilean legislation made it impossible for the rent to be paid as directed, as the mode of payment as already interpreted would have been an international exchange transaction within the meaning of the Chilean legislation.—DE BEECHE *v.* SOUTH AMERICAN STORES, LTD., & CHILIAN STORES, LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

2824. *Add. Annotations:*—**Expld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part XIX.—Cheques.

2841. *Add. Annotation:*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2842. *Add. Annotation:*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2846a. —— ——.]—A further item in the finding of negligence is that some of the cheques were crossed "account of payee," one with the addition of the word "only." While this addition does not affect the negotiability of an order or bearer cheque, I agree with the view of ROWLATT, J., in *House Property Co. of London, Ltd.* v. *London, County & Westminster Bank*, No. 2850, that when such a cheque is paid into the account of a person who is not the payee the bank is put on inquiry, especially when he is a servant of the payee (SCRUTTON, L.J.).—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, UNDERWOOD (A. L.), LTD. *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations:—**Refd.** London & Montrose Shipbuilding & Repairing Co., Ltd. *v.* Barclays Bank, Ltd. (1925), 31 Com. Cas. 67; Robinson *v.* Midland Bank, Ltd. (1925), 41 T. L. R. 402; Kreditbank Cassell G.M.B.H. *v.* Schenkers, Ltd., [1926] 2 K. B. 450; Houghton & Co. *v.* Nothard, Lowe & Wills, Ltd., [1927] 1 K. B. 246; Auchteroni & Co. *v.* Midland Bank, Ltd., [1928] 2 K. B. 294; Liggett, B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48; Lloyds Bank, Ltd. *v.* Chartered Bank of India (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, Ltd. (1928), 45 T. L. R. 36; Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

2847. *Add. Annotations:*—*Generally*, **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

2849. *Add. Annotations:*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2850. *Add. Annotation:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

2851. *Add. Annotations:*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

2852. *Add. Annotations:*—**Apprvd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2866. *Add. Annotation:*—**Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

2873. *Add. Annotations:*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

2887. *Add. Annotations:*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China,

PART XX. SECT. 2, SUB-SECT. 5.

2876 ll. ——.]—Pltf. who owned thirty-one debentures of the Bombay Improvement Trust entrusted them to his agent, deft. No. 1, for collection of interest. Deft. No. 1 forged pltf.'s signature on the debentures, & indorsed them in his own favour. Subsequently deft. No. 1 pledged them with a bank, deft. No. 2, to secure an overdraft to himself. The bank surrendered the debentures to the Bombay Improvement Trust for renewal. New debentures were issued payable to the bank or order. These new debentures were subsequently indorsed to another bank (deft. No. 3) for value. Pltf. filed a suit against defts. for a return of the debentures, or in the alternative for their value:—*Held:* the debentures were promissory notes, & therefore, negotiable instruments within Negotiable Instruments Act, ss. 4 & 13.—MERCANTILE BANK OF INDIA *v.* MASCURENHAS (1928), I. L. R. 52 Bom. 792; *on appeal* (1931), 47 T. L. R. 611, P. C.—IND.

[1929] 1 K. B. 40; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2891. *Add. Annotations:—As to* (1) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. *As to* (2) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2897. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

2901a. —— **1882 Act, s. 95—Warrant for interest on Government stock.**]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 242a, *ante*.

2911. *Add. Annotation:*—**Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

Part XXI.—I.O.U.'s.

2924. *Add. Annotations:*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Nihalchand Navalchand McMullan, [1934] 1 K. B. 171.

Part XXII.—Actions on and in Connection with Negotiable Instruments.

2976. *Add. Annotation:*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2976a. One joint maker appointed holder's executor—Action by executor against one of other makers.]—JENKINS *v.* JENKINS, No. 2393a, *ante*.

3015. *Add. Annotation:—As to* (2) **Consd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3019. *Add. Annotation:*—**Apprvd.** Powszechny Bank Zwiazkowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3019a. —— —— ——.]—In an action brought on a writ specially indorsed under R. S. C., Ord. 3, r. 6, by indorsees against the maker of a promissory note, pltfs. in an affidavit in support of a summons for leave to sign final judgment under R. S. C., Ord. 14, r. 1, stated that they were holders in due course of the note, having taken it in good faith for value from the payees without notice of any defect in their title. Deft. in his affidavit in answer stated facts which, if true, showed that the note had been negotiated in fraud of him. The judge in chambers made an order, under R. S. C., Ord. 14, r. 6, that deft. should have leave to defend the action if he brought a sum of money into ct. within a certain time, but that if he failed to do this, pltfs. should have leave to sign judgment for the amount claimed. On appeal from this order:—*Held:* (1) a triable issue was raised between the parties; the mere statement in pltfs.' affidavit that they had given value without notice of any defect in their indorsers' title was not sufficient to decide that issue in pltfs.' favour, but that the ct. must have an opportunity of deciding it, & therefore deft. was entitled to leave to defend the action without the condition that he should pay money into ct.; (2) by GREER, L.J., & *semble* by SLESSER, L.J., where a deft. is entitled to leave to defend, the judge in chambers cannot under R. S. C., Ord. 14, r. 6, make an order for conditional leave to defend, the effect of which is to give pltf. conditional leave to sign judgment.—POWSZECHNY BANK ZWIAZKOWY W. POLSCE *v.* PAROS, [1932] 2 K. B. 353; 101 L. J. K. B. 671; 147 L. T. 377, C. A.

3020. *Add. Annotation:*—**Consd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3023. *Add. Annotation:*—**Refd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3056. *Add. Annotation:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

PART XX. SECT. 2, SUB-SECT. 7.

sx. *Lien note.*]—*Held:* not a promissory note.—CANADIAN BANK OF COMMERCE *v.* JOHNSON, [1925] 4 D. L. R. 511; [1925] 3 W. W. R. 328.—**CAN.**

sy. ——.]—*Held:* not a promissory note.—METCALFE *v.* ADAIR (Man.), [1927] 1 D. L. R. 982; [1927] 1 W. W. R. 331; 36 Man. L. R. 255.—**CAN.**

PART XXII. SECT. 1.

2951 via. —— —— ——.]—JOHNSON *v.* RICHARDSON, [1922] 3 W. W. R. 453.—**CAN.**

PART XXII. SECT. 3.

n i. —— *Letter granting delay for payment.*]—On Sept. 3, 1929, applt. sued resp. corpn. on four promissory notes overdue & the defence set up was that the action was premature because, on Aug. 28, 1929, applt. had written a letter to the secretary of the corpn. stating *inter alia* that unless payment was made within fifteen days he would take proceedings; but he brought his action before the expiry of that time:—*Held:* applt. was entitled to judgment.—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619; 4 D. L. R. 337.—**CAN.**

xi. —— *Letter granting delay—Action before expiry of delay.*]—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619; 4 D. L. R. 337.—**CAN.**

PART XXII. SECT. 7.

sa. *Pleading—Striking out—When ordered.*]—NEEDLES *v.* SLOVARP, [1922] 2 W. W. R. 649; 66 D. L. R. 273; 15 Sask. L. R. 448.—**CAN.**

sd. *Discovery—Examination for—Action by indorsee.*]—EMPIRE FINANCIERS, LTD. *v.* NANCE, [1920] 1 W. W. R. 694; 51 D. L. R. 231.—**CAN.**

PART XXII. SECT. 11, SUB-SECT. 1.

sl. *Right to jury.*]—BANK OF YORKTON *v.* BRYAN, [1930] 2 W. W. R. 49; 4 D. L. R. 287; 24 Alta. L. R. 576.—**CAN.**

PART XXII. SECT. 11, SUB-SECT. 4.

d i. —— *& to prove collateral agreement—For "working out" of note.*]—MALLOUGH *v.* DICK, [1927] 2 D. L. R. 370; [1927] 1 W. W. R. 544; 22 Alta. L. R. 425.—**CAN.**

d ii. *To show that note signed as trustee only.*]—Evidence not admissible.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* ANDERSON (1917), 37 D. L. R. 805.—**CAN.**

f i. —— *Addition of word "security"—Evidence to explain.*]—Parol evidence is admissible to explain the addition of the word "security" to the name of one of the makers.—MCINTOSH *v.* MCNAUGHTON, [1935] 2 D. L. R. 237; O. R. 155.—**CAN.**

Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotation :—As to* (2) **Refd.** Aman *v.* Southern Ry. (1925), 42 T. L. R. 31.

Part XXV.—Stamp Duties.

SUB-SECT. 1.—BILLS OF EXCHANGE AND OTHER ORDERS ON ONE PERSON TO PAY ANOTHER (Vol. VI., p. 493).

3121a. Bill of exchange.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

3125. *Add. Annotation :*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3126. *Add. Annotation :*—Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3146a. "Chequelet."]—A bank issued documents to its customers in the form of receipts for payment by them to the customer of sums under £2, & agreed with its customers that they would pay to persons presenting these documents to them signed by a customer the sums named therein & would debit the customer's account therewith, it being their avowed intention that the documents should be used for the same purpose as cheques, & the object being to avoid the stamp duty on cheques :—*Held :* the documents were bills of exchange within Stamp Act. 1891 (c. 39), s. 32.—MIDLAND BANK, LTD. *v.* INLAND REVENUE COMRS., [1927] 2 K. B. 465 ; 96 L. J. K. B. 1006 ; 137 L. T. 817 ; 43 T. L. R. 701 ; 71 Sol. Jo. 622.

3150. *Add. Annotation :*—**Refd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

3172. *Add. Annotation :*—**Refd.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

3173. *Add. Annotation :*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3209. *Add. Annotations :*—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Slingsby *v.* District Bank, Ltd., [1931] 2 K. B. 588.

PART XXIII. SECT. 7.

sl. *Failure of holder to sue on collateral—Security barred by lapse of time.*]—In an action on a promissory note deft. counterclaimed on the ground that pltf. had negligently failed to sue on certain notes given him as collateral security with the result that action on said notes was now barred by Stat. Limitations. The trial judge found that deft. had acquiesced in the opinion of a solr. acting for both parties that it was not worth while suing on the notes & that the only practical thing to do was to try to get renewal notes, but he held that deft.'s acquiescence could operate only as estoppel & since estoppel was not pleaded he allowed the counterclaim. On appeal : —*Held :* the appeal should be allowed. Deft.'s claim was for negligence in failing in a duty to sue on the notes or to return them to him & thereby put him in a position to sue. Under the circumstances there was no duty to do anything more than to try to obtain renewal notes. The solr. did so try &, therefore, pltf. was not guilty of the negligence which deft. had to establish in order to succeed on his counterclaim.—ORLOFF *v.* KIPPAN, [1936] 2 W. W. R. 631 ; 4 D. L. R. 506.—**CAN.**

PART XXV. SECT. 1, SUB-SECT. 1.

3123 ii. —— *Issued by one branch on another.*]—Demand drafts, issued by one office of a bank upon another of the same bank, are bills of exchange payable on demand & are exempt from stamp duty.—*Re* DEMAND DRAFTS OF IMPERIAL BANK OF INDIA (1928), I. L. R. 56 Calc. 233.—**IND.**

PART XXV. SECT. 2, SUB-SECT. 1.

sk. *Time for stamping—Whether after acceptance & indorsement.*]—BUTLER *v.* EVANS (1873), 9 N. S. R. (3 G. & O.) 171.—**CAN.**

PART XXV. SECT. 2, SUB-SECT. 2.

sm. *Time for stamping.*]—HENDERSON *v.* GESNER (1866), 25 U. C. R. 184. —**CAN.**

sn. ——.] — *Held :* a promissory note before being negotiated could be stamped by the maker on the day of the making thereof, though after it had been signed & indorsed by the payee.—BANK OF OTTAWA *v.* MCLAUGHLIN (1883), 8 A. R. 543.—**CAN.**

PART XXV. SECT. 4, SUB-SECT. 3.—B.

3254 vii. ——.]—Where a promissory note, being insufficiently stamped, is inadmissible in evidence, a suit to recover the principal debt based on the acknowledgment contained in a contemporaneous receipt mentioning the loan & referring to the promissory note, is maintainable.—GOVIND SINGH *v.* BIJOY BAHADUR SINGH (1929), I. L. R. 52 All. 169.—**IND.**

PART XXV. SECT. 4, SUB-SECT. 8.—C

3263 v. ——.]—An unstamped cheque is admissible in evidence & may amount to an earnest or part payment.—SYKES *v.* GECK, [1920] 1 W. W. R. 741.—**CAN.**

PART XXV. SECT. 6, SUB-SECT. 1.

f i. —— —— —— ——.]—TRAVIS *v.* GLASIER (1870), 2 Han. 215.—**CAN.**

f ii. —— —— —— ——.]—BANK OF NOVA SCOTIA *v.* CUSHING (1882), 21 N. B. R. 498.—**CAN.**

BILLS OF LADING.

See SHIPPING AND NAVIGATION.

BILLS OF SALE.

Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

7. *Add. Annotation :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

Part II.—What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

12. *Add. Annotations :*—**Refd.** *Re* George Inglefield, Ltd., [1933] Ch. 1 ; *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

14. *Add. Annotation :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

15a. —— ——.]—H., a dealer in motor vehicles, defts., a finance co., entered into a transaction for the sale of a motor lorry by H. to defts. & the letting of the lorry by defts. to H. on an agreement in the form of a hire-purchase agreement. The transaction was carried out by means of the printed forms used by defts. in their business, which were more appropriate to a case in which they bought a vehicle & let it on hire-purchase to a third party, than to the present case. H., being in possession of the lorry, then fraudulently sold it to pltfs., who were not aware of the previous transaction between H. & defts. The payments due from H. to defts. under the hire-purchase agreement between them having fallen into arrear, defts. resumed possession of the lorry & refused to deliver it to pltfs. at their request. Pltfs. thereupon brought an action against defts. claiming delivery up of the lorry or damages for its detention :—*Held :* in the circumstances the transaction between H. & defts. was in fact what it purported to be, & the agreement between them as to the letting of the lorry was a valid hire-purchase agreement & could not be treated as a bill of sale to secure the repayment of a loan by defts. to H.—STAFFS MOTOR GUARANTEE, LTD. *v.* BRITISH WAGON CO., LTD., [1934] 2 K. B. 305 ; 103 L. J. K. B. 613 ; 151 L. T. 396.

15b. —— **Sale—Re-letting to seller.**]—BRITISH, RAILWAY TRAFFIC & ELECTRIC CO. *v.* KAHN, [1921] W. N. 52.

24. *Add. Annotations :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464 ; Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

27. *Add. Annotation :*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

35. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

41. *Add. Annotations :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196 ; *Re* George Inglefield, Ltd., [1933] Ch. 1.

44. *Add. Annotations :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236. **Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

55a. **Sales agreement between manufacturer & company—To secure loan.**]—Being short of liquid capital, the debtor, who was a manufacturer of furniture, approached A. for assistance. A. agreed to help him & for this

PART I.

g i. —— *Protection of creditors.*]—Bills of Sale Act, R. S. A., 1922, c. 151, is not intended to do anything further than to stop a buyer of goods who has not registered a bill of sale & who is not in possession of the goods from claiming, as against creditors of the person in possession, that he had bought the goods from said person. It is not the intention of the Act that the buyer of a chattel who leaves it in the possession of the vendor until it can be sold again & then sells it & makes delivery to a person who takes it away is to be deprived of the proceeds of the resale by reason of garnishee or other proceedings taken by creditors of the person in possession before the resale & delivery.—*Re* AYLING, ROYAL BANK OF CANADA *v.* HEYLER & AYLING, [1930] 1 W. W. R. 102 ; 1 D. L. R. 68.—**CAN.**

sa. *Bills of Sale & Chattel Mortgage Act, R. S. M.*, 1913 (*c.* 17)—*Not applicable to mortgage of equity in mortgaged goods.*]—The above Act does not apply to a chattel mtge. which ——— covers not the goods themselves referred to therein but any interest or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—BANQUE D'HOCHELAGA *v.* BROWNSTONE, [1925] 3 D. L. R. 176 ; [1925] 2 W. W. R. 348 ; 35 Man. L. R. 62.—**CAN.**

sb. *Crop Payments Act*, 1924 (*c.* 147), *ss.* 2, 3—*Effect of—Alienation by landlord, vendor or mortgagee.*]—*Re* CROP PAYMENTS ACT, *Re* BILLS OF SALE & CHATTEL MORTGAGE ACT (1926), 36 Man. L. R. 34 ; [1926] 2 W. W. R. 844.—**CAN.**

sd. *Contract made outside jurisdiction —Provincial Act not applicable.*]—NATIONAL CASH REGISTER CO. *v.* LOVETT, MOORE *v.* NATIONAL CASH REGISTER CO. (1906), 1 E. L. R. 321.—**CAN.**

sf. *Who may be "creditor"—Trustee in bankruptcy.*]—A trustee in bkpcy. is a creditor within Bills of Sale Act, R. S. N. S. 1923, c. 201, s. 8.—*Re* SATISFACTION STORES, [1929] 2 D. L. R. 435 ; 60 N. S. R. 357.—**CAN.**

PART II. SECT. 1.

10 ii. Add "*revsd.*, [1920] 3 W. W. R. 421."

PART II. SECT. 2.

sm. *Declaration reserving to maker powers of management & disposition—No power in cestui que trust to seize or take possession.*]—PURCELL *v.* DEPUTY FEDERAL TAXATION COMR. (1920), 28 C. L. R. 77.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

28 i. Add "*revsd.*, [1920] 3 W. W. R. 421."

PART II. SECT. 4.

t i. —— *Goods paid for but not delivered.*]—*Held :* registration not required under Bills of Sale Act in order to protect purchaser's right to goods subsequently manufactured & paid for under the agreement, the property in which had passed to him but which were still on vendor's premises.—ALLEN-STOLTZE LUMBER CO., LTD. *v.* SUMMIT LAKE LUMBER CO., LTD., [1920] 3 W. W. R. 895.—**CAN.**

sp. "*Customer's agreement*" — & "*trust receipts.*"]—*Re* DOMINION SHIP[illegible]

CAN.

purpose a co. was incorporated on Sept. 1, 1933, with a capital of 100 shares of £1 each, of which A. held ninety-eight, his clerk one, & the debtor one. On the same date the debtor entered into an agreement with the co. by which the co. agreed to buy for cash goods manufactured by him up to a total amount of £7,000, the price to be 10 per cent. less than the prices that any of certain specified customers had agreed to pay for them, & the goods to be invoiced to the customers in the name of the co. The agreement also provided that the debtor should not sell goods to any person other than the co., that he should repay to the co. any part of the price of goods so purchased which the customer failed to pay, & that the co. should not make a profit of more than £2,500 in any one year. Notices were issued to customers that for the future sales would be effected through the co. On Feb. 5, 1934, a receiving order was made against the debtor, & on Feb. 19 he was adjudicated a bkpt. The question arose whether the agreement was void as against the trustees in bkpcy. so that the sums remaining due from customers at the beginning of the bkpcy. formed part of the debtor's estate:—*Held:* the agreement was not void either as an unregistered bill of sale or as an assignment of future book debts within sect. 43 of Bkpcy. Act, 1914 (c. 59).—*Re* LOVEGROVE, *Ex p.* LOVEGROVE & CO. (SALES), LTD., *Re* LOVEGROVE, *Ex p.* TRUSTEES, [1935] Ch. 464; 104 L. J. Ch. 282; (1934–5), B. & C. R. 262; *sub nom. Re* LOVEGROVE, *Ex p.* APPLESTONE *v.* TRUSTEES, 152 L. T. 480; 79 Sol. Jo. 145; *sub nom. Re* LOVEGROVE, *Ex p.* LOVEGROVE & CO. (SALES), LTD. *v.* TRUSTEES, 51 T. L. R. 248, C. A.

70. *Add. Annotation:*—**Refd.** Modern Light Cars, Ltd. *v.* Seals, [1934] 1 K. B. 32.

74. *Add. Annotation:*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

82. *Add. Annotations:*—*As to* (1) **Consd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807. *As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

90. *Add. Annotation:*—**Apld.** *Re* Allester, [1922] 2 Ch. 211.

93. *Add. Annotation:*—**Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

93a. —— —— **Room on borrower's premises.**]—Deft. co., in order to secure pltf. against loss on a certain contract & in consideration of pltf. giving further time within which to pay for the goods, set aside certain specified goods in two rooms on defts.' premises, which were locked up & the keys handed to pltf., no other goods being in those two rooms. The terms of the transaction were recorded in two letters written by deft. co. to pltf., one letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words: "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (*c*), as being a charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale. Pltf. brought an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them:—*Held:* possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods.—WRIGHTSON *v.* MCARTHUR & HUTCHISONS, [1921] 2 K. B. 807; 90 L. J. K. B. 842; 125 L. T. 383; 37 T. L. R. 575; 65 Sol. Jo. 553; [1921] B. & C. R. 136.

Annotation:—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

97. *Add. Annotation:*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

98. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

98a. Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.]—The owner of a motor car which was in the hands of deft., a motor engineer, for the purpose of repairs, & which he had instructed deft. to sell on his behalf when repaired, had an account at pltfs.' bank, which was overdrawn. Being requested by pltfs. to give security for the overdraft he wrote to deft. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltfs. The letter was not registered as a bill of sale. The car having been sold & the price received by deft., pltfs. claimed the proceeds:—*Held:* the letter in question created one entire

PART II. SECT. 5, SUB-SECT. 4.

80 i. *Following alleged sale to vendor.*]—C. purchased an automobile, paying partly in cash & partly by post-dated cheque. Later requiring money to finance his business, he borrowed $1,400 from pltf., giving in return a hire-purchase agreement as to the automobile. C. continued in possession of the car:—*Held:* the document was an assurance & came within Bills of Sale Act.—RITHET (R. P.) & Co. *v.* SCARFF (1920), 29 B. C. R. 70.—**CAN.**

80 ii. ——.]—A. an employee of pltf. co., being desirous of obtaining a new motor car for the purposes of his work, arranged with an officer of pltf. that the co. would advance him £200 to enable him to purchase the car. A. selected a car & signed an order for it in his own name, & an invoice addressed to pltf. was issued to A. A cheque for the balance of the amount owing on the car was given by the pltf. to A., who handed it to the vendor. The co.'s ledger showed the amount of the cheque as an advance to A. As security for this advance A. entered into a hire-purchase agreement with the co., whereby the co. purported to let the car to A. upon the usual terms of a hire-purchase agreement. The agreement was not registered as a bill of sale, & A. subsequently sold the car to deft. In an action for detention:—*Held:* the ct. was not concluded by the form into which the parties had thrown the transaction, but was entitled, & indeed bound, to inquire into its real nature; the transaction between A. & pltf. amounted to an advance by pltf. to A. on the security of the car; the pltf. could not make out its title independently of the hire-purchase agreement, which contained a licence to take possession of a personal chattel, & was consequently a bill of sale within Instruments Act, 1915, s. 12?, & the agreement not being registered as a bill of sale was void, & deft. entitled to

charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—NATIONAL PRO- & UNION BANK OF ENGLAND *v.* [1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; 66 Sol. Jo. (W. R.) 11; [1921] B. & C. R. 209.

Annotation :—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

104. *Add. Annotation :*—**Expld. & Apld.** Shears *v.* Jones, [1922] 2 Ch. 802.

108. *Add. Annotation :*—**Consd.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

110a. ——.]—An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—SHEARS & SONS, LTD. *v.* JONES, [1922] 2 Ch. 802; 92 L. J. Ch. 28; 128 L. T. 218; 66 Sol. Jo. 682; [1922] B. & C. R. 211.

112. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

117. After this case add

Power of distress as indemnity against rent.]—*See* Law of Property Act, 1925 (c. 20), s. 189 (1).

Part III.—Instruments not within the Expression "Bill of Sale."

128. *Add. Annotations :*—**Folld.** French *v.* Gething, [1922] 1 K. B. 236. **Refd.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179.

133. *Add. Annotations :*—**Refd.** The Harlow, [1922] P. 175; Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

134. *Add. Annotation :*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

135. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

138. *Add. Annotations :*—**Refd.** *Re* Allester, [1922] 2 Ch. 211; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

138a. Letter of trust on redelivery for realisation of pledged bills of lading.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised :—*Held :* the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semble :* if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

Annotations :—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

138b. Agreement for sale of growing crop.]—An agreement for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a "transfer of goods in the ordinary course of business of any trade or calling."—STEPHENSON *v.* THOMPSON, [1924] 2 K. B. 240; 93 L. J. K. B. 771; 131 L. T. 279; 88 J. P. 142; 40 T. L. R. 513; 68 Sol. Jo. 536; 22 L. G. R. 359; [1924] B. & C. R. 170, C. A.

141. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

144a. —— —— **Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).**]—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the society present & future was charged to secure the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged :—*Held :* (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in

PART II. SECT. 6.

81. *To give security — Registration necessary.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., LTD. (Ont.), [1925] 2 D. L. R. 239; 5 C. B. R. 629.—**CAN.**

81v. *Royalty agreement with oil company.*]—An agreement under which a co. incorporated to drill for oil & gas agrees to pay another co. a percentage royalty on all the oil, gas & other products to be recovered by the former, is not one to which Bills of Sale Act, 1929, applies.—*Re* PUBLIX OIL & GAS, LTD., *Re* CANADIAN C— MEN'S TRUST ASSOCN., LTD. & —— LAND OIL CO. OF CANADA, LTD., [1936] 3 W. W. R. 634; [1937] 1 D. L. R. 203.—**CAN.**

PART III. SECT. 5.

sw. *Lien note—No collateral contract to transfer property in goods back to seller.*]—*Held :* not a chattel mtge.—O'BRIEN *v.* STEBBINS & MULLEN, [1927] 3 D. L. R. 274; 2 W. W. R. 176; 21 Sask. L. R. 478.—**CAN.**

PART III. SECT. 6.

142 iv. —— ——.] — GORDON MACKAY & CO., LTD. *v.* CAPITAL TRUST CO., LTD., [1927] 2 D. L. R. 1150; S. C. R. 374; 8 C. B. R. 216.—**CAN.**

142 v. —— ——.]—Debentures issued by the co. on May 1, 1927, were not registered as chattel mtges. under the Bills of Sale & Chattel Mtge. Act. By each debenture the co. agreed to pay the principal sum therein mentioned on a certain date, with interest. There was no covering deed or trust mtge. Each debenture provided security for its payment by creating a first floating charge on all its assets & undertakings both present & future :—*Held :* the words used in creating the charge did not constitute the debentures a mtge. with Bills of Sale & Chattel Mtge. Act, & they were a charge on the property of the co. in priority to the claims of all other creditors.—*Re* DOMINION CHOCOLATE CO., [1931] 2 D. L. R. 813; O. R. 86 12 C. B. R. 456.—**CAN.**

sect. 17 of that Act; (2) the property charged by the debenture, although described in general terms, was severable; &, accordingly, the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, [1922] 2 Ch. 340; 91 L. J. Ch. 415; 127 L. T. 288; 38 T. L. R. 518; 66 Sol. Jo. 439; [1922] B. & C. R. 12.

148. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

149. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

151. *Add. Annotation :*—**Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

155. *Add. Annotation :*—**Apld.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

156. *Add. Annotations :*—**Consd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1. **Refd.** Dey *v.* Rubber & Mercantile Corpn., [1923] 2 Ch. 528.

158. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part IV.—Subject-Matter of Bills of Sale—"Personal Chattels."

160. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

168. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

176. *Add. Annotations :*—**Refd.** Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

180. *Add. Annotation :*—**Refd.** Townley Mill Co (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

190. *Add. Annotation :*—**Distd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

196a. Growing crops.]—STEPHENSON *v.* THOMPSON, No. 138b, *ante*.

PART IV. SECT. 1.

sy. *Sale of dwelling-house for removal.*]—A sale of a dwelling-house with the intention on the part of the vendor & purchaser that it shall be removed from the land on which it is situated is a sale of a chattel within the meaning of sect. 9 of the Bills of Sale Act, R. S. A., 1922, c. 151.—WADE *v.* MUNICIPAL DISTRICT OF GOLDEN CENTRE, [1929] 2 D. L. R. 779; 1 W. W. R. 901; 24 Alta. L. R. 1.—**CAN.**

sz. *Goods not property of grantor.*]—The purchaser of a motor car under an uncompleted conditional sale agreement orally agreed to sell it to his father in consideration (*inter alia*) of the latter's assumption of the payments due the original vendor; but there was not sufficient change of possession to satisfy Bills of Sale Act if it applied to such a transaction. After the father had paid off the vendor the car was seized under an execution against the son:—*Held :* the transaction was not a "sale, assignment or transfer" of the car; its only effect was to give the father an equitable interest in the car which did not depend upon the delivery of possession; &, therefore, it was not affected by Bills of Sale Act then in force, R. S. A., 1922, which did not provide, as does the present Act, 1929, s. 27, that it shall apply to bills of sale although the goods may not be the property of the grantor.—BOYD *v.* HALLING, [1931] 1 W. W. R. 595; 2 D. L. R. 568; 25 Alta. L. R. 243.—**CAN.**

sa. *Property exempt from execution.*]—The Bills of Sale Act, R. S. S., 1930, applies to property exempt from seizure under execution. A herd of hogs in the apparent possession & ownership of an execution debtor were seized under execution. His wife, claiming them as hers, produced a written memorandum, dated five years previously, of a sale to her by the debtor of four hogs; & adduced evidence to show that at that time he owned only four hogs & that the herd seized was their progeny; & contended, that, although the sale had not been registered under Bills of Sale Act & although there had been no actual & continual change of possession, yet as said four hogs were the only hogs owned by her husband at that time they were exempt from seizure, &, therefore, said Act did not apply to them or their progeny:—*Held :* the contention could not be sustained &, therefore, the seizure was valid.—MCGIRR *v.* BELOUS, [1932] 1 W. W. R. 495.—**CAN.**

sg. *After-acquired property—Increase & progeny of sheep.*]—By an indenture described as a mtge. of stock, H. assigned to Y., as security for moneys advanced, certain sheep, a detailed description of which was given in the schedule thereto, & also all the increase & progeny of such sheep, & all other sheep which then belonged or which might thereafter belong to H., & which at any time during the continuance of the security might be brought on the property:—*Held :* the indenture operated in law as an assignment of the sheep described in the schedule & operated in equity as an assignment of the progeny, when born, & of the sheep acquired & brought on to the land when so acquired & brought on to the land, &, therefore, any wool shorn from such sheep during the continuance of the security belonged to Y.—YOUNGHUSBAND, LTD. *v.* CAMPBELL (1934), 34 S. R. N. S. W. 404; 51 N. S. W. W. N. 80.—**AUS.**

PART IV. SECT. 2.

a i. —— *Goods in possession of third party—Claiming possession on his own behalf.*]—*Held :* Bills of Sale Act did not apply.—PRETE *v.* LAUZON & FENSOM, [1923] 3 D. L. R. 1152; 52 O. L. R. 334.—**CAN.**

PART IV. SECT. 3.

167 ii. ——.]—The assignment by way of security of a chattel, the subject of a hire-purchase agreement & which at the date of the assignment was in the possession of the hirer, who was not in default under the hire-purchase agreement, is an assignment of a chose in action within s. 3 of Bills of Sale Act, 1898.—MOTOR CREDITS, LTD. *v.* W. F. WOLLASTON, LTD. (IN LIQUIDATION) (1929), 29 S. R. N. S. W. 227; 46 N. S. W. W. N. 48.—**AUS.**

PART IV. SECT. 4, SUB-SECT. 3.

o i. ——.]—When a mtgee. enters into possession, he becomes entitled to any crops growing on the land as against a mtgee. of the crops under a chattel mtge. executed after his mtge. & before possession taken; but, if the crops are cut at the time of possession taken, the holder of the chattel mtge. would have priority.—HARRISON *v.* CARBERRY ELEVATOR CO. (Man.) (1908), 7 W. L. R. 535.—**CAN.**

o ii. ——.]—Where a chattel mtge. includes future crops, there is an implied term that mtgor. may carry on his business & sell the mtged. property in the usual way, & purchaser, *e.g.*, a canning factory, gets a good title.—NOURSE *v.* CANADIAN CANNERS, LTD., [1935] 2 D. L. R. 121; *affd.*, [1935] 3 D. L. R. 168; O. R. 361.—**CAN.**

a i. —— *Chattel mortgage including cut grain—Amount of cut grain not specified.*]—*Held :* mtge. not valid even in part.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

a ii. —— *Lease by mortgagee in possession to guarantor of mortgagor's debt to bank—Profits from crop to be applied in reduction of debt.*]—*Held :* the above arrangement did not violate Chattel Mtge. Act, R. S. C., 1920 (c. 200), s. 20, as an attempt to create a security on a growing crop, since it did not come within any instrument mentioned therein.—BURNS & BROWN *v.* ZULAUF & DOEER (Sask.), [1926] 1 W. W. R. 943.—**CAN.**

a iii. ——.]—Bills of Sale & Chattel Mtge. Act cannot apply to a sale of growing crops.—NOURSE *v.* CANADIAN CANNERS, LTD. [1935], 3 D. L. R. 168; O. R. 361.—**CAN.**

197 iv a. ——.]—JACKSON *v.* PENFOLD, [1931] 1 D. L. R. 808; 66 O. L. R. 440.—**CAN.**

Part V.—Statutory Requirements.

213a. —— **Substantial accuracy—Payment of loan by cheque.**]—Pltf. granted a bill of sale over certain furniture to a money-lender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts., & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale:—*Held:* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

220. *Add. Annotations:*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26. **Reld.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

228a. —— —— & **grantor's creditors paid by grantee.**]—(1) On June 24, 1925, the parties to a bill of sale for £1,000 entered into an

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197 x. ——.]—Security on grain given to a bank in Oct. 1921, in respect to advances made in the spring of 1920:—*Held:* invalid in respect to 1921 crop as there was no proof that 1921 crop was intended as the security, & if there was such an agreement made in 1920 as to 1921 crop it was bad as covering property not then in existence.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

197 xi. ——.]—*Held:* an agreement only intended to operate as security for payment, payable when the crop was harvested, was void under R. S. M., 1913 (c. 17), s. 33.—HASCALL *v.* ROYAL BANK OF CANADA, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—**CAN.**

197 xii. ——.]—*Held:* a security on crops to be grown *in futuro* was invalid under R. S. S., 1920 (c. 200), s. 20.—RICHLAND FARM, LTD. *v.* VERMETTE, [1923] 3 W. W. R. 74.—**CAN.**

197 xiii. ——.]—DALTON *v.* EATON, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—**CAN.**

197 xiv. ——.]—ORPEN *v.* DYER (Alta.), [1929] 4 D. L. R. 1084; 1 W. W. R. 382.—**CAN.**

197 xv. ——.]—Pltf. in 1929 agreed to sell a certain half-section of land to one A. In pursuance of the agreement a lease was entered into reserving to pltf. as rent one-third of the crop of each of the years, 1929, 1930, 1931, to be applied on the instalments of the purchase price, interest & taxes. In Apr. 1930, A., in consideration of extensions of time, & advances, agreed to give pltf. the whole of the crop & authorised pltf. to sell it as pltf. saw fit & deduct from the proceeds payments due under the agreement for sale plus any advances. The advances were for the purchase of cattle & clover seed. Subsequently, in response to a letter written by a solr. on behalf of A., deft. advanced A. money on the notes of A. & his son. In pursuance of a promise made in said letter A. later consigned a car of wheat grown on the land to order of the deft. The bill of lading was at A.'s instance, issued to A. & a co. which was the agent of pltf. A. delivered the bill of lading to said agent, who endorsed to the order of deft. & forwarded it to deft. with instructions to sell. Deft. procured & sold the grain, & wrote said agent of pltf. offering to pay it one-third of the proceeds of the car. Pltf. insisted on receiving the whole proceeds of the car less the usual charges:—*Held:* deft. was not entitled to retain its advance.—LAW UNION & ROCK INSURANCE CO. *v.* NORTH WEST COMMISSION CO., [1931] 2 W. W. R. 905.—**CAN.**

g i. —— ——.]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., EKMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—**CAN.**

k i. —— *Transaction not bonâ fide.*]—Pltf. claimed the right to take certain wheat in A.'s possession. A. wanted some of it for seed. It was agreed that pltf. would purchase the wheat from A. at a price which was equal to the amount of A.'s indebtedness to pltf., & pltf. would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on pltf.'s purchase. This was carried out, & to secure the purchase price pltf. took from A. a seed grain mtge. on the crop to be grown:—*Held:* as A. did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but was fixed with reference to the debt owing by A. to pltf., the actual value being much less than the price agreed on, the transaction could not be considered a *bonâ fide* sale to A., & pltf.'s mtge. was invalid.—LYNCH *v.* TURNEY (Sask.), [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *revsg.*, [1923] 1 D. L. R. 1198.—**CAN.**

k ii. —— ——.]—*Held:* the chattel mtge. in question, which was given on a growing crop for the purchase-price of seed grain, was *bonâ fide* & valid.—FEIBER *v.* ROMANCIEWICZ, [1928] 4 D. L. R. 400; [1928] 2 W. W. R. 625.—**CAN.**

sa. *Binder twine chattel mortgage—To secure price of twine used in previous year.*]—*Held:* may be validly granted in the following year over the crops of that year, & is entitled to priority.—FENNELL *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 79.—**CAN.**

sc. *Whether giving of chattel mortgage effects severance.*]—When the question is whether fixtures have ceased to be part of the freehold the test is, has there been an actual severance or does the contract in question provide for immediate severance? If neither of these facts is present then the fixtures remain part of the freehold. The chattel mtge. in question herein which covered articles which were found on the evidence to be fixtures & which expressly granted & assigned "fixtures," *held* to be in respect of or affecting lands &, therefore, to fall within Mtgors.' & Purchasers Relief Act, 1932.—SAM SICK HONG *v.* MAH PON, [1933] 3 W. W. R. 249; *affd.*, [1934] 2 W. W. R. 626; 3 D. L. R. 758; 48 B. C. R. 362.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

b i. —— —— *Not amount secured.*]—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

f i. —— *Seed-grain mortgage.*]—A seed-grain mtge. & the affidavit of *bona fides* stated that it was given to secure the price, mentioning it, of 330 bushels of barley "purchased" from the mtgee. The evidence showed that the mtgor. took delivery of only 320 or 321 bushels. There was no evidence indicating that the difference between the price of the quantity referred to in the mtge. & the quantity delivered was to be paid by the mtgor. for anything but barley:—*Held:* it could not be inferred from the above facts that the consideration set forth in the mtge. & affidavit was not truly stated.—HOGTNESS *v.* FEFCHAK, [1931] 2 W. W. R. 267; 4 D. L. R. 797.—**CAN.**

f ii. —— —— *Necessaries incorrectly specified.*]—Under sect. 32 of Bills of Sale Act, 1929, which provides for the giving of security on a growing or future crop for the purchase-price of seed grain, meat, groceries, flour, clothing & binder twine & for money borrowed to pay for machinery repairs & wages, which goods & borrowings are collectively called "necessaries," the correct specifying in the security & the affidavit of *bona fides* of the particular nature of the alleged necessaries is an essential part of both affidavit & security without which the document does not become a security. The term "dry goods" is not a sufficient specification of the nature of the thing referred to in sect. 32 as "clothing"; & the term "borrowing" is too general to specify the nature of borrowing for the particular purposes authorised by the section.—SHARMAN *v.* WHITE, [1932] 1 W. W. R. 30.—**CAN.**

h i. —— *Misstatement as to currency.*—The fact that a bill of sale states that the consideration was paid in "lawful money of Canada," whereas it was in fact paid in United States currency, does not invalidate the bill of sale.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C. (a).

t i. —— ——.]—MOWAT *v.* CLEMENT (1886), 3 Man. L. R. 585.—**CAN.**

227 vii. —— ——.]—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

agreement that the grantee should pay, as he then did, £600 to creditors of the grantor in satisfaction of their debt, that the existing bill of sale should be cancelled, & that the grantor should give to the grantee a new bill of sale for £1,600. The new bill of sale provided that "in consideration of £1,600 paid to" the grantor "by" the grantee "on June 24, 1925," the grantor assigned the chattels to the grantee:—*Held:* the new bill of sale truly set forth the consideration for which it was given, as required by 1882 Act, s. 8.

A bill of sale provided that the grantor would pay the grantee the principal sum of £1,600 with the interest then due "on Dec. 24, 1925." A contemporaneous mtge. of other property, given as part of the same transaction & as a collateral security for the principal sum, provided as follows: "The mtgor." (the grantor of the bill of sale) "hereby covenants with the mtgee." (the grantee) "to pay to him on Dec. 24 next £1,600 with interest thereon, & it is hereby agreed & declared that (subject to the right of the mtgee. to require repayment of the principal on Dec. 24 next according to the foregoing covenant by the mtgor. or at any time thereafter) the principal money hereby secured shall be repaid by instalments of not less than £20" on specified dates; these provisions not being contained in the bill of sale:—*Held:* the bill of sale by being made contemporaneously with, & as part of the same transaction as, the mtge. containing that clause for repayment of the principal by instalments, was not made or given subject to a "defeasance or condition" within 1878 Act, s. 10 (3), & the fact that that clause was not contained in the body of the bill of sale or written on the same paper or parchment therewith did not avoid the registration of the bill of sale under that sub-sect.—STOTT *v.* SHAW & LEE, LTD., [1928] 2 K. B. 26; 97 L. J. K. B. 556; 139 L. T. 302; 44 T. L. R. 493; [1928] B. & C. R. 24, C. A.

237. *Add. Annotation:*—**Distd.** Henshall *v.* Widdison (1923), 130 L. T. 607.

237a. —— ——.]—Pltf., H., had had a number of betting transactions with deft., W., a bookmaker, since 1918. Pltf. lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, pltf. obtained judgment against deft. for £692 10*s.* Execution was levied at the instance of the judgment creditor whereupon deft.'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained the words "In consideration of a sum of £600 now paid . . ." & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not "now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was "now paid" was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed:—*Held:* there was evidence in the present case on which the county ct. judge could find that the £600 was "now paid" within the meaning of the statement in the bill; the bill of sale was executed, & the money was paid over by claimant at substantially the same time; the bill was therefore valid & the appeal must be dismissed.—HENSHALL *v.* WIDDISON (1923), 130 L. T. 607, D. C.

249. *Add. Annotations:*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

256. *Add. Annotations:*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

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273. *Add. Annotation:*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

279. *Add. Annotations:*—**Refd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667; Gordon *v.* Goldstein, [1924] 2 K. B. 779.

282. *Add. Annotation:*—**Consd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

283a. —— —— **Rights under preceding oral agreement.**]—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—WILKINS *v.* NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON (1922), 39 T. L. R. 85.

Annotation:—**Follid.** Bradford Advance Co. *v.* Ayers, [1924] W. N. 152.

283b. —— —— ——.]—When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.—BRADFORD ADVANCE CO., LTD. *v.* AYERS, [1924] W. N. 152.

288. *Add. Annotation:*—**Consd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

288a. **Joint parties—Joint assignment—Of property owned by one party.**]—By a bill of sale a husband & wife, who were therein together

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¶ 1. —— —— *& notes under discount —Notes subsequently taken up by grantee.*]—*Held:* the chattel mtge. was valid.—FISH *v.* HIGGINS (1884), 2 Man. L. R. 65.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

sb. *Situation of chattels not properly designated—Description by which premises generally known.*]—*Held:* sufficient if not likely to mislead & chattels capable of being identified.—*Re* COMPORTER & CUSHION MANUFACTURING CO., *Ex p.* HENDERSON (J. B.) & CO. (Ont.), [1926] 1 D. L. R. 30.—**CAN.**

sd. *One mortgage form attached to part of another mortgage form.*]—*Held:* void for uncertainty.—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—**CAN.**

called "the grantor", purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone:—*Held:* inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—GORDON *v.* GOLDSTEIN, [1924] 2 K. B. 779; 94 L. J. K. B. 21; 132 L. T. 155; [1924] B. & C. R. 245.

Annotation:—**Expld.** Gamage *v.* Payne (1925), 42 T. L. R. 138.

289. *Add. Annotations:*—**Consd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667. **Distd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

297. *Add. Annotation:*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

299. *Add. Annotation:*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

301. *Add. Annotation:*—**Expld.** & **Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302. *Add. Annotations:*—**Expld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340. **Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

302a. —— —— **Other property of industrial society—Charged by debenture.**]—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, No. 144a, *ante*.

329. *Add. Annotations:*—**Mentd.** Edwards Motor Union Insce., [1922] 2 K. B. 249: *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukasson (1924), 40 T. L. R. 837; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

346. For "does render the bill of sale void," read "does not render the bill of sale void."

372.

[1923]

417. *Add. Annotation:*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

418. *Add. Annotation:*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420. *Add. Annotation:*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420a. ——.]—The sched. contained the following items: "Horses: eight horses described by their name & colour & two three-year-olds

PART V. SECT. 2, SUB-SECT. 3.

sg. *Sufficiency of—Small present payment—& extension of time for payment.*]—*Held:* sufficient.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—**CAN.**

sl. *Discharge of consideration—Whether bill security for different consideration.*]—*Qu.:* whether a bill of sale given for one consideration may, after the consideration is discharged, be used as security for an entirely different consideration.—LAW UNION & ROCK INSURANCE CO., LTD. *v.* KEYRIACOU & CHRISTOFIS, [1934] S. R. (Q.) 63.—**AUS.**

PART V. SECT. 2, SUB-SECT. 4.

293 v. —— —— *Reference to description in another instrument.*]—*Held:* goods & chattels must be so set out on the face of the instrument as to be easily identifiable, & a reference to another instrument cannot suffice; & as to subsequently acquired goods the mtge. was null & void.—*Re* RINN, [1923] 3 D. L. R. 986; 33 Man. L. R. 153; [1923] 1 W. W. R. 1190; 3 C. B. R. 828.—**CAN.**

293 vi. —— ——.]—A bill of sale of certain personal chattels, which were specifically set forth therein, contained also an assignment by the grantor of "all other personal chattels whether of a like nature or otherwise howsoever which I may during the continuance of this bill of sale be possessed of & which may be in & upon or about the said section or any other land which I may hereafter occupy or be in possession of whether brought there in substitution for renewal of or in addition to the said personal chattels or otherwise howsoever & all my right title claim & demand to the same":—*Held:* sect. 28 of Bills of Sale Act, 1886 (S. A.), did not render such bill of sale void as against the trustee in bkpcy. of the grantor as failing to "contain or state a description of the personal chattels in respect of after-acquired chattels comprised therein" as required by sect. 9 (3) of the Act.—WURM *v.* RICHARDSON (1932), 40 C. L. R. 301; 4 A. B. C. 193; 6 A. L. J. 32.—**AUS.**

q i. ——.]—When a mtge. of a car was made by H., he was owner of only one undivided half-share in the car:—*Held:* notwithstanding the consent of his partner to the mtge., it was valid only to the extent of H.'s half share; the fact that shortly after giving the security H. became the sole owner did not operate retrospectively under Chattels Transfer Act, s. 21.—BOWDEN *v.* R., [1921] N. Z. L. R. 249.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 6.—G.

p i. —— *Rights of grantor.*]—The covenant implied in instruments by way of security over stock which, while forbidding the removal of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not require as a condition of a valid sale that the proceeds be paid to the grantee.—NATIONAL BANK OF NEW ZEALAND *v.* DALGETY & CO., [1925] N. Z. L. R. 250.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 8.—A.

sh. *Attachment after signature but before delivery.*]—The fact that the inventory of goods & chattels referred to in the chattel mtge. in question herein was not attached thereto when the mtgor. signed the mtge. but was attached subsequently held not to invalidate the mtge. The inventory was attached, under instructions from the mtgor., before the mtge. was delivered to the mtgee. & before the mtgor. had obtained possession of the goods under a bill of sale from the mtgee.—STUBBERT *v.* SCOTT & TEMPLE, [1931] 1 W. W. R. 598.—**CAN.**

PART V. SECT. 2, SUB-SECT. 8.—B.

b (p. 70) **i.** —— *Clause capable of different constructions—Sufficient.*]—A description is sufficient when it is apparent that the mtge. covers all the chattels of the specified kind owned by the mtgor.—ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524; 2 D. L. R. 12.—**CAN.**

415 xi. —— —— ——.]—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—**CAN.**

415 xii. —— —— ——.]—The description of the goods in the chattel mtge. in question herein held not to be sufficient to satisfy the requirements of sect. 17 of Chattel Mortgage Act, R. S. S., 1920, c. 200, which provides that the goods must be so described as to be "readily and easily known and distinguished."—MANNING *v.* HALL, [1930] 3 W. W. R. 526; [1931] 1 D. L. R. 96.—**CAN.**

416 vii. —— —— ——.]—The insolvent assigned to applt. personal chattels described at the foot of the bill of sale situate on block 151 . . . & "all other personal chattels whatsoever whether of the kinds mentioned at the foot hereof or not which are now or during the continuance of this security may be in upon or about the said land & elsewhere." The insolvent had other chattels situated on another block of land:—*Held:* the bill of sale did not satisfy the requirements of s. 9 of Bills of Sale Act, 1886, & the omissions contained in the bill of sale were material omissions.—*Re* ROHRLACH; RIEDEL *v.* THE OFFICIAL RECEIVER (1928), S. A. S. R. 113.—**AUS.**

m (p. 73) **i.** —— "*Eight pure bred red poll cows.*"]—A bill of sale of cattle described them as "eight pure bred red poll cows named as follows, giving the names, in the possession of W. R. & pasturing on a named timber reserve":—*Held:* (1) the description was sufficient, in the absence of evidence that claimant had red poll cows other than those covered by the bill of sale so as to make those covered thereby difficult of identification; (2) the *onus* was on the party attacking the bill of sale to show that the cows described were incapable of identification even on making proper inquiries.—ROBILLARD *v.* MCCULLOUGH, [1926] 3 D. L. R. 178; [1926] 2 W. W. R. 350; 20 Sask. L. R. 559.—**CAN.**

n (p. 73) **i.** —— "*Issue of*" *named "animal."*]—It is not a sufficient description to describe an animal as the issue of another animal when the animal has at the date of the mtge. ceased to follow its dam for nurture.—RESER *v.* BEWLEY, [1922] 1 W. W. R. 1134; 65 D. L. R. 58; 17 Alta. L. R.

k (p. 74) **i.** ——

(one colt & one filly). Cows: nineteen shorthorn, one Jersey. Store-cattle: two steers, five heifers. Pigs: four large black sows, one middle white boar, pedigree, & thirty pigs (crossed as above)":—*Held:* the description of the horses, cows & pigs satisfied the requirements of 1882 Act, s. 4, but the store cattle were not specifically described within that section & consequently formed part of the bkpt.'s estate.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; [1926] B. & C. R. 26.

423. *Add. Annotation:*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

435. *Add. Annotation:*—**Refd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439. *Add. Annotation:*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439a. —— —— —— ——.]—STOTT *v.* SHAW & LEE, LTD., No. 228a, *ante.*

444. *Add. Annotation:*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

450. *Add. Annotation:*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

453. *Add. Annotation:*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

487. *Add. Annotation:*—**Refd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

495. *Add. Annotation:*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

498. *Add. Annotation:*—**Consd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

552. *Add. Annotation:*—**Expld.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

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v. DOMINION BANK, [1920] 3 W. W. R. 295.—**CAN.**

sk. *Locality of goods misdescribed—Not misleading.*]—A chattel mtge. is not invalidated by an error in the description of the locality of goods included, such error not being misleading.—*Re* ORD, WILKINS *v.* NATIONAL DRUG & CHEMICAL CO., [1936] 3 D. L. R. 429.—**CAN.**

PART V. SECT. 3.

p i. —— *Reference in schedule to earlier mortgage.*]—OTAGO FARMERS CO-OPERATIVE ASSOCN. OF NEW ZEALAND, LTD. *v.* MCGOWAN, [1925] N. Z. L. R. 482.—**N.Z.**

PART V. SECT. 4, SUB-SECT. 1.

466 i. *Non-compliance with statutory requirements—How far mortgage valid.*]—Bills of Sale Act, N. B. 1903 (c. 142), s. 5, affords no protection for a mtge. not executed & attested in accordance with s. 3 subsequent to another mtge. also not in accordance with s. 3. Such prior mtge. is good as between the parties & those who are not protected by s. 5.—MEADE *v.* DESCHENE, [1923] 2 D. L. R. 332.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

c i. ——.]—Chattel mtges. unregistered under such an agreement:—*Held:* void as against a mtgee. of the land claiming the chattels under a distress under an attornment clause in his mtge. —MCDOUGALL & SECORD, LTD. *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 364; 51 D. L. R. 309.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

e i. —— *Declaration as to bona fides sworn six days before execution.*]—*Held:* mtge. null & void as against the trustee in bkpcy. of the mtgor.—*Re* GIBBONS, [1924] 3 D. L. R. 619; 5 C. B. R. 16.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

492 ii. —— ——.]—*Held:* a document not a "true copy" was null & void against purchasers.—COMMERCIAL CREDIT CO. OF CANADA, LTD. *v.* FULTON BROTHERS, [1923] A. C. 798; 93 L. J. P. C. 12; 130 L. T. 72; 39 T. L. R. 684; [1923] B. & C. R. 102. —**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—A.

o (p. 86) i. —— *Bill for future advances.*]—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—**CAN.**

o (p. 86) ii. —— *Effect of omission—Part of goods delivered.*]—*Held:* bill valid where there was an immediate delivery followed by an actual & continued change of possession, & where goods had been sold & the proceeds were lying in the sheriff's hands.—KIPPAN *v.* MCCAW, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 64.—**CAN.**

o (p. 86) iii. ——.]—L., a dealer in cars, being about to buy a car & requiring money for the purpose, applied to pltf. for the money, which was lent. Two documents were executed, a bill of sale by L. to pltf. & an agreement for a conditional sale by pltf. to L.:—*Held:* transaction was a mtge. of the car by L. to pltf.: pltf.'s rights against deft., who had seized the car under a subsequent assignment from L., were governed by Bills of Sale & Chattel Mtge. Act. Affidavits of execution & *bona fides* were not made nor were the documents registered, therefore pltf. could not succeed as against deft. who was a purchaser in good faith & for value.—COMMERCIAL FINANCE CORPN., LTD. *v.* CAPITAL DISCOUNT CORPN., LTD., [1931] 1 D. L. R. 1007; O. R. 22.—**CAN.**

q (p. 86) i. —— ——.]—*Re* MCDONAGH (Ont.), [1926] 3 D. L. R. 36; 7 C. B. R. 686.—**CAN.**

500 iii. —— —— *Must be subscribing witness.*]—The attesting witness making an affidavit within Bills of Sale & Chattel Mortgage Act, R.S.O., 1927, s. 4 (*a*), must also be a subscribing witness.—RIDLEY *v.* MCGREGOR & CANADIAN BANK OF COMMERCE, [1934] 2 D. L. R. 399; O. R. 259.—**CAN.**

m (p. 86) i. —— —— —— *Omission of statement as to knowledge.*]—CRAIG (W. G.) & CO., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—**CAN.**

q (p. 87) i. —— *Bank taking mortgage—Local manager—Without written authority.*] — *Held:* sufficient. — *Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

506 v a. —— —— ——.]—While it is very desirable, the absence of date is not fatal, as the Ordinance does not prescribe any form of affidavit.—BANQUE D'HOCHELAGA *v* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—**CAN.**

506 ix. —— *Discrepancy in date.*]—A chattel mtge. is not invalidated by a discrepancy in dates between the affidavit of execution & the affidavit of *bonâ fides*, due to clerical error.—LECKIE *v.* DRIVER, [1936] 2 D. L. R. 703; O. R. 325.—**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—B.

sk. *Presumption of accuracy—Absence of evidence to rebut.*]—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

g (p. 88) i. —— *Necessity for affidavit—Bill executed under corporate seal of company.*]—LIVERGOOD *v.* TAYLOR, [1920] 3 W. W. R. 62.—**CAN.**

g (p. 88) ii. *S. P.* LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—**CAN.**

k (p. 88) i. —— —— ——.]—The absence of the date of execution of a chattel mtge. from the affidavit of the witness renders the mtge. invalid.—NORTH AMERICAN LUMBER CO., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

k (p. 88) ii. —— —— ——.]—*Re* LAWSON, *Ex p.* SHANKEY, [1925] 1 D. L. R. 1100.—**CAN.**

n (p. 88) i. —— —— ——.]—The affidavit must strictly comply with the form in the statute, or the mtge. is void against creditors of mtgor.—*Re* RAPER, *Ex p.* JAMIESON, [1924] 4 D. L. R. 789; 5 C. B. R. 184.—**CAN.**

p (p. 89) i. —— —— —— *Omission of material fact.*]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., ERMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—**CAN.**

d (p. 90) i. —— —— *Misstatement—Whether bill vitiated.*]—*Re* BLAIR, *Ex p.* MAPLE LEAF MLLG. CO. (Ont.), [1927] 3 D. L. R. 477; 8 C. B. R. 329.—**CAN.**

r (p. 91) i. —— —— ——.]—KEOUGH *v.* PRICE (1877), 27 C. P. 309. —**CAN.**

r (p. 91) ii. —— —— *Not filled in.*]—*Held:* the affidavit of *bona fides* was insufficient.—MCINTYRE *v.* UNION BANK (1885), 2 Man. L. R. 305. —**CAN.**

PART V. SECT. 5, SUB-SECT. 5.—D.

596 iii. —— *Not stated in mortgage—Stated in affidavit.*]—The statement of the address of the agent of mtgee. in the affidavit of *bona fides* is sufficient to satisfy the statutory requirements, although mtgee.'s address is not stated in the mtge. itself.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—**CAN.**

PART V. SECT. 5, SUB-SECT. 8.

l (p. 101) i. —— ——.]—If the mtgee., during the currency of a mtge. & before renewal becomes necessary, takes actual possession of the goods & makes no sale or change of title, the mtge. remains valid & effective without renewal.—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—**CAN.**

l (p. 101) ii. *S.P.*—*Re* BLACKBURN, *Ex p.* MOFFATT, [1925] 2 D. L. R. 1206; 5 C. B. R. 698.—**CAN.**

613a. —— —— **Unless possession taken.**]—In Dec. 1926, T. executed a bill of sale to one H., which was registered & duly re-registered in May, 1926, five years later. In Dec. 1926, V., son of T., took a written transfer of the bill of sale & paid off the creditor. At the date of the transfer T. & his wife & V. & his wife were all living in the same house. Nothing was ever paid by T. to V., & in Apr. 1927, V. gave him notice of his intention to seize the property comprised in the bill of sale, & according to his own story took formal possession of the property comprised in it. In Mar. 1928, V. & his wife left the house he was living in with T. & went to another house near, leaving a few of the chattels covered by the bill of sale behind for the use of his mother, brother & sister, but taking away the rest. In May, 1931, T. was made a bkpt. On a claim by the trustee in bkpcy. against V. to the property comprised in the bill of sale & also to the proceeds of sale of certain furniture (which was also comprised therein) on the ground that the bill of sale had not been re-registered in May, 1931, as required by Bills of Sale Act, 1878 (c. 31), s. 11, & Bills of Sale Act, 1882 (c. 43), s. 8 :—*Held :* resp. V. took possession of the chattels in Apr. 1927, & as regards those he did not remove when he left the house in Mar. 1928, he allowed his mother to retain them for her use & that of his brother & sister. He had therefore obtained the legal title to the chattels in Apr. 1927, & no re-registration of the bill of sale was necessary.—*Re* TOOTH, TRUSTEE *v.* TOOTH, [1934] Ch. 616 ; 102 L. J. Ch. 315 ; 151 L. T. 424 ; [1933] B. & C. R. 146.

Part VI.—Avoidance.

648. *Add. Annotation :*—**Consd.** Shears *v.* Jones, [1922] 2 Ch. 802.

663. *Add. Annotation :*—**Refd.** Thomas *v.* Metropolitan Housing Corpn., Ltd., [1936] 1 All E. R. 210.

664. *Add. Annotation :*—**Refd.** Thomas *v.* Metropolitan Housing Corpn., Ltd., [1936] 1 All E. R. 210.

672. *Add. Annotation :*—**Expld.** & **Apld.** French *v.* Gething, [1922] 1 K. B. 236.

673. *Add. Annotation :*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

673a. —— ——.]—By a post-nuptial deed in May, 1914, a husband gave his wife certain household furniture in the house in which the husband & wife lived together. The furni-

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n (p. 102) i. —— ——.]—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—**CAN.**

o (p. 102) i. —— ——.]—*Re* KERR, *Ex p.* MARTIN (Ont.), [1926] 4 D. L. R. 705 ; 7 C. B. R. 605.—**CAN.**

t (p. 102) i. —— *Statement filed after proper time.*]—*Held :* the chattel mtge. was void.—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—**CAN.**

616 iii. —— —— ——.]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465 ; 70 D. L. R. 25.—**CAN.**

616 iv. —— —— ——.]—MCDONALD *v.* CAREY, [1923] 3 D. L. R. 1018 ; 2 W. W. R. 972.—**CAN.**

616 v. —— —— ——.]—When an order permitting the filing of a renewal statement is obtained on an *ex parte* application while the question of the rights of the chattel mtgee. are *coram judice* in other proceedings, the mtgee.'s position should not be taken to have been bettered in any way thereby.—*Re* BILL'S ESTATE, [1924] 4 D. L. R. 876 ; 3 W. W. R. 475.—**CAN.**

616 vi. —— —— *From what date time for subsequent renewals fixed.*]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465 ; 70 D. L. R. 25.—**CAN.**

618 viii. —— ——.]—Where deft. purchased goods from mtgor., paying full value & knew of the mtge., but considered he was entitled as a matter of law to rely upon mtgee.'s failure to file renewal :—*Held :* deft. was not a purchaser in good faith.—**CANADIAN BANK OF COMMERCE** *v.* MUNROE, [1925] 1 D. L. R. 368 ; [1925] 1 W. W. R. 1.—**CAN.**

PART VI. SECT. 2.

r (p. 107) i. —— ——.]—LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—**CAN.**

r (p. 107) ii. —— ——.]—The creditors entitled to the protection of Chattel Mtge. Act, R. S. S., 1920 (c. 200), are all creditors of the seller, & not merely those whose claims have been prosecuted to judgment.—**FIRST NATIONAL BANK OF MINNEAPOLIS** *v.* MANN & CONWAY, [1925] 3 D. L. R. 648 ; [1925] 2 W. W. R. 525 ; 19 Sask. L. R. 546.—**CAN.**

r (p. 107) iii. —— ——.]—"Creditor" in Bills of Sale Act, R. S. A., 1922 (c. 151), s. 12, includes a simple contract creditor.—LAPIERRE *v.* TWIN CITY GRAVEL & CONCRETE CO., LTD. & TERWILLEGER (Alta.), [1926] 3 W. W. R. 775.—**CAN.**

s (p. 107) i. —— —— *Obtaining judgment subsequently to sale.*]—*Held :* "creditors."—MICKELSON *v.* NASH-SIMINGTON CO., [1923] 3 W. W. R. 843. —**CAN.**

t (p. 109) i. —— —— *Before judgment recovered by creditor.*]—*Held :* mtgee. was entitled to maintain her right as such.—HENRY *v.* SEXSMITH (1921), 64 D. L. R. 373 ; 50 O. L. R. 278.—**CAN.**

t (p. 109) ii. —— *Subsequent seizure & disposal of goods by grantee.*]—*Held :* a defective bill of sale could not be perfected by a seizure & disposal of the goods thereunder as against creditors who had already seized the goods under execution.—*Re* SCRAGG, [1925] 1 D. L. R. 240 ; [1924] 3 W. W. R. 905.—**CAN.**

t (p. 109) iii. —— *Grantor remaining in possession—Whether bill avoided.*]—SHERIFF *v.* MCKEEN (1883), 23 N. B. R. 184.—**CAN.**

d (p. 109) i. ——.]—SLOAN *v.* OTTAWA CAR MANUFACTURING CO. (1921), 64 D. L. R. 333 ; 50 O. L. R. 235.—**CAN.**

l (p. 109) i. ——.]—Resp., as trustee in bkpcy. of an automobile dealer in O., disputed the right claimed by applt., as vendor to the dealer under conditional sale agreements, in certain automobiles, in stock on the dealer's premises at the time of the assignment in bkpcy. Two of the automobiles, had been ordered by the dealer from the maker, & shipped to the dealer by freight, the bills of lading being sent to a bank with draft for price attached, so that the dealer could get possession by payment of the draft. The dealer, having ascertained the serial numbers of the cars, executed an "indenture," in reality a bill of sale, purporting to sell, assign, transfer, & set over the cars to applt. in consideration of the price represented by the drafts. The bill of sale was not registered. Applt. & the dealer then executed a conditional sale agreement (which was registered) by which applt. agreed to sell the cars to the dealer for the amounts represented by the drafts, the property in the cars to remain in applt. until the price was paid. Applt. then gave cheques to the dealer with which the dealer paid the drafts & got possession of the cars. In the case of the other cars, the dealer, when ordering one, sent its driver to the maker's factory with the dealer's blank cheque, which was filled in for the price & handed to the maker, the driver then taking possession of the car & driving it to the dealer's place of business, where it went into stock. The dealer then executed an "indenture," or bill of sale (not registered), of the car to applt., which then executed a conditional sale (registered) of it to the dealer for the original price, or 90 per cent. of it, & gave its cheque to the dealer for that sum, thus enabling the dealer to meet its cheque to the maker of the car :—*Held :* as against resp., the bills of sale & conditional sale agreements were invalid.—*Re* GRAND RIVER MOTORS, LTD., COMMERCIAL FINANCE CORPN., LTD. *v.* MARTIN, [1933] S. C. R. 591 ; 4 D. L. R. 375.—**CAN.**

o (p. 109) i. —— —— *Seizure under lien subsequently obtained.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922 ; 4 C. B. R. 140 ; *affd.*, 24 O. W. N. 513. —**CAN.**

sk. *Against principal—Agent granting bill without authority.*]—ALLEN *v.* NORFOLK CO-OPERATIVE DAIRY CO., LTD., [1923] N. Z. L. R. 715.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

h (p. 110) i. *Chattels subsequently taken by bargainee.*]—A bill of sale void under the statute cannot be made

ture remained in the house, which continued to be occupied by the husband & wife. The deed was not registered under 1878 Act. Execution creditors under a judgment recovered in 1920 against the husband levied execution at the house. The wife claimed the furniture. In an interpleader issue between the wife & the execution creditors :—*Held :* the furniture was not in the possession or apparent possession of the husband within 1878 Act, s. 8, nor in his order & disposition or reputed ownership within Married Women's Property Act, 1882 (c. 75), s. 10.—FRENCH *v.* GETHING, [1922] 1 K. B. 236 ; 91 L. J. K. B. 276 ; 126 L. T. 394 ; 38 T. L. R. 77 ; 66 Sol. Jo. 140 ; [1922] B. & C. R. 30, C. A.

678. *Add. Annotation :*—**Consd.** French *v.* Gething, (1921), 91 L. J. K. B. 276.

689. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

695. *Add. Annotations :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431 ; *Re* Wait, [1926] Ch. 962. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

704. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

706. *Add. Annotations :*—**Consd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Cotton *v.* Heyl, [1930] 1 Ch. 510 ; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

b. —— —— ——.]—The grantor of a bill of sale described the goods in the schedule thereto as his own, though, in fact, the true owner was pltf., his wife. The bill of sale was given as security for a loan to the grantor from deft., & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods : —*Held :* she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against deft. under 1882 Act, s. 5.—WESTEN *v.* FAIRBRIDGE, [1928] 1 K. B. 667 ; 92 L. J. K. B. 577 ; 129 L. T. 221 ; 67 Sol. Jo. 403 ; [1923] B. & C. R. 86.

710a. —— —— **Voluntary deed of gift by husband —Declared void after date of bill.**]—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under 1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale :—*Held :* until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—HARRODS, LTD. *v.* STANTON, [1923] 1 K. B. 516 ; 92 L. J. K. B. 403 ; 128 L. T. 685 ; [1923] B. & C. R. 70, D. C.

718. *Add. Annotation :*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

719. *Add. Annotation :*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

722. *Add. Annotations :* — **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249 ; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukassow (1924), 40 T. L. R. 837.

723a. Owner—Statutory declaration that goods belonged to grantor.]—WESTEN *v.* , No. 708a, *ante*.

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valid by any subsequent possession taken by the bargainee.—KIPPAN *v.* MCCAW, [1924] 1 D. L. R. 601 ; 1 W. W. R. 65 ; 34 Man. L. R. 64.—**CAN.**

b (p. 114) i. —— ——.]—YOUNG *v.* MAGEE, [1924] 3 D. L. R. 426 ; 2 W. W. R. 816 ; 20 Alta. L. R. 431.—**CAN.**

675 iii. —— *Grantee daughter of grantor.*]—A father living with his daughter in a house owned by him sold to her the furniture in the house for a sum of money, which she immediately paid, & a sale note specifying the articles sold was signed by him. There was no delivery of possession, & the furniture remained in the house, & both parties continued to live there :—*Held :* the transaction being *bonâ fide*, possession of the furniture must be deemed to have passed with the title at the time of sale, the sale note therefore was not a document conferring power to seize or take possession & did not require registration as a bill of sale. —BALSARINI *v.* LEWIS, [1931] Argus. L. R. 374.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.—B.

1 (p. 116) i. —— ——.]—The "change of possession" required by Bills of Sale Ordinance, C. O., 1898 c. 43), s. 9, must be open.—DOMINION LUMBER CO. *v.* ALBERTA FISH CO., [1921] 3 W. W. R. 619.—**CAN.**

r (p. 116) i. —— .]—STRAKER *v.* NORTH OF SCOTLAND CANADIAN MTGE. CO., LTD., [1932] 1 W. W. R. 354.—. **CAN.**

si. *Goods sold—Actual change of possession—Knowledge of creditor.*]—Where there has been an actual sale of goods, &, as between the parties, an actual change of possession, knowledge of that change by a particular creditor will be sufficient as to him to satisfy the requirements of Bills of Sale & Chattel Mtge. Act with respect to change of possession, whether the rest of the public knew of it or not.—MARCQ *v.* BERTHOLET, [1928] 2 D. L. R. 691 ; [1928] 1 W. W. R. 843 ; 37 Man. L. R. 307.—**CAN.**

sm. *Chattel mortgage on crop—Given after hiring agreement substituted for lease.*]—FRANCIS *v.* BOCZ (Sask.), [1929] 4 D. L. R. 38.—**CAN.**

so. *Validity of sale against creditors of bargainee.*]—Under Bills of Sale & Chattel Mtge. Act, R.S.O., 1927, s. 8, a sale by a bargainor, by being the owner, unaccompanied by possession is not void against the creditors of the bargainee.—*Re* LAUTENSCHLAGER, [1934] 3 D. L. R. 513 ; O. R. 507.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

686 xi. ——.]—LIQUID CARBONIC CO. *v.* ROUNTREE, [1924] 1 D. L. R. 1092 ; 54 O. L. R. 75.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.

740 i. *Second bill to cure invalidity—Second bill valid.*]—Where goods have been sold *bonâ fide* & a bill of sale given which is invalid because it was not duly registered, & the seller gives the buyer a new bill of sale, even after the period for registration dating from the execution of the first, which is registered before the seller's creditors are in a position to proceed against the

Part VII.—Rights and Liabilities of Parties.

754. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

761a. —— **Seizure under void bill.**]—THOMPSON *v.* WARD (1858), 31 L. T. O. S. 86.

762. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

809. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

goods, it will entitle the buyer to hold them as against the creditors.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546; *revsg.*, [1925] 1 W. W. R. 899.—**CAN.**

t i. —— —— ——.]—Although the provisions of Chattels Transfer Act, 1924, require that the true bargain between the parties to an instrument shall be recorded at the time when the instrument is registered, yet there is nothing in the Act from which it can be inferred that a registered instrument is to become void if it be varied by a subsequent agreement which is made between the same parties & which is itself unregistered.—GUARDIAN, TRUST & EXECUTORS CO., LTD. *v.* EQUITABLE LOAN & FINANCE CO., LTD., [1929] N. Z. L. R. 702.—**N.Z.**

sm. *Second bill invalid—First bill valid only between parties.*]—TOPHAM *v.* MOTOR SECURITIES CO., FEDERAL MOTOR CO. *v.* TOPHAM (B. C.), [1928] 3 D. L. R. 153; *affd.*, [1929] 1 D. L. R. 995; 1 W. W. R. 116; 40 B. C. R. 375. —**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

c i. ——.]—TULLY *v.* ANDREWS 1921), 59 D. L. R. 687.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 3.

756 x. —— ——.]—DORMAN *v.* CRAPPER (1914), 27 W. L. R. 599; 6 W. W. R. 551; 17 D. L. R. 121; 7 Sask. L. R. 229.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

xi. —— ——.]—WARNER *v.* DORAN (1931), 2 M. P. R. 574.—**CAN.**

h i. —— *Insecurity clause.*]—A chattel mtge. on a retail merchants' stock-in-trade & fixtures provided that if the mtgee. should "feel unsafe or insecure or deem the goods & chattels thereby covered in danger of being sold or removed then it shall be lawful for him to seize said goods & chattels." The mtge. also gave a right to seize on any default in payment occurring simpliciter. It also authorised the mtgee. on a seizure being made to sell the goods & retain "such money as may be due" under the mtge. plus expenses incurred by him; & provided that on default in payment the mtgee. would become absolute owner of the goods in law apart from equity :—*Held :* the right to seize because of a feeling of insecurity was not dependent upon there being a default in payment at the time of the seizure but was a power separate from & independent of the powers arising on such default.—RICHARDS *v.* HANSON & HANSON, [1935] 3 W. W. R. 144; 50 B. C. R. 245.—**CAN.**

sg. *Seizure under insecurity clause.*]—Insecurity clauses in a chattel mtge. are strictly construed & their terms must be rigidly complied with. In order to avail himself of an insecurity clause in a chattel mtge. the mtgee. must proceed, not upon an imaginary, whimsical or arbitrary belief, but upon an honest, sincere belief based on reasonable grounds, & if he invokes such clause to uphold a seizure he must have made the seizure because of that belief, & not for any other reason. —MEINCKE *v.* CITY DAIRY, LTD. (No. 2), [1932] 2 W. W. R. 398; 40 Man. L. R. 465.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—B.

d i. —— *Proceedings to cancel principal security.*]—Where it was the intention that a breach of agreement to purchase land should give a right of distress under a collateral chattel mtge. : —*Held :* the right to seize under the mtge. was not curtailed by reason of proceedings to cancel the agreement.—COOK *v.* ORR, [1924] 1 D. L. R. 920; 1 W. W. R. 1027.—**CAN.**

d ii. —— *Principal security satisfied.*]—AMHERST BOOT & SHOE CO. *v.* CARTER (N. B.) (1922), 70 D. L. R. 110.—**CAN.**

sn. *Exemptions Act*, 1920 (c. 51)—*Extent of exemption—Not dependent on prior dealings with property.*]—A chattel mtgor.'s right under Exemptions Act, 1920 (c. 51), s. 3, to claim that certain of the mortgaged chattels are exempt from seizure under the mtge. does not depend in any way on his dealings with the mortgaged property prior to the seizure. Therefore where a mtge. covered thirty horses the fact that prior to the seizure the mtgor. sold ten of them did not disentitle him to claim four of the remaining twenty as exempt; four being the number allowed him by said Act.—BURROWS *v.* JOHNSTON (Sask.), [1928] 4 D. L. R. 865; [1928] 3 W. W. R. 337.—**CAN.**

so. —— *Debtor resident outside province.*]—The fact that a debtor is not a resident of Saskatchewan does not disentitle him to the benefits of Exemptions Act, R. S. S., 1920.—MCDERMID *v.* WENZEL (Sask.), [1929] 1 D. L. R. 1083; [1929] 1 W. W. R. 780.—**CAN.**

sp. *Whether seizure amounts to distress.*]—Where there is a legal distress it must be exhausted before concurrent remedies can be enforced. The seizure in question herein, made under a chattel mtge. which gave a right to distrain as for rent :—*Held :* not to be a distress, but an exercise of the other provisions of the mtge. authorising the seizure & sale of the goods.—COMMERCIAL FINANCE CORPN., LTD. *v.* WILSON, [1931] 2 W. W. R. 578; 3 D. L. R. 601.—**CAN.**

sq. *Necessity for seizure by sheriff—Distress Act, R. S. S.*, 1930, *s.* 6—*What amounts to "chattel mortgage."*]—A document which although in form an absolute bill of sale is in reality a mtge. is a "chattel mtge." within sect. 6 (1) of Distress Act, R. S. S., 1930, which provides that no chattels covered by a chattel mtge. shall be seized or sold except by the sheriff or a person authorised by him, & also within sect. 3 of Exemptions Act, R. S. S., 1930, which provides the right to set up a claim of exemption in the case of a seizure under a chattel mtge.—DRIEDGER *v.* SCHMIDT, [1931] 3 W. W. R. 514.—**CAN.**

sv. *Grantee takes subject to existing execution.*]—A bargainee in a bill of sale or a chattel mtgee. must take subject to any execution against the bargainor or mtgor. in the sheriff's hands, at the date of execution of the bill of sale or chattel mtge., with or without notice thereof & whether or not a seizure has been made.—MUTUAL FINANCE CORPN., LTD. *v.* GANLEY, [1934] O. R. 1; 1 D. L. R. 451.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—C.

785 ii. —— *Rights of creditors.*]—*Re* BERRINGER, [1930] 1 D. L. R. 882; 11 C. B. R. 221.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

y i. —— —— ——.]—KNIGHT *v.* T. S. PATTILLO CO., [1927] 3 D. L. R. 13; 59 N. S. R. 357.—**CAN.**

y ii. —— *Deduction of expenses of realisation.*]—YUKON HARDWARE CO. *v.* MCLENNAN (Y. T.) (1905), 2 W. L. R. 294.—**CAN.**

sq. *Necessity to obtain leave of court —Jurisdiction of court on application.*] —RUDDER *v.* LUNDIN, *Re* EXTRA-JUDICIAL SEIZURES ACT, [1922] 2 W. W. R. 974; 67 D. L. R. 657.—**CAN.**

sr. —— *For mortgagee to bid at sale.*] —STEWART *v.* COCCIOLONE, [1930] 3 W. W. R. 141; 4 D. L. R. 876.—**CAN.**

sw. *Title to goods not passing to grantor until paid for—Notice to purchaser.*]—The purchaser under a bill of sale of chattels made from lumber who has notice that the title to the lumber would not pass until paid for must account to the seller of the lumber.—FIDELITY LUMBER CO. *v.* ROOTE, [1934] 3 D. L. R. 158; 48 B. C. R. 429.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. —— —— ——.]—KING *v.* KUHN (1887), 4 Man. L. R. 413.—**CAN.**

802 iv. —— ——.]—Where a trader gives a chattel mtge. upon his stock-in-trade & it is shown either by the express terms of the mtge., or by necessary implication, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, *bonâ fide*, & in the ordinary course of business, will obtain title to such goods freed from the mtge.; but if the mtge. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.—SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. *v.* CANADIAN PACIFIC RY. CO., [1924] 3 D. L. R. 525; 2 W. W. R. 910.—**CAN.**

q i. —— ——.]—GRAVES *v.* WASKESIU MILLS, LTD., [1934] 2 W. W. R. 529.—**CAN.**

r i. —— *Prior mortgage.*]—The purchaser from a mtgor. in good faith of movables mortgaged without possession takes them free from the mtgee.'s lien.—BACKER, KLORASANCE *v.* AHMED ESMAIL JAMAL (1927), I. L. R. 5 Ran. 633.—**IND.**

807 ii a. —— —— ——.] A second chattel mtge. made in good faith, & for valuable consideration, takes priority over a prior unfiled chattel mtge., even if the second mtgee. has actual notice of the prior mtge.—ROFF *v.* KRECKER (1892), 8 Man. L. R. 230.—**CAN.**

810 i a. —— *By bill of sale.*]—D, executed a bill of sale, duly registered, assigning to the Crown (*inter alia*) all after-acquired chattels. D. subse-

824. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

830a. —— ——.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum.* An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £450 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov. 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemption in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum.* The latter deed was not registered as a bill of sale under the Bills of Sale Acts :—*Held :* the deed was not a " transfer or assignment " of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely upon the registered bill of sale as assignee thereof.—MARSHALL & SNELGROVE, LTD. *v.* GOWER, [1923] 1 K. B. 356 ; 92 L. J. K. B. 499 ; 128 L. T. 329 ; [1923] B. & C. R. 81, D. C.

831. *Add. Annotation :*—**Consd.** Marshall & Snelgrove *v.* Gower, [1923] 1 K. B. 356.

837. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

846. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

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quently executed in favour of deft. another bill of sale over certain farm implements acquired since the first bill of sale. Upon the sale of these implements the Crown claimed the proceeds on the ground that upon their acquisition they became subject to the security of the Crown. Deft. was aware that the Crown held a chattel security, but believed it comprised other chattels than those contained in his security :—*Held :* the title acquired by the Crown was equitable only, & since deft. acquired a good title at law for value & without notice of the special provision in the Crown's security, the legal title prevailed over the equitable title : & deft.'s knowledge of the existence of the former bill of sale did not amount to constructive notice of its contents.—R. *v.* CANTERBURY FARMERS CO-OPERATIVE ASSOCN., LTD., [1924] N. Z. L. R. 513.—**N.Z.**

sd. *Bankruptcy of grantor—Bill renewed owing to mistake after bankruptcy.*] —A renewal of a chattel mtge. permitted, owing to honest mistake, after bkpcy. of the mtgor. intervened, is a valid security against mtgor.'s trustee in bkpcy.—*Re* DAINTY CONFECTIONS, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* HOPPER, [1937] 1 D. L. R. 249.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—B.

r i. —— *Title of chattel mortgagees not derived from " tenant " within Distress Act, R. S. A.*, 1922 (c. 97), *s. 5—Mortgagees protected from distress.*]—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85 ; [1927] 2 W. W. R. 35.—**CAN.**

814 ii. —— *After removal of goods by grantor.*]—Deft. leased a house to P., who gave a bill of sale of goods to pltf. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises ; deft. followed them & distrained for the rent ; pltf. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress :—*Held :* deft. was liable.—PIDGEON *v.* MILLIGAN (1871), N. B. Dig. 282.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—C.

819 iii. —— *Irrigation district—Postponed to mortgagee to secure price of seed grain.*]—By virtue of the amendment of 1923 (c. 26), to Bills of Sale Act, the rights of a mtgee. under a chattel mtge. given to secure the price of seed grain are superior to those of an irrigation district resting on a distress levied on the mortgaged crop for arrears of rates due by the mtgee.—GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY *v.* BOARD OF TRUSTEES OF LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1925] 4 D. L. R. 522 ; [1925] 3 W. W. R. 475.—**CAN.**

819 iv. —— *Assessment of Workmen's Compensation Board.*] — The Workmen's Compensation Board seized chattels under execution for the amount of an assessment due the Board. Mtgees. of the property under a prior mtge. claimed the goods so seized. On an issue directed to determine whether the goods were those of the Board as against the mtgees., the judge decided in favour of the mtgees. & the Board appealed :—*Held :* appeal should be allowed.—WORKMEN'S COMPENSATION BOARD *v.* SUMAS OIL & GAS CO., LTD., [1933] 2 W. W. R. 121 ; 3 D. L. R. 489 ; 47 B. C. R. 12.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.

sp. *To sue—Debt repayable on demand—Whether demand necessary.*]—Under a mtge. payable on demand where the debt is a present one the mtgee. may sue the mtgor. forthwith without first making demand upon him. Under a chattel security providing for the repayment of a sum " upon demand " & importing the covenants, powers, provisions, agreements & conditions which by virtue of Chattels Transfer Act, 1924, are to be implied in instruments by way of security, a demand by notice in writing is necessary, & the covenant to pay " upon demand " imports a covenant not to sue except after demand.—BROWN *v.* AIMERS, [1934] N. Z. L. R. 414 ; G. L. R. 359.—**N.Z.**

PART VII. SECT. 3.

a i. —— ——.]—In order for an assignee of a chattel mtge. to recover the debt secured thereby in an action by him alone against mtgor.. his assignment must be absolute & in writing & notice thereof in writing must have been given to mtgor.—BELLEMARE *v.* GAMACHE, [1921] 2 W. W. R. 564.—**CAN.**

b i. ——.]—The assignee of a bill of sale & lien notes, which are in effect a chattel mtge., can stand in no better position than the original holder thereof, & must hold the same subject to existing equities, & he is liable in damages for any unwarranted sale by him of the chattels covered by the bill of sale & lien notes.—SCOTT *v.* MOOSE JAW MOTORS, LTD. & J. HANNA, LTD., [1924] 4 D. L. R. 279 ; 2 W. W. R. 1234.—**CAN.**

b ii. ——.]—TRADERS TRUST CO. *v.* CRAWFORD, [1926] 1 D. L. R. 1167 ; 58 O. L. R. 381.—**CAN.**

PART VII. SECT. 4.

g i. —— *Chattels taken by mortgagee.*] —TINANT *v.* SIMON (1922), 67 D. L. R. 773.—**CAN.**

BONDS.

Part III.—Validity.

119a. —— **Warden of fleet—Pleading.**]—HUGGINS *v.* BAMBRIDGE (1740), Willes, 241; 125 E. R. 1152.

155a. ——.]—If a bond to secure an annuity contain a recital of the payment of the consideration, & the annuity has been paid for several years, the actual payment of the consideration will be presumed, though there be no receipt indorsed, & though the subscribing witness have no recollection of the subject.—HASLAM *v.* DIGGLES (1824), 1 C. & P. 398; 171 E. R. 1247, N. P.

Part IV.—Execution.

194. *Add. Annotation:*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

Part V.—Interpretation.

269. *Add. Annotation:*—*Generally*, **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

Part VI.—Operation and Incidents.

313. After this case add:-
.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 80 (1).

317. *Add. Annotations:*—**Apld.** Lawrence *v.* Hayes, [1927] 2 K. B. 111. **Refd.** Humphery Wilson (1929), 141 L. T. 469.

338. After this case add:-
-.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 81.

Part VII.—Performance or Breach of Condition.

413. *Add. Citation:*—*sub nom.* MOORWOOD *v.* DICKENS, 3 Bulst. 148.

456. *Add. Citation:*—*sub nom.* FOREWOOD *v.* ν, 1 Roll. Rep. 296.

536. *Citations:*—For "BROWN'S CASE (1550), Benl. 8; Ben. & D. 35; 73 E. R. 937," read "BROWN'S CASE (1500), cited Benl. 8; Ben. & D. 35; 73 E. R. 937."

547. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naptha Export Agency, [1925] 2 K. B. 172.

Part VIII.—Amount Recoverable on Breach of Condition.

569. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

604a. —— —— ——.]—A joint & several bond was conditioned for payment of the principal money after six months' notice, & in the meantime for payment of interest on the usual quarter days. Default having been made in pay-

PART III. SECT. 3, SUB-SECT. 11.

sa. *Loan to infant secured by simple bond—Subsequent bond to cover same loan after majority attained.*]—Where a minor borrowed a sum of money, executing a simple bond for it, & after attaining majority executed a second bond in respect of the original loan plus interest thereon:—*Held:* a suit upon the second bond was not maintainable, as that bond was without consideration & did not come under Indian Contract Act, s. 25 (2).—SURAJ NARAIN *v.* SUKHU AHIR (1928), I. L. R. 51 All. 164.—**IND.**

PART III. SECT. 3, SUB-SECT. 13.

sb. *Penalty bond—Omission of penal sum in obligatory clause.*]—*Held:* this omission did not render the bond uncertain & ineffectual.—GREAT WEST LIFE ASSURANCE CO. *v.* CAMPBELL (Man.), [1928] 1 D. L. R. 263; 37 Man. L. R. 164; [1927] 3 W. W. R. 645.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

366 ii. —— *On both obligors.*]—*Held:* not necessary.—FORTUNE *v.* COCKBURN (1863), 22 U. C. R. 359.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

1 i. —— *Delivery at specified destination—Failure to re-land in Canada.*]—R. *v.* VANCOUVER BREWERIES, LTD., [1928] 4 D. L. R. 881.—**CAN.**

1 ii. —— ——.]—R. *v.* FIDELITY INSURANCE CO., [1928] 4 D. L. R. 965.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.

1 i. —— *Selection of land during lifetime of obligor & obligee.*]—BURNHAM *v.* RAMSAY (1872), 32 U. C. R. 491.—**CAN.**

sc. *To pay over half purchase-money on sale of land—Death of obligor & obligee before sale—Bond not charge on land.*]—J., the owner of certain land, executed a bond, which was registered, whereby, for himself, his heirs, exors. or administrators, he covenanted that, on his effecting a sale of the land, which however, was to be entirely at his option, he would pay A. half the purchase-money. He died without having effected a sale; & subsequently A. died. J. by his will devised the land to I. for life with remainder in fee to L. & they both joined in an agreement to sell to D.:—*Held:* without deciding whether the bond was in force as between J. & A.'s representatives, it did not constitute a charge on the land the liability thereunder being merely of a personal character.—*Re* EAGAN & DAWSON (1909), 18 O. L. R. 638; 13 O. W. R. 694.—**CAN.**

PART VIII. SECT. 3.

q i. —— *Conveyance of land—Failure to obtain title.*]—*Held:* the damages were not confined to the purchase-money paid & interest.—PLUMER *v.* SIMONTON (1858), 16 U. C. R. 220.—**CAN.**

ment of one quarter's interest, as it was said, through inadvertence, the obligee gave notice to pay the principal, & the next day brought actions on the bond against the several obligors:—*Held:* the ct. had no power to stay the proceedings on payment of the interest due & costs.—WHEELHOUSE *v.* LADBROOKE (1858), 3 H. & N. 291; 27 L. J. Ex. 307; 31 L. T. O. S. 104; 4 Jur. N. S. 417; 157 E. R. 481.

628. *Annotation:*—**Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

Part IX.—Assignment.

680. *Add. Annotation:*—**Apld.** *Re* City Life Assce., [1926] Ch. 191.

691. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part X.—Discharge.

695. *Add. Annotation:*—*As to* (1) **Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

700. *Add. Citation:*—Cited 6 Co. Rep. 44 b.
Add. Annotation:—**Refd.** Ene's Case (1627), Litt. 58.

701a. *S. P.* ENE'S CASE (1627), Litt. 58; 124 E. R. 135.

712. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

749. *Add. Annotation:*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

751. *Add. Annotation:*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

770. *Add. Annotation:*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

796a. —— **Payment by one—Whether co-obligor released.**]—Assignment of bond to co-obligor, who pays it, is of no use.—WOFFINGTON *v.* SPARKS (1754), 2 Ves. Sen. 569; 28 E. R. 363.

803. *Add. Annotation:*—**Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

Part XII.—Actions on Bonds.

827. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

828. *Add. Annotation:*—**Consd.** Way *v.* Bishop, [1928] Ch. 647.

841. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

848. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

850. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

853. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

888. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

947a. —— ——.]—CANNEL *v.* BUCKLE (1724), 2 P. Wms. 243; 2 Eq. Cas. Abr. 23; 24 E. R. 715, L. C.

Annotations:—**Refd.** Harvey *v.* Ashley (1748), 3 Atk. 607; Drury *v.* Drury (1761), 2 Eden, 39; Wright *v.* Cadogan (1764), 2 Eden, 239; Durnford *v.* Lane (1781), 1 Bro. C. C. 106; Caruthers *v.* Caruthers (1794), 4 Bro. C. C. 500; Field *v.* Moore, Field *v.* Brown (1855), 7 De G. M. & G. 691.

950a. ——.]—WATKYNS *v.* WATKYNS (1740), 2 Atk. 96; 26 E. R. 460.

Annotation:—**Refd.** Sleech *v.* Thorington (1754), 2 Ves. Sen. 560.

953. *Add. Annotation:*—**Refd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

PART XII. SECT. 2.

860 iii. —— *Bond in penal sum.*]—Summary judgment cannot be obtained in an action on a bond in a penal sum guaranteeing the payment of a smaller sum.—WESTERN DOMINION INVESTMENT CO. *v.* McN [1925] 1 W. W. R. 566.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 3.

3m. *Extension of time for payment in consideration of higher rate of interest.*]—*Held:* the proper time for applying to amend in order to raise the above defence was at the trial, & not on appeal.—WESTERN DOMINION INVESTMENT CO. *v.* MACMILLAN, [1925] 4 D. L. R. 562.—**CAN.**

PART XII. SECT. 6.

6 i. —— *Alternative pleas of payment & denial of execution.*]—The plea of payment will not amount to an admission of the bond, & will not relieve pltf. from the necessity of proving the alleged loss of the bond.—MUHAMMAD ZAFAR *v.* ZAHUR HUSAIN (1926), I. L. R. 49 All. 78.—**IND.**

PART XII. SECT. 8.

8 i. —— *At instance of obligee of earlier bond—Obligor's property insufficient to satisfy both bonds.*]—*Held:* there was no equity to restrain proceedings on the judgment obtained by the obligee of the second bond.—

11. —— *Of fulfilment of condition of bond.*]—CONSOLIDATED DISTILLERIES, LTD. *v.* R., [1931] S. C. R. 283; 2 D. L. R. 912.—**CAN.**

19 Gr. 530.—**CAN.**

BOUNDARIES, FENCES AND PARTY-WALLS.

Part I.—Boundaries.

8. *Add. Citation :*—109 L. T. 820.

10. *Add. Annotation :—Generally,* **Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

39. *Add. Annotation :*—**Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

94. *Add. Annotations :*—**Consd.** Brighton & Hove General Gas Co. *v.* Hove Bungalows, [1924] 1 Ch. 372. **Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

97. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

PART I. SECT. 1, SUB-SECT. 1.

c i. ——.]—A grant of land to within one chain of a river, means to within one chain of the edge of the river, not of the top of the bank.—STANTON *v.* WINDEAT (1843), 1 U. C. R. 30.—**CAN.**

ss. *Boundary in plan running in straight line—Deviation for convenience.*]—Lands owned by pltf. & deft. were described as bounded in the one case on the north & in the other on the south side of the "C. Rd." The road in the original grant & the plan attached thereto, was shown to run in a straight line between the lands of the two opposite proprietors. The line as laid out ran through a deep gully & for convenience the road at that point was directed to one side, returning to the described straight line further one :—*Held :* the line as shown upon the plan controlled the line by which the parties bounding upon the road had held.—BANKS *v.* BEALS, [1928] 1 D. L. R. 459 ; 59 N. S. R. 503.—**CAN.**

PART I. SECT. 1, SUB-SECT. 2.—A.

m (p. 264) i. ——.]—PIERS *v.* WHITING, [1923] 3 D. L. R. 879.—**CAN.**

p (p. 264) i. —— ——.]—KINGSTON *v.* HIGHLAND (1920), 47 N. B. R. 324.—**CAN.**

p (p. 264) ii. *S. P.* KANEEN *v.* MELLISH (1922). 70 D. L. R. 327.—**CAN.**

q (p. 264) i.——*Duty of surveyors.*]—R., who held a licence from the Government to cut timber on Crown lands, claimed that S., licencee of the adjoining lot, was cutting timber on his grant, & replevied logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that the lines of the land held under the licence of R. should be surveyed & established by named surveyors & the stumps counted, etc. :—*Held :* under this agreement the surveyors were bound to make a formal survey, & could not take a line run by one of them at a former time as the said boundary line. —SNOWBALL *v.* RITCHIE (N. B.) (1888), 14 S. C. R. 741.—**CAN.**

b (p. 264) i. —— —— ——.]—A.-G. FOR ONTARIO *v.* BOOTH (1923), 53 O. L. R. 374.—**CAN.**

d (p. 264) i. —— *Conventional line.*]—CROWLEY *v.* FEENEY (1932), 5 M. P. R. 248.—**CAN.**

f (p. 265) i. —— ——.]—Where adjoining owners erroneously assume that a certain line is the boundary between their properties & concur in the erection of a fence thereon, but neither has made any representations to the other & said concurrence is not the settlement of a dispute as to the boundary, the line so adopted is not binding on either owner when the error is discovered. — LES SOEURS DE MISERICORDE *v.* TELLIER, [1932] 2 W. W. R. 357 ; 40 Man. L. R. 351.—**CAN.**

sb. *Fence dividing cleared portions of adjoining lots—Whether uncleared portions divisible by continuation of line of fence.*]—Pltf. & deft. occupied adjoining lots for twenty years by a line & fence extending from the front through the cleared land. *Semble :* that, in the absence of any actual possession beyond the clearing, it must be considered that the possession from thence to the rear of the lot was intended to be a continuation of the line in the front.—BELYEA *v.* BELYEA (1857), 3 All. 588.—**CAN.**

PART I. SECT. 1, SUB-SECT. 3.

e. (p. 266) i. —— —— ——.]—A concession or base line had been run & posts planted on it upon an original survey, but the question was, how the side line of a lot was to be ascertained : —*Held :* the distance between the two nearest ascertained monuments on the base line should be measured & divided proportionately between the lots, making due allowance for roads, & the side line required should be run from the angle of the lot so ascertained. —CULP *v.* CULP (1857), 6 C. P. 466.—**CAN.**

r (p. 267) i. —— —— *Where mound missing.*]—KAJNER *v.* KOVACZ, [1922] 3 W. W. R. 102 ; 68 D. L. R. 793.—**CAN.**

r (p. 267) ii. —— —— ——.]—*Held :* evidence of the existence & location at one time of a certain mound, according to the rules governing surveys, was a proper way of establishing the boundary line.—CAIN *v.* COPELAND, [1922] 2 W. W. R. 1025 ; 67 D. L. R. 581 ; 15 Sask. L. R. 529.—**CAN.**

r (p. 267) iii. —— —— *Where posts destroyed by fire.*]—BARRY *v.* DESROSIERS (1908), 14 B. C. R. 126 ; 9 W. L. R. 633.—**CAN.**

r (p. 267) iv. —— ——.]—ARTLEY *v.* CURRY (1823-1900), 3 Ont. Dig. 5323.—**CAN.**

r (p. 267) v. —— —— *Point of commencement.*]—HOOVER *v.* SABOURIN (1874), 21 Gr. 333.—**CAN.**

t (p. 267) i. —— *When overplus apportioned.*]—Where three lots faced upon a certain street, & upon a survey being made it was found that there was more land upon the ground than was shown upon the plan, & the question arising as to whether this overplus of land should be added to one lot or apportioned between the three :—*Held :* the crucial question being the location of the north-east angle of one lot, & that point being ascertainable by measurement from the true & unalterable lines upon the plan in accordance with Surveyors Act, R. S. O., 1927, s. 12 (1), the principle of apportionment introduced by sect. 12 (3) had no application, as the sub-sect. only applies where the original stakes defining the angles of a lot cannot be found or their position satisfactorily established.—MARTIN *v.* KELLOG, [1932] O. R. 274 ; 2 D. L. R. 496 ; *affd.*, [1932] 4 D. L. R. 617.—**CAN.**

t (p. 267) ii. —— *Right to show true boundaries.*]—Parties adjoining a right of way are not estopped from showing the true boundaries by an incorrect survey.—SISTERS OF MERCY *v.* TELLIER, [1932] 3 D. L. R. 715.—**CAN.**

w (p. 269) i. —— *Survey not conclusive.*]—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

ss. *Monuments — Where placed — Whether position selected conclusive.*]—Monuments placed in compliance with R. S. O. 1877, c. 146, ss. 34, 35, 36 & 37, must be placed at the true corners governing points, or off-sets, or at the true ends of concession lines, & there is nothing in these sections making a survey thereunder or the placing of the monuments conclusive, whether right or wrong, & evidence may be received in contradiction.—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

ss. —— —— ——.]—*Held :* the intention of sect. 26 of Saskatchewan Surveys Act, 1924, which made sects. 56, 58, & 60-67 of Dominion Lands Surveys Act, 1908, c. 21 (Dom.), applicable to all lands, in the province which were originally Dominion lands was to adopt the provisions of those sects. for the purpose of all matters falling within the jurisdiction of the province with respect to such lands, & that, therefore, the area of each of the quarter sections in question was determined by reference to the monuments on the ground.—KRISTIANSEN *v.* SILVERSON (Sask.), [1929] 4 D. L. R. 252; 3 W. W. R. 322 ; *revg.*, [1929] 1 W. W. R. 256.—**CAN.**

sg. *Removal of boundary post—Form of information.*]—An information for removing a post lawfully placed by a land surveyor to mark the angle of a lot must contain the word "wilfully."—R. *v.* FISH, *Ex p.* SOBEY (1932), 4 M. P. R. 390.—**CAN.**

PART I. SECT. 1, SUB-SECT. 4.—C.

sl. *Decision of jury on view—Finality of.*]—COUTURIER *v.* OUELLETTE (1933), 6 M. P. R. 352.—**CAN.**

Part II.—Fences.

130. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

137a. **Danger created by highway authority—Road level raised—Adjoining owner not liable to fence.**]—Where a danger has been created on a highway by something done on the highway & not by anything done on the adjoining land, the owner of the adjoining land is not bound to make any alteration on or to his land to do away with that danger. Thus, where, in consequence of a highway having been made up by a highway authority, the level of the adjoining land, which is unfenced, has been lowered so as to cause a dangerous drop from the edge or kerb of the reconstructed highway, & a pedestrian slips down from the highway on to the adjoining land & is thereby injured, the owner of the adjoining land is not liable, but the highway authority is.—NICHOLSON *v.* SOUTHERN RY. CO. & SUTTON & CHEAM URBAN DISTRICT COUNCIL, [1935] 1 K. B. 558 ; 104 L. J. K. B. 265 ; 152 L. T. 349 ; 99 J. P. 141 ; 51 T. L. R. 216 ; 79 Sol. Jo. 87 ; 33 L. G. R. 140.

138. *Add. Annotations :*—**Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. **Refd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

139. *Add. Annotations :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

143. *Add. Annotation :*—**Refd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 558.

145. *Add. Annotations :*—*As to* (1) **Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332 ; Wilkins *v.* Leighton, [1932] 2 Ch. 106. **Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671 ; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

146. *Add. Annotation :*—**Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44.

148. *Add. Annotation :*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

154a. **Spiked iron fence—On bank.**]—*Held :* not a nuisance.—GIBSON *v.* PLUMSTEAD BURIAL BOARD (1897), 13 T. L. R. 273, C. A.

155. *Add. Annotations :*—**Consd.** Bromley *v.* Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44 ; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125 ; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

157. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

158. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

159. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

163. *Add. Annotations :*—**Consd.** Hardy *v.* C. L. Ry. (1920), 124 L. T. 136 ; Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44 ; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776 ; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125 ; Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602. **Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253 ; Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358 ; Compania Mexicana De Petraleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106 ; Sycamore *v.* Ley (1932), 147 L. T. 342 ; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101 ; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30 ; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

168. *Add. Annotations :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746.

169. *Add. Annotation :*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

171. *Add. Annotations :*—**Folld.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375 ; Symes & Jaywick Association Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551. **Refd.** Brighton & Hove Gas Co. *v.* Hove Bungalows (1923), 88 J. P. 61 ; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

171a. —— ——.]—Pltfs. were incorporated, under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1729 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former comrs. were vested in pltfs. who had power under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs.

PART II. SECT. 1.

11. ——.]—BIANCO *v.* BANKS (1932), 5 M. P. R. 295.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

sf. Park adjoining railway—No obligation on municipal corporation to construct fence.]—RICHARDSON *v.* CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801 ; 32 Can. Ry. Cas. 411 ; 60 O. L. R. 296.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—C. (a).

135 ii. ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietor of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road :—*Held :* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities, & action accordingly dismissed.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1929] S. C. 1.—**SCOT.**

alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land:—*Held:* (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea; (2) pltfs. had established their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore; the possession of pltfs. & of deft. being at most doubtful or equivocal the law attached possession to the title; deft., therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—CANVEY ISLAND COMRS. *v.* PREEDY, [1922] 1 Ch. 179; 91 L. J. Ch. 203; 126 L. T. 445; 86 J. P. 21; 66 Sol. Jo. 182; 20 L. G. R. 125.

Annotation:—**Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

172. *Add. Annotation:*—*As to* (1) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan B. C. (1929), 93 J. P. 173; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 3 All E. R. 908.

181. *Add. Annotation:*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

203. After this case add, "Power of commissioners to direct repair of fences, *see* COMMONS, No. 939a."

204. *Add. Annotation:*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

205. *Add. Annotation:*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

210. *Add. Annotation:*—**Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

213. *Add. Annotation:*—**Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

Part III.—Party-Walls.

215. Before this case add:—
See, now, Law of Property Act, 1925 (c. 20), s. 38.

223a. Law of Property Act, 1925 (c. 20)—Damage to party wall—Action by owner of one half—Measure of damages.]—Pltf. was by virtue of Law of Property Act, 1925 (c. 20), Sched. I, Part V, the owner of one half of a party wall divided vertically. He brought an action in respect of damage to the wall:—*Held:* he could only recover the damage to that half of the wall which was vested in him.—APOSTAL *v.* SIMONS, [1936] 1 All E. R. 207; 80 Sol. Jo. 205. C. A.

240. *Add. Annotations:*—*As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

249. *Add. Annotations:*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

250. *Add. Annotation:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

PART II. SECT. 2, SUB-SECT. 3.

p i. *Right to interfere with.*]—City of Victoria Official Map Act, 1880, & amending Acts, have reference to streets only:—*Held:* nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase & 20 years' possession.—CROWTHER *v.* BEAVEN (1884), 1 B. C. R. pt. 2, 116.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

r (p. 294) **i.** —— *Marsupial-proof—Question of fact.*]—Whether a fence is or is not marsupial-proof within sect. 171 of Land Acts, 1910-1927, is a question of fact for the adjudicating tribunal.—R. *v.* MAGISTRATES' COURT & ESMOND, *Ex p.* BEAZLEY, [1928] St. R. Qd. 349; 22 Q. J. P. 97.—**AUS.**

r (p. 294) **ii** —— *Material benefit to adjoining lessee — Determination of value.*]—Lessees of a holding erected a fence before Nov. 1, 1924. On June 1, 1927, the lessees filed a plaint in the magistrate's ct., whereby they claimed that the fence "is of material benefit," to deft., an adjoining holder. The magistrate determined the benefit as from Nov. 1, 1924:—*Held:* the time from which the magistrate must determine the value of the benefit cannot be earlier than the date of the plaint claiming that benefit under the sect.—R. *v.* POLICE MAGISTRATE AT BLACKALL & HART, *Ex p.* HART, [1928] St. R. Qd. 174; 22 Q. J. P. 47.—**AUS.**

sg. *Forest reserve.*] — It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in the Fence Ordinance.—MINISTER OF INTERIOR FOR CANADA *v.* NELSON, [1920] 1 W. W. R. 129.—**CAN.**

sl. *Duty not to plant trees alongside fence—Meaning of "alongside."*]—The word "alongside" in sect. 26 of Fencing Act, 1908, which prohibits a person from planting trees on or alongside any boundary line or fence without the previous written consent of the occupier of the adjoining land, must be construed as "contiguous" to, in its ordinary sense—*viz.*, "touching"—that boundary line or fence, & not in its loose sense as meaning "neighbouring." Therefore, young macrocarpa trees planted for a length of about 25 chains parallel to & at a distance varying from 2 ft. to 4 ft. from the boundary line or fence were held not to have been planted "alongside" such boundary line or fence.—GILBERT *v.* SAMPSON, [1934] N. Z. L. R. 137.—**N.Z.**

PART III. SECT. 1, SUB-SECT. 2.

so. *Duration.*]—Where on the erection of a building on each of two adjoining & separately owned lots, the owners agree to plans calling for a party wall & the use by each owner of part of the premises of the other & the buildings are so constructed, the right to such use will, in the absence of a reference to time, be held to continue during the existence of the two buildings as they were constructed.—SMITH *v.* CURRY (Man.), [1918] 2 W. W. R. 848; 42 D. L. R. 225.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C. (b)

e i. —— *Wall built & used only by adjoining owner.*] — *Held:* deft. was answerable, as the injury was the direct result of negligence in the original construction of the wall.—MCQUILLAN *v.* RYAN (1921), 64 D. L. R. 482; 50 O. L. R. 337.—**CAN.**

e ii. —— *Party wall undermined—Extent of liability.*]—JEFFREY (F. W.) & SONS, LTD. *v.* COPELAND FLOUR MILLS. FINLAYSON *v.* COPELAND FLOUR MILLS, [1923] 4 D. L. R. 1140; 52 O. L. R. 617.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

sp. *Remedy—Action for damages.*]—Where a mutual wall has been built so as to encroach on the property of one of the two adjoining owners, but was built in good faith under some mistake as to title & with the knowledge of, but without any protest from, him on whose land it encroaches, the owner of the building should not be compelled to remove the wall back to the boundary line; the remedy is in damages.—O'LEARY *v.* SMITH, [1924] 2 D. L. R. 521; [1924] 2 W. W. R. 227; 34 Man. L. R. 386; *on appeal* [1925] 2 D. L. R. 1022.—**CAN.**

251. *Add. Annotations :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235; Simpson *v.* Weber (1925), 133 L. T. 46. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

251a. Right of support—By adjoining house.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held :* pltf.'s allegations had not been substantiated by the evidence. *Semble :* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

257. *Add. Annotation :*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

258a. —— ——.]—If a wall is knocked down, the owner may maintain an action for the trespass, but he cannot, by omitting to rebuild it, hold deft. always responsible for any consequential damage (POLLOCK, C.B.).—FIRMSTONE *v.* WHEELEY (1844), 2 Dow. & L. 203; 13 L. J. Ex. 361.

Annotations :—**Refd.** Clegg *v.* Dearden (1848), 12 Q. B. 576; Smith *v.* Kenrick (1849), 7 C. B. 515.

271a. —— **No agreement for lease.**]—TAYLOR *v.* REED (1815), 6 Taunt. 249; 128 E. R. 1030.

Annotation :—**Refd.** Collins *v.* Wilson (1828), 1 Moo. & P. 454.

272. *Add. Annotation :*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

282. *Add. Annotation :*—**Consd.** London County Council *v.* Harling Street Owners, [1935] 2 K. B. 322.

309. *Add. Annotations :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191; Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

310. *Add. Annotations :*—*As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

Part IV.—Evidence of Boundaries.

323. *Add. Annotation :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

332. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

343. *Add. Annotation :*—*As to* (3) **Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

359. *Add. Annotation :*—**Apld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

402. *Add. Annotation :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

433. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

436a. —— —— **Title deeds—Nature of document misconceived.**]—There is no clear authority that in proceedings for the production of documents of title to land, the ct. will differentiate cases where boundaries are in dispute from other cases. Although the ct. is more ready to order production of documents in cases where boundaries are in dispute, it will apply to those cases the same principle which is applied to other cases where the title to land is in dispute, namely, the principle adopted by the Ct. of Appeal in *A.-G.* v. *Emerson*, No. 433, *ante*, that the assertion on oath by the party against whom production is sought that the documents which he objects to produce relate solely to his own title & do not tend to prove or support the case of his opponent will not be disregarded, unless the ct. is reasonably certain that the deposing party misconceived the nature or effect of those documents.—CHOWOOD, LTD. *v.* LYALL, [1929] 2 Ch. 406; 98 L. J. Ch. 451.

437. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

PART IV. SECT. 1.

318 ii. —— *Conversations between previous owners—Not admissible when title deeds are put in.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—**CAN.**

h i. —— *Surveyors giving conflicting evidence—Duty of court to accept evidence of surveyor making first examina-*
v. LANGENBURG RURAL
, [1920] 3 W. W. R. 706.
—**CAN.**

sq. *Subsequent conveyances — Acts of possession.*]—MATTHEWS *v.* GOODE (1923), 56 N. S. R. 543.—**CAN.**

st. *Survey marks of Crown agents.*]—Where a Crown grant describes the subject land by reference to the boundaries of a "measured portion," evidence of the measurements which were made & the survey marks which were erected or adopted on such portion by the Crown or its agents on the last occasion, preceding the grant, when such portion was measured as a portion for sale, is admissible for the purpose of ascertaining the boundaries of the Crown grant.—CURRIE *v.* CLARKE (1929), 29 S. R. N. S. W. 215; 46 N. S. W. W. N. 81.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 2.

334 iii. —— *Not private bounduries.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—**CAN.**

PART IV. SECT. 7.

426 iii. —— —— ——.]—McNEIL & HINGLEY, LTD. *v.* HILL (N. S.), [1928] 2 D. L. R. 954.—**CAN.**

BOUNTIES.

See CHARITIES; PRIZE LAW.

BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

Part II.—The Contract.

9. *Add. Citation :—revsg.* S. C. *sub nom.* STEWARDS & Co., LTD. *v.* R. (1900), 17 T. L. R. 111, C. A.

11a. —— **Communication of acceptance—What amounts to—Return of opened bills of quantities.**]—WILLCOCKS & BARNES *v.* PAIGNTON CO-OPERATIVE SOCIETY, LTD. (1930), 74 Sol. Jo. 247.

18. *Add. Annotations :*—**Refd.** Boot (London) *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118 ; Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

20. *Add. Annotations :*—**Consd.** *Re* Meyrick's Settlmt., Meyrick *v.* Meyrick, [1921] 1 Ch. 311. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

21. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

33. *Add. Annotation :*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

34. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

36a. **Contract between employer & third party for supply of materials—No liability to builder for delay.**]—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN., No. 58a, *post.*

36b. **Contract with owner of building estate—Implied warranties—As to workmanship & materials.**]—(1) In a contract with builders or with the owners of a building estate for the purchase of a house to be erected or in course of erection, there is an implied warranty by the vendors that the house shall be built in an efficient and workmanlike manner and of proper materials, and that it shall be fit for habitation.

(2) A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113 ; 100 L. J. K. B. 740 ; 144 L. T. 567 ; 75 Sol. Jo. 155.

36c. —— —— ——.]—PERRY *v.* SHARON DEVELOPMENT CO., LTD., [1937] 4 All E. R. 390, C. A.

36d. —— —— **House reasonably fit for habitation.**]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante.*

36e. —— **Representation as to material & workmanship—Amounts to collateral warranty.**]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante.*

Compare SALE OF LAND, No. 2922c, *post.*

36f. —— **Extent of duty—To purchaser.**]—A builder who builds a house for sale is under no duty either to a future purchaser or to persons who come to live in the house to take care that it is well constructed & safe.

PART II. SECT. 1.

1i. —— —— *Forfeiture of deposit.*]—BAYNES & HORIE *v.* VANCOUVER BOARD SCHOOL TRUSTEES (B. C.), [1927] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

3a. *Repugnant provisions.*]—A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a definite sum.—GIT *v.* FORBES (1921), 62 S. C. R. 1 ; 59 D. L. R. 155.—**CAN.**

3b. *Contract to erect house similar to another house.*]—By a building contract it was agreed that a house was to be erected similar to H.'s house :—*Held :* the house was to be similar to H.'s house in the sense that it was to have a general likeness in the principal points of materials, design, & workmanship.—MAYS *v.* ROBERTS (1928), S. A. S. R. 217.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—C.

3c. *Contract with Crown—Rent of plant.*]—Claimant contracted to construct certain public works in the harbour of Toronto, on a cost plus basis. It was (*inter alia*) agreed that the claimant would furnish the plant, for which he was to receive as rental thereof a certain percentage of its value per annum for a working season of 150 days ; this to be payable when each piece commenced operation, & to cease when determined by resp.'s engineer. A portion of this rented plant became locked in behind a coffer-dam constructed in connection with the works in question. It was properly there engaged on the works, but it could not be removed when its work was completed on account of the coffer-dam, & while so retained was not available for use, which condition of affairs was not due to any fault of the contractor :—*Held :* said portion of the plant never ceased to be part of the rented plant under the terms of the contract & was still retained for use on the works by resp.'s engineer & the claimant was entitled to recover rent therefor.—ROGER MILLER & SONS, LTD. *v.* R., [1930] S. C. R. 293 ; 2 D. L. R. 751 ; *affg.*, [1929] Ex. C. R. 136.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

3h. *Contract to put old houses "in first class shape."*]—*Held :* the phrase must have reference to their capacity for taking on repairs, which could be only those which their aged condition permitted.—HOUSE REPAIR & SERVICE CO., LTD. *v.* MILLER (1921), 64 D. L. R. 115 ; 49 O. L. R. 205.—**CAN.**

3k. *"Extra haul" & "overhaul."*]—The view of a contract advanced by resp. was that the contract phrases "extra haul" & "overhaul" have, by usage, in construction contracts, or at all events in railway construction contracts, a special & specific meaning ; & that they signify that the length of the haul in respect of which the contractor was entitled to charge for overhaul, was to be ascertained by taking the distance, measured along the centre line of the railway in process of construction, between the projections first, of the centre of mass of earth, to be excavated in making the cut, & second, of the embankment, & deducting therefrom 500 feet ; the projections being for this purpose the several points on the centre line nearest the respective centres of mass :—*Held :* the alleged usage had not been proven. It had been established that there was a practice widely followed of inserting in railway construction contracts a clause providing for the computation of payment for overhaul according to the method contended for by resp. ; but in the text books, engineering manuals & writings by engineers produced, there was no basis for the view that the effect of the words used in the present contract is, apart from such special stipulations, what was contended by resp.—GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO., [1929] 4 D. L. R. 161 ; S. C. R. 630 ; *revg.*, [1929] 1 D. L. R. 77 ; 35 C. R. C. 204 ; 40 B. C. R. 290 ; [1928] 3 W. W. R. 466 ; *revg.*, [1928] 3 D. L. R. 26 ; 35 C. R. C. 197 ; 40 B. C. R. 81.—**CAN.**

3m. *"Impracticable."*]—In a contract for diamond-drilling, the diameter of the bore was to be reduced where the continuation of the original size became impracticable for certain reasons :—*Held :* impracticable did not mean physically impossible nor commercially unprofitable, but impracticable in the sense in which an experienced driller would understand that term.—ADELAIDE OIL EXPLORATION CO., LTD. *v.* GOLDFIELDS DIAMOND DRILLING CO. (PROPRIETARY), LTD., [1932] S. A. S. R. 390.—**AUS.**

The principle laid down in *Donoghue* v. *Stevenson*, [1932] A. C. 562, is that there can be no duty cast upon the vendor without proximate relationship, of which the main test is whether there is reasonable opportunity for examination between the time of the sale or the doing of the work & the use or consumption of the article by the purchaser.—OTTO *v.* BOLTON & NORRIS, [1936] 2 K. B. 46; [1936] 1 All E. R. 960; 105 L. J. K. B. 602; 154 L. T. 717; 52 T. L. R. 438; 80 Sol. Jo. 306.

Annotation :—**Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

36g .—— —— **To stranger to contract.**]—OTTO *v.* BOLTON & NORRIS, No. 36f, *ante*.

38. *Add. Annotation :*—**Refd.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

39. *Add. Annotations :*—**Distd.** A.-G. *v.* Denby, [1925] Ch. 596. **Apld.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

43. *Add. Annotation :*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

45a. ——.]—MILLER *v.* LONDON COUNTY COUNCIL, No. 55a, *post*.

47. *Add. Annotation :*—**Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

51. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

55a. **Construction of clause.**]—(1) A building contract contained provisions under which the date for completion of the works was Nov. 15, 1931. Clause 31 of the contract provided that "it shall be lawful for the engineer if he shall think fit, to grant from time to time, & at any time or times by writing under his hand such extension of time for completion of the work & that either prospectively or retrospectively, & to assign such other time or times for completion as to him may seem reasonable." Clause 37 provided for the payment of liquidated damages for delay at a specified rate. The contractor did not complete the works till July 25, 1932, & on Nov. 17, 1932, the engineer issued a certificate granting an extension of time to Feb. 7, 1932, & certifying the amount due to the building owner as liquidated damages in respect of the period between Feb. 7 & July 25, 1932 :—*Held :* the words "either prospectively or retrospectively" did not confer on the engineer a right to fix the extension of time *ex post facto* when the work was completed. They empowered him to wait till the cause of delay had ceased to operate, & then "retrospectively" with regard to the causes of delay to assign to the contractor a new date to work to. The extension admittedly proper not having been granted in time no liquidated damages were payable.

(2) The contractor claimed to be paid the first portion of the retention money, which by clause 41 was to be paid on the issue of the certificate of completion. The building owner relied on clause 42, which provided that "no sum or sums of money shall be considered to be due & owing to the contractor . . . unless the engineer shall in writing under his hand have certified or recommended the amount to be paid as such instalment or balance to the contractor." No such certificate had been given :—*Held :* the retention money claimed must be either an "instalment" or a "balance," & a condition precedent had not been complied with, so the action was premature.—MILLER *v.* LONDON COUNTY COUNCIL (1934), 151 L. T. 425; 50 T. L. R. 479.

56. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

58a. —— **Contract for supply between employer & third party.**]—A. co. carrying on the business of builders & decorators entered into a contract with a corpn. for the erection of two lodges & a park entrance. With the assent of the builders, the corpn. conducted the negotiations with a stone firm for the supply of the stone which was required for the work & fixed the quantity & price. The contract between the builders & the corpn. provided that the corpn. should pay the stone firm the price of the stone, to be deducted from the contract price. Owing to delay in delivering the stone the builders were unable to complete the work until some months after the date fixed for completion by the contract. In an action by the builders against the corpn. in respect of the loss arising to the builders by reason of such delay :—*Held :* there was no implied obligation on the corpn. under the contract between them & the builders to supply the stone; at the highest there was only an obligation on them to hold the benefit of the contract with the stone firm for the builders; & that "business efficacy" did not require that there should be implied an obligation on the corpn. to make good to the builders any loss which they might suffer by reason of the failure of the stone firm to deliver in time. Accordingly the corpn. were not liable to the builders for such loss.—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN. (1929), 93 J. P. 89; 27 L. G. R. 200.

59. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

65a. ——.]—By a contract in writing dated Feb. 21, 1912, defts. agreed to build a steamer for, & deliver her to, pltf. on or before Feb. 28, 1913. The contract contained the following exceptions clause :—"If the steamer is not delivered entirely ready to the purchaser at the above-mentioned time, the builders hereby agree to pay to the purchaser for liquidated damages, & not by way of penalty, the sum of £10 sterling for each day of delay & in deduction of the price stipulated in this contract, being excepted only the cause of force majeure &/or strikes of workmen of the building yard where the vessel is being built, or the workshops where the machinery is being made, or at the works where steel is being manufactured for the steamer, or any works of any sub-contractor." As a result of the universal coal strike of 1912 the works from which defts. obtained their

PART II. SECT. 3, SUB-SECT. 2.—C.

52 iii. —— ——.]—Where the architect ordered additional work, & at that time it was apparent that the work originally contracted for could not be completed within the time fixed, but there was no application for extension nor intimation from the owner of an intention to enforce a claim for damages for delay :—*Held :* the contract should not be construed so as to impose upon the contractor the obligation of completing the work, including additions, within the time fixed.—GRIER *v.* GEORGAS (1923), 54 O. L. R. 580.—CAN.

materials for other ships they were building got behindhand ; the ship in turn to be built before pltf.'s occupied the berth that was intended to be occupied by pltf.'s much longer than otherwise she should have done, & consequently pltf.'s steamer was late in being laid down. The steamer having been delivered after the contract date, pltf. claimed damages :—*Held :* (1) the general dislocation of the business of defts. & those from whom they obtained materials operating indirectly on the completion of pltf.'s steamer, by preventing the completion of the vessel prior in turn, constituted a case of force majeure within the exceptions clause & excused defts. in respect of the delay so caused ; (2) delay due to breakdown of machinery was, but delay due to bad weather was not, covered by the exception of force majeure.—MATSOUKIS *v.* PRIESTMAN & Co., [1915] 1 K. B. 681 ; 84 L. J. K. B. 967 ; 113 L. T. 48 ; 13 Asp. M. L. C. 68 ; 20 Com. Cas. 252.

Annotation :—**Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

68. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

70. *Add. Annotations :*—**Consd.** Alexander *v.* Webber, [1922] 1 K. B. 642. **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

71. *Add. Annotation :*—**Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

87a. When contractor entitled to.]—A building contract contained a clause, numbered 30, in these words : " The contractor shall be entitled . . . under certificates to be issued by the architect to the contractor . . . to payment by the employer from time to time by instalments, when in the opinion of the architect actual work to the value of £1,000 has been executed in accordance with the contract, at the rate of 90 per cent. of the value of the work so executed in the building & materials actually on the site for use on the works until the balance in hand amounts to the sum of £2,000. . . ." By clause 32, if any dispute should arise between the employer, or the architect on his behalf, & the contractors as to the construction of the contract or as to the withholding by the architect of any certificate to which the contractors might claim to be entitled, the dispute was to be referred to an arbitrator. By another clause, No. 26, if the contractors should suspend the work, except in case of a certificate being withheld, the architect was empowered to give notice to the contractors to proceed with the work with all reasonable dispatch. Disregard of this notice might involve the contractors in serious consequences. During the progress of the work, after £9,000 or more had been paid by the employers to the contractors upon certificates given by the architect, the contractors claimed that on Mar. 11, 1929, they were entitled to a further substantial sum which had not been included in the architect's certificates. The employers insisted that the contractors had been overpaid, & that no certificate was due to them. The contractors thereupon stopped work, & the architect served upon them a notice under clause 26. The parties then submitted to an arbitrator the " disputes in regard to (*a*) the issue of certificates, & (*b*) the validity of the notice served by the architect under clause 26 " of the contract. The arbitrator found that on May 11, 1929, there remained due to the contractors a sum of £793 17*s.* 10*d.*, & awarded that " having regard to the provisions of clause 30 " (which he then set out as above) " the architect had up to the said 11th day of Mar. 1929, issued to the contractor certificates in accordance with the terms of the contract." He further awarded that the notice given under clause 26 was properly given & was valid :—*Held :* the arbitrator had erred in his construction of clause 30 of the contract in holding that, after the value of work done & materials on the site had reached the sum of £1,000, it was still necessary that a round sum of £1,000 should be due to the contractors in order to entitle them to a certificate ; the construction of sect. 30 had not been expressly or specifically left to the arbitrator, & his award should be set aside for error in law appearing upon the face of it.—ABSALOM (F. R.), LTD. *v.* GREAT WESTERN (LONDON) GARDEN VILLAGE SOCIETY, LTD., [1933] A. C. 592 ; 102 L. J. K. B. 648 ; 149 L. T. 193 ; 49 T. L. R. 350, H. L.

Annotations :—**Consd.** Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191. **Expld.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

PART II. SECT. 4.

Material departure from ..]—McINNIS *v.* GRAY, [1936] 3 D. L. R. 337.—**CAN.**

PART III. SECT. 1.

73 xxvii. ——.]—DIXON *v.* SOUTH AUSTRALIAN RAILWAYS COMRS. (1923). 34 C. L. R. 71.—**AUS.**

73 xxviii. ——.]—**The engineer's certificate, required for the payment of works specified in the contract & of additional work not covered by the contract but ordered by the engineer, is not a condition precedent to the right of the contractor to be paid for work done to replace works executed in virtue of the contract which have been destroyed or damaged by an act of nature.—DUFRESNE CONSTRUCTION CO., LTD. *v.* R., [1935] Ex. C. R. 77.—CAN.**

84 i. —— *Certifier improperly influenced.*]—*Held :* the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.—NORTHERN CONSTRUCTION CO. *v.* R., [1925] 2 D. L. R. 582.—**CAN.**

sq. —— *Alteration of contract in many details.*]—*Held :* a final certificate was not a condition precedent to the bringing of an action by the contractor for the balance due.—McMANUS *v.* GRAVELBOURG, [1925] 1 D. L. R. 995.—**CAN.**

PART III. SECT. 2.

o i. ——.]—The progressive estimates provided for by a road construction contract under which the contractor was entitled to receive on certificates based thereon a certain percentage of the value of the finished work as shown by said estimates :—*Held :* not to be finally binding between the parties but to be subject to revision.—*Re* NORTHERN CARTAGE & CONTRACTING CO., LTD., [1937] 1 W. W. R. 186.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

102 iv. —— ——.]—D'AMOURS *v.* TROIS-PISTOLES, [1924] 4 D. L. R. 501.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C.

108 ii. ——.]—*Held :* as soon as a dispute arose & was notified by either party the architect's certificate was eliminated as determining, or as part of the machinery for determining, the amount due to the contractor.—PIGGOTT *v.* TOWNSEND (1926), 27 S. R. N. S. W. 25 ; 44 N. S. W. W. N. 26.—**AUS.**

Part IV.—Price.

129. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 554 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532 ; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

—— —— **Work abandoned.**]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 245.

132. *Add. Annotation :*—**Refd.** Colley *v.* Overseas Exporters, [1921] 3 K. B. 302.

135. *Add. Annotations :*—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

136. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son. Ltd., [1931] 1 Ch. 310.

138. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

142. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

143. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

144. *Annotation :*—For " [1910] " read " [1919]."

Add. Annotations :—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

145. *Add. Annotation :*—**Refd.** Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423.

147a. —— ——.]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 245.

Part V.—Payment.

171. *Add. Annotations :*—**Consd.** *Re* Mahmoud & Ispahani, [1921] 2 K. B. 716. **Apld.** *Re* National Benefit Assurance Co., Ltd. [1931] 1 Ch. 46.

PART IV. SECT. 1.

a i. —— —— ——.]—Under a contract between a building contractor & an owner the former undertook to perform certain work in a substantial & workmanlike manner & to the full satisfaction of the owner, a specified amount of the contract price was to be retained until the completion of the work & " the balance " was to be paid thirty days after the completion, the owner was to make weekly payments to the contractor for labour & material paid for by the contractor during the previous week :—*Held :* under the express terms of the contract, entire performance was a condition precedent to payment of the balance remaining unpaid to the contractor & that substantial performance was not a compliance with the contract enabling the contractor to sue.—PAS CONSTRUCTION CO., LTD. *v.* OLENSKY, [1931] 1 W. W. R. 106 ; 1 D. L. R. 843 ; 39 Man. L. R. 332.—**CAN.**

e i. —— —— —— ——.]—MODERN CONSTRUCTION CO. *v.* SHAW, [1923] 3 D. L. R. 893 ; 3 W. W. R. 301.—**CAN.**

r i. —— —— ——.]—TORONTO RADIATOR MANUFACTURING CO. *v.* ——, 2 Terr. L. R. 120.—**CAN.**

st. *Percentage on cost—How calculated.*]—A contract entered into between pltfs. & defts. for the construction of a vessel by pltfs. for defts. provided that defts. were to pay pltfs. an agreed sum for the use of their plant, consisting of yard, sheds, machinery, etc., &, in addition ten per cent. above the cost of all labour & material which entered into the construction of the vessel :—*Held :* the ten per cent. must be restricted to labour & material supplied by pltfs. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which pltfs. had nothing to do.—BOEHNER *v.* BACKMAN (1922), 55 N. S. R. 325.—**CAN.**

PART IV. SECT. 2.

135 i. *General rule.*]—FISHER *v.* COX (1921), 54 N. S. R. 226 ; 57 D. L. R. 567.—**CAN.**

135 ii. ——.]—LA CROIX BROTHERS & CO. *v.* COOK (Sask.), [1926] 4 D. L. R. 747 ; [1926] 3 W. W. R. 385.—**CAN.**

136 iv. ——.]—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115 ; [1927] 2 W. W. R. 838.—**CAN.**

136 v. ——.]—EVANS *v.* DRAPER (Sask.), [1927] 4 D. L. R. 1079 ; [1927] 3 W. W. R. 507.—**CAN.**

h (p. 367) i. —— —— ——.]—SPEIRS, LTD. *v.* PETERSEN, [1924] S. C. 428.—**SCOT.**

v. CLARK, [1933] 2 D. L. R. 737.—**CAN.**

146 iii. —— ——.]—WILLIAMS *v.* STEWART & CAMERON, LTD., [1923] 4 D. L. R. 855, 3 W. W. R. 1021.—**CAN.**

149 i. *Work completed after date specified—Waiver.*] — DUFFERIN CONSTRUCTION CO. *v.* THOROLD, [1929] 4 D. L. R. 132.—**CAN.**

sz. *How calculated.*]—The amount to which a contractor is entitled on a *quantum meruit* is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. Meaning of " cost " discussed.—JAMIESON CONSTRUCTION CO., LTD. *v.* LACOMBE & NORTH WESTERN RY., [1926] 2 D. L. R. 653 ; [1926] 1 W. W. R. 628 ; 22 Alta. L. R. 165.—**CAN.**

sa. *Illegal contract.*]—Where in the carrying out of an illegal building contract the contractor's work & materials have been incorporated into a building he cannot recover on a *quantum meruit* based on defts.' retention of the premises, since the latter is unable to exercise an option to return the materials. In order to recover upon a *quantum meruit* there must be some evidence of a fresh contract to pay for the work done.—FARRELL *v.* SAWITSKI (Sask.), [1929] 4 D. L. R. 289 ; 3 W. W. R. 23.—**CAN.**

PART V.

g (p. 373) i. —— *Ascertained by intention of parties.*]—HANSON *v.* PARKS, [1925] 3 D. L. R. 1103.—**CAN.**

r i. —— ——.]—*Held :* to make the 20 per cent. retained by the owner a valid security for completion of the work, the architect in certifying 80 per cent. due should base his estimate on the proportion that the value of the work done bore to the cost of the entire undertaking.—HOPGOOD *v.* FEENER (1921), 62 D. L. R. 419 ; 62 S. C. R. 534.—**CAN.**

h (p. 374) i. —— *Owner promissory notes in default of Notes discounted with bank & interest paid.*]—SMITH *v.* MCCUTCHEON, [1922] 1 W. W. R. 306 ; 67 D. L. R. 554 ; 31 Man. L. R. 413.—**CAN.**

sb. *Under cost plus percentage agreement—Part of material supplied by ——— of contractor to percentage on cost of such material.*]—SMITH *v.* MCCUTCHEON, [1922] 1 W. W. R. 306 ; 67 D. L. R. 554 ; 31 Man. L. R. 413. —**CAN.**

Part VI.—Alterations, Additions and Omissions.

195. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

199. *Add. Annotations :*—**Consd.** Diamantidi *v.* Grosvenor Securities, Ltd. & Guildhall Trust, Ltd., [1937] 1 All E. R. 703. **Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

200. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

202. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

215. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

Part VII.—Maintenance and Defect Clauses.

222. *Add. Annotation :*—**Consd.** Murphy *v.* Hurly, [1922] 1 A. C. 369.

Part VIII.—Breach of the Contract.

225a. Approval of council's surveyor & inspector—Subsequent discovery of breach of contract—Whether approval conclusive.]—Defts. agreed to build for pltfs. a number of houses in accordance with certain plans & specifications, the work to be carried out to the satisfaction of the surveyor & the sanitary inspector of the urban district council.

PART VI. SECT. 2, SUB-SECT. 1.

186 i. *Written contract—Evidence to vary inadmissible.*]—KARSGAARD *v.* BAILEY, [1931] 1 D. L. R. 85.—**CAN.**

sd. *Prices for extras agreed on.*]—BLAIS *v.* PARADIS, [1933] S. C. R. 452; [1933] 4 D. L. R. 814.—**CAN.**

sf. *Contract with municipality—Compulsory employment of labour.*]—A municipality which compels a contractor to employ labour from men on public relief, thereby increasing his costs, is liable in damages for the variation in the contract.—CHERICO *v.* SUDBURY, [1937] 2 D. L. R. 92.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

195 ii. —— ——.]—Where a contractor chooses to adopt a more expensive method of carrying out his contract than the contract properly interpreted calls for the loss is his own.—GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO. (B. C.), [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466; *on appeal*, [1929] 4 D. L. R. 161; S. C. R. 630.—**CAN.**

e (p. 380) **i.** —— ——.]—A contract for the execution of road making works for a municipal council provided that no extra works done by the contractor would be paid for unless there were an order in writing & a certificate of the engineer in respect of them. Pltf. alleged that certain extra works were in fact done at the oral request of the engineer & with his knowledge, & that certain of the extra works were actually paid for by progress payments on the work completed, that deft. stood by & took the benefit of the extra works, & that he thereby had been induced to believe that deft. would not require written orders, & had acted to his detriment in the belief so induced :—*Held :* even if these allegations were proved, they did not establish either waiver or estoppel.—BYSOUTH *v.* SHIRE OF BLACKBURN & MITCHAM (No. 2), [1928] V. L. R. 562; [1928] Argus L. R. 337.—**AUS.**

sc. *Entire contract.*]—Pltf. contracted to perform the whole of the works required in & about the construction of a concrete retaining wall for deft. for a fixed price according to a certain plan & specification. The contract provided that the specification should form & be construed as forming part of the agreement. It also required pltf. to build the wall in a certain position. This involved removing a sand bank. The plan showed a bank approximately 6 ft. in width. Pltf. claimed that the bank was 12 ft. in width, & he brought an action on the common counts for the work & labour done in removing the extra 6 ft. :—*Held :* the contract was an entire contract to build the wall for a fixed price & that inasmuch as the specification was, & the plan was not, expressly incorporated in the contract, pltf.'s obligation to complete the works for the agreed price was not affected by the alleged understatement in the plan, & therefore he was not entitled to recover payment for extra work occasioned thereby.—WALKER *v.* RANDWICK MUNICIPALITY COUNCIL (1930), 30 S. R. N. S. W. 84; 47 N. S. W. W. N. 20.—**AUS.**

se. *Alternative methods of carrying out contract.*]—Where there are equivalent methods for carrying out the contract no extras caused by the adoption of one may be recovered without a new agreement.—QUEBEC *v.* DUMONT, [1936] 1 D. L. R. 446.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

gi. —— *No estimate given.*]—PRICE *v.* SWIFT CANADIAN CO., LTD. (1932), 4 M. P. R. 543.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

216 i. *Right of contractor to abandon contract.*]—The contract in question was for the construction of an Ice Pier at Barrington Passage, N. S. The specification (*inter alia*) provided that the foundations for the crib "must be excavated by means of a dredge to the rock & cleared off by a diver." This the contractor found more difficult than he anticipated, & he told the District Engineer that the excavation by dredge was impossible of performance. Thereupon the District Engineer verbally relieved him of the dredging, the foundation area for crib to be levelled off with bags of concrete, etc., but refused to put the instructions in writing. The contractor would not carry on, & the work was taken out of his hands for delay in execution of the contract. Hence the present action for damages to have been suffered :—*Held :* if a party by his contract charges himself with an obligation possible to be performed he must make good, unless the performance becomes impossible in law or in fact, or by the conduct of the other party. If what is agreed is possible & lawful, it must be done. The changes in the work under the contract made by the District Engineer in this case were not matters of detail, but, from an engineering standpoint, were fundamental changes which could only be authorised by the Chief Engineer.—BOONE *v.* R., [1933] Ex. C. R. 33; *revsd.* [1934] 3 D. L. R. 161; S. C. R. 457.—**CAN.**

PART VII.

r i. —— *Defect due to unsuitability of subject-matter of contract—Method of repair.*]—*Held :* the obligation of the contractor was not affected by the alleged fact that the material was not suitable to the climatic conditions. If a method of repair as satisfactory but less expensive than that called for by the contract could be secured by the owner, he should be bound to accept it.—BLOME *v.* REGINA (CITY), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

sd. *Liability of contractor for defects—Materials supplied by contractor.*]—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

222 i. *Notice to remedy defects—Failure to comply with—Liability of contractor.*]—Where a contractor was notified of defects by the owner & wrongly insisted that they were trifling & could be fixed up at slight expense, but the owner refused to accept repairs of that sort & employed a carpenter to do the necessary work :—*Held :* the contractor had all the notice & opportunity to repair properly which he could have claimed, even if the contract had expressly provided for such notice.—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

PART VIII. SECT. 1.

k i. —— *Different contractors for building & joiner work.*]—A builder contracted to carry out the building & plastering work in connection with the erection of a house, & another contractor undertook to carry out the joiner work. The builder finished his work, & the owner accepted possession of the house & paid two instalments

The houses were completed to the satisfaction of the surveyor & the inspector, & pltfs. sold them at a profit. In fact the express agreement to cement & the implied agreement to do the work properly had been broken, & on complaint by the purchasers pltfs. carried out repairs to put the houses in a habitable state, & they sued defts. for the cost of the repairs. Defts. contended that they were under no liability as the surveyor & the inspector had approved of the work, that pltfs., having sold the houses at a profit, had suffered no damage, & that, as the repairs were only an act of generosity, pltfs. could not recover the cost :—*Held :* there being in the contract no statement that the approval of the surveyor & the inspector was to be final & conclusive, their approval was only a superadded protection, & pltfs. were entitled to recover the difference between the value of the houses as they ought to have been when completed & their value in fact. —NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS. (1931), 47 T. L. R. 616.

225b. Liability for defects limited to defects discovered within five years—Discovery within five years—Effect on subsequent discoveries.] —A district council employed contractors to make a road, the contract containing the following clause : " Should it at any time subsequent to the termination of the period of maintenance up to but not exceeding a period of five years from the date of the completion of the works be discovered that the terms of this specification have been violated by the execution of bad, insufficient or inaccurate work the council shall be at liberty to make good such work & to recover the cost thereof from the contractor . . ." :—*Held :* the council could recover only for the defects discovered within the five years to the actual extent of that discovery, & such discovery did not entitle the council to recover for defects thereafter discovered.—MARSDEN URBAN DISTRICT COUNCIL *v.* SHARP (1931), 48 T. L. R. 23, C. A.

230a. —— Excess of cost of completion over contract price.]—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration of the notice, the Minister of Munitions refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract :—*Held :* deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract.—MERTENS *v.* HOME FREEHOLDS CO., [1921] 2 K. B. 526 ; 90 L. J. K. B. 707 ; 125 L. T. 355, C. A.

230b. —— House improperly built—Difference between value in fact & proper value.]—NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS., No. 225a, *ante*.

of the account. Afterwards the outside walls began to crack, & it was discovered that the walls were off the plumb. In an action by the builder for the balance of his account, the owner averred that the defect in the walls was occasioned by the use of faulty materials in the construction of the concrete floors by the builder. The builder averred that the damage to the walls was caused by the use of unseasoned timber in the construction of the roof by the other contractor. Neither of these averments was established at the proof, but either of them might have been the cause of the cracking of the walls :—*Held :* breach of contract had not been established against pursuer, & he was entitled to decree for the balance of the contract price.—CARRUTHERS *v.* MACGREGOR, [1927] S. C. 816.—**SCOT.**

s1. *Deposit of funds as security for due construction—Default by employer—Return of bonds.*]—CANADIAN TERMINAL SYSTEM, LTD. *v.* KINGSTON CORPN., [1936] S. C. R. 106 ; [1935] 4 D. L. R. 713.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

r (p. 389) i. —— —— ——.]—Where no time had been set for the completion of a roof, which deft. agreed to build on pltf.'s hotel, & at the expiration of a reasonable time the contractor left it unfinished, & the owner agreed to the contractor undertaking to complete it within a further period :—*Held :* the contractor was not liable in damages where, within that period, the unfinished condition of the roof resulted in its destruction by a storm & consequential damage by rain to the hotel.—DUMONT *v.* LANDRY (Sask.), [1927] 3 D. L. R. 605 ; [1927] 2 W. W. R. 869.—**CAN.**

b (p. 389) i. —— ——.]—DOE & ROMAN CATHOLIC EPISCOPAL CORPN. OF DIOCESE OF LONDON, IN ONTARIO *v.* CANADIAN SURETY CO., BLONDE *v.* DOE, [1937] S. C. R. 1 ; 1 D. L. R. 5.—**CAN.**

e (p. 389) i. —— *Right to general damages—Not where no evidence of loss beyond specific damage.*]—EVANS *v.* DRAPER (Sask.), [1927] 4 D. L. R. 1079 : [1927] 3 W. W. R. 507.—**CAN.**

h (p. 390) i. —— *Cost of alteration.*]—Where a building as constructed does not comply in respect to the quality of the work or material with that called for by the contract the measure of damages is the cost of such alterations or repairs as are necessary to bring about compliance with the contract.—PEARSON-BURLEIGH, LTD. *v.* PIONEER GRAIN CO., LTD., [1933] 1 W. W. R. 179 ; 1 D. L. R. 714 ; 41 Man. L. R. 65.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.

b i. *Failure to furnish plan.*]—*Held :* delay & loss from spring flood of river were not attributable to delay in furnishing plan, & therefore employer was not liable.—CREELMAN *v.* CANADIAN PACIFIC RAILWAY, [1932] 4 D. L. R. 798.—**CAN.**

238. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

243. *Add. Annotations :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373 ; Pearl Assurance Co. *v.* South Africa Union Government, [1934] A. C. 570.

262. *Add. Annotation :*—**Apld.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

263. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

265a. ——.]—A bill will not lie to compel the performance of an agreement to build an house.—ERRINGTON *v.* AYNESLY (1788), 2 Bro. C. C. 341 ; 2 Dick. 692 ; 21 E. R. 440.

273a. —— **Non-compliance with building regulations.**]—Deft. agreed to erect a house according to a plan to be approved by pltfs., & according to the regulations of Metropolitan Building Acts. Pltfs. approved a plan, but it was objected to by the Board of Works :—*Held :* deft. must specifically perform his contract, subject to the plan being modified to conform with the regulations of the Board of Works.—CUBITT *v.* SMITH (1864), 11 L. T. 298 ; 28 J. P. 820 ; 10 Jur. N. S. 1123.

Annotation :—**Refd.** Wolverhampton Corpn. *v.* Emmons, [1901] 1 K. B. 515.

Part IX.—Excuses for Non-Performance.

279. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532 ; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

282. *Add. Annotations :*—*As to* (2) **Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526 ; Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132 ; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455 ; Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579 ; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298 ; The Penelope, [1928] P. 180 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; May *v.* May (1929), 98 L. J. K. B. 770 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

285a. —— —— **Brought about by contractor's own act.**]—MERTENS *v.* HOME FREEHOLDS Co., No. 230a, *ante*.

287a. —— **Indemnity Act, 1920 (c. 48)—"Direct & particular interference with business"—What is.**]—The claimant whose business was that of a steam-trawler owner had a contract with a firm of trawler builders to build for him a number of trawlers. Before the builders had commenced to build the trawlers so contracted for the Admiralty issued an order to them under Reg. 8A of the Defence of the Realm Regulations, directing them not to proceed with any work on vessels for private owners, but to work for the Admiralty instead. At the time of making that Order the Admiralty had full knowledge of the existence of the claimant's contract with the builders. By reason of the order he suffered substantial loss. On a claim being made for compensation under Indemnity Act, 1920 (c. 48), s. 2 (1) (b) & Sched., Part II. :—*Held :* the Admiralty's knowledge of the contract was wholly immaterial, & in so far as the order interfered with claimant's business it was only a secondary & indirect interference, with the result that claimant was not entitled to compensation.—BLACK *v.* ADMIRALTY COMRS., [1924] 1 K. B. 661 ; 93 L. J. K. B. 341 ; 130 L. T. 711 ; 40 T. L. R. 316 ; 68 Sol. Jo. 866, C. A.

Annotation :—**Refd.** Brocklebank, Ltd. *v.* R., [1925] 1 K. B. 52.

Part X.—Forfeiture.

293. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

PART VIII. SECT. 3, SUB-SECT. 1.

243 i. —— *Deduction of value of incompleted work with fifty per cent. thereon—Penalty.*]—MACDONAL *v.* NORTH WEST BISCUIT CO., [1924] 1 D. L. R. 987 ; 1 W. W. R. 795.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.

si. Owner taking possession before completion.]—CASSIDY (A. W.) & Co. *v.* HICKS (Sask.), [1929] 2 D. L. R. 353.—CAN.

PART IX. SECT. 1.

r i. ——.]—A contractor who entered into a contract with a municipality for the construction of a sewer system is bound to do the work necessary to shore up the sides of the trenches when he is met with a condition of the soil generally known as quicksand ; & that fact is not a sufficient cause which would justify the ct. to set aside the contract on the ground that its performance is impossible. Even if the contract provides that the work will be performed under the supervision of the city engineer, the contractor cannot complain of the fact that the engineers had not given him any instructions or advice as to the way the trenches should be cribbed, as he was at liberty to do such work in his own way without the permission of the engineer as long as the latter was not making any formal objection.—RIVET *v.* LA CORPORATION DU VILLAGE DE ST.-JOSEPH, [1932] S. C. R. 1.—CAN.

PART IX. SECT. 3.

sg. *Supply of defective materials.*]—In an action wherein the contractor sued to recover the balance of the contract price unpaid under a contract to drill an oil well, & the owner pleaded that the contract had not been completed, it was found that the contractor had carried out the contract except with respect to bailing the well, & that he was prevented from doing so because the casing pipe supplied by the owner was too light & had collapsed :—*Held :* therefore, the case was one coming under the principle that where under the terms of a building contract mutual obligations are imposed on both parties with respect to carrying out the contract, & as a result of the failure of the owner to fulfil his obligations the contractor is unable to finish the work completely, the fact that the work was not fully completed does not disentitle the contractor to recover the full contract price.—UNION DRILLING & DEVELOPMENT CO., LTD. *v.* CAPITAL OIL & NATURAL GAS CO., LTD., [1931] 1 W. W. R. 786 ; *affd.*, [1931] 2 D. L. R. 851 ; 2 W. W. R. 508 ; *affd.*, [1931] 3 D. L. R. 656.—CAN.

Part XI.—Materials.

312. *Add. Annotation :—As to* (1) **Apld.** *Re* Blyth Shipbuilding & Dry Docks Co. Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

316. *Add. Annotation :—***Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

318. *Add. Annotation :—***Apld.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation :—***Distd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. —— ——.]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose approval the quality of the material used & the workmanship were to be subject. Clause 6 provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the shipbuilding co. for enforcing their security :—*Held :* certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re* BLYTH SHIPBUILDING & DRY DOCKS CO., FORSTER *v.* BLYTH SHIPBUILDING & DRY DOCKS CO., [1926] Ch. 494 ; 95 L. J. Ch. 350 ; 134 L. T. 643, C. A.

*Annotations :—***Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649 ; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

325a. **Erection of temporary building for special purpose—Agreement for return of materials.**] —Pltf. agreed with deft., who was mayor of H., to erect the hustings for the election for the borough of H., as before with alterations, for £19 10*s.* by receiving the wood back again. After the election was ended, the mob carried the wood of the hustings away. In *assumpsit* for not returning the wood :—*Held :* deft. was bound to return the wood, by putting the hustings safely into the possession of pltf.—FULLER *v.* PATTRICK (1849), 18 L. J. Q. B. 236 ; 13 L. T. O. S. 185 ; 13 Jur. 561.

Part XII.—Assignment and Devolution of Rights and Liabilities.

340. *Add. Annotation :—***Consd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

341. *Add. Annotations :—As to* (1) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339 ; *As to* (2) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (3) **Apld.** *Re* City Life Assce., [1926] Ch. 191. *As to* (4) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

342. *Add. Annotation :—***Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

342a. ——.]—Pltfs. claimed £1,000 being retention moneys due from defts. to a firm of contractors. Pltfs. claimed under an assignment dated Apr. 7, 1924. On Nov. 21, 1922, defts. entered into a building contract for a lump sum with S., the contractors, for the construction of a number of cottages under a housing scheme. The contract provided for interim payments, but no money was to become payable to the contractors except on the architect's certificate in writing, & certificates were to be issued when work to the value of £1,000 had been executed & thereafter at monthly intervals as certified by the architect in writing. He was to certify the amount from time to time payable to the contractors under the contract. The amount to be certified by the architect on his first & monthly certificates as due to the contractors was to be at the rate of 90 per cent. of the value of the work, including extras. The balance of 10 per cent. of the value of the work was to be retained until the sum so retained, called a retention fund, should amount to £2,472 after which the contractors were to be paid monthly to the full value of the work done & the materials supplied. The retention fund was to be deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention fund amounted to £1,000 at the beginning of 1924. This was never deposited at the bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked.

PART XI. SECT. 2, SUB-SECT. 1. a 1. ——.]—An unpaid builder as such has no lien upon the building in his possession for the balance due to him, unless under the contract for construction.—N. P. A. CHETLIAR FIRM *v.* SHARMA (1927), I. L. R. 6 Ran. 87.—IND.

It was included without distinction in the architect's final certificate for £1,848 10s. 2d. on Jan. 28, 1927. Meanwhile pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention fund by a document dated Apr. 7, 1924, in the following terms: "In part reduction of the amount now, or to be, owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the Hemsworth R. D. C. for retention moneys in respect of the G. housing scheme, & for which your receipt shall be a sufficient discharge. It is understood that we are only to be credited with the amount actually paid to you under this assignment as & when the same is received by you." Due notice of that assignment was given by pltfs. to defts. on the following day. This was acknowledged by defts. on May 26, 1924. By that time the contractors had issued a number of debentures to the M. & C. Bank. These debentures were dated at various periods from Feb. 1, 1900, to Feb. 2, 1924, & they charged the undertaking & property, both present & future, of the contractors, the charge being a specific charge on their freehold & leasehold property, machinery, goodwill, & uncalled capital & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge on any of the assets in priority to the debentures. A receiver for the debenture holders was appointed in Oct. 1924, & he duly entered into possession. Seven days after the appointment of the receiver a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture holders, & on the architect's certificate being given in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders:—*Held:* the assignment in question was a good legal assignment & pltfs. were entitled to sue on it. The retention fund in this case arose out of an existing contract, & although it did not become payable until a date later than that of the assignment, it was a debt or other legal thing in action which could be assigned. The assignment was within Jud. Act, 1873, s. 25, & Law of Property Act, 1925 (c. 20), s. 136. It could be sued on by the assignee without joining the assignor as a party. Pltfs. were therefore entitled to recover on the assignment.—EARLE (G. & T.) (1925), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

344. *Add. Annotations:* — **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

345. *Add. Annotations:*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

345a. Effect of—On contractor's rights under arbitration clause.]—Building contractors assigned to a bank all money due & to become due to them under a building contract, which contained an arbn. clause, & the proper notice of the assignment was served on the building owners. Disputes having arisen regarding a claim by the contractors for compensation & extra payment, recourse was had to arbn.:—*Held:* (1) the arbitrator had jurisdiction to entertain the arbn., since the contractors' rights under the arbn. clause did not constitute a "legal" or "other remedy" for the debt within Law of Property Act, 1925 (c. 20), s. 136 (1), & were not passed & transferred to the bank by the assignment; (2) the arbitrator had to consider not merely the terms of the contract within the limits of the document, but also the application & enforcement of those terms, having regard to the whole legal position which the parties had created, including the relinquishment by the contractors themselves by the assignment of their right to claim the debt, & he must make his award in favour of the building owners.—COTTAGE CLUB ESTATES *v.* WOODSIDE ESTATES CO. (AMERSHAM), [1928] 2 K. B. 463; 97 L. J. K. B. 72; 139 L. T. 353; 44 T. L. R. 20; 33 Com. Cas. 97.

Part XIII.—Substituted Contracts and Sub-Contracts.

369a. —— Dismissal of sub-contractor at request of employer.]—Deft., a contractor, had contracted to divert a road for a county council, &, as incidental to that purpose, to make a tunnel. The work of excavating for the tunnel was sub-contracted to a firm called C. Bros. This firm was later turned into a limited co. & a receiver was appointed by the debenture holders. The receiver elected to complete the sub-contract, but, hampered by lack of money, he was unable to proceed with the work at the speed the contract required. The head contract contained a clause giving the engineers of the county council, if they were dissatisfied with any sub-contractor, power to require his removal.

PART XIII. SECT. 2, SUB-SECT. 2.

n i. —— *Dismissal of sub-contractor by architect.*]—Deft., a sub-contractor, gave pltf., a contractor, a price for certain work in connection with a building. The contractor was bound by general conditions of contract; those conditions were not defined nor in the contemplation of the parties when the sub-contractor's price was given & accepted, nor did he ever become party to them, although they were referred to & incorporated in certain specifications according to which the sub-contractor was bound to work:—*Held:* the sub-contractor was not bound by a term in the general conditions whereby the architect had power to dismiss a sub-contractor.—OSBURN *v.* LEGGETT, [1930] S. A. S. R. 346.—**AUS.**

372 ii. —— *Mechanic's lien action pending against sub-contractor—Liability for sales tax.*]—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

c i. —— ——.]—Contractors:—*Held:* entitled to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

sub-contract, which contained many provisions in similar terms to those in the head contract, contained no clause providing for the contingency of the engineers giving a notice under the above clause. The engineers served such a notice: *Held:* (1) as the parties had the head contract before them when they entered into the sub-contract, they must be taken to have had in contemplation the possibility of the engineers giving such a notice, & a term could not be implied in the sub-contract giving the contractor power, as between him & the sub-contractor, upon such a notice being given, to put an end to the sub-contract; (2) a recital that the sub-contractor had agreed to carry out the work in accordance with the terms of the principal contract did not, where other clauses were expressly included, incorporate the clause of the principal contract here in question; (3) the effect of the giving of the notice was to give the sub-contractor the right to sue for breach of contract or upon a *quantum meruit* basis. He was not obliged to wait until the date of completion arrived & then sue on a breach of contract.—CHANDLER BROS., LTD. *v.* [1936] 3 All E. R. 179; 80 Sol. Jo. 951, C. A.

Part XIV.—Guarantees and Sureties.

383a. — **Loans to debtor by creditor.**]—A firm of contractors agreed to construct a new & enlarged dock. The Dock Board required a guarantee for the performance of the contract & defts. gave a joint & several bond in the sum of £50,000 conditioned for the due performance of the contract:—*Held:* (1) this was a contract of guarantee & not of insurance; (2) by clause 7 of the agreement the Dock Board had made it clear that they were a non-disclosing body & they had thereby contracted out of any duty to disclose; (3) loans of £45,000 made to the contractors by the Dock Board out of a fund provided by the Treasury under Trade Facilities Act, 1921 (c. 65), & of which the guarantors had no knowledge, were outside the construction contract & therefore outside the guarantee; & no certificate of the Dock Board engineer, though agreed to be final & binding upon them, could make the guarantors liable in respect of such loans; (4) such advances, though repayable by an increased percentage of retention money, were not a variation of the contract & therefore not a discharge of the guarantors.—TRADE INDEMNITY CO., LTD. *v.* WORKINGTON HARBOUR & DOCK BOARD, [1937] A. C. 1; [1936] 1 All E. R. 454; 105 L. J. K. B. 183; 154 L. T. 507; 41 Com. Cas. 186, H. L.

383b. —— **Bond to indemnify road authority—Authority stated to be rural district council—Authority in fact county council.**]—On June 6, 1930, in consideration of the issue by pltf. co. of a bond on behalf of F. "in favour of the Gower R.D.C.," in connection with a contract for road improvement, defts. undertook to indemnify pltf. co. against all losses incurred in consequence of having issued the bond. On July 4, 1930, pltf. co. & F. bound themselves by a bond issued in favour of the Glamorgan C.C. which had by virtue of the Local Government Act, 1929 (c. 17), s. 30, become the competent road authority on Apr. 1, 1930. Pltf. co. became liable to perform its obligations under the bond, & it thereupon sought to be indemnified by defts. Defts. did not know, when they gave their undertaking that the Glamorgan C.C. had become the competent road authority:—*Held:* (1) the maxim *ignorantia legis neminem excusat* was not applicable; (2) the words in the undertaking "in favour of the Gower R.D.C." were not mere surplusage & immaterial, & it could not be inferred that defts. meant "the competent road authority"; (3) there was no evidence that defts. misled pltf. co. by their conduct, & defts. were not estopped from saying that they had never agreed to indemnify pltf. co.—PROVIDENT ACCIDENT & WHITE CROSS INSURANCE CO., LTD. *v.* DAHNE & WHITE, [1937] 2 All E. R. 255; 81 Sol. Jo. 421.

Part XV.—Arbitration Clauses.

386. *Add. Annotation:*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

387. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

PART XV. SECT. 1.

h 1. ——.]—A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on, the completion of the contract to another engineer. A dispute having arisen as to the rate payalbe for the removal of certain rock, the contractors refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages:—*Held:* as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to

VFORD *v.* NORTHERN COMRS., [1925] S. C. (H. L.) 22.—SCOT.

li. —— *Breach of contract alleged against engineer—Engineer appointed by contract as arbitrator.*]—One of the conditions of a road-making contract between pltf. & deft. provided that any dispute relating to any alleged breach of contract by deft. should from time to time be referred to & be decided by the award of deft.'s engineer. Alleging that by reason of breaches of the contract committed by deft. by its engineer deft. had repudiated the contract, which repudiation pltf. had elected to accept as a rescission of the contract, pltf. brought an action for damages or for work & labour done. Deft. applied under Arbn. Act, 1928, s. 5, for a stay of the

was admitted by pltf. that the breaches of contract alleged

388. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388a. Clause restricting time for opening reference —"Until after completion of works"—Meaning of.]—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that "such reference . . . shall not be opened until after the completion of the works." During the progress of certain works which were being carried out under a building contract in the above form the building owner neglected to pay the builder a sum certified by the architect within the stipulated time, & thereupon the builder determined the contract under condition 31. The builder commenced arbn. proceedings while the contract works were still uncompleted, & the arbitrator made an award in his favour for the money due to him under the contract :—*Held :* the words "until after the completion of the works" in condition 32 meant until after completion of the whole of the works contracted for, & not merely until after completion of so much of the works as the builder was under the circumstances bound to perform ; consequently the arbn. was premature & the arbitrator had no jurisdiction to make the award ; or at all events the validity of the award was sufficiently doubtful to render it improper to enforce it summarily.—SMITH *v.* MARTIN, [1925] 1 K. B. 745 ; 94 L. J. K. B. 645 ; 133 L. T. 196, C. A.

390. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board [1937] A. C. 1.

Part XVI.—Architects and Engineers.

425. *Add. Annotations :*—**Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200.

425a. —— —— Interim certificates.]—Pltfs., a local authority, made a contract with builders under which deft. was the architect. The Ministry of Health had the right to require the use of materials which the Disposals Board had for sale. While the houses were in course of erection deft. gave interim certificates, & he also gave documents under which pltfs. paid the Board for articles supplied by the Board. Under these certificates & documents pltfs. had to pay both the builders & the Board for the same material. In an action by pltfs. to recover the amount from deft. on the ground of negligence :—*Held :* as the certificates were only interim certificates, & as deft. on going into the figures with pltfs. had indicated to them that the amount paid to the Disposals Board was to be deducted from the final balance due to the contractors, deft. had not been guilty of negligence, & the action failed—WISBECH RURAL DISTRICT COUNCIL *v.* WARD, [1928] 2 K. B. 1 ; 97 L. J. K. B. 56 ; 138 L. T. 308 ; 91 J. P. 200 ; 44 T. L. R. 62 ; 26 L. G. R. 10, C. A.

were amongst the matters agreed to be referred. Deeming himself bound by authority :—*Held :* although deft. was otherwise entitled to have the proceedings stayed until the matters agreed to be referred had been referred to the appointed arbitrator, in which case the ct. could afterwards determine whether on his decision there had been a repudiation of the contract, yet in the exercise of its discretion under the sect. the ct. should not compel pltf. to accept a tribunal which in the circumstances had become unsuitable for the determination of the dispute which had arisen. The matter should therefore stand over to enable the parties to agree upon another arbitrator ; failing such agreement the appeal should be dismissed.—MODERN ROAD CONSTRUCTION CO. PTY., LTD. *v.* MELBOURNE HARBOUR TRUST COMRS., [1932] V. L. R. 275 ; Argus L. R. 237.—AUS.

PART XV. SECT. 4.

e i. —— ——.]—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work :—*Held :* as the contractors had agreed to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a bias.—CRAWFORD *v.* NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT

PART XVI. SECT. 1.

e i. —— —— *Unqualified person.*]—*Held :* a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person "practising as a professional engineer" under Engineering Profession Act, Man. 1920 (c. 38), s. 7.—*Re* ENGINEERING PROFESSION ACT, *Re* JOHNSON, [1922] 3 W. W. R. 424 ; 70 D. L. R. 161.—CAN.

sf. *Termination of appointment—By verbal cancellation given to architect's assistant—Record of cancellation made by architect.*]—*Held :* effective.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331 ; 52 D. L. R. 709.—CAN.

PART XVI. SECT. 2, SUB-SECT. 1.—A.

sg. *Whether architect liable for mistakes of surveyor.*]—HARRIES, HALL & KRUSE *v.* SOUTH SARNIA PROPERTIES, LTD., SOUTH SARNIA PROPERTIES, LTD. *v.* BAIRD & BAIRD (Ont.), [1928] 4 D. L. R. 872 ; *on appeal*, [1929] 2 D. L. R. 821 ; 63 O. L. R. 597.—CAN.

PART XVI. SECT. 2, SUB-SECT. 1.—C.

sj. *Retirement of architect—Subsequent discovery of inaccuracy in plans.*]—Pltf., an architect, sued for professional fees, & deft., building owner, counterclaimed for damages for negligence on the ground that certain measurements in the plans prepared by pltf. were inaccurate, & that he had been put to additional expense by reason thereof. After the plans were prepared, but before the inaccuracies were discovered, the parties quarrelled & pltf. retired from the employment on terms which he set out in a letter to deft. as follows : "As your decision to carry out the erection of garage contrary to the instructions issued by me to contractor entirely overrides my authority & leaves me without any security that the work will be done as I direct, I accept your offer to be relieved of all responsibility in connection with same. . . ." The magistrate gave judgment for pltf. on the counterclaim on the ground that the arrangement between the parties relieved pltf. from all responsibility in respect of the plans :—*Held :* the arrangement between the parties only relieved the architect from responsibility in connection with the erection of the work in accordance with the plans he had prepared & did not relieve him from any responsibility which he had incurred by reason of defects in the plans & specifications which were not known to the building owner at the time.—MURNANE *v.* STEERE, [1934] W. A. L. R. 98.—AUS.

PART XVI. SECT. 2, SUB-SECT. 2.

k i. —— *In giving decisions.*]—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers ; & if it appears that he is so biased as to be likely not to decide

428. *Add. Annotation:*—**Consd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

434. *Add. Annotation:*—**Distd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 87.

436. *Add. Annotation:*—**Reld.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 819.

448. *Add. Annotation:*—**Reld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

452a. —— —— **General Housing Memorandum No. 4.**]—ELKINGTON *v.* WANDSWORTH CORPN. (1924), 41 T. L. R. 76; 88 J. P. Jo. 702.

458. *Add. Annotations:*—**Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82. **Reld.** Shipley Urban District Council *v.* Bradford Corpn., (1935), 179 L. T. Jo. 475.

SECT. 4.—REGISTRATION.

See Architects (Registration) Act, 1931 (c. 33).

fairly, then the contractor will not be bound by his decision.—BLOME *v.* REGINA (CITY), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 3.

sl. *Advertisement by unregistered architect—Formerly on register but struck off.*]—R. *v.* SHEWBROOKS, [1931] 3 W. W. R. 97; 56 Can. C. C. 365; 44 B. C. R. 313.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

d i. —— ——.]—Pltf.:—*Held:* entitled to payment for plans adopted & used, although there was no express contract to that effect.—SINCLAIR *v.* LAND SETTLEMENT BOARD (B. C.), [1925] 2 D. L. R. 1050.—**CAN.**

g i. —— *Work done before registration as architect.*]—A person employed as an architect who is not registered, & whose employment is discontinued before he becomes registered, cannot recover for his services.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 2.

k i. *Plans approved by employer—To be used at future date.*]—*Held:* employer bound to pay, even though the building contemplated was never erected.—QUIRK *v.* TOWN OF SYDNEY MINES (1923), 56 N. S. R. 281.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.

445 ii. ——.]—An architect employed to prepare plans is entitled to be paid a fair remuneration for his work, notwithstanding that the employer does not benefit by the work & does not erect the buildings contemplated by the plans.—HUTCHINSON *v.* [illegible] (1927), 48 N. L. R. 451.—**S. AF.**

445 iii. ——.]—BRIDGMAN *v.* VOLLANS (Man.), [1928] 3 D. L. R. 679.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 4.

c (p. 445) i. —— ——.]—Pltf., an architect, prepared plans for & superintended the erection of a building estimated to cost $175,000. After $50,000 had been expended, pltf. rendered a partial account based upon the estimated cost at 3½ per cent., amounting to $6,125, intimating that the full charge for his services would be 5 per cent. of the estimated cost. Deft. considered the claim excessive, & dispensed with pltf.'s further services:—*Held:* pltf. should be awarded for his services up to the time of his dismissal, including damages for dismissal, the sum of $8,000.—COBB *v.* ROY, [1921] 54 N. S. R. 135; 57 D. L. R. 212.—**CAN.**

n (p. 445) i. —— ——.]—DALLYN *v.* NIAGARA FALLS CITY, [1934] 4 D. L. R. 798.—**CAN.**

st. *Reasonable remuneration.*]—In the absence of adequate proof of professional usage which would require the employer to remunerate the architect in terms of the tariff framed under Architects & Quantity Surveyors (Private) Act, No. 18 of 1927, the latter is entitled to a reasonable remuneration for the services he rendered.—MCKINLAY *v.* RORVIK, [1935] N. L. R. 80.—**S. AF.**

BUILDING SOCIETIES.

Part III.—Rules.

13. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

14. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

15. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

17. *Add. Annotation :*—**Apld.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318.

19. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

20. *Add. Annotations :*—**Consd.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318 ; Hole *v.* Garnsey, [1930] A. C. 472.

23. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

Part IV.—Officers.

36. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

37. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

65a. *S. P.* R. *v.* HASTIE (1863), Le. & Ca. 269 ; 1 New Rep. 335 ; 32 L. J. M. C. 63 ; 7 L. T. 695 ; 27 J. P. 85 ; 9 Jur. N. S. 235 ; 9 Cox, C. C. 264 ; 169 E. R. 1391 ; *sub nom.* R. *v.* HARTIE, 11 W. R. 293, C. C. R.

Part VI.—Shares.

84. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

85. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

86. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

101. *Add. Annotation :*—**Refd.** *Re* Burradon & Coxlodge Coal Co. (1930), 23 B. W. C. C. 7.

Part VII.—Advances.

110. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

110a. —— —— **Rights & benefits under—Whether transferable.**]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

112. *Add. Annotations :—As to* (1) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (3) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (4) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

115a. —— **Collateral security for first mortgage.**]—An estate co. in respect of two separate advances for the purposes of one building estate mtged. two separate sets of plots of that estate with a building society. It further secured each advance by a collateral charge. These collateral charges were second mtges. & each contained a clause stating that Law of Property Act, 1925 (c. 20), s. 93, should apply to the charge. It was most probable that it was intended that that clause was intended to negative such application. The estate co. had executed another mtge. with the same society in respect of quite different land & the society, not being satisfied with the security in this case, refused to allow the collateral mtges. to be released unless this third mtge. was also redeemed. It was contended that as the society was forbidden by statute to lend money on the security of a second mtge., the collateral mtges. were invalid & inoperative :—*Held :* (1) the Building Societies Act, 1894 (c. 47), s. 13, forbidding an advance on land subject to a prior mtge. does not make void a second mtge. where the society already has a first mtge. as security for the same debt. The society can fortify its position by taking a second mtge. ; (2) the collateral mtge. being good, the society was entitled in the circumstances to consolidate this mtge. with the third mtge. & to refuse to redeem unless the debts outstanding under both mtges. were satisfied in full.

Right to partial release of mortgaged property.]—ALMON *v.* FAIRBANKS (1876), 10 N. S. R. (1 R. & C.) 407.—CAN.

Consideration of a verbal collateral agreement to release houses from a mtge. upon payment of £400 upon the sale of each house. —HAYES BRIDGE ESTATE *v.* PORTMAN BUILDING SOCIETY, [1936] 2 All E. R. 1400.

119. *Add. Citation :— subsequent proceedings,* [1921] 2 Ch. 438, C. A.

123a. Effect of attornment clause.]—WOOLWICH EQUITABLE BUILDING SOCIETY *v.* PRESTON (1937), 54 T. L. R. 80 ; 81 Sol. Jo. 943.

134. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

142. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

146. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

147. *Add. Annotation :*—**Refd.** Waring *v.* London & Manchester Assurance Co., [1935] Ch. 310.

155. *Add. Annotation :*—**Refd.** Hayes Bridge Estate *v.* Portman Building Society, [1936] 2 All E. R. 1400.

158a. ——.]—KIDDERMINSTER MUTUAL BENEFIT BUILDING SOCIETY *v.* HADDOCK (1936), 80 Sol. Jo. 466.

161. After this case add :—
-.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115.

174. After this case add :-
-.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115.

174a. Transfer of property & shares—No release from covenant—Liability on covenant.]—Deft. received from pltf. building society an advance upon mtge. of certain property, such advance being regulated by the number of advanced shares held by him. He subsequently transferred the equity of redemption in the property & his shares to a third party. The rules provided that when that had been done the transferee should be liable for all subscriptions & that the board of the society might grant to the original mtgor., at his cost & charges, a release from all future liability in respect thereof. The covenant in the mtge. was to pay the money advanced to him & also such other subscriptions & payments as may become payable in respect of the shares :—*Held :* the proper construction of the covenant was that the original mtgor. was liable to pay all sums due in respect of such shares whoever the shareholder might be ; & the proper construction of the rules was that in order to be released from the covenant, he must obtain a release from the board.—WEST BROMWICH BUILDING SOCIETY *v.* BULLOCK, [1936] 1 All E. R. 887 ; 80 Sol. Jo. 654.

182. After this case add :—
-.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115 (9).

184. *Add. Annotations :*—**Refd.** Sweet *v.* Macdiarmid (or Henderson) (1920), 7 Tax Cas. 640 ; Inland Revenue Comrs. *v.* Hay (1924), 8 Tax Cas. 636.

Part VIII.—Borrowing and Loans.

187a. For purchase of mortgages Whether purpose of society.]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

190. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

198. *Add. Annotations :—As to* (2) **Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142. *Generally,* **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 132 ; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 766 ; Holt *v.* Markham, [1923] 1 K. B. 504 ; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226 ; Anchor Donaldson *v.* Crossland, [1929] A. C. 297 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

202. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

208. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

220. *Add. Annotations :*—**Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

230. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

230a. —— —— Insufficient surplus funds to carry out purchase.]—Although a building society

PART VII. SECT. 3.

sd. *Assumption of mortgage by purchaser—Monthly instalments unpaid—Rights of purchaser.*]—STARK *v.* SHEPHERD (1881), 29 Gr. 316.—CAN.

PART VII. SECT. 4.

24 l. *Determination of amount payfor losses incurred in management of society.*]—*Held :* under the mtge. in question & the bye-laws & rules of the society, the society could not charge against the mtge. a share of losses incurred in the management of the society.—LEE *v.* CANADIAN MUTUAL LOAN CO. (1908), 23 C. L. T. 165 ; 5 O. L. R. 471 ; 2 O. W. R. 370.—CAN.

PART VII. SECT. 5, SUB-SECT. 2.

t. For the existing " read " *Held :* pltf. foreclose for the whole amount due, to be computed according to the rules."

may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society:—*Held:* (1) although the contract might be *intra vires* in its inception, notwithstanding that deft. society had not sufficient surplus funds to carry it out, yet if at the time when an order was made for its specific performance deft. society had not sufficient surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which were not its surplus funds in a security in which it had no power to invest them; (2) a further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges.; & as its borrowing powers could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act; therefore no order for specific performance ought in the circumstances to be made; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled, pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract.—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, [1921] 2 Ch. 438; 91 L. J. Ch. 74; 125 L. T. 782; 37 T. L. R. 844; 65 Sol. Jo. 734, C. A.

Part X.—Disputes.

242. *Add. Citation:*—37 J. P. 468.

251. *Add. Annotation:*—**Refd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

277. *Add. Citation:*—37 J. P. 468.

Part XII.—Amalgamation and Transfer.

285a. Amalgamation—Effect of 1874 Act, s. 33—Dissolution of constituent societies unnecessary.]—By a contract dated Sept. 15, 1928, applt. agreed to sell to resp. two freehold plots of land & a dwelling-house. On Nov. 30, 1925, the property so contracted to be sold was mtged. to the H. Equitable B.B. Society, & on Jan. 31, 1928, that society was united in accordance with the provisions of the Building Societies Acts with the H. Permanent B.B. Society under the name of the H. Building Society. On June 28, 1928, the money due on the mtge. was repaid to the H. Building Society, which society gave a receipt endorsed on the mtge. A note was also endorsed that on Jan. 31, 1928, the H. Equitable B.B. Society & the H. Permanent B.B.Society were united & became one society under the name of the H. Building Society, & that the transaction was duly registered as required by the Building Society Acts. The purchaser required an abstract of the documents effecting the transfer of the mtge. to the H. Building Society from the H. Equitable B.B. Society & asserted that resolutions as to union, the notice to the registrar, & consents in writing of the shareholders in the two societies must be abstracted. The purchaser also claimed to be entitled to see the instrument of union to ascertain that the provisions of the Building Societies Acts had been complied with. The vendor contended that this was not necessary as under 1877 Act, s. 5, the registration operated as a conveyance of the property which was then vested in the H. Equitable B.B. Society. The judge held that under the Building Societies Acts the possibility was contemplated of a union without a dissolution of the uniting societies, & 1877 Act, s. 5, which provided that the registration of the union should operate as a conveyance, must be read as subject to 1874 Act, s. 33, under which the instrument of union might provide that certain properties should be excepted & not transferred, & it was therefore necessary for the purchaser to be furnished with an abstract of the instrument of union to enable him to see whether 1877 Act, s. 5, could operate without

PART X. SECT. 1.

243 ii. —— ——.]—The rules of the building society provided that every dispute arising between members of the society or any person claiming through or under a member or under the rules of the society or any officer thereof should be referred to arbn.:—*Held:* the effect of the rules of the society & sect. 36 of Building Societies Act, 1886, was not to oust the jurisdiction of the ct. to determine a question whether a certain person was a member of the society or not, such question not being a dispute within the rules & sect. 36 of the Act.—BOLTON & DOWNS BUILDING CO., LTD. *v.* DARLING DOWNS BUILDING SOCIETY, [1935] Q. S. R. 237.—**AUS.**

any qualification :—*Held :* 1874 Act, s. 33, & 1877 Act, s. 5, contemplated that a union of two societies might be made without a dissolution of each society, & it was putting too much on 1874 Act, s. 33, to say it gave complete union so that no inquiry could be made as to the terms of union, & 1877 Act, s. 5, made it clear that only such properties vested in the united society as the instrument of union provided, therefore it was necessary that the vendor should abstract & verify the resolution of union, the notice to be given to the registrar of the union, & the other instrument of union if any, & until he had done so he had not produced to the purchaser a proper title.—*Re* FRYER & HAMPSON'S CONTRACT (1929), 140 L. T. 680, C. A.

285b. —— **Property vesting in united society—Dependent on terms of instrument of union.**]—*Re* FRYER & HAMPSON'S CONTRACT, No. *ante*.

Part XIII.—Dissolution.

293. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

294. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

298. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

305. *Add. Annotation :*—**Refd.** *Re* Verpon Heaton Co., [1936] Ch. 289.

307. *Add. Citation :—subsequent proceedings*, [1921] 2 Ch. 438, C. A.

310. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

313. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

314. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

316. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

343. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

344. *Add. Annotation :—Generally*, **Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

349. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust, [1932] 1 Ch. 395.

359. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

365. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

370. *Add. Annotations :—As to* (2) **Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

BURGLARY AND THEFT INSURANCE.

See INSURANCE.

BURIAL AND CREMATION.

Part I.—Rights and Duties of Executors and Others as to Burial.

20a. —— **Not freehold estate—No personal estate—3 & 4 Will. 4, c. 104.**]—CARTER *v.* BEARD (1839), 10 Sim. 7; 3 Jur. 532; 59 E. R. 514.

Annotation :—**Refd.** *Re* Rhodes, Rhodes *v.* Rhodes (1890), 44 Ch. D. 94.

45. *Add. Annotations :—As to* (2) **Refd.** Kent *v.* Atkinson, [1923] P. 142; Rose *v.* Ford, [1937] 3 All E. R. 359.

47. *Add. Annotation :*—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461.

After this case add :—

(Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (3).

56a. —— **Verbal instructions by deceased for elaborate funeral.**]—*Re* READ, GALLOWAY *v.* HARRIS (1892), 36 Sol. Jo. 626.

Part II.—Churchyards.

69. After this case add :—

——.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

Part III.—Burial in Churches and Churchyards.

77. *Add. Annotation :*—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

81. *Add. Annotation :*—**Consd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

101. *Add. Annotation :*—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

121. *Add. Annotation :*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

138. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

139. *Add. Annotation :*—**Refd.** *Re* Little Gaddesden Churchyard, *Ex p.* Cuthbertson, [1933] P. 150.

140a. Material—White marble.]—(1) A faculty to erect a memorial in a churchyard was refused by the Consistory Ct. on the ground that the memorial was to be of white marble. It was 8 feet by 4 feet, & consisted of a St. Andrew's cross about 1 inch above the ground. Resting on the cross was a vase about 20 inches above the ground. Forty-one per cent. of the memorials already in the churchyard were of white marble :—*Held :* there was nothing illegal in the use of white marble for the memorial & in the circumstances the wishes of petitioner ought to be acceded to & a faculty granted.

(2) The incumbent's so-called discretion does not exist. All that he can do, when any one wishes to erect a memorial, if he does not consent, is to say that that person must obtain a faculty, & if that faculty is refused the matter cannot proceed. That is the power of the incumbent : he has no judicial discretion. In the second place there has been a grave misunderstanding as to the report of the Central Council for the Care of Churches, & its pamphlet on the care of churchyards. That report is merely advice, & does not profess to be anything else. The incumbent in the present case thought that he was bound to follow that report. He spoke of himself as a man under authority, referring to the diocesan report, which followed the lines of the report of the Central Council. That is wrong, for, as I have said, these reports are merely advice. The only authority is that of the Chancellor & of the ct. to which appeals from his decision can be taken (Sir LEWIS DIBDIN).—*Re* LITTLE GADDESDEN CHURCHYARD, *Ex p.* CUTHBERTSON, [1933] P. 150; *sub nom.* CUTHBERTSON *v.* LITTLE GADDESDEN PARISHIONERS, 77 Sol. Jo. 268.

140b. Powers of incumbent.]—*Re* LITTLE GADDESDEN CHURCHYARD, *Ex p.* CUTHBERTSON, No. 140a, *ante.*

PART I. SECT. 1, SUB-SECT. 1.

sa. *General rule.*]—In the absence of a testamentary disposition providing otherwise, the right to the possession of a dead body for the purposes of preservation & burial belongs to the surviving husband or wife or next of kin, & for any infraction of said right, such as an unlawful mutilation of the remains, an action for damages will lie & recovery may be had therein for mental suffering which results proximately from the wrongful act although no actual pecuniary damage is alleged or proven.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; [1931] 1 D. L. R. 676; 25 Alta. L. R. 173.—**CAN.**

sb. *Right of executor.*]—The exor. has a right to the body for the purpose of burial, & in an action by an exor. against the widow & others, an interim injunction was granted & continued until the trial of the action, restraining defts. from preventing pltfs. from carrying out the burial of the body of the deceased.—HUNTER *v.* HUNTER, [1930] 4 D. L. R. 255; 65 O. L. R. 586.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.

sc. *Coroner—Liability of municipality.*]—An unclaimed human body having been found dead within the area of deft. municipality, a provincial coroner instructed pltf., an undertaker, to prepare it for burial. Pltf. did the necessary work & completed the burial & sued the municipality for his labour & expenses incurred :—*Held :* reading together Coroners Act, R. S. M., 1913, Manitoba Anatomy Act, R. S. M., 1913, & Burials Act, R. S. M., 1913, sect. 5 of Coroners Act placed the duty on the coroner to cause the body to be interred & sect. 19 of Burials Act rendered the municipality liable for the expenses of the interment.—DAVEY *v.* CORNWALLIS, [1931] 1 W. W. R. 1; 2 D. L. R. 80; 39 Man. L. R. 259.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

se. *Company—Whether "lot holder."*]—BAYVIEW CEMETERY CO. *v.* MCLEAN, [1932] 3 D. L. R. 699; 5 M. P. R. 302.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.

136 i. *Removal—To another part of churchyard.*]—Where a proposed extension of the fabric of a Scottish Episcopal church entailed encroachment on part of the graveyard surrounding the church, the ct., in the exercise of the *nobile officium,* authorised the removal, subject to certain conditions, of the gravestones, & their re-erection upon or near the fabric of the new building.—CHRISTIE, ETC. PETITIONERS, [1926] S. C. 750.—**SCOT.**

Part X.—Position of Burial Grounds.

272. *Add. Annotation :—As to* (1) **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

274. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

277. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

Part XI.—Closed and Disused Burial Grounds.

279a. **Removal of graves—Liability of trustees to injunction.**]—Persons had purchased family graves in perpetuity in a private burying ground, which was afterwards closed by order of the Queen in council. There was no formal grant executed, but their title was merely evidenced by a receipt for the purchase-money stating the purchase :—*Held :* they were entitled to an injunction to restrain the trustees from removing or injuring the graves or gravestones, etc., but the relief must be limited to the spot purchased by pltfs., & the rights of the trustees to the remainder was unaffected.—MORELAND *v.* RICHARDSON (1856), 22 Beav. 596 ; 25 L. J. Ch. 883 ; 27 L. T. O. S. 287 ; 20 J. P. 547 ; 2 Jur. N. S. 726 ; 4 W. R. 765 ; 52 E. R. 1238.

284. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

290. After this case add :—
——.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

291. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

291a. —— ——.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land "to hold the same . . . according to the true intent & meaning" of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground :—*Held :* (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a "disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3 ; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, [1924] 2 Ch. 214 ; 93 L. J. Ch. 602 ; 131 L. T. 634 ; 68 Sol. Jo. 718.

Annotation :—As to (1) **Expld.** L. C. C. *v.* Greenwich [1929] 1 Ch. 305.

292. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

294a. **Land set apart for interment—Interments abandoned as to part—Continued as to other part.**]—(1) Where a piece of land has been effectually set apart for the purposes of interment it becomes a "burial ground" within the aggregate definition of Metropolitan Open Spaces Act, 1881 (c. 34), 1884 Act, & Open Spaces Act, 1887 (c. 32), & any portion for which the purposes of interment are subsequently abandoned becomes a "disused burial ground" within the similar definition, although interments still go on in other parts of the cemetery.

(2) A sale of a "disused burial ground" by the Admiralty under the general powers of Admiralty Lands & Works Act, 1864 (c. 57), s. 15, is not a sale under the authority of an Act of Parliament within 1884 Act, s. 5, & consequently the disused burial ground still remains subject to the building prohibitions of 1884 Act, s. 3.—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., [1929] 1 Ch. 305 ; 98 L. J. Ch. 49 ; 140 L. T. 456 ; 93 J. P. 123 ; 45 T. L. R. 144 ; 27 L. G. R. 282.

296. *Add. Annotation :*—**Consd.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

296a. —— **Sale by Admiralty.**]—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., No. 294a, *ante.*

300. *Add. Annotations :*—**Apld.** Stevens *v.* Willing & Co. (1929), 167 L. T. Jo. 178. **Consd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

300a. **Urinal.**]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed :—*Held :* (1) the proposed urinals were "buildings" within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection ; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a "building" within the above Acts ; (3) the facts proved justified the authorisation of games in the converted churchyard, but

PART XI. SECT. 1, SUB-SECT. 2.—A.

284 i. *Compulsory sale—Basis of compensation.*]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—R. *v.* MIDDLETON CHURCH TRUSTEES (1920), 56 D. L. R. 60.—CAN.

organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor. — BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, [1926] P. 87.

300b. Toolshed.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

300c. Underground chamber.] — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, No. 309a, *post*.

309. *Add. Annotation :*—**Distd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

309a. —— ——.]—A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a " building " erected " upon a disused burial ground " within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation. — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, [1928] A. C. 469 ; 97 L. J. P. C. 113 ; 139 L. T. 530 ; 92 J. P. 185 ; 44 T. L. R. 656 ; 26 L. G. R. 583, P. C.

315. *Add. Annotation :—Generally*, **Refd.** Bermondsey B. C. *v.* Mortimer, [1926] P. 87.

315a. Buildings incidental to use as children's playground.]—By the London County Council (General Powers) Act, 1935, the council or any other London local authority have power to undertake the management & upkeep of a disused burial ground or churchyard by agreement with the incumbent & churchwardens of the parish to which the ground belongs, on the issue of a faculty for that purpose by the Bishop of the diocese & subject to such conditions as the faculty may impose. Notwithstanding the prohibition against buildings being erected thereon, imposed by Disused Burial Grounds Act, 1884 (c. 72), s. 3, the council undertaking such management & upkeep may erect & maintain a gymnasium, sheds, & lavatories or other buildings or structures which they may consider necessary for the use of the ground by children, & to this extent the London County Council (General Powers) Act, 1935, though a local Act, has impliedly repealed Disused Burial Grounds Act, 1884 (c. 72), s. 3.

The Chancellor, on a petition presented by the London County Council, directed the issue of a faculty authorising the council to manage & erect certain buildings on a disused churchyard, subject to the conditions that the use of the ground for recreation should be limited to children under 14 years of age & that no organised games were to be permitted thereon.—*Re* ST. DUNSTAN'S, STEPNEY, [1937] P. 199 ; 53 T. L. R. 905.

323a. —— Playground for children—Tennis courts & swings.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

324a. Danger to persons in churchyard—Defective tombstone.]—The infant pltf., while lawfully in a churchyard, was injured by the fall of a tombstone which had been erected by defts. It was found that defts. had been negligent in the erection of the tombstone :—*Held :* defts. owed a duty to persons who might lawfully be in the churchyard, & were liable for the injury sustained by pltf.—BROWN *v.* COTTERILL (1934), 51 T. L. R. 21.

330. *Add. Annotation :*—**Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102.

331. *Add. Annotation :*—**Apld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333. *Add. Annotation :*—**Folld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333a. —— ——.]—Where a church burial ground has been closed for burials & afterwards, by agreement between the vicar & churchwardens & the local authority, dedicated for the purpose of an " open space " under Open Spaces Act, 1906 (c. 25), there is no jurisdiction in the Chancellor of the diocese to order the issue of a faculty to enable a strip of the ground to be taken by the county council for the purpose of widening an adjoining road.—*Ex p.* WEST RIDING COUNTY COUNCIL (1935), 52 T. L. R. 111.

Part XIV.—Burial of Persons Found Drowned.

350. After this case add :—

—— ——.]— *See, now*, Burial of Drowned Persons Act, 1886 (c. 20).

PART XV. SECT. 2.

sk. *Reinterment with testatrix—Testatrix illegitimate—Testamentary direction invalid.*]—Testatrix left estate amounting to £3,600. By her will she provided that her whole estate should be expended on the erection of a vault on ground to be purchased. She directed that the remains of two persons, whom she designated as her uncle & aunt, should be exhumed from the grave where they had been buried for many years, & should be buried along with her own remains in the vault. Testatrix was of illegitimate birth, & the two persons referred to were, accordingly, not legally related to her :—*Held :* the estate of the testatrix had fallen into intestacy, in respect that she was not entitled to direct an application to be made for the exhumation & re-interment of persons to whom she was not related & this direction was an inseparable part of her will.—MACKINTOSH'S JUDICIAL FACTOR *v.* LORD ADVOCATE, [1935] S. C. 406.—**SCOT.**

Part XVI.—Registration of Burials.

874. *Add. Annotations:*—*As to* (1) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. *As to* (2) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879; China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375. **Reld.** Brocklebank *v.* R., [1925] 1 K. B. 52. *As to* (3) **Reld.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343.

Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

389. *Add. Annotations:*—**Reld.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314; Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185; Townley Mill Co. (1919), Ltd. *v.* Oldham Asessment Committee, [1936] 1 K. B. 585.

PART XIX.

sm. *Taxes—Whether land in use for purposes of cemetery.*]—BURNABY DISTRICT CORPN. *v.* OCEAN VIEW DEVELOPMENT, LTD., [1923] 3 D. L. R. 1073; 32 B. C. R. 413.—**CAN.**

m i. —— —— —— *Method of valuation.*]—FALKIRK PARISH COUNCIL *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 405.—**SCOT.**

m ii. —— —— —— ——.]—ABERDEEN ASSESSOR *v.* ABERDEEN CEMETERY CO., LTD.; ABERDEEN ASSESSOR *v.* MASTER OF TRADES HOSPITAL, [1929] S. C. (Ct. of Sess.) 275.—**SCOT.**

CARRIERS.

Part I.—Who is a Common Carrier.

4a. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held:* defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.

Annotations:—**Folld.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

4b. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held:* as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—FAGAN *v.* GREEN & EDWARDS, LTD., [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.

Annotations:—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

5a. —— **Upon terms limiting liability.**]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

6. *Add. Annotation:*—*As to* (3) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

6a. —— **No fixed terminus.**]—LIVER ALKALI CO. *v.* JOHNSON, No. 31, *post.*

12a. —— —— ——.]—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., No. 4a, *ante.*

12b. —— —— ——.]—FAGAN *v.* GREEN & EDWARDS, LTD., No. 4b, *ante.*

14a. —— **Of goods accompanied by passenger.**]—By London County Council (Tramways & Improvements) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2*d.* for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held:* the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—ROSENTHAL *v.* LONDON COUNTY COUNCIL (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.

16. *Add. Annotation:*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

17. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. [illegible]

18. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. [illegible]

28. *Add. Annotation:*—**Refd.** Aslam *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

PART I. SECT. 1.

4 i. *Carrying on business as carrier—Furniture remover.*]—Deft., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was accepted:—*Held:* deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—WILSON *v.* [illegible] CO., LTD., [1923] N. Z.

For POOLEY *v.*

h i. —— *Right to reject reserved.*]—A carrier who, while inviting all & sundry to employ him, reserves to himself the right of accepting of rejecting their offers of goods for carriage, whether his conveyances are full or empty, being guided in his decision by the attractiveness or otherwise of the particular offer, & not by his ability or inability to carry having regard to his other engagements, is not a common carrier.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 1 W. W. R. 547; *affd.*, [1930] 4 D. L. R. 486; 2 W. W. R. 337.—CAN.

PART I. SECT. 2.

15 i. *Haulage* [illegible] *ing damaged motor cars.*]—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until payment for services rendered.—TERRY *v.* AUTOMOBILE OWNERS ASSOCN. (1927), Q. R. 65 S. C. 390.—CAN.

sb. *Public vehicle under Public Vehicles Act.*]—A public vehicle under Public Vehicles Act, R. S. S., 1930, is not a "common carrier" within sect. 216 (84) of City Act, R. S. S., 1930, which gives a city power to make bye-laws for the licensing of "common carriers," nor, therefore, within the meaning of a city bye-law imposing a licence fee on motor vehicles operated as "common carriers."—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—CAN.

31. For existing paragraph substitute the following :—

Deft. was a barge-owner, & let out his vessels for the conveyance of goods to any customers who applied to him. Each voyage was made under a separate agreement, & a barge was not let to more than one person for the same voyage. Deft. did not ply between any fixed termini, but the customer fixed in each particular case the points of arrival & departure. In an action against deft. by the pltfs. for not safely & securely carrying certain goods :—*Held :* deft. in exercising this employment had incurred the liability of a common carrier, & was liable though the goods were lost without negligence on his part.

Deft. was not a common carrier nor liable as such, but was liable as a ship-owner carrying goods for hire, upon the custom applicable to him as such (*per* CUR.).

Add. Annotations :—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation :—As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

44. *Add. Annotations :—Generally,* **Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

45. *Add. Annotation :*—**Refd.** Troy *v.* Eastern Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.

46. *Add. Citation :*—15 Asp. M. L. C. 208.

47. *Add. Citations :*—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

Part III.—The Contract at Common Law.

51. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

58. *Add Annotations :—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

66. *Add. Annotations :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

82. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

85. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

90a. —— ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

PART I. SECT. 4.

33 ii. ——.]—A ferry-boat engaged in transporting persons & goods for hire is a common carrier. The ferryman must insure not only the goods, but the seaworthiness of the vessel itself & his liability in case of unseaworthiness is not affected by the Harter Act.—DIRECT TRANSPORT CO. *v.* DETROIT & WINDSOR FERRY CO., [1936] 1 D. L. R. 423; O. R. 86; *affd.* [1936] 4 D. L. R. 807.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A

t i. —— ——.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—CANADIAN NORTHERN QUEBEC RY. CO. *v.* PLEET, [1923] 4 D. L. R. 1112; 26 Can. Ry. Cas. 238.—**CAN.**

t ii. ——.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pltfs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pltfs. The defective flooring was known to both parties, but pltfs. alone knew the use the cars were to be put to :—*Held :* the accident should be attributed to pltfs.' method of loading rather than to any breach of duty on part of defts.—CANADIAN WESTINGHOUSE CO., LTD. *v.* CANADIAN PACIFIC RY. CO. (1923), 54 O. L. R. 238.—**CAN.**

t iii. —— *Default of consignee.*]—HATFIELD & CO. *v.* CANADIAN PACIFIC RY. (N. B.), [1926] 2 D. L. R. 93.—**CAN.**

t iv. —— *Position of Indian railways.*]—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—GREAT INDIAN PENINSULA RY. CO., LTD. *v.* JESRAJ PATWARI (1927), I. L. R. 55 Calc. 132.—**IND.**

77 ii a. ——.]—NORTHERN GRAIN CO. *v.* CANADIAN NATIONAL RYS. & GRAND TRUNK PACIFIC RY., [1922] 3 W. W. R. 733; 70 D. L. R. 281.—**CAN.**

77 v. —— —— *Through sub-contractor's negligence.*]—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 2), [1924] N. Z. L. R. 465.—**N.Z.**

77 vi. *S. P.* WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 3), [1924] N. Z. L. R. 890.—**N.Z.**

77 vii. —— —— *What amounts to negligence.*]—Where goods entrusted to a bailee for reward are lost or destroyed while in his custody, the onus is on him to show that the loss or destruction was not due to his negligence. Where while a motor van carrying goods for hire was being operated with the cut-out open flames occasionally issued from the heater pipes at a point only a few inches from the wooden floor of the van, it cannot be said that this method of operation did not constitute negligence.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 2 W. W. R. 337; 4 D. L. R. 486.—**CAN.**

85 iii. ——.]—Goods were damaged :—*Held :* defts. were not excused from liability by any special contract in the bills of lading issued after delivery taken of the goods, &, having failed to show that the damage was not caused by their fault or neglect, they were liable.—EDGETT, LTD. *v.* PACIFIC GREAT EASTERN RY. CO., [1923] 1 W. W. R. 684; 32 B. C. R. 37.—**CAN.**

91 i. —— *Goods destroyed—No written contract limiting liability.*]—*Held :* applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO., LTD. (1923), L. R. 51 Ind. App. 29.—**IND.**

sk. *Misdelivery—Measure of damages.*—The measure of damages for misdelivery of goods by a carrier is the loss suffered by the shipper, being the price he has to pay to replace the shipment.—SCALES *v.* CLARKE STEAMSHIP CO., [1937] 2 D. L. R. 420.—**CAN.**

92a. —— ——.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again :—*Held :* in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO. (1923), 93 L. J. P. C. 108 ; 130 L. T. 554 ; 16 Asp. M. L. C. 285, P. C.

96. *Add. Annotation :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

102. *Add. Citations :*—[1917] 2 K. B. 755 ; 33 T. L. R. 517.

114. *Add. Annotations :—As to* (1) **Consd.** Frenkel *v.* McAndrews, [1929] A. C. 545. **Refd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158 ; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577. *Generally,* **Refd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597.

122. *Add. Annotation :*—**Distd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

123. *Add. Annotation :*—**Consd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

144a. Contract to carry by particular train—Whether warranty of time of arrival.]—LORD *v.* MIDLAND RY. CO., No. 412, *post.*

149. *Annotations :*—After "*As to* (2)" add "**Refd.**"

Add. Annotation :—As to (2) **Refd.** Jensen *v.* Hollis Bros. & Co., [1936] 1 All E. R. 140.

151. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART III. SECT. 3, SUB-SECT. 1.—B.

a i. —— *Goods warehoused for carrier's convenience.*]—Resps., husband & wife, were proceeding to England on Apr. 3 by mail steamer, & on Mar. 29 the male resp. wrote applts., common carriers, to the following effect : "Cabin trunk leave this day, Mar. 29. One cabin trunk will leave T. per goods train to Port A., addressed Mr. & Mrs. H., rail Port A., c/o C. & Co. Kindly deliver cabin trunk to Orient steamer S.S. *O.*" The trunk left T. by goods train, arrived & was received at Port A. by defts., who put it in their store—all on Mar. 31. On Apr. 2 the store was broken into, & most of the contents of the trunk stolen. There was no reply to resp.'s letter :—*Held :* the letter, or the letter, together with the address on the trunk, only authorised applts. to collect the trunk, & deliver it on the steamer, & the collection earlier than was necessary, & the consequent storing in the warehouse, were only for the convenience of applts. &, accordingly, applts. were liable as common carriers in respect of the articles stolen.—COCKING *v.* HOFFMANN, [1932] S. A. S. R. 108.—**AUS.**

100 i. —— *Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge.*]—*Held :* nolling the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

100 ii. —— —— *Consignee with notice of arrival—Bonded goods—Carrier liable.*]—GEORGE *v.* CANADIAN NORTHERN RY. CO. (1922), 53 O. L. R. 94.—**CAN.**

100 iii. —— —— —— *Carrier not liable—Failure of consignee to remove goods within reasonable time.*]—DYAMENT & PZADKAWOLSKI *v.* CANADIAN EXPRESS CO., [1923] 3 D. L. R. 1122 ; 52 O. L. R. 114.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*]—Pltf. shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. Pltf. in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts.' car at destination :—*Held :* pltf. could not recover, as the cause of action was founded upon an illegal contract.—MAJOR *v.* CANADIAN PACIFIC RY. CO., [1922] 3 W. W. R. 512.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

sf. *Who are.*]—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers :—*Held :* the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—SECRETARY OF STATE FOR WAR *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND, [1923] 2 I. R. 102.—**IR.**

PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages.*]—LECLERC *v.* R. (1920), 62 D. L. R. 324 ; 20 Exch. C. R. 236.—**CAN.**

PART III. SECT. 5.

h i. —— —— ——.]—DEVLIN *v.* GRAND TRUNK RY. CO. OF CANADA (1870), 30 U. C. R. 537.—**CAN.**

159 ix. —— —— —— ——.]—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 3 D. L. R. 84 ; 33 Man. L. R. 91 ; [1923] 2 W. W. R. 88.—**CAN.**

159 x. —— —— —— *Delay in delivery.*]—HATFIELD & SCOTT, LTD. *v.* CANADIAN PACIFIC RY. CO. (1921), 57 D. L. R. 453.—**CAN.**

159 xi. —— —— ——.]—INDIA GENERAL NAVIGATION & RY. CO., LTD. *v.* GIRIDHARILAL GOBERDHONE DAS (1927), I. L. R. 54 Calc. 430.—**IND.**

165 ii. —— —— —— *Goods damaged.*]—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—ROSE & LAFLAMME, LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—**CAN.**

165 iii. —— —— —— *Short delivery.*]—*Held :* defts. had discharged the *onus* of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—HARRIS *v.* DUBLIN & SOUTH EASTERN RY. CO., [1927] I. R. 137.—**IR.**

sg. *What consignee must prove—That goods in good condition when shipped—That goods actually passed over line of defendants.*]—NOVA SALES CO. *v.* CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—**CAN.**

PART III. SECT. 6.

c i. —— *Goods sent to specified wharf.*]—*Held :* evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—MORRISON *v.* THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

d i. ——.]—Goods carried by defts. for pltf. :—*Held :* at owner's risk while in defts.' warehouse at point of destination.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

d ii. ——.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY *v.* WHITEHOUSE & CO. (1921), 17 Tas. L. R. 125.—**AUS.**

e i. *S. P.* O'NEILL *v.* GREAT WESTERN RY. CO. (1857), 7 C. P. 203.—**CAN.**

f i. ——.]—SECRETARY OF STATE *v.* HAR KISHAN DAS-KURA MAL (1925), I. L. R. 7 Lah. 370.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

182 ii. —— ——.]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649 ; [1923] S. C. R. 84 ; 1 W. W. R. 473.—**CAN.**

182 iii. —— ——.]—NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781 ; 3 W. W. R. 278.—**CAN.**

PART III. SECT. 7, SUB-SECT. 3.

p i. —— *Delivery without requiring surrender of bills of lading—Delivery after indorsement of bills of lading as security.*]—*Held :* the carriers were liable.—HICKMAN GRAIN CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851 ; 1 W. W. R. 317 ; 32 C. R. C. 333 ; 36 Man. L. R. 322 ; *revsd. sub nom.* CANADIAN PACIFIC RY. CO. *v.* HICKMAN GRAIN CO., [1928] 1 D. L. R. 1069 ; [1928] S. C. R. 170 ; 34 C. R. C. 238.—**CAN.**

p ii. ——.]—CAMPBELL *v.* CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—**CAN.**

PART III. SECT. 7, SUB-SECT. 5.

s i. ——.]—*Held :* a consignee by delay in accepting delivery cannot

201. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

203. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

208. *Add. Annotations :*—**Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

234a. ——.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger ; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty :—*Held :* (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt ; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods ; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., [1922] 2 K. B. 742 ; 91 L. J. K. B. 807 ; 127 L. T. 664 ; 38 T. L. R. 711, C. A.

241. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88.

262. *Add. Annotations :*—**Refd.** The Christel Vinnen, [1924] P. 61 ; Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

265. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50 ; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97 ; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Fagan *v.* Green & Edwards, [1906] 1 K. B. 102 ; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

266. *Add. Annotations :—As to* (1) **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. *As to* (2) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51 ; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87 ;

extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—**CAN.**

sk. *Rights of carrier — To sell — Must be exercised with reasonable diligence.*]—DAVIS *v.* ELLIOT (1924), 55 O. L. R. 583.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges.*]—PATEL *v.* KEELER & CO., [1923] App. D. 506.—**S. AF.**

PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner.*]—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—ALBERTA POTATO & VEGETABLE CO. *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813 ; ——— W. W. R. 65 ; 32 Can. Ry. Cas. 356.—**CAN.**

PART III. SECT. 8.

c. Add "*revsd.* (1921), 64 D. R. 316 ; 50 O. L. R. 223."

c i. ——— ———.]—NAZZARENO *v.* ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sl. *Condition requiring notice of loss—Absence of notice bar to right of action.*]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649 ; [1923] S. C. R. 84 ; 1 W. W. R. 473.—**CAN.**

sm. *S. P.* NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781 ; 3 W. W. R. 278.—**CAN.**

sn. *United States freight classification.*]—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount :—*Held :* to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302 ; [1925] 2 W. W. R. 385 ; 30 Can. Ry. Cas. 186 ; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

o i. —— *Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.*]—SOUTH AFRICAN ——— *v.* CONRADIE, [1922] App. D. 137.—**S. AF.**

Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

267. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Rutter *v.* Palmer, [1922] 2 K. B. 87.

271. *Add. Annotations :*—*As to* (1) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 203. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

After this case add :—

Loss, damage or delay—Loss of bullion—Carriage by air.]—*See* ASLAN *v.* IMPERIAL AIRWAYS, LTD., STREET & AERIAL TRAFFIC, No. 260a, *post.*

300. *Add. Annotation :*—*As to* (2) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

302. *Add. Annotation :*—**Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

307a. Goods handed to unauthorised person.]—ROSE BROS. (WIGMORE), LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1935), 79 Sol. Jo. 923.

342. *Add. Annotations :*—*As to* (1) **Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563. *As to* (2) **Consd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

347. *Add. Annotations :*—*As to* (2) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

351. *Add. Annotations :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97.

352. *Add. Annotation :*—*As to* (1) **Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

368. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

376. *Add. Annotations :*—*As to* (4) **Consd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

381. *Add. Annotation :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

403. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

411. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

412. Add the following paragraph :—

A contract by a ry. co. to carry goods by a given train, which ordinarily arrives in London at a particular hour, does not amount to a warranty that it will so arrive, although the co.'s servants be informed that the object of the sender requires that it should arrive.

424. *Add. Annotation :*—*As to* (3) **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

426. *Add. Annotations :*—*As to* (2) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

430. *Add. Annotation :*—*Generally*, **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

434. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

436. *Add. Annotation :*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

442. *Add. Annotations :*—*As to* (1) **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505. *As to* (2) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

452. *Add. Annotations :*—**Overd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

453. *Add. Annotation :*—**Consd.** Neilson *v.* L. & N. W. Ry., [1922] 1 K. B. 192.

454. *Add. Citations :*—[1922] 1 K. B. 192; *affd. sub nom.* LONDON & NORTH WESTERN RY. CO. *v.* NEILSON, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.

Add. Annotations :—**Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

460. *Add. Citations :*—*affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

PART IV. SECT. 1, SUB-SECT. 7.

s 1. —— *" Value at place & time of shipment."*]—*Held :* the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment. —THOMPSON *v.* CANADIAN PACIFIC RY. CO. (1922), 52 O. L. R. 306.—**CAN.**

s 2. *Goods exceeding declared value—Shipper bound by declared value.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

323 i. *" Pictures "—Sound films.*]—On a claim in the Magistrate's Ct. for £44 16*s.*, the value of a motion picture sound film, which, without any declaration as to its nature & value, had been entrusted to a carrier for carriage from one town to another & had been irreparably damaged in transit, the magistrate decided that the film was not a " picture or pictures " within sect. 1 of Carriers Act, 1830, & therefore the carrier was not protected by the said section & was liable. On appeal :—*Held :* the question decided by the magistrate was one of fact & therefore not appealable, &, further, the decision was right in fact as well as in law.—S. O. S. MOTORS, LTD. *v.* FOXTON & METRO GOLDWYN-MAYER, LTD., CORPN., [1932] N. Z. L. R. 1159; G. L. R. 425.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 4.—A.

r 1. —— *Package containing scheduled articles—Effect of non-disclosure.*]—Where a package declared to contain stationery, but in fact containing scheduled articles (as under the schedule to Carriers Act) exceeding Rs. 100 in value & also non-scheduled articles is lost in transit the value of the lost non-scheduled articles may be recovered by the consignee from the carrier under sect. 3 of the Act.—RIVER STEAM NAVIGATION CO., LTD. *v.* JAMUNADAS RAMKUMAR (1931), I. L. R. 59 Calc. 472.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—B

p. —— —— —— ——.]—TAMBOLI *v.* GREAT INDIAN PENINSULA RY. CO. (1927), 55 L. R. Ind. App. 67.—**IND.**

e (p. 69) **i.** —— *Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1924] 4 D. L. R. 184; 3 W. W. R. 136; 34 B. C. R. 140.—**CAN.**

e (p. 69) **ii.** —— *Mistake by company—Recovery of deficiency in freight.*]—Where a consignment of goods was by mistake accepted by a railway at a concession rate which was applicable

Part V.—Carriage of Persons.

480. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

481. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

492. *Add. Annotation :*—*As to* (2) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

516. *Add. Annotations :* — **Consd.** Brandon *v.* Osborne Garrett, [1924] 1 K. B. 548; The

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only to a particular special customer, instead of at the ordinary rate applicable to that class of goods according to the goods tariff, & by one of the conditions of consignment the railway reserved the right of "remeasurement, re-weighment, re-classification & re-calculation of rates":—*Held:* the railway could lawfully demand at the destination the deficiency in freight calculated at the correct rate.—SECRETARY OF STATE FOR INDIA *v.* HARBANS PRASAD (1929), I. L. R. 52 All. 81.—**IND.**

l (p. 69) i. —— —— —— ——.]—PURAN DAS *v.* EAST INDIAN RY. CO. (1927), I. L. R. 6 Pat. 718.—**IND.**

l (p. 69) ii. —— —— —— ——.]—SHEO NARAIN *v.* EAST INDIAN RY. (1927), I. L. R. 50 All. 246.—**IND.**

n (p. 69) i. —— —— —— ——.]—MASON & RISCH PIANO CO. *v.* CANADIAN PACIFIC RY. CO. (1908), 8 W. L. R. 951; 1 Sask. L. R. 213; 8 Can. Ry. Cas. 369.—**CAN.**

n (p. 69) ii. —— —— —— ——.]—SECRETARY OF STATE *v.* GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

pp i. —— —— ——. *When railway protected.*]—So long as it is established that the risk notes, the forwarding note, & the railway receipt refer to the particular consignment in question, the railway co. is amply protected.—MOOLJI SIKKA & CO. *v.* BENGAL NAGPUR RY. CO., LTD. (1929), I. L. R. 56 Calc. 1060.—**IND.**

qq i. —— —— —— ——.]—The word "misconduct" in a risk note suggests that a railway servant has been guilty of doing something which was inconsistent with the conduct required of him by the rules of the co. In the absence of proof that there was any breach of duty by the railway servants or any infringement of the rules which regulate their terms of employment, no fair inference of misconduct could properly arise.—BOMBAY BARODA & CENTRAL INDIA RY. CO. *v.* NAJNAGAR SPINNING, WEAVING, & MANUFACTURING CO. (1929), I. L. R. 54; Bom. 106.—**IND.**

rr i. —— —— *Meaning of "robbery."*]—The word "robbery" as used in Risk Note H. is not synonymous with "theft," &. therefore, where there is no robbery from a running train, but theft only, deft. railway co. is not absolved from liability by the proviso to the note.—JAI NARAIN-LACHHMI NARAIN *v.* GREAT INDIAN PENINSULAR RY. CO. (1929), I. L. R. 11 Lah. 158.—**IND.**

rr ii. —— —— *Meaning of deterioration.*]—The word "deterioration" in the risk note, form B., & in Railways Act, s. 72, & Contract Act, s. 161, is wide enough to include depreciation in value of the goods on account of a fall in the market price.—GREAT INDIAN PENINSULAR RY. *v.* JUGUL KISHORE MUKAT LAL (1929), I. L. R. 52 All. 238.—**IND.**

rr iii. —— —— *Damage to goods by cold—Conditions in bill of lading as to ventilation complied with.*]—ROBERT *v.* CANADIAN NATIONAL RY., [1932] 1 D. L. R. 306.—**CAN.**

ss. *Liability for delay in delivery—Meaning of deterioration.*]—The word "deterioration" in Railways Act, s. 77, includes loss in value owing to delay in delivery & a fall in the market value of the goods consigned. Hence, a suit for the recovery of such loss is not maintainable without the notice required by the sect.—BHAGWAN DAS LACHMI NARAIN *v.* BENGALNAGPUR RAILWAY (1929), I. L. R. 51 All. 895.—**IND.**

ss. *Non-acceptance of goods—Sale—"Public auction"—What amounts to.*]—SECRETARY OF STATE *v.* SUNDERJI SHIVJI & CO., SECRETARY OF STATE *v.* DEDJI SHIVJI & CO. (1937), 81 Sol. Jo. 961, P. C.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*]—MILLS *v.* CANADIAN PACIFIC STEAMSHIPS, LTD. (1926), Q. R. 65 S. C. 148.—**CAN.**

483 ii. —— ——.]—MARCHESSEAULT *v.* CANADIAN NATIONAL RYS. (1926), Q. R. 42 K. B. 355.—**CAN.**

488 i. —— *Caused by act of stranger.*]—If an accident is due to the train leaving the metals, *primâ facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—JEWAN RAM KHETTRY *v.* EAST INDIAN RY. CO. (1924), I. L. R. 51 Calc. 861.—**IND.**

490 ii. —— —— *Opening carriage door.*]—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck pltf., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held:* defts. were liable.—ODEGAARD *v.* WINNIPEG ELECTRIC CO., [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—**CAN.**

491 iii a. —— ——.]—Ry. cos. have a duty to provide a reasonably adequate & safe access to their carriages for normal passengers, but they owe no special duty towards those passengers who are abnormal by reason of physical disability.

A passenger brought an action against a ry. co. for damages in respect of personal injuries sustained by him through a fall, owing to his having missed his foothold on the step of a ry. carriage while attempting to enter it at one of defenders' stations. Pursuer averred that, being of abnormal weight & advanced age, he had great difficulty in entering ry. carriages, a fact which was well known to defenders' servants as he was a regular traveller by their trains from the station in question, & that, at the time of the accident, access to the carriage was rendered difficult for a normal passenger, & dangerous to him in view of his physical disability, by reason of a concealed danger, viz., that the step of the carriage, owing to its design & to the place where the train was drawn up on the occasion in question, was at an unusual height above the platform:—*Held:* (1) while defenders had a duty to provide a reasonably adequate & safe access to their trains for the normal individual, they had no special duty towards abnormal passengers such as pursuer; (2) defenders were not bound to ensure that there should be an unvarying distance between step & platform; (3) pursuer's averments did not disclose any failure of duty on defenders' part, by way of concealed danger or otherwise, which brought about the accident, but the true cause of the accident was pursuer's own physical disability; action dismissed.—HENDERSON *v.* LONDON MIDLAND, & SCOTTISH RY. CO., [1935] S. C. 734.—**SCOT.**

491 vi. —— *Effect of finding of negligence.*]—It is generally sufficient for carriers to prove that they have adopted the best-known apparatus & have kept it in working order, but this rule is not applicable when there is a definite finding of negligence against the carriers.—CANADIAN NATIONAL RAILWAY *v.* MULLER, [1934] 1 D. L. R. 768.—**CAN.**

497 ii. —— *Driver of omnibus stooping down to recover tickets on floor.*]—BRADLEY *v.* BELL BUS CO., [1928] N. Z. L. R. 204.—**N.Z.**

501 i. —— *Passenger injured by sudden stopping of train.*]—The fact that a passenger was injured because of the sudden stopping of a railway train establishes a *primâ facie* case of negligence against the railway co.; & in order to rebut that presumption it is not enough for the co. to show that the train was necessarily or reasonably so stopped because, *e.g.*, there was an obstruction on the track, it must also show that it was not because of its negligence that the obstruction got there.—VIVIAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 1 W. W. R. 791; 3 D. L. R. 892; 42 B. C. R. 423.—**CAN.**

501 ii. —— ——.]—The driver of a motor bus owes a duty to his passengers not to drive so close to a vehicle ahead, that, in any emergency created by driver of that vehicle, he will have to apply his brakes so violently that a passenger is thrown from a seat in the bus & injured. Also, while a carrier is not an insurer of his passengers' safety, he owes a duty to his passengers to provide seats so protected that they cannot be injured by being thrown therefrom upon an emergency application of the brakes.—DE COURCEY *v.* LONDON STREET RY., [1932] 2 D. L. R. 319; O. R. 226.—**CAN.**

512 i. —— *Act done in course of employment.*]—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held:* pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—FORSTER *v.* TORONTO RY. CO. (1921), 67 D. L. R. 441; 51 O. L. R. 136.—**CAN.**

Paludina, [1925] P. 40. **Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

526. *Add. Annotation :—As to* (1) **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

536. *Add. Annotation :—***Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

549. *Add. Annotations :—***Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

560. *Add. Annotation :—As to* (2) **Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

560a. —— Warning not heard by passenger—Passenger asleep.]—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured :—*Held :* even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—SHARPE *v.* SOUTHERN RY. Co., [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

Annotation :—**Apld.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461.

571. *Add. Annotation :—***Distd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation :—***Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation :—As to* (1) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

578. *Add. Annotation :—***Apld.** Broome *v.* Agar (1928), 138 L. T. 698.

579a. *S. P.* WHITEHOUSE *v.* MIDLAND RY. Co. (1866), 30 J. P. 760.

PART V. SECT. 2, SUB-SECT. 3.

k i. —— —— *Bye-law prohibiting passengers from riding on car platforms.*]—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in :—*Held :* pltf. was entitled to recover.—KIME *v.* HAMILTON RADIAL ELECTRIC RY. Co. (1921), 50 O. L. R. 113; 64 D. L. R. 191.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

537 ii. —— ——.]—Pltf. alleged that he had been injured by falling from a train of defts. in which he was a passenger, & charged negligence of defts.' servants in leaving open the vestibule door of a car, through which he fell. To the question " In what did the negligence consist ? " the jury answered : " By the south side of rear end of second-class car by trap & door of vestibule being open ":—*Held :* this answer, making the negligence the " being open " of the door, & not the opening or leaving of it open, & not indicating who opened it or left it open, was not a finding upon which a judgment for pltf. could be based.—ALEXANDER *v.* CANADIAN NATIONAL RY., [1930] 3 D. L. R. 140; 36 C. R. C. 404; 65 O. L. R. 162.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

575 i. —— *Platform too low.*]—Where at a railway station there is no platform, or a platform of inadequate length to permit a passenger to step from his carriage on to a platform, the duty of the carrier to supply passengers with reasonable facilities for boarding & alighting from trains is fulfilled by providing the carriages with steps. A train pulled into a station in broad daylight, the carriage in which suppliant was travelling being drawn up beyond the platform. After goods from that station had been put out & a reasonable time had elapsed, the guard, thinking that all passengers had alighted, gave the signal to start & the train moved on, with the result that suppliant, who was then alighting from the side of the carriage away from the platform & out of view of the train officials, fell & was injured : —*Held :* there was no obligation upon the train officials to see that all passengers had actually alighted, & was no evidence of negligence.—MUNT *v.* R., [1932] N. Z. L. R. 1691; G. L. R. 667.—**N.Z.**

p. Add " *revsd.* (1920), 48 O. L. R. 386; 19 O. W. N. 221."

p i. *Train stopping before reaching station—No duty to warn passengers.*]—GRAND TRUNK RY. Co. OF CANADA *v.* MURPHY, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—**CAN.**

q i. —— —— —— ——.]—As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—WILSON *v.* WINNIPEG ELECTRIC RY. Co., [1922] 2 W. W. R. 610; 68 D. L. R. 617.—**CAN.**

s i. —— —— *Conductor not on platform.*]—A tramway conductor, as the car was approaching a " stop if required " station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured :—*Held :* no blame attached to the conductor, & the accident was due to the fault of the passenger.—GRAY *v.* GLASGOW CORPN., [1926] S. C. 967.—**SCOT.**

584 v. —— *Passenger thrown down.*]—*Held :* there was negligence on the part of defts.' servants, & deft. liable in damages.—GUILDAY *v.* WINNIPEG ELECTRIC RY. Co., [1922] 3 W. W. R. 498; 70 D. L. R. 517.—**CAN.**

584 vi. —— *After stopping—No invitation to alight.*]—The stoppage of a tram-car at other than at an authorised stopping place is not in itself an invitation to passengers to leave the vehicle; & upon a tram-car so stopping, a passenger alights at his own risk of injury from the restarting of the tram-car as well as from passing traffic.—KILPATRICK *v.* CHRISTCHURCH TRAMWAY BOARD, [1933] N. Z. L. R. Supp. 170.—**N.Z.**

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*]—GRIFFIN *v.* CAPE BRETON ELECTRIC Co. (1921), 63 D. L. R. 251; 55 N. S. R. 19.—**CAN.**

t ii. —— *In contravention of bye-law.*]—*Held :* a contravention of an absolute statutory provision precluded a claim for damages.—HILL *v.* GRAND TRUNK RY. Co. (1922), 52 O. L. R. 508.—**CAN.**

u i. —— *What is dangerous condition.*]—ELLIOTT *v.* TORONTO TRANSPORTATION COMMISSION, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—**CAN.**

so. *Omnibus stopping at unsafe place.*]—When the place where the driver of a motor bus usually makes his stop is presently safe to his knowledge & available, it is negligence on his part to cause or invite passengers to alight at a place which, to his knowledge, is unsafe.—ROADHOUSE *v.* WINNIPEG ELECTRIC CO., [1935] 2 W. W. R. 194; 3 D. L. R. 246; 43 B. C. R. 184; *affd.*, [1936] S. C. R. 147; 2 D. L. R. 190. —**CAN.**

sq. *Car starting before passenger clear.*]—Pltf., 75 years old, got his right hand caught in the rear door of a " one-man " street car when alighting from it, & was compelled to run 50 or 60 yards with the car, thereby putting a severe strain upon his muscles, heart & arteries :—*Held :* although the motor-man saw his signal light go on, which was said to mean that the rear door had closed, yet since he did not look back or otherwise make certain that pltf. was clear of the car before it started he was negligent; & pltf. was entitled to damages for his pain & suffering, past & prospective.—FRASER *v.* WINNIPEG ELECTRIC Co., [1936] 3 W. W. R. 524; 4 D. L. R. 624.—**CAN.**

sr. *Contributory negligence of passenger.*]—In an action against the owners of a tramway system, brought by a woman passenger on one of their cars to recover damages in respect of personal injuries which she had sustained in consequence of the alleged negligence of defenders' servants, pursuer averred that, when the car was approaching at a slow speed, & appeared about to stop at, the stopping

592. *Add. Annotation :*—**Folld.** Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

592a. —— —— ——.]—On a very foggy night pltf., having descended the staircase of a ry. station, was proceeding cautiously forward on the platform, when she fell over the edge. It was proved that on this particular night the lighting of the station was quite ineffective at this particular point, & the construction of the station was such that pltf. was without any indication of which way the platform was run. The foot of the staircase was within three yards of the edge of the platform, but the latter was marked by a white line painted along it. There was no guard rail :—*Held :* defts. were negligent & there was no evidence of contributory negligence on the part of pltf.—SCHLARB *v.* LONDON & NORTH EASTERN RY. CO., [1936] 1 All E. R. 71 ; 80 Sol. Jo. 168.

597. *Add. Annotations :*—**Apprvd. & Apld.** Letang *v.* Ottawa Electric Ry., [1926] A. C. 725. **Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

598. *Add. Annotations :*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455 ; Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

598a. —— —— ——.]—Applt. met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation :—*Held :* unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—LETANG *v.* OTTAWA ELECTRIC RY. CO., [1926] A. C. 725 ; 95 L. J. P. C. 153 ; 135 L. T. 421 ; 42 T. L. R. 596; P. C.

598b. —— **Whether escalator dangerous.**]—ALEXANDER *v.* CITY & SOUTH LONDON RY. CO. (1928), 44 T. L. R. 450, D. C.

600. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

603. *Add. Annotation :*—*As to* (3) **Refd.** Montreal City *v.* Watt & Scott (1922), 128 L. T. 147.

605. *Add. Annotations :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

609. *Add. Annotations :*—*As to* (1) **Refd.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461. *As to* (2) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

620. *Add. Annotations :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

625. *Add. Annotation :*—*As to* (2) **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

629. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

631a. —— —— **Running over defective line.**]—In an action against a ry. co. for an injury to a passenger, it is evidence of negligence in the conduct of the carrying, that the train was run over a rail known to have been defective & fractured, the jury considering that this was the cause of the accident.—

place where she intended to alight, she descended the step below the rear platform, & that, while she was standing with both feet on the step, waiting for the car to stop, the car was accelerated with a jerk which threw her off the step & caused her injuries :—*Held :* pursuer, by voluntarily placing herself on the step of the moving car, had added a risk, which was not contemplated in the contract of carriage between her & defenders, & which constituted contributory negligence on her part ; action dismissed.—CALDWELL *v.* GLASGOW CORPN., [1936] S. C. 490.—**SCOT.**

sw. *Train stopping suddenly at platform—Passenger waiting to alight.*]—Suppliant was a passenger by train. Before its arrival at the station-platform which was her destination she rose from her seat. The train gave a jolt as it was stopping, & she was thrown off her balance in the carriage-aisle & injured. The evidence showed the jolt was not an unusual one :—*Held :* resp. could not be held re- [illegible] by suppliant.—CHANDLER *v.* R., [1936] N. Z. L. R. 95 ; 12 N. Z. L. J. 232. **N.Z.**

PART V. SECT. 2, SUB-SECT. 6.

586 ii. ——.]—Deft. co. gratuitously, & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it :—*Held :* the co. was not liable.—BURKE *v.* BRITISH COLUMBIA ELECTRIC RY. CO., LTD. (1900), 7 B. C. R. 85.—**CAN.**

592 ii. —— —— ——.]—Where a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, &, after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured :—*Held :* the co. were liable.—OLDRIGHT *v.* GRAND TRUNK RY. CO. OF CANADA (1895), 22 A. R. 286.—**CAN.**

sa. *Waiting room—Passage leading to "Ladies Toilet"—Unlighted & unlocked door opening on to stairs to basement.*]—Pltf.'s wife entered a passage leading from a waiting room above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. Pltf.'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured :—*Held :* the third doorway was a trap or concealed place of danger, & was a place to which pltf.'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—KNOWLTON *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1926] 1 D. L. R. 217 ; 58 O. L. R. 80.—**CAN.**

sc. —— —— ——.]—An unlocked & unlabelled door leading from a railway waiting room is not a trap, & a woman who, thinking it to lead to a lavatory, enters & falls down unlighted steps & is injured, has no right of action against the railway co.—GRANT *v.* CANADIAN PACIFIC RAILWAY, [1936] 4 D. L. R. 380 ; 11 M. P. R. 25.—**CAN.**

sd. —— *Doors leading from—Duty of carrier.*]—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence ; on the contrary, the absence of any notice should put the public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—CANADIAN NATIONAL RYS. CO. *v.* LEPAGE, [1927] 3 D. L. R. 1030 ; [1927] S. C. R. 575.—**CAN.**

PART V. SECT. 2, SUB-SECT. 10.

622 iii. —— —— ——.]—WATSON *v.* PACIFIC STAGES, LTD. (1935), 5 F. L. J. (Can.) 52.—**CAN.**

v. GREAT NORTHERN RAIL. Co. (1861), 2 F. & F. 619; *subsequent proceedings* (1862), 2 B. & S. 759; (1863), 4 B. & S. 396, Ex. Ch.

Annotation :—**Consd.** Readhead *v.* Midland Rail. Co. (1867), L. R. 2 Q. B. 412.

638. *Add. Annotations :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

645. *Add. Annotation :*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

647. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

652. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

680. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

681a. —— —— —— **Accident in booking-hall.**]—ROGERS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1930), 46 T. L. R. 238; 74 Sol. Jo. 123; 94 J. P. Jo. 155.

683a. —— **Necessity for submission to Rates Tribunal of schedule for standard season tickets.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

683b. —— **Season ticket rates—Continuation of—1921 Act, s. 34.**]—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

684. *Add. Annotations :*—**Consd.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

685a. —— **Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).**]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—NUNAN *v.* SOUTHERN RY. CO., [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 131; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.

.....:—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Penton *v.* Southern Ry., [1931] 2 K. B. 103; Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

685b. —— —— —— **Injury on journey by special train.**]—Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*interalia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special contract between themselves & pltf. whereby their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey :—*Held :* although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be

PART V. SECT. 2, SUB-SECT. 11.

p i. —— —— ——.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants :—*Held :* the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—STEWART *v.* GRAND TRUNK PACIFIC RY. CO., [1924] 1 D. L. R. 881; 1 W. W. R. 473.—**CAN.**

s i. —— ——.]—When one entrusts himself or his property to another to be carried, there is an implied contract that the traveller shall use ordinary care in the transport, & in the absence of special circumstances the fact that the passenger is the father of the driver has no significance.—KEY *v.* KEY, [1930] 3 D. L. R. 327; 65 O. L. R. 232.—**CAN.**

PART V. SECT. 2, SUB-SECT. 12.

sm. *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—BUCHANAN *v.* ——— S. C. 658.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.

651 iii. —— —— *Another route adopted—Liability for excess fare.*]—A passenger after purchasing a ticket from Agra to M. *via* Aligarh & C. discovered that if he travelled beyond Aligarh & *via* G. he would reach his destination more quickly than by the route indicated on the ticket, although he would be travelling by a longer route. He did travel accordingly & on arrival at M. he was made to pay excess fare. On suit for refund :—*Held :* Indian Railways Coaching Tariff, r. 64, applied to a passenger who was found travelling, either intentionally or by mistake, by a route other than that indicated on the ticket & not to a passenger who had arrived at his destination, & the case was governed by r. 63 & the excess fare was justified.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MURTI MANOHAR (1928), I. L. R. 51 All. 399.—**IND.**

limited to £100, & pltf. could recover no more than that amount.—HEARN *v.* SOUTHERN RY. CO. (1925), 41 T. L. R. 305, C. A.

685c. **Time limit for making claim.**]—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:— *Held:* (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—JONES *v.* OCEANIC STEAM NAVIGATION CO., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

686a. **Contract for voyage—Mistake as to nature of voyage—Ratification.**]—In Oct. 1933, pltf., a widow lady who since the death of her husband in 1929 had suffered from insomnia, nervous disorder, & heart trouble, wished to go to sea for a pleasure cruise. She called at the office of deft. co. & bought a ticket for a voyage to Australia & back on defts.' steamer *O.* She was under the impression that the voyage was to be a pleasure cruise & that she would have the benefit of the usual entertainments & shore excursions which are arranged on pleasure cruises, but in fact the voyage was an ordinary voyage in the regular mail & passenger service between England & Australia. She embarked on the *O.* in due course, & after the steamer had started she discovered that the voyage was not a pleasure cruise & she asked the purser to make arrangements for her to be put ashore & conveyed back to England. He suggested that she should go ashore at Toulon & return home by train through France, but as he could not undertake that deft. co. would refund the money which pltf. had paid for her passage she decided to stay on board, & she accordingly travelled to Australia & back. She then brought this action for damages for breach of contract. She had paid to deft. co. £140 for the return ticket to Australia & had paid a further £60 as a deposit to cover incidental expenses during the voyage, & she said that owing to the circumstances of the voyage her health had become worse & she had been put to trouble & expense at the ports of call:— *Held:* although originally the parties were not *ad idem* & there was no concluded contract, when pltf. made up her mind to remain on board for the voyage to Australia & back instead of returning to England from Toulon she elected to affirm the contract which deft. co. had in fact offered her, & as deft. co. had performed that contract the action failed.—MACMILLAN *v.* ORIENT STEAM NAVIGATION CO., LTD. (1935), 40 Com. Cas. 182.

688. *Add. Annotation:*—**Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

689. *Add. Annotations:*—**Distd.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

695. *Add. Annotations:*—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

695a. —— —— —— **Conditions ascertainable by reference to time-table.**]—Pltf., who could not read, had an excursion ticket taken for her by her niece on the face of which were printed the words: "Excursion. For conditions see back"; & on the back was a notice that the ticket was issued subject to the conditions in the deft. co.'s time-tables & excursion bills. On the excursion bills excursion tickets were stated to be issued subject to the conditions shown in the company's current time-tables. The time-tables, which could be obtained for sixpence each, stated: "Excursion tickets . . . are issued subject to the general regulations & to the condition that the holders . . . shall have no rights of action against the co. . . . in respect of . . . injury (fatal or otherwise) . . . however caused." A special jury found that an accident to the pltf. on the journey

PART V. SECT. 3, SUB-SECT. 5.

688 *v.* —— —— ——.]—*Held:* in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—WILLIAMSON *v.* NORTH OF SCOTLAND, ETC. NAVIGATION CO., [1916] S. C. 554.—SCOT.

p 1. —— —— —— ——.]—In an action by a passenger against a ry. co. to recover damages for personal injury sustained by him while travelling on one of their trains, defenders maintained that, under the contract of carriage, they were exempt from liability. When the accident occurred, pursuer was travelling on a "pleasure party" ticket, issued at a fare less than the ordinary fare. The ticket bore on the front, in legible print, "See Back," & on the back, also in legible print, "This ticket is issued subject to the General Notices, Regulations, & Conditions in the co.'s current Time Tables & Bills." Defenders' current Time Tables contained a section headed "General Notices, Regulations, & Condition," which included a condition that the holder of a ticket issued at a fare less than the ordinary fare should have no right of action against the co. in respect of injury, however caused. Pursuer admitted that he knew that there was printing on the back of his ticket, & that he must have read what was printed on the back of a similar ticket when travelling on previous occasions, but deponed that what he read had conveyed nothing to him:— *Held:* the condition formed part of the contract, in respect that the reference of the ticket to the conditions in defenders' time tables was reasonable notice of their existence & terms, & further, as pursuer knew there was printing on the back of the ticket, & admitted that at some time he must have read the printing, he must be taken to have known that it referred to conditions. Defenders assoilzied.—GRAY *v.* L. & N. E. RY. CO., [1930] S. C. 989.—SCOT.

q 1. —— —— —— ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* SIMPSON (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320.—CAN.

s 1. *S. P.* ERICKSON *v.* CANADIAN PACIFIC RY. CO., WALSTEAD *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1928] 1 D. L. R. 29; [1927] 3 W. W. R. 749.—CAN.

covered by the excursion ticket was due to negligence on the part of deft. co. To prevent the case going back for a new trial, the jury were asked whether the deft. co. took reasonable steps to bring the conditions to the notice of pltf. & answered "No," & awarded damages. Argument was then allowed whether the jury could so find, & it was held that as a matter of law when the ticket was accepted the contract was complete, & therefore there was no evidence on which the jury could find as they did :—*Held :* (1) the fact that pltf. could not read did not alter the legal position ; she was bound by the special contract made on the excursion ticket on the acceptance of the ticket ; & the indication of the special conditions by reference to the time-tables was sufficient notice of their existence & contents ; (2) the question put to the jury for the sake of convenience as to reasonable notice must be determined upon the law applicable to the conditions upon which the ticket was issued, & those conditions negatived the right of pltf. to recover damages.—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1930] 1 K. B. 41 ; 98 L. J. K. B. 615 ; 141 L. T. 382, C. A.

Annotations :—As to (1) **Apld.** Penton *v.* Southern Railway, [1931] 2 K. B. 103. *Generally,* **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

695b. —— —— —— **Plaintiff unable to read.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante.*

695c. —— —— —— **Whether question of law or fact.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante.*

695d. —— —— ——.]—Defts., a railway co., issued to persons asking for tickets between certain hours of the day between certain stations return day tickets at a reduced rate, whether such rate was demanded or not. On the front of these tickets were the words, legibly & clearly printed in large letters, "For conditions see back," & on the back was printed a condition exonerating the co. from liability for injury to the holder of the ticket, however caused. Pltf. asked for "Waterloo return," & was supplied with one of these tickets, which he accepted without objection. He was injured on the journey through the alleged negligence of defts.' servants :—*Held :* in the absence of proof that pltf. actually knew of this condition, defts. must show that they had taken reasonable steps to bring it to his notice, but on the facts there was no evidence for a jury that they had not done so.—PENTON *v.* SOUTHERN RY., [1931] 2 K. B. 103 ; 100 L. J. K. B. 228 ; 144 L. T. 614 ; 75 Sol. Jo. 100.

696. *Add. Annotation :*—**Refd.** Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

701. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

703a. —— ——.]—METROPOLITAN RY. Co. *v.* GREAT WESTERN RY. Co. (1886), 3 T. L. R. 113.

704. *Add. Annotations :*—**Refd.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420 ; Pratt *v.* Patrick, [1924] 1 K. B. 438.

723. *Add. Annotations :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354 ; Ley *v.* Hamilton (1934), 151 L. T. 360.

724. *Add. Annotations :—As to* (1) **Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429. **Refd.** Ley *v.* Hamilton (1934), 151 L. T. 360 ; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

725. *Add. Annotation :*—**Refd.** Baker *v.* Dalgleish Steam Shipping Co. (1921), 126 L. T. 482.

733. *Add. Annotations :*—**Folld.** Haynes *v.* Davey (1937), 25 Ry. & Can. Tr. Cas. 294. **Apld.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 367.

733a. —— —— ——.]—A passenger who travels upon a railway without paying his own fare but by producing the return half of a non-transferable return ticket issued to another person is guilty of the offence of travelling without having previously paid his fare & with intent to avoid payment thereof, though he did not know that the ticket was non-transferable & would not have used it if he had known.—HAYNES *v.* DAVEY (1937), 25 Ry. & Can. Tr. Cas. 294.

753a. —— —— **Transfer of non-transferable ticket.**]—K. purchased for 10*s.* an excursion return ticket, which was not transferable. The ordinary single fare for the same journey was 23*s.* On arrival at his destination K. handed to G. the return half of his excursion ticket which G. intended to use to avoid payment of his fare. Informations were preferred against K. & G., under the bye-law set out below, charging them respectively with having unlawfully transferred & unlawfully received a partly used ticket. The bye-law provided : "No person shall . . . transfer or receive any partly-used ticket . . . to or from any other person with intent that any person shall use the same for the purpose of travelling . . . on the ry., unless the ticket shall at the time of issuing thereof purport to be transferable." The magistrate dismissed the informations on the ground that, as the bye-law was framed to cover cases where there was no fraudulent intent, it was void & *ultra vires* as being repugnant to the general principles of law :—*Held :* inasmuch as the purpose of the bye-law was to prohibit transactions which must in general be fraudulent, the bye-law was a valid one.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* GREAVER, [1936]3 All E. R. 333 ; 155 L. T. 535 ; 100 J. P. 511 ; 53 T. L. R. 75 ; 80 Sol. Jo. 878, D. C.

PART V. SECT. 4.

699 ii. —— —— *Negligence of issuing company.*]—In an action against a railway co. to recover damages in respect of pecuniary loss & also for *solatium,* pursuer averred that his son, while travelling as a passenger on defenders' railway from London to Glasgow, with the return half of a ticket purchased by him in Glasgow, was fatally injured as a result of an accident to the train, which occurred in England, & admittedly was caused by the negligence of defenders' servants :—*Held :* the rights of the parties fell to be determined in accordance with the law of England, as the *lex loci delicti.*—NAFTALIN *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1933] S. C. 259.—SCOT.

PART V. SECT. 6, SUB-SECT. 1.

so. *Pulling communication cord—Defences—Compartment overcrowded.*]—A railway passenger who pulls the emergency chain because he finds the compartment crowded beyond the prescribed limit commits no offence under Indian Railways Act, 1890, s. 108, merely because he does so for the additional reason of obtaining the names of certain passengers who used abusive language towards him.—EMPEROR *v.* POPATLAL BHAICHAND (1929), I. L. R. 54 Bom. 326.—IND

756. *Add. Annotation :*—**Consd.** London Passenger Transport Board *v.* Summer (1935), 154 L. T. 108.

759. *Add. Annotation :*—**Consd.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 307.

764. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

765. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

775. *Add. Annotations :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; *Re* Carroll, [1931] 1 K. B. 317.

777. *Add. Annotation :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299.

781a. —— —— ——.]—**Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employment.**—PERCY *v.* GLASGOW CORPN., [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 38 T. L. R. 722; 66 Sol. Jo. 555; 20 L. G. R. 605.

Part VI.—Carriage of Passengers' Luggage.

784. *Add. Annotation :*—*As to* (1) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

786. *Add. Annotation :*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

787. *Add. Annotation :*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

792. *Add. Annotation :*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

795. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

796. *Add. Annotation :*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

799. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

800. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

804a. Luggage put in luggage van—By order of official.]—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD., No. 851a, *post.*

811. *Add. Annotations :*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522; Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

813. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

816. *Add. Annotation :*—*As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

823. *Add. Annotation :*—*As to* (3) **Folld.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

827a. Luggage put in compartment by porter—Passenger travelling in another compartment.] — Pltf., who had a third-class ticket, got a porter to put his suit-case in a first-class compartment & travelled in another part of the train, third class, with some friends whom he found on the train. At the end of the journey pltf.'s suit-case could not be found. In an action against the railway co. for its value :—*Held :* as the railway had failed to discharge the *onus* of proving that the loss of the hand arose by reason of the negligence of the passenger, pltf. was entitled to recover.—VOSPER *v.* GREAT WESTERN RY. CO., [1928] 1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520; 45 T. L. R. 738; 71 Sol. Jo. 605, D.

829. *Add. Annotation :*—*As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

830. *Add. Annotations :*—*As to* (1) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678; Vosper *v.* G. W. Ry. (1927), 137 L. T. 520. *As to* (2) **Refd.** Ehinger *v.*

PART V. SECT. 7.

b i. —— —— *Refusal to obey conductor—Request unreasonable—Carrier liable.*]—RAINES *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1921), 70 D. L. R. 738; 30 B. C. R. 340.—CAN.

g i. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202; *revsg.*, [1924] 4 D. L. R. 339; 55 O. L. R. 387.—CAN.

m i. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202.—CAN.

PART VI. SECT. 3, SUB-SECT. 1.

o i. —— *Sent back by returning steamer after arrival at destination—Carrier liable.*]—SMITH *v.* UNION S.S. CO. (1922), 68 D. L. R. 488.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.

806 i. *Luggage placed in compartment with passenger—Whether company liable—Passenger leaving carriage with door open.*]—Pltf. & her sister arrived at Euston Station of defts.' railway shortly after 5 p.m. in order to travel by the 6.10 p.m. train to H. Their luggage included two dressing cases which they directed a porter to put in a carriage in which they had reserved seats. The porter carried out these instructions & placed pltf.'s dressing case on the rack of a corridor carriage which was about the middle of the train. As the porter left, pltf. lifted down her case & placed it on the seat. Having removed a book therefrom, the two ladies left the carriage, without closing the door, & proceeded to a bookstall on the platform about the end of the train. Upon their return seven minutes later pltf.'s dressing case had disappeared :—*Held :* the onus of proving that the loss was due to negligence on the part of the passenger lay upon the co. Pltf., by leaving her dressing case unprotected in a carriage with the door open, was not guilty of such negligence as would exonerate the co., who were, accordingly, liable for the loss.—CARR *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1931), N. I. 94.—IR.

PART VI. SECT. 7.

sp. *Luggage left with porter—Passenger telephoning for car.*]—A passenger arrived by train at a railway station with heavy luggage in the van & lighter articles accompanying her in the compartment. All the luggage was taken on a barrow by a porter to a cab-stand in the station, where the passenger expected to be met by friends with a car. Failing to find them, she went to telephone to them, leaving the luggage in charge of the porter along with her two young children. In her absence the porter left the luggage unattended, & a thief having got rid of the children by a device, stole the lighter articles. In

S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (3) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

831. *Add. Annotation :—Generally,* **Refd.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

833a. *S. P.* HARRISON *v.* GREAT WESTERN RY. CO. (1875), 39 J. P. 312.

-.]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow

at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two deft. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos. :—*Held :* as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD. (1922), 38 T. L. R. 678 ; 66 Sol. Jo. 633.

-.]—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever" :—*Held :* such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—TAUBMAN *v.* PACIFIC STEAM NAVIGATION CO. (1872), 26 L. T. 704 ; 1 Asp. M. L. C. 336.

Annotations :—**Consd.** Price *v.* Union Lighterage Co. (1904), 73 L. J. K. B. 222 ; Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** The Pearlmoor, [1904] P. 286.

852. *Add. Annotation :—Generally,* **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

853. *Add. Annotation :*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615.

854. *Add. Annotation :—As to* (1) **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

855. *Add. Annotation :—As to* (1) **Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

857. *Add. Annotation :—As to* (1) **Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

858. *Add. Annotations :*—**Consd.** Werner *v.* Det Bergenske Dampskibsselschaft (1926), 134 L. T. 573. **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations :*—**Refd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263 ; Nunan *v.* Southern Ry., [1923] 2 K. B. 703 ; Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646 ; The Refrigerant, [1925] P. 130 ; H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co. (1933), 149 L. T. 603 ; Danneberg *v.* White Sea Timber Trust, Ltd. (1935), 154 L. T. 25 ; Ashby *v.* Tolhurst, [1937] 2 K. B. 242.

866. *Add. Annotations :*—**Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Rys. [1923] 2 K. B. 703.

Part VII.—Carriage of Animals.

885. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1923] 2 K. B. 742.

890. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

an action by the passenger against the railway co. :—*Held :* the co. was liable, in respect that its liability as carrier of passengers' luggage lasted until the passenger, using due diligence, had been afforded a reasonable opportunity of taking delivery of the luggage ; & here it was not proved that the passenger had failed to exercise due diligence.—PARKER *v.* M. S. RY. CO., [1930] S. C. 822.—SCOT.

PART VI. SECT. 8, SUB-SECT. 4.

d i. —— *Special contract.*]—*Held :* it was a valid answer to pltf.'s action that she had assented to be bound by the contract relieving the carrier from liability.—FENNELL *v.* MONTREAL S.S. Co. (1876), 6 Nfld. L. R. 124.—NFLD.

d ii. —— —— *Construction.*]—DIXON *v.* RICHELIEU NAVIGATION CO. (1889), 18 S. C. R. 704.—CAN.

e i. —— ——.]—*Held :* pltf. was bound by the conditions.—WOOD *v.* ALLAN (1880), 13 N. S. R. (1 R. & G.) 477 ; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—CAN.

——*eld :* pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting defts.' liability, as the clause had been waived, & there was a special contract.—TOLERTON *v.* ——ARD S.S. Co., [1924] 3 D. L. R. 355 ; 2 W. W. R. 927 ; 33 B. C. R. 551.—CAN.

PART VII. SECT. 1, SUB-SECT. 2.

——— PACIFIC RAILWAY (1929), 1 M. P. R.

PART VII. SECT. 3.

r i. —— *No evidence as to cause of loss.*]—In an action for damages for the loss of three horses which died while in transit on deft.'s railway under a contract known as "Live Stock—Special Contract—Shipping Order," approved by the Board of Railway Comrs. for Canada :—*Held :* there being no evidence to establish the actual cause of the deaths, the facts disclosed *pointed to* the conclusion that something beyond the control of deft., rather than any fault on its part, was the cause of the loss, &, therefore, under the terms of the contract deft. was not liable.—BAYNE *v.* CANADIAN NATIONAL RYS., [1933] 3 W. W. R. 616.—CAN.

w i. —— *Animals dying of arsenic poisoning.*]—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with

Part VIII.—Carriage of Explosives and Dangerous Goods.

894. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

895. *Add. Annotations :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B 742 ; McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

896. *Add. Annotations :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Folld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

896a. ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P, DEPOSITORY, LTD., No. 234a.

896b. Goods unfit to travel—Liability of sender.]—SOUTHERN RY. CO. *v.* BOOTS PURE DRUG CO., LTD. (1935), 79 Sol. Jo. 109.

Part IX.—Measure of Damages.

905. *Add. Annotations :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535 ; The Edison, [1932] P. 52 ; The Arpad (1934), 50 T. L. R. 505.

910. *Add. Annotations :*—**Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535. **Apld.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404 ; The Edison, [1932] P. 52. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Apld.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739 ; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209 ; Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66 ; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Flint *v.* Lovell, [1935] 1 K. B. 354 ; Haynes *v.* Harwood, [1935] 1 K. B. 146 ; Millar's Machinery Co., Ltd. *v.* Way (David) & Son (1935), 40 Com. Cas. 204 ; Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936), 80 Sol. Jo. 284 ; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

912. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

914. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

918. *Add. Annotations :*—*As to* (1) **Consd.** The Edison, [1932] P. 52 ; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

924. *Add. Annotation :*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

930. *Add. Annotation :*—**Refd.** Aronson *v.* Molga Holzindustrie A./G. Leningrad (1927), 32 Com. Cas. 276.

Part X.—Statutory Control of Carriers' Business.

954a. Side entrance to—Refusal to re-open.]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed

any alleged negligence, & the cause of the damage was purely a matter of speculation.—TURNER *v.* CANADIAN PACIFIC RY. CO., [1922] 2 W. W. R. 858 ; 66 D. L. R. 31.—**CAN.**

b i. —— *Unless written notice of claim given at point of delivery.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO., [1921] 3 W. W. R. 788 ; 62 D. L. R. 601 : 15 Sask. L. R. 1.—**CAN.**

PART IX. SECT. 1.

901 vi. ——.]—Action against a ry. co. for alleged shortages in thirty-seven cars of grain loaded in bulk from elevators on private sidings & delivered at private sidings. The real dispute between the parties as to each car was as to the quantity (*a*) shipped, (*b*) delivered at destination, (*c*) loss in transit, if any, & if any whether the shipper was to blame for the loss. The cars were all shipped under the uniform bill of lading for bulk grain :—*Held :* after reviewing the method of weighing & billing the grain, it was not to be assumed on that account that the grain was not carefully weighed or that the ry. was charged with any worthwhile quantity as having been put into any car which was not actually put into it, & the bills of lading largely lost their value as *prima facie* evidence of quantities, & in accordance with the real intention of the parties, should be considered rather as evidence only of approximate quantities shipped.—GRAIN CLAIMS BUREAU, LTD. & FEDERAL GRAIN, LTD. *v.* CANADIAN PACIFIC RY. CO., [1936] 2 W. W. R. 17 ; 2 D. L. R. 558.—**CAN.**

PART X.

For cases decided by the Board of Railway Commissioners for Canada, *see, generally,* RAILWAYS, Vol. XXXVIII., pp. 254-256, 375-378.

in pursuance of a general policy of " closed " stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—NOTTINGHAM CORPN. *v.* MIDLAND RY. CO. (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.

955. *Add.* *Annotation :* — **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

957. *Add. Annotation :—As to* (1) **Consd.** Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10.

958. *Add. Annotation :—As to* (3) **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

960. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14; Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

967. *Add. Annotation :—As to* (1) **Distd.** London & North Eastern Ry. Co. *v.* British Trawlers Federation, Ltd., [1934] A. C. 279.

973a. —— **Over land of third party—Not ordered.**] —*Held :* a railway co. cannot be ordered to work a siding which trespasses on the land of a third party.—STOKES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1932), 21 Ry. & Can. Tr. Cas. 30.

976a. —— **Refusal to accept privately owned wagons.**]—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—CHARRINGTON, GARDNER, LOCKETT & CO., LTD. *v.* SOUTHERN RY. CO. (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.

980. *Add. Annotation :—As to* (1) **Consd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

991a. —— **Jurisdiction of Commissioners.**]—By rule 52 of the Railway & Canal Commission Rules any application to rescind an order of the Comrs. must be made within twenty-eight days after the said order has been communicated to the parties unless the Comrs. think fit to enlarge the time. In 1931 the Comrs. allowed an application to be made to rescind an order made in 1891. In 1891 the Comrs. ordered a railway co. to afford reasonable facilities for passenger traffic on a branch line which had been closed to passenger traffic. The railway co. complied with the order. In a later case between other parties it was held by the Ct. of Appeal that the Comrs. had no jurisdiction to make the order of 1891. In 1930 the railway co. again closed the line to passenger traffic. On an application by the urban council of the district for an order compelling the railway co. to obey the order of 1891, & on a motion by the railway co. to rescind the order of 1891 :—*Held :* the order of 1891, having been made without jurisdiction, must be rescinded. A facility which involves the railway co. which affords it in a loss is not reasonable.—WINSFORD URBAN DISTRICT COUNCIL *v.* CHESHIRE LINES COMMITTEE (1931), 21 Ry. & Can. Tr. Cas. 10.

1010a. —— **To continue former facilities—Pending decision as to rights of parties.**]—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties :—*Held :* this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—GREAT CENTRAL RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 89.

1015a. —— **Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post*.

1025. *Add. Citation :—sub nom.* R. *v.* RAILWAY COMRS., 46 J. P. 35.

1043a. Amount fixed so as to allow rebate to be made.] — Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2*d.* per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been withdrawn, an application was made for a through rate equal to the original charge :—*Held :* (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader. —GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.

1049a. —— —— **Applicants not performing functions of ordinary railway company.**]—STOCKSBRIDGE RY. CO. *v.* GREAT CENTRAL RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 335.

1051a.—— **Congested route—Alternative route available.**]—*Held :* (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrangement between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 202

1058a. —— **Terminal costs.**]—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, *ante*.

1060a. —— **Payment of rebate to trader.**]—GLENAVON GARW COLLIERIES, LTD. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, *ante*.

1072. *Add. Annotation :*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1077. *Add. Annotation :—As to* (1) **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1080. *Add. Annotations :—As to* (4) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1096a. —— **Regulation affecting one class of goods only—Lower rate necessary in public interest.**]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, *post*.

1098. *Add. Annotation :—As to* (1) **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

1108. *Add. Annotations :*—**Refd.** *Re* Railways Act, 1921, *Re* Great Western Ry. Co.'s Application, [1933] 2 K. B. 391; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1110. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1111. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1115. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1122. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123a. Meaning of "trader"—Railway & Canal Traffic Act, 1888 (c. 25), s. 27.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post*.

1124. *Add. Annotation :*—**Consd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

1144. *Add. Annotations :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1149. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1149a. ——.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post*.

1166a. —— **Wharfage.**]—By its Act a canal co. was precluded from charging for wharfage in respect of private wharves constructed under provisions of the Act, which empowered adjoining owners to construct wharves on the banks of the canal. An oil co. acquired from the canal co. land adjoining the canal bank, under three conveyances, by one of which they were obliged, & by another empowered, to construct a wharf on a line beyond their boundary, so that the front part of the wharf should extend beyond the canal bank over the canal. On a wharf so erected the oil co. fixed a pipe & discharged oil in bulk from vessels lying in the canal. Competitors of the oil co. owning land that was near to but did not adjoin the canal obtained from the canal co. easements to erect valve houses on the canal bank, & discharged their oil in the same way. The canal co.'s sched. of charges contained two classes of oil. As to the one it was stated that the rate was inclusive of a charge for wharfage, as to the other, that the rate was for tolls only but that the use of the canal co.'s wharves was free. The oil co. & their competitors were charged the same rates, which were less than the maximum tolls for the use of the canal :—*Held :* the oil co.'s wharf was not a private wharf, to which the wharfage rate was inapplicable, firstly because it was constructed, not under the powers conferred by the Act on adjoining landowners, but under the obligations imposed as part of the consideration for which the land was acquired; secondly, because the wharf, extending over the canal, was not wholly constructed on the land of the adjoining owner; therefore, the oil co. was not unduly prejudiced by being charged the same rates as their competitors who did not own land adjoining the canal. The Commission found as a fact that the canal co. did not, in certain cases, charge for wharfage, though they charged an inclusive rate which covered the use of their wharves.—ANGLO-OIL CO. *v.* MANCHESTER SHIP (1929), 20 Ry. & Can. Tr. Cas. 45.

Annotation :—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

—— ——.]—(1) *Held* by the Comrs. where an inclusive charge covers services

PART X. SECT. 3, SUB-SECT.

3a. *Classification causing prefe... Validity of bye-law.*]—By Government Railways Act, 1912, s. 24, the Comrs. are empowered to demand tolls in respect of goods carried upon the railways, but subject to the provisions of the Act, such tolls shall be charged equally to all persons, & after the same rate in respect of all goods of the same description :—*Held :* certain bye-laws made in pursuance of the Act, which classified imported galvanised iron in a different class to iron of a similar nature manufactured locally, & which prescribed a toll of a higher rate for the imported than for locally manufactured iron of the nature referred to, were not ...—HARDY'S, LTD. *v.*

COMRS. FOR NEW SOUTH (1928), 28 S. R. N. S. W. 318; 45 N. S. W. W. N. 82.—AUS.

PART X. SECT. 3, SUB-SECT. 3.—D.

h i. —— —— —— —— ——

Dominion Railway Act, 1919, *s.* 316.] R. (CANADIAN PACIFIC RY. CO. — MILLER) *v.* STANDELL, [1923] 2 W.W. R.

in respect of which a railway co. is bound to show no undue preference, then, if it can be shown that there is allowed out of the inclusive charge less for those services than is charged to complainants for the same services, an undue preference is made out. Therefore a cause of action was disclosed by an application which alleged that out of an inclusive charge made by the resps. for collection & delivery by water of rail-borne traffic less was retained by resps. in respect of wharfage at a wharf where goods were loaded on to railway trucks than was charged to the applicants for the same wharfage; (2) by the Ct. of Appeal such a question ought not to be tried on the pleadings because there might be disclosed at the trial material facts which had not been disclosed on the pleadings.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

·]—Resps. made an inclusive charge of 3*s.* 10*d.* for collection & delivery by lighter on the Thames. This charge covered lighterage by resps.' accredited agents & also wharfage at the waterside station where the traffic was loaded & unloaded. Resps. paid their agents 2*s.* 10*d.* for the lighterage & retained 1*s.* for the wharfage. For the same wharfage the resps. charged 1*s.* 6*d.* to appcts., who were lightermen competing with resps.' agents. The Comrs. found as a fact that this discrimination, which they assumed to be a preference of resps.' agents against appcts., was necessary for the purpose of preventing the traffic collected & delivered by resps.' agents from being transferred from resps.' railway to rival carriers by road:—*Held:* (1) it was in the public interest that this traffic should be retained by the resps. instead of being carried by road; (2) the following facts were properly taken into account by the Comrs. in deciding that the preference was not undue, *viz.*, that a similar system had been enforced for forty years by other railway cos. owning other wharves on the Thames; in consideration of the preference resps.' agents had submitted themselves to a system of control which was an advantage to resps.; the effect of the preference & the consequent monopoly of resps.' agents had been to augment resps.' traffic, & at the same time to render the working of it cheaper & more efficient, & to minimise delays & demurrage charges.

(3) *Per* MAUGHAM, L.J.: "Trader" in Railway & Canal Traffic Act, 1888 (c. 25), s. 27, includes a rival carrier.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

Annotation:—As to (1) **Refd.** Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1166d. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appcts at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate:—*Held:* without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—PRENTICE BROTHERS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1167. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1169. *Add. Annotation:—As to* (3) **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1171. *Add. Annotation:*—**Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175. *Add. Annotation:*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1175a. —— Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post.*

1178. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1184. *Add. Annotation:—As to* (1) **Consd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1192. *Add. Annotation:—As to* (1) **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1193. *Add. Annotations:—As to* (1) **Consd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. **Refd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Can. 54; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1194. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1205. *Add. Annotation:—Generally,* **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1219a. —— Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged

a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co. :—*Held :* (1) both rates were properly charged under the circumstances, & the difference between them was justified ; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1224a. —— —— ——.]—*Held :* " the discovery by the party aggrieved of the matter complained of " in 1888 Act, s. 12, means discovery of the preferential treatment of complainant's competitor, & not discovery of the evidence by which the complaint can be substantiated. — BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 78.

1236. *Add. Annotation :* — **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1237a. Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.]—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period :—*Held :* not an agreement fixing those rates within 1921 Act, s. 34.—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. —— —— ——.]—(1) A colliery co. agreed with a railway co. that in consideration of the colliery co. sinking a pit the railway co. would build a railway & would charge for the coal conveyed from the pit to the port of shipment rates as low per ton per mile as the rates for the time being charged by the railway co. for coal to or from the said port to or from any colliery in Glamorganshire. In pursuance of this agreement a charge of 6.923*d.* was made from before 1914 to Jan. 1920, when, in consequence of the imposition of a flat rate addition by the Minister of Transport the mileage rate of the said charge so increased came to exceed the mileage rate of the charges, similarly increased, for coal from more distant collieries to the same port : by the Rates Tribunal the charge of 6.923*d.* was fixed under a statutory agreement & originally fixed for valuable consideration.

(2) An assignment of the goodwill of a business " & all other protected rights & all other hereditaments, effects & things not capable of delivery by hand held relating to or enjoyed or exercised in connection with the said business " transfers the benefit of an agreement for a railway rate.

(3) An agreement which has been assigned, but incompletely for want of notice, is a subsisting agreement within sect. 34 (2) of Railways Act.

(4) The jurisdiction of the Rates Tribunal under sect. 34 (2) of the Railways Act is to continue charges, but not so as to override the repeal of agreements for charges effected by sect. 34 (1). Consequently, an agreement that a colliery co. shall have as low a rate per ton per mile as any other colliery cannot be continued.

(5) The adjustment prescribed by sect. 34 (2) means that the adjusted charge is to bear the same relation to the general charges made on the appointed day as the charge to be continued bore to the general charges made on Aug. 4, 1914.—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237c. —— —— **What is a fixed rate.**]—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—CARDIFF COLLIERIES, LTD. *v.* GREAT WESTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 202.

Annotations :—**Folld.** Forest of Dean Freighters' Assocn. *v.* Great Western Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 13. **Consd.** Powell Duffryn Steam Coal Co. *v.* Great Western Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237d. —— —— ——.]—*Held :* although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appcts. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—R. & W. PAUL, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 228.

1237e. —— **Under special statutory provision—What amounts to special statutory provision.**] —SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237f. —— —— ——.]—A bill was promoted in Parliament to empower two railway companies to purchase jointly the railway of a third company. Petitioners against the bill withdrew their opposition in consideration of the promoters agreeing to the insertion of a clause limiting the charging powers on the line proposed to be purchased. The bill with the clause so inserted was passed into law :—*Held :* charges were thereby fixed under a special statutory provision, & were originally so fixed for valuable consideration.—FOREST

OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 13.

1237g. —— Originally fixed for valuable consideration—What amounts to.]—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. Co., No. 1237f, *ante*.

1237h. —— —— ——.]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. Co., No. 1237b, *ante*.

1237j. —— Extent of jurisdiction of Rates Tribunal.]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. Co., No. 1237b, *ante*.

1237k. Railway Freights Rebates Scheme—Review.]—*Re* RAILWAY FREIGHT REBATES SCHEME (1936), 25 Ry. & Can. Tr. Cas. 148.

1243. *Add. Annotation :*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W., L. M. & S., L. & N. E. & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. "Rolling stock"—Transit of empty wagons needing repair on change of ownership.]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* INCE WAGON & IRONWORKS Co., LTD. (1924), 131 L. T. 229; 40 T. L. R. 551, C. A.

1245b. "Pipes, rain water & their connections, cast iron or steel"—Include rain water pipes adapted for other purposes.] — ROWNSON, DREW & CLYDESDALE *v.* GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. Cos. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245c. "Coal"—Coal, coke & patent fuel.]—*Re* NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND'S APPEAL (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

1245d. "Castings, iron or steel of light type"—Includes cantilever wall brackets.]—Small cantilever wall brackets, constructed so that one end of the top bar is let into the wall, are not "cantilevers, iron or steel, as girders," class 7, but "castings, iron or steel of light type," classes 13 to 17.—AMALGAMATED RY. COS. *v.* ASSOCIATED BUILDERS' MERCHANTS, LTD. (1930), 20 Ry. & Can. Tr. Cas. 162.

1245e. Railway motor carriages fitted with electric motors.]—A railway coach fitted with an electric motor which derives its power from a generating station is a "railway motor carriage with engine combined running on its own wheels" & not a "railway vehicle running on its own wheels."—AMALGAMATED RY. Co.'s *v.* RAILWAY CARRIAGE & WAGON BUILDERS (1933), 21 Ry. & Can. Tr. Cas. 158.

1245f. "Glassware."]—Oven-table glassware, machine-made, but designed to resist great heat, is not "glassware . . . common, machine-made, Class 16c" but is "glassware . . . Class 18g."—AMALGAMATED RY. COS. *v.* BRITISH HEAT-RESISTING GLASS CO., LTD. (1936), 25 Ry. & Can. Tr. Cas. 1.

1245g. "Extracts & essences for human food."]—A railway co. carried Virol under Class 3 as an article not specified in the classification :—*Held :* Virol was a mixture of different component parts rather than an extract or essence, &, as it did not come clearly within the expression "extracts & essences for human food," the railway co. must continue to carry it under Class 3 as being unclassified. —BOVRIL, LTD. & VIROL, LTD. *v.* GREAT WESTERN RY. Co. (1904), 12 Ry. & Can. Tr. Cas. 151.

1245h. Alteration—When granted.]—The standard charges based on the classification are not intended to be the equivalent of the services rendered in each particular case. They are overall charges which the cos. are prepared to make in all the circumstances of all the articles in the classification. The cos. may make more profit out of one carriage than another. That alone is not a ground for transferring the article which is carried at the greater profit into a lower class.—WOOLWORTH & Co. *v.* AMALGAMATED RY. Cos. (1930), 20 Ry. & Can. Tr. Cas. 149.

1245j. Publication—Addition of explanation to statutory classification.]—By 1921 Act, s. 28, the Rates Tribunal have jurisdiction to determine any question as to the class in which any article is classified, & by sect. 54 the railway cos. are required to keep for sale printed copies of the general classification for the time being in force. The railway cos. kept for sale two copies, one a literal copy, known as the Statutory Classification, in which the different articles appeared according to their class, & another, a copy known as the Working Classification, in which the different articles appeared in alphabetical order followed by the number of the class to which they belonged. In the Working Classification were numerous explanatory entries inserted by the railway cos. but not found in the statutory copy. On an application to incorporate into the Statutory Classification the explanations in the Working Classification :—*Held :* granting the application, that the railway cos. had not contravened the provisions of 1921 Act, s. 54.—AMALGAMATED RY. Cos. *v.* LONDON CHAMBER OF COMMERCE (1930), 20 Ry. & Can. Tr. Cas. 157.

1246a. On rejection of goods by consignee.]—A contract of carriage of goods in a co.'s wagon to a private siding does not terminate until the wagon is returned empty by the consignee to the railway co. Where a consignee rejects a consignment delivered to him in a co.'s wagon at his private siding, the services of hauling the wagon back to the station & then accommodating it while the instructions of the consignor as to its disposal are obtained, & also the service of hauling the wagon back to the private siding, where the instructions are to redeliver the consignment, are all

services rendered for the convenience of the consignor within para. 5 of the Sched. to the Rates & Charges Orders. The charges for such services are therefore recoverable from the consignor, both under the contract where the consignment note provides that all charges are to be paid by the consignor & under the Rates & Charges Order.—LONDON & NORTH EASTERN RY. Co. *v.* BRAHAMS (1931), 21 Ry. & Can. Tr. Cas. 1.

1246b. Services in connection with sidings—When conveyance begins & ends.]—(1) The Railway Rates Tribunal, on a modification of standard charges under sect. 35 of 1921 Act, fixed standard charges for " services performed by the co. at the beginning & end of transit " :—*Held :* such standard charges were applicable to services at or in connection with private sidings, & a rate or charge being thereby otherwise provided for such services the Tribunal had no jurisdiction to fix a reasonable charge for them under para. 11 (1) (i.) of Sched. V. of 1921 Act.

(2) The Tribunal having in fact fixed a standard charge for private siding services the question whether it ever had power so to do could not be entertained on an application to fix reasonable charges for private siding services.

(3) In applying sect. 40 of 1921 Act to exceptional rates for traffic which has beer transferred from one class to another, the disintegration is to be made by reference to the standard rate to which the exceptional rate is for the time being exceptional, not by reference to the standard rate out of which the exceptional rate was originally carved.

(4) A railway co. granted a rate by passenger train from private siding to private siding :—*Held :* conveyance began & ended, not at the private siding, but in the station at the point where the traffic was attached to or detached from the passenger train.—NESTLE & ANGLO-SWISS CONDENSED MILK Co. *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1934), 22 Ry. & Can. Tr. Cas. 61.

1268. *Add. Annotation :—Generally,* **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1276. *Add. Annotation :—As to* (1) **Refd.** Nestle & Anglo-Swiss Condensed Milk Co. *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 61.

1285. *Add. Annotations :—As to* (1) **Refd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93 ; Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

1286. *Add. Annotations :—As to* (1) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations :*—**Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93. **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1287a. Stevedoring.]—The London & North Western Railway Co. (Rates & Charges) Order Confirmation Act, after reciting the Railway & Canal Traffic Act, confirms the Order as set out in the Sched. By para. 21 of the Sched., nothing therein contained shall affect the right of the co. to make any charges which they are authorised by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the co. at or in connection with docks or shipping places, & by para. 26 of the Sched. the term " railway " means any railway or steam tramway over which the co. conveys merchandise, & in respect of which no maximum rates & charges other than those authorised in the Sched. are for the time being authorised by Parliament. By Pt. IV. of the Appendix to the Sched. the co. may charge such reasonable sums as they think fit for any accommodation or services rendered within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the Sched. :—*Held :* (1) in construing the Sched. the definition of " railway " in para. 26 of the Sched. is to be applied, & not the definition in sect. 3 of 1873 Act ; (2) the work of stevedoring is incidental to the undertaking of a dock owned by a railway co. ; (3) in doing the work of stevedoring a railway co. is not bound by the limitations of Pt. IV. of the Appendix to the Sched., &, in the absence of any other restrictive enactment, may contract as they please.—DAMPS SELSK SVENDBORG *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 67.

1307. *Add. Annotation :*—**Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1316. *Add. Annotations :*—**Refd.** Bede Steam Shipping Co. *v.* Bunge y Born, Limitada S. A. (1927), 43 T. L. R. 374 ; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316 ; Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1316a. —— ——.]—GREAT CENTRAL RY. Co. *v.* SWANN (1913), 48 L. Jo. 47.

1318. *Add. Annotation :*—**Refd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1323. *Add. Annotations :*—**Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102 ; R. *v.* Leinster, [1924] 1 K. B. 311.

SECT. 6.—**EXCEPTIONAL RATES AND FARE**
(Vol. VIII., p. 207).

1323a. Under 1921 Act—Meaning of " standard " & " exceptional."]—The expression " standard " as applied to charges in Part III. o the above Act is the correlative or complementary term to " exceptional," &, there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 80 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re* STANDARD CHARGES SCHEDULES (1923), 17 Ry. & Can. Tr. Cas. 147.

1323b. New exceptional rates—Grounds for granting.]—The fact that equal rates were formerly charged from two competing points to a

common market unequally distant from them, whereas the corresponding standard charges are unequal, is not a ground on which the Railway Rates Tribunal will grant a new exceptional rate so as to restore the equality. —DOWLOW LIME & STONE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 41.

1323c. —— ——.]—An application for a new exceptional rate under sect. 37 (3) of Railways Act, 1921, may be justified by showing that the rate for which it is intended to be substituted is unfair or excessive, or that the new rate will tend to augment the standard revenue. Where the existing rate in force is one which the railway co. has no legal power to charge the Tribunal will not consider whether it is unjust or excessive.

In a proper case the Tribunal will grant a new exceptional rate to relieve a trader against an undue prejudice. A trader is not unduly prejudiced by a lower rate granted to another trader who does not compete with him.—DOLE (JAMES) & CO. *v.* FOUR AMALGAMATED RY. COS. & LONDON PASSENGER TRANSPORT BOARD (1936), 25 Ry. & Can. Tr. Cas. 87.

1323d. —— **Validity of flat rate.**]—A new exceptional rate under Railways Act, 1921 (c. 55), s. 37, must not be a flat rate irrespective of distance, but must contain a charge based on so much per ton per mile according to distance & class.—*Re* GREAT WESTERN RY. CO.'S APPLICATION, [1933] 2 K. B. 391, 102 L. J. K. B. 549; 149 L. T. 372; 49 T. L. R. 500; *sub nom.* GREAT WESTERN RY. CO. *v.* BRISTOL GRAIN IMPORTERS DEFENCE ASSOCN., 21 Ry. & Can. Tr. Cas. 46, C. A.

1323e. —— **Must be fixed by tribunal & entered in rate book.**]—A new exceptional rate within Rys. Act, 1921 (c. 55), s. 37, requires to be "fixed," that is, sanctioned by the Ry. Rates Tribunal under the above section & it also requires to be entered in the rate book of the co. before it is "granted," that is to say, before it becomes operative as between the ry. co. & consignors of goods. Therefore where the tribunal fixed a rate of 10*s.* 9*d.*, but the ry. co. entered in its rate book a rate of 14*s.* 9*d.* there was no effective exceptional rate granted, since neither rate was both sanctioned by the tribunal & entered in the rate book.—GREAT WESTERN RY. CO. *v.* JAMES (HENRY R.) & SONS, LTD., [1936] 2 All E. R. 660; 80 Sol. Jo. 571; 24 Ry. & Can. Tr. Cas. 241, C. A.

1323f. Disintegration—On continuation.]—Where an exceptional rate is referred to the Rates Tribunal for its determination under 1921 Act, s. 36, then, if the Tribunal decides to continue the rate, its duty is to disintegrate it in the manner provided for in sect. 40 of the Act, & the performance of this duty may at its discretion be postponed until some party interested in the rate applies for the disintegration.—DISINTEGRATION OF CONTINUED EXCEPTIONAL RATES (1928), 20 Ry. & Can. Tr. Cas. 1.

1323g. —— **Time for.**]—A railway co. applied to the Rates Tribunal to sanction a rate, more than 40 per cent. below the standard rate, between a seaport town & the Midlands. Another seaport town competing in the same traffic, having been admitted to oppose the said rate, sought to administer interrogatories to the railway co. as to the disintegration of the existing rates between the two ports respectively & the Midlands & of the new proposed rate, with a view to showing the effect that the new rate would have on the competition, & the prejudice that would be caused to the opponents of the rate:—*Held:* by the Rates Tribunal, such rates are to be disintegrated by the Rates Tribunal, under 1921 Act, s. 40, at the time when they are sanctioned; it is proper for the railway co. to present the rate for sanction without any proposed disintegration, & there is no procedure for obtaining a preliminary disintegration of such a rate.—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 28.

1323h. —— **Traffic transferred from one class to another.**]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante*.

SECT. 7.—OWNER'S RISK RATES (Vol. VIII., p. 207).

1323j. Conveyance of goods by passenger train at owner's risk—Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk:—*Held:* the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, &, when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323k. —— —— **Grounds for ordering.**]—Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk

scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk: —*Held:* looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1323l. **Delay in making claim—When relief granted.**]—Where the course of business between a consignor & his selling agent made it impossible for the agent to know what consignments he ought to have received until the half-yearly stocktaking, & where in consequence no advice was given to the co. within fourteen days of the consignment being handed to them that it had not been delivered, & no claim was made within twenty-eight days:—*Held:* that is not the kind of impossibility contemplated by the proviso to condition 6 of the standard terms & conditions of carriage of merchandise by passenger train at owner's risk, in respect of which the Rates Tribunal may grant relief.—WAPNAH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 87.

1326a. —— **Charges imposed by Ministry of Transport.**]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3*s.* per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5*s.* per day, & in the case of sheets 6*d.* & 1*s.* for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1*s.* 6*d.* per day for wagons & 3*d.* per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held:* (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3*s.* per day for wagons & 6*d.* per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2*s.* & 6*d.* per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION *v.* SAME (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotations:—As to* (3) **Consd.** G. W. Ry. *v.* Laing (1922), 28 Com. Cas. 100. *Generally,* **Refd.** London & North Eastern Ry. Co. *v.* Brahams (1931), 21 Ry. & Can. Tr. Cas. 1.

1331a. —— **Congestion caused by increased traffic —Insufficiency of unloading sidings.**]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltfs. to defts. within the scope of pltfs.' undertaking by the desire of defts.:—*Held:* as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—GREAT WESTERN RY. CO. *v.* LAING (J.) & CO., LTD. (1922), 39 T. L. R. 93; 28 Com. Cas. 100, C. A.

PART X. SECT. 9, SUB-SECT. 1.

sq. *Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act,* 1919 (*c.* 50), *s.* 3.]—NORTH BRITISH RY. CO. *v.* STEEL CO. OF SCOTLAND, LTD., [1922] S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.

CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—CAN.

g ii. —— *Cars excepted from Rules— "Cars stored on carrier's or private track"—"Private cars on private track of car owner."*]—TORONTO HAMILTON & BUFFALO RY. CO. *v.* STEEL CO. OF CANADA (1923) 55 O. L. R. 63.—CAN.

st. *Notice of arrival—Time for.*]—Under the Demurrage Rules notice of arrival of a car may be mailed on Sunday or a legal holiday.—CANADIAN CAR DEMURRAGE BUREAU *v.* DEPT. OF NATIONAL DEFENCE, OTTAWA, [1935] 2 D. L. R. 72.—CAN.

1337. *Add. Annotation :—Generally,* **Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. —— ——.]—PRENTICE BROTHERS, LTD *v.* LONDON & NORTH EASTERN RY. CO., No. 1166d, *ante.*

1337b. —— **Terminal charges not in fact made.**]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance :—*Held :* (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive. (2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—DIXON (T. & M.) LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation :—As to* (1) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1349. *Add. Annotation :—As to* (2) **Refd.** Dixon *v.* L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. —— **Application for increase—Before "appointed day"—1921 Act, s. 60.**]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

Annotations:—**Apld.** British Hay Traders' Assocn. *v.* L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation *v.* Same (1925), 18 Ry. & Can. Tr. Cas. 169. **Refd.** Paul *v.* L. & N. E. Ry. (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation :*—**Refd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 134.

1373. *Add. Annotation :*—**Consd.** *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53.

SECT. 12.—REDUCTION OF RATES
(Vol. VIII., p. 217).

1377a. Who may apply for—Trader "interested"—Warehouseman & forwarding agent.]—Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106*s.* 7*d.*, formerly 107*s.*, charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54*s.* 6*d.*, provisionally reduced to 50*s.* The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable :—*Held :* (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings ; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations : (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business ; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that the railway cos. were mistaken ; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate ; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72*s.* 6*d* subject to any general revision of rates.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO.,

PART X. SECT. 11, SUB-SECT. 3.

1365 ii. —— *Long-standing voluntary toll.*]—Where an increase in a long-standing voluntary toll is sought, the *onus* is on the carrier to establish its reasonableness.—NATIONAL DAIRY COUNCIL *v.* GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE) (1919), 26 Can. Ry. Cas. 113.—CAN.

& GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. Grounds for ordering—Necessity for primâ facie case.]—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars :—*Held :* (1) an appct. for a reduction in rates must make a *primâ facie* case for the same ; (2) such a case had been made upon the above facts ; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions ; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., *e.g.* 4 or 5 per cent., was not sufficient to justify a reduction in rate.—MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. ——.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *ante*.

1377d. —— Experimental rate.]—Upon an application for an experimental reduced rate of 40*s.* per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45*s.*, plus siding haulage charge. The ordinary class rate was 88*s.* 2*d.*, less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered :—*Held :* the rate should be 45*s.* *Qu.* : whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—MARSH *v.* GREAT EASTERN & GREAT WESTERN RY. COS. (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —— Removal of flat-rate additions imposed by Minister of Transport.]—Upon applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (*c*) :—*Held :* (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions ; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic ; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.', *i.e.*, coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. *v.* GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. *v.* SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. *v.* SAME (1923), 18 Ry. & Can. Tr. Cas. 1.

1377f. —— Reductions granted to other interests.]—Upon an application for the removal of a flat-rate increase of 2*d.* per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appcts. in support of their case : (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic ; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps. ; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet :—*Held :* (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts. ; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away ; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that *onus* by alleging that a reduction in rates would assist.—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME (1924), 18 Ry. & Can. Tr. Cas. 14.

1377g. —— Abolition of free storage facilities.]—Appcts., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10*s.* 11*d.* per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appcts.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility

having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, &, therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held:* the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10*s.* 11*d.* rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 81.

1377h. ——.]—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891–2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification:—*Held:* there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 97.

1377i. —— Group rates.]—GOOD (JOHN) & SONS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 191.

1377j. Burden of proof—On applicant.]—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME, No. 1377f, *ante.*

1377k. —— ——.]—EBBW VALE STEEL, IRON & COAL CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 207.

1377l. Power of railway company during transitional period until "appointed day"—To raise reduced rates.]—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.

Where, on Aug. 15, 1921, there was a rate for sugar & a lower rate for sugar in four-ton lots, & the railway cos. subsequently conceded a still lower rate for sugar in five-ton lots:—*Held:* the five-ton rate was not a new rate, & on Aug. 15, 1921, there was a rate in force for sugar in five-ton lots, namely the rate for sugar in four-ton lots.—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 134; 71 Sol. Jo. 82; 20 Ry. & Can. Tr. Cas. 166, H. L.

Annotation:—Consd. Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1377m. Charges fixed for services at beginning & end of transit—Charges for sidings otherwise provided.]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante.*

What rates—Owner's risk rates.]—*See* Nos. 1323j, 1323k, *ante.*

—— **Charges for detention.**]—*See* No. 1326a, *ante.*

SECT. 14.—TRANSITIONAL PERIOD.

1377n. Power during transitional period to make "such charges as were in force"—Meaning of.]—"Such charges as were in force," in sect. 60 of 1921 Act, mean such charges as the co. were holding themselves out as claiming for the particular service in question.—GREAT WESTERN RY. CO. *v.* BOON (1928), 20 Ry. & Can. Tr. Cas. 63.

1377o. —— ——.]—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO., No. 1377l, *ante.*

SECT. 15.—AGREED CHARGES.

See Road and Rail Traffic Act, 1933 (c. 53), ss. 37–39.

1377p. What agreements approved.]—General observations as to agreed charges under the Road & Rail Traffic Act, 1933 (c. 53).

Where an agreement is approved by the Tribunal statements made by the parties in the proceedings for approval form part of the agreement. It is no objection to an agreement for a charge that it does not limit the railway co. to carriage by rail.—*Re* CHISWICK PRODUCTS AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 53.

1377q. ——.]—An agreement to carry the whole of a trader's traffic wherever required for a percentage of the purchase price may properly be made under Road & Rail Traffic Act (c. 53), s. 37. The objection that such an agreement makes it impossible for competing traders to compare their own charges with the agreed charge would be equally applicable to a tonnage or a package rate.

It is not necessary that such an agreement should contain a provision for limiting the advantage which may be expected to accrue to the trader. A comparison between a rate based on the purchase price of a certain commodity & a rate based on mileage & weight of a consignment of the same commodity is fallacious.

An agreement may be approved though it gives liberty to the parties to agree (without seeking the approval of the Tribunal) for the exclusion of certain traffics from the operation of the agreement.—*Re* WOOLWORTH'S AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 90.

SECT. 16.—GOODS VEHICLES.

See Part XII., *post.*

Part XI.—Remedies of and against Carriers.

1378. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1380a. —— —— **Market salesman.**]—A foreign consignor sent fruit consigned to himself in England, instructing a firm of carriers to collect goods & pay charges. The consignor's son ordered them to deliver the goods to a firm of market salesmen. This firm accepted the goods, sold them, & credited the son with the proceeds, & refused payment to the carriers :—*Held :* (1) a market salesman who receives the goods of another to sell, is as against the carriers an independent contractor & is the consignee, although he may be liable to a principal to " sell & account " ; (2) his acceptance, in the absence of notice to the contrary, is evidence of an implied contract with the carrier to pay his charges, of which the consideration is that the carrier has parted with his lien.—WORLD TRANSPORT CO. *v.* TEALING & CO., [1936] 2 All E. R. 573 ; 80 Sol. Jo. 634.

1389. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

1390. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1398. *Add. Annotation :—As to* (1) **Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

1435. *Add. Annotation :*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

1449. *Add. Citation :*—91 L. J. K. B. 39.

Add. Annotations :—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557 ; Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.

Part XII.—Goods Vehicles.

See Road and Rail Traffic Act, 1933 (c. 53).

SECT. 1.—LICENCES.

1474. " A " licence—When granted.]—It is not sufficient for appct. for an A licence to discharge the burden of proving that there are persons ready & willing to employ him. He must also satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.—ENSTON & CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 3.

Annotations :—**Apld.** *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Consd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171. **Apld.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201. **Expld. & Apld.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. **Expld. & Distd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23. **Apld.** Edwards *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 67 ; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Palmer (1935), 23 Ry. & Can. Tr. Cas. 76. **Consd.** Tickle *v.* London, Midland & Scottish, Great Western, & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88. **Apld.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178. **Consd.** Jones *v.* London Midland & Scottish Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 72 ; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. **Apld.** Newbury & District Motor Services, Ltd. *v.* Stephen & Hewett (1936), 24 Ry. & Can. Tr. Cas. 140. **Refd.** Petrie *v.* Great Western Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 15 ; Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21 ; Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116 ; Allatt *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 82 ; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159 ; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195 ; Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55 ; McLachlan *v.* Morgan & Co. (1935), 23 Ry. & Can. Tr. Cas. 243 ; Southern Ry. Co. *v.* Owen (1936), 24 Ry. & Can. Tr. Cas. 36 ; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99 ; London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325 ; Pocock *v.* Wasey (1936), 24 Ry. & Can. Tr. Cas. 316 ; Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1475. —— ——.]—The fact that an appct. was a partner in a firm which used goods vehicles during the basic year is not a relevant matter to be taken into account on an application for an A licence. Since Parliament has granted to licensing authorities a discretion to grant or refuse licences, traders no longer have the right to choose the carriers they will employ.

It is not enough for an appct. for an A licence to prove that traders are willing to employ him. He must also show that there is a need for his services in the locality in which he proposes to operate.—PETRIE *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 15.

Annotations :—**Refd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171 ; London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201.

1476. —— ——.]—(1) An applt. who thought that

PART XI. SECT. 1, SUB-SECT. 2.

sb. *Goods carried under approved bill of lading—Action by connecting carrier against shipper—Not maintainable.*]—NEW YORK CENTRAL RY. CO. *v.* ELLIOTT (N. S.), [1928] 2 D. L. R. 973 ; 34 Can. Ry. Cas. 246.—**CAN.**

sc. *Agreement as to freight charge—Subsequent additional charges according to " special joint tariff "—No liability to pay.*]—NEW YORK CENTRAL RY. CO. *v.* JOSEPH DOLAN & SONS, LTD., [1929] 1 D. L. R. 817 ; 35 C. R. C. 333 ; 63 O. L. R. 341.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 4.—A. (a).

1391 vii. —— *Waiver.*]—CONBOY *v.* MILLSAP, [1930] 3 W. W. R. 161.—**CAN.**

st. *Payment for services rendered—Towing damaged motor car.*]—TERRY *v.* AUTOMOBILE OWNERS ASSOCN., No. 15 1, *ante.*

PART XI. SECT. 2, SUB-SECT. 1.

sx. *Consignee—Damage to goods en route—Owner having paid damage to consignee.*]—Where an owner of goods had indorsed a bill of lading to the buyer :—*Held :* he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—FORD MOTOR CO. *v.* UNION S.S. Co., [1925] 1 D. L. R. 265 ; [1924] 3 W. W. R. 718.—**CAN.**

his application was a matter of form, & who did not realise the importance of presenting the whole of his case to the licensing authority was allowed to call new evidence before the Appeal Tribunal.

(2) The fact that an appct.'s vehicle has been employed by other hauliers is some evidence of a public need for additional transport facilities.—*Re* FRY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 29.

1477. —— ——.]—An A licence should be granted where the public need for a carrier in the appct.'s district is established, even though it is not shown that that need has been brought about by any general expansion of industry. An appct.'s ignorance of the law relating to motor cars, the fact that an appct. has bought a goods vehicle without first obtaining a licence for it, & the probability that an appct. will lose money in the business of a carrier are not relevant considerations to which a Comr. should have regard in granting or refusing an A licence.—*Re* HUGHES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 141.

1478. —— ——.]—The fact that vehicles were used during the basic year by a firm since dissolved of which the appct.'s son was a member is not a good ground for granting an application for an A licence intended to be exercised for the benefit of the son.—LONDON & NORTH EASTERN RY. CO. *v.* HURD, NEWHAMS, LTD. *v.* HURD (1935), 22 Ry. & Can. Tr. Cas. 147.

1479. —— ——.]—*Held:* by the Appeal Tribunal, distinguishing *Enston's Case*, railway cos. are in an exceptional position owing to their peculiar statutory obligations as to collection & delivery. If, therefore, a railway co. can show that they could carry out these statutory obligations more efficiently with the licence than without it their application should succeed, notwithstanding they will thereby abstract traffic from other carriers already engaged in carrying in the district intended to be served.—LONDON & NORTH EASTERN RY. CO. *v.* SANDERSON (1935), 22 Ry. & Can. Tr. Cas. 171.

Annotations :—**Apld.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187. **Refd.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201; Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1480. —— ——.]—The fact that an appct. was a carrier up to a few weeks before the commencement of the basic year, but went out of business because of rate cutting by his competitors, should not influence a licensing comr. to grant him an A licence in the absence of evidence that the work he proposes to do cannot be done by other carriers. Where an appct. failed to adduce evidence showing that his vehicles would not be in excess of local requirements, his application ought to have been refused.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INMAN (1935), 22 Ry. & Can. Tr. Cas. 184.

Annotations :—**Refd.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

—— ——.]—There being only two covered vans in G. suitable for the removal of furniture, the appct. was granted an A licence on proof that there was a need in G. for another such van & that there were persons willing to employ him.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* TAIT & MACCONN (1935), 22 Ry. & Can. Tr. Cas. 201.

Annotations :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; Tickle *v.* London, Midland & Scottish, Great Western & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88.

1482. —— ——.]—*Held:* an A licence should not be granted to a carrier of twelve years' standing who gave up the business of carrying because he was losing money, but was out of time for an application under sect. 7 (2). But there may be an equitable right to a licence where a carrier was actively employed as such on Apr. 1, 1934, but failed through inadvertence to apply in time.—YEARSLEY *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 258.

Annotation :—**Refd.** Barker *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 161.

1483. —— ——.]—(1) An appct. who proposes to provide a new type of service, such as a regular daily service, is not bound to satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.

(2) An appeal was allowed where applt. did not present his true case to the licensing authority, but did present it to the Appeal Tribunal. Observations on the duty of a licensing comr. to give the reasons for his decision in writing when duly requested to do so.—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 262.

Annotation :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72.

1484. —— ——.]—The fact that an appct. has been granted a short term licence for administrative reasons under sect. 3 (4), & that he has purchased a vehicle on the faith of that grant are not grounds for granting him an A licence for the full currency period.—RHODES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 266.

—— ——.]—An appct. for an A licence who proves that there are persons ready & willing to employ him & that the service which he offers can be more efficiently operated by him than by others should be granted a licence.—EDWARDS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 67.

Annotation :—**Refd.** London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325.

1486. —— ——.]—(1) On an application for an A licence by a newcomer to the carriers' business appct. must not only prove that there are persons ready & willing to employ him, but must also make out a *primâ facie* case that if the application is granted traffic facilities in the district which he proposes to serve will not be in excess of requirements.

(2) The willingness of an appct. for an A licence to enter into an undertaking to observe a condition limiting his exercise of the licence is not a proper ground for granting the licence.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER (1935), 23 Ry. & Can. Tr. Cas. 76.

1487. —— ——.]—LONDON, MIDLAND & SCOTTISH

& LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS, No. 1597, *post.*

1488. —— ——.]—(1) An applt. who had failed to prove his case before the comr. was permitted to call new evidence to prove it before the Appeal Tribunal.

(2) At a public inquiry held by the comr. it appeared that appct. had captured the traffic of the objectors, but it did not appear how this had been done. The comr. refused the application because there was no evidence of any need for the services of the appct. On new evidence being called before them the Appeal Tribunal were satisfied that the traffic of the objectors had been captured by appct. because of the inefficiency of the former; the appeal was therefore allowed though there was no evidence to show that the work proposed to be done by the appct. could not for some reason or reasons be done by other carriers.—STEPHENSON *v.* SAGAR & SON (1935), 23 Ry. & Can. Tr. Cas. 183.

1489. —— ——.]—Although it is found as a fact that there is work available for an appct. to do, he ought not to be granted a licence to do it unless he also proves a *primâ facie* case that there is no other carrier able to do the work.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* PENNINGTON (1935), 23 Ry. & Can. Tr. Cas. 256.

Annotation:—**Consd.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267.

1490. —— ——.]—(1) A carrier who anticipates that he is not likely to use his vehicle to do any work except for one person only ought not to be granted an ordinary A licence.

(2) The fact that an appct. bought his vehicle before the passing of the Road & Rail Traffic Act, 1933 (c. 53), but after the end of the basic year, & used it for carrying goods for reward, & the hardship which would be occasioned by refusing a licence in such circumstances, are not matters which a Comr. ought to take into consideration in the exercise of his discretion.—BARKLEY *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 267.

Annotation:—**Consd.** Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323.

1491. —— ——.]—*Held:* the fact that a ry. co. offered facilities for the transport of wet hides & had a number of years ago carried wet hides for a trader for whom appct. proposed to carry wet hides was evidence that suitable transport facilities in the district intended to be served by appct. were in excess of requirements.—LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. *v.* DUNNETT (1935), 23 Ry. & Can. Tr. Cas. 276.

Annotations:—**Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273. **Refd.** London, Midland & Scottish Ry. Co. *v.* Ingleby (1936), 24 Ry. & Can. Tr. Cas. 294.

1492. —— ——.]—A carrier who was entitled to an A licence because he had been carrying during the basic year was granted an A licence under sect. 7 (1) of the Act subject to the condition that he should use his vehicle exclusively for the traffic of one co. Later part of the traffic of that co., came under the control of another person who also desired to employ this carrier. The carrier therefore surrendered his A licence with the condition attached & applied for an A licence without any condition. Sir Henry Piggott was of opinion that in ordinary justice the applicant was entitled to an A licence:—*Held:* by the Appeal Tribunal, appct. should not have been granted an A licence because it appeared that he was not the only carrier capable of dealing with the traffic.—SOUTHERN RY. CO. *v.* OWEN (1935), 24 Ry. & Can. Tr. Cas. 36.

1493. —— ——.]—An appct. obtained an A (Contract) licence. Later he applied for an A licence, claiming that he had been mistaken as to the nature of the A (Contract) licence. He adduced no evidence that persons other than the co. with whom he was under contract would employ him:—*Held:* on the facts, appct. had not made a mistake, & no case had been made out. *Semble:* if a mistake had been made, this would have afforded equitable grounds for granting an A licence.—AXFORD *v.* SOUTHERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 77.

1494. —— ——.]—A haulage co. went into liquidation in Sept. In Oct. resps., two of its former drivers started business on their own account, & applied for an A licence. At the inquiry two of their customers stated that they, the customers, had employed the co., but that in the interval between the liquidation & the commencement of the new business they had employed other firms. A third customer had no complaint against applts., whom he had employed until the new business started:—*Held:* resps. had not established a *primâ facie* case that the work they proposed to do could not be done by existing operators, & were therefore not entitled to a licence.

Per Sir Henry Piggott: Particulars of the objector's & other existing services should be given in the Notice of Objection.—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT (1936), 24 Ry. & Can. Tr. Cas. 140.

1495. —— ——.]—An application for an A licence was refused both because appcts. failed to discharge the onus of proving the need for the service which they desired to provide & that this need could not for some reason be met by the facilities already available, & also because the grant of the licence would have created an excess of transport facilities in the district.—ORANGE (J.), LTD. *v.* JENNINGS (1935), 24 Ry. Can. & Tr. Cas. 195.

1496. —— ——.]—An A licence ought not to be granted to an appct. who does not prove that he is the only carrier capable of carrying the traffic he proposes to carry. It makes no difference that there are persons who desire to avail themselves of his services.—JONES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 24 Ry. Can. & Tr. Cas. 208.

1497. —— ——.]—A co. engaged principally upon haulage on trunk routes applied at the close of the first currency period for a new A licence in continuation of their existing A licence. The amalgamated railway cos. objected upon the ground that suitable transport facilities

were already in excess of requirements:— *Held:* by the Appeal Tribunal: (1) it is no part of a licensing authority's duty to have regard to a difference between road & rail rates or to take into account the railway "rates structure" set up pursuant to Railways Act, 1921; (2) there is nothing in the Act to support the view that the "*status quo*" should be maintained beyond the first currency period; (3) the principle laid down in *Smart's Case*, No. 1517, *post*, is not limited to applications for variations but applies equally to applications such as this. The principle is that, if an objector proves that suitable transport facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. The Appeal Tribunal now point out that proof of the objection does not give the objector a legal right to have the application dismissed; the reason why such an application should be dismissed is that it would not be in the public interest for a licensing authority to exercise his discretion so as to create wasteful competition; (4) an established haulier on a trunk service when applying for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed; (*b*) as to his gross receipts & tonnage; (*c*) there has been no material change in the circumstances relating to his business. If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. Such overriding circumstances exist if the evidence establishes beyond reasonable doubt that suitable transport facilities are, or will be, in excess of requirements; (5) transport facilities are not "suitable" within sect. 11 (2) of the Act unless they are (*a*) suitable for carrying the goods required to be carried, (*b*) suitable to the person requiring them to be carried on the occasions when he requires transport, & (*c*) suitable to current industrial & commercial conditions; (6) on the facts of this case, appcts. had satisfied the licensing authority as to the matters (*a*), (*b*) & (*c*) of (4) above, & that the objectors, though they had proved that their facilities were physically adequate, had not proved them to be "suitable." Application granted.—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 158.

Annotations:—Generally, **Refd.** *Re* Boyer (William) & Sons (Transport), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 302; Hazell *v.* Southern Counties Road Transport Co., Ltd. (1937), 25 Ry. & Can. Tr. Cas. 259; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328; Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272.

1498. ——— ———.]—Where the holder of a B licence acquires the carrying business of the holder of an A licence & applies for an A licence which is necessary to enable him to obtain the full benefit of the goodwill transferred, the fact that he is already the holder of a B licence is not a special circumstance which would justify the licensing authority in refusing him an A licence. When application is made for an A licence for the purpose of effecting the transfer of a carrying business, then whether or not the case is one in which the licensing authority is bound to take into account the objection that transport facilities are or will be in excess of requirements, nevertheless appct. must prove that a reasonable number of the customers of the vendor are prepared to transfer their business to the purchaser.—WASEY *v.* BORWICK (1937), 25 Ry. & Can. Tr. Cas. 217.

1499. ——— ———.]—An old-established firm of hauliers also carried on a gravel, etc., business. In 1927 the entire business was acquired by a limited co. In 1931 a second limited co. was formed & acquired the road haulage portion of the business. This haulage co. was in 1934 granted an A licence, claimed tonnage. It now applied for an A licence in continuation of the expiring licence. Mr. Gleeson Robinson refused the application on the ground that a B licence was appropriate; otherwise any person combining a haulage business with another business could evade the disabilities of a B licensee by incorporating a separate haulage co. On appeal:—*Held:* although Mr. Gleeson Robinson's views might be properly applicable to many cases, they did not apply in this case where appct. co. was the successor of an old-established transport business & had been incorporated in 1931, before the Road & Rail Traffic Act was contemplated.—*Re* BOYER (WILLIAM) & SONS (TRANSPORT), LTD. (1937), 25 Ry. & Can. Tr. Cas. 302.

1500. ——— **For additional vehicles—When granted.**]—(1) The principles on which A licences should be granted or refused during the first currency period are *inter alia* that the *status quo* should as far as possible be maintained. No increase in the number of vehicles licensed should be allowed except upon proof that such increase is really necessitated by the general expansion of industry in any particular business or district. Stabilisation of the industry should be the first aim of the licensing authorities.

(2) The mere fact that particular customers are willing to give further custom to the appct. is not by itself sufficient to justify the grant of an A licence for an increased number of vehicles.

Where an appct. seeks an A licence for an increased number of vehicles on the ground that particular customers propose to use those vehicles his proper course is to apply for contract licences under Road & Rail Traffic Act, 1933 (c. 53), s. 7 (1).

(3) An undertaking by the appct. to observe certain conditions attached to the grant of an A licence cannot be accepted as an alternative to refusing the application because such an undertaking would not be enforceable.—RIDGEWELL & Co. *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 6.

*Annotations:—***Apld.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Distd.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Apld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55; Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225 a London & North Eastern & London, Midland & Scottish

Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Apld.** London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149. **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323. **Refd.** Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21; *Re* Hughes' Appeal (1934), 22 Ry. & Can. Tr. Cas. 141; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport Co. (1936), 24 Ry. & Can. Tr. Cas. 258; Southern Ry. Co. *v.* Hardy & Son, Ltd. (1935), 24 Ry. & Can. Tr. Cas. 18; Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158.

1501. —— —— ——.]—*Held:* by the Appeal Tribunal, the enlargement of a carrier's licence cannot be justified by general evidence of an increase in his business & general evidence that that increased business cannot be done by other carriers.—LONDON & NORTH EASTERN RY. CO. *v.* BRIGGS (1935), 22 Ry. & Can. Tr. Cas. 252.

Annotation:—**Refd.** London & North Eastern Ry. Co. *v.* Brownbridge (1935), 22 Ry. & Can. Tr. Cas. 255.

1502. —— —— ——.]—(1) Where an appct. hired vehicles in the past as part of a general policy, & not in a casual manner, he has no right to a licence to enable him to dispense with hiring in the future, apart from special circumstances such as those mentioned in *L. M. S. and Barr.*

(2) A general increase in a carrier's business is a good ground for authorising him to use a larger number of vehicles; & the fact that the increase is largely attributable to the custom of one particular firm is not in the circumstances a ground for limiting him to a contract licence under sect. 7 (1).—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations:—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249; Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1503. —— —— ——.]—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. No. 1530, *post.*

1504. —— —— ——.]—(1) On an application to vary a carrier's licence by the inclusion of an additional vehicle it is not sufficient for appct. to prove an increase in his business since the original grant of his licence, & there is no distinction between the cases where the application is opposed by a railway co., where it is opposed by a rival road carrier, & where it is not opposed at all.

(2) Where the decision of the licensing authority appears to have been based on erroneous grounds a resp. is nevertheless entitled to support the decision on other grounds.—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 82.

Annotation:—*As to* (1) **Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1505. —— —— ——.]—(1) An application in part for claimed, & in part for discretionary, tonnage should be so published, & not as an application for discretionary tonnage only. Where an appct. carries partly in one traffic area & partly in another general evidence as to his operations throughout the country will not suffice to support an application for a licence for vehicles intended to be normally based in a particular traffic area.

(2) A licensing comr. should act judicially, & should not allow his mind to be influenced by mere complaints unsupported by evidence.

(3) Where the previous conduct of an appct. is brought in issue by allegations of criminal offences it is the duty of those making the allegations to furnish appct. with particulars of the offences he is alleged to have committed if he requires them. If the fact that a criminal offence has been committed comes in question even collaterally, it must be strictly proved.

(4) A licensing comr. who is required to give his reasons for a decision under sect. 6 (3) of Road & Rail Traffic Act, 1933 (c. 53), it bound to give all his reasons. He cannos reserve to himself a right to give additional reasons later.

(5) Previous offences committed by an appct. as a carrier against sect. 19 of Road & Rail Traffic Act, 1930, & the charging of uneconomic rates as a carrier do not constitute "previous conduct of appct. as a carrier of goods" within sect. 6 (2) (*b*) of Road & Rail Traffic Act, 1933, & a licensing comr. is not entitled in law to take such matters into consideration when exercising his discretion under that sect. But if an objection to the application is made under sect. 11 (2) of the Act, on the ground that suitable transport facilities are or, if the application were granted, would be in excess of requirements, such matters are relevant to such objection & should be taken into consideration.

(6) A road carrier who maintains long-distance trunk services, & seeks authority for additional vehicles to be used for the collection & delivery of his traffic, may justify his application by showing that such collection & delivery can be better co-ordinated with his trunk services & can be performed more efficiently with vehicles owned by him & under his control than by employing others to do the work.—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD. (1935), 23 Ry. & Can. Tr. Cas. 106.

Annotation:—*As to* (6) **Refd.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1506. —— —— ——.]—On an application to vary an A licence by including an additional vehicle appct. established a case for his tonnage being increased, & his application was granted. On appeal by the objectors to the Appeal Tribunal:—*Held:* a case for an additional vehicle could not be established merely by making a case for additional tonnage, &, though the latter case had been made out, the Tribunal were not competent to deal with the appeal on that basis.—SOUTHERN RY. CO. *v.* BARNES (1935), 23 Ry. & Can. Tr. Cas. 137.

1507. —— —— ——.]—(1) There is no right of appeal by an objector to an application for claimed tonnage where the comr.; being satisfied that the vehicle to be authorised is properly included in the claimed tonnage grants the application.

(2) Where a carrier who was established during the basic year seeks to augment the vehicles which he is authorised to use he

must prove some general expansion in the business of his customers.—STUBBS (LEONARD) & CO., LTD. *v.* JACKSON & ELLIS (1935), 23 Ry. & Can. Tr. Cas. 141.

1508. —— —— ——.]—(1) An increase in the business of a carrier is not the same thing as an increase in the business of his customers; & evidence of the former by itself does not justify an addition to the vehicles authorised by a carrier's licence.

(2) On an application for a variation of a licence a Comr. is entitled to take into consideration the conclusions he came to on the original application.

(3) General evidence that a carrier has had difficulty in finding other carriers to carry for him is not a special circumstance justifying the licensing of additional vehicles to enable the carrier to do his own carrying himself.

(4) A licence ought not to be granted to a carrier for services which the Comr. thinks are unnecessary.

(5) The decision of a Comr. on an application cannot create anything in the nature of an estoppel against appct.—FORRESTER *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 225.

1509. —— —— ——.]—An established carrier sought an enlargement of his licence on the ground that his fruit-carrying business had increased. The Comr. having refused the application on the ground that suitable transport facilities in the district were in excess of requirements:—*Held:* though the evidence in support of the Comr.'s finding was very slight, the appeal should not be allowed because the Tribunal were of opinion that appct.'s fruit-carrying business had not increased, & they refused to consider whether his business of carrying vegetables had increased.—COOPER *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 55.

1510. —— —— ——.]—A haulier holding an A licence for two vehicles applied for it to be varied by the addition of a third vehicle. His gross receipts had increased & he had been compelled to hire:—*Held:* such an appct. must first establish a case as laid down in *Ridgewell's Case*. If such a case is established the formula in *Hawker's Case* must then be applied to determine how many (if any) additional vehicles should be authorised. Assuming that this appct. had established the first point, he failed on the second point, for he had not proved abnormal hiring, while the increase in gross receipts, computed on a basis of ten-months as laid down in *Hawker's Case*, was too small to justify the extra vehicle. The formula in *Hawker's Case* cannot be applied to certain cases. Alternative considerations discussed. Matters to be considered when assessing evidence of increase in gross receipts discussed. Two classes of hirers distinguished.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BEAZLEY (1936), 24 Ry. & Can. Tr. Cas. 112.

Annotations:—**Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273. **Apld.** Drinkwater *v.* London & North Eastern, London, Midland & Scottish & Great Western Ry. Cos. (1936), 25 Ry. & Can. Tr. Cas. 32. **Reid.** Bradshaw *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 137; London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99.

1511. —— —— ——.]—An appct. claimed an additional vehicle under his A licence on three grounds: (1) that the vehicle was to be acquired from a trader, who was then operating it under a C licence, & that the trader would thenceforth employ the applicant to do his cartage; (2) that his business was increasing; (3) that he required a heavier vehicle for certain work:—*Held:* operation of a vehicle under a C licence was no evidence of need for its authorisation under an A licence, & since the trader could obtain another C licence there was danger of a dual grant in respect of his work. Ground (2) had not been established by the evidence; & the evidence for ground (3) did not justify an additional vehicle, though it might have justified the replacement of an existing vehicle by a heavier one. The fact that an extra vehicle would be placed on the roads is not a ground for refusing a licence where a case has been made out. "Contracting out" of the Act, referred to. Remission to licensing authority, refused.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* ROBERTS (1936), 24 Ry. & Can. Tr. Cas. 154.

1512. —— —— ——.]—*Held:* that the avoidance of double-shift working is not in itself a sufficient ground for authorising additional tonnage under an A licence. Meaning of "Harrogate & district" discussed.—LONDON & NORTH EASTERN RY. CO. *v.* PARKER (1936), 24 Ry. & Can. Tr. Cas. 159.

—— —— ——.]—(1) The fact that a trader desires to transfer his traffic from other carriers to appct. only because appct. is in a position to help him financially is not a matter to be taken into consideration on an application to increase the number of vehicles authorised under a licence.

(2) Evidence of increase in gross receipts is not so useful as evidence of increase in tonnage of goods carried, nor so useful as evidence of increase in gross receipts & increase in tonnage of goods carried.—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS. (1935), 23 Ry. Can. & Tr. Cas. 199.

Annotation:—*Generally,* **Consd.** Four Amalgamated Ry. Cos. *v.* Foster & Co., Ltd. (1936), 24 Ry. & Can. Tr. Cas. 265.

-.]—MOSS BROS. *v.* SOUTHERN RY. CO., No. 1615, *post.*

—— —— ——.]—(1) The fact that manufacturers adopt a practice of waiting for orders before manufacturing their goods in place of manufacturing the goods first & warehousing them in anticipation of orders, if proved, is material to the question whether there is a need for additional vehicles.

General evidence that an appct. has had difficulty in hiring will not by itself justify the grant of a licence for an additional vehicle.

The evidence of a commercial clerk assistant goods manager to a ry. co. that the ry. formerly carried traffic which it has since lost, & that, so far as he knows, the ry. facilities meet the requirements of traders, does not prove that the ry. facilities are suitable with regard either to that traffic or to the persons requiring facilities for it.

General evidence of an increase in a carrier's business without evidence that the business of his customers has also increased will not justify the grant of a licence for an additional vehicle.

Evidence that one carrier has without good cause abstracted the traffic of another may be a ground for refusing a licence, but the mere fact of absence of any such evidence is not a ground for granting a licence.

(2) Where, owing to the pressure of business before the Comr., evidence which was available could not be called, the Appeal Tribunal sent the case back for a further inquiry.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD. (1936), 24 Ry. & Can. Tr. Cas. 258.

1516. —— —— ——.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *post.*

1517. —— —— ——.]—(1) Objectors having submitted that if they proved suitable transport facilities to exist in the district where an appct. proposes to carry, then the application must fail:—*Held:* if such facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. But there may be exceptional cases (though the Appeal Tribunal failed to visualise them) where a grant would be justified. In this context, "suitable" means more than "adequate" & "requirements" does not refer solely to the requirements of appct. & objector; both words must be considered in relation to current industrial & commercial conditions.

A haulier operating nine vehicles under A licence on a trunk service & one vehicle for collection & delivery, applied for an extra vehicle for the trunk service. The objectors contended that suitable facilities were in excess of requirements:—*Held:* the two questions, whether appct. has made out a case within *Ridgewell's Case*, & whether the objectors have proved their objection, have both to be considered. On the facts, this appct. had made out a case, & the objectors had not shown that their facilities were "suitable."

Methods of ascertaining quantum of extra tonnage discussed. When considering quantum on a trunk service, the tonnage of a collection & delivery vehicle should not be taken into consideration. Extra vehicle of 2½ tons authorised.

(3) The Appeal Tribunal will not decide any principle not necessary for their decision upon the facts.

(4) Counsel for representative bodies heard, under rule 5, Appeal Tribunal Rules, 1934.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART (1936), 24 Ry. & Can. Tr. Cas. 273.

Annotations:—As to (1) **Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1518. —— —— ——.]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER, No. 1614, *post.*

1519. —— —— ——.]—H. applied for the variation of his A licence by the authorisation of additional vehicles. At the inquiry in Feb. 1935 certain of his customers gave evidence of increases in their business, in their industries, in the tonnage they desired H. to carry, etc. The variation was granted. Later H. applied for another variation to authorise further additional vehicles. At the inquiry in Apr. 1936 the customers who had given evidence in 1935 were not called, but general evidence was given by H.'s accountant that there had been an increase in tonnage due partly to increased business done for these customers:—*Held:* additional vehicles should not be granted solely on the ground that tonnage had increased, since increased tonnage for old customers might be due not to increases in customers' businesses but to their transferring to appct. work hitherto done by other carriers. However, it is unnecessary for customers to be called to give the same evidence which they have given fourteen months previously, provided that some evidence is given to confirm appct.'s general statements. Helpful evidence would be (i) evidence of inquiries by appct. as to the cause of increases in the business of these customers, or (ii) letters from these customers containing statements as to increases in their business & as to their suffering inconvenience from appct. being unable to supply transport. Such letters would be open to challenge by objectors.

H. operated a trunk service & ancillary collection & delivery services. He based his application as to the trunk service upon increased traffic due partly to increased work for old customers, as stated above, & partly to obtaining substantial business from a new customer whose goods had hitherto been carried by rail. H. delivered these goods more expeditiously than the railway, but no reason was given why speedier delivery was necessary:—*Held:* it would not be in the public interest to grant H. a licence to carry goods hitherto carried by another carrier, provided that the previous carrier's facilities were suitable. The fact that the latter were slower did not render them unsuitable in the absence of evidence that more expeditious delivery was reasonably necessary to the trader. H. was not entitled to additional vehicles for his trunk service.

As to his collection & delivery service H. gave evidence that owing to reorganisation of the working of his fleet he needed further vehicles for this work, that he had been hiring these at a cost of £500 *per annum*, & had had difficulty in hiring suitable vehicles:—*Held:* special considerations apply to collection & delivery vehicles; it was reasonable for H. to use his own vehicles for this purpose; the amount paid for hire represented the work of two vehicles, & he should be authorised to use these on his A licence.

The "Hawker formula" discussed *obiter*. When once an appct. for a variation has established a case within *Ridgewell's Case*, this formula is a useful guide to determine the quantum, if any, of additional tonnage to be authorised.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (NO. 2) (1936), 25 Ry. & Can. Tr. Cas. 99.

Annotation:—**Consd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328.

1520. —— —— ——.]—Additional tonnage will not be authorised upon the ground that appcts. had sometimes to keep customers waiting for transport. It is inevitable that on some occasions carriers cannot meet the demands of their customers at short notice. Nor is the hiring of horse-drawn vehicles a ground, in the absence of evidence that appcts. intend to use motor vehicles in substitution for horse-drawn vehicles.

"Carrying capacity" discussed. "Static carrying capacity" distinguished from "performance capacity."—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* RICHARDS, LTD. (1936), 25 Ry. & Can. Tr. Cas. 114.

1521. —— —— ——.]—(1) An appct. for additional tonnage performed 80 per cent. of his work for customers who refused access to their premises to motor-drivers who were not members of a trade union. For this reason appct. found it difficult to hire vehicles for this work:—*Held:* customers' requirements as to trade union membership were not a special circumstance entitling the appct. to additional tonnage in the absence of evidence of need.

(2) Where 80 per cent. of a haulier's work is done for three particular customers, this cannot be said to be a case in which a Contract A licence should be applied for.—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 269.

1522. —— —— ——.]—S. & Co. applied for the authorisation of additional vehicles under A licence upon the grounds that (1) they had obtained substantial new traffic from U.; (2) certain fruit traffic had increased; (3) there had been a substantial general increase in their tonnage carried; (4) they had proved a case within *Ridgewell's Case;* (5) they needed additional maintenance tonnage.

(1) U.'s traffic had previously been consigned by rail; S. & Co. agreed to carry this at a rate cheaper than that by rail, & to furnish warehouse accommodation. The railway cos. objected to the application on the ground that their facilities were suitable:—*Held:* in considering whether objectors' facilities were suitable a licensing authority ought to take into consideration neither the fact that road rates were cheaper (unless they were uneconomic), nor the fact that warehouse accommodation would be provided; that on the facts the railway cos. had proved their objections; & that no additional tonnage should be granted for carrying U.'s traffic; (2) *Held:* on the facts as to the fruit traffic the objectors had proved their objections.

(3), (4) *Held:* since S. & Co. had proved (*a*) that there had been an increase in their business, (*b*) that there had been an increase in the business of their customers, (*c*) that some of their customers had been inconvenienced by their inability to provide transport facilities, they had made out a case for additional tonnage within *Ridgewell's Case.* As to quantum, the formula in *Hawker's Case* (*No.* 1) applied; but when applying this formula (i) the increased goods tonnage carried in respect of U.'s traffic & the fruit traffic must be disregarded, & (ii) the tonnage of maintenance vehicles must be deducted from fleet tonnage in order to arrive at "effective" vehicle tonnage.

(5) By applying the "Hawker formula" it was ascertained that two additional vehicles of 8 tons each should be authorised:—*Held:* this was a substantial addition to S. & Co.'s fleet & they should be authorised to use further tonnage for maintenance purposes.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STEVENSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 328.

1523. —— —— **For particular customers—Duty to apply for contract licence.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1500, *ante.*

1524. —— —— —— ——.]—(1) A hauler applied for the addition of one vehicle to his A licence. He proposed to use this vehicle exclusively for one customer:—*Held:* that, whether or not there was a contract with this customer, the haulier could not be authorised to use this vehicle under an ordinary A licence; (2) Order directed to lie in the office for a fortnight, to enable appct. to apply for an A (Contract) licence.—KERR & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BROWN (1936), 24 Ry. & Can. Tr. Cas. 323.

1525. —— —— **Vehicles formerly hired.**]—Only special circumstances will justify the grant of a licence to a carrier with the object of enabling him to own the vehicles which he formerly hired. The risk he runs in losing his custom to those who supply such vehicles is not such a special circumstance.—WARD *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 38.

Annotation:—**Refd.** *Re* Lovell (Shaw) & Sons, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 250.

1526. —— —— ——.]—(1) The mere fact that a carrier who has been hiring the vehicles he requires now desires to use his own is not sufficient to justify the grant of an A licence, apart from special circumstances.

(2) Where a carrier has in the past, by evading the limits imposed by law on hours of work and weight of loads, been able to do with fewer & smaller vehicles, the fact that he will no longer be able to evade the law & will therefore require more or larger vehicles to do the same amount of work is no ground for authorising an increase in his tonnage—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD. (1934), 22 Ry. & Can. Tr. Cas. 44.

Annotations:—*As to* (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77; Randall *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 163. **Apld.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; Reece, Ltd. *v.* Four Amalgamated Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 199; London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1527. —— —— ——.]—A carrier who seeks to acquire additional vehicles in order to do away with the necessity of hiring must prove special circumstances. It is not enough to allege that hired vehicles are unsatisfactory without particularising how & why they are unsatisfactory.—BURGOINE & SONS *v.* F—

AMALGAMATED RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 77.

1528. —— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD., No. 1502, *ante*.

1529. —— —— ——.]—*Held:* by the Appeal Tribunal a carrier cannot justify an application for an A licence by general evidence that he has lost custom through being unable to hire vehicles when he needed them.—LONDON & NORTH EASTERN RY. CO. *v.* BROWNBRIDGE (1935), 22 Ry. & Can. Tr. Cas. 255.

Annotation:—**Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1530. —— —— ——.]—(1) Where additional vehicles are sought to be authorised under a public carrier's licence, if appct. is a newcomer to the business he must prove a *primâ facie* case that the existing operators already in business are not able to cope with the traffic which he proposes to carry; if appct. is an operator already established during the basic year it is sufficient to show some expansion in the business of his customers, & a useful method of arriving at the amount of additional tonnage to which he is entitled is to take into consideration the tonnage of goods carried per ton of unladen weight of the vehicles.

(2) Great difficulty in finding covered vans to hire is a special circumstance which justifies an applicant being authorised to use vehicles of his own in place of the vehicles which he formerly made a practice of hiring.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 23.

Annotations:—*As to* (1) **Consd.** Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225. **Expld.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Refd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159; Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. *As to* (2) **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273.

1531. —— —— ——.]—(1) The fact that the contractor from whom a carrier has been accustomed to hire has proved to be unsatisfactory is not a special circumstance justifying the grant of a licence to the carrier to enable him to carry in his own vehicles.

(2) The burden of proving objections does not lie on objectors; the burden of disproving them lies in the first place on appct.

(3) A carrier who had been carrying since 1875, but had hired cars to carry in from 1928 to 1934, was a newcomer to the carrying trade.—MCLACHLAN *v.* MORGAN & CO. (1935), 23 Ry. & Can. Tr. Cas. 243.

1532. —— —— **Necessary to avoid illegality as to hours & weights.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD., No. 1526, *ante*.

1533. —— —— **Motor to be used in addition to horse-drawn vehicles.**]—*Held:* by the Appeal Tribunal, in the special circumstances of the case, a licence ought to be granted to a carrier for a motor lorry which he proposed to use in addition to & not in substitution for carts drawn by horses.—*Re* WOOD'S APPEAL (1935), 22 Ry. & Can. Tr. Cas. 247.

1534. —— —— **Difficulty of overhauling vehicles.**]—An appct. using seven motor vehicles under an A licence & two under a B licence applied to vary the A licence by the addition of a further vehicle. In support of his application he put in two letters from customers:—*Held:* (1) letters are often of small assistance to a case; appcts. should call witnesses wherever possible; these letters gave no particulars of the transport difficulties they alleged, & did not justify the application; (2) An operator with nine vehicles should have no difficulty in providing for overhaul & repair. He could not invoke sect. 6 (2) (*d*) of the Act. If in difficulty he could apply for a short-term licence under sect. 3 (3).—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 137.

1535. —— —— **Evidence of increase of business.**]—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS., No. 1513, *ante*.

1536. —— —— ——.]—(1) A haulier applied for additional tonnage on the grounds that his existing vehicles were so overworked that he had no opportunity to overhaul or repair them, & that his business & that of his customers had substantially increased. He supported his application by letters from customers:—*Held:* failure to comply with the requirements of the Act as to overhaul, etc., could not be a ground of application. The appct. had, however, made out a case on other grounds. As to the amount of extra tonnage to be authorised, increase in gross receipts considered; (2) The evidential value of letters is small, & oral evidence should be given wherever possible. In future the Appeal Tribunal will pay less regard to the contents of letters.—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN (1936), 24 Ry. & Can. Tr. Cas. 149.

Annotation:—*Generally*, **Refd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport, Ltd. (1936), 24 Ry. & Can. Tr. Cas. 256.

1537. —— **Conditions—Undertaking to observe—Whether alternative to refusing application.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1500, *ante*.

1538. —— —— —— ——.]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER, No. 1486, *ante*.

1539. —— **Charges deduced from price of vehicle.**]—(1) The findings of fact of a licensing authority are subject to review by the Appeal Tribunal.

(2) The probable charges of a carrier cannot be inferred from the price he has paid for his vehicle.—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 21.

Annotation:—*As to* (1) **Refd.** Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1540. —— **Subsidiary company—Vehicles owned by parent company.**]—A co. which was entitled to an A licence under the provisions of sect. 7 (2) signified to the licensing authority its desire that the provisions of sect. 12 should have effect as regards its subsidiary co. which was not so entitled to a licence, & in respect of vehicles which belonged not to the subsidiary co. but to the parent co.:

the signification could be treated as a nullity, & the parent co. should be granted an A licence under the provisions of sect. 7 (2). *Qu.*: whether the provisions of sect. 12 apply to A & B licences or only to C licences. The vehicles which a licensee uses or intends to use should be specified in the licence, if necessary as & when they are acquired.—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO. (1934), 22 Ry. & Can. Tr. Cas. 132.

1541. —— **Specification of vehicles—Necessity for.**]—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO., No. 1540, *ante*.

1542. —— **Base from which vehicles to be used.**]—Application was made for A licences for vehicles to be normally used from P. as a base. The evidence showed that some of the vehicles would be used from bases other than P., but in the neighbourhood of P.:—*Held*: (1) the comr. was not wrong in law in granting licences for vehicles to be used from P. as a base; (2) when a railway co. seeks A licences for the purpose of discharging its statutory obligation of collection & delivery it must prove its case separately in respect of each base from which the collection & delivery is to be effected.—NORMAN *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 5.

Annotation:—**Refd.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1543. —— **Back loading—Whether justified.**]—Where appcts. charged a lower rate for services which, in the opinion of their customers, were more efficient than those offered by the objectors, it was found as a fact that the work could be dealt with efficiently by existing facilities & allowed an objection on the ground that transport facilities were in excess of requirements:—*Held*: there cannot be any objection to back loading as a normal part of a carrier's business under an A licence, because this practice relieves traffic congestion & makes for the economical transport of goods. But where the traffic is undirectional the effect may be to produce uneconomic competition.—SHEPHERD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 173.

1544. —— —— **Matters for consideration.**]—(1) A distinction must be drawn between the carrier already established, who seeks to obtain back loads in order that his vehicles shall not operate an undue amount of dead mileage, & one who, having newly entered the carrying business, seeks to obtain a licence solely on the ground that he has been promised work by one or more clearing houses.

(2) Where on an appeal by an objector against the grant of a licence it appeared to the Appeal Tribunal doubtful whether appcts. base or centre was in the traffic area of the Comr. who granted the licence, the appeal was formally allowed, & the case was sent back to the Comr. for a further hearing with the suggestion that a short-term licence should be issued to resp. pending the final disposal of the matter.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF (1935), 23 Ry. & Can. Tr. Cas. 261.

Annotation:—**Refd.** London & North Eastern Ry. Co. *v.* Turnbull & Sons (Leeds), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 239.

1545. —— **Vehicles used principally for single customer.**]—(1) The Tribunal admitted new evidence of facts which had occurred since the decision of the Comr.

The Comrs. must not grant an ordinary A licence for vehicles which will be principally used for the business of a single customer, so that they are generally loaded only with the goods of that customer, even though none of the vehicles will ever be used for the purposes of a contract for the carriage of goods for a year.—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 18.

1546. —— **In continuation of existing licence—What must be shown.**]—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD., No. 1497, *ante*.

1547. —— —— ——.]—*Held*: (1) an established haulier who applies for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed; (*b*) as to his gross receipts & tonnage; (*c*) that there has been no material change in the circumstances relating to his business. If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. This applies not only to trunk services but also to other facilities, although special considerations may arise in connection with collection & delivery services; (2) where an A licensee has on a prior application stated that he intended to provide facilities within certain districts or between certain places, & where it appears upon his application for a new licence in continuation of his existing licence that he has been providing, & intends to provide, facilities within other districts or between other places, then his application should be refused in the absence of evidence of need; (3) if during the currency period of an expiring A or B licence there has been a substantial break in the continuity of the licensee's haulage business, the licensee should not necessarily be treated as a newcomer when he applies for a new licence in continuation. But if the evidence proves the former business to have been abandoned, the new licence should not be granted in the absence of evidence of need. *Aliter* if the break was due to illness or fluctuation of business.—MODERN HAULAGE SERVICES, LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART (1937), 25 Ry. & Can. Tr. Cas. 272.

1548. —— **To whom granted—Liquidator.**]—A haulage co. holding two A licences went into liquidation. The liquidator applied for A licences in respect of the vehicles specified in the co.'s licence. Mr. Henderson granted the application, but only in respect of such vehicles as were in use at the date of liquidation & he expressed the licences to expire on the dates on which the co.'s licences would have expired:—*Held*: this was a proper course. There is no reason why a liquidator should not be granted a licence. Under

sect. 3 (2) of the Act licences may be granted for less than the full currency period for "special reasons," & the appointment of a liquidator was a special reason. Insolvency does not by itself show that goods had been carried at uneconomic rates. The objectors had not proved that facilities would be in excess of requirements: their facilities differed materially from those of the co.

The "carriers quarters" system in Scotland commented upon.—AITCHISON *v.* DOWLING (1936), 25 Ry. & Can. Tr. Cas. 9.

1549. —— **Hiring allowance—When justified.**]—A haulier applied for a new A licence in continuation of her existing A licence & in respect of the same tonnage, viz.: four vehicles in possession & one vehicle to be hired. During a fourteen weeks period the hiring allowance had been utilised three times when a vehicle was under repair & three times for work which could not be undertaken by the other four vehicles. The application was granted, & the objectors appealed against that part of the decision which authorised the hiring allowance:—*Held:* this was a case of the type in which the need for an additional vehicle should be dealt with by an application for temporary replacement under article 15 of the Goods Vehicles (Licences & Prohibitions) Regulations, 1936.

Urgent applications under this article are dealt with very rapidly by licensing authorities.—SOUTHERN RY. CO. *v.* WILKINSON (1937), 25 Ry. & Can. Tr. Cas. 245.

1550. —— **To what vehicles applicable.**]—(1) Two railway cos. applied for the variation of a number of their A licences in respect of different bases by the addition of further vehicles. The majority of the applications were for vehicles to be used for the collection & delivery of rail-borne traffic; in some instances the ground of the application was that such traffic had increased, & in others it was that the vehicles were to be used in substitution for horse-drawn vehicles. The applications were granted. The objectors (applts.) contended, *inter alia*), that such vehicles should have been authorised under B licence:—*Held:* it was proper in such a case to authorise collection & delivery vehicles under A licence, & not under B licence subject to conditions restrictive as to radius, since it was necessary for the efficient working of a large transport organisation that vehicles could in an emergency be used from a base other than their normal base. If the right to unrestricted user under A licence were abused, the licensing authority could refuse a subsequent application.

(2) The ratio in which motor vehicles should be authorised in substitution for horse-drawn collection & delivery vehicles cannot be fixed & depends entirely upon the facts of each case.

(3) By reason of sects. 11 (2) & 15 of the Act objectors who are B licensees have no right of appeal against a decision to grant an A licence. *Sanderson's Case* explained & followed.—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 187.

1551. **"B" licence—When granted.**]—A trader who carries his own goods long distances to deliver to his customers, & on the return journey carries goods for his customers for reward, competes with carriers who only carry for reward, & it is not desirable in the interests of transport that he should do so.—COX *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 161.

1552. —— ——.]—*Held:* (1) a B licence should not be granted to an appct. who failed to prove a need for further transport facilities in his district; (2) the principles laid down in *Enston's Case* do not apply to all applications for B licences any more than they apply to all applications for A licences.—THORNLEY & SON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 249.

1553. —— ——.]—(1) A manufacturing co. using a fleet of vehicles to deliver their products made a practice of carrying goods for hire or reward on return journeys. They applied for a B licence to enable them to continue to do so:—*Held:* the carrying of return loads for hire or reward is not generally in the public interest provided that alternative transport is available. On such an application, therefore, a licensing authority has to consider whether a case for exceptional treatment is made out, & whether alternative transport is available. Letters from customers asserting a preference for road over rail transport do not assist such a case, & the existence of alternative road transport may be inferred from them. Here no case for exceptional treatment was shown, & the existence of alternative transport for the return loads was proved: the application was rightly dismissed.

Obiter, on an application for a B licence it may be material for the licensing authority to consider whether alternative transport is available for the carriage of appct.'s own goods.

(2) The licensing authority, in reaching his decision, had made use of knowledge of transport conditions acquired generally in the course of his duties:—*Held:* he was entitled so to do, but if during a public inquiry a licensing authority contemplates using knowledge of specific matters he should give the parties an opportunity of dealing with them.—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 127.

Annotations:—As to (1) **Consd.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Sheville (1936), 25 Ry. & Can. Tr. Cas. 45. **Apld.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Smalley (1936), 25 Ry. & Can. Tr. Cas. 118; London, Midland & Scottish Ry. Co. *v.* Mitchell & Broadbent (1936), 25 Ry. & Can. Tr. Cas. 78. **Reld.** Four Amalgamated Ry. Cos. *v.* Routs-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; London, Midland & Scottish Ry. Co. *v.* Holden (1936), 24 Ry. & Can. Tr. Cas. 178.

1554. —— ——.]—*Held:* the whole of the provisions of sect. 7 (3), apply only to applications for licences for the first currency period. On applications for licences for the second or subsequent currency periods the discretion to grant or refuse the licence is that given by sect. 6 of the Act.

An appct. proved that there was a need for his car to be used on a private estate where no licence was required to use a car for carriage of goods for hire or reward, & that there was a possibility that there might be a need for the car to be used on public roads where a licence would be required:—*Held:* no case for a licence had been made out.

Obiter, if the public are admitted to a private estate the roads on that estate are roads within

Road & Rail Traffic Act, 1933 (c. 53).—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* HOLDEN (1936), 24 Ry. & Can. Tr. Cas. 178.

1555. —— ——.]—(1) A haulier applied for the renewal of his B licence permitting him (*inter alia*) to carry strawboards for a certain co. A ry. co. objector gave general evidence as to ry. facilities & argued that these facilities were suitable & that therefore the application should have been dismissed :—*Held :* in this case whether or not the ry. facilities were suitable depended upon whether or not the strawboards had frequently to be carried for urgent delivery. The evidence as to this was unsatisfactory ; case remitted for further inquiry.

The fact that objectors have in the past carried large quantities of certain goods does not prove that their facilities are suitable ; it is a factor to be taken into consideration, but is not conclusive.

It had been stated as one ground for granting the application the fact that conveyance of strawboards by rail would involve a 50 per cent. increase in transport charges ; he described the rail charge as " on the high side " :—*Held :* this finding was not justified by the evidence ; the rail rate had been authorised by the lty. Rates Tribunal & was not on the high side.

(2) Evidence tendered by objectors should be as particularised as that given by appcts.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY (1936), 24 Ry. & Can. Tr. Cas. 294.

1556. —— ——.]—A coal merchant who hawked coal from his motor vehicle during the winter months applied for a B licence :—*Held :* a coal merchant who is unable to discharge the ordinary burden of proof should nevertheless be granted a B licence if : (*a*) his business is genuine ; (*b*) he requires the vehicle for carrying goods in connection with his own business & these goods cannot satisfactorily be carried otherwise ; (*c*) taking the year as a whole the vehicle cannot be economically operated unless used during the off season for hire or reward ; & provided a special condition be attached preventing him carrying for hire save during the off season & preventing wasteful competition.

This principle only applies to genuine coal merchants' businesses, & it does not necessarily apply to other seasonal businesses.—SOUTHERN RY. CO. *v.* LAMBERT (1936), 25 Ry. & Can. Tr. Cas. 24.

Annotations :—**Refd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158 ; Marris *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 248.

1557. —— ——.]—Furniture dealers applied for a B licence to enable them to carry out removals. They did business on the " easy payment " system, & proposed to apply this system to removals :—*Held :* they must raise a *primâ facie* case within the terms of *Enston's Case ;* their proposed method of collecting charges was not a matter which the licensing authority should take into consideration.—BRADSHAWS STORES, LTD. *v.* WALKER & LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas.

1558. —— ——.]—A wholesale fruit merchant used motor vehicles to convey fruit from London to Nottingham & Ilkeston. He applied for a B licence to enable him to continue his practice of carrying for hire or reward on the return journeys to London :—*Held :* he was not entitled to a licence if there were already in existence suitable transport facilities for the conveyance of (*a*) his goods, & (*b*) those of his customers.

The evidence showed that railway facilities were suitable for the conveyance of appct.'s goods to Nottingham but not to Ilkeston. The Tribunal refused to assume in the absence of evidence that suitable facilities to Ilkeston were provided by A licence-holders. There was also insufficient evidence as to facilities available for conveyance of the customers' goods ; case therefore remitted to the licensing authority for further inquiry.

Barratt's Case followed ; decision of Mr. Gleeson Robinson therein approved, save that the Tribunal doubted whether a licensing authority was entitled to take into consideration the fact that a B licensee would obtain an advantage over his competitors not similarly licensed.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1936), 25 Ry. & Can. Tr. Cas. 118.

1559. —— ——.]—Sect. 6 (2) (*c*) of the Act requires the licensing authority to have regard to the extent to which the vehicles to be authorised will be in substitution for horse-drawn vehicles previously used by the appct. for the purposes of his business as a carrier.

Resp. co-operative society applied for a B licence for one vehicle to enable them to effect furniture removals for their members. They had hitherto done this work locally by their own horse-drawn vans, for which they had hired horses from S. Mr. Nicholson granted the application subject to a radius of twenty-five miles. On appeal it was said that S. had now himself obtained a licence on the ground of substitution of motor for horse-drawn vehicles, & that if this decision were supported there would have been a dual grant :—*Held :* where a van belonging to one person had been drawn by a horse belonging to another, the fact that the owner of the horse has already successfully invoked sect. 6 (2) (*c*) does not preclude the owner of the van from relying on it as well.

Grant upheld, subject to a reduction of radius to fifteen miles.—REED & SONS *v.* BRISTOL CO-OPERATIVE SOCIETY, LTD. (1937), 25 Ry. & Can. Tr. Cas. 241.

1560. —— ——.]—The owner of a furniture depository & a furniture removal business had been authorised under B licence to carry furniture & household effects within a 100-mile radius. He applied for a new licence in continuation of his expiring licence & asked that the restrictive radius be removed :—*Held :* (1) in the absence of evidence to the contrary it must be assumed that removals beyond the 100-mile radius had been satisfactorily effected by other carriers & therefore that the lifting of the restriction would create an excess of suitable facilities ; but (2) it is reasonable that the owner of a depository who is also a furniture remover should be permitted to carry without radius restriction furniture & household effects stored in his depository.—BROWN *v.* LONDON & NORTH EASTERN RY. CO. (1937) 25 Ry. & Can. Tr. Cas. 265.

-.]—(1) It is not by itself a ground for refusing a B licence that appct.'s own goods could be quite satisfactorily carried by existing transport & that there is no other valid & sufficient reason why he should carry them himself. But where there already exist suitable transport facilities for the carriage of the goods which appct. proposes to carry for reward the licence must be refused.

(2) In the absence of any explanation from the traders concerned it is not right to draw the inference that rail transport is unsuitable from the fact that many consignees order their goods forward by road.

(3) Where there is a finding that there are no A licensees in a certain area who are not fully employed, & this finding is based on knowledge acquired in the exercise of the duties of a licensing authority, the Appeal Tribunal have no alternative but to accept it.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1937), 25 Ry. & Can. Tr. Cas. 348.

1562. —— **Additional vehicles—When granted.**]—Wharfingers applied for a variation of their B licence by the addition of five vehicles that they might themselves do work hitherto done for them by sub-contractors. They complained of an increasing difficulty in hiring vehicles from such sub-contractors :—*Held :* by Mr. Gleeson Robinson, in the case of applications by wharfingers, forwarding agents & clearing houses who had hitherto done all or part of their haulage work by sub-contractors, & in the absence of special circumstances, a licensing authority should safeguard the transport industry generally by refusing to authorise vehicles for the purpose of doing such work as was hitherto done by sub-contractors. He refused the application. On appeal, the Appeal Tribunal were disposed to agree, *obiter*, with Mr. Gleeson Robinson as far as concerned forwarding agents, clearing houses, & some wharfingers. In the case of these appcts., however, they found special circumstances to exist, & held appcts.' road facilities were to be regarded as collection & delivery services ancillary to trunk routes by sea, & since an increasing difficulty in hiring had been proved, the extra vehicles should be authorised.—*Re* LOVELL (SHAW) & SONS, LTD. (1937), 25 Ry. & Can. Tr. Cas. 250.

1563. —— **Application for—What must be stated.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1564, *post*.

1564. —— **Jurisdiction of licensing authority.**]—(1) An appct. for a B licence in respect of a motor vehicle in describing the area which he intends to serve is only bound to state the district within which or the places between which he intends normally to use the vehicle. (2) In granting such a licence the licensing authority may, if he thinks fit, under sect. 8 (3) (*a*), attach to the licence a condition that it shall be used only in a specified district or between specified places; or he may grant the licence without imposing any restriction.

(3) When a rule *nisi* for a writ of *certiorari* has been made absolute by the K. B. Div. & an appeal to the Ct. of Appeal from the order absolute has been allowed. *Qu.* : whether it is necessary to sue out writs of *supersedeas & procedendo* to avoid the writ.—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, [1936] A. C. 128; 105 L. J. K. B. 37; 52 T. L. R. 44; 79 Sol. Jo. 941; 24 Ry. & Can. Tr. Cas. 1; *sub nom.* R. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, *Ex p.* GREAT WESTERN RY. CO., 154 L. T. 39, H. L.

Annotations :—As to (1) **Apld.** Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272. **Reid.** Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116.

1565. —— **Licensing authority using knowledge gained in course of duty—Duty to give notice to parties.**]—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS., No. 1553, *ante*.

1566. —— **Conditions—Consideration of public interest.**]—(1) Leave to call new evidence on appeal was refused to an applt., who as appct. had been given every opportunity to present his case to the comr. & had not asked for an adjournment.

(2) In attaching conditions to a B licence granted under sect. 7 (3), which provides that no condition shall be attached which would constitute a substantial interference with the business for which the vehicles were used during the basic year, a comr. may also take into account the public interest. The business may include the business of a carrier.—PLENTY *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 82.

1567. —— —— **Auctioneer's licence.**]—The Appeal Tribunal imposed a condition on an auctioneer's B licence limiting him to the carriage of furniture for hire or reward to or from his auction rooms & within a certain area.—NEWBURY & DISTRICT MOTOR SERVICES *v.* PERRY (1935), 23 Ry. & Can. Tr. Cas. 1.

1568. —— —— **Duty to attach.**]—When granting a B licence a licensing authority in the proper exercise of his discretion under sect. 8 (3) of the Act should attach reasonable conditions having regard to the evidence.

An appct. carried for hire or reward within twenty-five miles of his base. The licensing authority granted a B licence without special conditions :—*Held :* he should have attached conditions in accordance with the evidence. Case remitted for reconsideration.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BREEZE (1936), 24 Ry. & Can. Tr. Cas. 290.

Annotation :—**Reid.** Sutcliffe, Ltd. *v.* London, Midland & Scottish Ry. Co. (1936), 25 Ry. & Can. Tr. Cas. 213.

1569. —— ——.]—A newcomer applied for a B licence. It was granted subject to a condition limiting the use of his vehicle to a 25-mile radius from its base. Hauliers with bases twelve & fifteen miles respectively from the newcomer's base objected, & appealed :—*Held :* on the evidence, the newcomer had made out a *primâ facie* case, but that it had been *pro tanto* rebutted by the two objectors, so far as their bases were concerned; condition amended to prevent the newcomer carrying for persons other than those residing within four miles of his base. An offer made at a public inquiry by an objector, to station a vehicle at an appct.'s base, should not be taken into consideration.

Value of maps as evidence, commented upon.—POCOCK *v.* WASEY (1936), 24 Ry. & Can. Tr. Cas. 316.

1570. —— ——.]—*Qu.:* whether a licensing authority has jurisdiction to grant a B licence subject to special condition empowering the licensee to carry for a firm who are themselves holders of an A licence.—LONDON & NORTH EASTERN RY. CO. *v.* TURNBULL & SONS (LEEDS), LTD. (1937), 25 Ry. & Can. Tr. Cas. 239.

1571. —— **Grant quashed by Divisional Court—Issue of writ of supersedeas & procedendo by Court of Appeal.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1564, *ante*.

1572. —— **Return loads.**]—Traders had carried return loads within radii of sixty-five, forty & twenty miles under B licence, claimed tonnage. They now applied for a fresh B licence subject to the same conditions in continuation of the first licence. Objectors gave evidence of their facilities:—*Held:* by Mr. Farndale, in cases where appcts. had been carrying return loads since at least the commencement of the basic year, they should be permitted to continue so to do unless objectors proved beyond doubt that alternative transport facilities were commercially suitable as well as physically sufficient.

In the absence of evidence by objectors that they could deliver goods in the district in question early the morning next after dispatch, & that such delivery met the needs of consignees, Mr. Farndale found, & the Appeal Tribunal agreed, that objectors had not proved their facilities to be commercially suitable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* MITCHELL & BROADBENT (1936), 25 Ry. & Can. Tr. Cas. 78.

1573. —— **Radius.**]—Appcts. applied for a B licence in substitution for their existing B licence under which they were permitted to carry for hire or reward within a 70-mile radius. They had been carrying daily return loads from points 35 to 65 miles from their base:—*Held:* since the return loads were not carried for "long distances" & since they formed a regular service, the decision in *Barratt's Case* did not apply.

Sir William Hart granted the application subject to new radii of 15 & 35 miles. He considered these to be radii within which a B licensee might reasonably be expected to operate:—*Held:* by the Appeal Tribunal, in fixing a radius regard should be had to the evidence of past work & future need; Sir William's decision must be reversed.—SUTCLIFFE (EDWARD), LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 213.

1574. "C" licence—Condition prohibiting carriage for reward—Vehicle owned by mutual benefit societies.]—An incorporated society, whose members consisted exclusively of persons employed at a colliery, had as its object the business of delivering to its members coal supplied to them from the colliery by the colliery co. For the purposes of its business the society owned a motor goods vehicle in respect of which it held "a C licence" under the above sub-sect. The society used the vehicle for making a delivery of coal at the house of one of its members, the charge for the delivery being deducted from the wage of the member payable by the colliery co. & subsequently paid by that co. to the society. On an information against the society for having failed to comply with the condition, to which the licence was subject under the above sub-sect., by using the vehicle for the carriage of goods for hire or reward:—*Held:* as the society was incorporated, it was a legal entity separate & distinct from its individual members; & consequently in using the vehicle for the carriage of coal to one of the members at a charge, it used the vehicle for "the carriage of goods for hire or reward" within the Road & Rail Traffic Act, 1933 (c. 53), s. 2 (4), & was guilty of the offence with which it was charged.

In another case in which the material circumstances were in all respects similar to those above mentioned, except that the society which carried on the business & owned the vehicle & against which the information was laid, was an unincorporated society:—*Held:* as the society was unincorporated, it had no separate existence apart from its individual members who were themselves the owners of the vehicle & the recipients of the payments made for the use of it; & consequently when the vehicle was used for the carriage of coal to the member it was not used for "the carriage of goods for hire or reward" within the sub-sect., & the society was not guilty of the offence charged against it.—WURZEL *v.* HOUGHTON MAIN HOME DELIVERY SERVICE, LTD., WURZEL *v.* ATKINSON, [1937] 1 K. B. 380; [1936] 3 All E. R. 311; 106 L. J. K. B. 197; 155 L. T. 575; 100 J. P. 503; 53 T. L. R. 81; 80 Sol. Jo. 895; 34 L. G. R. 587; 25 Ry. & Can. Tr. Cas. 59, D. C.

1574a. —— **Breach of condition.**]—Resps., as holders of a private "C" carrier's licence, were charged with having failed to comply with a condition attached to the licence, namely, that "the holder of this licence is entitled to use the authorised vehicles for the carriage of goods for or in connection with any trade or business carried on by him, but no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward," contrary to Road & Rail Traffic Act, 1933, s. 9 (1). The vehicles in question were used for the removal & disposal of the whole of the surplus excavations from the site of a new railway station, for the sum of 1*s.* 10*d.* per cubic yard of excavation, & it was alleged that the consideration paid, or some part of it, was paid for the carriage of the rubbish. The justices dismissed the charge, holding that the property in the rubbish passed to the respondents the moment it was loaded on to the vehicle, & that it could not be said that a person had carried his own goods for hire or reward:—*Held:* (1) a large part of the payment recovered by resps was paid for the carriage of the rubbish from the premises of the railway, & the offence charged was proved; (2) this was not a case of "delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him" within sect. 1 (5) (*a*) of the Act of 1933.—SPITTLE *v.* THAMES GRIT & AGGREGATES, LTD., [1937] 4 All E. R. 101; 101 J. P. 557; 81 Sol. Jo. 902, D. C.

1575. **Variation—What amounts to.**]—*Re* COLES' APPEAL, No. 1641, *post.*

1576. —— **Application to include tonnage used before Apr. 1, 1934.**]—(1) The right of an appct. to claimed tonnage under sect. 7 (3) of the Act is exhausted when he is granted a licence for the first currency period. If, therefore, he did not apply before Apr. 1, 1934, for all that he might have applied for he has no right thereafter to have his licence varied so as to include the difference between the tonnage he did apply for & that which he might have applied for.

(2) A trailer is not a specified vehicle within sect. 10 (2). Consequently, the holder of a licence for a motor vehicle & a trailer has no right to have a second motor vehicle substituted for the trailer.

The principles with regard to hiring laid down in *L. M. & S. & Barr*, No. 1519, *ante*, apply as well to the variation of a licence as to the grant of a new licence.—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 163.

Annotation :—As to (1) **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1577. —— **Application to include vehicles formerly hired.**]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1576, *ante.*

1578. —— **Specified vehicle—Trailer.**]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1576, *ante.*

1579. —— **Application before licence granted.**]—A carrier applied for a licence. Before his application could be heard he applied for a variation of the licence which he hoped would be granted. On hearing of the original application Mr. Chamberlain refused to entertain the application for the variation because it had not been published, & he granted the original application in part only. On the application for a variation coming before Sir William Hart he refused to authorise additional vehicles because the evidence in support of the application for a variation was the same as the evidence on the original application, but he did authorise heavier vehicles. On the matter coming before the Appeal Tribunal they approved of what had been done both by Mr. Chamberlain & by Sir William Hart.—BARLOW *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 52.

1580. —— **Purchase of haulier's business—Application of 1933 Act, s. 11.**]—A haulier using ten vehicles under an A licence contracted to purchase the business of another haulier, operating five vehicles under an A licence. The first haulier applied to vary his licence by the inclusion of the additional five vehicles :—*Held :* the case did not fall within sect. 11 (3) (*b*) of the Act. Para. (*b*) of subsect. (3) applies only to applications for licences, & not to applications for variations of licences.

A haulier purchasing another haulier's business & applying to vary his own A licence by the inclusion of the purchased vehicles must prove (1) that the vendor had a business as a public carrier ; (2) that the vendor's customers are ready & willing to give their work to the purchaser ; (3) that this work should be done under an A licence ; (4) that to do this work it is reasonably necessary for the purchaser to use the vendor's vehicles in addition to his own vehicles. In this case the fourth point had not been proved & the variation was refused.—BOSTON HAULAGE CO., LTD. *v.* SANDERSON & LONDON & NORTH EASTERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 107.

Annotations :—**Apld.** London & North Eastern Ry. Co. *v.* Butler & Marshall (1936), 24 Ry. & Can. Tr. Cas. 144 **Consd.** Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217

1581. —— —— ——.]—A haulier contracted to purchase the business of another haulier, including two vehicles. The vendor at that time owned no vehicles. The purchaser applied for an A licence for two vehicles to be acquired. After the application but before the public inquiry the vendor bought the two vehicles, obtained A licences for them, & transferred them to the purchaser :—*Held :* sect. 11 (3) (*b*) did not apply ; therefore the licensing authority was under a duty to hear an objector & the objector had a right of appeal under sect. 15 (1) (*b*). For sect. 11 (3) (*b*) to apply the vendor's licence must be in existence at the date of the purchaser's application.

For three months prior to the contract the vendor had owned no vehicles, & evidence as to hiring was vague. The licensing authority did not investigate the vendor's books & records, but granted the application : —*Held :* the principles of *Boston Haulage Co., Ltd. & Sanderson*, must be applied. The question whether the vendor had any business to dispose of, or whether the purchase was a device intended to prevent a public inquiry, had been insufficiently investigated. Application referred back to the licensing authority for the holding of a further public inquiry.—LONDON & NORTH EASTERN RY. CO. *v.* BUTLER & MARSHALL (1936), 24 Ry. & Can. Tr. Cas. 144.

1582. —— **Extension of area.**]—A B licence was granted for the carriage of livestock within sixty miles of a place in Anglesey. It appeared that the principal markets for livestock from Anglesey were in Manchester & Salford ; the Appeal Tribunal accordingly enlarged the area so as to include these places.—WILLIAMS & EVANS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 193.

1583. —— **What may be considered.**]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1508, *ante.*

1584. —— **Additional vehicles—When granted.**]—Appcts. for B licences or variations who rely on an increase in gross receipts should present figures showing separately the gross receipts earned in carrying goods for hire or reward.

A ballast merchant & road haulier held a B licence for twenty-five vehicles for the first currency period. At its expiry he obtained a second licence for nineteen vehicles, the other six being at that time unfit for use. He now applied for the addition of six vehicles to his licence. He gave evidence of an increase in the gross receipts of his business & of an increase in hiring :—*Held :* on the facts, it was impossible to tell what portion of the gross receipts related to carrying for hire or reward & what related to the ballast business ; & the hiring figures could not properly be assessed since they must have been affected by the fact that six

vehicles were at one time laid up although authorised.

Per Mr. Gleeson Robinson: A false statement made by appct.'s assistant manager to objectors, with a view to having objections withdrawn, is "previous conduct of appct. in the capacity of a carrier of goods," within sect. 6 (2) (*b*) of the Act.—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON, MIDLAND & SCOTTISH & GREAT WESTERN RY. COS. (1936), 25 Ry. & Can. Tr. Cas. 32.

1585. Licensing authority—Duty to give reasons for decisions.]—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1483, *ante*.

1586. —— —— All reasons.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1587. —— Duty to act judicially.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1588. —— Public inquiry—Powers.]—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1628, *post*.

1589. —— —— ——.]—A co. applied for an A licence in continuation of an existing licence issued to a carrier whose business they had acquired. Mr. Nicholson gave notice of the application in *Applications & Decisions*, held a public inquiry, & heard objectors. On the evidence he held that the co. had not shown a need that justified their application, & he dismissed it:—*Held:* on appeal, although sect. 11 (3) (*b*) of the Act applied to the application, the licensing authority had power to notify it. He had power to hold a public inquiry, both under sect. 11 (5) & under the principles laid down in *Board of Education* v. *Rice*, [1907] A. C. 179, & *Local Government Board* v. *Arlidge*, [1915] A. C. 120. He had power to hear objectors, not as statutory objectors, but as persons making representations to assist him. In deciding such an application he was bound to have regard to all the matters set out in sect. 6 (2) of the Act. In this case the evidence justified the finding: appeal dismissed.

It is incorrect to refer to such an application as one "made under sect. 11 (3) (*b*) of the Act" or as one for "transfer of licence."—EX-ARMY TRANSPORT, LTD. *v.* DIAMOND & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 303.

Annotation:—Refd. Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217.

1589a. —— —— ——.]—*Re* WOODWARD'S APPLICATION, WOODWARD *v.* NORTH WESTERN TRAFFIC AREA LICENSING AUTHORITY, [1937] 4 All E. R. 656; 54 T. L. R. 216.

1590. —— Non-compliance with conditions—Consideration of.]—Breaches of the conditions attached to a licence such as would justify the revocation of the licence are previous conduct of an appct. in his capacity of a carrier of goods & ought to be considered on an application for a new licence in substitution for an existing licence.

Although under sect. 11 (2) of the Road & Rail Traffic Act, 1933, a statutory objector may object to the grant of a licence on the ground that any of the conditions of a licence held by appct. have not been complied with, it can only be in rare cases that an objector has knowledge whether or not breaches of conditions have taken place, & in the great majority of cases this knowledge will be that of the licensing authority only acquired by him in the course of his administrative duties under the Act. Consequently any such non-compliance may be properly considered by the licensing authority *ex proprio motu suo*. In such a case the licensing authority is not bound to hear direct evidence of non-compliance with the conditions. Where it is intended to take such matters into consideration it is better that written notice should be given to appct., but if sufficient oral notice has been given the fact that there was no written notice will not be a ground of appeal.—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 318.

1591. "Previous conduct of applicant"—Criminal offences—Necessity for strict proof.]—BOUT-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

SON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1593. —— Material time.]—A licensing authority dismissed an application for an A licence in substitution for an expiring licence upon the ground, *inter alia*, that appct.'s previous conduct in the capacity of a carrier of goods was such as to disentitle him to a licence. This previous conduct comprised the transaction under which appct. had obtained the vehicles with which he began business as a road haulier. On appeal:—*Held:* since at the time of the transaction in question appct. had not yet begun to be a carrier of goods, the conduct was not such as fell to be considered by a licensing authority under sect. 6 (2) (*b*) of the Act. Appeal allowed.

Objectors' evidence in proof of objection discussed.—HAZELL *v.* SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. (1937), 25 Ry. & Can. Tr. Cas. 259.

1594. —— What amounts to.]—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON MIDLAND & SCOTTISH & GREAT WESTERN RY. COS., No. 1584, *ante*.

1595. —— ——.]—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1590, *ante*.

1596. Newcomer—Who is.]—(1) An appct. is a newcomer to the carrying business notwithstanding he was a partner in a firm of carriers before the basic year.

(2) Where a newcomer applies for a carrier's licence the burden of proof is on him to meet the objection under sect. 11 (2) of Road & Rail Traffic Act, 1933 (c. 53), that, if the application is granted, transport facilities will be in excess of requirements; & he must discharge that burden even if there are no objectors.—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN, & LONDON & NORTH EASTERN RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 88.

1597. —— ——.]—(1) *Held:* (1) by the Appeal Tribunal, an appct. who had been a partner in a firm of carriers from 1918 till May, 1933, & thereafter a carrier on his own account, was a newcomer to the carrier's business for the purpose of an application for a licence which he proposed to use for a carrying business of an entirely different character; (2) the evidence of the managing director of a co. of haulage contractors that there was a

shortage of goods vehicles in the district proposed to be served by appct. did not make a *primâ facie* case that the work proposed to be done by the appct. could not for some reason or reasons be done by other existing carriers.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS (1935), 23 Ry. & Can. Tr. Cas. 159.

1598. —— ——.]—On an application for an A licence for a vehicle to be normally used in R. & 100 miles around an objection was lodged on the ground that transport facilities were in excess of requirements. It was admitted on behalf of the objectors that if appct. would restrict himself within the limits of a B licence the objection could not possibly be sustained. Nevertheless the objection was allowed:—*Held:* by the Appeal Tribunal, an appct. who had been a carrier & haulage contractor except for the period from 1929 to 1933, when he went out of business for family reasons, was a newcomer to the carrying business.—CROMPTON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 178.

Annotations:—**Folld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

1599. —— ——.]—MCLACHLAN *v.* MORGAN & CO., No. 1531, *ante*.

1600. —— ——.]—An appct. for an A licence had been a carrier during the basic year. He had also had a coal business which, as the Comr. found, was always a very small part of his general business:—*Held:* in these circumstances appct. was a newcomer to the carrying business, because it appeared from his books that over the whole period of the basic year his vehicle was not used mainly for carriage for reward; the burden of proof was on appct. to establish that no other carrier could do the work which he proposed to continue to do; &, that burden not having been discharged, the licence should have been refused, notwithstanding there was no evidence to show that transport facilities in the district were in excess of requirements.—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN (1935), 24 Ry. & Can. Tr. Cas. 31.

Annotation: **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1601. —— ——.]—(1) Sect. 5 (3) requires that, in the case of A & B licences, a separate application must be made in respect of each permanent base or centre from which the vehicles will be normally used, but permits the Comr. to grant a single licence in respect of such applications. A single application having been made for a B licence for two vehicles "for goods to be conveyed within a twenty-five miles radius of Ayr & Kilmarnock, from Bus Station, Ayr, & Bus Station, Kilmarnock":—*Held:* by Mr. Henderson, since Ayr & Kilmarnock are only ten miles apart one application was sufficient, but two licences ought to be granted. On the matter coming to the notice of the Appeal Tribunal they gave no decision on this point because no objection was taken to the form of the application.

(2) On an application for a B licence to carry parcels an objection that suitable transport facilities in the district intended to be served were already in excess of requirements was disallowed by Mr. Henderson because it was not supported by evidence:—*Held:* by the Appeal Tribunal, a co. which has been engaged in carrying parcels & passengers for many years is a newcomer to the carrying business & ought not to be granted a licence except upon proof of a *primâ facie* case that no other carrier could carry the parcels.—FERGUSON *v.* WESTERN S. M. T. CO., LTD. (1935), 24 Ry. & Can. Tr. Cas. 72.

1602. —— ——.]—(1) A haulier who had operated during the basic year applied for an A licence. He claimed to have an equitable right to a licence because his delay had been due to inadvertence & ignorance:—*Held:* at this late stage an appct. claiming to have operated during the basic year must produce conclusive & fully corroborated evidence. Appct. must be treated as a newcomer.

(2) Evidence of work done by vehicles operating illegally is probably not receivable in support of an application—*obiter*.—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 161.

-.]—(1) A limited co. had two separate departments, one carrying on the business of building contractor, & the other carrying on that of haulage contractor. During the basic year the haulage department carried 21 per cent. of their tonnage for the building department, & the balance for outside customers. The co. applied for an A licence (partly claimed tonnage). This application was adjourned, & in the interval a new limited co. was formed which took over the haulage business of the older or parent co. The new co. applied for an A licence:—*Held:* in these special circumstances the new co. was to be regarded not as a newcomer & subject to the requirements of *Enston's Case*, but as successor to the haulage department of the parent co., & should be granted an A licence for such vehicles as were engaged during the basic year in carrying for customers other than the building depart-

Abandonment of part of appeal at late stage taken into account in assessing costs.—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD. (1936), 24 Ry. & Can. Tr. Cas. 248.

1604. —— ——.]—(1) A firm of carriers was wound up in 1934. One of the former partners applied for a B licence in 1935. In the meanwhile he had maintained a business as carrier by means of hiring & sub-contracting:—*Held:* the applicant was a newcomer, & as such had to fulfil the requirements laid down in *Enston's Case*. On the evidence he had done so.

(2) The carriage of livestock is not traffic of a special character, in connection with which an appct.'s personal skill should be considered.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON (1936), 24 Ry. & Can. Tr. Cas. 325.

1605. —— ——.]—MODERN HAULAGE SERVICES, LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART, No. 1547, *ante*.

1606. —— ——.]—An operator under B licence ceased to carry on any business other than that of haulier. During the currency of his first B licence he applied for an A licence :—*Held :* the grant of the B licence exhausted his rights to claimed tonnage : there is no continuing right. Appct. was a new comer & must discharge the onus of proof laid down in *Enston's Case.*

As to the admission of fresh evidence before the Appeal Tribunal, *Taylor's Appeal* followed.—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD. (1936), 25 Ry. & Can. Tr. Cas. 83.

1607. Onus of proof—That facilities not excessive.]—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS., No. 1596, *ante.*

1608. —— ——.]—*Held :* (1) the burden of proving an objection under sect. 11 (2) does not lie on the objector, but the burden of disproving the objection lies on appct. ; (2) the fact that a carrier has been compelled to hire vehicles to carry his customers' goods is no evidence that either his business or theirs has increased ; (3) in determining the number of vehicles to be authorised for a seasonal business of a carrier in a small way, the comr. should not have regard to the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair, as appears to be required by sect. 6 (2) (*d*) of Road & Rail Traffic Act, 1933.—LONDON & NORTH EASTERN RY. CO. *v.* BURGESS (1935), 23 Ry. & Can. Tr. Cas. 147.

1609. —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN, No. 1600, *ante.*

1610. —— **Of abstraction of traffic.**]—*Held :* (1) by the Appeal Tribunal, the burden of proving an objection that appcts. have abstracted traffic from the objectors does not lie on the objectors, but it is for appcts. to disprove the objection.

(2) The Appeal Tribunal have no jurisdiction to allow an amendment of a notice of appeal.—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD. (1935), 23 Ry. & Can. Tr. Cas. 164.

1611. Evidence—Of objections.]—MCLACHLAN *v.* MORGAN & CO., No. 1531, *ante.*

1612. —— —— **Need for particularity.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY, No. 1555, *ante.*

1613. —— **Letters from customers.**]—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1534, *ante.*

1614. —— ——.]—(1) An appct. for an additional vehicle put in letters from customers, but furnished no evidence as to his tonnage or receipts :—*Held :* the evidence was insufficient.

(2) The absence of evidence as to alternative facilities is not a ground for granting an application.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER (1936), 24 Ry. & Can. Tr. Cas. 301.

1615. —— **Of goods & receipts during illegal user.**]—(1) Hauliers operating a service from their Devon base to London applied for authorisation of two extra vehicles. These vehicles had been operated illegally without licence for four & five months respectively. Their case was based upon an increase in the business both of their Devon customers & of a London co. for whom they carried on return journeys :—*Held :* evidence of customers obtained, of goods carried, & of receipts earned during a period of illegal running must be ignored ; (2) if the holder of an A licence applies for the authorisation of extra vehicles to be normally used for carrying from a particular base, he must first prove a need for these vehicles to carry goods outward from that base. If he proves that need, evidence as to return loads may be helpful, though not, strictly speaking, necessary. If he does not prove that need, evidence as to return loads will not support his application. In this case appcts. had not been able to prove sufficient increase in business outward from their base ; evidence as to return loads did not therefore need to be considered.—MOSS BROS. *v.* SOUTHERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 253.

1616. —— **Failure to hear—Ground for rehearing.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD., No. 1515, *ante.*

1617. —— **Fresh evidence—On reference back.**]—(1) When as the result of an appeal a case is referred back to a licensing authority for further inquiry, applt. ought to call fresh evidence.

(2) A haulier who substitutes a motor vehicle for a horse-drawn vehicle is not entitled as of right to a licence.—JONES *v.* ROBERTS & OWEN (NO. 2) (1936), 24 Ry. & Can. Tr. Cas. 287.

1618. —— **Maps.**]—POCOCK *v.* WASEY, No. 1569, *ante.*

1619. —— **Rights of objectors.**]—An appct. for additional tonnage put in letters from his customers. The texts of these were read at the public inquiry but the names of the writers were not read or disclosed to the objectors. Appct. could not give evidence as to his tonnage at the inquiry, but subsequently submitted a written statement of tonnage to Mr. Chamberlain, who then granted the application :—*Held :* (1) where a party relies on the contents of documents, the opposing parties are entitled to see those documents ; (2) objectors should have been given the opportunity of commenting upon the statement of tonnage. The proceedings were unsatisfactory : appeal allowed.

If important information is promised to a licensing authority, he should adjourn the public inquiry for its reception at a later hearing.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* (1936), 25 Ry. & Can. Tr. Cas. 37.

1620. —— **Of refusal of traffic—Necessity for strict proof.**]—An allegation that an objector has refused traffic should be strictly proved.

Hauliers applied for an extension of the radius prescribed in their B licence. They were employed as sub-contractors by C., a road haulier, to carry bricks for the M. Co. C. gave evidence of the M. Co.'s need, & stated that railway co. objectors were not meeting that need, as a result of which the M. Co. had had to acquire vehicles of their own under C. licence :—*Held :* on the facts,

that need had not been proved. The relations between the M. Co. & the objectors should have been proved by some official of the M. Co. & not by C.'s evidence, which was hearsay.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BOTTERILL & SONS (1936), 25 Ry. & Can. Tr. Cas. 72.

1621. Number of vehicles—Provisions for overhaul—Seasonal business of small carrier.]—LONDON & NORTH EASTERN RY. CO. *v.* BURGESS, No. 1608, *ante*.

1622. —— Wrongful possession during basic year.]—(1) Wrongful possession of a vehicle during the basic year cannot confer a right to claimed tonnage. But where such a vehicle was handed over in part payment for another vehicle under a hire-purchase agreement, possession of the second vehicle during the basic year could confer the right to claimed tonnage.

(2) A licensing authority granted an application for an A licence in respect of two vehicles, claimed tonnage, but doubted whether the appct. was the owner of the vehicles :—*Held :* the objector had a right to appeal.—SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. *v.* HAZELL (1936), 24 Ry. & Can. Tr. Cas. 312.

1623. Motor vehicle substituted for horse-drawn—What amounts to.]—*Held :* (1) where a carrier sold a barge which was towed by a horse, & bought a motor car, this was a case of a motor vehicle being substituted for a horse-drawn vehicle within sect. 6 (2) (*e*).

(2) Objectors who had called no evidence in support of their objection were permitted to appeal to the Appeal Tribunal under the provisions of sect. 15 (1) (*b*) on the grounds that the evidence given by appct. in support of his application was untrue, that the objectors had not been in a position to refute such evidence, & that appct. had made no *primâ facie* case that the work he proposed to do could not be done by other carriers. The Appeal Tribunal, being satisfied that the evidence of appct. had been untrue, allowed the appeal.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ABRAM (1935), 23 Ry. & Can. Tr. Cas. 153.

1624. —— ——.]—An appct. having tendered for a contract for work to be done by his horses & carts, & having failed to secure the contract, disposed of the horses & carts & applied for an A licence for motor vehicles to be used instead :—*Held :* by the Appeal Tribunal, this was not a case of the substitution of motor vehicles for horse-drawn vehicles for the purposes of the business of a carrier within sect. 6 (2) (*e*).—LONDON & NORTH EASTERN RY. CO. *v.* ALDRIDGE (1935), 23 Ry. & Can. Tr. Cas. 188.

1625. —— Ratio.]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1550, *ante*.

1626. —— Right to licence.]—JONES *v.* ROBERTS & OWEN (No. 2), No. 1617, *ante*.

1627. Publication of application—What should be stated.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1628. —— When necessary.]—(1) An appct. applied for an A licence in continuation of an existing licence issued to a carrier whose business she had acquired. The provisions of sect. 11 (1), (2) of the Act as to publication & the hearing of objectors do not apply to certain applications of this nature : sect. 11 (3) (*b*) :—*Held :* sect. 11 (3) (*b*) does not apply unless the licensing authority is satisfied that at the time of the sale the vendor had a genuine carrier's business.

(2) Mr. Henderson published the application, held a public inquiry, & heard objectors : —*Held :* the licensing authority was justified in taking these steps in order to ascertain whether sect. 11 (3) (*b*) applied. He was entitled to hear any representations made to him on that subject. "Statutory objectors" distinguished from other persons entitled to make representations.—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 182.

1629. Agreement to permit operation of vehicles in name of licensee—Validity.]—Pltf. who was entitled by virtue of sect. 7 (2) to obtain as of right A licences in respect of goods vehicles up to a certain tonnage, did not wish to use those vehicles himself. He entered into an agreement with defts., whereby, in consideration of a money payment by defts., defts. were to be entitled to operate the vehicles in pltf.'s name, under pltf.'s licences, which could not, by sect. 21 of the Act, be transferred or assigned by him to defts. The present action was brought by pltf. to recover the sum payable under the agreement :—*Held :* although the agreement did not purport to transfer or assign pltf.'s licences, it could not be carried into effect without the commission by defts. of a criminal offence under sect. 1, since defts. would be using vehicles in respect of which they had no licence. Nor could pltf., who had licences, but was not the person using the vehicles within sect. 1, comply with the requirements of sect. 16 by keeping, or causing to be kept, the records therein mentioned. The agreement was therefore illegal, & pltf.'s claim failed.—NASH *v.* STEVENSON TRANSPORT, LTD., [1936] 2 K. B. 128 ; [1936] 1 All E. R. 906 ; 105 L. J. K. B. 527 ; 154 L. T. 420 ; 52 T. L. R. 331 ; 80 Sol. Jo. 245, C. A.

1630. Effect of decision—Whether amounting to estoppel.]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1508, *ante*.

1631. Traffic of special character—What is.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON, No. 1604, *ante*.

1632. Vehicles operated from two bases—Whether two licences required.]—FERGUSON *v.* WESTERN S. M. T. CO., LTD., No. 1601, *ante*.

1633. Notice of objection—Contents.]—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT, No. 1494, *ante*.

1634. —— ——.]—It is imperative that notices of objection follow the form in Sched. III. of the Goods Vehicles (Licences & Prohibitions) Provisional Regulations, 1934 (now replaced by the Goods Vehicles (Licences & Prohibitions) Regulations, 1936). If an objector does not follow that form his objection is invalid.

Objectors who were road hauliers gave no particulars of their transport facilities in the notices of objection, nor did they state what

licences they held:—*Held:* the notices of objection were invalid, consequently the licensing authority was not bound to take them into consideration & the objectors had no right of appeal.

Where an appct. proposes to carry throughout Great Britain objectors have complied with the form if they describe the "district" in which they already provide transport as "Northern Scotland."—AITCHISON *v.* GALBRAITH (1936), 25 Ry. & Can. Tr. Cas. 3.

1635. Authority to carry specified goods from future date.]—(1) A licensing authority has no power to permit the carrying of certain goods only as from a future date.

(2) Under sect. 15 (12) (*b*) of the Act the Appeal Tribunal has power to award to an unsuccessful party the costs of any issue on which he has succeeded.—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN (1936), 24 Ry. & Can. Tr. Cas. 234.

1636. Contract licence—When necessary.]—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. Cos., No. 1521, *ante*.

1637. Suitable facilities—What must be considered.]—When considering the suitability of existing railway facilities some regard must be had to the facilities for collection & delivery. Facilities which might otherwise be suitable may be shown to be unsuitable if there are no reasonable facilities available for carrying the fruit to or from the terminal railway stations.—LEWIS *v.* SOUTHERN RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 18.

1638. —— ——.]—(1) Transport facilities which make no provision for the speedy delivery of traffic in respect of which there is real urgency with regard to delivery are not suitable facilities for such traffic.

(2) Before refusing an application for an A licence on the ground that the application should have been for a contract licence the licensing authority should be completely satisfied that vehicles of the appct. have been &/or will be used exclusively for carrying the traffic of a particular person.—MILLER & CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., COAST LINES, LTD., & BOWKER (1937), 25 Ry. & Can. Tr. Cas. 364.

SECT. 2.—APPEALS.

1639. When appeal lies—Appeal from agreed condition.]—(1) The Appeal Tribunal will not entertain an appeal from a condition to which the applt. himself has agreed.

(2) The time for lodging a notice of appeal is limited by regulations made by the Minister of Transport. The Appeal Tribunal has no power to extend that time. Consequently, that time having elapsed, an amendment of the notice of appeal will not be allowed.—*Re* EDWARDS' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 1.

1640. —— **Effect of right to apply to licensing authority for variation.**]—(1) An applt. who did not realise the importance of proving his case before the comr. was allowed to call new evidence on appeal.

(2) The fact that an appct. who is dissatisfied with the conditions attached to his licence may be entitled to apply to the licensing authority to vary the conditions does not affect his right of appeal to the Appeal Tribunal.—*Re* TAYLOR'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 32.

Annotation:—As to (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77. **Reld.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1641. —— **Application for variation of licence—What amounts to.**]—An application to a licensing authority for a dispensation from the requirements of sect. 16 & regulations made thereunder is not an application for a variation of a licence within sect. 15 (1) (*a*), & the Appeal Tribunal have no jurisdiction to entertain an appeal from the refusal of a licensing authority to grant such a dispensation.—*Re* COLES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 129.

1642. —— **Application for claimed tonnage—Vehicle properly included.**]—STUBBS (LEONARD) & CO., LTD. *v.* JACKSON & ELLIS, No. 1507, *ante*.

1643. —— —— **Doubt as to ownership of vehicle.**]—SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. *v.* HAZELL, No. 1622, *ante*.

1644. —— **Untrue evidence given.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ABRAM, No. 1623, *ante*.

1645. Who may appeal—Person aggrieved—Objector.]—The word "thereon" in Road & Rail Traffic Act, 1933 (c. 53), s. 15 (1) (*b*), refers to "application" & not to "objection." Consequently an objector who is not aggrieved by the decision on the application but is aggrieved by the refusal of the licensing authority to entertain his objection has no right of appeal.—LUCAS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 25.

-.]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1550, *ante*.

1647. Notice of appeal—Time for—Extension.]—*Re* EDWARDS' APPEAL, No. 1639, *ante*.

1648. —— —— **How calculated.**]—For the purpose of calculating the time for lodging an appeal against a decision on an application to which the provisions of sect. 11 of the Act do not apply the date of the decision is the day on which the comr. gives his decision, not the day on which the appct. first receives written notice of the decision.—*Re* HUXLEY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 35.

*Annotation:—***Reld.** Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1649. —— **Amendment—Jurisdiction of Appeal Tribunal.**]—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD., No. 1610, *ante*.

1650. Right of audience—Officer of association—Meaning of "association."]—The Appeal Tribunal certified an assocn. to be "an assocn. representing a substantial number of persons interested in or likely to be affected by the decisions of the Tribunal," & accordingly granted right of audience to an officer of the assocn. under Road & Rail Traffic Act, 1933

(Appeal Tribunal) Rules, 1934, r. 11 (2) (*a*). It was subsequently ascertained that the name of the assocn. had been registered under Registration of Business Names Act, 1916 (c. 58), as the business name of the secretary of the assocn.; that the assocn. had no banking account separate from the private banking account of the secretary; & that although by the rules of the assocn. its government was vested in an executive committee of whom a president was to be a member, no president had in fact been elected. The assocn. had 182 members:—*Held:* the assocn. was not an assocn. in the ordinary meaning of the word. The body of persons whom the secretary represented was not an assocn. or body of persons within rule 11 (2) (*a*).—*Re* SUSSEX CARRIERS' ASSOCN. (1935), 24 Ry. & Can. Tr. Cas. 64.

1651. **Power to hear counsel.**]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1517, *ante*.

1652. **Evidence—Fresh evidence—When admissible.**]—An appct. neglected *per incuriam* to call before the licensing authority evidence material to his application. The Appeal Tribunal, being of opinion that if the evidence had been called the application would have been granted, allowed the evidence to be called on appeal.—DRINKWATER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 19.

1653. —— —— ——.]—*Re* FRY'S APPEAL, No. 1476, *ante*.

1654. —— —— ——.]—*Re* TAYLOR'S APPEAL, No. 1640, *ante*.

1655. —— —— ——.]—PLENTY *v.* GREAT WESTERN RY. CO., No. 1566, *ante*.

1656. —— —— ——.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *post*.

1657. —— —— ——.]—STEPHENSON *v.* SAGAR & SON, No. 1488, *ante*.

1658. —— —— ——.]—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO., No. 1545, *ante*.

1659. —— —— ——.]—Mr. Chamberlain allowed an objection that traffic facilities in the district were in excess of requirements upon proof that the objector had four cars of which only one was in use because there was no work for the other three. On appeal, the Appeal Tribunal admitted new evidence to show that these three cars were out of use because they were mechanically unfit, but refused to admit new evidence to show that since the decision of the Comr. the traffic needs of the district had been increased by the reopening of certain quarries & the decision of the county council to proceed with a large scheme of road reconstruction. The matter was referred back to the Comr. for further inquiry.—JONES *v.* ROBERTS & OWEN (1935), 24 Ry. & Can. Tr. Cas. 205.

1660. —— —— ——.]—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD., No. 1606, *ante*.

1661. —— —— **Reference back for re-hearing.**]—Applt. applied for & was refused a B licence to carry milk within fifty miles of Nantwich. On appeal to the Appeal Tribunal he endeavoured to show that he was entitled to a B licence to carry milk from places within ten miles of Wrenbury to Manchester & other goods back from Manchester to those places. The Appeal Tribunal referred the case back to the licensing authority for re-hearing.—HARDEN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 71.

1662. —— —— **Evidence of applicant.**]—An appct. carrying on a hardware & scrap business applied for a B licence to enable him to carry return loads from Leeds to Glasgow for hire or reward. At the inquiry his solr. stated that the return loads were provided by appct.'s own customers, but appct. himself stated in cross-examination that he obtained these loads from clearing-houses. Mr. Henderson accepted the solr.'s statement & granted the application. In these circumstances the Appeal Tribunal called appct. to give evidence before them. It then appeared that the return loads were carried only for one or other of two clearing-houses:—*Held:* the case was governed by the decision in *Barratt's Case*, & since no exceptional circumstances existed the application must be refused. Appeal allowed.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SHEVILLE (1936), 25 Ry. & Can. Tr. Cas. 45.

1663. —— **Letters—When admissible.**]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *post*.

1664. —— —— ——.]—An appct. for an A licence proved that he was carrying for a substantial number of customers, & tendered in evidence a number of letters from customers supporting his application:—*Held:* he had not made out a *primâ facie* case. The fact that proposed facilities would be a convenience to some customers is not evidence to support a *primâ facie* case. Nor do letters showing no more than willingness to employ constitute a *primâ facie* case.—LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* GIMSON (1936), 24 Ry. & Can. Tr. Cas. 82.

—— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN, No. 1536, *ante*.

1666. —— **Purposes for which vehicles to be used.**]—AULD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 289.

Annotations:—**Refd.** Ferguson *v.* Western S. M. T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72; Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1667. —— **Illegal work done.**]—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1602, *ante*.

1668. **Decision based on erroneous grounds—Right of respondent.**]—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1504, *ante*.

1669. **Powers of appellant.**]—Resp. to an appeal may not challenge that part of the licensing authority's decision which is not appealed from.—AITKIN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 321.

1670. ——.]—(1) *Held:* on an application by resps. to strike out applts.' grounds of appeal, on an appeal by an objector, (1) the Appeal Tribunal has jurisdiction to review a licensing authority's findings of fact; (2) an applt. may raise any point relevant to the issues as to whether suitable transport facilities exist or are in excess of requirements; (3) an applt. may argue that a licensing authority

wrongly exercised his discretion because it had been established before him that suitable transport facilities existed or were in excess of requirements. In this case the grounds of appeal sufficiently indicated a case which applts. were entitled to make; (4) it is doubtful whether the Appeal Tribunal has power to strike out a ground of appeal.

(5) A haulage co. operating twenty-four vehicles under an A licence, claimed tonnage, applied for the authorisation of extra vehicles:—*Held:* having regard to the size of the fleet, one extra vehicle should be authorised for maintenance purposes. As to other extra vehicles, the evidence was insufficient. The failure of a pooling scheme is not evidence of need for additional vehicles. —FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 265.

1671. Jurisdiction of Appeal Tribunal—To dismiss appeal—Non-appearance of applicant.]—*Re* SMITH'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 15.

1672. —— To review findings of fact.]—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1539, *ante*.

—.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *ante*.

1674. —— To rectify condition—Mistake of applicant.]—(1) Where an appct. agreed to conditions attached to a B licence under mistake, the Appeal Tribunal will rectify the mistake, & will make all such consequential amendments to the conditions as may be reasonable.

(2) In proper cases letters will be admitted by the tribunal as evidence of the facts stated in them, though the authors of the letters are not called as witnesses nor cross-examined, but it is more satisfactory that facts should be proved by witnesses.

(3) Where a confusion arose at the public inquiry owing to two names having the same pronunciation the Appeal Tribunal admitted new evidence to explain the confusion.

(4) The Appeal Tribunal has no jurisdiction to order a comr. to enlarge the area for which a B licence is granted beyond the area mentioned in the published application.—CHARMAN *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 116.

Annotations:—As to (2) **Consd.** London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. *v.* Gimson (1936), 24 Ry. & Can. Tr. Cas. 82. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23.

1675. —— To order Commissioner to enlarge area of licence.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *ante*.

1676. —— To issue B licence—Application for A licence.]—It is not competent for the Appeal Tribunal to make an order on the licensing authority to issue a B licence when the application was for an A licence. Where an appct. intends to use vehicles normally based upon a number of different bases he must prove his case in respect of each base; general evidence as to his operations over the whole traffic area is not sufficient.—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations:—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1677. —— Where doubt as to jurisdiction of Commissioner.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF, No. 1544, *ante*.

1678. —— To strike out grounds of appeal.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *ante*.

1679. —— Extent.]—GREAT WESTERN & LONDON MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1517, *ante*.

1680. —— ——.]—The Appeal Tribunal allowed an appeal by an appct. to whom the licensing authority had refused a B licence, upon a ground neither raised in the notice of appeal nor argued before them. Special order as to costs.—MARRIS *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 248.

1681. Costs.]—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN, No. 1635, *ante*.

1682. ——.]—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD., No. 1603, *ante*.

1683. —— Scottish practice.]—The Ct. of Session, in the exercise of its *nobile officium*, ordered the extractor of the ct. to issue an extract of an order for costs made by Road & Rail Traffic Appeal Tribunal sitting in Scotland, in the same manner as if it were a decree of the Ct. of Session.—*Re* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 25 Ry. & Can. Tr. Cas. 257.

CASE, ACTION ON THE.

See ACTION; BAILMENT.

CASE STATED.

See ARBITRATION ; MAGISTRATES.

CATCHING BARGAIN.

See FRAUDULENT AND VOIDABLE CONVEYANCES.

CATTLE.

See ANIMALS ; COMMONS ; DISTRESS ; HIGHWAYS ; MARKETS.

CATTLEGATE.

See COMMONS.

CAVEAT.

See ADMIRALTY ; EXECUTORS.

CAVEAT EMPTOR.

See SALE OF GOODS; SALE OF LAND.

CELLAR.

See PUBLIC HEALTH; RATES.

CHARITIES.

Part I.—Charitable Purposes.

1. *Add. Annotations:*—*As to* (1) **Consd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Follid.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; Jackson *v.* Voss, [1923] 2 K. B. 357; Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139; Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142. *As to* (2) **Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. **Apld.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578. **Distd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; Hunter (Sir G. B.) (1922) "C" Trust, Trustees *v.* I. R. Comrs. (1929), 14 Tax Cas. 427. **Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643. **Distd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. **Consd.** Master Mariners, Honourable Co. of, *v.* I. R. Comrs. (1932), 17 Tax Cas. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813; Scottish Flying Club, Ltd. *v.* I. R. Comrs. (1935), 20 Tax Cas. 1. **Refd.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711; R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362; I. R. Comrs. *v.* Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; I. R. Comrs. *v.* Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153; *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

1a. ——.]—VERGE *v.* SOMERVILLE, No.

2. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

3. *Add. Annotation:*—**Refd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

3a. —— **Motive immaterial.**]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy près*.—*Re* KING, KERR *v.* BRADLEY, [1923] 1 Ch. 243; 92 L. J. Ch. 292; 128 L. T. 790; 67 Sol. Jo. 313.

Annotation:—*As to* (3) **Follid.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71.

4a. —— —— **Question for court.**]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* HUMMELTENBERG, BEATTY *v.* LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237; 92 L. J. Ch. 326; 129 L. T. 124; 39 T. L. R. 203; 67 Sol. Jo. 313.

Annotations:—**Consd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27. **Apprvd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

.]—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, No. 20Sa, *post*.

12a. —— —— —— **Beneficiaries formerly helped by testator.**]—*Re* SHEPHERD, SMITHEM *v.* SHEPHERD (1921), 152 L. T. Jo. 18.

21a. —— **Widows with children dependent on them—Valid.**]—A testator bequeathed a sum of money to trustees upon trust to invest it & to use the income of the investments "in providing annual allowances of forty pounds each to widows or spinsters in England whose income otherwise shall not be less than eighty or more than one hundred & twenty pounds per annum. . . ." The provision continued: ". . . preference shall

PART I. SECT. 1.

1 vi. —— *Estate Duty Assessment Act, 1914, s. 8 (5).*]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 369; 42 T. L. R. 121. —AUS.

3 ii. —— *Purpose not source.*]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the assocn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—PERPETUAL TRUSTEE CO., LTD. *v.* SHELLEY (1921), 21 S. R. N. S. W. 426; 38 N. S. W. W. N. 132. —AUS.

be given to widows with young children dependent on them. . . .":—*Held:* the provision was in substance for widows of small means with young children dependent on them & created a valid charitable trust. —*Re* DE CARTERET, FORSTER *v.* DE CARTERET, [1933] 1 Ch. 103; 102 L. J. Ch. 52 148 L. T. 188; 48 T. L. R. 555; 76 Sol. Jo. 474.

22. *Add. Annotation:*—**Folld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation:*—**Reld.** Verge *v.* Somerville, [1924] A. C. 496.

23a. —— —— **Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).**]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been convicted of having solicited & obtained money from members of the public:—*Held:* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—BARBER *v.* CHUDLEY (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 114, D. C.

23b. —— **"Oldest respectable inhabitants"—Valid.**]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5*s.* per week each":—*Held:* the amount of the gift implied poverty, &, coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re* LUCAS, RHYS *v.* A.-G., [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.

Annotation:—**Reld.** *Re* Roadley, Iveson *v.* Wakefield, [1930] 1 Ch. 524.

23c. —— **Disabled soldiers of former enemy country—Valid.**]—Testator devised & bequeathed the residue of his property "to the German Govt. for the time being for the benefit of its soldiers disabled in the late war . . . in the event of this . . . being for any reason held to be void, then I give devise & bequeath the whole of such residue to General Smuts of the Transvaal, upon trust to retain thereout for himself absolutely the sum of £1,000 . . . & upon trust as to the residue to apply the same at his discretion & in such manner as he may think fit for the benefit of any disabled Boers who have suffered through the South African War. . . ." The German Govt. had notified its willingness to accept the legacy if it should be held to be valid; General Smuts had also expressed his willingness to accept the alternative trust should it become effective. Upon a summons asking the ct. to determine whether the devise & bequest to the German Govt. was void for uncertainty or otherwise: wise:—*Held:* (1) the gift did not fail for uncertainty; (2) there was no objection to the gift from the point of view of public policy; (3) the trustee being abroad, the ct. had no power to direct a scheme, & in such cases the practice was to hand over the fund to be applied according to the trusts of the will.

(4) A scheme directed by this ct. in relation to gifts for charitable purposes is not necessarily or, I think, generally, a scheme for the application of the fund *cy-près* (MAUGHAM, J.).—*Re* ROBINSON, BESANT *v.* GERMAN REICH, [1931] 2 Ch. 122; 100 L. J. Ch. 321; 145 L. T. 254: 47 T. L. R. 264.

Annotations:—*As to* (2) **Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *Generally,* **Reld.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

27. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

27a. —— ——.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion:—*Held:* both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re* RAYNER, CLOUTMAN *v.* REGNART (1920), 89 L. J. Ch. 369; 122 L. T. 577; 84 J. P. 61.

28. *Add. Annotation:*—*As to* (1) **Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

28. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

30. *Add. Annotation:*—**Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

34a. —— **Distributing coal & making loans to poor & deserving inhabitants.**]—Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided." No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund

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PART I. SECT. 2, SUB-SECT. 1.

b i. —— *Indigent gentlewomen.*]—*Held:* a true charitable bequest.—*Re* CAMPBELL. PEACOCK *v.* EWEN, [1930] N. Z. L. R. 713.—**N.Z.**

sb. "*Wounded & disabled soldiers*" —"*Home for wounded sailors.*"]—Testatrix, by a will executed in 1921, directed her trustees to pay out of the moneys representing her net residuary estate (*inter alia*) "To the Wounded & Disabled Soldiers of New Zealand the sum of four hundred pounds," & "To a home for Wounded Sailors of the British Empire the sum of one hundred pounds." (All parties agreed that the latter was a good charitable gift):—*Held:* as the gift to "the Wounded & Disabled Soldiers of New Zealand" was not to individuals but to a section of the public, it was a charitable gift; &, although it was a gift direct, the absence of anything directly constituting a trust was immaterial as the ct. could constitute the trust; the gifts to "a home for Wounded Sailors of the British Empire" disclosed a general intention in favour of charity, & did not fail because the object of such gift might be uncertain.—*Re* SIMMONDS, PUBLIC TRUSTEE *v.* STONE, [1933] N. Z. L. R. Supp. 172.—**N.Z.**

was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. Testator directed that " all surplus money forming part of or arising from the ' Loans Fund ' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required " :—*Held :* (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin ; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity ; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired. — *Re* MONK, GIFFEN *v.* WEDD, [1927] 2 Ch. 197 ; 96 L. J. Ch. 296 ; 137 L. T. 4 ; 43 T. L. R. 256, C. A.

Annotation :—As to (1) **Refd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270.

36. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

42a. —— —— **Maintenance of patients from particular parish.**]—A testator, by his will, gave a sum of £3,000 to his trustees upon trust for investment & directed that the yearly income thereof should be applied " in payment of the expenses & maintenance of patients from the parishes of " S. & S. to & at two named hospitals or either of them :—*Held :* the gift was a trust for the relief of impotent & poor persons within the purposes set out in the preamble to the Statute of Elizabeth & was a valid charitable bequest.—*Re* ROADLEY, IVESON *v.* WAKEFIELD, [1930] 1 Ch. 524 ; 99 L. T. Ch. 232 ; 144 L. T. 64 ; 46 T. L. R. 215.

45. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270. **Folld.** *Re* Chaplin, Neame *v.* A.-G. (1932), 76 Sol. Jo. 576 ; *Re* James, Grenfell *v.* Hamilton (1932), 48 T. L. R. 250. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* De Casteret, Forster *v.* De Carteret, [1933] Ch. 103.

46. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

47a. Nursing home—Persons of moderate means—Gift charitable.]—Testator made the following gift in his will : " I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to : (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution ; (b) the Royal National Lifeboat Institution ; (c) the Lister Institute of Preventive Medicine ; (d) & such other funds, charities & institutions as the exors. in their absolute discretion shall think fit ; & I direct that such residue shall by divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty :—*Held :* (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need ; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, [1923] 2 Ch. 407 ; 92 L. J. Ch. 629 ; 129 L. T. 310 ; 39 T. L. R. 433 ; 67 Sol. Jo. 680.

Annotation :—As to (1) **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

47b. " Home of Rest "—Lady teachers—Valid.]—*Re* ESTLIN, PRICHARD *v.* THOMAS, No. 45, *ante*.

47c. —— Sisters of a Community & Clergy—Valid.]—Testatrix devised a freehold house to her trustees in trust to establish a Home of Rest for the Sisters of a Community, for the Clergy of the Diocese of Truro, & such persons as the Mother Superior of the Community should nominate & appoint, & bequeathed £6,000, the interest of which should be applied to repair the house & maintain & support the inmates. The Sisters of the Community were engaged on charitable work & their individual incomes were pooled. It was doubtful whether it was practicable to carry on the Home of Rest with the resources available :—*Held :* (1) the devise & bequest were a good charitable trust ; (2) the Sisters & the Clergy were good objects of a charity ; (3) the Mother Superior should only appoint persons who were suitable objects of a charity, & to do otherwise would be a breach of trust ; (4) there should be an inquiry in Chambers whether it would be practicable now or at any future time to establish the Home of Rest, & if so to settle a scheme ; (5) & if it was found not practicable the question must be determined whether the trust failed or should be applied *cy-près*.—*Re* JAMES, GRENFELL *v.* HAMILTON, [1932] 2 Ch. 25 ; 101 L. J. Ch. 265 ; 146 L. T. 528 ; 48 T. L. R. 250 ; 76 Sol. Jo. 146.

Annotation :—As to (1) **Folld.** *Re* Chaplin, Neame *v.* A.-G., 76 Sol. Jo. 576.

47d. —— For means of physical & mental recuperation—Valid.]—Testator devised & bequeathed to his trustees a freehold house, its contents, & funds representing the net residue of his estate upon trust to establish & found a charity " to provide a Home of

Rest that shall afford the means of physical &/or mental recuperation to persons in need of rest by reason of the stress & strain caused or partly caused by the conditions in which they ordinarily live &/or work." The same clause provided that the trustees should apply to the ct. or the Charity Comrs. for a scheme in respect of the charity & also specified testator's further wishes with regard to the charity, but provided that if the ct., the Charity Comrs., or the trustees considered those wishes in any respects impracticable or difficult to realise, in those respects they were not to be regarded as binding on or fettering the discretion of the ct. the Charity Comrs., or the trustees in the provision or alteration of a scheme. One of those wishes, expressed also in the same clause, was that in considering the suitability of a candidate for admission to the home the candidate's financial position should not be taken into account; another was that persons admitted might be required to pay according to their means for board, lodging & other benefits &, where reasonably possible, for medical attendance & treatment, for which, however, the funds of the home might be drawn upon at the trustees' discretion:—*Held:* these were valid charitable trusts.—*Re* CHAPLIN, NEAME *v.* A.-G., [1933] Ch. 115; 102 L. J. Ch. 56; 148 L. T. 190; 76 Sol. Jo. 576.

48. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

49. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

50. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. *As to* (2) **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Refd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173. *As to* (2) **Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

57. *Add Annotation:*—*As to* (2) **Apld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

62. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

66. *Add. Annotation:*—**Refd.** Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229.

68. *Add. Annotations:*—**Apld.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

68a. **Advancement of Christian principles.**]—H. died on July 12, 1922, having made his will on May 24, 1921, in which he directed that the residue of his estate, about £13,000, should be paid to certain persons to be held by them upon certain trusts as follows: "Whereas I believe in the universality of the Christian religion & that the remedy for the unrest & disorders of the body politic will be found in the application of Christian principles to all human relationships. & whereas I believe the drink traffic to be one of the most subtle & effective forces in preventing the successful application of these principles & I therefore hope & trust that active steps will be taken to minimise & ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned & in aiding all active steps to minimise & extinguish the drink traffic." The public trustee issued a summons to have it determined whether that gift in the will constituted a valid charitable trust or whether the gift so far as given for the minimising of the drink traffic was not charitable & therefore the whole gift was invalid & the next of kin became entitled. The judge held that the gift was a good charitable gift. On appeal by the next of kin:—*Held:* the first recital in the gift was the dominant clause showing that the main object was the advancement of Christian principles with a suggestion as to a particular method by which the advancement could be furthered & that method was subsidiary & ancillary, therefore the whole gift was a good charitable gift, being one for the advancement of Christian principles.

Temperance itself is undoubtedly a charitable object (LAWRENCE, L.J.).—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, [1931] 1 Ch. 240; 100 L. J. Ch. 115; 143 L. T. 691; 46 T. L. R. 571; 74 Sol. Jo. 549, C. A.

Annotation:—**Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220.

69. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Geologists' Assocn *v.* I. R. Comrs. (1928), 14 Tax Cas. 271.

70. *Add. Annotation:*—**Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

70a. **Zoology—Zoological Society of London—Valid.**]—The objects of the Zoological Society of London as defined by its Charter are "the advancement of zoology & animal physiology & the introduction of new & curious subjects of the animal kingdom":—*Held:* the first object was clearly educational & the second object, being on construction merely in aid of the first, was also educational &, *semble*, it was educational in itself. The Society was therefore an educational charity, although in carrying out its objects it was

found necessary to provide its pupils with food & amusement. The second object necessitated & involved the upkeep & improvement of Zoological Gardens. Consequently a bequest of money to the Society upon trust to apply the income for "the upkeep & improvement of the Zoological Gardens, & for the objects of the said Society," was a good charitable gift & not void for perpetuity.—*Re* LOPES, BENCE, JONES *v.* ZOOLOGICAL SOCIETY OF LONDON-[1931] 2 Ch. 130; 100 L. J. Ch. 295; 146 L. T. 8; 46 T. L. R. 577; 74 Sol. Jo. 581.

70b. **Children's outing.**]—*Re* WARD'S ESTATE WARD *v.* WARD (1937), 81 Sol. Jo. 397.

73a. —— **Trust to erect national theatre—& revive English classical drama—Valid.**]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held:* the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs.* v. *Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held:* notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. **Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.**]—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide "a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish," & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held:* since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re* PLEASANTS, PLEASANTS *v.* A.-G. (1923), 39 T. L. R. 675.

Annotation:—**Reld.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

75. *Add. Annotations:*—**Apprvd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Reld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

75a. ——.]—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: "If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D.":—*Held:* the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.

Annotation:—**Reld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

78. *Add. Annotations:*—**Reld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

78a. —— —— ——.]—A testatrix who died domiciled in England, leaving property in both England & the United States, by her will gave a legacy of 10,000 dollars or the

PART I. SECT. 4, SUB-SECT. 1.

sa. *Wakf.*]—A trust in the sense of being an obligation attached to the ownership of the property is known to & recognised by the Muhammadan Law. The distinction between an English trust for charitable & religious purposes & a Muhammadan *wakf* is more historical than legal.—SYED SHAH MOHAMAD KAZIM *v.* SYED ABI SAQUIR (1931), I. L. R. 11 Pat. 288.—**IND.**

equivalent thereof in sterling at current rates of exchange to the rector & churchwardens or other the governing body of C. Church for the purpose of keeping the burial ground & monument therein to her late husband & herself in good & sufficient repair & for the maintenance of the church & the decorations thereof. Testatrix, who died in 1925, was buried in C. cemetery immediately adjoining the churchyard, which had long been closed for burials, in the same grave as her husband: —*Held:* a valid charitable bequest, to be divided equally between the vicar & churchwardens of C. Parish Church as the controllers of the church & churchyard & the Borough Council as managers & owners of the cemetery.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524; 104 L. J. Ch. 254; 153 L. T. 295; 51 T. L. R. 404.

79a. Benefit of Roman Catholic Church—Open to public—Valid.]—(1) A bequest for the benefit of a church belonging to a monastic order of the Roman Catholic Church but open to the public was not rendered invalid by Roman Catholic Relief Act, 1829 (c. 7).

Testatrix by her will dated Sept. 7, 1903, gave the residue of all her property, after the death of G., to whom she had given a life interest, in the following terms: "To the Superior of the Jesuit Church of the Immaculate Conception, Farm Street, London, to the Superior of that Church at the moment of the legacy falling due, & failing him to any other representative Father of the Order of the Society of Jesus . . . ":—*Held:* the gift was to this Superior upon trust for the benefit of the church at Farm Street as he might in his discretion think fit; & this was a valid gift.

(2) Testatrix died in 1910, & G. died in 1928. The Superior of the Church of the Immaculate Conception, Farm Street, London, was not the same person at the death of testatrix as at the death of G.:—*Held:* the gift was a valid gift to the Superior at the moment of G.'s death absolutely.—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, [1929] 2 Ch. 173; 98 L. J. Ch. 410; 141 L. T. 447; 45 T. L. R. 406, C. A.

Annotation:—Generally, **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

80a. —— ——.]—*Re* EIGHMIE, COLBOURNE *v.* WILKS, No. 78a, *ante*.

81a. Upkeep of chapel & school—Includes maintenance of services & Sunday school.]—A testator by his will, after giving certain specific legacies including one of £50 to the K. H. Baptist Chapel, directed that a trust be created with the remainder of his personal & real estate "for the payment from the income thereof of the following legacies, viz., £25 *per annum* to M. L., £100 *per annum* to J. L., & the balance of the income to be divided equally between my two sisters C. P. & M. H. . . . On the death of the last surviving legatee under the trust I direct that the income be devoted to the upkeep of the K. H. Baptist Chapel & school & for the provision of prizes for the scholars of both sexes." A summons was taken out to determine (i) whether the gift was a good & valid bequest of the whole of the residuary estate or whether it failed to any & what extent. The only school attached to the K. H. Baptist church was a Sunday school in connection with which book prizes were awarded. It was contended that such a school was not what testator had in mind, & that, even if it was, the upkeep of the chapel & school would not exhaust the income of the residuary estate the capital of which amounted to some £29,500, with the result that the balance of the income which was not used for that purpose must be held to be undisposed of by the will; (ii) how, in view of the fact that, at the date of the summons, the testator's two sisters, both of whom had survived the testator, had both died, the income of the testator's estate thereby set free should be disposed of until the death of the survivor of the other annuitants, M. L. & J. L.:—*Held:* (1) there was a good charitable bequest of the whole of the testator's residuary estate in favour of the K. H. Baptist Chapel & school & the word school included Sunday school; (2) the personal representatives of testator's two sisters were entitled to the surplus of the income, after providing for the annuities to M. L. & J. L., until the survivor of M. L. & J. L. had died; (3) "upkeep" of the chapel did not mean merely keeping the premises in repair, but included all the expenses necessarily incurred in providing the chapel services & maintaining, in a broad sense, the Sunday school.—*Re* STRICKLAND'S WILL TRUSTS, NATIONAL GUARANTEE & SURETYSHIP ASSOCN., LTD. *v.* MAIDMENT, [1936] 3 All E. R. 1027; [1937] 3 All E. R. 676.

82. *Add. Annotation:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

89. *Add. Annotations:—As to* (1) **Apld.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283.

90. *Add. Annotation:—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

94. *Add. Annotation:*—**Refd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.

106. *Add. Annotations:*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

PART I. SECT. 4, SUB-SECT. 4.

sc. *True Christian Church Publishing Society—Valid.*]—A gift to the True Christian Church Publishing Society, which disseminates the religious teaching of Swedenborg, is a valid charitable bequest.—*Re* KNIGHT, [1937] 2 D. L. R. 285.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.

s. For "[1919] 1 I. R. 443" read "[1919] 1 I. R. 316."

PART I. SECT. 4, SUB-SECT. 7.

106 xi. —— ——.]—A bequest for the saying of masses for the repose of souls is not in this Province void as superstitious. A bequest of the residue of testator's estate (consisting of both realty & personalty) to a church, "to be invested & kept invested . . . for ever & the interest . . . to be applied & expended . . . for the saying of holy masses . . . for the repose of the soul of testator & his descendants for ever": —*Held:* ineffective as creating or tending to create a perpetuity, & not a charitable use. *Semble:* in any case the personalty alone would have been applicable to the trust declared.—*Re* ZEAGMAN (1916), 37 O. L. R. 536.—**CAN.**

106 xii. —— ——.]—A bequest of the annual income of a trust fund to a priest for the saying of masses in perpetuity is valid as a charitable trust & thus outside the scope of [illegible]

106a. —— ——.]—A Roman Catholic testator by his will bequeathed "£1,000 for Masses, foundation & others" & also devoted four houses "for one foundation Mass to be said for my soul & the souls of my parents & relatives during the space of twenty-five years," & directed that the property should revert to a named church. Evidence was given that by a "foundation Mass" was intended a Mass the saying of which was to be paid for out of the interest of an invested fund, so that unless the gift was charitable it would be void for perpetuity:—*Held:* a gift for the saying of Masses is charitable as being for the advancement of religion (*a*) because it enables a ritual act to be performed which is the central act of the religion of a large proportion of Christian people, & (*b*) because it assists in the endowment of priests whose duty it is to perform the act.—*Re* CAUS, LINDEBOOM *v.* CAMILLE, [1934] Ch. 162; 103 L. J. Ch. 49; 150 L. T. 131; 50 T. L. R. 80. 77 Sol. Jo. 816.

110a. —— —— **Invalid.**]—WALPOOL'S CASE (1349), Duke, 95.

Annotations:—**Consd.** Adams & Lambert's Case (1602), 4 Co. Rep. 104b. **Refd.** Heath *v.* Chapman (1854), 2 Drew. 417.

114. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

116. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

118. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

119. *Add. Annotations:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

120. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

128a. —— **For benefit of church open to public——Valid.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante.*

Add. Annotations:—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

130. *Add. Annotation:*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173.

135. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

144. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

145. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

152. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

155. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

157. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691.

163. *Add. Annotation:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

164. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

166. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

172. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

176. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

179. *Add. Annotation:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

183. *Add. Annotation:*—**Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

After this case add:—*Compare*, No. 217b, *post.*

183a. —— **Gift for purchase of site & erection of public hall.**]—By his will a testator gave a collection of antiques to deft. corpn. subject to the condition that the corpn. should deposit them in one of the rooms of a public hall, hereinafter referred to, where they were

against perpetuities.—*Re* HALLISY, [1932] 4 D. L. R. 516; O. R. 486.—**CAN.**

114 iv. —— ——.]—Testator (who died within three months from the date of the execution of his will) directed his interest in a farm of land to be sold, & out of the proceeds of the sale a sum of £200 to be set apart & given to the parish priests & curates of C. Roman Catholic Church to be invested by them; the principal to remain invested for all time in the names of the successive parish priests & curates of C., the interest thereof to be applied in saying masses for the repose of testator's soul. After bequeathing a pecuniary legacy, testator gave the rest, residue & remainder of his property to the Abbot of M., & the Franciscan Friars in C. in equal shares for the purposes of having masses said for the repose of his soul in M. & C. At the dates of the execution of the will & of the death of testator the same person was Abbot of M. & the three Franciscan Friars were resident in C.:—*Held:* (1) the legacy of £200 was void as a charge upon lands under Charitable Donations & Bequests Act, 7 & 8 Vict. c. 97; (2) in reference to the gift of residue so far as it consisted of pure personalty, there was a gift of one-half to the person who filled the office of Abbot of M. at the date of testator's death in his individual capacity for the offering up of masses & same was valid; there was a gift of the other half for the offering of masses to a specified body, because they were members of the Order of Franciscan Friars bound by monastic vows, which was void as contrary to the policy of Catholic Relief Act, 10 Geo. 4, c. 7.—BURKE *v.* POWER, [1906] 1 I. R. 119.—**IR.**

PART I. SECT. 4, SUB-SECT. 12.

sd. "*Service of my Lord & Master*"—*Valid.*]—The gift to trustees of moneys "to be employed in the service of my "Lord & Master" is a good charitable gift.—*Re* BREWER, SOLICITOR-GENERAL *v.* BYDDER, [1933] N. Z. L. R. 1221.—**N.Z.**

sf. *Establishment of religious newspaper.*]—*Held:* a gift for the establishment of a Catholic newspaper could not be supported as being for a charitable purpose.—MELBOURNE ROMAN CATHOLIC ARCHBISHOP *v.* LAWLOR, THE POPE *v.* NATIONAL TRUSTEES, EXECUTORS & AGENCY CO. OF AUSTRALASIA, LTD. (1934), 51 C. L. R. 1; [1934] V. L. R. 231; 40 Argus L. R. 202; 8 A. L. J. 70.—**AUS.**

PART I. SECT. 5, SUB-SECT. 1.

m i. —— *Improvement.*]—A gift by will to a city council, to be expended for the improvement of the city as trustee of the will and the council agree:—*Held:* a good charitable —*Re* BONER, GOLTZ *v.* BALLARAT TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1930] V. L. R. 346; A. L. R. 279.—**AUS.**

to be kept open to inspection by the public, subject to such reasonable restrictions & regulations as might be imposed by the corpn. The residue of testator's estate was to be applied in the purchase of a suitable piece of land at Stockton-on-Tees & in or towards the erection on such site of a public hall which site & hall when completed were to be presented by the trustees to deft. corpn. in memory of testator's father & mother, & to be used by the corpn. for such public purposes as it might from time to time consider desirable. The surplus, if any, was to be paid to the corpn. absolutely to be used by the corpn. for such public purposes as it might from time to time consider desirable :—*Held :* (1) the gift for the purchase of a site & the erection on it of a public hall to be presented to the corpn. was a valid charitable gift : (2) the gift of the collection of antiques was a valid charitable gift ; (3) the question whether the gift of the surplus was a valid charitable gift ought to stand over until it was ascertained whether there was any such surplus.—*Re* SPENCE'S ESTATE, BARCLAYS BANK, LTD. *v.* STOCKTON-ON-TEES CORPN., [1937] 3 All E. R. 684 ; 53 T. L. R. 961 ; 81 Sol. Jo. 650.

183b. —— **Gift of antiques for exhibition in public** -*Re* SPENCE'S ESTATE, BARCLAYS BANK LTD. *v.* STOCKTON-ON-TEES CORPN., No. 183a, *ante.*

191. *Add. Annotation :*—**Consd.** *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

193. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

195a. Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante.*

196. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

197. *Add. Annotations :*—*As to* (1) **Folld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199a. Promotion of physical efficiency of army—Encouragement of sport—Valid.]—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy :—*Held :* the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD *v.* TAYLOR, [1925] Ch. 362 ; 94 L. J. Ch. 430 ; 133 L. T. 630 ; 41 T. L. R. 335 ; 69 Sol. Jo. 398.

Annotations :—**Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199b. Repatriation of soldiers—After war service—Valid.]—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers :—*Held :* (2) the gift created a valid charitable trust ; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—VERGE *v.* SOMERVILLE, [1924] A. C. 496 ; 131 L. T. 107 ; 40 T. L. R. 279 ; 68 Sol. Jo. 419 ; *sub nom.* VERGE *v.* SOMERVILLE, A.-G. FOR AUSTRALIA *v.* SOMERVILLE, 93 L. J. P. C. 173, P. C.

Annotations :—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 459. *As to* (2) **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

201. *Add. Annotation :*—**Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

205. *Add. Annotations :*—*As to* (1) **Consd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

206. *Add. Annotations :*—*As to* (1) **Dbtd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237. **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1927] 1 Ch. 557. *As to* (2) **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

208. *Add. Annotation :*—*As to* (2) **Expld. & Distd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

208a. —— —— **If beneficial to community.**]—Testatrix, who died in 1925, by her will gave her residuary estate to her trustees to form a trust for the founding, establishing & maintaining of a charitable institution to be called the "Beaumont Animals' Benevolent Society" under such rules & regulations & under such committee of management not exceeding ten members & otherwise in all respects as her trustees should in their absolute discretion think fit, & having regard to her wish that the expense of management should be kept as low as possible ; provided that all members of the committee & of the governing body & all officials of the said society should be & always have been declared anti-vivisectionists & opponents of all sport involving the pursuit or death of any stag, deer, fox, hare, rabbit, bird, fish, or any other animal, & to have for its objects (*a*) the acquisition of land, permitted by a judge of the Ch. Div. or the

Charity Comrs., for the provision of refuges for the preservation of "all animals, birds or other creatures not human"; (*b*) the distribution of any part of the yearly income of the trust fund amongst such societies or homes for the benefit of animals generally or for the benefit of individual cases British or foreign as the committee of the "Beaumont Animals' Benevolent Society" might think fit; (*c*) the founding, establishing, endowing, supporting, maintaining or providing of hospitals or homes for animals in Great Britain having no declared vivisectionist upon the governing body or bodies thereof or in any way connected with the management thereof:—*Held:* although a trust in perpetuity for animals might be a good charitable trust if in its execution there was necessarily involved a benefit to the community, yet where that element was wanting, the trust would be bad; therefore, trusts in the present case not having been shown to be for purposes beneficial to the community they were not good & valid charitable trusts.—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, [1929] 1 Ch. 557; 98 L. J. Ch. 261; 140 L. T. 659; 45 T. L. R. 261; 73 Sol. Jo. 158, C. A.; *varied on appeal, sub nom.* A.-G. *v.* PLOWDEN, [1931] W. N. 89; 171 L. T. Jo. 308; 71 L. Jo. 329, H. L.

210. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Apld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

213. *Add. Annotation:*—**Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

213a. Encouragement of gardening—Charitable.]—*Re* PLEASANTS, PLEASANTS *v.* A.-G., No. 73b, *ante*.

213b. Provision of public recreation for working-class people—Valid.]—Testator by his will dated Apr. 30, 1929, gave the residue of his estate to trustees upon trust to make certain payments thereout &, by clause 14 of his will, directed that they should hold the ultimate residue "to be expended in some scheme or schemes to be approved by my trustees for the benefit in the cities of Vancouver, & if in the opinion of my trustees there is some equally deserving object of the nature hereinafter indicated of Nottingham or other places of the working people such as playing fields parks gymnasiums or other plans which will give recreation to as many people as possible but as regards Vancouver I would not exclude some educational purpose being considered by my trustees." By a preceding clause, clause 13, testator had made a disposition of certain moneys, in certain events, in the following terms: "Upon trust for any scheme to be approved by my trustees of a national character excluding hospitals & works of an educational character. Without binding my trusiees I would prefer a scheme which would give open-air recreation to as large a number of ople as possible." Testator died on Feb. 14, 1931, leaving ultimate residue of the value of about £35,000:—*Held:* (1) upon the true construction of the will, the dominant object of testator was the health & welfare of the working classes, & the benefits authorised by clause 14 were the supply of healthy recreation, mainly in the open air & in particular by providing playing fields, parks & gymnasiums; & (2) through legislative recognition indicated by Mortmain & Charitable Uses Act, 1888 (c. 42), s. 6, of the dedication of land to the public for recreation as a charitable object, the provision of means for public recreation was a charitable object within "the meaning, purview & interpretation" of the preamble to the 43 Eliz. c. 4. Accordingly, the trusts expressed in clause 14 of the will were valid charitable trusts.—*Re* HADDEN, PUBLIC TRUSTEE *v.* MORE, [1932] 1 Ch. 133; 146 L. T. 190; 48 T. L. R. 9; 75 Sol. Jo. 781; *sub nom. Re* HADDEN, PUBLIC TRUSTEE *v.* WARE, 101 L. J. Ch. 52.

Annotation:—As to (2) **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

215. *Add. Annotations:*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

215a. —— **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**]—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held:* the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM (1924), 131 L. T. 21; 68 Sol. Jo. 320.

Compare INCOME TAX, No. 476e, *post*.

217. *Add. Annotations:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. *Generally*, **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

217a. —— ——.]—Testator devised to the Royal Society of Arts two ancient cottages in order that the Society might preserve them in their present condition. He also gave £700 to the Society upon trust to invest & to apply the income for the maintenance of the cottages. The Society had issued an appeal to form a Fund for the Preservation of Ancient Cottages, of which testator was aware. The Society was by its charter authorised to hold real property in mortmain. The objects of the fund were to preserve ancient cottages

as specimens & models of English craftsmanship so as to teach the lessons of such craftsmanship. These cottages were Elizabethan & picturesque :—*Held :* the primary object of the fund was for the good of the community at large, & was charitable in the legal sense ; the cottages fell within the objects of the fund ; & the devise & bequest were charitable.—*Re* CRANSTOUN, NATIONAL PROVINCIAL BANK *v.* ROYAL SOCIETY FOR THE ENCOURAGEMENT OF ARTS, MANUFACTURES & COMMERCE, [1932] 1 Ch. 537 ; 101 L. J. Ch. 152 ; 146 L. T. 568 ; 48 T. L. R. 226 ; 76 Sol. Jo. 111.

217b. **Primrose League—Not a charity.**]—Testatrix by her will gave a leasehold house " to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause " :—*Held :* as the gift was impressed with a trust & could not be sold, & as the league was not a charity, the gift failed.—*Re* JONES, PUBLIC TRUSTEE *v.* CLARENDON (EARL) (1929), 45 T. L. R. 259.

217c. **Bequest " unto my country England "—Valid as charitable gift to people of England.**]—Testator, who died in 1930, by his will gave his residuary estate " unto my country England for—own use & benefit absolutely " : —*Held :* residuary gift was a valid gift for charitable purposes & the residuary estate must be transferred to such person as His Majesty should direct under his sign manual. —*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, [1932] 1 Ch. 153 ; 100 L. J. Ch. 409 ; 146 L. T. 145 ; 48 T. L. R. 44 ; 75 Sol. Jo. 780, C. A.

217d. **Temperance.**]—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, No. 68a, *ante*.

Compare INCOME TAX, No. 472b, *post*.

225. *Add. Annotations :*—**Consd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

230. *Add. Annotation :—As to* (1) **Folld.** *Re* Hooper, Parker *v.* Ward, [1932] 1 Ch. 38.

230a. —— —— —— ——.] — Testator bequeathed to his exors. & trustees money out of the income of which to provide, " so far as they legally can do so & in any manner that they may in their discretion arrange," for the care & upkeep of certain graves, a vault, certain monuments, a tablet & a window. On a summons to determine whether the bequest was valid in whole or in part :—*Held :* the rule against perpetuities not applying to the trust for the upkeep of the tablet & the window, the trust for the upkeep of the graves, the vault & the monuments was valid for twenty-one years from testator's death.—*Re* HOOPER, PARKER *v.* WARD, [1932] 1 Ch. 38 ; 101 L. J. Ch. 61 ; 146 L. T. 208.

231a. ——.]—Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. " during such period as they shall continue to maintain & keep " two specified graves " in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned :—*Held :* the gift was a valid gift.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464 ; 97 L. J. Ch. 289 ; 139 L. T. 261.

238a. —— **In memory of testatrix—Valid.**]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

239a. **War memorial—Useful character—Valid.**]—MURRAY *v.* THOMAS, [1937] 4 All E. R. 545.

240. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

241. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42

PART I. SECT. 6, SUB-SECT. 1.

218 iv.—A direction in a will to the exors. to deposit a sum in a bank or invest it, " the yearly interest to be devoted to the care of my grave," creates, leaving statutory provisions out of consideration, a perpetual trust ; &, as the purpose is not charitable, is void ; but legislative sanction is given to this particular form of perpetual trust, by above sect. — *Re* JONES (1918), 42 O. L. R. 62 ; 13 O. W. N. 405.—**CAN.**

e i. —— ——.]—Bequests made to bodies incapable of contracting, on the condition precedent that they should agree with testator's trustees to care for certain burial lots for all time :—*Held :* void.—*Re* LAING ESTATE, [1927] 1 W. W. R. 699 ; 38 B. C. R. 449.—**CAN.**

e ii. —— ——.]—Testator bequeathed a sum in trust, the income of which was to be used to clean & keep in order certain family graves :—*Held :* not charities, & void as a perpetuity.—*Re* MAIN'S WILL TRUSTS (1933), 7 M. P. R. 139.—**CAN.**

e iii. —— ——.]—A will directed that $500 be paid to some trust co. & that the proceeds thereof be used to keep the grave of testator & that of his mother in good condition :—*Held :* the bequest infringed the rule against perpetuities.—*Re* HALLIDAY ESTATE, [1935] 1 W. W. R. 360 ; 43 Man. L. R. 81.—**CAN.**

232 i. *Erection of monument—To testator's memory—Not charitable use.*]—A will provided that one-half of the residue of the estate be used by the exors. " towards the erection of a monument or some suitable memorial to me." Testator's husband died after the making of the will, & she caused to be erected between his grave & the space reserved for hers a monument to him on which was left a blank space apparently intended to be filled in with an inscription for herself after her death :—*Held :* the provision for the monument was not an enforceable trust nor a charitable bequest which could be worked out *cy-près*.—*Re* JEFFERSON ESTATE (Man.), [1930] 3 D. L. R. 453 ; [1929] 3 W. W. R. 690.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.

h i. —— *Society of St. Vincent de Paul—House of Providence.*]—Testator bequeathed £100 to the Society of St. Vincent de Paul, & directed the residue of his estate to be converted into cash, & paid to the House of Providence These were voluntary unincorporated associations :—*Held :* so far as they could be paid out of personalty these legacies were good ; & should be paid over to the persons having the management of the pecuniary affairs of the institutions named.—ELMSLEY *v.* MADDEN (1867), 18 Gr. 386.—**CAN.**

11. *Fund of Benevolence of Freemasons —Valid.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 216.—**AUS.**

PART I. SECT. 6, SUB-SECT. 4.

sk. *Superannuation fund for employees.*]—An incorporated trading co. had set aside certain moneys to be held by trustees with the object of providing individual personal benefits, allowances & provisions to persons who had been, were, or might become its employees. It was contemplated by the trust instrument that employees might make contributions to the fund available for these purposes. No period was fixed for the duration of the trusts, nor was any distinction drawn in the instrument between employees who were in needy or affluent circumstances. Voting power was given to members subject to the votes varying according to the amount of salary received. The deed also provided that the fund was not to be regarded as relieving members from the duty of making provision for those dependent on them : —*Held :* the trust was in favour of a fluctuating body of individuals & not an appreciably important class of the community, & the trust was not a valid charitable gift.—*Re* HARRIS SCARFE, LTD., [1935] S. A. S. R. 433.—**AUS.**

T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

242. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

245. *Add. Annotations :*—**Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

249. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

250. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

251. *Add. Citation :*—[1912] 1 Ch. 29.

Add. Annotations :—*As to* (1) **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally*, **Refd.** *Re* Bancroft, Bancroft *v.* Bancroft, [1928] Ch. 577.

251a. —— **London Library.**]—A gift of real & personal estate to the trustees of an unincorporated voluntary assocn. [the London Library], not being a charity, for the general purposes of the assocn. held valid, & not open to objection on the ground of remoteness.—*Re* PREVOST, LLOYDS BANK, LTD. *v.* BARCLAYS BANK, LTD., [1930] 2 Ch. 383; 99 L. J. Ch. 425; 143 L. T. 743; 46 T. L. R. 557; 74 Sol. Jo. 488.

255. *Add. Annotation :*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496.

258. *Add. Annotation :*—**Apld.** *Re* Thompson, Public Trustee *v.* Lloyd, [1934] Ch. 342.

259. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 577.

265. *Add. Annotation :*—**Refd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.]—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

266a. Provision of knickers for all boys of district—Void.]—(1) Testator devised his residuary estate on trust, the income to be applied for ever in providing knickers for boys who resided in the F. district, who were not supported by any charitable institution, & whose parents were not in receipt of parochial relief :—*Held :* as none of the conditions necessarily imported poverty & therefore the object of the benefaction was not the relief of poverty & as the limitation of area did not make the trust a good charitable trust, the bequest was void as offending against the rule against perpetuities.

(2) A trust which is not a charitable trust cannot be changed into a charitable one by limiting the area in which it is to operate (EVE, J.).—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., [1930] 1 Ch. 255; 99 L. J. Ch. 104; 46 T. L. R. 96; 73 Sol. Jo. 833; *sub nom.* PUBLIC TRUSTEE *v.* A.-G., 142 L. T. 321.

Annotation :—*As to* (2) **Apld.** *Re* King, Henderson *v.* Cranmer (1931), 75 Sol. Jo. 781.

267. *Add. Annotation :*—**Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

267a. Social club—Staff Christmas fund—Invalid.]—Testator gave three legacies in the following terms : "To the Junior Carlton Club, Pall Mall, S.W. : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Union Club, Brighton : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Sussex County Cricket Club : £300 of Funding Loan in trust to pay the interest yearly to the Nursery Fund " :—*Held :* the legacies to the clubs were not charitable, &, therefore, invalid.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

267b. Cricket club—Nursery fund—Invalid.]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 267a, *ante*.

270. *Add. Annotations :*—**Apld.** *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

271. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

272a. Gift to Universal Negro Redemption Fund—Valid.]—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED *v.* MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

272b. Gift for disabled soldiers of former enemy country—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

302. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

316. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

350. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

351. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

384. *Add. Annotation :*—**Refd.** Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

397. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

398. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

429. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

432a. **Art gallery—Valid—Right of trustees to purchase house & grounds.**]—*Re* TOWNER, EASTBOURNE CORPN. *v.* A.-G. (1923), 40 T. L. R. 3.

464. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

466. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

472. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

480. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

502. For cross-reference before this case, read "*See, now,* Settled Land Act, 1925 (c. 18), s. 119, Sched. V."

503. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

534. For cross-reference before this case, read "*See, now,* Settled Land Act, 1925 (c. 18), s. 29 (4)."

625. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

629a. —— **Under Education Act, 1921 (c. 51), s. 117—Assurance of land for erection of sanatorium—Exempt.**]—*Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556 ; 96 L. J. Ch. 267 ; 137 L. T. 119 ; 71 Sol. Jo. 408.

638. *Add. Annotation :*—**Refd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407.

Part III.—Charitable Trusts.

646. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), ss. 53, 55.

653. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

656. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244.

657a. —— ——.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE *v.* A.-G. (1925), 69 Sol. Jo. 345.

658. *Add. Annotations :*—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *As to* (3) **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

661. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

673. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

680. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

687. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; *Re* James, Grenfell *v.* Hamilton (1932), 146 L. T. 528.

687a. ——.]—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 740b, *post.*

691a. —— —— **Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.**]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not

PART II. SECT. 4, SUB-SECT. 5.

STRATFORD BAP- (1869), 2 Ch. 388.—CAN.

PART II. SECT. 6, SUB-SECT. 4.

† ‡. —— —— *Not applicable to.*]—The above Act is not in force in Manitoba.—*Re* FENTON ESTATE, [1920] 2 W. W. R. 367 ; 53 D. L. R. 82 ; 30 Man. L. R. 246.—CAN.

PART III. SECT. 1, SUB-SECT. 1.

sm. *By settlement—Settlor divesting himself of income from shares.*]—TUNLEY *v.* FEDERAL COMR. OF TAXATION (1927), 39 C. L. R. 528.—AUS.

drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited :—*Held :* in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—PEASE *v.* HOW (1922), 91 L. J. Ch. 334; 126 L. T. 629; 66 Sol. Jo. 250.

691b. Limitation of area insufficient.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante*.

691c. ——.]—*Re* KING, HENDERSON *v.* CRANMER (1931), 75 Sol. Jo. 781.

692a. ——.]—*Re* KEMBLE, NASH *v.* LOMBARDINI (1931), 71 L. Jo. 347.

702. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702a. "Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate "for missionary purposes" to J. :—*Held :* (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re* REES, JONES *v.* EVANS, [1920] 2 Ch. 59; 89 L. J. Ch. 382; 123 L. T. 567.

Annotations :—*As to* (1) **Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702b. "**Parish work**"—**Void.**]—By her will a testatrix gave part of her residuary estate to the vicar & churchwardens of a certain church "for parish work" :—*Held :* this was not a charitable gift, & accordingly it failed.—*Re* ASHTON'S ESTATE, WESTMINSTER BANK, LTD. *v.* FARLEY, [1937] 3 All E. R. 279; 106 L. J. Ch. 234; 157 L. T. 184; 53 T. L. R. 809; 81 Sol. Jo. 499.

703a. "Two institutions which I hope to be able to name"—Valid.]—Testatrix, who died in 1919, left her foreign property to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

705. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Verge *v.* Somerville, [1924] A. C. 496; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

708. *Add. Annotations :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

716. *Add. Annotations :*—**Apld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

717a. "For such objects connected with the church as" vicar "shall think fit"—Valid.]—Where testatrix devised & bequeathed all the residue of her estate to the vicar of a church "for such objects connected with the church as he shall think fit" :—*Held :* "objects connected with the church" did not mean parochial objects, but meant objects connected with the fabric & services of the church, & therefore the gift created a valid charitable gift.—*Re* BAIN, PUBLIC TRUSTEE *v.* ROSS, [1930] 1 Ch. 224; 99 L. J. Ch. 171; 142 L. T. 344; 45 T. L. R. 617, C. A.

Annotations :—**Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Foll.** *Re* Martley, Simpson *v.* Bourne (1931), 47 T. L. R. 392. **Consd.** *Re* Davies, Lloyds Bank, Ltd. *v.* Mostyn (1932), 48 T. L. R. 539; *Re* Ashton's Estate Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

sp. *Gift "for some good public purpose".*—*"Such as emergency hospital, women's home or park with urinary"—Valid.*]—COX *v.* HOGAN & VICTORIA CORPN. (1925), 35 B. C. R. 286.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

715 i. *"Among such charitable institutions & schemes already constituted or which may hereafter be constituted as they shall in their absolute discretion select"—Valid.*]—CUNNINGHAM *v.* TALBOT, [1932] 2 W. W. R. 638; 3 D. L. R. 665.—**CAN.**

st. *"To be invested in war charities at trustees' discretion to be selected by trustees"—Valid.*]—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R.

sw. *Bequest to Bishop "for diocesan purposes."*]—Testatrix made bequests to the Anglican Bishop for the time being of the Diocese of Grafton & Armidale to be used respectively "for diocesan purposes" & "for diocesan purposes generally." She also bequeathed the sum of £20 per annum to the said Bishop to be used "in support of" an indicated Anglican Church :—*Held :* (1) upon the true construction of the words "for diocesan purposes" & "for diocesan purposes generally" the discretion vested in the Bishop trustee must be exercised within the scope of diocesan purposes proper, that every diocesan purpose proper was a religious purpose & charitable in the legal sense, & the gifts to be used for the above-mentioned purposes were, therefore, valid; (2) the gift of the sum of £20 per annum to be used "in support of" the indicated church was a trust for a religious purpose & was valid.—*Re* MACGREGOR, THOMPSON *v.* ASHTON (1932), 32 S. R. N. S. W. 483; 49 N. S. W. W. N. 179. —**AUS.**

sz. *"Such charitable institutions & schemes . . . as my trustees shall in their absolute discretion select.*]—*Held :* valid & not void for uncertainty.—*Re* CUNNINGHAM'S ESTATE (1932), 45 B. C. R. 543.—**CAN.**

717b. "Such parochial institutions or purposes as" vicar "shall select"—Invalid.]—Testatrix, who died in 1929, made a bequest of money in trust for the vicar of a parish for the time being, to be distributed by him "among such parochial institutions or purposes as he shall select":—*Held:* as "parochial institutions or purposes" might include objects which were not charitable the bequest was not a valid charitable gift.—*Re* STRATTON, KNAPMAN *v.* A.-G., [1931] 1 Ch. 197; 100 L. J. Ch. 62; 144 L. T. 169; 47 T. L. R. 32; *sub nom. Re* STRATTON, KNAPMAN *v.* STRATTON, 74 Sol. Jo. 787, C. A.; *affg.* S. C. *sub nom. Re* STRATTON, STRATTON *v.* A.-G., [1930] 2 Ch. 151.

Annotation:—**Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279.

717c. "For the benefit of the work of the Cathedral"—Valid.]—*Re* MARTLEY, SIMPSON *v.* BOURNE (CARDINAL) (1931), 47 T. L. R. 392; 75 Sol. Jo. 279.

717d. "For work connected with the Roman Catholic Church"—Invalid.]—*Re* DAVIES, LLOYDS BANK, LTD. *v.* MOSTYN (1932), 48 T. L. R. 539; 76 Sol. Jo. 474; *affd.* 49 T. L. R. 5, C. A.

718. *Add. Annotations:*—**Consd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Folld.** *Re* Jackson, Midland Bank Executor & Trustee Co. *v.* Wales (Archbp.), [1930] 2 Ch. 389. **Consd.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75. **Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

718a. Trustees empowered to change objects if interests of Church better served.] — *Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, No. 75a, *ante*.

718b. Gift to Archbishop to be applied "in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales."]—Testatrix made a bequest of half her residuary estate to the Archbishop of Wales for the time being to be paid & applied by him in or towards the General Fund belonging to the Church in Wales, or in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales:—*Held:* the alternative gift was too indefinite in that it could not be said that the application of it by the Archbishop must be for a charitable purpose, & the whole gift was therefore void.—*Re* JACKSON, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* WALES, ARCHBISHOP OF, [1930] 2 Ch. 389; 99 L. J. Ch. 450; 144 L. T. 102; 46 T. L. R. 558.

720. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Chapman, Hales *v.* A.-G. (1922), 91 L. J. Ch. 527; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

721. *Add. Annotations:*—**Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Verge *v.* Somerville, [1924] A. C. 496; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

723. *Add Annotation:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

724a. "Charitable or public institutions"—At discretion of trustees—Void.]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees "to hold the residuary moneys & investments upon trust, subject to payment of the wife's annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit":—*Held:* the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re* DAVIS, THOMAS *v.* DAVIS, [1923] 1 Ch. 225; 92 L. J. Ch. 322; 128 L. T. 735; 39 T. L. R. 201; 67 Sol. Jo. 297.

725. *Add. Annotation:*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

728a. "To such charities or to such religious bodies"—As trustees in their discretion shall think fit—Valid.]—*Re* TOMKINSON, M'CREA & BELL *v.* A.-G. OF THE DUCHY OF LANCASTER (1929), 74 Sol. Jo. 77.

731. *Add. Annotations:* — **Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Distd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R 270. **Consd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Smith, Public Trustee *v.* Smith, [1931] 2 Ch. 364. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B.

PART III. SECT. 2. SUB-SECT. 2.—B.

t i. "*Charitable or other deserving institutions*"—*As trustees think fit—Void.*] — CAMPBELL'S TRUSTEES *v.* CAMPBELL, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—**SCOT.**

b i. "*Benevolent, charitable & religious institutions*"—*As trustees think proper—In limited locality—Valid.*]—EDGAR, ETC. *v.* CASSELLS, [1922] S. C. 395; 59 Sc. L. R. 304.—**SCOT.**

c i. ——,]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—**SCOT.**

c ii. —— *In particular place—As trustees shall think deserving.*]—*Re* GREAVES (B. C.), [1917] 1 ——. W. R. 997.—**CAN.**

sg. "*Charitable, religious, philanthropic, educational, or scientific*"—*Void.*]—Testator directed his trustee to hold the surplus of his residuary estate on trust, to invest the same & pay the net annual income to named children & another named person for life equally, or to the survivors, & upon the death of the survivor to hold his residuary estate upon trust "for such charitable, religious, philanthropic, educational or scientific institution or institutions absolutely" as his trustee should select . . .:—*Held:* the gift was void for uncertainty.—*Re* WHITE, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* A.-G., [1933] S. A. S. R. 129.—**AUS.**

611; Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461; Master Mariners, Honourable Co. of *v.* I. R. Comrs. (1932), 17 Tax Cas. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

734. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

735. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. *As to* (2) **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

735a. **" Charities & institutions "—" As executors in their absolute discretion think fit "—Void.**] —*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, No. 47a, *ante*.

739. *Add. Annotations :*—**Consd.** Caldwell *v.* Caldwell (1921), 91 L. J. P. C. 95; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

740a. **" Charitable purposes " directed by testator or for such objects as executor selects—Void.**] —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *post*.

740b. **" Patriotic purposes or charitable institutions or objects "—At discretion of trustees—Void.**] —(1) Testator by his will directed his trustees to apply one-fifth of his residuary estate " for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire " as they in their absolute discretion should select :—*Held :* the words of the gift must be read disjunctively, " patriotic purposes " were not necessarily charitable, & the gift was void for uncertainty.

(2) The general rule is clear that if you are making a will you must declare your wishes, & not leave it in wide & uncertain terms to some one else to make a will for you. Special treatment is meted out to a gift for charitable purposes, & in that case the cts. have recognised that it is open to a testator who declares a charitable purpose to leave it to his trustees to select the particular charities for whose benefit his fund is to be applied. But that does not apply to cases not coming within the description of charity (VISCOUNT CAVE, C.).—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] A. C. 262; 40 T. L. R. 191; 68 Sol. Jo. 235; *sub nom. Re* TETLEY, A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, 93 L. J. Ch. 231; 131 L. T. 34, H. L.; *affg.* S. C. *sub nom. Re* TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* TETLEY, [1923] 1 Ch. 258, C. A.

As to (1) **Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** V *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Rol Marine Mansions Trustees (1927), 43 T. L. R. 270; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

745. *Add. Citation :*—91 L. J. P. C. 95.

748. *Add. Annotation :*—*As to* (1) **Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

749. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

751. *Add. Annotation :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

751a. **" Objects of charity or any other public objects "—" In parish of F."—Valid.**]—By her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, " for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F." : —*Held :* it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re* BENNETT, GIBSON *v.* A.-G., [1920] 1 Ch. 305; 89 L. J. Ch. 269; 122 L. T. 578; 84 J. P. 78; 64 Sol. Jo. 291.

Annotation :—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

754. *Add. Annotations :*—**Refd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

755a. **" Hospital or other charitable or benevolent institution "—Valid.**]—By his will, made in 1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, " for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution " ; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock :—*Held :* the word " hospital " where it was first used in the will was used in an adjectival sense, & applied to the following words " wards, beds, or cots " ; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words " benevolent institution " must be construed as *ejusdem generis*, with " hospital " ; & therefore the bequest constituted a good & valid charitable gift.—*Re* LUDLOW, BENCE-JONES *v.* A.-G. (1923), 93 L. J. Ch. 30, C. A.

763. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

765. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769. *Add. Annotation :*—**Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769a. Invalid gift for maintenance of family graves—Surplus to rector of B.—Void for uncertainty.]—FOWLER *v.* FOWLER (1864), 33 Beav. 616; 33 L. J. Ch. 674; 10 L. T. 682; 28 J. P. 707; 10 Jur. N. S. 648; 12 W. R. 972; 55 E. R. 507.

Annotations :—**Distd.** *Re* Williams (1877), 5 Ch. D. 735. **Refd.** Hoare *v.* Osborne (1866), 30 J. P. 309; *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147; Choa Choon Neoh *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

769b. Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.]—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not :—*Held :* (1) the decisions in the "tomb cases" were inapplicable; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* PORTER, PORTER *v.* PORTER, [1925] Ch. 746; 95 L. J. Ch. 46; 133 L. T. 812.

770. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

771. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

772. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

776. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

786. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

794. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

795. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

810. For "**appointment**" read "**apportionment.**"

816. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

817. *Add. Annotation :*—**Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

823a. —— Description not confined to charitable purposes — Description having particular meaning in religious denomination to which testator belonged.]—In construing gifts of recent date, evidence is not admissible to show that words having a clear ordinary meaning were used in a special narrower sense.

Testator, a member of the "Brethren," or "Plymouth Brethren," by his will left all his property, subject to a life interest, to his widow, to be divided into two equal parts, one for his sons, & the other for his trustees "to distribute between the various good works which I & my wife have been in the habit of assisting. . . ." After the widow's death this summons was taken out to determine whether that direction created a good charitable trust. Affidavits were tendered to the effect that among the "Brethren" "good works" was a phrase in common use to indicate works distinctly religious, *i.e.* Christian, & suggesting that testator had used it in that sense :—*Held :* there was no evidence of the significance with which the testator had used the words, & the statement as to their use among the "Brethren" was not evidence of constant use in such a sense as would exclude non-religious charitable objects.—*Re* How, How *v.* How, [1930] 1 Ch. 66; 99 L. J. Ch. 1; 142 L. T. 86.

832. *Add. Annotations :*—*As to* (1) **Apprvd.** Blackwell *v.* Blackwell, [1929] A. C. 318. *As to* (2) **Refd.** *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

836. *Add. Annotations :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66. **Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

B. Names of Charities omitted or left blank (Vol. VIII., p. 305).

For "*See* Nos. 1419 *et seq., post,*" read "*See, also,* Nos. 1419 *et seq., post,*" & add as follows :—

PART III. SECT. 2, SUB-SECT. 3.—B (b).

770 i. *Gift of residue or surplus for charitable purposes — Valid.*]—Testatrix gave the residue of her estate upon trust for conversion & directed the same to be expended upon the erection in a certain cemetery of a monument (with minute directions as to its nature & surroundings) to the memory of her deceased son, & the sum of £50 to be paid to the proper person for the perpetual care of the ground. After certain other directions the will continued, "I direct that any money left unexpended after the erection & completion of the said monument to be paid to the treasurer of the Children's Hospital, Camperdown . . ." :—*Held :* the special rule in the class of cases known as the "tomb cases" applied, &, therefore, the primary gifts for the erection of the monument & for the perpetual care of the ground having failed, the whole of the residuary fund was applicable to deft. charity.—POOLEY *v.* ROYAL ALEXANDRA HOSPITAL FOR CHILDREN (1932), 32 S. R. N. S. W. 459 49 N. S. W. W. N. 156.—AUS.

PART III. SECT. 4, SUB-SECT. 2.—B.

824 i. *Admitted—Description applying indifferently to more than one charity —"Old People's Home"—Old Folks Home or Maison des Vieux.*]—*Re* SMITH (1912), 22 W. L. R. 630; 3 W. W. R. 899; 22 Man. L. R. 756; 8 D. L. R. 93.—CAN.

824 ii. —— —— *Gift to "St. James' Presbyterian Church, $375 which I owe it"—Two St. James' Churches—Evidence of debt.*]—*Re* MCLAURIN LEGACY (1911), 9 E. L. R. 326.—CAN.

PART III. SECT. 4, SUB-SECT. 2.—C.

830 ii. —— ——.]—Where testator made a bequest to a society, & it was found no society exactly corresponding to the designation given by testator was known :—*Held :* if the society is misdescribed, the ct. will if possible, discover from surrounding circumstances, what society was intended. The ct. will admit extrinsic evidence to determine what testator's words express. Evidence to show that testator subscribed to a particular society will be admitted, to show what was in his mind when he made the bequest.—*Re* ALEXANDER'S WILL (1885), 7 Nfld. L. R. 42.—NFLD.

841a. Gift to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors "—Valid.]—Testatrix, who died in 1919, left her foreign property to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

. Gift to any institution in Sussex assisting crippled ex-service men.]—Testator bequeathed his residuary estate to any institution formed in Sussex for the purpose of housing, aiding & assisting crippled ex-service men or, if no such institution, directed the formation of such an institution :—*Held :* a home which provided lodgings for crippled ex-soldiers & sailors belonging to the district who had for the time being nowhere else to go, satisfied the conditions of the will, & a scheme for the administration of the fund was directed.—*Re* BLOOMFIELD, PUBLIC TRUSTEE *v.* KOHLBECK (1933), 77 Sol. Jo. 539.

841c. " Institutions established for benevolent purposes "—Void.]—A testatrix domiciled in New Zealand, bequeathed to the trustee & exor. of her will (resp. co.) her residuary estate, " to apply the same in making other bequests towards institutions, societies or objects established in or about Auckland aforesaid for charitable, benevolent, educational or religious purposes " within the absolute discretion of the trustee :—*Held :* the gift failed for uncertainty, as a gift for " benevolent purposes " is not a good charitable gift.—A.-G. FOR NEW ZEALAND *v.* NEW ZEALAND INSURANCE CO., LTD., [1936] 3 All E. R. 888 ; 53 T. L. R. 37 ; 80 Sol. Jo. 912, P. C.

843a. —— Poor of parish where testator buried—Direction as to place of burial—Subsequent parol direction as to different place.]—Testatrix, by her will, directed that her remains should be deposited in the church nearest which she might chance to die ; & in a subsequent part of the will gave a legacy to the poor of the parish where her remains were deposited. Her executrix, in pursuance of parol directions given subsequent to the date of the will, buried her in the neighbouring parish of W. :—*Held :* nevertheless, the poor of the parish of B., where testatrix died, were entitled to the legacy.—SALTER *v.* FAREY (1843), 12 L. J. Ch. 411 ; 1 L. T. O. S. 76 ; 7 Jur. 831.

856. *Add. Annotation :*—**Reld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

864a. Gift to German Reich—For benefit abled German soldiers—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

865. *Add. Citation :*—3 Leon. 18.

PART III. SECT. 4, SUB-SECT. 3.—A.

sa. *Public institutions in Scotland—Void.*]—Testator directed his trustees, upon the expiry of a life-rent of the residue of his estate, " to pay appropriate & distribute the free residue & remainder of my said estate & effects at such times & in such proportions as my trustees may think fit to & among such poor persons in E. or such charitable, educational, or benevolent societies or public institutions in Scotland as my trustees shall select " :—*Held :* the words " public institutions in Scotland " were to be read as indicative of a separate class ; they were too indefinite to receive effect ; & the whole bequest was void from uncertainty.—REID'S TRUSTEES *v.* CATTANACH'S TRUSTEES, [1929] S. C. 727.—**SCOT.**

sb. " *Any worthy cause* "—*Void.*]—A clause of a will reads as follows : " the balance of my estate I leave entirely in the hands of my exor. to aid & help any worthy cause or causes as he shall think fit :—*Held :* the will did not create a valid charitable trust. —PLANTA *v.* GREENSHIELDS, [1931] 1 W. W. R. 401 ; 2 D. L. R. 189 ; 43 B. C. R. 439.—**CAN.**

sd. " *Pious acts* "—*Void.*]—In construing a will which, after providing for certain pecuniary legacies, directed that the balance income be spent on " pious acts " according to the discretion of the trustees :—*Held :* bequest void for uncertainty.—SATKARHI BHATTACHARYA *v.* HAZARILAL KHANNA (1930), I. L. R. 58 Calc. 1025.—**IND.**

PART III. SECT. 4, SUB-SECT. 3.—C.

sw. *Advancement of art, science or literature.*]—A testator directed his trustees to hold the residue of his estate for behoof of his sister in liferent, with power to encroach on the capital, & on her death to make certain payments. He further provided : " & if there is still any residue left my trustees shall apply it in whatever manner to them may seem most suitable for the advancement of art, science, or literature in the burgh of C." :—*Held :* the bequest was void from uncertainty.—HARPER'S TRUSTEES *v.* JACOBS, [1929] S. C. 345.—**SCOT.**

sx. *Gift to " missions, Corean & Home " —Testator contributor to Presbyterian missions.*]—Where a legacy was to " the missions, Corean & Home," & testatrix had been in the habit of contributing to the Home & Corean Mission Fund in connection with the Presbyterian Church in Canada :—*Held :* the legacy in question should go to the latter fund.—*Re* HENDERSON ESTATE (1914), 14 E. L. R. 401.—**CAN.**

sy. *Gift to the blind.*]—A gift by will to the blind, *simpliciter*, is a good charitable gift.—*Re* BOND ; BRENNAN *v.* A.-G., [1929] V. L. R. 333 ; [1929] Argus L. R. 300.—**AUS.**

sz. " *Orphanages.*"]—After certain gifts testator directed that " the balance of my estate shall be equally divided : Salvation Army Rescue Home ; Home for Incurables, Fullerton ; South Australian Protestant Orphanages ; Minda Home." There was one institution in South Australia whose rules provided for the care of orphans of a particular denomination ; there were also other institutions whose rules enabled them to receive not only orphans but other children whose condition needed relief. All these institutions, including the first-named, as a practice received children other than orphans :—*Held :* whether an institution was or was not an orphanage was a question of fact, & both the rules & practice of the institution were to be considered. An orphanage is an institution where the main or primary purpose which it is actually fulfilling is to provide & care for orphaned children. The orphanages took one-fourth of the residue of the estate, to be divided equally between them.—*Re* DODSON, [1931] S. A. S. R. 387.—**AUS.**

sz. *Right of executors to come to arrangement with charity.*]—Gift to Picton Academy, Picton, in aid of poor & deserving young men & women getting an education. Picton Academy was one of the public schools of Picton : —*Held :* neither the trustees of the Picton Academy Educational Foundation, nor the Board of School Comrs. for town of Picton were entitled, but the exors. were entitled to make an arrangement with the trustees of the Picton Academy Educational Foundation.—*Re* LOGGIE'S WILL (1934), 8 M. P. R. 298.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—D.

1 i. —— —— " *Industrial School for Blind, B. Place* "—" *Royal Institution for Blind Incorporated* " *in B. Place entitled.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 218.—**AUS.**

1 ii. —— —— *Home Mission Extension Fund—Home Mission & Forward Movement entitled.*]—Testatrix after making certain bequests provided that " the residue is to be paid to the Home Mission Extension Fund of the Cong. Church & the other to the London Missionary Society to be kept at interest." The Congregational Union had no fund known under the above name ; there was a fund known as the Home Mission & Forward Movement Board :—*Held :* testatrix intended to indicate a certain purpose by the use of the words " Home Mission Extension " & a gift was expressed to the Congregational Union & Home Mission for Home Mission purposes.—*Re* TURNER, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* MORIALTA PROTESTANT CHILDREN'S HOMES INCORPORATED, [1930] S. A. S. R. 223.—**AUS.**

1 iii. —— —— " *Home for Fallen Girls* "—" *Church Home for Girls* " *entitled.*]—On new evidence adduced on a further hearing of the application the original hearing of which is reported [1936] 3 W. W. R. 620, it appeared

869. *Add. Annotation :*—**Refd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 51 T. L. R. 97.

875. *Citation :*—For "2 W. R. 154" read "21 W. R. 154."

876a. —— —— —— **London General Hospital Fund —King Edward's Hospital Fund for London or London Hospital—Former entitled.**]—*Re* BORINGER, MEARA *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1931), 48 T. L. R. 14.

884a. —— —— **"Chelsea Hospital"—Royal Hospital, Chelsea.**]—The ct. held that a testamentary gift to "the Chelsea Hospital" went to the Royal Hospital, Chelsea, & not to any other hospital having "Chelsea" as part of its name.—*Re* DE JONG, PUBLIC TRUSTEE *v.* GOLDSMID (1929), 46 T. L. R. 70; 73 Sol. Jo. 850.

Gift to "Soldiers' Crippled Homes Three claimants—Legacy divided.]—Testatrix by her will bequeathed part of her estate to "Soldiers' Crippled Homes." In response to advertisements three institutions put in claims :—*Held :* as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re* HUSBAND, NEAVE *v.* BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN. (1923), 58 L. Jo. 600.

894a. —— **"Diocesan Curates' Aid Society"—Testator resident in Oxford—Oxford Diocesan Spiritual Help Society entitled.**]—*Re* JOHNSON, GOODRICH *v.* OGLE (1893), 9 T. L. R. 277.

894b. —— **Gift to three bishops for poor of dioceses —One bishop a suffragan.**]—*Re* SMITH, TREVOR *v.* GOODHALL (1934), 51 T. L. R. 108; 78 Sol. Jo. 839.

896a. —— —— **"Southwark Diocesan Society" —Southwark Diocesan & South London Fund.**]—*Re* WATT, HICKS *v.* HILL, [1932] 2 Ch. 243, n.; 101 L. J. Ch. 417, n.; 147 L. T. 528, n., C. A.

898. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

901a. —— **"United Methodists"—Gift over on union with other religious body—Effect of Methodist Church Union Act, 1929 (c. lix), s. 18.**]—By sect. 18 of Methodist Church Union Act, 1929 (c. lix) (an Act to authorise the union of the Wesleyan Methodist, Primitive, & United Methodist Churches): "All personal or movable property (other than chattels real . . .) at the date of union . . . held in trust for or on behalf of . . . the United Methodist Church . . . or for the purposes of any . . . charity subsidiary or ancillary to [the United Methodist Church] shall as from that date be deemed to . . . be held in trust for . . . the purposes of the Methodist Church or the . . . charity subsidiary or ancillary to the Methodist Church nevertheless in other respects upon the same trusts . . . as those upon . . . which the same were previously held so far as circumstances will permit."

Testator directed that after his wife's death a sum of money should be held upon trust to invest & to apply the income in augmenting the salaries of the ministers of the United Methodists' chapel at Batley: with a proviso that "in case the said chapel & property connected therewith shall, in the opinion & absolute discretion of the trustees or trustee for the time being of my will, at any time cease to be used for the preaching & teaching the doctrine of the said United Methodists, or for any other reason . . . shall cease to exist for the said purpose, or the said United Methodists at Batley shall become merged in or united with some other

that testator's bequest to the "Home for Fallen Girls" was a case of misdescription or error in the name & that the "Church Home for Girls" was intended. There was no such institution as the first named :—*Held :* the Church Home for Girls was entitled to the bequest.—*Re* GILROY ESTATE (No. 2), [1937] 1 W. W. R. 356; 2 D. L. R. 351.—**CAN.**

p i. —— *Gift to Society for Prevention of Cruelty to Animals in New Zealand—Several local societies for prevention of cruelty to animals—Legacy divided.*]—*Re* BUCKLEY, PUBLIC TRUSTEE *v.* WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.), [1928] N. Z. L. R. 148.—**N.Z.**

PART III. SECT. 4, SUB-SECT. 3.—E.

898 ii. ——*Gift to Presbyterian Church —Entry into Union.*]—*Re* PATRIQUIN (N.S.), [1928] 2 D. L. R. 791; *on appeal*, [1929] 2 D. L. R. 197; 60 N. S. R. 343. —**CAN.**

898 iii. —— —— ——.]—Testatrix bequeathed to "aged & infirm ministers & widows of the Presbyterian Church." There was no fund in connection with the church known as a fund for aged & infirm ministers & widows. By the United Church of Canada Act, the Presbyterian Church in Canada became part of the United Church of Canada, but after this union, a Presbyterian Church continued to exist that did not form part of the United Church. Testatrix was opposed to the union :—*Held :* the bequest was not made either to the United Church nor to the continuing Presbyterian Church; the exors. should have possession & control of the corpus & pay the income annually to aged & infirm ministers of the continuing Presbyterian Church & their widows.—*Re* LOGGIE (1927), 53 N. B. R. 395.—**CAN.**

898 iv. —— —— ——.]—WEATHERBY *v.* WEATHERBY (1927), 53 N. B. R. 403.—**CAN.**

898 v. —— —— ——.]—*Held :* the congregation could not take bequests; by becoming a congregation of the United Church of Canada at T., it had become something so different from the congregation for whose benefit the bequests were made, that it did not now come within the description in the will; the present congregation was not the same entity as the congregation which P. contemplated as her beneficiary. As to the bequest to "the Trustees of the T. Presbyterian Church," it was to a corpn. which, even if it continued to exist, was not now one for carrying into effect the testatrix' object, & the same principle applied as in the case of the other bequest.—MCLELLAN *v.* FRASER & FRASER *v.* MCLELLAN, [1930] S. C. R. 344; 3 D. L. R. 241; *affg.*, [1929] 2 D. L. R. 197; 60 N. S. R. 343; *varg.*, [1928] 2 D. L. R. 791.—**CAN.**

898 vi. —— —— ——.]—By her will, made in 1921, G. gave a sum to "the Home Mission Fund of the Presbyterian Church in Canada" & a sum to "the Foreign Mission Fund of the Presbyterian Church in Canada." When she made her will she was a member of a congregation of the Presbyterian Church in Canada, at Hopewell, Nova Scotia. That congregation entered the United Church of Canada in 1925, when United Church of Canada Act (Dom., 1924, c. 100) came into force. G. remained a member of the congregation until her death in 1919 :—*Held :* the United Church of Canada was not entitled to the gifts.—UNITED CHURCH OF CANADA *v.* PRESBYTERIAN CHURCH IN CANADA, [1934] S. C. R. 708; [1935] 1 D. L. R. 1; *affg.*, S. C. *sub nom. Re* GRAY, [1933] 2 D. L. R. 400; 6 M. P. R. 465. —**CAN.**

898 vii. —— —— ——.]—In the case of bequests to the Home & Foreign Mission Boards of the Presbyterian Church in Canada :—*Held :* these objects did not cease to exist on the creation of the United Church of Canada, which was accordingly entitled to the bequests.—*Re* STEPHENS, ANDERSON *v.* UNITED CHURCH OF CANADA (1933), 6 M. P. R. 305.—**CAN.**

898 viii. —— *Gift to Congregational Church—Entry into Union.*]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

898 ix. —— —— ——.]—Testator devised his residuary estate to a Congregational Church, or if it should cease to exist, then over :—*Held :* the church ceased to exist within the meaning of the devise on becoming part of the United Church of Canada.—*Re* KELLEY, [1933] 4 D. L. R. 416; *affd.*, [1934] 3 D. L. R. 379.—**CAN.**

898 x. —— *Gift to Methodist Church—Entry into Union.*]—Legacy to Methodist Church held to fail because the Union was in force before the time of vesting.—*Re* THORNE, [1935] 4 D. L. R. 778.—**CAN.**

religious body, then the said sum . . . shall be held upon trust for such of my nephews & nieces . . . as shall be living at my death in equal shares." About four years after testator's wife's death, the Wesleyan Methodist, Primitive Methodist, & United Methodist Churches became merged & united in accordance with the Methodist Church Union Act, 1929 (c. lix):—*Held:* (1) the trust created by testator's will was for a particular kind of charity & the will showed no general charitable intent; (2) the proviso was void for perpetuity & therefore did not affect the trust; (3) the Act enlarged the trust, which, under sect. 18, continued as a trust " subsidiary or ancillary to " the purposes of the Methodist Church & was a charity to augment the salaries of ministers of the chapel.—*Re* TALBOT, JUBB *v.* SHEARD, [1933] Ch. 895; 102 L. J. Ch. 362; 149 L. T. 401; 49 T. L. R. 462; 77 Sol. Jo. 388.

906. *Add. Annotation:*—**Distd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

908. *Add. Annotations:—As to* (1) **Consd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 50 T. L. R. 473; *Re* Harwood, Coleman *v.* Innes, [1936] Ch. 285. *Generally*, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

910a. " Lord Milner's Homes for Mentally Disabled Soldiers "—Ex-Service Welfare Society entitled.]—*Re* GURDON, REYNOLDS *v.* EX-SERVICES WELFARE SOCIETY (1936), 80 Sol. Jo. 288.

912a. —— —— —— ——.]—Testatrix by her will dated Sept. 22, 1924, directed her exors. to sell the residue of her property & to pay the proceeds to the Margate Cottage Hospital. At the time she made her will there was a hospital of that name, an unincorporated body, to the funds of which testatrix was a subscriber. About the year 1926, a fund was opened for the purpose of purchasing a new site & building a larger hospital, to which testatrix was also a contributor. At the time of testatrix's death on Oct. 19, 1930, the work formerly carried on at the Margate Cottage Hospital, including the medical & nursing staff & the patients, had been transferred to & was carried on at the new hospital, called the " Margate & District General Hospital," which had been opened on July 3, 1930. The invested funds held by trustees for the Margate Cottage Hospital & the income thereof were dealt with by the same trustees for the purposes of the new hospital:—*Held:* the real intention of testatrix was to add the proceeds of sale of her residuary estate to the funds dedicated to the purposes of the Margate Cottage Hospital, &, accordingly, there was a valid charitable bequest of those moneys to which the next of kin of testatrix had no title.

Qu.: whether the Margate & District General Hospital was in any & what sense identical with the Margate Cottage Hospital, & whether the purposes of the Margate & District General Hospital to which those who administered the funds of the Margate Cottage Hospital had devoted them were in a true sense the purposes of the Margate Cottage Hospital.—*Re* WITHALL, WITHALL *v.* COBB, [1932] 2 Ch. 236; 101 L. J. Ch. 414; 147 L. T. 526.

922. *Add. Annotation:*—**Refd.** *Re* Withall, Withall *v.* Cobb, [1932] 2 Ch. 236.

924. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

926. *Add. Annotations:*—**Consd.** *Re* Withall, Withall *v.* Cobb, [1932]
Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

932. *Add. Annotations:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192; *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279.

933. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

945. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

948. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

962. *Add. Annotation:*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

980. *Add. Annotation:—Generally*, **Refd.** Clergy Orphan Corpn. *v.* Christopher, [1933] Ch. 267.

980a. Charity for orphans of Established Church—Effect of Welsh Disestablishment—Children of Welsh clergy entitled.]—A charity formed in 1749 was incorporated by Act of Parliament in 1809. Its object was to maintain & educate poor orphans of clergymen of the Church of England. Owing to the disestablishment of the Church in Wales doubts arose whether the corpn. had power to continue its work among the poor orphans of clergymen in Wales & Monmouthshire, & a summons was issued to obtain a decision of the ct. on the point:—*Held:* there was nothing in Welsh Church Act, 1914 (c. 91), or the Welsh Church (Temporalities) Act, 1919 (c. 65), that interfered with the power of the corpn. to maintain & educate poor orphans of clergymen in Wales & Monmouthshire.—*Re* CLERGY ORPHAN CORPN. TRUSTS, CLERGY ORPHAN CORPN. *v.* CHRISTOPHER, [1933] 1 Ch. 267; 102 L. J. Ch. 83; 148 L. T. 324; 49 T. L. R. 79.

PART III. SECT. 4, SUB-SECT. 3.—G.

sz. *Bequest to " Protestant Orphan Girls' Home "—Bequest taken by " Protestant Children's Homes "—Formed by amalgamation of " Girls' Home " & " Protestant Orphans' Home."*]—*Re* CARRICK, [1929] 3 D. L. R. 373; 64 O. L. R. 39.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

x i. —— *Gift to " that church which is sound & evangelical "—Prior gift to Presbyterian Church.*]—Testator, a minister of the United Presbyterian Church of North America, after bequeathing $1,000 to the said church, proceeded as follows: " I give for a Jewish mission $1,000 to that church which is sound & evangelical in doctrine & pure in worship, using the songs of praise, the inspired book which can unite all nations," etc. The evidence showed that this description applied to the said church:—*Held:* not void, for uncertainty, for that testator clearly intended the said church as the legatee. —GILLIES *v.* MCCONOCHIE (1882), 3 O. R. 203.—**CAN.**

x ii. —— " *Roman Catholic Church in Canada "—General Roman Catholic Church.*]—*Held:* a bequest to " foreign missions in connection with the Roman Catholic Church in Canada," should be paid to the general Roman Catholic Church, to be used for foreign missions in connection with that branch of the church which is in Canada, there being no Roman Catholic Church in Canada as a separate entity.—*Re* UPTON (1913), 24 O. W. R. 54; 4 O. W. N. 815; 9 D. L. R. 373.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—B.

xx. *Fund for maintenance & repair—Repair of fabric—& conduct of services—& provision of furniture, fittings & Re* BOYD (1924), 55 O. L. R.

981a. Gift to "church"—Construed as gift to congregation—Not to edifice.]—*Re* TYLER (1901), 45 Sol. Jo. 204.

981b. —— Gift to institution — "Church of England."]—*Re* BARNES, SIMPSON *v.* BARNES (1922), [1930] 2 Ch. 80, n.; 99 L. J. Ch. 380, n.; 143 L. T. 332, n.

Annotation :—**Folld.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75.

981c. —— —— "Roman Catholic Church."]—Testatrix made a residuary bequest "to the Roman Catholic Church, for the use thereof": —*Held :* the gift was a valid charitable bequest. — *Re* SCHOALES, SCHOALES *v.* SCHOALES, [1930] 2 Ch. 75; 99 L. J. Ch. 377; 143 L. T. 331; 46 T. L. R. 354; 74 Sol. Jo. 233.

981d. Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town.] —In 1841 certain resolutions were agreed to by the clergy & laity in this country at a meeting convened by the Archbishop of Canterbury to raise a fund for the endowment of Bishoprics in the Colonies, the fundamental object being to found & endow Bishoprics in connection with the Church of England. Among the Colonies selected was the Cape of Good Hope. In 1847 a large sum was given to the fund, & amongst the specific purposes mentioned for its application was the endowment of a Bishopric at Cape Town. In June, 1847, a Bishop's Diocese was created for the Cape of Good Hope by Letters Patent, & Cape Town was constituted a Bishop's See. The Bishop appointed was to be under the Metropolitical See of Canterbury. In 1849 part of the fund was invested on mtge. in the Colony & part laid out in the purchase of an estate in Cape Town for the use of the Bishop. In the year 1850, a representative Legislature was granted to Cape Colony, & in 1853 by fresh Letters Patent a separate See of Cape Town was created. In 1864, as the result of disputes concerning the effect of the Letters Patent of 1853, it was decided by the Privy Council in *Re the Lord Bishop of Natal* (1864), 3 Moo. P. C. (N. S.) 115, that as there was an independent legisative assembly in the Colony at the date when the Letters Patent of 1853 were granted, there was no power in the Crown by virtue of its prerogative to establish a Metropolitan See or Province whose status the Colony could be required to recognise. As a result in Feb. 1870, the Church of the Province of South Africa was constituted on a consensual basis. In 1882, following further disputes, the Privy Council decided in *Merriman* v. *Williams* (1882), 7 App. Cas. 484, that the Church of the Province of South Africa was not a Church in connection with the Church of England as by law established. Having regard to the fact that the present Archbishop of Cape Town was not a Bishop of the Church of England or of a Church in connection with the Church of England but was a Bishop of the Church of the Province of South Africa; & the doubt felt how the income of the fund should be dealt with, an originating summons was taken out by the present trustees of the fund raised in 1841 for the determination of the question how the income of the fund allocated to the endowment of a Bishopric at Cape Town should be applied, & whether the present Archbishop of Cape Town would be beneficially entitled to the income of the investments in this country held by the fund & set apart for the endowment of a Bishopric of Cape Town :—*Held :* (1) as it had been established that the present Archbishop of Cape Town was not a Bishop of the Church of England as by law established but a Bishop of the consensual Church of the Province of South Africa, which was, however, in communion with the Church of England, he was not a beneficiary of the funds in this country set apart for the endowment of the Bishopric of Cape Town. The question of a *cy-près* application of the fund thereupon arose; (2) therefore, as the fund in question & the trustees were in this country, & the trusts relating to it established here, the ct. had jurisdiction to order a scheme *cy-près :* & the proper order was first to declare that on the true construction of the resolutions, the original trusts which affected the property were for the endowment of a Bishopric of Cape Town in connection with the Church of England, & those trusts had become impracticable; & then to direct the trustees in this country to pay the income in question now in their hands to the Archbishop of Cape Town for the time being appointed & recognized by the Church of the Province of South Africa, but only so long as that Church remained, in the Archbishop of Canterbury's opinion, in communion with the Church of England.—*Re* COLONIAL BISHOPRICS FUND, 1841, [1935] Ch. 148; 104 L. J. Ch. 205; 152 L. T. 458.

986. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

987. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

991a. —— Gift to Superior of Jesuit Church.]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante*.

991b. —— "To the rector of St. Thomas' Roman Catholic Church of Newport.]—*In the Estate of* PESCA (1930), 74 Sol. Jo. 59.

991c. —— "To Mayor of L. for poor & needy fishermen of L."]—A testatrix bequeathed one-quarter of her residuary estate to the "Mayor of Lowestoft for the benefit of poor & needy fishermen of Lowestoft" :—*Held :* the testatrix intended the fund to be administered by the Mayor of Lowestoft for the time being, & a scheme should be directed to be drawn up.—*Re* PIPE, LEDGER *v.* MOBBS, [1937] 3 All E. R. 650; 106 L. J. Ch. 292; 53 T. L. R. 904; 81 Sol. Jo. 570.

PART III. SECT. 4, SUB-SECT. 6.—A.

sd. *Gift to "parish priest"—Curate temporarily in charge at time of death.*]—N. by her will bequeathed the residue of her estate to the parish priest of L., officiating at the time of her decease, to be applied by him for the benefit of the Roman Catholic Church in the parish as he, in his discretion, should think fit, & in the event of the failure of such bequest, testatrix bequeathed the said residue to the said parish priest of L., for his own use & benefit. Testatrix died within three months of the execution of her will, & as the property consisted almost entirely of land, the charitable bequest failed. There was no parish priest of L. at the time of the death of testatrix, but all the duties of the office were being discharged by the curate of the parish :—*Held :* the curate was entitled to the ultimate residue bequeathed to the parish priest for his own use & benefit. —MCALLISTER *v.* STEWART, [1931] N. I. 52.—IR.

PART III. SECT. 4, SUB-SECT. 6.—B

sg. *Education of deserving children in district—Meaning of "deserving."*]—In a bequest for the "education of poor & deserving children in the district of A." :—*Held :* deserving means deserving of education, not morally deserving.—KERKRAAD OF THE DUTCH REFORMED CHURCH, ALEXANDRIA *v.* SCHEEPERS, [1932] App. D. 88.—S. AF.

999. *Add. Annotations :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

1020a. Admission to Home of Rest—Must be suitable objects of a charity.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante.*

1041. *Add. Annotation :*—**Refd.** *Re* Robinson, Wright *v.* Tugwell, [1923] 2 Ch. 332.

1041a. —— Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.]—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an " abiding condition " that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one ; & accordingly, the fund was carried over to the credit of the action, the separate account of " the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services :—*Held :* the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* ROBINSON, WRIGHT *v.* TUGWELL, [1923] 2 Ch. 332 ; 92 L. J. Ch. 340 ; 129 L. T. 527 ; 39 T. L. R. 509 ; 67 Sol. Jo. 619.

1054. *Add. Annotation :—Generally,* **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1055. *Add. Annotation :—As to* (2) **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1061. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

1069. *Add Citation :*—[1910] 1 Ch. 273.

1069a. Gift over on charity receiving state subsidy —Charity receiving grant in aid as public elementary school.]—Testator, who by his will gave the residue of his property to certain charities, made it a condition of the gift that the charities should not be taken over or subsidised by the State or by any public or local authority. One of the institutions, which had a school attached recognised by the Board of Education as a public elementary school, received grants in aid of teachers' salaries from the local education authority :—*Held :* the grants did not amount to a subsidy & the charity was not prevented from receiving a share of the residue.—*Re* GREGORY, HOW *v.* CHARRINGTON (1935), 52 T. L. R. 130 ; 79 Sol. Jo. 880.

1078. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1080. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1081. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1085a. —— —— Masonic lodge—Valid.]—*Re* TURKINGTON, OWEN *v.* BENSON, [1937] 4 All E. R. 501.

1089a. —— Provision of knickers for all boys of district—Void.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante.*

1095. *Add. Annotation :*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1098. *Add. Annotation :—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

PART III. SECT. 4, SUB-SECT. 7.

1007 i. *Discretion of trustees—Gift to war charities—Not confined to Canada.*] —*Re* HAMMOND (1921), 68 D. L. R. 590. 51 O. L. R. 149.—**CAN.**

PART III. SECT. 6, SUB-SECT. 4.—A.

e i. —— *Orchestra—Void.*]—By an indenture of trust, which recited that the settlor had donated the sum of £10,000 for the purpose of assisting in founding a permanent fund for establishing & maintaining a metropolitan permanent orchestra in & for the State of Victoria, & that the donor had paid the money to the trustee, it was declared that the trustee should hold the said sum, & all sums thereafter given in augmentation of it, upon trust to apply the income of the fund in or towards the maintenance of a metropolitan permanent orchestra, so many of the members whereof as the trustee should consider sufficient to be professional musicians, etc. At the date of the deed such an orchestra did not exist, & the sum of £10,000 was altogether insufficient to establish & maintain one :—*Held :* the settlement infringed the rule against perpetuities, & there was a resulting trust for the settlor.—*Re* DYER, DYER *v.* TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1935] V. L. R. 273 ; 41 Argus L. R. 384.—**AUS.**

PART III. SECT. 6, SUB-SECT. 4.—B.

k i. —— ——.]—Testator left an estate of $99,000, of which $44,000 was in real estate & Hudson Bay Co. shares. This latter sum was left in trust to supply an income for a Bishop of Cornwall, or if such a Bishop was not elected within twenty-five years after testator's death, the money was to go to the University of Bishop's College, at Lennoxville, for the endowment of a Professorship of Natural Science :—*Held :* there was an immediate gift for charitable uses delayed as to the actual conveyance till the secured debts were paid, &, therefore, vested at the death & effective in law, though the particular application of the gift might be in suspense for twenty-five years, or might never take effect at all, in which contingency there was a valid transfer to another charity at the end of twenty-five years ; & the will did not offend against the rule concerning perpetuities.—*Re* MOUNTAIN'S WILL (1912), 21 O. W. R. 866 ; 3 O. W. N. 1011 ; 26 O. L. R. 163 ; 4 D. L. R. 737.—**CAN.**

1098a. —— ——.]—*Re* MONK, GIFFEN *v.* WEDD, No. 34a, *ante*.

1099. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496. **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96. **Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465 ; *Re* Spence's Estate, Barclay's Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

1102. *Add. Annotation :—Generally*, **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1102a. —— —— —— ——.]—*Re* TALBOT, JUBB *v.* SHEARD, No. 901a, *ante*.

1109. *Add. Citation :*—127 L. T. 123.

Add. Annotation :—**Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1114. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1115. *Citations :*—After " H. L." add " *affg* S. C. *sub nom.* HARBIN *v.* MASTERMAN (1871), L. R. 12 Eq. 559 ; [1894] 2 Ch. 184, C. A."

Add. Annotations :—**Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. **Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341. **Consd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626.

1116. *Add. Annotation :—As to* (1) **Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.

1116a. Direction for accumulation—Discretion of trustees.]—The expression in a will of a wish that " the interest upon my investments may be allowed to accumulate . . ." followed by an indication of the charitable objects to which the accumulations are to be devoted does not bind the trustees of the will. But it is a directory provision ; & the trustees ought to bear it in mind & generally to use their discretion so as to give effect to it.

A will, after certain bequests, including a bequest of residue in trust for " the Trustees of the S.M. Charities," expressed a wish of testator that " the income upon my investments may be allowed to accumulate for a period of twenty-one years or so long as the law will allow," & then set out various charitable objects in the town of S. which testator desired should thereafter benefit by such income only :—*Held :* the wish as to accumulation was not binding, but was in the circumstances a directory provision to which regard should be had in settling a scheme.—*Re* KNAPP, SPRECKLEY *v.* A.-G., [1929] 1 Ch. 341 ; 98 L. J. Ch. 95 ; 140 L. T. 533.

1118. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd (1927), 137 L. T. 4.

1150. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1186a. ——.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats :—*Held :* on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.

1188. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1189. *Add. Annotations :*—**Distd.** *Re* Beck, Crook *v.* Royal National Lifeboat Institution (1926), 42 T. L. R. 244. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1200. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

1225. *Add. Annotation :*—**Refd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1227. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

1246a. —— **Not necessarily application cy-pres.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1247. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

PART III. SECT. 6, SUB-SECT. 4.—H.

1115 i. *Absolute vested interest payable at future date—Whether charity entitle to immediate distribution.*]—An accumulated fund was directed to be paid by a trustee twenty-one years after the death of the party giving it for the aged & deserving poor of the town. On a motion to approve a compromise between the trustee & the town council: —*Held :* it was doubtful if the rule that a legatee may put an end to an accumulation exclusively for his benefit applied.—*Re* BIRTWISTLE (1935), 4 137.—CAN.

PART IV. SECT. 1, SUB-SECT. 1.—A.

p i. —— *Funds insufficient.*]—*Re* MITCHNER, [1922] St. R. Qd. 39.—AUS.

p ii. —— *Legatee uncertain.*]—Testator, domiciled & dying in Ireland, bequeathed shares to " the Director of the African Mission." There was no society known as " the African Mission," & no individual with the official designation of " Director of the African Mission." There were, however, two societies which carried on missionary work in Africa, one of them being known in English as " The Society of African Missions," its principal officer being the " Provincial." The other Society possessed an Irish Mission to Africa of which the principal officer was the " Secretary," who was also described in a French publication of the Society as " Directeur." Testator, had been on terms of intimacy with the latter officer, & had sent him a subscription, & in his letter enclosing the subscription he referred to " the needs of your great African Mission." Testator had also known the Provincial of the former Society, had discussed its work with him, was in regular receipt

1248. *Add. Annotation :*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1248a. —— —— —— ——.]—*Re* WILSON-BARKWORTH, BURSTALL *v.* DECK (1933), 50 T. L. R. 82.

1252a. —— **No trustees.**]—VERGE *v.* SOMERVILLE, No. 199b, *ante*.

1252b. —— **Uncertainty as to beneficiary.**]—*Re* HURST, HARPER *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1935), 79 Sol. Jo. 252.

1252c. Gift to trustees of chapel—Disclaimer by trustees.]—By her will a testatrix bequeathed to the trustees of a certain Methodist Chapel £1,000 or half her residuary estate whichever should be the lesser amount with the direction that the trustees should purchase a field which they should permit to be used as a recreation ground by the children attending the Sunday School in connection with the chapel & others as the trustees should approve. The exors. set aside sufficient to satisfy this legacy & distributed the residue of the estate. The trustees of the chapel disclaimed the legacy. The trustees thereupon took out a summons to determine whether the bequest failed & fell into the residuary estate of the testatrix or whether by reason of the charitable nature of the trust attached to it the bequest ought to be applied *cy-près* :—*Held :* (1) as it was not of the essence of the bequest that the trustees of the chapel should be the trustees of the charity, the bequest did not lapse, but ought to be applied *cy-près ;* (2) the costs of the proceedings should be paid out of the £1,000. *Re* LAWTON, GARTSIDE *v.* A.-G., [1936] 3 All E. R. 378.

1264. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1265a. ——.]—A testator who was a native of Scotland but died domiciled in England gave his residuary estate upon trust, after payment of annuities, to establish educational charities in & for the benefit of the residents of a town in Scotland. After the building & opening of a college in the town, there remained a large sum of money in the hands of the trustee subject to the trusts of the will. Upon an application to settle a scheme *cy-près*, the ct., at the instance of the A.-G., gave liberty to the trustee to carry into effect a scheme for the administration of the charity to be settled by the Ct. of Session in Scotland.—*Re* MARR'S WILL TRUSTS, WALKER *v.* A.-G., [1936] Ch. 671 ; 105 L. J. Ch. 345 ; 155 L. T. 485.

1267. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1269. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1273a. —— **Object & trustee out of the jurisdiction.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1274. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1277. *Add. Annotation :*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1278. *Add. Annotations :*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122. **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1312. *Add. Annotations :*—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240 ; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

1371. *Add. Citation :—previous proceedings* (1912), 106 L. T. 295.

Add. Annotation :—Generally, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1373a. ——.]—*Re* EDWIN RILEY CHARITIES (1930), 70 L. Jo. 409.

1373b. ——.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1373c. ——.]—Where a testator selects a particular charity & takes some care to identify it, it is very difficult for the ct. to find a general charitable intent, if the named society ceases to exist before testator's death ; but a general charitable intent may be inferred where no charitable institution as described in the will has ever existed.—*I* HARWOOD, COLEMAN *v.* INNES, [1936] Ch. 285 ; 105 L. J. Ch. 142 ; 154 L. T. 624.

1382a. Gift for rebuilding & equipment of hospital —Hospital partially rebuilt at testator's death.]—Testatrix gave a legacy "towards the rebuilding & equipment" of a hospital "to the satisfaction & under the direction" of her exors. At the death of testatrix the hospital was almost entirely rebuilt, though not equipped. The directors did not at any time direct the rebuilding or equipment :—*Held :* (1) the exors. could not give directions for works already completed, but if they gave their assent to proposed works of which they had a general knowledge they might apply the legacy towards such works when properly

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of its publication, called the "African Missioner," & had also contributed, although a much smaller amount, to its funds :—*Held :* the gift was a good charitable bequest for the propagation of the faith in Africa ; & it should be referred to Chambers to settle a scheme, with the approval of the Attorney-General.—*Re* MULCAHY, BUTLER *v.* MEAGHER, [1931] I. R. 239.—**IR.**

r i. ——.]—*Re* WRIGHT (1923), 56 N. S. R. 364.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—C (a).

sw. *School closed by statute.*]—Testatrix having during her lifetime erected a school-house, vested, by her will, the said school-house in her trustees upon certain charitable trusts. By her will she also created a perpetual yearly rentcharge which she vested in the said trustees to be expended in the maintenance of the said school & in paying a scripture reader residing on the said school premises. Testatrix died on Dec. 1, 1888, & the trusts were fully carried out until by the operation of Education Act (Northern Ireland), 1923, the school, as such, was closed permanently in Feb. 1929. On a summons being brought to determine whether the said school premises & the said rentcharge were still impressed with a charitable trust :—*Held :* although the trust was for a specific charitable purpose & disclosed no general charitable intention, there was no resulting trust to the testatrix's estate, & the trust should be administered *cy-près*.—*Re* HARDY, NELSON *v.* A.-G., [1933] N. I. 150.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

1372 v. ——.]—*Re* MCNAB, [1925] 2 D. L. R. 1100 ; 56 O. L. R. 676 ; *affd.*, 55 O. L. R. 538.—**CAN.**

1372 vi. ——.]—*Re* DEREMORE ESTATE (Alta.), [1927] 2 D. L. R. 1093 ; [1927] 2 W. W. R. 113.—**CAN.**

1372 vii. ——.]—*Held :* the ct. could find an indication of a general charitable intention from the fact that the property had been devoted to a particular charitable purpose, in circumstances from which it was apparent that the donors intended to make absolute perpetual gifts of the property, not reserving to themselves any interest in it ; & that the fund should be applied *cy-près*.—ARMSTRONG *v.* A.-G. (1934), 34 S. R. N. S. W. 454; 51 N. S. W. W. N. 151.—**AUS.**

sb. *Purpose unnecessary—Fund to establish free school—Free school established by statute.*]—R. *v.* OUTLER (*circa* 1876), R. E. D. 159.—**CAN.**

executed; (2) "equipment" meant everything required to convert an empty building into a hospital; (3) no limit of time being fixed the discretion of the executors remained exercisable until the hospital was fully rebuilt & fully equipped.—*Re* UNITE, EDWARDS *v.* SMITH (1906), 75 L. J. Ch. 163; 54 W. R. 358; 22 T. L. R. 242; 50 Sol. Jo. 239.

1392. *Add. Annotation:*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1394. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395a. Misdescription of charity.]—*Re* FORSHAW WALLACE *v.* MIDDLESEX HOSPITAL (1934), 51 T. L. R. 97; 78 Sol. Jo. 859, C. A.

1395b. Non-existence of object—Reference to "treasurer."—By her will a testatrix gave her residuary personal estate to the Berwick-upon-Tweed Infirmary, the Newcastle-upon-Tyne Infirmary, the Newcastle-upon-Tyne Nursing Home, & Doctor Barnardo's Homes London, in equal shares; & she directed that the receipt of the treasurer for the time being of the aforesaid institutions should be a sufficient discharge to her executor for payment of the aforesaid legacies.

No institution having been found which correctly answered the description of the "Newcastle-upon-Tyne Nursing Home," & doubts having arisen as to how the gift of this one-quarter share of residue should be disposed of, an originating summons was taken out by the exor. of the will for the purpose of determining (*inter alia*) the question whether certain of defts. (being institutions which seemed most nearly to correspond to the particular institution referred to in the will), namely, the Northumberland County Nursing Assocn., the Newcastle Private Hospital & Nurses' Home (a private nurses' home whereof two of defts., A. M. F. & S. L. P., were proprietors), the Cathedral Nursing Society for the Sick Poor of Newcastle-upon-Tyne (of which another deft., F. C. C., was treasurer) or any other body, society or institution was entitled to the particular one-fourth share in the residuary personal estate of the testatrix in question, or whether such share devolved as upon an intestacy:—*Held:* (1) no society or body existed which satisfied the ct. that it was the society or body meant & intended by the description "The Newcastle-upon-Tyne Nursing Home," but (2) although the objects of a nursing home are not necessarily charitable, the fact that the testatrix was dealing with the residue of her estate in equal shares, the other three named residuary legatees were charities having kindred objects, & there was a direction in the will that the receipt of the treasurer for the time being of each institution was to be a sufficient discharge showed a general charitable intention in the will, there was sufficient context to prevent a lapse of the particular share in question & therefore no intestacy. A scheme for administering the one-quarter share *cy-près* could therefore be properly carried out.—*Re* KNOX, FLEMING *v.* CARMICHAEL, [1937] Ch. 109; [1936] 3 All E. R. 623; 106 Ch. 97; 156 L. T. 189; 80 Sol. Jo. 915.

1396. *Add. Citation:*—1 Ves. 243.
Add. Annotation:—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

1404. *Add. Annotation:*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

1412. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

PART IV. SECT. 2, SUB-SECT. 2.—B.

si. ——— ———.]—A will directed that the residuary estate be invested by the exor. & trustee & the income thereof be paid to the Winnipeg Foundation to be used by it in the support & maintenance & for the purpose of the following charities "carrying on work for the sick & poor in the City of Winnipeg & the vicinity thereof & being the . . & the Home for Fallen Girls." No question arose with respect to any of the institutions named except the "Home for Fallen Girls." There was neither when the will was made nor at the testator's death any institution in Winnipeg or its vicinity of that name. But four institutions in Winnipeg did charitable work in caring for girls who came within the ordinary meaning of the term "fallen":—*Held:* testatrix appeared to have been thinking of the special & particular charitable work which in fact was being carried on by each of the various institutions named in the will, & that view negatived a suggestion that she intended to assist the church of which, on the evidence, she was an active member in meeting its contributions or liabilities to the joint work carried on by it (the Church of England) & the United Church of Canada in maintaining an institution known at the time of the making of the will as the Church Home for Girls but which had later changed its name. The *cy-près* doctrine should be applied & the gift in question should be held intended for the benefit of the charitable work for fallen girls carried on by four institutions.—*Re* GILROY ESTATE, [1936] 3 W. W. R. 620; [1937] 1 D. L. R. 142.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

sd. *Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.*]—*Re* FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—**CAN.**

se. *Surplus held for similar purposes.*]—Where a charitable object comes to an end contributions raised do not belong to the donors but are held for similar charitable purposes.—HALIFAX SCHOOL FOR BLIND *v.* ATTORNEY-GENERAL, [1935] 2 D. L. R. 347.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (d).

sk. *Lack of applicants.*]—Testator bequeathed a sum of money to trustees for the purpose of founding a bursary to be granted by them "to any deserving young man, being a native of D., attending college in the prospect of becoming a minister of the Established Church of Scotland, or as a missionary." The trustees received payment of the bequest in 1888. In 1907 they presented a petition in which they stated that, although full publicity had been given to the bursary by advertisement & by intimation in the local schools, no application for it had ever been made, & craved the ct. to empower them, failing application from natives of Dunbar, to grant the bursary to otherwise qualified appcts. born in the Presbytery of Dunbar, or failing such appcts. to otherwise qualified appcts. without conditions as to nativity. The ct. granted the petition.—*Re* BORLAND, [1908] S. C. 852.—**SCOT.**

sf. ———.]—Testator, having erected six houses for the residence of six widows who had been the wives of persons who had resided for five years on the F. estates, demised to trustees a yearly rentcharge of £70 a year, charged on the townland of D., & directed them to apply the sum of £10 a year in repairing & improving the six houses, & to pay the remaining sum of £60 a year in six equal shares of £10 each to such six widows during their widowhood. He further directed that the person or persons seized of his real estate under the limitations in his will should have the sole & exclusive control of this charity, & should not be subject to the control of the Comrs. of Charitable Donations & Bequests or any other persons, but should have full power & authority when the houses should become vacant to select such widows qualified as already stated to inhabit the houses & receive the annual pension provided. For many years past there had been a lack of qualified appcts., & since 1913 only two of them had been occupied:—*Held:* the trust was not charitable.—A.-G. *v.* FORDE, [1932] N. I. 1.—**IR.**

sg. *Dispersal of congregation.*]—A church & a manse were held by trustees "for the congregation of United

1418a. Lack of applicants.]—PHILIPPS *v.* A.-G., [1932] W. N. 100; 173 L. T. Jo. 320.

1418b. Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town—Church in South Africa not part of Church of England.]—*Re* COLONIAL BISHOPRICS FUND, 1841, No. 981d, *ante*.

1423. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1424. *Add. Annotation :*—**Refd.** *Re* Chapman, Hales *v.* A.-G., [1922] 2 Ch. 479.

1424a. —— —— Alternative non-charitable gift.]—Testatrix by her will appointed an exor., & after giving various pecuniary legacies, including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited :—*Held :* (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re* CHAPMAN, HALES *v.* A.-G., [1922] 2 Ch. 479; 91 L. J. Ch. 527; 127 L. T. 616; 66 Sol. Jo. 522, C. A.

See, also, No. 841a,

1430. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1431. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Cammell, Public Trustee *v.* A.-G. (1925), 69 Sol. Jo. 345.

1434. *Add. Annotation :*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1444a. Fund for erection of stained glass Surplus applied to additional stained glass windows.]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

1444b. Gift for restoration or maintenance of church.]—Testatrix bequeathed her residue "to be used towards the restoration or maintenance of" a certain church :—*Held :* she intended that the residue should be used either for the restoration or maintenance of the church, or for both purposes, & that, there being a general charitable intention, any surplus must be applied *cy-près*.—*Re* ROBERTSON, COLIN *v.* CHAMBERLIN, [1930] 2 Ch. 71; 99 L. J. Ch. 284; 143 L. T. 36; 46 T. L. R. 276.

1449a. —— —— Alternative non-charitable gift.]—*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *ante*.

1453. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1457a. —— Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University

Original Seceders presently worshipping in A. Square under the pastoral charge of the Rev. A. B." Adherence to the principles contained in a document known as the "Testimony" was declared in the trust deed to be a condition of the right of any individual to remain a member of the congregation. The congregation had seceded on a question of doctrine from the Synod of the United Original Secession Church. In 1878 the congregation, which had become reduced to fourteen individuals, ceased to worship together, the trustees let the property & accumulated the rents. In 1912 the last of the trustees died & his testamentary trustees brought an action of multiplepoinding for the disposal of the property & the accumulations of rent :—*Held :* failing the establishment of a right to the property by any congregation of the United Original Seceders, the trust, being a trust for public purposes, fell to be administered *cy-près*.—ANDERSON'S TRUSTEES *v.* SCOTT, [1914] S. C. 942.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—D.

c i. ——.]—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume new trustees from time to time, but vacancies among the trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the particular circumstances of the case sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOCN., [1925] S. C. 676.—**SCOT.**

sk. *Persons eligible to act as administrators no longer available.*]—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer. — ROSYTH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—E.

g i. *Surplus applied to such other purposes as should be deemed proper.*]—Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the objects so prescribed, the ct., at the suit of the Advocate-General of Bengal, at the relation of the Treasurer for Charitable Endowments, & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the surplus to such other purposes as the ct. deemed proper upon the *cy-près* principle.—ADVOCATE-GENERAL OF BENGAL *v.* WEBB-JOHNSON (1924), I. L. R. 52 Calc. 508.—**IND.**

sn. *Erection of church tower—Surplus applied to building Sunday school.*]—ROWE & BROWN *v.* PUBLIC TRUSTEE, [1928] N. Z. L. R. 51.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 3.

sp. *Administration of charity becoming increasingly arduous & discouraging.*]—It is not a legitimate ground for the application of the doctrine of *cy-près* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re* GLASGOW DOMESTIC TRAINING SCHOOL, [1923] S. C. 892.—**SCOT.**

sr. *Inexpedient to effect purpose.*]—Where the Y.W.C.A. applied for leave to divert certain moneys procured by subscription "for the purpose of building an extension to supply increased demand for accommodation in order to be of greater service to the young girl" :—*Held :* there was no gift except to do that which, under the circumstances, it is inexpedient & unnecessary to effect now, & it was not within the principle of the cases in which the ct. executes a general purpose *cy-près*, & the application should be refused.—*Re* YOUNG WOMEN'S CHRISTIAN ASSOCN. EXTENSION CAMPAIGN FUND, [1934] 3 W. W. R. 49.—**CAN.**

accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14*s.* 10*d.* Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied :—*Held :* in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re* STANFORD, CAMBRIDGE UNIVERSITY *v.* A.-G., [1924] 1 Ch. 73 ; 93 L. J. Ch. 109 ; 130 L. T. 309 ; 40 T. L. R. 3 ; 68 Sol. Jo. 59.

Annotations :—**Distd.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Strickland's Will Trusts National Guarantee & Suretyship Assocn., Ltd. *v.* Maidment, [1936] 3 All E. R. 1027.

Part V.—Trust Property after Trust created.

1480. *Add. Annotation :—As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1508. *Add. Annotation :*—**N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.

1511. *Add. Annotations :—As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251. *Generally*, **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

1532a. —— **Settled Land Act, 1925 (c. 18), ss. 29, 94.**]—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money :—*Held :* (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all ; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act ; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579 ; 96 L. J. Ch. 272 ; 43 T. L. R. 334 ; *sub nom.* BOOTH *v.* SOUTHEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.

1545. *Add. Annotation :—As to* (2) **Consd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotations :—As to* (1) **Consd.** I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154. *As to* (2) **Refd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394 ; *Re* Booth & Southend-on-Sea Estates Co.'s Contract. [1927] 1 Ch. 579.

1595. *Add. Annotation :*—**Refd.** *Re* Smith. Public Trustee *v.* Smith (1931), 100 L. J. Ch. 409.

1609a. —— **Not decreed.**]—SOMERVILLE *v.* CHAPMAN (1779), 1 Bro. C. C. 61 ; 28 E. R. 985.

Annotations :—**Expld.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92. **Refd.** Browne *v.* Tighe (1834), 2 Cl. & Fin. 396.

1670. *Add. Annotation :—Generally*, **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

Part VII.—Trustees.

1847. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

1870a. Powers under Settled Land Act, 1925 (c. 18), s. 29—Powers of sale under sects. 29, 94.]—

PART V. SECT. 1, SUB-SECT. 1.

sa. *Interest payable to beneficiary—Whether entitled to corpus.*]—A testator by his will appointed trustees, providing for the appointment of new trustees in place of those dying, etc., & gave them his residuary estate in trust to convert into money & stand possessed of all moneys in trust for certain uses & purposes, including, as to $20,000, to invest it & pay the net annual interest & income therefrom to his sister for life if remaining unmarried, & from & after her death or marriage to keep invested said sum & " pay & apply the net annual interest & income thereof," one-half to applt., a charitable institution (incorporated by statute), " to be used for the general purposes of that institution," &, as to another $20,000, to invest it & pay & apply the net annual interest & income thereof for the benefit of a certain church, & should (*inter alia*) said church cease to exist or change its adherence, " then & thereafter " to " annually pay over the whole of the net annual interest & income " of said sum to applt. " to be used for the general purposes of that institution." In events which occurred since testator's death, applt. became entitled to said gifts in its favour. It claimed the right, as sole beneficiary of the income, to receive from the trustees the corpus (one-half & the whole respectively) of said sums :—*Held :* applt. was not entitled to receive the corpus.—HALIFAX SCHOOL FOR THE BLIND *v.* CHIPMAN, [1937] S. C. R. 196.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

1502 iii. *Whether charities within Real Property Limitation Act, 1833 (—)—Exp*

DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—**IR.**

PART V. SECT. 3, SUB-SECT. 6.

1660 i. *When sanctioned by court.*]—When land is held upon a charitable trust, which contemplates its permanent retention, & there is no express power to mtge. the land, the ct. will not give its sanction to a mtge. unless satisfied that a mtge. will be not merely beneficial, but is necessary for the carrying into effect of the trust. Business expediency is insufficient.—*Re* HUGHES, THORNTON *v.* CHURCH OF ENGLAND TRUSTS CORPN. (MELBOURNE DIOCESE) (1935), 41 Argus L. R. 19.—**AUS.**

sc. *Departure from trust—Whether sanctioned.*]—The ct. will not authorise a departure from the terms of a charitable trust by way of mtge. of the trust premises, unless the performance of the trust as originally created has become impossible otherwise.—*Re* HUGHES, THORNTON *v.* MELBOURNE CHURCH OF ENGLAND TRUSTS CORPN., [1934] V. L. R. 345.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 2.

si. *Power of appointing su[illegible] apprehension of [illegible] power of revocation.*]—power is given to a trustee to appoint his successor " at his death " for a public charitable trust, there should, if the appointment is made *inter vivos* to take effect at once, be proof of cir-

Re BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, No. 1532a, *ante*.

1870b. —— **To what trusts applicable—Public trusts—Trust of society within Literary & Scientific Institutions Act, 1854 (c. 112).**]—Trusts of land belonging to an unincorporated society, confined to members paying an annual subscription, & the object of which is the encouragement of literature, science & art, & which comes within Literary & Scientific Institutions Act, 1854 (c. 112), are "public trusts" within Settled Land Act, 1925 (c. 18), s. 29, & the trustees, appointed by deed since 1925, have the powers conferred on them by that sect.—*Re* CLEVELAND LITERARY & PHILOSOPHICAL SOCIETY'S LAND, BOLCHOW *v.* LAUGHTON, [1931] 2 Ch. 247; 100 L. J. Ch. 363; 145 L. T. 486.

1938. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IX.—Jurisdiction over Charities.

1980a. —— —— —— **Gift "unto my country England."**]—*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, No. 217c, *ante*.

1981. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1998. *Add. Annotation :*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

2001. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

2015. *Add. Annotation :*—**Refd.** R. *v.* All Souls College, Oxford (1681), Skin. 13.

2019a. —— —— ——.]—If the visitor of a college refuse to exercise his visitatorial power by hearing an appeal, the Ct. of Queen's Bench will grant a mandamus to set him in motion, but cannot afterwards review his decision.

A fellow of King's College, Cambridge, had been expelled the college & deprived of his fellowship, by the provost & fellows, upon a charge of fraud & perjury, the proceedings being conducted partly in the absence of the accused, & the charge being alone supported by a comparison of his letters with an answer which he had filed in a suit in Chancery. Upon appeal to the visitor, the decision of the provost & fellows was affirmed: —*Held :* the ct. had no power to grant a mandamus to restore to the fellowship.—*Ex p.* BULLER (1855), 25 L. T. O. S. 102; 1 Jur. N. S. 709; 3 W. R. 447; 3 C. L. R. 1158.

2026. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons (1932), 102 L. J. K. B. 113.

2041. After this case add :—

——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2111a. *S. P. Ex p.* BULLAR (1857), 28 L. T. O. S. 269; 21 J. P. Jo. 84.

2137. For the existing paragraph substitute the following paragraph :—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs a donation or bequest made to a "mixed charity"—*i.e.* a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity :—*Held :* the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re* CHILD VILLIERS' APPLICATION, VILLIERS *v.* A.-G., [1922] 1 Ch. 394; 91 L. J. Ch. 473; 126 L. T. 555; 38 T. L. R. 291; 66 Sol. Jo. 266, C. A.

Annotation :—**Apld.** *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398.

2146a. —— **Land purchased out of donation—Donation before first annual subscription.**]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante*.

2154. *Add. Annotation :*—**Consd.** *Re* Diptford Parish Lands, [1934] Ch. 151.

2154a. Time for appeal.]—(1) On an appeal, by leave of the A.-G., from an order of the Charity Comrs. establishing a scheme for the

cumstances showing that the appointor had reasonable apprehension of his death, & it is always subject to the condition that, if the appointor recovers, the transfer is not to operate; & even if the power of revocation is not expressly reserved in the deed, such a deed should always be deemed to be subject to a power of revocation by implication.—CHOCKALINGA MUDALIAR *v.* DURAISWAMI MUDALIAR (1927), I. L. R. 51 Mad. 720.—**IND.**

PART IX. SECT. 3, SUB-SECT. 1.

sd. *Effect of Church of England Trust Property Act*, 1917, *s.* 32.]—Although by reason of the wide powers conferred upon Synod by sect. 32 of Church of England Trust Property Act, 1917, in respect to the variation of trusts, it is improbable that the Ct. of Equity will continue to exercise its *cy-près* jurisdiction in respect to charitable trusts coming within the operation of that Act, nevertheless the ct. has jurisdiction to entertain informations the object of which is to complain of breaches of such trusts & to administer the same, & will not decline to exercise such jurisdiction except for good cause shown.—A.-G. *v.* CHURCH OF ENGLAND PROPERTY TRUST DIOCESE OF SYDNEY (1933), 34 S. R. N. S. W. 36; 50 N. S. W. W. N. 241.—**AUS.**

PART IX. SECT. 3, SUB-SECT. 2.

sv. *Enforcement of provision for schism.*]—When property is given in trust for A., B. & C., etc., forming an association for fraternal & benevolent purposes, if the instrument provides for the case of a schism then the ct. will act upon it.—LINDSAY *v.* EMPY (Alta.) (1915), 32 W. L. R. 246; 9 W. W. R. 32; 23 D. L. R. 877.—**CAN.**

administration of charities, the petition to the ct. must under Charitable Trusts Act, 1860 (c. 136), s. 8, be presented within three calendar months next "after the definitive publication of the order," which is effected under sect. 7 of the Act by affixing a copy of the order when made in some convenient place within the parish or in the district to which the charity is applicable such as on the church door, & an appeal presented more than three months after the date when the order is first so affixed is out of time.

(2) A petition for appeal, to be presented under Charitable Trusts Act, 1869 (c. 110), s. 11, under the hand of applt., may be signed by the applt.'s solicitor or other duly authorised agent.—*Re* DIPTFORD PARISH LANDS, [1934] Ch. 151 ; 103 L. J. Ch. 145.

2154b. Petition for appeal—Signature.]—*Re* DIPTFORD PARISH LANDS, No. 2154a, *ante*.

Part X.—Practice.

2177a. —— Action to restrain exclusion from management of non-provided school.]—Where an action was begun which claimed an injunction restraining defts. from excluding pltf. from the meetings of the managers of a non-provided school, who had been appointed in pursuance of an order made by the Board of Education under Education Act, 1902 (c. 42), s. 11 (8), & damages, & where the management of such non-provided school had been originally established by a trust deed, the action was not allowed to proceed until, in pursuance of Charitable Trusts Act, 1853 (c. 137), s. 17, & Orders in Council made under Board of Education Act, 1899 (c. 33), s. 2 (2), a certificate from the Board as exercising with regard to educational charities the jurisdiction formerly exercised by the Charity Comrs. had been obtained.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232 ; 146 L. T. 461 ; 30 L. G. R. 187.

2224. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2227a. Bequests to Irish parishes.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2246a. Bequests to Irish parishes—Attorney-General of the Irish Free State not proper party.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17 ; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2252. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2271. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

2283. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2289a. —— Trust to establish Home of Rest—Reference to decide whether practicable.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

2330a. ——.]—An information was filed in the year 1821 against the trustee of a grammar school founded in the reign of Edward VI., praying that a new scheme might be approved of for the management of the school. Pending these proceedings, the trustees, in the year 1838, themselves made new regulations for the school, to which the usher, who was appointed previously to the filing of the information, was ordered to conform. The usher refused to be bound by such new regulations, & was consequently dismissed, & now presented a petition under Charities Procedure Act, 1812 (c. 101), alleging that the trustees of the school had no power to alter the rules, & praying that he might be reinstated :—*Held :* the ct. had no power, except under an information, to decide whether the trustees had power to alter the regulations of the school. Petition dismissed, with costs.—A.-G. *v.* EAST RETFORD GRAMMAR SCHOOL (1848), 17 L. J. Ch. 450.

2330b. Matters relating to constitution of charity.]—A.-G. *v.* BRISTOL CORPN., *Ex p.* Goodenough, No. 2346a, *post*.

2346a. —— —— After decree.]—After a decree had been made, in a suit by information & bill, for the general administration of a charity, one of the objects of which was a free grammar school, the master of the school, who was not a party to the suit, presented a petition in it, with the sanction of the A.-G., stating that, in 1832, which was five years before the decree was made, defts., the trustees of the charity, unlawfully removed him from his office, & praying to be paid the arrears of his salary :—*Held :* (1) the petition could not be entertained, because it was presented by a person who was not a party to the suit, & involved an important question between the petitioner & the trustees, which was not raised at the hearing of the suit ; (2) the ct. would not have had jurisdiction to determine the question, if the petition had been presented under Charities Procedure Act, 1812 (c. 101), but that a new suit must be instituted.

(3) Where the rule laid down for the management of a charity is clear, & the only question is whether the parties have acted according to that rule or not, that is a question which may be determined on petition. But, where the question has reference to the original constitution of the charity, as, for instance, whether certain persons called governors or trustees, have a certain authority, that is a question touching the original constitution of the charity, which can be decided only on information (SHADWELL, V.-C.).—A.-G. *v.* BRISTOL CORPN., *Ex p.* GOODENOUGH (1845), 14 Sim. 648 ; 14 L. J. Ch. 457 ; 5 L. T. O. S. 533 ; 60 E. R. 510.

2353a. —— Not petition for payment out of funds in court of money for completion of purchase of land.]—*Ex p.* ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS) (1928), 72 Sol. Jo. 225.

2414a. Order for payment of legacy to trustee—Undertaking to render accounts to Attorney-General.]—*Re* REDDISH, PENTON *v.* WATERS, [1934] W. N. 198; 178 L. T. Jo. 329.

2423a. —— —— ——.]—PHILIPPS *v.* A.-G., [1932] W. N. 100 ; 173 L. T. Jo. 320.

2446. After this case add :—
——.]—*See, now,* S. C. J. (Consolidation) Act 1925 (c. 49), s. 19 (5).

2537. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2562a. Application to ascertain whether cy-pres doctrine applicable.]—*Re* LAWTON, GARTSIDE *v.* A.-G., No. 1252c, *ante.*

2576. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

CHATTEL MORTGAGES.

See BILLS OF SALE.

CHEAT.

See CRIMINAL LAW.

CHECKWEIGHER.

See MINES.

CHEESE.

See FOOD AND DRUGS.

CHIMNEY.

See EASEMENTS ; NUISANCE.

CHIMNEY SWEEP.

See MASTER AND SERVANT ; TRADE.

CHOSES IN ACTION.

Part I.—In General.

7. *Add. Annotation :*—**Refd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] W. N. 158.

12a. **Rentcharge—Arrears of.**]—SALWAY *v.* SALWAY (1770), 2 Dick. 434; Amb. 692; 21 E. R. 338.

13. *Add. Annotations :*—**Distd.** Baker *v.* Archer-Shee, [1927] A. C. 844; A.-G. *v.* Belilios, [1928] 1 K. B. 798. **Refd.** New York Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Brassard *v.* Smith, [1925] A. C. 371; Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* I. R. Comrs., Duff Dunbar *v.* I. R. Comrs. (1928), 14 Tax Cas. 58.

19. After this case add "**Patent.**]—*See* PATENTS."

20. *Add. Annotations :* — **Dbtd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

21. *Add. Citations :*—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

21a. —— ——.]—In Feb. 1912, three parcels of goods were shipped in a British steamship from Baltimore for Hamburg. The ship sailed & was never heard of again. The goods were insured with M., who were German nationals carrying on business in New York. The assured claimed against M., & some time before Nov. 1918, were paid by M. for a total loss; whereupon the bills of lading were handed over to M. by the assured. Actions on the contract of carriage against the ship-owners were commenced in England for the benefit of M. & other insurers by the owners of the goods & damages were recovered, of which the sum of £4,538, being that portion which corresponded with M.'s share in the insurance, was claimed by deft. to be subject in his hands to the charge created by the Treaty of Peace Order, 1919. On Nov. 18, 1918, after the outbreak of war between the United States & Germany & after proceedings had been commenced in England, pltf., in pursuance of the American Trading with the Enemy Act, 1917, & executive Orders made thereunder, made a demand upon M., the effect of which was to vest in him as Alien Property Custodian all the property, rights, claims & assets of M. within the United States. In an action by pltf. claiming payment by deft. of the said sum of £4,538, so recovered by M. & in the hands of deft. as Administrator of German Property :—*Held :* (1) on the crucial date, Nov. 18, 1918, M. had by subrogation anequitable interest as against the owners of the goods in the right of action which those owners had for the loss of their goods to the extent that was necessary to recoup to M. the amount paid on the policies of insurance; (2) that right of action came within the general rule that choses in action must be taken to be situate in the country where they are properly enforceable; (3) notwithstanding the fact that the bills of lading & other documents relating to the claim against the shipowners were at the material time in the hands of pltf. in the United States as Alien Property Custodian, the *situs* of the right of action was in England, & therefore the sum recovered for M. therein passed to deft. & not to pltf.—SUTHERLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1934] 1 K. B. 423; 103 L. J. K. B. 244; 150 L. T. 247 50 T. L. R. 107, C. A.

23. *Add. Annotations :*—**Consd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25; English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** New York Life Ince. *v.* Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

24. *Add. Annotations :* — **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

25. *Add. Annotations :*—**Apld.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Richardson *v.* Richardson, [1927] P. 228. **Consd.** Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

26. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

26a. ——.]—An agreement for the sale, among other things, of simple contract debts owed by debtors resident out of the United Kingdom is exempt from stamp duty in respect of such debts on the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170.

Annotation :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

27. *Add. Annotations :*—*As to* (1) **Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174. *As to* (2) **Refd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

PART I. SECT. 1, SUB-SECT. 2.

d. Add "*revsd.* 17 O. R. 574."

s. Add "*revsd. in part* 4 A. R. 267."

PART I. SECT. 2.

27 i. *Residence of debtor.*]—Resp. & one S. were both resident in & subjects of the Indore State. Resp. carried on business as a commission agent at Indore, also at Bombay, his head office being at Indore. S. had dealings with resp. through both offices, a separate account being kept at each. On Apr. 17, 1924, a sum of nearly two lakhs was owing by resp. to S. on the Bombay account; the Indore account was about even. On that date a notice was served on resp. by order of the Indore Govt. requiring him to pay to it the sum owing to S. on the Bombay account. The debt was accordingly transferred to the Indore account without the consent of S., & on May 15, 1924, was credited to the ruler of Indore. On May 16, 1924, applts.

27a. Assignment executed abroad—Of debt payable in England.]—C., being domiciled in Guatemala, deposited a sum of money with a bank in London. Subsequently he, being then in Guatemala, assigned in writing by way of gift the money so lying to his credit at the bank to N., who was also domiciled in Guatemala, & written notice of that assignment was given to the bank. It was not disputed that if the effect of that assignment had had to be decided by English law it would have been held good. By the law of Guatemala an assignment of money made without consideration is void, unless made by a document executed before a notary on stamped paper, & signed by both parties; & by the same law an infant cannot accept a voluntary assignment himself, it must be made to & accepted by a legal representative appointed by a judge on the infant's behalf. The assignment was on unstamped paper, was not executed before a notary, & was not signed by N. At the time of the assignment N. was an infant & no legal representative had been appointed. The money lying in the bank having been claimed both by the republic of Guatemala & by N. the bankers interpleaded. In an action to determine the issue between the two claimants:—*Held:* the validity of the assignment to N. must be determined by the law of Guatemala, & was therefore bad:

(*Per* BANKES, L.J.) upon the ground that, as the republic & N. were both domiciled & resident in Guatemala at the date of their respective assignments, & as the English depositary claimed no interest in the fund, the question which, if either, of the two claimants was entitled to it must be determined by the law of their domicil & residence, & not by that of this country;

(*Per* SCRUTTON & LAWRENCE, L.JJ.) upon the ground that the question of a person's capacity to take an assignment of personal property is to be governed either by the law of his domicil, or by that of the country where the assignment takes place, & that, as in this case the country of N.'s domicil & that of the assignment to him were the same, it was immaterial to inquire which, had they been different, ought to prevail; but from either point of view N. was incapable, by reason of his infancy, of receiving the donation;

(*Per* SCRUTTON, L.J.) on the further ground that by reason of non-compliance with the formalities relating to stamp, notary, etc., the assignment was, both by the law of the place where it was made, & by that of the domicil of the parties to it, not merely inadmissible in evidence but void;

(*Per* LAWRENCE, L.J.). As the contract of deposit was made in England, & the money was repayable in England where the bank was domiciled, & was recoverable in England, it was an English debt having a local situation in this country, & accordingly the validity of the assignment, as distinguished from that of a contract to assign, must be governed by the *lex loci rei sitæ*, & not by the law of the country where the assignor & assignee were domiciled, or where the assignment took place. Consequently if non-compliance with the required formalities had been the only objection he would have held the assignment good.—REPUBLICA DE GUATEMALA *v.* NUNEZ, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

Annotations:—**Folld.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Reld.** Richardson *v.* Richardson, [1927] P. 228.

27b. —— Exercise of power of appointment over sum in England.]—An assignment, executed in a foreign jurisdiction by a person there domiciled, of a chose in action locally situate (so far as a chose in action can be) in England, is void if the assignment is void on grounds of substance according to the local law.

A document executed abroad in exercise of powers of appointment conferred by settlements executed in accordance with English law, & expressed to be intended to operate both as an assignment & as a will, may take effect as a conveyance *inter vivos* of the property of the person executing it.

Upon the marriage of testatrix, who was born in Italy, to an Italian, two settlements of property belonging to her, hereinafter respectively called the "A" settlement & the "B" settlement, were executed. The "A" settlement comprised proceeds of sale of English freeholds conveyed to the settlement trustees on trust for sale, & investments & other moneys, the whole fund being settled on trust to pay to the husband during the joint lives of himself & testatrix, £500 a year, & subject thereto to pay the annual income to testatrix for life without power of anticipation, &, after her death, to raise £50,000, as she should by deed or will appoint & pay the sum so raised to such persons as she should appoint. The "B" settlement comprised certain freeholds & certain moneys which were settled on trust to pay the income to testatrix for life, & after her death as she should appoint. Both were English in language & form, & the trustees were resident in the United Kingdom. By a deed of Dec. 10, 1906, to which her husband & the trustees of the "A" settlement were parties, testatrix appointed that the residue of the £50,000, which she then had power to appoint under the "A" settlement should be charged upon & raised out of the property subject to that settlement, &, after her death, should be held in trust for her absolutely as her separate estate. By a deed of May 23, 1912, between herself, her husband, & the "B" settlement trustees, testatrix appointed that, after her death, &, until then, subject to her life interest, the property comprised in the "B" settlement should be held by the trustees upon trust to pay sums which she or her husband should become liable to pay to them under certain covenants of indemnity in the deed, &, subject thereto in

served on resp. an order of the High Ct., made in a suit which they had brought against S., attaching before judgment the debt in question. Applts. ha[d] obtained later a decree in their [suit] against S. sued resp. claiming to enforce the attachment:—*Held:* as the contract between resp. & S. did not provide expressly or impliedly that payment [was] to be solely, or primarily, at Bombay, or make the debt enforceable only there, the *situs* of the debt was Indore; & it had been effectively seized by the Indore Govt. before attachment by applts. It was not for the ct. to inquire whether the Indore Govt. in seizing property situate in its own territory had acted within the law of that State.—CHATURBHUJ PIRAMAL *v.* CHUNILAL GOMKARMAL (1933), 60 L. R. Ind. App. 211.—IND

trust for testatrix, her heirs, administrators & assigns. Testatrix & her husband lived in Italy, & she was domiciled there at the date of her death. On July 28, 1927, being then domiciled in Italy, she executed an "appointment & assignment," expressed to be supplemental to the "A" settlement, the "B" settlement, & the deed of Dec. 10, 1906, & expressed also to be intended to operate as an assignment *inter vivos* & as a will. By it, she appointed & assigned the property comprised in those documents, subject to certain subsisting trusts, to the trustees of the appointment & assignment whom she appointed exors. upon trust for the payment of certain debts & legacies, & she gave the final residue to one of the trustees absolutely. After the death of testatrix leaving no other testamentary disposition, the deed of appointment & assignment was admitted to probate in the United Kingdom:—*Held:* (1) the deed of appointment & assignment so far as it purported to assign movable property was subject to the law of the country in which it had been executed & in which the testatrix was domiciled, *i.e.* to Italian law, & that, being null & void in Italian law, it did not effectually assign the remainder of the £50,000, appointed by the deed of Dec. 10, 1906; (2) the appointees of the sum of £50,000, were not persons entitled to immovable property. Their right, which was to require the trustees to pay the amount, was a chose in action in the nature of a movable; (3) the deed of appointment & assignment, as it was expressed to be intended to operate as an assignment as well as a will, could take effect as a conveyance *inter vivos* of the immovable property of testatrix situate in England.—*Re* ANZIANI, HERBERT *v.* CHRISTOPHERSON, [1930] 1 Ch. 407; 99 L. J. Ch. 215; 142 L. T. 570.

After this case for "**Assignments executed abroad.**]—*See* Nos. 459–462, 504, 505, *post*," read "——.]—*See, also*, Nos. 459–462, 504, 505.

Part II.—Assignment in General.

29. *Add. Annotation:*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

35. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

40. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part III.—What may be Assigned.

47. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

53. *Add. Annotation:*—**Refd.** *Re* Bower-Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

63. *Add. Annotations:*—*As to* (1) **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67. *Add. Annotations:*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67a. **Assignment of part of debt—Not operative to pass legal right to part assigned.**]—A firm of C., V. & Co., being owners or pledgees of certain cotton goods, which had been transferred or pledged to them by one member of the firm, insured them for £8,000 upon an open policy of marine insurance. The goods were lost at sea. The firm incurred a liability of £7,000 to one W., & in settlement of his claim it was agreed that they should assign the policy to him & that he should pay them a certain sum unconditionally & a further sum of £1,000 if, but only if, the should receive that amount or more from the insurers. W. then in his own name brought an action against the insurers to recover the value of the insured goods:—*Held:* an assignment of part of a debt or legal chose in action is merely an equitable assignment & is not effectual to transfer the legal right to the debt or "thing in action" under Law of Property Act, 1925 (c. 20), s. 136, & therefore pltf. suing in his own name could not recover; by SLESSER, L.J., also on the additional ground that no express notice had been given to the insurers after execution of the assignment; SCRUTTON, L.J., *contra* on this point, inclining to the view that, if there was an assignment valid in other respects, the pleadings gave sufficient notice of it *pendente lite* so as to bring the case within R. S. C., Ord. 17, r. 3.—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD., [1933] 1 K. B. 81, 102 L. J. K. B. 241:

PART II. SECT. 1.

sg. *Judicature Act, R.S.A.*, 1922—*Equitable rights not affected.*]—Sect. 37 (*m*) of Judicature Act, R.S.A., 1922, deals with only the legal right between the assignor & assignee of a chose in action & there is nothing therein to suggest that, while the assignee has all the legal rights & remedies of the assignor, some one may not have equitable rights in that chose in action which has become legally vested in the assignee.—DAWSON *v.* LEACH & HAZZA, [1935] 3 W. W. R. 547; [1936] 1 D. L. R. 31.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—The judgment of a foreign ct. creates a debt, & is *primâ facie* assignable.—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.

64 iii. —— ——.]—Under Choses in Action Act, R.S.S., 1930, there can be an assignment of part of a debt.—MACDONALD *v.* ROYAL BANK OF CANADA, [1934] 1 W. W. R. 732.—**CAN.**

148 L. T. 313; 37 Com. Cas. 304; 18 Asp. M. L. C. 334, C. A.

71. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

73. *Add. Annotation :—As to* (2) **Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

77a. —— —— **Retention money.**]—*Held :* retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

78. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Wait, [1927] 1 Ch. 606.

80. *Add. Annotation :—As to* (2) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

81. *Add. Annotation :*—**Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

82. *Add. Annotation :*—**Refd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

84. *Add. Annotation :*—**Refd.** Norwich Union Fire Insce. Soc. *v.* Colonial Mutual Fire Insce., [1922] 2 K. B. 461.

86. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

91. *Add. Annotation :*—**Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

93. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

94. *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

106a. —— —— **Grantee bound to attend at specified place to receive payments & give receipts.**]—*Held :* assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—ARDEN *v.* GOODACRE (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.

110a. —— ——.]—Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married." In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin :—*Held :* the interest which J. had at the date of the settlement in the settled share of W. was either a mere *spes successionis*, or must be treated as such, & was not assignable at law.—*Re* MUDGE, [1914] 1 Ch. 115; 83

PART III. SECT. 2, SUB-SECT. 3.

77 ii. —— ——.]—M. who had contracted with defts. to do certain work for them, gave an order upon defts. in favour of H. & M., who assigned it to pltfs. to pay to H. & M. "any moneys due or to become due on my contract . . . in consideration of moneys advanced by them to me for the purpose of financing this contract." Defts. acknowledged the receipt of the order. Afterwards certain payments were made by defts. to sub-contractors on M.'s direction, certain costs in the action were paid to solrs. & execution creditors of M. attached moneys in defts.' hands payable upon the contract, whereupon an interpleader issue was directed & tried :—*Held :* the order under which pltfs. claimed was not a legal assignment of an existing chose in action nor an assignment of the contract : it was nothing more than an equitable assignment of a fund not yet in existence.—INTERIOR TRUST CO. *v.* ESSEX BORDER UTILITIES COMMISSION (1928), 62 O. L. R. 551.—**CAN.**

78 i. *Money accruing to assignor by will.*]—An amount which exors. are directed by the will to pay for the maintenance & education of an infant may be assigned by the person to whom they have become liable therefor.—*Re* GRANT ESTATE, MULLIN & MULLIN *v.* ANNABLE, [1928] 1 W. W. R. 894; 22 Sask. L. R. 483.—**CAN.**

PART III. SECT. 3.

To construct tramway across

ALD *v.* PEDDLE, [1925] N. Z. L. R. 987.

sb. *To execute lease.*]—A right arising under an agreement with an owner of immovable property to call upon him to execute a lease is a chose in action, and as such movable property.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

PART III. SECT. 4.

96 i. *Claim to compensation—Damage to lands—Assignable.*]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown : —*Held :* it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. *v.* HYE (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—**CAN.**

96 ii. ——.]—By a clause in a lease it was provided that in case the demised premises should be resumed by any authority, then out of the compensation moneys payable to the lessor & lessee, the lessor shall be entitled to receive £8,440, & in addition £300 *per annum* or a proportionate part thereof for the unexpired term of the lease & the lessee shall be entitled to the balance :—*Held :* the clause in the lease did not operate as an equitable assignment.—TOOTH *v.* BRISBANE CITY COUNCIL (1929), 41 C. L. R. 212.—**AUS.**

c i. —— —— ——.]—A right of action in tort is not assignable. The lessee under a crop payment lease, having been served while threshing with a garnishee summons issued in a suit against the lessor, sold all the crop in his own name & paid the lessor's share of the proceeds into ct., meanwhile notifying the lessor that he would do so. The lessor after receiving said notice & a copy of the garnishee summons assigned to pltf. all his claims & demands against the lessee for "debts or rentals now due or to become due" under the lease, & all his interest in the crops grown thereunder. The lease required the lessee to deliver the lessor's share on the day of threshing, &, if required, at a certain elevator in the name of the lessor. The pltf., *i.e.* the assignee of the lessor, sued the lessee for damages on the ground of conversion.—*Held :* the action was not maintainable.—KOZAK *v.* MISIURA, [1928] 1 D. L. R. 591; [1928] 1 W. W. R. 1; 22 Sask. L. R. 208.—**CAN.**

company—Having paid loss.]—Pltfs., insurance cos., had insured premises which were destroyed by a fire which, as they alleged, arose from the negligence of defts. Having paid the owners of the premises the amount of the loss, pltfs. claimed to be subrogated to the right of the owners to recover against defts. & also alleged they had taken assignments in writing by way of subrogation to the right of the owners, & they claimed in this action damages for the negligence of defts. causing the fire :—*Held :* the action was a simple common law action in which the owners' rights were asserted against the alleged wrongdoers, & a motion to strike out a jury notice given by defts. upon the ground that the action was one which, before 1873, was exclusively within the jurisdiction of the Ct. of Chancery, was refused.—ROYAL EXCHANGE ASS'CE. CO. *v.* GRIMSHAW BROTHERS, LTD., [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

1 ii. —— —— *Nuisance.*]—CANADIAN SURETY CO. *v.* FINCH, [1930] 2 D. L. R. 421.—**CAN.**

PART III. SECT. 5.

100 i. *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.*]—Where there was an assignment of part of the fruits of litigation :—*Held :* even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—VATSAVAYA VENKATA JAGAPATI *v.* POOSAPATI VENKATAPATI (1924), L. R. 52 Ind. App. 1.—**IND.**

L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.

Annotation :—**Refd.** *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345.

114. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

118. *Add. Annotations :*—**Apld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Gillott's Settlement, Chattock *v.* Reid (1933), 77 Sol. Jo. 447.

119. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

124. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191; Walls *v.* Legge, [1923] 2 K. B. 240.

125. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191. **Refd.** Campbell *v.* Campbell, [1928] P. 187; *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

153. *Add. Annotations :*—**Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

154. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

160. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

Part IV.—What amounts to an Assignment.

191. *Add. Annotation :*—**Apld.** The Zigurds (1931), 47 T. L. R. 525.

193. *Add. Annotation :*—*As to* (2) **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

195. *Add. Annotations :*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

196. *Add. Annotations :*—*As to* (3) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304. *Generally*, **Refd.** The Zigurds (No. 2) (1932), 48 T. L. R. 559.

200. *Add. Annotation :*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

202. *Add. Annotation :*—**Refd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

204. *Add. Annotation :*—**Refd.** Smith *v.* Zigurds S.S. Owners & E. A. Casper, Edgar & Co., [1934] A. C. 209.

204a. —— ——.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liability in respect of the vessel obtained from the master the following document: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. C. E. & Co., Ltd., & oblige." The persons described in the document as the master's agents were pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage :—*Held :* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

204b. —— ——.]—Pltf., who had obtained judgment as first mtgee. against the proceeds of sale of a Latvian steamship, further claimed legal assignment to himself of the freight earned on the ship's last voyage. It was argued that by an agreement supplementary to the mtge. the mtgee. was given an equitable assignment, which by reason of notice to or knowledge possessed by the consignee or receiver of the cargo was converted into a legal assignment. The alleged notice consisted in the intervention by the mtgee. in an action by necessaries claimants who had arrested the ship, &/or in the terms of the mtgee.'s affidavit of interest filed in that action. The knowledge of the mtgee.'s claim was said to be proved by a letter written by the solrs. for the consignees or receivers of cargo. The material paragraphs of the supplementary agreement were as follows: "The mtgee. shall be at liberty so long as any moneys may be due under the said first mtge. & this agreement & he is hereby empowered in his own name or in the name of the shipowners . . . to demand, sue for, & receive & give receipt for all moneys due to the shipowners in connection with the said steamship & to institute such legal proceedings as he may think proper. . . ." "In relation to the matters dealt with herein, where they apply, the shipowners hereby appoint the mtgee. their attorney for them & in their name at any time during the currency of this security to collect, sue for, receive & give effective receipts for all freights . . . which may be or become due & owing to the shipowners. . . .":—*Held :* (1) by

PART III. SECT. 13, SUB-SECT. 4.

ao. *Pension Act, s.* 20 (3)—*What amounts to charge—Order under Collection Act, R. S. N. S.* 1923.]—CHIPMAN *v.* ROSCOE (N. S.), [1929] 4 D. L. R. 130.—**CAN.**

PART III. SECT. 14.

—— —— option to purchase contained in a will, is *prima facie* not —— —— but is assignable by —— optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

ar. *Non-negotiable promissory notes.*]—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

as. *Land scrip.*]—WRIGHT *v.* BATTLEY (1905), 15 Man. L. R. 322; 1 W. L. R. 563.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

at. ——.]—MCQUADE & CLARK *v.* MONCRIEFF & VISTAUNET (B. C.), [1929] 1 D. L. R. 782.—**CAN.**

au. *When amounting to assignment.*]—A simple order to pay only constitutes an assignment if that intention appears on the face of the agreement, & there is consideration.—*Re* MARITIME FINANCE, LTD., [1935] 2 D. L. R. 799.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

av. *General rule.*]—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—*Re* BLAND & MOHUN (1913), 25 O. W. R. 419; 30 O. L. R. 100; 5 O. W. N. 522.—**CAN.**

Law of Property Act, 1925 (c. 20), s. 136, a legal assignment must be absolute & express notice thereof must be given to the debtor; the constructive notice upon which the mtgee. relied was not sufficient to comply with the statute & the claim to a legal assignment of the freight failed; but there was in the supplementary agreement clear evidence of an equitable assignment of the freight to the mtgee.; (2) in a case where the mtgor. was a shipowner through whose default in business the whole trouble had been occasioned, & against whom judgments had been recovered, in default of appearance, by (*inter alios*) the interveners, it was not a necessary condition that the mtgor. should be joined in the mtgee.'s action.—THE ZIGURDS (No. 2), [1932] P. 113; 101 L. J. P. 81; 148 L. T. 72; 48 T. L. R. 559; 18 Asp. M. L. Cas. 324.

204c. —— ——.]—Pltfs., while acting as agents for a foreign steamship in an English port, were asked to make disbursements & incur expenses on behalf of the vessel. Before doing so they obtained the following document, addressed to the receivers of cargo, which was signed by the master with the approval & consent of the managing owner of the ship: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, E. A. Casper, Edgar & Co., Ltd., & oblige." On June 15, 1931, on an *ex parte* motion, LANGTON, J., gave judgment for pltfs.' claim for necessaries, & pronounced for the validity of an assignment to them of the freight & demurrage. At the reference to assess the amount of the claim the registrar, however, reported that the document was no more than an order to pay the freight & demurrage to pltfs., who, he said, had under it nothing in the nature of a right *in rem* against the freight. He, therefore, disallowed several items on the ground that they were not necessaries. Interveners, who as necessaries men were interested in the fund represented by the freight, moved to set aside the judgment of June 15, 1931, on the ground that the document was merely an ordinary agent's authority to collect the freight, & that even if it amounted to an equitable assignment the action must fail because the assignor was not joined as a pltf.:—*Held:* on the evidence of pltfs., combined with the document itself, there was an equitable assignment of the freight & demurrage to pltfs.; where the ct. was satisfied that there was no danger of fraud or harsh treatment of the assignor it could dispense with the presence of the assignor as a joint pltf.; & pltfs. could maintain their action *in rem*.—THE ZIGURDS (No. 3), [1932] P. 113; 101 L. J. P. 84; 148 L. T. 72; 48 T. L. R. 561; 18 Asp. M. L. C. 324; *revsd.* on another point, [1933] P. 87, C. A.

204d. Amount recoverable by assignee limited.]—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—*Held:* (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltfs. were entitled to recover.—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.

Annotation:—As to (1) **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

205. *Add. Annotations:—As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Lindsell, [1922] 1 K. B. 21; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. *As to* (2) **Consd.** Timpson's Exors. *v.* Yerbury, [1936] 1 All E. R. 186. **Refd.** Allgemeine Versicherungs Gesellschaft Helvetia *v.* German Property Administrator (1931), 144 L. T. 705; The Zigurds (No. 3) (1932), 49 T. L. R. 193; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351. *As to* (3) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; Harmer *v.* Armstrong, [1934] Ch. 65. *Generally*, **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

211. *Add. Annotation:—As to* (1) **Refd.** Palmer *v. v.* Carey, [1926] A. C. 703.

214a. ——.]—Order to pay money out of a particular fund gives the party a specific lien thereon.—SMITH *v.* EVERETT (1792), 4 Bro. C. C. 64; 29 E. R. 780.

Annotations:—**Refd.** Crowfoot *v.* Gurney (1832), 9 Bing. 372; Best *v.* Argles (1834), 2 Cr. & M. 394.

221a. —— Part of debt.]—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND, No. 204a, *ante*.

236. *Add. Annotation:*—**Apprvd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. —— —— *Building contract apportioning price between builder & third party.*]—GRANT *v.* TRAVIS, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—**CAN.**

205 xi. —— ——.]—An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers.—THAKAR DAS *v.* MALIK CHAND (1932), I. L. R. 14 Lah. 325.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

sm. *Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*]—CLARKE BROTHERS, LTD. *v.* GOODIN & PEDERSON, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—**CAN.**

223 i. *Assigning money due or to become due—Under contract.*]—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re* MATTHEWS SHEET METAL & ROOFING CO., LTD., *Ex p.* MARTIN, [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—**CAN.**

223 ii. —— *Under policy.*]—*Held:* the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus L. R. 417.—**AUS.**

sp. *To agent holding its funds—To pay to holder of order.*]—*Re* BRITISH COLUMBIA EMPIRE SALMON CANNERS, LTD. (1934), 49 B. C. R. 89.—**CAN.**

237. *Add. Annotation :*—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

250a. Directions to pay proceeds of cargo to creditor.]—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—HOLLAND & HUMBLE'S ASSIGNEES *v.* —— (1815). 1 Stark. 143; 171 E. R. 427; *sub nom.* HEYWOOD *v.* WARING, 4 Camp. 291; *sub nom. Re* HOLMES, *Ex p.* HEYWOOD, 2 Rose, 355, N. P.

Annotations :—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Giles *v.* Grover (1832), 9 Bing. 128; Malcolm *v.* Scott (1843), 3 Hare, 39.

258. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

258a. Agreement to pay proceeds into lender's bank—Advances for purchase of goods.]—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of purchased. Resp. claimed a charge above assets in respect of the advan repaid :—*Held :* as the agreement did either contractually or otherwise, create right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—PALMER *v.* CAREY, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

Annotation :—**Distd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

259. *Add. Annotation :*—**Dbtd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

269. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

274. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

274a. *S. P.* BRADLEY *v.* —— (1744), Ridg. *temp.* H. 194; 27 E. R. 801, L. C.

280. *Add. Annotation :*—*As to* (1) **Refd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

303. *Add. Annotation :*—*As to* (1) **Distd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

307. *Add. Citations :*—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

Add. Annotation :—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

PART IV. SECT. 2, SUB-SECT. 1.—B. (f).

238 i. *Banker's deposit receipt—Surrender to bank—New deposit receipt taken out.*]—In order to transfer the beneficial interest in a deposit receipt, a written assignment is unnecessary. It is sufficient if the deposit receipt is surrendered to the bank, & a new deposit receipt taken out, with intent to pass the beneficial interest, in the names of the persons to whom the depositor intends to pass the beneficial interest. S., the owner of a deposit receipt for £900, surrendered the same to the bank, & directed a new deposit receipt to be made out in the names of himself & his two nephews, with the intention that the interest in the same should at his own death pass to his nephews. S. subsequently died :—*Held :* there had been an effectual transfer of the beneficial interest, & at the death of A. the same passed to the two nephews.—MCENEANEY *v.* SHEVLIN, [1912] 1 I. R. 32.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

243 iii. —— ——.]—It is an essential requisite of an equitable assignment of a chose in action that the fund which is being disposed of shall be indicated in such a way that it can be identified.—DUNNETT *v.* WHITEWATER RURAL MUNICIPALITY, [1932] 1 W. W. R. 749; 40 Man. L. R. 267; 3 D. L. R. 135.—**CAN.**

246 iv. —— ——.]—*Held :* the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—STIRLING COLLIERIES, LTD. *v.* JONES, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*]—KIDD *v.* HARDEN, MCCONNAL *v.* HARDEN, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—**CAN.**

258 a i. *Agreement to pay proceeds to lender—Advances for purchase of goods.*]—B. being indebted to a co. for the price of sheep which it had purchased on his behalf, by an agreement in writing undertook so long as his indebtedness to the co. should continue not to sell any of the sheep without the written consent of the co., & in the event of any sale with such consent to pay the nett proceeds to the co. in full or to the extent of his indebtedness. Some of the sheep having been sold :—*Held :* the agreement operated as an equitable assignment of the proceeds to the co.—*Re* MCPHERSON, THOM & CO.; SANDHURST & NORTHERN DISTRICT TRUSTEES, ETC., CO., LTD. *v.* COOMBIE PASTORAL CO. PTY., LTD., [1929] V. L. R. 295; Argus L. R. 240.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C.

o. Add "*revsd.*, [1921] 1 W. W. R. 839."

PART IV. SECT. 2, SUB-SECT. 3.

sn. *Lodging notes as collateral security.*]—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank" :—*Held :* not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W R. 931.—**CAN.**

st. *Indorsement of lien note.*]—*Held :* to constitute a good equitable assignment thereof.—CANADIAN BANK OF COMMERCE *v.* LA BRASH, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—**CAN.**

PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*]—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—STARR CO. OF CANADA, LTD. *v.* MERRILL, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—**CAN.**

PART IV. SECT. 6.

288 ii. ——.]—LOEPPKY *v.* LANG, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—**CAN.**

sa. *Assignment of lien agreement—Whether consideration amount due under lien.*]—A. R. WILLIAMS MACHINERY CO., LTD. *v.* MOORE, [1926] 4 D. L. R. 568.—**CAN.**

Part V.—Notice of Assignment.

See, now, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

322a. Assignment of covenant of indemnity on assignment of lease—Notice to one of two covenantors—One covenantor bankrupt.]—In 1923 a lease was granted to deft. & his brother, B. B., who were in partnership. In 1927 the partnership was dissolved, & the lease, as part of the terms of the dissolution, was allotted to B. B., who formed a limited co., B. B., Ltd., to which the lease was duly assigned. In 1930 B. B., Ltd., went into liquidation. In 1931 the liquidators sold the lease to G., the third party in these proceedings, but the assignment was made, by the direction of the third party, to R. B. B., the son of B. B. The covenant of indemnity in this assignment was given by R. B. B. & the third party to the co. & the liquidators. Both B. B. & R. B. B. were adjudicated bkpt. before 1936. In 1936 the co. acting by the liquidators assigned the benefit of the covenant of indemnity to deft., & deft. released the co. & the liquidators from the covenant "except in so far as is necessary to enable" deft. to enforce the assigned covenants. Notice of this assignment was given to the third party only & not to R. B. B. The rent under the lease falling into arrear, the lessor sued deft., as an original lessee, & deft. brought in the third party alleging a right to indemnity under the assignment of the benefit of the covenant in 1936. For the third party it was contended that (*a*) the assignment of 1936 was an assignment by one only of joint covenantees & could not operate to assign the benefit of the covenants, (*b*) notice of the assignment had only been given to one of the joint covenantors & the requirements of Law of Property Act, 1925, s. 136, had not been complied with, (*c*) the assignment of 1936 purported to be an assignment of a right of action sounding in damages & not of a debt, (*d*) on the construction of the assignment, the third party was under no liability by reason of the release of the covenant therein contained :—*Held :* (1) by virtue of Law of Property Act, 1925 (c. 20), s. 81, the claim for indemnity must be treated as a joint & several claim, not as merely a joint claim ; (2) by virtue of Bkpcy. Act, 1914 (c. 59), s. 118, it was not necessary to join or to give notice to a covenantee who had since become bkpt. ; (3) the claim was for a debt, not for liquidated damages ; (4) the assignment properly construed was effective to assign the benefit of the covenants.

Semble : it is necessary that the notice under Law of Property Act, 1925 (c. 20), s. 136, be given to all solvent debtors or covenantors, where there are joint debtors or covenantors.—JOSSELSON *v.* BORST, [1937] 3 All E. R. 722 ; 81 Sol. Jo. 668, C. A.

334. *Add. Annotation :*—**Refd.** The Zigurds (No. 3), [1932] P. 113.

338a. —— ——.]—A. B. was entitled to a reversionary interest in a fund vested in four trustees, of whom he was one. A. B. mortgaged his interest to C. D., another trustee :—*Held :* C. D.'s notice in the transaction was a sufficient notice to the trustees of the mtge. ; but A. B.'s notice was not.—WILLES *v.* GREENHILL (No. 1) (1860), 29 Beav. 376 ; 54 E. R. 673 ; *affd. on other grounds* (1861), 4 De G. F. & J. 147, L. C.

354. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

393. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee

406. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

407. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

417. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 137."

421. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

PART V. SECT. 1, SUB-SECT. 1.

311 i. *Assignment—As security—Of debts.*]—OKELL MORRIS & CO. *v.* DICKSON (1902), 9 B. C. R. 151.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

sb. *Assignment of lien.*]—HENDSBEE *v.* SONORA TIMBER CO., LTD., [1928] 1 D. L. R. 642 ; 59 N. S. R. 457.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

so. *To guarantor—Notice not given to debtor.*]—DONALD *v.* JUKES, [1921] 2 W. W. R. 208 ; 56 D. L. R. 692 ; 60 S. C. R. 652.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.

sd. *Of debtor.*]—Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned.—ST. JOHN & QUEBEC RY. CO. *v.* BANK OF BRITISH NORTH AMERICA & HIBBARD CO. (1921), 67 D. L. R. 650 ; 62 S. C. R. 346.—**CAN.**

PART V. SECT. 4.

sf. *Before action—Judicature Act,* 1909, *s.* 19 (6).]—WOODSTOCK ELECTRIC RAILWAY, LIGHT & POWER CO. *v.* DOMINION TANNERIES, LTD. (1918), 45 N. B. R. 408.—**CAN.**

PART V. SECT. 5.

b i. —— *That alleged assignee had possession of notes.*]—Although debtors may have known that notes were in the possession of a bank, the alleged assignee :—*Held :* this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931. —**CAN.**

PART V. SECT. 6.

381 ii. —— —— ——.]—On an assignment of a debt the express notice in writing to the debtor which under sect. 37 (*m*) of Judicature Act is required to complete the transfer of the legal right to the debt need not be in any special form, it being sufficient if the effect upon the debtor is to convey to him with sufficient certainty the fact that the right to demand payment has been transferred to a certain third person as assignee.—GENERAL MOTORS ACCEPTANCE CORPN. & WILLIAMSON *v.* JOHNSON, [1930] 2 W. W. R. 167 ; 4 D. L. R. 291 ; 24 Alta. L. R. 475.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313 ; 10 D. L. R. 232 ; 23 W. L. R. 445."

p i. ——.] — The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—GORDON *v.* GORDON, [1924] 2 D. L. R. 74 ; 1 W. W. R. 903 ; 18 Sask. L. R. 187.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (b).

sk. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Cert[illegible] handed to second assignee.*]—J. I. [illegible] THRESHING MACHINE CO. *v.* GENERAL MOTORS ACCEPTANCE CORPN., [1924] 4 D. L. R. 1297 ; 3 W. W. R. 694.—**CAN.**

437a. Assignment of freight.]—Among the claimants to a fund in ct., representing the proceeds of a sale of a foreign vessel & her freight, were a mtgee. of the ship & a firm of ship brokers who acted as the ship's agents & made advances on behalf of the ship. Both claimants relied upon documents which were admitted to be good equitable assignments of the freight. The mtgee.'s assignment was prior in time. The ship's agents relied upon a letter dated Mar. 2, 1931, & signed by the master of the ship with the consent & approval of her managing owner. Having received this letter, the ship's agents on Mar. 5, 1931, wrote to the receivers of cargo: "S.S. *Z.* We beg to give you notice that we hold captain's authority to collect the freight per this steamer's cargo, against which we have made payments." The mtgee. had given no notice of his assignment. In an action brought by the mtgee. against the owners claiming possession of the ship & her freight under his mtge., the ship's agents intervened to claim against the freight as assignees relying on their assignment, & on the letter of Mar. 5, 1931, as being notice thereof:—*Held:* in the circumstances the letter was a good & sufficient notice of the assignment.—SMITH *v.* ZIGURDS S.S. OWNERS & E. A. CASPER, EDGAR & CO., LTD., [1934] A. C. 209; *sub nom.* SMITH *v.* E. A. CASPER EDGAR & CO., LTD., 103 L. J. P. 28; 150 L. T. 303; 39 Com. Cas. 178; 18 Asp., M. L. C. 475; *sub nom.* THE ZIGURDS (No. 3), 50 T. L. R. 162, H. L.

440. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

460. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

461. *Add. Annotation:*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

463. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part VI.—Effect of Assignment.

475. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Bernstein, Barnett *v.* Bernstein (1924), 69 Sol. Jo. 88. *As to* (2) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

483. *Add. Annotation:*—**Apld.** Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

483a. —— ——.]—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL, No. 77a, *ante*.

485. *Add. Annotations:*—**Refd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

504. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

509. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1922] 2 K. B. 433.

519. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

542. *Add. Annotation:*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

544. *Add. Annotation:*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

PART V. SECT. 10.

sl. *Registered judgment—Notice given against creditor—Of assignment.*]—If a vendor of land, in order to secure an indebtedness, assigns all the moneys due or to become due under the agreement of sale, such assignment not being registered, but due notice thereof being given to the purchaser, the assignee will be entitled to the moneys as against one who subsequently obtains & registers judgments against the vendor.—CANADIAN BANK OF COMMERCE *v.* ROYAL BANK OF CANADA, [1921] 2 W. W. R. 462; 60 D. L. R. 275; 29 B. C. R. 407.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

sm. *Assignment as security—Payment of debt—Direction by assignee for payment o moneys to assignor—Right of assignor to sue in own name.*]—ELLIOTT *v.* LE PAGE (Man.), [1929] 3 D. L. R. 912.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

476 ii. —— —— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457: 2 W. W. R. 864.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

t i. —— *Of contract for sale of land.*]—INTERSTATE INVESTMENT CO., LTD. *v.* MOBBS (1928), 28 S. R. N. S. W. 572; 45 N. S. W. W. N. 176.—**AUS.**

u. Add "*revsd. in part*, 4 A. R. 267."

e i. —— *Of lien.*]—Pltf., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor:—*Held:* pltf. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—BARNES *v.* BLACK, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

m i. —— —— *Effect of Land Titles Act, s.* 101.]—ARMSTRONG *v.* MARSHALL (1915), 8 W. W. R. 300; 19 D. L. R. 183; 8 Alta. L. R. 449.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

512 ia. —— —— —— ——.]—Pltf. brought action on July 2, 1929, for balance of account for goods sold & delivered. On Oct. 25, following, pltf. assigned the debt to three persons who on the following day assigned the debt to M., & on Jan. 1, 1930, M. re-assigned to pltf.:—*Held:* the several assignments were merely equitable, & pltf. was the proper person in whose name the action should be brought.—MOUAT BROS. & CO. *v.* WARNIER, [1931] 1 D. L. R. 569; 43 B. C. R. 238.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

550 iii. —— ——]—SHEPHERD *v.* LIVINGSTON, [1924] 1 D. L. R. 723; 1 W. W. R. 455.—**CAN.**

550 iv. —— ——.]—MCPHERSON *v.* LEES (ANDREW), LTD., [1926] N. Z. L. R. 523.—**N.Z.**

sw. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

Part VII.—Assignment subject to Equities.

592. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

601. *Add. Annotations :*—**Consd.** *Re* Pinto Leite *Ex p.* Des Olivaes, *[1929]* 1 Ch. 221. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

601a. —— **Assignment of debt payable in futuro.**]—In 1918, C., a creditor of a firm, agreed to leave the sum constituting her debt on deposit with the firm for fifteen years from Jan. 1, 1917, upon the terms *(inter alia)* that interest & commission thereon should be paid to V. for his own use, & that in certain events, which subsequently happened, V. should receive a share of the firm's profits, which he in fact received during the years 1918–1921. In 1920, by C.'s direction, the debtor firm transferred C.'s debt by a book entry into the name of F., V. continuing to receive interest & commission as before, & on Feb. 24, 1926, F. made an equitable assignment of the debt to V. Notice of the assignment was given to the debtor firm on Mar. 2, 1926, whereupon the firm transferred the debt by a book entry into the name of V. At the date of the said equitable assignment by F., F. was under a liability to the debtor firm in respect of certain accommodation bills for which, as between F. & the firm, F. was liable, but such liability did not accrue due as a debt until after notice of assignment had been given, namely, when the debtor firm expended £15,000 in taking up the acceptances. On Mar. 15, 1926, the debtor firm presented their petition for a receiving order & were subsequently adjudicated bkpt. In a claim by V. to prove in the firm's bkpcy. :—*Held :* the assignment by F. to V. was subject to all rights of set-off which had accrued due on the part of the firm against F. at the date of the notice of assignment but was not subject to any right of set-off in respect of the £15,000 which had not accrued due at that date ; nor did the fact that the debt assigned was a debt payable *in futuro*, for which the assignor was not at the date of the notice of assignment in a position to sue, affect the general rule governing the assignment of a chose in action.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES, [1929] 1 Ch. 221 ; 98 L. J. Ch. 211 ; 140 L. T. 587 ; [1928] B. & C. R. 188.

604. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

605. *Add. Annotations :—As to* (2) **Distd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111 ; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

607a. **For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.**]—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of assignment was given to deft., the latter obtained judgment against the assignor for damages for breach ot warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim :—*Held :* the set-off was valid.—LAWRENCE *v.* HAYES, [1927] 2 K. B. 111 ; 96 L. J. K. B. 658 ; 137 L. T. 149 ; 91 J. P. 141 ; 43 T. L. R. 379, D. C.

Part VIII.—Voluntary Assignments.

613. *Add. Annotation :*—**Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330.

617. *Add. Annotation :*—**Consd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

PART VII. SECT. 1.

565 iii. ——.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

565 iv. —— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—HAMILTON *v.* RAILTON, [1925] 3 D. L. R. 1090 ; [1925] 3 W. W. R. 136 ; *revsg.*, [1925] 2 W. W. R. 195.—**CAN.**

566 viii. —— —— *Assignment of security by bank.*]—Where a creditor, a bank, held securities for its debt which were subject to orders from the debtor to pay certain other creditors out of the surplus of the proceeds thereof over & above the amount due the bank :—*Held :* a third party by purchasing the securities from the bank with full knowledge of said orders placed [illegible] in the position of the bank & [illegible] whatever liability the orders imposed upon the bank.—STEPHENS (G. F.) & Co., LTD. *v.* PERDUE, WERNER *v.* PERDUE & EATON, [1931] 3 W. W. R. 90 ; 4 D. L. R. 46.—**CAN.**

q i. —— *Notice of covenant by assignor—Whether assignee bound.*]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 414 ; 58 O. L. R. 97.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

ti. ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.

604 ii. Add "*revsd.* in part, 25 A. R. 179."

604 iv. —— ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

619. *Add. Annotation :*—**Refd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

624a. —— ——.]—SLOANE *v.* CADOGAN (1808), cited in 12 Sim. at p. 291.

Annotations :—**Consd.** Edwards *v.* Jones (1836), 1 My. & Cr. 226; Beatson *v.* Beatson (1841), 12 Sim. 281. **Distd.** Meek *v.* Kettlewell (1843), 1 Ph. 342. **Apld.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176; Donaldson *v.* Donaldson (1854), Kay, 711. **Refd.** Fenner *v.* Taylor (1831), 2 Russ. & M. 190; M'Fadden *v.* Jenkyns (1842), 1 Hare, 458; Price *v.* Price (1851), 21 L. J. Ch. 53; Bridge *v.* Bridge (1852), 16 Beav. 315; Voyle *v.* Hughes (1854), 2 Sm. & G. 18; Gilbert *v.* Overton (1864), 4 New Rep. 420; Glegg *v.* Rees (1871), 7 Ch. App. 71.

634. For "*Held :* (1) as it was the intention of the settlor," etc., read "*Held :* (1) as it was not the intention of the settlor," etc.

Add. Annotations :—*As to* (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *As to* (3) **Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330. *Generally*, **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

PART IX.

p i. —— *Under Assignment of Book Debts Act*, 1923 (*c.* 29).]—*Re* RAPORT, DENISON *v.* UNION BANK OF CANADA, [1925] 3 D. L. R. 1058; 57 O. L. R. 374; 5 C. B. R. 811.—**CAN.**

p ii. —— ——.]—K., on June 8, made a chattel mtge. to pltfs. on his stock-in-trade, & by the same instrument purported to assign to pltfs., as additional security, all present & future book debts arising out of or connected with K.'s business. The affidavit of *bona fides* described the instrument as a bill of sale by way of mtge. & asserted that it was not taken for the purpose of protecting the "goods & chattels" mentioned therein against the creditors of the mtgors., etc. :—*Held :* the instrument did not comply with above statute & was invalid as an assignment.—WESTLAKE *v.* MARTIN, [1930] 4 D. L. R. 805; 66 O. L. R. 89; 11 C. B. R. 469; *varg.*, 11 C. B. R. 87.—**CAN.**

p iii. —— *Under Assignment of Book Debts Act, R. S. O.*, 1927.]—The Assignment of Book Debts Act, R. S. O., 1927, confers no greater right upon an assignee of a chose in action than he had before. All it does is to make a general assignment of book debts void, as against creditors & subsequent purchasers or mtgees. in good faith & for value, unless registered. By registration pltf. co had preserved whatever rights it acquired by virtue of the assignment & no more.—SNYDER'S, LTD. *v.* FURNITURE FINANCE CORPN., LTD., [1931] 1 D. L. R. 398; 66 O. L. R. 79.—**CAN.**

sp. *Book account—Under Assignment of Book Accounts Act, R. S. B. C.*, 1924 (*c.* 16).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

st. —— ——.]—Registration under Assignment of Book Accounts Act, R. S. B. C., 1924, of an assignment of book accounts does not confer any greater rights upon the assignee than he had by virtue of the assignment; the effect of the registration is merely to preserve those rights. The fact that the assignment is also registered under Cos. Act, 1929, does not "confirm" it, *i.e.*, make it good without being subject to existing superior equities.—BURRARD DRYDOCK CO., LTD. *v.* BANK OF TORONTO & VULCAN ENGINEERING WORKS, LTD., [1933] 1 W. W. R. 222; 46 B. C. R. 447.—**CAN.**

CHURCHYARD.

See BURIALS; ECCLESIASTICAL LAW.

CINEMATOGRAPH.

See THEATRES.

CITIZENS.

See ALIENS; CONSTITUTIONAL LAW; LOCAL GOVERNMENT.

CITY.

See LOCAL GOVERNMENT; METROPOLIS.

CIVIL LAW.

See ECCLESIASTICAL LAW.

CIVIL RIGHTS.

See ALIENS; CONSTITUTIONAL LAW; ROYAL FORCES; and titles *passim*.

CLERKS.

Arraigns, of	*See* CRIMINAL LAW.
Articled	,, SOLICITORS.
Assize, of	,, CRIMINAL LAW.
Barristers'	,, BARRISTERS.
Ecclesiastical	,, ECCLESIASTICAL LAW.
Justices, to	,, MAGISTRATES.
Local Authorities, to	,, LOCAL GOVERNMENT.
Parish	,, ECCLESIASTICAL LAW.
Peace, of the	,, LOCAL GOVERNMENT.
Town	,, LOCAL GOVERNMENT.

CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

Part II.—Jurisdiction of the Courts.

11. *Add. Annotation :*—**Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

13a. Application of funds cy-près.]—*Re* HOMES FOR INEBRIATES ASSOCIATION, THE ASSOCIATION *v.* A.-G. (1935), 79 Sol. Jo. 903.

13b. Application of funds—Civil Service Association—Application intra vires.]—KELLY *v.* WYLD (1937), 81 Sol. Jo. 179.

Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation :*—**Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

18. *Add. Annotations :—As to* (1) **Consd.** Lamberton *v.* Thorpe (1929), 141 L. T. 638. **Refd.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602; Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

20. *Add. Annotations :—As to* (1) **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251. *Generally*, **Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

20a. —— To alter qualification for membership.]—GRIMWOOD *v.* ALDENHAM (1928), 72 Sol. Jo. 569.

21a. —— Binding without express notice—Agreement to be bound by "any further rules & alterations to existing rules."]—Pltf. who was under twenty-one years of age, applied in Mar. 1932, for a licence as a boxer in the following words: "I hereby apply for a licence as a boxer &, if the licence is granted me, I declare to adhere strictly to the rules of the British Boxing Board (1929) as printed & abide by any further rules or alterations to existing rules as may be passed." A licence was duly granted & renewed for a further year on Mar. 1, 1933. A copy of the rules was supplied to pltf. at the time of his application, & reg. 20, para. 16, provided that the boxer's money might be stopped only when he was disqualified "for committing a deliberate foul, for not trying, or retiring without sufficient cause, or if the referee gives a no contest decision." This paragraph was altered on June 17, 1932, to read: "Boxers in case of disqualification are only entitled to receive bare travelling expenses, pending the decision of the board . . . when the board . . . may deal with the money as it thinks fit." No notice of the altered rules was given to pltf. On July 12, 1933, pltf.

PART II.

sc. *Validity of rules.*]—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

12 ii. —— *Majority of members acting illegally—Injunction.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

12 iii. —— —— ——.]—The property of a voluntary society cannot be diverted by a majority of its members from the purposes for which it was given by those who contributed to it, or devoted to purposes that are alien to or in conflict with the fundamental rules laid down by the society, & the dissenting minority who adhere to these rules are entitled to have them restrained from so doing.—KOWALCHUK *v.* UKRAINIAN LABOR FARMER TEMPLE ASSOCN., [1935] 1 W. W. R. 529; 2 D. L. R. 691; 43 Man. L. R. 76.—**CAN.**

sd. *Dispute outside province of domestic tribunal.*]—Where the rules of a voluntary society provide that certain disputes & complaints should come before the domestic tribunals the law cts. will not as a rule usurp their functions, but where a dispute arises with which the rules never designed the domestic tribunals to deal, the law cts. will not refer the matter to the domestic tribunals but will themselves deal with it.—CRISP *v.* SOUTH AFRICAN COUNCIL OF THE AMALGAMATED ENGINEERING UNION, [1930] App. D. 225.—**S. AF.**

sf. *Failure to pass candidate—No injustice—Whether court will interfere.*] The mere fact of failing to pass an examination held under the Barbers Act is, in the absence of evidence of unfairness, no ground for interference by the ct. under Barbers Act Amendment Act, 1934.—HARLEY *v.* BARBERS' ASSOCN. OF BRITISH COLUMBIA (1936), 50 B. C. R. 327.—**CAN.**

sg. *Competition for scholarship—Examination—Fraud & mistake—Validity of second award.*]—L'ACADÉMIE DE MUSIQUE DE QUÉBEC *v.* PAYMENT, BERNIER & PICHE, [1936] S. C. R. 323; 4 D. L. R. 279.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

c i. ——.]—A person on becoming a member of a lawful assocn. or society is, subject to its constitution, bound by the decisions of the society on matters of dispute between him & the society, unless such decision is contrary to natural justice, or in violation of the rules of the society, or done *malâ fide*.—CUTLER *v.* LAW SOCIETY OF MANITOBA, [1930] 3 W. W. R. 387; *affd.*, [1931] 2 W. W. R. 653; 4 D. L. R. 453; 39 Man. L. R. 535.—**CAN.**

sk. *Bye-law — Validity —Restricting play by women members of golf club.*]—A club, incorporated under the provisions of the Incorporated Societies Act, 1908, had power under its constitution to make & alter its rules, & its committee had authority to make bye-laws within certain prescribed limits. The rules provided for the admission of various classes of members, each class enjoying specifically defined rights, but in the case of ordinary members no distinction was drawn between the playing privileges of men & women. The committee, without the previous authority of a general meeting, purported to enact a bye-law prohibiting women who were ordinary members from playing on the club links on Saturdays before the hours of 3 p.m., & then only after men players had commenced their rounds. It was further provided that women playing on Saturday afternoons should give the right of way to men players. The committee, in making this bye-law, relied upon one of the rules of the club, which was to the following effect: "The committee may make bye-laws for the regulation of the club-house, grounds, & links, & for the arrangement & control of games & matches." Certain women members, who challenged the validity of this bye-law, played on a Saturday & were fined by the committee & were suspended from the exercise of their privileges as members. Upon an application by these members to have the club restrained from putting such bye-law into force & acting thereunder:—*Held:* the committee, in making the bye-law in question, had acted beyond the powers conferred upon it by the rules of the club, & the bye-law was therefore invalid.—O'NEILL *v.* PUPUKE GOLF CLUB, INCORPORATED, [1932] N. Z. L. R. 1012.—**N.Z.**

PART III. SECT. 1, SUB-SECT. 2.

f i. —— —— *Necessity for unanimous vote or consent of all members.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

f ii. —— ——.]—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting:—*Held:* the repeal of the rule did not itself require a two-thirds majority.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

agreed to box at the White City Stadium on the terms that he should receive £3,000 win, lose or draw. At the contest pltf. was disqualified for hitting below the belt. The promoters of the contest paid the sum of £3,000 to the Board of Control at their request, & after holding an inquiry the Board withheld the money from pltf. on the ground that he had been disqualified. Pltf. brought proceedings to recover the amount against White City Stadium, Ltd., & the Board of Control:—*Held:* (1) the contract with the Board of Control was too closely connected with a contract as to employment that it was binding on the infant pltf. having regard to the fact that the contract as a whole was for his benefit; (2) notice of the altered rules was unnecessary in order to make them binding on pltf. in view of the terms of his application for a licence.—DOYLE *v.* WHITE CITY STADIUM, LTD., [1935] 1 K. B. 110; 104 L. J. K. B. 140; 152 L. T. 32; 78 Sol. Jo. 601, C. A.

Annotation:—*As to* (1) **Refd.** Mercantile Union Guarantee Corpn., Ltd. *v.* Ball, [1937] 3 All E. R. 1.

21b. Notice of general meeting—Who entitled to.]—Pltfs. were the captain & the secretary of the women's section of a golf club, of which deft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid:—*Held:* under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—COLE *v.* MERTON PARK (WIMBLEDON) GOLF CLUB, LTD. (1927), 43 T. L. R. 400.

23. *Add. Annotation:*—*As to* (1) **Distd.** *R. v.* General Medical Council, [1930] 1 K. B. 562.

33a. —— —— ——.]—WELLS *v.* MYDDLETON (1935), 79 Sol. Jo. 270, C. A.

35. *Add. Annotations:*—*As to* (2) **Expld.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602. *Generally*, **Refd.** Cooper *v.* Wilson, [1937] 2 K. B. 309.

38. *Add. Annotations:*—**Consd.** Soc. of Carpenters, Cabinet Makers & Joiners *v.* Braithwaite, General Union of Operative Carpenters & Joiners *v.* Ashley, [1922] 2 A. C. 440. **Folld.** Wing *v.* Burn (1928), 44 T. L. R. 258. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B 682.

39. *Add. Annotations:*—*As to* (1) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682; Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

39a. —— —— ——.]—WING *v.* BURN (1928), 44 T. L. R. 258.

39b. —— —— ——.]—DONALDSON *v.* INSTITUTE OF BOTANO-THERAPY, LTD. (1937), 184 L. T. Jo. 384.

46a. —— —— ——.]—In an action against the officers of a club for an injunction restraining them from enforcing a resolution by which the council of the club has excluded pltf. from membership of the club, the questions for the ct. are, (*a*) whether the rules of the club have been observed, (*b*) whether the council has given pltf. a fair hearing, & (*c*) whether the council has acted in good faith.—LAMBERTON *v.* THORPE (1929), 141 L. T. 638; 45 T. L. R. 420.

Annotation:—**Refd.** Lumiansky *v.* Myddleton (1934), 78 Sol. Jo. 223.

46b. —— **Withdrawal of licence as boxing manager —In accordance with rules.**]—LUMIANSKY *v.* MYDDLETON (1934), 78 Sol. Jo. 223.

53a. —— **Claim by member for proportion of—On winding up of club.**]—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a

PART III. SECT. 2, SUB-SECT. 2.—A.

24 i. *Power to expel after inquiry by committee—Inadequate inquiry.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

26 i. *Power to expel for infringing rules.*]—Where a club was registered under Cos. Act:—*Held:* the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—MURPHY *v.* SYNNOTT, [1925] N. I. 14.—**IR.**

PART III. SECT. 2, SUB-SECT. 2.—B.

29 iv. —— —— ——.]—Resp., being charged with having grossly misconducted himself within the meaning of a rule of applt. club, was summoned before a meeting of the club committee to show cause why he should not be dealt with under the rule. He was aware of the details of the charges preferred against him before attending the meeting, but, having attended as requested, & having failed in the opinion of the committee to justify his conduct, was suspended from membership. He took action against the club to have the suspension removed, & for damages, on the ground that the committee's decision, having been arrived at without affording him an opportunity of cross-examining the witnesses against him, was contrary to the principles of natural justice:—*Held:* the committee was not bound by the formal rules of evidence, & the inquiry having been conducted in accordance with the club's rules & the decision of the committee arrived at in good faith, in pursuance of an honest desire to protect the interests of the institution, after resp. had been given every facility for presenting a defence, the suspension was not contrary to the principles of natural justice, notwithstanding that no opportunity was given to cross-examine the witnesses.—PERRY *v.* FELLDING CLUB, [1929] N. Z. L. R. 529.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. —— —— ——.]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—HENDERSON *v.* KANE & PIONEER CLUB, [1924] N. Z. L. R. 1073.—**N.Z.**

ab. *Declaration of membership.*]—Pltf., a member of a society which was incorporated under Societies Act, 1924, & which owned property, was expelled therefrom without having been given notice of the proceedings against him or particulars of the charge or names of the complainants:—*Held:* he was entitled to a declaration that he had been wrongfully expelled & was still a member in good standing of the society.—KLIS *v.* POLISH SOCIETY FOR BROTHERLY AID OF COLEMAN, [1932] 1 W. W. R. 683; [1932] 2 D. L. R. 136; 26 Alta. L. R. 90.—**CAN.**

member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year :—*Held :* A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee ; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re* CURZON SYNDICATE, LTD. (1920), 149 L. T. Jo. 232.

54. For "**Entrance fee payable by instalments**" read "**Entrance fee—Payable by instalments.**"

54a. —— **Claim by member for return of—On winding up of club.**]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

61. *Add. Annotation :* — **Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

Part IV.—Liability of Clubs and Members.

91. *Add. Annotation :*—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

91a. —— **Liability for loss or damage to member's goods—Effect of negligence—Construction of rule.**]—One of the rules of a proprietary club provided that the proprietors would not be responsible for the loss of or damage to any article brought by members or guests into the club but would take all reasonable care of articles for which a receipt would be given if the same were deposited in the office :—*Held :* the rule covered loss or damage caused by negligence.—ORCHARD *v.* CONNAUGHT CLUB (1930), 46 T. L. R. 214 ; 74 Sol. Jo. 169.

Part VI.—Debentures.

105. *Add. Citations :*—[1922] 1 Ch. 51 ; 91 L. J. Ch. 93 ; 126 L. T. 225.

Part VII.—Duty Payable by Clubs.

106. *Add. Annotation :—As to* (3) **Reld.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotations :*—**Apld.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380. **Reld.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

110. *Add. Annotation :*—**Consd.** Watson *v.* Cully, [1926] 2 K. B. 270.

111a. —— —— **Whether in "club"—Temporary premises.**]—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours :—*Held :* as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—WATSON *v.* CULLY, [1926] 2 K. B. 270 ; 95 L. J. K. B. 554 ; 135 L. T. 28 ; 90 J. P. 119 ; 42 T. L. R. 529 ; 24 L. G. R. 357 ; 28 Cox, C. C. 194, D. C.

Annotation :—**Reld.** Clarke *v.* Griffiths, Peacock *v.* Same (1926), 95 L. J. K. B. 965.

111b. —— —— —— **Additional unregistered premises.**]—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer,

PART IV. SECT. 1, SUB-SECT. 1.

70 ii. —— *Money lent to lodge.*]—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

PART IV. SECT. 2.

se. *General rule.*]—If liabilities are to be fastened upon any members of an unincorporated voluntary assocn. it must be by reason of the acts of those members themselves or their agents, & the agency must be made out by the person who relies on it, for none is implied by the mere fact of assocn.—TOEWS *v.* ISAAC, [1929] 2 D. L. R. 719 ; 1 W. W. R. 817 ; 38 Man. L. R. 201 ; *revg. in part*, [1928] 1 W. W. R. 643.—**CAN.**

which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94 :—*Held :* as the liquor was not supplied in the registered premises of the club it was not supplied " in a club " within the above sect., & the conviction must be quashed.—CLARKE *v.* GRIFFITHS, PEACOCK *v.* GRIFFITHS, [1927] 1 K. B. 226 ; 95 L. J. K. B. 905 ; 135 L. T. 58 ; 90 J. P. 151 ; 42 T. L. R. 541 ; 24 L. G. R. 466 ; 28 Cox, C. C. 240, D. C.

119. *Add. Annotation :*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

125. *Add. Annotation :*—**Consd.** Ashton *v.* Wainwright, [1936] 1 All E. R. 805.

125a. Effect of Licensing (Consolidation) Act, 1910 (c. 24), s. 96.]—Above section does not impliedly exclude registered clubs from the operation of sect. 82 of above Act, but it grants to the magistrate & the police special & additional powers in the case of registered clubs.—HAMMOND *v.* HANLON, [1935] 1 K. B. 474 ; 104 L. J. K. B. 239 ; 153 L. T. 13 ; 99 J. P. 134 ; 51 T. L. R. 195 ; 33 L. G. R. 12 ; 30 Cox, C. C. 215, D. C.

127a. Permitted hours on Sunday—Fixed number between specified hours—Discretion of club to alter limiting hours.]—Licensing Act, 1921 (c. 42), s. 2 (1), provides that " The hours during which intoxicating liquor may be sold or supplied on Sundays . . . in any . . . club . . . shall be as follows, that is to say, five hours, of which not more than two shall be between 12 noon & 3 in the afternoon, & not more than three between 6 & 10 in the evening. . . ." ; & s. 2 (2) provides that " Subject to the foregoing provisions, the permitted hours on Sundays shall be such as may be fixed . . . in the case of a club in accordance with the rules of the club. . . ." In a golf club the permitted hours on Sundays were fixed by a rule of the club at five hours, namely, from 12 noon to 1.30 p.m., 2 p.m. to 2.30 p.m., & 4.30 p.m. to 7.30 p.m. ; & pursuant to that rule a supply of intoxicating liquor was given to members of the club on a Sunday at 5 p.m. :—*Held :* on the true construction of above sect. the permitted hours on Sundays for a club were a period of not more than two hours, the whole of which should be between 12 & 8 p.m., & a period of not more than three hours, the whole of which should be between 6 & 10 p.m., & consequently that the supply in question was not authorised by the sect. —BROWN *v.* JOYCE, [1931] 1 K. B. 643 ; 100 L. J. K. B. 168 ; 144 L. T. 552 ; 95 J. P. 41 ; 47 T. L. R. 200 ; 75 Sol. Jo. 80 ; 29 L. G. R. 126 ; 29 Cox, C. C. 273.

Part IX.—Betting and Gaming in Clubs.

134a. —— Totalisator club.]—It is not an offence against Betting Act, 1853 (c. 119), s. 1, to carry on a totalisator club on a credit basis. —STREATHAM CINEMA, LTD. *v.* JOHN MCLAUCHLAN, LTD., [1933] 2 K. B. 331 ; 102 L. J. K. B. 536 ; 149 L. T. 447 ; 97 J. P. 273 ; 49 T. L. R. 471 ; 31 L. G. R. 219.

136. *Add. Annotations :*—**Apld.** R. *v.* O. K. Social & Whist Club (1929), 45 T. L. R. 570; Daniels *v.* Pinks, [1931] 1 K. B. 374. **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

136a. —— Whether members' club is.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming :—*Held :* in order that a house should be a common gaming house within

PART VIII. SECT. 3.

sf. *Right of members to store beer at club.*]—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & serv
R. *v.* ROCK (1923), 32 B. C. 67.—**CAN.**

' *Distributing " beer by servant of club—What amounts to.*]—R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

sh. *Supply during prohibited hours—No payment made.*]—Three members of a club were found drinking liquor at the bar of the club premises one Sunday morning. The secretary informed an officer of police, who had come upon the premises, that the members had not paid for the liquor, but that he had given it to them, thinking he was entitled to do so :—*Held :* the secretary had been rightly convicted on a charge of supplying liquor on licensed premises during prohibited hours.—*Re* DUFFEL, *Ex p.* TURNBULL (No. 2) (1931), 31 S. R. N. S. W. 46; 48 N. S. W. W. N. 14.—**AUS.**

Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favourable to all the players, & the fact that the club was a members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under s. 4 of the Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120.

140. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

140a. —— —— —— ——.]—There is a sufficient element of chance in the game popularly called a "whist drive" to make a club where it is played for money a "common gaming house." —R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

Annotation :—**Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

Part X.—Dissolution of Clubs.

148a. Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.]—*Re* CURZON SYNDICATE, LTD. No. 53a, *ante*.

PART IX. SECT. 2.

137 i. *Common gaming house—Who are liable as persons assisting in conducting business—Employees.*]—R. *v.* DORGAN, R. *v.* KESSLER, R. *v.* COATES (Sask.) (1927), 47 Can. Crim. Cas. 344. —**CAN.**

137 ii. —— —— *Steward.*]—R. *v.* SULLIVAN (1930), 53 Can. C. C. 243; 42 B. C. R. 435.—**CAN.**

137 iii. —— —— ——.]—Applt. was steward of a *bonâ fide* club which had a membership of 1,700 & provided all the regular facilities of a social club, including meals, billiard rooms, reading rooms, various card games, etc.; it also leased & operated a football field. Members contributed ten cents apiece to the funds of the club for each half hour's play at the poker table, irrespective of whether they were winning or losing. This money was not taken from the stakes or the pot, but was collected by the applt., as steward, from the players & paid over to the club. Only members were allowed in the premises, a bye-law expressly forbidding the introduction of visitors to any part of the club property. Applt. was convicted, under sect. 226 of the Criminal Code, of unlawfully keeping a common gaming house; & the conviction was affirmed by the appellate ct.:—*Held :* the club was not "a house . . . kept for gain" within sect. 226 of the Criminal Code & applt. had been wrongly convicted.—R. *v.* BAMPTON, [1932] S. C. R. 626; 4 D. L. R. 209; 58 C. C. C. 239.—**CAN.**

137 iv. —— —— *Secretary.*]—Slot machines maintained on the premises of a *bonâ fide* club were under the control of the club's secretary. He kept the keys of the machines, deposited money of the club in them & collected the "proceeds" of their operation for the benefit of the club. The playing of the machines was a game of at least "mixed chance & skill," if not of pure chance. The secretary was convicted of keeping a common gaming house :—*Held :* the conviction should be sustained.—R. *v.* THOMAS, [1934] 1 W. W. R. 493; 61 C. C. C. 301; 48 B. C. R. 76.—**CAN.**

137 v. —— *Lawfully incorporated club.*]—The facts that a club has been lawfully incorporated & its constitution & frame-work still formally exist & some of its legitimate activities & amenities are participated in or made use of *bonâ fide* by some of its members to a substantial degree does not prevent its premises being a common gaming house within sect. 226 (*a*) of Criminal Code, R.S.C., 1927, if the real object of its actual proprietors in carrying it on is the acquiring of gain for themselves from gambling engaged in therein.—R. *v.* WILLIAMSON, [1937] 2 W. W. R. 545.—**CAN.**

COMMERCE.

See AGENCY; BANKERS; BILLS OF EXCHANGE; CARRIERS; CONTRACT; INSURANCE; OF GOODS; SHIPPING; STOCK EXCHANGE; TRADE AND TRADE UNIONS.

COMMON LANDS.

See COMMONS.

COMMONWEALTH OF AUSTRALIA.

See DEPENDENCIES AND DOMINIONS.

COMMORIENTES.

See EVIDENCE ; EXECUTORS.

COMMUNION.

See ECCLESIASTICAL LAW.

COMMUTATION.

Death Duties, of – – –	*See* ESTATE AND OTHER DEATH DUTIES.
Railway fares, of – – –	,, CARRIERS.
Sentence, of – – – –	,, CRIMINAL LAW.
Tithes, of – – – –	,, ECCLESIASTICAL LAW.
Workmen's Compensation, of –	,, MASTER AND SERVANT.

COMPANIES.

NOTE.—The Act now in force is the Companies Act, 1929 (c. 23), which repealed (*inter alia*) the Companies (Consolidation) Act, 1908 (c. 69). References to sections of the 1908 Act should therefore be checked with the Comparative Table appended below.

1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.
1	357, 358	54	60	105	76	152	185, 198	202	259	252	323
2	1	55	57	106	77	153	186	203	260, Sch.	253	324
3	2	56	55, 50	107	78	154	194		IX.	254	325
4	2	57	16	108	131	155	195	204	187	255	326
5	2	58	53	109	135	156	193	205	173, 229,	256	359
6	3	59	49	110	137	157	197		258	257	327
7	4	60	146	111	138	158	192	206	261	258	328
8	17, 19	61	147	112	132, 133	159	196	207	262	259	329
9	5	62	92	113	129, 130,	160	199, 200	208	263	260	330
10	6, 7, 8	63	93		134	161	209	209	264	261	331
11	8 (2)	64	112	114	130	162	307	210	265	262	332
12	9	65	113, 171	115	28	163	203	211	174, 258	263	333
13	10, 319	66	114	116	370	164	204	212	266	264	334
14	20	67	115	117	33	165	205	213	270	265	335
15	12	68	116	118	11, 14 (2),	166	206	214	191, 248,	266	336
16	13, 14	69	117		108 (4),	167	207		260	267	337
17	15	70	118		379, 3rd	168	208	215	276	268	338
18	23	71	120		Sch. F.	169	210	216	272	269	339
19	14	72	140	119		170	211	217	277	270	340
20	18	73	141	120	153	171	213	218	363	271	341
21	21	74	143	121	26	172	221	219	288	272	
22	62	75	144	122	156	173	220	220	282	273	342
23	68	76	29	123	157	174	214	221	212	274	343, 344,
24	25	77	30	124	158	175	216	222	283		346, 348,
25	95	78	31	125	159	176	218	223	294		349, 351,
26	108, 110	79	32	126	160	177	219	224	284, 285		352, Sch.
27	101	80	34	127	161	178	163, 373	225	289		X., III.
28	65	81	35, 355,	128	162	179	222	226	290	275	345
29	64		Sch. IV.	129	168	180	223	227	291	276	366
30	98, 110	82	40	130	169	181	224	228	293	277	367
31	99	83	36	131	163	182	225	229	300	278	371
32	100	84	37	132	164	183	227	230	301	279	372
33	102	85	39	133	165	184	228	231	302	280	375
34	103	86	41	134		185	226	232		281	362
35	104	87	94	135		186	232, 241,	233	303	282	364
36	105	88	42	136	167		247, 248,	234		283	376
37	70, 97, 141	89	43	137	170		249	235	304	284	377
38	72	90	44	138	178	187	250	236	378	285	380
39	48	91	54	139	175	188		237	305	286	
40		92	67	140	172	189	233, 242	238	374	287	
41	50	93	79, 80, 82,	141	171	190		239	297	288	
42	51		83, 87	142	177	191	251	240	298	289	
43	95, 108	94	86	143	176	192	234	241	299	290	
44	7, 52	95	310	144	202	193	252	242	295	291	
45		96	85	145	288	194	235, 244,	243	312, 314	292	
46	55	97	84	146	179		248	244	313	293	
47	56	98	82 (4)	147	181	195	236, 245	245	316	294	
48	57	99	80, 83	148	182	196	254	246	317	295	
49	56	100	88	149	183, 184,	197	255	247	318	296	
50	57	101	89		185, 186,	198		248	319		
51	58	102	73		187, 188	199	256	249	321		
52	58	103	74	150	189	200	257	250	322		
53	59	104	75	151	184, 191	201	288	251	360		

Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotations :—As to* (1) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. *As to* (2) **Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

11. *Add. Annotations :*—**Consd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33. **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401; Colville I. R. Comrs., [1930] 2 K. B. 393; E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

14. *Add. Annotation :*—**Refd.** E. B. M. Co. Dominion Bank, [1937] 3 All E. R. 555.

15. *Add. Annotations :*—**Refd.** British Thomson-Houston Co. *v.* Starling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

25a. —— **Distinct from component members.**]—DITCHAM *v.* MILLER, No. 5959b, *post.*

Part II.—Domicil, Residence and Nationality of Companies.

26a. —— —— **Business conducted abroad.**]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England :—*Held :* the domicil of the co. was not in Holland but in England.—BAELZ *v.* PUBLIC TRUSTEE, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.

26b. ——.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—LITTAUER GLOVE CORPN. *v.* F. W. MILLINGTON (1920), LTD. (1928), 44 T. L. R. 746.

27. *Add. Annotations :*—**Consd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

——.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe :—*Held :* a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations :—**Consd.** I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation :—As to* (6) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

45. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

75. For the paragraph " (9) (WARRINGTON, L.J. . . . 1908 Act, s. 82," substitute :—" (9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void."

For the paragraph " (10) (LORD STERNDALE, M.R., . . . was written," substitute :—

PART I. SECT. 1.

s2. *Under statute—Existence apart from members—Conveyance of property by originators to company.*]—Defts. contracted with pltfs. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corpn., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the purpose of holding the land, & transferred the land to it in consideration of the allotment to them of the whole of its capital stock :—*Held :* the co. could not be declared to be a trustee for the growers & bound by the contract.—ASSOCIATED GROWERS OF B. C., LTD. & KELOWNA GROWERS EXCHANGE *v.* EDMUNDS & BYZANT ORCHARDS, LTD., [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—CAN.

s3. *One company owning all shares of another—Distinct legal persons.*]—ASSINIBOIA RURAL MUNICIPALITY *v.* SUBURBAN RAPID TRANSIT CO., [1931] 2 D. L. R. 862; 1 W. W. R. 778; 39 Man. L. R. 402.—CAN.

PART I. SECT. 2.

s6. *Companies limited by guarantee—Assignment of undertaking by third party—Validity.*]—LLOYD'S BANK *v.* MORRISON & SON, LTD., [1927] S. C. 571.—SCOT.

PART II.

n 1. —— —— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—CAN.

PART III. SECT. 1, SUB-SECT. 5.—A. (a) ii.

s9. *General rule.*]—VITOMEN CEREAL, LTD. *v.* MANITOBA GRAIN CO. (B. C.), [1928] 4 D. L. R. 440.—CAN.

"(10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration."—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) *v.* LEWIS, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re* JUBILEE COTTON MILLS, LTD., 131 L. T. 579, H. L.

Annotation :—As to (9) **Consd.** *Re* Burton, 1927] 2 Ch. 132.

82. *Add. Annotation :—As to* (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

192. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

196. *Add. Annotation :*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

198. *Add. Annotation :*—**Refd.** Radio Rentals, Ltd. *v.* Rentals, Ltd. (1934), 51 R. P. C. 407.

210. *Add. Citation :*—9 Jur. N. S. 843.

216. *Add. Annotation :*—**Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

225. *Citation :*—For "56 Sol. Jo. 36" read "56 Sol. Jo. 361."

Add. Annotation :—**Consd.** Harrods *v.* Harrod , 40 T. L. R. 195.

227. *Add. Annotation :*—**Consd.** Crystalate Gramophone Record Manufacturing Co. *v.* British Crystalite Co. (1934), 51 R. P. C. 315.

228. *Add. Citation :—On appeal*, 41 R. P. C. 67, C. A.

228a. **"Harrods" — "R. Harrod."**]—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.' use of the name was calculated to lead the public erroneously to believe that defts.' business had some connection with pltfs.' business.—HARRODS, LTD. *v.* HARROD (R.), LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.

Annotation :—**Expld.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers', etc., Insce., [1925] Ch. 675.

228b. **"Society of Motor Manufacturers & Traders" —"Motor Manufacturers' & Traders' Mutual Insurance Co."**]—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words "Motor Manufacturers & Traders," which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society's business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.'s business wholly different from that of pltf. society :—*Held :* pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. —MOTOR MANUFACTURERS' & TRADERS' SOCIETY *v.* MOTOR MANUFACTURERS' & TRADERS' MUTUAL INSURANCE CO., [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 483; 42 R. P. C. 307, C. A.

228c. **"British Legion"—British Legion Club (Street), Ltd.**]—BRITISH LEGION *v.* BRITISH LEGION CLUB (STREET), LTD. (1931), 47 T. L. R. 571; 48 R. P. C. 555.

Annotations :—**Consd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137. **Refd.** British Medical Association *v.* Marsh (1931), 47 T. L. R. 572.

228d. **"B. M. A."—"B. M. A. Drug Stores."**]—BRITISH MEDICAL ASSOCN. *v.* MARSH (1931), 47 T. L. R. 572; 48 R. P. C. 565.

Annotations :—**Refd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

Annotation :—As to (1) **Consd.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

238. *Add. Annotations :*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce. (1925), 94 L. J. Ch. 410.

——.]—In 1902 the Crystalate Manufacturing Co., Ltd., commenced manufacturing & selling (*inter alia*) electrical accessories, & in 1928 sold their business to pltfs. At no time had either co. sold electric lamps. In 1933 defts. were formed & commenced selling electric lamps, & in one advertisement were inadvertently described as "British Crystalate Co., Ltd." Pltfs. commenced an action to restrain defts. from carrying on business under their name or any name containing the word "Crystalite" or any other word only colourably differing from "Crystalate." Defts. alleged that the businesses carried on by the parties were dissimilar & that there was no likelihood of confusion :—

PART III. SECT. 3, SUB-SECT. 3.—B. (a).

198 ii. ——.]—Where there is no proof of injury or of likely injury to pltf., by deprivation of profits or of its reputation suffering by reason of the use of its trade name by deft., an injunction will not be granted to prevent deft. from such user notwithstanding proof of extension of pltf.'s reputation to New Zealand & of deft.'s intention to deceive.—COLES (G. J.) & CO., LTD. *v.* COLES (G. J.) (N.Z.), LTD., [1933] N. Z. L. R. 1189.—**N.Z.**

sd. *Insurance company.*]—The Continental Assurance Co., a United States corpn., was refused registration in Canada under Foreign Insurance Cos. Act, on the ground that its name was liable to be confounded with that of the Continental Life Insurance Co., a Canadian corpn. licensed under Canadian & British Insurance Cos. Act. On appeal from the ruling of the Minister of Finance :—*Held :* under sect. 9 of Foreign Insurance Cos. Act registration may be refused if the name of appct. co. is so similar to the name of a co. already registered under the same Act, as to cause confusion; the words "or otherwise on public grounds objectionable" in sect. 9 (1) of Foreign Insurance Cos. Act mean something other than the question of confusion arising out of a similarity of names.—*Re* FOREIGN INSURANCE COS. ACT, 1932, [1934] EX. C. R. 84.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B. (b).

sd. "*Precision Engineering Co.*"—"*Ou-Tone Precision Engineers.*"]—An application by C. & T., Ltd., for approval of a change of name to the "Ou-Tone Precision Engineers, Ltd.," was opposed by the Precision Engineering Co., Ltd. Both cos. were engaged in the engineering business. Appct. had been engaged in making what are known as "precision tools," & in what is styled "precision work." The objecting co. was engaged in manufacturing motor-plates, steel shelving, lockers, & office equipment. Appct. co. had decided to make "precision work" a prominent feature of its business, & adopted the term "precision" not as a fancy word, but as being descriptive of the kind of work in which it proposed to specialise : —*Held*, granting the approval sought, as the word "precision" was an ordinary English word descriptive of part of the work carried on by appct. co. in common with other engineering firms, it had not acquired a secondary or subsidiary meaning to denote only the business of the objecting co., & could not be monopolised by the latter, & its use in the form proposed was not calculated to deceive.—*Re* CUFF & THOMSON, LTD., [1933] N. Z. L. R. 50; G. L. R. 313.—**N.Z.**

Held: defts. had adopted their name in good faith as being descriptive of the " crystal light " sold by them, but pltfs. & defts. were both concerned in the same trade, that their names were substantially similar, & the use by defts. of their name was calculated to cause confusion between the two businesses. An injunction was granted with costs, the operation of the injunction being suspended for two months.—CRYSTALATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. *v.* BRITISH CRYSTALITE CO., LTD. (1934), 51 R. P. C. 315.

251. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

255. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70. *As to* (2) **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

257. *Add. Annotation:*—**Refd.** Greenberg *v.* Co. operstein, [1926] Ch. 657.

260a. —— **What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.**] — DOMINION IRON & STEEL CO., LTD. *v.* INVERNAIRN. W. N. 277.

265. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70.

266. *Add. Annotations:*—*As to* (1) **Apld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657; *Re* United General Commercial Insce. Corpn., [1927] 2 Ch. 51. *As to* (2) **Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

270. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

271. *Add. Annotation:*—**Folld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

272a. —— ——.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given:—*Held:* (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—GREENBERG *v.* COOPERSTEIN, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.

282. *Add. Citation:*—130 L. T. 450.
Add. Annotation:—**Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

286. *Add. Annotation:*—**Consd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

298. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

310. *Add. Annotation:*—*Generally*, **Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

313a. **Substitution of—For deed of settlement.**]—A co. registered under 1908 Act, with a deed of settlement can, if it satisfies 1929 Act, s. 5, substitute a memorandum & articles for the deed of settlement.—*Re* SHERBORNE GAS & COKE CO., LTD. (1935), 80 Sol. Jo. 33.

317. *Add. Annotation:*—**Consd.** *Re* Blucher (Prince), *Ex p. Debtor*, [1931] 2 Ch. 70.

327. *Add. Annotation:*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

327a. —— —— **Right of export.**]—The E. Syndicate in 1899 was granted by the Egyptian Govt. a concession for manufacturing & selling salt for Egypt from the Mex area, & the sole right to export salt from that area, but the Govt. reserved the right to abolish the salt monopoly at six months' notice. The syndicate then promoted applt. co., which agreed to purchase the rights of the syndicate under the Mex concession, but with the reservation that the co. should not do any export trade in salt, such right of

PART III. SECT. 4, SUB-SECT. 1.

265 iii. ——.]—An assocn. of more than 20 persons formed for starting a business for gain requires registration in accordance with Cos. Act, s. 4, whatever may be the use to which the gains of the business are to be put, *e.g.* educational & other charitable purposes.—CHHEDI LAL *v.* PUNNU LAL (1929), I. L. R. 52 All, 325.—**IND.**

265 iv. —— *Meaning of " gain."*]—The word " gain " is not limited to pecuniary or commercial profits. It means acquisition, something obtained or acquired.—TAN WAING *v.* BO HEIN (1932), I. L. R. 10 Man. 490.—**IND.**

PART III. SECT. 4, SUB-SECT. 5.

sd. *Striking off register—Effect.*]—(1) The intention to dissolve a co. should not be read into a statute providing for the striking of the co. off the register because of a short delay in the payment of its annual fee, unless the language of the statute expressly or by necessary implication imposes that penalty. (2) The conduct of deft. shareholders after the co. had been struck off the register held to make them trustees of the co.'s property for the individual shareholders, who made contributions to conserve the property, & not for the co. It was, therefore, not necessary for pltf., whose suit was for his share of the assets, to have the co. restored to the register & to have the action brought by the co.—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—**CAN.**

sf. *Right to certificate to commence business—Non-compliance with Securities Act.*]—Where a co. is not one which is required by Securities Act, 1930, entitled until 1933, Security Frauds Prevention Act, to comply with that Act, the registrar of cos. is not entitled because of non-compliance with that Act to refuse to issue it a certificate under sect. 40 of the Cos. Act, 1929, entitling it to commence business; & a *mandamus* will issue commanding him to do so.—R. *v.* REGISTRAR OF COS. (No. 1), [1934] 1 W. W. R. 393 48 B. C. R. 152.—**CAN.**

PART III. SECT. 6.

ki. —— *That company duly incorporated.*]—The fact that a co. incorporated under Cos. Act includes in its name the word " Co-operative," contrary to Co-operative Assocns. Act, 1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

export being reserved by the syndicate from the sale to the co. On Jan. 1, 1906, the Govt. abolished the salt monopoly of the syndicate. The memorandum of association of the applt. co. did not expressly prohibit the co. from exporting salt from Egypt, but stated that one of the objects of the co. was to ratify the agreement with the syndicate, & another object was to deal in salt & soda, & it was conceded that under its memorandum the co. could acquire salt deposits outside Egypt & there engage in the export of salt:—*Held:* the memorandum did not exclude from the permitted objects of the co. the export of salt from Egypt so as to prevent its engaging in that business.—EGYPTIAN SALT & SODA Co. *v.* PORT SAID SALT ASSOCN., [1931] A. C. 677; 100 L. J. P. C. 147; 145 L. T. 313, P. C.

330. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

335. *Add. Annotation:*—**Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

337. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

341. *Add. Annotation:*—*As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

343. *Add. Annotation:*—*As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

346. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

351. *Add. Annotation:*—**Apld.** Plantations Trust *v.* Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676.

354. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Consd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon (1930), 47 T. L. R. 97.

355a. —— **Liquidator.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

398. *Add. Annotations:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925]Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

406. *Add. Annotations:*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

410. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

411. *Add. Annotations:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192.

415. *Add. Annotation:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

423. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

PART III. SECT. 7, SUB-SECT. 4.—A.

336 iii. ——.]—The objects of a co., as set forth in its memorandum of assocn., were (*a*) to acquire land in G. & to erect thereon a public hall with shops & cellars; (*b*) to let the hall for public meetings, lectures, auctions, & similar purposes; (*c*) to let the shops & cellars to tenants, either year to year or on lease; & (*d*) to do all such other things as were "incidental or conducive to the attainment of the above object." A hall with shops & cellars underneath was erected, but, some fifty years afterwards, was destroyed by fire. The sum recovered under an insurance policy formed the whole assets of the co. Thereafter the co. presented a petition under Cos. Act, 1929, s. 5, craving the ct. (*inter alia*) to confirm a resolution, duly passed, which altered its memorandum of assocn. by deleting all reference to the erection & letting of a public hall with shops & cellars, & substituting therefor provisions for the erection & letting of shops & dwelling-houses & warehouses. Answers were lodged by certain dissentient shareholders, who maintained that the proposed alteration, if sanctioned, would completely alter the nature of the co.'s undertaking:—*Held:* as the proposed alteration of the memorandum involved a fundamental change in the character of the co. it was not one which could be forced on dissentient shareholders; & petition refused.—STRATHSPEY PUBLIC ASSEMBLY & AGRICULTURAL HALL CO. *v.* ANDERSON'S TRUSTEES, [1934] S. C. 385.—**SCOT.**

81. *Memorandum of insurance company—Alteration to include life assurance—Conditions of grant.*]—The Mutual Property Insce. Co., Ltd., whose objects were to carry on every kind of insurance except life presented a petition under 1929 Act, sect. 5, to confirm a resolution altering the memorandum so as to include power to carry on life insurance:—*Held:* resolution should be confirmed on alteration of the name of the co. to the "Mutual Property & Life Insce. Co., Ltd." & on deposit of the £20,000 required by Assurance Cos. Act, 1909.—*Re* MUTUAL PROPERTY INSCE. CO., LTD., [1934] S. C. 61.—**SCOT.**

80. *Company registered without "limited"—Charitable objects—Alteration.*]—A co. registered under sect. 18 (1) of Cos. Act (Northern Ireland), 1932, by licence of the Ministry of Commerce, as a co. for promoting a charitable object with limited liability but without the addition to its name of the word "limited" cannot extend the objects in its memorandum under sect. 5 of the said Act where the change in the objects is of a substantial character unless circumstances appear in which the doctrine of *cy-près* would be applicable & the principles of *cy-près* should be followed in the consideration of any such application.—*Re* ULSTER SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INCORPORATED) & COMPANIES ACT (NORTHERN IRELAND), 1932, [1936] N. I. 97.—**IR.**

PART III. SECT. 7, SUB-SECT. 6.—A. (a).

358 i. *To take up number subscribed for.*]—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter to cancel his "requirements." P.'s name was never entered in the register of members:—*Held:* P. was liable.—*Re* J. H. CHANDLER & CO., LTD. (1926), I. L. R. 48 All. 580.—**IND.**

PART III. SECT. 7, SUB-SECT. 6.—A. (c).

388 i. *Where shares subscribed for not allotted.*]—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—*Re* T. E. O'REILLY, LTD., [1927] 3 D. L. R. 797; 60 O. L. R. 649.—**CAN.**

395 i. *By transfer.*] — An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.—*Re* GEORGE W. GRIFFITHS CO., [1924 4 D. L. R. 1031.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.—B

400 i. *Misrepresentation by promoter—Not ground for rescission.*]—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract; the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, [1924] N. Z. L. R. 102.—**N.Z.**

427. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

431a. ——.]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, [1925] Ch. 769 ; 94 L. J. Ch. 397 ; 133 L. T. 274 ; 41 T. L. R. 470 ; 69 Sol. Jo. 557, C. A. ; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.

Annotation :—**Expld. & Distd.** Hole *v.* Garnsey, [1930] A. C. 472.

432a. —— **Unless arising from wilful neglect or default.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *post.*

432b. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS & CLARK (1928), 45 T. L. R. 113 ; *on appeal* (1929), 45 T. L. R. 264, C. A.

432c. —— **Unless arising from wilful or wrongful act or default.**]—One of the arts. of assocn. of a co. provided that " The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default " :—*Held :* the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re* CITY OF LONDON INSURANCE CO., LTD. (1925), 41 T. L. R. 521 ; 69 Sol. Jo. 591.

433. *Add. Annotation :*—*As to* (1) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

435. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

437. *Add. Annotation :*—*As to* (1) **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

439. *Add. Annotations :*—*As to* (1) **Consd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *As to* (3) **Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. *Generally,* **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59 ; R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

439a. **" Issued " to the public—What amounts to.**]—A co. being in want of further capital, a document was prepared by applt., who was the managing director, & signed by the other directors, stating the position of the co., that it was proposed to issue 20,000 preference shares, & giving an estimate of the profits after the new capital was available. Attached was an application form for preference shares. A second document was also prepared by the applt., written on the co.'s paper & addressed to a fellow director, marked " strictly private & confidential," which, after setting out the amount of nominal & issued capital, stated the purposes for which the additional capital was required, & concluded thus : " I shall be very happy to discuss this proposition in all its details with any one who is really interested." Attached was a form of application for ordinary shares. Several copies of these documents were given to applt.'s fellow director, who sent a copy to a solr., with a request, in substance, that he should find some client willing to provide the capital required. The solr. sent the documents to resp.'s brother-in-law, & he in turn sent them to resp., who, on the faith of the statements they contained, subscribed for 3,000 ordinary shares in the co. Subsequently ascertaining that a considerable part of the issued capital had been issued otherwise than for cash, a fact that was not stated in either of the documents, he sued applt. for damages for the loss he had sustained through the omission by applt. to comply with the requirements of 1908 Act, s. 81 (1) (*e*). At the trial the jury found that the two documents were an offer of shares by the co. to the public. In answer to the question, whether they were in fact issued to the public, the jury said : " There is no proof of this." The jury found that resp. sustained damage to the amount of £2,000 :—*Held :* the documents were not issued as a prospectus within 1908 Act, s. 81 (1) (*e*).—NASH *v.* LYNDE, [1929] A. C. 158 ; 98 L. J. K. B. 127 ; 45 T. L. R. 42 ; 72 Sol. Jo. 873 ; *sub nom.* LYNDE *v.* NASH, 140 L. T. 146, H. L.

462. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

476. *Add. Annotation :*—**Consd.** Nash *v.* Lynde, [1929] A. C. 158.

483. *Add. Annotations :*—**Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. **Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

484. For first catchword " —— " read **" Notice of contracts."**

491. *Add. Annotation :*—**Apld.** Coles *v.* White City (Manchester) Greyhound Assocn. (1929), 45 T. L. R. 230.

525. *Add. Annotation :*—**Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

525a. ——.]—*Held :* pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the

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PART III. SECT. 8, SUB-SECT. 1.

1. i. —— ——.]—An advertisement offering the public shares in a co. for sale is a " prospectus " under sect. 2 (14) of Indian Cos. Act (VII. of 1913), —PRAMATHA NATH SANYAL *v.* KALI KUMAR DUTT (1924), I. L. R. 52 Calc. 440.—IND.

town-planning scheme.—COLES *v.* WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD. (1929), 45 T. L. R. 230, C. A.

556a. —— ——.]—If the name of a person is improperly placed in the list of directors in the prospectus of a co., it must depend upon the circumstances of the case whether it is a material misstatement.—SMITH *v.* CHADWICK (1882), 20 Ch. D. 27; 51 L. J. Ch. 597; 46 L. T. 702; 30 W. R. 661, C. A.; *affd. on other grounds* (1884), 9 App. Cas. 187, H. L.

560. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

562. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

568. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

577. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

581. *Add. Annotation:*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

581a. —— —— **Directors without knowledge that misrepresentation basis of contract.**]—Deft. co. had no knowledge, that, so far as pltf. was concerned, his application had been induced by any representations made before the co. was incorporated. In these circumstances I think pltf. fails to establish any right to have any contract to take the shares in question rescinded (LUXMOORE, J.).—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1, 14; *affd.*, [1930] 1 Ch. 1, 28, C. A.

581b. —— **Contract between company & agent for undisclosed principal—Whether principal entitled to rescission.**]—Shortly before the incorporation of a co. a draft prospectus, which was afterwards adopted by the co., was circulated for the purpose of obtaining underwriters of shares intended to be offered to the public by the proposed co. An investment co. entered into an underwriting agreement on Nov. 28, 1927, by which they agreed that they would within three days of the issue of the prospectus "either subscribe themselves . . . on the basis of the said prospectus for 1,164,000 . . . shares of 5*s* each or cause the same before the date aforesaid to be subscribed on the terms of the said prospectus by responsible persons," & any reasonable objection might be taken by the co. within two days to persons put forward by the investment co. On Nov. 29, 1927, M. & O. signed & remitted an offer to underwrite 12,000 shares addressed to the investment co. & also an application for the shares addressed to the proposed company, which was accompanied by a cheque for £600. On Dec. 12, 1927, the incorporation of the proposed co. took place, & the underwriting agreement & prospectus were adopted by the co. & the prospectus issued to the public. The public response was insufficient, & 8,160 shares were allotted to M. & O., the allotment letter bearing at the back a form of renunciation. M. & O. were agents for pltf., who had provided the £600. They renounced the shares in favour of pltf., who paid the further sum of £624 due on allotment & sent the allotment letter to the co., who replied stating that it had been duly registered in his name & placed his name on the register of shareholders:—*Held:* pltf. was not entitled to rescission, because (1) the contract between M. & O. & the co. was of such a class that M. & O. must be treated as the principals, so that pltf., as the undisclosed principal, could not sue on the contract or obtain its rescission, & (2) the contract constituted by the co.'s acceptance of pltf.'s authority under the renunciation to place his name on the register could not be treated as a contract entered into on the basis of the draft prospectus.—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1; 99 L. J. Ch. 52, C. A.

581c. —— —— **Effect of renunciation by agent in favour of plaintiff.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

582a. Misrepresentation by promoters.]—If a person is induced to take shares on the faith of a promise by the promoters of a co., which promise is not kept, he is a contributory. His remedy is only against the persons who made the promise.—*Re* UNITED KINGDOM SHIPOWNING CO., LTD., FELGATES CASE (1865), 2 De G. J. & Sm. 456; 11 L. T. 613; 11 Jur. N. S. 52; 13 W. R. 305; 46 E. R. 451, C. A.

604. *Add. Annotation:*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

614a. ——.]—B. signed a printed form issued by the promoters of an intended co., expressing his willingness to become a member of the council of administration of the intended co. M. also wrote to the promoters promising to help the co. Soon afterwards the promoters issued a prospectus in which the co. was described as "to be incorporated under the Cos. Acts," & an extract was given from the proposed articles of assocn. to the effect that there would be a council of administration of members of the co., & a list of members of the council was appended containing the names of B. & M. In reliance on this prospectus, K. applied for shares in the intended co. On Jan. 31, three days after K.'s application, the co. was duly registered under the Cos. Act; & on Feb. 2, the directors allotted K. the shares which he had applied for, & approved a form of prospectus substantially the same as that which had been issued by the promoters. On Feb. 11, K. paid the allotment money on those shares. On June 26, K. discovered that B. & M. had both declined to take shares in the co. & to become members of the council of administration, & took out a summons to have his name removed from the list of shareholders:—*Held:* the effect of the statement in the prospectus was not merely that B. & M. had expressed their willingness to become members of the council of administration, but that they had authorised the publication of their names as members, & as such was a false statement of fact; the prospectus, although issued by the promoters before the formation of the co., was the basis of the contract between the co. & K. for the allotment of shares; that the misstatement in the prospectus was relied on by K., & was material to the contract, & consequently that K. was entitled to rescind the contract

& repudiate the shares. The ct., being of opinion that there had been no laches or acquiescence, ordered K.'s name to be removed from the list of shareholders, & the money paid by him in application & allotment to be returned with interest at 4 per cent.—*Re* METROPOLITAN COAL CONSUMERS' ASSOCN. KARBERG'S CASE, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700; 8 T. L. R. 637, C. A.

Annotations :—**Refd.** *Re* Canadian Direct Meat Co. (1892), 36 Sol. Jo. 865; *Re* Consort Deep Level Gold Lines, Ltd., *Ex p.* Stark, *Ex p.* Elliston (1896), 45 W. R. 227; Lynde *v.* Anglo-Italian Hemp Spinning Co., [1896] 1 Ch. 178; *Re* Metal Constituents, Ltd., Lurgan's Case, [1902] 1 Ch. 707; Hilo Manufacturing Co., Ltd. *v.* Williamson (1911), 28 T. L. R. 164; Mair *v.* Rio Grande Rubber Estates, Ltd., [1913] A. C. 853; *Re* Pacaya Rubber & Produce Co., Ltd., Burns' Applns., [1914] 1 Ch. 542; Goldrei, Foucard & Son *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Bisset *v.* Wilkinson, [1927] A. C. 177, P. C.

642. *Add. Annotations :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641. **Refd.** Horwood *v.* Statesman Publishing Co. (1929), 141 L. T. 54; United Motor Finance Co. *v.* Addison & Co., [1937] 1 All E. R. 425.

660. *Add. Annotation :*—**Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

667. *Add. Annotation :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

677. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

702. *Add. Annotations :*—**Expld.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

703. *Add. Annotation :*—**Refd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

738. *Add. Annotation :*—**Refd.** The Saxicava, [1924] P. 131.

741. After this case add :—
See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

(*i*) *Other Cases* (Vol. IX., p. 139).

770a. Acceptance of sum paid into court—Effect on liability under 1908 Act, s. 84.]—Resp. applied for & was allotted debenture stock in W., C., & Co., Ltd., relying upon the statements contained in a prospectus. The first-named applts. were directors in W., C., & Co., Ltd.; the second-named applts. carried on business as merchant bankers in the name of S. & Co., who were stated in the prospectus to have purchased the whole of the debenture stock of W., C., & Co., Ltd., but who were alleged by resp. to have issued the prospectus as agents for the other applts. Resp. by his writ claimed "damages for false & fraudulent misrepresentation against all applts., & against such of applts. as were directors of W., C., & Co., Ltd., compensation under 1908 Act, s. 84, alternatively damages for conspiracy to defraud, the damages claimed in respect of the three claims being £178." The trial judge dismissed the action against the first-named applts. with costs. The action then proceeded against the second-named applts. until they amended their defence by leave & paid £130 into ct. with a denial of liability, which amount the resp. accepted in lieu of the £178 claimed, in full satisfaction of the cause of action for fraudulent misrepresentation. The Ct. of Appeal set aside the orders & judgment of the trial judge & ordered a new trial of the action as regards the causes of action under 1908 Act, s. 84, & conspiracy to defraud :—*Held :* (1) both on the issue of conspiracy to defraud & the issue of deceit, after the money had been taken out in satisfaction there was no cause of action & no head of damage remained unsatisfied of which there was any evidence or which could be ordered to be tried anew; (2) on the question of compensation under 1908 Act, s. 84, although the case should have been left to the jury there was nothing left to be tried after resp. had taken out in satisfaction money paid in on the issue of conspiracy only. Compensation was not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28; 99 L. J. P. C. 1; 141 L. T. 641, H. L.

771a. —— Order for new trial—After acceptance of sum paid into court.]—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, No. 770a, *ante.*

777. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

784. *Add. Annotation :*—**Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

814. *Add. Annotation :*—*As to* (1) **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

814a. Profit sharing deposit notes redeemable in four years—Company bound to redeem.]—Pltf., in reliance upon a prospectus issued in

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PART III. SECT. 8, SUB-SECT. 3.—D. (b).

sf. Prospectus must be issued by or on behalf of company.]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—URQUHART *v.* STRACEY, [1928] N. I. 162.—**IR.**

678 i. *Measure of damages.*]—URQUHART *v.* STRACEY, No. 747 i, *post.*—**IR.**

PART III. SECT. 8, SUB-SECT. 3.—D. (c).

sm. Under Criminal Code, s. 414.]—The above sect. relates to the issuing of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements :—*Held :* a conviction under that sect. was not justified.—R. *v.* ANDERSON (1924), 55 O. L. R. 586.—**CAN.**

sn. —— Ingredients of offence.]—R. *v.* HARCOURT (Ont.) (1929), 52 Can. Crim. Cas. 342.—**CAN.**

PART III. SECT. 8, SUB-SECT. 3.—F. (c).

747 i. *Claim for damages against directors—& others—Joined with statutory claim for compensation against directors.*]—Pltf. bought debentures in a co. on the faith of statements in a prospectus. Some of defts. were directors in the co., & some were partners in an issuing house called S. & Co. Pltf. claimed against all defts. damages for fraudulent misrepresentations in the prospectus & for conspiracy to defraud, & against such of defts. as were directors in the co. claimed compensation under 1908 Act, s. 84 :—*Held :* (1) pltf. was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (*a*) that he could not get damages more than once in respect of what was in substance the same cause of action, & (*b*) that the causes of action could conveniently be tried or disposed of together; (2) if pltf. succeedod on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation.—URQUHART *v.* STRACEY, [1928] N. I. 162; *varied,* 141 L. T. 641, H. L.—**IR.**

Sept., 1920, by deft. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held:* pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co.* v. *Buckleton* (*see* No. 1565) was satisfied.—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations:*—**Consd.** *Re* Burton, [1927] 2 Ch. 132. **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

820. *Add. Annotations:*—*As to* (4) **Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. *As to* (5) **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K B. 421. *Generally*, **Refd.** Stapley *v.* Read (1924), 131 L. T. 629.

826. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

834a. Order under 1929 Act, s. 56 (3)—What amounts to special circumstance—Not mere solvency of company.]—PRACTICE NOTE (1930), 69 L. Jo. 252; 169 L. T. Jo. 283; [1930 W. N. 78.

839a. —— —— Company in voluntary liquidation.]—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re* WALTERS (STEPHEN) & SONS, LTD. (1926), 70 Sol. Jo. 953.

839b. —— ——.]—*Re* ACME SPINNING CO., LTD., *Re* AMALGAMATED COTTON MILLS TRUST, LTD. (1937), 81 Sol. Jo. 922; *sub nom.* PRACTICE NOTE, 184 L. T. Jo. 402.

840. *Add. Annotations:*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91; Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

842. *Add. Annotation:*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

849a. —— Scheme fully explained & approved on poll.]—Resp. co., which was incorporated

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PART III. SECT. 10, SUB-SECT. 1.

sp. *Includes premiums on sale of stock.*]—TORONTO *v.* CONSUMERS' GAS CO., [1927] 4 D. L. R. 102.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—E.

sp. *Increase not permitted by articles—Resolution to reduce simultaneously with resolution to increase—Validity.*]—Where articles do not authorise increase of capital, a co. may not, under 1929 Act, sect. 50 (1) (*a*), pass resolutions to reduce capital simultaneously with resolutions to increase capital & to alter articles to permit such increase.—*Re* METROPOLITAN CEMETERY CO., [1934] S. C. 65.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3. —A.

834a i. *Order under 1929 Act, s. 56 (3)—What amounts to special circumstances.*]—In a petition at the instance of a shipping co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock, that the co.'s only debts, consisted of expenditure incurred by its ships in the course of their voyages, the amount of which would not be ascertained till their return; that such debts were, in practice, regularly discharged as soon as their amount had been ascertained; & that the value of the co.'s ships was ample security for its outstanding debts. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. directed that the provisions of Cos. Act, 1929, s. 56 (2), should not apply to the creditors of the co. or any class of them; & confirmed the reduction of capital *simpliciter*.—*Re* UNIFRUITCO STEAMSHIP CO., [1930] S. C. 1104.—**SCOT.**

834a ii. —— ——.]—In a petition at the instance of a colliery co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock; that the co.'s principal creditors were trade creditors, mineral owners in respect of lordships, employees in respect of wages, & the collectors of rates & taxes; that, during the dependence of the petition, all these creditors, with one exception, had been paid or had consented to the proposed reduction; that the remaining creditor, the Inland Revenue, whose claim was for £19,690 in respect of unascertained income tax liability had, in accordance with department practice, declined to sign any consent, but had stated no objection to the proposed reduction; & that the value of the co.'s liquid assets was ample security for its outstanding liabilities. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. found it unnecessary to apply the provisions of Cos. Act, 1929, s. 56 (2), & confirmed the reduction of capital *simpliciter*.—*Re* CADZOW COAL CO., LTD., [1931] S. C. 272.—**SCOT.**

with a capital of £95,000,000 consisting of cumulative preference, ordinary & deferred shares, petitioned the ct. to sanction a reduction of capital to £89,565,859 by cancellation of half the amount of each of the 21,736,564 deferred shares of 10*s.* each, & by conversion & consolidation of each four deferred shares into one £1 ordinary share carrying full dividend rights as from Jan. 1, 1935. The scheme, which was submitted by the directors for the purpose of simplifying & strengthening the co.'s financial structure, was approved by more than the statutory majority at the extraordinary general meeting, & by more than the majority prescribed by the arts. of assocn. of the co. at each of the separate class meetings of the ordinary & deferred shareholders. It was provided by the memorandum & arts. of assocn. that the special rights or privileges of any class of shareholders should not be varied or extinguished without the approval of a separate class meeting of the shareholders so affected. Apart from the scheme, the co.'s profits, in terms of the articles, were to be distributed in payment of (i) a dividend of 7 per cent. *per annum* on the cumulative preference shares, (ii) a dividend of 7 per cent. *per annum* on the ordinary shares, & (iii) out of the available balance of profits, (*a*) a further dividend on the ordinary shares, together with (*b*) a dividend on the deferred shares in such a manner that the balance so distributable in respect of the ordinary shares should be as nearly as possible twice the total amount to be distributed in respect of the deferred shares. The board sent to all shareholders a circular which contained detailed information regarding the scheme, but which made no reference to the comparative holdings of the directors in ordinary & deferred shares of the co. Meetings for the purpose of obtaining the shareholders' sanction were convened, & held on May 1, 1935. The first was an extraordinary general meeting of all shareholders, at which the chairman spoke in support of the scheme & announced that, with the approval of the shareholders, he proposed to make that one speech in relation to that meeting & to the two subsequent class meetings of the ordinary shareholders & deferred shareholders respectively, without any further speeches. The resolutions having been defeated on a show of hands, a poll was taken forthwith, & thereafter two meetings, purporting to be separate class meetings of ordinary shareholders & deferred shareholders, were held. The resolution was duly passed at the meeting of the ordinary shareholders, & it was declared lost on a show of hands at the deferred shareholders' meeting, but was subsequently carried by the requisite majority on a poll being taken. Holders of shares of classes other than deferred shares were present in the hall during the holding of the class meeting of the deferred shareholders, but there was no evidence that any shareholder other than deferred shareholders either took any part in the conduct of, or voted at, that meeting. The co.'s petition was opposed by applt. on behalf of himself & all other holders of deferred shares, on the ground that, *inter alia*, the reduction of capital was *ultra vires* the co. & was not properly sanctioned by the deferred shareholders, who, under the scheme, were exposed to unfair treatment as a class of shareholders :—*Held :* (1) as the arts. of assocn. empowered the co. to reduce its share capital in the ways specifically mentioned therein, " or otherwise as may seem expedient," the co. thus became entitled to reduce its capital in any way authorised by 1929 Act ; (2) the meeting of deferred shareholders was properly convened, the objection which might have been raised to the presence of holders of shares of another class was waived, the poll was duly demanded, & the extraordinary resolution was duly passed by the requisite majority ; (3) the circular issued to the shareholders disclosed sufficient information to enable them to judge of the fairness & propriety of the scheme ; (4) the proposed reduction of capital should be confirmed, as the scheme for the re-arrangement thereof did not operate unfairly in relation to the holders of deferred shares.—CARRUTH *v.* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1937] A. C. 707 ; [1937] 2 All E. R. 422 ; 156 L. T. 499 ; 53 T. L. R. 524 ; *sub nom. Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., 106 L. J. Ch. 129, H. L.

863. *Add. Annotation :*—**Refd.** Drown *v.* Gaumont-British Picture Corpn., Ltd., [1937] 2 All E. R. 609.

871. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

887. *Add. Annotation :*—**Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

935. *Add. Annotation :*—**Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

PART III. SECT. 10, SUB-SECT. 3.—C.

sq. *Cancellation of vendor's shares*].—Deft. co. was incorporated for the express purpose (*inter alia*) of acquiring the assets & business of a certain boiler works of which pltf. was the principal owner. Under an agreement between pltf. & the co., which modified an earlier agreement, the co. agreed to assume the liabilities of said business and to issue to pltf. fifty-five of the co.'s shares fully paid up in consideration of the transfer of the assets of said works. It was then discovered that the liabilities of pltf.'s business equalled or exceeded the value of its assets, & he & the co. entered into a compromise agreement under which his said shares were surrendered & cancelled & he agreed to take in lieu thereof whatever the shareholders should vote him :—*Held :* said compromise agreement was within the power of the co. ; it did not bring about a real reduction of capital or constitute a purchase by the co. of its own shares or prejudice creditors.—PATTERSON *v.* VULCAN IRON WORKS, [1930] 1 W. W. R. 640 ; 2 D. L. R. 961 ; 42 B. C. R. 300 ; *affg.*, [1929] 4 D. L. R. 508, C. A.—**CAN.**

PART III. SECT. 10, SUB-SECT. 3.—F. (a) iii.

sr. *Free shares taken by promoters.*]—Where on an unopposed petition by a co. for confirmation of resolutions for the reduction of capital & cancellation of shares, it appeared that the promoters had taken a large holding of free shares & that one of the objects of the petition was probably to free the promoters of a possible liability in respect of these shares :—*Held :* the reduction & cancellation of the shares should be confirmed.—*Re* ADELAIDE MORTGAGE & INVESTMENT CO., LTD. (1928), S. A. S. R. 478.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—F. (e).

926 i. *Nominal capital not reduced—Amount returned liable to be called up again.*]—By special resolution under Cos. Act, 1929, s. 55, a limited co. resolved that, in respect of each fully-paid £1 share of its issued capital, the sum of 2*s.* 6*d.* be paid off " upon the footing that the amount so returned or any part thereof may be again called up." In a petition at the instance of the co. for confirmation of the proposed reduction :—*Held :* the form of the reduction was competent & the ct. confirmed the reduction *simpliciter*.—*Re* BROWN, SONS & CO., [1931] S. C. 701.—**SCOT.**

942a. Resolution before operative date of 1929 Act — Confirmation after such date.]—*Re* GRAYSON, ROLLO & CLOVER DOCKS, LTD. (1930), 69 L. Jo. 151; 169 L. T. Jo. 144; [1930] W. N. 27.

943. *Add. Annotation :*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

977a. —— —— Large fund available to meet liabilities.]—*Re* ANTWERP WATERWORKS CO., LTD., [1931] W. N. 186; 172 L. T. Jo. 75; 72 L. Jo. 79.

1012a. —— At date of registration of minute.]—A co., which desired to vary the constitution of its capital, petitioned the ct. for an order sanctioning a scheme of arrangement which involved the reduction & subsequent increase, subdivision & consolidation of capital. The capital was to be reduced by converting certain issued ordinary shares of 15*s.* each into ordinary shares of 12*s.* each. The capital was then to be increased by the issue of redeemable preference shares of £1 each & shares of 4*s.* each. It was part of the scheme that the unissued ordinary shares of 15*s.* each should be subdivided & consolidated into ordinary shares of 12*s.* each. It was proposed that the minute of reduction to be registered under 1929 Act, s. 58, should be approved in a form which, after dealing with the reduction, stated the amount & constitution of the share capital at the date of the registration of the minute, but did not give details of the increase, subdivision & consolidation of the capital :—*Held :* the scheme should be sanctioned & the suggested form of order should be approved.—*Re* HARRODS (BUENOS AIRES), LTD., [1936] 2 All E. R. 1651; 80 Sol. Jo. 689.

1012b. —— ——.]—A co. with a share capital consisting of preference shares of £1 each & ordinary shares of £1 each, desiring to reduce its capital, approved a scheme by special resolution whereby the issued preference shares & ordinary shares of £1 each (which were fully paid up) were to be reduced to an equivalent number of preference shares & ordinary shares of 10*s.* each. These 10*s.* shares were then to be consolidated in such a manner that every two of such preference & ordinary shares respectively should constitute one £1 fully paid preference or ordinary share as the case might be. The ct. was petitioned to sanction the scheme. The ct. sanctioned the scheme & approved a form of minute for registration.—*Re* HOLLAND & WEBB, LTD., [1936] 3 All E. R. 955; 80 Sol. Jo. 1014.

1015. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1017. *Add. Annotations :*—**Refd.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1019a. Passing of special resolution—& confirmation by court.]—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re* NORTH POLE ICE CO., LTD. & REDUCED, [1924] W. N. 131.

Annotation :—As to (1) **Expld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718.

1019b. —— ——.]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re* DAMPNEY & CO., LTD. & REDUCED (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1036. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1036a. —— ——.]—*Re* NORTH POLE ICE CO., LTD., & REDUCED, No. 1019a, *ante*.

PART III. SECT. 10, SUB-SECT. 3.—G. (b).

f i. —— *Without remit to reporter—Creditors not affected.*]—FOWLERS (ABERDEEN), LTD., [1928] S. C. 186.—**SCOT.**

f ii. —— ——.]—In a petition for reduction of capital presented by a co. in which it was stated that the proposed reduction did not involve either the diminution of liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, & that the rights of creditors were not affected in any way, & further, that the leading creditors & all the shareholders had assented to the proposed reduction, the ct. dispensed with a remit to a reporter, & granted the prayer of the petition.—*Re* SCOTTISH STAMPING & ENGINEERING CO., LTD., [1928] S. C. 484.—**SCOT.**

f iii. —— ——.]—*Re* HAY & SONS, [1928] S. C. 622.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (c) ii.

961 i. on an application by a limited co. for confirmation by the ct. of a reduction of its capital it appears that the co.'s only creditors are those in respect of trade liabilities incurred from day to day during the current month, the ct. may make an order confirming the reduction forthwith & dispensing with the advertisement of the presentation of the petition & the settlement of the list of creditors.—*Re* A. LESSER & CO. PTY., LTD. (1929), V. L. R. 316; 1929 A. L. R. 265.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—G. (d) i.

967 i. *Who are creditors — Persons entitled to unclaimed dividends.*]—ARIZONA COPPER CO., PETITIONERS, [1926] S. C. 315.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (e).

st. *Function of court—What court must consider.*]—*Re* MILLS (E. W.), LTD., [1925] N. Z. L. R. 227.—**N.Z.**

PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p i —— —— *Amount after increase by subsequent resolution.*]—*Held :* when a co. has passed the necessary resolutions to reduce its capital, subject to the approval of the ct., by writing down the par value of the existing shares, &, on such reduction being confirmed by the ct., to increase its capital by the creation of further shares, the minute required to be recorded under Cos. Act, 1908, s. 51, should set forth (*a*) the state of the co.'s capital after giving effect to the reduction as sanctioned, & (*b*) the state of its capital as increased by the resolutions passed conditionally upon such reduction taking effect.—D. SIMPSON, LTD., [1929] S. C. 65.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 4.

g i. —— ——.]—*Held :* the proposed arrangement was so drastic in its destruction of the sinking fund & placed absolute power in the hands of those who controlled the co. to redeem whose stock they pleased, as to make it a violation of the rights of the minority : & for that reason approval of the arrangement should be refused.—*Re* SECOND STANDARD ROYALTIES, LTD. (1930), 66 O. L. R. 288.—**CAN.**

1080a. —— **Company in voluntary liquidation.**]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante*.

1087. After this case add :-

-.]—*See, now,* 1929 Act, s. 153 (5).

1102. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

1105. *Add. Annotation :—As to* (2) **Consd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

1108. *Add. Annotations :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** I. R. Comrs. *v.* Barnato, [1936] 2 All E. R. 1176.

1124. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338 ; *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982 ; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364 ; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857 ; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

1125. *Add. Annotation :*—**Overd.** A.-G. *v.* Tube Investments, Ltd. (1930), 142 L. T. 561.

On increase of capital.]—After this cross-reference add :—

1126a. —— **When increase takes place.**]—In Dec. 1927, resp. co. passed an extraordinary resolution that the capital of the co. be increased to £1,550,000 by the creation of 300,000 new ordinary shares & payment was made on the increase of the stamp duty under Stamp Act, 1891 (c. 39), s. 112. On the same day the co. passed an extraordinary resolution altering the Arts. of the co. & adding an Art. 44 (*a*) which provided " the directors of the company for the time being be & they are hereby authorised from time to time by resolution passed by them to increase the existing capital of the co. from £1,550,000 to £2,500,000 by the creation of 950,000 additional shares of £1 each. Such increases within the limits aforesaid may be made successively & such new shares shall have " certain priorities & rights. The Crown asserted that immediately on the creation of Art. 44 (*a*) there was an increase of capital within the meaning of Stamp Act, 1891 (c. 39), s. 112, & stamp duty was payable on the 950,000 new shares:—*Held:* under Art. 44 (*a*) two steps were necessary before an increase of capital was created within the meaning of Stamp Act, 1891 (c. 39) s. 112 : first the introduction of the article & then a step which might not in fact be ever taken, namely, a resolution creating the increase or some of the increase of the capital authorised by the article ; & until the directors exercised the power to increase given to them by the article there was no increase in the registered capital of the company & no duty was attracted under sect. 112.—A.-G. *v.* TUBE INVESTMENTS, LTD. (1930), 142 L. T. 561, C. A.

1127. *Add. Annotation :—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1133. *Add. Annotation :*—**Refd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1134. *Add. Annotation :—As to* (2) **Refd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1153a. —— **Liability of sub-underwriter.**]—ICE RINKS, LTD. *v.* MATHUEN (1930), 74 Sol. Jo. 41.

1169. *Add. Annotation :*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

1169a. —— —— —— **Directors without knowledge that misrepresentation basis of contract.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581a, *ante*.

1169b. —— —— —— **Between company & agen for undisclosed principal—Renunciation by agent in favour of principal.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

1205. *Add. Annotations :*—**Distd.** Pailin *v.* Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73. **Consd.** Hindmarch *v.* Carterthorne Colliery Co. (1928), 21 B. W. C. C. 44 ; Vickers *v.* Cumberland Coal Owners' Mutual Indemnity Co. & Whitehaven Colliery Co. (1934), 27 B. W. C. C. 56. **Refd.** Wales *v.* Iron Trades Employers Assocn. (1928), 21 B. W. C. C. 316.

1220. *Add. Annotation :*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

1226. *Add. Annotations :—As to* (2) **Expld.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

PART III. SECT. 11, SUB-SECT. 2.—A. (a).

sc. *Agreement to pay commission—Ultra vires.*]—An agreement was entered into by applt. co., incorporated in New South Wales, for the underwriting by them of a proposed issue of capital of resp. co. The taking up of any of the shares pursuant to the underwriting agreement involved the payment out of resp. co.'s share capital of a commission to applt. co. in respect of such shares. The New South Wales Cos. Acts, 1899 to 1918, contain no provision expressly authorising the payment of underwriting commissions. On a claim by applt. co. that the underwriting agreement was *ultra vires* resp. co. & unenforceable :—*Held :* inasmuch as the agreement would result in applt. co. receiving from resp. co. a discount for which there was no consideration it was *ultra vires* resp. co.—AUSTRALIAN INVESTMENT TRUST, LTD. *v.* STRAND & PITT STREET PROPERTIES, LTD., [1932] A. C. 735 ; 148 L. T. 1 ; 48 T. L. R. 646, P. C.—**AUS.**

PART III. SECT. 11, SUB-SECT 3.—B.

sw. *To account to company for money received before incorporation of company.*]—Where a co. brought an action against an underwriter, & recovered a verdict for £317 10*s.* :—*Held :* as deft. by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him. —HARMONIC RESONATOR, LTD. *v.* WALTON (1927), 27 S. R. N. S. W. 81 ; 44 N. S. W. W. N. 50.—**AUS.**

PART III. SECT. 12, SUB-SECT. 4.—B. (a).

sy. *Company holding franchise—Second company owning shares—Whether liable to Municipal & Public Utility Board.*]—Where a co. has been given a franchise, the fact that all its issued shares, except qualification shares, are held by another co. & that its officers are all officers of such other co. does not impose on the latter co. the obligations with respect to the franchise which the former co. is under &, therefore, does not subject it to orders of the Municipal & Public Utility Board with respect to said obligations.—*Re* SUBURBAN RAPID TRANSIT CO., WINNIPEG ELECTRIC CO. & RURAL MUNICIPALITY OF ASSINIBOIA, [1931] 1 W. W. R. 778.—**CAN.**

1226a. ——.] — AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, No. 431a, *ante*.

1230. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1265. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

1265a. —— ——.]—In the absence of fraud or *mala fides*, a *cestui que trust* cannot be put on the list of contributories, though he may be called upon to indemnify his trustee.—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE (1860), 2 De G. F. & J. 275; 9 W. R. 43; 45 E. R. 627; *sub nom. Re* ELECTRIC TELEGRAPH CO. OF IRELAND, *Ex p.* BUNN, 3 L. T. 567; *sub nom.* ELECTRIC TELEGRAPH CO. OF IRELAND *v.* BUNN, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, L. JJ.

1268. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

1320. *Add. Annotation:*—**Apld.** *Re* Hobson, Houghton, [1929] 1 Ch. 300.

1321. *Add. Annotation:*—*As to* (1) **Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

1342. *Add. Annotation:*—*Generally*, **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1358a. ——.]—The appct. was persuaded by Y. to take part in a certain transaction & to deposit with Y., as security until the transaction was completed, certain shares, of which the appct. was the registered holder. The appct. was told that these shares were to be put temporarily in the name of Y. & for that purpose the appct. signed certain documents, but in no instance was the signature witnessed. By means of a transfer purporting to be executed by the appct. & properly witnessed, the name of Y. was entered upon the co.'s register as holder of the shares. The appct. in evidence said that she had never signed a transfer of the shares & the witness to the signature admitted that she had not signed as witness in the presence of the appct. A handwriting expert gave evidence that the appct.'s alleged signature on the transfer form was more likely to be genuine than a forgery. The appct. moved to rectify the co.'s register under 1929 Act, s. 100. Certain brokers had been instructed by Y. to sell the said shares & they opposed the application on the ground that the transfer was part of a scheme " to rig the market " : —*Held:* (1) the jurisdiction of the ct. to rectify the register is not limited to cases where a name has been entered improperly, but extends to cases where a name stands on the register without sufficient cause; (2) there was sufficient evidence, even assuming the transfer to have been a proper one & not a forgery, that the appct.'s name had without sufficient cause been omitted from, & Y.'s name had without sufficient cause been placed upon the register, & it ought to be rectified; (3) as the brokers did not claim that they themselves or anyone with whom they had entered into any contract had a right to have their or his name put upon the register, their application must be refused, but they had rightly brought the suggestion of illegality before the ct. On the evidence the appct. was no party to any illegality.—*Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1936] 2 All E. R. 463; 80 Sol. Jo. 533.

1379a. Restrictions on transfer—Deposit with bank as security—Sale by bank notwithstanding restrictions.]—S. H., the holder of shares in a private co., T. H., Ltd., was also chairman of a co., C. & Co., Ltd. The account of C. & Co. with their bankers being largely overdrawn, S. H. gave the bankers a continuing guarantee & deposited with them a certificate for 800 shares in T. H., Ltd., with a memorandum charging all shares, the certificates for which were or might be lodged with the bankers, as security for the payment on demand of all moneys due or to become due to them, &, upon default by him in paying or further securing on demand any money secured, authorising them without further notice to sell the shares.

By the arts. of assocn. of T. H., Ltd., a member could not transfer his shares until he had given notice to the secretary offering to sell the shares at a price to be fixed by the auditor, & until the secretary had offered them to the other members, one director, T. H. V. H., having a right of pre-emption. The bankers began to press for a transfer of the shares into the names of two nominees. They were aware of the arts. of assocn. of T. H., Ltd., & were warned by S. H. that such a transfer would be invalid. They also gave S. H. notice in writing demanding payment of C. & Co.'s overdraft. S. H. then gave them as further security certificates for 346 additional shares in T. H., Ltd., & executed instruments purporting to be transfers of 1,146 shares in that co., & the nominees of the bankers were placed on the register of the co. as the holders of the shares. In order to obtain a further advance for the benefit of C. & Co., S. H. executed a mtge. of other property, covenanting to pay the bankers on demand all money then or at any time due from himself or from C. & Co. Application was then made to the auditor of T. H., Ltd., to fix a price for the 1,146 shares: a price was fixed, & the shares were bought by T. H. V. H. with money borrowed from the bankers & secured by a so-called transfer of the 1,146 shares & 850 other shares to nominees of the bankers, who were placed on the register of T. H., Ltd., as the holders of 1,996 shares. Two actions were brought, one by E. H., a shareholder in T. H., Ltd., suing on behalf of herself & all other the shareholders in the co., except T. H. V. H., & claiming to have the register of shareholders rectified by restoring thereto the name of S. H. as the holder of 1,146 shares & entering that of T. H. V. H. as the holder of 850 shares on the ground that

PART III. SECT. 12, SUB-SECT. 4.—B. (b).

sz. *Limited company—Husband & wife sole shareholders—Wife not personally liable on contract.*]—Where a husband & wife are the sole shareholders in a co. incorporated under Cos. Act, 1929 (B. C.), the wife cannot be held personally liable for goods sold on credit to the co.—WALDRON *v.* HOGAN, D. L. R. 800.—CAN.

PART III. SECT. 13, SUB-SECT. 5.—B. (d) vii.

1374 i. *Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.*] —*Re* CUSTOM HOUSE MOTOR CO., LTD. (IN VOLUNTARY LIQUIDATION), [1928] St. R. Qd. 338.—AUS.

all the transfers & registrations aforesaid were made in contravention of the co.'s arts. & were void. The second action was brought by S. H., who sought the same relief & also claimed the right to redeem the 1,146 shares on the footing that the sale of the shares was void, & that his equity of redemption was still subsisting. In E. H.'s action, which was the first to be tried, an order was made for rectification of the register as prayed therein. In S. H.'s action a similar order was made, a further order that S. H. was entitled to redeem the 1,146 shares. T. H. V. H., T. H., Ltd., & the bankers & their nominees appealed against the orders in both actions. The Ct. of Appeal dismissed the appeal in E. H.'s action. From that decision there was no appeal. The Ct. of Appeal allowed the appeal in S. H.'s action, holding that S. H. was entitled to be upon the register, but that the sale of the 1,146 shares to T. H. V. H. operated as a valid transfer of the equitable interest in the shares, & ordering that S. H. should execute a declaration of trust of the shares in favour of T. H. V. H. & bankers or as they should direct. From this decision S. H. appealed, & there was a cross-appeal by T. H. V. H., T. H., Ltd., the bankers & their nominees:—*Held:* applt. was entitled to have the register rectified by restoring his name thereto as the holder of 1,146 shares, on the grounds: (1) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN (Lord ATKIN *doubting*), that there was no effective demand for payment before the attempted sale of the shares, the demand which was made having been superseded by the security & mtge. subsequently given & executed; (2) *Per* Lord CHANCELLOR, Lord ATKIN, & Lord MACMILLAN, that there was no effective sale of the shares, the restrictions imposed by the arts. of assocn. of the co. not having been observed; (3) *Per* Lord CHANCELLOR & Lord MACMILLAN, that applt. was not estopped from claiming rectification of the register, inasmuch as the bankers were well aware, & had been informed by applt., of all the restrictions upon the sale of the shares (Lord BLANESBURGH *assenting* on other grounds); (4) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord ATKIN, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN, that the attempted sale by the bankers did not operate to pass the equitable apart from the legal interest in the shares.—HUNTER *v.* HUNTER, [1936] A. C. 222; 105 L. J. Ch. 97; 154 L. T. 513, H. L.

1411a. —— Where further investigation required.] —On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re* GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD. (1924), 40 T. L. R. 488, D. C.

1433. *Add. Annotations:*—**Consd.** *Re* Paulin, *Re* Crossman, [1935] 1 K. B. 26. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443; I. R. Comrs. *v.* Crossman, I. R. *v.* Mann, [1937] A. C. 26.

1448a. —— Right to issue stock warrants payable to bearer.]—There is nothing in the Cos. Act, 1929 (c. 23), that, expressly or by implication, deprives a co. of the power to issue warrants to bearer in respect of stock.—PILKINGTON *v.* UNITED RAILWAYS OF THE HAVANA & REGLA WAREHOUSES, LTD., [1930] 2 Ch. 108, 99 L. J. Ch. 555; 144 L. T. 115; 46 T. L. R. 370; 74 Sol. Jo. 264.

1448b. Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.]—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation:—*Held:* such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re* BLAINA COLLIERY CO., LTD. (1926), 70 Sol. Jo. 404.

1451. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1453. *Add. Annotation:*—*As to* (1) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1455a. —— Power in memorandum—No provision in articles.]—By the memorandum of assocn. of a co. incorporated under the Cos. Act, 1899, of New South Wales, the material provisions of which Act were similar to the law as to English cos., the co. was to have power to issue with preferential rights part of the shares in its original capital thereby stated. The articles of assocn. contained no express power to issue preference shares as part of the original capital. Art. 10 provided that the shares should be under the control of the directors, who might allot them on such "terms & conditions" as they thought fit. By art. 117 the management of the "business of the co." was vested in the directors who, in addition to the powers otherwise expressly conferred on them, might do all such things as the co. might do, save those which by the articles or statute were to be done in general meeting. The articles

PART III. SECT. 14.

sz. "*Preference shares.*"] — "Preference share" is an indefinite term, having a commercial or popular rather than a legal import. Where a preference of any character is given to the holder of a share, the circumstance that in other respects he is deprived of the usual rights of a holder of common shares does not prevent his share from being properly designated a "preference share."—RUBAS *v.* PARKINSON, [1929] 3 D. L. R. 558; 64 O. L. R. 87.—CAN.

PART III. SECT. 15, SUB-SECT. 1.

1450 ii. —— —— ——.]—The memorandum of assocn. of a co. provided, *inter alia*, that the preference stock should rank as to dividend & capital in priority to the ordinary stock & all other stock & shares in the capital for the time being of the co., & that it should be "subject to the other provisions with regard to the same contained in the articles of assocn." The arts. of assocn. set forth that the co. might increase its capital by the creation of new shares with such preference over other shares or stock as it might direct, provided that no shares or stock should be created with a preference over, or ranking *pari passu* with, the existing preference stock without the sanction of the stockholders affected:—*Held:* upon a sound construction of the memorandum of assocn., the co. had not power at its own hand, even with the sanction of the preference stockholders, to create new preference stock ranking *pari passu* with existing preference stock; & that an alteration of the memorandum was necessary for that purpose.—*Re* SCOTTISH NATIONAL TRUST CO., [1928] S. C. 499.—SCOT.

gave the co. power in general meeting to create new shares, & gave the directors authority, in the absence of a direction by the general meeting, to issue the new shares with preferential rights :—*Held :* the express power given by the memorandum to issue part of the original capital with preferential rights could be exercised by the co. in the absence of an article to the contrary, & under art. 10 the directors had authority to exercise the power of the co. in that respect. Even if that was not so, the directors had that authority under art. 117.—CAMPBELL *v.* ROFE, [1933] A. C. 91 ; 102 L. J. P. C. 1 ; 148 L. T. 230 ; 49 T. L. R. 156, P. C.

1459. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

1460. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1461. *Add. Annotations :*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144 ; *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1466a. —— **Necessity for disclosure of all material facts.**]—Where a co. proposes to alter the rights of stockholders, all material facts must be disclosed before the stockholders are called on to vote on the proposals.—HUGHES *v.* UNION COLD STORAGE CO., LTD. (1934), 78 Sol. Jo. 551.

Annotation :—**Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

1472. *Add. Annotation :*—**Refd.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

1480. *Add. Annotations :—Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

1515. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

1552. *Add. Annotations :—As to* (2) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. *As to* (4) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. (In my view the headnote of the report is inaccurate so far as it states what constitutes the fourth head, which should read, "Where the contract is made to the knowledge of the co. on the basis of certain representations, & it turns out that some of them were material & untrue," *per* LUXMOORE, J.).

1553. *Add. Annotation :*—**Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1565. *Add. Annotation :*—**Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

1578. *Add. Annotation :—As to* (1) **Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

1585. *Add. Annotations :*—**Refd.** *Re* Royal British Bank (1859), 3 De G. & J. 387; Western Bank of Scotland *v.* Addie, Addie *v.* Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145.

1589a. —— **Statement by agent—That application purely formal.**]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on

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PART III. SECT. 15, SUB-SECT. 2.

k i. *Power to modify rights by bye-law—Validity of bye-law—Companies Act, R. S. C.*, 1906 (*c.* 79).]—HOLMESTED *v.* ALBERTA PACIFIC GRAIN CO., LTD. (Alta.), [1928] 1 D. L. R. 135 ; [1927] 3 W. W. R. 707.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—A. (a).

b i. ——.]—*Held :* persons, who, intending to become shareholders in a proposed co., had signed & sealed a "subscribers' agreement," were not shareholders.—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484 ; 58 O. L. R. 486.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—B. (a) i.

s i. —— —— ——.]—Where the evidence was not conclusive :—*Held :* in the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re* BUFF PRESSED BRICK CO. (1924), 56 O. L. R. 33.—**CAN.**

c i. —— *Balance to be paid on commencement of undertaking by company.*]—A. added on the foot of an application for shares the words : "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence" :—*Held :* this stipulation had nothing to do with his becoming a shareholder ; & failure of the co. to commence building did not entitle A. to rescind his contract.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

f i. —— —— ——.]—A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site :—*Held :* his agreement constituted A. a shareholder *in præsenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—D. (b).

sy. *Abrogation of original agreement—Ascertainment of terms of substituted oral agreement.*]—LAZIER *v.* MCCULLOUGH (1913), 25 W. L. R. 911 ; 14 D. L. R. 270 ; 6 Alta. L. R. 503.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—E.

d i. —— *Not after election to retain shares.*]—MCDONALD *v.* WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—**N.Z.**

f i. —— *Lapse of time.*]—Where the owner of shares held in escrow agreed to sell them, & certificates therefor were issued in the name of the purchaser & retained by the trustee pending fulfilment of the terms of the trust agreement, but no demand had yet been made upon the purchaser for payment :—*Held :* the fact that there was a lapse of about four years without any action being taken by the purchaser displaying any right of ownership or interest in the shares did not show that he had abandoned the contract of purchase.—DALLAS & BIRKE *v.* DALLAS OIL CO., LTD., & WEBSTER, [1930] 2 W. W. R. 301 ; 2 D. L. R. 788 ; 24 Alta. L. R. 445 ; *affd.*, [1931] S. C. R. 220 ; 2 D. L. R. 733.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—F.

m i. —— ——.]—The ct. has jurisdiction to decree specific performance of a contract with a co. for the purchase of shares thereof, but the matter is one of judicial discretion, *i.e.* contracts for the sale of shares are treated on the same principles as to the exercise of the ct.'s jurisdiction to decree specific performance as are contracts relating to land.—MCDOUGAL SEGUR EXPLORATION CO. OF CANADA, LTD. *v.* SOLLOWAY MILLS & CO., [1931] 2 W. W. R. 516.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 vi. ——.]—MILNE *v.* DURHAM HOSIERY MILLS, LTD., [1925] 3 D. L. R. 725 ; 57 O. L. R. 228.—**CAN.**

1553 vii. ——.]—PATHESCOPE UNION OF SOUTH AFRICA, LTD. *v.* MALLINICK, [1927] App. D. 292.—**S. AF.**

1553 viii. ——.]—ROBERTS *v.* ARNOTT CO., [1932] 1 D. L. R. 798.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

sa. *Representation must have induced contract.*]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. *v.* DICKIE, [1925] D. L. R. 377 ; 52 N. B. R. 42.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1588 ii. —— ——.]—Deft., director of a co., without putting his signature to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares :—*Held :* Lord Tenterden's Act had no application to the case, & pltf. was entitled to recover from deft. the amount paid for the shares.—DIAMANTI *v.* MARTELLI, [1923] N. Z. L. R. 663.—**N.Z.**

f. Read now "1588 i."

g. Read now "1588 ii."

1588 iii. —— ——.]—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, No. 400 1., *ante*.—**N.Z.**

250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed:—*Held:* although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) *v.* KAVANAGH (1925), 41 T. L. R. 378, C. A.

1604. *Add. Annotation:*—**Refd.** *Re* United Citizen's Investment Trust (1931), 101 L. J. Ch. 17.

1644a. —— **Contract to repay advance after allotment.**]—WHEELER *v.* FRADD (1898), 14 T. L. R. 302, 440; 42 Sol. Jo. 364, C. A.

1645. *Add. Annotation:*—**Distd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1653. After this case add:—

-.]—*See, now,* 1929 Act, s. 39 (1).

1654a. —— **What amounts to.**]—In Jan. 1920, K. applied, on a form supplied to him by Y., for 100 shares in a co. about to be formed On Apr. 14, Y. purported to transfer to K. 100 shares, but the transfer did not specify the denoting numbers of the shares comprised therein. At a meeting of the directors held on Apr. 16, a resolution was passed purporting to allot all the shares of the co. At that date the co. had not issued a prospectus or filed a statement in lieu thereof. On Apr. 20, the statement in lieu of prospectus was filed. At a meeting of the directors held on Apr. 30, the transfer from Y. to K. came before the board, & a resolution was passed approving the transfer & directing that a share certificate should be forwarded to K. Subsequently K. was registered a member of the co. The certificate, dated May 26, was sent to, & was accepted by, K. On June 8 a bonus, declared at the meeting of Apr. 30, was paid to, & was accepted by, K. K., as purporting to be the owner of the shares, attended a meeting of shareholders on Mar. 24, 1921. Subsequently the co. went into liquidation, & K., on whose shares there was a liability of 10*s.* per share, then denied being a shareholder, contending that the allotment of shares to Y. was void under 1908 Act, s. 82:—*Held:* (1) although the allotment to Y. was void, K. was a member of the co. at the commencement of the winding up, there having been no agreement between him & the co. until Apr. 30, when the co. was legally in a position to allot shares; (2) in any event, in view of his subsequent conduct, he was estopped from denying that he was a member of the co.—*Re* BURTON (JAMES) & SONS, LTD., [1927] 2 Ch. 132; 96 L. J. Ch. 457; 137 L. T. 564; 71 Sol. Jo. 491.

1659. *Add. Annotation:*—*As to* (4) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. ——.]—TRUSTS & GUARANTEE CO. *v.* SMITH, [1924] 2 D. L. R. 211; 54 O. L. R. 144; 4 C. B. R. 195.—**CAN.**

r ii. ——.]—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

r iii. ——.]—If a shareholder desires to rescind his contract to take shares in a co., then, in order to make the rescission effective, he must before the commencement of the winding-up either have his name removed from the register of members, or institute appropriate legal proceedings to have it removed. Pltf. who had been induced to take shares under circumstances which entitled him to repudiate his contract, duly notified deft. co. of his repudiation. Negotiations were then entered into between pltf. & the director of the co. with reference to the mode of repayment to pltf. of the moneys due to him by the co. No agreement was, however, arrived at between the parties, & after some further delay pltf. commenced an action claiming, *inter alia*, an order directing the removal of his name from the register. A few days prior to the commencement of this action, the directors, without any notice to pltf., passed an effective resolution for the voluntary winding up of the co.:—*Held:* the claim for the rectification of the register was, under the circumstances, too late & must be refused.—FLEMING *v.* ECLIPSE LAUNDRY CO., [1928] N. Z. L. R. 598.—**N.Z.**

sb. *Failure to repudiate before declaration of insolvency.*]—Apart from the effect of the commencement of winding up, it is too late for a shareholder in a limited co. to apply for rectification of the register of shareholders, on the ground of misrepresentation, after there has been a definite public declaration of insolvency, & this is so whether the business has in fact been kept open as a going concern or not.—*Re* LUCKS, LTD., SERPELL'S CASE, [1928] V. L. R. 466; 49 A. L. T. 270; [1928] Argus L. R. 288.—**AUS.**

PART III. SECT. 17, SUB-SECT. 2.—A.

1606 iii. —— *Agreement to subscribe for shares when called upon.*]—BEARDMORE & CO., LTD. *v.* BARRY, [1928] S.C. 101.—**SCOT.**

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

f i. ——.]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered:—*Held:* the latter was never under any liability to the co. & could not be made a contributory.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242; 2 W.W. R. 521.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.—C.

sc. —— *Whether nominee liable—Nominee incapable of contracting.*]—Petitioner's father signed her name to a stock subscription book of a bank, paid the calls, & received the dividend cheques, which were indorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, & the order for call against contributories was made three months before she came of age. A year after the liquidation commenced she took proceedings to have her name removed from the list of contributories:—*Held:* she was not liable as a contributory, & her name must be removed from the list.—*Re* CENTRAL BANK & HOGG (1890), 19 O. R. 7.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—A.

f i. ——.]—Allotment is the acceptance by a co. of an offer to take shares.—IMPERIAL BANK OF CANADA *v.* DENNIS, [1926] 3 D. L. R. 168; 59 O. L. R. 20; *varying*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1654 i. *Allotment before statement in lieu of prospectus filed.*]—*Held:* ineffective to charge persons who had signed a "subscribers' agreement."—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484; 58 O. L. R. 486.—**CAN.**

sd. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*]—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application:—*Held:* he was not entitled to have his name removed from the list of contributories.—*Re* GREAT NORTH INSURANCE CO., PAINTER'S CASE, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1149; 21 Alta L. R. 326; *revsg.*, [1925] 1 W. W. R. 752.—**CAN.**

1663. *Add. Annotation :—Generally,* **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

1664. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw (1935), 153 L. T. 245.

1668a. Unauthorised issue of allotment letters by secretary—Estoppel of company.]—PETERBOROUGH TRUST, LTD. *v.* STEEL INDUSTRIES OF GREAT BRITAIN, LTD. (1934), 78 Sol. Jo. 861.

1681a. —— —— ——.]—In their circular the directors asked whether, should there be any of the reserved shares remaining undisposed of, each shareholder would say if he wished to have any shares in addition to those he might receive as his proportional shares. They also required payment to be made on or before Oct. 1. Applts. answered that they did wish to have some additional shares. In their reply, dated July 18, the directors declared that additional shares had been allotted to them, & that payment thereon must be made on a day specified or the shares would be forfeited. No notice was taken of this communication :—*Held :* there was no complete contract as to these additional shares.—JACKSON *v.* TURQUAND (1869), L. R. 4 H. L. 305 ; 39 L. J. Ch. 11, H. L.

1746. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1771. After this case add :—
——.]—*See, now,* 1929 Act, s. 41.

1778. *Citation :*—For " 96 L. T. 743 " read " 92 L. T. 743."

1783a. As to compliance with formalities — Authorised affixing of seal.]—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, No. 1794a, *post.*

1786. *Add. Annotation :*—**Refd.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

1794. *Add. Annotations :*—**Apld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1794a. Seal affixed by secretary without authority.]—The A. co., of which D. was a director & G. was the secretary, being debtors of W. who, on Apr. 23, 1928, had issued a writ to enforce payment of the debt, procured the issue to W. of a certificate No. 528, certifying that W. was the registered holder of 2,000 preferred ordinary shares numbered 40,652 to 42,651 of ten shillings each fully paid in pltf. co., which certificate, early in May, 1928, was accepted by W. as security for the payment of the debt & on the faith of which W. abstained from serving the writ upon the A. co. until June 18, 1928. D. was also managing director & G. was also secretary of pltf. co. The certificate bore the seal of that co., & was attested by the signatures of D. & G. as such director & secretary respectively. Pltf. co. having refused to recognise W.'s title to the shares brought this action against W., in which they claimed a declaration that W. was not entitled to the shares & rectification of their register of members. By art. 105 of the arts. of assocn. of pltf. co. it was provided as follows : " The seal of the co. shall not be affixed, except by the authority of a resolution of the board of directors & in the presence of at least one director

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PART III. SECT. 17, SUB-SECT. 3.—C. (b).

1666 i. *Exercise of powers by directors—Directors never properly appointed.*]—An applicant for shares in a co. who accepted the shares allotted him, paid for them in part, allowed his name to appear on the list of shareholders, attended both in person & by proxy shareholders' meetings & accepted a dividend :—*Held :* to be precluded from contending for the first time after a winding-up order had been made that the directors who made the allotment were only *de facto* not *de jure* directors, & from disputing his status as a shareholder.—*Re* ACME PRODUCTS, LTD., HOPPS' CASE, [1932] 2 W. W. R. 580 ; 4 D. L. R. 330 ; 40 Man. L. R. 444.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (a).

sf. *Allotment on terms other than those in application.*]—Where an allotment of shares was made on terms differing substantially from those contained in the application :—*Held :* as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—WHITTLE *v.* HENLEY, [1924] App. D. 138.—**S. AF.**

sg. *Allotment fraud on company—Company not bound to repudiate.*]—*Re* SUN RAY MANUFACTURING CO., *Ex p.* BIRKETT & SONS, LTD., [1925] 1 D. L. R. 1204 ; 5 C. B. R. 286 ; *affd.,* [1924] 2 D. L. R. 1055 ; 4 C. B. R. 615.—**CAN.**

sh. *Non-fulfilment of conditions by company—Acquiescence.*]—A subscriber for stock who has received his stock without inquiry as to fulfilment of conditions & has acted as a shareholder in every way, cannot set up breach of condition as a ground for refusing to pay for his shares.—*Re* MANITOULIN QUARTZITE, LTD., [1933] 4 D. L. R. 132.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (b) i.

n i. —— *Contract to take treasury shares.*]—Deft. applied to a California co. through an agent in Victoria, B.C., for shares in the co. He intended to obtain treasury shares, but the shares which he received were shares owned by one A. Deft.'s name was entered, to his knowledge, on the co.'s register of shareholders, & he received dividends & contributed funds to assist in rehabilitating the co., but it was not until after the present action was brought that he learned that he had not received treasury shares. He thereupon immediately repudiated ownership. The action was one in which creditors of the co. sought, in accordance with the law of California, to fix deft. with a liability for its debts proportionate to the amount of his shares :—*Held :* deft. never became a shareholder since no contract making him such ever came into existence, & that his conduct did not estop him from denying that he was a shareholder.—AMERICAN SEAMLESS TUBE CORPN. *v.* GOWARD, [1930] 2 W. W. R. 31 ; 3 D. L. R. 870 ; 42 B. C. R. 551 ; *affd.,* [1931] 1 W. W. R. 509 ; 1 D. L. R. 878 ; 43 O. L. R. 407.—**CAN.**

n ii. —— ——.]—WITCOMB *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 2 W. W. R. 545.—**CAN.**

n iii. —— ——.]—An agreement for the sale of treasury shares of a co. is not satisfied by the transfer to the purchaser of an individual shareholder's personal stock.—CLAY *v.* POWELL & CO., LTD., [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (a).

1707 v. —— ——.]—An application for shares in a co. is not binding on appct. unless & until it has been accepted by allotment & notice thereof made & given within a reasonable time.—MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial—Posting sufficient.*]—HOWSON *v.* CROW (Ont.), [1925] 1 D. L. R. 495.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—G.

g i. —— *Non-compliance with Sale of Shares Act, R. S. M.,* 1913 (c. 175).]—Allotment void, & not merely voidable : & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re* NORTH WESTERN TRUST CO., *Re* MCASKILL *v.* NORTH WESTERN TRUST CO., [1926] 3 D. L. R. 612 ; [1926] S. C. R. 412.—**CAN.**

1773 i. *Effect of avoidance—Right to recover money paid.*]—The right of an appct. to have the register of members of a co. rectified by the removal of his name therefrom under an order of the equity ct. carries with it the right to recover from the co. moneys paid to it by appct. in respect of his contract to take shares, & this is so whether the basis of the rescission of the contract be fraudulent or innocent misrepresentation. — *Re* AUSTRALIAN SLATE QUARRIES, LTD. (1930), 47 N. S. W. W. N. 179.—**AUS.**

& the secretary; & the said one director & the secretary shall sign every instrument to which the seal shall be so affixed in their presence & in favour of any purchaser or person *bonâ fide* dealing with the co. such signature shall be conclusive of the fact that the seal has been properly affixed." The following further facts were held to have been established at the trial: from entries in the register of members it appeared that the shares in dispute had in Nov. 1927, been issued, with other shares, to the English & Foreign Investment Trust, Ltd., & that in respect of those shares three shillings per share were paid up. There was no entry showing when that co. ceased to be a member. There were entries in the register indicating that the 2,000 shares were transferred to W., & that W. was entered on the register as a member on Apr. 30, 1928, as having acquired the shares as fully paid & as having had a certificate No. 528 issued to him. There was no record of any transfer from the English & Foreign Investment Trust, Ltd. In Apr. 1928, while the register & seal of pltf. co. were under their physical control, D. & G. made the entries in the register, &, as director & secretary respectively of pltf. co., affixed the seal of that co. to & signed the certificate issued to W., but without any authority from pltf. co. & fraudulently in the interest of the A. co.:—*Held:* (1) the certificate not having in truth been sealed by pltf. co.'s authority, was, in the circumstances aforesaid, a forgery & not binding upon the co; (2) W., whose ignorance of art. 105 had been proved, was, on that account, precluded from relying on that article to support the contention that pltf. co. was bound in his favour to treat the attesting signatures as conclusive evidence of the fact that the seal of pltf. co. had been properly affixed to the certificate; (3) as affixing the seal was not a matter in which normally a single director would have power to act without the authority of the board of directors, W. was not relieved from the obligation to inquire whether the formalities required by the art. had been complied with.—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, [1931] 1 Ch. 496; 100 L. J. Ch. 169; 144 L. T. 607; 74 Sol. Jo. 820.

1810. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1814a. **"Initial share issue"—Meaning.**]—GAS METER CO., LTD. *v.* DIAPHRAGM & GENERAL LEATHER CO., LTD. (1925), 41 T. L. R. 342.

1815. Before this case add "*see, now,* 1929 Act, s. 47."

1817. *Add. Annotations:—As to* (4) **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809. *Generally,* **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1821. *Add. Annotations:—As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. *Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

PART III. SECT. 18, SUB-SECT. 3.—C.

f i. —— ——.]—An allottee:—*Held:* entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re* SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* CALDWELL, [1926] 1 D. L. R. 824; 58 N. S. R. 399.—**CAN.**

PART III. SECT. 19.

1812 i. *Issue for improper purpose—Increase of voting power—Ultestraint.*]—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—SMITH & TATCHELL *v.* HANSON TIRE & SUPPLY CO., LTD., [1927] 3 D. L. R. 786; [1927] 2 W.W. R. 529; 21 Sask. L. R. 621.—**CAN.**

1812 ii. —— —— ——.]—TREASURE TROVE DIAMONDS, LTD. *v.* HYMAN, [1928] App. D. 464.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 1.—A.

l i. —— *Issue for future services to be rendered.*]—Defts. procured the incorporation of pltf. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares:—*Held:* the transaction was *ultra vires* of pltf. co.—BANKING SERVICE CORPN., LTD. *v.* TORONTO FINANCE CORPN. LTD., [1928] A. C. 333; 97 L. J. P. C. 65; 139 L. T. 149, P. C.—**CAN.**

l ii. —— ——.]—The manager of a co. incorporated under Ontario Ces. Act agreed with the co. to buy certain shares thereof at their par value & to pay therefor partly by promissory notes & partly by serving the co. as its manager for the next four years. The manager became bkpt. & the co. claimed against his estate for the amount of the notes. The trustee disallowed the claim & the co. appealed:—*Held:* as the evidence showed that the contract was, not illusory, but a *bonâ fide* transaction, the terms of payment were within the powers of the co.—*Re* GIBSON ESTATE, PELICAN LAKE LUMBER CO., LTD. & TRADERS TRUST CO. (Man.), [1929] 4 D. L. R. 1001; 3 W. W. R. 224; 11 C. B. R. 100.—**CAN.**

l iii. ——.]—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

l iv. ——.]—SIGNAL HILL OILS CO., LTD. *v.* LONDON OIL SECURITIES, LTD. (Alta.), [1927] 3 D. L. R. 984; [1927] 2 W. W. R. 392.—**CAN.**

l v. ——.]—WASCHYSYN *v.* KILDONAN ICE & FUEL CO. (Man.), [1929] 4 D. L. R. 555, *affd.* [1937] 1 W. W. R. 572.—**CAN.**

l vi. ——.]—Unless a co. has been expressly authorised by statute to issue shares at a discount, it is *ultra vires* for it to issue shares as fully paid up in consideration of property or services where no attention is given to the question of the relationship of the value of the consideration to the par value of the shares.—SPOONER *v.* SPOONER OILS, LTD., [1936] 1 W. W. R. 561; 2 D. L. R. 634.—**CAN.**

sh. *Under Companies Act,* 1929, *s.* 47—*Petition to court—Remit to reporter.*]—Where a petition is presented to the ct. under Cos. Act, 1929, s. 47, for authority to issue shares at a discount, the ct. will not dispense with a remit to a reporter.—*Re* EDINBURGH & DUNDEE INVESTMENT CO., [1930] S. C. 681.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 1.—B.

si. *Issue of shares as bonus.*]—*Held:* a co. agreeing to issue twenty-one preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

sl. *Crediting applicants with commission.*]—The crediting of appcts. for shares with "commission" at 25 per cent. of the par value may amount to sale of shares at a discount & be *ultra vires* the co.—*Re* BROOKS STEAM MOTORS, LTD., [1934] 2 D. L. R. 648.—**CAN.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) i.

sn. —— *Credit for accommodation bills met by shareholder.*]—An agreement was entered into by a co. with one of its shareholders to credit moneys which he might be called upon to pay in respect of accommodation bills entered into by him for the co.'s assistance, or which might fall due to him for services rendered to the co. against his liability for shares. Although a sufficient sum had accumulated under these heads to extinguish the shareholder's liability on his shares, the co. went into liquidation before an actual credit had been passed for the amount:—*Held:* the transaction did not amount to payment by the shareholder of the amount due by him on his shares within Cos. Act, 1908, & the actual set-off not having been carried into effect prior to the liquidation, the shareholder was precluded by sect. 68 of the Act from having his name removed

1826. *Add. Annotation :*—*As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1860. *Add. Annotation :*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

1871. *Add. Annotation :*—**Refd.** Tarrant *v.* Roberts (1930), 47 T. L. R. 199.

1923. *Add. Annotation :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1928. *Add. Annotation :*—*As to* (3) **Refd.** Faber *v.* I. R. Comrs., 1936] 1 All E. R. 617.

1929. *Add. Annotation :*—*As to* (3) **Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1934. *Add. Annotation :*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1935. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1940. *Add. Annotation :*—*As to* (3) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1949. *Add. Annotation :*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1953. *Add. Annotation :*—*As to* (1) **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

2026. After this case add the following new subsection :—

SUB-SECT. 3*a*.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

See case *infra*.

2060. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

2070. *Add. Annotation :*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2070a. ——.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser ; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—SPENCER *v.* ASHWORTH PARTINGTON & CO., [1925] 1 K. B. 589 ; 94 L. J. K. B. 447 ; 132 L. T. 753, C. A.

2072. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2087a. Sale by transferee to sub-purchaser.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante*.

2100. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2168. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2174. *Add. Annotations :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin,

from the list of contributories.—HARDING & CO. *v.* HAMILTON, [1929] N. Z. L. R. 338.—**N.Z.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders—Application of surplus assets.*]—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit :—*Held :* no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118 ; 55 O. L. R. 413.—**CAN.**

PART III. SECT. 20, SUB-SECT. 3.—B. (a).

m i. —— ——.]—Any *bonâ fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a "payment in cash."—MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) *v.* LINDER BROTHERS (1927), 48 N. L. R. 279.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—B. (b).

1886 ii. —— ——.]—By an agreement in writing applt. & another agreed to sell & the co. agreed to purchase certain land at the price of £2,610, which price was to be paid & satisfied partly by certain cash instalments & partly by the issue of fully paid shares in the co. Possession of the land was to be given on payment of £10 & the issue of four hundred shares ; transfer was to be made after payment of all instalments, the last of which, under the agreement was not payable until Aug. 1928. Possession of the land was given & the shares were issued, but no contract was filed at or before the issue of the shares :—*Held :* under the agreement the shares were not paid or to be paid in cash.—*Re* GOODMAN BROTHERS AUTO & SERVICE CO., LTD., *Ex p.* ROSE, [1927] S. A. S. R. 571.—**AUS.**

st. *Adoption of contract with promoter—Money placed in his hands by intending shareholders.*]—Where a co. on completion of conveyances to it by the vendor gave credit to him for moneys placed in his hands as promoter on the terms of the co.'s prospectus by intending shareholders & specifically appropriated by them in payment *pro tanto* for their shares, registered the shares in their names, & at the same time obtained credit in respect of the payment from the vendor on account of the purchase-money :—*Held :* this was a payment in cash to the co. in respect of those shares within New South Wales Cos. Act, 1874, s. 57, which is substantially identical with Imperial Cos. Act, 1867, s. 25.—NORTH SYDNEY INVESTMENT & TRAMWAY CO. *v.* HIGGINS, [1899] A. C. 263 ; 68 L. J. P. C. 42 ; 80 L. T. 303 ; 47 W. R. 481 ; 15 T. L. R. 232 ; 6 Mans. 321, P. C.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3a.

sl. *Filing of contract—Time for filing—Extension of time.*]—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time :—*Held :* merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—*Re* ANDERSON & MUNRO, LTD., [1924] S. C. 222.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 3.—C. (c).

1925 i. *Sufficiency of—Whether court will inquire into.*]—*Held :* the agreement not having been set aside, the adequacy of the consideration could not be inquired into in a winding-up proceeding.—*Re* DOMINION COMBING MILLS, [1930] 3 D. L. R. 98 ; 65 O. L. R. 65 ; 11 C. B. R. 189 ; *revsg.*, 11 C. B. R. 84 ; *affg.*, 10 C. B. R. 462.—**CAN.**

PART III. SECT. 21, SUB-SECT. 2.

2053 i. *Must state amount of call—& time & place of payment.*]—PIONEER ALKALI WORKS, LTD. *v.* AMIRUDDIN SHALEBHOY TYEBJI (1925), I. L. R. 50 Bom. 461.—**IND.**

PART III. SECT. 21, SUB-SECT. 3.

1 i. ——.]—EUROPEAN & NORTH AMERICAN RY. CO. *v.* DUNN (1876), 16 N. B. R. (3 Pug.) 320.—**CAN.**

PART III. SECT. 21, SUB-SECT. 4—B. (b).

2068 iii. ——.]—The transferor of shares in a co. remains liable to the co. for calls due & owing at the date of transfer, notwithstanding that the co. duly registered such transfer & recovered judgment & issued execution in respect of the calls against the transferee.—MOTOR & CASH ORDERS, LTD. *v.* O'MARA (1936), 36 S. R. N. S. W. 243 ; 53 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 21, SUB-SECT. 5.—A. (b).

c i. —— *Estoppel.*] — DOMINION SECURITIES *v.* DUNCAN, [1929] N. Z. L. R. 65.—**N.Z.**

PART III. SECT. 21, SUB-SECT. 7.

e i. —— *Liability of application & allotment money in voluntary winding up.*]—A co. in voluntary liquidation may recover unpaid application & allotment money from a former shareholder, whose shares have been duly forfeited for non-payment of calls.—*Re* AUSTRALIAN GROUP & GENERAL ASSURANCE CO., LTD. (1932), 32 S. R. N. S. W. 435 ; 49 N. S. W. W. N. 111.—**AUS.**

PART III. SECT. 22, SUB-SECT. 2.

2174 i. *Lien extended to fully paid shares—Valid.*]—Where a debt to a

Official Assignee of Property, [1933] A. C. 691.

2179. *Add. Annotations :—As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

2183a. —— **Lien in respect of debt of trustee—Right of trustees to sell shares.**]—Pltfs. were the trustees of the marriage settlement of one of them, who was also a beneficiary under the settlement. They claimed damages from defts. for breach of an agreement, whereby defts. undertook to purchase shares in a certain company. The pltf., who was a beneficiary under the settlement, was, in his individual capacity, indebted to the co. & the co. had, under its articles, a lien upon shares in respect of the debts of a member. In a previous action it had been held that whatever equitable interest the co. had in these shares under its lien was postponed to the interests of the beneficiaries under the settlement, other than the debtor-trustee & persons claiming under him. Defts. now contended that, as the co. would lose its lien, which was admittedly good against the debtor-trustee & persons claiming under him, if the trustees were to sell, the trustees were not in a position to sell the shares free from encumbrances, & therefore the defts. were not bound to carry out their agreement to purchase :—*Held :* the right of the trustees to sell the shares in execution of their trust was not affected by the co.'s lien against the debtor-trustee's personal interest, & the trustees could give an unencumbered title to a purchaser of the shares, although the co. would lose its lien thereby. Defts. were, therefore, bound to carry out their agreement to purchase.—MATHIESON *v.* GRONOW (1929), 141 L. T. 553 ; 45 T. L. R. 604.

2210a. —— ——.]—PICKERING *v.* APPLEBY (1720), 1 Com. 354 ; 92 E. R. 1108.

Annotation :—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

2211a. —— —— **Spanish & Portuguese bonds.**]—*Qu. :* whether Spanish & Portuguese Bonds are " goods, wares, & merchandizes," within Stat. Frauds, s. 17.—PAWLE *v.* GUNN (1838), as reported in 1 Arn. 200 ; 6 Scott, 286 ; 7 L. J. C. P. 206.

2217. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2224a. —— **Dividend before exercise of option to purchase—Payment postponed.**]—By a contract made in Apr. 1922, it was agreed between the persons interested therein that a business forming part of a testator's estate should be converted into a private co. with a capital of £30,000, divided into £20,000 debentures bearing interest at 7 per cent. & 10,000 ordinary shares of £1 each, fully paid, which were to be allotted to the trustees of the will. One of the trustees, F., was appointed manager of the co., & was given the option, so long as he continued to be both trustee & manager, of purchasing the whole of the debentures & shares at par value. In June, 1928, the co. declared a dividend of 57½ per cent. on the ordinary shares for the year ending Mar. 31, 1928, to be paid in three equal instalments on July 1 & Nov. 1, 1928, & Feb. 1, 1929, & the first instalment was paid on July 1, 1928. On July 30, 1928, F. exercised his option to purchase the whole of the shares & debentures for £30,000. At that date there was four months' interest due upon the debentures. The purchase was completed on Nov. 5, 1928. On a summons being taken out to determine the rights of the parties in the unpaid instalments of the dividend, & the debenture interest, as between vendors & purchaser :—*Held :* (1) the four months' accrued interest on the debentures passed to the purchaser ; (2) the declaration of the dividend on the shares having created a debt to the trustees as the then registered shareholders, the postponement of the payment did not operate to deprive them of their rights, & therefore the remaining instalments belonged to them & not to the purchaser.—*Re* KIDNER, KIDNER *v.* KIDNER, [1929] 2 Ch. 121 ; 98 L. J. Ch. 247 ; 141 L. T. 195.

2228. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

2228a. Condition for ascertainment of solvency of company—Duty of accountant.]—Upon a proposed sale of 50,000 shares in a limited co., it was agreed that the sale should be subject to an accountant appointed by the purchasers being " satisfied that the financial position " of the vendor co. was " solvent " : —*Held :* the agreement meant that the accountant had to be satisfied as to the solvency of the co., & his evidence as to what he understood to be the meaning of " solvent was irrelevant. It was not for the ct. to determine the meaning of " solvent."—DIAMANTIDI *v.* GROSVENOR SECURITIES, LTD., & GUILDHALL TRUST, LTD., [1937] 1 All E. R. 703 ; 81 Sol. Jo. 236, C. A.

2237. *Add. Annotation :*—**Dbtd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

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co. was contracted at a time when its articles imposed a lien on its shares, " not fully paid up," & the debt existed when the articles were amended by striking out the words " not fully paid up " :—*Held :* that this amendment operated, apart from sub-sect. (3) of sect. 111 of Cos. Ordinance, to create an effective lien with respect to such debt on shares of the debtor fully paid up when the debt was contracted.—BATU PAHAT BANK, LTD. *v.* TAN KENG TIN, [1933] A. C. 691, P. C.—**STRAITS SETTLEMENTS.**

PART III. SECT. 23, SUB-SECT. 1.

sg. *Personal representative.*] — The effect of sects. 51 & 56 of Cos. Act, 1932 (Man.), is that the personal representative of a deceased shareholder can sell & transfer the latter's shares direct to a purchaser without first becoming by transmission a shareholder in the co., & without making the declaration referred to in sect. 54.—DEACON *v.* CENTRAL MANITOBA MINES, LTD., [1934] 1 W. W. R. 45.—**CAN.**

g i. —— *Agreement binding—Company entitled to refuse to register transfer.*]—ONTARIO JOCKEY CLUB, LTD. *v.* MCBRIDE, [1927] A. C. 918; 137 L. T. 751, P. C.—**CAN.**

m i. —— *Isolated transaction.*]—MOROZ *v.* KILDONAN ICE & FUEL CO., [1930] 1 D. L. R. 138.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—A.

p i. —— *To comply with provision to furnish statement of company's " liabilities "—Meaning of " liabilities."*]—BUTLER *v.* FAIRHALL, [1927] 4 D. L. R. 976 ; 61 O. L. R. 305.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—B.

sp. *Sale of Goods Act, R. S. N. B., 1927, s. 4 (1)—Not applicable to purchase of shares through stockbroker.*]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421 ; *affd.*, [1930] 1 D. L. R. 219.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (a).

c i. —— *On failure of transferee to take up shares.*]—*Re* COMPANIES ACT, *Re* BRITISH PETROLEUMS, LTD. (B.C.), [1925] 1 W. W. R. 236.—**CAN.**

d i. —— *Repudiation—Laches of purchaser's nominee.*]—NESBITT *v.* MCCARTNEY (Alta.) (1922), 63 D. L. R. 93.—**CAN.**

2244a. Securities deposited for sale & re-investment—Misrepresentation—Right to return of securities.]—*Re* BROAD STREET PRESS, LTD. (1933), 77 Sol. Jo. 448.

2250a. —— **Valid tender of stock.**]—A. contracts with B. for the sale of £200 South-Sea stock, for £1,360 to be paid on or before the day of shutting the transfer books, in order to make the Christmas dividend. The money not being paid, A. brought his action upon the covenant, & in his declaration alleged, that he attended at the South-Sea house, for the space of an hour before the shutting of the books, & was ready to transfer the stock to deft., but that he was not ready to receive it. On a demurrer, judgment was given for deft., pltf. not having made a sufficient tender of the stock. In an action upon a contract for the sale of stock, it is necessary for pltf. to show, that he had made a legal tender of the stock before he can claim the money; for his attending at the office upon the day, & being ready to transfer, is not sufficient. He ought to set out in his declaration, the manner of transferring stock, & the time & place when & where it is usually transferred; these being matters which the ct. cannot judicially take notice of.—STAPLETON *v.* SHELBURNE (1725), 1 Bro. Parl. Cas. 215; 1 E. R. 523; *sub nom.* WIVELL *v.* STAPLETON, 8 Mod. Rep. 68, H. L.

Annotation:—**Consd.** Russen *v.* Coleby (1736), Ridg. *temp.* H. 154.

2356a. —— —— ——.]—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., No. 2590a, *post.*

2263. *Add. Annotation:*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2269a. —— ——.]—Upon the breach of a contract for the sale of shares, the proper measure of damages is, the difference between the contract price & the market price at the time of the breach.—POWELL *v.* JESSOPP (1856), 18 C. B. 336; 139 E. R. 1400.

2269b. —— ——.]—Under a contract for the sale of shares in a co. the measure of damages upon a breach by the buyer is the difference between the contract price & the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date. If the seller retains the shares after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.—JAMAL *v.* MOOLLA DAWOOD, SONS & Co., [1916] 1 A. C. 175; 85 L. J. P. C. 29; 114 L. T. 1; 32 T. L. R. 79; 60 Sol. Jo. 139, P. C.

Annotations:—**Refd.** Hill *v.* Showell (1918), 87 L. J. K. B. 1106; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

2274a. —— ——.]—The vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery the difference between the price agreed on & the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip.—TEMPEST *v.* KILNER (1846), 3 C. B. 249; 136 E. R. 100.

2280. *Add. Annotation:*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

2283a. Appointment of new trustee.]—*Re* HOBSON, HOUGHTON & Co., No. 2585a, *post.*

2299a. ——.]—An allottee of shares in a completely registered joint stock co. but who has not executed the deed of settlement of the co. cannot under 7 & 8 Vict. c. 110, s. 26, enter into a contract for the sale of his shares. W. was the allottee of shares in a completely registered joint stock co., but had not executed the deed of settlement; his brother T., acting under the authority of a power of attorney, desired Messrs. N., stockbrokers, to sell these shares, & they entered into contracts with purchasers accordingly; before the transfers were registered W. became bkpt. & the brokers were obliged at their own cost to complete the contracts with the purchasers:—*Held:* dismissing a petition by the brokers claiming to have the bkpt.'s shares transferred to them, under the terms of 7 & 8 Vict. c. 110, s. 26, the contracts were null & void, & that the assignees of the bkpt. were entitled to the shares as part of his estate & effects.—*Re* EDMOND, *Ex p.* NELLSON (1853), 3 De G. M. & G. 556; 23 L. J. Bcy. 12; 22 L. T. O. S. 190; 18 Jur. 297; 2 W. R. 121; 43 E. R. 218, L. C. & L. J.; *previous proceedings* (1850), 15 L. T. O. S. 435.

PART III. SECT. 23, SUB-SECT. 2.—C. (d) iii.

st. *Waiver.*]—DOLL *v.* HOWARD (1897), 11 Man. L. R. 577.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) i.

2251 i. *Nature of remedy.*]—Action by seller for purchase price is not an action for specific performance, but a common law action to enforce a money demand. —MCTAVISH *v.* LANGER, [1933] 4 D. L. R. 609.—**CAN.**

sv. *Injunction—Breach of pooling agreement—Covenant not to encumber shares.*]—REED *v.* MCVEIGH, [1931] 1 W. W. R. 257.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) ii.

m i. —— ——.]—GRICE *v.* BARTRAM (1912), 22 O. W. R. 182; 3 O. W. N. 1312; 3 D. L. R. 868.—**CAN.**

m ii. —— *Contract between employer & employee.*]—In an action specific performance of a contract for the repurchase of shares, in which the contracting parties were employer & employee:—*Held:* (1) employee may prove an agreement on the part of the principal shareholder to repurchase on termination of the employment; & (2) employee may also prove an agreement by the principal shareholder to pay dividends at a minimum rate, upon the shares.—MACDONALD *v.* SOULIS, [1925] 2 D. L. R. 926.—**CAN.**

m iii. —— —— *Sale by vendor to third party without notice of prior agreement.*]—DUFF *v.* RUDOLPH & LUNENBURG GAS CO., ADAMS *v.* LUNENBURG GAS CO. (N. S.), [1930] 2 D. L. R. 801; *revsg.*, [1929] 4 D. L. R. 813.—**CAN.**

2260 i. —— *Against purchaser.*]—FRANKLIN *v.* REARDON (N. S.) (1917), 55 S. C. R. 613; 39 D. L. R. 176.—**CAN.**

2266 i. *Loss of right to relief—Laches—Right to relief from forfeiture of money paid.*]—A purchaser who has never in fact abandoned or receded from his contract, but yet, by reason of laches, or otherwise from causes not falling within abandonment or recession, has deprived himself of the right to specific performance is, if the vendor refuses to accede to specific performance, *prima facie* entitled to relief from forfeiture of the money paid unless some facts are shown which would render this relief inequitable. The jurisdiction to grant this relief is not limited to cases where the overdue payment has been tendered: & the relief granted will not necessarily be the return of the whole amount of the purchase money; the seller is entitled to have such damages deducted as he is proved to have sustained because of the buyer's default: & if he can be so fully compensated that is enough to justify the remedy.—MOSDELL *v.* JARDINE (B. C.), [1929] 4 D. L. R. 617. 3 W. W. R. 95.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) iii.

2269 i. *Measure of damages—Misrepresentation as to liabilities of company.*]—SISSONS *v.* HASSARD (Alta.), [1923] 4 D. L. R. 186, [1923] 3 W. W. R. 105.—**CAN.**

2299b. ——.]—Where a transfer of shares is not | to the registrar's office the transferor | will be liable to the creditor of the company, but not liable to contribute as between himself and the other shareholders.—*Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE CO., ORPEN'S CASE (1863), 2 New Rep. 225; 9 Jur. N. S. 615; *sub nom. Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, ORPEN, 32 L. J. Ch. 633; 8 L. T. 596; 11 W. R. 741; *on appeal*, 33 L. J. Ch. 67, L. JJ.

—**Consd.** *Re* General Provident Assce., Cross's Case (1869), 38 L. J. Ch. 583.

2332. *Add. Annotation:*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2332a. —— ——.]—IRVING *v.* SOUTH EASTERN RY. CO. (1857), 29 L. T. O. S. 64.

2343a. ——.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante*.

2344. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2344a. —— **Transfer of whole interest in company—Indemnity against "outstanding liabilities"—Whether unpaid income tax included.**]—On the purchase by pltfs. in Aug. 1928, of the shares & interests of defts. in a co., defts. undertook to indemnify pltfs. against all outstanding liabilities of co. up to the date of the completion of the purchase:—*Held:* the words "outstanding liabilities" included the payment of the income tax & property tax which ultimately became payable by the co. in respect of the period from Apr. 5, 1928, to the date of the completion of the purchase in Aug. 1928.—UNITED KINGDOM ADVERTISING CO., LTD. *v.* WHITING (1931), 47 T. L. R. 420, C. A.

2344b. As between transferee & other shareholders.]—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—*Re* MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

Annotations:—**Consd.** *Re* Athenæum Life Assce. Soc., Chinnock's Case (1860), John. 714; *Re* Phœnix Life Assce., *Ex p.* Hatton (1862), 31 L. J. Ch. 340; *Re* Discoverers Finance Corpn., [1908] 1 Ch. 111. **Refd.** *Re* Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575; *Re* Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; *Re* Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; *Re* Consols Insce. Assocn., Benham's Case (1865), 11 Jur. N. S. 381; *Re* National & Provincial Marine Insce., *Ex p.* Parker (1867), 2 Ch. App. 685; *Re* Smith, Knight, Weston's Case (1868), L. R. 6 Eq. 238; Spackman *v.* Evans (1868), 19 L. T. 151; *Re* Asiatic Banking Co., *Ex p.* Collum (1869), 21 L. T. 350; *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Consols Insce. Assocn., Glanville's Case (1870), L. R. 10 Eq. 479; *Re* Smith, Knight, Battle's Case (1870), 39 L. J. Ch. 391; *Re* European Bank, Masters' Case (1871), 7 Ch. App. 292; *Re* Great Wheal Busy Mining Co., King's Case (1871), 40 L. J. Ch. 361; R. *v.* Lambourn Valley Ry. (1888), 22 Q. B. D. 463; *Re* Discoverers Finance Corpn., Lindlar's Case, [1910] 1 Ch. 312.

2347. *Add. Annotation:*— **Refd.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2389. For the paragraph in the original volume substitute the following paragraph:—

—— **Board equally divided.**]—Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs. accordingly & to return all the documents, namely, a transfer by the extrix. to herself certificates & registration fee:—*Held:* the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly.—*Re* HACKNEY PAVILION, LTD., [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

2390a. Presumption of bona fides.]—By one of the articles of assocn. of deft. co. it was provided that: "The directors may decline to register any transfer of shares made by a member who is indebted to the co., or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them to be objectionable or the transfer shall be considered as having been made for purposes not conducive to the interest of the co. & the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article." A shareholder sought to transfer a number of his shares, but the directors declined to register the transfer. By another article the holder of 1 share and 1 vote, the holder of 5 shares had 2 votes & there was an additional vote for every additional 10 shares, with the result that by

PART III. SECT. 23, SUB-SECT. 3.—D. (b).

2331 ii. ——.]—ABDUL VAHAD, ETC. *v.* HASANALLI ATIBHAI, ETC. (1925), I. L. R. 50 Bom. 229.—**IND.**

2331 iii. —— ——.]—MCLEOD *v.* BRAZILIAN TRACTION LIGHT & POWER CO., LTD., [1927] 2 D. L. R. 875; 60 O. L. R. 253.—**CAN.**

2337 iii. —— —— —— *Cancellation of restrictive endorsement by transferee.*]—MATHERS *v.* ROYAL BANK OF CANADA (1913), 29 O. L. R. 141; 4 O. W. N. 1481.—**CAN.**

PART III. SECT. 23, SUB-SECT. 4.

2344 i. *Inter se—Transfer subject to understanding as to assets of company—Transferee bound.*]—*Re* HOBRECKER'S ESTATE, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—**CAN.**

sg. *Right to transferee to reject or return transfer.*]—A provision of the agreement gave the transferee of the shares an option or right, on the happening of two conditions, to reject or return the transfer & to demand back the money paid by him, the conditions being the failure of the transferor to exercise the option given her to repurchase the shares & the discovery that her title to the shares was defective:—*Held:* said provision gave deft. the transferor, no rights, but merely imposed additional obligations on her.—MCRAE *v.* LAW, [1936] 2 W. W. R. 60.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (a).

b i. ——.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 ii. —— ——.]—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

splitting a holding of shares, the voting power could be increased. It was alleged that the directors had systematically rejected transfers in order to prevent an increase in the voting power of the shareholders. In an action to enforce registration of the transfer it was sought to adduce evidence that the directors had refused registration in accordance with that systematic practice:—*Held:* (1) evidence as to the rejection of transfers on previous occasions was inadmissbile, as it could not be material to the issue in the present case; (2) in the absence of evidence to the contrary the directors must be taken to have acted reasonably & *bonâ fide*, & as they were not bound to disclose their reasons, there was no ground for interfering with their exercise of their discretion.—BERRY & STEWART *v.* TOTTENHAM HOTSPUR FOOTBALL & ATHLETIC CO., LTD., [1936] 3 All E. R. 554; 53 T. L. R. 100; 80 Sol. Jo. 954.

2408. *Add. Annotation:*—**Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

2409. After this case add:—

——.]—*Compare* DISCOVERY, Nos. 1705a, 1705b, *post.*

2412. *Add. Annotation:*—*As to* (1) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

2419. *Add. Annotations:*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1, H. L. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

2419a. —— ——.]—Where in fact the secretary of a co. is permitted to certify transfers, his authority in that behalf only extends to acknowledging the receipt of certificates which are in fact lodged, &, if he certifies a transfer when no certificate has in fact been lodged, his statement in that behalf is not in law the statement of the co.—KLEINWORT, SONS & CO. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD. (1934), 151 L. T. 1; 50 T. L. R. 244; 78 Sol. Jo. 153; 39 Com. Cas. 189, H. L.

Annotation:—**Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861.

2427a. Party registered as executor—Subsequently becoming owner—Duty of company to register without formality of transfer.]—Pltf. was the exor. of a testator who died in 1928 possessed of four debentures in the deft. co. He gave the residue of his estate to pltf. & to his widow in equal shares. Pltf. in due course was registered with the co. in his representative capacity on production of the probate, & on a division of the estate later on he claimed to be registered as owner, he having accepted the debentures as part of his share. The co. refused & required a transfer to be executed to himself under condition 4 endorsed. Pltf. refused to comply & commenced this action, claiming a declaration that he was entitled to be registered as owner without any such formality as required:—*Held:* in the circumstances, the transfer asked by the co. was an idle formality. They were bound to register the person entitled, & had already registered pltf. in his representative capacity & ought now to do so as owner. He was entitled to the declaration asked.—EDWARDS *v.* RANSOMES & RAPIER, LTD. (1930), 143 L. T. 594.

2452a. —— —— **Transfer to director of overpayments made to vendor by company.**]—A partnership business was sold to a co. for a sum of money which was satisfied by an allotment to the vendors of a number of fully paid shares in the co. It was subsequently discovered that, owing to mistake in the valuation, the partners had been overpaid by the co., &, in order to adjust the matter, two of them, on behalf of themselves & their co-vendors, voluntarily transferred to the chairman of the board of directors of the co. 3,000 shares upon trust to use or sell them for the benefit of the co. An action was commenced against the chairman of the board of directors & the co. in which the pltfs. claimed that he held the shares as trustee for the individual shareholders & in which they sought an injunction restraining him from voting, at any meeting of the co., as the holder of the shares:—*Held:* (1) on the evidence, the chairman of the board of directors held the shares, not for the benefit of the individual shareholders, but for the benefit of the co., & that he held them on trust, at his discretion, to sell them; (2) the transfer did not offend against any principle laid down by any of the decided cases, & that the transaction was not made invalid by reason of the transfer having been made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the co. might from time to time direct.—KIRBY *v.* WILKINS, [1929] 2 Ch. 444; 142 L. T. 16.

Annotation:—**Refd.** Lowe *v.* Peter Walker (Warrington) & Robert Cain & Sons, Ltd. (1935), 80 Sol. Jo. 32.

2456a. Provision of financial assistance by company for purchase of own shares—1929 Act, s. 45—What amounts to.]—Deft., being a director & manager of pltf. co., who carried on business as garage proprietors & motor-car dealers, entered into a written agreement with the co. in consideration of a cash payment to resign both positions, covenanting also not to carry on or assist in carrying on a similar

PART III. SECT. 23, SUB-SECT. 8.—A. (b).

2428 ii. —— ——.]—An agreement for the sale of shares does not imply a further agreement to have the transferee's name registered as the holder.—DOMINGO *v.* DE SOUZA (1928), I. L. R. 50 All. 695.—**IND.**

r i. —— *Claim to registration by assignee of insolvent member.*]—The arts. of assocn. of a proprietary co. provided that the regulations in Table A. in the Companies Act should not apply, but contained no transmission clause providing for the registration as a member of the co. of any person becoming entitled to shares in consequence of the insolvency of a member. The directors were given power in their discretion to refuse to register the transfer of shares to any person they should not approve as transferee. On the insolvency of one of the members the directors declined to register his assignee in insolvency as a member in respect of the insolvent's shares. The assignee applied to the ct. to order rectification of the register of members by inserting therein his name as the holder of the shares:—*Held:* the application must be refused.—*Re* W. & G. DEAN PROPRIETARY, LTD. (1929), V. L. R. 140.—**AUS.**

sd. *Certificate stolen.*]—WHITEHEAD *v.* BRIDGER HEVENOR & CO., [illegible] 3 D. L. R. 408; 6 F. L. J. (Can.) 5.—**CAN.**

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*]—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

business within a certain radius for a period of five years. The agreement further provided that he should transfer his shareholding in the co. to another director for £250, & this sum was paid to him by a cheque drawn on the co.'s account:—*Held:* (1) assuming the agreement to be one between employer & employee, the restrictive covenant was not rendered invalid as being contrary to public policy by reason of the fact that it was entered into on the termination of the employment instead of at the beginning; (2) if the payment for the shares by co.'s cheque was such as to contravene sect. 45 (1) of 1929 Act & to render the co. liable to a fine under sub-sect. (3), which was not proved, the agreement was not thereby rendered invalid.—SPINK (BOURNEMOUTH), LTD. *v.* SPINK, [1936] Ch. 544; [1936] 1 All E. R. 597; 105 L. J. Ch. 165; 155 L. T. 18; 52 T. L. R. 366; 80 Sol. Jo. 225.

2463. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Allan (1925), 9 Tax Cas. 234; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2473a. ——.]—*Re* SMITH, KNIGHT & CO., HAKIM'S CASE (1869), 7 Ch. App. 296, n.

2475. *Add. Annotation:*—**Apld.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2523. *Add. Annotations:*—**Distd.** *Re* Park Ward, [1926] Ch. 828. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2578. *Add. Annotation:*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation:*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2585a. Article restricting right of transfer—Construction.]—Arts. of assocn. restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly & reasonably exercising their powers as members of the co.

Testator appointed his wife, a son, & two other persons exors. & trustees of his will, whereby he bequeathed his residuary estate to the trustees on trust to sell & convert & to hold the proceeds, after the wife's death, upon trust as to one-third thereof for the said son, & as to the remaining two-thirds for the other children of testator alive at testator's death. The residue included shares in the co., some in testator's name, the remainder in the name of another as his nominee or as trustee for him. The will was proved by the widow & the son only. They caused these shares to be registered in their own names without qualification, as the arts. of the co. disqualified transferees from receiving notice of or voting at meetings. Later they appointed an additional trustee of the will; & in order to vest the shares jointly in them & him, all three executed a transfer. This was presented to the co. for registration, but registration was refused on the ground that the restrictions on transfer imposed by the articles applied:—*Held:* the transfer could be justified under the arts.—*Re* HOBSON, HOUGHTON & CO., [1929] 1 Ch. 300; 98 L. J. Ch. 140; 140 L. T. 496.

2585b. —— —— **Right to transfer to another member of company.**—Certain shareholders in a private co. commenced an action to restrain certain members of the co. from transferring shares otherwise than in accordance with the arts. of assocn. The substantial question, which came before the ct. upon motion, was whether one member was entitled, under the articles, to transfer shares to another member. The material articles were as follows:—

Art. 5: "The directors may in their absolute & uncontrolled discretion refuse to register any proposed transfer of shares, & clause 20 of Table A shall be modified accordingly. No shares shall in any circumstances be transferred to any infant, bkpt., or person of unsound mind. Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the co. so long as any member or failing such member any person selected by the directors is willing to purchase the same at the fair

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PART III. SECT. 23, SUB-SECT. 13.—A.

sc. *Transfer of shares of director's wife.*]—Resp. was the holder of shares not fully paid up in the bkpt. co. Her husband was a director of the co., & she had given him a power of attorney authorising him to indorse & transfer her certificates & transact any business with the co. which she could transact in person. Resp. was also a shareholder in another co. of which her husband was a director. Under the constitution of the bkpt. co. its shareholders could not sell or dispose of their shares except with the leave of the directors evidenced by a resolution of the board. All the directors of the bkpt. co. except one were indebted to it on their shares. At meetings of the directors where as a result of a prearrangement each director in turn, except the one not indebted, refrained from voting on resolutions in which he was interested, resolutions were passed, in pursuance of the prearranged scheme, which resolutions authorised the exchange of resp.'s shares in the bkpt. co. for shares in the other co. & the purchase from her by the bkpt. co. of the shares so received by her from the other co., the purchase-price being payable by crediting her with full settlement of the amount owing by her to the bkpt. co. Similar resolutions were passed with respect to the shares & indebtedness of the indebted directors. Her husband voted on the resolutions affecting her:—*Held:* apart from the question of the validity of the resolutions, the transaction should be set aside on the ground that it was a sham & did not fall within the cases in which it has been held that a *bonâ fide* out-&-out transfer of partially paid shares on the eve of insolvency of a co. will be upheld, even though made to an insolvent & for the purpose of getting rid of the liability thereon.—CLARK (R. P.) & Co., *Re*, SHIMMIN *v.* CLARK, [1932] 2 W. W. R. 370; [1933] 3 D. L. R. 702; 45 B. C. R. 355.—**CAN.**

PART III. SECT. 23, SUB-SECT. 14.—A.

2521 i. *Contract for sale of shares—Before presentation of petition—Whether void.*]—A share being a *jus in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any depreciation in market value meanwhile.—UNION SHARE AGENCY LIQUIDATORS *v.* HATTON, [1927] App. D. 240.—**S. AF.**

PART III. SECT. 23, SUB-SECT. 15.—A. (b) 1.

ss. *Purchase in name of infant—Whether complete gift of shares to infant.*]—In 1920 resp. purchased out of his own funds shares in a limited co., & directed that the shares should be registered in the name of his son who was then ten years old. The son attained his minority, in Scots law, in Sept. 1923. The share certificates were held by resp. until July, 1925, when he deposited them with his law agents on behalf of the son. Dividend warrants were issued regularly in the son's name. Resp., on behalf of the son, claimed repayment for the year ended Apr. 5, 1925, of the tax deducted from the dividends on the shares. The Crown contended (*a*) that to make a gift by a father to his son effective there must be a delivery either to the donee or to some third person for him; (*b*) that as the son was a pupil child at the date of the alleged gift he was incapable of acting or consenting, & that resp., as tutor of the pupil child, was the only person who could act for him; (*c*) that as resp. had done nothing beyond taking the title to the shares in the son's name, the shares remained under the control & at the disposal of resp. The claim was allowed by the General Comrs. who held that the shares had been effectively donated to the son & were his sole property:—*Held:* an effective donation of the shares had been made.—INLAND REVENUE COMRS. *v.* WILSON, [1928] S.C. (H. L.) 42; 13 Tax Cas. 789.—**SCOT.**

value which shall be determined as hereinafter provided." Art. 6: "In order to ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value, the person whether a member of the co. or not proposing to transfer the same, hereinafter called 'the retiring member,' shall give notice in writing, hereinafter described as a 'sale notice,' to the co. that he desires to sell the same, & until otherwise determined by the co. in general meeting the same shall be offered among the holders of ordinary shares in proportion as near as may be to their existing holdings thereof and any not accepted by them shall be offered to such other persons as the directors shall determine. Such notice shall constitute the co. the agent of the retiring member for the sale of such shares to any member of the co. or a person selected as aforesaid at the fair value. No sale notice shall be withdrawn except with the sanction of the directors":—*Held:* there was nothing in the language of arts. 5 & 6 which gave rise to the necessity of implying any restriction upon the right of a member of the company to transfer shares therein to another member.—DELAVENNE *v.* BROADHURST, [1931] 1 Ch. 234; 100 L. J. Ch. 112; 144 L. T. 342.

2589a. —— —— **Finance Act, 1927 (c. 10), s. 55.—What amounts to "issue" of shares**]—In connection with a scheme for the reconstruction of a company a new co. was formed to enter into a sale agreement to acquire the undertaking of the existing co. The consideration for the agreement was to consist, in addition to the discharge by the new co. of certain liabilities of the old co. of the allotment of shares in the new co. to the shareholders in the old co. Letters of allotment were sent to these shareholders, accompanied by a form of renunciation. Before the original allottees were registered some of them renounced in favour of other persons, with the result that of the first registered shareholders in the new co. those who had been shareholders in the old co. held less than 90 per cent. of the shares in the new co. The question of the stamp duty payable on the sale agreement & other documents was submitted for adjudication, the co. contending that the sending of the letters of allotment constituted an "issue" of shares to the original allottees, & that the conditions of exemption from *ad valorem* duty laid down in the Finance Act, 1927 (c. 10), s. 55, were complied with. The Comrs. of Inland Revenue decided that *ad valorem* duty was payable:—*Held:* the allotment letter accompanied by the form of renunciation was not an issue of shares, but only notice that the allottee was entitled to demand that shares should be issued either to himself or, if he preferred it, to his nominee to be named in the form of renunciation. Therefore the Comrs. were right in claiming *ad valorem* duty.—OSWALD TILLOTSON, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 134; 101 L. J. K. B. 737; 147 L. T. 481; 48 T. L. R. 628, C. A.

Annotation:—**Refd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

2589a. —— —— ——.]—Applt. co. in 1918 acquired all the issued ordinary shares of the C. Co. for a cash consideration. In 1936, it acquired practically all the issued preference shares, in consideration of the allotment of preference shares of applt. co. It was contended that the transfers effecting the acquisition of the preference shares in 1936 were exempt from stamp duty under Finance Act, 1927 (c. 10), s. 55:—*Held:* the consideration for the acquisition of the ordinary shares was cash, & not the allotment of shares, & it could not be said that applt. co. had increased its capital with a view to the acquisition of 90 per cent. of the share capital of the C. Co. The transfers were not entitled to the exemption claimed, & attracted the usual *ad valorem* conveyance duty.—LEVER BROS., LTD. *v.* INLAND REVENUE COMRS., [1937] 4 All E. R. 227; 54 T. L. R. 67; 81 Sol. Jo. 904.

2590a. —— —— ——.]—Those in control of deft. co. were desirous of converting it into a private co., & pltfs. were anxious to prevent this being done. With this purpose in view pltfs. executed 44 transfers, each being a transfer of five £1 shares for a stated consideration of £5. Each transfer was stamped 1*s.* (which is the correct duty on a transfer for £5), but bore no adjudication stamp. It was proved that no consideration money passed, & that the transfers were not transfers upon a sale of the shares. The co. refused to register the transfers for the reason that they were not duly stamped:—*Held:* (1) the co. was justified in refusing to register the transfers. The transfers, not being conveyances on sale, must be stamped either as voluntary conveyances, in which case Finance (1909–10) Act, 1910 (c. 8), s. 74 (2), required that the stamp duty should be adjudicated, or under Sched. to the Stamp Act, 1891 (c. 39), as conveyances or transfers of any kind not thereinbefore described, in which case that Act required them to be stamped 10*s.*; (2) following *Maynard* v. *Consolidated Kent Collieries Corpn.*, [1903] 2 K. B. 121; 9 Digest 370, *3256*, the directors, in considering whether the transfer was duly stamped, were entitled to go behind the consideration stated in the transfer.—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., [1927] 4 All E. R. 191; 81 Sol. Jo. 943.

2608. *Add. Annotation:*—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

2637. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2646. *Add. Annotation:*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2658. *Add. Annotation:*—**Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

2667a. —— **What amounts to sale.**]—Stock transferred as a security for a floating balance, & under an agreement to continue it transferred & re-transferred by & to the creditor by way of loan:—*Held:* a sale.—*Ex p.* DENNISON (1797), 3 Ves. 552; 30 E. R. 1152, L. C.

Annotation:—**Apld.** Langton *v.* Waite (1868), L. R. 6 Eq. 165.

PART III. SECT. 24, SUB-SECT. 5.

2645 1. *Whether gift complete.*]—Gifts of shares:—*Held:* not complete until at least the transfers were handed to the respective transferees.—COMMISSIONER N. Z. L. R. 345.—

2669. *Add. Annotation :*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2689a. —— **Whether mortgagee bound to obtain best price.**]—*Semble :* a mtgee. of shares is not bound to watch the market so as to sell them at the highest price ; & he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mtgor.—*Re* McMURDO, PENFIELD *v.* McMURDO, [1902] 2 Ch. 684 ; 71 L. J. Ch. 691 ; 86 L. T. 814 ; 50 W. R. 644, C. A.

2694. *Add. Annotation :*—**Apld.** Weld *v.* Petre, [1929] 1 Ch. 33.

2703a. —— **No lien conferred by articles of association.**]—Bye-laws of applt. bank, made under its Act of incorporation, provided : (44.) " the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank " ; (57.) " the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due ; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment :—*Held :* the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—BANK OF N. T. BUTTERFIELD & SON, LTD. *v.* GOLINSKY, [1926] A. C. 733 ; 95 L. J. P. C. 162 ; 135 L. T. 584, P. C.

2705. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2706. *Add. Annotation :*—*As to* (1) **Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2707. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2715. *Add. Annotation :*—**Expld.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2769. *Add. Annotation :*—**Distd.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank *v.* The Co. (1930), 23 B. W. C. C. 7.

2793. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2798a. —— **For what amount—Shares reissued.**]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture, & the shares are subsequently sold & reallotted to other persons with the result of a loss to the co., the co. on the subsequent bpkcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the reallotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable. —*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48 ; 99 L. J. Ch. 209 ; 143 L. T. 425 ; [1929] B. & C. R. 141.

2799. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2820a. —— ——.]—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., No. 2798a, *ante*.

2821. *Add. Annotation :*—**Consd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2822. *Add. Annotation :*—**Apld.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2823. After this case add :—

——.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

2833a. —— **Appointment by majority—Validity.**]—The rule of corpn. law that when a duty is delegated to a body of persons those persons can act at a meeting does not apply to the case of arts. of assocn. of cos. incorporated under Cos. Act.

By Art. 90A of the arts. of assocn. of a co. it was provided as follows : " the governing directors shall have power from time to time & at any time to appoint & remove at will additional directors & to define & limit their powers & duties provided that the total number of directors shall not exceed the prescribed maximum. Any director so appointed shall retire from office at the next general meeting, but shall be eligible for re-election subject to the approval of the governing directors. In all questions arising the opinion of the governing director or directors shall prevail." Two out of the three governing directors of the co. having, against the will of the third, by a resolution purported to appoint additional directors :—*Held :* on the construction of Art. 90A, the powers conferred on the governing directors by that article were to be exercised by all of them, & the resolution was, therefore, invalid.—PERROTT & PERROTT, LTD. *v.* STEPHENSON, [1934] Ch. 171 ; 103 L. J. Ch. 47 ; 150 L. T. 189 ; 50 T. L. R. 44 ; 77 Sol. Jo. 816.

2839. *Add. Annotations :*—**Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640 ; **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2840. *Add. Annotation :*—*As to* (2) **Apld.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640.

2841a. ——.]—The arts. of a co. provided (art. 12) : " Until otherwise determined by a

PART III. SECT. 26, SUB-SECT. 1.—A.

sa. *Surrender for cancellation—Failure of company to observe terms—Whether enforceable by injunction.*]—McDOUGALD *v.* WILSON, [1933] 3 D. L. R. 111.—**CAN.**

PART III. SECT. 26, SUB-SECT. 1.—C.

sb. *Fraudulent cancellation by company—Bar to action—Laches.*]—PATTERSON *v.* VULCAN IRON WORKS, LTD. (B. C.), [1929] 4 D. L. R. 508 ; *on d*, [1930] 1 W. W. R. 640 ; 2 R. 961 ; 42 B. C. R. 300.—**CAN.**

PART III. SECT. 27, SUB-SECT. 5.—A.

m l. —— *Plea of limitation.*]—HABIB ROUJI *v.* STANDARD ALUMINIUM & BRASS WORKS, LTD. (1925), I. L. R. 49 Bom. 715.—**IND.**

general meeting the number of directors shall not be less than two nor more than seven." The arts. also adopted arts. 83 & 85 of Table A, 1908 Act:—*Held:* the power of appointing additional directors had not been delegated to the directors so as to exclude the inherent power of the co. in general meeting to appoint directors.—WORCESTER CORSETRY, LTD. *v.* WITTING (1932), [1936] Ch. 640; 105 L. J. Ch. 385, C. A.

2844. *Add. Annotation:*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2850. *Add Citation:*—13 Mans. 316.

2854. *Add. Annotation:* — **Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

2856. *Add. Annotation:*—*As to* (3) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

2879a. ——— ———.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held:* though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held:* as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble:* Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER *v.* KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

Annotation:—*As to* (3) **Dbtd.** Holt *v.* Catterall (1931), 47 T. L. R. 332. (I am not satisfied that Mr. JUSTICE ASTBURY, by his remarks at p. 135, meant to say anything of the kind, *per* MAUGHAM, J.)

2889. *Annotations:*—For "Howard *v.* Sadler, [1895] 1 Q. B. 1" read "Howard *v.* Sadler, [1893] 1 Q. B. 1.

2895a. Transfers of shares passed before election—Transfers not registered until after election.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

2905. Add the following paragraph:—

(3) As to the shares taken for attendance fees, I am also of opinion that applts. are not liable to contribute in respect of those shares. They were taken, &, as it seems to me, improperly taken, as paid-up shares, but the same principles which apply to the 100 shares apply, as I think, to these shares also (TURNER, L.J.).

2922. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

2944. *Add. Annotations:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. Remuneration not authorised by general meeting.]—Pltf. was a director of deft. co., which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing pltf. "overseas director" at a salary of £1,800 a year. Pltf. proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by pltf. for salary due under the agreement:—*Held:* the agreement was *ultra vires* the board, & since pltf.'s remuneration had never been determined by the co. in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the co. on their counterclaim the money paid to him under the agreement.—KERR *v.* MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

2972. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.*

PART III. SECT. 28, SUB-SECT. 1.—C.

q i. —— *Omission of bye-law authorising alteration in number.*]—MCKENNA *v.* SPOONER OILS, LTD., [1934] 1 W. W. R. 255.—**CAN.**

PART III. SECT. 28, SUB-SECT. 1.—D.

c. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 2.—A.

a. Add "*varied*, 9 A. R. 620."

PART III. SECT. 28, SUB-SECT. 2.—B.

sd. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*]—An insolvent, who is registered as a member of a co. in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the "holder of shares." In this respect there is a distinction between the words "holder" & "holder in his own right."—*Re* CAMBERWELL MOTORS PTY., LTD., [1926] V. L. R. 539; [1926] Argus L. R. 421.—**AUS.**

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. —— —— *Director acting as secretary-treasurer.*]—*Held:* COS. ACT. R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON *v.* HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—**CAN.**

2958 iii. —— —— *Gratuity—Not by way of remuneration for services.*]—Bye-laws passed by the directors of deft. co., & said to have been confirmed by the shareholders at a special general meeting, providing for the transfer by deft. co. to the three individual defts. of shares in another co. as remuneration for past services as directors & officers, were attacked in this action by shareholders in deft. co.:—*Held:* there was no agreement binding on deft. co. to pay for the services rendered by the co-defts. & the payments provided for in the bye-laws must be treated as gratuities.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—B. (a).

a i. *Services requiring expert & technical knowledge.*]—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held:* he was entitled to a reasonable remuneration for such services.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN**

Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2973. *Add. Annotation :*—*As to* (2) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2977. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

2988a. Remuneration dependent upon determination of proportions by directors.]—KNIGHT *v.* WORLD BARTER & TRADING CO., LTD. (1935), 79 Sol. Jo. 214, C. A.

2996. *Add. Annotation :*—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3005. *Add. Annotations :*—*Generally*, **Refd.** Knight *v.* World Barter & Trading Co. (1934), 78 Sol. Jo. 840 ; *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

3014. *Add. Annotation :*—**Distd.** Williams *v.* Barton, [1927] 2 Ch. 9.

3022. *Add. Annotation :*—**Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

3025a. —— Company thereby induced to carry on business.]—F. was the governing director of a limited co. In Feb. 1934, at F.'s suggestion, a resolution was passed by the directors that no fees should be paid to the directors from Oct. 1, 1933, until it should be resolved otherwise. A minute of this resolution was read & confirmed on May 7, 1934, & it was acted upon by the co. F. having subsequently become bkpt., & the co. having passed a resolution that it be voluntarily wound up, the trustee in F.'s bkpcy. sought to prove in the liquidation for F.'s fees as a director subsequent to Oct. 1, 1933 :—*Held :* the resolution was not a mere act of benevolence on the part of the directors, but was intended to induce the co. to carry on its business, & the co. having carried on its business in reliance on the resolution, no claim could now be made by a director in respect of his fees subsequent to Oct. 1, 1933. —*Re* PORTER (WILLIAM) & CO., LTD., [1937] 2 All E. R. 361.

3033. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3055a. —— Tranfer to director of overpayments made to vendor by company—Discretionary trust for sale.]—KIRBY *v.* WILKINS, No. 2452a, *ante*.

3059. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. —— ——.]—(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (*a*) must act honestly, & (*b*) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But,

PART III. SECT. 28, SUB-SECT. 3.—B. (d).

11. ——.]—Two of the directors of an Alberta co. who, at the time in question, owned in the aggregate all but 40 of its 1,000 issued shares, & who managed its business virtually as a partnership, agreed to, & did, pay themselves a bonus, in cash & in shares owned by the co., as extra remuneration for their services. Under the arts. of assocn. the bonuses in question could have been authorised by the directors of the co. The only remaining director on learning of the arraugement approved of it ; & it appeared that all the shareholders had been willing that all the business of the co. should be carried on by said two directors without consultation with the shareholders. The payment of the bonuses was not, however, authorised at a directors' meeting or by a resolution signed by the directors ; nor was any shareholders' meeting held to pass on it, & it was not proven that both of the two remaining shareholders other than the directors had individually assented thereto. Subsequently under an agreement to which the co. was a party, deft. C., one of said two directors, sold his shares to the other at an agreed valuation based on the assumption that the bonuses had been legally paid. In an action by the co. to compel the return of the shares received by C. as such bonus or for damages in lieu thereof :—*Held :* in the absence of a directors' meeting or resolution signed by the directors, the payment of the bonuses was invalid, & the co. was entitled to judgment.—GRAY & FARR, LTD. *v.* CARLILE, [1931] 2 W. W. R. 526 ; 3 D. L. R. 785 ; *affd.*, [1932] 1 D. L. R. 391.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. Add " *varied*, [1902] A. C. 83."

sm. *Increase of liabilities—Mortgage—Fraud on creditors—Ultra vires.*]—PLAIN, LTD. (TRUSTEE) *v.* KENLEY & ROYAL TRUST CO., [1931] 1 D. L. R. 468 ; 66 O. L. R. 179 ; *affd.*, [1931] 2 D. L. R. 801 ; O. R. 75 ; 12 C. B. R. 492.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*]—BOAK *v.* WOODS, [1926] 1 D. L. R. 1186 ; 36 B. C. R. 456.—**CAN.**

3029 i. *Right to act as director—Right to injunction.*]—An injunction may be granted on the application of a director restraining plff.'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI *v.* TARAK CHANDRA CHATTERJEE (1924), I. L. R. 51 Calc. 916.—**IND.**

ART III. SECT. 28, SUB-SECT. 4.—B.

3039 ii. ——.]—R., in his lifetime, while acting in the capacity of managing director of a joint stock co., used moneys of the co. in commercial adventures & other investments for his personal gain & profit. After R.'s death his exors. paid back to the co. the principal money so used, but declined to account for the profits which R. had derived from the use thereof :—*Held :* as R. was to be regarded as a trustee of the co.'s moneys, his executors were liable to the co. in respect of such profits, which, or the equivalent interest, must be paid over to the co.—ROGERS HARDWARE CO. *v.* ROGERS (P. E. I.) (1913), 12 E. L. R. 493 ; 10 D. L. R. 541.—**CAN.**

3039 iii. —— *Shares acquired in new company by shareholder director—Paid for out of assets of old company in liquidation.*]—CHANDLER & MASSEY *v.* IRISH (1911), 20 O. W. R. 649 ; 3 O. W. N. 383 ; 25 O. L. R. 211.—**CAN.**

who was a director & vice-president of deft. co., acted as its solr., although not formally appointed as such, in a great number of matters, & was consulted, & his advice sought, by his co-directors & the officers of the co. His co-directors were aware of his so acting, & he was paid substantial amounts on account of the legal services rendered from time to time. He sued on an account for legal services rendered :—*Held :* he could not recover ; his position as director of the co. incapacitated him from engaging as its solr.—CAPE BRETON COLD STORAGE CO., LTD. *v.* ROWLINGS [1929] 3 D. L. R. 577 ; S. C. R. 505 ; *revg.*, [1929] 2 D. L. R. 519 ; 60 N. S. R. 460.—**CAN.**

3055 i. —— *Benefits of contract diverted to directors.*]—CONSOLIDATED COAL CO., LTD. *v.* BIG CHIEF WOODYARD, LTD. & MACFARLANE, [1934] 2 W. W. R. 433 ; 3 D. L. R. 668 ; 48 B. C. R. 241.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—C.

3058 i. —— *Reasonable diligence.*]—In discharging his duties, a director must act honestly & must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances in his own behalf.—GOVIND NARAYAN *v.* RANGNATH GOPAL (1929), I. L. R. 54 Bom. 226.—**IND.**

(*c*) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for mere errors of judgment; (*d*) he is not bound to give continuous attention to the affairs of his co.; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (*e*) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Held:* (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co., & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held:* (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (*a*) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held:* (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

Annotations:—As to (10) **Distd.** *Re* City of London Insce. (1925), 41 T. L. R. 521. **Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262; *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. *As to* (13) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3060a. —— —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3062. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3063a. —— —— **Proper & honest performance of duties.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3063b. —— **Reliance on chairman—Accuracy of balance-sheet.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3065. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3068. For "—— **Signature of cheques to company's prejudice**" read "—— **Signature of cheques—To company's prejudice.**"

3068a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3071. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3077. *Add. Citation:—previous proceedings, sub nom. Re* SOUTH ESSEX GAS LIGHT & COKE CO., *Ex p.* STEARS (1859), John. 480.

3092a. —— **Act by two directors for benefit of one—No right to contribution.**]—Where two directors of a limited co. join in signing a cheque whereby a part of the co.'s funds is used for a purpose not authorised by the arts. of assocn. & one of the directors is subsequently compelled to replace the money so used, he cannot recover contribution from the other if the money has been applied for the sole benefit of the director claiming contribution, even if the other director has assented to its being so used.—WALSH *v.* BARDSLEY (1931), 47 T. L. R. 564.

3105a. Payment of rates due from company—Right to stand in place of overseers.]—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation:—*Held:* (1) he was entitled to stand in the place of the creditor, & to use all remedies, &, if need be, the name of the creditor in any action or other pro-

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3062 i. *Standard of diligence—Reliance on company's officials—Where no ground for suspicion—Examination of company's books.*]—*Re* LOGAN (H. J.) CO. (ONT.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—**CAN.**

o. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 4.—D.

3075 i. *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN.**

3076 iii. —— ——.] — CANADIAN GUARANTEE TRUST CO. *v.* YOUNG, [1933] 1 D. L. R. 256; [1932] 3 W. W. R. 671.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—F.

sg. *Expenses of rebutting charge of fraud.*]—Expenses incurred by a director in defending himself against a charge of fraud as a director are too remote to form the subject of indemnity either under an indemnity clause in the articles, or at common law.—TOMLINSON *v.* LIQUIDATORS OF SCOTTISH AMALGAMATED SILKS, LTD., [1934] S. C. 85.—**SCOT.**

sk. *Expenses of defence against charge of fraud.*]—An indemnity clause in the articles of a co. provided for the indemnification of any director against all losses & expenses which he might incur by reason of any act done by him as director.

The co. went into voluntary liquidation, & thereafter a director was indicted & tried for alleged fraud in relation to acts done by him as director prior to the date of the liquidation, the charges being that he had issued a fraudulent prospectus, & had fraudulently misapplied funds of the co. He was acquitted; & thereupon he lodged a claim in the liquidation for the expenses incurred by him in his defence. The liquidators rejected his claim:—*Held:* he was not entitled to his expenses either under the indemnity clause or at common law, in respect that expenses incurred in defending himself against an allegation that he did something, which he did not in fact do & which it was not his duty to do, were not expenses incurred by him as a director or as an agent of the co. in the discharge of his duties.—TOMLINSON *v.* SCOTTISH AMALGAMATED SILKS, LTD. (LIQUIDATORS), [1935] S. C. (H. L.) 1.—**SCOT.**

ceeding in order to obtain indemnification from the principal debtor for the loss sustained; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re* LAMPLUGH IRON ORE Co., [1927] 1 Ch. 308; 96 L. J. Ch. 177; 136 L. T. 501; [1927] B. & C. R. 61.

3107. After this case add :—

—.]—*See, now,* 1929 Act, s. 152.

3109. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton. [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3109a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3112a. —— **Necessity for board-meeting.**]—*Re* ATHENÆUM LIFE ASSCE. SOCIETY, *Ex p.* EAGLE INSCE. CO., No. 4094a, *post.*

3126a. Adoption of balance sheet — Including directors' fees.]—Balance sheets including fees due to directors, & signed by directors pursuant to Cos. Act, 1908, s. 113, are not acknowledgments of those fees within Statute of Frauds Amendment Act, 1828 (c. 14).

After an order for the compulsory winding up of the co. appct. put in a proof for £950 in respect of directors' fees. The liquidator rejected the proof to the extent of £350, allowing only £600 on the ground that all directors' fees which had accrued due more than six years before the date of the winding-up order were barred by Stat. Limitations. The directors' fees due to appct. appeared from balance sheets duly signed by two directors & passed by the co. Upon a summons taken out by appct. asking that the decision of the liquidator rejecting his proof to the extent of £350 might be reversed, & that the proof might be allowed in the full sum of £950 :—*Held :* (1) a board of directors, acting as a board, & passing a resolution adopting a balance-sheet which includes directors' fees, does not bind the co. to pay those fees; (2) a balance-sheet so adopted & signed by directors pursuant to Cos. Act, 1908, s. 113, is not a written promise by the co. or its agents to pay the directors *Re* COLISEUM (BARROW), LTD., [1930] 2 Ch. 44; 99 L. J. Ch. 423; 143 L. T. 423; [1929–30] B. & C. R. 218.

3127a. —— **Delegation of duty.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3128a. Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3150a. Debt owing by ordinary directors—Action by permanent directors.]—Defts., who were directors of & were indebted to pltf. co., agreed to Terms of Settlement by which (*inter alia*) the first deft. should resign his office as governing director, that the co. should appoint independent persons as permanent directors, that the two defts., with three others, should be ordinary directors, that the co.'s articles should be altered so as to provide that defts. should have no control over, & have no right to vote in respect of, their debts, that an accountant should certify the amount of the defts.' liability, that the dividends payable to defts. should be retained by the co. on account of those debts, which, however, were not to be called in for twenty years, & that these terms should be embodied in an agreement under seal & sanctioned by special resolutions of the co. Special resolutions embodying that agreement were thereafter passed which provided also that the ordinary directors should have no right at directors' meetings to vote in respect of the co.'s financial affairs, & that with regard to other business they were to have only such rights of voting & control over the management as might be conferred upon them by the permanent directors. An accountant prepared a balance-sheet which showed the amount due to the co. by each of the two defts., & that balance-sheet, which was signed thus : " Peter Shaw, John Shaw, Directors," was adopted at a general meeting of the co. at which defts. were present.

The agreement under seal containing the above Terms of Settlement was sealed by the co., but defts. having declined to execute it, as they objected to certain of its terms, the

PART III. SECT. 28, SUB-SECT. 5.—A.

3115 i. *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN. [1925] 2 D. L. R. 529.—**CAN.**

3115 ii. —— *Effect of specifying method in articles.*]—(1) For the purpose of binding a co. in its corporate capacity individual assents of directors or shareholders given separately are not equivalent to the assent of a meeting.

(2) Where the arts. of assocn. of a co. authorise a certain method of procedure by the directors as the equivalent of a formal meeting there is by implication a denial of the validity of any other procedure other than a meeting.—TORONTO GENERAL TRUSTS CORPN. *v.* CARLILE, [1931] 3 W. W. R. 671; 26 Alta. L. R. 374.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—C. (a).

d i. *S. P. Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

sl. *Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action : —*Held :* the co. was not bound by the agreement.—LEGG & CO. *v.* PREMIER TOBACCO CO., [1926] App. D. 132.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 5.—C. (d).

3132 i. *Necessary formalities.*]—Where the directors of a co. had power to borrow & mortgage :—*Held :* the president & managing director were, by virtue of their offices, *primâ facie* proper officers to execute mtges., & the mtge., which had the common seal of the co. attached, & was executed by the president & managing director, was properly executed.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3132 ii. ——.]—Where a mtge by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being no appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtge., or authenticate the affixing of the seal :—*Semble :* the execution was bad.—INNES & GRIFFITH *v.* CAMERON VALLEY LAND CO. (B. C.), [1919] 1 W. W. R. 752.—**CAN.**

3133 i. *Mortgage to directors.*]—Set aside at instance of simple contract creditors of the co.—NORTHERN ELECTRIC & MANUFACTURING CO., LTD. *v.* CORDOVA MINES, LTD. (1914), 31 O. L. R. 221; 6 O. W. N. 210.—**CAN.**

3133 ii. ——.]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—C. (e).

f. Add " *varied,* 9 A. R. 620."

permanent directors, at a meeting to which none of the ordinary directors was summoned, resolved that instructions be given for writs to be issued against defts. for the recovery of the debts owing by them, & although by a resolution passed subsequently by the shareholders at an extraordinary meeting of the co. the chairman was directed to discontinue proceedings, a writ was issued against each deft. claiming the amount as "found & admitted by deft. to be due to pltfs. as shown by pltfs.' balance-sheet." To these actions defts. pleaded that they had been brought without proper authority, & they denied that the alleged or any account was stated between pltfs. & them:—*Held:* (1) as to authority to bring the actions: *per* GREER, L.J., under the co.'s articles the power to give instructions for the bringing of the actions was vested not in the directors generally but in the permanent directors, whose decision could not be overridden by the mere resolution of the shareholders, & therefore that the bringing of the actions was duly authorised; *per* SLESSER, L.J., the bringing of the actions was not authorised, as authority to do so could not be given at a meeting of directors to which the ordinary directors were not summoned; *per* ROCHE, L.J., as a rule objection to the right to bring an action should be taken, not at the trial but by interlocutory motion or summons, & if that course is not followed, the ct. should not entertain an application at the trial to dismiss the action, but where want of capacity or authority to sue plainly appears at any stage the ct. may order the action to be struck out. In this case, however, the ct. had not with regard to matters of fact the information necessary for deciding whether effect should be given to the objection to the competency of the actions & the objection therefore failed; (2) as to the cause of action relied upon: by the whole ct., the balance-sheet was not an account stated involving a fresh promise by defts. to pay the amounts debited to them therein, inasmuch as it was signed by them not *animo contrahendi* but in performance of their duties as directors.—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

3157a. —— **Presumption of authority.**]—Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held:* whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd. on other grounds*, [1928] A. C. 1, H. L.

Annotations:—As to (1) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Dbtd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356. *Generally*, **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505.

3160. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3160a. ——.]—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—PARKER & COOPER, LTD. *v.* READING, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

Annotation:—**Refd.** E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

3162. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3166. *Add. Annotation:*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

PART III. SECT. 23, SUB-SECT. 5.—E.

r i. —— *Must be with full knowledge of transaction.*]—HINDUSTAN ANCE & MUTUAL BENEFIT ——. LTD., LAHORE *v.* KHALSA BANK, LTD., —— (1927), I. L. R. 9 Lah. —IND.

d i. ——.]—DAVISON *v.* VICKERY'S MOTORS, LTD. (1925), AUS.

3201. *Add. Annotation :*—**Refd.** *Re* Etic, [1928] Ch. 861.

3216. *Add. Annotation :*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3231. *Add. Annotation :*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3240. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3248. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3249. *Add. Annotation :*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3250. *Add. Annotation :*—*As to* (2) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3252. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3257. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

3259. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3261. *Add. Annotations :*—*Generally*, **Refd.** *Re* Etic, [1928] Ch. 861 ; *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3280a. —— Directors relying on chairman's assurance as to value of assets.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3282a. Dividends paid out of capital.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3284. *Add. Annotation :*—*As to* (3) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

3285. *Add. Annotation :*—*As to* (2) **Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3287. *Add. Annotation :*—*Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3291. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3305. *Add. Annotation :*—*As to* (2) **Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

PART III. SECT. 28, SUB-SECT. 6.—A.

g i. ——.]—B. C. TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK, [1934] 2 W. W. R. 161 ; 3 D. L. R. 31.—**CAN.**

sk. *Personal liability—Wrong committed by company.*]—A director of a co. who is a party to a fraud or other wrong committed by the co. is personally liable for the damage caused thereby.—JOHNSON *v.* SOLLOWAY, [1932] 1 W. W. R. 481 ; 45 B. C. R. 420 ; *revsd. on other grounds*, [1934] 2 D. L. R. 241, P. C.—**CAN.**

PART III, SECT. 28, SUB-SECT 6.—B (a).

so. *Misrepresentation of unauthorised sales agent.*]—Directors of a corpn. are not liable for misrepresentations of a sales agent unauthorisedly marketing its securities or for statements in a prospectus not issued under their authority.—CHAPMAN *v.* WARREN, [1936] 2 D. L. R. 157 ; O. R. 145.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—B. (d).

s i. —— *Essentials.*]—A conviction under sect. 414 of the Criminal Code which deals with false statements by directors & promoters of cos. can only be secured if proof is given that (1) the statements are in themselves false in some material particular, & (2) not only so but false to the knowledge of the accused, & (3) made with intent to defraud.—R. *v.* BOWEN (1930), 43 B. C. R. 507.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—C. (b).

sm. *Commission.*]—Cos. Act, 1908, s. 57, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors, & recoverable by the co.—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

o i. —— *Extent of liability.*]—Deft., a director of pltf. co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them : —*Held :* such value was not the intrinsic value at the specified date, but the value in money which pltf. co. could reasonably have obtained on the market, & as pltf. co. had discharged the *onus* of proving that it could have obtained the market price, the value would be fixed at that amount.—ROBINSON *v.* RANDFONTEIN ESTATES GOLD MINING CO., LTD., [1924] App. D. 151.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 6.—E. (d).

sd. *Validity.*]—Upon a petition by applt., as liquidator of the Crédit Canadien Incorporé, alleging the illegality & irregularity of certain resolutions of its directors making a call on the shareholders & later declaring the forfeiture of these shares when the call was not paid, & further asking for a declaration that the directors had thus acted *ultra vires* & against the interests of the co. :—*Held :* upon the evidence, no adequate ground was disclosed for holding the call was not a valid call of which payment could have been enforced, the charge had not been established by evidence that, in exercising the power of forfeiture, the directors had been availing themselves of that power for some purpose for which it could not be legitimately employed, &, under the circumstances of this case, it was impossible to conclude that the forfeiture was not in the interest of the co.—*Re* CRÉDIT CANADIEN INCORPORÉ, SUN TRUST CO., LTD. *v.* BÉGIN, [1937] S. C. R. 305.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—E. (f).

3301 i. *Estoppel of shareholders.*]—Deft. brewing co. was incorporated under Dominion Cos. Act in 1924. In 1926 the C. co. was organised, also with a Dominion charter & with substantially the same incorporators & officers, to act as the agent of the brewing co. to promote the sales of its products. By an agreement between the two cos., the prices which the C. co. was to collect from customers upon sales, as well as the rates at which they were to remit when so collected, were fixed, the difference in favour of the C. co. constituting their remuneration for services to be rendered. Pltf. a shareholder & director of both cos. brought this action on behalf of himself & all other shareholders of the two cos. against the two cos. & four individual defts., who were shareholders directors & officers of both cos. to compel the individual defts. to pay back into the treasury or either or both cos. sums alleged to have been improperly paid to them by the cos. in 1927, 1928, & 1929. These sums were paid to the individual defts. for "promotion expenses" :—*Held :* in so far as the action rested upon the contention that the moneys paid by the brewing co. to the C. co. were improperly paid, it failed for the reason that pltf. himself received & still retained a portion of those moneys, & was not therefore in a position to complain either individually, or as a shareholder of the brewing co.—SHIESEL *v.* KIRSH, [1931] 1 D. L. R. 460 ; 66 O. L. R. 174 ; *affd.*, [1931] 2 D. L. R. 791 ; O. R. 41.—**CAN.**

g i. ——.]—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they know, or were bound to know, the insolvency of the co. at the time the dividend was declared.—SMITH *v.* HENDERSON, [1924] 1 D. L. R. 863 ; Q. R. 62 S. C 270.—**CAN.**

sn. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593 ; S. C. R. 314.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—F. (c).

sn. *Loan intra vires & bonâ fide—Director interested in land on which loan obtained.*]—The fact that a director of a mtge. & trust co. was interested in land on which he applied to the board of directors for & obtained, in the name of his vendor, a loan which resulted in a loss to the co. :—*Held :* not to give the co. a right of action against him & his co-directors for damages where the co. was not prohibited from making loans to directors, & the said director's interest in the land was found to have been disclosed to his co-directors & they had applied their minds to the facts before approving of the loan, & the question whether there was fraud or negligence or improvidence in making the loan was not raised in the action.—CANADIAN GUARANTY TRUST CO. *v.* [1932] 3 W. W. R. 671.—**CAN.**

to shareholders—

of directors to creditors.]—*Held :* Cos. Act, R.S.C., 1927, c. 27, s. 112, renders the directors of a co. liable to its creditors not only for debts of the co. existing at the time a loan is made to its shareholders but also for debts contracted between the time of the making of such loan & that of its reimbursement.—R. *v.* KUSSNER & KUSSNER, [1936] S. C. R. 206 ; 4 D. L. R. 752.—**CAN.**

3320. *Add. Annotation :*—**Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3327. *Add. Annotation :*—**Distd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

3327a. —— ——.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—BRITISH THOMSON-HOUSTON CO. *v.* STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. *v.* CROWTHER & OSBORN, LTD., [1924] 2 Ch. 33; 93 L. J. Ch. 335; 131 L. T. 535; 40 T. L. R. 544; 68 Sol. Jo. 595; 41 R. P. C. 311.

Annotation :—**Apld.** Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

3327b. —— ——.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction :—*Held :* there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltfs. against these defts. personally; & the action as against them must be dismissed with costs.—PRICHARD & CONSTANCE (WHOLESALE), LTD. *v.* AMATA, LTD. (1924), 42 R. P. C. 63.

3335a. —— **Loan for expenses in connection with promotion.**]—ADAMS (FRANCIS), LTD. *v.* FISHWICK (1928), 72 Sol. Jo. 122.

3345a. —— **Relief under 1929 Act, s. 372—Application by director—No evidence of shareholders' wishes.**]—A director failed to obtain his qualification shares within the time fixed, thinking that he had them at the date of his appointment, & having either overlooked or forgotten the definition of "qualification shares" in the co.'s arts. of assocn. At the end of the time he ceased, in accordance with sect. 141 (3) of 1929 Act, to be a director, but continued to act & to receive remuneration as a director, thus incurring penalties under sub-sect. (5). Later, he was re-appointed by the board pursuant to the co.'s arts. of assocn., retired, & was re-elected by the shareholders. He applied to the ct. by petition under sect. 372 (2) for relief against any liability which he had incurred by acting & receiving remuneration as a director after he had ceased to be a director : —*Held :* the ct. has jurisdiction under sect. 372 (1) to relieve a director who has acted as a director without having obtained qualification shares within the prescribed period from the penalties imposed by sect. 141.

But *semble*, the ct. will in general decline to relieve a director from liability to repay money to a co. or its liquidator in the absence of evidence as to the wishes of the shareholders or, if the co. is insolvent, of the creditors.—*Re* BARRY & STAINES LINOLEUM, LTD., [1934] Ch. 227; 103 L. J. Ch. 113; 150 L. T. 254.

3345b. —— —— **Invalid appointment of director.**]—L. F. owned the greater part of the shares of J. F. & Son, Ltd. His wife was appointed director in his lifetime, & also in his lifetime one C. C. was appointed a director. The latter never took up his qualification shares, &, although he continued to act & was treated as a director, he in law ceased to be such in 1933. L. F. died in 1934, & his wife, being in bad health, then went to the South of France, it being expected that her stay there would be a temporary one, but in fact she never returned. The directors at their meeting in the autumn of 1934 proposed to recommend to the annual general meeting of the co. that she should receive remuneration at the rate of £8 per week as from Feb. 10, 1934, & that proposal was accepted & confirmed at the annual general meeting. It appeared, however, that there was not a quorum at that meeting, & payments made under the resolution were sought to be recovered from L. F.'s wife & the two persons who voted at the meeting. It was contended that this was a proper case for relief under 1929 Act, s. 372, as the persons in question had acted honestly & reasonably, & ought fairly to be excused :—*Held :* though the defect in the resolution was a mere technicality, the appointment of the director being invalid, this was not a case in which, in all the circumstances of the case, any of the parties ought fairly to be excused for the breach of trust in making the improper payments.—*Re* FRANKLIN (J.) & SON, LTD., [1937] 4 All E. R. 43; 157 L. T. 188.

3347. *Add. Annotations :*—*As to* (4) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Consd.** *Re* Etic, [1928] Ch. 861. **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3353. After cross-ref. following this case add :—

(*l*) *Declaration of Liability.*

See 1929 Act, s. 275.

3353a. Carrying on business with "intent to defraud creditors"—What amounts to.]—(1) The declaration of liability in 1929 Act, s. 275 (1) should state the amount for which the director is liable.

(2) A co. carrying on business & incurring debts when to the knowledge of the directors

PART III. SECT. 28, SUB-SECT. 6.—F. (g).

m. For "26 W. L. R. 626" read "7 Alta. L. R. 245; 28 W. L. R. 250."

b (p. 509) **i.** —— —— ——.]—Pltfs. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltfs. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness :—*Held :* the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—MULLEN *v.* MILLAR (1924), 55 O. L. R. 563.—**CAN.**

m (p. 509) **i.** —— —— —— —— ——.]—An action based on sect. 35 of Cos. Act, R. S. M., 1913, against a director of a co. for wages alleged to be due a servant of the co. is an action upon the original debt, not one upon the judgment against the co., & pltf. must prove the employment, performance of services & debt.—DERBACH *v.* SHAW, [1933] 2 W. W. R. 605; 4 D. L. R. 461; 41 Man. L. R. 379.—**CAN.**

there is no reasonable prospect of the debts being paid may, in general, be properly inferred to be carrying on business "with intent to defraud creditors" within 1929 Act, s. 275 (1).

(3) *Semble:* sect. 275 is a punitive provision, & the ct. on making a declaration in the winding-up of a co. that a director is personally responsible for all or any of the debts or other liabilities of the co. may in its discretion make an order not limiting his liability to the amount of the debts due to creditors held to be defrauded within the sect.—*Re* LEITCH (WILLIAM C.) BROS., LTD., [1932] 2 Ch. 71; 101 L. J. Ch. 380; 148 L. T. 106.

Annotation:—As to (2) **Refd.** *Re* Patrick & Lyon, Ltd. [1933] Ch. 786.

3353b. —— ——.]—*Held:* (1) in 1929 Act, sect. 275, the references to "intent to defraud" & to "fraudulent purpose," unlike the words "fraudulent preference" in sect. 265, import actual dishonesty; (2) for the purposes of sect. 266 a co. is not solvent if it is unable to pay its debts as they become due.—*Re* PATRICK & LYON, LTD., [1933] Ch. 786; 102 L. J. Ch. 300; 149 L. T. 231; 49 T. L. R. 372; 77 Sol. Jo. 250; [1933] B. & C. R. 151.

3353c. Amount for which director liable—Should be stated in declaration of liability.]—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353d. —— **Whether limited to amount of debts due to creditors defrauded.]**—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353e. —— **General assets for all creditors.]**—A declaration under Cos. Act, 1929 (c. 23), s. 275, having been made by the ct. in the course of the winding-up of a co., that W., a governing director of the co. had been knowingly a party to carrying on the co.'s business with intent to defraud creditors between certain dates, fixing the liability of the director at £6,000, & charging a debenture for £4,000 issued to the director with that liability, the liquidator recovered the sum of £3,356 from the director in respect of the declaration, & asked for directions as to the application of that sum, & any further sum he might recover under the judgment, among the creditors of the co.:—*Held:* the moneys so recovered & to be recovered were not to be exclusively applied for the benefit of creditors whose debts were contracted during the period when the business of the co. was carried on with intent to defraud creditors, but formed part of the general assets of the co. available for all the creditors, on the same principle as that applicable to moneys recovered from "B" contributories. —*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), [1933] Ch. 261; 102 L. J. Ch. 81; 148 L. T. 108; 49 T. L. R. 74; 76 Sol. Jo. 888; [1933] B. & C. R. 31.

Annotation:—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3364. *Add. Annotation:*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

3365. *Add. Annotation:*—**Refd.** Bendir *v.* Anson, [1936] 3 All E. R. 326.

3376. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3377. *Add. Annotation:—As to* (1) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

3389. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3391. *Add. Annotation:—Generally*, **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3398. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3405. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

3407. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3419a. —— ——.]—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held:* the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—VICTORS, LTD. *v.* LINGARD, [1927] 1 Ch. 323; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

3423. *Add. Annotation:*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3432a. —— **Meaning of "book."]**—Entries made in a number of loose leaves fastened together in two covers are not admissible in evidence as minutes entered in books within 1929 Act, s. 120.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* FLOWER (JAMES) & SONS, [1936] Ch. 76; 105 L. J. Ch. 25; 154 L. T. 156; 52 T. L. R. 5; 79 Sol. Jo. 839.

PART III. SECT. 28, SUB-SECT. 6.—G. (a).

n i. —— *By servant of company—Unsatisfied return of execution.*]—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

n ii. —— —— ——.]—When a return of *nulla bona* has been made by the sheriff without a *bonâ fide* attempt having been made to ascertain whether or not there were assets available to satisfy the execution, & there were in fact exigible assets sufficient for that purpose, the return is not such a return as is contemplated by Cos. Act, 1927, s. 113.—STEVENS *v.* SPENCER (Alta.), [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—A.

3385 ii. —— *Proceedings ratified at subsequent meeting properly convened.*]—A director's meeting authorised an action by the co. No notice was given to one director, but at a subsequent meeting properly called a resolution was passed ratifying the first meeting: —*Held:* the action was properly commenced.—LYTTON GOLD MINES, LTD. *v.* MUNRO (1933), 49 B. C. R. 18.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (b) i.

g i. ——.]—In the case of a co. subject to Trust Cos. Act, R. S. C., 1927, seven forms a *quorum* for a [illegible] of [illegible] TRUST

192; O. R. 195.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (c).

l i. —— *What constitutes interest—Financial interest.*]—The personal interest which disqualifies a director from voting must be a financial interest, not merely a friendly spirit or a feeling of affection, *e.g.*, that of a husband for his wife.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD. (No. 2), [1931] 3 W. W. R. 306.—**CAN**

PART III. SECT. 28, SUB-SECT. 7.—D.

oi. —— *Meeting not in fact held.*]—AVIS *v.* P. PALLESEN DAIRY & CREAMERY CO., [1935] 3 W. W. R. 305; 4 [illegible]

3434. *Add. Annotation :—As to* (5) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3444. *Add. Annotation :—As to* (1) **Distd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

3451a. —— **Oral resignation—Articles requiring written resignation.**]—A co.'s acceptance of the oral resignation of a director constitutes a binding contract, even though the co.'s articles require the resignation of a director to be in writing.—LATCHFORD PREMIER CINEMA, LTD. *v.* ENNION, [1931] 2 Ch. 409; 100 L. J. Ch. 397; 145 L. T. 672; 47 T. L. R. 595.

3455a. —— **Re-election of retiring director—Adjournment of meeting.**]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3455b. —— **Failure to re-elect or replace.**]—By art. 97 of a co.'s arts., "At the second ordinary general meeting in each calendar year, one-third of the directors . . . shall retire from office. A retiring director shall retain office until the dissolution of the meeting at which his successor is elected." By art. 100, "If at any meeting at which an election of directors ought to take place the places of the retiring directors or some of them are not filled up, then, subject to any resolution reducing the number of directors, the retiring directors, or such of them as have not had their places filled up & may be willing to act, shall be deemed to have been re-elected" :—*Held :* if a retiring director was not re-elected, & if his place was not filled up at the same meeting, he retained office until his retirement by rotation, since by art 100 he was to be deemed to have been re-elected & therefore there was no vacancy to which a successor could subsequently be elected.—HOLT *v.* CATTERALL (1931), 47 T. L. R. 332.

3455c. —— **Construction of articles.**]—Art. 85 of a co.'s arts. of assocn. provides that "at the ordinary meeting in 1925 & every subsequent year, one-third, or the nearest number next below one-third, of the whole number of directors shall retire from office," that a retiring director is to be eligible for re-election at the meeting at which he retires & shall act as director throughout that meeting, & that the directors to retire in 1925, "unless the directors agree among themselves, shall be determined by ballot" & those to retire in every subsequent year "shall be those who have been longest in office since their last election & when two or more of such directors shall have served for an equal period, then their retirement shall be determined by ballot." In 1935 the board consisted of the chairman & seven other directors. Of these the managing director was by art. 101 not liable to retire by rotation or be taken into account in determining the rotation of retirement, & two others were additional directors appointed under art. 90, which provided that any additional director should hold office "only until the next following ordinary general meeting of the co." No question arose as to the first director to retire, but if a second director had to retire a selection had to be made between the pltf. & the chairman who had held office as directors for an equal period :—*Held :* (1) the words "by ballot" in art. 85 meant "by lot"; (2) "the whole number of directors" under art. 85 of whom a proportion was to retire did not include the additional directors, who by art. 90 only held office until the ordinary general meeting, seeing that the directors to retire fell by art. 85 to be determined at that meeting. It followed that one director only had to retire.—EYRE *v.* MILTON PROPRIETARY, LTD., [1936] Ch. 244; 105 L. J. Ch. 121; 154 L. T. 120; 52 T. L. R. 208; 80 Sol. Jo. 15, C. A.

3455d. Effect on contract of service.]—Pltfs. entered into an agreement with deft. co., a private co. under 1929 Act, to act as managers, buyers & supervisors for a term of 5 years. The agreement provided that it should be *ipso facto* determined upon either of pltfs. at any time vacating his or her office as director, but neither of them should at any time during its continuance resign his or her directorship or disqualify himself or herself from holding such office. At the first ordinary general meeting of the co., when pltfs. would, under Table A, art. 73, which was incorporated in the co.'s articles, automatically vacate their offices as directors, but be eligible for re-election, the chairman, who was the governing director, proposed a resolution that another person be appointed director in place of one of pltfs. & that the remaining vacancy be left unfilled. This resolution was after adjournments passed. Deft. co. then treated the agreement as terminated, & pltfs. brought this action for wrongful dismissal :—*Held :* (1) if pltfs. had been re-elected, or not being re-elected there had been no resolution to fill up the vacated office, there would have been no vacation of their offices; (2) the provision in the agreement for its termination did not apply only to voluntary resignation, & pltfs.' offices as directors had by reason of the passing of the resolution been *ipso facto* determined under the first part of the clause.—WALKER *v.* KENNS, LTD., [1937] 1 All E. R. 566, C. A.

3475. *Add. Annotation :—As to* (1) **Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3490. *Add. Annotations :—As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Refd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

3491a. —— —— **Effect of voluntary winding-up.**]—By an agreement in writing made between pltf. & deft. co. pltf. was appointed managing director of the co. for a term of 5¼ years at a fixed salary. Before the expiration of that period the co. passed a resolution, which was assented to by pltf., for the voluntary winding up of the co. on the ground that by reason of its liabilities it could not continue its business. Pltf. thereupon brought an action claiming damages for repudiation of the agreement :—*Held :* a term could not be implied in the agreement that if the co. should be wound up voluntarily & pltf. should vote for that course being adopted, his employment should cease so as to disentitle him to damages for breach

or the agreement. Pltf. was therefore entitled to damages for breach of the agreement.—FOWLER *v.* COMMERCIAL TIMBER CO., LTD., [1930] 2 K. B. 1; 99 L. J. K. B. 529; 143 L. T. 391, C. A.

Annotation :—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3492. *Add. Annotations :*—**Consd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3494. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3497a. —— Failure to obtain qualification shares—Recovery on quantum meruit.]—Pltf. was appointed managing director of a co. by an agreement under the co.'s seal which also provided for his remuneration. By the arts. of assocn. of the co. each director was required to obtain his qualification shares within two months after his appointment. Neither pltf. nor the other directors obtained their qualification shares within two months or at all. Pltf. having done work for the co. claimed to recover the remuneration provided for in the agreement, or, alternatively, on the basis of a *quantum meruit* :—*Held :* the fact that pltf. did the work under an agreement which was in the fact void did not disentitle him from recovering on a *quantum meruit*.—CRAVEN-ELLIS *v.* CANONS, LTD., [1936] 2 K. B. 403; [1936] 2 All E. R. 1066; 105 L. J. K. B. 767; 155 L. T. 376; 52 T. L. R. 657; 80 Sol. Jo. 652, C. A.

3500a. Power to provide for employees—Grant of pension.]—A private co., the articles of which authorised the directors to provide for the welfare of employees & their widows & children, entered into a deed of covenant by which it granted a pension of £500 a year to the widow of a former managing director five years after his death. Some three years later the co. passed a resolution for voluntary winding-up. The widow lodged a proof in the winding-up for the capitalised value of the annuity, but the liquidator rejected it :—*Held :* the transaction was not one for the benefit of the co. or reasonably incidental to the co.'s business. The pension did not come within the terms of the co.'s articles, as a managing or other director is not a person in the employment of a co., & the action of the directors was not confirmed by the shareholders in general meeting convened for the purpose of doing so. The grant of the pension was therefore void & *ultra vires* the co.—*Re* LEE, BEHRENS & CO., LTD., [1932] 2 Ch. 46; 101 L. J. Ch. 183; 147 L. T. 348; 48 T. L. R. 248; [1931] B. & C. R. 160.

3502. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3505. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

3506. *Add. Annotation :*—*Generally*, **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3506a. —— —— Cheque — Presumption of authority.]—STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. *v.* WESTMINSTER BANK, LTD., [1926] W. N. 271, C. A.

PART III. SECT. 28, SUB-SECT. 9.—C

so. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*]—When a pltf. complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 33 B. C. R. 425.—**CAN.**

sg. *Remuneration of profits—Meaning of "profits."*]—CARLTON HOTEL CO., LTD. *v.* GARDINER, [1934] 3 W. W. R. 97; 4 D. L. R. 713; 48 B. C. R. 441.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9.—D.

sp. *Extent of powers.*] — Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director; but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN, [1925 2 D L. R. 529.—**CAN.**

3501 v. —— —— ——.]—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—J. STANLEY WEDLOCK, LTD., *Ex p.* ROYAL BANK, [1924] 4 D. L. R. 1178; 5 C. B. R. 103.—**CAN.**

3501 vi. —— —— ——.]—Where under the arts. of assocn. of a co. its managing director might have the power which he purported to exercise, a person contracting with the co. through him is entitled to assume that he actually did have such power.—*Re* BRITISH COLUMBIA BOND CORPN., LTD., & LANG, [1931] 1 W. W. R. 286; 2 D. L. R. 985.—**CAN.**

3501 vii. —— —— ——.]—*Held :* the evidence proved R.'s position to be that of managing director, &, therefore, it must be presumed, especially since there was nothing adduced by the co. to negative his authority, that he had authority to contract on behalf of the co. to pay pltf. a commission.—WRATHALL *v.* RIPSTEIN & MANITOWAN EXPLORATION CO., LTD., [1932] 1 W. W. R. 801; 40 Man. L. R. 272; 3 D. L. R. 64; *affg.*, [1931] 3 W. W. R. 741.—**CAN.**

f i. —— —— *Presumption as to borrowing power.*]—Money was advanced by pltf. to F., a director, & not to the co. F. was in control of the co.'s business, but the directors had not delegated their borrowing power to him :—*Held :* one director alone had no actual authority from the co. to borrow, & pltf. was not entitled to assume that the directors had delegated their borrowing powers to the one director who had been left in full control of the business.—MERCANTILE FINANCE CORPN., LTD. *v.* FRANCIS & TAYLOR, LTD., [1929] N. Z. L. R. 731.—**N.Z.**

sq. *Fraud of managing director—Secret arrangement for sale of property.*] —LASELL *v.* HANNAH (B. C.) (1906), 37 S. C. R. 324.—**CAN.**

st. *Position as trustee—Advantage to company from misconduct.*]—A managing director acting in a way whereby he derives an improper advantage to himself financially or otherwise cannot justify it by showing that his action was of benefit to the co.—BRITISH COLUMBIA TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK (1934), 48 B. C. R. 209.—**CAN.**

PART III. SECT. 28, SUB-SECT. 10.

r i. —— *Effect of bye-law.*]—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re* PETRIE MANUFACTURING CO., *Ex p.* HUGHES, [1924] 4 D. L. R. 1308; 4 C. B. R. 311.—**CAN.**

s i. —— *Cheque—Unsatisfied judgment against company.*]—*Held :* the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—WRIGHT *v.* RITCHIE, [1925] 4 D. L. R. 1050.—**CAN.**

sb. *Not a trustee—As regards funds & securities in his custody.*]—*Ex p.* GIROUX, [1926] 2 D. L. R. 900; 45 Can. Crim. Cas. 315; (1925), Q. R. 40 K. B. 362.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—A.

h i. —— *Mining engineer—Companies Act*, 1927, *s.* 113.]—STEVENS *v.* SPENCER (Alta.), [1930] 2 W. W. R. 271; 3 D. L. R. 993; *affg.*, [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

sc. *Clerk, labourer, servant or apprentice—Director also field manager of mining company.*] Sect. 113 of Cos. Act, 1934, does not make the directors of a co. liable for the wages of a director for work performed by him as a "clerk, labourer, servant or apprentice" of the co.

Qu. : whether, even if pltf. had not been a director, his position as field manager for a gold mining co., interpreted in the light of the authority he had, the work he did & the place &

3526. *Add. Annotations :—As to* (2) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *Generally,* **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A C. 395.

3526a. " Person in the employment of the company "—Director.]—No managing or other director is a " person in the employment of the company."—NORMANDY *v.* IND COOPE & Co., LTD. [1908] 1 Ch. 84 ; 77 L. J. Ch. 82 ; 97 L. T. 872 ; 24 T. L. R. 57 ; 15 Mans. 65.

3532. *Add. Annotations :*—**Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. **Folld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201.

3532a. —— ——.]—By the articles of a private co. a governing director, who also held practically the whole of the share capital, was so appointed for his life, or until he should resign or be removed by special resolution of the co., at a salary of £300 a year. After he had continued in office for some years the co. passed a resolution for voluntary winding-up, & he ceased to act as director. His assignees sought to prove in the liquidation for compensation due to him for loss of office, but the liquidator rejected the claim :—*Held :* as the only contract between the director & the co. was that contained or evidenced in the articles, his employment as such was conditional on the continued existence of the co., & ceased automatically when it was wound up. But assuming there had been any breach of contract it was one in respect of which, in the circumstances, no damages were recoverable.—*Re* FARRER (T. N.), LTD., [1937] Ch. 352 ; [1937] 2 All E. R. 505 ; 106 L. J. Ch. 305 ; 157 L. T. 431 ; 53 T. L. R. 581 ; 81 Sol. Jo. 357.

3535. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536a. —— ——.]—*Re* LEE, BEHRENS & Co., LTD., No. 3500a, *ante.*

3536b. Remuneration payable out of profits—Whether profits available for dividend.]—In consideration of services rendered & of the transfer of certain rights to the co. by him, the co. agreed as purchasers " to pay to [pltf.] out of the first profits of the purchasers & in priority to all dividends payable in respect of any shares in the purchasers' capital the sum of £1,000." The balance sheet of the co., for the year ending Mar. 31, 1935, showed a profit of £698 11*s.* 10*d.*, which sum the directors used for writing off preliminary expenses & in making a transfer to certain reserve accounts. Pltf. contended that the £698 11*s.* 10*d.*, being the first profit of deft. co., he was entitled to payment of that sum in part satisfaction of the £1,000 : & that the co. by the publication of the balance sheet were estopped from denying that the £698 11*s.* 10*d.* was a first profit :—*Held :* upon the true construction of the contract the words " the first profits in priority to all dividends " means profits available for dividends ; & the test is whether the purpose to which the directors have applied the sum in dispute is one to which the shareholders could not object if such application deprived them of what would otherwise have been a dividend.—STEWART *v.* SASHALITE, LTD., [1936] 2 All E. R. 1481 ; 52 T. L. R. 712.

3537a. Superannuation—Alteration of scheme—Whether ultra vires.]—*Re* ELDER DEMPSTER SUPERANNUATION FUND ASSOCN. (1933), 78 Sol. Jo. 13.

3540a. —— —— **Presumption of authority—Due delegation of authority.**]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante.*

3549. *Add. Annotations :*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

3549a. —— —— ——.]—KLEINWORT, SONS & Co. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD., No. 2419a, *ante.*

3553. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

3560. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26. **Distd** Mudd *v.* Collins (1925), 133 L. T. 186 ; Reed *v.* Seymour (1927), 11 Tax Cas. 625 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748. **Consd.** Denny (H. & A.)

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circumstance of its performance, would have put him in the class of " labourers or servants," within the meaning of said sect.—MULLIGAN *v.* LANCASTER, [1937] 1 W. W. R. 73 ; 1 D. L. R. 414. —**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—B.

e i. —— *By president—Confirmation*]—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned :—*Held :* the co. could not repudiate the agreement, on the mere ground that it was not formally authorised or adopted by bye-law.—BLOOMFIELD *v.* MONARCH OVERALL MANUFACTURING CO., LTD. (No. 2), [1927] 2 W. W. R. 18 ; [1927] 3 D. L. R. 146 ; *affd.*, [1927] 3 W. W. R. 502 ; [1927] 4 D. L. R. 1137.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—C.

sd. *By whom fixed—Directors.*]—The remuneration of an officer of a co. must be fixed by the directors, & cannot be fixed by the shareholders.—WILSON *v.* WOOLLATT, [1928] 4 D. L. R. 403 ; 62 O. L. R. 620.—**CAN.**

se. *Who liable for — Directors — Whether manager included in " labourers, servants & apprentices."*]—DOMANSKI *v.* WILSON, [1935] 4 D. L. R. 17 ; O. R. 400 ; 5 F. L. J. (Can.) 69.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—D.

g i. —— —— *Contracts for purchase of stock.*]—*Held :* the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—TICONDEROGA PULP & PAPER CO. *v.* COWANS, [1925] 4 D. L. R. 1.—**CAN.**

g ii. —— —— *Agreement for non-shareholders to gain advantages of shareholders.*]—*Held :* express authority necessary.—MCLEOD *v.* UNITED CANNERS, LTD. (P.E.I.), [1925] 3 D. L. R. 767.—**CAN.**

g iii. —— —— *Cancellation of subscription for stock.*]—*Held :* express authority necessary.—*Re* SUN RAY MANUFACTURING CO., *Ex p.* ROBSON (Ont.), [1925] 1 D. L. R. 175 ; 5 C. B. R. 303 ; *affd.*, 4 C. B. R. 597.—**CAN.**

sf. *Liabilities — Investigation into conduct.*]—Act 46, 1926, s. 184 (1), is not designed for the purpose of enabling the ct. to hold a general investigation into the conduct of an officer of the co. The examination there intended is for the purpose of fixing liability in respect of a particular claim then before the ct. The sect. does not create any new liability or any new right, but only provides a summary mode of enforcing rights which would otherwise have been enforced by the ordinary procedure of the cts. A person cannot therefore be held liable under the sect. unless he is already liable to pay a sum of money by some principle of ordinary law, or by virtue of a special clause of Cos. Act imposing upon him a particular liability.—ZULULAND MOTOR CO. *v.* SHORT, LIQUIDATOR, ETC. (1928), 49 N. L. R. 368.—**S. AF.**

v. Reed (1933), 18 Tax Cas. 254. **Refd.** Stedeford *v.* Beloe, [1931] 2 K. B. 610; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

3560a. Remuneration by commission—Amount recoverable—How calculated.]—Applt., pltf. in the action, was for many years secretary of resp. co. Originally he received a fixed salary per week, but in 1916 an agreement was made between him & one A. S., managing director of resp. co., to the effect that in addition to his weekly salary he was to receive 10 per cent. on the balance of profits after payment of 12½ per cent. dividend. In 1926 applt. quarrelled with A. S. & left the service of resps., & shortly afterwards he brought this action for an account of the sums due to him as commission & for payment of the amount found to be due. It appeared that nearly all the capital of the resp. co. was held by A. S. & his family, & that he, as managing director, had entire control of the co.'s business. During applt.'s tenure of office A. S., with the connivance & assistance of applt., habitually appropriated funds of the co. to his own purposes. Applt. in framing his claim for commission contended (i) that the 12½ per cent. dividend referred to in the agreement must be a dividend subject to income-tax; (ii) that the 12½ per cent. dividend must be limited to an amount representing 12½ per cent. on the capital of the co. at the date of the agreement & had no application to subsequent increases of capital; & (iii) that for the purpose of calculating his commission he was entitled to reintroduce into the accounts all the sums which had been unlawfully applied for the benefit of A. S. personally:—*Held:* (1) the 12½ per cent. dividend must be a dividend subject to income-tax; the 12½ per cent. dividend must be measured on the capital as it stood in each year when the accounts were made up; & in reckoning the amount on which commission must be paid no account could be taken of the sums which ought to have been included in the profits but had been misappropriated by A. S.; (2) although applt. had been guilty of misconduct in relation to the affairs of resps., he was entitled to recover moneys which were already due to him for work done on resps.' behalf, & the remedy of resps. was an action or counterclaim for damages for breach of duty.—RAMSDEN *v.* SHARRATT (DAVID) & SONS, LTD. (1930), 35 Com. Cas. 314, H. L.

Annotation:—As to (2) **Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3560b. —— —— Effect of misconduct.] - RAMSDEN *v.* SHARRATT (DAVID) & SON, LTD., No. 3560a, *ante*.

3565. *Add. Annotations:*—**Consd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

3567a. —— Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3568a. —— Purchase of goods for company's benefit.]—LEVY *v.* METROPOLITAN CAB CO. (1854), 23 L. T. O. S. 67.

3573. *Add. Annotation:*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

3576. *Add. Annotation:*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

3586. *Add. Annotation:*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

3590. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

3595. *Add. Annotation:*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3599. *Add. Annotation:—As to* (1) **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3603a. —— —— Bills of exchange drawn by branch manager.]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers:—*Held:* (1) pltfs. were not entitled to act on bills drawn by a person in the position of the branch manager; (2) the bills were forgeries under which pltfs. could have no title.—KREDITBANK CASSEL G. m. b. H. *v.* SCHENKERS, [1927] 1 K. B. 826; 96 L. J. K. B. 501; 136 L. T. 716; 43

PART III. SECT. 29, SUB-SECT. 2.—C. (b).

q i. —— *By acts of secretary-treasurer.*]—*Held:* (1) a secretary-treasurer, as such, has no authority to bind his co.; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—B.

3596 i. *Remuneration by commission—Based on profits—& weekly sum—Provision for fixed minimum—Right to minimum although no profits.*]—GALLE-*v.* WATERLOO MOTORS, LTD., [1931] 2 D. L. R. 310; 3 M. P. R. 137.—**CAN.**

sb. *Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M.*, 1913 (c. 35), *s.* 32.]—MENZIES *v.* TYNDALL QUARRIES CO. (Man.), [1926] 4 D. L. R. 350; [1926] 2 W. W. R. 864.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—C.

g i. —— —— ——.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

sd. *Manager conducting personal business—Payment by party having dealings with company.*]—FAWCETT *v.* PETITCODIAC BLACK FOX CO., LTD. (1932), 5 M. P. R. 442.—**CAN.**

3602 i. —— —— *By misrepresentation—Question of authority.*]—RAVENE PLANTATIONS, LTD. *v.* ESTATE H. ABRAY (1927), 48 N. L. R. 174.—**S. AF.**

T. L. R. 237; 71 Sol. Jo. 141; 32 Com. Cas. 197, C. A.

Annotations:—As to (1) **Consd.** British Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48. *As to* (2) **Consd.** Slingsby *v.* District Bank Ltd. (1931), 47 T. L. R. 587; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

3608. *Add. Annotation:*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

3652. *Add. Annotation:*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

3656. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3657. *Add. Annotation:*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661. *Add. Annotation:*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3662a. Inspection of securities—Whether in proper custody.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3664. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3665. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3668. *Add. Annotation:*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3670a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3674a. Duty to report to members—Extent of duty.]—The duty of the auditors of a co. to make a report to the members, under 1929 Act, sect. 134 (1), is confined to forwarding their report to the secretary of the co.—*Re* ALLEN, CRAIG & CO. (LONDON), LTD., [1934] Ch. 483; 103 L. J. Ch. 193; 151 L. T. 323; 50 T. L. R. 301; 78 Sol. Jo. 223.

3675. Before this case add "*See, now*, 1929 Act, s. ——.

3684a. Application of Interpretation Act, 1889 (c. 63), s. 1 (1)—To special articles used with Table A.]—*By the arts. of assocn. of a co.* which was incorporated in 1906 it was provided that Table A in the first sched. to the Cos. Act, 1862, should apply to the co., but that certain clauses of Table A should be excluded. In an action by a director against the co. & its directors, in which he claimed a declaration that a notice purporting to remove him from the office of director was invalid, the question arose whether Interpretation Act, 1889 (c. 63), s. 1 (1), which provides that words in the singular shall include the plural & words in the plural shall include the singular applied to the special articles which were used with Table A:—*Held:* sect. 1 (1), which governed Table A, also governed the special articles which were used with Table A, &, applying this principle to the notice in question, pltf. was validly removed from his office of director & the action failed.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252; 100 L. J. Ch. 311; 145 L. T. 356.

3692. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

3693. *Add. Annotations:—As to* (1) **Refd.** Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official

PART III. SECT. 29, SUB-SECT. 3.—D.

3sl. *For judgment against company—In action brought on manager's instructions.*]—*Held:* the manager was not liable.—PACIFIC COAST COAL MINES, LTD. *v.* ARBUTHNOT, [1926] 1 D. L. R. 670; [1926] 1 W. W. R. 478; 36 B. C. R. 321.—**CAN.**

3sm. *Undue preference.*]—An officer of a co. who grants an undue preference to himself is guilty of misfeasance & breach of trust within the meaning of Act 46, 1926, s. 184 (1). A part-time secretary is an officer of the co. within the same sect.—ZULULAND MOTOR CO. *v.* BOSWELL, LIQUIDATOR, ETC. (1928), 49 N. L. R. 376.—**S. AF.**

PART III. SECT. 29, SUB-SECT. 4.—A.

3sn. *Contract to appoint on obtaining control of company—Construction.*]—PURDOM *v.* DOHERTY (Can.), [1929] 3 D. L. R. 719; *affg.*, 33 O. W. N. 425.—**CAN.**

PART III. SECT. 29, SUB-SECT. 4.—D.

3t. —— —— ——.]—*Re* ALPHA MTGAGE & INVESTMENT CO. (1916), 34 W. L. R. 483; 10 W. W. R. 652.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—B.

3661 i. *General rule.*]—Persons who continue from year to year to assume the duties of auditors must be held to have agreed to conduct their work in a reasonably skilful & careful manner. In an action in which defts. auditors were held liable in damages for negligence in not detecting defalcations by the pltf.'s accountant, it was held that there was ample justification for the belief of pltf.'s shareholders that the report pltf. was receiving annually from defts. provided for such an audit as would reasonably catch such thefts & manipulations of the books as said employee had been guilty of. Defts. were not justified in taking directions from another employee, the manager, whom also they were required to check, as to whether it was necessary to do certain work of checking. Since defts. were aware that pltf.'s system of checking was faulty & that the danger of theft was always present, the default of pltf., or of its employees other than the accused in not remedying that situation did not excuse the continuing negligence of defts. The fact that pltf. had received from bonding cos. the greater part of the loss it had sustained was not a defence to the action. Any possible issue arising from such payment might be left to be determined between pltf. & said cos. on defts. making payment, or, alternatively, if defts. so required, the form of judgment might provide for notice to any parties, such as the bonding cos., presumed to have an interest therein.—INTERNATIONAL LABORATORIES, LTD. *v.* DEWAR, [1932] 3 W. W. R. 174; [1933] 1 D. L. R. 34; *revsd.*, [1933] 2 W. W. R. 529; 3 D. L. R. 665; 41 Man. L. R. 329.—**CAN.**

3661 ii. ——.]—The extent of the duty & liability of an auditor depends on the terms of his employment in the particular case, & on the book-keeping methods used, to the knowledge of his employer, by the latter's officials.—JAMIESON, AUSTIN & MITCHELL, LTD. *v.* BATTRUM, [1934] 1 W. W. R. 324.—**CAN.**

3668 i. *As to balance sheet.*]—Although an auditor of a co. is not an insurer, & does not guarantee that the books of the co. show the true position of its affairs or that his balance-sheet is accurate according to the books, it is his duty to ascertain & certify to the shareholders the true financial position of the co. at the time of the audit so far as reasonable care & skill on his part discloses it; it is not sufficient for him to ascertain that the balance-sheet corresponds to the books, he must take reasonable care to ascertain that the books themselves show the true position. It is his duty to report & comment on any item in the balance-sheet furnished by the directors which either appears or is found from investigation to call for comment or explanation. An auditor who gives shareholders means of information instead of information in respect of a co.'s financial position does so at his peril, & runs the very serious risk of being held, judicially, to have failed to have discharged his duty. When it is shown that the audited balance-sheets do not show the true condition of the co. & that damage has resulted the onus is on the auditor to show that such damage is not the result of any breach of duty on his part.—BLUE BAND NAVIGATION CO., LTD. (TRUSTEE) *v.* PRICE, WATERHOUSE & CO. (NO. 2), [1933] 3 W. W. R. 53; *revsd. on the facts*, [1934] 2 W. W. R. 49; 3 D. L. R. 404; 48 B. C. R. 325.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—C.

3679 i. *Misfeasance—Failure to audit.*]—*Held:* the failure to audit & report on the balance sheets of a co., & the sending of summaries purporting to be audited to the registrar of cos. were wilful acts or defaults on the part of the auditor, & he was liable to make good certain sums paid as preference dividends as a result of such default.—*Re* FULTON (JOHN) & CO., LTD., [1932] N. I. 35.—**IR.**

Assignee of Property, [1933] A. C. 691. *As to* (2) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3695. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

3696a. —— **Increase in voting rights of preference shareholders.**]—ST. DAVIDS (LORD) *v.* UNION CASTLE MAIL SS. CO., LTD. (1934), 78 Sol. Jo. 877.

3698. *Add. Annotation :*—**Expld. & Distd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

3702. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3703. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704. *Add. Annotation :*—*As to* (2) **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704a. —— **Interference by court.**]—It is for the shareholders, & not for the ct., to say whether an alteration of the articles is for the benefit of the co., provided that it is not of such a character as that no reasonable men could so regard it.

The arts. of assocn. of a co. provided that pltf. & four others should be the first directors of the co., & that they should be permanent directors, & that each of them should be entitled to hold office so long as he should live unless he should become disqualified from any one of six specified events. Owing to irregularities in the accounts furnished by pltf. of sums received by him on the co.'s account an extraordinary general meeting of the co. was held & a special resolution was passed that the articles should be altered by adding a seventh event disqualifying a director, namely, a request in writing by all his co-directors that he should resign his office. Such a request was subsequently made to the pltf. There was no evidence of bad faith on the part of the shareholders. In an action by pltf. for breach of an alleged contract contained in the original articles that he should be a permanent director, & for a declaration that he was still a director of the co. :—*Held :* the contract, if any, between pltf. & the co. contained in the articles in their original form was subject to the statutory power of alteration & that if the alteration was *bonâ fide* for the benefit of the co. it was valid & there was no breach of that contract ; there was no ground for saying that the alteration could not reasonably be considered for the benefit of the co. ; therefore, there being no evidence of bad faith, there was no ground for questioning the decision of the shareholders that the alteration was for the benefit of the co. ; &, consequently, pltf. was not entitled to the relief claimed.—SHUTTLEWORTH *v.* COX BROTHERS & CO. (MAIDENHEAD), LTD., [1927] 2 K. B. 9 ; 96 L. J. K. B. 104 ; 136 L. T. 337 ; 43 T. L. R. 83, C. A.

Annotation :—Folld. Sugden *v.* Urban Fire Insurance Co., (1930), 75 Sol. Jo. 60.

3704b. —— ——.]—SUGDEN *v.* URBAN FIRE INSURANCE CO., LTD. (1931), 75 Sol. Jo. 60 (Vice-Chancellor of Lancashire).

3724. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3729. Before this case insert " *Compare* CORPORATIONS, Vol. XIII., pp. 339 *et seq.*"

3734a. —— **Preference shareholders whose dividends "in arrear."**]—A co.'s articles of assocn. provided that the original preference shares, carrying a cumulative preferential dividend of 7 per cent., should not confer upon the holders the right to attend & vote at any general meeting or to have notice thereof unless (*inter alia*) the dividend thereon was " in arrear " for more than three months. Subsequently the capital of the co. was increased by the issue of preferred ordinary shares with the right to a non-cumulative preferential dividend of 10 per cent. payable in respect of each year exclusively out of the profits earned in each year & to rank after the preference shares. It was further provided that the holders of these preferred ordinary shares should, *mutatis mutandis*, be subject to the same restrictions

PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

sp. *Rights of members—Forcing additional shares on dissenting member.*]—An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words "three shares for every 250 lb. of butter fat" supplied by a member & substituted " one share for every 60 lb. of butterfat." Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held :* the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—MACDONALD *v.* NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD., [1923] N. Z. L. R. 122.—**N.Z.**

3698 i. *Alteration a breach of contract.*]—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bonâ fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bonâ fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—HARI CHANDANA JOGA DEVA *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. (1924), I. L. R. 52 Calc. 239.—**IND.**

3698 ii. ——.]—Resp., a member of applt. co. for a number of years, supplied produce to the co. upon terms set out in certain of the co.'s arts. of assocn. The co. altered the arts. in question in a manner which subsequently proved to be prejudicial to resp., &, declining to be bound by such alteration, he took action to recover the balance due to him on the basis of the original articles :—*Held :* it not having been shown that resp. had in any way assented to the alteration in question, he was not bound thereby, & was entitled to be paid for his produce on the basis of the original arts. as unaltered.—JOHNSON *v.* ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD., ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD. *v.* JOHNSON, [1927] N. Z. L. R. 216.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 2.—C. (b) iii.

3701 i. *For benefit of company as whole.*]—If a majority of shareholders carry a resolution to alter the articles not in the interests of the co. at large, but entirely for their own benefit & in their own interests, they have not acted *bonâ fide*, & that is fatal to the validity of the alteration. The co. had rescinded an article whereby the " dry " shareholders were entitled to interest on their capital, & substituted another which had the effect of depriving the " dry " shareholders of interest :—*Held :* the article was invalid.—GEARY *v.* MELROSE CO-OPERATIVE DAIRY CO., LTD., [1930] N. Z. L. R. 768.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 3.—A.

sd. *Misdescription of meeting—Effect.*]—A meeting was erroneously described as a directors' meeting instead of a shareholders' meeting. The three shareholders present were also directors. An act done at such meeting, being *intra vires* bound the co. notwithstanding the misdescription.—E. H. MCGUIRE & H. J. FORRESTER, LTD. *v.* CADZOW, [1932] 3 W. W. R. 337 ; [1933] 1 D. L. R. 192 ; **26 Alta. L. R. 518.—CAN.**

as to receiving notices of & attending & voting at general meetings as the holders of original preference shares. Since 1920 no profits had been available to pay dividends, & for the general meeting of 1926 the holders of preferred ordinary shares received no summonses. In an action by holders of such shares against the co. for a declaration that they were entitled to have notice of & to attend & vote at the general meetings :—*Held :* the words " in arrear," in the context in which they appeared in the articles, could not be construed to cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year & not paid because there were no profits available for the dividend, & the action failed.—COULSON *v.* AUSTIN MOTOR CO., LTD. (1927). 43 T. L. R. 493.

3736. *Add. Citation :*—13 Mans. 316.

3740. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3746. *Add. Annotation :*—**Folld.** *Re* Newcastle United Football Co., [1932] W. N. 109.

3749a. Where twenty-one days' notice required—Shareholders resident abroad—Notice unnecessary.]—*Re* NEWCASTLE UNITED FOOTBALL CO., LTD., [1932] W. N. 109 ; 173 L. T. Jo. 344.

3753. *Add. Annotation :—Generally,* **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3770. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771. *Add. Annotations :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83 ; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official Assignee of Property, [1933] A. C. 691.

3771a. Shareholder with no registered address—No address in United Kingdom for service of notices.]—DICKSON *v.* HALESOWEN STEEL CO., [1928] W. N. 33.

3775. *Add. Annotations :—As to* (1) **Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. *As to* (2) **Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3779. *Add. Annotation :*—**Expld. & Apld.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3787a. —— —— ——.]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *post.*

3802. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3803a. —— —— **Although proxy given.**]—A co.'s arts. of assocn. provided, art. 74, that votes might be given personally or by proxy ; art. 75, that the instrument appointing a proxy should be deposited at the office not less than forty-eight hours before the time of holding the meeting at which it was to be used ; &, art. 76, that " a vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous . . . revocation of the proxy . . . provided no intimation in writing of the . . . revocation . . . shall have been received at the office before the meeting " :—*Held :* in a case where a proxy had not been validly revoked in accordance with art. 76, the shareholder who had given the proxy was free to attend at the meeting & vote personally ; &, when he had done this, the vote tendered by the proxy was properly rejected.—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., [1931] 2 Ch. 90 ; 100 L. J. Ch. 404 ; 145 L. T. 471 ; 47 T. L. R. 217, C. A.

3811. *Add. Annotation :*—**Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3811a. —— —— —— **Whether decision of chairman final.**]—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes :—*Held :* the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—WALL *v.* EXCHANGE INVESTMENT CORPN., [1926] Ch. 143 ; 95 L. J. Ch. 132 ; 134 L. T. 399, C. A.

PART III. SECT. 30, SUB-SECT. 3.—B. (f).

e i. ——.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution ; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* EXCEL FOOTWEAR CO., *Ex p.* NOVA SCOTIA TRUST CO., [1923] 3 D. L. R. 212 ; 56 N. S. R. 195 ; 3 C. B. R. 748.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (b).

sq. *Necessity for quorum at commencement—& at time of voting.*]—At the outset a majority of the issued shares were represented at the meeting, but some of the shareholders withdrew & at the time of the voting there was no longer a quorum :—*Held :* meetings of shareholders are to be governed by the same rules as to quorum & procedure as apply to parliamentary & municipal bodies except where the statute or bye-laws otherwise provide ; & the shareholders' meeting therefore was a nullity failing for want of a quorum, & the bye-laws were not properly passed.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51 ; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (c).

3785 ii. —— *To give casting vote—For what purposes to be exercised.*]—*Re* CITIZEN'S COAL & FORWARDING CO. (Ont.), [1927] 4 D. L. R. 275.—**CAN.**

3796 ii. —— ——.]—At an extraordinary general meeting of a co. a special resolution to increase capital was declared by the chairman to have been carried by the requisite majority. Among the majority voting for the resolution were two shareholders who, in terms of the articles of assocn. were not qualified to vote, in respect that they had been registered owners of their shares for less than a month. If their votes had not been included, the requisite majority in favour of the resolution could not have been obtained. No poll was demanded at the meeting :—*Held :* under 1929 Act, s. 117 (3), as no poll had been demanded at the meeting, the declaration of the chairman that the resolution had been carried by the requisite majority was final & conclusive.—*Re* GRAHAMS' MOROCCO CO., [1932] S. C. 269.—**SCOT.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) i.

3801 i. —— —— *Interested directors & shareholders.*]—Directors & other shareholders, implicated in a breach of trust with respect to the co.'s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.'s name be retained as pltf. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. *v.* GREAT WEST PERMANENT LOAN CO. (No. 2) (Man.), [1927] 3 W. W. R. 486.—**CAN.**

sr. *Necessity for concurrence of joint shareholders.*]—Joint holders of shares must concur in voting upon them unless the bye-laws of the co. otherwise provide. Defts. were not entitled to vote upon shares held by them as trustees jointly with other persons, who were not present or assenting.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51 ; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) iii.

st. *No amendment of vote—After vote cast.*]—BARBER, ETC. *v.* NEW ZEALAND SOUNDS HYDRO ELECTRIC CONCESSIONS, LTD., [1927] N. Z. L. R. 589.—**N.Z.**

sv. *How demanded—Demand by specified number of members—Proxies*

3822. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3823. *Add. Annotations :—As to* (1) **Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] C. R. 640. **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3826. *Add. Annotation :*—**Consd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3829. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

3841a. —— Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Consd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3847a. —— —— Vote valid unless disallowed at meeting — Whether decision of chairman final.]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *ante*.

3847b. Right of member to vote although proxy given.]—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., No. 3803a, *ante*.

3853. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3858a. —— Two resolutions put to meeting en bloc.]—Where on a show of hands there are two resolutions before a meeting of shareholders, one for the reduction of capital & another for the conversion of the preference shares into ordinary shares, & where there is a right to a poll, the chairman may put the resolutions *en bloc* if no shareholder requires him to put them separately.—*Re* JONES (R. E.), LTD. (1933), 50 T. L. R. 31.

3866a. Notice of intention to propose—Twenty-one days—How calculated.]—The period of not less than twenty-one days prescribed by 1929 Act, s. 117 (2), relating to notices of meetings in connection with the passing of special resolutions, means a period of not less than twenty-one clear days, exclusive of the day of service of the notice & exclusive of the day on which the meeting is to be held.

Provisions in the articles regulating the date on which a notice is to be deemed to be served must be considered ; but an article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded.—*Re* HECTOR WHALING, LTD., [1936] Ch. 208 ; 105 L. J. Ch. 117 ; 154 L. T. 342 ; 52 T. L. R. 142 ; 79 Sol. Jo. 966.

3874. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

3874a. —— —— Adjournment of second meeting to date more than month from date of first meeting.]—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—NEUSCHILD *v.* BRITISH EQUATORIAL OIL CO., [1925] 1 Ch. 346 ; 94 L. J. Ch. 201 ; 133 L. T. 227 ; 41 T. L. R. 414 ; 69 Sol. Jo. 446.

—— —— ——.]—*See, now*, 1929 Act, ss. 117 (2), 119, 287.

3878. Before this case insert "*Compare* CORPORATIONS, Vol. XIII., p. 346."

3880. *Add. Annotations :—As to* (1) **Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. **Refd.** Cox *v.* National Union of Foundry Workers of Great Britain & Ireland (1928), 44 T. L. R. 345.

3881a. —— ——.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Refd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3882. *Add. Annotation :*—**Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3882a. —— —— Re-election of retiring director.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3890. *Add. Annotation :*—**Consd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3916a. —— —— Whether "knowingly" party to default.]—BECK *v.* BOARD OF TRADE (SOLICITOR), GOODCHILD *v.* BOARD OF TRADE (SOLICITOR) (1932), 76 Sol. Jo. 414, D. C.

3917. *Add. Annotation :—As to* (2) **Refd.** Glanvill, Enthoven *v.* I. R. Comrs. (1924), 131 L. T. 818.

3925. *Add. Annotation :*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

3933. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579 ; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

3934a. Locality of debt created.]—An English trust investment co. held 3,712 ordinary £1 shares in deft. co., also an English co. with a registered office in London, & deriving its revenue entirely from its shares in four cos. carrying on business exclusively in Australia. Deft. co. had its head office & board of directors in Australia, but had also a register of shares in London. Deft. co. having been assessed to Australian income tax was required by the Deputy Federal Comr. of

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not included.]—Cos. Act, 1892, s. 48 (3), provides that a demand for a poll of members of a co. must be made by at least two members :—*Held :* a demand by a member personally present & holding proxies for two other members not personally present was not a demand within this sect.—*Re* RHODESIAN MANUFACTURING CO., LTD., [1927] S. A. S. R. 310.—**AUS.**

PART III. SECT. 30, SUB-SECT. 3.—G.

3897 i. *When court will interfere—To summon meeting.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2. W. W. R. 606 ; 36 Man. L. R. 606.—**CAN.**

3899 i. *When court will interfere—To prevent meeting being held.*]—Injunction may be granted restraining the meeting of a co. where a *primâ facie* case of fraud or oppression is made out.—FULLER *v.* BRUCE, [1935] 3 D. L. R. 256 ; 9 M. P. R. 437 ; 5 F. L. J. (Can.) 101 ; *on appeal*, [1936] S. C. R. 124 ; 2 D. L. R. 273.—**CAN.**

sg. *Motion by cestui que trust—To restrain trustee from voting—Whether company necessary party.*]—PETRIE *v.* BROWN & LOVE, [1934] 3 W. W. R. 380 ; 49 B. C. R. 299.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—A.

sa. *Must apply rateably to all shareholders of same class.*]—It is of the essence of a dividend that it shall apply rateably to all shareholders of the same class.—PRICEVILLE FOX CO. *v.* JORDAN, [1929] 3 D. L. R. 907 ; 64 O. L. R. 172.—**CAN.**

sc. *What amounts to dividend—Dividend Duty Act*, 1902 (*W. A.*).]—SWAN BREWERY CO., LTD. *v.* R., [1914] A. C. 231, P. C.—**AUS.**

Taxation, to deduct an amount sufficient to pay the income tax from the dividend payable to the English trust investment co., as being an " absentee " taxpayer for the year ending June 30, 1921. The investment co. sued deft. co. for the amount deducted, & contended that such dividends were not assessable to Australian income tax :—*Held :* the shares held by pltf. co. in deft. co., were locally situate in England, & the dividend due in respect of them was an English debt. The Commonwealth Govt. had therefore no power to impose or alter the incidence of taxation upon the dividend, & the deft. co. was not entitled to deduct any Australian income tax from any dividend payable to English shareholders.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 136 L. T. 436; 70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., 42 T. L. R. 771.

3934b. Every payment other than authorised reduction of capital.]—A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. —HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720; 144 L. T. 65; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WAKES, 99 L. J. P. C. 191, P. C.

Annotations :—**Distd.** *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773. **Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

3936. *Add. Annotation :*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3939. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

3943a. ——— ——— ———.]—A co. was incorporated as a trust investment co., the objects as defined by clause 3 of its memorandum of assocn. including (*a*) to acquire & hold stocks, shares & securities of the classes therein specified & from time to time to change such investments for others of the like nature, & (*b*) to borrow on debenture stock & to redeem or pay off any moneys so borrowed. The business & accounts of the co. were conducted & kept, as required by the articles of assocn., on the footing that profit or loss on a change of investment was carried to capital account, & net receipts over expenditure were carried to revenue account & became available for payment of dividends without regard to any depreciation in the market value of the co.'s investments. In 1900 the co. issued at par debenture stock. In 1918, owing to the general fall in the value of securities, the directors were enabled to redeem some of this debenture stock at a discount, & they claimed the right to carry the whole amount of this discount to revenue account. The investments forming the assets of the co. had fallen to an extent approximately equivalent to the discount at which the debenture stock had been redeemed :—*Held :* (1) apart from the special provisions of the articles of assocn., the single item of gain by redemption of debenture stock could not be dissociated from the loss of capital assets, & that the amount of the discount was not distributable as dividend; (2) the issue of loan capital was not one of the objects or part of the business of the co., but was a power to be exercised incidentally to, & in furtherance of, its objects, & even if the discount was otherwise divisible as net profit, such a division would be prohibited by the fact that it did not arise out of the co.'s business.—WALL *v.* LONDON & PROVINCIAL TRUST, LTD., [1920] 2 Ch. 582; 90 L. J. Ch. 43; 125 L. T. 57; 36 T. L. R. 729; 64 Sol. Jo. 635.

3944a. ———.]—A co. with a capital of some £16,000,000 & operating to a large extent through subsidiary & sub-subsidiary cos., proposed to pay a dividend on its preference shares. There had admittedly been a loss of £780,000. Against this there were available two sums of £362,000 & £500,000. The former was admittedly profits available for dividend. The £500,000 was made up in part of premiums on the issue of shares & in part of profits carried to reserve, but which had in fact been invested in the assets of the co. Pltf. asked for an injunction to restrain the co. from paying the dividend :—*Held :* (1) the onus was on pltf. to establish that in paying such dividend the co. would trench upon assets of the co. representing capital paid up upon the shares; (2) the assets of the co., properly valued, must in such a case be treated as notionally divisible into two parts, those representing subscribed capital & those representing reserve. These two parts must be proportionately reduced in respect of any diminution of value & the reserve so reduced will be available for dividend; (3) that part of a reserve fund consisting of moneys paid by way of

PART III. SECT. 30, SUB-SECT. 7.—B.

3935 ii. ——— *Resolution sufficient—Bye-law unnecessary.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—D. (a).

3b. *General rule.*]—A co. cannot realise its entire assets &, having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend. —DAVISON *v.* KING, [1926] N. I. 1.—**IR.**

PART III. SECT. 30, SUB-SECT. 7.—E. (a).

3958 ii. ——— ——— ———.]—Deft. co. was created by letters patent under Dominion Cos. Act, R. S. C., 1906. Its capital was divided into preferred & common shares & the letters patent provided that the preferred shares " shall confer the right to receive out of the profits of each year a preferential dividend for such year at the rate of eight per centum *per annum* on the capital for the time being paid up thereon & shall rank as regards return of capital in priority to the common shares, but shall not confer the right to any further participation in profit or assets." The by-laws of the co. provided that the directors might before declaring any dividend set aside out of profits such sums as they should think proper as a reserve. Pltf., the owner of both preference & common shares, sought a declaration that the co. had earned profits during certain specified years sufficient to pay said preferred dividends & that it was bound to apply such profits in payment thereof & had no discretion to ap[ply] them in providing for a reserve f[und] or contingencies :—*Held :* whether or not profits had been shown out of which the preferred dividend could be paid, the discretion of the directors to withhold the declaration of a dividend had not been taken away by the letters patent.—DEVALL *v.* WAINWRIGHT GAS CO., LTD., [1932] 1 W. W. R. 281; 2 D. L. R. 145; 26 Alta. L. R. 274; 3 W. W. R. 251.

premiums on shares, unless set aside in some particular fund which has been wholly spent, is available for dividend purposes.—DROWN *v.* GAUMONT-BRITISH PICTURE CORPN., LTD., [1937] Ch. 402; [1937] 2 All E. R. 609; 106 L. J. Ch. 241; 157 L. T. 543.

3948. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3952. *Add. Annotation:*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

3959a. Arrears of dividend—Distribution.]—The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding 5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures & preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held:* the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—FIRST GARDEN CITY *v.* BONHAM-CARTER, [1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.

3966. *Add. Annotation:*—**Distd.** *Re* Hyde, Hyde *v.* Bryce (1930), 74 Sol. Jo. 467.

3976a. —— —— **Calculation on wrong principle—Acquiescence.**]—The ct. will not grant an injunction to restrain the declaration of a dividend on the co.'s stock, etc., on the ground that the dividend so to be declared was calculated upon an erroneous principle with reference to various accounts of several amalgamated lines of railway, & the profits realised, where the same principle as to the matters of account had been adopted & acted upon for several successive years & acquiesced in by the respective shareholders. A motion for an injunction to this effect directed to stand over until the hearing of the cause, as no immediate injury could accrue to pltfs. (shareholders) until that time.—YOOL *v.* GREAT WESTERN RY. CO. (1869), 20 L. T. 74.

3984. *Add. Annotations:*—**Consd.** *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

3988a. —— ——.]—THORNYCROFT (J. I.) & CO., LTD. *v.* THORNYCROFT (1927), 44 T. L. R. 9.

3990. *Add. Annotation:*—**Refd.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

3991. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** Steel Co. of Canada *v.* Ramsay, [1931] A. C. 270.

3992. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q i. —— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the co.:—*Held:* there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—**CAN.**

sf. *Allotment of shares held in another company—Validity.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—I.

3991 i. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re* NEW ZEALAND HARDWARE CO., LTD., [1926] N. Z. L. R. 76.—**N.Z.**

sh. *Undeclared dividend—Whether liability of company—Contract for sale of shares.*]—F. gave an option to purchase a block of common shares of a company, which purchase would give the purchaser control of the co. The optionee required that F. furnish an accountant's statement showing the company's assets & liabilities & profit & loss to Aug. 31, 1926, & an affidavit that the co.'s liabilities would not exceed the amount shown by such statement. A statement & affidavit were furnished, & the acceptance of the option was expressed to be based on said statement. Preference shares had been issued by the co. non-participating & non-assessable, entitling the holders thereof to a first, fixed, cumulative dividend of 8 per cent. *per annum*:—*Held:* cumulative dividends on preference shares, to Aug. 31, 1926, undeclared & unpaid, constituted a liability of the co. within the meaning of the contract, & should have been included as such in the said statement.—FAIRHALL *v.* BUTLER, [1928] 3 D. L. R. 161; [1928] S. C. R. 369.—**CAN.**

sk. *Right to participate in profits in excess of fixed preferential dividend—Construction of charter.*]—The letters patent of a co. incorporated in 1910 under Cos. Act of Canada provided that the net profits from time to time distributed should be applicable first to paying a fixed cumulative dividend at the rate of 7 per cent. *per annum* on the preference shares, & that the holders of those shares should participate rateably with the holders of the ordinary shares in the distribution of net profits after the holders of the ordinary shares should have received "dividends equal to those paid on the preferred shares." Further, that no dividends should be paid on the ordinary shares until after the co. had to the credit of a reserve fund a sum equal to one year's dividend on the issued preference shares:—*Held:* the preference shareholders were not entitled to receive in dividend more than 7 per cent. *per annum* until the ordinary shares should have received dividends which gave them that percentage on their shares since the incorporation of the co.—STEEL CO. OF CANADA, LTD. *v.* RAMSAY (THOMAS), [1931] A. C. 270; 100 L. J. P. C. 81; 144 L. T. 532, P. C.; *affg.*, [1930] 3 D. L. R. 555; 65 O. L. R. 250; *affg.*, [1929] 4 D. L. R. 879; 64 O. L. R. 327.—**CAN.**

3993. *Add. Annotations :—As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

3994. *Add. Annotations :*—**Consd.** First Garden City *v.* Bonham-Carter, [1928] Ch. 53 ; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962. **Apld.** *Re* Smith's Will Trusts, Smith *v.* Melville, [1936] 2 All E. R. 1210. **Refd.** *Re* Sandbach, Royds *v.* Douglas, [1933] Ch. 505 ; MacIver's Settlement, *Re*, MacIver *v.* Rae, [1936] Ch. 198.

4003. *Add. Annotation :—Generally,* **Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1937] 1 K. B. 788.

4016a. —— —— **Application of profits in reduction of adverse balance.**]—A co. issued notes which entitled the noteholders to a fixed amount per cent. & to an additional share in the "profits available for dividend" :—*Held :* the directors were entitled to apply the whole of the profits of any one year, after payment of the fixed amount per cent. to the noteholders, in reduction of the adverse balances of previous years, & the noteholders were not entitled to claim a share in such profits.—LONG ACRE PRESS, LTD. *v.* ODHAMS PRESS, LTD., [1930] 2 Ch. 196 ; 99 L. J. Ch. 479 ; 143 L. T. 562.

Annotation :—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4017. *Add. Annotation :*—**Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196.

4019. *Add. Citation :*—93 L. J. Ch. 49.

4020. *Add. Annotations :—As to* (1) **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395 ; Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *As to* (2) **Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4021. *Add. Annotations :*—**Folld.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4023a. —— ——.]—By its memorandum of assocn. a co. as an attraction to participating preference shareholders, provided for the constitution of a reserve fund of £50,000 to be accumulated from the profits of the co. after certain dividend payments had been made. The arts. of assocn. of the co., however, also authorised the setting aside of a reserve fund out of profits, in addition to the reserve fund empowered by the memorandum, & the fund set aside under the arts. was, according to the arts., to be used to meet contingencies, or for special dividends, or for repairing, improving, & maintaining the property of the co. & for such other purposes as the directors should in their absolute discretion think conducive to the interests of the co. The arts. also provided that the reserve fund to be set aside under the memorandum should be kept invested outside the business "until required for any of the above purposes" :—*Held :* the memorandum & the arts. might be read together to explain any ambiguity appearing in the terms of the memorandum or to supplement it on any matter on which it was silent, but that in the present case, as there was no ambiguity, the reserve fund authorised by the memorandum having been created for the benefit & protection of the preference shareholders, the two documents could not be read together, & it was *ultra vires* the directors of the co. to use the memorandum reserve fund of £50,000 for any of the purposes set out in the arts. of assocn.—ANGOSTURA BITTERS (DR. J. G. B. SIEGERT & SONS), LTD. *v.* KERR, [1933] A. C. 550 ; 102 L. J. P. C. 161 ; 149 L. T. 313 ; 49 T. L. R. 533, P. C.

4023b. —— **Writing back to profit account—Profits written off in excess of requirements.**]—A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—STAPLEY *v.* READ BROTHERS, LTD., [1924] 2 Ch. 1 ; 93 L. J. Ch. 513 ; 131 L. T. 629 ; 40 T. L. R. 442 ; 68 Sol. Jo. 519.

Annotation :—**Refd.** Long Acre Press *v.* Odhams Press, Ltd.,

4026. *Add. Annotations :*—**Refd.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23 ; Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4035. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291 ; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

4037a. ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4046. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4048. *Add. Annotations :*—**Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192. **Refd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

PART III. SECT. 31, SUB-SECT. 2.—B.

n i. —— ——.]—*Re* INRIG SHOE CO., [1924] 4 D. L. R. 625 ; 5 C. B. R. 157.—**CAN.**

o i. —— ——.]—The holder of 1,500 £1 shares in a co., on which 5*s.* per share had been paid & on which a call of a further 2*s.* 6*d.* per share had been made but not paid, being unable to pay his debts as they fell due agreed with the co. that the money already paid should be applied towards payment in full of 750 shares, & that he should pay a further amount sufficient to pay those 750 shares in full, & that thereupon the other 750 shares should be cancelled :—*Held :* the transaction amounted to a purchase by the co. of the shares cancelled, & the shareholder was still a member of the co. in respect of the 1,500 shares.—*Re* GREATER MELBOURNE REALTY CO., PTY., LTD., [1931] Argus L. R. 276 ; *affd. sub nom.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* GREATER MELBOURNE REALTY CO. PROPRIETARY, LTD. (IN LIQUIDATION), [1932] Argus L. R. 178 ; 5 A. L. J. 433 ; 47 C. L. R. 44.—**AUS.**

q i. —— *No reduction of assets.*]—Where the extinguishment of co. shares by their surrender & cancellation involves no actual reduction of assets, the transaction is not illegal. Real capital is not diminished by relinquishing something of no value or by securing relief from liabilities. Each case must be decided on its own facts & the diminution in capital must be, not fanciful nor theoretical, but actual & substantial, before the transaction can be successfully attacked.—BRITISH COLUMBIA RED CEDAR SHINGLE CO., LTD. *v.* STOLTZE MANUFACTURING CO., LTD., [1932] 1 W. W. R. 164 ; 1 D. L. R. 762 ; 44 B. C. R. 458 ; *revsg.*, [1931] 3 D. L. R. 379.—**CAN.**

4050a. —— **Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.**]—Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by pltf.: & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees:—*Held:* the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained; & pltf. was entitled to judgment for £1,500 with interest.—GARRARD *v.* JAMES, [1925] 1 Ch. 616; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

4052a. Provision of financial assistance to buy own shares—1929 Act, s. 45.]—1929 Act, s. 45, was declaratory of the law & did not create a new offence.—R. *v.* LORANG (1931), 22 Cr. App. Rep. 167; 75 Sol. Jo. 121, C. C. A.

4064a. —— **Guarantee of payment by French firm to French Treasury.**]—REPUBLIC OF FRANCE (MINISTER OF FINANCE) *v.* PERRY & CO. (BOW), LTD. (1929), 73 Sol. Jo. 268.

4070. *Add. Annotation:—Generally,* **Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4072a. —— **Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.**]—BLOXHAM *v.* MEDICAL DEFENCE UNION, LTD. (1894), 10 T. L. R. 384; 38 Sol. Jo. 288, C. A.

4074. After this case for "—— **Remuneration of directors.**]" read "—— **Remuneration—Of directors.**]"

4080. *Add. Annotations:—Generally,* **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4087. *Add. Annotation:*—**Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4094. *Add. Annotations:* — **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4094a. ——].—(1) A question might arise under the 38th clause of the deed, as to whether what the directors are there authorised to do under their general powers must not be done by them at a Board; & it appears to me that it would not be competent to any one, two, or even three directors, by putting their signature to an instrument, to enter into a contract for the society; for, by the 38th section, the contract must be executed at a Board.

(2) I do not think it at all an unreasonable requisition on the part of joint stock cos., that every instrument required in their transactions should be under their common seal. The 44th section of the Act makes

4051 ii. ——.]—It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—*Re* E. J. LANE, LTD., *Ex p.* MILLIGAN, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—**CAN.**

4051 iii. ——.]—KNECHTEL MOTOR CO., LTD. *v.* WORDEN (Sask.), [1923] 2 D. L. R. 839; [1923] 2 W. W. R. 154.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—I.

n i. ——.]—Where a co. assigned money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement:—*Held:* the co.'s memorandum of assocn. gave it no such power.—ABBOTSFORD LUMBER CO. *v.* STEVENSON, [1925] 4 D. L. R. 560; [1925] 3 W. W. R. 451.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—K.

sh. *Power limited to negotiation of investments—No right to registration of mortgage charge.*]—*Re* MUTUAL INVESTMENTS, LTD., [1924] 4 D. L. R. 1070; 56 O. L. R. 29.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—C.

4083 iii. —— ——.]—*Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

4083 iv. —— *By injunction.*]—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD., [1937] 2 W. W. R. 399.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—D.

4094 i. *Presumption that powers properly exercised.*]—The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & indorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed:—*Held:* the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—CANADIAN BANK OF COMMERCE *v.* PIONEER FARM CO., LTD. & HALL (Sask.), [1927] 4 D. L. R. 772; [1927] 3 W. W. R. 312.—**CAN.**

4094 ii. ——.]—Deft. co., the owner of mining lands, by an agreement in writing, executed by its president & secretary-treasurer under the co.'s seal, gave L. an option to purchase a portion of the lands. Pltf., a shareholder of deft. co., sought to have the agreement declared null & void because it was not sanctioned by a bye-law of the directors, confirmed by a vote of the shareholders. It appeared that the directors in fact sanctioned the transaction & by a bye-law authorised [illegible] treasurer to [illegible] with [illegible] the co.'s seal [illegible]

[illegible] NICKEL CO., [1929] 4 D. L. R. 42; 64 O. L. R. 190.—**CAN.**

4094 iii. ——.] — PACIFIC BERRY GROWERS, LTD. *v.* WESTERN PACKING CORPN., LTD., [1929] 1 D. L. R. 814; 1 W. W. R. 426; 41 B. C. R. 78.—**CAN.**

such a requisition of the utmost importance; for, according to that section, every contract entered into by an instrument not under their common seal would be unilateral as regards them—a contract under which they would be liable, but of which they could not claim the benefit against those with whom it was entered into.

(3) There is, no doubt, an important distinction to be drawn, & it is drawn in the case of *Royal British Bank* v. *Turquand*, No. 4094, *ante*, between that which, upon the face of it, is manifestly imperfect when tested by the requirements of the deed of settlement of the co., & that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be under the common seal of the co., every person contracting with the co. can see at once whether that requisition is complied with, & he is bound to do so; but where, as in the case I have last referred to, the conditions required by the deed consist of certain internal arrangements of the co. for instance resolutions at meetings, & the like, if the party contracting with the directors find the acts which they undertake to do to be within the scope of their powers under the deed, he has a right to assume that all such conditions have been complied with. In the case last supposed, he is not bound to inquire whether the resolutions have been duly passed, or the like, otherwise he would be bound to go further back, & to inquire whether the meetings have been duly summoned, & to ascertain a variety of other matters, into which if it were necessary to make such inquiry, it would be impossible for the co. to carry on the business for which it is formed.—*Re* ATHENÆUM LIFE ASSURANCE SOCIETY. *Ex p.* EAGLE INSURANCE CO. (1858), 4 K. & J. 549; 27 L. J. Ch. 829; 4 Jur. N. S. 1140; 6 W. R. 779; 70 E. R. 229.

4095a. ——.]—Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only:—*Held:* the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank* v. *Turquand*, No. 4094, & assume that a signature purporting to be that of a new director was that of a person duly appointed. —LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443, 43 T. L. R. 449.

4100. *Add. Annotation:*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4104a. —— —— **Disputes between directors.**]—STANFIELD *v.* GIBBON, [1925] W. N. 11.

4107a. —— —— **Merger of English companies—Opposition by American company.**]—INTERNATIONAL MERCANTILE MARINE CO. (INC.) *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1934), 78 Sol. Jo. 350.

4117a. —— —— ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4129. *Add. Annotation:*—**Refd.** Leyton U. D. C. *v.* Wilkinson, [1927] 1 K. B. 853.

4129a. —— **Borrowing.**]—A trading co. was by its memorandum of assocn. empowered, *inter alia*, to raise capital & to borrow money by deeds of hypothecation, & to act through agents. The only reference to borrowing contained in the arts. of assocn. was a provision that the directors might borrow money. There was no express power of delegation by the directors. By various powers of attorney, the co. appointed agents, not directors, who were empowered, *inter alia*, to borrow money on the security of the co.'s goods, railway receipts, bills of lading or other documents of title. These agents borrowed money principally upon the security of letters of hypothecation relating to goods & produce in the co.'s go-downs. The co. was free to deal with the goods & produce in the ordinary course of business, & the contents of the go-downs therefore changed frequently. In some of the printed forms of letter of hypothecation the spaces for the names of the places at which the go-downs were situated were left blank, & at the end of the form, after the signature, a list of places was set out. One of the co.'s agents borrowed sums in excess of the value of the goods. A bank which held certain letters of hypothecation, acting upon a licence to seize contained in letters from the co., seized all the goods to which it had access by the terms of such letters of hypothecation:—*Held:* (1) the fact that the arts. of assocn. empowered the directors to borrow, did not restrict the co.'s general power to borrow, which it could exercise through properly authorised agents; (2) in the absence of anything in the memorandum or arts. of assocn. restricting the co.'s power to borrow through agents, borrowing by such agents was within their ostensible authority, the precise limits of the agents' power to borrow being a matter of internal management into which a lender would not be required to inquire. The co. was, therefore, bound even by the excessive borrowings of the appointed agents, so long as those borrowings were within the ostensible authority of the agents; (3) the letters of

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PART III. SECT. 31, SUB-SECT. 3.—E.

d i. —— ——.]—In an action against a co. & its directors, pltf., who was suing on behalf of himself & the other shareholders, applied for an order to continue an interim injunction until after the trial restraining defts. from carrying on as a board of directors. The act complained of was that some of defts. did not wish certain of the other shareholders to be present or represented at the annual general meeting, & prevented such presence or representation by having the meeting take place in an inner office of the place of meeting while some of the other shareholders were waiting to attend in the outer office to the knowledge of defts.:—*Held:* if irregularities were committed in the conduct of the meeting at which resolutions complained of were passed, it could be regularised by the passing of fresh & effective resolutions. The ct. will not interfere in the internal management of the co. Application dismissed.—WATSON *v.* BARRETT (1929), 41 B. C. R. 478.—CAN.

d ii. —— ——.]—Whatever should be done by a co. itself through its own internal organisation ought to be left to the co. to do & ought not to be interfered with by the ct. Accordingly, an order, made in an action by a shareholder against the co. appointing a receiver for the co., & a subsequent order, made on an *ex parte* application by the receiver, authorising him to commence an action in the name of himself & the co. to recover property of the co. & for an account of moneys received by two directors of the co. were set aside & the action brought in pursuance of the latter order dismissed, on the motion of one of said two directors.—YOUNG *v.* ALBERTA PETROLEUM CONSOLIDATED, PATTERSON *v.* OKALTA OILS, LTD., & CULBERT, [1930] 1 W. W. R. 86; 1 D. L. R. 903; *sub nom.* PATTERSON *v.* OKALTA OILS, LTD., 24 Alta. L. R. 370.—CAN.

d iii. —— ——.]—The cts. do not interfere with the internal management of private cos. not formed for profit unless there is illegality or fraud. —PARDEE *v.* HUMBERSTONE SUMMER RESORT CO. OF ONTARIO, LTD., [1933] 3 D. L. R. 277; O. R. 580.—CAN.

hypothecation constituted floating charges, which ought to have been registered, but upon seizure, before the liquidation of the co., under the licence to seize, a specific charge came into being, which had been perfected by the seizure of the goods. The seizure was, therefore, in the circumstances a rightful one, & valid against the liquidator; (4) the produce which could be seized under the letters of hypothecation, in which the spaces were left blank, was limited to produce in the go-downs specified at the end of the form.—MERCANTILE BANK OF INDIA, LTD. *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA & STRAUSS & CO., LTD., CHARTERED BANK OF INDIA, AUSTRALIA & CHINA *v.* MERCANTILE BANK OF INDIA, LTD. & STRAUSS & CO., LTD., [1937] 1 All E. R. 231.

4136a. ——.]—BRIGHTEN *v.* BOWMAN (1929), 73 Sol. Jo. 748.

4142. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

4144. *Add. Annotation :*—**Consd.** Havana Cigar & Tobacco Factories *v.* Oddenino, [1924] 1 Ch. 179.

4145. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

4159. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

4166. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4167. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4170. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4170a. —— —— —— ——.]—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, No. [illegible] *ante*.

4170b. —— —— —— ——.]—By the articles of assocn. of a co. the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the co., & to determine who should be entitled to sign contracts & documents on the co.'s behalf. A document purporting to be a guarantee was given to pltfs. executed by the co. in this form: "The F. E. B., Ltd., signed N. P." N. P was a director of the co. During the negotiations for the giving of the guarantee he had written to pltfs., signing the letter "for & on behalf of" the co., "N. P., Chairman." On these facts, in an action on the guarantee: —*Held :* pltfs. were entitled to presume that the directors of the co. had authorised N. P. to sign contracts on behalf of the co., & the co. was liable on the guarantee.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 2 K. B. 176; 101 L. J. K. B. 690; 147 L. T. 345, C. A.

4193. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4209. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4211. *Add. Annotation :*—**Refd.** Greenwood Martin's Bank, Ltd., [1932] 1 K. B. 371.

PART III. SECT. 31, SUB-SECT. 4.—B. (a).

f i. ——.]—*Held :* there was something so out of the ordinary in one co. undertaking to purchase the entire outstanding stock of another as to put pltfs. upon inquiry to ascertain whether the person or persons making the contract had authority in fact to make it.—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1931] 2 D. L. R. 743; O. R. 92.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—B. (b).

sl. *Negligence—Arrest by constable employed by company.*]—Where a co. has statutory power to employ &, practically, to appoint constables & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co. he renders the co. liable for the damage caused thereby.—VIGNITCH *v.* BOND & CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—C.

ki. —— *Agent for sale of bonds—Bonds not issued in compliance with Acts.*]—Where bonds are actually executed by a co. they cannot be said not to exist as bonds even though, because of non-compliance with the requirements of the Cos. Act, they are not legally valid; &, therefore, a person who as agent for the co. & without fraudulent intent induces another to buy such bonds from it cannot be liable in damages merely on the ground of an implied representation that the bonds are legally valid, since, even if such representation can be implied & it proves to be false it is a representation in point of law.—KAVANER *v.* BOWHEY (Alta.), [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—PRICE *v.* INDIANA-ALBERTA OIL CO. (Alta.), [1926] 3 D. L. R. 82.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 iv. —— ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

—— —— —— MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

c. Read "**4178 i.**"

PART III. SECT. 31, SUB-SECT. 5.—A. (f).

sp. *Whether company may plead contract ultra vires.*]—A co. incorporated under Ontario Cos. Act, R. S. O., 1927, by letters patent, cannot escape from the consequences of a contract by setting up a breach of its bye-laws or regulations.—*Re* MCEACHREN (W. N.) & SONS, LTD., MCGIBBON *v.* IMPERIAL TRUST CO., [1933] 2 D. L. R. 558; O. R. 349.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

s i. —— ——.]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation :—*Held :* commissions earned after incorporation of the co. were not recoverable against the partnership; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—POWER *v.* EDMONTON LUMBER EXCHANGE (1920), 3 W. W. R. 10; 53 D. L. R. 468.—**CAN.**

a i. —— *Sale of goods.*]—*Re* J. R. MORGAN, LTD., *Ex p.* J. & G. GARMENT MFG. CO. (Ont.), [1926] 1 D. L. R. 882; 8 C. B. R. 52.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (b).

4209 vii. ——.]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & defts. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed and delivered [illegible] thereafter acted on [illegible] was entitled to sue for damages for breach of such contract.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

4232. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4236. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4237. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4239. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48 ; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4256. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4257. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

4267. *Add. Annotations :*—**Appld.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

4267a. —— ——.]—Two rival cos., the N. Co. & the W. Co., formed resp. co. to take over certain branches of their business of fruit importers, the shares of the new co. being equally divided between the two old cos., & the board consisting of two directors of the N. Co., namely, M. & G. Lowe, & two directors of the W. Co. By a brokerage agreement embodied in a letter dated in July, 1924, between M. Lowe & applts., a firm of fruit brokers, it was arranged that applts. should make certain advances to the N. co. & should receive all fruit consigned either to the N. co. or to resp. co. & keep back 70 per cent. of the net proceeds in reduction of the advances, & it was stipulated that resp. co. should subscribe to this arrangement. Applts. also obtained a guarantee of the loan from the two Lowes & a third director of the N. Co., who was also the secretary of resp. co. This arrangement was not ratified by any agreement under the seal of resp. co., but the secretary wrote to applts. purporting to confirm the arrangement on behalf of his co. The directors of resp. co., other than the two Lowes, first became aware of the arrangement after it had been in operation for some months, & it was then put an end to. Applts. had obtained fruit consigned to resp. co. on board several ships without production of the bills of lading, on giving an indemnity to the ships, & they sued resp. co. for delivery of the bills of lading. Resps. counterclaimed for the proceeds of fruit belonging to them & not accounted for :—*Held :* (1) the arrangement contained in the agreement of July was not authorised by resp. co. ; (2) resp. co. were not estopped from denying the existence of the arrangement by the knowledge of the Lowes, inasmuch as they were parties to the wrong done to the co., or by the omission of the other directors to inspect the accounts of the co., which would have disclosed the arrangement.—HOUGHTON (J. C.) & Co. *v.* NOTHARD, LOWE & WILLS, LTD., [1928] A. C. 1 ; 97 L. J. K. B. 76 ; 138 L. T. 210 ; 44 T. L. R. 76, H. L.

Annotations :—As to (1) **Consd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231. *As to* (2) **Apld.** Evans *v.* Employers' Mutual Insurance Association, Ltd. (1935), 152 L. T. 333. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, Ltd., [1927] 1 K. B. 826 ; Liggett

PART III. SECT. 31, SUB-SECT. 5. —C.

4233 i. *Whether company bound—Promissory note—Signed by president or vice-president.*]—Where the endorsement of promissory notes purported to be that of a co. executed by the signature of its president or vice-president, signing as such, & the indorsee had given good consideration therefor, held that neither the co. nor the maker could dispute the authority of said officers to make the indorsement.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1 ; 4 D. L. R. 699.—**CAN.**

4233 ii. —— —— *For director's private liability.*]—S. & other members of a syndicate retained pltf. as their solr. in an action brought by them. S., on the advice of pltf., transferred his business of a timber-merchant to a proprietary co., of which he became managing director & principal shareholder. Pltf. procured from S. the co.'s promissory note, payable to pltf., on account of pltf.'s charges & outgoings in connection with the litigation. When the promissory note fell due, it was retired upon part payment & the giving of a new promissory note for the balance, made by the co. & payable to pltf. In an action by pltf. upon this promissory note :—*Held :* since pltf. had failed to show, as in the circumstances he must show, that the promissory note was given by the co. for good consideration & as part of or in aid of some business transaction of the co., the co. was not liable to pltf. on the note.—WOOLF *v.* SNIPE S. L. PTY. LTD., [1936] V. L. R. 22 ; 42 —— L. R. 92.—**AUS.**

4239 i. *Signature—Promissory note—Authority—Whether bank bound to inquire.*]—The co. was incorporated by Dominion Letters Patent on May 25, 1927, & went into liquidation in June, 1929. Applt. bank filed its claim in respect of five promissory notes made by S., as president, on behalf of the co. & amounting to $28,768.02. The liquidator called upon the bank to prove its claim before the Superior Ct. The notes were signed in blank by S. alone & were handed to L., the New York buying agent of the co., to be filled in & used by L. in payment of goods bought or to be bought by the co. L. filled the blank note forms with the names of two other cos. owned & controlled by him, being also at that time the owner of all the shares of the insolvent co. The notes were indorsed to applt. bank, & it is admitted that the bank was a holder in due course. S. was the only witness at the trial ; he produced a by-law of the insolvent co. providing *inter alia* that "all cheques . . . notes . . . shall be signed by such officer . . . of the co. & in such manner as shall from time to time be determined by resolution of the Board of Directors," & he also produced a resolution of the directors pursuant to the by-law which provides "that all notes . . . be signed by the president & countersigned by the auditor . . .," of which resolution applt. bank had no knowledge :—*Held :* applt. bank, being a holder in due course, was entitled to rank as a creditor of the insolvent co. The notes were made in general accordance with the authority of the president under the by-law of the co., & it was not necessary for applt. bank to inquire into the authority of the president to sign the notes on behalf of the co. Under sect. 106*d* of the Dominion Cos. Act, the president had to be one of the directors ; &, under sect. 37, the only persons who could make notes on behalf of the co. would be those designated in the by-law. Persons dealing with a co. are presumed to have notice of what is contained in the Act under which the co. was incorporated & the Letters Patent ; &, in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorised to make such note in the course of the co.'s business ; but he is not obliged to go further & inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the co.'s "indoor management." If the officer might, under the by-laws, have been authorised to make the note, the making of it was within his ostensible powers & was "in general accordance with his powers as such under the by-laws."—*Re* ALMUR FUR TRADING CO., BANK OF UNITED STATES *v.* ROSS, [1932] S. C. R. 150 ; 2 D. L. R. 128.—**CAN.**

PART III. SECT. 31, SUB-SECT. 6.—A. (c).

k i. —— *Solicitor.*]—BANK OF BRITISH NORTH AMERICA *v.* ST. JOHN & QUEBEC RY. CO. (N. B.) (1920), 52 D. L. R. 557.—**CAN.**

B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48; Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

4272. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4278. *Add. Annotations :*—*As to* (1) **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

4282. *Add. Annotations :*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4283. *Add. Annotations :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4291. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

4297a. —— —— Compulsory form of document to be used by members.]—*Re* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1929), 45 T. L. R. 296.

4307a. Extension of objects to new trades.]—A co. incorporated for the primary object of acquiring & carrying on two businesses, one that of a private co. making & selling footwear & clothing, but with other wide powers, & the other that of a retailer of footwear, petitioned the ct. for sanction to an extension of its objects, as set out in its memorandum of association, to the carrying on of a large number of different retail trades, including that of universal stores. The extension was approved by the co. in general meeting without opposition, but the petition was opposed by certain preference shareholders: —*Held :* there being no evidence that the proposed alterations were necessary or proper to enable the co.'s business to be carried on more efficiently, & as the trades it was proposed to take power to work were entirely outside the original objects of the co., the ct. would refuse to sanction the petition.

On appeal additional evidence was adduced to show that a large number of the trades to which it was sought to extend the co.'s objects were already being carried on by the co., & that to this extent the object of the petition was to regularise the position, & further that during the year 1934 a small profit had been made by the co. as opposed to the loss suffered in 1933 :—*Held :* in view of the further evidence the alterations in the objects, when limited so as to give power to carry on only those trades which were already being carried on by the co., should be sanctioned.—*Re* BOLSOM BROS. (1928), LTD., [1935] Ch. 413; 104 L. J. Ch. 267; 152 L. T. 477; 79 Sol. Jo. 214, C. A.

4320. After this case add "*See, now*, 1929 Act, s. 5 (1) (f), (g)."

4321a. Society not for profit.]—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re* SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN (1927), 71 Sol. Jo. 583.

Annotation :—**Distd.** *Re* Scientific Poultry Breeders' Assocn., Ltd., [1933] Ch. 227.

4321b. —— Alteration permitting remuneration of governing body.]—The memorandum of a co. limited by guarantee, formed to improve & encourage the breeding of poultry, contained a provision that no remuneration should be paid to members of the governing body of

PART III. SECT. 31, SUB-SECT. 9.—A.

p i. ——.]—*Held :* (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—INCORPORATED GLASGOW DENTAL HOSPITAL *v.* LORD ADVOCATE, [1927] S. C. 400.—**SCOT.**

q i. —— *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ——.]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—EDINBURGH SOUTHERN CEMETERY CO., LTD., [1923] S. C. 867.—**SCOT.**

4308 v. ——.]—A reversionary co. presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of assocn. by adding powers to carry on, along with its existing business, that of trust investment, & to sell or otherwise dispose of the whole or any part of its property & assets for such consideration as it might think fit, &, in particular, for shares, stock, debentures, debenture stock, or securities of any company purchasing the same. The ct. confirmed the alteration holding, with regard to the proposed power to sell, that it did not involve a sale of the undertaking but merely of assets, & in view of the extension of the co.'s business, was germane to its operations as an investment co.—METROPOLITAN REVERSIONS, LTD., [1928] S. C. 480.—**SCOT.**

4308 vi. ——.]—The additional business which a co., by an alteration of its objects effected under Cos. Act, 1908, s. 162 (5), is permitted to carry on may be one which is wholly different from & which has no relation to the then existing business of the co., & it may yet be quite capable of being conveniently & advantageously combined with it, provided the new business is not destructive of or inconsistent with the existing business.—*Re* MATAKANA CO-OPERATIVE DAIRY CO., LTD., [1929] N. Z. L. R. 721.—**N.Z.**

4308 vii. ——.]—A co. whose objects, as stated in its memorandum, were "to manufacture, sell, & trade in ginger beer, lemonade, soda water, & other aerated waters & drinks, & to do all such other acts as might be incidental to the attainment of these objects, presented a petition under sect. 5 craving confirmation of a resolution altering its memorandum by inserting after the word "drinks" the words "& also to bottle, sell & trade in all alcoholic beers." A reporter to whom the petition was remitted stated that, in his view the proposed new line of business could conveniently & advantageously be combined with the existing business. The ct. granted the prayer of the petition.—*Re* DUNDEE AERATED WATER MANUFACTURING CO., [1932] S. C. 473.—**SCOT.**

4308 viii. ——.]—A co., incorporated to carry on the business of maltsters & hop merchants, presented a petition under 1929 Act, s. 5, craving the ct. to confirm a resolution altering its memorandum of assocn., by the insertion of a clause enabling the co. to carry on, along with its existing business, the business of fruit merchants & canners, & preserve manufacturers. It appeared that, in the course of its existing business, the co. was in the habit of purchasing hops from persons who also grew fruit, & of selling hops, malt, & barley to persons engaged in the refreshment trade; & in these circumstances, the co. maintained that it could conveniently engage in business of the character proposed. The ct. confirmed the proposed alteration.—*Re* BAIRD & SONS, [1932] S. C. 455.—**SCOT.**

r i. ——.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

the co. Owing to the increase in the co.'s business it became impossible for those members to give their time to the co.'s affairs without some remuneration, & the co. in general meeting passed resolutions providing for equitable remuneration for services rendered. Upon petition to the ct. to sanction the consequent modifications of the memorandum of assocn.:—*Held:* the proposed alterations did not affect the real object of the co., which was the improvement of poultry husbandry; they were ancillary to the main object, & were alterations within the words "with respect to the objects of the co." in Cos. Act, 1929 (c. 23), s. 5 (1); they appeared to be to enable the co. "to carry on its business more economically or more efficiently" within sub-clause (*a*) of that sub-sect. & therefore the petition must be granted.—*Re* SCIENTIFIC POULTRY BREEDERS' ASSOCN., LTD., [1933] Ch. 227; 101 L. J. Ch. 423; 148 L. T. 68; 49 T. L. R. 4; 76 Sol. Jo. 798, C. A.

4361. *Add. Annotation:*—**Refd.** *Re* Bolsom Bros. (1928), Ltd., [1935] Ch. 413.

4362a. Extension of objects of benevolent association—By amalgamation—Amalgamation of funds.]—A benevolent assocn. desired to extend its objects to include the members & their dependants of any society with which it might amalgamate. The assocn. proposed an early amalgamation & wished to be enabled to give relief to the members of the society with which it proposed to amalgamate:—*Held:* the ct. ought not to confirm the alteration of the objects of the assocn. unless the assocn. undertook to amalgamate only upon the terms that there should be an amalgamation of funds as well as of members. The undertaking was given & the alteration confirmed.—*Re* CHARTERED SURVEYORS' BENEVOLENT FUND (INCORPORATED), [1936] 2 All E. R. 1631; 80 Sol. Jo. 705.

4369a. Affidavit of notice—Omission to exhibit register of members.]—On an application by petition made by a co. for confirmation of an alteration of the objects of the co., the secretary's affidavit of the posting of notices, contrary to the usual practice, did not exhibit the register of members:—*Held:* the petition would be granted notwithstanding the omission to exhibit the register, the ct. being of opinion that no useful purpose was served by exhibiting it, provided that, as in the present case, the affidavit of the secretary proved that the register was duly kept & contained the name & last known address of every person who was a member of the co. on the material date.—*Re* DEBENTURE CORPN., LTD. (1931), 47 T. L. R. 399.

4377. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4380. *Add. Annotation:*—**Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4389. *Add. Annotation:*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

4389a. —— Simple contract debts recoverable out of United Kingdom.]—An agreement for the sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

Annotations:—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667.

4393. *Add. Annotation:*—*As tp* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

PART III. SECT. 31, SUB-SECT. 9.—B. (c).

sc. *Alteration causing breach of lease.*]—The corpn. of G. possessed statutory powers to make & maintain tramways in the streets of G. Sect. 26 of their statute provided that animal power alone should be used on the tramways. The corpn. leased the tramways to a limited co. which was promoted for the purpose of acquiring the lease, & whose objects as specified in the memorandum of assocn., were to carry on the working of the tramways & omnibus traffic in connection therewith under the lease & after the expiration of the lease to carry on the business of omnibus proprietors in the city & vicinity. The co. acquired a large stock of horses & plant, the greater part of which would be rendered useless in the event of the lease not being renewed & accordingly, when about three years of the lease had still to run, the co. applied for an alteration of its memorandum to include (*inter alia*) these objects: "(10) to exercise the powers & carry on the business of a tramway co.; (13) to work & move all or any of the vehicles by means of electrical power, steam power or any other mechanical power." Application opposed by corpn. as being breach of contract to alter constitution & because object (13) was inconsistent with Parliamentary prohibition:—*Held:* promoting & disposing of tramways was an object foreign to the purposes of the memorandum & could not be sanctioned, & that *quoad ultra* the alterations fell to be confirmed.—GLASGOW TRAMWAY & OMNIBUS CO., LTD. *v.* GLASGOW MAGISTRATES (1891), 18 Rettie, 675.—**SCOT.**

PART III. SECT. 32, SUB-SECT. 1.—C.

q i. —— ——.]—Deft. co. bought land from pltfs., & in payment therefor transferred to pltfs. a block of shares in another co., agreeing to re-purchase from pltfs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltfs.:—*Held:* the agreement to re-purchase was *ultra vires* deft. co. as Cos. Act, s. 44, expressly prohibits a purchase of shares in another co.—GRANT *v.* DOMINION LOOSE LEAF CO. (1924), 56 O. L. R. 43.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—A.

a i. —— *To directors.*]—A sale by directors of the co.'s property to themselves & a third party as trustee for them is valid if such a transaction is *intra vires* the co. & if, as in this case, the purchasing directors constitute a majority of the shareholders.—FERGUSON *v.* WALLBRIDGE, [1934] 2 D. L. R. 270.—**CAN.**

sm. *Whether power implied from power to purchase land.*]—Where a joint stock co. is given by its memorandum express power to purchase land, it is implied as part of its constitution that it has power to let the land, & if necessary to sell it.—GUJERAT GINNING & MANUFACTURING CO. *v.* MOTILAL HIRABHAI SPINNING CO. (1928), I. L. R. 53 Bom. 792.—**IND.**

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

4401 i. —— *Under power in memorandum—For shares in another company.*]—Such sale does not necessarily involve winding up, &, where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—HEMSTREET *v.* NORTH WEST BISCUIT CO., [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—**CAN.**

g i. —— *Land acquired for carrying on company's undertaking—Companies Act, R. S. O.*, 1914 (c. 178), *s.* 24.]—*Re* ALLAN BROWN'S, LTD. & DRYALL, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—B. (c).

o i. ——.]—DADSON *v.* GREST (Sask.), [1927] 3 D. L. R. 530.—**CAN.**

sg. *On sale of undertaking—Vendor owning all shares except one—Duty not to make secret profit.*]—A person owning all shares except one in a co. cannot deny his identity as vendor & make a secret profit on sale of the co. to another.—PATTON *v.* YUKON CONSOLIDATED GOLD CORPN., LTD., [1934] 3 D. L. R. 400.—**CAN.**

4423. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Kisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

4427. *Add. Annotation :*—**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

4428. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4436. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4456. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

4458. *Add. Annotations :*—**Consd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

4488. *Add. Annotation :*—*As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4501a. —— **Dissenting—Joinder as defendant.**]—In a representative action by a pltf. on behalf of himself & all other bondholders :—*Held :* a dissentient bondholder, it not appearing that there were any others who dissented, should be added as a deft., but not in a representative character.—WILSON *v.* CHURCH (1878), 9 Ch. D. 552 ; 39 L. T. 413 ; 26 W. R. 735.

Annotations :—**Consd.** McCheane *v.* Gyles (No. 2), [1902] 1 Ch. 1911. **Refd.** Cunnach *v.* Edwards (1894), 64 L. J. Ch. 344.

4503. *Add. citation :*—6 Dow. & L. 606.

4513a. General rule—Necessity for solicitor.]—A co. can only appear by attorney (*per* CUR.).—SCRIVEN *v.* JESCOTT (LEEDS), LTD. (1908), 53 Sol. Jo. 101.

4524. For this number read "4525."

4525. For this number read "4524."

4526. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater. [1928] 2 K. B. 244.

PART III. SECT. 33, SUB-SECT. 1.

sn. *Institution of proceedings—Necessity to employ solicitor.*]—A co. cannot issue a writ of summons by any one but a solr.—WESTERN PRODUCERS MUTUAL HAIL INSURANCE CO. *v.* STEWART (Sask.), [1928] 1 W. W. R. 320.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—A.

e i. —— ——.]—Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients :—*Held :* the cause of action alleged was not defamation but an *injuria* done merely to the co. for which the co., & not an individual shareholder, was entitled to sue.—GOODALL *v.* HOOGENDOORN, LTD., [1926] App. D. 11.—**S. AF.**

k i. —— —— —— —— *Refusal unnecessary where no one to authorise use of name.*]—MASON *v.* LIVINGSTONE (Alta.), [1928] 2 D. L. R. 799.—**CAN.**

p i. —— —— ——.]—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657 ; 33 B. C. R. 425.—**CAN.**

q i. —— ——.]—FARRELL *v.* MAGIC SILVER-BLACK FOX CO., [1924] 3 D. L. R. 132.—**CAN.**

q ii. —— ——.]—SHAW *v.* WAINWELL OILS, LTD. (Alta.), [1929] 3 D. L. R. 621.—**CAN.**

t i. *Using company's name as plaintiff—No authority to use name—Doubt as to wishes of shareholders.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 606 ; 36 Man. L. R. 606.—**CAN.**

4448 i. *Internal management—Conduct of majority ultra vires—Or fraudulent.*]—Although the rule that in order to redress a wrong done to a co. or to recover money or damages due to the co. the action should be brought by the co. itself is subject to the exception that the complaining shareholders may sue in their own names where the persons against whom the relief is sought themselves hold & control the majority of the shares in the co., & will not permit an action to be brought in its name, yet in such an action pltfs. cannot have a larger right to relief than the co. itself would have if it were pltf., & cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority ; therefore, the cases in which the minority can maintain such an action are confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the co.—MASON *v.* LIVINGSTON, [1929] 1 D. L. R. 608 ; 1 W. W. R. 295 ; 24 Alta. L. R. 69 ; *varg.*, [1928] 3 D. L. R. 468.—**CAN.**

so. *Several groups of shareholders claiming to represent company—Stay of proceedings.*]—In company cases where there is an internecine warfare between factions, each claiming to be entitled to represent the co., the practice is to direct the proceedings be stayed until after a meeting of shareholders has been held, & the will of the majority ascertained.—DUMART PACKING CO., LTD. *v.* DUMART, [1928] 1 D. L. R. 640 ; 61 O. L. R. 478.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (a).

k i. —— *Action by beneficial owner on behalf of himself & all other shareholders.*]—*Held :* it was not open to pltfs. in a suit framed on behalf of themselves & all other shareholders of the co. to bring a suit as beneficial owners of shares, against the co. for enforcement of their beneficial rights & that the whole of the allegations & relief asked with respect to such suit must be struck out.—MAAS *v.* MCINTOSH (1928), 28 S. R. N. S. W. 441 ; 45 N. S. W. W. N. 107.—**AUS.**

o i. —— —— *Loss of right by winding up.*]—The right of a minority shareholder to maintain a representative action against the co. & the majority shareholders to compel an accounting by the latter for property of the co. unlawfully appropriated by them ceases as soon as the co. goes into liquidation.—FERGUSON *v.* WALLBRIDGE, [1935] 1 W. W. R. 673 ; 3 D. L. R. 66.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (b).

sq. —— *Unregistered shareholder.*]—In an action wherein pltf. alleged that he was a shareholder in deft. co. & sued on behalf of himself & all the other shareholders to compel the individual defts. to account to the co. for shares alleged to have been illegally obtained by them, it was held that, although pltf. was not a registered shareholder, he had a *status* to bring the action whether he was the beneficial owner outright of the shares alleged to be his or owned them subject to a charge in favour of the registered holder.—GOODBUN *v.* MITCHELL (Man.), [1928] 1 W. W. R. 495.—**CAN.**

PART III. SECT. 33, SUB-SECT. 4.

t i. —— ——.]—HINI *v.* ANDERSON, [1933] 2 W. W. R. 176.—**CAN.**

PART III. SECT. 33, SUB-SECT. 6.

ki. —— *Essential condition.*]—Service of a statement of claim on a co. is not good unless the officer or agent served is a person who is likely to bring it to the co.'s notice, even though he is one who under the rules may be served as representing the co.—ROYAL TRUST CO. *v.* SPILLERS CANADIAN MILLING CO., [1931] 2 W. W. R. 841 ; 4 D. L. R. 430 ; 25 Alta. L. R. 542.—**CAN.**

PART III. SECT. 33, SUB-SECT. 12.

4535 i. *Out of what fund—Action by company for benefit of directors.*]—While it is a well established rule that directors may not use the co.'s funds in payment of their own costs, although such costs would not have been incurred if they had not been directors, yet it is equally well established that directors acting as such within such of the co.'s powers as are confided to them & without gross negligence, cannot be called upon to pay out of their own funds the costs of defending resolutions passed by them in the interests of the co., simply because a pltf. has chosen to make them individually co-defts.—NORTHERN LIFE ASSURANCE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512.—**CAN.**

PART III. SECT. 33, SUB-SECT. 13.—A. (a).

sk. *Return of nulla bona not necessary.*]—On an application under sect. 223 of Cos. Act, 1933, for an order that pltf. give security for costs :—*Held :* a return of *nulla bona* was not necessary & deft. had on the material filed satisfied the onus on it.—R. M. BUCHANAN-SUMNER CO., LTD. *v.* SCOTTISH CO-OPERATIVE WHOLESALE SOCIETY, LTD., [1936] 1 W. W. R. 491.—**CAN.**

4568. *Add. Annotations :*—**Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

4570a. Assignment to secure personal debt of directors—Directors sole shareholders.]—As additional security for an advance to three partners, who, in addition to & apart from the partnership, were directors of a limited co., a bank accepted a document charging the co.'s interest in certain bonds which had been deposited with the bank to meet any judgment which might be obtained against the co. in then impending litigation. The document was signed by the three partners & the co.'s seal was affixed thereto, accompanied by the signature of one of the partners as president & of another as secretary of the co. No resolution was ever passed, either by the co. or by the directors, authorising the creation of the charge. The partners held all the shares in the co. except two which were held by two other directors of the co. There were also persons equitably interested in the shares. The litigation against the co. was concluded substantially in the co.'s favour, & the bank claimed the balance of the proceeds of sale of the bonds in reduction of the partners' indebtedness :—*Held :* as the co., acting through its directors, & not by its shareholders in general meeting, had purported to apply its property for the benefit of those directors, the transaction was unenforceable, & the ct. would not inquire whether the co. had derived any benefit from it. The bank was, therefore, bound to account to the co. for the balance of the proceeds of sale of the bonds.—E. B. M. Co., LTD. *v.* DOMINION BANK, [1937] 3 All E. R. 555; 81 Sol. Jo. 814, P. C.

4607. *Add. Annotations :*—**Consd.** Garrard *v.* James, [1925] Ch. 616; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

4623. *Add. Annotations :*—*As to* (2) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927]

PART III. SECT. 33, SUB-SECT. 13.—A. (b) ii.

p i. ——— ———.]—On appeal from the dismissal of an application by defts. for security for costs under sect. 223 of Cos. Act, 1933, held they were entitled to security.—CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD, LTD. *v.* TRAFIMENKOFF, [1937] 2 W. W. R. 340, C. A.—**CAN.**

sv. *"Credible testimony" of inability to pay—What is.*]—In an action for reduction of a lease, brought by a co., defender was assoilzied & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by "credible testimony" that pursuers would be unable to pay defender's expenses if he were successful, in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, &, further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—EDINBURGH ENTERTAINMENTS, LTD. *v.* STEVENSON, [1925] S. C. 848.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 1.—A. (a).

4569 ii. ———.] — ZIMMERMAN *v.* ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE) [1925], 3 D. L. R. 953; 3 W. W. R. 42.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—A. (b).

sw. *Elevator company—Bond for price of elevator.*]—A co. whose charter provides that it "may acquire, own, lease & sell real estate," & "build, sell, lease & otherwise deal with elevators, etc.," & further "may issue bonds bearing interest to an amount not exceeding the cost of any elevator built by it," has the power to issue such bonds for the price of an elevator bought by it.—ROYAL TRUST CO. *v.* GREAT NORTHERN ELEVATOR CO. (1906), Q. R. 30 S. C. 499.—**CAN.**

s i. ——— ———.]—Although under Rural Telephone Act, 1920 (c. 96), s. 31, deft. co. is impliedly prohibited from borrowing money otherwise than by the issue & sale of debentures, & has no power to make or give a promissory note, yet, held in an action on a promissory note, &, in the alternative for money borrowed, that, since the money was used by deft. in paying its legitimate debts incurred in carrying out the purposes of the co. pltf. was entitled to recover on the alternative claim with interest at the legal rate.—SMITH *v.* ELROSE RURAL TELEPHONE CO., LTD., [1928] 3 D. L. R. 51; [1928] 1 W. W. R. 970; 22 Sask. L. R. 414.—**CAN.**

sd. *Co-operative livestock company incorporated under Companies Act.*]—*Held :* to have power to borrow.—CANADIAN BANK OF COMMERCE *v.* JOHNSON (Alta.), [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—B.

sk. *Power to borrow & raise money—Mortgage.*]—*Held :* a mtge. over part of a co.'s real estate as security for a loan was justified.—UNIQUE PROPERTIES, LTD. *v.* ENDEAN, [1927] N. Z. L. R. 244.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 1.—D. (b).

4594 i. *Capital only capable of being called up in winding up—Company limited by guarantee.*]—A co. limited by guarantee was formed for the purpose of promoting an exhibition. Among its objects were the formation of a guarantee fund; the receipt of subscriptions thereto from persons, whether members of the co. or not, for the purpose of carrying out its objects & defraying its expenses; & the assignation of the letters of guarantee to any corporation which might give it credit. The co. obtained an undertaking from a firm, which was not one of its members, to pay a proportion of any loss arising in connection with the holding of the exhibition. It subsequently assigned the undertaking to a bank which had given it credit. A loss having occurred, the bank sued the firm upon the guarantee. The defenders contended that the assignation was *ultra vires*, having been made at a time when the co. was not in liquidation :—*Held :* the assignation was valid, in respect that the guarantee fund was not capital of the co. within the meaning of sects. 2 & 4 (1) (v) of 1908 Act, which could only come under the control of the co. or its directors in the event of liquidation, but formed an independent fund of credit to which an assignee could make good his right on the happening of the event on which the guarantee was contingent.—LLOYDS BANK, LTD. *v.* MORRISON & SON, [1927] S. C. 571.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 2.—A.

sm. *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*]—*Held :* binding on the bondholders.—GREENE *v.* RUGGLES (1891), 31 N. B. R. 679.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—B.

sp. *Form of bonds—Whether approval of directors necessary.*]—Where the directors of a limited co. at a proper meeting authorise the issue of bonds on the security of the assets of the co. & the shareholders confirm the decision of the directors, it is proper to leave the form of the bonds to the duly appointed or elected officers of the co. In such a situation no approval of the form of the bonds at a formal meeting of the directors is necessary, & the absence of such a meeting is not an irregularity affecting the validity of the bonds.—REID *v.* PURITY FARMS, LTD., [1937] 1 D. L. R. 725; O. R. 248.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (a) ii.

m i. ———.]—MERCHANTS BANK OF CANADA *v.* HANCOCK (1884), 6 O. R. 285.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) i.

r i. ——— *Issue before prospectus filed.*]—MARTIN *v.* CLARKSON, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

b i. ——— *For price of shares sold by one member to another.*]—The mtge. in question herein made by deft. co. held to be *ultra vires*, since it was made for the purpose of enabling one of the shareholders to purchase for his own benefit the shares of another & no case of necessity for the transaction had been established, there being no evidence of any disagreement among the shareholders or that the co. was in jeopardy or that it needed funds to carry on its operations. The mtgee. was held entitled, however, to recover the amount actually advanced with interest thereon.—MARTIN *v.* NORTHERN HOTEL CO., LTD., [1932] 1 W. W. R. 242.—**CAN.**

sn. *Unauthorised loan—Recoverable.*]—DOUGLAS *v.* MARITIME UNITED FARMERS CO-OP., LTD., WILSON *v.* MARITIME UNITED FARMERS CO-OP., LTD. (N. B.), [1928] 3 D. L. R. 166.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) ii.

k i. ——— ——— ———.]—Persons lending money to a co. have a right to

1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4625. *Add. Annotations:—As to* (1) **Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4630. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

4637. *Add. Annotation:*—**Refd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1.

4637a. Whether certificate securing income stock is debenture.]—Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pltfs. whereby the co. certified that it was indebted to them in a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held:* (1) the certificates were debentures within the sect., & pltfs. were entitled to the injunction; (2) all the holders of income stock certificates were entitled to inspection of the register thereof kept by the co. in accordance with the conditions.—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., [1926] Ch. 1, 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

Add. Annotation:—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4651a. ——.]—*Re* PRIESTMAN (ALFRED) & CO. (1929), LTD., No. 7007a, *post*.

4652a. Whether prospectus may be considered.]—*Re* CHICAGO & NORTH WEST GRANARIES CO., LTD., No. 814, *ante*.

4652b. ——.]—In determining a question as to the construction of a debenture the ct. cannot refer to the prospectus pursuant to which the debenture was issued.—*Re* TEWKESBURY GAS CO., TYSOL *v.* TEWKESBURY GAS CO., [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Mans. 301; *affd.*, [1912] 1 Ch. 1, C. A.

Annotations:—**Distd.** Jacobs *v.* Batavia, & General Plantations Trusts, Ltd., [1924] 1 Ch. 287; 93 L. J. Ch. 520. **Refd.** Eyre *v.* Milton Proprietary, Ltd., [1936] Ch. 244.

4652c. ——.]—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, No. 814a, *ante*.

——.]—*Compare* DEEDS, Vol. XVII., p. 342, No. 1537.

4676. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4677a. —— **Right to issue originating summons under R. S. C., Ord. 55, r. 3—To ascertain persons entitled.**]—*Re* CHILLAGOE RY. & MINES, LTD., TRUST DEED (1930), 46 T. L. R. 242.

4678a. —— **General rule.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4678b. —— **Wilful neglect or default—What amounts to.**]—*Re* LEEDS CITY BREWERY, LTD.'S TRUSTS, LEEDS CITY BREWERY, LTD. *v.* PLATTS, [1925] 1 Ch. 532, n., C. A.

Annotations:—**Apld.** *Re* City Equitable Fire Insce. Co., [1925] 1 Ch. 407. **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4688a. —— —— **Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4690. *Add. Annotations:*—**Refd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412; *Re* Priestman (Alfred) & Co. (1929), Ltd., [1936] 2 All E. R. 1340.

4697. *Add. Annotation:—As to* (2) **Refd.** National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

assume that the essentials of internal management have been carried out by the co.—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (c).

m i. ——.]—Where debentures were issued before the co. had filed a prospectus:—*Held:* even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—MARTIN *v.* CLARKSON, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—A. (b) i.

p i. —— —— *Whether misfeasance claims included.*]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re* BUICK LTD., [1926] N. Z. L. R. 24.—

"Powers, rights, revenues, privileges, exemptions & franchises."]—In a bond mtge. the words "powers, rights, revenues, privileges, exemptions & franchises" cannot be extended beyond their ordinary & natural meaning in the absence of suitable words to convey the whole property of the co.—MCDOUGALL *v.* SCOTT & EASTERN TRUST CO., [1934] 4 D. L. R. 607.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—B. (b).

sn. *Reimbursement of trustee—Grounds for refusing.*]—The trustee under a trust deed, under which certain bondholders were the *cestuis que trust* & by which certain land was mortgaged to the trustee as security for the payment of the bonds, sued for the determination of the trust deed & for reimbursement by the bondholders or from the property itself for moneys disbursed by the trustee for taxes, losses sustained in conducting farming operations on the land & for interest paid the bondholders but not collected from the mtgors. or realised out of the land:—*Held:* since, after the creation of the trust, the trustees had acquired a beneficial interest in the land for themselves & the moneys sued for had been expended after the acquirement of that interest, it could not be said that the expenditures had been made wholly in the interest of the bondholders & not in the trustee's interest as well, &, therefore, the action could not succeed.—VERMONT LOAN & TRUST CO. *v.* ENNIS, [1933] 2 W. W. R. 397.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—C. (a).

sq. *Mortgage of specific assets.*]—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank:—*Held:* the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of them in the course of the business subject to prescribed conditions.—BANK OF BARODA, LTD. *v.* H. B. SHIVDASANI (1926), I. L. R. 50 Bom. 547.—**IND.**

4698. *Add. Annotations :*—**Reld.** Earle *v.* worth R. D. C. (1928), 44 T. L. R. 605; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4699. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4699a. Effect of section—Redemption of debenture—Remedies of liquidator.]—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it :—*Held :* though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139 ; 98 L. J. Ch. 9 ; 140 L. T. 174; 45 T. L. R. 11 ; [1928] B. & C. R. 144. D. C.

4700 *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

4705a. ——.]—*Re* PATRICK & LYON, LTD., No. 3353b, *ante.*

4707a. "Cash paid"—Need not be unconditional payment.]—Early in 1932 a co. which was in financial difficulty & insolvent obtained a loan from its chairman, who was also a partner in a firm which supplied the bulk of its stock of goods to the co. He thought that an advance might save the co., but before making any advance ascertained from his partners that they would only consent to continue to supply the co. with goods on credit if the past debt to the firm of £1,954 was paid. He therefore advanced to the co. £3,000 on the security of a third debenture, dated Mar. 24, 1932, after arranging with the co. that out of this sum £1,954 should be applied in paying the past debt to the firm. In July, 1932, a compulsory order for the winding-up of the co. was made :—*Held :* the sum of £1,954 out of the total sum of £3,000 was "cash paid to the co. at the time of . . . the creation of, & in consideration for, the charge" within Cos. Act, 1929 (c. 23), s. 266, & there was, therefore, a valid floating charge in respect of the whole sum of £3,000.—*Re* MATTHEW ELLIS, LTD., [1933] Ch. 458 ; 102 L. J. Ch. 65 ; 148 L. T. 434 ; 77 Sol. Jo. 82 ; [1933] B. & C. R. 17, C. A.

4708. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Stanton, [1929] 1 Ch. 180.

4709a. —— ——.]—Moneys were advanced on the security of debentures creating a floating charge on the property & assets of the co. Fifty-four days elapsed after the first advance & five days after the last advance before the issue of the debentures on Jan. 20, 1926. The delay in the issue of the debentures was not acquiesced in by the lenders, who when they sent cheques for the advances wrote that the money was in further payment on account of debentures to be issued as arranged. The co. went into liquidation on Jan. 25, 1926. During the period in which the bulk of the advances were made the lenders were unaware that the co. was on the verge of liquidation. The debentures were issued when the co. was unable to pay its debts :—*Held :* the debentures were valid, the payments being made "at the time of" the creation of the charge & in consideration for the charge within 1908 Act, s. 212, & consequently the debentures were not a fraudulent preference within 1908 Act, s. 210.—*Re* STANTON (F. & E.), LTD., [1929] 1 Ch. 180 ; 98 L. J. Ch. 133 ; 140 L. T. 372 ; [1928] B. & C. R. 161.

4710. *Add. Annotation :*—**Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4716. *Add. Annotation :*—**Folld.** Heaton & Dugard *v.* Cutting, [1925] 1 K. B. 655.

4716a. —— —— ——.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff :—*Held :* the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—HEATON & DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., [1925] 1 K. B. 655 ; 94 L. J. K. B. 673 ; 133 L. T. 41 ; 41 T. L. R. 286. D. C.

PART III. SECT. 34, SUB-SECT. 3.—C. (c).

sr. "*Cash paid.*"]—Deft. co. was owned by S., who was its managing director. In Feb. 1930, he obtained a loan of £300 from pltfs. for his co. on the security of his own promissory note & also of deft. co.'s debenture for £300, which should have been registered within 21 days, viz., on or before Mar. 13, 1930. As S. was endeavouring to effect a flotation of his co. as a public co., he requested pltfs. not to register the debenture until the last moment, which they agreed to do. On Mar. 13, S. asked for further time, & it was ultimately agreed that in lieu of such registration pltfs. should advance S. £400 on the security of a new promissory note & a debenture for that amount, out of which sum he should forthwith repay the £300 previously borrowed with interest thereon. This was intended to give S. the additional time he required without prejudicing pltfs.' security. In pursuance of this arrangement pltfs. gave S. their own cheque for £400. W., who acted as solr. to both parties, attended with S. at the bank on Mar. 15, when the cheque was presented for payment, & when the latter received the £400 he immediately in pursuance of the agreement handed to W. the sum of £310 in payment of principal & interest on foot of the first loan, which sum the latter immediately lodged to the credit of pltf. co. The debenture for £400 was duly registered. The contemplated flotation did not materialise & the deft. co. went into voluntary liquidation :—*Held :* under Cos. (Consolidation) Act, 1908, s. 212, the mtge. debenture for £400 was invalid except to the extent of £90, the nett amount received by deft. co. on foot of the promissory note & debenture for £400, with interest thereon at 5 per cent.—REVERE TRUST, LTD. *v.* WELLINGTON HANDKERCHIEF WORKS, LTD., [1931] N. I. 55.—IR.

PART III. SECT. 34, SUB-SECT. 3.—C. (d) ii.

4729 i. *General rule.*]—DOMINION IRON & STEEL CO. *v.* CANADIAN BANK . S.), [1928] 1 D. L. R. 809.—CAN.

4730a. —— Floating charge over part of assets already charged.]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper " by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held:* the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re* AUTOMATIC BOTTLE MAKERS, OSBORNE *v.* AUTOMATIC BOTTLE MAKERS, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4739a. —— ——.]—By a lump sum building contract entered into in 1922 between S. & Co., the contractors, & defts., provision was made for interim payments on the architect's certificates, to be given monthly at the rate of 90 per cent. of the value of all work executed. The remaining 10 per cent., the retention moneys, was to be retained & deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention moneys amounted to £1,000 at the beginning of 1924; this was never deposited in a bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included, without distinction, in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile, pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments, & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention moneys by a document in these terms: " In reduction of the amount now or to be owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the H.R.D.C. for retention moneys in respect of the G. Housing Scheme, & for which your receipt shall be a sufficient discharge. . . ." Of that assignment due notice was given by pltfs. to defts. next day. The contractors had at various dates between 1900 & Feb. 2, 1924, issued to the Manchester & County Bank, Ltd., a number of debentures charging the undertaking of the contractors & all their property, both present & future, the charge being a specific charge on the contractors' freehold & leasehold property, machinery, goodwill, & uncalled capital, & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge for any of their assets in priority to the debentures. On Oct. 13, 1924, a receiver for the debenture-holders was appointed, who duly entered into possession. On Oct. 20, 1924, a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture-holders, & on the architect's final certificate being given, in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders, & pltfs. thereupon brought their action upon their assignment:—*Held:* (1) the debentures only created a floating charge on the retention moneys, which the contractors could therefore assign or charge in spite of the clause in the debentures prohibiting the creation of charges in priority to the debentures; (2) pltfs. had no express notice of that clause in the debentures; (3) though the registration of the debentures affect pltfs. with constructive notice that debentures existed, it did not affect them with notice of the terms, including the limitation on prior charges, of those debentures.—EARLE (G. & T.), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 44 T. L. R. 605; *affd.*, 140 L. T. 69; 44 T. L. R. 758, C. A.

4747. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

4755. *Add. Annotations:—As to* (1) **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. *Generally,* **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4767a. —— —— Validity of appointment—Onus of proof.]—KASOFSKY *v.* KREEGERS, [1937] 4 All E. R. 374, D. C.

4781. *Add. Citations:*—93 L. J. Ch. 27; 130 L. T. 93.

4783a. —— Delay in issue to retain credit.]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* LLOYD'S FURNITURE PALACE, LTD., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

4785a. —— Validity—Charge given as compensation for loss of management share.]—By an

agreement dated Sept. 28, 1925, after a recital that a management share of £1 of the T. Co. had been allotted to the S. Co. as manager of the T. Co. it was agreed that the S. Co. should be entitled to act as manager during the T. Co.'s operation of a certain undertaking & to receive in respect of each financial period of the T. Co. 50 per cent. of its net profits. The management share entitled the S. Co. to a majority of the voting power of the shareholders at any meeting & to a share of the surplus assets of the T. Co. in a winding-up after payment off of the preference share capital. In 1933 the rights of the management share were varied, & it became known as a reversionary share. The T. Co. having become desirous of putting an end to the management of the S. Co., a draft agreement had been prepared terminating the management in consideration of the payment to the S. Co. of £100,000 to be raised by the T. Co. by the issue of debenture stock. Incidentally the reversionary share was to be converted into an ordinary share. On the application of a shareholder of the T. Co. to test the legality of the proposed agreement:—*Held:* it was not *ultra vires* the T. Co. to enter into the proposed agreement. It was no objection to the agreement that it involved the redemption of the annual charge on the T. Co.'s net profits out of capital raised for the purpose.—INVESTMENT TRUST CORPN., LTD. *v.* SINGAPORE TRACTION CO., LTD., [1935] *Ch. 615; 105 L. J. Ch. 319; 153 L. T. 83;* 51 T. L. R. 476; 79 Sol. Jo. 402, C. A.

4796. *Add. Annotation:*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4808. *Add. Annotation:*—**Distd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation:*—**Consd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4818. *Add. Annotation:*—**Refd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4821. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

4825a. ——.]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4829a. Right of transferee to accrued interest.]—*Re* KIDNER, KIDNER *v.* KIDNER, No. 2224a, *ante*.

4833. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4838. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4839. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4852a. Transferee informed that registration unnecessary.]—The debentures of a co. payable to K. or his "registered assigns" were transferred by him. At the time of the transfer K. was indebted to the co. to a larger amount than the sum secured by the debentures. The co. kept no books for registering transfers, & on K. & his transferee applying to the secretary for registration, he told them it was unnecessary, & made no mention of the co.'s claim against K. On the co. being wound up:—*Held:* the transferee was entitled to prove as a creditor in respect of the debentures—*Re* COLONIAL & GENERAL GAS CO., LISHMAN'S CLAIM (1870), 23 L. T. 40.

4858. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4858a. —— ——.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme:—*Held:* the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration, & because the scheme, so far as it provided for a committee, was *ultra vires*.—BRITISH AMERICA NICKEL CORPN. *v.* O'BRIEN, [1927] A. C. 369; 96 L. J. P. C. 57; 136 L. T. 615; 43 T. L. R. 195, P. C.

4872a. —— **Redemption at figure below par but above market price.**]—MEADE-KING *v.* USHER'S WILTSHIRE BREWERY, LTD. (1928), 44 T. L. R. 298.

ART III. SECT. 34, SUB-SECT. 3.—G. (c).

s i. —— —— ——.]—The Apatco, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff:—*Held:* as regards the goods comprised within the second debenture, the rights of deft. under the said debentures were paramount to those of pltf.—MATHIESON *v.* WAHLEN (1928), 23 S. R. N. S. W. 189; 45 N. S. W. W. N. 47.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—I.

st. *Grounds for allowing or refusing—Under Sale of Shares Act*, 1916 (*c.* 15).]—*Re* SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE (Sask.), [1918] 3 W. W. R. 92.—**CAN.**

sv. *Who may be "bearer."*]—There cannot be "a bearer" of a debenture consisting of two or more persons holding the document in severalty, nor can the bearer of a debenture assign a part of the principal sum or sums secured by the debenture so as to create independent rights therein to different persons at one & the same time.—JAFFE (R.), LTD. *v.* JAFFE, [1932] N. Z. L. R. 168.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) i.

sw. *By extraordinary resolution—Adjourned meeting—No notice of adjournment—Whether adjournment continuation of original meeting.*]—*Re* ARGYLE MOTOR SERVICES, LTD., [1932] 1 D. L. R. 81; 4 M. P. R. 88.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) ii.

4863 ii. —— ——.] — NATIONAL TRUST CO. *v.* MARITIME COAL, RAILWAY & POWER CO., [1930] 2 D. L. R. 309.—**CAN.**

4879. *Add. Annotations :*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

4888. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4901. *Add. Annotation :*—**Refd.** Hunter *v.* Hunter, [1936] A. C. 222.

4904a. After twenty years—Reference to debentures in company's published accounts.]—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest :—*Held :* the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) *v.* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., [1928] Ch. 836 ; 97 L. J. Ch. 369 ; 140 L. T. 18 ; 44 T. L. R. 702 ; 72 Sol. Jo. 598.

4906. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation :*— **Consd.** Employers' Liability Assce. *v.* Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4928a. —— **Holder of income-stock certificate.**]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4931. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Due registration — Particulars of property charged insufficiently entered.**]—A co. with the object of securing payment of the overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1098 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated "—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor :—*Held :* as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* CHARNLEY, [1924] 1 K. B. 431 ; 93 L. J. K. B. 241 ; 130 L. T. 465 ; 68 Sol. Jo. 480 ; [1924] B. & C. R. 37.

4941. *Add. Annotation :*—*Generally*, **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

4943. *Add. Annotation :*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

PART III. SECT. 34, SUB-SECT. 3.—K. (b).

sg. *Effect of Companies Creditors Arrangement Act, 1933.*]—Companies Creditors Arrangement Act, 1933, does not affect the rights of separate classes of secured creditors in regard to schemes of arrangement.—*Re* WELLINGTON BUILDING CORPN., LTD., [1934] 4 D. L. R. 626 ; O. R. 653.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—L. (a) i.

sl. *Whether property must be restored.*]—The equitable doctrine that "a mtgee. is bound on payment to restore the property to the mtgor., & if by the act of the mtgee. unauthorised by the mtgor. it has become impossible to restore the estate on payment of all that is due the mtgee. will be prevented from suing the mtgor. at law" has no application to a floating charge created by debenture where nothing is vested in or handed over to the creditor.—O'DAY *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1934), 40 C. L. R. 200 ; 40 Argus L. R. 80.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—L. (b).

sh. *Debenture stock issued by loan company.*]—Debenture stock issued by a loan co. proceeding under Loan Companies Act, 1914 (c. 40), as amended by 12 & 13 Geo. 5, c. 31, s. 4, is not redeemable at the option of the holder.—SCOTTISH WIDOWS' FUND & LIFE ASSURANCE SOCIETY *v.* CANADA PERMANENT MTGE. CORPN., [1929] 3 D. L. R. 405 ; 63 O. L. R. 637.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—M.

sd. *Stamp Act*, 1891 (c. 39), s. 82 (1) (b) (i)—*Marketable security—Debenture.*]—A Canadian co. had agents in the United Kingdom for the purpose of recovering money for loans on debenture. On receipt of the money the agents granted an interim receipt therefor, & informed the co. The debenture was then made out & completed by the co. in Canada, & was dispatched to the co.'s agents in the United Kingdom, for delivery to the lender there in exchange for the interim receipt :—*Held :* the debenture was assessable to duty as a marketable security under Stamp Act, 1871, s. 82 (1) (b) (i) as being issued in the United Kingdom, in respect that it did not pass beyond the co.'s control, so as to create an obligation against the co. upon it, until delivery by the co.'s agents in the United Kingdom to the lender.—CANADA PERMANENT MORTGAGE CORPN. *v.* I. R. COMRS., [1932] S. C. 129.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4920 iii. —— ——.]—*Re* HOLMES (SAMUEL), LTD. (1923), 58 I. L. T. 9.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

sf. *Agreement to give security.*]—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed—*Held :* the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge" in Cos Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non registration.—NEW ZEALAND STRUTHERS CO., LTD *v* HOON HAY QUARRIES, LTD., [1925] N Z L R 73.—**N Z.**

sm *Assignment of book debts.*]—Where the assignor is a co the assignment of book debts must be registered in the offices of the County Court of the county in which the head office of the co is situate & the head office means the head office designated in the letters patent incorporating the co., or in any bye-law that may be passed by the co. pursuant to Cos. Act, s. 32.—*Re* SMITH TRANSPORTATION CO., [1928] 2 D. L. R. 508 ; 62 O. L. R. 203 ; 10 C. B. R. 48.—**CAN.**

4944. *Add. Annotations :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53 ; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

4944a. Assignment of goods to discount company—Financing hire-purchase agreements.]—A co. carried on a furniture business largely by means of hire-purchase agreements, & in order to provide the capital for the purpose entered into a series of agreements with a discount co. by which they assigned to a discount co. the goods comprised in the hire-purchase agreements subject to & with the benefit of the hire-purchase agreements on an immediate payment of 75 per cent. of the total purchase price, which was the same as that payable by the hirer if he continued payments of hire long enough to become the purchaser. From that 75 per cent. there was, however, deducted a percentage called the finance charge, which represented the discount co.'s profit. The balance of 25 per cent. of the purchase price was retained by the vendor co. out of the payments made by the hirer, 75 per cent. of such payments being secured collaterally to the discount co. by the issue of a series of bills of exchange which were equal in number to the instalments payable by the hirer & which were accepted by the vendors. The agreements with the discount co. provided that no notice thereof was to be given to the hirer, so long as there was no breach of the hire-purchase agreement. The vendor co. went into voluntary liquidation, being insolvent :—*Held :* the agreements in this form were assignments on sale & purchase & not charges &, therefore, did not require registration under 1929 Act, s. 79.—*Re* GEORGE INGLEFIELD, LTD., [1933] Ch. 1 ; 101 L. J. Ch. 360 ; 147 L. T. 411 ; 48 T. L. R. 536 ; [1931] B. & C. R. 220, C. A.

Annotation :—**Consd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4944b. Contractor employed by local authority—Authorisation to authority to pay sub-contractor.]—A firm A. contracted with the L.C.C. to install steam plant in a hospital. It subcontracted with another firm B. to do some of the work. A. fell into financial difficulty & gave B. an authority addressed to the L.C.C. to pay B. a named sum against the chief engineer's next certificate. The L.C.C. took interpleader proceedings against B. & the receiver of A., appointed by the debenture holder after the authority was given, & the Div. Ct. ordered the sum to be paid to B. The receiver appealed on the ground : (i) that the authority was a charge on the book debts of a co. &, not having been registered under 1929 Act, s. 79, was invalid ; (ii) that he ought to have credit for the expense he incurred in completing the work that was to have been done by B. : —*Held :* (1) the authority was an absolute equitable assignment & not a charge within 1929 Act, s. 79 ; (2) the receiver could not by any subsequent conduct alter the nature of the authority or the subcontractor's rights under it, & his remedy in respect of the expense incurred if any was by action for breach of contract.—ASHBY, WARNER & CO., LTD. *v.* SIMMONS, [1936] 2 All E. R. 697 ; 106 L. J. K. B. 127 ; 155 L. T. 371 ; 52 T. L. R. 613 ; 80 Sol. Jo. 552, C. A.

4945. *Add. Annotation :*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4946. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

4958. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4960. *Add. Annotations :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Charles & Co., [1935] W. N. 15.

4963. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4964. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967a. —— ——.]—(1) The usual proviso added to an order for extension of time for registration under 1929 Act, sect. 85—namely, that the order is to be without prejudice to the rights of parties acquired prior to the date of actual registration—only protects creditors who have acquired security on the property the subject-matter of the charge ; (2) the ct. will not insert in the order any terms for the protection of unsecured creditors of the co.—*Re* M. I. G. TRUST, LTD., [1933] Ch. 542 ; 102 L. J. Ch. 179 ; 149 L. T. 56 ; 49 T. L. R. 299 ; [1933] B. & C. R. 91, C. A. ; *affd. on other grounds, sub nom.* PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252, H. L.

4967b. —— —— **Winding up pending.**]—*Re* CHARLES (L. H.) & CO., LTD., [1935] W. N. 15 ; 179 L. T. Jo. 120.

4968. *Add. Annotation :*—**Refd.** *Re* Charles & Co., [1935] W. N. 15.

PART III. SECT. 34, SUB-SECT. 4.—C. (a).

sy. *Power of court—To impose terms.*]—In making an order under Cos. (Registration of Securities) Act, 1918, s. 7, granting an extension of time for the registration of debentures, the ct. will, in a proper case, impose terms for the protection of the unsecured creditors of the co., although it will not do so except where the circumstances so require.—*Re* A LIMITED COMPANY (1928), 28 S. R. N. S. W. 364 ; 45 N. S. W. W. N. 91.—**AUS.**

sz. *What must be shown.*]—Where the time prescribed by Cos. Act, 1908, s. 130, within which a mtge. given by a co. is to be registered has expired it is essential that a co. applying for an extension of such time should in the supporting affidavit, in addition to giving full particulars relating to the grounds upon which the application is made, give a very full & complete statement of the financial position of the co., with information (i) as to the amount owing to unsecured creditors & the nature of the accounts, *i.e.* whether ordinary monthly accounts or of long standing : (ii) as to whether there are any judgments outstanding against the co. : (iii) as to whether any proceedings are pending for winding up the co. & generally such full & complete information as may be necessary to enable the ct. to be fully seised of the position & to enable it to determine whether it is necessary to insert in the order any words specifically protecting unsecured creditors.—*Re* DALGETY & CO., [1928] N. Z. L. R. 731.—**N.Z.**

PART III. SECT. 34, SUB-SECT 4.—C. (c) i.

sb. *May not be made ex parte.*]—An application made under sect. 83 of Cos. Act (Northern Ireland), 1932, to extend the time for the registration of the charge in the Co.'s register may not be made *ex parte* but must be made upon notice of motion or summons.—*Re* COATES BUILDINGS, LTD., & LAW UNION & ROCK INSURANCE CO., LTD., [1936] N. I. 156.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—C. (c) ii.

4968 i. *Effect of order—How far creditors protected.*]—*Re* BOEHNER'S, LTD. (1932), 5 M. P. R. 43.—**CAN.**

4969. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4969a. —— ——.]—*Re* M. I. G. TRUST, LTD., No. 4967a, *ante*.

4975. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Refd.** Gough's Garages, Ltd. *v.* Pugsley, [1930] 1 K. B. 615 ; I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651 ; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

4976. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.*

4977. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Lodge (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations :*—93 L. J. Ch. 42 ; 130 L. T. 178.

4979a. —— **Effect of voluntary winding up.**]—Where under a debenture deed in the common form made by a limited co. the debenture-holder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—THOMAS *v.* TODD, [1926] 2 K. B. 511 ; 95 L. J. K. B. 808 ; 135 L. T. 377 ; 42 T. L. R. 494.

4982. *Add. Annotation :*—**Consd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

4982a. —— **Claim believed invalid—Notice to debenture holder—Duty to refund.**]—A sole debenture holder appointed a receiver. The latter proceeded to realise the assets of the co., & paid four sums of £25, £50, £10 & £10 respectively to an agent of the debenture holder. Between the time of the first & second payment the receiver received a claim for rates in respect of certain premises occupied by the co. The receiver till then had been quite unaware that the co. had occupied these premises & he therefore inquired of the managing director of the co. & the agent of the debenture holder whether the claim was valid. Both assured him it was not. He therefore made the second payment but the claim being repeated, he stopped the cheque sent in payment & made further inquiries of the agent of the debenture holder. He was again assured that the claim was invalid but he only allowed the cheque to be paid upon the agent giving an indemnity. Ultimately the local authority sued the receiver for the amount of the rates & he joined the agent & the debenture holder as third parties. The claim of the local authority was subsequently admitted, & the action proceeded as to the liabilities of the third parties to the receiver. For the third parties it was contended that the receiver in making payments to the debenture holder without first satisfying that claim for rates had acted in contravention of 1929 Act, s. 78, & was therefore setting up his own wrong & basing his claim on his own contravention of a statute :—*Held :* (1) the payment to the debenture holder was not *per se* an illegal act but only illegal in certain circumstances, & as the agent had misrepresented the facts & induced the receiver to believe he was acting quite legally the defence of illegality failed ; (2) the agent was liable upon the indemnity to repay the receiver the amount he had paid in respect of the claim & costs ; (3) the debenture holder was liable to refund to the receiver the payments made after she had notice of the claim for rates ; (4) notice to the agent was notice to the debenture holder & the latter must therefore refund the last three payments ; (5) the receiver could not receive from the agent & the debenture holder a greater sum than the total amount he had paid in respect of the claim & costs.—WESTMINSTER CITY COUNCIL *v.* TREBY, [1936] 2 All E. R. 21 ; 80 Sol. Jo. 465.

Debenture containing floating charge & fixed charge—Priority given only in respect of assets subject to floating charge.]—*Held :* when the receiver is appointed by a debenture holder whose debenture is secured by both a fixed charge & a floating charge, the priority given to the preferential debts by 1908 Act, s. 107 (1), applies only in respect of assets subject to the floating charge & not to assets subject to the fixed charge.—*Re* LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD., LLOYDS BANK *v.* THE CO., [1929] 1 Ch. 498 ; 98 L. J. Ch. 353 ; 140 L. T. 321 ; 73 Sol. Jo. 27 ; 22 B. W. C. C. 20, C. A.

4982c. Preferential payment of income tax—Assessment after appointment or taking possession of receiver.]—Under 1908 Act, s. 107, where a receiver of a co. is appointed on behalf of holders of debentures secured by a floating charge, or possession is taken by or on behalf of debenture holders of property subject to such a charge, certain debts, including income tax assessed on the co. up to the fifth day of Apr. next before the date of the appointment of the receiver or of possession being taken as aforesaid, but not exceeding one year's assessment, are under 1908 Act, s. 209, to be forthwith paid by the receiver or person taking possession out of any assets coming to his hands in priority to any claim for principal or interest in respect of the debentures :—*Held :* the expression in sect. 209 "assessed up to the fifth day of Apr." means "assessed for a period ending on the fifth day of Apr.," & therefore the right to preferential payment of one year's assessment remains, notwithstanding that the assessment is not made until after the date of the appointment of the receiver or of his taking possession, as the case may be.—GOWERS *v.* WALKER, [1930] 1 Ch. 262 ; 99 L. J. Ch. 138 ; 142 L. T. 404 ; 46 T. L. R. 150 ; 74 Sol. Jo. 41 ; 15 Tax Cas. 165 ; [1929] B. & C. R. 125.

Annotation :—**Apld.** *Re* Cockell, Jackson *v.* A.-G. (1932), 76 Sol. Jo. 495.

4982d. Preferential payment of rates—Increase in rates after taking possession by receiver.]—Where in the assessment of property relief has been claimed & in the first instance allowed in the valuation list under the derating provisions of the Local Government Act, 1929 (c. 17), but subsequently disallowed, the resulting change in the amount of a rate payable in respect of that property takes effect as from the date of the making of the rate, as if the change had been caused by a proposal for the amendment of the rateable value. Consequently, where a receiver for debenture holders has taken possession of the property of the co. which issued the debentures, an increase in the amount of the rates due at the date of taking possession,

which increase has been subsequently ascertained by reason of such an alteration in the assessment, is payable by the receiver as a preferential debt.—*Re* AIREDALE GARAGE CO., ANGLO-SOUTH AMERICAN BANK *v.* AIREDALE GARAGE CO., [1933] Ch. 64; 101 L. J. Ch. 289; 147 L. T. 372; 96 J. P. 312; 48 T. L. R. 477; 30 L. G. R. 286, C. A.

4983. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4987a. —— Same receiver appointed by court—Form of order as to accounts.]—*Re* ARCTIC ELECTRIC SUPPLIES, LTD., ANSELL *v.* THE CO. (1932), 48 T. L. R. 350; *sub nom.* PRACTICE NOTE, [1932] W. N. 79; 173 L. T. Jo. 281.

5011a. —— Not appointed if hostile to debenture-holders.]—GILES *v.* NUTTALL, *Re* HOUSE IMPROVEMENT ASSOCN., LTD. (1885), 78 L. T. Jo. 352, C. A.

5025. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5036a. Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.]—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves" :—*Held :* the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

5036b. Power of sale—Contract subject to approval of court—Time for obtaining approval—Before completion.]—Where, in a debenture-holders' action, the receiver contracts to sell property included in the debentures, subject to the contract being approved & sanctioned by the ct. & no date is fixed for obtaining such approval, it must be obtained before the date fixed for completion of the contract.

On Oct. 31, 1927, the receiver in a debenture-holders' action entered into a conditional contract to sell land & cottages included in the debentures. The contract provided that the purchase should be completed on or before Dec. 31, 1927. By clause 14 it was provided that the contract was subject to its being approved & sanctioned by the ct., & in the event of its not being so approved it was to become void, & the purchasers were to be entitled to be repaid their deposit. The receiver took no effective steps to obtain the sanction of the ct., & on Jan. 10, 1928, the purchasers' solrs. wrote to the debenture-holders' solrs. repudiating the contract & demanding the return of the deposit money under clause 14. On an application for an order that the conditional contract should be confirmed :—*Held :* the purchasers were entitled to repudiate the contract & to be repaid their deposit money, together with all interest earned by such deposit, from the date of its payment to the vendor.—*Re* SANDWELL PARK COLLIERY CO., FIELD *v.* THE CO., [1929] 1 Ch. 277; 98 L. J. Ch. 229; 140 L. T. 612.

5036c. Power to pay commission to agent for sale—Necessity for sanction of court.]—A receiver appointed by the ct. in a debenture-holders' action employed an agent for the purpose of introducing a purchaser of certain property belonging to the co. The receiver did not apply to the ct. for leave to employ the agent. The agent was successful in finding a purchaser for the property. On an application by the agent for an order directing the receiver to pay him commission :—*Held :* where a receiver has not applied to the ct. for leave to employ an agent, the agent is not entitled to any commission; but the ct. has a discretion to award him such compensation for his efforts as the ct. considers just in the circumstances of the particular case.—*Re* NATIONAL FLYING SERVICES, LTD., COUSINS *v.* NATIONAL FLYING SERVICES, LTD., [1936] Ch. 271; 105 L. J. Ch. 145; 154 L. T. 493; 52 T. L. R. 37; [1934–5] B. & C. R. 338.

5038a. ——.]—CONSOLIDATED ENTERTAINMENTS, LTD. *v.* TAYLOR, [1937] 4 All E. R. 432.

5042a. Breach of price maintenance agreement.]—By certain agreements between pltfs., manufacturers of radio sets, & defts., wholesale dealers in such radio sets, it was agreed that the retail prices of the radio sets should be maintained at prices fixed by pltfs. The order form provided that the wholesalers were to be compensated for any loss that might occur through any alteration of list prices by pltfs., & that if a receiver should be appointed or pltfs. should go into liquidation, defts. should have the right to return any of the goods which they might have in stock. On Oct. 5, 1934, a receiver for the debenture holders of pltfs. was appointed & the appointment was notified to defts. on the same day. On the same day a large number of radio sets was invoiced to defts. On Oct. 9 defts. were informed that business was being carried on & that the co.'s policy of price maintenance was unaffected. Defts. thereupon ordered further goods from the receiver. On Nov. 3, 1934, a creditor presented a petition for winding up pltf. co.,

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PART III. SECT. 34, SUB-SECT. 6.—B. (b) i.

4988 i. *Discretion of court—Interference by appellate court.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., LTD., [1927] 1 D. L. R. 421; 59 N. S. R. 123.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (b) ii.

ss. *What amounts to default in payment of interest.*]—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (f).

sc. *On occupation of company.*]—A receiver appointed by debenture-holders under a debenture deed constituting him agent of the co. that gave the debenture, does not exercise an independent possession of his own, but his entry on & the assumption of control over the co.'s property leaves the co. still in occupation in point of law.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* PUBLIC CURATOR OF QUEENSLAND, [1931] Argus L. R. 294; 5 A. L. J. 213.—**AUS.**

PART III. SECT. 34, SUB-SECT. 6.—B. (g).

sl. *Distinguished from receiver appointed by shareholders.*]—There is no analogy between a receiver & manager in a debenture-holders' action & the receiver & manager in question herein who was appointed at the instance of the shareholders of a co. in order that the business might be continued as a going concern on their behalf & to enable the co., if possible, to effect a sale of its undertaking & thus avoid a winding-up order.—ANDERSON *v.* NEWTON, [1934] 1 W. W. R. 636; 3 D. L. R. 224; 42 Man. L. R. 107.—**CAN.**

& on Nov. 20 the receiver stopped manufacture, no further goods being ordered by the wholesalers after that date. The receiver proceeded to negotiate for the sale of pltfs.' business, & on Nov. 30, 1934, an offer to purchase a large number of sets was accepted, the receiver imposing no conditions as to price maintenance. On Dec. 3 an order was made for winding up the co. & a provisional liquidator appointed, & on the same day possession of the stock was given by the receiver's agent to the purchasers, with the result that a large number of radio sets was put on the market at prices much below the list prices. Defts. wrote to the receiver referring to their right to return the goods, but no arrangement for their actual return was made. The liquidator then brought an action for the balance due on the radio sets delivered to defts., who counterclaimed damages for breach of contract, contending that the receiver had broken his contract to maintain prices. Pltfs. contended that, assuming there was such a contract between the receiver & the wholesalers, there was no breach before the winding up order on Dec. 3, & that after that date the receiver had no authority to bind the co., & that therefore the counterclaim could not be set off. The wholesalers contended alternatively that the liquidator was guilty of breach of contract in refusing or not accepting the return of the sets :—*Held :* (1) the agreement for the sale of pltfs.' business on Nov. 30, 1934, constituted a breach of the receiver's agreement to maintain prices ; (2) alternatively the liquidator ought to have accepted the return of the goods, as at the date of his appointment the wholesalers were entitled to return them.—TELSEN ELECTRIC CO., LTD. *v.* EASTICK & SONS, [1936] 3 All E. R. 266.

5064a. —— —— ——.]—A deed of floating charge on the assets of a co. gave power to the trustee to appoint a receiver & manager, who was expressed to be the agent of the mtgor. :—*Held :* on a receiver duly appointed under the power entering into possession of the premises & commencing to carry on the business of the co., there was a change of occupancy within Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 16, & Public Health Act, 1875 (c. 55), s. 211 (3).—RICHARDS *v.* KIDDERMINSTER OVERSEERS ; RICHARDS *v.* KIDDERMINSTER CORPN., [1896] 2 Ch. 212 ; 65 L. J. Ch. 502 ; 74 L. T. 483 ; 44 W. R. 505 ; 12 T. L. R. 340.

Annotations :—**Consd.** *Re* Marriage Neave & Co., North of England Trustee, Debenture & Assets Corpn. *v.* Marriage, Neave & Co., [1896] 2 Ch. 663. **Distd.** National Provincial Bank *v.* United Electric Theatres (1915), 85 L. J. Ch. 106., **Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5067a. —— ——.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them :—*Held :* there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, [1928] 1 K. B. 1 ; 96 L. J. K. B. 1016 ; 137 L. T. 241, C. A.

5067b. —— —— **Right to sue.**]—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided : " A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by deft. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance :—*Held :* the debenture empowered the receiver & manager to bring the action without the co.'s consent.—M. WHEELER & CO., LTD. *v.* WARREN, [1928] Ch. 840 ; 97 L. J. Ch. 486 ; 139 L. T. 543 ; 44 T. L. R. 693, C. A.

5069a. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, No. 5067a, *ante*.

5091. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Stead, Hazel & Co. *v.* Cooper (1933), 49 T. L. R. 200.

5095a. —— ——.]—*Re* NEW ZEALAND MIDLAND RY. CO., SMITH *v.* LUBBOCK, [1901] W. N. 105 ; *revsd.* on other grounds, [1901] 2 Ch. 357, C. A.

Annotation :—**Refd.** *Re* Glasdir Copper Mines, Ltd., English Electro Metallurgical, Ltd. *v.* Glasdir Copper Mines, Ltd., [1906] 1 Ch. 365.

5105a. —— —— **All debenture-holders not before court—Sale subject to approbation of judge.**]—In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under R. S. C., Ord. 51, r. 1B, on motion for judgment on admissions in the pleadings, but, unless all the debenture-holders subse-

PART III. SECT. 34, SUB-SECT. 6.—C. (e).

sb. *Duty to preserve & carry on undertaking as going concern.*]—NATIONAL TRUST CO. *v.* DOMINION IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—D. (a).

sd. *Jurisdiction of court to order—In winding-up proceedings—On pe for conveyance to mortgagee of ...y's equity of redemption.*, ...EX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—...

PART III. SECT. 34, SUB-SECT. 6.—D. (b).

sf. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

sg. *Jurisdiction to order sale—Foreign immovables.*]—A mining co. incorporated in Victoria executed a debenture whereby it charged all its undertaking & assets. The assets included mineral leases & mineral easement licences in respect of land situate in Tasmania & fixtures on that land. Pursuant to the terms of the debenture the debenture-holder appointed a receiver & manager of the property charged, with power to sell. The debenture-holder took out an originating summons for an order sanctioning the sale of the property by the receiver & manager :—*Held :* there was jurisdiction to entertain the application.—BOND *v.* NORTH MOUNT FARRELL CO., NO LIABILITY, [1931] V. L. R. 144 ; Argus L. R. 88.—**AUS.**

sq. *Confirmation by court—Sale by receiver.*]—In approving a sale by a receiver in the interests of bondholders the ct. must have regard to the interests of all parties.—NATIONAL TRUST CO. *v.* GREAT LAKES PAPER CO., [1936] 2 D. L. R. 239.—**CAN.**

quent to pltfs. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale.—*Re* CRIGGLESTONE COAL CO., STEWART *v.* CRIGGLESTONE COAL CO., [1906] 1 Ch. 523; 75 L. J. Ch. 307; 94 L. T. 471; 54 W. R. 298; 50 Sol. Jo. 240; 13 Mans. 181.

5110. *Add. Annotations :*—**Apld.** MacCarthy *v.* Agard, [1933] 2 K. B. 417. **Refd.** Powell Dyffryn Steam Coal Co. *v.* Griffiths (1934), 27 B. W. C. C. 408.

5111a. Short cause—Copies of affidavit in support—Necessity for.]—*Re* CHURCH STRETTON MINERAL WATER CO., LTD. (1904), 52 W. R. 375; 48 Sol. Jo. 299.

5120a. Conduct of action—To whom given—Independent party—When desirable.]—The conduct of a debenture holder's action begun by a person whose transactions with the co. the ct. considers to require investigation, or whose interests are shown to be adverse to those of the remaining debenture holders, may be given by the ct. to an independent party.

One of the objects of the co. was to buy & let premises for use as flats & clubs. Its first directors were pltf. & his nominee, but it was in substance a "one man" co. with pltf. as managing director. It granted leases of certain premises to the S. syndicate, of which the directors were pltf. & the same nominee. The co. agreed to pay a yearly salary to pltf. & guaranteed the issue of debentures by the syndicate. The syndicate soon failed to pay rent, but pltf. took no steps either to enforce payment or forfeit the leases: &, although the co. was carrying on business at a loss, he bought a quantity of furniture with its money on its behalf. The syndicate issued debentures, pltf. becoming the holder of a number of them, & also holding debentures issued by the co. Later, a receiver & manager of the property of the syndicate charged by the debentures was appointed, & pltf. began a debenture holder's action against the co., subsequently selling the furniture which he had bought & the leasehold premises at a loss. Ultimately, he resigned his directorship: & this summons asked that the conduct of the proceedings should be vested in appct., another debenture holder, on the ground that pltf. against whom gross negligence was alleged, had an interest adverse to that of the remaining debenture holders:—*Held :* as the transactions of pltf. with the co. had never been investigated, & as it had so far been impossible to investigate them, it was desirable that the conduct of the action should be given to an independent person.—*Re* SERVICES CLUB ESTATE SYNDICATE, LTD., MCCANDLISH *v.* THE COMPANY, [1930] 1 Ch. 78; 99 L. J. Ch. 33; 142 L. T. 127.

5134a. —— ——.]—*Re* GUTTA PERCHA CORPN., LTD., THORNTON *v.* GUTTA PERCHA CORPN., LTD., [1899] W. N. 251; 44 Sol. Jo. 133.

5149a. —— Application of assets—Deficiency.]—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. *v.* THE CO., [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re* GLYNCORRWG COLLIERY CO., *Re* RAILWAY DEBENTURE & GENERAL TRUST CO., 136 L. T. 159.

5149b. ——.]—*Re* BURRADON & COXLODGE COAL CO., LTD. [1929], W. N. 15.

5170. *Add. Annotation :*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

5184a. On authority of receiver—To carry on business of company.]—THOMAS *v.* TODD, No. 4979a, *ante*.

5184b. —— To enforce rights under Landlord & Tenant Act, 1927 (c. 36), s. 5.]—A co. was the lessee of certain premises under a lease expiring on June 24, 1930. In 1925 the co. issued a debenture by which it charged all its undertaking & all its property, present & future, including its uncalled capital in favour of the debenture holders. On Apr. 22, 1929, the co. gave notice to the landlords under above sect., requiring them to grant to it a new lease of the premises. In July, 1929, the debenture holders in exercise of the power on that behalf in the debenture appointed a receiver of the property & assets therein comprised. The landlords having failed to comply with the co.'s request for the grant of a new lease the receiver on Sept. 23. 1929, commenced an action in the county court in the name of the co. to obtain the grant of a new lease. On Oct. 15 a compulsory order was made to wind up the co. & a liquidator was appointed: —*Held :* the right to apply for a renewal of the lease under above sect. was a right given by the co. to the debenture holders as part of their security, & the receiver was entitled to enforce that right notwithstanding the liquidation of the co.—GOUGH'S GARAGES, LTD. *v.* PUGSLEY, [1930] 1 K. B. 615; 99 L. J. K. B. 225; 143 L. T. 38; 46 T. L. R. 283; 74 Sol. Jo. 215; 28 L. G. R. 239.

Annotation :—**Refd.** Smith *v.* Metropolitan] Properties Co., [1932] 1 K. B. 314.

PART III. SECT. 34, SUB-SECT. 6.—E. (c) ii.

5122 i. *Who may sue.*]—DOWNER *v.* BOUGHNER (1930), 66 O. L. R. 279.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (d).

sk. *Affidavits — Made before institution of proceedings—Inadmissible.*]—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

5130 i. *Ex parte application.*]—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (f) ii.

5148 i. *Form of judgment.*]—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 7.

sj. *Competition between liquidator & receiver—Liquidator preferred.*]—Where there is a question of competition between a liquidator & a receiver appointed by the ct., at the instance of debenture-holders or mtgees., the ct. will ordinarily, in the exercise of its jurisdiction, give preference to the liquidator.—*Re* KHARKHAREE COLLIERIES, LTD. (1930), I. L. R. 58 Calc. 946.—**IND.**

5186a. —— —— —— **Who should sue for contribution—Liquidator.**]—Where in a winding up the general assets are insufficient for the payment of the preferential creditors of the co., the proper pltf., in an action under sect. 209 of 1908 Act, to recover contribution from a debenture-holder with a floating charge towards payment of a preferential debt is the liquidator acting in the name of the co.—WESTMINSTER CORPN. & UNITED TRAVELLERS CLUB CO., LTD. *v.* CHAPMAN, [1916] 1 Ch. 161; 85 L. J. Ch. 334; 114 L. T. 63; 80 J. P. 74; [1916] H. B. R. 12.

5186b. Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.]—The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re* PARK WARD & CO., LTD., [1926] Ch. 828; 95 L. J. Ch. 584; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 94.

5194. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

5314. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316. *Add. Annotations :*—**Consd.** *Re* Stanton; Hogg *v.* Maule (1927), 44 T. L. R. 118, **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316a. —— **May decide validity of debentures.**]—Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors :—*Held :* the county ct. judge had jurisdiction to entertain the liquidator's application, &, as he had done so, his discretion could not be interfered with.—*Re* F. & E. STANTON, LTD., [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 44 T. L. R. 118; [1927] B. & C. R. 187, D. C.

5323. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5324. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5337. *Add. Annotation :*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5338. *Add. Annotation :*—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5346. *Add. Annotation :*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

PART III. SECT. 34, SUB-SECT. 8.

sk. *Whether interest payable after maturity of bond—Combined effect of trust deed, debenture & bonds.*]—TRUSTS & GUARANTEE CO., LTD. *v.* CONTINENTAL SUPPLY CO., LTD., [1932] 1 W. W. R. 921.—**CAN.**

PART III. SECT. 35.

sm. *Meaning of "being wound up" —Under Companies Ordinance,* 1901 (*c.* 20), *s.* 47.]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkpcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

sn. *Whether proceedings under Bankruptcy Act condition precedent.*]—Leave may be given a co. to institute proceedings under Winding-up Act, & a winding-up order made, although proceedings have not been instituted in bkpcy. by petition for a receiving order or by authorised assignment.—*Re* MCARTHUR LUMBER & FUEL CO., LTD., [1931] 3 W. W. R. 162; 40 Man. L. R. 299.—**CAN.**

PART III. SECT. 36, SUB-SECT. 1.—A.

c i. —— *To remit to Sheriff Court.*]—*Held :* under Cos. Act, 1929, s. 116 (3), the ct. has power to remit a petition for the winding-up of a co. to the sheriff ct. only where the capital of the co. paid up or credited as paid up does not exceed £10,000.—*Re* CHANEY & BULL, [1930] S. C. 759.—**SCOT.**

t. Add "*revsd.* 14 S. C. R. 624."

PART III. SECT. 36, SUB-SECT. 1.—C. (c).

l i. ——.]—*Re* ALBION MACHINE CO. (N. S.), [1929] 1 D. L. R. 274; 10 C. B. R. 240.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—B.

n i —— *Delay not accounted for.*]—*Re* SOUTHLAND WOOLLEN MILLS, LTD., [1929] N. Z. L. R. 289.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—C. (a).

a i. ——.]—Where the notice provided for by Winding-up Act, R. S. C., 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re* MILO WHEAT CO., LTD., [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (a).

d i. —— ——.]—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

d ii. —— ——.] — *Re* BRITISH EMPIRE STEEL CORPN., LTD. (N. S.), [1927] 2 D. L. R. 964.—**CAN.**

e i. —— ——.]—A shareholder of a limited co. filed a petition for winding up on the grounds set out in Winding-up Act, R. S. C., s. 10 (*d*). Subsequently to the petition, a meeting of the shareholders of the co. was called & the shareholders, by a large majority, voted that the co. should continue in business :—*Held :* a winding-up order should be made.—*Re* BASE-O-LITE PRODUCTS, LTD., [1933] O. R. 156; 1 D. L. R. 746.—**CAN.**

e ii. ——.]—On an application for the winding up of a co., made by the A.-G. pursuant to sect. 6 of Co.s (Special Investigations) Act, 1935, which provides that on such application the ct. shall have the same powers, & the provisions of the Cos. Act shall apply as on a winding up petition presented by the co., it appeared that the business of the co. could not be carried on consistently with candid & straightforward dealings with the public, from whom further capital was required if the co. were to continue to exist :—*Held :* it was just & equitable that the co. should be wound up.—*Re* PRODUCERS REAL ESTATE & FINANCE CO., LTD., [1936] V. L. R. 235.—**AUS.**

sp. *Control by one shareholder.*]—Under sect. 162 (vi) of Indian Co.'s Act, 1913, which provides that a co. may be wound up by the ct. if the ct. is of opinion that that course is just & equitable, the fact that one shareholder has a preponderating voice in the co.'s affairs, by reason of owning or controlling a large number of shares, is of itself no reason for a winding-up order.—RIPON PRESS & SUGAR MILL CO. *v.* GOPAL CHETTI (1931), 58 L. R. Ind. App. 416.—**IND.**

sr. *Application by fully-paid shareholder.*]—In spite of sect. 172 (1) of Cos. Act, 1933, a fully-paid shareholder, who petitions solely in that character, & who cannot show that there will be a tangible surplus of assets in which he will participate, should establish as part of his ground for the order that the substratum of the co. has gone or that there is a case for investigation in the affairs of the co., or that there is some other good reason for incurring the costs which are the consequence of a winding-up order of the ct.—*Re* TARANAKI AMUSEMENTS (HAWERA), LTD., [1935] N. Z. L. R. 33.—**N.Z.**

5354. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357. *Add. Annotation:*—**Refd.** Loch *v.* Black wood, [1924] A. C. 783.

5357a. ——.]—A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value:—*Held:* the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the petitioners were entitled under that provision to a winding-up order.—LOCH *v.* BLACKWOOD (JOHN), LTD., [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

:—**Consd.** Davis & Co. *v.* Brunswick (Australia), Ltd., Brunswicke-Balke-Collender Co. & Brunswick Radio Corpn., [1936] 1 All E. R. 299.

5357b. Control acquired by one director.]—Where the capital of a private co. is so owned as to make the co. in substance a partnership & one director has purported by means of irregularities to acquire complete control of the co. & to exclude the other director or directors from the management of it, it may be "just & equitable" that the co. should be wound up.—*Re* DAVIS & COLLETT, LTD., [1935] Ch. 693; 104 L. J. Ch. 340; 153 L. T. 329; 79 Sol. Jo. 609; [1934–5] B. & C. R. 274.

Annotation:—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5357c. Private company—Refusal to register transfer to executors.]—A private co. was formed in 1913 with a capital of £10,000 in £1 shares, half of which belonged to C. C. & half to his two elder sons. C. C. & his two elder sons were the first directors of the co. & continued to be so until 1930, when C. C. died, leaving his two elder sons sole directors. By his will C. C. appointed his three younger sons, who were employed in the business but were not members of the co., exors. thereof & bequeathed his 5,000 shares equally between them.

The arts. of the co. provided that the directors might in their absolute discretion refuse to register any transfer of shares, & without assigning any reason for such refusal, & that this power should extend to the registration of the personal representatives of a deceased shareholder. The directors refused to register the exors. in their capacity of beneficiaries under the will as members of the co. Subsequently the directors dismissed the exors. from their employment with the co. & refused to supply them with copies of the balance-sheet & accounts for the year ending June 30, 1936. The exors. presented a petition for the winding-up of the co. on the ground that in the circumstances above stated it was just & equitable that the co. should be wound up:—*Held:* though the principles applicable to the case were those which would be applied in an action for dissolution of partnership, there were no grounds shown in the petition on which it would be "just & equitable" within 1929 Act, s. 168, to make a winding-up order.—*Re* COOPER (CUTHBERT) & SONS, LTD., [1937] Ch. 392; [1937] 2 All E. R. 466; 106 L. J. Ch. 249; 157 L. T. 545; 53 T. L. R. 548; 81 Sol. Jo. 338.

5364a. —— —— ——.]—*Re* ELECTRIC ARMS AMMUNITION SYNDICATE (1891), 35 Sol. Jo. 818.

5372. *Add. Annotation:*—**Refd. Loch** *v.* **Blackwood**, [1924] A. C. 783.

5379a. —— **Subsidiary company.**]—The New South Wales Cos. Act, 1899, s. 84 (*e*), is identical with the English Cos. Act, 1929, s. 168 (6), & provides for winding up by the ct. when, in the opinion of the ct., it is just & equitable that the co. should be wound up.

A large American co. trading in gramophone records formed a subsidiary co. in Australia. The directors of the subsidiary co. who had previously been agents to the parent co., were interested in a competing co. & by a special agreement they were entitled to compete with the subsidiary co. These directors were also the holders of all the preference shares in the subsidiary co. & had been guaranteed by the parent co. or its nominees that the interest on the preference shares should be fully paid for two years after the date of allotment, & that in the event of the subsidiary co. being wound up within the said two years 20*s.* in the £1

PART III. SECT. 36, SUB-SECT. 2.—D. (b) i.

f i. —— *Property of speculative value.*] ... was a minority shareholder. ... 37,500 shares of the total ...ation of 2,000,000 shares. The property owned by the co. was an undeveloped mining location of merely speculative value. The location was intact & there were practically no liabilities, but the actual cash in the treasury was trifling:—*Held:* the case was not brought within the class of cases in which a winding-up is ordered, because the whole substratum of the undertaking has disappeared.—*Re* JURY GOLD MINE DEVELOPMENT CO., LTD., [1928] 4 D. L. R. 735; 63 O. L. R. 109.—CAN.

f ii. ——.]—The mere fact that there has been depreciation in the value of its assets, or that the assets had become frozen instead of liquid, did not establish the disappearance of the ... TORONTO FINANCE

PART III. SECT. 36, SUB-SECT. 2. D. (b) ii.

ii. —— ——.] CORPN. (N. S.), [1927] 337.—CAN.

m i. ——.]—Where a co. having for its main object the manufacturing & dealing in cement had failed to commence business for a period of 5 years following its incorporation, but an apparent majority of shareholders were then desirous to commence the manufacture of hydrated lime in accordance with one of the subsidiary objects, on a petition by a shareholder for compulsory winding up on the grounds of delay in commencing business, & that it was just & equitable that the co. should be wound up:—*Held:* the delay not having been satisfactorily explained, & it appearing that there was no prospect of the co. commencing business either in accordance with its main object or the subsidiary object, the substratum of the co. had gone & petitioner would appear entitled to an order for compulsory winding-up on either ground alleged.—*Re* NATIONAL PORTLAND CEMENT CO., LTD., [1930] N. Z. L. R. 564.—N.Z.

would be paid in respect of the capital of the preference shares. Within the period mentioned in the guarantee & at a time when, owing to the general depression in trade, business was bad & the subsidiary co. was being carried on at a loss the directors presented a petition to wind up the subsidiary co. :—*Held :* (1) the existence of the guarantee was only material in considering whether a compulsory order shall be made in so far as it biassed the evidence on either side ; (2) in considering whether it was just equitable to wind up the co. the criterion was not whether the directors were seeking to obtain the benefit of the guarantee or whether the parent co. were seeking to carry on the co. until such time as the guarantee had expired & thus avoid liability thereunder ; but whether, having regard to all the circumstances, there was at the date of the presentation of the petition a reasonable hope that in time the subsidiary co. could be carried on at a profit.—DAVIS & CO., LTD. *v.* BRUNSWICK (AUSTRALIA), LTD., BRUNSWICKE-BALKE-COLLENDER CO. & BRUNSWICK RADIO CORPN., [1936] 1 All E. R. 299, P. C.

5388. *Add. Annotations :*—**Consd.** Loch *v.* Blackwood, [1924] A. C. 783. **Apld.** *Re* Davis & Collett, Ltd., [1935] Ch. 693. **Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5397a. —— Omission to hold general meetings or to submit accounts.]—LOCH *v.* BLACKWOOD (JOHN), LTD., No. 5357a, *ante*.

5454a. Petition for winding up of unregistered foreign company dissolved before 1929 Act.]—*Re* RUSSIAN & ENGLISH BANK, No. 8548b, *post*.

PART III. SECT. 36, SUB-SECT. 2.—D. (d).

5384 ii. ——.]—Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887 ; 58 O. L. R. 585.—**CAN.**

r i. —— *Question of fact.*]—Although a majority shareholder may not tyrannously or fraudulently or for an ulterior purpose dominate a minority shareholder yet in deciding on a petition for an order for the winding up of the co. on the ground that it is just & equitable that such an order should be made, each case must be decided on its own facts.—*Re* SOVEREIGN OIL CO., LTD., [1934] 3 W. W. R. 317.—**CAN.**

t i. ——*Differences between two sole members.*] Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration :—*Held :* it was just & equitable that the co. should be wound up.—THOMSON *v.* DRYSDALE, [1925] S. C. 311.—**SCOT.**

t ii. —— *Deadlock caused by petitioners.*]—Winding-up order refused.—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173 ; 58 O. L. R. 100.—**CAN.**

t iii. —— ——.]—At the time of the presentation of the petition there were only four directors, whereas the co. under its bye-laws should have five. The two petitioning directors had recently refused to attend meetings or to discuss with the other directors the management of the co.'s affairs :—*Held :* if any deadlock existed it was created by the petitioners & was not a ground for ordering winding-up.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882 ; 65 O. L. R. 351.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a i. —— —— *Managing director conducting affairs as though company his private business.*]—BAIRD *v.* LEES, [1924] S. C. 83.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—A.

sg. *Leave to appeal from order—When granted.*]—Winding-up Act, 1927, s. 103, applies to an application for leave to appeal from an order allowing or dismissing a petition to wind up a co. Leave to appeal should not be granted, however, unless there appears to be some reason for doubting the validity of the judgment in review. "Futur rights" in sub-sect. (*a*) of said sec. 103 should be given a wide interpretation ; & the question to be raised on the intended appeal from an order dismissing a winding-up petition may involve future rights although the applicant for leave to appeal is merely a shareholder & not a creditor.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 209 ; 39 Man. L. R. 195.—**CAN.**

sh. *Security on appeal—Extension of time for giving.*]—The Ct. of Appeal has no power to extend the time for the giving of the security which Companies Winding-up Act, R. S. S. 1920 (c. 82), requires to be given when an appeal is taken from an order or decision in a proceeding under that Act. Resp.'s approval of the appeal book prior to the expiration of the time within which the security had to be given was held not to have been a waiver of his right to the security.—SHAUNAVON BUTCHERS, LTD. *v.* BURNESS, [1930] 1 W. W. R. 760 ; 3 D. L. R. 656 ; 24 S. L. R. 399.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) ii.

c i. —— ——.]—Petitioner herein, the holder of bonds of the co., which gave him in the words thereof a "first floating charge" on "the undertaking & all the assets of the co., both present & future" :—*Held :* to have a right to apply for a winding-up order & to have made out a case therefor. He was not obliged to proceed on the covenant to pay in the bonds & by way of judgment & execution rather than by way of the proceedings for a winding-up order.—*Re* MID-WEST GLASS CO., LTD., [1931] 3 W. W. R. 165 ; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q i. —— —— ——.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—PYDA SATYARAZU *v.* GUNTUR COTTON & PAPER MILLS CO., LTD. (1924), I. L. R. 48 Mad. 267.—**IND.**

5439 ii. —— ——.]—SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. *v.* LEVER (1924), 45 N. L. R. 73.—**S. AF.**

PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.

5484 i. *Executor of deceased shareholder.*]—*Held :* entitled to present a winding-up petition, although his name had not been entered in the books of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.—*Re* GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (Man.), [1927] 2 W. W. R. 15.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

l i. *General rule—Winding up detrimental to all concerned.*]—Winding-up order set aside.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887 ; 58 O. L. R. 585.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. —— *Exceptional circumstances.*]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300 ; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co. ; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily :—*Held :* although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—BOUBOULIS *v.* MANN, MACNEAL & CO., LTD., [1926] S. S. 637.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—D. (c).

sd. *Possibility of restoration of lost capital.*]—On an application for winding-up under R. S. C., 1927, on the ground of impairment of capital the ct. must determine the extent of the impairment, & whether the lost capital is likely to be restored within one year.—*Re* EASTERN FUR FINANCE CORPN., LTD., [1934] 1 D. L. R. 611 ; 7 M. P. R. 201.—**CAN.**

s. *Impairment of capital.*]—Under sect. 352 of Cos. Act, 1932, impairment of capital alone is not a ground for

5580a. —— **Whether vacation included in calculation.**]—The seven days required by General Orders No. 2 made upon the Cos. Act, 1862, may be counted in the vacation.—*Re* LONDON INDIA RUBBER CO. (1866), 14 W. R. 594, L. C.

5585. *Add. Citation :*—[1889] W. N. 1.

5590a. —— **Effect on right to costs.**]—PRACTICE NOTE, [1929] W. N. 66 ; 167 L. T. Jo. 245.

5605. After this case add :—

-.]—*See, now,* 1929 Act, s. 295 (5).

5634a. —— **Affidavit by assistant secretary**]—Under Cos. (Winding-up) Rules, 1929, r. 29, where the petition is presented by a corpn., the affidavit verifying it is to be made by some director, secretary or other principal officer. The assistant secretary of a co. is not a principal officer for the purpose of this rule.—PRACTICE NOTE, [1937] W. N. 350 ; 184 L. T. Jo. 350.

5648. *Add. Annotation :*—**Refd.** *Re* City Life Assce., [1926] Ch. 191.

5654a. Discretion of court to allow appearance although no notice given.]—PRACTICE NOTE (1930), 69 L. Jo. 268 ; [1930] W. N. 78.

5703. *Add. Citation :*—[1889] W. N. 1.

5711. After this case add :—

-.]—*See, now,* Winding-up Rules, 1929, r.

5815a. ——.]—*Re* KATHERINE ET CIE, LTD., No. 5959c, *post.*

5819. After this case add :—

-.]—*See, now,* 1929 Act, s. 175.

5829. *Add. Annotation :—As to* (3) **Folld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

5841a. Issue of debenture—For money advanced to company for payment of wages.] — *Re* PARK WARD & Co., LTD., No. 5186b, *ante.*

5881. *Add. Annotations :*— **Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5890. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

5908a. Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.]—*Re* AMUSEMENTS CONSTRUCTION CO., LTD., [1927] W. N. 7.

5938. *Add. Annotation :—As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

5943. *Add. Annotation :*—**Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

5948a. —— **On contracts.**]—STEAD, HAZEL & Co. *v.* COOPER, No. 5959d, *post.*

5959a. Duty to refund sum paid to company without consideration.] — *Re* REGENT FINANCE & GUARANTEE CORPN., LTD. (1930), 69 L. Jo. 283 ; 169 L. T. Jo. 305 ; [1930] W. N. 84.

5959b. Duty of liquidator of private company.]—The question arose in this case whether resp. had shown through a private co. a title under which he had become the assign of leasehold premises within sect. 95 of St. John's Municipal Act, 1921, & as such entitled on the expiration of the term granted by the lease to compensation for the unexhausted value of improvements made during the term. Resp.'s title was faulty & certain transactions under which he traced his title from the private co. irregular, but he was held by the Supreme Ct. to be an assign, a private co. not being regarded as a corpn. distinct from the persons composing it & irregularities in connection with its liquidation being

winding-up a solvent trading co.—*Re* WINNIPEG SADDLERY CO., LTD., [1934] 3 W. W. R. 1 ; 42 Man. L. R. 448.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (a).

sl. *Creditor's petition—Statement of debt.*]—A petition presented by a creditor for the winding up of a co. under Cos. Act, 1863, s. 81, ought to set forth the debt in respect of which the petitioner claims to be a creditor, together with the particulars of such debt, but, *semble,* he is not precluded from alleging *simpliciter* that he is a creditor. Where a petitioner alle one debt & gives evidence of ano the irregularity may, in case of sur prise, be cured by the amendment of the petition or the adjournment of the hearing.—*Re* BARRIER REEF TRADING CO., LTD. (1929), S. R. (Q.) 177.—**AUS.**

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—Application refused.—*Re* WINDING-UP ACT, *Re* GREAT WEST PERMANENT LOAN CO. (Man.), [1927] 2 W. W. R. 433.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (i.) ii.

st. *Dispute as to petitioning creditor's debt.*]—Where a co. is insolvent the ct. will not stay the proceedings on the ground that there is a *bonâ fide* dispute as to the petitioning creditor's debt.—*Re* PRIVATE CO., 1935] N. Z. L. R. 120.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 4.—B. (b) i.

5829 i. *General rule—Property becomes affected with trust for creditors.*]—A winding-up order establishes a *quasi*-trust of which the creditors are the beneficiaries & which for the purpose of set-off, is an entity essentially distinct from the original corpn. when carrying on business for the benefit of its shareholders.—LYALL (P.) & SONS CONSTRUCTION CO., LTD. *v.* BAKER, [1933] O. R. 286 ; 2 D. L. R. 264.—**CAN.**

PART III. SECT. 36, SUB-SECT. 4.—B.

m i. —— *Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.*]—HAMILTON *v.* HAMILTON STEEL CO. (1911), 18 O. W. R. 739 ; 2 O. W. N. 779 ; 23 O. L. R. 270.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—B.

5948 i. *Personal liability—For rates.*]—A liquidator whose name has not been entered on the assessment roll cannot be held personally responsible for the payment of taxes incurred during the winding-up.—TORONTO CITY & TORONTO HYDRO-ELECTRIC COMMISSION *v.* WADE, [1932] O. R. 500 ; 3 D. L. R. 509.—**CAN.**

sp. *Officer of company—Becomes functus officio on dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

st. *Liability to justify expenditure—Necessity for proof of misfeasance.*]—Before a liquidator can be called upon to justify an expense incurred by him in the course of liquidation, some particular evidence of negligence or breach of trust must be adduced before the case can be left to a jury.—NEW BRILLIANT FREEHOLD GOLD MINING CO., LTD. *v.* MILLS, [1928] St. R. Qd. 120.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (a).

sl. *Power to apply to court for directions—As to what matters—Ownership of bonds.*]—*Re* RANT & KER, LTD., [1930] 2 W. W. R. 274.—**CAN.**

so. *Duty in regard to trust company.*]—Where a trust co. is in liquidation, a first duty of the liquidator is to preserve the trust property & the accounts & forthwith apply to the proper ct. of the province submitting the facts fully & completely as an officer of the ct. should do, & apply for directions as to the disposal thereof. A co. in liquidation cannot continue to exercise the duties of trustee unless directed to do so by a ct. having jurisdiction over the trust, & a liquidator who undertakes to do so without such an application or any direction accepts responsibility for any consequence that may ensue. He has no right to assume that he as liquidator can continue in the name of the co. to function as trustee, but in accepting the office of liquidator he accepts the above-mentioned responsibility of applying forthwith to the ct. for directions with respect to the trust, even in the case where the co. has so conducted the affairs of the trust that its assets are wasted & no reasonable accounting can be made.—*Re* HIBBERT ESTATE, [1934] 3 W. W. R. 193 ; 4 D. L. R. 799.—**CAN.**

regarded as permissible :—*Held :* the duties & responsibilities of the liquidator of a private co. are as serious as of any other co., & a private co. is distinct from the persons composing it ; a liquidator of a private co. was therefore not justified in paying the creditors merely a dividend on their debts when large surplus assets remained in hand, & in then allowing the contributories without any deed of assignment to take possession for themselves of the surplus assets, & for the future in Newfoundland such irregularities should be without judicial countenance. Resp. had not established his claim to be legal assign of the property, having regard to such irregularities.—DITCHAM *v.* MILLER (1931), 100 L. J. P. C. 177 ; [1931] B. & C. R. 86, P. C.

Power to disclaim onerous property.]—*See* 1929 Act, s. 267.

5959c. —— Application for leave—What court will consider—Effect on interested parties.]—(1) Where the liquidator of a co. applies for leave to disclaim leasehold property of the co., the ct., in exercising its discretion, may take into consideration the effect of the disclaimer on interested parties.

The liquidator of a co. holding a lease applied for liberty to disclaim the lease. The lessors, who were relying on certain guarantors for the payment of the rent & performance of the covenants, opposed the application, on which the registrar made no order save as to payment of costs. On a motion before the ct. by way of appeal :—*Held :* as the lessors, who were entitled to appear, would suffer substantial injury if the disclaimer were allowed, the ct., in the exercise of its discretion, would not allow it.

(2) The winding up of a co. does not effect a *cessio bonorum*, & the property of the co. remains vested in the co. as before ; whilst in a bkpcy. the property of the bkpt. vests in the trustee (MAUGHAM, J.).—*Re* KATHERINE ET CIE, LTD., [1932] 1 Ch. 70 ; 101 L. J. Ch. 91 ; 146 L. T. 226 ; [1931] B. & C. R. 121.

5959d. —— Failure to disclaim—Whether personal liability.]—When a liquidator appointed by the ct. performs a contract of the co. without disclaimer or purports to make a new contract on its behalf, there is no presumption that he does so in his personal capacity, even though he does not describe himself as liquidator ; & his position in this respect is not altered by Cos. Act, 1929 (c. 23), s. 267, which gives him the right to disclaim any contract which he thinks onerous.—STEAD, HAZEL & CO. *v.* COOPER, [1933] 1 K. B. 840 ; 102 L. J. K. B. 533 ; 148 L. T. 384 ; 49 T. L. R. 200 ; 77 Sol. Jo. 117 ; [1933] B. & C. R. 72.

5972. *Add. Annotation :*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5973. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 191.

6047. *Add. Annotation :*—**Refd.** *Re* Leitch (William C.) Bros., Ltd. (No. 2), [1933] Ch. 261.

6048a. —— —— —— After declaration of liability.]—*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), No. 3353e, *ante.*

6055. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125 ; Madras & Southern Mahratta Ry. Co., Ltd. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

6056a. —— Damages & costs paid by insurance company in respect of judgment obtained against insured company.]—Appct. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator :—*Held :* appct. was not entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appct.—*Re* HARRINGTON MOTOR CO., *Ex p.* CHAPLIN, [1928] Ch. 105 ; 97 L. J. Ch. 55 ; 138 L. T. 185 ; 44 T. L. R. 58 ; 72 Sol. Jo. 48 ; [1927] B. & C. R. 198, C. A.

Annotations :—**Apld.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392 ; *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17.

-.]—*See, now,* Third Parties (Rights Against Insurers) Act, 1930 (c. 25).

6056b. Third Parties (Rights against Insurers) Act, 1930 (c. 25)—Whether retrospective.]—*Held :*

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k i. —— *Action by company—To recover purchase price of shares—What defences available—Fraud.*]—FARMERS PACK CO., LTD. *v.* TULLY & TULLY, FARMERS PACK CO., LTD. *v.* HAVERS (Man.), [1927] 2 D. L. R. 749 ; [1927] 1 W. W. R. 902.—**CAN.**

so. *Extent of duty.*]—A liquidator owes no duty to the co., or to those interested in the liquidation, to prosecute, or facilitate the prosecution of, any claim, whether against himself or a third party, unless he believes or has reason to believe, that such prosecution has a reasonable prospect of success or will serve some useful purpose. Where the claim is against the liquidator himself for an alleged misfeasance, particularly where he is a bare trustee, & neither believes, nor ought to believe, that the claim has any reasonable prospect of success, or that any useful purpose will be served by its prosecution, his duty as liquidator can be put no higher than a duty to take no advantage of his position as liquidator to impede the prosecution of such claim, & to take such action as will permit of such prosecution.—*Re* BOND (GEORGE A.) & CO., LTD. (1932), 32 S. R. N. S. W. 301 ; 49 N. S. W. W. N. 96.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sa. *Change of solicitor — When permissible—Under order of court.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 3 D. L. R. 9 ; 2 W. W. R. 440 ; 34 Man. L. R. 482.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—E. (e).

6026 i. *When ordered—Misfeasance summons.*]—MONTREAL TRUST CO. *v.* MCDOUGALL, [1930] 1 W. W. R. 784 ; 3 D. L. R. 159.—**CAN.**

PART III. SECT. 36, SUB-SECT. 9.—A.

sb. *Notice of meeting — To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders. — *Re* PATRICIA APPLIANCE SHOPS, LTD., [1923] 3 D. L. R. 1160 ; 52 O. L. R. 215 ; 2 C. B. R. 466.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—A.

e i. —— —— *Trust funds.*]—Trust property in the hands of a co. in its capacity as a trustee or fiduciary cannot be used to satisfy a judgment against that co. in its own right. Therefore where a trust co. had obtained judgment against its directors who appealed & obtained a reversal of the judgment with costs throughout, & the liquidator, who had been appointed in the meantime & had opposed the appeal, was ordered to pay said costs "out of the assets in his hands" :—*Held :* the costs in question should be paid out of the co.'s own assets & not out of those of any trust estate.—CANADIAN GUARANTY TRUST CO. *v.* YOUNG (No. 2), [1933] 1 W. W. R. 659 ; 3 D. L. R. 558 ; 41 Man. L. R. 177.—**CAN.**

Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1 (1) is not retrospective so as to affect cases in which the liability had been incurred before July 10, 1930, when the Act came into operation.—WARD *v.* BRITISH OAK INSURANCE CO., LTD., [1932] 1 K. B. 392; 101 L. J. K. B. 240; 146 L. T. 323; 48 T. L. R. 13, C. A.

Annotations :—**Distd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17. **Refd.** Croxford *v.* Universal Insurance Co., [1935] 2 K. B. 409.

6056c. —— —— **Liquidation after Act.**]—On Sept. 21, 1925, a policy of insurance was taken out by a co. insuring it against third-party risks. On Oct. 6, 1925, an accident to a third party occurred & the insurers thereupon became liable to the co. in respect of the accident. On July 10, 1930, Third Parties (Rights against Insurers) Act, 1930 (c. 25), came into operation. On Oct. 13, 1931, an order was made for the compulsory winding up of the co. On a summons taken out by the third party in the winding up of the co. asking to be subrogated to the rights of the co. against the insurers :—*Held :* the winding up of the co. having supervened after the Act of 1930 came into operation, sect. 1 of that Act became operative & enured to transfer the benefit of the policy of insurance from the co. to the third party.—

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L. J. Ch. 42; 153 L. T. 273; 18 Asp. M. L. C. 554; [1934–5] B. & C. R. 308, C. A.

6056d. —— **Policy obtained by fraud.**]—Where under Road Traffic Act, 1930 (c. 43), an insurance co. has issued a certificate that a driver is insured & the co. afterwards ascertains that the policy was obtained from it by fraud, the co. is entitled to succeed in this defence against a claim under Third Parties (Rights against Insurers) Act, 1930 (c. 25).—MCCORMICK *v.* NATIONAL MOTOR & ACCIDENT INSURANCE UNION, LTD. (1934), 50 T. L. R. 528; 78 Sol. Jo. 633; 40 Com. Cas. 76, C. A.

Annotation :—**Consd.** Tattersall *v.* Drysdale, [1935] 2 K. B. 174.

6058a. —— —— **Money borrowed from company by share-brokers.**]—The share-brokers of a provisionally registered co., who were also holders of shares, & had signed the co.'s deeds, borrowed of the directors part of the co.'s monies, to enable them to complete a large purchase of shares in the market, & deposited as a security the purchased shares & some of their original shares :—*Held :* the moneys borrowed were not due from them as members & contributories of the co., so as to authorise the master summarily to order them, in that character, to pay the

—— under Joint-Stock Cos. Act, 1848 (c. 45), s. 66.—*Re* TRING, READING & BASINGSTOKE RY. CO., COX'S CASE (1850), 3 De G. & Sm. 180; 19 L. J. Ch. 167; 14 L. T. O. S. 484; 14 Jur. 387; 64 E. R. 435; *affd.*, 15 L. T. O. S. 389, L. C.

...tation :—**Refd.** *Re* United English & Scottish Co., *Ex p.* Hawkins (1868), 3 Ch. App. 787.

Add. Annotations :—**Cons** 1 K. B. 464. **Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

6111a. —— **Discretion of court.**]—The discretionary power of allowing a question to be put at a public examination given to the ct. by Cos. (Winding-up) Act, 1890 (c. 63), s. 8 (7), is in no way limited by the other provisions of that sect., but is a discretion that must be judicially & carefully exercised under all the circumstances of each particular case.—*Re* LONDON & GLOBE FINANCE CO., LTD. (1902), 50 W. R. 253.

6133. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

6137a. —— —— —— ——.]—*Re* OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., POTTER'S CASE (1849), 1 De G. & Sm. 728; 5 Ry. & Can. Cas. 628; 18 L. J. Ch. 247; 13 L. T. O. S. 320; 13 Jur. 691; 63 E. R. 1270.

Annotations :—**Consd.** *Re* South Essex Estuary & Reclama-

6150. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

6150a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

——.]—(1) The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director :—*Held :* the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.

(2) No set-off is permissible as against a claim under sect. 215.—*Re* ETIC, LTD., [1928] Ch. 861; 97 L. J. Ch. 460; 140 L. T. 219; [1928] B. & C. R. 81.

6154. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

PART III. SECT. 36, SUB-SECT. 10.—B. (a).

sc. *Use of information—In subsequent criminal proceedings.*]—Information derived in the course of an examination under Indian Companies Act, s. 195, can be used by a public servant charged with the investigation of a criminal offence, & such officer should be allowed to inform himself as to anything which might have come to light on such examination.—*Re* REGENT PARK SYNDICATE, LTD. (1929), I. L. R. 57 Calc. 424.—**IND.**

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

6110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re* MCMILLAN GRAIN CO. & WINDING-UP ACT, [1927] 3 D. L. R. 229; [1927] 1 W. W. R. 899; 36 Man. L. R. 454.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—C. (a).

... Extent of jurisdiction of court.]—The ct., during winding up proceedings, may examine into the conduct of any director or officer who appears to have misapplied moneys.—*Re* SOLLOWAY MILLS & CO., [1935] 2 D. L. R. 459; O. R. 275.—**CAN.**

sa. *When leave refused—Failure of former action.*]—The ct. will not give leave to a liquidator to proceed against officers & shareholders to recover assets, when a former similar action has failed.—LLOYD-OWEN *v.* BULL, [1936] 1 D. L. R. 433; 50 B. C. R. 370; *revsd.*, [1936] 3 W. W. R. 146; 4 D. L. R. 273; 6 F. L. J. (Can.) 83, P. C.—**CAN.**

6154a. Discretion of court—As to sum payable by HOME & COLONIAL INSURANCE Co., No. 6858b,

6158. *Add. Annotation :*—**Reld.** Weld [1929] 1 Ch. 33.

6161. *Add. Annotations :—As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853. *Generally*, **Reld.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6169. *Add. Annotation :*—**Consd.** *Re* Etic, [1928] Ch. 861.

6173. *Add. Annotation :*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173a. —— Article relieving directors from loss—Unless arising from wilful neglect or default.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6173b. ——.]—*Re* ETIC, LTD., No. 6150b, *ante*.

6176a. Transactions in cotton futures.]—*Re* DAVID HEALEY & SON, LTD., DISTRICT BANK, LTD. *v.* HEALEY (1929), 74 Sol. Jo. 41.

6180a. Wrongful admission of proof—Failure to investigate claim.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6180b. Extent of liability—Discretion of court.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858, *post*.

6182. *Add. Annotations :—As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Reld.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6183. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

6183a. ——.]—*Re* ETIC, LTD., No. 6150b, *ante*.

6189. *Add. Annotation :—As to* (1) **Reld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6195a. Particulars—In respect of what matters ordered.]—In a misfeasance summons by the liquidator of a co. against two directors it was alleged in the points of claim that certain dividends were paid wholly out of the capital of the co. & not out of profits, & that there were in fact no profits of the co. out of which the dividends could properly & lawfully have been paid. The directors asked for an order for further & better particulars of the facts relied upon in support of these allegations, contending that under R. S. C., Ord. 19, r. 6, the fullest particulars are necessary where a breach of trust is alleged :—*Held* : the fact that the dividends were paid wholly out of capital was a material fact within R. S. C., Ord. 19, r. 4, & the fact upon which the liquidator relied. The liquidator ought not to be ordered to give particulars of that fact, as to give any further particulars would be merely to disclose the evidence by which it was intended to be proved.—*Re* DEPENDABLE UPHOLSTERY, LTD., [1936] 3 All E. R. 741.

6198a. Duty to give notice of intention to call witness.]—Two misfeasance summonses were called on for hearing together, appct. on each being the liquidator of the same co. It was stated that the liquidator desired to call a witness who had not made any affidavit in the proceedings, & that he had subpœnaed that witness, but had not given to resps. to either summons notice of his intention to call him. It was stated that resps. did not object to his being called. MAUGHAM, J., in allowing the witness to be called, said that misfeasance summonses were rather peculiar methods of procedure. They were summary proceedings, & brought out matters of great importance. An appct. on a misfeasance summons ought to give notice to resps. of intention to call a witness who had made no affidavit in the proceedings. Misfeasance summonses ought to be conducted with complete fairness to resps.—PRACTICE NOTE, [1933] W. N. 284.

6212. *Add. Annotation :*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6217. *Add. Annotation :*—**Distd.** *Re* Aidall, Ltd., [1933] Ch. 323.

6217a. —— —— ——.]—In the winding-up of a co., A. was placed on the list of contributories as the holder of 994 fully paid shares of £1 each out of a total capital of 1,000 shares. A. was assessed by the Comrs. under the powers given to them under Finance Act, 1922 (c. 17), s. 21, to the amount of £2,069 as his share of the profits of the co. during two assessing periods before the winding-up. On Oct. 18, 1929, a notice of assessment under the Income Tax Acts was given by the Special Comrs. of Income Tax. It was addressed to A. in the name of the co. (in liquidation). It was an assessment to super-tax of £568 19*s.* 6*d.* in respect of the £2,069. The notice contained the words :

PART III. SECT. 36, SUB-SECT. 10.—C. (d) i.

sd. *Something in nature of misconduct.*]—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of UICK SALES, LTD., [1926] N. Z. L. R. 24.—

PART III. SECT. 36, SUB-SECT. 10.—C. (d) iii.

se. *Payments to discharge directors' liability on guarantee.*]—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re* LINNEY (H.) & Co., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

sf. *Failure to have balance sheet prepared—Giving guarantees—Improper payment of dividends.*]—In the winding up of the F. co. under order of ct. it was disclosed, *inter alia*, that its liabilities included a large sum due on foot of guarantees in respect of the debts of the C. co., in which the F. co. owned all the shares, & also that substantial sums had been withdrawn from reserve & utilised in the payment of dividends on preference shares :—*Held* : (1) the failure to have proper balance sheets prepared, & the giving of guarantees to the C. co. & the payment of the preference dividends were wilful acts or defaults on the part of all the directors, & they were accordingly liable to make good the amount payable on foot of the guarantees & also to replace the amounts paid —*Re* (JOHN) & Co., LTD., [1932] N. I. 35.—**IR.**

PART III. SECT. 36, SUB-SECT. 10.—C. (g).

6201 i. *Position of liquidator on summons—Security for costs—Whether court will order.*]—On a summons for an order requiring the liquidator to give security for costs : — *Held* : although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be followed, & the summons must be dismissed.—*Re* NEW ZEALAND GUN MACHINE CO., LTD. (IN LIQUIDATION), [1927] N. Z. L. R. 100.—**N.Z.**

sd. *Refusal to set aside summons—Appeal.*]—There is no appeal without leave from refusal to set aside a misfeasance summons issued by an assistant master.—*Re* SOLLOWAY MILLS & Co., [1935] 1 D. L. R. 340 ; O. R. 37. —**CAN.**

" You are requested to inform the Comrs. if you elect to pay this tax." On Oct. 19, A. returned the notice with a statement that he entirely repudiated it. On Nov. 30, the sum of £9,070 5*s*. was paid to A. in respect of his share of the surplus assets of the co. by the liquidator. The Comrs made an application under Cos. Act, 1908 (c. 69), s. 165, asking for an order that A. might be ordered to refund to the co. or the liquidator the sum of £568 19*s*. 6*d*. out of the £9,070 5*s*., & that that sum, being the amount of super-tax which had been assessed upon the co. under Finance Act, 1922 (c. 17), s. 21, as amended by Finance Act, 1927 (c. 10), s. 31, might be paid out of the moneys so refunded. A. disputed both the jurisdiction of the ct. & the propriety, if there were a jurisdiction, of making the order, or any part of the order, asked for :—*Held :* A. had properly been put upon the list of contributories, notwithstanding the definition of " contributory " in Cos. Act, 1908 (c. 69), s. 124 ; (2) having received moneys from the liquidator upon a distribution of surplus assets of the co. in liquidation, with notice that the liquidator had not provided for payment of a debt due by the co., ought to be ordered to pay the amount of the debt to the credit of the liquidator's account at the Bank of England.—*Re* AIDALL, LTD., [1933] Ch. 323 ; 102 L. J. Ch. 150 ; 148 L. T. 233 ; 18 Tax Cas. 617 ; [1933] B. & C. R. 56, C. A.

Add. Annotation :—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

6293a. —— Excess of liability of contributories—Right to refund.]—An insurance co., the bulk of the shares of which were only partly paid up, was ordered to be wound up by the ct. These shares being held at the date of winding-up by another co., also in liquidation & insolvent, the liquidator of the insurance co, made two calls, the first of 1*s*. a share in 1925. & the second, described as a " final call," of 1*s*. 6*d*. a share in 1927, on the B. contributories who held the shares before they had been transferred to the insolvent co. The proceeds of these calls, together with the other assets of the co., were insufficient to pay all its creditors in full, but, apart from the other assets, exceeded by some £10,000 the total amount of the debts & liabilities of the co. contracted at the date when the B. contributories ceased to be members of the co. :—*Held :* the surplus did not form part of the assets of the co., but must be refunded to the B. contributories. The call must first be enforced against all B. contributories who had not paid it, so as to produce equality of contribution & distribution.—*Re* CITY OF LONDON INSURANCE CO., LTD., [1932] 1 Ch. 226 ; 101 L. J. Ch. 124 ; 146 L. T. 296 ; 48 T. L. R. 169 ; 76 Sol. Jo. 29 ; [1931] B. & C. R. 129.

6293b. Enforcement of call—Notwithstanding right to refund—Necessity for equality of contribution & distribution.]—*Re* CITY OF LONDON INSURANCE CO., LTD., No. 6293a, *ante*.

6315. After this case add :—

iii. *Other Cases.*

6315a. Order for repayment to liquidator—Receipt of surplus assets with notice that debt unpaid.]—*Re* AIDALL, LTD., No. 6217a, *ante*.

6346. *Add. Annotation :*—*As to* (1) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

6352a. Breach of contract to carry safely.]—Applt., who was a paying passenger on a tramcar,

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PART III. SECT. 36, SUB-SECT. 10.—E. (a) iii.

6221 i. *When liable as contributory—General rule.*]—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re* SOUTHERN CROSS MOTOR FUELS, LTD., *Ex p.* KELLEWAY, [1926] V. L. R. 527 ; 48 A. L. T. 100 ; [1926] Argus L. R. 427.—**AUS.**

sg. *Who are past members—Deceased joint shareholder.*]—Upon the death of one of several joint holders of a share in a limited co., deceased becomes a past member within Cos. Act, 1899, s. 33, &, in the event of the co. going into liquidation prior to the expiration of a period of one year from his death, his personal representatives are liable to be placed upon the B. list of contributories of the co.—*Re* WOOL TRADING CO., LTD. (NO. 2) (1920), 28 S. R. N. S. W. 435 ; 45 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 36, SUB-SECT. 10.—E. (b).

6238 i. *Termination of liability—Whether Statute of Limitations applicable.*]—A co.'s Act of incorpn. provided that every shareholder should be liable to the creditors of the co., for the amount not paid up on his shares. The co. was ordered to be wound up under the Winding-up Act (Dom.) :—*Held :* the liability of a shareholder with respect to the amount unpaid on his shares was a statutory one & not dependent on the terms of the contract under which he took the shares, &, therefore, the Statute of Limitations could not be relied on as a defence.—*Re* IMPERIAL CANADIAN TRUST CO. & MCKEAGUE, [1929] 4 D. L. R. 381 ; 2 W. W. R. 423 ; 38 Man. L. R. 249 ; *affd.*, [1929] 1 W. W. R. 588.—**CAN.**

sj. *How enforced—Right of liquidator to bring action.*]—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242 ; 2 W. W. R. 521.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (c).

t i. —— ——.]—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

sk. —— *Deceased shareholder.*]—*Re* CANADIAN CORDAGE & MANUFACTURING CO. (1923), 54 O. L. R. 486.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (e) ii.

6296 ii. —— ——.]—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation. — *Re* DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO., LTD., *Re* PANNA LAL (1927), I. L. R. 50 All. 476.—**IND.**

6298 i. —— *Power of liquidator to make immediate call—For whole of unpaid balance on shares.*]—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27 ; [1924] 3 W. W. R. 850.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—F.

p i. —— *Without consent of general creditors—Or of Accountant of Court.*]—An English co. in compulsory liquidation owned heritable estate in Scotland burdened with hereditable securities to an extent admitting of no reversion for its general creditors. The liquidator having sold the property privately with the consent of the heritable creditors, the purchasers maintained that the sale was invalid without the concurrence also of the general creditors & of the Accountant of Ct., as required by Bkpcy. Act, 1913, s. 111 :—*Held :* Bkpcy. Act, 1913, s. 111, as incorporated into Cos. Act, 1929, by sect. 270 (1) (c) thereof, did not have the effect of derogating from the liquidator's powers under sect. 191 (2) (*a*) of 1929 Act, by which sub-sect. he was entitled to carry through the sale without the concurrence either of the general creditors or of the Accountant of Ct.—STYLE & MANTLE, LTD.'S LIQUIDATOR *v.* PRICES TAILORS, LTD., [1934] S. C. 548.—**SCOT.**

suffered serious injuries owing to the tramcar getting out of control, &, the tramway co. having subsequently been ordered to be wound up, applt. lodged a proof, claiming damages for breach of contract to carry her safely on the journey as a paying passenger. The liquidator rejected the proof on the ground that within Bkpcy. Act, 1914 (c. 59), s. 30, & Cos. Act, 1929 (c. 23), s. 262, it was a claim for unliquidated damages "arising otherwise than by reason of a contract," in other words, that it was a claim based on tort:—*Held:* as the proof was based on contract it must be allowed, & there must be an inquiry as to the damages.—*Re* GREAT ORME TRAMWAYS CO. (1934), 50 T. L. R. 450.

6359. *Add. Annotation:*—**Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

6361. After this case add:—

——.]—*Compare* FOWLER *v.* COMMERCIAL TIMBER CO., LTD., No. 3491a, *ante*.

6362. *Add. Annotation:*—**Apld.** *Re* Snow (W. R.) & Co. (1930), 74 Sol. Jo. 201.

6368a. —— **For salary for dismissal without notice.**]—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement:—*Held:* he was entitled to the salary as claimed.—*Re* MADRID BANK, *Ex p.* WILLIAMS (1866), L. R. 2 Eq. 216; 35 L. J. Ch. 474, 14 W. R. 706; *sub nom. Re* MADRID BANK, LTD., *Ex p.* HOLDER, *Ex p.* WILLIAMS, 14 L. T. 456.

Annotations:—**Refd.** *Re* Madrid Bank, Wilkinson's Case (1867), 15 W. R. 331; *Re* General Exchange Bank, Preston's Claim (1868), 19 L. T. 138.

6384a. Proof by holder against drawer—Dissolution of drawer before maturity—Limitation of action.]—In Oct. 1915, in order to rehabilitate Russian credit in London, an arrangement was made by the Bank of England, with the authority of the Treasury, under which approved Russian banks were to draw three months' sterling bills & remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks & accepting houses, who agreed to renew the bills until one year after the termination of the War, the Banque de l'Etat undertaking to provide to meet the acceptances on maturity. Imperial Russian Treasury Bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. No accepting house was to be liable for more than £100,000, unless otherwise agreed. In pursuance of this arrangement the Russio-Asiatic Bank in 1916 drew 151 bills of exchange on twenty-one accepting houses maturing in Feb. & Mar. 1918, which were presented through Baring Bros. & Co. as agents for the Banque de l'Etat & accepted by the banks & financial houses under a form of agreement with the Banque de l'Etat which carried out the above arrangement more completely; & authorised the issue by the Treasury of sterling Treasury Bills of the Imperial Russian Govt. to the amount of the acceptances to cover any default in payment on maturity. In Jan. 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer bonds to the accepting houses to the amount thereof. Notice of the assignment was despatched by the Bank of England to the Russo-Asiatic Bank in Petrograd, but according to the evidence never reached its destination in consequence of the Bolshevist revolution in Russia. By a decree issued by the Soviet Govt. in Dec. 1917, all private banks in Russia were abolished & the whole of their assets transferred to a State bank. The Russo-Asiatic Bank, whose head office was in Petrograd, was one of the banks so abolished. Its London branch was opened in 1908 & was ordered to be wound up by the ct. in 1926, under 1929 Act, s. 338. The Bank of England, on behalf of the Crown, lodged a proof of debt in the liquidation for £752,500, proceeds of the above named bills. The liquidator rejected the proof of the Bank of

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PART III. SECT. 36, SUB-SECT. 11.—A. (c).

6357 ii. —— ——.]—In Oct. 1907, R., J., I., G., & H., five directors of C. & Co., Ltd., entered into agreements under which they became employees of the co., each receiving a salary & one-fifth of the net profits. The agreements were to remain in force for ten years, unless terminated as therein provided. R., being unable to attend to the business of the co., entered into a new agreement dated June 14, 1911, whereby his prior agreement was annulled, & it was agreed that he & his personal representatives should continue to be paid one-fifth of the net profits, so long as he or they retained the share interest in the capital of the co., which he then held, in one undivided holding. The agreements with the other directors were not cancelled, but, by supplemental agreements, it was provided that if they gave up their employment with the co. they also would continue to receive their respective one-fifth shares of the net profits, so long as their respective shares in the co. were retained in one holding. H. died in 1913; G. in 1914; R. in 1919. In 1920 £3,000 was appropriated in respect of directors' shares of the net profits, payable under their agreements, & was placed to the credit of a directors' remuneration account. This sum was subsequently divided into five sums of £600 & placed to the credit of their respective deposit accounts with the co. The co. had power under its arts. of assocn. to fix the remuneration of directors, & in pursuance of a resolution passed at the annual meeting of the co. on June 11, 1920, a sum of £3,500 was placed at the disposal of the managing directors, then J. & I., & two others, as a bonus for the year 1919-20. Of this sum £1,300 was allotted to J. & I. respectively. These amounts were not paid out, but were retained by the co. & placed to the credit of their deposit accounts in 1925. The co. having become insolvent, went into voluntary liquidation, & up to that time the five sums of £600 & the two sums of £1,300 had not been paid to the persons who claimed them:—*Held:* (1) the sums of £600 claimed by the personal representatives of H., G., & R., were sums due to members of the co. in their character of members by way of dividends, profits, or otherwise, within Cos. Act, 1908, s. 123 (1) (vii), & accordingly the persons claiming these sums were not entitled to compete with the ordinary creditors of the co. in respect thereof; (2) J. & I., having continued their employment with the co. until after June 11, 1920, the sums of £600 claimed on their behalf were payable to them under their contracts of employment, & not in their character of members of the co., & so did not come within Cos. Act, 1908, s. 123 (1) (vii); (3) the sums of £1,300 due to I., & to the personal representatives of J., were sums given to them, not by agreement, but under the arts. of assocn., & so were not payable to them in their character of members within Cos. Act, 1908, s. 123 (1) (vii).—*Re* CINNAMOND PARK & CO., LTD., [1930] N. I. 47.—**IR.**

PART III. SECT. 36, SUB-SECT. 11.—A. (f).

si. —— ——.]—The liquidator of a co. in voluntary liquidation carried on the business on demised premises, paying rent. In Nov. he ceased to carry on business & removed the co.'s goods, except fixtures, the property of the liquidator, from the premises, but retained the keys until the following May, refusing payment:—*Held:* during the period the liquidator was liable out of the co.'s assets for rent. A liquidator's liability for rent out of the co.'s assets is not dependent on or to be measured by the degree to which the use of the demised premises has been profitable to him or the co. Liability for rent of premises taken into use by a liquidator continues until the liquidator unambiguously determines the case.—*Re* FLOUR & GRAIN EXCHANGE, LTD., *Ex p.* RIX, [1934] S. A. S. R. 386.—**AUS.**

England on several grounds, the most important being that the claim was barred by the Statutes of Limitation :—*Held :* (1) the bills had been assigned to the Bank of England with the authority & on behalf of the Crown, & had passed to the bank an equitable title to all the rights under the agreements made with the acceptors, including the right of action for breach of contract, if the bills were not paid at maturity ; (2) the obligation being to pay in sterling in London at maturity the debt was located in England & not in Russia, & therefore English law must be applied ; (3) the Russian Imperial Treasury bills were only a collateral security & being of no value at any material time were not a discharge of the debt ; (4) on the evidence of experts & documents, the Russo-Asiatic Bank ceased to have any corporate existence in Russia as the result of decrees of the Soviet Govt. made on or before Jan. 26, 1918, a date before the bills matured, & as from that date there was no debtor who could be sued. The Statute of Limitations therefore was no defence to the application, & the Bank of England was entitled to be admitted to prove for the debt in the winding up of the London branch of resp. bank. There being no evidence, however, that notice of the assignment had reached the drawers, the assignors must be joined in the application.—*Re* RUSSO-ASIATIC BANK, *Re* RUSSIAN BANK FOR FOREIGN TRADE, [1934] Ch. 720 ; 103 L. J. Ch. 336 ; 152 L. T. 142 ; 78 Sol. Jo. 647 ; [1934] B. & C. R. 71.

6392. *Add. Annotation :*—**Consd.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6394a. —— ——.]—The society, under a loan stock trust deed, issued loan stock bearing interest at 7 per cent. with a quinquennial bonus of 2½ per cent. Under the trust deed, entered into by the society with trustees for the stockholders, an amount equal to 7½ per cent. on the par value of the stock was to be paid to the trustees, for apportionment to the interest & to a fund for the bonus. At the date of an order for the winding up of the society, most of the stockholders had received payment in full of interest at 7 per cent. on the amount of loan stock issued, up to & including a date seven months before the order. The trustees lodged with the liquidator a proof stated to be for cash advanced on loan ; & this summons asked (i) whether the proof should be rejected to the extent of interest proved for above 7½ per cent. up to the date of the commencement of the winding up ; (ii) whether interest should be calculated, at 5 per cent., to the date of the order or to the commencement of the winding up ; & (iii) whether Bkpcy. Act, 1914 (c. 59), s. 66 (2) (*b*), had any application to proof or dividend in respect of the loan stock :—*Held :* (1) the amounts proved for by the trustees were to be computed only to the date of the commencement of the winding up ; (2) Bkpcy. Act, 1914 (c. 59), s. 66, was not incorporated by 1908 Act, s. 207, so as to apply in the winding up of an insolvent co., & that the trustees' proof was therefore calculable at the rate of 7½ per cent.—*Re* AGRICULTURAL WHOLESALE SOCIETY, [1929] 2 Ch. 261 ; 98 L. J. Ch. 396 ; 141 L. T. 551 ; 45 T. L. R. 467 ; [1929] B. & C. R. 54.

Annotations :—As to (2) **Apld.** *Re* Wells, [1929] 2 Ch. 269. **N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202 ; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

6396a. —— **Whether bankruptcy rules applicable.**]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante.*

6399a. Adoption of balance sheet including directors' fees—Whether acknowledgment within Statute of Limitations.]—*Re* COLISEUM (BARROW), LTD., No. 3126a, *ante.*

6400. *Add. Annotation :*—**Consd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., Ltd., [1936] Ch. 17.

6403. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6407. *Add. Annotation :—Generally,* **Reld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6409. *Add. Annotation :*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

6409a. Rule limiting rate of interest.]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante.*

6409b. Rule relating to copyright or interest in copyright vested in bankrupt.]—A book was published by Co. No. 1 under an ordinary royalty agreement. Thereafter Co. No. 1, with the consent of the author, granted to Co. No. 2 the exclusive right of publishing a cheap edition subject to the payment of a royalty to Co. No. 1, & Co. No. 1 agreed with the author to pay to him a half share of such royalty. Co. No. 1 went into voluntary liquidation, & the liquidator contended that the author was not entitled to payment in full of a half share of the royalty received or to be received from Co. No. 2, but must prove in the liquidation for the value of his contract :—*Held :* the author was entitled to payment in full of the half share of royalty received or to be received by the liquidator from Co. No. 2.—HENHAM *v.* ALSTON RIVERS, LTD. (1916), Macgillivray, Copyright Cases (1911-16) 330.

Annotation :—**Distd.** *Re* Health Promotion, Ltd., [1932] 1 Ch. 65.

6409c. ——.]—Bkpcy. Act, 1914 (c. 59), s. 60, does not apply in the winding up of an insolvent co.

Two authors entered into agreements with a publishing co. for the exclusive right to print & publish certain books written by them. The copyright in some of the books was to go to the co., in others, to remain to the authors : & royalties were payable to the authors as in the agreements provided. The co. went into voluntary liquidation, & the liquidator sold its assets, including copies of the books : & it was agreed by a later

PART III. SECT. 36, SUB-SECT. 11.—B. (a).

sd. *Right of creditor under Bankruptcy Act,* 1927, *s.* 69.]—A shareholder in a bkpt. co. has not the [illegible] by sect. 69 of Bkpcy. Act, R.S.C., 1927, to a creditor.—RICKERD & POWELL *v.* WEBER & WEBER, [1934] 1 W. W. R. [illegible]

sf. *Effect of Supreme Court Act,* 1878, *s.* 6 (1).]—The provisions of sects. 92, 93 of Federal Bkpcy. Act, [illegible], are not imported into the winding up of a co. under the provisions of Cos. Act, 1892, by the language of sect. 6 (1) of Supreme Ct. Act, 1878.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—AUS.

agreement between him & the purchaser that nothing in the agreement should prejudice the purchaser's right to sell them. The co. became insolvent. On a summons to determine whether, where the copyright or some interest in it was vested in the co. at the date of the resolution to wind up, the sale was subject to Bkpcy. Act, 1914 (c. 59), s. 60, & whether, where the copyright was not then vested in the co., the consent of the authors was necessary to the sale:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 60, is not incorporated in Cos. Act, 1929 (c. 23), s. 262, & therefore did not apply to the rights of the authors.—*Re* HEALTH PROMOTION, LTD., [1932] 1 Ch. 65; 101 L. J. Ch. 58; 146 L. T. 211; [1931] B. & C. R. 97.

6414. *Add. Annotations:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70; James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6421. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6427. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6428. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6431. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6436a. ——.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, deft. has no right of set-off in respect of sums alleged to be due to him from the co.—ALLIANCE FILM CORPN., LTD. *v.* KNOLES (1927), 43 T. L. R. 678.

6442. *Add. Annotation:*—*As to* (1) **Refd.** Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6442a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to to the liquidator the sum for which he recovered judgment against the co.:—*Held:* the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debits capable of set-off; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re* A DEBTOR (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

6442b. No set-off against sums paid in fraudulent preference.]—The co. being wound up had had business relations with two other cos. Within three months of the commencement of the winding up, the co. now in liquidation owed money to the other two cos. & the latter also owed money to the former. The co. in liquidation paid its debts to the other cos. without any claim of set-off in respect of the debts owing by them. These payments were admittedly a fraudulent preference, but the cos. claimed to set off the debts paid by them during the same period against the claim of the liquidator for repayment of the sums paid:—*Held:* no set-off having been asserted or made, the liquidator was entitled to repayment in full.—*Re* FOWLER (B. P.), LTD., [1937] 3 All E. R. 781.

6444. *Add. Annotations:*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6445. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6446. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* City Life Assce., [1926] Ch. 191; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6447. *Add. Annotations:*—*As to* (2) **Apld.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. *Generally*, **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6448. *Add. Annotations:*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

6423 i. ——.]—**Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.**—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

o. Add "*revsd.* 16 S. C. R. 456.

o i. —— *Claim to indemnity in respect of shares held as trustee.*]—D. & F. were joint managers of the M. Bank, &, while so acting, a number of stocks, shares, & other securities, & amongst others, £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred into their names, as trustees for the bank. There was also assigned to them by certain customers of the bank 801 shares in the bank itself, as security for moneys due, or to become due, from them to the bank; & these shares were, at the date of the liquidation, standing in the names of D. & F. During the years 1883 & 1884 the £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred to the Bank of Ireland, as security for advances to the M. Bank on an account entitled in the name of the Governor & Co. of the Bank of Ireland, "in collateral account with D. & F., both of the M. Bank." The M. Bank stopped payment in July, 1885, & was being wound up. F. absconded, & on Oct. 1, 1885, an order was made that the estate & interest of D. & F. in the £40,000 Consols & £60,000 New Three Per Cent. Stock should vest in D. & the liquidators of the M. Bank. The Bank of Ireland having been paid off, the £40,000 Consols & £60,000 New Three Per Cents. were, on Oct. 5, 1885, transferred into the names of D. & the liquidators. The liquidators placed D. on the list of contributories in respect of the 801 shares, & made a call thereon; & they also required D. to join with them in realising the stock. D. claimed to be indemnified against the calls out of these stocks:—*Held:* as against creditors, D. had no such right of indemnity.—*Re* MUNSTER BANK, LTD. (DILLON'S CLAIM) (1886), 17 L. R. Ir. 341.—IR.

6455a. —— Joint partnership debt — Creditor member of firm.]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member :—*Held :* the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re* PENNINGTON & OWEN, LTD., [1925] Ch. 825 ; 95 L. J. Ch. 93 ; 134 L. T. 66 ; 41 T. L. R. 657 ; 69 Sol. Jo. 759 ; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotation :*—**Reld.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6457a. Lump sum compensation payable to workman—" Rights capable of being transferred."] —An injured workman received weekly payments of compensation from his employer, who was a limited co. insured with a mutual indemnity co., until the date of commencement of winding it up. The indemnity co. was only liable under its contract of insurance to indemnify the employer for six weeks after it commenced to be wound up, & accordingly only paid compensation to the workman for a further six weeks, when its liability to the employer under the contract ceased. The workman took out a summons in the winding-up of the employing co. claiming to all other debts for the lump sum for which, at the commencement of the winding-up his weekly payments could have been redeemed to the extent to which the liability of the insurers to the workman was less than the liability of the co. to the workman. He claimed that that was the combined effect of sect. 264 of Cos. Act, 1929 (c. 23), & sect. 7 of Workmen's Compensation Act, 1925 (c. 84). The contract between the indemnity co. & the employer was such as was mentioned in sect. 7 of 1925 Act, though the rights of the employers capable of being transferred to & vested in the appct. were in fact less than his rights against his employers, in other words, his employer was not fully insured. Sect. 264 of Cos. Act, 1929 (c. 23), provides for compensation to be paid in priority, unless there is a contract with insurers under which by virtue of sect. 7 of 1925 Act there are rights capable of being transferred to the workman :—*Held :* in view of the fact that there were " rights capable of being transferred " within sect. 264 (1) (*d*) of Cos. Act, 1929 (c. 23), such sect. gave no priority right in the winding-up.

Summons dismissed.—*Re* WHITEHAVEN COLLIERY CO., LTD. (1935), 28 B. W. C. C. 1.

6460. *Add. Citations :*—130 L. T. 1 ; [1923] B. & C. R. 114 ; *affg.* S. C. *sub nom.*

PART III. SECT. 36 SUB-SECT. 11.—D. (a).

f i. —— ——.]—In the distribution of the assets of a bkpt. co. (consisting of personal property, insufficient to pay in full all claims now in question), which co. had carried on business in Toronto, Ontario, the following claimants were, for reasons stated below, held entitled to payment according to the following order of priority : (1) the Treasurer of the Province of Ontario (for tax under Corpns. Tax Act, R. S. O., 1927) ; (2) the City of Toronto (for business tax imposed under Assessment Act, R. S. O., 1927), & the Toronto Electric Comrs. (for supply of electrical energy under Public Utilities Act, R. S. O., 1927) ; (3) the landlord ; (4) the custodian & the trustee (for costs, fees & expenses) ; (5) the Workmen's Compensation Board (for indebtedness under the Workmen's Compensation Act, R. S. O., 1927, c. 179) ; (6) the Minister of National Revenue (for sales tax imposed under the Special War Revenue Act, R. S. C., 1927, c. 179).—*Re* GENERAL FIREPROOFING CO. OF CANADA, LTD., [1937] S. C. R. 150 ; 2 D. L. R. 30.—**CAN.**

h i. —— *Rent.*]—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re* SHRIVES & MCKENZIE PTY., LTD., [1926] V. L. R. 563 ; 48 A. L. T. 99 ; [1926] Argus L. R. 442.—**AUS.**

h ii. *S. P. Re* CARPENTER HALES & CO., LTD. (1926), 26 S. R. N. S. W. 420 ; 43 N. S. W. W. N. 116.—**AUS.**

sk. *Insolvency Act, 1928—Whether applicable.*]—In the winding up of an insolvent co., sect. 207 of Cos. Act, 1928, does not apply the rules as to priority of debts contained in the Insolvency Act, 1928.—*Re* EUTROPE (W. H.) & SONS PTY., LTD., [1932] V. L. R. 124 ; Argus L. R. 151.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—D. (b).

sm. *Price of wheat supplied under State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation :—*Held :* the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re* OCKERBY & CO., LTD. (1922), 25 W. A. L. R. 25.—**AUS.**

sn. *Price of coal from State coal mine.*] —The Victorian Railways Comrs. supplied coal from the Victorian State Coal Mine to a co. which subsequently went into voluntary liquidation. The Comrs. lodged a proof of debt with the liquidator in respect of the price of the coal, but, after having received two dividends, they claimed priority over the other creditors on the ground that the amount due was a debt due to the Crown :—*Held :* the debt was one due to the Crown, & was entitled to priority over the other debts of the co., Cos. Act, 1928, ss. 186, 208, not affecting Crown debts.—*Re* ORIENTAL HOLDINGS PTY., [1931] V. L. R. 279 ; Argus L. R. 266.—**AUS.**

so. *Debt due to public Board.*]—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion ; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund :—*Held :* a debt due to the Board was not a debt due to the Crown.—METROPOLITAN MEAT INDUSTRY BOARD *v.* SHEEDY, [1927] A. C. 899 ; 137 L. T. 782 ; 43 T. L. R. 701, P. C.—**AUS.**

sp. *Contributions under Unemployment Insurance Acts.*]—A co. was being wound up by the ct. under the provisions of the Companies (Consolidation) Act, 1908, &, in answer to the advertisement for claims against the co., the liquidator received from the Department of Industry & Commerce a claim in respect of unpaid contributions under the Unemployment Insurance Acts in respect of workmen employed by the co. Portion of the amount was claimed as a preferential payment under Unemployment Insurance Act, 1920, s. 26 (1), in respect of contributions payable by the co. during the four months before the commencement of the winding up as specified in that sect., & the balance was claimed as a State debt to rank next after the preferential debts & in priority to the ordinary creditors :—*Held :* the claim of the Department other than such portion as was payable under sect. 26 (1), was not payable in priority to the claims of the general creditors of the co.—*Re* A. & B. TAXIS, LTD., [1931] I. R. 87.—**IR.**

sq. *Damages for breach of contract.*]—*Held :* the Crown, in the right of the Dominion Govt., had priority, in respect of its claim for unliquidated damages for breach by the shipbuilding co. of a contract for the building of ships, over the claims of a city corpn. & electric comrs. for taxes & the price of power supplied.—TORONTO (CITY) & TORONTO ELECTRIC COMRS. *v.* WADE, [1931] 4 D. L. R. 928 ; O. R. 470 ; *affd.*, [1932] 3 D. L. R. 509 ; O. R. 500.—**CAN.**

st. *Extent of priority.*]—Creditors whose claims have arisen subsequently to the liquidation & have been properly incurred by the liquidator in the course of the winding up have priority over the claims of the creditors which arose before the liquidation, except claims by the Crown of equal or higher degree, & except the claims of the execution creditor to the amount of the value of his security. Debts due to the Postmaster-General, the Deputy Federal Comr. of Taxation, & the State Comr. of Taxation are entitled to priority over the claims of unsecured creditors of equal degree, but are postponed to the debts of secured creditors, & to the extent of their security.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—**AUS**

Re WEBB (H. J.) & Co. (SMITHFIELD, [illegible]

Add. Annotations :—**Refd.** *Re* Winget, Burn Winget, [1924] 1 Ch. 550 ; *Re* Cockell, *v.* A.-G., [1931] 1 Ch. 389.

6462. *Add. Annotations :*—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

Rates paid by director—Preferential rights of director.]—*Re* LAMPLUGH IRON ORE Co., No. 3105a, *ante.*

6466. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6467. *Add. Annotation :*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6472a. —— —— **No exclusive employment—Or fixed hours.**]—ANGLO-AUSTRIAN CONFECTIONARY Co., LTD., BARTLETT *v.* THE COMPANY (1912), Y. S. C. P.

6477a. —— —— ——.]—*Re* GENERAL RADIO Co., LTD., FIRST CO-OPERATIVE INVESTMENT TRUST, LTD. *v.* THE Co., [1929] W. N. 172.

6500. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

6506. *Add. Annotation :*—**Apld.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6513a. —— **From rejection of proof.**]—A claim was made against a co. in liquidation for damages. The liquidator issued a summons to have it determined whether the claims should be allowed & the judge made an order for an inquiry into the amount of damage sustained & that the claimant be permitted to prove for the sum so ascertained. The damages were so ascertained by the registrar & a proof carried in. The liquidator rejected the proof on the ground that a shareholder, while retaining his shares, cannot claim damages in respect of any loss in respect of his shares :—*Held :* this objection was too late. It should have been taken on the hearing of the summons or on appeal therefrom.—*Re* AYNEK SYNDICATE, LTD., [1930] 1 All E. R. 406.

6517a. Right to consider set-off.]—A [illegible] when examining a proof of debt [illegible] to its admission or rejection, is [illegible] to examine a set-off to such proof, if it is a matter of account, in order to arrive at the amount, if any, for which the proof is to be allowed.—*Re* NATIONAL WHOLE MEAL BREAD & BISCUIT Co., [1892] 2 Ch. 457 ; 67 L. T. 293 ; 40 W. R. 591 ; 36 Sol. Jo.

6533a. —— **On footing that company insolvent—Company found solvent—Right to prove for balance.**]—A compulsory order having been made for the winding up of a co. on the ground of its being just & equitable to make such an order, the costs of the co. of the petition were taxed & paid out of the assets on the basis that it was insolvent. The co. was ultimately found to be solvent, & the solr. claimed to prove in the liquidation for the balance of his bill of costs, being solr. & client costs incurred upon the instructions of the co. & its directors in opposing the petition. The liquidator rejected the proof on the ground that the amount claimed represented costs already taxed off the bill, & the registrar upheld his decision on the ground that there was no right of proof for any costs beyond the taxed costs of the petition under r. 192 of the Winding-up Rules, 1929 :—*Held :* the solr. was entitled to prove for any unpaid balance of costs due to him from the co., there being nothing to the contrary contained or implied in r. 192, which was concerned with the priorities of different sets of costs incurred in winding up. There being sufficient to pay all creditors in full, the co.'s solr. was entitled to be paid his costs as between solr. & client, & the liquidator was ordered to admit the proof, subject to taxation if he so desired.—*Re* C. B. & M. (TAILORS), LTD., [1932] 1 Ch. 17 ; 101 L. J. Ch. 6 ; 146 L. T. 118 ; [1931] B. & C. R. 69 ; 75 Sol. Jo. 797.

6549a. —— **Costs of summons by debenture-holders.**]—The directors of a co. registered under 1862 Act, being empowered by their articles to borrow on debenture bonds any sums " necessary " for the business of the co.,

PART III. SECT. 36, SUB-SECT. 11.—D. (c).

st. *Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309 ; 5 C. B. R. 378.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (d).

a i. ——.]—*Held :* a director of the co., the secretary, a floor-manager & host, an entertainer & the members of a band of musicians did not come within the definition of " clerk or servant " in s. 208 (1) (*c*) of Cos. Act, 1915, & were therefore not entitled under the section to preferential claims for salary or wages.—*Re* ESPLANADE THEATRE, LTD. (IN LIQUIDATION) (1929), V. L. R. 237 ; Argus L. R. 198.—**AUS.**

946) **i.** —— *Meaning of " going into liquidation."*]—Bkpcy. is a " going into liquidation " within sect. 100 (1) (*b*) of Cos. Act, R. S. O., 1927.—DAVEY *v.* GIBSON, [1930] 3 D. L. R. 606 ; 65 O. L. R. 379 ; 11 C. B. R. 341 ; *affg.*, [1930] 2 D. L. R. 139 ; 64 O. L. R. 627 ; 11 C. B. R. 138.—**CAN.**

st. *Effect of Bankruptcy Act, s.* 48 (4).]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re* CALGARY FURNITURE STORE, LTD. & HIGGS, [1924] 2 D. L. R. 308 ; [1924] 1 W. W. R. 1137 ; 4 C. B. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (a).

sv. *Not bondholders under unregistered trust mortgage.*]—*Re* BEAVER TRUCK Co. (Ont.), [1926] 1 D. L. R. 71.—**CAN.**

sw. *Bondholders — Notwithstanding abandonment of lien against purchaser of assets.*]—*Re* ST. JOHN RIVER LOG DRIVING Co. (N. B.), [1927] 3 D. L. R. 800.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (b).

6490 i. *Whether proof for total sum due at time of claim—Where securities realised before claim.*]—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—MCFARLAND *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT Co. (Can.), [1927] 3 D. L. R. 67.—**CAN.**

sy. *Whether interest on balance after security exhausted can be added.*]—In the liquidation proceedings of an insolvent co. a secured creditor after having exhausted his security cannot in proving as regards the balance of his debt unsatisfied include interest after the date of the winding up order.—OPPENHEIMER *v.* MOOLA (1929), I. L. R. 7 Ran. 514.—**IND.**

PART III. SECT. 36, SUB-SECT. 12.—B. (d).

6528 i. *Lien on fund recovered by his exertions—Costs incurred before winding up—Fund not under control of court.*]—A petition for a charging order was presented by a law agent who had recovered a fund for a company registered in England. The ct. granted the order, notwithstanding the voluntary liquidation of the company & the payment over of the fund to the liquidator in England.—PHILIP *v.* (1911), 48 Sc. L. R. 947.—

in Dec. 1865, issued twenty debentures of £100 each, all in the same form, by which they pledged "the property belonging to us for the time being during the subsistence of the debenture, with all the buildings & stock on, & connected with, our said property, & all the receipts & revenues to arise therefrom"; & declared that the entire debenture loan & interest should be a first charge on "our undertaking & property & receipts & revenues aforesaid." The business of the co. was to buy & sell land, to build, buy, & sell houses, to furnish houses for hotels, & to carry on the business of hotel keepers. A winding-up order having been made, the liquidator proceeded to sell certain freehold & leasehold estate belonging to the co.; but the purchaser refused to complete unless the debenture-holders were satisfied. The debenture-holders thereupon took out a summons in Chambers:—*Held:* after making all just allowances to the liquidator in realising the fund, the debenture-holders, applying by way of summons in the matter of the winding up, were entitled to their costs, as well as to their principal & interest, out of the fund, in priority to all other charges.—*Re* MARINE MANSIONS CO. (1867), L. R. 4 Eq. 601; 37 L. J. Ch. 113; 17 L. T. 50.

Annotation:—**Folld.** *Re* Oriental Hotels Co., Perry *v.* Oriental Hotels Co. (1871), L. R. 12 Eq. 126.

6555a. Payment of dividend to creditors of private company—Surplus assets handed over to contributories—Validity.]—DITCHAM *v.* MILLER, No. 5959b, *ante*.

6558a. Deduction of sur-tax from shares of members.]—A private co. to which Finance Act, 1922 (c. 17), s. 21, applied, having gone into voluntary liquidation, there was a large surplus for distribution amongst the holders of preference & ordinary shares. The Special Comrs. of Income Tax having given a direction under that sect. that the surplus must be deemed to be the undistributed income of the members for the purposes of sur-tax, assessed the co. to sur-tax for the previous financial year, & apportioned the tax among the members in accordance with their holdings, some being liable to pay sur-tax, & others not so liable. Notices of the charge were served upon the members liable, but none of them elected to pay the tax within the prescribed period of twenty-eight days, & notice having then been served upon the co., the liquidator paid the tax so assessed:—*Held:* in distributing the balance of the surplus among the members the liquidator, having regard to Finance Act, 1922 (c. 17), Sched. I., para. 8, must bring into account the sur-tax so paid against the amounts receivable by the members in respect of their incomes from their holdings of preference & ordinary shares in the co.—*Re* DREW (ALEXANDER) & SONS, LTD., [1935] Ch. 93; 104 L. J. Ch. 78; 152 L. T. 281; 51 T. L. R. 113; 78 Sol. Jo. 876; [1934–5] B. & C. R. 230.

6563. *Add. Annotation:*—**Apld.** Sugden *v.* Urban Fire Insurance Co. (1930), 75 Sol. Jo. 60.

6565. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers (1928), 98 L. J. Ch. 17.

6567. *Add. Annotations:*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

6569a. —— **What are.**]—A limited co.'s memorandum of assocn. provided that the preference shareholders should be entitled "in a winding up to such a share of the surplus assets as shall provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided for the holders of the preference shares shall not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets":—*Held:* the expression "surplus assets" meant what was left after the payment of debts & the repayment of the whole of the preference & ordinary capital.—*Re* DUNSTABLE PORTLAND CEMENT CO., LTD. (1932), 48 T. L. R. 223; 76 Sol. Jo. 95.

6576. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6578. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579a. —— —— ——.]—1929 Act, s. 177, by which no action or proceeding shall be continued or begun without the ct.'s leave against a co. after the making of a winding-up order against, or the appointment of a provisional liquidator of, the co., does not apply to proceedings abroad. But proceedings abroad by a person or corpn. within the ct.'s jurisdiction can be restrained by the ct., in the exercise of its equitable jurisdiction *in personam*, if that person has been properly served, within the jurisdiction, with the ct.'s order restraining the proceedings. Where, however, a foreign co. registered in a foreign country & also in England, or other foreign creditor within the ct.'s jurisdiction, has given credit to an English co. registered & trading in the foreign country, knowing the English co. to have attachable assets there, the ct. will not exercise its equitable jurisdiction *in personam* to restrain proceedings abroad, since it would not be just or equit-

PART III. SECT. 36, SUB-SECT. 12.—C.

sz. *Judgment creditor — Right to interest.*]—On the liquidation of a co. judgment creditors who obtained their judgments after the commencement of the liquidation as well as those who obtained their judgments prior thereto held alike entitled to interest out of any surplus remaining after payment of all the principal debts.—*Re* COLONIAL ASSURANCE CO. (Man.), [1928] 3 W. W. R. 703.—**CAN.**

sb. —— *Seizure before winding up—Priority.*]—In the winding up of a co. judgment creditors of the co., in respect of whose debts a seizure of the assets of the co. has been made prior to the presentation of the petition for winding up, are entitled to be paid their claims in priority to petitioner's & liquidator's costs & the liquidator's remuneration, notwithstanding that no sale has been effected prior to the presentation of the petition.—*Re* WHITEROCK QUARRIES, LTD., [1933] I. R. 363.—**IR.**

PART III. SECT. 36, SUB-SECT. 12.—D. (a).

m i. ——.]—*Re* SMEETONS, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 190.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 13.—A.

p i. —— —— *Sale by mortgagees in possession.*]—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co.":—*Held:* the mtgees. were proceeding rightfully.—*Re* BRITISH COLUMBIA TIE & TIMBER CO. [illegible] 14 B. C. R. 81; 9 W. L. R. 495.

able to restrain them on the ground either that the foreign co. or creditor is within the ct.'s jurisdiction or that the foreign co. or creditor can be served with proceedings in England. If the English co. is wound up by the ct., & its foreign branch is wound up by the foreign ct., the foreign co. or other creditor is free to prove the debt in the foreign country &, subject to the *lex fori*, to bring an action there.—*Re* VOCALION (FOREIGN), LTD., [1932] 2 Ch. 196; 102 L. J. Ch. 42; 148 L. T. 159; 48 T. L. R. 525; [1933] B. & C. R. 1.

6581. *Add. Citation:—affd.*, [1867] W. N. 178, L.JJ.

6591. *Add. Annotation:*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

6610. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6616. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6619. *Add. Annotation:—As to* (1) **Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6624a. —— Delivery to liquidator—1929 Act, s. 269—Charge for costs of execution—What costs included.]—The costs of the execution referred to in Cos. Act, 1929, s. 269 (1), are limited to the sheriff's costs & do not include the judgment creditors' costs of issuing & serving the writ on the sheriff.—*Re* WOODS (BRISTOL), LTD., [1931] 2 Ch. 320; 100 L. J. Ch. 335; 145 L. T. 444; 47 T. L. R. 464; 75 Sol. Jo. 458; [1931] B. & C. R. 17.

6627. After this case add:—*See, now*, 1929 Act, s. 268.

6649. After this case add:—

——.]—*See, now*, 1929 Act, s. 268.

6663. *Add. Annotations:*—**Refd.** *Re* South Rhondda Colliery Co. (1898), Ltd. (1928), 72 Sol. Jo. 453; Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

6669. *Add. Annotation:*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

6717a. ——.]—The High Ct. has jurisdiction to transfer winding-up proceedings from the High Ct. to any ct. which has jurisdiction to wind up cos., & can transfer proceedings in the winding up of a co. with a capital exceeding £10,000 to a county ct. having winding-up jurisdiction. — *Re* VERNON HEATON CO., LTD., [1936] Ch. 289; 105 L. J. Ch. 115; 154 L. T. 374; 52 T. L. R. 156; 80 Sol. Jo. 33; [1934–5] B. & C. R. 305.

6718. *Add. Annotation:*—**Distd.** *Re* Vernon Heaton Co., [1936] Ch. 289.

6727. *Add. Annotation:*—**Refd.** *Re* Yagerphone, Ltd., [1935] Ch. 392.

6727a. —— —— ——.]—The joint liquidators in the voluntary winding up of a co. recovered a sum of money alleged to have been paid to a creditor by the co. by way of fraudulent preference. A debenture holder took out a summons in the liquidation for an order that the money recovered from the creditor should be paid to the receiver of the property charged by the debenture:—*Held:* the money did not become part of the general assets of the co., but was a sum of money received by the liquidators & impressed in their hands with a trust for those creditors among whom the assets of the co. were distributable.—*Re* YAGERPHONE, LTD., [1935] Ch. 392; 104 L. J. Ch. 156; 152 L. T. 555; 51 T. L. R. 226; 79 Sol. Jo. 162; [1934–5] B. & C. R. 240.

6731. After this case add:—

—— ——.]—*See, now*, 1929 Act, s. 265 (2).

6731a. Necessity for dishonesty.]—*Re* PATRICK & LYON, LTD., No. 3353b, *ante*.

6740. *Add. Annotation:*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

6741. *Add. Annotations:*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410. **Expld.** *Re* Fowler (B. P.), Ltd., [1937] 3 All E. R. 781.

6745. *Add. Annotation:*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

6746. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6746a. Payment to principal creditor—To relieve surety.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act,

PART III. SECT. 36, SUB-SECT. 13.—C. (a).

sg. *Action for negligence.*]—Where it is alleged that through the negligent handling of an asset of a co. a tort was committed after the making of a winding-up order, the claim of the injured party for damages does not fall within the language of sect. 136 of Winding-up Act; &, therefore, leave should be granted under sect. 21 of said Act to commence an action against the co. if such action is not barred by a statutory limitation. Where such an action has been begun without leave before the expiration of the time prescribed by statute for bringing such an action, a *nunc pro tunc* order giving leave to bring the action should not be granted after said period has expired.—*Re* G. B. WOOD, LTD., SPIVAK *v.* LEE, [1932] 3 W. W. R. 525; 40 Man. L. R. 613.—**CAN.**

PART III. SECT. 36, SUB-SECT. 13.—C. (b) II.

sk. *Action against insurance company—By injured third party.*]—In an action for damages for personal injuries through being run down by a car, pursuer obtained a decree in absence against the owner of the car & on his failing to make payment, used arrestments in the hands of the insurance co. with whom defender was insured against third party risks & brought an action of forthcoming. While this action was pending the insurance co., which had its registered office in England & a place of business in Scotland, was ordered to be wound up:—*Held:* in view of Cos. Act, 1929, sects. 177 & 380, the action could not proceed without the leave of the ct. which had pronounced the winding-up order, & action sisted until leave of the English ct. should be obtained.—MARTIN *v.* PORT OF MANCHESTER INSCE. CO., [1934] S. C. 143.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 13.—D. (a).

n. Add "*revsd.* 23 A. R. 426."

PART III. SECT. 36, SUB-SECT. 13.—D. (c).

sb. *Writ filed after winding-up order.*]—*Held:* not to constitute a lien, even for costs, against the property of a [illegible] in liquidation.—*Re* LEITCH COL[illegible] D. L. R.

PART III. SECT. 36, SUB-SECT. 15.—B.

6741 i. *Debt due to directors—Set-off against amount unpaid on shares.*]—MICHELL *v.* BOOTH (1928), S. A. S. R. 367.—**AUS.**

sd. *General rule.*]—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re* NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING CO., LTD., [1927] N. Z. L. R. 16.—**N.Z.**

sf. *Deposit of lease—To prevent creditor cashing post-dated cheque.*]—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co.:—*Held:* as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re* DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD. (1924), 58 I. L. T. 42.—**IR.**

Loan of stock by directors to company—Mortgage of stock—Assignment of redemption to directors.]—[illegible] BOOTH, [1927] S. A. S. R. 576.—**AUS.**

1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made:—*Held:* the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co. [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

Annotation:—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6746b. Withdrawal of opposition—To motion for extension of time for registration of charge.]—The debtor co. of which applt. became the liquidator, deposited with resp. Trust title deeds of certain property to secure a sum of money owing by it to the Trust, agreeing to execute any necessary deed in respect of the property charged. The Trust did not register the charge within the prescribed time, & ten months afterwards applied to the Chancery Div. under 1929 Act, sect. 85, for an extension of the time for registration on the ground of inadvertence. The co., at the time of that application, was unable to pay its debts, & counsel were briefed on behalf of the co. to oppose the application for extension of time, but before the hearing of the application the instructions to oppose were withdrawn, an order was made for an extension of the time, & the charge was registered. An order for the compulsory winding up of the co. was made shortly afterwards, & the liquidator issued a summons in the winding up claiming that the withdrawal of the opposition of the co. was the suffering by it of a judicial proceeding with a view of giving a creditor a preference, & therefore must be deemed fraudulent & void as against the liquidator, having regard to the provisions in Bkpcy. Act, 1914 (c. 59), s. 44, & 1929 Act, sect. 265. W., who gave instructions for the withdrawal of the opposition by the co., was a director of the co. & managing director of the Trust:—*Held:* the onus was on the liquidator to satisfy the ct. that the dominant intention of the co. in withdrawing its opposition to the application for an extension of time was to prefer resps. &, there being no direct evidence of such an intention, an intent to prefer could not be inferred.—PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252; 151 L. T. 63; 50 T. L. R. 345; *sub nom. Re* M. I. G. TRUST, LTD., 103 L. J. Ch. 173; [1934] B. & C. R. 33, H. L.

Annotation:—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6756a. Order made without jurisdiction.]—By the rules of a mutual marine insurance assocn., which was not registered under the Companies Act, it was provided that all persons who effected an insurance with the assocn. should be members. No ship was to be insured for more than three-fourths of its value, the person insuring paid a deposit of 25*s.* per cent. on the amount of the insurance, & in case of the total loss of a vessel, the members were to pay the loser the amount for which he had insured it rateably, according to the amounts assured to them respectively. The assocn. consisted of more than twenty members. A vessel insured by R. was lost, & the amount of the loss was referred to arbitration. R. assigned his claim to his bankers, who obtained judgment in R.'s name on the award, &, not obtaining payment, presented a petition to wind up the assocn., the petition stating that the assocn. consisted of more than seven members, but not stating that it consisted of more than twenty. The petition was served at the abandoned office of the assocn. which had ceased to carry on business, & the proper advertisements were issued. On May 28, 1880, a winding-up order was made, no one appearing to oppose. In Nov. 1881, another member of the assocn. heard, for the first time, of the winding-up order, & within a week applied for leave to appeal against it:—*Held:* the order having been made by a superior ct. having jurisdiction in winding up, & having authority to decide as to its own competency, must, if the assocn. was one which ought not to be wound up, be treated merely as an erroneous order, & not as an order void for want of jurisdiction, & that the proper manner of getting rid of it was by appeal.—*Re* PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN. (1882), 20 Ch. D. 137; 51 L. J. Ch. 344; 45 L. T. 774; 30 W. R. 326, C. A.

Annotation:—**Consd.** *Re* Bowling & Welby's Contract, [1895] 1 Ch. 663.

6756b. Order of county court.]—This ct. will not entertain appeals from county ct. orders, unless the order appealed against has been completed & an office copy is produced for our inspection (EVE, J.).—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139; 98 L. J. Ch. 9; 140 L. T. 174; 45 T. L. R. 11; [1928] B. & C. R. 144, D. C.

PART III. SECT. 36, SUB-SECT. 17.

sk. *Order of province.*]—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re* HOME BANK OF CANADA & WINDING-UP ACT, [1925] 1 D. L. R. 734; 34 B. C. R. 321.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—C.

t. Add "*revsd.* 14 S. C. R. 624."

sl. *Order dismissing winding-up petition.*]—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1931] 1 D. L. R. 751.—**CAN.**

sm. *Order placing name on list of contributories.*]—A judge of the Supreme Ct. of Canada has jurisdiction to grant leave of appeal to this ct., under sect. 108 of Winding-Up Act, from a judgment ordering that the name of a person should be put on the list of contributories, its effect being to fix his liability at an amount over $2,000, although such judgment does not condemn him to pay immediately a definite sum of money.—*Re* JOYCE DRESS CORPN., LTD., HOROWITZ *v.* GREENBERG. [1934] S. C. R. 212; 3 D. L. R. 160.—**CAN.**

sp. *Order refusing security for costs—Application by liquidator.*]—An order refusing security for costs on application by a liquidator is not appealable.—*Re* SOLLOWAY MILLS CO., *Re* SOLLOWAY, [1936] 3 D. L. R. 504; O. R. 416.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—D. (a).

e i. *S. P. Re* DOMINION SHIPBUILDING & REPAIR CO., LTD., [1926] 3 D. L. R. 274; 59 O. L. R. 89.—**CAN.**

6775. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

]—*Re* CONSOLIDATED SOUTH MINES DEEP, LTD., [1909] 1 Ch. 491; 78 L. J. Ch. 326; 100 L. T. 319; 16 Mans. 81, C. A.

Motion to validate debenture.] — *Re* PARK WARD & CO., LTD., No. 5186b, *ante*.

6830. After this case add :—

—— **On property.**]—*See, now*, 1929 Act, s. 296.

6857. *Add. Annotation :*—**Consd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

6857a. ——.]—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925 (c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re* WINDSOR STEAM COAL CO. (1901), LTD., [1928] Ch. 609; 97 L. J. Ch. 238; 72 Sol. Jo. 335; [1928] B. & C. R. 36; *affd.* on other grounds, [1929] 1 Ch. 151, C. A.

Annotation :—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6858a. —— **When investigating proof.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6858b. Whether liable for negligence—On wrongful admission of proof.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co., B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co. :—*Held :* (1) a liquidator in the voluntary winding up of a limited co. is not, apart from negligence, liable for wrongly admitting a claim by an alleged creditor; (2) the liquidator did not, in the circumstances, fulfil his duty of investigating the claim of the L. Co., & was therefore liable as for misfeasance under Cos. Act, 1908, s. 215, for admitting the claim of the L. Co. since it was in fact an invalid one; (3) the Arts. of a limited co. cannot amount to a contract between the co. & its liquidator, & he could not therefore rely on an Art. absolving officers of the co. from liability except for fraud; (4) the position of a liquidator examining a proof for admission or rejection in a winding-up is the same as that of a trustee in bkpcy.; (5) in fixing the amount which a person liable for misfeasance under Cos. Act, 1908, s. 215, should be ordered to pay or contribute to the assets of the company, the ct. has a discretion, &, in the special circumstances, the liquidator should be ordered to contribute, by way of compensation, only such a sum as would enable all creditors to be paid in full with interest at 5 per cent.—*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

6874. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26; Mudd *v.* Collins (1925), 133 L. T. 186. **Distd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625; Henry *v.*

PART III. SECT. 36, SUB-SECT. 18.—H.

sp. *Of directors appealing against order.*]—The directors of a co. that was ordered to be wound up under Cos. Act retained in their hands certain moneys belonging to the co. & spent them on an appeal filed by the co. against the order of the winding up. The appeal was unsuccessful & there was no order of appellate ct., allowing the costs of the co.'s advocates out of the estate :—*Held :* the official liquidator could, under the directions of the ct., allow the expenditure, if incurred *bonâ fide*, & up to a reasonable extent.—MOOLLA *v.* OFFICIAL LIQUIDATOR (1928), I. L. R. 7 Ran. 34.—**IND.**

PART III. SECT. 36, SUB-SECT. 19.—I.

so. *Of creditor—Obtaining charging order.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., DAVIDSON *v.* SWANSON (Sask.), [1928] 2 W. W. R. 256.—**CAN.**

sp. *Amount—Application of K. B. rule 951.*]—Although a petition for the winding-up of a co. under Winding-up Act, R. S. C., 1927, is dismissed, it is a proceeding under said Act, & K. B. rule 951, which limits certain costs to $300 & disbursements, does not a thereto.—*Re* CANADIAN NATIONAL INSURANCE CO. & BROWNSTONE, [1931] 1 W. W. R. 753; 2 D. L. R. 875; 39 Man. L. R. 539; 12 C. B. R. 338.—**CAN.**

CO. (No. 2), [1931] 2 W. W. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 20.

m i. —— *On powers of liquidator—Power to complete formal act after dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

q i. —— *Grounds for granting or refusing.*]—*Re* ALBERNI PACIFIC LUMBER CO., THOMAS *v.* LAWSON (B. C.), [1927] 3 D. L. R. 1126; [1927] 2 W. W. R. 662.—**CAN.**

PART III. SECT. 37, SUB-SECT. 3.—B.

d i. —— *Sufficiency of resolution.*]—An extraordinary resolution for the winding up of a co., that it cannot " by reason of the passing & enforcement of Prohibition Act continue its business " is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

d ii. —— *Resolution providing for liquidator to act under supervision of directors.*]—*Held :* highly objectionable.—PARASHURAM DATTARAM SHAMDASANI *v.* TATA INDUSTRIAL BANK, LTD. (1928), 55 L. R. Ind. App. 274.—**IND.**

PART III. SECT. 37, SUB-SECT. 4.—B.

sm. *Payment to person purporting to be liquidator.*]—Where, after payment made to one purporting to be a liquidator, deft. discovered that the was not legally a liquidator :—the doctrine of estoppel was not applicable.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

sp. *Liability for negligence—Sale of assets.*]—An unsecured creditor of a limited co., which had gone into voluntary liquidation & had been dissolved, sued the sole liquidator, in negligence, alleging, as a breach of duty to pltf., that the assets had been greatly in excess of the amounts secured thereon, & that the liquidator had sold the equity of redemption of the co. in those assets at a price far below its real value :—*Held :* pltf. had no right of action in negligence.—FRANKLIN (THOMAS) & SONS, LTD. *v.* CAMERON (1936), 36 S. R. N. S. W. 286; 53 N. S. W. W. N. 30.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—C.

o i. —— *Whether in own name.*]—A receiver, as such, is not entitled to bring an action in his own name, since no property is vested in him. A liquidator of a co. in voluntary liquidation is not, as such, entitled to bring an action in his own name, but must do so in the name of the co.—BOLTON & DOWNS BUILDING CO., LTD. *v.* DARLING DOWNS BUILDING SOCIETY, [1935] Q. S. R. 237.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—D.

sp. *Increase by court.*]—Where the remuneration of a liquidator in a voluntary winding up has been fixed

Foster (Arthur), Henry *v.* Foster (Joseph) (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748 **Refd.** Seymour *v.* Reed, [1927] A. C. 554 Benyon *v.* Thorpe (1928), 97 L. J. K. B. 705 Dewhurst *v.* Hunter (1932), 146 L. T. 510; Stedeford *v.* Beloe, [1931] 2 K. B. 610.

6875. *Add. Annotation:*—**Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

6875a. —— **Profit costs—Solicitor co-liquidator.**]—One of two liquidators in the voluntary winding up of a limited co. was a solr., who acted on behalf of the other liquidator & himself in certain proceedings. The proceedings resulted in a compromise by which, *inter alia*, the liquidators' costs were to be paid. On taxation of the costs it was objected that as the solr. was one of the liquidators he could not charge any profit costs for the work done by him in the proceedings. The liquidators contended that profit costs should be allowed on the principle that where one of two trustees acts on behalf of himself & his co-trustee in litigious proceedings he is entitled to charge his profit costs. The registrar held that that principle did not apply to one of two joint liquidators, on the ground that it was excluded by the Cos. (Winding-up) Rules, 1929, r. 158:—*Held:* (1) the Cos. (Winding-up) Rules, 1929, r. 158, prohibits any arrangement for any remuneration beyond the remuneration to which a liquidator is entitled under 1929 Act, or the Cos. (Winding-up) Rules, 1929; (2) there must have been some arrangement made between the two liquidators, whereby the solr. had become entitled to some remuneration beyond that to which he was entitled under the Act or rules, & the solr. was therefore prohibited from receiving profit costs whilst acting as solr. for himself & his co-liquidator.—*Re* GERTZENSTEIN, LTD., [1937] Ch. 115; [1936] 3 All E. R. 341; 155 L. T. 573; 53 T. L. R. 89; 80 Sol. Jo. 933; [1936–7] B. & C. R. 146.

6878a. Review—Voluntary winding-up superseded by compulsory order.]—Where a members' voluntary liquidation of a co. is superseded by compulsory liquidation, the ct. is empowered by r. 192 (1) of Cos. (Winding-up) Rules, 1929, to review the amount of remuneration fixed by the members of the co., during the voluntary liquidation, as payable to the voluntary liquidator.—*Re* MORTIMERS (LONDON), LTD., [1937] Ch. 289; [1937] 2 All E. R. 364; 106 L. J. Ch. 164; 157 L. T. 544; 53 T. L. R. 493; 81 Sol. Jo. 295; [1936–7] B. & C. R. 131.

6880a. Costs of opposing petition for compulsory winding up—Disallowed on taxation.—Allowed to voluntary liquidator.]—A co. passed a resolution for voluntary winding up Five days later a petition was presented by a creditor for a compulsory order, & a month later the usual compulsory order with the usual order as to costs was made. The voluntary liquidator appeared on the petition in opposition to it. On the taxation of costs the registrar disallowed certain items of costs incurred by the liquidator after the resolution but before the petition was heard, including the costs of consultations by the liquidator & of obtaining counsel's opinion. The solr. to the liquidator then brought in a further bill of costs, including items disallowed on the previous taxation, but allowable on a taxation between solr. & client:—*Held:* these costs, which were costs incurred by the liquidator in opposing a compulsory order, were properly allowed, in the discretion of the ct.—*Re* ADLER (WILLIAM) & CO., LTD., [1935] Ch. 138; 104 L. J. Ch. 58; 152 L. T. 251; 78 Sol. Jo. 898; [1934] B. & C. R. 150, C. A.

6895. *Add. Annotation:*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

6904a. —— —— **By receiver—Liability of receiver.**]—THOMAS *v.* TODD, No. 4979a, *ante*.

6922a. —— **Premiums paid to company—In respect of ultra vires extension of objects.**]—A joint stock co. was formed under a deed describing its business as life assurance. Resolutions of extraordinary general meetings were regularly passed & confirmed for extending the business to marine insurance. The marine business was mentioned in the annual returns to the registry office. & referred to in reports & circulars, & on one occasion a report on the marine business was sent out with the dividend warrants. A deed extending the purposes of the co. to sea risks was executed by some only of the shareholders; but it did not appear that any shareholder had objected to the marine business being carried on. About one & a half years after the commencement of the marine business the co. was wound up:—*Held:* (1) there was no such acquiescence by the shareholders as to entitle the holders of marine policies to prove in respect of them; (2) the premiums paid might be proved against the co.—*Re* PHŒNIX LIFE ASSURANCE CO., BURGES & STOCK'S CASE (1862), 2 John. & H. 441; 31 L. J. Ch. 749; 7 L. T. 191; 9 Jur. N. S. 15; 10 W. R. 816; 70 E. R. 1131.

Annotation:—**Consd.** Sinclair *v.* Brougham, [1914] A. C. 398.

6924a. —— **Claim by manager for loss of salary.**]—*Re* SNOW (W. R.) & CO., LTD. (1930), 74 Sol. Jo. 201.

6934. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. Co., [1930] 2 Ch. 293.

6936. *Add. Citations:*—130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON) LTD., [1922] 2 Ch. 369.

Add. Annotations:—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389, C. A.

6936a. —— **Deduction of income tax from payment of interest by company on mortgage.**]—A

by a general meeting the ct. has power to increase that remuneration in a proper case.—*Re* BRIGHTON MOTORS PTY., LTD., [1932] V. L. R. 241; Argus L. R. 181.—**AUS.**

PART III. SECT. 37, SUB-SECT. 8.

6936 i. *Preferential debts—Crown debts.*]—A co., which had given a mtge. to the Crown under Fruit Preserving Industry Act, 1913, which mtge. was transferred to the State Advances Account, went into voluntary liquidation:—*Held:* the Crown debt had priority.—TASMAN FRUIT PACKING ASSOCN., LTD. *v.* R., [1927] N. Z. L. R. 518.—**N.Z.**

6936 ii. —— ——.]—C. A. S. E., Ltd., a co. incorporated in South Australia, went into voluntary liquidation in South Australia. The co. owed debts (*inter alia*) to the Department of Agriculture & the Railways Comr. in South Australia:—*Held:* in the winding-up, these debts took priority as owing to the Crown. The co. also owed debts to the Railways Comrs. of New South Wales & Queensland:—*Held:* in the winding-up, these debts were due to the Govts. of the two

co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs. :—*Held :* inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re* LANG PROPELLER, LTD., [1927] 1 Ch. 120 ; 95 L. J. Ch. 516 ; 136 L. T. 48 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836 ; 11 Tax Cas. 46 ; [1926] B. & C. R. 127, C. A.

6936b. —— **Rates—Payment by director—Preferential rights of director.**]—*Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante*.

6943. *Add. Annotation :*—**Apld.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6944a. ——————.]—In Sept. 1925, certain premises were demised under two leases to a co., & each of the leases contained a personal covenant on the part of the co. as tenants, to pay the rent during the currency of the lease. In Jan. 1933, notice was given by the co. to determine the leases, with the result that they would come to an end at Michaelmas, 1938. In Jan. 1933, the premises were assigned to another tenant. In Apr. 1933, the co. went into voluntary liquidation & the liquidator distributed its assets without making provision for future rent due under the leases. In an action brought by the lessors against the liquidator for a declaration that, in distributing the assets without making provision for the liabilities of the co. under the two leases, he had acted wrongfully & negligently & in breach of his duty as liquidator, & for damages :—*Held :* the liability was one which ought to have been admitted to proof by the liquidator under 1929 Act, s. 261, & he had committed a breach of his statutory duty under sect. 274 of the Act to pay or provide for the liabilities of the co., in not taking steps to have the value of the contingent liability ascertained, & he was liable in damages to pltfs.—JAMES SMITH & SONS (NORWOOD), LTD. *v.* GOODMAN, [1936] Ch. 216 ; 105 L. J. Ch. 70 ; 154 L. T. 113 ; [1934-5] B. & C. R. 283, C. A.

6947. *Add. Annotation :*—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6950a. —— **Postponed to income tax on profits made by liquidator.**]—A co. incorporated in 1907 owned & worked mines & transport facilities in Algeria under concessions from the French Govt. In Dec. 1925, the ct. sanctioned a scheme for the transfer to two French cos. of the whole of the co.'s undertaking & assets, except cash & assets sufficient to repay the co.'s preference share capital, & a resolution for voluntary liquidation was passed. The co.'s manager was appointed liquidator at a salary of £1,000 a year & its creditors were told that the liquidation was purely formal & they would be paid in full. The assets excepted from the undertakings to be acquired by the French cos. were not enough to repay the whole of the co.'s preference share capital &, under a provision in the scheme, payments on account amounting altogether to five shillings in the pound were made to preference shareholders in 1925 & 1926. Owing to various difficulties created by causes which included the general strike of 1926, the scheme could be carried out only by allowing the French cos. to work the mines & transport facilities by means of moneys which the co. provided by realising the ores. The amount of the disbursements which the co. had to make exceeded that produced by realising the ores, & from June, 1928, the liquidator could preserve the assets only by borrowing & by means of an overdraft granted by the co.'s bank. In 1929 an assessment under Sched. D of the Income Tax Act, 1918, was made on the co. for the year 1929-1930 ; in Mar. 1930, an assessment was made on it for the year 1926-1927 ; & in Oct. 1930, another assessment was made on it for the year 1929-1930. None of the amounts due under those assessments were paid. Before the liquidator had received the notice of the last assessment the co.'s mine had been closed down, & before the date of this summons the French cos. had gone into liquidation & the French liquidator on their behalf claimed & took possession of the assets in Algeria out of which the amounts due under the assessments could otherwise have been paid. Included in the disbursements made by the co. were sums which the liquidator had retained as remuneration & on account of travelling expenses. The liquidator stated in an affidavit that he had received no remuneration since 1931, that he had had no funds in hand since June, 1928, & that he had since Apr. 1931, spent all his assets to maintain himself & was practically destitute at the date of this summons :—*Held :* (1) income tax to which a co. has been assessed in respect of profits earned after the commencement of the winding up is not within the words " . . .

States, & were entitled to priority equally with the debts above mentioned. The co. also owed debts to officers who were carrying out their contracts of employment in New South Wales :—*Held :* in the winding-up, these servants were entitled to priority equally with the South Australian officers.—*Re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS, LTD. (1928), S. A. S. R. 342.—**AUS.**

st. *Application of bankruptcy rules —Negotiable instrument.*]—Voluntary liquidation of a limited co. does not accelerate the due date of a negotiable instrument payable on a date subsequent to the commencement of the winding up, sect. 246 of the Cos. Act, 1908, making the rules in bkpcy. applicable in the winding up of insolvent cos.—*Re* MACKY, LOGAN CALDWELL, LTD., [1934] N. Z. L. R. 1034.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 9.—A.

sn. *Restraint of distribution—At instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*]—*Re* VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION), [1927] N. Z. L. R. 95.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 9.—B.

6949 i. *Liquidator's remuneration & costs—Realisation of security belonging to debenture-holders.*]—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re* WILLIS C. RAYMOND, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 115.—**N.Z.**

fees & actual expenses incurred in realising or getting in the assets . . ." in rule 187, par. 1, of the Cos. (Winding up) Rules, 1909, but that income tax is part of the expenses of the winding up; (2) when the assets of a co. in voluntary liquidation are insufficient to discharge its liabilities, the ct. has power, under sects. 171 & 196 of 1908 Act (now sects. 213 & 254 of 1929 Act), to make an order, in the exercise of its discretion, as to the payment thereout of the "costs, charges, & expenses" (including the liquidator's remuneration) in such order of priority as it thinks just, & that *primâ facie* all the expenses ought to be paid before the liquidator's remuneration; (3) *semble:* the ct. in a proper case may authorise a liquidator to keep remuneration which he retained when he had no reason to believe that the co.'s assets would not be sufficient to discharge all costs, charges & expenses of the liquidation; in the present case the liquidator should be authorised to retain the remuneration received by him before the date of the notice of the assessment of Oct. 1930.—*Re* BENI-FELKAI MINING CO., LTD., [1934] Ch. 406; 103 L. J. Ch. 187; 150 L. T. 370; 78 Sol. Jo. 29; 18 Tax Cas. 632; [1934] B. & C. R. 14.

Annotation:—**Refd.** Wilson Box (Foreign Rights), Ltd. *v.* Brice, [1936] 2 All E. R. 452.

6956a. Priorities—Jurisdiction of court to settle.]—*Re* BENI-FELKAI MINING CO., LTD., No. 6950a, *ante*.

6958. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52. *As to* (2) **Refd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

6965. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144; *Re* Metcalfe (William) & Sons, Ltd. (1932), 48 T. L. R. 651.

6974. *Add. Citation:*—[1923] B. & C. R. 139.

6977. *Add. Annotations:*—*As to* (1) **Distd.** *Re* Madame Tussaud, [1927] 1 Ch. 657. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52.

6984. *Add. Annotations:*—*As to* (1) **Expld.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. *As to* (3) **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6984a. —— —— Provision in articles for equal ranking with deferred shareholders.]—(1) The arts. of assocn. of a limited co. whose capital was divided into preferred & deferred shares provided that, subject to the difference in dividing the profits, the preferred & deferred shares should rank equally in the co., & that there should be no difference between a preferred & deferred shareholder in respect of his status & liability to the debts & engagements of the co. The also provided for the dissolution of the co. On the voluntary winding up of the co. under 1862 Act, s. 133:—*Held:* the two classes of shareholders were in the same position, & entitled to the capital *pro rata*.

(2) People who enter into these partnerships under articles of assocn., that is, articles of partnership, must be taken to have read them, & must be taken to have understood them, & if they are to be taken to have read them, & to have understood them, which they ought to do before entering into these contracts, they cannot complain if the contract is afterwards carried out (JESSEL, M.R.).—GRIFFITH *v.* PAGET (1877), 6 Ch. D. 511; 37 L. T. 141; 25 W. R. 821.

Annotations:—*As to* (1) **Consd.** Sheppard *v.* Seinde Punjaub & Delhi Rail. Co. & Abbott (1887), 56 L. J. Ch. 558; Bishop *v.* Smyrna & Cassaba Rail. Co., [1895] 2 Ch. 265. **Refd.** *Re* Bridgewater Navigation Co., Ltd. (1888), 39 Ch. D. 1.

6986. *Add. Annotations:*—*As to* (1) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6987 *Add. Annotation:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387.

6988. *Add. Annotations:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387. **Refd.** Coulson *v.* Austin Motor Co. (1927), 43 T. L. R. 493.

6988a. —— —— —— No dividend declared.]—The memorandum of assocn. of a co. provided that in the event of a winding-up the preference shareholders should be entitled to receive in full out of the assets the amount of capital paid up on their shares, & also all arrears of dividend due thereon at the date of winding-up. A resolution was passed for the winding-up of the co. in Apr. 1925, at which date no dividends on the preference shares had been declared or paid for over four years past. After the winding up there was a surplus sufficient to pay arrears of dividend due:—*Held:* no dividends having been declared between 1921 & 1925, none were due, & the preference shareholders were not entitled to be paid anything in respect of arrears.—*Re* ROBERTS & COOPER, LTD., [1929] 2 Ch. 383; 98 L. J. Ch. 450; 141 L. T. 636; [1929] B. & C. R. 74.

Right to payment without deduction of income tax.]—Where upon the winding up of a co. the preference share holders are entitled to payment of all arrears of dividend, & there is a fund available for payment, they are entitled to receive the full amount of the dividends in arrear without any deduction of income tax, in priority to any payment to the ordinary shareholders. —*Re* DOMINION TAR & CHEMICAL CO., LTD., [1929] 2 Ch. 387; 98 L. J. Ch. 448; 142 L. T. 15; 45 T. L. R. 601; [1929] B. & C. R. 71.

6988c. —— —— —— ——.]—*Re* HOME GROWN SUGAR, LTD. (1937), 54 T. L. R. 230.

PART III. SECT. 37, SUB-SECT. 9.—D. (a).

6975 i. *As between different classes of shares—Right of preference shareholders.*]—*Held:* on the construction of a memorandum & arts. of assocn. in the event of a winding-up or liquidation of the co. the preference shareholders would be entitled to participate rateably with the ordinary shareholders in any distribution of surplus remaining after payment of the co.'s liabilities & repayment of all capital paid up on the preference & ordinary shares, since the provision in Art. 10 giving the preference shareholders a fixed cumulative preferential dividend & the right in the winding up of the co. to priority in payment of capital over ordinary shareholders was not an exhaustive statement of the rights of the preference shareholders, excluding any other right or privilege. Further, on construction of the memorandum & arts. on a distribution of surplus assets the preference shareholders were entitled to participate in such distribution *pro rata* with the ordinary shareholders.—CORK ELECTRIC *v* CO., LTD. *v* I. R. 314.—IR.

of capital.]—A clause in a co.'s memorandum of association in force at the date of a resolution for voluntary winding up provided that the co.'s preference shares should confer the right to a fixed cumulative preferential dividend & to half the surplus profits for each year after payment (or provision for the payment) of a specified dividend on the co.'s ordinary shares, & that the preference shares should rank with regard both to dividends & to capital in priority to the ordinary shares. The co.'s arts. of assocn. in force at the date of the resolution for winding up provided (*inter alia*) that the co.'s profits which it should be determined to divide in any year should be applied, first, in paying a fixed cumulative preferential dividend to the preference shareholders, secondly, in paying a specified dividend to the ordinary shareholders, & thirdly, as to half in paying a further dividend to the preference shareholders, & as to half in paying a further dividend to the ordinary shareholders. The arts. further provided (*inter alia*) that capital paid up on shares in advance of calls upon the footing that it should carry interest should not while carrying interest confer a right to participate in profits, that the co. in general meeting might declare a dividend to be paid to the members according to their rights & interests in the profits, that no larger dividend should be declared than was recommended by the directors but that the co. in general meeting might declare a smaller dividend, & that no dividend should be payable except out of the co.'s profits or should carry interest against the co.

Dividends were paid on the preference shares up to & including the year ending Mar. 31, 1930, but not for the years ending Mar. 31, 1931, & Mar. 31, 1932, or for the period from Apr. 1, 1932, to Sept. 30, 1932, the date of the resolution for winding up. Certain preference shareholders claimed to be paid, out of the assets available for distribution, sums representing dividends on their shares for the period since Mar. 31, 1930, &/or otherwise to share in those assets in priority to any repayment of capital to the ordinary shareholders:—*Held:* on the true construction of the memorandum & articles of association, the preference shareholders were entitled, in priority to the ordinary shareholders, to payment of arrears of fixed cumulative preferential dividend & to repayment of capital.—*Re* WALTER SYMONS, LTD., [1934] Ch. 308; 103 L. J. Ch. 136; 150 L. T. 349; [1933] B. & C. R. 237.

Add. Annotations:—**Consd.** Collaroy Co. *v* Giffard, [1928] Ch. 144. **Follo.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Consd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6989a. —— ——.]—A co. issued preferenc shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets:—*Held:* (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *primâ facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re* MADAME TUSSAUD & SONS, LTD., [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

6989b. —— ——.]—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should "confer the right to a fixed cumulative dividend" at a certain rate, "& shall rank, both as regards dividends & capital, in priority to the ordinary shares." By the arts. it was provided in the same terms as to the dividends, & that the preference shares should "confer the right in a winding up to repayment of capital in priority to the ordinary shares":—*Held:* the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not entitled to share in any surplus assets.—COLLAROY CO., LTD. *v.* GIFFARD, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

Annotations:—**N.F.** *Re* John Dry Steam Tugs, Ltd., [1932, 1 Ch. 594. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd.] [1933] Ch. 142.

6989c. —— ——.]—A co. was incorporated in 1909 with a capital of £25,000, divided equally into preference & ordinary shares of £10 each, a small proportion of which only were fully paid. Under clause 5 of the articles of assocn. the preference shareholders were entitled (1) to a fixed cumulative dividend at the rate of 5 per cent. *per annum* on their paid up capital, & after payment of 5 per cent. on the ordinary shares to an additional one-half per cent. for each 1 per cent. in excess of 5 per cent. paid on the ordinary shares, & (2) to priority in the event of a winding up both as to the cumulative dividend & return of capital.

In 1929, the co. went into voluntary liquidation, & after payment of all debts & return to the shareholders of the capital paid up on their shares there was a surplus available for distribution of £10,000:—*Held:* on a summons taken out by the liquidator, there being nothing in the articles to modify or exclude the normal right of the preference shareholders to share in the distribution of the surplus assets, they were entitled to rank *pari passu* with the ordinary shares in such distribution.—*Re* JOHN DRY STEAM TUGS, LTD., [1932] 1 Ch. 594; 101 L. J. Ch. 271; 147 L. T. 493; [1931] B. & C. R. 157.

cumstance as to take the case out of the general rule.—ANGLO-BALTIC & MEDITERRANEAN BANK *v.* BARBER & Co., [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

Annotation :—**Consd.** Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

7036. After this case add :—

—— ——.]—*See, now*, 1929 Act, s. 268.

7037a. —— —— **Bank account in name of liquidator.**]—A co. went into liquidation under a resolution for a member's voluntary winding up. The liquidator summarily discharged its manageress, who sued the co. for wrongful dismissal & obtained judgment in default of defence. She applied for a garnishee order on a bank account in the name of the liquidator. There was no evidence of any other claims on the co. The master refused to make the order absolute, but the judge in chambers reversed his decision. The liquidator appealed :—*Held :* (1) this being a members' voluntary winding up, it must be taken that the co. was solvent, as there was no evidence to the contrary. There was therefore no question of all creditors being paid in full & the ct. might properly refuse to exercise its discretion to stay an execution, & make the garnishee order absolute ; (2) the fact that the account was in the name of the

(1898), 42 Sol. Jo. 740.

7051. After this case add :—

—— —— ——.]—*See, now*, 1929 Act, s. 234 (1).

7056. *Add. Annotations :*—**Apld.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. **Consd.** *Re* West Yorkshire Partial Amalgamation (Coal Mines) Scheme (1935), 153 L. T. 167.

7064. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7074. *Add. Annotations :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

7076. *Add. Annotations :*—**Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. **Refd.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

7082. *Add. Annotation :*—*As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7083. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

7102. *Add. Citation :*—130 L. T. 256.

7119a. 1929 Act, s. 155—Power to acquire shares of dissentient shareholders—When court will

tarily, the general practice of the ct. is to grant an order staying execution of decrees against the co., except in very special circumstances.

A distinction must be drawn between a seizure under an English writ of *fi. fa.* & an attachment under Indian law. An attachment, which has not yet been completed by sale, cannot be treated as if the execution had been completed before the commencement of the winding-up without statutory provision to that effect analogous to the provisions of sect. 268 of English Cos. Act, 1929.—*Re* RAJBARI ICE FACTORY, LTD., I. L. R., [1937] 1 Cal. 632.—**IND.**

sp. *Power of court to order stay—Under Indian Companies Act*, 1913, s. 215.]—*Re* SRI YOGASHRAM PHARMACY, LTD. (IN LIQUIDATION), *Re* MOHAN LAL MEHTA (1927), I. L. R. 50 All. 482.—**IND.**

PART III. SECT. 37, SUB-SECT. 11.—E.

sq. *Order rejecting scheme—Appeal.*]—An appeal lies from an order rejecting a scheme of re-organisation both under sect. 202 of Cos. Act (VII. of 1913) & clause 13 of the Letters Patent.—DAWSON *v.* HORMASJI ; BALDWIN *v.* HORMASJI (1932), I. L. R. 10 Ran. 438.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—A.

sr. *Trustee under voting trust agreement—Extent of powers of voting.*]—A trustee under a voting trust agreement, the object of which is the re-organisation of the co., has no right to vote upon bye-laws terminating the trust agreement.—*Re* FIRSTBROOK BOXES, LTD., [1936] 1 D. L. R. 92; O. R. 15.—**CAN.**

order.]—C. & Co., Ltd., made an offer to the shareholders in H. & Co., Ltd., to acquire their shares in the latter co. This offer was accepted by shareholders representing 99·62 per cent. of the total issued share capital of H. & Co., Ltd. The balance of ·38 per cent. consisted of 7,465 shares. Of these 4,665 were acquired compulsorily under 1929 Act, s. 155, by C. & Co. without objection by the holders. The remaining 2,800 shares, representing ·14 per cent. of the issued share capital of the co., were the subject of this application under sect. 155 for an order that resps., C. & Co., Ltd., were not entitled to acquire the shares of appcts. in H. & Co., Ltd. :—*Held :* where not less than nine-tenths of the shareholders in the transferor co. approve a scheme involving the transfer of the co.'s shares to a transferee co., *primâ facie* the offer must be taken to be a fair one, & the ct. will not " order otherwise " unless it is affirmatively established that, notwithstanding the views of a very large majority of shareholders, the scheme is unfair.—*Re* HOARE & Co., LTD. (1933), 150 L. T. 374.

7136a. —— —— Discretion of court.]—*Re* EUSTACE MILES FOODS (1921), LTD. (1934), 78 Sol. Jo. 238.

7155a. Exemption—Finance Act, 1927 (c. 10), s. 55—Issue of shares in transferee company to holders of shares in existing company—Issue to nominees.]—A new co. was formed for the purpose of acquiring from the " B." co. its property & assets. An agreement for sale was entered into on Oct. 22, 1928, by which the " B." co. agreed to sell & the new co. agreed to purchase all the undertaking & assets of the " B." co., the consideration being the allotment to the liquidator of the " B." co. or his nominees of 600,000 preference shares of the new co. of £1 each fully paid & 3,600,000 ordinary shares of the new co. of 1*s.* each fully paid. On Nov. 22, 1928, the appointment of the liquidator was confirmed, & he adopted the agreement for sale. On Oct. 22 about 26 shareholders in the " B." co. held the whole of the 120,000 shares in that co. On Nov. 22, 88,000 shares out of those 120,000 shares were held by the solrs. of the " B." co. as bare trustees for the transferors, who were, as to 45,500 shares, eight shareholders, & as to 42,500 shares, the purchaser of those shares from seven shareholders in the " B." co. Shares in the new co. were allotted to the registered holders of 11,200 shares of the " B." co. in respect of those shares. The holders of the remaining 108,800 shares of the " B." co. requested the liquidator of the " B." co. to procure the allotment of the shares in the new co. to which they were entitled to persons other than themselves, & the shares were so allotted by the new co. In the case of a considerable number of shares, exceeding 10 per cent. of the total consideration for sale to the new co. under the agreement for sale, they were allotted to persons who had agreed to purchase either shares of the " B." co. or shares of the new co. to which registered holders of shares in the " B." co. were entitled. As a consequence the first registered holders of shares in the new co. were to an extent far exceeding 10 per cent. of such shares, & far exceeding 10 per cent. of the total consideration for the sale, persons who were not holders of shares in the " B." co. The Comrs. of Inland Revenue held that the agreement for sale was liable to *ad valorem* duty under Stamp Act, 1891 (c. 39), s. 59 :—*Held :* the issue of shares to purchasers from, or other nominees of, holders of shares in the " B." co. was not the issue of shares to holders of shares in the " B." co. within Finance Act, 1927 (c. 10), s. 55, & therefore the new co. were not entitled to exemption under that sect.—BROTEX CELLULOSE FIBRES, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 158 ; 102 L. J. K. B. 211 ; 148 L. T. 116.

Annotations :—**Refd.** Murex, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 173 ; *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7155b. —— —— —— ——.]—The I. C. I. co. were the holders of 79,900 shares of the P. co., & two persons were each the holders of 200 shares in the P. co. as the nominees of the I. C. I. co. The share capital of the P. co. was divided into 87,500 shares. The I. C. I. co. & their two nominees agreed to sell to the M. co. the 80,300 shares in the P. co., which they held in consideration of the allotment by the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. The agreement & subsequent transfers were executed as part of a scheme for the amalgamation of the P. co. & the M. co. The I. C. I. co. & their two nominees executed three transfers by which they transferred to the M. co. three blocks of shares in the P. co. amounting in all to 800,300 shares, in consideration of the allotment of the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. Subsequently the M. co., in accordance with a previous request, allotted those 30,000 shares to five nominees of the I. C. I. co. The Comrs. of Inland Revenue decided that the three transfers were liable to *ad valorem* duty under the heading " Conveyance or transfer on sale " in the First Sched. to the Stamp Act, 1891 (c. 59) :—*Held :* the issue of the 30,000 shares in the M. co. to the five nominees of the I. C. I. co. was not the issue of shares to the holders of shares in the P. co. in exchange for shares held by them in the P. co. within Finance Act, 1927 (c. 10), s. 55 (1) (*c*) (ii.), & therefore the conditions laid down in that sect. for exemption from duty did not exist ; although it was necessary to look at the surrounding circumstances in order to see whether there was an

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

st. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation :—*Held :* the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—HUNTER *v.* DAMODAR DAS (1924), I. L. R. 46 All. 759.—IND.

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

o. Add " *revsd.* 1 O. L. R. 480."

p 1. *On contract—To pay commission.*]—BETHEL *v.* AUTOMATIC TOTALISATORS, LTD. (1927), 28 S. R. N. S. W. 76 ; A.

sv. *On right of shareholder in old company—To contingent asset realised*

amalgamation of two cos. or a reconstruction of a co. within meaning of sect. 55, yet in considering whether a particular instrument executed in purported performance of such amalgamation or reconstruction was subject to stamp duty, or whether it was exempt from duty, regard could only be had to the terms of that instrument.—MUREX, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 173; 102 L. J. K. B. 219; 148 L. T. 164.

Annotation :—**Refd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7158. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7159. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7161. *Add. Annotation :*—**Refd.** Soc. Anon. Pecheries Ostendaises *v.* Merchants Marine Insce., [1928] 1 K. B. 750.

7168. *Add. Annotation :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252.

7169. *Add. Annotations :*—**Expld. & Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—*See, now,* 1929 Act, s. 296.

7169a. Agreement to transfer land & equitable interest—Vesting order.]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169b. —— Whether new trustee necessary—Trustee Act, 1925 (c. 19), s. 44, para. (ii) (c), s. 51 (1), para. (ii) (c).]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169c. 1929 Act, s. 296—Equity of redemption.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia :—Held :* (1) Cos. Act, 1929 (c. 24), s. 296, did not apply, as that sect. was not retrospective; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia.* — *Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD. [1933] Ch. 29; 101 L. J. Ch. 346; 148 L. T. 5; 48 T. L. R. 617, C. A.

7169d. —— Whether retrospective.]—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, No. 7169c *ante.*

7174a. —— Mode of application for order.]—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare the dissolution void, notice of the motion ought to be given to the Treasury Solr., since on dissolution the undistributed assets pass to the Crown as *bona vacantia.* (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re* HOME & COLONIAL INSURANCE CO., LTD. (1928), 44 T. L. R. 718.

7176. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7177a. —— Effect of.]—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of proceedings taken during the interval between the dissolution & its avoidance.—MORRIS *v.* HARRIS, [1927] A. C. 252; 96 L. J. Ch. 253; 136 L. T. 587; [1927] B. & C. R. 65, H. L.

7203a. Charges of fraud on public.]—Where charges have been made against a co. of having committed frauds, not in any way

175; 1 W. W. R. 804; 24 Alta. L. R. 90.—**CAN.**

PART III. SECT. 37, SUB-SECT. 14.—B.

sw. *Avoidance—Jurisdiction to order—For limited purpose only.*]—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor :—*Held :* it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re* CHAMPDANY JUTE CO., LTD., [1924] S. C. 209.—**SCOT.**

sz. —— *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—MACDONALD'S (LORD) CURATOR, [1924] S. C. 163-4.—**SCOT.**

sb. —— ——.]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—FORTH SHIPBREAKING CO., LTD., PETITIONERS, [1924] S. C. 489-90.—**SCOT.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) ii.

sf. *Rule in India.*]—Petitioner prayed that the People's Bank of Northern India be wound up by the ct. It was contended by counsel for the Bank that the Bank should not be compulsorily wound up by the ct., & that the opinion of the creditors & shareholders in meeting, which had been consistently in favour of the present directors carrying on the liquidation, should be allowed to continue :—*Held :* the rule generally applied in England, should not apply strictly to India where limited liability cos. are in their infancy & shareholders & creditors easily misled. While the opinions of shareholders & creditors ought to be taken into consideration these classes of persons in India at present require to be protected against themselves.—MADAN GOPAL *v.* PEOPLES BANK OF NORTHERN INDIA (1935), I. L. R. 16 Lah. 1029.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

s t. ——.]—*Held :* in the absence of [illegible]'s rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—SANSAR CHAND *v.* KARAM CHAND (1925), I. L. R. 6 Lah. 340.—**IND.**

connected with its promotion or formation in its dealings with members of the outside public, not being dealings with shareholders as regards their membership in the co., the desirability of investigating such charges under a compulsory winding up is not a ground for saying that creditors will be "prejudiced by a voluntary winding-up" within sect. 145 of 1862 Act.—*Re* MEDICAL BATTERY CO., [1894] 1 Ch. 444; 63 L. J. Ch. 189; 69 L. T. 799; 42 W. R. 191; 38 Sol. Jo. 81; 1 Mans. 104; 8 R. 46.

7269. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

7290. *For existing citation read following paragraph & citations & anno. :—*

A creditor cannot obtain an order to continue a voluntary winding up under the supervision of the ct. unless he possesses all the qualifications required of a creditor petitioning for a compulsory winding-up order. Therefore, a debt incurred by a co. under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the voluntary liquidation & the agreement formed parts of one scheme.—*Re* BANK OF SOUTH AUSTRALIA, [1894] 3 Ch. 722; 64 L. J. Ch. 44; 43 W. R. 299.

Annotation :—**Dbtd.** *Re* Bank of South Australia, [1895] 1 Ch. 578.

7363. *Add. Annotation :*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

7370. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

7371a. —— Scheme involving reduction of capital —Modification of rights of different classes of shareholders.]—*Re* ODHAMS PRESS, LTD., [1925] W. N. 10.

7372. *Add. Annotation :*—**Refd.** *Re* Garner Motors, Ltd., [1937] 1 All E. R. 671.

7373. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

7373a. Arrangement between creditors & voluntary company "about to be wound up"—Meaning of.]—*Held :* (1) 1929 Act, s. 251 (1), applies only to an arrangement entered into during a voluntary winding-up or shortly before the passing of a resolution for a voluntary winding up; (2) a composition by a co. with its creditors, intended to make the co. solvent & therefore to prevent a voluntary winding up, is not an "arrangement" within the sect.

Qu. : whether the word "arrangement" in the sect. is intended to include a compromise.—*Re* CONTAL RADIO, LTD., [1932] 2 Ch. 66; 101 L. J. Ch. 377; 148 L. T. 109; 48 T. L. R. 458; 76 Sol. Jo. 359; [1931] B. & C. R. 255.

7373b. —— Whether compromise included.]—*Re* CONTAL RADIO, LTD., No. 7373a, *ante.*

7373c. Circulars—Sufficiency of.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *post.*

7373d. —— Duty of court to

Re DORMAN, LONG & CO., DURHAM STEEL & IRON CO., LTD., No. 73 *post.*

7374a.

L. Jo. 80; 169 L. T. Jo. 101; [1930] W. N. 4.

7377a. —— ——.]—In 1933, Dorman, Long & Co., Ltd., & South Durham Steel & Iron Co., Ltd. (hereinafter respectively called "Dormans" & "South Durham"), provisionally agreed that Dormans should acquire South Durham's undertaking & assets. Two schemes of arrangement were prepared, one between Dormans, its 5½ per cent. debenture stockholders & its shareholders, & the other between South Durham & its debenture stockholders & shareholders, each scheme being conditional on the ct.'s sanctioning the other before the end of 1933. On June 19, the ct. ordered that Dormans & South Durham should convene separate meetings of their interested debenture stockholders & of their classes of shareholders, to consider & if thought fit approve the respective schemes, by letter enclosing a print of the scheme & a proxy in the form settled in chambers. On June 20, a circular signed by South Durham's secretary, a notice of the meetings, & forms of proxy settled in chambers, were sent to South Durham's debenture stockholders & shareholders. The circular stated (*inter alia*) that a revaluation of South Durham's assets had been made by its auditors & confirmed by two named gentlemen. The forms of proxy purported to appoint a certain person as proxy, leaving the donor of the proxy to write "for" or "against" before the words "the scheme." The meetings were to be held on July 19, & a note at the foot of the proxy stated that the proxy must be lodged not later than noon on July 15. On July 3 a circular signed by Dormans' secretary, notices of the meetings ordered by the ct. of its debenture stockholders & shareholders, proxies in the form settled in Chambers, & voting cards, were sent to Dormans' debenture stockholders & shareholders. The circular stated (*inter alia*) that the whole of Dormans' assets had been revalued upon the basis of their earning power & that the revaluation had been confirmed by two named gentlemen. These were the gentlemen who had confirmed the revaluation of South Durham's assets. The circular stated also that the trustees for the stockholders, after careful investigation, recommended the scheme for the stockholders' approval. It did not state the figures arrived at in the revaluation, nor did it state that, as was the fact, the trustees for the stockholders, who were a bank which had financed Dormans, stood to benefit by the scheme. The forms of proxy were substantially the same as those sent out with South Durham's circular, the date of the meetings being July 27, & the proxies being required to be lodged not later that 6 p.m. on July 25.

PART III. SECT. 37, SUB-SECT. 15.—A. (c).

sg. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*]—*Re* STOCKBRIDGE & CO., LTD., [1923] N. Z. L. R. 221.—**N.Z.**

PART III. SECT. 39, SUB-SECT. 1.—B.

ff —— *Preferential treatment of creditor.*]—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20*s.* in the pound :—*Held :* the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

st. *What court must consider.*]—On an application to sanction a scheme of arrangement it is the duty of the judge to ascertain whether all statutory requirements have been complied with, & whether it is fair & reasonable. —*Re* DAIRY CORPN. OF CANADA, LTD., [1934] O. R. 436; 3 D. L. R. 347.—**CAN.**

sw. ——.]—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD. (NO. 2), [1937] 3 W. W. R. 61.—**CAN.**

Along the side of each voting card was written in red ink "If you are voting as proxy for other holder(s), please write the name of holder(s) on the back of this card." July 3 & July 10, H., a shareholder in South Durham, wrote to its shareholders criticising the scheme & asking them not to sign proxies in favour of it but to sign proxies against it which he enclosed with his second letter. At South Durham's meetings H.'s proxies were rejected as being in a form different from that settled in Chambers, & certain proxies also were rejected as having been lodged after the time fixed for lodging proxies. The chairman reported that, if H.'s proxies were excluded, the scheme would be carried by the requisite statutory majority, & that if they were admitted there would be a majority in number, but not the three-fourths' majority in value, in favour of the scheme. On July 19, a committee of debenture stockholders in Dormans who opposed the scheme, among whom was L., sent a circular to about half the total number of holders of £200 or more 5½ per cent. debenture stock, asking them to vote against it. Many replied that they wished to revoke the proxies they had lodged & vote against the scheme, but feared that it would be too late. At the meeting of Dormans' debenture stockholders, voting cards with the red ink sidenote on them were handed to those attending, & the chairman asked that they would record their votes on them. At the meeting certain proxies were rejected on the ground that they had been lodged after the time fixed for lodging proxies. The chairman reported that at all of Dormans' meetings resolutions approving the scheme without modification were passed. Petitions asking for the ct.'s sanction to the respective schemes came on for hearing on Nov. 22, Dormans' petition being opposed by the debenture stockholders, of whose committee L. was a member, & South Durham's by H. On the hearing of Dormans' petition L. stated in an affidavit that he had no instructions with his voting card, that by request he (L.) took a vote by show of hands on the chairman's refusing to do so & declared the resolution approving the scheme lost, & that the chairman left the room. The chairman gave evidence denying that he left the meeting before the vote was taken & another witness denied that the statements in L.'s affidavit about the meeting were accurate. The confirmation of the schemes by the ct. was sought under 1929 Act, sects. 153 & 154, sects. giving power to compromise with creditors & members & providing for facilitating reconstruction & amalgamation of cos. :—*Held :* (1) in determining whether a compromise or arrangement should be sanctioned, the ct. must be satisfied that the resolutions in favour of it

sufficient, & misleading in its reference t the approval of the scheme by the trustee for the stockholders, & should have state the amount of the revaluation; (5) th description in South Durham's circular of th auditors' report as if it were a valuation o South Durham's assets was justified only i the report was prepared solely in order to ascertain the relative values of the assets of Dormans & South Durham, the opinions of South Durham's board were justified on an optimistic view, & the board had acted reasonably & in the best interests of those concerned.—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., [1934] Ch. 635; 103 L. J. Ch. 316; 151 L. T. 347; 78 Sol. Jo. 12.

Annotation :—Generally, **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7382a. —— Scheme involving reduction, reorganisation & increase of capital.] — *Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante.*

7385a. Discretion of court as to acquisition of shares of dissentient shareholders—Terms must be adequate & reasonable.]—Upon a petition to sanction a scheme of arrangement & amalgamation under Cos. Act, 1929 (c. 23), s. 155, the ct. has power to determine the terms upon which the shares of shareholders who have dissented from the scheme approved by the majority shall be acquired, notwithstanding that since the original offer was made the scheme has been superseded by a later amalgamation which has absorbed the transferee co., & the fact that petitioners cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the ct., which is only bound to decide whether the terms offered are adequate & reasonable, & if not, to substitute such other terms of purchase as, in its discretion, are fair & just.—*Re* CASTNER-KELLNER ALKALI CO., LTD., [1930] 2 Ch. 349; 99 L. J. Ch. 453; 144 L. T. 26; 46 T. L. R. 592.

7391. *Add. Annotation :*—**Refd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ii. ——.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re* LINDNERS, LTD. (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 O. B. R. 49.—**CAN.**

PART III. SECT. 39, SUB-SECT. 1.—E.

sf. *Object of scheme—Clarification of rights.*]—(1) The existence of reasonable doubts as to the rights of shareholders under the memorandum of assocn. of a co. is a ground warranting the ct. in sanctioning a scheme of arrangement the effect of which is to remove those doubts.

A limited co. consisted of three classes of shareholders, viz. A., B. & C., whose respective rights were determined by clause 5 of the memorandum of assocn. Questions having arisen as to the rights of the A. shareholders under clause 5, the co. proposed a scheme of arrangement by which clause 5 was to be replaced by a new clause, the effect of which was to determine exactly the rights of the A. shareholders :—*Held :* as the proposed scheme was one which would commend itself to a reasonable business man, it would receive the sanction of the ct.

7398a. —— **Acquisition of shares of—Discretion of court.**]—*Re* CASTNER-KELLNER ALKALI CO., LTD., No. 7385a, *ante*.

7402. *Add. Annotations:—As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7404a. —— **Different classes of creditors—Meaning of.**]—By sect. 2 of the Joint Stock Cos. Arrangement Act, 1870 (c. 104), where an arrangement is proposed between a co. in the course of being wound up & " the creditors of such co., or any class of such creditors," the ct. may order that a meeting of " such creditors or class of creditors " shall be summoned, & if a majority in number, representing three-fourths in value of " such creditors or class of creditors," agree to the arrangement, it shall, if sanctioned by an order of the ct., be binding on " all such creditors or class of creditors, as the case may be," & also on the liquidator & contributories of the co. The persons summoned to the meeting under the above sect. were the policy-holders of the co., & no separate meeting was summoned of those whose policies had, as distinct from those whose policies had not, matured:—*Held:* the insured persons whose policies had matured formed a distinct class of creditors from those whose policies had not matured; a separate meeting of such class ought to have been held under the Act in order to make the arrangement binding upon the members of that class; & the arrangement did not, therefore, operate as a release by deft. of his claim against pltfs.—SOVEREIGN LIFE ASSURANCE CO. *v.* DODD, [1892] 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4; 8 T. L. R. 684; 36 Sol. Jo. 644; 4 R. 17, C. A.

7404b. Objections to—Should be taken on petition for sanction.]—In proceedings under 1929 Act, sect. 153, for the sanction by the ct. of a compromise or arrangement between a co. & its creditors, or any class of them, EVE, J., said that the responsibility for determining what creditors are to be summoned to any meeting, as constituting a class, is the appct.'s, & if the meetings are incorrectly convened or constituted, or an objection is taken to the presence of any particular creditors as having interests competing with the others, the objection must be taken on the hearing of the petition for sanction, & the appct. must take the risk of having it dismissed.—PRACTICE NOTE, [1934] W. N. 142; 178 L. J. Jo. 28.

7407a. —— **Omission to advertise—Sufficient majority present.**]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had received the notices:—*Held:* the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re* ANGLO-SPANISH TARTAR REFINERIES, LTD. (1924), 68 Sol. Jo. 738.

7408. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409a. ——.]—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy " to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: " If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.

(3) Trustees for debenture-holders are in no different position from other trustees, except that, unlike many other trustees, they are remunerated for their services, & whether the mtgor. co. is a going concern, or whether the security is being realised for the benefit of debenture-holders, the conduct of the trustees is controlled by the same rules, subjected to the same restrictions, & measured

(2) The unsuccessful objector then moved that the co. should be found liable for his expenses, on the ground that dissentient shareholders should not be discouraged from bringing to the notice of the ct. considerations which might reasonably influence the ct. in arriving at a right decision. The ct. refused this motion, but, on consent of petitioners, found no expenses due to or by either party in connection with the discussion on the objector's note.—EDINBURGH RAILWAY ACCESS & PROPERTY CO. *v.* SCOTTISH METROPOLITAN ASSURANCE CO., [1932] S. C. 2.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ii. —— —— ——.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held:* in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120(2).—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

o i. —— *Majority necessary.*]—Under sect. 122 (2) of Cos. Act, 1934, which provides for the sanctioning of a proposed compromise or arrangement between a co. & its shareholders, the number of shareholders present in person or by proxy at the meeting & voting in favour of the arrangement must be three-fourths of the total number of shares of each class, not merely three-fourths of each class voting at the meeting unless the latter amounts to three-fourths of the total of the shares of each class of shareholders.—*Re* WESTERN GROCERS, LTD., [1936] 2 W. W. R. 81; 2 D. L. R. 762; *on appeal*, [1936] 3 W. W. R. 334. 4 D. L. R. 816.—**CAN.**

122 (2) of } —**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (b).

sf. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held:* the rejection of the proxies was wrong.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.

Cos. Act, 1934, is satisfied if shareholders holding three-fourths of the shares of each class held by shareholders present in person or by proxy at the meeting approve the proposed scheme; shareholders not present or represented by proxy should be disregarded.—*Re* PROVINCIAL APARTMENTS, LTD., [1936] 3 W. W. R. 327.—**CAN.**

by the same standards as are applied to other fiduciary agents (EVE, J.).—*Re* MAGADI SODA CO., LTD. (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

Annotation :—As to (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409b. ——.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7409c. ——.]—At a meeting to consider a scheme of arrangement a number of shareholders had appointed proxies "to act for me at the meeting . . . for the purpose of considering &, if thought fit, approving, with or without modification, the proposed scheme of arrangement . . . & at such meeting or at any adjournment thereof to vote for me & in my name" either for or against the scheme. At the meeting a shareholder moved an amendment to the resolution approving the scheme that the consideration of the scheme should be deferred until after the publication of the accounts for the year. Upon a show of hands there was a majority in favour of the amendment, but the chairman demanded a poll, & using the proxies given to him, secured a majority to defeat the amendment :—*Held :* the form of proxy did not restrict the holder of the proxy, so far as voting was concerned, to voting either for or against the scheme of arrangement. & the chairman was entitled to use the proxies which he held to vote upon the amendment.—*Re* WAXED PAPERS, LTD., [1937] 2 All E. R. 481; 156 L. T. 452; 53 T. L. R. 676; 81 Sol. Jo. 397, C. A.

7410. *Add. Annotations :—As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7411a. Duty of directors to use.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7412. *Add. Annotation :*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

7415a. Release of joint debtor—Other joint debtors not released.]—Although an accord & satisfaction between a creditor & one of several joint & several debtors discharges the other joint & several debtors unless it appears from the terms of agreement or the surrounding circumstances that the creditor intended to reserve his right against them, yet when the debt of one of the joint & several debtors, being a co., is released by a scheme of arrangement in the liquidation of that co., that scheme does not release the other debtors. The scheme has a statutory operation & is quite different from an agreement signed by the parties, & it is not necessary for the scheme to reserve the rights of those debtors.—*Re* GARNER'S MOTORS, LTD., [1937] Ch. 594; [1937] 1 All E. R. 671; 106 L. J. Ch. 365; 157 L. T. 258; 81 Sol. Jo. 218.

7440. After this case add :—

—— —— ——.]—*See, now,* 1929 Act, s. 295 (5).

7452a. Notice of motion to be given to Treasury Solicitor—Where undistributed assets.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 7174a, *ante*.

7452b. —— **Filing of affidavit of notice.**]—PRACTICE NOTE, [1931] W. N. 199; 172 L. T. Jo. 299.

Part IV.—Banking Companies.

7462a. —— —— **Defences available—Liability for calls.**]—*Assumpsit* on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, "not indebted" :—*Held :* (1) the replication was bad, the set-off being founded entirely on the deed; (2) the plea was good.—MILVAIN *v.* MATHER (1850), 5 Exch. 55; 1 L. M. & P. 220; 19 L. J. Ex. 227; 14 L. T. O. S. 446; 155 E. R. 24.

Annotation :—Generally, **Refd.** Smith *v.* Trowsdale (1854), 18 Jur. 552.

7479. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

7479a. ——.]—BARCLAY *v.* PEARSE (1884), *Times*, Aug. 4, C. A.

Annotations :—**Distd.** Perry *v.* Barnett (1885), 14 Q. B. D. 467. **Apld.** Seymour *v.* Bridge (1885), 14 Q. B. D. 460.

PART III. SECT. 40, SUB-SECT. 2.—A.

7449 v. —— ——.]—A co. formed for the purpose of money-lending, which, having discontinued business, had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off :—*Held :* the application should be granted.—CHARLES DALE, LTD., [1927] S. C. 130.—**SCOT.**

oi. —— *Dissolution of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re* —— —— BRICK & ESTATE CO., LTD., [1926] N. 47.—**IR.**

sl. *Effect of.*]—Where a co. has defaulted in complying with Cos. Act, ss. 80–85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, &, on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted.—BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—**CAN.**

sp. ——.]—A co. which had been struck off the register was restored thereto by an order of the ct. which in pursuance of sect. 200 of Cos. Act, 1929, provided that it should be "without prejudice to the rights of parties acquired prior to the date" of the restoration but contained no further directions or provisions. The Act provided that the effect of an order for restoration was that "the co. shall be deemed to have continued in existence . . . as if it had not been struck off" :—*Held :* the Crown was not entitled to moneys which were on deposit in a bank to the co.'s credit at the date of the striking off & which were still held by the bank when the co. was restored. The "rights" protected by the "without prejudice" clause did not include such rights as the Crown's right to *bona vacantia*.—A.-G. FOR BRITISH COLUMBIA *v.* ROYAL BANK OF CANADA & ISLAND AMUSEMENT CO., LTD., [1936] 1 W. W. R. 108; 50 B. C. R. 268; *affd.*, [1937] 1 W. W. R. 273; 1 D. L. R. 637; *affd.*, [1937] S. C. R. 459—**CAN.**

PART IV. SECT. 4.

sr. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkpcy. liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—*Re* NIPPON KINYN SHA, LTD., *Ex p.* TOTARO FUJINO, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 880; 3 C. B. R. 673.—**CAN.**

Part V.—Insurance Companies.

7482. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

7482a. Power of company to vary rate of interest on loans to policy-holders.]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral contract or on established practice :—*Held :* there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—THISELTON *v.* COMMERCIAL UNION ASSURANCE CO., [1926] Ch. 888 ; 95 L. J. Ch. 447 ; 136 L. T. 114 ; 70 Sol. Jo. 892.

7484a. Shareholders—Liability to execution.]—Affidavits of a director of the co. stating, that, on a certain day, the co. discontinued to carry on its business, & was wholly insolvent, & that its funds, property, & assets were & had since continued totally exhausted, & that there were no funds, property, or assets of or belonging to the co., or any other means whatsoever from or by which the pltf. could recover or enforce payment of the judgment-debt ; & of the sheriff's officer to whom a *fi. fa.* against the co. had been delivered for execution, stating that he went to the only place in London where the co. had carried on its business, & found the place deserted, & from information & personal inspection ascertained that they had no goods or property there :—*Held :* sufficient to entitled the judgment-creditor to execution against a shareholder under 7 & 8 Vict. c. 110, s. 68.—RIDGWAY *v.* SECURITY MUTUAL LIFE ASSURANCE SOCIETY (1856), 18 C. B. 686 ; 139 E. R. 1540.

7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers' liability insurance company—Carrying on business outside United Kingdom—What is.]—The above Act applies to employers' liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (*i*) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—*Re* UNITED GENERAL COMMERCIAL INSURANCE CORPN., [1927] 2 Ch. 51 ; 96 L. J. Ch. 231 ; 136 L. T. 653 ; 71 Sol. Jo. 141, C. A.

Annotation :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922.

7485b. Liability of assets.]—A policy of insurance under the common seal of a joint stock co. contained the following proviso : " That the said policy, or any thing therein contained, shall in no case extend, or be deemed or construed to extend, to charge or render liable the respective proprietors of the said co., or any of them," etc., " to any claim or demand whatsoever in respect of the said policy or of the assurance thereby made, beyond the amount of their, his or her individual shares or share in the capital stock of the said co. ; but that the capital stock & funds of the said co. shall alone be charged & liable to answer all claims & demands by virtue of the said assurance, or incident thereto " :—*Held :* the terms of the policy precluded the assured from any remedy at law against individual shareholders ; &, consequently, that, after using due diligence to obtain satisfaction of a judgment recovered against the co. in an action on such policy, by execution against their property, he was not entitled to issue execution against an individual shareholder, under sects. 66 & 68 of Stat. 7 & 8 Vict. (c. 110), ss. 66, 68.—HALKET *v.* MERCHANT TRADERS' SHIP LOAN & INSCE. ASSOCN. (1849), 13 Q. B. 960 ; 19 L. J. Q. B. 59 ; 14 Jur. 222 ; 116 E. R. 1530.

7490. After this case add :—

—— Company carrying on motor vehicle business.]—*See* Road Traffic Act, 1930 (c.43), s. 42.

7490a. —— "Policy on human life"—What amounts to.]—The co., now in liquidation, in addition to ordinary life assurance business issued endowment policies consisting of assurances of sums of money maturing at the expiration of a stated number of years. Amongst other such policies the co. issued a form of certificate whereby in consideration of an annual premium it assured payment to the certificate-holder (which expression included his exors., administrators & assigns) of a fixed sum at a future date, subject to a condition that the legal personal representatives of any certificate-holder should be at liberty to surrender the certificate to the co. within six months of the death of the holder, in which case the co. should pay to them the total amount of all premiums then paid thereunder :—*Held :* looking to the option of surrender given to the legal personal

PART V. SECT. 1.

st. *Grounds for granting or refusing licence—Whether company carrying on business in good faith.*]—*Re* ALL RISK INSURANCE AGENCIES, LTD. (B. C.), [1927] 3 D. L. R. 245 ; [1927] 3 W. R. R. 58.—**CAN.**

7483 i. *Power of directors to contract—Contract to stand surety for debt due by third party.*]—*Held :* not within the co.'s arts. of assocn.—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHALSA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

sx. *Superintendent of insurance—Powers—To alter annual statement of company.*]—*Re* SUN LIFE ASSURANCE CO., [1927] 4 D. L. R. 287.—**CAN.**

sy. *Power to write off capital—Extent of power.*]—The power conferred by sect. 70 of Insurance Act, R. S. C., 1927 (c. 101), of writing off paid-up capital is not limited to the writing off of the precise amount of the lost capital.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 113 ; 4 D. L. R. 572 ; 39 Man. L. R. 188 ; 12 C. B. R. 21.—**CAN.**

PART V. SECT. 5.

sa. *British company doing business in Irish Free State.*]—A British insurance co. doing business in the Irish Free State after Dec. 1922, claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied with in 1914, when deposits were made in England :—*Held :* the co. was bound to make such deposits in the Irish Free State.—WESTERN AUSTRALIAN INSURANCE CO., LTD. *v.* A.-G. & MINISTER FOR INDUSTRY & COMMERCE, [1926] I. R. 57 ; 59 I. L. T. 109.—**IR.**

representatives in case of the death of the holder, the form of certificate was a " policy on human life " within the statutory definition contained in Assurance Cos. Act, 1909 (c. 49), s. 30 (*a*), entitling the holder to resort to the statutory deposit in the liquidation of the co.—*Re* NATIONAL STANDARD LIFE ASSCE. CORPN., [1918] 1 Ch. 427 ; 87 L. J. Ch. 283 ; 118 L. T. 621.

7490b. —— **Reinsurance of fire risks.**]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) *v.* A.-G., [1925] A. C. 639 ; 94 L. J. K. B. 712 ; 133 L. T. 151 ; 41 T. L. R. 473 ; 69 Sol. Jo. 543 ; 30 Com. Cas. 252, H. L. ; *affg.* S. C. *sub nom.* A.-G. *v.* FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) (1924), 93 L. J. K. B. 679, C. A.

Annotations :—**Reld.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* National Benefit Assce., *Ex p.* English Insce., [1928] Ch. 74.

7490c. —— **Company carrying on accident insurance business—Charitable association.**]—The ct. held that the British Provident Assocn. for Hospital & Additional Services was not a co. carrying on accident insurance business within Assurance Cos. Act, 1909 (c. 49), s. 1 (c).—HALL D'ATH *v.* BRITISH PROVIDENT ASSOCN. FOR HOSPITAL & ADDITIONAL SERVICES (1932), 48 T. L. R. 240 ; 76 Sol. Jo. 111.

7493a. —— —— —— **By summons under R. S. C., Ord. 50, r. 2 (8).**]—*Re* CANADA LIFE ASSURANCE CO., [1929] W. N. 46 ; 167 L. T. Jo. 156.

7493b. —— —— —— ——.]—A co. carrying on a general insurance business deposited, under the combined provisions of Assurance Cos. Act, 1909 (c. 49), & Road Traffic Act, 1930 (c. 43), s. 42, & rules thereunder, securities to the value of £15,000 in respect of motor vehicle insurance. The securities so deposited increased in market value, & the co. sought to exchange them for other securities to the value of £15,000. The questions arose whether an application to the ct. should be made by petition or by summons in Chambers, & whether the co. had any such right :—*Held :* (1) if the £15,000 deposit had been made in cash, no variation could occur, &, therefore, if securities were deposited in lieu of cash, on the one hand the co. could not demand as of right to change those securities if they appreciated in value, nor, on the other hand, could the Paymaster-General demand further security in case of a depreciation in value of the securities deposited ; (2) if the application were to withdraw the securities, the application must be by petition to the ct., but if it were for a mere change of investment it must be by summons ; (3) in either case the Board of Trade must be consulted in the first place, & the ct. has discretion to pass such order as it may deem just in the particular circumstances.—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., [1933] Ch. 349 ; 102 L. J. Ch. 98 ; 148 L. T. 451 ; 49 T. L. R. 107.

7493c. —— —— —— **Appreciation or depreciation of securities—Whether grounds for variation.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7493d. —— —— —— **Notice to Board of Trade.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7498. *Add. Annotation :*—**Reld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7500. *Add. Annotations :*—**Reld.** *Re* South East Lancashire Insurance Co., [1935] Ch. 225 ; *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500a. —— **Deposit by company carrying on motor vehicle business.**]—(1) The deposit of £15,000 made by a co. under Assurance Companies Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, is primarily applicable in satisfaction of claims under motor vehicle insurance policies issued by the co. in priority to the claims of its general creditors.

(2) The deposits dealt with in Road Traffic Act, 1930 (c. 43), s. 43, are primarily applicable for the payment of claims arising in respect of third party risks only, the £15,000 deposit being a security for the holders of policies coming within the motor vehicle insurance business.—*Re* SOUTH-EAST LANCASHIRE INSURANCE CO. (1932), 102 L. J. Ch. 27 ; 49 T. L. R. 25 ; 76 Sol. Jo. 815.

Annotation :—**Consd.** *Re* South East Lancashire Insurance Co., [1934] Ch. 374.

7500b. —— ——.]—In the winding up of an insurance co. carrying on motor vehicle insurance business, the deposit of £15,000 made by the co. with the Accountant-General of the Supreme Ct. under the Assurance Cos. Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, forms assets of the co. available for distribution among all its creditors generally, & is not primarily applicable to the satisfaction of the claims of the holders of motor vehicle insurance policies issued by the co.—*Re* SOUTH EAST LANCASHIRE INSURANCE CO., LTD., [1935] Ch. 225 ; 104 L. J. Ch. 158 ; 152 L. T. 245 ; 51 T. L. R. 143 ; 78 Sol. Jo. 859, C. A.

Annotation :—**Apld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500c. ——.]—(1) Where a statutory deposit has been made by an assurance co., the policy holders of the class in respect of which the deposit was made & the general creditors of the co. whose claims arise in connection with the business of that class have, in a liquidation, a claim in priority to other creditors over the investments made by the co. representing that deposit.

(2) Where an assurance co. goes into liquidation the holder of an industrial policy entered into before the year 1924, must, before he can make a claim against the deposit made under Life Assurance Cos. Act, 1870 (c. 61), show that, if he is only admitted to prove against the deposit made under the Act of 1923 & against the general assets, he would

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7498 i. *Application of deposit on up.*]—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289 ; [1927] 2 W. W. R. 348 ; 36 Man. L. R. 549.—**CAN.**

receive less than he would have received if the Act of 1923 had not been passed.—*Re* HEARTS OF OAK ASSURANCE CO., LTD., [1936] Ch. 558; 105 L. J. Ch. 211; 155 L. T. 407; [1937-7] B. & C. R. 65.

7508a. —— —— ——.] — *Re* UNITED BRITISH INSURANCE CO., *No.* 7526a, *post.*

7510a. Insurance companies—Separate funds—Distribution of surplus of one fund among members of society.]—In Assurance Companies Act, 1909 (c. 49), as applied to industrial life assurance by the Industrial Assurance Act, 1923 (c. 8), there is nothing to prevent a society, which is carrying on industrial life assurance as well as ordinary life assurance, from distributing among its members such part of the surplus of the industrial life assurance fund as it may be determined to distribute in accordance with the provisions of its rules.—WESLEYAN & GENERAL ASSURANCE SOCIETY *v.* A.-G., 148 L. T. 49 T. L. R. 140; 77 Sol. Jo. 48.

7526a. ——.]—Where an assurance co. having power under its memorandum of assocn. to transfer its business or any part thereof to another co. has agreed to transfer all its life business to another assurance co., & the proposed transfer has been sanctioned by the ct. upon a petition presented under Assurance Companies Act, 1909 (c. 49), s. 13, & all statutory requirements in connection with the transfer have been duly complied with, the effect is that all liability of the transferring co. towards its policy holders is completely discharged, & the ct. can order payment out of the deposit money to the transferring co.—*Re* UNITED BRITISH INSURANCE CO., [1929] 2 Ch. 430; 98 L. J. Ch. 444; 142 L. T. 12.

7536. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

7542a. —— —— —— ——.]—*Re* BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909 (1927), 71 Sol. Jo. 729.

7549. *Add. Annotation :*—*As to* (1) **Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

7551. After this case add :—

——.]—*See* Assurance Cos. (Winding-up) Act, 1933 (c. 9).

7551a. Winding-up of reinsurer—Claim against insuring company—Set-off.]—By a treaty of reinsurance dated Apr. 13, 1920, between two insurance cos. the reinsurer accepted a share of all insurances accepted by or renewed by the insuring co. in its fire department. By Art. VIII. of the treaty the insuring co. was entitled to retain & accumulate out of money due to the reinsurer a sum equal to 40 per cent. of the share of all premiums credited to the reinsurer in the first year, this sum to remain as a deposit to secure the due performance of the reinsurer's obligation. The insuring co. was to be entitled to retain deposit, or any balance remaining after satisfying any obligation in respect of which the reinsurer might make default, until the determination of the agreement, paying the reinsurer interest at 3½ per cent. *per annum* on any part of the deposit not used in manner aforesaid. By Art. IX. the agreement was immediately determinable by notice on the reinsurer going into liquidation. On Jan. 31, 1922, the reinsurer presented its own winding-up petition, & on Feb. 1, 1922, the insuring co. gave notice determining the agreement. On Feb. 14, 1922, a compulsory order was made for the winding up of the reinsurer. After all obligations under the treaty had been satisfied, there remained in the possession of the insuring co. a sum of over £8,000 out of the deposit & a sum of accrued interest. The liquidator of the reinsurer took out a summons for a declaration that the insuring co. was bound to pay over the deposit & interest in full. The insuring co. claimed to be entitled to set them off against sums due to it from the reinsurer under other treaties & policies of insurance & reinsurance :—*Held :* (1) the interest was a debt due from the insuring co. to the reinsurer & fell therefore within Bkpcy. Act, 1914 (c. 59), s. 31, as being one of a number of mutual credits or debts arising between the parties, & that there was therefore a right of set-off in regard to it; (2) the deposit being money handed over to the insuring co. for a specific purpose, the balance remaining after satisfying the specific purpose continued to be excluded from the course of account between the parties & could not be the subject of a set-off. —*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

7593. *Add. Annotation :*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

7600. *Add. Annotations :* —*As to* (1) **Expld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558. *As to* (2) **Consd. & Apld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7609. *Add. Annotations :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

7611a. —— **Former actuary—In receipt of pension.**] —On the resignation of the actuary & secretary of an insurance co. which, in addition to other branches of insurance

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PART V. SECT. 3, SUB-SECT. 1.

c i. —— —— *Meaning of "liabilities" in Victoria.*]—On the proper construction of the sect. the "liabilities of the co. in Victoria" referred to in sect. 448 of Cos. Act, 1928, include a liability incurred elsewhere than in Victoria which is to be satisfied in Victoria.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD., [1932] V. L. R. 301; Argus L. R. 324.—**AUS.**

PART V. SECT. 8, SUB-SECT. 4.—A.

c i. —— *Dominion Winding-up Act.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 132.—**CAN.**

c ii. —— ——.]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 1080.—**CAN.**

PART V. SECT. 8, SUB-SECT. 5.—A.

sg. *Full amount insured—No right to repayment of premiums.*]—In Jan. 1930, an order was made for the winding up of a life assurance co. In May, 1930, the official liquidator of the co. informed all policy-holders in the co. that the co. would not carry out its obligations under the policies. Between Jan. & May, 1930, certain policy-holders paid their premiums as they became due to the official liquidator. He placed the moneys so received in a special account. The policy-holders claimed that the moneys should be repaid to them. The liquidator now applied to the ct. for directions as to how he should deal with these moneys : —*Held :* the winding-up order did not determine the policies, & as by virtue of paying the premiums the policy-holders had become entitled to prove in the liquidation for the full amount insured, in the event of the policy maturing prior to repudiation they were not now entitled to the repayment of the premiums, &, therefore, the moneys should be retained by the liquidator as assets of the co.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD. (1934), 34 S. R. N. S. W. 499; 51 N. S. W. W. N. 160.—**AUS.**

7612a. ——.]—*Held:* the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—ENGLISH INSURANCE CO. *v.* NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER), [1929] A. C. 114; 98 L. J. Ch. 1; 140 L. T. 76; [1928] B. & C. R. 67, H. L.; *affg.* S. C. *sub nom. Re* NATIONAL BENEFIT ASSURANCE CO., *Ex p.* ENGLISH INSURANCE CO., [1928] Ch. 74, C. A.

Annotations:—**Distd.** *Re* Norske Lloyd Insce., [1928] W. N. 99. **Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658; *Re* National Benefit Assurance Co., Ltd., [1931] 1 Ch. 46; Motor Union Insurance Co., Ltd. *v.* Mannheimer Versicherungs Gesellschaft, [1933] 1 K. B. 812.

7612b. —— Effect of compromise under 1908 Act, s. 214, accepted & acted on by parties.]—*Re* NORSKE LLOYD INSURANCE CO., LTD., [1928] W. N. 99.

7620. *Add. Annotation:*—**Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622. *Add. Annotation:*—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622a. —— ——.]—An insurance co. carrying on a marine & general insurance business but excluding from its objects (*inter alia*) fire insurance business, insured, through agents in Germany, a consignment of wool whilst in transit from quay to warehouse & whilst stored in a warehouse, against all damage or loss for one month. The policy was on a printed marine form in the German language, & the risks of fire & pilferage were included by indorsement. The policy was twice renewed whilst the wool was in storage upon payment of the same premium. After the second renewal a fire occurred causing serious damage to the wool. The owners claimed under the policy & recovered judgment in Germany, & afterwards in the King's Bench Division, suing on the foreign judgment.

The insurance co. having gone into liquidation, appcts. presented a proof for the amount of the judgment, but the liquidator rejected it:—*Held:* the policy, though on a

7625. *Add. Annotations:*—**Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7626. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7627. *Add. Annotations:*—**Overd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

7627a. ——.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

Annotation:—**Apprvd. & Folld.** *Re* City Life Assce. Co. (1925), 42 T. L. R. 45.

7627b. ——.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpcy. Act, 1914 (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies.—*Re* CITY LIFE ASSURANCE CO., LTD., [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

Annotations:—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262; *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1929), 99 L. J. Ch. 358.

Part VI.—Companies Registered Under Repealed Statutes.

7647a. —— Alteration in objects.]—*Re* HEWITT BROTHERS, LTD. (1931), 75 Sol. Jo. 615.

Part VII.—Unregistered Companies

7650. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

7663. *Add. Annotation :*—**Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

7669a. —— —— ***Representatives of deceased members.***]—An unregistered co. cannot be wound up under Cos. Act, 1862 (c. 89), s. 199, unless there are more than seven existing members at the date of the winding-up petition. Representatives of deceased members, trustees of bkpt. members, & past members, although liable to contribute to the debts of the co., are not members within the [illegible] BOWLING & WELBY'S CONTRACT, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 39 Sol. Jo. 345; 43 W. R. 417; 2 Mans. 257; 13 R. 125, C. A.

Annotations :—**Apld.** [illegible] Llewellyn *v.* [illegible] [1914] 2 Ch. 670.

7669b. —— —— **Trustees of bankrupt members.**]—*Re* BOWLING & WELBY'S CONTRACT, No. 7669a, *ante*.

7687. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. —— —— ——.]—COURTEIS *v.* JOHNSON (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

Annotation :—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

7726. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

7737. *Add. Annotation :*—*As to* (2) **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

Part IX.—Statutory Companies for Public Purposes.

7843a. —— **Capital expenditure out of reserve funds.**]—Sums expended by the railways upon capital works, & furnished by drawing upon their own undistributed profits, pension funds & reserves, are not additional capital "raised or provided" within Railways Act, 1921 (c. 55), s. 58 (1) (*b*). Therefore the companies are not entitled to include those sums as capital for the purpose of fixing the standard rates & charges necessary to produce the revenue sufficient to remunerate them upon their capital valuation.—*Re* STANDARD CHARGES SCHEDULE (1925), 94 L. J. K. B. 364; 132 L. T. 682; 89 J. P. 90; 41 T. L. R. 247; 69 Sol. Jo. 326; 23 L. G. R. 209; 18 Ry. & Can. Tr. Cas. 133, C. A.

7862. *Add. Annotation :*—*As to* (1) **Consd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

7904a. —— ——.]—The ct. will not grant a rule under 8 & 9 Vict. c. 16, s. 36, for a *scire facias* against a party as a shareholder in a joint stock co., upon a judgment obtained against the co., unless the affidavits disclose reasonable grounds for believing that the party sought to be charged is a shareholder. The fact of his having applied for & received an allotment of shares, & paid a deposit thereon, is not enough.—EDWARDS *v.* KILKENNY & GREAT SOUTHERN & WESTERN RY. Co. (1863), 14 C. B. N. S. 526; 143 E. R. 526.

PART VII. SECT. 2, SUB-SECT. 1.

7654 i. *Power of court—Under Companies Acts — Discretionary.*] — The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator :—*Held :* although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—MUIRHEAD *v.* BORLAND, [1925] S. C. 474.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—A.

7658 i. *"Unregistered company"—Benevolent society.*]—A co. & its directors instituted & endowed a benevolent society, which was not registered under Friendly Societies Act, 1896, & made it a condition in the contract of employment of its manual labourers that they should be members of the society. In addition to income derived from the endowment fund, further income was provided, in terms of the constitution, by the members paying small weekly sums to the society, which were deducted from their wages, & by the co. paying an equal amount. The members & their dependants were respectively entitled to sickness & death benefits. The management was vested in a committee which was elected by the members in annual general meeting. The co., having been bought up by a larger concern, went out of business, & the works were eventually closed down. A special meeting of the society was thereafter held, at which it was resolved to cease receiving contributions & paying benefits. Subsequently certain officers of the society presented a petition for the winding up of the society as an "unregistered co." :—*Held :* the society was not a "partnership, assocn., or co." within Cos. Act, 1908, Part VIII., s. 267, in respect that there was no contractual relation between the members *inter se*, &, accordingly, that it could not be wound up under the Act as an "unregistered co."—*Re* CALEDONIAN EMPLOYEES' BENEVOLENT SOCIETY, [1928] S. C. 633.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—D.

7670 i. *Association of less than seven members—At date of petition.*]—*Held :* the ct. may not under Cos. Act, s. 271, order the winding up of an unregistered co. if it is composed at the date of the application for its winding up, of not more than 7 members.—V. E. R. M. CHETTYAR *v.* HORMASJI (J) (1930), I. L. R. 8 Ran. 658, *revsg.* S. C. *sub nom. Re* INDIAN COMPANIES ACT, 1913 (1930), I. L. R. 8 Ran. 409.—IND.

v. WHITEHEAD, [1931] 1 Ch. 558; 100 L. J. Ch. 147; 144 L. T. 636; [1929-30] B. & C. R. 276.

7956. *Add. Annotation :*—*As to* (2) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

8045. *Add. Annotations :*—**Distd.** Aylott *v.* West Ham Corpn., Sisson *v.* Same (1926), 95 L. J. Ch. 533. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

8091. *Add. Annotation :*—**Refd.** Lovibond *v.* Grand Trunk Ry. Co. of Canada, [1936] 2 All E. R. 495.

8126. *Add. Annotation :*—*As to* (2) **Refd.** Cotter *v.* National Union of Seamen [1929] Ch. 58.

8129. *Add. Annotations :*—*Generally*, **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8150. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

8176. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8321. *Add. Citation :*—2 Macq. 391.

8339. *Add. Citation :*—1 Macq. 461.

Add. Annotations :—**Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

8361. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

8365. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

8366. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

8375. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

8389. *Add. Annotations :*—*As to* (1) **Apld.** Garrard *v.* James, [1925] Ch. 616. **Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536. **Refd.** Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

8390. *Add. Annotations :*—**Refd.** *Re* George Inglefield, Ltd., [1933] Ch. 1; *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

8412a. —— ——.]—*Re* MERSEY RY. CO., GIBBS *v.* MERSEY RY. CO. (1895), 11 T. L. R. 390.

8416. *Add. Annotation :*—**Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

PART IX. SECT. 8, SUB-SECT. 5.—B.

b i. —— *Necessity for.*]—Where the directors of a railway co. at one meeting made several calls, payable at intervals of two months from each other :—*Held :* bad, for the calls cannot be made at less intervals than two months; & a stockholder who had paid the first call thus made, & then transferred his shares, was not responsible for the subsequent calls thus illegally made.—MOORE *v.* MCLAREN (1862), 11 C. P. 534.—**CAN.**

b ii. —— *How calculated.*]—Where calls on stock were to be made "at periods of not less than three months' interval," & one call was made payable on Aug. 10, & another on Nov. 10 :—*Held :* an interval of three months had not elapsed between the two calls, & that the second call was therefore bad.—STADACONA FIRE & LIFE INSURANCE CO. *v.* MACKENZIE (1878), 29 C. P. 10.—**CAN.**

PART IX. SECT. 14, SUB-SECT. 1.

8370 i. *By issue of debentures—On completion of portion of railway—Issue before completion.*]—The B. & W. Ry. Co., whose borrowing powers were not to arise until a certain portion of their line should have been open for traffic, entered into an agreement with the S. & W. Ry. Co. that, if the latter co. would advance them a sufficient sum to enable them to complete that portion of the line, they, the B. & W. Co., would, when their borrowing powers arose, issue & deliver to the S. & W. Co. a sufficient amount of debentures to enable them to repay themselves the sum which they should so advance. In pursuance of this agreement, the S. & W. Co. paid, from time to time, the contractor's accounts, until the portion of the line required by the B. & W. Co.'s special Act to be open for traffic before the borrowing powers should arise was completed. The S. & W. Co. advanced in that way £12,000. The B. & W. Co.'s borrowing powers having arisen, they issued & delivered to the S. & W. Co. debentures to secure that advance :—*Held :* there was nothing illegal in that contract, & the debentures were valid to the extent of £12,000, the sum actually advanced.—*Re* BAGNALSTOWN & WEXFORD RY. CO. (1870), 4 I. R. Eq. 505.—**IR.**

8420a. As between lenders & unsecured creditors.]—A tramway co., created by private Act of Parliament incorporating the Cos. Clauses Acts, was closed down, &, after being registered as a limited co. under Part IX. of the Cos. Act, 1929, was voluntarily wound up. The liquidator took out a summons to determine (*inter alia*) the rights of debenture-holders as against unsecured creditors, & the extent of the charge created by the debentures:—*Held:* the tramway having altogether ceased to exist as a going concern, the debenture-holders were entitled to a charge on all the assets, including proceeds of sale of realised assets & uncalled capital, in priority to the claims of unsecured creditors.—*Re* GLYN VALLEY TRAMWAY CO., [1937] Ch. 465; [1937] 3 All E. R. 15; 106 L. J. Ch. 238; 157 L. T. 36; 53 T. L. R. 743; 81 Sol. Jo. 479.

8444a. —— ——.]—A receiver & manager was appointed of the undertaking of a tramways co.—BARTLETT *v.* WEST METROPOLITAN TRAMWAYS CO., [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560.

Annotation:—**Dbtd.** Marshall *v.* South Staffordshire Tram. Co., [1895] 2 Ch. 36.

8463. *Add. Annotation:*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

8481a. —— **Priority in winding-up—Validity.**]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante.*

8481b. Condition restricting rights of preference shareholders—Limitation to repayment out of surplus assets paid up on share—Validity.]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante.*

8481c. Surplus assets — Distribution between original & surplus capital.]—No provision was made in the memorandum or articles of a statutory co., which had a capital of £10,000, either for the distribution of surplus assets in the event of a winding up or for dividends, except that the directors could declare a dividend to the members in proportion to their shares. In 1902 an order, which was confirmed by statute, was made providing for an increase of the capital to £18,000 by an issue of additional shares. The order provided that the undertakers should not make a larger dividend payment than one of 10 per cent. on the original capital & one of 7 per cent. on the additional capital. There was no provision with regard to the distribution of surplus assets & there was nothing else to distinguish the two classes of capital. In 1936 the co.'s undertaking was sold & the co. was wound up. A question arose as to the distribution of surplus assets in the hands of the liquidator after payment of the debts of the co. & after paying to the shareholders the amount paid up on their shares. The surplus assets represented *inter alia* the proceeds of the carrying on of the undertaking since the last dividend was declared & paid:—*Held:* (1) as no dividend had been declared by the directors before the winding up, the surplus assets could not be distributed partly as dividend & partly as capital; (2) the surplus assets should be distributed *pari passu* between the holders of both classes of share capital.—*Re* SYSTON & THURMASTON GAS, LIGHT & COKE CO., LTD., [1937] 2 All E. R. 322.

Part XII.—Foreign Companies.

8510. *Add. Annotations:*—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; A.-G. *v.* Belilios, [1928] 1 K. B. 798.

8512. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

8513. *Add. Annotation:*—**Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

8514. *Add. Annotation:*—**Refd.** Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137.
After this case add:—
—— ——.]—*See, now,* 1929 Act, s. 234 (1).

8520. *Add. Annotation:*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

8523. For the portion of the paragraph in the original volume commencing with "*Held:*" substitute the following paragraph:—
Held: (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the

PART X. SECT. 6.

sb. *Effect of Act respecting Capacity of Companies,* 1917 (c. 12).]—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PURE OIL CO., LTD. (Man.), [1926] 1 D. L. R. 689; [1926] 1 W. W. R. 436; 35 Man. L. R. 433.—**CAN.**

PART XII. SECT. 4.

t. (top of p. 1200). Read now "**w.**"

w (p. 1200) **i.** —— *Company holding no licence in mortmain.*]—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land:—*Held:* the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns.—*Re* NEW YORK LIFE INSURANCE CO. (1924), 55 O. L. R. 408.—**CAN.**

q (p. 1200) **i.** —— —— *Burden of proof of status to carry on business.*]—LA SALLE EXTENSION UNIVERSITY *v.* FREEMAN (Man.), [1926] 3 W. W. R. 474.—**CAN.**

g. (p. 1202). Add "*revsd.* 56 S. C. R. 539."

g. (p. 1202) **i.** —— —— ——.]—NEWS PUBLISHING CO. *v.* ARMSTRONG STAGE & TAXI CO., [1933] 3 D. L. R. 568.—**CAN.**

PART XII. SECT. 5.

ss. *General rule.*]—In the absence of evidence of the law of the foreign state in question, the ct. cannot hold that a doctrine of English law applicable to a co. incorporated under local statutes applies to a co. incorporated under a foreign statute.—CLARK *v.* THOMAS J.

PART XII. SECT. 7, SUB-SECT. 1.—A.

ii. —— *Necessity for proof of incorporation.*]—The provisions of Cos. Act, 1933, requiring foreign cos. to be registered & licensed in Saskatchewan before commencing to carry on business therein do not prevent an unregistered foreign co. from suing in the

they ought to have moved to strike out the name of the bank as pltf.—RUSSIAN COMMERCIAL & INDUSTRIAL BANK *v.* COMPTOIR D'ESCOMPTE DE MULHOUSE, [1925] A. C. 112; 93 L. J. K. B. 1098; 132 L. T. 99; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

As to (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Distd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd., [1933] A. C. 289. **Consd.** Russian & English Bank *v.* Baring Bros. Co. (1932), 48 T. L. R. 193. *As to* (2) **Folld.** Banque [illegible] de Petrograd *v.* Goukassow, [1925] A. C. 150. **Consd.** The Jupiter (No. 2), [1925] P. 69; The Jupiter (No. 3) (1927), 137 L. T. 333. **Distd.** [illegible] *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. Russian & English Bank *v.* Baring Bros. & Co., [illegible] 120; Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

8523a. —— ——.]—A bank incorporated in Russia in 1911, with British shareholders holding a majority of the shares, established a branch in London under separate management in 1915. In 1917 the Bolshevist revolution took place, & the bank ceased to carry on any business in Russia, its last general meeting being held at Petrograd in June, 1917. In 1921 an action was commenced in the name of the bank by British shareholders to recover two sums of £100,000 & £80,000, forming part of a credit lodged by the former Russian Govt. with defts., an English bank, & alleged to have been assigned to pltfs. Pleadings were delivered, but the action lay dormant for several years, after which pleadings were amended & the A.-G. was added as a deft. At some uncertain date, either before or shortly after the action was launched, pltfs. were dissolved & ceased to exist as a corpn. at Russian law by virtue of a decree of the Soviet Government:—*Held:* on a procedure summons taken out by defts., the action must be stayed indefinitely, as pltfs. no longer existed either in Russia or in Great Britain.

Semble: although extinguished in the country of its origin, there is power in the ct. to wind up the English branch of a foreign corpn. as an unregistered co. under 1929 Act, s. 338.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1932] 1 Ch. 435; 101 L. J. Ch. 157; 146 L. T. 424; 48 T. L. R. 193; 76 Sol. Jo. 68.

Annotations:—**Consd.** *Re* Russian & English Bank, [1932] 1 Ch. 663; Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523b. —— —— **Application for removal of stay—After making of winding-up order.**]—A Russian banking co., which had established a business in England, was dissolved by Soviet law before the coming into operation of 1929 Act. The co. was pltf. in an action which was stayed in 1932 by an order of the ct., pltf. co. being treated as having been dissolved. A compulsory winding-up was subsequently made under sect. 338 of 1929 Act:—*Held:* 1929 Act, sect. 338 (2), did not operate to revive pltf. for the purposes of the action to which an end had been put by the order of the ct. or to avoid the dissolution brought about by the foreign law.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1934] Ch. 276; 103 L. J. Ch. 111; 150 L. T. 353; 77 Sol. Jo. 913; [1933] B. & C. R. 213.

Annotation:—**Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523c. —— ——.]—A foreign co. which after carrying on business in this country has been dissolved in the country of its incorporation may, notwithstanding its dissolution in that country, be wound up as an unregistered co. under 1929 Act, s. 338 (1), (2), although the dissolution took place before the passing of that Act; &, with the leave of the Registrar in Cos. Winding-up, on the instruction of the liquidator with the approval of the committee of inspection, an action may be brought in the name of the foreign co. to recover sums which at the date of its dissolution were due to the co. & unpaid.—RUSSIAN & ENGLISH BANK & FLORANCE MONTEFIORE GUEDALLA *v.* BARING BROS. & Co., LTD., [1936] A. C. 405; [1936] 1 All E. R. 505; 105 L. J. Ch. 174; 154 L. T. 602; 52 T. L. R. 393; [1936–7] B. & C. R. 28, H. L.

8523d. —— ——.]—By a decree dated June 20, 1936, the Italian government purported to dissolve the Bank of Ethiopia. The Emperor Haile Selassie had left Abyssinia on May 1 or 2, 1936. In an action begun on Sept. 29, 1936, the Bank of Ethiopia made claims against the National Bank of Egypt (its correspondent in Cairo & London), & against the liquidator appointed pursuant to the Italian decree. In the action direction was made for the trial of the issue whether the Bank of Ethiopia had been dissolved or had otherwise ceased to exist by virtue of the laws of the country under the laws whereof it was incorporated, or, if it had not so ceased to exist, whether the action had been brought with its authority. On Apr. 28, 1937, the Emperor Haile Selassie, in England, signed a decree purporting to empower all cos. incorporated under Ethiopian law to hold valid meetings of their members & of their councils of administration & to carry on business outside Abyssinia. On Apr. 29, 1937, the issue came before the Ct. for trial. During the hearing there was put before the ct. a certificate from the Foreign Office showing that the British government, in Dec. 1936, recognised the Italian government as being in fact (*de facto*) the government of the area

province on a contract made out of the province with respect to property situate outside of the province; but the pltf. foreign co. must prove its incorporation under the laws of the country in which it alleges it is incorporated.

A certificate, purporting to be under the hand & seal of the Secretary of State for a certain state of the United States of America, to the effect that the document attached thereto contains a true & correct copy of the charter of the pltf. co. is not receivable in evidence to prove that the co. is incorporated in that state. But applying K. B. rule 343, leave was given pltf. to establish its incorporation by an affidavit of said Secretary of State or of some official connected with his office who can testify as to the incorporation & verify an examined copy of the charter.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 699.—**CAN.**

[illegible] ——.]—The Supreme Ct. of New South Wales has no jurisdiction to entertain an action against a co. registered & carrying on business wholly outside the State & Service & Execution of Process Act, 1901–1928 (Cth.), does not extend its jurisdiction.—BRAEMAR WOOLLEN MILLS CO-OP., LTD. *v.* POINSETTIA HOSIERY [illegible] PTY., LTD. (1931), 51 N. S. W. W. N. 16.—**AUS.**

se. *Action by creditor—Liquidation in country of domicil.*]—A liquidation in the country of domicil of a co. registered in New South Wales as a foreign co. gives this ct. no jurisdiction to interfere with the rights of creditors in this State.—PRIMARY PRODUCERS BANK OF AUSTRALIA, LTD. *v.* HUGHES (1931), 48 N. S. W. W. N. 240.—**AUS.**

of Abyssinia then under Italian control:—*Held:* (1) the decree of June 20, 1936, was made by a *de facto* government having the occupied territory completely under its control & therefore under its full governmental authority; (2) the action could not be held to have been authorised by the Bank of Ethiopia, as it had not been brought by the liquidator's authority.

Semble: a *de facto* government has necessarily full responsibility, & its acts have the status of acts of a government with full responsibility.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513; [1937] 3 All E. R. 8; 106 L. J. Ch. 279; 157 L. T. 428; 53 T. L. R. 751; 81 Sol. Jo. 479.

8524. For the paragraph in the original volume substitute the following paragraph:—

—— ——.]—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank:—*Held:* the case was governed by *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—BANQUE INTERNATIONALE DE COMMERCE DE PETROGRAD *v.* GOUKASSOW, [1925] A. C. 150; 93 L. J. K. B. 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

Annotations:—**Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

8527a. —— —— **Whether company in existence.**]—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held:* (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—[illegible] LIABILITY ASSURANCE CORPN. *v.* COLLINS & Co., [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* SEDGWICK COLLINS & Co., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.; *affg.* S.C. *sub nom.* SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

Annotations:—*As to* (1) **Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *As to* (3) **Apld.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495. *Generally*, **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

8527b. —— **Company extinct—Judgment by default—Garnishee proceedings—Invalid.**]—On Oct. 29, 1930, a writ was issued by applts. against a Moscow bank, hereinafter called the Industrial Bank, claiming £362,396 15*s.* as a debt & interest; an affidavit was sworn on which an order was made for service of notice of the writ on the Industrial Bank at Moscow. On Nov. 24, 1930, judgment was entered for applts. in default of appearance. On Nov. 28, 1930, applts. received a letter from the Soviet Embassy, dated Nov. 27, 1930, returning the notices of the writ & stating that they could not be delivered as the Industrial Bank went out of existence during the 1917 Oct. revolution. On Dec. 12, 1930, the applts. obtained a garnishee order *nisi* against resps., who were indebted to the Industrial Bank for a sum in excess of the sum for which applts. had obtained judgment. A copy of the order was sent on the same day to the Industrial Bank but was returned marked "unknown."

On the questions whether the garnishee order *nisi* should be set aside on the ground that the judgment was a nullity, having been signed against a non-existent deft., since the Industrial Bank had ceased to exist as a juristic person before the date of the writ, & further whether the order should not also be set aside on the ground that there was no proper service on defts. even if existent:—*Held:* (1) the English ct. recognised that the governing authority in Russia was, & had been since Oct. 1917, the Soviet State, & the Russian Soviet law, as to whether the Industrial Bank was in Oct. 1930, an existing juristic person, was a question of fact which must be proved by qualified expert evidence as to the foreign law & decided by the judge alone; the evidence compelled the conclusion that the Industrial Bank was by Soviet law non-existent in Russia in 1930, & therefore the judgment & garnishee proceedings must be set aside; (2) the discretion of the ct. ought to be exercised to set aside the order for service of the writ, & in refusing to treat the judgment as of sufficient foundation for a garnishee order, as the affidavit had not properly disclosed the position, & because no reference was therein made to the procedure provided for such cases by R. S. C., Ord. 11, r. 8, which, if it had been complied with would have resulted in the judge becoming aware of the impossibility of service of the notice of the writ; (3) at the material time the procedure under R. S. C., Ord. 11, was mandatory, the relevant words being "the following procedure shall be adopted"

& not as now permissive by the substitution since made by the Rules Committee of the word "may" for the word "shall." Accordingly, apart from the want of accuracy in the affidavit, the order for substituted service was made by an incompetent procedure & was a nullity. The judgment, therefore, based on such service & the subsequent garnishee proceedings failed.—LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., [1933] A. C. 289; 102 L. J. K. B. 191; 148 L. T. 242; 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.: *affg.* S. C. *sub nom.* LAZARD BROS. & Co. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations:—As to (1) **Reid.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120. *Generally,* **Reid.** Burr *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527c. —— —— —— **Setting aside.**]—If it comes to the knowledge of the ct. that it has entered judgment in default of appearance against a man who was at the time dead, or a co. which was at the time dissolved, or non-existent according to the law of its country of origin, the ct. is bound, after hearing the parties interested, of its own motion to set the judgment aside (SCRUTTON, L.J.).—LAZARD BROS. & Co. *v.* BANQUE INDUSTRIELLE DE MOSCOU; LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., [1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240, C. A.; *affd.*, [1933] A. C. 289, H. L.

Annotation:—**Reid.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527d. —— —— **Setting aside judgment.**]—A Chilean co. was formed under Chilean law by the making of two decrees in Mar. & Apr. 1931. On Jan. 2, 1933, a Presidential decree was issued declaring that the two former decrees creating the co. were repealed & left without effect. On Jan. 19, 1933, a judgment in favour of the then pltfs. (the present defts.) was given in an action in the English High Ct. against the co. Pltfs. in the present action, members of a Liquidation Commission appointed to take over the assets lately belonging to the Chilean co., claimed a declaration that the judgment given in the English High Ct. was null & void:—*Held:* the effect of the Presidential decree was that the co., although it had had a *de facto* existence, never came into legal existence & was not a *de jure* entity, & was non-existent at the time when the judgment was given against it. The present pltfs. were therefore entitled to a declaration that the judgment against the co. was null & void as having been given against a non-existent deft.—BURR *v.* ANGLO-FRENCH 282; 49 T. L. R. 405;

8542. *Add. Annotations:*—
v. Rossia Insce. of Petrograd, *Re* Russian & English Bank 282.

8543. *Add. Annotations:*—
v. Rossia Insce. of L. T. 808; *Re* Vocalion (Foreign), 48 T. L. R. 525.

8548a. —— **Company dissolved before Power to wind up as unregistered company Winding up of English branch.**]—RUSSIAN ENGLISH BANK *v.* BARING BROS. & Co., No. 8523a, *ante.*

8548b. —— —— ——.]—A petition was by creditors, whose debt was disputed, for the compulsory winding-up of an unregistered foreign co. which had a branch in England & which was dissolved by the laws of Russia before the 1929 Act came into operation:—*Held:* (1) the provisions of 1929 Act, s. 338, notwithstanding sub-sect. 2 of sect. 338, did not alter the law as it existed, before that statute came into operation, under the corresponding sects. of the Acts of 1862 & 1908, & the ct. had therefore jurisdiction to make an order for the compulsory winding-up of the co. under sect. 338 (1) (*d*); (2) notwithstanding the general rule that a disputed debt may not form the basis of a creditor's petition for the winding-up of a co., petitioners would in the circumstances be otherwise without a remedy & were entitled to proceed by a winding-up petition; & they were entitled to a compulsory order for the winding-up of the co.—*Re* RUSSIAN & ENGLISH BANK, [1932] 1 Ch. 663; 101 L. J. Ch. 226; 147 L. T. 57; 48 T. L. R. 282; 76 Sol. Jo. 201; [1931] B. & C. R. 140.

Annotations:—As to (2) **Folld.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. **Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8548c. —— —— ——.]—The bank was established in Russia in 1871 as a limited co. & was authorised by its statutes to open branches in Russia & elsewhere, which it did in, among other places, London & Paris. In 1909 it began business in London, filed particulars with the Registrar of Cos., & registered the names & addresses of persons authorised to accept service in England on its behalf. The bank at all material times consisted of more than eight members. Petitioner claimed to be a creditor for over £23,000, & asked that the bank should be wound up. Expert evidence for him expressed the view that the bank had ceased to exist as a result of decrees made under

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PART XII. SECT. 8, SUB-SECT. 1.

e i. —— —— ——.]—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on the petition of a Canadian creditor, with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held:* a valid order.—*Re* SCOTTISH CANADIAN ASBESTOS CO., ALLEN *v.* HANSON (1890), 18 S. C. R. 667.—**CAN.**

e ii. —— —— ——.]—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order:—*Held:* a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—**CAN**

e iii. —— *Remission of funds to foreign liquidator.*]—A co., incorporated in New South Wales & carrying on business in Victoria, was ordered by the Supreme Ct. of New South Wales to be wound up. A similar order, subsequently made by the Supreme Ct. of Victoria, provided that the Victorian winding up should be conducted as ancillary to that in New South Wales. The Victorian liquidator had in hand £1,665, proceeds of realisation:—*Held:* upon the New South Wales liquidator giving security to the satisfaction of the prothonotary in the sum of £1,500 that the Victorian assets would be applied to the satisfaction of the claims of the Victorian creditors *pari passu* with other claims of the same class, all moneys in the hands of the Victorian liquidator, after deducting the costs of the winding-up, including the liquidator's remuneration, should be remitted to the New South Wales liquidator.—*Re* AUSTRALIAN FEDERAL LIFE & GENERAL ASSURANCE CO., LTD. (No. 2), [1931] V. L. R. 317; Argus L. R. 291 (Victoria).—**AUS.**

the laws of the Union of Socialist Soviet Republics, which decrees had transferred its assets to the Soviet Govt., & that payment could not be demanded from any person or body of persons. Petitioner's debt was disputed & the bank opposed the petition on the ground, also supported by expert evidence, that it could not have ceased to exist as long as it had, as it claimed to have in London & Paris, branches with which the Soviet Govt. had not dealt & which it had not taken over. Pursuant to an order of the Registrar the petition had been served upon the persons registered as authorised to accept service in England, & no question was raised before the ct. as to the validity of the service :—*Held :* (1) the result of the Russian revolutionary legislation of 1917 & the following years was to put an end to the juristic existence of banking companies incorporated in Russia, including those which had branches established in England ; (2) apart from that conclusion, the impossibility of a branch of such a Russian bank continuing to function according to its incorporating statutes was a sufficient ground for a winding-up order ; (3) such an order might be made even if the debt of the petitioning creditor was in dispute ; (4) the Soviet decrees could not have the effect of extinguishing or transferring debts regarded in English law as being locally situate in England ; (5) the ct.'s jurisdiction was not affected by the circumstance that the Soviet Govt. which, up to the date of the judgment on the petition, had not intervened, might possibly establish a claim to some part of the assets.—*Re* RUSSIAN BANK FOR FOREIGN TRADE, [1933] Ch. 745 ; 102 L. J. Ch. 309 ; 149 L. T. 65 ; 49 T. L. R. 253 ; 77 Sol. Jo. 197 ; [1933] B. & C. R. 157.

8548d. —— —— —— **Service of petition.**]—The ct. can wind up a foreign co. which has carried on business within the jurisdiction, even if the co. has ceased to exist, & if there is no member, officer, or servant of the co. on whom the petition to wind up can be served, the service must be effected, not under R. S. C., Ord. 67, r. 6, but under Companies (Winding Up) Rules, 1929, r. 28, by leaving a copy of it at the co.'s "last known principal place of business" within the jurisdiction.—*Re* TEA TRADING CO. K. & C. POPOFF BROS., [1933] Ch. 647 ; 102 L. J. Ch. 224 ; 149 L. T. 138 ; 77 Sol. Jo. 215 ; [1933] B. & C. R. 120.

8554. *Add. Annotation :*—**Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8556. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

Part XIII.—Illegal Companies.

8571. *Add. Annotations :*—**Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383 ; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

8574a. —— **Company selling Irish lottery tickets.**]—A co. was formed in England for the sale there of tickets & chances in the Irish lottery : —*Held :* the object of the co. was unlawful, & the Registrar of Joint Stock Cos. was right in refusing to register the co.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197 ; 100 L. J. K. B. 638 ; 145 L. T. 522 ; 95 J. P. 137 ; 47 T. L. R. 383 ; 29 L. G. R. 452, C. A.

8576a. ——.]—HARVEY *v.* COLLETT (1846), 15 Sim. 332 ; 4 Ry. & Can. Cas. 387 ; 15 L. J. Ch. 376 ; 10 Jur. 603 ; 60 E. R. 646.

Annotation :—**Refd.** Stewart *v.* Austin (1866), 36 L. J. Ch. 162.

8581a. —— **Action against treasurer & secretary —Illegality will not prevent account.**]—GREENBERG *v.* COOPERSTEIN, No. 272a, *ante*.

8582. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8583. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8587. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281 ; Greenberg *v.* Cooperstein, [1926] Ch. 657 ; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal Owners' Assocn. (1926), 135 L. T. 673.

Part XIV.—Companies under Private Acts.

8595a. —— **Name of member omitted from memorial of names of members—Deed not executed.**]—SCOTT *v.* BERKELEY (1847), 3 C. B. 925 ; 5 Ry. & Can. Cas. 51 ; 16 L. J. C. P. 107 ; 8 L. T. O. S. 389 ; 11 Jur. 242 ; 136 E. R. 371.

Annotations :—**Refd.** Portal *v.* Emmens (1876), 1 C. P. D. 201 ; Kipling *v.* Todd (1878), 3 C. P. D. 350 ; *Re* South London Fish Market Co., Plimsoll's Case (1888), 1 Meg. 92.

PART XIII. SECT. 2, SUB-SECT. 2.

8a. *Illegality as ground for winding up.*]—The objects of a co. as disclosed in its memorandum were unobjectionable, & one of its objects was to raise donation funds to carry out charitable objects. By its Arts. of Assocn. certain objects were introduced which had the effect of making the co. conduct a lottery or keep an office for the purpose of drawing a lottery or publish proposals relating to the drawing of such a lottery :—*Held :* the co. should be wound up, since its main object was an illegal purpose. A lottery is "a distribution of prizes by lot or chance." AID & POOR HOUSES ASSOCN., LTD. *v.* THOPPA NAIDU (1933), I. L. R. 56 Mad. 26.—IND.

PART XIV. SECT. 2, SUB-SECT. 3.

8d. *Subscription books—Conditions as to.*]—MARMORA FOUNDRY CO. *v.* MURNEY (1850), 1 C. P. 29.—CAN.

8615. Add following para.:—*Held:* in an action against the co. for improperly withholding the shares after a tender of the sum due for calls & interest, A. was entitled to recover their value at the market price of the day of the tender, deducting the amount of the calls & interest.—VAN DIEMAN'S LAND CO. *v.* COCKERELL (1857), 1 C. B. N. S. 732.

8621a. —— ——.]—BROWNE *v.* LONDON NECROPOLIS & NATIONAL MAUSOLEUM CO. (1857), 6 W. R. 188.

8633. *Add. Annotations:*—**Consd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, *see* Law of Property Act, 1925 (c. 20), ss. 193, 194.

Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

224. *Add. Annotation :—Generally,* **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

226. *Add. Annotation :—As to* (2) **Refd.** Hodgson *v.* McCreagh (1923), 92 L. J. Ch. 426.

Part V.—Right of Free Warren.

323. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

323a. —— **In demesne land—Is warren in gross.**]—Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301; alternatively, on a lost grant, presumed from immemorial user :—*Held :* the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—HODGSON *v.* MCCREAGH (1923), 93 L. J. Ch. 339; 131 L. T. 340; 40 T. L. R. 10; 68 Sol. Jo. 58, C. A.

329. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347a. **Alienation reserving franchise of free warren.**]—HODGSON *v.* MCCREAGH, No. 323a, *ante.*

349a. —— **By alienation of soil—Although soil reacquired.**]—R. *v.* SHIRLAND (1314), Y. B. 6 & 7 Edw. 2, VIII. Sel. Soc. (Vol. III., Eyre of Kent) 181.

Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotations :—As to* (2) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

452. *Add. Annotation :*—**Refd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

454. *Add. Annotation :*—**Distd.** Wade (Gabriel) & English, Ltd. *v.* Dixon & Cardus, Ltd., [1937] 3 All E. R. 900.

Part XIII.—Inclosure of Commons and Common Fields.

884. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

886. *Add. Annotation :*—**Refd.** Back *v.* Daniels, [1925] 1 K. B. 526.

893. *Add. Annotations :—As to* (4) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. *As to* (5) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

896. *Add. Annotation :—As to* (2) **Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

899. *Add. Annotation :—As to* (1) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

900. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

901. *Add. Citation :*—[1922] 2 Ch. 187, n.

Add. Annotations :—**Folld** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

903. For the paragraph in the original volume substitute the following paragraph :—

—— —— —— —— ——.]—By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or

could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damnified by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees:—*Held:* (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co.* v. *Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to pltfs.; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. *v.* CONSETT IRON CO., [1922] 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383; 38 T. L. R. 584; 66 Sol. Jo. 452, C. A.

905. *Add. Annotations:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

906. *Add. Annotation:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

909. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. *As to* (3) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

911. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Overd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

913. *Add. Annotations:*—**Refd.** Taylor *v.* British Legal Life Assce., [1925] Ch. 395; Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

929a. Power to stop up highway through "old enclosure."]—By Inclosure Act, 1845 (c. 118), s. 62, power is given to the valuer acting in the matter of any inclosure to set out & make public roads & ways, & widen public roads & ways, in or over the land to be inclosed, & to stop up, divert or alter any of the roads or ways passing through the land to be inclosed, or "through any old inclosures in the parish or respective parishes in which the land to be inclosed shall be situate":—*Held:* the power of stopping up roads so given is not confined to roads passing through old inclosures or intakes from the waste or common, the subject of inclosure, but extends to roads passing through any old inclosures within the parish.—HORNBY *v.* SILVESTER (1888), 20 Q. B. D. 797; 57 L. J. Q. B. 558; 59 L. T. 666; 52 J. P. 468; 36 W. R. 679, C. A.

939a. As to fences—Power to direct maintenance.]—Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—GARNETT *v.* PRATT, [1926] Ch. 897; 95 L. J. Ch. 453; 135 L. T. 471; 70 Sol. Jo. 736.

942a. Trespass—Power to maintain—Interference with stake.]—DRIVER *v.* SIMPSON (1818), 8 Taunt. 614, n.; 2 Moore, C. P. 682, n.; 129 E. R. 523.

Annotation:—**Distd.** Newcastle *v.* Clark (1818), 2 Moore, C. P. 666.

983. *Add. Annotation:*—*Generally*, **Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

Add. Annotation:—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1012. *Add. Annotation:*—*As to* (2) **Refd.** Liddle *v.* North Riding of Yorkshire County Council [1934] 2 K. B. 101.

1012a. —— Extent of dedication to public.]—Where the lord of a manor encloses a strip of land by the side of a public highway & within a few feet only from the metalled portion of the road, then, whatever the presumption might have been before, a presumption thereafter arises that what he has left between the metal & his fence is dedicated to the public.—COPESTAKE *v.* WEST SUSSEX COUNTY COUNCIL, [1911] 2 Ch. 331; 80 L. J. Ch. 673; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905.

1015. *Add. Annotation:*—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

1023. *Add. Annotations:*—*As to* (1) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

Part XIV.—Regulation of Commons.

1078. *Add. Annotation:*—**Consd.** Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450.

1089. After this case add "—— **Injunction to restrain promotion—Scheme inconsistent with prior conveyance.**]—*See* INJUNCTION, Vol. XXVIII., pp. 469, 470, No. 789."

COMPULSORY PURCHASE OF LAND AND COMPENSATION.

Part I.—Compulsory Powers over Lan

Add. Annotations :—As to (2) **Distd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

7. *Add. Annotations :—As to* (3) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

Add. Annotation :—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

Part II.—Conditions attached to the Powers.

28. *Add. Annotations :—As to* (2) **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315 ; *Re* Simcon, [1937] 3 All E. R. 149. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

56. *Add. Annotation :*—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

62a. ——.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—*Held :* (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality ; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1927] A. C. 198 ; 95 L. J. P. C. 209 ; 136 L. T. 197, P. C.

Annotation :—Generally, **Refd.** Bell Telephone Co. of Canada *v.* Canadian National Rys., [1933] A. C. 563.

67. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

88. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

91. *Add. Annotations :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283 ; Roberts *v.* Hopwood, [1925] A. C. 578.

98. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

99a. —— **Subway.**] — BOLAND *v.* CANADIAN NATIONAL RY. CO., No. 62a, *ante.*

109. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

110. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

111. *Add. Annotations :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283. *As to* (2) **Refd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

114. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

116. *Add. Annotation :*—**Refd.** Sydney Municipal Council *v.* Campbell, [1925] A. C. 338.

116a. —— **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving

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PART I. SECT. 1.

c 1. ——.]—The right to expropriate must be clear, & if there is a doubt it will be settled in favour of the landowner.—*Re* CALDWELL & TORONTO, [1935] 2 D. L. R. 623 ; O. R. 255.—**CAN.**

ss. *What amounts to compulsory taking.*]—The acquisition of the International Ry., on the expiration of its franchise, by the Niagara Parks Commission, was not a compulsory taking.—INTERNATIONAL RY. CO. *v.* NIAGARA PARKS COMMISSION, [1936] 1 D. L. R. 737 ; O. R. 195 ; *on appeal,* [1937] 3 All E. R. 181, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

so. *Land in use "otherwise for more convenient occupation" of building*

cl. s. 325.

DISTRICT CORPN. *v.* CAINE (1920), 67 D. L. R. 794 ; 28 B. C. R. 321.—**CAN.**

m 1. —— *Public Works R. S. B. C.,* 1911 (c. 189)—*Vc of contract by Minister of Public Works.*]—A contract made by the Minister for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department. MACKAY *v.* A.-G. FOR BRITISH COLUMBIA, [1922] 1 A. C. 457.—**CAN.**

— ii. —— *Expropriation Act,* 1906 (c. 143)—*Discretion of Minister.*]—As to the propriety & necessity of expropriation the Minister is the sole judge & the ct. has no jurisdiction to interfere with his discretion.—*R. v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—A.

sd. *Bye-law expropriating excessive land—Severable.*]—A bye-law expropriating land in excess of that allowed by statute is severable.—RICHES *v.* RICHMOND TOWNSHIP, [1933] 3 D. L. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—B. (a).

sf. *Land taken for building Toronto Viaduct—What Act applicable.*]—CANADIAN NATIONAL RY. CO. *v.* TORONTO IRON WORKS, [1926] C. R. 133.—**CAN.**

or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether resps.' land was required for improving or remodelling:—*Held:* the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, [1925] A. C. 338; 133 L. T. 63; *sub nom.* SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, SAME *v.* HUGHES MOTOR SERVICE, LTD., 94 L. J. P. C. 65, P. C.

116b. **Whether land required—Right of local authority to decide.**]—A local authority which has acquired land under its statutory powers must, acting in good faith, be the sole judge, under either Public Health Act, 1875 (c. 55), s. 175, or Public Health Acts Amendment Act, 1907 (c. 53), s. 95, of whether the land is "not required" or "not required for the purposes for which it has been acquired."—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112.

126. *Add. Annotation:*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

129. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

131. *Add. Annotation:*—**Apld.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133. *Add. Annotation:*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133a. —— **For pleasure gardens & street widening—Part used for pleasure garden—May be subsequently used for street widening.**]—A local authority bought land in 1896 for the purposes of: (1) street widening; (2) making new streets; (3) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held:* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, [1930] 1 Ch. 168, C. A.

134. *Add. Annotation:*—**Consd.** A.-G. *v.* Sunderland Corpn. (1929), 142 L. T. 61.

135. *Add. Annotations:*—*As to* (1) **Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. *As to* (2) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

136. *Add. Annotation:*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

138. *Add. Annotation:*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

139. *Add. Annotations:*—*As to* (1) **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

140. *Add. Annotation:*—*Generally*, **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

142. *Add. Annotations:*—**Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

143. *Add. Annotations:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

145. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

146. *Add. Annotation:*—*As to* (4) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

Part III.—Principles of the Law of Compensation.

153. *Add. Annotation:*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

155. *Add. Annotations:*—**Consd.** Clore *v.* Theatrical Properties, Ltd. & Westby & Co., [1936] 3 All E. R. 483. **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

155a. —— **Right to erect electric advertisement sign.**]—The lessees of a hotel entered into

PART II. SECT. 3, SUB-SECT. 4.

119 ii. —— —— *To construct tunnel under river.*]—A co. incorporated for the purpose of constructing a tunnel under a river desired to expropriate a parallelopidedon beneath the surface:—*Held:* what the co. desired to take was not a mere easement, but a hereditament & it had power under its Act of incorporation to do so.—*Re* KOLODZI & DETROIT & WINDSOR SUBWAY CO., [1930] 4 D. L. R. 10; 37 C. R. C. 4; 65 O. L. R. 398; *affd.*, [1931] 3 D. L. R. 337; S. C. R. 523.—**CAN.**

sd. *Use cannot be restricted.*]—Where an easement is expropriated the municipality cannot restrict the use of it as it exists at the time, & the arbitrator must fix the damages occasioned by the right acquired in terms of the bye-law.—*Re* CONGER LEHIGH COAL CO., LTD. & TORONTO CITY, [1934] O. R. 35; 1 D. L. R. 476.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. —— *Subsequent conveyance unregistered.*]—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

149 iii. —— *Unless right to compensation reserved by vendor.*]—*Re* CODVILLE (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—**CAN.**

o i. —— *After expropriation.*]—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation:—*Held:* H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

sk. *Surface owner—Compulsory taking of mining rights.*]—The compensation payable a surface-rights owner for a right of entry for the purpose of

drilling for oil should cover not only the value of land taken or destroyed, but also any damage or loss that may reasonably be expected to be caused him, in the use of his remaining land, as a result of the drilling or other operations on the parcel taken. But the special value which because of the underlying minerals the surface rights possess for the compulsory taker cannot be taken into consideration in fixing the compensation. The board's duty being merely to follow the regulations of the Department of Lands & Mines, it proceeded on the assumption that compensation was payable to the surface-rights owner, notwithstanding any reservations as to mines & minerals in his title.—*Re* MERCURY OILS, LTD. & HARTELL, [1936] 3 W. W. R. 679.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. ——.]—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

156 iii. ——.]—The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

156 iv. ——.]—*Re* POWER COMMISSION ACT (Sask.), [1930] 1 D. L. R. 900.—**CAN.**

f (p. 124) i. —— —— ——.]—Where a county corpn. expropriated certain toll roads:—*Held:* the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re* OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON (1921), 69 D. L. R. 480; 51 O. L. R. 467.—**CAN.**

f (p. 124) ii. —— —— ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

g (p. 124) i. —— ——.]—Deft. derived its title to the lands expropriated under a grant from the Crown subject to two conditions: (*a*) that the building now being or lately erected by deft. on said lands be such as would be suitable for exhibition purposes & available at all times for the same, & (*b*) that certain water pipes on the lands should be diverted and relaid outside the area of said building:—*Held:* as property may under certain circumstances have a specially high value to the owner over & above its market value, & as it is the value to the owner which the party expropriated is entitled to receive & as the above mentioned conditions or servitudes would be less onerous to the owner than to any one else in the community, the market value of the property in question was not the proper criterion of the amount to be allowed him for the same.—R. *v.* QUEBEC SKATING CLUB, [1931] Ex. C. R. 103; *affd.*, [1932] 2 D. L. R. 799; S. C. R. 539.—**CAN.**

l (p. 124) i. —— *Conflicting evidence.*]—R. *v.* ARCHER, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—**CAN.**

l (p. 124) ii. —— ——.]—Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging" of witnesses," or "splitting the difference."—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

l (p. 124) iii. —— ——.]—While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

q i. —— —— ——.]—REDDIAR & SAN CHIEN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF RANGOON (1927), I. L. R. 5 Ran. 799.—**IND.**

o (p. 125) i. —— —— *Equivalent to value to owner.*]—The market value of the land acquired is the price that the owner willing, & not obliged, to sell might reasonably expect from a willing purchaser. There is no difference between the term "value to the owner" as used in the Land Clauses Act, in England, & the expression "market value" as used in Land Acquisition Act, s. 23.—SWARNA MANJURI DASSI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 55 Calc. 994.—**IND.**

k (p. 125) i. —— —— ——.]—Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation.—R. *v.* ROYAL NOVA SCOTIA YACHT SQUADRON (1921), 21 Exch. C. R. 160.—**CAN.**

k (p. 125) ii. —— —— ——.]—*Re* TORRANCE & PROVINCE OF ONTARIO, *Re* NOBLE & PROVINCE OF ONTARIO, *Re* PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—**CAN.**

k (p. 125) iii. .]—There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitarily fixed at ten per cent.; an award of six per cent. may be ample.—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

k (p. 125) iv. —— —— ——.]—An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

k (p. 125) v. —— —— ——.]—R. *v.* MCPHERSON (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—**CAN.**

began to demolish it. The
removed by arrangement with the
agents, who subsequently
action against the lessees to
for breach of the two contracts:
the local authority had acquired
interest in the premises by compulsion;
the two contracts did not confer upon pltfs.
any proprietary interest or estate in the
hotel; &, as it could not be said that both
parties to those contracts had made their
bargain upon the footing that if the local

p (p. 125) i. —— —— *Not value according to quantity survey.*]—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

p (p. 125) ii. —— —— *Not "value in use."*]—*Held:* the productive value of land, or the value of the land to its owner based on the income he is able to derive from its use, is not the measure of compensation, for land expropriated, & is not material, except in so far as it throws light upon the market value. "Value in use" is to be repudiated as a test.—DUSSAULT *v.* R., [1929] Ex. C. R. 8.—**CAN.**

p (p. 125) iii. —— —— *Evidence of.*]—*Held:* although under certain circumstances the price paid for land cannot properly be taken as the market value thereof, nevertheless, where a careful purchaser, not obliged to buy, parts with his money, without pressure or inducement from the owner, willing but not obliged to sell, & after carefully considering the matter, & more especially the special advantages the land in question offered for the carrying on of the business he proposed to start, then the price so paid is cogent evidence of market value.—R. *v.* BERUBE, [1930] Ex. C. R. 218; [1931] 1 D. L. R. 685.—**CAN.**

sc. —— *Value of assets necessary to operation of undertaking.*]—TORONTO (CITY) CORPN. *v.* TORONTO RAILWAY CORPN., [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—**CAN.**

sd. —— *Where land of college taken for street—Under disputed agreement.*]—ST. MICHAELS COLLEGE *v.* TORONTO CITY CORPN., [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—**CAN.**

se. —— *Value for commercial purposes.*]—Where the residence & adjoining consulting rooms of a medical practitioner were situated in a position which was more suitable for a business site than a medical practitioner's residence, & compensation was assessed on the basis of the value of the land for a commercial purpose:—*Held:* the correct method of assessing compensation had been adopted.—GUNSON *v.* MUNICIPAL TRAMWAYS TRUST, [1927] S. A. S. R. 276.—**AUS.**

sg. *Cost of plans.*]—*Held:* the cost of the plans, & other expenditures claimed, either made the lands that much more valuable to deft. or, they constituted a loss or damage arising directly from the taking of the land & for which compensation should be allowed.—FEDERAL DISTRICT COMMISSION *v.* DAGENAIS, [1935] Ex. C. R. 25.—**CAN.**

sk. *Land subject to agreement to convey—Not amounting to option to purchase.*]—R. *v.* DEAN & BARONI, [1936] Ex. Cr. 120.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——.]—R. *v.* KELLY (1921), D. L. R. 402; 21 Exch. C. R. 205.—**CAN.**

—— ——.]—An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of

authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD. WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

160. *Add. Citation:—Sub nom.* R. *v.* MIDLAND, ETC. RY. CO., *Ex. p.* BROWN, 8 B. & S. 456.

Add. Annotation:—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

169. *Add. Annotations:—As to* (2) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

171. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

186. *Add. Annotations:*—**Consd.** Godstone Rural District Council *v.* Croydon Corpn. (1932), 48 T. L. R. 447. **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

187. *Add. Annotations:—As to* (1) **Apld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131. *As to* (2) **Refd.** Consett Iron Co. *v.* Clavering, [1935] 2 K. B. 42. *Generally*, **Refd.** Cross *v.* Gatineau Power Co., [1936] 3 All E. R. 52.

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money.—R. *v.* COLEMAN, [1926] Exch. C. R. 121.—**CAN.**

b (p. 125) i. —— *How estimate to be made.*]—In determining the market value of land acquired under Land Acquisition Act, 1894, the value should be estimated with reference to the most lucrative & advantageous manner in which the land might be used.

The operative effect of the special adaptability of the land or its future utility must be estimated not by idle speculation or unpractical imagination, but by prudent business considerations such as would weigh with a purchaser intending to buy the land in the open market.—MAHARAJADHIRAJA SIR RAMESHWAR SINGH BAHADUR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), L. L. R. 8 Pat. 793.—**IND.**

n (p. 126) i. —— *Electric light undertaking.*]—An electric light franchise was granted by applt. municipality to resp. co. for the period of 50 years, subject to the privilege of the municipality to purchase the "undertaking, property & rights" of the co. at any time at a price to be agreed on or, in default of agreement, found by arbitrators. The municipality elected to exercise this privilege & an arbitration ensued in which the co. was awarded $74,000 & the award stated that $36,000 thereof was the value of the physical assets. The municipality, without complaining as to the amount awarded for the physical assets, objected to the allowance of the balance, which was referred to in letters between the solicitors as compensation for prospective profits:—*Held:* since the only right of the municipality was to take over, not merely the physical assets, but the undertaking as a whole, including its privileges, the appeal should be dismissed.—CUMBERLAND (CITY) *v.* CUMBERLAND ELECTRIC LIGHT CO., LTD., [1931] 2 W. W. R. 377; 3 D. L. R. 70; 43 B. C. R. 525; *affd.*, [1931] 4 D. L. R. 459; S. C. R. 718.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C.

o i. ——.]—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

o ii. ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

a i. —— ——.]—"Special value" refers to the present use of the land, & means its added worth to the owners for the actual & peculiar use to which it is being put & for which it is specially fit: while "special adaptability" refers to an apparent but future use to which the property may be put.—*Re* CANADIAN STEAMSHIP LINES, LTD. & TORONTO TERMINALS RY. CO., [1930] 3 D. L. R. 626; 36 C. R. C. 301; 65 O. L. R. 494.—**CAN.**

e i. —— ——.]—A parcel of land upon part of which were erected a restaurant, boat-house, & dance-hall, in which a profitable business had been carried on for several years by the claimants, was expropriated by a municipal corpn. The property was peculiarly suited for the purposes of the business; there was no other property to which it could be transferred, & it had to be discontinued:—*Held:* as the profits depended not only on the locality, but also on the personal talents of the proprietors, the damages could not properly be arrived at by capitalising the profits & adding an allowance for possible enlargement of the business.—*Re* MEYER & TORONTO (1914), 30 O. L. R. 426.—**CAN.**

169 i. For "169 i." read "170 i."

n i. ——.]—CANADIAN PROVINCIAL POWER CO. *v.* NOVA SCOTIA POWER COMMISSION, [1929] 1 D. L. R. 674; 60 N. S. R. 479.—**CAN.**

sf. *Special use by owner.*]—*Held:* the arbitrator did not err in considering certain earnings of the land owner in respect of a special use of a portion of the property for parking cars.—*Re* FORBES & TORONTO, [1930] 2 D. L. R. 650; 65 O. L. R. 34.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

p i. —— ——.]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

r i. —— *Flooding of neighbourhood.*]—The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held;* no claim could arise in respect of an inconvenience common to the public generally.—R. *v.* LAFOND (1921), 69 D. L. R. 127; 21 Exch C. R. 55.—**CAN.**

r ii. —— *Valuation upon basis of non-existence of buildings.*]—The value of buildings & compensation for business disturbance cannot be considered if valuation has been upon the basis that the buildings have disappeared.—STANDARD FUEL CO. *v.* TORONTO TERMINALS RY. CO., [1935] 3 D. L. R. 657; 5 F. L. J. (Can.) 35.—**CAN.**

176 iii. —— *Cost of removal.*]—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. *v.* GOLDSTEIN, [1924] Exch. C. R. 55.—**CAN.**

sk. *Loss of profits—Municipal Act, R.S.O., 1927.*]—Under Municipal Act, R.S.O., 1927, no compensation for loss of profits can be awarded to the claimant.—*Re* CONGER LEHIGH COAL CO. & TORONTO CITY, [1934] O. R. 35; 1 D. L. R. 476.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. —— *Cost of acquiring new site.*]—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held:* the offer should be taken into account & dealt with by the arbitrator in his award.—*Re* GARLAND & TORONTO (1924), 55 O. L. R. 646.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. —— *Subsequent improvements by owner.*]—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

187 vii. —— ——.]—R. *v.* MOREAU (1921), 21 Exch. C. R. 82.—**CAN.**

m i. —— *Buildings erected by expropriator before notice to treat given—Whether value of buildings to be considered.*]—The Govt. having resolved to acquire under Land Acquisition Act, 1894, land belonging to applts., took possession by arrangement with sutidars, who occupied part of the land, & erected buildings partly on land occupied by applt. & partly on land occupied by the sutidars. Only after doing so the Govt. notified a declaration under sect. 6 of the Act that the land was required for a public purpose. Applt. was awarded under the Act the value of the land, & interest thereon from the date when possession had been taken:—*Held:* applt. was not entitled to the value of the buildings, since by the law of India they did not form part of the soil, &, even if applt. would have been entitled to compensation for them, if the Govt. had acted as mere trespassers, & without colour of title, the Govt. had not so acted.—VALLABHDAS NARANJI *v.* BANDRA DEVELOPMENT OFFICER (1929), 56 L. R. Ind. App. 259.—**IND.**

sm. *On abandonment—Time of taking & of revesting to be considered.*]—Expropriation Act, R. S. C., 1906, s. 23, gives power to the Minister of Railways & Canals, by a registered notice, to abandon land which has been taken for a public purpose but which, before the compensation has been actually paid, has been found not to be required, & the land thereupon is to revest. By sub-sect. (4), "the fact of such abandonment or revesting shall be taken into account, in connection with all the other circumstances of the case, in estimating or assessing the amount to be paid to any person claiming compensation for the land taken." On Jan. 24, 1911, land belonging to applts. in Quebec was appropriated for a public purpose, & became vested in the Crown; the amount of compensation was subsequently agreed but not paid. On

197. *Add. Annotation:—As to* (2) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

213. *Add. Annotation:* — **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

215. *Add. Annotation:—As to* (1) **Apld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216. *Add. Annotation:* — **Folld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216a. —— —— ——.]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected:—*Held:* the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value

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Dec. 30, 1912, the Minister registered a notice abandoning the land. By a petition of right applts. claimed as compensation the difference between the sum originally agreed & the value of the land when it revested; they recovered only their loss of rentals:—*Held:* (1) applts. were entitled to the sum originally agreed, subject to the revesting being taken into account with the other circumstances; (2) the petition of right was maintainable under sect. 20 of Exchequer Ct. Act; & (3) there should be a new trial.—GIBB *v.* R., [1918] A. C. 915, P. C.—**CAN.**

so. —— ——.]—In Mar. 1929, land belonging to suppliant in Montreal was expropriated for a public purpose, & became vested in the Crown; the amount of compensation was not agreed upon. After the expropriation, suppliant was permitted to continue in occupation of his property, & was authorised to receive & collect rents. In Mar. 1932, the Crown abandoned the expropriation. The suppliant claims *inter alia* as compensation the difference between the value of the property at the date of expropriation, & its value at the date it reverted back to him:—*Held:* the value of the land at the time of taking, & at the time of the revestment, must be taken into account in connection with all the other circumstances in determining the amount to be paid.—MATHYS *v.* R., [1934] Ex. C. R. 213.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—J.

s i. ——.]—*Held:* where the evidence of value relied upon had reference to a number of sales in the vicinity, only a few of which were for cash, others were never perfected, & others against had been completely abandoned; & further, where it is established that there are large areas of land available for building purposes in the vicinity at reasonable prices; such sales must be considered in such a case as made under special circumstances & at prices that cannot establish a market value & cannot be taken as a criterion of the value of property.—R. *v.* CYR., [1929] Ex. C. R. 225.—**CAN.**

sg. *Conflicting evidence—Duty of court.*]—Where, in expropriation cases, the ct. is faced with conflicting evidence of the optimists on the one hand & the pessimists on the other, it must be guided, in arriving at the true market value of the property, by the reasons supporting each witness' views, bearing in mind the soundness of the same, & the balance of probabilities.—R. *v.* FROST, [1931] Ex. C. R. 176.—**CAN.**

PART III. SECT. 2.

191 i. *What constitutes severance—Part of land taken—Premises not contiguous—No legal right over intervening land.*]—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held:* if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. *v.* LOONAN (1920), 20 Exch. C. R. 131.—**CAN.**

a i. —— ——.]—*Held:* the right to additional value & the right to damages for severance must depend on the existence at the time of acquisition of the property of some right of passage between the pieces of land.—*Re* CANAL CO., LTD., & MINISTER OF MARINE, [1927] S. A. S. R. 106.—**AUS.**

PART III. SECT. 3, SUB-SECT. 1.

205 ii. *Canadian National Railways Act—Sufficient to confer right to compensation.*]—Pltf. owned lands in the city of Montreal & sought damages for injury to its property resulting from the construction of a subway by deft. co. under its railway lines near pltf.'s property. No land belonging to pltf. had been taken by def'. for its work. The ct. found that pltf.'s property had been injuriously affected & awarded it compensation:—*Held:* Canadian National Railways Act does not deprive the owner of lands injuriously affected by the construction of a public work, of the compensation awarded by the Expropriation Act; the damage must result from an act rendered lawful by statutory powers of the co.; the damage must be such as would have been actionable under the common law, but for the statutory powers; the damage or loss must be to the property itself; personal injury inconvenience, injury to trade or business are no grounds for compensation; the damage must be occasioned by the construction of the public work, not by its user.—AUTOGRAPHIC REGISTER SYSTEMS, LTD. *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 152.—**CAN.**

sf. *General rule.*]—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

ni. *Claim must be made within prescribed time.*]—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re* EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE *v.* EDMONTON CORPN., [1925] 1 W. W. R. 780.—**CAN.**

sg. *Railway Act, 1919—Spur track constructed along streets—Measure of compensation to adjacent landowners.*]—BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. (NO. 3), [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sask. L. R. 298.—**CAN.**

sk. *Road laid through land—Expense of keeping up fences.*]—R. *v.* KENT JJ. (1854), 8 N. B. R. (3 All.) 118.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

t i. —— *Injury to other land by erection of viaduct.*]—Pltfs. sought to recover compensation for part of their lands taken by expropriation & for damages for injury to an adjoining lot owned by them, due to the construction of a viaduct for which the other part of the land was expropriated:—*Held:* sect. 17 of 19 & 20 Geo. 5, c. 10, amending the Canadian National Railway Co. Act, does not limit the scope of sect. 23 of Expropriation Act, & the Canadian National Railway Co. must pay, not only the value of the land actually taken by expropriation, but also the damages caused to lands injuriously affected by the construction of the public work, in this case a viaduct. The damages recoverable for injurious affection are such as are attributable to the construction of the public work & not such as would flow from its operation, & only to the extent to which such injurious affection depreciates said land & makes it less valuable. No damage can be recovered for personal inconvenience or loss of trade, nor damages which the owner of the land suffers in common with the public generally.—RENAUD *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 230.—**CAN.**

si. *Adjoining land occupied with hotel—Loss of water supply.*]—*Re* BUSH *v.* NIAGARA FALLS PARK COMRS. (1887), 14 A. R. 73.—**CAN.**

sm. *Land adjoining water-lot—Water-lot taken—Loss of riparian rights.*]—*Re* SNOW & TORONTO, [1924] 4 D. L. R. 1023; 56 O. L. R. 100.—**CAN.**

sp. *Land divided into lots—Some lots sold—Five lots taken for sewage plant.*]—*Held:* the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent depreciation in the value of the adjacent lands.—MONTREAL (CITY) *v.* MCANULTY REALTY CO., [1923] 2 D. L. R. 409; [1923] S. C. R. 273.—**CAN.**

sa. *Land taken for lowering road—Obstruction of access by road to other land.*]—*Held:* claimant entitled to compensation.—M. E. MOOLLA *v.* COLLECTOR OF RANGOON (1926), I. L. R. 4 Ran. 350.—**IND.**

sc. *Land taken for power line—Intention to use adjoining land as aviation ground.*]—*Held:* claimant entitled to compensation.—SHAWINIGAN WATER & POWER CO. *v.* GAGNON, [1931] S. C. R. 518; 3 D. L. R. 665.—**CAN.**

sf. *Ownership of two islands—One taken for penitentiary.*]—Deft. owned two islands named P. & K., separated from each other a distance of 1,250 feet, in the Gulf of Georgia. The Crown expropriated P. for a term of

of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—ROCKINGHAM SISTERS OF CHARITY *v.* R., [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

223. *Add. Annotation :*—**Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

225. *Add. Citation :*—3 Macq. 833.

231. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

245. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

259. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

261. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

263a. —— ——.]—By a private Act the President of the Air Council was authorised to enter upon, take & use all or any of certain lands, & also to construct a certain new thoroughfare. By sect. 2 he was authorised to stop up a portion of a certain lane known as Plough-lane. By sect. 5, "subject as hereinafter provided the Lands Clauses Acts are for the purpose of the acquisition of land under this Act incorporated with this Act." Then followed several exceptions, which did not specify sect. 68 of the Lands Clauses Consolidation Act, 1845, which deals with injurious affection. Lands were taken by the President under the special Act, & the said portion of Plough-lane was stopped up.

The claimant owned a dwelling-house in Plough-lane, not the part stopped up. No lands of the claimant were taken by the President under the Act, but his premises were depreciated in value to the extent of £100, through the stopping up of a portion of Plough-lane, rendering his premises less accessible in one direction. The claimant claimed compensation in respect of the stopping up of this portion of Plough-lane. On the hearing of an award in the form of a special case stated by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), it was contended for the President of the Air Council that the claimant had no right to claim compensation on the ground that no portion of the Lands Clauses Consolidation Act, 1845, was incorporated with the special Act as regards sect. 2 thereof, which was not a sect. for the purpose of the acquisition of land, but one merely authorising the closing of a thoroughfare; & also on the ground that sect. 68 of the Act of 1845 was not incorporated with the Special Act as its provisions for "injurious affection" were not for the acquisition of land. The official arbitrator asked the following question of the ct.: Was the claimant entitled to be paid compensation in respect of the stopping up of this portion of Plough-lane? The ct. answered the question in the affirmative.—WRIGHT *v.* AIR COUNCIL, PRESIDENT (1929), 143 L. T. 43.

265. For ("LORD WESTBURY") read ("LORD WESTBURY, *dissenting*").

Add. Annotations :—*As to* (1) **Distd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6. **Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

268. *Add. Annotation :*—**Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269. *Add. Annotation :*—*As to* (1) **Distd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269a. —— —— ——.]—Where a highway is obstructed for building operations, & the

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five years for use as a penitentiary. Deft., in addition to rental, claimed compensation for injurious affection to R.:—*Held :* in determining the compensation under the circumstances here existing, the value of the freehold must be considered in order to reach a fair & just conclusion as to the amount of compensation; there was no unity of property in the two islands, they being separate holdings or estates; it was not a case of the severance of a single holding or estate; the fact of common ownership did not constitute the two islands one estate; to entitle a person to recover compensation for injurious affection, the damage must arise from something which would, if done without statutory authority, have given rise to a cause of action.—R. *v.* O'HALLORAN, [1934] Ex. C. R. 67.—**CAN.**

sk. *Flooding—Level of lake raised—Rights in bed of lake not considered.*]—Where compensation for flooding due to raising the level of a lake is in question, the ct. will not consider the rights of the owner in the bed of the lake.—TREMBLAY *v.* DUKE-PRICE POWER CO., [1935] 4 D. L. R. 87.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. —— —— ——.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same:—*Held :* the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

227 v. —— ——.]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136; 29 Can. Ry. Cas 345; 52 O. L. R. 528.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (a).

f i. ——.]—*Re* OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY, [1927] 2 D. L. R. 606; [1927] 1 W. W. R. 833; 33 Can. Ry. Cas. 92; 36 Man. L. R. 412.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

266 vi. —— ——.]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re* EDMONTON CHARTER, FREEMAN CO., LTD. *v.* EDMONTON CORPN., [1925] 1 W. W. R. 778.—**CAN.**

k ii. —— *Compensation payable for damage done by bye-law—Closure before bye-law—No right to compensation.*]—Where a statute empowering a city to pass bye-laws for the closing of streets provided for arbn. proceedings to determine the compensation to be paid to land owners for damages caused "by reason of anything under the bye-law":—*Held :* claimants thereunder were not entitled to damages caused by the closing of a street long before the passing of the bye-law.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

k iii. —— —— —— —— *Effect of judgment on damages awarded by arbitrator.*]—*Re* MICHAELIS (NO. 2), [1933] 1 W. W. R. 751.—**CAN.**

sw. *Alteration of position of bridge—Cold storage company thereby relegated to back street.*]—An award was given as compensation for the injurious affecting of lands by the building of a highway traffic bridge over the railway yards of the C.P.R. The claim for compensation arose from the fact that while the old bridge ended at an avenue on which applt. co.'s buildings faced the new bridge runs a city block further north with the result that the co.'s buildings which were formerly on a "front" street are now on a "back" street over-shadowed by the new bridge. The co. was a cold storage co. The accessibility & appearance of its plant were seriously affected, & its facilities for loading & unloading railway cars & trucks were hampered,

obstructor has obtained the appropriate licence from the local authority, a person suffering inconvenience or loss from the inconvenience can only recover damages in a case where the obstruction is unreasonable, either as to quantum or duration.

Per LAWRENCE, L.J.: When the owner of a house abutting on a public street desires to undertake building operations, & has obtained the appropriate licence from the local authority under Metropolis Management Act, 1855 (c. 20), or similar statutes relating to other places, it cannot be contended that the necessary scaffolding & hoardings are illegal & a public nuisance unless they were erected in a manner or place not authorised by the licence, or maintained for a longer period than by the licence authorised.—HARPER *v.* HADEN (G. N.) & SONS, [1933] Ch. 298; 102 L. J. Ch. 6; 148 L. T. 303; 96 J. P. 525; 76 Sol. Jo. 849; 31 L. G. R. 18, C. A.

270. *Add. Annotations:*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

272. *Add. Annotation:—As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

274a. —— —— **By construction of bridge.**]—Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, *i.e.*, the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads: depreciation of freehold value of the old wharf; cost of the new wharf; damage through loss of traffic; damage through extra cost of handling traffic at the new wharf; damage to river sailing-barge traffic; damage through total stoppage of dumb craft with goods for overseas; damage through loss of storage rents:—*Held:* claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—HEWETT *v.* ESSEX COUNTY COUNCIL (1928), 138 L. T. 742; 44 T. L. R. 373; 72 Sol. Jo. 241.

275a. —— **River frontage of private house.**]—BUCCLEUGH (DUKE) *v.* METROPOLITAN BOARD OF WORKS, No. 215, *ante*.

284a. Reservation of water—Coupled with grant of easements & restrictions.]—By agreements made in 1904 & subsequent years a local authority agreed with the then owner of the S. estate for a supply of water from a pumping station & well on the S. estate. In 1932, S., who had become entitled to the S. estate, sold & conveyed a portion of it, not including the pumping station & well, to X. in fee simple. The conveyance to X. contained certain reservations & a covenant so framed as, if enforceable, to run with the land conveyed for the benefit of the remaining portion of the S. estate. The reservations purported to reserve all water (whether surface or underground) in or under any portion of the property so conveyed to X., & all necessary easements rights privileges advantages powers & liberties necessary for the enjoyment of that reservation. The covenant was not to do anything on the property so conveyed whereby the water supply then obtained therefrom or any part thereof or any supply thereafter to be obtained therefrom in addition to or in substitution therefor should be in any way diminished or the purity impaired. In Apr. 1934, the local authority made a compulsory purchase order under Public Works Facilities Act, 1930 (c. 50), s. 2, for the compulsory purchase of part of the property so conveyed to X. for the purpose of obtaining water therefrom & for the construction of a reservoir & certain works. This order incorporated Lands Clauses Consolidation Act, 1845 (c. 18), s. 68.

S. claimed compensation on the ground that the S. estate & the reservations & restrictions imposed for the benefit of the S. estate by the conveyance of 1932 would be injuriously affected by the proposed works on the land comprised in the compulsory-purchase order. The parties having failed to come to terms, an official arbitrator was appointed, who subsequently acted as an agreed arbitrator under Lands Clauses Consolidation Act, 1845 (c. 18).

In his award the arbitrator found (*a*) that a pumping station if erected on the portion of X.'s land comprised in the compulsory-purchase order would probably tap water which would otherwise percolate to the area tapped by the local authority's existing pumping station & well on the S. estate & might affect the quantity of water reaching such area, & (*b*) that a pumping station on the proposed site would not be likely to tap water which, in the absence of such a pumping station, could not be tapped by pumping at the local authority's existing works. He consequently awarded S. a certain sum by way of compensation, but made his award in the form of a special case, referring to the ct. the question whether S. was entitled to be compensated for the injurious affection of his adjoining estate & the interests easements & restrictions appertaining thereto by reason of the proposed works of the local authority & the facts so found by him: *Held:* (1) though the attempt to reserve percolating water out of the land conveyed by the conveyance of 1932 failed, the reservation therein contained ought to be construed as a

while the construction of the subway in front of the buildings prevents future structural changes & adaptations to a serious degree:—*Held:* after referring to the various items of compensation & the evidence as to damage, the amount of the award was increased to $25,000, & the appeal allowed with costs.—*Re* WINNIPEG COLD STORAGE CO., LTD. & WINNIPEG CITY, [1934] 2 W. W. R. 354; 4 D. L. R. 681; 42 Man. L. R. 176.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) iii.

sb. —— —— *Depreciation in value* [illegible] EASTERN RY. CO., —— MARY IMMACULATE *v.* PACIFIC GREAT EASTERN RY. CO., LEFEAUX & CARLISLE *v.* PACIFIC GREAT EASTERN RY. CO. (1919), 67 D. L. R. 792; 27 B. C. R. 420.—**CAN.**

reservation of all necessary rights to enable S. to obtain water from the land conveyed; & the covenant imposed a contractual prohibition on X. & those deriving title under him from doing anything to interfere with the existing & future water supply at the existing works on the S. estate. The claimant therefore had an interest in land which was affected by the compulsory-purchase order; (2) the injury to the S. estate arose from the "execution of the works" within Lands Clauses Consolidation Act, 1845 (c. 18), s. 68; since the statutory powers vested in the local authority under Public Health Act, 1875 (c. 55), s. 51, authorised the construction & maintenance of waterworks for the supply of water, & in order to supply water, it was necessary to draw water from the land taken. The claimant therefore was entitled to recover by way of compensation the amount awarded to him under the arbitrator's award.—*Re* SIMEON & ISLE OF WIGHT RURAL DISTRICT COUNCIL, [1937] Ch. 525; [1937] 3 All E. R. 149; 106 L. J. Ch. 335; 157 L. T. 473; 101 J. P. 447; 53 T. L. R. 854; 81 Sol. Jo. 526; 35 L. G. R. 402.

288a. —— **Wharf.**]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

289a. ——.]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

299. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Simeon, [1937] 3 All E. R. 149.

323a. —— ——.]—ROCKINGHAM SISTERS OF CHARITY *v.* R., No. 216a, *ante*.

Part IV.—Compensation for Mines and Minerals.

328. To the existing paragraph add as follows:—(3) Limestone is a mineral within the above sects.

331. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

332. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

333. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

334. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

335. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

336a. —— —— **Within Act.**]—MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. *v.* ROBINSON, No. 328, *ante*.

337. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

345. *Add. Annotation:*—**Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

349. *Add. Annotation:*—**Consd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

353. *Add. Annotation:*—**Refd.** London & North Eastern Ry. Co. *v.* Hardwick Colliery Co., [1935] Ch. 203.

355. *Add. Annotations:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

355a. —— —— **Purchase by predecessor of undertaker—Common law right of support—Effect of Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37).**]—Pltf. council, being the statutory undertakers for the supply of water to the urban district of Wath-upon-Dearne, purchased by agreement in 1901, from trustees for sale under a settlement, certain land in Wath-upon-Dearne which had been allotted to the vendors' predecessors in title in 1810 under an Inclosure Act. This allotment was subject to the reservation to the lord of the manor of Wath-upon-Dearne of coal & other minerals, with power to work the same upon making compensation to the allotment owners for damage to the surface of the lands caused by

PART III. SECT. 3, SUB-SECT. 4.—B. (g).

s1. *Loss of privacy.*]—The owner of a house, the privacy of which has been affected by the acquisition of another property made for public purposes under Land Acquisition Act, is entitled to compensation by reason of the acquisition injuriously affecting his property.—PRASANNAKUMAR DATTA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1933), I. L. R. 61 Cal. 245.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ——.]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—R. *v.* LAFOND (1921), 21 Exch. C. R. 55.—**CAN.**

PART III. SECT. 3, SUB-SECT. 5.

sc. *Payment of mortgage on part of land.*]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of $22,000:—*Held:* the above payment, although satisfying any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—STUART *v.* R., [1926] 2 D. L. R. 260; [1926] S. C. R. 284; [1926] Exch. C. R. 101, n.—**CAN.**

sd. *No right to interest.*]—Under Municipal Act, R. S. M., 1913, what is to be paid the owner of land injuriously affected by the construction of municipal works is due compensation for any damage. No provision is made for interest in addition thereto; & neither the arbitrators, nor a judge under an application to him under sect. 706 of the Act to increase the award, have power to award interest.—*Re* BANNATYNE (*Re* TAYLOR ESTATE) & ASSINIBOIA RURAL MUNICIPALITY (No. 2), [1932] 1 W. W. R. 754; 2 D. L. R. 703; 40 Man. L. R. 253.—**CAN.**

PART III. SECT. 4.

g i. —— ——.]—*Held:* the only increase which should be deducted under Public Works Act (Alta.), s. 24 (8), is the increase so caused in the value of the land through which the public work is constructed over & above any such increase as is common to said land & to the land in the immediate vicinity.—*Re* CENTRAL CANADA RY. CO. ARBITRATIONS, [1929] 4 D. L. R. 333; 2 W. W. R. 445; 24 Alta. L. R. 209.—**CAN.**

g ii. —— —— *Municipal Act, R. S. O.*, 1927, *s.* 342 (1).]—ROMAN CATHOLIC EPISCOPAL CORPN. OF LONDON & SANDWICH (TOWN), 4 D. L. R 955; 65 O. L. R. **CAN.**

working. Shortly after the purchase, pltfs. erected two reservoirs & three filter beds on the land purchased. Deft. co. were lessees from the lord of the manor of a seam of coal lying under & adjacent to pltfs.' land. In 1911 deft. co., in pursuance of Waterworks Clauses Act, 1847 (c. 17), & the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), gave notice to pltfs. of their intention to work the coal under & within forty yards of pltfs.' waterworks. This notice was duly acknowledged, but no counter-notice was given by pltfs. of willingness to treat or to make compensation for or of their intention to prevent or interfere with the working of the coal either within or outside the forty yards area. In 1914, pltfs. purchased from the same vendors further lands adjoining the land bought in 1901 & subject to the same reservation of minerals to the lord of the manor of Wath-upon-Dearne. Pltfs. constructed on this land two further reservoirs, two more filter beds & other works. Damage to one of the reservoirs having appeared between Oct. 1926, & Jan. 21, 1929, caused, as was alleged, by the working of the adjacent & subjacent minerals by defts., pltfs. had the damage repaired. In 1930 a further notice of intention to work minerals near another part of pltfs.' lands & reservoirs was served on the pltfs. by defts., but again no counter-notice was given by pltfs. Pltfs. thereupon issued a writ claiming an injunction & damages or compensation. His Lordship having held on the evidence that the damage to the waterworks was caused by subsidence of the surface directly due to the working of the minerals by defts. & that the surface would have been damaged by subsidence if the waterworks had not been constructed on it, the question arose whether the vendors to pltfs. in 1901 & 1914, when they conveyed the land, had any right of support for the surface of those plots from the subjacent minerals & adjacent land & minerals, & if so, whether this right passed to pltfs. :—*Held:* (1) on the true construction of the Inclosure Act, 1810, the common law right of support was not excluded by necessary implication & the vendors to pltfs. had a common law right to have the surface supported by the subjacent minerals & adjacent land & minerals; (2) this right passed to pltfs. by the conveyances of 1901 & 1914, & deft. co. was not entitled to ignore this right although pltfs. failed to give any counter-notice under Waterworks Clauses Act, 1847 (c. 17), ss. 22, 23. Further, there was nothing in Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), s. 3 (2), which gives the local authority an option to extend their counter-notice to minerals outside the forty yards area to deprive the local authority of the rights they possessed outside the forty yards area, if the option conferred by that section was not exercised.—WATH-UPON-DEARNE URBAN DISTRICT COUNCIL *v.* BROWN (JOHN) & CO., LTD., [1936] Ch. 172; 105 L. J. Ch. 81; 154 L. T. 295; 51 T. L. R. 353; 79 Sol. Jo. 342.

356. *Add. Annotations :*—**Consd.** Walton Harvey Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

356a. —— —— **Enfranchised copyholds.**]—Under conveyances made in 1879, 1922, & 1927 deft. corpn. acquired land for the purposes of sewage works & a gas undertaking. So far as the present case was concerned, these lands were enfranchised copyholds subject to a custom whereby the lord of the manor had the right to work mines subject to making compensation for damage done including that arising from subsidence. The pltf. co. were the lessees of the minerals under such enfranchised copyholds & also under the adjoining land. In 1934 pltfs. gave the corpn. notice in writing that they desired to work seams of coal under or within 40 yds. of such enfranchised copyholds. Defts. gave no counter-notice under Waterworks Clauses Act, 1847 (c. 17), s. 23, to treat for the payment of compensation for such mines, & it became lawful for pltfs. to work the mines. In an action for a declaration as to the rights of the parties, the Vice-Chancellor of the County Palatine of Lancaster, after making a declaration of pltfs.' right to work the mines & let down the surface subject to payment of compensation for damage done including damage due to subsidence provided pltfs. did no wilful damage & did not work the mines in an unusual manner, added that defts. were not entitled to any greater protection in respect of the greater weight imposed upon the land by their sanitary works except where they had acquired a prescriptive right of support for such works: —*Held:* (1) defts. not having served a counter-notice, their rights in relation to the minerals were the same as those of their vendor & were therefore governed by the custom of the manor; (2) the addition to the declaration stated above could not be supported.—HARGREAVES, LTD.'S EXECUTORS *v.* BURNLEY CORPN., [1936] 3 All E. R. 959; 156 L. T. 41; 101 J. P. 87; 53 T. L. R. 231; 81 Sol. Jo. 56, C. A.

359. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

367. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

374. *Add. Annotation :*—**Consd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

378. To the existing paragraph add as follows :—(3) The word "lands" in sect. 6 of the above Act includes mines.

Add. Annotation :—Generally. **Consd.** Craigola Merthyr Co. *v.* Swansea Corpn. (1927), 71 Sol. Jo. 681.

381. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

383. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

403. *Add. Annotation :*—**Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

412. *Add.* — . Swift *v.* Board of Trade, [1925] A. C. 520.

433. *Add. Annotation :*—**Refd.** Newton *v.* Lambton, Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

Part VI.—Procedure to acquire Land otherwise than by Agreement.

470. *Add. Annotation :*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

475. For existing citations and annotations, substitute (1851), 9 Hare, 436 ; 7 Ry. & Can. Cas. 92 ; 18 L. T. O. S. 116 ; 68 E. R. 580, L.JJ. ; *subsequent proceedings* (1852), 2 De G. M. & G. 94, L.JJ.

Annotations :—**Refd.** Salisbury *v.* G. N. Ry. (1852), 17 Q. B. 840 ; Hedges *v.* Met. Ry. (1860), 28 Beav. 109.

478. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

484. For citations read the following para. & citations :—

A ry. co. having given notice of their intention to purchase lands for the undertaking, deposited the purchase-money, & delivered the bond according to sect. 35 of Lands Clauses Act, before the expiration of the period prescribed for the exercise of their compulsory powers ; neither their power to purchase the land, nor their power to enter, is gone by the subsequent expiration of that period.—SPARROW *v.* OXFORD, WORCESTER & WOLVERHAMPTON RY. Co. (1851), 9 Hare, 436 ; 18 L. T. O. S. 116 ; 68 E. R. 580.

500. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

526. *Add. Annotation :*—*As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

531. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

533a. —— —— **Rights of assignee.**]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—CARDIFF CORPN. *v.* COOK, [1923] 2 Ch. 115 ; 92 L. J. Ch. 177 ; 128 L. T. 530 ; 87 J. P. 90 ; 67 Sol. Jo. 315 ; 21 L. G. R. 279.

534. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

540. *Add. Annotation :*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

540a. Within clause in lease.]—(1) Under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), the official arbitrator is entitled to state his award in the form of a special case raising the question what is the title or interest of the person claiming compensation.

(2) A local Act having authorised a corpn. to acquire certain premises compulsorily, the owners granted a lease for a term of years, containing a clause that the demise was made & granted "subject to the termination of such demise by reason of the exercise by the said corpn. of such compulsory powers as may hereafter become effective." The corpn. served a notice to treat upon the lessor in respect of his reversionary interest in the premises, & they afterwards served a notice to treat upon the lessee, who claimed compensation in respect of his interest :—*Held :* neither of the notices to treat was, within the clause in the lease or at all, such an exercise by the corpn. of their compulsory powers as was effective to terminate the lease or to put an end to the lessee's interest in the premises, &, consequently, he was entitled to compensation in respect of his interest in the premises as at the date of the service of notice to treat upon him.—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., [1934] 2 K. B. 23 ; 103 L. J. K. B. 603 ; 151 L. T. 402 ; 32 L. G. R. 17, D. C.

558a. Misdescription as to nature of property—Abatement of purchase-money—Not ordered.]—*Re* STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT (1902), 47 Sol. Jo. 159.

562. *Add. Annotation :*—*As to* (1) **Refd.** Greswolde-Williams *v.* Newcastle-upon-Tyne Corpn. (1927), 91 J. P. Jo. 968.

595a. Building consisting of several blocks of offices—Constitutes one "building."]—GRESWOLDE-WILLIAMS *v.* NEWCASTLE-UPON-TYNE CORPN. (1927), 92 J. P. 13 ; 26 L. G. R. 26.

PART VI. SECT. 1, SUB-SECT. 2.—D.

490 i. *Effect of—No right of action at common law—Damages for rendering land useless & unsaleable not recoverable.*]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas. 345 ; 52 O. L. R. 528.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is for enjoyment of house.*]—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

Promoters of an undertaking :—*Held :* not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—DRAPER *v.* SOUTH AUSTRALIAN RAILWAYS COMR. (1901), 3 S. A. L. R. 150.—**AUS.**

PART VII. SECT. 1.

sg. *Public Works Act, s.* 22—*Acquisition of toll road under Provincial Highways Act,* 1917.]—*Re* COBOURG & GRAFTON TOLL ROAD CO. (1921), 64 D. L. R. 241 ; 50 O. L. R. 125.—**CAN.**

Part VII.—Assessment of Purchase Price and Compensation.

650. For existing paragraph & citations substitute the following:—

The Blackpool Improvement Act, 1917, s. 70, enacted that the provisions of the sect. should, unless otherwise agreed in writing, apply for the benefit & protection of a certain co. as owners of the land referred to in the section. By its terms the owners were to sell & the corpn. was to buy the land therein described at a price to be determined in default of agreement, by arbitration in th manner provided by the Lands Clauses Acts as modified by that Act, & a notice to treat was to be served by the corpn. within a defined time. It was further provided that the corpn. should not use the land so acquired for certain purposes which might cause a nuisance or annoyance to the owners. By Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), where by any statute, whether passed before or after the passing of this Act, land is authorised to be acquired compulsorily by any local authority any question of disputed compensation is to be determined in the manner thereby provided, & the provisions of the Act by which the land is authorised to be acquired, or of any Act incorporated therewith, so far as inconsistent with this Act, shall cease to have effect. Notice to treat was served on the owners by the corpn. shortly before the coming into operation of the Act of 1919 but no arbitrator had been appointed to fix the price. A question having arisen whether the compensation was to be assessed under the Act of 1919 or under the private Act of 1917:—*Held:* the Act of 1919 did not apply, & the compensation was to be ascertained in the manner provided by the Lands Clauses Acts as modified by the Act of 1917; by VISCOUNT FINLAY, VISCOUNT CAVE, & LORD PHILLIMORE on the grounds, (*a*) that sect. 70 of the private Act embodied an agreement between the parties for the sale & purchase of the land & that the land was not "authorised to be acquired compulsorily"; (*b*) that the general language of the Act of 1919 ought not, in the absence of clear words, to be construed as affecting the special provisions of sect. 70 of the private Act of 1917; by VISCOUNT HALDANE on the second ground by LORD SHAW OF DUNFERMLINE (dissenting as to the second ground) on the first ground only.—BLACKPOOL CORPN. *v.* STARR ESTATE CO., LTD., [1922] 1 A. C. 27; 91 L. J. K. B 202; 126 L. T. 258; 86 J. P. 25; 38 T. L. R 79; 66 Sol. Jo. 17; 19 L. G. R. 721, H. L.

Annotations:—**Distd.** Thurrock Grays & Tilbury Joint Sewerage Board *v.* Thames Land Co., Ltd. (1925), 90 J. P. 1. **Refd.** Thornely *v.* Leconfield (Lord), [1925] 1 K. B. 236; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1931), 101 L. J. K. B. 229; Drapers Co. *v.* London Passenger Transport Board, [1937] Ch. 344.

650a. —— Acquisition of land & appointment of arbitrator under Public Health Act, 1875, (c. 55.)]—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—*Held:* as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD. (1925), 90 J. P. 1; 23 L. G. R. 648.

650b. —— Power to purchase given to railway company—Transfer to public authority.]—Pltfs. were the estate owners in fee simple of certain land & buildings in the City of London. Defts., a public authority established in accordance with the provisions of London Passenger Transport Act, 1933, in Oct. 1935, gave notice to pltfs. to treat for the compulsory purchase of the premises, & subsequently took possession. By the Act of 1933 certain passenger transport undertakings were transferred to defts. including the C. L. Railway. It was provided by the Act that such transfer should include all lands & other property, assets, powers, rights, and privileges held or enjoyed therewith, & further that defts. might exercise all the rights, powers, & privileges which immediately before the appointed day, July 1, 1933, were vested in the C. L. Railway as one of the undertakers & should be subject to all liabilities & obligations to which the C. L. Railway were subject immediately before the appointed day. Among the powers conferred on the C. L. Railway in existence on July 1, 1933, was a power conferred by an Act of 1931 to purchase the premises of pltfs. The time for the exercise of this power was, after the passing of the Act of 1933, extended to Oct. 1937, by sect. 68 of London Passenger Transport Act, 1934. Defts. contended that being a public authority authorised to acquire the particular land in question compulsorily, the provisions of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), as to the compensation payable, applied.

Pltfs. denied this on the ground (*a*) that if the C. L. Railway (the " undertakers ") had purchased compulsorily before July 1, 1933, the purchase price must have been fixed as provided for by the Lands Clauses Acts as modified by the Act of 1931, & that this was therefore a liability or obligation of the C. L. Railway to pltfs.; (*b*) that by virtue of sect. 68 of the Act of 1934, the time limited for the exercise of compulsory purchase by the Act of 1931 was extended subject to the provisions for the protection or benefit of (*inter alia*) any co., body or person mentioned in (among others) the Act of 1931, & that the provisions of that Act with regard to the assessment of compensation in cases of compulsory purchase were provisions for pltfs.' benefit, & (*c*) that the provisions of the Act of 1931 were not affected by the provisions of the Acts of 1933 & 1934 in the absence of clear words showing that it was the intention of the two later Acts to abrogate the provisions of the Act of 1931:—*Held:* pltfs.' contentions failed because (*a*) as the C. L. Railway had not served any notice to treat on or before July 1, 1933, there was no liability or obligation of the C. L. Railway on that date towards pltfs. or their property to which defts. could be subjected in respect of a notice given by defts. subsequently to July 1, 1933, (*b*) pltfs. were not expressly mentioned as a co., body or person for whose protection or benefit provision was made in the Act of 1931, & (*c*) the provisions for compensation in the Act of 1931 were general provisions & accordingly the maximum " *generalia specialibus non derogant* " did not apply.

The compensation must therefore be ascertained under & in accordance with the Act of 1919.—DRAPERS CO. *v.* LONDON PASSENGER TRANSPORT BOARD, [1937] Ch. 344; [1937] 2 All E. R. 12; 106 L. J. Ch. 121; 156 L. T. 272; 53 T. L. R. 448; 81 Sol. Jo. 199.

702a. Arbitrator incapable of continuing—Power to replace.]—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—GROSS, SHERWOOD & HEALD, LTD. *v.* ESSEX COUNTY COUNCIL, [1927] 1 Ch. 205; 96 L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17; 43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R. 135.

702b. Effect of appointment under protest—Whether right to compensation admitted.]—*Semble:* a co. does not, by nominating under protest an arbitrator in pursuance of the Lands Act, 1845, admit that the case is one entitling the claimant to any compensation.—SUTTON HARBOUR IMPROVEMENT CO. *v.* HITCHENS (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 73; 18 L. T. O. S. 163; 16 Jur. 70; 42 E. R. 514, L. JJ.

PART VII. SECT. 2, SUB-SECT. 1.

sh. *Jurisdiction of Exchequer Court.*]—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—R. *v.* HUDSON'S BAY CO. (1921), 20 Exch. C. R. 413.—**CAN.**

sk. *Cannot inquire into validity of mutual agreement for compensation.*]—*Held:* where one of the parties set up an agreement purporting to fix the compensation a dispute as to the existence, validity, & applicability of such agreement must be settled by agreement of the parties or determined by the ct. before a case for arbn. arises; & the arbitrators exceeded their jurisdiction when they entered upon an inquiry as to the existence & validity of the agreement alleged.—*Re* HARMANS, LTD., & TORONTO CITY, *Re* PORTER & TORONTO CITY, *Re* STEWART & TORONTO CITY, [1928] 4 D. L. R. 781: 62 O. L. R. 475.—**CAN.**

sl. *Assessment by resolution of city council.*]—After the passing of an expropriating bye-law the amount of the purchase price may be settled by resolution of the city council & no further bye-law is necessary.—PRINCE *v.* TORONTO, [1933] 3 D. L. R. 201; O. R. 442; *revsd.*, [1934] 3 D. L. R. 81; S. C. R. 414.—**CAN.**

sm. *Practice of appellate court.*]—The general rule adopted by appellate cts. in dealing with a question of quantum on an awardby an arbitrator is the same as the rule adopted in dealing with a question of quantum of damages in a judgment by a trial judge sitting without a jury, & the ct. will not interfere except in a case of very serious error.—*Re* WINSETT & C. N. R., [1933] O. R. 237; 2 D. L. R. 438.—**CAN.**

sp. —— *Variation of award.*]—Applt. owned property on the Gatineau River, including a saw mill used for his timber business & a plant for the production & distribution of electricity both worked by water power. Resps. were attempting to expropriate for the purposes of a scheme for development of hydro-electric power on the river, & had erected a dam with the result that much of his property was submerged & other seriously affected. An action in respect of this damage had proceeded to trial, & judgment had been reserved, when a special Act was passed by the Quebec Legislature to prevent any disturbance of resps.' operations. Resps. were by the Act to make just & fair compensation to applt. for all his properties & rights taken or affected, & the ct. was to determine what properties & rights should upon payment of the compensation become vested in resps.:—*Held:* (1) the Act did not require the ct. to vest in resps. all lands or properties affected, if in its discretion, it thought compensation for injurious affection sufficient; (2) the amount of an award may be varied by an appeal ct. where it is clear that it is based upon a wrong principle of calculation or not justified by the admitted facts; (3) although undertakers cannot offer remedial works in lieu of compensation, the offer of land taken or easements over land taken for the restoration of a piling ground & a ry. siding was a proper one & ought to be taken into consideration.—CROSS *v.* GATINEAU POWER CO., [1936] 3 All E. R. 52. P. C.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.

n i. —— —— *Passing of bye-law by local authority—Submission before bye-law passed ultra vires.*]—KOEHMSTEDT *v.* RURAL MUNICIPALITY OF EYE HILL, NO. 382, [1923] 2 W. W. R. 669.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

f i. —— *Extent of duty.*]—On an application under sect. 408 of Town Act, R. S. S., 1930, for the appointment of an arbitrator of a claim for compensation for lands taken or injuriously affected, it is not the duty of the judge applied to to decide whether or not the claimant has a claim.—MCGILLIVRAY *v.* MELVILLE TOWN [1932] 2 W. W. R. 635.—**CAN.**

sl. *Under Dominion Railway Act, 1919.*]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re* LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO. (1924), 55 O. L. R. 581.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 4.

713 iii. —— *Jurisdiction of court.*]—*Re* TAYLOR ESTATE & ASSINIBOIA RURAL MUNICIPALITY, [1931] 2 W. W. R. 719; 4 D. L. R. 249; 29 Man. L. R. 563.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

sm. *Appeal under Municipal Arbitrations Act, 1927.*]—An appeal to a Divisional Ct. of the Appellate Division from an award made under Municipal Arbitrations Act, R. S. O., 1927, lies, but not unless the award is appealed from within six weeks after notice that it has been filed; & the ct. has no jurisdiction to give leave to appeal, or to extend the time for appealing after the time has expired, even in a case where there was fraud in procuring the award. Sect. 3 of Arbn. Act, R. S. O., 1927, is not applicable.—*Re* FAIR & TORONTO, [1930] 3 D. L. R. 76; 65 O. L. R. 176.—**CAN.**

727a. Question of title involved.]—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., No. 540a, *ante*.

727b. Hearing — Entry in Crown Paper.] — An award made by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—HEWITT *v.* ESSEX COUNTY COUNCIL (1927), 97 L. J. K. B. 249; 92 J. P. 36; 44 T L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.

761a. —— Award embodying decision of court on special case.]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held:* no appeal could be entertained.—NORTHWOOD *v.* LONDON COUNTY COUNCIL (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 25 L. G. R. 254, C. A.

762. *Add. Annotation:—As to* (2) Apprvd. & Apld. Matthey *v.* Curling, [1922] 2 A. C. 180.

773a. Award of lump sum—Validity.]—Claimant was the owner of certain land with regard to the acquisition of which an arbn. was held under Acquisition of Land (Assessment of C— ation) Act, 1919 (c. 57). He claimed &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act:—*Held:* in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator

PART VII. SECT. 5, SUB-SECT. 8.

736 i. —— *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*]—STEWART MUNICIPAL DISTRICT *v.* BLIESNER, [1924] 2 W. W. R. 1217.—**CAN.**

s i. —— *Arbitrator not entitled to allow interest.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

s ii. —— *Award referring to "present value"—Value at time of expropriation.*]—An award is good, although it contains the words "present value," if it is clear from the award as a whole that the arbitrators made their valuation as at the date of the expropriation.—R. *v.* VANCOUVER CITY (1932), 47 B. C. R. 243.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 10.

j (p. 196) **i.** ——.]—On an application under sect. 706 of Municipal Act, R. S. M., 1913, to vary or increase an award the judge is in the position of sole arbitrator or umpire as well as having the power to set aside or remit the award.—*Re* TAYLOR ESTATE & ASSINOBOIA RURAL MUNICIPALITY (No. 2), [1931] 3 W. W. R. 408; *on appeal*, [1932] 1 W. W. R. 754.—**CAN.**

m (p. 196) **i.** —— *Under Dominion Railway Act*, 1906 (*c.* 37).]—*Re* KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. *v.* R., [1918] 2 W. W. R. 411.—**CAN.**

m (p. 196) **ii.** —— *Under Dominion Railway Act*, 1919 (*c.* 68).]—*Re* ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. CO. (No. 1), [1922] 2 W. W. R. 577; 65 D. L. R. 735; 15 Sask. L. R. 431.—**CAN.**

m (p. 196) **iii.** —— ——.]—CEDAR RAPIDS MANUFACTURING & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

r (p. 196) **i.** —— *Award determined on wrong principle.*]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held:* the award must be set aside as determined upon a wrong principle.—RADISSON TOWN *v.* AMSON, [1919] 3 W. W. R. 580.—**CAN.**

x i. —— ——.]—WINTER *v.* TORONTO (CITY) (1922), 70 D. L. R. 458.—**CAN.**

x ii. —— *Sum awarded inadequate.*]—ARMSTRONG *v.* NEW WESTMINSTER HARBOUR BOARD, [1929] 2 D. L. R. 150; 1 W. W. R. 755; 41 B. C. R. 1.—**CAN.**

Lump sum awarded—Award good on its face.]—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

y ii. —— *Arbitrator not qualified.*]—An award will be set aside if one of the arbitrators is disqualified by not being a freeholder as required by statute.—NEW GLASGOW *v.* MILLIGAN, [1933] 1 D. L. R. 748.—**CAN.**

c (p. 197) **i.** —— ——.]—NASH & WILLIAMS *v.* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO., [1917] 3 W. W. R. 553; 36 D. L. R. 601.—**CAN.**

c (p. 197) **ii.** —— ——.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—**CAN.**

c (p. 197) **iii.** —— ——.]—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

c (p. 197) **iv.** —— ——.]—*Re* SULLIVAN & TOWNSHIP OF BERTIE, [1927] 2 D. L. R. 74; 60 O. L. R. 107. —**CAN.**

e (p. 197) **i.** —— ——.]—*Re* ARBITRATION ACT, *Re* WOODS, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—**CAN.**

m (p. 197) **i.** —— ——.]—*Re* DIXON & TORONTO CORPN. (1924), 56 O. L. R. 167.—**CAN.**

o (p. 197) **i.** —— ——.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. *v.* KETCHESON (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—**CAN.**

q (p. 197) **i.** —— —— *Question only one of quantum.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R.

PART VII. SECT. 5, SUB-SECT. 11

sp. *By motion—Damages "allowed"—Amounts to direction to pay.*]—Where an award determines the amount of the compensation to be paid by a municipality as damages for land taken & "allows" them to the claimant, that is a sufficient direction to pay. In any event, a direction to pay is not necessary to enable the award to be enforced by motion.—*Re* BANNATYNE & ASSINIBOIA RURAL MUNICIPALITY (No. 3), [1934] 1 W. W. R. 497; 41 Man. L. R. 640.—**CAN.**

sm. *Purchase of easement—Execution of conveyance not condition precedent to enforcement.*]—Where an easement was expropriated by a municipal corpn. under sect. 338 of Municipal Act, R. S. O., 1927, it was held that the corpn. was not entitled to withhold payment of the compensation money until the claimant had executed a conveyance of the easement, for the easement had automatically vested in the corpn.—*Re* MAYO & TORONTO CITY, [1929] 3 D. L. R. 890; 64 O. L. R. 139.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 12.—A.

e i. —— —— *Solicitor & client costs—New Brunswick Electric Power Act.*]—*Re* INGLEWOOD PULP & PAPER CO., LTD., & NEW BRUNSWICK ELECTRIC POWER COMMISSION (1929), 3 M. P. R. 91.—**CAN.**

sn. *Costs follow event—Subject to discretion of court—Principles governing exercise of discretion.*]—The ordinary rule is that costs should follow the event. But the ct. has a discretion to depart from this rule, & such discretion is to be exercised on well recognised principles.—ASSISTANT COLLECTOR SALSETTE *v.* DAMODARDAS TRITHUVANDAS (1928), I. L. R. 53 Bom. 178.—**IND.**

sx. *Application to set aside award—Liability for costs.*]—Where on an application under sect. 332 of the Municipal Act appcts. succeeded in having an award set aside, there is no power in the ct. to order the unsuccessful party to pay the costs of appcts. in connection with the arbn. proceedings.—*Re* ELDRIDGE ESTATE & DISTRICT OF SUMAS CORPN., [1931] 3 W. W. R. 223; 44 B. C. R. 194.—**CAN.**

had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW *v.* AIR COUNCIL, [1926] Ch. 329; 95 L. J. Ch. 499; 135 L. T. 538; 42 T. L. R. 197; 70 Sol. Jo. 367; 24 L. G. R. 351.

785. For " No. 749, *ante*," read " No. 372, *ante*."

863. For existing citations read " (1865), 19 C. B. N. S. 139; 144 E. R. 739; *previous proceedings* (1863), 4 B. & S. 315."

875. *Add. Citation :—sub nom. Re* HAYNE (CHARLES), 13 W. R. 492.

930. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

948. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

966. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation :—As to* (1) **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

1035. *Add. Annotation :—As to* (1) **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation :—As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

Part X.—Conveyance of Land and Payment of Purchase-Money.

1122. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1125. *Add. Annotations :—As to* (1) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529; Swift *v.* Board of Trade, [1925] A. C. 520; Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1158. *Add. Annotation :*—**Consd.** Berners *v.* Fleming, [1925] Ch. 264.

1163. *Add. Annotation :*—**Refd.** Newton *v.* Lambton Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

1184a. **In Act—Right to vendor to costs of opposing Bill.**]—A vendor of land to a ry. co. having filed a bill for specific performance, opposed three Bills in Parliament, & by an Act which was eventually obtained his lien was provided for. It was then arranged that he should be paid principal, interest, & costs :—*Held :* the taxing-master in taxing the costs should allow all reasonable costs, charges, & expenses of appearing before the committee & opposing the Bills in Parliament.—COOPER *v.* LONDON, CHATHAM & DOVER RY. CO. (1867), 17 L. T. 283.

1205a. ——.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—INGLEWOOD PULP & PAPER CO. *v.* NEW BRUNSWICK ELECTRIC POWER COMMISSION, [1928] A. C. 492; 97 L. J. P. C. 118; 139 L. T. 593, P. C.

1227. After this case add :—

.]—*See, further,* CHARITIES, Vol. VIII., pp. 359, 360, Nos. 1558–1565.

1237. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

1242a. ——.]—*Re* BROMLEY GUARDIANS (1845), 4 L. T. O. S. 430.

PART VIII. SECT. 1, SUB-SECT. 1.

so. *Payment or tender of compensation not necessary.*]—CANADIAN PACIFIC RY. CO. *v.* PAUL (1921), 27 Can. Ry. Cas. 417.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—A.

a i. —— *Or expropriation proceedings completed.*]—GODDARD *v.* BAINBRIDGE [illegible] (1920), 29 B. C. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sp. *Application for warrant of possession of Jurisdiction of Exchequer Court to hear.*]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—**CAN.**

sq. —— ——.]—CANADIAN NATIONAL RY. CO. *v.* BOLAND, [1925] 4 D. L. R. 703; [1925] Exch. C. R. 173.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—B. (c) i.

y i. ——.]—R. *v.* MCKENZIE (1890), 2 Exch. C. R. 198.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

p i. —— *From filing of caveat—Owner remaining in possession.*]—*Re* ARBITRATION ACT, *Re* ROSHKO & WINNIPEG SCHOOL DISTRICT NO. 1, [1924] 4 D. L. R. 1017; 3 W. W. R.

z i. —— *Sydney Corporation (Amendment) Act (No. 7 of 1924), s. 17.*]—SYDNEY MUNICIPAL COUNCIL *v.* TROY, [1927] A. C. 706; 96 L. J. P. C. 124; 137 L. T. 707, P. C.—**AUS.**

Part XI.—Application of Money Deposited in Bank.

1275a. Order for purchase-money to remain on deposit in court—In lieu of investment.]—*Ex p.* TRINITY COLLEGE, CAMBRIDGE (1897), Y. S. C. P.

1279a. ——.]—*Re* ST. MARY MAGDALEN, OXFORD (1898), Y. S. C. P.

1382. *Add. Annotation:*—**Apld.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384. *Add. Annotation:*—**Consd.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384a. —— Title not proved to be defective—Payment out ordered.]—*Ex p.* BURDETT COUTTS, [1927] 2 Ch. 98; 96 L. J. Ch. 453; 137 L. T. 404; 71 Sol. Jo. 389.

1500. *Add. Annotation:*—**Consd.** *Re* Williams' Settlmt., Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

1560a. —— Encumbrancers otherwise secured need not be served.]—Where a petition was presented for payment out of ct. of purchase-money paid in in respect of real estate purchased under the General Metropolitan Paving Act, service of the petition upon parties entitled to certain small rent-charges charged on the property purchased, but which were amply secured on other property not included in the purchase, was held to be unnecessary.—*Ex p.* MERCERS' CO. (1879), 10 Ch. D. 481; 18 L. J. Ch. 384; 27 W. R. 424.

1560b. —— Summons by Representative Body of the Welsh Church.]—*Re* GREAT WESTERN RAILWAY ACT, 1911, *Ex p.* GREAT WESTERN RY., [1922] W. N. 148; 153 L. T. Jo. 339.

Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotation:*—*As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1604. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1614a. —— ——.]—*Re* LONDON BRIDGE ACTS, *Ex p.* TATHAM (1838), 3 Y. & C. Ex. 67; 7 L. J. Ex. Eq. 64; 2 Jur. 440; 160 E. R. 617.

1686a. —— ——.]—*Ex p.* NORFOLK RY. CO. (1860), 1 Drew. & Sm. 48, n.; 62 E. R. 296.

Annotation:—**Apld.** *Re* Cleveland's Harte Estates (1860), 1 Drew. & Sm. 46.

1707. *Add. Citation:*—*Sub nom. Re* BENYON'S TRUSTS, 8 W. R. 425.

1974. *Citations:*—Delete 5 Ch. App. 1, & add 20 L. T. 940.

1985. *Add. Annotation:*—**Refd.** *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1997a. Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.]—*Ex p.* SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, *Ex p.* STAINES RESERVOIRS JOINT COMMITTEE (1922), 86 J. P. Jo. 153.

Part XIII.—Purchase of Particular Interests in Land.

2017a. Agreement with mortgagor—Binding on mortgagee entering into possession.]—MOLD *v.* WHEATCROFT (1859). 27 Beav. 510; 29 L. J. Ch. 11; 1 L. T. 226; 6 Jur. N. S. 2; 54 E. R. 202.

2033. For existing citations substitute the following paragraph & citations:—

A bill filed against a railway co. by the grantee of an annuity charged on land taken by the co. stated that before the grant of the annuity the land was subject to a mtge. in fee, which had since been paid off, but that there had been no reconveyance; that the defts., under the powers of their act, had given the pltf. notice to treat for the land charged with the annuity, but without any further proceeding had taken possession of the land. The prayer was that the co. might be decreed to pay the arrears of the annuity & to secure the future payment of it. The defence made by the answer & evidence was that the co. had purchased from the

PART XII. SECT. 8, SUB-SECT. 5.—A.

2 i. —— ——.]—*Re* FORD & CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 319.—CAN.

PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce—R. S. O.*, 1897 (*c.* 110), *ss.* 15, 16.]—*Re* KINGSTON LIGHT, HEAT & POWER CO. & KINGSTON CORPN. (1904), 24 C. L. T. 358; 8 O. L. R. 258; 3 O. W. R. 769.—CAN.

so. Bonus to mortgagee on payment of loan before maturity—Must be considered in compensation.]—By a clause in the deed of hypothec affecting a property expropriated, the owner (mtgor.) was obliged to pay to the mtgee. a certain sum as bonus, in the event of the loan being paid before maturity:—*Held:* the expropriating party must assume the payment of such bonus, to the exoneration of the owner (mtgor.) as part of the compensation to be paid him for the lands taken under the Expropriation Act.—*v.* PICKLEMAN, [1932] Ex. C. R.

prior incumbrancer under a power of sale :—*Held :* pltf. could not on such pleadings enforce a specific performance of the notice to treat regarded as a contract to purchase pltfs.' interest. The prayer for general relief is not available for the purpose of obtaining a decree at variance with the case made by the statements of the bill.—HILL *v.* GREAT NORTHERN RY. Co. (1854), 5 De. G. M. & G. 66 ; 2 Eq. Rep. 1069 ; 23 L. J. Ch. 524 ; 18 Jur. 685 ; 2 W. R. 335 ; 43 E. R. 794, L.JJ.

2035a. —— **Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.**]—NORFOLK RY. Co. *v.* BAYES (1849), 14 L. T. O. S. 170 ; 13 Jur. 435.

2037. *Add. Annotations :*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63. **Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2038. *Add. Annotations :*—**Apld.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115 ; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2059. *Add. Citation :*—66 L. J. Q. B. 30.

2067. *Add. Annotations :*—**Consd.** Matthey *v.* Curling, [1922] 2 A. C. 180 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2068. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

2075. *Add. Annotations :*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177 ; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

Part XIV.—Superfluous Lands.

2136. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2174. *Add. Annotations :*—*As to* (1) **Consd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172. **Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

2175. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

2177. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

Part XV.—Compensation for Land taken or used for Special Purposes.

2201. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

2203a. ——.]—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD., No. 650a, *ante*.

PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. —— *Under invalid lease.* Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required :—*Held :* the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—R. *v.* HUDSON'S BAY CO. (1921), 65 D. L. R. 569 ; 20 Exch. C. R. 413.—**CAN.**

s i. —— *Disturbance of sporting rights.*]—In arbn. proceedings following upon the compulsory acquisition by the Dept. of Agriculture for Scotland of a deer forest which was let for purposes of sport under a ninety-nine years' lease, the tenant made a claim for personal loss in respect of dispossession of the subjects. His claim was opposed by the Dept., who maintained that a claim based on disturbance at the instance of a sporting tenant was incompetent :—*Held :* rules (2) & (6) of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 2, did not have the effect of displacing in any way the rule, now well settled in the construction of Lands Clauses Consolidation (Scotland) Act, 1845 (c. 19), that, where lands have been taken under compulsory powers, a tenant is entitled to full compensation for all loss resulting to him from dispossession ; &, further, there was no distinction, in principle, between a claim for disturbance such as was here in question & a claim for ordinary business disturbance.—VENABLES *v.* DEPARTMENT OF AGRICULTURE FOR SCOTLAND, [1932] S. C. 573.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 3.

sr. *General rules.*]—The rights conferred by a lease being a matter of property & civil rights, within the exclusive powers of the provincial legislature, the ct. in ascertaining the estate or interest of persons claiming compensation thereunder in an expropriation by the Dominion Crown, will have regard to the laws affecting such estate or interest in the province where the property is situated, notwithstanding Expropriation Act, ss. 25, 26. The compensation to be made to the lessee for the unexpired term of his lease should cover all reasonable cost of moving, refitting & settling the new premises ; loss of time in seeking new location ; depreciation of valuable business fixtures & fittings & damage thereto due to moving, etc., & a certain amount for dislocation or disturbance of business, which, however, cannot be fixed with mathematical certainty. The customary test of market value is no test of value in arriving at the compensation to be allowed for a leasehold interest expropriated.—R. *v.* ELITE CAFE, LTD., [1929] Ex. C. R. 56.—**CAN.**

z i. —— ——.]—The information herein was filed to have the compensation to which deft. was entitled fixed by the ct. Deft. was lessee of the property expropriated. & by the terms of his lease was given an option to purchase the freehold :—*Held :* as a lessee is entitled to compensation for the loss of his lease & as the option to purchase was one of the covenants of the lease, the right to purchase the freehold is an element to be considered in computing the compensation to be allowed deft.—R. *v.* NORTH-EASTERN LUNCH CO., LTD., [1933] Ex. C. R. 64.—**CAN.**

b i. —— —— ——.]—*Re* UNION FOUNDRY & MACHINERY WORKS, LTD., & ST. JOHN HARBOUR COMRS. (1929), 1 M. P. R. 267.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 1. —A.

t i. —— *Entitled to offer—As well as owner.*]—R. *v.* MUSGRAVE, [1924] Exch. C. R. 218.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 2.

st. *Measure of compensation—Licencee.*]—Where one is in occupation of part of a street under licence from the municipality, by the provisions of which licence he was obliged to vacate upon notice before a given date, & when by reason of the expropriation of the property he was forced to vacate before such date, he becomes entitled to compensation for his loss of the use & occupation, as well as for the extra inconvenience & expense occasioned by reason of having to make an immediate move instead of having the whole life of the licence to do so, but not to include the cost of moving.—VALENCOURT *v.* R., [1928] Exch. C. R.

2209. *Add. Annotation:*—**Consd.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

ii. *Basis of Compensation* (p. 293).

2211a. On withdrawal of notice to treat—National Economy (Road Services) Order, 1931—What are "expenses."]—On the withdrawal by a county council of a notice to treat in respect of certain premises resps. became entitled to compensation "equal to the amount of any expenses . . . reasonably incurred by [them] by reason or in consequence of the service of the notice to treat."

Before the date of such service resps. had become lessees of the premises at a ground rent, & had also borrowed money wherewith to purchase the lease. They claimed as such "expenses" a proportionate part of the ground rent & of the interest on the said borrowed money for the period of the currency of the said notice:—*Held:* these payments were not expenses "incurred . . . by reason or in consequence of the service of the notice to treat" but by reason of antecedent contractual liability, & were not, therefore, the subject matter for compensation.—LONDON COUNTY COUNCIL *v.* MONTAGUE BURTON, LTD., [1934] 1 K. B. 360; 103 L. J. K. B. 86; 150 L. T. 178; 97 J. P. 318; 31 L. G. R. 385, D. C.

Before Sub-sect. 2 (p. 293), add:—

(*d*) *By Action.*

2212a. Admission of liability—Right to continue action.]—Where a local authority have intimated that they do not dispute their liability for damage done to premises, the owner of such premises is entitled to continue the action instituted by him before the defts. admitted liability, claiming a declaration that defts. are liable to pay compensation.—HOLT BROS. & WHITFORD *v.* AXBRIDGE RURAL DISTRICT COUNCIL (1931), 95 J. P. 87.

2214. *Add. Annotation:*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2218. *Add. Annotations:*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2222a. —— —— Loss of trade & licence & value of trade fixtures not considered.]—NORTHWOOD *v.* LONDON COUNTY COUNCIL, [1926] 2 K. B. 411; 95 L. J. K. B. 862; 135 L. T. 159; 90 J. P. 128; 42 T. L. R. 508; 24 L. G. R. 415, D. C.; *on appeal* (1927), 96 L. J. K. B. 520, C. A.

2225a. —— —— Must be within three years of confirmation of Order.]—It is insufficient to serve notice to treat within the three years, & where that had been done, but the hearing of the arbitration to determine compensation was not held within the three years:—*Held:* the powers of the local authority had lapsed, & prohibition would lie to the official arbitrator.—R. *v.* WEBSTER, *Ex p.* MARSHALL (1931), 95 J. P. 226; 30 L. G. R. 29, D. C.

2225b. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (*a*) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (*b*) of providing for the general entertainment & refreshment of the population:—*Held:* the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, &, as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect.; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

Semble: both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—CONRON *v.* LONDON COUNTY COUNCIL, [1922] 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 38 T. L. R. 380; 20 L. G. R. 131; *sub nom.* CONSON *v.* LONDON COUNTY COUNCIL, 66 Sol. Jo. 350.

2225c. Under Housing Act, 1925 (c. 14)—Assessment of compensation—Whether under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7.]—Housing Act, 1925 (c. 14), s. 46, provides for the assessment of compensation for land acquired compulsorily under an improvement or reconstruction scheme made under that Act in a manner differing in certain respects from that prescribed by the Act of 1919:—*Held:* even on the assumption that Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7 (1), purports to apply to future Acts, Housing Act, 1925 (c. 14), s. 46, in so far as its provisions for the assessment of compensation for land acquired thereunder are inconsistent with the provisions of the earlier Act of 1919, repeals by implication these provisions of that earlier Act.

Per AVORY, J.: Sect. 7 (1) of the 1919 Act on its true construction applies only to Acts which existed at the time when that Act was passed, & not to future Acts.—VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., [1932] 1 K. B. 733; 101 L. J. K. B. 779; 95 J. P. 224; 48 T. L. R. 100; 75 Sol. Jo. 886; *sub nom.* VAUXHALL ESTATES, LTD. *v.* LIVERPOOL

CORPN., GROSVENOR ESTATES, LTD. *v.* LIVERPOOL CORPN., WHITECHAPEL ESTATES, LTD. *v.* LIVERPOOL CORPN., RYMER *v.* LIVERPOOL CORPN., 146 L. T. 167; 30 L. G. R. 22.

Annotation :—**Apprvd.** Ellen Street Estates, Ltd. *v.* Minister of Health, [1934] 1 K. B. 590.

2225d. —— —— ——.]—*Held :* (1) Parliament cannot bind itself as to the form of subsequent legislation & cannot effectively enact that a provision in one statute shall not be altered by a subsequent Act save by express words; (2) Housing Act, 1925 (c. 14), s. 46, so far as its provisions are inconsistent with those of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), has repealed by implication the provisions of that Act.—ELLEN STREET ESTATES, LTD. *v.* MINISTER OF HEALTH, [1934] 1 K. B. 590; 103 L. J. K. B. 364; 150 L. T. 468; 98 J. P. 157; 32 L. G. R. 233, C. A.

2225e. —— **Notice to treat—Whether service necessary before service of notice of entry.**]—(1) It is proper to serve the two notices simultaneously.

(2) If a notice to enter is served before a notice to treat has been served, that notice operates as a notice of intention to enter not less than twenty-eight days after the service of both notices, that is, not less than twenty-eight days after the subsequent service of the notice to treat.—LIVERPOOL CORPN. *v.* ROSE (1935), 100 J. P. 62; 79 Sol. Jo. 839; 34 L. G. R. 181, C. A.

2225f. —— **Open space within London Open Spaces Act, 1893, c. lxxi.**]—By London Open Spaces Act, 1893 (c. lxxi.), Hackney Marshes was vested in the L.C.C. in fee simple as & for an open space for the perpetual use thereof by the public for exercise & recreation. Sect. 12 of that Act provided that the council might from time to time exchange any lands forming part of Hackney Marshes for any other lands "adjoining." In 1935, the L.C.C., in purported exercise of their powers under sect. 65 of Housing Act, 1925 (c. 14), of appropriating for housing lands vested in them, resolved that, subject to the certificate of the Minister under sect. 103 (1) of that Act, thirty acres of Hackney Marshes should be appropriated for housing & that fifty acres of land at Chigwell, about seven miles away, should be given in exchange. Appct. having addressed a protest to the Minister against the proposed appropriation & exchange was informed that the Minister proposed to hold a public inquiry under sect. 103 (2) of Housing Act, 1925 (c. 14).

The appct. then obtained a rule *nisi* for a writ of prohibition to prohibit the Minister from (*a*) consenting to the appropriation by the L.C.C. of a portion of Hackney Marshes, (*b*) issuing his certificate under sect. 103 (1) of Housing Act, 1925 (c. 14), approving the giving in exchange of an area of land at Chigwell, & (*c*) holding a public local inquiry in relation to those matters under sect. 103 (2) of Housing Act, 1925 (c. 14):—*Held :* (1) prohibition would lie; (2) in exercising its powers of appropriation of land under sect. 65, a local authority need not act by an "order," & therefore the resolution of the L.C.C. was not bad merely because it was not under seal; (3) Housing Act, 1925 (c. 14), which is a consolidating Act repealing & re-enacting Housing of the Working Classes Act, 1890 (c. 70), & Housing, Town Planning, etc., Act, 1909 (c. 44) (from which ss. 65 & 103 are respectively taken), did not affect an Act passed between the original enactment of sect. 57 (3) of the Act of 1890 & its re-enactment in sect. 65 of the consolidating Act. It was manifest that the council could not, immediately after the Act of 1893 had vested Hackney Marshes in them as an open space, have appropriated part of the Marshes for housing under the Act of 1890. They had no greater powers under the Act of 1925; (4) the maxim "*generalia specialibus non derogant*" also applied to prevent the Housing Act, 1925 (c. 14), overriding the special provisions of London Open Spaces Act, 1893 (c. lxxi.), with regard to Hackney Marshes.—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, [1936] 2 K. B. 29; [1936] 1 All E. R. 817; 105 L. J. K. B. 792; 154 L. T. 630; 100 J. P. 212; 52 T. L. R. 408; 80 Sol. Jo. 426; 34 L. G. R. 203, D. C.

2225g. —— **Whether local authority must act by order.**]—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, No. 2225f, *ante*.

2252. *Add. Annotation :*—*As to* (3) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2259. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2262. *Add. Annotation :*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2265. *Add. Annotation :*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268a. —— **Uncompleted building.**]—A local authority purporting to act under the powers conferred by Metropolitan Paving Act, 1817, served on deft. a written notice to treat for the compulsory purchase of part of a piece of land on which a house then uncompleted was in course of erection:—*Held :* (1) the principle that a notice to treat for the compulsory purchase of part of a building is bad if the purchase of the part will cause a substantial interference with or alteration in the character of the whole building, applies where the building, part of which it is proposed to purchase compulsorily, is not complete at the time the notice is given, being in course of

PART XV. SECT. 3, SUB-SECT. 6.

sv. *Amount of land—Amount necessary for contemplated works.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held :* it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—N.Z.

sw. *Time for valuation—Successive declarations relating to different land.*]—The local government published under Land Acquisition Act, 1894, s. 6, a declaration that land belonging to applts. respectively & land belonging to other persons were required for public purposes. Five months later the govt. published another declaration for the acquisition of applts.' lands only; the declaration stated that the earlier declaration was thereby cancelled:—*Held :* having regard to Land Acquisition Act, 1894, s. 23 (1), the compensation should have been based upon the value of the land at the date of the publication of the later declaration.—MA SIN *v.* RANGOON COLLECTOR (1929), 56 L. R. Ind. App. 210.—IND.

construction; (2) the notice is bad if it refers to "land" only, being the site of the building part of which it is proposed to purchase compulsorily.—SILCOCK & SONS *v.* GREEN, [1936] 1 K. B. 478; 105 L. J. K. B. 170; 154 L. T. 176; 100 J. P. 91; 52 T. L. R. 156; 79 Sol. Jo. 988; 34 L. G. R. 71.

2269. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2269a. Notice to treat referring to "land"—Validity.]—SILCOCK & SONS *v.* GREEN, No. 2268a, *ante.*

2283. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2286a. Compensation for damage to land by severance not included.]—COURTAULDS, LTD. *v.* CITY OF LONDON CORPN., [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

2298. *Add. citation :*—[1921] 1 Ch. 299.

Add. Annotations :—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

SUB-SECT. 3.—UNEMPLOYMENT.

See Public Works Facilities Act, 1930 (c. 50).

2300a. Validity of order—Inclusion of name of owner of easement.]—By a conveyance made in 1932 appct. sold land to a purchaser in fee simple subject to reservations in favour of himself & his grantees of certain rights to surface & underground water. Subsequently the local district council as water authority acting ostensibly under the Public Works Facilities Act, 1930 (c. 50), s. 2, made an order purporting to be a compulsory purchase order in the prescribed form authorising them to purchase a part of the land comprised in the conveyance, there being inserted in the schedule to the order under the heading "Owners or Reputed Owners" not only the name of the purchaser under the conveyance but also the name of appct., & under the heading "Quantity, Description & Situation of the lands" a full description of the land but no mention of appct.'s easement over it; & the council served upon appct. a notice of the making of the order purporting to be a notice in accordance with the Act & in the prescribed form, the schedule to which notice contained a full description of the lands but made no mention of the easement. Appct. gave notice of objections to the confirmation of the order by the Minister of Health, & by direction of the Minister a public local inquiry was held in regard to the matter before an officer of the Ministry, who stated that the objections raised points of law which could not be dealt with by him but must be considered by the Minister. Having considered the objections & read the report of the officer, the Minister confirmed the order. Appct. thereupon made an application to the High Ct. under Sched. I., Part III., para. 2, of the Act that the order might be set aside on the grounds: (1) that the order was not within the powers of the Act, inasmuch as, though the Act authorised only the purchase of land, the order included the name of appct. who had merely an easement over the land & therefore purported to acquire what was not land; (2) the property to be acquired was not sufficiently described in the order or the notice thereof, as no mention was made in them of appct.'s easement; &, further, that the notice of the order did not, pursuant to Sched. I., Part II., para. 3 (*b*), of the Act state the "effect of the order," because it did not bring home to the applicant what effect the order would have upon him or his property; & (3) that the Minister did not before deciding whether or not the order should be confirmed give appct. an opportunity of coming before him & stating his legal arguments in support of the objections:—*Held :* the application could not be supported on any of these grounds, & must therefore be refused.—*Re* SIMEON (J. W. B.), [1935] 2 K. B. 183; *sub nom.* SIMEON *v.* MINISTER OF HEALTH, 104 L. J. K. B. 330; 152 L. T. 372; 99 J. P. 167; 51 T. L. R. 235; 79 Sol. Jo. 109; 33 L. G. R. 75.

2300b. —— Description of property—Omission of easement.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300c. Notice of order—Omission to state effect of order.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*.

2300d. Confirmation of order by Minister—Applicant not heard on objection on point of law.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300e. Public inquiry—Appointment of technical assessor—Validity.]—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934, No. 2300f, *post.*

2300f. Quashing order—Order ultra vires—No prejudice.]—(1) Under Public Works Facilities Act, 1930 (c. 50), Sched. I., Part III. (2), the High Ct. has power to quash a compulsory purchase order, "if satisfied that the order is not within the powers of the Act or that the interests of the appct. have been substantially prejudiced by any requirement of this Act not having been complied with." The provision that appct. must have been substantially prejudiced applies to both the above grounds of objection to an order. Accordingly, if an order is not within the powers of the Act, by reason of the Minister having failed to act judicially in some particular or for some other cause, the order will not be quashed, unless it is also shown that the interests of appct. have been prejudiced thereby. (2) *Held :* further, on the facts, a tentative approval of a scheme contemplated as a result of the order, expressed in a letter written by the Minister to the

PART XV. SECT. 3, SUB-SECT. 7.—C.

ex. ***Land taken under Winnipeg Charter—Time for making claim.***]—**Defts.' claim was for compensation for their land injuriously affected by the exercise of the powers of the City under the Charter, & had been expressly recognised by a bye-law of the council:** —***Held :*** **the Charter had, under the circumstances, no application to the** claim of defts., & they had all the time allowed them by the general law applicable to the case for making their claims.—WINNIPEG CORPN. *v.* TORONTO GENERAL TRUSTS CORPN. (1911), 20 Man. L. R. 545.—**CAN.**

promoters of the scheme, did not prevent the Minister from bringing a judicial mind to bear on the matters in issue, & the public local inquiry, which under the Act the Minister is bound to hold before confirming the order, was not invalidated by the appointment of a technical assessor to sit with the inspector who held the inquiry.—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934 (1935), 153 L. T. 219; 99 J. P. 319; 79 Sol. Jo. 503; 33 L. G. R. 314.

Annotation :—Generally, **Reid.** Horn *v.* Minister of Health, [1936] 2 All E. R. 1299.

COMPTROLLER.

See PATENTS; TRADE MARKS

CONDONATION.

See HUSBAND AND WIFE

CONFLICT OF LAWS.

Part I.—Principles of Jurisdiction.

1. *Add. Annotation :*—**Refd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

6. *Add. Annotation :*—**Folld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6a. ——.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re* VISSER, QUEEN OF HOLLAND *v.* DRUKKER, [1928] 1 Ch. 877 ; 97 L. J. Ch. 488 ; 139 L. T. 658 ; 44 T. L. R. 692 ; 72 Sol. Jo. 518.

8. —— ——.]—The Spanish Govt. declared deft. the ex-King of Spain, to be a traitor, & decreed that all his property & grounds of action should be seized for the benefit of the State, & that all bankers in Spain having in deposit any such property should make delivery thereof to the Spanish Treasury. Certain securities, the private property of deft. had been deposited at the W. Bank in London to the order of pltfs. a Spanish bank in Spain, as deft.'s agents. Both pltfs. & deft. claimed the delivery up of these securities & the W. Bank interpleaded :—*Held :* as pltfs. claimed no personal title to the securities, were not asserting their contractual rights as they originally existed but those rights as altered by the above decrees, upon which they must rely, & as, in substance, they were not asserting their own right at all, but that of the Spanish State, a judgment in their favour would involve the execution of a foreign penal law. Therefore pltfs.' claim failed.—BANCO DE VIZCAYA *v.* DON ALFONSO DE BORBON Y AUSTRIA, [1935] 1 K. B. 140 ; 104 L. J. K. B. 46 ; 151 L. T. 499 ; 50 T. L. R. 284 ; 78 Sol. Jo. 224.

11. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

12. *Add. Annotation :—As to* (1) **Apprvd.** Kramer *v.* A.-G. (1922), 92 L. J. Ch. 1.

After this case add " Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see* ALIENS, Nos. 49a *et seq.*, *ante*.

13. *Add. Citation :*—2 T. L. R. 116, D. C.

14. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

17. *Add. Annotations :—As to* (1) **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. **Refd.** The Jupiter (1924), 93 L. J. P. 156 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte De Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Folld.** White, Child & Bency *v.* Simmons ; White, Child & Beney *v.* Eagle Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259 ; Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (3) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

17a. —— —— ——.] — Pltfs. were an English limited co. of engineers & merchants. Part of its business was transacted in Russia, & for the purpose of that business pltfs., through their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the Banque de Commerce de l'Azoff-Don. Having done so, pltfs. took out two policies of insurance to insure themselves against loss or damage to the insured property " directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) " for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolshevists, purporting to act under the authority of an

PART I. SECT. 1.

2 iii. ——.]—A husband obtained decree of divorce against his wife in an undefended action in Scotland. Therefore, while he was resident in England, his former wife brought an action against him in Scotland for reduction of the decree, on (*inter alia*) the ground that the ct. had had no jurisdiction to entertain the action of divorce, the husband being domiciled in England. At a proof it was established that, in the divorce proceedings, the husband had deliberately misled the ct. as to his domicile, & had thereby procured the decree of divorce :—*Held :* even though the decree of divorce was one the ct. had had no jurisdiction to grant & which had been obtained only through the husband's false evidence, yet the ct. could not competently entertain the action to reduce that decree, the defender not being personally subject to its jurisdiction ; action dismissed.—ACUTT *v.* ACUTT, [1936] S. C. 386.—**SOOT.**

h i. —— ——.]—A foreign subject comes within the purview of all Acts in force in British India, if he chooses to come into the country, unless such Act specially exempts him. Ignorance of law enforceable in British India might be pleaded in mitigation of sentence but affords him no sort of, privilege or immunity.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVT. (1932), I. L. R. 60 Cal. 364.—**IND.**

8b. *Tort committed within jurisdiction—By party resident outside.*]—An action founded on tort committed within the jurisdiction by a party resident outside the jurisdiction may be tried by an Ontario ct.—ANDERSON *v.* THOMAS, [1935] 3 D. L. R. 286.—**CAN.**

8c. —— ——.]—A judge of the circuit ct. has no jurisdiction to try an action for tort where deft. does not ordinarily reside or carry on any profession, business or occupation in

8c. *Proceedings in tort against foreign executors—One executor temporarily resident in jurisdiction.*]—In an action of damages for personal injuries arising out of a motor car accident in Scotland, pursuers sought (*inter alia*) to establish that the accident was due to the fault of the driver of the car in which they were travelling, who had died as a result of the accident, & they called his exors. as defenders. Deceased was a domiciled Englishman, his executry estate was wholly situated in England, & the exors., two in number, were domiciled & resident there. Personal service of the summons was made upon one of the exors. in his executorial capacity, while he was temporarily in Scotland. Both exors. having lodged defences to the action, & having pleaded that they were not subject to the jurisdiction of the Ct. of Session :—*Held :* jurisdiction had not been established against the exors., in respect that only one of them had been personally cited in Scotland.—DALZIEL *v.* COULTHURST'S EXORS., [1934] S. C. 564.—**SOOT.**

executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power:—*Held:* on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—WHITE, CHILD & BENEY, LTD. *v* SIMMONS, WHITE, CHILD & BENEY, LTD. *v.* EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. (1922), 127 L. T. 571; 38 T. L. R. 616, C. A.

Annotation:—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8.

Part II.—Domicil.

19. *Add. Annotations:—As to* (2) **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669. *As to* (3) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Abraham *v.* A.-G., [1934] P. 17. *As to* (4) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

22. *Add. Annotation:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177.

32. *Add. Annotation:—As to* (1) **Consd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

34. *Add. Annotation:—As to* (3) **Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

36. *Add. Annotations:—As to* (1) **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9; Abraham *v.* A.-G., [1934] P. 17. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259; Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Boldrini *v.* Boldrini & Martini, [1932] P. 9. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

37. *Add. Annotation:*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

38. *Add. Annotations:*—**Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Rudd *v.* Rudd, [1924] P. 72; Ross *v.* Ross, [1930] A. C. 1; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Herd *v.* Herd, [1936] 2 All E. R. 1516.

40. *Add. Annotation:—As to* (2) **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

44. *Add. Annotation:*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

48a. —— ——.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires a domicil of choice there, only when with that intention he again resides there. The domicil of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation:—As to* (6) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

51. *Add. Annotations:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177. **Refd.** Rudd *v.* Rudd, [1924] P. 72.

52a. ——.]—(1) In questions of domicil, less weight is given by the cts. to a testator's declarations than to his acts, & no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered as evidence of the *animus manendi* or *revertendi.*

(2) The cts. are now slower to hold a change of the domicil of origin, & must be satisfied that testator intended *quatenus in illo exuere patriam.*

(3) The decisions that persons going to India in the service of the East India Co. thereby acquire an Anglo-Indian domicil, are excrescences upon, & anomalous to, the principles of domicil.

PART II. SECT. 1.

sq. *Person settled in province.*]—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

40 iii. —— ——.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—NELSON *v.* NELSON, [1925] 3 D. L. R. 22; [1925] 2 W. W. R. 1.—**CAN.**

40 iv. —— ——.]—R. *v.* MILKHA SINGH (1931), 44 B. C. R. 278; 56 Can. C. C. 211.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. —— ——.]—A domicil of origin differs from a domicil of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicil continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicil. This *onus* is a heavy one, & is upon those who assert a change of domicil.—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

51 iii. —— ——.]—A domicil of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicil of origin & to settle in the country of choice.—BARRY *v.* JAMES (1921), *Times,* Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

51 iv. ——.]—TAYLOR *v.* TAYLOR (1928), Q. R. 45 K. B. 184.—**CAN.**

(4) The *animus* to change an acquired domicil is not sufficient without the factum of return.—DREVON *v.* DREVON (1864), 4 New Rep. 316; 34 L. J. Ch. 129; 10 L. T. 730; 10 Jur. N. S. 717; 12 W. R. 946.

Annotation :—As to (1) **Consd.** Doucet *v.* Geoghegan (1878), 9 Ch. D. 441.

53a. ——.]—HORN *v.* HORN (1929), 142 L. T. 93; *previous proceedings, sub nom.* H. *v.* H., [1928] P. 206.

54a. —— —— **After revival of domicil on abandonment of domicil of choice.**]—FLEMING *v.* HORNIMAN, No. 48a, *ante*.

55a. ——.]—RUDD *v.* RUDD, No. 903a, *post*.

58a. Life to be considered as a whole].—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

59. *Add. Annotations :—As to* (2) **Distd.** *Re* Ross Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

64a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

65a. —— **Effect of deportation order.**]—VEITH *v.* VEITH (1929), 73 Sol. Jo. 235.

66. *Add. Annotation :*—**Follid.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

67. *Add. Annotations :*—**Consd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

67a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

68. *Add. Annotations :—As to* (1) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768. **Refd.** Rudd *v.* Rudd, [1924] P. 72. *Generally*, **Refd.** Ross *v.* Ross, [1930] A. C. 1.

——.]—Applt. was the proprietor of a Scotch estate, but left Scotland for America in 1895 to earn his living. In 1901 he married resp., an American lady, & in 1902 they went to Quebec where he carried on the business of manufacturing arms. They lived together there till 1917 with occasional visits to England. In 1917 applt. went to Washington, staying there as an expert adviser on munitions till Sept. 1918, when he stayed a certain time in Great Britain & in 1918 leased a house in London. In 1922 he took a lease of a flat in New York of which he remained tenant when these proceedings for divorce began in Dec. 1923. Up to the year 1920 there was no statement by applt. of his intention to abandon his Scottish domicil, & as late as Dec. 1920, he stated in an affidavit that he was a domiciled Scotchman. Between Dec. 1920, & the institution of these proceedings he was trying for the purposes of taxation to become a resident alien in the United States, & in Apr. 1923, succeeded. In Jan. 1924, after these proceedings he sought to be naturalised as an American citizen. He spent increasing periods of time at his Scottish estate & referred to it as his home in a letter written to resp. in Nov. Since 1920, however, he had made statements in documents & verbally that he intended to live permanently in New York, though such statements were never made to his wife, nor, with one exception, to any personal friend :—*Held :* the evidence of declared intention of change of domicil was not established, as such declarations must be examined by considering the person to whom, the purposes for which, & the circumstances in which they were made, & be carried into effect by conduct & action consistent with the declared intention.—ROSS *v.* ELLISON (OR ROSS), [1930] A. C. 1, H. L.; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

Annotation :—**Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

68b. —— ——.]—On an issue as to domicil the declarations of a living person as to his intention of acquiring a domicil of choice are not subject to the usual common law rule which excludes evidence of statements of intention unless they are against the interest of the party making them. The declarations in question are to be duly weighed along with the rest of the evidence on the issue, although they have been properly described as being, unless they are accompanied by acts, the "lowest species of evidence, especially when encountered by conflicting declarations" of another party.—BRYCE *v.* BRYCE, [1933] P. 83; 102 L. J. P. 1; 148 L. T. 351; 49 T. L. R. 177; 77 Sol. Jo. 49.

68c. —— ——.]—Testator, who died in 1935, declared by his will, which was in English form : "I have not relinquished & do not intend to relinquish my English domicil." Testator's domicil of origin was England, where he was born, but in 1897 he moved with his parents to Scotland, where his father had bought certain property. Testator's father continued to live in Scotland until his death in 1905, when by his will, which was in English form, his residuary estate, including the property in Scotland & other property in England, passed to testator. With the exception of brief visits to England & an occasional trip abroad, testator lived in Scotland from 1897 until his death. He had a great love for his property in Scotland & was anxious that after his death it should remain in his family & not be sold. At his own request testator was buried in Scotland. The exors. of the will took out a summons to determine (*inter alia*) whether testator was at the time of his death domiciled in England or in Scotland :—*Held :* as all the evidence showed that the testator's residence was in Scotland & that he intended that such residence should be permanent, the testator was domiciled in Scotland at the time of his death.—*Re* LIDDELL-GRAINGER'S WILL TRUSTS, DORMER *v.* LIDDELL-GRAINGER, [1936] 3 All E. R. 173; 53 T. L. R. 12; 80 Sol. Jo. 836.

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. ——.]—GROTHKOP *v.* GROTHKOP, [1922] N. Z. L. R. 1.—**N.Z.**

60 iv. ——.]—HARRIS *v.* HARRIS (Sask.), [1929] 2 D. L. R. 546.—**CAN.**

60 v. ——.]—The intention necessary to constitute a domicile of choice excludes all contemplation of any event on the occurrence of which the residence would cease.

The domicile of origin of a man found not to have been abandoned at the time of his marriage, despite the facts that he had actually resided & been employed in a certain State in the U.S.A. for over a year & a half; that while there he had sent for his fiancée to join him; that he had married her there & had become a naturalised American citizen.—JOHNSON *v.* JOHNSON, [1931] A. D. 391.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. —— ——.]—CROSBY *v.* THOMSON (N. B.), [1926] 4 D. L. R. 56.—**CAN.**

68d. Declarations as to intention—Purpose & circumstances must be considered.]—ROSS *v.* ELLISON (OR ROSS), No. 68a, *ante*.

69. *Add. Annotations :—As to* (1) **Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

-.]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

84. *Add. Annotation :*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

84a. —— —— **Although subject to Aliens Order.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* (1) the provisions of the Act of 1914 & the Order of 1920 did not preclude the petitioner from acquiring an English domicil of choice ; (2) on the facts, petitioner had discharged the *onus* on him of proving that he had acquired an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9 ; 101 L. J. P. 4 ; 146 L. T. 121 ; 48 T. L. R. 94 ; 75 Sol. Jo. 868, C. A.

88a. —— ——.]—It being settled that a change of domicil must be made *animo et facto*, the *animus* may be inferred by the *factum* of residence within the new domicil, but in order to warrant that inference the quality of the residence must be taken into account ; mere length of residence is not of itself sufficient.

A testator who died in Liverpool in 1927, aged eighty-two & unmarried, left a holograph will, valid by the law of Scotland but invalid by the law of England. Testator's domicil of origin was Scottish, & he lived the greater part of his life in Glasgow. Originally employed there as a commercial traveller he gave up that employment in 1882 & never worked again. In 1892 he went to Liverpool to be near a brother & sister, & lived there for the last thirty-five years of his life. He was supplied with the means of subsistence by his brother & sister, & on the death of his sister he succeeded to the whole of her estate. With the exception of family ties he had few, if any, ties in either England or Scotland. In an action by beneficiaries under the will against testator's next of kin for a declaration that testator was domiciled in Scotland at the date of his death :—*Held :* in the absence of independent evidence of an intention on the part of testator to change his domicil, the burden which lay on the next of kin of proving that he had abandoned his domicil of origin had not been discharged.—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, [1930] A. C. 588 ; 99 L. J. P. C. 134 ; 143 L. T. 388 ; 46 T. L. R. 465, H. L.

Annotation :—**Refd.** *Re* Liddell-Grainger's Will Trusts, Dormer *v.* Liddell-Grainger, [1936] 3 All E. R. 173.

100a. —— ——.]—Resp., a domiciled Englishman, was an officer in the Indian Army, & consequently, although his true matrimonial & conjugal home had been in England, he was temporarily resident in India when a petition for judicial separation was served upon him :—*Held :* without deciding whether resp.'s English domicile was sufficient to found jurisdiction, in the circumstances, as resp.'s temporary residence in India was independent of his personal volition, but was determined by his superior officers, he had a sufficient matrimonial residence in this country to give jurisdiction to the ct.—WARD *v.* WARD (1923), 39 T. L. R. 440.

104. *Add. Annotations :—As to* (1) **Expld.** Graham *v.* Graham, [1923] P. 31. **Refd.** Eustace *v.* Eustace, [1924] P. 45.

112. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61

113. *Add. Annotation :*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

114. *Add. Annotations :—As to* (2) **Consd. & Expld.** *Re* Ross. Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

115. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd [1924] P. 72 ; Bartlett *v.* Bartlett, [1925] A. C. 377 ; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

120a. Health of wife.]—Deceased was born in Germany of German parents in 1852. His father had a large interest in a starch & sugar manufacturing business in Germany, & his son was brought up in that business. In 1877 deceased married a German lady & had two sons who were both born in Germany. In 1879 he came to England where he resided at various places until 1884, when he applied for & obtained naturalisation as a British subject under the Aliens Act, 1870. In his memorial he stated that he intended to continue to reside permanently within the

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

97 i. *Naval service.*] — There is no rule of law that a sailor in the Australian Navy cannot, while on service in Australia, acquire a domicile of choice in one of the Australian States. —SCHACHE *v.* SCHACHE & STREETER (1931), 31 S. R. N. S. W. 633 ; 48 N. S. W. W. N. 230.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

S. AF.

116 v. —— ——.]—In a suit by a wife for dissolution of marriage on the ground of desertion, resp. entered an appearance under protest & disputed the jurisdiction of the ct. on the ground that the parties were not domiciled in New South Wales. It appeared that about the end of 1926 resp. whose domicile of origin was in Victoria, applied for, & was appointed to, a permanent position in the New South Wales Postal Department of the Commonwealth Public Service. In 1929 he married in New South Wales ; subsequently he took & furnished a house in this State, & in 1931 was resident in the house with his wife & child at the time of his alleged desertion. Prior to 1923 resp., whilst a minor & after coming of age, had been employed & had resided in New South Wales :—*Held :* at the time of the alleged desertion resp. was domiciled in New South Wales, & that at the time of the institution of the suit petitioner was domiciled, & had been domiciled for three years & upwards, in this State.—PERKINS *v.* PERKINS (1934), 51 N. S. W. W. N. 175.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

120 i. *General rule.*]—The fact that a person has taken up residence in New South Wales solely for reasons of health does not prevent the acquisition by him of a domicile of choice in this State ; for, if the residence was taken up with the intention of residing permanently or indefinitely, he thereby acquired a domicile in this State.—BROWN *v.* BROWN (1933), 50 N. S. W. W. N. 33.—**AUS.**

United Kingdom of Great Britain & Ireland & had no intention of permanently leaving the United Kingdom. Having divorced his wife he married in 1886 in England his second wife, a lady of English birth, & lived with his wife & children for two years in England. He then returned to Germany for two years & was there engaged on business connected with his father's firm. His wife having become an invalid, he took a house for her in Hampstead, & in it she died in 1906. In 1901 the father of the deceased, who had been the head of the firm at Cüstrin, died & was succeeded in the management of the business by the deceased, who paid frequent visits to Germany lasting for considerable periods, in attendance at meetings of the board, & made the old family house his residence when at Cüstrin on business. On the death of his mother in 1908 at Neuwied he used her house as a second residence when in Germany. Deceased died in 1915 at his house in Hampstead which he had endeavoured to dispose of, though without success:—*Held:* the true inference to be drawn from the circumstances under which the house in Hampstead was taken & maintained by the deceased was that it was an emergency measure dictated by the condition of his wife & not one which should be held to indicate an intention to establish a family home & thus to adopt a new domicile in this country. The evidence was wholly insufficient to establish the abandonment by the deceased of his German domicile.

Per Lord ATKIN: It is not the law either that a change of domicile is a condition of naturalisation, or that naturalisation involves necessarily a change of domicile.—WAHL *v.* A.-G. (1932), 147 L. T. 382, H. L.

128. *Add. Citation:*—4 Notes of Cases, 698, n.

134. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

142. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206.

145. *Add. Annotation:*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

147. *Add. Annotation:*—**Refd.** Bryce *v.* Bryce, [1933] P. 83.

150. *Add. Citation:*—3 Macq. 852.

154. *Add. Annotations:*—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

155a. —— **Material consideration.**]—D.. who was born in Edinburgh in 1858, went out to Calcutta, India, in 1875 & worked in his uncle's cotton mills, becoming a partner in his uncle's firm in 1880. In 1883 he returned for a few months, but from 1883 to 1900 remained working in India, making his business his life. He seldom went into society, but was fond of Indians, & chiefly associated with them. In 1900 he returned to England & married his cousin, & took her out with him to Calcutta in 1901, but, the climate not suiting her, she returned in Nov. 1901, to England. From Jan. 1903 to 1910, he paid visits for a substantial time each year to be with his wife in England, where he had bought a house. In 1903 a child was born. From Jan. 1912 to Nov. 1915, D. remained in England, being, it was said, detained by litigation. In 1916 his wife went out to Calcutta, & she & her daughter lived with her husband in his flat over his offices. She returned with her daughter after two months. In 1917 D. followed his wife home, & until his death on July 3, 1928, remained in England, except for short visits to India in 1919, 1920, 1922, 1924, & 1925. In his will dated June 28, 1922, he made a declaration of Indian domicile. On his death, the Crown, on the ground that he was domiciled in the United Kingdom, claimed death duties on his estate, the value of which was many millions of pounds. On the question whether, as the exors. of the will alleged, he had acquired a domicile of choice in India & lost his domicile of origin:—*Held:* the earlier period of D.'s life up to the year 1900 could not be estimated in deciding whether he had acquired a domicile of choice in India in a compartment separate from his later years, & the declaration in his will did not decide the point, but where his wife & children had their permanent residence was material as to a man's domicile. There was a distinction between residence & domicile, & it could not be inferred from the fact of residence that domicile resulted. On the facts there was no clear evidence, as was necessary, of any manifest & concluded intention of change of domicile to overcome the domicile of origin. Therefore the onus of proof of a domicile of choice was not discharged, & D. died domiciled in the United Kingdom.—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA (1931), 145 L. T. 9, C. A.

Annotations:—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

PART II. SECT. 3, SUB-SECT. 2.—B (f).

133 ii. ——.]—When a person voluntarily accepts employment, the duties of which necessarily require residence in another country & there is no stipulated period of service, & he proceeds to that country, the law presumes an intention consistent with his duty & holds his domicil to be in the country to which he goes, even though he has real property, but provided he has no residence in his domicil of origin.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

133 iii. ——.]—The fact that pltf. was employed by the C. P. R. as a constable & might be ordered by his superiors to move from the province held not to be a reason for holding that he had not acquired a domicile of choice in Saskatchewan where he had resided ever since he had asked to be transferred there. Pltf. had no contract of service & could leave the co.'s service if he should not wish to move in compliance with its orders.—LOWRY *v.* LOWRY, [1936] 2 W. W. R. 217.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

146 i. *House or apartments rented in another country—Family estate kept up.*]—Deft., whose domicil of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year. In order to supervise his financial interests, which were in America, & to avoid British income tax. He retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman:—*Held:* deft. had failed to prove an intention to abandon his Scottish domicil & to acquire a domicil of choice in America.—ROSS *v.* ROSS, [1926] S. C. 1038.—**SCOT.**

sr. *Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*]—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

st. —— —— ——.]—DONALD *v.* DONALD, [1922] N. Z. L. R. 237.—**N.Z.**

169a. —— **Declaration of change of domicil.**]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *ante.*

173a. ——.]—A husband & wife, both born in England of English parents, were married in England in 1905, where they resided together until in 1923 the husband left his wife & went to the United States of America. The husband corresponded regularly with his wife & sent her money until 1932, when she discovered that he was living with another woman as his wife. In reply to an inquiry the husband wrote that he had no thought of returning to England. The wife petitioned for divorce in England, alleging that she & her husband were domiciled in England. The husband did not enter an appearance. At the adjourned hearing, when the King's Proctor had entered an appearance in the suit to argue the question of domicil & of the ct.'s jurisdiction to grant a decree of divorce, a certificate from the U.S. Department of Labour was put in, to the effect that the husband was naturalised in New York in 1930. By the law in the United States of America, the husband in order to have obtained such a certificate must have declared on oath at least two years before his admission as a citizen of the United States that it was *bona fide* his intention to become a citizen & to renounce for ever allegiance to the state of which he might at the time be a citizen. He must also have stated in writing his intention to reside permanently within the United States :—*Held :* (1) at the time when the petition was filed, the husband was domiciled in the United States of America, & had lost his domicil in England ; (2) there was no jurisdiction in the ct. in England to grant a decree of divorce.—HERD *v.* HERD, [1936] P. 205 ; [1936] 2 All E. R. 1516 ; 105 L. J. P. 108 ; 155 L. T. 355 ; 52 T. L. R. 709 ; 80 Sol. Jo. 837.

176a. Declaration in application—Evidence of intention.]—GULBENKIAN *v.* GULBENKIAN, [1937] 4 All E. R. 618 ; 54 T. L. R. 241 ; 81 Sol. Jo. 1003.

191. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

192. *Add. Annotation :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

214. *Add. Annotations :*—**Apld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, 1927] A. C. 641. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

217a. —— —— ——.]—*Re* BORWICK, HOLLAND *v.* WOODMAN (1937), 81 Sol. Jo. 587.

218. *Add. Annotations :*—*As to* (1) **Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (3) **Apld.** Nachimson *v.* Nachimson, [1930] P. 217. *Generally*, **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

220. *Add. Annotations :*—*As to* (3) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. *Generally*, **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; H. *v.* H., [1928] P. 206.

221. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

223. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

225. *Add. Annotation :*—**Expld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

228. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44 ; Inverclyde *v.* Inverclyde, [1931] P. 29 ; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; H. & H., [1928] P. 206.

236a. —— ——.]—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, No. 88a, *ante.*

243a. —— **Nature of doctrine.**]—DREVON *v.* DREVON, No. 52a, *ante.*

248. *Add. Annotations :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Dbtd.** *Re* Askew, Marjoribanks *v.* Askew, (1930), 2 Ch. 259. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

249. *Add. Annotation :*—**Dbtd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

-.]—The question whether a person

PART II. SECT. 3, SUB-SECT. 2.—G.

sw. *Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*]—*Held :* facts of great importance in determining question of domicil.—BARRY *v.* JAMES (1921), *Times*, Apr. 29 ; [1921] 3 W. W. R. 182.—**S. AF.**

sx. *Missionary.*]—The Oxford Mission Brotherhood was founded at Oxford in 1880 & E. F. Brown, who was one of the founders, was chiefly responsible for drawing up its constitution. The objects were, (*inter alia*), to remain in intimate contact with the people of Bengal & to bring the Kingdom of Christ amongst the more educated natives of the Province. The constitution made it obligatory on every member of the Brotherhood to strive to attain these objects, by working throughout his life in Bengal, unless his health broke down or he wished to leave the Brotherhood. E. F. Brown went out to India in 1880 & except for short visits to England remained working as a missionary until his death in 1933 :—*Held :* he had acquired an Indian domicil of choice.—SHORE *v.* MORGAN (1935), I. L. R. 62 Cal. 869.—**IND.**

PART II. SECT. 3, SUB-SECT. 4.

230 x. ——.]—BOYLE *v.* [1925] 1 W. W. R. 829.—**CAN.**

230 xi. —— ——.]—JONES *v.* (1923), I. L. R. 1 Ran. 705.—**IND.**

230 xii. —— ——.]—To establish change of domicil, it must be proved that the change was made with a clear intention of settling there, as a person whose ultimate & permanent home was to be in that country. The entire burden of proving change of domicil lies on him who wants to establish it.—LINTON *v.* GUDERIAN (1928), I. L. R. 56 Calc. 530.—**IND.**

230 xiii. —— ——.]—HARRISON *v.* HARRISON, [1929] N. Z. L. R. 668.—**N.Z.**

230 xiv. —— ——.]—BROWN *v.* BROWN, [1928] S. C. 542.—**SCOT.**

PART II. SECT. 4.

239 iii. —— ——.]—The doctrine of Anglo-Indian domicile forms no part of the law of Scotland ; held, therefore, the fact of residence in India in the service of the East India Co. was not *per se* sufficient to cause loss of Scottish domicile.—GRANT *v.* GRANT, [1931] S. C. 238.—**SCOT.**

sz. *What may be considered.*]—In the case of a European claiming to be domiciled in India it will be pertinent to inquire where his father lived & died or resides, as the case may be, where he & his father were born, the circumstances in which he came to & resides in India, which will assist in ascertaining whether there exists an *animus revertendi* or *animus manendi* his object in residing in India & generally as to the conditions under which he lives & his habits of life.—WRIGHT *v.* WRIGHT (1930), I. L. R. 58 Calc. 259.—**IND.**

is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicil, irrespective of the question whether the person in question has or has not acquired a domicil in the foreign country in the eyes of the law of that country.

Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13 :—*Held :* (1) she had nevertheless on the evidence acquired a French domicil of choice, & the ct. would apply the law of France in administering her estate ; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of deceased was governed by that law.—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, [1926] Ch. 692 ; 95 L. J. Ch. 404 ; 135 L. T. 508 ; 42 T. L. R. 584.

o (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259 *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

251a. ——— ——— ———.]—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, No. 249a, *ante*.

265. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

Part III.—Nature of Property.

290. *Add. Annotations :*—**Distd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

297. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

300. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

302. For the paragraph in the original volume substitute the following paragraph :—

——— **Interest in proceeds of sale of English freeholds—By English law.**]—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs*.—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, [1923] 1 Ch. 192 ; 92 L. J. Ch. 185 ; 128 L. T. 591 ; 67 Sol. Jo. 212.

303. For the paragraph in the original volume substitute the paragraph numbered **302** in the original volume.

308. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

309. *Add. Annotation :*—**Consd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

Part IV.—Immovables.

331. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

334. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

PART III. SECT. 2.

p i. ———.]—Although land for purposes of succession may be regarded as personal property, it is not a movable.—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602 ; [1927] 1 W. W. R. 143 ; 38 B. C. R. 28.—**CAN.**

p ii. ——— *Interest in land agreed to be sold.*]—Where on the death intestate of an owner of land situate in Saskatchewan his title is subject to the interest of a purchaser under an outstanding agreement for sale, the interest of deceased in the land is immovable property, & devolves according to the law of Saskatchewan & is to be administered by the representative of the estate in that province, even though deceased died domiciled elsewhere.—*Re* BURKE ESTATE (Sask.), [1927] 3 W. W. R. 718.—**CAN.**

p iii. ——— *Sale of settled land under compulsory powers.*]—Capital moneys the proceeds of land, situate in England, sold under the Settled Land Acts, 1882-1890, which land at the time of sale was settled on a tenant for life, with remainders over, & subject to a trust for conversion at the death of the tenant for life, & the investments representing the same, are, at any rate until the death of the tenant for life, immovables for the purposes of private international law & devolve according to the law of descent in England.—*Re* CROOK (1936), 36 S. R. N. S. W. 186 ; 53 N. S. W. W. N. 49.—**AUS.**

sb. *Immovable—Interest in of sale of Tasmanian solvency in Natal.*]—Testator will devised land in Tasmania to trustees to pay his widow out of the income an annuity, & to pay the residue of the income to his sons in equal shares, & he directed that upon the death of his widow the trustees should sell the land, with a discretionary power to postpone the sale for seven years, & divide the proceeds equally among the sons. One of the sons having gone to Natal, in South Africa, before the death of his mother, became insolvent there, &, according to the Law of Natal, his trustee would have priority over subsequent incumbrances of insolvent's choses in action without the necessity of giving notice. Insolvent having returned to Tasmania, executed an assignment of his interest in his father's estate to an assignee who had no notice of the insolvency & who gave notice to the trustee of the property :—*Held :* from the date of testator's death until the date of the sale of the land the interest of each son was an immovable, & the insolvency in Natal did not operate in Tasmania as an assignment of insolvent's interest in his father's estate.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* GREGORY (1908), 5 C. L. R. 615.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.

314 iv. ——— ———.]—*Re* HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—**CAN.**

t i. ——— ———.]—A judgment of a ct. of the state of California on a question of title & ownership of real cannot be recognised as final & be enforced by the cts. of that province, in accordance with the general rule that the cts. of any country have no jurisdiction to adjudicate on the right & title to lands not situate in such country.—DUKE *v.* ANDLER, [1932] S. C. R. 734 ; 4 D. L. R. 529.—**CAN.**

t ii. ——— ———.]—The ct. of a foreign country has no right to deal with real property within Alberta or with the title thereto ; although where the owner is domiciled within the jurisdiction of the foreign ct. it can proceed against him *in personam*.

Pltf. had obtained in the state of Washington a decree of divorce which purported to award her a half interest in certain land in Alberta. The husband was then domiciled in Montana. The husband having died, pltf. sought by this action, brought against her husband's exor. to have the decree enforced against said land. Both parties admitted that the decree was valid with respect to the divorce :—*Held :* the decree had no force here as against the land ; & there is nothing in the authorities making it incumbent upon this ct. to grant any alimony to pltf., much less to grant in amount or kind the same alimony that was granted by the foreign ct.—HASPEL *v.* HASPEL, [1934] 2 W. W. R. 412.—**CAN.**

334 i. *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State.*]—BOSLUND *v.* ABBOTSFORD LUMBER MINING & DEVELOPMENT CO., [1925] 1 D. L. R. 978 ; [1925] 1 W. W. R. 475 ; 34 B. C. R. 485.—**CAN.**

334 ii. ——— ———.]—An action founded on trespass to realty in a

334a. —— ——.]—MURRAY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, [1931] W. N. 91; 171 L. T. Jo. 308, C. A.

336a. —— —— **Action for declaration as to currency in which payable.**]—Applts. (defts. in the action), two English cos. having their head offices in London but carrying on business exclusively in South America, were jointly liable to resps. (the pltfs. in the action) for rent in respect of premises occupied by one of them in Chile under a lease drawn in the Spanish language according to Chilean law & executed by all parties in Paris, by which also all parties elected domicil in Chile. The rent stipulated by the lease was 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, which was to be paid at the option of the lessors either in Chile or remitted to Europe according to their instructions. Disputes having arisen between the parties in view of Chilean legislation which applts. contended prevented them remitting the rent from Chile without official authorisation by the Chilean Government, which authorisation had been refused, applts. commenced proceedings in Chile, which were still pending, claiming a declaration that the rent could lawfully be paid in notes of the Banco Central de Chile. Resps. having brought the present action in England claiming payment of the rent in sterling equivalent to 183,057 millionths of a gramme of fine gold, applts. applied under sect. 41 of Jud. Act, 1925 (c. 49), to have it stayed as being vexatious & oppressive:—*Held:* (1) the action was a personal action, transitory in its nature, which the English ct. could competently entertain notwithstanding that incidentally it related to an immovable out of England; (2) the legal effect of the clause in the lease by which all parties elected domicil in Chile could not properly be determined upon affidavits; (3) though some inconvenience might be caused to applts. by having to call evidence as to Chilean law with regard to the mode in which the rent could be paid, this did not amount to an injustice sufficient to entitle the applts. to a stay of the action; (4) the fact that an action by applts. against resps. was pending in Chile was not in itself a ground entitling applts. to a stay.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., [1936] 1 K. B. 382; 105 L. J. K. B. 436; 154 L. T. 546, C. A.

339. *Add. Annotation:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

342. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

345. *Add. Annotation:*— **Consd.** Liddell's Settlement Trusts, *Re*, Liddell *v.* Liddell, [1936] 1 All E. R. 239.

349. *Add. Annotations:*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or Robinson (1929), 69 L. Jo. 61.

350a. —— —— —— ——.]—ROBINSON *v.* SPEAKMAN OR ROBINSON (1929), 69 L. Jo. 61, H. L.

352. *Add. Citation:—sub nom.* ANON., 1 Salk. 404.

352a. —— —— **Mortgage of Isle of Man.**]—Upon a mtge. made of this Isle, & both mtgor. & mtgee. resident within the jurisdiction of this ct., upon a bill concerning it, the ct. would hold jurisdiction of it (HARDWICKE, L.C.).—DERBY (EARL) *v.* ATHOL (DUKE) (1749), 1 Ves. Sen. 201; 27 E. R. 982, L. C.

356. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

357. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

361. *Add. Annotation:—As to* (2) **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

363. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

368. For "(2) an order giving leave to serve a writ in an action for rescission" read "(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission." *Add. Citation:*—127 L. T. 209.

373. *Add. Annotation:*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

374. After this case for "**Foreign judgments generally.**]—*See* Part XIV., *post*," read "Foreign judgments generally, *see* pp. 444 *et seq.*, *post*."

380. *Add. Annotations:—As to* (1) **Consd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15; Guatemala (Republica de) *v.* Nunez, [1927] 1 K. B. 669.

395a. —— **Floating charge on land in Scotland.**]—A shipping co., registered in England, but owning heritable & movable property in Scotland, in pursuance of a previous agreement with all its secured creditors, in Mar. 1934, executed a charge in Glasgow in favour of a Scottish bank, whereby, after reciting the agreement, charged with payment of sums advanced by the bank by way of floating security its undertaking & all its property & assets both present & future. By the deed the charge was to rank as a first charge on the co.'s undertaking & all its property & assets whatsoever & wheresoever both present & future subject to specific mtges., & was to be a floating security, but so that the co. should not have power to create any further mtges. or charges ranking in priority to or *pari passu* with the charge thereby created. This charge was registered in England. Subsequently an agreement for sale of all the co.'s property & assets was entered into but before it was carried into effect the co. was compulsorily wound up & a liquidator was appointed. The liquidator took out an originating summons to determine whether a valid & effectual charge had been created over the heritable & movable

foreign country cannot be tried in New Brunswick. The Province of Quebec is, for this purpose, a foreign country.—ALBERT *v.* FRASER COMPANIES, LTD., [1937] 1 D. L. R. 39; 11 M. P. R. 209.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

349 i. —— *Scottish heritage.*]—Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which consisted of the most part of real & personal property in England, but also included Scottish heritage:—*Held:* the Scottish cts. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—FOSTER *v.* FOSTER'S TRUSTEES, [1923] S. C. 212.—**SCOT.**

PART IV. SECT. 3, SUB-SECT. 2.

sf. *Assignment must comply with lex situs.*]—A person's capacity to transfer immovables situate in Ontario is determined by the law of Ontario & not by the law of the domicil of the person.—LANDREAU *v.* LACHAPELLE, [1937] 1 D. L. R. 87; [1936] O. R. 569.—**CAN.**

property & assets of the co. therein specified in so far as such assets were at the commencement of the liquidation of the co. locally situate in Scotland. The bulk of the property having been sold & the proceeds of sale only left in the hands of the liquidator, the question before the ct. was whether in the distribution of the assets of the co. effect ought to be given to the charge executed in Glasgow in Mar. 1934, so far as the proceeds of sale represented heritable & movable property in Scotland at the date of the liquidation :—*Held :* (1) the charge must be construed according to English law & was a valid equitable security according to English law ; (2) Cos. Act, 1929 (c. 23), s. 270, does not place heritable or other property in Scotland belonging to a co. registered in England in a different position from property belonging to it in England or in any other part of the world. The proceeds of sale therefore of all the property of the co. expressed to be subject to the floating charge (including the proceeds of sale of the heritable or movable property in Scotland) were payable to the Scottish bank in or towards satisfaction of the moneys secured by the charge of Mar. 1934.—*Re* ANCHOR LINE (HENDERSON BROS.), LTD. (No. 2), [1937] Ch. 483 ; [1937] 2 All E. R. 823 ; 106 L. J. Ch. 211 ; 156 L. T. 481 ; 53 T. L. R. 806 ; 81 Sol. Jo. 437.

Part V.—Movables.

417. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

417a. —— —— ——.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the other for £50,000 ; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of £50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4*s.* 5*d.* The U. Bank, whose claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become complete, & that such an arrestment operated as an assignment of the fund duly intimated ; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree ; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor :—*Held :* without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be made invalid by anything in the law of the assignor's domicil ; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*Re* QUEENSLAND MERCANTILE & AGENCY CO., *Ex p.* AUSTRALASIAN INVESTMENT CO., *Ex p.* UNION BANK OF AUSTRALIA, LTD. *v.* COMR. OF STAMPS, [1892] A. C. 484 ; 61 L. J. P. C. 98 ; 67 L. T. 1 ; 41 W. R. 129 ; 8 T. L. R. 753 ; 36 Sol. Jo. 691 ; 3 R. (Q.) 145.—**AUS.**

PART V. SECT. 2, SUB-SECT. 1.—A.

sc. *Jains in British India—Hindu law.*]—In British India, Jains are governed by Hindu law in matters of succession & inheritance unless a custom to the contrary is proved. It is of the essence of special usages modifying the ordinary law of succession that they should be ancient & invariable, & it is further essential that they should be established to be so by clear & unambiguous evidence.—BHIKABAI *v.* MANILAL (1930), I. L. R. 54 Bom. 780.—**IND.**

PART V. SECT. 3, SUB-SECT. 1.

409 i. *Mobilia sequuntur personam.*]—A., whose domicil was in Ontario, died in Michigan. Certain securities were, at the time of his death, in a bank in Michigan :—*Held :* the securities, although physically situated in Michigan, had an artificial or legal status in Ontario *v.* BABY, [1926] 3 D. L. R. 958 ; 59 O. L. R. 181.—**CAN.**

409 ii. —— *Not applicable to income tax.*]—The maxim *mobilia sequuntur personam* does not afford a test of liability to income tax in respect of transactions relating to personal property outside Queensland, unless the Legislature has clearly made it applicable.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* COMR. OF [illegible] S. R. (Q.) 145.—**AUS.**

OF AUSTRALIA, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177, C. A.

Annotations :—**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** Kelly *v.* Selwyn, [1905] 2 Ch. 117.

418. *Add. Annotations* :— **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652.

421. *Add. Annotations* :—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

423. *Add. Annotations* :—**Apld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

424. *Add. Annotation* :—**Distd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

434a. —— —— ——.]—An English woman domiciled in England, being possessed of certain moneys & securities in a bank in Monaco, gave her son a power of attorney in respect of them. Subsequently, having in mind a pending operation which might prove fatal, she directed him to get this property into his own name because she wished it to be his in the event of her death, & he accordingly gave instructions to this effect to the bank, which complied with them. The testatrix died as a result of the operation, & her estate was administered in England :—*Held* : (1) the question whether there was a valid *donatio mortis causa* was one arising in the administration of the estate of the deceased & must, therefore, be determined according to English law; (2) the question whether the acts relied on as constituting a parting with the dominion over the property were effective for that purpose must be determined according to the law of Monaco; (3) (both by English law & by the law of Monaco as proved), though the giving of a power of attorney was not by itself such a parting with the donor's dominion over her property as to support a valid *donatio mortis causa*, the subsequent instructions upon which her son acted were sufficient.—*Re* CRAVEN'S ESTATE, LLOYDS BANK *v.* COCKBURN (No. 1), [1937] Ch. 423; [1937] 3 All E. R. 33; 106 L. J. Ch. 308; 157 L. T. 283; 53 T. L. R. 691; *sub nom. Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN, 81 Sol. Jo. 398.

Part VI.—Succession.

439. *Add. Annotation* :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

439a. —— **Interest in proceeds of sale of English freeholds.**]—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, No. 302, *ante*.

440a. —— **Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.**]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children :—*Held* : having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law.—BARTLETT *v.* BARTLETT, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

440b. —— **Will of Italian realty by British subject domiciled in Italy.**]—*Re* ROSS, ROSS *v.* WATERFIELD, No. 457a, *post*.

448. *Add. Annotation* :—*As to* (1) **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

PART VI. SECT. 1, SUB-SECT. 1.

436 iii. ——.]—Where on the death intestate of an owner of land situate in S. his title is subject to the interest of a purchaser under an outstanding agreement for sale the interest of the deceased in the land is immovable, not movable, property &, therefore, devolves according to the law of S., & is to be administered by the representative of the estate in that province, even though the deceased died domiciled elsewhere.—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318; 22 Sask. L. R. 142; [1927] 3 W. W. R. 718.—**CAN.**

436 iv. ——.]—In an action of accounting, brought by a daughter against her deceased father's executrix for the purpose of ascertaining the legitim payable to her out of her father's estate, the pursuer averred that her father at his death was the owner of land in Canada; that by the Canadian law applicable such estate vested in the owner's personal representatives, & was dealt with & distributed among them as personal estate; & that its value, therefore, fell to be added to deceased's movable estate in estimating the legitim fund. She admitted that, by the local law, the distinction between real & personal property was recognised, & that land was real estate; & also that, by that law, the devolution on intestacy of real & personal property was the same :—*Held* : the land in Canada did not fall to be included in computing legitim, in respect that, as it was immovable by the law of Canada, the succession to it fell to be regulated by Canadian law, & the right of legitim did not form part of that law.—MACDONALD *v.* MACDONALD, [1932] S. C. 79.—**SCOT.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

440 iii. —— *Scottish holograph will of Irish realty.*]—*Held* : a holograph will of a British subject executed in Scotland according to the law of Scotland, but not executed according to the formalities prescribed by Wills Act, 1837, is inoperative to convey registered freehold land of a testatrix purchased under Land Purchase Acts (Ireland) & situate in Northern Ireland, such land being real estate although it vests in the personal representative of the registered owner as if it were a chattel real, & though on intestacy the beneficial interest in it devolves as if it were personal estate. The doctrine of the *lex situs* applied thereto.—M'GINN *v.* DELBEKE (1926), 61 I. L. T. 117.—**IR.**

441 iv. —— ——.]—Testatrix, who was domiciled in England, died possessed of movable & immovable property in New South Wales. The exor. named in the will obtained a grant of probate in common form in England, &, as a person entitled to probate who was out of the jurisdiction, brought a suit in the Supreme Ct. of New South Wales for the grant to his attorney of administration with the will annexed. The suit was contested by a caveator who claimed that the will was invalid :—*Held* : the validity of the will as a disposition of immovables & as a title to administer them must be determined independently of the English grant, & the caveator's objection should, therefore, be heard & determined upon the merits.—LEWIS *v.* BALSHAW (1936), 54 C. L. R. 188; 9 A. L. J. 345; 42 Argus L. R. 92.—**AUS.**

sy. *Will of Chinese Buddhist domiciled in Burma—Whether Chinese customary law applicable—Right to make will.*]—Chinese customary law governs the succession to the estate of a Chinaman domiciled in Burma. The right of the Chinese to make wills has also been recognised.—CHAN PYU *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

456. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

457. *Add. Annotations :—Generally,* **Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258 ; Straits Settlements Commissioner of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378 ; Alberta Provincial Treasurer *v.* Kerr, [1933] W. N. 205 ; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710.

457a. ——.]—(1) The succession to movable property, wherever situate, is governed by the law of testator's domicil, that is to say, the whole law of the country of domicil, including the rules of private international law administered by its tribunals. The inquiry in an English ct. before which such a question of succession comes is, therefore, what the cts. of the country of domicil would decide in the particular case. The result is that, where by the law of the succession to the movables of a testator depends on the law of that testator's nationality, an English ct. will hold that the succession is governed by the law of the nationality & not by the municipal law of the domicil.

(2) The succession to the immovable property situate in Italy of an English testator domiciled in Italy is to be determined by Italian law, namely, in the same manner as English Courts would determine it if the property belonged to an Englishman & was situate in England.—*Re* Ross, Ross *v.* Waterfield, [1930] 1 Ch. 377 ; 99 L. J. Ch. 67 ; 142 L. T. 189 ; 46 T. L. R. 61.

Annotation :—As to (1) & (2) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

461. *Add. Annotations :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

463. *Add. Annotations :—As to* (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

467a. —— **Law of nationality.**]—*Re* Ross, Ross *v.* Waterfield, No. 457a, *ante.*

468a. ——.]—English subject resident & dying in England, where his will was proved, but having debts & choses in action in Scotland : —*Held :* the latter were distributable as the rest of his effects.—Thorne *v.* Watkins (1750), 2 Ves. Sen. 35 ; 28 E. R. 24, L. C.

481. *Add. Annotations :—As to* (3) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Musurus, [1936] 2 All E. R. 1666.

490a. —— —— —— ——.]—A Turkish woman domiciled in Turkey died intestate & without heirs in 1915, leaving (*inter alia*), certain personal property in England. The British Crown claimed that as this property was ownerless in Turkish law, it must be treated as *bona vacantia.* The Turkish govt. claimed

PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. ——.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicil. The bulk of his property was invested in bonds & in mtges. of land in N.Z. :—*Held :* the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicil.—*Re* O'Neill, etc., [1922] N. Z. L. R. 468.—**N.Z.**

453 x. ——.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland :—*Held :* the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—Cunningham's Trustees *v.* Cunningham, [1924] S. C. 581.—**SCOT.**

453 xi. ——.]—A domiciled Scotsman died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a liferentrix, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the liferentrix without leaving issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the liferentrix :—*Held :* in the absence of any indication of a contrary intention on the part of testator, the legatee's heirs fell to be ascertained by the law of his domicil, *i.e.*, the law of England.—Smith's Trustees *v.* C.

sk. *Effect of Legitimacy Act.*]—The commencement of Legitimacy Act, 1926, was Jan. 1, 1927. L. D. was born in 1910. His parents were married in 1911. At both the times of his birth & the marriage of his parents L. D.'s father was domiciled in England. L. D. became legitimate in England & Wales by virtue of the provisions of the said Act, on Jan. 1, 1927, on which date his father was domiciled in New Zealand. L. D. had never been legitimated in New Zealand under the provisions of the Legitimation Act, 1908 (N.Z.). On originating summons for determination whether L. D. was entitled to share in a legacy of £1,000 bequeathed by his grandmother, who was domiciled in New Zealand, to her grandchildren living at her decease :—*Held :* the status of legitimacy conferred by the Legitimacy Act, 1926 (Eng.), upon L. D. could not be recognised in New Zealand as entitling L. D. to share in a legacy given to legitimate grandchildren by the will of a testatrix domiciled in New Zealand, as L. D.'s father was not domiciled in England at the date of the commencement of the said English statute. —*Re* Davey, Public Trustee *v.* Wheeler, [1937] N. Z. L. R. 56 ; 13 N. Z. L. J. 31.—**N. Z.**

PART VI. SECT. 2, SUB-SECT. 2.

468 vii. ——.]—Indian Succession Act, therefore, governs the succession to the estates of "Chinese Buddhists," whether born in China or born in Burma, who were domiciled & died in Burma. Even if "Chinese Buddhists" are Buddhists within Burma Laws Act, s. 13 (1), Chinese customary law cannot be applied to their estates, because it is not Buddhist law. The law of justice, equity, & good conscience must, therefore, be applied under Burma Laws Act, s. 13 (3), & Indian Succession Act should govern the succession to the estates of "Chinese Buddhists," as being the law of justice, equity, & good conscience, in view of the fact that it is the general law of succession in India & is the law which governs the succession to the e... of all other Chinese domiciled & dying in Burma, whose personal law is identical with that of "Chinese Buddhists."—Phan Tiyok *v.* Lim Kyin Kauk (1930), I. L. R. 8 Ran. 57.—**IND.**

468 viii. ——.]—Succession to the estate of a Chinese Buddhist domiciled in Burma, is governed by Chinese customary law.—Ma Sein Byu *v.* Khoo Soon Thye (1933), I. L. R. 11 Ran. 310.—**IND.**

468 ix. —— *Effect of Legitimacy Act.*]—The status of legitimacy, retrospectively conferred by Legitimacy Act, 1926, 16 & 17 Geo. V., c. 60, upon a child born in England out of wedlock but whose parents, domiciled there, have subsequently married, cannot be recognised in Victoria as entitling such child to share, as one of the next of kin, in the division of an intestate's estate in Victoria, when that Act did not come into force during the lifetime of the father of the child, though it was in operation at the date of the death of the intestate.—*Re* Williams, Curator of Estates of Deceased Persons *v.* Williams, [1936] V. L. R. 223 ; 42 Argus L. R. 348.—**AUS.**

468 x. ——.]—In 1904, deft., domiciled in Quebec, married deceased in Quebec, no ante-nuptial contract being made. In 1905 the couple moved to Ontario where they became domiciled until the wife's death in 1935 : *Held :* the change of domicil did not affect the community of property created by the law of Quebec & on the wife's death the community was dissolved & partition took place. But the succession of the wife's share of the community property was governed by the law of her last domicil, *i.e.*, Ontario.—... ... Trudell, [1937] 1 D. L. R. 216 ; O. R. 1.—**CAN.**

sd. *Intestate domiciled abroad leaving shares in Canadian company—Issue as to ownership of shares—By what court determined.*]—*Re* Fenwick (1915), 35 O. L. R. 29 ; 9 O. W. N. 227.—**CAN.**

that, under the law of the Ottoman Empire as it was in 1915, the property would have passed to the Bait al-mál, the treasury of the Moslems, which would have applied the property for the relief & benefit of the Moslems, & that as the application of the property was thus limited to certain objects, it was impressed with something in the nature of a trust, & it was impossible to liken it to *bona vacantia*, & it claimed the property. If for any reason the Bait al-mál did not take any uninherited property, there was no ultimate right in anyone else :—*Held :* (i) the property was ownerless, & the limited application of the property under Turkish law made no difference to its character ; (ii) as the authority by which the Turkish govt. claimed was in substance the same as that by which the British Crown claimed, the Crown was entitled to the property as *bona vacantia*. *—In the Estate of* MUSURUS, [1936] 2 All E. R. 1666 ; 80 Sol. Jo. 637.

511. For the paragraph in the original volume substitute the following paragraph :—

—— **Share in proceeds of sale of freeholds—Held on trust for sale but not converted.**]—An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS. LYNE *v.* GIBBS, [1919] 1 Ch. 80 ; 88 L. J. Ch. 1 ; 120 L. T. 81 ; 35 T. L. R. 44 ; 63 Sol. Jo 53, C. A.

Annotation :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

517. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

521. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

526a. —— —.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees ; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicil of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled :—*Held :* the domicil being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *primâ facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, HEALING *v.* WEBB, [1924] 1 Ch. 68 ; 93 L. J. Ch. 95 ; 130 L. T. 308 ; 68 Sol. Jo. 118.

528. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Manners. Manners *v.* Manners, [1923] 1 Ch. 220.

536. *Add. Annotation :*—**Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

548a. —— ——.]—Funds in ct. standing to the credit of an infant, having a foreign domicil, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicil.—*Re* SCHNAPPER, [1928] 1 Ch. 420 ; 97 L. J. Ch. 237 ; 139 L. T. 42 ; 72 Sol. Jo. 137.

549. *Add. Annotation :*—**Consd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

563a. —— ——.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland. *—In the Goods of* HENDERSON (1850), 2 Rob. Eccl. 144 ; 7 Notes of Cases, 378 ; 163 E. R 1271.

574. *Add. Annotation :*—**Refd.** *Re* McLaughlin, [1922] P. 235.

576a. —— —— —— **Foreign grant to next of kin as administratrix.**]—In following a foreign grant to the estate of a deceased person domiciled abroad, this ct. will make the English grant to the person clothed by the ct. of the domicil with the power of administration " no matter who he is or on what ground he has been clothed with that power." Appct. for an English grant had been constituted administratrix by the ct. of the domicil of deceased. By a power of attorney given by the administratrix to obtain a grant in this jurisdiction it appeared that by English law she was also entitled to a grant in the character of next of kin :—*Held :* her attorneys should take the grant for her as administratrix & not as next of kin.—*In the Estate of* HUMPHRIES, [1934] P. 78 ; 103 L. J. P. 31 ; 150 L. T. 220 ; 50 T. L. R. 126 ; 78 Sol. Jo. 83.

580a. —— **Foreign grant of will & unattested codicil—Followed.**]—*In the Goods of* FOY (1839), 2 Curt. 328 ; 163 E. R. 428.

587a. —— —— **Will made after death according to directions of deceased—Valid under Spanish**

PART VI. SECT. 2, SUB-SECT. 3.—D. (a).

521 iv. ——.]—*Re* ROPER (Deceased), [1927] N. Z. L. R. 731.—**N.Z.**

sg. *Governed by lex situs—Where will made.*]—The will of testatrix, who was a British subject & who at the date of her death was domiciled in Switzerland, was drawn in Ontario relative to Ontario property & during a visit by her to Ontario :—*Held :* testatrix wrote her will with reference to the law of Ontario & the law of Ontario as to the interpretation of her will should be applied.—*Re* WILKISON, [1934] 1 D. L. R. 544 ; O. R. 6.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

sm. *" Heirs "—In Canadian will—Whether adopted children included.*]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person " or his heirs " & such person dies domiciled in a foreign country before the death of testator, the word " heirs " includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—PURCELL *v.* HENDRICKS & MARKS, (B.C.), [1925] 3 D. L. R. 854 ; [1925] 2 W. W. R. 689.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—A. (c).

so. *Grant to attorney of executrix.*]—Where a testator domiciled in Quebec made an " authentic will " under the law of that province & the sole executrix resided therein & the attorney appointed by her filed a duly authenticated copy of said will with the Surrogate ct. in Saskatchewan letters of administration with the will annexed were granted to him for the use & benefit of the executrix & until she should duly apply for & obtain probate. —*Re* POIRIER ESTATE (Sask.), [1929] 4 D. L. R. 1080 ; 1 W. W. R. 904.—**CAN.**

law—Grant made.]—*In the Goods of* OSBORNE (1855), Dea. & Sw. 4; 26 L. T. O. S. 128; 1 Jur. N. S. 1220; 4 W. R. 164.

587b. *S. P. In the Goods of* GUTTIEREZ (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of* GUTIERES, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation:*—**Consd.** *In the Goods of* Grewe (1922), 127 L. T. 371.

594. *Add. Annotations:*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

594a. —— ——.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—FRERE *v.* FRERE (1847), 5 Notes of Cases, 593.

Annotation:—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

606. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

610. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

615. *Add. Annotation:—As to* (2) **Follid.** *Re* Cunnington, Healing *v.* Webb (1923), 68 Sol. Jo. 118.

621a. —— —— —— ——.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion:—*Held:* the will was an effectual exercise of the power.—*Re* STRONG, STRONG *v.* MEISSNER (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

621b. Revocation valid by lex domicilii—English law not complied with.]—Testatrix domiciled in Italy purported to exercise a special power to appoint English assets by a will validly executed according to English & Italian law alike. She subsequently revoked the will, complying with Italian law, but without the complete formality necessary for its revocation according to English law. The appointee contended that a will exercising the power could be revoked only according to the formalities imposed by English law. A party entitled to share in the appointed assets in default of appointment relied on the effectual revocation of the will according to Italian law:—*Held:* in the absence of authority the policy of the ct. must lean towards giving effect to the intention of testatrix & ought not to impose upon her as necessary a compliance with English requirements as to revocation which was unknown to the law of her domicil, & the party entitled in default of appointment must succeed.—VELASCO *v.* CONEY, [1934] P. 143; 103 L. J. P. 76; 151 L. T. 307; 50 T. L. R. 444; 78 Sol. Jo. 431.

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman, domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 34, by her will in the French language gave "all her properties & chattels (*tous les biens et droits mobiliers*)" to T. absolutely:—*Held:* the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal estate in form, it passed by the will.—*Re* HARMAN, LLOYD *v.* TARDY, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

Annotation:—**Refd.** *Re* Scholefield, Scholefield *v.* St. John *Re* Young, Smith *v.* St. John, [1905] 2 Ch. 408.

638a. Infant beneficiaries—Power of administrators to postpone sale.]—W., domiciled in Ontario, Canada, died possessed of estates in Canada, the United States of America, France & England. He left wills disposing of his estates in Canada, the United States & France, but no will could be found disposing of his estate in England. Letters of administration were granted to his widow & pltf. He left him surviving his wife & three infant children. Included in his English estate were a large block of shares in an English private co. According to the law of Ontario the sale of the portion of these shares to which the infants were entitled could not be postponed by administrators appointed in Ontario. The English administrators were anxious to postpone the sale of the shares, & pltf. took out this summons asking whether they were entitled, by virtue of Administration of Estates Act, 1925 (c. 23), s. 33, to postpone the sale:—*Held:* the English administrators were entitled to exercise the power to postpone given to them by sect. 33, until they could get a good discharge for the money in their hands from the persons beneficially entitled to it.—*Re* WILKS, KEEFER *v.* WILKS, [1935] Ch. 645; 104 L. J. Ch. 297; 153 L. T. 255; 51 T. L. R. 489.

PART VI. SECT. 3.

631 iii. —— ——.]—The Supreme Ct. has no jurisdiction to grant letters of administration of a deceased person domiciled in New Zealand but leaving no estate there.—*Re* MINIFIE, [1936] N. Z. L. R. S. 13; G. L. R. 78; 12 N. Z. L. J. 6.—**N. Z.**

635 iv. —— ——.]—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318.—**CAN.**

635v. —— ——.]—Where there was an administration of the estate of a deceased person in South Australia & also in Queensland the Queensland administrator merely collected certain moneys under a policy of assurance effected by deceased on his own life in Queensland & transmitted those moneys to the South Australian administrator:—*Held:* an Act of the South Australian Parliament could operate to enforce the South Australian administrator to treat policy moneys wherever collected as protected under Policies Protection Act, 1887.—*Re* FLOOD, [1933] S. A. S. R. 203.—**AUS.**

Part VII.—Contracts.

639. To the cross-reference before this case add "No. 1981a."

639a. ——.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury. —JONES *v.* OCEANIC STEAM NAVIGATION CO., LTD., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation:*—**Apld.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

640a. —— **Inclusion of provisions of local Ordinance.**]—Certain parcels of oranges were shipped at Jaffa upon an Esthonian steamship for carriage to Hull. The ship was under time charter to a British firm, who ran a line of steamships called the Jaffa Union Line. The bills of lading, which were signed by directors of a Palestine corporation, the Jaffa Union Line, Ltd., contained the following clause: "This bill of lading wherever signed is to be construed in accordance with English law." Pltfs. were Hull fruit merchants, two of whom were indorsees of certain of the bills of lading & sued as owners of the cases of fruit therein mentioned; nine others had merely paid the freight & sued on an implied contract with deft. shipowners to deliver the cases in good order & condition according to the terms of the bills of lading. The Palestine Carriage of Goods by Sea Ordinance, No. 43 of 1926, incorporated the rules relating to bills of lading adopted by the International Conference on Maritime Law held at Brussels in 1922–23, generally known as the Hague Rules. Clause 4 of the Ordinance was in the following terms: "Every bill of lading . . . issued in Palestine which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provision of the said Rules as applied by this Ordinance, & shall be deemed to have effect subject thereto, notwithstanding the omission of such express statement." Pltfs.' action was in respect of damage &/or short delivery. Defts. set up various exceptions in the bills of lading, & pltfs. pleaded in reply that the contracts were governed by the Palestine Ordinance; that accordingly, notwithstanding the omission of a statement to that effect, the Hague Rules should be deemed to be written into the contracts, &, therefore, that the exceptions relied on were of no avail. The question whether the bills of lading were subject to the provisions of the Ordinance was set down for trial as a preliminary issue. The judge held that they were so subject, & that all pltfs. were entitled to succeed on the preliminary issue. Defts. appealed:—*Held:* (1) the express terms of the Ordinance, based on an international convention, could not be defeated by the insertion of a clause in the bills of lading that they were to be construed according to English law, & the bills of lading were subject to the provisions of the Ordinance & the Rules thereunder, &, with those terms read into them, should then be construed according to English law; but (2) the ct. had not sufficient information as to the facts to determine the effect of that decision on the nine pltfs. who sued on implied contracts, &, while the appeal would be dismissed, the judgment must be varied to that extent.—THE TORNI, [1932] P. 78; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471; 18 Asp. M. L. C. 315, C. A.

Annotation:—As to (1) **Distd.** The St. Joseph, [1933] P. 119.

640b. Agreement for contract to be subject to foreign law—Contract cancelled by decree of foreign Government.]—In May, 1903, pltf. took out a 20 year endowment life insurance policy with defts. for 10,000 roubles payable at defts.' office in St. Petersburgh, & by the terms of the policy all premiums were to be paid in Russia. Pltf. paid all the premiums in Russia down to 1917, & then in London down to 1919. By the terms of an Imperial Decree of the Russian Empire, dated July 7, 1889, which were incorporated in the policy, it was provided (*inter alia*) that all disputes in connection with insurance operations should be settled according to Russian laws & in Russian cts. of justice. By a Monopolisation Decree of the Russian Soviet Govt., dated Dec. 1918, insurance in all its forms was declared a State monopoly, & in Nov. 1919, a Decree of Cancellation abolished life assurance altogether in the Soviet Republic, & all existing contracts were annulled. In those circumstances pltf., who was prevented by the above decrees of 1918 & 1919 from suing on the policy in Russia, brought an action in England for a declaration that defts. were liable to him under the policy:—*Held:* the proper law of the contract was, according to the policy rules, the law of Russia, & the effect of the Cancellation Decree of Nov. 1919, was that the contract, if in fact there was any contractual *nexus*

left in existence between the parties after the Monopolisation Decree of 1918 came into force, was annulled, & pltf. could not recover on it.—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A. (1929), 45 T. L. R. 468.

641. *Add. Annotations :—As to* (2) **Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137. *As to* (3) **Refd.** The Njegos, [1936] P. 90; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500.

642. *Add. Annotation :—As to* (1) **Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

643. *Add. Annotations :—***Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730: N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; The Njegos, [1936] P. 90.

644. *Add. Annotation :—As to* (2) **Refd.** Cayzer Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

645a. ——.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge :—*Held :* as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, &, as the giving of the orders fixed the seat of the contract in England, the law of England applied. —THE WILHELM SCHMIDT (1871), 25 L. T. 34; 1 Asp. M. L. C. 82.

Annotations :—**Consd.** The Adriatic (1931), 47 T. L. R. 638. **Refd.** The San Roman (1872), L. R. 3 A. & E. 583; The Dannebrog (1874), 31 L. T. 759.

646. *Add. Annotations :—***Apld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Consd.** The Adriatic (1931), 47 T. L. R. 638. **Expld. & Distd.** The Torni (1932), 48 T. L. R. 471. **Consd.** The Njegos, [1936] P. 90. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

647. *Add. Annotation :—* **Refd.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

(c) Application of Lex loci solutionis (Vol. XI., p. 392).

650a. Contract by State—Loan.]—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—SMITH *v.* WEGUELIN (1869), L. R. 8 Eq. 198; 38 L. J. Ch. 465; 20 L. T. 724; 17 W. R. 904.

Annotations :—**Folld.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Goodwin *v.* Robarts (1876), 1 App. Cas. 476.

PART VII. SECT. 2, SUB-SECT. 1.—B. (a).

sc. *Contract relating to foreign immovable—Application of lex situs.*]—Pltf., a co. incorporated in Victoria, whose principal office was situated in Victoria, by an agreement in writing made in Victoria, agreed to sell a station property, together with chattels, in New South Wales to persons resident in New South Wales, as agents for a co. to be formed. The proposed co. was incorporated in Victoria. It adopted the contract, & was subsequently joined as deft. in an action in the Supreme Ct. of Victoria by pltf. co. for instalments of purchase money & interest on the unpaid balance of purchase money. Pltf. co. & deft. co. were both registered in New South Wales for the purpose of carrying on business there. The contract of sale provided that it should be stamped, & it was in fact stamped in New South Wales. The purchase money was payable in Victoria :—*Held :* the proper law of the contract was the law of New South Wales; the Moratorium Act, 1930–1931 (N.S.W.), consequently applied, & the personal obligation was extinguished by that Act.—MERWIN PASTORAL CO. PROPRIETARY, LTD. *v.* MOOLPA PASTORAL CO. PROPRIETARY, LTD.; MOOLPA PASTORAL CO. PROPRIETARY, LTD. *v.* MCKINDLAY, [1933] Argus L. R. 401; 7 A. L. J. 167; 48 C. L. R. 565.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. —— *Assessment of damages.*]—The right to damages for breach of a contract made in a foreign country & to be executed there is governed by the *lex loci contractus* & not by the *lex fori.*—LIVESLEY *v.* HORST, [1924] S. C. R. 605; [1925] 1 D. L. R. 159; *affg.* S. C. *sub nom.* HORST *v.* LIVESLEY, [1924] 2 D. L. R. 1002; [1924] 2 W. W. R. 443; 34 B. C. R. 19.—**CAN.**

652 vii. ——.]—LUCAS & CO. *v.* MONCTON SUPPLY CO., [1924] 4 D. L. R. 376.—**CAN.**

652 viii. ——.]—The validity of a contract must be decided by the law of the place where it was made. If valid there, it will be held valid everywhere, by the tacit or implied consent of the parties. The law of the transfer of negotiable instruments rests on this foundation.—HANSON *v.* COLLETTE (1931), 5 M. P. R. 363.—**CAN.**

652 ix. ——.]—A contract of conditional sale having been made in Saskatchewan & the goods sold thereunder, a motor car, having been delivered there :—*Held :* in the absence of proof of a contrary intention, the rights & obligations of the parties were governed by the law of Saskatchewan.

The car was seized in Alberta on default by the buyer & resold; & an action was brought in Saskatchewan to recover the deficiency on the resale :—*Held :* the fact that the car had been seized in Alberta did not render Extra-Judicial Seizures Act of that province, which had not been complied with, applicable to prevent the recovery of the deficiency, where, at least the action for the deficiency was brought, as it was in this case, in Saskatchewan. *Qu. :* whether the non-compliance with said Act would have prevented recovery had the action been brought in Alberta.—COMMERCIAL CORPN. SECURITIES, LTD. *v.* NICHOLS (OTHERWISE BUTTERFIELD), [1933] 1 W. W. R. 484; 3 D. L. R. 56.—**CAN.**

652 x. ——.]—The rights & liabilities, as distinguished from the remedies, of the parties to a mercantile contract must be determined by the proper law of the contract; which is, the *lex loci contractus*, a which applies with particular force when the contract is to be performed wholly in the country wherein it is made. On the other hand, whatever relates to the remedy which may be enforced is governed by the *lex fori*, for litigants must take the procedure as they find it in the country in which they sue.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

652 xi. ——.]—By an agreement in writing made in Victoria between pltf., a Victorian co. carrying on business in Victoria, & P., a resident of New South Wales, P. agreed to repay in Victoria all moneys due by him to pltf. & to execute securities for the same over his station property situate in New South Wales. Payment of the moneys was guaranteed by defts., who resided in Victoria. In an action on the guarantee defts. pleaded that the rights of pltf. were barred by reason of the Moratorium Acts of New South Wales :—*Held :* the rights of the parties in the action were not to be ascertained by reference to the law of New South Wales.—DENNYS LASCELLES, LTD. *v.* BORCHARD, [1933] V. L. R. 46; L. R. 128.—**AUS.**

sn. *Offer made & accepted by post—Governed by law of country of offeror.*]—RENFREW FLOUR MILLS *v.* SANSCHAGRIN (1928), Q. R. 45 K. B. 29.—**CAN.**

sp. *Mortgage.*]—Where a mtge. of land in New Zealand is collaterally secured by an equitable mtge. of an interest in land in England, both being executed in New Zealand by parties there resident & domiciled, & securing moneys advanced & repayable in New Zealand, the law of the contract to be applied is the *lex loci contractus*, & not the *lex situs*. Accordingly, the Mortgagors Relief Act, 1931, applies both to the mtge. & the collateral security.—Re I. TO A. A. MORTGAGE [1933]

Before **659** add as follows :—

658a. General rule.]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser :—*Held :* as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—BENAIM & Co. *v.* DEBONO, [1924] A. C. 514 ; 93 L. J. P. C. 133 ; 131 L. T. 1, P. C.

Annotation :—**Refd.** Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373.

664. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

668. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

669. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

670. *Add. Annotations :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

672. *Add. Annotations :*—**Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

676. *Add. Annotation :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D' Escompte de Mulhouse, [1923] 2 K. B. 630.

683. *Add. Annotation :*—**Refd.** The Colorado, [1923] P. 102.

684. *Add. Annotation :*—*Generally*, **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

688. *Add. Annotations :*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514 ; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373 ; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

689a. —— Agreement by German in Germany—Enforcement by third parties.]—HARTMANN *v.* KONIG (1933), 50 T. L. R. 114, H. L.

691a. —— Charterparty in English—Entered into by master of German ship with Germans abroad—To take cargo to England.]—THE WILHELM SCHMIDT, No. 645a, *ante*.

692. *Add. Annotation :*—**Consd.** The Adriatic (1931), 47 T. L. R. 638.

694. *Add. Annotations :*—*As to* (2) **Consd.** The Adriatic (1931), 47 T. L. R. 638 ; The Njegos, [1936] P. 90.

694a. —— Charterparty made in Egypt—Documents & consignees English—Ship Swedish.] —By two freight engagement notes made in Egypt between pltfs., a firm carrying on business in Egypt, & defts., a British co. with a branch office in Egypt, pltfs. agreed

sq. *Contract of agent appointed in Bombay—To purchase cotton in New York or Liverpool.*]—Where a person in Bombay employs another person in Bombay as commission agent to effect transactions of purchase & sale of cotton in New York or Liverpool, the transactions are not governed by the Bombay Cotton Contracts Act XIV. of 1922 & the bye-laws thereunder.—PIROJSHAW *v.* BANDEALI ISMAIL & Co. (1931), I. L. R. 57 Bom. 225.—**IND.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

m. Read now "**658a i.**"

PART VII. SECT. 2, SUB-SECT. 2.

t i. ——.]—The weight of authority supports the view that capacity to enter into an ordinary mercantile contract is governed, not by the *lex domicilii*, but by the *lex loci contractus*. Therefore judgment cannot be recovered here against a married woman as maker of a promissory note if under the *lex loci contractus* a married woman is not legally competent to make a promissory note.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A.

677 iv. ——.]—The obligations of trustees of a deed to secure payment of a bond issue were held to be governed by the law of British Columbia, although the trustees were resident in Oregon, U.S.A., where the contract was made in British Columbia & was substantially to be performed there. The property also was situated, & the mtgor. resident, in British Columbia.—HARRIS INVESTMENTS, LTD. *v.* SMITH, [1934] 1 D. L. R. 748 ; 48 B. C. R. 274.—**CAN.**

st. *Jurisdiction of court to enforce—Contract to be performed abroad—Defendants resident within jurisdiction.*]—Where defts. in a suit reside in this country & the principal office of pltfs. is in England, & a contract is entered into there between the parties which is to be executed in New York, a suit in respect thereof may be instituted in this Province.—DIRECT CABLE CO. *v.* DOMINION TELEGRAPH CO. (1881), 28 Gr. 648 ; (1883) 8 A. R. 416.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—B. (b).

f i. —— —— *Incorporation of Harter Act.*]—Pltf. contracted with deft. ship for the carriage of a cargo of wheat from Buffalo to Montreal. Pltf. was an American, the ship was an American ship, & the contract was made in the United States. Deft. alleged that the contract or bill of lading was issued subject to the Harter Act, the terms & conditions of which applied to & formed part of such contract, while pltf. alleged that as this Act was not referred to or made part of the contract it did not apply :—*Held :* the obligations of the parties under this contract were governed by the laws of the United States. Under the laws of the United States the Harter Act did not need to be referred to in the bill of lading to become binding on the parties, & said Act was to be applied in this case.—J. RICHARDSON & SONS, LTD. *v.* SS. BURLINGTON (Que. Adm.), [1931] S. C. R. 96 ; [1930] 4 D. L. R. 527 ; *affg.*, [1929] Ex. C. R. 186.—**CAN.**

f ii. —— —— ——.]—Each of two bills of lading, which were similar, for certain goods to be carried from the United States of America to the Irish Free State in a ship, the property of the United States Shipping Board, stated that the shipments were subject to all the terms & provisions of, & all the exemptions from liability contained in, the Harter Act, an Act of Congress of the United States of America :—*Held :* the bills of lading were American contracts, & as such should be construed by American law, & that law must be proved or admitted before the ct. would be competent to decide the questions of law submitted in the special case.—MACNAMARA *v.* S.S. HATTERAS, [1931] I. R. 337.—**IR.**

f iii. —— —— ——.]—The contract of carriage in question herein was made in the United States of America, both pltfs. were United States corpns., & the contract contained a clause valid & necessary according to such law, but not necessary under the Canadian or English law. Moreover, the insurance certificates issued by one of pltfs. contained an express reference to the Harter Act, a law of the United States which the pltfs. now contend should not be applied :—*Held :* in the above circumstances, inasmuch as the intention of the parties is to govern, it must be presumed that the parties to the contract intended to be governed by the law of the United States (the Harter Act), & that such law applied. The best criterion of what law is to be applied is to be found in the intention of the parties, & where such intention is not expressed it is to be gathered from the terms of the contract itself & from the surrounding circumstances. Where a bill of lading contains special clauses, not necessary or valid under other laws, but necessary & valid under the laws of the country where the contract was made, the parties are presumed to have contracted subject to the law which gives effect to such clauses.—BUNGE NORTH AMERICAN GRAIN CORPN. & FIRE ASSOCN. OF PHILADELPHIA *v.* S.S. SKARP, [1933] Ex. C. R. 75.—**CAN.**

to reserve room for certain cottonseed for shipment to London by a steamer to be specified. Under a charterparty made between the owners of the Swedish steamship *A.* & pltfs. as charterers the *A.* loaded the cargo at Alexandria for delivery in London; & pltfs., "as agents only," issued bills of lading whereby the cargo was to be delivered in London to the order of the defts. on payment of freight by them at the specified rate. In the course of the voyage the *A.* came into collision with another vessel, & was so badly injured that she had to be towed to Cadiz, where she was found to be a constructive total loss. The cargo, accordingly, was discharged at Cadiz & delivery was taken there by defts. Pltfs., suing on behalf of the shipowners, claimed distance (*i.e. pro rata*) freight, which they alleged was payable either under the law of the flag (Swedish) or the *lex loci contractus* (Egypt). Defts. alleged that the law of England applied, under which *pro rata* freight is not payable:—*Held:* all the authorities showed that the best criterion of what law was to be applied was to be found in the intention of the parties, &, if the parties intended otherwise, the presumption was rebutted that a contract for the carriage of goods by sea was governed by the law of the flag; looking at the circumstances broadly, & having regard (*inter alia*) to the facts that all the documents were in English & on English forms, that delivery & payment were to be in England, the freight engagement notes did not specify a ship of any particular nationality, defts. were a British firm, & the British position in Egypt had for many years been predominant, the inference was that the parties, who as business people must be taken to have intended what was most convenient, intended English law to apply; & consequently the claim for distance freight failed.—THE ADRIATIC, [1931] P. 241; 100 L. J. P. 138; 145 L. T. 580; 47 T. L. R. 638; 18 Asp. M. L. C. 259.

Annotations:—**Consd.** The Njegos, [1936] P. 90. **Refd.** The Torni (1932), 147 L. T. 208.

—— **Charterparty governed by English law—Incorporation of charterparty in bill of lading.**] —*See* ARBITRATION, No. 141a, *ante*.

697a. —— **Delivery of goods against bill of lading—Property in goods passing by contract with third party.**]—In Jan. 1929, pltfs., the Government of Guatemala, purchased aeroplanes & war material from a French firm in Paris for delivery at Guatemala City. By the contract of sale the goods were to be accepted by the purchasers before departure from the sellers' works, & payment therefor was to be made as to 34 per cent. by cash with order & as to the balance of 66 per cent. by a confirmed irrevocable credit with a first-class bank. The sellers undertook to insure the goods & also arrange for their transport to Guatemala City *via* Puerto Barrios. For these transport services the pltfs. agreed to pay a lump sum. The sellers, by their agents in Antwerp, chartered the Norwegian steamship *St. Joseph*, owned by defts. for the transport of a portion of the goods from Antwerp to Puerto Barrios. By the bill of lading, which was mainly in English, the goods were to be delivered unto the "Gouvernement de Guatemala or to his/their assigns." The bill of lading contained no reference to the Hague Rules or to the article of the Belgian Code which embodied those rules. On the arrival of the ship at Puerto Barrios pltfs. presented the bill of lading & took delivery of the goods, which were then sent on by rail to Guatemala City. The goods were found to have been damaged during sea transit by reason of the bad stowage of a part cargo of patent fuel also carried in the *St. Joseph*, & the Guatemala Government sued the shipowners for the damage. The shipowners admitted liability, but contended that their contract with pltfs. was governed by Belgian law, which embodied the Hague Rules, & that therefore their liability was limited:—*Held:* that pltfs. became the owners of the goods by acceptance, & payment to the sellers, before shipment, & not as consignees or indorsees of the bill of lading within the meaning of Bills of Lading Act, 1855 (c. 111); the only contract between pltfs. & defts. was made by pltfs.' offering the bill of lading to the shipmaster & getting delivery of the goods, & it was a contract made in Guatemala, with which no Belgian had anything to do, except as agent; pltfs. were bound by the terms contained in the bill of lading & nothing more; there was nothing to show that either party intended or contemplated the application of Belgian law to the contract, & it was impossible to import into such a contract, between such parties, a term of Belgian law to which no reference was made therein; even if the contract was made in Antwerp, & pltfs., by taking delivery, incurred the same liabilities as the shipper, who took the bill of lading, they only incurred a liability to which the section of the Belgian Code had no application, for it could not be that a document which, in its inception, had nothing to do with Belgian law could afterwards become subject to it; &, therefore, there must be judgment for pltfs. on their claim, subject to a reference.—THE ST. JOSEPH, [1933] P. 119; 102 L. J. P. 49; 149 L. T. 352; 49 T. L. R. 367; 18 Asp. 375.

699. *Add. Annotations:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Equitable Trust Co. of New York *v.* Henderson (1930), 47 T. L. R. 90.

702a. —— **Contract between foreign broker & English broker—Right of cancellation as between foreign broker & principal—Governed by lex loci contractus.**]—By English law, an underwriter acknowledging in a policy of marine insurance that the assured has paid

the premiums, the policy cannot be cancelled by the insurance broker on the ground that he has not received the premiums from the assured, without the authority of the assured. But where a Canadian assured instructs in the United States an American insurance broker to effect an insurance in England, which he must do through an English broker, the law applicable on this question of right of cancellation is that of the country where the relation of principal & agent is created—that of the United States. In such a case, the English broker, who is liable to the English underwriter for the premium, cannot sue the assured. but looks to the American broker, who, in turn, looks to the assured for payment:—*Held:* the question in such a case was one of foreign law—here, that of New York State—& therefore of fact; the ct. accordingly found that the American broker could cancel such a policy on the ground that the assured had failed to supply him with the premium, with the assent of the underwriter, but without the assent of the assured who had failed to pay the premium.—RUBY S.S. CORPN., LTD. *v.* COMMERCIAL UNION ASSURANCE CO. (1933), 150 L. T. 30; 39 Com. Cas. 48; 18 Asp. M. L. C. 445, C. A.

702b. —— **Reinsurance with foreign company—No policy issued.**]—MARITIME INSURANCE CO., LTD. *v.* UNION VON ASSECURANZ, 1865 (1935), 79 Sol. Jo. 403.

703a. —— —— **Policy effected in England by foreigner—With foreign company through English office.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law:—*Held:* it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430: 68 Sol. Jo. 477, C. A.

Annotations:—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

705. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

705a. Insurance against loss by forged document—Governed by English law—Insurance in London—Business carried on in New York.]—Pltfs., who carried on business in New York, took out a policy of insurance in London against loss which they might incur by having acted upon any document which might prove "to have been forged." During the currency of the policy pltfs. were induced to lend money to a firm by a document containing a false statement of the firm's assets & liabilities. Before the whole of the loan had been repaid the firm became bkpt., & the pltfs. sued an underwriter on the policy. By the law of the State of New York forgery includes "a false statement of financial condition." A member of the firm had since been convicted in New York of forgery. Pltfs. contended that the word "forged" in the policy must be construed by the law of New York where the loss occurred, & that therefore it was immaterial if the document was not a forgery according to English law:—*Held:* even if the document was a forged document according to the law of New York the word "forged" was used in the policy merely to describe an existing state of fact & not as a term of art to be construed according to the law of the place where the loss happened, & accordingly the action failed.—EQUITABLE TRUST CO. OF NEW YORK *v.* HENDERSON (1930), 47 T. L. R. 90.

707a. Governed by lex loci rei sitæ—Lease executed in France—Relating to land in Chile.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 756a, *post.*

709. *Add. Annotation:*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

709a. —— **Contract cancelled by decree of foreign Government.**]—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A., No. 640b, *ante.*

711. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

716. *Citations:*—For "5 De G. M. & G. 604" read "1 De G. M. & G. 604."

719. *Add. Annotation:*—**Refd.** The Colorado, [1923] P. 102.

721. *Add. Annotation:*—*Generally,* **Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

730. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732a. —— **Goods to be smuggled into foreign country—Not enforceable in England.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £250 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky

703 ii. —— ——.]—*Re* HEWITT & HEWITT (Ont.) (1918), 14 O.W. N. 300; 43 D. L. R. 716.—CAN.

at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26, & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage:—*Held:* the object to be attained by this agreement being a breach of international comity, the agreement was contrary to public policy & void.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

Annotation:—**Refd.** Carling Export Brewing & Malting Co., Ltd. *v.* R., [1931] A. C. 435.

733. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

738a. Payment of rent by bills on London—Illegal exchange transaction.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable: "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & documents of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first class bills on London. The evidence accepted was that "payable in Chile in first class bills on London" had a special mercantile meaning in Chile—namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation:—*Held:* the Chilean legislation made it impossible for the rent to be paid as directed, as the mode of payment as already interpreted would have been an international exchange transaction within the meaning of the Chilean legislation.—DE BEÉCHE *v.* SOUTH AMERICAN STORES, LTD., & CHILIAN STORES, LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

740. *Add. Annotation:*—*As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

748. *Add. Annotations:*—*As to* (1) **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *Generally,* **Mentd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

750. *Add. Annotations:*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

752. *Add. Annotations:*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

752a. —— —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE *v.* BAUMGART (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

Annotation:—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

PART VII. SECT. 2, SUB-SECT. 6.—D.

sp. *Contract to indemnify bail.*]—Where a contract of indemnity against loss with respect to bail given in proceedings in a ct. of a foreign country, is lawful under the law of that country the contract, & the security, if any, given "in implement of the contract," can be enforced in Canada, even though the contract was executed in Canada & said security is a mtge. on Canadian land.—NATIONAL SURETY CO. *v.* LARSEN (B. C.), [1929] 4 D. L. R. 918; 3 W. W. R. 299; *revg.*, [1929] 3 D. L. R. 79; 2 W. W. R. 152.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8

756 i. *By act of parties—Payment—In what currency.*]—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—**CAN.**

756 ii. —— —— ——.]—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

756 iii. —— —— ——.]—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—SIMMS *v.* CHERNENKOFF, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 185.—**CAN.**

756a. ——— ——— ——— **Option as to place.**]—Pltfs., successors of the owner of premises in Santiago de Chile, by a lease executed at the Chilean consulate in Paris & drawn in the Spanish language, let the premises to the Chilean Stores for a term of 10 years from 1935, at a rental of 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, to be paid at the option of the owner either in Santiago de Chile or remitted to Europe, according to the instructions which the owner might give, one month in advance on the first working day of each month. The second deft., the South American Stores, joined in the lease as guarantor, but so as to become jointly responsible as primary obligor under the contract. The South American Stores carried on business in the Argentine. All parties by the lease elected domicil in Chile. There was evidence that there was no verbal agreement that the rental should be fixed on a gold basis. In July, 1935, the owner served a notice as follows: "Please take note, till further notice, of my option & of the following instructions," & then followed instructions for payment in sterling on a gold basis:—*Held:* (1) the contract must be construed according to Chilean law, even though part of the performance of it was to be in England; (2) evidence of the intention of the parties which would be admissible in a Chilean ct. to interpret the contract is admissible in England; (3) neither party had any intention other than that expressed in the contract as interpreted by experts on Chilean law; (4) the rent to be paid had been specified as an amount of Chilean money, & not as an amount of gold; (5) the rent was to be remitted from Chile, & no claim could be made to have it remitted from the Argentine by the guarantors.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD. & CHILEAN STORES (GATH & CHAVES), LTD., [1937] 3 All E. R. 349; 42 Com. Cas. 363, C. A.

757. *Add. Annotation:—As to* (1) **Apld. Swiss Bank Corpn. *v.* Boehmische Industrial Bank. [1923] 1 K. B. 673.**

762a. ———.]—MOUNT ALBERT BOROUGH COUNCIL *v.* AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD., [1937] 4 All E. R. 206; 54 T. L. R. 5, P. C.

Part VIII.—Torts.

777. *Add. Annotation:*—**Refd. Isaacs *v.* Cook, [1925] 2 K. B. 391.**

788. *Add. Citation:—sub nom.* **BADTOLPH *v.* BAMFEILD, Cas. *temp.* Finch. 186.**

PART VII, SECT. 3.

a i. ——— *Debentures payable in particular place.*]—Deft., a municipal corpn. in New Zealand, duly constituted under the Municipal Corps. Act, 1933, borrowed from pltf., a life assurance society incorporated in the State of Victoria, moneys by way of special loans, & issued to the pltf. debentures for the amount so borrowed, whereby the principal & interest was made payable in Victoria. The loan was made & secured by a special rate on rateable property in New Zealand & the debentures given under & in accordance with the Local Bodies' Loans Act, 1913 (now 1926). The loan-moneys were paid in New Zealand, the debentures were executed in New Zealand, &, in the event of default by deft., pltf. could not effectively obtain relief except in the Supreme Ct. of New Zealand. The Financial Emergency Act, 1931 (Victoria), s. 19 (1), enacted that except as therein provided every mtge. shall . . . be construed & take effect as if it were a term of the mtge. that on & from the coming into operation of Part III . . . the interest payable under the mtge. should be reduced at a rate equivalent to four shillings & sixpence for every pound of such interest. It was provided by sub-s. (2) that the provisions of the sect. or of any order made under that particular Division of the Act should not operate so as to reduce the interest payable under any mtge. to a rate less than five pounds per centum per annum. It was enacted by sect. 22 (1) that every payment of interest made in pursuance of that particular Division of the Act or of an order made thereunder should be a full discharge of the mtgor.'s liability for interest under his mtge. in respect of the period to which such payment related. Pltf. sued deft. for the difference between the amount of interest payable under the debentures & the amount actually paid by defts.—viz., the reduced amount that would be payable if the Victorian Act applied:—*Held:* (1) deft. was not entitled to the reduction enacted by the Victorian Act; (2) the proper law of the contract as to its nature & effect was the law of New Zealand, including the obligation to pay interest & the quantum thereof; (3) even if the law of Victoria governed the mode of performance, the Victoria Act did not relate to the mode of performance but effected a variation of an obligation imposed & of an amount payable fixed by the Legislature of New Zealand (as well as by the intention of the parties), which could not be overriden by foreign law.—AUSTRALASIAN TEMPERANCE & GENERAL ASSURANCE CORPN., LTD. *v.* MOUNT ALBERT BOROUGH, [1936] N. Z. L. R. 54.—**N.Z.**

PART VIII. SECT. 1.

775 xii. ——— ——— ———.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario:—*Held:* the action could not be maintained.—MCMILLAN *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. ——— ——— ———.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of pltf.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—WARD *v.* BRITISH AMERICAN OIL CO., LTD., [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—**CAN.**

775 xiv. ——— ——— ———.]—O'CONNOR *v.* WRAY, BOYD *v.* WRAY, [1930] 2 D. L. R. 899; S. C. R. 231, *affg.* [1929] 2 D. L. R. 24; 46 Que. K. B. 199.—**CAN.**

775 ——— WELL *v.* REILLY & BELL, [1931] 3 W. W. R. 513.—**CAN.**

775 xvi. ——— ——— ——— *Effect of Criminal Code, ss.* 1143, 1144.]—Sects. 1143 & 1144 cannot be invoked as a bar to an action for a tort committed in a foreign country.—CALDWELL *v.* REILLY & BELL, [1932] 3 D. L. R. 149; 1 W. W. R. 890; *affg.*, [1931] 3 W. W. R. 513.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*]—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—WALPOLE *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—**CAN.**

b. For "*Trespass — Negligence — Common employment—Lex loci actus*" read "——— *Negligence—Common employment—Lex loci actus.*"

f. After this case add "*See, also,* No. 775 xii., *ante.*"

f i. ——— ———.]—Defender, whose domicile of origin was Scottish, but who had resided abroad for some years without, however, losing his Scottish domicile, was sued in respect of a delict committed while on a visit to Scotland. The delict consisted in the negligent driving of his motor car, resulting in a collision with another motor car, the owners of which were also cited as defenders. At the date when the action was brought against him he had gone abroad again & he was not personally cited, but he had intimated the claim to an insurance co. with whom he was insured against third-party risks, & they were themselves conducting the defence:—*Held:* defender's Scottish domicile of origin, coupled with the commission of a

Add. Annotation :—**Refd.** The Fagernes, [1927] P. 311.

796. *Add. Annotation :*—*As to* (2) **Refd.** mercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

Part IX.—Marriage.

800. *Add. Annotations :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353 ; Fender *v.* Mildmay, [1936] 1 K. B. 111.

801. *Add. Annotations :*—**Expld. & Distd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353.

802. *Add. Annotations :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4 ; Spivack *v.* Spivack (1930), 99 L. J. P. 52.

803. *Add. Annotation :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

803a. —— —— **Facilities for dissolution under local law immaterial.**]—Marriage is a voluntary union for life of one man & one woman to the exclusion of all others, & where a marriage in a foreign country complies with these requirements it is immaterial that under the local law dissolution can be obtained by mutual consent or at the will of either party with merely formal conditions of official registration.

A man & a woman, both domiciled Russians, entered in Russia into a contract accepted by the local law as one of marriage. The marriage could, according to the same law, be dissolved by mutual consent or at the will of one of the parties, with merely formal conditions of official registration :—*Held :* on an issue directed in a suit by the woman for judicial separation, that as the union so formed was of one man to one woman to the exclusion of all others, it constituted a valid marriage according to English law, notwithstanding that it could, according to the local law, be dissolved as stated above.—NACHIMSON *v.* NACHIMSON, [1930] P. 217 ; 99 L. J. P. 104 ; 143 L. T. 254 ; 94 J. P. 211 ; 46 T. L. R. 444 ; 74 Sol. Jo. 370 ; 28 L. G. R. 617, C. A.

Annotations :—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; Spivack *v.* Spivack (1930), 99 L. J. P. 52 ; Fender *v.* Mildmay, [1936] 1 K. B. 111.

806. *Add. Annotations :*—*As to* (3) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Mitford *v.* Mitford, [1923] P. 130 ; Nachimson *v.* Nachimson, [1930] P. 217.

814. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

817. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

821. *Add. Annotation :*—**Refd.** Papadopoulos Papadopoulos (1929), 46 T. L. R. 44.

827. *Add. Annotations :*—*As to* (1) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. *As to* (2) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

828a. —— —— —— ——.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *post.*

828b. —— —— **Incapacity by lex domicilii.**]—Petitioner & resp., Portuguese subjects domiciled in Portugal, & first cousins to each other, came to reside in England in 1858, & in 1866 they went through a form of marriage before the registrar of the district of the City of London. In 1873 they returned to Portugal, & their domicil throughout continued to be Portuguese. By the law of Portugal a marriage between first cousins is illegal, as being incestuous, but may be celebrated under a Papal dispensation :—*Held :* the parties being by the law of the country of their domicil under a personal disability to contract marriage, their marriage ought to be declared null & void.—SOTTOMAYOR *v.* DE BARROS (1877), 3 P. D. 1 ; 47 L. J. P. 23 ; 37 L. T. 415 ; 26 W. R. 455, C. A.

Annotations :—**Consd.** Ingham (falsely called Sachs) *v.* Sachs (1886), 56 L. T. 920 ; Hay *v.* Northcote, [1900] 2 Ch. 262 ; *Re* Bozzelli's Settlement, Husey-Hunt *v.* Bozzelli, [1902] 1 Ch. 751. **Expld.** Ogden *v.* Ogden, [1907] P. 107. **Consd.** Republica do Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Bloxam *v.* Favre (1884), 50 L. T. 766 ; Viditz *v.* O'Hagan (1899), 68 L. J. Ch. 553 ; Mitford *v.* Mitford & von Kuhlmann, [1923] P. 130.

829. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Sloggett *v.* Sloggett, [1928] P. 148 ; Nachimson *v.* Nachimson, [1930] P. 217.

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delict in Scotland, did not suffice to found jurisdiction against him in the absence of personal citation in Scotland.—KERR *v.* FERGUSON (R. & W.), [1931] S. C. 736.—**SCOT.**

f ii. —— ——.]—The rights of a minor residing in a foreign state to sue in Quebec for injuries sustained in an accident in Quebec are governed by the laws of the foreign state.—SCHATZ *v.* MCENTYRE, [1935] S. C. R. 238 ; 1 D. L. R. 608.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.

811 i. —— *Marriage solemnised according to law of state.*]—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the ots. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166 ; 1 W. W. R. 753 ; 33 B. C. R. 109 ; *revsg.* S. C. *sub nom. Re* LEE OHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

814 iii. ——.]—FAFARD *v.* BEAUPRE (1927), Q. R. 66 S. C. 24.—**CAN.**

814 iv. ——.]—The fact that the ceremony of marriage was solemnized in a foreign country wherein such a marriage is valid does not render it valid in a province in which 5 & 6 Will. 4, c. 54, is in force, if the parties were British subjects & only temporarily resident, but not domiciled, abroad.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ——.]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute :—*Held :* the marriage was valid inasmuch as the domicil of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicil not recognised by the law of N.—FRIEDMAN *v.* FRIEDMAN'S EXECUTORS (1922), 43 N. L. R. 259.—**S. AF.**

835a. ——.]—If there is one question better settled than any other in international law, it is that as regards marriage—putting aside the question of capacity—*locus regit actum.* If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicil of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicil would be considered a good marriage (*per* CUR.).—BERTHIAUME *v.* DASTOUS, [1930] A. C. 79; 99 L. J. P. C. 66; 142 L. T. 54, P. C.

Annotation:—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

836. *Add. Annotations:*—**Folld.** Mitford *v.* Mitford, [1923] P. 130. **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Berthiaume *v.* Dastous (1929), 45 T. L. R. 607; Inverclyde *v.* Inverclyde, [1931] P. 29.

840. *Add. Annotation:*—*As to* (2) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

853. *Add. Annotations:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111; R. *v.* Moscovitch (1927), 138 L. T. 183.

858a. —— —— **Marriage of Roman Catholics in India — Within prohibited degree — Indian statutes inapplicable.**]—(1) Two British Roman Catholics assumed to be domiciled in India went through a ceremony of marriage, though they were within the prohibited degrees of consanguinity according to English law, but a dispensation had been obtained from the local Roman Catholic ecclesiastical authorities for the couple to contract the marriage notwithstanding:—*Held:* there was no sanction in the Indian statutes relating to the marriage of Christians in India for British Roman Catholics to enter into a valid union, & the marriage was declared null & void.

(2) There is no legal impossibility, as far as I know, in retention of domicil of origin during successive generations (LORD MERRIVALE, P.).—PEAL *v.* PEAL, [1931] P. 97; 100 L. J. P. 69; 143 L. T. 768; 46 T. L. R. 645; 74 Sol. Jo. 612.

859a. **Marriage at embassy—Between foreigners not of ambassador's country.**]—Marriage in the public church, or some public chapel, required by Marriage Act, 1753 (c. 33), s. 1. Exception, as to the chapel of a foreign ambassador, between foreigners, not being of the ambassador's country, not admitted.—PERTREIS *v.* TONDEAR (1790), 1 Hag. Con. 136.

860. *Add. Annotation:*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

861a. —— —— **Marriage in Turkey before Treaty of Lausanne.**]—MARTIN *v.* MARTIN & MAY (1928), 72 Sol. Jo. 612.

——.]—DOUST *v.* DOUST (1929), 168 L. T. Jo. 113.

868. *Add. Annotation:* — **Apld.** Matthews Matthews (1930), 99 L. J. P. 143.

Part X.—Divorce and other Matrimonial Causes.

873a. ——.]—The jurisdiction in divorce is limited to England & Wales & depends upon domicil there, & it does not necessarily confer any authority over the property of a person domiciled in a foreign country.—TALLACK *v.* TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. P. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

Annotation:—**Consd.** Goff *v.* Goff, [1934] P. 107.

Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—*See* HUSBAND & WIFE, No. 5542a, *post.*

PART X. SECT. 1, SUB-SECT. 1.

sq. *To make order for custody of children—Children living with mother outside province.*]—KILPATRICK *v.* KILPATRICK (B. C.), [1929] 3 W. W. R. 463; [1930] 1 D. L. R. 288; 42 B. C. R. 88.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—A. (a).

b i. ——.]—*Held:* it is the duty of the district judge, when a petition for dissolution of marriage comes before him, to satisfy himself that the parties to the marriage were domiciled in India at the time when the petition was presented & to see that the petition itself contains a declaration to that effect; & before hearing the suit, to satisfy himself that the parties are in fact domiciled in India.—MURPHY *v.* MURPHY (1929), I. L. R. 10 Lah. 607.—IND.

b ii. —— *Under Indian Divorce (Amendment) Act,* 1926.]—Under Indian & Colonial Divorce Jurisdiction Acts, s. 1 (1), & Indian Divorce Act, 1869, s. 3, the High Ct. has jurisdiction to grant a decree for dissolution of a marriage; the words in sect. 1 (1) (*a*) of the Act of 1926 are intended to mean that the grounds on which a decree for the dissolution of the marriage of British subjects domiciled in England may be granted by a High Ct. in India shall be those on which such a decree might be granted by the Divorce Ct. in England according to the law for the time being in force in England, *i.e.* according to Supreme Ct. of Judicature (Consolidation) Act, 1925, s. 176.—BARNARD *v.* BARNARD (1928), I. L. R. 56 Calc. 89.—IND.

b iii. —— ——.]—In cases under the Indian Divorce Act, the ct. should always raise the following issues: (*a*) is the marriage between the parties proved; (*b*) do the parties or either of them profess the Christian religion; (*c*) was the domicil of origin of the husband Indian; if yes, is it proved that he had changed such domicil at the date of the presentation of the petition; if no, is it proved that at the date of the presentation of the petition he had acquired an Indian domicil; (*d*) do the parties reside or did they last reside together within the local limits of the ordinary jurisdiction, or the jurisdiction under the Indian Divorce Act of this ct.—ROOKE *v.* ROOKE (1934), I. L. R. 58 Bom. 502.—IND.

b iv. ——.]—A wife cannot have a domicil distinct from that of her husband, while they continue married, even though the wife has left him for cause or the husband has deserted her; &, in order to give the ct. jurisdiction to decree a divorce, it must be established that the husband was domiciled within the province at the commencement of the proceedings.—BREEN *v.* BREEN (Man.), [1929] 4 D. L. R. 649; 2 W. W. R. 345; *revsd. on facts,* [1930] 1 W. W. R. 30; 1 D. L. R. 1006; 38 Man. L. R. 409.—CAN.

b v. ——.]—Act 25 of 1926 prevents any decree of dissolution of a marriage except where the parties are domiciled in India.—BONHIEM *v.* KA TROLIMON (1929), I. L. R. 57 Calc. 1159.—IND.

b vi. ——.]—Before exercising jurisdiction under the Indian Divorce Act, the ct. ought carefully to inquire, on proper legal principles, into the question of domicil of the parties.—CRESSWELL *v.* CRESSWELL (1932), I. L. R. 60 Cal. 601.—IND.

b vii. —— *Statutory domicile of wife—Validity of Divorce & Matrimonial*

878. To the cross-reference following this case add "*See, now,* Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40)."

878a. —— —— —— —— **Registration of decree.**]—Where a decree absolute of divorce has been granted in India under Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40), either party may, on production of the necessary certificate, secure the registration of such decree in the High Ct. in England.—WILKINS *v.* WILKINS (1932), 101 L. J. P. 35; 147 L. T. 17; 48 T. L. R. 425; 76 Sol. Jo. 345.

884. *Add. Annotations:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

885. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Graham *v.* Graham (1923), 128 L. T. 639; Eustace *v.* Eustace, [1924] P. 45; Rudd *v.* Rudd, [1924] P. 72; Sasson *v.* Sasson, [1924] A. C. 1007; Herd *v.* Herd, [1936] 2 All E. R. 1516.

894. *Add. Annotations:*—**Consd.** Graham *v.* Graham, [1923] P. 31; Salvesen (or von Lorang) *v.* Austrian Property Administrator [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

894a. ——.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicil & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicil does not become estopped from alleging another domicil after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicil or render it incapable of alteration without the consent of the wife.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598; *subsequent proceedings: sub nom.* HORN *v.* HORN (1929), 142 L. T. 93.

Annotation:—*As to* (2) **Consd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

894b. ——.]—HERD *v.* HERD, No. 173a. *ante.*

895. *Add. Annotations:*—*As to* (1) **Refd.** Graham *v.* Graham, [1923] P. 31; Eustace *v.* Eustace, [1924] P. 45.

896. *Add. Annotations:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29; Bryce *v.* Bryce (1932), 49 T. L. R. 177.

899a. —— —— ——.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicil different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicil at the time of the proceedings.

Causes Act, 1930, s. 3.]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand:—*Held:* entitled to a decree *nisi.*—WORTH *v.* WORTH [1931] N. Z. L. R. 1109.—**N.Z.**

b viii. —— ——.]—Sect. 43 of the Matrimonial Causes Act, 1929, provides that for the purposes of this Act a deserted wife who was domiciled in the State at the time of desertion shall be deemed to have retained her South Australian domicile, although since the desertion her husband may have acquired another domicile.—IRELAND *v.* IRELAND, [1935] S. A. S. R. 217.—**AUS.**

b ix. ——.]—There is no authority for the proposition that the jurisdiction of the ct. to make an order for divorce or judicial separation depends upon domicil at the time when the order is made. The relevant time is the time when the action is begun.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

878 i. —— —— —— *Indian marriage.*]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree *nisi:*—*Held:* the ct. had jurisdiction to pass the decree.—MILLER *v.* MILLER (1924), I. L. R. 52 Calc. 566.—**IND.**

879 iv. —— —— ——.]—The domicil of the married pair at the time when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bonâ fide* existing domicil has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—CROMARTY *v.* CROMARTY (1917), 38 O. L. R. 481; 33 D. L. R. 151.—**CAN.**

879 v. —— —— ——.]—A Mahomedan domiciled in India who marries in Scotland, with Scottish ceremonies, a Christian Scotch woman domiciled in Scotland can, if the woman becomes a Muslim, divorce her in India by pronouncing a *talak.*—KHAMBATTA *v.* KHAMBATTA (1934), I. L. R. 59 Bom. 278.—**IND.**

—.]—MYANDUK *v.* MYANDUK, [1931] 1 W. W. R. 755; 2 D. L. R. 673.—**CAN.**

890 iv. —— ——.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicil to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid:—*Held:* as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—SWAIZIE *v.* SWAIZIE (1899), 51 O. R. 324.—**CAN.**

890 v. —— ——.]—In order to found jurisdiction to entertain a suit for divorce it must be shown that the husband was domiciled in South Australia at the commencement of the proceedings. Unconditional submission to the jurisdiction by the husband is insufficient.—SLATER *v.* SLATER, [1928] S. A. S. R. 161.—**AUS.**

ss. *Under Deserted Wives Maintenance Act, R.S.B.C.* 1924.]—Under Deserted Wives' Maintenance Act, R.S.B.C., 1924, the magistrate has jurisdiction when a wife has been deserted within the Province, but the husband is domiciled outside the Province.—GAGEN *v.* GAGEN, [1934] 4 D. L. R. 409; 3 W. W. R. 84; 48 B. C. R. 481.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A. (b).

f i. —— —— ——.]—The words in Marriage Act, 1928, s. 75, "No person shall be entitled to petition under this section who has resorted to Victoria for that purpose only," do not preclude a person from petitioning unless he has resorted to Victoria for the purpose of qualifying himself to present a petition, &, in the absence of collusive arrangement, do not debar a wife who resides abroad from petitioning when her husband is domiciled in Victoria.—BELL *v.* BELL, [1931] V. L. R. 373; Argus L. R. 304.—**AUS.**

f ii. —— *Must be within territorial limits of province.*]—The domicil necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose cts. are appealed to.—MARRIAGGI *v.* MARRIAGGI, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—**CAN.**

899 iii. —— —— ——.]—Where a wife has obtained a decree of judicial separation, she is entitled to acquire a domicil independently of her husband.—HASTINGS *v.* HASTINGS, [1922] N. Z. L. R. 273.—**N.Z.**

band's domicil. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444; 95 L. J. P. C. 102 134 L. T. 717; 42 T. L. R. 317, P. C.

Annotations :—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Herd *v.* Herd [1936] 2 All E. R. 1516. **Refd.** H. *v.* H., [1928] P. 206.

899b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

903a. —— —— ——.]—(1) The burden of proving a change of the domicil of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicil, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble :* even if resp. has now acquired an American domicil, petitioner can still as a deserted wife obtain relief from the English cts.—RUDD *v.* RUDD, [1924] P. 72; 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

:—*As to* (3) **Refd.** Hughes *v.* Hughes (1932), 48 T. L. R. 328.

903b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

905. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

906. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

916. *Add. Annotation :*—**Refd.** Graham *v.* Graham, [1923] P. 31.

917. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206. **Refd.** Graham *v.* Graham, [1923] P. 31; Raeburn *v.* Raeburn (1928), 138 672.

918. *Add. Annotations :*—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Graham *v.* [1923] P. 31; Mitford *v.* P. 130.

.]—It is established by the cases of *Armytage* v. *Armytage*, No. 917, *ante*, & *Anghinelli* v. *Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensâ et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—GRAHAM *v.* GRAHAM, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

Annotations :—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. C72; Johnstone *v.* Johnstone [1929] P. 165.

918b. —— ——.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—RAEBURN *v.* RAEBURN (1928), 138 L. T. 672; 44 T. L. R. 384.

918c. —— **Respondent domiciled in England.**]—There is jurisdiction in the Probate, Divorce

903 iv a. —— —— ——.]—The law of domicil governing divorce is that the domicil of the husband is the domicil of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the cts. so as to give a deserted wife relief from her marriage tie.—PAYN *v.* PAYN, [1924] 3 D. L. R. 1006; 3 W. W. R. 111.—**CAN.**

903 iv b. —— —— ——.]—Although a married woman has been deserted by her husband & he is moving about from place to place, she cannot acquire an independent domicil; &, therefore, an action for divorce, brought by her in a province in which she is residing & was residing when he deserted her but which is not his domicil at the time of the action must be dismissed.—NELSON *v.* NELSON & ANDREWS (Sask.), [1928] 4 D. L. R. 910; [1928] 3 W. W. R. 291; *affd.*, [1930] 1 W. W. R. 169; 3 D. L. R. 522; 24 S. L. R. 250.—**CAN.**

903 vi. —— —— ——.]—Pltf. husband, when domiciled in N., married deft. in that State. She deserted him while in that State in 1907. In 1917 he came to Q. & acquired a domicil there. Deft. continued to reside in N. In 1927 he brought this action for dissolution of the marriage on the ground of desertion continuously without cause for five years :—*Held :* the ct. had jurisdiction to entertain the action.—ROCHE *v.* ROCHE, [1928] St. R. Qd. 11.—**AUS.**

903 vii. —— —— ——.]—The facts that a wife has been deserted by her husband & he has acquired another domicile while she has continued to reside in the domicile which was his at the time of the desertion, do not afford an exception to the rule that it is only the ct. of his domicile at the time the action is begun which has jurisdiction to grant her a decree of divorce.—HARRIS *v.* HARRIS & HARRIS, [1930] 1 W. W. R. 173; 4 D. L. R. 736; 24 S. L. R. 234; *affg.*, [1929] 2 D. L. R. 546.—**CAN.**

st. *In Ireland—Power to elect to be domiciled either in Northern Ireland or in Irish Free State.*]—EGAN *v.* EGAN, [1928] N. I. 159.—**IR.**

PART X. SECT. 1, SUB-SECT. 2.—B.

sv. *Co-respondent not domiciled in country where divorce sought—Liability to damages & costs.*]—In Manitoba where an action for divorce is based on adultery committed outside the province, & the co-resp. is neither a resident of nor domiciled in Manitoba & has no assets therein, the ct. has no jurisdiction to decree either costs or damages against the co-resp. where he has not submitted himself to its jurisdiction.—RUTA *v.* RUTA & SAMULIAK [1929] 4 D. L. R. 1053; 1 744.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

917 v. —— —— *Indian Divorce Act.*]—Under the Indian Divorce Act, ss. 2, 3, on a petition by a wife for a decree of judicial separation from her husband, the Bombay High Ct. has jurisdiction to grant the relief asked for, if petitioner, when she last resided in India, stayed with her husband in any place within the jurisdiction of the ct.—DE SOUZA *v.* DE SOUZA (1935), I. L. R. 59 Bom. 570.—**IND.**

gi. —— ——.]—Where a wife brings an action of separation & aliment against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicil in a foreign country.—RAMSAY *v.* RAMSAY, [1925] S. C. 216.—**SCOT.**

st. *Separation for cruelty—Cruelty within jurisdiction.*]—In a suit for judicial separation on the ground of cruelty, the ct. will not necessarily demand proof of matrimonial domicil within its jurisdiction, but at least there must be acts of cruelty committed or apprehended within its jurisdiction, from which it is the function of the ct. to protect the suppliant.—SMITH *v.* SMITH, [1934] N. L. R. 67.—**S. AF.**

sx. *Protest to jurisdiction — Procedure.*]—MILLER *v.* MILLER (Man.), [1929] 3 W. W. R. 167.—**CAN.**

& Admlty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—EUSTACE *v.* EUSTACE, [1924] P. 45; 93 L. J. P. 28; 130 L. T. 79; 39 T. L. R. 687; 67 Sol. Jo. 807, C. A.

924. *Add. Annotations:—As to* (1) **Expld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (2) **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

925. *Add. Annotation:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

926. *Add. Annotations:*—**N.F.** Graham *v.* Graham, [1923] P. 31. **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Folld.** White (otherwise Bennett) *v.* White, [1937] P. 111. **Refd.** Mitford *v.* Mitford [1923] P. 130.

926a. Parties domiciled in country where decree sought — Validity of marriage in dispute.]—(1) Where the validity of a marriage is in dispute the ct. of the domicil of the parties has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] A. C. 641; 96 L. J. P. C. 105; 137 L. T. 571; 43 T. L. R. 609, H. L.

Annotations:—As to (1) **Folld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Distd.** White (otherwise Bennett) *v.* White, [1937] P. 111. *As to* (3) **Refd.** H. *v.* H. (No. 2) (1928), 97 L. J. P. 116; Nachimson *v.* Nachimson, [1930] P. 217, C. A.

926b. Jurisdiction dependent on domicil.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a marriage on this ground deals with a marriage which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 74 Sol. Jo. 863; 29 L. G. R. 353.

Annotation:—**Consd.** White (otherwise Bennett) *v.* White, [1937] P. 111.

926c. Marriage not celebrated in country where decree sought—Marriage in country where former decree of dissolution invalid.]—PAUL *v.* PAUL (1936), 80 Sol. Jo. 555.

926d. —— **Proceedings where wife petitioner resident & domiciled—Bigamous marriage.**]—On a petition by a woman for nullity of a

PART X. SECT. 1, SUB-SECT. 4.

921 ii. ——.]—The High Ct. of Bombay has jurisdiction to entertain a petition for restitution of conjugal rights by a Christian wife of a Parsi husband if the wife was at the date of the petition residing in Bombay.—DALAL *v.* DALAL (1930), I. L. R. 54 Bom. 877.—**IND.**

921 iii. —— *Or domicil.*]—The ct. has jurisdiction to entertain a suit for restitution of conjugal rights where the parties were domiciled or were both both *bonâ fide* resident in New South Wales at the time of the institution of the suit.—BOARDMAN *v.* BOARDMAN (1936), 36 S. R. N. S. W. 474; 53 N. S. W. W. N. 182.—**AUS.**

l i. ——.]—On petition by a wife for restitution of conjugal rights:—*Held:* resp. had an Irish domicil, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—BELL *v.* BELL, [1922] 2 I. R. 152.—**IR.**

m i. ——.]—Petitioner was married in New Zealand to resp. The evidence established that resps.' domicile of origin was New Zealand, & negatived any inference that he had acquired a fresh domicile. In 1923, resp. went to the Federated Malay States as an employee of the English Civil Service, residing there with petitioner from 1923 to 1934, when she returned to New Zealand, where he wished her to remain with the child of the marriage. Resp. remained in the Malay States. Petitioner applied for a decree for restitution of conjugal rights:—*Held:* granting the decree, in the circumstances, the ct. should exercise the discretion conferred by sect. 8 of the Divorce & Matrimonial Causes Act, 1928, in favour of petitioner.—BEST [1935] N. Z. L. R. 593.—**N. Z.**

PART X. SECT. 1, SUB-SECT. 5.

n i. —— ——.]—An application in a nullity of marriage suit to determine the question of the jurisdiction of the Ct. of K. B. of S. to entertain the action. The marriage was celebrated in S.; the husband, pltf., was domiciled & resident in A. at the time of the commencement of the action, & the wife was residing in M.:—*Held:* the Ct. of K. B. of S. had jurisdiction to make a decree of the nullity of a marriage entered into in S.—G. *v.* G., [1928] 1 W. W. R. 651; 22 Sask. L. R. 376.—**CAN.**

n ii. —— ——.]—HINDS *v.* MCDONALD, [1932] 1 D. L. R. 96.—**CAN.**

n iii. —— ——.]—Where petitioner, who had married as her first husband a man who was domiciled in England, sought an annulment of her second marriage which was solemnised in India & petitioner was resident in India:—*Held:* the cts. in India had jurisdiction to deal with the matter—TAYLOR *v.* WENKENBACH 1. L. R., [1937] 1 Cal. 417.—**IND.**

n iv. ——.]—**The Ct. of King's Bench of Saskatchewan has jurisdiction to entertain an action for the annulment of a marriage celebrated in Saskatchewan whether or not the husband was domiciled in Saskatchewan at the time of the issue of the writ.**—REID (OTHERWISE FRANCIS) *v.* FRANCIS (Sask.), [1929] 4 D. L. R. 311; 3 W. W. R. 102.—**CAN.**

o i. —— *Respondent residing in country where decree sought—Petitioner not residing in country where decree sought.*]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bonâ fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor although his wife was a resident, in British Columbia.—PURDY *v.* PURDY, [1919] 2 W. W. R. 551.—**CAN.**

o ii. —— ——.]—VAMVAKIDIS *v.* KIRKOFF, [1929] 4 D. L. R. 1060.—**CAN.**

o iii. —— *Necessity for domicile or residence of parties.*]—In the case of a marriage void *ab initio*, the ct. has no jurisdiction to entertain a suit for a declaration of nullity of marriage unless the marriage in question was celebrated in this State, or both parties to the ceremony of marriage either were domiciled or resident in the State at the time of the institution of the suit.—SMART *v.* MAXWELL (1929), 47 N. S. W. W. N. 100.—**AUS.**

p i. ——.]—The ct. cannot entertain a suit for a declaration of the nullity of a marriage where resp. is neither domiciled nor resident within the province & the marriage was not celebrated therein. Where such a suit is brought by the man its dismissal on the ground that resp. has not his domicile is, necessarily, a recognition by the ct. that the alleged marriage is null.—HUTCHINGS *v.* HUTCHINGS (OR BROWNING), [1930] 2 W. W. R. 565; 4 D. L. R. 673; 39 Man. L. R. 66.—**CAN.**

ct. of
domicile has exclusive ju[illegible]tion
suits for nullity upon the ground of
impotence.—FLEMING *v.* FLEMING,
[1934] 4 D. L. R. 90; O. R. 588.—**CAN.**

p iii. ——.]—W. *v.* W., [1935] 1 W. W. R. 293; 42 Man. L. R. 578.—**CAN.**

sl. *Nullity based on invalidity of foreign divorce decree—Necessity for proof of law.*]—An action for nullity based on an allegation of previous
to the invalidity of
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absence of proof of the law of the place of the previous divorce proceedings.—LEIGH *v.* LEIGH, [1937] 1 D. L. R. 773; O. R. 239.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ——.]—POTRATZ *v.* POTRATZ (Sask.), [1926] 1 D. L. R. 147.—**CAN.**

q ii. ——.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—**CAN.**

q iii. ——.]—SHEASER *v.* SHEASER, [1926] 3 D. L. R. 196; [1926] 2 W. W. R. 389; 22 Alta. L. R. 261; *varying*, [1926] 2 D. L. R. 906; [1926] 2 W. W. R. 129.—**CAN.**

q iv. ——.]—BROWN *v.* MCINNESS, [1927] 2 D. L. R. 655; [1927] 1 W. W. R. 597; 38 B. C. R. 324.—**CAN.**

q v. ——.]—MCNUTT *v.* CREE (1928), Q. R. 66 S. C. 332; 34 R. de J. 370.—**CAN.**

q vi. ——.]—A decree of divorce obtained in a foreign country is not recognised as valid in Canada if at the time of the decree the husband was domiciled in Canada, even though he had then resided in said foreign country long enough to give the cts. thereof jurisdiction under the law of that country to grant the decree. Where subsequently to such a divorce one of the parties thereto goes through a form of marriage while the other party is still living & the original marriage still subsisting under the law of their domicil, said purported marriage will be declared null & void.—MACDONALD *v.* NASH (Man.), [1929] 4 D. L. R. 1051; 2 W. W. R. 84.—**CAN.**

q vii ——.]—Petitioner & resp., both born in British Columbia, were married in Vancouver in 1917. In the fall of 1923 resp. went to Portland, Oregon, & after remaining there a few weeks went to Los Angeles, California, where he remained until Jan. 1925. Late in 1924 he commenced divorce proceedings in Portland & a decree of divorce was granted him in Apr. 1925. He then returned to Vancouver & in Apr. 1926, he, with another woman, went to Bellingham in Washington, where they went through a form of marriage before a magistrate & returned to Vancouver. Petitioner filed her petition herein in May, 1929. The law of the State of Oregon requires that pltf. in a divorce action must have been a resident & inhabitant of the State of Oregon one year next prior to the commencement of the suit & the Supreme Ct. of the State has defined domicil, residence & inhabitance as synonymous in relation to divorce proceedings:—*Held:* on the evidence, resp. did not renounce his British Columbia domicil, he was not in the ordinary meaning of the words a "resident" or "inhabitant" of the State of Oregon & did not acquire a domicil there. Domicil being the governing factor, there was no jurisdiction in the cts. of the State of Oregon to grant a decree of divorce, & petitioner herein should be granted a decree absolute.—BIGGAR *v.* BIGGAR, [1930] 2 D. L. R. 940; 42 B. C. R. 329.—**CAN.**

q viii. ——.]—The cts. in Canada will recognise the binding effect of a decree of divorce obtained in a foreign country against a husband domiciled outside Canada although he was not domiciled in the country of the ct. which granted the decree, if the cts. of the country of his domicile would recognise the validity of the decree. In the present case the husband was domiciled in the English legal sense in Oregon when the wife obtained a decree of divorce in California on the ground of wilful desertion:—*Held:* after receiving expert evidence of the law of Oregon & of the effect of "the full faith & credit clause" of the U.S. Constitution, that under the law of Oregon the wife could not claim a separate residence from that of her husband so as to transfer jurisdiction over a divorce action between them to another state than that of his domicile unless he had given her cause by wilful desertion; &, since the question whether the wife had acquired the right on said ground to establish a separate domicile or residence in California was one going to the root of the jurisdiction of the California Ct., said "full faith & credit clause" would not compel the Oregon Ct. to recognise the California decree without inquiring whether she had acquired said right.—WYLLIE *v.* MARTIN, [1931] 3 W. W. R. 465; 44 B. C. R. 486.—**CAN.**

927 v. —— —— ——.]—As the domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law:—*Held:* a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage.—CAMPBELL *v.* CAMPBELL, [1921] 2 W. W. R. 849.—**CAN**

927 vi. —— —— ——.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again:—*Held:* the wife's prayer for divorce should be granted.—YATES *v.* YATES, [1924] 4 D. L. R. 835; 3 W. W. R. 578.—**CAN.**

936 ii. —— —— ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

944a. ——.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief:—*Held:* the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—MITFORD *v.* MITFORD & VON KUHLMANN, [1923] P. 130; 92 L. J. P. 90; 129 L. T. 153; 39 T. L. R. 350.

Annotation:—**Consd.** Invercivde *v.* Invercivde, [1931] P. 29.

-.]—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, No. 926a, *ante*.

946a. —— —— **No cohabitation.**]—An Englishman married an Englishwoman in England, but there was no cohabitation, & the wife went almost immediately to Canada & the United States, and on her application a ct. in Michigan, U.S.A., granted her a decree of nullity of marriage on the ground that it was a marriage in form of law but not in legal effect. The husband had agreed to the decree being made. Thinking herself free, the wife went through a form of marriage with another man & lived with him as his wife. The first husband, who was domiciled in England, now petitioned for the dissolution of his marriage, citing the second man as co-respondent. The suit was undefended, but was referred by the Assize Comr. to the King's Proctor on the question of connivance: —*Held:* the American decree was invalid.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45; 101 L. J. P. 23; 146 L. T. 327; 48 T. L. R. 191; 76 Sol. Jo. 96.

Annotation:—**Refd.** Hughes *v.* Hughes (1932), 147 L. T. 20.

946b. Foreign court without jurisdiction to grant decree of nullity.]—The disability of a foreigner to marry in England otherwise than in accordance with the law of his country as regards matters of form is a disability of which he can divest himself at will & therefore constitutes no objection to the validity of a marriage contracted by him in England in English form. A decree of a foreign ct. invalidating such a marriage is recognisable in England only if the foreign ct. has jurisdiction over the marriage & even then is open to examination. Want of jurisdiction cannot be cured by mere consent of the parties. A decree of a foreign ct. purporting to annul an English marriage under these circumstances is not severable, & if it is incompetent to annul the marriage, neither is it competent to award maintenance or a lump sum in lieu of maintenance.

The husband, a domiciled Cypriot, married a Frenchwoman in England in English form. Afterwards he repudiated the marriage on the ground that it was not in form in accordance with the law of his domicil. Later, on proceedings by the wife in a Cypriot ct., the marriage was declared null on the same ground by consent of the parties, & it was further declared that the husband should pay the wife a lump sum in satisfaction of all claims, including maintenance. The Cypriot ct. by the terms of its constitution had no jurisdiction to annul a marriage. Still later, the wife, finding the husband in England, took out a summons against him for neglect to maintain her under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925. The summary jurisdiction ct., upholding the marriage, ordered the husband to pay maintenance:—*Held:* the marriage was good & the agreement to set it aside illegal, that the decree of the ct. in Cyprus was pronounced without jurisdiction in compromising maintenance as well as in annulling the marriage, & that the order of the ct. of summary jurisdiction must stand, the measure of maintenance within the limits of the Summary Jurisdiction Act being the means of the parties at the time of the proceedings.—PAPADOPOULOS *v.* PAPADOPOULOS, [1930] P. 55; 99 L. J. P. 1; 142 L. T. 237; 94 J. P. 39; 28 L. G. R. 73.

Annotation:—**Apld.** Marcovitch *v.* Marcovitch (1934), 151 L. T. 139.

947. *Add. Citation:*—*sub nom.* SUGDEN *v.* 2 Cl. & Fin. 567, n.

Add. Annotation:—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

949a. ——.]—In 1935 a maintenance order was made in a ct. of summary jurisdiction in England against M., a German subject. In 1936 a decree of divorce was pronounced between M. & his wife in Germany. Both parties had submitted to the jurisdiction of the ct. & the decree was pronounced on grounds that by insulting behaviour & incompatibility of temper the wife had failed to fulfil her marriage obligations. M. then applied for a revocation of the maintenance order. The justices refused the application for the following reasons: (i) they considered that the fact that the marriage had been dissolved in Germany on grounds which would not be recognised in England was not a sufficient reason for them to discharge the order, & (ii) the wife's financial position had not changed & was such that she required the maintenance payable under the order for her support, & the justices therefore exercised their discretion in her favour. The husband appealed:—*Held:* (1) the decree of the German ct. was valid & binding throughout the world & the justices were not concerned with the question whether the grounds of

PART X. SECT. 2, SUB-SECT. 2.

947 iii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

u i —— *Decree for alimony.*]—BURPEE *v.* BURPEE (B. C.), [1929] 3 D. L. R. 18; 2 W. W. R. 128.—**CAN.**

u ii. —— *Marriage of minor without consent.*]—Petitioner was deemed to be domiciled in New Zealand by virtue of Divorce & Matrimonial Causes Amendment Act, 1930. Resp. was an American sailor domiciled in California. All matters were proved to entitle petitioner to a divorce if her marriage with resp. was subsisting, but in 1927 resp.'s father, acting on his behalf, obtained a decree of nullity of marriage in California on the ground that at the time of the marriage resp. was a minor & did not obtain the consent required by the law of that State:—*Held:* the marriage was, in the contemplation of the law of this country, still subsisting, & that a decree *nisi* for its dissolution should be granted.—CARTER *v.* CARTER, [1932] N. Z. L. R. 1104.—**N.Z.**

divorce were recognised in England; (2) in the case of a foreign divorce where the parties could not make any application to the Divorce Ct. in England the continuance of the award of maintenance is not a judicial exercise of the magistrates' discretion.

Observations on procedure on proof of a decree of dissolution of marriage by a foreign ct.—MEZGER *v.* MEZGER, [1937] P. 19; [1936] 3 All E. R. 130; 106 L. J. P. 1; 155 L. T. 491; 100 J. P. 475; 53 T. L. R. 18; 80 Sol. Jo. 916; 34 L. G. R. 608; 30 Cox C. C. 467.

951a. ——.]—A husband & wife were married in 1916. In 1922 they went to America, where they settled, the husband getting employment. In 1925 the husband deserted his wife & in 1926 at the husband's request the wife visited certain lawyers in America, where she saw the husband. He said he had decided to take divorce proceedings against her & that he would pay her a certain weekly sum & give her the custody of the child of the marriage. The wife agreed to this, & a divorce petition was duly filed by the husband alleging cruelty by the wife, & alleging that he "resides in & is an inhabitant of the State of Michigan." No answer was put in by the wife, she did not take the point that the husband was not domiciled in that State, & she did not defend the case. A decree was duly made. The wife returned to England &, in order to test the validity of the American divorce, she brought a petition for divorce in England alleging adultery by the husband with the woman whom he had married since the American divorce:—*Held:* (1) it was clear from the evidence that the husband was domiciled in the State of Michigan when he filed his petition for divorce, & the decree granted in that State was a valid one. The wife, being a single woman, could not, therefore, bring a petition for divorce in England; (2) the American decree was not invalidated by the fact that the interview between the parties at the lawyers might in England be considered to amount to collusion.—CROWE *v.* CROWE, [1937] 2 All E. R. 723; 157 L. T. 557; 81 Sol. Jo. 399.

952. *Add. Annotations:* — **Consd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Reld.** Mitford *v.* Mitford, [1923] P. 130; Rudd *v.* Rudd, [1924] P. 72; Papadopoulos *v.* Papadopoulos, [1930] P. 55; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

952a. Decree made by mistake—Authority to appear for petitioner withdrawn.]—In this undefended suit the wife petitioned for the dissolution of her marriage on the ground of her husband's adultery in Egypt. Resp., who was engaged in business in Egypt, appeared under protest to the jurisdiction & said that he was domiciled in Egypt. An order was made for the trial of the issue prior to the hearing of the suit, but later resp. abandoned his plea to the jurisdiction. At the hearing the judge drew the attention of counsel to the fact that petitioner had in 1930 petitioned for divorce in Egypt, & had been granted in May, 1930, a decree *nisi* of divorce in H.M. Ct. at Alexandria; that the husband had given evidence in that suit, though it was undefended, & had given evidence that he was domiciled in Egypt. The hearing was adjourned for the production of the ct. record from Alexandria, which was forthcoming at the resumed hearing:—*Held:* the proceedings in Egypt amounted to nothing at all, because petitioner had withdrawn all authority from anybody to appear in the cts. of that country. The judge at Alexandria was not informed of that fact, & he proceeded with the suit on the footing that she was represented, whereas she was not. The domicile was really English. A decree *nisi* was pronounced.—HUGHES *v.* HUGHES (1932), 147 L. T. 20; 48 T. L. R. 328; 76 Sol. Jo. 344.

954a. Award of maintenance by foreign court—Court incompetent to annul marriage.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante*.

956. *Add. Annotation:* — **Reld.** Nachimson *v.* Nachimson, [1930] P. 217.

PART X. SECT. 2, SUB-SECT. 3.

952 i. For "14 O. L. R. 234" read "14 O. L. R. 434."

952 ii. ——.]—OWEN *v.* ROBINSON (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—**N.Z.**

sw. *Presumption in favour of validity of proceedings.*]—FIELDS *v.* FIELDS, [1925] 2 D. L. R. 256; 58 N. S. R. 65.—**CAN.**

sx. *Foreign court without jurisdiction—Doubt as to husband's domicil.*]—A decree of divorce granted to a wife by a ct. of a foreign state wherein the husband was born & had lived continuously up to a time shortly before the date of the commencement of the divorce proceedings should not be pronounced invalid by our cts., when collaterally attacked years afterwards on the ground that at said date the husband had acquired another domicil, unless there is the clearest possible proof that the new domicil had then been acquired by him.—GILBERT *v.* STANDARD TRUST CO. (Alta.), [1928] 4 D. L. R. 371; [1928] 3 W. W. R. 111.—**CAN.**

sy. —— *No domicil in country of court granting decree—Decree not recognised.*]—DRAKE (OTHERWISE MACLAREN) *v.* MACLAREN (Alta.), [1929] 3 D. L. R. 159; 2 W. W. R. 87.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

954 iv. —— ——.]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—*Held:* the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final.—*Re* GAY, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—**CAN.**

954 v. —— ——.]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—*Held:* his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—*Re* SNYDER, SNYDER *v.* SNYDER, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—**CAN.**

954 vi. —— *On orders for alimony.*]—A judgment of a foreign ct. awarding alimony to a husband is enforceable in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation :*—**Refd.** Rudd *v.* Rudd, [1924] P. 72.

969. *Add. Annotations :*—*As to* (2) **Refd.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1923] 2 K. B. 682. *Generally*, **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1000. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

1007. For existing citations read "(1854), 18 Beav. 128; 2 Eq. Rep. 593; 23 L. J. Ch. 265; 23 L. T. O. S. 318; 18 Jur. 736; 52 E. R. 51; *affd. on other grounds* (1855), 7 De G. M. & G. 78, L. C."

1009. *Add. Annotation :*—**Consd.** Goff *v.* Goff, [1934] P. 107.

1010. *Add. Annotation :*—**Consd.** Goff *v.* Goff, [1934] P. 107.

Part XIV.—Foreign Judgments.

See, now, Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13).

1033. For "No. 383, *ante*" read the following :—The judgment of a foreign ct. [in this case the exors.' Ct. of Dealing at St. Croix], consisting of persons interested in the property in dispute, will be disregarded in the cts. of this country.—PRICE *v.* DEWHURST (1837), 8 Sim. 279; Donnelly, 264; 6 L. J. Ch. 226; 59 E. R. 111; *affd. on other grounds* (1838), 4 My. & Cr. 76.

1033a. Due constitution of court—Necessity for strict proof.]—R. *v.* BEECH, POLLITT & STRUDWICK (1928), 20 Cr. App. Rep. 175, C. C. A.

1039. *Add. Annotation :*—*As to* (1) **Consd.** Dreyfus (C. L.) *v.* I. R. Comrs., Dreyfus (L. L.) *v.* I. R. Comrs. (1929), 14 Tax Cas. 560.

PART XII. SECT. 2, SUB-SECT. 1.—F.

n i. —— —— *Marriage to domiciled Englishman—Effect of English divorce decree.*]—A domiciled Englishman & a domiciled Scotswoman entered into an ante-nuptial marriage contract which contained this clause, "It is hereby declared that these presents shall be interpreted & the rights of the parties regulated by the law of Scotland." The wife obtained decree of divorce in the English cts. :—*Held :* the rights of parties under the contract arising on divorce fell to be regulated in the same manner as if decree of divorce had been pronounced by the Scottish cts.—DRUMMOND *v.* BELL-IRVING, [1930] S. C. 704.—**SCOT.**

PART XIII. SECT. 2.

1015 i. *As to property—Father entitled by law of infant's domicil.*]—An infant domiciled in Indore, India, was absolutely entitled to a fund in ct., & by the law of the Indore State her father as legal guardian both of her person & property was entitled to receive & give legal discharges for all moneys coming to her during minority. The father applied for payment out of the fund to him for the benefit of the infant :—*Held :* the father was not entitled as of right to the fund, but the ct. must be satisfied by evidence that the fund was to be applied for the benefit of the infant & in what manner. —DHARAMAL *v.* HOLM PATRICK (LORD), [1935] I. R. 760.—**IR.**

r i. ——.]—The only ct. with jurisdiction over the custody of an infant is the ct. of the domicil of the infant.—CODY *v.* CODY, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—**CAN.**

r ii. —— *Divorce proceedings commenced in Alberta—Removal of children by father to another Province.*]—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign State & are residing therein at the time of the application for the order.—GOFORTH *v.* GOFORTH (Alta.), [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—**CAN.**

Compare No. 1117 i., *post.*

s i. —— *Decree by Serbian court—Whether Scottish court will enforce.*]—Decree of divorce & for the custody of the child of the marriage had been obtained in the Serbian cts. by a Serbian, resident in Belgrade, against his wife, who was a Scotswoman. The child, a girl of 8 years of age, was resident with her mother in Scotland. In a petition to the ct. in Scotland by the father for custody of the child, the mother averred that it would be prejudicial to the health, welfare, & interests of the child that the petition should be granted :—*Held :* while petitioner's right to custody of the child had already been settled by a competent ct., the Scottish ct. was entitled, before ordering delivery of the child, to be informed of petitioner's arrangements for the conveyance of the child to Belgrade, & for her reception there.—RADOYEVITCH *v.* RADOYEVITCH, [1930] S. C. 619.—**SCOT.**

PART XIII. SECT. 3.

t i. —— —— *Court of husband's domicil.*]—In a petition brought by the wife of a domiciled Scotsman for custody of the only child of the marriage, or otherwise for access, the husband maintained that the Scottish ct., even if it had jurisdiction, could not pronounce any effective order. The husband, when the question of jurisdiction was raised, was residing in New York, where he held a professional appointment; petitioner was living in London, & the child, under the care of her paternal grandmother, was in France :—*Held :* the Ct. of Session, as the ct. of the husband's domicil, had jurisdiction to determine the questions of custody & access; the mere fact that the parties were outwith Scotland did not render ineffectual any decree which it might pronounce since such decree being a decision as to status, was a judgment *in rem* universally binding.—PONDER *v.* PONDER, [1932] S. C. 233.—**SCOT.**

PART XIV. SECT. 1.

a i. —— *Order conferring rights on committee of lunatic.*]—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicil, with reference to personalty, are entitled to world-wide recognition.—*Re* HICKSON, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—**CAN.**

sg. *Judgment in default of appearance.*]—A judgment of the King's Bench Div. in London passed in default of appearance of deft. under the summary procedure, without any evidence being called, is not a judgment on the merits within sect. 13 (*b*) of the Code of Civil Procedure & a suit cannot be brought solely on such a judgment in British India.—DERBY MCINTYRE & CO. *v.* MITTER & CO. (1935), I. L. R. 62 Calc. 682.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. ——.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—GANGA PRASAD *v.* GANESHI LAL (1923), I. L. R. 46 All. 119.—**IND.**

1039 i. *Essentials to establishment of jurisdiction.*]—*Held :* the provisions in Jud. Act, 1927 (c. 88), ss. 51, 52, must be confined to actions upon judgments obtained in the Province of Q., which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within the Province of Q. upon a person domiciled & resident therein & who owed allegiance to the laws of Q.—LUNG *v.* LEE, [1929] 1 D. L. R. 130; 63 O. L. R. 194.—**CAN.**

1039 ii. ——.]—Deft. must be a subject or resident in the country of the forum, or have selected it as plff. or have voluntarily submitted to its jurisdiction.—WEBSTER *v.* CONNORS BROS., LTD., [1935] 2 D. L. R. 483; 5 F. L. J. (Can.) 37; *sub nom.* WEBSTER MCLANCHLAN CO. *v.* CONNORS BROS., [1935] 4 D. L. R. 205; 9 M. P. R. 345. —**CAN.**

1041. *Add. Annotation :—Generally,* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1044a. Judgment of horning.]—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—DOUGLAS *v.* FORREST (1828), 4 Bing. 686 ; 1 Moo. & P. 663 ; 6 L. J. O. S. C. P. 157 ; 130 E. R. 933.

Annotations :—As to (1) **Refd.** Don *v.* Lippmann (1837), 5 Cl. & Fin. 1 ; Cowan *v.* Braidwood (1840), 9 Dowl. 26 ; Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155 ; Rousillon *v.* Rousillon (1880), 14 Ch. D. 351 ; Emanuel *v.* Symon, [1908] 1 K. B. 302 ; Gavin Gibson *v.* Gibson, [1913] 3 K. B. 379.

Add. Annotation :— **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation :—***Apld.** Rudd *v.* Rudd, [1924] P. 72.

1069. *Add. Annotation :—***Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation :—As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation :—*[1921] B. & C. R. 195.

1090a. ——.]—RUDD *v.* RUDD, No. 903a, *ante.*

1098a. General rule.] — A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—FRAYES *v.* WORMS (1861), 10 C. B. N. S. 149 ; 142 E. R. 407.

1108. *Add. Annotation :—***Apld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—Allmony.] —By the law of the State of New York, where

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1042 i. *Absence of jurisdiction—Effect of.*]—A judgment was obtained in Florida without jurisdiction. A judgment was given in New Jersey upon this, without inquiry as to the merits. In an action upon the New Jersey judgment :—*Held :* both the Florida & the New Jersey judgments were nullities.—FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSCE. CO., [1933] 2 D. L. R. 660.—**CAN.**

sl. *Subject-matter of judgment out of jurisdiction.*]—Pltf.'s husband purchased a ticket which drew a horse in a sweepstake in the Irish Free State entitling the purchaser to a certain sum as prize money. Pltf. obtained a decree of divorce in the State of California & a declaration that she was entitled to the money, the ticket having been " community property " :—*Held :* the decree of the Californian Court could not have any effect in the Irish Free State as the subject-matter of the decree was not within the control of the State of California.—MCKIE *v.* MCKIE, [1933] I. R. 464.—**IR.**

PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —— ——.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment " on the merits " within Code of Civil Procedure (Act V. of 1908), s. 13.—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196 ; 49 L. R. Ind. App. 174.—**IND.**

1054 xv. —— ——.]—Deft., who was resident & domiciled in Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly at least in Ontario. He did not appear & judgment was entered against him by default. In an action upon that judgment brought in Ontario by same pltf. against same deft., the latter pleaded that the Quebec judgment was of no effect in Ontario :—*Held :* the provisions of Judicature Act, R. S. O., 1927, ss. 51, 52, enacted by an Act of the Province of Canada, 1860, must be confined to actions upon judgments obtained in Quebec which, according to the principles of international law are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

1065 i. *Judgment recognised—Defendant served—No appearance or defence—Proceedings regular.*]—*Held :* a judgment of the High Ct. of Justice in England against a deft. in India, who had been duly served with a writ of summons but who did not enter appearance or deliver a defence, must be regarded as a judgment passed on the merits of the case when the proceedings had been strictly in accordance with the Rules of the Supreme Ct. —KULWANT *v.* DHAN RAJ DUTT (1934), I. L. R. 16 Lah. 768.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—E.

c i. —— *Judgment based on joint petition presented by both parties.*]—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—F.

e i. —— *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*]—JANOO HASSAN SAIT *v.* MAHAMAD OHUTHU (1924), I. L. R. 47 Mad. 877.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—G.

h i. ——.]—On an application under Ord. 14 for leave to sign judgment in an action on a foreign judgment :—*Held :* the defence that deft. had not been served with process in the foreign action, & that the proceedings therein did not come to his knowledge or notice raised a triable issue which must be tried, in the ordinary way.—ROMANO *v.* MAGGIORA, [1935] 2 W. W. R. 524 ; 50 B. C. R. 66.—**CAN.**

n i. ——.]—In an action on a foreign judgment a statement in said judgment that deft. was " duly & personally served with the summons & a copy of the complaint " is at least *primâ facie* evidence that the formalities required by the law of the foreign state to effect service were observed. In the present case, wherein it was found that deft. was resident of the foreign state at the time of said alleged service :—*Held :* he had not discharged the onus on him of displacing the *primâ facie* case that he was served, & if the service in question consisted, as on the evidence it apparently did, of the handing the suit papers in an envelope to deft. such service would not be against " natural justice." The ct. is not entitled to presume, in the absence of evidence, that the foreign practice is the same as ours.—ROMANO *v.* MAGGIORA (No. 3), [1937] 1 W. W. R. 490 ; 51 B. C. R. 352.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.

o. Read now " **1098a i.**"

p. Read now " **1098a ii.**"

1098a iii. —— *Presumption of finality.*]—The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—SMITH *v.* SMITH, [1923] 2 D. L. R. 896 ; 2 W. W. R. 389.—**CAN.**

q. Read now " **1098a iv.**"

r. Read now " **1098a v.**"

1098a vi. ——.]—AINSLIE *v.* AINSLIE (1927), 39 C. L. R. 381 ; 27 S. R. N. S. W. 524 ; [1927] Argus L. R. 301. —**AUS.**

1113 ii. —— —— ——.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment :—*Held :* a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—MAGUIRE *v.* MAGUIRE 1921), 64 D. L. R. 180 ; 50 O. L. R. 100.—**CAN.**

1113 iii. —— —— ——.]—PERRY *v.* PERRY, [1924] 4 D. L. R. 1177 ; 54 O. L. R. 613 ; *revsg.*, [1924] 1 D. L. R. 665 ; 53 O. L. R. 502.—**CAN.**

sa. *Judgment made award of court—No notice given to party—No notice required by law of country where judgment given.*]—In an action in Ontario upon a judgment recovered in Holland, it appeared that the judgment was pronounced by a ct. of record & directed that an award of arbitrators should be executed after its form & contents & in the ordinary way of execution ; & that no notice was given to defts. who were parties to the arbn. :—*Held :* the requirement of notice or no notice is a matter of procedure ; as it was shown that in Holland no notice was necessary, the lack of notice did not affect the validity of the judgment in Holland, which was final & conclusive & could be sued on in Ontario. —STOLP & CO. *v.* BROWNE & CO., [1930] 4 D. L. R. 703 ; 66 O. L. R. 73.—**CAN.**

a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due :—*Held :* such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—BEATTY *v.* BEATTY, [1924] 1 K. B. 807 : 93 L. J. K. B. 750 ; 131 L. T. 226, C. A.

1114. *Add. Annotation :*—**Refd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1118. *Add. Annotation :—As to* (1) **Consd.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1122a. Judgment founded on immoral agreement.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante.*

1126. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1132. *Add. Annotations :*—**Apld.** Ellerman Lines *v.* Read (1927), 44 T. L. R. 7. **Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1135a. ——.]—Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to salve her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced :—*Held :* (1) the Turkish judgment was invalid ; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144 ; 97 L. J. K. B. 366 ; 138 L. T. 625 ; 44 T. L. R. 285 ; 17 Asp. M. L. C. 421 ; 33 Com. Cas. 219, C. A. ; *revsg.* (1927), 44 T. L. R. 7.

1136. *Add. Annotation : — Generally,* **Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

1141. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1147. *Add. Annotation :*—**Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1147a. ——.]—In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct. :—*Held :* there being evidence that according to French law the ct. was not bound

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PART XIV. SECT. 2, SUB-SECT. 5.

1117 i. *Orders in respect of foreign infant—Custody.*]—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re* AYERS, [1921] 2 W. W. R. 171 ; *affd.*, [1921] 2 W. W. R. 625.—**CAN.**

—— ——.]—*See, also,* Nos. 954 i–954 v, *ante.*

1117 ii. —— *Appointment of guardian.*]—Where a child, whose parents had died, was removed from the province of its domicil of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus.* The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re* BERGMAN & WALDRON, *Re* INFANTS ACT, [1923] 4 D. L. R. 56 ; 3 W. W. R. 70.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 7.

1124 iv. —— *Necessity for strict proof.*]—The defence that a foreign judgment was obtained by fraud must be clearly proved.—BOGA *v.* CHAMBERLEN, [1936] 1 D. L. R. 660 ; 9 M. P. R. 565.—**CAN.**

1127 i. ——.]—DELAPORTE *v.* DELAPORTE, [1927] 4 D. L. R. 933 ; 61 O. L. R. 302.—**CAN.**

1133 iii. —— —— *Not where involving retrial of questions adjudicated on by foreign court.*]—MANOLOPOULOS *v.* PNAIFFE, [1930] 2 D. L. R. 169 ; 1 M. P. R. 366 ; *revsg.*, [1929] 4 D. L. R. 48.—**CAN.**

1133 iv. ——.]—MANOLOPOULOS *v.* PNAIFFE (N. S.), [1929] 4 D. L. R. 48.—**CAN.**

1135 ii. —— ——.]—If it be alleged & proved that a party has obtained a judgment in his favour by some extraneous fraud, such as the clandestine substitution of a false exhibit for the real exhibit, or the deliberate suborning of a witness to testify to the genuineness of false documents or to give any material false testimony, or the giving of false oral testimony material & relevant to the issues, such judgment if a domestic judgment, can be set aside in a new action, or if it is a foreign judgment the fraud may be set up as a defence to an action thereon.—LOCKE *v.* HULETT (Alta.), [1929] 3 D. L. R. 572 ; 2 W. W. R. 558.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

1140 i. *What amounts to repugnancy to "natural justice"—Not merely following lex fori—Lex fori different from law in force in British India.*]—GANGA PRASAD *v.* GANESHI LAL (1923), 1 L. R. 46 All. 119.—**IND.**

sg. *Judgment based on judgment in proceedings of which no notice given.*]—Pltf. recovered a default judgment against deft. in Florida, U.S.A. The writ of summons was not served on deft. co., but was served on an individual resident in Florida who was assumed to be, but who was not, an agent of deft. co. Deft. co. did not carry on business in Florida & knew nothing about the Florida action until after judgment by default had been entered. Subsequently pltf. brought action in New Jersey on the Florida judgment. The action in New Jersey was commenced by attachment against the assets of deft. co. in New Jersey & deft. co. entered an appearance in the New Jersey action. The New Jersey ct. gave judgment in favour of pltf. on the Florida judgment without inquiring into the merits of the dispute. Pltf. brought action in the Supreme Ct. of Ontario on the New Jersey judgment & the action was dismissed. On appeal this judgment was affirmed. —FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSURANCE CO., [1933] O. R. 428.—**CAN.**

by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, &, there being no fraud proved, the judgment in the French action was valid & could not be impeached, & was a complete defence to the English action.—JACOBSON *v.* FRACHON (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

1151. *Add. Annotation:*—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1170. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1187. *Add. Annotation:*—*Generally*, **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

1195. *Add. Annotations:*—*As to* (2) **Refd.** The Goulandris, [1927] P. 182. *As to* (3) **Refd.** Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1205a. —— **Inquiry abroad into loss of ship—Report not confirmed by governor of colony.**] —*Held:* the inquiry was not conclusive.—*Re* QUEEN OF THE THAMES (1872), 36 J. P. 72.

1214. After this case add "*See, also*, ESTOPPEL, Vol. XXI., pp. 154–156, Nos. 165–190."

1240. *Add. Annotation:*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1241. After the last cross-reference following this case add "—— **Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**]—*See* HUSBAND & WIFE, Nos. 6233b, 6233c, 6233d."

1241a. —— **Judgment severable.**] — RAULIN *v.* FISCHER, No. 1120, *ante*.

1243a. —— **Since constitution of Irish Free State.**] —Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—WAKELY *v.* TRIUMPH CYCLE Co., [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.

Annotations:—**Followed.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society *v.* Bray U. D. C., [1930] A. C. 377.

1243b. —— ——.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

Semble: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of

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PART XIV. SECT. 3, SUB-SECT. 1.—A.

1155 iii. —— ——.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay; the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—CALLAGHAN *v.* NICHOLLS, [1921] 3 W. W. R. 476; 31 Man. L. R. 331.—**CAN.**

1167 v. —— —— —— ——.]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—HUTTON *v.* DENT (1922), 70 D. L. R. 582.—**CAN.**

sd. *Test of judgment on merits.*]—The true test whether a foreign judgment has been passed on the merits is whether the judgment has been given as a penalty for any conduct of deft. or whether it is based on a consideration of the truth or otherwise of pltf.'s case.—MEHR SINGH *v.* ISHAR SINGH (1932), I. L. R. 14 Lah. 58.—**IND.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.*]—Where a ct. of the country of domicil adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicil to determine whether its own proceedings are *in rem* or merely *in personam*, & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—JONES *v.* SMITH, [1925] 2 D. L. R. 790; 56 O. L. R. 550.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. —— ——.]—*Re* HAMAR, *Ex p.* MCGUINTY & CO. (1921), 63 D. L. R. 241; 2 C. B. R. 137.—**CAN.**

1215 v. —— ——.]—MARSHALL *v.* HOUGHTON, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—**CAN.**

PART XIV. SECT. 4 SUB-SECT. 3.

sb. *Action in Ontario against Ontario administrator—On foreign judgment against foreign administrator.*]—Where administrations are granted to different persons in different states, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the other, to effect assets received by the latter in virtue of his own administration.—BONN *v.* NATIONAL TRUST CO., [1930] 4 D. L. R. 820; 65 O. L. R. 633.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 4.

sd. *Defence on merits—Application to strike out.*]—LESPERANCE *v.* LEISTIKOW, [1935] 3 W. W. R. 1; 4 D. L. R. 125; 43 Man. L. R. 322.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 5.

sg. *Effect of—Foreign decree of divorce.*]—On a petition for divorce it was shown that a decree of divorce to the parties had been granted by a foreign ct. on the cross-complaint of petitioner herein, that resp. subsequently married the co-resp. in said suit, & that petitioner had allowed 12 years to elapse without doing anything to question the validity of the foreign decree:—*Held:* even though that decree was invalid here, the petition should be dismissed on the grounds that petitioner had been "accessory to" the adultery of which he now complained & had been guilty of "unreasonable delay" in presenting his petition.—LITTLE *v.* LITTLE, [1930] 3 W. W. R. 222; 39 Man. L. R. 170; *revsd.*, [1931] 1 W. W. R. 5; 1 D. L. R. 823; 39 Man. L. R. 264.—**CAN.**

PART XIV. SECT. 5.

1233 iii. —— ——.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—*Held:* she was not estopped by the foreign judgment, & alimony granted.—DETRO *v.* DETRO, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—**CAN.**

k i. —— *Identity of subject-matter—Onus of proof.*]—QUICKSTAD *v.* MCNEILL, [1932] 4 D. L. R. 427; 46 B. C. R. 81.—**CAN.**

PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—GIEVES *v.* O'CONOR, [1924] 2 I. R. 182.—**IR.**

the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

SUB-SECT. 2.—OF SUPERIOR COURTS OF UNITED KINGDOM AND DOMINIONS (p. 471).

Order to secure lump sum.]—*See* HUSBAND & WIFE, No. 5469a, *post.*

1252a. Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), s. 1—Canadian judgment—No order relating to Canada—Right to bring action on judgment.]—Deft. brought an action against pltf. co. in the Supreme Ct. of Ontario. The action was dismissed with costs, & an appeal to the Ct. of Appeal in Ontario was also dismissed with costs. The costs were duly taxed & a part of them paid or satisfied by money paid in by deft. Deft. gave notice of appeal to the Privy Council &, as required by the rules of ct. of the Ct. of Appeal of Ontario, he gave security for the costs of that appeal. Pltf. co. sought to recover in England the balance of the costs payable in respect of the earlier proceedings. Deft. contended that pltf. co. could not sue upon the Ontario judgment, having regard to (i) the Administration of Justice Act, 1920 (c. 81), s. 9 (1); (ii) Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), ss. 1, 6, 7, & Reciprocal Enforcement of Judgments (General Application to His Majesty's Dominions, etc.) Order, 1933; & (iii) the fact that deft. had given notice of appeal to the Privy Council & had given security for the costs of that appeal:—*Held:* (1) there was nothing in the Act of 1920 forbidding the bringing of an action in England on a colonial judgment; (2) as no order in council under sect. 1 of the Act of 1933 had been made specifying that the Act should extend to Ontario & the Supreme Ct. of Ontario should be deemed to be a superior ct. for the purposes of the Act, pltf. co. was not entitled to register its judgment under sect. 2 of the 1933 Act & its action was therefore not barred by sect. 6 of the same Act; (3) as deft. had not given security, as required by the Revised Statutes of Ontario, 1927, c. 86, s. 3 (*d*) for payment of the sums claimed if the appeal to the Privy Council were dismissed, there could be no stay of pltf. co.'s right to recover the sums claimed.—YUKON CONSOLIDATED GOLD CORPN., LTD. *v.* CLARK, [1937] 2 All E. R. 343; 157 L. T. 259; 81 Sol. Jo. 459.

1262a. Date from which interest runs—No date fixed in judgment.]—DOUGLAS *v.* FORREST, No. 1044a, *ante.*

Part XVI.—Practice and Procedure.

1272a. —— Not payment under garnishee order in England.]—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, No. 1307a, *post.*

1277a. ——.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus.*

(2) *Semble:* set-off is matter of procedure, &, as such, determinable by the *lex fori.*—MACFARLANE *v.* NORRIS (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.

Annotation:—As to (2) **Reid.** Maspons y Hermano *v.* Mildred (1882), 9 Q. B. D. 530.

PART XIV. SECT. 7, SUB-SECT. 2.

sm. *By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct., so that it might be enforced in New Zealand:—*Held:* (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—REDHEAD *v.* REDHEAD & CROTHERS, [1926] N. Z. L. R. 131.—**N.Z.**

sn. *Reciprocal Enforcement of Judgments Act, 1925—Scope of Act.*]—Reciprocal Enforcement of Judgments Act, 1925, does not permit the registration of a judgment obtained in a province or territory of the Dominion of Canada to which the Act applies unless the judgment is one which could be enforced by action thereon in Alberta. The Act does not make the judgments to which it applies any less "foreign" judgments or any more directly enforceable than before the Act was passed, & does not alter the rules of private international law as to the recognition to be given to foreign judgments. Therefore a judgment obtained in another province, under the rules thereof permitting service *ex juris*, against a deft. who was not resident or present in that province & did not submit to the jurisdiction of the ct. by contract or appearance is not one which is registrable under the Act. A partnership is not a "person," within the meaning of the Act, against whom a judgment may be registered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* RYAN (Alta.), [1930] 1 D. L. R. 280; [1929] 3 W. W. R. 403.—**CAN.**

sg. *Reciprocal Enforcement of Judgments Act, 1929 (Ont.)—Application of Act.*]—Where deft. would have a good defence to an action in Ontario on a British Columbia judgment, the registration of the judgment under Reciprocal Enforcement of Judgments Act, 1929 (Ont.) is forbidden.—*Re* TANGYE & SMITH, LTD. & PELICAN CARBON CO., [1935] 1 D. L. R. 759; O. R. 123.—**CAN.**

PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—Under the Evidence Act, N. B., c. 127, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—HARRIS *v.* GARSON (1921), 67 D. L. R. 682; 49 N. B. R. 91.—**CAN.**

PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori.*—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—**CAN.**

1266 i. ..... the time ..... action may be brought, *i.e.* any l ..... tion in the strict sense of that ..... is a matter of procedure; & is gov ..... by the *lex fori.* Therefore a law of a foreign country in which a debt was contracted which limits the time within which an action may be brought there on, but does not extinguish the debt, does not affect the right of action here.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

1280. *Add. Annotation :—As to* (4) **Apld.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1285a. —— **Foreign receivers or assignees in bankruptcy.**]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—MACAULAY *v.* GUARANTY TRUST CO. OF NEW YORK (1927), 44 T. L. R. 99.

1289. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1290. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1292a. —— —— ——.]—WRIGHT *v.* SIMPSON (1802), 6 Ves. 714 ; 31 E. R. 1272, L. C.

Annotations :—**Consd.** Newton *v.* Chorlton (1853), 2 Drew. 333. **Refd.** The Vreede (1811), 1 Dods. 1 ; Pennell *v.* Roy (1853), 3 De G. M. & G. 126 ; Jackson *v.* Digby (1854), 2 W. R. 540 ; Strong *v.* Foster (1855), 4 W. R. 151 ; Madden *v.* M'Mullen (1860), 4 L. T. 180 ; Bailey *v.* Edwards (1864), 4 B. & S. 761 ; Belfast Banking Co. *v.* Stanley (1867), 15 W. R. 989 ; Liverpool Marine Credit Co. *v.* Hunter (1867), L. R. 4 Eq. 62 ; Barber *v.* Mackrell (1892), 68 L. T. 29.

1306a. Governed by lex fori.]—MACFARLANE *v.* NORRIS, No. 1277a, *ante*.

1307. *Add. Annotations :*—**Distd.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673. **Consd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808 ; Richardson *v.* Richardson, [1927] P. 228.

1307a. Garnishee proceedings — Payment of debt situate in England — Recognised by international law.]—Judgment having been recovered against a foreign corpn., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corpn. :—*Held :* the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corpn., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673 ; 92 L. J. K. B. 600 ; 128 L. T. 809 ; 39 T. L. R. 179 ; 67 Sol. Jo. 423, C. A.

Annotations :—**Apld.** Employers' Liability Assce. *v.* Sedgwick [illegible] L. J. K. B. 1015. **Consd.** Richardson *v.* Richardson, [1927] P. 228.

1307b. —— —— ——.]—Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to pltfs., the writ being served on C., & in default of appearance judgment was signed against defts. Pltfs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England :—*Held :* as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1 ; 95 L. J. K. B. 7 ; 133 L. T. 808 ; 41 T. L. R. 663, C. A. ; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95, H. L.

Annotations :—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495 ; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* Russian & English Bank (1932), 48 T. L. R. 282 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745 ; The Madrid, [1937] P. 40.

1308. *Add. Annotation :—As to* (2) **Refd.** The Stream Fisher, [1927] P. 73.

1309a. —— **Rights of mortgagee of ship under French hypothèque—Claim for necessaries.**]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c. 60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessaries man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship :—*Held :* as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessaries man who had merely the right to sue *in rem*, the claim of the necessaries men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102 ; 92 L. J. P. 100 ; 128 L. T. 759 ; 16 Asp. M. L. C. 145, C. A.

Annotations :—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1309b. Rights of "ship's creditors" under German code—As against mortgagee & other necessaries men.]—A German firm supplied bunker coal to a Latvian steamship in a German port under a contract which was said to confer upon them a status known to German law as

PART XVI. SECT. 3, SUB-SECT. 1.

sd. —— *Liability to action for damages within jurisdiction—Attempt to return to country of residence.*]—Pltf. claimed $20,000 damages from deft., the cause of action being criminal conversation with pltf.'s wife. Deft. lived in U.S., but was here for a temporary purpose when pltf. had him arrested under an order to hold to bail. Pltf. in his affidavit sworn on Jan. 30, on which the order was granted, stated that deft. had arrived in Toronto that morning, & that he intended to leave for his own country that night, with intent to defraud pltf. of the damages he had sustained :—*Held :* in leaving Ontario he was not doing so with intent to defraud pltf., & was therefore entitled to be discharged.—RICE *v.* FLETCHER (1889), 13 P. R. 46.—**CAN.**

that of "ship's creditors." The ship was subsequently arrested in England at the suit of other necessaries men & sold by order of the English ct. Further claims were brought against her by a mtgee. & other necessaries men, & these, as well as the German firm, in due course obtained judgment, in default of appearance, against the proceeds of the sale of the ship. On a motion to determine priorities it was argued for the German suppliers of bunkers that the law applicable was the German Commercial Code, by which "ship's creditors" were given priority not only over other necessaries men but also over a mtgee., & also were given the equivalent of a maritime lien, which entitled them to follow the ship or her proceeds into the hands of subsequent owners: — *Held:* any rights possessed by the claimants under German law were of no value unless & until they were enforced by the arrest of the vessel in the German cts.; the question of priorities must be determined by the *lex fori*, under which the claimants as necessaries men had no maritime lien or special rights over the heads of a mtgee. or other necessaries men.—THE ZIGURDS (No. 1), [1932] P. 113; 101 L. J. P. 75; 148 L. T. 72; 48 T. L. R. 556; 18 Asp. M. L. Cas. 324.

1310. *Add. Annotations:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382; Oppenheimer *v.* Louis Rosenthal & Co., A. G., [1937] 1 All E. R. 23.

1312. *Add. Annotation:*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1313. *Add. Annotations:*—**Distd.** The London, [1931] P. 14. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1315a. —— Action relating to same subject-matter.]—An action *in personam* for damage occasioned by a collision in Scottish waters was commenced in the cts. of Scotland by the owners of the *L.* against the owners of the *G.* Subsequently the owners of the *G.* commenced proceedings *in rem* in England for the damage to their vessel against the owners of the *L.* & under threat to arrest obtained security from the owners of the *L.*, who thereupon applied by summons to stay the proceedings in the action in England:—*Held:* the ct. will not, as a matter of course, where there is an action pending in the United Kingdom or any of the British Dominions, stay a second action commenced in respect of the same subject-matter, whether pltf. is or is not the same in both actions; & the matter being one of discretion, in the circumstances of the present case no stay to be granted.—THE LONDON, [1931] P. 14; 100 L. J. P. 57; 144 L. T. 375; 47 T. L. R. 170; 18 Asp. M. L. C. 180.

Annotation:—**Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1319a. —— —— Difficulty of proving foreign law in England.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 336a, *ante*.

1321. *Add. Annotation:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1325a. —— Plaintiff in England defendant abroad.]—A Greek vessel & an Argentine vessel came into collision in the River Parana; the Argentine vessel sank, &, it was alleged, became a total loss.

On Sept. 30, 1936, proceedings were instituted in the Argentine by the owners of the sunken ship, an Argentine corpn.; the owner of the Greek ship put in a counter-claim, but on Oct. 27 withdrew it. Meanwhile, on Sept. 30, he had issued the writ in the present proceedings in this country, & served it by leaving a copy at the London office of the Argentine Corpn. which had been established for the purpose of the transfer & registration of shares. The Argentine Corpn. moved to set aside the writ, or alternatively to stay the proceedings, on the grounds, amongst others, (*a*) that the corpn. only carried on business within the jurisdiction so far as claims connected with the share register were concerned; (*b*) that the proceedings were vexatious & oppressive as there was an action pending in Argentina, where all the corpn.'s witnesses as well as the chief witnesses for the Greek ship resided; & further that pltf. had no effective remedy, inasmuch as Argentine law must be applied in this country, under which, if a vessel was a total loss, liability being limited to the property available, her owners were under no liability at all. By Cos. Act, 1929 (c. 23), s. 352, the expression "place of business" includes a share transfer office:

(1) as the corpn. had a place of business within the jurisdiction it was amenable to the jurisdiction for all purposes & not merely to the limited jurisdiction suggested; (2) pltf.'s action could not be stayed merely because he was deft. elsewhere; it could not be said, as in *Dawkins* v. *Prince Edward of Saxe Weimar* (1876), 1 Q. B. D. 499; 38 Digest 79, *566*, that on the facts of the declaration no cause of action was shown; & the question whether pltf.'s claim was groundless depended on facts which he was entitled to have tried, & accordingly the motion failed.—THE MADRID, [1937] P. 40; [1937] 1 All E. R. 216; 106 L. J. P. 39; 53 T. L. R. 237.

1328. *Add. Annotations:*—**Consd.** The Golaa, [1926] P. 103. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1331. *Add. Annotation:*—**Refd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332. *Add. Annotation:*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332a. ——.]—ELLERMAN LINES, LTD. *v.* READ, No. 1135a, *ante*.

1340. *Add. Annotations:*—**Consd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

PART XVI. SECT. 5, SUB-SECT. 2.—B.

b i. —— *Indian courts.*]—The case of *Carron Iron Co.* v. *Maclaren* is not an authority for the proposition that a ct. will not grant an injunction against a person who is not within its jurisdiction, so that he would be subject to process of contempt.

The position of cts. in India *inter se* is quite different from that of English cts. as regards foreign cts.—A. MILTON & Co. *v.* OJHA AUTOMOBILE ENGINEERING Co. (1930), I. L. R. 57 Calc. 1280.—IND.

1342. *Add. Annotation :*—**Reld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1345. *Add. Annotation :*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1348a. —— —— **Scottish action for rectification of settlement.**]—WILSON *v.* WILSON (1895), *Times*, Feb. 14 & Mar. 5.

1351. *Add. Annotation :*—**Consd.** Vardy *v.* Smith (1932), 148 L. T. 124.

1370. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1372. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1375. *Add. Annotation :*—*As to* (1) **Reld.** Lindsay *v.* Lindsay, [1934] P. 162.

1378. *Add. Annotation :*—**N.F.** The London, [1931] P. 14.

1378a. —— ——.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt: —*Held :* if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—THE JANERA, [1928] P. 55; 97 L. J. P. 58; 138 L. T. 557; 44 T. L. R. 193; 17 Asp. M. L. C. 416.

Annotations :—**Distd.** The London, [1931] P. 14. **Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382. **Consd.** The Madrid, [1937] P. 40.

1378b. Action in rem in one country—Whether stayed pending proceedings in personam by defendant in another country.]—THE LONDON, No. 1315a, *ante*.

1379a. —— —— —— ——.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8 :—*Held :* having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—THE GOLAA, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations :*—**Distd.** The Juno (1922), 128 L. T. 671. **Apld.** The Golaa, [1926] P. 103. **Consd.** The London, [1931] P. 14. **Reld.** The Goulandris, [1927] P. 182; The Baarn (1933), 150 L. T. 50.

1381. *Add. Annotation :*—**Consd.** The Juno (1922), 128 L. T. 671.

1383. *Add. Annotations :*—**Folld.** The Juno (1922), 128 L. T. 671. **Reld.** The Golaa, [1926] P. 103.

1383a. — — —— ——.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland :—*Held :* no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—THE JUNO (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

1387. *Add. Annotation :*—**Reld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

1393. *Add. Annotation :*—*As to* (1) **Consd.** Societe Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933), 77 Sol. Jo. 800.

1395a. —— —— —— ——.]—SOCIETE ANONYME METALLURGIQUE DE PRAYON, TROOZ, BELGIUM *v.* KOPPEL (1933), 77 Sol. Jo. 800.

PART XVI. SECT. 6, SUB-SECT. 2.
s. Add "*varied on appeal*, 4 A. R. 267."

CONSECRATION.

See BURIAL AND CREMATION; ECCLESIASTICAL LAW.

CONSERVANCY.

See WATERS AND WATERCOURSES.

CONSISTORY COURT.

See ECCLESIASTICAL COURT.

CONSORTIUM.

See HUSBAND AND WIFE.

CONSPIRACY.

See CRIMINAL LAW; TORT; TRADE AND TRADE UNIONS.

CONSTABLE.

See CRIMINAL LAW; POLICE.

CONSTITUTIONAL LAW.

Part II.—The Title to the Crown.

2. *Add. Annotation:—As to* (2) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

Part III.—Relations between the Crown and the Subject.

7a. —— **In foreign parts.**]—There is no legal duty on the Crown to afford by its military forces protection to British subjects in foreign parts. If, in the exercise of its discretion, the Crown decides to afford such protection, it may lawfully stipulate that it will do so only on the condition that the cost shall be borne by those asking for it.

Pltfs., an English shipping co. trading in the China seas, requested the Crown to provide armed guards to be placed on board their ships as a protection against internal piracy, which was a serious menace at the material time. Armed guards having been provided on the terms that they should be paid for by the pltfs., the latter claimed a declaration that as British subjects they were entitled to protection without payment:—*Held:* there was no duty on the Crown to afford military protection to pltfs. in foreign parts, & if it did afford protection it was entitled to do so on such terms as it thought fit.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197; 101 L. J. K. B. 478; 147 L. T. 22; 48 T. L. R. 375; 18 Asp. M. L. C. 288, C. A.

17. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

Part IV.—The Royal Family.

25. *Add. Annotation:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part V.—The Royal Prerogative.

53. *Add. Annotation:—As to* (2) **Consd.** Nadan *v.* R., [1926] A. C. 482.

54. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

58a. Crown cannot seize subject's property without compensation—What amounts to seizure.]—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where, by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—FRANCE FENWICK & CO. *v.* R., [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

Annotations:—**Refd.** Ensign Shipping Co. *v.* I. R. Comrs. (1927), 139 L. T. 111; Ensign Shipping Co. *v.* I. R. Comrs. (1928), 12 Tax Cas. 1169.

Part VI.—The Crown in relation to the Executive.

78. *Add. Annotation:*—**Consd.** Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248.

79. *Add. Annotations:*—**Consd.** Reilly *v.* R., [1934] A. C. 176; Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248. **Refd.** Nix *v.* A.-G., [1930] 1 Ch. 566.

79a. —— —— ——.]—Applt., who held office in the civil service of the Crown in India as a reader in the Govt. Press, Madras, fell under suspicion of being concerned in a leakage of information in respect of certain examination papers, & was dismissed from the service. On a claim against the Secretary of State for India in Council for damages for wrongful dismissal:—*Held:* the procedure prescribed by rule XIV. of the Civil Services

III. SECT. 1.

b 1. *To govern & protect—Statutory right to compensation for civil commotion—Loss of right by recovery from insurer.*]—LEEN *v.* EXECUTIVE COUNCIL (PRESIDENT), [1928] I. R. 408.—IR.

PART VI. SECT. 2, SUB-SECT. 1.

78 1. *Public officers & servants generally—Suspension of—Holding of inquiry—Court cannot interfere.*]—SCHIERHOUT *v.* UNION GOVERNMENT (MINISTER OF JUSTICE), [1926] App. D. 295.—S. AF.

Classification Rules, 1920–24, made under sect. 96B (2) of Govt. of India Act, 1919 (c. 101), was not followed at the official inquiry which preceded the dismissal. Applt.'s employment, however, was not of a limited & special kind during pleasure with an added contractual term that the procedure prescribed by the Rules must be observed; it was by the express terms of sect. 96B held "during His Majesty's pleasure," & no right of action as claimed by the applt. existed. The terms of sect. 96B assure that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by the rules, which are manifold in number, most minute in particularity & all capable of change, but there was no right in applt., enforceable by action, to hold his office in accordance with with those rules, & he could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them. Sect. 96B & the rules make provision for the redress of grievances by administrative process.—VENKATA RAO *v.* SECRETARY OF STATE FOR INDIA, [1937] A. C. 248; 106 L. J. P. C. 53; 156 L. T. 261, P. C.

80. *Add. Annotations:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

81. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

83. *Add. Annotations:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

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81 ii. —— —— ——.] — Pltf., manager of a railway under a contract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice, was dismissed without notice:—*Held:* (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest. —NOBLE *v.* NEWFOUNDLAND GOVERNMENT (1902), 8 Nfld. L. R. 571, 601.—**NFLD.**

83 iii. —— —— ——.]—If the terms of the appointment to a public office definitely prescribe a period of employment & expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication to dismiss at pleasure is excluded. *Qu.:* whether the relations between the Crown & the holder of a public office are not, at least in respect to some offices, constituted in some degree by contract.—REILLY *v.* R., [1934] 1 W. W. R. 298; 1 D. L. R. 434.—**CAN.**

83 iv. —— —— ——.]—Apart from some special statutory provision, no action will lie against the Crown for the wrongful dismissal of a servant of Govt. This rule of law is based upon public policy & the prerogative right of the Sovereign. In Government of India Act, 1919, s. 96B, the words "subject to the provisions of this Act & of rules made thereunder every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure," read together with r. 14 of the rules regarding the Civil Services in India made by the Secretary of State providing for—proper departmental inquiry, indicate that certain formalities must be observed before a civil servant can be dismissed. In so far as these formalities are alleged not to have been followed, pltf. has a cause of action.—BARONI *v.* SECRETARY OF STATE FOR INDIA (1929), I. L. R. 8 Ran. 215.—**IND.**

83 v. —— —— ——.]—At common law, where the Crown is the employer, & the office is not an ancient office with special incidents, the employment, whether it be permanent or temporary, is during pleasure only, & the Crown servant may be dismissed at any time without notice. This right in the Crown exists, notwithstanding any provision in the contract of employment to the contrary unless, in a particular case, it is excluded by Statute. Such exclusion may be implied where a Statute prescribes special conditions for dismissal as the case may be. Where there is a suspension of an officer, this may operate not to vacate the office, but to relieve the officer from the performance of his duties whilst leaving him absolutely or conditionally entitled to his salary; or it may operate as a temporary suspension of the whole contract of employment.—BROWNE *v.* RAILWAYS COMR. (1936), 36 S. R. N. S. W. 21; 53 N. S. W. W. N. 1.—**AUS.**

83 vi. —— —— ——.]—Sect. 96B of Govt. of India Act, 1919, does not abrogate the rule that a Govt. servant has no right of action for damages for wrongful dismissal.—SECRETARY OF STATE FOR INDIA *v.* MAURICE, I. L. R., [1937] Ran. 35.—**IND.**

p i. —— —— ——.]—The Crown can dismiss its servants at pleasure & without notice unless the power of dismissal has been limited by some statutory provision, the general rule being that a Government servant holds office during pleasure & is liable to be dismissed at any time without notice & without reason assigned. The rule is subject to exceptions, but they must be statutory exceptions.—SECRETARY OF STATE FOR INDIA *v.* YADAVGI (1935), I. L. R. 60 Bom. 42.—**IND.**

a. *Affd. sub nom.* YOUNG *v.* ADAMS, [1898] A. C. 469, P. C.

c i. —— —— *Ordinance made under Northern Territory Acts.*]—Pltf. was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services:—*Held:* the Crown had power to dispense, at will, with the services of pltf., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—TROWER *v.* THE COMMONWEALTH (1924), 34 C. L. R. 587.—**AUS.**

f i. —— —— *Effect of Government of India Act,* 1919.]—Govt. of India Acts, 1919, s. 96B, does not abrogate the right of the Crown to dismiss its civil servants at its pleasure, but reiterates that right & enacts that the same is only limited in so far as there are definite & special or particular rules laying down the method by which, or the circumstances in which, that right is to be exercised.—BIMALACHARAN BATABYAL *v.* INDIAN MUSEUM TRUSTEES (1929), I. L. R. 57 Calc. 231.—**IND.**

f ii. —— —— *Failure to observe conditions precedent—Remedy.*]—Where a public servant has been discharged contrary to Act 27, 1923, that is to say, where the statutory conditions precedent to his lawful discharge have not been observed, he is entitled, notwithstanding that his discharge is a nullity, to claim damages against the Crown for wrongful dismissal & is not limited to the remedy of having the irregular procedure set aside or the proper procedure enforced.

A Minister of the Crown, in discharging or purporting to discharge a public officer under Act 27, 1923, does not act as a servant of the Legislature, but as a servant of the Crown.—BRAMDAW *v.* UNION GOVERNMENT (1931), 52 N. L. R. 57.—**S. AF.**

f iii. —— —— *Refusal to be transferred.*]—A public servant received notice of transfer from Auckland to New Plymouth to which he objected. He failed to comply with a final notice to go to the latter place, & was thereupon dismissed by the Public Service Comr. In an action against the Crown for wrongful dismissal:—*Held:* the effect of sect. 50 of Public Service Act, 1918, is that if it is desirable that an officer be transferred from one place to another that officer has no alternative but to obey, unless he can satisfy the Comr. that the transfer should not take place. The Comr. by that sect. is made the sole judge of the sufficiency of the reasons against the transfer, & from his decision there is no appeal.—BARNES *v.* R., [1933] N. Z. L. R. Supp. 117.—**N.Z.**

f iv. —— ——.]—F. was gazetted a member of the Unemployment Board for a period of two years from Nov. 20, 1930. He performed his duties as a member of the Board for eight months, during which time he received an allowance of £2 2*s. per diem* as the Board sat continuously. On July 31, 1931, his occupancy of the position was terminated by sect. 26 of Unemployment Amendment Act, 1931. F. claimed damages for the wrongful termination of his employment:—*Held:* (1) the office of membership of the Unemployment Board as constituted by Unemployment Act, 1930, was abolished by sect. 26 of the Amendment Act, 1931; (2) even if the office had not been abolished, the Crown's absolute power of dismissal of a servant of the Crown at any time without incurring liability for damages or compensation was not restricted by Unemployment Act, 1930, or by the Unemployment Act, 1931; (3) there was no contractual relationship between the Crown & the suppliant as appointee to the office—he was simply gazetted as appointed to the Unemployment Board of 1930; he could resign at any time, & there was no provision for his remuneration; &, since there was no *animus contrahendi*, a valid claim could not be established against the Crown.—FINN *v.* R., [1933] N. Z. L. R. 1018.—**N.Z.**

g i. —— *Retirement by Order in Council—No office named in Order—Retirement from all public offices.*]—BRYCE *v.* R. (Can. Ex.), [1929] 3 D. L. R. 138.—**CAN.**

83a. —— —— ——.]—If the terms of an appointment prescribe its period & provide expressly that it may be terminated for cause, a power to dismiss at pleasure cannot be implied.—REILLY *v.* R., [1934] A. C. 176; 103 L. J. P. C. 41; 150 L. T. 384; 50 T. L. R. 212, P. C.

85. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

86. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

100. After the cross-reference following this case add as follows :—

Extension of British jurisdiction in British protectorate.]—*See* DEPENDENCIES, No. 10a.

—— **Effect of recitals in.**]—*See* ESTOPPEL, Vol. XXI., p. 331, No. 1247.

107. *Add. Annotation :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

110. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

119. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

122. Before this case add "*See, also,* CROWN PRACTICE, Vol. XVI., pp. 481–491."

136a. Statement of fact—Whether binding on court.]—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorganshire, &, on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended :—*Held :* (1) (ATKIN & L.JJ.) the statement of the A.-G. was binding on the ct.; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should be guided by the information so given.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

136b. —— ——.]—ENGELKE *v.* MUSMANN, No. 418a, *post.*

152. *Citations :*—For "[1920] 1 Ch. 107" read "[1921] 1 Ch. 107."

153a **Admiralty—Action against—Description in writ.**]—By 1 & 2 Geo. 4, c. 93, s. 9, the principal officers & comrs. of the navy for the time being were empowered to bring & maintain any action of ejectment or other proceeding for recovering possession of lands, etc., vested in them, & to bring, maintain, or defend any other action in respect of the said lands, etc.; & it was enacted that, in any such action, they should be called by the name of "the principal officers & comrs. of His Majesty's navy," without naming any of them; & that such action or suit should not abate by the death, resignation, or removal of such comrs., or any of them. By subsequent statutes, the powers & authorities of those comrs. were transferred to & vested in "the comrs. for executing the office of Lord High Admiral of the United Kingdom." A writ of summons, addressed to "the comrs. for executing the office of Lord High Admiral of the United Kingdom," requiring them to

PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act, 1914, s. 6—Validity.*]—PUGSLEY *v.* GARSON (1922), 50 W. B. R. 414.—**CAN.**

100 ii. —— *Under Dominion Lands Act, R. S. C., 1886 (c. 54)—Validity.*]—STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO., [1927] 2 W. W. R. 379; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

100 iii. —— *Whether contract constituted.*]—*Held :* Orders in Council issued pursuant to 46 Vict. c. 17, ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—[illegible] R. (1894), 23 S. C. R. 488.—**CAN.**

100 iv. —— ——.]—STEWART *v.* JONES (1900), 19 P. R. 227.—**CAN.**

100 v. —— *Based on mistake of fact—Whether binding on Crown.*]—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—QUEBEC, MONTREAL & SOUTHERN RY. CO. *v.* R. (1914), 15 Exch. C. R. 237.—**CAN.**

100 vi. —— *Sufficient memorandum in writing of agreement.*]—*Held :* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 174.—**CAN.**

100 vii. —— *Authorising contract—Scope of authority.*]—*Held :* an Order in Council authorising the Minister to enter into a contract for the removal of clay, sand & gravel, tendered for at a given price, does not carry with it any authority to add anything to or to vary the scope of the contract beyond the ambit of the Order in Council. The introduction of a clause purporting to be part of the authorised contract, throwing upon the contractor the obligation to remove, at the same price, material of another class than that mentioned in the Order in Council, is beyond the authority conferred by said Order in Council.—NATIONAL DOCK & DREDGING CORPN., LTD. *v.* R., [1929] Ex. C. R. 40.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

sm. *Whether power to begin action in county court by information.*]—R. *v.* COLMAN, [1930] 1 D. L. R. 523; [1929] 3 W. W. R. 385; 52 Can. C. C. 186; 38 Man. L. R. 330.—**CAN.**

so. *Department of Attorney-General—Manitoba Temperance Act, s. 68.*]—The Department of the A.-G. referred to in the above sect. is to be distinguished from the A.-G.—R. (THOMPSON) *v.* HAMMATT (Man.), [1926] 3 W. W. R. 350.—**CAN.**

sp. *Meaning of—In statute.*]—Wherever the words "Attorney-General" are used without qualification in a code or in a statute of Quebec, they have reference to the Attorney-General for Quebec.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452.—**CAN.**

Misapplication of powers delegated by Provincial Legislature.]—The delegate of a provincial Legislature can no more usurp indirectly the functions of the Parliament of Canada than can the Legislature itself, & it is the duty of the cts. to interfere to protect the subject from such an illegitimate exercise of powers founded upon oblique motives. On appeal from the dismissal of an action for an injunction restraining the defts. from taking further proceedings under Security Frauds Prevention Act, 1930, in alleged pursuance of "delegated authority" under sect. 10 of said Act :—*Held :* deft. A.-G. by & through his delegated representative had unconstitutionally misapplied the powers delegated to him, in that the purpose of his proceedings was to aid a criminal prosecution, something which was not contemplated by the Act, with the result that the federal field had been just as much invaded, even if indirectly, as if the primary invasion had been accomplished directly by the passing of an Act which in its terms was a violation of the B. N. A. Act.—MCGEE *v.* POOLEY, [1931] 3 W. W. R. 65, 140; 4 D. L. R. 475; 56 Can. C. C. 325; 44 B. C. R. 338.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

st. *Acting Deputy Attorney-General.*] [illegible] [1933]

appear in an action of debt at the suit of the pltf., was served upon A., one of the comrs., & upon no one else. Upon a motion, on behalf of A., to set aside the writ, & the copy & service thereof, for irregularity, the affidavits disclosed that the action was brought to recover arrears of half-pay alleged to be due to pltf.:—*Held:* that it was not competent to the ct., in dealing with such a motion, to enter into the consideration of whether the action was maintainable or not; for that, inasmuch as 1 & 2 Geo. 4, c. 93, s. 9, enabled some actions to be brought against the comrs. by the description contained in this writ, there was no irregularity in the process itself; & to determine, upon a summary application, that the cause of action was not within the statute, would be to deprive pltf. of his right to review their decision by writ of error.

The comrs. of the navy are not a corpn.: *semble*, therefore, that the proper mode of serving them with process would be by delivering a copy to each of them.—WILLIAMS *v.* ADMIRALTY COMRS. (1851), 11 C. B. 420; 2 L. M. & P. 456; 20 L. J. C. P. 245; 17 L. T. O. S. 200; 16 Jur. 42; 138 E. R. 536.

—— —— **Service of writ.**]—WILLIAMS *v.* ADMIRALTY COMRS., No. 153a, *ante*.

155. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

157a. Air Council — Whether corporation.]—*Semble:* the Air Council is not a corpn.—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

Part IX.—The Crown in relation to the Law.

175a. ——.]—ROOKEWOOD'S CASE (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. *v.* ROOKWOOD, 13 St. Tr. 139, 186.

Annotations:—**Refd.** R. *v.* Kinloch (1746), 18 State Tr. 395; Heward *v.* Shipley (1803), 4 East, 180; R. *v.* Duffy (1849), 7 State Tr. N. S. 795; Mulcahy *v.* R. (1867), 15 W. R. 446.

214a. ——.]—R. *v.* CROSBY (*alias* PHILIPS) (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

Annotations:—**Refd.** R. *v.* Davis & Carter (1695), 5 Mod. Rep. 74; The Ville de Varsovie (1817), 2 Dods. 174; Hinks' Case (1845), 1 Den. 84; *Re* Barber (1850), 15 L. T. O. S. 500.

218a. —— —— ——.]—In 1833, A. was convicted of felony & transported. At this time his wife was entitled to a fund, contingently on her surviving her mother. In 1846, A. obtained a conditional pardon, available in all places except the United Kingdom. The mother died in 1838, & the wife in 1852. On a petition by the Crown for payment, the ct., without deciding the right, merely ordered payment to the administrator of the wife.—*Re* HARRINGTON'S TRUSTS (1860), 29 Beav. 24; 54 E. R. 533.

233. *Add. Annotations:*—**Refd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480; A.-G. *v.* Still (1927), 44 T. L. R. 102.

240a. Claim that right of administration of premises vested in Crown—Crown must be represented.]—Government House, Sydney, was built upon Crown land about 1845 as a residence for the Governor of New South Wales, &, with the stables of a former residence, was continuously so used until 1900. From 1900 to 1912, by an arrangement between the Governments of the Commonwealth & of the State, the premises were occupied by the Governor-General, & another residence was provided for the Governor of the State. In 1912, this arrangement having come to an end, the State Government threw the grounds attached to the house open to the public & took steps to convert the stables into a school of music. By the New South Wales Constitution Act, 1855 (c. 54), s. 2, all "waste lands" in the then colony were placed under the control of the local Legislature. The A.-G. for New South Wales, at the relation of residents in the State, filed an information praying for declarations that the house & grounds were vested in His Majesty, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, & that neither the Governor of New South Wales nor the Governor in Council had power to interfere with or alter that purpose,

PART VI. SECT. 10.

sb. *No power to waive statutory conditions.*]—A department of the Govt. cannot waive the performance of any of the conditions imposed by the legislature.—PECK *v.* R. (1884), 1 B. C. R. pt. 2, 11.—**CAN.**

sc. *Land Settlement Board.*]—The Land Settlement Board created by Land Settlement & Development Act, 1924 (c. 128), is a department of the Government, & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *on appeal*, [1929] 1 D. L. R. 242.—**CAN.**

sf. *Education Board.*]—An Education Board is not a Department of State, a servant or statutory agent of the Crown, or *in consimili casu*, & so is not entitled to the prerogatives of the Crown, including the prerogative of not being bound by a statute unless so provided in the statute.—CHRISTCHURCH CITY CORPN. *v.* CANTERBURY EDUCATION BOARD, [1933] N. Z. L. R. Supp. 22.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 1.

sb. *Power to pardon—By whom given.*]—*Qu.:* is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning, in the Imperial Parliament only, or, if not, in what legislature does it reside.—A.-G. FOR CANADA *v.* A.-G. OF PROVINCE OF ONTARIO (1893), 23 Can. S. C. R. 458.—**CAN.**

sc. *Not dependent on consent.*]—The Governor-General on the exercise of the royal prerogative may release a convict from prison without his consent.—*Re* ROYAL PREROGATIVE OF MERCY UPON DEPORTATION PROCEEDINGS, [1933] 2 D. L. R. 248; S. C. R. 269; 59 C. C. C. 301.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.

sk. *Amnesty—Terms exceeding six months—Sentence imposed after amnesty but including imprisonment served before.*]—An amnesty reducing terms exceeding 6 months applies to a 9 months sentence imposed after the amnesty but including imprisonment served prior to the sentence.—JACOBS *v.* SEGUIN, [1936] 2 D. L. R. 21; 65 Can. C. C. 147.—**CAN.**

& for an injunction restraining the resp. (as representing the State Government & ministers) from otherwise using the house & grounds :—*Held :* (1) the suit was not maintainable, since no trust had been declared or charity established, & the action complained of was that of the State Executive & within its competence, whether the house & grounds were "waste lands" within above sect. or not ; (2) the proceedings were not properly constituted since it was claimed that the right of administration of the premises was in the Crown in the right of the United Kingdom, but the Crown in that right was not represented before the cts.—A.-G. FOR NEW SOUTH WALES *v.* WILLIAMS, [1915] A. C. 573 ; 84 L. J. P. C. 92 ; 112 L. T. 785 ; 31 T. L. R. 171, P. C.

264a. —— ——.]—BIDGOOD *v.* DAVIES (1826), 6 B. & C. 84 ; 9 Dow. & Ry. K. B. 153 ; 5 L. J. O. S. K. B. 64 ; 108 E. R. 384.

266. For "—— **Chaplain to King**" read "—— **Royal chaplain.**"

266a. *S. P.* WINTER *v.* DIBDIN (1844), 13 M. & W. 25 ; 2 Dow. & L. 211 ; 13 L. J. Ex. 263 ; 3 L. T. O. S. 164 ; 153 E. R. 11.

Annotation :—**Apld.** Harvey *v.* Dakins (1849), 3 Exch. 266.

272. *Add. Citation :*—48 L. J. Q. B. 455.

284. *Add. Citations :*—66 Sol. Jo. 218 ; *affd*, [1922] P. 122.

287. *Add. Annotations :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704 ; *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

289. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Carnarvon Harbour Acts, 1793-1903, Thomas *v.* A.-G., [1937] Ch. 72.

290. *Add. Annotation :*—**Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

291. *Add. Annotation :*—**Consd.** A.-G. for Straits Settlmts. *v.* Pang Ah Yew, [1925] A. C. 555.

PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*]—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the question of provincial legislative jurisdiction.—CITIZENS INS. CO. *v.* JOHNSTON, Cass. Dig. 2nd. ed. 678.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) **i.** —— *For tort.*]—An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE *v.* R. (1920), 62 D. L. R. 390 ; 20 Exch. C. R. 198.—**CAN.**

h (p. 523) **ii.** *S. P.* YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

h (p. 523) **iii.** *S. P.* MANSEAU *v.* R., [1923] 1 D. L. R. 25 ; [1923] Exch. C. R. 21.—**CAN.**

h (p. 523) **iv.** —— ——.]—An action in tort does not lie against the Crown, except under special statutory authority.—THERIAULT *v.* R. (Que.) (1917), 16 Exch. C. R. 253 ; 39 D. L. R. 705.—**CAN.**

h (p. 523) **v.** —— ——.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot :—*Held :* it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co.* v. *A.-G.*, & inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—BRITISH PETROLEUM CO., LTD. *v.* A.-G. FOR CEYLON, [1926] A. C. 147 ; 95 L. J. P. C. 86 ; 134 L. T. 305 ; 42 T. L. R. 166.—**CEYLON.**

h (p. 523) **vi.** —— *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud ; nor can the Crown be held liable for the fraud of its officers.—*Re* FROST BROTHERS, [1925] 2 D. L. R. 339 ; [1925] 2 W. W. R. 459.—**CAN.**

291 xiv. ——.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—MACGREGOR *v.* LORD ADVOCATE, [1921] S. C. 847.—**SCOT.**

291 xv. ——.]—*Held :* (1) no action in tort will lie against the Crown except where & when such right of action is given by Statute ; (2) the act of the Crown in paying the expenses of & incidental to the funeral & burial, is referable to the grace & bounty of the Crown & did not constitute an acknowledgment by it of a right of action.—JOUBERT *v.* R., [1931] Ex. C. R. 113 ; 4 D. L. R. 164.—**CAN.**

j (p. 524) **i.** ——.]—WELDEN *v.* SMITH, [1924] A. C. 484.—**AUS.**

j (p. 524) **ii.** ——.]—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469, P. C.—**AUS.**

y (p. 524). Add "*revsd.*. 30 S. C. R. 42."

y (p. 525) **i.** ——.]—LECLERC *v.* R. (1920), 62 D. L. R. 324 ; 20 Exch. C. R. 236.—**CAN.**

y (p. 525) **ii.** ——.]—*Held :* the Crown was liable in damages under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected & maintained by the provincial Department of Railways & Telephones.—ZORNES *v.* R., HAMILTON *v.* R., [1922] 2 W. W. R. 1179 ; 67 D. L. R. 733.—**CAN.**

y (p. 525) **iii.** ——.]—The suppliant was wounded by a bullet fired, during target practice, from the rifle range at Cote St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained :—*Held :* the rifle range was not a "public work," within Exchequer Ct. Act, 50 & 51 Vict. c. 16 (D.), s. 16 (*c*), & the Crown was not liable.—LAROSE *v.* R. (1900), 6 Exch. C. R. 425.—**CAN.**

y (p. 525) **iv.** ——.]—About 11.30 a.m. on Feb. 10, 1928, suppliant, while entering the Ottawa Post Office to purchase stamps, was struck on the head by an icicle falling from the coping of that building, causing her injury. An employee of the Public Works Dept. who had full charge & care of the roofs of Govt. buildings, especially that of the Post Office, & whose duty it was to remove snow & icicles therefrom, passed the building twice on the morning of the accident, first between 8 & 8.30 & again between 9.30 & 10 o'clock, but claims no snow or ice needed to be removed :—*Held :* the omission of the officer, whose duty it was to keep roofs free of snow & ice, to notice the presence of icicles & to remove them, when he had ample time to do so before the accident, constituted negligence, making the Crown liable for the damage resulting from such careless omission.—JOHNSON *v.* R., [1931] Ex. C. R. 163.—**CAN.**

y (p. 525) **v.** —— —— —— —— *Contributory negligence.*]—At about 9 p.m. on Nov. 15, 1921, one C. drove on to a wharf, Montreal Harbour, with his two children to visit some friends who were employed in transferring freight from a shed on the wharf, rented to private companies, to a warehouse in the city. C. had not been sent by his employer, had no business there & went solely to amuse himself. C. had been drinking & was under the influence of liquor. He was making a nuisance of himself & when told to go, got into his car and drove straight into the canal, & all were drowned :—*Held :* as C. had no business on the wharf on the evening of the accident & was there by tolerance, the Crown under such circumstances was under no obligation or duty to him. The accident was the result of deceased's inebriated condition & he was the victim of his own condition & conduct.—LEGAULT *v.* R., [1931] Ex. C. R. 167.—**CAN.**

y (p. 525) **vi.** ——.]—There is no recourse against the Crown for injury to the person, except in cases coming within the ambit of sub-sect. (*c*) of sect. 19 of Exchequer Ct. Act, R. S. C., 1927 (c. 34).—ROCHON *v.* R., [1932] Ex. C. R. 161.—**CAN.**

y (p. 525) **vii.** ——.]—Suppliant's motor-boat collided with a buoy at the mouth of the Bracebridge river, in the Muskoka Lakes region, on which there was no light, & by his petition sought to recover $500 by way of damages to the boat, alleged to be the result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work, to wit, in not seeing that the buoy carried a light :—*Held :* the buoy in question, was not a public work within the meaning of sect. 19, ss. "C" of Exchequer Ct. Act, &, in consequence, suppliant was not entitled to the relief sought by his petition of right.—CAPON *v.* R., [1933] Ex. C. R. 54.—**CAN.**

y (p. 525) **viii.** ——.]—Specially equipped motor cars, owned by the Govt. of Canada, are employed by the Radio Branch of the Department of Marine, in the detection & elimination of radio inductive interference. Two employees of the Radio Branch were returning to Ottawa in such a car, from a tour of inspection, when they stopped the car on one side of the travelled road to wipe the windshield which had become clouded due to weather conditions. An oncoming car, in which

292. *Add. Annotations :—As to* (1) **Refd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. *As to* (2) **Distd.** Kynaston *v.* A.-G. (1933), 49 T. L. R. 300. **Consd.** *Re* Carnarvon Harbour Acts, 1793–1903, Thomas *v.* A.-G., [1937] Ch. 72. **Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208; Thomas *v.* A.-G., [1936] 2 All E. R. 1325. *Generally*, **Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

293. *Add. Annotation :—***Expld.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

293a. Indemnity Act as defence.]—In 1918 the suppliant, who was then a jewelry dealer in Petrograd, deposited certain jewelry with the British consul, who was in charge of the embassy premises, & owing to difficulties in the way of the consular officers obtaining money the suppliant agreed that the consul might sell the jewelry & use the proceeds for His Majesty's service. The jewelry was put in a locked leather bag kept in a safe at the embassy. Persons claiming to be representatives of the Soviet Govt. entered the embassy & arrested everybody, & afterwards the bag was found to have been cut open & the contents taken. In 1926 the suppliant claimed the value of the jewelry, but the Foreign Secretary repudiated liability, & the suppliant brought a petition of right. The A.-G., by demurrer, submitted that there was no ground of claim as the facts disclosed showed the absence of negligence, &, secondly, he put in an answer & plea that the claim was barred by the Indemnity Act, 1920 (c. 48) :—*Held :* (1) the facts stated in the petition did not negative the possibility of the proof of negligence & the demurrer must be overruled; (2) the claim was barred by the Indemnity Act, 1920 (c. 48), & there must be judgment for the Crown on the answer & plea relating to that Act.—BUCKNALL *v.* R. (1930), 46 T. L. R. 449, C. A.

305. *Add. Citation :*—48 L. J. Q. B. 455.

317. *Add. Annotation :—***Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

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the son of the suppliants was a passenger, collided with the Govt. car, & he was killed :—*Held :* the Govt. owned motor car, in occupation & control of the Govt. employees on the occasion in question, was a "public work" within Exchequer Ct. Act, R. S. C., 1927, s. 19 (*c*); the Govt. employees in the said car were, at the time of the collision in question, officers or servants of the Crown acting within the scope of their duties or employment upon a public work, within Exchequer Ct. Act; the ct. has jurisdiction to entertain the action.—DUBOIS *v.* R., [1934] Ex. C. R. 195; [1935], 2 D. L. R. 314; *revsd.*, [1935] S. C. R. 378; 3 D. L. R. 209.—**CAN.**

y (p. 525) **ix.** ——————————.]—One K., an enlisted soldier in the Canadian Army Service Corps, engaged as a transport driver, stationed at Kingston, drove a motor truck, loaded with supplies, from Kingston & delivered the same to the Royal Air Force at Trenton. Whilst returning to Kingston the motor truck driven by K. negligently collided with a motor truck in which M. was a passenger, causing his death. Suppliants are the widow & step-mother of M. :—*Held :* K. was engaged in a public work & was acting within the scope of his duties as a servant of the Crown, at the time of the accident.—MOSCOVITZ *v.* R., [1934] Ex. C. R. 188; [1935] 2 D. L. R. 308; *revsd.*, [1935] S. C. R. 404; 3 D. L. R. 231.—**CAN.**

y (p. 525) **x.** ——————————.]—An automobile belonging to R. C. M. P. is not a public work & the Crown is not liable for injuries caused by the negligence of the constable driving it.—TOMAN *v.* R., [1935] 2 D. L. R. 289.—**CAN.**

y (p. 525) **xi.** ——————————.]—The immunity of the Crown in respect of tortious acts of the Crown's servants is not destroyed by the fact that the Temiskaming & Northern Ontario Railway Commission administering a public undertaking of the Crown may sue & be sued.—PECCIN *v.* LONEGAN, [1934] 4 D. L. R. 776; O. R. 701.—**CAN.**

y (p. 525) **xii.** ——————————.]—About 9 a.m. on Jan. 23, 1934, M. when going to the Post Office in the town of St. Laurent on business & while walking on the sidewalk leading to the Post Office fell & broke his wrist. It had been raining during the night & the sidewalk was covered with ice. At the place where M. fell there was a depression in the cement walk which held the water on the ice. The caretaker had spread sawdust on the walk instead of the sand provided for the purpose, & this did not adhere to the ice but floated on the water :—*Held :* a Post Office is a public work within the statute; the act of the caretaker in spreading sawdust where water was lying when instructions had been given to put sand, was negligence on his part which bound the Crown & rendered it liable in damages.—LUDGER MARCOUX *v.* R., [1937] Ex. C. R. 23.—**CAN.**

h (p. 525) **i.** —— *Services rendered to committee.*]—The Crown is not liable upon a claim for the services rendered by any one to a committee.—KIMMITT *v.* R. (1896), 5 Exch. C. R. 130.—**CAN.**

ff **i.** —— *For excess of salaries fixed & approved by Governor-General in Council.*]—BURROUGHS *v.* R. (1891), 20 S. C. R. 420.—**CAN.**

ff **ii.** —— *Wrongful acts of police in course of duty.*]—Members of the police force are *prima facie* servants of the Crown, & by virtue of the Crown Liabilities Act, 1910, the Crown is *primâ facie* liable for wrongful acts committed by a member of that Force in the course of his duty. In order to escape liability it is not sufficient for the Crown to show that the police officer was performing a statutory duty. To take the case out of the Act there must be a lack of one or more of the essentials of the law relating to master & servant such as that the police officer was performing a duty of a personal nature which made him independent of the control of the Crown *pro hac vice*.—UNION GOVT. *v.* THORNE, [1930] App. D. 47.—**S. AF.**

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. ——.]—R. *v.* PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN**

sd. —— *Reference to head of department.*]—Under Exchequer Ct. Act of Canada, s. 38, any claim against the Crown may be prosecuted by petition of right or referred to the ct. by the head of the department in connection with the administration of which the claim arises. A claim by applts. for compensation in respect of the repudiation of a contract was so referred by the Minister of Railways & Canals. Subsequently the Crown applied for leave to withdraw the reference :—*Held :* the claim arose "in connection with the administration" of the Department of Railways & Canals & came within sect. 38, & leave must be refused.—DOMINION BUILDING CORPN., LTD. *v.* R., [1930] A. C. 90; 46 T. L. R. 22, P. C.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sf. *Right to plead & demur together.*]—In a common law action the Crown is entitled to plead & demur together without obtaining leave of the ct.—DEMPSTER *v.* RICHARDSON (1931), 24 Tas. L. R. 75.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 4.

317 i. *Addition of Attorney-General—Action affecting rights of Crown—Petition of right not applicable.*]—This was an appeal by the A.-G. for Manitoba from an order by which he was added as a deft. to an action brought against the University of Manitoba to enforce agreements under which pltfs. had agreed to donate certain land as a site for the University on the condition that the University expended a certain amount of money on the grounds & in the erection of buildings. Pltfs. had transferred to the University all of the land originally contemplated except 25 acres which, under an agreement with the provincial Govt., they transferred to the province as a site for a school for the deaf. The agreements with the University were confirmed by an order-in-council which also authorised the execution of the agreement made with the Crown. Pltfs. alleged that these agreements were interdependent, & that there was in reality a tri-partite bargain whereby the Govt. entered into the arrangement previously made by the Governors of the University, furnishing $500,000 for a school for the deaf as part of the general scheme for the erection of educational buildings. This contention the A.-G. denied. Pltfs. asked for specific performance & for an injunction restraining the University from doing anything at variance with its contract with pltfs., & from accepting any money from the Crown for the erection or maintenance of university buildings elsewhere than on said site. No relief was asked for against the Crown; all that was sought with respect to it was a declaratory judgment that the contracts & order-in-council were not *ultra vires* :—*Held :* the appeal should be dismissed, for the reasons : (*a*) the A.-G. should be a party to this action to represent

324a. Civil action against Crown servant—By private person—Discretion of court to order trial at bar.]—ANDERSON *v.* GORRIE (1894), 10 T. L. R. 383, C. A.

339a. ——.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—A.-G. *v.* GUY MOTORS, LTD., [1928] 2 K. B. 78; 97 L. J. K. B. 421; 139 L. T. 311.

SUB-SECT. 7.—COSTS (p. 530).

See, now, Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36).

344. *Add. Annotations:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

345. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

346. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

348a. —— In proceedings under Patents & Designs Acts.]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne:—*Held:* (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re* LETTERS PATENT NO. 139,207, *Re* CARBONIT AKT., [1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

Annotation:—As to (1) **Consd.** Swift *v.* Board of Trade [1926] 2 K. B. 131.

-.]—*See, generally,* PATENTS.

348b. —— —— As to validity of patent—Action against Air Council.]—*Held:* there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—ROWLAND *v.* AIR COUNCIL, [1923] W. N. 72.

367. *Add. Annotation:*—**Apld.** Pathe of France *v.* Harris, Same *v.* Mansbridge (1926), 42 T. L. R. 760.

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public interests which he alone can serve. Moreover his presence was necessary to make any declaratory judgment which might be given binding upon the Crown; (*b*) petition of right is not the proper remedy in this case, for there was no direct claim made against the Crown; (*c*) the case falls within the ambit of cases where the A.-G. is properly joined.—TUXEDO HOLDING CO., LTD. *v.* UNIVERSITY OF MANITOBA & A.-G. FOR MANITOBA, [1930] 1 W. W. R. 464; 3 D. L. R. 250; 38 Man. L. R. 506; *affg.*, [1930] 1 D. L. R. 435.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. ——.]—Estoppel cannot be invoked against the Crown.—R. *v.* TESSIER (1921), 21 Exch. C. R. 150.—**CAN.**

339 iii. ——.]—A subject has no right to set off in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

339 iv. ——.]—A right of set-off does not exist against the Crown.—R. *v.* BRITISH AMERICAN BANK NOTE CO. (1901), 7 Exch. C. R. 119.—**CAN.**

o i. ——.]—A counterclaim cannot be pleaded against the Crown as of right.—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59; 49 O. L. R. 103.—**CAN.**

o ii. ——.]—A subject has no right to counterclaim in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

sm. *Whether action brought in right name.*]—In an action concerning transactions under Soldiers Settlement Act, defts. contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown:—*Held:* action properly instituted in that of the Crown.—R. *v.* SAYWARD TRADING & RANCHING CO., LTD., [1924] Exch. C. R. 15.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—A.

sp. *Crown Costs Act, R. S. B. C.,* 1911 (*c.* 61)—*Effect of.*]—*Held:* not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—MONTREAL TRUST CO. *v.* R., [1924] 1 D. L. R. 1030; 1 W. W. R. 657; 33 B. C. R. 280.—**CAN.**

sq. *Crown Costs Act,* R. S. B. C., 1924.]—Crown Costs Act, R. S. B. C., 1924, forbids the awarding of costs either in favour of or against the Crown as represented by the Govt. of the province of British Columbia.—R. *v.* CONWAY (B. C.), [1929] 3 W. W. R. 268; 52 Can. Crim. Cas. 161.—**CAN.**

st. ——.]—Crown Costs Act, R. S. B. C., 1924, does not apply to a prosecution under a Dominion Act. On dismissing an appeal from a conviction under such an Act, costs were, therefore, given to the Crown.—R. *v.* TRONSON, [1932] 1 W. W. R. 537; 57 C. C. C. 383.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—C.

t i. —— *On appeal.*]—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—R. *v.* CASKIE (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—**CAN.**

t ii. —— —— *Under Fire Marshal Act,* 1921 (*c.* 15).]—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an "officer, servant or agent of & acting for the Crown" within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—WATSON *v.* HOWARD, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 404; 34 B. C. R. 449.—**CAN.**

t iii. —— —— *Under Summary Convictions Act, R. S. B. C.,* 1924 (*c.* 245).]—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an appeal under Summary Convictions Act, R. S. B. C., 1924, form a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146).—R. *v.* MCLANE, R. *v.* NOON, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—**CAN.**

t iv. —— *In proceedings by creditor—Crown administrator of intestate's estate.*]—*Held:* neither the Crown nor the A.-G. liable for costs.—CARVER *v.* A.-G. OF PRINCE EDWARD ISLAND, [1926] 4 D. L. R. 1106.—**CAN.**

368. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373. *Add. Annotations :*—*As to* (1) **Apld.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Consd.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187 ; Central London Railway *v.* I. R. Comrs., London Electric Railway *v.* I. R. Comrs., Metropolitan Railway *v.* I. R. Comrs. (1934), 151 L. T. 333. **Refd.** Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs. (1930), 99 L. J. K. B. 330.

373a. —— **Arbitration to assess compensation for requisitioned goods.**]—In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations :—*Held :* the arbitrator had no power to order the Crown to pay the costs of the reference & award.—SWIFT & Co. *v.* BOARD OF TRADE, [1926] 2 K. B. 131 ; 95 L. J. K. B. 834 ; 135 L. T. 391 ; 42 T. L. R. 461, C. A.

Annotation :—**Refd.** Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission, [1928] A. C. 492.

376. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

382. *Add. Annotation :*—**Refd.** R. *v.* Provisional Government (General of the Forces) (1922), 67 Sol. Jo. 125.

384a. —— ——.]—WOLFE TONE'S CASE (1798), 27 State Tr. 613.

Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations :*—*As to* (1) **Folld.** White, Child & Beney *v.* Simmons, White, Child & Beney *v.* Eagle, Star & British Dominions Insce. (1922), 127 L. T. 571. **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (2) **Apld.** The Jupiter (1924), 93 L. J. P. 156. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

387a. —— —— ——]—The Bank of Ethiopia was formed under the law of Ethiopia in 1931. It was a bank of issue & was the only bank in the Ethiopian Empire. In the autumn of 1935 hostilities began between Italy & the Ethiopian govt. & on May 1, 1936, the Emperor left the country. On May 5, 1936, the Italian army entered the capital & thereafter the affairs of the bank were carried on under the supervision of the representative of the Italian authorities. In Dec. 1936, the British govt. recognised the Italian govt. as being the *de facto* govt. of the area then under Italian control. On June 20, 1936, a govt. decree, valid according to the law as recognised & administered by the *de facto* govt., had placed the bank in liquidation & appointed a liquidator :—*Held :* (1) it was the duty of the ct. to treat the acts of the *de facto* govt. with all the respect due to the acts of a duly recognised foreign sovereign state, & this was not affected by the fact that the British govt. in addition to recognising a *de facto* govt., recognised the Emperor as a *de jure* monarch ; (2) the Bank of Ethiopia had been dissolved under or by virtue of the laws of the country under which it was incorporated, & had accordingly ceased to exist, except in so far as might be necessary for the liquidation of its affairs ; (3) no action could be brought in the name of the Bank of Ethiopia otherwise than by or under the authority of the duly constituted liquidator of the bank.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513 ; [1937] 3 All E. R. 8 ; 106 L. J. Ch. 279 ; 157 L. T. 428 ; 53 T. L. R. 751 ; 81 Sol. Jo. 479.

387b. —— **Decrees of Russian Soviet Government —Effect of.**]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Govt. as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion :—*Held :* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY (PRINCESS OLGA) *v.* WEISZ, [1929] 1 K. B. 718 ; 98 L. J. K. B. 465 ; 141 L. T. 207 ; 45 T. L. R. 365 ; 73 Sol. Jo. 283, C. A.

Annotations :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. De Beécho *v.* South American Stores, Ltd., & Chilian Stores, Ltd., [1935] A. C. 148.

—— —— ——.]—*See, also*, COMPANIES Nos. 8523, 8523a–8523d, 8524, 8527a–8527d, *ante*.

On liability of Russian reinsurance company under reinsurance treaties.]—*See* INSURANCE, No. 712a, *post*.

—— —— —— **Cancellation of life assurance.**]—*See* CONFLICT OF LAWS, No. 640b, *ante*.

387c Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.]—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—THE JUPITER (NO. 3), [1927] P. 250 ; 97 L. J. P. 33 ; 137 L. T. 333 ; 43 T. L. R. 741 ; 17 Asp. M. L. C. 250, C. A.

Annotations :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

388. *Citations :*—For "Coop. Pr. Cas. 501 ; 9

L. J. O. S. Ch. 215; 47 E. R. 619, L. C.," read " Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON *v.* BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."

389. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

391. *Add. Annotations :*—**Refd.** The Tervaete, [1922] P. 259; Engelke *v.* Musmann, [1928] A. C. 433.

392. *Add. Annotation :*—*As to* (2) **Refd.** The Tervaete, [1922] P. 259.

394. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** The Tervaete, [1922] P. 259; *Re* Bjornstad & Ouse Shipping Co.' [1924] 2 K. B. 673; Compania Mercantile Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433.

395. *Add. Annotation :*—*As to* (2) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

396. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

401. *Add. Annotation :*—**Apld.** The Tervaete, [1922] P. 259.

408. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R 259.

409. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

411. *Add. Annotation :*—**Consd.** Engelke *v.* Musmann, [1928] A. C. 433.

412a. **Chief of mail department—Within privilege.**] —*Held :* the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—ASSURANTIE COMPAGNIE EXCELSIOR *v.* SMITH (1923), 40 T. L. R. 105, C. A.

413. Transfer paragraphs (2) to (5) to No. 421, *post.*

Annotations :—For the existing annotations read " **Refd.** *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139."

418a. **Evidence—Settlement by Attorney-General on instructions of Foreign Office.**]—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.

Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt. :—*Held :* (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—ENGELKE *v.* MUSMANN, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *revsg.* S. C. *sub nom.* MUSMANN *v.* ENGELKE, [1928] 1 K. B. 90, C. A.

421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers " (1), (2), (3), (4)," for " (2), (3), (4), (5)."

Citations : — For " No. 413, *ante*," read " (1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338."

Annotations :—*As to* (1) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. *As to* (3) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

421a. —— **Liability to be cross-examined to ascertain status.**]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

422. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

425. *Add. Annotation :* — **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

427. For " No. 413, *ante*," read " No. 421, *ante.*"

429. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

430. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

431. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

432. *Add. Annotation :*—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

435. *Add. Annotation :*—*As to* (2) **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

436. For " No. 413, *ante*," read " No. 421, *ante.*"

445. For " No. 413, *ante*," read " No. 421, *ante.*"

447. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

447a. ——.]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

462a. —— **No waiver of privilege from execution.**] —An ambassador in this country is entitled to complete immunity from the jurisdiction of the local cts. except in cases in which he submits to or invites the jurisdiction. Where an ambassador, sued as administrator to an intestate's estate, has submitted to the jurisdiction down to judgment, & an order has been made determining his liability to pay money into ct., he can still assert his immunity from process by way of execution & set up Diplomatic Privileges Act, 1708 (c. 12), as an answer to an application for leave to issue execution against his personal property.—*Re* SUAREZ, SUAREZ *v.* SUAREZ, [1917] 2 Ch. 131; 86 L. J. Ch. 673; 117 L. T. 239; 33 T. L. R. 405; 61 Sol. Jo. 524.

465. *Add. Annotations :*—**Consd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

465a. —— **By order of diplomatic superior.**]— Deft., who was First Secretary of the Peruvian

Legation, took out a policy of insurance against legal liability to members of the public in connection with the driving of his motor car, the policy providing that "the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., &, as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held :* the privilege of diplomatic immunity was waived by the entry of appearance without protest.—DICKINSON *v.* DEL SOLAR, [1930] 1 K. B. 376; 99 L. J. K. B. 162; 142 L. T. 66; 45 T. L. R. 637.

SECT. 5.—**PASSPORTS** (Vol. XI., p. 543).

474a. Property of the Crown.]—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within Bkpcy. Act, 1914 (c. 59).—*Re* SUWALSKY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

Forgery of.]—*See* Criminal Justice Act, 1925 (c. 86), s. 36.

Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation :—Generally,* **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

483. *Add. Annotation :—As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

487a. —— ——.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919 :—*Held :* peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS *v.* TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

Annotation :—**Folld.** Lloyd *v.* Bowring (1920), 36 T. L. R. 397.

487b. —— ——.]—For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace.—LLOYD *v.* BOWRING (1920), 36 T. L. R. 397.

487c. —— **Whether subject's debt discharged.**]—TRONER *v.* HASSOLD (1670), 1 Cas. in Ch. 173; 22 E. R. 748.

487d. *S. P.* WEYMBERG *v.* TOUCH (1669), 1 Cas. in Ch. 123; 22 E. R. 724.

496. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

498. *Add. Annotation:*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

PART XII. SECT. 3.

469 i. *Whether consent of legislature necessary—Interference with private rights.*]—In Canada or Great Britain a treaty does not confer, as between the state & the subject, or as between subjects, any rights upon the latter :—*Held :* therefore, the Ashburton Treaty relating to water rights, never having been validated by statute, is no part of the law of this country, but it is binding in honour on the Crown & its successors.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

PART XIII. SECT. 2.

487 i. *Treaty of peace—Ratification by sovereign authority necessary.*]—*Re* 90TH BATTALION, WINNIPEG RIFLES, [1923] 1 W. W. R. 37.—**CAN.**

487 ii. —— *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*]—PARRY *v.* DUNCAN (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

sf. *Order in Council under War Measures Act, 1914, s. 6—Validity.*]—*Held :* the omission of an averment the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—PUGSLEY *v.* GARSON (1922), 50 N. B. R. 414.—**CAN.**

sg. *Calling out militia—Liability for expenses—Whether on Dominion or Province.*]—The question referred to this ct. was whether the province of Nova Scotia was liable, or not, to pay to the Dominion of Canada all expenses & costs incurred by the latter by reason of part of the active militia of Canada being called out & serving in aid of the civil power in the county of Cape Breton in 1925, in a case of riot, upon a requisition, made by the A.-G. of Nova Scotia in the form prescribed by s. 85 of the Militia Act, which included an undertaking by him that these expenses & costs would be paid to the Dominion Govt. by the province :—*Held :* the question should be answered in the negative. Sects. 80 to 90 of the Militia Act repose certain powers in the person occupying the position of A.-G. in the province for the time being, but the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor or of the provincial legislature. The Militia Act envisages the A.-G., not in his capacity as A.-G. to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested & on whom certain duties are laid by the statute. These sects. apply to every province & go into operation independently of the scope of the A.-G.'s authority to bind the province in respect of the expenditure of moneys for such purpose. Therefore these enactments do not contemplate a duty to pay, proceeding from a contract between the province & the Dominion. The revenues of the province are vested in His Majesty as the supreme head of the province, & the right of appropriation of all such revenues belongs to the legislature of the province exclusively. *Semble :* the A.-G., whose duties, in so far as now material, include the supervision of the administration of justice within the province, has no statutory authority to undertake the payment now demanded by the Dominion : the subject matters comprised within the supervision of the administration of justice would not embrace authority to enter into such an undertaking.—*Re* TROOPS IN CAPE BRETON, REFERENCE, [1930] S. C. R. 55 : *sub nom.* A.-G. OF CANADA *v.* A.-G. OF N.S., [1930] 4 D. L. R. 82.—**CAN.**

499. *Add. Annotations :—As to* (1) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. *As to* (4) **Refd.** A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328 ; Matthey *v.* Curling, [1922] 2 A. C. 180 ; *Re* Colnbrook Chemical & Explosives Co., A.-G. *v.* The Co., [1923] 2 Ch. 289 ; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271 ; Rowland & Mackenzie-Kennedy *v.* Air Council (1927), 96 L. J. Ch. 470. *Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81; France Fenwick *v.* R., [1927] 1 K. B. 458. *Generally*, **Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

Under Indemnity Act, 1920 (c. 48)—"Direct loss or damage"—What is.]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course ; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (*b*) of the above Act :—*Held :* "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—A. & B. TAXIS, LTD. *v.* SECRETARY OF STATE FOR AIR, [1922] 2 K. B. 328 ; 91 L. J. K. B. 779 ; 127 L. T. 478 ; 38 T. L. R. 671 ; 66 Sol. Jo. 633, C. A.

—— —— **Duty of tribunal assessing compensation.**]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—MOFFAT HYDROPATHIC CO., LTD. *v.* SECRETARY OF STATE FOR WAR (1924), 40 T. L. R. 543 ; 68 Sol. Jo. 535, H. L.

505a. —— **Certificate that taking necessary—Mode of granting.**]—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard ; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect. ; but even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—HUTTON *v.* A.-G., [1927] 1 Ch. 427 ; 96 L. J. Ch. 285 ; 137 L. T. 20 ; 43 T. L. R. 166 ; 71 Sol. Jo. 159.

505b. —— **Conditions precedent to assessment of compensation—Whether Crown in possession.**]—HUTTON *v.* A.-G., No. 505a, *ante*.

507a. **Costs of establishing claim to fund in Court.**]—Three guineas is a proper sum to allow to each successful claimant to a fund in ct. for the costs of establishing his claim.—WATERTON *v.* BURT (1870), 39 L. J. Ch. 425.

12. *Add. Annotations :—As to* (2) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42 ; Rowland *v.* Air Council (1923), 39 T. L. R. 228. *Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

15a. —— —— **Closing of public footpath over land acquired.**]—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close permanently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—SECRETARY OF STATE FOR WAR *v.* MIDDLESEX COUNTY COUNCIL (1923), 39 T. L. R. 357 ; 21 L. G. R. 291.

21. *Add. Annotation :—Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken for purposes of defence.*]—R. *v.* BROWN (1920), 56 D. L. R. 312 ; 20 Exch. C. R. 30.—**CAN.**

499 ii. ——————.]—*Held :* a portion of a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (*c*). RE Co. *v.* R., POWERS *v.* R. 63 D. L. R. 647 ; 63 S. C. R. 141.—**CAN.**

499a i. —— *Under Indemnity Act, 1920 (c. 48)—Basis of assessment.*]—A distillery requisitioned during the war, owing to a fire while it was in the Govt.'s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was withdrawn. The proprietors having claimed compensation for loss of profits during the three years :—*Held :* the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—MACKENZIE BROTHERS *v.* THE ADMIRALTY, [1925] S. C. (H. L.) 32.—**SCOT.**

PART XIII. SECT. 3, SUB-SECT. 7.

sm. *Requisition under Order in ——owers of Dominion Govern—— virtue of Order in Council dated Nov. 24, 1916, passed under War Measures Act, 1914 :—Held :* the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242 ; 21 Exch. C. R. 370.—**CAN.**

525 i. *Compensation for requisitioned ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate.*]—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242 ; 21 Exch. C. R. 370.—**CAN.**

526. *Add. Citation :*—15 Asp. M. L. C. 205.
Add. Annotation :—As to (3) **Distd.** A.-G. *v.* Royal Mail Steam Packet Co., [1922] 2 A. C. 279.

526a. **Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).**]—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act :—*Held :* the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose ; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—BRISTOL CHANNEL STEAMERS, LTD. *v.* R. (1924), 131 L. T. 608 ; 40 T. L. R. 550 ; 68 Sol. Jo. 771.

526b. —— —— ——.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid :—*Held :* (1) the imposition of the condition was illegal, & the payment was not a voluntary payment ; (2) the petition of right was barred by the above sub-sect. ; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (*b*) ; (3) (BANKES & SARGANT, L.JJ.) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—BROCKLEBANK, LTD. *v.* R., [1925] 1 K. B. 52 ; 94 L. J. K. B. 26 ; 132 L. T. 166 ; 40 T. L. R. 869 ; 69 Sol. Jo. 105 ; 16 Asp. M. L. C. 415, C. A. ; *revsg.*, [1924] 1 K. B. 647.

Annotations :—As to (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. *As to* (2) **Folld.** Marshal Shipping Co. *v.* R. (1925), 41 T. L. R. 285. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542. *Generally*, **Reid.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608 ; Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040.

526c. —— —— ——.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful :—*Held :* as the demand was made in the *bonâ fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect. — MARSHAL SHIPPING CO. (IN LIQUIDATION) *v.* R. (1925), 41 T. L. R. 285.

526d. —— —— —— **Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.**]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued :—*Held :* the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to

525 ii. —— ——.]—LEMAY *v.* R. (1922), 68 D. L. R. 489 ; 21 Exch. C. R. 364.—**CAN.**

525 iii. —— *Who entitled—Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer :—*Held :* the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act ; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherw se enjoyed.—WARNER QUINLAN ASPHALT CO. *v.* R., [1923] Exch. C. R. 195.—**CAN.**

be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort :—*Qu.* : whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—MARSHAL SHIPPING CO. *v.* BOARD OF TRADE, [1923] 2 K. B. 343 ; 92 L. J. K. B. 901 ; 129 L. T. 644 ; 39 T. L. R. 415 ; 67 Sol. Jo. 639 ; 16 Asp. M. L. C. 210, C. A.

Annotations :—As to (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally*, **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655 ; PUBLIC AUTHORITIES.

527. *Add. Annotation :—Generally*, **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

530. *Add. Annotations :—As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. *Generally*, **Refd.** Newcastle Breweries *v.* I. R. Comrs. (1927), 137 L. T. 426 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

531. *Add. Annotations :—As to* (5) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529. *Generally*, **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

534. *Add. Annotation :*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

534a. —— —— —— ——.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (*a*), on the ground that in the circumstances they would but for the Act have had a legal right to compensation :—*Held* : (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will ; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made " in exercise of " a " prerogative right to His Majesty " within s. 2 (1) (*b*) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants " would have had apart from " the Act a valid claim for compensation by petition of right, &, the Crown admitting that such a claim constituted " a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (*a*) of the Act.—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, [1925] 1 K. B. 271 ; 94 L. J. K. B. 50 ; 132 L. T. 516, C. A.

Annotation :—As to (2) **Consd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.]—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, No. 534a, *ante*.

539. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. *Generally*, **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603 ; Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. Restriction on right of action.]—Reg. 2A (2) of Defence of the Realm Regulations, which provides that " no person shall, without the consent of the Minister of Munition, take . . . any proceedings for the purpose of obtaining an order or decree for the recovery of possession of, or for the ejectment of a tenant of, any dwelling-house " in which a munition worker is living, & which is situate in an area declared by order of the Minister of Munitions to be a " special area," is not authorised by Defence of the Realm Consolidation Act, 1914 (c. 8), s. 1 (1), & is, therefore, invalid.

The only question for decision is whether this portion of the regulation is *ultra vires* the statute under which it purports to be made, that is to say, Defence of the Realm Consolidation Act, 1914. This depends upon whether it can be said, on any reasonable construction of the statute, to be a regulation for securing the public safety & the defence of the realm, &, particularly under sect. 1 (1) (*e*), whether it can be said to be a regulation to prevent the successful prosecution of the war being endangered (AVORY, J.).

It is true that the power to make a regulation to prevent the successful prosecution of the war being endangered is of a wide & sweeping character, but I decline to hold that Parliament intended by these general words to give to the executive the right to close any of the King's cts. against his subjects unless they obtained the sanction of a minister to resort thereto (SANKEY, J.).—CHESTER *v.* BATESON, [1920] 1 K. B. 829 ; 89 L. J. K. B. 387 ; 122 L. T. 684 ; 84 J. P. 65 ; 36 T. L. R. 225 ; 18 L. G. R. 212 ; 26 Cox, C. C. 591, D. C.

Annotations :—**Consd.** Fowle *v.* Monsell (1920), 90 L. J. K. B. 105 ; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469 ; Newcastle Breweries, Ltd. *v.* R., [1920] 1 K. B. 854 ; R. *v.* Wormwood Scrubs Prison Governor (1920), 84 J. P. 94 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation :*—**Consd.** Rhondda's Claim, [1922] 2 A. C. 339.

Part XV.—The Crown in relation to Ports and Harbours.

568. *Add. Annotation :*—**Distd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

Part XVI.—The Crown in relation to the Coinage.

570. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

Part XIX.—Royal Grants.

661. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

706. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

728a. Grant of land reserving strip of coast land—Effect of confirming grant.]—A.-G. FOR NEW SOUTH WALES *v.* DICKSON, [1904] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

PART XIX. SECT. 1, SUB-SECT. 1.

e i. ——— ———.]—R. *v.* NEW ENGLAND Co. (1922), 63 D. L. R. 537; 21 Exch. C. R. 245.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 2.

m i. ——.]—The recital in a Crown grant made under the Great Seal of Canada & duly recorded, *i.e.* enrolled, that it is made "under & by virtue of the statutes in that behalf & pursuant to authority duly granted by our Governor-in-Council," is sufficient to establish a *prima facie* case of the existence of such an Order in Council, or at least to bring into operation the maxim *omnia præsumuntur rite esse acta*.—BURRARD INLET TUNNEL & BRIDGE Co. *v.* THE SS. EURANA (B. C. Adm.), [1929] 3 D. L. R. 161; 2 W. W. R. 275; *on appeal*, [1931] A. C. 300.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—A.

602 ii. ——.]—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—R. *v.* SEAMAN, [1927] Exch. C. R. 201.—**CAN.**

q. Add "*revsd.* on other grounds, 9 Gr. 224."

sa. *As to Crown's title—Crown ousted by adverse possession.*]—A. has been in possession of land at T. for over sixty years without having obtained a grant for the same from the Crown. B., a stranger, upon application, obtains a grant of said land. A. takes action to have grant declared null & void :—*Held :* the rights of the Crown in the land have been ousted, & the grant should be set aside.—MILLER *v.* SMITH (1900), 8 Nfld. L. R. 399.—**NFLD.**

sb. *Mistake in description—Cancellation of erroneous patent—Right to new patent.*]—R. *v.* SINCLAIR (191 11 E. L. R. 367.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—B.

607 iii. ——.]—LAWRENCE *v.* POMEROY (1863), 9 Gr. 474.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—C.

h. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 2, SUB-SECT. 4.

sd. *Grants for homesteads—To men only.*]—By R. S. O. 1877, c. 24, free grants of lands for homesteads are authorised to be made only to men.—ROGERS *v.* LOWTHIAN (1880), 27 Gr. 559.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 2.

656 i. Add "*revsd.* on other grounds, 19 A. R. 329."

662 ii. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 3.—A.

r i. ——.]—A Crown grant of land, as to part of the land granted, used the words "grant, convey & assure," & as to other land granted, "grant, release & quit claim":—*Held :* both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—NORTHERN TRUST Co. *v.* TURNER, [1923] 2 D. L. R. 1176.—**CAN.**

se. *Land subject to existing timber lease.*]—Pltf. obtained a Crown grant to certain lands, to the timber on which a lease for twenty-one years had been previously given. The grant from the Crown was silent as to the timber lease. At a date subsequent to the said grant, the timber lease had to be surrendered for renewal under the Land Act :—*Held :* the rights given the grantee under his Crown grant were subject to the existing timber lease.—BROHM *v.* BRITISH COLUMBIA MILLS, TIMBER & TRADING Co. (1907), 13 B. C. R. 123.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—C.

sf. "*Water-power*" — *Water-power from artificial channels.*]—KEEWATIN POWER Co. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER Co. *v.* LAKE OF THE WOODS MILLING Co., [1928] 1 D. L. R. 32; 61 O. L. R. 363; *affd.*, [1929] 3 D. L. R. 199; 63 O. L. R. 667; 1930] A. C. 640.—**CAN.**

sg. *Grant of land to Indians—"Customs & usages"—Fishing with seine net.*]—In an action by an Indian living on an Indian reserve against a fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve :—*Held :* the land of the band of Indians occupying the reserve was the property of the King, & the only rights they have in the land came through royal grant—the Simcoe deed of 1793, a grant of land "to be held & enjoyed by them in the most free & ample manner & according to the several customs & usages" with a proviso against alienation. "Customs & usages" are words of tenure & not indicative of the manner in which the Indians are to use the land; moreover, there was no evidence that fishing with a seine was one of the customs of the Indians in 1793. There is nothing in the grant suggesting exclusion from the ordinary laws, & the Indians are subject to those laws.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—E.

l i. ——— ———.]—The reservation in a Crown grant of the mines & minerals "with full power to work the s for this purpose to enter upon or occupy the lands or so much & to such an extent as may be sary for the effectual working of the said minerals":—*Held :* this c fers greater powers than is implied bare reservation in an agreement for the sale of the land so granted of "all mines & minerals."—[illegible] v. GARNEAU (1920), 61 S. C. R. 450; 58 D. L. R. 642.—**CAN.**

l ii. ——— ——— *Includes petroleum & natural gas.*]—CREIGHTON *v.* UNITED [illegible]

749. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

754. *Add. Annotation :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

780. *Add. Annotation :—Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

785a. —— **Grant of sole right to draw bills & informations.**]—MOUNSON *v.* LYSTER (1632), W. Jo. 231 ; 82 E. R. 122.

786. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549.

Part XXI.—Hereditary and Private Revenues of the Crown.

857. Before this case add " *See* Crown Lands Act, 1927 (c. 23)."

857. *Add. Annotations :—As to* (4) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

862. After this case add :—

Petroleum.]—*See* Petroleum (Production) Act, 1934 (c. 36).

927. Substitute the following paragraph & citations :—

By virtue of Assessionable Manors Act, 1844 (c. 105), s. 54, His Royal Highness the Prince of Wales, as Duke of Cornwall, was absolutely entitled to the mines & minerals within certain manors including that of C. Sect. 55 of the Act empowered the Duke, his agents & lessees, to enter upon all lands within the said manors, & all mines belonging to the Duke, & to open & work the same, & to erect all such buildings, machinery, etc., & do all such acts as should be " necessary or convenient for working the same mines," on making compensation to the surface owners. By sect. 69 it was provided that it should be lawful for the Duke, his agents & lessees, to pull down & remove all buildings, machinery, etc., no longer used for the purposes aforesaid, or to allow the same to remain, & no buildings should, by non-user or otherwise, be deemed to be abandoned, so as to vest any right or title therein in the owner of the land. Deft. was the owner by purchase of garden land adjoining two cottages at W. E. in the manor of C., & was also in possession of a house & garden at W. Z., the site of which she had purchased in 1902. This house was subsequently enlarged from one of six rooms into one of eleven rooms, with an additional wing. These alterations & some improvements to the garden cost £500, & were known to the mineral agent of the Duchy, who remained passive. The Duchy claimed that under the provisions of sects. 55 & 69 of the Act the two cottages & land at W. E. & the house & land at W. Z. had been originally erected, entered

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l iii. *S. P.* STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO. (No. 2), [1927] 2 W. W. R. 466 ; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

l iv. —— —— *Effect of Act to amend Public Lands Act,* 1908 (*c.* 16).]—*Re* COX, [1927] 4 D. L. R. 556 ; 61 O. L. R. 182.—**CAN.**

sh. *Exception of lots—Conflict between plan & description—Evidence of physical features of alleged exceptions.*]—THOMPSON *v.* FRASER COMPANIES, LTD. (Can.), [1929] 3 D. L. R. 778 ; *revg.*, [1929] 1 D. L. R. 168.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—F.

729 ii. ——.]—*Semble :* the Crown may grant a tract of land by a sufficient description to designate the portion meant, although the township within which the land lies has not been surveyed & laid out into lots & concessions ; & the grantee will be entitled to hold it although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession, from that named in the patent, or the surveyor laying it out projects a road through it —HORNE *v.* MUNRO (1857), 7 C. P. 433.—**CAN.**

PART XIX. SECT. 5, SUB-SECT. 1.

t i. —— *Derogation of rights under earlier grant.*]—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO. (Ont.), [1928] 1 D. L. R. 32 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667 ; [1930] A. C. 640.—**C** .

PART XIX. SECT. 5, SUB-SECT. 6.

c i. —— ——.]—COSTIN *v.* CHAPPELL (1875), 10 N. S. R. (1 R. & C.) 40.—**CAN.**

sk. *Unoccupied land.*]—Land unoccupied in the island of Newfoundland at the time of passing 5 Geo. 4, c. 51, is within that statute, & may be granted out as waste lands under sect. 15, notwithstanding it has been occupied & enclosed before any grant of it was made.—A.-G. OF NEWFOUNDLAND *v.* RYAN (1836), 2 Nfld. L. R. App. 8.—**NFLD.**

sl. *Right of pre-emption.*]—HOGGAN *v.* ESQUIMALT & NANAIMO RY. CO., WADDINGTON *v.* ESQUIMALT & NANAIMO RY. CO. (1892), 20 S. C. R. 235 ; *affd.*, [1894] A. C. 429.—**CAN.**

sm. ——.]—HESELWOOD *v.* JONES (1910), 16 B. C. R. 485.—**CAN.**

PART XIX. SECT. 8.

p i. —— *Evidence of invalidity of first grant—Not admissible.*]—DOE d. MCKAY *v.* RYKERT (1823-1900), 1 Ont. Dig. 1726.—**CAN.**

PART XIX. SECT. 9.

r i. —— *Cancellation for incompetency—Soldiers' settlement—Functions of Minister for Repatriation.*]—*Held :* the Minister had a merely administrative function, & might form an opinion on such materials as he himself thought sufficient without giving resp. an opportunity of being heard or of meeting allegations to his prejudice.—LAFFER *v.* GILLEN (1927), 40 C. L. R. 86.—**AUS.**

so. *Whether Attorney - General necessary party.*]—The bill alleged that the patentees obtained their patent by false representations to the Government, & showed a case in which the patentees would not be entitled to compensation if the patent were set aside & the land given to another :—*Held :* to such a bill the A.-G. was not a necessary party.—REES *v.* A.-G. (1869), 16 Gr. 467.—**CAN.**

sp. *Whether Attorney-General entitled to take proceedings—Soldier Settlement Act,* 1919—*Notwithstanding Dominion Lands Act, s.* 94.]—*Held :* Sect. 94 does not give the Minister of the Interior the exclusive right to institute such actions & does not take away the usual right & power of the A.-G.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

PART XX. SECT. 6.

n i. —— —— *When in possession of Crown lessee or licensee.*]—The prerogative of the Crown & its freedom from interference by a council in the matter of building operations do not extend to Crown lessees or licensees.—HORNSBY, COUNCIL OF THE SHIRE OF *v.* DANGLADE (1928), 29 S. R. 118.—**AUS.**

st. *Sale of land under Soldier Settlement Act,* 1919—*Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*]—A.-G. FOR CANADA *v.* PUGH, [1924] Exch. C. R. 62.—**CAN.**

PART XXI. SECT. 1, SUB-SECT. 2.

858 iii. —— ——.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—HUDSON'S BAY CO. *v.* A.-G. FOR CANADA, [1929] A. C. 285 ; 98 L. J. P. C. 28 ; 45 T. L. R. 47, P. C.—**CAN.**

upon, & used in connection with the mines at W. E. & W. Z. respectively, & were now vested in the Duchy. From 1846 onwards licences & leases had been granted by the Duchy for the working of the two mines, but neither had been in fact worked for many years. Upon an information by the A.-G. to His Royal Highness the Prince of Wales claiming declarations of title to the lands & buildings, & an injunction to restrain the deft. from asserting any title to the same :— *Held :* (1) the effect of sect. 55 was not to vest any land in the Duchy, but only compelled the surface owner to permit his land to bear certain burdens, & did not divest him of his title ; nor did it follow from the power in that section to erect " buildings " that a power was given to take land for gardens ; (2) the effect of sect. 69 was not to vest any title in the Duchy, but to prevent the surface owner from resuming full enjoyment of land once taken ; & consequently the Duchy had established no right over, or title to, these lands.—A.-G. TO PRINCE OF WALES *v.* COLLOM, [1916] 2 K. B. 193 ; 85 L. J. K. B. 1484 ; 114 L. T. 1121 ; 32 T. L. R. 448.

CONSTRUCTIVE NOTICE.

See EQUITY.

CONSTRUCTIVE TRUST.

See TRUSTS AND TRUSTEES.

CONTRABAND.

See PRIZE LAW.

CONTRACT.

Part I.—Definitions and Classification.

3. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

4. For the existing paragraph substitute the following paragraph :—

—— —— **Legal effect expressly excluded.**]—By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & intention of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held :* (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

Annotation :—As to (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

—— ——.]—Certain builders requested a firm of publishers to publish a builders' guide in connection with their estate, & by the terms of documents signed by both parties it was agreed that the publishers should prepare & publish the guide free of charge to the builders. It was further agreed that the publishers should be freed from the obligation of publishing the guide should in their opinion insufficient advertisement be obtained to justify publication. The publishers proceeded to carry out the terms of the documents thereby incurring expense. The builders then passed a resolution for a voluntary winding up, & the liquidators informed the publishers that they did not wish them to proceed with the guide. The publishers sought to be admitted as creditors in the winding up, alleging breach of the contract embodied in the above-mentioned documents, & they claimed damages in respect of the expenses incurred & loss of profits. The liquidators contended that the discretion given to the publishers by the terms of the document was so wide & of such a nature that no real obligation rested upon them, & that there was no binding contract between the parties :—*Held :* it must be implied in the documents that the publishers should only be freed from their obligations if in their reasonable & honest opinion insufficient advertisements were obtained & the obligations under the documents could not under this clause be arbitrarily determined by them. There was therefore a binding contract & the publishers were entitled to be admitted as creditors in the winding up.—*Re* BRAND ESTATES, LTD., [1936] 3 All E. R. 374.

5. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

5a. —— —— ——.]—SNOW *v.* FIREBRASS (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

5b. —— —— ——.]—Pltfs., the freeholders of certain property, entered into an agreement with defts. to give them the " first option " of purchasing any premises that might be designated for dairy purposes on the said property :—*Held :* this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words " first option."—RYAN *v.* THOMAS (1911), 55 Sol. Jo. 364.

Annotation :—**Refd.** County Hotel & Wine Co. *v.* London & North Western Ry. Co., [1918] 2 K. B. 251.

5c. —— —— ——.]—On Mar. 15, 1934, pltf. co. by a formal contract in writing agreed with

PART I.

2 l. *Definitions—Must be capable of being enforced in court of justice.*]—An arrangement between intending husband & wife for a dress allowance to the wife held not to be a contract because not intended to affect or give rise to legal relations or to be attended with legal consequences.—COHEN *v.* COHEN (1929), 42 C. L. R. 91 ; [1929] Argus L. R. 204.—**AUS.**

5 l. —— —— *Vagueness & uncertainty as to subject-matter & terms.*]—Applt. in writing authorised resp. to sell his motor car & agreed that if he did so, he would purchase another car, either new or second-hand, from resp. & take delivery of it when convenient to himself. He authorised resp. to place the net proceeds from the sale, less commission, to his credit with resp. as a deposit on the other car, & agreed that the balance owing by him on the purchase of the other car should be paid in cash or on terms to be decided by resp. if he desired terms. Resp. sold applt.'s car, but applt. refused to purchase from resp. another car in pursuance of the agreement, & claimed from resp. the proceeds of the sale, less commission :—*Held :* the agreement was void for uncertainty & did not constitute a binding contract, & applt. was entitled to recover from resp. the proceeds of the sale of his motor car, less commission.—WILLESDEN *v.* WEBB (1936), 30 Q. J. P. R. 138.—**AUS.**

Part X.—Position of Burial Grounds.

272. *Add. Annotation :—As to* (1) **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

274. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

277. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

Part XI.—Closed and Disused Burial Grounds.

279a. **Removal of graves—Liability of trustees to injunction.**]—Persons had purchased family graves in perpetuity in a private burying ground, which was afterwards closed by order of the Queen in council. There was no formal grant executed, but their title was merely evidenced by a receipt for the purchase-money stating the purchase :—*Held :* they were entitled to an injunction to restrain the trustees from removing or injuring the graves or gravestones, etc., but the relief must be limited to the spot purchased by pltfs., & the rights of the trustees to the remainder was unaffected.—MORELAND *v.* RICHARDSON (1856), 22 Beav. 596 ; 25 L. J. Ch. 883 ; 27 L. T. O. S. 287 ; 20 J. P. 547 ; 2 Jur. N. S. 726 ; 4 W. R. 765 ; 52 E. R. 1238.

284. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

290. After this case add :—
——.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

291. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

291a. —— ——.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land "to hold the same . . . according to the true intent & meaning" of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground :—*Held :* (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a "disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3 ; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, [1924] 2 Ch. 214 ; 93 L. J. Ch. 602 ; 131 L. T. 634 ; 68 Sol. Jo. 718.

Annotation :—As to (1) **Expld.** L. C. C. *v.* Greenwich [1929] 1 Ch. 305.

292. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

294a. **Land set apart for interment—Interments abandoned as to part—Continued as to other part.**]—(1) Where a piece of land has been effectually set apart for the purposes of interment it becomes a "burial ground" within the aggregate definition of Metropolitan Open Spaces Act, 1881 (c. 34), 1884 Act, & Open Spaces Act, 1887 (c. 32), & any portion for which the purposes of interment are subsequently abandoned becomes a "disused burial ground" within the similar definition, although interments still go on in other parts of the cemetery.

(2) A sale of a "disused burial ground" by the Admiralty under the general powers of Admiralty Lands & Works Act, 1864 (c. 57), s. 15, is not a sale under the authority of an Act of Parliament within 1884 Act, s. 5, & consequently the disused burial ground still remains subject to the building prohibitions of 1884 Act, s. 3.—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., [1929] 1 Ch. 305 ; 98 L. J. Ch. 49 ; 140 L. T. 456 ; 93 J. P. 123 ; 45 T. L. R. 144 ; 27 L. G. R. 282.

296. *Add. Annotation :*—**Consd.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

296a. —— **Sale by Admiralty.**]—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., No. 294a, *ante.*

300. *Add. Annotations :*—**Apld.** Stevens *v.* Willing & Co. (1929), 167 L. T. Jo. 178. **Consd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

300a. **Urinal.**]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed :—*Held :* (1) the proposed urinals were "buildings" within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection ; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a "building" within the above Acts ; (3) the facts proved justified the authorisation of games in the converted churchyard, but

PART XI. SECT. 1, SUB-SECT. 2.—A.

284 i. *Compulsory sale—Basis of compensation.*]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—R. *v.* MIDDLETON CHURCH TRUSTEES (1920), 56 D. L. R. 60.—CAN.

organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor. — BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, [1926] P. 87.

300b. Toolshed.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

300c. Underground chamber.] — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, No. 309a, *post*.

309. *Add. Annotation :*—**Distd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

309a. —— ——.]—A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a " building " erected " upon a disused burial ground " within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation. — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, [1928] A. C. 469 ; 97 L. J. P. C. 113 ; 139 L. T. 530 ; 92 J. P. 185 ; 44 T. L. R. 656 ; 26 L. G. R. 583, P. C.

315. *Add. Annotation :—Generally*, **Refd.** Bermondsey B. C. *v.* Mortimer, [1926] P. 87.

315a. Buildings incidental to use as children's playground.]—By the London County Council (General Powers) Act, 1935, the council or any other London local authority have power to undertake the management & upkeep of a disused burial ground or churchyard by agreement with the incumbent & churchwardens of the parish to which the ground belongs, on the issue of a faculty for that purpose by the Bishop of the diocese & subject to such conditions as the faculty may impose. Notwithstanding the prohibition against buildings being erected thereon, imposed by Disused Burial Grounds Act, 1884 (c. 72), s. 3, the council undertaking such management & upkeep may erect & maintain a gymnasium, sheds, & lavatories or other buildings or structures which they may consider necessary for the use of the ground by children, & to this extent the London County Council (General Powers) Act, 1935, though a local Act, has impliedly repealed Disused Burial Grounds Act, 1884 (c. 72), s. 3.

The Chancellor, on a petition presented by the London County Council, directed the issue of a faculty authorising the council to manage & erect certain buildings on a disused churchyard, subject to the conditions that the use of the ground for recreation should be limited to children under 14 years of age & that no organised games were to be permitted thereon.—*Re* ST. DUNSTAN'S, STEPNEY, [1937] P. 199 ; 53 T. L. R. 905.

323a. —— Playground for children—Tennis courts & swings.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

324a. Danger to persons in churchyard—Defective tombstone.]—The infant pltf., while lawfully in a churchyard, was injured by the fall of a tombstone which had been erected by defts. It was found that defts. had been negligent in the erection of the tombstone :—*Held :* defts. owed a duty to persons who might lawfully be in the churchyard, & were liable for the injury sustained by pltf.—BROWN *v.* COTTERILL (1934), 51 T. L. R. 21.

330. *Add. Annotation :*—**Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102.

331. *Add. Annotation :*—**Apld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333. *Add. Annotation :*—**Folld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333a. —— ——.]—Where a church burial ground has been closed for burials & afterwards, by agreement between the vicar & churchwardens & the local authority, dedicated for the purpose of an " open space " under Open Spaces Act, 1906 (c. 25), there is no jurisdiction in the Chancellor of the diocese to order the issue of a faculty to enable a strip of the ground to be taken by the county council for the purpose of widening an adjoining road.—*Ex p.* WEST RIDING COUNTY COUNCIL (1935), 52 T. L. R. 111.

Part XIV.—Burial of Persons Found Drowned.

350. After this case add :—

—— ——.]— *See, now*, Burial of Drowned Persons Act, 1886 (c. 20).

PART XV. SECT. 2.

sk. *Reinterment with testatrix—Testatrix illegitimate—Testamentary direction invalid.*]—Testatrix left estate amounting to £3,600. By her will she provided that her whole estate should be expended on the erection of a vault on ground to be purchased. She directed that the remains of two persons, whom she designated as her uncle & aunt, should be exhumed from the grave where they had been buried for many years, & should be buried along with her own remains in the vault. Testatrix was of illegitimate birth, & the two persons referred to were, accordingly, not legally related to her :—*Held :* the estate of the testatrix had fallen into intestacy, in respect that she was not entitled to direct an application to be made for the exhumation & re-interment of persons to whom she was not related & this direction was an inseparable part of her will.—MACKINTOSH'S JUDICIAL FACTOR *v.* LORD ADVOCATE, [1935] S. C. 406.—**SCOT.**

Part XVI.—Registration of Burials.

874. *Add. Annotations:*—*As to* (1) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. *As to* (2) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879; China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375. **Reld.** Brocklebank *v.* R., [1925] 1 K. B. 52. *As to* (3) **Reld.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343.

Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

389. *Add. Annotations:*—**Reld.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314; Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185; Townley Mill Co. (1919), Ltd. *v.* Oldham Asessment Committee, [1936] 1 K. B. 585.

PART XIX.

sm. *Taxes—Whether land in use for purposes of cemetery.*]—BURNABY DISTRICT CORPN. *v.* OCEAN VIEW DEVELOPMENT, LTD., [1923] 3 D. L. R. 1073; 32 B. C. R. 413.—**CAN.**

m i. —— —— —— *Method of valuation.*]—FALKIRK PARISH COUNCIL *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 405.—**SCOT.**

m ii. —— —— —— ——.]—ABERDEEN ASSESSOR *v.* ABERDEEN CEMETERY CO., LTD.; ABERDEEN ASSESSOR *v.* MASTER OF TRADES HOSPITAL, [1929] S. C. (Ct. of Sess.) 275.—**SCOT.**

CARRIERS.

Part I.—Who is a Common Carrier.

4a. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held:* defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.

Annotations:—**Folld.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

4b. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held:* as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—FAGAN *v.* GREEN & EDWARDS, LTD., [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.

Annotations:—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

5a. —— **Upon terms limiting liability.**]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

6. *Add. Annotation:*—*As to* (3) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

6a. —— **No fixed terminus.**]—LIVER ALKALI CO. *v.* JOHNSON, No. 31, *post.*

12a. —— —— ——.]—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., No. 4a, *ante.*

12b. —— —— ——.]—FAGAN *v.* GREEN & EDWARDS, LTD., No. 4b, *ante.*

14a. —— **Of goods accompanied by passenger.**]—By London County Council (Tramways & Improvements) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2*d.* for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held:* the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—ROSENTHAL *v.* LONDON COUNTY COUNCIL (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.

16. *Add. Annotation:*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

17. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. [illegible]

18. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. [illegible]

28. *Add. Annotation:*—**Refd.** Aslam *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

PART I. SECT. 1.

4 i. *Carrying on business as carrier—Furniture remover.*]—Deft., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was accepted:—*Held:* deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—WILSON *v.* [illegible] CO., LTD., [1923] N. Z.

For POOLEY *v.*

h i. —— *Right to reject reserved.*]—A carrier who, while inviting all & sundry to employ him, reserves to himself the right of accepting of rejecting their offers of goods for carriage, whether his conveyances are full or empty, being guided in his decision by the attractiveness or otherwise of the particular offer, & not by his ability or inability to carry having regard to his other engagements, is not a common carrier.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 1 W. W. R. 547; *affd.*, [1930] 4 D. L. R. 486; 2 W. W. R. 337.—CAN.

PART I. SECT. 2.

15 i. *Haulage* [illegible] *ing damaged motor cars.*]—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until payment for services rendered.—TERRY *v.* AUTOMOBILE OWNERS ASSOCN. (1927), Q. R. 65 S. C. 390.—CAN.

sb. *Public vehicle under Public Vehicles Act.*]—A public vehicle under Public Vehicles Act, R. S. S., 1930, is not a "common carrier" within sect. 216 (84) of City Act, R. S. S., 1930, which gives a city power to make bye-laws for the licensing of "common carriers," nor, therefore, within the meaning of a city bye-law imposing a licence fee on motor vehicles operated as "common carriers."—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—CAN.

31. For existing paragraph substitute the following :—

Deft. was a barge-owner, & let out his vessels for the conveyance of goods to any customers who applied to him. Each voyage was made under a separate agreement, & a barge was not let to more than one person for the same voyage. Deft. did not ply between any fixed termini, but the customer fixed in each particular case the points of arrival & departure. In an action against deft. by the pltfs. for not safely & securely carrying certain goods :—*Held :* deft. in exercising this employment had incurred the liability of a common carrier, & was liable though the goods were lost without negligence on his part.

Deft. was not a common carrier nor liable as such, but was liable as a ship-owner carrying goods for hire, upon the custom applicable to him as such (*per* CUR.).

Add. Annotations :—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation :—As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

44. *Add. Annotations :—Generally,* **Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

45. *Add. Annotation :*—**Refd.** Troy *v.* Eastern Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.

46. *Add. Citation :*—15 Asp. M. L. C. 208.

47. *Add. Citations :*—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

Part III.—The Contract at Common Law.

51. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

58. *Add Annotations :—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

66. *Add. Annotations :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

82. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

85. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

90a. —— ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

PART I. SECT. 4.

33 ii. ——.]—A ferry-boat engaged in transporting persons & goods for hire is a common carrier. The ferryman must insure not only the goods, but the seaworthiness of the vessel itself & his liability in case of unseaworthiness is not affected by the Harter Act.—DIRECT TRANSPORT CO. *v.* DETROIT & WINDSOR FERRY CO., [1936] 1 D. L. R. 423; O. R. 86; *affd.* [1936] 4 D. L. R. 807.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A

t i. —— ——.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—CANADIAN NORTHERN QUEBEC RY. CO. *v.* PLEET, [1923] 4 D. L. R. 1112; 26 Can. Ry. Cas. 238.—**CAN.**

t ii. ——.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pltfs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pltfs. The defective flooring was known to both parties, but pltfs. alone knew the use the cars were to be put to :—*Held :* the accident should be attributed to pltfs.' method of loading rather than to any breach of duty on part of defts.—CANADIAN WESTINGHOUSE CO., LTD. *v.* CANADIAN PACIFIC RY. CO. (1923), 54 O. L. R. 238.—**CAN.**

t iii. —— *Default of consignee.*]—HATFIELD & CO. *v.* CANADIAN PACIFIC RY. (N. B.), [1926] 2 D. L. R. 93.—**CAN.**

t iv. —— *Position of Indian railways.*]—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—GREAT INDIAN PENINSULA RY. CO., LTD. *v.* JESRAJ PATWARI (1927), I. L. R. 55 Calc. 132.—**IND.**

77 ii a. ——.]—NORTHERN GRAIN CO. *v.* CANADIAN NATIONAL RYS. & GRAND TRUNK PACIFIC RY., [1922] 3 W. W. R. 733; 70 D. L. R. 281.—**CAN.**

77 v. —— —— *Through sub-contractor's negligence.*]—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 2), [1924] N. Z. L. R. 465.—**N.Z.**

77 vi. *S. P.* WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 3), [1924] N. Z. L. R. 890.—**N.Z.**

77 vii. —— —— *What amounts to negligence.*]—Where goods entrusted to a bailee for reward are lost or destroyed while in his custody, the onus is on him to show that the loss or destruction was not due to his negligence. Where while a motor van carrying goods for hire was being operated with the cut-out open flames occasionally issued from the heater pipes at a point only a few inches from the wooden floor of the van, it cannot be said that this method of operation did not constitute negligence.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 2 W. W. R. 337; 4 D. L. R. 486.—**CAN.**

85 iii. ——.]—Goods were damaged :—*Held :* defts. were not excused from liability by any special contract in the bills of lading issued after delivery taken of the goods, &, having failed to show that the damage was not caused by their fault or neglect, they were liable.—EDGETT, LTD. *v.* PACIFIC GREAT EASTERN RY. CO., [1923] 1 W. W. R. 684; 32 B. C. R. 37.—**CAN.**

91 i. —— *Goods destroyed—No written contract limiting liability.*]—*Held :* applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO., LTD. (1923), L. R. 51 Ind. App. 29.—**IND.**

sk. *Misdelivery—Measure of damages.*—The measure of damages for misdelivery of goods by a carrier is the loss suffered by the shipper, being the price he has to pay to replace the shipment.—SCALES *v.* CLARKE STEAMSHIP CO., [1937] 2 D. L. R. 420.—**CAN.**

92a. —— ——.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again :—*Held :* in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO. (1923), 93 L. J. P. C. 108 ; 130 L. T. 554 ; 16 Asp. M. L. C. 285, P. C.

96. *Add. Annotation :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

102. *Add. Citations :*—[1917] 2 K. B. 755 ; 33 T. L. R. 517.

114. *Add. Annotations :—As to* (1) **Consd.** Frenkel *v.* McAndrews, [1929] A. C. 545. **Refd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158 ; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577. *Generally,* **Refd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597.

122. *Add. Annotation :*—**Distd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

123. *Add. Annotation :*—**Consd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

144a. Contract to carry by particular train—Whether warranty of time of arrival.]—LORD *v.* MIDLAND RY. CO., No. 412, *post.*

149. *Annotations :*—After "*As to* (2)" add "**Refd.**"

Add. Annotation :—As to (2) **Refd.** Jensen *v.* Hollis Bros. & Co., [1936] 1 All E. R. 140.

151. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART III. SECT. 3, SUB-SECT. 1.—B.

a i. —— *Goods warehoused for carrier's convenience.*]—Resps., husband & wife, were proceeding to England on Apr. 3 by mail steamer, & on Mar. 29 the male resp. wrote applts., common carriers, to the following effect : "Cabin trunk leave this day, Mar. 29. One cabin trunk will leave T. per goods train to Port A., addressed Mr. & Mrs. H., rail Port A., c/o C. & Co. Kindly deliver cabin trunk to Orient steamer S.S. *O.*" The trunk left T. by goods train, arrived & was received at Port A. by defts., who put it in their store—all on Mar. 31. On Apr. 2 the store was broken into, & most of the contents of the trunk stolen. There was no reply to resp.'s letter :—*Held :* the letter, or the letter, together with the address on the trunk, only authorised applts. to collect the trunk, & deliver it on the steamer, & the collection earlier than was necessary, & the consequent storing in the warehouse, were only for the convenience of applts. &, accordingly, applts. were liable as common carriers in respect of the articles stolen.—COCKING *v.* HOFFMANN, [1932] S. A. S. R. 108.—**AUS.**

100 i. —— *Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge.*]—*Held :* nolling the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

100 ii. —— —— *Consignee with notice of arrival—Bonded goods—Carrier liable.*]—GEORGE *v.* CANADIAN NORTHERN RY. CO. (1922), 53 O. L. R. 94.—**CAN.**

100 iii. —— —— —— *Carrier not liable—Failure of consignee to remove goods within reasonable time.*]—DYAMENT & PZADKAWOLSKI *v.* CANADIAN EXPRESS CO., [1923] 3 D. L. R. 1122 ; 52 O. L. R. 114.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*]—Pltf. shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. Pltf. in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts.' car at destination :—*Held :* pltf. could not recover, as the cause of action was founded upon an illegal contract.—MAJOR *v.* CANADIAN PACIFIC RY. CO., [1922] 3 W. W. R. 512.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

sf. *Who are.*]—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers :—*Held :* the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—SECRETARY OF STATE FOR WAR *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND, [1923] 2 I. R. 102.—**IR.**

PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages.*]—LECLERC *v.* R. (1920), 62 D. L. R. 324 ; 20 Exch. C. R. 236.—**CAN.**

PART III. SECT. 5.

h i. —— —— ——.]—DEVLIN *v.* GRAND TRUNK RY. CO. OF CANADA (1870), 30 U. C. R. 537.—**CAN.**

159 ix. —— —— —— ——.]—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 3 D. L. R. 84 ; 33 Man. L. R. 91 ; [1923] 2 W. W. R. 88.—**CAN.**

159 x. —— —— —— *Delay in delivery.*]—HATFIELD & SCOTT, LTD. *v.* CANADIAN PACIFIC RY. CO. (1921), 57 D. L. R. 453.—**CAN.**

159 xi. —— —— ——.]—INDIA GENERAL NAVIGATION & RY. CO., LTD. *v.* GIRIDHARILAL GOBERDHONE DAS (1927), I. L. R. 54 Calc. 430.—**IND.**

165 ii. —— —— —— *Goods damaged.*]—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—ROSE & LAFLAMME, LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—**CAN.**

165 iii. —— —— —— *Short delivery.*]—*Held :* defts. had discharged the *onus* of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—HARRIS *v.* DUBLIN & SOUTH EASTERN RY. CO., [1927] I. R. 137.—**IR.**

sg. *What consignee must prove—That goods in good condition when shipped—That goods actually passed over line of defendants.*]—NOVA SALES CO. *v.* CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—**CAN.**

PART III. SECT. 6.

c i. —— *Goods sent to specified wharf.*]—*Held :* evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—MORRISON *v.* THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

d i. ——.]—Goods carried by defts. for pltf. :—*Held :* at owner's risk while in defts.' warehouse at point of destination.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

d ii. ——.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY *v.* WHITEHOUSE & CO. (1921), 17 Tas. L. R. 125.—**AUS.**

e i. *S. P.* O'NEILL *v.* GREAT WESTERN RY. CO. (1857), 7 C. P. 203.—**CAN.**

f i. ——.]—SECRETARY OF STATE *v.* HAR KISHAN DAS-KURA MAL (1925), I. L. R. 7 Lah. 370.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

182 ii. —— ——.]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649 ; [1923] S. C. R. 84 ; 1 W. W. R. 473.—**CAN.**

182 iii. —— ——.]—NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781 ; 3 W. W. R. 278.—**CAN.**

PART III. SECT. 7, SUB-SECT. 3.

p i. —— *Delivery without requiring surrender of bills of lading—Delivery after indorsement of bills of lading as security.*]—*Held :* the carriers were liable.—HICKMAN GRAIN CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851 ; 1 W. W. R. 317 ; 32 C. R. C. 333 ; 36 Man. L. R. 322 ; *revsd. sub nom.* CANADIAN PACIFIC RY. CO. *v.* HICKMAN GRAIN CO., [1928] 1 D. L. R. 1069 ; [1928] S. C. R. 170 ; 34 C. R. C. 238.—**CAN.**

p ii. ——.]—CAMPBELL *v.* CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—**CAN.**

PART III. SECT. 7, SUB-SECT. 5.

s i. ——.]—*Held :* a consignee by delay in accepting delivery cannot

201. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

203. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

208. *Add. Annotations :*—**Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

234a. ——.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger ; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty :—*Held :* (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt ; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods ; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., [1922] 2 K. B. 742 ; 91 L. J. K. B. 807 ; 127 L. T. 664 ; 38 T. L. R. 711, C. A.

241. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88.

262. *Add. Annotations :*—**Refd.** The Christel Vinnen, [1924] P. 61 ; Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

265. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50 ; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97 ; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Fagan *v.* Green & Edwards, [1906] 1 K. B. 102 ; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

266. *Add. Annotations :—As to* (1) **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. *As to* (2) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51 ; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87 ;

extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—**CAN.**

sk. *Rights of carrier — To sell — Must be exercised with reasonable diligence.*]—DAVIS *v.* ELLIOT (1924), 55 O. L. R. 583.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges.*]—PATEL *v.* KEELER & CO., [1923] App. D. 506.—**S. AF.**

PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner.*]—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—ALBERTA POTATO & VEGETABLE CO. *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813 ; ——— W. W. R. 65 ; 32 Can. Ry. Cas. 356.—**CAN.**

PART III. SECT. 8.

c. Add "*revsd.* (1921), 64 D. R. 316 ; 50 O. L. R. 223."

c i. ——— ———.]—NAZZARENO *v.* ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sl. *Condition requiring notice of loss—Absence of notice bar to right of action.*]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649 ; [1923] S. C. R. 84 ; 1 W. W. R. 473.—**CAN.**

sm. *S. P.* NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781 ; 3 W. W. R. 278.—**CAN.**

sn. *United States freight classification.*]—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount :—*Held :* to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302 ; [1925] 2 W. W. R. 385 ; 30 Can. Ry. Cas. 186 ; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

o i. —— *Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.*]—SOUTH AFRICAN ——— *v.* CONRADIE, [1922] App. D. 137.—**S. AF.**

Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

267. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Rutter *v.* Palmer, [1922] 2 K. B. 87.

271. *Add. Annotations :*—*As to* (1) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 203. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

After this case add :—

Loss, damage or delay—Loss of bullion—Carriage by air.]—*See* ASLAN *v.* IMPERIAL AIRWAYS, LTD., STREET & AERIAL TRAFFIC, No. 260a, *post.*

300. *Add. Annotation :*—*As to* (2) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

302. *Add. Annotation :*—**Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

307a. Goods handed to unauthorised person.]—ROSE BROS. (WIGMORE), LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1935), 79 Sol. Jo. 923.

342. *Add. Annotations :*—*As to* (1) **Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563. *As to* (2) **Consd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

347. *Add. Annotations :*—*As to* (2) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

351. *Add. Annotations :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97.

352. *Add. Annotation :*—*As to* (1) **Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

368. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

376. *Add. Annotations :*—*As to* (4) **Consd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

381. *Add. Annotation :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

403. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

411. *Add. Annotation :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

412. Add the following paragraph :—

A contract by a ry. co. to carry goods by a given train, which ordinarily arrives in London at a particular hour, does not amount to a warranty that it will so arrive, although the co.'s servants be informed that the object of the sender requires that it should arrive.

424. *Add. Annotation :*—*As to* (3) **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

426. *Add. Annotations :*—*As to* (2) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

430. *Add. Annotation :*—*Generally*, **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

434. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

436. *Add. Annotation :*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

442. *Add. Annotations :*—*As to* (1) **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505. *As to* (2) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

452. *Add. Annotations :*—**Overd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

453. *Add. Annotation :*—**Consd.** Neilson *v.* L. & N. W. Ry., [1922] 1 K. B. 192.

454. *Add. Citations :*—[1922] 1 K. B. 192; *affd. sub nom.* LONDON & NORTH WESTERN RY. CO. *v.* NEILSON, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.

Add. Annotations :—**Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

460. *Add. Citations :*—*affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

PART IV. SECT. 1, SUB-SECT. 7.

s 1. —— *" Value at place & time of shipment."*]—*Held :* the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment. —THOMPSON *v.* CANADIAN PACIFIC RY. CO. (1922), 52 O. L. R. 306.—**CAN.**

s 2. *Goods exceeding declared value—Shipper bound by declared value.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

323 i. *" Pictures "—Sound films.*]—On a claim in the Magistrate's Ct. for £44 16*s.*, the value of a motion picture sound film, which, without any declaration as to its nature & value, had been entrusted to a carrier for carriage from one town to another & had been irreparably damaged in transit, the magistrate decided that the film was not a " picture or pictures " within sect. 1 of Carriers Act, 1830, & therefore the carrier was not protected by the said section & was liable. On appeal :—*Held :* the question decided by the magistrate was one of fact & therefore not appealable, &, further, the decision was right in fact as well as in law.—S. O. S. MOTORS, LTD. *v.* FOXTON & METRO GOLDWYN-MAYER, LTD., CORPN., [1932] N. Z. L. R. 1159; G. L. R. 425.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 4.—A.

r 1. —— *Package containing scheduled articles—Effect of non-disclosure.*]—Where a package declared to contain stationery, but in fact containing scheduled articles (as under the schedule to Carriers Act) exceeding Rs. 100 in value & also non-scheduled articles is lost in transit the value of the lost non-scheduled articles may be recovered by the consignee from the carrier under sect. 3 of the Act.—RIVER STEAM NAVIGATION CO., LTD. *v.* JAMUNADAS RAMKUMAR (1931), I. L. R. 59 Calc. 472.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—B

p. —— —— —— ——.]—TAMBOLI *v.* GREAT INDIAN PENINSULA RY. CO. (1927), 55 L. R. Ind. App. 67.—**IND.**

e (p. 69) **i.** —— *Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1924] 4 D. L. R. 184; 3 W. W. R. 136; 34 B. C. R. 140.—**CAN.**

e (p. 69) **ii.** —— *Mistake by company—Recovery of deficiency in freight.*]—Where a consignment of goods was by mistake accepted by a railway at a concession rate which was applicable

Part V.—Carriage of Persons.

480. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

481. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

492. *Add. Annotation :*—*As to* (2) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

516. *Add. Annotations :* — **Consd.** Brandon *v.* Osborne Garrett, [1924] 1 K. B. 548; The

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only to a particular special customer, instead of at the ordinary rate applicable to that class of goods according to the goods tariff, & by one of the conditions of consignment the railway reserved the right of "remeasurement, re-weighment, re-classification & re-calculation of rates":—*Held:* the railway could lawfully demand at the destination the deficiency in freight calculated at the correct rate.—SECRETARY OF STATE FOR INDIA *v.* HARBANS PRASAD (1929), I. L. R. 52 All. 81.—**IND.**

l (p. 69) i. —— —— —— ——.]—PURAN DAS *v.* EAST INDIAN RY. CO. (1927), I. L. R. 6 Pat. 718.—**IND.**

l (p. 69) ii. —— —— —— ——.]—SHEO NARAIN *v.* EAST INDIAN RY. (1927), I. L. R. 50 All. 246.—**IND.**

n (p. 69) i. —— —— —— ——.]—MASON & RISCH PIANO CO. *v.* CANADIAN PACIFIC RY. CO. (1908), 8 W. L. R. 951; 1 Sask. L. R. 213; 8 Can. Ry. Cas. 369.—**CAN.**

n (p. 69) ii. —— —— —— ——.]—SECRETARY OF STATE *v.* GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

pp i. —— —— ——. *When railway protected.*]—So long as it is established that the risk notes, the forwarding note, & the railway receipt refer to the particular consignment in question, the railway co. is amply protected.—MOOLJI SIKKA & CO. *v.* BENGAL NAGPUR RY. CO., LTD. (1929), I. L. R. 56 Calc. 1060.—**IND.**

qq i. —— —— —— ——.]—The word "misconduct" in a risk note suggests that a railway servant has been guilty of doing something which was inconsistent with the conduct required of him by the rules of the co. In the absence of proof that there was any breach of duty by the railway servants or any infringement of the rules which regulate their terms of employment, no fair inference of misconduct could properly arise.—BOMBAY BARODA & CENTRAL INDIA RY. CO. *v.* NAJNAGAR SPINNING, WEAVING, & MANUFACTURING CO. (1929), I. L. R. 54; Bom. 106.—**IND.**

rr i. —— —— *Meaning of "robbery."*]—The word "robbery" as used in Risk Note H. is not synonymous with "theft," &. therefore, where there is no robbery from a running train, but theft only, deft. railway co. is not absolved from liability by the proviso to the note.—JAI NARAIN-LACHHMI NARAIN *v.* GREAT INDIAN PENINSULAR RY. CO. (1929), I. L. R. 11 Lah. 158.—**IND.**

rr ii. —— —— *Meaning of deterioration.*]—The word "deterioration" in the risk note, form B., & in Railways Act, s. 72, & Contract Act, s. 161, is wide enough to include depreciation in value of the goods on account of a fall in the market price.—GREAT INDIAN PENINSULAR RY. *v.* JUGUL KISHORE MUKAT LAL (1929), I. L. R. 52 All. 238.—**IND.**

rr iii. —— —— *Damage to goods by cold—Conditions in bill of lading as to ventilation complied with.*]—ROBERT *v.* CANADIAN NATIONAL RY., [1932] 1 D. L. R. 306.—**CAN.**

ss. *Liability for delay in delivery—Meaning of deterioration.*]—The word "deterioration" in Railways Act, s. 77, includes loss in value owing to delay in delivery & a fall in the market value of the goods consigned. Hence, a suit for the recovery of such loss is not maintainable without the notice required by the sect.—BHAGWAN DAS LACHMI NARAIN *v.* BENGALNAGPUR RAILWAY (1929), I. L. R. 51 All. 895.—**IND.**

ss. *Non-acceptance of goods—Sale—"Public auction"—What amounts to.*]—SECRETARY OF STATE *v.* SUNDERJI SHIVJI & CO., SECRETARY OF STATE *v.* DEDJI SHIVJI & CO. (1937), 81 Sol. Jo. 961, P. C.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*]—MILLS *v.* CANADIAN PACIFIC STEAMSHIPS, LTD. (1926), Q. R. 65 S. C. 148.—**CAN.**

483 ii. —— ——.]—MARCHESSEAULT *v.* CANADIAN NATIONAL RYS. (1926), Q. R. 42 K. B. 355.—**CAN.**

488 i. —— *Caused by act of stranger.*]—If an accident is due to the train leaving the metals, *primâ facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—JEWAN RAM KHETTRY *v.* EAST INDIAN RY. CO. (1924), I. L. R. 51 Calc. 861.—**IND.**

490 ii. —— —— *Opening carriage door.*]—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck pltf., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held:* defts. were liable.—ODEGAARD *v.* WINNIPEG ELECTRIC CO., [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—**CAN.**

491 iii a. —— ——.]—Ry. cos. have a duty to provide a reasonably adequate & safe access to their carriages for normal passengers, but they owe no special duty towards those passengers who are abnormal by reason of physical disability.

A passenger brought an action against a ry. co. for damages in respect of personal injuries sustained by him through a fall, owing to his having missed his foothold on the step of a ry. carriage while attempting to enter it at one of defenders' stations. Pursuer averred that, being of abnormal weight & advanced age, he had great difficulty in entering ry. carriages, a fact which was well known to defenders' servants as he was a regular traveller by their trains from the station in question, & that, at the time of the accident, access to the carriage was rendered difficult for a normal passenger, & dangerous to him in view of his physical disability, by reason of a concealed danger, viz., that the step of the carriage, owing to its design & to the place where the train was drawn up on the occasion in question, was at an unusual height above the platform:—*Held:* (1) while defenders had a duty to provide a reasonably adequate & safe access to their trains for the normal individual, they had no special duty towards abnormal passengers such as pursuer; (2) defenders were not bound to ensure that there should be an unvarying distance between step & platform; (3) pursuer's averments did not disclose any failure of duty on defenders' part, by way of concealed danger or otherwise, which brought about the accident, but the true cause of the accident was pursuer's own physical disability; action dismissed.—HENDERSON *v.* LONDON MIDLAND, & SCOTTISH RY. CO., [1935] S. C. 734.—**SCOT.**

491 vi. —— *Effect of finding of negligence.*]—It is generally sufficient for carriers to prove that they have adopted the best-known apparatus & have kept it in working order, but this rule is not applicable when there is a definite finding of negligence against the carriers.—CANADIAN NATIONAL RAILWAY *v.* MULLER, [1934] 1 D. L. R. 768.—**CAN.**

497 ii. —— *Driver of omnibus stooping down to recover tickets on floor.*]—BRADLEY *v.* BELL BUS CO., [1928] N. Z. L. R. 204.—**N.Z.**

501 i. —— *Passenger injured by sudden stopping of train.*]—The fact that a passenger was injured because of the sudden stopping of a railway train establishes a *primâ facie* case of negligence against the railway co.; & in order to rebut that presumption it is not enough for the co. to show that the train was necessarily or reasonably so stopped because, *e.g.*, there was an obstruction on the track, it must also show that it was not because of its negligence that the obstruction got there.—VIVIAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 1 W. W. R. 791; 3 D. L. R. 892; 42 B. C. R. 423.—**CAN.**

501 ii. —— ——.]—The driver of a motor bus owes a duty to his passengers not to drive so close to a vehicle ahead, that, in any emergency created by driver of that vehicle, he will have to apply his brakes so violently that a passenger is thrown from a seat in the bus & injured. Also, while a carrier is not an insurer of his passengers' safety, he owes a duty to his passengers to provide seats so protected that they cannot be injured by being thrown therefrom upon an emergency application of the brakes.—DE COURCEY *v.* LONDON STREET RY., [1932] 2 D. L. R. 319; O. R. 226.—**CAN.**

512 i. —— *Act done in course of employment.*]—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held:* pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—FORSTER *v.* TORONTO RY. CO. (1921), 67 D. L. R. 441; 51 O. L. R. 136.—**CAN.**

Paludina, [1925] P. 40. **Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

526. *Add. Annotation :—As to* (1) **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

536. *Add. Annotation :—***Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

549. *Add. Annotations :—***Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

560. *Add. Annotation :—As to* (2) **Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

560a. —— Warning not heard by passenger—Passenger asleep.]—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured :—*Held :* even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—SHARPE *v.* SOUTHERN RY. Co., [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

Annotation :—**Apld.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461.

571. *Add. Annotation :—***Distd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation :—***Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation :—As to* (1) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

578. *Add. Annotation :—***Apld.** Broome *v.* Agar (1928), 138 L. T. 698.

579a. *S. P.* WHITEHOUSE *v.* MIDLAND RY. Co. (1866), 30 J. P. 760.

PART V. SECT. 2, SUB-SECT. 3.

k i. —— —— *Bye-law prohibiting passengers from riding on car platforms.*]—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in :—*Held :* pltf. was entitled to recover.—KIME *v.* HAMILTON RADIAL ELECTRIC RY. Co. (1921), 50 O. L. R. 113; 64 D. L. R. 191.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

537 ii. —— ——.]—Pltf. alleged that he had been injured by falling from a train of defts. in which he was a passenger, & charged negligence of defts.' servants in leaving open the vestibule door of a car, through which he fell. To the question " In what did the negligence consist ? " the jury answered : " By the south side of rear end of second-class car by trap & door of vestibule being open ":—*Held :* this answer, making the negligence the " being open " of the door, & not the opening or leaving of it open, & not indicating who opened it or left it open, was not a finding upon which a judgment for pltf. could be based.—ALEXANDER *v.* CANADIAN NATIONAL RY., [1930] 3 D. L. R. 140; 36 C. R. C. 404; 65 O. L. R. 162.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

575 i. —— *Platform too low.*]—Where at a railway station there is no platform, or a platform of inadequate length to permit a passenger to step from his carriage on to a platform, the duty of the carrier to supply passengers with reasonable facilities for boarding & alighting from trains is fulfilled by providing the carriages with steps. A train pulled into a station in broad daylight, the carriage in which suppliant was travelling being drawn up beyond the platform. After goods from that station had been put out & a reasonable time had elapsed, the guard, thinking that all passengers had alighted, gave the signal to start & the train moved on, with the result that suppliant, who was then alighting from the side of the carriage away from the platform & out of view of the train officials, fell & was injured : —*Held :* there was no obligation upon the train officials to see that all passengers had actually alighted, & was no evidence of negligence.—MUNT *v.* R., [1932] N. Z. L. R. 1691; G. L. R. 667.—**N.Z.**

p. Add " *revsd.* (1920), 48 O. L. R. 386; 19 O. W. N. 221."

p i. *Train stopping before reaching station—No duty to warn passengers.*]—GRAND TRUNK RY. Co. OF CANADA *v.* MURPHY, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—**CAN.**

q i. —— —— —— ——.]—As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—WILSON *v.* WINNIPEG ELECTRIC RY. Co., [1922] 2 W. W. R. 610; 68 D. L. R. 617.—**CAN.**

s i. —— —— *Conductor not on platform.*]—A tramway conductor, as the car was approaching a " stop if required " station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured :—*Held :* no blame attached to the conductor, & the accident was due to the fault of the passenger.—GRAY *v.* GLASGOW CORPN., [1926] S. C. 967.—**SCOT.**

584 v. —— *Passenger thrown down.*]—*Held :* there was negligence on the part of defts.' servants, & deft. liable in damages.—GUILDAY *v.* WINNIPEG ELECTRIC RY. Co., [1922] 3 W. W. R. 498; 70 D. L. R. 517.—**CAN.**

584 vi. —— *After stopping—No invitation to alight.*]—The stoppage of a tram-car at other than at an authorised stopping place is not in itself an invitation to passengers to leave the vehicle; & upon a tram-car so stopping, a passenger alights at his own risk of injury from the restarting of the tram-car as well as from passing traffic.—KILPATRICK *v.* CHRISTCHURCH TRAMWAY BOARD, [1933] N. Z. L. R. Supp. 170.—**N.Z.**

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*]—GRIFFIN *v.* CAPE BRETON ELECTRIC Co. (1921), 63 D. L. R. 251; 55 N. S. R. 19.—**CAN.**

t ii. —— *In contravention of bye-law.*]—*Held :* a contravention of an absolute statutory provision precluded a claim for damages.—HILL *v.* GRAND TRUNK RY. Co. (1922), 52 O. L. R. 508.—**CAN.**

u i. —— *What is dangerous condition.*]—ELLIOTT *v.* TORONTO TRANSPORTATION COMMISSION, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—**CAN.**

so. *Omnibus stopping at unsafe place.*]—When the place where the driver of a motor bus usually makes his stop is presently safe to his knowledge & available, it is negligence on his part to cause or invite passengers to alight at a place which, to his knowledge, is unsafe.—ROADHOUSE *v.* WINNIPEG ELECTRIC CO., [1935] 2 W. W. R. 194; 3 D. L. R. 246; 43 B. C. R. 184; *affd.*, [1936] S. C. R. 147; 2 D. L. R. 190. —**CAN.**

sq. *Car starting before passenger clear.*]—Pltf., 75 years old, got his right hand caught in the rear door of a " one-man " street car when alighting from it, & was compelled to run 50 or 60 yards with the car, thereby putting a severe strain upon his muscles, heart & arteries :—*Held :* although the motor-man saw his signal light go on, which was said to mean that the rear door had closed, yet since he did not look back or otherwise make certain that pltf. was clear of the car before it started he was negligent; & pltf. was entitled to damages for his pain & suffering, past & prospective.—FRASER *v.* WINNIPEG ELECTRIC Co., [1936] 3 W. W. R. 524; 4 D. L. R. 624.—**CAN.**

sr. *Contributory negligence of passenger.*]—In an action against the owners of a tramway system, brought by a woman passenger on one of their cars to recover damages in respect of personal injuries which she had sustained in consequence of the alleged negligence of defenders' servants, pursuer averred that, when the car was approaching at a slow speed, & appeared about to stop at, the stopping

592. *Add. Annotation :*—**Folld.** Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

592a. —— —— ——.]—On a very foggy night pltf., having descended the staircase of a ry. station, was proceeding cautiously forward on the platform, when she fell over the edge. It was proved that on this particular night the lighting of the station was quite ineffective at this particular point, & the construction of the station was such that pltf. was without any indication of which way the platform was run. The foot of the staircase was within three yards of the edge of the platform, but the latter was marked by a white line painted along it. There was no guard rail :—*Held :* defts. were negligent & there was no evidence of contributory negligence on the part of pltf.—SCHLARB *v.* LONDON & NORTH EASTERN RY. CO., [1936] 1 All E. R. 71 ; 80 Sol. Jo. 168.

597. *Add. Annotations :*—**Apprvd. & Apld.** Letang *v.* Ottawa Electric Ry., [1926] A. C. 725. **Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

598. *Add. Annotations :*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455 ; Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

598a. —— —— ——.]—Applt. met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation :—*Held :* unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—LETANG *v.* OTTAWA ELECTRIC RY. CO., [1926] A. C. 725 ; 95 L. J. P. C. 153 ; 135 L. T. 421 ; 42 T. L. R. 596; P. C.

598b. —— **Whether escalator dangerous.**]—ALEXANDER *v.* CITY & SOUTH LONDON RY. CO. (1928), 44 T. L. R. 450, D. C.

600. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

603. *Add. Annotation :*—*As to* (3) **Refd.** Montreal City *v.* Watt & Scott (1922), 128 L. T. 147.

605. *Add. Annotations :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

609. *Add. Annotations :*—*As to* (1) **Refd.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461. *As to* (2) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

620. *Add. Annotations :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

625. *Add. Annotation :*—*As to* (2) **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

629. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

631a. —— —— **Running over defective line.**]—In an action against a ry. co. for an injury to a passenger, it is evidence of negligence in the conduct of the carrying, that the train was run over a rail known to have been defective & fractured, the jury considering that this was the cause of the accident.—

place where she intended to alight, she descended the step below the rear platform, & that, while she was standing with both feet on the step, waiting for the car to stop, the car was accelerated with a jerk which threw her off the step & caused her injuries :—*Held :* pursuer, by voluntarily placing herself on the step of the moving car, had added a risk, which was not contemplated in the contract of carriage between her & defenders, & which constituted contributory negligence on her part ; action dismissed.—CALDWELL *v.* GLASGOW CORPN., [1936] S. C. 490.—**SCOT.**

sw. *Train stopping suddenly at platform—Passenger waiting to alight.*]—Suppliant was a passenger by train. Before its arrival at the station-platform which was her destination she rose from her seat. The train gave a jolt as it was stopping, & she was thrown off her balance in the carriage-aisle & injured. The evidence showed the jolt was not an unusual one :—*Held :* resp. could not be held re- [illegible] by suppliant.—CHANDLER *v.* R., [1936] N. Z. L. R. 95 ; 12 N. Z. L. J. 232. **N.Z.**

PART V. SECT. 2, SUB-SECT. 6.

586 ii. ——.]—Deft. co. gratuitously, & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it :—*Held :* the co. was not liable.—BURKE *v.* BRITISH COLUMBIA ELECTRIC RY. CO., LTD. (1900), 7 B. C. R. 85.—**CAN.**

592 ii. —— —— ——.]—Where a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, &, after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured :—*Held :* the co. were liable.—OLDRIGHT *v.* GRAND TRUNK RY. CO. OF CANADA (1895), 22 A. R. 286.—**CAN.**

sa. *Waiting room—Passage leading to "Ladies Toilet"—Unlighted & unlocked door opening on to stairs to basement.*]—Pltf.'s wife entered a passage leading from a waiting room above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. Pltf.'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured :—*Held :* the third doorway was a trap or concealed place of danger, & was a place to which pltf.'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—KNOWLTON *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1926] 1 D. L. R. 217 ; 58 O. L. R. 80.—**CAN.**

sc. —— —— ——.]—An unlocked & unlabelled door leading from a railway waiting room is not a trap, & a woman who, thinking it to lead to a lavatory, enters & falls down unlighted steps & is injured, has no right of action against the railway co.—GRANT *v.* CANADIAN PACIFIC RAILWAY, [1936] 4 D. L. R. 380 ; 11 M. P. R. 25.—**CAN.**

sd. —— *Doors leading from—Duty of carrier.*]—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence ; on the contrary, the absence of any notice should put the public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—CANADIAN NATIONAL RYS. CO. *v.* LEPAGE, [1927] 3 D. L. R. 1030 ; [1927] S. C. R. 575.—**CAN.**

PART V. SECT. 2, SUB-SECT. 10.

622 iii. —— —— ——.]—WATSON *v.* PACIFIC STAGES, LTD. (1935), 5 F. L. J. (Can.) 52.—**CAN.**

v. GREAT NORTHERN RAIL. Co. (1861), 2 F. & F. 619; *subsequent proceedings* (1862), 2 B. & S. 759; (1863), 4 B. & S. 396, Ex. Ch.

Annotation :—**Consd.** Readhead *v.* Midland Rail. Co. (1867), L. R. 2 Q. B. 412.

638. *Add. Annotations :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

645. *Add. Annotation :*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

647. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

652. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

680. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

681a. —— —— —— **Accident in booking-hall.**]—ROGERS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1930), 46 T. L. R. 238; 74 Sol. Jo. 123; 94 J. P. Jo. 155.

683a. —— **Necessity for submission to Rates Tribunal of schedule for standard season tickets.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

683b. —— **Season ticket rates—Continuation of—1921 Act, s. 34.**]—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

684. *Add. Annotations :*—**Consd.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

685a. —— **Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).**]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—NUNAN *v.* SOUTHERN RY. CO., [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 131; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.

.....:—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Penton *v.* Southern Ry., [1931] 2 K. B. 103; Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

685b. —— —— —— **Injury on journey by special train.**]—Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*interalia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special contract between themselves & pltf. whereby their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey :—*Held :* although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be

PART V. SECT. 2, SUB-SECT. 11.

p i. —— —— ——.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants :—*Held :* the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—STEWART *v.* GRAND TRUNK PACIFIC RY. CO., [1924] 1 D. L. R. 881; 1 W. W. R. 473.—**CAN.**

s i. —— ——.]—When one entrusts himself or his property to another to be carried, there is an implied contract that the traveller shall use ordinary care in the transport, & in the absence of special circumstances the fact that the passenger is the father of the driver has no significance.—KEY *v.* KEY, [1930] 3 D. L. R. 327; 65 O. L. R. 232.—**CAN.**

PART V. SECT. 2, SUB-SECT. 12.

sm. *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—BUCHANAN *v.* ——— S. C. 658.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.

651 iii. —— —— *Another route adopted—Liability for excess fare.*]—A passenger after purchasing a ticket from Agra to M. *via* Aligarh & C. discovered that if he travelled beyond Aligarh & *via* G. he would reach his destination more quickly than by the route indicated on the ticket, although he would be travelling by a longer route. He did travel accordingly & on arrival at M. he was made to pay excess fare. On suit for refund :—*Held :* Indian Railways Coaching Tariff, r. 64, applied to a passenger who was found travelling, either intentionally or by mistake, by a route other than that indicated on the ticket & not to a passenger who had arrived at his destination, & the case was governed by r. 63 & the excess fare was justified.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MURTI MANOHAR (1928), I. L. R. 51 All. 399.—**IND.**

limited to £100, & pltf. could recover no more than that amount.—HEARN *v.* SOUTHERN RY. CO. (1925), 41 T. L. R. 305, C. A.

685c. **Time limit for making claim.**]—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:— *Held:* (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—JONES *v.* OCEANIC STEAM NAVIGATION CO., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

686a. **Contract for voyage—Mistake as to nature of voyage—Ratification.**]—In Oct. 1933, pltf., a widow lady who since the death of her husband in 1929 had suffered from insomnia, nervous disorder, & heart trouble, wished to go to sea for a pleasure cruise. She called at the office of deft. co. & bought a ticket for a voyage to Australia & back on defts.' steamer *O.* She was under the impression that the voyage was to be a pleasure cruise & that she would have the benefit of the usual entertainments & shore excursions which are arranged on pleasure cruises, but in fact the voyage was an ordinary voyage in the regular mail & passenger service between England & Australia. She embarked on the *O.* in due course, & after the steamer had started she discovered that the voyage was not a pleasure cruise & she asked the purser to make arrangements for her to be put ashore & conveyed back to England. He suggested that she should go ashore at Toulon & return home by train through France, but as he could not undertake that deft. co. would refund the money which pltf. had paid for her passage she decided to stay on board, & she accordingly travelled to Australia & back. She then brought this action for damages for breach of contract. She had paid to deft. co. £140 for the return ticket to Australia & had paid a further £60 as a deposit to cover incidental expenses during the voyage, & she said that owing to the circumstances of the voyage her health had become worse & she had been put to trouble & expense at the ports of call:— *Held:* although originally the parties were not *ad idem* & there was no concluded contract, when pltf. made up her mind to remain on board for the voyage to Australia & back instead of returning to England from Toulon she elected to affirm the contract which deft. co. had in fact offered her, & as deft. co. had performed that contract the action failed.—MACMILLAN *v.* ORIENT STEAM NAVIGATION CO., LTD. (1935), 40 Com. Cas. 182.

688. *Add. Annotation:*—**Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

689. *Add. Annotations:*—**Distd.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

695. *Add. Annotations:*—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

695a. —— —— —— **Conditions ascertainable by reference to time-table.**]—Pltf., who could not read, had an excursion ticket taken for her by her niece on the face of which were printed the words: "Excursion. For conditions see back"; & on the back was a notice that the ticket was issued subject to the conditions in the deft. co.'s time-tables & excursion bills. On the excursion bills excursion tickets were stated to be issued subject to the conditions shown in the company's current time-tables. The time-tables, which could be obtained for sixpence each, stated: "Excursion tickets . . . are issued subject to the general regulations & to the condition that the holders . . . shall have no rights of action against the co. . . . in respect of . . . injury (fatal or otherwise) . . . however caused." A special jury found that an accident to the pltf. on the journey

PART V. SECT. 3, SUB-SECT. 5.

688 *v.* —— —— ——.]—*Held:* in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—WILLIAMSON *v.* NORTH OF SCOTLAND, ETC. NAVIGATION CO., [1916] S. C. 554.—SCOT.

p 1. —— —— —— ——.]—In an action by a passenger against a ry. co. to recover damages for personal injury sustained by him while travelling on one of their trains, defenders maintained that, under the contract of carriage, they were exempt from liability. When the accident occurred, pursuer was travelling on a "pleasure party" ticket, issued at a fare less than the ordinary fare. The ticket bore on the front, in legible print, "See Back," & on the back, also in legible print, "This ticket is issued subject to the General Notices, Regulations, & Conditions in the co.'s current Time Tables & Bills." Defenders' current Time Tables contained a section headed "General Notices, Regulations, & Condition," which included a condition that the holder of a ticket issued at a fare less than the ordinary fare should have no right of action against the co. in respect of injury, however caused. Pursuer admitted that he knew that there was printing on the back of his ticket, & that he must have read what was printed on the back of a similar ticket when travelling on previous occasions, but deponed that what he read had conveyed nothing to him:— *Held:* the condition formed part of the contract, in respect that the reference of the ticket to the conditions in defenders' time tables was reasonable notice of their existence & terms, & further, as pursuer knew there was printing on the back of the ticket, & admitted that at some time he must have read the printing, he must be taken to have known that it referred to conditions. Defenders assoilzied.—GRAY *v.* L. & N. E. RY. CO., [1930] S. C. 989.—SCOT.

q 1. —— —— —— ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* SIMPSON (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320.—CAN.

s 1. *S. P.* ERICKSON *v.* CANADIAN PACIFIC RY. CO., WALSTEAD *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1928] 1 D. L. R. 29; [1927] 3 W. W. R. 749.—CAN.

covered by the excursion ticket was due to negligence on the part of deft. co. To prevent the case going back for a new trial, the jury were asked whether the deft. co. took reasonable steps to bring the conditions to the notice of pltf. & answered "No," & awarded damages. Argument was then allowed whether the jury could so find, & it was held that as a matter of law when the ticket was accepted the contract was complete, & therefore there was no evidence on which the jury could find as they did :—*Held :* (1) the fact that pltf. could not read did not alter the legal position ; she was bound by the special contract made on the excursion ticket on the acceptance of the ticket ; & the indication of the special conditions by reference to the time-tables was sufficient notice of their existence & contents ; (2) the question put to the jury for the sake of convenience as to reasonable notice must be determined upon the law applicable to the conditions upon which the ticket was issued, & those conditions negatived the right of pltf. to recover damages.—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1930] 1 K. B. 41 ; 98 L. J. K. B. 615 ; 141 L. T. 382, C. A.

Annotations :—As to (1) **Apld.** Penton *v.* Southern Railway, [1931] 2 K. B. 103. *Generally,* **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

695b. —— —— —— **Plaintiff unable to read.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante.*

695c. —— —— —— **Whether question of law or fact.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante.*

695d. —— —— ——.]—Defts., a railway co., issued to persons asking for tickets between certain hours of the day between certain stations return day tickets at a reduced rate, whether such rate was demanded or not. On the front of these tickets were the words, legibly & clearly printed in large letters, "For conditions see back," & on the back was printed a condition exonerating the co. from liability for injury to the holder of the ticket, however caused. Pltf. asked for "Waterloo return," & was supplied with one of these tickets, which he accepted without objection. He was injured on the journey through the alleged negligence of defts.' servants :—*Held :* in the absence of proof that pltf. actually knew of this condition, defts. must show that they had taken reasonable steps to bring it to his notice, but on the facts there was no evidence for a jury that they had not done so.—PENTON *v.* SOUTHERN RY., [1931] 2 K. B. 103 ; 100 L. J. K. B. 228 ; 144 L. T. 614 ; 75 Sol. Jo. 100.

696. *Add. Annotation :*—**Refd.** Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

701. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

703a. —— ——.]—METROPOLITAN RY. Co. *v.* GREAT WESTERN RY. Co. (1886), 3 T. L. R. 113.

704. *Add. Annotations :*—**Refd.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420 ; Pratt *v.* Patrick, [1924] 1 K. B. 438.

723. *Add. Annotations :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354 ; Ley *v.* Hamilton (1934), 151 L. T. 360.

724. *Add. Annotations :—As to* (1) **Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429. **Refd.** Ley *v.* Hamilton (1934), 151 L. T. 360 ; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

725. *Add. Annotation :*—**Refd.** Baker *v.* Dalgleish Steam Shipping Co. (1921), 126 L. T. 482.

733. *Add. Annotations :*—**Folld.** Haynes *v.* Davey (1937), 25 Ry. & Can. Tr. Cas. 294. **Apld.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 367.

733a. —— —— ——.]—A passenger who travels upon a railway without paying his own fare but by producing the return half of a non-transferable return ticket issued to another person is guilty of the offence of travelling without having previously paid his fare & with intent to avoid payment thereof, though he did not know that the ticket was non-transferable & would not have used it if he had known.—HAYNES *v.* DAVEY (1937), 25 Ry. & Can. Tr. Cas. 294.

753a. —— —— **Transfer of non-transferable ticket.**]—K. purchased for 10*s.* an excursion return ticket, which was not transferable. The ordinary single fare for the same journey was 23*s.* On arrival at his destination K. handed to G. the return half of his excursion ticket which G. intended to use to avoid payment of his fare. Informations were preferred against K. & G., under the bye-law set out below, charging them respectively with having unlawfully transferred & unlawfully received a partly used ticket. The bye-law provided : "No person shall . . . transfer or receive any partly-used ticket . . . to or from any other person with intent that any person shall use the same for the purpose of travelling . . . on the ry., unless the ticket shall at the time of issuing thereof purport to be transferable." The magistrate dismissed the informations on the ground that, as the bye-law was framed to cover cases where there was no fraudulent intent, it was void & *ultra vires* as being repugnant to the general principles of law :—*Held :* inasmuch as the purpose of the bye-law was to prohibit transactions which must in general be fraudulent, the bye-law was a valid one.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* GREAVER, [1936]3 All E. R. 333 ; 155 L. T. 535 ; 100 J. P. 511 ; 53 T. L. R. 75 ; 80 Sol. Jo. 878, D. C.

PART V. SECT. 4.

699 ii. —— —— *Negligence of issuing company.*]—In an action against a railway co. to recover damages in respect of pecuniary loss & also for *solatium,* pursuer averred that his son, while travelling as a passenger on defenders' railway from London to Glasgow, with the return half of a ticket purchased by him in Glasgow, was fatally injured as a result of an accident to the train, which occurred in England, & admittedly was caused by the negligence of defenders' servants :—*Held :* the rights of the parties fell to be determined in accordance with the law of England, as the *lex loci delicti.*—NAFTALIN *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1933] S. C. 259.—SCOT.

PART V. SECT. 6, SUB-SECT. 1.

so. *Pulling communication cord—Defences—Compartment overcrowded.*]—A railway passenger who pulls the emergency chain because he finds the compartment crowded beyond the prescribed limit commits no offence under Indian Railways Act, 1890, s. 108, merely because he does so for the additional reason of obtaining the names of certain passengers who used abusive language towards him.—EMPEROR *v.* POPATLAL BHAICHAND (1929), I. L. R. 54 Bom. 326.—IND

756. *Add. Annotation :*—**Consd.** London Passenger Transport Board *v.* Summer (1935), 154 L. T. 108.

759. *Add. Annotation :*—**Consd.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 307.

764. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

765. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

775. *Add. Annotations :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; *Re* Carroll, [1931] 1 K. B. 317.

777. *Add. Annotation :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299.

781a. —— —— ——.]—**Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employment.**—PERCY *v.* GLASGOW CORPN., [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 38 T. L. R. 722; 66 Sol. Jo. 555; 20 L. G. R. 605.

Part VI.—Carriage of Passengers' Luggage.

784. *Add. Annotation :*—*As to* (1) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

786. *Add. Annotation :*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

787. *Add. Annotation :*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

792. *Add. Annotation :*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

795. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

796. *Add. Annotation :*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

799. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

800. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

804a. Luggage put in luggage van—By order of official.]—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD., No. 851a, *post.*

811. *Add. Annotations :*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522; Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

813. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

816. *Add. Annotation :*—*As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

823. *Add. Annotation :*—*As to* (3) **Folld.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

827a. Luggage put in compartment by porter—Passenger travelling in another compartment.] — Pltf., who had a third-class ticket, got a porter to put his suit-case in a first-class compartment & travelled in another part of the train, third class, with some friends whom he found on the train. At the end of the journey pltf.'s suit-case could not be found. In an action against the railway co. for its value :—*Held :* as the railway had failed to discharge the *onus* of proving that the loss of the hand arose by reason of the negligence of the passenger, pltf. was entitled to recover.—VOSPER *v.* GREAT WESTERN RY. CO., [1928] 1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520; 45 T. L. R. 738; 71 Sol. Jo. 605, D.

829. *Add. Annotation :*—*As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

830. *Add. Annotations :*—*As to* (1) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678; Vosper *v.* G. W. Ry. (1927), 137 L. T. 520. *As to* (2) **Refd.** Ehinger *v.*

PART V. SECT. 7.

b i. —— —— *Refusal to obey conductor—Request unreasonable—Carrier liable.*]—RAINES *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1921), 70 D. L. R. 738; 30 B. C. R. 340.—CAN.

g i. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202; *revsg.*, [1924] 4 D. L. R. 339; 55 O. L. R. 387.—CAN.

m i. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202.—CAN.

PART VI. SECT. 3, SUB-SECT. 1.

o i. —— *Sent back by returning steamer after arrival at destination—Carrier liable.*]—SMITH *v.* UNION S.S. CO. (1922), 68 D. L. R. 488.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.

806 i. *Luggage placed in compartment with passenger—Whether company liable—Passenger leaving carriage with door open.*]—Pltf. & her sister arrived at Euston Station of defts.' railway shortly after 5 p.m. in order to travel by the 6.10 p.m. train to H. Their luggage included two dressing cases which they directed a porter to put in a carriage in which they had reserved seats. The porter carried out these instructions & placed pltf.'s dressing case on the rack of a corridor carriage which was about the middle of the train. As the porter left, pltf. lifted down her case & placed it on the seat. Having removed a book therefrom, the two ladies left the carriage, without closing the door, & proceeded to a bookstall on the platform about the end of the train. Upon their return seven minutes later pltf.'s dressing case had disappeared :—*Held :* the onus of proving that the loss was due to negligence on the part of the passenger lay upon the co. Pltf., by leaving her dressing case unprotected in a carriage with the door open, was not guilty of such negligence as would exonerate the co., who were, accordingly, liable for the loss.—CARR *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1931), N. I. 94.—IR.

PART VI. SECT. 7.

sp. *Luggage left with porter—Passenger telephoning for car.*]—A passenger arrived by train at a railway station with heavy luggage in the van & lighter articles accompanying her in the compartment. All the luggage was taken on a barrow by a porter to a cab-stand in the station, where the passenger expected to be met by friends with a car. Failing to find them, she went to telephone to them, leaving the luggage in charge of the porter along with her two young children. In her absence the porter left the luggage unattended, & a thief having got rid of the children by a device, stole the lighter articles. In

S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (3) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

831. *Add. Annotation :—Generally,* **Refd.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

833a. *S. P.* HARRISON *v.* GREAT WESTERN RY. CO. (1875), 39 J. P. 312.

-.]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow

at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two deft. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos. :—*Held :* as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD. (1922), 38 T. L. R. 678 ; 66 Sol. Jo. 633.

-.]—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever" :—*Held :* such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—TAUBMAN *v.* PACIFIC STEAM NAVIGATION CO. (1872), 26 L. T. 704 ; 1 Asp. M. L. C. 336.

Annotations :—**Consd.** Price *v.* Union Lighterage Co. (1904), 73 L. J. K. B. 222 ; Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** The Pearlmoor, [1904] P. 286.

852. *Add. Annotation :—Generally,* **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

853. *Add. Annotation :*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615.

854. *Add. Annotation :—As to* (1) **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

855. *Add. Annotation :—As to* (1) **Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

857. *Add. Annotation :—As to* (1) **Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

858. *Add. Annotations :*—**Consd.** Werner *v.* Det Bergenske Dampskibsselschaft (1926), 134 L. T. 573. **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations :*—**Refd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263 ; Nunan *v.* Southern Ry., [1923] 2 K. B. 703 ; Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646 ; The Refrigerant, [1925] P. 130 ; H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co. (1933), 149 L. T. 603 ; Danneberg *v.* White Sea Timber Trust, Ltd. (1935), 154 L. T. 25 ; Ashby *v.* Tolhurst, [1937] 2 K. B. 242.

866. *Add. Annotations :*—**Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Rys. [1923] 2 K. B. 703.

Part VII.—Carriage of Animals.

885. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1923] 2 K. B. 742.

890. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

an action by the passenger against the railway co. :—*Held :* the co. was liable, in respect that its liability as carrier of passengers' luggage lasted until the passenger, using due diligence, had been afforded a reasonable opportunity of taking delivery of the luggage ; & here it was not proved that the passenger had failed to exercise due diligence.—PARKER *v.* M. S. RY. CO., [1930] S. C. 822.—SCOT.

PART VI. SECT. 8, SUB-SECT. 4.

d i. —— *Special contract.*]—*Held :* it was a valid answer to pltf.'s action that she had assented to be bound by the contract relieving the carrier from liability.—FENNELL *v.* MONTREAL S.S. Co. (1876), 6 Nfld. L. R. 124.—NFLD.

d ii. —— —— *Construction.*]—DIXON *v.* RICHELIEU NAVIGATION CO. (1889), 18 S. C. R. 704.—CAN.

e i. —— ——.]—*Held :* pltf. was bound by the conditions.—WOOD *v.* ALLAN (1880), 13 N. S. R. (1 R. & G.) 477 ; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—CAN.

——*eld :* pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting defts.' liability, as the clause had been waived, & there was a special contract.—TOLERTON *v.* ——ARD S.S. Co., [1924] 3 D. L. R. 355 ; 2 W. W. R. 927 ; 33 B. C. R. 551.—CAN.

PART VII. SECT. 1, SUB-SECT. 2.

——— PACIFIC RAILWAY (1929), 1 M. P. R.

PART VII. SECT. 3.

r i. —— *No evidence as to cause of loss.*]—In an action for damages for the loss of three horses which died while in transit on deft.'s railway under a contract known as "Live Stock—Special Contract—Shipping Order," approved by the Board of Railway Comrs. for Canada :—*Held :* there being no evidence to establish the actual cause of the deaths, the facts disclosed *pointed to* the conclusion that something beyond the control of deft., rather than any fault on its part, was the cause of the loss, &, therefore, under the terms of the contract deft. was not liable.—BAYNE *v.* CANADIAN NATIONAL RYS., [1933] 3 W. W. R. 616.—CAN.

w i. —— *Animals dying of arsenic poisoning.*]—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with

Part VIII.—Carriage of Explosives and Dangerous Goods.

894. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

895. *Add. Annotations :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B 742 ; McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

896. *Add. Annotations :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Folld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

896a. ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P, DEPOSITORY, LTD., No. 234a.

896b. Goods unfit to travel—Liability of sender.]—SOUTHERN RY. CO. *v.* BOOTS PURE DRUG CO., LTD. (1935), 79 Sol. Jo. 109.

Part IX.—Measure of Damages.

905. *Add. Annotations :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535 ; The Edison, [1932] P. 52 ; The Arpad (1934), 50 T. L. R. 505.

910. *Add. Annotations :*—**Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535. **Apld.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404 ; The Edison, [1932] P. 52. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Apld.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739 ; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209 ; Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66 ; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Flint *v.* Lovell, [1935] 1 K. B. 354 ; Haynes *v.* Harwood, [1935] 1 K. B. 146 ; Millar's Machinery Co., Ltd. *v.* Way (David) & Son (1935), 40 Com. Cas. 204 ; Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936), 80 Sol. Jo. 284 ; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

912. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

914. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

918. *Add. Annotations :*—*As to* (1) **Consd.** The Edison, [1932] P. 52 ; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

924. *Add. Annotation :*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

930. *Add. Annotation :*—**Refd.** Aronson *v.* Molga Holzindustrie A./G. Leningrad (1927), 32 Com. Cas. 276.

Part X.—Statutory Control of Carriers' Business.

954a. Side entrance to—Refusal to re-open.]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed

any alleged negligence, & the cause of the damage was purely a matter of speculation.—TURNER *v.* CANADIAN PACIFIC RY. CO., [1922] 2 W. W. R. 858 ; 66 D. L. R. 31.—**CAN.**

b i. —— *Unless written notice of claim given at point of delivery.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO., [1921] 3 W. W. R. 788 ; 62 D. L. R. 601 : 15 Sask. L. R. 1.—**CAN.**

PART IX. SECT. 1.

901 vi. ——.]—Action against a ry. co. for alleged shortages in thirty-seven cars of grain loaded in bulk from elevators on private sidings & delivered at private sidings. The real dispute between the parties as to each car was as to the quantity (*a*) shipped, (*b*) delivered at destination, (*c*) loss in transit, if any, & if any whether the shipper was to blame for the loss. The cars were all shipped under the uniform bill of lading for bulk grain :—*Held :* after reviewing the method of weighing & billing the grain, it was not to be assumed on that account that the grain was not carefully weighed or that the ry. was charged with any worthwhile quantity as having been put into any car which was not actually put into it, & the bills of lading largely lost their value as *prima facie* evidence of quantities, & in accordance with the real intention of the parties, should be considered rather as evidence only of approximate quantities shipped.—GRAIN CLAIMS BUREAU, LTD. & FEDERAL GRAIN, LTD. *v.* CANADIAN PACIFIC RY. CO., [1936] 2 W. W. R. 17 ; 2 D. L. R. 558.—**CAN.**

PART X.

For cases decided by the Board of Railway Commissioners for Canada, *see, generally,* RAILWAYS, Vol. XXXVIII., pp. 254-256, 375-378.

in pursuance of a general policy of " closed " stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—NOTTINGHAM CORPN. *v.* MIDLAND RY. CO. (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.

955. *Add.* *Annotation :* — **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

957. *Add. Annotation :—As to* (1) **Consd.** Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10.

958. *Add. Annotation :—As to* (3) **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

960. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14; Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

967. *Add. Annotation :—As to* (1) **Distd.** London & North Eastern Ry. Co. *v.* British Trawlers Federation, Ltd., [1934] A. C. 279.

973a. —— **Over land of third party—Not ordered.**] —*Held :* a railway co. cannot be ordered to work a siding which trespasses on the land of a third party.—STOKES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1932), 21 Ry. & Can. Tr. Cas. 30.

976a. —— **Refusal to accept privately owned wagons.**]—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—CHARRINGTON, GARDNER, LOCKETT & CO., LTD. *v.* SOUTHERN RY. CO. (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.

980. *Add. Annotation :—As to* (1) **Consd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

991a. —— **Jurisdiction of Commissioners.**]—By rule 52 of the Railway & Canal Commission Rules any application to rescind an order of the Comrs. must be made within twenty-eight days after the said order has been communicated to the parties unless the Comrs. think fit to enlarge the time. In 1931 the Comrs. allowed an application to be made to rescind an order made in 1891. In 1891 the Comrs. ordered a railway co. to afford reasonable facilities for passenger traffic on a branch line which had been closed to passenger traffic. The railway co. complied with the order. In a later case between other parties it was held by the Ct. of Appeal that the Comrs. had no jurisdiction to make the order of 1891. In 1930 the railway co. again closed the line to passenger traffic. On an application by the urban council of the district for an order compelling the railway co. to obey the order of 1891, & on a motion by the railway co. to rescind the order of 1891 :—*Held :* the order of 1891, having been made without jurisdiction, must be rescinded. A facility which involves the railway co. which affords it in a loss is not reasonable.—WINSFORD URBAN DISTRICT COUNCIL *v.* CHESHIRE LINES COMMITTEE (1931), 21 Ry. & Can. Tr. Cas. 10.

1010a. —— **To continue former facilities—Pending decision as to rights of parties.**]—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties :—*Held :* this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—GREAT CENTRAL RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 89.

1015a. —— **Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post*.

1025. *Add. Citation :—sub nom.* R. *v.* RAILWAY COMRS., 46 J. P. 35.

1043a. Amount fixed so as to allow rebate to be made.] — Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2*d.* per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been withdrawn, an application was made for a through rate equal to the original charge :—*Held :* (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader. —GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.

1049a. —— —— **Applicants not performing functions of ordinary railway company.**]—STOCKSBRIDGE RY. CO. *v.* GREAT CENTRAL RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 335.

1051a.—— **Congested route—Alternative route available.**]—*Held :* (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrangement between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 202

1058a. —— **Terminal costs.**]—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, *ante*.

1060a. —— **Payment of rebate to trader.**]—GLENAVON GARW COLLIERIES, LTD. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, *ante*.

1072. *Add. Annotation :*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1077. *Add. Annotation :—As to* (1) **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1080. *Add. Annotations :—As to* (4) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1096a. —— **Regulation affecting one class of goods only—Lower rate necessary in public interest.**]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, *post*.

1098. *Add. Annotation :—As to* (1) **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

1108. *Add. Annotations :*—**Refd.** *Re* Railways Act, 1921, *Re* Great Western Ry. Co.'s Application, [1933] 2 K. B. 391; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1110. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1111. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1115. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1122. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123a. Meaning of "trader"—Railway & Canal Traffic Act, 1888 (c. 25), s. 27.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post*.

1124. *Add. Annotation :*—**Consd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

1144. *Add. Annotations :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1149. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1149a. ——.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post*.

1166a. —— **Wharfage.**]—By its Act a canal co. was precluded from charging for wharfage in respect of private wharves constructed under provisions of the Act, which empowered adjoining owners to construct wharves on the banks of the canal. An oil co. acquired from the canal co. land adjoining the canal bank, under three conveyances, by one of which they were obliged, & by another empowered, to construct a wharf on a line beyond their boundary, so that the front part of the wharf should extend beyond the canal bank over the canal. On a wharf so erected the oil co. fixed a pipe & discharged oil in bulk from vessels lying in the canal. Competitors of the oil co. owning land that was near to but did not adjoin the canal obtained from the canal co. easements to erect valve houses on the canal bank, & discharged their oil in the same way. The canal co.'s sched. of charges contained two classes of oil. As to the one it was stated that the rate was inclusive of a charge for wharfage, as to the other, that the rate was for tolls only but that the use of the canal co.'s wharves was free. The oil co. & their competitors were charged the same rates, which were less than the maximum tolls for the use of the canal :—*Held :* the oil co.'s wharf was not a private wharf, to which the wharfage rate was inapplicable, firstly because it was constructed, not under the powers conferred by the Act on adjoining landowners, but under the obligations imposed as part of the consideration for which the land was acquired; secondly, because the wharf, extending over the canal, was not wholly constructed on the land of the adjoining owner; therefore, the oil co. was not unduly prejudiced by being charged the same rates as their competitors who did not own land adjoining the canal. The Commission found as a fact that the canal co. did not, in certain cases, charge for wharfage, though they charged an inclusive rate which covered the use of their wharves.—ANGLO-OIL CO. *v.* MANCHESTER SHIP (1929), 20 Ry. & Can. Tr. Cas. 45.

Annotation :—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

—— ——.]—(1) *Held* by the Comrs. where an inclusive charge covers services

PART X. SECT. 3, SUB-SECT.

3a. *Classification causing prefe... Validity of bye-law.*]—By Government Railways Act, 1912, s. 24, the Comrs. are empowered to demand tolls in respect of goods carried upon the railways, but subject to the provisions of the Act, such tolls shall be charged equally to all persons, & after the same rate in respect of all goods of the same description :—*Held :* certain bye-laws made in pursuance of the Act, which classified imported galvanised iron in a different class to iron of a similar nature manufactured locally, & which prescribed a toll of a higher rate for the imported than for locally manufactured iron of the nature referred to, were not ...—HARDY'S, LTD. *v.*

COMRS. FOR NEW SOUTH (1928), 28 S. R. N. S. W. 318; 45 N. S. W. W. N. 82.—AUS.

PART X. SECT. 3, SUB-SECT. 3.—D.

h i. —— —— —— —— ——

Dominion Railway Act, 1919, *s.* 316.] R. (CANADIAN PACIFIC RY. CO. — MILLER) *v.* STANDELL, [1923] 2 W.W. R.

in respect of which a railway co. is bound to show no undue preference, then, if it can be shown that there is allowed out of the inclusive charge less for those services than is charged to complainants for the same services, an undue preference is made out. Therefore a cause of action was disclosed by an application which alleged that out of an inclusive charge made by the resps. for collection & delivery by water of rail-borne traffic less was retained by resps. in respect of wharfage at a wharf where goods were loaded on to railway trucks than was charged to the applicants for the same wharfage; (2) by the Ct. of Appeal such a question ought not to be tried on the pleadings because there might be disclosed at the trial material facts which had not been disclosed on the pleadings.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

·]—Resps. made an inclusive charge of 3*s.* 10*d.* for collection & delivery by lighter on the Thames. This charge covered lighterage by resps.' accredited agents & also wharfage at the waterside station where the traffic was loaded & unloaded. Resps. paid their agents 2*s.* 10*d.* for the lighterage & retained 1*s.* for the wharfage. For the same wharfage the resps. charged 1*s.* 6*d.* to appcts., who were lightermen competing with resps.' agents. The Comrs. found as a fact that this discrimination, which they assumed to be a preference of resps.' agents against appcts., was necessary for the purpose of preventing the traffic collected & delivered by resps.' agents from being transferred from resps.' railway to rival carriers by road:—*Held:* (1) it was in the public interest that this traffic should be retained by the resps. instead of being carried by road; (2) the following facts were properly taken into account by the Comrs. in deciding that the preference was not undue, *viz.*, that a similar system had been enforced for forty years by other railway cos. owning other wharves on the Thames; in consideration of the preference resps.' agents had submitted themselves to a system of control which was an advantage to resps.; the effect of the preference & the consequent monopoly of resps.' agents had been to augment resps.' traffic, & at the same time to render the working of it cheaper & more efficient, & to minimise delays & demurrage charges.

(3) *Per* MAUGHAM, L.J.: "Trader" in Railway & Canal Traffic Act, 1888 (c. 25), s. 27, includes a rival carrier.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

Annotation:—As to (1) **Refd.** Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1166d. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appcts at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate:—*Held:* without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—PRENTICE BROTHERS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1167. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1169. *Add. Annotation:—As to* (3) **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1171. *Add. Annotation:*—**Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175. *Add. Annotation:*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1175a. —— Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post.*

1178. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1184. *Add. Annotation:—As to* (1) **Consd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1192. *Add. Annotation:—As to* (1) **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1193. *Add. Annotations:—As to* (1) **Consd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. **Refd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Can. 54; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1194. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1205. *Add. Annotation:—Generally,* **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1219a. —— Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged

a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co. :—*Held :* (1) both rates were properly charged under the circumstances, & the difference between them was justified ; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1224a. —— —— ——.]—*Held :* " the discovery by the party aggrieved of the matter complained of " in 1888 Act, s. 12, means discovery of the preferential treatment of complainant's competitor, & not discovery of the evidence by which the complaint can be substantiated. — BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 78.

1236. *Add. Annotation :* — **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1237a. Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.]—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period :—*Held :* not an agreement fixing those rates within 1921 Act, s. 34.—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. —— —— ——.]—(1) A colliery co. agreed with a railway co. that in consideration of the colliery co. sinking a pit the railway co. would build a railway & would charge for the coal conveyed from the pit to the port of shipment rates as low per ton per mile as the rates for the time being charged by the railway co. for coal to or from the said port to or from any colliery in Glamorganshire. In pursuance of this agreement a charge of 6.923*d.* was made from before 1914 to Jan. 1920, when, in consequence of the imposition of a flat rate addition by the Minister of Transport the mileage rate of the said charge so increased came to exceed the mileage rate of the charges, similarly increased, for coal from more distant collieries to the same port : by the Rates Tribunal the charge of 6.923*d.* was fixed under a statutory agreement & originally fixed for valuable consideration.

(2) An assignment of the goodwill of a business " & all other protected rights & all other hereditaments, effects & things not capable of delivery by hand held relating to or enjoyed or exercised in connection with the said business " transfers the benefit of an agreement for a railway rate.

(3) An agreement which has been assigned, but incompletely for want of notice, is a subsisting agreement within sect. 34 (2) of Railways Act.

(4) The jurisdiction of the Rates Tribunal under sect. 34 (2) of the Railways Act is to continue charges, but not so as to override the repeal of agreements for charges effected by sect. 34 (1). Consequently, an agreement that a colliery co. shall have as low a rate per ton per mile as any other colliery cannot be continued.

(5) The adjustment prescribed by sect. 34 (2) means that the adjusted charge is to bear the same relation to the general charges made on the appointed day as the charge to be continued bore to the general charges made on Aug. 4, 1914.—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237c. —— —— **What is a fixed rate.**]—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—CARDIFF COLLIERIES, LTD. *v.* GREAT WESTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 202.

Annotations :—**Folld.** Forest of Dean Freighters' Assocn. *v.* Great Western Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 13. **Consd.** Powell Duffryn Steam Coal Co. *v.* Great Western Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237d. —— —— ——.]—*Held :* although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appcts. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—R. & W. PAUL, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 228.

1237e. —— **Under special statutory provision—What amounts to special statutory provision.**] —SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237f. —— —— ——.]—A bill was promoted in Parliament to empower two railway companies to purchase jointly the railway of a third company. Petitioners against the bill withdrew their opposition in consideration of the promoters agreeing to the insertion of a clause limiting the charging powers on the line proposed to be purchased. The bill with the clause so inserted was passed into law :—*Held :* charges were thereby fixed under a special statutory provision, & were originally so fixed for valuable consideration.—FOREST

OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 13.

1237g. —— Originally fixed for valuable consideration—What amounts to.]—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. Co., No. 1237f, *ante*.

1237h. —— —— ——.]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. Co., No. 1237b, *ante*.

1237j. —— Extent of jurisdiction of Rates Tribunal.]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. Co., No. 1237b, *ante*.

1237k. Railway Freights Rebates Scheme—Review.]—*Re* RAILWAY FREIGHT REBATES SCHEME (1936), 25 Ry. & Can. Tr. Cas. 148.

1243. *Add. Annotation :*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W., L. M. & S., L. & N. E. & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. "Rolling stock"—Transit of empty wagons needing repair on change of ownership.]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* INCE WAGON & IRONWORKS Co., LTD. (1924), 131 L. T. 229; 40 T. L. R. 551, C. A.

1245b. "Pipes, rain water & their connections, cast iron or steel"—Include rain water pipes adapted for other purposes.] — ROWNSON, DREW & CLYDESDALE *v.* GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. Cos. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245c. "Coal"—Coal, coke & patent fuel.]—*Re* NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND'S APPEAL (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

1245d. "Castings, iron or steel of light type"—Includes cantilever wall brackets.]—Small cantilever wall brackets, constructed so that one end of the top bar is let into the wall, are not "cantilevers, iron or steel, as girders," class 7, but "castings, iron or steel of light type," classes 13 to 17.—AMALGAMATED RY. COS. *v.* ASSOCIATED BUILDERS' MERCHANTS, LTD. (1930), 20 Ry. & Can. Tr. Cas. 162.

1245e. Railway motor carriages fitted with electric motors.]—A railway coach fitted with an electric motor which derives its power from a generating station is a "railway motor carriage with engine combined running on its own wheels" & not a "railway vehicle running on its own wheels."—AMALGAMATED RY. Co.'s *v.* RAILWAY CARRIAGE & WAGON BUILDERS (1933), 21 Ry. & Can. Tr. Cas. 158.

1245f. "Glassware."]—Oven-table glassware, machine-made, but designed to resist great heat, is not "glassware . . . common, machine-made, Class 16c" but is "glassware . . . Class 18g."—AMALGAMATED RY. COS. *v.* BRITISH HEAT-RESISTING GLASS CO., LTD. (1936), 25 Ry. & Can. Tr. Cas. 1.

1245g. "Extracts & essences for human food."]—A railway co. carried Virol under Class 3 as an article not specified in the classification :—*Held :* Virol was a mixture of different component parts rather than an extract or essence, &, as it did not come clearly within the expression "extracts & essences for human food," the railway co. must continue to carry it under Class 3 as being unclassified. —BOVRIL, LTD. & VIROL, LTD. *v.* GREAT WESTERN RY. Co. (1904), 12 Ry. & Can. Tr. Cas. 151.

1245h. Alteration—When granted.]—The standard charges based on the classification are not intended to be the equivalent of the services rendered in each particular case. They are overall charges which the cos. are prepared to make in all the circumstances of all the articles in the classification. The cos. may make more profit out of one carriage than another. That alone is not a ground for transferring the article which is carried at the greater profit into a lower class.—WOOLWORTH & Co. *v.* AMALGAMATED RY. Cos. (1930), 20 Ry. & Can. Tr. Cas. 149.

1245j. Publication—Addition of explanation to statutory classification.]—By 1921 Act, s. 28, the Rates Tribunal have jurisdiction to determine any question as to the class in which any article is classified, & by sect. 54 the railway cos. are required to keep for sale printed copies of the general classification for the time being in force. The railway cos. kept for sale two copies, one a literal copy, known as the Statutory Classification, in which the different articles appeared according to their class, & another, a copy known as the Working Classification, in which the different articles appeared in alphabetical order followed by the number of the class to which they belonged. In the Working Classification were numerous explanatory entries inserted by the railway cos. but not found in the statutory copy. On an application to incorporate into the Statutory Classification the explanations in the Working Classification :—*Held :* granting the application, that the railway cos. had not contravened the provisions of 1921 Act, s. 54.—AMALGAMATED RY. Cos. *v.* LONDON CHAMBER OF COMMERCE (1930), 20 Ry. & Can. Tr. Cas. 157.

1246a. On rejection of goods by consignee.]—A contract of carriage of goods in a co.'s wagon to a private siding does not terminate until the wagon is returned empty by the consignee to the railway co. Where a consignee rejects a consignment delivered to him in a co.'s wagon at his private siding, the services of hauling the wagon back to the station & then accommodating it while the instructions of the consignor as to its disposal are obtained, & also the service of hauling the wagon back to the private siding, where the instructions are to redeliver the consignment, are all

services rendered for the convenience of the consignor within para. 5 of the Sched. to the Rates & Charges Orders. The charges for such services are therefore recoverable from the consignor, both under the contract where the consignment note provides that all charges are to be paid by the consignor & under the Rates & Charges Order.—LONDON & NORTH EASTERN RY. Co. *v.* BRAHAMS (1931), 21 Ry. & Can. Tr. Cas. 1.

1246b. Services in connection with sidings—When conveyance begins & ends.]—(1) The Railway Rates Tribunal, on a modification of standard charges under sect. 35 of 1921 Act, fixed standard charges for " services performed by the co. at the beginning & end of transit " :—*Held :* such standard charges were applicable to services at or in connection with private sidings, & a rate or charge being thereby otherwise provided for such services the Tribunal had no jurisdiction to fix a reasonable charge for them under para. 11 (1) (i.) of Sched. V. of 1921 Act.

(2) The Tribunal having in fact fixed a standard charge for private siding services the question whether it ever had power so to do could not be entertained on an application to fix reasonable charges for private siding services.

(3) In applying sect. 40 of 1921 Act to exceptional rates for traffic which has beer transferred from one class to another, the disintegration is to be made by reference to the standard rate to which the exceptional rate is for the time being exceptional, not by reference to the standard rate out of which the exceptional rate was originally carved.

(4) A railway co. granted a rate by passenger train from private siding to private siding :—*Held :* conveyance began & ended, not at the private siding, but in the station at the point where the traffic was attached to or detached from the passenger train.—NESTLE & ANGLO-SWISS CONDENSED MILK Co. *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1934), 22 Ry. & Can. Tr. Cas. 61.

1268. *Add. Annotation :—Generally,* **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1276. *Add. Annotation :—As to* (1) **Refd.** Nestle & Anglo-Swiss Condensed Milk Co. *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 61.

1285. *Add. Annotations :—As to* (1) **Refd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93 ; Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

1286. *Add. Annotations :—As to* (1) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations :*—**Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93. **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1287a. Stevedoring.]—The London & North Western Railway Co. (Rates & Charges) Order Confirmation Act, after reciting the Railway & Canal Traffic Act, confirms the Order as set out in the Sched. By para. 21 of the Sched., nothing therein contained shall affect the right of the co. to make any charges which they are authorised by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the co. at or in connection with docks or shipping places, & by para. 26 of the Sched. the term " railway " means any railway or steam tramway over which the co. conveys merchandise, & in respect of which no maximum rates & charges other than those authorised in the Sched. are for the time being authorised by Parliament. By Pt. IV. of the Appendix to the Sched. the co. may charge such reasonable sums as they think fit for any accommodation or services rendered within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the Sched. :—*Held :* (1) in construing the Sched. the definition of " railway " in para. 26 of the Sched. is to be applied, & not the definition in sect. 3 of 1873 Act ; (2) the work of stevedoring is incidental to the undertaking of a dock owned by a railway co. ; (3) in doing the work of stevedoring a railway co. is not bound by the limitations of Pt. IV. of the Appendix to the Sched., &, in the absence of any other restrictive enactment, may contract as they please.—DAMPS SELSK SVENDBORG *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 67.

1307. *Add. Annotation :*—**Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1316. *Add. Annotations :*—**Refd.** Bede Steam Shipping Co. *v.* Bunge y Born, Limitada S. A. (1927), 43 T. L. R. 374 ; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316 ; Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1316a. —— ——.]—GREAT CENTRAL RY. Co. *v.* SWANN (1913), 48 L. Jo. 47.

1318. *Add. Annotation :*—**Refd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1323. *Add. Annotations :*—**Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102 ; R. *v.* Leinster, [1924] 1 K. B. 311.

SECT. 6.—**EXCEPTIONAL RATES AND FARE**
(Vol. VIII., p. 207).

1323a. Under 1921 Act—Meaning of " standard " & " exceptional."]—The expression " standard " as applied to charges in Part III. o the above Act is the correlative or complementary term to " exceptional," &, there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 80 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re* STANDARD CHARGES SCHEDULES (1923), 17 Ry. & Can. Tr. Cas. 147.

1323b. New exceptional rates—Grounds for granting.]—The fact that equal rates were formerly charged from two competing points to a

common market unequally distant from them, whereas the corresponding standard charges are unequal, is not a ground on which the Railway Rates Tribunal will grant a new exceptional rate so as to restore the equality. —DOWLOW LIME & STONE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 41.

1323c. —— ——.]—An application for a new exceptional rate under sect. 37 (3) of Railways Act, 1921, may be justified by showing that the rate for which it is intended to be substituted is unfair or excessive, or that the new rate will tend to augment the standard revenue. Where the existing rate in force is one which the railway co. has no legal power to charge the Tribunal will not consider whether it is unjust or excessive.

In a proper case the Tribunal will grant a new exceptional rate to relieve a trader against an undue prejudice. A trader is not unduly prejudiced by a lower rate granted to another trader who does not compete with him.—DOLE (JAMES) & CO. *v.* FOUR AMALGAMATED RY. COS. & LONDON PASSENGER TRANSPORT BOARD (1936), 25 Ry. & Can. Tr. Cas. 87.

1323d. —— **Validity of flat rate.**]—A new exceptional rate under Railways Act, 1921 (c. 55), s. 37, must not be a flat rate irrespective of distance, but must contain a charge based on so much per ton per mile according to distance & class.—*Re* GREAT WESTERN RY. CO.'S APPLICATION, [1933] 2 K. B. 391, 102 L. J. K. B. 549; 149 L. T. 372; 49 T. L. R. 500; *sub nom.* GREAT WESTERN RY. CO. *v.* BRISTOL GRAIN IMPORTERS DEFENCE ASSOCN., 21 Ry. & Can. Tr. Cas. 46, C. A.

1323e. —— **Must be fixed by tribunal & entered in rate book.**]—A new exceptional rate within Rys. Act, 1921 (c. 55), s. 37, requires to be "fixed," that is, sanctioned by the Ry. Rates Tribunal under the above section & it also requires to be entered in the rate book of the co. before it is "granted," that is to say, before it becomes operative as between the ry. co. & consignors of goods. Therefore where the tribunal fixed a rate of 10*s.* 9*d.*, but the ry. co. entered in its rate book a rate of 14*s.* 9*d.* there was no effective exceptional rate granted, since neither rate was both sanctioned by the tribunal & entered in the rate book.—GREAT WESTERN RY. CO. *v.* JAMES (HENRY R.) & SONS, LTD., [1936] 2 All E. R. 660; 80 Sol. Jo. 571; 24 Ry. & Can. Tr. Cas. 241, C. A.

1323f. Disintegration—On continuation.]—Where an exceptional rate is referred to the Rates Tribunal for its determination under 1921 Act, s. 36, then, if the Tribunal decides to continue the rate, its duty is to disintegrate it in the manner provided for in sect. 40 of the Act, & the performance of this duty may at its discretion be postponed until some party interested in the rate applies for the disintegration.—DISINTEGRATION OF CONTINUED EXCEPTIONAL RATES (1928), 20 Ry. & Can. Tr. Cas. 1.

1323g. —— **Time for.**]—A railway co. applied to the Rates Tribunal to sanction a rate, more than 40 per cent. below the standard rate, between a seaport town & the Midlands. Another seaport town competing in the same traffic, having been admitted to oppose the said rate, sought to administer interrogatories to the railway co. as to the disintegration of the existing rates between the two ports respectively & the Midlands & of the new proposed rate, with a view to showing the effect that the new rate would have on the competition, & the prejudice that would be caused to the opponents of the rate:—*Held:* by the Rates Tribunal, such rates are to be disintegrated by the Rates Tribunal, under 1921 Act, s. 40, at the time when they are sanctioned; it is proper for the railway co. to present the rate for sanction without any proposed disintegration, & there is no procedure for obtaining a preliminary disintegration of such a rate.—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 28.

1323h. —— **Traffic transferred from one class to another.**]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante*.

SECT. 7.—OWNER'S RISK RATES (Vol. VIII., p. 207).

1323j. Conveyance of goods by passenger train at owner's risk—Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk:—*Held:* the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, &, when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323k. —— —— **Grounds for ordering.**]—Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk

scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk: —*Held:* looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1323l. **Delay in making claim—When relief granted.**]—Where the course of business between a consignor & his selling agent made it impossible for the agent to know what consignments he ought to have received until the half-yearly stocktaking, & where in consequence no advice was given to the co. within fourteen days of the consignment being handed to them that it had not been delivered, & no claim was made within twenty-eight days:—*Held:* that is not the kind of impossibility contemplated by the proviso to condition 6 of the standard terms & conditions of carriage of merchandise by passenger train at owner's risk, in respect of which the Rates Tribunal may grant relief.—WAPNAH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 87.

1326a. —— **Charges imposed by Ministry of Transport.**]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3*s.* per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5*s.* per day, & in the case of sheets 6*d.* & 1*s.* for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1*s.* 6*d.* per day for wagons & 3*d.* per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held:* (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3*s.* per day for wagons & 6*d.* per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2*s.* & 6*d.* per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION *v.* SAME (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotations:—As to* (3) **Consd.** G. W. Ry. *v.* Laing (1922), 28 Com. Cas. 100. *Generally,* **Refd.** London & North Eastern Ry. Co. *v.* Brahams (1931), 21 Ry. & Can. Tr. Cas. 1.

1331a. —— **Congestion caused by increased traffic —Insufficiency of unloading sidings.**]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltfs. to defts. within the scope of pltfs.' undertaking by the desire of defts.:—*Held:* as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—GREAT WESTERN RY. CO. *v.* LAING (J.) & CO., LTD. (1922), 39 T. L. R. 93; 28 Com. Cas. 100, C. A.

PART X. SECT. 9, SUB-SECT. 1.

sq. *Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act,* 1919 (*c.* 50), *s.* 3.]—NORTH BRITISH RY. CO. *v.* STEEL CO. OF SCOTLAND, LTD., [1922] S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.

CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—CAN.

g ii. —— *Cars excepted from Rules— "Cars stored on carrier's or private track"—"Private cars on private track of car owner."*]—TORONTO HAMILTON & BUFFALO RY. CO. *v.* STEEL CO. OF CANADA (1923) 55 O. L. R. 63.—CAN.

st. *Notice of arrival—Time for.*]—Under the Demurrage Rules notice of arrival of a car may be mailed on Sunday or a legal holiday.—CANADIAN CAR DEMURRAGE BUREAU *v.* DEPT. OF NATIONAL DEFENCE, OTTAWA, [1935] 2 D. L. R. 72.—CAN.

1337. *Add. Annotation :—Generally,* **Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. —— ——.]—PRENTICE BROTHERS, LTD *v.* LONDON & NORTH EASTERN RY. CO., No. 1166d, *ante.*

1337b. —— **Terminal charges not in fact made.**]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance :—*Held :* (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive. (2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—DIXON (T. & M.) LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation :—As to* (1) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1349. *Add. Annotation :—As to* (2) **Refd.** Dixon *v.* L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. —— **Application for increase—Before "appointed day"—1921 Act, s. 60.**]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

Annotations:—**Apld.** British Hay Traders' Assocn. *v.* L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation *v.* Same (1925), 18 Ry. & Can. Tr. Cas. 169. **Refd.** Paul *v.* L. & N. E. Ry. (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation :*—**Refd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 134.

1373. *Add. Annotation :*—**Consd.** *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53.

SECT. 12.—REDUCTION OF RATES
(Vol. VIII., p. 217).

1377a. Who may apply for—Trader "interested"—Warehouseman & forwarding agent.]—Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106*s.* 7*d.*, formerly 107*s.*, charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54*s.* 6*d.*, provisionally reduced to 50*s.* The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable :—*Held :* (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings ; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations : (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business ; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that the railway cos. were mistaken ; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate ; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72*s.* 6*d* subject to any general revision of rates.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO.,

PART X. SECT. 11, SUB-SECT. 3.

1365 ii. —— *Long-standing voluntary toll.*]—Where an increase in a long-standing voluntary toll is sought, the *onus* is on the carrier to establish its reasonableness.—NATIONAL DAIRY COUNCIL *v.* GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE) (1919), 26 Can. Ry. Cas. 113.—CAN.

& GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. Grounds for ordering—Necessity for primâ facie case.]—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars :—*Held :* (1) an appct. for a reduction in rates must make a *primâ facie* case for the same ; (2) such a case had been made upon the above facts ; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions ; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., *e.g.* 4 or 5 per cent., was not sufficient to justify a reduction in rate.—MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. ——.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *ante*.

1377d. —— Experimental rate.]—Upon an application for an experimental reduced rate of 40*s.* per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45*s.*, plus siding haulage charge. The ordinary class rate was 88*s.* 2*d.*, less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered :—*Held :* the rate should be 45*s.* *Qu.* : whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—MARSH *v.* GREAT EASTERN & GREAT WESTERN RY. COS. (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —— Removal of flat-rate additions imposed by Minister of Transport.]—Upon applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (*c*) :—*Held :* (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions ; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic ; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.', *i.e.*, coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. *v.* GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. *v.* SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. *v.* SAME (1923), 18 Ry. & Can. Tr. Cas. 1.

1377f. —— Reductions granted to other interests.]—Upon an application for the removal of a flat-rate increase of 2*d.* per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appcts. in support of their case : (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic ; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps. ; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet :—*Held :* (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts. ; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away ; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that *onus* by alleging that a reduction in rates would assist.—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME (1924), 18 Ry. & Can. Tr. Cas. 14.

1377g. —— Abolition of free storage facilities.]—Appcts., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10*s.* 11*d.* per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appcts.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility

having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, &, therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held:* the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10*s.* 11*d.* rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 81.

1377h. ——.]—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891–2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification:—*Held:* there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 97.

1377i. —— Group rates.]—GOOD (JOHN) & SONS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 191.

1377j. Burden of proof—On applicant.]—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME, No. 1377f, *ante.*

1377k. —— ——.]—EBBW VALE STEEL, IRON & COAL CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 207.

1377l. Power of railway company during transitional period until "appointed day"—To raise reduced rates.]—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.

Where, on Aug. 15, 1921, there was a rate for sugar & a lower rate for sugar in four-ton lots, & the railway cos. subsequently conceded a still lower rate for sugar in five-ton lots:—*Held:* the five-ton rate was not a new rate, & on Aug. 15, 1921, there was a rate in force for sugar in five-ton lots, namely the rate for sugar in four-ton lots.—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 134; 71 Sol. Jo. 82; 20 Ry. & Can. Tr. Cas. 166, H. L.

Annotation:—Consd. Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1377m. Charges fixed for services at beginning & end of transit—Charges for sidings otherwise provided.]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante.*

What rates—Owner's risk rates.]—*See* Nos. 1323j, 1323k, *ante.*

—— **Charges for detention.**]—*See* No. 1326a, *ante.*

SECT. 14.—TRANSITIONAL PERIOD.

1377n. Power during transitional period to make "such charges as were in force"—Meaning of.]—"Such charges as were in force," in sect. 60 of 1921 Act, mean such charges as the co. were holding themselves out as claiming for the particular service in question.—GREAT WESTERN RY. CO. *v.* BOON (1928), 20 Ry. & Can. Tr. Cas. 63.

1377o. —— ——.]—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO., No. 1377l, *ante.*

SECT. 15.—AGREED CHARGES.

See Road and Rail Traffic Act, 1933 (c. 53), ss. 37–39.

1377p. What agreements approved.]—General observations as to agreed charges under the Road & Rail Traffic Act, 1933 (c. 53).

Where an agreement is approved by the Tribunal statements made by the parties in the proceedings for approval form part of the agreement. It is no objection to an agreement for a charge that it does not limit the railway co. to carriage by rail.—*Re* CHISWICK PRODUCTS AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 53.

1377q. ——.]—An agreement to carry the whole of a trader's traffic wherever required for a percentage of the purchase price may properly be made under Road & Rail Traffic Act (c. 53), s. 37. The objection that such an agreement makes it impossible for competing traders to compare their own charges with the agreed charge would be equally applicable to a tonnage or a package rate.

It is not necessary that such an agreement should contain a provision for limiting the advantage which may be expected to accrue to the trader. A comparison between a rate based on the purchase price of a certain commodity & a rate based on mileage & weight of a consignment of the same commodity is fallacious.

An agreement may be approved though it gives liberty to the parties to agree (without seeking the approval of the Tribunal) for the exclusion of certain traffics from the operation of the agreement.—*Re* WOOLWORTH'S AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 90.

SECT. 16.—GOODS VEHICLES.

See Part XII., *post.*

Part XI.—Remedies of and against Carriers.

1378. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1380a. —— —— **Market salesman.**]—A foreign consignor sent fruit consigned to himself in England, instructing a firm of carriers to collect goods & pay charges. The consignor's son ordered them to deliver the goods to a firm of market salesmen. This firm accepted the goods, sold them, & credited the son with the proceeds, & refused payment to the carriers :—*Held :* (1) a market salesman who receives the goods of another to sell, is as against the carriers an independent contractor & is the consignee, although he may be liable to a principal to " sell & account " ; (2) his acceptance, in the absence of notice to the contrary, is evidence of an implied contract with the carrier to pay his charges, of which the consideration is that the carrier has parted with his lien.—WORLD TRANSPORT CO. *v.* TEALING & CO., [1936] 2 All E. R. 573 ; 80 Sol. Jo. 634.

1389. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

1390. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1398. *Add. Annotation :—As to* (1) **Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

1435. *Add. Annotation :*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

1449. *Add. Citation :*—91 L. J. K. B. 39.

Add. Annotations :—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557 ; Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.

Part XII.—Goods Vehicles.

See Road and Rail Traffic Act, 1933 (c. 53).

SECT. 1.—LICENCES.

1474. " A " licence—When granted.]—It is not sufficient for appct. for an A licence to discharge the burden of proving that there are persons ready & willing to employ him. He must also satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.—ENSTON & CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 3.

Annotations :—**Apld.** *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Consd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171. **Apld.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201. **Expld. & Apld.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. **Expld. & Distd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23. **Apld.** Edwards *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 67 ; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Palmer (1935), 23 Ry. & Can. Tr. Cas. 76. **Consd.** Tickle *v.* London, Midland & Scottish, Great Western, & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88. **Apld.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178. **Consd.** Jones *v.* London Midland & Scottish Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 72 ; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. **Apld.** Newbury & District Motor Services, Ltd. *v.* Stephen & Hewett (1936), 24 Ry. & Can. Tr. Cas. 140. **Refd.** Petrie *v.* Great Western Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 15 ; Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21 ; Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116 ; Allatt *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 82 ; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159 ; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195 ; Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55 ; McLachlan *v.* Morgan & Co. (1935), 23 Ry. & Can. Tr. Cas. 243 ; Southern Ry. Co. *v.* Owen (1936), 24 Ry. & Can. Tr. Cas. 36 ; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99 ; London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325 ; Pocock *v.* Wasey (1936), 24 Ry. & Can. Tr. Cas. 316 ; Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1475. —— ——.]—The fact that an appct. was a partner in a firm which used goods vehicles during the basic year is not a relevant matter to be taken into account on an application for an A licence. Since Parliament has granted to licensing authorities a discretion to grant or refuse licences, traders no longer have the right to choose the carriers they will employ.

It is not enough for an appct. for an A licence to prove that traders are willing to employ him. He must also show that there is a need for his services in the locality in which he proposes to operate.—PETRIE *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 15.

Annotations :—**Refd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171 ; London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201.

1476. —— ——.]—(1) An applt. who thought that

PART XI. SECT. 1, SUB-SECT. 2.

sb. *Goods carried under approved bill of lading—Action by connecting carrier against shipper—Not maintainable.*]—NEW YORK CENTRAL RY. CO. *v.* ELLIOTT (N. S.), [1928] 2 D. L. R. 973 ; 34 Can. Ry. Cas. 246.—**CAN.**

sc. *Agreement as to freight charge—Subsequent additional charges according to " special joint tariff "—No liability to pay.*]—NEW YORK CENTRAL RY. CO. *v.* JOSEPH DOLAN & SONS, LTD., [1929] 1 D. L. R. 817 ; 35 C. R. C. 333 ; 63 O. L. R. 341.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 4.—A. (a).

1391 vii. —— *Waiver.*]—CONBOY *v.* MILLSAP, [1930] 3 W. W. R. 161.—**CAN.**

st. *Payment for services rendered—Towing damaged motor car.*]—TERRY *v.* AUTOMOBILE OWNERS ASSOCN., No. 15 1, *ante.*

PART XI. SECT. 2, SUB-SECT. 1.

sx. *Consignee—Damage to goods en route—Owner having paid damage to consignee.*]—Where an owner of goods had indorsed a bill of lading to the buyer :—*Held :* he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—FORD MOTOR CO. *v.* UNION S.S. Co., [1925] 1 D. L. R. 265 ; [1924] 3 W. W. R. 718.—**CAN.**

his application was a matter of form, & who did not realise the importance of presenting the whole of his case to the licensing authority was allowed to call new evidence before the Appeal Tribunal.

(2) The fact that an appct.'s vehicle has been employed by other hauliers is some evidence of a public need for additional transport facilities.—*Re* FRY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 29.

1477. —— ——.]—An A licence should be granted where the public need for a carrier in the appct.'s district is established, even though it is not shown that that need has been brought about by any general expansion of industry. An appct.'s ignorance of the law relating to motor cars, the fact that an appct. has bought a goods vehicle without first obtaining a licence for it, & the probability that an appct. will lose money in the business of a carrier are not relevant considerations to which a Comr. should have regard in granting or refusing an A licence.—*Re* HUGHES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 141.

1478. —— ——.]—The fact that vehicles were used during the basic year by a firm since dissolved of which the appct.'s son was a member is not a good ground for granting an application for an A licence intended to be exercised for the benefit of the son.—LONDON & NORTH EASTERN RY. CO. *v.* HURD, NEWHAMS, LTD. *v.* HURD (1935), 22 Ry. & Can. Tr. Cas. 147.

1479. —— ——.]—*Held:* by the Appeal Tribunal, distinguishing *Enston's Case*, railway cos. are in an exceptional position owing to their peculiar statutory obligations as to collection & delivery. If, therefore, a railway co. can show that they could carry out these statutory obligations more efficiently with the licence than without it their application should succeed, notwithstanding they will thereby abstract traffic from other carriers already engaged in carrying in the district intended to be served.—LONDON & NORTH EASTERN RY. CO. *v.* SANDERSON (1935), 22 Ry. & Can. Tr. Cas. 171.

Annotations :—**Apld.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187. **Refd.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201; Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1480. —— ——.]—The fact that an appct. was a carrier up to a few weeks before the commencement of the basic year, but went out of business because of rate cutting by his competitors, should not influence a licensing comr. to grant him an A licence in the absence of evidence that the work he proposes to do cannot be done by other carriers. Where an appct. failed to adduce evidence showing that his vehicles would not be in excess of local requirements, his application ought to have been refused.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INMAN (1935), 22 Ry. & Can. Tr. Cas. 184.

Annotations :—**Refd.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

—— ——.]—There being only two covered vans in G. suitable for the removal of furniture, the appct. was granted an A licence on proof that there was a need in G. for another such van & that there were persons willing to employ him.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* TAIT & MACCONN (1935), 22 Ry. & Can. Tr. Cas. 201.

Annotations :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; Tickle *v.* London, Midland & Scottish, Great Western & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88.

1482. —— ——.]—*Held:* an A licence should not be granted to a carrier of twelve years' standing who gave up the business of carrying because he was losing money, but was out of time for an application under sect. 7 (2). But there may be an equitable right to a licence where a carrier was actively employed as such on Apr. 1, 1934, but failed through inadvertence to apply in time.—YEARSLEY *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 258.

Annotation :—**Refd.** Barker *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 161.

1483. —— ——.]—(1) An appct. who proposes to provide a new type of service, such as a regular daily service, is not bound to satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.

(2) An appeal was allowed where applt. did not present his true case to the licensing authority, but did present it to the Appeal Tribunal. Observations on the duty of a licensing comr. to give the reasons for his decision in writing when duly requested to do so.—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 262.

Annotation :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72.

1484. —— ——.]—The fact that an appct. has been granted a short term licence for administrative reasons under sect. 3 (4), & that he has purchased a vehicle on the faith of that grant are not grounds for granting him an A licence for the full currency period.—RHODES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 266.

—— ——.]—An appct. for an A licence who proves that there are persons ready & willing to employ him & that the service which he offers can be more efficiently operated by him than by others should be granted a licence.—EDWARDS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 67.

Annotation :—**Refd.** London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325.

1486. —— ——.]—(1) On an application for an A licence by a newcomer to the carriers' business appct. must not only prove that there are persons ready & willing to employ him, but must also make out a *primâ facie* case that if the application is granted traffic facilities in the district which he proposes to serve will not be in excess of requirements.

(2) The willingness of an appct. for an A licence to enter into an undertaking to observe a condition limiting his exercise of the licence is not a proper ground for granting the licence.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER (1935), 23 Ry. & Can. Tr. Cas. 76.

1487. —— ——.]—LONDON, MIDLAND & SCOTTISH

& LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS, No. 1597, *post.*

1488. —— ——.]—(1) An applt. who had failed to prove his case before the comr. was permitted to call new evidence to prove it before the Appeal Tribunal.

(2) At a public inquiry held by the comr. it appeared that appct. had captured the traffic of the objectors, but it did not appear how this had been done. The comr. refused the application because there was no evidence of any need for the services of the appct. On new evidence being called before them the Appeal Tribunal were satisfied that the traffic of the objectors had been captured by appct. because of the inefficiency of the former; the appeal was therefore allowed though there was no evidence to show that the work proposed to be done by the appct. could not for some reason or reasons be done by other carriers.—STEPHENSON *v.* SAGAR & SON (1935), 23 Ry. & Can. Tr. Cas. 183.

1489. —— ——.]—Although it is found as a fact that there is work available for an appct. to do, he ought not to be granted a licence to do it unless he also proves a *primâ facie* case that there is no other carrier able to do the work.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* PENNINGTON (1935), 23 Ry. & Can. Tr. Cas. 256.

Annotation:—**Consd.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267.

1490. —— ——.]—(1) A carrier who anticipates that he is not likely to use his vehicle to do any work except for one person only ought not to be granted an ordinary A licence.

(2) The fact that an appct. bought his vehicle before the passing of the Road & Rail Traffic Act, 1933 (c. 53), but after the end of the basic year, & used it for carrying goods for reward, & the hardship which would be occasioned by refusing a licence in such circumstances, are not matters which a Comr. ought to take into consideration in the exercise of his discretion.—BARKLEY *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 267.

Annotation:—**Consd.** Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323.

1491. —— ——.]—*Held:* the fact that a ry. co. offered facilities for the transport of wet hides & had a number of years ago carried wet hides for a trader for whom appct. proposed to carry wet hides was evidence that suitable transport facilities in the district intended to be served by appct. were in excess of requirements.—LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. *v.* DUNNETT (1935), 23 Ry. & Can. Tr. Cas. 276.

Annotations:—**Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273. **Refd.** London, Midland & Scottish Ry. Co. *v.* Ingleby (1936), 24 Ry. & Can. Tr. Cas. 294.

1492. —— ——.]—A carrier who was entitled to an A licence because he had been carrying during the basic year was granted an A licence under sect. 7 (1) of the Act subject to the condition that he should use his vehicle exclusively for the traffic of one co. Later part of the traffic of that co., came under the control of another person who also desired to employ this carrier. The carrier therefore surrendered his A licence with the condition attached & applied for an A licence without any condition. Sir Henry Piggott was of opinion that in ordinary justice the applicant was entitled to an A licence:—*Held:* by the Appeal Tribunal, appct. should not have been granted an A licence because it appeared that he was not the only carrier capable of dealing with the traffic.—SOUTHERN RY. CO. *v.* OWEN (1935), 24 Ry. & Can. Tr. Cas. 36.

1493. —— ——.]—An appct. obtained an A (Contract) licence. Later he applied for an A licence, claiming that he had been mistaken as to the nature of the A (Contract) licence. He adduced no evidence that persons other than the co. with whom he was under contract would employ him:—*Held:* on the facts, appct. had not made a mistake, & no case had been made out. *Semble:* if a mistake had been made, this would have afforded equitable grounds for granting an A licence.—AXFORD *v.* SOUTHERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 77.

1494. —— ——.]—A haulage co. went into liquidation in Sept. In Oct. resps., two of its former drivers started business on their own account, & applied for an A licence. At the inquiry two of their customers stated that they, the customers, had employed the co., but that in the interval between the liquidation & the commencement of the new business they had employed other firms. A third customer had no complaint against applts., whom he had employed until the new business started:—*Held:* resps. had not established a *primâ facie* case that the work they proposed to do could not be done by existing operators, & were therefore not entitled to a licence.

Per Sir Henry Piggott: Particulars of the objector's & other existing services should be given in the Notice of Objection.—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT (1936), 24 Ry. & Can. Tr. Cas. 140.

1495. —— ——.]—An application for an A licence was refused both because appcts. failed to discharge the onus of proving the need for the service which they desired to provide & that this need could not for some reason be met by the facilities already available, & also because the grant of the licence would have created an excess of transport facilities in the district.—ORANGE (J.), LTD. *v.* JENNINGS (1935), 24 Ry. Can. & Tr. Cas. 195.

1496. —— ——.]—An A licence ought not to be granted to an appct. who does not prove that he is the only carrier capable of carrying the traffic he proposes to carry. It makes no difference that there are persons who desire to avail themselves of his services.—JONES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 24 Ry. Can. & Tr. Cas. 208.

1497. —— ——.]—A co. engaged principally upon haulage on trunk routes applied at the close of the first currency period for a new A licence in continuation of their existing A licence. The amalgamated railway cos. objected upon the ground that suitable transport facilities

were already in excess of requirements:— *Held:* by the Appeal Tribunal: (1) it is no part of a licensing authority's duty to have regard to a difference between road & rail rates or to take into account the railway "rates structure" set up pursuant to Railways Act, 1921; (2) there is nothing in the Act to support the view that the "*status quo*" should be maintained beyond the first currency period; (3) the principle laid down in *Smart's Case*, No. 1517, *post*, is not limited to applications for variations but applies equally to applications such as this. The principle is that, if an objector proves that suitable transport facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. The Appeal Tribunal now point out that proof of the objection does not give the objector a legal right to have the application dismissed; the reason why such an application should be dismissed is that it would not be in the public interest for a licensing authority to exercise his discretion so as to create wasteful competition; (4) an established haulier on a trunk service when applying for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed; (*b*) as to his gross receipts & tonnage; (*c*) there has been no material change in the circumstances relating to his business. If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. Such overriding circumstances exist if the evidence establishes beyond reasonable doubt that suitable transport facilities are, or will be, in excess of requirements; (5) transport facilities are not "suitable" within sect. 11 (2) of the Act unless they are (*a*) suitable for carrying the goods required to be carried, (*b*) suitable to the person requiring them to be carried on the occasions when he requires transport, & (*c*) suitable to current industrial & commercial conditions; (6) on the facts of this case, appcts. had satisfied the licensing authority as to the matters (*a*), (*b*) & (*c*) of (4) above, & that the objectors, though they had proved that their facilities were physically adequate, had not proved them to be "suitable." Application granted.—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 158.

Annotations:—Generally, **Refd.** *Re* Boyer (William) & Sons (Transport), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 302; Hazell *v.* Southern Counties Road Transport Co., Ltd. (1937), 25 Ry. & Can. Tr. Cas. 259; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328; Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272.

1498. ——— ———.]—Where the holder of a B licence acquires the carrying business of the holder of an A licence & applies for an A licence which is necessary to enable him to obtain the full benefit of the goodwill transferred, the fact that he is already the holder of a B licence is not a special circumstance which would justify the licensing authority in refusing him an A licence. When application is made for an A licence for the purpose of effecting the transfer of a carrying business, then whether or not the case is one in which the licensing authority is bound to take into account the objection that transport facilities are or will be in excess of requirements, nevertheless appct. must prove that a reasonable number of the customers of the vendor are prepared to transfer their business to the purchaser.—WASEY *v.* BORWICK (1937), 25 Ry. & Can. Tr. Cas. 217.

1499. ——— ———.]—An old-established firm of hauliers also carried on a gravel, etc., business. In 1927 the entire business was acquired by a limited co. In 1931 a second limited co. was formed & acquired the road haulage portion of the business. This haulage co. was in 1934 granted an A licence, claimed tonnage. It now applied for an A licence in continuation of the expiring licence. Mr. Gleeson Robinson refused the application on the ground that a B licence was appropriate; otherwise any person combining a haulage business with another business could evade the disabilities of a B licensee by incorporating a separate haulage co. On appeal:—*Held:* although Mr. Gleeson Robinson's views might be properly applicable to many cases, they did not apply in this case where appct. co. was the successor of an old-established transport business & had been incorporated in 1931, before the Road & Rail Traffic Act was contemplated.—*Re* BOYER (WILLIAM) & SONS (TRANSPORT), LTD. (1937), 25 Ry. & Can. Tr. Cas. 302.

1500. ——— **For additional vehicles—When granted.**]—(1) The principles on which A licences should be granted or refused during the first currency period are *inter alia* that the *status quo* should as far as possible be maintained. No increase in the number of vehicles licensed should be allowed except upon proof that such increase is really necessitated by the general expansion of industry in any particular business or district. Stabilisation of the industry should be the first aim of the licensing authorities.

(2) The mere fact that particular customers are willing to give further custom to the appct. is not by itself sufficient to justify the grant of an A licence for an increased number of vehicles.

Where an appct. seeks an A licence for an increased number of vehicles on the ground that particular customers propose to use those vehicles his proper course is to apply for contract licences under Road & Rail Traffic Act, 1933 (c. 53), s. 7 (1).

(3) An undertaking by the appct. to observe certain conditions attached to the grant of an A licence cannot be accepted as an alternative to refusing the application because such an undertaking would not be enforceable.—RIDGEWELL & Co. *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 6.

*Annotations:—***Apld.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Distd.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Apld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55; Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225 a London & North Eastern & London, Midland & Scottish

Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Apld.** London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149. **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323. **Refd.** Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21; *Re* Hughes' Appeal (1934), 22 Ry. & Can. Tr. Cas. 141; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport Co. (1936), 24 Ry. & Can. Tr. Cas. 258; Southern Ry. Co. *v.* Hardy & Son, Ltd. (1935), 24 Ry. & Can. Tr. Cas. 18; Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158.

1501. —— —— ——.]—*Held:* by the Appeal Tribunal, the enlargement of a carrier's licence cannot be justified by general evidence of an increase in his business & general evidence that that increased business cannot be done by other carriers.—LONDON & NORTH EASTERN RY. CO. *v.* BRIGGS (1935), 22 Ry. & Can. Tr. Cas. 252.

Annotation:—**Refd.** London & North Eastern Ry. Co. *v.* Brownbridge (1935), 22 Ry. & Can. Tr. Cas. 255.

1502. —— —— ——.]—(1) Where an appct. hired vehicles in the past as part of a general policy, & not in a casual manner, he has no right to a licence to enable him to dispense with hiring in the future, apart from special circumstances such as those mentioned in *L. M. S. and Barr.*

(2) A general increase in a carrier's business is a good ground for authorising him to use a larger number of vehicles; & the fact that the increase is largely attributable to the custom of one particular firm is not in the circumstances a ground for limiting him to a contract licence under sect. 7 (1).—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations:—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249; Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1503. —— —— ——.]—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. No. 1530, *post.*

1504. —— —— ——.]—(1) On an application to vary a carrier's licence by the inclusion of an additional vehicle it is not sufficient for appct. to prove an increase in his business since the original grant of his licence, & there is no distinction between the cases where the application is opposed by a railway co., where it is opposed by a rival road carrier, & where it is not opposed at all.

(2) Where the decision of the licensing authority appears to have been based on erroneous grounds a resp. is nevertheless entitled to support the decision on other grounds.—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 82.

Annotation:—*As to* (1) **Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1505. —— —— ——.]—(1) An application in part for claimed, & in part for discretionary, tonnage should be so published, & not as an application for discretionary tonnage only. Where an appct. carries partly in one traffic area & partly in another general evidence as to his operations throughout the country will not suffice to support an application for a licence for vehicles intended to be normally based in a particular traffic area.

(2) A licensing comr. should act judicially, & should not allow his mind to be influenced by mere complaints unsupported by evidence.

(3) Where the previous conduct of an appct. is brought in issue by allegations of criminal offences it is the duty of those making the allegations to furnish appct. with particulars of the offences he is alleged to have committed if he requires them. If the fact that a criminal offence has been committed comes in question even collaterally, it must be strictly proved.

(4) A licensing comr. who is required to give his reasons for a decision under sect. 6 (3) of Road & Rail Traffic Act, 1933 (c. 53), it bound to give all his reasons. He cannos reserve to himself a right to give additional reasons later.

(5) Previous offences committed by an appct. as a carrier against sect. 19 of Road & Rail Traffic Act, 1930, & the charging of uneconomic rates as a carrier do not constitute "previous conduct of appct. as a carrier of goods" within sect. 6 (2) (*b*) of Road & Rail Traffic Act, 1933, & a licensing comr. is not entitled in law to take such matters into consideration when exercising his discretion under that sect. But if an objection to the application is made under sect. 11 (2) of the Act, on the ground that suitable transport facilities are or, if the application were granted, would be in excess of requirements, such matters are relevant to such objection & should be taken into consideration.

(6) A road carrier who maintains long-distance trunk services, & seeks authority for additional vehicles to be used for the collection & delivery of his traffic, may justify his application by showing that such collection & delivery can be better co-ordinated with his trunk services & can be performed more efficiently with vehicles owned by him & under his control than by employing others to do the work.—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD. (1935), 23 Ry. & Can. Tr. Cas. 106.

Annotation:—*As to* (6) **Refd.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1506. —— —— ——.]—On an application to vary an A licence by including an additional vehicle appct. established a case for his tonnage being increased, & his application was granted. On appeal by the objectors to the Appeal Tribunal:—*Held:* a case for an additional vehicle could not be established merely by making a case for additional tonnage, &, though the latter case had been made out, the Tribunal were not competent to deal with the appeal on that basis.—SOUTHERN RY. CO. *v.* BARNES (1935), 23 Ry. & Can. Tr. Cas. 137.

1507. —— —— ——.]—(1) There is no right of appeal by an objector to an application for claimed tonnage where the comr.; being satisfied that the vehicle to be authorised is properly included in the claimed tonnage grants the application.

(2) Where a carrier who was established during the basic year seeks to augment the vehicles which he is authorised to use he

must prove some general expansion in the business of his customers.—STUBBS (LEONARD) & CO., LTD. *v.* JACKSON & ELLIS (1935), 23 Ry. & Can. Tr. Cas. 141.

1508. —— —— ——.]—(1) An increase in the business of a carrier is not the same thing as an increase in the business of his customers; & evidence of the former by itself does not justify an addition to the vehicles authorised by a carrier's licence.

(2) On an application for a variation of a licence a Comr. is entitled to take into consideration the conclusions he came to on the original application.

(3) General evidence that a carrier has had difficulty in finding other carriers to carry for him is not a special circumstance justifying the licensing of additional vehicles to enable the carrier to do his own carrying himself.

(4) A licence ought not to be granted to a carrier for services which the Comr. thinks are unnecessary.

(5) The decision of a Comr. on an application cannot create anything in the nature of an estoppel against appct.—FORRESTER *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 225.

1509. —— —— ——.]—An established carrier sought an enlargement of his licence on the ground that his fruit-carrying business had increased. The Comr. having refused the application on the ground that suitable transport facilities in the district were in excess of requirements:—*Held:* though the evidence in support of the Comr.'s finding was very slight, the appeal should not be allowed because the Tribunal were of opinion that appct.'s fruit-carrying business had not increased, & they refused to consider whether his business of carrying vegetables had increased.—COOPER *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 55.

1510. —— —— ——.]—A haulier holding an A licence for two vehicles applied for it to be varied by the addition of a third vehicle. His gross receipts had increased & he had been compelled to hire:—*Held:* such an appct. must first establish a case as laid down in *Ridgewell's Case*. If such a case is established the formula in *Hawker's Case* must then be applied to determine how many (if any) additional vehicles should be authorised. Assuming that this appct. had established the first point, he failed on the second point, for he had not proved abnormal hiring, while the increase in gross receipts, computed on a basis of ten-months as laid down in *Hawker's Case*, was too small to justify the extra vehicle. The formula in *Hawker's Case* cannot be applied to certain cases. Alternative considerations discussed. Matters to be considered when assessing evidence of increase in gross receipts discussed. Two classes of hirers distinguished.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BEAZLEY (1936), 24 Ry. & Can. Tr. Cas. 112.

Annotations:—**Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273. **Apld.** Drinkwater *v.* London & North Eastern, London, Midland & Scottish & Great Western Ry. Cos. (1936), 25 Ry. & Can. Tr. Cas. 32. **Reid.** Bradshaw *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 137; London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99.

1511. —— —— ——.]—An appct. claimed an additional vehicle under his A licence on three grounds: (1) that the vehicle was to be acquired from a trader, who was then operating it under a C licence, & that the trader would thenceforth employ the applicant to do his cartage; (2) that his business was increasing; (3) that he required a heavier vehicle for certain work:—*Held:* operation of a vehicle under a C licence was no evidence of need for its authorisation under an A licence, & since the trader could obtain another C licence there was danger of a dual grant in respect of his work. Ground (2) had not been established by the evidence; & the evidence for ground (3) did not justify an additional vehicle, though it might have justified the replacement of an existing vehicle by a heavier one. The fact that an extra vehicle would be placed on the roads is not a ground for refusing a licence where a case has been made out. "Contracting out" of the Act, referred to. Remission to licensing authority, refused.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* ROBERTS (1936), 24 Ry. & Can. Tr. Cas. 154.

1512. —— —— ——.]—*Held:* that the avoidance of double-shift working is not in itself a sufficient ground for authorising additional tonnage under an A licence. Meaning of "Harrogate & district" discussed.—LONDON & NORTH EASTERN RY. CO. *v.* PARKER (1936), 24 Ry. & Can. Tr. Cas. 159.

—— —— ——.]—(1) The fact that a trader desires to transfer his traffic from other carriers to appct. only because appct. is in a position to help him financially is not a matter to be taken into consideration on an application to increase the number of vehicles authorised under a licence.

(2) Evidence of increase in gross receipts is not so useful as evidence of increase in tonnage of goods carried, nor so useful as evidence of increase in gross receipts & increase in tonnage of goods carried.—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS. (1935), 23 Ry. Can. & Tr. Cas. 199.

Annotation:—*Generally,* **Consd.** Four Amalgamated Ry. Cos. *v.* Foster & Co., Ltd. (1936), 24 Ry. & Can. Tr. Cas. 265.

-.]—MOSS BROS. *v.* SOUTHERN RY. CO., No. 1615, *post.*

—— —— ——.]—(1) The fact that manufacturers adopt a practice of waiting for orders before manufacturing their goods in place of manufacturing the goods first & warehousing them in anticipation of orders, if proved, is material to the question whether there is a need for additional vehicles.

General evidence that an appct. has had difficulty in hiring will not by itself justify the grant of a licence for an additional vehicle.

The evidence of a commercial clerk assistant goods manager to a ry. co. that the ry. formerly carried traffic which it has since lost, & that, so far as he knows, the ry. facilities meet the requirements of traders, does not prove that the ry. facilities are suitable with regard either to that traffic or to the persons requiring facilities for it.

General evidence of an increase in a carrier's business without evidence that the business of his customers has also increased will not justify the grant of a licence for an additional vehicle.

Evidence that one carrier has without good cause abstracted the traffic of another may be a ground for refusing a licence, but the mere fact of absence of any such evidence is not a ground for granting a licence.

(2) Where, owing to the pressure of business before the Comr., evidence which was available could not be called, the Appeal Tribunal sent the case back for a further inquiry.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD. (1936), 24 Ry. & Can. Tr. Cas. 258.

1516. —— —— ——.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *post.*

1517. —— —— ——.]—(1) Objectors having submitted that if they proved suitable transport facilities to exist in the district where an appct. proposes to carry, then the application must fail:—*Held:* if such facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. But there may be exceptional cases (though the Appeal Tribunal failed to visualise them) where a grant would be justified. In this context, "suitable" means more than "adequate" & "requirements" does not refer solely to the requirements of appct. & objector; both words must be considered in relation to current industrial & commercial conditions.

A haulier operating nine vehicles under A licence on a trunk service & one vehicle for collection & delivery, applied for an extra vehicle for the trunk service. The objectors contended that suitable facilities were in excess of requirements:—*Held:* the two questions, whether appct. has made out a case within *Ridgewell's Case*, & whether the objectors have proved their objection, have both to be considered. On the facts, this appct. had made out a case, & the objectors had not shown that their facilities were "suitable."

Methods of ascertaining quantum of extra tonnage discussed. When considering quantum on a trunk service, the tonnage of a collection & delivery vehicle should not be taken into consideration. Extra vehicle of 2½ tons authorised.

(3) The Appeal Tribunal will not decide any principle not necessary for their decision upon the facts.

(4) Counsel for representative bodies heard, under rule 5, Appeal Tribunal Rules, 1934.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART (1936), 24 Ry. & Can. Tr. Cas. 273.

Annotations:—As to (1) **Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1518. —— —— ——.]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER, No. 1614, *post.*

1519. —— —— ——.]—H. applied for the variation of his A licence by the authorisation of additional vehicles. At the inquiry in Feb. 1935 certain of his customers gave evidence of increases in their business, in their industries, in the tonnage they desired H. to carry, etc. The variation was granted. Later H. applied for another variation to authorise further additional vehicles. At the inquiry in Apr. 1936 the customers who had given evidence in 1935 were not called, but general evidence was given by H.'s accountant that there had been an increase in tonnage due partly to increased business done for these customers:—*Held:* additional vehicles should not be granted solely on the ground that tonnage had increased, since increased tonnage for old customers might be due not to increases in customers' businesses but to their transferring to appct. work hitherto done by other carriers. However, it is unnecessary for customers to be called to give the same evidence which they have given fourteen months previously, provided that some evidence is given to confirm appct.'s general statements. Helpful evidence would be (i) evidence of inquiries by appct. as to the cause of increases in the business of these customers, or (ii) letters from these customers containing statements as to increases in their business & as to their suffering inconvenience from appct. being unable to supply transport. Such letters would be open to challenge by objectors.

H. operated a trunk service & ancillary collection & delivery services. He based his application as to the trunk service upon increased traffic due partly to increased work for old customers, as stated above, & partly to obtaining substantial business from a new customer whose goods had hitherto been carried by rail. H. delivered these goods more expeditiously than the railway, but no reason was given why speedier delivery was necessary:—*Held:* it would not be in the public interest to grant H. a licence to carry goods hitherto carried by another carrier, provided that the previous carrier's facilities were suitable. The fact that the latter were slower did not render them unsuitable in the absence of evidence that more expeditious delivery was reasonably necessary to the trader. H. was not entitled to additional vehicles for his trunk service.

As to his collection & delivery service H. gave evidence that owing to reorganisation of the working of his fleet he needed further vehicles for this work, that he had been hiring these at a cost of £500 *per annum*, & had had difficulty in hiring suitable vehicles:—*Held:* special considerations apply to collection & delivery vehicles; it was reasonable for H. to use his own vehicles for this purpose; the amount paid for hire represented the work of two vehicles, & he should be authorised to use these on his A licence.

The "Hawker formula" discussed *obiter*. When once an appct. for a variation has established a case within *Ridgewell's Case*, this formula is a useful guide to determine the quantum, if any, of additional tonnage to be authorised.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (NO. 2) (1936), 25 Ry. & Can. Tr. Cas. 99.

Annotation:—**Consd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328.

1520. —— —— ——.]—Additional tonnage will not be authorised upon the ground that appcts. had sometimes to keep customers waiting for transport. It is inevitable that on some occasions carriers cannot meet the demands of their customers at short notice. Nor is the hiring of horse-drawn vehicles a ground, in the absence of evidence that appcts. intend to use motor vehicles in substitution for horse-drawn vehicles.

"Carrying capacity" discussed. "Static carrying capacity" distinguished from "performance capacity."—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* RICHARDS, LTD. (1936), 25 Ry. & Can. Tr. Cas. 114.

1521. —— —— ——.]—(1) An appct. for additional tonnage performed 80 per cent. of his work for customers who refused access to their premises to motor-drivers who were not members of a trade union. For this reason appct. found it difficult to hire vehicles for this work:—*Held:* customers' requirements as to trade union membership were not a special circumstance entitling the appct. to additional tonnage in the absence of evidence of need.

(2) Where 80 per cent. of a haulier's work is done for three particular customers, this cannot be said to be a case in which a Contract A licence should be applied for.—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 269.

1522. —— —— ——.]—S. & Co. applied for the authorisation of additional vehicles under A licence upon the grounds that (1) they had obtained substantial new traffic from U.; (2) certain fruit traffic had increased; (3) there had been a substantial general increase in their tonnage carried; (4) they had proved a case within *Ridgewell's Case;* (5) they needed additional maintenance tonnage.

(1) U.'s traffic had previously been consigned by rail; S. & Co. agreed to carry this at a rate cheaper than that by rail, & to furnish warehouse accommodation. The railway cos. objected to the application on the ground that their facilities were suitable:—*Held:* in considering whether objectors' facilities were suitable a licensing authority ought to take into consideration neither the fact that road rates were cheaper (unless they were uneconomic), nor the fact that warehouse accommodation would be provided; that on the facts the railway cos. had proved their objections; & that no additional tonnage should be granted for carrying U.'s traffic; (2) *Held:* on the facts as to the fruit traffic the objectors had proved their objections.

(3), (4) *Held:* since S. & Co. had proved (*a*) that there had been an increase in their business, (*b*) that there had been an increase in the business of their customers, (*c*) that some of their customers had been inconvenienced by their inability to provide transport facilities, they had made out a case for additional tonnage within *Ridgewell's Case.* As to quantum, the formula in *Hawker's Case* (*No.* 1) applied; but when applying this formula (i) the increased goods tonnage carried in respect of U.'s traffic & the fruit traffic must be disregarded, & (ii) the tonnage of maintenance vehicles must be deducted from fleet tonnage in order to arrive at "effective" vehicle tonnage.

(5) By applying the "Hawker formula" it was ascertained that two additional vehicles of 8 tons each should be authorised:—*Held:* this was a substantial addition to S. & Co.'s fleet & they should be authorised to use further tonnage for maintenance purposes.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STEVENSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 328.

1523. —— —— **For particular customers—Duty to apply for contract licence.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1500, *ante.*

1524. —— —— —— ——.]—(1) A hauler applied for the addition of one vehicle to his A licence. He proposed to use this vehicle exclusively for one customer:—*Held:* that, whether or not there was a contract with this customer, the haulier could not be authorised to use this vehicle under an ordinary A licence; (2) Order directed to lie in the office for a fortnight, to enable appct. to apply for an A (Contract) licence.—KERR & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BROWN (1936), 24 Ry. & Can. Tr. Cas. 323.

1525. —— —— **Vehicles formerly hired.**]—Only special circumstances will justify the grant of a licence to a carrier with the object of enabling him to own the vehicles which he formerly hired. The risk he runs in losing his custom to those who supply such vehicles is not such a special circumstance.—WARD *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 38.

Annotation:—**Refd.** *Re* Lovell (Shaw) & Sons, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 250.

1526. —— —— ——.]—(1) The mere fact that a carrier who has been hiring the vehicles he requires now desires to use his own is not sufficient to justify the grant of an A licence, apart from special circumstances.

(2) Where a carrier has in the past, by evading the limits imposed by law on hours of work and weight of loads, been able to do with fewer & smaller vehicles, the fact that he will no longer be able to evade the law & will therefore require more or larger vehicles to do the same amount of work is no ground for authorising an increase in his tonnage—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD. (1934), 22 Ry. & Can. Tr. Cas. 44.

Annotations:—*As to* (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77; Randall *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 163. **Apld.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; Reece, Ltd. *v.* Four Amalgamated Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 199; London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1527. —— —— ——.]—A carrier who seeks to acquire additional vehicles in order to do away with the necessity of hiring must prove special circumstances. It is not enough to allege that hired vehicles are unsatisfactory without particularising how & why they are unsatisfactory.—BURGOINE & SONS *v.* F—

AMALGAMATED RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 77.

1528. —— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD., No. 1502, *ante*.

1529. —— —— ——.]—*Held:* by the Appeal Tribunal a carrier cannot justify an application for an A licence by general evidence that he has lost custom through being unable to hire vehicles when he needed them.—LONDON & NORTH EASTERN RY. CO. *v.* BROWNBRIDGE (1935), 22 Ry. & Can. Tr. Cas. 255.

Annotation:—**Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1530. —— —— ——.]—(1) Where additional vehicles are sought to be authorised under a public carrier's licence, if appct. is a newcomer to the business he must prove a *primâ facie* case that the existing operators already in business are not able to cope with the traffic which he proposes to carry; if appct. is an operator already established during the basic year it is sufficient to show some expansion in the business of his customers, & a useful method of arriving at the amount of additional tonnage to which he is entitled is to take into consideration the tonnage of goods carried per ton of unladen weight of the vehicles.

(2) Great difficulty in finding covered vans to hire is a special circumstance which justifies an applicant being authorised to use vehicles of his own in place of the vehicles which he formerly made a practice of hiring.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 23.

Annotations:—*As to* (1) **Consd.** Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225. **Expld.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Refd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159; Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. *As to* (2) **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273.

1531. —— —— ——.]—(1) The fact that the contractor from whom a carrier has been accustomed to hire has proved to be unsatisfactory is not a special circumstance justifying the grant of a licence to the carrier to enable him to carry in his own vehicles.

(2) The burden of proving objections does not lie on objectors; the burden of disproving them lies in the first place on appct.

(3) A carrier who had been carrying since 1875, but had hired cars to carry in from 1928 to 1934, was a newcomer to the carrying trade.—MCLACHLAN *v.* MORGAN & CO. (1935), 23 Ry. & Can. Tr. Cas. 243.

1532. —— —— **Necessary to avoid illegality as to hours & weights.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD., No. 1526, *ante*.

1533. —— —— **Motor to be used in addition to horse-drawn vehicles.**]—*Held:* by the Appeal Tribunal, in the special circumstances of the case, a licence ought to be granted to a carrier for a motor lorry which he proposed to use in addition to & not in substitution for carts drawn by horses.—*Re* WOOD'S APPEAL (1935), 22 Ry. & Can. Tr. Cas. 247.

1534. —— —— **Difficulty of overhauling vehicles.**]—An appct. using seven motor vehicles under an A licence & two under a B licence applied to vary the A licence by the addition of a further vehicle. In support of his application he put in two letters from customers:—*Held:* (1) letters are often of small assistance to a case; appcts. should call witnesses wherever possible; these letters gave no particulars of the transport difficulties they alleged, & did not justify the application; (2) An operator with nine vehicles should have no difficulty in providing for overhaul & repair. He could not invoke sect. 6 (2) (*d*) of the Act. If in difficulty he could apply for a short-term licence under sect. 3 (3).—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 137.

1535. —— —— **Evidence of increase of business.**]—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS., No. 1513, *ante*.

1536. —— —— ——.]—(1) A haulier applied for additional tonnage on the grounds that his existing vehicles were so overworked that he had no opportunity to overhaul or repair them, & that his business & that of his customers had substantially increased. He supported his application by letters from customers:—*Held:* failure to comply with the requirements of the Act as to overhaul, etc., could not be a ground of application. The appct. had, however, made out a case on other grounds. As to the amount of extra tonnage to be authorised, increase in gross receipts considered; (2) The evidential value of letters is small, & oral evidence should be given wherever possible. In future the Appeal Tribunal will pay less regard to the contents of letters.—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN (1936), 24 Ry. & Can. Tr. Cas. 149.

Annotation:—*Generally*, **Refd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport, Ltd. (1936), 24 Ry. & Can. Tr. Cas. 256.

1537. —— **Conditions—Undertaking to observe—Whether alternative to refusing application.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1500, *ante*.

1538. —— —— —— ——.]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER, No. 1486, *ante*.

1539. —— **Charges deduced from price of vehicle.**]—(1) The findings of fact of a licensing authority are subject to review by the Appeal Tribunal.

(2) The probable charges of a carrier cannot be inferred from the price he has paid for his vehicle.—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 21.

Annotation:—*As to* (1) **Refd.** Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1540. —— **Subsidiary company—Vehicles owned by parent company.**]—A co. which was entitled to an A licence under the provisions of sect. 7 (2) signified to the licensing authority its desire that the provisions of sect. 12 should have effect as regards its subsidiary co. which was not so entitled to a licence, & in respect of vehicles which belonged not to the subsidiary co. but to the parent co.:

the signification could be treated as a nullity, & the parent co. should be granted an A licence under the provisions of sect. 7 (2). *Qu.*: whether the provisions of sect. 12 apply to A & B licences or only to C licences. The vehicles which a licensee uses or intends to use should be specified in the licence, if necessary as & when they are acquired.—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO. (1934), 22 Ry. & Can. Tr. Cas. 132.

1541. —— **Specification of vehicles—Necessity for.**]—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO., No. 1540, *ante*.

1542. —— **Base from which vehicles to be used.**]—Application was made for A licences for vehicles to be normally used from P. as a base. The evidence showed that some of the vehicles would be used from bases other than P., but in the neighbourhood of P.:—*Held*: (1) the comr. was not wrong in law in granting licences for vehicles to be used from P. as a base; (2) when a railway co. seeks A licences for the purpose of discharging its statutory obligation of collection & delivery it must prove its case separately in respect of each base from which the collection & delivery is to be effected.—NORMAN *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 5.

Annotation:—**Refd.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1543. —— **Back loading—Whether justified.**]—Where appcts. charged a lower rate for services which, in the opinion of their customers, were more efficient than those offered by the objectors, it was found as a fact that the work could be dealt with efficiently by existing facilities & allowed an objection on the ground that transport facilities were in excess of requirements:—*Held*: there cannot be any objection to back loading as a normal part of a carrier's business under an A licence, because this practice relieves traffic congestion & makes for the economical transport of goods. But where the traffic is undirectional the effect may be to produce uneconomic competition.—SHEPHERD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 173.

1544. —— —— **Matters for consideration.**]—(1) A distinction must be drawn between the carrier already established, who seeks to obtain back loads in order that his vehicles shall not operate an undue amount of dead mileage, & one who, having newly entered the carrying business, seeks to obtain a licence solely on the ground that he has been promised work by one or more clearing houses.

(2) Where on an appeal by an objector against the grant of a licence it appeared to the Appeal Tribunal doubtful whether appcts. base or centre was in the traffic area of the Comr. who granted the licence, the appeal was formally allowed, & the case was sent back to the Comr. for a further hearing with the suggestion that a short-term licence should be issued to resp. pending the final disposal of the matter.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF (1935), 23 Ry. & Can. Tr. Cas. 261.

Annotation:—**Refd.** London & North Eastern Ry. Co. *v.* Turnbull & Sons (Leeds), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 239.

1545. —— **Vehicles used principally for single customer.**]—(1) The Tribunal admitted new evidence of facts which had occurred since the decision of the Comr.

The Comrs. must not grant an ordinary A licence for vehicles which will be principally used for the business of a single customer, so that they are generally loaded only with the goods of that customer, even though none of the vehicles will ever be used for the purposes of a contract for the carriage of goods for a year.—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 18.

1546. —— **In continuation of existing licence—What must be shown.**]—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD., No. 1497, *ante*.

1547. —— —— ——.]—*Held*: (1) an established haulier who applies for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed; (*b*) as to his gross receipts & tonnage; (*c*) that there has been no material change in the circumstances relating to his business. If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. This applies not only to trunk services but also to other facilities, although special considerations may arise in connection with collection & delivery services; (2) where an A licensee has on a prior application stated that he intended to provide facilities within certain districts or between certain places, & where it appears upon his application for a new licence in continuation of his existing licence that he has been providing, & intends to provide, facilities within other districts or between other places, then his application should be refused in the absence of evidence of need; (3) if during the currency period of an expiring A or B licence there has been a substantial break in the continuity of the licensee's haulage business, the licensee should not necessarily be treated as a newcomer when he applies for a new licence in continuation. But if the evidence proves the former business to have been abandoned, the new licence should not be granted in the absence of evidence of need. *Aliter* if the break was due to illness or fluctuation of business.—MODERN HAULAGE SERVICES, LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART (1937), 25 Ry. & Can. Tr. Cas. 272.

1548. —— **To whom granted—Liquidator.**]—A haulage co. holding two A licences went into liquidation. The liquidator applied for A licences in respect of the vehicles specified in the co.'s licence. Mr. Henderson granted the application, but only in respect of such vehicles as were in use at the date of liquidation & he expressed the licences to expire on the dates on which the co.'s licences would have expired:—*Held*: this was a proper course. There is no reason why a liquidator should not be granted a licence. Under

sect. 3 (2) of the Act licences may be granted for less than the full currency period for "special reasons," & the appointment of a liquidator was a special reason. Insolvency does not by itself show that goods had been carried at uneconomic rates. The objectors had not proved that facilities would be in excess of requirements: their facilities differed materially from those of the co.

The "carriers quarters" system in Scotland commented upon.—AITCHISON *v.* DOWLING (1936), 25 Ry. & Can. Tr. Cas. 9.

1549. —— **Hiring allowance—When justified.**]—A haulier applied for a new A licence in continuation of her existing A licence & in respect of the same tonnage, viz.: four vehicles in possession & one vehicle to be hired. During a fourteen weeks period the hiring allowance had been utilised three times when a vehicle was under repair & three times for work which could not be undertaken by the other four vehicles. The application was granted, & the objectors appealed against that part of the decision which authorised the hiring allowance:—*Held:* this was a case of the type in which the need for an additional vehicle should be dealt with by an application for temporary replacement under article 15 of the Goods Vehicles (Licences & Prohibitions) Regulations, 1936.

Urgent applications under this article are dealt with very rapidly by licensing authorities.—SOUTHERN RY. CO. *v.* WILKINSON (1937), 25 Ry. & Can. Tr. Cas. 245.

1550. —— **To what vehicles applicable.**]—(1) Two railway cos. applied for the variation of a number of their A licences in respect of different bases by the addition of further vehicles. The majority of the applications were for vehicles to be used for the collection & delivery of rail-borne traffic; in some instances the ground of the application was that such traffic had increased, & in others it was that the vehicles were to be used in substitution for horse-drawn vehicles. The applications were granted. The objectors (applts.) contended, *inter alia*), that such vehicles should have been authorised under B licence:—*Held:* it was proper in such a case to authorise collection & delivery vehicles under A licence, & not under B licence subject to conditions restrictive as to radius, since it was necessary for the efficient working of a large transport organisation that vehicles could in an emergency be used from a base other than their normal base. If the right to unrestricted user under A licence were abused, the licensing authority could refuse a subsequent application.

(2) The ratio in which motor vehicles should be authorised in substitution for horse-drawn collection & delivery vehicles cannot be fixed & depends entirely upon the facts of each case.

(3) By reason of sects. 11 (2) & 15 of the Act objectors who are B licensees have no right of appeal against a decision to grant an A licence. *Sanderson's Case* explained & followed.—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 187.

1551. **"B" licence—When granted.**]—A trader who carries his own goods long distances to deliver to his customers, & on the return journey carries goods for his customers for reward, competes with carriers who only carry for reward, & it is not desirable in the interests of transport that he should do so.—COX *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 161.

1552. —— ——.]—*Held:* (1) a B licence should not be granted to an appct. who failed to prove a need for further transport facilities in his district; (2) the principles laid down in *Enston's Case* do not apply to all applications for B licences any more than they apply to all applications for A licences.—THORNLEY & SON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 249.

1553. —— ——.]—(1) A manufacturing co. using a fleet of vehicles to deliver their products made a practice of carrying goods for hire or reward on return journeys. They applied for a B licence to enable them to continue to do so:—*Held:* the carrying of return loads for hire or reward is not generally in the public interest provided that alternative transport is available. On such an application, therefore, a licensing authority has to consider whether a case for exceptional treatment is made out, & whether alternative transport is available. Letters from customers asserting a preference for road over rail transport do not assist such a case, & the existence of alternative road transport may be inferred from them. Here no case for exceptional treatment was shown, & the existence of alternative transport for the return loads was proved: the application was rightly dismissed.

Obiter, on an application for a B licence it may be material for the licensing authority to consider whether alternative transport is available for the carriage of appct.'s own goods.

(2) The licensing authority, in reaching his decision, had made use of knowledge of transport conditions acquired generally in the course of his duties:—*Held:* he was entitled so to do, but if during a public inquiry a licensing authority contemplates using knowledge of specific matters he should give the parties an opportunity of dealing with them.—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 127.

Annotations:—As to (1) **Consd.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Sheville (1936), 25 Ry. & Can. Tr. Cas. 45. **Apld.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Smalley (1936), 25 Ry. & Can. Tr. Cas. 118; London, Midland & Scottish Ry. Co. *v.* Mitchell & Broadbent (1936), 25 Ry. & Can. Tr. Cas. 78. **Reld.** Four Amalgamated Ry. Cos. *v.* Routs-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; London, Midland & Scottish Ry. Co. *v.* Holden (1936), 24 Ry. & Can. Tr. Cas. 178.

1554. —— ——.]—*Held:* the whole of the provisions of sect. 7 (3), apply only to applications for licences for the first currency period. On applications for licences for the second or subsequent currency periods the discretion to grant or refuse the licence is that given by sect. 6 of the Act.

An appct. proved that there was a need for his car to be used on a private estate where no licence was required to use a car for carriage of goods for hire or reward, & that there was a possibility that there might be a need for the car to be used on public roads where a licence would be required:—*Held:* no case for a licence had been made out.

Obiter, if the public are admitted to a private estate the roads on that estate are roads within

Road & Rail Traffic Act, 1933 (c. 53).—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* HOLDEN (1936), 24 Ry. & Can. Tr. Cas. 178.

1555. —— ——.]—(1) A haulier applied for the renewal of his B licence permitting him (*inter alia*) to carry strawboards for a certain co. A ry. co. objector gave general evidence as to ry. facilities & argued that these facilities were suitable & that therefore the application should have been dismissed :—*Held :* in this case whether or not the ry. facilities were suitable depended upon whether or not the strawboards had frequently to be carried for urgent delivery. The evidence as to this was unsatisfactory ; case remitted for further inquiry.

The fact that objectors have in the past carried large quantities of certain goods does not prove that their facilities are suitable ; it is a factor to be taken into consideration, but is not conclusive.

It had been stated as one ground for granting the application the fact that conveyance of strawboards by rail would involve a 50 per cent. increase in transport charges ; he described the rail charge as " on the high side " :—*Held :* this finding was not justified by the evidence ; the rail rate had been authorised by the lty. Rates Tribunal & was not on the high side.

(2) Evidence tendered by objectors should be as particularised as that given by appcts.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY (1936), 24 Ry. & Can. Tr. Cas. 294.

1556. —— ——.]—A coal merchant who hawked coal from his motor vehicle during the winter months applied for a B licence :—*Held :* a coal merchant who is unable to discharge the ordinary burden of proof should nevertheless be granted a B licence if : (*a*) his business is genuine ; (*b*) he requires the vehicle for carrying goods in connection with his own business & these goods cannot satisfactorily be carried otherwise ; (*c*) taking the year as a whole the vehicle cannot be economically operated unless used during the off season for hire or reward ; & provided a special condition be attached preventing him carrying for hire save during the off season & preventing wasteful competition.

This principle only applies to genuine coal merchants' businesses, & it does not necessarily apply to other seasonal businesses.—SOUTHERN RY. CO. *v.* LAMBERT (1936), 25 Ry. & Can. Tr. Cas. 24.

Annotations :—**Refd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158 ; Marris *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 248.

1557. —— ——.]—Furniture dealers applied for a B licence to enable them to carry out removals. They did business on the " easy payment " system, & proposed to apply this system to removals :—*Held :* they must raise a *primâ facie* case within the terms of *Enston's Case ;* their proposed method of collecting charges was not a matter which the licensing authority should take into consideration.—BRADSHAWS STORES, LTD. *v.* WALKER & LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas.

1558. —— ——.]—A wholesale fruit merchant used motor vehicles to convey fruit from London to Nottingham & Ilkeston. He applied for a B licence to enable him to continue his practice of carrying for hire or reward on the return journeys to London :—*Held :* he was not entitled to a licence if there were already in existence suitable transport facilities for the conveyance of (*a*) his goods, & (*b*) those of his customers.

The evidence showed that railway facilities were suitable for the conveyance of appct.'s goods to Nottingham but not to Ilkeston. The Tribunal refused to assume in the absence of evidence that suitable facilities to Ilkeston were provided by A licence-holders. There was also insufficient evidence as to facilities available for conveyance of the customers' goods ; case therefore remitted to the licensing authority for further inquiry.

Barratt's Case followed ; decision of Mr. Gleeson Robinson therein approved, save that the Tribunal doubted whether a licensing authority was entitled to take into consideration the fact that a B licensee would obtain an advantage over his competitors not similarly licensed.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1936), 25 Ry. & Can. Tr. Cas. 118.

1559. —— ——.]—Sect. 6 (2) (*c*) of the Act requires the licensing authority to have regard to the extent to which the vehicles to be authorised will be in substitution for horse-drawn vehicles previously used by the appct. for the purposes of his business as a carrier.

Resp. co-operative society applied for a B licence for one vehicle to enable them to effect furniture removals for their members. They had hitherto done this work locally by their own horse-drawn vans, for which they had hired horses from S. Mr. Nicholson granted the application subject to a radius of twenty-five miles. On appeal it was said that S. had now himself obtained a licence on the ground of substitution of motor for horse-drawn vehicles, & that if this decision were supported there would have been a dual grant :—*Held :* where a van belonging to one person had been drawn by a horse belonging to another, the fact that the owner of the horse has already successfully invoked sect. 6 (2) (*c*) does not preclude the owner of the van from relying on it as well.

Grant upheld, subject to a reduction of radius to fifteen miles.—REED & SONS *v.* BRISTOL CO-OPERATIVE SOCIETY, LTD. (1937), 25 Ry. & Can. Tr. Cas. 241.

1560. —— ——.]—The owner of a furniture depository & a furniture removal business had been authorised under B licence to carry furniture & household effects within a 100-mile radius. He applied for a new licence in continuation of his expiring licence & asked that the restrictive radius be removed :—*Held :* (1) in the absence of evidence to the contrary it must be assumed that removals beyond the 100-mile radius had been satisfactorily effected by other carriers & therefore that the lifting of the restriction would create an excess of suitable facilities ; but (2) it is reasonable that the owner of a depository who is also a furniture remover should be permitted to carry without radius restriction furniture & household effects stored in his depository.—BROWN *v.* LONDON & NORTH EASTERN RY. CO. (1937) 25 Ry. & Can. Tr. Cas. 265.

-.]—(1) It is not by itself a ground for refusing a B licence that appct.'s own goods could be quite satisfactorily carried by existing transport & that there is no other valid & sufficient reason why he should carry them himself. But where there already exist suitable transport facilities for the carriage of the goods which appct. proposes to carry for reward the licence must be refused.

(2) In the absence of any explanation from the traders concerned it is not right to draw the inference that rail transport is unsuitable from the fact that many consignees order their goods forward by road.

(3) Where there is a finding that there are no A licensees in a certain area who are not fully employed, & this finding is based on knowledge acquired in the exercise of the duties of a licensing authority, the Appeal Tribunal have no alternative but to accept it.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1937), 25 Ry. & Can. Tr. Cas. 348.

1562. —— **Additional vehicles—When granted.**]—Wharfingers applied for a variation of their B licence by the addition of five vehicles that they might themselves do work hitherto done for them by sub-contractors. They complained of an increasing difficulty in hiring vehicles from such sub-contractors :—*Held :* by Mr. Gleeson Robinson, in the case of applications by wharfingers, forwarding agents & clearing houses who had hitherto done all or part of their haulage work by sub-contractors, & in the absence of special circumstances, a licensing authority should safeguard the transport industry generally by refusing to authorise vehicles for the purpose of doing such work as was hitherto done by sub-contractors. He refused the application. On appeal, the Appeal Tribunal were disposed to agree, *obiter*, with Mr. Gleeson Robinson as far as concerned forwarding agents, clearing houses, & some wharfingers. In the case of these appcts., however, they found special circumstances to exist, & held appcts.' road facilities were to be regarded as collection & delivery services ancillary to trunk routes by sea, & since an increasing difficulty in hiring had been proved, the extra vehicles should be authorised.—*Re* LOVELL (SHAW) & SONS, LTD. (1937), 25 Ry. & Can. Tr. Cas. 250.

1563. —— **Application for—What must be stated.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1564, *post*.

1564. —— **Jurisdiction of licensing authority.**]—(1) An appct. for a B licence in respect of a motor vehicle in describing the area which he intends to serve is only bound to state the district within which or the places between which he intends normally to use the vehicle. (2) In granting such a licence the licensing authority may, if he thinks fit, under sect. 8 (3) (*a*), attach to the licence a condition that it shall be used only in a specified district or between specified places; or he may grant the licence without imposing any restriction.

(3) When a rule *nisi* for a writ of *certiorari* has been made absolute by the K. B. Div. & an appeal to the Ct. of Appeal from the order absolute has been allowed. *Qu.* : whether it is necessary to sue out writs of *supersedeas & procedendo* to avoid the writ.—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, [1936] A. C. 128; 105 L. J. K. B. 37; 52 T. L. R. 44; 79 Sol. Jo. 941; 24 Ry. & Can. Tr. Cas. 1; *sub nom.* R. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, *Ex p.* GREAT WESTERN RY. CO., 154 L. T. 39, H. L.

Annotations :—As to (1) **Apld.** Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272. **Reid.** Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116.

1565. —— **Licensing authority using knowledge gained in course of duty—Duty to give notice to parties.**]—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS., No. 1553, *ante*.

1566. —— **Conditions—Consideration of public interest.**]—(1) Leave to call new evidence on appeal was refused to an applt., who as appct. had been given every opportunity to present his case to the comr. & had not asked for an adjournment.

(2) In attaching conditions to a B licence granted under sect. 7 (3), which provides that no condition shall be attached which would constitute a substantial interference with the business for which the vehicles were used during the basic year, a comr. may also take into account the public interest. The business may include the business of a carrier.—PLENTY *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 82.

1567. —— —— **Auctioneer's licence.**]—The Appeal Tribunal imposed a condition on an auctioneer's B licence limiting him to the carriage of furniture for hire or reward to or from his auction rooms & within a certain area.—NEWBURY & DISTRICT MOTOR SERVICES *v.* PERRY (1935), 23 Ry. & Can. Tr. Cas. 1.

1568. —— —— **Duty to attach.**]—When granting a B licence a licensing authority in the proper exercise of his discretion under sect. 8 (3) of the Act should attach reasonable conditions having regard to the evidence.

An appct. carried for hire or reward within twenty-five miles of his base. The licensing authority granted a B licence without special conditions :—*Held :* he should have attached conditions in accordance with the evidence. Case remitted for reconsideration.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BREEZE (1936), 24 Ry. & Can. Tr. Cas. 290.

Annotation :—**Reid.** Sutcliffe, Ltd. *v.* London, Midland & Scottish Ry. Co. (1936), 25 Ry. & Can. Tr. Cas. 213.

1569. —— ——.]—A newcomer applied for a B licence. It was granted subject to a condition limiting the use of his vehicle to a 25-mile radius from its base. Hauliers with bases twelve & fifteen miles respectively from the newcomer's base objected, & appealed :—*Held :* on the evidence, the newcomer had made out a *primâ facie* case, but that it had been *pro tanto* rebutted by the two objectors, so far as their bases were concerned; condition amended to prevent the newcomer carrying for persons other than those residing within four miles of his base. An offer made at a public inquiry by an objector, to station a vehicle at an appct.'s base, should not be taken into consideration.

Value of maps as evidence, commented upon.—POCOCK *v.* WASEY (1936), 24 Ry. & Can. Tr. Cas. 316.

1570. —— ——.]—*Qu.:* whether a licensing authority has jurisdiction to grant a B licence subject to special condition empowering the licensee to carry for a firm who are themselves holders of an A licence.—LONDON & NORTH EASTERN RY. CO. *v.* TURNBULL & SONS (LEEDS), LTD. (1937), 25 Ry. & Can. Tr. Cas. 239.

1571. —— **Grant quashed by Divisional Court—Issue of writ of supersedeas & procedendo by Court of Appeal.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1564, *ante*.

1572. —— **Return loads.**]—Traders had carried return loads within radii of sixty-five, forty & twenty miles under B licence, claimed tonnage. They now applied for a fresh B licence subject to the same conditions in continuation of the first licence. Objectors gave evidence of their facilities:—*Held:* by Mr. Farndale, in cases where appcts. had been carrying return loads since at least the commencement of the basic year, they should be permitted to continue so to do unless objectors proved beyond doubt that alternative transport facilities were commercially suitable as well as physically sufficient.

In the absence of evidence by objectors that they could deliver goods in the district in question early the morning next after dispatch, & that such delivery met the needs of consignees, Mr. Farndale found, & the Appeal Tribunal agreed, that objectors had not proved their facilities to be commercially suitable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* MITCHELL & BROADBENT (1936), 25 Ry. & Can. Tr. Cas. 78.

1573. —— **Radius.**]—Appcts. applied for a B licence in substitution for their existing B licence under which they were permitted to carry for hire or reward within a 70-mile radius. They had been carrying daily return loads from points 35 to 65 miles from their base:—*Held:* since the return loads were not carried for "long distances" & since they formed a regular service, the decision in *Barratt's Case* did not apply.

Sir William Hart granted the application subject to new radii of 15 & 35 miles. He considered these to be radii within which a B licensee might reasonably be expected to operate:—*Held:* by the Appeal Tribunal, in fixing a radius regard should be had to the evidence of past work & future need; Sir William's decision must be reversed.—SUTCLIFFE (EDWARD), LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 213.

1574. "C" licence—Condition prohibiting carriage for reward—Vehicle owned by mutual benefit societies.]—An incorporated society, whose members consisted exclusively of persons employed at a colliery, had as its object the business of delivering to its members coal supplied to them from the colliery by the colliery co. For the purposes of its business the society owned a motor goods vehicle in respect of which it held "a C licence" under the above sub-sect. The society used the vehicle for making a delivery of coal at the house of one of its members, the charge for the delivery being deducted from the wage of the member payable by the colliery co. & subsequently paid by that co. to the society. On an information against the society for having failed to comply with the condition, to which the licence was subject under the above sub-sect., by using the vehicle for the carriage of goods for hire or reward:—*Held:* as the society was incorporated, it was a legal entity separate & distinct from its individual members; & consequently in using the vehicle for the carriage of coal to one of the members at a charge, it used the vehicle for "the carriage of goods for hire or reward" within the Road & Rail Traffic Act, 1933 (c. 53), s. 2 (4), & was guilty of the offence with which it was charged.

In another case in which the material circumstances were in all respects similar to those above mentioned, except that the society which carried on the business & owned the vehicle & against which the information was laid, was an unincorporated society:—*Held:* as the society was unincorporated, it had no separate existence apart from its individual members who were themselves the owners of the vehicle & the recipients of the payments made for the use of it; & consequently when the vehicle was used for the carriage of coal to the member it was not used for "the carriage of goods for hire or reward" within the sub-sect., & the society was not guilty of the offence charged against it.—WURZEL *v.* HOUGHTON MAIN HOME DELIVERY SERVICE, LTD., WURZEL *v.* ATKINSON, [1937] 1 K. B. 380; [1936] 3 All E. R. 311; 106 L. J. K. B. 197; 155 L. T. 575; 100 J. P. 503; 53 T. L. R. 81; 80 Sol. Jo. 895; 34 L. G. R. 587; 25 Ry. & Can. Tr. Cas. 59, D. C.

1574a. —— **Breach of condition.**]—Resps., as holders of a private "C" carrier's licence, were charged with having failed to comply with a condition attached to the licence, namely, that "the holder of this licence is entitled to use the authorised vehicles for the carriage of goods for or in connection with any trade or business carried on by him, but no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward," contrary to Road & Rail Traffic Act, 1933, s. 9 (1). The vehicles in question were used for the removal & disposal of the whole of the surplus excavations from the site of a new railway station, for the sum of 1*s.* 10*d.* per cubic yard of excavation, & it was alleged that the consideration paid, or some part of it, was paid for the carriage of the rubbish. The justices dismissed the charge, holding that the property in the rubbish passed to the respondents the moment it was loaded on to the vehicle, & that it could not be said that a person had carried his own goods for hire or reward:—*Held:* (1) a large part of the payment recovered by resps was paid for the carriage of the rubbish from the premises of the railway, & the offence charged was proved; (2) this was not a case of "delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him" within sect. 1 (5) (*a*) of the Act of 1933.—SPITTLE *v.* THAMES GRIT & AGGREGATES, LTD., [1937] 4 All E. R. 101; 101 J. P. 557; 81 Sol. Jo. 902, D. C.

1575. **Variation—What amounts to.**]—*Re* COLES' APPEAL, No. 1641, *post.*

1576. —— **Application to include tonnage used before Apr. 1, 1934.**]—(1) The right of an appct. to claimed tonnage under sect. 7 (3) of the Act is exhausted when he is granted a licence for the first currency period. If, therefore, he did not apply before Apr. 1, 1934, for all that he might have applied for he has no right thereafter to have his licence varied so as to include the difference between the tonnage he did apply for & that which he might have applied for.

(2) A trailer is not a specified vehicle within sect. 10 (2). Consequently, the holder of a licence for a motor vehicle & a trailer has no right to have a second motor vehicle substituted for the trailer.

The principles with regard to hiring laid down in *L. M. & S. & Barr*, No. 1519, *ante*, apply as well to the variation of a licence as to the grant of a new licence.—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 163.

Annotation :—As to (1) **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1577. —— **Application to include vehicles formerly hired.**]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1576, *ante.*

1578. —— **Specified vehicle—Trailer.**]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1576, *ante.*

1579. —— **Application before licence granted.**]—A carrier applied for a licence. Before his application could be heard he applied for a variation of the licence which he hoped would be granted. On hearing of the original application Mr. Chamberlain refused to entertain the application for the variation because it had not been published, & he granted the original application in part only. On the application for a variation coming before Sir William Hart he refused to authorise additional vehicles because the evidence in support of the application for a variation was the same as the evidence on the original application, but he did authorise heavier vehicles. On the matter coming before the Appeal Tribunal they approved of what had been done both by Mr. Chamberlain & by Sir William Hart.—BARLOW *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 52.

1580. —— **Purchase of haulier's business—Application of 1933 Act, s. 11.**]—A haulier using ten vehicles under an A licence contracted to purchase the business of another haulier, operating five vehicles under an A licence. The first haulier applied to vary his licence by the inclusion of the additional five vehicles :—*Held :* the case did not fall within sect. 11 (3) (*b*) of the Act. Para. (*b*) of subsect. (3) applies only to applications for licences, & not to applications for variations of licences.

A haulier purchasing another haulier's business & applying to vary his own A licence by the inclusion of the purchased vehicles must prove (1) that the vendor had a business as a public carrier ; (2) that the vendor's customers are ready & willing to give their work to the purchaser ; (3) that this work should be done under an A licence ; (4) that to do this work it is reasonably necessary for the purchaser to use the vendor's vehicles in addition to his own vehicles. In this case the fourth point had not been proved & the variation was refused.—BOSTON HAULAGE CO., LTD. *v.* SANDERSON & LONDON & NORTH EASTERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 107.

Annotations :—**Apld.** London & North Eastern Ry. Co. *v.* Butler & Marshall (1936), 24 Ry. & Can. Tr. Cas. 144 **Consd.** Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217

1581. —— —— ——.]—A haulier contracted to purchase the business of another haulier, including two vehicles. The vendor at that time owned no vehicles. The purchaser applied for an A licence for two vehicles to be acquired. After the application but before the public inquiry the vendor bought the two vehicles, obtained A licences for them, & transferred them to the purchaser :—*Held :* sect. 11 (3) (*b*) did not apply ; therefore the licensing authority was under a duty to hear an objector & the objector had a right of appeal under sect. 15 (1) (*b*). For sect. 11 (3) (*b*) to apply the vendor's licence must be in existence at the date of the purchaser's application.

For three months prior to the contract the vendor had owned no vehicles, & evidence as to hiring was vague. The licensing authority did not investigate the vendor's books & records, but granted the application : —*Held :* the principles of *Boston Haulage Co., Ltd. & Sanderson*, must be applied. The question whether the vendor had any business to dispose of, or whether the purchase was a device intended to prevent a public inquiry, had been insufficiently investigated. Application referred back to the licensing authority for the holding of a further public inquiry.—LONDON & NORTH EASTERN RY. CO. *v.* BUTLER & MARSHALL (1936), 24 Ry. & Can. Tr. Cas. 144.

1582. —— **Extension of area.**]—A B licence was granted for the carriage of livestock within sixty miles of a place in Anglesey. It appeared that the principal markets for livestock from Anglesey were in Manchester & Salford ; the Appeal Tribunal accordingly enlarged the area so as to include these places.—WILLIAMS & EVANS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 193.

1583. —— **What may be considered.**]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1508, *ante.*

1584. —— **Additional vehicles—When granted.**]—Appcts. for B licences or variations who rely on an increase in gross receipts should present figures showing separately the gross receipts earned in carrying goods for hire or reward.

A ballast merchant & road haulier held a B licence for twenty-five vehicles for the first currency period. At its expiry he obtained a second licence for nineteen vehicles, the other six being at that time unfit for use. He now applied for the addition of six vehicles to his licence. He gave evidence of an increase in the gross receipts of his business & of an increase in hiring :—*Held :* on the facts, it was impossible to tell what portion of the gross receipts related to carrying for hire or reward & what related to the ballast business ; & the hiring figures could not properly be assessed since they must have been affected by the fact that six

vehicles were at one time laid up although authorised.

Per Mr. Gleeson Robinson: A false statement made by appct.'s assistant manager to objectors, with a view to having objections withdrawn, is "previous conduct of appct. in the capacity of a carrier of goods," within sect. 6 (2) (*b*) of the Act.—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON, MIDLAND & SCOTTISH & GREAT WESTERN RY. COS. (1936), 25 Ry. & Can. Tr. Cas. 32.

1585. Licensing authority—Duty to give reasons for decisions.]—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1483, *ante*.

1586. —— —— All reasons.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1587. —— Duty to act judicially.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1588. —— Public inquiry—Powers.]—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1628, *post*.

1589. —— —— ——.]—A co. applied for an A licence in continuation of an existing licence issued to a carrier whose business they had acquired. Mr. Nicholson gave notice of the application in *Applications & Decisions*, held a public inquiry, & heard objectors. On the evidence he held that the co. had not shown a need that justified their application, & he dismissed it:—*Held:* on appeal, although sect. 11 (3) (*b*) of the Act applied to the application, the licensing authority had power to notify it. He had power to hold a public inquiry, both under sect. 11 (5) & under the principles laid down in *Board of Education* v. *Rice*, [1907] A. C. 179, & *Local Government Board* v. *Arlidge*, [1915] A. C. 120. He had power to hear objectors, not as statutory objectors, but as persons making representations to assist him. In deciding such an application he was bound to have regard to all the matters set out in sect. 6 (2) of the Act. In this case the evidence justified the finding: appeal dismissed.

It is incorrect to refer to such an application as one "made under sect. 11 (3) (*b*) of the Act" or as one for "transfer of licence."—EX-ARMY TRANSPORT, LTD. *v.* DIAMOND & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 303.

Annotation:—Refd. Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217.

1589a. —— —— ——.]—*Re* WOODWARD'S APPLICATION, WOODWARD *v.* NORTH WESTERN TRAFFIC AREA LICENSING AUTHORITY, [1937] 4 All E. R. 656; 54 T. L. R. 216.

1590. —— Non-compliance with conditions—Consideration of.]—Breaches of the conditions attached to a licence such as would justify the revocation of the licence are previous conduct of an appct. in his capacity of a carrier of goods & ought to be considered on an application for a new licence in substitution for an existing licence.

Although under sect. 11 (2) of the Road & Rail Traffic Act, 1933, a statutory objector may object to the grant of a licence on the ground that any of the conditions of a licence held by appct. have not been complied with, it can only be in rare cases that an objector has knowledge whether or not breaches of conditions have taken place, & in the great majority of cases this knowledge will be that of the licensing authority only acquired by him in the course of his administrative duties under the Act. Consequently any such non-compliance may be properly considered by the licensing authority *ex proprio motu suo*. In such a case the licensing authority is not bound to hear direct evidence of non-compliance with the conditions. Where it is intended to take such matters into consideration it is better that written notice should be given to appct., but if sufficient oral notice has been given the fact that there was no written notice will not be a ground of appeal.—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 318.

1591. "Previous conduct of applicant"—Criminal offences—Necessity for strict proof.]—BOUT-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

SON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1593. —— Material time.]—A licensing authority dismissed an application for an A licence in substitution for an expiring licence upon the ground, *inter alia*, that appct.'s previous conduct in the capacity of a carrier of goods was such as to disentitle him to a licence. This previous conduct comprised the transaction under which appct. had obtained the vehicles with which he began business as a road haulier. On appeal:—*Held:* since at the time of the transaction in question appct. had not yet begun to be a carrier of goods, the conduct was not such as fell to be considered by a licensing authority under sect. 6 (2) (*b*) of the Act. Appeal allowed.

Objectors' evidence in proof of objection discussed.—HAZELL *v.* SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. (1937), 25 Ry. & Can. Tr. Cas. 259.

1594. —— What amounts to.]—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON MIDLAND & SCOTTISH & GREAT WESTERN RY. COS., No. 1584, *ante*.

1595. —— ——.]—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1590, *ante*.

1596. Newcomer—Who is.]—(1) An appct. is a newcomer to the carrying business notwithstanding he was a partner in a firm of carriers before the basic year.

(2) Where a newcomer applies for a carrier's licence the burden of proof is on him to meet the objection under sect. 11 (2) of Road & Rail Traffic Act, 1933 (c. 53), that, if the application is granted, transport facilities will be in excess of requirements; & he must discharge that burden even if there are no objectors.—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN, & LONDON & NORTH EASTERN RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 88.

1597. —— ——.]—(1) *Held:* (1) by the Appeal Tribunal, an appct. who had been a partner in a firm of carriers from 1918 till May, 1933, & thereafter a carrier on his own account, was a newcomer to the carrier's business for the purpose of an application for a licence which he proposed to use for a carrying business of an entirely different character; (2) the evidence of the managing director of a co. of haulage contractors that there was a

shortage of goods vehicles in the district proposed to be served by appct. did not make a *primâ facie* case that the work proposed to be done by the appct. could not for some reason or reasons be done by other existing carriers.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS (1935), 23 Ry. & Can. Tr. Cas. 159.

1598. —— ——.]—On an application for an A licence for a vehicle to be normally used in R. & 100 miles around an objection was lodged on the ground that transport facilities were in excess of requirements. It was admitted on behalf of the objectors that if appct. would restrict himself within the limits of a B licence the objection could not possibly be sustained. Nevertheless the objection was allowed:—*Held:* by the Appeal Tribunal, an appct. who had been a carrier & haulage contractor except for the period from 1929 to 1933, when he went out of business for family reasons, was a newcomer to the carrying business.—CROMPTON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 178.

Annotations:—**Folld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

1599. —— ——.]—MCLACHLAN *v.* MORGAN & CO., No. 1531, *ante*.

1600. —— ——.]—An appct. for an A licence had been a carrier during the basic year. He had also had a coal business which, as the Comr. found, was always a very small part of his general business:—*Held:* in these circumstances appct. was a newcomer to the carrying business, because it appeared from his books that over the whole period of the basic year his vehicle was not used mainly for carriage for reward; the burden of proof was on appct. to establish that no other carrier could do the work which he proposed to continue to do; &, that burden not having been discharged, the licence should have been refused, notwithstanding there was no evidence to show that transport facilities in the district were in excess of requirements.—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN (1935), 24 Ry. & Can. Tr. Cas. 31.

Annotation: **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1601. —— ——.]—(1) Sect. 5 (3) requires that, in the case of A & B licences, a separate application must be made in respect of each permanent base or centre from which the vehicles will be normally used, but permits the Comr. to grant a single licence in respect of such applications. A single application having been made for a B licence for two vehicles "for goods to be conveyed within a twenty-five miles radius of Ayr & Kilmarnock, from Bus Station, Ayr, & Bus Station, Kilmarnock":—*Held:* by Mr. Henderson, since Ayr & Kilmarnock are only ten miles apart one application was sufficient, but two licences ought to be granted. On the matter coming to the notice of the Appeal Tribunal they gave no decision on this point because no objection was taken to the form of the application.

(2) On an application for a B licence to carry parcels an objection that suitable transport facilities in the district intended to be served were already in excess of requirements was disallowed by Mr. Henderson because it was not supported by evidence:—*Held:* by the Appeal Tribunal, a co. which has been engaged in carrying parcels & passengers for many years is a newcomer to the carrying business & ought not to be granted a licence except upon proof of a *primâ facie* case that no other carrier could carry the parcels.—FERGUSON *v.* WESTERN S. M. T. CO., LTD. (1935), 24 Ry. & Can. Tr. Cas. 72.

1602. —— ——.]—(1) A haulier who had operated during the basic year applied for an A licence. He claimed to have an equitable right to a licence because his delay had been due to inadvertence & ignorance:—*Held:* at this late stage an appct. claiming to have operated during the basic year must produce conclusive & fully corroborated evidence. Appct. must be treated as a newcomer.

(2) Evidence of work done by vehicles operating illegally is probably not receivable in support of an application—*obiter*.—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 161.

-.]—(1) A limited co. had two separate departments, one carrying on the business of building contractor, & the other carrying on that of haulage contractor. During the basic year the haulage department carried 21 per cent. of their tonnage for the building department, & the balance for outside customers. The co. applied for an A licence (partly claimed tonnage). This application was adjourned, & in the interval a new limited co. was formed which took over the haulage business of the older or parent co. The new co. applied for an A licence:—*Held:* in these special circumstances the new co. was to be regarded not as a newcomer & subject to the requirements of *Enston's Case*, but as successor to the haulage department of the parent co., & should be granted an A licence for such vehicles as were engaged during the basic year in carrying for customers other than the building depart-

Abandonment of part of appeal at late stage taken into account in assessing costs.—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD. (1936), 24 Ry. & Can. Tr. Cas. 248.

1604. —— ——.]—(1) A firm of carriers was wound up in 1934. One of the former partners applied for a B licence in 1935. In the meanwhile he had maintained a business as carrier by means of hiring & sub-contracting:—*Held:* the applicant was a newcomer, & as such had to fulfil the requirements laid down in *Enston's Case*. On the evidence he had done so.

(2) The carriage of livestock is not traffic of a special character, in connection with which an appct.'s personal skill should be considered.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON (1936), 24 Ry. & Can. Tr. Cas. 325.

1605. —— ——.]—MODERN HAULAGE SERVICES, LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART, No. 1547, *ante*.

1606. —— ——.]—An operator under B licence ceased to carry on any business other than that of haulier. During the currency of his first B licence he applied for an A licence :—*Held :* the grant of the B licence exhausted his rights to claimed tonnage : there is no continuing right. Appct. was a new comer & must discharge the onus of proof laid down in *Enston's Case.*

As to the admission of fresh evidence before the Appeal Tribunal, *Taylor's Appeal* followed.—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD. (1936), 25 Ry. & Can. Tr. Cas. 83.

1607. Onus of proof—That facilities not excessive.]—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS., No. 1596, *ante.*

1608. —— ——.]—*Held :* (1) the burden of proving an objection under sect. 11 (2) does not lie on the objector, but the burden of disproving the objection lies on appct. ; (2) the fact that a carrier has been compelled to hire vehicles to carry his customers' goods is no evidence that either his business or theirs has increased ; (3) in determining the number of vehicles to be authorised for a seasonal business of a carrier in a small way, the comr. should not have regard to the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair, as appears to be required by sect. 6 (2) (*d*) of Road & Rail Traffic Act, 1933.—LONDON & NORTH EASTERN RY. CO. *v.* BURGESS (1935), 23 Ry. & Can. Tr. Cas. 147.

1609. —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN, No. 1600, *ante.*

1610. —— **Of abstraction of traffic.**]—*Held :* (1) by the Appeal Tribunal, the burden of proving an objection that appcts. have abstracted traffic from the objectors does not lie on the objectors, but it is for appcts. to disprove the objection.

(2) The Appeal Tribunal have no jurisdiction to allow an amendment of a notice of appeal.—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD. (1935), 23 Ry. & Can. Tr. Cas. 164.

1611. Evidence—Of objections.]—MCLACHLAN *v.* MORGAN & CO., No. 1531, *ante.*

1612. —— —— **Need for particularity.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY, No. 1555, *ante.*

1613. —— **Letters from customers.**]—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1534, *ante.*

1614. —— ——.]—(1) An appct. for an additional vehicle put in letters from customers, but furnished no evidence as to his tonnage or receipts :—*Held :* the evidence was insufficient.

(2) The absence of evidence as to alternative facilities is not a ground for granting an application.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER (1936), 24 Ry. & Can. Tr. Cas. 301.

1615. —— **Of goods & receipts during illegal user.**]—(1) Hauliers operating a service from their Devon base to London applied for authorisation of two extra vehicles. These vehicles had been operated illegally without licence for four & five months respectively. Their case was based upon an increase in the business both of their Devon customers & of a London co. for whom they carried on return journeys :—*Held :* evidence of customers obtained, of goods carried, & of receipts earned during a period of illegal running must be ignored ; (2) if the holder of an A licence applies for the authorisation of extra vehicles to be normally used for carrying from a particular base, he must first prove a need for these vehicles to carry goods outward from that base. If he proves that need, evidence as to return loads may be helpful, though not, strictly speaking, necessary. If he does not prove that need, evidence as to return loads will not support his application. In this case appcts. had not been able to prove sufficient increase in business outward from their base ; evidence as to return loads did not therefore need to be considered.—MOSS BROS. *v.* SOUTHERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 253.

1616. —— **Failure to hear—Ground for rehearing.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD., No. 1515, *ante.*

1617. —— **Fresh evidence—On reference back.**]—(1) When as the result of an appeal a case is referred back to a licensing authority for further inquiry, applt. ought to call fresh evidence.

(2) A haulier who substitutes a motor vehicle for a horse-drawn vehicle is not entitled as of right to a licence.—JONES *v.* ROBERTS & OWEN (NO. 2) (1936), 24 Ry. & Can. Tr. Cas. 287.

1618. —— **Maps.**]—POCOCK *v.* WASEY, No. 1569, *ante.*

1619. —— **Rights of objectors.**]—An appct. for additional tonnage put in letters from his customers. The texts of these were read at the public inquiry but the names of the writers were not read or disclosed to the objectors. Appct. could not give evidence as to his tonnage at the inquiry, but subsequently submitted a written statement of tonnage to Mr. Chamberlain, who then granted the application :—*Held :* (1) where a party relies on the contents of documents, the opposing parties are entitled to see those documents ; (2) objectors should have been given the opportunity of commenting upon the statement of tonnage. The proceedings were unsatisfactory : appeal allowed.

If important information is promised to a licensing authority, he should adjourn the public inquiry for its reception at a later hearing.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* (1936), 25 Ry. & Can. Tr. Cas. 37.

1620. —— **Of refusal of traffic—Necessity for strict proof.**]—An allegation that an objector has refused traffic should be strictly proved.

Hauliers applied for an extension of the radius prescribed in their B licence. They were employed as sub-contractors by C., a road haulier, to carry bricks for the M. Co. C. gave evidence of the M. Co.'s need, & stated that railway co. objectors were not meeting that need, as a result of which the M. Co. had had to acquire vehicles of their own under C. licence :—*Held :* on the facts,

that need had not been proved. The relations between the M. Co. & the objectors should have been proved by some official of the M. Co. & not by C.'s evidence, which was hearsay.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BOTTERILL & SONS (1936), 25 Ry. & Can. Tr. Cas. 72.

1621. Number of vehicles—Provisions for overhaul—Seasonal business of small carrier.]—LONDON & NORTH EASTERN RY. CO. *v.* BURGESS, No. 1608, *ante*.

1622. —— Wrongful possession during basic year.]—(1) Wrongful possession of a vehicle during the basic year cannot confer a right to claimed tonnage. But where such a vehicle was handed over in part payment for another vehicle under a hire-purchase agreement, possession of the second vehicle during the basic year could confer the right to claimed tonnage.

(2) A licensing authority granted an application for an A licence in respect of two vehicles, claimed tonnage, but doubted whether the appct. was the owner of the vehicles :—*Held :* the objector had a right to appeal.—SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. *v.* HAZELL (1936), 24 Ry. & Can. Tr. Cas. 312.

1623. Motor vehicle substituted for horse-drawn—What amounts to.]—*Held :* (1) where a carrier sold a barge which was towed by a horse, & bought a motor car, this was a case of a motor vehicle being substituted for a horse-drawn vehicle within sect. 6 (2) (*e*).

(2) Objectors who had called no evidence in support of their objection were permitted to appeal to the Appeal Tribunal under the provisions of sect. 15 (1) (*b*) on the grounds that the evidence given by appct. in support of his application was untrue, that the objectors had not been in a position to refute such evidence, & that appct. had made no *primâ facie* case that the work he proposed to do could not be done by other carriers. The Appeal Tribunal, being satisfied that the evidence of appct. had been untrue, allowed the appeal.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ABRAM (1935), 23 Ry. & Can. Tr. Cas. 153.

1624. —— ——.]—An appct. having tendered for a contract for work to be done by his horses & carts, & having failed to secure the contract, disposed of the horses & carts & applied for an A licence for motor vehicles to be used instead :—*Held :* by the Appeal Tribunal, this was not a case of the substitution of motor vehicles for horse-drawn vehicles for the purposes of the business of a carrier within sect. 6 (2) (*e*).—LONDON & NORTH EASTERN RY. CO. *v.* ALDRIDGE (1935), 23 Ry. & Can. Tr. Cas. 188.

1625. —— Ratio.]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1550, *ante*.

1626. —— Right to licence.]—JONES *v.* ROBERTS & OWEN (No. 2), No. 1617, *ante*.

1627. Publication of application—What should be stated.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1505, *ante*.

1628. —— When necessary.]—(1) An appct. applied for an A licence in continuation of an existing licence issued to a carrier whose business she had acquired. The provisions of sect. 11 (1), (2) of the Act as to publication & the hearing of objectors do not apply to certain applications of this nature : sect. 11 (3) (*b*) :—*Held :* sect. 11 (3) (*b*) does not apply unless the licensing authority is satisfied that at the time of the sale the vendor had a genuine carrier's business.

(2) Mr. Henderson published the application, held a public inquiry, & heard objectors : —*Held :* the licensing authority was justified in taking these steps in order to ascertain whether sect. 11 (3) (*b*) applied. He was entitled to hear any representations made to him on that subject. "Statutory objectors" distinguished from other persons entitled to make representations.—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 182.

1629. Agreement to permit operation of vehicles in name of licensee—Validity.]—Pltf. who was entitled by virtue of sect. 7 (2) to obtain as of right A licences in respect of goods vehicles up to a certain tonnage, did not wish to use those vehicles himself. He entered into an agreement with defts., whereby, in consideration of a money payment by defts., defts. were to be entitled to operate the vehicles in pltf.'s name, under pltf.'s licences, which could not, by sect. 21 of the Act, be transferred or assigned by him to defts. The present action was brought by pltf. to recover the sum payable under the agreement :—*Held :* although the agreement did not purport to transfer or assign pltf.'s licences, it could not be carried into effect without the commission by defts. of a criminal offence under sect. 1, since defts. would be using vehicles in respect of which they had no licence. Nor could pltf., who had licences, but was not the person using the vehicles within sect. 1, comply with the requirements of sect. 16 by keeping, or causing to be kept, the records therein mentioned. The agreement was therefore illegal, & pltf.'s claim failed.—NASH *v.* STEVENSON TRANSPORT, LTD., [1936] 2 K. B. 128 ; [1936] 1 All E. R. 906 ; 105 L. J. K. B. 527 ; 154 L. T. 420 ; 52 T. L. R. 331 ; 80 Sol. Jo. 245, C. A.

1630. Effect of decision—Whether amounting to estoppel.]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1508, *ante*.

1631. Traffic of special character—What is.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON, No. 1604, *ante*.

1632. Vehicles operated from two bases—Whether two licences required.]—FERGUSON *v.* WESTERN S. M. T. CO., LTD., No. 1601, *ante*.

1633. Notice of objection—Contents.]—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT, No. 1494, *ante*.

1634. —— ——.]—It is imperative that notices of objection follow the form in Sched. III. of the Goods Vehicles (Licences & Prohibitions) Provisional Regulations, 1934 (now replaced by the Goods Vehicles (Licences & Prohibitions) Regulations, 1936). If an objector does not follow that form his objection is invalid.

Objectors who were road hauliers gave no particulars of their transport facilities in the notices of objection, nor did they state what

licences they held:—*Held:* the notices of objection were invalid, consequently the licensing authority was not bound to take them into consideration & the objectors had no right of appeal.

Where an appct. proposes to carry throughout Great Britain objectors have complied with the form if they describe the "district" in which they already provide transport as "Northern Scotland."—AITCHISON *v.* GALBRAITH (1936), 25 Ry. & Can. Tr. Cas. 3.

1635. Authority to carry specified goods from future date.]—(1) A licensing authority has no power to permit the carrying of certain goods only as from a future date.

(2) Under sect. 15 (12) (*b*) of the Act the Appeal Tribunal has power to award to an unsuccessful party the costs of any issue on which he has succeeded.—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN (1936), 24 Ry. & Can. Tr. Cas. 234.

1636. Contract licence—When necessary.]—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. Cos., No. 1521, *ante*.

1637. Suitable facilities—What must be considered.]—When considering the suitability of existing railway facilities some regard must be had to the facilities for collection & delivery. Facilities which might otherwise be suitable may be shown to be unsuitable if there are no reasonable facilities available for carrying the fruit to or from the terminal railway stations.—LEWIS *v.* SOUTHERN RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 18.

1638. —— ——.]—(1) Transport facilities which make no provision for the speedy delivery of traffic in respect of which there is real urgency with regard to delivery are not suitable facilities for such traffic.

(2) Before refusing an application for an A licence on the ground that the application should have been for a contract licence the licensing authority should be completely satisfied that vehicles of the appct. have been &/or will be used exclusively for carrying the traffic of a particular person.—MILLER & CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., COAST LINES, LTD., & BOWKER (1937), 25 Ry. & Can. Tr. Cas. 364.

SECT. 2.—APPEALS.

1639. When appeal lies—Appeal from agreed condition.]—(1) The Appeal Tribunal will not entertain an appeal from a condition to which the applt. himself has agreed.

(2) The time for lodging a notice of appeal is limited by regulations made by the Minister of Transport. The Appeal Tribunal has no power to extend that time. Consequently, that time having elapsed, an amendment of the notice of appeal will not be allowed.—*Re* EDWARDS' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 1.

1640. —— **Effect of right to apply to licensing authority for variation.**]—(1) An applt. who did not realise the importance of proving his case before the comr. was allowed to call new evidence on appeal.

(2) The fact that an appct. who is dissatisfied with the conditions attached to his licence may be entitled to apply to the licensing authority to vary the conditions does not affect his right of appeal to the Appeal Tribunal.—*Re* TAYLOR'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 32.

Annotation:—As to (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77. **Reld.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1641. —— **Application for variation of licence—What amounts to.**]—An application to a licensing authority for a dispensation from the requirements of sect. 16 & regulations made thereunder is not an application for a variation of a licence within sect. 15 (1) (*a*), & the Appeal Tribunal have no jurisdiction to entertain an appeal from the refusal of a licensing authority to grant such a dispensation.—*Re* COLES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 129.

1642. —— **Application for claimed tonnage—Vehicle properly included.**]—STUBBS (LEONARD) & CO., LTD. *v.* JACKSON & ELLIS, No. 1507, *ante*.

1643. —— —— **Doubt as to ownership of vehicle.**]—SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. *v.* HAZELL, No. 1622, *ante*.

1644. —— **Untrue evidence given.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ABRAM, No. 1623, *ante*.

1645. Who may appeal—Person aggrieved—Objector.]—The word "thereon" in Road & Rail Traffic Act, 1933 (c. 53), s. 15 (1) (*b*), refers to "application" & not to "objection." Consequently an objector who is not aggrieved by the decision on the application but is aggrieved by the refusal of the licensing authority to entertain his objection has no right of appeal.—LUCAS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 25.

-.]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1550, *ante*.

1647. Notice of appeal—Time for—Extension.]—*Re* EDWARDS' APPEAL, No. 1639, *ante*.

1648. —— —— **How calculated.**]—For the purpose of calculating the time for lodging an appeal against a decision on an application to which the provisions of sect. 11 of the Act do not apply the date of the decision is the day on which the comr. gives his decision, not the day on which the appct. first receives written notice of the decision.—*Re* HUXLEY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 35.

*Annotation:—***Reld.** Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1649. —— **Amendment—Jurisdiction of Appeal Tribunal.**]—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD., No. 1610, *ante*.

1650. Right of audience—Officer of association—Meaning of "association."]—The Appeal Tribunal certified an assocn. to be "an assocn. representing a substantial number of persons interested in or likely to be affected by the decisions of the Tribunal," & accordingly granted right of audience to an officer of the assocn. under Road & Rail Traffic Act, 1933

(Appeal Tribunal) Rules, 1934, r. 11 (2) (*a*). It was subsequently ascertained that the name of the assocn. had been registered under Registration of Business Names Act, 1916 (c. 58), as the business name of the secretary of the assocn.; that the assocn. had no banking account separate from the private banking account of the secretary; & that although by the rules of the assocn. its government was vested in an executive committee of whom a president was to be a member, no president had in fact been elected. The assocn. had 182 members:—*Held:* the assocn. was not an assocn. in the ordinary meaning of the word. The body of persons whom the secretary represented was not an assocn. or body of persons within rule 11 (2) (*a*).—*Re* SUSSEX CARRIERS' ASSOCN. (1935), 24 Ry. & Can. Tr. Cas. 64.

1651. **Power to hear counsel.**]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1517, *ante*.

1652. **Evidence—Fresh evidence—When admissible.**]—An appct. neglected *per incuriam* to call before the licensing authority evidence material to his application. The Appeal Tribunal, being of opinion that if the evidence had been called the application would have been granted, allowed the evidence to be called on appeal.—DRINKWATER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 19.

1653. —— —— ——.]—*Re* FRY'S APPEAL, No. 1476, *ante*.

1654. —— —— ——.]—*Re* TAYLOR'S APPEAL, No. 1640, *ante*.

1655. —— —— ——.]—PLENTY *v.* GREAT WESTERN RY. CO., No. 1566, *ante*.

1656. —— —— ——.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *post*.

1657. —— —— ——.]—STEPHENSON *v.* SAGAR & SON, No. 1488, *ante*.

1658. —— —— ——.]—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO., No. 1545, *ante*.

1659. —— —— ——.]—Mr. Chamberlain allowed an objection that traffic facilities in the district were in excess of requirements upon proof that the objector had four cars of which only one was in use because there was no work for the other three. On appeal, the Appeal Tribunal admitted new evidence to show that these three cars were out of use because they were mechanically unfit, but refused to admit new evidence to show that since the decision of the Comr. the traffic needs of the district had been increased by the reopening of certain quarries & the decision of the county council to proceed with a large scheme of road reconstruction. The matter was referred back to the Comr. for further inquiry.—JONES *v.* ROBERTS & OWEN (1935), 24 Ry. & Can. Tr. Cas. 205.

1660. —— —— ——.]—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD., No. 1606, *ante*.

1661. —— —— **Reference back for re-hearing.**]—Applt. applied for & was refused a B licence to carry milk within fifty miles of Nantwich. On appeal to the Appeal Tribunal he endeavoured to show that he was entitled to a B licence to carry milk from places within ten miles of Wrenbury to Manchester & other goods back from Manchester to those places. The Appeal Tribunal referred the case back to the licensing authority for re-hearing.—HARDEN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 71.

1662. —— —— **Evidence of applicant.**]—An appct. carrying on a hardware & scrap business applied for a B licence to enable him to carry return loads from Leeds to Glasgow for hire or reward. At the inquiry his solr. stated that the return loads were provided by appct.'s own customers, but appct. himself stated in cross-examination that he obtained these loads from clearing-houses. Mr. Henderson accepted the solr.'s statement & granted the application. In these circumstances the Appeal Tribunal called appct. to give evidence before them. It then appeared that the return loads were carried only for one or other of two clearing-houses:—*Held:* the case was governed by the decision in *Barratt's Case*, & since no exceptional circumstances existed the application must be refused. Appeal allowed.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SHEVILLE (1936), 25 Ry. & Can. Tr. Cas. 45.

1663. —— **Letters—When admissible.**]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *post*.

1664. —— —— ——.]—An appct. for an A licence proved that he was carrying for a substantial number of customers, & tendered in evidence a number of letters from customers supporting his application:—*Held:* he had not made out a *primâ facie* case. The fact that proposed facilities would be a convenience to some customers is not evidence to support a *primâ facie* case. Nor do letters showing no more than willingness to employ constitute a *primâ facie* case.—LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* GIMSON (1936), 24 Ry. & Can. Tr. Cas. 82.

—— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN, No. 1536, *ante*.

1666. —— **Purposes for which vehicles to be used.**]—AULD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 289.

Annotations:—**Refd.** Ferguson *v.* Western S. M. T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72; Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1667. —— **Illegal work done.**]—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1602, *ante*.

1668. **Decision based on erroneous grounds—Right of respondent.**]—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1504, *ante*.

1669. **Powers of appellant.**]—Resp. to an appeal may not challenge that part of the licensing authority's decision which is not appealed from.—AITKIN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 321.

1670. ——.]—(1) *Held:* on an application by resps. to strike out applts.' grounds of appeal, on an appeal by an objector, (1) the Appeal Tribunal has jurisdiction to review a licensing authority's findings of fact; (2) an applt. may raise any point relevant to the issues as to whether suitable transport facilities exist or are in excess of requirements; (3) an applt. may argue that a licensing authority

wrongly exercised his discretion because it had been established before him that suitable transport facilities existed or were in excess of requirements. In this case the grounds of appeal sufficiently indicated a case which applts. were entitled to make; (4) it is doubtful whether the Appeal Tribunal has power to strike out a ground of appeal.

(5) A haulage co. operating twenty-four vehicles under an A licence, claimed tonnage, applied for the authorisation of extra vehicles:—*Held:* having regard to the size of the fleet, one extra vehicle should be authorised for maintenance purposes. As to other extra vehicles, the evidence was insufficient. The failure of a pooling scheme is not evidence of need for additional vehicles. —FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 265.

1671. Jurisdiction of Appeal Tribunal—To dismiss appeal—Non-appearance of applicant.]—*Re* SMITH'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 15.

1672. —— To review findings of fact.]—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1539, *ante*.

—.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *ante*.

1674. —— To rectify condition—Mistake of applicant.]—(1) Where an appct. agreed to conditions attached to a B licence under mistake, the Appeal Tribunal will rectify the mistake, & will make all such consequential amendments to the conditions as may be reasonable.

(2) In proper cases letters will be admitted by the tribunal as evidence of the facts stated in them, though the authors of the letters are not called as witnesses nor cross-examined, but it is more satisfactory that facts should be proved by witnesses.

(3) Where a confusion arose at the public inquiry owing to two names having the same pronunciation the Appeal Tribunal admitted new evidence to explain the confusion.

(4) The Appeal Tribunal has no jurisdiction to order a comr. to enlarge the area for which a B licence is granted beyond the area mentioned in the published application.—CHARMAN *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 116.

Annotations:—As to (2) **Consd.** London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. *v.* Gimson (1936), 24 Ry. & Can. Tr. Cas. 82. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23.

1675. —— To order Commissioner to enlarge area of licence.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1674, *ante*.

1676. —— To issue B licence—Application for A licence.]—It is not competent for the Appeal Tribunal to make an order on the licensing authority to issue a B licence when the application was for an A licence. Where an appct. intends to use vehicles normally based upon a number of different bases he must prove his case in respect of each base; general evidence as to his operations over the whole traffic area is not sufficient.—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations:—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1677. —— Where doubt as to jurisdiction of Commissioner.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF, No. 1544, *ante*.

1678. —— To strike out grounds of appeal.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1670, *ante*.

1679. —— Extent.]—GREAT WESTERN & LONDON MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1517, *ante*.

1680. —— ——.]—The Appeal Tribunal allowed an appeal by an appct. to whom the licensing authority had refused a B licence, upon a ground neither raised in the notice of appeal nor argued before them. Special order as to costs.—MARRIS *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 248.

1681. Costs.]—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN, No. 1635, *ante*.

1682. ——.]—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD., No. 1603, *ante*.

1683. —— Scottish practice.]—The Ct. of Session, in the exercise of its *nobile officium*, ordered the extractor of the ct. to issue an extract of an order for costs made by Road & Rail Traffic Appeal Tribunal sitting in Scotland, in the same manner as if it were a decree of the Ct. of Session.—*Re* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 25 Ry. & Can. Tr. Cas. 257.

CASE, ACTION ON THE.

See ACTION; BAILMENT.

CASE STATED.

See ARBITRATION ; MAGISTRATES.

CATCHING BARGAIN.

See FRAUDULENT AND VOIDABLE CONVEYANCES.

CATTLE.

See ANIMALS ; COMMONS ; DISTRESS ; HIGHWAYS ; MARKETS.

CATTLEGATE.

See COMMONS.

CAVEAT.

See ADMIRALTY ; EXECUTORS.

CAVEAT EMPTOR.

See SALE OF GOODS; SALE OF LAND.

CELLAR.

See PUBLIC HEALTH; RATES.

CHARITIES.

Part I.—Charitable Purposes.

1. *Add. Annotations:*—*As to* (1) **Consd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Follid.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; Jackson *v.* Voss, [1923] 2 K. B. 357; Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139; Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142. *As to* (2) **Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. **Apld.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578. **Distd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; Hunter (Sir G. B.) (1922) "C" Trust, Trustees *v.* I. R. Comrs. (1929), 14 Tax Cas. 427. **Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643. **Distd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. **Consd.** Master Mariners, Honourable Co. of, *v.* I. R. Comrs. (1932), 17 Tax Cas. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813; Scottish Flying Club, Ltd. *v.* I. R. Comrs. (1935), 20 Tax Cas. 1. **Refd.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711; R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362; I. R. Comrs. *v.* Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; I. R. Comrs. *v.* Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153; *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

1a. ——.]—VERGE *v.* SOMERVILLE, No.

2. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

3. *Add. Annotation:*—**Refd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

3a. —— **Motive immaterial.**]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy près*.—*Re* KING, KERR *v.* BRADLEY, [1923] 1 Ch. 243; 92 L. J. Ch. 292; 128 L. T. 790; 67 Sol. Jo. 313.

Annotation:—*As to* (3) **Follid.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71.

4a. —— —— **Question for court.**]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* HUMMELTENBERG, BEATTY *v.* LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237; 92 L. J. Ch. 326; 129 L. T. 124; 39 T. L. R. 203; 67 Sol. Jo. 313.

Annotations:—**Consd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27. **Apprvd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

.]—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, No. 20Sa, *post*.

12a. —— —— —— **Beneficiaries formerly helped by testator.**]—*Re* SHEPHERD, SMITHEM *v.* SHEPHERD (1921), 152 L. T. Jo. 18.

21a. —— **Widows with children dependent on them—Valid.**]—A testator bequeathed a sum of money to trustees upon trust to invest it & to use the income of the investments "in providing annual allowances of forty pounds each to widows or spinsters in England whose income otherwise shall not be less than eighty or more than one hundred & twenty pounds per annum. . . ." The provision continued: ". . . preference shall

PART I. SECT. 1.

1 vi. —— *Estate Duty Assessment Act, 1914, s. 8 (5).*]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 369; 42 T. L. R. 121. —AUS.

3 ii. —— *Purpose not source.*]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the assocn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—PERPETUAL TRUSTEE CO., LTD. *v.* SHELLEY (1921), 21 S. R. N. S. W. 426; 38 N. S. W. W. N. 132. —AUS.

be given to widows with young children dependent on them. . . .":—*Held:* the provision was in substance for widows of small means with young children dependent on them & created a valid charitable trust. —*Re* DE CARTERET, FORSTER *v.* DE CARTERET, [1933] 1 Ch. 103; 102 L. J. Ch. 52 148 L. T. 188; 48 T. L. R. 555; 76 Sol. Jo. 474.

22. *Add. Annotation:*—**Folld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation:*—**Reld.** Verge *v.* Somerville, [1924] A. C. 496.

23a. —— —— **Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).**]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been convicted of having solicited & obtained money from members of the public:—*Held:* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—BARBER *v.* CHUDLEY (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 114, D. C.

23b. —— **"Oldest respectable inhabitants"—Valid.**]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5*s.* per week each":—*Held:* the amount of the gift implied poverty, &, coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re* LUCAS, RHYS *v.* A.-G., [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.

Annotation:—**Reld.** *Re* Roadley, Iveson *v.* Wakefield, [1930] 1 Ch. 524.

23c. —— **Disabled soldiers of former enemy country—Valid.**]—Testator devised & bequeathed the residue of his property "to the German Govt. for the time being for the benefit of its soldiers disabled in the late war . . . in the event of this . . . being for any reason held to be void, then I give devise & bequeath the whole of such residue to General Smuts of the Transvaal, upon trust to retain thereout for himself absolutely the sum of £1,000 . . . & upon trust as to the residue to apply the same at his discretion & in such manner as he may think fit for the benefit of any disabled Boers who have suffered through the South African War. . . ." The German Govt. had notified its willingness to accept the legacy if it should be held to be valid; General Smuts had also expressed his willingness to accept the alternative trust should it become effective. Upon a summons asking the ct. to determine whether the devise & bequest to the German Govt. was void for uncertainty or otherwise: wise:—*Held:* (1) the gift did not fail for uncertainty; (2) there was no objection to the gift from the point of view of public policy; (3) the trustee being abroad, the ct. had no power to direct a scheme, & in such cases the practice was to hand over the fund to be applied according to the trusts of the will.

(4) A scheme directed by this ct. in relation to gifts for charitable purposes is not necessarily or, I think, generally, a scheme for the application of the fund *cy-près* (MAUGHAM, J.).—*Re* ROBINSON, BESANT *v.* GERMAN REICH, [1931] 2 Ch. 122; 100 L. J. Ch. 321; 145 L. T. 254: 47 T. L. R. 264.

Annotations:—*As to* (2) **Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *Generally,* **Reld.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

27. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

27a. —— ——.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion:—*Held:* both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re* RAYNER, CLOUTMAN *v.* REGNART (1920), 89 L. J. Ch. 369; 122 L. T. 577; 84 J. P. 61.

28. *Add. Annotation:*—*As to* (1) **Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

28. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

30. *Add. Annotation:*—**Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

34a. —— **Distributing coal & making loans to poor & deserving inhabitants.**]—Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided." No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund

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PART I. SECT. 2, SUB-SECT. 1.

b i. —— *Indigent gentlewomen.*]—*Held:* a true charitable bequest.—*Re* CAMPBELL. PEACOCK *v.* EWEN, [1930] N. Z. L. R. 713.—**N.Z.**

sb. "*Wounded & disabled soldiers*" —"*Home for wounded sailors.*"]—Testatrix, by a will executed in 1921, directed her trustees to pay out of the moneys representing her net residuary estate (*inter alia*) "To the Wounded & Disabled Soldiers of New Zealand the sum of four hundred pounds," & "To a home for Wounded Sailors of the British Empire the sum of one hundred pounds." (All parties agreed that the latter was a good charitable gift):—*Held:* as the gift to "the Wounded & Disabled Soldiers of New Zealand" was not to individuals but to a section of the public, it was a charitable gift; &, although it was a gift direct, the absence of anything directly constituting a trust was immaterial as the ct. could constitute the trust; the gifts to "a home for Wounded Sailors of the British Empire" disclosed a general intention in favour of charity, & did not fail because the object of such gift might be uncertain.—*Re* SIMMONDS, PUBLIC TRUSTEE *v.* STONE, [1933] N. Z. L. R. Supp. 172.—**N.Z.**

was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. Testator directed that " all surplus money forming part of or arising from the ' Loans Fund ' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required " :—*Held :* (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin ; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity ; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired. — *Re* MONK, GIFFEN *v.* WEDD, [1927] 2 Ch. 197 ; 96 L. J. Ch. 296 ; 137 L. T. 4 ; 43 T. L. R. 256, C. A.

Annotation :—As to (1) **Refd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270.

36. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

42a. —— —— **Maintenance of patients from particular parish.**]—A testator, by his will, gave a sum of £3,000 to his trustees upon trust for investment & directed that the yearly income thereof should be applied " in payment of the expenses & maintenance of patients from the parishes of " S. & S. to & at two named hospitals or either of them :—*Held :* the gift was a trust for the relief of impotent & poor persons within the purposes set out in the preamble to the Statute of Elizabeth & was a valid charitable bequest.—*Re* ROADLEY, IVESON *v.* WAKEFIELD, [1930] 1 Ch. 524 ; 99 L. T. Ch. 232 ; 144 L. T. 64 ; 46 T. L. R. 215.

45. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270. **Folld.** *Re* Chaplin, Neame *v.* A.-G. (1932), 76 Sol. Jo. 576 ; *Re* James, Grenfell *v.* Hamilton (1932), 48 T. L. R. 250. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* De Casteret, Forster *v.* De Carteret, [1933] Ch. 103.

46. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

47a. Nursing home—Persons of moderate means—Gift charitable.]—Testator made the following gift in his will : " I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to : (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution ; (b) the Royal National Lifeboat Institution ; (c) the Lister Institute of Preventive Medicine ; (d) & such other funds, charities & institutions as the exors. in their absolute discretion shall think fit ; & I direct that such residue shall by divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty :—*Held :* (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need ; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, [1923] 2 Ch. 407 ; 92 L. J. Ch. 629 ; 129 L. T. 310 ; 39 T. L. R. 433 ; 67 Sol. Jo. 680.

Annotation :—As to (1) **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

47b. " Home of Rest "—Lady teachers—Valid.]—*Re* ESTLIN, PRICHARD *v.* THOMAS, No. 45, *ante*.

47c. —— Sisters of a Community & Clergy—Valid.]—Testatrix devised a freehold house to her trustees in trust to establish a Home of Rest for the Sisters of a Community, for the Clergy of the Diocese of Truro, & such persons as the Mother Superior of the Community should nominate & appoint, & bequeathed £6,000, the interest of which should be applied to repair the house & maintain & support the inmates. The Sisters of the Community were engaged on charitable work & their individual incomes were pooled. It was doubtful whether it was practicable to carry on the Home of Rest with the resources available :—*Held :* (1) the devise & bequest were a good charitable trust ; (2) the Sisters & the Clergy were good objects of a charity ; (3) the Mother Superior should only appoint persons who were suitable objects of a charity, & to do otherwise would be a breach of trust ; (4) there should be an inquiry in Chambers whether it would be practicable now or at any future time to establish the Home of Rest, & if so to settle a scheme ; (5) & if it was found not practicable the question must be determined whether the trust failed or should be applied *cy-près*.—*Re* JAMES, GRENFELL *v.* HAMILTON, [1932] 2 Ch. 25 ; 101 L. J. Ch. 265 ; 146 L. T. 528 ; 48 T. L. R. 250 ; 76 Sol. Jo. 146.

Annotation :—As to (1) **Folld.** *Re* Chaplin, Neame *v.* A.-G., 76 Sol. Jo. 576.

47d. —— For means of physical & mental recuperation—Valid.]—Testator devised & bequeathed to his trustees a freehold house, its contents, & funds representing the net residue of his estate upon trust to establish & found a charity " to provide a Home of

Rest that shall afford the means of physical &/or mental recuperation to persons in need of rest by reason of the stress & strain caused or partly caused by the conditions in which they ordinarily live &/or work." The same clause provided that the trustees should apply to the ct. or the Charity Comrs. for a scheme in respect of the charity & also specified testator's further wishes with regard to the charity, but provided that if the ct., the Charity Comrs., or the trustees considered those wishes in any respects impracticable or difficult to realise, in those respects they were not to be regarded as binding on or fettering the discretion of the ct. the Charity Comrs., or the trustees in the provision or alteration of a scheme. One of those wishes, expressed also in the same clause, was that in considering the suitability of a candidate for admission to the home the candidate's financial position should not be taken into account; another was that persons admitted might be required to pay according to their means for board, lodging & other benefits &, where reasonably possible, for medical attendance & treatment, for which, however, the funds of the home might be drawn upon at the trustees' discretion:—*Held:* these were valid charitable trusts.—*Re* CHAPLIN, NEAME *v.* A.-G., [1933] Ch. 115; 102 L. J. Ch. 56; 148 L. T. 190; 76 Sol. Jo. 576.

48. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

49. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

50. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. *As to* (2) **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Refd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173. *As to* (2) **Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

57. *Add Annotation:*—*As to* (2) **Apld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

62. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

66. *Add. Annotation:*—**Refd.** Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229.

68. *Add. Annotations:*—**Apld.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

68a. **Advancement of Christian principles.**]—H. died on July 12, 1922, having made his will on May 24, 1921, in which he directed that the residue of his estate, about £13,000, should be paid to certain persons to be held by them upon certain trusts as follows: "Whereas I believe in the universality of the Christian religion & that the remedy for the unrest & disorders of the body politic will be found in the application of Christian principles to all human relationships. & whereas I believe the drink traffic to be one of the most subtle & effective forces in preventing the successful application of these principles & I therefore hope & trust that active steps will be taken to minimise & ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned & in aiding all active steps to minimise & extinguish the drink traffic." The public trustee issued a summons to have it determined whether that gift in the will constituted a valid charitable trust or whether the gift so far as given for the minimising of the drink traffic was not charitable & therefore the whole gift was invalid & the next of kin became entitled. The judge held that the gift was a good charitable gift. On appeal by the next of kin:—*Held:* the first recital in the gift was the dominant clause showing that the main object was the advancement of Christian principles with a suggestion as to a particular method by which the advancement could be furthered & that method was subsidiary & ancillary, therefore the whole gift was a good charitable gift, being one for the advancement of Christian principles.

Temperance itself is undoubtedly a charitable object (LAWRENCE, L.J.).—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, [1931] 1 Ch. 240; 100 L. J. Ch. 115; 143 L. T. 691; 46 T. L. R. 571; 74 Sol. Jo. 549, C. A.

Annotation:—**Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220.

69. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Geologists' Assocn *v.* I. R. Comrs. (1928), 14 Tax Cas. 271.

70. *Add. Annotation:*—**Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

70a. **Zoology—Zoological Society of London—Valid.**]—The objects of the Zoological Society of London as defined by its Charter are "the advancement of zoology & animal physiology & the introduction of new & curious subjects of the animal kingdom":—*Held:* the first object was clearly educational & the second object, being on construction merely in aid of the first, was also educational &, *semble*, it was educational in itself. The Society was therefore an educational charity, although in carrying out its objects it was

found necessary to provide its pupils with food & amusement. The second object necessitated & involved the upkeep & improvement of Zoological Gardens. Consequently a bequest of money to the Society upon trust to apply the income for "the upkeep & improvement of the Zoological Gardens, & for the objects of the said Society," was a good charitable gift & not void for perpetuity.—*Re* LOPES, BENCE, JONES *v.* ZOOLOGICAL SOCIETY OF LONDON-[1931] 2 Ch. 130; 100 L. J. Ch. 295; 146 L. T. 8; 46 T. L. R. 577; 74 Sol. Jo. 581.

70b. **Children's outing.**]—*Re* WARD'S ESTATE WARD *v.* WARD (1937), 81 Sol. Jo. 397.

73a. —— **Trust to erect national theatre—& revive English classical drama—Valid.**]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held:* the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs.* v. *Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held:* notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. **Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.**]—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide "a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish," & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held:* since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re* PLEASANTS, PLEASANTS *v.* A.-G. (1923), 39 T. L. R. 675.

Annotation:—**Reld.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

75. *Add. Annotations:*—**Apprvd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Reld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

75a. ——.]—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: "If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D.":—*Held:* the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.

Annotation:—**Reld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

78. *Add. Annotations:*—**Reld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

78a. —— —— ——.]—A testatrix who died domiciled in England, leaving property in both England & the United States, by her will gave a legacy of 10,000 dollars or the

PART I. SECT. 4, SUB-SECT. 1.

sa. *Wakf.*]—A trust in the sense of being an obligation attached to the ownership of the property is known to & recognised by the Muhammadan Law. The distinction between an English trust for charitable & religious purposes & a Muhammadan *wakf* is more historical than legal.—SYED SHAH MOHAMAD KAZIM *v.* SYED ABI SAQUIR (1931), I. L. R. 11 Pat. 288.—**IND.**

equivalent thereof in sterling at current rates of exchange to the rector & churchwardens or other the governing body of C. Church for the purpose of keeping the burial ground & monument therein to her late husband & herself in good & sufficient repair & for the maintenance of the church & the decorations thereof. Testatrix, who died in 1925, was buried in C. cemetery immediately adjoining the churchyard, which had long been closed for burials, in the same grave as her husband: —*Held:* a valid charitable bequest, to be divided equally between the vicar & churchwardens of C. Parish Church as the controllers of the church & churchyard & the Borough Council as managers & owners of the cemetery.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524; 104 L. J. Ch. 254; 153 L. T. 295; 51 T. L. R. 404.

79a. Benefit of Roman Catholic Church—Open to public—Valid.]—(1) A bequest for the benefit of a church belonging to a monastic order of the Roman Catholic Church but open to the public was not rendered invalid by Roman Catholic Relief Act, 1829 (c. 7).

Testatrix by her will dated Sept. 7, 1903, gave the residue of all her property, after the death of G., to whom she had given a life interest, in the following terms: "To the Superior of the Jesuit Church of the Immaculate Conception, Farm Street, London, to the Superior of that Church at the moment of the legacy falling due, & failing him to any other representative Father of the Order of the Society of Jesus . . . ":—*Held:* the gift was to this Superior upon trust for the benefit of the church at Farm Street as he might in his discretion think fit; & this was a valid gift.

(2) Testatrix died in 1910, & G. died in 1928. The Superior of the Church of the Immaculate Conception, Farm Street, London, was not the same person at the death of testatrix as at the death of G.:—*Held:* the gift was a valid gift to the Superior at the moment of G.'s death absolutely.—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, [1929] 2 Ch. 173; 98 L. J. Ch. 410; 141 L. T. 447; 45 T. L. R. 406, C. A.

Annotation:—Generally, **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

80a. —— ——.]—*Re* EIGHMIE, COLBOURNE *v.* WILKS, No. 78a, *ante*.

81a. Upkeep of chapel & school—Includes maintenance of services & Sunday school.]—A testator by his will, after giving certain specific legacies including one of £50 to the K. H. Baptist Chapel, directed that a trust be created with the remainder of his personal & real estate "for the payment from the income thereof of the following legacies, viz., £25 *per annum* to M. L., £100 *per annum* to J. L., & the balance of the income to be divided equally between my two sisters C. P. & M. H. . . . On the death of the last surviving legatee under the trust I direct that the income be devoted to the upkeep of the K. H. Baptist Chapel & school & for the provision of prizes for the scholars of both sexes." A summons was taken out to determine (i) whether the gift was a good & valid bequest of the whole of the residuary estate or whether it failed to any & what extent. The only school attached to the K. H. Baptist church was a Sunday school in connection with which book prizes were awarded. It was contended that such a school was not what testator had in mind, & that, even if it was, the upkeep of the chapel & school would not exhaust the income of the residuary estate the capital of which amounted to some £29,500, with the result that the balance of the income which was not used for that purpose must be held to be undisposed of by the will; (ii) how, in view of the fact that, at the date of the summons, the testator's two sisters, both of whom had survived the testator, had both died, the income of the testator's estate thereby set free should be disposed of until the death of the survivor of the other annuitants, M. L. & J. L.:—*Held:* (1) there was a good charitable bequest of the whole of the testator's residuary estate in favour of the K. H. Baptist Chapel & school & the word school included Sunday school; (2) the personal representatives of testator's two sisters were entitled to the surplus of the income, after providing for the annuities to M. L. & J. L., until the survivor of M. L. & J. L. had died; (3) "upkeep" of the chapel did not mean merely keeping the premises in repair, but included all the expenses necessarily incurred in providing the chapel services & maintaining, in a broad sense, the Sunday school.—*Re* STRICKLAND'S WILL TRUSTS, NATIONAL GUARANTEE & SURETYSHIP ASSOCN., LTD. *v.* MAIDMENT, [1936] 3 All E. R. 1027; [1937] 3 All E. R. 676.

82. *Add. Annotation:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

89. *Add. Annotations:—As to* (1) **Apld.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283.

90. *Add. Annotation:—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

94. *Add. Annotation:*—**Refd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.

106. *Add. Annotations:*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

PART I. SECT. 4, SUB-SECT. 4.

sc. *True Christian Church Publishing Society—Valid.*]—A gift to the True Christian Church Publishing Society, which disseminates the religious teaching of Swedenborg, is a valid charitable bequest.—*Re* KNIGHT, [1937] 2 D. L. R. 285.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.

s. For "[1919] 1 I. R. 443" read "[1919] 1 I. R. 316."

PART I. SECT. 4, SUB-SECT. 7.

106 xi. —— ——.]—A bequest for the saying of masses for the repose of souls is not in this Province void as superstitious. A bequest of the residue of testator's estate (consisting of both realty & personalty) to a church, "to be invested & kept invested . . . for ever & the interest . . . to be applied & expended . . . for the saying of holy masses . . . for the repose of the soul of testator & his descendants for ever": —*Held:* ineffective as creating or tending to create a perpetuity, & not a charitable use. *Semble:* in any case the personalty alone would have been applicable to the trust declared.—*Re* ZEAGMAN (1916), 37 O. L. R. 536.—**CAN.**

106 xii. —— ——.]—A bequest of the annual income of a trust fund to a priest for the saying of masses in perpetuity is valid as a charitable trust & thus outside the scope of [illegible]

106a. —— ——.]—A Roman Catholic testator by his will bequeathed "£1,000 for Masses, foundation & others" & also devoted four houses "for one foundation Mass to be said for my soul & the souls of my parents & relatives during the space of twenty-five years," & directed that the property should revert to a named church. Evidence was given that by a "foundation Mass" was intended a Mass the saying of which was to be paid for out of the interest of an invested fund, so that unless the gift was charitable it would be void for perpetuity:—*Held:* a gift for the saying of Masses is charitable as being for the advancement of religion (*a*) because it enables a ritual act to be performed which is the central act of the religion of a large proportion of Christian people, & (*b*) because it assists in the endowment of priests whose duty it is to perform the act.—*Re* CAUS, LINDEBOOM *v.* CAMILLE, [1934] Ch. 162; 103 L. J. Ch. 49; 150 L. T. 131; 50 T. L. R. 80. 77 Sol. Jo. 816.

110a. —— —— **Invalid.**]—WALPOOL'S CASE (1349), Duke, 95.

Annotations:—**Consd.** Adams & Lambert's Case (1602), 4 Co. Rep. 104b. **Refd.** Heath *v.* Chapman (1854), 2 Drew. 417.

114. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

116. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

118. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

119. *Add. Annotations:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

120. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

128a. —— **For benefit of church open to public——Valid.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante.*

Add. Annotations:—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

130. *Add. Annotation:*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173.

135. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

144. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

145. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

152. *Add. Annotation:*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

155. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

157. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691.

163. *Add. Annotation:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

164. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

166. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

172. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

176. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

179. *Add. Annotation:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

183. *Add. Annotation:*—**Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

After this case add:—*Compare*, No. 217b, *post.*

183a. —— **Gift for purchase of site & erection of public hall.**]—By his will a testator gave a collection of antiques to deft. corpn. subject to the condition that the corpn. should deposit them in one of the rooms of a public hall, hereinafter referred to, where they were

against perpetuities.—*Re* HALLISY, [1932] 4 D. L. R. 516; O. R. 486.—**CAN.**

114 iv. —— ——.]—Testator (who died within three months from the date of the execution of his will) directed his interest in a farm of land to be sold, & out of the proceeds of the sale a sum of £200 to be set apart & given to the parish priests & curates of C. Roman Catholic Church to be invested by them; the principal to remain invested for all time in the names of the successive parish priests & curates of C., the interest thereof to be applied in saying masses for the repose of testator's soul. After bequeathing a pecuniary legacy, testator gave the rest, residue & remainder of his property to the Abbot of M., & the Franciscan Friars in C. in equal shares for the purposes of having masses said for the repose of his soul in M. & C. At the dates of the execution of the will & of the death of testator the same person was Abbot of M. & the three Franciscan Friars were resident in C.:—*Held:* (1) the legacy of £200 was void as a charge upon lands under Charitable Donations & Bequests Act, 7 & 8 Vict. c. 97; (2) in reference to the gift of residue so far as it consisted of pure personalty, there was a gift of one-half to the person who filled the office of Abbot of M. at the date of testator's death in his individual capacity for the offering up of masses & same was valid; there was a gift of the other half for the offering of masses to a specified body, because they were members of the Order of Franciscan Friars bound by monastic vows, which was void as contrary to the policy of Catholic Relief Act, 10 Geo. 4, c. 7.—BURKE *v.* POWER, [1906] 1 I. R. 119.—**IR.**

PART I. SECT. 4, SUB-SECT. 12.

sd. "*Service of my Lord & Master*"—*Valid.*]—The gift to trustees of moneys "to be employed in the service of my "Lord & Master" is a good charitable gift.—*Re* BREWER, SOLICITOR-GENERAL *v.* BYDDER, [1933] N. Z. L. R. 1221.—**N.Z.**

sf. *Establishment of religious newspaper.*]—*Held:* a gift for the establishment of a Catholic newspaper could not be supported as being for a charitable purpose.—MELBOURNE ROMAN CATHOLIC ARCHBISHOP *v.* LAWLOR, THE POPE *v.* NATIONAL TRUSTEES, EXECUTORS & AGENCY CO. OF AUSTRALASIA, LTD. (1934), 51 C. L. R. 1; [1934] V. L. R. 231; 40 Argus L. R. 202; 8 A. L. J. 70.—**AUS.**

PART I. SECT. 5, SUB-SECT. 1.

m i. —— *Improvement.*]—A gift by will to a city council, to be expended for the improvement of the city as trustee of the will and the council agree:—*Held:* a good charitable —*Re* BONER, GOLTZ *v.* BALLARAT TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1930] V. L. R. 346; A. L. R. 279.—**AUS.**

to be kept open to inspection by the public, subject to such reasonable restrictions & regulations as might be imposed by the corpn. The residue of testator's estate was to be applied in the purchase of a suitable piece of land at Stockton-on-Tees & in or towards the erection on such site of a public hall which site & hall when completed were to be presented by the trustees to deft. corpn. in memory of testator's father & mother, & to be used by the corpn. for such public purposes as it might from time to time consider desirable. The surplus, if any, was to be paid to the corpn. absolutely to be used by the corpn. for such public purposes as it might from time to time consider desirable :—*Held :* (1) the gift for the purchase of a site & the erection on it of a public hall to be presented to the corpn. was a valid charitable gift : (2) the gift of the collection of antiques was a valid charitable gift ; (3) the question whether the gift of the surplus was a valid charitable gift ought to stand over until it was ascertained whether there was any such surplus.—*Re* SPENCE'S ESTATE, BARCLAYS BANK, LTD. *v.* STOCKTON-ON-TEES CORPN., [1937] 3 All E. R. 684 ; 53 T. L. R. 961 ; 81 Sol. Jo. 650.

183b. —— **Gift of antiques for exhibition in public** -*Re* SPENCE'S ESTATE, BARCLAYS BANK LTD. *v.* STOCKTON-ON-TEES CORPN., No. 183a, *ante.*

191. *Add. Annotation :*—**Consd.** *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

193. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

195a. Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante.*

196. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

197. *Add. Annotations :*—*As to* (1) **Folld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199a. Promotion of physical efficiency of army—Encouragement of sport—Valid.]—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy :—*Held :* the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD *v.* TAYLOR, [1925] Ch. 362 ; 94 L. J. Ch. 430 ; 133 L. T. 630 ; 41 T. L. R. 335 ; 69 Sol. Jo. 398.

Annotations :—**Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199b. Repatriation of soldiers—After war service—Valid.]—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers :—*Held :* (2) the gift created a valid charitable trust ; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—VERGE *v.* SOMERVILLE, [1924] A. C. 496 ; 131 L. T. 107 ; 40 T. L. R. 279 ; 68 Sol. Jo. 419 ; *sub nom.* VERGE *v.* SOMERVILLE, A.-G. FOR AUSTRALIA *v.* SOMERVILLE, 93 L. J. P. C. 173, P. C.

Annotations :—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 459. *As to* (2) **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

201. *Add. Annotation :*—**Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

205. *Add. Annotations :*—*As to* (1) **Consd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

206. *Add. Annotations :*—*As to* (1) **Dbtd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237. **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1927] 1 Ch. 557. *As to* (2) **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

208. *Add. Annotation :*—*As to* (2) **Expld. & Distd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

208a. —— —— **If beneficial to community.**]—Testatrix, who died in 1925, by her will gave her residuary estate to her trustees to form a trust for the founding, establishing & maintaining of a charitable institution to be called the "Beaumont Animals' Benevolent Society" under such rules & regulations & under such committee of management not exceeding ten members & otherwise in all respects as her trustees should in their absolute discretion think fit, & having regard to her wish that the expense of management should be kept as low as possible ; provided that all members of the committee & of the governing body & all officials of the said society should be & always have been declared anti-vivisectionists & opponents of all sport involving the pursuit or death of any stag, deer, fox, hare, rabbit, bird, fish, or any other animal, & to have for its objects (*a*) the acquisition of land, permitted by a judge of the Ch. Div. or the

Charity Comrs., for the provision of refuges for the preservation of "all animals, birds or other creatures not human"; (*b*) the distribution of any part of the yearly income of the trust fund amongst such societies or homes for the benefit of animals generally or for the benefit of individual cases British or foreign as the committee of the "Beaumont Animals' Benevolent Society" might think fit; (*c*) the founding, establishing, endowing, supporting, maintaining or providing of hospitals or homes for animals in Great Britain having no declared vivisectionist upon the governing body or bodies thereof or in any way connected with the management thereof:—*Held:* although a trust in perpetuity for animals might be a good charitable trust if in its execution there was necessarily involved a benefit to the community, yet where that element was wanting, the trust would be bad; therefore, trusts in the present case not having been shown to be for purposes beneficial to the community they were not good & valid charitable trusts.—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, [1929] 1 Ch. 557; 98 L. J. Ch. 261; 140 L. T. 659; 45 T. L. R. 261; 73 Sol. Jo. 158, C. A.; *varied on appeal, sub nom.* A.-G. *v.* PLOWDEN, [1931] W. N. 89; 171 L. T. Jo. 308; 71 L. Jo. 329, H. L.

210. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Apld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

213. *Add. Annotation:*—**Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

213a. Encouragement of gardening—Charitable.]—*Re* PLEASANTS, PLEASANTS *v.* A.-G., No. 73b, *ante*.

213b. Provision of public recreation for working-class people—Valid.]—Testator by his will dated Apr. 30, 1929, gave the residue of his estate to trustees upon trust to make certain payments thereout &, by clause 14 of his will, directed that they should hold the ultimate residue "to be expended in some scheme or schemes to be approved by my trustees for the benefit in the cities of Vancouver, & if in the opinion of my trustees there is some equally deserving object of the nature hereinafter indicated of Nottingham or other places of the working people such as playing fields parks gymnasiums or other plans which will give recreation to as many people as possible but as regards Vancouver I would not exclude some educational purpose being considered by my trustees." By a preceding clause, clause 13, testator had made a disposition of certain moneys, in certain events, in the following terms: "Upon trust for any scheme to be approved by my trustees of a national character excluding hospitals & works of an educational character. Without binding my trusiees I would prefer a scheme which would give open-air recreation to as large a number of ople as possible." Testator died on Feb. 14, 1931, leaving ultimate residue of the value of about £35,000:—*Held:* (1) upon the true construction of the will, the dominant object of testator was the health & welfare of the working classes, & the benefits authorised by clause 14 were the supply of healthy recreation, mainly in the open air & in particular by providing playing fields, parks & gymnasiums; & (2) through legislative recognition indicated by Mortmain & Charitable Uses Act, 1888 (c. 42), s. 6, of the dedication of land to the public for recreation as a charitable object, the provision of means for public recreation was a charitable object within "the meaning, purview & interpretation" of the preamble to the 43 Eliz. c. 4. Accordingly, the trusts expressed in clause 14 of the will were valid charitable trusts.—*Re* HADDEN, PUBLIC TRUSTEE *v.* MORE, [1932] 1 Ch. 133; 146 L. T. 190; 48 T. L. R. 9; 75 Sol. Jo. 781; *sub nom. Re* HADDEN, PUBLIC TRUSTEE *v.* WARE, 101 L. J. Ch. 52.

Annotation:—As to (2) **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

215. *Add. Annotations:*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

215a. —— **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**]—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held:* the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM (1924), 131 L. T. 21; 68 Sol. Jo. 320.

Compare INCOME TAX, No. 476e, *post*.

217. *Add. Annotations:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. *Generally*, **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

217a. —— ——.]—Testator devised to the Royal Society of Arts two ancient cottages in order that the Society might preserve them in their present condition. He also gave £700 to the Society upon trust to invest & to apply the income for the maintenance of the cottages. The Society had issued an appeal to form a Fund for the Preservation of Ancient Cottages, of which testator was aware. The Society was by its charter authorised to hold real property in mortmain. The objects of the fund were to preserve ancient cottages

as specimens & models of English craftsmanship so as to teach the lessons of such craftsmanship. These cottages were Elizabethan & picturesque :—*Held :* the primary object of the fund was for the good of the community at large, & was charitable in the legal sense ; the cottages fell within the objects of the fund ; & the devise & bequest were charitable.—*Re* CRANSTOUN, NATIONAL PROVINCIAL BANK *v.* ROYAL SOCIETY FOR THE ENCOURAGEMENT OF ARTS, MANUFACTURES & COMMERCE, [1932] 1 Ch. 537 ; 101 L. J. Ch. 152 ; 146 L. T. 568 ; 48 T. L. R. 226 ; 76 Sol. Jo. 111.

217b. **Primrose League—Not a charity.**]—Testatrix by her will gave a leasehold house " to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause " :—*Held :* as the gift was impressed with a trust & could not be sold, & as the league was not a charity, the gift failed.—*Re* JONES, PUBLIC TRUSTEE *v.* CLARENDON (EARL) (1929), 45 T. L. R. 259.

217c. **Bequest " unto my country England "—Valid as charitable gift to people of England.**]—Testator, who died in 1930, by his will gave his residuary estate " unto my country England for—own use & benefit absolutely " : —*Held :* residuary gift was a valid gift for charitable purposes & the residuary estate must be transferred to such person as His Majesty should direct under his sign manual. —*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, [1932] 1 Ch. 153 ; 100 L. J. Ch. 409 ; 146 L. T. 145 ; 48 T. L. R. 44 ; 75 Sol. Jo. 780, C. A.

217d. **Temperance.**]—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, No. 68a, *ante*.

Compare INCOME TAX, No. 472b, *post*.

225. *Add. Annotations :*—**Consd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

230. *Add. Annotation :—As to* (1) **Folld.** *Re* Hooper, Parker *v.* Ward, [1932] 1 Ch. 38.

230a. —— —— —— ——.] — Testator bequeathed to his exors. & trustees money out of the income of which to provide, " so far as they legally can do so & in any manner that they may in their discretion arrange," for the care & upkeep of certain graves, a vault, certain monuments, a tablet & a window. On a summons to determine whether the bequest was valid in whole or in part :—*Held :* the rule against perpetuities not applying to the trust for the upkeep of the tablet & the window, the trust for the upkeep of the graves, the vault & the monuments was valid for twenty-one years from testator's death.—*Re* HOOPER, PARKER *v.* WARD, [1932] 1 Ch. 38 ; 101 L. J. Ch. 61 ; 146 L. T. 208.

231a. ——.]—Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. " during such period as they shall continue to maintain & keep " two specified graves " in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned :—*Held :* the gift was a valid gift.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464 ; 97 L. J. Ch. 289 ; 139 L. T. 261.

238a. —— **In memory of testatrix—Valid.**]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

239a. **War memorial—Useful character—Valid.**]—MURRAY *v.* THOMAS, [1937] 4 All E. R. 545.

240. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

241. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42

PART I. SECT. 6, SUB-SECT. 1.

218 iv.—A direction in a will to the exors. to deposit a sum in a bank or invest it, " the yearly interest to be devoted to the care of my grave," creates, leaving statutory provisions out of consideration, a perpetual trust ; &, as the purpose is not charitable, is void ; but legislative sanction is given to this particular form of perpetual trust, by above sect. — *Re* JONES (1918), 42 O. L. R. 62 ; 13 O. W. N. 405.—**CAN.**

e i. —— ——.]—Bequests made to bodies incapable of contracting, on the condition precedent that they should agree with testator's trustees to care for certain burial lots for all time :—*Held :* void.—*Re* LAING ESTATE, [1927] 1 W. W. R. 699 ; 38 B. C. R. 449.—**CAN.**

e ii. —— ——.]—Testator bequeathed a sum in trust, the income of which was to be used to clean & keep in order certain family graves :—*Held :* not charities, & void as a perpetuity.—*Re* MAIN'S WILL TRUSTS (1933), 7 M. P. R. 139.—**CAN.**

e iii. —— ——.]—A will directed that $500 be paid to some trust co. & that the proceeds thereof be used to keep the grave of testator & that of his mother in good condition :—*Held :* the bequest infringed the rule against perpetuities.—*Re* HALLIDAY ESTATE, [1935] 1 W. W. R. 360 ; 43 Man. L. R. 81.—**CAN.**

232 i. *Erection of monument—To testator's memory—Not charitable use.*]—A will provided that one-half of the residue of the estate be used by the exors. " towards the erection of a monument or some suitable memorial to me." Testator's husband died after the making of the will, & she caused to be erected between his grave & the space reserved for hers a monument to him on which was left a blank space apparently intended to be filled in with an inscription for herself after her death :—*Held :* the provision for the monument was not an enforceable trust nor a charitable bequest which could be worked out *cy-près*.—*Re* JEFFERSON ESTATE (Man.), [1930] 3 D. L. R. 453 ; [1929] 3 W. W. R. 690.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.

h i. —— *Society of St. Vincent de Paul—House of Providence.*]—Testator bequeathed £100 to the Society of St. Vincent de Paul, & directed the residue of his estate to be converted into cash, & paid to the House of Providence These were voluntary unincorporated associations :—*Held :* so far as they could be paid out of personalty these legacies were good ; & should be paid over to the persons having the management of the pecuniary affairs of the institutions named.—ELMSLEY *v.* MADDEN (1867), 18 Gr. 386.—**CAN.**

11. *Fund of Benevolence of Freemasons —Valid.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 216.—**AUS.**

PART I. SECT. 6, SUB-SECT. 4.

sk. *Superannuation fund for employees.*]—An incorporated trading co. had set aside certain moneys to be held by trustees with the object of providing individual personal benefits, allowances & provisions to persons who had been, were, or might become its employees. It was contemplated by the trust instrument that employees might make contributions to the fund available for these purposes. No period was fixed for the duration of the trusts, nor was any distinction drawn in the instrument between employees who were in needy or affluent circumstances. Voting power was given to members subject to the votes varying according to the amount of salary received. The deed also provided that the fund was not to be regarded as relieving members from the duty of making provision for those dependent on them : —*Held :* the trust was in favour of a fluctuating body of individuals & not an appreciably important class of the community, & the trust was not a valid charitable gift.—*Re* HARRIS SCARFE, LTD., [1935] S. A. S. R. 433.—**AUS.**

T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

242. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

245. *Add. Annotations :*—**Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

249. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

250. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

251. *Add. Citation :*—[1912] 1 Ch. 29.

Add. Annotations :—*As to* (1) **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally*, **Refd.** *Re* Bancroft, Bancroft *v.* Bancroft, [1928] Ch. 577.

251a. —— **London Library.**]—A gift of real & personal estate to the trustees of an unincorporated voluntary assocn. [the London Library], not being a charity, for the general purposes of the assocn. held valid, & not open to objection on the ground of remoteness.—*Re* PREVOST, LLOYDS BANK, LTD. *v.* BARCLAYS BANK, LTD., [1930] 2 Ch. 383; 99 L. J. Ch. 425; 143 L. T. 743; 46 T. L. R. 557; 74 Sol. Jo. 488.

255. *Add. Annotation :*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496.

258. *Add. Annotation :*—**Apld.** *Re* Thompson, Public Trustee *v.* Lloyd, [1934] Ch. 342.

259. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 577.

265. *Add. Annotation :*—**Refd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.]—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

266a. Provision of knickers for all boys of district—Void.]—(1) Testator devised his residuary estate on trust, the income to be applied for ever in providing knickers for boys who resided in the F. district, who were not supported by any charitable institution, & whose parents were not in receipt of parochial relief :—*Held :* as none of the conditions necessarily imported poverty & therefore the object of the benefaction was not the relief of poverty & as the limitation of area did not make the trust a good charitable trust, the bequest was void as offending against the rule against perpetuities.

(2) A trust which is not a charitable trust cannot be changed into a charitable one by limiting the area in which it is to operate (EVE, J.).—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., [1930] 1 Ch. 255; 99 L. J. Ch. 104; 46 T. L. R. 96; 73 Sol. Jo. 833; *sub nom.* PUBLIC TRUSTEE *v.* A.-G., 142 L. T. 321.

Annotation :—*As to* (2) **Apld.** *Re* King, Henderson *v.* Cranmer (1931), 75 Sol. Jo. 781.

267. *Add. Annotation :*—**Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

267a. Social club—Staff Christmas fund—Invalid.]—Testator gave three legacies in the following terms : "To the Junior Carlton Club, Pall Mall, S.W. : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Union Club, Brighton : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Sussex County Cricket Club : £300 of Funding Loan in trust to pay the interest yearly to the Nursery Fund " :—*Held :* the legacies to the clubs were not charitable, &, therefore, invalid.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

267b. Cricket club—Nursery fund—Invalid.]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 267a, *ante*.

270. *Add. Annotations :*—**Apld.** *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

271. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

272a. Gift to Universal Negro Redemption Fund—Valid.]—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED *v.* MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

272b. Gift for disabled soldiers of former enemy country—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

302. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

316. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

350. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

351. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

384. *Add. Annotation :*—**Refd.** Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

397. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

398. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

429. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

432a. **Art gallery—Valid—Right of trustees to purchase house & grounds.**]—*Re* TOWNER, EASTBOURNE CORPN. *v.* A.-G. (1923), 40 T. L. R. 3.

464. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

466. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

472. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

480. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

502. For cross-reference before this case, read "*See, now,* Settled Land Act, 1925 (c. 18), s. 119, Sched. V."

503. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

534. For cross-reference before this case, read "*See, now,* Settled Land Act, 1925 (c. 18), s. 29 (4)."

625. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

629a. —— **Under Education Act, 1921 (c. 51), s. 117—Assurance of land for erection of sanatorium—Exempt.**]—*Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556 ; 96 L. J. Ch. 267 ; 137 L. T. 119 ; 71 Sol. Jo. 408.

638. *Add. Annotation :*—**Refd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407.

Part III.—Charitable Trusts.

646. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), ss. 53, 55.

653. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

656. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244.

657a. —— ——.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE *v.* A.-G. (1925), 69 Sol. Jo. 345.

658. *Add. Annotations :*—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *As to* (3) **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

661. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

673. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

680. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

687. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; *Re* James, Grenfell *v.* Hamilton (1932), 146 L. T. 528.

687a. ——.]—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 740b, *post.*

691a. —— —— **Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.**]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not

PART II. SECT. 4, SUB-SECT. 5.

STRATFORD BAP- (1869), 2 Ch. 388.—CAN.

PART II. SECT. 6, SUB-SECT. 4.

† ‡. —— —— *Not applicable to.*]—The above Act is not in force in Manitoba.—*Re* FENTON ESTATE, [1920] 2 W. W. R. 367 ; 53 D. L. R. 82 ; 30 Man. L. R. 246.—CAN.

PART III. SECT. 1, SUB-SECT. 1.

sm. *By settlement—Settlor divesting himself of income from shares.*]—TUNLEY *v.* FEDERAL COMR. OF TAXATION (1927), 39 C. L. R. 528.—AUS.

drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited :—*Held :* in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—PEASE *v.* HOW (1922), 91 L. J. Ch. 334; 126 L. T. 629; 66 Sol. Jo. 250.

691b. Limitation of area insufficient.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante*.

691c. ——.]—*Re* KING, HENDERSON *v.* CRANMER (1931), 75 Sol. Jo. 781.

692a. ——.]—*Re* KEMBLE, NASH *v.* LOMBARDINI (1931), 71 L. Jo. 347.

702. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702a. "Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate "for missionary purposes" to J. :—*Held :* (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re* REES, JONES *v.* EVANS, [1920] 2 Ch. 59; 89 L. J. Ch. 382; 123 L. T. 567.

Annotations :—*As to* (1) **Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702b. "**Parish work**"—**Void.**]—By her will a testatrix gave part of her residuary estate to the vicar & churchwardens of a certain church "for parish work" :—*Held :* this was not a charitable gift, & accordingly it failed.—*Re* ASHTON'S ESTATE, WESTMINSTER BANK, LTD. *v.* FARLEY, [1937] 3 All E. R. 279; 106 L. J. Ch. 234; 157 L. T. 184; 53 T. L. R. 809; 81 Sol. Jo. 499.

703a. "Two institutions which I hope to be able to name"—Valid.]—Testatrix, who died in 1919, left her foreign property to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

705. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Verge *v.* Somerville, [1924] A. C. 496; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

708. *Add. Annotations :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

716. *Add. Annotations :*—**Apld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

717a. "For such objects connected with the church as" vicar "shall think fit"—Valid.]—Where testatrix devised & bequeathed all the residue of her estate to the vicar of a church "for such objects connected with the church as he shall think fit" :—*Held :* "objects connected with the church" did not mean parochial objects, but meant objects connected with the fabric & services of the church, & therefore the gift created a valid charitable gift.—*Re* BAIN, PUBLIC TRUSTEE *v.* ROSS, [1930] 1 Ch. 224; 99 L. J. Ch. 171; 142 L. T. 344; 45 T. L. R. 617, C. A.

Annotations :—**Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Foll.** *Re* Martley, Simpson *v.* Bourne (1931), 47 T. L. R. 392. **Consd.** *Re* Davies, Lloyds Bank, Ltd. *v.* Mostyn (1932), 48 T. L. R. 539; *Re* Ashton's Estate Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

sp. *Gift "for some good public purpose".*—*"Such as emergency hospital, women's home or park with urinary"—Valid.*]—COX *v.* HOGAN & VICTORIA CORPN. (1925), 35 B. C. R. 286.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

715 i. *"Among such charitable institutions & schemes already constituted or which may hereafter be constituted as they shall in their absolute discretion select"—Valid.*]—CUNNINGHAM *v.* TALBOT, [1932] 2 W. W. R. 638; 3 D. L. R. 665.—**CAN.**

st. *"To be invested in war charities at trustees' discretion to be selected by trustees"—Valid.*]—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R.

sw. *Bequest to Bishop "for diocesan purposes."*]—Testatrix made bequests to the Anglican Bishop for the time being of the Diocese of Grafton & Armidale to be used respectively "for diocesan purposes" & "for diocesan purposes generally." She also bequeathed the sum of £20 per annum to the said Bishop to be used "in support of" an indicated Anglican Church :—*Held :* (1) upon the true construction of the words "for diocesan purposes" & "for diocesan purposes generally" the discretion vested in the Bishop trustee must be exercised within the scope of diocesan purposes proper, that every diocesan purpose proper was a religious purpose & charitable in the legal sense, & the gifts to be used for the above-mentioned purposes were, therefore, valid; (2) the gift of the sum of £20 per annum to be used "in support of" the indicated church was a trust for a religious purpose & was valid.—*Re* MACGREGOR, THOMPSON *v.* ASHTON (1932), 32 S. R. N. S. W. 483; 49 N. S. W. W. N. 179. —**AUS.**

sz. *"Such charitable institutions & schemes . . . as my trustees shall in their absolute discretion select.*]—*Held :* valid & not void for uncertainty.—*Re* CUNNINGHAM'S ESTATE (1932), 45 B. C. R. 543.—**CAN.**

717b. "Such parochial institutions or purposes as" vicar "shall select"—Invalid.]—Testatrix, who died in 1929, made a bequest of money in trust for the vicar of a parish for the time being, to be distributed by him "among such parochial institutions or purposes as he shall select":—*Held:* as "parochial institutions or purposes" might include objects which were not charitable the bequest was not a valid charitable gift.—*Re* STRATTON, KNAPMAN *v.* A.-G., [1931] 1 Ch. 197; 100 L. J. Ch. 62; 144 L. T. 169; 47 T. L. R. 32; *sub nom. Re* STRATTON, KNAPMAN *v.* STRATTON, 74 Sol. Jo. 787, C. A.; *affg.* S. C. *sub nom. Re* STRATTON, STRATTON *v.* A.-G., [1930] 2 Ch. 151.

Annotation:—**Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279.

717c. "For the benefit of the work of the Cathedral"—Valid.]—*Re* MARTLEY, SIMPSON *v.* BOURNE (CARDINAL) (1931), 47 T. L. R. 392; 75 Sol. Jo. 279.

717d. "For work connected with the Roman Catholic Church"—Invalid.]—*Re* DAVIES, LLOYDS BANK, LTD. *v.* MOSTYN (1932), 48 T. L. R. 539; 76 Sol. Jo. 474; *affd.* 49 T. L. R. 5, C. A.

718. *Add. Annotations:*—**Consd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Folld.** *Re* Jackson, Midland Bank Executor & Trustee Co. *v.* Wales (Archbp.), [1930] 2 Ch. 389. **Consd.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75. **Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

718a. Trustees empowered to change objects if interests of Church better served.] — *Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, No. 75a, *ante*.

718b. Gift to Archbishop to be applied "in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales."]—Testatrix made a bequest of half her residuary estate to the Archbishop of Wales for the time being to be paid & applied by him in or towards the General Fund belonging to the Church in Wales, or in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales:—*Held:* the alternative gift was too indefinite in that it could not be said that the application of it by the Archbishop must be for a charitable purpose, & the whole gift was therefore void.—*Re* JACKSON, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* WALES, ARCHBISHOP OF, [1930] 2 Ch. 389; 99 L. J. Ch. 450; 144 L. T. 102; 46 T. L. R. 558.

720. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Chapman, Hales *v.* A.-G. (1922), 91 L. J. Ch. 527; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

721. *Add. Annotations:*—**Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Verge *v.* Somerville, [1924] A. C. 496; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

723. *Add Annotation:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

724a. "Charitable or public institutions"—At discretion of trustees—Void.]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees "to hold the residuary moneys & investments upon trust, subject to payment of the wife's annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit":—*Held:* the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re* DAVIS, THOMAS *v.* DAVIS, [1923] 1 Ch. 225; 92 L. J. Ch. 322; 128 L. T. 735; 39 T. L. R. 201; 67 Sol. Jo. 297.

725. *Add. Annotation:*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

728a. "To such charities or to such religious bodies"—As trustees in their discretion shall think fit—Valid.]—*Re* TOMKINSON, M'CREA & BELL *v.* A.-G. OF THE DUCHY OF LANCASTER (1929), 74 Sol. Jo. 77.

731. *Add. Annotations:* — **Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Distd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R 270. **Consd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Smith, Public Trustee *v.* Smith, [1931] 2 Ch. 364. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B.

PART III. SECT. 2. SUB-SECT. 2.—B.

t i. "*Charitable or other deserving institutions*"—*As trustees think fit—Void.*] — CAMPBELL'S TRUSTEES *v.* CAMPBELL, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—**SCOT.**

b i. "*Benevolent, charitable & religious institutions*"—*As trustees think proper—In limited locality—Valid.*]—EDGAR, ETC. *v.* CASSELLS, [1922] S. C. 395; 59 Sc. L. R. 304.—**SCOT.**

c i. ——,]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—**SCOT.**

c ii. —— *In particular place—As trustees shall think deserving.*]—*Re* GREAVES (B. C.), [1917] 1 ——. W. R. 997.—**CAN.**

sg. "*Charitable, religious, philanthropic, educational, or scientific*"—*Void.*]—Testator directed his trustee to hold the surplus of his residuary estate on trust, to invest the same & pay the net annual income to named children & another named person for life equally, or to the survivors, & upon the death of the survivor to hold his residuary estate upon trust "for such charitable, religious, philanthropic, educational or scientific institution or institutions absolutely" as his trustee should select . . .:—*Held:* the gift was void for uncertainty.—*Re* WHITE, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* A.-G., [1933] S. A. S. R. 129.—**AUS.**

611; Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461; Master Mariners, Honourable Co. of *v.* I. R. Comrs. (1932), 17 Tax Cas. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

734. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

735. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. *As to* (2) **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

735a. **" Charities & institutions "—" As executors in their absolute discretion think fit "—Void.**] —*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, No. 47a, *ante*.

739. *Add. Annotations :*—**Consd.** Caldwell *v.* Caldwell (1921), 91 L. J. P. C. 95; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

740a. **" Charitable purposes " directed by testator or for such objects as executor selects—Void.**] —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *post*.

740b. **" Patriotic purposes or charitable institutions or objects "—At discretion of trustees—Void.**] —(1) Testator by his will directed his trustees to apply one-fifth of his residuary estate " for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire " as they in their absolute discretion should select :—*Held :* the words of the gift must be read disjunctively, " patriotic purposes " were not necessarily charitable, & the gift was void for uncertainty.

(2) The general rule is clear that if you are making a will you must declare your wishes, & not leave it in wide & uncertain terms to some one else to make a will for you. Special treatment is meted out to a gift for charitable purposes, & in that case the cts. have recognised that it is open to a testator who declares a charitable purpose to leave it to his trustees to select the particular charities for whose benefit his fund is to be applied. But that does not apply to cases not coming within the description of charity (VISCOUNT CAVE, C.).—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] A. C. 262; 40 T. L. R. 191; 68 Sol. Jo. 235; *sub nom. Re* TETLEY, A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, 93 L. J. Ch. 231; 131 L. T. 34, H. L.; *affg.* S. C. *sub nom. Re* TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* TETLEY, [1923] 1 Ch. 258, C. A.

As to (1) **Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** V *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Rol Marine Mansions Trustees (1927), 43 T. L. R. 270; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

745. *Add. Citation :*—91 L. J. P. C. 95.

748. *Add. Annotation :*—*As to* (1) **Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

749. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

751. *Add. Annotation :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

751a. **" Objects of charity or any other public objects "—" In parish of F."—Valid.**]—By her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, " for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F." : —*Held :* it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re* BENNETT, GIBSON *v.* A.-G., [1920] 1 Ch. 305; 89 L. J. Ch. 269; 122 L. T. 578; 84 J. P. 78; 64 Sol. Jo. 291.

Annotation :—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

754. *Add. Annotations :*—**Refd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

755a. **" Hospital or other charitable or benevolent institution "—Valid.**]—By his will, made in 1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, " for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution " ; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock :—*Held :* the word " hospital " where it was first used in the will was used in an adjectival sense, & applied to the following words " wards, beds, or cots " ; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words " benevolent institution " must be construed as *ejusdem generis*, with " hospital " ; & therefore the bequest constituted a good & valid charitable gift.—*Re* LUDLOW, BENCE-JONES *v.* A.-G. (1923), 93 L. J. Ch. 30, C. A.

763. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

765. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769. *Add. Annotation :*—**Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769a. Invalid gift for maintenance of family graves—Surplus to rector of B.—Void for uncertainty.]—FOWLER *v.* FOWLER (1864), 33 Beav. 616; 33 L. J. Ch. 674; 10 L. T. 682; 28 J. P. 707; 10 Jur. N. S. 648; 12 W. R. 972; 55 E. R. 507.

Annotations :—**Distd.** *Re* Williams (1877), 5 Ch. D. 735. **Refd.** Hoare *v.* Osborne (1866), 30 J. P. 309; *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147; Choa Choon Neoh *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

769b. Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.]—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not :—*Held :* (1) the decisions in the "tomb cases" were inapplicable; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* PORTER, PORTER *v.* PORTER, [1925] Ch. 746; 95 L. J. Ch. 46; 133 L. T. 812.

770. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

771. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

772. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

776. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

786. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

794. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

795. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

810. For "**appointment**" read "**apportionment.**"

816. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

817. *Add. Annotation :*—**Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

823a. —— Description not confined to charitable purposes — Description having particular meaning in religious denomination to which testator belonged.]—In construing gifts of recent date, evidence is not admissible to show that words having a clear ordinary meaning were used in a special narrower sense.

Testator, a member of the "Brethren," or "Plymouth Brethren," by his will left all his property, subject to a life interest, to his widow, to be divided into two equal parts, one for his sons, & the other for his trustees "to distribute between the various good works which I & my wife have been in the habit of assisting. . . ." After the widow's death this summons was taken out to determine whether that direction created a good charitable trust. Affidavits were tendered to the effect that among the "Brethren" "good works" was a phrase in common use to indicate works distinctly religious, *i.e.* Christian, & suggesting that testator had used it in that sense :—*Held :* there was no evidence of the significance with which the testator had used the words, & the statement as to their use among the "Brethren" was not evidence of constant use in such a sense as would exclude non-religious charitable objects.—*Re* How, How *v.* How, [1930] 1 Ch. 66; 99 L. J. Ch. 1; 142 L. T. 86.

832. *Add. Annotations :*—*As to* (1) **Apprvd.** Blackwell *v.* Blackwell, [1929] A. C. 318. *As to* (2) **Refd.** *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

836. *Add. Annotations :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66. **Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

B. Names of Charities omitted or left blank (Vol. VIII., p. 305).

For "*See* Nos. 1419 *et seq., post,*" read "*See, also,* Nos. 1419 *et seq., post,*" & add as follows :—

PART III. SECT. 2, SUB-SECT. 3.—B (b).

770 i. *Gift of residue or surplus for charitable purposes — Valid.*]—Testatrix gave the residue of her estate upon trust for conversion & directed the same to be expended upon the erection in a certain cemetery of a monument (with minute directions as to its nature & surroundings) to the memory of her deceased son, & the sum of £50 to be paid to the proper person for the perpetual care of the ground. After certain other directions the will continued, "I direct that any money left unexpended after the erection & completion of the said monument to be paid to the treasurer of the Children's Hospital, Camperdown . . ." :—*Held :* the special rule in the class of cases known as the "tomb cases" applied, &, therefore, the primary gifts for the erection of the monument & for the perpetual care of the ground having failed, the whole of the residuary fund was applicable to deft. charity.—POOLEY *v.* ROYAL ALEXANDRA HOSPITAL FOR CHILDREN (1932), 32 S. R. N. S. W. 459 49 N. S. W. W. N. 156.—AUS.

PART III. SECT. 4, SUB-SECT. 2.—B.

824 i. *Admitted—Description applying indifferently to more than one charity —"Old People's Home"—Old Folks Home or Maison des Vieux.*]—*Re* SMITH (1912), 22 W. L. R. 630; 3 W. W. R. 899; 22 Man. L. R. 756; 8 D. L. R. 93.—CAN.

824 ii. —— —— *Gift to "St. James' Presbyterian Church, $375 which I owe it"—Two St. James' Churches—Evidence of debt.*]—*Re* MCLAURIN LEGACY (1911), 9 E. L. R. 326.—CAN.

PART III. SECT. 4, SUB-SECT. 2.—C.

830 ii. —— ——.]—Where testator made a bequest to a society, & it was found no society exactly corresponding to the designation given by testator was known :—*Held :* if the society is misdescribed, the ct. will if possible, discover from surrounding circumstances, what society was intended. The ct. will admit extrinsic evidence to determine what testator's words express. Evidence to show that testator subscribed to a particular society will be admitted, to show what was in his mind when he made the bequest.—*Re* ALEXANDER'S WILL (1885), 7 Nfld. L. R. 42.—NFLD.

841a. Gift to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors "—Valid.]—Testatrix, who died in 1919, left her foreign property to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

. Gift to any institution in Sussex assisting crippled ex-service men.]—Testator bequeathed his residuary estate to any institution formed in Sussex for the purpose of housing, aiding & assisting crippled ex-service men or, if no such institution, directed the formation of such an institution :—*Held :* a home which provided lodgings for crippled ex-soldiers & sailors belonging to the district who had for the time being nowhere else to go, satisfied the conditions of the will, & a scheme for the administration of the fund was directed.—*Re* BLOOMFIELD, PUBLIC TRUSTEE *v.* KOHLBECK (1933), 77 Sol. Jo. 539.

841c. " Institutions established for benevolent purposes "—Void.]—A testatrix domiciled in New Zealand, bequeathed to the trustee & exor. of her will (resp. co.) her residuary estate, " to apply the same in making other bequests towards institutions, societies or objects established in or about Auckland aforesaid for charitable, benevolent, educational or religious purposes " within the absolute discretion of the trustee :—*Held :* the gift failed for uncertainty, as a gift for " benevolent purposes " is not a good charitable gift.—A.-G. FOR NEW ZEALAND *v.* NEW ZEALAND INSURANCE CO., LTD., [1936] 3 All E. R. 888 ; 53 T. L. R. 37 ; 80 Sol. Jo. 912, P. C.

843a. —— Poor of parish where testator buried—Direction as to place of burial—Subsequent parol direction as to different place.]—Testatrix, by her will, directed that her remains should be deposited in the church nearest which she might chance to die ; & in a subsequent part of the will gave a legacy to the poor of the parish where her remains were deposited. Her executrix, in pursuance of parol directions given subsequent to the date of the will, buried her in the neighbouring parish of W. :—*Held :* nevertheless, the poor of the parish of B., where testatrix died, were entitled to the legacy.—SALTER *v.* FAREY (1843), 12 L. J. Ch. 411 ; 1 L. T. O. S. 76 ; 7 Jur. 831.

856. *Add. Annotation :*—**Reld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

864a. Gift to German Reich—For benefit abled German soldiers—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

865. *Add. Citation :*—3 Leon. 18.

PART III. SECT. 4, SUB-SECT. 3.—A.

sa. *Public institutions in Scotland—Void.*]—Testator directed his trustees, upon the expiry of a life-rent of the residue of his estate, " to pay appropriate & distribute the free residue & remainder of my said estate & effects at such times & in such proportions as my trustees may think fit to & among such poor persons in E. or such charitable, educational, or benevolent societies or public institutions in Scotland as my trustees shall select " :—*Held :* the words " public institutions in Scotland " were to be read as indicative of a separate class ; they were too indefinite to receive effect ; & the whole bequest was void from uncertainty.—REID'S TRUSTEES *v.* CATTANACH'S TRUSTEES, [1929] S. C. 727.—**SCOT.**

sb. " *Any worthy cause* "—*Void.*]—A clause of a will reads as follows : " the balance of my estate I leave entirely in the hands of my exor. to aid & help any worthy cause or causes as he shall think fit :—*Held :* the will did not create a valid charitable trust. —PLANTA *v.* GREENSHIELDS, [1931] 1 W. W. R. 401 ; 2 D. L. R. 189 ; 43 B. C. R. 439.—**CAN.**

sd. " *Pious acts* "—*Void.*]—In construing a will which, after providing for certain pecuniary legacies, directed that the balance income be spent on " pious acts " according to the discretion of the trustees :—*Held :* bequest void for uncertainty.—SATKARHI BHATTACHARYA *v.* HAZARILAL KHANNA (1930), I. L. R. 58 Calc. 1025.—**IND.**

PART III. SECT. 4, SUB-SECT. 3.—C.

sw. *Advancement of art, science or literature.*]—A testator directed his trustees to hold the residue of his estate for behoof of his sister in liferent, with power to encroach on the capital, & on her death to make certain payments. He further provided : " & if there is still any residue left my trustees shall apply it in whatever manner to them may seem most suitable for the advancement of art, science, or literature in the burgh of C." :—*Held :* the bequest was void from uncertainty.—HARPER'S TRUSTEES *v.* JACOBS, [1929] S. C. 345.—**SCOT.**

sx. *Gift to " missions, Corean & Home " —Testator contributor to Presbyterian missions.*]—Where a legacy was to " the missions, Corean & Home," & testatrix had been in the habit of contributing to the Home & Corean Mission Fund in connection with the Presbyterian Church in Canada :—*Held :* the legacy in question should go to the latter fund.—*Re* HENDERSON ESTATE (1914), 14 E. L. R. 401.—**CAN.**

sy. *Gift to the blind.*]—A gift by will to the blind, *simpliciter*, is a good charitable gift.—*Re* BOND ; BRENNAN *v.* A.-G., [1929] V. L. R. 333 ; [1929] Argus L. R. 300.—**AUS.**

sz. " *Orphanages.*"]—After certain gifts testator directed that " the balance of my estate shall be equally divided : Salvation Army Rescue Home ; Home for Incurables, Fullerton ; South Australian Protestant Orphanages ; Minda Home." There was one institution in South Australia whose rules provided for the care of orphans of a particular denomination ; there were also other institutions whose rules enabled them to receive not only orphans but other children whose condition needed relief. All these institutions, including the first-named, as a practice received children other than orphans :—*Held :* whether an institution was or was not an orphanage was a question of fact, & both the rules & practice of the institution were to be considered. An orphanage is an institution where the main or primary purpose which it is actually fulfilling is to provide & care for orphaned children. The orphanages took one-fourth of the residue of the estate, to be divided equally between them.—*Re* DODSON, [1931] S. A. S. R. 387.—**AUS.**

sz. *Right of executors to come to arrangement with charity.*]—Gift to Picton Academy, Picton, in aid of poor & deserving young men & women getting an education. Picton Academy was one of the public schools of Picton : —*Held :* neither the trustees of the Picton Academy Educational Foundation, nor the Board of School Comrs. for town of Picton were entitled, but the exors. were entitled to make an arrangement with the trustees of the Picton Academy Educational Foundation.—*Re* LOGGIE'S WILL (1934), 8 M. P. R. 298.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—D.

1 i. —— —— " *Industrial School for Blind, B. Place* "—" *Royal Institution for Blind Incorporated* " *in B. Place entitled.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 218.—**AUS.**

1 ii. —— —— *Home Mission Extension Fund—Home Mission & Forward Movement entitled.*]—Testatrix after making certain bequests provided that " the residue is to be paid to the Home Mission Extension Fund of the Cong. Church & the other to the London Missionary Society to be kept at interest." The Congregational Union had no fund known under the above name ; there was a fund known as the Home Mission & Forward Movement Board :—*Held :* testatrix intended to indicate a certain purpose by the use of the words " Home Mission Extension " & a gift was expressed to the Congregational Union & Home Mission for Home Mission purposes.—*Re* TURNER, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* MORIALTA PROTESTANT CHILDREN'S HOMES INCORPORATED, [1930] S. A. S. R. 223.—**AUS.**

1 iii. —— —— " *Home for Fallen Girls* "—" *Church Home for Girls* " *entitled.*]—On new evidence adduced on a further hearing of the application the original hearing of which is reported [1936] 3 W. W. R. 620, it appeared

869. *Add. Annotation :*—**Refd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 51 T. L. R. 97.

875. *Citation :*—For "2 W. R. 154" read "21 W. R. 154."

876a. —— —— —— **London General Hospital Fund —King Edward's Hospital Fund for London or London Hospital—Former entitled.**]—*Re* BORINGER, MEARA *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1931), 48 T. L. R. 14.

884a. —— —— **"Chelsea Hospital"—Royal Hospital, Chelsea.**]—The ct. held that a testamentary gift to "the Chelsea Hospital" went to the Royal Hospital, Chelsea, & not to any other hospital having "Chelsea" as part of its name.—*Re* DE JONG, PUBLIC TRUSTEE *v.* GOLDSMID (1929), 46 T. L. R. 70; 73 Sol. Jo. 850.

Gift to "Soldiers' Crippled Homes Three claimants—Legacy divided.]—Testatrix by her will bequeathed part of her estate to "Soldiers' Crippled Homes." In response to advertisements three institutions put in claims :—*Held :* as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re* HUSBAND, NEAVE *v.* BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN. (1923), 58 L. Jo. 600.

894a. —— **"Diocesan Curates' Aid Society"—Testator resident in Oxford—Oxford Diocesan Spiritual Help Society entitled.**]—*Re* JOHNSON, GOODRICH *v.* OGLE (1893), 9 T. L. R. 277.

894b. —— **Gift to three bishops for poor of dioceses —One bishop a suffragan.**]—*Re* SMITH, TREVOR *v.* GOODHALL (1934), 51 T. L. R. 108; 78 Sol. Jo. 839.

896a. —— —— **"Southwark Diocesan Society" —Southwark Diocesan & South London Fund.**]—*Re* WATT, HICKS *v.* HILL, [1932] 2 Ch. 243, n.; 101 L. J. Ch. 417, n.; 147 L. T. 528, n., C. A.

898. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

901a. —— **"United Methodists"—Gift over on union with other religious body—Effect of Methodist Church Union Act, 1929 (c. lix), s. 18.**]—By sect. 18 of Methodist Church Union Act, 1929 (c. lix) (an Act to authorise the union of the Wesleyan Methodist, Primitive, & United Methodist Churches): "All personal or movable property (other than chattels real . . .) at the date of union . . . held in trust for or on behalf of . . . the United Methodist Church . . . or for the purposes of any . . . charity subsidiary or ancillary to [the United Methodist Church] shall as from that date be deemed to . . . be held in trust for . . . the purposes of the Methodist Church or the . . . charity subsidiary or ancillary to the Methodist Church nevertheless in other respects upon the same trusts . . . as those upon . . . which the same were previously held so far as circumstances will permit."

Testator directed that after his wife's death a sum of money should be held upon trust to invest & to apply the income in augmenting the salaries of the ministers of the United Methodists' chapel at Batley: with a proviso that "in case the said chapel & property connected therewith shall, in the opinion & absolute discretion of the trustees or trustee for the time being of my will, at any time cease to be used for the preaching & teaching the doctrine of the said United Methodists, or for any other reason . . . shall cease to exist for the said purpose, or the said United Methodists at Batley shall become merged in or united with some other

that testator's bequest to the "Home for Fallen Girls" was a case of misdescription or error in the name & that the "Church Home for Girls" was intended. There was no such institution as the first named :—*Held :* the Church Home for Girls was entitled to the bequest.—*Re* GILROY ESTATE (No. 2), [1937] 1 W. W. R. 356; 2 D. L. R. 351.—**CAN.**

p i. —— *Gift to Society for Prevention of Cruelty to Animals in New Zealand—Several local societies for prevention of cruelty to animals—Legacy divided.*]—*Re* BUCKLEY, PUBLIC TRUSTEE *v.* WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.), [1928] N. Z. L. R. 148.—**N.Z.**

PART III. SECT. 4, SUB-SECT. 3.—E.

898 ii. ——*Gift to Presbyterian Church —Entry into Union.*]—*Re* PATRIQUIN (N.S.), [1928] 2 D. L. R. 791; *on appeal*, [1929] 2 D. L. R. 197; 60 N. S. R. 343. —**CAN.**

898 iii. —— —— ——.]—Testatrix bequeathed to "aged & infirm ministers & widows of the Presbyterian Church." There was no fund in connection with the church known as a fund for aged & infirm ministers & widows. By the United Church of Canada Act, the Presbyterian Church in Canada became part of the United Church of Canada, but after this union, a Presbyterian Church continued to exist that did not form part of the United Church. Testatrix was opposed to the union :—*Held :* the bequest was not made either to the United Church nor to the continuing Presbyterian Church; the exors. should have possession & control of the corpus & pay the income annually to aged & infirm ministers of the continuing Presbyterian Church & their widows.—*Re* LOGGIE (1927), 53 N. B. R. 395.—**CAN.**

898 iv. —— —— ——.]—WEATHERBY *v.* WEATHERBY (1927), 53 N. B. R. 403.—**CAN.**

898 v. —— —— ——.]—*Held :* the congregation could not take bequests; by becoming a congregation of the United Church of Canada at T., it had become something so different from the congregation for whose benefit the bequests were made, that it did not now come within the description in the will; the present congregation was not the same entity as the congregation which P. contemplated as her beneficiary. As to the bequest to "the Trustees of the T. Presbyterian Church," it was to a corpn. which, even if it continued to exist, was not now one for carrying into effect the testatrix' object, & the same principle applied as in the case of the other bequest.—MCLELLAN *v.* FRASER & FRASER *v.* MCLELLAN, [1930] S. C. R. 344; 3 D. L. R. 241; *affg.*, [1929] 2 D. L. R. 197; 60 N. S. R. 343; *varg.*, [1928] 2 D. L. R. 791.—**CAN.**

898 vi. —— —— ——.]—By her will, made in 1921, G. gave a sum to "the Home Mission Fund of the Presbyterian Church in Canada" & a sum to "the Foreign Mission Fund of the Presbyterian Church in Canada." When she made her will she was a member of a congregation of the Presbyterian Church in Canada, at Hopewell, Nova Scotia. That congregation entered the United Church of Canada in 1925, when United Church of Canada Act (Dom., 1924, c. 100) came into force. G. remained a member of the congregation until her death in 1919 :—*Held :* the United Church of Canada was not entitled to the gifts.—UNITED CHURCH OF CANADA *v.* PRESBYTERIAN CHURCH IN CANADA, [1934] S. C. R. 708; [1935] 1 D. L. R. 1; *affg.*, S. C. *sub nom. Re* GRAY, [1933] 2 D. L. R. 400; 6 M. P. R. 465. —**CAN.**

898 vii. —— —— ——.]—In the case of bequests to the Home & Foreign Mission Boards of the Presbyterian Church in Canada :—*Held :* these objects did not cease to exist on the creation of the United Church of Canada, which was accordingly entitled to the bequests.—*Re* STEPHENS, ANDERSON *v.* UNITED CHURCH OF CANADA (1933), 6 M. P. R. 305.—**CAN.**

898 viii. —— *Gift to Congregational Church—Entry into Union.*]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

898 ix. —— —— ——.]—Testator devised his residuary estate to a Congregational Church, or if it should cease to exist, then over :—*Held :* the church ceased to exist within the meaning of the devise on becoming part of the United Church of Canada.—*Re* KELLEY, [1933] 4 D. L. R. 416; *affd.*, [1934] 3 D. L. R. 379.—**CAN.**

898 x. —— *Gift to Methodist Church—Entry into Union.*]—Legacy to Methodist Church held to fail because the Union was in force before the time of vesting.—*Re* THORNE, [1935] 4 D. L. R. 778.—**CAN.**

religious body, then the said sum . . . shall be held upon trust for such of my nephews & nieces . . . as shall be living at my death in equal shares." About four years after testator's wife's death, the Wesleyan Methodist, Primitive Methodist, & United Methodist Churches became merged & united in accordance with the Methodist Church Union Act, 1929 (c. lix):—*Held:* (1) the trust created by testator's will was for a particular kind of charity & the will showed no general charitable intent; (2) the proviso was void for perpetuity & therefore did not affect the trust; (3) the Act enlarged the trust, which, under sect. 18, continued as a trust " subsidiary or ancillary to " the purposes of the Methodist Church & was a charity to augment the salaries of ministers of the chapel.—*Re* TALBOT, JUBB *v.* SHEARD, [1933] Ch. 895; 102 L. J. Ch. 362; 149 L. T. 401; 49 T. L. R. 462; 77 Sol. Jo. 388.

906. *Add. Annotation:*—**Distd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

908. *Add. Annotations:—As to* (1) **Consd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 50 T. L. R. 473; *Re* Harwood, Coleman *v.* Innes, [1936] Ch. 285. *Generally*, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

910a. " Lord Milner's Homes for Mentally Disabled Soldiers "—Ex-Service Welfare Society entitled.]—*Re* GURDON, REYNOLDS *v.* EX-SERVICES WELFARE SOCIETY (1936), 80 Sol. Jo. 288.

912a. —— —— —— ——.]—Testatrix by her will dated Sept. 22, 1924, directed her exors. to sell the residue of her property & to pay the proceeds to the Margate Cottage Hospital. At the time she made her will there was a hospital of that name, an unincorporated body, to the funds of which testatrix was a subscriber. About the year 1926, a fund was opened for the purpose of purchasing a new site & building a larger hospital, to which testatrix was also a contributor. At the time of testatrix's death on Oct. 19, 1930, the work formerly carried on at the Margate Cottage Hospital, including the medical & nursing staff & the patients, had been transferred to & was carried on at the new hospital, called the " Margate & District General Hospital," which had been opened on July 3, 1930. The invested funds held by trustees for the Margate Cottage Hospital & the income thereof were dealt with by the same trustees for the purposes of the new hospital:—*Held:* the real intention of testatrix was to add the proceeds of sale of her residuary estate to the funds dedicated to the purposes of the Margate Cottage Hospital, &, accordingly, there was a valid charitable bequest of those moneys to which the next of kin of testatrix had no title.

Qu.: whether the Margate & District General Hospital was in any & what sense identical with the Margate Cottage Hospital, & whether the purposes of the Margate & District General Hospital to which those who administered the funds of the Margate Cottage Hospital had devoted them were in a true sense the purposes of the Margate Cottage Hospital.—*Re* WITHALL, WITHALL *v.* COBB, [1932] 2 Ch. 236; 101 L. J. Ch. 414; 147 L. T. 526.

922. *Add. Annotation:*—**Refd.** *Re* Withall, Withall *v.* Cobb, [1932] 2 Ch. 236.

924. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

926. *Add. Annotations:*—**Consd.** *Re* Withall, Withall *v.* Cobb, [1932]
Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

932. *Add. Annotations:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192; *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1937] 3 All E. R. 279.

933. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

945. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

948. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

962. *Add. Annotation:*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

980. *Add. Annotation:—Generally*, **Refd.** Clergy Orphan Corpn. *v.* Christopher, [1933] Ch. 267.

980a. Charity for orphans of Established Church—Effect of Welsh Disestablishment—Children of Welsh clergy entitled.]—A charity formed in 1749 was incorporated by Act of Parliament in 1809. Its object was to maintain & educate poor orphans of clergymen of the Church of England. Owing to the disestablishment of the Church in Wales doubts arose whether the corpn. had power to continue its work among the poor orphans of clergymen in Wales & Monmouthshire, & a summons was issued to obtain a decision of the ct. on the point:—*Held:* there was nothing in Welsh Church Act, 1914 (c. 91), or the Welsh Church (Temporalities) Act, 1919 (c. 65), that interfered with the power of the corpn. to maintain & educate poor orphans of clergymen in Wales & Monmouthshire.—*Re* CLERGY ORPHAN CORPN. TRUSTS, CLERGY ORPHAN CORPN. *v.* CHRISTOPHER, [1933] 1 Ch. 267; 102 L. J. Ch. 83; 148 L. T. 324; 49 T. L. R. 79.

PART III. SECT. 4, SUB-SECT. 3.—G.

sz. *Bequest to " Protestant Orphan Girls' Home "—Bequest taken by " Protestant Children's Homes "—Formed by amalgamation of " Girls' Home " & " Protestant Orphans' Home."*]—*Re* CARRICK, [1929] 3 D. L. R. 373; 64 O. L. R. 39.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

x i. —— *Gift to " that church which is sound & evangelical "—Prior gift to Presbyterian Church.*]—Testator, a minister of the United Presbyterian Church of North America, after bequeathing $1,000 to the said church, proceeded as follows: " I give for a Jewish mission $1,000 to that church which is sound & evangelical in doctrine & pure in worship, using the songs of praise, the inspired book which can unite all nations," etc. The evidence showed that this description applied to the said church:—*Held:* not void, for uncertainty, for that testator clearly intended the said church as the legatee. —GILLIES *v.* MCCONOCHIE (1882), 3 O. R. 203.—**CAN.**

x ii. —— " *Roman Catholic Church in Canada "—General Roman Catholic Church.*]—*Held:* a bequest to " foreign missions in connection with the Roman Catholic Church in Canada," should be paid to the general Roman Catholic Church, to be used for foreign missions in connection with that branch of the church which is in Canada, there being no Roman Catholic Church in Canada as a separate entity.—*Re* UPTON (1913), 24 O. W. R. 54; 4 O. W. N. 815; 9 D. L. R. 373.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—B.

xx. *Fund for maintenance & repair—Repair of fabric—& conduct of services—& provision of furniture, fittings & Re* BOYD (1924), 55 O. L. R.

981a. Gift to "church"—Construed as gift to congregation—Not to edifice.]—*Re* TYLER (1901), 45 Sol. Jo. 204.

981b. —— Gift to institution — "Church of England."]—*Re* BARNES, SIMPSON *v.* BARNES (1922), [1930] 2 Ch. 80, n.; 99 L. J. Ch. 380, n.; 143 L. T. 332, n.

Annotation :—**Folld.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75.

981c. —— —— "Roman Catholic Church."]—Testatrix made a residuary bequest "to the Roman Catholic Church, for the use thereof": —*Held :* the gift was a valid charitable bequest. — *Re* SCHOALES, SCHOALES *v.* SCHOALES, [1930] 2 Ch. 75; 99 L. J. Ch. 377; 143 L. T. 331; 46 T. L. R. 354; 74 Sol. Jo. 233.

981d. Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town.] —In 1841 certain resolutions were agreed to by the clergy & laity in this country at a meeting convened by the Archbishop of Canterbury to raise a fund for the endowment of Bishoprics in the Colonies, the fundamental object being to found & endow Bishoprics in connection with the Church of England. Among the Colonies selected was the Cape of Good Hope. In 1847 a large sum was given to the fund, & amongst the specific purposes mentioned for its application was the endowment of a Bishopric at Cape Town. In June, 1847, a Bishop's Diocese was created for the Cape of Good Hope by Letters Patent, & Cape Town was constituted a Bishop's See. The Bishop appointed was to be under the Metropolitical See of Canterbury. In 1849 part of the fund was invested on mtge. in the Colony & part laid out in the purchase of an estate in Cape Town for the use of the Bishop. In the year 1850, a representative Legislature was granted to Cape Colony, & in 1853 by fresh Letters Patent a separate See of Cape Town was created. In 1864, as the result of disputes concerning the effect of the Letters Patent of 1853, it was decided by the Privy Council in *Re the Lord Bishop of Natal* (1864), 3 Moo. P. C. (N. S.) 115, that as there was an independent legisative assembly in the Colony at the date when the Letters Patent of 1853 were granted, there was no power in the Crown by virtue of its prerogative to establish a Metropolitan See or Province whose status the Colony could be required to recognise. As a result in Feb. 1870, the Church of the Province of South Africa was constituted on a consensual basis. In 1882, following further disputes, the Privy Council decided in *Merriman* v. *Williams* (1882), 7 App. Cas. 484, that the Church of the Province of South Africa was not a Church in connection with the Church of England as by law established. Having regard to the fact that the present Archbishop of Cape Town was not a Bishop of the Church of England or of a Church in connection with the Church of England but was a Bishop of the Church of the Province of South Africa; & the doubt felt how the income of the fund should be dealt with, an originating summons was taken out by the present trustees of the fund raised in 1841 for the determination of the question how the income of the fund allocated to the endowment of a Bishopric at Cape Town should be applied, & whether the present Archbishop of Cape Town would be beneficially entitled to the income of the investments in this country held by the fund & set apart for the endowment of a Bishopric of Cape Town :—*Held :* (1) as it had been established that the present Archbishop of Cape Town was not a Bishop of the Church of England as by law established but a Bishop of the consensual Church of the Province of South Africa, which was, however, in communion with the Church of England, he was not a beneficiary of the funds in this country set apart for the endowment of the Bishopric of Cape Town. The question of a *cy-près* application of the fund thereupon arose; (2) therefore, as the fund in question & the trustees were in this country, & the trusts relating to it established here, the ct. had jurisdiction to order a scheme *cy-près :* & the proper order was first to declare that on the true construction of the resolutions, the original trusts which affected the property were for the endowment of a Bishopric of Cape Town in connection with the Church of England, & those trusts had become impracticable; & then to direct the trustees in this country to pay the income in question now in their hands to the Archbishop of Cape Town for the time being appointed & recognized by the Church of the Province of South Africa, but only so long as that Church remained, in the Archbishop of Canterbury's opinion, in communion with the Church of England.—*Re* COLONIAL BISHOPRICS FUND, 1841, [1935] Ch. 148; 104 L. J. Ch. 205; 152 L. T. 458.

986. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

987. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

991a. —— Gift to Superior of Jesuit Church.]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante*.

991b. —— "To the rector of St. Thomas' Roman Catholic Church of Newport.]—*In the Estate of* PESCA (1930), 74 Sol. Jo. 59.

991c. —— "To Mayor of L. for poor & needy fishermen of L."]—A testatrix bequeathed one-quarter of her residuary estate to the "Mayor of Lowestoft for the benefit of poor & needy fishermen of Lowestoft" :—*Held :* the testatrix intended the fund to be administered by the Mayor of Lowestoft for the time being, & a scheme should be directed to be drawn up.—*Re* PIPE, LEDGER *v.* MOBBS, [1937] 3 All E. R. 650; 106 L. J. Ch. 292; 53 T. L. R. 904; 81 Sol. Jo. 570.

PART III. SECT. 4, SUB-SECT. 6.—A.

sd. *Gift to "parish priest"—Curate temporarily in charge at time of death.*]—N. by her will bequeathed the residue of her estate to the parish priest of L., officiating at the time of her decease, to be applied by him for the benefit of the Roman Catholic Church in the parish as he, in his discretion, should think fit, & in the event of the failure of such bequest, testatrix bequeathed the said residue to the said parish priest of L., for his own use & benefit. Testatrix died within three months of the execution of her will, & as the property consisted almost entirely of land, the charitable bequest failed. There was no parish priest of L. at the time of the death of testatrix, but all the duties of the office were being discharged by the curate of the parish :—*Held :* the curate was entitled to the ultimate residue bequeathed to the parish priest for his own use & benefit. —MCALLISTER *v.* STEWART, [1931] N. I. 52.—IR.

PART III. SECT. 4, SUB-SECT. 6.—B

sg. *Education of deserving children in district—Meaning of "deserving."*]—In a bequest for the "education of poor & deserving children in the district of A." :—*Held :* deserving means deserving of education, not morally deserving.—KERKRAAD OF THE DUTCH REFORMED CHURCH, ALEXANDRIA *v.* SCHEEPERS, [1932] App. D. 88.—S. AF.

999. *Add. Annotations :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

1020a. Admission to Home of Rest—Must be suitable objects of a charity.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante.*

1041. *Add. Annotation :*—**Refd.** *Re* Robinson, Wright *v.* Tugwell, [1923] 2 Ch. 332.

1041a. —— Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.]—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an " abiding condition " that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one ; & accordingly, the fund was carried over to the credit of the action, the separate account of " the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services :—*Held :* the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* ROBINSON, WRIGHT *v.* TUGWELL, [1923] 2 Ch. 332 ; 92 L. J. Ch. 340 ; 129 L. T. 527 ; 39 T. L. R. 509 ; 67 Sol. Jo. 619.

1054. *Add. Annotation :—Generally,* **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1055. *Add. Annotation :—As to* (2) **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1061. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

1069. *Add Citation :*—[1910] 1 Ch. 273.

1069a. Gift over on charity receiving state subsidy —Charity receiving grant in aid as public elementary school.]—Testator, who by his will gave the residue of his property to certain charities, made it a condition of the gift that the charities should not be taken over or subsidised by the State or by any public or local authority. One of the institutions, which had a school attached recognised by the Board of Education as a public elementary school, received grants in aid of teachers' salaries from the local education authority :—*Held :* the grants did not amount to a subsidy & the charity was not prevented from receiving a share of the residue.—*Re* GREGORY, HOW *v.* CHARRINGTON (1935), 52 T. L. R. 130 ; 79 Sol. Jo. 880.

1078. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1080. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1081. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1085a. —— —— Masonic lodge—Valid.]—*Re* TURKINGTON, OWEN *v.* BENSON, [1937] 4 All E. R. 501.

1089a. —— Provision of knickers for all boys of district—Void.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante.*

1095. *Add. Annotation :*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1098. *Add. Annotation :—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

PART III. SECT. 4, SUB-SECT. 7.

1007 i. *Discretion of trustees—Gift to war charities—Not confined to Canada.*] —*Re* HAMMOND (1921), 68 D. L. R. 590. 51 O. L. R. 149.—**CAN.**

PART III. SECT. 6, SUB-SECT. 4.—A.

e i. —— *Orchestra—Void.*]—By an indenture of trust, which recited that the settlor had donated the sum of £10,000 for the purpose of assisting in founding a permanent fund for establishing & maintaining a metropolitan permanent orchestra in & for the State of Victoria, & that the donor had paid the money to the trustee, it was declared that the trustee should hold the said sum, & all sums thereafter given in augmentation of it, upon trust to apply the income of the fund in or towards the maintenance of a metropolitan permanent orchestra, so many of the members whereof as the trustee should consider sufficient to be professional musicians, etc. At the date of the deed such an orchestra did not exist, & the sum of £10,000 was altogether insufficient to establish & maintain one :—*Held :* the settlement infringed the rule against perpetuities, & there was a resulting trust for the settlor.—*Re* DYER, DYER *v.* TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1935] V. L. R. 273 ; 41 Argus L. R. 384.—**AUS.**

PART III. SECT. 6, SUB-SECT. 4.—B.

k i. —— ——.]—Testator left an estate of $99,000, of which $44,000 was in real estate & Hudson Bay Co. shares. This latter sum was left in trust to supply an income for a Bishop of Cornwall, or if such a Bishop was not elected within twenty-five years after testator's death, the money was to go to the University of Bishop's College, at Lennoxville, for the endowment of a Professorship of Natural Science :—*Held :* there was an immediate gift for charitable uses delayed as to the actual conveyance till the secured debts were paid, &, therefore, vested at the death & effective in law, though the particular application of the gift might be in suspense for twenty-five years, or might never take effect at all, in which contingency there was a valid transfer to another charity at the end of twenty-five years ; & the will did not offend against the rule concerning perpetuities.—*Re* MOUNTAIN'S WILL (1912), 21 O. W. R. 866 ; 3 O. W. N. 1011 ; 26 O. L. R. 163 ; 4 D. L. R. 737.—**CAN.**

1098a. —— ——.]—*Re* MONK, GIFFEN *v.* WEDD, No. 34a, *ante*.

1099. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496. **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96. **Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465 ; *Re* Spence's Estate, Barclay's Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

1102. *Add. Annotation :—Generally*, **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1102a. —— —— —— ——.]—*Re* TALBOT, JUBB *v.* SHEARD, No. 901a, *ante*.

1109. *Add. Citation :*—127 L. T. 123.

Add. Annotation :—**Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1114. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1115. *Citations :*—After " H. L." add " *affg* S. C. *sub nom.* HARBIN *v.* MASTERMAN (1871), L. R. 12 Eq. 559 ; [1894] 2 Ch. 184, C. A."

Add. Annotations :—**Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. **Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341. **Consd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626.

1116. *Add. Annotation :—As to* (1) **Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.

1116a. Direction for accumulation—Discretion of trustees.]—The expression in a will of a wish that " the interest upon my investments may be allowed to accumulate . . ." followed by an indication of the charitable objects to which the accumulations are to be devoted does not bind the trustees of the will. But it is a directory provision ; & the trustees ought to bear it in mind & generally to use their discretion so as to give effect to it.

A will, after certain bequests, including a bequest of residue in trust for " the Trustees of the S.M. Charities," expressed a wish of testator that " the income upon my investments may be allowed to accumulate for a period of twenty-one years or so long as the law will allow," & then set out various charitable objects in the town of S. which testator desired should thereafter benefit by such income only :—*Held :* the wish as to accumulation was not binding, but was in the circumstances a directory provision to which regard should be had in settling a scheme.—*Re* KNAPP, SPRECKLEY *v.* A.-G., [1929] 1 Ch. 341 ; 98 L. J. Ch. 95 ; 140 L. T. 533.

1118. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd (1927), 137 L. T. 4.

1150. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1186a. ——.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats :—*Held :* on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.

1188. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1189. *Add. Annotations :*—**Distd.** *Re* Beck, Crook *v.* Royal National Lifeboat Institution (1926), 42 T. L. R. 244. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1200. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

1225. *Add. Annotation :*—**Refd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1227. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

1246a. —— **Not necessarily application cy-pres.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1247. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

PART III. SECT. 6, SUB-SECT. 4.—H.

1115 i. *Absolute vested interest payable at future date—Whether charity entitle to immediate distribution.*]—An accumulated fund was directed to be paid by a trustee twenty-one years after the death of the party giving it for the aged & deserving poor of the town. On a motion to approve a compromise between the trustee & the town council: —*Held :* it was doubtful if the rule that a legatee may put an end to an accumulation exclusively for his benefit applied.—*Re* BIRTWISTLE (1935), 4 137.—CAN.

PART IV. SECT. 1, SUB-SECT. 1.—A.

p i. —— *Funds insufficient.*]—*Re* MITCHNER, [1922] St. R. Qd. 39.—AUS.

p ii. —— *Legatee uncertain.*]—Testator, domiciled & dying in Ireland, bequeathed shares to " the Director of the African Mission." There was no society known as " the African Mission," & no individual with the official designation of " Director of the African Mission." There were, however, two societies which carried on missionary work in Africa, one of them being known in English as " The Society of African Missions," its principal officer being the " Provincial." The other Society possessed an Irish Mission to Africa of which the principal officer was the " Secretary," who was also described in a French publication of the Society as " Directeur." Testator, had been on terms of intimacy with the latter officer, & had sent him a subscription, & in his letter enclosing the subscription he referred to " the needs of your great African Mission." Testator had also known the Provincial of the former Society, had discussed its work with him, was in regular receipt

1248. *Add. Annotation :*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1248a. —— —— —— ——.]—*Re* WILSON-BARKWORTH, BURSTALL *v.* DECK (1933), 50 T. L. R. 82.

1252a. —— **No trustees.**]—VERGE *v.* SOMERVILLE, No. 199b, *ante*.

1252b. —— **Uncertainty as to beneficiary.**]—*Re* HURST, HARPER *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1935), 79 Sol. Jo. 252.

1252c. Gift to trustees of chapel—Disclaimer by trustees.]—By her will a testatrix bequeathed to the trustees of a certain Methodist Chapel £1,000 or half her residuary estate whichever should be the lesser amount with the direction that the trustees should purchase a field which they should permit to be used as a recreation ground by the children attending the Sunday School in connection with the chapel & others as the trustees should approve. The exors. set aside sufficient to satisfy this legacy & distributed the residue of the estate. The trustees of the chapel disclaimed the legacy. The trustees thereupon took out a summons to determine whether the bequest failed & fell into the residuary estate of the testatrix or whether by reason of the charitable nature of the trust attached to it the bequest ought to be applied *cy-près* :—*Held :* (1) as it was not of the essence of the bequest that the trustees of the chapel should be the trustees of the charity, the bequest did not lapse, but ought to be applied *cy-près ;* (2) the costs of the proceedings should be paid out of the £1,000. *Re* LAWTON, GARTSIDE *v.* A.-G., [1936] 3 All E. R. 378.

1264. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1265a. ——.]—A testator who was a native of Scotland but died domiciled in England gave his residuary estate upon trust, after payment of annuities, to establish educational charities in & for the benefit of the residents of a town in Scotland. After the building & opening of a college in the town, there remained a large sum of money in the hands of the trustee subject to the trusts of the will. Upon an application to settle a scheme *cy-près*, the ct., at the instance of the A.-G., gave liberty to the trustee to carry into effect a scheme for the administration of the charity to be settled by the Ct. of Session in Scotland.—*Re* MARR'S WILL TRUSTS, WALKER *v.* A.-G., [1936] Ch. 671 ; 105 L. J. Ch. 345 ; 155 L. T. 485.

1267. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1269. *Add. Annotation :*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1273a. —— **Object & trustee out of the jurisdiction.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1274. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1277. *Add. Annotation :*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1278. *Add. Annotations :*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122. **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1312. *Add. Annotations :*—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240 ; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

1371. *Add. Citation :—previous proceedings* (1912), 106 L. T. 295.

Add. Annotation :—Generally, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1373a. ——.]—*Re* EDWIN RILEY CHARITIES (1930), 70 L. Jo. 409.

1373b. ——.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1373c. ——.]—Where a testator selects a particular charity & takes some care to identify it, it is very difficult for the ct. to find a general charitable intent, if the named society ceases to exist before testator's death ; but a general charitable intent may be inferred where no charitable institution as described in the will has ever existed.—*I* HARWOOD, COLEMAN *v.* INNES, [1936] Ch. 285 ; 105 L. J. Ch. 142 ; 154 L. T. 624.

1382a. Gift for rebuilding & equipment of hospital —Hospital partially rebuilt at testator's death.]—Testatrix gave a legacy "towards the rebuilding & equipment" of a hospital "to the satisfaction & under the direction" of her exors. At the death of testatrix the hospital was almost entirely rebuilt, though not equipped. The directors did not at any time direct the rebuilding or equipment :—*Held :* (1) the exors. could not give directions for works already completed, but if they gave their assent to proposed works of which they had a general knowledge they might apply the legacy towards such works when properly

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of its publication, called the "African Missioner," & had also contributed, although a much smaller amount, to its funds :—*Held :* the gift was a good charitable bequest for the propagation of the faith in Africa ; & it should be referred to Chambers to settle a scheme, with the approval of the Attorney-General.—*Re* MULCAHY, BUTLER *v.* MEAGHER, [1931] I. R. 239.—**IR.**

r i. ——.]—*Re* WRIGHT (1923), 56 N. S. R. 364.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—C (a).

sw. *School closed by statute.*]—Testatrix having during her lifetime erected a school-house, vested, by her will, the said school-house in her trustees upon certain charitable trusts. By her will she also created a perpetual yearly rentcharge which she vested in the said trustees to be expended in the maintenance of the said school & in paying a scripture reader residing on the said school premises. Testatrix died on Dec. 1, 1888, & the trusts were fully carried out until by the operation of Education Act (Northern Ireland), 1923, the school, as such, was closed permanently in Feb. 1929. On a summons being brought to determine whether the said school premises & the said rentcharge were still impressed with a charitable trust :—*Held :* although the trust was for a specific charitable purpose & disclosed no general charitable intention, there was no resulting trust to the testatrix's estate, & the trust should be administered *cy-près*.—*Re* HARDY, NELSON *v.* A.-G., [1933] N. I. 150.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

1372 v. ——.]—*Re* MCNAB, [1925] 2 D. L. R. 1100 ; 56 O. L. R. 676 ; *affd.*, 55 O. L. R. 538.—**CAN.**

1372 vi. ——.]—*Re* DEREMORE ESTATE (Alta.), [1927] 2 D. L. R. 1093 ; [1927] 2 W. W. R. 113.—**CAN.**

1372 vii. ——.]—*Held :* the ct. could find an indication of a general charitable intention from the fact that the property had been devoted to a particular charitable purpose, in circumstances from which it was apparent that the donors intended to make absolute perpetual gifts of the property, not reserving to themselves any interest in it ; & that the fund should be applied *cy-près*.—ARMSTRONG *v.* A.-G. (1934), 34 S. R. N. S. W. 454; 51 N. S. W. W. N. 151.—**AUS.**

sb. *Purpose unnecessary—Fund to establish free school—Free school established by statute.*]—R. *v.* OUTLER (*circa* 1876), R. E. D. 159.—**CAN.**

executed; (2) "equipment" meant everything required to convert an empty building into a hospital; (3) no limit of time being fixed the discretion of the executors remained exercisable until the hospital was fully rebuilt & fully equipped.—*Re* UNITE, EDWARDS *v.* SMITH (1906), 75 L. J. Ch. 163; 54 W. R. 358; 22 T. L. R. 242; 50 Sol. Jo. 239.

1392. *Add. Annotation:*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1394. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395a. Misdescription of charity.]—*Re* FORSHAW WALLACE *v.* MIDDLESEX HOSPITAL (1934), 51 T. L. R. 97; 78 Sol. Jo. 859, C. A.

1395b. Non-existence of object—Reference to "treasurer."—By her will a testatrix gave her residuary personal estate to the Berwick-upon-Tweed Infirmary, the Newcastle-upon-Tyne Infirmary, the Newcastle-upon-Tyne Nursing Home, & Doctor Barnardo's Homes London, in equal shares; & she directed that the receipt of the treasurer for the time being of the aforesaid institutions should be a sufficient discharge to her executor for payment of the aforesaid legacies.

No institution having been found which correctly answered the description of the "Newcastle-upon-Tyne Nursing Home," & doubts having arisen as to how the gift of this one-quarter share of residue should be disposed of, an originating summons was taken out by the exor. of the will for the purpose of determining (*inter alia*) the question whether certain of defts. (being institutions which seemed most nearly to correspond to the particular institution referred to in the will), namely, the Northumberland County Nursing Assocn., the Newcastle Private Hospital & Nurses' Home (a private nurses' home whereof two of defts., A. M. F. & S. L. P., were proprietors), the Cathedral Nursing Society for the Sick Poor of Newcastle-upon-Tyne (of which another deft., F. C. C., was treasurer) or any other body, society or institution was entitled to the particular one-fourth share in the residuary personal estate of the testatrix in question, or whether such share devolved as upon an intestacy:—*Held:* (1) no society or body existed which satisfied the ct. that it was the society or body meant & intended by the description "The Newcastle-upon-Tyne Nursing Home," but (2) although the objects of a nursing home are not necessarily charitable, the fact that the testatrix was dealing with the residue of her estate in equal shares, the other three named residuary legatees were charities having kindred objects, & there was a direction in the will that the receipt of the treasurer for the time being of each institution was to be a sufficient discharge showed a general charitable intention in the will, there was sufficient context to prevent a lapse of the particular share in question & therefore no intestacy. A scheme for administering the one-quarter share *cy-près* could therefore be properly carried out.—*Re* KNOX, FLEMING *v.* CARMICHAEL, [1937] Ch. 109; [1936] 3 All E. R. 623; 106 Ch. 97; 156 L. T. 189; 80 Sol. Jo. 915.

1396. *Add. Citation:*—1 Ves. 243.
Add. Annotation:—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

1404. *Add. Annotation:*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

1412. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

PART IV. SECT. 2, SUB-SECT. 2.—B.

si. ——— ———.]—A will directed that the residuary estate be invested by the exor. & trustee & the income thereof be paid to the Winnipeg Foundation to be used by it in the support & maintenance & for the purpose of the following charities "carrying on work for the sick & poor in the City of Winnipeg & the vicinity thereof & being the . . & the Home for Fallen Girls." No question arose with respect to any of the institutions named except the "Home for Fallen Girls." There was neither when the will was made nor at the testator's death any institution in Winnipeg or its vicinity of that name. But four institutions in Winnipeg did charitable work in caring for girls who came within the ordinary meaning of the term "fallen":—*Held:* testatrix appeared to have been thinking of the special & particular charitable work which in fact was being carried on by each of the various institutions named in the will, & that view negatived a suggestion that she intended to assist the church of which, on the evidence, she was an active member in meeting its contributions or liabilities to the joint work carried on by it (the Church of England) & the United Church of Canada in maintaining an institution known at the time of the making of the will as the Church Home for Girls but which had later changed its name. The *cy-près* doctrine should be applied & the gift in question should be held intended for the benefit of the charitable work for fallen girls carried on by four institutions.—*Re* GILROY ESTATE, [1936] 3 W. W. R. 620; [1937] 1 D. L. R. 142.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

sd. *Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.*]—*Re* FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—**CAN.**

se. *Surplus held for similar purposes.*]—Where a charitable object comes to an end contributions raised do not belong to the donors but are held for similar charitable purposes.—HALIFAX SCHOOL FOR BLIND *v.* ATTORNEY-GENERAL, [1935] 2 D. L. R. 347.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (d).

sk. *Lack of applicants.*]—Testator bequeathed a sum of money to trustees for the purpose of founding a bursary to be granted by them "to any deserving young man, being a native of D., attending college in the prospect of becoming a minister of the Established Church of Scotland, or as a missionary." The trustees received payment of the bequest in 1888. In 1907 they presented a petition in which they stated that, although full publicity had been given to the bursary by advertisement & by intimation in the local schools, no application for it had ever been made, & craved the ct. to empower them, failing application from natives of Dunbar, to grant the bursary to otherwise qualified appcts. born in the Presbytery of Dunbar, or failing such appcts. to otherwise qualified appcts. without conditions as to nativity. The ct. granted the petition.—*Re* BORLAND, [1908] S. C. 852.—**SCOT.**

sf. ———.]—Testator, having erected six houses for the residence of six widows who had been the wives of persons who had resided for five years on the F. estates, demised to trustees a yearly rentcharge of £70 a year, charged on the townland of D., & directed them to apply the sum of £10 a year in repairing & improving the six houses, & to pay the remaining sum of £60 a year in six equal shares of £10 each to such six widows during their widowhood. He further directed that the person or persons seized of his real estate under the limitations in his will should have the sole & exclusive control of this charity, & should not be subject to the control of the Comrs. of Charitable Donations & Bequests or any other persons, but should have full power & authority when the houses should become vacant to select such widows qualified as already stated to inhabit the houses & receive the annual pension provided. For many years past there had been a lack of qualified appcts., & since 1913 only two of them had been occupied:—*Held:* the trust was not charitable.—A.-G. *v.* FORDE, [1932] N. I. 1.—**IR.**

sg. *Dispersal of congregation.*]—A church & a manse were held by trustees "for the congregation of United

1418a. Lack of applicants.]—PHILIPPS *v.* A.-G., [1932] W. N. 100; 173 L. T. Jo. 320.

1418b. Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town—Church in South Africa not part of Church of England.]—*Re* COLONIAL BISHOPRICS FUND, 1841, No. 981d, *ante*.

1423. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1424. *Add. Annotation :*—**Refd.** *Re* Chapman, Hales *v.* A.-G., [1922] 2 Ch. 479.

1424a. —— —— Alternative non-charitable gift.]—Testatrix by her will appointed an exor., & after giving various pecuniary legacies, including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited :—*Held :* (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re* CHAPMAN, HALES *v.* A.-G., [1922] 2 Ch. 479; 91 L. J. Ch. 527; 127 L. T. 616; 66 Sol. Jo. 522, C. A.

See, also, No. 841a,

1430. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1431. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Cammell, Public Trustee *v.* A.-G. (1925), 69 Sol. Jo. 345.

1434. *Add. Annotation :*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1444a. Fund for erection of stained glass Surplus applied to additional stained glass windows.]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

1444b. Gift for restoration or maintenance of church.]—Testatrix bequeathed her residue "to be used towards the restoration or maintenance of" a certain church :—*Held :* she intended that the residue should be used either for the restoration or maintenance of the church, or for both purposes, & that, there being a general charitable intention, any surplus must be applied *cy-près*.—*Re* ROBERTSON, COLIN *v.* CHAMBERLIN, [1930] 2 Ch. 71; 99 L. J. Ch. 284; 143 L. T. 36; 46 T. L. R. 276.

1449a. —— —— Alternative non-charitable gift.]—*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *ante*.

1453. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1457a. —— Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University

Original Seceders presently worshipping in A. Square under the pastoral charge of the Rev. A. B." Adherence to the principles contained in a document known as the "Testimony" was declared in the trust deed to be a condition of the right of any individual to remain a member of the congregation. The congregation had seceded on a question of doctrine from the Synod of the United Original Secession Church. In 1878 the congregation, which had become reduced to fourteen individuals, ceased to worship together, the trustees let the property & accumulated the rents. In 1912 the last of the trustees died & his testamentary trustees brought an action of multiplepoinding for the disposal of the property & the accumulations of rent :—*Held :* failing the establishment of a right to the property by any congregation of the United Original Seceders, the trust, being a trust for public purposes, fell to be administered *cy-près*.—ANDERSON'S TRUSTEES *v.* SCOTT, [1914] S. C. 942.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—D.

c i. ——.]—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume new trustees from time to time, but vacancies among the trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the particular circumstances of the case sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOCN., [1925] S. C. 676.—**SCOT.**

sk. *Persons eligible to act as administrators no longer available.*]—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer. — ROSYTH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—E.

g i. *Surplus applied to such other purposes as should be deemed proper.*]—Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the objects so prescribed, the ct., at the suit of the Advocate-General of Bengal, at the relation of the Treasurer for Charitable Endowments, & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the surplus to such other purposes as the ct. deemed proper upon the *cy-près* principle.—ADVOCATE-GENERAL OF BENGAL *v.* WEBB-JOHNSON (1924), I. L. R. 52 Calc. 508.—**IND.**

sn. *Erection of church tower—Surplus applied to building Sunday school.*]—ROWE & BROWN *v.* PUBLIC TRUSTEE, [1928] N. Z. L. R. 51.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 3.

sp. *Administration of charity becoming increasingly arduous & discouraging.*]—It is not a legitimate ground for the application of the doctrine of *cy-près* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re* GLASGOW DOMESTIC TRAINING SCHOOL, [1923] S. C. 892.—**SCOT.**

sr. *Inexpedient to effect purpose.*]—Where the Y.W.C.A. applied for leave to divert certain moneys procured by subscription "for the purpose of building an extension to supply increased demand for accommodation in order to be of greater service to the young girl" :—*Held :* there was no gift except to do that which, under the circumstances, it is inexpedient & unnecessary to effect now, & it was not within the principle of the cases in which the ct. executes a general purpose *cy-près*, & the application should be refused.—*Re* YOUNG WOMEN'S CHRISTIAN ASSOCN. EXTENSION CAMPAIGN FUND, [1934] 3 W. W. R. 49.—**CAN.**

accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14*s.* 10*d.* Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied :—*Held :* in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re* STANFORD, CAMBRIDGE UNIVERSITY *v.* A.-G., [1924] 1 Ch. 73 ; 93 L. J. Ch. 109 ; 130 L. T. 309 ; 40 T. L. R. 3 ; 68 Sol. Jo. 59.

Annotations :—**Distd.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Strickland's Will Trusts National Guarantee & Suretyship Assocn., Ltd. *v.* Maidment, [1936] 3 All E. R. 1027.

Part V.—Trust Property after Trust created.

1480. *Add. Annotation :—As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1508. *Add. Annotation :*—**N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.

1511. *Add. Annotations :—As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251. *Generally*, **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

1532a. —— **Settled Land Act, 1925 (c. 18), ss. 29, 94.**]—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money :—*Held :* (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all ; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act ; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579 ; 96 L. J. Ch. 272 ; 43 T. L. R. 334 ; *sub nom.* BOOTH *v.* SOUTHEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.

1545. *Add. Annotation :—As to* (2) **Consd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotations :—As to* (1) **Consd.** I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154. *As to* (2) **Refd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394 ; *Re* Booth & Southend-on-Sea Estates Co.'s Contract. [1927] 1 Ch. 579.

1595. *Add. Annotation :*—**Refd.** *Re* Smith. Public Trustee *v.* Smith (1931), 100 L. J. Ch. 409.

1609a. —— **Not decreed.**]—SOMERVILLE *v.* CHAPMAN (1779), 1 Bro. C. C. 61 ; 28 E. R. 985.

Annotations :—**Expld.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92. **Refd.** Browne *v.* Tighe (1834), 2 Cl. & Fin. 396.

1670. *Add. Annotation :—Generally*, **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

Part VII.—Trustees.

1847. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

1870a. Powers under Settled Land Act, 1925 (c. 18), s. 29—Powers of sale under sects. 29, 94.]—

PART V. SECT. 1, SUB-SECT. 1.

sa. *Interest payable to beneficiary—Whether entitled to corpus.*]—A testator by his will appointed trustees, providing for the appointment of new trustees in place of those dying, etc., & gave them his residuary estate in trust to convert into money & stand possessed of all moneys in trust for certain uses & purposes, including, as to $20,000, to invest it & pay the net annual interest & income therefrom to his sister for life if remaining unmarried, & from & after her death or marriage to keep invested said sum & " pay & apply the net annual interest & income thereof," one-half to applt., a charitable institution (incorporated by statute), " to be used for the general purposes of that institution," &, as to another $20,000, to invest it & pay & apply the net annual interest & income thereof for the benefit of a certain church, & should (*inter alia*) said church cease to exist or change its adherence, " then & thereafter " to " annually pay over the whole of the net annual interest & income " of said sum to applt. " to be used for the general purposes of that institution." In events which occurred since testator's death, applt. became entitled to said gifts in its favour. It claimed the right, as sole beneficiary of the income, to receive from the trustees the corpus (one-half & the whole respectively) of said sums :—*Held :* applt. was not entitled to receive the corpus.—HALIFAX SCHOOL FOR THE BLIND *v.* CHIPMAN, [1937] S. C. R. 196.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

1502 iii. *Whether charities within Real Property Limitation Act, 1833 (—)—Exp*

DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—**IR.**

PART V. SECT. 3, SUB-SECT. 6.

1660 i. *When sanctioned by court.*]—When land is held upon a charitable trust, which contemplates its permanent retention, & there is no express power to mtge. the land, the ct. will not give its sanction to a mtge. unless satisfied that a mtge. will be not merely beneficial, but is necessary for the carrying into effect of the trust. Business expediency is insufficient.—*Re* HUGHES, THORNTON *v.* CHURCH OF ENGLAND TRUSTS CORPN. (MELBOURNE DIOCESE) (1935), 41 Argus L. R. 19.—**AUS.**

sc. *Departure from trust—Whether sanctioned.*]—The ct. will not authorise a departure from the terms of a charitable trust by way of mtge. of the trust premises, unless the performance of the trust as originally created has become impossible otherwise.—*Re* HUGHES, THORNTON *v.* MELBOURNE CHURCH OF ENGLAND TRUSTS CORPN., [1934] V. L. R. 345.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 2.

si. *Power of appointing su[illegible] apprehension of [illegible] power of revocation.*]—power is given to a trustee to appoint his successor " at his death " for a public charitable trust, there should, if the appointment is made *inter vivos* to take effect at once, be proof of cir-

Re BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, No. 1532a, *ante*.

1870b. —— **To what trusts applicable—Public trusts—Trust of society within Literary & Scientific Institutions Act, 1854 (c. 112).**]—Trusts of land belonging to an unincorporated society, confined to members paying an annual subscription, & the object of which is the encouragement of literature, science & art, & which comes within Literary & Scientific Institutions Act, 1854 (c. 112), are "public trusts" within Settled Land Act, 1925 (c. 18), s. 29, & the trustees, appointed by deed since 1925, have the powers conferred on them by that sect.—*Re* CLEVELAND LITERARY & PHILOSOPHICAL SOCIETY'S LAND, BOLCHOW *v.* LAUGHTON, [1931] 2 Ch. 247; 100 L. J. Ch. 363; 145 L. T. 486.

1938. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IX.—Jurisdiction over Charities.

1980a. —— —— —— **Gift "unto my country England."**]—*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, No. 217c, *ante*.

1981. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1998. *Add. Annotation :*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

2001. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

2015. *Add. Annotation :*—**Refd.** R. *v.* All Souls College, Oxford (1681), Skin. 13.

2019a. —— —— ——.]—If the visitor of a college refuse to exercise his visitatorial power by hearing an appeal, the Ct. of Queen's Bench will grant a mandamus to set him in motion, but cannot afterwards review his decision.

A fellow of King's College, Cambridge, had been expelled the college & deprived of his fellowship, by the provost & fellows, upon a charge of fraud & perjury, the proceedings being conducted partly in the absence of the accused, & the charge being alone supported by a comparison of his letters with an answer which he had filed in a suit in Chancery. Upon appeal to the visitor, the decision of the provost & fellows was affirmed: —*Held :* the ct. had no power to grant a mandamus to restore to the fellowship.—*Ex p.* BULLER (1855), 25 L. T. O. S. 102; 1 Jur. N. S. 709; 3 W. R. 447; 3 C. L. R. 1158.

2026. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons (1932), 102 L. J. K. B. 113.

2041. After this case add :—

——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2111a. *S. P. Ex p.* BULLAR (1857), 28 L. T. O. S. 269; 21 J. P. Jo. 84.

2137. For the existing paragraph substitute the following paragraph :—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs a donation or bequest made to a "mixed charity"—*i.e.* a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity :—*Held :* the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re* CHILD VILLIERS' APPLICATION, VILLIERS *v.* A.-G., [1922] 1 Ch. 394; 91 L. J. Ch. 473; 126 L. T. 555; 38 T. L. R. 291; 66 Sol. Jo. 266, C. A.

Annotation :—**Apld.** *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398.

2146a. —— **Land purchased out of donation—Donation before first annual subscription.**]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante*.

2154. *Add. Annotation :*—**Consd.** *Re* Diptford Parish Lands, [1934] Ch. 151.

2154a. Time for appeal.]—(1) On an appeal, by leave of the A.-G., from an order of the Charity Comrs. establishing a scheme for the

cumstances showing that the appointor had reasonable apprehension of his death, & it is always subject to the condition that, if the appointor recovers, the transfer is not to operate; & even if the power of revocation is not expressly reserved in the deed, such a deed should always be deemed to be subject to a power of revocation by implication.—CHOCKALINGA MUDALIAR *v.* DURAISWAMI MUDALIAR (1927), I. L. R. 51 Mad. 720.—**IND.**

PART IX. SECT. 3, SUB-SECT. 1.

sd. *Effect of Church of England Trust Property Act*, 1917, *s.* 32.]—Although by reason of the wide powers conferred upon Synod by sect. 32 of Church of England Trust Property Act, 1917, in respect to the variation of trusts, it is improbable that the Ct. of Equity will continue to exercise its *cy-près* jurisdiction in respect to charitable trusts coming within the operation of that Act, nevertheless the ct. has jurisdiction to entertain informations the object of which is to complain of breaches of such trusts & to administer the same, & will not decline to exercise such jurisdiction except for good cause shown.—A.-G. *v.* CHURCH OF ENGLAND PROPERTY TRUST DIOCESE OF SYDNEY (1933), 34 S. R. N. S. W. 36; 50 N. S. W. W. N. 241.—**AUS.**

PART IX. SECT. 3, SUB-SECT. 2.

sv. *Enforcement of provision for schism.*]—When property is given in trust for A., B. & C., etc., forming an association for fraternal & benevolent purposes, if the instrument provides for the case of a schism then the ct. will act upon it.—LINDSAY *v.* EMPY (Alta.) (1915), 32 W. L. R. 246; 9 W. W. R. 32; 23 D. L. R. 877.—**CAN.**

administration of charities, the petition to the ct. must under Charitable Trusts Act, 1860 (c. 136), s. 8, be presented within three calendar months next "after the definitive publication of the order," which is effected under sect. 7 of the Act by affixing a copy of the order when made in some convenient place within the parish or in the district to which the charity is applicable such as on the church door, & an appeal presented more than three months after the date when the order is first so affixed is out of time.

(2) A petition for appeal, to be presented under Charitable Trusts Act, 1869 (c. 110), s. 11, under the hand of applt., may be signed by the applt.'s solicitor or other duly authorised agent.—*Re* DIPTFORD PARISH LANDS, [1934] Ch. 151 ; 103 L. J. Ch. 145.

2154b. Petition for appeal—Signature.]—*Re* DIPTFORD PARISH LANDS, No. 2154a, *ante*.

Part X.—Practice.

2177a. —— Action to restrain exclusion from management of non-provided school.]—Where an action was begun which claimed an injunction restraining defts. from excluding pltf. from the meetings of the managers of a non-provided school, who had been appointed in pursuance of an order made by the Board of Education under Education Act, 1902 (c. 42), s. 11 (8), & damages, & where the management of such non-provided school had been originally established by a trust deed, the action was not allowed to proceed until, in pursuance of Charitable Trusts Act, 1853 (c. 137), s. 17, & Orders in Council made under Board of Education Act, 1899 (c. 33), s. 2 (2), a certificate from the Board as exercising with regard to educational charities the jurisdiction formerly exercised by the Charity Comrs. had been obtained.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232 ; 146 L. T. 461 ; 30 L. G. R. 187.

2224. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2227a. Bequests to Irish parishes.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2246a. Bequests to Irish parishes—Attorney-General of the Irish Free State not proper party.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17 ; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2252. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2271. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

2283. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2289a. —— Trust to establish Home of Rest—Reference to decide whether practicable.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

2330a. ——.]—An information was filed in the year 1821 against the trustee of a grammar school founded in the reign of Edward VI., praying that a new scheme might be approved of for the management of the school. Pending these proceedings, the trustees, in the year 1838, themselves made new regulations for the school, to which the usher, who was appointed previously to the filing of the information, was ordered to conform. The usher refused to be bound by such new regulations, & was consequently dismissed, & now presented a petition under Charities Procedure Act, 1812 (c. 101), alleging that the trustees of the school had no power to alter the rules, & praying that he might be reinstated :—*Held :* the ct. had no power, except under an information, to decide whether the trustees had power to alter the regulations of the school. Petition dismissed, with costs.—A.-G. *v.* EAST RETFORD GRAMMAR SCHOOL (1848), 17 L. J. Ch. 450.

2330b. Matters relating to constitution of charity.]—A.-G. *v.* BRISTOL CORPN., *Ex p.* Goodenough, No. 2346a, *post*.

2346a. —— —— After decree.]—After a decree had been made, in a suit by information & bill, for the general administration of a charity, one of the objects of which was a free grammar school, the master of the school, who was not a party to the suit, presented a petition in it, with the sanction of the A.-G., stating that, in 1832, which was five years before the decree was made, defts., the trustees of the charity, unlawfully removed him from his office, & praying to be paid the arrears of his salary :—*Held :* (1) the petition could not be entertained, because it was presented by a person who was not a party to the suit, & involved an important question between the petitioner & the trustees, which was not raised at the hearing of the suit ; (2) the ct. would not have had jurisdiction to determine the question, if the petition had been presented under Charities Procedure Act, 1812 (c. 101), but that a new suit must be instituted.

(3) Where the rule laid down for the management of a charity is clear, & the only question is whether the parties have acted according to that rule or not, that is a question which may be determined on petition. But, where the question has reference to the original constitution of the charity, as, for instance, whether certain persons called governors or trustees, have a certain authority, that is a question touching the original constitution of the charity, which can be decided only on information (SHADWELL, V.-C.).—A.-G. *v.* BRISTOL CORPN., *Ex p.* GOODENOUGH (1845), 14 Sim. 648 ; 14 L. J. Ch. 457 ; 5 L. T. O. S. 533 ; 60 E. R. 510.

2353a. —— Not petition for payment out of funds in court of money for completion of purchase of land.]—*Ex p.* ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS) (1928), 72 Sol. Jo. 225.

2414a. Order for payment of legacy to trustee—Undertaking to render accounts to Attorney-General.]—*Re* REDDISH, PENTON *v.* WATERS, [1934] W. N. 198; 178 L. T. Jo. 329.

2423a. —— —— ——.]—PHILIPPS *v.* A.-G., [1932] W. N. 100 ; 173 L. T. Jo. 320.

2446. After this case add :—
——.]—*See, now,* S. C. J. (Consolidation) Act 1925 (c. 49), s. 19 (5).

2537. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2562a. Application to ascertain whether cy-pres doctrine applicable.]—*Re* LAWTON, GARTSIDE *v.* A.-G., No. 1252c, *ante.*

2576. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

CHATTEL MORTGAGES.

See BILLS OF SALE.

CHEAT.

See CRIMINAL LAW.

CHECKWEIGHER.

See MINES.

CHEESE.

See FOOD AND DRUGS.

CHIMNEY.

See EASEMENTS ; NUISANCE.

CHIMNEY SWEEP.

See MASTER AND SERVANT ; TRADE.

CHOSES IN ACTION.

Part I.—In General.

7. *Add. Annotation :*—**Refd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] W. N. 158.

12a. **Rentcharge—Arrears of.**]—SALWAY *v.* SALWAY (1770), 2 Dick. 434; Amb. 692; 21 E. R. 338.

13. *Add. Annotations :*—**Distd.** Baker *v.* Archer-Shee, [1927] A. C. 844; A.-G. *v.* Belilios, [1928] 1 K. B. 798. **Refd.** New York Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Brassard *v.* Smith, [1925] A. C. 371; Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* I. R. Comrs., Duff Dunbar *v.* I. R. Comrs. (1928), 14 Tax Cas. 58.

19. After this case add "**Patent.**]—*See* PATENTS."

20. *Add. Annotations :* — **Dbtd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

21. *Add. Citations :*—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

21a. —— ——.]—In Feb. 1912, three parcels of goods were shipped in a British steamship from Baltimore for Hamburg. The ship sailed & was never heard of again. The goods were insured with M., who were German nationals carrying on business in New York. The assured claimed against M., & some time before Nov. 1918, were paid by M. for a total loss; whereupon the bills of lading were handed over to M. by the assured. Actions on the contract of carriage against the ship-owners were commenced in England for the benefit of M. & other insurers by the owners of the goods & damages were recovered, of which the sum of £4,538, being that portion which corresponded with M.'s share in the insurance, was claimed by deft. to be subject in his hands to the charge created by the Treaty of Peace Order, 1919. On Nov. 18, 1918, after the outbreak of war between the United States & Germany & after proceedings had been commenced in England, pltf., in pursuance of the American Trading with the Enemy Act, 1917, & executive Orders made thereunder, made a demand upon M., the effect of which was to vest in him as Alien Property Custodian all the property, rights, claims & assets of M. within the United States. In an action by pltf. claiming payment by deft. of the said sum of £4,538, so recovered by M. & in the hands of deft. as Administrator of German Property :—*Held :* (1) on the crucial date, Nov. 18, 1918, M. had by subrogation anequitable interest as against the owners of the goods in the right of action which those owners had for the loss of their goods to the extent that was necessary to recoup to M. the amount paid on the policies of insurance; (2) that right of action came within the general rule that choses in action must be taken to be situate in the country where they are properly enforceable; (3) notwithstanding the fact that the bills of lading & other documents relating to the claim against the shipowners were at the material time in the hands of pltf. in the United States as Alien Property Custodian, the *situs* of the right of action was in England, & therefore the sum recovered for M. therein passed to deft. & not to pltf.—SUTHERLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1934] 1 K. B. 423; 103 L. J. K. B. 244; 150 L. T. 247 50 T. L. R. 107, C. A.

23. *Add. Annotations :*—**Consd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25; English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** New York Life Ince. *v.* Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

24. *Add. Annotations :* — **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

25. *Add. Annotations :*—**Apld.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Richardson *v.* Richardson, [1927] P. 228. **Consd.** Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

26. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

26a. ——.]—An agreement for the sale, among other things, of simple contract debts owed by debtors resident out of the United Kingdom is exempt from stamp duty in respect of such debts on the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170.

Annotation :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

27. *Add. Annotations :*—*As to* (1) **Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174. *As to* (2) **Refd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

PART I. SECT. 1, SUB-SECT. 2.

d. Add "*revsd.* 17 O. R. 574."

s. Add "*revsd. in part* 4 A. R. 267."

PART I. SECT. 2.

27 i. *Residence of debtor.*]—Resp. & one S. were both resident in & subjects of the Indore State. Resp. carried on business as a commission agent at Indore, also at Bombay, his head office being at Indore. S. had dealings with resp. through both offices, a separate account being kept at each. On Apr. 17, 1924, a sum of nearly two lakhs was owing by resp. to S. on the Bombay account; the Indore account was about even. On that date a notice was served on resp. by order of the Indore Govt. requiring him to pay to it the sum owing to S. on the Bombay account. The debt was accordingly transferred to the Indore account without the consent of S., & on May 15, 1924, was credited to the ruler of Indore. On May 16, 1924, applts.

27a. Assignment executed abroad—Of debt payable in England.]—C., being domiciled in Guatemala, deposited a sum of money with a bank in London. Subsequently he, being then in Guatemala, assigned in writing by way of gift the money so lying to his credit at the bank to N., who was also domiciled in Guatemala, & written notice of that assignment was given to the bank. It was not disputed that if the effect of that assignment had had to be decided by English law it would have been held good. By the law of Guatemala an assignment of money made without consideration is void, unless made by a document executed before a notary on stamped paper, & signed by both parties; & by the same law an infant cannot accept a voluntary assignment himself, it must be made to & accepted by a legal representative appointed by a judge on the infant's behalf. The assignment was on unstamped paper, was not executed before a notary, & was not signed by N. At the time of the assignment N. was an infant & no legal representative had been appointed. The money lying in the bank having been claimed both by the republic of Guatemala & by N. the bankers interpleaded. In an action to determine the issue between the two claimants:—*Held:* the validity of the assignment to N. must be determined by the law of Guatemala, & was therefore bad:

(*Per* BANKES, L.J.) upon the ground that, as the republic & N. were both domiciled & resident in Guatemala at the date of their respective assignments, & as the English depositary claimed no interest in the fund, the question which, if either, of the two claimants was entitled to it must be determined by the law of their domicil & residence, & not by that of this country;

(*Per* SCRUTTON & LAWRENCE, L.JJ.) upon the ground that the question of a person's capacity to take an assignment of personal property is to be governed either by the law of his domicil, or by that of the country where the assignment takes place, & that, as in this case the country of N.'s domicil & that of the assignment to him were the same, it was immaterial to inquire which, had they been different, ought to prevail; but from either point of view N. was incapable, by reason of his infancy, of receiving the donation;

(*Per* SCRUTTON, L.J.) on the further ground that by reason of non-compliance with the formalities relating to stamp, notary, etc., the assignment was, both by the law of the place where it was made, & by that of the domicil of the parties to it, not merely inadmissible in evidence but void;

(*Per* LAWRENCE, L.J.). As the contract of deposit was made in England, & the money was repayable in England where the bank was domiciled, & was recoverable in England, it was an English debt having a local situation in this country, & accordingly the validity of the assignment, as distinguished from that of a contract to assign, must be governed by the *lex loci rei sitæ*, & not by the law of the country where the assignor & assignee were domiciled, or where the assignment took place. Consequently if non-compliance with the required formalities had been the only objection he would have held the assignment good.—REPUBLICA DE GUATEMALA *v.* NUNEZ, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

Annotations:—**Folld.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Reld.** Richardson *v.* Richardson, [1927] P. 228.

27b. —— Exercise of power of appointment over sum in England.]—An assignment, executed in a foreign jurisdiction by a person there domiciled, of a chose in action locally situate (so far as a chose in action can be) in England, is void if the assignment is void on grounds of substance according to the local law.

A document executed abroad in exercise of powers of appointment conferred by settlements executed in accordance with English law, & expressed to be intended to operate both as an assignment & as a will, may take effect as a conveyance *inter vivos* of the property of the person executing it.

Upon the marriage of testatrix, who was born in Italy, to an Italian, two settlements of property belonging to her, hereinafter respectively called the "A" settlement & the "B" settlement, were executed. The "A" settlement comprised proceeds of sale of English freeholds conveyed to the settlement trustees on trust for sale, & investments & other moneys, the whole fund being settled on trust to pay to the husband during the joint lives of himself & testatrix, £500 a year, & subject thereto to pay the annual income to testatrix for life without power of anticipation, &, after her death, to raise £50,000, as she should by deed or will appoint & pay the sum so raised to such persons as she should appoint. The "B" settlement comprised certain freeholds & certain moneys which were settled on trust to pay the income to testatrix for life, & after her death as she should appoint. Both were English in language & form, & the trustees were resident in the United Kingdom. By a deed of Dec. 10, 1906, to which her husband & the trustees of the "A" settlement were parties, testatrix appointed that the residue of the £50,000, which she then had power to appoint under the "A" settlement should be charged upon & raised out of the property subject to that settlement, &, after her death, should be held in trust for her absolutely as her separate estate. By a deed of May 23, 1912, between herself, her husband, & the "B" settlement trustees, testatrix appointed that, after her death, &, until then, subject to her life interest, the property comprised in the "B" settlement should be held by the trustees upon trust to pay sums which she or her husband should become liable to pay to them under certain covenants of indemnity in the deed, &, subject thereto in

served on resp. an order of the High Ct., made in a suit which they had brought against S., attaching before judgment the debt in question. Applts. ha[d] obtained later a decree in their [suit] against S. sued resp. claiming to enforce the attachment:—*Held:* as the contract between resp. & S. did not provide expressly or impliedly that payment [was] to be solely, or primarily, at Bombay, or make the debt enforceable only there, the *situs* of the debt was Indore; & it had been effectively seized by the Indore Govt. before attachment by applts. It was not for the ct. to inquire whether the Indore Govt. in seizing property situate in its own territory had acted within the law of that State.—CHATURBHUJ PIRAMAL *v.* CHUNILAL GOMKARMAL (1933), 60 L. R. Ind. App. 211.—IND

trust for testatrix, her heirs, administrators & assigns. Testatrix & her husband lived in Italy, & she was domiciled there at the date of her death. On July 28, 1927, being then domiciled in Italy, she executed an "appointment & assignment," expressed to be supplemental to the "A" settlement, the "B" settlement, & the deed of Dec. 10, 1906, & expressed also to be intended to operate as an assignment *inter vivos* & as a will. By it, she appointed & assigned the property comprised in those documents, subject to certain subsisting trusts, to the trustees of the appointment & assignment whom she appointed exors. upon trust for the payment of certain debts & legacies, & she gave the final residue to one of the trustees absolutely. After the death of testatrix leaving no other testamentary disposition, the deed of appointment & assignment was admitted to probate in the United Kingdom:—*Held:* (1) the deed of appointment & assignment so far as it purported to assign movable property was subject to the law of the country in which it had been executed & in which the testatrix was domiciled, *i.e.* to Italian law, & that, being null & void in Italian law, it did not effectually assign the remainder of the £50,000, appointed by the deed of Dec. 10, 1906; (2) the appointees of the sum of £50,000, were not persons entitled to immovable property. Their right, which was to require the trustees to pay the amount, was a chose in action in the nature of a movable; (3) the deed of appointment & assignment, as it was expressed to be intended to operate as an assignment as well as a will, could take effect as a conveyance *inter vivos* of the immovable property of testatrix situate in England.—*Re* ANZIANI, HERBERT *v.* CHRISTOPHERSON, [1930] 1 Ch. 407; 99 L. J. Ch. 215; 142 L. T. 570.

After this case for "**Assignments executed abroad.**]—*See* Nos. 459–462, 504, 505, *post*," read "——.]—*See, also*, Nos. 459–462, 504, 505.

Part II.—Assignment in General.

29. *Add. Annotation:*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

35. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

40. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part III.—What may be Assigned.

47. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

53. *Add. Annotation:*—**Refd.** *Re* Bower-Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

63. *Add. Annotations:*—*As to* (1) **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67. *Add. Annotations:*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67a. **Assignment of part of debt—Not operative to pass legal right to part assigned.**]—A firm of C., V. & Co., being owners or pledgees of certain cotton goods, which had been transferred or pledged to them by one member of the firm, insured them for £8,000 upon an open policy of marine insurance. The goods were lost at sea. The firm incurred a liability of £7,000 to one W., & in settlement of his claim it was agreed that they should assign the policy to him & that he should pay them a certain sum unconditionally & a further sum of £1,000 if, but only if, the should receive that amount or more from the insurers. W. then in his own name brought an action against the insurers to recover the value of the insured goods:—*Held:* an assignment of part of a debt or legal chose in action is merely an equitable assignment & is not effectual to transfer the legal right to the debt or "thing in action" under Law of Property Act, 1925 (c. 20), s. 136, & therefore pltf. suing in his own name could not recover; by SLESSER, L.J., also on the additional ground that no express notice had been given to the insurers after execution of the assignment; SCRUTTON, L.J., *contra* on this point, inclining to the view that, if there was an assignment valid in other respects, the pleadings gave sufficient notice of it *pendente lite* so as to bring the case within R. S. C., Ord. 17, r. 3.—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD., [1933] 1 K. B. 81, 102 L. J. K. B. 241:

PART II. SECT. 1.

sg. *Judicature Act, R.S.A.*, 1922—*Equitable rights not affected.*]—Sect. 37 (*m*) of Judicature Act, R.S.A., 1922, deals with only the legal right between the assignor & assignee of a chose in action & there is nothing therein to suggest that, while the assignee has all the legal rights & remedies of the assignor, some one may not have equitable rights in that chose in action which has become legally vested in the assignee.—DAWSON *v.* LEACH & HAZZA, [1935] 3 W. W. R. 547; [1936] 1 D. L. R. 31.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—The judgment of a foreign ct. creates a debt, & is *primâ facie* assignable.—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.

64 iii. —— ——.]—Under Choses in Action Act, R.S.S., 1930, there can be an assignment of part of a debt.—MACDONALD *v.* ROYAL BANK OF CANADA, [1934] 1 W. W. R. 732.—**CAN.**

148 L. T. 313; 37 Com. Cas. 304; 18 Asp. M. L. C. 334, C. A.

71. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

73. *Add. Annotation :—As to* (2) **Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

77a. —— —— **Retention money.**]—*Held :* retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

78. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Wait, [1927] 1 Ch. 606.

80. *Add. Annotation :—As to* (2) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

81. *Add. Annotation :*—**Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

82. *Add. Annotation :*—**Refd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

84. *Add. Annotation :*—**Refd.** Norwich Union Fire Insce. Soc. *v.* Colonial Mutual Fire Insce., [1922] 2 K. B. 461.

86. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

91. *Add. Annotation :*—**Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

93. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

94. *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

106a. —— —— **Grantee bound to attend at specified place to receive payments & give receipts.**]—*Held :* assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—ARDEN *v.* GOODACRE (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.

110a. —— ——.]—Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married." In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin :—*Held :* the interest which J. had at the date of the settlement in the settled share of W. was either a mere *spes successionis*, or must be treated as such, & was not assignable at law.—*Re* MUDGE, [1914] 1 Ch. 115; 83

PART III. SECT. 2, SUB-SECT. 3.

77 ii. —— ——.]—M. who had contracted with defts. to do certain work for them, gave an order upon defts. in favour of H. & M., who assigned it to pltfs. to pay to H. & M. "any moneys due or to become due on my contract . . . in consideration of moneys advanced by them to me for the purpose of financing this contract." Defts. acknowledged the receipt of the order. Afterwards certain payments were made by defts. to sub-contractors on M.'s direction, certain costs in the action were paid to solrs. & execution creditors of M. attached moneys in defts.' hands payable upon the contract, whereupon an interpleader issue was directed & tried :—*Held :* the order under which pltfs. claimed was not a legal assignment of an existing chose in action nor an assignment of the contract : it was nothing more than an equitable assignment of a fund not yet in existence.—INTERIOR TRUST CO. *v.* ESSEX BORDER UTILITIES COMMISSION (1928), 62 O. L. R. 551.—**CAN.**

78 i. *Money accruing to assignor by will.*]—An amount which exors. are directed by the will to pay for the maintenance & education of an infant may be assigned by the person to whom they have become liable therefor.—*Re* GRANT ESTATE, MULLIN & MULLIN *v.* ANNABLE, [1928] 1 W. W. R. 894; 22 Sask. L. R. 483.—**CAN.**

PART III. SECT. 3.

To construct tramway across

ALD *v.* PEDDLE, [1925] N. Z. L. R. 987.

sb. *To execute lease.*]—A right arising under an agreement with an owner of immovable property to call upon him to execute a lease is a chose in action, and as such movable property.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

PART III. SECT. 4.

96 i. *Claim to compensation—Damage to lands—Assignable.*]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown : —*Held :* it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. *v.* HYE (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—**CAN.**

96 ii. ——.]—By a clause in a lease it was provided that in case the demised premises should be resumed by any authority, then out of the compensation moneys payable to the lessor & lessee, the lessor shall be entitled to receive £8,440, & in addition £300 *per annum* or a proportionate part thereof for the unexpired term of the lease & the lessee shall be entitled to the balance :—*Held :* the clause in the lease did not operate as an equitable assignment.—TOOTH *v.* BRISBANE CITY COUNCIL (1929), 41 C. L. R. 212.—**AUS.**

c i. —— —— ——.]—A right of action in tort is not assignable. The lessee under a crop payment lease, having been served while threshing with a garnishee summons issued in a suit against the lessor, sold all the crop in his own name & paid the lessor's share of the proceeds into ct., meanwhile notifying the lessor that he would do so. The lessor after receiving said notice & a copy of the garnishee summons assigned to pltf. all his claims & demands against the lessee for "debts or rentals now due or to become due" under the lease, & all his interest in the crops grown thereunder. The lease required the lessee to deliver the lessor's share on the day of threshing, &, if required, at a certain elevator in the name of the lessor. The pltf., *i.e.* the assignee of the lessor, sued the lessee for damages on the ground of conversion.—*Held :* the action was not maintainable.—KOZAK *v.* MISIURA, [1928] 1 D. L. R. 591; [1928] 1 W. W. R. 1; 22 Sask. L. R. 208.—**CAN.**

company—Having paid loss.]—Pltfs., insurance cos., had insured premises which were destroyed by a fire which, as they alleged, arose from the negligence of defts. Having paid the owners of the premises the amount of the loss, pltfs. claimed to be subrogated to the right of the owners to recover against defts. & also alleged they had taken assignments in writing by way of subrogation to the right of the owners, & they claimed in this action damages for the negligence of defts. causing the fire :—*Held :* the action was a simple common law action in which the owners' rights were asserted against the alleged wrongdoers, & a motion to strike out a jury notice given by defts. upon the ground that the action was one which, before 1873, was exclusively within the jurisdiction of the Ct. of Chancery, was refused.—ROYAL EXCHANGE ASS'CE. CO. *v.* GRIMSHAW BROTHERS, LTD., [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

1 ii. —— —— *Nuisance.*]—CANADIAN SURETY CO. *v.* FINCH, [1930] 2 D. L. R. 421.—**CAN.**

PART III. SECT. 5.

100 i. *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.*]—Where there was an assignment of part of the fruits of litigation :—*Held :* even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—VATSAVAYA VENKATA JAGAPATI *v.* POOSAPATI VENKATAPATI (1924), L. R. 52 Ind. App. 1.—**IND.**

L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.

Annotation :—**Refd.** *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345.

114. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

118. *Add. Annotations :*—**Apld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Gillott's Settlement, Chattock *v.* Reid (1933), 77 Sol. Jo. 447.

119. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

124. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191; Walls *v.* Legge, [1923] 2 K. B. 240.

125. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191. **Refd.** Campbell *v.* Campbell, [1928] P. 187; *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

153. *Add. Annotations :*—**Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

154. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

160. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

Part IV.—What amounts to an Assignment.

191. *Add. Annotation :*—**Apld.** The Zigurds (1931), 47 T. L. R. 525.

193. *Add. Annotation :*—*As to* (2) **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

195. *Add. Annotations :*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

196. *Add. Annotations :*—*As to* (3) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304. *Generally*, **Refd.** The Zigurds (No. 2) (1932), 48 T. L. R. 559.

200. *Add. Annotation :*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

202. *Add. Annotation :*—**Refd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

204. *Add. Annotation :*—**Refd.** Smith *v.* Zigurds S.S. Owners & E. A. Casper, Edgar & Co., [1934] A. C. 209.

204a. —— ——.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liability in respect of the vessel obtained from the master the following document: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. C. E. & Co., Ltd., & oblige." The persons described in the document as the master's agents were pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage :—*Held :* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

204b. —— ——.]—Pltf., who had obtained judgment as first mtgee. against the proceeds of sale of a Latvian steamship, further claimed legal assignment to himself of the freight earned on the ship's last voyage. It was argued that by an agreement supplementary to the mtge. the mtgee. was given an equitable assignment, which by reason of notice to or knowledge possessed by the consignee or receiver of the cargo was converted into a legal assignment. The alleged notice consisted in the intervention by the mtgee. in an action by necessaries claimants who had arrested the ship, &/or in the terms of the mtgee.'s affidavit of interest filed in that action. The knowledge of the mtgee.'s claim was said to be proved by a letter written by the solrs. for the consignees or receivers of cargo. The material paragraphs of the supplementary agreement were as follows: "The mtgee. shall be at liberty so long as any moneys may be due under the said first mtge. & this agreement & he is hereby empowered in his own name or in the name of the shipowners . . . to demand, sue for, & receive & give receipt for all moneys due to the shipowners in connection with the said steamship & to institute such legal proceedings as he may think proper. . . ." "In relation to the matters dealt with herein, where they apply, the shipowners hereby appoint the mtgee. their attorney for them & in their name at any time during the currency of this security to collect, sue for, receive & give effective receipts for all freights . . . which may be or become due & owing to the shipowners. . . .":—*Held :* (1) by

PART III. SECT. 13, SUB-SECT. 4.

ao. *Pension Act, s.* 20 (3)—*What amounts to charge—Order under Collection Act, R. S. N. S.* 1923.]—CHIPMAN *v.* ROSCOE (N. S.), [1929] 4 D. L. R. 130.—**CAN.**

PART III. SECT. 14.

—— —— option to purchase contained in a will, is *prima facie* not —— —— but is assignable by —— optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

ar. *Non-negotiable promissory notes.*]—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

as. *Land scrip.*]—WRIGHT *v.* BATTLEY (1905), 15 Man. L. R. 322; 1 W. L. R. 563.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

at. ——.]—MCQUADE & CLARK *v.* MONCRIEFF & VISTAUNET (B. C.), [1929] 1 D. L. R. 782.—**CAN.**

au. *When amounting to assignment.*]—A simple order to pay only constitutes an assignment if that intention appears on the face of the agreement, & there is consideration.—*Re* MARITIME FINANCE, LTD., [1935] 2 D. L. R. 799.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

av. *General rule.*]—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—*Re* BLAND & MOHUN (1913), 25 O. W. R. 419; 30 O. L. R. 100; 5 O. W. N. 522.—**CAN.**

Law of Property Act, 1925 (c. 20), s. 136, a legal assignment must be absolute & express notice thereof must be given to the debtor; the constructive notice upon which the mtgee. relied was not sufficient to comply with the statute & the claim to a legal assignment of the freight failed; but there was in the supplementary agreement clear evidence of an equitable assignment of the freight to the mtgee.; (2) in a case where the mtgor. was a shipowner through whose default in business the whole trouble had been occasioned, & against whom judgments had been recovered, in default of appearance, by (*inter alios*) the interveners, it was not a necessary condition that the mtgor. should be joined in the mtgee.'s action.—THE ZIGURDS (No. 2), [1932] P. 113; 101 L. J. P. 81; 148 L. T. 72; 48 T. L. R. 559; 18 Asp. M. L. Cas. 324.

204c. —— ——.]—Pltfs., while acting as agents for a foreign steamship in an English port, were asked to make disbursements & incur expenses on behalf of the vessel. Before doing so they obtained the following document, addressed to the receivers of cargo, which was signed by the master with the approval & consent of the managing owner of the ship: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, E. A. Casper, Edgar & Co., Ltd., & oblige." On June 15, 1931, on an *ex parte* motion, LANGTON, J., gave judgment for pltfs.' claim for necessaries, & pronounced for the validity of an assignment to them of the freight & demurrage. At the reference to assess the amount of the claim the registrar, however, reported that the document was no more than an order to pay the freight & demurrage to pltfs., who, he said, had under it nothing in the nature of a right *in rem* against the freight. He, therefore, disallowed several items on the ground that they were not necessaries. Interveners, who as necessaries men were interested in the fund represented by the freight, moved to set aside the judgment of June 15, 1931, on the ground that the document was merely an ordinary agent's authority to collect the freight, & that even if it amounted to an equitable assignment the action must fail because the assignor was not joined as a pltf.:—*Held:* on the evidence of pltfs., combined with the document itself, there was an equitable assignment of the freight & demurrage to pltfs.; where the ct. was satisfied that there was no danger of fraud or harsh treatment of the assignor it could dispense with the presence of the assignor as a joint pltf.; & pltfs. could maintain their action *in rem*.—THE ZIGURDS (No. 3), [1932] P. 113; 101 L. J. P. 84; 148 L. T. 72; 48 T. L. R. 561; 18 Asp. M. L. C. 324; *revsd.* on another point, [1933] P. 87, C. A.

204d. Amount recoverable by assignee limited.]—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—*Held:* (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltfs. were entitled to recover.—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.

Annotation:—As to (1) **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

205. *Add. Annotations:—As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Lindsell, [1922] 1 K. B. 21; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. *As to* (2) **Consd.** Timpson's Exors. *v.* Yerbury, [1936] 1 All E. R. 186. **Refd.** Allgemeine Versicherungs Gesellschaft Helvetia *v.* German Property Administrator (1931), 144 L. T. 705; The Zigurds (No. 3) (1932), 49 T. L. R. 193; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351. *As to* (3) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; Harmer *v.* Armstrong, [1934] Ch. 65. *Generally*, **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

211. *Add. Annotation:—As to* (1) **Refd.** Palmer *v. v.* Carey, [1926] A. C. 703.

214a. ——.]—Order to pay money out of a particular fund gives the party a specific lien thereon.—SMITH *v.* EVERETT (1792), 4 Bro. C. C. 64; 29 E. R. 780.

Annotations:—**Refd.** Crowfoot *v.* Gurney (1832), 9 Bing. 372; Best *v.* Argles (1834), 2 Cr. & M. 394.

221a. —— Part of debt.]—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND, No. 204a, *ante*.

236. *Add. Annotation:*—**Apprvd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. —— —— *Building contract apportioning price between builder & third party.*]—GRANT *v.* TRAVIS, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—**CAN.**

205 xi. —— ——.]—An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers.—THAKAR DAS *v.* MALIK CHAND (1932), I. L. R. 14 Lah. 325.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

sm. *Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*]—CLARKE BROTHERS, LTD. *v.* GOODIN & PEDERSON, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—**CAN.**

223 i. *Assigning money due or to become due—Under contract.*]—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re* MATTHEWS SHEET METAL & ROOFING CO., LTD., *Ex p.* MARTIN, [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—**CAN.**

223 ii. —— *Under policy.*]—*Held:* the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus L. R. 417.—**AUS.**

sp. *To agent holding its funds—To pay to holder of order.*]—*Re* BRITISH COLUMBIA EMPIRE SALMON CANNERS, LTD. (1934), 49 B. C. R. 89.—**CAN.**

237. *Add. Annotation :*—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

250a. Directions to pay proceeds of cargo to creditor.]—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—HOLLAND & HUMBLE'S ASSIGNEES *v.* —— (1815). 1 Stark. 143; 171 E. R. 427; *sub nom.* HEYWOOD *v.* WARING, 4 Camp. 291; *sub nom. Re* HOLMES, *Ex p.* HEYWOOD, 2 Rose, 355, N. P.

Annotations :—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Giles *v.* Grover (1832), 9 Bing. 128; Malcolm *v.* Scott (1843), 3 Hare, 39.

258. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

258a. Agreement to pay proceeds into lender's bank—Advances for purchase of goods.]—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of purchased. Resp. claimed a charge above assets in respect of the advan repaid :—*Held :* as the agreement did either contractually or otherwise, create right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—PALMER *v.* CAREY, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

Annotation :—**Distd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

259. *Add. Annotation :*—**Dbtd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

269. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

274. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

274a. *S. P.* BRADLEY *v.* —— (1744), Ridg. *temp.* H. 194; 27 E. R. 801, L. C.

280. *Add. Annotation :*—*As to* (1) **Refd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

303. *Add. Annotation :*—*As to* (1) **Distd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

307. *Add. Citations :*—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

Add. Annotation :—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

PART IV. SECT. 2, SUB-SECT. 1.—B. (f).

238 i. *Banker's deposit receipt—Surrender to bank—New deposit receipt taken out.*]—In order to transfer the beneficial interest in a deposit receipt, a written assignment is unnecessary. It is sufficient if the deposit receipt is surrendered to the bank, & a new deposit receipt taken out, with intent to pass the beneficial interest, in the names of the persons to whom the depositor intends to pass the beneficial interest. S., the owner of a deposit receipt for £900, surrendered the same to the bank, & directed a new deposit receipt to be made out in the names of himself & his two nephews, with the intention that the interest in the same should at his own death pass to his nephews. S. subsequently died :—*Held :* there had been an effectual transfer of the beneficial interest, & at the death of A. the same passed to the two nephews.—MCENEANEY *v.* SHEVLIN, [1912] 1 I. R. 32.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

243 iii. —— ——.]—It is an essential requisite of an equitable assignment of a chose in action that the fund which is being disposed of shall be indicated in such a way that it can be identified.—DUNNETT *v.* WHITEWATER RURAL MUNICIPALITY, [1932] 1 W. W. R. 749; 40 Man. L. R. 267; 3 D. L. R. 135.—**CAN.**

246 iv. —— ——.]—*Held :* the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—STIRLING COLLIERIES, LTD. *v.* JONES, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*]—KIDD *v.* HARDEN, MCCONNAL *v.* HARDEN, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—**CAN.**

258 a i. *Agreement to pay proceeds to lender—Advances for purchase of goods.*]—B. being indebted to a co. for the price of sheep which it had purchased on his behalf, by an agreement in writing undertook so long as his indebtedness to the co. should continue not to sell any of the sheep without the written consent of the co., & in the event of any sale with such consent to pay the nett proceeds to the co. in full or to the extent of his indebtedness. Some of the sheep having been sold :—*Held :* the agreement operated as an equitable assignment of the proceeds to the co.—*Re* MCPHERSON, THOM & CO.; SANDHURST & NORTHERN DISTRICT TRUSTEES, ETC., CO., LTD. *v.* COOMBIE PASTORAL CO. PTY., LTD., [1929] V. L. R. 295; Argus L. R. 240.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C.

o. Add "*revsd.*, [1921] 1 W. W. R. 839."

PART IV. SECT. 2, SUB-SECT. 3.

sn. *Lodging notes as collateral security.*]—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank" :—*Held :* not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W R. 931.—**CAN.**

st. *Indorsement of lien note.*]—*Held :* to constitute a good equitable assignment thereof.—CANADIAN BANK OF COMMERCE *v.* LA BRASH, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—**CAN.**

PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*]—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—STARR CO. OF CANADA, LTD. *v.* MERRILL, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—**CAN.**

PART IV. SECT. 6.

288 ii. ——.]—LOEPPKY *v.* LANG, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—**CAN.**

sa. *Assignment of lien agreement—Whether consideration amount due under lien.*]—A. R. WILLIAMS MACHINERY CO., LTD. *v.* MOORE, [1926] 4 D. L. R. 568.—**CAN.**

Part V.—Notice of Assignment.

See, now, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

322a. Assignment of covenant of indemnity on assignment of lease—Notice to one of two covenantors—One covenantor bankrupt.]—In 1923 a lease was granted to deft. & his brother, B. B., who were in partnership. In 1927 the partnership was dissolved, & the lease, as part of the terms of the dissolution, was allotted to B. B., who formed a limited co., B. B., Ltd., to which the lease was duly assigned. In 1930 B. B., Ltd., went into liquidation. In 1931 the liquidators sold the lease to G., the third party in these proceedings, but the assignment was made, by the direction of the third party, to R. B. B., the son of B. B. The covenant of indemnity in this assignment was given by R. B. B. & the third party to the co. & the liquidators. Both B. B. & R. B. B. were adjudicated bkpt. before 1936. In 1936 the co. acting by the liquidators assigned the benefit of the covenant of indemnity to deft., & deft. released the co. & the liquidators from the covenant "except in so far as is necessary to enable" deft. to enforce the assigned covenants. Notice of this assignment was given to the third party only & not to R. B. B. The rent under the lease falling into arrear, the lessor sued deft., as an original lessee, & deft. brought in the third party alleging a right to indemnity under the assignment of the benefit of the covenant in 1936. For the third party it was contended that (*a*) the assignment of 1936 was an assignment by one only of joint covenantees & could not operate to assign the benefit of the covenants, (*b*) notice of the assignment had only been given to one of the joint covenantors & the requirements of Law of Property Act, 1925, s. 136, had not been complied with, (*c*) the assignment of 1936 purported to be an assignment of a right of action sounding in damages & not of a debt, (*d*) on the construction of the assignment, the third party was under no liability by reason of the release of the covenant therein contained :—*Held :* (1) by virtue of Law of Property Act, 1925 (c. 20), s. 81, the claim for indemnity must be treated as a joint & several claim, not as merely a joint claim ; (2) by virtue of Bkpcy. Act, 1914 (c. 59), s. 118, it was not necessary to join or to give notice to a covenantee who had since become bkpt. ; (3) the claim was for a debt, not for liquidated damages ; (4) the assignment properly construed was effective to assign the benefit of the covenants.

Semble : it is necessary that the notice under Law of Property Act, 1925 (c. 20), s. 136, be given to all solvent debtors or covenantors, where there are joint debtors or covenantors.—JOSSELSON *v.* BORST, [1937] 3 All E. R. 722 ; 81 Sol. Jo. 668, C. A.

334. *Add. Annotation :*—**Refd.** The Zigurds (No. 3), [1932] P. 113.

338a. —— ——.]—A. B. was entitled to a reversionary interest in a fund vested in four trustees, of whom he was one. A. B. mortgaged his interest to C. D., another trustee :—*Held :* C. D.'s notice in the transaction was a sufficient notice to the trustees of the mtge. ; but A. B.'s notice was not.—WILLES *v.* GREENHILL (No. 1) (1860), 29 Beav. 376 ; 54 E. R. 673 ; *affd. on other grounds* (1861), 4 De G. F. & J. 147, L. C.

354. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

393. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee

406. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

407. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

417. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 137."

421. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

PART V. SECT. 1, SUB-SECT. 1.

311 i. *Assignment—As security—Of debts.*]—OKELL MORRIS & CO. *v.* DICKSON (1902), 9 B. C. R. 151.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

sb. *Assignment of lien.*]—HENDSBEE *v.* SONORA TIMBER CO., LTD., [1928] 1 D. L. R. 642 ; 59 N. S. R. 457.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

so. *To guarantor—Notice not given to debtor.*]—DONALD *v.* JUKES, [1921] 2 W. W. R. 208 ; 56 D. L. R. 692 ; 60 S. C. R. 652.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.

sd. *Of debtor.*]—Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned.—ST. JOHN & QUEBEC RY. CO. *v.* BANK OF BRITISH NORTH AMERICA & HIBBARD CO. (1921), 67 D. L. R. 650 ; 62 S. C. R. 346.—**CAN.**

PART V. SECT. 4.

sf. *Before action—Judicature Act,* 1909, *s.* 19 (6).]—WOODSTOCK ELECTRIC RAILWAY, LIGHT & POWER CO. *v.* DOMINION TANNERIES, LTD. (1918), 45 N. B. R. 408.—**CAN.**

PART V. SECT. 5.

b i. —— *That alleged assignee had possession of notes.*]—Although debtors may have known that notes were in the possession of a bank, the alleged assignee :—*Held :* this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931. —**CAN.**

PART V. SECT. 6.

381 ii. —— —— ——.]—On an assignment of a debt the express notice in writing to the debtor which under sect. 37 (*m*) of Judicature Act is required to complete the transfer of the legal right to the debt need not be in any special form, it being sufficient if the effect upon the debtor is to convey to him with sufficient certainty the fact that the right to demand payment has been transferred to a certain third person as assignee.—GENERAL MOTORS ACCEPTANCE CORPN. & WILLIAMSON *v.* JOHNSON, [1930] 2 W. W. R. 167 ; 4 D. L. R. 291 ; 24 Alta. L. R. 475.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313 ; 10 D. L. R. 232 ; 23 W. L. R. 445."

p i. ——.] — The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—GORDON *v.* GORDON, [1924] 2 D. L. R. 74 ; 1 W. W. R. 903 ; 18 Sask. L. R. 187.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (b).

sk. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Cert[illegible] handed to second assignee.*]—J. I. [illegible] THRESHING MACHINE CO. *v.* GENERAL MOTORS ACCEPTANCE CORPN., [1924] 4 D. L. R. 1297 ; 3 W. W. R. 694.—**CAN.**

437a. Assignment of freight.]—Among the claimants to a fund in ct., representing the proceeds of a sale of a foreign vessel & her freight, were a mtgee. of the ship & a firm of ship brokers who acted as the ship's agents & made advances on behalf of the ship. Both claimants relied upon documents which were admitted to be good equitable assignments of the freight. The mtgee.'s assignment was prior in time. The ship's agents relied upon a letter dated Mar. 2, 1931, & signed by the master of the ship with the consent & approval of her managing owner. Having received this letter, the ship's agents on Mar. 5, 1931, wrote to the receivers of cargo: "S.S. *Z.* We beg to give you notice that we hold captain's authority to collect the freight per this steamer's cargo, against which we have made payments." The mtgee. had given no notice of his assignment. In an action brought by the mtgee. against the owners claiming possession of the ship & her freight under his mtge., the ship's agents intervened to claim against the freight as assignees relying on their assignment, & on the letter of Mar. 5, 1931, as being notice thereof:—*Held:* in the circumstances the letter was a good & sufficient notice of the assignment.—SMITH *v.* ZIGURDS S.S. OWNERS & E. A. CASPER, EDGAR & CO., LTD., [1934] A. C. 209; *sub nom.* SMITH *v.* E. A. CASPER EDGAR & CO., LTD., 103 L. J. P. 28; 150 L. T. 303; 39 Com. Cas. 178; 18 Asp., M. L. C. 475; *sub nom.* THE ZIGURDS (No. 3), 50 T. L. R. 162, H. L.

440. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

460. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

461. *Add. Annotation:*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

463. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part VI.—Effect of Assignment.

475. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Bernstein, Barnett *v.* Bernstein (1924), 69 Sol. Jo. 88. *As to* (2) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

483. *Add. Annotation:*—**Apld.** Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

483a. —— ——.]—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL, No. 77a, *ante*.

485. *Add. Annotations:*—**Refd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

504. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

509. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1922] 2 K. B. 433.

519. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

542. *Add. Annotation:*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

544. *Add. Annotation:*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

PART V. SECT. 10.

sl. *Registered judgment—Notice given against creditor—Of assignment.*]—If a vendor of land, in order to secure an indebtedness, assigns all the moneys due or to become due under the agreement of sale, such assignment not being registered, but due notice thereof being given to the purchaser, the assignee will be entitled to the moneys as against one who subsequently obtains & registers judgments against the vendor.—CANADIAN BANK OF COMMERCE *v.* ROYAL BANK OF CANADA, [1921] 2 W. W. R. 462; 60 D. L. R. 275; 29 B. C. R. 407.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

sm. *Assignment as security—Payment of debt—Direction by assignee for payment o moneys to assignor—Right of assignor to sue in own name.*]—ELLIOTT *v.* LE PAGE (Man.), [1929] 3 D. L. R. 912.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

476 ii. —— —— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457: 2 W. W. R. 864.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

t i. —— *Of contract for sale of land.*]—INTERSTATE INVESTMENT CO., LTD. *v.* MOBBS (1928), 28 S. R. N. S. W. 572; 45 N. S. W. W. N. 176.—**AUS.**

u. Add "*revsd. in part*, 4 A. R. 267."

e i. —— *Of lien.*]—Pltf., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor:—*Held:* pltf. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—BARNES *v.* BLACK, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

m i. —— —— *Effect of Land Titles Act, s.* 101.]—ARMSTRONG *v.* MARSHALL (1915), 8 W. W. R. 300; 19 D. L. R. 183; 8 Alta. L. R. 449.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

512 ia. —— —— —— ——.]—Pltf. brought action on July 2, 1929, for balance of account for goods sold & delivered. On Oct. 25, following, pltf. assigned the debt to three persons who on the following day assigned the debt to M., & on Jan. 1, 1930, M. re-assigned to pltf.:—*Held:* the several assignments were merely equitable, & pltf. was the proper person in whose name the action should be brought.—MOUAT BROS. & CO. *v.* WARNIER, [1931] 1 D. L. R. 569; 43 B. C. R. 238.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

550 iii. —— ——]—SHEPHERD *v.* LIVINGSTON, [1924] 1 D. L. R. 723; 1 W. W. R. 455.—**CAN.**

550 iv. —— ——.]—MCPHERSON *v.* LEES (ANDREW), LTD., [1926] N. Z. L. R. 523.—**N.Z.**

sw. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

Part VII.—Assignment subject to Equities.

592. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

601. *Add. Annotations :*—**Consd.** *Re* Pinto Leite *Ex p.* Des Olivaes, *[1929]* 1 Ch. 221. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

601a. —— **Assignment of debt payable in futuro.**]—In 1918, C., a creditor of a firm, agreed to leave the sum constituting her debt on deposit with the firm for fifteen years from Jan. 1, 1917, upon the terms *(inter alia)* that interest & commission thereon should be paid to V. for his own use, & that in certain events, which subsequently happened, V. should receive a share of the firm's profits, which he in fact received during the years 1918–1921. In 1920, by C.'s direction, the debtor firm transferred C.'s debt by a book entry into the name of F., V. continuing to receive interest & commission as before, & on Feb. 24, 1926, F. made an equitable assignment of the debt to V. Notice of the assignment was given to the debtor firm on Mar. 2, 1926, whereupon the firm transferred the debt by a book entry into the name of V. At the date of the said equitable assignment by F., F. was under a liability to the debtor firm in respect of certain accommodation bills for which, as between F. & the firm, F. was liable, but such liability did not accrue due as a debt until after notice of assignment had been given, namely, when the debtor firm expended £15,000 in taking up the acceptances. On Mar. 15, 1926, the debtor firm presented their petition for a receiving order & were subsequently adjudicated bkpt. In a claim by V. to prove in the firm's bkpcy. :—*Held :* the assignment by F. to V. was subject to all rights of set-off which had accrued due on the part of the firm against F. at the date of the notice of assignment but was not subject to any right of set-off in respect of the £15,000 which had not accrued due at that date ; nor did the fact that the debt assigned was a debt payable *in futuro*, for which the assignor was not at the date of the notice of assignment in a position to sue, affect the general rule governing the assignment of a chose in action.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES, [1929] 1 Ch. 221 ; 98 L. J. Ch. 211 ; 140 L. T. 587 ; [1928] B. & C. R. 188.

604. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

605. *Add. Annotations :—As to* (2) **Distd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111 ; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

607a. **For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.**]—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of assignment was given to deft., the latter obtained judgment against the assignor for damages for breach ot warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim :—*Held :* the set-off was valid.—LAWRENCE *v.* HAYES, [1927] 2 K. B. 111 ; 96 L. J. K. B. 658 ; 137 L. T. 149 ; 91 J. P. 141 ; 43 T. L. R. 379, D. C.

Part VIII.—Voluntary Assignments.

613. *Add. Annotation :*—**Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330.

617. *Add. Annotation :*—**Consd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

PART VII. SECT. 1.

565 iii. ——.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

565 iv. —— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—HAMILTON *v.* RAILTON, [1925] 3 D. L. R. 1090 ; [1925] 3 W. W. R. 136 ; *revsg.*, [1925] 2 W. W. R. 195.—**CAN.**

566 viii. —— —— *Assignment of security by bank.*]—Where a creditor, a bank, held securities for its debt which were subject to orders from the debtor to pay certain other creditors out of the surplus of the proceeds thereof over & above the amount due the bank :—*Held :* a third party by purchasing the securities from the bank with full knowledge of said orders placed [illegible] in the position of the bank & [illegible] whatever liability the orders imposed upon the bank.—STEPHENS (G. F.) & Co., LTD. *v.* PERDUE, WERNER *v.* PERDUE & EATON, [1931] 3 W. W. R. 90 ; 4 D. L. R. 46.—**CAN.**

q i. —— *Notice of covenant by assignor—Whether assignee bound.*]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 414 ; 58 O. L. R. 97.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

ti. ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.

604 ii. Add "*revsd.* in part, 25 A. R. 179."

604 iv. —— ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

619. *Add. Annotation :*—**Refd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

624a. —— ——.]—SLOANE *v.* CADOGAN (1808), cited in 12 Sim. at p. 291.

Annotations :—**Consd.** Edwards *v.* Jones (1836), 1 My. & Cr. 226; Beatson *v.* Beatson (1841), 12 Sim. 281. **Distd.** Meek *v.* Kettlewell (1843), 1 Ph. 342. **Apld.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176; Donaldson *v.* Donaldson (1854), Kay, 711. **Refd.** Fenner *v.* Taylor (1831), 2 Russ. & M. 190; M'Fadden *v.* Jenkyns (1842), 1 Hare, 458; Price *v.* Price (1851), 21 L. J. Ch. 53; Bridge *v.* Bridge (1852), 16 Beav. 315; Voyle *v.* Hughes (1854), 2 Sm. & G. 18; Gilbert *v.* Overton (1864), 4 New Rep. 420; Glegg *v.* Rees (1871), 7 Ch. App. 71.

634. For "*Held :* (1) as it was the intention of the settlor," etc., read "*Held :* (1) as it was not the intention of the settlor," etc.

Add. Annotations :—*As to* (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *As to* (3) **Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330. *Generally*, **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

PART IX.

p i. —— *Under Assignment of Book Debts Act*, 1923 (*c.* 29).]—*Re* RAPORT, DENISON *v.* UNION BANK OF CANADA, [1925] 3 D. L. R. 1058; 57 O. L. R. 374; 5 C. B. R. 811.—**CAN.**

p ii. —— ——.]—K., on June 8, made a chattel mtge. to pltfs. on his stock-in-trade, & by the same instrument purported to assign to pltfs., as additional security, all present & future book debts arising out of or connected with K.'s business. The affidavit of *bona fides* described the instrument as a bill of sale by way of mtge. & asserted that it was not taken for the purpose of protecting the "goods & chattels" mentioned therein against the creditors of the mtgors., etc. :—*Held :* the instrument did not comply with above statute & was invalid as an assignment.—WESTLAKE *v.* MARTIN, [1930] 4 D. L. R. 805; 66 O. L. R. 89; 11 C. B. R. 469; *varg.*, 11 C. B. R. 87.—**CAN.**

p iii. —— *Under Assignment of Book Debts Act, R. S. O.*, 1927.]—The Assignment of Book Debts Act, R. S. O., 1927, confers no greater right upon an assignee of a chose in action than he had before. All it does is to make a general assignment of book debts void, as against creditors & subsequent purchasers or mtgees. in good faith & for value, unless registered. By registration pltf. co had preserved whatever rights it acquired by virtue of the assignment & no more.—SNYDER'S, LTD. *v.* FURNITURE FINANCE CORPN., LTD., [1931] 1 D. L. R. 398; 66 O. L. R. 79.—**CAN.**

sp. *Book account—Under Assignment of Book Accounts Act, R. S. B. C.*, 1924 (*c.* 16).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

st. —— ——.]—Registration under Assignment of Book Accounts Act, R. S. B. C., 1924, of an assignment of book accounts does not confer any greater rights upon the assignee than he had by virtue of the assignment; the effect of the registration is merely to preserve those rights. The fact that the assignment is also registered under Cos. Act, 1929, does not "confirm" it, *i.e.*, make it good without being subject to existing superior equities.—BURRARD DRYDOCK CO., LTD. *v.* BANK OF TORONTO & VULCAN ENGINEERING WORKS, LTD., [1933] 1 W. W. R. 222; 46 B. C. R. 447.—**CAN.**

CHURCHYARD.

See BURIALS; ECCLESIASTICAL LAW.

CINEMATOGRAPH.

See THEATRES.

CITIZENS.

See ALIENS; CONSTITUTIONAL LAW; LOCAL GOVERNMENT.

CITY.

See LOCAL GOVERNMENT; METROPOLIS.

CIVIL LAW.

See ECCLESIASTICAL LAW.

CIVIL RIGHTS.

See ALIENS; CONSTITUTIONAL LAW; ROYAL FORCES; and titles *passim*.

CLERKS.

Arraigns, of	*See* CRIMINAL LAW.
Articled	,, SOLICITORS.
Assize, of	,, CRIMINAL LAW.
Barristers'	,, BARRISTERS.
Ecclesiastical	,, ECCLESIASTICAL LAW.
Justices, to	,, MAGISTRATES.
Local Authorities, to	,, LOCAL GOVERNMENT.
Parish	,, ECCLESIASTICAL LAW.
Peace, of the	,, LOCAL GOVERNMENT.
Town	,, LOCAL GOVERNMENT.

CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

Part II.—Jurisdiction of the Courts.

11. *Add. Annotation :*—**Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

13a. Application of funds cy-près.]—*Re* HOMES FOR INEBRIATES ASSOCIATION, THE ASSOCIATION *v.* A.-G. (1935), 79 Sol. Jo. 903.

13b. Application of funds—Civil Service Association—Application intra vires.]—KELLY *v.* WYLD (1937), 81 Sol. Jo. 179.

Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation :*—**Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

18. *Add. Annotations :—As to* (1) **Consd.** Lamberton *v.* Thorpe (1929), 141 L. T. 638. **Refd.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602; Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

20. *Add. Annotations :—As to* (1) **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251. *Generally*, **Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

20a. —— To alter qualification for membership.]—GRIMWOOD *v.* ALDENHAM (1928), 72 Sol. Jo. 569.

21a. —— Binding without express notice—Agreement to be bound by "any further rules & alterations to existing rules."]—Pltf. who was under twenty-one years of age, applied in Mar. 1932, for a licence as a boxer in the following words: "I hereby apply for a licence as a boxer &, if the licence is granted me, I declare to adhere strictly to the rules of the British Boxing Board (1929) as printed & abide by any further rules or alterations to existing rules as may be passed." A licence was duly granted & renewed for a further year on Mar. 1, 1933. A copy of the rules was supplied to pltf. at the time of his application, & reg. 20, para. 16, provided that the boxer's money might be stopped only when he was disqualified "for committing a deliberate foul, for not trying, or retiring without sufficient cause, or if the referee gives a no contest decision." This paragraph was altered on June 17, 1932, to read: "Boxers in case of disqualification are only entitled to receive bare travelling expenses, pending the decision of the board . . . when the board . . . may deal with the money as it thinks fit." No notice of the altered rules was given to pltf. On July 12, 1933, pltf.

PART II.

sc. *Validity of rules.*]—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

12 ii. —— *Majority of members acting illegally—Injunction.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

12 iii. —— —— ——.]—The property of a voluntary society cannot be diverted by a majority of its members from the purposes for which it was given by those who contributed to it, or devoted to purposes that are alien to or in conflict with the fundamental rules laid down by the society, & the dissenting minority who adhere to these rules are entitled to have them restrained from so doing.—KOWALCHUK *v.* UKRAINIAN LABOR FARMER TEMPLE ASSOCN., [1935] 1 W. W. R. 529; 2 D. L. R. 691; 43 Man. L. R. 76.—**CAN.**

sd. *Dispute outside province of domestic tribunal.*]—Where the rules of a voluntary society provide that certain disputes & complaints should come before the domestic tribunals the law cts. will not as a rule usurp their functions, but where a dispute arises with which the rules never designed the domestic tribunals to deal, the law cts. will not refer the matter to the domestic tribunals but will themselves deal with it.—CRISP *v.* SOUTH AFRICAN COUNCIL OF THE AMALGAMATED ENGINEERING UNION, [1930] App. D. 225.—**S. AF.**

sf. *Failure to pass candidate—No injustice—Whether court will interfere.*] The mere fact of failing to pass an examination held under the Barbers Act is, in the absence of evidence of unfairness, no ground for interference by the ct. under Barbers Act Amendment Act, 1934.—HARLEY *v.* BARBERS' ASSOCN. OF BRITISH COLUMBIA (1936), 50 B. C. R. 327.—**CAN.**

sg. *Competition for scholarship—Examination—Fraud & mistake—Validity of second award.*]—L'ACADÉMIE DE MUSIQUE DE QUÉBEC *v.* PAYMENT, BERNIER & PICHE, [1936] S. C. R. 323; 4 D. L. R. 279.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

c i. ——.]—A person on becoming a member of a lawful assocn. or society is, subject to its constitution, bound by the decisions of the society on matters of dispute between him & the society, unless such decision is contrary to natural justice, or in violation of the rules of the society, or done *malâ fide*.—CUTLER *v.* LAW SOCIETY OF MANITOBA, [1930] 3 W. W. R. 387; *affd.*, [1931] 2 W. W. R. 653; 4 D. L. R. 453; 39 Man. L. R. 535.—**CAN.**

sk. *Bye-law — Validity —Restricting play by women members of golf club.*]—A club, incorporated under the provisions of the Incorporated Societies Act, 1908, had power under its constitution to make & alter its rules, & its committee had authority to make bye-laws within certain prescribed limits. The rules provided for the admission of various classes of members, each class enjoying specifically defined rights, but in the case of ordinary members no distinction was drawn between the playing privileges of men & women. The committee, without the previous authority of a general meeting, purported to enact a bye-law prohibiting women who were ordinary members from playing on the club links on Saturdays before the hours of 3 p.m., & then only after men players had commenced their rounds. It was further provided that women playing on Saturday afternoons should give the right of way to men players. The committee, in making this bye-law, relied upon one of the rules of the club, which was to the following effect: "The committee may make bye-laws for the regulation of the club-house, grounds, & links, & for the arrangement & control of games & matches." Certain women members, who challenged the validity of this bye-law, played on a Saturday & were fined by the committee & were suspended from the exercise of their privileges as members. Upon an application by these members to have the club restrained from putting such bye-law into force & acting thereunder:—*Held:* the committee, in making the bye-law in question, had acted beyond the powers conferred upon it by the rules of the club, & the bye-law was therefore invalid.—O'NEILL *v.* PUPUKE GOLF CLUB, INCORPORATED, [1932] N. Z. L. R. 1012.—**N.Z.**

PART III. SECT. 1, SUB-SECT. 2.

f i. —— —— *Necessity for unanimous vote or consent of all members.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

f ii. —— ——.]—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting:—*Held:* the repeal of the rule did not itself require a two-thirds majority.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

agreed to box at the White City Stadium on the terms that he should receive £3,000 win, lose or draw. At the contest pltf. was disqualified for hitting below the belt. The promoters of the contest paid the sum of £3,000 to the Board of Control at their request, & after holding an inquiry the Board withheld the money from pltf. on the ground that he had been disqualified. Pltf. brought proceedings to recover the amount against White City Stadium, Ltd., & the Board of Control:—*Held:* (1) the contract with the Board of Control was too closely connected with a contract as to employment that it was binding on the infant pltf. having regard to the fact that the contract as a whole was for his benefit; (2) notice of the altered rules was unnecessary in order to make them binding on pltf. in view of the terms of his application for a licence.—DOYLE *v.* WHITE CITY STADIUM, LTD., [1935] 1 K. B. 110; 104 L. J. K. B. 140; 152 L. T. 32; 78 Sol. Jo. 601, C. A.

Annotation:—*As to* (1) **Refd.** Mercantile Union Guarantee Corpn., Ltd. *v.* Ball, [1937] 3 All E. R. 1.

21b. Notice of general meeting—Who entitled to.]—Pltfs. were the captain & the secretary of the women's section of a golf club, of which deft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid:—*Held:* under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—COLE *v.* MERTON PARK (WIMBLEDON) GOLF CLUB, LTD. (1927), 43 T. L. R. 400.

23. *Add. Annotation:*—*As to* (1) **Distd.** *R. v.* General Medical Council, [1930] 1 K. B. 562.

33a. —— —— ——.]—WELLS *v.* MYDDLETON (1935), 79 Sol. Jo. 270, C. A.

35. *Add. Annotations:*—*As to* (2) **Expld.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602. *Generally*, **Refd.** Cooper *v.* Wilson, [1937] 2 K. B. 309.

38. *Add. Annotations:*—**Consd.** Soc. of Carpenters, Cabinet Makers & Joiners *v.* Braithwaite, General Union of Operative Carpenters & Joiners *v.* Ashley, [1922] 2 A. C. 440. **Folld.** Wing *v.* Burn (1928), 44 T. L. R. 258. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B 682.

39. *Add. Annotations:*—*As to* (1) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682; Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

39a. —— —— ——.]—WING *v.* BURN (1928), 44 T. L. R. 258.

39b. —— —— ——.]—DONALDSON *v.* INSTITUTE OF BOTANO-THERAPY, LTD. (1937), 184 L. T. Jo. 384.

46a. —— —— ——.]—In an action against the officers of a club for an injunction restraining them from enforcing a resolution by which the council of the club has excluded pltf. from membership of the club, the questions for the ct. are, (*a*) whether the rules of the club have been observed, (*b*) whether the council has given pltf. a fair hearing, & (*c*) whether the council has acted in good faith.—LAMBERTON *v.* THORPE (1929), 141 L. T. 638; 45 T. L. R. 420.

Annotation:—**Refd.** Lumiansky *v.* Myddleton (1934), 78 Sol. Jo. 223.

46b. —— **Withdrawal of licence as boxing manager —In accordance with rules.**]—LUMIANSKY *v.* MYDDLETON (1934), 78 Sol. Jo. 223.

53a. —— **Claim by member for proportion of—On winding up of club.**]—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a

PART III. SECT. 2, SUB-SECT. 2.—A.

24 i. *Power to expel after inquiry by committee—Inadequate inquiry.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

26 i. *Power to expel for infringing rules.*]—Where a club was registered under Cos. Act:—*Held:* the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—MURPHY *v.* SYNNOTT, [1925] N. I. 14.—**IR.**

PART III. SECT. 2, SUB-SECT. 2.—B.

29 iv. —— —— ——.]—Resp., being charged with having grossly misconducted himself within the meaning of a rule of applt. club, was summoned before a meeting of the club committee to show cause why he should not be dealt with under the rule. He was aware of the details of the charges preferred against him before attending the meeting, but, having attended as requested, & having failed in the opinion of the committee to justify his conduct, was suspended from membership. He took action against the club to have the suspension removed, & for damages, on the ground that the committee's decision, having been arrived at without affording him an opportunity of cross-examining the witnesses against him, was contrary to the principles of natural justice:—*Held:* the committee was not bound by the formal rules of evidence, & the inquiry having been conducted in accordance with the club's rules & the decision of the committee arrived at in good faith, in pursuance of an honest desire to protect the interests of the institution, after resp. had been given every facility for presenting a defence, the suspension was not contrary to the principles of natural justice, notwithstanding that no opportunity was given to cross-examine the witnesses.—PERRY *v.* FELLDING CLUB, [1929] N. Z. L. R. 529.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. —— —— ——.]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—HENDERSON *v.* KANE & PIONEER CLUB, [1924] N. Z. L. R. 1073.—**N.Z.**

ab. *Declaration of membership.*]—Pltf., a member of a society which was incorporated under Societies Act, 1924, & which owned property, was expelled therefrom without having been given notice of the proceedings against him or particulars of the charge or names of the complainants:—*Held:* he was entitled to a declaration that he had been wrongfully expelled & was still a member in good standing of the society.—KLIS *v.* POLISH SOCIETY FOR BROTHERLY AID OF COLEMAN, [1932] 1 W. W. R. 683; [1932] 2 D. L. R. 136; 26 Alta. L. R. 90.—**CAN.**

member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year :—*Held :* A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee ; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re* CURZON SYNDICATE, LTD. (1920), 149 L. T. Jo. 232.

54. For "**Entrance fee payable by instalments**" read "**Entrance fee—Payable by instalments.**"

54a. —— **Claim by member for return of—On winding up of club.**]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

61. *Add. Annotation :* — **Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

Part IV.—Liability of Clubs and Members.

91. *Add. Annotation :*—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

91a. —— **Liability for loss or damage to member's goods—Effect of negligence—Construction of rule.**]—One of the rules of a proprietary club provided that the proprietors would not be responsible for the loss of or damage to any article brought by members or guests into the club but would take all reasonable care of articles for which a receipt would be given if the same were deposited in the office :—*Held :* the rule covered loss or damage caused by negligence.—ORCHARD *v.* CONNAUGHT CLUB (1930), 46 T. L. R. 214 ; 74 Sol. Jo. 169.

Part VI.—Debentures.

105. *Add. Citations :*—[1922] 1 Ch. 51 ; 91 L. J. Ch. 93 ; 126 L. T. 225.

Part VII.—Duty Payable by Clubs.

106. *Add. Annotation :—As to* (3) **Reld.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotations :*—**Apld.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380. **Reld.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

110. *Add. Annotation :*—**Consd.** Watson *v.* Cully, [1926] 2 K. B. 270.

111a. —— —— **Whether in "club"—Temporary premises.**]—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours :—*Held :* as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—WATSON *v.* CULLY, [1926] 2 K. B. 270 ; 95 L. J. K. B. 554 ; 135 L. T. 28 ; 90 J. P. 119 ; 42 T. L. R. 529 ; 24 L. G. R. 357 ; 28 Cox, C. C. 194, D. C.

Annotation :—**Reld.** Clarke *v.* Griffiths, Peacock *v.* Same (1926), 95 L. J. K. B. 965.

111b. —— —— —— **Additional unregistered premises.**]—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer,

PART IV. SECT. 1, SUB-SECT. 1.

70 ii. —— *Money lent to lodge.*]—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

PART IV. SECT. 2.

se. *General rule.*]—If liabilities are to be fastened upon any members of an unincorporated voluntary assocn. it must be by reason of the acts of those members themselves or their agents, & the agency must be made out by the person who relies on it, for none is implied by the mere fact of assocn.—TOEWS *v.* ISAAC, [1929] 2 D. L. R. 719 ; 1 W. W. R. 817 ; 38 Man. L. R. 201 ; *revg. in part*, [1928] 1 W. W. R. 643.—**CAN.**

which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94 :—*Held :* as the liquor was not supplied in the registered premises of the club it was not supplied " in a club " within the above sect., & the conviction must be quashed.—CLARKE *v.* GRIFFITHS, PEACOCK *v.* GRIFFITHS, [1927] 1 K. B. 226 ; 95 L. J. K. B. 905 ; 135 L. T. 58 ; 90 J. P. 151 ; 42 T. L. R. 541 ; 24 L. G. R. 466 ; 28 Cox, C. C. 240, D. C.

119. *Add. Annotation :*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

125. *Add. Annotation :*—**Consd.** Ashton *v.* Wainwright, [1936] 1 All E. R. 805.

125a. Effect of Licensing (Consolidation) Act, 1910 (c. 24), s. 96.]—Above section does not impliedly exclude registered clubs from the operation of sect. 82 of above Act, but it grants to the magistrate & the police special & additional powers in the case of registered clubs.—HAMMOND *v.* HANLON, [1935] 1 K. B. 474 ; 104 L. J. K. B. 239 ; 153 L. T. 13 ; 99 J. P. 134 ; 51 T. L. R. 195 ; 33 L. G. R. 12 ; 30 Cox, C. C. 215, D. C.

127a. Permitted hours on Sunday—Fixed number between specified hours—Discretion of club to alter limiting hours.]—Licensing Act, 1921 (c. 42), s. 2 (1), provides that " The hours during which intoxicating liquor may be sold or supplied on Sundays . . . in any . . . club . . . shall be as follows, that is to say, five hours, of which not more than two shall be between 12 noon & 3 in the afternoon, & not more than three between 6 & 10 in the evening. . . ." ; & s. 2 (2) provides that " Subject to the foregoing provisions, the permitted hours on Sundays shall be such as may be fixed . . . in the case of a club in accordance with the rules of the club. . . ." In a golf club the permitted hours on Sundays were fixed by a rule of the club at five hours, namely, from 12 noon to 1.30 p.m., 2 p.m. to 2.30 p.m., & 4.30 p.m. to 7.30 p.m. ; & pursuant to that rule a supply of intoxicating liquor was given to members of the club on a Sunday at 5 p.m. :—*Held :* on the true construction of above sect. the permitted hours on Sundays for a club were a period of not more than two hours, the whole of which should be between 12 & 8 p.m., & a period of not more than three hours, the whole of which should be between 6 & 10 p.m., & consequently that the supply in question was not authorised by the sect. —BROWN *v.* JOYCE, [1931] 1 K. B. 643 ; 100 L. J. K. B. 168 ; 144 L. T. 552 ; 95 J. P. 41 ; 47 T. L. R. 200 ; 75 Sol. Jo. 80 ; 29 L. G. R. 126 ; 29 Cox, C. C. 273.

Part IX.—Betting and Gaming in Clubs.

134a. —— Totalisator club.]—It is not an offence against Betting Act, 1853 (c. 119), s. 1, to carry on a totalisator club on a credit basis. —STREATHAM CINEMA, LTD. *v.* JOHN MCLAUCHLAN, LTD., [1933] 2 K. B. 331 ; 102 L. J. K. B. 536 ; 149 L. T. 447 ; 97 J. P. 273 ; 49 T. L. R. 471 ; 31 L. G. R. 219.

136. *Add. Annotations :*—**Apld.** R. *v.* O. K. Social & Whist Club (1929), 45 T. L. R. 570; Daniels *v.* Pinks, [1931] 1 K. B. 374. **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

136a. —— Whether members' club is.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming :—*Held :* in order that a house should be a common gaming house within

PART VIII. SECT. 3.

sf. *Right of members to store beer at club.*]—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & serv
R. *v.* ROCK (1923), 32 B. C. 67.—**CAN.**

' *Distributing " beer by servant of club—What amounts to.*]—R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

sh. *Supply during prohibited hours—No payment made.*]—Three members of a club were found drinking liquor at the bar of the club premises one Sunday morning. The secretary informed an officer of police, who had come upon the premises, that the members had not paid for the liquor, but that he had given it to them, thinking he was entitled to do so :—*Held :* the secretary had been rightly convicted on a charge of supplying liquor on licensed premises during prohibited hours.—*Re* DUFFEL, *Ex p.* TURNBULL (No. 2) (1931), 31 S. R. N. S. W. 46; 48 N. S. W. W. N. 14.—**AUS.**

Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favourable to all the players, & the fact that the club was a members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under s. 4 of the Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120.

140. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

140a. —— —— —— ——.]—There is a sufficient element of chance in the game popularly called a "whist drive" to make a club where it is played for money a "common gaming house." —R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

Annotation :—**Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

Part X.—Dissolution of Clubs.

148a. Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.]—*Re* CURZON SYNDICATE, LTD. No. 53a, *ante*.

PART IX. SECT. 2.

137 i. *Common gaming house—Who are liable as persons assisting in conducting business—Employees.*]—R. *v.* DORGAN, R. *v.* KESSLER, R. *v.* COATES (Sask.) (1927), 47 Can. Crim. Cas. 344. —**CAN.**

137 ii. —— —— *Steward.*]—R. *v.* SULLIVAN (1930), 53 Can. C. C. 243; 42 B. C. R. 435.—**CAN.**

137 iii. —— —— ——.]—Applt. was steward of a *bonâ fide* club which had a membership of 1,700 & provided all the regular facilities of a social club, including meals, billiard rooms, reading rooms, various card games, etc.; it also leased & operated a football field. Members contributed ten cents apiece to the funds of the club for each half hour's play at the poker table, irrespective of whether they were winning or losing. This money was not taken from the stakes or the pot, but was collected by the applt., as steward, from the players & paid over to the club. Only members were allowed in the premises, a bye-law expressly forbidding the introduction of visitors to any part of the club property. Applt. was convicted, under sect. 226 of the Criminal Code, of unlawfully keeping a common gaming house; & the conviction was affirmed by the appellate ct.:—*Held :* the club was not "a house . . . kept for gain" within sect. 226 of the Criminal Code & applt. had been wrongly convicted.—R. *v.* BAMPTON, [1932] S. C. R. 626; 4 D. L. R. 209; 58 C. C. C. 239.—**CAN.**

137 iv. —— —— *Secretary.*]—Slot machines maintained on the premises of a *bonâ fide* club were under the control of the club's secretary. He kept the keys of the machines, deposited money of the club in them & collected the "proceeds" of their operation for the benefit of the club. The playing of the machines was a game of at least "mixed chance & skill," if not of pure chance. The secretary was convicted of keeping a common gaming house :—*Held :* the conviction should be sustained.—R. *v.* THOMAS, [1934] 1 W. W. R. 493; 61 C. C. C. 301; 48 B. C. R. 76.—**CAN.**

137 v. —— *Lawfully incorporated club.*]—The facts that a club has been lawfully incorporated & its constitution & frame-work still formally exist & some of its legitimate activities & amenities are participated in or made use of *bonâ fide* by some of its members to a substantial degree does not prevent its premises being a common gaming house within sect. 226 (*a*) of Criminal Code, R.S.C., 1927, if the real object of its actual proprietors in carrying it on is the acquiring of gain for themselves from gambling engaged in therein.—R. *v.* WILLIAMSON, [1937] 2 W. W. R. 545.—**CAN.**

COMMERCE.

See AGENCY; BANKERS; BILLS OF EXCHANGE; CARRIERS; CONTRACT; INSURANCE; OF GOODS; SHIPPING; STOCK EXCHANGE; TRADE AND TRADE UNIONS.

COMMON LANDS.

See COMMONS.

COMMONWEALTH OF AUSTRALIA.

See DEPENDENCIES AND DOMINIONS.

COMMORIENTES.

See EVIDENCE ; EXECUTORS.

COMMUNION.

See ECCLESIASTICAL LAW.

COMMUTATION.

Death Duties, of – – –	*See* ESTATE AND OTHER DEATH DUTIES.
Railway fares, of – – –	,, CARRIERS.
Sentence, of – – – –	,, CRIMINAL LAW.
Tithes, of – – – –	,, ECCLESIASTICAL LAW.
Workmen's Compensation, of –	,, MASTER AND SERVANT.

COMPANIES.

NOTE.—The Act now in force is the Companies Act, 1929 (c. 23), which repealed (*inter alia*) the Companies (Consolidation) Act, 1908 (c. 69). References to sections of the 1908 Act should therefore be checked with the Comparative Table appended below.

1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.
1	357, 358	54	60	105	76	152	185, 198	202	259	252	323
2	1	55	57	106	77	153	186	203	260, Sch.	253	324
3	2	56	55, 50	107	78	154	194		IX.	254	325
4	2	57	16	108	131	155	195	204	187	255	326
5	2	58	53	109	135	156	193	205	173, 229,	256	359
6	3	59	49	110	137	157	197		258	257	327
7	4	60	146	111	138	158	192	206	261	258	328
8	17, 19	61	147	112	132, 133	159	196	207	262	259	329
9	5	62	92	113	129, 130,	160	199, 200	208	263	260	330
10	6, 7, 8	63	93		134	161	209	209	264	261	331
11	8 (2)	64	112	114	130	162	307	210	265	262	332
12	9	65	113, 171	115	28	163	203	211	174, 258	263	333
13	10, 319	66	114	116	370	164	204	212	266	264	334
14	20	67	115	117	33	165	205	213	270	265	335
15	12	68	116	118	11, 14 (2),	166	206	214	191, 248,	266	336
16	13, 14	69	117		108 (4),	167	207		260	267	337
17	15	70	118		379, 3rd	168	208	215	276	268	338
18	23	71	120		Sch. F.	169	210	216	272	269	339
19	14	72	140	119		170	211	217	277	270	340
20	18	73	141	120	153	171	213	218	363	271	341
21	21	74	143	121	26	172	221	219	288	272	
22	62	75	144	122	156	173	220	220	282	273	342
23	68	76	29	123	157	174	214	221	212	274	343, 344,
24	25	77	30	124	158	175	216	222	283		346, 348,
25	95	78	31	125	159	176	218	223	294		349, 351,
26	108, 110	79	32	126	160	177	219	224	284, 285		352, Sch.
27	101	80	34	127	161	178	163, 373	225	289		X., III.
28	65	81	35, 355,	128	162	179	222	226	290	275	345
29	64		Sch. IV.	129	168	180	223	227	291	276	366
30	98, 110	82	40	130	169	181	224	228	293	277	367
31	99	83	36	131	163	182	225	229	300	278	371
32	100	84	37	132	164	183	227	230	301	279	372
33	102	85	39	133	165	184	228	231	302	280	375
34	103	86	41	134		185	226	232		281	362
35	104	87	94	135		186	232, 241,	233	303	282	364
36	105	88	42	136	167		247, 248,	234		283	376
37	70, 97, 141	89	43	137	170		249	235	304	284	377
38	72	90	44	138	178	187	250	236	378	285	380
39	48	91	54	139	175	188		237	305	286	
40		92	67	140	172	189	233, 242	238	374	287	
41	50	93	79, 80, 82,	141	171	190		239	297	288	
42	51		83, 87	142	177	191	251	240	298	289	
43	95, 108	94	86	143	176	192	234	241	299	290	
44	7, 52	95	310	144	202	193	252	242	295	291	
45		96	85	145	288	194	235, 244,	243	312, 314	292	
46	55	97	84	146	179		248	244	313	293	
47	56	98	82 (4)	147	181	195	236, 245	245	316	294	
48	57	99	80, 83	148	182	196	254	246	317	295	
49	56	100	88	149	183, 184,	197	255	247	318	296	
50	57	101	89		185, 186,	198		248	319		
51	58	102	73		187, 188	199	256	249	321		
52	58	103	74	150	189	200	257	250	322		
53	59	104	75	151	184, 191	201	288	251	360		

Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotations :—As to* (1) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. *As to* (2) **Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

11. *Add. Annotations :*—**Consd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33. **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401; Colville I. R. Comrs., [1930] 2 K. B. 393; E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

14. *Add. Annotation :*—**Refd.** E. B. M. Co. Dominion Bank, [1937] 3 All E. R. 555.

15. *Add. Annotations :*—**Refd.** British Thomson-Houston Co. *v.* Starling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

25a. —— **Distinct from component members.**]—DITCHAM *v.* MILLER, No. 5959b, *post.*

Part II.—Domicil, Residence and Nationality of Companies.

26a. —— —— **Business conducted abroad.**]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England :—*Held :* the domicil of the co. was not in Holland but in England.—BAELZ *v.* PUBLIC TRUSTEE, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.

26b. ——.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—LITTAUER GLOVE CORPN. *v.* F. W. MILLINGTON (1920), LTD. (1928), 44 T. L. R. 746.

27. *Add. Annotations :*—**Consd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

——.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe :—*Held :* a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations :—**Consd.** I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation :—As to* (6) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

45. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

75. For the paragraph " (9) (WARRINGTON, L.J. . . . 1908 Act, s. 82," substitute :—" (9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void."

For the paragraph " (10) (LORD STERNDALE, M.R., . . . was written," substitute :—

PART I. SECT. 1.

s2. *Under statute—Existence apart from members—Conveyance of property by originators to company.*]—Defts. contracted with pltfs. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corpn., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the purpose of holding the land, & transferred the land to it in consideration of the allotment to them of the whole of its capital stock :—*Held :* the co. could not be declared to be a trustee for the growers & bound by the contract.—ASSOCIATED GROWERS OF B. C., LTD. & KELOWNA GROWERS EXCHANGE *v.* EDMUNDS & BYZANT ORCHARDS, LTD., [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—CAN.

s3. *One company owning all shares of another—Distinct legal persons.*]—ASSINIBOIA RURAL MUNICIPALITY *v.* SUBURBAN RAPID TRANSIT CO., [1931] 2 D. L. R. 862; 1 W. W. R. 778; 39 Man. L. R. 402.—CAN.

PART I. SECT. 2.

s6. *Companies limited by guarantee—Assignment of undertaking by third party—Validity.*]—LLOYD'S BANK *v.* MORRISON & SON, LTD., [1927] S. C. 571.—SCOT.

PART II.

n 1. —— —— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—CAN.

PART III. SECT. 1, SUB-SECT. 5.—A. (a) ii.

s9. *General rule.*]—VITOMEN CEREAL, LTD. *v.* MANITOBA GRAIN CO. (B. C.), [1928] 4 D. L. R. 440.—CAN.

"(10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration."—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) *v.* LEWIS, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re* JUBILEE COTTON MILLS, LTD., 131 L. T. 579, H. L.

Annotation :—As to (9) **Consd.** *Re* Burton, 1927] 2 Ch. 132.

82. *Add. Annotation :—As to* (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

192. *Add. Annotation :—***Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

196. *Add. Annotation :—***Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

198. *Add. Annotation :—***Refd.** Radio Rentals, Ltd. *v.* Rentals, Ltd. (1934), 51 R. P. C. 407.

210. *Add. Citation :—*9 Jur. N. S. 843.

216. *Add. Annotation :—***Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

225. *Citation :—*For "56 Sol. Jo. 36" read "56 Sol. Jo. 361."

*Add. Annotation :—***Consd.** Harrods *v.* Harrod , 40 T. L. R. 195.

227. *Add. Annotation :—***Consd.** Crystalate Gramophone Record Manufacturing Co. *v.* British Crystalite Co. (1934), 51 R. P. C. 315.

228. *Add. Citation :—On appeal,* 41 R. P. C. 67, C. A.

228a. **"Harrods" — "R. Harrod."**]—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.' use of the name was calculated to lead the public erroneously to believe that defts.' business had some connection with pltfs.' business.—HARRODS, LTD. *v.* HARROD (R.), LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.

*Annotation :—***Expld.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers', etc., Insce., [1925] Ch. 675.

228b. **"Society of Motor Manufacturers & Traders" —"Motor Manufacturers' & Traders' Mutual Insurance Co."**]—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words "Motor Manufacturers & Traders," which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society's business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.'s business wholly different from that of pltf. society :—*Held :* pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. —MOTOR MANUFACTURERS' & TRADERS' SOCIETY *v.* MOTOR MANUFACTURERS' & TRADERS' MUTUAL INSURANCE CO., [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 483; 42 R. P. C. 307, C. A.

228c. **"British Legion"—British Legion Club (Street), Ltd.**]—BRITISH LEGION *v.* BRITISH LEGION CLUB (STREET), LTD. (1931), 47 T. L. R. 571; 48 R. P. C. 555.

*Annotations :—***Consd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137. **Refd.** British Medical Association *v.* Marsh (1931), 47 T. L. R. 572.

228d. **"B. M. A."—"B. M. A. Drug Stores."**]—BRITISH MEDICAL ASSOCN. *v.* MARSH (1931), 47 T. L. R. 572; 48 R. P. C. 565.

*Annotations :—***Refd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

Annotation :—As to (1) **Consd.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

238. *Add. Annotations :—***Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce. (1925), 94 L. J. Ch. 410.

——.]—In 1902 the Crystalate Manufacturing Co., Ltd., commenced manufacturing & selling (*inter alia*) electrical accessories, & in 1928 sold their business to pltfs. At no time had either co. sold electric lamps. In 1933 defts. were formed & commenced selling electric lamps, & in one advertisement were inadvertently described as "British Crystalate Co., Ltd." Pltfs. commenced an action to restrain defts. from carrying on business under their name or any name containing the word "Crystalite" or any other word only colourably differing from "Crystalate." Defts. alleged that the businesses carried on by the parties were dissimilar & that there was no likelihood of confusion :—

PART III. SECT. 3, SUB-SECT. 3.—B. (a).

198 ii. ——.]—Where there is no proof of injury or of likely injury to pltf., by deprivation of profits or of its reputation suffering by reason of the use of its trade name by deft., an injunction will not be granted to prevent deft. from such user notwithstanding proof of extension of pltf.'s reputation to New Zealand & of deft.'s intention to deceive.—COLES (G. J.) & CO., LTD. *v.* COLES (G. J.) (N.Z.), LTD., [1933] N. Z. L. R. 1189.—**N.Z.**

sd. *Insurance company.*]—The Continental Assurance Co., a United States corpn., was refused registration in Canada under Foreign Insurance Cos. Act, on the ground that its name was liable to be confounded with that of the Continental Life Insurance Co., a Canadian corpn. licensed under Canadian & British Insurance Cos. Act. On appeal from the ruling of the Minister of Finance :—*Held :* under sect. 9 of Foreign Insurance Cos. Act registration may be refused if the name of appct. co. is so similar to the name of a co. already registered under the same Act, as to cause confusion; the words "or otherwise on public grounds objectionable" in sect. 9 (1) of Foreign Insurance Cos. Act mean something other than the question of confusion arising out of a similarity of names.—*Re* FOREIGN INSURANCE COS. ACT, 1932, [1934] Ex. C. R. 84.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B. (b).

sd. "*Precision Engineering Co.*"—"*Ou-Tone Precision Engineers.*"]—An application by C. & T., Ltd., for approval of a change of name to the "Ou-Tone Precision Engineers, Ltd.," was opposed by the Precision Engineering Co., Ltd. Both cos. were engaged in the engineering business. Appct. had been engaged in making what are known as "precision tools," & in what is styled "precision work." The objecting co. was engaged in manufacturing motor-plates, steel shelving, lockers, & office equipment. Appct. co. had decided to make "precision work" a prominent feature of its business, & adopted the term "precision" not as a fancy word, but as being descriptive of the kind of work in which it proposed to specialise : —*Held*, granting the approval sought, as the word "precision" was an ordinary English word descriptive of part of the work carried on by appct. co. in common with other engineering firms, it had not acquired a secondary or subsidiary meaning to denote only the business of the objecting co., & could not be monopolised by the latter, & its use in the form proposed was not calculated to deceive.—*Re* CUFF & THOMSON, LTD., [1933] N. Z. L. R. 50; G. L. R. 313.—**N.Z.**

Held: defts. had adopted their name in good faith as being descriptive of the " crystal light " sold by them, but pltfs. & defts. were both concerned in the same trade, that their names were substantially similar, & the use by defts. of their name was calculated to cause confusion between the two businesses. An injunction was granted with costs, the operation of the injunction being suspended for two months.—CRYSTALATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. *v.* BRITISH CRYSTALITE CO., LTD. (1934), 51 R. P. C. 315.

251. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

255. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70. *As to* (2) **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

257. *Add. Annotation:*—**Refd.** Greenberg *v.* Co. operstein, [1926] Ch. 657.

260a. —— **What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.**] — DOMINION IRON & STEEL CO., LTD. *v.* INVERNAIRN. W. N. 277.

265. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70.

266. *Add. Annotations:*—*As to* (1) **Apld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657; *Re* United General Commercial Insce. Corpn., [1927] 2 Ch. 51. *As to* (2) **Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

270. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

271. *Add. Annotation:*—**Folld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

272a. —— ——.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given:—*Held:* (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—GREENBERG *v.* COOPERSTEIN, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.

282. *Add. Citation:*—130 L. T. 450.
Add. Annotation:—**Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

286. *Add. Annotation:*—**Consd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

298. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

310. *Add. Annotation:*—*Generally*, **Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

313a. **Substitution of—For deed of settlement.**]—A co. registered under 1908 Act, with a deed of settlement can, if it satisfies 1929 Act, s. 5, substitute a memorandum & articles for the deed of settlement.—*Re* SHERBORNE GAS & COKE CO., LTD. (1935), 80 Sol. Jo. 33.

317. *Add. Annotation:*—**Consd.** *Re* Blucher (Prince), *Ex p. Debtor*, [1931] 2 Ch. 70.

327. *Add. Annotation:*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

327a. —— —— **Right of export.**]—The E. Syndicate in 1899 was granted by the Egyptian Govt. a concession for manufacturing & selling salt for Egypt from the Mex area, & the sole right to export salt from that area, but the Govt. reserved the right to abolish the salt monopoly at six months' notice. The syndicate then promoted applt. co., which agreed to purchase the rights of the syndicate under the Mex concession, but with the reservation that the co. should not do any export trade in salt, such right of

PART III. SECT. 4, SUB-SECT. 1.

265 iii. ——.]—An assocn. of more than 20 persons formed for starting a business for gain requires registration in accordance with Cos. Act, s. 4, whatever may be the use to which the gains of the business are to be put, *e.g.* educational & other charitable purposes.—CHHEDI LAL *v.* PUNNU LAL (1929), I. L. R. 52 All, 325.—**IND.**

265 iv. —— *Meaning of " gain."*]—The word " gain " is not limited to pecuniary or commercial profits. It means acquisition, something obtained or acquired.—TAN WAING *v.* BO HEIN (1932), I. L. R. 10 Man. 490.—**IND.**

PART III. SECT. 4, SUB-SECT. 5.

sd. *Striking off register—Effect.*]—(1) The intention to dissolve a co. should not be read into a statute providing for the striking of the co. off the register because of a short delay in the payment of its annual fee, unless the language of the statute expressly or by necessary implication imposes that penalty. (2) The conduct of deft. shareholders after the co. had been struck off the register held to make them trustees of the co.'s property for the individual shareholders, who made contributions to conserve the property, & not for the co. It was, therefore, not necessary for pltf., whose suit was for his share of the assets, to have the co. restored to the register & to have the action brought by the co.—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—**CAN.**

sf. *Right to certificate to commence business—Non-compliance with Securities Act.*]—Where a co. is not one which is required by Securities Act, 1930, entitled until 1933, Security Frauds Prevention Act, to comply with that Act, the registrar of cos. is not entitled because of non-compliance with that Act to refuse to issue it a certificate under sect. 40 of the Cos. Act, 1929, entitling it to commence business; & a *mandamus* will issue commanding him to do so.—R. *v.* REGISTRAR OF COS. (No. 1), [1934] 1 W. W. R. 393 48 B. C. R. 152.—**CAN.**

PART III. SECT. 6.

ki. —— *That company duly incorporated.*]—The fact that a co. incorporated under Cos. Act includes in its name the word " Co-operative," contrary to Co-operative Assocns. Act, 1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

export being reserved by the syndicate from the sale to the co. On Jan. 1, 1906, the Govt. abolished the salt monopoly of the syndicate. The memorandum of association of the applt. co. did not expressly prohibit the co. from exporting salt from Egypt, but stated that one of the objects of the co. was to ratify the agreement with the syndicate, & another object was to deal in salt & soda, & it was conceded that under its memorandum the co. could acquire salt deposits outside Egypt & there engage in the export of salt:—*Held:* the memorandum did not exclude from the permitted objects of the co. the export of salt from Egypt so as to prevent its engaging in that business.—EGYPTIAN SALT & SODA Co. *v.* PORT SAID SALT ASSOCN., [1931] A. C. 677; 100 L. J. P. C. 147; 145 L. T. 313, P. C.

330. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

335. *Add. Annotation:*—**Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

337. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

341. *Add. Annotation:*—*As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

343. *Add. Annotation:*—*As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

346. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

351. *Add. Annotation:*—**Apld.** Plantations Trust *v.* Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676.

354. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Consd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon (1930), 47 T. L. R. 97.

355a. —— **Liquidator.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

398. *Add. Annotations:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925]Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

406. *Add. Annotations:*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

410. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

411. *Add. Annotations:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192.

415. *Add. Annotation:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

423. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

PART III. SECT. 7, SUB-SECT. 4.—A.

336 iii. ——.]—The objects of a co., as set forth in its memorandum of assocn., were (*a*) to acquire land in G. & to erect thereon a public hall with shops & cellars; (*b*) to let the hall for public meetings, lectures, auctions, & similar purposes; (*c*) to let the shops & cellars to tenants, either year to year or on lease; & (*d*) to do all such other things as were "incidental or conducive to the attainment of the above object." A hall with shops & cellars underneath was erected, but, some fifty years afterwards, was destroyed by fire. The sum recovered under an insurance policy formed the whole assets of the co. Thereafter the co. presented a petition under Cos. Act, 1929, s. 5, craving the ct. (*inter alia*) to confirm a resolution, duly passed, which altered its memorandum of assocn. by deleting all reference to the erection & letting of a public hall with shops & cellars, & substituting therefor provisions for the erection & letting of shops & dwelling-houses & warehouses. Answers were lodged by certain dissentient shareholders, who maintained that the proposed alteration, if sanctioned, would completely alter the nature of the co.'s undertaking:—*Held:* as the proposed alteration of the memorandum involved a fundamental change in the character of the co. it was not one which could be forced on dissentient shareholders; & petition refused.—STRATHSPEY PUBLIC ASSEMBLY & AGRICULTURAL HALL CO. *v.* ANDERSON'S TRUSTEES, [1934] S. C. 385.—**SCOT.**

81. *Memorandum of insurance company—Alteration to include life assurance—Conditions of grant.*]—The Mutual Property Insce. Co., Ltd., whose objects were to carry on every kind of insurance except life presented a petition under 1929 Act, sect. 5, to confirm a resolution altering the memorandum so as to include power to carry on life insurance:—*Held:* resolution should be confirmed on alteration of the name of the co. to the "Mutual Property & Life Insce. Co., Ltd." & on deposit of the £20,000 required by Assurance Cos. Act, 1909.—*Re* MUTUAL PROPERTY INSCE. CO., LTD., [1934] S. C. 61.—**SCOT.**

80. *Company registered without "limited"—Charitable objects—Alteration.*]—A co. registered under sect. 18 (1) of Cos. Act (Northern Ireland), 1932, by licence of the Ministry of Commerce, as a co. for promoting a charitable object with limited liability but without the addition to its name of the word "limited" cannot extend the objects in its memorandum under sect. 5 of the said Act where the change in the objects is of a substantial character unless circumstances appear in which the doctrine of *cy-près* would be applicable & the principles of *cy-près* should be followed in the consideration of any such application.—*Re* ULSTER SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INCORPORATED) & COMPANIES ACT (NORTHERN IRELAND), 1932, [1936] N. I. 97.—**IR.**

PART III. SECT. 7, SUB-SECT. 6.—A. (a).

358 i. *To take up number subscribed for.*]—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter to cancel his "requirements." P.'s name was never entered in the register of members:—*Held:* P. was liable.—*Re* J. H. CHANDLER & CO., LTD. (1926), I. L. R. 48 All. 580.—**IND.**

PART III. SECT. 7, SUB-SECT. 6.—A. (c).

388 i. *Where shares subscribed for not allotted.*]—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—*Re* T. E. O'REILLY, LTD., [1927] 3 D. L. R. 797; 60 O. L. R. 649.—**CAN.**

395 i. *By transfer.*] — An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.—*Re* GEORGE W. GRIFFITHS CO., [1924 4 D. L. R. 1031.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.—B

400 i. *Misrepresentation by promoter—Not ground for rescission.*]—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract; the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, [1924] N. Z. L. R. 102.—**N.Z.**

427. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

431a. ——.]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, [1925] Ch. 769 ; 94 L. J. Ch. 397 ; 133 L. T. 274 ; 41 T. L. R. 470 ; 69 Sol. Jo. 557, C. A. ; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.

Annotation :—**Expld. & Distd.** Hole *v.* Garnsey, [1930] A. C. 472.

432a. —— **Unless arising from wilful neglect or default.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *post.*

432b. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS & CLARK (1928), 45 T. L. R. 113 ; *on appeal* (1929), 45 T. L. R. 264, C. A.

432c. —— **Unless arising from wilful or wrongful act or default.**]—One of the arts. of assocn. of a co. provided that " The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default " :—*Held :* the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re* CITY OF LONDON INSURANCE CO., LTD. (1925), 41 T. L. R. 521 ; 69 Sol. Jo. 591.

433. *Add. Annotation :*—*As to* (1) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

435. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

437. *Add. Annotation :*—*As to* (1) **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

439. *Add. Annotations :*—*As to* (1) **Consd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *As to* (3) **Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. *Generally,* **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59 ; R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

439a. **" Issued " to the public—What amounts to.**]—A co. being in want of further capital, a document was prepared by applt., who was the managing director, & signed by the other directors, stating the position of the co., that it was proposed to issue 20,000 preference shares, & giving an estimate of the profits after the new capital was available. Attached was an application form for preference shares. A second document was also prepared by the applt., written on the co.'s paper & addressed to a fellow director, marked " strictly private & confidential," which, after setting out the amount of nominal & issued capital, stated the purposes for which the additional capital was required, & concluded thus : " I shall be very happy to discuss this proposition in all its details with any one who is really interested." Attached was a form of application for ordinary shares. Several copies of these documents were given to applt.'s fellow director, who sent a copy to a solr., with a request, in substance, that he should find some client willing to provide the capital required. The solr. sent the documents to resp.'s brother-in-law, & he in turn sent them to resp., who, on the faith of the statements they contained, subscribed for 3,000 ordinary shares in the co. Subsequently ascertaining that a considerable part of the issued capital had been issued otherwise than for cash, a fact that was not stated in either of the documents, he sued applt. for damages for the loss he had sustained through the omission by applt. to comply with the requirements of 1908 Act, s. 81 (1) (*e*). At the trial the jury found that the two documents were an offer of shares by the co. to the public. In answer to the question, whether they were in fact issued to the public, the jury said : " There is no proof of this." The jury found that resp. sustained damage to the amount of £2,000 :—*Held :* the documents were not issued as a prospectus within 1908 Act, s. 81 (1) (*e*).—NASH *v.* LYNDE, [1929] A. C. 158 ; 98 L. J. K. B. 127 ; 45 T. L. R. 42 ; 72 Sol. Jo. 873 ; *sub nom.* LYNDE *v.* NASH, 140 L. T. 146, H. L.

462. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

476. *Add. Annotation :*—**Consd.** Nash *v.* Lynde, [1929] A. C. 158.

483. *Add. Annotations :*—**Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. **Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

484. For first catchword " —— " read **" Notice of contracts."**

491. *Add. Annotation :*—**Apld.** Coles *v.* White City (Manchester) Greyhound Assocn. (1929), 45 T. L. R. 230.

525. *Add. Annotation :*—**Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

525a. ——.]—*Held :* pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the

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PART III. SECT. 8, SUB-SECT. 1.

1. i. —— ——.]—An advertisement offering the public shares in a co. for sale is a " prospectus " under sect. 2 (14) of Indian Cos. Act (VII. of 1913), —PRAMATHA NATH SANYAL *v.* KALI KUMAR DUTT (1924), I. L. R. 52 Calc. 440.—IND.

town-planning scheme.—COLES *v.* WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD. (1929), 45 T. L. R. 230, C. A.

556a. —— ——.]—If the name of a person is improperly placed in the list of directors in the prospectus of a co., it must depend upon the circumstances of the case whether it is a material misstatement.—SMITH *v.* CHADWICK (1882), 20 Ch. D. 27; 51 L. J. Ch. 597; 46 L. T. 702; 30 W. R. 661, C. A.; *affd. on other grounds* (1884), 9 App. Cas. 187, H. L.

560. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

562. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

568. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

577. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

581. *Add. Annotation:*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

581a. —— —— **Directors without knowledge that misrepresentation basis of contract.**]—Deft. co. had no knowledge, that, so far as pltf. was concerned, his application had been induced by any representations made before the co. was incorporated. In these circumstances I think pltf. fails to establish any right to have any contract to take the shares in question rescinded (LUXMOORE, J.).—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1, 14; *affd.*, [1930] 1 Ch. 1, 28, C. A.

581b. —— **Contract between company & agent for undisclosed principal—Whether principal entitled to rescission.**]—Shortly before the incorporation of a co. a draft prospectus, which was afterwards adopted by the co., was circulated for the purpose of obtaining underwriters of shares intended to be offered to the public by the proposed co. An investment co. entered into an underwriting agreement on Nov. 28, 1927, by which they agreed that they would within three days of the issue of the prospectus "either subscribe themselves . . . on the basis of the said prospectus for 1,164,000 . . . shares of 5*s* each or cause the same before the date aforesaid to be subscribed on the terms of the said prospectus by responsible persons," & any reasonable objection might be taken by the co. within two days to persons put forward by the investment co. On Nov. 29, 1927, M. & O. signed & remitted an offer to underwrite 12,000 shares addressed to the investment co. & also an application for the shares addressed to the proposed company, which was accompanied by a cheque for £600. On Dec. 12, 1927, the incorporation of the proposed co. took place, & the underwriting agreement & prospectus were adopted by the co. & the prospectus issued to the public. The public response was insufficient, & 8,160 shares were allotted to M. & O., the allotment letter bearing at the back a form of renunciation. M. & O. were agents for pltf., who had provided the £600. They renounced the shares in favour of pltf., who paid the further sum of £624 due on allotment & sent the allotment letter to the co., who replied stating that it had been duly registered in his name & placed his name on the register of shareholders:—*Held:* pltf. was not entitled to rescission, because (1) the contract between M. & O. & the co. was of such a class that M. & O. must be treated as the principals, so that pltf., as the undisclosed principal, could not sue on the contract or obtain its rescission, & (2) the contract constituted by the co.'s acceptance of pltf.'s authority under the renunciation to place his name on the register could not be treated as a contract entered into on the basis of the draft prospectus.—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1; 99 L. J. Ch. 52, C. A.

581c. —— —— **Effect of renunciation by agent in favour of plaintiff.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

582a. Misrepresentation by promoters.]—If a person is induced to take shares on the faith of a promise by the promoters of a co., which promise is not kept, he is a contributory. His remedy is only against the persons who made the promise.—*Re* UNITED KINGDOM SHIPOWNING CO., LTD., FELGATES CASE (1865), 2 De G. J. & Sm. 456; 11 L. T. 613; 11 Jur. N. S. 52; 13 W. R. 305; 46 E. R. 451, C. A.

604. *Add. Annotation:*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

614a. ——.]—B. signed a printed form issued by the promoters of an intended co., expressing his willingness to become a member of the council of administration of the intended co. M. also wrote to the promoters promising to help the co. Soon afterwards the promoters issued a prospectus in which the co. was described as "to be incorporated under the Cos. Acts," & an extract was given from the proposed articles of assocn. to the effect that there would be a council of administration of members of the co., & a list of members of the council was appended containing the names of B. & M. In reliance on this prospectus, K. applied for shares in the intended co. On Jan. 31, three days after K.'s application, the co. was duly registered under the Cos. Act; & on Feb. 2, the directors allotted K. the shares which he had applied for, & approved a form of prospectus substantially the same as that which had been issued by the promoters. On Feb. 11, K. paid the allotment money on those shares. On June 26, K. discovered that B. & M. had both declined to take shares in the co. & to become members of the council of administration, & took out a summons to have his name removed from the list of shareholders:—*Held:* the effect of the statement in the prospectus was not merely that B. & M. had expressed their willingness to become members of the council of administration, but that they had authorised the publication of their names as members, & as such was a false statement of fact; the prospectus, although issued by the promoters before the formation of the co., was the basis of the contract between the co. & K. for the allotment of shares; that the misstatement in the prospectus was relied on by K., & was material to the contract, & consequently that K. was entitled to rescind the contract

& repudiate the shares. The ct., being of opinion that there had been no laches or acquiescence, ordered K.'s name to be removed from the list of shareholders, & the money paid by him in application & allotment to be returned with interest at 4 per cent.—*Re* METROPOLITAN COAL CONSUMERS' ASSOCN. KARBERG'S CASE, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700; 8 T. L. R. 637, C. A.

Annotations :—**Refd.** *Re* Canadian Direct Meat Co. (1892), 36 Sol. Jo. 865; *Re* Consort Deep Level Gold Lines, Ltd., *Ex p.* Stark, *Ex p.* Elliston (1896), 45 W. R. 227; Lynde *v.* Anglo-Italian Hemp Spinning Co., [1896] 1 Ch. 178; *Re* Metal Constituents, Ltd., Lurgan's Case, [1902] 1 Ch. 707; Hilo Manufacturing Co., Ltd. *v.* Williamson (1911), 28 T. L. R. 164; Mair *v.* Rio Grande Rubber Estates, Ltd., [1913] A. C. 853; *Re* Pacaya Rubber & Produce Co., Ltd., Burns' Applns., [1914] 1 Ch. 542; Goldrei, Foucard & Son *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Bisset *v.* Wilkinson, [1927] A. C. 177, P. C.

642. *Add. Annotations :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641. **Refd.** Horwood *v.* Statesman Publishing Co. (1929), 141 L. T. 54; United Motor Finance Co. *v.* Addison & Co., [1937] 1 All E. R. 425.

660. *Add. Annotation :*—**Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

667. *Add. Annotation :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

677. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

702. *Add. Annotations :*—**Expld.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

703. *Add. Annotation :*—**Refd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

738. *Add. Annotation :*—**Refd.** The Saxicava, [1924] P. 131.

741. After this case add :—
See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

(*i*) *Other Cases* (Vol. IX., p. 139).

770a. Acceptance of sum paid into court—Effect on liability under 1908 Act, s. 84.]—Resp. applied for & was allotted debenture stock in W., C., & Co., Ltd., relying upon the statements contained in a prospectus. The first-named applts. were directors in W., C., & Co., Ltd.; the second-named applts. carried on business as merchant bankers in the name of S. & Co., who were stated in the prospectus to have purchased the whole of the debenture stock of W., C., & Co., Ltd., but who were alleged by resp. to have issued the prospectus as agents for the other applts. Resp. by his writ claimed "damages for false & fraudulent misrepresentation against all applts., & against such of applts. as were directors of W., C., & Co., Ltd., compensation under 1908 Act, s. 84, alternatively damages for conspiracy to defraud, the damages claimed in respect of the three claims being £178." The trial judge dismissed the action against the first-named applts. with costs. The action then proceeded against the second-named applts. until they amended their defence by leave & paid £130 into ct. with a denial of liability, which amount the resp. accepted in lieu of the £178 claimed, in full satisfaction of the cause of action for fraudulent misrepresentation. The Ct. of Appeal set aside the orders & judgment of the trial judge & ordered a new trial of the action as regards the causes of action under 1908 Act, s. 84, & conspiracy to defraud :—*Held :* (1) both on the issue of conspiracy to defraud & the issue of deceit, after the money had been taken out in satisfaction there was no cause of action & no head of damage remained unsatisfied of which there was any evidence or which could be ordered to be tried anew; (2) on the question of compensation under 1908 Act, s. 84, although the case should have been left to the jury there was nothing left to be tried after resp. had taken out in satisfaction money paid in on the issue of conspiracy only. Compensation was not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28; 99 L. J. P. C. 1; 141 L. T. 641, H. L.

771a. —— Order for new trial—After acceptance of sum paid into court.]—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, No. 770a, *ante.*

777. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

784. *Add. Annotation :*—**Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

814. *Add. Annotation :*—*As to* (1) **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

814a. Profit sharing deposit notes redeemable in four years—Company bound to redeem.]—Pltf., in reliance upon a prospectus issued in

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PART III. SECT. 8, SUB-SECT. 3.—D. (b).

sf. Prospectus must be issued by or on behalf of company.]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—URQUHART *v.* STRACEY, [1928] N. I. 162.—**IR.**

678 i. *Measure of damages.*]—URQUHART *v.* STRACEY, No. 747 i, *post.*—**IR.**

PART III. SECT. 8, SUB-SECT. 3.—D. (c).

sm. Under Criminal Code, s. 414.]—The above sect. relates to the issuing of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements :—*Held :* a conviction under that sect. was not justified.—R. *v.* ANDERSON (1924), 55 O. L. R. 586.—**CAN.**

sn. —— Ingredients of offence.]—R. *v.* HARCOURT (Ont.) (1929), 52 Can. Crim. Cas. 342.—**CAN.**

PART III. SECT. 8, SUB-SECT. 3.—F. (c).

747 i. *Claim for damages against directors—& others—Joined with statutory claim for compensation against directors.*]—Pltf. bought debentures in a co. on the faith of statements in a prospectus. Some of defts. were directors in the co., & some were partners in an issuing house called S. & Co. Pltf. claimed against all defts. damages for fraudulent misrepresentations in the prospectus & for conspiracy to defraud, & against such of defts. as were directors in the co. claimed compensation under 1908 Act, s. 84 :—*Held :* (1) pltf. was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (*a*) that he could not get damages more than once in respect of what was in substance the same cause of action, & (*b*) that the causes of action could conveniently be tried or disposed of together; (2) if pltf. succeedod on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation.—URQUHART *v.* STRACEY, [1928] N. I. 162; *varied,* 141 L. T. 641, H. L.—**IR.**

Sept., 1920, by deft. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held:* pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co.* v. *Buckleton* (*see* No. 1565) was satisfied.—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations:*—**Consd.** *Re* Burton, [1927] 2 Ch. 132. **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

820. *Add. Annotations:*—*As to* (4) **Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. *As to* (5) **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K B. 421. *Generally*, **Refd.** Stapley *v.* Read (1924), 131 L. T. 629.

826. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

834a. Order under 1929 Act, s. 56 (3)—What amounts to special circumstance—Not mere solvency of company.]—PRACTICE NOTE (1930), 69 L. Jo. 252; 169 L. T. Jo. 283; [1930 W. N. 78.

839a. —— —— Company in voluntary liquidation.]—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re* WALTERS (STEPHEN) & SONS, LTD. (1926), 70 Sol. Jo. 953.

839b. —— ——.]—*Re* ACME SPINNING CO., LTD., *Re* AMALGAMATED COTTON MILLS TRUST, LTD. (1937), 81 Sol. Jo. 922; *sub nom.* PRACTICE NOTE, 184 L. T. Jo. 402.

840. *Add. Annotations:*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91; Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

842. *Add. Annotation:*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

849a. —— Scheme fully explained & approved on poll.]—Resp. co., which was incorporated

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PART III. SECT. 10, SUB-SECT. 1.

sp. *Includes premiums on sale of stock.*]—TORONTO *v.* CONSUMERS' GAS CO., [1927] 4 D. L. R. 102.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—E.

sp. *Increase not permitted by articles—Resolution to reduce simultaneously with resolution to increase—Validity.*]—Where articles do not authorise increase of capital, a co. may not, under 1929 Act, sect. 50 (1) (*a*), pass resolutions to reduce capital simultaneously with resolutions to increase capital & to alter articles to permit such increase.—*Re* METROPOLITAN CEMETERY CO., [1934] S. C. 65.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3. —A.

834a i. *Order under 1929 Act, s. 56 (3)—What amounts to special circumstances.*]—In a petition at the instance of a shipping co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock, that the co.'s only debts, consisted of expenditure incurred by its ships in the course of their voyages, the amount of which would not be ascertained till their return; that such debts were, in practice, regularly discharged as soon as their amount had been ascertained; & that the value of the co.'s ships was ample security for its outstanding debts. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. directed that the provisions of Cos. Act, 1929, s. 56 (2), should not apply to the creditors of the co. or any class of them; & confirmed the reduction of capital *simpliciter*.—*Re* UNIFRUITCO STEAMSHIP CO., [1930] S. C. 1104.—**SCOT.**

834a ii. —— ——.]—In a petition at the instance of a colliery co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock; that the co.'s principal creditors were trade creditors, mineral owners in respect of lordships, employees in respect of wages, & the collectors of rates & taxes; that, during the dependence of the petition, all these creditors, with one exception, had been paid or had consented to the proposed reduction; that the remaining creditor, the Inland Revenue, whose claim was for £19,690 in respect of unascertained income tax liability had, in accordance with department practice, declined to sign any consent, but had stated no objection to the proposed reduction; & that the value of the co.'s liquid assets was ample security for its outstanding liabilities. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. found it unnecessary to apply the provisions of Cos. Act, 1929, s. 56 (2), & confirmed the reduction of capital *simpliciter*.—*Re* CADZOW COAL CO., LTD., [1931] S. C. 272.—**SCOT.**

with a capital of £95,000,000 consisting of cumulative preference, ordinary & deferred shares, petitioned the ct. to sanction a reduction of capital to £89,565,859 by cancellation of half the amount of each of the 21,736,564 deferred shares of 10*s.* each, & by conversion & consolidation of each four deferred shares into one £1 ordinary share carrying full dividend rights as from Jan. 1, 1935. The scheme, which was submitted by the directors for the purpose of simplifying & strengthening the co.'s financial structure, was approved by more than the statutory majority at the extraordinary general meeting, & by more than the majority prescribed by the arts. of assocn. of the co. at each of the separate class meetings of the ordinary & deferred shareholders. It was provided by the memorandum & arts. of assocn. that the special rights or privileges of any class of shareholders should not be varied or extinguished without the approval of a separate class meeting of the shareholders so affected. Apart from the scheme, the co.'s profits, in terms of the articles, were to be distributed in payment of (i) a dividend of 7 per cent. *per annum* on the cumulative preference shares, (ii) a dividend of 7 per cent. *per annum* on the ordinary shares, & (iii) out of the available balance of profits, (*a*) a further dividend on the ordinary shares, together with (*b*) a dividend on the deferred shares in such a manner that the balance so distributable in respect of the ordinary shares should be as nearly as possible twice the total amount to be distributed in respect of the deferred shares. The board sent to all shareholders a circular which contained detailed information regarding the scheme, but which made no reference to the comparative holdings of the directors in ordinary & deferred shares of the co. Meetings for the purpose of obtaining the shareholders' sanction were convened, & held on May 1, 1935. The first was an extraordinary general meeting of all shareholders, at which the chairman spoke in support of the scheme & announced that, with the approval of the shareholders, he proposed to make that one speech in relation to that meeting & to the two subsequent class meetings of the ordinary shareholders & deferred shareholders respectively, without any further speeches. The resolutions having been defeated on a show of hands, a poll was taken forthwith, & thereafter two meetings, purporting to be separate class meetings of ordinary shareholders & deferred shareholders, were held. The resolution was duly passed at the meeting of the ordinary shareholders, & it was declared lost on a show of hands at the deferred shareholders' meeting, but was subsequently carried by the requisite majority on a poll being taken. Holders of shares of classes other than deferred shares were present in the hall during the holding of the class meeting of the deferred shareholders, but there was no evidence that any shareholder other than deferred shareholders either took any part in the conduct of, or voted at, that meeting. The co.'s petition was opposed by applt. on behalf of himself & all other holders of deferred shares, on the ground that, *inter alia*, the reduction of capital was *ultra vires* the co. & was not properly sanctioned by the deferred shareholders, who, under the scheme, were exposed to unfair treatment as a class of shareholders :—*Held :* (1) as the arts. of assocn. empowered the co. to reduce its share capital in the ways specifically mentioned therein, " or otherwise as may seem expedient," the co. thus became entitled to reduce its capital in any way authorised by 1929 Act ; (2) the meeting of deferred shareholders was properly convened, the objection which might have been raised to the presence of holders of shares of another class was waived, the poll was duly demanded, & the extraordinary resolution was duly passed by the requisite majority ; (3) the circular issued to the shareholders disclosed sufficient information to enable them to judge of the fairness & propriety of the scheme ; (4) the proposed reduction of capital should be confirmed, as the scheme for the re-arrangement thereof did not operate unfairly in relation to the holders of deferred shares.—CARRUTH *v.* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1937] A. C. 707 ; [1937] 2 All E. R. 422 ; 156 L. T. 499 ; 53 T. L. R. 524 ; *sub nom. Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., 106 L. J. Ch. 129, H. L.

863. *Add. Annotation :*—**Refd.** Drown *v.* Gaumont-British Picture Corpn., Ltd., [1937] 2 All E. R. 609.

871. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

887. *Add. Annotation :*—**Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

935. *Add. Annotation :*—**Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

PART III. SECT. 10, SUB-SECT. 3.—C.

sq. *Cancellation of vendor's shares*].—Deft. co. was incorporated for the express purpose (*inter alia*) of acquiring the assets & business of a certain boiler works of which pltf. was the principal owner. Under an agreement between pltf. & the co., which modified an earlier agreement, the co. agreed to assume the liabilities of said business and to issue to pltf. fifty-five of the co.'s shares fully paid up in consideration of the transfer of the assets of said works. It was then discovered that the liabilities of pltf.'s business equalled or exceeded the value of its assets, & he & the co. entered into a compromise agreement under which his said shares were surrendered & cancelled & he agreed to take in lieu thereof whatever the shareholders should vote him :—*Held :* said compromise agreement was within the power of the co. ; it did not bring about a real reduction of capital or constitute a purchase by the co. of its own shares or prejudice creditors.—PATTERSON *v.* VULCAN IRON WORKS, [1930] 1 W. W. R. 640 ; 2 D. L. R. 961 ; 42 B. C. R. 300 ; *affg.*, [1929] 4 D. L. R. 508, C. A.—**CAN.**

PART III. SECT. 10, SUB-SECT. 3.—F. (a) iii.

sr. *Free shares taken by promoters.*]—Where on an unopposed petition by a co. for confirmation of resolutions for the reduction of capital & cancellation of shares, it appeared that the promoters had taken a large holding of free shares & that one of the objects of the petition was probably to free the promoters of a possible liability in respect of these shares :—*Held :* the reduction & cancellation of the shares should be confirmed.—*Re* ADELAIDE MORTGAGE & INVESTMENT CO., LTD. (1928), S. A. S. R. 478.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—F. (e).

926 i. *Nominal capital not reduced—Amount returned liable to be called up again.*]—By special resolution under Cos. Act, 1929, s. 55, a limited co. resolved that, in respect of each fully-paid £1 share of its issued capital, the sum of 2*s.* 6*d.* be paid off " upon the footing that the amount so returned or any part thereof may be again called up." In a petition at the instance of the co. for confirmation of the proposed reduction :—*Held :* the form of the reduction was competent & the ct. confirmed the reduction *simpliciter*.—*Re* BROWN, SONS & CO., [1931] S. C. 701.—**SCOT.**

942a. Resolution before operative date of 1929 Act — Confirmation after such date.]—*Re* GRAYSON, ROLLO & CLOVER DOCKS, LTD. (1930), 69 L. Jo. 151; 169 L. T. Jo. 144; [1930] W. N. 27.

943. *Add. Annotation :*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

977a. —— —— Large fund available to meet liabilities.]—*Re* ANTWERP WATERWORKS CO., LTD., [1931] W. N. 186; 172 L. T. Jo. 75; 72 L. Jo. 79.

1012a. —— At date of registration of minute.]—A co., which desired to vary the constitution of its capital, petitioned the ct. for an order sanctioning a scheme of arrangement which involved the reduction & subsequent increase, subdivision & consolidation of capital. The capital was to be reduced by converting certain issued ordinary shares of 15*s.* each into ordinary shares of 12*s.* each. The capital was then to be increased by the issue of redeemable preference shares of £1 each & shares of 4*s.* each. It was part of the scheme that the unissued ordinary shares of 15*s.* each should be subdivided & consolidated into ordinary shares of 12*s.* each. It was proposed that the minute of reduction to be registered under 1929 Act, s. 58, should be approved in a form which, after dealing with the reduction, stated the amount & constitution of the share capital at the date of the registration of the minute, but did not give details of the increase, subdivision & consolidation of the capital :—*Held :* the scheme should be sanctioned & the suggested form of order should be approved.—*Re* HARRODS (BUENOS AIRES), LTD., [1936] 2 All E. R. 1651; 80 Sol. Jo. 689.

1012b. —— ——.]—A co. with a share capital consisting of preference shares of £1 each & ordinary shares of £1 each, desiring to reduce its capital, approved a scheme by special resolution whereby the issued preference shares & ordinary shares of £1 each (which were fully paid up) were to be reduced to an equivalent number of preference shares & ordinary shares of 10*s.* each. These 10*s.* shares were then to be consolidated in such a manner that every two of such preference & ordinary shares respectively should constitute one £1 fully paid preference or ordinary share as the case might be. The ct. was petitioned to sanction the scheme. The ct. sanctioned the scheme & approved a form of minute for registration.—*Re* HOLLAND & WEBB, LTD., [1936] 3 All E. R. 955; 80 Sol. Jo. 1014.

1015. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1017. *Add. Annotations :*—**Refd.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1019a. Passing of special resolution—& confirmation by court.]—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re* NORTH POLE ICE CO., LTD. & REDUCED, [1924] W. N. 131.

Annotation :—As to (1) **Expld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718.

1019b. —— ——.]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re* DAMPNEY & CO., LTD. & REDUCED (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1036. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1036a. —— ——.]—*Re* NORTH POLE ICE CO., LTD., & REDUCED, No. 1019a, *ante*.

PART III. SECT. 10, SUB-SECT. 3.—G. (b).

f i. —— *Without remit to reporter—Creditors not affected.*]—FOWLERS (ABERDEEN), LTD., [1928] S. C. 186.—**SCOT.**

f ii. —— ——.]—In a petition for reduction of capital presented by a co. in which it was stated that the proposed reduction did not involve either the diminution of liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, & that the rights of creditors were not affected in any way, & further, that the leading creditors & all the shareholders had assented to the proposed reduction, the ct. dispensed with a remit to a reporter, & granted the prayer of the petition.—*Re* SCOTTISH STAMPING & ENGINEERING CO., LTD., [1928] S. C. 484.—**SCOT.**

f iii. —— ——.]—*Re* HAY & SONS, [1928] S. C. 622.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (c) ii.

961 i. on an application by a limited co. for confirmation by the ct. of a reduction of its capital it appears that the co.'s only creditors are those in respect of trade liabilities incurred from day to day during the current month, the ct. may make an order confirming the reduction forthwith & dispensing with the advertisement of the presentation of the petition & the settlement of the list of creditors.—*Re* A. LESSER & CO. PTY., LTD. (1929), V. L. R. 316; 1929 A. L. R. 265.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—G. (d) i.

967 i. *Who are creditors — Persons entitled to unclaimed dividends.*]—ARIZONA COPPER CO., PETITIONERS, [1926] S. C. 315.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (e).

st. *Function of court—What court must consider.*]—*Re* MILLS (E. W.), LTD., [1925] N. Z. L. R. 227.—**N.Z.**

PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p i —— —— *Amount after increase by subsequent resolution.*]—*Held :* when a co. has passed the necessary resolutions to reduce its capital, subject to the approval of the ct., by writing down the par value of the existing shares, &, on such reduction being confirmed by the ct., to increase its capital by the creation of further shares, the minute required to be recorded under Cos. Act, 1908, s. 51, should set forth (*a*) the state of the co.'s capital after giving effect to the reduction as sanctioned, & (*b*) the state of its capital as increased by the resolutions passed conditionally upon such reduction taking effect.—D. SIMPSON, LTD., [1929] S. C. 65.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 4.

g i. —— ——.]—*Held :* the proposed arrangement was so drastic in its destruction of the sinking fund & placed absolute power in the hands of those who controlled the co. to redeem whose stock they pleased, as to make it a violation of the rights of the minority : & for that reason approval of the arrangement should be refused.—*Re* SECOND STANDARD ROYALTIES, LTD. (1930), 66 O. L. R. 288.—**CAN.**

1080a. —— **Company in voluntary liquidation.**]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante*.

1087. After this case add :-

-.]—*See, now,* 1929 Act, s. 153 (5).

1102. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

1105. *Add. Annotation :—As to* (2) **Consd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

1108. *Add. Annotations :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** I. R. Comrs. *v.* Barnato, [1936] 2 All E. R. 1176.

1124. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338 ; *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982 ; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364 ; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857 ; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

1125. *Add. Annotation :*—**Overd.** A.-G. *v.* Tube Investments, Ltd. (1930), 142 L. T. 561.

On increase of capital.]—After this cross-reference add :—

1126a. —— **When increase takes place.**]—In Dec. 1927, resp. co. passed an extraordinary resolution that the capital of the co. be increased to £1,550,000 by the creation of 300,000 new ordinary shares & payment was made on the increase of the stamp duty under Stamp Act, 1891 (c. 39), s. 112. On the same day the co. passed an extraordinary resolution altering the Arts. of the co. & adding an Art. 44 (*a*) which provided " the directors of the company for the time being be & they are hereby authorised from time to time by resolution passed by them to increase the existing capital of the co. from £1,550,000 to £2,500,000 by the creation of 950,000 additional shares of £1 each. Such increases within the limits aforesaid may be made successively & such new shares shall have " certain priorities & rights. The Crown asserted that immediately on the creation of Art. 44 (*a*) there was an increase of capital within the meaning of Stamp Act, 1891 (c. 39), s. 112, & stamp duty was payable on the 950,000 new shares:—*Held:* under Art. 44 (*a*) two steps were necessary before an increase of capital was created within the meaning of Stamp Act, 1891 (c. 39) s. 112 : first the introduction of the article & then a step which might not in fact be ever taken, namely, a resolution creating the increase or some of the increase of the capital authorised by the article ; & until the directors exercised the power to increase given to them by the article there was no increase in the registered capital of the company & no duty was attracted under sect. 112.—A.-G. *v.* TUBE INVESTMENTS, LTD. (1930), 142 L. T. 561, C. A.

1127. *Add. Annotation :—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1133. *Add. Annotation :*—**Refd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1134. *Add. Annotation :—As to* (2) **Refd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1153a. —— **Liability of sub-underwriter.**]—ICE RINKS, LTD. *v.* MATHUEN (1930), 74 Sol. Jo. 41.

1169. *Add. Annotation :*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

1169a. —— —— —— **Directors without knowledge that misrepresentation basis of contract.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581a, *ante*.

1169b. —— —— —— **Between company & agen for undisclosed principal—Renunciation by agent in favour of principal.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

1205. *Add. Annotations :*—**Distd.** Pailin *v.* Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73. **Consd.** Hindmarch *v.* Carterthorne Colliery Co. (1928), 21 B. W. C. C. 44 ; Vickers *v.* Cumberland Coal Owners' Mutual Indemnity Co. & Whitehaven Colliery Co. (1934), 27 B. W. C. C. 56. **Refd.** Wales *v.* Iron Trades Employers Assocn. (1928), 21 B. W. C. C. 316.

1220. *Add. Annotation :*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

1226. *Add. Annotations :—As to* (2) **Expld.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

PART III. SECT. 11, SUB-SECT. 2.—A. (a).

sc. *Agreement to pay commission—Ultra vires.*]—An agreement was entered into by applt. co., incorporated in New South Wales, for the underwriting by them of a proposed issue of capital of resp. co. The taking up of any of the shares pursuant to the underwriting agreement involved the payment out of resp. co.'s share capital of a commission to applt. co. in respect of such shares. The New South Wales Cos. Acts, 1899 to 1918, contain no provision expressly authorising the payment of underwriting commissions. On a claim by applt. co. that the underwriting agreement was *ultra vires* resp. co. & unenforceable :—*Held :* inasmuch as the agreement would result in applt. co. receiving from resp. co. a discount for which there was no consideration it was *ultra vires* resp. co.—AUSTRALIAN INVESTMENT TRUST, LTD. *v.* STRAND & PITT STREET PROPERTIES, LTD., [1932] A. C. 735 ; 148 L. T. 1 ; 48 T. L. R. 646, P. C.—**AUS.**

PART III. SECT. 11, SUB-SECT 3.—B.

sw. *To account to company for money received before incorporation of company.*]—Where a co. brought an action against an underwriter, & recovered a verdict for £317 10*s.* :—*Held :* as deft. by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him. —HARMONIC RESONATOR, LTD. *v.* WALTON (1927), 27 S. R. N. S. W. 81 ; 44 N. S. W. W. N. 50.—**AUS.**

PART III. SECT. 12, SUB-SECT. 4.—B. (a).

sy. *Company holding franchise—Second company owning shares—Whether liable to Municipal & Public Utility Board.*]—Where a co. has been given a franchise, the fact that all its issued shares, except qualification shares, are held by another co. & that its officers are all officers of such other co. does not impose on the latter co. the obligations with respect to the franchise which the former co. is under &, therefore, does not subject it to orders of the Municipal & Public Utility Board with respect to said obligations.—*Re* SUBURBAN RAPID TRANSIT CO., WINNIPEG ELECTRIC CO. & RURAL MUNICIPALITY OF ASSINIBOIA, [1931] 1 W. W. R. 778.—**CAN.**

1226a. ——.] — AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, No. 431a, *ante*.

1230. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1265. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

1265a. —— ——.]—In the absence of fraud or *mala fides*, a *cestui que trust* cannot be put on the list of contributories, though he may be called upon to indemnify his trustee.—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE (1860), 2 De G. F. & J. 275; 9 W. R. 43; 45 E. R. 627; *sub nom. Re* ELECTRIC TELEGRAPH CO. OF IRELAND, *Ex p.* BUNN, 3 L. T. 567; *sub nom.* ELECTRIC TELEGRAPH CO. OF IRELAND *v.* BUNN, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, L. JJ.

1268. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

1320. *Add. Annotation:*—**Apld.** *Re* Hobson, Houghton, [1929] 1 Ch. 300.

1321. *Add. Annotation:*—*As to* (1) **Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

1342. *Add. Annotation:*—*Generally*, **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1358a. ——.]—The appct. was persuaded by Y. to take part in a certain transaction & to deposit with Y., as security until the transaction was completed, certain shares, of which the appct. was the registered holder. The appct. was told that these shares were to be put temporarily in the name of Y. & for that purpose the appct. signed certain documents, but in no instance was the signature witnessed. By means of a transfer purporting to be executed by the appct. & properly witnessed, the name of Y. was entered upon the co.'s register as holder of the shares. The appct. in evidence said that she had never signed a transfer of the shares & the witness to the signature admitted that she had not signed as witness in the presence of the appct. A handwriting expert gave evidence that the appct.'s alleged signature on the transfer form was more likely to be genuine than a forgery. The appct. moved to rectify the co.'s register under 1929 Act, s. 100. Certain brokers had been instructed by Y. to sell the said shares & they opposed the application on the ground that the transfer was part of a scheme " to rig the market " : —*Held:* (1) the jurisdiction of the ct. to rectify the register is not limited to cases where a name has been entered improperly, but extends to cases where a name stands on the register without sufficient cause; (2) there was sufficient evidence, even assuming the transfer to have been a proper one & not a forgery, that the appct.'s name had without sufficient cause been omitted from, & Y.'s name had without sufficient cause been placed upon the register, & it ought to be rectified; (3) as the brokers did not claim that they themselves or anyone with whom they had entered into any contract had a right to have their or his name put upon the register, their application must be refused, but they had rightly brought the suggestion of illegality before the ct. On the evidence the appct. was no party to any illegality.—*Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1936] 2 All E. R. 463; 80 Sol. Jo. 533.

1379a. Restrictions on transfer—Deposit with bank as security—Sale by bank notwithstanding restrictions.]—S. H., the holder of shares in a private co., T. H., Ltd., was also chairman of a co., C. & Co., Ltd. The account of C. & Co. with their bankers being largely overdrawn, S. H. gave the bankers a continuing guarantee & deposited with them a certificate for 800 shares in T. H., Ltd., with a memorandum charging all shares, the certificates for which were or might be lodged with the bankers, as security for the payment on demand of all moneys due or to become due to them, &, upon default by him in paying or further securing on demand any money secured, authorising them without further notice to sell the shares.

By the arts. of assocn. of T. H., Ltd., a member could not transfer his shares until he had given notice to the secretary offering to sell the shares at a price to be fixed by the auditor, & until the secretary had offered them to the other members, one director, T. H. V. H., having a right of pre-emption. The bankers began to press for a transfer of the shares into the names of two nominees. They were aware of the arts. of assocn. of T. H., Ltd., & were warned by S. H. that such a transfer would be invalid. They also gave S. H. notice in writing demanding payment of C. & Co.'s overdraft. S. H. then gave them as further security certificates for 346 additional shares in T. H., Ltd., & executed instruments purporting to be transfers of 1,146 shares in that co., & the nominees of the bankers were placed on the register of the co. as the holders of the shares. In order to obtain a further advance for the benefit of C. & Co., S. H. executed a mtge. of other property, covenanting to pay the bankers on demand all money then or at any time due from himself or from C. & Co. Application was then made to the auditor of T. H., Ltd., to fix a price for the 1,146 shares: a price was fixed, & the shares were bought by T. H. V. H. with money borrowed from the bankers & secured by a so-called transfer of the 1,146 shares & 850 other shares to nominees of the bankers, who were placed on the register of T. H., Ltd., as the holders of 1,996 shares. Two actions were brought, one by E. H., a shareholder in T. H., Ltd., suing on behalf of herself & all other the shareholders in the co., except T. H. V. H., & claiming to have the register of shareholders rectified by restoring thereto the name of S. H. as the holder of 1,146 shares & entering that of T. H. V. H. as the holder of 850 shares on the ground that

PART III. SECT. 12, SUB-SECT. 4.—B. (b).

sz. *Limited company—Husband & wife sole shareholders—Wife not personally liable on contract.*]—Where a husband & wife are the sole shareholders in a co. incorporated under Cos. Act, 1929 (B. C.), the wife cannot be held personally liable for goods sold on credit to the co.—WALDRON *v.* HOGAN, D. L. R. 800.—CAN.

PART III. SECT. 13, SUB-SECT. 5.—B. (d) vii.

1374 i. *Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.*] —*Re* CUSTOM HOUSE MOTOR CO., LTD. (IN VOLUNTARY LIQUIDATION), [1928] St. R. Qd. 338.—AUS.

all the transfers & registrations aforesaid were made in contravention of the co.'s arts. & were void. The second action was brought by S. H., who sought the same relief & also claimed the right to redeem the 1,146 shares on the footing that the sale of the shares was void, & that his equity of redemption was still subsisting. In E. H.'s action, which was the first to be tried, an order was made for rectification of the register as prayed therein. In S. H.'s action a similar order was made, a further order that S. H. was entitled to redeem the 1,146 shares. T. H. V. H., T. H., Ltd., & the bankers & their nominees appealed against the orders in both actions. The Ct. of Appeal dismissed the appeal in E. H.'s action. From that decision there was no appeal. The Ct. of Appeal allowed the appeal in S. H.'s action, holding that S. H. was entitled to be upon the register, but that the sale of the 1,146 shares to T. H. V. H. operated as a valid transfer of the equitable interest in the shares, & ordering that S. H. should execute a declaration of trust of the shares in favour of T. H. V. H. & bankers or as they should direct. From this decision S. H. appealed, & there was a cross-appeal by T. H. V. H., T. H., Ltd., the bankers & their nominees:—*Held:* applt. was entitled to have the register rectified by restoring his name thereto as the holder of 1,146 shares, on the grounds: (1) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN (Lord ATKIN *doubting*), that there was no effective demand for payment before the attempted sale of the shares, the demand which was made having been superseded by the security & mtge. subsequently given & executed; (2) *Per* Lord CHANCELLOR, Lord ATKIN, & Lord MACMILLAN, that there was no effective sale of the shares, the restrictions imposed by the arts. of assocn. of the co. not having been observed; (3) *Per* Lord CHANCELLOR & Lord MACMILLAN, that applt. was not estopped from claiming rectification of the register, inasmuch as the bankers were well aware, & had been informed by applt., of all the restrictions upon the sale of the shares (Lord BLANESBURGH *assenting* on other grounds); (4) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord ATKIN, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN, that the attempted sale by the bankers did not operate to pass the equitable apart from the legal interest in the shares.—HUNTER *v.* HUNTER, [1936] A. C. 222; 105 L. J. Ch. 97; 154 L. T. 513, H. L.

1411a. —— Where further investigation required.] —On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re* GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD. (1924), 40 T. L. R. 488, D. C.

1433. *Add. Annotations:*—**Consd.** *Re* Paulin, *Re* Crossman, [1935] 1 K. B. 26. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443; I. R. Comrs. *v.* Crossman, I. R. *v.* Mann, [1937] A. C. 26.

1448a. —— Right to issue stock warrants payable to bearer.]—There is nothing in the Cos. Act, 1929 (c. 23), that, expressly or by implication, deprives a co. of the power to issue warrants to bearer in respect of stock.—PILKINGTON *v.* UNITED RAILWAYS OF THE HAVANA & REGLA WAREHOUSES, LTD., [1930] 2 Ch. 108, 99 L. J. Ch. 555; 144 L. T. 115; 46 T. L. R. 370; 74 Sol. Jo. 264.

1448b. Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.]—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation:—*Held:* such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re* BLAINA COLLIERY CO., LTD. (1926), 70 Sol. Jo. 404.

1451. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1453. *Add. Annotation:*—*As to* (1) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1455a. —— Power in memorandum—No provision in articles.]—By the memorandum of assocn. of a co. incorporated under the Cos. Act, 1899, of New South Wales, the material provisions of which Act were similar to the law as to English cos., the co. was to have power to issue with preferential rights part of the shares in its original capital thereby stated. The articles of assocn. contained no express power to issue preference shares as part of the original capital. Art. 10 provided that the shares should be under the control of the directors, who might allot them on such "terms & conditions" as they thought fit. By art. 117 the management of the "business of the co." was vested in the directors who, in addition to the powers otherwise expressly conferred on them, might do all such things as the co. might do, save those which by the articles or statute were to be done in general meeting. The articles

PART III. SECT. 14.

sz. "*Preference shares.*"] — "Preference share" is an indefinite term, having a commercial or popular rather than a legal import. Where a preference of any character is given to the holder of a share, the circumstance that in other respects he is deprived of the usual rights of a holder of common shares does not prevent his share from being properly designated a "preference share."—RUBAS *v.* PARKINSON, [1929] 3 D. L. R. 558; 64 O. L. R. 87.—CAN.

PART III. SECT. 15, SUB-SECT. 1.

1450 ii. —— —— ——.]—The memorandum of assocn. of a co. provided, *inter alia*, that the preference stock should rank as to dividend & capital in priority to the ordinary stock & all other stock & shares in the capital for the time being of the co., & that it should be "subject to the other provisions with regard to the same contained in the articles of assocn." The arts. of assocn. set forth that the co. might increase its capital by the creation of new shares with such preference over other shares or stock as it might direct, provided that no shares or stock should be created with a preference over, or ranking *pari passu* with, the existing preference stock without the sanction of the stockholders affected:—*Held:* upon a sound construction of the memorandum of assocn., the co. had not power at its own hand, even with the sanction of the preference stockholders, to create new preference stock ranking *pari passu* with existing preference stock; & that an alteration of the memorandum was necessary for that purpose.—*Re* SCOTTISH NATIONAL TRUST CO., [1928] S. C. 499.—SCOT.

gave the co. power in general meeting to create new shares, & gave the directors authority, in the absence of a direction by the general meeting, to issue the new shares with preferential rights :—*Held :* the express power given by the memorandum to issue part of the original capital with preferential rights could be exercised by the co. in the absence of an article to the contrary, & under art. 10 the directors had authority to exercise the power of the co. in that respect. Even if that was not so, the directors had that authority under art. 117.—CAMPBELL *v.* ROFE, [1933] A. C. 91 ; 102 L. J. P. C. 1 ; 148 L. T. 230 ; 49 T. L. R. 156, P. C.

1459. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

1460. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1461. *Add. Annotations :*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144 ; *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1466a. —— **Necessity for disclosure of all material facts.**]—Where a co. proposes to alter the rights of stockholders, all material facts must be disclosed before the stockholders are called on to vote on the proposals.—HUGHES *v.* UNION COLD STORAGE CO., LTD. (1934), 78 Sol. Jo. 551.

Annotation :—**Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

1472. *Add. Annotation :*—**Refd.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

1480. *Add. Annotations :—Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

1515. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

1552. *Add. Annotations :—As to* (2) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. *As to* (4) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. (In my view the headnote of the report is inaccurate so far as it states what constitutes the fourth head, which should read, "Where the contract is made to the knowledge of the co. on the basis of certain representations, & it turns out that some of them were material & untrue," *per* LUXMOORE, J.).

1553. *Add. Annotation :*—**Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1565. *Add. Annotation :*—**Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

1578. *Add. Annotation :—As to* (1) **Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

1585. *Add. Annotations :*—**Refd.** *Re* Royal British Bank (1859), 3 De G. & J. 387; Western Bank of Scotland *v.* Addie, Addie *v.* Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145.

1589a. —— **Statement by agent—That application purely formal.**]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on

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PART III. SECT. 15, SUB-SECT. 2.

k i. *Power to modify rights by bye-law—Validity of bye-law—Companies Act, R. S. C.*, 1906 (*c.* 79).]—HOLMESTED *v.* ALBERTA PACIFIC GRAIN CO., LTD. (Alta.), [1928] 1 D. L. R. 135 ; [1927] 3 W. W. R. 707.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—A. (a).

b i. ——.]—*Held :* persons, who, intending to become shareholders in a proposed co., had signed & sealed a "subscribers' agreement," were not shareholders.—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484 ; 58 O. L. R. 486.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—B. (a) i.

s i. —— —— ——.]—Where the evidence was not conclusive :—*Held :* in the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re* BUFF PRESSED BRICK CO. (1924), 56 O. L. R. 33.—**CAN.**

c i. —— *Balance to be paid on commencement of undertaking by company.*]—A. added on the foot of an application for shares the words : "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence" :—*Held :* this stipulation had nothing to do with his becoming a shareholder ; & failure of the co. to commence building did not entitle A. to rescind his contract.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

f i. —— —— ——.]—A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site :—*Held :* his agreement constituted A. a shareholder *in præsenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—D. (b).

sy. *Abrogation of original agreement—Ascertainment of terms of substituted oral agreement.*]—LAZIER *v.* MCCULLOUGH (1913), 25 W. L. R. 911 ; 14 D. L. R. 270 ; 6 Alta. L. R. 503.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—E.

d i. —— *Not after election to retain shares.*]—MCDONALD *v.* WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—**N.Z.**

f i. —— *Lapse of time.*]—Where the owner of shares held in escrow agreed to sell them, & certificates therefor were issued in the name of the purchaser & retained by the trustee pending fulfilment of the terms of the trust agreement, but no demand had yet been made upon the purchaser for payment :—*Held :* the fact that there was a lapse of about four years without any action being taken by the purchaser displaying any right of ownership or interest in the shares did not show that he had abandoned the contract of purchase.—DALLAS & BIRKE *v.* DALLAS OIL CO., LTD., & WEBSTER, [1930] 2 W. W. R. 301 ; 2 D. L. R. 788 ; 24 Alta. L. R. 445 ; *affd.*, [1931] S. C. R. 220 ; 2 D. L. R. 733.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—F.

m i. —— ——.]—The ct. has jurisdiction to decree specific performance of a contract with a co. for the purchase of shares thereof, but the matter is one of judicial discretion, *i.e.* contracts for the sale of shares are treated on the same principles as to the exercise of the ct.'s jurisdiction to decree specific performance as are contracts relating to land.—MCDOUGAL SEGUR EXPLORATION CO. OF CANADA, LTD. *v.* SOLLOWAY MILLS & CO., [1931] 2 W. W. R. 516.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 vi. ——.]—MILNE *v.* DURHAM HOSIERY MILLS, LTD., [1925] 3 D. L. R. 725 ; 57 O. L. R. 228.—**CAN.**

1553 vii. ——.]—PATHESCOPE UNION OF SOUTH AFRICA, LTD. *v.* MALLINICK, [1927] App. D. 292.—**S. AF.**

1553 viii. ——.]—ROBERTS *v.* ARNOTT CO., [1932] 1 D. L. R. 798.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

sa. *Representation must have induced contract.*]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. *v.* DICKIE, [1925] D. L. R. 377 ; 52 N. B. R. 42.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1588 ii. —— ——.]—Deft., director of a co., without putting his signature to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares :—*Held :* Lord Tenterden's Act had no application to the case, & pltf. was entitled to recover from deft. the amount paid for the shares.—DIAMANTI *v.* MARTELLI, [1923] N. Z. L. R. 663.—**N.Z.**

f. Read now "1588 i."

g. Read now "1588 ii."

1588 iii. —— ——.]—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, No. 400 1., *ante*.—**N.Z.**

250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed:—*Held:* although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) *v.* KAVANAGH (1925), 41 T. L. R. 378, C. A.

1604. *Add. Annotation:*—**Refd.** *Re* United Citizen's Investment Trust (1931), 101 L. J. Ch. 17.

1644a. —— **Contract to repay advance after allotment.**]—WHEELER *v.* FRADD (1898), 14 T. L. R. 302, 440; 42 Sol. Jo. 364, C. A.

1645. *Add. Annotation:*—**Distd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1653. After this case add:—

-.]—*See, now,* 1929 Act, s. 39 (1).

1654a. —— **What amounts to.**]—In Jan. 1920, K. applied, on a form supplied to him by Y., for 100 shares in a co. about to be formed On Apr. 14, Y. purported to transfer to K. 100 shares, but the transfer did not specify the denoting numbers of the shares comprised therein. At a meeting of the directors held on Apr. 16, a resolution was passed purporting to allot all the shares of the co. At that date the co. had not issued a prospectus or filed a statement in lieu thereof. On Apr. 20, the statement in lieu of prospectus was filed. At a meeting of the directors held on Apr. 30, the transfer from Y. to K. came before the board, & a resolution was passed approving the transfer & directing that a share certificate should be forwarded to K. Subsequently K. was registered a member of the co. The certificate, dated May 26, was sent to, & was accepted by, K. On June 8 a bonus, declared at the meeting of Apr. 30, was paid to, & was accepted by, K. K., as purporting to be the owner of the shares, attended a meeting of shareholders on Mar. 24, 1921. Subsequently the co. went into liquidation, & K., on whose shares there was a liability of 10*s.* per share, then denied being a shareholder, contending that the allotment of shares to Y. was void under 1908 Act, s. 82:—*Held:* (1) although the allotment to Y. was void, K. was a member of the co. at the commencement of the winding up, there having been no agreement between him & the co. until Apr. 30, when the co. was legally in a position to allot shares; (2) in any event, in view of his subsequent conduct, he was estopped from denying that he was a member of the co.—*Re* BURTON (JAMES) & SONS, LTD., [1927] 2 Ch. 132; 96 L. J. Ch. 457; 137 L. T. 564; 71 Sol. Jo. 491.

1659. *Add. Annotation:*—*As to* (4) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. ——.]—TRUSTS & GUARANTEE CO. *v.* SMITH, [1924] 2 D. L. R. 211; 54 O. L. R. 144; 4 C. B. R. 195.—**CAN.**

r ii. ——.]—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

r iii. ——.]—If a shareholder desires to rescind his contract to take shares in a co., then, in order to make the rescission effective, he must before the commencement of the winding-up either have his name removed from the register of members, or institute appropriate legal proceedings to have it removed. Pltf. who had been induced to take shares under circumstances which entitled him to repudiate his contract, duly notified deft. co. of his repudiation. Negotiations were then entered into between pltf. & the director of the co. with reference to the mode of repayment to pltf. of the moneys due to him by the co. No agreement was, however, arrived at between the parties, & after some further delay pltf. commenced an action claiming, *inter alia*, an order directing the removal of his name from the register. A few days prior to the commencement of this action, the directors, without any notice to pltf., passed an effective resolution for the voluntary winding up of the co.:—*Held:* the claim for the rectification of the register was, under the circumstances, too late & must be refused.—FLEMING *v.* ECLIPSE LAUNDRY CO., [1928] N. Z. L. R. 598.—**N.Z.**

sb. *Failure to repudiate before declaration of insolvency.*]—Apart from the effect of the commencement of winding up, it is too late for a shareholder in a limited co. to apply for rectification of the register of shareholders, on the ground of misrepresentation, after there has been a definite public declaration of insolvency, & this is so whether the business has in fact been kept open as a going concern or not.—*Re* LUCKS, LTD., SERPELL'S CASE, [1928] V. L. R. 466; 49 A. L. T. 270; [1928] Argus L. R. 288.—**AUS.**

PART III. SECT. 17, SUB-SECT. 2.—A.

1606 iii. —— *Agreement to subscribe for shares when called upon.*]—BEARDMORE & CO., LTD. *v.* BARRY, [1928] S.C. 101.—**SCOT.**

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

f i. ——.]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered:—*Held:* the latter was never under any liability to the co. & could not be made a contributory.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242; 2 W.W. R. 521.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.—C.

sc. —— *Whether nominee liable—Nominee incapable of contracting.*]—Petitioner's father signed her name to a stock subscription book of a bank, paid the calls, & received the dividend cheques, which were indorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, & the order for call against contributories was made three months before she came of age. A year after the liquidation commenced she took proceedings to have her name removed from the list of contributories:—*Held:* she was not liable as a contributory, & her name must be removed from the list.—*Re* CENTRAL BANK & HOGG (1890), 19 O. R. 7.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—A.

f i. ——.]—Allotment is the acceptance by a co. of an offer to take shares.—IMPERIAL BANK OF CANADA *v.* DENNIS, [1926] 3 D. L. R. 168; 59 O. L. R. 20; *varying*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1654 i. *Allotment before statement in lieu of prospectus filed.*]—*Held:* ineffective to charge persons who had signed a "subscribers' agreement."—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484; 58 O. L. R. 486.—**CAN.**

sd. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*]—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application:—*Held:* he was not entitled to have his name removed from the list of contributories.—*Re* GREAT NORTH INSURANCE CO., PAINTER'S CASE, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1149; 21 Alta L. R. 326; *revsg.*, [1925] 1 W. W. R. 752.—**CAN.**

1663. *Add. Annotation :—Generally,* **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

1664. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw (1935), 153 L. T. 245.

1668a. Unauthorised issue of allotment letters by secretary—Estoppel of company.]—PETERBOROUGH TRUST, LTD. *v.* STEEL INDUSTRIES OF GREAT BRITAIN, LTD. (1934), 78 Sol. Jo. 861.

1681a. —— —— ——.]—In their circular the directors asked whether, should there be any of the reserved shares remaining undisposed of, each shareholder would say if he wished to have any shares in addition to those he might receive as his proportional shares. They also required payment to be made on or before Oct. 1. Applts. answered that they did wish to have some additional shares. In their reply, dated July 18, the directors declared that additional shares had been allotted to them, & that payment thereon must be made on a day specified or the shares would be forfeited. No notice was taken of this communication :—*Held :* there was no complete contract as to these additional shares.—JACKSON *v.* TURQUAND (1869), L. R. 4 H. L. 305 ; 39 L. J. Ch. 11, H. L.

1746. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1771. After this case add :—
——.]—*See, now,* 1929 Act, s. 41.

1778. *Citation :*—For " 96 L. T. 743 " read " 92 L. T. 743."

1783a. As to compliance with formalities — Authorised affixing of seal.]—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, No. 1794a, *post.*

1786. *Add. Annotation :*—**Refd.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

1794. *Add. Annotations :*—**Apld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1794a. Seal affixed by secretary without authority.]—The A. co., of which D. was a director & G. was the secretary, being debtors of W. who, on Apr. 23, 1928, had issued a writ to enforce payment of the debt, procured the issue to W. of a certificate No. 528, certifying that W. was the registered holder of 2,000 preferred ordinary shares numbered 40,652 to 42,651 of ten shillings each fully paid in pltf. co., which certificate, early in May, 1928, was accepted by W. as security for the payment of the debt & on the faith of which W. abstained from serving the writ upon the A. co. until June 18, 1928. D. was also managing director & G. was also secretary of pltf. co. The certificate bore the seal of that co., & was attested by the signatures of D. & G. as such director & secretary respectively. Pltf. co. having refused to recognise W.'s title to the shares brought this action against W., in which they claimed a declaration that W. was not entitled to the shares & rectification of their register of members. By art. 105 of the arts. of assocn. of pltf. co. it was provided as follows : " The seal of the co. shall not be affixed, except by the authority of a resolution of the board of directors & in the presence of at least one director

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PART III. SECT. 17, SUB-SECT. 3.—C. (b).

1666 i. *Exercise of powers by directors—Directors never properly appointed.*]—An applicant for shares in a co. who accepted the shares allotted him, paid for them in part, allowed his name to appear on the list of shareholders, attended both in person & by proxy shareholders' meetings & accepted a dividend :—*Held :* to be precluded from contending for the first time after a winding-up order had been made that the directors who made the allotment were only *de facto* not *de jure* directors, & from disputing his status as a shareholder.—*Re* ACME PRODUCTS, LTD., HOPPS' CASE, [1932] 2 W. W. R. 580 ; 4 D. L. R. 330 ; 40 Man. L. R. 444.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (a).

sf. *Allotment on terms other than those in application.*]—Where an allotment of shares was made on terms differing substantially from those contained in the application :—*Held :* as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—WHITTLE *v.* HENLEY, [1924] App. D. 138.—**S. AF.**

sg. *Allotment fraud on company—Company not bound to repudiate.*]—*Re* SUN RAY MANUFACTURING CO., *Ex p.* BIRKETT & SONS, LTD., [1925] 1 D. L. R. 1204 ; 5 C. B. R. 286 ; *affd.,* [1924] 2 D. L. R. 1055 ; 4 C. B. R. 615.—**CAN.**

sh. *Non-fulfilment of conditions by company—Acquiescence.*]—A subscriber for stock who has received his stock without inquiry as to fulfilment of conditions & has acted as a shareholder in every way, cannot set up breach of condition as a ground for refusing to pay for his shares.—*Re* MANITOULIN QUARTZITE, LTD., [1933] 4 D. L. R. 132.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (b) i.

n i. —— *Contract to take treasury shares.*]—Deft. applied to a California co. through an agent in Victoria, B.C., for shares in the co. He intended to obtain treasury shares, but the shares which he received were shares owned by one A. Deft.'s name was entered, to his knowledge, on the co.'s register of shareholders, & he received dividends & contributed funds to assist in rehabilitating the co., but it was not until after the present action was brought that he learned that he had not received treasury shares. He thereupon immediately repudiated ownership. The action was one in which creditors of the co. sought, in accordance with the law of California, to fix deft. with a liability for its debts proportionate to the amount of his shares :—*Held :* deft. never became a shareholder since no contract making him such ever came into existence, & that his conduct did not estop him from denying that he was a shareholder.—AMERICAN SEAMLESS TUBE CORPN. *v.* GOWARD, [1930] 2 W. W. R. 31 ; 3 D. L. R. 870 ; 42 B. C. R. 551 ; *affd.,* [1931] 1 W. W. R. 509 ; 1 D. L. R. 878 ; 43 O. L. R. 407.—**CAN.**

n ii. —— ——.]—WITCOMB *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 2 W. W. R. 545.—**CAN.**

n iii. —— ——.]—An agreement for the sale of treasury shares of a co. is not satisfied by the transfer to the purchaser of an individual shareholder's personal stock.—CLAY *v.* POWELL & CO., LTD., [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (a).

1707 v. —— ——.]—An application for shares in a co. is not binding on appct. unless & until it has been accepted by allotment & notice thereof made & given within a reasonable time.—MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial—Posting sufficient.*]—HOWSON *v.* CROW (Ont.), [1925] 1 D. L. R. 495.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—G.

g i. —— *Non-compliance with Sale of Shares Act, R. S. M.,* 1913 (c. 175).]—Allotment void, & not merely voidable : & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re* NORTH WESTERN TRUST CO., *Re* MCASKILL *v.* NORTH WESTERN TRUST CO., [1926] 3 D. L. R. 612 ; [1926] S. C. R. 412.—**CAN.**

1773 i. *Effect of avoidance—Right to recover money paid.*]—The right of an appct. to have the register of members of a co. rectified by the removal of his name therefrom under an order of the equity ct. carries with it the right to recover from the co. moneys paid to it by appct. in respect of his contract to take shares, & this is so whether the basis of the rescission of the contract be fraudulent or innocent misrepresentation. — *Re* AUSTRALIAN SLATE QUARRIES, LTD. (1930), 47 N. S. W. W. N. 179.—**AUS.**

& the secretary; & the said one director & the secretary shall sign every instrument to which the seal shall be so affixed in their presence & in favour of any purchaser or person *bonâ fide* dealing with the co. such signature shall be conclusive of the fact that the seal has been properly affixed." The following further facts were held to have been established at the trial: from entries in the register of members it appeared that the shares in dispute had in Nov. 1927, been issued, with other shares, to the English & Foreign Investment Trust, Ltd., & that in respect of those shares three shillings per share were paid up. There was no entry showing when that co. ceased to be a member. There were entries in the register indicating that the 2,000 shares were transferred to W., & that W. was entered on the register as a member on Apr. 30, 1928, as having acquired the shares as fully paid & as having had a certificate No. 528 issued to him. There was no record of any transfer from the English & Foreign Investment Trust, Ltd. In Apr. 1928, while the register & seal of pltf. co. were under their physical control, D. & G. made the entries in the register, &, as director & secretary respectively of pltf. co., affixed the seal of that co. to & signed the certificate issued to W., but without any authority from pltf. co. & fraudulently in the interest of the A. co.:—*Held:* (1) the certificate not having in truth been sealed by pltf. co.'s authority, was, in the circumstances aforesaid, a forgery & not binding upon the co; (2) W., whose ignorance of art. 105 had been proved, was, on that account, precluded from relying on that article to support the contention that pltf. co. was bound in his favour to treat the attesting signatures as conclusive evidence of the fact that the seal of pltf. co. had been properly affixed to the certificate; (3) as affixing the seal was not a matter in which normally a single director would have power to act without the authority of the board of directors, W. was not relieved from the obligation to inquire whether the formalities required by the art. had been complied with.—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, [1931] 1 Ch. 496; 100 L. J. Ch. 169; 144 L. T. 607; 74 Sol. Jo. 820.

1810. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1814a. **"Initial share issue"—Meaning.**]—GAS METER CO., LTD. *v.* DIAPHRAGM & GENERAL LEATHER CO., LTD. (1925), 41 T. L. R. 342.

1815. Before this case add "*see, now,* 1929 Act, s. 47."

1817. *Add. Annotations:—As to* (4) **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809. *Generally,* **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1821. *Add. Annotations:—As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. *Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

PART III. SECT. 18, SUB-SECT. 3.—C.

f i. —— ——.]—An allottee:—*Held:* entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re* SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* CALDWELL, [1926] 1 D. L. R. 824; 58 N. S. R. 399.—**CAN.**

PART III. SECT. 19.

1812 i. *Issue for improper purpose—Increase of voting power—Ultestraint.*]—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—SMITH & TATCHELL *v.* HANSON TIRE & SUPPLY CO., LTD., [1927] 3 D. L. R. 786; [1927] 2 W.W. R. 529; 21 Sask. L. R. 621.—**CAN.**

1812 ii. —— —— ——.]—TREASURE TROVE DIAMONDS, LTD. *v.* HYMAN, [1928] App. D. 464.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 1.—A.

l i. —— *Issue for future services to be rendered.*]—Defts. procured the incorporation of pltf. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares:—*Held:* the transaction was *ultra vires* of pltf. co.—BANKING SERVICE CORPN., LTD. *v.* TORONTO FINANCE CORPN. LTD., [1928] A. C. 333; 97 L. J. P. C. 65; 139 L. T. 149, P. C.—**CAN.**

l ii. —— ——.]—The manager of a co. incorporated under Ontario Ces. Act agreed with the co. to buy certain shares thereof at their par value & to pay therefor partly by promissory notes & partly by serving the co. as its manager for the next four years. The manager became bkpt. & the co. claimed against his estate for the amount of the notes. The trustee disallowed the claim & the co. appealed:—*Held:* as the evidence showed that the contract was, not illusory, but a *bonâ fide* transaction, the terms of payment were within the powers of the co.—*Re* GIBSON ESTATE, PELICAN LAKE LUMBER CO., LTD. & TRADERS TRUST CO. (Man.), [1929] 4 D. L. R. 1001; 3 W. W. R. 224; 11 C. B. R. 100.—**CAN.**

l iii. ——.]—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

l iv. ——.]—SIGNAL HILL OILS CO., LTD. *v.* LONDON OIL SECURITIES, LTD. (Alta.), [1927] 3 D. L. R. 984; [1927] 2 W. W. R. 392.—**CAN.**

l v. ——.]—WASCHYSYN *v.* KILDONAN ICE & FUEL CO. (Man.), [1929] 4 D. L. R. 555, *affd.* [1937] 1 W. W. R. 572.—**CAN.**

l vi. ——.]—Unless a co. has been expressly authorised by statute to issue shares at a discount, it is *ultra vires* for it to issue shares as fully paid up in consideration of property or services where no attention is given to the question of the relationship of the value of the consideration to the par value of the shares.—SPOONER *v.* SPOONER OILS, LTD., [1936] 1 W. W. R. 561; 2 D. L. R. 634.—**CAN.**

sh. *Under Companies Act,* 1929, *s.* 47—*Petition to court—Remit to reporter.*]—Where a petition is presented to the ct. under Cos. Act, 1929, s. 47, for authority to issue shares at a discount, the ct. will not dispense with a remit to a reporter.—*Re* EDINBURGH & DUNDEE INVESTMENT CO., [1930] S. C. 681.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 1.—B.

si. *Issue of shares as bonus.*]—*Held:* a co. agreeing to issue twenty-one preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

sl. *Crediting applicants with commission.*]—The crediting of appcts. for shares with "commission" at 25 per cent. of the par value may amount to sale of shares at a discount & be *ultra vires* the co.—*Re* BROOKS STEAM MOTORS, LTD., [1934] 2 D. L. R. 648.—**CAN.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) i.

sn. —— *Credit for accommodation bills met by shareholder.*]—An agreement was entered into by a co. with one of its shareholders to credit moneys which he might be called upon to pay in respect of accommodation bills entered into by him for the co.'s assistance, or which might fall due to him for services rendered to the co. against his liability for shares. Although a sufficient sum had accumulated under these heads to extinguish the shareholder's liability on his shares, the co. went into liquidation before an actual credit had been passed for the amount:—*Held:* the transaction did not amount to payment by the shareholder of the amount due by him on his shares within Cos. Act, 1908, & the actual set-off not having been carried into effect prior to the liquidation, the shareholder was precluded by sect. 68 of the Act from having his name removed

1826. *Add. Annotation :*—*As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1860. *Add. Annotation :*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

1871. *Add. Annotation :*—**Refd.** Tarrant *v.* Roberts (1930), 47 T. L. R. 199.

1923. *Add. Annotation :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1928. *Add. Annotation :*—*As to* (3) **Refd.** Faber *v.* I. R. Comrs., 1936] 1 All E. R. 617.

1929. *Add. Annotation :*—*As to* (3) **Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1934. *Add. Annotation :*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1935. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1940. *Add. Annotation :*—*As to* (3) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1949. *Add. Annotation :*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1953. *Add. Annotation :*—*As to* (1) **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

2026. After this case add the following new subsection :—

SUB-SECT. 3*a*.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

See case *infra*.

2060. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

2070. *Add. Annotation :*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2070a. ——.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser ; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—SPENCER *v.* ASHWORTH PARTINGTON & CO., [1925] 1 K. B. 589 ; 94 L. J. K. B. 447 ; 132 L. T. 753, C. A.

2072. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2087a. Sale by transferee to sub-purchaser.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante*.

2100. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2168. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2174. *Add. Annotations :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin,

from the list of contributories.—HARDING & CO. *v.* HAMILTON, [1929] N. Z. L. R. 338.—**N.Z.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders—Application of surplus assets.*]—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit :—*Held :* no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118 ; 55 O. L. R. 413.—**CAN.**

PART III. SECT. 20, SUB-SECT. 3.—B. (a).

m i. —— ——.]—Any *bonâ fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a "payment in cash."—MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) *v.* LINDER BROTHERS (1927), 48 N. L. R. 279.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—B. (b).

1886 ii. —— ——.]—By an agreement in writing applt. & another agreed to sell & the co. agreed to purchase certain land at the price of £2,610, which price was to be paid & satisfied partly by certain cash instalments & partly by the issue of fully paid shares in the co. Possession of the land was to be given on payment of £10 & the issue of four hundred shares ; transfer was to be made after payment of all instalments, the last of which, under the agreement was not payable until Aug. 1928. Possession of the land was given & the shares were issued, but no contract was filed at or before the issue of the shares :—*Held :* under the agreement the shares were not paid or to be paid in cash.—*Re* GOODMAN BROTHERS AUTO & SERVICE CO., LTD., *Ex p.* ROSE, [1927] S. A. S. R. 571.—**AUS.**

st. *Adoption of contract with promoter—Money placed in his hands by intending shareholders.*]—Where a co. on completion of conveyances to it by the vendor gave credit to him for moneys placed in his hands as promoter on the terms of the co.'s prospectus by intending shareholders & specifically appropriated by them in payment *pro tanto* for their shares, registered the shares in their names, & at the same time obtained credit in respect of the payment from the vendor on account of the purchase-money :—*Held :* this was a payment in cash to the co. in respect of those shares within New South Wales Cos. Act, 1874, s. 57, which is substantially identical with Imperial Cos. Act, 1867, s. 25.—NORTH SYDNEY INVESTMENT & TRAMWAY CO. *v.* HIGGINS, [1899] A. C. 263 ; 68 L. J. P. C. 42 ; 80 L. T. 303 ; 47 W. R. 481 ; 15 T. L. R. 232 ; 6 Mans. 321, P. C.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3a.

sl. *Filing of contract—Time for filing—Extension of time.*]—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time :—*Held :* merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—*Re* ANDERSON & MUNRO, LTD., [1924] S. C. 222.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 3.—C. (c).

1925 i. *Sufficiency of—Whether court will inquire into.*]—*Held :* the agreement not having been set aside, the adequacy of the consideration could not be inquired into in a winding-up proceeding.—*Re* DOMINION COMBING MILLS, [1930] 3 D. L. R. 98 ; 65 O. L. R. 65 ; 11 C. B. R. 189 ; *revsg.*, 11 C. B. R. 84 ; *affg.*, 10 C. B. R. 462.—**CAN.**

PART III. SECT. 21, SUB-SECT. 2.

2053 i. *Must state amount of call—& time & place of payment.*]—PIONEER ALKALI WORKS, LTD. *v.* AMIRUDDIN SHALEBHOY TYEBJI (1925), I. L. R. 50 Bom. 461.—**IND.**

PART III. SECT. 21, SUB-SECT. 3.

1 i. ——.]—EUROPEAN & NORTH AMERICAN RY. CO. *v.* DUNN (1876), 16 N. B. R. (3 Pug.) 320.—**CAN.**

PART III. SECT. 21, SUB-SECT. 4—B. (b).

2068 iii. ——.]—The transferor of shares in a co. remains liable to the co. for calls due & owing at the date of transfer, notwithstanding that the co. duly registered such transfer & recovered judgment & issued execution in respect of the calls against the transferee.—MOTOR & CASH ORDERS, LTD. *v.* O'MARA (1936), 36 S. R. N. S. W. 243 ; 53 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 21, SUB-SECT. 5.—A. (b).

c i. —— *Estoppel.*] — DOMINION SECURITIES *v.* DUNCAN, [1929] N. Z. L. R. 65.—**N.Z.**

PART III. SECT. 21, SUB-SECT. 7.

e i. —— *Liability of application & allotment money in voluntary winding up.*]—A co. in voluntary liquidation may recover unpaid application & allotment money from a former shareholder, whose shares have been duly forfeited for non-payment of calls.—*Re* AUSTRALIAN GROUP & GENERAL ASSURANCE CO., LTD. (1932), 32 S. R. N. S. W. 435 ; 49 N. S. W. W. N. 111.—**AUS.**

PART III. SECT. 22, SUB-SECT. 2.

2174 i. *Lien extended to fully paid shares—Valid.*]—Where a debt to a

Official Assignee of Property, [1933] A. C. 691.

2179. *Add. Annotations :—As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

2183a. —— **Lien in respect of debt of trustee—Right of trustees to sell shares.**]—Pltfs. were the trustees of the marriage settlement of one of them, who was also a beneficiary under the settlement. They claimed damages from defts. for breach of an agreement, whereby defts. undertook to purchase shares in a certain company. The pltf., who was a beneficiary under the settlement, was, in his individual capacity, indebted to the co. & the co. had, under its articles, a lien upon shares in respect of the debts of a member. In a previous action it had been held that whatever equitable interest the co. had in these shares under its lien was postponed to the interests of the beneficiaries under the settlement, other than the debtor-trustee & persons claiming under him. Defts. now contended that, as the co. would lose its lien, which was admittedly good against the debtor-trustee & persons claiming under him, if the trustees were to sell, the trustees were not in a position to sell the shares free from encumbrances, & therefore the defts. were not bound to carry out their agreement to purchase :—*Held :* the right of the trustees to sell the shares in execution of their trust was not affected by the co.'s lien against the debtor-trustee's personal interest, & the trustees could give an unencumbered title to a purchaser of the shares, although the co. would lose its lien thereby. Defts. were, therefore, bound to carry out their agreement to purchase.—MATHIESON *v.* GRONOW (1929), 141 L. T. 553 ; 45 T. L. R. 604.

2210a. —— ——.]—PICKERING *v.* APPLEBY (1720), 1 Com. 354 ; 92 E. R. 1108.

Annotation :—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

2211a. —— —— **Spanish & Portuguese bonds.**]—*Qu. :* whether Spanish & Portuguese Bonds are " goods, wares, & merchandizes," within Stat. Frauds, s. 17.—PAWLE *v.* GUNN (1838), as reported in 1 Arn. 200 ; 6 Scott, 286 ; 7 L. J. C. P. 206.

2217. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2224a. —— **Dividend before exercise of option to purchase—Payment postponed.**]—By a contract made in Apr. 1922, it was agreed between the persons interested therein that a business forming part of a testator's estate should be converted into a private co. with a capital of £30,000, divided into £20,000 debentures bearing interest at 7 per cent. & 10,000 ordinary shares of £1 each, fully paid, which were to be allotted to the trustees of the will. One of the trustees, F., was appointed manager of the co., & was given the option, so long as he continued to be both trustee & manager, of purchasing the whole of the debentures & shares at par value. In June, 1928, the co. declared a dividend of 57½ per cent. on the ordinary shares for the year ending Mar. 31, 1928, to be paid in three equal instalments on July 1 & Nov. 1, 1928, & Feb. 1, 1929, & the first instalment was paid on July 1, 1928. On July 30, 1928, F. exercised his option to purchase the whole of the shares & debentures for £30,000. At that date there was four months' interest due upon the debentures. The purchase was completed on Nov. 5, 1928. On a summons being taken out to determine the rights of the parties in the unpaid instalments of the dividend, & the debenture interest, as between vendors & purchaser :—*Held :* (1) the four months' accrued interest on the debentures passed to the purchaser ; (2) the declaration of the dividend on the shares having created a debt to the trustees as the then registered shareholders, the postponement of the payment did not operate to deprive them of their rights, & therefore the remaining instalments belonged to them & not to the purchaser.—*Re* KIDNER, KIDNER *v.* KIDNER, [1929] 2 Ch. 121 ; 98 L. J. Ch. 247 ; 141 L. T. 195.

2228. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

2228a. Condition for ascertainment of solvency of company—Duty of accountant.]—Upon a proposed sale of 50,000 shares in a limited co., it was agreed that the sale should be subject to an accountant appointed by the purchasers being " satisfied that the financial position " of the vendor co. was " solvent " : —*Held :* the agreement meant that the accountant had to be satisfied as to the solvency of the co., & his evidence as to what he understood to be the meaning of " solvent was irrelevant. It was not for the ct. to determine the meaning of " solvent."—DIAMANTIDI *v.* GROSVENOR SECURITIES, LTD., & GUILDHALL TRUST, LTD., [1937] 1 All E. R. 703 ; 81 Sol. Jo. 236, C. A.

2237. *Add. Annotation :*—**Dbtd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

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co. was contracted at a time when its articles imposed a lien on its shares, " not fully paid up," & the debt existed when the articles were amended by striking out the words " not fully paid up " :—*Held :* that this amendment operated, apart from sub-sect. (3) of sect. 111 of Cos. Ordinance, to create an effective lien with respect to such debt on shares of the debtor fully paid up when the debt was contracted.—BATU PAHAT BANK, LTD. *v.* TAN KENG TIN, [1933] A. C. 691, P. C.—**STRAITS SETTLEMENTS.**

PART III. SECT. 23, SUB-SECT. 1.

sg. *Personal representative.*] — The effect of sects. 51 & 56 of Cos. Act, 1932 (Man.), is that the personal representative of a deceased shareholder can sell & transfer the latter's shares direct to a purchaser without first becoming by transmission a shareholder in the co., & without making the declaration referred to in sect. 54.—DEACON *v.* CENTRAL MANITOBA MINES, LTD., [1934] 1 W. W. R. 45.—**CAN.**

g i. —— *Agreement binding—Company entitled to refuse to register transfer.*]—ONTARIO JOCKEY CLUB, LTD. *v.* MCBRIDE, [1927] A. C. 918; 137 L. T. 751, P. C.—**CAN.**

m i. —— *Isolated transaction.*]—MOROZ *v.* KILDONAN ICE & FUEL CO., [1930] 1 D. L. R. 138.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—A.

p i. —— *To comply with provision to furnish statement of company's " liabilities "—Meaning of " liabilities."*]—BUTLER *v.* FAIRHALL, [1927] 4 D. L. R. 976 ; 61 O. L. R. 305.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—B.

sp. *Sale of Goods Act, R. S. N. B., 1927, s. 4 (1)—Not applicable to purchase of shares through stockbroker.*]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421 ; *affd.*, [1930] 1 D. L. R. 219.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (a).

c i. —— *On failure of transferee to take up shares.*]—*Re* COMPANIES ACT, *Re* BRITISH PETROLEUMS, LTD. (B.C.), [1925] 1 W. W. R. 236.—**CAN.**

d i. —— *Repudiation—Laches of purchaser's nominee.*]—NESBITT *v.* MCCARTNEY (Alta.) (1922), 63 D. L. R. 93.—**CAN.**

2244a. Securities deposited for sale & re-investment—Misrepresentation—Right to return of securities.]—*Re* BROAD STREET PRESS, LTD. (1933), 77 Sol. Jo. 448.

2250a. —— **Valid tender of stock.**]—A. contracts with B. for the sale of £200 South-Sea stock, for £1,360 to be paid on or before the day of shutting the transfer books, in order to make the Christmas dividend. The money not being paid, A. brought his action upon the covenant, & in his declaration alleged, that he attended at the South-Sea house, for the space of an hour before the shutting of the books, & was ready to transfer the stock to deft., but that he was not ready to receive it. On a demurrer, judgment was given for deft., pltf. not having made a sufficient tender of the stock. In an action upon a contract for the sale of stock, it is necessary for pltf. to show, that he had made a legal tender of the stock before he can claim the money; for his attending at the office upon the day, & being ready to transfer, is not sufficient. He ought to set out in his declaration, the manner of transferring stock, & the time & place when & where it is usually transferred; these being matters which the ct. cannot judicially take notice of.—STAPLETON *v.* SHELBURNE (1725), 1 Bro. Parl. Cas. 215; 1 E. R. 523; *sub nom.* WIVELL *v.* STAPLETON, 8 Mod. Rep. 68, H. L.

Annotation:—**Consd.** Russen *v.* Coleby (1736), Ridg. *temp.* H. 154.

2356a. —— —— ——.]—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., No. 2590a, *post.*

2263. *Add. Annotation:*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2269a. —— ——.]—Upon the breach of a contract for the sale of shares, the proper measure of damages is, the difference between the contract price & the market price at the time of the breach.—POWELL *v.* JESSOPP (1856), 18 C. B. 336; 139 E. R. 1400.

2269b. —— ——.]—Under a contract for the sale of shares in a co. the measure of damages upon a breach by the buyer is the difference between the contract price & the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date. If the seller retains the shares after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.—JAMAL *v.* MOOLLA DAWOOD, SONS & Co., [1916] 1 A. C. 175; 85 L. J. P. C. 29; 114 L. T. 1; 32 T. L. R. 79; 60 Sol. Jo. 139, P. C.

Annotations:—**Refd.** Hill *v.* Showell (1918), 87 L. J. K. B. 1106; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

2274a. —— ——.]—The vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery the difference between the price agreed on & the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip.—TEMPEST *v.* KILNER (1846), 3 C. B. 249; 136 E. R. 100.

2280. *Add. Annotation:*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

2283a. Appointment of new trustee.]—*Re* HOBSON, HOUGHTON & Co., No. 2585a, *post.*

2299a. ——.]—An allottee of shares in a completely registered joint stock co. but who has not executed the deed of settlement of the co. cannot under 7 & 8 Vict. c. 110, s. 26, enter into a contract for the sale of his shares. W. was the allottee of shares in a completely registered joint stock co., but had not executed the deed of settlement; his brother T., acting under the authority of a power of attorney, desired Messrs. N., stockbrokers, to sell these shares, & they entered into contracts with purchasers accordingly; before the transfers were registered W. became bkpt. & the brokers were obliged at their own cost to complete the contracts with the purchasers:—*Held:* dismissing a petition by the brokers claiming to have the bkpt.'s shares transferred to them, under the terms of 7 & 8 Vict. c. 110, s. 26, the contracts were null & void, & that the assignees of the bkpt. were entitled to the shares as part of his estate & effects.—*Re* EDMOND, *Ex p.* NELLSON (1853), 3 De G. M. & G. 556; 23 L. J. Bcy. 12; 22 L. T. O. S. 190; 18 Jur. 297; 2 W. R. 121; 43 E. R. 218, L. C. & L. J.; *previous proceedings* (1850), 15 L. T. O. S. 435.

PART III. SECT. 23, SUB-SECT. 2.—C. (d) iii.

st. *Waiver.*]—DOLL *v.* HOWARD (1897), 11 Man. L. R. 577.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) i.

2251 i. *Nature of remedy.*]—Action by seller for purchase price is not an action for specific performance, but a common law action to enforce a money demand. —MCTAVISH *v.* LANGER, [1933] 4 D. L. R. 609.—**CAN.**

sv. *Injunction—Breach of pooling agreement—Covenant not to encumber shares.*]—REED *v.* MCVEIGH, [1931] 1 W. W. R. 257.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) ii.

m i. —— ——.]—GRICE *v.* BARTRAM (1912), 22 O. W. R. 182; 3 O. W. N. 1312; 3 D. L. R. 868.—**CAN.**

m ii. —— *Contract between employer & employee.*]—In an action specific performance of a contract for the repurchase of shares, in which the contracting parties were employer & employee:—*Held:* (1) employee may prove an agreement on the part of the principal shareholder to repurchase on termination of the employment; & (2) employee may also prove an agreement by the principal shareholder to pay dividends at a minimum rate, upon the shares.—MACDONALD *v.* SOULIS, [1925] 2 D. L. R. 926.—**CAN.**

m iii. —— —— *Sale by vendor to third party without notice of prior agreement.*]—DUFF *v.* RUDOLPH & LUNENBURG GAS CO., ADAMS *v.* LUNENBURG GAS CO. (N. S.), [1930] 2 D. L. R. 801; *revsg.*, [1929] 4 D. L. R. 813.—**CAN.**

2260 i. —— *Against purchaser.*]—FRANKLIN *v.* REARDON (N. S.) (1917), 55 S. C. R. 613; 39 D. L. R. 176.—**CAN.**

2266 i. *Loss of right to relief—Laches—Right to relief from forfeiture of money paid.*]—A purchaser who has never in fact abandoned or receded from his contract, but yet, by reason of laches, or otherwise from causes not falling within abandonment or recession, has deprived himself of the right to specific performance is, if the vendor refuses to accede to specific performance, *prima facie* entitled to relief from forfeiture of the money paid unless some facts are shown which would render this relief inequitable. The jurisdiction to grant this relief is not limited to cases where the overdue payment has been tendered: & the relief granted will not necessarily be the return of the whole amount of the purchase money; the seller is entitled to have such damages deducted as he is proved to have sustained because of the buyer's default: & if he can be so fully compensated that is enough to justify the remedy.—MOSDELL *v.* JARDINE (B. C.), [1929] 4 D. L. R. 617. 3 W. W. R. 95.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) iii.

2269 i. *Measure of damages—Misrepresentation as to liabilities of company.*]—SISSONS *v.* HASSARD (Alta.), [1923] 4 D. L. R. 186, [1923] 3 W. W. R. 105.—**CAN.**

2299b. ——.]—Where a transfer of shares is not | to the registrar's office the transferor | will be liable to the creditor of the company, but not liable to contribute as between himself and the other shareholders.—*Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE CO., ORPEN'S CASE (1863), 2 New Rep. 225; 9 Jur. N. S. 615; *sub nom. Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, ORPEN, 32 L. J. Ch. 633; 8 L. T. 596; 11 W. R. 741; *on appeal*, 33 L. J. Ch. 67, L. JJ.

—**Consd.** *Re* General Provident Assce., Cross's Case (1869), 38 L. J. Ch. 583.

2332. *Add. Annotation:*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2332a. —— ——.]—IRVING *v.* SOUTH EASTERN RY. CO. (1857), 29 L. T. O. S. 64.

2343a. ——.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante*.

2344. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2344a. —— **Transfer of whole interest in company—Indemnity against "outstanding liabilities"—Whether unpaid income tax included.**]—On the purchase by pltfs. in Aug. 1928, of the shares & interests of defts. in a co., defts. undertook to indemnify pltfs. against all outstanding liabilities of co. up to the date of the completion of the purchase:—*Held:* the words "outstanding liabilities" included the payment of the income tax & property tax which ultimately became payable by the co. in respect of the period from Apr. 5, 1928, to the date of the completion of the purchase in Aug. 1928.—UNITED KINGDOM ADVERTISING CO., LTD. *v.* WHITING (1931), 47 T. L. R. 420, C. A.

2344b. As between transferee & other shareholders.]—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—*Re* MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

Annotations:—**Consd.** *Re* Athenæum Life Assce. Soc., Chinnock's Case (1860), John. 714; *Re* Phœnix Life Assce., *Ex p.* Hatton (1862), 31 L. J. Ch. 340; *Re* Discoverers Finance Corpn., [1908] 1 Ch. 111. **Refd.** *Re* Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575; *Re* Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; *Re* Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; *Re* Consols Insce. Assocn., Benham's Case (1865), 11 Jur. N. S. 381; *Re* National & Provincial Marine Insce., *Ex p.* Parker (1867), 2 Ch. App. 685; *Re* Smith, Knight, Weston's Case (1868), L. R. 6 Eq. 238; Spackman *v.* Evans (1868), 19 L. T. 151; *Re* Asiatic Banking Co., *Ex p.* Collum (1869), 21 L. T. 350; *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Consols Insce. Assocn., Glanville's Case (1870), L. R. 10 Eq. 479; *Re* Smith, Knight, Battle's Case (1870), 39 L. J. Ch. 391; *Re* European Bank, Masters' Case (1871), 7 Ch. App. 292; *Re* Great Wheal Busy Mining Co., King's Case (1871), 40 L. J. Ch. 361; R. *v.* Lambourn Valley Ry. (1888), 22 Q. B. D. 463; *Re* Discoverers Finance Corpn., Lindlar's Case, [1910] 1 Ch. 312.

2347. *Add. Annotation:*— **Refd.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2389. For the paragraph in the original volume substitute the following paragraph:—

—— **Board equally divided.**]—Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs. accordingly & to return all the documents, namely, a transfer by the extrix. to herself certificates & registration fee:—*Held:* the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly.—*Re* HACKNEY PAVILION, LTD., [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

2390a. Presumption of bona fides.]—By one of the articles of assocn. of deft. co. it was provided that: "The directors may decline to register any transfer of shares made by a member who is indebted to the co., or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them to be objectionable or the transfer shall be considered as having been made for purposes not conducive to the interest of the co. & the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article." A shareholder sought to transfer a number of his shares, but the directors declined to register the transfer. By another article the holder of 1 share and 1 vote, the holder of 5 shares had 2 votes & there was an additional vote for every additional 10 shares, with the result that by

PART III. SECT. 23, SUB-SECT. 3.—D. (b).

2331 ii. ——.]—ABDUL VAHAD, ETC. *v.* HASANALLI ATIBHAI, ETC. (1925), I. L. R. 50 Bom. 229.—**IND.**

2331 iii. —— ——.]—MCLEOD *v.* BRAZILIAN TRACTION LIGHT & POWER CO., LTD., [1927] 2 D. L. R. 875; 60 O. L. R. 253.—**CAN.**

2337 iii. —— —— —— *Cancellation of restrictive endorsement by transferee.*]—MATHERS *v.* ROYAL BANK OF CANADA (1913), 29 O. L. R. 141; 4 O. W. N. 1481.—**CAN.**

PART III. SECT. 23, SUB-SECT. 4.

2344 i. *Inter se—Transfer subject to understanding as to assets of company—Transferee bound.*]—*Re* HOBRECKER'S ESTATE, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—**CAN.**

sg. *Right to transferee to reject or return transfer.*]—A provision of the agreement gave the transferee of the shares an option or right, on the happening of two conditions, to reject or return the transfer & to demand back the money paid by him, the conditions being the failure of the transferor to exercise the option given her to repurchase the shares & the discovery that her title to the shares was defective:—*Held:* said provision gave deft. the transferor, no rights, but merely imposed additional obligations on her.—MCRAE *v.* LAW, [1936] 2 W. W. R. 60.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (a).

b i. ——.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 ii. —— ——.]—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

splitting a holding of shares, the voting power could be increased. It was alleged that the directors had systematically rejected transfers in order to prevent an increase in the voting power of the shareholders. In an action to enforce registration of the transfer it was sought to adduce evidence that the directors had refused registration in accordance with that systematic practice:—*Held:* (1) evidence as to the rejection of transfers on previous occasions was inadmissbile, as it could not be material to the issue in the present case; (2) in the absence of evidence to the contrary the directors must be taken to have acted reasonably & *bonâ fide*, & as they were not bound to disclose their reasons, there was no ground for interfering with their exercise of their discretion.—BERRY & STEWART *v.* TOTTENHAM HOTSPUR FOOTBALL & ATHLETIC CO., LTD., [1936] 3 All E. R. 554; 53 T. L. R. 100; 80 Sol. Jo. 954.

2408. *Add. Annotation:*—**Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

2409. After this case add:—

——.]—*Compare* DISCOVERY, Nos. 1705a, 1705b, *post.*

2412. *Add. Annotation:*—*As to* (1) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

2419. *Add. Annotations:*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1, H. L. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

2419a. —— ——.]—Where in fact the secretary of a co. is permitted to certify transfers, his authority in that behalf only extends to acknowledging the receipt of certificates which are in fact lodged, &, if he certifies a transfer when no certificate has in fact been lodged, his statement in that behalf is not in law the statement of the co.—KLEINWORT, SONS & CO. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD. (1934), 151 L. T. 1; 50 T. L. R. 244; 78 Sol. Jo. 153; 39 Com. Cas. 189, H. L.

Annotation:—**Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861.

2427a. Party registered as executor—Subsequently becoming owner—Duty of company to register without formality of transfer.]—Pltf. was the exor. of a testator who died in 1928 possessed of four debentures in the deft. co. He gave the residue of his estate to pltf. & to his widow in equal shares. Pltf. in due course was registered with the co. in his representative capacity on production of the probate, & on a division of the estate later on he claimed to be registered as owner, he having accepted the debentures as part of his share. The co. refused & required a transfer to be executed to himself under condition 4 endorsed. Pltf. refused to comply & commenced this action, claiming a declaration that he was entitled to be registered as owner without any such formality as required:—*Held:* in the circumstances, the transfer asked by the co. was an idle formality. They were bound to register the person entitled, & had already registered pltf. in his representative capacity & ought now to do so as owner. He was entitled to the declaration asked.—EDWARDS *v.* RANSOMES & RAPIER, LTD. (1930), 143 L. T. 594.

2452a. —— —— **Transfer to director of overpayments made to vendor by company.**]—A partnership business was sold to a co. for a sum of money which was satisfied by an allotment to the vendors of a number of fully paid shares in the co. It was subsequently discovered that, owing to mistake in the valuation, the partners had been overpaid by the co., &, in order to adjust the matter, two of them, on behalf of themselves & their co-vendors, voluntarily transferred to the chairman of the board of directors of the co. 3,000 shares upon trust to use or sell them for the benefit of the co. An action was commenced against the chairman of the board of directors & the co. in which the pltfs. claimed that he held the shares as trustee for the individual shareholders & in which they sought an injunction restraining him from voting, at any meeting of the co., as the holder of the shares:—*Held:* (1) on the evidence, the chairman of the board of directors held the shares, not for the benefit of the individual shareholders, but for the benefit of the co., & that he held them on trust, at his discretion, to sell them; (2) the transfer did not offend against any principle laid down by any of the decided cases, & that the transaction was not made invalid by reason of the transfer having been made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the co. might from time to time direct.—KIRBY *v.* WILKINS, [1929] 2 Ch. 444; 142 L. T. 16.

Annotation:—**Refd.** Lowe *v.* Peter Walker (Warrington) & Robert Cain & Sons, Ltd. (1935), 80 Sol. Jo. 32.

2456a. Provision of financial assistance by company for purchase of own shares—1929 Act, s. 45—What amounts to.]—Deft., being a director & manager of pltf. co., who carried on business as garage proprietors & motor-car dealers, entered into a written agreement with the co. in consideration of a cash payment to resign both positions, covenanting also not to carry on or assist in carrying on a similar

PART III. SECT. 23, SUB-SECT. 8.—A. (b).

2428 ii. —— ——.]—An agreement for the sale of shares does not imply a further agreement to have the transferee's name registered as the holder.—DOMINGO *v.* DE SOUZA (1928), I. L. R. 50 All. 695.—**IND.**

r i. —— *Claim to registration by assignee of insolvent member.*]—The arts. of assocn. of a proprietary co. provided that the regulations in Table A. in the Companies Act should not apply, but contained no transmission clause providing for the registration as a member of the co. of any person becoming entitled to shares in consequence of the insolvency of a member. The directors were given power in their discretion to refuse to register the transfer of shares to any person they should not approve as transferee. On the insolvency of one of the members the directors declined to register his assignee in insolvency as a member in respect of the insolvent's shares. The assignee applied to the ct. to order rectification of the register of members by inserting therein his name as the holder of the shares:—*Held:* the application must be refused.—*Re* W. & G. DEAN PROPRIETARY, LTD. (1929), V. L. R. 140.—**AUS.**

sd. *Certificate stolen.*]—WHITEHEAD *v.* BRIDGER HEVENOR & CO., [illegible] 3 D. L. R. 408; 6 F. L. J. (Can.) 5.—**CAN.**

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*]—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

business within a certain radius for a period of five years. The agreement further provided that he should transfer his shareholding in the co. to another director for £250, & this sum was paid to him by a cheque drawn on the co.'s account:—*Held:* (1) assuming the agreement to be one between employer & employee, the restrictive covenant was not rendered invalid as being contrary to public policy by reason of the fact that it was entered into on the termination of the employment instead of at the beginning; (2) if the payment for the shares by co.'s cheque was such as to contravene sect. 45 (1) of 1929 Act & to render the co. liable to a fine under sub-sect. (3), which was not proved, the agreement was not thereby rendered invalid.—SPINK (BOURNEMOUTH), LTD. *v.* SPINK, [1936] Ch. 544; [1936] 1 All E. R. 597; 105 L. J. Ch. 165; 155 L. T. 18; 52 T. L. R. 366; 80 Sol. Jo. 225.

2463. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Allan (1925), 9 Tax Cas. 234; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2473a. ——.]—*Re* SMITH, KNIGHT & CO., HAKIM'S CASE (1869), 7 Ch. App. 296, n.

2475. *Add. Annotation:*—**Apld.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2523. *Add. Annotations:*—**Distd.** *Re* Park Ward, [1926] Ch. 828. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2578. *Add. Annotation:*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation:*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2585a. Article restricting right of transfer—Construction.]—Arts. of assocn. restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly & reasonably exercising their powers as members of the co.

Testator appointed his wife, a son, & two other persons exors. & trustees of his will, whereby he bequeathed his residuary estate to the trustees on trust to sell & convert & to hold the proceeds, after the wife's death, upon trust as to one-third thereof for the said son, & as to the remaining two-thirds for the other children of testator alive at testator's death. The residue included shares in the co., some in testator's name, the remainder in the name of another as his nominee or as trustee for him. The will was proved by the widow & the son only. They caused these shares to be registered in their own names without qualification, as the arts. of the co. disqualified transferees from receiving notice of or voting at meetings. Later they appointed an additional trustee of the will; & in order to vest the shares jointly in them & him, all three executed a transfer. This was presented to the co. for registration, but registration was refused on the ground that the restrictions on transfer imposed by the articles applied:—*Held:* the transfer could be justified under the arts.—*Re* HOBSON, HOUGHTON & CO., [1929] 1 Ch. 300; 98 L. J. Ch. 140; 140 L. T. 496.

2585b. —— —— **Right to transfer to another member of company.**—Certain shareholders in a private co. commenced an action to restrain certain members of the co. from transferring shares otherwise than in accordance with the arts. of assocn. The substantial question, which came before the ct. upon motion, was whether one member was entitled, under the articles, to transfer shares to another member. The material articles were as follows:—

Art. 5: "The directors may in their absolute & uncontrolled discretion refuse to register any proposed transfer of shares, & clause 20 of Table A shall be modified accordingly. No shares shall in any circumstances be transferred to any infant, bkpt., or person of unsound mind. Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the co. so long as any member or failing such member any person selected by the directors is willing to purchase the same at the fair

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PART III. SECT. 23, SUB-SECT. 13.—A.

sc. *Transfer of shares of director's wife.*]—Resp. was the holder of shares not fully paid up in the bkpt. co. Her husband was a director of the co., & she had given him a power of attorney authorising him to indorse & transfer her certificates & transact any business with the co. which she could transact in person. Resp. was also a shareholder in another co. of which her husband was a director. Under the constitution of the bkpt. co. its shareholders could not sell or dispose of their shares except with the leave of the directors evidenced by a resolution of the board. All the directors of the bkpt. co. except one were indebted to it on their shares. At meetings of the directors where as a result of a prearrangement each director in turn, except the one not indebted, refrained from voting on resolutions in which he was interested, resolutions were passed, in pursuance of the prearranged scheme, which resolutions authorised the exchange of resp.'s shares in the bkpt. co. for shares in the other co. & the purchase from her by the bkpt. co. of the shares so received by her from the other co., the purchase-price being payable by crediting her with full settlement of the amount owing by her to the bkpt. co. Similar resolutions were passed with respect to the shares & indebtedness of the indebted directors. Her husband voted on the resolutions affecting her:—*Held:* apart from the question of the validity of the resolutions, the transaction should be set aside on the ground that it was a sham & did not fall within the cases in which it has been held that a *bonâ fide* out-&-out transfer of partially paid shares on the eve of insolvency of a co. will be upheld, even though made to an insolvent & for the purpose of getting rid of the liability thereon.—CLARK (R. P.) & Co., *Re*, SHIMMIN *v.* CLARK, [1932] 2 W. W. R. 370; [1933] 3 D. L. R. 702; 45 B. C. R. 355.—**CAN.**

PART III. SECT. 23, SUB-SECT. 14.—A.

2521 i. *Contract for sale of shares—Before presentation of petition—Whether void.*]—A share being a *jus in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any depreciation in market value meanwhile.—UNION SHARE AGENCY LIQUIDATORS *v.* HATTON, [1927] App. D. 240.—**S. AF.**

PART III. SECT. 23, SUB-SECT. 15.—A. (b) 1.

ss. *Purchase in name of infant—Whether complete gift of shares to infant.*]—In 1920 resp. purchased out of his own funds shares in a limited co., & directed that the shares should be registered in the name of his son who was then ten years old. The son attained his minority, in Scots law, in Sept. 1923. The share certificates were held by resp. until July, 1925, when he deposited them with his law agents on behalf of the son. Dividend warrants were issued regularly in the son's name. Resp., on behalf of the son, claimed repayment for the year ended Apr. 5, 1925, of the tax deducted from the dividends on the shares. The Crown contended (*a*) that to make a gift by a father to his son effective there must be a delivery either to the donee or to some third person for him; (*b*) that as the son was a pupil child at the date of the alleged gift he was incapable of acting or consenting, & that resp., as tutor of the pupil child, was the only person who could act for him; (*c*) that as resp. had done nothing beyond taking the title to the shares in the son's name, the shares remained under the control & at the disposal of resp. The claim was allowed by the General Comrs. who held that the shares had been effectively donated to the son & were his sole property:—*Held:* an effective donation of the shares had been made.—INLAND REVENUE COMRS. *v.* WILSON, [1928] S.C. (H. L.) 42; 13 Tax Cas. 789.—**SCOT.**

value which shall be determined as hereinafter provided." Art. 6: "In order to ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value, the person whether a member of the co. or not proposing to transfer the same, hereinafter called 'the retiring member,' shall give notice in writing, hereinafter described as a 'sale notice,' to the co. that he desires to sell the same, & until otherwise determined by the co. in general meeting the same shall be offered among the holders of ordinary shares in proportion as near as may be to their existing holdings thereof and any not accepted by them shall be offered to such other persons as the directors shall determine. Such notice shall constitute the co. the agent of the retiring member for the sale of such shares to any member of the co. or a person selected as aforesaid at the fair value. No sale notice shall be withdrawn except with the sanction of the directors":—*Held:* there was nothing in the language of arts. 5 & 6 which gave rise to the necessity of implying any restriction upon the right of a member of the company to transfer shares therein to another member.—DELAVENNE *v.* BROADHURST, [1931] 1 Ch. 234; 100 L. J. Ch. 112; 144 L. T. 342.

2589a. —— —— **Finance Act, 1927 (c. 10), s. 55.—What amounts to "issue" of shares**]—In connection with a scheme for the reconstruction of a company a new co. was formed to enter into a sale agreement to acquire the undertaking of the existing co. The consideration for the agreement was to consist, in addition to the discharge by the new co. of certain liabilities of the old co. of the allotment of shares in the new co. to the shareholders in the old co. Letters of allotment were sent to these shareholders, accompanied by a form of renunciation. Before the original allottees were registered some of them renounced in favour of other persons, with the result that of the first registered shareholders in the new co. those who had been shareholders in the old co. held less than 90 per cent. of the shares in the new co. The question of the stamp duty payable on the sale agreement & other documents was submitted for adjudication, the co. contending that the sending of the letters of allotment constituted an "issue" of shares to the original allottees, & that the conditions of exemption from *ad valorem* duty laid down in the Finance Act, 1927 (c. 10), s. 55, were complied with. The Comrs. of Inland Revenue decided that *ad valorem* duty was payable:—*Held:* the allotment letter accompanied by the form of renunciation was not an issue of shares, but only notice that the allottee was entitled to demand that shares should be issued either to himself or, if he preferred it, to his nominee to be named in the form of renunciation. Therefore the Comrs. were right in claiming *ad valorem* duty.—OSWALD TILLOTSON, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 134; 101 L. J. K. B. 737; 147 L. T. 481; 48 T. L. R. 628, C. A.

Annotation:—**Refd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

2589a. —— —— ——.]—Applt. co. in 1918 acquired all the issued ordinary shares of the C. Co. for a cash consideration. In 1936, it acquired practically all the issued preference shares, in consideration of the allotment of preference shares of applt. co. It was contended that the transfers effecting the acquisition of the preference shares in 1936 were exempt from stamp duty under Finance Act, 1927 (c. 10), s. 55:—*Held:* the consideration for the acquisition of the ordinary shares was cash, & not the allotment of shares, & it could not be said that applt. co. had increased its capital with a view to the acquisition of 90 per cent. of the share capital of the C. Co. The transfers were not entitled to the exemption claimed, & attracted the usual *ad valorem* conveyance duty.—LEVER BROS., LTD. *v.* INLAND REVENUE COMRS., [1937] 4 All E. R. 227; 54 T. L. R. 67; 81 Sol. Jo. 904.

2590a. —— —— ——.]—Those in control of deft. co. were desirous of converting it into a private co., & pltfs. were anxious to prevent this being done. With this purpose in view pltfs. executed 44 transfers, each being a transfer of five £1 shares for a stated consideration of £5. Each transfer was stamped 1*s.* (which is the correct duty on a transfer for £5), but bore no adjudication stamp. It was proved that no consideration money passed, & that the transfers were not transfers upon a sale of the shares. The co. refused to register the transfers for the reason that they were not duly stamped:—*Held:* (1) the co. was justified in refusing to register the transfers. The transfers, not being conveyances on sale, must be stamped either as voluntary conveyances, in which case Finance (1909–10) Act, 1910 (c. 8), s. 74 (2), required that the stamp duty should be adjudicated, or under Sched. to the Stamp Act, 1891 (c. 39), as conveyances or transfers of any kind not thereinbefore described, in which case that Act required them to be stamped 10*s.*; (2) following *Maynard* v. *Consolidated Kent Collieries Corpn.*, [1903] 2 K. B. 121; 9 Digest 370, *3256*, the directors, in considering whether the transfer was duly stamped, were entitled to go behind the consideration stated in the transfer.—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., [1927] 4 All E. R. 191; 81 Sol. Jo. 943.

2608. *Add. Annotation:*—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

2637. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2646. *Add. Annotation:*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2658. *Add. Annotation:*—**Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

2667a. —— **What amounts to sale.**]—Stock transferred as a security for a floating balance, & under an agreement to continue it transferred & re-transferred by & to the creditor by way of loan:—*Held:* a sale.—*Ex p.* DENNISON (1797), 3 Ves. 552; 30 E. R. 1152, L. C.

Annotation:—**Apld.** Langton *v.* Waite (1868), L. R. 6 Eq. 165.

PART III. SECT. 24, SUB-SECT. 5.

2645 1. *Whether gift complete.*]—Gifts of shares:—*Held:* not complete until at least the transfers were handed to the respective transferees.—COMMISSIONER N. Z. L. R. 345.—

2669. *Add. Annotation :*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2689a. —— **Whether mortgagee bound to obtain best price.**]—*Semble :* a mtgee. of shares is not bound to watch the market so as to sell them at the highest price ; & he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mtgor.—*Re* McMURDO, PENFIELD *v.* McMURDO, [1902] 2 Ch. 684 ; 71 L. J. Ch. 691 ; 86 L. T. 814 ; 50 W. R. 644, C. A.

2694. *Add. Annotation :*—**Apld.** Weld *v.* Petre, [1929] 1 Ch. 33.

2703a. —— **No lien conferred by articles of association.**]—Bye-laws of applt. bank, made under its Act of incorporation, provided : (44.) " the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank " ; (57.) " the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due ; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment :—*Held :* the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—BANK OF N. T. BUTTERFIELD & SON, LTD. *v.* GOLINSKY, [1926] A. C. 733 ; 95 L. J. P. C. 162 ; 135 L. T. 584, P. C.

2705. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2706. *Add. Annotation :*—*As to* (1) **Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2707. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2715. *Add. Annotation :*—**Expld.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2769. *Add. Annotation :*—**Distd.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank *v.* The Co. (1930), 23 B. W. C. C. 7.

2793. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2798a. —— **For what amount—Shares reissued.**]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture, & the shares are subsequently sold & reallotted to other persons with the result of a loss to the co., the co. on the subsequent bpkcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the reallotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable. —*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48 ; 99 L. J. Ch. 209 ; 143 L. T. 425 ; [1929] B. & C. R. 141.

2799. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2820a. —— ——.]—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., No. 2798a, *ante*.

2821. *Add. Annotation :*—**Consd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2822. *Add. Annotation :*—**Apld.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2823. After this case add :—

——.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

2833a. —— **Appointment by majority—Validity.**]—The rule of corpn. law that when a duty is delegated to a body of persons those persons can act at a meeting does not apply to the case of arts. of assocn. of cos. incorporated under Cos. Act.

By Art. 90A of the arts. of assocn. of a co. it was provided as follows : " the governing directors shall have power from time to time & at any time to appoint & remove at will additional directors & to define & limit their powers & duties provided that the total number of directors shall not exceed the prescribed maximum. Any director so appointed shall retire from office at the next general meeting, but shall be eligible for re-election subject to the approval of the governing directors. In all questions arising the opinion of the governing director or directors shall prevail." Two out of the three governing directors of the co. having, against the will of the third, by a resolution purported to appoint additional directors :—*Held :* on the construction of Art. 90A, the powers conferred on the governing directors by that article were to be exercised by all of them, & the resolution was, therefore, invalid.—PERROTT & PERROTT, LTD. *v.* STEPHENSON, [1934] Ch. 171 ; 103 L. J. Ch. 47 ; 150 L. T. 189 ; 50 T. L. R. 44 ; 77 Sol. Jo. 816.

2839. *Add. Annotations :*—**Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640 ; **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2840. *Add. Annotation :*—*As to* (2) **Apld.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640.

2841a. ——.]—The arts. of a co. provided (art. 12) : " Until otherwise determined by a

PART III. SECT. 26, SUB-SECT. 1.—A.

sa. *Surrender for cancellation—Failure of company to observe terms—Whether enforceable by injunction.*]—McDOUGALD *v.* WILSON, [1933] 3 D. L. R. 111.—**CAN.**

PART III. SECT. 26, SUB-SECT. 1.—C.

sb. *Fraudulent cancellation by company—Bar to action—Laches.*]—PATTERSON *v.* VULCAN IRON WORKS, LTD. (B. C.), [1929] 4 D. L. R. 508 ; *on d*, [1930] 1 W. W. R. 640 ; 2 R. 961 ; 42 B. C. R. 300.—**CAN.**

PART III. SECT. 27, SUB-SECT. 5.—A.

m l. —— *Plea of limitation.*]—HABIB ROUJI *v.* STANDARD ALUMINIUM & BRASS WORKS, LTD. (1925), I. L. R. 49 Bom. 715.—**IND.**

general meeting the number of directors shall not be less than two nor more than seven." The arts. also adopted arts. 83 & 85 of Table A, 1908 Act:—*Held:* the power of appointing additional directors had not been delegated to the directors so as to exclude the inherent power of the co. in general meeting to appoint directors.—WORCESTER CORSETRY, LTD. *v.* WITTING (1932), [1936] Ch. 640; 105 L. J. Ch. 385, C. A.

2844. *Add. Annotation:*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2850. *Add Citation:*—13 Mans. 316.

2854. *Add. Annotation:* — **Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

2856. *Add. Annotation:*—*As to* (3) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

2879a. ——— ———.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held:* though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held:* as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble:* Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER *v.* KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

Annotation:—*As to* (3) **Dbtd.** Holt *v.* Catterall (1931), 47 T. L. R. 332. (I am not satisfied that Mr. JUSTICE ASTBURY, by his remarks at p. 135, meant to say anything of the kind, *per* MAUGHAM, J.)

2889. *Annotations:*—For "Howard *v.* Sadler, [1895] 1 Q. B. 1" read "Howard *v.* Sadler, [1893] 1 Q. B. 1.

2895a. Transfers of shares passed before election—Transfers not registered until after election.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

2905. Add the following paragraph:—

(3) As to the shares taken for attendance fees, I am also of opinion that applts. are not liable to contribute in respect of those shares. They were taken, &, as it seems to me, improperly taken, as paid-up shares, but the same principles which apply to the 100 shares apply, as I think, to these shares also (TURNER, L.J.).

2922. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

2944. *Add. Annotations:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. Remuneration not authorised by general meeting.]—Pltf. was a director of deft. co., which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing pltf. "overseas director" at a salary of £1,800 a year. Pltf. proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by pltf. for salary due under the agreement:—*Held:* the agreement was *ultra vires* the board, & since pltf.'s remuneration had never been determined by the co. in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the co. on their counterclaim the money paid to him under the agreement.—KERR *v.* MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

2972. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.*

PART III. SECT. 28, SUB-SECT. 1.—C.

q i. —— *Omission of bye-law authorising alteration in number.*]—MCKENNA *v.* SPOONER OILS, LTD., [1934] 1 W. W. R. 255.—**CAN.**

PART III. SECT. 28, SUB-SECT. 1.—D.

c. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 2.—A.

a. Add "*varied*, 9 A. R. 620."

PART III. SECT. 28, SUB-SECT. 2.—B.

sd. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*]—An insolvent, who is registered as a member of a co. in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the "holder of shares." In this respect there is a distinction between the words "holder" & "holder in his own right."—*Re* CAMBERWELL MOTORS PTY., LTD., [1926] V. L. R. 539; [1926] Argus L. R. 421.—**AUS.**

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. —— —— *Director acting as secretary-treasurer.*]—*Held:* COS. ACT. R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON *v.* HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—**CAN.**

2958 iii. —— —— *Gratuity—Not by way of remuneration for services.*]—Bye-laws passed by the directors of deft. co., & said to have been confirmed by the shareholders at a special general meeting, providing for the transfer by deft. co. to the three individual defts. of shares in another co. as remuneration for past services as directors & officers, were attacked in this action by shareholders in deft. co.:—*Held:* there was no agreement binding on deft. co. to pay for the services rendered by the co-defts. & the payments provided for in the bye-laws must be treated as gratuities.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—B. (a).

a i. *Services requiring expert & technical knowledge.*]—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held:* he was entitled to a reasonable remuneration for such services.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN**

Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2973. *Add. Annotation :*—*As to* (2) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2977. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

2988a. Remuneration dependent upon determination of proportions by directors.]—KNIGHT *v.* WORLD BARTER & TRADING CO., LTD. (1935), 79 Sol. Jo. 214, C. A.

2996. *Add. Annotation :*—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3005. *Add. Annotations :*—*Generally*, **Refd.** Knight *v.* World Barter & Trading Co. (1934), 78 Sol. Jo. 840 ; *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

3014. *Add. Annotation :*—**Distd.** Williams *v.* Barton, [1927] 2 Ch. 9.

3022. *Add. Annotation :*—**Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

3025a. —— Company thereby induced to carry on business.]—F. was the governing director of a limited co. In Feb. 1934, at F.'s suggestion, a resolution was passed by the directors that no fees should be paid to the directors from Oct. 1, 1933, until it should be resolved otherwise. A minute of this resolution was read & confirmed on May 7, 1934, & it was acted upon by the co. F. having subsequently become bkpt., & the co. having passed a resolution that it be voluntarily wound up, the trustee in F.'s bkpcy. sought to prove in the liquidation for F.'s fees as a director subsequent to Oct. 1, 1933 :—*Held :* the resolution was not a mere act of benevolence on the part of the directors, but was intended to induce the co. to carry on its business, & the co. having carried on its business in reliance on the resolution, no claim could now be made by a director in respect of his fees subsequent to Oct. 1, 1933. —*Re* PORTER (WILLIAM) & CO., LTD., [1937] 2 All E. R. 361.

3033. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3055a. —— Tranfer to director of overpayments made to vendor by company—Discretionary trust for sale.]—KIRBY *v.* WILKINS, No. 2452a, *ante*.

3059. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. —— ——.]—(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (*a*) must act honestly, & (*b*) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But,

PART III. SECT. 28, SUB-SECT. 3.—B. (d).

11. ——.]—Two of the directors of an Alberta co. who, at the time in question, owned in the aggregate all but 40 of its 1,000 issued shares, & who managed its business virtually as a partnership, agreed to, & did, pay themselves a bonus, in cash & in shares owned by the co., as extra remuneration for their services. Under the arts. of assocn. the bonuses in question could have been authorised by the directors of the co. The only remaining director on learning of the arraugement approved of it ; & it appeared that all the shareholders had been willing that all the business of the co. should be carried on by said two directors without consultation with the shareholders. The payment of the bonuses was not, however, authorised at a directors' meeting or by a resolution signed by the directors ; nor was any shareholders' meeting held to pass on it, & it was not proven that both of the two remaining shareholders other than the directors had individually assented thereto. Subsequently under an agreement to which the co. was a party, deft. C., one of said two directors, sold his shares to the other at an agreed valuation based on the assumption that the bonuses had been legally paid. In an action by the co. to compel the return of the shares received by C. as such bonus or for damages in lieu thereof :—*Held :* in the absence of a directors' meeting or resolution signed by the directors, the payment of the bonuses was invalid, & the co. was entitled to judgment.—GRAY & FARR, LTD. *v.* CARLILE, [1931] 2 W. W. R. 526 ; 3 D. L. R. 785 ; *affd.*, [1932] 1 D. L. R. 391.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. Add " *varied*, [1902] A. C. 83."

sm. *Increase of liabilities—Mortgage—Fraud on creditors—Ultra vires.*]—PLAIN, LTD. (TRUSTEE) *v.* KENLEY & ROYAL TRUST CO., [1931] 1 D. L. R. 468 ; 66 O. L. R. 179 ; *affd.*, [1931] 2 D. L. R. 801 ; O. R. 75 ; 12 C. B. R. 492.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*]—BOAK *v.* WOODS, [1926] 1 D. L. R. 1186 ; 36 B. C. R. 456.—**CAN.**

3029 i. *Right to act as director—Right to injunction.*]—An injunction may be granted on the application of a director restraining plff.'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI *v.* TARAK CHANDRA CHATTERJEE (1924), I. L. R. 51 Calc. 916.—**IND.**

ART III. SECT. 28, SUB-SECT. 4.—B.

3039 ii. ——.]—R., in his lifetime, while acting in the capacity of managing director of a joint stock co., used moneys of the co. in commercial adventures & other investments for his personal gain & profit. After R.'s death his exors. paid back to the co. the principal money so used, but declined to account for the profits which R. had derived from the use thereof :—*Held :* as R. was to be regarded as a trustee of the co.'s moneys, his executors were liable to the co. in respect of such profits, which, or the equivalent interest, must be paid over to the co.—ROGERS HARDWARE CO. *v.* ROGERS (P. E. I.) (1913), 12 E. L. R. 493 ; 10 D. L. R. 541.—**CAN.**

3039 iii. —— *Shares acquired in new company by shareholder director—Paid for out of assets of old company in liquidation.*]—CHANDLER & MASSEY *v.* IRISH (1911), 20 O. W. R. 649 ; 3 O. W. N. 383 ; 25 O. L. R. 211.—**CAN.**

who was a director & vice-president of deft. co., acted as its solr., although not formally appointed as such, in a great number of matters, & was consulted, & his advice sought, by his co-directors & the officers of the co. His co-directors were aware of his so acting, & he was paid substantial amounts on account of the legal services rendered from time to time. He sued on an account for legal services rendered :—*Held :* he could not recover ; his position as director of the co. incapacitated him from engaging as its solr.—CAPE BRETON COLD STORAGE CO., LTD. *v.* ROWLINGS [1929] 3 D. L. R. 577 ; S. C. R. 505 ; *revg.*, [1929] 2 D. L. R. 519 ; 60 N. S. R. 460.—**CAN.**

3055 i. —— *Benefits of contract diverted to directors.*]—CONSOLIDATED COAL CO., LTD. *v.* BIG CHIEF WOODYARD, LTD. & MACFARLANE, [1934] 2 W. W. R. 433 ; 3 D. L. R. 668 ; 48 B. C. R. 241.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—C.

3058 i. —— *Reasonable diligence.*]—In discharging his duties, a director must act honestly & must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances in his own behalf.—GOVIND NARAYAN *v.* RANGNATH GOPAL (1929), I. L. R. 54 Bom. 226.—**IND.**

(*c*) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for mere errors of judgment; (*d*) he is not bound to give continuous attention to the affairs of his co.; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (*e*) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Held:* (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co., & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held:* (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (*a*) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held:* (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

Annotations:—As to (10) **Distd.** *Re* City of London Insce. (1925), 41 T. L. R. 521. **Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262; *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. *As to* (13) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3060a. —— —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3062. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3063a. —— —— **Proper & honest performance of duties.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3063b. —— **Reliance on chairman—Accuracy of balance-sheet.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3065. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3068. For "—— **Signature of cheques to company's prejudice**" read "—— **Signature of cheques—To company's prejudice.**"

3068a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3071. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3077. *Add. Citation:—previous proceedings, sub nom. Re* SOUTH ESSEX GAS LIGHT & COKE CO., *Ex p.* STEARS (1859), John. 480.

3092a. —— **Act by two directors for benefit of one—No right to contribution.**]—Where two directors of a limited co. join in signing a cheque whereby a part of the co.'s funds is used for a purpose not authorised by the arts. of assocn. & one of the directors is subsequently compelled to replace the money so used, he cannot recover contribution from the other if the money has been applied for the sole benefit of the director claiming contribution, even if the other director has assented to its being so used.—WALSH *v.* BARDSLEY (1931), 47 T. L. R. 564.

3105a. Payment of rates due from company—Right to stand in place of overseers.]—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation:—*Held:* (1) he was entitled to stand in the place of the creditor, & to use all remedies, &, if need be, the name of the creditor in any action or other pro-

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3062 i. *Standard of diligence—Reliance on company's officials—Where no ground for suspicion—Examination of company's books.*]—*Re* LOGAN (H. J.) CO. (ONT.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—**CAN.**

o. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 4.—D.

3075 i. *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN.**

3076 iii. —— ——.] — CANADIAN GUARANTEE TRUST CO. *v.* YOUNG, [1933] 1 D. L. R. 256; [1932] 3 W. W. R. 671.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—F.

sg. *Expenses of rebutting charge of fraud.*]—Expenses incurred by a director in defending himself against a charge of fraud as a director are too remote to form the subject of indemnity either under an indemnity clause in the articles, or at common law.—TOMLINSON *v.* LIQUIDATORS OF SCOTTISH AMALGAMATED SILKS, LTD., [1934] S. C. 85.—**SCOT.**

sk. *Expenses of defence against charge of fraud.*]—An indemnity clause in the articles of a co. provided for the indemnification of any director against all losses & expenses which he might incur by reason of any act done by him as director.

The co. went into voluntary liquidation, & thereafter a director was indicted & tried for alleged fraud in relation to acts done by him as director prior to the date of the liquidation, the charges being that he had issued a fraudulent prospectus, & had fraudulently misapplied funds of the co. He was acquitted; & thereupon he lodged a claim in the liquidation for the expenses incurred by him in his defence. The liquidators rejected his claim:—*Held:* he was not entitled to his expenses either under the indemnity clause or at common law, in respect that expenses incurred in defending himself against an allegation that he did something, which he did not in fact do & which it was not his duty to do, were not expenses incurred by him as a director or as an agent of the co. in the discharge of his duties.—TOMLINSON *v.* SCOTTISH AMALGAMATED SILKS, LTD. (LIQUIDATORS), [1935] S. C. (H. L.) 1.—**SCOT.**

ceeding in order to obtain indemnification from the principal debtor for the loss sustained; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re* LAMPLUGH IRON ORE Co., [1927] 1 Ch. 308; 96 L. J. Ch. 177; 136 L. T. 501; [1927] B. & C. R. 61.

3107. After this case add :—

—.]—*See, now,* 1929 Act, s. 152.

3109. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton. [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3109a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3112a. —— **Necessity for board-meeting.**]—*Re* ATHENÆUM LIFE ASSCE. SOCIETY, *Ex p.* EAGLE INSCE. CO., No. 4094a, *post.*

3126a. Adoption of balance sheet — Including directors' fees.]—Balance sheets including fees due to directors, & signed by directors pursuant to Cos. Act, 1908, s. 113, are not acknowledgments of those fees within Statute of Frauds Amendment Act, 1828 (c. 14).

After an order for the compulsory winding up of the co. appct. put in a proof for £950 in respect of directors' fees. The liquidator rejected the proof to the extent of £350, allowing only £600 on the ground that all directors' fees which had accrued due more than six years before the date of the winding-up order were barred by Stat. Limitations. The directors' fees due to appct. appeared from balance sheets duly signed by two directors & passed by the co. Upon a summons taken out by appct. asking that the decision of the liquidator rejecting his proof to the extent of £350 might be reversed, & that the proof might be allowed in the full sum of £950 :—*Held :* (1) a board of directors, acting as a board, & passing a resolution adopting a balance-sheet which includes directors' fees, does not bind the co. to pay those fees; (2) a balance-sheet so adopted & signed by directors pursuant to Cos. Act, 1908, s. 113, is not a written promise by the co. or its agents to pay the directors *Re* COLISEUM (BARROW), LTD., [1930] 2 Ch. 44; 99 L. J. Ch. 423; 143 L. T. 423; [1929–30] B. & C. R. 218.

3127a. —— **Delegation of duty.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3128a. Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3150a. Debt owing by ordinary directors—Action by permanent directors.]—Defts., who were directors of & were indebted to pltf. co., agreed to Terms of Settlement by which (*inter alia*) the first deft. should resign his office as governing director, that the co. should appoint independent persons as permanent directors, that the two defts., with three others, should be ordinary directors, that the co.'s articles should be altered so as to provide that defts. should have no control over, & have no right to vote in respect of, their debts, that an accountant should certify the amount of the defts.' liability, that the dividends payable to defts. should be retained by the co. on account of those debts, which, however, were not to be called in for twenty years, & that these terms should be embodied in an agreement under seal & sanctioned by special resolutions of the co. Special resolutions embodying that agreement were thereafter passed which provided also that the ordinary directors should have no right at directors' meetings to vote in respect of the co.'s financial affairs, & that with regard to other business they were to have only such rights of voting & control over the management as might be conferred upon them by the permanent directors. An accountant prepared a balance-sheet which showed the amount due to the co. by each of the two defts., & that balance-sheet, which was signed thus : " Peter Shaw, John Shaw, Directors," was adopted at a general meeting of the co. at which defts. were present.

The agreement under seal containing the above Terms of Settlement was sealed by the co., but defts. having declined to execute it, as they objected to certain of its terms, the

PART III. SECT. 28, SUB-SECT. 5.—A.

3115 i. *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN. [1925] 2 D. L. R. 529.—**CAN.**

3115 ii. —— *Effect of specifying method in articles.*]—(1) For the purpose of binding a co. in its corporate capacity individual assents of directors or shareholders given separately are not equivalent to the assent of a meeting.

(2) Where the arts. of assocn. of a co. authorise a certain method of procedure by the directors as the equivalent of a formal meeting there is by implication a denial of the validity of any other procedure other than a meeting.—TORONTO GENERAL TRUSTS CORPN. *v.* CARLILE, [1931] 3 W. W. R. 671; 26 Alta. L. R. 374.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—C. (a).

d i. *S. P. Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

sl. *Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action : —*Held :* the co. was not bound by the agreement.—LEGG & CO. *v.* PREMIER TOBACCO CO., [1926] App. D. 132.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 5.—C. (d).

3132 i. *Necessary formalities.*]—Where the directors of a co. had power to borrow & mortgage :—*Held :* the president & managing director were, by virtue of their offices, *primâ facie* proper officers to execute mtges., & the mtge., which had the common seal of the co. attached, & was executed by the president & managing director, was properly executed.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3132 ii. ——.]—Where a mtge by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being no appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtge., or authenticate the affixing of the seal :—*Semble :* the execution was bad.—INNES & GRIFFITH *v.* CAMERON VALLEY LAND CO. (B. C.), [1919] 1 W. W. R. 752.—**CAN.**

3133 i. *Mortgage to directors.*]—Set aside at instance of simple contract creditors of the co.—NORTHERN ELECTRIC & MANUFACTURING CO., LTD. *v.* CORDOVA MINES, LTD. (1914), 31 O. L. R. 221; 6 O. W. N. 210.—**CAN.**

3133 ii. ——.]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—C. (e).

f. Add " *varied,* 9 A. R. 620."

permanent directors, at a meeting to which none of the ordinary directors was summoned, resolved that instructions be given for writs to be issued against defts. for the recovery of the debts owing by them, & although by a resolution passed subsequently by the shareholders at an extraordinary meeting of the co. the chairman was directed to discontinue proceedings, a writ was issued against each deft. claiming the amount as "found & admitted by deft. to be due to pltfs. as shown by pltfs.' balance-sheet." To these actions defts. pleaded that they had been brought without proper authority, & they denied that the alleged or any account was stated between pltfs. & them:—*Held:* (1) as to authority to bring the actions: *per* GREER, L.J., under the co.'s articles the power to give instructions for the bringing of the actions was vested not in the directors generally but in the permanent directors, whose decision could not be overridden by the mere resolution of the shareholders, & therefore that the bringing of the actions was duly authorised; *per* SLESSER, L.J., the bringing of the actions was not authorised, as authority to do so could not be given at a meeting of directors to which the ordinary directors were not summoned; *per* ROCHE, L.J., as a rule objection to the right to bring an action should be taken, not at the trial but by interlocutory motion or summons, & if that course is not followed, the ct. should not entertain an application at the trial to dismiss the action, but where want of capacity or authority to sue plainly appears at any stage the ct. may order the action to be struck out. In this case, however, the ct. had not with regard to matters of fact the information necessary for deciding whether effect should be given to the objection to the competency of the actions & the objection therefore failed; (2) as to the cause of action relied upon: by the whole ct., the balance-sheet was not an account stated involving a fresh promise by defts. to pay the amounts debited to them therein, inasmuch as it was signed by them not *animo contrahendi* but in performance of their duties as directors.—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

3157a. —— **Presumption of authority.**]—Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held:* whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd. on other grounds*, [1928] A. C. 1, H. L.

Annotations:—As to (1) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Dbtd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356. *Generally*, **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505.

3160. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3160a. ——.]—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—PARKER & COOPER, LTD. *v.* READING, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

Annotation:—**Refd.** E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

3162. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3166. *Add. Annotation:*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

PART III. SECT. 23, SUB-SECT. 5.—E.

r i. —— *Must be with full knowledge of transaction.*]—HINDUSTAN ANCE & MUTUAL BENEFIT ——. LTD., LAHORE *v.* KHALSA BANK, LTD., —— (1927), I. L. R. 9 Lah. —IND.

d i. ——.]—DAVISON *v.* VICKERY'S MOTORS, LTD. (1925), AUS.

3201. *Add. Annotation :*—**Refd.** *Re* Etic, [1928] Ch. 861.

3216. *Add. Annotation :*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3231. *Add. Annotation :*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3240. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3248. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3249. *Add. Annotation :*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3250. *Add. Annotation :*—*As to* (2) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3252. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3257. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

3259. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3261. *Add. Annotations :*—*Generally*, **Refd.** *Re* Etic, [1928] Ch. 861 ; *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3280a. —— Directors relying on chairman's assurance as to value of assets.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3282a. Dividends paid out of capital.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3284. *Add. Annotation :*—*As to* (3) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

3285. *Add. Annotation :*—*As to* (2) **Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3287. *Add. Annotation :*—*Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3291. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3305. *Add. Annotation :*—*As to* (2) **Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

PART III. SECT. 28, SUB-SECT. 6.—A.

g i. ——.]—B. C. TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK, [1934] 2 W. W. R. 161 ; 3 D. L. R. 31.—**CAN.**

sk. *Personal liability—Wrong committed by company.*]—A director of a co. who is a party to a fraud or other wrong committed by the co. is personally liable for the damage caused thereby.—JOHNSON *v.* SOLLOWAY, [1932] 1 W. W. R. 481 ; 45 B. C. R. 420 ; *revsd. on other grounds*, [1934] 2 D. L. R. 241, P. C.—**CAN.**

PART III, SECT. 28, SUB-SECT 6.—B (a).

so. *Misrepresentation of unauthorised sales agent.*]—Directors of a corpn. are not liable for misrepresentations of a sales agent unauthorisedly marketing its securities or for statements in a prospectus not issued under their authority.—CHAPMAN *v.* WARREN, [1936] 2 D. L. R. 157 ; O. R. 145.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—B. (d).

s i. —— *Essentials.*]—A conviction under sect. 414 of the Criminal Code which deals with false statements by directors & promoters of cos. can only be secured if proof is given that (1) the statements are in themselves false in some material particular, & (2) not only so but false to the knowledge of the accused, & (3) made with intent to defraud.—R. *v.* BOWEN (1930), 43 B. C. R. 507.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—C. (b).

sm. *Commission.*]—Cos. Act, 1908, s. 57, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors, & recoverable by the co.—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

o i. —— *Extent of liability.*]—Deft., a director of pltf. co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them : —*Held :* such value was not the intrinsic value at the specified date, but the value in money which pltf. co. could reasonably have obtained on the market, & as pltf. co. had discharged the *onus* of proving that it could have obtained the market price, the value would be fixed at that amount.—ROBINSON *v.* RANDFONTEIN ESTATES GOLD MINING CO., LTD., [1924] App. D. 151.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 6.—E. (d).

sd. *Validity.*]—Upon a petition by applt., as liquidator of the Crédit Canadien Incorporé, alleging the illegality & irregularity of certain resolutions of its directors making a call on the shareholders & later declaring the forfeiture of these shares when the call was not paid, & further asking for a declaration that the directors had thus acted *ultra vires* & against the interests of the co. :—*Held :* upon the evidence, no adequate ground was disclosed for holding the call was not a valid call of which payment could have been enforced, the charge had not been established by evidence that, in exercising the power of forfeiture, the directors had been availing themselves of that power for some purpose for which it could not be legitimately employed, &, under the circumstances of this case, it was impossible to conclude that the forfeiture was not in the interest of the co.—*Re* CRÉDIT CANADIEN INCORPORÉ, SUN TRUST CO., LTD. *v.* BÉGIN, [1937] S. C. R. 305.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—E. (f).

3301 i. *Estoppel of shareholders.*]—Deft. brewing co. was incorporated under Dominion Cos. Act in 1924. In 1926 the C. co. was organised, also with a Dominion charter & with substantially the same incorporators & officers, to act as the agent of the brewing co. to promote the sales of its products. By an agreement between the two cos., the prices which the C. co. was to collect from customers upon sales, as well as the rates at which they were to remit when so collected, were fixed, the difference in favour of the C. co. constituting their remuneration for services to be rendered. Pltf. a shareholder & director of both cos. brought this action on behalf of himself & all other shareholders of the two cos. against the two cos. & four individual defts., who were shareholders directors & officers of both cos. to compel the individual defts. to pay back into the treasury or either or both cos. sums alleged to have been improperly paid to them by the cos. in 1927, 1928, & 1929. These sums were paid to the individual defts. for "promotion expenses" :—*Held :* in so far as the action rested upon the contention that the moneys paid by the brewing co. to the C. co. were improperly paid, it failed for the reason that pltf. himself received & still retained a portion of those moneys, & was not therefore in a position to complain either individually, or as a shareholder of the brewing co.—SHIESEL *v.* KIRSH, [1931] 1 D. L. R. 460 ; 66 O. L. R. 174 ; *affd.*, [1931] 2 D. L. R. 791 ; O. R. 41.—**CAN.**

g i. ——.]—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they know, or were bound to know, the insolvency of the co. at the time the dividend was declared.—SMITH *v.* HENDERSON, [1924] 1 D. L. R. 863 ; Q. R. 62 S. C 270.—**CAN.**

sn. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593 ; S. C. R. 314.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—F. (c).

sn. *Loan intra vires & bonâ fide—Director interested in land on which loan obtained.*]—The fact that a director of a mtge. & trust co. was interested in land on which he applied to the board of directors for & obtained, in the name of his vendor, a loan which resulted in a loss to the co. :—*Held :* not to give the co. a right of action against him & his co-directors for damages where the co. was not prohibited from making loans to directors, & the said director's interest in the land was found to have been disclosed to his co-directors & they had applied their minds to the facts before approving of the loan, & the question whether there was fraud or negligence or improvidence in making the loan was not raised in the action.—CANADIAN GUARANTY TRUST CO. *v.* [1932] 3 W. W. R. 671.—**CAN.**

to shareholders—

of directors to creditors.]—*Held :* Cos. Act, R.S.C., 1927, c. 27, s. 112, renders the directors of a co. liable to its creditors not only for debts of the co. existing at the time a loan is made to its shareholders but also for debts contracted between the time of the making of such loan & that of its reimbursement.—R. *v.* KUSSNER & KUSSNER, [1936] S. C. R. 206 ; 4 D. L. R. 752.—**CAN.**

3320. *Add. Annotation :*—**Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3327. *Add. Annotation :*—**Distd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

3327a. —— ——.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—BRITISH THOMSON-HOUSTON CO. *v.* STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. *v.* CROWTHER & OSBORN, LTD., [1924] 2 Ch. 33; 93 L. J. Ch. 335; 131 L. T. 535; 40 T. L. R. 544; 68 Sol. Jo. 595; 41 R. P. C. 311.

Annotation :—**Apld.** Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

3327b. —— ——.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction :—*Held :* there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltfs. against these defts. personally; & the action as against them must be dismissed with costs.—PRICHARD & CONSTANCE (WHOLESALE), LTD. *v.* AMATA, LTD. (1924), 42 R. P. C. 63.

3335a. —— **Loan for expenses in connection with promotion.**]—ADAMS (FRANCIS), LTD. *v.* FISHWICK (1928), 72 Sol. Jo. 122.

3345a. —— **Relief under 1929 Act, s. 372—Application by director—No evidence of shareholders' wishes.**]—A director failed to obtain his qualification shares within the time fixed, thinking that he had them at the date of his appointment, & having either overlooked or forgotten the definition of "qualification shares" in the co.'s arts. of assocn. At the end of the time he ceased, in accordance with sect. 141 (3) of 1929 Act, to be a director, but continued to act & to receive remuneration as a director, thus incurring penalties under sub-sect. (5). Later, he was re-appointed by the board pursuant to the co.'s arts. of assocn., retired, & was re-elected by the shareholders. He applied to the ct. by petition under sect. 372 (2) for relief against any liability which he had incurred by acting & receiving remuneration as a director after he had ceased to be a director : —*Held :* the ct. has jurisdiction under sect. 372 (1) to relieve a director who has acted as a director without having obtained qualification shares within the prescribed period from the penalties imposed by sect. 141.

But *semble*, the ct. will in general decline to relieve a director from liability to repay money to a co. or its liquidator in the absence of evidence as to the wishes of the shareholders or, if the co. is insolvent, of the creditors.—*Re* BARRY & STAINES LINOLEUM, LTD., [1934] Ch. 227; 103 L. J. Ch. 113; 150 L. T. 254.

3345b. —— —— **Invalid appointment of director.**]—L. F. owned the greater part of the shares of J. F. & Son, Ltd. His wife was appointed director in his lifetime, & also in his lifetime one C. C. was appointed a director. The latter never took up his qualification shares, &, although he continued to act & was treated as a director, he in law ceased to be such in 1933. L. F. died in 1934, & his wife, being in bad health, then went to the South of France, it being expected that her stay there would be a temporary one, but in fact she never returned. The directors at their meeting in the autumn of 1934 proposed to recommend to the annual general meeting of the co. that she should receive remuneration at the rate of £8 per week as from Feb. 10, 1934, & that proposal was accepted & confirmed at the annual general meeting. It appeared, however, that there was not a quorum at that meeting, & payments made under the resolution were sought to be recovered from L. F.'s wife & the two persons who voted at the meeting. It was contended that this was a proper case for relief under 1929 Act, s. 372, as the persons in question had acted honestly & reasonably, & ought fairly to be excused :—*Held :* though the defect in the resolution was a mere technicality, the appointment of the director being invalid, this was not a case in which, in all the circumstances of the case, any of the parties ought fairly to be excused for the breach of trust in making the improper payments.—*Re* FRANKLIN (J.) & SON, LTD., [1937] 4 All E. R. 43; 157 L. T. 188.

3347. *Add. Annotations :*—*As to* (4) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Consd.** *Re* Etic, [1928] Ch. 861. **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3353. After cross-ref. following this case add :—

(*l*) *Declaration of Liability.*

See 1929 Act, s. 275.

3353a. Carrying on business with "intent to defraud creditors"—What amounts to.]—(1) The declaration of liability in 1929 Act, s. 275 (1) should state the amount for which the director is liable.

(2) A co. carrying on business & incurring debts when to the knowledge of the directors

PART III. SECT. 28, SUB-SECT. 6.—F. (g).

m. For "26 W. L. R. 626" read "7 Alta. L. R. 245; 28 W. L. R. 250."

b (p. 509) **i.** —— —— ——.]—Pltfs. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltfs. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness :—*Held :* the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—MULLEN *v.* MILLAR (1924), 55 O. L. R. 563.—**CAN.**

m (p. 509) **i.** —— —— —— —— ——.]—An action based on sect. 35 of Cos. Act, R. S. M., 1913, against a director of a co. for wages alleged to be due a servant of the co. is an action upon the original debt, not one upon the judgment against the co., & pltf. must prove the employment, performance of services & debt.—DERBACH *v.* SHAW, [1933] 2 W. W. R. 605; 4 D. L. R. 461; 41 Man. L. R. 379.—**CAN.**

there is no reasonable prospect of the debts being paid may, in general, be properly inferred to be carrying on business "with intent to defraud creditors" within 1929 Act, s. 275 (1).

(3) *Semble:* sect. 275 is a punitive provision, & the ct. on making a declaration in the winding-up of a co. that a director is personally responsible for all or any of the debts or other liabilities of the co. may in its discretion make an order not limiting his liability to the amount of the debts due to creditors held to be defrauded within the sect.—*Re* LEITCH (WILLIAM C.) BROS., LTD., [1932] 2 Ch. 71; 101 L. J. Ch. 380; 148 L. T. 106.

Annotation:—As to (2) **Refd.** *Re* Patrick & Lyon, Ltd. [1933] Ch. 786.

3353b. —— ——.]—*Held:* (1) in 1929 Act, sect. 275, the references to "intent to defraud" & to "fraudulent purpose," unlike the words "fraudulent preference" in sect. 265, import actual dishonesty; (2) for the purposes of sect. 266 a co. is not solvent if it is unable to pay its debts as they become due.—*Re* PATRICK & LYON, LTD., [1933] Ch. 786; 102 L. J. Ch. 300; 149 L. T. 231; 49 T. L. R. 372; 77 Sol. Jo. 250; [1933] B. & C. R. 151.

3353c. Amount for which director liable—Should be stated in declaration of liability.]—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353d. —— **Whether limited to amount of debts due to creditors defrauded.]**—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353e. —— **General assets for all creditors.]**—A declaration under Cos. Act, 1929 (c. 23), s. 275, having been made by the ct. in the course of the winding-up of a co., that W., a governing director of the co. had been knowingly a party to carrying on the co.'s business with intent to defraud creditors between certain dates, fixing the liability of the director at £6,000, & charging a debenture for £4,000 issued to the director with that liability, the liquidator recovered the sum of £3,356 from the director in respect of the declaration, & asked for directions as to the application of that sum, & any further sum he might recover under the judgment, among the creditors of the co.:—*Held:* the moneys so recovered & to be recovered were not to be exclusively applied for the benefit of creditors whose debts were contracted during the period when the business of the co. was carried on with intent to defraud creditors, but formed part of the general assets of the co. available for all the creditors, on the same principle as that applicable to moneys recovered from "B" contributories. —*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), [1933] Ch. 261; 102 L. J. Ch. 81; 148 L. T. 108; 49 T. L. R. 74; 76 Sol. Jo. 888; [1933] B. & C. R. 31.

Annotation:—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3364. *Add. Annotation:*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

3365. *Add. Annotation:*—**Refd.** Bendir *v.* Anson, [1936] 3 All E. R. 326.

3376. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3377. *Add. Annotation:—As to* (1) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

3389. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3391. *Add. Annotation:—Generally*, **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3398. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3405. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

3407. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3419a. —— ——.]—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held:* the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—VICTORS, LTD. *v.* LINGARD, [1927] 1 Ch. 323; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

3423. *Add. Annotation:*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3432a. —— **Meaning of "book."]**—Entries made in a number of loose leaves fastened together in two covers are not admissible in evidence as minutes entered in books within 1929 Act, s. 120.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* FLOWER (JAMES) & SONS, [1936] Ch. 76; 105 L. J. Ch. 25; 154 L. T. 156; 52 T. L. R. 5; 79 Sol. Jo. 839.

PART III. SECT. 28, SUB-SECT. 6.—G. (a).

n i. —— *By servant of company—Unsatisfied return of execution.*]—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

n ii. —— —— ——.]—When a return of *nulla bona* has been made by the sheriff without a *bonâ fide* attempt having been made to ascertain whether or not there were assets available to satisfy the execution, & there were in fact exigible assets sufficient for that purpose, the return is not such a return as is contemplated by Cos. Act, 1927, s. 113.—STEVENS *v.* SPENCER (Alta.), [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—A.

3385 ii. —— *Proceedings ratified at subsequent meeting properly convened.*]—A director's meeting authorised an action by the co. No notice was given to one director, but at a subsequent meeting properly called a resolution was passed ratifying the first meeting: —*Held:* the action was properly commenced.—LYTTON GOLD MINES, LTD. *v.* MUNRO (1933), 49 B. C. R. 18.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (b) i.

g i. ——.]—In the case of a co. subject to Trust Cos. Act, R. S. C., 1927, seven forms a *quorum* for a [illegible] of [illegible] TRUST

192; O. R. 195.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (c).

l i. —— *What constitutes interest—Financial interest.*]—The personal interest which disqualifies a director from voting must be a financial interest, not merely a friendly spirit or a feeling of affection, *e.g.*, that of a husband for his wife.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD. (No. 2), [1931] 3 W. W. R. 306.—**CAN**

PART III. SECT. 28, SUB-SECT. 7.—D.

oi. —— *Meeting not in fact held.*]—AVIS *v.* P. PALLESEN DAIRY & CREAMERY CO., [1935] 3 W. W. R. 305; 4 [illegible]

3434. *Add. Annotation :—As to* (5) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3444. *Add. Annotation :—As to* (1) **Distd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

3451a. —— **Oral resignation—Articles requiring written resignation.**]—A co.'s acceptance of the oral resignation of a director constitutes a binding contract, even though the co.'s articles require the resignation of a director to be in writing.—LATCHFORD PREMIER CINEMA, LTD. *v.* ENNION, [1931] 2 Ch. 409; 100 L. J. Ch. 397; 145 L. T. 672; 47 T. L. R. 595.

3455a. —— **Re-election of retiring director—Adjournment of meeting.**]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3455b. —— **Failure to re-elect or replace.**]—By art. 97 of a co.'s arts., "At the second ordinary general meeting in each calendar year, one-third of the directors . . . shall retire from office. A retiring director shall retain office until the dissolution of the meeting at which his successor is elected." By art. 100, "If at any meeting at which an election of directors ought to take place the places of the retiring directors or some of them are not filled up, then, subject to any resolution reducing the number of directors, the retiring directors, or such of them as have not had their places filled up & may be willing to act, shall be deemed to have been re-elected" :—*Held :* if a retiring director was not re-elected, & if his place was not filled up at the same meeting, he retained office until his retirement by rotation, since by art 100 he was to be deemed to have been re-elected & therefore there was no vacancy to which a successor could subsequently be elected.—HOLT *v.* CATTERALL (1931), 47 T. L. R. 332.

3455c. —— **Construction of articles.**]—Art. 85 of a co.'s arts. of assocn. provides that "at the ordinary meeting in 1925 & every subsequent year, one-third, or the nearest number next below one-third, of the whole number of directors shall retire from office," that a retiring director is to be eligible for re-election at the meeting at which he retires & shall act as director throughout that meeting, & that the directors to retire in 1925, "unless the directors agree among themselves, shall be determined by ballot" & those to retire in every subsequent year "shall be those who have been longest in office since their last election & when two or more of such directors shall have served for an equal period, then their retirement shall be determined by ballot." In 1935 the board consisted of the chairman & seven other directors. Of these the managing director was by art. 101 not liable to retire by rotation or be taken into account in determining the rotation of retirement, & two others were additional directors appointed under art. 90, which provided that any additional director should hold office "only until the next following ordinary general meeting of the co." No question arose as to the first director to retire, but if a second director had to retire a selection had to be made between the pltf. & the chairman who had held office as directors for an equal period :—*Held :* (1) the words "by ballot" in art. 85 meant "by lot"; (2) "the whole number of directors" under art. 85 of whom a proportion was to retire did not include the additional directors, who by art. 90 only held office until the ordinary general meeting, seeing that the directors to retire fell by art. 85 to be determined at that meeting. It followed that one director only had to retire.—EYRE *v.* MILTON PROPRIETARY, LTD., [1936] Ch. 244; 105 L. J. Ch. 121; 154 L. T. 120; 52 T. L. R. 208; 80 Sol. Jo. 15, C. A.

3455d. Effect on contract of service.]—Pltfs. entered into an agreement with deft. co., a private co. under 1929 Act, to act as managers, buyers & supervisors for a term of 5 years. The agreement provided that it should be *ipso facto* determined upon either of pltfs. at any time vacating his or her office as director, but neither of them should at any time during its continuance resign his or her directorship or disqualify himself or herself from holding such office. At the first ordinary general meeting of the co., when pltfs. would, under Table A, art. 73, which was incorporated in the co.'s articles, automatically vacate their offices as directors, but be eligible for re-election, the chairman, who was the governing director, proposed a resolution that another person be appointed director in place of one of pltfs. & that the remaining vacancy be left unfilled. This resolution was after adjournments passed. Deft. co. then treated the agreement as terminated, & pltfs. brought this action for wrongful dismissal :—*Held :* (1) if pltfs. had been re-elected, or not being re-elected there had been no resolution to fill up the vacated office, there would have been no vacation of their offices; (2) the provision in the agreement for its termination did not apply only to voluntary resignation, & pltfs.' offices as directors had by reason of the passing of the resolution been *ipso facto* determined under the first part of the clause.—WALKER *v.* KENNS, LTD., [1937] 1 All E. R. 566, C. A.

3475. *Add. Annotation :—As to* (1) **Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3490. *Add. Annotations :—As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Refd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

3491a. —— —— **Effect of voluntary winding-up.**]—By an agreement in writing made between pltf. & deft. co. pltf. was appointed managing director of the co. for a term of 5¼ years at a fixed salary. Before the expiration of that period the co. passed a resolution, which was assented to by pltf., for the voluntary winding up of the co. on the ground that by reason of its liabilities it could not continue its business. Pltf. thereupon brought an action claiming damages for repudiation of the agreement :—*Held :* a term could not be implied in the agreement that if the co. should be wound up voluntarily & pltf. should vote for that course being adopted, his employment should cease so as to disentitle him to damages for breach

or the agreement. Pltf. was therefore entitled to damages for breach of the agreement.—FOWLER *v.* COMMERCIAL TIMBER CO., LTD., [1930] 2 K. B. 1; 99 L. J. K. B. 529; 143 L. T. 391, C. A.

Annotation :—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3492. *Add. Annotations :*—**Consd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3494. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3497a. —— Failure to obtain qualification shares—Recovery on quantum meruit.]—Pltf. was appointed managing director of a co. by an agreement under the co.'s seal which also provided for his remuneration. By the arts. of assocn. of the co. each director was required to obtain his qualification shares within two months after his appointment. Neither pltf. nor the other directors obtained their qualification shares within two months or at all. Pltf. having done work for the co. claimed to recover the remuneration provided for in the agreement, or, alternatively, on the basis of a *quantum meruit* :—*Held :* the fact that pltf. did the work under an agreement which was in the fact void did not disentitle him from recovering on a *quantum meruit*.—CRAVEN-ELLIS *v.* CANONS, LTD., [1936] 2 K. B. 403; [1936] 2 All E. R. 1066; 105 L. J. K. B. 767; 155 L. T. 376; 52 T. L. R. 657; 80 Sol. Jo. 652, C. A.

3500a. Power to provide for employees—Grant of pension.]—A private co., the articles of which authorised the directors to provide for the welfare of employees & their widows & children, entered into a deed of covenant by which it granted a pension of £500 a year to the widow of a former managing director five years after his death. Some three years later the co. passed a resolution for voluntary winding-up. The widow lodged a proof in the winding-up for the capitalised value of the annuity, but the liquidator rejected it :—*Held :* the transaction was not one for the benefit of the co. or reasonably incidental to the co.'s business. The pension did not come within the terms of the co.'s articles, as a managing or other director is not a person in the employment of a co., & the action of the directors was not confirmed by the shareholders in general meeting convened for the purpose of doing so. The grant of the pension was therefore void & *ultra vires* the co.—*Re* LEE, BEHRENS & CO., LTD., [1932] 2 Ch. 46; 101 L. J. Ch. 183; 147 L. T. 348; 48 T. L. R. 248; [1931] B. & C. R. 160.

3502. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3505. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

3506. *Add. Annotation :*—*Generally*, **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3506a. —— —— Cheque — Presumption of authority.]—STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. *v.* WESTMINSTER BANK, LTD., [1926] W. N. 271, C. A.

PART III. SECT. 28, SUB-SECT. 9.—C

so. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*]—When a pltf. complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 33 B. C. R. 425.—**CAN.**

sg. *Remuneration of profits—Meaning of "profits."*]—CARLTON HOTEL CO., LTD. *v.* GARDINER, [1934] 3 W. W. R. 97; 4 D. L. R. 713; 48 B. C. R. 441.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9.—D.

sp. *Extent of powers.*] — Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director; but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN, [1925 2 D L. R. 529.—**CAN.**

3501 v. —— —— ——.]—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—J. STANLEY WEDLOCK, LTD., *Ex p.* ROYAL BANK, [1924] 4 D. L. R. 1178; 5 C. B. R. 103.—**CAN.**

3501 vi. —— —— ——.]—Where under the arts. of assocn. of a co. its managing director might have the power which he purported to exercise, a person contracting with the co. through him is entitled to assume that he actually did have such power.—*Re* BRITISH COLUMBIA BOND CORPN., LTD., & LANG, [1931] 1 W. W. R. 286; 2 D. L. R. 985.—**CAN.**

3501 vii. —— —— ——.]—*Held :* the evidence proved R.'s position to be that of managing director, &, therefore, it must be presumed, especially since there was nothing adduced by the co. to negative his authority, that he had authority to contract on behalf of the co. to pay pltf. a commission.—WRATHALL *v.* RIPSTEIN & MANITOWAN EXPLORATION CO., LTD., [1932] 1 W. W. R. 801; 40 Man. L. R. 272; 3 D. L. R. 64; *affg.*, [1931] 3 W. W. R. 741.—**CAN.**

f i. —— —— *Presumption as to borrowing power.*]—Money was advanced by pltf. to F., a director, & not to the co. F. was in control of the co.'s business, but the directors had not delegated their borrowing power to him :—*Held :* one director alone had no actual authority from the co. to borrow, & pltf. was not entitled to assume that the directors had delegated their borrowing powers to the one director who had been left in full control of the business.—MERCANTILE FINANCE CORPN., LTD. *v.* FRANCIS & TAYLOR, LTD., [1929] N. Z. L. R. 731.—**N.Z.**

sq. *Fraud of managing director—Secret arrangement for sale of property.*] —LASELL *v.* HANNAH (B. C.) (1906), 37 S. C. R. 324.—**CAN.**

st. *Position as trustee—Advantage to company from misconduct.*]—A managing director acting in a way whereby he derives an improper advantage to himself financially or otherwise cannot justify it by showing that his action was of benefit to the co.—BRITISH COLUMBIA TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK (1934), 48 B. C. R. 209.—**CAN.**

PART III. SECT. 28, SUB-SECT. 10.

r i. —— *Effect of bye-law.*]—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re* PETRIE MANUFACTURING CO., *Ex p.* HUGHES, [1924] 4 D. L. R. 1308; 4 C. B. R. 311.—**CAN.**

s i. —— *Cheque—Unsatisfied judgment against company.*]—*Held :* the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—WRIGHT *v.* RITCHIE, [1925] 4 D. L. R. 1050.—**CAN.**

sb. *Not a trustee—As regards funds & securities in his custody.*]—*Ex p.* GIROUX, [1926] 2 D. L. R. 900; 45 Can. Crim. Cas. 315; (1925), Q. R. 40 K. B. 362.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—A.

h i. —— *Mining engineer—Companies Act*, 1927, *s.* 113.]—STEVENS *v.* SPENCER (Alta.), [1930] 2 W. W. R. 271; 3 D. L. R. 993; *affg.*, [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

sc. *Clerk, labourer, servant or apprentice—Director also field manager of mining company.*] Sect. 113 of Cos. Act, 1934, does not make the directors of a co. liable for the wages of a director for work performed by him as a "clerk, labourer, servant or apprentice" of the co.

Qu. : whether, even if pltf. had not been a director, his position as field manager for a gold mining co., interpreted in the light of the authority he had, the work he did & the place &

3526. *Add. Annotations :—As to* (2) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *Generally,* **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A C. 395.

3526a. " Person in the employment of the company "—Director.]—No managing or other director is a " person in the employment of the company."—NORMANDY *v.* IND COOPE & Co., LTD. [1908] 1 Ch. 84 ; 77 L. J. Ch. 82 ; 97 L. T. 872 ; 24 T. L. R. 57 ; 15 Mans. 65.

3532. *Add. Annotations :*—**Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. **Folld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201.

3532a. —— ——.]—By the articles of a private co. a governing director, who also held practically the whole of the share capital, was so appointed for his life, or until he should resign or be removed by special resolution of the co., at a salary of £300 a year. After he had continued in office for some years the co. passed a resolution for voluntary winding-up, & he ceased to act as director. His assignees sought to prove in the liquidation for compensation due to him for loss of office, but the liquidator rejected the claim :—*Held :* as the only contract between the director & the co. was that contained or evidenced in the articles, his employment as such was conditional on the continued existence of the co., & ceased automatically when it was wound up. But assuming there had been any breach of contract it was one in respect of which, in the circumstances, no damages were recoverable.—*Re* FARRER (T. N.), LTD., [1937] Ch. 352 ; [1937] 2 All E. R. 505 ; 106 L. J. Ch. 305 ; 157 L. T. 431 ; 53 T. L. R. 581 ; 81 Sol. Jo. 357.

3535. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536a. —— ——.]—*Re* LEE, BEHRENS & Co., LTD., No. 3500a, *ante.*

3536b. Remuneration payable out of profits—Whether profits available for dividend.]—In consideration of services rendered & of the transfer of certain rights to the co. by him, the co. agreed as purchasers " to pay to [pltf.] out of the first profits of the purchasers & in priority to all dividends payable in respect of any shares in the purchasers' capital the sum of £1,000." The balance sheet of the co., for the year ending Mar. 31, 1935, showed a profit of £698 11*s.* 10*d.*, which sum the directors used for writing off preliminary expenses & in making a transfer to certain reserve accounts. Pltf. contended that the £698 11*s.* 10*d.*, being the first profit of deft. co., he was entitled to payment of that sum in part satisfaction of the £1,000 : & that the co. by the publication of the balance sheet were estopped from denying that the £698 11*s.* 10*d.* was a first profit :—*Held :* upon the true construction of the contract the words " the first profits in priority to all dividends " means profits available for dividends ; & the test is whether the purpose to which the directors have applied the sum in dispute is one to which the shareholders could not object if such application deprived them of what would otherwise have been a dividend.—STEWART *v.* SASHALITE, LTD., [1936] 2 All E. R. 1481 ; 52 T. L. R. 712.

3537a. Superannuation—Alteration of scheme—Whether ultra vires.]—*Re* ELDER DEMPSTER SUPERANNUATION FUND ASSOCN. (1933), 78 Sol. Jo. 13.

3540a. —— —— **Presumption of authority—Due delegation of authority.**]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante.*

3549. *Add. Annotations :*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

3549a. —— —— ——.]—KLEINWORT, SONS & Co. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD., No. 2419a, *ante.*

3553. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

3560. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26. **Distd** Mudd *v.* Collins (1925), 133 L. T. 186 ; Reed *v.* Seymour (1927), 11 Tax Cas. 625 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748. **Consd.** Denny (H. & A.)

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circumstance of its performance, would have put him in the class of " labourers or servants," within the meaning of said sect.—MULLIGAN *v.* LANCASTER, [1937] 1 W. W. R. 73 ; 1 D. L. R. 414. —**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—B.

e i. —— *By president—Confirmation*]—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned :—*Held :* the co. could not repudiate the agreement, on the mere ground that it was not formally authorised or adopted by bye-law.—BLOOMFIELD *v.* MONARCH OVERALL MANUFACTURING CO., LTD. (No. 2), [1927] 2 W. W. R. 18 ; [1927] 3 D. L. R. 146 ; *affd.*, [1927] 3 W. W. R. 502 ; [1927] 4 D. L. R. 1137.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—C.

sd. *By whom fixed—Directors.*]—The remuneration of an officer of a co. must be fixed by the directors, & cannot be fixed by the shareholders.—WILSON *v.* WOOLLATT, [1928] 4 D. L. R. 403 ; 62 O. L. R. 620.—**CAN.**

se. *Who liable for — Directors — Whether manager included in " labourers, servants & apprentices."*]—DOMANSKI *v.* WILSON, [1935] 4 D. L. R. 17 ; O. R. 400 ; 5 F. L. J. (Can.) 69.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—D.

g i. —— —— *Contracts for purchase of stock.*]—*Held :* the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—TICONDEROGA PULP & PAPER CO. *v.* COWANS, [1925] 4 D. L. R. 1.—**CAN.**

g ii. —— —— *Agreement for non-shareholders to gain advantages of shareholders.*]—*Held :* express authority necessary.—MCLEOD *v.* UNITED CANNERS, LTD. (P.E.I.), [1925] 3 D. L. R. 767.—**CAN.**

g iii. —— —— *Cancellation of subscription for stock.*]—*Held :* express authority necessary.—*Re* SUN RAY MANUFACTURING CO., *Ex p.* ROBSON (Ont.), [1925] 1 D. L. R. 175 ; 5 C. B. R. 303 ; *affd.*, 4 C. B. R. 597.—**CAN.**

sf. *Liabilities — Investigation into conduct.*]—Act 46, 1926, s. 184 (1), is not designed for the purpose of enabling the ct. to hold a general investigation into the conduct of an officer of the co. The examination there intended is for the purpose of fixing liability in respect of a particular claim then before the ct. The sect. does not create any new liability or any new right, but only provides a summary mode of enforcing rights which would otherwise have been enforced by the ordinary procedure of the cts. A person cannot therefore be held liable under the sect. unless he is already liable to pay a sum of money by some principle of ordinary law, or by virtue of a special clause of Cos. Act imposing upon him a particular liability.—ZULULAND MOTOR CO. *v.* SHORT, LIQUIDATOR, ETC. (1928), 49 N. L. R. 368.—**S. AF.**

v. Reed (1933), 18 Tax Cas. 254. **Refd.** Stedeford *v.* Beloe, [1931] 2 K. B. 610; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

3560a. Remuneration by commission—Amount recoverable—How calculated.]—Applt., pltf. in the action, was for many years secretary of resp. co. Originally he received a fixed salary per week, but in 1916 an agreement was made between him & one A. S., managing director of resp. co., to the effect that in addition to his weekly salary he was to receive 10 per cent. on the balance of profits after payment of 12½ per cent. dividend. In 1926 applt. quarrelled with A. S. & left the service of resps., & shortly afterwards he brought this action for an account of the sums due to him as commission & for payment of the amount found to be due. It appeared that nearly all the capital of the resp. co. was held by A. S. & his family, & that he, as managing director, had entire control of the co.'s business. During applt.'s tenure of office A. S., with the connivance & assistance of applt., habitually appropriated funds of the co. to his own purposes. Applt. in framing his claim for commission contended (i) that the 12½ per cent. dividend referred to in the agreement must be a dividend subject to income-tax; (ii) that the 12½ per cent. dividend must be limited to an amount representing 12½ per cent. on the capital of the co. at the date of the agreement & had no application to subsequent increases of capital; & (iii) that for the purpose of calculating his commission he was entitled to reintroduce into the accounts all the sums which had been unlawfully applied for the benefit of A. S. personally:—*Held:* (1) the 12½ per cent. dividend must be a dividend subject to income-tax; the 12½ per cent. dividend must be measured on the capital as it stood in each year when the accounts were made up; & in reckoning the amount on which commission must be paid no account could be taken of the sums which ought to have been included in the profits but had been misappropriated by A. S.; (2) although applt. had been guilty of misconduct in relation to the affairs of resps., he was entitled to recover moneys which were already due to him for work done on resps.' behalf, & the remedy of resps. was an action or counterclaim for damages for breach of duty.—RAMSDEN *v.* SHARRATT (DAVID) & SONS, LTD. (1930), 35 Com. Cas. 314, H. L.

Annotation:—As to (2) **Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3560b. —— —— Effect of misconduct.] - RAMSDEN *v.* SHARRATT (DAVID) & SON, LTD., No. 3560a, *ante*.

3565. *Add. Annotations:*—**Consd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

3567a. —— Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3568a. —— Purchase of goods for company's benefit.]—LEVY *v.* METROPOLITAN CAB CO. (1854), 23 L. T. O. S. 67.

3573. *Add. Annotation:*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

3576. *Add. Annotation:*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

3586. *Add. Annotation:*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

3590. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

3595. *Add. Annotation:*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3599. *Add. Annotation:—As to* (1) **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3603a. —— —— Bills of exchange drawn by branch manager.]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers:—*Held:* (1) pltfs. were not entitled to act on bills drawn by a person in the position of the branch manager; (2) the bills were forgeries under which pltfs. could have no title.—KREDITBANK CASSEL G. m. b. H. *v.* SCHENKERS, [1927] 1 K. B. 826; 96 L. J. K. B. 501; 136 L. T. 716; 43

PART III. SECT. 29, SUB-SECT. 2.—C. (b).

q i. —— *By acts of secretary-treasurer.*]—*Held:* (1) a secretary-treasurer, as such, has no authority to bind his co.; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—B.

3596 i. *Remuneration by commission—Based on profits—& weekly sum—Provision for fixed minimum—Right to minimum although no profits.*]—GALLE-*v.* WATERLOO MOTORS, LTD., [1931] 2 D. L. R. 310; 3 M. P. R. 137.—**CAN.**

sb. *Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M.*, 1913 (c. 35), *s.* 32.]—MENZIES *v.* TYNDALL QUARRIES CO. (Man.), [1926] 4 D. L. R. 350; [1926] 2 W. W. R. 864.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—C.

g i. —— —— ——.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

sd. *Manager conducting personal business—Payment by party having dealings with company.*]—FAWCETT *v.* PETITCODIAC BLACK FOX CO., LTD. (1932), 5 M. P. R. 442.—**CAN.**

3602 i. —— —— *By misrepresentation—Question of authority.*]—RAVENE PLANTATIONS, LTD. *v.* ESTATE H. ABRAY (1927), 48 N. L. R. 174.—**S. AF.**

T. L. R. 237; 71 Sol. Jo. 141; 32 Com. Cas. 197, C. A.

Annotations:—As to (1) **Consd.** British Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48. *As to* (2) **Consd.** Slingsby *v.* District Bank Ltd. (1931), 47 T. L. R. 587; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

3608. *Add. Annotation:*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

3652. *Add. Annotation:*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

3656. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3657. *Add. Annotation:*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661. *Add. Annotation:*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3662a. Inspection of securities—Whether in proper custody.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3664. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3665. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3668. *Add. Annotation:*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3670a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3674a. Duty to report to members—Extent of duty.]—The duty of the auditors of a co. to make a report to the members, under 1929 Act, sect. 134 (1), is confined to forwarding their report to the secretary of the co.—*Re* ALLEN, CRAIG & CO. (LONDON), LTD., [1934] Ch. 483; 103 L. J. Ch. 193; 151 L. T. 323; 50 T. L. R. 301; 78 Sol. Jo. 223.

3675. Before this case add "*See, now*, 1929 Act, s. ——.

3684a. Application of Interpretation Act, 1889 (c. 63), s. 1 (1)—To special articles used with Table A.]—*By the arts. of assocn. of a co.* which was incorporated in 1906 it was provided that Table A in the first sched. to the Cos. Act, 1862, should apply to the co., but that certain clauses of Table A should be excluded. In an action by a director against the co. & its directors, in which he claimed a declaration that a notice purporting to remove him from the office of director was invalid, the question arose whether Interpretation Act, 1889 (c. 63), s. 1 (1), which provides that words in the singular shall include the plural & words in the plural shall include the singular applied to the special articles which were used with Table A:—*Held:* sect. 1 (1), which governed Table A, also governed the special articles which were used with Table A, &, applying this principle to the notice in question, pltf. was validly removed from his office of director & the action failed.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252; 100 L. J. Ch. 311; 145 L. T. 356.

3692. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

3693. *Add. Annotations:—As to* (1) **Refd.** Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official

PART III. SECT. 29, SUB-SECT. 3.—D.

3sl. *For judgment against company—In action brought on manager's instructions.*]—*Held:* the manager was not liable.—PACIFIC COAST COAL MINES, LTD. *v.* ARBUTHNOT, [1926] 1 D. L. R. 670; [1926] 1 W. W. R. 478; 36 B. C. R. 321.—**CAN.**

3sm. *Undue preference.*]—An officer of a co. who grants an undue preference to himself is guilty of misfeasance & breach of trust within the meaning of Act 46, 1926, s. 184 (1). A part-time secretary is an officer of the co. within the same sect.—ZULULAND MOTOR CO. *v.* BOSWELL, LIQUIDATOR, ETC. (1928), 49 N. L. R. 376.—**S. AF.**

PART III. SECT. 29, SUB-SECT. 4.—A.

3sn. *Contract to appoint on obtaining control of company—Construction.*]—PURDOM *v.* DOHERTY (Can.), [1929] 3 D. L. R. 719; *affg.*, 33 O. W. N. 425.—**CAN.**

PART III. SECT. 29, SUB-SECT. 4.—D.

3t. —— —— ——.]—*Re* ALPHA MTGAGE & INVESTMENT CO. (1916), 34 W. L. R. 483; 10 W. W. R. 652.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—B.

3661 i. *General rule.*]—Persons who continue from year to year to assume the duties of auditors must be held to have agreed to conduct their work in a reasonably skilful & careful manner. In an action in which defts. auditors were held liable in damages for negligence in not detecting defalcations by the pltf.'s accountant, it was held that there was ample justification for the belief of pltf.'s shareholders that the report pltf. was receiving annually from defts. provided for such an audit as would reasonably catch such thefts & manipulations of the books as said employee had been guilty of. Defts. were not justified in taking directions from another employee, the manager, whom also they were required to check, as to whether it was necessary to do certain work of checking. Since defts. were aware that pltf.'s system of checking was faulty & that the danger of theft was always present, the default of pltf., or of its employees other than the accused in not remedying that situation did not excuse the continuing negligence of defts. The fact that pltf. had received from bonding cos. the greater part of the loss it had sustained was not a defence to the action. Any possible issue arising from such payment might be left to be determined between pltf. & said cos. on defts. making payment, or, alternatively, if defts. so required, the form of judgment might provide for notice to any parties, such as the bonding cos., presumed to have an interest therein.—INTERNATIONAL LABORATORIES, LTD. *v.* DEWAR, [1932] 3 W. W. R. 174; [1933] 1 D. L. R. 34; *revsd.*, [1933] 2 W. W. R. 529; 3 D. L. R. 665; 41 Man. L. R. 329.—**CAN.**

3661 ii. ——.]—The extent of the duty & liability of an auditor depends on the terms of his employment in the particular case, & on the book-keeping methods used, to the knowledge of his employer, by the latter's officials.—JAMIESON, AUSTIN & MITCHELL, LTD. *v.* BATTRUM, [1934] 1 W. W. R. 324.—**CAN.**

3668 i. *As to balance sheet.*]—Although an auditor of a co. is not an insurer, & does not guarantee that the books of the co. show the true position of its affairs or that his balance-sheet is accurate according to the books, it is his duty to ascertain & certify to the shareholders the true financial position of the co. at the time of the audit so far as reasonable care & skill on his part discloses it; it is not sufficient for him to ascertain that the balance-sheet corresponds to the books, he must take reasonable care to ascertain that the books themselves show the true position. It is his duty to report & comment on any item in the balance-sheet furnished by the directors which either appears or is found from investigation to call for comment or explanation. An auditor who gives shareholders means of information instead of information in respect of a co.'s financial position does so at his peril, & runs the very serious risk of being held, judicially, to have failed to have discharged his duty. When it is shown that the audited balance-sheets do not show the true condition of the co. & that damage has resulted the onus is on the auditor to show that such damage is not the result of any breach of duty on his part.—BLUE BAND NAVIGATION CO., LTD. (TRUSTEE) *v.* PRICE, WATERHOUSE & CO. (NO. 2), [1933] 3 W. W. R. 53; *revsd. on the facts*, [1934] 2 W. W. R. 49; 3 D. L. R. 404; 48 B. C. R. 325.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—C.

3679 i. *Misfeasance—Failure to audit.*]—*Held:* the failure to audit & report on the balance sheets of a co., & the sending of summaries purporting to be audited to the registrar of cos. were wilful acts or defaults on the part of the auditor, & he was liable to make good certain sums paid as preference dividends as a result of such default.—*Re* FULTON (JOHN) & CO., LTD., [1932] N. I. 35.—**IR.**

Assignee of Property, [1933] A. C. 691. *As to* (2) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3695. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

3696a. —— **Increase in voting rights of preference shareholders.**]—ST. DAVIDS (LORD) *v.* UNION CASTLE MAIL SS. CO., LTD. (1934), 78 Sol. Jo. 877.

3698. *Add. Annotation :*—**Expld. & Distd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

3702. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3703. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704. *Add. Annotation :*—*As to* (2) **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704a. —— **Interference by court.**]—It is for the shareholders, & not for the ct., to say whether an alteration of the articles is for the benefit of the co., provided that it is not of such a character as that no reasonable men could so regard it.

The arts. of assocn. of a co. provided that pltf. & four others should be the first directors of the co., & that they should be permanent directors, & that each of them should be entitled to hold office so long as he should live unless he should become disqualified from any one of six specified events. Owing to irregularities in the accounts furnished by pltf. of sums received by him on the co.'s account an extraordinary general meeting of the co. was held & a special resolution was passed that the articles should be altered by adding a seventh event disqualifying a director, namely, a request in writing by all his co-directors that he should resign his office. Such a request was subsequently made to the pltf. There was no evidence of bad faith on the part of the shareholders. In an action by pltf. for breach of an alleged contract contained in the original articles that he should be a permanent director, & for a declaration that he was still a director of the co. :—*Held :* the contract, if any, between pltf. & the co. contained in the articles in their original form was subject to the statutory power of alteration & that if the alteration was *bonâ fide* for the benefit of the co. it was valid & there was no breach of that contract ; there was no ground for saying that the alteration could not reasonably be considered for the benefit of the co. ; therefore, there being no evidence of bad faith, there was no ground for questioning the decision of the shareholders that the alteration was for the benefit of the co. ; &, consequently, pltf. was not entitled to the relief claimed.—SHUTTLEWORTH *v.* COX BROTHERS & CO. (MAIDENHEAD), LTD., [1927] 2 K. B. 9 ; 96 L. J. K. B. 104 ; 136 L. T. 337 ; 43 T. L. R. 83, C. A.

Annotation :—Folld. Sugden *v.* Urban Fire Insurance Co., (1930), 75 Sol. Jo. 60.

3704b. —— ——.]—SUGDEN *v.* URBAN FIRE INSURANCE CO., LTD. (1931), 75 Sol. Jo. 60 (Vice-Chancellor of Lancashire).

3724. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3729. Before this case insert " *Compare* CORPORATIONS, Vol. XIII., pp. 339 *et seq.*"

3734a. —— **Preference shareholders whose dividends "in arrear."**]—A co.'s articles of assocn. provided that the original preference shares, carrying a cumulative preferential dividend of 7 per cent., should not confer upon the holders the right to attend & vote at any general meeting or to have notice thereof unless (*inter alia*) the dividend thereon was " in arrear " for more than three months. Subsequently the capital of the co. was increased by the issue of preferred ordinary shares with the right to a non-cumulative preferential dividend of 10 per cent. payable in respect of each year exclusively out of the profits earned in each year & to rank after the preference shares. It was further provided that the holders of these preferred ordinary shares should, *mutatis mutandis*, be subject to the same restrictions

PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

sp. *Rights of members—Forcing additional shares on dissenting member.*]—An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words "three shares for every 250 lb. of butter fat" supplied by a member & substituted " one share for every 60 lb. of butterfat." Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held :* the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—MACDONALD *v.* NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD., [1923] N. Z. L. R. 122.—**N.Z.**

3698 i. *Alteration a breach of contract.*]—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bonâ fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bonâ fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—HARI CHANDANA JOGA DEVA *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. (1924), I. L. R. 52 Calc. 239.—**IND.**

3698 ii. ——.]—Resp., a member of applt. co. for a number of years, supplied produce to the co. upon terms set out in certain of the co.'s arts. of assocn. The co. altered the arts. in question in a manner which subsequently proved to be prejudicial to resp., &, declining to be bound by such alteration, he took action to recover the balance due to him on the basis of the original articles :—*Held :* it not having been shown that resp. had in any way assented to the alteration in question, he was not bound thereby, & was entitled to be paid for his produce on the basis of the original arts. as unaltered.—JOHNSON *v.* ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD., ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD. *v.* JOHNSON, [1927] N. Z. L. R. 216.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 2.—C. (b) iii.

3701 i. *For benefit of company as whole.*]—If a majority of shareholders carry a resolution to alter the articles not in the interests of the co. at large, but entirely for their own benefit & in their own interests, they have not acted *bonâ fide*, & that is fatal to the validity of the alteration. The co. had rescinded an article whereby the " dry " shareholders were entitled to interest on their capital, & substituted another which had the effect of depriving the " dry " shareholders of interest :—*Held :* the article was invalid.—GEARY *v.* MELROSE CO-OPERATIVE DAIRY CO., LTD., [1930] N. Z. L. R. 768.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 3.—A.

sd. *Misdescription of meeting—Effect.*]—A meeting was erroneously described as a directors' meeting instead of a shareholders' meeting. The three shareholders present were also directors. An act done at such meeting, being *intra vires* bound the co. notwithstanding the misdescription.—E. H. MCGUIRE & H. J. FORRESTER, LTD. *v.* CADZOW, [1932] 3 W. W. R. 337 ; [1933] 1 D. L. R. 192 ; **26 Alta. L. R. 518.—CAN.**

as to receiving notices of & attending & voting at general meetings as the holders of original preference shares. Since 1920 no profits had been available to pay dividends, & for the general meeting of 1926 the holders of preferred ordinary shares received no summonses. In an action by holders of such shares against the co. for a declaration that they were entitled to have notice of & to attend & vote at the general meetings :—*Held :* the words " in arrear," in the context in which they appeared in the articles, could not be construed to cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year & not paid because there were no profits available for the dividend, & the action failed.—COULSON *v.* AUSTIN MOTOR CO., LTD. (1927). 43 T. L. R. 493.

3736. *Add. Citation :*—13 Mans. 316.

3740. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3746. *Add. Annotation :*—**Folld.** *Re* Newcastle United Football Co., [1932] W. N. 109.

3749a. Where twenty-one days' notice required—Shareholders resident abroad—Notice unnecessary.]—*Re* NEWCASTLE UNITED FOOTBALL CO., LTD., [1932] W. N. 109 ; 173 L. T. Jo. 344.

3753. *Add. Annotation :—Generally,* **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3770. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771. *Add. Annotations :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83 ; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official Assignee of Property, [1933] A. C. 691.

3771a. Shareholder with no registered address—No address in United Kingdom for service of notices.]—DICKSON *v.* HALESOWEN STEEL CO., [1928] W. N. 33.

3775. *Add. Annotations :—As to* (1) **Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. *As to* (2) **Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3779. *Add. Annotation :*—**Expld. & Apld.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3787a. —— —— ——.]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *post.*

3802. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3803a. —— —— **Although proxy given.**]—A co.'s arts. of assocn. provided, art. 74, that votes might be given personally or by proxy ; art. 75, that the instrument appointing a proxy should be deposited at the office not less than forty-eight hours before the time of holding the meeting at which it was to be used ; &, art. 76, that " a vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous . . . revocation of the proxy . . . provided no intimation in writing of the . . . revocation . . . shall have been received at the office before the meeting " :—*Held :* in a case where a proxy had not been validly revoked in accordance with art. 76, the shareholder who had given the proxy was free to attend at the meeting & vote personally ; &, when he had done this, the vote tendered by the proxy was properly rejected.—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., [1931] 2 Ch. 90 ; 100 L. J. Ch. 404 ; 145 L. T. 471 ; 47 T. L. R. 217, C. A.

3811. *Add. Annotation :*—**Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3811a. —— —— —— **Whether decision of chairman final.**]—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes :—*Held :* the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—WALL *v.* EXCHANGE INVESTMENT CORPN., [1926] Ch. 143 ; 95 L. J. Ch. 132 ; 134 L. T. 399, C. A.

PART III. SECT. 30, SUB-SECT. 3.—B. (f).

e i. ——.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution ; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* EXCEL FOOTWEAR CO., *Ex p.* NOVA SCOTIA TRUST CO., [1923] 3 D. L. R. 212 ; 56 N. S. R. 195 ; 3 C. B. R. 748.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (b).

sq. *Necessity for quorum at commencement—& at time of voting.*]—At the outset a majority of the issued shares were represented at the meeting, but some of the shareholders withdrew & at the time of the voting there was no longer a quorum :—*Held :* meetings of shareholders are to be governed by the same rules as to quorum & procedure as apply to parliamentary & municipal bodies except where the statute or bye-laws otherwise provide ; & the shareholders' meeting therefore was a nullity failing for want of a quorum, & the bye-laws were not properly passed.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51 ; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (c).

3785 ii. —— *To give casting vote—For what purposes to be exercised.*]—*Re* CITIZEN'S COAL & FORWARDING CO. (Ont.), [1927] 4 D. L. R. 275.—**CAN.**

3796 ii. —— ——.]—At an extraordinary general meeting of a co. a special resolution to increase capital was declared by the chairman to have been carried by the requisite majority. Among the majority voting for the resolution were two shareholders who, in terms of the articles of assocn. were not qualified to vote, in respect that they had been registered owners of their shares for less than a month. If their votes had not been included, the requisite majority in favour of the resolution could not have been obtained. No poll was demanded at the meeting :—*Held :* under 1929 Act, s. 117 (3), as no poll had been demanded at the meeting, the declaration of the chairman that the resolution had been carried by the requisite majority was final & conclusive.—*Re* GRAHAMS' MOROCCO CO., [1932] S. C. 269.—**SCOT.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) i.

3801 i. —— —— *Interested directors & shareholders.*]—Directors & other shareholders, implicated in a breach of trust with respect to the co.'s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.'s name be retained as pltf. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. *v.* GREAT WEST PERMANENT LOAN CO. (No. 2) (Man.), [1927] 3 W. W. R. 486.—**CAN.**

sr. *Necessity for concurrence of joint shareholders.*]—Joint holders of shares must concur in voting upon them unless the bye-laws of the co. otherwise provide. Defts. were not entitled to vote upon shares held by them as trustees jointly with other persons, who were not present or assenting.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51 ; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) iii.

st. *No amendment of vote—After vote cast.*]—BARBER, ETC. *v.* NEW ZEALAND SOUNDS HYDRO ELECTRIC CONCESSIONS, LTD., [1927] N. Z. L. R. 589.—**N.Z.**

sv. *How demanded—Demand by specified number of members—Proxies*

3822. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3823. *Add. Annotations :—As to* (1) **Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] C. R. 640. **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3826. *Add. Annotation :*—**Consd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3829. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

3841a. —— Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Consd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3847a. —— —— Vote valid unless disallowed at meeting — Whether decision of chairman final.]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *ante*.

3847b. Right of member to vote although proxy given.]—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., No. 3803a, *ante*.

3853. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3858a. —— Two resolutions put to meeting en bloc.]—Where on a show of hands there are two resolutions before a meeting of shareholders, one for the reduction of capital & another for the conversion of the preference shares into ordinary shares, & where there is a right to a poll, the chairman may put the resolutions *en bloc* if no shareholder requires him to put them separately.—*Re* JONES (R. E.), LTD. (1933), 50 T. L. R. 31.

3866a. Notice of intention to propose—Twenty-one days—How calculated.]—The period of not less than twenty-one days prescribed by 1929 Act, s. 117 (2), relating to notices of meetings in connection with the passing of special resolutions, means a period of not less than twenty-one clear days, exclusive of the day of service of the notice & exclusive of the day on which the meeting is to be held.

Provisions in the articles regulating the date on which a notice is to be deemed to be served must be considered ; but an article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded.—*Re* HECTOR WHALING, LTD., [1936] Ch. 208 ; 105 L. J. Ch. 117 ; 154 L. T. 342 ; 52 T. L. R. 142 ; 79 Sol. Jo. 966.

3874. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

3874a. —— —— Adjournment of second meeting to date more than month from date of first meeting.]—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—NEUSCHILD *v.* BRITISH EQUATORIAL OIL CO., [1925] 1 Ch. 346 ; 94 L. J. Ch. 201 ; 133 L. T. 227 ; 41 T. L. R. 414 ; 69 Sol. Jo. 446.

—— —— ——.]—*See, now*, 1929 Act, ss. 117 (2), 119, 287.

3878. Before this case insert "*Compare* CORPORATIONS, Vol. XIII., p. 346."

3880. *Add. Annotations :—As to* (1) **Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. **Refd.** Cox *v.* National Union of Foundry Workers of Great Britain & Ireland (1928), 44 T. L. R. 345.

3881a. —— ——.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Refd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3882. *Add. Annotation :*—**Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3882a. —— —— Re-election of retiring director.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3890. *Add. Annotation :*—**Consd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3916a. —— —— Whether "knowingly" party to default.]—BECK *v.* BOARD OF TRADE (SOLICITOR), GOODCHILD *v.* BOARD OF TRADE (SOLICITOR) (1932), 76 Sol. Jo. 414, D. C.

3917. *Add. Annotation :—As to* (2) **Refd.** Glanvill, Enthoven *v.* I. R. Comrs. (1924), 131 L. T. 818.

3925. *Add. Annotation :*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

3933. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579 ; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

3934a. Locality of debt created.]—An English trust investment co. held 3,712 ordinary £1 shares in deft. co., also an English co. with a registered office in London, & deriving its revenue entirely from its shares in four cos. carrying on business exclusively in Australia. Deft. co. had its head office & board of directors in Australia, but had also a register of shares in London. Deft. co. having been assessed to Australian income tax was required by the Deputy Federal Comr. of

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not included.]—Cos. Act, 1892, s. 48 (3), provides that a demand for a poll of members of a co. must be made by at least two members :—*Held :* a demand by a member personally present & holding proxies for two other members not personally present was not a demand within this sect.—*Re* RHODESIAN MANUFACTURING CO., LTD., [1927] S. A. S. R. 310.—**AUS.**

PART III. SECT. 30, SUB-SECT. 3.—G.

3897 i. *When court will interfere—To summon meeting.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2. W. W. R. 606 ; 36 Man. L. R. 606.—**CAN.**

3899 i. *When court will interfere—To prevent meeting being held.*]—Injunction may be granted restraining the meeting of a co. where a *primâ facie* case of fraud or oppression is made out.—FULLER *v.* BRUCE, [1935] 3 D. L. R. 256 ; 9 M. P. R. 437 ; 5 F. L. J. (Can.) 101 ; *on appeal*, [1936] S. C. R. 124 ; 2 D. L. R. 273.—**CAN.**

sg. *Motion by cestui que trust—To restrain trustee from voting—Whether company necessary party.*]—PETRIE *v.* BROWN & LOVE, [1934] 3 W. W. R. 380 ; 49 B. C. R. 299.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—A.

sa. *Must apply rateably to all shareholders of same class.*]—It is of the essence of a dividend that it shall apply rateably to all shareholders of the same class.—PRICEVILLE FOX CO. *v.* JORDAN, [1929] 3 D. L. R. 907 ; 64 O. L. R. 172.—**CAN.**

sc. *What amounts to dividend—Dividend Duty Act*, 1902 (*W. A.*).]—SWAN BREWERY CO., LTD. *v.* R., [1914] A. C. 231, P. C.—**AUS.**

Taxation, to deduct an amount sufficient to pay the income tax from the dividend payable to the English trust investment co., as being an " absentee " taxpayer for the year ending June 30, 1921. The investment co. sued deft. co. for the amount deducted, & contended that such dividends were not assessable to Australian income tax :—*Held :* the shares held by pltf. co. in deft. co., were locally situate in England, & the dividend due in respect of them was an English debt. The Commonwealth Govt. had therefore no power to impose or alter the incidence of taxation upon the dividend, & the deft. co. was not entitled to deduct any Australian income tax from any dividend payable to English shareholders.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 136 L. T. 436; 70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., 42 T. L. R. 771.

3934b. Every payment other than authorised reduction of capital.]—A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. —HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720; 144 L. T. 65; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WAKES, 99 L. J. P. C. 191, P. C.

Annotations :—**Distd.** *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773. **Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

3936. *Add. Annotation :*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3939. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

3943a. ——— ——— ———.]—A co. was incorporated as a trust investment co., the objects as defined by clause 3 of its memorandum of assocn. including (*a*) to acquire & hold stocks, shares & securities of the classes therein specified & from time to time to change such investments for others of the like nature, & (*b*) to borrow on debenture stock & to redeem or pay off any moneys so borrowed. The business & accounts of the co. were conducted & kept, as required by the articles of assocn., on the footing that profit or loss on a change of investment was carried to capital account, & net receipts over expenditure were carried to revenue account & became available for payment of dividends without regard to any depreciation in the market value of the co.'s investments. In 1900 the co. issued at par debenture stock. In 1918, owing to the general fall in the value of securities, the directors were enabled to redeem some of this debenture stock at a discount, & they claimed the right to carry the whole amount of this discount to revenue account. The investments forming the assets of the co. had fallen to an extent approximately equivalent to the discount at which the debenture stock had been redeemed :—*Held :* (1) apart from the special provisions of the articles of assocn., the single item of gain by redemption of debenture stock could not be dissociated from the loss of capital assets, & that the amount of the discount was not distributable as dividend; (2) the issue of loan capital was not one of the objects or part of the business of the co., but was a power to be exercised incidentally to, & in furtherance of, its objects, & even if the discount was otherwise divisible as net profit, such a division would be prohibited by the fact that it did not arise out of the co.'s business.—WALL *v.* LONDON & PROVINCIAL TRUST, LTD., [1920] 2 Ch. 582; 90 L. J. Ch. 43; 125 L. T. 57; 36 T. L. R. 729; 64 Sol. Jo. 635.

3944a. ———.]—A co. with a capital of some £16,000,000 & operating to a large extent through subsidiary & sub-subsidiary cos., proposed to pay a dividend on its preference shares. There had admittedly been a loss of £780,000. Against this there were available two sums of £362,000 & £500,000. The former was admittedly profits available for dividend. The £500,000 was made up in part of premiums on the issue of shares & in part of profits carried to reserve, but which had in fact been invested in the assets of the co. Pltf. asked for an injunction to restrain the co. from paying the dividend :—*Held :* (1) the onus was on pltf. to establish that in paying such dividend the co. would trench upon assets of the co. representing capital paid up upon the shares; (2) the assets of the co., properly valued, must in such a case be treated as notionally divisible into two parts, those representing subscribed capital & those representing reserve. These two parts must be proportionately reduced in respect of any diminution of value & the reserve so reduced will be available for dividend; (3) that part of a reserve fund consisting of moneys paid by way of

PART III. SECT. 30, SUB-SECT. 7.—B.

3935 ii. ——— *Resolution sufficient—Bye-law unnecessary.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—D. (a).

3b. *General rule.*]—A co. cannot realise its entire assets &, having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend. —DAVISON *v.* KING, [1926] N. I. 1.—**IR.**

PART III. SECT. 30, SUB-SECT. 7.—E. (a).

3958 ii. ——— ——— ———.]—Deft. co. was created by letters patent under Dominion Cos. Act, R. S. C., 1906. Its capital was divided into preferred & common shares & the letters patent provided that the preferred shares " shall confer the right to receive out of the profits of each year a preferential dividend for such year at the rate of eight per centum *per annum* on the capital for the time being paid up thereon & shall rank as regards return of capital in priority to the common shares, but shall not confer the right to any further participation in profit or assets." The by-laws of the co. provided that the directors might before declaring any dividend set aside out of profits such sums as they should think proper as a reserve. Pltf., the owner of both preference & common shares, sought a declaration that the co. had earned profits during certain specified years sufficient to pay said preferred dividends & that it was bound to apply such profits in payment thereof & had no discretion to ap[ply] them in providing for a reserve f[und] or contingencies :—*Held :* whether or not profits had been shown out of which the preferred dividend could be paid, the discretion of the directors to withhold the declaration of a dividend had not been taken away by the letters patent.—DEVALL *v.* WAINWRIGHT GAS CO., LTD., [1932] 1 W. W. R. 281; 2 D. L. R. 145; 26 Alta. L. R. 274; 3 W. W. R. 251.

premiums on shares, unless set aside in some particular fund which has been wholly spent, is available for dividend purposes.—DROWN *v.* GAUMONT-BRITISH PICTURE CORPN., LTD., [1937] Ch. 402; [1937] 2 All E. R. 609; 106 L. J. Ch. 241; 157 L. T. 543.

3948. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3952. *Add. Annotation:*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

3959a. Arrears of dividend—Distribution.]—The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding 5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures & preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held:* the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—FIRST GARDEN CITY *v.* BONHAM-CARTER, [1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.

3966. *Add. Annotation:*—**Distd.** *Re* Hyde, Hyde *v.* Bryce (1930), 74 Sol. Jo. 467.

3976a. —— —— **Calculation on wrong principle—Acquiescence.**]—The ct. will not grant an injunction to restrain the declaration of a dividend on the co.'s stock, etc., on the ground that the dividend so to be declared was calculated upon an erroneous principle with reference to various accounts of several amalgamated lines of railway, & the profits realised, where the same principle as to the matters of account had been adopted & acted upon for several successive years & acquiesced in by the respective shareholders. A motion for an injunction to this effect directed to stand over until the hearing of the cause, as no immediate injury could accrue to pltfs. (shareholders) until that time.—YOOL *v.* GREAT WESTERN RY. CO. (1869), 20 L. T. 74.

3984. *Add. Annotations:*—**Consd.** *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

3988a. —— ——.]—THORNYCROFT (J. I.) & CO., LTD. *v.* THORNYCROFT (1927), 44 T. L. R. 9.

3990. *Add. Annotation:*—**Refd.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

3991. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** Steel Co. of Canada *v.* Ramsay, [1931] A. C. 270.

3992. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q i. —— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the co.:—*Held:* there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—**CAN.**

sf. *Allotment of shares held in another company—Validity.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—I.

3991 i. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re* NEW ZEALAND HARDWARE CO., LTD., [1926] N. Z. L. R. 76.—**N.Z.**

sh. *Undeclared dividend—Whether liability of company—Contract for sale of shares.*]—F. gave an option to purchase a block of common shares of a company, which purchase would give the purchaser control of the co. The optionee required that F. furnish an accountant's statement showing the company's assets & liabilities & profit & loss to Aug. 31, 1926, & an affidavit that the co.'s liabilities would not exceed the amount shown by such statement. A statement & affidavit were furnished, & the acceptance of the option was expressed to be based on said statement. Preference shares had been issued by the co. non-participating & non-assessable, entitling the holders thereof to a first, fixed, cumulative dividend of 8 per cent. *per annum*:—*Held:* cumulative dividends on preference shares, to Aug. 31, 1926, undeclared & unpaid, constituted a liability of the co. within the meaning of the contract, & should have been included as such in the said statement.—FAIRHALL *v.* BUTLER, [1928] 3 D. L. R. 161; [1928] S. C. R. 369.—**CAN.**

sk. *Right to participate in profits in excess of fixed preferential dividend—Construction of charter.*]—The letters patent of a co. incorporated in 1910 under Cos. Act of Canada provided that the net profits from time to time distributed should be applicable first to paying a fixed cumulative dividend at the rate of 7 per cent. *per annum* on the preference shares, & that the holders of those shares should participate rateably with the holders of the ordinary shares in the distribution of net profits after the holders of the ordinary shares should have received "dividends equal to those paid on the preferred shares." Further, that no dividends should be paid on the ordinary shares until after the co. had to the credit of a reserve fund a sum equal to one year's dividend on the issued preference shares:—*Held:* the preference shareholders were not entitled to receive in dividend more than 7 per cent. *per annum* until the ordinary shares should have received dividends which gave them that percentage on their shares since the incorporation of the co.—STEEL CO. OF CANADA, LTD. *v.* RAMSAY (THOMAS), [1931] A. C. 270; 100 L. J. P. C. 81; 144 L. T. 532, P. C.; *affg.*, [1930] 3 D. L. R. 555; 65 O. L. R. 250; *affg.*, [1929] 4 D. L. R. 879; 64 O. L. R. 327.—**CAN.**

3993. *Add. Annotations :—As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

3994. *Add. Annotations :*—**Consd.** First Garden City *v.* Bonham-Carter, [1928] Ch. 53 ; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962. **Apld.** *Re* Smith's Will Trusts, Smith *v.* Melville, [1936] 2 All E. R. 1210. **Refd.** *Re* Sandbach, Royds *v.* Douglas, [1933] Ch. 505 ; MacIver's Settlement, *Re*, MacIver *v.* Rae, [1936] Ch. 198.

4003. *Add. Annotation :—Generally,* **Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1937] 1 K. B. 788.

4016a. —— —— **Application of profits in reduction of adverse balance.**]—A co. issued notes which entitled the noteholders to a fixed amount per cent. & to an additional share in the "profits available for dividend" :—*Held :* the directors were entitled to apply the whole of the profits of any one year, after payment of the fixed amount per cent. to the noteholders, in reduction of the adverse balances of previous years, & the noteholders were not entitled to claim a share in such profits.—LONG ACRE PRESS, LTD. *v.* ODHAMS PRESS, LTD., [1930] 2 Ch. 196 ; 99 L. J. Ch. 479 ; 143 L. T. 562.

Annotation :—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4017. *Add. Annotation :*—**Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196.

4019. *Add. Citation :*—93 L. J. Ch. 49.

4020. *Add. Annotations :—As to* (1) **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395 ; Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *As to* (2) **Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4021. *Add. Annotations :*—**Folld.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4023a. —— ——.]—By its memorandum of assocn. a co. as an attraction to participating preference shareholders, provided for the constitution of a reserve fund of £50,000 to be accumulated from the profits of the co. after certain dividend payments had been made. The arts. of assocn. of the co., however, also authorised the setting aside of a reserve fund out of profits, in addition to the reserve fund empowered by the memorandum, & the fund set aside under the arts. was, according to the arts., to be used to meet contingencies, or for special dividends, or for repairing, improving, & maintaining the property of the co. & for such other purposes as the directors should in their absolute discretion think conducive to the interests of the co. The arts. also provided that the reserve fund to be set aside under the memorandum should be kept invested outside the business "until required for any of the above purposes" :—*Held :* the memorandum & the arts. might be read together to explain any ambiguity appearing in the terms of the memorandum or to supplement it on any matter on which it was silent, but that in the present case, as there was no ambiguity, the reserve fund authorised by the memorandum having been created for the benefit & protection of the preference shareholders, the two documents could not be read together, & it was *ultra vires* the directors of the co. to use the memorandum reserve fund of £50,000 for any of the purposes set out in the arts. of assocn.—ANGOSTURA BITTERS (DR. J. G. B. SIEGERT & SONS), LTD. *v.* KERR, [1933] A. C. 550 ; 102 L. J. P. C. 161 ; 149 L. T. 313 ; 49 T. L. R. 533, P. C.

4023b. —— **Writing back to profit account—Profits written off in excess of requirements.**]—A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—STAPLEY *v.* READ BROTHERS, LTD., [1924] 2 Ch. 1 ; 93 L. J. Ch. 513 ; 131 L. T. 629 ; 40 T. L. R. 442 ; 68 Sol. Jo. 519.

Annotation :—**Refd.** Long Acre Press *v.* Odhams Press, Ltd.,

4026. *Add. Annotations :*—**Refd.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23 ; Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4035. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291 ; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

4037a. ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4046. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4048. *Add. Annotations :*—**Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192. **Refd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

PART III. SECT. 31, SUB-SECT. 2.—B.

n i. —— ——.]—*Re* INRIG SHOE CO., [1924] 4 D. L. R. 625 ; 5 C. B. R. 157.—**CAN.**

o i. —— ——.]—The holder of 1,500 £1 shares in a co., on which 5*s.* per share had been paid & on which a call of a further 2*s.* 6*d.* per share had been made but not paid, being unable to pay his debts as they fell due agreed with the co. that the money already paid should be applied towards payment in full of 750 shares, & that he should pay a further amount sufficient to pay those 750 shares in full, & that thereupon the other 750 shares should be cancelled :—*Held :* the transaction amounted to a purchase by the co. of the shares cancelled, & the shareholder was still a member of the co. in respect of the 1,500 shares.—*Re* GREATER MELBOURNE REALTY CO., PTY., LTD., [1931] Argus L. R. 276 ; *affd. sub nom.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* GREATER MELBOURNE REALTY CO. PROPRIETARY, LTD. (IN LIQUIDATION), [1932] Argus L. R. 178 ; 5 A. L. J. 433 ; 47 C. L. R. 44.—**AUS.**

q i. —— *No reduction of assets.*]—Where the extinguishment of co. shares by their surrender & cancellation involves no actual reduction of assets, the transaction is not illegal. Real capital is not diminished by relinquishing something of no value or by securing relief from liabilities. Each case must be decided on its own facts & the diminution in capital must be, not fanciful nor theoretical, but actual & substantial, before the transaction can be successfully attacked.—BRITISH COLUMBIA RED CEDAR SHINGLE CO., LTD. *v.* STOLTZE MANUFACTURING CO., LTD., [1932] 1 W. W. R. 164 ; 1 D. L. R. 762 ; 44 B. C. R. 458 ; *revsg.*, [1931] 3 D. L. R. 379.—**CAN.**

4050a. —— **Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.**]—Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by pltf.: & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees:—*Held:* the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained; & pltf. was entitled to judgment for £1,500 with interest.—GARRARD *v.* JAMES, [1925] 1 Ch. 616; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

4052a. Provision of financial assistance to buy own shares—1929 Act, s. 45.]—1929 Act, s. 45, was declaratory of the law & did not create a new offence.—R. *v.* LORANG (1931), 22 Cr. App. Rep. 167; 75 Sol. Jo. 121, C. C. A.

4064a. —— **Guarantee of payment by French firm to French Treasury.**]—REPUBLIC OF FRANCE (MINISTER OF FINANCE) *v.* PERRY & CO. (BOW), LTD. (1929), 73 Sol. Jo. 268.

4070. *Add. Annotation:—Generally,* **Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4072a. —— **Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.**]—BLOXHAM *v.* MEDICAL DEFENCE UNION, LTD. (1894), 10 T. L. R. 384; 38 Sol. Jo. 288, C. A.

4074. After this case for "—— **Remuneration of directors.**]" read "—— **Remuneration—Of directors.**]"

4080. *Add. Annotations:—Generally,* **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4087. *Add. Annotation:*—**Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4094. *Add. Annotations:* — **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4094a. ——].—(1) A question might arise under the 38th clause of the deed, as to whether what the directors are there authorised to do under their general powers must not be done by them at a Board; & it appears to me that it would not be competent to any one, two, or even three directors, by putting their signature to an instrument, to enter into a contract for the society; for, by the 38th section, the contract must be executed at a Board.

(2) I do not think it at all an unreasonable requisition on the part of joint stock cos., that every instrument required in their transactions should be under their common seal. The 44th section of the Act makes

4051 ii. ——.]—It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—*Re* E. J. LANE, LTD., *Ex p.* MILLIGAN, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—**CAN.**

4051 iii. ——.]—KNECHTEL MOTOR CO., LTD. *v.* WORDEN (Sask.), [1923] 2 D. L. R. 839; [1923] 2 W. W. R. 154.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—I.

n i. ——.]—Where a co. assigned money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement:—*Held:* the co.'s memorandum of assocn. gave it no such power.—ABBOTSFORD LUMBER CO. *v.* STEVENSON, [1925] 4 D. L. R. 560; [1925] 3 W. W. R. 451.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—K.

sh. *Power limited to negotiation of investments—No right to registration of mortgage charge.*]—*Re* MUTUAL INVESTMENTS, LTD., [1924] 4 D. L. R. 1070; 56 O. L. R. 29.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—C.

4083 iii. —— ——.]—*Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

4083 iv. —— *By injunction.*]—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD., [1937] 2 W. W. R. 399.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—D.

4094 i. *Presumption that powers properly exercised.*]—The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & indorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed:—*Held:* the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—CANADIAN BANK OF COMMERCE *v.* PIONEER FARM CO., LTD. & HALL (Sask.), [1927] 4 D. L. R. 772; [1927] 3 W. W. R. 312.—**CAN.**

4094 ii. ——.]—Deft. co., the owner of mining lands, by an agreement in writing, executed by its president & secretary-treasurer under the co.'s seal, gave L. an option to purchase a portion of the lands. Pltf., a shareholder of deft. co., sought to have the agreement declared null & void because it was not sanctioned by a bye-law of the directors, confirmed by a vote of the shareholders. It appeared that the directors in fact sanctioned the transaction & by a bye-law authorised [illegible] treasurer to [illegible] with [illegible] the co.'s seal [illegible]

[illegible] NICKEL CO., [1929] 4 D. L. R. 42; 64 O. L. R. 190.—**CAN.**

4094 iii. ——.] — PACIFIC BERRY GROWERS, LTD. *v.* WESTERN PACKING CORPN., LTD., [1929] 1 D. L. R. 814; 1 W. W. R. 426; 41 B. C. R. 78.—**CAN.**

such a requisition of the utmost importance; for, according to that section, every contract entered into by an instrument not under their common seal would be unilateral as regards them—a contract under which they would be liable, but of which they could not claim the benefit against those with whom it was entered into.

(3) There is, no doubt, an important distinction to be drawn, & it is drawn in the case of *Royal British Bank* v. *Turquand*, No. 4094, *ante*, between that which, upon the face of it, is manifestly imperfect when tested by the requirements of the deed of settlement of the co., & that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be under the common seal of the co., every person contracting with the co. can see at once whether that requisition is complied with, & he is bound to do so; but where, as in the case I have last referred to, the conditions required by the deed consist of certain internal arrangements of the co. for instance resolutions at meetings, & the like, if the party contracting with the directors find the acts which they undertake to do to be within the scope of their powers under the deed, he has a right to assume that all such conditions have been complied with. In the case last supposed, he is not bound to inquire whether the resolutions have been duly passed, or the like, otherwise he would be bound to go further back, & to inquire whether the meetings have been duly summoned, & to ascertain a variety of other matters, into which if it were necessary to make such inquiry, it would be impossible for the co. to carry on the business for which it is formed.—*Re* ATHENÆUM LIFE ASSURANCE SOCIETY. *Ex p.* EAGLE INSURANCE CO. (1858), 4 K. & J. 549; 27 L. J. Ch. 829; 4 Jur. N. S. 1140; 6 W. R. 779; 70 E. R. 229.

4095a. ——.]—Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only:—*Held:* the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank* v. *Turquand*, No. 4094, & assume that a signature purporting to be that of a new director was that of a person duly appointed. —LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443, 43 T. L. R. 449.

4100. *Add. Annotation:*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4104a. —— —— **Disputes between directors.**]—STANFIELD *v.* GIBBON, [1925] W. N. 11.

4107a. —— —— **Merger of English companies—Opposition by American company.**]—INTERNATIONAL MERCANTILE MARINE CO. (INC.) *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1934), 78 Sol. Jo. 350.

4117a. —— —— ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4129. *Add. Annotation:*—**Refd.** Leyton U. D. C. *v.* Wilkinson, [1927] 1 K. B. 853.

4129a. —— **Borrowing.**]—A trading co. was by its memorandum of assocn. empowered, *inter alia*, to raise capital & to borrow money by deeds of hypothecation, & to act through agents. The only reference to borrowing contained in the arts. of assocn. was a provision that the directors might borrow money. There was no express power of delegation by the directors. By various powers of attorney, the co. appointed agents, not directors, who were empowered, *inter alia*, to borrow money on the security of the co.'s goods, railway receipts, bills of lading or other documents of title. These agents borrowed money principally upon the security of letters of hypothecation relating to goods & produce in the co.'s go-downs. The co. was free to deal with the goods & produce in the ordinary course of business, & the contents of the go-downs therefore changed frequently. In some of the printed forms of letter of hypothecation the spaces for the names of the places at which the go-downs were situated were left blank, & at the end of the form, after the signature, a list of places was set out. One of the co.'s agents borrowed sums in excess of the value of the goods. A bank which held certain letters of hypothecation, acting upon a licence to seize contained in letters from the co., seized all the goods to which it had access by the terms of such letters of hypothecation:—*Held:* (1) the fact that the arts. of assocn. empowered the directors to borrow, did not restrict the co.'s general power to borrow, which it could exercise through properly authorised agents; (2) in the absence of anything in the memorandum or arts. of assocn. restricting the co.'s power to borrow through agents, borrowing by such agents was within their ostensible authority, the precise limits of the agents' power to borrow being a matter of internal management into which a lender would not be required to inquire. The co. was, therefore, bound even by the excessive borrowings of the appointed agents, so long as those borrowings were within the ostensible authority of the agents; (3) the letters of

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PART III. SECT. 31, SUB-SECT. 3.—E.

d i. —— ——.]—In an action against a co. & its directors, pltf., who was suing on behalf of himself & the other shareholders, applied for an order to continue an interim injunction until after the trial restraining defts. from carrying on as a board of directors. The act complained of was that some of defts. did not wish certain of the other shareholders to be present or represented at the annual general meeting, & prevented such presence or representation by having the meeting take place in an inner office of the place of meeting while some of the other shareholders were waiting to attend in the outer office to the knowledge of defts.:—*Held:* if irregularities were committed in the conduct of the meeting at which resolutions complained of were passed, it could be regularised by the passing of fresh & effective resolutions. The ct. will not interfere in the internal management of the co. Application dismissed.—WATSON *v.* BARRETT (1929), 41 B. C. R. 478.—CAN.

d ii. —— ——.]—Whatever should be done by a co. itself through its own internal organisation ought to be left to the co. to do & ought not to be interfered with by the ct. Accordingly, an order, made in an action by a shareholder against the co. appointing a receiver for the co., & a subsequent order, made on an *ex parte* application by the receiver, authorising him to commence an action in the name of himself & the co. to recover property of the co. & for an account of moneys received by two directors of the co. were set aside & the action brought in pursuance of the latter order dismissed, on the motion of one of said two directors.—YOUNG *v.* ALBERTA PETROLEUM CONSOLIDATED, PATTERSON *v.* OKALTA OILS, LTD., & CULBERT, [1930] 1 W. W. R. 86; 1 D. L. R. 903; *sub nom.* PATTERSON *v.* OKALTA OILS, LTD., 24 Alta. L. R. 370.—CAN.

d iii. —— ——.]—The cts. do not interfere with the internal management of private cos. not formed for profit unless there is illegality or fraud. —PARDEE *v.* HUMBERSTONE SUMMER RESORT CO. OF ONTARIO, LTD., [1933] 3 D. L. R. 277; O. R. 580.—CAN.

hypothecation constituted floating charges, which ought to have been registered, but upon seizure, before the liquidation of the co., under the licence to seize, a specific charge came into being, which had been perfected by the seizure of the goods. The seizure was, therefore, in the circumstances a rightful one, & valid against the liquidator; (4) the produce which could be seized under the letters of hypothecation, in which the spaces were left blank, was limited to produce in the go-downs specified at the end of the form.—MERCANTILE BANK OF INDIA, LTD. *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA & STRAUSS & CO., LTD., CHARTERED BANK OF INDIA, AUSTRALIA & CHINA *v.* MERCANTILE BANK OF INDIA, LTD. & STRAUSS & CO., LTD., [1937] 1 All E. R. 231.

4136a. ——.]—BRIGHTEN *v.* BOWMAN (1929), 73 Sol. Jo. 748.

4142. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

4144. *Add. Annotation :*—**Consd.** Havana Cigar & Tobacco Factories *v.* Oddenino, [1924] 1 Ch. 179.

4145. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

4159. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

4166. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4167. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4170. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4170a. —— —— —— ——.]—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, No. [illegible] *ante*.

4170b. —— —— —— ——.]—By the articles of assocn. of a co. the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the co., & to determine who should be entitled to sign contracts & documents on the co.'s behalf. A document purporting to be a guarantee was given to pltfs. executed by the co. in this form: "The F. E. B., Ltd., signed N. P." N. P was a director of the co. During the negotiations for the giving of the guarantee he had written to pltfs., signing the letter "for & on behalf of" the co., "N. P., Chairman." On these facts, in an action on the guarantee: —*Held :* pltfs. were entitled to presume that the directors of the co. had authorised N. P. to sign contracts on behalf of the co., & the co. was liable on the guarantee.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 2 K. B. 176; 101 L. J. K. B. 690; 147 L. T. 345, C. A.

4193. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4209. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4211. *Add. Annotation :*—**Refd.** Greenwood Martin's Bank, Ltd., [1932] 1 K. B. 371.

PART III. SECT. 31, SUB-SECT. 4.—B. (a).

f i. ——.]—*Held :* there was something so out of the ordinary in one co. undertaking to purchase the entire outstanding stock of another as to put pltfs. upon inquiry to ascertain whether the person or persons making the contract had authority in fact to make it.—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1931] 2 D. L. R. 743; O. R. 92.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—B. (b).

sl. *Negligence—Arrest by constable employed by company.*]—Where a co. has statutory power to employ &, practically, to appoint constables & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co. he renders the co. liable for the damage caused thereby.—VIGNITCH *v.* BOND & CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—C.

ki. —— *Agent for sale of bonds—Bonds not issued in compliance with Acts.*]—Where bonds are actually executed by a co. they cannot be said not to exist as bonds even though, because of non-compliance with the requirements of the Cos. Act, they are not legally valid; &, therefore, a person who as agent for the co. & without fraudulent intent induces another to buy such bonds from it cannot be liable in damages merely on the ground of an implied representation that the bonds are legally valid, since, even if such representation can be implied & it proves to be false it is a representation in point of law.—KAVANER *v.* BOWHEY (Alta.), [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—PRICE *v.* INDIANA-ALBERTA OIL CO. (Alta.), [1926] 3 D. L. R. 82.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 iv. —— ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

—— —— —— MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

c. Read "**4178 i.**"

PART III. SECT. 31, SUB-SECT. 5.—A. (f).

sp. *Whether company may plead contract ultra vires.*]—A co. incorporated under Ontario Cos. Act, R. S. O., 1927, by letters patent, cannot escape from the consequences of a contract by setting up a breach of its bye-laws or regulations.—*Re* MCEACHREN (W. N.) & SONS, LTD., MCGIBBON *v.* IMPERIAL TRUST CO., [1933] 2 D. L. R. 558; O. R. 349.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

s i. —— ——.]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation :—*Held :* commissions earned after incorporation of the co. were not recoverable against the partnership; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—POWER *v.* EDMONTON LUMBER EXCHANGE (1920), 3 W. W. R. 10; 53 D. L. R. 468.—**CAN.**

a i. —— *Sale of goods.*]—*Re* J. R. MORGAN, LTD., *Ex p.* J. & G. GARMENT MFG. CO. (Ont.), [1926] 1 D. L. R. 882; 8 C. B. R. 52.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (b).

4209 vii. ——.]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & defts. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed and delivered [illegible] thereafter acted on [illegible] was entitled to sue for damages for breach of such contract.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

4232. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4236. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4237. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4239. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48 ; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4256. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4257. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

4267. *Add. Annotations :*—**Appld.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

4267a. —— ——.]—Two rival cos., the N. Co. & the W. Co., formed resp. co. to take over certain branches of their business of fruit importers, the shares of the new co. being equally divided between the two old cos., & the board consisting of two directors of the N. Co., namely, M. & G. Lowe, & two directors of the W. Co. By a brokerage agreement embodied in a letter dated in July, 1924, between M. Lowe & applts., a firm of fruit brokers, it was arranged that applts. should make certain advances to the N. co. & should receive all fruit consigned either to the N. co. or to resp. co. & keep back 70 per cent. of the net proceeds in reduction of the advances, & it was stipulated that resp. co. should subscribe to this arrangement. Applts. also obtained a guarantee of the loan from the two Lowes & a third director of the N. Co., who was also the secretary of resp. co. This arrangement was not ratified by any agreement under the seal of resp. co., but the secretary wrote to applts. purporting to confirm the arrangement on behalf of his co. The directors of resp. co., other than the two Lowes, first became aware of the arrangement after it had been in operation for some months, & it was then put an end to. Applts. had obtained fruit consigned to resp. co. on board several ships without production of the bills of lading, on giving an indemnity to the ships, & they sued resp. co. for delivery of the bills of lading. Resps. counterclaimed for the proceeds of fruit belonging to them & not accounted for :—*Held :* (1) the arrangement contained in the agreement of July was not authorised by resp. co. ; (2) resp. co. were not estopped from denying the existence of the arrangement by the knowledge of the Lowes, inasmuch as they were parties to the wrong done to the co., or by the omission of the other directors to inspect the accounts of the co., which would have disclosed the arrangement.—HOUGHTON (J. C.) & Co. *v.* NOTHARD, LOWE & WILLS, LTD., [1928] A. C. 1 ; 97 L. J. K. B. 76 ; 138 L. T. 210 ; 44 T. L. R. 76, H. L.

Annotations :—As to (1) **Consd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231. *As to* (2) **Apld.** Evans *v.* Employers' Mutual Insurance Association, Ltd. (1935), 152 L. T. 333. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, Ltd., [1927] 1 K. B. 826 ; Liggett

PART III. SECT. 31, SUB-SECT. 5. —C.

4233 i. *Whether company bound—Promissory note—Signed by president or vice-president.*]—Where the endorsement of promissory notes purported to be that of a co. executed by the signature of its president or vice-president, signing as such, & the indorsee had given good consideration therefor, held that neither the co. nor the maker could dispute the authority of said officers to make the indorsement.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1 ; 4 D. L. R. 699.—**CAN.**

4233 ii. —— —— *For director's private liability.*]—S. & other members of a syndicate retained pltf. as their solr. in an action brought by them. S., on the advice of pltf., transferred his business of a timber-merchant to a proprietary co., of which he became managing director & principal shareholder. Pltf. procured from S. the co.'s promissory note, payable to pltf., on account of pltf.'s charges & outgoings in connection with the litigation. When the promissory note fell due, it was retired upon part payment & the giving of a new promissory note for the balance, made by the co. & payable to pltf. In an action by pltf. upon this promissory note :—*Held :* since pltf. had failed to show, as in the circumstances he must show, that the promissory note was given by the co. for good consideration & as part of or in aid of some business transaction of the co., the co. was not liable to pltf. on the note.—WOOLF *v.* SNIPE S. L. PTY. LTD., [1936] V. L. R. 22 ; 42 —— L. R. 92.—**AUS.**

4239 i. *Signature—Promissory note—Authority—Whether bank bound to inquire.*]—The co. was incorporated by Dominion Letters Patent on May 25, 1927, & went into liquidation in June, 1929. Applt. bank filed its claim in respect of five promissory notes made by S., as president, on behalf of the co. & amounting to $28,768.02. The liquidator called upon the bank to prove its claim before the Superior Ct. The notes were signed in blank by S. alone & were handed to L., the New York buying agent of the co., to be filled in & used by L. in payment of goods bought or to be bought by the co. L. filled the blank note forms with the names of two other cos. owned & controlled by him, being also at that time the owner of all the shares of the insolvent co. The notes were indorsed to applt. bank, & it is admitted that the bank was a holder in due course. S. was the only witness at the trial ; he produced a by-law of the insolvent co. providing *inter alia* that "all cheques . . . notes . . . shall be signed by such officer . . . of the co. & in such manner as shall from time to time be determined by resolution of the Board of Directors," & he also produced a resolution of the directors pursuant to the by-law which provides "that all notes . . . be signed by the president & countersigned by the auditor . . .," of which resolution applt. bank had no knowledge :—*Held :* applt. bank, being a holder in due course, was entitled to rank as a creditor of the insolvent co. The notes were made in general accordance with the authority of the president under the by-law of the co., & it was not necessary for applt. bank to inquire into the authority of the president to sign the notes on behalf of the co. Under sect. 106*d* of the Dominion Cos. Act, the president had to be one of the directors ; &, under sect. 37, the only persons who could make notes on behalf of the co. would be those designated in the by-law. Persons dealing with a co. are presumed to have notice of what is contained in the Act under which the co. was incorporated & the Letters Patent ; &, in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorised to make such note in the course of the co.'s business ; but he is not obliged to go further & inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the co.'s "indoor management." If the officer might, under the by-laws, have been authorised to make the note, the making of it was within his ostensible powers & was "in general accordance with his powers as such under the by-laws."—*Re* ALMUR FUR TRADING CO., BANK OF UNITED STATES *v.* ROSS, [1932] S. C. R. 150 ; 2 D. L. R. 128.—**CAN.**

PART III. SECT. 31, SUB-SECT. 6.—A. (c).

k i. —— *Solicitor.*]—BANK OF BRITISH NORTH AMERICA *v.* ST. JOHN & QUEBEC RY. CO. (N. B.) (1920), 52 D. L. R. 557.—**CAN.**

B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48; Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

4272. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4278. *Add. Annotations :*—*As to* (1) **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

4282. *Add. Annotations :*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4283. *Add. Annotations :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4291. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

4297a. —— —— Compulsory form of document to be used by members.]—*Re* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1929), 45 T. L. R. 296.

4307a. Extension of objects to new trades.]—A co. incorporated for the primary object of acquiring & carrying on two businesses, one that of a private co. making & selling footwear & clothing, but with other wide powers, & the other that of a retailer of footwear, petitioned the ct. for sanction to an extension of its objects, as set out in its memorandum of association, to the carrying on of a large number of different retail trades, including that of universal stores. The extension was approved by the co. in general meeting without opposition, but the petition was opposed by certain preference shareholders: —*Held :* there being no evidence that the proposed alterations were necessary or proper to enable the co.'s business to be carried on more efficiently, & as the trades it was proposed to take power to work were entirely outside the original objects of the co., the ct. would refuse to sanction the petition.

On appeal additional evidence was adduced to show that a large number of the trades to which it was sought to extend the co.'s objects were already being carried on by the co., & that to this extent the object of the petition was to regularise the position, & further that during the year 1934 a small profit had been made by the co. as opposed to the loss suffered in 1933 :—*Held :* in view of the further evidence the alterations in the objects, when limited so as to give power to carry on only those trades which were already being carried on by the co., should be sanctioned.—*Re* BOLSOM BROS. (1928), LTD., [1935] Ch. 413; 104 L. J. Ch. 267; 152 L. T. 477; 79 Sol. Jo. 214, C. A.

4320. After this case add "*See, now*, 1929 Act, s. 5 (1) (f), (g)."

4321a. Society not for profit.]—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re* SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN (1927), 71 Sol. Jo. 583.

Annotation :—**Distd.** *Re* Scientific Poultry Breeders' Assocn., Ltd., [1933] Ch. 227.

4321b. —— Alteration permitting remuneration of governing body.]—The memorandum of a co. limited by guarantee, formed to improve & encourage the breeding of poultry, contained a provision that no remuneration should be paid to members of the governing body of

PART III. SECT. 31, SUB-SECT. 9.—A.

p i. ——.]—*Held :* (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—INCORPORATED GLASGOW DENTAL HOSPITAL *v.* LORD ADVOCATE, [1927] S. C. 400.—**SCOT.**

q i. —— *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ——.]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—EDINBURGH SOUTHERN CEMETERY CO., LTD., [1923] S. C. 867.—**SCOT.**

4308 v. ——.]—A reversionary co. presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of assocn. by adding powers to carry on, along with its existing business, that of trust investment, & to sell or otherwise dispose of the whole or any part of its property & assets for such consideration as it might think fit, &, in particular, for shares, stock, debentures, debenture stock, or securities of any company purchasing the same. The ct. confirmed the alteration holding, with regard to the proposed power to sell, that it did not involve a sale of the undertaking but merely of assets, & in view of the extension of the co.'s business, was germane to its operations as an investment co.—METROPOLITAN REVERSIONS, LTD., [1928] S. C. 480.—**SCOT.**

4308 vi. ——.]—The additional business which a co., by an alteration of its objects effected under Cos. Act, 1908, s. 162 (5), is permitted to carry on may be one which is wholly different from & which has no relation to the then existing business of the co., & it may yet be quite capable of being conveniently & advantageously combined with it, provided the new business is not destructive of or inconsistent with the existing business.—*Re* MATAKANA CO-OPERATIVE DAIRY CO., LTD., [1929] N. Z. L. R. 721.—**N.Z.**

4308 vii. ——.]—A co. whose objects, as stated in its memorandum, were "to manufacture, sell, & trade in ginger beer, lemonade, soda water, & other aerated waters & drinks, & to do all such other acts as might be incidental to the attainment of these objects, presented a petition under sect. 5 craving confirmation of a resolution altering its memorandum by inserting after the word "drinks" the words "& also to bottle, sell & trade in all alcoholic beers." A reporter to whom the petition was remitted stated that, in his view the proposed new line of business could conveniently & advantageously be combined with the existing business. The ct. granted the prayer of the petition.—*Re* DUNDEE AERATED WATER MANUFACTURING CO., [1932] S. C. 473.—**SCOT.**

4308 viii. ——.]—A co., incorporated to carry on the business of maltsters & hop merchants, presented a petition under 1929 Act, s. 5, craving the ct. to confirm a resolution altering its memorandum of assocn., by the insertion of a clause enabling the co. to carry on, along with its existing business, the business of fruit merchants & canners, & preserve manufacturers. It appeared that, in the course of its existing business, the co. was in the habit of purchasing hops from persons who also grew fruit, & of selling hops, malt, & barley to persons engaged in the refreshment trade; & in these circumstances, the co. maintained that it could conveniently engage in business of the character proposed. The ct. confirmed the proposed alteration.—*Re* BAIRD & SONS, [1932] S. C. 455.—**SCOT.**

r i. ——.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

the co. Owing to the increase in the co.'s business it became impossible for those members to give their time to the co.'s affairs without some remuneration, & the co. in general meeting passed resolutions providing for equitable remuneration for services rendered. Upon petition to the ct. to sanction the consequent modifications of the memorandum of assocn.:—*Held:* the proposed alterations did not affect the real object of the co., which was the improvement of poultry husbandry; they were ancillary to the main object, & were alterations within the words "with respect to the objects of the co." in Cos. Act, 1929 (c. 23), s. 5 (1); they appeared to be to enable the co. "to carry on its business more economically or more efficiently" within sub-clause (*a*) of that sub-sect. & therefore the petition must be granted.—*Re* SCIENTIFIC POULTRY BREEDERS' ASSOCN., LTD., [1933] Ch. 227; 101 L. J. Ch. 423; 148 L. T. 68; 49 T. L. R. 4; 76 Sol. Jo. 798, C. A.

4361. *Add. Annotation:*—**Refd.** *Re* Bolsom Bros. (1928), Ltd., [1935] Ch. 413.

4362a. Extension of objects of benevolent association—By amalgamation—Amalgamation of funds.]—A benevolent assocn. desired to extend its objects to include the members & their dependants of any society with which it might amalgamate. The assocn. proposed an early amalgamation & wished to be enabled to give relief to the members of the society with which it proposed to amalgamate:—*Held:* the ct. ought not to confirm the alteration of the objects of the assocn. unless the assocn. undertook to amalgamate only upon the terms that there should be an amalgamation of funds as well as of members. The undertaking was given & the alteration confirmed.—*Re* CHARTERED SURVEYORS' BENEVOLENT FUND (INCORPORATED), [1936] 2 All E. R. 1631; 80 Sol. Jo. 705.

4369a. Affidavit of notice—Omission to exhibit register of members.]—On an application by petition made by a co. for confirmation of an alteration of the objects of the co., the secretary's affidavit of the posting of notices, contrary to the usual practice, did not exhibit the register of members:—*Held:* the petition would be granted notwithstanding the omission to exhibit the register, the ct. being of opinion that no useful purpose was served by exhibiting it, provided that, as in the present case, the affidavit of the secretary proved that the register was duly kept & contained the name & last known address of every person who was a member of the co. on the material date.—*Re* DEBENTURE CORPN., LTD. (1931), 47 T. L. R. 399.

4377. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4380. *Add. Annotation:*—**Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4389. *Add. Annotation:*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

4389a. —— Simple contract debts recoverable out of United Kingdom.]—An agreement for the sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

Annotations:—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667.

4393. *Add. Annotation:*—*As tp* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

PART III. SECT. 31, SUB-SECT. 9.—B. (c).

sc. *Alteration causing breach of lease.*]—The corpn. of G. possessed statutory powers to make & maintain tramways in the streets of G. Sect. 26 of their statute provided that animal power alone should be used on the tramways. The corpn. leased the tramways to a limited co. which was promoted for the purpose of acquiring the lease, & whose objects as specified in the memorandum of assocn., were to carry on the working of the tramways & omnibus traffic in connection therewith under the lease & after the expiration of the lease to carry on the business of omnibus proprietors in the city & vicinity. The co. acquired a large stock of horses & plant, the greater part of which would be rendered useless in the event of the lease not being renewed & accordingly, when about three years of the lease had still to run, the co. applied for an alteration of its memorandum to include (*inter alia*) these objects: "(10) to exercise the powers & carry on the business of a tramway co.; (13) to work & move all or any of the vehicles by means of electrical power, steam power or any other mechanical power." Application opposed by corpn. as being breach of contract to alter constitution & because object (13) was inconsistent with Parliamentary prohibition:—*Held:* promoting & disposing of tramways was an object foreign to the purposes of the memorandum & could not be sanctioned, & that *quoad ultra* the alterations fell to be confirmed.—GLASGOW TRAMWAY & OMNIBUS CO., LTD. *v.* GLASGOW MAGISTRATES (1891), 18 Rettie, 675.—**SCOT.**

PART III. SECT. 32, SUB-SECT. 1.—C.

q i. —— ——.]—Deft. co. bought land from pltfs., & in payment therefor transferred to pltfs. a block of shares in another co., agreeing to re-purchase from pltfs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltfs.:—*Held:* the agreement to re-purchase was *ultra vires* deft. co. as Cos. Act, s. 44, expressly prohibits a purchase of shares in another co.—GRANT *v.* DOMINION LOOSE LEAF CO. (1924), 56 O. L. R. 43.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—A.

a i. —— *To directors.*]—A sale by directors of the co.'s property to themselves & a third party as trustee for them is valid if such a transaction is *intra vires* the co. & if, as in this case, the purchasing directors constitute a majority of the shareholders.—FERGUSON *v.* WALLBRIDGE, [1934] 2 D. L. R. 270.—**CAN.**

sm. *Whether power implied from power to purchase land.*]—Where a joint stock co. is given by its memorandum express power to purchase land, it is implied as part of its constitution that it has power to let the land, & if necessary to sell it.—GUJERAT GINNING & MANUFACTURING CO. *v.* MOTILAL HIRABHAI SPINNING CO. (1928), I. L. R. 53 Bom. 792.—**IND.**

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

4401 i. —— *Under power in memorandum—For shares in another company.*]—Such sale does not necessarily involve winding up, &, where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—HEMSTREET *v.* NORTH WEST BISCUIT CO., [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—**CAN.**

g i. —— *Land acquired for carrying on company's undertaking—Companies Act, R. S. O.*, 1914 (c. 178), *s.* 24.]—*Re* ALLAN BROWN'S, LTD. & DRYALL, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—B. (c).

o i. ——.]—DADSON *v.* GREST (Sask.), [1927] 3 D. L. R. 530.—**CAN.**

sg. *On sale of undertaking—Vendor owning all shares except one—Duty not to make secret profit.*]—A person owning all shares except one in a co. cannot deny his identity as vendor & make a secret profit on sale of the co. to another.—PATTON *v.* YUKON CONSOLIDATED GOLD CORPN., LTD., [1934] 3 D. L. R. 400.—**CAN.**

4423. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Kisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

4427. *Add. Annotation :*—**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

4428. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4436. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4456. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

4458. *Add. Annotations :*—**Consd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

4488. *Add. Annotation :*—*As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4501a. —— **Dissenting—Joinder as defendant.**]—In a representative action by a pltf. on behalf of himself & all other bondholders :—*Held :* a dissentient bondholder, it not appearing that there were any others who dissented, should be added as a deft., but not in a representative character.—WILSON *v.* CHURCH (1878), 9 Ch. D. 552 ; 39 L. T. 413 ; 26 W. R. 735.

Annotations :—**Consd.** McCheane *v.* Gyles (No. 2), [1902] 1 Ch. 1911. **Refd.** Cunnach *v.* Edwards (1894), 64 L. J. Ch. 344.

4503. *Add. citation :*—6 Dow. & L. 606.

4513a. General rule—Necessity for solicitor.]—A co. can only appear by attorney (*per* CUR.).—SCRIVEN *v.* JESCOTT (LEEDS), LTD. (1908), 53 Sol. Jo. 101.

4524. For this number read "4525."

4525. For this number read "4524."

4526. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater. [1928] 2 K. B. 244.

PART III. SECT. 33, SUB-SECT. 1.

sn. *Institution of proceedings—Necessity to employ solicitor.*]—A co. cannot issue a writ of summons by any one but a solr.—WESTERN PRODUCERS MUTUAL HAIL INSURANCE CO. *v.* STEWART (Sask.), [1928] 1 W. W. R. 320.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—A.

e i. —— ——.]—Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients :—*Held :* the cause of action alleged was not defamation but an *injuria* done merely to the co. for which the co., & not an individual shareholder, was entitled to sue.—GOODALL *v.* HOOGENDOORN, LTD., [1926] App. D. 11.—**S. AF.**

k i. —— —— —— —— *Refusal unnecessary where no one to authorise use of name.*]—MASON *v.* LIVINGSTONE (Alta.), [1928] 2 D. L. R. 799.—**CAN.**

p i. —— —— ——.]—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657 ; 33 B. C. R. 425.—**CAN.**

q i. —— ——.]—FARRELL *v.* MAGIC SILVER-BLACK FOX CO., [1924] 3 D. L. R. 132.—**CAN.**

q ii. —— ——.]—SHAW *v.* WAINWELL OILS, LTD. (Alta.), [1929] 3 D. L. R. 621.—**CAN.**

t i. *Using company's name as plaintiff—No authority to use name—Doubt as to wishes of shareholders.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 606 ; 36 Man. L. R. 606.—**CAN.**

4448 i. *Internal management—Conduct of majority ultra vires—Or fraudulent.*]—Although the rule that in order to redress a wrong done to a co. or to recover money or damages due to the co. the action should be brought by the co. itself is subject to the exception that the complaining shareholders may sue in their own names where the persons against whom the relief is sought themselves hold & control the majority of the shares in the co., & will not permit an action to be brought in its name, yet in such an action pltfs. cannot have a larger right to relief than the co. itself would have if it were pltf., & cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority ; therefore, the cases in which the minority can maintain such an action are confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the co.—MASON *v.* LIVINGSTON, [1929] 1 D. L. R. 608 ; 1 W. W. R. 295 ; 24 Alta. L. R. 69 ; *varg.*, [1928] 3 D. L. R. 468.—**CAN.**

so. *Several groups of shareholders claiming to represent company—Stay of proceedings.*]—In company cases where there is an internecine warfare between factions, each claiming to be entitled to represent the co., the practice is to direct the proceedings be stayed until after a meeting of shareholders has been held, & the will of the majority ascertained.—DUMART PACKING CO., LTD. *v.* DUMART, [1928] 1 D. L. R. 640 ; 61 O. L. R. 478.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (a).

k i. —— *Action by beneficial owner on behalf of himself & all other shareholders.*]—*Held :* it was not open to pltfs. in a suit framed on behalf of themselves & all other shareholders of the co. to bring a suit as beneficial owners of shares, against the co. for enforcement of their beneficial rights & that the whole of the allegations & relief asked with respect to such suit must be struck out.—MAAS *v.* MCINTOSH (1928), 28 S. R. N. S. W. 441 ; 45 N. S. W. W. N. 107.—**AUS.**

o i. —— —— *Loss of right by winding up.*]—The right of a minority shareholder to maintain a representative action against the co. & the majority shareholders to compel an accounting by the latter for property of the co. unlawfully appropriated by them ceases as soon as the co. goes into liquidation.—FERGUSON *v.* WALLBRIDGE, [1935] 1 W. W. R. 673 ; 3 D. L. R. 66.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (b).

sq. —— *Unregistered shareholder.*]—In an action wherein pltf. alleged that he was a shareholder in deft. co. & sued on behalf of himself & all the other shareholders to compel the individual defts. to account to the co. for shares alleged to have been illegally obtained by them, it was held that, although pltf. was not a registered shareholder, he had a *status* to bring the action whether he was the beneficial owner outright of the shares alleged to be his or owned them subject to a charge in favour of the registered holder.—GOODBUN *v.* MITCHELL (Man.), [1928] 1 W. W. R. 495.—**CAN.**

PART III. SECT. 33, SUB-SECT. 4.

t i. —— ——.]—HINI *v.* ANDERSON, [1933] 2 W. W. R. 176.—**CAN.**

PART III. SECT. 33, SUB-SECT. 6.

ki. —— *Essential condition.*]—Service of a statement of claim on a co. is not good unless the officer or agent served is a person who is likely to bring it to the co.'s notice, even though he is one who under the rules may be served as representing the co.—ROYAL TRUST CO. *v.* SPILLERS CANADIAN MILLING CO., [1931] 2 W. W. R. 841 ; 4 D. L. R. 430 ; 25 Alta. L. R. 542.—**CAN.**

PART III. SECT. 33, SUB-SECT. 12.

4535 i. *Out of what fund—Action by company for benefit of directors.*]—While it is a well established rule that directors may not use the co.'s funds in payment of their own costs, although such costs would not have been incurred if they had not been directors, yet it is equally well established that directors acting as such within such of the co.'s powers as are confided to them & without gross negligence, cannot be called upon to pay out of their own funds the costs of defending resolutions passed by them in the interests of the co., simply because a pltf. has chosen to make them individually co-defts.—NORTHERN LIFE ASSURANCE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512.—**CAN.**

PART III. SECT. 33, SUB-SECT. 13.—A. (a).

sk. *Return of nulla bona not necessary.*]—On an application under sect. 223 of Cos. Act, 1933, for an order that pltf. give security for costs :—*Held :* a return of *nulla bona* was not necessary & deft. had on the material filed satisfied the onus on it.—R. M. BUCHANAN-SUMNER CO., LTD. *v.* SCOTTISH CO-OPERATIVE WHOLESALE SOCIETY, LTD., [1936] 1 W. W. R. 491.—**CAN.**

4568. *Add. Annotations :*—**Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

4570a. Assignment to secure personal debt of directors—Directors sole shareholders.]—As additional security for an advance to three partners, who, in addition to & apart from the partnership, were directors of a limited co., a bank accepted a document charging the co.'s interest in certain bonds which had been deposited with the bank to meet any judgment which might be obtained against the co. in then impending litigation. The document was signed by the three partners & the co.'s seal was affixed thereto, accompanied by the signature of one of the partners as president & of another as secretary of the co. No resolution was ever passed, either by the co. or by the directors, authorising the creation of the charge. The partners held all the shares in the co. except two which were held by two other directors of the co. There were also persons equitably interested in the shares. The litigation against the co. was concluded substantially in the co.'s favour, & the bank claimed the balance of the proceeds of sale of the bonds in reduction of the partners' indebtedness :—*Held :* as the co., acting through its directors, & not by its shareholders in general meeting, had purported to apply its property for the benefit of those directors, the transaction was unenforceable, & the ct. would not inquire whether the co. had derived any benefit from it. The bank was, therefore, bound to account to the co. for the balance of the proceeds of sale of the bonds.—E. B. M. Co., LTD. *v.* DOMINION BANK, [1937] 3 All E. R. 555; 81 Sol. Jo. 814, P. C.

4607. *Add. Annotations :*—**Consd.** Garrard *v.* James, [1925] Ch. 616; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

4623. *Add. Annotations :*—*As to* (2) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927]

PART III. SECT. 33, SUB-SECT. 13.—A. (b) ii.

p i. ——— ———.]—On appeal from the dismissal of an application by defts. for security for costs under sect. 223 of Cos. Act, 1933, held they were entitled to security.—CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD, LTD. *v.* TRAFIMENKOFF, [1937] 2 W. W. R. 340, C. A.—**CAN.**

sv. *"Credible testimony" of inability to pay—What is.*]—In an action for reduction of a lease, brought by a co., defender was assoilzied & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by "credible testimony" that pursuers would be unable to pay defender's expenses if he were successful, in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, &, further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—EDINBURGH ENTERTAINMENTS, LTD. *v.* STEVENSON, [1925] S. C. 848.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 1.—A. (a).

4569 ii. ———.] — ZIMMERMAN *v.* ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE) [1925], 3 D. L. R. 953; 3 W. W. R. 42.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—A. (b).

sw. *Elevator company—Bond for price of elevator.*]—A co. whose charter provides that it "may acquire, own, lease & sell real estate," & "build, sell, lease & otherwise deal with elevators, etc.," & further "may issue bonds bearing interest to an amount not exceeding the cost of any elevator built by it," has the power to issue such bonds for the price of an elevator bought by it.—ROYAL TRUST CO. *v.* GREAT NORTHERN ELEVATOR CO. (1906), Q. R. 30 S. C. 499.—**CAN.**

s i. ——— ———.]—Although under Rural Telephone Act, 1920 (c. 96), s. 31, deft. co. is impliedly prohibited from borrowing money otherwise than by the issue & sale of debentures, & has no power to make or give a promissory note, yet, held in an action on a promissory note, &, in the alternative for money borrowed, that, since the money was used by deft. in paying its legitimate debts incurred in carrying out the purposes of the co. pltf. was entitled to recover on the alternative claim with interest at the legal rate.—SMITH *v.* ELROSE RURAL TELEPHONE CO., LTD., [1928] 3 D. L. R. 51; [1928] 1 W. W. R. 970; 22 Sask. L. R. 414.—**CAN.**

sd. *Co-operative livestock company incorporated under Companies Act.*]—*Held :* to have power to borrow.—CANADIAN BANK OF COMMERCE *v.* JOHNSON (Alta.), [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—B.

sk. *Power to borrow & raise money—Mortgage.*]—*Held :* a mtge. over part of a co.'s real estate as security for a loan was justified.—UNIQUE PROPERTIES, LTD. *v.* ENDEAN, [1927] N. Z. L. R. 244.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 1.—D. (b).

4594 i. *Capital only capable of being called up in winding up—Company limited by guarantee.*]—A co. limited by guarantee was formed for the purpose of promoting an exhibition. Among its objects were the formation of a guarantee fund; the receipt of subscriptions thereto from persons, whether members of the co. or not, for the purpose of carrying out its objects & defraying its expenses; & the assignation of the letters of guarantee to any corporation which might give it credit. The co. obtained an undertaking from a firm, which was not one of its members, to pay a proportion of any loss arising in connection with the holding of the exhibition. It subsequently assigned the undertaking to a bank which had given it credit. A loss having occurred, the bank sued the firm upon the guarantee. The defenders contended that the assignation was *ultra vires*, having been made at a time when the co. was not in liquidation :—*Held :* the assignation was valid, in respect that the guarantee fund was not capital of the co. within the meaning of sects. 2 & 4 (1) (v) of 1908 Act, which could only come under the control of the co. or its directors in the event of liquidation, but formed an independent fund of credit to which an assignee could make good his right on the happening of the event on which the guarantee was contingent.—LLOYDS BANK, LTD. *v.* MORRISON & SON, [1927] S. C. 571.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 2.—A.

sm. *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*]—*Held :* binding on the bondholders.—GREENE *v.* RUGGLES (1891), 31 N. B. R. 679.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—B.

sp. *Form of bonds—Whether approval of directors necessary.*]—Where the directors of a limited co. at a proper meeting authorise the issue of bonds on the security of the assets of the co. & the shareholders confirm the decision of the directors, it is proper to leave the form of the bonds to the duly appointed or elected officers of the co. In such a situation no approval of the form of the bonds at a formal meeting of the directors is necessary, & the absence of such a meeting is not an irregularity affecting the validity of the bonds.—REID *v.* PURITY FARMS, LTD., [1937] 1 D. L. R. 725; O. R. 248.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (a) ii.

m i. ———.]—MERCHANTS BANK OF CANADA *v.* HANCOCK (1884), 6 O. R. 285.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) i.

r i. ——— *Issue before prospectus filed.*]—MARTIN *v.* CLARKSON, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

b i. ——— *For price of shares sold by one member to another.*]—The mtge. in question herein made by deft. co. held to be *ultra vires*, since it was made for the purpose of enabling one of the shareholders to purchase for his own benefit the shares of another & no case of necessity for the transaction had been established, there being no evidence of any disagreement among the shareholders or that the co. was in jeopardy or that it needed funds to carry on its operations. The mtgee. was held entitled, however, to recover the amount actually advanced with interest thereon.—MARTIN *v.* NORTHERN HOTEL CO., LTD., [1932] 1 W. W. R. 242.—**CAN.**

sn. *Unauthorised loan—Recoverable.*]—DOUGLAS *v.* MARITIME UNITED FARMERS CO-OP., LTD., WILSON *v.* MARITIME UNITED FARMERS CO-OP., LTD. (N. B.), [1928] 3 D. L. R. 166.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) ii.

k i. ——— ——— ———.]—Persons lending money to a co. have a right to

1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4625. *Add. Annotations:—As to* (1) **Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4630. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

4637. *Add. Annotation:*—**Refd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1.

4637a. Whether certificate securing income stock is debenture.]—Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pltfs. whereby the co. certified that it was indebted to them in a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held:* (1) the certificates were debentures within the sect., & pltfs. were entitled to the injunction; (2) all the holders of income stock certificates were entitled to inspection of the register thereof kept by the co. in accordance with the conditions.—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., [1926] Ch. 1, 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

Add. Annotation:—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4651a. ——.]—*Re* PRIESTMAN (ALFRED) & CO. (1929), LTD., No. 7007a, *post*.

4652a. Whether prospectus may be considered.]—*Re* CHICAGO & NORTH WEST GRANARIES CO., LTD., No. 814, *ante*.

4652b. ——.]—In determining a question as to the construction of a debenture the ct. cannot refer to the prospectus pursuant to which the debenture was issued.—*Re* TEWKESBURY GAS CO., TYSOL *v.* TEWKESBURY GAS CO., [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Mans. 301; *affd.*, [1912] 1 Ch. 1, C. A.

Annotations:—**Distd.** Jacobs *v.* Batavia, & General Plantations Trusts, Ltd., [1924] 1 Ch. 287; 93 L. J. Ch. 520. **Refd.** Eyre *v.* Milton Proprietary, Ltd., [1936] Ch. 244.

4652c. ——.]—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, No. 814a, *ante*.

——.]—*Compare* DEEDS, Vol. XVII., p. 342, No. 1537.

4676. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4677a. —— **Right to issue originating summons under R. S. C., Ord. 55, r. 3—To ascertain persons entitled.**]—*Re* CHILLAGOE RY. & MINES, LTD., TRUST DEED (1930), 46 T. L. R. 242.

4678a. —— **General rule.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4678b. —— **Wilful neglect or default—What amounts to.**]—*Re* LEEDS CITY BREWERY, LTD.'S TRUSTS, LEEDS CITY BREWERY, LTD. *v.* PLATTS, [1925] 1 Ch. 532, n., C. A.

Annotations:—**Apld.** *Re* City Equitable Fire Insce. Co., [1925] 1 Ch. 407. **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4688a. —— —— **Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4690. *Add. Annotations:*—**Refd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412; *Re* Priestman (Alfred) & Co. (1929), Ltd., [1936] 2 All E. R. 1340.

4697. *Add. Annotation:—As to* (2) **Refd.** National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

assume that the essentials of internal management have been carried out by the co.—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (c).

m i. ——.]—Where debentures were issued before the co. had filed a prospectus:—*Held:* even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—MARTIN *v.* CLARKSON, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—A. (b) i.

p i. —— —— *Whether misfeasance claims included.*]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re* BUICK LTD., [1926] N. Z. L. R. 24.—

"Powers, rights, revenues, privileges, exemptions & franchises."]—In a bond mtge. the words "powers, rights, revenues, privileges, exemptions & franchises" cannot be extended beyond their ordinary & natural meaning in the absence of suitable words to convey the whole property of the co.—MCDOUGALL *v.* SCOTT & EASTERN TRUST CO., [1934] 4 D. L. R. 607.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—B. (b).

sn. *Reimbursement of trustee—Grounds for refusing.*]—The trustee under a trust deed, under which certain bondholders were the *cestuis que trust* & by which certain land was mortgaged to the trustee as security for the payment of the bonds, sued for the determination of the trust deed & for reimbursement by the bondholders or from the property itself for moneys disbursed by the trustee for taxes, losses sustained in conducting farming operations on the land & for interest paid the bondholders but not collected from the mtgors. or realised out of the land:—*Held:* since, after the creation of the trust, the trustees had acquired a beneficial interest in the land for themselves & the moneys sued for had been expended after the acquirement of that interest, it could not be said that the expenditures had been made wholly in the interest of the bondholders & not in the trustee's interest as well, &, therefore, the action could not succeed.—VERMONT LOAN & TRUST CO. *v.* ENNIS, [1933] 2 W. W. R. 397.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—C. (a).

sq. *Mortgage of specific assets.*]—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank:—*Held:* the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of them in the course of the business subject to prescribed conditions.—BANK OF BARODA, LTD. *v.* H. B. SHIVDASANI (1926), I. L. R. 50 Bom. 547.—**IND.**

4698. *Add. Annotations :*—**Reld.** Earle *v.* worth R. D. C. (1928), 44 T. L. R. 605; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4699. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4699a. Effect of section—Redemption of debenture—Remedies of liquidator.]—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it :—*Held :* though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139 ; 98 L. J. Ch. 9 ; 140 L. T. 174; 45 T. L. R. 11 ; [1928] B. & C. R. 144. D. C.

4700 *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

4705a. ——.]—*Re* PATRICK & LYON, LTD., No. 3353b, *ante.*

4707a. "Cash paid"—Need not be unconditional payment.]—Early in 1932 a co. which was in financial difficulty & insolvent obtained a loan from its chairman, who was also a partner in a firm which supplied the bulk of its stock of goods to the co. He thought that an advance might save the co., but before making any advance ascertained from his partners that they would only consent to continue to supply the co. with goods on credit if the past debt to the firm of £1,954 was paid. He therefore advanced to the co. £3,000 on the security of a third debenture, dated Mar. 24, 1932, after arranging with the co. that out of this sum £1,954 should be applied in paying the past debt to the firm. In July, 1932, a compulsory order for the winding-up of the co. was made :—*Held :* the sum of £1,954 out of the total sum of £3,000 was "cash paid to the co. at the time of . . . the creation of, & in consideration for, the charge" within Cos. Act, 1929 (c. 23), s. 266, & there was, therefore, a valid floating charge in respect of the whole sum of £3,000.—*Re* MATTHEW ELLIS, LTD., [1933] Ch. 458 ; 102 L. J. Ch. 65 ; 148 L. T. 434 ; 77 Sol. Jo. 82 ; [1933] B. & C. R. 17, C. A.

4708. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Stanton, [1929] 1 Ch. 180.

4709a. —— ——.]—Moneys were advanced on the security of debentures creating a floating charge on the property & assets of the co. Fifty-four days elapsed after the first advance & five days after the last advance before the issue of the debentures on Jan. 20, 1926. The delay in the issue of the debentures was not acquiesced in by the lenders, who when they sent cheques for the advances wrote that the money was in further payment on account of debentures to be issued as arranged. The co. went into liquidation on Jan. 25, 1926. During the period in which the bulk of the advances were made the lenders were unaware that the co. was on the verge of liquidation. The debentures were issued when the co. was unable to pay its debts :—*Held :* the debentures were valid, the payments being made "at the time of" the creation of the charge & in consideration for the charge within 1908 Act, s. 212, & consequently the debentures were not a fraudulent preference within 1908 Act, s. 210.—*Re* STANTON (F. & E.), LTD., [1929] 1 Ch. 180 ; 98 L. J. Ch. 133 ; 140 L. T. 372 ; [1928] B. & C. R. 161.

4710. *Add. Annotation :*—**Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4716. *Add. Annotation :*—**Folld.** Heaton & Dugard *v.* Cutting, [1925] 1 K. B. 655.

4716a. —— —— ——.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff :—*Held :* the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—HEATON & DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., [1925] 1 K. B. 655 ; 94 L. J. K. B. 673 ; 133 L. T. 41 ; 41 T. L. R. 286. D. C.

PART III. SECT. 34, SUB-SECT. 3.—C. (c).

sr. "*Cash paid.*"]—Deft. co. was owned by S., who was its managing director. In Feb. 1930, he obtained a loan of £300 from pltfs. for his co. on the security of his own promissory note & also of deft. co.'s debenture for £300, which should have been registered within 21 days, viz., on or before Mar. 13, 1930. As S. was endeavouring to effect a flotation of his co. as a public co., he requested pltfs. not to register the debenture until the last moment, which they agreed to do. On Mar. 13, S. asked for further time, & it was ultimately agreed that in lieu of such registration pltfs. should advance S. £400 on the security of a new promissory note & a debenture for that amount, out of which sum he should forthwith repay the £300 previously borrowed with interest thereon. This was intended to give S. the additional time he required without prejudicing pltfs.' security. In pursuance of this arrangement pltfs. gave S. their own cheque for £400. W., who acted as solr. to both parties, attended with S. at the bank on Mar. 15, when the cheque was presented for payment, & when the latter received the £400 he immediately in pursuance of the agreement handed to W. the sum of £310 in payment of principal & interest on foot of the first loan, which sum the latter immediately lodged to the credit of pltf. co. The debenture for £400 was duly registered. The contemplated flotation did not materialise & the deft. co. went into voluntary liquidation :—*Held :* under Cos. (Consolidation) Act, 1908, s. 212, the mtge. debenture for £400 was invalid except to the extent of £90, the nett amount received by deft. co. on foot of the promissory note & debenture for £400, with interest thereon at 5 per cent.—REVERE TRUST, LTD. *v.* WELLINGTON HANDKERCHIEF WORKS, LTD., [1931] N. I. 55.—IR.

PART III. SECT. 34, SUB-SECT. 3.—C. (d) ii.

4729 i. *General rule.*]—DOMINION IRON & STEEL CO. *v.* CANADIAN BANK . S.), [1928] 1 D. L. R. 809.—CAN.

4730a. —— Floating charge over part of assets already charged.]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper " by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held:* the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re* AUTOMATIC BOTTLE MAKERS, OSBORNE *v.* AUTOMATIC BOTTLE MAKERS, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4739a. —— ——.]—By a lump sum building contract entered into in 1922 between S. & Co., the contractors, & defts., provision was made for interim payments on the architect's certificates, to be given monthly at the rate of 90 per cent. of the value of all work executed. The remaining 10 per cent., the retention moneys, was to be retained & deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention moneys amounted to £1,000 at the beginning of 1924; this was never deposited in a bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included, without distinction, in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile, pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments, & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention moneys by a document in these terms: " In reduction of the amount now or to be owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the H.R.D.C. for retention moneys in respect of the G. Housing Scheme, & for which your receipt shall be a sufficient discharge. . . ." Of that assignment due notice was given by pltfs. to defts. next day. The contractors had at various dates between 1900 & Feb. 2, 1924, issued to the Manchester & County Bank, Ltd., a number of debentures charging the undertaking of the contractors & all their property, both present & future, the charge being a specific charge on the contractors' freehold & leasehold property, machinery, goodwill, & uncalled capital, & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge for any of their assets in priority to the debentures. On Oct. 13, 1924, a receiver for the debenture-holders was appointed, who duly entered into possession. On Oct. 20, 1924, a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture-holders, & on the architect's final certificate being given, in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders, & pltfs. thereupon brought their action upon their assignment:—*Held:* (1) the debentures only created a floating charge on the retention moneys, which the contractors could therefore assign or charge in spite of the clause in the debentures prohibiting the creation of charges in priority to the debentures; (2) pltfs. had no express notice of that clause in the debentures; (3) though the registration of the debentures affect pltfs. with constructive notice that debentures existed, it did not affect them with notice of the terms, including the limitation on prior charges, of those debentures.—EARLE (G. & T.), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 44 T. L. R. 605; *affd.*, 140 L. T. 69; 44 T. L. R. 758, C. A.

4747. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

4755. *Add. Annotations:—As to* (1) **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. *Generally,* **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4767a. —— —— Validity of appointment—Onus of proof.]—KASOFSKY *v.* KREEGERS, [1937] 4 All E. R. 374, D. C.

4781. *Add. Citations:*—93 L. J. Ch. 27; 130 L. T. 93.

4783a. —— Delay in issue to retain credit.]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* LLOYD'S FURNITURE PALACE, LTD., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

4785a. —— Validity—Charge given as compensation for loss of management share.]—By an

agreement dated Sept. 28, 1925, after a recital that a management share of £1 of the T. Co. had been allotted to the S. Co. as manager of the T. Co. it was agreed that the S. Co. should be entitled to act as manager during the T. Co.'s operation of a certain undertaking & to receive in respect of each financial period of the T. Co. 50 per cent. of its net profits. The management share entitled the S. Co. to a majority of the voting power of the shareholders at any meeting & to a share of the surplus assets of the T. Co. in a winding-up after payment off of the preference share capital. In 1933 the rights of the management share were varied, & it became known as a reversionary share. The T. Co. having become desirous of putting an end to the management of the S. Co., a draft agreement had been prepared terminating the management in consideration of the payment to the S. Co. of £100,000 to be raised by the T. Co. by the issue of debenture stock. Incidentally the reversionary share was to be converted into an ordinary share. On the application of a shareholder of the T. Co. to test the legality of the proposed agreement:—*Held:* it was not *ultra vires* the T. Co. to enter into the proposed agreement. It was no objection to the agreement that it involved the redemption of the annual charge on the T. Co.'s net profits out of capital raised for the purpose.—INVESTMENT TRUST CORPN., LTD. *v.* SINGAPORE TRACTION CO., LTD., [1935] *Ch. 615; 105 L. J. Ch. 319; 153 L. T. 83;* 51 T. L. R. 476; 79 Sol. Jo. 402, C. A.

4796. *Add. Annotation:*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4808. *Add. Annotation:*—**Distd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation:*—**Consd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4818. *Add. Annotation:*—**Refd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4821. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

4825a. ——.]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4829a. Right of transferee to accrued interest.]—*Re* KIDNER, KIDNER *v.* KIDNER, No. 2224a, *ante*.

4833. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4838. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4839. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4852a. Transferee informed that registration unnecessary.]—The debentures of a co. payable to K. or his "registered assigns" were transferred by him. At the time of the transfer K. was indebted to the co. to a larger amount than the sum secured by the debentures. The co. kept no books for registering transfers, & on K. & his transferee applying to the secretary for registration, he told them it was unnecessary, & made no mention of the co.'s claim against K. On the co. being wound up:—*Held:* the transferee was entitled to prove as a creditor in respect of the debentures—*Re* COLONIAL & GENERAL GAS CO., LISHMAN'S CLAIM (1870), 23 L. T. 40.

4858. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4858a. —— ——.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme:—*Held:* the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration, & because the scheme, so far as it provided for a committee, was *ultra vires*.—BRITISH AMERICA NICKEL CORPN. *v.* O'BRIEN, [1927] A. C. 369; 96 L. J. P. C. 57; 136 L. T. 615; 43 T. L. R. 195, P. C.

4872a. —— **Redemption at figure below par but above market price.**]—MEADE-KING *v.* USHER'S WILTSHIRE BREWERY, LTD. (1928), 44 T. L. R. 298.

ART III. SECT. 34, SUB-SECT. 3.—G. (c).

s i. —— —— ——.]—The Apatco, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff:—*Held:* as regards the goods comprised within the second debenture, the rights of deft. under the said debentures were paramount to those of pltf.—MATHIESON *v.* WAHLEN (1928), 23 S. R. N. S. W. 189; 45 N. S. W. W. N. 47.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—I.

st. *Grounds for allowing or refusing—Under Sale of Shares Act*, 1916 (*c.* 15).]—*Re* SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE (Sask.), [1918] 3 W. W. R. 92.—**CAN.**

sv. *Who may be "bearer."*]—There cannot be "a bearer" of a debenture consisting of two or more persons holding the document in severalty, nor can the bearer of a debenture assign a part of the principal sum or sums secured by the debenture so as to create independent rights therein to different persons at one & the same time.—JAFFE (R.), LTD. *v.* JAFFE, [1932] N. Z. L. R. 168.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) i.

sw. *By extraordinary resolution—Adjourned meeting—No notice of adjournment—Whether adjournment continuation of original meeting.*]—*Re* ARGYLE MOTOR SERVICES, LTD., [1932] 1 D. L. R. 81; 4 M. P. R. 88.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) ii.

4863 ii. —— ——.] — NATIONAL TRUST CO. *v.* MARITIME COAL, RAILWAY & POWER CO., [1930] 2 D. L. R. 309.—**CAN.**

4879. *Add. Annotations :*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

4888. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4901. *Add. Annotation :*—**Refd.** Hunter *v.* Hunter, [1936] A. C. 222.

4904a. After twenty years—Reference to debentures in company's published accounts.]—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest :—*Held :* the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) *v.* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., [1928] Ch. 836 ; 97 L. J. Ch. 369 ; 140 L. T. 18 ; 44 T. L. R. 702 ; 72 Sol. Jo. 598.

4906. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation :*— **Consd.** Employers' Liability Assce. *v.* Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4928a. —— **Holder of income-stock certificate.**]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4931. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Due registration — Particulars of property charged insufficiently entered.**]—A co. with the object of securing payment of the overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1098 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated "—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor :—*Held :* as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* CHARNLEY, [1924] 1 K. B. 431 ; 93 L. J. K. B. 241 ; 130 L. T. 465 ; 68 Sol. Jo. 480 ; [1924] B. & C. R. 37.

4941. *Add. Annotation :*—*Generally*, **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

4943. *Add. Annotation :*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

PART III. SECT. 34, SUB-SECT. 3.—K. (b).

sg. *Effect of Companies Creditors Arrangement Act, 1933.*]—Companies Creditors Arrangement Act, 1933, does not affect the rights of separate classes of secured creditors in regard to schemes of arrangement.—*Re* WELLINGTON BUILDING CORPN., LTD., [1934] 4 D. L. R. 626 ; O. R. 653.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—L. (a) i.

sl. *Whether property must be restored.*]—The equitable doctrine that "a mtgee. is bound on payment to restore the property to the mtgor., & if by the act of the mtgee. unauthorised by the mtgor. it has become impossible to restore the estate on payment of all that is due the mtgee. will be prevented from suing the mtgor. at law" has no application to a floating charge created by debenture where nothing is vested in or handed over to the creditor.—O'DAY *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1934), 40 C. L. R. 200 ; 40 Argus L. R. 80.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—L. (b).

sh. *Debenture stock issued by loan company.*]—Debenture stock issued by a loan co. proceeding under Loan Companies Act, 1914 (c. 40), as amended by 12 & 13 Geo. 5, c. 31, s. 4, is not redeemable at the option of the holder.—SCOTTISH WIDOWS' FUND & LIFE ASSURANCE SOCIETY *v.* CANADA PERMANENT MTGE. CORPN., [1929] 3 D. L. R. 405 ; 63 O. L. R. 637.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—M.

sd. *Stamp Act*, 1891 (c. 39), s. 82 (1) (b) (i)—*Marketable security—Debenture.*]—A Canadian co. had agents in the United Kingdom for the purpose of recovering money for loans on debenture. On receipt of the money the agents granted an interim receipt therefor, & informed the co. The debenture was then made out & completed by the co. in Canada, & was dispatched to the co.'s agents in the United Kingdom, for delivery to the lender there in exchange for the interim receipt :—*Held :* the debenture was assessable to duty as a marketable security under Stamp Act, 1871, s. 82 (1) (b) (i) as being issued in the United Kingdom, in respect that it did not pass beyond the co.'s control, so as to create an obligation against the co. upon it, until delivery by the co.'s agents in the United Kingdom to the lender.—CANADA PERMANENT MORTGAGE CORPN. *v.* I. R. COMRS., [1932] S. C. 129.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4920 iii. —— ——.]—*Re* HOLMES (SAMUEL), LTD. (1923), 58 I. L. T. 9.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

sf. *Agreement to give security.*]—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed—*Held :* the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge" in Cos Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non registration.—NEW ZEALAND STRUTHERS CO., LTD *v* HOON HAY QUARRIES, LTD., [1925] N Z L R 73.—**N Z.**

sm *Assignment of book debts.*]—Where the assignor is a co the assignment of book debts must be registered in the offices of the County Court of the county in which the head office of the co is situate & the head office means the head office designated in the letters patent incorporating the co., or in any bye-law that may be passed by the co. pursuant to Cos. Act, s. 32.—*Re* SMITH TRANSPORTATION CO., [1928] 2 D. L. R. 508 ; 62 O. L. R. 203 ; 10 C. B. R. 48.—**CAN.**

4944. *Add. Annotations :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53 ; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

4944a. Assignment of goods to discount company—Financing hire-purchase agreements.]—A co. carried on a furniture business largely by means of hire-purchase agreements, & in order to provide the capital for the purpose entered into a series of agreements with a discount co. by which they assigned to a discount co. the goods comprised in the hire-purchase agreements subject to & with the benefit of the hire-purchase agreements on an immediate payment of 75 per cent. of the total purchase price, which was the same as that payable by the hirer if he continued payments of hire long enough to become the purchaser. From that 75 per cent. there was, however, deducted a percentage called the finance charge, which represented the discount co.'s profit. The balance of 25 per cent. of the purchase price was retained by the vendor co. out of the payments made by the hirer, 75 per cent. of such payments being secured collaterally to the discount co. by the issue of a series of bills of exchange which were equal in number to the instalments payable by the hirer & which were accepted by the vendors. The agreements with the discount co. provided that no notice thereof was to be given to the hirer, so long as there was no breach of the hire-purchase agreement. The vendor co. went into voluntary liquidation, being insolvent :—*Held :* the agreements in this form were assignments on sale & purchase & not charges &, therefore, did not require registration under 1929 Act, s. 79.—*Re* GEORGE INGLEFIELD, LTD., [1933] Ch. 1 ; 101 L. J. Ch. 360 ; 147 L. T. 411 ; 48 T. L. R. 536 ; [1931] B. & C. R. 220, C. A.

Annotation :—**Consd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4944b. Contractor employed by local authority—Authorisation to authority to pay sub-contractor.]—A firm A. contracted with the L.C.C. to install steam plant in a hospital. It subcontracted with another firm B. to do some of the work. A. fell into financial difficulty & gave B. an authority addressed to the L.C.C. to pay B. a named sum against the chief engineer's next certificate. The L.C.C. took interpleader proceedings against B. & the receiver of A., appointed by the debenture holder after the authority was given, & the Div. Ct. ordered the sum to be paid to B. The receiver appealed on the ground : (i) that the authority was a charge on the book debts of a co. &, not having been registered under 1929 Act, s. 79, was invalid ; (ii) that he ought to have credit for the expense he incurred in completing the work that was to have been done by B. : —*Held :* (1) the authority was an absolute equitable assignment & not a charge within 1929 Act, s. 79 ; (2) the receiver could not by any subsequent conduct alter the nature of the authority or the subcontractor's rights under it, & his remedy in respect of the expense incurred if any was by action for breach of contract.—ASHBY, WARNER & CO., LTD. *v.* SIMMONS, [1936] 2 All E. R. 697 ; 106 L. J. K. B. 127 ; 155 L. T. 371 ; 52 T. L. R. 613 ; 80 Sol. Jo. 552, C. A.

4945. *Add. Annotation :*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4946. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

4958. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4960. *Add. Annotations :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Charles & Co., [1935] W. N. 15.

4963. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4964. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967a. —— ——.]—(1) The usual proviso added to an order for extension of time for registration under 1929 Act, sect. 85—namely, that the order is to be without prejudice to the rights of parties acquired prior to the date of actual registration—only protects creditors who have acquired security on the property the subject-matter of the charge ; (2) the ct. will not insert in the order any terms for the protection of unsecured creditors of the co.—*Re* M. I. G. TRUST, LTD., [1933] Ch. 542 ; 102 L. J. Ch. 179 ; 149 L. T. 56 ; 49 T. L. R. 299 ; [1933] B. & C. R. 91, C. A. ; *affd. on other grounds, sub nom.* PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252, H. L.

4967b. —— —— **Winding up pending.**]—*Re* CHARLES (L. H.) & CO., LTD., [1935] W. N. 15 ; 179 L. T. Jo. 120.

4968. *Add. Annotation :*—**Refd.** *Re* Charles & Co., [1935] W. N. 15.

PART III. SECT. 34, SUB-SECT. 4.—C. (a).

sy. *Power of court—To impose terms.*]—In making an order under Cos. (Registration of Securities) Act, 1918, s. 7, granting an extension of time for the registration of debentures, the ct. will, in a proper case, impose terms for the protection of the unsecured creditors of the co., although it will not do so except where the circumstances so require.—*Re* A LIMITED COMPANY (1928), 28 S. R. N. S. W. 364 ; 45 N. S. W. W. N. 91.—**AUS.**

sz. *What must be shown.*]—Where the time prescribed by Cos. Act, 1908, s. 130, within which a mtge. given by a co. is to be registered has expired it is essential that a co. applying for an extension of such time should in the supporting affidavit, in addition to giving full particulars relating to the grounds upon which the application is made, give a very full & complete statement of the financial position of the co., with information (i) as to the amount owing to unsecured creditors & the nature of the accounts, *i.e.* whether ordinary monthly accounts or of long standing : (ii) as to whether there are any judgments outstanding against the co. : (iii) as to whether any proceedings are pending for winding up the co. & generally such full & complete information as may be necessary to enable the ct. to be fully seised of the position & to enable it to determine whether it is necessary to insert in the order any words specifically protecting unsecured creditors.—*Re* DALGETY & CO., [1928] N. Z. L. R. 731.—**N.Z.**

PART III. SECT. 34, SUB-SECT 4.—C. (c) i.

sb. *May not be made ex parte.*]—An application made under sect. 83 of Cos. Act (Northern Ireland), 1932, to extend the time for the registration of the charge in the Co.'s register may not be made *ex parte* but must be made upon notice of motion or summons.—*Re* COATES BUILDINGS, LTD., & LAW UNION & ROCK INSURANCE CO., LTD., [1936] N. I. 156.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—C. (c) ii.

4968 i. *Effect of order—How far creditors protected.*]—*Re* BOEHNER'S, LTD. (1932), 5 M. P. R. 43.—**CAN.**

4969. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4969a. —— ——.]—*Re* M. I. G. TRUST, LTD., No. 4967a, *ante*.

4975. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Refd.** Gough's Garages, Ltd. *v.* Pugsley, [1930] 1 K. B. 615 ; I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651 ; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

4976. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.*

4977. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Lodge (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations :*—93 L. J. Ch. 42 ; 130 L. T. 178.

4979a. —— **Effect of voluntary winding up.**]—Where under a debenture deed in the common form made by a limited co. the debenture-holder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—THOMAS *v.* TODD, [1926] 2 K. B. 511 ; 95 L. J. K. B. 808 ; 135 L. T. 377 ; 42 T. L. R. 494.

4982. *Add. Annotation :*—**Consd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

4982a. —— **Claim believed invalid—Notice to debenture holder—Duty to refund.**]—A sole debenture holder appointed a receiver. The latter proceeded to realise the assets of the co., & paid four sums of £25, £50, £10 & £10 respectively to an agent of the debenture holder. Between the time of the first & second payment the receiver received a claim for rates in respect of certain premises occupied by the co. The receiver till then had been quite unaware that the co. had occupied these premises & he therefore inquired of the managing director of the co. & the agent of the debenture holder whether the claim was valid. Both assured him it was not. He therefore made the second payment but the claim being repeated, he stopped the cheque sent in payment & made further inquiries of the agent of the debenture holder. He was again assured that the claim was invalid but he only allowed the cheque to be paid upon the agent giving an indemnity. Ultimately the local authority sued the receiver for the amount of the rates & he joined the agent & the debenture holder as third parties. The claim of the local authority was subsequently admitted, & the action proceeded as to the liabilities of the third parties to the receiver. For the third parties it was contended that the receiver in making payments to the debenture holder without first satisfying that claim for rates had acted in contravention of 1929 Act, s. 78, & was therefore setting up his own wrong & basing his claim on his own contravention of a statute :—*Held :* (1) the payment to the debenture holder was not *per se* an illegal act but only illegal in certain circumstances, & as the agent had misrepresented the facts & induced the receiver to believe he was acting quite legally the defence of illegality failed ; (2) the agent was liable upon the indemnity to repay the receiver the amount he had paid in respect of the claim & costs ; (3) the debenture holder was liable to refund to the receiver the payments made after she had notice of the claim for rates ; (4) notice to the agent was notice to the debenture holder & the latter must therefore refund the last three payments ; (5) the receiver could not receive from the agent & the debenture holder a greater sum than the total amount he had paid in respect of the claim & costs.—WESTMINSTER CITY COUNCIL *v.* TREBY, [1936] 2 All E. R. 21 ; 80 Sol. Jo. 465.

Debenture containing floating charge & fixed charge—Priority given only in respect of assets subject to floating charge.]—*Held :* when the receiver is appointed by a debenture holder whose debenture is secured by both a fixed charge & a floating charge, the priority given to the preferential debts by 1908 Act, s. 107 (1), applies only in respect of assets subject to the floating charge & not to assets subject to the fixed charge.—*Re* LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD., LLOYDS BANK *v.* THE CO., [1929] 1 Ch. 498 ; 98 L. J. Ch. 353 ; 140 L. T. 321 ; 73 Sol. Jo. 27 ; 22 B. W. C. C. 20, C. A.

4982c. Preferential payment of income tax—Assessment after appointment or taking possession of receiver.]—Under 1908 Act, s. 107, where a receiver of a co. is appointed on behalf of holders of debentures secured by a floating charge, or possession is taken by or on behalf of debenture holders of property subject to such a charge, certain debts, including income tax assessed on the co. up to the fifth day of Apr. next before the date of the appointment of the receiver or of possession being taken as aforesaid, but not exceeding one year's assessment, are under 1908 Act, s. 209, to be forthwith paid by the receiver or person taking possession out of any assets coming to his hands in priority to any claim for principal or interest in respect of the debentures :—*Held :* the expression in sect. 209 "assessed up to the fifth day of Apr." means "assessed for a period ending on the fifth day of Apr.," & therefore the right to preferential payment of one year's assessment remains, notwithstanding that the assessment is not made until after the date of the appointment of the receiver or of his taking possession, as the case may be.—GOWERS *v.* WALKER, [1930] 1 Ch. 262 ; 99 L. J. Ch. 138 ; 142 L. T. 404 ; 46 T. L. R. 150 ; 74 Sol. Jo. 41 ; 15 Tax Cas. 165 ; [1929] B. & C. R. 125.

Annotation :—**Apld.** *Re* Cockell, Jackson *v.* A.-G. (1932), 76 Sol. Jo. 495.

4982d. Preferential payment of rates—Increase in rates after taking possession by receiver.]—Where in the assessment of property relief has been claimed & in the first instance allowed in the valuation list under the derating provisions of the Local Government Act, 1929 (c. 17), but subsequently disallowed, the resulting change in the amount of a rate payable in respect of that property takes effect as from the date of the making of the rate, as if the change had been caused by a proposal for the amendment of the rateable value. Consequently, where a receiver for debenture holders has taken possession of the property of the co. which issued the debentures, an increase in the amount of the rates due at the date of taking possession,

which increase has been subsequently ascertained by reason of such an alteration in the assessment, is payable by the receiver as a preferential debt.—*Re* AIREDALE GARAGE CO., ANGLO-SOUTH AMERICAN BANK *v.* AIREDALE GARAGE CO., [1933] Ch. 64; 101 L. J. Ch. 289; 147 L. T. 372; 96 J. P. 312; 48 T. L. R. 477; 30 L. G. R. 286, C. A.

4983. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4987a. —— Same receiver appointed by court—Form of order as to accounts.]—*Re* ARCTIC ELECTRIC SUPPLIES, LTD., ANSELL *v.* THE CO. (1932), 48 T. L. R. 350; *sub nom.* PRACTICE NOTE, [1932] W. N. 79; 173 L. T. Jo. 281.

5011a. —— Not appointed if hostile to debenture-holders.]—GILES *v.* NUTTALL, *Re* HOUSE IMPROVEMENT ASSOCN., LTD. (1885), 78 L. T. Jo. 352, C. A.

5025. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5036a. Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.]—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves" :—*Held :* the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

5036b. Power of sale—Contract subject to approval of court—Time for obtaining approval—Before completion.]—Where, in a debenture-holders' action, the receiver contracts to sell property included in the debentures, subject to the contract being approved & sanctioned by the ct. & no date is fixed for obtaining such approval, it must be obtained before the date fixed for completion of the contract.

On Oct. 31, 1927, the receiver in a debenture-holders' action entered into a conditional contract to sell land & cottages included in the debentures. The contract provided that the purchase should be completed on or before Dec. 31, 1927. By clause 14 it was provided that the contract was subject to its being approved & sanctioned by the ct., & in the event of its not being so approved it was to become void, & the purchasers were to be entitled to be repaid their deposit. The receiver took no effective steps to obtain the sanction of the ct., & on Jan. 10, 1928, the purchasers' solrs. wrote to the debenture-holders' solrs. repudiating the contract & demanding the return of the deposit money under clause 14. On an application for an order that the conditional contract should be confirmed :—*Held :* the purchasers were entitled to repudiate the contract & to be repaid their deposit money, together with all interest earned by such deposit, from the date of its payment to the vendor.—*Re* SANDWELL PARK COLLIERY CO., FIELD *v.* THE CO., [1929] 1 Ch. 277; 98 L. J. Ch. 229; 140 L. T. 612.

5036c. Power to pay commission to agent for sale—Necessity for sanction of court.]—A receiver appointed by the ct. in a debenture-holders' action employed an agent for the purpose of introducing a purchaser of certain property belonging to the co. The receiver did not apply to the ct. for leave to employ the agent. The agent was successful in finding a purchaser for the property. On an application by the agent for an order directing the receiver to pay him commission :—*Held :* where a receiver has not applied to the ct. for leave to employ an agent, the agent is not entitled to any commission; but the ct. has a discretion to award him such compensation for his efforts as the ct. considers just in the circumstances of the particular case.—*Re* NATIONAL FLYING SERVICES, LTD., COUSINS *v.* NATIONAL FLYING SERVICES, LTD., [1936] Ch. 271; 105 L. J. Ch. 145; 154 L. T. 493; 52 T. L. R. 37; [1934–5] B. & C. R. 338.

5038a. ——.]—CONSOLIDATED ENTERTAINMENTS, LTD. *v.* TAYLOR, [1937] 4 All E. R. 432.

5042a. Breach of price maintenance agreement.]—By certain agreements between pltfs., manufacturers of radio sets, & defts., wholesale dealers in such radio sets, it was agreed that the retail prices of the radio sets should be maintained at prices fixed by pltfs. The order form provided that the wholesalers were to be compensated for any loss that might occur through any alteration of list prices by pltfs., & that if a receiver should be appointed or pltfs. should go into liquidation, defts. should have the right to return any of the goods which they might have in stock. On Oct. 5, 1934, a receiver for the debenture holders of pltfs. was appointed & the appointment was notified to defts. on the same day. On the same day a large number of radio sets was invoiced to defts. On Oct. 9 defts. were informed that business was being carried on & that the co.'s policy of price maintenance was unaffected. Defts. thereupon ordered further goods from the receiver. On Nov. 3, 1934, a creditor presented a petition for winding up pltf. co.,

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PART III. SECT. 34, SUB-SECT. 6.—B. (b) i.

4988 i. *Discretion of court—Interference by appellate court.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., LTD., [1927] 1 D. L. R. 421; 59 N. S. R. 123.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (b) ii.

ss. *What amounts to default in payment of interest.*]—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (f).

sc. *On occupation of company.*]—A receiver appointed by debenture-holders under a debenture deed constituting him agent of the co. that gave the debenture, does not exercise an independent possession of his own, but his entry on & the assumption of control over the co.'s property leaves the co. still in occupation in point of law.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* PUBLIC CURATOR OF QUEENSLAND, [1931] Argus L. R. 294; 5 A. L. J. 213.—**AUS.**

PART III. SECT. 34, SUB-SECT. 6.—B. (g).

sl. *Distinguished from receiver appointed by shareholders.*]—There is no analogy between a receiver & manager in a debenture-holders' action & the receiver & manager in question herein who was appointed at the instance of the shareholders of a co. in order that the business might be continued as a going concern on their behalf & to enable the co., if possible, to effect a sale of its undertaking & thus avoid a winding-up order.—ANDERSON *v.* NEWTON, [1934] 1 W. W. R. 636; 3 D. L. R. 224; 42 Man. L. R. 107.—**CAN.**

& on Nov. 20 the receiver stopped manufacture, no further goods being ordered by the wholesalers after that date. The receiver proceeded to negotiate for the sale of pltfs.' business, & on Nov. 30, 1934, an offer to purchase a large number of sets was accepted, the receiver imposing no conditions as to price maintenance. On Dec. 3 an order was made for winding up the co. & a provisional liquidator appointed, & on the same day possession of the stock was given by the receiver's agent to the purchasers, with the result that a large number of radio sets was put on the market at prices much below the list prices. Defts. wrote to the receiver referring to their right to return the goods, but no arrangement for their actual return was made. The liquidator then brought an action for the balance due on the radio sets delivered to defts., who counterclaimed damages for breach of contract, contending that the receiver had broken his contract to maintain prices. Pltfs. contended that, assuming there was such a contract between the receiver & the wholesalers, there was no breach before the winding up order on Dec. 3, & that after that date the receiver had no authority to bind the co., & that therefore the counterclaim could not be set off. The wholesalers contended alternatively that the liquidator was guilty of breach of contract in refusing or not accepting the return of the sets :—*Held :* (1) the agreement for the sale of pltfs.' business on Nov. 30, 1934, constituted a breach of the receiver's agreement to maintain prices ; (2) alternatively the liquidator ought to have accepted the return of the goods, as at the date of his appointment the wholesalers were entitled to return them.—TELSEN ELECTRIC CO., LTD. *v.* EASTICK & SONS, [1936] 3 All E. R. 266.

5064a. —— —— ——.]—A deed of floating charge on the assets of a co. gave power to the trustee to appoint a receiver & manager, who was expressed to be the agent of the mtgor. :—*Held :* on a receiver duly appointed under the power entering into possession of the premises & commencing to carry on the business of the co., there was a change of occupancy within Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 16, & Public Health Act, 1875 (c. 55), s. 211 (3).—RICHARDS *v.* KIDDERMINSTER OVERSEERS ; RICHARDS *v.* KIDDERMINSTER CORPN., [1896] 2 Ch. 212 ; 65 L. J. Ch. 502 ; 74 L. T. 483 ; 44 W. R. 505 ; 12 T. L. R. 340.

Annotations :—**Consd.** *Re* Marriage Neave & Co., North of England Trustee, Debenture & Assets Corpn. *v.* Marriage, Neave & Co., [1896] 2 Ch. 663. **Distd.** National Provincial Bank *v.* United Electric Theatres (1915), 85 L. J. Ch. 106., **Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5067a. —— ——.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them :—*Held :* there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, [1928] 1 K. B. 1 ; 96 L. J. K. B. 1016 ; 137 L. T. 241, C. A.

5067b. —— —— **Right to sue.**]—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided : " A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by deft. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance :—*Held :* the debenture empowered the receiver & manager to bring the action without the co.'s consent.—M. WHEELER & CO., LTD. *v.* WARREN, [1928] Ch. 840 ; 97 L. J. Ch. 486 ; 139 L. T. 543 ; 44 T. L. R. 693, C. A.

5069a. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, No. 5067a, *ante*.

5091. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Stead, Hazel & Co. *v.* Cooper (1933), 49 T. L. R. 200.

5095a. —— ——.]—*Re* NEW ZEALAND MIDLAND RY. CO., SMITH *v.* LUBBOCK, [1901] W. N. 105 ; *revsd.* on other grounds, [1901] 2 Ch. 357, C. A.

Annotation :—**Refd.** *Re* Glasdir Copper Mines, Ltd., English Electro Metallurgical, Ltd. *v.* Glasdir Copper Mines, Ltd., [1906] 1 Ch. 365.

5105a. —— —— **All debenture-holders not before court—Sale subject to approbation of judge.**]—In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under R. S. C., Ord. 51, r. 1B, on motion for judgment on admissions in the pleadings, but, unless all the debenture-holders subse-

PART III. SECT. 34, SUB-SECT. 6.—C. (e).

sb. *Duty to preserve & carry on undertaking as going concern.*]—NATIONAL TRUST CO. *v.* DOMINION IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—D. (a).

sd. *Jurisdiction of court to order—In winding-up proceedings—On pe for conveyance to mortgagee of ...y's equity of redemption.*, ...EX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—...

PART III. SECT. 34, SUB-SECT. 6.—D. (b).

sf. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

sg. *Jurisdiction to order sale—Foreign immovables.*]—A mining co. incorporated in Victoria executed a debenture whereby it charged all its undertaking & assets. The assets included mineral leases & mineral easement licences in respect of land situate in Tasmania & fixtures on that land. Pursuant to the terms of the debenture the debenture-holder appointed a receiver & manager of the property charged, with power to sell. The debenture-holder took out an originating summons for an order sanctioning the sale of the property by the receiver & manager :—*Held :* there was jurisdiction to entertain the application.—BOND *v.* NORTH MOUNT FARRELL CO., NO LIABILITY, [1931] V. L. R. 144 ; Argus L. R. 88.—**AUS.**

sq. *Confirmation by court—Sale by receiver.*]—In approving a sale by a receiver in the interests of bondholders the ct. must have regard to the interests of all parties.—NATIONAL TRUST CO. *v.* GREAT LAKES PAPER CO., [1936] 2 D. L. R. 239.—**CAN.**

quent to pltfs. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale.—*Re* CRIGGLESTONE COAL CO., STEWART *v.* CRIGGLESTONE COAL CO., [1906] 1 Ch. 523; 75 L. J. Ch. 307; 94 L. T. 471; 54 W. R. 298; 50 Sol. Jo. 240; 13 Mans. 181.

5110. *Add. Annotations :*—**Apld.** MacCarthy *v.* Agard, [1933] 2 K. B. 417. **Refd.** Powell Dyffryn Steam Coal Co. *v.* Griffiths (1934), 27 B. W. C. C. 408.

5111a. Short cause—Copies of affidavit in support—Necessity for.]—*Re* CHURCH STRETTON MINERAL WATER CO., LTD. (1904), 52 W. R. 375; 48 Sol. Jo. 299.

5120a. Conduct of action—To whom given—Independent party—When desirable.]—The conduct of a debenture holder's action begun by a person whose transactions with the co. the ct. considers to require investigation, or whose interests are shown to be adverse to those of the remaining debenture holders, may be given by the ct. to an independent party.

One of the objects of the co. was to buy & let premises for use as flats & clubs. Its first directors were pltf. & his nominee, but it was in substance a "one man" co. with pltf. as managing director. It granted leases of certain premises to the S. syndicate, of which the directors were pltf. & the same nominee. The co. agreed to pay a yearly salary to pltf. & guaranteed the issue of debentures by the syndicate. The syndicate soon failed to pay rent, but pltf. took no steps either to enforce payment or forfeit the leases: &, although the co. was carrying on business at a loss, he bought a quantity of furniture with its money on its behalf. The syndicate issued debentures, pltf. becoming the holder of a number of them, & also holding debentures issued by the co. Later, a receiver & manager of the property of the syndicate charged by the debentures was appointed, & pltf. began a debenture holder's action against the co., subsequently selling the furniture which he had bought & the leasehold premises at a loss. Ultimately, he resigned his directorship: & this summons asked that the conduct of the proceedings should be vested in appct., another debenture holder, on the ground that pltf. against whom gross negligence was alleged, had an interest adverse to that of the remaining debenture holders:—*Held :* as the transactions of pltf. with the co. had never been investigated, & as it had so far been impossible to investigate them, it was desirable that the conduct of the action should be given to an independent person.—*Re* SERVICES CLUB ESTATE SYNDICATE, LTD., MCCANDLISH *v.* THE COMPANY, [1930] 1 Ch. 78; 99 L. J. Ch. 33; 142 L. T. 127.

5134a. —— ——.]—*Re* GUTTA PERCHA CORPN., LTD., THORNTON *v.* GUTTA PERCHA CORPN., LTD., [1899] W. N. 251; 44 Sol. Jo. 133.

5149a. —— Application of assets—Deficiency.]—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. *v.* THE CO., [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re* GLYNCORRWG COLLIERY CO., *Re* RAILWAY DEBENTURE & GENERAL TRUST CO., 136 L. T. 159.

5149b. ——.]—*Re* BURRADON & COXLODGE COAL CO., LTD. [1929], W. N. 15.

5170. *Add. Annotation :*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

5184a. On authority of receiver—To carry on business of company.]—THOMAS *v.* TODD, No. 4979a, *ante*.

5184b. —— To enforce rights under Landlord & Tenant Act, 1927 (c. 36), s. 5.]—A co. was the lessee of certain premises under a lease expiring on June 24, 1930. In 1925 the co. issued a debenture by which it charged all its undertaking & all its property, present & future, including its uncalled capital in favour of the debenture holders. On Apr. 22, 1929, the co. gave notice to the landlords under above sect., requiring them to grant to it a new lease of the premises. In July, 1929, the debenture holders in exercise of the power on that behalf in the debenture appointed a receiver of the property & assets therein comprised. The landlords having failed to comply with the co.'s request for the grant of a new lease the receiver on Sept. 23. 1929, commenced an action in the county court in the name of the co. to obtain the grant of a new lease. On Oct. 15 a compulsory order was made to wind up the co. & a liquidator was appointed: —*Held :* the right to apply for a renewal of the lease under above sect. was a right given by the co. to the debenture holders as part of their security, & the receiver was entitled to enforce that right notwithstanding the liquidation of the co.—GOUGH'S GARAGES, LTD. *v.* PUGSLEY, [1930] 1 K. B. 615; 99 L. J. K. B. 225; 143 L. T. 38; 46 T. L. R. 283; 74 Sol. Jo. 215; 28 L. G. R. 239.

Annotation :—**Refd.** Smith *v.* Metropolitan] Properties Co., [1932] 1 K. B. 314.

PART III. SECT. 34, SUB-SECT. 6.—E. (c) ii.

5122 i. *Who may sue.*]—DOWNER *v.* BOUGHNER (1930), 66 O. L. R. 279.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (d).

sk. *Affidavits — Made before institution of proceedings—Inadmissible.*]—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

5130 i. *Ex parte application.*]—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (f) ii.

5148 i. *Form of judgment.*]—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 7.

sj. *Competition between liquidator & receiver—Liquidator preferred.*]—Where there is a question of competition between a liquidator & a receiver appointed by the ct., at the instance of debenture-holders or mtgees., the ct. will ordinarily, in the exercise of its jurisdiction, give preference to the liquidator.—*Re* KHARKHAREE COLLIERIES, LTD. (1930), I. L. R. 58 Calc. 946.—**IND.**

5186a. —— —— —— **Who should sue for contribution—Liquidator.**]—Where in a winding up the general assets are insufficient for the payment of the preferential creditors of the co., the proper pltf., in an action under sect. 209 of 1908 Act, to recover contribution from a debenture-holder with a floating charge towards payment of a preferential debt is the liquidator acting in the name of the co.—WESTMINSTER CORPN. & UNITED TRAVELLERS CLUB CO., LTD. *v.* CHAPMAN, [1916] 1 Ch. 161; 85 L. J. Ch. 334; 114 L. T. 63; 80 J. P. 74; [1916] H. B. R. 12.

5186b. Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.]—The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re* PARK WARD & CO., LTD., [1926] Ch. 828; 95 L. J. Ch. 584; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 94.

5194. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

5314. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316. *Add. Annotations :*—**Consd.** *Re* Stanton; Hogg *v.* Maule (1927), 44 T. L. R. 118, **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316a. —— **May decide validity of debentures.**]—Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors :—*Held :* the county ct. judge had jurisdiction to entertain the liquidator's application, &, as he had done so, his discretion could not be interfered with.—*Re* F. & E. STANTON, LTD., [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 44 T. L. R. 118; [1927] B. & C. R. 187, D. C.

5323. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5324. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5337. *Add. Annotation :*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5338. *Add. Annotation :*—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5346. *Add. Annotation :*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

PART III. SECT. 34, SUB-SECT. 8.

sk. *Whether interest payable after maturity of bond—Combined effect of trust deed, debenture & bonds.*]—TRUSTS & GUARANTEE CO., LTD. *v.* CONTINENTAL SUPPLY CO., LTD., [1932] 1 W. W. R. 921.—**CAN.**

PART III. SECT. 35.

sm. *Meaning of "being wound up" —Under Companies Ordinance,* 1901 (*c.* 20), *s.* 47.]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkpcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

sn. *Whether proceedings under Bankruptcy Act condition precedent.*]—Leave may be given a co. to institute proceedings under Winding-up Act, & a winding-up order made, although proceedings have not been instituted in bkpcy. by petition for a receiving order or by authorised assignment.—*Re* MCARTHUR LUMBER & FUEL CO., LTD., [1931] 3 W. W. R. 162; 40 Man. L. R. 299.—**CAN.**

PART III. SECT. 36, SUB-SECT. 1.—A.

c i. —— *To remit to Sheriff Court.*]—*Held :* under Cos. Act, 1929, s. 116 (3), the ct. has power to remit a petition for the winding-up of a co. to the sheriff ct. only where the capital of the co. paid up or credited as paid up does not exceed £10,000.—*Re* CHANEY & BULL, [1930] S. C. 759.—**SCOT.**

t. Add "*revsd.* 14 S. C. R. 624."

PART III. SECT. 36, SUB-SECT. 1.—C. (c).

l i. ——.]—*Re* ALBION MACHINE CO. (N. S.), [1929] 1 D. L. R. 274; 10 C. B. R. 240.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—B.

n i —— *Delay not accounted for.*]—*Re* SOUTHLAND WOOLLEN MILLS, LTD., [1929] N. Z. L. R. 289.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—C. (a).

a i. ——.]—Where the notice provided for by Winding-up Act, R. S. C., 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re* MILO WHEAT CO., LTD., [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (a).

d i. —— ——.]—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

d ii. —— ——.] — *Re* BRITISH EMPIRE STEEL CORPN., LTD. (N. S.), [1927] 2 D. L. R. 964.—**CAN.**

e i. —— ——.]—A shareholder of a limited co. filed a petition for winding up on the grounds set out in Winding-up Act, R. S. C., s. 10 (*d*). Subsequently to the petition, a meeting of the shareholders of the co. was called & the shareholders, by a large majority, voted that the co. should continue in business :—*Held :* a winding-up order should be made.—*Re* BASE-O-LITE PRODUCTS, LTD., [1933] O. R. 156; 1 D. L. R. 746.—**CAN.**

e ii. ——.]—On an application for the winding up of a co., made by the A.-G. pursuant to sect. 6 of Co.s (Special Investigations) Act, 1935, which provides that on such application the ct. shall have the same powers, & the provisions of the Cos. Act shall apply as on a winding up petition presented by the co., it appeared that the business of the co. could not be carried on consistently with candid & straightforward dealings with the public, from whom further capital was required if the co. were to continue to exist :—*Held :* it was just & equitable that the co. should be wound up.—*Re* PRODUCERS REAL ESTATE & FINANCE CO., LTD., [1936] V. L. R. 235.—**AUS.**

sp. *Control by one shareholder.*]—Under sect. 162 (vi) of Indian Co.'s Act, 1913, which provides that a co. may be wound up by the ct. if the ct. is of opinion that that course is just & equitable, the fact that one shareholder has a preponderating voice in the co.'s affairs, by reason of owning or controlling a large number of shares, is of itself no reason for a winding-up order.—RIPON PRESS & SUGAR MILL CO. *v.* GOPAL CHETTI (1931), 58 L. R. Ind. App. 416.—**IND.**

sr. *Application by fully-paid shareholder.*]—In spite of sect. 172 (1) of Cos. Act, 1933, a fully-paid shareholder, who petitions solely in that character, & who cannot show that there will be a tangible surplus of assets in which he will participate, should establish as part of his ground for the order that the substratum of the co. has gone or that there is a case for investigation in the affairs of the co., or that there is some other good reason for incurring the costs which are the consequence of a winding-up order of the ct.—*Re* TARANAKI AMUSEMENTS (HAWERA), LTD., [1935] N. Z. L. R. 33.—**N.Z.**

5354. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357. *Add. Annotation:*—**Refd.** Loch *v.* Black wood, [1924] A. C. 783.

5357a. ——.]—A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value:—*Held:* the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the petitioners were entitled under that provision to a winding-up order.—LOCH *v.* BLACKWOOD (JOHN), LTD., [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

:—**Consd.** Davis & Co. *v.* Brunswick (Australia), Ltd., Brunswicke-Balke-Collender Co. & Brunswick Radio Corpn., [1936] 1 All E. R. 299.

5357b. Control acquired by one director.]—Where the capital of a private co. is so owned as to make the co. in substance a partnership & one director has purported by means of irregularities to acquire complete control of the co. & to exclude the other director or directors from the management of it, it may be "just & equitable" that the co. should be wound up.—*Re* DAVIS & COLLETT, LTD., [1935] Ch. 693; 104 L. J. Ch. 340; 153 L. T. 329; 79 Sol. Jo. 609; [1934–5] B. & C. R. 274.

Annotation:—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5357c. Private company—Refusal to register transfer to executors.]—A private co. was formed in 1913 with a capital of £10,000 in £1 shares, half of which belonged to C. C. & half to his two elder sons. C. C. & his two elder sons were the first directors of the co. & continued to be so until 1930, when C. C. died, leaving his two elder sons sole directors. By his will C. C. appointed his three younger sons, who were employed in the business but were not members of the co., exors. thereof & bequeathed his 5,000 shares equally between them.

The arts. of the co. provided that the directors might in their absolute discretion refuse to register any transfer of shares, & without assigning any reason for such refusal, & that this power should extend to the registration of the personal representatives of a deceased shareholder. The directors refused to register the exors. in their capacity of beneficiaries under the will as members of the co. Subsequently the directors dismissed the exors. from their employment with the co. & refused to supply them with copies of the balance-sheet & accounts for the year ending June 30, 1936. The exors. presented a petition for the winding-up of the co. on the ground that in the circumstances above stated it was just & equitable that the co. should be wound up:—*Held:* though the principles applicable to the case were those which would be applied in an action for dissolution of partnership, there were no grounds shown in the petition on which it would be "just & equitable" within 1929 Act, s. 168, to make a winding-up order.—*Re* COOPER (CUTHBERT) & SONS, LTD., [1937] Ch. 392; [1937] 2 All E. R. 466; 106 L. J. Ch. 249; 157 L. T. 545; 53 T. L. R. 548; 81 Sol. Jo. 338.

5364a. —— —— ——.]—*Re* ELECTRIC ARMS AMMUNITION SYNDICATE (1891), 35 Sol. Jo. 818.

5372. *Add. Annotation:*—**Refd. Loch** *v.* **Blackwood**, [1924] A. C. 783.

5379a. —— **Subsidiary company.**]—The New South Wales Cos. Act, 1899, s. 84 (*e*), is identical with the English Cos. Act, 1929, s. 168 (6), & provides for winding up by the ct. when, in the opinion of the ct., it is just & equitable that the co. should be wound up.

A large American co. trading in gramophone records formed a subsidiary co. in Australia. The directors of the subsidiary co. who had previously been agents to the parent co., were interested in a competing co. & by a special agreement they were entitled to compete with the subsidiary co. These directors were also the holders of all the preference shares in the subsidiary co. & had been guaranteed by the parent co. or its nominees that the interest on the preference shares should be fully paid for two years after the date of allotment, & that in the event of the subsidiary co. being wound up within the said two years 20*s.* in the £1

PART III. SECT. 36, SUB-SECT. 2.—D. (b) i.

f i. —— *Property of speculative value.*] ... was a minority shareholder. ... 37,500 shares of the total ...ation of 2,000,000 shares. The property owned by the co. was an undeveloped mining location of merely speculative value. The location was intact & there were practically no liabilities, but the actual cash in the treasury was trifling:—*Held:* the case was not brought within the class of cases in which a winding-up is ordered, because the whole substratum of the undertaking has disappeared.—*Re* JURY GOLD MINE DEVELOPMENT CO., LTD., [1928] 4 D. L. R. 735; 63 O. L. R. 109.—CAN.

f ii. ——.]—The mere fact that there has been depreciation in the value of its assets, or that the assets had become frozen instead of liquid, did not establish the disappearance of the ... TORONTO FINANCE

PART III. SECT. 36, SUB-SECT. 2. D. (b) ii.

ii. —— ——.] CORPN. (N. S.), [1927] 337.—CAN.

m i. ——.]—Where a co. having for its main object the manufacturing & dealing in cement had failed to commence business for a period of 5 years following its incorporation, but an apparent majority of shareholders were then desirous to commence the manufacture of hydrated lime in accordance with one of the subsidiary objects, on a petition by a shareholder for compulsory winding up on the grounds of delay in commencing business, & that it was just & equitable that the co. should be wound up:—*Held:* the delay not having been satisfactorily explained, & it appearing that there was no prospect of the co. commencing business either in accordance with its main object or the subsidiary object, the substratum of the co. had gone & petitioner would appear entitled to an order for compulsory winding-up on either ground alleged.—*Re* NATIONAL PORTLAND CEMENT CO., LTD., [1930] N. Z. L. R. 564.—N.Z.

would be paid in respect of the capital of the preference shares. Within the period mentioned in the guarantee & at a time when, owing to the general depression in trade, business was bad & the subsidiary co. was being carried on at a loss the directors presented a petition to wind up the subsidiary co. :—*Held :* (1) the existence of the guarantee was only material in considering whether a compulsory order shall be made in so far as it biassed the evidence on either side ; (2) in considering whether it was just equitable to wind up the co. the criterion was not whether the directors were seeking to obtain the benefit of the guarantee or whether the parent co. were seeking to carry on the co. until such time as the guarantee had expired & thus avoid liability thereunder ; but whether, having regard to all the circumstances, there was at the date of the presentation of the petition a reasonable hope that in time the subsidiary co. could be carried on at a profit.—DAVIS & CO., LTD. *v.* BRUNSWICK (AUSTRALIA), LTD., BRUNSWICKE-BALKE-COLLENDER CO. & BRUNSWICK RADIO CORPN., [1936] 1 All E. R. 299, P. C.

5388. *Add. Annotations :*—**Consd.** Loch *v.* Blackwood, [1924] A. C. 783. **Apld.** *Re* Davis & Collett, Ltd., [1935] Ch. 693. **Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5397a. —— Omission to hold general meetings or to submit accounts.]—LOCH *v.* BLACKWOOD (JOHN), LTD., No. 5357a, *ante*.

5454a. Petition for winding up of unregistered foreign company dissolved before 1929 Act.]—*Re* RUSSIAN & ENGLISH BANK, No. 8548b, *post*.

PART III. SECT. 36, SUB-SECT. 2.—D. (d).

5384 ii. ——.]—Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887 ; 58 O. L. R. 585.—**CAN.**

r i. —— *Question of fact.*]—Although a majority shareholder may not tyrannously or fraudulently or for an ulterior purpose dominate a minority shareholder yet in deciding on a petition for an order for the winding up of the co. on the ground that it is just & equitable that such an order should be made, each case must be decided on its own facts.—*Re* SOVEREIGN OIL CO., LTD., [1934] 3 W. W. R. 317.—**CAN.**

t i. ——*Differences between two sole members.*] Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration :—*Held :* it was just & equitable that the co. should be wound up.—THOMSON *v.* DRYSDALE, [1925] S. C. 311.—**SCOT.**

t ii. —— *Deadlock caused by petitioners.*]—Winding-up order refused.—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173 ; 58 O. L. R. 100.—**CAN.**

t iii. —— ——.]—At the time of the presentation of the petition there were only four directors, whereas the co. under its bye-laws should have five. The two petitioning directors had recently refused to attend meetings or to discuss with the other directors the management of the co.'s affairs :—*Held :* if any deadlock existed it was created by the petitioners & was not a ground for ordering winding-up.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882 ; 65 O. L. R. 351.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a i. —— —— *Managing director conducting affairs as though company his private business.*]—BAIRD *v.* LEES, [1924] S. C. 83.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—A.

sg. *Leave to appeal from order—When granted.*]—Winding-up Act, 1927, s. 103, applies to an application for leave to appeal from an order allowing or dismissing a petition to wind up a co. Leave to appeal should not be granted, however, unless there appears to be some reason for doubting the validity of the judgment in review. "Futur rights" in sub-sect. (*a*) of said sec. 103 should be given a wide interpretation ; & the question to be raised on the intended appeal from an order dismissing a winding-up petition may involve future rights although the applicant for leave to appeal is merely a shareholder & not a creditor.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 209 ; 39 Man. L. R. 195.—**CAN.**

sh. *Security on appeal—Extension of time for giving.*]—The Ct. of Appeal has no power to extend the time for the giving of the security which Companies Winding-up Act, R. S. S. 1920 (c. 82), requires to be given when an appeal is taken from an order or decision in a proceeding under that Act. Resp.'s approval of the appeal book prior to the expiration of the time within which the security had to be given was held not to have been a waiver of his right to the security.—SHAUNAVON BUTCHERS, LTD. *v.* BURNESS, [1930] 1 W. W. R. 760 ; 3 D. L. R. 656 ; 24 S. L. R. 399.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) ii.

c i. —— ——.]—Petitioner herein, the holder of bonds of the co., which gave him in the words thereof a "first floating charge" on "the undertaking & all the assets of the co., both present & future" :—*Held :* to have a right to apply for a winding-up order & to have made out a case therefor. He was not obliged to proceed on the covenant to pay in the bonds & by way of judgment & execution rather than by way of the proceedings for a winding-up order.—*Re* MID-WEST GLASS CO., LTD., [1931] 3 W. W. R. 165 ; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q i. —— —— ——.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—PYDA SATYARAZU *v.* GUNTUR COTTON & PAPER MILLS CO., LTD. (1924), I. L. R. 48 Mad. 267.—**IND.**

5439 ii. —— ——.]—SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. *v.* LEVER (1924), 45 N. L. R. 73.—**S. AF.**

PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.

5484 i. *Executor of deceased shareholder.*]—*Held :* entitled to present a winding-up petition, although his name had not been entered in the books of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.—*Re* GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (Man.), [1927] 2 W. W. R. 15.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

l i. *General rule—Winding up detrimental to all concerned.*]—Winding-up order set aside.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887 ; 58 O. L. R. 585.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. —— *Exceptional circumstances.*]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300 ; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co. ; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily :—*Held :* although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—BOUBOULIS *v.* MANN, MACNEAL & CO., LTD., [1926] S. S. 637.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—D. (c).

sd. *Possibility of restoration of lost capital.*]—On an application for winding-up under R. S. C., 1927, on the ground of impairment of capital the ct. must determine the extent of the impairment, & whether the lost capital is likely to be restored within one year.—*Re* EASTERN FUR FINANCE CORPN., LTD., [1934] 1 D. L. R. 611 ; 7 M. P. R. 201.—**CAN.**

s. *Impairment of capital.*]—Under sect. 352 of Cos. Act, 1932, impairment of capital alone is not a ground for

5580a. —— **Whether vacation included in calculation.**]—The seven days required by General Orders No. 2 made upon the Cos. Act, 1862, may be counted in the vacation.—*Re* LONDON INDIA RUBBER CO. (1866), 14 W. R. 594, L. C.

5585. *Add. Citation :*—[1889] W. N. 1.

5590a. —— **Effect on right to costs.**]—PRACTICE NOTE, [1929] W. N. 66 ; 167 L. T. Jo. 245.

5605. After this case add :—

-.]—*See, now,* 1929 Act, s. 295 (5).

5634a. —— **Affidavit by assistant secretary**]—Under Cos. (Winding-up) Rules, 1929, r. 29, where the petition is presented by a corpn., the affidavit verifying it is to be made by some director, secretary or other principal officer. The assistant secretary of a co. is not a principal officer for the purpose of this rule.—PRACTICE NOTE, [1937] W. N. 350 ; 184 L. T. Jo. 350.

5648. *Add. Annotation :*—**Refd.** *Re* City Life Assce., [1926] Ch. 191.

5654a. Discretion of court to allow appearance although no notice given.]—PRACTICE NOTE (1930), 69 L. Jo. 268 ; [1930] W. N. 78.

5703. *Add. Citation :*—[1889] W. N. 1.

5711. After this case add :—

-.]—*See, now,* Winding-up Rules, 1929, r.

5815a. ——.]—*Re* KATHERINE ET CIE, LTD., No. 5959c, *post.*

5819. After this case add :—

-.]—*See, now,* 1929 Act, s. 175.

5829. *Add. Annotation :—As to* (3) **Folld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

5841a. Issue of debenture—For money advanced to company for payment of wages.] — *Re* PARK WARD & Co., LTD., No. 5186b, *ante.*

5881. *Add. Annotations :*— **Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5890. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

5908a. Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.]—*Re* AMUSEMENTS CONSTRUCTION CO., LTD., [1927] W. N. 7.

5938. *Add. Annotation :—As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

5943. *Add. Annotation :*—**Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

5948a. —— **On contracts.**]—STEAD, HAZEL & Co. *v.* COOPER, No. 5959d, *post.*

5959a. Duty to refund sum paid to company without consideration.] — *Re* REGENT FINANCE & GUARANTEE CORPN., LTD. (1930), 69 L. Jo. 283 ; 169 L. T. Jo. 305 ; [1930] W. N. 84.

5959b. Duty of liquidator of private company.]—The question arose in this case whether resp. had shown through a private co. a title under which he had become the assign of leasehold premises within sect. 95 of St. John's Municipal Act, 1921, & as such entitled on the expiration of the term granted by the lease to compensation for the unexhausted value of improvements made during the term. Resp.'s title was faulty & certain transactions under which he traced his title from the private co. irregular, but he was held by the Supreme Ct. to be an assign, a private co. not being regarded as a corpn. distinct from the persons composing it & irregularities in connection with its liquidation being

winding-up a solvent trading co.—*Re* WINNIPEG SADDLERY CO., LTD., [1934] 3 W. W. R. 1 ; 42 Man. L. R. 448.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (a).

sl. *Creditor's petition—Statement of debt.*]—A petition presented by a creditor for the winding up of a co. under Cos. Act, 1863, s. 81, ought to set forth the debt in respect of which the petitioner claims to be a creditor, together with the particulars of such debt, but, *semble,* he is not precluded from alleging *simpliciter* that he is a creditor. Where a petitioner all one debt & gives evidence of ano the irregularity may, in case of sur prise, be cured by the amendment of the petition or the adjournment of the hearing.—*Re* BARRIER REEF TRADING CO., LTD. (1929), S. R. (Q.) 177.—**AUS.**

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—Application refused.—*Re* WINDING-UP ACT, *Re* GREAT WEST PERMANENT LOAN CO. (Man.), [1927] 2 W. W. R. 433.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (i.) ii.

st. *Dispute as to petitioning creditor's debt.*]—Where a co. is insolvent the ct. will not stay the proceedings on the ground that there is a *bonâ fide* dispute as to the petitioning creditor's debt.—*Re* PRIVATE CO., 1935] N. Z. L. R. 120.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 4.—B. (b) i.

5829 i. *General rule—Property becomes affected with trust for creditors.*]—A winding-up order establishes a *quasi*-trust of which the creditors are the beneficiaries & which for the purpose of set-off, is an entity essentially distinct from the original corpn. when carrying on business for the benefit of its shareholders.—LYALL (P.) & SONS CONSTRUCTION CO., LTD. *v.* BAKER, [1933] O. R. 286 ; 2 D. L. R. 264.—**CAN.**

PART III. SECT. 36, SUB-SECT. 4.—B.

m i. —— *Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.*]—HAMILTON *v.* HAMILTON STEEL CO. (1911), 18 O. W. R. 739 ; 2 O. W. N. 779 ; 23 O. L. R. 270.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—B.

5948 i. *Personal liability—For rates.*]—A liquidator whose name has not been entered on the assessment roll cannot be held personally responsible for the payment of taxes incurred during the winding-up.—TORONTO CITY & TORONTO HYDRO-ELECTRIC COMMISSION *v.* WADE, [1932] O. R. 500 ; 3 D. L. R. 509.—**CAN.**

sp. *Officer of company—Becomes functus officio on dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

st. *Liability to justify expenditure—Necessity for proof of misfeasance.*]—Before a liquidator can be called upon to justify an expense incurred by him in the course of liquidation, some particular evidence of negligence or breach of trust must be adduced before the case can be left to a jury.—NEW BRILLIANT FREEHOLD GOLD MINING CO., LTD. *v.* MILLS, [1928] St. R. Qd. 120.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (a).

sl. *Power to apply to court for directions—As to what matters—Ownership of bonds.*]—*Re* RANT & KER, LTD., [1930] 2 W. W. R. 274.—**CAN.**

so. *Duty in regard to trust company.*]—Where a trust co. is in liquidation, a first duty of the liquidator is to preserve the trust property & the accounts & forthwith apply to the proper ct. of the province submitting the facts fully & completely as an officer of the ct. should do, & apply for directions as to the disposal thereof. A co. in liquidation cannot continue to exercise the duties of trustee unless directed to do so by a ct. having jurisdiction over the trust, & a liquidator who undertakes to do so without such an application or any direction accepts responsibility for any consequence that may ensue. He has no right to assume that he as liquidator can continue in the name of the co. to function as trustee, but in accepting the office of liquidator he accepts the above-mentioned responsibility of applying forthwith to the ct. for directions with respect to the trust, even in the case where the co. has so conducted the affairs of the trust that its assets are wasted & no reasonable accounting can be made.—*Re* HIBBERT ESTATE, [1934] 3 W. W. R. 193 ; 4 D. L. R. 799.—**CAN.**

regarded as permissible :—*Held :* the duties & responsibilities of the liquidator of a private co. are as serious as of any other co., & a private co. is distinct from the persons composing it ; a liquidator of a private co. was therefore not justified in paying the creditors merely a dividend on their debts when large surplus assets remained in hand, & in then allowing the contributories without any deed of assignment to take possession for themselves of the surplus assets, & for the future in Newfoundland such irregularities should be without judicial countenance. Resp. had not established his claim to be legal assign of the property, having regard to such irregularities.—DITCHAM *v.* MILLER (1931), 100 L. J. P. C. 177 ; [1931] B. & C. R. 86, P. C.

Power to disclaim onerous property.]—*See* 1929 Act, s. 267.

5959c. —— Application for leave—What court will consider—Effect on interested parties.]—(1) Where the liquidator of a co. applies for leave to disclaim leasehold property of the co., the ct., in exercising its discretion, may take into consideration the effect of the disclaimer on interested parties.

The liquidator of a co. holding a lease applied for liberty to disclaim the lease. The lessors, who were relying on certain guarantors for the payment of the rent & performance of the covenants, opposed the application, on which the registrar made no order save as to payment of costs. On a motion before the ct. by way of appeal :—*Held :* as the lessors, who were entitled to appear, would suffer substantial injury if the disclaimer were allowed, the ct., in the exercise of its discretion, would not allow it.

(2) The winding up of a co. does not effect a *cessio bonorum*, & the property of the co. remains vested in the co. as before ; whilst in a bkpcy. the property of the bkpt. vests in the trustee (MAUGHAM, J.).—*Re* KATHERINE ET CIE, LTD., [1932] 1 Ch. 70 ; 101 L. J. Ch. 91 ; 146 L. T. 226 ; [1931] B. & C. R. 121.

5959d. —— Failure to disclaim—Whether personal liability.]—When a liquidator appointed by the ct. performs a contract of the co. without disclaimer or purports to make a new contract on its behalf, there is no presumption that he does so in his personal capacity, even though he does not describe himself as liquidator ; & his position in this respect is not altered by Cos. Act, 1929 (c. 23), s. 267, which gives him the right to disclaim any contract which he thinks onerous.—STEAD, HAZEL & CO. *v.* COOPER, [1933] 1 K. B. 840 ; 102 L. J. K. B. 533 ; 148 L. T. 384 ; 49 T. L. R. 200 ; 77 Sol. Jo. 117 ; [1933] B. & C. R. 72.

5972. *Add. Annotation :*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5973. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 191.

6047. *Add. Annotation :*—**Refd.** *Re* Leitch (William C.) Bros., Ltd. (No. 2), [1933] Ch. 261.

6048a. —— —— —— After declaration of liability.]—*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), No. 3353e, *ante.*

6055. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125 ; Madras & Southern Mahratta Ry. Co., Ltd. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

6056a. —— Damages & costs paid by insurance company in respect of judgment obtained against insured company.]—Appct. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator :—*Held :* appct. was not entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appct.—*Re* HARRINGTON MOTOR CO., *Ex p.* CHAPLIN, [1928] Ch. 105 ; 97 L. J. Ch. 55 ; 138 L. T. 185 ; 44 T. L. R. 58 ; 72 Sol. Jo. 48 ; [1927] B. & C. R. 198, C. A.

Annotations :—**Apld.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392 ; *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17.

-.]—*See, now,* Third Parties (Rights Against Insurers) Act, 1930 (c. 25).

6056b. Third Parties (Rights against Insurers) Act, 1930 (c. 25)—Whether retrospective.]—*Held :*

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k i. —— *Action by company—To recover purchase price of shares—What defences available—Fraud.*]—FARMERS PACK CO., LTD. *v.* TULLY & TULLY, FARMERS PACK CO., LTD. *v.* HAVERS (Man.), [1927] 2 D. L. R. 749 ; [1927] 1 W. W. R. 902.—**CAN.**

so. *Extent of duty.*]—A liquidator owes no duty to the co., or to those interested in the liquidation, to prosecute, or facilitate the prosecution of, any claim, whether against himself or a third party, unless he believes or has reason to believe, that such prosecution has a reasonable prospect of success or will serve some useful purpose. Where the claim is against the liquidator himself for an alleged misfeasance, particularly where he is a bare trustee, & neither believes, nor ought to believe, that the claim has any reasonable prospect of success, or that any useful purpose will be served by its prosecution, his duty as liquidator can be put no higher than a duty to take no advantage of his position as liquidator to impede the prosecution of such claim, & to take such action as will permit of such prosecution.—*Re* BOND (GEORGE A.) & CO., LTD. (1932), 32 S. R. N. S. W. 301 ; 49 N. S. W. W. N. 96.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sa. *Change of solicitor — When permissible—Under order of court.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 3 D. L. R. 9 ; 2 W. W. R. 440 ; 34 Man. L. R. 482.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—E. (e).

6026 i. *When ordered—Misfeasance summons.*]—MONTREAL TRUST CO. *v.* MCDOUGALL, [1930] 1 W. W. R. 784 ; 3 D. L. R. 159.—**CAN.**

PART III. SECT. 36, SUB-SECT. 9.—A.

sb. *Notice of meeting — To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders. — *Re* PATRICIA APPLIANCE SHOPS, LTD., [1923] 3 D. L. R. 1160 ; 52 O. L. R. 215 ; 2 C. B. R. 466.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—A.

e i. —— —— *Trust funds.*]—Trust property in the hands of a co. in its capacity as a trustee or fiduciary cannot be used to satisfy a judgment against that co. in its own right. Therefore where a trust co. had obtained judgment against its directors who appealed & obtained a reversal of the judgment with costs throughout, & the liquidator, who had been appointed in the meantime & had opposed the appeal, was ordered to pay said costs "out of the assets in his hands" :—*Held :* the costs in question should be paid out of the co.'s own assets & not out of those of any trust estate.—CANADIAN GUARANTY TRUST CO. *v.* YOUNG (No. 2), [1933] 1 W. W. R. 659 ; 3 D. L. R. 558 ; 41 Man. L. R. 177.—**CAN.**

Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1 (1) is not retrospective so as to affect cases in which the liability had been incurred before July 10, 1930, when the Act came into operation.—WARD *v.* BRITISH OAK INSURANCE CO., LTD., [1932] 1 K. B. 392; 101 L. J. K. B. 240; 146 L. T. 323; 48 T. L. R. 13, C. A.

Annotations :—**Distd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17. **Refd.** Croxford *v.* Universal Insurance Co., [1935] 2 K. B. 409.

6056c. —— —— **Liquidation after Act.**]—On Sept. 21, 1925, a policy of insurance was taken out by a co. insuring it against third-party risks. On Oct. 6, 1925, an accident to a third party occurred & the insurers thereupon became liable to the co. in respect of the accident. On July 10, 1930, Third Parties (Rights against Insurers) Act, 1930 (c. 25), came into operation. On Oct. 13, 1931, an order was made for the compulsory winding up of the co. On a summons taken out by the third party in the winding up of the co. asking to be subrogated to the rights of the co. against the insurers :—*Held :* the winding up of the co. having supervened after the Act of 1930 came into operation, sect. 1 of that Act became operative & enured to transfer the benefit of the policy of insurance from the co. to the third party.—

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L. J. Ch. 42; 153 L. T. 273; 18 Asp. M. L. C. 554; [1934–5] B. & C. R. 308, C. A.

6056d. —— **Policy obtained by fraud.**]—Where under Road Traffic Act, 1930 (c. 43), an insurance co. has issued a certificate that a driver is insured & the co. afterwards ascertains that the policy was obtained from it by fraud, the co. is entitled to succeed in this defence against a claim under Third Parties (Rights against Insurers) Act, 1930 (c. 25).—MCCORMICK *v.* NATIONAL MOTOR & ACCIDENT INSURANCE UNION, LTD. (1934), 50 T. L. R. 528; 78 Sol. Jo. 633; 40 Com. Cas. 76, C. A.

Annotation :—**Consd.** Tattersall *v.* Drysdale, [1935] 2 K. B. 174.

6058a. —— —— **Money borrowed from company by share-brokers.**]—The share-brokers of a provisionally registered co., who were also holders of shares, & had signed the co.'s deeds, borrowed of the directors part of the co.'s monies, to enable them to complete a large purchase of shares in the market, & deposited as a security the purchased shares & some of their original shares :—*Held :* the moneys borrowed were not due from them as members & contributories of the co., so as to authorise the master summarily to order them, in that character, to pay the

—— under Joint-Stock Cos. Act, 1848 (c. 45), s. 66.—*Re* TRING, READING & BASINGSTOKE RY. CO., COX'S CASE (1850), 3 De G. & Sm. 180; 19 L. J. Ch. 167; 14 L. T. O. S. 484; 14 Jur. 387; 64 E. R. 435; *affd.*, 15 L. T. O. S. 389, L. C.

...tation :—**Refd.** *Re* United English & Scottish Co., *Ex p.* Hawkins (1868), 3 Ch. App. 787.

Add. Annotations :—**Cons** 1 K. B. 464. **Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

6111a. —— **Discretion of court.**]—The discretionary power of allowing a question to be put at a public examination given to the ct. by Cos. (Winding-up) Act, 1890 (c. 63), s. 8 (7), is in no way limited by the other provisions of that sect., but is a discretion that must be judicially & carefully exercised under all the circumstances of each particular case.—*Re* LONDON & GLOBE FINANCE CO., LTD. (1902), 50 W. R. 253.

6133. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

6137a. —— —— —— ——.]—*Re* OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., POTTER'S CASE (1849), 1 De G. & Sm. 728; 5 Ry. & Can. Cas. 628; 18 L. J. Ch. 247; 13 L. T. O. S. 320; 13 Jur. 691; 63 E. R. 1270.

Annotations :—**Consd.** *Re* South Essex Estuary & Reclama-

6150. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

6150a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

——.]—(1) The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director :—*Held :* the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.

(2) No set-off is permissible as against a claim under sect. 215.—*Re* ETIC, LTD., [1928] Ch. 861; 97 L. J. Ch. 460; 140 L. T. 219; [1928] B. & C. R. 81.

6154. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

PART III. SECT. 36, SUB-SECT. 10.—B. (a).

sc. *Use of information—In subsequent criminal proceedings.*]—Information derived in the course of an examination under Indian Companies Act, s. 195, can be used by a public servant charged with the investigation of a criminal offence, & such officer should be allowed to inform himself as to anything which might have come to light on such examination.—*Re* REGENT PARK SYNDICATE, LTD. (1929), I. L. R. 57 Calc. 424.—**IND.**

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

6110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re* MCMILLAN GRAIN CO. & WINDING-UP ACT, [1927] 3 D. L. R. 229; [1927] 1 W. W. R. 899; 36 Man. L. R. 454.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—C. (a).

... Extent of jurisdiction of court.]—The ct., during winding up proceedings, may examine into the conduct of any director or officer who appears to have misapplied moneys.—*Re* SOLLOWAY MILLS & CO., [1935] 2 D. L. R. 459; O. R. 275.—**CAN.**

sa. *When leave refused—Failure of former action.*]—The ct. will not give leave to a liquidator to proceed against officers & shareholders to recover assets, when a former similar action has failed.—LLOYD-OWEN *v.* BULL, [1936] 1 D. L. R. 433; 50 B. C. R. 370; *revsd.*, [1936] 3 W. W. R. 146; 4 D. L. R. 273; 6 F. L. J. (Can.) 83, P. C.—**CAN.**

6154a. Discretion of court—As to sum payable by HOME & COLONIAL INSURANCE Co., No. 6858b,

6158. *Add. Annotation :*—**Reld.** Weld [1929] 1 Ch. 33.

6161. *Add. Annotations :—As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853. *Generally*, **Reld.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6169. *Add. Annotation :*—**Consd.** *Re* Etic, [1928] Ch. 861.

6173. *Add. Annotation :*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173a. —— Article relieving directors from loss—Unless arising from wilful neglect or default.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6173b. ——.]—*Re* ETIC, LTD., No. 6150b, *ante*.

6176a. Transactions in cotton futures.]—*Re* DAVID HEALEY & SON, LTD., DISTRICT BANK, LTD. *v.* HEALEY (1929), 74 Sol. Jo. 41.

6180a. Wrongful admission of proof—Failure to investigate claim.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6180b. Extent of liability—Discretion of court.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858, *post*.

6182. *Add. Annotations :—As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Reld.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6183. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

6183a. ——.]—*Re* ETIC, LTD., No. 6150b, *ante*.

6189. *Add. Annotation :—As to* (1) **Reld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6195a. Particulars—In respect of what matters ordered.]—In a misfeasance summons by the liquidator of a co. against two directors it was alleged in the points of claim that certain dividends were paid wholly out of the capital of the co. & not out of profits, & that there were in fact no profits of the co. out of which the dividends could properly & lawfully have been paid. The directors asked for an order for further & better particulars of the facts relied upon in support of these allegations, contending that under R. S. C., Ord. 19, r. 6, the fullest particulars are necessary where a breach of trust is alleged :—*Held* : the fact that the dividends were paid wholly out of capital was a material fact within R. S. C., Ord. 19, r. 4, & the fact upon which the liquidator relied. The liquidator ought not to be ordered to give particulars of that fact, as to give any further particulars would be merely to disclose the evidence by which it was intended to be proved.—*Re* DEPENDABLE UPHOLSTERY, LTD., [1936] 3 All E. R. 741.

6198a. Duty to give notice of intention to call witness.]—Two misfeasance summonses were called on for hearing together, appct. on each being the liquidator of the same co. It was stated that the liquidator desired to call a witness who had not made any affidavit in the proceedings, & that he had subpœnaed that witness, but had not given to resps. to either summons notice of his intention to call him. It was stated that resps. did not object to his being called. MAUGHAM, J., in allowing the witness to be called, said that misfeasance summonses were rather peculiar methods of procedure. They were summary proceedings, & brought out matters of great importance. An appct. on a misfeasance summons ought to give notice to resps. of intention to call a witness who had made no affidavit in the proceedings. Misfeasance summonses ought to be conducted with complete fairness to resps.—PRACTICE NOTE, [1933] W. N. 284.

6212. *Add. Annotation :*—**Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6217. *Add. Annotation :*—**Distd.** *Re* Aidall, Ltd., [1933] Ch. 323.

6217a. —— —— ——.]—In the winding-up of a co., A. was placed on the list of contributories as the holder of 994 fully paid shares of £1 each out of a total capital of 1,000 shares. A. was assessed by the Comrs. under the powers given to them under Finance Act, 1922 (c. 17), s. 21, to the amount of £2,069 as his share of the profits of the co. during two assessing periods before the winding-up. On Oct. 18, 1929, a notice of assessment under the Income Tax Acts was given by the Special Comrs. of Income Tax. It was addressed to A. in the name of the co. (in liquidation). It was an assessment to super-tax of £568 19*s.* 6*d.* in respect of the £2,069. The notice contained the words :

PART III. SECT. 36, SUB-SECT. 10.—C. (d) i.

sd. *Something in nature of misconduct.*]—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of UICK SALES, LTD., [1926] N. Z. L. R. 24.—

PART III. SECT. 36, SUB-SECT. 10.—C. (d) iii.

se. *Payments to discharge directors' liability on guarantee.*]—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re* LINNEY (H.) & Co., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

sf. *Failure to have balance sheet prepared—Giving guarantees—Improper payment of dividends.*]—In the winding up of the F. co. under order of ct. it was disclosed, *inter alia*, that its liabilities included a large sum due on foot of guarantees in respect of the debts of the C. co., in which the F. co. owned all the shares, & also that substantial sums had been withdrawn from reserve & utilised in the payment of dividends on preference shares :—*Held* : (1) the failure to have proper balance sheets prepared, & the giving of guarantees to the C. co. & the payment of the preference dividends were wilful acts or defaults on the part of all the directors, & they were accordingly liable to make good the amount payable on foot of the guarantees & also to replace the amounts paid —*Re* (JOHN) & Co., LTD., [1932] N. I. 35.—**IR.**

PART III. SECT. 36, SUB-SECT. 10.—C. (g).

6201 i. *Position of liquidator on summons—Security for costs—Whether court will order.*]—On a summons for an order requiring the liquidator to give security for costs : — *Held* : although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be followed, & the summons must be dismissed.—*Re* NEW ZEALAND GUN MACHINE CO., LTD. (IN LIQUIDATION), [1927] N. Z. L. R. 100.—**N.Z.**

sd. *Refusal to set aside summons—Appeal.*]—There is no appeal without leave from refusal to set aside a misfeasance summons issued by an assistant master.—*Re* SOLLOWAY MILLS & Co., [1935] 1 D. L. R. 340 ; O. R. 37. —**CAN.**

" You are requested to inform the Comrs. if you elect to pay this tax." On Oct. 19, A. returned the notice with a statement that he entirely repudiated it. On Nov. 30, the sum of £9,070 5*s*. was paid to A. in respect of his share of the surplus assets of the co. by the liquidator. The Comrs made an application under Cos. Act, 1908 (c. 69), s. 165, asking for an order that A. might be ordered to refund to the co. or the liquidator the sum of £568 19*s*. 6*d*. out of the £9,070 5*s*., & that that sum, being the amount of super-tax which had been assessed upon the co. under Finance Act, 1922 (c. 17), s. 21, as amended by Finance Act, 1927 (c. 10), s. 31, might be paid out of the moneys so refunded. A. disputed both the jurisdiction of the ct. & the propriety, if there were a jurisdiction, of making the order, or any part of the order, asked for :—*Held :* A. had properly been put upon the list of contributories, notwithstanding the definition of " contributory " in Cos. Act, 1908 (c. 69), s. 124 ; (2) having received moneys from the liquidator upon a distribution of surplus assets of the co. in liquidation, with notice that the liquidator had not provided for payment of a debt due by the co., ought to be ordered to pay the amount of the debt to the credit of the liquidator's account at the Bank of England.—*Re* AIDALL, LTD., [1933] Ch. 323 ; 102 L. J. Ch. 150 ; 148 L. T. 233 ; 18 Tax Cas. 617 ; [1933] B. & C. R. 56, C. A.

Add. Annotation :—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

6293a. —— Excess of liability of contributories—Right to refund.]—An insurance co., the bulk of the shares of which were only partly paid up, was ordered to be wound up by the ct. These shares being held at the date of winding-up by another co., also in liquidation & insolvent, the liquidator of the insurance co, made two calls, the first of 1*s*. a share in 1925. & the second, described as a " final call," of 1*s*. 6*d*. a share in 1927, on the B. contributories who held the shares before they had been transferred to the insolvent co. The proceeds of these calls, together with the other assets of the co., were insufficient to pay all its creditors in full, but, apart from the other assets, exceeded by some £10,000 the total amount of the debts & liabilities of the co. contracted at the date when the B. contributories ceased to be members of the co. :—*Held :* the surplus did not form part of the assets of the co., but must be refunded to the B. contributories. The call must first be enforced against all B. contributories who had not paid it, so as to produce equality of contribution & distribution.—*Re* CITY OF LONDON INSURANCE CO., LTD., [1932] 1 Ch. 226 ; 101 L. J. Ch. 124 ; 146 L. T. 296 ; 48 T. L. R. 169 ; 76 Sol. Jo. 29 ; [1931] B. & C. R. 129.

6293b. Enforcement of call—Notwithstanding right to refund—Necessity for equality of contribution & distribution.]—*Re* CITY OF LONDON INSURANCE CO., LTD., No. 6293a, *ante*.

6315. After this case add :—

iii. *Other Cases.*

6315a. Order for repayment to liquidator—Receipt of surplus assets with notice that debt unpaid.]—*Re* AIDALL, LTD., No. 6217a, *ante*.

6346. *Add. Annotation :*—*As to* (1) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

6352a. Breach of contract to carry safely.]—Applt., who was a paying passenger on a tramcar,

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PART III. SECT. 36, SUB-SECT. 10.—E. (a) iii.

6221 i. *When liable as contributory—General rule.*]—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re* SOUTHERN CROSS MOTOR FUELS, LTD., *Ex p.* KELLEWAY, [1926] V. L. R. 527 ; 48 A. L. T. 100 ; [1926] Argus L. R. 427.—**AUS.**

sg. *Who are past members—Deceased joint shareholder.*]—Upon the death of one of several joint holders of a share in a limited co., deceased becomes a past member within Cos. Act, 1899, s. 33, &, in the event of the co. going into liquidation prior to the expiration of a period of one year from his death, his personal representatives are liable to be placed upon the B. list of contributories of the co.—*Re* WOOL TRADING CO., LTD. (NO. 2) (1920), 28 S. R. N. S. W. 435 ; 45 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 36, SUB-SECT. 10.—E. (b).

6238 i. *Termination of liability—Whether Statute of Limitations applicable.*]—A co.'s Act of incorpn. provided that every shareholder should be liable to the creditors of the co., for the amount not paid up on his shares. The co. was ordered to be wound up under the Winding-up Act (Dom.) :—*Held :* the liability of a shareholder with respect to the amount unpaid on his shares was a statutory one & not dependent on the terms of the contract under which he took the shares, &, therefore, the Statute of Limitations could not be relied on as a defence.—*Re* IMPERIAL CANADIAN TRUST CO. & MCKEAGUE, [1929] 4 D. L. R. 381 ; 2 W. W. R. 423 ; 38 Man. L. R. 249 ; *affd.*, [1929] 1 W. W. R. 588.—**CAN.**

sj. *How enforced—Right of liquidator to bring action.*]—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242 ; 2 W. W. R. 521.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (c).

t i. —— ——.]—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

sk. —— *Deceased shareholder.*]—*Re* CANADIAN CORDAGE & MANUFACTURING CO. (1923), 54 O. L. R. 486.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (e) ii.

6296 ii. —— ——.]—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation. — *Re* DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO., LTD., *Re* PANNA LAL (1927), I. L. R. 50 All. 476.—**IND.**

6298 i. —— *Power of liquidator to make immediate call—For whole of unpaid balance on shares.*]—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27 ; [1924] 3 W. W. R. 850.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—F.

p i. —— *Without consent of general creditors—Or of Accountant of Court.*]—An English co. in compulsory liquidation owned heritable estate in Scotland burdened with hereditable securities to an extent admitting of no reversion for its general creditors. The liquidator having sold the property privately with the consent of the heritable creditors, the purchasers maintained that the sale was invalid without the concurrence also of the general creditors & of the Accountant of Ct., as required by Bkpcy. Act, 1913, s. 111 :—*Held :* Bkpcy. Act, 1913, s. 111, as incorporated into Cos. Act, 1929, by sect. 270 (1) (c) thereof, did not have the effect of derogating from the liquidator's powers under sect. 191 (2) (*a*) of 1929 Act, by which sub-sect. he was entitled to carry through the sale without the concurrence either of the general creditors or of the Accountant of Ct.—STYLE & MANTLE, LTD.'S LIQUIDATOR *v.* PRICES TAILORS, LTD., [1934] S. C. 548.—**SCOT.**

suffered serious injuries owing to the tramcar getting out of control, &, the tramway co. having subsequently been ordered to be wound up, applt. lodged a proof, claiming damages for breach of contract to carry her safely on the journey as a paying passenger. The liquidator rejected the proof on the ground that within Bkpcy. Act, 1914 (c. 59), s. 30, & Cos. Act, 1929 (c. 23), s. 262, it was a claim for unliquidated damages "arising otherwise than by reason of a contract," in other words, that it was a claim based on tort:—*Held:* as the proof was based on contract it must be allowed, & there must be an inquiry as to the damages.—*Re* GREAT ORME TRAMWAYS CO. (1934), 50 T. L. R. 450.

6359. *Add. Annotation:*—**Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

6361. After this case add:—

——.]—*Compare* FOWLER *v.* COMMERCIAL TIMBER CO., LTD., No. 3491a, *ante*.

6362. *Add. Annotation:*—**Apld.** *Re* Snow (W. R.) & Co. (1930), 74 Sol. Jo. 201.

6368a. —— **For salary for dismissal without notice.**]—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement:—*Held:* he was entitled to the salary as claimed.—*Re* MADRID BANK, *Ex p.* WILLIAMS (1866), L. R. 2 Eq. 216; 35 L. J. Ch. 474, 14 W. R. 706; *sub nom. Re* MADRID BANK, LTD., *Ex p.* HOLDER, *Ex p.* WILLIAMS, 14 L. T. 456.

Annotations:—**Refd.** *Re* Madrid Bank, Wilkinson's Case (1867), 15 W. R. 331; *Re* General Exchange Bank, Preston's Claim (1868), 19 L. T. 138.

6384a. Proof by holder against drawer—Dissolution of drawer before maturity—Limitation of action.]—In Oct. 1915, in order to rehabilitate Russian credit in London, an arrangement was made by the Bank of England, with the authority of the Treasury, under which approved Russian banks were to draw three months' sterling bills & remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks & accepting houses, who agreed to renew the bills until one year after the termination of the War, the Banque de l'Etat undertaking to provide to meet the acceptances on maturity. Imperial Russian Treasury Bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. No accepting house was to be liable for more than £100,000, unless otherwise agreed. In pursuance of this arrangement the Russio-Asiatic Bank in 1916 drew 151 bills of exchange on twenty-one accepting houses maturing in Feb. & Mar. 1918, which were presented through Baring Bros. & Co. as agents for the Banque de l'Etat & accepted by the banks & financial houses under a form of agreement with the Banque de l'Etat which carried out the above arrangement more completely; & authorised the issue by the Treasury of sterling Treasury Bills of the Imperial Russian Govt. to the amount of the acceptances to cover any default in payment on maturity. In Jan. 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer bonds to the accepting houses to the amount thereof. Notice of the assignment was despatched by the Bank of England to the Russo-Asiatic Bank in Petrograd, but according to the evidence never reached its destination in consequence of the Bolshevist revolution in Russia. By a decree issued by the Soviet Govt. in Dec. 1917, all private banks in Russia were abolished & the whole of their assets transferred to a State bank. The Russo-Asiatic Bank, whose head office was in Petrograd, was one of the banks so abolished. Its London branch was opened in 1908 & was ordered to be wound up by the ct. in 1926, under 1929 Act, s. 338. The Bank of England, on behalf of the Crown, lodged a proof of debt in the liquidation for £752,500, proceeds of the above named bills. The liquidator rejected the proof of the Bank of

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PART III. SECT. 36, SUB-SECT. 11.—A. (c).

6357 ii. —— ——.]—In Oct. 1907, R., J., I., G., & H., five directors of C. & Co., Ltd., entered into agreements under which they became employees of the co., each receiving a salary & one-fifth of the net profits. The agreements were to remain in force for ten years, unless terminated as therein provided. R., being unable to attend to the business of the co., entered into a new agreement dated June 14, 1911, whereby his prior agreement was annulled, & it was agreed that he & his personal representatives should continue to be paid one-fifth of the net profits, so long as he or they retained the share interest in the capital of the co., which he then held, in one undivided holding. The agreements with the other directors were not cancelled, but, by supplemental agreements, it was provided that if they gave up their employment with the co. they also would continue to receive their respective one-fifth shares of the net profits, so long as their respective shares in the co. were retained in one holding. H. died in 1913; G. in 1914; R. in 1919. In 1920 £3,000 was appropriated in respect of directors' shares of the net profits, payable under their agreements, & was placed to the credit of a directors' remuneration account. This sum was subsequently divided into five sums of £600 & placed to the credit of their respective deposit accounts with the co. The co. had power under its arts. of assocn. to fix the remuneration of directors, & in pursuance of a resolution passed at the annual meeting of the co. on June 11, 1920, a sum of £3,500 was placed at the disposal of the managing directors, then J. & I., & two others, as a bonus for the year 1919-20. Of this sum £1,300 was allotted to J. & I. respectively. These amounts were not paid out, but were retained by the co. & placed to the credit of their deposit accounts in 1925. The co. having become insolvent, went into voluntary liquidation, & up to that time the five sums of £600 & the two sums of £1,300 had not been paid to the persons who claimed them:—*Held:* (1) the sums of £600 claimed by the personal representatives of H., G., & R., were sums due to members of the co. in their character of members by way of dividends, profits, or otherwise, within Cos. Act, 1908, s. 123 (1) (vii), & accordingly the persons claiming these sums were not entitled to compete with the ordinary creditors of the co. in respect thereof; (2) J. & I., having continued their employment with the co. until after June 11, 1920, the sums of £600 claimed on their behalf were payable to them under their contracts of employment, & not in their character of members of the co., & so did not come within Cos. Act, 1908, s. 123 (1) (vii); (3) the sums of £1,300 due to I., & to the personal representatives of J., were sums given to them, not by agreement, but under the arts. of assocn., & so were not payable to them in their character of members within Cos. Act, 1908, s. 123 (1) (vii).—*Re* CINNAMOND PARK & CO., LTD., [1930] N. I. 47.—**IR.**

PART III. SECT. 36, SUB-SECT. 11.—A. (f).

si. —— ——.]—The liquidator of a co. in voluntary liquidation carried on the business on demised premises, paying rent. In Nov. he ceased to carry on business & removed the co.'s goods, except fixtures, the property of the liquidator, from the premises, but retained the keys until the following May, refusing payment:—*Held:* during the period the liquidator was liable out of the co.'s assets for rent. A liquidator's liability for rent out of the co.'s assets is not dependent on or to be measured by the degree to which the use of the demised premises has been profitable to him or the co. Liability for rent of premises taken into use by a liquidator continues until the liquidator unambiguously determines the case.—*Re* FLOUR & GRAIN EXCHANGE, LTD., *Ex p.* RIX, [1934] S. A. S. R. 386.—**AUS.**

England on several grounds, the most important being that the claim was barred by the Statutes of Limitation :—*Held :* (1) the bills had been assigned to the Bank of England with the authority & on behalf of the Crown, & had passed to the bank an equitable title to all the rights under the agreements made with the acceptors, including the right of action for breach of contract, if the bills were not paid at maturity ; (2) the obligation being to pay in sterling in London at maturity the debt was located in England & not in Russia, & therefore English law must be applied ; (3) the Russian Imperial Treasury bills were only a collateral security & being of no value at any material time were not a discharge of the debt ; (4) on the evidence of experts & documents, the Russo-Asiatic Bank ceased to have any corporate existence in Russia as the result of decrees of the Soviet Govt. made on or before Jan. 26, 1918, a date before the bills matured, & as from that date there was no debtor who could be sued. The Statute of Limitations therefore was no defence to the application, & the Bank of England was entitled to be admitted to prove for the debt in the winding up of the London branch of resp. bank. There being no evidence, however, that notice of the assignment had reached the drawers, the assignors must be joined in the application.—*Re* RUSSO-ASIATIC BANK, *Re* RUSSIAN BANK FOR FOREIGN TRADE, [1934] Ch. 720 ; 103 L. J. Ch. 336 ; 152 L. T. 142 ; 78 Sol. Jo. 647 ; [1934] B. & C. R. 71.

6392. *Add. Annotation :*—**Consd.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6394a. —— ——.]—The society, under a loan stock trust deed, issued loan stock bearing interest at 7 per cent. with a quinquennial bonus of 2½ per cent. Under the trust deed, entered into by the society with trustees for the stockholders, an amount equal to 7½ per cent. on the par value of the stock was to be paid to the trustees, for apportionment to the interest & to a fund for the bonus. At the date of an order for the winding up of the society, most of the stockholders had received payment in full of interest at 7 per cent. on the amount of loan stock issued, up to & including a date seven months before the order. The trustees lodged with the liquidator a proof stated to be for cash advanced on loan ; & this summons asked (i) whether the proof should be rejected to the extent of interest proved for above 7½ per cent. up to the date of the commencement of the winding up ; (ii) whether interest should be calculated, at 5 per cent., to the date of the order or to the commencement of the winding up ; & (iii) whether Bkpcy. Act, 1914 (c. 59), s. 66 (2) (*b*), had any application to proof or dividend in respect of the loan stock :—*Held :* (1) the amounts proved for by the trustees were to be computed only to the date of the commencement of the winding up ; (2) Bkpcy. Act, 1914 (c. 59), s. 66, was not incorporated by 1908 Act, s. 207, so as to apply in the winding up of an insolvent co., & that the trustees' proof was therefore calculable at the rate of 7½ per cent.—*Re* AGRICULTURAL WHOLESALE SOCIETY, [1929] 2 Ch. 261 ; 98 L. J. Ch. 396 ; 141 L. T. 551 ; 45 T. L. R. 467 ; [1929] B. & C. R. 54.

Annotations :—As to (2) **Apld.** *Re* Wells, [1929] 2 Ch. 269. **N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202 ; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

6396a. —— **Whether bankruptcy rules applicable.**]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante.*

6399a. Adoption of balance sheet including directors' fees—Whether acknowledgment within Statute of Limitations.]—*Re* COLISEUM (BARROW), LTD., No. 3126a, *ante.*

6400. *Add. Annotation :*—**Consd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., Ltd., [1936] Ch. 17.

6403. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6407. *Add. Annotation :—Generally,* **Reld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6409. *Add. Annotation :*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

6409a. Rule limiting rate of interest.]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante.*

6409b. Rule relating to copyright or interest in copyright vested in bankrupt.]—A book was published by Co. No. 1 under an ordinary royalty agreement. Thereafter Co. No. 1, with the consent of the author, granted to Co. No. 2 the exclusive right of publishing a cheap edition subject to the payment of a royalty to Co. No. 1, & Co. No. 1 agreed with the author to pay to him a half share of such royalty. Co. No. 1 went into voluntary liquidation, & the liquidator contended that the author was not entitled to payment in full of a half share of the royalty received or to be received from Co. No. 2, but must prove in the liquidation for the value of his contract :—*Held :* the author was entitled to payment in full of the half share of royalty received or to be received by the liquidator from Co. No. 2.—HENHAM *v.* ALSTON RIVERS, LTD. (1916), Macgillivray, Copyright Cases (1911-16) 330.

Annotation :—**Distd.** *Re* Health Promotion, Ltd., [1932] 1 Ch. 65.

6409c. ——.]—Bkpcy. Act, 1914 (c. 59), s. 60, does not apply in the winding up of an insolvent co.

Two authors entered into agreements with a publishing co. for the exclusive right to print & publish certain books written by them. The copyright in some of the books was to go to the co., in others, to remain to the authors : & royalties were payable to the authors as in the agreements provided. The co. went into voluntary liquidation, & the liquidator sold its assets, including copies of the books : & it was agreed by a later

PART III. SECT. 36, SUB-SECT. 11.—B. (a).

sd. *Right of creditor under Bankruptcy Act,* 1927, *s.* 69.]—A shareholder in a bkpt. co. has not the [illegible] by sect. 69 of Bkpcy. Act, R.S.C., 1927, to a creditor.—RICKERD & POWELL *v.* WEBER & WEBER, [1934] 1 W. W. R. [illegible]

sf. *Effect of Supreme Court Act,* 1878, *s.* 6 (1).]—The provisions of sects. 92, 93 of Federal Bkpcy. Act, [illegible], are not imported into the winding up of a co. under the provisions of Cos. Act, 1892, by the language of sect. 6 (1) of Supreme Ct. Act, 1878.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—AUS.

agreement between him & the purchaser that nothing in the agreement should prejudice the purchaser's right to sell them. The co. became insolvent. On a summons to determine whether, where the copyright or some interest in it was vested in the co. at the date of the resolution to wind up, the sale was subject to Bkpcy. Act, 1914 (c. 59), s. 60, & whether, where the copyright was not then vested in the co., the consent of the authors was necessary to the sale:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 60, is not incorporated in Cos. Act, 1929 (c. 23), s. 262, & therefore did not apply to the rights of the authors.—*Re* HEALTH PROMOTION, LTD., [1932] 1 Ch. 65; 101 L. J. Ch. 58; 146 L. T. 211; [1931] B. & C. R. 97.

6414. *Add. Annotations:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70; James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6421. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6427. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6428. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6431. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6436a. ——.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, deft. has no right of set-off in respect of sums alleged to be due to him from the co.—ALLIANCE FILM CORPN., LTD. *v.* KNOLES (1927), 43 T. L. R. 678.

6442. *Add. Annotation:*—*As to* (1) **Refd.** Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6442a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to to the liquidator the sum for which he recovered judgment against the co.:—*Held:* the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debits capable of set-off; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re* A DEBTOR (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

6442b. No set-off against sums paid in fraudulent preference.]—The co. being wound up had had business relations with two other cos. Within three months of the commencement of the winding up, the co. now in liquidation owed money to the other two cos. & the latter also owed money to the former. The co. in liquidation paid its debts to the other cos. without any claim of set-off in respect of the debts owing by them. These payments were admittedly a fraudulent preference, but the cos. claimed to set off the debts paid by them during the same period against the claim of the liquidator for repayment of the sums paid:—*Held:* no set-off having been asserted or made, the liquidator was entitled to repayment in full.—*Re* FOWLER (B. P.), LTD., [1937] 3 All E. R. 781.

6444. *Add. Annotations:*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6445. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6446. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* City Life Assce., [1926] Ch. 191; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6447. *Add. Annotations:*—*As to* (2) **Apld.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. *Generally*, **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6448. *Add. Annotations:*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

6423 i. ——.]—**Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.**—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

o. Add "*revsd.* 16 S. C. R. 456.

o i. —— *Claim to indemnity in respect of shares held as trustee.*]—D. & F. were joint managers of the M. Bank, &, while so acting, a number of stocks, shares, & other securities, & amongst others, £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred into their names, as trustees for the bank. There was also assigned to them by certain customers of the bank 801 shares in the bank itself, as security for moneys due, or to become due, from them to the bank; & these shares were, at the date of the liquidation, standing in the names of D. & F. During the years 1883 & 1884 the £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred to the Bank of Ireland, as security for advances to the M. Bank on an account entitled in the name of the Governor & Co. of the Bank of Ireland, "in collateral account with D. & F., both of the M. Bank." The M. Bank stopped payment in July, 1885, & was being wound up. F. absconded, & on Oct. 1, 1885, an order was made that the estate & interest of D. & F. in the £40,000 Consols & £60,000 New Three Per Cent. Stock should vest in D. & the liquidators of the M. Bank. The Bank of Ireland having been paid off, the £40,000 Consols & £60,000 New Three Per Cents. were, on Oct. 5, 1885, transferred into the names of D. & the liquidators. The liquidators placed D. on the list of contributories in respect of the 801 shares, & made a call thereon; & they also required D. to join with them in realising the stock. D. claimed to be indemnified against the calls out of these stocks:—*Held:* as against creditors, D. had no such right of indemnity.—*Re* MUNSTER BANK, LTD. (DILLON'S CLAIM) (1886), 17 L. R. Ir. 341.—IR.

6455a. —— Joint partnership debt — Creditor member of firm.]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member :—*Held :* the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re* PENNINGTON & OWEN, LTD., [1925] Ch. 825 ; 95 L. J. Ch. 93 ; 134 L. T. 66 ; 41 T. L. R. 657 ; 69 Sol. Jo. 759 ; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotation :*—**Reld.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6457a. Lump sum compensation payable to workman—" Rights capable of being transferred."] —An injured workman received weekly payments of compensation from his employer, who was a limited co. insured with a mutual indemnity co., until the date of commencement of winding it up. The indemnity co. was only liable under its contract of insurance to indemnify the employer for six weeks after it commenced to be wound up, & accordingly only paid compensation to the workman for a further six weeks, when its liability to the employer under the contract ceased. The workman took out a summons in the winding-up of the employing co. claiming to all other debts for the lump sum for which, at the commencement of the winding-up his weekly payments could have been redeemed to the extent to which the liability of the insurers to the workman was less than the liability of the co. to the workman. He claimed that that was the combined effect of sect. 264 of Cos. Act, 1929 (c. 23), & sect. 7 of Workmen's Compensation Act, 1925 (c. 84). The contract between the indemnity co. & the employer was such as was mentioned in sect. 7 of 1925 Act, though the rights of the employers capable of being transferred to & vested in the appct. were in fact less than his rights against his employers, in other words, his employer was not fully insured. Sect. 264 of Cos. Act, 1929 (c. 23), provides for compensation to be paid in priority, unless there is a contract with insurers under which by virtue of sect. 7 of 1925 Act there are rights capable of being transferred to the workman :—*Held :* in view of the fact that there were " rights capable of being transferred " within sect. 264 (1) (*d*) of Cos. Act, 1929 (c. 23), such sect. gave no priority right in the winding-up.

Summons dismissed.—*Re* WHITEHAVEN COLLIERY CO., LTD. (1935), 28 B. W. C. C. 1.

6460. *Add. Citations :*—130 L. T. 1 ; [1923] B. & C. R. 114 ; *affg.* S. C. *sub nom.*

PART III. SECT. 36 SUB-SECT. 11.—D. (a).

f i. —— ——.]—In the distribution of the assets of a bkpt. co. (consisting of personal property, insufficient to pay in full all claims now in question), which co. had carried on business in Toronto, Ontario, the following claimants were, for reasons stated below, held entitled to payment according to the following order of priority : (1) the Treasurer of the Province of Ontario (for tax under Corpns. Tax Act, R. S. O., 1927) ; (2) the City of Toronto (for business tax imposed under Assessment Act, R. S. O., 1927), & the Toronto Electric Comrs. (for supply of electrical energy under Public Utilities Act, R. S. O., 1927) ; (3) the landlord ; (4) the custodian & the trustee (for costs, fees & expenses) ; (5) the Workmen's Compensation Board (for indebtedness under the Workmen's Compensation Act, R. S. O., 1927, c. 179) ; (6) the Minister of National Revenue (for sales tax imposed under the Special War Revenue Act, R. S. C., 1927, c. 179).—*Re* GENERAL FIREPROOFING CO. OF CANADA, LTD., [1937] S. C. R. 150 ; 2 D. L. R. 30.—**CAN.**

h i. —— *Rent.*]—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re* SHRIVES & MCKENZIE PTY., LTD., [1926] V. L. R. 563 ; 48 A. L. T. 99 ; [1926] Argus L. R. 442.—**AUS.**

h ii. *S. P. Re* CARPENTER HALES & CO., LTD. (1926), 26 S. R. N. S. W. 420 ; 43 N. S. W. W. N. 116.—**AUS.**

sk. *Insolvency Act, 1928—Whether applicable.*]—In the winding up of an insolvent co., sect. 207 of Cos. Act, 1928, does not apply the rules as to priority of debts contained in the Insolvency Act, 1928.—*Re* EUTROPE (W. H.) & SONS PTY., LTD., [1932] V. L. R. 124 ; Argus L. R. 151.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—D. (b).

sm. *Price of wheat supplied under State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation :—*Held :* the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re* OCKERBY & CO., LTD. (1922), 25 W. A. L. R. 25.—**AUS.**

sn. *Price of coal from State coal mine.*] —The Victorian Railways Comrs. supplied coal from the Victorian State Coal Mine to a co. which subsequently went into voluntary liquidation. The Comrs. lodged a proof of debt with the liquidator in respect of the price of the coal, but, after having received two dividends, they claimed priority over the other creditors on the ground that the amount due was a debt due to the Crown :—*Held :* the debt was one due to the Crown, & was entitled to priority over the other debts of the co., Cos. Act, 1928, ss. 186, 208, not affecting Crown debts.—*Re* ORIENTAL HOLDINGS PTY., [1931] V. L. R. 279 ; Argus L. R. 266.—**AUS.**

so. *Debt due to public Board.*]—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion ; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund :—*Held :* a debt due to the Board was not a debt due to the Crown.—METROPOLITAN MEAT INDUSTRY BOARD *v.* SHEEDY, [1927] A. C. 899 ; 137 L. T. 782 ; 43 T. L. R. 701, P. C.—**AUS.**

sp. *Contributions under Unemployment Insurance Acts.*]—A co. was being wound up by the ct. under the provisions of the Companies (Consolidation) Act, 1908, &, in answer to the advertisement for claims against the co., the liquidator received from the Department of Industry & Commerce a claim in respect of unpaid contributions under the Unemployment Insurance Acts in respect of workmen employed by the co. Portion of the amount was claimed as a preferential payment under Unemployment Insurance Act, 1920, s. 26 (1), in respect of contributions payable by the co. during the four months before the commencement of the winding up as specified in that sect., & the balance was claimed as a State debt to rank next after the preferential debts & in priority to the ordinary creditors :—*Held :* the claim of the Department other than such portion as was payable under sect. 26 (1), was not payable in priority to the claims of the general creditors of the co.—*Re* A. & B. TAXIS, LTD., [1931] I. R. 87.—**IR.**

sq. *Damages for breach of contract.*]—*Held :* the Crown, in the right of the Dominion Govt., had priority, in respect of its claim for unliquidated damages for breach by the shipbuilding co. of a contract for the building of ships, over the claims of a city corpn. & electric comrs. for taxes & the price of power supplied.—TORONTO (CITY) & TORONTO ELECTRIC COMRS. *v.* WADE, [1931] 4 D. L. R. 928 ; O. R. 470 ; *affd.*, [1932] 3 D. L. R. 509 ; O. R. 500.—**CAN.**

st. *Extent of priority.*]—Creditors whose claims have arisen subsequently to the liquidation & have been properly incurred by the liquidator in the course of the winding up have priority over the claims of the creditors which arose before the liquidation, except claims by the Crown of equal or higher degree, & except the claims of the execution creditor to the amount of the value of his security. Debts due to the Postmaster-General, the Deputy Federal Comr. of Taxation, & the State Comr. of Taxation are entitled to priority over the claims of unsecured creditors of equal degree, but are postponed to the debts of secured creditors, & to the extent of their security.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—**AUS**

Re WEBB (H. J.) & Co. (SMITHFIELD, [illegible]

Add. Annotations :—**Refd.** *Re* Winget, Burn Winget, [1924] 1 Ch. 550 ; *Re* Cockell, *v.* A.-G., [1931] 1 Ch. 389.

6462. *Add. Annotations :*—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

Rates paid by director—Preferential rights of director.]—*Re* LAMPLUGH IRON ORE Co., No. 3105a, *ante.*

6466. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6467. *Add. Annotation :*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6472a. —— —— **No exclusive employment—Or fixed hours.**]—ANGLO-AUSTRIAN CONFECTIONARY Co., LTD., BARTLETT *v.* THE COMPANY (1912), Y. S. C. P.

6477a. —— —— ——.]—*Re* GENERAL RADIO Co., LTD., FIRST CO-OPERATIVE INVESTMENT TRUST, LTD. *v.* THE Co., [1929] W. N. 172.

6500. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

6506. *Add. Annotation :*—**Apld.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6513a. —— **From rejection of proof.**]—A claim was made against a co. in liquidation for damages. The liquidator issued a summons to have it determined whether the claims should be allowed & the judge made an order for an inquiry into the amount of damage sustained & that the claimant be permitted to prove for the sum so ascertained. The damages were so ascertained by the registrar & a proof carried in. The liquidator rejected the proof on the ground that a shareholder, while retaining his shares, cannot claim damages in respect of any loss in respect of his shares :—*Held :* this objection was too late. It should have been taken on the hearing of the summons or on appeal therefrom.—*Re* AYNEK SYNDICATE, LTD., [1930] 1 All E. R. 406.

6517a. Right to consider set-off.]—A [illegible] when examining a proof of debt [illegible] to its admission or rejection, is [illegible] to examine a set-off to such proof, if it is a matter of account, in order to arrive at the amount, if any, for which the proof is to be allowed.—*Re* NATIONAL WHOLE MEAL BREAD & BISCUIT Co., [1892] 2 Ch. 457 ; 67 L. T. 293 ; 40 W. R. 591 ; 36 Sol. Jo.

6533a. —— **On footing that company insolvent—Company found solvent—Right to prove for balance.**]—A compulsory order having been made for the winding up of a co. on the ground of its being just & equitable to make such an order, the costs of the co. of the petition were taxed & paid out of the assets on the basis that it was insolvent. The co. was ultimately found to be solvent, & the solr. claimed to prove in the liquidation for the balance of his bill of costs, being solr. & client costs incurred upon the instructions of the co. & its directors in opposing the petition. The liquidator rejected the proof on the ground that the amount claimed represented costs already taxed off the bill, & the registrar upheld his decision on the ground that there was no right of proof for any costs beyond the taxed costs of the petition under r. 192 of the Winding-up Rules, 1929 :—*Held :* the solr. was entitled to prove for any unpaid balance of costs due to him from the co., there being nothing to the contrary contained or implied in r. 192, which was concerned with the priorities of different sets of costs incurred in winding up. There being sufficient to pay all creditors in full, the co.'s solr. was entitled to be paid his costs as between solr. & client, & the liquidator was ordered to admit the proof, subject to taxation if he so desired.—*Re* C. B. & M. (TAILORS), LTD., [1932] 1 Ch. 17 ; 101 L. J. Ch. 6 ; 146 L. T. 118 ; [1931] B. & C. R. 69 ; 75 Sol. Jo. 797.

6549a. —— **Costs of summons by debenture-holders.**]—The directors of a co. registered under 1862 Act, being empowered by their articles to borrow on debenture bonds any sums " necessary " for the business of the co.,

PART III. SECT. 36, SUB-SECT. 11.—D. (c).

st. *Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309 ; 5 C. B. R. 378.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (d).

a i. ——.]—*Held :* a director of the co., the secretary, a floor-manager & host, an entertainer & the members of a band of musicians did not come within the definition of " clerk or servant " in s. 208 (1) (*c*) of Cos. Act, 1915, & were therefore not entitled under the section to preferential claims for salary or wages.—*Re* ESPLANADE THEATRE, LTD. (IN LIQUIDATION) (1929), V. L. R. 237 ; Argus L. R. 198.—**AUS.**

946) **i.** —— *Meaning of " going into liquidation."*]—Bkpcy. is a " going into liquidation " within sect. 100 (1) (*b*) of Cos. Act, R. S. O., 1927.—DAVEY *v.* GIBSON, [1930] 3 D. L. R. 606 ; 65 O. L. R. 379 ; 11 C. B. R. 341 ; *affg.*, [1930] 2 D. L. R. 139 ; 64 O. L. R. 627 ; 11 C. B. R. 138.—**CAN.**

st. *Effect of Bankruptcy Act, s.* 48 (4).]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re* CALGARY FURNITURE STORE, LTD. & HIGGS, [1924] 2 D. L. R. 308 ; [1924] 1 W. W. R. 1137 ; 4 C. B. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (a).

sv. *Not bondholders under unregistered trust mortgage.*]—*Re* BEAVER TRUCK Co. (Ont.), [1926] 1 D. L. R. 71.—**CAN.**

sw. *Bondholders — Notwithstanding abandonment of lien against purchaser of assets.*]—*Re* ST. JOHN RIVER LOG DRIVING Co. (N. B.), [1927] 3 D. L. R. 800.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (b).

6490 i. *Whether proof for total sum due at time of claim—Where securities realised before claim.*]—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—MCFARLAND *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT Co. (Can.), [1927] 3 D. L. R. 67.—**CAN.**

sy. *Whether interest on balance after security exhausted can be added.*]—In the liquidation proceedings of an insolvent co. a secured creditor after having exhausted his security cannot in proving as regards the balance of his debt unsatisfied include interest after the date of the winding up order.—OPPENHEIMER *v.* MOOLA (1929), I. L. R. 7 Ran. 514.—**IND.**

PART III. SECT. 36, SUB-SECT. 12.—B. (d).

6528 i. *Lien on fund recovered by his exertions—Costs incurred before winding up—Fund not under control of court.*]—A petition for a charging order was presented by a law agent who had recovered a fund for a company registered in England. The ct. granted the order, notwithstanding the voluntary liquidation of the company & the payment over of the fund to the liquidator in England.—PHILIP *v.* (1911), 48 Sc. L. R. 947.—

in Dec. 1865, issued twenty debentures of £100 each, all in the same form, by which they pledged "the property belonging to us for the time being during the subsistence of the debenture, with all the buildings & stock on, & connected with, our said property, & all the receipts & revenues to arise therefrom"; & declared that the entire debenture loan & interest should be a first charge on "our undertaking & property & receipts & revenues aforesaid." The business of the co. was to buy & sell land, to build, buy, & sell houses, to furnish houses for hotels, & to carry on the business of hotel keepers. A winding-up order having been made, the liquidator proceeded to sell certain freehold & leasehold estate belonging to the co.; but the purchaser refused to complete unless the debenture-holders were satisfied. The debenture-holders thereupon took out a summons in Chambers:—*Held:* after making all just allowances to the liquidator in realising the fund, the debenture-holders, applying by way of summons in the matter of the winding up, were entitled to their costs, as well as to their principal & interest, out of the fund, in priority to all other charges.—*Re* MARINE MANSIONS CO. (1867), L. R. 4 Eq. 601; 37 L. J. Ch. 113; 17 L. T. 50.

Annotation:—**Folld.** *Re* Oriental Hotels Co., Perry *v.* Oriental Hotels Co. (1871), L. R. 12 Eq. 126.

6555a. Payment of dividend to creditors of private company—Surplus assets handed over to contributories—Validity.]—DITCHAM *v.* MILLER, No. 5959b, *ante*.

6558a. Deduction of sur-tax from shares of members.]—A private co. to which Finance Act, 1922 (c. 17), s. 21, applied, having gone into voluntary liquidation, there was a large surplus for distribution amongst the holders of preference & ordinary shares. The Special Comrs. of Income Tax having given a direction under that sect. that the surplus must be deemed to be the undistributed income of the members for the purposes of sur-tax, assessed the co. to sur-tax for the previous financial year, & apportioned the tax among the members in accordance with their holdings, some being liable to pay sur-tax, & others not so liable. Notices of the charge were served upon the members liable, but none of them elected to pay the tax within the prescribed period of twenty-eight days, & notice having then been served upon the co., the liquidator paid the tax so assessed:—*Held:* in distributing the balance of the surplus among the members the liquidator, having regard to Finance Act, 1922 (c. 17), Sched. I., para. 8, must bring into account the sur-tax so paid against the amounts receivable by the members in respect of their incomes from their holdings of preference & ordinary shares in the co.—*Re* DREW (ALEXANDER) & SONS, LTD., [1935] Ch. 93; 104 L. J. Ch. 78; 152 L. T. 281; 51 T. L. R. 113; 78 Sol. Jo. 876; [1934–5] B. & C. R. 230.

6563. *Add. Annotation:*—**Apld.** Sugden *v.* Urban Fire Insurance Co. (1930), 75 Sol. Jo. 60.

6565. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers (1928), 98 L. J. Ch. 17.

6567. *Add. Annotations:*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

6569a. —— **What are.**]—A limited co.'s memorandum of assocn. provided that the preference shareholders should be entitled "in a winding up to such a share of the surplus assets as shall provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided for the holders of the preference shares shall not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets":—*Held:* the expression "surplus assets" meant what was left after the payment of debts & the repayment of the whole of the preference & ordinary capital.—*Re* DUNSTABLE PORTLAND CEMENT CO., LTD. (1932), 48 T. L. R. 223; 76 Sol. Jo. 95.

6576. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6578. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579a. —— —— ——.]—1929 Act, s. 177, by which no action or proceeding shall be continued or begun without the ct.'s leave against a co. after the making of a winding-up order against, or the appointment of a provisional liquidator of, the co., does not apply to proceedings abroad. But proceedings abroad by a person or corpn. within the ct.'s jurisdiction can be restrained by the ct., in the exercise of its equitable jurisdiction *in personam*, if that person has been properly served, within the jurisdiction, with the ct.'s order restraining the proceedings. Where, however, a foreign co. registered in a foreign country & also in England, or other foreign creditor within the ct.'s jurisdiction, has given credit to an English co. registered & trading in the foreign country, knowing the English co. to have attachable assets there, the ct. will not exercise its equitable jurisdiction *in personam* to restrain proceedings abroad, since it would not be just or equit-

PART III. SECT. 36, SUB-SECT. 12.—C.

sz. *Judgment creditor — Right to interest.*]—On the liquidation of a co. judgment creditors who obtained their judgments after the commencement of the liquidation as well as those who obtained their judgments prior thereto held alike entitled to interest out of any surplus remaining after payment of all the principal debts.—*Re* COLONIAL ASSURANCE CO. (Man.), [1928] 3 W. W. R. 703.—**CAN.**

sb. —— *Seizure before winding up—Priority.*]—In the winding up of a co. judgment creditors of the co., in respect of whose debts a seizure of the assets of the co. has been made prior to the presentation of the petition for winding up, are entitled to be paid their claims in priority to petitioner's & liquidator's costs & the liquidator's remuneration, notwithstanding that no sale has been effected prior to the presentation of the petition.—*Re* WHITEROCK QUARRIES, LTD., [1933] I. R. 363.—**IR.**

PART III. SECT. 36, SUB-SECT. 12.—D. (a).

m i. ——.]—*Re* SMEETONS, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 190.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 13.—A.

p i. —— —— *Sale by mortgagees in possession.*]—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co.":—*Held:* the mtgees. were proceeding rightfully.—*Re* BRITISH COLUMBIA TIE & TIMBER CO. [illegible] 14 B. C. R. 81; 9 W. L. R. 495.

able to restrain them on the ground either that the foreign co. or creditor is within the ct.'s jurisdiction or that the foreign co. or creditor can be served with proceedings in England. If the English co. is wound up by the ct., & its foreign branch is wound up by the foreign ct., the foreign co. or other creditor is free to prove the debt in the foreign country &, subject to the *lex fori*, to bring an action there.—*Re* VOCALION (FOREIGN), LTD., [1932] 2 Ch. 196; 102 L. J. Ch. 42; 148 L. T. 159; 48 T. L. R. 525; [1933] B. & C. R. 1.

6581. *Add. Citation:—affd.*, [1867] W. N. 178, L.JJ.

6591. *Add. Annotation:*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

6610. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6616. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6619. *Add. Annotation:—As to* (1) **Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6624a. —— Delivery to liquidator—1929 Act, s. 269—Charge for costs of execution—What costs included.]—The costs of the execution referred to in Cos. Act, 1929, s. 269 (1), are limited to the sheriff's costs & do not include the judgment creditors' costs of issuing & serving the writ on the sheriff.—*Re* WOODS (BRISTOL), LTD., [1931] 2 Ch. 320; 100 L. J. Ch. 335; 145 L. T. 444; 47 T. L. R. 464; 75 Sol. Jo. 458; [1931] B. & C. R. 17.

6627. After this case add:—*See, now*, 1929 Act, s. 268.

6649. After this case add:—

——.]—*See, now*, 1929 Act, s. 268.

6663. *Add. Annotations:*—**Refd.** *Re* South Rhondda Colliery Co. (1898), Ltd. (1928), 72 Sol. Jo. 453; Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

6669. *Add. Annotation:*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

6717a. ——.]—The High Ct. has jurisdiction to transfer winding-up proceedings from the High Ct. to any ct. which has jurisdiction to wind up cos., & can transfer proceedings in the winding up of a co. with a capital exceeding £10,000 to a county ct. having winding-up jurisdiction. — *Re* VERNON HEATON CO., LTD., [1936] Ch. 289; 105 L. J. Ch. 115; 154 L. T. 374; 52 T. L. R. 156; 80 Sol. Jo. 33; [1934–5] B. & C. R. 305.

6718. *Add. Annotation:*—**Distd.** *Re* Vernon Heaton Co., [1936] Ch. 289.

6727. *Add. Annotation:*—**Refd.** *Re* Yagerphone, Ltd., [1935] Ch. 392.

6727a. —— —— ——.]—The joint liquidators in the voluntary winding up of a co. recovered a sum of money alleged to have been paid to a creditor by the co. by way of fraudulent preference. A debenture holder took out a summons in the liquidation for an order that the money recovered from the creditor should be paid to the receiver of the property charged by the debenture:—*Held:* the money did not become part of the general assets of the co., but was a sum of money received by the liquidators & impressed in their hands with a trust for those creditors among whom the assets of the co. were distributable.—*Re* YAGERPHONE, LTD., [1935] Ch. 392; 104 L. J. Ch. 156; 152 L. T. 555; 51 T. L. R. 226; 79 Sol. Jo. 162; [1934–5] B. & C. R. 240.

6731. After this case add:—

—— ——.]—*See, now*, 1929 Act, s. 265 (2).

6731a. Necessity for dishonesty.]—*Re* PATRICK & LYON, LTD., No. 3353b, *ante*.

6740. *Add. Annotation:*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

6741. *Add. Annotations:*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410. **Expld.** *Re* Fowler (B. P.), Ltd., [1937] 3 All E. R. 781.

6745. *Add. Annotation:*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

6746. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6746a. Payment to principal creditor—To relieve surety.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act,

PART III. SECT. 36, SUB-SECT. 13.—C. (a).

sg. *Action for negligence.*]—Where it is alleged that through the negligent handling of an asset of a co. a tort was committed after the making of a winding-up order, the claim of the injured party for damages does not fall within the language of sect. 136 of Winding-up Act; &, therefore, leave should be granted under sect. 21 of said Act to commence an action against the co. if such action is not barred by a statutory limitation. Where such an action has been begun without leave before the expiration of the time prescribed by statute for bringing such an action, a *nunc pro tunc* order giving leave to bring the action should not be granted after said period has expired.—*Re* G. B. WOOD, LTD., SPIVAK *v.* LEE, [1932] 3 W. W. R. 525; 40 Man. L. R. 613.—**CAN.**

PART III. SECT. 36, SUB-SECT. 13.—C. (b) II.

sk. *Action against insurance company—By injured third party.*]—In an action for damages for personal injuries through being run down by a car, pursuer obtained a decree in absence against the owner of the car & on his failing to make payment, used arrestments in the hands of the insurance co. with whom defender was insured against third party risks & brought an action of forthcoming. While this action was pending the insurance co., which had its registered office in England & a place of business in Scotland, was ordered to be wound up:—*Held:* in view of Cos. Act, 1929, sects. 177 & 380, the action could not proceed without the leave of the ct. which had pronounced the winding-up order, & action sisted until leave of the English ct. should be obtained.—MARTIN *v.* PORT OF MANCHESTER INSCE. CO., [1934] S. C. 143.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 13.—D. (a).

n. Add "*revsd.* 23 A. R. 426."

PART III. SECT. 36, SUB-SECT. 13.—D. (c).

sb. *Writ filed after winding-up order.*]—*Held:* not to constitute a lien, even for costs, against the property of a [illegible] in liquidation.—*Re* LEITCH COL[illegible] D. L. R.

PART III. SECT. 36, SUB-SECT. 15.—B.

6741 i. *Debt due to directors—Set-off against amount unpaid on shares.*]—MICHELL *v.* BOOTH (1928), S. A. S. R. 367.—**AUS.**

sd. *General rule.*]—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re* NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING CO., LTD., [1927] N. Z. L. R. 16.—**N.Z.**

sf. *Deposit of lease—To prevent creditor cashing post-dated cheque.*]—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co.:—*Held:* as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re* DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD. (1924), 58 I. L. T. 42.—**IR.**

Loan of stock by directors to company—Mortgage of stock—Assignment of redemption to directors.]—[illegible] BOOTH, [1927] S. A. S. R. 576.—**AUS.**

1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made:—*Held:* the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co. [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

Annotation:—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6746b. Withdrawal of opposition—To motion for extension of time for registration of charge.]—The debtor co. of which applt. became the liquidator, deposited with resp. Trust title deeds of certain property to secure a sum of money owing by it to the Trust, agreeing to execute any necessary deed in respect of the property charged. The Trust did not register the charge within the prescribed time, & ten months afterwards applied to the Chancery Div. under 1929 Act, sect. 85, for an extension of the time for registration on the ground of inadvertence. The co., at the time of that application, was unable to pay its debts, & counsel were briefed on behalf of the co. to oppose the application for extension of time, but before the hearing of the application the instructions to oppose were withdrawn, an order was made for an extension of the time, & the charge was registered. An order for the compulsory winding up of the co. was made shortly afterwards, & the liquidator issued a summons in the winding up claiming that the withdrawal of the opposition of the co. was the suffering by it of a judicial proceeding with a view of giving a creditor a preference, & therefore must be deemed fraudulent & void as against the liquidator, having regard to the provisions in Bkpcy. Act, 1914 (c. 59), s. 44, & 1929 Act, sect. 265. W., who gave instructions for the withdrawal of the opposition by the co., was a director of the co. & managing director of the Trust:—*Held:* the onus was on the liquidator to satisfy the ct. that the dominant intention of the co. in withdrawing its opposition to the application for an extension of time was to prefer resps. &, there being no direct evidence of such an intention, an intent to prefer could not be inferred.—PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252; 151 L. T. 63; 50 T. L. R. 345; *sub nom. Re* M. I. G. TRUST, LTD., 103 L. J. Ch. 173; [1934] B. & C. R. 33, H. L.

Annotation:—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6756a. Order made without jurisdiction.]—By the rules of a mutual marine insurance assocn., which was not registered under the Companies Act, it was provided that all persons who effected an insurance with the assocn. should be members. No ship was to be insured for more than three-fourths of its value, the person insuring paid a deposit of 25*s.* per cent. on the amount of the insurance, & in case of the total loss of a vessel, the members were to pay the loser the amount for which he had insured it rateably, according to the amounts assured to them respectively. The assocn. consisted of more than twenty members. A vessel insured by R. was lost, & the amount of the loss was referred to arbitration. R. assigned his claim to his bankers, who obtained judgment in R.'s name on the award, &, not obtaining payment, presented a petition to wind up the assocn., the petition stating that the assocn. consisted of more than seven members, but not stating that it consisted of more than twenty. The petition was served at the abandoned office of the assocn. which had ceased to carry on business, & the proper advertisements were issued. On May 28, 1880, a winding-up order was made, no one appearing to oppose. In Nov. 1881, another member of the assocn. heard, for the first time, of the winding-up order, & within a week applied for leave to appeal against it:—*Held:* the order having been made by a superior ct. having jurisdiction in winding up, & having authority to decide as to its own competency, must, if the assocn. was one which ought not to be wound up, be treated merely as an erroneous order, & not as an order void for want of jurisdiction, & that the proper manner of getting rid of it was by appeal.—*Re* PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN. (1882), 20 Ch. D. 137; 51 L. J. Ch. 344; 45 L. T. 774; 30 W. R. 326, C. A.

Annotation:—**Consd.** *Re* Bowling & Welby's Contract, [1895] 1 Ch. 663.

6756b. Order of county court.]—This ct. will not entertain appeals from county ct. orders, unless the order appealed against has been completed & an office copy is produced for our inspection (EVE, J.).—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139; 98 L. J. Ch. 9; 140 L. T. 174; 45 T. L. R. 11; [1928] B. & C. R. 144, D. C.

PART III. SECT. 36, SUB-SECT. 17.

sk. *Order of province.*]—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re* HOME BANK OF CANADA & WINDING-UP ACT, [1925] 1 D. L. R. 734; 34 B. C. R. 321.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—C.

t. Add "*revsd.* 14 S. C. R. 624."

sl. *Order dismissing winding-up petition.*]—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1931] 1 D. L. R. 751.—**CAN.**

sm. *Order placing name on list of contributories.*]—A judge of the Supreme Ct. of Canada has jurisdiction to grant leave of appeal to this ct., under sect. 108 of Winding-Up Act, from a judgment ordering that the name of a person should be put on the list of contributories, its effect being to fix his liability at an amount over $2,000, although such judgment does not condemn him to pay immediately a definite sum of money.—*Re* JOYCE DRESS CORPN., LTD., HOROWITZ *v.* GREENBERG. [1934] S. C. R. 212; 3 D. L. R. 160.—**CAN.**

sp. *Order refusing security for costs—Application by liquidator.*]—An order refusing security for costs on application by a liquidator is not appealable.—*Re* SOLLOWAY MILLS CO., *Re* SOLLOWAY, [1936] 3 D. L. R. 504; O. R. 416.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—D. (a).

e i. *S. P. Re* DOMINION SHIPBUILDING & REPAIR CO., LTD., [1926] 3 D. L. R. 274; 59 O. L. R. 89.—**CAN.**

6775. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

]—*Re* CONSOLIDATED SOUTH MINES DEEP, LTD., [1909] 1 Ch. 491; 78 L. J. Ch. 326; 100 L. T. 319; 16 Mans. 81, C. A.

Motion to validate debenture.] — *Re* PARK WARD & CO., LTD., No. 5186b, *ante*.

6830. After this case add :—

—— **On property.**]—*See, now*, 1929 Act, s. 296.

6857. *Add. Annotation :*—**Consd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

6857a. ——.]—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925 (c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re* WINDSOR STEAM COAL CO. (1901), LTD., [1928] Ch. 609; 97 L. J. Ch. 238; 72 Sol. Jo. 335; [1928] B. & C. R. 36; *affd.* on other grounds, [1929] 1 Ch. 151, C. A.

Annotation :—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6858a. —— **When investigating proof.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6858b. Whether liable for negligence—On wrongful admission of proof.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co., B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co. :—*Held :* (1) a liquidator in the voluntary winding up of a limited co. is not, apart from negligence, liable for wrongly admitting a claim by an alleged creditor; (2) the liquidator did not, in the circumstances, fulfil his duty of investigating the claim of the L. Co., & was therefore liable as for misfeasance under Cos. Act, 1908, s. 215, for admitting the claim of the L. Co. since it was in fact an invalid one; (3) the Arts. of a limited co. cannot amount to a contract between the co. & its liquidator, & he could not therefore rely on an Art. absolving officers of the co. from liability except for fraud; (4) the position of a liquidator examining a proof for admission or rejection in a winding-up is the same as that of a trustee in bkpcy.; (5) in fixing the amount which a person liable for misfeasance under Cos. Act, 1908, s. 215, should be ordered to pay or contribute to the assets of the company, the ct. has a discretion, &, in the special circumstances, the liquidator should be ordered to contribute, by way of compensation, only such a sum as would enable all creditors to be paid in full with interest at 5 per cent.—*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

6874. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26; Mudd *v.* Collins (1925), 133 L. T. 186. **Distd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625; Henry *v.*

PART III. SECT. 36, SUB-SECT. 18.—H.

sp. *Of directors appealing against order.*]—The directors of a co. that was ordered to be wound up under Cos. Act retained in their hands certain moneys belonging to the co. & spent them on an appeal filed by the co. against the order of the winding up. The appeal was unsuccessful & there was no order of appellate ct., allowing the costs of the co.'s advocates out of the estate :—*Held :* the official liquidator could, under the directions of the ct., allow the expenditure, if incurred *bonâ fide*, & up to a reasonable extent.—MOOLLA *v.* OFFICIAL LIQUIDATOR (1928), I. L. R. 7 Ran. 34.—**IND.**

PART III. SECT. 36, SUB-SECT. 19.—I.

so. *Of creditor—Obtaining charging order.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., DAVIDSON *v.* SWANSON (Sask.), [1928] 2 W. W. R. 256.—**CAN.**

sp. *Amount—Application of K. B. rule 951.*]—Although a petition for the winding-up of a co. under Winding-up Act, R. S. C., 1927, is dismissed, it is a proceeding under said Act, & K. B. rule 951, which limits certain costs to $300 & disbursements, does not a thereto.—*Re* CANADIAN NATIONAL INSURANCE CO. & BROWNSTONE, [1931] 1 W. W. R. 753; 2 D. L. R. 875; 39 Man. L. R. 539; 12 C. B. R. 338.—**CAN.**

CO. (No. 2), [1931] 2 W. W. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 20.

m i. —— *On powers of liquidator—Power to complete formal act after dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

q i. —— *Grounds for granting or refusing.*]—*Re* ALBERNI PACIFIC LUMBER CO., THOMAS *v.* LAWSON (B. C.), [1927] 3 D. L. R. 1126; [1927] 2 W. W. R. 662.—**CAN.**

PART III. SECT. 37, SUB-SECT. 3.—B.

d i. —— *Sufficiency of resolution.*]—An extraordinary resolution for the winding up of a co., that it cannot " by reason of the passing & enforcement of Prohibition Act continue its business " is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

d ii. —— *Resolution providing for liquidator to act under supervision of directors.*]—*Held :* highly objectionable.—PARASHURAM DATTARAM SHAMDASANI *v.* TATA INDUSTRIAL BANK, LTD. (1928), 55 L. R. Ind. App. 274.—**IND.**

PART III. SECT. 37, SUB-SECT. 4.—B.

sm. *Payment to person purporting to be liquidator.*]—Where, after payment made to one purporting to be a liquidator, deft. discovered that the was not legally a liquidator :—the doctrine of estoppel was not applicable.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

sp. *Liability for negligence—Sale of assets.*]—An unsecured creditor of a limited co., which had gone into voluntary liquidation & had been dissolved, sued the sole liquidator, in negligence, alleging, as a breach of duty to pltf., that the assets had been greatly in excess of the amounts secured thereon, & that the liquidator had sold the equity of redemption of the co. in those assets at a price far below its real value :—*Held :* pltf. had no right of action in negligence.—FRANKLIN (THOMAS) & SONS, LTD. *v.* CAMERON (1936), 36 S. R. N. S. W. 286; 53 N. S. W. W. N. 30.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—C.

o i. —— *Whether in own name.*]—A receiver, as such, is not entitled to bring an action in his own name, since no property is vested in him. A liquidator of a co. in voluntary liquidation is not, as such, entitled to bring an action in his own name, but must do so in the name of the co.—BOLTON & DOWNS BUILDING CO., LTD. *v.* DARLING DOWNS BUILDING SOCIETY, [1935] Q. S. R. 237.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—D.

sp. *Increase by court.*]—Where the remuneration of a liquidator in a voluntary winding up has been fixed

Foster (Arthur), Henry *v.* Foster (Joseph) (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748 **Refd.** Seymour *v.* Reed, [1927] A. C. 554 Benyon *v.* Thorpe (1928), 97 L. J. K. B. 705 Dewhurst *v.* Hunter (1932), 146 L. T. 510; Stedeford *v.* Beloe, [1931] 2 K. B. 610.

6875. *Add. Annotation:*—**Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

6875a. —— **Profit costs—Solicitor co-liquidator.**]—One of two liquidators in the voluntary winding up of a limited co. was a solr., who acted on behalf of the other liquidator & himself in certain proceedings. The proceedings resulted in a compromise by which, *inter alia*, the liquidators' costs were to be paid. On taxation of the costs it was objected that as the solr. was one of the liquidators he could not charge any profit costs for the work done by him in the proceedings. The liquidators contended that profit costs should be allowed on the principle that where one of two trustees acts on behalf of himself & his co-trustee in litigious proceedings he is entitled to charge his profit costs. The registrar held that that principle did not apply to one of two joint liquidators, on the ground that it was excluded by the Cos. (Winding-up) Rules, 1929, r. 158:—*Held:* (1) the Cos. (Winding-up) Rules, 1929, r. 158, prohibits any arrangement for any remuneration beyond the remuneration to which a liquidator is entitled under 1929 Act, or the Cos. (Winding-up) Rules, 1929; (2) there must have been some arrangement made between the two liquidators, whereby the solr. had become entitled to some remuneration beyond that to which he was entitled under the Act or rules, & the solr. was therefore prohibited from receiving profit costs whilst acting as solr. for himself & his co-liquidator.—*Re* GERTZENSTEIN, LTD., [1937] Ch. 115; [1936] 3 All E. R. 341; 155 L. T. 573; 53 T. L. R. 89; 80 Sol. Jo. 933; [1936–7] B. & C. R. 146.

6878a. Review—Voluntary winding-up superseded by compulsory order.]—Where a members' voluntary liquidation of a co. is superseded by compulsory liquidation, the ct. is empowered by r. 192 (1) of Cos. (Winding-up) Rules, 1929, to review the amount of remuneration fixed by the members of the co., during the voluntary liquidation, as payable to the voluntary liquidator.—*Re* MORTIMERS (LONDON), LTD., [1937] Ch. 289; [1937] 2 All E. R. 364; 106 L. J. Ch. 164; 157 L. T. 544; 53 T. L. R. 493; 81 Sol. Jo. 295; [1936–7] B. & C. R. 131.

6880a. Costs of opposing petition for compulsory winding up—Disallowed on taxation.—Allowed to voluntary liquidator.]—A co. passed a resolution for voluntary winding up Five days later a petition was presented by a creditor for a compulsory order, & a month later the usual compulsory order with the usual order as to costs was made. The voluntary liquidator appeared on the petition in opposition to it. On the taxation of costs the registrar disallowed certain items of costs incurred by the liquidator after the resolution but before the petition was heard, including the costs of consultations by the liquidator & of obtaining counsel's opinion. The solr. to the liquidator then brought in a further bill of costs, including items disallowed on the previous taxation, but allowable on a taxation between solr. & client:—*Held:* these costs, which were costs incurred by the liquidator in opposing a compulsory order, were properly allowed, in the discretion of the ct.—*Re* ADLER (WILLIAM) & CO., LTD., [1935] Ch. 138; 104 L. J. Ch. 58; 152 L. T. 251; 78 Sol. Jo. 898; [1934] B. & C. R. 150, C. A.

6895. *Add. Annotation:*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

6904a. —— —— **By receiver—Liability of receiver.**]—THOMAS *v.* TODD, No. 4979a, *ante*.

6922a. —— **Premiums paid to company—In respect of ultra vires extension of objects.**]—A joint stock co. was formed under a deed describing its business as life assurance. Resolutions of extraordinary general meetings were regularly passed & confirmed for extending the business to marine insurance. The marine business was mentioned in the annual returns to the registry office. & referred to in reports & circulars, & on one occasion a report on the marine business was sent out with the dividend warrants. A deed extending the purposes of the co. to sea risks was executed by some only of the shareholders; but it did not appear that any shareholder had objected to the marine business being carried on. About one & a half years after the commencement of the marine business the co. was wound up:—*Held:* (1) there was no such acquiescence by the shareholders as to entitle the holders of marine policies to prove in respect of them; (2) the premiums paid might be proved against the co.—*Re* PHŒNIX LIFE ASSURANCE CO., BURGES & STOCK'S CASE (1862), 2 John. & H. 441; 31 L. J. Ch. 749; 7 L. T. 191; 9 Jur. N. S. 15; 10 W. R. 816; 70 E. R. 1131.

Annotation:—**Consd.** Sinclair *v.* Brougham, [1914] A. C. 398.

6924a. —— **Claim by manager for loss of salary.**]—*Re* SNOW (W. R.) & CO., LTD. (1930), 74 Sol. Jo. 201.

6934. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. Co., [1930] 2 Ch. 293.

6936. *Add. Citations:*—130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON) LTD., [1922] 2 Ch. 369.

Add. Annotations:—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389, C. A.

6936a. —— **Deduction of income tax from payment of interest by company on mortgage.**]—A

by a general meeting the ct. has power to increase that remuneration in a proper case.—*Re* BRIGHTON MOTORS PTY., LTD., [1932] V. L. R. 241; Argus L. R. 181.—**AUS.**

PART III. SECT. 37, SUB-SECT. 8.

6936 i. *Preferential debts—Crown debts.*]—A co., which had given a mtge. to the Crown under Fruit Preserving Industry Act, 1913, which mtge. was transferred to the State Advances Account, went into voluntary liquidation:—*Held:* the Crown debt had priority.—TASMAN FRUIT PACKING ASSOCN., LTD. *v.* R., [1927] N. Z. L. R. 518.—**N.Z.**

6936 ii. —— ——.]—C. A. S. E., Ltd., a co. incorporated in South Australia, went into voluntary liquidation in South Australia. The co. owed debts (*inter alia*) to the Department of Agriculture & the Railways Comr. in South Australia:—*Held:* in the winding-up, these debts took priority as owing to the Crown. The co. also owed debts to the Railways Comrs. of New South Wales & Queensland:—*Held:* in the winding-up, these debts were due to the Govts. of the two

co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs. :—*Held :* inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re* LANG PROPELLER, LTD., [1927] 1 Ch. 120 ; 95 L. J. Ch. 516 ; 136 L. T. 48 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836 ; 11 Tax Cas. 46 ; [1926] B. & C. R. 127, C. A.

6936b. —— **Rates—Payment by director—Preferential rights of director.**]—*Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante*.

6943. *Add. Annotation :*—**Apld.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6944a. ——————.]—In Sept. 1925, certain premises were demised under two leases to a co., & each of the leases contained a personal covenant on the part of the co. as tenants, to pay the rent during the currency of the lease. In Jan. 1933, notice was given by the co. to determine the leases, with the result that they would come to an end at Michaelmas, 1938. In Jan. 1933, the premises were assigned to another tenant. In Apr. 1933, the co. went into voluntary liquidation & the liquidator distributed its assets without making provision for future rent due under the leases. In an action brought by the lessors against the liquidator for a declaration that, in distributing the assets without making provision for the liabilities of the co. under the two leases, he had acted wrongfully & negligently & in breach of his duty as liquidator, & for damages :—*Held :* the liability was one which ought to have been admitted to proof by the liquidator under 1929 Act, s. 261, & he had committed a breach of his statutory duty under sect. 274 of the Act to pay or provide for the liabilities of the co., in not taking steps to have the value of the contingent liability ascertained, & he was liable in damages to pltfs.—JAMES SMITH & SONS (NORWOOD), LTD. *v.* GOODMAN, [1936] Ch. 216 ; 105 L. J. Ch. 70 ; 154 L. T. 113 ; [1934-5] B. & C. R. 283, C. A.

6947. *Add. Annotation :*—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6950a. —— **Postponed to income tax on profits made by liquidator.**]—A co. incorporated in 1907 owned & worked mines & transport facilities in Algeria under concessions from the French Govt. In Dec. 1925, the ct. sanctioned a scheme for the transfer to two French cos. of the whole of the co.'s undertaking & assets, except cash & assets sufficient to repay the co.'s preference share capital, & a resolution for voluntary liquidation was passed. The co.'s manager was appointed liquidator at a salary of £1,000 a year & its creditors were told that the liquidation was purely formal & they would be paid in full. The assets excepted from the undertakings to be acquired by the French cos. were not enough to repay the whole of the co.'s preference share capital &, under a provision in the scheme, payments on account amounting altogether to five shillings in the pound were made to preference shareholders in 1925 & 1926. Owing to various difficulties created by causes which included the general strike of 1926, the scheme could be carried out only by allowing the French cos. to work the mines & transport facilities by means of moneys which the co. provided by realising the ores. The amount of the disbursements which the co. had to make exceeded that produced by realising the ores, & from June, 1928, the liquidator could preserve the assets only by borrowing & by means of an overdraft granted by the co.'s bank. In 1929 an assessment under Sched. D of the Income Tax Act, 1918, was made on the co. for the year 1929-1930 ; in Mar. 1930, an assessment was made on it for the year 1926-1927 ; & in Oct. 1930, another assessment was made on it for the year 1929-1930. None of the amounts due under those assessments were paid. Before the liquidator had received the notice of the last assessment the co.'s mine had been closed down, & before the date of this summons the French cos. had gone into liquidation & the French liquidator on their behalf claimed & took possession of the assets in Algeria out of which the amounts due under the assessments could otherwise have been paid. Included in the disbursements made by the co. were sums which the liquidator had retained as remuneration & on account of travelling expenses. The liquidator stated in an affidavit that he had received no remuneration since 1931, that he had had no funds in hand since June, 1928, & that he had since Apr. 1931, spent all his assets to maintain himself & was practically destitute at the date of this summons :—*Held :* (1) income tax to which a co. has been assessed in respect of profits earned after the commencement of the winding up is not within the words " . . .

States, & were entitled to priority equally with the debts above mentioned. The co. also owed debts to officers who were carrying out their contracts of employment in New South Wales :—*Held :* in the winding-up, these servants were entitled to priority equally with the South Australian officers.—*Re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS, LTD. (1928), S. A. S. R. 342.—**AUS.**

st. *Application of bankruptcy rules —Negotiable instrument.*]—Voluntary liquidation of a limited co. does not accelerate the due date of a negotiable instrument payable on a date subsequent to the commencement of the winding up, sect. 246 of the Cos. Act, 1908, making the rules in bkpcy. applicable in the winding up of insolvent cos.—*Re* MACKY, LOGAN CALDWELL, LTD., [1934] N. Z. L. R. 1034.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 9.—A.

sn. *Restraint of distribution—At instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*]—*Re* VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION), [1927] N. Z. L. R. 95.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 9.—B.

6949 i. *Liquidator's remuneration & costs—Realisation of security belonging to debenture-holders.*]—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re* WILLIS C. RAYMOND, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 115.—**N.Z.**

fees & actual expenses incurred in realising or getting in the assets . . ." in rule 187, par. 1, of the Cos. (Winding up) Rules, 1909, but that income tax is part of the expenses of the winding up; (2) when the assets of a co. in voluntary liquidation are insufficient to discharge its liabilities, the ct. has power, under sects. 171 & 196 of 1908 Act (now sects. 213 & 254 of 1929 Act), to make an order, in the exercise of its discretion, as to the payment thereout of the "costs, charges, & expenses" (including the liquidator's remuneration) in such order of priority as it thinks just, & that *primâ facie* all the expenses ought to be paid before the liquidator's remuneration; (3) *semble:* the ct. in a proper case may authorise a liquidator to keep remuneration which he retained when he had no reason to believe that the co.'s assets would not be sufficient to discharge all costs, charges & expenses of the liquidation; in the present case the liquidator should be authorised to retain the remuneration received by him before the date of the notice of the assessment of Oct. 1930.—*Re* BENI-FELKAI MINING CO., LTD., [1934] Ch. 406; 103 L. J. Ch. 187; 150 L. T. 370; 78 Sol. Jo. 29; 18 Tax Cas. 632; [1934] B. & C. R. 14.

Annotation:—**Refd.** Wilson Box (Foreign Rights), Ltd. *v.* Brice, [1936] 2 All E. R. 452.

6956a. Priorities—Jurisdiction of court to settle.]—*Re* BENI-FELKAI MINING CO., LTD., No. 6950a, *ante*.

6958. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52. *As to* (2) **Refd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

6965. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144; *Re* Metcalfe (William) & Sons, Ltd. (1932), 48 T. L. R. 651.

6974. *Add. Citation:*—[1923] B. & C. R. 139.

6977. *Add. Annotations:*—*As to* (1) **Distd.** *Re* Madame Tussaud, [1927] 1 Ch. 657. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52.

6984. *Add. Annotations:*—*As to* (1) **Expld.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. *As to* (3) **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6984a. —— —— Provision in articles for equal ranking with deferred shareholders.]—(1) The arts. of assocn. of a limited co. whose capital was divided into preferred & deferred shares provided that, subject to the difference in dividing the profits, the preferred & deferred shares should rank equally in the co., & that there should be no difference between a preferred & deferred shareholder in respect of his status & liability to the debts & engagements of the co. The also provided for the dissolution of the co. On the voluntary winding up of the co. under 1862 Act, s. 133:—*Held:* the two classes of shareholders were in the same position, & entitled to the capital *pro rata*.

(2) People who enter into these partnerships under articles of assocn., that is, articles of partnership, must be taken to have read them, & must be taken to have understood them, & if they are to be taken to have read them, & to have understood them, which they ought to do before entering into these contracts, they cannot complain if the contract is afterwards carried out (JESSEL, M.R.).—GRIFFITH *v.* PAGET (1877), 6 Ch. D. 511; 37 L. T. 141; 25 W. R. 821.

Annotations:—*As to* (1) **Consd.** Sheppard *v.* Seinde Punjaub & Delhi Rail. Co. & Abbott (1887), 56 L. J. Ch. 558; Bishop *v.* Smyrna & Cassaba Rail. Co., [1895] 2 Ch. 265. **Refd.** *Re* Bridgewater Navigation Co., Ltd. (1888), 39 Ch. D. 1.

6986. *Add. Annotations:*—*As to* (1) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6987 *Add. Annotation:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387.

6988. *Add. Annotations:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387. **Refd.** Coulson *v.* Austin Motor Co. (1927), 43 T. L. R. 493.

6988a. —— —— —— No dividend declared.]—The memorandum of assocn. of a co. provided that in the event of a winding-up the preference shareholders should be entitled to receive in full out of the assets the amount of capital paid up on their shares, & also all arrears of dividend due thereon at the date of winding-up. A resolution was passed for the winding-up of the co. in Apr. 1925, at which date no dividends on the preference shares had been declared or paid for over four years past. After the winding up there was a surplus sufficient to pay arrears of dividend due:—*Held:* no dividends having been declared between 1921 & 1925, none were due, & the preference shareholders were not entitled to be paid anything in respect of arrears.—*Re* ROBERTS & COOPER, LTD., [1929] 2 Ch. 383; 98 L. J. Ch. 450; 141 L. T. 636; [1929] B. & C. R. 74.

Right to payment without deduction of income tax.]—Where upon the winding up of a co. the preference share holders are entitled to payment of all arrears of dividend, & there is a fund available for payment, they are entitled to receive the full amount of the dividends in arrear without any deduction of income tax, in priority to any payment to the ordinary shareholders. —*Re* DOMINION TAR & CHEMICAL CO., LTD., [1929] 2 Ch. 387; 98 L. J. Ch. 448; 142 L. T. 15; 45 T. L. R. 601; [1929] B. & C. R. 71.

6988c. —— —— —— ——.]—*Re* HOME GROWN SUGAR, LTD. (1937), 54 T. L. R. 230.

PART III. SECT. 37, SUB-SECT. 9.—D. (a).

6975 i. *As between different classes of shares—Right of preference shareholders.*]—*Held:* on the construction of a memorandum & arts. of assocn. in the event of a winding-up or liquidation of the co. the preference shareholders would be entitled to participate rateably with the ordinary shareholders in any distribution of surplus remaining after payment of the co.'s liabilities & repayment of all capital paid up on the preference & ordinary shares, since the provision in Art. 10 giving the preference shareholders a fixed cumulative preferential dividend & the right in the winding up of the co. to priority in payment of capital over ordinary shareholders was not an exhaustive statement of the rights of the preference shareholders, excluding any other right or privilege. Further, on construction of the memorandum & arts. on a distribution of surplus assets the preference shareholders were entitled to participate in such distribution *pro rata* with the ordinary shareholders.—CORK ELECTRIC *v* CO., LTD. *v* I. R. 314.—IR.

of capital.]—A clause in a co.'s memorandum of association in force at the date of a resolution for voluntary winding up provided that the co.'s preference shares should confer the right to a fixed cumulative preferential dividend & to half the surplus profits for each year after payment (or provision for the payment) of a specified dividend on the co.'s ordinary shares, & that the preference shares should rank with regard both to dividends & to capital in priority to the ordinary shares. The co.'s arts. of assocn. in force at the date of the resolution for winding up provided (*inter alia*) that the co.'s profits which it should be determined to divide in any year should be applied, first, in paying a fixed cumulative preferential dividend to the preference shareholders, secondly, in paying a specified dividend to the ordinary shareholders, & thirdly, as to half in paying a further dividend to the preference shareholders, & as to half in paying a further dividend to the ordinary shareholders. The arts. further provided (*inter alia*) that capital paid up on shares in advance of calls upon the footing that it should carry interest should not while carrying interest confer a right to participate in profits, that the co. in general meeting might declare a dividend to be paid to the members according to their rights & interests in the profits, that no larger dividend should be declared than was recommended by the directors but that the co. in general meeting might declare a smaller dividend, & that no dividend should be payable except out of the co.'s profits or should carry interest against the co.

Dividends were paid on the preference shares up to & including the year ending Mar. 31, 1930, but not for the years ending Mar. 31, 1931, & Mar. 31, 1932, or for the period from Apr. 1, 1932, to Sept. 30, 1932, the date of the resolution for winding up. Certain preference shareholders claimed to be paid, out of the assets available for distribution, sums representing dividends on their shares for the period since Mar. 31, 1930, &/or otherwise to share in those assets in priority to any repayment of capital to the ordinary shareholders:—*Held:* on the true construction of the memorandum & articles of association, the preference shareholders were entitled, in priority to the ordinary shareholders, to payment of arrears of fixed cumulative preferential dividend & to repayment of capital.—*Re* WALTER SYMONS, LTD., [1934] Ch. 308; 103 L. J. Ch. 136; 150 L. T. 349; [1933] B. & C. R. 237.

Add. Annotations:—**Consd.** Collaroy Co. *v* Giffard, [1928] Ch. 144. **Follo.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Consd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6989a. —— ——.]—A co. issued preferenc shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets:—*Held:* (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *primâ facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re* MADAME TUSSAUD & SONS, LTD., [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

6989b. —— ——.]—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should "confer the right to a fixed cumulative dividend" at a certain rate, "& shall rank, both as regards dividends & capital, in priority to the ordinary shares." By the arts. it was provided in the same terms as to the dividends, & that the preference shares should "confer the right in a winding up to repayment of capital in priority to the ordinary shares":—*Held:* the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not entitled to share in any surplus assets.—COLLAROY CO., LTD. *v.* GIFFARD, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

Annotations:—**N.F.** *Re* John Dry Steam Tugs, Ltd., [1932, 1 Ch. 594. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd.] [1933] Ch. 142.

6989c. —— ——.]—A co. was incorporated in 1909 with a capital of £25,000, divided equally into preference & ordinary shares of £10 each, a small proportion of which only were fully paid. Under clause 5 of the articles of assocn. the preference shareholders were entitled (1) to a fixed cumulative dividend at the rate of 5 per cent. *per annum* on their paid up capital, & after payment of 5 per cent. on the ordinary shares to an additional one-half per cent. for each 1 per cent. in excess of 5 per cent. paid on the ordinary shares, & (2) to priority in the event of a winding up both as to the cumulative dividend & return of capital.

In 1929, the co. went into voluntary liquidation, & after payment of all debts & return to the shareholders of the capital paid up on their shares there was a surplus available for distribution of £10,000:—*Held:* on a summons taken out by the liquidator, there being nothing in the articles to modify or exclude the normal right of the preference shareholders to share in the distribution of the surplus assets, they were entitled to rank *pari passu* with the ordinary shares in such distribution.—*Re* JOHN DRY STEAM TUGS, LTD., [1932] 1 Ch. 594; 101 L. J. Ch. 271; 147 L. T. 493; [1931] B. & C. R. 157.

cumstance as to take the case out of the general rule.—ANGLO-BALTIC & MEDITERRANEAN BANK *v.* BARBER & Co., [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

Annotation :—**Consd.** Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

7036. After this case add :—

—— ——.]—*See, now*, 1929 Act, s. 268.

7037a. —— —— **Bank account in name of liquidator.**]—A co. went into liquidation under a resolution for a member's voluntary winding up. The liquidator summarily discharged its manageress, who sued the co. for wrongful dismissal & obtained judgment in default of defence. She applied for a garnishee order on a bank account in the name of the liquidator. There was no evidence of any other claims on the co. The master refused to make the order absolute, but the judge in chambers reversed his decision. The liquidator appealed :—*Held :* (1) this being a members' voluntary winding up, it must be taken that the co. was solvent, as there was no evidence to the contrary. There was therefore no question of all creditors being paid in full & the ct. might properly refuse to exercise its discretion to stay an execution, & make the garnishee order absolute ; (2) the fact that the account was in the name of the

(1898), 42 Sol. Jo. 740.

7051. After this case add :—

—— —— ——.]—*See, now*, 1929 Act, s. 234 (1).

7056. *Add. Annotations :*—**Apld.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. **Consd.** *Re* West Yorkshire Partial Amalgamation (Coal Mines) Scheme (1935), 153 L. T. 167.

7064. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7074. *Add. Annotations :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

7076. *Add. Annotations :*—**Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. **Refd.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

7082. *Add. Annotation :*—*As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7083. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

7102. *Add. Citation :*—130 L. T. 256.

7119a. 1929 Act, s. 155—Power to acquire shares of dissentient shareholders—When court will

tarily, the general practice of the ct. is to grant an order staying execution of decrees against the co., except in very special circumstances.

A distinction must be drawn between a seizure under an English writ of *fi. fa.* & an attachment under Indian law. An attachment, which has not yet been completed by sale, cannot be treated as if the execution had been completed before the commencement of the winding-up without statutory provision to that effect analogous to the provisions of sect. 268 of English Cos. Act, 1929.—*Re* RAJBARI ICE FACTORY, LTD., I. L. R., [1937] 1 Cal. 632.—**IND.**

sp. *Power of court to order stay—Under Indian Companies Act*, 1913, s. 215.]—*Re* SRI YOGASHRAM PHARMACY, LTD. (IN LIQUIDATION), *Re* MOHAN LAL MEHTA (1927), I. L. R. 50 All. 482.—**IND.**

PART III. SECT. 37, SUB-SECT. 11.—E.

sq. *Order rejecting scheme—Appeal.*]—An appeal lies from an order rejecting a scheme of re-organisation both under sect. 202 of Cos. Act (VII. of 1913) & clause 13 of the Letters Patent.—DAWSON *v.* HORMASJI ; BALDWIN *v.* HORMASJI (1932), I. L. R. 10 Ran. 438.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—A.

sr. *Trustee under voting trust agreement—Extent of powers of voting.*]—A trustee under a voting trust agreement, the object of which is the re-organisation of the co., has no right to vote upon bye-laws terminating the trust agreement.—*Re* FIRSTBROOK BOXES, LTD., [1936] 1 D. L. R. 92; O. R. 15.—**CAN.**

order.]—C. & Co., Ltd., made an offer to the shareholders in H. & Co., Ltd., to acquire their shares in the latter co. This offer was accepted by shareholders representing 99·62 per cent. of the total issued share capital of H. & Co., Ltd. The balance of ·38 per cent. consisted of 7,465 shares. Of these 4,665 were acquired compulsorily under 1929 Act, s. 155, by C. & Co. without objection by the holders. The remaining 2,800 shares, representing ·14 per cent. of the issued share capital of the co., were the subject of this application under sect. 155 for an order that resps., C. & Co., Ltd., were not entitled to acquire the shares of appcts. in H. & Co., Ltd. :—*Held :* where not less than nine-tenths of the shareholders in the transferor co. approve a scheme involving the transfer of the co.'s shares to a transferee co., *primâ facie* the offer must be taken to be a fair one, & the ct. will not " order otherwise " unless it is affirmatively established that, notwithstanding the views of a very large majority of shareholders, the scheme is unfair.—*Re* HOARE & Co., LTD. (1933), 150 L. T. 374.

7136a. —— —— Discretion of court.]—*Re* EUSTACE MILES FOODS (1921), LTD. (1934), 78 Sol. Jo. 238.

7155a. Exemption—Finance Act, 1927 (c. 10), s. 55—Issue of shares in transferee company to holders of shares in existing company—Issue to nominees.]—A new co. was formed for the purpose of acquiring from the " B." co. its property & assets. An agreement for sale was entered into on Oct. 22, 1928, by which the " B." co. agreed to sell & the new co. agreed to purchase all the undertaking & assets of the " B." co., the consideration being the allotment to the liquidator of the " B." co. or his nominees of 600,000 preference shares of the new co. of £1 each fully paid & 3,600,000 ordinary shares of the new co. of 1*s.* each fully paid. On Nov. 22, 1928, the appointment of the liquidator was confirmed, & he adopted the agreement for sale. On Oct. 22 about 26 shareholders in the " B." co. held the whole of the 120,000 shares in that co. On Nov. 22, 88,000 shares out of those 120,000 shares were held by the solrs. of the " B." co. as bare trustees for the transferors, who were, as to 45,500 shares, eight shareholders, & as to 42,500 shares, the purchaser of those shares from seven shareholders in the " B." co. Shares in the new co. were allotted to the registered holders of 11,200 shares of the " B." co. in respect of those shares. The holders of the remaining 108,800 shares of the " B." co. requested the liquidator of the " B." co. to procure the allotment of the shares in the new co. to which they were entitled to persons other than themselves, & the shares were so allotted by the new co. In the case of a considerable number of shares, exceeding 10 per cent. of the total consideration for sale to the new co. under the agreement for sale, they were allotted to persons who had agreed to purchase either shares of the " B." co. or shares of the new co. to which registered holders of shares in the " B." co. were entitled. As a consequence the first registered holders of shares in the new co. were to an extent far exceeding 10 per cent. of such shares, & far exceeding 10 per cent. of the total consideration for the sale, persons who were not holders of shares in the " B." co. The Comrs. of Inland Revenue held that the agreement for sale was liable to *ad valorem* duty under Stamp Act, 1891 (c. 39), s. 59 :—*Held :* the issue of shares to purchasers from, or other nominees of, holders of shares in the " B." co. was not the issue of shares to holders of shares in the " B." co. within Finance Act, 1927 (c. 10), s. 55, & therefore the new co. were not entitled to exemption under that sect.—BROTEX CELLULOSE FIBRES, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 158 ; 102 L. J. K. B. 211 ; 148 L. T. 116.

Annotations :—**Refd.** Murex, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 173 ; *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7155b. —— —— —— ——.]—The I. C. I. co. were the holders of 79,900 shares of the P. co., & two persons were each the holders of 200 shares in the P. co. as the nominees of the I. C. I. co. The share capital of the P. co. was divided into 87,500 shares. The I. C. I. co. & their two nominees agreed to sell to the M. co. the 80,300 shares in the P. co., which they held in consideration of the allotment by the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. The agreement & subsequent transfers were executed as part of a scheme for the amalgamation of the P. co. & the M. co. The I. C. I. co. & their two nominees executed three transfers by which they transferred to the M. co. three blocks of shares in the P. co. amounting in all to 800,300 shares, in consideration of the allotment of the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. Subsequently the M. co., in accordance with a previous request, allotted those 30,000 shares to five nominees of the I. C. I. co. The Comrs. of Inland Revenue decided that the three transfers were liable to *ad valorem* duty under the heading " Conveyance or transfer on sale " in the First Sched. to the Stamp Act, 1891 (c. 59) :—*Held :* the issue of the 30,000 shares in the M. co. to the five nominees of the I. C. I. co. was not the issue of shares to the holders of shares in the P. co. in exchange for shares held by them in the P. co. within Finance Act, 1927 (c. 10), s. 55 (1) (*c*) (ii.), & therefore the conditions laid down in that sect. for exemption from duty did not exist ; although it was necessary to look at the surrounding circumstances in order to see whether there was an

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

st. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation :—*Held :* the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—HUNTER *v.* DAMODAR DAS (1924), I. L. R. 46 All. 759.—IND.

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

o. Add " *revsd.* 1 O. L. R. 480."

p 1. *On contract—To pay commission.*]—BETHEL *v.* AUTOMATIC TOTALISATORS, LTD. (1927), 28 S. R. N. S. W. 76 ; A.

sv. *On right of shareholder in old company—To contingent asset realised*

amalgamation of two cos. or a reconstruction of a co. within meaning of sect. 55, yet in considering whether a particular instrument executed in purported performance of such amalgamation or reconstruction was subject to stamp duty, or whether it was exempt from duty, regard could only be had to the terms of that instrument.—MUREX, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 173; 102 L. J. K. B. 219; 148 L. T. 164.

Annotation :—**Refd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7158. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7159. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7161. *Add. Annotation :*—**Refd.** Soc. Anon. Pecheries Ostendaises *v.* Merchants Marine Insce., [1928] 1 K. B. 750.

7168. *Add. Annotation :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252.

7169. *Add. Annotations :*—**Expld. & Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—*See, now,* 1929 Act, s. 296.

7169a. Agreement to transfer land & equitable interest—Vesting order.]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169b. —— Whether new trustee necessary—Trustee Act, 1925 (c. 19), s. 44, para. (ii) (c), s. 51 (1), para. (ii) (c).]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169c. 1929 Act, s. 296—Equity of redemption.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia :—Held :* (1) Cos. Act, 1929 (c. 24), s. 296, did not apply, as that sect. was not retrospective; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia.* — *Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD. [1933] Ch. 29; 101 L. J. Ch. 346; 148 L. T. 5; 48 T. L. R. 617, C. A.

7169d. —— Whether retrospective.]—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, No. 7169c *ante.*

7174a. —— Mode of application for order.]—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare the dissolution void, notice of the motion ought to be given to the Treasury Solr., since on dissolution the undistributed assets pass to the Crown as *bona vacantia.* (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re* HOME & COLONIAL INSURANCE CO., LTD. (1928), 44 T. L. R. 718.

7176. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7177a. —— Effect of.]—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of proceedings taken during the interval between the dissolution & its avoidance.—MORRIS *v.* HARRIS, [1927] A. C. 252; 96 L. J. Ch. 253; 136 L. T. 587; [1927] B. & C. R. 65, H. L.

7203a. Charges of fraud on public.]—Where charges have been made against a co. of having committed frauds, not in any way

175; 1 W. W. R. 804; 24 Alta. L. R. 90.—**CAN.**

PART III. SECT. 37, SUB-SECT. 14.—B.

sw. *Avoidance—Jurisdiction to order—For limited purpose only.*]—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor :—*Held :* it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re* CHAMPDANY JUTE CO., LTD., [1924] S. C. 209.—**SCOT.**

sz. —— *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—MACDONALD'S (LORD) CURATOR, [1924] S. C. 163-4.—**SCOT.**

sb. —— ——.]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—FORTH SHIPBREAKING CO., LTD., PETITIONERS, [1924] S. C. 489-90.—**SCOT.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) ii.

sf. *Rule in India.*]—Petitioner prayed that the People's Bank of Northern India be wound up by the ct. It was contended by counsel for the Bank that the Bank should not be compulsorily wound up by the ct., & that the opinion of the creditors & shareholders in meeting, which had been consistently in favour of the present directors carrying on the liquidation, should be allowed to continue :—*Held :* the rule generally applied in England, should not apply strictly to India where limited liability cos. are in their infancy & shareholders & creditors easily misled. While the opinions of shareholders & creditors ought to be taken into consideration these classes of persons in India at present require to be protected against themselves.—MADAN GOPAL *v.* PEOPLES BANK OF NORTHERN INDIA (1935), I. L. R. 16 Lah. 1029.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

s t. ——.]—*Held :* in the absence of [illegible]'s rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—SANSAR CHAND *v.* KARAM CHAND (1925), I. L. R. 6 Lah. 340.—**IND.**

connected with its promotion or formation in its dealings with members of the outside public, not being dealings with shareholders as regards their membership in the co., the desirability of investigating such charges under a compulsory winding up is not a ground for saying that creditors will be "prejudiced by a voluntary winding-up" within sect. 145 of 1862 Act.—*Re* MEDICAL BATTERY CO., [1894] 1 Ch. 444; 63 L. J. Ch. 189; 69 L. T. 799; 42 W. R. 191; 38 Sol. Jo. 81; 1 Mans. 104; 8 R. 46.

7269. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

7290. *For existing citation read following paragraph & citations & anno. :—*

A creditor cannot obtain an order to continue a voluntary winding up under the supervision of the ct. unless he possesses all the qualifications required of a creditor petitioning for a compulsory winding-up order. Therefore, a debt incurred by a co. under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the voluntary liquidation & the agreement formed parts of one scheme.—*Re* BANK OF SOUTH AUSTRALIA, [1894] 3 Ch. 722; 64 L. J. Ch. 44; 43 W. R. 299.

Annotation :—**Dbtd.** *Re* Bank of South Australia, [1895] 1 Ch. 578.

7363. *Add. Annotation :*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

7370. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

7371a. —— Scheme involving reduction of capital —Modification of rights of different classes of shareholders.]—*Re* ODHAMS PRESS, LTD., [1925] W. N. 10.

7372. *Add. Annotation :*—**Refd.** *Re* Garner Motors, Ltd., [1937] 1 All E. R. 671.

7373. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

7373a. Arrangement between creditors & voluntary company "about to be wound up"—Meaning of.]—*Held :* (1) 1929 Act, s. 251 (1), applies only to an arrangement entered into during a voluntary winding-up or shortly before the passing of a resolution for a voluntary winding up; (2) a composition by a co. with its creditors, intended to make the co. solvent & therefore to prevent a voluntary winding up, is not an "arrangement" within the sect.

Qu. : whether the word "arrangement" in the sect. is intended to include a compromise.—*Re* CONTAL RADIO, LTD., [1932] 2 Ch. 66; 101 L. J. Ch. 377; 148 L. T. 109; 48 T. L. R. 458; 76 Sol. Jo. 359; [1931] B. & C. R. 255.

7373b. —— Whether compromise included.]—*Re* CONTAL RADIO, LTD., No. 7373a, *ante.*

7373c. Circulars—Sufficiency of.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *post.*

7373d. —— Duty of court to

Re DORMAN, LONG & CO., DURHAM STEEL & IRON CO., LTD., No. 73 *post.*

7374a.

L. Jo. 80; 169 L. T. Jo. 101; [1930] W. N. 4.

7377a. —— ——.]—In 1933, Dorman, Long & Co., Ltd., & South Durham Steel & Iron Co., Ltd. (hereinafter respectively called "Dormans" & "South Durham"), provisionally agreed that Dormans should acquire South Durham's undertaking & assets. Two schemes of arrangement were prepared, one between Dormans, its 5½ per cent. debenture stockholders & its shareholders, & the other between South Durham & its debenture stockholders & shareholders, each scheme being conditional on the ct.'s sanctioning the other before the end of 1933. On June 19, the ct. ordered that Dormans & South Durham should convene separate meetings of their interested debenture stockholders & of their classes of shareholders, to consider & if thought fit approve the respective schemes, by letter enclosing a print of the scheme & a proxy in the form settled in chambers. On June 20, a circular signed by South Durham's secretary, a notice of the meetings, & forms of proxy settled in chambers, were sent to South Durham's debenture stockholders & shareholders. The circular stated (*inter alia*) that a revaluation of South Durham's assets had been made by its auditors & confirmed by two named gentlemen. The forms of proxy purported to appoint a certain person as proxy, leaving the donor of the proxy to write "for" or "against" before the words "the scheme." The meetings were to be held on July 19, & a note at the foot of the proxy stated that the proxy must be lodged not later than noon on July 15. On July 3 a circular signed by Dormans' secretary, notices of the meetings ordered by the ct. of its debenture stockholders & shareholders, proxies in the form settled in Chambers, & voting cards, were sent to Dormans' debenture stockholders & shareholders. The circular stated (*inter alia*) that the whole of Dormans' assets had been revalued upon the basis of their earning power & that the revaluation had been confirmed by two named gentlemen. These were the gentlemen who had confirmed the revaluation of South Durham's assets. The circular stated also that the trustees for the stockholders, after careful investigation, recommended the scheme for the stockholders' approval. It did not state the figures arrived at in the revaluation, nor did it state that, as was the fact, the trustees for the stockholders, who were a bank which had financed Dormans, stood to benefit by the scheme. The forms of proxy were substantially the same as those sent out with South Durham's circular, the date of the meetings being July 27, & the proxies being required to be lodged not later that 6 p.m. on July 25.

PART III. SECT. 37, SUB-SECT. 15.—A. (c).

sg. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*]—*Re* STOCKBRIDGE & CO., LTD., [1923] N. Z. L. R. 221.—**N.Z.**

PART III. SECT. 39, SUB-SECT. 1.—B.

ff —— *Preferential treatment of creditor.*]—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20*s.* in the pound :—*Held :* the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

st. *What court must consider.*]—On an application to sanction a scheme of arrangement it is the duty of the judge to ascertain whether all statutory requirements have been complied with, & whether it is fair & reasonable. —*Re* DAIRY CORPN. OF CANADA, LTD., [1934] O. R. 436; 3 D. L. R. 347.—**CAN.**

sw. ——.]—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD. (NO. 2), [1937] 3 W. W. R. 61.—**CAN.**

Along the side of each voting card was written in red ink "If you are voting as proxy for other holder(s), please write the name of holder(s) on the back of this card." July 3 & July 10, H., a shareholder in South Durham, wrote to its shareholders criticising the scheme & asking them not to sign proxies in favour of it but to sign proxies against it which he enclosed with his second letter. At South Durham's meetings H.'s proxies were rejected as being in a form different from that settled in Chambers, & certain proxies also were rejected as having been lodged after the time fixed for lodging proxies. The chairman reported that, if H.'s proxies were excluded, the scheme would be carried by the requisite statutory majority, & that if they were admitted there would be a majority in number, but not the three-fourths' majority in value, in favour of the scheme. On July 19, a committee of debenture stockholders in Dormans who opposed the scheme, among whom was L., sent a circular to about half the total number of holders of £200 or more 5½ per cent. debenture stock, asking them to vote against it. Many replied that they wished to revoke the proxies they had lodged & vote against the scheme, but feared that it would be too late. At the meeting of Dormans' debenture stockholders, voting cards with the red ink sidenote on them were handed to those attending, & the chairman asked that they would record their votes on them. At the meeting certain proxies were rejected on the ground that they had been lodged after the time fixed for lodging proxies. The chairman reported that at all of Dormans' meetings resolutions approving the scheme without modification were passed. Petitions asking for the ct.'s sanction to the respective schemes came on for hearing on Nov. 22, Dormans' petition being opposed by the debenture stockholders, of whose committee L. was a member, & South Durham's by H. On the hearing of Dormans' petition L. stated in an affidavit that he had no instructions with his voting card, that by request he (L.) took a vote by show of hands on the chairman's refusing to do so & declared the resolution approving the scheme lost, & that the chairman left the room. The chairman gave evidence denying that he left the meeting before the vote was taken & another witness denied that the statements in L.'s affidavit about the meeting were accurate. The confirmation of the schemes by the ct. was sought under 1929 Act, sects. 153 & 154, sects. giving power to compromise with creditors & members & providing for facilitating reconstruction & amalgamation of cos. :—*Held :* (1) in determining whether a compromise or arrangement should be sanctioned, the ct. must be satisfied that the resolutions in favour of it

sufficient, & misleading in its reference t the approval of the scheme by the trustee for the stockholders, & should have state the amount of the revaluation; (5) th description in South Durham's circular of th auditors' report as if it were a valuation o South Durham's assets was justified only i the report was prepared solely in order to ascertain the relative values of the assets of Dormans & South Durham, the opinions of South Durham's board were justified on an optimistic view, & the board had acted reasonably & in the best interests of those concerned.—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., [1934] Ch. 635; 103 L. J. Ch. 316; 151 L. T. 347; 78 Sol. Jo. 12.

Annotation :—Generally, **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7382a. —— Scheme involving reduction, reorganisation & increase of capital.] — *Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante.*

7385a. Discretion of court as to acquisition of shares of dissentient shareholders—Terms must be adequate & reasonable.]—Upon a petition to sanction a scheme of arrangement & amalgamation under Cos. Act, 1929 (c. 23), s. 155, the ct. has power to determine the terms upon which the shares of shareholders who have dissented from the scheme approved by the majority shall be acquired, notwithstanding that since the original offer was made the scheme has been superseded by a later amalgamation which has absorbed the transferee co., & the fact that petitioners cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the ct., which is only bound to decide whether the terms offered are adequate & reasonable, & if not, to substitute such other terms of purchase as, in its discretion, are fair & just.—*Re* CASTNER-KELLNER ALKALI CO., LTD., [1930] 2 Ch. 349; 99 L. J. Ch. 453; 144 L. T. 26; 46 T. L. R. 592.

7391. *Add. Annotation :*—**Refd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ii. ——.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re* LINDNERS, LTD. (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 O. B. R. 49.—**CAN.**

PART III. SECT. 39, SUB-SECT. 1.—E.

sf. *Object of scheme—Clarification of rights.*]—(1) The existence of reasonable doubts as to the rights of shareholders under the memorandum of assocn. of a co. is a ground warranting the ct. in sanctioning a scheme of arrangement the effect of which is to remove those doubts.

A limited co. consisted of three classes of shareholders, viz. A., B. & C., whose respective rights were determined by clause 5 of the memorandum of assocn. Questions having arisen as to the rights of the A. shareholders under clause 5, the co. proposed a scheme of arrangement by which clause 5 was to be replaced by a new clause, the effect of which was to determine exactly the rights of the A. shareholders :—*Held :* as the proposed scheme was one which would commend itself to a reasonable business man, it would receive the sanction of the ct.

7398a. —— **Acquisition of shares of—Discretion of court.**]—*Re* CASTNER-KELLNER ALKALI CO., LTD., No. 7385a, *ante*.

7402. *Add. Annotations:—As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7404a. —— **Different classes of creditors—Meaning of.**]—By sect. 2 of the Joint Stock Cos. Arrangement Act, 1870 (c. 104), where an arrangement is proposed between a co. in the course of being wound up & " the creditors of such co., or any class of such creditors," the ct. may order that a meeting of " such creditors or class of creditors " shall be summoned, & if a majority in number, representing three-fourths in value of " such creditors or class of creditors," agree to the arrangement, it shall, if sanctioned by an order of the ct., be binding on " all such creditors or class of creditors, as the case may be," & also on the liquidator & contributories of the co. The persons summoned to the meeting under the above sect. were the policy-holders of the co., & no separate meeting was summoned of those whose policies had, as distinct from those whose policies had not, matured:—*Held:* the insured persons whose policies had matured formed a distinct class of creditors from those whose policies had not matured; a separate meeting of such class ought to have been held under the Act in order to make the arrangement binding upon the members of that class; & the arrangement did not, therefore, operate as a release by deft. of his claim against pltfs.—SOVEREIGN LIFE ASSURANCE CO. *v.* DODD, [1892] 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4; 8 T. L. R. 684; 36 Sol. Jo. 644; 4 R. 17, C. A.

7404b. Objections to—Should be taken on petition for sanction.]—In proceedings under 1929 Act, sect. 153, for the sanction by the ct. of a compromise or arrangement between a co. & its creditors, or any class of them, EVE, J., said that the responsibility for determining what creditors are to be summoned to any meeting, as constituting a class, is the appct.'s, & if the meetings are incorrectly convened or constituted, or an objection is taken to the presence of any particular creditors as having interests competing with the others, the objection must be taken on the hearing of the petition for sanction, & the appct. must take the risk of having it dismissed.—PRACTICE NOTE, [1934] W. N. 142; 178 L. J. Jo. 28.

7407a. —— **Omission to advertise—Sufficient majority present.**]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had received the notices:—*Held:* the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re* ANGLO-SPANISH TARTAR REFINERIES, LTD. (1924), 68 Sol. Jo. 738.

7408. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409a. ——.]—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy " to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: " If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.

(3) Trustees for debenture-holders are in no different position from other trustees, except that, unlike many other trustees, they are remunerated for their services, & whether the mtgor. co. is a going concern, or whether the security is being realised for the benefit of debenture-holders, the conduct of the trustees is controlled by the same rules, subjected to the same restrictions, & measured

(2) The unsuccessful objector then moved that the co. should be found liable for his expenses, on the ground that dissentient shareholders should not be discouraged from bringing to the notice of the ct. considerations which might reasonably influence the ct. in arriving at a right decision. The ct. refused this motion, but, on consent of petitioners, found no expenses due to or by either party in connection with the discussion on the objector's note.—EDINBURGH RAILWAY ACCESS & PROPERTY CO. *v.* SCOTTISH METROPOLITAN ASSURANCE CO., [1932] S. C. 2.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ii. —— —— ——.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held:* in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120(2).—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

o i. —— *Majority necessary.*]—Under sect. 122 (2) of Cos. Act, 1934, which provides for the sanctioning of a proposed compromise or arrangement between a co. & its shareholders, the number of shareholders present in person or by proxy at the meeting & voting in favour of the arrangement must be three-fourths of the total number of shares of each class, not merely three-fourths of each class voting at the meeting unless the latter amounts to three-fourths of the total of the shares of each class of shareholders.—*Re* WESTERN GROCERS, LTD., [1936] 2 W. W. R. 81; 2 D. L. R. 762; *on appeal*, [1936] 3 W. W. R. 334. 4 D. L. R. 816.—**CAN.**

122 (2) of } —**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (b).

sf. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held:* the rejection of the proxies was wrong.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.

Cos. Act, 1934, is satisfied if shareholders holding three-fourths of the shares of each class held by shareholders present in person or by proxy at the meeting approve the proposed scheme; shareholders not present or represented by proxy should be disregarded.—*Re* PROVINCIAL APARTMENTS, LTD., [1936] 3 W. W. R. 327.—**CAN.**

by the same standards as are applied to other fiduciary agents (EVE, J.).—*Re* MAGADI SODA CO., LTD. (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

Annotation :—As to (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409b. ——.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7409c. ——.]—At a meeting to consider a scheme of arrangement a number of shareholders had appointed proxies "to act for me at the meeting . . . for the purpose of considering &, if thought fit, approving, with or without modification, the proposed scheme of arrangement . . . & at such meeting or at any adjournment thereof to vote for me & in my name" either for or against the scheme. At the meeting a shareholder moved an amendment to the resolution approving the scheme that the consideration of the scheme should be deferred until after the publication of the accounts for the year. Upon a show of hands there was a majority in favour of the amendment, but the chairman demanded a poll, & using the proxies given to him, secured a majority to defeat the amendment :—*Held :* the form of proxy did not restrict the holder of the proxy, so far as voting was concerned, to voting either for or against the scheme of arrangement. & the chairman was entitled to use the proxies which he held to vote upon the amendment.—*Re* WAXED PAPERS, LTD., [1937] 2 All E. R. 481; 156 L. T. 452; 53 T. L. R. 676; 81 Sol. Jo. 397, C. A.

7410. *Add. Annotations :—As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7411a. Duty of directors to use.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7412. *Add. Annotation :*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

7415a. Release of joint debtor—Other joint debtors not released.]—Although an accord & satisfaction between a creditor & one of several joint & several debtors discharges the other joint & several debtors unless it appears from the terms of agreement or the surrounding circumstances that the creditor intended to reserve his right against them, yet when the debt of one of the joint & several debtors, being a co., is released by a scheme of arrangement in the liquidation of that co., that scheme does not release the other debtors. The scheme has a statutory operation & is quite different from an agreement signed by the parties, & it is not necessary for the scheme to reserve the rights of those debtors.—*Re* GARNER'S MOTORS, LTD., [1937] Ch. 594; [1937] 1 All E. R. 671; 106 L. J. Ch. 365; 157 L. T. 258; 81 Sol. Jo. 218.

7440. After this case add :—

—— —— ——.]—*See, now,* 1929 Act, s. 295 (5).

7452a. Notice of motion to be given to Treasury Solicitor—Where undistributed assets.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 7174a, *ante*.

7452b. —— **Filing of affidavit of notice.**]—PRACTICE NOTE, [1931] W. N. 199; 172 L. T. Jo. 299.

Part IV.—Banking Companies.

7462a. —— —— **Defences available—Liability for calls.**]—*Assumpsit* on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, "not indebted" :—*Held :* (1) the replication was bad, the set-off being founded entirely on the deed; (2) the plea was good.—MILVAIN *v.* MATHER (1850), 5 Exch. 55; 1 L. M. & P. 220; 19 L. J. Ex. 227; 14 L. T. O. S. 446; 155 E. R. 24.

Annotation :—Generally, **Refd.** Smith *v.* Trowsdale (1854), 18 Jur. 552.

7479. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

7479a. ——.]—BARCLAY *v.* PEARSE (1884), *Times*, Aug. 4, C. A.

Annotations :—**Distd.** Perry *v.* Barnett (1885), 14 Q. B. D. 467. **Apld.** Seymour *v.* Bridge (1885), 14 Q. B. D. 460.

PART III. SECT. 40, SUB-SECT. 2.—A.

7449 v. —— ——.]—A co. formed for the purpose of money-lending, which, having discontinued business, had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off :—*Held :* the application should be granted.—CHARLES DALE, LTD., [1927] S. C. 130.—**SCOT.**

oi. —— *Dissolution of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re* —— —— BRICK & ESTATE CO., LTD., [1926] N. 47.—**IR.**

sl. *Effect of.*]—Where a co. has defaulted in complying with Cos. Act, ss. 80–85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, &, on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted.—BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—**CAN.**

sp. ——.]—A co. which had been struck off the register was restored thereto by an order of the ct. which in pursuance of sect. 200 of Cos. Act, 1929, provided that it should be "without prejudice to the rights of parties acquired prior to the date" of the restoration but contained no further directions or provisions. The Act provided that the effect of an order for restoration was that "the co. shall be deemed to have continued in existence . . . as if it had not been struck off" :—*Held :* the Crown was not entitled to moneys which were on deposit in a bank to the co.'s credit at the date of the striking off & which were still held by the bank when the co. was restored. The "rights" protected by the "without prejudice" clause did not include such rights as the Crown's right to *bona vacantia*.—A.-G. FOR BRITISH COLUMBIA *v.* ROYAL BANK OF CANADA & ISLAND AMUSEMENT CO., LTD., [1936] 1 W. W. R. 108; 50 B. C. R. 268; *affd.*, [1937] 1 W. W. R. 273; 1 D. L. R. 637; *affd.*, [1937] S. C. R. 459—**CAN.**

PART IV. SECT. 4.

sr. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkpcy. liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—*Re* NIPPON KINYN SHA, LTD., *Ex p.* TOTARO FUJINO, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 880; 3 C. B. R. 673.—**CAN.**

Part V.—Insurance Companies.

7482. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

7482a. Power of company to vary rate of interest on loans to policy-holders.]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral contract or on established practice :—*Held :* there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—THISELTON *v.* COMMERCIAL UNION ASSURANCE CO., [1926] Ch. 888 ; 95 L. J. Ch. 447 ; 136 L. T. 114 ; 70 Sol. Jo. 892.

7484a. Shareholders—Liability to execution.]—Affidavits of a director of the co. stating, that, on a certain day, the co. discontinued to carry on its business, & was wholly insolvent, & that its funds, property, & assets were & had since continued totally exhausted, & that there were no funds, property, or assets of or belonging to the co., or any other means whatsoever from or by which the pltf. could recover or enforce payment of the judgment-debt ; & of the sheriff's officer to whom a *fi. fa.* against the co. had been delivered for execution, stating that he went to the only place in London where the co. had carried on its business, & found the place deserted, & from information & personal inspection ascertained that they had no goods or property there :—*Held :* sufficient to entitled the judgment-creditor to execution against a shareholder under 7 & 8 Vict. c. 110, s. 68.—RIDGWAY *v.* SECURITY MUTUAL LIFE ASSURANCE SOCIETY (1856), 18 C. B. 686 ; 139 E. R. 1540.

7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers' liability insurance company—Carrying on business outside United Kingdom—What is.]—The above Act applies to employers' liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (*i*) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—*Re* UNITED GENERAL COMMERCIAL INSURANCE CORPN., [1927] 2 Ch. 51 ; 96 L. J. Ch. 231 ; 136 L. T. 653 ; 71 Sol. Jo. 141, C. A.

Annotation :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922.

7485b. Liability of assets.]—A policy of insurance under the common seal of a joint stock co. contained the following proviso : " That the said policy, or any thing therein contained, shall in no case extend, or be deemed or construed to extend, to charge or render liable the respective proprietors of the said co., or any of them," etc., " to any claim or demand whatsoever in respect of the said policy or of the assurance thereby made, beyond the amount of their, his or her individual shares or share in the capital stock of the said co. ; but that the capital stock & funds of the said co. shall alone be charged & liable to answer all claims & demands by virtue of the said assurance, or incident thereto " :—*Held :* the terms of the policy precluded the assured from any remedy at law against individual shareholders ; &, consequently, that, after using due diligence to obtain satisfaction of a judgment recovered against the co. in an action on such policy, by execution against their property, he was not entitled to issue execution against an individual shareholder, under sects. 66 & 68 of Stat. 7 & 8 Vict. (c. 110), ss. 66, 68.—HALKET *v.* MERCHANT TRADERS' SHIP LOAN & INSCE. ASSOCN. (1849), 13 Q. B. 960 ; 19 L. J. Q. B. 59 ; 14 Jur. 222 ; 116 E. R. 1530.

7490. After this case add :—

—— Company carrying on motor vehicle business.]—*See* Road Traffic Act, 1930 (c.43), s. 42.

7490a. —— "Policy on human life"—What amounts to.]—The co., now in liquidation, in addition to ordinary life assurance business issued endowment policies consisting of assurances of sums of money maturing at the expiration of a stated number of years. Amongst other such policies the co. issued a form of certificate whereby in consideration of an annual premium it assured payment to the certificate-holder (which expression included his exors., administrators & assigns) of a fixed sum at a future date, subject to a condition that the legal personal representatives of any certificate-holder should be at liberty to surrender the certificate to the co. within six months of the death of the holder, in which case the co. should pay to them the total amount of all premiums then paid thereunder :—*Held :* looking to the option of surrender given to the legal personal

PART V. SECT. 1.

st. *Grounds for granting or refusing licence—Whether company carrying on business in good faith.*]—*Re* ALL RISK INSURANCE AGENCIES, LTD. (B. C.), [1927] 3 D. L. R. 245 ; [1927] 3 W. R. R. 58.—**CAN.**

7483 i. *Power of directors to contract—Contract to stand surety for debt due by third party.*]—*Held :* not within the co.'s arts. of assocn.—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHALSA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

sx. *Superintendent of insurance—Powers—To alter annual statement of company.*]—*Re* SUN LIFE ASSURANCE CO., [1927] 4 D. L. R. 287.—**CAN.**

sy. *Power to write off capital—Extent of power.*]—The power conferred by sect. 70 of Insurance Act, R. S. C., 1927 (c. 101), of writing off paid-up capital is not limited to the writing off of the precise amount of the lost capital.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 113 ; 4 D. L. R. 572 ; 39 Man. L. R. 188 ; 12 C. B. R. 21.—**CAN.**

PART V. SECT. 5.

sa. *British company doing business in Irish Free State.*]—A British insurance co. doing business in the Irish Free State after Dec. 1922, claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied with in 1914, when deposits were made in England :—*Held :* the co. was bound to make such deposits in the Irish Free State.—WESTERN AUSTRALIAN INSURANCE CO., LTD. *v.* A.-G. & MINISTER FOR INDUSTRY & COMMERCE, [1926] I. R. 57 ; 59 I. L. T. 109.—**IR.**

representatives in case of the death of the holder, the form of certificate was a " policy on human life " within the statutory definition contained in Assurance Cos. Act, 1909 (c. 49), s. 30 (*a*), entitling the holder to resort to the statutory deposit in the liquidation of the co.—*Re* NATIONAL STANDARD LIFE ASSCE. CORPN., [1918] 1 Ch. 427 ; 87 L. J. Ch. 283 ; 118 L. T. 621.

7490b. —— **Reinsurance of fire risks.**]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) *v.* A.-G., [1925] A. C. 639 ; 94 L. J. K. B. 712 ; 133 L. T. 151 ; 41 T. L. R. 473 ; 69 Sol. Jo. 543 ; 30 Com. Cas. 252, H. L. ; *affg.* S. C. *sub nom.* A.-G. *v.* FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) (1924), 93 L. J. K. B. 679, C. A.

Annotations :—**Reld.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* National Benefit Assce., *Ex p.* English Insce., [1928] Ch. 74.

7490c. —— **Company carrying on accident insurance business—Charitable association.**]—The ct. held that the British Provident Assocn. for Hospital & Additional Services was not a co. carrying on accident insurance business within Assurance Cos. Act, 1909 (c. 49), s. 1 (c).—HALL D'ATH *v.* BRITISH PROVIDENT ASSOCN. FOR HOSPITAL & ADDITIONAL SERVICES (1932), 48 T. L. R. 240 ; 76 Sol. Jo. 111.

7493a. —— —— —— **By summons under R. S. C., Ord. 50, r. 2 (8).**]—*Re* CANADA LIFE ASSURANCE CO., [1929] W. N. 46 ; 167 L. T. Jo. 156.

7493b. —— —— —— ——.]—A co. carrying on a general insurance business deposited, under the combined provisions of Assurance Cos. Act, 1909 (c. 49), & Road Traffic Act, 1930 (c. 43), s. 42, & rules thereunder, securities to the value of £15,000 in respect of motor vehicle insurance. The securities so deposited increased in market value, & the co. sought to exchange them for other securities to the value of £15,000. The questions arose whether an application to the ct. should be made by petition or by summons in Chambers, & whether the co. had any such right :—*Held :* (1) if the £15,000 deposit had been made in cash, no variation could occur, &, therefore, if securities were deposited in lieu of cash, on the one hand the co. could not demand as of right to change those securities if they appreciated in value, nor, on the other hand, could the Paymaster-General demand further security in case of a depreciation in value of the securities deposited ; (2) if the application were to withdraw the securities, the application must be by petition to the ct., but if it were for a mere change of investment it must be by summons ; (3) in either case the Board of Trade must be consulted in the first place, & the ct. has discretion to pass such order as it may deem just in the particular circumstances.—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., [1933] Ch. 349 ; 102 L. J. Ch. 98 ; 148 L. T. 451 ; 49 T. L. R. 107.

7493c. —— —— —— **Appreciation or depreciation of securities—Whether grounds for variation.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7493d. —— —— —— **Notice to Board of Trade.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7498. *Add. Annotation :*—**Reld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7500. *Add. Annotations :*—**Reld.** *Re* South East Lancashire Insurance Co., [1935] Ch. 225 ; *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500a. —— **Deposit by company carrying on motor vehicle business.**]—(1) The deposit of £15,000 made by a co. under Assurance Companies Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, is primarily applicable in satisfaction of claims under motor vehicle insurance policies issued by the co. in priority to the claims of its general creditors.

(2) The deposits dealt with in Road Traffic Act, 1930 (c. 43), s. 43, are primarily applicable for the payment of claims arising in respect of third party risks only, the £15,000 deposit being a security for the holders of policies coming within the motor vehicle insurance business.—*Re* SOUTH-EAST LANCASHIRE INSURANCE CO. (1932), 102 L. J. Ch. 27 ; 49 T. L. R. 25 ; 76 Sol. Jo. 815.

Annotation :—**Consd.** *Re* South East Lancashire Insurance Co., [1934] Ch. 374.

7500b. —— ——.]—In the winding up of an insurance co. carrying on motor vehicle insurance business, the deposit of £15,000 made by the co. with the Accountant-General of the Supreme Ct. under the Assurance Cos. Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, forms assets of the co. available for distribution among all its creditors generally, & is not primarily applicable to the satisfaction of the claims of the holders of motor vehicle insurance policies issued by the co.—*Re* SOUTH EAST LANCASHIRE INSURANCE CO., LTD., [1935] Ch. 225 ; 104 L. J. Ch. 158 ; 152 L. T. 245 ; 51 T. L. R. 143 ; 78 Sol. Jo. 859, C. A.

Annotation :—**Apld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500c. ——.]—(1) Where a statutory deposit has been made by an assurance co., the policy holders of the class in respect of which the deposit was made & the general creditors of the co. whose claims arise in connection with the business of that class have, in a liquidation, a claim in priority to other creditors over the investments made by the co. representing that deposit.

(2) Where an assurance co. goes into liquidation the holder of an industrial policy entered into before the year 1924, must, before he can make a claim against the deposit made under Life Assurance Cos. Act, 1870 (c. 61), show that, if he is only admitted to prove against the deposit made under the Act of 1923 & against the general assets, he would

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7498 i. *Application of deposit on up.*]—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289 ; [1927] 2 W. W. R. 348 ; 36 Man. L. R. 549.—**CAN.**

receive less than he would have received if the Act of 1923 had not been passed.—*Re* HEARTS OF OAK ASSURANCE CO., LTD., [1936] Ch. 558; 105 L. J. Ch. 211; 155 L. T. 407; [1937-7] B. & C. R. 65.

7508a. —— —— ——.] — *Re* UNITED BRITISH INSURANCE CO., *No.* 7526a, *post.*

7510a. Insurance companies—Separate funds—Distribution of surplus of one fund among members of society.]—In Assurance Companies Act, 1909 (c. 49), as applied to industrial life assurance by the Industrial Assurance Act, 1923 (c. 8), there is nothing to prevent a society, which is carrying on industrial life assurance as well as ordinary life assurance, from distributing among its members such part of the surplus of the industrial life assurance fund as it may be determined to distribute in accordance with the provisions of its rules.—WESLEYAN & GENERAL ASSURANCE SOCIETY *v.* A.-G., 148 L. T. 49 T. L. R. 140; 77 Sol. Jo. 48.

7526a. ——.]—Where an assurance co. having power under its memorandum of assocn. to transfer its business or any part thereof to another co. has agreed to transfer all its life business to another assurance co., & the proposed transfer has been sanctioned by the ct. upon a petition presented under Assurance Companies Act, 1909 (c. 49), s. 13, & all statutory requirements in connection with the transfer have been duly complied with, the effect is that all liability of the transferring co. towards its policy holders is completely discharged, & the ct. can order payment out of the deposit money to the transferring co.—*Re* UNITED BRITISH INSURANCE CO., [1929] 2 Ch. 430; 98 L. J. Ch. 444; 142 L. T. 12.

7536. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

7542a. —— —— —— ——.]—*Re* BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909 (1927), 71 Sol. Jo. 729.

7549. *Add. Annotation :*—*As to* (1) **Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

7551. After this case add :—

——.]—*See* Assurance Cos. (Winding-up) Act, 1933 (c. 9).

7551a. Winding-up of reinsurer—Claim against insuring company—Set-off.]—By a treaty of reinsurance dated Apr. 13, 1920, between two insurance cos. the reinsurer accepted a share of all insurances accepted by or renewed by the insuring co. in its fire department. By Art. VIII. of the treaty the insuring co. was entitled to retain & accumulate out of money due to the reinsurer a sum equal to 40 per cent. of the share of all premiums credited to the reinsurer in the first year, this sum to remain as a deposit to secure the due performance of the reinsurer's obligation. The insuring co. was to be entitled to retain deposit, or any balance remaining after satisfying any obligation in respect of which the reinsurer might make default, until the determination of the agreement, paying the reinsurer interest at 3½ per cent. *per annum* on any part of the deposit not used in manner aforesaid. By Art. IX. the agreement was immediately determinable by notice on the reinsurer going into liquidation. On Jan. 31, 1922, the reinsurer presented its own winding-up petition, & on Feb. 1, 1922, the insuring co. gave notice determining the agreement. On Feb. 14, 1922, a compulsory order was made for the winding up of the reinsurer. After all obligations under the treaty had been satisfied, there remained in the possession of the insuring co. a sum of over £8,000 out of the deposit & a sum of accrued interest. The liquidator of the reinsurer took out a summons for a declaration that the insuring co. was bound to pay over the deposit & interest in full. The insuring co. claimed to be entitled to set them off against sums due to it from the reinsurer under other treaties & policies of insurance & reinsurance :—*Held :* (1) the interest was a debt due from the insuring co. to the reinsurer & fell therefore within Bkpcy. Act, 1914 (c. 59), s. 31, as being one of a number of mutual credits or debts arising between the parties, & that there was therefore a right of set-off in regard to it; (2) the deposit being money handed over to the insuring co. for a specific purpose, the balance remaining after satisfying the specific purpose continued to be excluded from the course of account between the parties & could not be the subject of a set-off. —*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

7593. *Add. Annotation :*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

7600. *Add. Annotations :* —*As to* (1) **Expld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558. *As to* (2) **Consd. & Apld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7609. *Add. Annotations :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

7611a. —— **Former actuary—In receipt of pension.**] —On the resignation of the actuary & secretary of an insurance co. which, in addition to other branches of insurance

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PART V. SECT. 3, SUB-SECT. 1.

c i. —— —— *Meaning of "liabilities" in Victoria.*]—On the proper construction of the sect. the "liabilities of the co. in Victoria" referred to in sect. 448 of Cos. Act, 1928, include a liability incurred elsewhere than in Victoria which is to be satisfied in Victoria.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD., [1932] V. L. R. 301; Argus L. R. 324.—**AUS.**

PART V. SECT. 8, SUB-SECT. 4.—A.

c i. —— *Dominion Winding-up Act.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 132.—**CAN.**

c ii. —— ——.]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 1080.—**CAN.**

PART V. SECT. 8, SUB-SECT. 5.—A.

sg. *Full amount insured—No right to repayment of premiums.*]—In Jan. 1930, an order was made for the winding up of a life assurance co. In May, 1930, the official liquidator of the co. informed all policy-holders in the co. that the co. would not carry out its obligations under the policies. Between Jan. & May, 1930, certain policy-holders paid their premiums as they became due to the official liquidator. He placed the moneys so received in a special account. The policy-holders claimed that the moneys should be repaid to them. The liquidator now applied to the ct. for directions as to how he should deal with these moneys : —*Held :* the winding-up order did not determine the policies, & as by virtue of paying the premiums the policy-holders had become entitled to prove in the liquidation for the full amount insured, in the event of the policy maturing prior to repudiation they were not now entitled to the repayment of the premiums, &, therefore, the moneys should be retained by the liquidator as assets of the co.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD. (1934), 34 S. R. N. S. W. 499; 51 N. S. W. W. N. 160.—**AUS.**

7612a. ——.]—*Held:* the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—ENGLISH INSURANCE CO. *v.* NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER), [1929] A. C. 114; 98 L. J. Ch. 1; 140 L. T. 76; [1928] B. & C. R. 67, H. L.; *affg.* S. C. *sub nom. Re* NATIONAL BENEFIT ASSURANCE CO., *Ex p.* ENGLISH INSURANCE CO., [1928] Ch. 74, C. A.

Annotations:—**Distd.** *Re* Norske Lloyd Insce., [1928] W. N. 99. **Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658; *Re* National Benefit Assurance Co., Ltd., [1931] 1 Ch. 46; Motor Union Insurance Co., Ltd. *v.* Mannheimer Versicherungs Gesellschaft, [1933] 1 K. B. 812.

7612b. —— Effect of compromise under 1908 Act, s. 214, accepted & acted on by parties.]—*Re* NORSKE LLOYD INSURANCE CO., LTD., [1928] W. N. 99.

7620. *Add. Annotation:*—**Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622. *Add. Annotation:*—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622a. —— ——.]—An insurance co. carrying on a marine & general insurance business but excluding from its objects (*inter alia*) fire insurance business, insured, through agents in Germany, a consignment of wool whilst in transit from quay to warehouse & whilst stored in a warehouse, against all damage or loss for one month. The policy was on a printed marine form in the German language, & the risks of fire & pilferage were included by indorsement. The policy was twice renewed whilst the wool was in storage upon payment of the same premium. After the second renewal a fire occurred causing serious damage to the wool. The owners claimed under the policy & recovered judgment in Germany, & afterwards in the King's Bench Division, suing on the foreign judgment.

The insurance co. having gone into liquidation, appcts. presented a proof for the amount of the judgment, but the liquidator rejected it:—*Held:* the policy, though on a

7625. *Add. Annotations:*—**Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7626. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7627. *Add. Annotations:*—**Overd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

7627a. ——.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

Annotation:—**Apprvd. & Folld.** *Re* City Life Assce. Co. (1925), 42 T. L. R. 45.

7627b. ——.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpcy. Act, 1914 (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies.—*Re* CITY LIFE ASSURANCE CO., LTD., [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

Annotations:—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262; *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1929), 99 L. J. Ch. 358.

Part VI.—Companies Registered Under Repealed Statutes.

7647a. —— Alteration in objects.]—*Re* HEWITT BROTHERS, LTD. (1931), 75 Sol. Jo. 615.

Part VII.—Unregistered Companies

7650. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

7663. *Add. Annotation :*—**Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

7669a. —— —— ***Representatives of deceased members.***]—An unregistered co. cannot be wound up under Cos. Act, 1862 (c. 89), s. 199, unless there are more than seven existing members at the date of the winding-up petition. Representatives of deceased members, trustees of bkpt. members, & past members, although liable to contribute to the debts of the co., are not members within the [illegible] BOWLING & WELBY'S CONTRACT, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 39 Sol. Jo. 345; 43 W. R. 417; 2 Mans. 257; 13 R. 125, C. A.

Annotations :—**Apld.** [illegible] Llewellyn *v.* [illegible] [1914] 2 Ch. 670.

7669b. —— —— **Trustees of bankrupt members.**]—*Re* BOWLING & WELBY'S CONTRACT, No. 7669a, *ante*.

7687. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. —— —— ——.]—COURTEIS *v.* JOHNSON (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

Annotation :—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

7726. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

7737. *Add. Annotation :*—*As to* (2) **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

Part IX.—Statutory Companies for Public Purposes.

7843a. —— **Capital expenditure out of reserve funds.**]—Sums expended by the railways upon capital works, & furnished by drawing upon their own undistributed profits, pension funds & reserves, are not additional capital "raised or provided" within Railways Act, 1921 (c. 55), s. 58 (1) (*b*). Therefore the companies are not entitled to include those sums as capital for the purpose of fixing the standard rates & charges necessary to produce the revenue sufficient to remunerate them upon their capital valuation.—*Re* STANDARD CHARGES SCHEDULE (1925), 94 L. J. K. B. 364; 132 L. T. 682; 89 J. P. 90; 41 T. L. R. 247; 69 Sol. Jo. 326; 23 L. G. R. 209; 18 Ry. & Can. Tr. Cas. 133, C. A.

7862. *Add. Annotation :*—*As to* (1) **Consd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

7904a. —— ——.]—The ct. will not grant a rule under 8 & 9 Vict. c. 16, s. 36, for a *scire facias* against a party as a shareholder in a joint stock co., upon a judgment obtained against the co., unless the affidavits disclose reasonable grounds for believing that the party sought to be charged is a shareholder. The fact of his having applied for & received an allotment of shares, & paid a deposit thereon, is not enough.—EDWARDS *v.* KILKENNY & GREAT SOUTHERN & WESTERN RY. Co. (1863), 14 C. B. N. S. 526; 143 E. R. 526.

PART VII. SECT. 2, SUB-SECT. 1.

7654 i. *Power of court—Under Companies Acts — Discretionary.*] — The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator :—*Held :* although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—MUIRHEAD *v.* BORLAND, [1925] S. C. 474.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—A.

7658 i. *"Unregistered company"—Benevolent society.*]—A co. & its directors instituted & endowed a benevolent society, which was not registered under Friendly Societies Act, 1896, & made it a condition in the contract of employment of its manual labourers that they should be members of the society. In addition to income derived from the endowment fund, further income was provided, in terms of the constitution, by the members paying small weekly sums to the society, which were deducted from their wages, & by the co. paying an equal amount. The members & their dependants were respectively entitled to sickness & death benefits. The management was vested in a committee which was elected by the members in annual general meeting. The co., having been bought up by a larger concern, went out of business, & the works were eventually closed down. A special meeting of the society was thereafter held, at which it was resolved to cease receiving contributions & paying benefits. Subsequently certain officers of the society presented a petition for the winding up of the society as an "unregistered co." :—*Held :* the society was not a "partnership, assocn., or co." within Cos. Act, 1908, Part VIII., s. 267, in respect that there was no contractual relation between the members *inter se*, &, accordingly, that it could not be wound up under the Act as an "unregistered co."—*Re* CALEDONIAN EMPLOYEES' BENEVOLENT SOCIETY, [1928] S. C. 633.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—D.

7670 i. *Association of less than seven members—At date of petition.*]—*Held :* the ct. may not under Cos. Act, s. 271, order the winding up of an unregistered co. if it is composed at the date of the application for its winding up, of not more than 7 members.—V. E. R. M. CHETTYAR *v.* HORMASJI (J) (1930), I. L. R. 8 Ran. 658, *revsg.* S. C. *sub nom. Re* INDIAN COMPANIES ACT, 1913 (1930), I. L. R. 8 Ran. 409.—IND.

v. WHITEHEAD, [1931] 1 Ch. 558; 100 L. J. Ch. 147; 144 L. T. 636; [1929-30] B. & C. R. 276.

7956. *Add. Annotation :*—*As to* (2) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

8045. *Add. Annotations :*—**Distd.** Aylott *v.* West Ham Corpn., Sisson *v.* Same (1926), 95 L. J. Ch. 533. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

8091. *Add. Annotation :*—**Refd.** Lovibond *v.* Grand Trunk Ry. Co. of Canada, [1936] 2 All E. R. 495.

8126. *Add. Annotation :*—*As to* (2) **Refd.** Cotter *v.* National Union of Seamen [1929] Ch. 58.

8129. *Add. Annotations :*—*Generally*, **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8150. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

8176. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8321. *Add. Citation :*—2 Macq. 391.

8339. *Add. Citation :*—1 Macq. 461.

Add. Annotations :—**Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

8361. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

8365. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

8366. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

8375. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

8389. *Add. Annotations :*—*As to* (1) **Apld.** Garrard *v.* James, [1925] Ch. 616. **Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536. **Refd.** Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

8390. *Add. Annotations :*—**Refd.** *Re* George Inglefield, Ltd., [1933] Ch. 1; *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

8412a. —— ——.]—*Re* MERSEY RY. CO., GIBBS *v.* MERSEY RY. CO. (1895), 11 T. L. R. 390.

8416. *Add. Annotation :*—**Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

PART IX. SECT. 8, SUB-SECT. 5.—B.

b i. —— *Necessity for.*]—Where the directors of a railway co. at one meeting made several calls, payable at intervals of two months from each other :—*Held :* bad, for the calls cannot be made at less intervals than two months; & a stockholder who had paid the first call thus made, & then transferred his shares, was not responsible for the subsequent calls thus illegally made.—MOORE *v.* MCLAREN (1862), 11 C. P. 534.—**CAN.**

b ii. —— *How calculated.*]—Where calls on stock were to be made "at periods of not less than three months' interval," & one call was made payable on Aug. 10, & another on Nov. 10 :—*Held :* an interval of three months had not elapsed between the two calls, & that the second call was therefore bad.—STADACONA FIRE & LIFE INSURANCE CO. *v.* MACKENZIE (1878), 29 C. P. 10.—**CAN.**

PART IX. SECT. 14, SUB-SECT. 1.

8370 i. *By issue of debentures—On completion of portion of railway—Issue before completion.*]—The B. & W. Ry. Co., whose borrowing powers were not to arise until a certain portion of their line should have been open for traffic, entered into an agreement with the S. & W. Ry. Co. that, if the latter co. would advance them a sufficient sum to enable them to complete that portion of the line, they, the B. & W. Co., would, when their borrowing powers arose, issue & deliver to the S. & W. Co. a sufficient amount of debentures to enable them to repay themselves the sum which they should so advance. In pursuance of this agreement, the S. & W. Co. paid, from time to time, the contractor's accounts, until the portion of the line required by the B. & W. Co.'s special Act to be open for traffic before the borrowing powers should arise was completed. The S. & W. Co. advanced in that way £12,000. The B. & W. Co.'s borrowing powers having arisen, they issued & delivered to the S. & W. Co. debentures to secure that advance :—*Held :* there was nothing illegal in that contract, & the debentures were valid to the extent of £12,000, the sum actually advanced.—*Re* BAGNALSTOWN & WEXFORD RY. CO. (1870), 4 I. R. Eq. 505.—**IR.**

8420a. As between lenders & unsecured creditors.]—A tramway co., created by private Act of Parliament incorporating the Cos. Clauses Acts, was closed down, &, after being registered as a limited co. under Part IX. of the Cos. Act, 1929, was voluntarily wound up. The liquidator took out a summons to determine (*inter alia*) the rights of debenture-holders as against unsecured creditors, & the extent of the charge created by the debentures:—*Held:* the tramway having altogether ceased to exist as a going concern, the debenture-holders were entitled to a charge on all the assets, including proceeds of sale of realised assets & uncalled capital, in priority to the claims of unsecured creditors.—*Re* GLYN VALLEY TRAMWAY CO., [1937] Ch. 465; [1937] 3 All E. R. 15; 106 L. J. Ch. 238; 157 L. T. 36; 53 T. L. R. 743; 81 Sol. Jo. 479.

8444a. —— ——.]—A receiver & manager was appointed of the undertaking of a tramways co.—BARTLETT *v.* WEST METROPOLITAN TRAMWAYS CO., [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560.

Annotation:—**Dbtd.** Marshall *v.* South Staffordshire Tram. Co., [1895] 2 Ch. 36.

8463. *Add. Annotation:*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

8481a. —— **Priority in winding-up—Validity.**]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante.*

8481b. Condition restricting rights of preference shareholders—Limitation to repayment out of surplus assets paid up on share—Validity.]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante.*

8481c. Surplus assets — Distribution between original & surplus capital.]—No provision was made in the memorandum or articles of a statutory co., which had a capital of £10,000, either for the distribution of surplus assets in the event of a winding up or for dividends, except that the directors could declare a dividend to the members in proportion to their shares. In 1902 an order, which was confirmed by statute, was made providing for an increase of the capital to £18,000 by an issue of additional shares. The order provided that the undertakers should not make a larger dividend payment than one of 10 per cent. on the original capital & one of 7 per cent. on the additional capital. There was no provision with regard to the distribution of surplus assets & there was nothing else to distinguish the two classes of capital. In 1936 the co.'s undertaking was sold & the co. was wound up. A question arose as to the distribution of surplus assets in the hands of the liquidator after payment of the debts of the co. & after paying to the shareholders the amount paid up on their shares. The surplus assets represented *inter alia* the proceeds of the carrying on of the undertaking since the last dividend was declared & paid:—*Held:* (1) as no dividend had been declared by the directors before the winding up, the surplus assets could not be distributed partly as dividend & partly as capital; (2) the surplus assets should be distributed *pari passu* between the holders of both classes of share capital.—*Re* SYSTON & THURMASTON GAS, LIGHT & COKE CO., LTD., [1937] 2 All E. R. 322.

Part XII.—Foreign Companies.

8510. *Add. Annotations:*—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; A.-G. *v.* Belilios, [1928] 1 K. B. 798.

8512. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

8513. *Add. Annotation:*—**Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

8514. *Add. Annotation:*—**Refd.** Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137.
After this case add:—
—— ——.]—*See, now,* 1929 Act, s. 234 (1).

8520. *Add. Annotation:*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

8523. For the portion of the paragraph in the original volume commencing with "*Held:*" substitute the following paragraph:—
Held: (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the

PART X. SECT. 6.

sb. *Effect of Act respecting Capacity of Companies,* 1917 (c. 12).]—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PURE OIL CO., LTD. (Man.), [1926] 1 D. L. R. 689; [1926] 1 W. W. R. 436; 35 Man. L. R. 433.—**CAN.**

PART XII. SECT. 4.

t. (top of p. 1200). Read now "**w.**"

w (p. 1200) **i.** —— *Company holding no licence in mortmain.*]—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land:—*Held:* the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns.—*Re* NEW YORK LIFE INSURANCE CO. (1924), 55 O. L. R. 408.—**CAN.**

q (p. 1200) **i.** —— —— *Burden of proof of status to carry on business.*]—LA SALLE EXTENSION UNIVERSITY *v.* FREEMAN (Man.), [1926] 3 W. W. R. 474.—**CAN.**

g. (p. 1202). Add "*revsd.* 56 S. C. R. 539."

g. (p. 1202) **i.** —— —— ——.]—NEWS PUBLISHING CO. *v.* ARMSTRONG STAGE & TAXI CO., [1933] 3 D. L. R. 568.—**CAN.**

PART XII. SECT. 5.

ss. *General rule.*]—In the absence of evidence of the law of the foreign state in question, the ct. cannot hold that a doctrine of English law applicable to a co. incorporated under local statutes applies to a co. incorporated under a foreign statute.—CLARK *v.* THOMAS J.

PART XII. SECT. 7, SUB-SECT. 1.—A.

ii. —— *Necessity for proof of incorporation.*]—The provisions of Cos. Act, 1933, requiring foreign cos. to be registered & licensed in Saskatchewan before commencing to carry on business therein do not prevent an unregistered foreign co. from suing in the

they ought to have moved to strike out the name of the bank as pltf.—RUSSIAN COMMERCIAL & INDUSTRIAL BANK *v.* COMPTOIR D'ESCOMPTE DE MULHOUSE, [1925] A. C. 112; 93 L. J. K. B. 1098; 132 L. T. 99; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

As to (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Distd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd., [1933] A. C. 289. **Consd.** Russian & English Bank *v.* Baring Bros. Co. (1932), 48 T. L. R. 193. *As to* (2) **Folld.** Banque [illegible] de Petrograd *v.* Goukassow, [1925] A. C. 150. **Consd.** The Jupiter (No. 2), [1925] P. 69; The Jupiter (No. 3) (1927), 137 L. T. 333. **Distd.** [illegible] *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. Russian & English Bank *v.* Baring Bros. & Co., [illegible] 120; Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

8523a. —— ——.]—A bank incorporated in Russia in 1911, with British shareholders holding a majority of the shares, established a branch in London under separate management in 1915. In 1917 the Bolshevist revolution took place, & the bank ceased to carry on any business in Russia, its last general meeting being held at Petrograd in June, 1917. In 1921 an action was commenced in the name of the bank by British shareholders to recover two sums of £100,000 & £80,000, forming part of a credit lodged by the former Russian Govt. with defts., an English bank, & alleged to have been assigned to pltfs. Pleadings were delivered, but the action lay dormant for several years, after which pleadings were amended & the A.-G. was added as a deft. At some uncertain date, either before or shortly after the action was launched, pltfs. were dissolved & ceased to exist as a corpn. at Russian law by virtue of a decree of the Soviet Government:—*Held:* on a procedure summons taken out by defts., the action must be stayed indefinitely, as pltfs. no longer existed either in Russia or in Great Britain.

Semble: although extinguished in the country of its origin, there is power in the ct. to wind up the English branch of a foreign corpn. as an unregistered co. under 1929 Act, s. 338.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1932] 1 Ch. 435; 101 L. J. Ch. 157; 146 L. T. 424; 48 T. L. R. 193; 76 Sol. Jo. 68.

Annotations:—**Consd.** *Re* Russian & English Bank, [1932] 1 Ch. 663; Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523b. —— —— **Application for removal of stay—After making of winding-up order.**]—A Russian banking co., which had established a business in England, was dissolved by Soviet law before the coming into operation of 1929 Act. The co. was pltf. in an action which was stayed in 1932 by an order of the ct., pltf. co. being treated as having been dissolved. A compulsory winding-up was subsequently made under sect. 338 of 1929 Act:—*Held:* 1929 Act, sect. 338 (2), did not operate to revive pltf. for the purposes of the action to which an end had been put by the order of the ct. or to avoid the dissolution brought about by the foreign law.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1934] Ch. 276; 103 L. J. Ch. 111; 150 L. T. 353; 77 Sol. Jo. 913; [1933] B. & C. R. 213.

Annotation:—**Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523c. —— ——.]—A foreign co. which after carrying on business in this country has been dissolved in the country of its incorporation may, notwithstanding its dissolution in that country, be wound up as an unregistered co. under 1929 Act, s. 338 (1), (2), although the dissolution took place before the passing of that Act; &, with the leave of the Registrar in Cos. Winding-up, on the instruction of the liquidator with the approval of the committee of inspection, an action may be brought in the name of the foreign co. to recover sums which at the date of its dissolution were due to the co. & unpaid.—RUSSIAN & ENGLISH BANK & FLORANCE MONTEFIORE GUEDALLA *v.* BARING BROS. & Co., LTD., [1936] A. C. 405; [1936] 1 All E. R. 505; 105 L. J. Ch. 174; 154 L. T. 602; 52 T. L. R. 393; [1936–7] B. & C. R. 28, H. L.

8523d. —— ——.]—By a decree dated June 20, 1936, the Italian government purported to dissolve the Bank of Ethiopia. The Emperor Haile Selassie had left Abyssinia on May 1 or 2, 1936. In an action begun on Sept. 29, 1936, the Bank of Ethiopia made claims against the National Bank of Egypt (its correspondent in Cairo & London), & against the liquidator appointed pursuant to the Italian decree. In the action direction was made for the trial of the issue whether the Bank of Ethiopia had been dissolved or had otherwise ceased to exist by virtue of the laws of the country under the laws whereof it was incorporated, or, if it had not so ceased to exist, whether the action had been brought with its authority. On Apr. 28, 1937, the Emperor Haile Selassie, in England, signed a decree purporting to empower all cos. incorporated under Ethiopian law to hold valid meetings of their members & of their councils of administration & to carry on business outside Abyssinia. On Apr. 29, 1937, the issue came before the Ct. for trial. During the hearing there was put before the ct. a certificate from the Foreign Office showing that the British government, in Dec. 1936, recognised the Italian government as being in fact (*de facto*) the government of the area

province on a contract made out of the province with respect to property situate outside of the province; but the pltf. foreign co. must prove its incorporation under the laws of the country in which it alleges it is incorporated.

A certificate, purporting to be under the hand & seal of the Secretary of State for a certain state of the United States of America, to the effect that the document attached thereto contains a true & correct copy of the charter of the pltf. co. is not receivable in evidence to prove that the co. is incorporated in that state. But applying K. B. rule 343, leave was given pltf. to establish its incorporation by an affidavit of said Secretary of State or of some official connected with his office who can testify as to the incorporation & verify an examined copy of the charter.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 699.—**CAN.**

[illegible] ——.]—The Supreme Ct. of New South Wales has no jurisdiction to entertain an action against a co. registered & carrying on business wholly outside the State & Service & Execution of Process Act, 1901–1928 (Cth.), does not extend its jurisdiction.—BRAEMAR WOOLLEN MILLS CO-OP., LTD. *v.* POINSETTIA HOSIERY [illegible] PTY., LTD. (1931), 51 N. S. W. W. N. 16.—**AUS.**

se. *Action by creditor—Liquidation in country of domicil.*]—A liquidation in the country of domicil of a co. registered in New South Wales as a foreign co. gives this ct. no jurisdiction to interfere with the rights of creditors in this State.—PRIMARY PRODUCERS BANK OF AUSTRALIA, LTD. *v.* HUGHES (1931), 48 N. S. W. W. N. 240.—**AUS.**

of Abyssinia then under Italian control:—*Held:* (1) the decree of June 20, 1936, was made by a *de facto* government having the occupied territory completely under its control & therefore under its full governmental authority; (2) the action could not be held to have been authorised by the Bank of Ethiopia, as it had not been brought by the liquidator's authority.

Semble: a *de facto* government has necessarily full responsibility, & its acts have the status of acts of a government with full responsibility.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513; [1937] 3 All E. R. 8; 106 L. J. Ch. 279; 157 L. T. 428; 53 T. L. R. 751; 81 Sol. Jo. 479.

8524. For the paragraph in the original volume substitute the following paragraph:—

—— ——.]—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank:—*Held:* the case was governed by *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—BANQUE INTERNATIONALE DE COMMERCE DE PETROGRAD *v.* GOUKASSOW, [1925] A. C. 150; 93 L. J. K. B. 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

Annotations:—**Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

8527a. —— —— **Whether company in existence.**]—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held:* (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—[illegible] LIABILITY ASSURANCE CORPN. *v.* COLLINS & Co., [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* SEDGWICK COLLINS & Co., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.; *affg.* S.C. *sub nom.* SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

Annotations:—*As to* (1) **Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *As to* (3) **Apld.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495. *Generally*, **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

8527b. —— **Company extinct—Judgment by default—Garnishee proceedings—Invalid.**]—On Oct. 29, 1930, a writ was issued by applts. against a Moscow bank, hereinafter called the Industrial Bank, claiming £362,396 15*s.* as a debt & interest; an affidavit was sworn on which an order was made for service of notice of the writ on the Industrial Bank at Moscow. On Nov. 24, 1930, judgment was entered for applts. in default of appearance. On Nov. 28, 1930, applts. received a letter from the Soviet Embassy, dated Nov. 27, 1930, returning the notices of the writ & stating that they could not be delivered as the Industrial Bank went out of existence during the 1917 Oct. revolution. On Dec. 12, 1930, the applts. obtained a garnishee order *nisi* against resps., who were indebted to the Industrial Bank for a sum in excess of the sum for which applts. had obtained judgment. A copy of the order was sent on the same day to the Industrial Bank but was returned marked "unknown."

On the questions whether the garnishee order *nisi* should be set aside on the ground that the judgment was a nullity, having been signed against a non-existent deft., since the Industrial Bank had ceased to exist as a juristic person before the date of the writ, & further whether the order should not also be set aside on the ground that there was no proper service on defts. even if existent:—*Held:* (1) the English ct. recognised that the governing authority in Russia was, & had been since Oct. 1917, the Soviet State, & the Russian Soviet law, as to whether the Industrial Bank was in Oct. 1930, an existing juristic person, was a question of fact which must be proved by qualified expert evidence as to the foreign law & decided by the judge alone; the evidence compelled the conclusion that the Industrial Bank was by Soviet law non-existent in Russia in 1930, & therefore the judgment & garnishee proceedings must be set aside; (2) the discretion of the ct. ought to be exercised to set aside the order for service of the writ, & in refusing to treat the judgment as of sufficient foundation for a garnishee order, as the affidavit had not properly disclosed the position, & because no reference was therein made to the procedure provided for such cases by R. S. C., Ord. 11, r. 8, which, if it had been complied with would have resulted in the judge becoming aware of the impossibility of service of the notice of the writ; (3) at the material time the procedure under R. S. C., Ord. 11, was mandatory, the relevant words being "the following procedure shall be adopted"

& not as now permissive by the substitution since made by the Rules Committee of the word "may" for the word "shall." Accordingly, apart from the want of accuracy in the affidavit, the order for substituted service was made by an incompetent procedure & was a nullity. The judgment, therefore, based on such service & the subsequent garnishee proceedings failed.—LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., [1933] A. C. 289; 102 L. J. K. B. 191; 148 L. T. 242; 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.: *affg.* S. C. *sub nom.* LAZARD BROS. & Co. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations:—As to (1) **Reid.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120. *Generally,* **Reid.** Burr *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527c. —— —— —— **Setting aside.**]—If it comes to the knowledge of the ct. that it has entered judgment in default of appearance against a man who was at the time dead, or a co. which was at the time dissolved, or non-existent according to the law of its country of origin, the ct. is bound, after hearing the parties interested, of its own motion to set the judgment aside (SCRUTTON, L.J.).—LAZARD BROS. & Co. *v.* BANQUE INDUSTRIELLE DE MOSCOU; LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., [1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240, C. A.; *affd.*, [1933] A. C. 289, H. L.

Annotation:—**Reid.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527d. —— —— **Setting aside judgment.**]—A Chilean co. was formed under Chilean law by the making of two decrees in Mar. & Apr. 1931. On Jan. 2, 1933, a Presidential decree was issued declaring that the two former decrees creating the co. were repealed & left without effect. On Jan. 19, 1933, a judgment in favour of the then pltfs. (the present defts.) was given in an action in the English High Ct. against the co. Pltfs. in the present action, members of a Liquidation Commission appointed to take over the assets lately belonging to the Chilean co., claimed a declaration that the judgment given in the English High Ct. was null & void:—*Held:* the effect of the Presidential decree was that the co., although it had had a *de facto* existence, never came into legal existence & was not a *de jure* entity, & was non-existent at the time when the judgment was given against it. The present pltfs. were therefore entitled to a declaration that the judgment against the co. was null & void as having been given against a non-existent deft.—BURR *v.* ANGLO-FRENCH 282; 49 T. L. R. 405;

8542. *Add. Annotations:*—
v. Rossia Insce. of Petrograd, *Re* Russian & English Bank 282.

8543. *Add. Annotations:*—
v. Rossia Insce. of L. T. 808; *Re* Vocalion (Foreign), 48 T. L. R. 525.

8548a. —— **Company dissolved before Power to wind up as unregistered company Winding up of English branch.**]—RUSSIAN ENGLISH BANK *v.* BARING BROS. & Co., No. 8523a, *ante.*

8548b. —— —— ——.]—A petition was by creditors, whose debt was disputed, for the compulsory winding-up of an unregistered foreign co. which had a branch in England & which was dissolved by the laws of Russia before the 1929 Act came into operation:—*Held:* (1) the provisions of 1929 Act, s. 338, notwithstanding sub-sect. 2 of sect. 338, did not alter the law as it existed, before that statute came into operation, under the corresponding sects. of the Acts of 1862 & 1908, & the ct. had therefore jurisdiction to make an order for the compulsory winding-up of the co. under sect. 338 (1) (*d*); (2) notwithstanding the general rule that a disputed debt may not form the basis of a creditor's petition for the winding-up of a co., petitioners would in the circumstances be otherwise without a remedy & were entitled to proceed by a winding-up petition; & they were entitled to a compulsory order for the winding-up of the co.—*Re* RUSSIAN & ENGLISH BANK, [1932] 1 Ch. 663; 101 L. J. Ch. 226; 147 L. T. 57; 48 T. L. R. 282; 76 Sol. Jo. 201; [1931] B. & C. R. 140.

Annotations:—As to (2) **Folld.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. **Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8548c. —— —— ——.]—The bank was established in Russia in 1871 as a limited co. & was authorised by its statutes to open branches in Russia & elsewhere, which it did in, among other places, London & Paris. In 1909 it began business in London, filed particulars with the Registrar of Cos., & registered the names & addresses of persons authorised to accept service in England on its behalf. The bank at all material times consisted of more than eight members. Petitioner claimed to be a creditor for over £23,000, & asked that the bank should be wound up. Expert evidence for him expressed the view that the bank had ceased to exist as a result of decrees made under

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PART XII. SECT. 8, SUB-SECT. 1.

e i. —— —— ——.]—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on the petition of a Canadian creditor, with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held:* a valid order.—*Re* SCOTTISH CANADIAN ASBESTOS CO., ALLEN *v.* HANSON (1890), 18 S. C. R. 667.—**CAN.**

e ii. —— —— ——.]—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order:—*Held:* a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—**CAN**

e iii. —— *Remission of funds to foreign liquidator.*]—A co., incorporated in New South Wales & carrying on business in Victoria, was ordered by the Supreme Ct. of New South Wales to be wound up. A similar order, subsequently made by the Supreme Ct. of Victoria, provided that the Victorian winding up should be conducted as ancillary to that in New South Wales. The Victorian liquidator had in hand £1,665, proceeds of realisation:—*Held:* upon the New South Wales liquidator giving security to the satisfaction of the prothonotary in the sum of £1,500 that the Victorian assets would be applied to the satisfaction of the claims of the Victorian creditors *pari passu* with other claims of the same class, all moneys in the hands of the Victorian liquidator, after deducting the costs of the winding-up, including the liquidator's remuneration, should be remitted to the New South Wales liquidator.—*Re* AUSTRALIAN FEDERAL LIFE & GENERAL ASSURANCE CO., LTD. (No. 2), [1931] V. L. R. 317; Argus L. R. 291 (Victoria).—**AUS.**

the laws of the Union of Socialist Soviet Republics, which decrees had transferred its assets to the Soviet Govt., & that payment could not be demanded from any person or body of persons. Petitioner's debt was disputed & the bank opposed the petition on the ground, also supported by expert evidence, that it could not have ceased to exist as long as it had, as it claimed to have in London & Paris, branches with which the Soviet Govt. had not dealt & which it had not taken over. Pursuant to an order of the Registrar the petition had been served upon the persons registered as authorised to accept service in England, & no question was raised before the ct. as to the validity of the service :—*Held :* (1) the result of the Russian revolutionary legislation of 1917 & the following years was to put an end to the juristic existence of banking companies incorporated in Russia, including those which had branches established in England ; (2) apart from that conclusion, the impossibility of a branch of such a Russian bank continuing to function according to its incorporating statutes was a sufficient ground for a winding-up order ; (3) such an order might be made even if the debt of the petitioning creditor was in dispute ; (4) the Soviet decrees could not have the effect of extinguishing or transferring debts regarded in English law as being locally situate in England ; (5) the ct.'s jurisdiction was not affected by the circumstance that the Soviet Govt. which, up to the date of the judgment on the petition, had not intervened, might possibly establish a claim to some part of the assets.—*Re* RUSSIAN BANK FOR FOREIGN TRADE, [1933] Ch. 745 ; 102 L. J. Ch. 309 ; 149 L. T. 65 ; 49 T. L. R. 253 ; 77 Sol. Jo. 197 ; [1933] B. & C. R. 157.

8548d. —— —— —— **Service of petition.**]—The ct. can wind up a foreign co. which has carried on business within the jurisdiction, even if the co. has ceased to exist, & if there is no member, officer, or servant of the co. on whom the petition to wind up can be served, the service must be effected, not under R. S. C., Ord. 67, r. 6, but under Companies (Winding Up) Rules, 1929, r. 28, by leaving a copy of it at the co.'s "last known principal place of business" within the jurisdiction.—*Re* TEA TRADING CO. K. & C. POPOFF BROS., [1933] Ch. 647 ; 102 L. J. Ch. 224 ; 149 L. T. 138 ; 77 Sol. Jo. 215 ; [1933] B. & C. R. 120.

8554. *Add. Annotation :*—**Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8556. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

Part XIII.—Illegal Companies.

8571. *Add. Annotations :*—**Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383 ; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

8574a. —— **Company selling Irish lottery tickets.**]—A co. was formed in England for the sale there of tickets & chances in the Irish lottery : —*Held :* the object of the co. was unlawful, & the Registrar of Joint Stock Cos. was right in refusing to register the co.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197 ; 100 L. J. K. B. 638 ; 145 L. T. 522 ; 95 J. P. 137 ; 47 T. L. R. 383 ; 29 L. G. R. 452, C. A.

8576a. ——.]—HARVEY *v.* COLLETT (1846), 15 Sim. 332 ; 4 Ry. & Can. Cas. 387 ; 15 L. J. Ch. 376 ; 10 Jur. 603 ; 60 E. R. 646.

Annotation :—**Refd.** Stewart *v.* Austin (1866), 36 L. J. Ch. 162.

8581a. —— **Action against treasurer & secretary —Illegality will not prevent account.**]—GREENBERG *v.* COOPERSTEIN, No. 272a, *ante*.

8582. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8583. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8587. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281 ; Greenberg *v.* Cooperstein, [1926] Ch. 657 ; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal Owners' Assocn. (1926), 135 L. T. 673.

Part XIV.—Companies under Private Acts.

8595a. —— **Name of member omitted from memorial of names of members—Deed not executed.**]—SCOTT *v.* BERKELEY (1847), 3 C. B. 925 ; 5 Ry. & Can. Cas. 51 ; 16 L. J. C. P. 107 ; 8 L. T. O. S. 389 ; 11 Jur. 242 ; 136 E. R. 371.

Annotations :—**Refd.** Portal *v.* Emmens (1876), 1 C. P. D. 201 ; Kipling *v.* Todd (1878), 3 C. P. D. 350 ; *Re* South London Fish Market Co., Plimsoll's Case (1888), 1 Meg. 92.

PART XIII. SECT. 2, SUB-SECT. 2.

8a. *Illegality as ground for winding up.*]—The objects of a co. as disclosed in its memorandum were unobjectionable, & one of its objects was to raise donation funds to carry out charitable objects. By its Arts. of Assocn. certain objects were introduced which had the effect of making the co. conduct a lottery or keep an office for the purpose of drawing a lottery or publish proposals relating to the drawing of such a lottery :—*Held :* the co. should be wound up, since its main object was an illegal purpose. A lottery is "a distribution of prizes by lot or chance." AID & POOR HOUSES ASSOCN., LTD. *v.* THOPPA NAIDU (1933), I. L. R. 56 Mad. 26.—IND.

PART XIV. SECT. 2, SUB-SECT. 3.

8d. *Subscription books—Conditions as to.*]—MARMORA FOUNDRY CO. *v.* MURNEY (1850), 1 C. P. 29.—CAN.

8615. Add following para.:—*Held:* in an action against the co. for improperly withholding the shares after a tender of the sum due for calls & interest, A. was entitled to recover their value at the market price of the day of the tender, deducting the amount of the calls & interest.—VAN DIEMAN'S LAND CO. *v.* COCKERELL (1857), 1 C. B. N. S. 732.

8621a. —— ——.]—BROWNE *v.* LONDON NECROPOLIS & NATIONAL MAUSOLEUM CO. (1857), 6 W. R. 188.

8633. *Add. Annotations:*—**Consd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, *see* Law of Property Act, 1925 (c. 20), ss. 193, 194.

Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

224. *Add. Annotation :—Generally,* **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

226. *Add. Annotation :—As to* (2) **Refd.** Hodgson *v.* McCreagh (1923), 92 L. J. Ch. 426.

Part V.—Right of Free Warren.

323. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

323a. —— **In demesne land—Is warren in gross.**]—Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301; alternatively, on a lost grant, presumed from immemorial user :—*Held :* the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—HODGSON *v.* MCCREAGH (1923), 93 L. J. Ch. 339; 131 L. T. 340; 40 T. L. R. 10; 68 Sol. Jo. 58, C. A.

329. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347a. **Alienation reserving franchise of free warren.**]—HODGSON *v.* MCCREAGH, No. 323a, *ante.*

349a. —— **By alienation of soil—Although soil reacquired.**]—R. *v.* SHIRLAND (1314), Y. B. 6 & 7 Edw. 2, VIII. Sel. Soc. (Vol. III., Eyre of Kent) 181.

Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotations :—As to* (2) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

452. *Add. Annotation :*—**Refd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

454. *Add. Annotation :*—**Distd.** Wade (Gabriel) & English, Ltd. *v.* Dixon & Cardus, Ltd., [1937] 3 All E. R. 900.

Part XIII.—Inclosure of Commons and Common Fields.

884. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

886. *Add. Annotation :*—**Refd.** Back *v.* Daniels, [1925] 1 K. B. 526.

893. *Add. Annotations :—As to* (4) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. *As to* (5) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

896. *Add. Annotation :—As to* (2) **Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

899. *Add. Annotation :—As to* (1) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

900. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

901. *Add. Citation :*—[1922] 2 Ch. 187, n.

Add. Annotations :—**Folld** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

903. For the paragraph in the original volume substitute the following paragraph :—

—— —— —— —— ——.]—By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or

could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damnified by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees:—*Held:* (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co.* v. *Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to pltfs.; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. *v.* CONSETT IRON CO., [1922] 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383; 38 T. L. R. 584; 66 Sol. Jo. 452, C. A.

905. *Add. Annotations:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

906. *Add. Annotation:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

909. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. *As to* (3) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

911. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Overd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

913. *Add. Annotations:*—**Refd.** Taylor *v.* British Legal Life Assce., [1925] Ch. 395; Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

929a. Power to stop up highway through "old enclosure."]—By Inclosure Act, 1845 (c. 118), s. 62, power is given to the valuer acting in the matter of any inclosure to set out & make public roads & ways, & widen public roads & ways, in or over the land to be inclosed, & to stop up, divert or alter any of the roads or ways passing through the land to be inclosed, or "through any old inclosures in the parish or respective parishes in which the land to be inclosed shall be situate":—*Held:* the power of stopping up roads so given is not confined to roads passing through old inclosures or intakes from the waste or common, the subject of inclosure, but extends to roads passing through any old inclosures within the parish.—HORNBY *v.* SILVESTER (1888), 20 Q. B. D. 797; 57 L. J. Q. B. 558; 59 L. T. 666; 52 J. P. 468; 36 W. R. 679, C. A.

939a. As to fences—Power to direct maintenance.]—Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—GARNETT *v.* PRATT, [1926] Ch. 897; 95 L. J. Ch. 453; 135 L. T. 471; 70 Sol. Jo. 736.

942a. Trespass—Power to maintain—Interference with stake.]—DRIVER *v.* SIMPSON (1818), 8 Taunt. 614, n.; 2 Moore, C. P. 682, n.; 129 E. R. 523.

Annotation:—**Distd.** Newcastle *v.* Clark (1818), 2 Moore, C. P. 666.

983. *Add. Annotation:*—*Generally*, **Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

Add. Annotation:—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1012. *Add. Annotation:*—*As to* (2) **Refd.** Liddle *v.* North Riding of Yorkshire County Council [1934] 2 K. B. 101.

1012a. —— Extent of dedication to public.]—Where the lord of a manor encloses a strip of land by the side of a public highway & within a few feet only from the metalled portion of the road, then, whatever the presumption might have been before, a presumption thereafter arises that what he has left between the metal & his fence is dedicated to the public.—COPESTAKE *v.* WEST SUSSEX COUNTY COUNCIL, [1911] 2 Ch. 331; 80 L. J. Ch. 673; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905.

1015. *Add. Annotation:*—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

1023. *Add. Annotations:*—*As to* (1) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

Part XIV.—Regulation of Commons.

1078. *Add. Annotation:*—**Consd.** Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450.

1089. After this case add "—— **Injunction to restrain promotion—Scheme inconsistent with prior conveyance.**]—*See* INJUNCTION, Vol. XXVIII., pp. 469, 470, No. 789."

COMPULSORY PURCHASE OF LAND AND COMPENSATION.

Part I.—Compulsory Powers over Lan

Add. Annotations :—As to (2) **Distd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

7. *Add. Annotations :—As to* (3) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

Add. Annotation :—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

Part II.—Conditions attached to the Powers.

28. *Add. Annotations :—As to* (2) **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315 ; *Re* Simcon, [1937] 3 All E. R. 149. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

56. *Add. Annotation :*—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

62a. ——.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—*Held :* (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality ; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1927] A. C. 198 ; 95 L. J. P. C. 209 ; 136 L. T. 197, P. C.

Annotation :—Generally, **Refd.** Bell Telephone Co. of Canada *v.* Canadian National Rys., [1933] A. C. 563.

67. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

88. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

91. *Add. Annotations :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283 ; Roberts *v.* Hopwood, [1925] A. C. 578.

98. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

99a. —— **Subway.**] — BOLAND *v.* CANADIAN NATIONAL RY. CO., No. 62a, *ante.*

109. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

110. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

111. *Add. Annotations :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283. *As to* (2) **Refd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

114. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

116. *Add. Annotation :*—**Refd.** Sydney Municipal Council *v.* Campbell, [1925] A. C. 338.

116a. —— **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving

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PART I. SECT. 1.

c 1. ——.]—The right to expropriate must be clear, & if there is a doubt it will be settled in favour of the landowner.—*Re* CALDWELL & TORONTO, [1935] 2 D. L. R. 623 ; O. R. 255.—**CAN.**

ss. *What amounts to compulsory taking.*]—The acquisition of the International Ry., on the expiration of its franchise, by the Niagara Parks Commission, was not a compulsory taking.—INTERNATIONAL RY. CO. *v.* NIAGARA PARKS COMMISSION, [1936] 1 D. L. R. 737 ; O. R. 195 ; *on appeal,* [1937] 3 All E. R. 181, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

so. *Land in use "otherwise for more convenient occupation" of building*

cl. s. 325.

DISTRICT CORPN. *v.* CAINE (1920), 67 D. L. R. 794 ; 28 B. C. R. 321.—**CAN.**

m 1. —— *Public Works R. S. B. C.,* 1911 (c. 189)—*Vc of contract by Minister of Public Works.*]—A contract made by the Minister for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department. MACKAY *v.* A.-G. FOR BRITISH COLUMBIA, [1922] 1 A. C. 457.—**CAN.**

— ii. —— *Expropriation Act,* 1906 (c. 143)—*Discretion of Minister.*]—As to the propriety & necessity of expropriation the Minister is the sole judge & the ct. has no jurisdiction to interfere with his discretion.—*R. v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—A.

sd. *Bye-law expropriating excessive land—Severable.*]—A bye-law expropriating land in excess of that allowed by statute is severable.—RICHES *v.* RICHMOND TOWNSHIP, [1933] 3 D. L. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—B. (a).

sf. *Land taken for building Toronto Viaduct—What Act applicable.*]—CANADIAN NATIONAL RY. CO. *v.* TORONTO IRON WORKS, [1926] C. R. 133.—**CAN.**

or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether resps.' land was required for improving or remodelling:—*Held:* the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, [1925] A. C. 338; 133 L. T. 63; *sub nom.* SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, SAME *v.* HUGHES MOTOR SERVICE, LTD., 94 L. J. P. C. 65, P. C.

116b. **Whether land required—Right of local authority to decide.**]—A local authority which has acquired land under its statutory powers must, acting in good faith, be the sole judge, under either Public Health Act, 1875 (c. 55), s. 175, or Public Health Acts Amendment Act, 1907 (c. 53), s. 95, of whether the land is "not required" or "not required for the purposes for which it has been acquired."—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112.

126. *Add. Annotation:*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

129. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

131. *Add. Annotation:*—**Apld.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133. *Add. Annotation:*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133a. —— **For pleasure gardens & street widening—Part used for pleasure garden—May be subsequently used for street widening.**]—A local authority bought land in 1896 for the purposes of: (1) street widening; (2) making new streets; (3) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held:* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, [1930] 1 Ch. 168, C. A.

134. *Add. Annotation:*—**Consd.** A.-G. *v.* Sunderland Corpn. (1929), 142 L. T. 61.

135. *Add. Annotations:*—*As to* (1) **Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. *As to* (2) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

136. *Add. Annotation:*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

138. *Add. Annotation:*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

139. *Add. Annotations:*—*As to* (1) **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

140. *Add. Annotation:*—*Generally*, **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

142. *Add. Annotations:*—**Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

143. *Add. Annotations:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

145. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

146. *Add. Annotation:*—*As to* (4) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

Part III.—Principles of the Law of Compensation.

153. *Add. Annotation:*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

155. *Add. Annotations:*—**Consd.** Clore *v.* Theatrical Properties, Ltd. & Westby & Co., [1936] 3 All E. R. 483. **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

155a. —— **Right to erect electric advertisement sign.**]—The lessees of a hotel entered into

PART II. SECT. 3, SUB-SECT. 4.

119 ii. —— —— *To construct tunnel under river.*]—A co. incorporated for the purpose of constructing a tunnel under a river desired to expropriate a parallelopidedon beneath the surface:—*Held:* what the co. desired to take was not a mere easement, but a hereditament & it had power under its Act of incorporation to do so.—*Re* KOLODZI & DETROIT & WINDSOR SUBWAY CO., [1930] 4 D. L. R. 10; 37 C. R. C. 4; 65 O. L. R. 398; *affd.*, [1931] 3 D. L. R. 337; S. C. R. 523.—**CAN.**

sd. *Use cannot be restricted.*]—Where an easement is expropriated the municipality cannot restrict the use of it as it exists at the time, & the arbitrator must fix the damages occasioned by the right acquired in terms of the bye-law.—*Re* CONGER LEHIGH COAL CO., LTD. & TORONTO CITY, [1934] O. R. 35; 1 D. L. R. 476.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. —— *Subsequent conveyance unregistered.*]—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

149 iii. —— *Unless right to compensation reserved by vendor.*]—*Re* CODVILLE (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—**CAN.**

o i. —— *After expropriation.*]—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation:—*Held:* H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

sk. *Surface owner—Compulsory taking of mining rights.*]—The compensation payable a surface-rights owner for a right of entry for the purpose of

drilling for oil should cover not only the value of land taken or destroyed, but also any damage or loss that may reasonably be expected to be caused him, in the use of his remaining land, as a result of the drilling or other operations on the parcel taken. But the special value which because of the underlying minerals the surface rights possess for the compulsory taker cannot be taken into consideration in fixing the compensation. The board's duty being merely to follow the regulations of the Department of Lands & Mines, it proceeded on the assumption that compensation was payable to the surface-rights owner, notwithstanding any reservations as to mines & minerals in his title.—*Re* MERCURY OILS, LTD. & HARTELL, [1936] 3 W. W. R. 679.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. ——.]—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

156 iii. ——.]—The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

156 iv. ——.]—*Re* POWER COMMISSION ACT (Sask.), [1930] 1 D. L. R. 900.—**CAN.**

f (p. 124) i. —— —— ——.]—Where a county corpn. expropriated certain toll roads:—*Held:* the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re* OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON (1921), 69 D. L. R. 480; 51 O. L. R. 467.—**CAN.**

f (p. 124) ii. —— —— ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

g (p. 124) i. —— ——.]—Deft. derived its title to the lands expropriated under a grant from the Crown subject to two conditions: (*a*) that the building now being or lately erected by deft. on said lands be such as would be suitable for exhibition purposes & available at all times for the same, & (*b*) that certain water pipes on the lands should be diverted and relaid outside the area of said building:—*Held:* as property may under certain circumstances have a specially high value to the owner over & above its market value, & as it is the value to the owner which the party expropriated is entitled to receive & as the above mentioned conditions or servitudes would be less onerous to the owner than to any one else in the community, the market value of the property in question was not the proper criterion of the amount to be allowed him for the same.—R. *v.* QUEBEC SKATING CLUB, [1931] Ex. C. R. 103; *affd.*, [1932] 2 D. L. R. 799; S. C. R. 539.—**CAN.**

l (p. 124) i. —— *Conflicting evidence.*]—R. *v.* ARCHER, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—**CAN.**

l (p. 124) ii. —— ——.]—Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging" of witnesses," or "splitting the difference."—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

l (p. 124) iii. —— ——.]—While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

q i. —— —— ——.]—REDDIAR & SAN CHIEN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF RANGOON (1927), I. L. R. 5 Ran. 799.—**IND.**

o (p. 125) i. —— —— *Equivalent to value to owner.*]—The market value of the land acquired is the price that the owner willing, & not obliged, to sell might reasonably expect from a willing purchaser. There is no difference between the term "value to the owner" as used in the Land Clauses Act, in England, & the expression "market value" as used in Land Acquisition Act, s. 23.—SWARNA MANJURI DASSI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 55 Calc. 994.—**IND.**

k (p. 125) i. —— —— ——.]—Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation.—R. *v.* ROYAL NOVA SCOTIA YACHT SQUADRON (1921), 21 Exch. C. R. 160.—**CAN.**

k (p. 125) ii. —— —— ——.]—*Re* TORRANCE & PROVINCE OF ONTARIO, *Re* NOBLE & PROVINCE OF ONTARIO, *Re* PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—**CAN.**

k (p. 125) iii. .]—There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitarily fixed at ten per cent.; an award of six per cent. may be ample.—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

k (p. 125) iv. —— —— ——.]—An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

k (p. 125) v. —— —— ——.]—R. *v.* MCPHERSON (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—**CAN.**

began to demolish it. The
removed by arrangement with the
agents, who subsequently
action against the lessees to
for breach of the two contracts:
the local authority had acquired
interest in the premises by compulsion;
the two contracts did not confer upon pltfs.
any proprietary interest or estate in the
hotel; &, as it could not be said that both
parties to those contracts had made their
bargain upon the footing that if the local

p (p. 125) i. —— —— *Not value according to quantity survey.*]—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

p (p. 125) ii. —— —— *Not "value in use."*]—*Held:* the productive value of land, or the value of the land to its owner based on the income he is able to derive from its use, is not the measure of compensation, for land expropriated, & is not material, except in so far as it throws light upon the market value. "Value in use" is to be repudiated as a test.—DUSSAULT *v.* R., [1929] Ex. C. R. 8.—**CAN.**

p (p. 125) iii. —— —— *Evidence of.*]—*Held:* although under certain circumstances the price paid for land cannot properly be taken as the market value thereof, nevertheless, where a careful purchaser, not obliged to buy, parts with his money, without pressure or inducement from the owner, willing but not obliged to sell, & after carefully considering the matter, & more especially the special advantages the land in question offered for the carrying on of the business he proposed to start, then the price so paid is cogent evidence of market value.—R. *v.* BERUBE, [1930] Ex. C. R. 218; [1931] 1 D. L. R. 685.—**CAN.**

sc. —— *Value of assets necessary to operation of undertaking.*]—TORONTO (CITY) CORPN. *v.* TORONTO RAILWAY CORPN., [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—**CAN.**

sd. —— *Where land of college taken for street—Under disputed agreement.*]—ST. MICHAELS COLLEGE *v.* TORONTO CITY CORPN., [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—**CAN.**

se. —— *Value for commercial purposes.*]—Where the residence & adjoining consulting rooms of a medical practitioner were situated in a position which was more suitable for a business site than a medical practitioner's residence, & compensation was assessed on the basis of the value of the land for a commercial purpose:—*Held:* the correct method of assessing compensation had been adopted.—GUNSON *v.* MUNICIPAL TRAMWAYS TRUST, [1927] S. A. S. R. 276.—**AUS.**

sg. *Cost of plans.*]—*Held:* the cost of the plans, & other expenditures claimed, either made the lands that much more valuable to deft. or, they constituted a loss or damage arising directly from the taking of the land & for which compensation should be allowed.—FEDERAL DISTRICT COMMISSION *v.* DAGENAIS, [1935] Ex. C. R. 25.—**CAN.**

sk. *Land subject to agreement to convey—Not amounting to option to purchase.*]—R. *v.* DEAN & BARONI, [1936] Ex. Cr. 120.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——.]—R. *v.* KELLY (1921), D. L. R. 402; 21 Exch. C. R. 205.—**CAN.**

—— ——.]—An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of

authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD. WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

160. *Add. Citation:—Sub nom.* R. *v.* MIDLAND, ETC. RY. CO., *Ex. p.* BROWN, 8 B. & S. 456.

Add. Annotation:—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

169. *Add. Annotations:—As to* (2) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

171. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

186. *Add. Annotations:*—**Consd.** Godstone Rural District Council *v.* Croydon Corpn. (1932), 48 T. L. R. 447. **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

187. *Add. Annotations:—As to* (1) **Apld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131. *As to* (2) **Refd.** Consett Iron Co. *v.* Clavering, [1935] 2 K. B. 42. *Generally*, **Refd.** Cross *v.* Gatineau Power Co., [1936] 3 All E. R. 52.

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money.—R. *v.* COLEMAN, [1926] Exch. C. R. 121.—**CAN.**

b (p. 125) i. —— *How estimate to be made.*]—In determining the market value of land acquired under Land Acquisition Act, 1894, the value should be estimated with reference to the most lucrative & advantageous manner in which the land might be used.

The operative effect of the special adaptability of the land or its future utility must be estimated not by idle speculation or unpractical imagination, but by prudent business considerations such as would weigh with a purchaser intending to buy the land in the open market.—MAHARAJADHIRAJA SIR RAMESHWAR SINGH BAHADUR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), L. L. R. 8 Pat. 793.—**IND.**

n (p. 126) i. —— *Electric light undertaking.*]—An electric light franchise was granted by applt. municipality to resp. co. for the period of 50 years, subject to the privilege of the municipality to purchase the "undertaking, property & rights" of the co. at any time at a price to be agreed on or, in default of agreement, found by arbitrators. The municipality elected to exercise this privilege & an arbitration ensued in which the co. was awarded $74,000 & the award stated that $36,000 thereof was the value of the physical assets. The municipality, without complaining as to the amount awarded for the physical assets, objected to the allowance of the balance, which was referred to in letters between the solicitors as compensation for prospective profits:—*Held:* since the only right of the municipality was to take over, not merely the physical assets, but the undertaking as a whole, including its privileges, the appeal should be dismissed.—CUMBERLAND (CITY) *v.* CUMBERLAND ELECTRIC LIGHT CO., LTD., [1931] 2 W. W. R. 377; 3 D. L. R. 70; 43 B. C. R. 525; *affd.*, [1931] 4 D. L. R. 459; S. C. R. 718.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C.

o i. ——.]—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

o ii. ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

a i. —— ——.]—"Special value" refers to the present use of the land, & means its added worth to the owners for the actual & peculiar use to which it is being put & for which it is specially fit: while "special adaptability" refers to an apparent but future use to which the property may be put.—*Re* CANADIAN STEAMSHIP LINES, LTD. & TORONTO TERMINALS RY. CO., [1930] 3 D. L. R. 626; 36 C. R. C. 301; 65 O. L. R. 494.—**CAN.**

e i. —— ——.]—A parcel of land upon part of which were erected a restaurant, boat-house, & dance-hall, in which a profitable business had been carried on for several years by the claimants, was expropriated by a municipal corpn. The property was peculiarly suited for the purposes of the business; there was no other property to which it could be transferred, & it had to be discontinued:—*Held:* as the profits depended not only on the locality, but also on the personal talents of the proprietors, the damages could not properly be arrived at by capitalising the profits & adding an allowance for possible enlargement of the business.—*Re* MEYER & TORONTO (1914), 30 O. L. R. 426.—**CAN.**

169 i. For "169 i." read "170 i."

n i. ——.]—CANADIAN PROVINCIAL POWER CO. *v.* NOVA SCOTIA POWER COMMISSION, [1929] 1 D. L. R. 674; 60 N. S. R. 479.—**CAN.**

sf. *Special use by owner.*]—*Held:* the arbitrator did not err in considering certain earnings of the land owner in respect of a special use of a portion of the property for parking cars.—*Re* FORBES & TORONTO, [1930] 2 D. L. R. 650; 65 O. L. R. 34.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

p i. —— ——.]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

r i. —— *Flooding of neighbourhood.*]—The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held;* no claim could arise in respect of an inconvenience common to the public generally.—R. *v.* LAFOND (1921), 69 D. L. R. 127; 21 Exch C. R. 55.—**CAN.**

r ii. —— *Valuation upon basis of non-existence of buildings.*]—The value of buildings & compensation for business disturbance cannot be considered if valuation has been upon the basis that the buildings have disappeared.—STANDARD FUEL CO. *v.* TORONTO TERMINALS RY. CO., [1935] 3 D. L. R. 657; 5 F. L. J. (Can.) 35.—**CAN.**

176 iii. —— *Cost of removal.*]—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. *v.* GOLDSTEIN, [1924] Exch. C. R. 55.—**CAN.**

sk. *Loss of profits—Municipal Act, R.S.O., 1927.*]—Under Municipal Act, R.S.O., 1927, no compensation for loss of profits can be awarded to the claimant.—*Re* CONGER LEHIGH COAL CO. & TORONTO CITY, [1934] O. R. 35; 1 D. L. R. 476.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. —— *Cost of acquiring new site.*]—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held:* the offer should be taken into account & dealt with by the arbitrator in his award.—*Re* GARLAND & TORONTO (1924), 55 O. L. R. 646.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. —— *Subsequent improvements by owner.*]—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

187 vii. —— ——.]—R. *v.* MOREAU (1921), 21 Exch. C. R. 82.—**CAN.**

m i. —— *Buildings erected by expropriator before notice to treat given—Whether value of buildings to be considered.*]—The Govt. having resolved to acquire under Land Acquisition Act, 1894, land belonging to applts., took possession by arrangement with sutidars, who occupied part of the land, & erected buildings partly on land occupied by applt. & partly on land occupied by the sutidars. Only after doing so the Govt. notified a declaration under sect. 6 of the Act that the land was required for a public purpose. Applt. was awarded under the Act the value of the land, & interest thereon from the date when possession had been taken:—*Held:* applt. was not entitled to the value of the buildings, since by the law of India they did not form part of the soil, &, even if applt. would have been entitled to compensation for them, if the Govt. had acted as mere trespassers, & without colour of title, the Govt. had not so acted.—VALLABHDAS NARANJI *v.* BANDRA DEVELOPMENT OFFICER (1929), 56 L. R. Ind. App. 259.—**IND.**

sm. *On abandonment—Time of taking & of revesting to be considered.*]—Expropriation Act, R. S. C., 1906, s. 23, gives power to the Minister of Railways & Canals, by a registered notice, to abandon land which has been taken for a public purpose but which, before the compensation has been actually paid, has been found not to be required, & the land thereupon is to revest. By sub-sect. (4), "the fact of such abandonment or revesting shall be taken into account, in connection with all the other circumstances of the case, in estimating or assessing the amount to be paid to any person claiming compensation for the land taken." On Jan. 24, 1911, land belonging to applts. in Quebec was appropriated for a public purpose, & became vested in the Crown; the amount of compensation was subsequently agreed but not paid. On

197. *Add. Annotation:—As to* (2) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

213. *Add. Annotation:* — **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

215. *Add. Annotation:—As to* (1) **Apld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216. *Add. Annotation:* — **Folld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216a. —— —— ——.]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected:—*Held:* the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value

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Dec. 30, 1912, the Minister registered a notice abandoning the land. By a petition of right applts. claimed as compensation the difference between the sum originally agreed & the value of the land when it revested; they recovered only their loss of rentals:—*Held:* (1) applts. were entitled to the sum originally agreed, subject to the revesting being taken into account with the other circumstances; (2) the petition of right was maintainable under sect. 20 of Exchequer Ct. Act; & (3) there should be a new trial.—GIBB *v.* R., [1918] A. C. 915, P. C.—**CAN.**

so. —— ——.]—In Mar. 1929, land belonging to suppliant in Montreal was expropriated for a public purpose, & became vested in the Crown; the amount of compensation was not agreed upon. After the expropriation, suppliant was permitted to continue in occupation of his property, & was authorised to receive & collect rents. In Mar. 1932, the Crown abandoned the expropriation. The suppliant claims *inter alia* as compensation the difference between the value of the property at the date of expropriation, & its value at the date it reverted back to him:—*Held:* the value of the land at the time of taking, & at the time of the revestment, must be taken into account in connection with all the other circumstances in determining the amount to be paid.—MATHYS *v.* R., [1934] Ex. C. R. 213.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—J.

s i. ——.]—*Held:* where the evidence of value relied upon had reference to a number of sales in the vicinity, only a few of which were for cash, others were never perfected, & others against had been completely abandoned; & further, where it is established that there are large areas of land available for building purposes in the vicinity at reasonable prices; such sales must be considered in such a case as made under special circumstances & at prices that cannot establish a market value & cannot be taken as a criterion of the value of property.—R. *v.* CYR., [1929] Ex. C. R. 225.—**CAN.**

sg. *Conflicting evidence—Duty of court.*]—Where, in expropriation cases, the ct. is faced with conflicting evidence of the optimists on the one hand & the pessimists on the other, it must be guided, in arriving at the true market value of the property, by the reasons supporting each witness' views, bearing in mind the soundness of the same, & the balance of probabilities.—R. *v.* FROST, [1931] Ex. C. R. 176.—**CAN.**

PART III. SECT. 2.

191 i. *What constitutes severance—Part of land taken—Premises not contiguous—No legal right over intervening land.*]—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held:* if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. *v.* LOONAN (1920), 20 Exch. C. R. 131.—**CAN.**

a i. —— ——.]—*Held:* the right to additional value & the right to damages for severance must depend on the existence at the time of acquisition of the property of some right of passage between the pieces of land.—*Re* CANAL CO., LTD., & MINISTER OF MARINE, [1927] S. A. S. R. 106.—**AUS.**

PART III. SECT. 3, SUB-SECT. 1.

205 ii. *Canadian National Railways Act—Sufficient to confer right to compensation.*]—Pltf. owned lands in the city of Montreal & sought damages for injury to its property resulting from the construction of a subway by deft. co. under its railway lines near pltf.'s property. No land belonging to pltf. had been taken by def'. for its work. The ct. found that pltf.'s property had been injuriously affected & awarded it compensation:—*Held:* Canadian National Railways Act does not deprive the owner of lands injuriously affected by the construction of a public work, of the compensation awarded by the Expropriation Act; the damage must result from an act rendered lawful by statutory powers of the co.; the damage must be such as would have been actionable under the common law, but for the statutory powers; the damage or loss must be to the property itself; personal injury inconvenience, injury to trade or business are no grounds for compensation; the damage must be occasioned by the construction of the public work, not by its user.—AUTOGRAPHIC REGISTER SYSTEMS, LTD. *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 152.—**CAN.**

sf. *General rule.*]—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

ni. *Claim must be made within prescribed time.*]—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re* EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE *v.* EDMONTON CORPN., [1925] 1 W. W. R. 780.—**CAN.**

sg. *Railway Act, 1919—Spur track constructed along streets—Measure of compensation to adjacent landowners.*]—BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. (NO. 3), [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sask. L. R. 298.—**CAN.**

sk. *Road laid through land—Expense of keeping up fences.*]—R. *v.* KENT JJ. (1854), 8 N. B. R. (3 All.) 118.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

t i. —— *Injury to other land by erection of viaduct.*]—Pltfs. sought to recover compensation for part of their lands taken by expropriation & for damages for injury to an adjoining lot owned by them, due to the construction of a viaduct for which the other part of the land was expropriated:—*Held:* sect. 17 of 19 & 20 Geo. 5, c. 10, amending the Canadian National Railway Co. Act, does not limit the scope of sect. 23 of Expropriation Act, & the Canadian National Railway Co. must pay, not only the value of the land actually taken by expropriation, but also the damages caused to lands injuriously affected by the construction of the public work, in this case a viaduct. The damages recoverable for injurious affection are such as are attributable to the construction of the public work & not such as would flow from its operation, & only to the extent to which such injurious affection depreciates said land & makes it less valuable. No damage can be recovered for personal inconvenience or loss of trade, nor damages which the owner of the land suffers in common with the public generally.—RENAUD *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 230.—**CAN.**

si. *Adjoining land occupied with hotel—Loss of water supply.*]—*Re* BUSH *v.* NIAGARA FALLS PARK COMRS. (1887), 14 A. R. 73.—**CAN.**

sm. *Land adjoining water-lot—Water-lot taken—Loss of riparian rights.*]—*Re* SNOW & TORONTO, [1924] 4 D. L. R. 1023; 56 O. L. R. 100.—**CAN.**

sp. *Land divided into lots—Some lots sold—Five lots taken for sewage plant.*]—*Held:* the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent depreciation in the value of the adjacent lands.—MONTREAL (CITY) *v.* MCANULTY REALTY CO., [1923] 2 D. L. R. 409; [1923] S. C. R. 273.—**CAN.**

sa. *Land taken for lowering road—Obstruction of access by road to other land.*]—*Held:* claimant entitled to compensation.—M. E. MOOLLA *v.* COLLECTOR OF RANGOON (1926), I. L. R. 4 Ran. 350.—**IND.**

sc. *Land taken for power line—Intention to use adjoining land as aviation ground.*]—*Held:* claimant entitled to compensation.—SHAWINIGAN WATER & POWER CO. *v.* GAGNON, [1931] S. C. R. 518; 3 D. L. R. 665.—**CAN.**

sf. *Ownership of two islands—One taken for penitentiary.*]—Deft. owned two islands named P. & K., separated from each other a distance of 1,250 feet, in the Gulf of Georgia. The Crown expropriated P. for a term of

of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—ROCKINGHAM SISTERS OF CHARITY *v.* R., [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

223. *Add. Annotation :*—**Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

225. *Add. Citation :*—3 Macq. 833.

231. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

245. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

259. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

261. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

263a. —— ——.]—By a private Act the President of the Air Council was authorised to enter upon, take & use all or any of certain lands, & also to construct a certain new thoroughfare. By sect. 2 he was authorised to stop up a portion of a certain lane known as Plough-lane. By sect. 5, "subject as hereinafter provided the Lands Clauses Acts are for the purpose of the acquisition of land under this Act incorporated with this Act." Then followed several exceptions, which did not specify sect. 68 of the Lands Clauses Consolidation Act, 1845, which deals with injurious affection. Lands were taken by the President under the special Act, & the said portion of Plough-lane was stopped up.

The claimant owned a dwelling-house in Plough-lane, not the part stopped up. No lands of the claimant were taken by the President under the Act, but his premises were depreciated in value to the extent of £100, through the stopping up of a portion of Plough-lane, rendering his premises less accessible in one direction. The claimant claimed compensation in respect of the stopping up of this portion of Plough-lane. On the hearing of an award in the form of a special case stated by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), it was contended for the President of the Air Council that the claimant had no right to claim compensation on the ground that no portion of the Lands Clauses Consolidation Act, 1845, was incorporated with the special Act as regards sect. 2 thereof, which was not a sect. for the purpose of the acquisition of land, but one merely authorising the closing of a thoroughfare; & also on the ground that sect. 68 of the Act of 1845 was not incorporated with the Special Act as its provisions for "injurious affection" were not for the acquisition of land. The official arbitrator asked the following question of the ct.: Was the claimant entitled to be paid compensation in respect of the stopping up of this portion of Plough-lane? The ct. answered the question in the affirmative.—WRIGHT *v.* AIR COUNCIL, PRESIDENT (1929), 143 L. T. 43.

265. For ("LORD WESTBURY") read ("LORD WESTBURY, *dissenting*").

Add. Annotations :—*As to* (1) **Distd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6. **Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

268. *Add. Annotation :*—**Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269. *Add. Annotation :*—*As to* (1) **Distd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269a. —— —— ——.]—Where a highway is obstructed for building operations, & the

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five years for use as a penitentiary. Deft., in addition to rental, claimed compensation for injurious affection to R.:—*Held :* in determining the compensation under the circumstances here existing, the value of the freehold must be considered in order to reach a fair & just conclusion as to the amount of compensation; there was no unity of property in the two islands, they being separate holdings or estates; it was not a case of the severance of a single holding or estate; the fact of common ownership did not constitute the two islands one estate; to entitle a person to recover compensation for injurious affection, the damage must arise from something which would, if done without statutory authority, have given rise to a cause of action.—R. *v.* O'HALLORAN, [1934] Ex. C. R. 67.—**CAN.**

sk. *Flooding—Level of lake raised—Rights in bed of lake not considered.*]—Where compensation for flooding due to raising the level of a lake is in question, the ct. will not consider the rights of the owner in the bed of the lake.—TREMBLAY *v.* DUKE-PRICE POWER CO., [1935] 4 D. L. R. 87.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. —— —— ——.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same:—*Held :* the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

227 v. —— ——.]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136; 29 Can. Ry. Cas 345; 52 O. L. R. 528.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (a).

f i. ——.]—*Re* OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY, [1927] 2 D. L. R. 606; [1927] 1 W. W. R. 833; 33 Can. Ry. Cas. 92; 36 Man. L. R. 412.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

266 vi. —— ——.]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re* EDMONTON CHARTER, FREEMAN CO., LTD. *v.* EDMONTON CORPN., [1925] 1 W. W. R. 778.—**CAN.**

k ii. —— *Compensation payable for damage done by bye-law—Closure before bye-law—No right to compensation.*]—Where a statute empowering a city to pass bye-laws for the closing of streets provided for arbn. proceedings to determine the compensation to be paid to land owners for damages caused "by reason of anything under the bye-law":—*Held :* claimants thereunder were not entitled to damages caused by the closing of a street long before the passing of the bye-law.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

k iii. —— —— —— —— *Effect of judgment on damages awarded by arbitrator.*]—*Re* MICHAELIS (NO. 2), [1933] 1 W. W. R. 751.—**CAN.**

sw. *Alteration of position of bridge—Cold storage company thereby relegated to back street.*]—An award was given as compensation for the injurious affecting of lands by the building of a highway traffic bridge over the railway yards of the C.P.R. The claim for compensation arose from the fact that while the old bridge ended at an avenue on which applt. co.'s buildings faced the new bridge runs a city block further north with the result that the co.'s buildings which were formerly on a "front" street are now on a "back" street over-shadowed by the new bridge. The co. was a cold storage co. The accessibility & appearance of its plant were seriously affected, & its facilities for loading & unloading railway cars & trucks were hampered,

obstructor has obtained the appropriate licence from the local authority, a person suffering inconvenience or loss from the inconvenience can only recover damages in a case where the obstruction is unreasonable, either as to quantum or duration.

Per LAWRENCE, L.J.: When the owner of a house abutting on a public street desires to undertake building operations, & has obtained the appropriate licence from the local authority under Metropolis Management Act, 1855 (c. 20), or similar statutes relating to other places, it cannot be contended that the necessary scaffolding & hoardings are illegal & a public nuisance unless they were erected in a manner or place not authorised by the licence, or maintained for a longer period than by the licence authorised.—HARPER *v.* HADEN (G. N.) & SONS, [1933] Ch. 298; 102 L. J. Ch. 6; 148 L. T. 303; 96 J. P. 525; 76 Sol. Jo. 849; 31 L. G. R. 18, C. A.

270. *Add. Annotations:*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

272. *Add. Annotation:—As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

274a. —— —— **By construction of bridge.**]—Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, *i.e.*, the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads: depreciation of freehold value of the old wharf; cost of the new wharf; damage through loss of traffic; damage through extra cost of handling traffic at the new wharf; damage to river sailing-barge traffic; damage through total stoppage of dumb craft with goods for overseas; damage through loss of storage rents:—*Held:* claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—HEWETT *v.* ESSEX COUNTY COUNCIL (1928), 138 L. T. 742; 44 T. L. R. 373; 72 Sol. Jo. 241.

275a. —— **River frontage of private house.**]—BUCCLEUGH (DUKE) *v.* METROPOLITAN BOARD OF WORKS, No. 215, *ante*.

284a. Reservation of water—Coupled with grant of easements & restrictions.]—By agreements made in 1904 & subsequent years a local authority agreed with the then owner of the S. estate for a supply of water from a pumping station & well on the S. estate. In 1932, S., who had become entitled to the S. estate, sold & conveyed a portion of it, not including the pumping station & well, to X. in fee simple. The conveyance to X. contained certain reservations & a covenant so framed as, if enforceable, to run with the land conveyed for the benefit of the remaining portion of the S. estate. The reservations purported to reserve all water (whether surface or underground) in or under any portion of the property so conveyed to X., & all necessary easements rights privileges advantages powers & liberties necessary for the enjoyment of that reservation. The covenant was not to do anything on the property so conveyed whereby the water supply then obtained therefrom or any part thereof or any supply thereafter to be obtained therefrom in addition to or in substitution therefor should be in any way diminished or the purity impaired. In Apr. 1934, the local authority made a compulsory purchase order under Public Works Facilities Act, 1930 (c. 50), s. 2, for the compulsory purchase of part of the property so conveyed to X. for the purpose of obtaining water therefrom & for the construction of a reservoir & certain works. This order incorporated Lands Clauses Consolidation Act, 1845 (c. 18), s. 68.

S. claimed compensation on the ground that the S. estate & the reservations & restrictions imposed for the benefit of the S. estate by the conveyance of 1932 would be injuriously affected by the proposed works on the land comprised in the compulsory-purchase order. The parties having failed to come to terms, an official arbitrator was appointed, who subsequently acted as an agreed arbitrator under Lands Clauses Consolidation Act, 1845 (c. 18).

In his award the arbitrator found (*a*) that a pumping station if erected on the portion of X.'s land comprised in the compulsory-purchase order would probably tap water which would otherwise percolate to the area tapped by the local authority's existing pumping station & well on the S. estate & might affect the quantity of water reaching such area, & (*b*) that a pumping station on the proposed site would not be likely to tap water which, in the absence of such a pumping station, could not be tapped by pumping at the local authority's existing works. He consequently awarded S. a certain sum by way of compensation, but made his award in the form of a special case, referring to the ct. the question whether S. was entitled to be compensated for the injurious affection of his adjoining estate & the interests easements & restrictions appertaining thereto by reason of the proposed works of the local authority & the facts so found by him: *Held:* (1) though the attempt to reserve percolating water out of the land conveyed by the conveyance of 1932 failed, the reservation therein contained ought to be construed as a

while the construction of the subway in front of the buildings prevents future structural changes & adaptations to a serious degree:—*Held:* after referring to the various items of compensation & the evidence as to damage, the amount of the award was increased to $25,000, & the appeal allowed with costs.—*Re* WINNIPEG COLD STORAGE CO., LTD. & WINNIPEG CITY, [1934] 2 W. W. R. 354; 4 D. L. R. 681; 42 Man. L. R. 176.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) iii.

sb. —— —— *Depreciation in value* [illegible] EASTERN RY. CO., —— MARY IMMACULATE *v.* PACIFIC GREAT EASTERN RY. CO., LEFEAUX & CARLISLE *v.* PACIFIC GREAT EASTERN RY. CO. (1919), 67 D. L. R. 792; 27 B. C. R. 420.—**CAN.**

reservation of all necessary rights to enable S. to obtain water from the land conveyed; & the covenant imposed a contractual prohibition on X. & those deriving title under him from doing anything to interfere with the existing & future water supply at the existing works on the S. estate. The claimant therefore had an interest in land which was affected by the compulsory-purchase order; (2) the injury to the S. estate arose from the "execution of the works" within Lands Clauses Consolidation Act, 1845 (c. 18), s. 68; since the statutory powers vested in the local authority under Public Health Act, 1875 (c. 55), s. 51, authorised the construction & maintenance of waterworks for the supply of water, & in order to supply water, it was necessary to draw water from the land taken. The claimant therefore was entitled to recover by way of compensation the amount awarded to him under the arbitrator's award.—*Re* SIMEON & ISLE OF WIGHT RURAL DISTRICT COUNCIL, [1937] Ch. 525; [1937] 3 All E. R. 149; 106 L. J. Ch. 335; 157 L. T. 473; 101 J. P. 447; 53 T. L. R. 854; 81 Sol. Jo. 526; 35 L. G. R. 402.

288a. —— **Wharf.**]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

289a. ——.]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

299. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Simeon, [1937] 3 All E. R. 149.

323a. —— ——.]—ROCKINGHAM SISTERS OF CHARITY *v.* R., No. 216a, *ante*.

Part IV.—Compensation for Mines and Minerals.

328. To the existing paragraph add as follows:—(3) Limestone is a mineral within the above sects.

331. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

332. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

333. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

334. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

335. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

336a. —— —— **Within Act.**]—MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. *v.* ROBINSON, No. 328, *ante*.

337. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

345. *Add. Annotation:*—**Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

349. *Add. Annotation:*—**Consd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

353. *Add. Annotation:*—**Refd.** London & North Eastern Ry. Co. *v.* Hardwick Colliery Co., [1935] Ch. 203.

355. *Add. Annotations:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

355a. —— —— **Purchase by predecessor of undertaker—Common law right of support—Effect of Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37).**]—Pltf. council, being the statutory undertakers for the supply of water to the urban district of Wath-upon-Dearne, purchased by agreement in 1901, from trustees for sale under a settlement, certain land in Wath-upon-Dearne which had been allotted to the vendors' predecessors in title in 1810 under an Inclosure Act. This allotment was subject to the reservation to the lord of the manor of Wath-upon-Dearne of coal & other minerals, with power to work the same upon making compensation to the allotment owners for damage to the surface of the lands caused by

PART III. SECT. 3, SUB-SECT. 4.—B. (g).

s1. *Loss of privacy.*]—The owner of a house, the privacy of which has been affected by the acquisition of another property made for public purposes under Land Acquisition Act, is entitled to compensation by reason of the acquisition injuriously affecting his property.—PRASANNAKUMAR DATTA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1933), I. L. R. 61 Cal. 245.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ——.]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—R. *v.* LAFOND (1921), 21 Exch. C. R. 55.—**CAN.**

PART III. SECT. 3, SUB-SECT. 5.

sc. *Payment of mortgage on part of land.*]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of $22,000:—*Held:* the above payment, although satisfying any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—STUART *v.* R., [1926] 2 D. L. R. 260; [1926] S. C. R. 284; [1926] Exch. C. R. 101, n.—**CAN.**

sd. *No right to interest.*]—Under Municipal Act, R. S. M., 1913, what is to be paid the owner of land injuriously affected by the construction of municipal works is due compensation for any damage. No provision is made for interest in addition thereto; & neither the arbitrators, nor a judge under an application to him under sect. 706 of the Act to increase the award, have power to award interest.—*Re* BANNATYNE (*Re* TAYLOR ESTATE) & ASSINIBOIA RURAL MUNICIPALITY (No. 2), [1932] 1 W. W. R. 754; 2 D. L. R. 703; 40 Man. L. R. 253.—**CAN.**

PART III. SECT. 4.

g i. —— ——.]—*Held:* the only increase which should be deducted under Public Works Act (Alta.), s. 24 (8), is the increase so caused in the value of the land through which the public work is constructed over & above any such increase as is common to said land & to the land in the immediate vicinity.—*Re* CENTRAL CANADA RY. CO. ARBITRATIONS, [1929] 4 D. L. R. 333; 2 W. W. R. 445; 24 Alta. L. R. 209.—**CAN.**

g ii. —— —— *Municipal Act, R. S. O.*, 1927, *s.* 342 (1).]—ROMAN CATHOLIC EPISCOPAL CORPN. OF LONDON & SANDWICH (TOWN), 4 D. L. R 955; 65 O. L. R. **CAN.**

working. Shortly after the purchase, pltfs. erected two reservoirs & three filter beds on the land purchased. Deft. co. were lessees from the lord of the manor of a seam of coal lying under & adjacent to pltfs.' land. In 1911 deft. co., in pursuance of Waterworks Clauses Act, 1847 (c. 17), & the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), gave notice to pltfs. of their intention to work the coal under & within forty yards of pltfs.' waterworks. This notice was duly acknowledged, but no counter-notice was given by pltfs. of willingness to treat or to make compensation for or of their intention to prevent or interfere with the working of the coal either within or outside the forty yards area. In 1914, pltfs. purchased from the same vendors further lands adjoining the land bought in 1901 & subject to the same reservation of minerals to the lord of the manor of Wath-upon-Dearne. Pltfs. constructed on this land two further reservoirs, two more filter beds & other works. Damage to one of the reservoirs having appeared between Oct. 1926, & Jan. 21, 1929, caused, as was alleged, by the working of the adjacent & subjacent minerals by defts., pltfs. had the damage repaired. In 1930 a further notice of intention to work minerals near another part of pltfs.' lands & reservoirs was served on the pltfs. by defts., but again no counter-notice was given by pltfs. Pltfs. thereupon issued a writ claiming an injunction & damages or compensation. His Lordship having held on the evidence that the damage to the waterworks was caused by subsidence of the surface directly due to the working of the minerals by defts. & that the surface would have been damaged by subsidence if the waterworks had not been constructed on it, the question arose whether the vendors to pltfs. in 1901 & 1914, when they conveyed the land, had any right of support for the surface of those plots from the subjacent minerals & adjacent land & minerals, & if so, whether this right passed to pltfs. :—*Held:* (1) on the true construction of the Inclosure Act, 1810, the common law right of support was not excluded by necessary implication & the vendors to pltfs. had a common law right to have the surface supported by the subjacent minerals & adjacent land & minerals; (2) this right passed to pltfs. by the conveyances of 1901 & 1914, & deft. co. was not entitled to ignore this right although pltfs. failed to give any counter-notice under Waterworks Clauses Act, 1847 (c. 17), ss. 22, 23. Further, there was nothing in Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), s. 3 (2), which gives the local authority an option to extend their counter-notice to minerals outside the forty yards area to deprive the local authority of the rights they possessed outside the forty yards area, if the option conferred by that section was not exercised.—WATH-UPON-DEARNE URBAN DISTRICT COUNCIL *v.* BROWN (JOHN) & CO., LTD., [1936] Ch. 172; 105 L. J. Ch. 81; 154 L. T. 295; 51 T. L. R. 353; 79 Sol. Jo. 342.

356. *Add. Annotations :*—**Consd.** Walton Harvey Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

356a. —— —— **Enfranchised copyholds.**]—Under conveyances made in 1879, 1922, & 1927 deft. corpn. acquired land for the purposes of sewage works & a gas undertaking. So far as the present case was concerned, these lands were enfranchised copyholds subject to a custom whereby the lord of the manor had the right to work mines subject to making compensation for damage done including that arising from subsidence. The pltf. co. were the lessees of the minerals under such enfranchised copyholds & also under the adjoining land. In 1934 pltfs. gave the corpn. notice in writing that they desired to work seams of coal under or within 40 yds. of such enfranchised copyholds. Defts. gave no counter-notice under Waterworks Clauses Act, 1847 (c. 17), s. 23, to treat for the payment of compensation for such mines, & it became lawful for pltfs. to work the mines. In an action for a declaration as to the rights of the parties, the Vice-Chancellor of the County Palatine of Lancaster, after making a declaration of pltfs.' right to work the mines & let down the surface subject to payment of compensation for damage done including damage due to subsidence provided pltfs. did no wilful damage & did not work the mines in an unusual manner, added that defts. were not entitled to any greater protection in respect of the greater weight imposed upon the land by their sanitary works except where they had acquired a prescriptive right of support for such works: —*Held:* (1) defts. not having served a counter-notice, their rights in relation to the minerals were the same as those of their vendor & were therefore governed by the custom of the manor; (2) the addition to the declaration stated above could not be supported.—HARGREAVES, LTD.'S EXECUTORS *v.* BURNLEY CORPN., [1936] 3 All E. R. 959; 156 L. T. 41; 101 J. P. 87; 53 T. L. R. 231; 81 Sol. Jo. 56, C. A.

359. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

367. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

374. *Add. Annotation :*—**Consd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

378. To the existing paragraph add as follows :—(3) The word "lands" in sect. 6 of the above Act includes mines.

Add. Annotation :—Generally. **Consd.** Craigola Merthyr Co. *v.* Swansea Corpn. (1927), 71 Sol. Jo. 681.

381. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

383. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

403. *Add. Annotation :*—**Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

412. *Add.* — . Swift *v.* Board of Trade, [1925] A. C. 520.

433. *Add. Annotation :*—**Refd.** Newton *v.* Lambton, Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

Part VI.—Procedure to acquire Land otherwise than by Agreement.

470. *Add. Annotation :*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

475. For existing citations and annotations, substitute (1851), 9 Hare, 436 ; 7 Ry. & Can. Cas. 92 ; 18 L. T. O. S. 116 ; 68 E. R. 580, L.JJ. ; *subsequent proceedings* (1852), 2 De G. M. & G. 94, L.JJ.

Annotations :—**Refd.** Salisbury *v.* G. N. Ry. (1852), 17 Q. B. 840 ; Hedges *v.* Met. Ry. (1860), 28 Beav. 109.

478. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

484. For citations read the following para. & citations :—

A ry. co. having given notice of their intention to purchase lands for the undertaking, deposited the purchase-money, & delivered the bond according to sect. 35 of Lands Clauses Act, before the expiration of the period prescribed for the exercise of their compulsory powers ; neither their power to purchase the land, nor their power to enter, is gone by the subsequent expiration of that period.—SPARROW *v.* OXFORD, WORCESTER & WOLVERHAMPTON RY. Co. (1851), 9 Hare, 436 ; 18 L. T. O. S. 116 ; 68 E. R. 580.

500. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

526. *Add. Annotation :*—*As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

531. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

533a. —— —— **Rights of assignee.**]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—CARDIFF CORPN. *v.* COOK, [1923] 2 Ch. 115 ; 92 L. J. Ch. 177 ; 128 L. T. 530 ; 87 J. P. 90 ; 67 Sol. Jo. 315 ; 21 L. G. R. 279.

534. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

540. *Add. Annotation :*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

540a. Within clause in lease.]—(1) Under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), the official arbitrator is entitled to state his award in the form of a special case raising the question what is the title or interest of the person claiming compensation.

(2) A local Act having authorised a corpn. to acquire certain premises compulsorily, the owners granted a lease for a term of years, containing a clause that the demise was made & granted "subject to the termination of such demise by reason of the exercise by the said corpn. of such compulsory powers as may hereafter become effective." The corpn. served a notice to treat upon the lessor in respect of his reversionary interest in the premises, & they afterwards served a notice to treat upon the lessee, who claimed compensation in respect of his interest :—*Held :* neither of the notices to treat was, within the clause in the lease or at all, such an exercise by the corpn. of their compulsory powers as was effective to terminate the lease or to put an end to the lessee's interest in the premises, &, consequently, he was entitled to compensation in respect of his interest in the premises as at the date of the service of notice to treat upon him.—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., [1934] 2 K. B. 23 ; 103 L. J. K. B. 603 ; 151 L. T. 402 ; 32 L. G. R. 17, D. C.

558a. Misdescription as to nature of property—Abatement of purchase-money—Not ordered.]—*Re* STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT (1902), 47 Sol. Jo. 159.

562. *Add. Annotation :*—*As to* (1) **Refd.** Greswolde-Williams *v.* Newcastle-upon-Tyne Corpn. (1927), 91 J. P. Jo. 968.

595a. Building consisting of several blocks of offices—Constitutes one "building."]—GRESWOLDE-WILLIAMS *v.* NEWCASTLE-UPON-TYNE CORPN. (1927), 92 J. P. 13 ; 26 L. G. R. 26.

PART VI. SECT. 1, SUB-SECT. 2.—D.

490 i. *Effect of—No right of action at common law—Damages for rendering land useless & unsaleable not recoverable.*]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas. 345 ; 52 O. L. R. 528.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is for enjoyment of house.*]—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

Promoters of an undertaking :—*Held :* not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—DRAPER *v.* SOUTH AUSTRALIAN RAILWAYS COMR. (1901), 3 S. A. L. R. 150.—**AUS.**

PART VII. SECT. 1.

sg. *Public Works Act, s.* 22—*Acquisition of toll road under Provincial Highways Act,* 1917.]—*Re* COBOURG & GRAFTON TOLL ROAD CO. (1921), 64 D. L. R. 241 ; 50 O. L. R. 125.—**CAN.**

Part VII.—Assessment of Purchase Price and Compensation.

650. For existing paragraph & citations substitute the following:—

The Blackpool Improvement Act, 1917, s. 70, enacted that the provisions of the sect. should, unless otherwise agreed in writing, apply for the benefit & protection of a certain co. as owners of the land referred to in the section. By its terms the owners were to sell & the corpn. was to buy the land therein described at a price to be determined in default of agreement, by arbitration in th manner provided by the Lands Clauses Acts as modified by that Act, & a notice to treat was to be served by the corpn. within a defined time. It was further provided that the corpn. should not use the land so acquired for certain purposes which might cause a nuisance or annoyance to the owners. By Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), where by any statute, whether passed before or after the passing of this Act, land is authorised to be acquired compulsorily by any local authority any question of disputed compensation is to be determined in the manner thereby provided, & the provisions of the Act by which the land is authorised to be acquired, or of any Act incorporated therewith, so far as inconsistent with this Act, shall cease to have effect. Notice to treat was served on the owners by the corpn. shortly before the coming into operation of the Act of 1919 but no arbitrator had been appointed to fix the price. A question having arisen whether the compensation was to be assessed under the Act of 1919 or under the private Act of 1917:—*Held:* the Act of 1919 did not apply, & the compensation was to be ascertained in the manner provided by the Lands Clauses Acts as modified by the Act of 1917; by VISCOUNT FINLAY, VISCOUNT CAVE, & LORD PHILLIMORE on the grounds, (*a*) that sect. 70 of the private Act embodied an agreement between the parties for the sale & purchase of the land & that the land was not "authorised to be acquired compulsorily"; (*b*) that the general language of the Act of 1919 ought not, in the absence of clear words, to be construed as affecting the special provisions of sect. 70 of the private Act of 1917; by VISCOUNT HALDANE on the second ground by LORD SHAW OF DUNFERMLINE (dissenting as to the second ground) on the first ground only.—BLACKPOOL CORPN. *v.* STARR ESTATE CO., LTD., [1922] 1 A. C. 27; 91 L. J. K. B 202; 126 L. T. 258; 86 J. P. 25; 38 T. L. R 79; 66 Sol. Jo. 17; 19 L. G. R. 721, H. L.

Annotations:—**Distd.** Thurrock Grays & Tilbury Joint Sewerage Board *v.* Thames Land Co., Ltd. (1925), 90 J. P. 1. **Refd.** Thornely *v.* Leconfield (Lord), [1925] 1 K. B. 236; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1931), 101 L. J. K. B. 229; Drapers Co. *v.* London Passenger Transport Board, [1937] Ch. 344.

650a. —— Acquisition of land & appointment of arbitrator under Public Health Act, 1875, (c. 55.)]—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—*Held:* as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD. (1925), 90 J. P. 1; 23 L. G. R. 648.

650b. —— Power to purchase given to railway company—Transfer to public authority.]—Pltfs. were the estate owners in fee simple of certain land & buildings in the City of London. Defts., a public authority established in accordance with the provisions of London Passenger Transport Act, 1933, in Oct. 1935, gave notice to pltfs. to treat for the compulsory purchase of the premises, & subsequently took possession. By the Act of 1933 certain passenger transport undertakings were transferred to defts. including the C. L. Railway. It was provided by the Act that such transfer should include all lands & other property, assets, powers, rights, and privileges held or enjoyed therewith, & further that defts. might exercise all the rights, powers, & privileges which immediately before the appointed day, July 1, 1933, were vested in the C. L. Railway as one of the undertakers & should be subject to all liabilities & obligations to which the C. L. Railway were subject immediately before the appointed day. Among the powers conferred on the C. L. Railway in existence on July 1, 1933, was a power conferred by an Act of 1931 to purchase the premises of pltfs. The time for the exercise of this power was, after the passing of the Act of 1933, extended to Oct. 1937, by sect. 68 of London Passenger Transport Act, 1934. Defts. contended that being a public authority authorised to acquire the particular land in question compulsorily, the provisions of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), as to the compensation payable, applied.

Pltfs. denied this on the ground (*a*) that if the C. L. Railway (the " undertakers ") had purchased compulsorily before July 1, 1933, the purchase price must have been fixed as provided for by the Lands Clauses Acts as modified by the Act of 1931, & that this was therefore a liability or obligation of the C. L. Railway to pltfs.; (*b*) that by virtue of sect. 68 of the Act of 1934, the time limited for the exercise of compulsory purchase by the Act of 1931 was extended subject to the provisions for the protection or benefit of (*inter alia*) any co., body or person mentioned in (among others) the Act of 1931, & that the provisions of that Act with regard to the assessment of compensation in cases of compulsory purchase were provisions for pltfs.' benefit, & (*c*) that the provisions of the Act of 1931 were not affected by the provisions of the Acts of 1933 & 1934 in the absence of clear words showing that it was the intention of the two later Acts to abrogate the provisions of the Act of 1931:—*Held:* pltfs.' contentions failed because (*a*) as the C. L. Railway had not served any notice to treat on or before July 1, 1933, there was no liability or obligation of the C. L. Railway on that date towards pltfs. or their property to which defts. could be subjected in respect of a notice given by defts. subsequently to July 1, 1933, (*b*) pltfs. were not expressly mentioned as a co., body or person for whose protection or benefit provision was made in the Act of 1931, & (*c*) the provisions for compensation in the Act of 1931 were general provisions & accordingly the maximum " *generalia specialibus non derogant* " did not apply.

The compensation must therefore be ascertained under & in accordance with the Act of 1919.—DRAPERS CO. *v.* LONDON PASSENGER TRANSPORT BOARD, [1937] Ch. 344; [1937] 2 All E. R. 12; 106 L. J. Ch. 121; 156 L. T. 272; 53 T. L. R. 448; 81 Sol. Jo. 199.

702a. Arbitrator incapable of continuing—Power to replace.]—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—GROSS, SHERWOOD & HEALD, LTD. *v.* ESSEX COUNTY COUNCIL, [1927] 1 Ch. 205; 96 L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17; 43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R. 135.

702b. Effect of appointment under protest—Whether right to compensation admitted.]—*Semble:* a co. does not, by nominating under protest an arbitrator in pursuance of the Lands Act, 1845, admit that the case is one entitling the claimant to any compensation.—SUTTON HARBOUR IMPROVEMENT CO. *v.* HITCHENS (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 73; 18 L. T. O. S. 163; 16 Jur. 70; 42 E. R. 514, L. JJ.

PART VII. SECT. 2, SUB-SECT. 1.

sh. *Jurisdiction of Exchequer Court.*]—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—R. *v.* HUDSON'S BAY CO. (1921), 20 Exch. C. R. 413.—**CAN.**

sk. *Cannot inquire into validity of mutual agreement for compensation.*]—*Held:* where one of the parties set up an agreement purporting to fix the compensation a dispute as to the existence, validity, & applicability of such agreement must be settled by agreement of the parties or determined by the ct. before a case for arbn. arises; & the arbitrators exceeded their jurisdiction when they entered upon an inquiry as to the existence & validity of the agreement alleged.—*Re* HARMANS, LTD., & TORONTO CITY, *Re* PORTER & TORONTO CITY, *Re* STEWART & TORONTO CITY, [1928] 4 D. L. R. 781: 62 O. L. R. 475.—**CAN.**

sl. *Assessment by resolution of city council.*]—After the passing of an expropriating bye-law the amount of the purchase price may be settled by resolution of the city council & no further bye-law is necessary.—PRINCE *v.* TORONTO, [1933] 3 D. L. R. 201; O. R. 442; *revsd.*, [1934] 3 D. L. R. 81; S. C. R. 414.—**CAN.**

sm. *Practice of appellate court.*]—The general rule adopted by appellate cts. in dealing with a question of quantum on an awardby an arbitrator is the same as the rule adopted in dealing with a question of quantum of damages in a judgment by a trial judge sitting without a jury, & the ct. will not interfere except in a case of very serious error.—*Re* WINSETT & C. N. R., [1933] O. R. 237; 2 D. L. R. 438.—**CAN.**

sp. —— *Variation of award.*]—Applt. owned property on the Gatineau River, including a saw mill used for his timber business & a plant for the production & distribution of electricity both worked by water power. Resps. were attempting to expropriate for the purposes of a scheme for development of hydro-electric power on the river, & had erected a dam with the result that much of his property was submerged & other seriously affected. An action in respect of this damage had proceeded to trial, & judgment had been reserved, when a special Act was passed by the Quebec Legislature to prevent any disturbance of resps.' operations. Resps. were by the Act to make just & fair compensation to applt. for all his properties & rights taken or affected, & the ct. was to determine what properties & rights should upon payment of the compensation become vested in resps.:—*Held:* (1) the Act did not require the ct. to vest in resps. all lands or properties affected, if in its discretion, it thought compensation for injurious affection sufficient; (2) the amount of an award may be varied by an appeal ct. where it is clear that it is based upon a wrong principle of calculation or not justified by the admitted facts; (3) although undertakers cannot offer remedial works in lieu of compensation, the offer of land taken or easements over land taken for the restoration of a piling ground & a ry. siding was a proper one & ought to be taken into consideration.—CROSS *v.* GATINEAU POWER CO., [1936] 3 All E. R. 52. P. C.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.

n i. —— —— *Passing of bye-law by local authority—Submission before bye-law passed ultra vires.*]—KOEHMSTEDT *v.* RURAL MUNICIPALITY OF EYE HILL, NO. 382, [1923] 2 W. W. R. 669.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

f i. —— *Extent of duty.*]—On an application under sect. 408 of Town Act, R. S. S., 1930, for the appointment of an arbitrator of a claim for compensation for lands taken or injuriously affected, it is not the duty of the judge applied to to decide whether or not the claimant has a claim.—MCGILLIVRAY *v.* MELVILLE TOWN [1932] 2 W. W. R. 635.—**CAN.**

sl. *Under Dominion Railway Act, 1919.*]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re* LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO. (1924), 55 O. L. R. 581.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 4.

713 iii. —— *Jurisdiction of court.*]—*Re* TAYLOR ESTATE & ASSINIBOIA RURAL MUNICIPALITY, [1931] 2 W. W. R. 719; 4 D. L. R. 249; 29 Man. L. R. 563.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

sm. *Appeal under Municipal Arbitrations Act, 1927.*]—An appeal to a Divisional Ct. of the Appellate Division from an award made under Municipal Arbitrations Act, R. S. O., 1927, lies, but not unless the award is appealed from within six weeks after notice that it has been filed; & the ct. has no jurisdiction to give leave to appeal, or to extend the time for appealing after the time has expired, even in a case where there was fraud in procuring the award. Sect. 3 of Arbn. Act, R. S. O., 1927, is not applicable.—*Re* FAIR & TORONTO, [1930] 3 D. L. R. 76; 65 O. L. R. 176.—**CAN.**

727a. Question of title involved.]—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., No. 540a, *ante*.

727b. Hearing — Entry in Crown Paper.] — An award made by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—HEWITT *v.* ESSEX COUNTY COUNCIL (1927), 97 L. J. K. B. 249; 92 J. P. 36; 44 T L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.

761a. —— Award embodying decision of court on special case.]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held:* no appeal could be entertained.—NORTHWOOD *v.* LONDON COUNTY COUNCIL (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 25 L. G. R. 254, C. A.

762. *Add. Annotation:—As to* (2) Apprvd. & Apld. Matthey *v.* Curling, [1922] 2 A. C. 180.

773a. Award of lump sum—Validity.]—Claimant was the owner of certain land with regard to the acquisition of which an arbn. was held under Acquisition of Land (Assessment of C— ation) Act, 1919 (c. 57). He claimed &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act:—*Held:* in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator

PART VII. SECT. 5, SUB-SECT. 8.

736 i. —— *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*]—STEWART MUNICIPAL DISTRICT *v.* BLIESNER, [1924] 2 W. W. R. 1217.—**CAN.**

s i. —— *Arbitrator not entitled to allow interest.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

s ii. —— *Award referring to "present value"—Value at time of expropriation.*]—An award is good, although it contains the words "present value," if it is clear from the award as a whole that the arbitrators made their valuation as at the date of the expropriation.—R. *v.* VANCOUVER CITY (1932), 47 B. C. R. 243.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 10.

j (p. 196) **i.** ——.]—On an application under sect. 706 of Municipal Act, R. S. M., 1913, to vary or increase an award the judge is in the position of sole arbitrator or umpire as well as having the power to set aside or remit the award.—*Re* TAYLOR ESTATE & ASSINOBOIA RURAL MUNICIPALITY (No. 2), [1931] 3 W. W. R. 408; *on appeal*, [1932] 1 W. W. R. 754.—**CAN.**

m (p. 196) **i.** —— *Under Dominion Railway Act*, 1906 (*c.* 37).]—*Re* KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. *v.* R., [1918] 2 W. W. R. 411.—**CAN.**

m (p. 196) **ii.** —— *Under Dominion Railway Act*, 1919 (*c.* 68).]—*Re* ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. CO. (No. 1), [1922] 2 W. W. R. 577; 65 D. L. R. 735; 15 Sask. L. R. 431.—**CAN.**

m (p. 196) **iii.** —— ——.]—CEDAR RAPIDS MANUFACTURING & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

r (p. 196) **i.** —— *Award determined on wrong principle.*]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held:* the award must be set aside as determined upon a wrong principle.—RADISSON TOWN *v.* AMSON, [1919] 3 W. W. R. 580.—**CAN.**

x i. —— ——.]—WINTER *v.* TORONTO (CITY) (1922), 70 D. L. R. 458.—**CAN.**

x ii. —— *Sum awarded inadequate.*]—ARMSTRONG *v.* NEW WESTMINSTER HARBOUR BOARD, [1929] 2 D. L. R. 150; 1 W. W. R. 755; 41 B. C. R. 1.—**CAN.**

Lump sum awarded—Award good on its face.]—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

y ii. —— *Arbitrator not qualified.*]—An award will be set aside if one of the arbitrators is disqualified by not being a freeholder as required by statute.—NEW GLASGOW *v.* MILLIGAN, [1933] 1 D. L. R. 748.—**CAN.**

c (p. 197) **i.** —— ——.]—NASH & WILLIAMS *v.* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO., [1917] 3 W. W. R. 553; 36 D. L. R. 601.—**CAN.**

c (p. 197) **ii.** —— ——.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—**CAN.**

c (p. 197) **iii.** —— ——.]—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

c (p. 197) **iv.** —— ——.]—*Re* SULLIVAN & TOWNSHIP OF BERTIE, [1927] 2 D. L. R. 74; 60 O. L. R. 107. —**CAN.**

e (p. 197) **i.** —— ——.]—*Re* ARBITRATION ACT, *Re* WOODS, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—**CAN.**

m (p. 197) **i.** —— ——.]—*Re* DIXON & TORONTO CORPN. (1924), 56 O. L. R. 167.—**CAN.**

o (p. 197) **i.** —— ——.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. *v.* KETCHESON (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—**CAN.**

q (p. 197) **i.** —— —— *Question only one of quantum.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R.

PART VII. SECT. 5, SUB-SECT. 11

sp. *By motion—Damages "allowed"—Amounts to direction to pay.*]—Where an award determines the amount of the compensation to be paid by a municipality as damages for land taken & "allows" them to the claimant, that is a sufficient direction to pay. In any event, a direction to pay is not necessary to enable the award to be enforced by motion.—*Re* BANNATYNE & ASSINIBOIA RURAL MUNICIPALITY (No. 3), [1934] 1 W. W. R. 497; 41 Man. L. R. 640.—**CAN.**

sm. *Purchase of easement—Execution of conveyance not condition precedent to enforcement.*]—Where an easement was expropriated by a municipal corpn. under sect. 338 of Municipal Act, R. S. O., 1927, it was held that the corpn. was not entitled to withhold payment of the compensation money until the claimant had executed a conveyance of the easement, for the easement had automatically vested in the corpn.—*Re* MAYO & TORONTO CITY, [1929] 3 D. L. R. 890; 64 O. L. R. 139.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 12.—A.

e i. —— —— *Solicitor & client costs—New Brunswick Electric Power Act.*]—*Re* INGLEWOOD PULP & PAPER CO., LTD., & NEW BRUNSWICK ELECTRIC POWER COMMISSION (1929), 3 M. P. R. 91.—**CAN.**

sn. *Costs follow event—Subject to discretion of court—Principles governing exercise of discretion.*]—The ordinary rule is that costs should follow the event. But the ct. has a discretion to depart from this rule, & such discretion is to be exercised on well recognised principles.—ASSISTANT COLLECTOR SALSETTE *v.* DAMODARDAS TRITHUVANDAS (1928), I. L. R. 53 Bom. 178.—**IND.**

sx. *Application to set aside award—Liability for costs.*]—Where on an application under sect. 332 of the Municipal Act appcts. succeeded in having an award set aside, there is no power in the ct. to order the unsuccessful party to pay the costs of appcts. in connection with the arbn. proceedings.—*Re* ELDRIDGE ESTATE & DISTRICT OF SUMAS CORPN., [1931] 3 W. W. R. 223; 44 B. C. R. 194.—**CAN.**

had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW *v.* AIR COUNCIL, [1926] Ch. 329; 95 L. J. Ch. 499; 135 L. T. 538; 42 T. L. R. 197; 70 Sol. Jo. 367; 24 L. G. R. 351.

785. For " No. 749, *ante*," read " No. 372, *ante*."

863. For existing citations read " (1865), 19 C. B. N. S. 139; 144 E. R. 739; *previous proceedings* (1863), 4 B. & S. 315."

875. *Add. Citation :—sub nom. Re* HAYNE (CHARLES), 13 W. R. 492.

930. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

948. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

966. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation :—As to* (1) **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

1035. *Add. Annotation :—As to* (1) **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation :—As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

Part X.—Conveyance of Land and Payment of Purchase-Money.

1122. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1125. *Add. Annotations :—As to* (1) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529; Swift *v.* Board of Trade, [1925] A. C. 520; Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1158. *Add. Annotation :*—**Consd.** Berners *v.* Fleming, [1925] Ch. 264.

1163. *Add. Annotation :*—**Refd.** Newton *v.* Lambton Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

1184a. **In Act—Right to vendor to costs of opposing Bill.**]—A vendor of land to a ry. co. having filed a bill for specific performance, opposed three Bills in Parliament, & by an Act which was eventually obtained his lien was provided for. It was then arranged that he should be paid principal, interest, & costs :—*Held :* the taxing-master in taxing the costs should allow all reasonable costs, charges, & expenses of appearing before the committee & opposing the Bills in Parliament.—COOPER *v.* LONDON, CHATHAM & DOVER RY. CO. (1867), 17 L. T. 283.

1205a. ——.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—INGLEWOOD PULP & PAPER CO. *v.* NEW BRUNSWICK ELECTRIC POWER COMMISSION, [1928] A. C. 492; 97 L. J. P. C. 118; 139 L. T. 593, P. C.

1227. After this case add :—

.]—*See, further,* CHARITIES, Vol. VIII., pp. 359, 360, Nos. 1558–1565.

1237. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

1242a. ——.]—*Re* BROMLEY GUARDIANS (1845), 4 L. T. O. S. 430.

PART VIII. SECT. 1, SUB-SECT. 1.

so. *Payment or tender of compensation not necessary.*]—CANADIAN PACIFIC RY. CO. *v.* PAUL (1921), 27 Can. Ry. Cas. 417.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—A.

a i. —— *Or expropriation proceedings completed.*]—GODDARD *v.* BAINBRIDGE [illegible] (1920), 29 B. C. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sp. *Application for warrant of possession of Jurisdiction of Exchequer Court to hear.*]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—**CAN.**

sq. —— ——.]—CANADIAN NATIONAL RY. CO. *v.* BOLAND, [1925] 4 D. L. R. 703; [1925] Exch. C. R. 173.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—B. (c) i.

y i. ——.]—R. *v.* MCKENZIE (1890), 2 Exch. C. R. 198.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

p i. —— *From filing of caveat—Owner remaining in possession.*]—*Re* ARBITRATION ACT, *Re* ROSHKO & WINNIPEG SCHOOL DISTRICT NO. 1, [1924] 4 D. L. R. 1017; 3 W. W. R.

z i. —— *Sydney Corporation (Amendment) Act (No. 7 of 1924), s. 17.*]—SYDNEY MUNICIPAL COUNCIL *v.* TROY, [1927] A. C. 706; 96 L. J. P. C. 124; 137 L. T. 707, P. C.—**AUS.**

Part XI.—Application of Money Deposited in Bank.

1275a. Order for purchase-money to remain on deposit in court—In lieu of investment.]—*Ex p.* TRINITY COLLEGE, CAMBRIDGE (1897), Y. S. C. P.

1279a. ——.]—*Re* ST. MARY MAGDALEN, OXFORD (1898), Y. S. C. P.

1382. *Add. Annotation:*—**Apld.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384. *Add. Annotation:*—**Consd.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384a. —— Title not proved to be defective—Payment out ordered.]—*Ex p.* BURDETT COUTTS, [1927] 2 Ch. 98; 96 L. J. Ch. 453; 137 L. T. 404; 71 Sol. Jo. 389.

1500. *Add. Annotation:*—**Consd.** *Re* Williams' Settlmt., Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

1560a. —— Encumbrancers otherwise secured need not be served.]—Where a petition was presented for payment out of ct. of purchase-money paid in in respect of real estate purchased under the General Metropolitan Paving Act, service of the petition upon parties entitled to certain small rent-charges charged on the property purchased, but which were amply secured on other property not included in the purchase, was held to be unnecessary.—*Ex p.* MERCERS' CO. (1879), 10 Ch. D. 481; 18 L. J. Ch. 384; 27 W. R. 424.

1560b. —— Summons by Representative Body of the Welsh Church.]—*Re* GREAT WESTERN RAILWAY ACT, 1911, *Ex p.* GREAT WESTERN RY., [1922] W. N. 148; 153 L. T. Jo. 339.

Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotation:*—*As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1604. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1614a. —— ——.]—*Re* LONDON BRIDGE ACTS, *Ex p.* TATHAM (1838), 3 Y. & C. Ex. 67; 7 L. J. Ex. Eq. 64; 2 Jur. 440; 160 E. R. 617.

1686a. —— ——.]—*Ex p.* NORFOLK RY. CO. (1860), 1 Drew. & Sm. 48, n.; 62 E. R. 296.

Annotation:—**Apld.** *Re* Cleveland's Harte Estates (1860), 1 Drew. & Sm. 46.

1707. *Add. Citation:*—*Sub nom. Re* BENYON'S TRUSTS, 8 W. R. 425.

1974. *Citations:*—Delete 5 Ch. App. 1, & add 20 L. T. 940.

1985. *Add. Annotation:*—**Refd.** *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1997a. Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.]—*Ex p.* SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, *Ex p.* STAINES RESERVOIRS JOINT COMMITTEE (1922), 86 J. P. Jo. 153.

Part XIII.—Purchase of Particular Interests in Land.

2017a. Agreement with mortgagor—Binding on mortgagee entering into possession.]—MOLD *v.* WHEATCROFT (1859). 27 Beav. 510; 29 L. J. Ch. 11; 1 L. T. 226; 6 Jur. N. S. 2; 54 E. R. 202.

2033. For existing citations substitute the following paragraph & citations:—

A bill filed against a railway co. by the grantee of an annuity charged on land taken by the co. stated that before the grant of the annuity the land was subject to a mtge. in fee, which had since been paid off, but that there had been no reconveyance; that the defts., under the powers of their act, had given the pltf. notice to treat for the land charged with the annuity, but without any further proceeding had taken possession of the land. The prayer was that the co. might be decreed to pay the arrears of the annuity & to secure the future payment of it. The defence made by the answer & evidence was that the co. had purchased from the

PART XII. SECT. 8, SUB-SECT. 5.—A.

2 i. —— ——.]—*Re* FORD & CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 319.—CAN.

PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce—R. S. O.*, 1897 (*c.* 110), *ss.* 15, 16.]—*Re* KINGSTON LIGHT, HEAT & POWER CO. & KINGSTON CORPN. (1904), 24 C. L. T. 358; 8 O. L. R. 258; 3 O. W. R. 769.—CAN.

so. Bonus to mortgagee on payment of loan before maturity—Must be considered in compensation.]—By a clause in the deed of hypothec affecting a property expropriated, the owner (mtgor.) was obliged to pay to the mtgee. a certain sum as bonus, in the event of the loan being paid before maturity:—*Held:* the expropriating party must assume the payment of such bonus, to the exoneration of the owner (mtgor.) as part of the compensation to be paid him for the lands taken under the Expropriation Act.—*v.* PICKLEMAN, [1932] Ex. C. R.

prior incumbrancer under a power of sale :—*Held :* pltf. could not on such pleadings enforce a specific performance of the notice to treat regarded as a contract to purchase pltfs.' interest. The prayer for general relief is not available for the purpose of obtaining a decree at variance with the case made by the statements of the bill.—HILL *v.* GREAT NORTHERN RY. Co. (1854), 5 De. G. M. & G. 66 ; 2 Eq. Rep. 1069 ; 23 L. J. Ch. 524 ; 18 Jur. 685 ; 2 W. R. 335 ; 43 E. R. 794, L.JJ.

2035a. —— **Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.**]—NORFOLK RY. Co. *v.* BAYES (1849), 14 L. T. O. S. 170 ; 13 Jur. 435.

2037. *Add. Annotations :*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63. **Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2038. *Add. Annotations :*—**Apld.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115 ; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2059. *Add. Citation :*—66 L. J. Q. B. 30.

2067. *Add. Annotations :*—**Consd.** Matthey *v.* Curling, [1922] 2 A. C. 180 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2068. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

2075. *Add. Annotations :*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177 ; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

Part XIV.—Superfluous Lands.

2136. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2174. *Add. Annotations :*—*As to* (1) **Consd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172. **Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

2175. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

2177. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

Part XV.—Compensation for Land taken or used for Special Purposes.

2201. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

2203a. ——.]—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD., No. 650a, *ante*.

PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. —— *Under invalid lease.* Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required :—*Held :* the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—R. *v.* HUDSON'S BAY CO. (1921), 65 D. L. R. 569 ; 20 Exch. C. R. 413.—**CAN.**

s i. —— *Disturbance of sporting rights.*]—In arbn. proceedings following upon the compulsory acquisition by the Dept. of Agriculture for Scotland of a deer forest which was let for purposes of sport under a ninety-nine years' lease, the tenant made a claim for personal loss in respect of dispossession of the subjects. His claim was opposed by the Dept., who maintained that a claim based on disturbance at the instance of a sporting tenant was incompetent :—*Held :* rules (2) & (6) of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 2, did not have the effect of displacing in any way the rule, now well settled in the construction of Lands Clauses Consolidation (Scotland) Act, 1845 (c. 19), that, where lands have been taken under compulsory powers, a tenant is entitled to full compensation for all loss resulting to him from dispossession ; &, further, there was no distinction, in principle, between a claim for disturbance such as was here in question & a claim for ordinary business disturbance.—VENABLES *v.* DEPARTMENT OF AGRICULTURE FOR SCOTLAND, [1932] S. C. 573.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 3.

sr. *General rules.*]—The rights conferred by a lease being a matter of property & civil rights, within the exclusive powers of the provincial legislature, the ct. in ascertaining the estate or interest of persons claiming compensation thereunder in an expropriation by the Dominion Crown, will have regard to the laws affecting such estate or interest in the province where the property is situated, notwithstanding Expropriation Act, ss. 25, 26. The compensation to be made to the lessee for the unexpired term of his lease should cover all reasonable cost of moving, refitting & settling the new premises ; loss of time in seeking new location ; depreciation of valuable business fixtures & fittings & damage thereto due to moving, etc., & a certain amount for dislocation or disturbance of business, which, however, cannot be fixed with mathematical certainty. The customary test of market value is no test of value in arriving at the compensation to be allowed for a leasehold interest expropriated.—R. *v.* ELITE CAFE, LTD., [1929] Ex. C. R. 56.—**CAN.**

z i. —— ——.]—The information herein was filed to have the compensation to which deft. was entitled fixed by the ct. Deft. was lessee of the property expropriated. & by the terms of his lease was given an option to purchase the freehold :—*Held :* as a lessee is entitled to compensation for the loss of his lease & as the option to purchase was one of the covenants of the lease, the right to purchase the freehold is an element to be considered in computing the compensation to be allowed deft.—R. *v.* NORTH-EASTERN LUNCH CO., LTD., [1933] Ex. C. R. 64.—**CAN.**

b i. —— —— ——.]—*Re* UNION FOUNDRY & MACHINERY WORKS, LTD., & ST. JOHN HARBOUR COMRS. (1929), 1 M. P. R. 267.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 1. —A.

t i. —— *Entitled to offer—As well as owner.*]—R. *v.* MUSGRAVE, [1924] Exch. C. R. 218.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 2.

st. *Measure of compensation—Licencee.*]—Where one is in occupation of part of a street under licence from the municipality, by the provisions of which licence he was obliged to vacate upon notice before a given date, & when by reason of the expropriation of the property he was forced to vacate before such date, he becomes entitled to compensation for his loss of the use & occupation, as well as for the extra inconvenience & expense occasioned by reason of having to make an immediate move instead of having the whole life of the licence to do so, but not to include the cost of moving.—VALENCOURT *v.* R., [1928] Exch. C. R.

2209. *Add. Annotation:*—**Consd.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

ii. *Basis of Compensation* (p. 293).

2211a. On withdrawal of notice to treat—National Economy (Road Services) Order, 1931—What are "expenses."]—On the withdrawal by a county council of a notice to treat in respect of certain premises resps. became entitled to compensation "equal to the amount of any expenses . . . reasonably incurred by [them] by reason or in consequence of the service of the notice to treat."

Before the date of such service resps. had become lessees of the premises at a ground rent, & had also borrowed money wherewith to purchase the lease. They claimed as such "expenses" a proportionate part of the ground rent & of the interest on the said borrowed money for the period of the currency of the said notice:—*Held:* these payments were not expenses "incurred . . . by reason or in consequence of the service of the notice to treat" but by reason of antecedent contractual liability, & were not, therefore, the subject matter for compensation.—LONDON COUNTY COUNCIL *v.* MONTAGUE BURTON, LTD., [1934] 1 K. B. 360; 103 L. J. K. B. 86; 150 L. T. 178; 97 J. P. 318; 31 L. G. R. 385, D. C.

Before Sub-sect. 2 (p. 293), add:—

(*d*) *By Action.*

2212a. Admission of liability—Right to continue action.]—Where a local authority have intimated that they do not dispute their liability for damage done to premises, the owner of such premises is entitled to continue the action instituted by him before the defts. admitted liability, claiming a declaration that defts. are liable to pay compensation.—HOLT BROS. & WHITFORD *v.* AXBRIDGE RURAL DISTRICT COUNCIL (1931), 95 J. P. 87.

2214. *Add. Annotation:*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2218. *Add. Annotations:*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2222a. —— —— Loss of trade & licence & value of trade fixtures not considered.]—NORTHWOOD *v.* LONDON COUNTY COUNCIL, [1926] 2 K. B. 411; 95 L. J. K. B. 862; 135 L. T. 159; 90 J. P. 128; 42 T. L. R. 508; 24 L. G. R. 415, D. C.; *on appeal* (1927), 96 L. J. K. B. 520, C. A.

2225a. —— —— Must be within three years of confirmation of Order.]—It is insufficient to serve notice to treat within the three years, & where that had been done, but the hearing of the arbitration to determine compensation was not held within the three years:—*Held:* the powers of the local authority had lapsed, & prohibition would lie to the official arbitrator.—R. *v.* WEBSTER, *Ex p.* MARSHALL (1931), 95 J. P. 226; 30 L. G. R. 29, D. C.

2225b. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (*a*) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (*b*) of providing for the general entertainment & refreshment of the population:—*Held:* the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, &, as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect.; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

Semble: both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—CONRON *v.* LONDON COUNTY COUNCIL, [1922] 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 38 T. L. R. 380; 20 L. G. R. 131; *sub nom.* CONSON *v.* LONDON COUNTY COUNCIL, 66 Sol. Jo. 350.

2225c. Under Housing Act, 1925 (c. 14)—Assessment of compensation—Whether under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7.]—Housing Act, 1925 (c. 14), s. 46, provides for the assessment of compensation for land acquired compulsorily under an improvement or reconstruction scheme made under that Act in a manner differing in certain respects from that prescribed by the Act of 1919:—*Held:* even on the assumption that Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7 (1), purports to apply to future Acts, Housing Act, 1925 (c. 14), s. 46, in so far as its provisions for the assessment of compensation for land acquired thereunder are inconsistent with the provisions of the earlier Act of 1919, repeals by implication these provisions of that earlier Act.

Per AVORY, J.: Sect. 7 (1) of the 1919 Act on its true construction applies only to Acts which existed at the time when that Act was passed, & not to future Acts.—VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., [1932] 1 K. B. 733; 101 L. J. K. B. 779; 95 J. P. 224; 48 T. L. R. 100; 75 Sol. Jo. 886; *sub nom.* VAUXHALL ESTATES, LTD. *v.* LIVERPOOL

CORPN., GROSVENOR ESTATES, LTD. *v.* LIVERPOOL CORPN., WHITECHAPEL ESTATES, LTD. *v.* LIVERPOOL CORPN., RYMER *v.* LIVERPOOL CORPN., 146 L. T. 167; 30 L. G. R. 22.

Annotation :—**Apprvd.** Ellen Street Estates, Ltd. *v.* Minister of Health, [1934] 1 K. B. 590.

2225d. —— —— ——.]—*Held :* (1) Parliament cannot bind itself as to the form of subsequent legislation & cannot effectively enact that a provision in one statute shall not be altered by a subsequent Act save by express words; (2) Housing Act, 1925 (c. 14), s. 46, so far as its provisions are inconsistent with those of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), has repealed by implication the provisions of that Act.—ELLEN STREET ESTATES, LTD. *v.* MINISTER OF HEALTH, [1934] 1 K. B. 590; 103 L. J. K. B. 364; 150 L. T. 468; 98 J. P. 157; 32 L. G. R. 233, C. A.

2225e. —— **Notice to treat—Whether service necessary before service of notice of entry.**]—(1) It is proper to serve the two notices simultaneously.

(2) If a notice to enter is served before a notice to treat has been served, that notice operates as a notice of intention to enter not less than twenty-eight days after the service of both notices, that is, not less than twenty-eight days after the subsequent service of the notice to treat.—LIVERPOOL CORPN. *v.* ROSE (1935), 100 J. P. 62; 79 Sol. Jo. 839; 34 L. G. R. 181, C. A.

2225f. —— **Open space within London Open Spaces Act, 1893, c. lxxi.**]—By London Open Spaces Act, 1893 (c. lxxi.), Hackney Marshes was vested in the L.C.C. in fee simple as & for an open space for the perpetual use thereof by the public for exercise & recreation. Sect. 12 of that Act provided that the council might from time to time exchange any lands forming part of Hackney Marshes for any other lands "adjoining." In 1935, the L.C.C., in purported exercise of their powers under sect. 65 of Housing Act, 1925 (c. 14), of appropriating for housing lands vested in them, resolved that, subject to the certificate of the Minister under sect. 103 (1) of that Act, thirty acres of Hackney Marshes should be appropriated for housing & that fifty acres of land at Chigwell, about seven miles away, should be given in exchange. Appct. having addressed a protest to the Minister against the proposed appropriation & exchange was informed that the Minister proposed to hold a public inquiry under sect. 103 (2) of Housing Act, 1925 (c. 14).

The appct. then obtained a rule *nisi* for a writ of prohibition to prohibit the Minister from (*a*) consenting to the appropriation by the L.C.C. of a portion of Hackney Marshes, (*b*) issuing his certificate under sect. 103 (1) of Housing Act, 1925 (c. 14), approving the giving in exchange of an area of land at Chigwell, & (*c*) holding a public local inquiry in relation to those matters under sect. 103 (2) of Housing Act, 1925 (c. 14):—*Held :* (1) prohibition would lie; (2) in exercising its powers of appropriation of land under sect. 65, a local authority need not act by an "order," & therefore the resolution of the L.C.C. was not bad merely because it was not under seal; (3) Housing Act, 1925 (c. 14), which is a consolidating Act repealing & re-enacting Housing of the Working Classes Act, 1890 (c. 70), & Housing, Town Planning, etc., Act, 1909 (c. 44) (from which ss. 65 & 103 are respectively taken), did not affect an Act passed between the original enactment of sect. 57 (3) of the Act of 1890 & its re-enactment in sect. 65 of the consolidating Act. It was manifest that the council could not, immediately after the Act of 1893 had vested Hackney Marshes in them as an open space, have appropriated part of the Marshes for housing under the Act of 1890. They had no greater powers under the Act of 1925; (4) the maxim "*generalia specialibus non derogant*" also applied to prevent the Housing Act, 1925 (c. 14), overriding the special provisions of London Open Spaces Act, 1893 (c. lxxi.), with regard to Hackney Marshes.—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, [1936] 2 K. B. 29; [1936] 1 All E. R. 817; 105 L. J. K. B. 792; 154 L. T. 630; 100 J. P. 212; 52 T. L. R. 408; 80 Sol. Jo. 426; 34 L. G. R. 203, D. C.

2225g. —— **Whether local authority must act by order.**]—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, No. 2225f, *ante*.

2252. *Add. Annotation :*—*As to* (3) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2259. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2262. *Add. Annotation :*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2265. *Add. Annotation :*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268a. —— **Uncompleted building.**]—A local authority purporting to act under the powers conferred by Metropolitan Paving Act, 1817, served on deft. a written notice to treat for the compulsory purchase of part of a piece of land on which a house then uncompleted was in course of erection:—*Held :* (1) the principle that a notice to treat for the compulsory purchase of part of a building is bad if the purchase of the part will cause a substantial interference with or alteration in the character of the whole building, applies where the building, part of which it is proposed to purchase compulsorily, is not complete at the time the notice is given, being in course of

PART XV. SECT. 3, SUB-SECT. 6.

sv. *Amount of land—Amount necessary for contemplated works.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held :* it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—N.Z.

sw. *Time for valuation—Successive declarations relating to different land.*]—The local government published under Land Acquisition Act, 1894, s. 6, a declaration that land belonging to applts. respectively & land belonging to other persons were required for public purposes. Five months later the govt. published another declaration for the acquisition of applts.' lands only; the declaration stated that the earlier declaration was thereby cancelled:—*Held :* having regard to Land Acquisition Act, 1894, s. 23 (1), the compensation should have been based upon the value of the land at the date of the publication of the later declaration.—MA SIN *v.* RANGOON COLLECTOR (1929), 56 L. R. Ind. App. 210.—IND.

construction; (2) the notice is bad if it refers to "land" only, being the site of the building part of which it is proposed to purchase compulsorily.—SILCOCK & SONS *v.* GREEN, [1936] 1 K. B. 478; 105 L. J. K. B. 170; 154 L. T. 176; 100 J. P. 91; 52 T. L. R. 156; 79 Sol. Jo. 988; 34 L. G. R. 71.

2269. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2269a. Notice to treat referring to "land"—Validity.]—SILCOCK & SONS *v.* GREEN, No. 2268a, *ante.*

2283. *Add. Annotation :*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2286a. Compensation for damage to land by severance not included.]—COURTAULDS, LTD. *v.* CITY OF LONDON CORPN., [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

2298. *Add. citation :*—[1921] 1 Ch. 299.

Add. Annotations :—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

SUB-SECT. 3.—UNEMPLOYMENT.

See Public Works Facilities Act, 1930 (c. 50).

2300a. Validity of order—Inclusion of name of owner of easement.]—By a conveyance made in 1932 appct. sold land to a purchaser in fee simple subject to reservations in favour of himself & his grantees of certain rights to surface & underground water. Subsequently the local district council as water authority acting ostensibly under the Public Works Facilities Act, 1930 (c. 50), s. 2, made an order purporting to be a compulsory purchase order in the prescribed form authorising them to purchase a part of the land comprised in the conveyance, there being inserted in the schedule to the order under the heading "Owners or Reputed Owners" not only the name of the purchaser under the conveyance but also the name of appct., & under the heading "Quantity, Description & Situation of the lands" a full description of the land but no mention of appct.'s easement over it; & the council served upon appct. a notice of the making of the order purporting to be a notice in accordance with the Act & in the prescribed form, the schedule to which notice contained a full description of the lands but made no mention of the easement. Appct. gave notice of objections to the confirmation of the order by the Minister of Health, & by direction of the Minister a public local inquiry was held in regard to the matter before an officer of the Ministry, who stated that the objections raised points of law which could not be dealt with by him but must be considered by the Minister. Having considered the objections & read the report of the officer, the Minister confirmed the order. Appct. thereupon made an application to the High Ct. under Sched. I., Part III., para. 2, of the Act that the order might be set aside on the grounds: (1) that the order was not within the powers of the Act, inasmuch as, though the Act authorised only the purchase of land, the order included the name of appct. who had merely an easement over the land & therefore purported to acquire what was not land; (2) the property to be acquired was not sufficiently described in the order or the notice thereof, as no mention was made in them of appct.'s easement; &, further, that the notice of the order did not, pursuant to Sched. I., Part II., para. 3 (*b*), of the Act state the "effect of the order," because it did not bring home to the applicant what effect the order would have upon him or his property; & (3) that the Minister did not before deciding whether or not the order should be confirmed give appct. an opportunity of coming before him & stating his legal arguments in support of the objections:—*Held :* the application could not be supported on any of these grounds, & must therefore be refused.—*Re* SIMEON (J. W. B.), [1935] 2 K. B. 183; *sub nom.* SIMEON *v.* MINISTER OF HEALTH, 104 L. J. K. B. 330; 152 L. T. 372; 99 J. P. 167; 51 T. L. R. 235; 79 Sol. Jo. 109; 33 L. G. R. 75.

2300b. —— Description of property—Omission of easement.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300c. Notice of order—Omission to state effect of order.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*.

2300d. Confirmation of order by Minister—Applicant not heard on objection on point of law.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300e. Public inquiry—Appointment of technical assessor—Validity.]—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934, No. 2300f, *post.*

2300f. Quashing order—Order ultra vires—No prejudice.]—(1) Under Public Works Facilities Act, 1930 (c. 50), Sched. I., Part III. (2), the High Ct. has power to quash a compulsory purchase order, "if satisfied that the order is not within the powers of the Act or that the interests of the appct. have been substantially prejudiced by any requirement of this Act not having been complied with." The provision that appct. must have been substantially prejudiced applies to both the above grounds of objection to an order. Accordingly, if an order is not within the powers of the Act, by reason of the Minister having failed to act judicially in some particular or for some other cause, the order will not be quashed, unless it is also shown that the interests of appct. have been prejudiced thereby. (2) *Held :* further, on the facts, a tentative approval of a scheme contemplated as a result of the order, expressed in a letter written by the Minister to the

PART XV. SECT. 3, SUB-SECT. 7.—C.

ex. ***Land taken under Winnipeg Charter—Time for making claim.***]—**Defts.' claim was for compensation for their land injuriously affected by the exercise of the powers of the City under the Charter, & had been expressly recognised by a bye-law of the council:** —***Held :*** **the Charter had, under the circumstances, no application to the** claim of defts., & they had all the time allowed them by the general law applicable to the case for making their claims.—WINNIPEG CORPN. *v.* TORONTO GENERAL TRUSTS CORPN. (1911), 20 Man. L. R. 545.—**CAN.**

promoters of the scheme, did not prevent the Minister from bringing a judicial mind to bear on the matters in issue, & the public local inquiry, which under the Act the Minister is bound to hold before confirming the order, was not invalidated by the appointment of a technical assessor to sit with the inspector who held the inquiry.—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934 (1935), 153 L. T. 219; 99 J. P. 319; 79 Sol. Jo. 503; 33 L. G. R. 314.

Annotation :—Generally, **Reid.** Horn *v.* Minister of Health, [1936] 2 All E. R. 1299.

COMPTROLLER.

See PATENTS; TRADE MARKS

CONDONATION.

See HUSBAND AND WIFE

CONFLICT OF LAWS.

Part I.—Principles of Jurisdiction.

1. *Add. Annotation :*—**Refd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

6. *Add. Annotation :*—**Folld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6a. ——.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re* VISSER, QUEEN OF HOLLAND *v.* DRUKKER, [1928] 1 Ch. 877 ; 97 L. J. Ch. 488 ; 139 L. T. 658 ; 44 T. L. R. 692 ; 72 Sol. Jo. 518.

8. —— ——.]—The Spanish Govt. declared deft. the ex-King of Spain, to be a traitor, & decreed that all his property & grounds of action should be seized for the benefit of the State, & that all bankers in Spain having in deposit any such property should make delivery thereof to the Spanish Treasury. Certain securities, the private property of deft. had been deposited at the W. Bank in London to the order of pltfs. a Spanish bank in Spain, as deft.'s agents. Both pltfs. & deft. claimed the delivery up of these securities & the W. Bank interpleaded :—*Held :* as pltfs. claimed no personal title to the securities, were not asserting their contractual rights as they originally existed but those rights as altered by the above decrees, upon which they must rely, & as, in substance, they were not asserting their own right at all, but that of the Spanish State, a judgment in their favour would involve the execution of a foreign penal law. Therefore pltfs.' claim failed.—BANCO DE VIZCAYA *v.* DON ALFONSO DE BORBON Y AUSTRIA, [1935] 1 K. B. 140 ; 104 L. J. K. B. 46 ; 151 L. T. 499 ; 50 T. L. R. 284 ; 78 Sol. Jo. 224.

11. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

12. *Add. Annotation :—As to* (1) **Apprvd.** Kramer *v.* A.-G. (1922), 92 L. J. Ch. 1.

After this case add " Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see* ALIENS, Nos. 49a *et seq.*, *ante*.

13. *Add. Citation :*—2 T. L. R. 116, D. C.

14. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

17. *Add. Annotations :—As to* (1) **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. **Refd.** The Jupiter (1924), 93 L. J. P. 156 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte De Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Folld.** White, Child & Bency *v.* Simmons ; White, Child & Beney *v.* Eagle Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259 ; Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (3) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

17a. —— —— ——.] — Pltfs. were an English limited co. of engineers & merchants. Part of its business was transacted in Russia, & for the purpose of that business pltfs., through their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the Banque de Commerce de l'Azoff-Don. Having done so, pltfs. took out two policies of insurance to insure themselves against loss or damage to the insured property " directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) " for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolshevists, purporting to act under the authority of an

PART I. SECT. 1.

2 iii. ——.]—A husband obtained decree of divorce against his wife in an undefended action in Scotland. Therefore, while he was resident in England, his former wife brought an action against him in Scotland for reduction of the decree, on (*inter alia*) the ground that the ct. had had no jurisdiction to entertain the action of divorce, the husband being domiciled in England. At a proof it was established that, in the divorce proceedings, the husband had deliberately misled the ct. as to his domicile, & had thereby procured the decree of divorce :—*Held :* even though the decree of divorce was one the ct. had had no jurisdiction to grant & which had been obtained only through the husband's false evidence, yet the ct. could not competently entertain the action to reduce that decree, the defender not being personally subject to its jurisdiction ; action dismissed.—ACUTT *v.* ACUTT, [1936] S. C. 386.—**SOOT.**

h i. —— ——.]—A foreign subject comes within the purview of all Acts in force in British India, if he chooses to come into the country, unless such Act specially exempts him. Ignorance of law enforceable in British India might be pleaded in mitigation of sentence but affords him no sort of, privilege or immunity.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVT. (1932), I. L. R. 60 Cal. 364.—**IND.**

8b. *Tort committed within jurisdiction—By party resident outside.*]—An action founded on tort committed within the jurisdiction by a party resident outside the jurisdiction may be tried by an Ontario ct.—ANDERSON *v.* THOMAS, [1935] 3 D. L. R. 286.—**CAN.**

8c. —— ——.]—A judge of the circuit ct. has no jurisdiction to try an action for tort where deft. does not ordinarily reside or carry on any profession, business or occupation in

8c. *Proceedings in tort against foreign executors—One executor temporarily resident in jurisdiction.*]—In an action of damages for personal injuries arising out of a motor car accident in Scotland, pursuers sought (*inter alia*) to establish that the accident was due to the fault of the driver of the car in which they were travelling, who had died as a result of the accident, & they called his exors. as defenders. Deceased was a domiciled Englishman, his executry estate was wholly situated in England, & the exors., two in number, were domiciled & resident there. Personal service of the summons was made upon one of the exors. in his executorial capacity, while he was temporarily in Scotland. Both exors. having lodged defences to the action, & having pleaded that they were not subject to the jurisdiction of the Ct. of Session :—*Held :* jurisdiction had not been established against the exors., in respect that only one of them had been personally cited in Scotland.—DALZIEL *v.* COULTHURST'S EXORS., [1934] S. C. 564.—**SOOT.**

executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power:—*Held:* on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—WHITE, CHILD & BENEY, LTD. *v* SIMMONS, WHITE, CHILD & BENEY, LTD. *v.* EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. (1922), 127 L. T. 571; 38 T. L. R. 616, C. A.

Annotation:—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8.

Part II.—Domicil.

19. *Add. Annotations:—As to* (2) **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669. *As to* (3) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Abraham *v.* A.-G., [1934] P. 17. *As to* (4) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

22. *Add. Annotation:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177.

32. *Add. Annotation:—As to* (1) **Consd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

34. *Add. Annotation:—As to* (3) **Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

36. *Add. Annotations:—As to* (1) **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9; Abraham *v.* A.-G., [1934] P. 17. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259; Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Boldrini *v.* Boldrini & Martini, [1932] P. 9. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

37. *Add. Annotation:*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

38. *Add. Annotations:*—**Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Rudd *v.* Rudd, [1924] P. 72; Ross *v.* Ross, [1930] A. C. 1; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Herd *v.* Herd, [1936] 2 All E. R. 1516.

40. *Add. Annotation:—As to* (2) **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

44. *Add. Annotation:*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

48a. —— ——.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires a domicil of choice there, only when with that intention he again resides there. The domicil of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation:—As to* (6) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

51. *Add. Annotations:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177. **Refd.** Rudd *v.* Rudd, [1924] P. 72.

52a. ——.]—(1) In questions of domicil, less weight is given by the cts. to a testator's declarations than to his acts, & no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered as evidence of the *animus manendi* or *revertendi.*

(2) The cts. are now slower to hold a change of the domicil of origin, & must be satisfied that testator intended *quatenus in illo exuere patriam.*

(3) The decisions that persons going to India in the service of the East India Co. thereby acquire an Anglo-Indian domicil, are excrescences upon, & anomalous to, the principles of domicil.

PART II. SECT. 1.

sq. *Person settled in province.*]—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

40 iii. —— ——.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—NELSON *v.* NELSON, [1925] 3 D. L. R. 22; [1925] 2 W. W. R. 1.—**CAN.**

40 iv. —— ——.]—R. *v.* MILKHA SINGH (1931), 44 B. C. R. 278; 56 Can. C. C. 211.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. —— ——.]—A domicil of origin differs from a domicil of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicil continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicil. This *onus* is a heavy one, & is upon those who assert a change of domicil.—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

51 iii. —— ——.]—A domicil of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicil of origin & to settle in the country of choice.—BARRY *v.* JAMES (1921), *Times,* Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

51 iv. ——.]—TAYLOR *v.* TAYLOR (1928), Q. R. 45 K. B. 184.—**CAN.**

(4) The *animus* to change an acquired domicil is not sufficient without the factum of return.—DREVON *v.* DREVON (1864), 4 New Rep. 316; 34 L. J. Ch. 129; 10 L. T. 730; 10 Jur. N. S. 717; 12 W. R. 946.

Annotation :—As to (1) **Consd.** Doucet *v.* Geoghegan (1878), 9 Ch. D. 441.

53a. ——.]—HORN *v.* HORN (1929), 142 L. T. 93; *previous proceedings, sub nom.* H. *v.* H., [1928] P. 206.

54a. —— —— **After revival of domicil on abandonment of domicil of choice.**]—FLEMING *v.* HORNIMAN, No. 48a, *ante*.

55a. ——.]—RUDD *v.* RUDD, No. 903a, *post*.

58a. Life to be considered as a whole].—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

59. *Add. Annotations :—As to* (2) **Distd.** *Re* Ross Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

64a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

65a. —— **Effect of deportation order.**]—VEITH *v.* VEITH (1929), 73 Sol. Jo. 235.

66. *Add. Annotation :*—**Follid.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

67. *Add. Annotations :*—**Consd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

67a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

68. *Add. Annotations :—As to* (1) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768. **Refd.** Rudd *v.* Rudd, [1924] P. 72. *Generally*, **Refd.** Ross *v.* Ross, [1930] A. C. 1.

——.]—Applt. was the proprietor of a Scotch estate, but left Scotland for America in 1895 to earn his living. In 1901 he married resp., an American lady, & in 1902 they went to Quebec where he carried on the business of manufacturing arms. They lived together there till 1917 with occasional visits to England. In 1917 applt. went to Washington, staying there as an expert adviser on munitions till Sept. 1918, when he stayed a certain time in Great Britain & in 1918 leased a house in London. In 1922 he took a lease of a flat in New York of which he remained tenant when these proceedings for divorce began in Dec. 1923. Up to the year 1920 there was no statement by applt. of his intention to abandon his Scottish domicil, & as late as Dec. 1920, he stated in an affidavit that he was a domiciled Scotchman. Between Dec. 1920, & the institution of these proceedings he was trying for the purposes of taxation to become a resident alien in the United States, & in Apr. 1923, succeeded. In Jan. 1924, after these proceedings he sought to be naturalised as an American citizen. He spent increasing periods of time at his Scottish estate & referred to it as his home in a letter written to resp. in Nov. Since 1920, however, he had made statements in documents & verbally that he intended to live permanently in New York, though such statements were never made to his wife, nor, with one exception, to any personal friend :—*Held :* the evidence of declared intention of change of domicil was not established, as such declarations must be examined by considering the person to whom, the purposes for which, & the circumstances in which they were made, & be carried into effect by conduct & action consistent with the declared intention.—ROSS *v.* ELLISON (OR ROSS), [1930] A. C. 1, H. L.; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

Annotation :—**Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

68b. —— ——.]—On an issue as to domicil the declarations of a living person as to his intention of acquiring a domicil of choice are not subject to the usual common law rule which excludes evidence of statements of intention unless they are against the interest of the party making them. The declarations in question are to be duly weighed along with the rest of the evidence on the issue, although they have been properly described as being, unless they are accompanied by acts, the "lowest species of evidence, especially when encountered by conflicting declarations" of another party.—BRYCE *v.* BRYCE, [1933] P. 83; 102 L. J. P. 1; 148 L. T. 351; 49 T. L. R. 177; 77 Sol. Jo. 49.

68c. —— ——.]—Testator, who died in 1935, declared by his will, which was in English form : "I have not relinquished & do not intend to relinquish my English domicil." Testator's domicil of origin was England, where he was born, but in 1897 he moved with his parents to Scotland, where his father had bought certain property. Testator's father continued to live in Scotland until his death in 1905, when by his will, which was in English form, his residuary estate, including the property in Scotland & other property in England, passed to testator. With the exception of brief visits to England & an occasional trip abroad, testator lived in Scotland from 1897 until his death. He had a great love for his property in Scotland & was anxious that after his death it should remain in his family & not be sold. At his own request testator was buried in Scotland. The exors. of the will took out a summons to determine (*inter alia*) whether testator was at the time of his death domiciled in England or in Scotland :—*Held :* as all the evidence showed that the testator's residence was in Scotland & that he intended that such residence should be permanent, the testator was domiciled in Scotland at the time of his death.—*Re* LIDDELL-GRAINGER'S WILL TRUSTS, DORMER *v.* LIDDELL-GRAINGER, [1936] 3 All E. R. 173; 53 T. L. R. 12; 80 Sol. Jo. 836.

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. ——.]—GROTHKOP *v.* GROTHKOP, [1922] N. Z. L. R. 1.—**N.Z.**

60 iv. ——.]—HARRIS *v.* HARRIS (Sask.), [1929] 2 D. L. R. 546.—**CAN.**

60 v. ——.]—The intention necessary to constitute a domicile of choice excludes all contemplation of any event on the occurrence of which the residence would cease.

The domicile of origin of a man found not to have been abandoned at the time of his marriage, despite the facts that he had actually resided & been employed in a certain State in the U.S.A. for over a year & a half; that while there he had sent for his fiancée to join him; that he had married her there & had become a naturalised American citizen.—JOHNSON *v.* JOHNSON, [1931] A. D. 391.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. —— ——.]—CROSBY *v.* THOMSON (N. B.), [1926] 4 D. L. R. 56.—**CAN.**

68d. Declarations as to intention—Purpose & circumstances must be considered.]—ROSS *v.* ELLISON (OR ROSS), No. 68a, *ante*.

69. *Add. Annotations :—As to* (1) **Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

-.]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

84. *Add. Annotation :*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

84a. —— —— **Although subject to Aliens Order.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* (1) the provisions of the Act of 1914 & the Order of 1920 did not preclude the petitioner from acquiring an English domicil of choice ; (2) on the facts, petitioner had discharged the *onus* on him of proving that he had acquired an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9 ; 101 L. J. P. 4 ; 146 L. T. 121 ; 48 T. L. R. 94 ; 75 Sol. Jo. 868, C. A.

88a. —— ——.]—It being settled that a change of domicil must be made *animo et facto*, the *animus* may be inferred by the *factum* of residence within the new domicil, but in order to warrant that inference the quality of the residence must be taken into account ; mere length of residence is not of itself sufficient.

A testator who died in Liverpool in 1927, aged eighty-two & unmarried, left a holograph will, valid by the law of Scotland but invalid by the law of England. Testator's domicil of origin was Scottish, & he lived the greater part of his life in Glasgow. Originally employed there as a commercial traveller he gave up that employment in 1882 & never worked again. In 1892 he went to Liverpool to be near a brother & sister, & lived there for the last thirty-five years of his life. He was supplied with the means of subsistence by his brother & sister, & on the death of his sister he succeeded to the whole of her estate. With the exception of family ties he had few, if any, ties in either England or Scotland. In an action by beneficiaries under the will against testator's next of kin for a declaration that testator was domiciled in Scotland at the date of his death :—*Held :* in the absence of independent evidence of an intention on the part of testator to change his domicil, the burden which lay on the next of kin of proving that he had abandoned his domicil of origin had not been discharged.—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, [1930] A. C. 588 ; 99 L. J. P. C. 134 ; 143 L. T. 388 ; 46 T. L. R. 465, H. L.

Annotation :—**Refd.** *Re* Liddell-Grainger's Will Trusts, Dormer *v.* Liddell-Grainger, [1936] 3 All E. R. 173.

100a. —— ——.]—Resp., a domiciled Englishman, was an officer in the Indian Army, & consequently, although his true matrimonial & conjugal home had been in England, he was temporarily resident in India when a petition for judicial separation was served upon him :—*Held :* without deciding whether resp.'s English domicile was sufficient to found jurisdiction, in the circumstances, as resp.'s temporary residence in India was independent of his personal volition, but was determined by his superior officers, he had a sufficient matrimonial residence in this country to give jurisdiction to the ct.—WARD *v.* WARD (1923), 39 T. L. R. 440.

104. *Add. Annotations :—As to* (1) **Expld.** Graham *v.* Graham, [1923] P. 31. **Refd.** Eustace *v.* Eustace, [1924] P. 45.

112. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61

113. *Add. Annotation :*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

114. *Add. Annotations :—As to* (2) **Consd. & Expld.** *Re* Ross. Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

115. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd [1924] P. 72 ; Bartlett *v.* Bartlett, [1925] A. C. 377 ; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

120a. Health of wife.]—Deceased was born in Germany of German parents in 1852. His father had a large interest in a starch & sugar manufacturing business in Germany, & his son was brought up in that business. In 1877 deceased married a German lady & had two sons who were both born in Germany. In 1879 he came to England where he resided at various places until 1884, when he applied for & obtained naturalisation as a British subject under the Aliens Act, 1870. In his memorial he stated that he intended to continue to reside permanently within the

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

97 i. *Naval service.*] — There is no rule of law that a sailor in the Australian Navy cannot, while on service in Australia, acquire a domicile of choice in one of the Australian States. —SCHACHE *v.* SCHACHE & STREETER (1931), 31 S. R. N. S. W. 633 ; 48 N. S. W. W. N. 230.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

S. AF.

116 v. —— ——.]—In a suit by a wife for dissolution of marriage on the ground of desertion, resp. entered an appearance under protest & disputed the jurisdiction of the ct. on the ground that the parties were not domiciled in New South Wales. It appeared that about the end of 1926 resp. whose domicile of origin was in Victoria, applied for, & was appointed to, a permanent position in the New South Wales Postal Department of the Commonwealth Public Service. In 1929 he married in New South Wales ; subsequently he took & furnished a house in this State, & in 1931 was resident in the house with his wife & child at the time of his alleged desertion. Prior to 1923 resp., whilst a minor & after coming of age, had been employed & had resided in New South Wales :—*Held :* at the time of the alleged desertion resp. was domiciled in New South Wales, & that at the time of the institution of the suit petitioner was domiciled, & had been domiciled for three years & upwards, in this State.—PERKINS *v.* PERKINS (1934), 51 N. S. W. W. N. 175.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

120 i. *General rule.*]—The fact that a person has taken up residence in New South Wales solely for reasons of health does not prevent the acquisition by him of a domicile of choice in this State ; for, if the residence was taken up with the intention of residing permanently or indefinitely, he thereby acquired a domicile in this State.—BROWN *v.* BROWN (1933), 50 N. S. W. W. N. 33.—**AUS.**

United Kingdom of Great Britain & Ireland & had no intention of permanently leaving the United Kingdom. Having divorced his wife he married in 1886 in England his second wife, a lady of English birth, & lived with his wife & children for two years in England. He then returned to Germany for two years & was there engaged on business connected with his father's firm. His wife having become an invalid, he took a house for her in Hampstead, & in it she died in 1906. In 1901 the father of the deceased, who had been the head of the firm at Cüstrin, died & was succeeded in the management of the business by the deceased, who paid frequent visits to Germany lasting for considerable periods, in attendance at meetings of the board, & made the old family house his residence when at Cüstrin on business. On the death of his mother in 1908 at Neuwied he used her house as a second residence when in Germany. Deceased died in 1915 at his house in Hampstead which he had endeavoured to dispose of, though without success:—*Held:* the true inference to be drawn from the circumstances under which the house in Hampstead was taken & maintained by the deceased was that it was an emergency measure dictated by the condition of his wife & not one which should be held to indicate an intention to establish a family home & thus to adopt a new domicile in this country. The evidence was wholly insufficient to establish the abandonment by the deceased of his German domicile.

Per Lord ATKIN: It is not the law either that a change of domicile is a condition of naturalisation, or that naturalisation involves necessarily a change of domicile.—WAHL *v.* A.-G. (1932), 147 L. T. 382, H. L.

128. *Add. Citation:*—4 Notes of Cases, 698, n.

134. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

142. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206.

145. *Add. Annotation:*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

147. *Add. Annotation:*—**Refd.** Bryce *v.* Bryce, [1933] P. 83.

150. *Add. Citation:*—3 Macq. 852.

154. *Add. Annotations:*—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

155a. —— **Material consideration.**]—D.. who was born in Edinburgh in 1858, went out to Calcutta, India, in 1875 & worked in his uncle's cotton mills, becoming a partner in his uncle's firm in 1880. In 1883 he returned for a few months, but from 1883 to 1900 remained working in India, making his business his life. He seldom went into society, but was fond of Indians, & chiefly associated with them. In 1900 he returned to England & married his cousin, & took her out with him to Calcutta in 1901, but, the climate not suiting her, she returned in Nov. 1901, to England. From Jan. 1903 to 1910, he paid visits for a substantial time each year to be with his wife in England, where he had bought a house. In 1903 a child was born. From Jan. 1912 to Nov. 1915, D. remained in England, being, it was said, detained by litigation. In 1916 his wife went out to Calcutta, & she & her daughter lived with her husband in his flat over his offices. She returned with her daughter after two months. In 1917 D. followed his wife home, & until his death on July 3, 1928, remained in England, except for short visits to India in 1919, 1920, 1922, 1924, & 1925. In his will dated June 28, 1922, he made a declaration of Indian domicile. On his death, the Crown, on the ground that he was domiciled in the United Kingdom, claimed death duties on his estate, the value of which was many millions of pounds. On the question whether, as the exors. of the will alleged, he had acquired a domicile of choice in India & lost his domicile of origin:—*Held:* the earlier period of D.'s life up to the year 1900 could not be estimated in deciding whether he had acquired a domicile of choice in India in a compartment separate from his later years, & the declaration in his will did not decide the point, but where his wife & children had their permanent residence was material as to a man's domicile. There was a distinction between residence & domicile, & it could not be inferred from the fact of residence that domicile resulted. On the facts there was no clear evidence, as was necessary, of any manifest & concluded intention of change of domicile to overcome the domicile of origin. Therefore the onus of proof of a domicile of choice was not discharged, & D. died domiciled in the United Kingdom.—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA (1931), 145 L. T. 9, C. A.

Annotations:—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

PART II. SECT. 3, SUB-SECT. 2.—B (f).

133 ii. ——.]—When a person voluntarily accepts employment, the duties of which necessarily require residence in another country & there is no stipulated period of service, & he proceeds to that country, the law presumes an intention consistent with his duty & holds his domicil to be in the country to which he goes, even though he has real property, but provided he has no residence in his domicil of origin.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

133 iii. ——.]—The fact that pltf. was employed by the C. P. R. as a constable & might be ordered by his superiors to move from the province held not to be a reason for holding that he had not acquired a domicile of choice in Saskatchewan where he had resided ever since he had asked to be transferred there. Pltf. had no contract of service & could leave the co.'s service if he should not wish to move in compliance with its orders.—LOWRY *v.* LOWRY, [1936] 2 W. W. R. 217.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

146 i. *House or apartments rented in another country—Family estate kept up.*]—Deft., whose domicil of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year. In order to supervise his financial interests, which were in America, & to avoid British income tax. He retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman:—*Held:* deft. had failed to prove an intention to abandon his Scottish domicil & to acquire a domicil of choice in America.—ROSS *v.* ROSS, [1926] S. C. 1038.—**SCOT.**

sr. *Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*]—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

st. —— —— ——.]—DONALD *v.* DONALD, [1922] N. Z. L. R. 237.—**N.Z.**

169a. —— **Declaration of change of domicil.**]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *ante.*

173a. ——.]—A husband & wife, both born in England of English parents, were married in England in 1905, where they resided together until in 1923 the husband left his wife & went to the United States of America. The husband corresponded regularly with his wife & sent her money until 1932, when she discovered that he was living with another woman as his wife. In reply to an inquiry the husband wrote that he had no thought of returning to England. The wife petitioned for divorce in England, alleging that she & her husband were domiciled in England. The husband did not enter an appearance. At the adjourned hearing, when the King's Proctor had entered an appearance in the suit to argue the question of domicil & of the ct.'s jurisdiction to grant a decree of divorce, a certificate from the U.S. Department of Labour was put in, to the effect that the husband was naturalised in New York in 1930. By the law in the United States of America, the husband in order to have obtained such a certificate must have declared on oath at least two years before his admission as a citizen of the United States that it was *bona fide* his intention to become a citizen & to renounce for ever allegiance to the state of which he might at the time be a citizen. He must also have stated in writing his intention to reside permanently within the United States :—*Held :* (1) at the time when the petition was filed, the husband was domiciled in the United States of America, & had lost his domicil in England ; (2) there was no jurisdiction in the ct. in England to grant a decree of divorce.—HERD *v.* HERD, [1936] P. 205 ; [1936] 2 All E. R. 1516 ; 105 L. J. P. 108 ; 155 L. T. 355 ; 52 T. L. R. 709 ; 80 Sol. Jo. 837.

176a. Declaration in application—Evidence of intention.]—GULBENKIAN *v.* GULBENKIAN, [1937] 4 All E. R. 618 ; 54 T. L. R. 241 ; 81 Sol. Jo. 1003.

191. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

192. *Add. Annotation :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

214. *Add. Annotations :*—**Apld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, 1927] A. C. 641. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

217a. —— —— ——.]—*Re* BORWICK, HOLLAND *v.* WOODMAN (1937), 81 Sol. Jo. 587.

218. *Add. Annotations :*—*As to* (1) **Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (3) **Apld.** Nachimson *v.* Nachimson, [1930] P. 217. *Generally*, **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

220. *Add. Annotations :*—*As to* (3) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. *Generally*, **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; H. *v.* H., [1928] P. 206.

221. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

223. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

225. *Add. Annotation :*—**Expld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

228. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44 ; Inverclyde *v.* Inverclyde, [1931] P. 29 ; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; H. & H., [1928] P. 206.

236a. —— ——.]—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, No. 88a, *ante.*

243a. —— **Nature of doctrine.**]—DREVON *v.* DREVON, No. 52a, *ante.*

248. *Add. Annotations :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Dbtd.** *Re* Askew, Marjoribanks *v.* Askew, (1930), 2 Ch. 259. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

249. *Add. Annotation :*—**Dbtd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

-.]—The question whether a person

PART II. SECT. 3, SUB-SECT. 2.—G.

sw. *Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*]—*Held :* facts of great importance in determining question of domicil.—BARRY *v.* JAMES (1921), *Times*, Apr. 29 ; [1921] 3 W. W. R. 182.—**S. AF.**

sx. *Missionary.*]—The Oxford Mission Brotherhood was founded at Oxford in 1880 & E. F. Brown, who was one of the founders, was chiefly responsible for drawing up its constitution. The objects were, (*inter alia*), to remain in intimate contact with the people of Bengal & to bring the Kingdom of Christ amongst the more educated natives of the Province. The constitution made it obligatory on every member of the Brotherhood to strive to attain these objects, by working throughout his life in Bengal, unless his health broke down or he wished to leave the Brotherhood. E. F. Brown went out to India in 1880 & except for short visits to England remained working as a missionary until his death in 1933 :—*Held :* he had acquired an Indian domicil of choice.—SHORE *v.* MORGAN (1935), I. L. R. 62 Cal. 869.—**IND.**

PART II. SECT. 3, SUB-SECT. 4.

230 x. ——.]—BOYLE *v.* [1925] 1 W. W. R. 829.—**CAN.**

230 xi. —— ——.]—JONES *v.* (1923), I. L. R. 1 Ran. 705.—**IND.**

230 xii. —— ——.]—To establish change of domicil, it must be proved that the change was made with a clear intention of settling there, as a person whose ultimate & permanent home was to be in that country. The entire burden of proving change of domicil lies on him who wants to establish it.—LINTON *v.* GUDERIAN (1928), I. L. R. 56 Calc. 530.—**IND.**

230 xiii. —— ——.]—HARRISON *v.* HARRISON, [1929] N. Z. L. R. 668.—**N.Z.**

230 xiv. —— ——.]—BROWN *v.* BROWN, [1928] S. C. 542.—**SCOT.**

PART II. SECT. 4.

239 iii. —— ——.]—The doctrine of Anglo-Indian domicile forms no part of the law of Scotland ; held, therefore, the fact of residence in India in the service of the East India Co. was not *per se* sufficient to cause loss of Scottish domicile.—GRANT *v.* GRANT, [1931] S. C. 238.—**SCOT.**

sz. *What may be considered.*]—In the case of a European claiming to be domiciled in India it will be pertinent to inquire where his father lived & died or resides, as the case may be, where he & his father were born, the circumstances in which he came to & resides in India, which will assist in ascertaining whether there exists an *animus revertendi* or *animus manendi* his object in residing in India & generally as to the conditions under which he lives & his habits of life.—WRIGHT *v.* WRIGHT (1930), I. L. R. 58 Calc. 259.—**IND.**

is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicil, irrespective of the question whether the person in question has or has not acquired a domicil in the foreign country in the eyes of the law of that country.

Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13 :—*Held :* (1) she had nevertheless on the evidence acquired a French domicil of choice, & the ct. would apply the law of France in administering her estate ; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of deceased was governed by that law.—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, [1926] Ch. 692 ; 95 L. J. Ch. 404 ; 135 L. T. 508 ; 42 T. L. R. 584.

o (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259 *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

251a. ——— ——— ———.]—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, No. 249a, *ante*.

265. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

Part III.—Nature of Property.

290. *Add. Annotations :*—**Distd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

297. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

300. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

302. For the paragraph in the original volume substitute the following paragraph :—

——— **Interest in proceeds of sale of English freeholds—By English law.**]—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs*.—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, [1923] 1 Ch. 192 ; 92 L. J. Ch. 185 ; 128 L. T. 591 ; 67 Sol. Jo. 212.

303. For the paragraph in the original volume substitute the paragraph numbered **302** in the original volume.

308. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

309. *Add. Annotation :*—**Consd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

Part IV.—Immovables.

331. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

334. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

PART III. SECT. 2.

p i. ———.]—Although land for purposes of succession may be regarded as personal property, it is not a movable.—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602 ; [1927] 1 W. W. R. 143 ; 38 B. C. R. 28.—**CAN.**

p ii. ——— *Interest in land agreed to be sold.*]—Where on the death intestate of an owner of land situate in Saskatchewan his title is subject to the interest of a purchaser under an outstanding agreement for sale, the interest of deceased in the land is immovable property, & devolves according to the law of Saskatchewan & is to be administered by the representative of the estate in that province, even though deceased died domiciled elsewhere.—*Re* BURKE ESTATE (Sask.), [1927] 3 W. W. R. 718.—**CAN.**

p iii. ——— *Sale of settled land under compulsory powers.*]—Capital moneys the proceeds of land, situate in England, sold under the Settled Land Acts, 1882-1890, which land at the time of sale was settled on a tenant for life, with remainders over, & subject to a trust for conversion at the death of the tenant for life, & the investments representing the same, are, at any rate until the death of the tenant for life, immovables for the purposes of private international law & devolve according to the law of descent in England.—*Re* CROOK (1936), 36 S. R. N. S. W. 186 ; 53 N. S. W. W. N. 49.—**AUS.**

sb. *Immovable—Interest in of sale of Tasmanian solvency in Natal.*]—Testator will devised land in Tasmania to trustees to pay his widow out of the income an annuity, & to pay the residue of the income to his sons in equal shares, & he directed that upon the death of his widow the trustees should sell the land, with a discretionary power to postpone the sale for seven years, & divide the proceeds equally among the sons. One of the sons having gone to Natal, in South Africa, before the death of his mother, became insolvent there, &, according to the Law of Natal, his trustee would have priority over subsequent incumbrances of insolvent's choses in action without the necessity of giving notice. Insolvent having returned to Tasmania, executed an assignment of his interest in his father's estate to an assignee who had no notice of the insolvency & who gave notice to the trustee of the property :—*Held :* from the date of testator's death until the date of the sale of the land the interest of each son was an immovable, & the insolvency in Natal did not operate in Tasmania as an assignment of insolvent's interest in his father's estate.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* GREGORY (1908), 5 C. L. R. 615.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.

314 iv. ——— ———.]—*Re* HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—**CAN.**

t i. ——— ———.]—A judgment of a ct. of the state of California on a question of title & ownership of real cannot be recognised as final & be enforced by the cts. of that province, in accordance with the general rule that the cts. of any country have no jurisdiction to adjudicate on the right & title to lands not situate in such country.—DUKE *v.* ANDLER, [1932] S. C. R. 734 ; 4 D. L. R. 529.—**CAN.**

t ii. ——— ———.]—The ct. of a foreign country has no right to deal with real property within Alberta or with the title thereto ; although where the owner is domiciled within the jurisdiction of the foreign ct. it can proceed against him *in personam*.

Pltf. had obtained in the state of Washington a decree of divorce which purported to award her a half interest in certain land in Alberta. The husband was then domiciled in Montana. The husband having died, pltf. sought by this action, brought against her husband's exor. to have the decree enforced against said land. Both parties admitted that the decree was valid with respect to the divorce :—*Held :* the decree had no force here as against the land ; & there is nothing in the authorities making it incumbent upon this ct. to grant any alimony to pltf., much less to grant in amount or kind the same alimony that was granted by the foreign ct.—HASPEL *v.* HASPEL, [1934] 2 W. W. R. 412.—**CAN.**

334 i. *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State.*]—BOSLUND *v.* ABBOTSFORD LUMBER MINING & DEVELOPMENT CO., [1925] 1 D. L. R. 978 ; [1925] 1 W. W. R. 475 ; 34 B. C. R. 485.—**CAN.**

334 ii. ——— ———.]—An action founded on trespass to realty in a

334a. —— ——.]—MURRAY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, [1931] W. N. 91; 171 L. T. Jo. 308, C. A.

336a. —— —— **Action for declaration as to currency in which payable.**]—Applts. (defts. in the action), two English cos. having their head offices in London but carrying on business exclusively in South America, were jointly liable to resps. (the pltfs. in the action) for rent in respect of premises occupied by one of them in Chile under a lease drawn in the Spanish language according to Chilean law & executed by all parties in Paris, by which also all parties elected domicil in Chile. The rent stipulated by the lease was 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, which was to be paid at the option of the lessors either in Chile or remitted to Europe according to their instructions. Disputes having arisen between the parties in view of Chilean legislation which applts. contended prevented them remitting the rent from Chile without official authorisation by the Chilean Government, which authorisation had been refused, applts. commenced proceedings in Chile, which were still pending, claiming a declaration that the rent could lawfully be paid in notes of the Banco Central de Chile. Resps. having brought the present action in England claiming payment of the rent in sterling equivalent to 183,057 millionths of a gramme of fine gold, applts. applied under sect. 41 of Jud. Act, 1925 (c. 49), to have it stayed as being vexatious & oppressive:—*Held:* (1) the action was a personal action, transitory in its nature, which the English ct. could competently entertain notwithstanding that incidentally it related to an immovable out of England; (2) the legal effect of the clause in the lease by which all parties elected domicil in Chile could not properly be determined upon affidavits; (3) though some inconvenience might be caused to applts. by having to call evidence as to Chilean law with regard to the mode in which the rent could be paid, this did not amount to an injustice sufficient to entitle the applts. to a stay of the action; (4) the fact that an action by applts. against resps. was pending in Chile was not in itself a ground entitling applts. to a stay.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., [1936] 1 K. B. 382; 105 L. J. K. B. 436; 154 L. T. 546, C. A.

339. *Add. Annotation:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

342. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

345. *Add. Annotation:*— **Consd.** Liddell's Settlement Trusts, *Re*, Liddell *v.* Liddell, [1936] 1 All E. R. 239.

349. *Add. Annotations:*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or Robinson (1929), 69 L. Jo. 61.

350a. —— —— —— ——.]—ROBINSON *v.* SPEAKMAN OR ROBINSON (1929), 69 L. Jo. 61, H. L.

352. *Add. Citation:—sub nom.* ANON., 1 Salk. 404.

352a. —— —— **Mortgage of Isle of Man.**]—Upon a mtge. made of this Isle, & both mtgor. & mtgee. resident within the jurisdiction of this ct., upon a bill concerning it, the ct. would hold jurisdiction of it (HARDWICKE, L.C.).—DERBY (EARL) *v.* ATHOL (DUKE) (1749), 1 Ves. Sen. 201; 27 E. R. 982, L. C.

356. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

357. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

361. *Add. Annotation:—As to* (2) **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

363. *Add. Annotation:*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

368. For "(2) an order giving leave to serve a writ in an action for rescission" read "(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission." *Add. Citation:*—127 L. T. 209.

373. *Add. Annotation:*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

374. After this case for "**Foreign judgments generally.**]—*See* Part XIV., *post*," read "Foreign judgments generally, *see* pp. 444 *et seq.*, *post*."

380. *Add. Annotations:—As to* (1) **Consd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15; Guatemala (Republica de) *v.* Nunez, [1927] 1 K. B. 669.

395a. —— **Floating charge on land in Scotland.**]—A shipping co., registered in England, but owning heritable & movable property in Scotland, in pursuance of a previous agreement with all its secured creditors, in Mar. 1934, executed a charge in Glasgow in favour of a Scottish bank, whereby, after reciting the agreement, charged with payment of sums advanced by the bank by way of floating security its undertaking & all its property & assets both present & future. By the deed the charge was to rank as a first charge on the co.'s undertaking & all its property & assets whatsoever & wheresoever both present & future subject to specific mtges., & was to be a floating security, but so that the co. should not have power to create any further mtges. or charges ranking in priority to or *pari passu* with the charge thereby created. This charge was registered in England. Subsequently an agreement for sale of all the co.'s property & assets was entered into but before it was carried into effect the co. was compulsorily wound up & a liquidator was appointed. The liquidator took out an originating summons to determine whether a valid & effectual charge had been created over the heritable & movable

foreign country cannot be tried in New Brunswick. The Province of Quebec is, for this purpose, a foreign country.—ALBERT *v.* FRASER COMPANIES, LTD., [1937] 1 D. L. R. 39; 11 M. P. R. 209.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

349 i. —— *Scottish heritage.*]—Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which consisted of the most part of real & personal property in England, but also included Scottish heritage:—*Held:* the Scottish cts. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—FOSTER *v.* FOSTER'S TRUSTEES, [1923] S. C. 212.—**SCOT.**

PART IV. SECT. 3, SUB-SECT. 2.

sf. *Assignment must comply with lex situs.*]—A person's capacity to transfer immovables situate in Ontario is determined by the law of Ontario & not by the law of the domicil of the person.—LANDREAU *v.* LACHAPELLE, [1937] 1 D. L. R. 87; [1936] O. R. 569.—**CAN.**

property & assets of the co. therein specified in so far as such assets were at the commencement of the liquidation of the co. locally situate in Scotland. The bulk of the property having been sold & the proceeds of sale only left in the hands of the liquidator, the question before the ct. was whether in the distribution of the assets of the co. effect ought to be given to the charge executed in Glasgow in Mar. 1934, so far as the proceeds of sale represented heritable & movable property in Scotland at the date of the liquidation :—*Held :* (1) the charge must be construed according to English law & was a valid equitable security according to English law ; (2) Cos. Act, 1929 (c. 23), s. 270, does not place heritable or other property in Scotland belonging to a co. registered in England in a different position from property belonging to it in England or in any other part of the world. The proceeds of sale therefore of all the property of the co. expressed to be subject to the floating charge (including the proceeds of sale of the heritable or movable property in Scotland) were payable to the Scottish bank in or towards satisfaction of the moneys secured by the charge of Mar. 1934.—*Re* ANCHOR LINE (HENDERSON BROS.), LTD. (No. 2), [1937] Ch. 483 ; [1937] 2 All E. R. 823 ; 106 L. J. Ch. 211 ; 156 L. T. 481 ; 53 T. L. R. 806 ; 81 Sol. Jo. 437.

Part V.—Movables.

417. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

417a. —— —— ——.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the other for £50,000 ; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of £50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4*s.* 5*d.* The U. Bank, whose claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become complete, & that such an arrestment operated as an assignment of the fund duly intimated ; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree ; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor :—*Held :* without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be made invalid by anything in the law of the assignor's domicil ; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*Re* QUEENSLAND MERCANTILE & AGENCY CO., *Ex p.* AUSTRALASIAN INVESTMENT CO., *Ex p.* UNION BANK OF AUSTRALIA, LTD. *v.* COMR. OF STAMPS, [1892] A. C. 484 ; 61 L. J. P. C. 98 ; 67 L. T. 1 ; 41 W. R. 129 ; 8 T. L. R. 753 ; 36 Sol. Jo. 691 ; 3 R. (Q.) 145.—**AUS.**

PART V. SECT. 2, SUB-SECT. 1.—A.

sc. *Jains in British India—Hindu law.*]—In British India, Jains are governed by Hindu law in matters of succession & inheritance unless a custom to the contrary is proved. It is of the essence of special usages modifying the ordinary law of succession that they should be ancient & invariable, & it is further essential that they should be established to be so by clear & unambiguous evidence.—BHIKABAI *v.* MANILAL (1930), I. L. R. 54 Bom. 780.—**IND.**

PART V. SECT. 3, SUB-SECT. 1.

409 i. *Mobilia sequuntur personam.*]—A., whose domicil was in Ontario, died in Michigan. Certain securities were, at the time of his death, in a bank in Michigan :—*Held :* the securities, although physically situated in Michigan, had an artificial or legal status in Ontario *v.* BABY, [1926] 3 D. L. R. 958 ; 59 O. L. R. 181.—**CAN.**

409 ii. —— *Not applicable to income tax.*]—The maxim *mobilia sequuntur personam* does not afford a test of liability to income tax in respect of transactions relating to personal property outside Queensland, unless the Legislature has clearly made it applicable.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* COMR. OF [illegible] S. R. (Q.) 145.—**AUS.**

OF AUSTRALIA, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177, C. A.

Annotations :—**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** Kelly *v.* Selwyn, [1905] 2 Ch. 117.

418. *Add. Annotations* :— **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652.

421. *Add. Annotations* :—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

423. *Add. Annotations* :—**Apld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

424. *Add. Annotation* :—**Distd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

434a. —— —— ——.]—An English woman domiciled in England, being possessed of certain moneys & securities in a bank in Monaco, gave her son a power of attorney in respect of them. Subsequently, having in mind a pending operation which might prove fatal, she directed him to get this property into his own name because she wished it to be his in the event of her death, & he accordingly gave instructions to this effect to the bank, which complied with them. The testatrix died as a result of the operation, & her estate was administered in England :—*Held* : (1) the question whether there was a valid *donatio mortis causa* was one arising in the administration of the estate of the deceased & must, therefore, be determined according to English law; (2) the question whether the acts relied on as constituting a parting with the dominion over the property were effective for that purpose must be determined according to the law of Monaco; (3) (both by English law & by the law of Monaco as proved), though the giving of a power of attorney was not by itself such a parting with the donor's dominion over her property as to support a valid *donatio mortis causa*, the subsequent instructions upon which her son acted were sufficient.—*Re* CRAVEN'S ESTATE, LLOYDS BANK *v.* COCKBURN (No. 1), [1937] Ch. 423; [1937] 3 All E. R. 33; 106 L. J. Ch. 308; 157 L. T. 283; 53 T. L. R. 691; *sub nom. Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN, 81 Sol. Jo. 398.

Part VI.—Succession.

439. *Add. Annotation* :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

439a. —— **Interest in proceeds of sale of English freeholds.**]—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, No. 302, *ante*.

440a. —— **Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.**]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children :—*Held* : having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law.—BARTLETT *v.* BARTLETT, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

440b. —— **Will of Italian realty by British subject domiciled in Italy.**]—*Re* ROSS, ROSS *v.* WATERFIELD, No. 457a, *post*.

448. *Add. Annotation* :—*As to* (1) **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

PART VI. SECT. 1, SUB-SECT. 1.

436 iii. ——.]—Where on the death intestate of an owner of land situate in S. his title is subject to the interest of a purchaser under an outstanding agreement for sale the interest of the deceased in the land is immovable, not movable, property &, therefore, devolves according to the law of S., & is to be administered by the representative of the estate in that province, even though the deceased died domiciled elsewhere.—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318; 22 Sask. L. R. 142; [1927] 3 W. W. R. 718.—**CAN.**

436 iv. ——.]—In an action of accounting, brought by a daughter against her deceased father's executrix for the purpose of ascertaining the legitim payable to her out of her father's estate, the pursuer averred that her father at his death was the owner of land in Canada; that by the Canadian law applicable such estate vested in the owner's personal representatives, & was dealt with & distributed among them as personal estate; & that its value, therefore, fell to be added to deceased's movable estate in estimating the legitim fund. She admitted that, by the local law, the distinction between real & personal property was recognised, & that land was real estate; & also that, by that law, the devolution on intestacy of real & personal property was the same :—*Held* : the land in Canada did not fall to be included in computing legitim, in respect that, as it was immovable by the law of Canada, the succession to it fell to be regulated by Canadian law, & the right of legitim did not form part of that law.—MACDONALD *v.* MACDONALD, [1932] S. C. 79.—**SCOT.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

440 iii. —— *Scottish holograph will of Irish realty.*]—*Held* : a holograph will of a British subject executed in Scotland according to the law of Scotland, but not executed according to the formalities prescribed by Wills Act, 1837, is inoperative to convey registered freehold land of a testatrix purchased under Land Purchase Acts (Ireland) & situate in Northern Ireland, such land being real estate although it vests in the personal representative of the registered owner as if it were a chattel real, & though on intestacy the beneficial interest in it devolves as if it were personal estate. The doctrine of the *lex situs* applied thereto.—M'GINN *v.* DELBEKE (1926), 61 I. L. T. 117.—**IR.**

441 iv. —— ——.]—Testatrix, who was domiciled in England, died possessed of movable & immovable property in New South Wales. The exor. named in the will obtained a grant of probate in common form in England, &, as a person entitled to probate who was out of the jurisdiction, brought a suit in the Supreme Ct. of New South Wales for the grant to his attorney of administration with the will annexed. The suit was contested by a caveator who claimed that the will was invalid :—*Held* : the validity of the will as a disposition of immovables & as a title to administer them must be determined independently of the English grant, & the caveator's objection should, therefore, be heard & determined upon the merits.—LEWIS *v.* BALSHAW (1936), 54 C. L. R. 188; 9 A. L. J. 345; 42 Argus L. R. 92.—**AUS.**

sy. *Will of Chinese Buddhist domiciled in Burma—Whether Chinese customary law applicable—Right to make will.*]—Chinese customary law governs the succession to the estate of a Chinaman domiciled in Burma. The right of the Chinese to make wills has also been recognised.—CHAN PYU *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

456. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

457. *Add. Annotations :—Generally,* **Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258 ; Straits Settlements Commissioner of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378 ; Alberta Provincial Treasurer *v.* Kerr, [1933] W. N. 205 ; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710.

457a. ——.]—(1) The succession to movable property, wherever situate, is governed by the law of testator's domicil, that is to say, the whole law of the country of domicil, including the rules of private international law administered by its tribunals. The inquiry in an English ct. before which such a question of succession comes is, therefore, what the cts. of the country of domicil would decide in the particular case. The result is that, where by the law of the succession to the movables of a testator depends on the law of that testator's nationality, an English ct. will hold that the succession is governed by the law of the nationality & not by the municipal law of the domicil.

(2) The succession to the immovable property situate in Italy of an English testator domiciled in Italy is to be determined by Italian law, namely, in the same manner as English Courts would determine it if the property belonged to an Englishman & was situate in England.—*Re* Ross, Ross *v.* Waterfield, [1930] 1 Ch. 377 ; 99 L. J. Ch. 67 ; 142 L. T. 189 ; 46 T. L. R. 61.

Annotation :—As to (1) & (2) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

461. *Add. Annotations :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

463. *Add. Annotations :—As to* (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

467a. —— **Law of nationality.**]—*Re* Ross, Ross *v.* Waterfield, No. 457a, *ante.*

468a. ——.]—English subject resident & dying in England, where his will was proved, but having debts & choses in action in Scotland : —*Held :* the latter were distributable as the rest of his effects.—Thorne *v.* Watkins (1750), 2 Ves. Sen. 35 ; 28 E. R. 24, L. C.

481. *Add. Annotations :—As to* (3) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Musurus, [1936] 2 All E. R. 1666.

490a. —— —— —— ——.]—A Turkish woman domiciled in Turkey died intestate & without heirs in 1915, leaving (*inter alia*), certain personal property in England. The British Crown claimed that as this property was ownerless in Turkish law, it must be treated as *bona vacantia.* The Turkish govt. claimed

PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. ——.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicil. The bulk of his property was invested in bonds & in mtges. of land in N.Z. :—*Held :* the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicil.—*Re* O'Neill, etc., [1922] N. Z. L. R. 468.—**N.Z.**

453 x. ——.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland :—*Held :* the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—Cunningham's Trustees *v.* Cunningham, [1924] S. C. 581.—**SCOT.**

453 xi. ——.]—A domiciled Scotsman died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a liferentrix, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the liferentrix without leaving issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the liferentrix :—*Held :* in the absence of any indication of a contrary intention on the part of testator, the legatee's heirs fell to be ascertained by the law of his domicil, *i.e.*, the law of England.—Smith's Trustees *v.* C.

sk. *Effect of Legitimacy Act.*]—The commencement of Legitimacy Act, 1926, was Jan. 1, 1927. L. D. was born in 1910. His parents were married in 1911. At both the times of his birth & the marriage of his parents L. D.'s father was domiciled in England. L. D. became legitimate in England & Wales by virtue of the provisions of the said Act, on Jan. 1, 1927, on which date his father was domiciled in New Zealand. L. D. had never been legitimated in New Zealand under the provisions of the Legitimation Act, 1908 (N.Z.). On originating summons for determination whether L. D. was entitled to share in a legacy of £1,000 bequeathed by his grandmother, who was domiciled in New Zealand, to her grandchildren living at her decease :—*Held :* the status of legitimacy conferred by the Legitimacy Act, 1926 (Eng.), upon L. D. could not be recognised in New Zealand as entitling L. D. to share in a legacy given to legitimate grandchildren by the will of a testatrix domiciled in New Zealand, as L. D.'s father was not domiciled in England at the date of the commencement of the said English statute. —*Re* Davey, Public Trustee *v.* Wheeler, [1937] N. Z. L. R. 56 ; 13 N. Z. L. J. 31.—**N. Z.**

PART VI. SECT. 2, SUB-SECT. 2.

468 vii. ——.]—Indian Succession Act, therefore, governs the succession to the estates of "Chinese Buddhists," whether born in China or born in Burma, who were domiciled & died in Burma. Even if "Chinese Buddhists" are Buddhists within Burma Laws Act, s. 13 (1), Chinese customary law cannot be applied to their estates, because it is not Buddhist law. The law of justice, equity, & good conscience must, therefore, be applied under Burma Laws Act, s. 13 (3), & Indian Succession Act should govern the succession to the estates of "Chinese Buddhists," as being the law of justice, equity, & good conscience, in view of the fact that it is the general law of succession in India & is the law which governs the succession to the e... of all other Chinese domiciled & dying in Burma, whose personal law is identical with that of "Chinese Buddhists."—Phan Tiyok *v.* Lim Kyin Kauk (1930), I. L. R. 8 Ran. 57.—**IND.**

468 viii. ——.]—Succession to the estate of a Chinese Buddhist domiciled in Burma, is governed by Chinese customary law.—Ma Sein Byu *v.* Khoo Soon Thye (1933), I. L. R. 11 Ran. 310.—**IND.**

468 ix. —— *Effect of Legitimacy Act.*]—The status of legitimacy, retrospectively conferred by Legitimacy Act, 1926, 16 & 17 Geo. V., c. 60, upon a child born in England out of wedlock but whose parents, domiciled there, have subsequently married, cannot be recognised in Victoria as entitling such child to share, as one of the next of kin, in the division of an intestate's estate in Victoria, when that Act did not come into force during the lifetime of the father of the child, though it was in operation at the date of the death of the intestate.—*Re* Williams, Curator of Estates of Deceased Persons *v.* Williams, [1936] V. L. R. 223 ; 42 Argus L. R. 348.—**AUS.**

468 x. ——.]—In 1904, deft., domiciled in Quebec, married deceased in Quebec, no ante-nuptial contract being made. In 1905 the couple moved to Ontario where they became domiciled until the wife's death in 1935 : *Held :* the change of domicil did not affect the community of property created by the law of Quebec & on the wife's death the community was dissolved & partition took place. But the succession of the wife's share of the community property was governed by the law of her last domicil, *i.e.*, Ontario.—... ... Trudell, [1937] 1 D. L. R. 216 ; O. R. 1.—**CAN.**

sd. *Intestate domiciled abroad leaving shares in Canadian company—Issue as to ownership of shares—By what court determined.*]—*Re* Fenwick (1915), 35 O. L. R. 29 ; 9 O. W. N. 227.—**CAN.**

that, under the law of the Ottoman Empire as it was in 1915, the property would have passed to the Bait al-mál, the treasury of the Moslems, which would have applied the property for the relief & benefit of the Moslems, & that as the application of the property was thus limited to certain objects, it was impressed with something in the nature of a trust, & it was impossible to liken it to *bona vacantia*, & it claimed the property. If for any reason the Bait al-mál did not take any uninherited property, there was no ultimate right in anyone else :—*Held :* (i) the property was ownerless, & the limited application of the property under Turkish law made no difference to its character ; (ii) as the authority by which the Turkish govt. claimed was in substance the same as that by which the British Crown claimed, the Crown was entitled to the property as *bona vacantia*. *—In the Estate of* MUSURUS, [1936] 2 All E. R. 1666 ; 80 Sol. Jo. 637.

511. For the paragraph in the original volume substitute the following paragraph :—

—— **Share in proceeds of sale of freeholds—Held on trust for sale but not converted.**]—An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS. LYNE *v.* GIBBS, [1919] 1 Ch. 80 ; 88 L. J. Ch. 1 ; 120 L. T. 81 ; 35 T. L. R. 44 ; 63 Sol. Jo 53, C. A.

Annotation :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

517. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

521. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

526a. —— —.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees ; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicil of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled :—*Held :* the domicil being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *primâ facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, HEALING *v.* WEBB, [1924] 1 Ch. 68 ; 93 L. J. Ch. 95 ; 130 L. T. 308 ; 68 Sol. Jo. 118.

528. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Manners. Manners *v.* Manners, [1923] 1 Ch. 220.

536. *Add. Annotation :*—**Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

548a. —— ——.]—Funds in ct. standing to the credit of an infant, having a foreign domicil, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicil.—*Re* SCHNAPPER, [1928] 1 Ch. 420 ; 97 L. J. Ch. 237 ; 139 L. T. 42 ; 72 Sol. Jo. 137.

549. *Add. Annotation :*—**Consd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

563a. —— ——.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland. *—In the Goods of* HENDERSON (1850), 2 Rob. Eccl. 144 ; 7 Notes of Cases, 378 ; 163 E. R 1271.

574. *Add. Annotation :*—**Refd.** *Re* McLaughlin, [1922] P. 235.

576a. —— —— —— **Foreign grant to next of kin as administratrix.**]—In following a foreign grant to the estate of a deceased person domiciled abroad, this ct. will make the English grant to the person clothed by the ct. of the domicil with the power of administration " no matter who he is or on what ground he has been clothed with that power." Appct. for an English grant had been constituted administratrix by the ct. of the domicil of deceased. By a power of attorney given by the administratrix to obtain a grant in this jurisdiction it appeared that by English law she was also entitled to a grant in the character of next of kin :—*Held :* her attorneys should take the grant for her as administratrix & not as next of kin.—*In the Estate of* HUMPHRIES, [1934] P. 78 ; 103 L. J. P. 31 ; 150 L. T. 220 ; 50 T. L. R. 126 ; 78 Sol. Jo. 83.

580a. —— **Foreign grant of will & unattested codicil—Followed.**]—*In the Goods of* FOY (1839), 2 Curt. 328 ; 163 E. R. 428.

587a. —— —— **Will made after death according to directions of deceased—Valid under Spanish**

PART VI. SECT. 2, SUB-SECT. 3.—D. (a).

521 iv. ——.]—*Re* ROPER (Deceased), [1927] N. Z. L. R. 731.—**N.Z.**

sg. *Governed by lex situs—Where will made.*]—The will of testatrix, who was a British subject & who at the date of her death was domiciled in Switzerland, was drawn in Ontario relative to Ontario property & during a visit by her to Ontario :—*Held :* testatrix wrote her will with reference to the law of Ontario & the law of Ontario as to the interpretation of her will should be applied.—*Re* WILKISON, [1934] 1 D. L. R. 544 ; O. R. 6.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

sm. *" Heirs "—In Canadian will—Whether adopted children included.*]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person " or his heirs " & such person dies domiciled in a foreign country before the death of testator, the word " heirs " includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—PURCELL *v.* HENDRICKS & MARKS, (B.C.), [1925] 3 D. L. R. 854 ; [1925] 2 W. W. R. 689.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—A. (c).

so. *Grant to attorney of executrix.*]—Where a testator domiciled in Quebec made an " authentic will " under the law of that province & the sole executrix resided therein & the attorney appointed by her filed a duly authenticated copy of said will with the Surrogate ct. in Saskatchewan letters of administration with the will annexed were granted to him for the use & benefit of the executrix & until she should duly apply for & obtain probate. —*Re* POIRIER ESTATE (Sask.), [1929] 4 D. L. R. 1080 ; 1 W. W. R. 904.—**CAN.**

law—Grant made.]—*In the Goods of* OSBORNE (1855), Dea. & Sw. 4; 26 L. T. O. S. 128; 1 Jur. N. S. 1220; 4 W. R. 164.

587b. *S. P. In the Goods of* GUTTIEREZ (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of* GUTIERES, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation:*—**Consd.** *In the Goods of* Grewe (1922), 127 L. T. 371.

594. *Add. Annotations:*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

594a. —— ——.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—FRERE *v.* FRERE (1847), 5 Notes of Cases, 593.

Annotation:—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

606. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

610. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

615. *Add. Annotation:—As to* (2) **Follid.** *Re* Cunnington, Healing *v.* Webb (1923), 68 Sol. Jo. 118.

621a. —— —— —— ——.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion:—*Held:* the will was an effectual exercise of the power.—*Re* STRONG, STRONG *v.* MEISSNER (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

621b. Revocation valid by lex domicilii—English law not complied with.]—Testatrix domiciled in Italy purported to exercise a special power to appoint English assets by a will validly executed according to English & Italian law alike. She subsequently revoked the will, complying with Italian law, but without the complete formality necessary for its revocation according to English law. The appointee contended that a will exercising the power could be revoked only according to the formalities imposed by English law. A party entitled to share in the appointed assets in default of appointment relied on the effectual revocation of the will according to Italian law:—*Held:* in the absence of authority the policy of the ct. must lean towards giving effect to the intention of testatrix & ought not to impose upon her as necessary a compliance with English requirements as to revocation which was unknown to the law of her domicil, & the party entitled in default of appointment must succeed.—VELASCO *v.* CONEY, [1934] P. 143; 103 L. J. P. 76; 151 L. T. 307; 50 T. L. R. 444; 78 Sol. Jo. 431.

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman, domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 34, by her will in the French language gave "all her properties & chattels (*tous les biens et droits mobiliers*)" to T. absolutely:—*Held:* the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal estate in form, it passed by the will.—*Re* HARMAN, LLOYD *v.* TARDY, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

Annotation:—**Refd.** *Re* Scholefield, Scholefield *v.* St. John *Re* Young, Smith *v.* St. John, [1905] 2 Ch. 408.

638a. Infant beneficiaries—Power of administrators to postpone sale.]—W., domiciled in Ontario, Canada, died possessed of estates in Canada, the United States of America, France & England. He left wills disposing of his estates in Canada, the United States & France, but no will could be found disposing of his estate in England. Letters of administration were granted to his widow & pltf. He left him surviving his wife & three infant children. Included in his English estate were a large block of shares in an English private co. According to the law of Ontario the sale of the portion of these shares to which the infants were entitled could not be postponed by administrators appointed in Ontario. The English administrators were anxious to postpone the sale of the shares, & pltf. took out this summons asking whether they were entitled, by virtue of Administration of Estates Act, 1925 (c. 23), s. 33, to postpone the sale:—*Held:* the English administrators were entitled to exercise the power to postpone given to them by sect. 33, until they could get a good discharge for the money in their hands from the persons beneficially entitled to it.—*Re* WILKS, KEEFER *v.* WILKS, [1935] Ch. 645; 104 L. J. Ch. 297; 153 L. T. 255; 51 T. L. R. 489.

PART VI. SECT. 3.

631 iii. —— ——.]—The Supreme Ct. has no jurisdiction to grant letters of administration of a deceased person domiciled in New Zealand but leaving no estate there.—*Re* MINIFIE, [1936] N. Z. L. R. S. 13; G. L. R. 78; 12 N. Z. L. J. 6.—**N. Z.**

635 iv. —— ——.]—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318.—**CAN.**

635v. —— ——.]—Where there was an administration of the estate of a deceased person in South Australia & also in Queensland the Queensland administrator merely collected certain moneys under a policy of assurance effected by deceased on his own life in Queensland & transmitted those moneys to the South Australian administrator:—*Held:* an Act of the South Australian Parliament could operate to enforce the South Australian administrator to treat policy moneys wherever collected as protected under Policies Protection Act, 1887.—*Re* FLOOD, [1933] S. A. S. R. 203.—**AUS.**

Part VII.—Contracts.

639. To the cross-reference before this case add "No. 1981a."

639a. ——.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury. —JONES *v.* OCEANIC STEAM NAVIGATION CO., LTD., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation:*—**Apld.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

640a. —— **Inclusion of provisions of local Ordinance.**]—Certain parcels of oranges were shipped at Jaffa upon an Esthonian steamship for carriage to Hull. The ship was under time charter to a British firm, who ran a line of steamships called the Jaffa Union Line. The bills of lading, which were signed by directors of a Palestine corporation, the Jaffa Union Line, Ltd., contained the following clause: "This bill of lading wherever signed is to be construed in accordance with English law." Pltfs. were Hull fruit merchants, two of whom were indorsees of certain of the bills of lading & sued as owners of the cases of fruit therein mentioned; nine others had merely paid the freight & sued on an implied contract with deft. shipowners to deliver the cases in good order & condition according to the terms of the bills of lading. The Palestine Carriage of Goods by Sea Ordinance, No. 43 of 1926, incorporated the rules relating to bills of lading adopted by the International Conference on Maritime Law held at Brussels in 1922–23, generally known as the Hague Rules. Clause 4 of the Ordinance was in the following terms: "Every bill of lading . . . issued in Palestine which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provision of the said Rules as applied by this Ordinance, & shall be deemed to have effect subject thereto, notwithstanding the omission of such express statement." Pltfs.' action was in respect of damage &/or short delivery. Defts. set up various exceptions in the bills of lading, & pltfs. pleaded in reply that the contracts were governed by the Palestine Ordinance; that accordingly, notwithstanding the omission of a statement to that effect, the Hague Rules should be deemed to be written into the contracts, &, therefore, that the exceptions relied on were of no avail. The question whether the bills of lading were subject to the provisions of the Ordinance was set down for trial as a preliminary issue. The judge held that they were so subject, & that all pltfs. were entitled to succeed on the preliminary issue. Defts. appealed:—*Held:* (1) the express terms of the Ordinance, based on an international convention, could not be defeated by the insertion of a clause in the bills of lading that they were to be construed according to English law, & the bills of lading were subject to the provisions of the Ordinance & the Rules thereunder, &, with those terms read into them, should then be construed according to English law; but (2) the ct. had not sufficient information as to the facts to determine the effect of that decision on the nine pltfs. who sued on implied contracts, &, while the appeal would be dismissed, the judgment must be varied to that extent.—THE TORNI, [1932] P. 78; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471; 18 Asp. M. L. C. 315, C. A.

Annotation:—As to (1) **Distd.** The St. Joseph, [1933] P. 119.

640b. Agreement for contract to be subject to foreign law—Contract cancelled by decree of foreign Government.]—In May, 1903, pltf. took out a 20 year endowment life insurance policy with defts. for 10,000 roubles payable at defts.' office in St. Petersburgh, & by the terms of the policy all premiums were to be paid in Russia. Pltf. paid all the premiums in Russia down to 1917, & then in London down to 1919. By the terms of an Imperial Decree of the Russian Empire, dated July 7, 1889, which were incorporated in the policy, it was provided (*inter alia*) that all disputes in connection with insurance operations should be settled according to Russian laws & in Russian cts. of justice. By a Monopolisation Decree of the Russian Soviet Govt., dated Dec. 1918, insurance in all its forms was declared a State monopoly, & in Nov. 1919, a Decree of Cancellation abolished life assurance altogether in the Soviet Republic, & all existing contracts were annulled. In those circumstances pltf., who was prevented by the above decrees of 1918 & 1919 from suing on the policy in Russia, brought an action in England for a declaration that defts. were liable to him under the policy:—*Held:* the proper law of the contract was, according to the policy rules, the law of Russia, & the effect of the Cancellation Decree of Nov. 1919, was that the contract, if in fact there was any contractual *nexus*

left in existence between the parties after the Monopolisation Decree of 1918 came into force, was annulled, & pltf. could not recover on it.—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A. (1929), 45 T. L. R. 468.

641. *Add. Annotations :—As to* (2) **Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137. *As to* (3) **Refd.** The Njegos, [1936] P. 90; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500.

642. *Add. Annotation :—As to* (1) **Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

643. *Add. Annotations :—***Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730: N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; The Njegos, [1936] P. 90.

644. *Add. Annotation :—As to* (2) **Refd.** Cayzer Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

645a. ——.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge :—*Held :* as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, &, as the giving of the orders fixed the seat of the contract in England, the law of England applied. —THE WILHELM SCHMIDT (1871), 25 L. T. 34; 1 Asp. M. L. C. 82.

Annotations :—**Consd.** The Adriatic (1931), 47 T. L. R. 638. **Refd.** The San Roman (1872), L. R. 3 A. & E. 583; The Dannebrog (1874), 31 L. T. 759.

646. *Add. Annotations :—***Apld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Consd.** The Adriatic (1931), 47 T. L. R. 638. **Expld. & Distd.** The Torni (1932), 48 T. L. R. 471. **Consd.** The Njegos, [1936] P. 90. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

647. *Add. Annotation :—* **Refd.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

(c) Application of Lex loci solutionis (Vol. XI., p. 392).

650a. Contract by State—Loan.]—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—SMITH *v.* WEGUELIN (1869), L. R. 8 Eq. 198; 38 L. J. Ch. 465; 20 L. T. 724; 17 W. R. 904.

Annotations :—**Folld.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Goodwin *v.* Robarts (1876), 1 App. Cas. 476.

PART VII. SECT. 2, SUB-SECT. 1.—B. (a).

sc. *Contract relating to foreign immovable—Application of lex situs.*]—Pltf., a co. incorporated in Victoria, whose principal office was situated in Victoria, by an agreement in writing made in Victoria, agreed to sell a station property, together with chattels, in New South Wales to persons resident in New South Wales, as agents for a co. to be formed. The proposed co. was incorporated in Victoria. It adopted the contract, & was subsequently joined as deft. in an action in the Supreme Ct. of Victoria by pltf. co. for instalments of purchase money & interest on the unpaid balance of purchase money. Pltf. co. & deft. co. were both registered in New South Wales for the purpose of carrying on business there. The contract of sale provided that it should be stamped, & it was in fact stamped in New South Wales. The purchase money was payable in Victoria :—*Held :* the proper law of the contract was the law of New South Wales; the Moratorium Act, 1930–1931 (N.S.W.), consequently applied, & the personal obligation was extinguished by that Act.—MERWIN PASTORAL CO. PROPRIETARY, LTD. *v.* MOOLPA PASTORAL CO. PROPRIETARY, LTD.; MOOLPA PASTORAL CO. PROPRIETARY, LTD. *v.* MCKINDLAY, [1933] Argus L. R. 401; 7 A. L. J. 167; 48 C. L. R. 565.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. —— *Assessment of damages.*]—The right to damages for breach of a contract made in a foreign country & to be executed there is governed by the *lex loci contractus* & not by the *lex fori.*—LIVESLEY *v.* HORST, [1924] S. C. R. 605; [1925] 1 D. L. R. 159; *affg.* S. C. *sub nom.* HORST *v.* LIVESLEY, [1924] 2 D. L. R. 1002; [1924] 2 W. W. R. 443; 34 B. C. R. 19.—**CAN.**

652 vii. ——.]—LUCAS & CO. *v.* MONCTON SUPPLY CO., [1924] 4 D. L. R. 376.—**CAN.**

652 viii. ——.]—The validity of a contract must be decided by the law of the place where it was made. If valid there, it will be held valid everywhere, by the tacit or implied consent of the parties. The law of the transfer of negotiable instruments rests on this foundation.—HANSON *v.* COLLETTE (1931), 5 M. P. R. 363.—**CAN.**

652 ix. ——.]—A contract of conditional sale having been made in Saskatchewan & the goods sold thereunder, a motor car, having been delivered there :—*Held :* in the absence of proof of a contrary intention, the rights & obligations of the parties were governed by the law of Saskatchewan.

The car was seized in Alberta on default by the buyer & resold; & an action was brought in Saskatchewan to recover the deficiency on the resale :—*Held :* the fact that the car had been seized in Alberta did not render Extra-Judicial Seizures Act of that province, which had not been complied with, applicable to prevent the recovery of the deficiency, where, at least the action for the deficiency was brought, as it was in this case, in Saskatchewan. *Qu. :* whether the non-compliance with said Act would have prevented recovery had the action been brought in Alberta.—COMMERCIAL CORPN. SECURITIES, LTD. *v.* NICHOLS (OTHERWISE BUTTERFIELD), [1933] 1 W. W. R. 484; 3 D. L. R. 56.—**CAN.**

652 x. ——.]—The rights & liabilities, as distinguished from the remedies, of the parties to a mercantile contract must be determined by the proper law of the contract; which is, the *lex loci contractus*, a which applies with particular force when the contract is to be performed wholly in the country wherein it is made. On the other hand, whatever relates to the remedy which may be enforced is governed by the *lex fori*, for litigants must take the procedure as they find it in the country in which they sue.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

652 xi. ——.]—By an agreement in writing made in Victoria between pltf., a Victorian co. carrying on business in Victoria, & P., a resident of New South Wales, P. agreed to repay in Victoria all moneys due by him to pltf. & to execute securities for the same over his station property situate in New South Wales. Payment of the moneys was guaranteed by defts., who resided in Victoria. In an action on the guarantee defts. pleaded that the rights of pltf. were barred by reason of the Moratorium Acts of New South Wales :—*Held :* the rights of the parties in the action were not to be ascertained by reference to the law of New South Wales.—DENNYS LASCELLES, LTD. *v.* BORCHARD, [1933] V. L. R. 46; L. R. 128.—**AUS.**

sn. *Offer made & accepted by post—Governed by law of country of offeror.*]—RENFREW FLOUR MILLS *v.* SANSCHAGRIN (1928), Q. R. 45 K. B. 29.—**CAN.**

sp. *Mortgage.*]—Where a mtge. of land in New Zealand is collaterally secured by an equitable mtge. of an interest in land in England, both being executed in New Zealand by parties there resident & domiciled, & securing moneys advanced & repayable in New Zealand, the law of the contract to be applied is the *lex loci contractus*, & not the *lex situs*. Accordingly, the Mortgagors Relief Act, 1931, applies both to the mtge. & the collateral security.—Re I. TO A. A. MORTGAGE [1933]

Before **659** add as follows :—

658a. General rule.]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser :—*Held :* as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—BENAIM & Co. *v.* DEBONO, [1924] A. C. 514 ; 93 L. J. P. C. 133 ; 131 L. T. 1, P. C.

Annotation :—**Refd.** Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373.

664. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

668. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

669. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

670. *Add. Annotations :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

672. *Add. Annotations :*—**Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

676. *Add. Annotation :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D' Escompte de Mulhouse, [1923] 2 K. B. 630.

683. *Add. Annotation :*—**Refd.** The Colorado, [1923] P. 102.

684. *Add. Annotation :*—*Generally*, **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

688. *Add. Annotations :*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514 ; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373 ; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

689a. —— Agreement by German in Germany—Enforcement by third parties.]—HARTMANN *v.* KONIG (1933), 50 T. L. R. 114, H. L.

691a. —— Charterparty in English—Entered into by master of German ship with Germans abroad—To take cargo to England.]—THE WILHELM SCHMIDT, No. 645a, *ante*.

692. *Add. Annotation :*—**Consd.** The Adriatic (1931), 47 T. L. R. 638.

694. *Add. Annotations :*—*As to* (2) **Consd.** The Adriatic (1931), 47 T. L. R. 638 ; The Njegos, [1936] P. 90.

694a. —— Charterparty made in Egypt—Documents & consignees English—Ship Swedish.] —By two freight engagement notes made in Egypt between pltfs., a firm carrying on business in Egypt, & defts., a British co. with a branch office in Egypt, pltfs. agreed

sq. *Contract of agent appointed in Bombay—To purchase cotton in New York or Liverpool.*]—Where a person in Bombay employs another person in Bombay as commission agent to effect transactions of purchase & sale of cotton in New York or Liverpool, the transactions are not governed by the Bombay Cotton Contracts Act XIV. of 1922 & the bye-laws thereunder.—PIROJSHAW *v.* BANDEALI ISMAIL & Co. (1931), I. L. R. 57 Bom. 225.—**IND.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

m. Read now "**658a i.**"

PART VII. SECT. 2, SUB-SECT. 2.

t i. ——.]—The weight of authority supports the view that capacity to enter into an ordinary mercantile contract is governed, not by the *lex domicilii*, but by the *lex loci contractus*. Therefore judgment cannot be recovered here against a married woman as maker of a promissory note if under the *lex loci contractus* a married woman is not legally competent to make a promissory note.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A.

677 iv. ——.]—The obligations of trustees of a deed to secure payment of a bond issue were held to be governed by the law of British Columbia, although the trustees were resident in Oregon, U.S.A., where the contract was made in British Columbia & was substantially to be performed there. The property also was situated, & the mtgor. resident, in British Columbia.—HARRIS INVESTMENTS, LTD. *v.* SMITH, [1934] 1 D. L. R. 748 ; 48 B. C. R. 274.—**CAN.**

st. *Jurisdiction of court to enforce—Contract to be performed abroad—Defendants resident within jurisdiction.*]—Where defts. in a suit reside in this country & the principal office of pltfs. is in England, & a contract is entered into there between the parties which is to be executed in New York, a suit in respect thereof may be instituted in this Province.—DIRECT CABLE CO. *v.* DOMINION TELEGRAPH CO. (1881), 28 Gr. 648 ; (1883) 8 A. R. 416.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—B. (b).

f i. —— —— *Incorporation of Harter Act.*]—Pltf. contracted with deft. ship for the carriage of a cargo of wheat from Buffalo to Montreal. Pltf. was an American, the ship was an American ship, & the contract was made in the United States. Deft. alleged that the contract or bill of lading was issued subject to the Harter Act, the terms & conditions of which applied to & formed part of such contract, while pltf. alleged that as this Act was not referred to or made part of the contract it did not apply :—*Held :* the obligations of the parties under this contract were governed by the laws of the United States. Under the laws of the United States the Harter Act did not need to be referred to in the bill of lading to become binding on the parties, & said Act was to be applied in this case.—J. RICHARDSON & SONS, LTD. *v.* SS. BURLINGTON (Que. Adm.), [1931] S. C. R. 96 ; [1930] 4 D. L. R. 527 ; *affg.*, [1929] Ex. C. R. 186.—**CAN.**

f ii. —— —— ——.]—Each of two bills of lading, which were similar, for certain goods to be carried from the United States of America to the Irish Free State in a ship, the property of the United States Shipping Board, stated that the shipments were subject to all the terms & provisions of, & all the exemptions from liability contained in, the Harter Act, an Act of Congress of the United States of America :—*Held :* the bills of lading were American contracts, & as such should be construed by American law, & that law must be proved or admitted before the ct. would be competent to decide the questions of law submitted in the special case.—MACNAMARA *v.* S.S. HATTERAS, [1931] I. R. 337.—**IR.**

f iii. —— —— ——.]—The contract of carriage in question herein was made in the United States of America, both pltfs. were United States corpns., & the contract contained a clause valid & necessary according to such law, but not necessary under the Canadian or English law. Moreover, the insurance certificates issued by one of pltfs. contained an express reference to the Harter Act, a law of the United States which the pltfs. now contend should not be applied :—*Held :* in the above circumstances, inasmuch as the intention of the parties is to govern, it must be presumed that the parties to the contract intended to be governed by the law of the United States (the Harter Act), & that such law applied. The best criterion of what law is to be applied is to be found in the intention of the parties, & where such intention is not expressed it is to be gathered from the terms of the contract itself & from the surrounding circumstances. Where a bill of lading contains special clauses, not necessary or valid under other laws, but necessary & valid under the laws of the country where the contract was made, the parties are presumed to have contracted subject to the law which gives effect to such clauses.—BUNGE NORTH AMERICAN GRAIN CORPN. & FIRE ASSOCN. OF PHILADELPHIA *v.* S.S. SKARP, [1933] Ex. C. R. 75.—**CAN.**

to reserve room for certain cottonseed for shipment to London by a steamer to be specified. Under a charterparty made between the owners of the Swedish steamship *A.* & pltfs. as charterers the *A.* loaded the cargo at Alexandria for delivery in London; & pltfs., "as agents only," issued bills of lading whereby the cargo was to be delivered in London to the order of the defts. on payment of freight by them at the specified rate. In the course of the voyage the *A.* came into collision with another vessel, & was so badly injured that she had to be towed to Cadiz, where she was found to be a constructive total loss. The cargo, accordingly, was discharged at Cadiz & delivery was taken there by defts. Pltfs., suing on behalf of the shipowners, claimed distance (*i.e. pro rata*) freight, which they alleged was payable either under the law of the flag (Swedish) or the *lex loci contractus* (Egypt). Defts. alleged that the law of England applied, under which *pro rata* freight is not payable:—*Held:* all the authorities showed that the best criterion of what law was to be applied was to be found in the intention of the parties, &, if the parties intended otherwise, the presumption was rebutted that a contract for the carriage of goods by sea was governed by the law of the flag; looking at the circumstances broadly, & having regard (*inter alia*) to the facts that all the documents were in English & on English forms, that delivery & payment were to be in England, the freight engagement notes did not specify a ship of any particular nationality, defts. were a British firm, & the British position in Egypt had for many years been predominant, the inference was that the parties, who as business people must be taken to have intended what was most convenient, intended English law to apply; & consequently the claim for distance freight failed.—THE ADRIATIC, [1931] P. 241; 100 L. J. P. 138; 145 L. T. 580; 47 T. L. R. 638; 18 Asp. M. L. C. 259.

Annotations:—**Consd.** The Njegos, [1936] P. 90. **Refd.** The Torni (1932), 147 L. T. 208.

—— **Charterparty governed by English law—Incorporation of charterparty in bill of lading.**] —*See* ARBITRATION, No. 141a, *ante*.

697a. —— **Delivery of goods against bill of lading—Property in goods passing by contract with third party.**]—In Jan. 1929, pltfs., the Government of Guatemala, purchased aeroplanes & war material from a French firm in Paris for delivery at Guatemala City. By the contract of sale the goods were to be accepted by the purchasers before departure from the sellers' works, & payment therefor was to be made as to 34 per cent. by cash with order & as to the balance of 66 per cent. by a confirmed irrevocable credit with a first-class bank. The sellers undertook to insure the goods & also arrange for their transport to Guatemala City *via* Puerto Barrios. For these transport services the pltfs. agreed to pay a lump sum. The sellers, by their agents in Antwerp, chartered the Norwegian steamship *St. Joseph*, owned by defts. for the transport of a portion of the goods from Antwerp to Puerto Barrios. By the bill of lading, which was mainly in English, the goods were to be delivered unto the "Gouvernement de Guatemala or to his/their assigns." The bill of lading contained no reference to the Hague Rules or to the article of the Belgian Code which embodied those rules. On the arrival of the ship at Puerto Barrios pltfs. presented the bill of lading & took delivery of the goods, which were then sent on by rail to Guatemala City. The goods were found to have been damaged during sea transit by reason of the bad stowage of a part cargo of patent fuel also carried in the *St. Joseph*, & the Guatemala Government sued the shipowners for the damage. The shipowners admitted liability, but contended that their contract with pltfs. was governed by Belgian law, which embodied the Hague Rules, & that therefore their liability was limited:—*Held:* that pltfs. became the owners of the goods by acceptance, & payment to the sellers, before shipment, & not as consignees or indorsees of the bill of lading within the meaning of Bills of Lading Act, 1855 (c. 111); the only contract between pltfs. & defts. was made by pltfs.' offering the bill of lading to the shipmaster & getting delivery of the goods, & it was a contract made in Guatemala, with which no Belgian had anything to do, except as agent; pltfs. were bound by the terms contained in the bill of lading & nothing more; there was nothing to show that either party intended or contemplated the application of Belgian law to the contract, & it was impossible to import into such a contract, between such parties, a term of Belgian law to which no reference was made therein; even if the contract was made in Antwerp, & pltfs., by taking delivery, incurred the same liabilities as the shipper, who took the bill of lading, they only incurred a liability to which the section of the Belgian Code had no application, for it could not be that a document which, in its inception, had nothing to do with Belgian law could afterwards become subject to it; &, therefore, there must be judgment for pltfs. on their claim, subject to a reference.—THE ST. JOSEPH, [1933] P. 119; 102 L. J. P. 49; 149 L. T. 352; 49 T. L. R. 367; 18 Asp. 375.

699. *Add. Annotations:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Equitable Trust Co. of New York *v.* Henderson (1930), 47 T. L. R. 90.

702a. —— **Contract between foreign broker & English broker—Right of cancellation as between foreign broker & principal—Governed by lex loci contractus.**]—By English law, an underwriter acknowledging in a policy of marine insurance that the assured has paid

the premiums, the policy cannot be cancelled by the insurance broker on the ground that he has not received the premiums from the assured, without the authority of the assured. But where a Canadian assured instructs in the United States an American insurance broker to effect an insurance in England, which he must do through an English broker, the law applicable on this question of right of cancellation is that of the country where the relation of principal & agent is created—that of the United States. In such a case, the English broker, who is liable to the English underwriter for the premium, cannot sue the assured. but looks to the American broker, who, in turn, looks to the assured for payment:—*Held:* the question in such a case was one of foreign law—here, that of New York State—& therefore of fact; the ct. accordingly found that the American broker could cancel such a policy on the ground that the assured had failed to supply him with the premium, with the assent of the underwriter, but without the assent of the assured who had failed to pay the premium.—RUBY S.S. CORPN., LTD. *v.* COMMERCIAL UNION ASSURANCE CO. (1933), 150 L. T. 30; 39 Com. Cas. 48; 18 Asp. M. L. C. 445, C. A.

702b. —— **Reinsurance with foreign company—No policy issued.**]—MARITIME INSURANCE CO., LTD. *v.* UNION VON ASSECURANZ, 1865 (1935), 79 Sol. Jo. 403.

703a. —— —— **Policy effected in England by foreigner—With foreign company through English office.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law:—*Held:* it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430: 68 Sol. Jo. 477, C. A.

Annotations:—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

705. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

705a. Insurance against loss by forged document—Governed by English law—Insurance in London—Business carried on in New York.]—Pltfs., who carried on business in New York, took out a policy of insurance in London against loss which they might incur by having acted upon any document which might prove "to have been forged." During the currency of the policy pltfs. were induced to lend money to a firm by a document containing a false statement of the firm's assets & liabilities. Before the whole of the loan had been repaid the firm became bkpt., & the pltfs. sued an underwriter on the policy. By the law of the State of New York forgery includes "a false statement of financial condition." A member of the firm had since been convicted in New York of forgery. Pltfs. contended that the word "forged" in the policy must be construed by the law of New York where the loss occurred, & that therefore it was immaterial if the document was not a forgery according to English law:—*Held:* even if the document was a forged document according to the law of New York the word "forged" was used in the policy merely to describe an existing state of fact & not as a term of art to be construed according to the law of the place where the loss happened, & accordingly the action failed.—EQUITABLE TRUST CO. OF NEW YORK *v.* HENDERSON (1930), 47 T. L. R. 90.

707a. Governed by lex loci rei sitæ—Lease executed in France—Relating to land in Chile.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 756a, *post.*

709. *Add. Annotation:*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

709a. —— **Contract cancelled by decree of foreign Government.**]—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A., No. 640b, *ante.*

711. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

716. *Citations:*—For "5 De G. M. & G. 604" read "1 De G. M. & G. 604."

719. *Add. Annotation:*—**Refd.** The Colorado, [1923] P. 102.

721. *Add. Annotation:*—*Generally,* **Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

730. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732a. —— **Goods to be smuggled into foreign country—Not enforceable in England.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £250 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky

703 ii. —— ——.]—*Re* HEWITT & HEWITT (Ont.) (1918), 14 O.W. N. 300; 43 D. L. R. 716.—CAN.

at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26, & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage:—*Held:* the object to be attained by this agreement being a breach of international comity, the agreement was contrary to public policy & void.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

Annotation:—**Refd.** Carling Export Brewing & Malting Co., Ltd. *v.* R., [1931] A. C. 435.

733. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

738a. Payment of rent by bills on London—Illegal exchange transaction.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable: "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & documents of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first class bills on London. The evidence accepted was that "payable in Chile in first class bills on London" had a special mercantile meaning in Chile—namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation:—*Held:* the Chilean legislation made it impossible for the rent to be paid as directed, as the mode of payment as already interpreted would have been an international exchange transaction within the meaning of the Chilean legislation.—DE BEÉCHE *v.* SOUTH AMERICAN STORES, LTD., & CHILIAN STORES, LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

740. *Add. Annotation:*—*As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

748. *Add. Annotations:*—*As to* (1) **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *Generally,* **Mentd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

750. *Add. Annotations:*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

752. *Add. Annotations:*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

752a. —— —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE *v.* BAUMGART (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

Annotation:—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

PART VII. SECT. 2, SUB-SECT. 6.—D.

sp. *Contract to indemnify bail.*]—Where a contract of indemnity against loss with respect to bail given in proceedings in a ct. of a foreign country, is lawful under the law of that country the contract, & the security, if any, given "in implement of the contract," can be enforced in Canada, even though the contract was executed in Canada & said security is a mtge. on Canadian land.—NATIONAL SURETY CO. *v.* LARSEN (B. C.), [1929] 4 D. L. R. 918; 3 W. W. R. 299; *revg.*, [1929] 3 D. L. R. 79; 2 W. W. R. 152.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8

756 i. *By act of parties—Payment—In what currency.*]—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—**CAN.**

756 ii. —— —— ——.]—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

756 iii. —— —— ——.]—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—SIMMS *v.* CHERNENKOFF, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 185.—**CAN.**

756a. ——— ——— ——— **Option as to place.**]—Pltfs., successors of the owner of premises in Santiago de Chile, by a lease executed at the Chilean consulate in Paris & drawn in the Spanish language, let the premises to the Chilean Stores for a term of 10 years from 1935, at a rental of 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, to be paid at the option of the owner either in Santiago de Chile or remitted to Europe, according to the instructions which the owner might give, one month in advance on the first working day of each month. The second deft., the South American Stores, joined in the lease as guarantor, but so as to become jointly responsible as primary obligor under the contract. The South American Stores carried on business in the Argentine. All parties by the lease elected domicil in Chile. There was evidence that there was no verbal agreement that the rental should be fixed on a gold basis. In July, 1935, the owner served a notice as follows: "Please take note, till further notice, of my option & of the following instructions," & then followed instructions for payment in sterling on a gold basis:—*Held:* (1) the contract must be construed according to Chilean law, even though part of the performance of it was to be in England; (2) evidence of the intention of the parties which would be admissible in a Chilean ct. to interpret the contract is admissible in England; (3) neither party had any intention other than that expressed in the contract as interpreted by experts on Chilean law; (4) the rent to be paid had been specified as an amount of Chilean money, & not as an amount of gold; (5) the rent was to be remitted from Chile, & no claim could be made to have it remitted from the Argentine by the guarantors.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD. & CHILEAN STORES (GATH & CHAVES), LTD., [1937] 3 All E. R. 349; 42 Com. Cas. 363, C. A.

757. *Add. Annotation:—As to* (1) **Apld. Swiss Bank Corpn. *v.* Boehmische Industrial Bank. [1923] 1 K. B. 673.**

762a. ———.]—MOUNT ALBERT BOROUGH COUNCIL *v.* AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD., [1937] 4 All E. R. 206; 54 T. L. R. 5, P. C.

Part VIII.—Torts.

777. *Add. Annotation:*—**Refd. Isaacs *v.* Cook, [1925] 2 K. B. 391.**

788. *Add. Citation:—sub nom.* **BADTOLPH *v.* BAMFEILD, Cas. *temp.* Finch. 186.**

PART VII, SECT. 3.

a i. ——— *Debentures payable in particular place.*]—Deft., a municipal corpn. in New Zealand, duly constituted under the Municipal Corps. Act, 1933, borrowed from pltf., a life assurance society incorporated in the State of Victoria, moneys by way of special loans, & issued to the pltf. debentures for the amount so borrowed, whereby the principal & interest was made payable in Victoria. The loan was made & secured by a special rate on rateable property in New Zealand & the debentures given under & in accordance with the Local Bodies' Loans Act, 1913 (now 1926). The loan-moneys were paid in New Zealand, the debentures were executed in New Zealand, &, in the event of default by deft., pltf. could not effectively obtain relief except in the Supreme Ct. of New Zealand. The Financial Emergency Act, 1931 (Victoria), s. 19 (1), enacted that except as therein provided every mtge. shall . . . be construed & take effect as if it were a term of the mtge. that on & from the coming into operation of Part III . . . the interest payable under the mtge. should be reduced at a rate equivalent to four shillings & sixpence for every pound of such interest. It was provided by sub-s. (2) that the provisions of the sect. or of any order made under that particular Division of the Act should not operate so as to reduce the interest payable under any mtge. to a rate less than five pounds per centum per annum. It was enacted by sect. 22 (1) that every payment of interest made in pursuance of that particular Division of the Act or of an order made thereunder should be a full discharge of the mtgor.'s liability for interest under his mtge. in respect of the period to which such payment related. Pltf. sued deft. for the difference between the amount of interest payable under the debentures & the amount actually paid by defts.—viz., the reduced amount that would be payable if the Victorian Act applied:—*Held:* (1) deft. was not entitled to the reduction enacted by the Victorian Act; (2) the proper law of the contract as to its nature & effect was the law of New Zealand, including the obligation to pay interest & the quantum thereof; (3) even if the law of Victoria governed the mode of performance, the Victoria Act did not relate to the mode of performance but effected a variation of an obligation imposed & of an amount payable fixed by the Legislature of New Zealand (as well as by the intention of the parties), which could not be overriden by foreign law.—AUSTRALASIAN TEMPERANCE & GENERAL ASSURANCE CORPN., LTD. *v.* MOUNT ALBERT BOROUGH, [1936] N. Z. L. R. 54.—**N.Z.**

PART VIII. SECT. 1.

775 xii. ——— ——— ———.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario:—*Held:* the action could not be maintained.—MCMILLAN *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. ——— ——— ———.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of pltf.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—WARD *v.* BRITISH AMERICAN OIL CO., LTD., [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—**CAN.**

775 xiv. ——— ——— ———.]—O'CONNOR *v.* WRAY, BOYD *v.* WRAY, [1930] 2 D. L. R. 899; S. C. R. 231, *affg.* [1929] 2 D. L. R. 24; 46 Que. K. B. 199.—**CAN.**

775 ——— WELL *v.* REILLY & BELL, [1931] 3 W. W. R. 513.—**CAN.**

775 xvi. ——— ——— ——— *Effect of Criminal Code, ss.* 1143, 1144.]—Sects. 1143 & 1144 cannot be invoked as a bar to an action for a tort committed in a foreign country.—CALDWELL *v.* REILLY & BELL, [1932] 3 D. L. R. 149; 1 W. W. R. 890; *affg.*, [1931] 3 W. W. R. 513.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*]—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—WALPOLE *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—**CAN.**

b. For "*Trespass — Negligence — Common employment—Lex loci actus*" read "——— *Negligence—Common employment—Lex loci actus.*"

f. After this case add "*See, also,* No. 775 xii., *ante.*"

f i. ——— ———.]—Defender, whose domicile of origin was Scottish, but who had resided abroad for some years without, however, losing his Scottish domicile, was sued in respect of a delict committed while on a visit to Scotland. The delict consisted in the negligent driving of his motor car, resulting in a collision with another motor car, the owners of which were also cited as defenders. At the date when the action was brought against him he had gone abroad again & he was not personally cited, but he had intimated the claim to an insurance co. with whom he was insured against third-party risks, & they were themselves conducting the defence:—*Held:* defender's Scottish domicile of origin, coupled with the commission of a

Add. Annotation :—**Refd.** The Fagernes, [1927] P. 311.

796. *Add. Annotation :*—*As to* (2) **Refd.** mercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

Part IX.—Marriage.

800. *Add. Annotations :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353 ; Fender *v.* Mildmay, [1936] 1 K. B. 111.

801. *Add. Annotations :*—**Expld. & Distd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353.

802. *Add. Annotations :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4 ; Spivack *v.* Spivack (1930), 99 L. J. P. 52.

803. *Add. Annotation :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

803a. —— —— **Facilities for dissolution under local law immaterial.**]—Marriage is a voluntary union for life of one man & one woman to the exclusion of all others, & where a marriage in a foreign country complies with these requirements it is immaterial that under the local law dissolution can be obtained by mutual consent or at the will of either party with merely formal conditions of official registration.

A man & a woman, both domiciled Russians, entered in Russia into a contract accepted by the local law as one of marriage. The marriage could, according to the same law, be dissolved by mutual consent or at the will of one of the parties, with merely formal conditions of official registration :—*Held :* on an issue directed in a suit by the woman for judicial separation, that as the union so formed was of one man to one woman to the exclusion of all others, it constituted a valid marriage according to English law, notwithstanding that it could, according to the local law, be dissolved as stated above.—NACHIMSON *v.* NACHIMSON, [1930] P. 217 ; 99 L. J. P. 104 ; 143 L. T. 254 ; 94 J. P. 211 ; 46 T. L. R. 444 ; 74 Sol. Jo. 370 ; 28 L. G. R. 617, C. A.

Annotations :—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; Spivack *v.* Spivack (1930), 99 L. J. P. 52 ; Fender *v.* Mildmay, [1936] 1 K. B. 111.

806. *Add. Annotations :*—*As to* (3) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Mitford *v.* Mitford, [1923] P. 130 ; Nachimson *v.* Nachimson, [1930] P. 217.

814. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

817. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

821. *Add. Annotation :*—**Refd.** Papadopoulos Papadopoulos (1929), 46 T. L. R. 44.

827. *Add. Annotations :*—*As to* (1) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. *As to* (2) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

828a. —— —— —— ——.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *post.*

828b. —— —— **Incapacity by lex domicilii.**]—Petitioner & resp., Portuguese subjects domiciled in Portugal, & first cousins to each other, came to reside in England in 1858, & in 1866 they went through a form of marriage before the registrar of the district of the City of London. In 1873 they returned to Portugal, & their domicil throughout continued to be Portuguese. By the law of Portugal a marriage between first cousins is illegal, as being incestuous, but may be celebrated under a Papal dispensation :—*Held :* the parties being by the law of the country of their domicil under a personal disability to contract marriage, their marriage ought to be declared null & void.—SOTTOMAYOR *v.* DE BARROS (1877), 3 P. D. 1 ; 47 L. J. P. 23 ; 37 L. T. 415 ; 26 W. R. 455, C. A.

Annotations :—**Consd.** Ingham (falsely called Sachs) *v.* Sachs (1886), 56 L. T. 920 ; Hay *v.* Northcote, [1900] 2 Ch. 262 ; *Re* Bozzelli's Settlement, Husey-Hunt *v.* Bozzelli, [1902] 1 Ch. 751. **Expld.** Ogden *v.* Ogden, [1907] P. 107. **Consd.** Republica do Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Bloxam *v.* Favre (1884), 50 L. T. 766 ; Viditz *v.* O'Hagan (1899), 68 L. J. Ch. 553 ; Mitford *v.* Mitford & von Kuhlmann, [1923] P. 130.

829. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Sloggett *v.* Sloggett, [1928] P. 148 ; Nachimson *v.* Nachimson, [1930] P. 217.

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delict in Scotland, did not suffice to found jurisdiction against him in the absence of personal citation in Scotland.—KERR *v.* FERGUSON (R. & W.), [1931] S. C. 736.—**SCOT.**

f ii. —— ——.]—The rights of a minor residing in a foreign state to sue in Quebec for injuries sustained in an accident in Quebec are governed by the laws of the foreign state.—SCHATZ *v.* MCENTYRE, [1935] S. C. R. 238 ; 1 D. L. R. 608.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.

811 i. —— *Marriage solemnised according to law of state.*]—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the ots. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166 ; 1 W. W. R. 753 ; 33 B. C. R. 109 ; *revsg.* S. C. *sub nom. Re* LEE OHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

814 iii. ——.]—FAFARD *v.* BEAUPRE (1927), Q. R. 66 S. C. 24.—**CAN.**

814 iv. ——.]—The fact that the ceremony of marriage was solemnized in a foreign country wherein such a marriage is valid does not render it valid in a province in which 5 & 6 Will. 4, c. 54, is in force, if the parties were British subjects & only temporarily resident, but not domiciled, abroad.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ——.]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute :—*Held :* the marriage was valid inasmuch as the domicil of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicil not recognised by the law of N.—FRIEDMAN *v.* FRIEDMAN'S EXECUTORS (1922), 43 N. L. R. 259.—**S. AF.**

835a. ——.]—If there is one question better settled than any other in international law, it is that as regards marriage—putting aside the question of capacity—*locus regit actum.* If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicil of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicil would be considered a good marriage (*per* CUR.).—BERTHIAUME *v.* DASTOUS, [1930] A. C. 79; 99 L. J. P. C. 66; 142 L. T. 54, P. C.

Annotation:—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

836. *Add. Annotations:*—**Folld.** Mitford *v.* Mitford, [1923] P. 130. **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Berthiaume *v.* Dastous (1929), 45 T. L. R. 607; Inverclyde *v.* Inverclyde, [1931] P. 29.

840. *Add. Annotation:*—*As to* (2) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

853. *Add. Annotations:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111; R. *v.* Moscovitch (1927), 138 L. T. 183.

858a. —— —— **Marriage of Roman Catholics in India — Within prohibited degree — Indian statutes inapplicable.**]—(1) Two British Roman Catholics assumed to be domiciled in India went through a ceremony of marriage, though they were within the prohibited degrees of consanguinity according to English law, but a dispensation had been obtained from the local Roman Catholic ecclesiastical authorities for the couple to contract the marriage notwithstanding:—*Held:* there was no sanction in the Indian statutes relating to the marriage of Christians in India for British Roman Catholics to enter into a valid union, & the marriage was declared null & void.

(2) There is no legal impossibility, as far as I know, in retention of domicil of origin during successive generations (LORD MERRIVALE, P.).—PEAL *v.* PEAL, [1931] P. 97; 100 L. J. P. 69; 143 L. T. 768; 46 T. L. R. 645; 74 Sol. Jo. 612.

859a. **Marriage at embassy—Between foreigners not of ambassador's country.**]—Marriage in the public church, or some public chapel, required by Marriage Act, 1753 (c. 33), s. 1. Exception, as to the chapel of a foreign ambassador, between foreigners, not being of the ambassador's country, not admitted.—PERTREIS *v.* TONDEAR (1790), 1 Hag. Con. 136.

860. *Add. Annotation:*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

861a. —— —— **Marriage in Turkey before Treaty of Lausanne.**]—MARTIN *v.* MARTIN & MAY (1928), 72 Sol. Jo. 612.

——.]—DOUST *v.* DOUST (1929), 168 L. T. Jo. 113.

868. *Add. Annotation:* — **Apld.** Matthews Matthews (1930), 99 L. J. P. 143.

Part X.—Divorce and other Matrimonial Causes.

873a. ——.]—The jurisdiction in divorce is limited to England & Wales & depends upon domicil there, & it does not necessarily confer any authority over the property of a person domiciled in a foreign country.—TALLACK *v.* TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. P. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

Annotation:—**Consd.** Goff *v.* Goff, [1934] P. 107.

Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—*See* HUSBAND & WIFE, No. 5542a, *post.*

PART X. SECT. 1, SUB-SECT. 1.

sq. *To make order for custody of children—Children living with mother outside province.*]—KILPATRICK *v.* KILPATRICK (B. C.), [1929] 3 W. W. R. 463; [1930] 1 D. L. R. 288; 42 B. C. R. 88.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—A. (a).

b i. ——.]—*Held:* it is the duty of the district judge, when a petition for dissolution of marriage comes before him, to satisfy himself that the parties to the marriage were domiciled in India at the time when the petition was presented & to see that the petition itself contains a declaration to that effect; & before hearing the suit, to satisfy himself that the parties are in fact domiciled in India.—MURPHY *v.* MURPHY (1929), I. L. R. 10 Lah. 607.—IND.

b ii. —— *Under Indian Divorce (Amendment) Act,* 1926.]—Under Indian & Colonial Divorce Jurisdiction Acts, s. 1 (1), & Indian Divorce Act, 1869, s. 3, the High Ct. has jurisdiction to grant a decree for dissolution of a marriage; the words in sect. 1 (1) (*a*) of the Act of 1926 are intended to mean that the grounds on which a decree for the dissolution of the marriage of British subjects domiciled in England may be granted by a High Ct. in India shall be those on which such a decree might be granted by the Divorce Ct. in England according to the law for the time being in force in England, *i.e.* according to Supreme Ct. of Judicature (Consolidation) Act, 1925, s. 176.—BARNARD *v.* BARNARD (1928), I. L. R. 56 Calc. 89.—IND.

b iii. —— ——.]—In cases under the Indian Divorce Act, the ct. should always raise the following issues: (*a*) is the marriage between the parties proved; (*b*) do the parties or either of them profess the Christian religion; (*c*) was the domicil of origin of the husband Indian; if yes, is it proved that he had changed such domicil at the date of the presentation of the petition; if no, is it proved that at the date of the presentation of the petition he had acquired an Indian domicil; (*d*) do the parties reside or did they last reside together within the local limits of the ordinary jurisdiction, or the jurisdiction under the Indian Divorce Act of this ct.—ROOKE *v.* ROOKE (1934), I. L. R. 58 Bom. 502.—IND.

b iv. ——.]—A wife cannot have a domicil distinct from that of her husband, while they continue married, even though the wife has left him for cause or the husband has deserted her; &, in order to give the ct. jurisdiction to decree a divorce, it must be established that the husband was domiciled within the province at the commencement of the proceedings.—BREEN *v.* BREEN (Man.), [1929] 4 D. L. R. 649; 2 W. W. R. 345; *revsd. on facts,* [1930] 1 W. W. R. 30; 1 D. L. R. 1006; 38 Man. L. R. 409.—CAN.

b v. ——.]—Act 25 of 1926 prevents any decree of dissolution of a marriage except where the parties are domiciled in India.—BONHIEM *v.* KA TROLIMON (1929), I. L. R. 57 Calc. 1159.—IND.

b vi. ——.]—Before exercising jurisdiction under the Indian Divorce Act, the ct. ought carefully to inquire, on proper legal principles, into the question of domicil of the parties.—CRESSWELL *v.* CRESSWELL (1932), I. L. R. 60 Cal. 601.—IND.

b vii. —— *Statutory domicile of wife—Validity of Divorce & Matrimonial*

878. To the cross-reference following this case add "*See, now,* Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40)."

878a. —— —— —— —— **Registration of decree.**]—Where a decree absolute of divorce has been granted in India under Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40), either party may, on production of the necessary certificate, secure the registration of such decree in the High Ct. in England.—WILKINS *v.* WILKINS (1932), 101 L. J. P. 35; 147 L. T. 17; 48 T. L. R. 425; 76 Sol. Jo. 345.

884. *Add. Annotations:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

885. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Graham *v.* Graham (1923), 128 L. T. 639; Eustace *v.* Eustace, [1924] P. 45; Rudd *v.* Rudd, [1924] P. 72; Sasson *v.* Sasson, [1924] A. C. 1007; Herd *v.* Herd, [1936] 2 All E. R. 1516.

894. *Add. Annotations:*—**Consd.** Graham *v.* Graham, [1923] P. 31; Salvesen (or von Lorang) *v.* Austrian Property Administrator [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

894a. ——.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicil & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicil does not become estopped from alleging another domicil after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicil or render it incapable of alteration without the consent of the wife.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598; *subsequent proceedings: sub nom.* HORN *v.* HORN (1929), 142 L. T. 93.

Annotation:—*As to* (2) **Consd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

894b. ——.]—HERD *v.* HERD, No. 173a. *ante.*

895. *Add. Annotations:*—*As to* (1) **Refd.** Graham *v.* Graham, [1923] P. 31; Eustace *v.* Eustace, [1924] P. 45.

896. *Add. Annotations:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29; Bryce *v.* Bryce (1932), 49 T. L. R. 177.

899a. —— —— ——.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicil different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicil at the time of the proceedings.

Causes Act, 1930, s. 3.]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand:—*Held:* entitled to a decree *nisi.*—WORTH *v.* WORTH [1931] N. Z. L. R. 1109.—**N.Z.**

b viii. —— ——.]—Sect. 43 of the Matrimonial Causes Act, 1929, provides that for the purposes of this Act a deserted wife who was domiciled in the State at the time of desertion shall be deemed to have retained her South Australian domicile, although since the desertion her husband may have acquired another domicile.—IRELAND *v.* IRELAND, [1935] S. A. S. R. 217.—**AUS.**

b ix. ——.]—There is no authority for the proposition that the jurisdiction of the ct. to make an order for divorce or judicial separation depends upon domicil at the time when the order is made. The relevant time is the time when the action is begun.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

878 i. —— —— —— *Indian marriage.*]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree *nisi:*—*Held:* the ct. had jurisdiction to pass the decree.—MILLER *v.* MILLER (1924), I. L. R. 52 Calc. 566.—**IND.**

879 iv. —— —— ——.]—The domicil of the married pair at the time when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bonâ fide* existing domicil has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—CROMARTY *v.* CROMARTY (1917), 38 O. L. R. 481; 33 D. L. R. 151.—**CAN.**

879 v. —— —— ——.]—A Mahomedan domiciled in India who marries in Scotland, with Scottish ceremonies, a Christian Scotch woman domiciled in Scotland can, if the woman becomes a Muslim, divorce her in India by pronouncing a *talak.*—KHAMBATTA *v.* KHAMBATTA (1934), I. L. R. 59 Bom. 278.—**IND.**

—.]—MYANDUK *v.* MYANDUK, [1931] 1 W. W. R. 755; 2 D. L. R. 673.—**CAN.**

890 iv. —— ——.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicil to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid:—*Held:* as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—SWAIZIE *v.* SWAIZIE (1899), 51 O. R. 324.—**CAN.**

890 v. —— ——.]—In order to found jurisdiction to entertain a suit for divorce it must be shown that the husband was domiciled in South Australia at the commencement of the proceedings. Unconditional submission to the jurisdiction by the husband is insufficient.—SLATER *v.* SLATER, [1928] S. A. S. R. 161.—**AUS.**

ss. *Under Deserted Wives Maintenance Act, R.S.B.C.* 1924.]—Under Deserted Wives' Maintenance Act, R.S.B.C., 1924, the magistrate has jurisdiction when a wife has been deserted within the Province, but the husband is domiciled outside the Province.—GAGEN *v.* GAGEN, [1934] 4 D. L. R. 409; 3 W. W. R. 84; 48 B. C. R. 481.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A. (b).

f i. —— —— ——.]—The words in Marriage Act, 1928, s. 75, "No person shall be entitled to petition under this section who has resorted to Victoria for that purpose only," do not preclude a person from petitioning unless he has resorted to Victoria for the purpose of qualifying himself to present a petition, &, in the absence of collusive arrangement, do not debar a wife who resides abroad from petitioning when her husband is domiciled in Victoria.—BELL *v.* BELL, [1931] V. L. R. 373; Argus L. R. 304.—**AUS.**

f ii. —— *Must be within territorial limits of province.*]—The domicil necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose cts. are appealed to.—MARRIAGGI *v.* MARRIAGGI, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—**CAN.**

899 iii. —— —— ——.]—Where a wife has obtained a decree of judicial separation, she is entitled to acquire a domicil independently of her husband.—HASTINGS *v.* HASTINGS, [1922] N. Z. L. R. 273.—**N.Z.**

band's domicil. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444; 95 L. J. P. C. 102 134 L. T. 717; 42 T. L. R. 317, P. C.

Annotations :—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Herd *v.* Herd [1936] 2 All E. R. 1516. **Refd.** H. *v.* H., [1928] P. 206.

899b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

903a. —— —— ——.]—(1) The burden of proving a change of the domicil of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicil, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble :* even if resp. has now acquired an American domicil, petitioner can still as a deserted wife obtain relief from the English cts.—RUDD *v.* RUDD, [1924] P. 72; 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

:—*As to* (3) **Refd.** Hughes *v.* Hughes (1932), 48 T. L. R. 328.

903b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

905. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

906. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

916. *Add. Annotation :*—**Refd.** Graham *v.* Graham, [1923] P. 31.

917. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206. **Refd.** Graham *v.* Graham, [1923] P. 31; Raeburn *v.* Raeburn (1928), 138 672.

918. *Add. Annotations :*—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Graham *v.* [1923] P. 31; Mitford *v.* P. 130.

.]—It is established by the cases of *Armytage* v. *Armytage*, No. 917, *ante*, & *Anghinelli* v. *Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensâ et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—GRAHAM *v.* GRAHAM, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

Annotations :—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. C72; Johnstone *v.* Johnstone [1929] P. 165.

918b. —— ——.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—RAEBURN *v.* RAEBURN (1928), 138 L. T. 672; 44 T. L. R. 384.

918c. —— **Respondent domiciled in England.**]—There is jurisdiction in the Probate, Divorce

903 iv a. —— —— ——.]—The law of domicil governing divorce is that the domicil of the husband is the domicil of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the cts. so as to give a deserted wife relief from her marriage tie.—PAYN *v.* PAYN, [1924] 3 D. L. R. 1006; 3 W. W. R. 111.—**CAN.**

903 iv b. —— —— ——.]—Although a married woman has been deserted by her husband & he is moving about from place to place, she cannot acquire an independent domicil; &, therefore, an action for divorce, brought by her in a province in which she is residing & was residing when he deserted her but which is not his domicil at the time of the action must be dismissed.—NELSON *v.* NELSON & ANDREWS (Sask.), [1928] 4 D. L. R. 910; [1928] 3 W. W. R. 291; *affd.*, [1930] 1 W. W. R. 169; 3 D. L. R. 522; 24 S. L. R. 250.—**CAN.**

903 vi. —— —— ——.]—Pltf. husband, when domiciled in N., married deft. in that State. She deserted him while in that State in 1907. In 1917 he came to Q. & acquired a domicil there. Deft. continued to reside in N. In 1927 he brought this action for dissolution of the marriage on the ground of desertion continuously without cause for five years :—*Held :* the ct. had jurisdiction to entertain the action.—ROCHE *v.* ROCHE, [1928] St. R. Qd. 11.—**AUS.**

903 vii. —— —— ——.]—The facts that a wife has been deserted by her husband & he has acquired another domicile while she has continued to reside in the domicile which was his at the time of the desertion, do not afford an exception to the rule that it is only the ct. of his domicile at the time the action is begun which has jurisdiction to grant her a decree of divorce.—HARRIS *v.* HARRIS & HARRIS, [1930] 1 W. W. R. 173; 4 D. L. R. 736; 24 S. L. R. 234; *affg.*, [1929] 2 D. L. R. 546.—**CAN.**

st. *In Ireland—Power to elect to be domiciled either in Northern Ireland or in Irish Free State.*]—EGAN *v.* EGAN, [1928] N. I. 159.—**IR.**

PART X. SECT. 1, SUB-SECT. 2.—B.

sv. *Co-respondent not domiciled in country where divorce sought—Liability to damages & costs.*]—In Manitoba where an action for divorce is based on adultery committed outside the province, & the co-resp. is neither a resident of nor domiciled in Manitoba & has no assets therein, the ct. has no jurisdiction to decree either costs or damages against the co-resp. where he has not submitted himself to its jurisdiction.—RUTA *v.* RUTA & SAMULIAK [1929] 4 D. L. R. 1053; 1 744.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

917 v. —— —— *Indian Divorce Act.*]—Under the Indian Divorce Act, ss. 2, 3, on a petition by a wife for a decree of judicial separation from her husband, the Bombay High Ct. has jurisdiction to grant the relief asked for, if petitioner, when she last resided in India, stayed with her husband in any place within the jurisdiction of the ct.—DE SOUZA *v.* DE SOUZA (1935), I. L. R. 59 Bom. 570.—**IND.**

gi. —— ——.]—Where a wife brings an action of separation & aliment against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicil in a foreign country.—RAMSAY *v.* RAMSAY, [1925] S. C. 216.—**SCOT.**

st. *Separation for cruelty—Cruelty within jurisdiction.*]—In a suit for judicial separation on the ground of cruelty, the ct. will not necessarily demand proof of matrimonial domicil within its jurisdiction, but at least there must be acts of cruelty committed or apprehended within its jurisdiction, from which it is the function of the ct. to protect the suppliant.—SMITH *v.* SMITH, [1934] N. L. R. 67.—**S. AF.**

sx. *Protest to jurisdiction — Procedure.*]—MILLER *v.* MILLER (Man.), [1929] 3 W. W. R. 167.—**CAN.**

& Admlty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—EUSTACE *v.* EUSTACE, [1924] P. 45; 93 L. J. P. 28; 130 L. T. 79; 39 T. L. R. 687; 67 Sol. Jo. 807, C. A.

924. *Add. Annotations:—As to* (1) **Expld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (2) **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

925. *Add. Annotation:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

926. *Add. Annotations:*—**N.F.** Graham *v.* Graham, [1923] P. 31. **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Folld.** White (otherwise Bennett) *v.* White, [1937] P. 111. **Refd.** Mitford *v.* Mitford [1923] P. 130.

926a. Parties domiciled in country where decree sought — Validity of marriage in dispute.]—(1) Where the validity of a marriage is in dispute the ct. of the domicil of the parties has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] A. C. 641; 96 L. J. P. C. 105; 137 L. T. 571; 43 T. L. R. 609, H. L.

Annotations:—As to (1) **Folld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Distd.** White (otherwise Bennett) *v.* White, [1937] P. 111. *As to* (3) **Refd.** H. *v.* H. (No. 2) (1928), 97 L. J. P. 116; Nachimson *v.* Nachimson, [1930] P. 217, C. A.

926b. Jurisdiction dependent on domicil.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a marriage on this ground deals with a marriage which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 74 Sol. Jo. 863; 29 L. G. R. 353.

Annotation:—**Consd.** White (otherwise Bennett) *v.* White, [1937] P. 111.

926c. Marriage not celebrated in country where decree sought—Marriage in country where former decree of dissolution invalid.]—PAUL *v.* PAUL (1936), 80 Sol. Jo. 555.

926d. —— **Proceedings where wife petitioner resident & domiciled—Bigamous marriage.**]—On a petition by a woman for nullity of a

PART X. SECT. 1, SUB-SECT. 4.

921 ii. ——.]—The High Ct. of Bombay has jurisdiction to entertain a petition for restitution of conjugal rights by a Christian wife of a Parsi husband if the wife was at the date of the petition residing in Bombay.—DALAL *v.* DALAL (1930), I. L. R. 54 Bom. 877.—**IND.**

921 iii. —— *Or domicil.*]—The ct. has jurisdiction to entertain a suit for restitution of conjugal rights where the parties were domiciled or were both both *bonâ fide* resident in New South Wales at the time of the institution of the suit.—BOARDMAN *v.* BOARDMAN (1936), 36 S. R. N. S. W. 474; 53 N. S. W. W. N. 182.—**AUS.**

l i. ——.]—On petition by a wife for restitution of conjugal rights:—*Held:* resp. had an Irish domicil, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—BELL *v.* BELL, [1922] 2 I. R. 152.—**IR.**

m i. ——.]—Petitioner was married in New Zealand to resp. The evidence established that resps.' domicile of origin was New Zealand, & negatived any inference that he had acquired a fresh domicile. In 1923, resp. went to the Federated Malay States as an employee of the English Civil Service, residing there with petitioner from 1923 to 1934, when she returned to New Zealand, where he wished her to remain with the child of the marriage. Resp. remained in the Malay States. Petitioner applied for a decree for restitution of conjugal rights:—*Held:* granting the decree, in the circumstances, the ct. should exercise the discretion conferred by sect. 8 of the Divorce & Matrimonial Causes Act, 1928, in favour of petitioner.—BEST [1935] N. Z. L. R. 593.—**N. Z.**

PART X. SECT. 1, SUB-SECT. 5.

n i. —— ——.]—An application in a nullity of marriage suit to determine the question of the jurisdiction of the Ct. of K. B. of S. to entertain the action. The marriage was celebrated in S.; the husband, pltf., was domiciled & resident in A. at the time of the commencement of the action, & the wife was residing in M.:—*Held:* the Ct. of K. B. of S. had jurisdiction to make a decree of the nullity of a marriage entered into in S.—G. *v.* G., [1928] 1 W. W. R. 651; 22 Sask. L. R. 376.—**CAN.**

n ii. —— ——.]—HINDS *v.* MCDONALD, [1932] 1 D. L. R. 96.—**CAN.**

n iii. —— ——.]—Where petitioner, who had married as her first husband a man who was domiciled in England, sought an annulment of her second marriage which was solemnised in India & petitioner was resident in India:—*Held:* the cts. in India had jurisdiction to deal with the matter—TAYLOR *v.* WENKENBACH 1. L. R., [1937] 1 Cal. 417.—**IND.**

n iv. ——.]—**The Ct. of King's Bench of Saskatchewan has jurisdiction to entertain an action for the annulment of a marriage celebrated in Saskatchewan whether or not the husband was domiciled in Saskatchewan at the time of the issue of the writ.**—REID (OTHERWISE FRANCIS) *v.* FRANCIS (Sask.), [1929] 4 D. L. R. 311; 3 W. W. R. 102.—**CAN.**

o i. —— *Respondent residing in country where decree sought—Petitioner not residing in country where decree sought.*]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bonâ fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor although his wife was a resident, in British Columbia.—PURDY *v.* PURDY, [1919] 2 W. W. R. 551.—**CAN.**

o ii. —— ——.]—VAMVAKIDIS *v.* KIRKOFF, [1929] 4 D. L. R. 1060.—**CAN.**

o iii. —— *Necessity for domicile or residence of parties.*]—In the case of a marriage void *ab initio*, the ct. has no jurisdiction to entertain a suit for a declaration of nullity of marriage unless the marriage in question was celebrated in this State, or both parties to the ceremony of marriage either were domiciled or resident in the State at the time of the institution of the suit.—SMART *v.* MAXWELL (1929), 47 N. S. W. W. N. 100.—**AUS.**

p i. ——.]—The ct. cannot entertain a suit for a declaration of the nullity of a marriage where resp. is neither domiciled nor resident within the province & the marriage was not celebrated therein. Where such a suit is brought by the man its dismissal on the ground that resp. has not his domicile is, necessarily, a recognition by the ct. that the alleged marriage is null.—HUTCHINGS *v.* HUTCHINGS (OR BROWNING), [1930] 2 W. W. R. 565; 4 D. L. R. 673; 39 Man. L. R. 66.—**CAN.**

ct. of
domicile has exclusive ju[illegible]tion
suits for nullity upon the ground of
impotence.—FLEMING *v.* FLEMING,
[1934] 4 D. L. R. 90; O. R. 588.—**CAN.**

p iii. ——.]—W. *v.* W., [1935] 1 W. W. R. 293; 42 Man. L. R. 578.—**CAN.**

sl. *Nullity based on invalidity of foreign divorce decree—Necessity for proof of law.*]—An action for nullity based on an allegation of previous
to the invalidity of
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absence of proof of the law of the place of the previous divorce proceedings.—LEIGH *v.* LEIGH, [1937] 1 D. L. R. 773; O. R. 239.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ——.]—POTRATZ *v.* POTRATZ (Sask.), [1926] 1 D. L. R. 147.—**CAN.**

q ii. ——.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—**CAN.**

q iii. ——.]—SHEASER *v.* SHEASER, [1926] 3 D. L. R. 196; [1926] 2 W. W. R. 389; 22 Alta. L. R. 261; *varying*, [1926] 2 D. L. R. 906; [1926] 2 W. W. R. 129.—**CAN.**

q iv. ——.]—BROWN *v.* MCINNESS, [1927] 2 D. L. R. 655; [1927] 1 W. W. R. 597; 38 B. C. R. 324.—**CAN.**

q v. ——.]—MCNUTT *v.* CREE (1928), Q. R. 66 S. C. 332; 34 R. de J. 370.—**CAN.**

q vi. ——.]—A decree of divorce obtained in a foreign country is not recognised as valid in Canada if at the time of the decree the husband was domiciled in Canada, even though he had then resided in said foreign country long enough to give the cts. thereof jurisdiction under the law of that country to grant the decree. Where subsequently to such a divorce one of the parties thereto goes through a form of marriage while the other party is still living & the original marriage still subsisting under the law of their domicil, said purported marriage will be declared null & void.—MACDONALD *v.* NASH (Man.), [1929] 4 D. L. R. 1051; 2 W. W. R. 84.—**CAN.**

q vii ——.]—Petitioner & resp., both born in British Columbia, were married in Vancouver in 1917. In the fall of 1923 resp. went to Portland, Oregon, & after remaining there a few weeks went to Los Angeles, California, where he remained until Jan. 1925. Late in 1924 he commenced divorce proceedings in Portland & a decree of divorce was granted him in Apr. 1925. He then returned to Vancouver & in Apr. 1926, he, with another woman, went to Bellingham in Washington, where they went through a form of marriage before a magistrate & returned to Vancouver. Petitioner filed her petition herein in May, 1929. The law of the State of Oregon requires that pltf. in a divorce action must have been a resident & inhabitant of the State of Oregon one year next prior to the commencement of the suit & the Supreme Ct. of the State has defined domicil, residence & inhabitance as synonymous in relation to divorce proceedings:—*Held:* on the evidence, resp. did not renounce his British Columbia domicil, he was not in the ordinary meaning of the words a "resident" or "inhabitant" of the State of Oregon & did not acquire a domicil there. Domicil being the governing factor, there was no jurisdiction in the cts. of the State of Oregon to grant a decree of divorce, & petitioner herein should be granted a decree absolute.—BIGGAR *v.* BIGGAR, [1930] 2 D. L. R. 940; 42 B. C. R. 329.—**CAN.**

q viii. ——.]—The cts. in Canada will recognise the binding effect of a decree of divorce obtained in a foreign country against a husband domiciled outside Canada although he was not domiciled in the country of the ct. which granted the decree, if the cts. of the country of his domicile would recognise the validity of the decree. In the present case the husband was domiciled in the English legal sense in Oregon when the wife obtained a decree of divorce in California on the ground of wilful desertion:—*Held:* after receiving expert evidence of the law of Oregon & of the effect of "the full faith & credit clause" of the U.S. Constitution, that under the law of Oregon the wife could not claim a separate residence from that of her husband so as to transfer jurisdiction over a divorce action between them to another state than that of his domicile unless he had given her cause by wilful desertion; &, since the question whether the wife had acquired the right on said ground to establish a separate domicile or residence in California was one going to the root of the jurisdiction of the California Ct., said "full faith & credit clause" would not compel the Oregon Ct. to recognise the California decree without inquiring whether she had acquired said right.—WYLLIE *v.* MARTIN, [1931] 3 W. W. R. 465; 44 B. C. R. 486.—**CAN.**

927 v. —— —— ——.]—As the domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law:—*Held:* a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage.—CAMPBELL *v.* CAMPBELL, [1921] 2 W. W. R. 849.—**CAN**

927 vi. —— —— ——.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again:—*Held:* the wife's prayer for divorce should be granted.—YATES *v.* YATES, [1924] 4 D. L. R. 835; 3 W. W. R. 578.—**CAN.**

936 ii. —— —— ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

944a. ——.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief:—*Held:* the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—MITFORD *v.* MITFORD & VON KUHLMANN, [1923] P. 130; 92 L. J. P. 90; 129 L. T. 153; 39 T. L. R. 350.

Annotation:—**Consd.** Invercivde *v.* Invercivde, [1931] P. 29.

-.]—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, No. 926a, *ante*.

946a. —— —— **No cohabitation.**]—An Englishman married an Englishwoman in England, but there was no cohabitation, & the wife went almost immediately to Canada & the United States, and on her application a ct. in Michigan, U.S.A., granted her a decree of nullity of marriage on the ground that it was a marriage in form of law but not in legal effect. The husband had agreed to the decree being made. Thinking herself free, the wife went through a form of marriage with another man & lived with him as his wife. The first husband, who was domiciled in England, now petitioned for the dissolution of his marriage, citing the second man as co-respondent. The suit was undefended, but was referred by the Assize Comr. to the King's Proctor on the question of connivance: —*Held:* the American decree was invalid.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45; 101 L. J. P. 23; 146 L. T. 327; 48 T. L. R. 191; 76 Sol. Jo. 96.

Annotation:—**Refd.** Hughes *v.* Hughes (1932), 147 L. T. 20.

946b. Foreign court without jurisdiction to grant decree of nullity.]—The disability of a foreigner to marry in England otherwise than in accordance with the law of his country as regards matters of form is a disability of which he can divest himself at will & therefore constitutes no objection to the validity of a marriage contracted by him in England in English form. A decree of a foreign ct. invalidating such a marriage is recognisable in England only if the foreign ct. has jurisdiction over the marriage & even then is open to examination. Want of jurisdiction cannot be cured by mere consent of the parties. A decree of a foreign ct. purporting to annul an English marriage under these circumstances is not severable, & if it is incompetent to annul the marriage, neither is it competent to award maintenance or a lump sum in lieu of maintenance.

The husband, a domiciled Cypriot, married a Frenchwoman in England in English form. Afterwards he repudiated the marriage on the ground that it was not in form in accordance with the law of his domicil. Later, on proceedings by the wife in a Cypriot ct., the marriage was declared null on the same ground by consent of the parties, & it was further declared that the husband should pay the wife a lump sum in satisfaction of all claims, including maintenance. The Cypriot ct. by the terms of its constitution had no jurisdiction to annul a marriage. Still later, the wife, finding the husband in England, took out a summons against him for neglect to maintain her under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925. The summary jurisdiction ct., upholding the marriage, ordered the husband to pay maintenance:—*Held:* the marriage was good & the agreement to set it aside illegal, that the decree of the ct. in Cyprus was pronounced without jurisdiction in compromising maintenance as well as in annulling the marriage, & that the order of the ct. of summary jurisdiction must stand, the measure of maintenance within the limits of the Summary Jurisdiction Act being the means of the parties at the time of the proceedings.—PAPADOPOULOS *v.* PAPADOPOULOS, [1930] P. 55; 99 L. J. P. 1; 142 L. T. 237; 94 J. P. 39; 28 L. G. R. 73.

Annotation:—**Apld.** Marcovitch *v.* Marcovitch (1934), 151 L. T. 139.

947. *Add. Citation:*—*sub nom.* SUGDEN *v.* 2 Cl. & Fin. 567, n.

Add. Annotation:—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

949a. ——.]—In 1935 a maintenance order was made in a ct. of summary jurisdiction in England against M., a German subject. In 1936 a decree of divorce was pronounced between M. & his wife in Germany. Both parties had submitted to the jurisdiction of the ct. & the decree was pronounced on grounds that by insulting behaviour & incompatibility of temper the wife had failed to fulfil her marriage obligations. M. then applied for a revocation of the maintenance order. The justices refused the application for the following reasons: (i) they considered that the fact that the marriage had been dissolved in Germany on grounds which would not be recognised in England was not a sufficient reason for them to discharge the order, & (ii) the wife's financial position had not changed & was such that she required the maintenance payable under the order for her support, & the justices therefore exercised their discretion in her favour. The husband appealed:—*Held:* (1) the decree of the German ct. was valid & binding throughout the world & the justices were not concerned with the question whether the grounds of

PART X. SECT. 2, SUB-SECT. 2.

947 iii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

u i —— *Decree for alimony.*]—BURPEE *v.* BURPEE (B. C.), [1929] 3 D. L. R. 18; 2 W. W. R. 128.—**CAN.**

u ii. —— *Marriage of minor without consent.*]—Petitioner was deemed to be domiciled in New Zealand by virtue of Divorce & Matrimonial Causes Amendment Act, 1930. Resp. was an American sailor domiciled in California. All matters were proved to entitle petitioner to a divorce if her marriage with resp. was subsisting, but in 1927 resp.'s father, acting on his behalf, obtained a decree of nullity of marriage in California on the ground that at the time of the marriage resp. was a minor & did not obtain the consent required by the law of that State:—*Held:* the marriage was, in the contemplation of the law of this country, still subsisting, & that a decree *nisi* for its dissolution should be granted.—CARTER *v.* CARTER, [1932] N. Z. L. R. 1104.—**N.Z.**

divorce were recognised in England; (2) in the case of a foreign divorce where the parties could not make any application to the Divorce Ct. in England the continuance of the award of maintenance is not a judicial exercise of the magistrates' discretion.

Observations on procedure on proof of a decree of dissolution of marriage by a foreign ct.—MEZGER *v.* MEZGER, [1937] P. 19; [1936] 3 All E. R. 130; 106 L. J. P. 1; 155 L. T. 491; 100 J. P. 475; 53 T. L. R. 18; 80 Sol. Jo. 916; 34 L. G. R. 608; 30 Cox C. C. 467.

951a. ——.]—A husband & wife were married in 1916. In 1922 they went to America, where they settled, the husband getting employment. In 1925 the husband deserted his wife & in 1926 at the husband's request the wife visited certain lawyers in America, where she saw the husband. He said he had decided to take divorce proceedings against her & that he would pay her a certain weekly sum & give her the custody of the child of the marriage. The wife agreed to this, & a divorce petition was duly filed by the husband alleging cruelty by the wife, & alleging that he "resides in & is an inhabitant of the State of Michigan." No answer was put in by the wife, she did not take the point that the husband was not domiciled in that State, & she did not defend the case. A decree was duly made. The wife returned to England &, in order to test the validity of the American divorce, she brought a petition for divorce in England alleging adultery by the husband with the woman whom he had married since the American divorce:—*Held:* (1) it was clear from the evidence that the husband was domiciled in the State of Michigan when he filed his petition for divorce, & the decree granted in that State was a valid one. The wife, being a single woman, could not, therefore, bring a petition for divorce in England; (2) the American decree was not invalidated by the fact that the interview between the parties at the lawyers might in England be considered to amount to collusion.—CROWE *v.* CROWE, [1937] 2 All E. R. 723; 157 L. T. 557; 81 Sol. Jo. 399.

952. *Add. Annotations:* — **Consd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Reld.** Mitford *v.* Mitford, [1923] P. 130; Rudd *v.* Rudd, [1924] P. 72; Papadopoulos *v.* Papadopoulos, [1930] P. 55; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

952a. Decree made by mistake—Authority to appear for petitioner withdrawn.]—In this undefended suit the wife petitioned for the dissolution of her marriage on the ground of her husband's adultery in Egypt. Resp., who was engaged in business in Egypt, appeared under protest to the jurisdiction & said that he was domiciled in Egypt. An order was made for the trial of the issue prior to the hearing of the suit, but later resp. abandoned his plea to the jurisdiction. At the hearing the judge drew the attention of counsel to the fact that petitioner had in 1930 petitioned for divorce in Egypt, & had been granted in May, 1930, a decree *nisi* of divorce in H.M. Ct. at Alexandria; that the husband had given evidence in that suit, though it was undefended, & had given evidence that he was domiciled in Egypt. The hearing was adjourned for the production of the ct. record from Alexandria, which was forthcoming at the resumed hearing:—*Held:* the proceedings in Egypt amounted to nothing at all, because petitioner had withdrawn all authority from anybody to appear in the cts. of that country. The judge at Alexandria was not informed of that fact, & he proceeded with the suit on the footing that she was represented, whereas she was not. The domicile was really English. A decree *nisi* was pronounced.—HUGHES *v.* HUGHES (1932), 147 L. T. 20; 48 T. L. R. 328; 76 Sol. Jo. 344.

954a. Award of maintenance by foreign court—Court incompetent to annul marriage.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante*.

956. *Add. Annotation:* — **Reld.** Nachimson *v.* Nachimson, [1930] P. 217.

PART X. SECT. 2, SUB-SECT. 3.

952 i. For "14 O. L. R. 234" read "14 O. L. R. 434."

952 ii. ——.]—OWEN *v.* ROBINSON (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—**N.Z.**

sw. *Presumption in favour of validity of proceedings.*]—FIELDS *v.* FIELDS, [1925] 2 D. L. R. 256; 58 N. S. R. 65.—**CAN.**

sx. *Foreign court without jurisdiction—Doubt as to husband's domicil.*]—A decree of divorce granted to a wife by a ct. of a foreign state wherein the husband was born & had lived continuously up to a time shortly before the date of the commencement of the divorce proceedings should not be pronounced invalid by our cts., when collaterally attacked years afterwards on the ground that at said date the husband had acquired another domicil, unless there is the clearest possible proof that the new domicil had then been acquired by him.—GILBERT *v.* STANDARD TRUST CO. (Alta.), [1928] 4 D. L. R. 371; [1928] 3 W. W. R. 111.—**CAN.**

sy. —— *No domicil in country of court granting decree—Decree not recognised.*]—DRAKE (OTHERWISE MACLAREN) *v.* MACLAREN (Alta.), [1929] 3 D. L. R. 159; 2 W. W. R. 87.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

954 iv. —— ——.]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—*Held:* the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final.—*Re* GAY, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—**CAN.**

954 v. —— ——.]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—*Held:* his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—*Re* SNYDER, SNYDER *v.* SNYDER, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—**CAN.**

954 vi. —— *On orders for alimony.*]—A judgment of a foreign ct. awarding alimony to a husband is enforceable in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation :*—**Refd.** Rudd *v.* Rudd, [1924] P. 72.

969. *Add. Annotations :*—*As to* (2) **Refd.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1923] 2 K. B. 682. *Generally*, **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1000. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

1007. For existing citations read "(1854), 18 Beav. 128; 2 Eq. Rep. 593; 23 L. J. Ch. 265; 23 L. T. O. S. 318; 18 Jur. 736; 52 E. R. 51; *affd. on other grounds* (1855), 7 De G. M. & G. 78, L. C."

1009. *Add. Annotation :*—**Consd.** Goff *v.* Goff, [1934] P. 107.

1010. *Add. Annotation :*—**Consd.** Goff *v.* Goff, [1934] P. 107.

Part XIV.—Foreign Judgments.

See, now, Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13).

1033. For "No. 383, *ante*" read the following :—The judgment of a foreign ct. [in this case the exors.' Ct. of Dealing at St. Croix], consisting of persons interested in the property in dispute, will be disregarded in the cts. of this country.—PRICE *v.* DEWHURST (1837), 8 Sim. 279; Donnelly, 264; 6 L. J. Ch. 226; 59 E. R. 111; *affd. on other grounds* (1838), 4 My. & Cr. 76.

1033a. Due constitution of court—Necessity for strict proof.]—R. *v.* BEECH, POLLITT & STRUDWICK (1928), 20 Cr. App. Rep. 175, C. C. A.

1039. *Add. Annotation :*—*As to* (1) **Consd.** Dreyfus (C. L.) *v.* I. R. Comrs., Dreyfus (L. L.) *v.* I. R. Comrs. (1929), 14 Tax Cas. 560.

PART XII. SECT. 2, SUB-SECT. 1.—F.

n i. —— —— *Marriage to domiciled Englishman—Effect of English divorce decree.*]—A domiciled Englishman & a domiciled Scotswoman entered into an ante-nuptial marriage contract which contained this clause, "It is hereby declared that these presents shall be interpreted & the rights of the parties regulated by the law of Scotland." The wife obtained decree of divorce in the English cts. :—*Held :* the rights of parties under the contract arising on divorce fell to be regulated in the same manner as if decree of divorce had been pronounced by the Scottish cts.—DRUMMOND *v.* BELL-IRVING, [1930] S. C. 704.—**SCOT.**

PART XIII. SECT. 2.

1015 i. *As to property—Father entitled by law of infant's domicil.*]—An infant domiciled in Indore, India, was absolutely entitled to a fund in ct., & by the law of the Indore State her father as legal guardian both of her person & property was entitled to receive & give legal discharges for all moneys coming to her during minority. The father applied for payment out of the fund to him for the benefit of the infant :—*Held :* the father was not entitled as of right to the fund, but the ct. must be satisfied by evidence that the fund was to be applied for the benefit of the infant & in what manner. —DHARAMAL *v.* HOLM PATRICK (LORD), [1935] I. R. 760.—**IR.**

r i. ——.]—The only ct. with jurisdiction over the custody of an infant is the ct. of the domicil of the infant.—CODY *v.* CODY, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—**CAN.**

r ii. —— *Divorce proceedings commenced in Alberta—Removal of children by father to another Province.*]—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign State & are residing therein at the time of the application for the order.—GOFORTH *v.* GOFORTH (Alta.), [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—**CAN.**

Compare No. 1117 i., *post.*

s i. —— *Decree by Serbian court—Whether Scottish court will enforce.*]—Decree of divorce & for the custody of the child of the marriage had been obtained in the Serbian cts. by a Serbian, resident in Belgrade, against his wife, who was a Scotswoman. The child, a girl of 8 years of age, was resident with her mother in Scotland. In a petition to the ct. in Scotland by the father for custody of the child, the mother averred that it would be prejudicial to the health, welfare, & interests of the child that the petition should be granted :—*Held :* while petitioner's right to custody of the child had already been settled by a competent ct., the Scottish ct. was entitled, before ordering delivery of the child, to be informed of petitioner's arrangements for the conveyance of the child to Belgrade, & for her reception there.—RADOYEVITCH *v.* RADOYEVITCH, [1930] S. C. 619.—**SCOT.**

PART XIII. SECT. 3.

t i. —— —— *Court of husband's domicil.*]—In a petition brought by the wife of a domiciled Scotsman for custody of the only child of the marriage, or otherwise for access, the husband maintained that the Scottish ct., even if it had jurisdiction, could not pronounce any effective order. The husband, when the question of jurisdiction was raised, was residing in New York, where he held a professional appointment; petitioner was living in London, & the child, under the care of her paternal grandmother, was in France :—*Held :* the Ct. of Session, as the ct. of the husband's domicil, had jurisdiction to determine the questions of custody & access; the mere fact that the parties were outwith Scotland did not render ineffectual any decree which it might pronounce since such decree being a decision as to status, was a judgment *in rem* universally binding.—PONDER *v.* PONDER, [1932] S. C. 233.—**SCOT.**

PART XIV. SECT. 1.

a i. —— *Order conferring rights on committee of lunatic.*]—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicil, with reference to personalty, are entitled to world-wide recognition.—*Re* HICKSON, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—**CAN.**

sg. *Judgment in default of appearance.*]—A judgment of the King's Bench Div. in London passed in default of appearance of deft. under the summary procedure, without any evidence being called, is not a judgment on the merits within sect. 13 (*b*) of the Code of Civil Procedure & a suit cannot be brought solely on such a judgment in British India.—DERBY MCINTYRE & CO. *v.* MITTER & CO. (1935), I. L. R. 62 Calc. 682.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. ——.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—GANGA PRASAD *v.* GANESHI LAL (1923), I. L. R. 46 All. 119.—**IND.**

1039 i. *Essentials to establishment of jurisdiction.*]—*Held :* the provisions in Jud. Act, 1927 (c. 88), ss. 51, 52, must be confined to actions upon judgments obtained in the Province of Q., which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within the Province of Q. upon a person domiciled & resident therein & who owed allegiance to the laws of Q.—LUNG *v.* LEE, [1929] 1 D. L. R. 130; 63 O. L. R. 194.—**CAN.**

1039 ii. ——.]—Deft. must be a subject or resident in the country of the forum, or have selected it as plff. or have voluntarily submitted to its jurisdiction.—WEBSTER *v.* CONNORS BROS., LTD., [1935] 2 D. L. R. 483; 5 F. L. J. (Can.) 37; *sub nom.* WEBSTER MCLANCHLAN CO. *v.* CONNORS BROS., [1935] 4 D. L. R. 205; 9 M. P. R. 345. —**CAN.**

1041. *Add. Annotation :—Generally,* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1044a. Judgment of horning.]—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—DOUGLAS *v.* FORREST (1828), 4 Bing. 686 ; 1 Moo. & P. 663 ; 6 L. J. O. S. C. P. 157 ; 130 E. R. 933.

Annotations :—As to (1) **Refd.** Don *v.* Lippmann (1837), 5 Cl. & Fin. 1 ; Cowan *v.* Braidwood (1840), 9 Dowl. 26 ; Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155 ; Rousillon *v.* Rousillon (1880), 14 Ch. D. 351 ; Emanuel *v.* Symon, [1908] 1 K. B. 302 ; Gavin Gibson *v.* Gibson, [1913] 3 K. B. 379.

Add. Annotation :— **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation :—***Apld.** Rudd *v.* Rudd, [1924] P. 72.

1069. *Add. Annotation :—***Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation :—As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation :—*[1921] B. & C. R. 195.

1090a. ——.]—RUDD *v.* RUDD, No. 903a, *ante.*

1098a. General rule.] — A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—FRAYES *v.* WORMS (1861), 10 C. B. N. S. 149 ; 142 E. R. 407.

1108. *Add. Annotation :—***Apld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—Allmony.] —By the law of the State of New York, where

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1042 i. *Absence of jurisdiction—Effect of.*]—A judgment was obtained in Florida without jurisdiction. A judgment was given in New Jersey upon this, without inquiry as to the merits. In an action upon the New Jersey judgment :—*Held :* both the Florida & the New Jersey judgments were nullities.—FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSCE. CO., [1933] 2 D. L. R. 660.—**CAN.**

sl. *Subject-matter of judgment out of jurisdiction.*]—Pltf.'s husband purchased a ticket which drew a horse in a sweepstake in the Irish Free State entitling the purchaser to a certain sum as prize money. Pltf. obtained a decree of divorce in the State of California & a declaration that she was entitled to the money, the ticket having been " community property " :—*Held :* the decree of the Californian Court could not have any effect in the Irish Free State as the subject-matter of the decree was not within the control of the State of California.—MCKIE *v.* MCKIE, [1933] I. R. 464.—**IR.**

PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —— ——.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment " on the merits " within Code of Civil Procedure (Act V. of 1908), s. 13.—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196 ; 49 L. R. Ind. App. 174.—**IND.**

1054 xv. —— ——.]—Deft., who was resident & domiciled in Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly at least in Ontario. He did not appear & judgment was entered against him by default. In an action upon that judgment brought in Ontario by same pltf. against same deft., the latter pleaded that the Quebec judgment was of no effect in Ontario :—*Held :* the provisions of Judicature Act, R. S. O., 1927, ss. 51, 52, enacted by an Act of the Province of Canada, 1860, must be confined to actions upon judgments obtained in Quebec which, according to the principles of international law are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

1065 i. *Judgment recognised—Defendant served—No appearance or defence—Proceedings regular.*]—*Held :* a judgment of the High Ct. of Justice in England against a deft. in India, who had been duly served with a writ of summons but who did not enter appearance or deliver a defence, must be regarded as a judgment passed on the merits of the case when the proceedings had been strictly in accordance with the Rules of the Supreme Ct. —KULWANT *v.* DHAN RAJ DUTT (1934), I. L. R. 16 Lah. 768.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—E.

c i. —— *Judgment based on joint petition presented by both parties.*]—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—F.

e i. —— *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*]—JANOO HASSAN SAIT *v.* MAHAMAD OHUTHU (1924), I. L. R. 47 Mad. 877.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—G.

h i. ——.]—On an application under Ord. 14 for leave to sign judgment in an action on a foreign judgment :—*Held :* the defence that deft. had not been served with process in the foreign action, & that the proceedings therein did not come to his knowledge or notice raised a triable issue which must be tried, in the ordinary way.—ROMANO *v.* MAGGIORA, [1935] 2 W. W. R. 524 ; 50 B. C. R. 66.—**CAN.**

n i. ——.]—In an action on a foreign judgment a statement in said judgment that deft. was " duly & personally served with the summons & a copy of the complaint " is at least *primâ facie* evidence that the formalities required by the law of the foreign state to effect service were observed. In the present case, wherein it was found that deft. was resident of the foreign state at the time of said alleged service :—*Held :* he had not discharged the onus on him of displacing the *primâ facie* case that he was served, & if the service in question consisted, as on the evidence it apparently did, of the handing the suit papers in an envelope to deft. such service would not be against " natural justice." The ct. is not entitled to presume, in the absence of evidence, that the foreign practice is the same as ours.—ROMANO *v.* MAGGIORA (No. 3), [1937] 1 W. W. R. 490 ; 51 B. C. R. 352.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.

o. Read now " **1098a i.**"

p. Read now " **1098a ii.**"

1098a iii. —— *Presumption of finality.*]—The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—SMITH *v.* SMITH, [1923] 2 D. L. R. 896 ; 2 W. W. R. 389.—**CAN.**

q. Read now " **1098a iv.**"

r. Read now " **1098a v.**"

1098a vi. ——.]—AINSLIE *v.* AINSLIE (1927), 39 C. L. R. 381 ; 27 S. R. N. S. W. 524 ; [1927] Argus L. R. 301. —**AUS.**

1113 ii. —— —— ——.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment :—*Held :* a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—MAGUIRE *v.* MAGUIRE 1921), 64 D. L. R. 180 ; 50 O. L. R. 100.—**CAN.**

1113 iii. —— —— ——.]—PERRY *v.* PERRY, [1924] 4 D. L. R. 1177 ; 54 O. L. R. 613 ; *revsg.*, [1924] 1 D. L. R. 665 ; 53 O. L. R. 502.—**CAN.**

sa. *Judgment made award of court—No notice given to party—No notice required by law of country where judgment given.*]—In an action in Ontario upon a judgment recovered in Holland, it appeared that the judgment was pronounced by a ct. of record & directed that an award of arbitrators should be executed after its form & contents & in the ordinary way of execution ; & that no notice was given to defts. who were parties to the arbn. :—*Held :* the requirement of notice or no notice is a matter of procedure ; as it was shown that in Holland no notice was necessary, the lack of notice did not affect the validity of the judgment in Holland, which was final & conclusive & could be sued on in Ontario. —STOLP & CO. *v.* BROWNE & CO., [1930] 4 D. L. R. 703 ; 66 O. L. R. 73.—**CAN.**

a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due :—*Held :* such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—BEATTY *v.* BEATTY, [1924] 1 K. B. 807 : 93 L. J. K. B. 750 ; 131 L. T. 226, C. A.

1114. *Add. Annotation :*—**Refd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1118. *Add. Annotation :—As to* (1) **Consd.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1122a. Judgment founded on immoral agreement.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante.*

1126. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1132. *Add. Annotations :*—**Apld.** Ellerman Lines *v.* Read (1927), 44 T. L. R. 7. **Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1135a. ——.]—Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to salve her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced :—*Held :* (1) the Turkish judgment was invalid ; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144 ; 97 L. J. K. B. 366 ; 138 L. T. 625 ; 44 T. L. R. 285 ; 17 Asp. M. L. C. 421 ; 33 Com. Cas. 219, C. A. ; *revsg.* (1927), 44 T. L. R. 7.

1136. *Add. Annotation : — Generally,* **Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

1141. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1147. *Add. Annotation :*—**Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1147a. ——.]—In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct. :—*Held :* there being evidence that according to French law the ct. was not bound

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PART XIV. SECT. 2, SUB-SECT. 5.

1117 i. *Orders in respect of foreign infant—Custody.*]—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re* AYERS, [1921] 2 W. W. R. 171 ; *affd.*, [1921] 2 W. W. R. 625.—**CAN.**

—— ——.]—*See, also,* Nos. 954 i–954 v, *ante.*

1117 ii. —— *Appointment of guardian.*]—Where a child, whose parents had died, was removed from the province of its domicil of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus.* The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re* BERGMAN & WALDRON, *Re* INFANTS ACT, [1923] 4 D. L. R. 56 ; 3 W. W. R. 70.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 7.

1124 iv. —— *Necessity for strict proof.*]—The defence that a foreign judgment was obtained by fraud must be clearly proved.—BOGA *v.* CHAMBERLEN, [1936] 1 D. L. R. 660 ; 9 M. P. R. 565.—**CAN.**

1127 i. ——.]—DELAPORTE *v.* DELAPORTE, [1927] 4 D. L. R. 933 ; 61 O. L. R. 302.—**CAN.**

1133 iii. —— —— *Not where involving retrial of questions adjudicated on by foreign court.*]—MANOLOPOULOS *v.* PNAIFFE, [1930] 2 D. L. R. 169 ; 1 M. P. R. 366 ; *revsg.*, [1929] 4 D. L. R. 48.—**CAN.**

1133 iv. ——.]—MANOLOPOULOS *v.* PNAIFFE (N. S.), [1929] 4 D. L. R. 48.—**CAN.**

1135 ii. —— ——.]—If it be alleged & proved that a party has obtained a judgment in his favour by some extraneous fraud, such as the clandestine substitution of a false exhibit for the real exhibit, or the deliberate suborning of a witness to testify to the genuineness of false documents or to give any material false testimony, or the giving of false oral testimony material & relevant to the issues, such judgment if a domestic judgment, can be set aside in a new action, or if it is a foreign judgment the fraud may be set up as a defence to an action thereon.—LOCKE *v.* HULETT (Alta.), [1929] 3 D. L. R. 572 ; 2 W. W. R. 558.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

1140 i. *What amounts to repugnancy to "natural justice"—Not merely following lex fori—Lex fori different from law in force in British India.*]—GANGA PRASAD *v.* GANESHI LAL (1923), 1 L. R. 46 All. 119.—**IND.**

sg. *Judgment based on judgment in proceedings of which no notice given.*]—Pltf. recovered a default judgment against deft. in Florida, U.S.A. The writ of summons was not served on deft. co., but was served on an individual resident in Florida who was assumed to be, but who was not, an agent of deft. co. Deft. co. did not carry on business in Florida & knew nothing about the Florida action until after judgment by default had been entered. Subsequently pltf. brought action in New Jersey on the Florida judgment. The action in New Jersey was commenced by attachment against the assets of deft. co. in New Jersey & deft. co. entered an appearance in the New Jersey action. The New Jersey ct. gave judgment in favour of pltf. on the Florida judgment without inquiring into the merits of the dispute. Pltf. brought action in the Supreme Ct. of Ontario on the New Jersey judgment & the action was dismissed. On appeal this judgment was affirmed. —FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSURANCE CO., [1933] O. R. 428.—**CAN.**

by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, &, there being no fraud proved, the judgment in the French action was valid & could not be impeached, & was a complete defence to the English action.—JACOBSON *v.* FRACHON (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

1151. *Add. Annotation:*—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1170. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1187. *Add. Annotation:*—*Generally*, **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

1195. *Add. Annotations:*—*As to* (2) **Refd.** The Goulandris, [1927] P. 182. *As to* (3) **Refd.** Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1205a. —— **Inquiry abroad into loss of ship—Report not confirmed by governor of colony.**] —*Held:* the inquiry was not conclusive.—*Re* QUEEN OF THE THAMES (1872), 36 J. P. 72.

1214. After this case add "*See, also*, ESTOPPEL, Vol. XXI., pp. 154–156, Nos. 165–190."

1240. *Add. Annotation:*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1241. After the last cross-reference following this case add "—— **Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**]—*See* HUSBAND & WIFE, Nos. 6233b, 6233c, 6233d."

1241a. —— **Judgment severable.**] — RAULIN *v.* FISCHER, No. 1120, *ante*.

1243a. —— **Since constitution of Irish Free State.**] —Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—WAKELY *v.* TRIUMPH CYCLE Co., [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.

Annotations:—**Followed.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society *v.* Bray U. D. C., [1930] A. C. 377.

1243b. —— ——.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

Semble: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of

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PART XIV. SECT. 3, SUB-SECT. 1.—A.

1155 iii. —— ——.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay; the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—CALLAGHAN *v.* NICHOLLS, [1921] 3 W. W. R. 476; 31 Man. L. R. 331.—**CAN.**

1167 v. —— —— —— ——.]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—HUTTON *v.* DENT (1922), 70 D. L. R. 582.—**CAN.**

sd. *Test of judgment on merits.*]—The true test whether a foreign judgment has been passed on the merits is whether the judgment has been given as a penalty for any conduct of deft. or whether it is based on a consideration of the truth or otherwise of pltf.'s case.—MEHR SINGH *v.* ISHAR SINGH (1932), I. L. R. 14 Lah. 58.—**IND.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.*]—Where a ct. of the country of domicil adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicil to determine whether its own proceedings are *in rem* or merely *in personam*, & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—JONES *v.* SMITH, [1925] 2 D. L. R. 790; 56 O. L. R. 550.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. —— ——.]—*Re* HAMAR, *Ex p.* MCGUINTY & CO. (1921), 63 D. L. R. 241; 2 C. B. R. 137.—**CAN.**

1215 v. —— ——.]—MARSHALL *v.* HOUGHTON, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—**CAN.**

PART XIV. SECT. 4 SUB-SECT. 3.

sb. *Action in Ontario against Ontario administrator—On foreign judgment against foreign administrator.*]—Where administrations are granted to different persons in different states, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the other, to effect assets received by the latter in virtue of his own administration.—BONN *v.* NATIONAL TRUST CO., [1930] 4 D. L. R. 820; 65 O. L. R. 633.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 4.

sd. *Defence on merits—Application to strike out.*]—LESPERANCE *v.* LEISTIKOW, [1935] 3 W. W. R. 1; 4 D. L. R. 125; 43 Man. L. R. 322.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 5.

sg. *Effect of—Foreign decree of divorce.*]—On a petition for divorce it was shown that a decree of divorce to the parties had been granted by a foreign ct. on the cross-complaint of petitioner herein, that resp. subsequently married the co-resp. in said suit, & that petitioner had allowed 12 years to elapse without doing anything to question the validity of the foreign decree:—*Held:* even though that decree was invalid here, the petition should be dismissed on the grounds that petitioner had been "accessory to" the adultery of which he now complained & had been guilty of "unreasonable delay" in presenting his petition.—LITTLE *v.* LITTLE, [1930] 3 W. W. R. 222; 39 Man. L. R. 170; *revsd.*, [1931] 1 W. W. R. 5; 1 D. L. R. 823; 39 Man. L. R. 264.—**CAN.**

PART XIV. SECT. 5.

1233 iii. —— ——.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—*Held:* she was not estopped by the foreign judgment, & alimony granted.—DETRO *v.* DETRO, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—**CAN.**

k i. —— *Identity of subject-matter—Onus of proof.*]—QUICKSTAD *v.* MCNEILL, [1932] 4 D. L. R. 427; 46 B. C. R. 81.—**CAN.**

PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—GIEVES *v.* O'CONOR, [1924] 2 I. R. 182.—**IR.**

the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

SUB-SECT. 2.—OF SUPERIOR COURTS OF UNITED KINGDOM AND DOMINIONS (p. 471).

Order to secure lump sum.]—*See* HUSBAND & WIFE, No. 5469a, *post.*

1252a. Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), s. 1—Canadian judgment—No order relating to Canada—Right to bring action on judgment.]—Deft. brought an action against pltf. co. in the Supreme Ct. of Ontario. The action was dismissed with costs, & an appeal to the Ct. of Appeal in Ontario was also dismissed with costs. The costs were duly taxed & a part of them paid or satisfied by money paid in by deft. Deft. gave notice of appeal to the Privy Council &, as required by the rules of ct. of the Ct. of Appeal of Ontario, he gave security for the costs of that appeal. Pltf. co. sought to recover in England the balance of the costs payable in respect of the earlier proceedings. Deft. contended that pltf. co. could not sue upon the Ontario judgment, having regard to (i) the Administration of Justice Act, 1920 (c. 81), s. 9 (1); (ii) Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), ss. 1, 6, 7, & Reciprocal Enforcement of Judgments (General Application to His Majesty's Dominions, etc.) Order, 1933; & (iii) the fact that deft. had given notice of appeal to the Privy Council & had given security for the costs of that appeal:—*Held:* (1) there was nothing in the Act of 1920 forbidding the bringing of an action in England on a colonial judgment; (2) as no order in council under sect. 1 of the Act of 1933 had been made specifying that the Act should extend to Ontario & the Supreme Ct. of Ontario should be deemed to be a superior ct. for the purposes of the Act, pltf. co. was not entitled to register its judgment under sect. 2 of the 1933 Act & its action was therefore not barred by sect. 6 of the same Act; (3) as deft. had not given security, as required by the Revised Statutes of Ontario, 1927, c. 86, s. 3 (*d*) for payment of the sums claimed if the appeal to the Privy Council were dismissed, there could be no stay of pltf. co.'s right to recover the sums claimed.—YUKON CONSOLIDATED GOLD CORPN., LTD. *v.* CLARK, [1937] 2 All E. R. 343; 157 L. T. 259; 81 Sol. Jo. 459.

1262a. Date from which interest runs—No date fixed in judgment.]—DOUGLAS *v.* FORREST, No. 1044a, *ante.*

Part XVI.—Practice and Procedure.

1272a. —— Not payment under garnishee order in England.]—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, No. 1307a, *post.*

1277a. ——.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus.*

(2) *Semble:* set-off is matter of procedure, &, as such, determinable by the *lex fori.*—MACFARLANE *v.* NORRIS (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.

Annotation:—As to (2) **Reid.** Maspons y Hermano *v.* Mildred (1882), 9 Q. B. D. 530.

PART XIV. SECT. 7, SUB-SECT. 2.

sm. *By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct., so that it might be enforced in New Zealand:—*Held:* (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—REDHEAD *v.* REDHEAD & CROTHERS, [1926] N. Z. L. R. 131.—**N.Z.**

sn. *Reciprocal Enforcement of Judgments Act, 1925—Scope of Act.*]—Reciprocal Enforcement of Judgments Act, 1925, does not permit the registration of a judgment obtained in a province or territory of the Dominion of Canada to which the Act applies unless the judgment is one which could be enforced by action thereon in Alberta. The Act does not make the judgments to which it applies any less "foreign" judgments or any more directly enforceable than before the Act was passed, & does not alter the rules of private international law as to the recognition to be given to foreign judgments. Therefore a judgment obtained in another province, under the rules thereof permitting service *ex juris*, against a deft. who was not resident or present in that province & did not submit to the jurisdiction of the ct. by contract or appearance is not one which is registrable under the Act. A partnership is not a "person," within the meaning of the Act, against whom a judgment may be registered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* RYAN (Alta.), [1930] 1 D. L. R. 280; [1929] 3 W. W. R. 403.—**CAN.**

sg. *Reciprocal Enforcement of Judgments Act, 1929 (Ont.)—Application of Act.*]—Where deft. would have a good defence to an action in Ontario on a British Columbia judgment, the registration of the judgment under Reciprocal Enforcement of Judgments Act, 1929 (Ont.) is forbidden.—*Re* TANGYE & SMITH, LTD. & PELICAN CARBON CO., [1935] 1 D. L. R. 759; O. R. 123.—**CAN.**

PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—Under the Evidence Act, N. B., c. 127, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—HARRIS *v.* GARSON (1921), 67 D. L. R. 682; 49 N. B. R. 91.—**CAN.**

PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori.*—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—**CAN.**

1266 i. ..... the time ..... action may be brought, *i.e.* any l ..... tion in the strict sense of that ..... is a matter of procedure; & is gov ..... by the *lex fori.* Therefore a law of a foreign country in which a debt was contracted which limits the time within which an action may be brought there on, but does not extinguish the debt, does not affect the right of action here.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

1280. *Add. Annotation :—As to* (4) **Apld.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1285a. —— **Foreign receivers or assignees in bankruptcy.**]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—MACAULAY *v.* GUARANTY TRUST CO. OF NEW YORK (1927), 44 T. L. R. 99.

1289. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1290. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1292a. —— —— ——.]—WRIGHT *v.* SIMPSON (1802), 6 Ves. 714 ; 31 E. R. 1272, L. C.

Annotations :—**Consd.** Newton *v.* Chorlton (1853), 2 Drew. 333. **Refd.** The Vreede (1811), 1 Dods. 1 ; Pennell *v.* Roy (1853), 3 De G. M. & G. 126 ; Jackson *v.* Digby (1854), 2 W. R. 540 ; Strong *v.* Foster (1855), 4 W. R. 151 ; Madden *v.* M'Mullen (1860), 4 L. T. 180 ; Bailey *v.* Edwards (1864), 4 B. & S. 761 ; Belfast Banking Co. *v.* Stanley (1867), 15 W. R. 989 ; Liverpool Marine Credit Co. *v.* Hunter (1867), L. R. 4 Eq. 62 ; Barber *v.* Mackrell (1892), 68 L. T. 29.

1306a. Governed by lex fori.]—MACFARLANE *v.* NORRIS, No. 1277a, *ante*.

1307. *Add. Annotations :*—**Distd.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673. **Consd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808 ; Richardson *v.* Richardson, [1927] P. 228.

1307a. Garnishee proceedings — Payment of debt situate in England — Recognised by international law.]—Judgment having been recovered against a foreign corpn., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corpn. :—*Held :* the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corpn., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673 ; 92 L. J. K. B. 600 ; 128 L. T. 809 ; 39 T. L. R. 179 ; 67 Sol. Jo. 423, C. A.

Annotations :—**Apld.** Employers' Liability Assce. *v.* Sedgwick [illegible] L. J. K. B. 1015. **Consd.** Richardson *v.* Richardson, [1927] P. 228.

1307b. —— —— ——.]—Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to pltfs., the writ being served on C., & in default of appearance judgment was signed against defts. Pltfs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England :—*Held :* as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1 ; 95 L. J. K. B. 7 ; 133 L. T. 808 ; 41 T. L. R. 663, C. A. ; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95, H. L.

Annotations :—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495 ; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* Russian & English Bank (1932), 48 T. L. R. 282 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745 ; The Madrid, [1937] P. 40.

1308. *Add. Annotation :—As to* (2) **Refd.** The Stream Fisher, [1927] P. 73.

1309a. —— **Rights of mortgagee of ship under French hypothèque—Claim for necessaries.**]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c. 60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessaries man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship :—*Held :* as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessaries man who had merely the right to sue *in rem*, the claim of the necessaries men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102 ; 92 L. J. P. 100 ; 128 L. T. 759 ; 16 Asp. M. L. C. 145, C. A.

Annotations :—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1309b. Rights of "ship's creditors" under German code—As against mortgagee & other necessaries men.]—A German firm supplied bunker coal to a Latvian steamship in a German port under a contract which was said to confer upon them a status known to German law as

PART XVI. SECT. 3, SUB-SECT. 1.

sd. —— *Liability to action for damages within jurisdiction—Attempt to return to country of residence.*]—Pltf. claimed $20,000 damages from deft., the cause of action being criminal conversation with pltf.'s wife. Deft. lived in U.S., but was here for a temporary purpose when pltf. had him arrested under an order to hold to bail. Pltf. in his affidavit sworn on Jan. 30, on which the order was granted, stated that deft. had arrived in Toronto that morning, & that he intended to leave for his own country that night, with intent to defraud pltf. of the damages he had sustained :—*Held :* in leaving Ontario he was not doing so with intent to defraud pltf., & was therefore entitled to be discharged.—RICE *v.* FLETCHER (1889), 13 P. R. 46.—**CAN.**

that of "ship's creditors." The ship was subsequently arrested in England at the suit of other necessaries men & sold by order of the English ct. Further claims were brought against her by a mtgee. & other necessaries men, & these, as well as the German firm, in due course obtained judgment, in default of appearance, against the proceeds of the sale of the ship. On a motion to determine priorities it was argued for the German suppliers of bunkers that the law applicable was the German Commercial Code, by which "ship's creditors" were given priority not only over other necessaries men but also over a mtgee., & also were given the equivalent of a maritime lien, which entitled them to follow the ship or her proceeds into the hands of subsequent owners: — *Held:* any rights possessed by the claimants under German law were of no value unless & until they were enforced by the arrest of the vessel in the German cts.; the question of priorities must be determined by the *lex fori*, under which the claimants as necessaries men had no maritime lien or special rights over the heads of a mtgee. or other necessaries men.—THE ZIGURDS (No. 1), [1932] P. 113; 101 L. J. P. 75; 148 L. T. 72; 48 T. L. R. 556; 18 Asp. M. L. Cas. 324.

1310. *Add. Annotations:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382; Oppenheimer *v.* Louis Rosenthal & Co., A. G., [1937] 1 All E. R. 23.

1312. *Add. Annotation:*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1313. *Add. Annotations:*—**Distd.** The London, [1931] P. 14. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1315a. —— Action relating to same subject-matter.]—An action *in personam* for damage occasioned by a collision in Scottish waters was commenced in the cts. of Scotland by the owners of the *L.* against the owners of the *G.* Subsequently the owners of the *G.* commenced proceedings *in rem* in England for the damage to their vessel against the owners of the *L.* & under threat to arrest obtained security from the owners of the *L.*, who thereupon applied by summons to stay the proceedings in the action in England:—*Held:* the ct. will not, as a matter of course, where there is an action pending in the United Kingdom or any of the British Dominions, stay a second action commenced in respect of the same subject-matter, whether pltf. is or is not the same in both actions; & the matter being one of discretion, in the circumstances of the present case no stay to be granted.—THE LONDON, [1931] P. 14; 100 L. J. P. 57; 144 L. T. 375; 47 T. L. R. 170; 18 Asp. M. L. C. 180.

Annotation:—**Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1319a. —— —— Difficulty of proving foreign law in England.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 336a, *ante*.

1321. *Add. Annotation:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1325a. —— Plaintiff in England defendant abroad.]—A Greek vessel & an Argentine vessel came into collision in the River Parana; the Argentine vessel sank, &, it was alleged, became a total loss.

On Sept. 30, 1936, proceedings were instituted in the Argentine by the owners of the sunken ship, an Argentine corpn.; the owner of the Greek ship put in a counter-claim, but on Oct. 27 withdrew it. Meanwhile, on Sept. 30, he had issued the writ in the present proceedings in this country, & served it by leaving a copy at the London office of the Argentine Corpn. which had been established for the purpose of the transfer & registration of shares. The Argentine Corpn. moved to set aside the writ, or alternatively to stay the proceedings, on the grounds, amongst others, (*a*) that the corpn. only carried on business within the jurisdiction so far as claims connected with the share register were concerned; (*b*) that the proceedings were vexatious & oppressive as there was an action pending in Argentina, where all the corpn.'s witnesses as well as the chief witnesses for the Greek ship resided; & further that pltf. had no effective remedy, inasmuch as Argentine law must be applied in this country, under which, if a vessel was a total loss, liability being limited to the property available, her owners were under no liability at all. By Cos. Act, 1929 (c. 23), s. 352, the expression "place of business" includes a share transfer office:

(1) as the corpn. had a place of business within the jurisdiction it was amenable to the jurisdiction for all purposes & not merely to the limited jurisdiction suggested; (2) pltf.'s action could not be stayed merely because he was deft. elsewhere; it could not be said, as in *Dawkins* v. *Prince Edward of Saxe Weimar* (1876), 1 Q. B. D. 499; 38 Digest 79, *566*, that on the facts of the declaration no cause of action was shown; & the question whether pltf.'s claim was groundless depended on facts which he was entitled to have tried, & accordingly the motion failed.—THE MADRID, [1937] P. 40; [1937] 1 All E. R. 216; 106 L. J. P. 39; 53 T. L. R. 237.

1328. *Add. Annotations:*—**Consd.** The Golaa, [1926] P. 103. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1331. *Add. Annotation:*—**Refd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332. *Add. Annotation:*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332a. ——.]—ELLERMAN LINES, LTD. *v.* READ, No. 1135a, *ante*.

1340. *Add. Annotations:*—**Consd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

PART XVI. SECT. 5, SUB-SECT. 2.—B.

b i. —— *Indian courts.*]—The case of *Carron Iron Co.* v. *Maclaren* is not an authority for the proposition that a ct. will not grant an injunction against a person who is not within its jurisdiction, so that he would be subject to process of contempt.

The position of cts. in India *inter se* is quite different from that of English cts. as regards foreign cts.—A. MILTON & Co. *v.* OJHA AUTOMOBILE ENGINEERING Co. (1930), I. L. R. 57 Calc. 1280.—IND.

1342. *Add. Annotation :*—**Reld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1345. *Add. Annotation :*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1348a. —— —— **Scottish action for rectification of settlement.**]—WILSON *v.* WILSON (1895), *Times*, Feb. 14 & Mar. 5.

1351. *Add. Annotation :*—**Consd.** Vardy *v.* Smith (1932), 148 L. T. 124.

1370. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1372. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1375. *Add. Annotation :*—*As to* (1) **Reld.** Lindsay *v.* Lindsay, [1934] P. 162.

1378. *Add. Annotation :*—**N.F.** The London, [1931] P. 14.

1378a. —— ——.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt: —*Held :* if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—THE JANERA, [1928] P. 55; 97 L. J. P. 58; 138 L. T. 557; 44 T. L. R. 193; 17 Asp. M. L. C. 416.

Annotations :—**Distd.** The London, [1931] P. 14. **Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382. **Consd.** The Madrid, [1937] P. 40.

1378b. Action in rem in one country—Whether stayed pending proceedings in personam by defendant in another country.]—THE LONDON, No. 1315a, *ante*.

1379a. —— —— —— ——.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8 :—*Held :* having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—THE GOLAA, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations :*—**Distd.** The Juno (1922), 128 L. T. 671. **Apld.** The Golaa, [1926] P. 103. **Consd.** The London, [1931] P. 14. **Reld.** The Goulandris, [1927] P. 182; The Baarn (1933), 150 L. T. 50.

1381. *Add. Annotation :*—**Consd.** The Juno (1922), 128 L. T. 671.

1383. *Add. Annotations :*—**Folld.** The Juno (1922), 128 L. T. 671. **Reld.** The Golaa, [1926] P. 103.

1383a. — — —— ——.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland :—*Held :* no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—THE JUNO (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

1387. *Add. Annotation :*—**Reld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

1393. *Add. Annotation :*—*As to* (1) **Consd.** Societe Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933), 77 Sol. Jo. 800.

1395a. —— —— —— ——.]—SOCIETE ANONYME METALLURGIQUE DE PRAYON, TROOZ, BELGIUM *v.* KOPPEL (1933), 77 Sol. Jo. 800.

PART XVI. SECT. 6, SUB-SECT. 2.
s. Add "*varied on appeal*, 4 A. R. 267."

CONSECRATION.

See BURIAL AND CREMATION; ECCLESIASTICAL LAW.

CONSERVANCY.

See WATERS AND WATERCOURSES.

CONSISTORY COURT.

See ECCLESIASTICAL COURT.

CONSORTIUM.

See HUSBAND AND WIFE.

CONSPIRACY.

See CRIMINAL LAW; TORT; TRADE AND TRADE UNIONS.

CONSTABLE.

See CRIMINAL LAW; POLICE.

CONSTITUTIONAL LAW.

Part II.—The Title to the Crown.

2. *Add. Annotation:—As to* (2) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

Part III.—Relations between the Crown and the Subject.

7a. —— **In foreign parts.**]—There is no legal duty on the Crown to afford by its military forces protection to British subjects in foreign parts. If, in the exercise of its discretion, the Crown decides to afford such protection, it may lawfully stipulate that it will do so only on the condition that the cost shall be borne by those asking for it.

Pltfs., an English shipping co. trading in the China seas, requested the Crown to provide armed guards to be placed on board their ships as a protection against internal piracy, which was a serious menace at the material time. Armed guards having been provided on the terms that they should be paid for by the pltfs., the latter claimed a declaration that as British subjects they were entitled to protection without payment:—*Held:* there was no duty on the Crown to afford military protection to pltfs. in foreign parts, & if it did afford protection it was entitled to do so on such terms as it thought fit.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197; 101 L. J. K. B. 478; 147 L. T. 22; 48 T. L. R. 375; 18 Asp. M. L. C. 288, C. A.

17. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

Part IV.—The Royal Family.

25. *Add. Annotation:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part V.—The Royal Prerogative.

53. *Add. Annotation:—As to* (2) **Consd.** Nadan *v.* R., [1926] A. C. 482.

54. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

58a. Crown cannot seize subject's property without compensation—What amounts to seizure.]—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where, by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—FRANCE FENWICK & CO. *v.* R., [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

Annotations:—**Refd.** Ensign Shipping Co. *v.* I. R. Comrs. (1927), 139 L. T. 111; Ensign Shipping Co. *v.* I. R. Comrs. (1928), 12 Tax Cas. 1169.

Part VI.—The Crown in relation to the Executive.

78. *Add. Annotation:*—**Consd.** Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248.

79. *Add. Annotations:*—**Consd.** Reilly *v.* R., [1934] A. C. 176; Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248. **Refd.** Nix *v.* A.-G., [1930] 1 Ch. 566.

79a. —— —— ——.]—Applt., who held office in the civil service of the Crown in India as a reader in the Govt. Press, Madras, fell under suspicion of being concerned in a leakage of information in respect of certain examination papers, & was dismissed from the service. On a claim against the Secretary of State for India in Council for damages for wrongful dismissal:—*Held:* the procedure prescribed by rule XIV. of the Civil Services

III. SECT. 1.

b 1. *To govern & protect—Statutory right to compensation for civil commotion—Loss of right by recovery from insurer.*]—LEEN *v.* EXECUTIVE COUNCIL (PRESIDENT), [1928] I. R. 408.—IR.

PART VI. SECT. 2, SUB-SECT. 1.

78 1. *Public officers & servants generally—Suspension of—Holding of inquiry—Court cannot interfere.*]—SCHIERHOUT *v.* UNION GOVERNMENT (MINISTER OF JUSTICE), [1926] App. D. 295.—S. AF.

Classification Rules, 1920–24, made under sect. 96B (2) of Govt. of India Act, 1919 (c. 101), was not followed at the official inquiry which preceded the dismissal. Applt.'s employment, however, was not of a limited & special kind during pleasure with an added contractual term that the procedure prescribed by the Rules must be observed; it was by the express terms of sect. 96B held "during His Majesty's pleasure," & no right of action as claimed by the applt. existed. The terms of sect. 96B assure that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by the rules, which are manifold in number, most minute in particularity & all capable of change, but there was no right in applt., enforceable by action, to hold his office in accordance with with those rules, & he could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them. Sect. 96B & the rules make provision for the redress of grievances by administrative process.—VENKATA RAO *v.* SECRETARY OF STATE FOR INDIA, [1937] A. C. 248; 106 L. J. P. C. 53; 156 L. T. 261, P. C.

80. *Add. Annotations:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

81. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

83. *Add. Annotations:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

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81 ii. —— —— ——.] — Pltf., manager of a railway under a contract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice, was dismissed without notice:—*Held:* (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest. —NOBLE *v.* NEWFOUNDLAND GOVERNMENT (1902), 8 Nfld. L. R. 571, 601.—**NFLD.**

83 iii. —— —— ——.]—If the terms of the appointment to a public office definitely prescribe a period of employment & expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication to dismiss at pleasure is excluded. *Qu.:* whether the relations between the Crown & the holder of a public office are not, at least in respect to some offices, constituted in some degree by contract.—REILLY *v.* R., [1934] 1 W. W. R. 298; 1 D. L. R. 434.—**CAN.**

83 iv. —— —— ——.]—Apart from some special statutory provision, no action will lie against the Crown for the wrongful dismissal of a servant of Govt. This rule of law is based upon public policy & the prerogative right of the Sovereign. In Government of India Act, 1919, s. 96B, the words "subject to the provisions of this Act & of rules made thereunder every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure," read together with r. 14 of the rules regarding the Civil Services in India made by the Secretary of State providing for—proper departmental inquiry, indicate that certain formalities must be observed before a civil servant can be dismissed. In so far as these formalities are alleged not to have been followed, pltf. has a cause of action.—BARONI *v.* SECRETARY OF STATE FOR INDIA (1929), I. L. R. 8 Ran. 215.—**IND.**

83 v. —— —— ——.]—At common law, where the Crown is the employer, & the office is not an ancient office with special incidents, the employment, whether it be permanent or temporary, is during pleasure only, & the Crown servant may be dismissed at any time without notice. This right in the Crown exists, notwithstanding any provision in the contract of employment to the contrary unless, in a particular case, it is excluded by Statute. Such exclusion may be implied where a Statute prescribes special conditions for dismissal as the case may be. Where there is a suspension of an officer, this may operate not to vacate the office, but to relieve the officer from the performance of his duties whilst leaving him absolutely or conditionally entitled to his salary; or it may operate as a temporary suspension of the whole contract of employment.—BROWNE *v.* RAILWAYS COMR. (1936), 36 S. R. N. S. W. 21; 53 N. S. W. W. N. 1.—**AUS.**

83 vi. —— —— ——.]—Sect. 96B of Govt. of India Act, 1919, does not abrogate the rule that a Govt. servant has no right of action for damages for wrongful dismissal.—SECRETARY OF STATE FOR INDIA *v.* MAURICE, I. L. R., [1937] Ran. 35.—**IND.**

p i. —— —— ——.]—The Crown can dismiss its servants at pleasure & without notice unless the power of dismissal has been limited by some statutory provision, the general rule being that a Government servant holds office during pleasure & is liable to be dismissed at any time without notice & without reason assigned. The rule is subject to exceptions, but they must be statutory exceptions.—SECRETARY OF STATE FOR INDIA *v.* YADAVGI (1935), I. L. R. 60 Bom. 42.—**IND.**

a. *Affd. sub nom.* YOUNG *v.* ADAMS, [1898] A. C. 469, P. C.

c i. —— —— *Ordinance made under Northern Territory Acts.*]—Pltf. was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services:—*Held:* the Crown had power to dispense, at will, with the services of pltf., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—TROWER *v.* THE COMMONWEALTH (1924), 34 C. L. R. 587.—**AUS.**

f i. —— —— *Effect of Government of India Act,* 1919.]—Govt. of India Acts, 1919, s. 96B, does not abrogate the right of the Crown to dismiss its civil servants at its pleasure, but reiterates that right & enacts that the same is only limited in so far as there are definite & special or particular rules laying down the method by which, or the circumstances in which, that right is to be exercised.—BIMALACHARAN BATABYAL *v.* INDIAN MUSEUM TRUSTEES (1929), I. L. R. 57 Calc. 231.—**IND.**

f ii. —— —— *Failure to observe conditions precedent—Remedy.*]—Where a public servant has been discharged contrary to Act 27, 1923, that is to say, where the statutory conditions precedent to his lawful discharge have not been observed, he is entitled, notwithstanding that his discharge is a nullity, to claim damages against the Crown for wrongful dismissal & is not limited to the remedy of having the irregular procedure set aside or the proper procedure enforced.

A Minister of the Crown, in discharging or purporting to discharge a public officer under Act 27, 1923, does not act as a servant of the Legislature, but as a servant of the Crown.—BRAMDAW *v.* UNION GOVERNMENT (1931), 52 N. L. R. 57.—**S. AF.**

f iii. —— —— *Refusal to be transferred.*]—A public servant received notice of transfer from Auckland to New Plymouth to which he objected. He failed to comply with a final notice to go to the latter place, & was thereupon dismissed by the Public Service Comr. In an action against the Crown for wrongful dismissal:—*Held:* the effect of sect. 50 of Public Service Act, 1918, is that if it is desirable that an officer be transferred from one place to another that officer has no alternative but to obey, unless he can satisfy the Comr. that the transfer should not take place. The Comr. by that sect. is made the sole judge of the sufficiency of the reasons against the transfer, & from his decision there is no appeal.—BARNES *v.* R., [1933] N. Z. L. R. Supp. 117.—**N.Z.**

f iv. —— ——.]—F. was gazetted a member of the Unemployment Board for a period of two years from Nov. 20, 1930. He performed his duties as a member of the Board for eight months, during which time he received an allowance of £2 2*s. per diem* as the Board sat continuously. On July 31, 1931, his occupancy of the position was terminated by sect. 26 of Unemployment Amendment Act, 1931. F. claimed damages for the wrongful termination of his employment:—*Held:* (1) the office of membership of the Unemployment Board as constituted by Unemployment Act, 1930, was abolished by sect. 26 of the Amendment Act, 1931; (2) even if the office had not been abolished, the Crown's absolute power of dismissal of a servant of the Crown at any time without incurring liability for damages or compensation was not restricted by Unemployment Act, 1930, or by the Unemployment Act, 1931; (3) there was no contractual relationship between the Crown & the suppliant as appointee to the office—he was simply gazetted as appointed to the Unemployment Board of 1930; he could resign at any time, & there was no provision for his remuneration; &, since there was no *animus contrahendi*, a valid claim could not be established against the Crown.—FINN *v.* R., [1933] N. Z. L. R. 1018.—**N.Z.**

g i. —— *Retirement by Order in Council—No office named in Order—Retirement from all public offices.*]—BRYCE *v.* R. (Can. Ex.), [1929] 3 D. L. R. 138.—**CAN.**

83a. —— —— ——.]—If the terms of an appointment prescribe its period & provide expressly that it may be terminated for cause, a power to dismiss at pleasure cannot be implied.—REILLY *v.* R., [1934] A. C. 176; 103 L. J. P. C. 41; 150 L. T. 384; 50 T. L. R. 212, P. C.

85. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

86. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

100. After the cross-reference following this case add as follows :—

Extension of British jurisdiction in British protectorate.]—*See* DEPENDENCIES, No. 10a.

—— **Effect of recitals in.**]—*See* ESTOPPEL, Vol. XXI., p. 331, No. 1247.

107. *Add. Annotation :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

110. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

119. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

122. Before this case add "*See, also,* CROWN PRACTICE, Vol. XVI., pp. 481–491."

136a. Statement of fact—Whether binding on court.]—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorganshire, &, on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended :—*Held :* (1) (ATKIN & L.JJ.) the statement of the A.-G. was binding on the ct.; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should be guided by the information so given.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

136b. —— ——.]—ENGELKE *v.* MUSMANN, No. 418a, *post.*

152. *Citations :*—For "[1920] 1 Ch. 107" read "[1921] 1 Ch. 107."

153a **Admiralty—Action against—Description in writ.**]—By 1 & 2 Geo. 4, c. 93, s. 9, the principal officers & comrs. of the navy for the time being were empowered to bring & maintain any action of ejectment or other proceeding for recovering possession of lands, etc., vested in them, & to bring, maintain, or defend any other action in respect of the said lands, etc.; & it was enacted that, in any such action, they should be called by the name of "the principal officers & comrs. of His Majesty's navy," without naming any of them; & that such action or suit should not abate by the death, resignation, or removal of such comrs., or any of them. By subsequent statutes, the powers & authorities of those comrs. were transferred to & vested in "the comrs. for executing the office of Lord High Admiral of the United Kingdom." A writ of summons, addressed to "the comrs. for executing the office of Lord High Admiral of the United Kingdom," requiring them to

PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act, 1914, s. 6—Validity.*]—PUGSLEY *v.* GARSON (1922), 50 W. B. R. 414.—**CAN.**

100 ii. —— *Under Dominion Lands Act, R. S. C., 1886 (c. 54)—Validity.*]—STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO., [1927] 2 W. W. R. 379; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

100 iii. —— *Whether contract constituted.*]—*Held :* Orders in Council issued pursuant to 46 Vict. c. 17, ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—[illegible] R. (1894), 23 S. C. R. 488.—**CAN.**

100 iv. —— ——.]—STEWART *v.* JONES (1900), 19 P. R. 227.—**CAN.**

100 v. —— *Based on mistake of fact—Whether binding on Crown.*]—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—QUEBEC, MONTREAL & SOUTHERN RY. CO. *v.* R. (1914), 15 Exch. C. R. 237.—**CAN.**

100 vi. —— *Sufficient memorandum in writing of agreement.*]—*Held :* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 174.—**CAN.**

100 vii. —— *Authorising contract—Scope of authority.*]—*Held :* an Order in Council authorising the Minister to enter into a contract for the removal of clay, sand & gravel, tendered for at a given price, does not carry with it any authority to add anything to or to vary the scope of the contract beyond the ambit of the Order in Council. The introduction of a clause purporting to be part of the authorised contract, throwing upon the contractor the obligation to remove, at the same price, material of another class than that mentioned in the Order in Council, is beyond the authority conferred by said Order in Council.—NATIONAL DOCK & DREDGING CORPN., LTD. *v.* R., [1929] Ex. C. R. 40.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

sm. *Whether power to begin action in county court by information.*]—R. *v.* COLMAN, [1930] 1 D. L. R. 523; [1929] 3 W. W. R. 385; 52 Can. C. C. 186; 38 Man. L. R. 330.—**CAN.**

so. *Department of Attorney-General—Manitoba Temperance Act, s. 68.*]—The Department of the A.-G. referred to in the above sect. is to be distinguished from the A.-G.—R. (THOMPSON) *v.* HAMMATT (Man.), [1926] 3 W. W. R. 350.—**CAN.**

sp. *Meaning of—In statute.*]—Wherever the words "Attorney-General" are used without qualification in a code or in a statute of Quebec, they have reference to the Attorney-General for Quebec.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452.—**CAN.**

Misapplication of powers delegated by Provincial Legislature.]—The delegate of a provincial Legislature can no more usurp indirectly the functions of the Parliament of Canada than can the Legislature itself, & it is the duty of the cts. to interfere to protect the subject from such an illegitimate exercise of powers founded upon oblique motives. On appeal from the dismissal of an action for an injunction restraining the defts. from taking further proceedings under Security Frauds Prevention Act, 1930, in alleged pursuance of "delegated authority" under sect. 10 of said Act :—*Held :* deft. A.-G. by & through his delegated representative had unconstitutionally misapplied the powers delegated to him, in that the purpose of his proceedings was to aid a criminal prosecution, something which was not contemplated by the Act, with the result that the federal field had been just as much invaded, even if indirectly, as if the primary invasion had been accomplished directly by the passing of an Act which in its terms was a violation of the B. N. A. Act.—MCGEE *v.* POOLEY, [1931] 3 W. W. R. 65, 140; 4 D. L. R. 475; 56 Can. C. C. 325; 44 B. C. R. 338.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

st. *Acting Deputy Attorney-General.*] [illegible] [1933]

appear in an action of debt at the suit of the pltf., was served upon A., one of the comrs., & upon no one else. Upon a motion, on behalf of A., to set aside the writ, & the copy & service thereof, for irregularity, the affidavits disclosed that the action was brought to recover arrears of half-pay alleged to be due to pltf.:—*Held:* that it was not competent to the ct., in dealing with such a motion, to enter into the consideration of whether the action was maintainable or not; for that, inasmuch as 1 & 2 Geo. 4, c. 93, s. 9, enabled some actions to be brought against the comrs. by the description contained in this writ, there was no irregularity in the process itself; & to determine, upon a summary application, that the cause of action was not within the statute, would be to deprive pltf. of his right to review their decision by writ of error.

The comrs. of the navy are not a corpn.: *semble*, therefore, that the proper mode of serving them with process would be by delivering a copy to each of them.—WILLIAMS *v.* ADMIRALTY COMRS. (1851), 11 C. B. 420; 2 L. M. & P. 456; 20 L. J. C. P. 245; 17 L. T. O. S. 200; 16 Jur. 42; 138 E. R. 536.

—— —— **Service of writ.**]—WILLIAMS *v.* ADMIRALTY COMRS., No. 153a, *ante*.

155. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

157a. Air Council — Whether corporation.]—*Semble:* the Air Council is not a corpn.—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

Part IX.—The Crown in relation to the Law.

175a. ——.]—ROOKEWOOD'S CASE (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. *v.* ROOKWOOD, 13 St. Tr. 139, 186.

Annotations:—**Refd.** R. *v.* Kinloch (1746), 18 State Tr. 395; Heward *v.* Shipley (1803), 4 East, 180; R. *v.* Duffy (1849), 7 State Tr. N. S. 795; Mulcahy *v.* R. (1867), 15 W. R. 446.

214a. ——.]—R. *v.* CROSBY (*alias* PHILIPS) (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

Annotations:—**Refd.** R. *v.* Davis & Carter (1695), 5 Mod. Rep. 74; The Ville de Varsovie (1817), 2 Dods. 174; Hinks' Case (1845), 1 Den. 84; *Re* Barber (1850), 15 L. T. O. S. 500.

218a. —— —— ——.]—In 1833, A. was convicted of felony & transported. At this time his wife was entitled to a fund, contingently on her surviving her mother. In 1846, A. obtained a conditional pardon, available in all places except the United Kingdom. The mother died in 1838, & the wife in 1852. On a petition by the Crown for payment, the ct., without deciding the right, merely ordered payment to the administrator of the wife.—*Re* HARRINGTON'S TRUSTS (1860), 29 Beav. 24; 54 E. R. 533.

233. *Add. Annotations:*—**Refd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480; A.-G. *v.* Still (1927), 44 T. L. R. 102.

240a. Claim that right of administration of premises vested in Crown—Crown must be represented.]—Government House, Sydney, was built upon Crown land about 1845 as a residence for the Governor of New South Wales, &, with the stables of a former residence, was continuously so used until 1900. From 1900 to 1912, by an arrangement between the Governments of the Commonwealth & of the State, the premises were occupied by the Governor-General, & another residence was provided for the Governor of the State. In 1912, this arrangement having come to an end, the State Government threw the grounds attached to the house open to the public & took steps to convert the stables into a school of music. By the New South Wales Constitution Act, 1855 (c. 54), s. 2, all "waste lands" in the then colony were placed under the control of the local Legislature. The A.-G. for New South Wales, at the relation of residents in the State, filed an information praying for declarations that the house & grounds were vested in His Majesty, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, & that neither the Governor of New South Wales nor the Governor in Council had power to interfere with or alter that purpose,

PART VI. SECT. 10.

sb. *No power to waive statutory conditions.*]—A department of the Govt. cannot waive the performance of any of the conditions imposed by the legislature.—PECK *v.* R. (1884), 1 B. C. R. pt. 2, 11.—**CAN.**

sc. *Land Settlement Board.*]—The Land Settlement Board created by Land Settlement & Development Act, 1924 (c. 128), is a department of the Government, & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *on appeal*, [1929] 1 D. L. R. 242.—**CAN.**

sf. *Education Board.*]—An Education Board is not a Department of State, a servant or statutory agent of the Crown, or *in consimili casu*, & so is not entitled to the prerogatives of the Crown, including the prerogative of not being bound by a statute unless so provided in the statute.—CHRISTCHURCH CITY CORPN. *v.* CANTERBURY EDUCATION BOARD, [1933] N. Z. L. R. Supp. 22.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 1.

sb. *Power to pardon—By whom given.*]—*Qu.:* is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning, in the Imperial Parliament only, or, if not, in what legislature does it reside.—A.-G. FOR CANADA *v.* A.-G. OF PROVINCE OF ONTARIO (1893), 23 Can. S. C. R. 458.—**CAN.**

sc. *Not dependent on consent.*]—The Governor-General on the exercise of the royal prerogative may release a convict from prison without his consent.—*Re* ROYAL PREROGATIVE OF MERCY UPON DEPORTATION PROCEEDINGS, [1933] 2 D. L. R. 248; S. C. R. 269; 59 C. C. C. 301.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.

sk. *Amnesty—Terms exceeding six months—Sentence imposed after amnesty but including imprisonment served before.*]—An amnesty reducing terms exceeding 6 months applies to a 9 months sentence imposed after the amnesty but including imprisonment served prior to the sentence.—JACOBS *v.* SEGUIN, [1936] 2 D. L. R. 21; 65 Can. C. C. 147.—**CAN.**

& for an injunction restraining the resp. (as representing the State Government & ministers) from otherwise using the house & grounds :—*Held :* (1) the suit was not maintainable, since no trust had been declared or charity established, & the action complained of was that of the State Executive & within its competence, whether the house & grounds were "waste lands" within above sect. or not ; (2) the proceedings were not properly constituted since it was claimed that the right of administration of the premises was in the Crown in the right of the United Kingdom, but the Crown in that right was not represented before the cts.—A.-G. FOR NEW SOUTH WALES *v.* WILLIAMS, [1915] A. C. 573 ; 84 L. J. P. C. 92 ; 112 L. T. 785 ; 31 T. L. R. 171, P. C.

264a. —— ——.]—BIDGOOD *v.* DAVIES (1826), 6 B. & C. 84 ; 9 Dow. & Ry. K. B. 153 ; 5 L. J. O. S. K. B. 64 ; 108 E. R. 384.

266. For "—— **Chaplain to King**" read "—— **Royal chaplain.**"

266a. *S. P.* WINTER *v.* DIBDIN (1844), 13 M. & W. 25 ; 2 Dow. & L. 211 ; 13 L. J. Ex. 263 ; 3 L. T. O. S. 164 ; 153 E. R. 11.

Annotation :—**Apld.** Harvey *v.* Dakins (1849), 3 Exch. 266.

272. *Add. Citation :*—48 L. J. Q. B. 455.

284. *Add. Citations :*—66 Sol. Jo. 218 ; *affd*, [1922] P. 122.

287. *Add. Annotations :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704 ; *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

289. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Carnarvon Harbour Acts, 1793-1903, Thomas *v.* A.-G., [1937] Ch. 72.

290. *Add. Annotation :*—**Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

291. *Add. Annotation :*—**Consd.** A.-G. for Straits Settlmts. *v.* Pang Ah Yew, [1925] A. C. 555.

PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*]—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the question of provincial legislative jurisdiction.—CITIZENS INS. CO. *v.* JOHNSTON, Cass. Dig. 2nd. ed. 678.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) **i.** —— *For tort.*]—An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE *v.* R. (1920), 62 D. L. R. 390 ; 20 Exch. C. R. 198.—**CAN.**

h (p. 523) **ii.** *S. P.* YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

h (p. 523) **iii.** *S. P.* MANSEAU *v.* R., [1923] 1 D. L. R. 25 ; [1923] Exch. C. R. 21.—**CAN.**

h (p. 523) **iv.** —— ——.]—An action in tort does not lie against the Crown, except under special statutory authority.—THERIAULT *v.* R. (Que.) (1917), 16 Exch. C. R. 253 ; 39 D. L. R. 705.—**CAN.**

h (p. 523) **v.** —— ——.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot :—*Held :* it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co.* v. *A.-G.*, & inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—BRITISH PETROLEUM CO., LTD. *v.* A.-G. FOR CEYLON, [1926] A. C. 147 ; 95 L. J. P. C. 86 ; 134 L. T. 305 ; 42 T. L. R. 166.—**CEYLON.**

h (p. 523) **vi.** —— *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud ; nor can the Crown be held liable for the fraud of its officers.—*Re* FROST BROTHERS, [1925] 2 D. L. R. 339 ; [1925] 2 W. W. R. 459.—**CAN.**

291 xiv. ——.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—MACGREGOR *v.* LORD ADVOCATE, [1921] S. C. 847.—**SCOT.**

291 xv. ——.]—*Held :* (1) no action in tort will lie against the Crown except where & when such right of action is given by Statute ; (2) the act of the Crown in paying the expenses of & incidental to the funeral & burial, is referable to the grace & bounty of the Crown & did not constitute an acknowledgment by it of a right of action.—JOUBERT *v.* R., [1931] Ex. C. R. 113 ; 4 D. L. R. 164.—**CAN.**

j (p. 524) **i.** ——.]—WELDEN *v.* SMITH, [1924] A. C. 484.—**AUS.**

j (p. 524) **ii.** ——.]—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469, P. C.—**AUS.**

y (p. 524). Add "*revsd.*. 30 S. C. R. 42."

y (p. 525) **i.** ——.]—LECLERC *v.* R. (1920), 62 D. L. R. 324 ; 20 Exch. C. R. 236.—**CAN.**

y (p. 525) **ii.** ——.]—*Held :* the Crown was liable in damages under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected & maintained by the provincial Department of Railways & Telephones.—ZORNES *v.* R., HAMILTON *v.* R., [1922] 2 W. W. R. 1179 ; 67 D. L. R. 733.—**CAN.**

y (p. 525) **iii.** ——.]—The suppliant was wounded by a bullet fired, during target practice, from the rifle range at Cote St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained :—*Held :* the rifle range was not a "public work," within Exchequer Ct. Act, 50 & 51 Vict. c. 16 (D.), s. 16 (*c*), & the Crown was not liable.—LAROSE *v.* R. (1900), 6 Exch. C. R. 425.—**CAN.**

y (p. 525) **iv.** ——.]—About 11.30 a.m. on Feb. 10, 1928, suppliant, while entering the Ottawa Post Office to purchase stamps, was struck on the head by an icicle falling from the coping of that building, causing her injury. An employee of the Public Works Dept. who had full charge & care of the roofs of Govt. buildings, especially that of the Post Office, & whose duty it was to remove snow & icicles therefrom, passed the building twice on the morning of the accident, first between 8 & 8.30 & again between 9.30 & 10 o'clock, but claims no snow or ice needed to be removed :—*Held :* the omission of the officer, whose duty it was to keep roofs free of snow & ice, to notice the presence of icicles & to remove them, when he had ample time to do so before the accident, constituted negligence, making the Crown liable for the damage resulting from such careless omission.—JOHNSON *v.* R., [1931] Ex. C. R. 163.—**CAN.**

y (p. 525) **v.** —— —— —— —— *Contributory negligence.*]—At about 9 p.m. on Nov. 15, 1921, one C. drove on to a wharf, Montreal Harbour, with his two children to visit some friends who were employed in transferring freight from a shed on the wharf, rented to private companies, to a warehouse in the city. C. had not been sent by his employer, had no business there & went solely to amuse himself. C. had been drinking & was under the influence of liquor. He was making a nuisance of himself & when told to go, got into his car and drove straight into the canal, & all were drowned :—*Held :* as C. had no business on the wharf on the evening of the accident & was there by tolerance, the Crown under such circumstances was under no obligation or duty to him. The accident was the result of deceased's inebriated condition & he was the victim of his own condition & conduct.—LEGAULT *v.* R., [1931] Ex. C. R. 167.—**CAN.**

y (p. 525) **vi.** ——.]—There is no recourse against the Crown for injury to the person, except in cases coming within the ambit of sub-sect. (*c*) of sect. 19 of Exchequer Ct. Act, R. S. C., 1927 (c. 34).—ROCHON *v.* R., [1932] Ex. C. R. 161.—**CAN.**

y (p. 525) **vii.** ——.]—Suppliant's motor-boat collided with a buoy at the mouth of the Bracebridge river, in the Muskoka Lakes region, on which there was no light, & by his petition sought to recover $500 by way of damages to the boat, alleged to be the result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work, to wit, in not seeing that the buoy carried a light :—*Held :* the buoy in question, was not a public work within the meaning of sect. 19, ss. "C" of Exchequer Ct. Act, &, in consequence, suppliant was not entitled to the relief sought by his petition of right.—CAPON *v.* R., [1933] Ex. C. R. 54.—**CAN.**

y (p. 525) **viii.** ——.]—Specially equipped motor cars, owned by the Govt. of Canada, are employed by the Radio Branch of the Department of Marine, in the detection & elimination of radio inductive interference. Two employees of the Radio Branch were returning to Ottawa in such a car, from a tour of inspection, when they stopped the car on one side of the travelled road to wipe the windshield which had become clouded due to weather conditions. An oncoming car, in which

292. *Add. Annotations :—As to* (1) **Refd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. *As to* (2) **Distd.** Kynaston *v.* A.-G. (1933), 49 T. L. R. 300. **Consd.** *Re* Carnarvon Harbour Acts, 1793–1903, Thomas *v.* A.-G., [1937] Ch. 72. **Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208; Thomas *v.* A.-G., [1936] 2 All E. R. 1325. *Generally*, **Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

293. *Add. Annotation :—***Expld.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

293a. Indemnity Act as defence.]—In 1918 the suppliant, who was then a jewelry dealer in Petrograd, deposited certain jewelry with the British consul, who was in charge of the embassy premises, & owing to difficulties in the way of the consular officers obtaining money the suppliant agreed that the consul might sell the jewelry & use the proceeds for His Majesty's service. The jewelry was put in a locked leather bag kept in a safe at the embassy. Persons claiming to be representatives of the Soviet Govt. entered the embassy & arrested everybody, & afterwards the bag was found to have been cut open & the contents taken. In 1926 the suppliant claimed the value of the jewelry, but the Foreign Secretary repudiated liability, & the suppliant brought a petition of right. The A.-G., by demurrer, submitted that there was no ground of claim as the facts disclosed showed the absence of negligence, &, secondly, he put in an answer & plea that the claim was barred by the Indemnity Act, 1920 (c. 48) :—*Held :* (1) the facts stated in the petition did not negative the possibility of the proof of negligence & the demurrer must be overruled; (2) the claim was barred by the Indemnity Act, 1920 (c. 48), & there must be judgment for the Crown on the answer & plea relating to that Act.—BUCKNALL *v.* R. (1930), 46 T. L. R. 449, C. A.

305. *Add. Citation :*—48 L. J. Q. B. 455.

317. *Add. Annotation :—***Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

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the son of the suppliants was a passenger, collided with the Govt. car, & he was killed :—*Held :* the Govt. owned motor car, in occupation & control of the Govt. employees on the occasion in question, was a "public work" within Exchequer Ct. Act, R. S. C., 1927, s. 19 (*c*); the Govt. employees in the said car were, at the time of the collision in question, officers or servants of the Crown acting within the scope of their duties or employment upon a public work, within Exchequer Ct. Act; the ct. has jurisdiction to entertain the action.—DUBOIS *v.* R., [1934] Ex. C. R. 195; [1935], 2 D. L. R. 314; *revsd.*, [1935] S. C. R. 378; 3 D. L. R. 209.—**CAN.**

y (p. 525) **ix.** ——————————.]—One K., an enlisted soldier in the Canadian Army Service Corps, engaged as a transport driver, stationed at Kingston, drove a motor truck, loaded with supplies, from Kingston & delivered the same to the Royal Air Force at Trenton. Whilst returning to Kingston the motor truck driven by K. negligently collided with a motor truck in which M. was a passenger, causing his death. Suppliants are the widow & step-mother of M. :—*Held :* K. was engaged in a public work & was acting within the scope of his duties as a servant of the Crown, at the time of the accident.—MOSCOVITZ *v.* R., [1934] Ex. C. R. 188; [1935] 2 D. L. R. 308; *revsd.*, [1935] S. C. R. 404; 3 D. L. R. 231.—**CAN.**

y (p. 525) **x.** ——————————.]—An automobile belonging to R. C. M. P. is not a public work & the Crown is not liable for injuries caused by the negligence of the constable driving it.—TOMAN *v.* R., [1935] 2 D. L. R. 289.—**CAN.**

y (p. 525) **xi.** ——————————.]—The immunity of the Crown in respect of tortious acts of the Crown's servants is not destroyed by the fact that the Temiskaming & Northern Ontario Railway Commission administering a public undertaking of the Crown may sue & be sued.—PECCIN *v.* LONEGAN, [1934] 4 D. L. R. 776; O. R. 701.—**CAN.**

y (p. 525) **xii.** ——————————.]—About 9 a.m. on Jan. 23, 1934, M. when going to the Post Office in the town of St. Laurent on business & while walking on the sidewalk leading to the Post Office fell & broke his wrist. It had been raining during the night & the sidewalk was covered with ice. At the place where M. fell there was a depression in the cement walk which held the water on the ice. The caretaker had spread sawdust on the walk instead of the sand provided for the purpose, & this did not adhere to the ice but floated on the water :—*Held :* a Post Office is a public work within the statute; the act of the caretaker in spreading sawdust where water was lying when instructions had been given to put sand, was negligence on his part which bound the Crown & rendered it liable in damages.—LUDGER MARCOUX *v.* R., [1937] Ex. C. R. 23.—**CAN.**

h (p. 525) **i.** —— *Services rendered to committee.*]—The Crown is not liable upon a claim for the services rendered by any one to a committee.—KIMMITT *v.* R. (1896), 5 Exch. C. R. 130.—**CAN.**

ff **i.** —— *For excess of salaries fixed & approved by Governor-General in Council.*]—BURROUGHS *v.* R. (1891), 20 S. C. R. 420.—**CAN.**

ff **ii.** —— *Wrongful acts of police in course of duty.*]—Members of the police force are *prima facie* servants of the Crown, & by virtue of the Crown Liabilities Act, 1910, the Crown is *primâ facie* liable for wrongful acts committed by a member of that Force in the course of his duty. In order to escape liability it is not sufficient for the Crown to show that the police officer was performing a statutory duty. To take the case out of the Act there must be a lack of one or more of the essentials of the law relating to master & servant such as that the police officer was performing a duty of a personal nature which made him independent of the control of the Crown *pro hac vice*.—UNION GOVT. *v.* THORNE, [1930] App. D. 47.—**S. AF.**

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. ——.]—R. *v.* PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN**

sd. —— *Reference to head of department.*]—Under Exchequer Ct. Act of Canada, s. 38, any claim against the Crown may be prosecuted by petition of right or referred to the ct. by the head of the department in connection with the administration of which the claim arises. A claim by applts. for compensation in respect of the repudiation of a contract was so referred by the Minister of Railways & Canals. Subsequently the Crown applied for leave to withdraw the reference :—*Held :* the claim arose "in connection with the administration" of the Department of Railways & Canals & came within sect. 38, & leave must be refused.—DOMINION BUILDING CORPN., LTD. *v.* R., [1930] A. C. 90; 46 T. L. R. 22, P. C.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sf. *Right to plead & demur together.*]—In a common law action the Crown is entitled to plead & demur together without obtaining leave of the ct.—DEMPSTER *v.* RICHARDSON (1931), 24 Tas. L. R. 75.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 4.

317 i. *Addition of Attorney-General—Action affecting rights of Crown—Petition of right not applicable.*]—This was an appeal by the A.-G. for Manitoba from an order by which he was added as a deft. to an action brought against the University of Manitoba to enforce agreements under which pltfs. had agreed to donate certain land as a site for the University on the condition that the University expended a certain amount of money on the grounds & in the erection of buildings. Pltfs. had transferred to the University all of the land originally contemplated except 25 acres which, under an agreement with the provincial Govt., they transferred to the province as a site for a school for the deaf. The agreements with the University were confirmed by an order-in-council which also authorised the execution of the agreement made with the Crown. Pltfs. alleged that these agreements were interdependent, & that there was in reality a tri-partite bargain whereby the Govt. entered into the arrangement previously made by the Governors of the University, furnishing $500,000 for a school for the deaf as part of the general scheme for the erection of educational buildings. This contention the A.-G. denied. Pltfs. asked for specific performance & for an injunction restraining the University from doing anything at variance with its contract with pltfs., & from accepting any money from the Crown for the erection or maintenance of university buildings elsewhere than on said site. No relief was asked for against the Crown; all that was sought with respect to it was a declaratory judgment that the contracts & order-in-council were not *ultra vires* :—*Held :* the appeal should be dismissed, for the reasons : (*a*) the A.-G. should be a party to this action to represent

324a. Civil action against Crown servant—By private person—Discretion of court to order trial at bar.]—ANDERSON *v.* GORRIE (1894), 10 T. L. R. 383, C. A.

339a. ——.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—A.-G. *v.* GUY MOTORS, LTD., [1928] 2 K. B. 78; 97 L. J. K. B. 421; 139 L. T. 311.

SUB-SECT. 7.—COSTS (p. 530).

See, now, Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36).

344. *Add. Annotations:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

345. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

346. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

348a. —— In proceedings under Patents & Designs Acts.]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne:—*Held:* (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re* LETTERS PATENT NO. 139,207, *Re* CARBONIT AKT., [1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

Annotation:—As to (1) **Consd.** Swift *v.* Board of Trade [1926] 2 K. B. 131.

-.]—*See, generally,* PATENTS.

348b. —— —— As to validity of patent—Action against Air Council.]—*Held:* there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—ROWLAND *v.* AIR COUNCIL, [1923] W. N. 72.

367. *Add. Annotation:*—**Apld.** Pathe of France *v.* Harris, Same *v.* Mansbridge (1926), 42 T. L. R. 760.

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public interests which he alone can serve. Moreover his presence was necessary to make any declaratory judgment which might be given binding upon the Crown; (*b*) petition of right is not the proper remedy in this case, for there was no direct claim made against the Crown; (*c*) the case falls within the ambit of cases where the A.-G. is properly joined.—TUXEDO HOLDING CO., LTD. *v.* UNIVERSITY OF MANITOBA & A.-G. FOR MANITOBA, [1930] 1 W. W. R. 464; 3 D. L. R. 250; 38 Man. L. R. 506; *affg.*, [1930] 1 D. L. R. 435.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. ——.]—Estoppel cannot be invoked against the Crown.—R. *v.* TESSIER (1921), 21 Exch. C. R. 150.—**CAN.**

339 iii. ——.]—A subject has no right to set off in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

339 iv. ——.]—A right of set-off does not exist against the Crown.—R. *v.* BRITISH AMERICAN BANK NOTE CO. (1901), 7 Exch. C. R. 119.—**CAN.**

o i. ——.]—A counterclaim cannot be pleaded against the Crown as of right.—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59; 49 O. L. R. 103.—**CAN.**

o ii. ——.]—A subject has no right to counterclaim in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

sm. *Whether action brought in right name.*]—In an action concerning transactions under Soldiers Settlement Act, defts. contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown:—*Held:* action properly instituted in that of the Crown.—R. *v.* SAYWARD TRADING & RANCHING CO., LTD., [1924] Exch. C. R. 15.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—A.

sp. *Crown Costs Act, R. S. B. C.,* 1911 (*c.* 61)—*Effect of.*]—*Held:* not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—MONTREAL TRUST CO. *v.* R., [1924] 1 D. L. R. 1030; 1 W. W. R. 657; 33 B. C. R. 280.—**CAN.**

sq. *Crown Costs Act,* R. S. B. C., 1924.]—Crown Costs Act, R. S. B. C., 1924, forbids the awarding of costs either in favour of or against the Crown as represented by the Govt. of the province of British Columbia.—R. *v.* CONWAY (B. C.), [1929] 3 W. W. R. 268; 52 Can. Crim. Cas. 161.—**CAN.**

st. ——.]—Crown Costs Act, R. S. B. C., 1924, does not apply to a prosecution under a Dominion Act. On dismissing an appeal from a conviction under such an Act, costs were, therefore, given to the Crown.—R. *v.* TRONSON, [1932] 1 W. W. R. 537; 57 C. C. C. 383.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—C.

t i. —— *On appeal.*]—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—R. *v.* CASKIE (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—**CAN.**

t ii. —— —— *Under Fire Marshal Act,* 1921 (*c.* 15).]—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an "officer, servant or agent of & acting for the Crown" within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—WATSON *v.* HOWARD, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 404; 34 B. C. R. 449.—**CAN.**

t iii. —— —— *Under Summary Convictions Act, R. S. B. C.,* 1924 (*c.* 245).]—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an appeal under Summary Convictions Act, R. S. B. C., 1924, form a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146).—R. *v.* MCLANE, R. *v.* NOON, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—**CAN.**

t iv. —— *In proceedings by creditor—Crown administrator of intestate's estate.*]—*Held:* neither the Crown nor the A.-G. liable for costs.—CARVER *v.* A.-G. OF PRINCE EDWARD ISLAND, [1926] 4 D. L. R. 1106.—**CAN.**

368. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373. *Add. Annotations :*—*As to* (1) **Apld.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Consd.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187 ; Central London Railway *v.* I. R. Comrs., London Electric Railway *v.* I. R. Comrs., Metropolitan Railway *v.* I. R. Comrs. (1934), 151 L. T. 333. **Refd.** Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs. (1930), 99 L. J. K. B. 330.

373a. —— **Arbitration to assess compensation for requisitioned goods.**]—In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations :—*Held :* the arbitrator had no power to order the Crown to pay the costs of the reference & award.—SWIFT & Co. *v.* BOARD OF TRADE, [1926] 2 K. B. 131 ; 95 L. J. K. B. 834 ; 135 L. T. 391 ; 42 T. L. R. 461, C. A.

Annotation :—**Refd.** Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission, [1928] A. C. 492.

376. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

382. *Add. Annotation :*—**Refd.** R. *v.* Provisional Government (General of the Forces) (1922), 67 Sol. Jo. 125.

384a. —— ——.]—WOLFE TONE'S CASE (1798), 27 State Tr. 613.

Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations :*—*As to* (1) **Folld.** White, Child & Beney *v.* Simmons, White, Child & Beney *v.* Eagle, Star & British Dominions Insce. (1922), 127 L. T. 571. **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (2) **Apld.** The Jupiter (1924), 93 L. J. P. 156. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

387a. —— —— ——]—The Bank of Ethiopia was formed under the law of Ethiopia in 1931. It was a bank of issue & was the only bank in the Ethiopian Empire. In the autumn of 1935 hostilities began between Italy & the Ethiopian govt. & on May 1, 1936, the Emperor left the country. On May 5, 1936, the Italian army entered the capital & thereafter the affairs of the bank were carried on under the supervision of the representative of the Italian authorities. In Dec. 1936, the British govt. recognised the Italian govt. as being the *de facto* govt. of the area then under Italian control. On June 20, 1936, a govt. decree, valid according to the law as recognised & administered by the *de facto* govt., had placed the bank in liquidation & appointed a liquidator :—*Held :* (1) it was the duty of the ct. to treat the acts of the *de facto* govt. with all the respect due to the acts of a duly recognised foreign sovereign state, & this was not affected by the fact that the British govt. in addition to recognising a *de facto* govt., recognised the Emperor as a *de jure* monarch ; (2) the Bank of Ethiopia had been dissolved under or by virtue of the laws of the country under which it was incorporated, & had accordingly ceased to exist, except in so far as might be necessary for the liquidation of its affairs ; (3) no action could be brought in the name of the Bank of Ethiopia otherwise than by or under the authority of the duly constituted liquidator of the bank.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513 ; [1937] 3 All E. R. 8 ; 106 L. J. Ch. 279 ; 157 L. T. 428 ; 53 T. L. R. 751 ; 81 Sol. Jo. 479.

387b. —— **Decrees of Russian Soviet Government —Effect of.**]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Govt. as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion :—*Held :* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY (PRINCESS OLGA) *v.* WEISZ, [1929] 1 K. B. 718 ; 98 L. J. K. B. 465 ; 141 L. T. 207 ; 45 T. L. R. 365 ; 73 Sol. Jo. 283, C. A.

Annotations :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. De Beécho *v.* South American Stores, Ltd., & Chilian Stores, Ltd., [1935] A. C. 148.

—— —— ——.]—*See, also*, COMPANIES Nos. 8523, 8523a–8523d, 8524, 8527a–8527d, *ante*.

On liability of Russian reinsurance company under reinsurance treaties.]—*See* INSURANCE, No. 712a, *post*.

—— —— —— **Cancellation of life assurance.**]—*See* CONFLICT OF LAWS, No. 640b, *ante*.

387c Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.]—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—THE JUPITER (NO. 3), [1927] P. 250 ; 97 L. J. P. 33 ; 137 L. T. 333 ; 43 T. L. R. 741 ; 17 Asp. M. L. C. 250, C. A.

Annotations :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

388. *Citations :*—For "Coop. Pr. Cas. 501 ; 9

L. J. O. S. Ch. 215; 47 E. R. 619, L. C.," read " Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON *v.* BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."

389. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

391. *Add. Annotations :*—**Refd.** The Tervaete, [1922] P. 259; Engelke *v.* Musmann, [1928] A. C. 433.

392. *Add. Annotation :*—*As to* (2) **Refd.** The Tervaete, [1922] P. 259.

394. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** The Tervaete, [1922] P. 259; *Re* Bjornstad & Ouse Shipping Co.' [1924] 2 K. B. 673; Compania Mercantile Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433.

395. *Add. Annotation :*—*As to* (2) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

396. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

401. *Add. Annotation :*—**Apld.** The Tervaete, [1922] P. 259.

408. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R 259.

409. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

411. *Add. Annotation :*—**Consd.** Engelke *v.* Musmann, [1928] A. C. 433.

412a. **Chief of mail department—Within privilege.**] —*Held :* the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—ASSURANTIE COMPAGNIE EXCELSIOR *v.* SMITH (1923), 40 T. L. R. 105, C. A.

413. Transfer paragraphs (2) to (5) to No. 421, *post.*

Annotations :—For the existing annotations read " **Refd.** *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139."

418a. **Evidence—Settlement by Attorney-General on instructions of Foreign Office.**]—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.

Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt. :—*Held :* (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—ENGELKE *v.* MUSMANN, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *revsg.* S. C. *sub nom.* MUSMANN *v.* ENGELKE, [1928] 1 K. B. 90, C. A.

421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers " (1), (2), (3), (4)," for " (2), (3), (4), (5)."

Citations : — For " No. 413, *ante*," read " (1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338."

Annotations :—*As to* (1) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. *As to* (3) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

421a. —— **Liability to be cross-examined to ascertain status.**]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

422. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

425. *Add. Annotation :* — **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

427. For " No. 413, *ante*," read " No. 421, *ante.*"

429. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

430. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

431. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

432. *Add. Annotation :*—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

435. *Add. Annotation :*—*As to* (2) **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

436. For " No. 413, *ante*," read " No. 421, *ante.*"

445. For " No. 413, *ante*," read " No. 421, *ante.*"

447. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

447a. ——.]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

462a. —— **No waiver of privilege from execution.**] —An ambassador in this country is entitled to complete immunity from the jurisdiction of the local cts. except in cases in which he submits to or invites the jurisdiction. Where an ambassador, sued as administrator to an intestate's estate, has submitted to the jurisdiction down to judgment, & an order has been made determining his liability to pay money into ct., he can still assert his immunity from process by way of execution & set up Diplomatic Privileges Act, 1708 (c. 12), as an answer to an application for leave to issue execution against his personal property.—*Re* SUAREZ, SUAREZ *v.* SUAREZ, [1917] 2 Ch. 131; 86 L. J. Ch. 673; 117 L. T. 239; 33 T. L. R. 405; 61 Sol. Jo. 524.

465. *Add. Annotations :*—**Consd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

465a. —— **By order of diplomatic superior.**]— Deft., who was First Secretary of the Peruvian

Legation, took out a policy of insurance against legal liability to members of the public in connection with the driving of his motor car, the policy providing that "the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., &, as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held :* the privilege of diplomatic immunity was waived by the entry of appearance without protest.—DICKINSON *v.* DEL SOLAR, [1930] 1 K. B. 376; 99 L. J. K. B. 162; 142 L. T. 66; 45 T. L. R. 637.

SECT. 5.—**PASSPORTS** (Vol. XI., p. 543).

474a. Property of the Crown.]—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within Bkpcy. Act, 1914 (c. 59).—*Re* SUWALSKY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

Forgery of.]—*See* Criminal Justice Act, 1925 (c. 86), s. 36.

Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation :—Generally,* **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

483. *Add. Annotation :—As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

487a. —— ——.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919 :—*Held :* peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS *v.* TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

Annotation :—**Folld.** Lloyd *v.* Bowring (1920), 36 T. L. R. 397.

487b. —— ——.]—For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace.—LLOYD *v.* BOWRING (1920), 36 T. L. R. 397.

487c. —— **Whether subject's debt discharged.**]—TRONER *v.* HASSOLD (1670), 1 Cas. in Ch. 173; 22 E. R. 748.

487d. *S. P.* WEYMBERG *v.* TOUCH (1669), 1 Cas. in Ch. 123; 22 E. R. 724.

496. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

498. *Add. Annotation:*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

PART XII. SECT. 3.

469 i. *Whether consent of legislature necessary—Interference with private rights.*]—In Canada or Great Britain a treaty does not confer, as between the state & the subject, or as between subjects, any rights upon the latter :—*Held :* therefore, the Ashburton Treaty relating to water rights, never having been validated by statute, is no part of the law of this country, but it is binding in honour on the Crown & its successors.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

PART XIII. SECT. 2.

487 i. *Treaty of peace—Ratification by sovereign authority necessary.*]—*Re* 90TH BATTALION, WINNIPEG RIFLES, [1923] 1 W. W. R. 37.—**CAN.**

487 ii. —— *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*]—PARRY *v.* DUNCAN (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

sf. *Order in Council under War Measures Act, 1914, s. 6—Validity.*]—*Held :* the omission of an averment the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—PUGSLEY *v.* GARSON (1922), 50 N. B. R. 414.—**CAN.**

sg. *Calling out militia—Liability for expenses—Whether on Dominion or Province.*]—The question referred to this ct. was whether the province of Nova Scotia was liable, or not, to pay to the Dominion of Canada all expenses & costs incurred by the latter by reason of part of the active militia of Canada being called out & serving in aid of the civil power in the county of Cape Breton in 1925, in a case of riot, upon a requisition, made by the A.-G. of Nova Scotia in the form prescribed by s. 85 of the Militia Act, which included an undertaking by him that these expenses & costs would be paid to the Dominion Govt. by the province :—*Held :* the question should be answered in the negative. Sects. 80 to 90 of the Militia Act repose certain powers in the person occupying the position of A.-G. in the province for the time being, but the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor or of the provincial legislature. The Militia Act envisages the A.-G., not in his capacity as A.-G. to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested & on whom certain duties are laid by the statute. These sects. apply to every province & go into operation independently of the scope of the A.-G.'s authority to bind the province in respect of the expenditure of moneys for such purpose. Therefore these enactments do not contemplate a duty to pay, proceeding from a contract between the province & the Dominion. The revenues of the province are vested in His Majesty as the supreme head of the province, & the right of appropriation of all such revenues belongs to the legislature of the province exclusively. *Semble :* the A.-G., whose duties, in so far as now material, include the supervision of the administration of justice within the province, has no statutory authority to undertake the payment now demanded by the Dominion : the subject matters comprised within the supervision of the administration of justice would not embrace authority to enter into such an undertaking.—*Re* TROOPS IN CAPE BRETON, REFERENCE, [1930] S. C. R. 55 : *sub nom.* A.-G. OF CANADA *v.* A.-G. OF N.S., [1930] 4 D. L. R. 82.—**CAN.**

499. *Add. Annotations :—As to* (1) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. *As to* (4) **Refd.** A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328 ; Matthey *v.* Curling, [1922] 2 A. C. 180 ; *Re* Colnbrook Chemical & Explosives Co., A.-G. *v.* The Co., [1923] 2 Ch. 289 ; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271 ; Rowland & Mackenzie-Kennedy *v.* Air Council (1927), 96 L. J. Ch. 470. *Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81; France Fenwick *v.* R., [1927] 1 K. B. 458. *Generally*, **Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

Under Indemnity Act, 1920 (c. 48)—"Direct loss or damage"—What is.]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course ; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (*b*) of the above Act :—*Held :* "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—A. & B. TAXIS, LTD. *v.* SECRETARY OF STATE FOR AIR, [1922] 2 K. B. 328 ; 91 L. J. K. B. 779 ; 127 L. T. 478 ; 38 T. L. R. 671 ; 66 Sol. Jo. 633, C. A.

—— —— **Duty of tribunal assessing compensation.**]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—MOFFAT HYDROPATHIC CO., LTD. *v.* SECRETARY OF STATE FOR WAR (1924), 40 T. L. R. 543 ; 68 Sol. Jo. 535, H. L.

505a. —— **Certificate that taking necessary—Mode of granting.**]—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard ; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect. ; but even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—HUTTON *v.* A.-G., [1927] 1 Ch. 427 ; 96 L. J. Ch. 285 ; 137 L. T. 20 ; 43 T. L. R. 166 ; 71 Sol. Jo. 159.

505b. —— **Conditions precedent to assessment of compensation—Whether Crown in possession.**]—HUTTON *v.* A.-G., No. 505a, *ante*.

507a. **Costs of establishing claim to fund in Court.**]—Three guineas is a proper sum to allow to each successful claimant to a fund in ct. for the costs of establishing his claim.—WATERTON *v.* BURT (1870), 39 L. J. Ch. 425.

12. *Add. Annotations :—As to* (2) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42 ; Rowland *v.* Air Council (1923), 39 T. L. R. 228. *Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

15a. —— —— **Closing of public footpath over land acquired.**]—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close permanently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—SECRETARY OF STATE FOR WAR *v.* MIDDLESEX COUNTY COUNCIL (1923), 39 T. L. R. 357 ; 21 L. G. R. 291.

21. *Add. Annotation :—Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken for purposes of defence.*]—R. *v.* BROWN (1920), 56 D. L. R. 312 ; 20 Exch. C. R. 30.—**CAN.**

499 ii. ——————.]—*Held :* a portion of a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (*c*). RE Co. *v.* R., POWERS *v.* R. 63 D. L. R. 647 ; 63 S. C. R. 141.—**CAN.**

499a i. —— *Under Indemnity Act, 1920 (c. 48)—Basis of assessment.*]—A distillery requisitioned during the war, owing to a fire while it was in the Govt.'s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was withdrawn. The proprietors having claimed compensation for loss of profits during the three years :—*Held :* the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—MACKENZIE BROTHERS *v.* THE ADMIRALTY, [1925] S. C. (H. L.) 32.—**SCOT.**

PART XIII. SECT. 3, SUB-SECT. 7.

sm. *Requisition under Order in ——owers of Dominion Govern—— virtue of Order in Council dated Nov. 24, 1916, passed under War Measures Act, 1914 :—Held :* the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242 ; 21 Exch. C. R. 370.—**CAN.**

525 i. *Compensation for requisitioned ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate.*]—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242 ; 21 Exch. C. R. 370.—**CAN.**

526. *Add. Citation :*—15 Asp. M. L. C. 205.
Add. Annotation :—As to (3) **Distd.** A.-G. *v.* Royal Mail Steam Packet Co., [1922] 2 A. C. 279.

526a. **Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).**]—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act :—*Held :* the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose ; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—BRISTOL CHANNEL STEAMERS, LTD. *v.* R. (1924), 131 L. T. 608 ; 40 T. L. R. 550 ; 68 Sol. Jo. 771.

526b. —— —— ——.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid :—*Held :* (1) the imposition of the condition was illegal, & the payment was not a voluntary payment ; (2) the petition of right was barred by the above sub-sect. ; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (*b*) ; (3) (BANKES & SARGANT, L.JJ.) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—BROCKLEBANK, LTD. *v.* R., [1925] 1 K. B. 52 ; 94 L. J. K. B. 26 ; 132 L. T. 166 ; 40 T. L. R. 869 ; 69 Sol. Jo. 105 ; 16 Asp. M. L. C. 415, C. A. ; *revsg.*, [1924] 1 K. B. 647.

Annotations :—As to (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. *As to* (2) **Folld.** Marshal Shipping Co. *v.* R. (1925), 41 T. L. R. 285. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542. *Generally*, **Reid.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608 ; Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040.

526c. —— —— ——.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful :—*Held :* as the demand was made in the *bonâ fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect. — MARSHAL SHIPPING CO. (IN LIQUIDATION) *v.* R. (1925), 41 T. L. R. 285.

526d. —— —— —— **Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.**]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued :—*Held :* the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to

525 ii. —— ——.]—LEMAY *v.* R. (1922), 68 D. L. R. 489 ; 21 Exch. C. R. 364.—**CAN.**

525 iii. —— *Who entitled—Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer :—*Held :* the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act ; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherw se enjoyed.—WARNER QUINLAN ASPHALT CO. *v.* R., [1923] Exch. C. R. 195.—**CAN.**

be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort :—*Qu.* : whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—MARSHAL SHIPPING CO. *v.* BOARD OF TRADE, [1923] 2 K. B. 343 ; 92 L. J. K. B. 901 ; 129 L. T. 644 ; 39 T. L. R. 415 ; 67 Sol. Jo. 639 ; 16 Asp. M. L. C. 210, C. A.

Annotations :—As to (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally*, **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655 ; PUBLIC AUTHORITIES.

527. *Add. Annotation :—Generally*, **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

530. *Add. Annotations :—As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. *Generally*, **Refd.** Newcastle Breweries *v.* I. R. Comrs. (1927), 137 L. T. 426 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

531. *Add. Annotations :—As to* (5) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529. *Generally*, **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

534. *Add. Annotation :*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

534a. —— —— —— ——.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (*a*), on the ground that in the circumstances they would but for the Act have had a legal right to compensation :—*Held* : (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will ; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made " in exercise of " a " prerogative right to His Majesty " within s. 2 (1) (*b*) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants " would have had apart from " the Act a valid claim for compensation by petition of right, &, the Crown admitting that such a claim constituted " a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (*a*) of the Act.—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, [1925] 1 K. B. 271 ; 94 L. J. K. B. 50 ; 132 L. T. 516, C. A.

Annotation :—As to (2) **Consd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.]—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, No. 534a, *ante*.

539. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. *Generally*, **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603 ; Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. Restriction on right of action.]—Reg. 2A (2) of Defence of the Realm Regulations, which provides that " no person shall, without the consent of the Minister of Munition, take . . . any proceedings for the purpose of obtaining an order or decree for the recovery of possession of, or for the ejectment of a tenant of, any dwelling-house " in which a munition worker is living, & which is situate in an area declared by order of the Minister of Munitions to be a " special area," is not authorised by Defence of the Realm Consolidation Act, 1914 (c. 8), s. 1 (1), & is, therefore, invalid.

The only question for decision is whether this portion of the regulation is *ultra vires* the statute under which it purports to be made, that is to say, Defence of the Realm Consolidation Act, 1914. This depends upon whether it can be said, on any reasonable construction of the statute, to be a regulation for securing the public safety & the defence of the realm, &, particularly under sect. 1 (1) (*e*), whether it can be said to be a regulation to prevent the successful prosecution of the war being endangered (AVORY, J.).

It is true that the power to make a regulation to prevent the successful prosecution of the war being endangered is of a wide & sweeping character, but I decline to hold that Parliament intended by these general words to give to the executive the right to close any of the King's cts. against his subjects unless they obtained the sanction of a minister to resort thereto (SANKEY, J.).—CHESTER *v.* BATESON, [1920] 1 K. B. 829 ; 89 L. J. K. B. 387 ; 122 L. T. 684 ; 84 J. P. 65 ; 36 T. L. R. 225 ; 18 L. G. R. 212 ; 26 Cox, C. C. 591, D. C.

Annotations :—**Consd.** Fowle *v.* Monsell (1920), 90 L. J. K. B. 105 ; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469 ; Newcastle Breweries, Ltd. *v.* R., [1920] 1 K. B. 854 ; R. *v.* Wormwood Scrubs Prison Governor (1920), 84 J. P. 94 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation :*—**Consd.** Rhondda's Claim, [1922] 2 A. C. 339.

Part XV.—The Crown in relation to Ports and Harbours.

568. *Add. Annotation :*—**Distd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

Part XVI.—The Crown in relation to the Coinage.

570. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

Part XIX.—Royal Grants.

661. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

706. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

728a. Grant of land reserving strip of coast land—Effect of confirming grant.]—A.-G. FOR NEW SOUTH WALES *v.* DICKSON, [1904] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

PART XIX. SECT. 1, SUB-SECT. 1.

e i. ——— ———.]—R. *v.* NEW ENGLAND Co. (1922), 63 D. L. R. 537; 21 Exch. C. R. 245.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 2.

m i. ——.]—The recital in a Crown grant made under the Great Seal of Canada & duly recorded, *i.e.* enrolled, that it is made "under & by virtue of the statutes in that behalf & pursuant to authority duly granted by our Governor-in-Council," is sufficient to establish a *prima facie* case of the existence of such an Order in Council, or at least to bring into operation the maxim *omnia præsumuntur rite esse acta*.—BURRARD INLET TUNNEL & BRIDGE Co. *v.* THE SS. EURANA (B. C. Adm.), [1929] 3 D. L. R. 161; 2 W. W. R. 275; *on appeal*, [1931] A. C. 300.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—A.

602 ii. ——.]—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—R. *v.* SEAMAN, [1927] Exch. C. R. 201.—**CAN.**

q. Add "*revsd.* on other grounds, 9 Gr. 224."

sa. *As to Crown's title—Crown ousted by adverse possession.*]—A. has been in possession of land at T. for over sixty years without having obtained a grant for the same from the Crown. B., a stranger, upon application, obtains a grant of said land. A. takes action to have grant declared null & void :—*Held :* the rights of the Crown in the land have been ousted, & the grant should be set aside.—MILLER *v.* SMITH (1900), 8 Nfld. L. R. 399.—**NFLD.**

sb. *Mistake in description—Cancellation of erroneous patent—Right to new patent.*]—R. *v.* SINCLAIR (191 11 E. L. R. 367.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—B.

607 iii. ——.]—LAWRENCE *v.* POMEROY (1863), 9 Gr. 474.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—C.

h. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 2, SUB-SECT. 4.

sd. *Grants for homesteads—To men only.*]—By R. S. O. 1877, c. 24, free grants of lands for homesteads are authorised to be made only to men.—ROGERS *v.* LOWTHIAN (1880), 27 Gr. 559.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 2.

656 i. Add "*revsd.* on other grounds, 19 A. R. 329."

662 ii. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 3.—A.

r i. ——.]—A Crown grant of land, as to part of the land granted, used the words "grant, convey & assure," & as to other land granted, "grant, release & quit claim":—*Held :* both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—NORTHERN TRUST Co. *v.* TURNER, [1923] 2 D. L. R. 1176.—**CAN.**

se. *Land subject to existing timber lease.*]—Pltf. obtained a Crown grant to certain lands, to the timber on which a lease for twenty-one years had been previously given. The grant from the Crown was silent as to the timber lease. At a date subsequent to the said grant, the timber lease had to be surrendered for renewal under the Land Act :—*Held :* the rights given the grantee under his Crown grant were subject to the existing timber lease.—BROHM *v.* BRITISH COLUMBIA MILLS, TIMBER & TRADING Co. (1907), 13 B. C. R. 123.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—C.

sf. "*Water-power*" — *Water-power from artificial channels.*]—KEEWATIN POWER Co. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER Co. *v.* LAKE OF THE WOODS MILLING Co., [1928] 1 D. L. R. 32; 61 O. L. R. 363; *affd.*, [1929] 3 D. L. R. 199; 63 O. L. R. 667; 1930] A. C. 640.—**CAN.**

sg. *Grant of land to Indians—"Customs & usages"—Fishing with seine net.*]—In an action by an Indian living on an Indian reserve against a fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve :—*Held :* the land of the band of Indians occupying the reserve was the property of the King, & the only rights they have in the land came through royal grant—the Simcoe deed of 1793, a grant of land "to be held & enjoyed by them in the most free & ample manner & according to the several customs & usages" with a proviso against alienation. "Customs & usages" are words of tenure & not indicative of the manner in which the Indians are to use the land; moreover, there was no evidence that fishing with a seine was one of the customs of the Indians in 1793. There is nothing in the grant suggesting exclusion from the ordinary laws, & the Indians are subject to those laws.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—E.

l i. ——— ———.]—The reservation in a Crown grant of the mines & minerals "with full power to work the s for this purpose to enter upon or occupy the lands or so much & to such an extent as may be sary for the effectual working of the said minerals":—*Held :* this c fers greater powers than is implied bare reservation in an agreement for the sale of the land so granted of "all mines & minerals."—[illegible] v. GARNEAU (1920), 61 S. C. R. 450; 58 D. L. R. 642.—**CAN.**

l ii. ——— ——— *Includes petroleum & natural gas.*]—CREIGHTON *v.* UNITED [illegible]

749. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

754. *Add. Annotation :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

780. *Add. Annotation :—Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

785a. —— **Grant of sole right to draw bills & informations.**]—MOUNSON *v.* LYSTER (1632), W. Jo. 231 ; 82 E. R. 122.

786. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549.

Part XXI.—Hereditary and Private Revenues of the Crown.

857. Before this case add " *See* Crown Lands Act, 1927 (c. 23)."

857. *Add. Annotations :—As to* (4) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

862. After this case add :—

Petroleum.]—*See* Petroleum (Production) Act, 1934 (c. 36).

927. Substitute the following paragraph & citations :—

By virtue of Assessionable Manors Act, 1844 (c. 105), s. 54, His Royal Highness the Prince of Wales, as Duke of Cornwall, was absolutely entitled to the mines & minerals within certain manors including that of C. Sect. 55 of the Act empowered the Duke, his agents & lessees, to enter upon all lands within the said manors, & all mines belonging to the Duke, & to open & work the same, & to erect all such buildings, machinery, etc., & do all such acts as should be " necessary or convenient for working the same mines," on making compensation to the surface owners. By sect. 69 it was provided that it should be lawful for the Duke, his agents & lessees, to pull down & remove all buildings, machinery, etc., no longer used for the purposes aforesaid, or to allow the same to remain, & no buildings should, by non-user or otherwise, be deemed to be abandoned, so as to vest any right or title therein in the owner of the land. Deft. was the owner by purchase of garden land adjoining two cottages at W. E. in the manor of C., & was also in possession of a house & garden at W. Z., the site of which she had purchased in 1902. This house was subsequently enlarged from one of six rooms into one of eleven rooms, with an additional wing. These alterations & some improvements to the garden cost £500, & were known to the mineral agent of the Duchy, who remained passive. The Duchy claimed that under the provisions of sects. 55 & 69 of the Act the two cottages & land at W. E. & the house & land at W. Z. had been originally erected, entered

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l iii. *S. P.* STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO. (No. 2), [1927] 2 W. W. R. 466 ; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

l iv. —— —— *Effect of Act to amend Public Lands Act,* 1908 (*c.* 16).]—*Re* COX, [1927] 4 D. L. R. 556 ; 61 O. L. R. 182.—**CAN.**

sh. *Exception of lots—Conflict between plan & description—Evidence of physical features of alleged exceptions.*]—THOMPSON *v.* FRASER COMPANIES, LTD. (Can.), [1929] 3 D. L. R. 778 ; *revg.*, [1929] 1 D. L. R. 168.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—F.

729 ii. ——.]—*Semble :* the Crown may grant a tract of land by a sufficient description to designate the portion meant, although the township within which the land lies has not been surveyed & laid out into lots & concessions ; & the grantee will be entitled to hold it although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession, from that named in the patent, or the surveyor laying it out projects a road through it —HORNE *v.* MUNRO (1857), 7 C. P. 433.—**CAN.**

PART XIX. SECT. 5, SUB-SECT. 1.

t i. —— *Derogation of rights under earlier grant.*]—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO. (Ont.), [1928] 1 D. L. R. 32 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667 ; [1930] A. C. 640.—**C** .

PART XIX. SECT. 5, SUB-SECT. 6.

c i. —— ——.]—COSTIN *v.* CHAPPELL (1875), 10 N. S. R. (1 R. & C.) 40.—**CAN.**

sk. *Unoccupied land.*]—Land unoccupied in the island of Newfoundland at the time of passing 5 Geo. 4, c. 51, is within that statute, & may be granted out as waste lands under sect. 15, notwithstanding it has been occupied & enclosed before any grant of it was made.—A.-G. OF NEWFOUNDLAND *v.* RYAN (1836), 2 Nfld. L. R. App. 8.—**NFLD.**

sl. *Right of pre-emption.*]—HOGGAN *v.* ESQUIMALT & NANAIMO RY. CO., WADDINGTON *v.* ESQUIMALT & NANAIMO RY. CO. (1892), 20 S. C. R. 235 ; *affd.*, [1894] A. C. 429.—**CAN.**

sm. ——.]—HESELWOOD *v.* JONES (1910), 16 B. C. R. 485.—**CAN.**

PART XIX. SECT. 8.

p i. —— *Evidence of invalidity of first grant—Not admissible.*]—DOE d. MCKAY *v.* RYKERT (1823-1900), 1 Ont. Dig. 1726.—**CAN.**

PART XIX. SECT. 9.

r i. —— *Cancellation for incompetency—Soldiers' settlement—Functions of Minister for Repatriation.*]—*Held :* the Minister had a merely administrative function, & might form an opinion on such materials as he himself thought sufficient without giving resp. an opportunity of being heard or of meeting allegations to his prejudice.—LAFFER *v.* GILLEN (1927), 40 C. L. R. 86.—**AUS.**

so. *Whether Attorney - General necessary party.*]—The bill alleged that the patentees obtained their patent by false representations to the Government, & showed a case in which the patentees would not be entitled to compensation if the patent were set aside & the land given to another :—*Held :* to such a bill the A.-G. was not a necessary party.—REES *v.* A.-G. (1869), 16 Gr. 467.—**CAN.**

sp. *Whether Attorney-General entitled to take proceedings—Soldier Settlement Act,* 1919—*Notwithstanding Dominion Lands Act, s.* 94.]—*Held :* Sect. 94 does not give the Minister of the Interior the exclusive right to institute such actions & does not take away the usual right & power of the A.-G.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

PART XX. SECT. 6.

n i. —— —— *When in possession of Crown lessee or licensee.*]—The prerogative of the Crown & its freedom from interference by a council in the matter of building operations do not extend to Crown lessees or licensees.—HORNSBY, COUNCIL OF THE SHIRE OF *v.* DANGLADE (1928), 29 S. R. 118.—**AUS.**

st. *Sale of land under Soldier Settlement Act,* 1919—*Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*]—A.-G. FOR CANADA *v.* PUGH, [1924] Exch. C. R. 62.—**CAN.**

PART XXI. SECT. 1, SUB-SECT. 2.

858 iii. —— ——.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—HUDSON'S BAY CO. *v.* A.-G. FOR CANADA, [1929] A. C. 285 ; 98 L. J. P. C. 28 ; 45 T. L. R. 47, P. C.—**CAN.**

upon, & used in connection with the mines at W. E. & W. Z. respectively, & were now vested in the Duchy. From 1846 onwards licences & leases had been granted by the Duchy for the working of the two mines, but neither had been in fact worked for many years. Upon an information by the A.-G. to His Royal Highness the Prince of Wales claiming declarations of title to the lands & buildings, & an injunction to restrain the deft. from asserting any title to the same :— *Held :* (1) the effect of sect. 55 was not to vest any land in the Duchy, but only compelled the surface owner to permit his land to bear certain burdens, & did not divest him of his title ; nor did it follow from the power in that section to erect " buildings " that a power was given to take land for gardens ; (2) the effect of sect. 69 was not to vest any title in the Duchy, but to prevent the surface owner from resuming full enjoyment of land once taken ; & consequently the Duchy had established no right over, or title to, these lands.—A.-G. TO PRINCE OF WALES *v.* COLLOM, [1916] 2 K. B. 193 ; 85 L. J. K. B. 1484 ; 114 L. T. 1121 ; 32 T. L. R. 448.

CONSTRUCTIVE NOTICE.

See EQUITY.

CONSTRUCTIVE TRUST.

See TRUSTS AND TRUSTEES.

CONTRABAND.

See PRIZE LAW.

CONTRACT.

Part I.—Definitions and Classification.

3. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

4. For the existing paragraph substitute the following paragraph :—

—— —— **Legal effect expressly excluded.**]—By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & intention of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held :* (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

Annotation :—As to (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

—— ——.]—Certain builders requested a firm of publishers to publish a builders' guide in connection with their estate, & by the terms of documents signed by both parties it was agreed that the publishers should prepare & publish the guide free of charge to the builders. It was further agreed that the publishers should be freed from the obligation of publishing the guide should in their opinion insufficient advertisement be obtained to justify publication. The publishers proceeded to carry out the terms of the documents thereby incurring expense. The builders then passed a resolution for a voluntary winding up, & the liquidators informed the publishers that they did not wish them to proceed with the guide. The publishers sought to be admitted as creditors in the winding up, alleging breach of the contract embodied in the above-mentioned documents, & they claimed damages in respect of the expenses incurred & loss of profits. The liquidators contended that the discretion given to the publishers by the terms of the document was so wide & of such a nature that no real obligation rested upon them, & that there was no binding contract between the parties :—*Held :* it must be implied in the documents that the publishers should only be freed from their obligations if in their reasonable & honest opinion insufficient advertisements were obtained & the obligations under the documents could not under this clause be arbitrarily determined by them. There was therefore a binding contract & the publishers were entitled to be admitted as creditors in the winding up.—*Re* BRAND ESTATES, LTD., [1936] 3 All E. R. 374.

5. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

5a. —— —— ——.]—SNOW *v.* FIREBRASS (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

5b. —— —— ——.]—Pltfs., the freeholders of certain property, entered into an agreement with defts. to give them the " first option " of purchasing any premises that might be designated for dairy purposes on the said property :—*Held :* this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words " first option."—RYAN *v.* THOMAS (1911), 55 Sol. Jo. 364.

Annotation :—**Refd.** County Hotel & Wine Co. *v.* London & North Western Ry. Co., [1918] 2 K. B. 251.

5c. —— —— ——.]—On Mar. 15, 1934, pltf. co. by a formal contract in writing agreed with

PART I.

2 l. *Definitions—Must be capable of being enforced in court of justice.*]—An arrangement between intending husband & wife for a dress allowance to the wife held not to be a contract because not intended to affect or give rise to legal relations or to be attended with legal consequences.—COHEN *v.* COHEN (1929), 42 C. L. R. 91 ; [1929] Argus L. R. 204.—**AUS.**

5 l. —— —— *Vagueness & uncertainty as to subject-matter & terms.*]—Applt. in writing authorised resp. to sell his motor car & agreed that if he did so, he would purchase another car, either new or second-hand, from resp. & take delivery of it when convenient to himself. He authorised resp. to place the net proceeds from the sale, less commission, to his credit with resp. as a deposit on the other car, & agreed that the balance owing by him on the purchase of the other car should be paid in cash or on terms to be decided by resp. if he desired terms. Resp. sold applt.'s car, but applt. refused to purchase from resp. another car in pursuance of the agreement, & claimed from resp. the proceeds of the sale, less commission :—*Held :* the agreement was void for uncertainty & did not constitute a binding contract, & applt. was entitled to recover from resp. the proceeds of the sale of his motor car, less commission.—WILLESDEN *v.* WEBB (1936), 30 Q. J. P. R. 138.—**AUS.**

deft. K. that pltf. co. should have the exclusive right to the services of K. & his band for the purposes of making gramophone records for twelve months, & also piano solo recordings by K. during the same period. The first clause in the agreement was: "This agreement shall be in force for a period of twelve months with an option on the part of the co. or the principal" (K.) "to extend the same for a further period of twelve months on terms to be hereinafter" (an inadvertent change upon the word in an earlier agreement "hereafter") "agreed": —*Held:* the so-called option had no binding effect. It was impossible to read into the option any implied terms, which would make it effective as a contract. A term might be implied that for the further period of twelve months K. was to continue to record & procure to be rendered to pltf. co. services similar to those which were the subject-matter of the existing agreement, but beyond that everything was left to the imagination.—BRITISH HOMOPHONE, LTD. *v.* KUNZ & CRYSTALLATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. (1935), 152 L. T. 589.

7. *Add. Annotation:—As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

Part II.—Parties to Contract.

12. *Add. Annotation:*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

17. *Add. Annotations:*—**Refd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857; *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10; Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402; Ridley *v.* Lee, [1935] Ch. 591.

25. *Add. Annotation:*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

48. *Add. Annotations:—As to* (1) **Refd.** Clarkson *v.* Davies, [1923] A. C. 100; Duffner *v.* Bowyer (1924), 40 T. L. R. 700; *Re* Pennington & Owen, [1925] Ch. 825. *As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

51. *Add. Annotation:*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

52. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

55. *Add. Annotation:*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

93. *Add. Annotation:*—**Refd.** Ridley *v.* Lee, [1935] Ch. 591.

103. *Add. Annotation:*—**Distd.** Way *v.* Bishop, [1928] Ch. 647.

129. After this case add "*See, also,* No. 36, *ante.*"

150. *Add. Annotation:* — **Consd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

151. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

163. After this case add "—— **Effect of judgment against one.**]—*See* ESTOPPEL, Vol. XXI., pp. 218–221."

163a. Action brought against all—Successful defence by one—Unsuccessful defences by others.]—In an action for breach of contract brought against A., B. & C. as joint contractors, A. set up the defence that pltf. had not performed his part of the contract. B. & C. set up other defences which failed. The judge decided that A. having established an effective defence, the action failed as against him, but succeeded against B. & C.:—*Held* B. & C. though they had not pleaded it, were entitled to the benefit of a defence set up by A. which went to the whole cause of action, & the action failed altogether.

Where the ct. has before it a fact common to the whole contract & not involving statutory illegality, it is bound to take notice of that fact as applicable to every joint debtor whether he has pleaded it or not. There can only be one judgment against joint contractors, except upon a matter peculiar to one of the contractors.—PIRIE *v.* RICHARDSON, [1927] 1 K. B. 448; 96 L. J. K. B. 42; 136 L. T. 104; 70 Sol. Jo. 1023, C. A.

165. *Add. Annotation:*—**Consd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

169. *Add. Annotation:*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

192. *Add. Annotation:*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

197 *Add. Annotation:*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

209. *Add. Annotation:*—**Consd.** York Glass Co. *v.* Jubb (1925), 42 T. L. R. 1.

218. *Add. Annotations:*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

PART II. SECT. 2, SUB-SECT. 2.—D.

124 ii. —— —— *Effect of admission by survivor on liability of representatives.*]—On the severance of a joint contract by the death of one of the joint contractors his personal representatives are not bound by anything subsequently done or said by the surviving joint contractors.—BENNETT *v.* FRASER, [1936] 2 W. W. R. 616.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—E.

130 iii. —— *Disclaimer by one.*]—If a contract purports to be made with two covenanters jointly, the disclaimer of one of them, to which the covenantor is not also a party, does not convert it into a contract with the other & entitle him to sue alone, even though the joint covenantor who has disclaimed is an infant.—BENNETT *v.* GREENSILL, [1927] N. Z. L. R. 167.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 2.—F.

151 iii. —— ——.]—In an action to rescind a contract deft. applied to add W. as co-deft.:—*Held:* deft. had no right to force W. upon pltf. as deft., in the character of a joint contractor.—TORONTO & HAMILTON NAVIGATION CO. *v.* SILCOX (1888), 12 P. R. 622.—**CAN.**

PART II. SECT. 5.

sa. *Buddhist monk.*]—A Buddhist monk is a person competent to contract within Contract Act, s. 11. There is nothing immoral, although it would be so from the standpoint of his religious Order, or forbidden by law, within Contract Act, s. 23, for a Buddhist monk to enter into a contract for the sale of land. This is a question of contract only & not a question relating to a religious institution or usage.—U PYINNYA *v.* MAUNG LAW (1929), I. L. R. 7 Ran. 677.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.

218 vi. —— ——.]—There is ample authority for saying that the administration of the law of contract in British India is not affected by the doctrine laid down in *Tweddle* v. *Atkinson* that only a person who is a party to the

223. *Add. Annotation :*—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65.

231a. —— ——.]—GILBERT (F.) (BOURNEMOUTH), LTD. *v.* MACKAY (1930), 74 Sol. Jo. 788.

255. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

256. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

257. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

259. *Add. Annotation :*—**Refd.** *Re* Franklin & Swathling, [1929] 1 Ch. 238.

264. *Add. Annotations :*—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65. **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

267. *Add. Annotation :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

268. *Add. Annotation :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

272. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

273. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455; Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

274. *Add. Annotations :*—**Consd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960. **Refd.** Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184.

275. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Part III.—Formation of Contract.

297a. Offer & acceptance—Though in pursuance of unenforceable agreement.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

298. After this case add "**Course of conduct.**]—*See* pp. 52, 67, 114, 115, Nos. 289, 389, 747-751; ESTOPPEL, Vol. XXI., pp. 290, 291, No. 1034."

contract can sue upon it. In British India the aim is to do complete justice in one suit.—KSHIRODEBIHARI DATTA *v.* MANGOBINDA PANDA (1934), I. L. R. 61 Calc. 841.—**IND.**

218 vii. —— ——.]—No person can sue or be sued in an action at law upon a contract under seal unless he is a party to the contract.—MARGOLIUS *v.* DIESBOURG, [1937] S. C. R. 183; 2 D. L. R. 145.—**CAN.**

218 viii. —— ——.]—If a party to a contract is a trustee of rights under the contract for a third party, that third party can in equity sue on the contract. But when it is sought to show that a trust for the benefit of a third party has been created by means of a contract between two other parties, it is not sufficient to show merely that the contract was entered into by one of the parties to the contract with a view to the benefit of that third party. To entitle the third party to sue it must be shown that the parties to the contract, or one of them, intended at the time the contract was entered into to confer upon the third party some interest in the subject matter of the contract, & to confer that interest in such a way that it could not be destroyed or varied solely by the actions of the parties to the contract.—RYDER *v.* TAYLOR (1936), 36 S. R. N. S. W. 31; 53 N. S. W. W. N. 40.—**AUS.**

PART II. SECT. 6, SUB-SECT. 2.

238 xvi. —— ——.]—An agreement between a dealer in automobiles & the maker thereof, providing that it should be construed as an agreement between the dealer signing it & all other dealers "who have signed a similar agreement":—*Held :* to bring about a contractual relationship between such dealers involving an obligation for breach of which an action would lie by one dealer against another who signed such agreement.—MCCANNELL *v.* MABEE MCLAREN MOTORS, LTD., [1926] 1 D. L. R. 282: [1926] 1 W. W. R. 353; 36 B. C. R. 369.—**CAN.**

238 xvii. —— ——.] — Under authority given it by its Charter the City of Winnipeg enacted a bye-law requiring bailiffs (*inter alia*) to be licensed & to "furnish to the City a bond of indemnity for the purpose of indemnifying the City or any other person or corpn. who may suffer loss owing to the default of such licensee." Deft. co. entered into a bond in conformity with the terms of the licensing bye-law to indemnify persons who might employ certain bailiffs & suffer loss owing to their default. Pltf., alleging that he had employed these bailiffs to collect certain moneys which they had collected but had not turned over to him, sought to recover the amount from deft. co., basing his claim on the bond. There was a demurrer to the statement of claim on the ground of privity:—*Held :* under the terms of the statute which were given effect to by the bye-law & carried into the bond, pltf. had a statutory right against the co. which he was entitled to enforce by his own action.—METROPOLITAN LOAN CO. *v.* CANADA SECURITY ASSURANCE CO., LTD., [1934] 2 W. W. R. 422; 3 D. L. R. 649; 42 Man. L. R. 272.—**CAN.**

238 xvii. —— ——.]—Where an American corpn. agreed to buy shares of a Canadian corpn. from the corpn. & from other persons not party to the agreement:—*Held :* the other persons obtained a right of action against the American corpn. to enforce the contract.—VIPOND *v.* RAMSAY, [1934] 4 D. L. R. 84.—**CAN.**

sc. —— *Member of public—Agreement between street railway & municipality.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332.—**CAN.**

PART III. SECT. 1.

m i. *Promise of subscription.*]—A written promise to contribute a certain sum of money towards the erection of a building for the Young Men's Christian Association, in reliance on which advances have been made & liabilities incurred, forms a valid & binding contract which cannot thereafter be revoked by the promisor & is enforceable against him on behalf of the assocn.—SARGENT *v.* NICHOLSON (1915), 25 D. L. R. 638.—**CAN.**

m ii. ——.]—A subscription whereby a certain sum of money is promised towards the erection & equipment of a building for the Young Men's Christian Association, in reliance on which liabilities are incurred & other subscriptions obtained, forms a sufficient consideration for a contract & is enforceable even before the completion of the building.—Y.M.C.A. *v.* RANKIN (1916), 27 D. L. R. 417.—**CAN.**

m iii. ——.]—In the course of a canvass for raising a fund to increase the general resources & usefulness of a college, B. signed a subscription as follows: "For the purpose of enabling Dalhousie College to maintain & improve the efficiency of its teaching, to construct new buildings & otherwise to keep pace with the growing need of its constituency & in consideration of the subscription of others, I promise to pay" $5,000 to the treasurer of the college. B. died without making any payment, & the college claimed against his estate:—*Held :* the subscription was not binding. The only basis for sustaining it as a binding promise could be as a contract supported by a good & sufficient consideration; & such a consideration could not be found in the subscription paper itself, or in the circumstances as disclosed by the evidence. The words "in consideration of the subscription of others" in the subscription were insufficient to support the promise if, in point of law, the subscriptions of others could not provide a valid consideration therefor; & the fact that others had signed separate subscription papers for the same common object or were expected to do so did not of itself constitute a legal consideration.—DALHOUSIE COLLEGE *v.* BOUTILIER ESTATE, [1934] S. C. R. 642; 3 D. L. R. 593; *affg.* S. C. *sub nom. Re* BOUTILIER, [1933] 1 D. L. R. 699.—**CAN.**

m iv. ——.]—Testator offered a subscription to a college building fund, in consideration of the subscription of others, but did not pay in his lifetime:—*Held :* this was a debt binding on his estate for which there was a consideration in law.—*Re* LORLAW, [1933] 4 D. L. R. 261; O. R. 761.—**CAN.**

m v. ——.]—In Prince Edward Island an action lies for a voluntary subscription when the work is a "public undertaking." — PROVINCIAL SANATORIUM *v.* MCARTHUR (1934), 7 M. P. R.

307. *Add. Annotations:*—**Consd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503. **Refd.** May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n.; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

310. *Add. Annotation:*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

339a. ——.]—HORSFALL *v.* GARNETT (1858), 6 W. R. 387.

379a. Knowledge of terms of contract immaterial.]—The buyer of an automatic slot machine signed & handed to the sellers an order form containing in ordinary print & writing the essential terms of the contract, & in small print certain special terms, one of which was "any express or implied condition, statement, or warranty, statutory or otherwise not stated herein is hereby excluded." The sellers thereupon signed & handed to the buyer a printed order confirmation assenting to the terms in the order form. The machine was delivered by the sellers to the buyer, who paid to the sellers an instalment of the price. The machine did not work satisfactorily, &

225; *affd.*, [1935] 4 D. L. R. 255; 10 M. P. R. 199; 5 F. L. J. (Can.) 70.—**CAN.**

sf. *Contract subject to approval—Effect of approval.*]—*Held:* the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—BANKS PENINSULA ELECTRIC-POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

sj. —— *Sufficiency of approval.*]—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as managers. There was evidence that they occupied these positions, but no evidence that they were the proper officers of the vendors for approval of the contract:—*Held:* approval could be shown by the subsequent conduct of the vendors.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY CO., [1924] 2 D. L. R. 183; 1 W. W. R. 1047.—**CAN.**

sk. *Contract for carriage of goods—Letter expressing wish for insurance of goods.*]—*Held:* the contract was complete when the agent received the goods & gave a receipt, which contained the terms of the contract, & the letter was only a request to insure, & formed no part of the contract.—MCGOLDRICK *v.* EASTERN EXPRESS CO. (1872), 14 N. B. R. (1 Pug.) 138.—**CAN.**

sl. *Statutory debt for taxes.*]—A statutory debt for taxes is not a contract.—A.-G. FOR CANADA *v.* O'REILLY, [1930] 1 W. W. R. 929; 3 D. L. R. 638; 24 Alta. L. R. 450.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A. (a)

s i. ——.]—ACME GRAIN CO., LTD. *v.* WENAUS, [1917] 3 W. W. R. 157; 36 D. L. R. 347; 10 Sask. L. R. 305.—**CAN.**

b i. ——.]—In an action brought against exor. of a farmer who had died intestate, the pursuer averred that deceased, a childless widower & an invalid, proposed to him that, if he gave up a situation which he then had, resided with him at the farm, & looked after him & the farm, he would make the pursuer his heir; that, after consideration & induced by the representations of the deceased, he accepted the proposal, lived with the deceased for sixteen years as his companion & nurse without remuneration, & successfully managed the farm; & that, owing to the failure of deceased, in spite of his representations, to make a will in favour of pursuer, he had suffered material loss. He accordingly claimed to be indemnified for this loss, which he estimated at £6,000, or, alternatively, to be recompensed in so far as the estate had benefited from his services. The ct. dismissed the action as irrelevant, holding that pursuer's averments did not import a legal claim enforceable against the deceased's executry, in respect (*a*) that nothing more was disclosed than a mere expression of intention on the part of the deceased to make the pursuer his heir; (*b*) that, even on the assumption that a definite promise of heirship was averred, such a promise could have been proved only by the writ of the deceased, & here admittedly no writ existed; (*c*) that no *primâ facie* case for indemnification on ground of equity was disclosed, the loss averred by the pursuer as a result of the deceased's representations being based solely on hypothetical calculations & not on actual outlay.—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

sm. *Construction—Ambiguous offer.*]—Where a written offer is ambiguous, it may be construed according to the contemporaneous interpretation put upon it by the maker & receiver.—MANNING *v.* CARRIQUE (1915), 9 O. W. N. 61; 34 O. L. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*]—Specific counter offer or rejection puts an end to an offer.—SHAW *v.* JONES, [1924] N. Z. L. R. 1133.—**N.Z.**

328 ii. —— ——.]—Deft., through his agent, sent pltf. an offer to sell him land for $1,800 on terms. Pltf. wired the agent: "Send lowest cash price. Will give $1,600 cash. Wire." The agent replied by wire: "Cannot reduce price." Pltf. then wrote accepting the offer:—*Held:* the telegram reading "Cannot reduce price" was a renewal of the original offer, not merely a rejection of pltf.'s counter offer, & pltf.'s acceptance of it completed a contract of sale.—LIVINGSTONE *v.* EVANS, [1925] 4 D. L. R. 769; [1925] 3 W. W. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (c) i.

337 viii. ——.]—Where a document was no more than an offer & was withdrawn before acceptance:—*Held:* there was no contract.—GOODISON THRESHER CO. *v.* DOYLE (1925), 57 O. L. R. 300.—**CAN.**

PART III. SECT. 2, SUB-SECT 1.—C. (c) iv.

p i. ——.]—Pltf. a member of & holder of a seat upon a Stock & Mining Exchange, in July, 1927, entered into an agreement with defts. S. & M. for the sale to them of his seat for the price of $20,000. In the course & as part of this transaction, a letter was written by deft. M. to pltf. dated July 27, 1927, stating: "I hereby give you an option, & guarantee same, for you to repurchase the . . . seat on or before Sept. 15, 1927, at the price of $21,000:—*Held:* the giving of the option was in consideration of the sale, & an option so given for a valuable consideration, cannot be revoked, & is open for acceptance by the optionee at any time within the period for which the option is given; all that was necessary to operate as an effectual exercise of the option was that pltf., not later than Sept. 15, should notify deft. M. of his acceptance of the offer.—FORREST *v.* SOLLOWAY, [1928] 3 D. L. R. 374; 62 O. L. R. 341.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. —— —— *Intention to discuss terms with third party.*]—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others:—*Held:* there cannot be said to be a binding contract.—CARBON COAL & CLAY CO. *v.* NANOOSE-WELLINGTON COLLIERIES, [1923] 1 D. L. R. 1160.—**CAN.**

366 vii. —— ——.]—PATERSON (A. & G.), LTD. *v.* HIGHLAND RY. CO., [1927] S. C. (H. L.) 32.—**SCOT.**

366 viii. —— ——.]—BIGELOW *v.* CRAIGELLACHIE-GLENLIVET DISTILLERY CO. (1905), 26 C. L. T. 186; 37 S. C. R. 55.—**CAN.**

366 ix. —— ——.]—WILSON & CO., LTD. *v.* FARQUHARSON (1906), 3 E. L. R. 146.—**CAN.**

370 xiii. —— *Acceptance stating understanding of offer made.*]—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to applts. on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating "an agreement is being prepared & will be submitted shortly for signature," but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, "but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt., & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original":—*Held:* the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council.—HALIFAX GRAVING CO. *v.* R. (1921), 62 S. C. R. 338.—**CAN.**

370 xiv. ——.]—CANADA PERMANENT MORTGAGE CORPN. *v.* BARNARD Sask.), [1926] 1 D. L. R. 153.—**CAN.**

370 xv. ——.]—LEFEBVRE *v.* MORRAU (Alta.), [1928] 1 D. L. R. 1019.—**CAN.**

sp. *Time for—Time limited by contract.*]—Where appit. had not notified his acceptance within the fixed time, & in the absence of proof that resp. had waived his right to demand definite written notice as stipulated:—*Held:* there was no valid acceptance.—LAWS *v.* RUTHERFORD, [1924] App. D. 261.—**S. AF.**

st. —— *Within reasonable time.*]—SHATFORD *v.* B. C. WINE GROWERS, LTD., [1927] 2 D. L. R. 759; 38 B. C. R. 419.—**CAN.**

the buyer brought an action against the sellers in the county ct. claiming (*inter alia*) damages for breach of an implied warranty that the machine was fit for the purpose for which it was sold. The sellers pleaded (*inter alia*) that the contract expressly provided for the exclusion of all implied warranties. The buyer replied that at the time when she signed the order form she had not read it & knew nothing of its contents, & that the clause excluding warranties could not easily be read owing to the smallness of the print. There was no evidence of any misrepresentation by the sellers to the buyer as to the terms of the contract:—*Held:* as the buyer had signed the written contract, & had not been induced to do so by any misrepresentation, she was bound by the terms of the contract, & it was wholly immaterial that she had not read it & did not know its contents; the action failed & the sellers were entitled to judgment.—L'ESTRANGE *v.* GRAUCOB (F.), LTD., [1934] 2 K. B. 394; 103 L. J. K. B. 730; 152 L. T. 164.

387a. —— **Sale of annuity—Execution of release.**]—KENNEDY *v.* THOMASSEN, No. 3081a, *post.*

396. *Add. Annotations:*—**Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

397. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 369.

415. *Add. Annotation:*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

416. To the existing paragraph, after the word "accepting," add "'subject to the terms of a contract being arranged.'"

418a. —— —— **"Orders to be acknowledged by return."**]—Defts.' departmental manager orally agreed on their behalf to buy certain goods from pltf. & signed an order form on which was printed the clause, "orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to defts. In an action for breach of the contract defts. pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed:—*Held:* (1) the words on the order form, "orders to be acknowledged by return," were not intended to be words of contract; (2) the words "by return" related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & pltf. was entitled to recover.—WILLIS *v.* BAGGS & SALT (1925), 41 T. L. R. 453; 69 Sol. Jo. 543.

419a. —— —— **Acceptance "subject to the terms of a lease."**]—Deft. employed house-agents to let shop premises at 155 High Street, Bromley, Kent, & on Dec. 9, 1930, pltf., after inspecting the premises, offered to take a lease. In reply the house-agents wrote to him on the same day: "Corner shop, 155 High Street, Bromley. Referring to our conversation this morning on the telephone, we confirm that, subject to the terms of a lease, our client is prepared to accept your

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

380 i. *Necessity.*]—BARRETT *v.* RAPELJE (1835), 4 O. S. 175.—**CAN.**

388 iii. ——.]—SHEADY & SMITH *v.* JOHN GILLESPIE & CO., LTD. (Alta.), [1931] S. C. R. 232; 1 D. L. R. 918; *revsg.*, [1929] 4 D. L. R. 745; 3 W. W. R. 247; 24 Alta. L. R. 245; *affd.*, [1929] 4 D. L. R. 23.—**CAN.**

388 iv. —— *Exercise of option.*]—Payment of the purchase-price made by a party purporting to exercise an option to purchase within the time & in the manner provided in the option is insufficient to create a binding contract where acceptance has not been communicated to the other party before the expiry of the option.

Deft., in consideration of payment of £5, gave pltf. "an option of ten days to purchase" his share in a motor-vessel for £150. The agreement provided that the £5 was to be forfeited unless the purchase was completed in the said ten days. Pltf. was given the right to pay the purchase-money into deft.'s bank account at W. instead of the same personally to deft. at tf. told deft. on the telephone that he was paying the money into the bank, & subsequently did pay the money within the ten days & posted a letter of advice which reached the deft. after the expiry of the option. Deft. then refused to transfer his share to pltf.:—*Held:* payment did not amount to communication of acceptance & there was no binding contract.—SOARES *v.* SIMPSON, [1931] N. Z. L. R. 1079.—**N.Z.**

388 v. —— *Order in Council authorising acceptance by Minister.*]—*Held:* No acceptance on behalf of the Crown communicated to F. by any one having authority to do so had been shown; &, therefore, no contract binding on the Crown had been established. The Order in Council did not in itself constitute an acceptance.—R. *v.* DOMINION CORPN., LTD., & FORGIE, [1932] S. C. R. 511; 2 D. L. R. 810.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (b) ii.

396 ii. —— ——.]—If a person to whom an offer is made so conducts himself that a reasonable man would believe that he is accepting that offer & the offeror acts upon that belief the offeree will be held to have accepted the offer &, therefore, to have contracted on the terms proposed.

This principle was applied where the owner of an automobile, subject to a chattel mtge., had placed the automobile with deft. co. for sale, but objected to the terms of a sale proposed by deft. & then the mtgee. with, it was held, the concurrence of the owner, made an offer to deft. which deft. by his conduct was held to have accepted.—GREENBERG *v.* MANITOBA HUDSON-ESSEX, LTD., [1934] 1 W. W. R. 790.—**CAN.**

82. *Delivery of goods—Before time laid down in order.*]—Applt. sent an order on June 7 to resp. to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on resp. until received & ratified in writing or by actual delivery of the goods to applt., & that the order might be cancelled by applt. giving notice to resp. by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter applt. ordered a binder from any other person, resp. might by registered notice revive the order, & deliver the binder within thirty days. An agent of resp. was told by applt. that he wished to cancel the order, as he was buying a harvester, & the agent notified resp., but no notice was given by applt. to resp. On Sept. 2, resp. forwarded by rail a binder to applt., & wrote him stating that the binder had been forwarded per rail. The machine arrived, & applt. refused to take delivery, but admitted he had received the letter:—*Held:* the letter did not amount to a ratification of the order, & a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order.—BLACKETT *v.* CLUTTERBUCK BROTHERS (ADELAIDE), LTD., [1923] S. A. S. R. 301.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—C.

403 ii. —— —— *Whether motive for informing material.*]—A reward was publicly offered by the Govt. of Western Australia "for such information as shall lead to the arrest & conviction of the person or persons who committed the murders" of two police officers. C. who knew of the offer, gave information that led to the arrest of one person, & the conviction of that person & another for the murder of one of those officers. By petition of right under Crown Suits Act, 1898, C. claimed payment of the reward:—*Held:* unless petitioner had performed the condition of the offer acting on the faith of or in reliance upon the offer, there was no acceptance of the offer, &, therefore, no contract between the parties.—R. *v.* CLARKE (1927), 40 C. L. R. 227; [1928] Argus L. R. 97.—**AUS.**

offer to take the above premises on a 7, 14 or 21 years' lease at a rent of £350 *per annum* for the first 14 years, rising to £375 for the last 7 years. . . . We have instructed Mr. B.'s solrs. to put the draft lease in hand immediately to forward to your solrs. . . ." The draft lease was forwarded on the same day, & after negotiations as to its terms deft.'s solrs. wrote on Dec. 29. 1930, to pltf.'s solrs. : " We have now received our client's instructions on the draft lease, & he is prepared to accept your client's alterations. We are, therefore, having the lease engrossed, & will forward you a counterpart for execution by your client in due course." This was done, but deft. then refused to execute the lease, & on Jan. 24, 1931, granted a lease of the premises to some one else. On Feb. 3, 1931, pltf. commenced proceedings for specific performance, or, alternatively, damages :—*Held :* there was no binding contract to grant a lease, as the expression " subject to the terms of a lease " in the letter of Dec. 9, 1930, meant " subject to the terms to be contained in a lease executed by the lessor." It followed that even if deft.'s solrs. were the agents of deft. to communicate by their letter of Dec. 29, 1930, the fact that deft. had himself agreed to the terms of the lease, so that this letter was a sufficient memorandum of the agreement signed by deft.'s duly authorised agents within Law of Property Act, 1925 (c. 20), s. 40, there was no binding contract, because the result of the letter of Dec. 9, 1930, was that there could be no concluded agreement until the lease had been executed.—RAINGOLD *v.* BROMLEY, [1931] 2 Ch. 307 ; 100 L. J. Ch. 337; 145 . T. 611.

420. *Add. Annotations :—As to* (2) **Dbtd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224. **Refd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

420a. —— —— ——.]—LORD CAIRNS indeed seems to have considered that, if the phrase [" subject to the title being approved by our solrs."] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice ; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning. but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. *v.* WHEELER, [1929] 2 Ch. 224 ; 98 L. J. Ch. 374 ; 141 L. T. 538.

Annotation :—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

422. *Add. Annotation :*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

422a. —— —— **Acceptance of purchase-price—Terms as to method of payment.**]—NEALE *v.* MERRETT (1930), 70 L. Jo. 95 ; 170 L. T. Jo. 99 ; [1930] W. N. 189.

422b. —— —— **Acceptance " subject to surveyor's report."**]—MARKS *v.* BOARD (1930), 46 T. L. R. 424 ; 74 Sol. Jo. 354.

429a. —— **What amounts to—Offer of house & " furniture "—Acceptance of house & " furniture & fittings as it stands."**]—Pltf. having an option from deft. to purchase a freehold house " with furniture for £4,000," wrote accepting deft.'s offer to sell the house " with the furniture & fittings as it stands " :—*Held :* there was a concluded contract between pltf. & deft.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488 ; 124 L. T. 145.

430a. ——.]—By the arts. of assocn. of the T. Co., a private co., any member desiring to sell any of his shares must notify the Board of the number of shares. the price, & the name of the proposed transferee. & the Board must offer to the other shareholders the number of the shares offered at the price, & if the offer is accepted the shares shall be transferred to the acceptors. It is provided that " if the shares or any of them are not so accepted the holder may sell or transfer them or any of them at the same or any higher price . . . to third parties approved by the Board." The capital of the T. Co. was £600,000 in 600,000 shares of £1 each, which shares were held in equal parts by the O. Co., & the P. Co. The P. Co. gave notice to the Board that they were desirous of selling 135,000 of their shares to third parties at the price of £2 per share. The Board offered the 135,000 shares to the O. Co., & the O. Co. desired to exercise their option as regards 5,000 shares only at the proposed price. The P. Co. contended that the whole of the 135,000 shares must be accepted, & that the acceptance of 5,000 shares was not good :—*Held :* the proposed acceptance was not good & the P. Co. were entitled to sell the whole 135,000 shares to third parties ; the offer was of the whole 135,000 shares at a certain price per share, & not of 135,000 separate shares at that price ; the price to be paid for the whole number of shares might well be less than that payable for a lesser number ; & an offer must be accepted according to its terms.—OCEAN COAL CO., LTD. *v.* POWELL DUFFRYN STEAM

PART III. SECT. 2, SUB-SECT. 2.—D.

425 viii. ——.]—Deft., through his agent, offered pltf. 300 tons of hay at $22 per ton. Pltf. accepted, & the agent wired his principal asking that shipment be rushed. Deft. replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month :—*Held :* a contract valid in law was then completed, & deft. could not subsequently vary it by demanding a deposit of $2 per ton as a condition of shipping.—BALLAM *v.* HATFIELD (1922), 55 N. S. R. 508.—CAN.

80. *Variation in covering letter to offeror's agent.*]—T., who was desirous of floating a gold mining co. in England, sent, through his broker F., a letter to D., a Dublin stockbroker, offering him a specified fee in consideration of the co. going to allotment, & D. allowing his name to be used as stockbroker, D. signed a letter of acceptance, which had also been forwarded to him by T., through F., & sent the acceptance to F. in a covering letter addressed to F., in which D. mentioned that he signed the acceptance on the distinct understanding that Messrs. H. (an English firm of stockbrokers) also joined. The co.'s prospectus was issued, but instead of the Messrs. H., G. & Co., stockbrokers of equally high standing, appeared as the English stockbrokers of the intended co. D., who was only interested in not being associated with what were commonly known as mining brokers, under no objection to the substitution, did not withdraw his name, & acted as Dublin broker until the co. went to allotment. In an action for the fee :—*Held :* (1) the complete contract in T.'s letter & D.'s acceptance could not be varied by the covering letter addressed to F. as T.'s agent ; (2) the covering letter was not intended to make the contract conditional upon H. being the English brokers ; (3) even if such a condition were imported into the contract, it could be waived by D., being one for his benefit solely.—MACONCHY *v.* TROWER, [1894] 2 I. R. 663.—IR.

COAL CO., LTD., [1932] 1 Ch. 654; 101 L. J. Ch. 253; 147 L. T. 10; 48 T. L. R. 290.

437. *Add. Annotation :*—**Follld.** Willis *v.* Baggs & Salt (1925), 41 T. L. R. 453.

448a. —— ——.]—WILLIS *v.* BAGGS & SALT, No. 418a, *ante.*

465. *Add. Annotations :*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394; Phipps (Northampton & Towcaster Breweries) *v.* Rogers, [1925] 1 K. B. 14.

466. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

467a. Offer & acceptance by telegram.]—Where an offer is made & accepted by telegram, the contract is complete, & the party accepting cannot repudiate the contract on the ground that his telegram had a meaning which would not be apparent to the other contracting party.—ROTH (L.) & CO., LTD. *v.* TAYSEN, TOWNSEND & CO. & GRANT & GRAHAME (1896), 12 T. L. R. 211; 1 Com. Cas. 306, C. A.

Annotations :—**Refd.** Nickoll & Knight *v.* Ashton, Edridge, [1900] 2 Q. B. 298; Tredegar Iron & Coal Co. *v.* Hawthorn (1902), 18 T. L. R. 716.

467b. Acceptance by telegram—Effect of word "writing" in telegram.]—HOWARTH *v.* FORDER (1903), 48 Sol. Jo. 52.

476. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

478. *Add. Annotation :* — **Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

480. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, [1925] A. C. 1.

481. *Add. Annotation :*—*Generally*, **Refd.** Watson *v.* Davies, [1931] 1 Ch. 455.

487. For "**Question of law—Not question of fact**" in the catchwords read "**Whether question of law or fact.**"

487a. —— ——.]—Where a contract is made, not in express terms, but is to be collected from a variety of letters between the parties, it is for the jury, & not for the ct., to determine, with reference to the situation & intention of the parties, whether a contract has actually been completed.—RICHARDS *v.* HAYWARD (1841), 2 Man. & G. 574; 2 Scott, N. R. 670; Drinkwater, 136; 10 L. J. C. P. 108; 133 E. R. 875.

487b. —— ——.]—CADDICK *v.* TERRY (1864), 5 New Rep. 137.

489. After the cross-references following this case insert "**Construction of contracts by correspondence.**]—*See* DEEDS, Vol. XVII., p. 245, Nos. 588–592."

492. *Add. Annotations :*—**Follld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Consd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503; May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n.; **Refd.** Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

496. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

501a. —— "**Subject to terms of contract being arranged.**"]—HONEYMAN *v.* MARRYATT, No. 416, *ante.*

504a. —— **Lease "to be drawn by counsel."**]—STURGION *v.* PAINTER (1608), Noy, 128; 74 E. R. 1092.

Annotation :—**Refd.** Goodtitle d. Estwick *v.* Way (1787), 1 Term Rep. 735.

511. *Add. Annotations :*—**Follld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Consd.** Trollope

PART III. SECT. 2, SUB-SECT. 3.—B. (b).

451 iii. —— *Offer not made by post—Acceptance binding only at time of receipt.*]—CHARLEBOIS *v.* BARIL, [1927] 3 D. L. R. 762.—**CAN.**

sa. *At place of posting—Contract under Farm Implement Act, R. S. S., 1920 (c. 128).*]—ELLARD *v.* WATERLOO MANUFACTURING CO., [1926] 3 D. L. R. 207; [1926] 2 W. W. R. 294; 20 Sask. L. R. 601.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

471 xii. ——.]—BRUCE *v.* TOLTON (1879), 4 A. R. 144.—**CAN.**

471 xiii. ——.]—Where it is sought to establish a contract by correspondence, the whole of the correspondence relating to the matter in question must be looked at for the purpose of finding out at what stage there was, if at all, a complete contract between the parties. Where the cardinal points are definitely agreed upon, the mere fact that reference has been made to a more formal agreement, or subsidiary non-essential stipulations, will not prevent the ct. from considering the agreement arrived at by the letters as concluded.—CURRIMBHOY & CO., LTD. *v.* CREET (1929), I. L. R. 57 Calc. 170.—**IND.**

471 xiv. ——.]—CLARKE *v.* PEABODY OVERALL CO., [1931] 2 D. L. R. 832.—**CAN.**

479 v. —— —— *Acceptance by telegram—Fresh term inserted in letter of confirmation.*]—ST. DENIS *v.* WESTERN PRODUCTS, LTD., [1923] 3 W. W. R. 858.—**CAN.**

489 iii. —— *Effect of correspondence coupled with conduct—Substantial part of goods delivered.*]—*Held :* a contract was established whereby plffs. became bound to deliver the remainder of the goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.

490 x. ——.]—Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at :—*Held :* in such a case, looking to the intentions of the parties, the contractual relations between them should be regarded as based upon the terms so agreed upon.—DOMINION IRON & STEEL CO. *v.* R. (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—**CAN.**

490 xi. ——.]—HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE (1922), L. R. 50 Ind. App. 25.—**IND.**

490 xii. ——.]—Persons who have been put into possession of land under an agreement which contemplates the execution of a formal contract do not become trespassers (as being in breach) upon failing to execute a contract when required to do so; if the agreement, upon its true construction, makes the execution of a contract a condition or term there is no enforceable contract, either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract.—CURRIMBHOY & CO. *v.* CREET (1932), 60 L. R. Ind. App. 297.—**IND.**

490 xiii. ——.]—The mere fact that an agreement complete in itself provides that its terms shall be embodied in a formal contract does not render the execution of the formal contract a condition precedent to the enforceability of the original agreement.—BRITISH AMERICAN TIMBER CO., LTD. *v.* ELK RIVER TIMBER CO., LTD., [1934] 2 W. W. R. 658.—**CAN.**

li. —— ——.]—An option for sale read as follows: "The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for $25 per acre, $2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up":—*Held :* the words "by agreement to be drawn up" had the same effect as the words "subject to an agreement to be drawn up," &, since the agreement was to be on the crop-payment plan, the ct. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—BOCALTER *v.* HAZLE, [1925] 4 D. L. R. 948; [1925] 3 W. W. R. 577; *revsg.* 19 Sask. L. R. 417; [1925] 2 W. W. R. 436.—**CAN.**

h i. —— *Contract for purchase of timber limits—All terms agreed upon—Provision for formal contract after survey.*]—Where all the terms of a contract for the purchase of timber limits are agreed upon it constitutes a binding contract, notwithstanding a provision for the execution of a formal contract after a preliminary survey & cruise of the limits.—BRITISH AMERICAN TIMBER CO. *v.* ELK RIVER TIMBER CO., [1933] 4 D. L. R. 286.—**CAN.**

(Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97 ; Keppel *v.* Wheeler, [1927] 1 K. B. 577.

511a. —— ——.]—During Mar. 1928, there were negotiations & detailed correspondence between resp. co. & another co. who were proposing to purchase the business of the resp. co., culminating in a letter dated Mar. 21, 1928, in which the prospective purchasers indicated that the terms contained in the correspondence, & as arranged at interviews between the parties, were generally accepted " subject to such terms being fully set out in a formal contract or agreement, to be submitted to us & finally approved of." On Mar. 29, 1928, two of the directors of resp. co. resigned & entered the service of the purchasers. On Mar. 30 resps. gave notice to their foreign agents terminating their engagements. The formal contract was dated Apr. 16, 1928 :—*Held :* the correspondence did not constitute a contract.—TODD (H.M. INSPECTOR OF TAXES) *v.* JONES BROS., LTD. (1930), 15 Tax Cas. 396.

513a. —— **" The usual public-house contract to be entered into."**]—LUCAS *v.* HALL, [1899] W. N. 92.

514. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

531. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

532. *Add. Annotation :*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

534. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

539a. —— ——].—Pltf. wrote to deft. an offer to sell a house to her for a certain sum subject to certain unspecified covenants, & deft. signed at the foot this statement : " I accept the above offer subject to contract." The solrs. of both parties approved a draft formal contract, but deft. refused to execute it. In an action for specific performance :—*Held :* the words " subject to contract " did not mean that deft. bound herself if the parties' solrs. approved a formal contract, but meant, in the circumstances, " subject to the execution by the parties of a formal contract," & therefore the action failed.—WILSON *v.* BALFOUR (1929), 45 T. L. R. 625.

540. *Add. Annotations :*—**Apld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97 ; Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125 ; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

540a. —— ——.]—An agreement subject to contract is merely in the stage of negotiation (SARGANT, L.J.).—KEPPEL *v.* WHEELER, [1927] 1 K. B. 577 ; 96 L. J. K. B. 483 ; 136 L. T. 203, C. A.

Annotations :—**Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606. **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436 ; Musson *v.* Moxley, [1936] 1 All E. R. 64.

545. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Apld.** Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Folld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

546a. —— **" Subject to suitable agreements being arranged between your solicitor & mine."**]—The words " subject to suitable agreements being arranged between your solr. & mine " are indistinguishable in their effect from such words as " subject to formal contract," " subject to contract," or " subject to proper contract to be prepared by the vendor's solr.," & do not import a binding agreement between the parties.—LOCKETT *v.* NORMAN-WRIGHT, [1925] Ch. 56 ; 94 L. J. Ch. 123 ; 132 L. T. 532 ; 69 Sol. Jo. 125.

546b. —— **" Subject to a proper contract to be prepared by the vendor's solicitors."**]—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor " subject to a proper contract to be prepared by the vendor's solrs." & acknowledged having paid £240 " as deposit & in part payment of the said purchase-money." Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared by the vendor's solrs., approved by the purchasers' solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers. however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit :—*Held :* the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—CHILLINGWORTH *v.* ESCHE, [1924] 1 Ch. 97 ; 93 L. J. Ch. 129 ; 129 L. T. 808 ; 40 T. L. R. 23 ; 68 Sol. Jo. 80, C. A.

Annotations :—**Apld.** Lockett *v.* Norman-Wright, [1925] Ch. 56 ; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577 ; May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n. ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

546c. —— **" Formal contract to be signed in due course."**]—RONALD FRANKAU PRODUCTIONS, LTD. *v.* BELL (1927), 65 L. Jo. 33 ; 164 L. T. Jo. 504.

555. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

543 i. —— *Solicitor to approve form of contract.*]—An option agreement provided that in the event of the purchaser deciding to accept the option by entering into an agreement to purchase the land, " such agreement to purchase shall be on a form approved by the vendor's solr." :—*Held :* the execution of a further contract was not necessary to the existence of an enforceable contract to purchase.—VITALY *v.* BRYAN (Alta.), [1927] 1 D. L. R. 244 ; [1926] 3 W. W. R. 785.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

555 xiv. ——.]—COLE *v.* SUMNER (1900), 30 S. C. R. 379.—**CAN.**

555 xv. ——.]—GRAHAM *v.* GRAHAM (Man.) (1914), 27 W. L. R. 263 ; 16 D. L. R. 485.—**CAN.**

555 xvi. ——.]—Where a person seeks in obtaining another's signature to a printed form to impose an obligation to pay for a service which for many years had been furnished gratuitously, notice of the terms & conditions on which the latter is asked to sign the document should be given in no uncertain language & in no uncertain way ; if the document is so printed & arranged that when read it gives the signer thereof the impression that he is merely supplying information when as a matter of fact it contains an obligation to pay money, & the signature is induced by that impression, the ct. will not enforce the obligation.—INTERNATIONAL TRANSPORTATION CO. *v.* WINNIPEG STORAGE, LTD., [1931] 2 W. W. R. 664.—**CAN.**

o i. —— *Burden of proof.*]—It is never necessary to prove in the first instance that either party to a contract understood the legal effect of a term thereof ; if a party seeks to escape the liability imposed by a term of the contract, he must adduce evidence to establish grounds of excuse.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT BOARD OF TRUSTEES, [1927] 1 D. L. R. 1178 ;

559. *Add. Annotation :*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

563a. ——.]—GUILDFORD TRUST, LTD. *v.* POHL & MARITCH (1928), 72 Sol. Jo. 171.

567. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389. **Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

567a. Knowledge of brother's liability to prosecution—No direct threat.]—A guarantee was obtained from a family co. under an implied threat to prosecute a member of the family who was alleged to have forged the signature of the co. to a previous guarantee. It was known to the receiver of the guarantee that it was only given because the father of the alleged forger was in such a state of health that the shock of the prosecution of his son was likely to endanger his life :—*Held :* the guarantee was obtained by undue influence, & the guarantors were entitled to repudiate it. —MUTUAL FINANCE, LTD. *v.* WETTON & SONS, LTD., [1937] 2 K. B. 389 ; [1937] 2 All E. R. 657 ; 106 L. J. K. B. 778 ; 157 L. T. 536 ; 53 T. L. R. 731 ; 81 Sol. Jo. 570.

568. *Add. Annotations :*—**Consd.** Hardie & Lane *v.* Chilton, [1936] 2 K. B. 306. **Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

569. *Add. Annotation :*—*As to* (1) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

570. *Add. Annotation :*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

572. *Add. Annotation :*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

573. *Add. Annotation :*—**Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

576. *Add. Annotation :*—**Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647.

581. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

587. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

588. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

596. *Add. Annotation :*—**Refd.** De Pret-Roose *v.* Pret-Roose (1934), 78 Sol. Jo. 914.

611. *Add. Annotations :*—**Apld.** *Re* Lloyds Bank, Bomze *v.* Bomze (1930), 47 T. L. R. 38. **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380. **Refd.** Shears *v.* Jones (1922), 128 L. T. 218.

613. *Add. Annotations :*—*As to* (3) **Apld.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127. *Generally*, **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

614. After this case add " *See, also*, FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

616. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

620. *Add. Annotation :*—*As to* (2) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

622. *Add. Annotation :*—*As to* (1) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

628. *Add. Annotation :*—*As to* (1) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

1927] 1 W. W. R. 449 ; 22 Alta. L. R. 415.—**CAN.**

p i. —— —— *Failure to read over whole contract.*]—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S., 1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English &, after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—ADVANCE RUMELY THRESHER CO. *v.* YORGA, [1926] 3 D. L. R. 517 ; [1926] S. C. R. 397.—**CAN.**

p ii. —— —— *No request for reading over or explanation.*]—If a person who cannot read a document signs it without requesting to have it read or explained to him & it is not read or explained he is bound by it, where, at least, there is no evidence that the other party knew that the illiterate party was signing under a misunderstanding of its effect.—CANADIAN BANK OF COMMERCE *v.* DEMBECK (Sask.), [1929] 4 D. L. R. 220 ; 2 W. W. R. 586.—**CAN.**

p iii. —— —— *Burden of proof.*]—Where a contract was drawn up by a magistrate, who was employed for that purpose, &, after being reduced to writing, it was read over to deft., who signed by his mark :—*Held :* the burden was upon deft. of establishing that the document was not his agreement.—KEDDY *v.* DAUBEY (1913), 47 N. S. R. 229 ; 12 D. L. R. 621 ; 13 E. L. R. 163.—**CAN.**

p iv. —— ——.]—MILLAR *v.* ELLARD, [1927] 2 D. L. R. 102.—**CAN.**

p v. —— *Party intoxicated.*]—SCHOFIELD *v.* TUMMONDS (1858), 6 Gr. 568.—**CAN.**

564 i. —— *Contract of sale silent as to time & mode of payment.*]—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery. Defts.' letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation :—*Held :* the contract was complete notwithstanding that the particular mode or time of payment was not stated. —CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395 ; 14 O. W. N. 348 ; *affd.*, 15 O. W. N. 339.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A. (b).

b i. ——.]—An agreement to pay a debt made by a debtor while under arrest on a *capias* previously issued for said debt, will not be cancelled for duress when the arrest was not illegal & the bare fact of the arrest was the only evidence of duress.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989 ; 60 N. S. R. 329.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C. (a).

599 i. *Contract voidable.*]—An agreement in writing by a wife to the provisions of her husband's will in lieu of the statutory provisions :—*Held :* to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24. —*Re* BURSAW'S ESTATE, [1924] 3 W. W. R. 807.—**CAN.**

599 ii. ——.]—BURRIS *v.* RHIND (1899), 29 S. C. R. 498.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (a).

611 vi a. ——.]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

r i. ——.]—Where by reason of the confidential relationship existing between pltf. & deft. & the influence he was able to exert over her by asserting knowledge of matters which he alleged could be used to her prejudice, which at the trial he admitted had no existence, he was enabled to procure from pltf. an excessive amount for services performed, which was paid by her even after she had obtained independent advice, pltf. was held entitled to recover the same back, less a reasonable amount for the services performed.—DISHER *v.* CLARRIS (1894), 25 O. R. 493.—**CAN.**

r ii. ——.]—*Re* WHITE, KERSTON *v.* TANK (1876), 24 Gr. 224.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (b) *i.*

a i. ——.]—An aged woman asked her son to inquire into the state of her property. By his report thereon she was induced to make a transfer of the property to him & a daughter :—*Held :* the mother was clearly capable of fully understanding what she was doing, & there was no undue influence or misrepresentation, & proof of independent advice was unnecessary to support the deed.—WEIR *v.* WEIR (B. C.), [1920] 3 W. W. R. 725.—**CAN.**

630. *Add. Annotations :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

633a. —— —— —— **Daughter married.**]—There is no rule of law that the marriage of a daughter, coupled with her departure from the parental home, necessarily puts an end to the domination of her parents. Whether or not the parental dominion has completely ceased is a question of fact depending on the particular circumstances of each case.

A daughter married at the age of eighteen & thereupon left her parental home & lived with her husband. Her mother was very extravagant & frequently borrowed money from moneylenders. When the daughter came of age she, at her mother's request, raised £2,000 on her reversionary interest under her grandfather's will in order to pay off her mother's debts to moneylenders. The mother continued to borrow money from moneylenders, & a year later the mother asked the daughter to sign a document so that she (the mother) might be able to borrow some more money. The mother & daughter signed a joint & several promissory note for £775 at 85 per cent. interest. Of the £775 £200 was a fresh loan to the mother & £575 was acknowledged by the mother & daughter to be then due & owing to the moneylenders. In reality £410 was money which had actually been advanced to the mother, £90 was for interest, & £75 supposed interest or bonus because the loans were renewed before they were due. The daughter also gave a second charge on her vested interest in remainder without which the moneylenders would not lend the money. The daughter, who did not understand the transaction, signed the document at the request of her mother. The only advice which the daughter received was that of a solr. who also acted for the mother & the moneylenders, & who prepared the documents. In an action by the moneylenders on the promissory note against both the mother & daughter the judge held that the daughter was emancipated by reason of her marriage & was not under the influence of her mother, but he held the transaction was harsh & unconscionable & re-opened all the transactions & gave judgment against both mother & daughter for the sums actually lent with interest at a reduced rate. On appeal by the daughter :—*Held :* the daughter was under the influence of her mother when she entered into the transaction in question, & also that she had no independent advice, & that as the moneylenders had notice of the facts which constituted undue influence on the part of the mother they were in no better position than the mother, & therefore the transaction must be set aside so far as the daughter was concerned.—LANCASHIRE LOANS, LTD. *v.* BLACK, [1934] 1 K. B. 380; 103 L. J. K. B. 129; 150 L. T. 304, C. A.

636. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

650. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

662. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

663. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bonze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664a. **General rule.**]—An agreement of May 6, 1929, between B. & L., who were betrothed, provided that L. should deposit at a bank, in her own name & B.'s, the sum of £4,000, to be re-deposited upon the marriage in a current account in their joint names, & to be used in paying off a mtge. on B.'s premises & in buying him a practice. The amount of the mtge. was stated to be about £1,200. The agreement had been drawn up on the instructions of L.'s brother, who had provided the £400 as her dowry. Despite the terms of the agreement, sums were withdrawn before the marriage, which took place on June 16. On May 15 B. & L. withdrew £1,000, with which the practice was bought, & on June 5 they withdrew £2,350. They also withdrew other sums at later dates. B. had the money, & L. signed documents authorising the withdrawals. The marriage was unhappy, & the parties separated on Sept. 27. There was then only the sum of £150 in the joint account, B. having had £3,850. At the date of the agreement he owed £2,000 to his bank secured by charge on his premises, a fact which he had not told L.'s brother. In an action by L. & her brother to recover the money from B., & asking that the agreement of May 6, 1929, should be set aside or rectified, on the ground that L. was induced by B.'s undue influence to sign the documents authorising the withdrawals :—*Held :* the agreement must stand, but the doctrine of *Huguenin* v. *Baseley*, No. 611, applies to the relation between persons engaged to be married; it had not been established that the sum of £2,000, part of the £2,350, withdrawn from the joint account, was a proper gift to deft.; & pltfs. were entitled to judgment for £1,000, half of the £2,000.—*Re* LLOYDS BANK, LTD., BOMZE & LEDERMAN *v.* BOMZE, [1931] 1 Ch. 289; 100 L. J. Ch. 45; 144 L. T. 276; 47 T. L. R. 38.

671. *Add. Annotation :*—**Refd.** Mitchell *v.* Alexander (1935), 79 Sol. Jo. 381.

698. *Add. Annotation :*—**Refd.** With *v.* O'Flanagan, [1936] Ch. 575.

After this case add "*See, also,* FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

717. *Add. Annotations :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

PART III. SECT. 3, SUB-SECT. 3.—A. (b) iii.

sc. *Donatio mortis causa to parish priest—Valid.*]—BOHAN *v.* WALKER (N. B.), [1928] 4 D. L. R. 630.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B.

696 i. *Onus on party alleging—Unless transaction primâ facie unconscionable.*]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101. —**IND.**

PART III. SECT. 3, SUB-SECT. 3.—C. (a).

715 i. *Principles on which relief granted.*]—UNDERWOOD *v.* COX (1912), 21 O. W. R. 757; 3 O. W. N. 1112; 26 O. L. R. 303.—**CAN.**

739. *Add. Annotations:*—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 90 J. P. 169. **Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

741. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

743a. —— —— **Outdoor relief afforded to pauper.**]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

745. *Add. Annotation:*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

747. *Add. Annotation:*—**Refd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

748. *Add. Annotation:*—**Refd.** Rederiakt. Transatlantic *v.* Compagnie Française des Phosphates de l'Oceanie (1926), 136 L. T. 619.

750. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

755a. ——.]—Covenant for 2*s.* for copying every quire of paper. Breach that he copied four quires & three sheets, for which 8*s.* 3*d.* was due. And that there could be no opportionment, for the covenant was to allow him 2*s.* a quire, but not *pro rata*. If he had averred 3*d.* to be the usual fees for copying three sheets he might have helped himself.—NEEDLER *v.* GUEST (1647), Aleyn, 9; Sty. 12; 82 E. R. 886.

759. *Add. Annotations:*—**Refd.** Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

763. *Add. Annotation:*—*Generally,* **Refd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368.

766. *Add. Annotation:*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

Part IV.—The Statute of Frauds.

769. *Add. Annotation:*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

772. *Add. Annotation:*—**Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

722 i. *Transaction voidable.*]—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

722 ii. ——.]—ERWIN *v.* SNELGROVE (Ont.), [1927] 4 D. L. R. 1028.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1

741 xii. —— ——.]—KILBORN *v.* FORESTER (1831), 1 Dra. 344.—**CAN.**

741 xiii. —— ——.]—Pltf. having entered into a contract for the supply of horses' food with the Officer Commanding the depot of a cavalry regiment sued the Secretary of State for the balance due to him under the contract:—*Held:* an Officer Commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf, of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter. However, under Indian Contract Act, s. 70, pltf., having lawfully supplied foods for the horses belonging to the Secretary of State, not intending to do so gratuitously & the latter having enjoyed the benefit thereof, was entitled to compensation.

Sect. 70 of the Contract Act, although founded on English law, must be interpreted according to its clear & explicit terms & not in reference to the provisions of English law relating to the matter. The sect. is much wider than the English law & goes beyond it.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

744 i. —— *From circumstances.*]—RICE *v.* BURCKHARDT (1925), 36 B. C. R. 161.—**CAN.**

744 ii. —— ——.]—NORTHERN RY. CO. *v.* LISTER (1867), 27 U. C. R. 57.—**CAN.**

747 ii. —— ——.]—*Held:* an agreement by a co. to repurchase shares was established, as the conduct of the co. was quite inconsistent with any other reason than that it intended & agreed to repurchase the shares.—CLARKE *v.* LANGS & RODDIS, LTD. (1926), 37 B. C. R. 77.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—C.

u i. —— *Contract to dig well.*]—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a "dry hole," & he is not entitled to payment.—WINKLER & MARTIN *v.* HUTTON, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—**CAN.**

u ii. —— ——.]—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed, these risks when he has not in his contract protected himself against such contingencies.—SAVIDAN *v.* LAPLANTE, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—**CAN.**

u iii. —— *Contract for removal of night soil—Special provisions as to cleansing.*]—*Held:* the contract was one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—HUNTER *v.* WEST MAITLAND MUNICIPAL COUNCIL (1923), 23 S. R. N. S. W. 420.—**AUS.**

763 i. ——.]—The contract of an undertaker is an entire one to conduct the funeral in a reverend manner, & therefore where the bottom of the casket falls out during the funeral the undertaker can recover nothing for goods sold & delivered.—SCHAFFER (M.), LTD. *v.* VICKERS, [1934] 4 D. L. R. 548.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—D.

c i. ——.]—ANDERSON *v* MCINTYRE, [1925] 3 D. L. R. 948.—**CAN.**

c ii. —— *Agreement to live on & work farm in consideration of father promising to devise farm.*]—*Held:* the father having prevented the son from performing the work contracted for & discharged him from service, the son was entitled to recover on a *quantum meruit* for the work done by him & money & materials furnished.—RENTON *v.* RENTON (1925), 52 N. B. R. 356.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.

h i. —— *Agreement to accept land in satisfaction of debt.*]—*Held:* binding, though not in writing.—FLEMING *v.* DUNCAN (1870), 17 Gr. 76.—**CAN.**

h ii. —— *Agreement to share commission.*]—*Held:* Alberta Statutes, 1906 (c. 27), not applicable.—HEATON *v.* FLATER (1914), 27 W. L. R. 98; 16 D. L. R. 78; 8 Alta. L. R. 21.—**CAN.**

h iii. *S. P.* KARRAR *v.* SCHUBERT (1914), 29 W. L. R. 540; 7 W. W. R. 189; 8 Alta. L. R. 21; 19 D. L. R. 804.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—A.

770 i. *Partnership agreement.*]—A contract for a partnership to last longer than a year is within Stat. Frauds.—HOFFMAN *v.* COHEN (Man.) (1914), 27 W. L. R. 127.—**CAN.**

sp. *Agreement to be performed before fixed date — Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 deft. promised to marry pltf. at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922:—*Held:* the contract was one to be performed within a year, & a memorandum in writing to satisfy Stat. Frauds was unnecessary.—CYR *v.* (1923), 55 O. L. R. 90.—**CAN.**

775. *Add. Annotation :*—**Refd.** Newman *v.* Slade, [1926] 2 K. B. 328.

793. *Add. Annotation :*—**Expld.** Scott *v.* Pattison, [1923] 2 K. B. 723.

801. *Add. Annotation :*—**Refd.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

803. *Add. Annotations :*—*As to* (1) **Refd.** Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71 ; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

810. *Add. Annotations :*—*As to* (3) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

819. *Add. Annotation :*—*As to* (1) **Refd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

837a. —— **Goodwill & stock-in-trade included—Entire.**]—Deft. orally agreed to buy from pltfs., who were the exors. of a deceased merchant, the business carried on at a named address, including the goodwill, stock in trade, & an interest in the premises, but he failed to carry out his agreement. In an action for damages deft. pleaded that the contract related to an interest in land & that by Law of Property Act, 1925 (c. 20), s. 40 (1), it could not be enforced against him as there was no written evidence of it. Pltfs. contended in answer that there had been part performance by them in looking after the premises and keeping the staff together until the defendant should take possession :—*Held :* that part of the contract which related to the goodwill, etc., was not severable from the part which dealt with taking over the premises, & that there was no part performance sufficient to take the case out of the statute, & the action failed.—HAWKESWORTH *v.* TURNER (1930), 46 T. L. R. 389.

837b. —— **Contract to construct road over land—Divisible.**]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him. The co. did not construct the road within a reasonable time, or at all, & the purchaser brought an action claiming damages for breach of contract :—*Held :* a promise to construct a road, apart from any conveyance of the land over which it was intended to run, was not a "contract for the sale or other disposition of land or any interest in land," & consequently an action would lie upon it, although it was oral, without infringing Law of Property Act, 1925 (c. 20), s. 40 (1).—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

Annotation :—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

840. *Add. Annotations :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

841. *Add. Annotations :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Folld.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142 ; Hodges *v.* Jones, [1935] Ch. 657.

844. *Add. Annotations :*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142 ; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

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sq. —— *Whether statute bar to action for dissolution of partnership.*]—WONG *v.* HOU, [1928] 1 W. W. R. 480 ; 39 B. C. R. 425.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

793 ii. *Agreement for maintenance of parent—For indefinite period.*]—Masters & Servants Act, R. S. S., 1920, s. 2, provides that a contract of personal service for a period of more than one year shall be signed by the contracting parties ; &, since a contract of hire of personal services during a lifetime is one which *prima facie* is not to be performed within a year, a contract by which a father & mother agreed in consideration of maintenance to work for their children as long as the parents should live & their health continue, but which was not signed by the father was void & no answer to the father's claim to financial support as a "dependent" under Parents Maintenance Act.—STE. MARIE *v.* STE. MARIE (Sask.), [1929] 4 D. L. R. 1076 ; 1 W. W. R. 890.—**CAN.**

st. *Agreement for partnership — For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date until dissolved by mutual consent, unless previously determined by a specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—GIBB *v.* SELL, [1922] V. L. R. 561 ; 28 Argus L. R. 305 ; 44 A. L. T. 1.—**AUS.**

sv. *Agreement not to practise medicine —No time mentioned.*]—A contract by which a party thereto agrees that he will not do a certain thing but which does not mention any time & under which the time is uncertain is not within sect. 4 of Stat. Frauds. A contract not to practise medicine in a certain locality, without more, leaves the time uncertain, because death may occur within the year.—MACINTOSH *v.* HOTHAM, [1933] 2 W. W. R. 383.—**CAN.**

sz. *Agreement to take milk.*]—A verbal agreement between a dairy co. & the owner of cows to take their milk is not void under Stat. Frauds, for the cows may die or be sold before the year has expired, or may have no milk.—SHAVER *v.* HAMILTON CO-OPERATIVE CREAMERIES, LTD., [1937] 1 D. L. R. 489.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—C.

806 ii. *S. P.* DICKSON *v.* JACQUES (1871), 31 U. C. R. 141.—**CAN.**

812 i. —— *To commence on following day.*]—A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract not to be performed within a year within Stat. Frauds, s. 4.—BELLER *v.* KLOTZ (Sask.), [1917] 1 W. W. R. 585.—**CAN.**

820 ii. —— ——.]—A contract for service, under which deft. is to receive "$700 a year, to be increased per year until it reaches $1,000," is a contract not to be performed within a year within Stat. Frauds.—FAIRGRIEVE *v.* O'MULLIN (1896), 40 N. S. R. 215.—**CAN.**

823 ii. —— *Share-milking agreement—Commencement & termination not stated.*]—*Held :* the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

PART IV. SECT. 1, SUB-SECT. 7.

832 i. *Agreement for sale of land—Part of contract in alternative—Divisible.*]—Although one part of a contract for the sale and purchase of land may not be binding under Stat. Frauds, another part of it, if in the alternative & distinct from the agreement to purchase (*e.g.* that either party will pay to the other a named sum if he does not fulfil his agreement to sell or purchase), may, on his refusal to do so, be enforced against the party refusing.—MERCIER *v.* CAMPBELL (1907), 14 O. L. R. 639.—**CAN.**

838 i. *Promise to pay debt of another —Subsequent credit given to guarantor as principal debtor—Not entire.*]—*Held :* as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under Stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it ; but as to goods supplied subsequently, although the account was continued in the buyer's name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—BATEMAN & MATTHEWS *v.* SPENCER, [1923] 4 D. L. R. 170 ; 16 Sask. L. R. 474 ; [1923] 1 W. W. R. 1281.—**CAN.**

845. *Annotations:*—For "**Refd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 30," read "**Dbtd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 30."

Add. Annotations:—**Consd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

845a. —— **Parol warranty to let for certain purposes.**]—Pltf., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & pltf. agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the consent of the superior landlord, & such consent was never in fact obtained. Pltf. took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—*Held:* pltf. had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into pltf. had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—CRAWFORD *v.* WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD. (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

—— **Implied warranties.**]—*See, generally,* LANDLORD & TENANT, Vol. XXXI., pp. 176–181.

859. *Add. Annotation:*—**Apld.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

859a. —— **What amounts to—Reconstitution of action.**]—Defts. on Jan. 9, 1924, agreed to sell a quantity of wood to a partnership firm. The firm, being in financial difficulties, formed a limited co., & duly notified defts. On July 9 it was orally agreed that the new co. should give defts. a cheque & three bills in respect of the indebtedness of the old firm, & that defts. should supply to the new co. the goods sold under the contract of Jan. 9, & accept the new co. as buyers of the goods. The new co. subsequently gave to defts. the cheque & three bills, but defts. did not deliver the goods under the contract of Jan. 9 to the new co. The two partners in the old firm then brought an action against defts. for breach of the contract of Jan. 9. To that action defts. put in a defence signed by counsel in which they pleaded, in par. 3, that it had been agreed by the contract of July 9 that the new co. should give defts. on the following Monday a cheque & three drafts, & that defts. would supply to the new co. instead of to the old firm the goods sold under the contract of Jan. 9, & accept that co. as buyers of the goods. The pleadings were then amended & the action was reconstituted, the partners in the old firm being struck out & the new co. substituted as pltfs., & the cause of action was stated to be a breach of the agreement of July 9. Defts. then amended their defence & relied upon Sale of Goods Act, 1893 (c. 71), s. 4, as a defence to that amended action:—*Held:* (1) par. 3 of the original unamended defence which was signed by counsel constituted a sufficient note or memorandum in writing of the contract signed by an agent of the party to be charged to satisfy the above sect., inasmuch as (2) the new departure with regard to the parties & the cause of action when the action was reconstituted must be treated as the commencement of the action within the rule in *Lucas* v. *Dixon*, No. 859, *ante*.—FARR, SMITH & CO. *v.* MESSERS, LTD., [1928] 1 K. B. 397; 97 L. J. K. B. 126; 138 L. T. 154; 44 T. L. R. 48; 72 Sol. Jo. 14; 33 Com. Cas. 101.

862. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

888. *Add. Annotation:*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

892. *Add. Annotations:*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

893. *Add. Annotations:*—**Consd.** National Sales Corpn. *v.* Bernardi, Bernardi *v.* National Sales Corpn., [1931] 2 K. B. 188. **Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

893a. —— ——.]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser:—*Held:* although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, the Statute of Frauds could not be set up as an answer to a claim under the bills.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

900. *Add. Annotation:*—**Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

900a. ——.]—FARR, SMITH & CO. *v.* MESSERS, LTD., No. 859a, *ante*.

900b. Contract rectified by court—On ground of mistake.]—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance of it as rectified, although apart from the

PART IV. SECT. 2, SUB-SECT. 3.—A.

900a i. *Contract rectified by court.*]—As against a defence of Stat. Frauds, the ct. has no power to reform a writing & then decree specific performance of it as reformed.—SWEITZER *v.* GRANGER (1923), 54 O. L. R. 70.—**CAN.**

ss. *Order in Council.*]—*Held:* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., Exch. C. R. 174.—**CAN.**

rectified contract there is no memorandum to satisfy Stat. Frauds.—U.S.A. *v.* MOTOR TRUCKS, LTD., [1924] A. C. 196; 93 L. J. P. C. 46; 130 L. T. 129; 39 T. L. R. 723, P. C.

914. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

923a. **Agreement to remain in force so long as another agreement continued.**]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it :—*Held :* the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent pltfs. from contending that the first agreement was to last for ten years.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANCAISE (1926), 42 T. L. R. 735.

924. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

930. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

933. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

954. *Add. Annotation :*—**Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

956. *Add. Annotation :*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

980. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

983. *Add. Annotation :*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

995. *Add. Annotation :*—**Apld.** *Re* Howden Hyslop's Contract, [1928] Ch. 479.

999. *Add. Annotations :*—*As to* (2) **Apld.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Folld.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445. *Generally*, **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1002. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

1017. *Add. Annotations :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46; Robinson *v.* Graves, [1935] 1 K. B. 579.

1022a. ——.]—On Nov. 21, 1918, pltf. paid deft. £10 & received the following receipt : "Received of Mr. A. £10 on account of house being sold for £500 from Mr. N. Possession to be taken in six weeks after date." Pltf. proved that on Nov. 21, 1918, before signing the receipt deft. verbally agreed to sell him his house & residence, N. Lodge, for £500 with possession in six weeks, & that the £10 was paid as a deposit on account of the purchase-money :—*Held :* the receipt was a sufficient memorandum of the verbal contract.—AUERBACH *v.* NELSON, [1919] 2 Ch. 383; 88 L. J. Ch. 493; 122 L. T. 90; 35 T. L. R. 655; 63 Sol. Jo. 683.

1027a. ——.]—HOWARD *v.* OKEOVER (1778), 3 Swan. 482; 36 E. R. 933.

1031. *Add. Annotations :*—**Refd.** Koskas *v.* Standard Marine Insce. (1927), 137 L. T. 165; L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394.

PART IV. SECT. 2, SUB-SECT. 3.—B.

8b. *Contract not absolutely recognised—Alleged variation of terms.*]—Deft.'s agents in A., on Oct. 14, 1914, telegraphed to deft. in business in O., that they had sold to pltfs. a carload of apples for shipment on opening of navigation. On Oct. 16, deft. answered accepting. On that day the agents sent deft. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, deft. wrote to the agents : "I will return contract, as I find you have worded contract 'opening of navigation 1915.' I will not accept contract on these terms unless they will pay for the goods when packed" :—*Held :* if the terms of the contract had not sufficiently appeared by the telegrams & the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

923 i. *Letter referring to previous correspondence—Contract constructively assented to therein.*]—Vendor's solr. wrote to purchaser's solr. : "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated : "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement" :—*Held :* the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (b).

ii. —— *From purchaser to partner—Stating terms of purchase.*]—In an action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation, they agreeing to our terms" :—*Held :* parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

971 i. *General rule.*]—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—MAHLER *v.* BARKER, [1924] 3 D. L. R. 292; 2 W. W. R. 796; 34 B. C. R. 136.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—B. (b).

1027 ii. —— *Admission of existence of contract.*]—Vendor's solr. wrote to purchaser's solr. : "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter, stated : "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement" :—*Held :* this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

1032. *Add. Citations :*—92 L. J. Ch. 598 ; 129 L. T. 659 ; 39 T. L. R. 576 ; 67 Sol. Jo. 638. C. A.

1051. *Add. Annotation :—As to* (2) **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

1059. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

1063. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1068. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1074. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1077. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1078. *Add. Annotation :—As to* (1) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1087. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1089. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1092. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1104. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

1107. After this case add "*See, also*, No. 1123a, *post*."

1109. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1112. *Add. Annotation :—As to* (2) **Consd.** Raingold *v.* Bromley, [1931] 2 Ch. 307.

1119. *Add. Annotations :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576 ; Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

1121. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1123a. —— **Purporting to enclose engrossment—Coupled with engrossment.**]—Circumstances (*see* LANDLORD & TENANT, No. 396a, *post*) in which :—*Held :* there was a sufficient memorandum of an oral contract.—HORNER *v.* WALKER, [1923] 2 Ch. 218 ; 92 L. J. Ch. 573 ; 129 L. T. 782.

1125. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1170. *Add. Annotation :*—**Apld.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1172. *Add. Annotations :*—**Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397 ; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

1176. *Add. Annotations :—As to* (1) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. *As to* (2) **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142. *Generally*, **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238

1178a. —— —— ——.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (ATKIN, L.J.).—*Re* A BANKRUPTCY NOTICE, [1924] 2 Ch. 76 ; 93 L. J. Ch. 497 ; 131 L. T. 307 ; 68 Sol. Jo. 458 ; [1924] B. & C. R. 188, C. A.

Annotation :—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

1184a. *S. P.* CROYSTON *v.* BANES (1702), Prec. Ch. 208 ; 24 E. R. 102.

Annotation :—**Consd.** Rondeau *v.* Wyatt (1792), 2 Hy. Bl. 63.

1185. *Add. Citation :—sub nom.* CHILD *v.* COMBER, 3

1186a. ——.]—HOSIER *v.* READ (1724), 9 Mod. Rep. 86 ; 88 E. R. 332.

1207. *Add. Annotations :—As to* (2) **Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465 ; Siqueira *v.* Noronha, [1934] A. C. 332. *Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

1208. *Add. Annotation :*—**Refd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

PART IV. SECT. 2, SUB-SECT. 4.—B. (d).

q. Read now "1034 i."

1034 ii. —— *Share-milking agreement.*]—*Held :* an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916. —**N.Z.**

1035 ii. —— *Share-milking agreement.*]—HALL *v.* GOLDSTONE, No. 1034 ii., *ante*.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

1062 i. —— *Parol acceptance of written offer.*]—Subsequent oral recognition of a memorandum previously signed, as containing all the terms of the contract, is a sufficient compliance with Stat. Frauds.—FRIEDMAN *v.* MAYER (1913), 25 W. L. R. 551 ; 5 W. W. R. 168 ; 14 D. L. R. 154 ; 7 Alta. L. R. 60.—**CAN.**

sc. *Sale & resale—No signature by sub-purchaser.*]—*Held :* where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—WORDDINGTON *v.* BUSH, [1923] 3 D. L. R. 884 ; 32 B. C. R. 434.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 6.—A.

1144 ii. —— ——.]—Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—A.

1195 ii. ——.]—A common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.—MCMILLAN *v.* WILLIAMS (1894). 9 Man. L. R. 627.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (a).

1200 ii. ——.]—An item in an account stated, being a sum charged for the price of a lot of land, does not make it incumbent on pltf. to prove the agreement respecting such land to have been made in writing.—DALTON *v.* BOTTS (1826), Tay. 281.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

f i. —— *Agreement to work in consideration of employer promising to devise really—Liability for services rendered.*]—*Held :* the employee was entitled to compensation on a *quantum meruit* for work performed & services rendered for deceased employer.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887 ; [1925] 3 W. W. R. 656.—**CAN.**

f ii. —— *Value of services—Admissibility of contract.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years ; it was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200 :—*Held :* although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROTHERS, LTD. (1928), 28 S. R. N. S. W. 425 ; 45 N. S. W. W. N. 130.—**AUS.**

1213a. —— **Refusal to pay for instalments until whole work published.**]—A purchaser contracted to purchase a series of engravings from pltfs., the publishers, by signing a circular to the following effect: "Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10*s*." After pltfs. had delivered the first four plates of the series, they called on deft. to pay for them, but he refused to do so till the entire set was published & delivered:—*Held:* the words "to be sent to me as published" made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—HOWELL *v.* EVANS (1926), 134 L. T. 570; 42 T. L. R. 310, D. C.

1214. *Add. Annotation:*—**Apld.** Way *v.* Latilla, [1937] 3 All E. R. 759.

1214a. *Add. Citations:*—[1923] 2 K. B. 723; 92 L. J. K. B. 886; 129 L. T. 830.

1217a. ——.]—ANON (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5, L. C.

1217b. ——.]—ANON. (*circa* 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5; 21 E. R. 842, L. C.

Annotation:—**Refd.** Maxwell *v.* Montacute (1720), Prec. Ch. 526.

1222. *Add. Annotation:*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1224. *Add. Annotation:*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1234a. ——.]—**Stat. Frauds not pleadable where the agreement is executed in part.**—AYLESFORD'S (EARL) CASE (1727), 2 Stra. 783; 93 E. R. 845.

Annotation:—**Consd.** Whitchurch *v.* Bevis (1789), 2 Bro. C. C. 559.

1235. *Add. Annotation:*—**Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

1245. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1247. *Add. Annotation:*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1248a. ——.]—*Re* A BANKRUPTCY NOTICE, No. 1178a, *ante*.

1263a. —— ——.]—In an action for the specific performance of an agreement, where it does not appear from the statement of claim whether the agreement was in writing or not, a defence founded on the Stat. Frauds cannot be raised by demurrer.—FUTCHER *v.* FUTCHER (1881), 50 L. J. Ch. 735; 45 L. T. 306; 29 W. R. 884.

1265. *Add. Annotation:*—**Folld.** Hills & Grant, Ltd. *v.* Hodson, [1934] Ch. 53.

1269. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; L. *v.* L. (1934), 50 T. L. R. 441; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

Part V.—Consideration.

1274. *Add. Annotations:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; *Re* Cuthbert, *Ex p.* Monnoyer British Construction Co. *v.* Trustees, [1936] 1 All E. R. 342.

PART IV. SECT. 3, SUB-SECT. 4.—A.

1217 i. *General rule.*]—Stat. Frauds & Mineral Act, B. C., s. 19, will not be allowed to be made instruments of fraud.—ROBERTS *v.* ROBERTS, [1923] 2 W. W. R. 137.—**CAN.**

1225 i. *Conveyance of interest in land—Whether evidence of trust admissible.*]—SMITH *v.* BENOR (1913), 24 O. W. R. 521; 4 O. W. N. 985; 10 D. L. R. 824.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

1237 viii. —— —— ——.]—The act of part performance relied on must be unequivocally referable to the agreement alleged.—TILLEY *v.* CLEARY & HENDERSON (1887), 7 Nfld. L. R. 209.—**NFLD.**

1237 ix. —— —— ——.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages:—*Held:* not to point unmistakably to a contract by the father to leave his property to the son, & the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—**CAN.**

1237 x. —— —— ——.]—A mother undertook verbally to make a will leaving to her son W. two farms in D., & thereby induced W. to convey his farm in B. to A. & to pay A. £200. She afterwards made a will which gave effect to this verbal undertaking, but subsequently revoked it, leaving W. merely a life interest in the two farms:—*Held:* there was a sufficient act of part performance by W. to take the case out of the operation of Stat. Frauds.—LOWRY *v.* REID, [1927] N.142.—**IR.**

1237 xi. —— —— ——.]—Where there was a parol agreement between pltf. & deft. to the effect that pltf. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into possession & erected structures thereon to pltf.'s knowledge, where it appeared that pltf. must have realised deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of pltf. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building:—*Held:* in a suit of ejectment by the lessor, that deft. not having obtained a lease in conformity with the provision of Transfer of Property Act, s. 107, read with Registration Act, s. 49, can resist ejectment, only if the case can be brought within the range of one or other of those principles of equity which have been held to apply to this country.—ANIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

1237 xii. —— —— ——.]—CHIPUKE *v.* SHANDRO, [1930] 2 D. L. R. 567.—**CAN.**

1237 xiii. —— —— ——.]—KORYCKI *v.* KORYCKI, [1937] 3 W. W. R. 419.—**CAN.**

PART IV. SECT. 4.

1258 i. *Since Judicature Acts—Necessity for pleading statute.*]—In an action claiming damages for conversion of goods, if it appears that the title to the goods is based on a contract, deft. may urge that such contract is void under Stat. Frauds, though no such defence is pleaded. It is only where the action is between the parties to the contract, which one of them seeks to enforce against the other, that deft. must plead Stat. Frauds if he wishes to avail himself of it.—KENT *v.* ELLIS (1900), 31 S. C. R. 110 32 N. S. R. 549.—**CAN.**

1258 ii. —— ——.]—The defence of Stat. Frauds cannot be raised, unless it has been pleaded.—DOMINION MEAT CO. *v.* JAMESON (1917), 12 Alta. L. R. 353.—**CAN.**

sb. *Half of net profits in freight savings.*]—MCKENZIE *v.* JOSEPH AZAR, LTD., [1931] 3 M. P. R. 265.—**CAN.**

PART V. SECT. 1.

1274 iv. ——.]—A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—CONRADIE *v.* ROUSSOUW, [1919] App. D. 279.—**S. AF.**

1276. *Add. Annotation :*—**Refd.** Rekstin *v.* Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

1285a. —— Promise to pay debt for which promisor not liable — Agreement void.]—BREALEY *v.* ANDREW (1837), 7 Ad. & El. 108; 2 Nev. & P. K. B. 114; Will. Woll. & Dav. 481; 6 L. J. K. B. 199; 1 Jur. 526; 112 E. R. 411.

1285b. —— Promise to employ person— No obligation on promisee to act.]—*Held :* there was no consideration for the agreement.—PAYNE *v.* NEW SOUTH WALES COAL & INTERCOLONIAL STEAM NAVIGATION CO. (1854), 10 Exch. 283; 24 L. J. Ex. 117; 156 E. R. 450.

Annotation :—**Refd.** Kelner *v.* Baxter (1866), L. R. 2 C. P. 174.

1299. *Add. Annotations :*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1350. *Add. Annotation :*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

1352. *Add. Annotations :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447; Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

1354a. Communication of confidential information.]—Patentees of a system of mechanical fittings for the bodies of motor-cars applied in May, 1928, for provisional protection in England in respect of certain particulars of the system. In July, 1928, the patentees approached certain manufacturers in this country & gave them certain information verbal & documentary with a view to development of the system & its application to the manufacturers' cars to the advantage of both parties. The information was given in confidence & for the purposes of a future agreement that the patentees should give & the manufacturers should accept a licence to use the patent rights of the patentees. In an action tried before a judge & jury the jury found that the two following agreements had been entered into between the patentees & the manufacturers: (*a*) that the manufacturers should accept a licence from the patentees, & (*b*) that the manufacturers should use the information disclosed only for the purposes of the licence. They also found that the manufacturers had committed breaches of both the agreements, & they awarded heavy damages in respect of both breaches. The manufacturers appealed. The Ct. of Appeal held that the first agreement was not proved, & that the second had been proved, but that the damages for the breach were only nominal. The patentees appealed to this House to establish the first agreement or to restore the verdict of the jury as to the damages for breach of the second agreement. There was a cross-appeal by the manufacturers to reverse the decision of the Ct. of Appeal upholding the second agreement & the breach thereof :—*Held :* the first agreement was not proved; the second agreement was proved, for that there was ample evidence to support the findings of a contract & the breach thereof, the giving of the information for a particular purpose being, on the analogy of a contract of bailment, good consideration for a promise not to use it for any other purpose, & its use for another purpose being a breach. The verdict of the jury assessing damages for breach of the second agreement must be restored.—MECHANICAL & GENERAL INVENTIONS CO., LTD. & LEHWESS *v.* AUSTIN & AUSTIN MOTOR CO., LTD., [1935] A. C. 346; 104 L. J. K. B. 403; 153 L. T. 153, H. L.

1383. *Add. Annotations :—Generally,* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Riley *v.* Brown (1929), 98 L. J. K. B. 739.

1421. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

1421a. —— By agent of joint owner of chattel to co-owner—Part of proceeds of sale of chattel.]—*Held :* sufficient consideration for a promise to deliver to the agent a bill of exchange or the equivalent amount in cash.—SURTEES *v.* LISTER (1861), 7 H. & N. 1; 30 L. J. Ex. 369; 158 E. R. 367.

1432a. Agreement to grant annuity.]—A mutual agreement by several to grant an annuity to a third party may be a consideration

PART V. SECT. 2.

1275 xiv. ——.]—Pltf.'s goods being about to be sold under a distress for rent, it was agreed between pltf. & deft. that if deft. would go to the sale & purchase the goods, pltf. would at a future day repay him the price & interest, when deft. was to give him the goods. Deft. went to the sale & purchased the goods; but, although some months afterwards pltf. tendered the amount & interest, deft. did not deliver the goods :—*Held :* there was no contract on which deft. could be held liable for damages.—TIMMINS *v.* SURPLES (1876), 26 C. P. 49.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A.

sd. *Promise to allow offer of option to promisor.*]—A promise to allow a third party to offer the promisor an option on shares does not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—B. (a).

sf. *Abandonment of claim.*]—Where any question arising between the parties on a previous verbal agreement had been compromised, & the compromise embodied in a written agreement; *Held :* sufficient consideration for the compromise was an abandonment of a claim by each party.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—B. (e).

sk. *Agreement to make another contract.*]—There may be a contract the consideration for which is the making of some other contract. "If you will make such & such a contract I will give you one hundred pounds" is in every sense of the word a complete legal contract. It is collateral to the main contract, but each has an independent existence, & they do not differ in respect of their possessing to the full the character & status of a contract. But such collateral contracts must from their very nature be rare &, since their sole effect is to vary or add to the terms of the principal contract, they are viewed with suspicion by the law. They must be proved strictly. Not only the terms of such contracts but the existence of an *animus contrahendi* on the part of all the parties to them must be clearly shown.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

sm. *Promise to offer prayers.*]—Pltf. sued for the sum of £1,105 3*s.* 0*d.*, being the balance alleged to be due for work & labour done, moneys expended & services rendered as architect for deft., Canon M. & the C. & P. Religious Order, in connection with the planning & erection of buildings at B., in the County of A. Defts. pleaded : (*a*) an agreement in which it was a term that the Religious Order should perform certain services in the nature of prayers for the benefit of pltf. & his family, & that pltf. would accept performance of the said services, together with the payment of a sum of £200 in full satisfaction of this portion of his claim; (*b*) that the labour & work were done, the money expended & the services rendered voluntarily & as an act of courtesy by pltf.; (*c*) that pltf.'s claim in so far as it related to all items prior to Jan. 15, 1928, was barred by Stat. of Limitations :—*Held :* there was no sufficient consideration in law for the agreement.—O'[illegible] *v.* MURPHY, [1936] N. I. 16.—I

sufficient to support the grant.—BENTLEY *v.* MACKAY (1862), 31 Beav. 143; 31 L. J. Ch. 697; 6 L. T. 632; 8 Jur. N. S. 857; 10 W. R. 593; 54 E. R. 1092; *affd.*, 4 De G. F. & J. 279, L. JJ.

1440. *Add. Annotations :*—**Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1441. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1459a. ——.]—S., a customer of bkpt., a stock-broker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled :—*Held :* the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

1460. *Add. Annotation :*—**Consd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1462. *Add. Annotation :*—**Refd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1475. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1525. *Add. Annotations :*—**Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442. **Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1527. *Add. Annotations :*—**Distd.** Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416. **Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442. **Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

1536. *Add. Annotation :*—**Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

1542. *Add. Annotation :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1550. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

1567. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

1569. *Add. Annotation :*—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1575. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

1578. *Add. Annotation :*—**Consd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1588. *Add. Annotation :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1589. *Add. Annotation :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1590. *Add. Annotations :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330. **Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

1630. *Add. Annotation :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

1631. *Add. Annotation :*—**Refd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

1641. *Add. Annotation :*—**Consd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

1643a. ——.]—The ct. does not inquire into the adequacy of the consideration for a contract & where a party leaves the determination of all matters under a contract in the discretion of the other party that does not in all circumstances constitute a total want of consideration. — GAUMONT-BRITISH PICTURE CORPN., LTD. *v.* ALEXANDER, [1936] 2 All E. R. 1686; 80 Sol. Jo. 816.

Annotation :—**Consd.** Warner Bros. Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

PART V. SECT. 3, SUB-SECT. 3.—A.

1445 iii. ——.]—MOBERLY *v.* BAINES & SHORTIS (1857), 15 U. C. R. 25.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B. (a).

1453 iii. ——.]—Where a creditor grants an extension of time for payment of a past due debt & at the same time obtains from debtor security for the debt, the proper inference to be drawn, in the absence of evidence to the contrary, is that the extension was granted as a result of the creditor's obtaining the security.—O'BRIEN *v.* STEDBINS & MULLEN, [1927] 3 D. L. R. 274; [1927] 2 W. W. R. 176; 21 Sask. L. R. 478.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A.

1570 i. *Discontinuance of action.*]—T. a member of a solrs.' partnership, borrowed money on the credit of the partnership, without the knowledge or consent of the remaining partner, W. A demand having been made by the lender against both partners for repayment of the amount of the loan, a compromise was arranged between the lender & W. of the claim against the latter. Subsequently the lender took against W. to recover the balance of the loan on the ground that the compromise arranged was without consideration & he was not bound thereby :—*Held :* W. entered into the compromise in the honest belief that he had a good defence to the claim, & this fact was sufficient to constitute a valid consideration for the compromise.—O'CONNOR *v.* WALDEGRAVE, [1928] N. Z. L. R. 480.—**N.Z.**

PART V. SECT. 3, SUB-SECT. 4.—B.

1581 ii. ——.]—The abandonment of a *bonâ fide* claim of right is a consideration sufficient to support a promise by the other party, even though the claim was in truth unfounded.—MCCONNELL *v.* DETWEILLER, [1930] 1 W. W. R. 79; 1 D. L. R. 888; 24 S. L. R. 202.—**CAN.**

PART V. SECT. 4.

a i. —— ——.]—Inadequate consideration alone is not sufficient to justify setting aside a settlement, the

1660. *Add. Annotations:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

1662. *Add. Annotations:*—**Refd.** The Lord Strathcona, [1925] P. 143; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

1669. *Add. Annotation:*—**Consd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

1685. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1688. *Add. Annotation:*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

1693. *Add. Annotation:*—**Consd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

1701. *Add. Annotation:*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1740a. —— ——.]—Promise by a father to his son-in-law after the marriage raises a consideration.—MARSH *v.* KAVENFORD (1587), Cro. Eliz. 59; 78 E. R. 319; *sub nom.* MARSH & RAINSFORD'S CASE, 2 Leon. 111.

Annotations:—**Consd.** Townsend *v.* Hunt (1635), Cro. Car. 408. **Refd.** Riggs *v.* Bullingham (1599), Cro. Eliz. 715; A.-G. *v.* Royal College of Physicians (1861), 30 L. J. Ch. 757.

1744. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1780. *Add. Annotation:*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1788. *Add. Annotation:*—**Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

1817. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman. Hughes *v.* Hughes (1928), 139 L. T. 416.

1822a. ——.]—R. *v.* LOPEN (INHABITANTS) (1788), 2 Term Rep. 577; 100 E. R. 310.

1828a. —— ——.]—GARBREY *v.* BROWN (1588), Gouldsb. 94; 75 E. R. 1018; *sub nom.* BROWNE *v.* GARBOROUGH, Cro. Eliz. 63.

1837. *Add. Annotation:*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1838. *Add. Annotation:*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1839. *Add. Annotation:*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

1856. *Add. Annotation:*—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

1856a. ——.]—DE PARRELL *v.* WALKER (1932), 49 T. L. R. 37; 76 Sol. Jo. 850.

1871. *Add. Annotations:*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1876. *Add. Annotation:*—**Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

1877. *Add. Annotation:* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1878. *Add. Annotations:* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500; Suhr (R. F. H.) *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1887a. *Add. Citations:*—[1923] 2 Ch. 452; 92 L. J. K. B 944; 129 L. T. 624; 67 Sol. Jo. 656.

1888. *Add. Annotations:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett, [1934] Ch. 1.

1903. *Add. Annotation:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1905. *Add. Annotations:*—**Consd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445;

inadequacy not being so gross as to prove fraud or imposition.—GISSING *v.* EATON (T.) Co. (1911), 20 O. W. R. 324; 3 O. W. N. 219; 25 O. L. R. 50. —**CAN.**

1653 i. *Whether consideration adequate.*]—GREENHAM *v.* WATT (1866), 25 U. C. R. 365.—**CAN.**

PART V. SECT. 5.

1659 v. ——.]—One who voluntarily & meaning to do so pays the debt of another cannot get his money back from the creditor.—BENSON *v.* GRAND UNION HOTEL Co., [1937] 2 W. W. R. 253.—**CAN.**

sk. *Third party to be allowed to offer option.*]—M. gave G. an option on shares owned by M. in a co.; the consideration expressed in the option was G.'s agreement "to make a similar proposition" to another shareholder:—*Held:* the alleged consideration was in effect a mere promise by G. to let such other shareholder give him an option similar to that given by M., & such promise did not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—A.

1689 i. *Promise to perform existing agreement.*]—Pltf. agreed to build a house for deft. for $6,464. When the house was nearly finished a fire took place in it, doing considerable damage. Deft. had insured the building & received $2,150 from the insurers. Pltfs. effected no insurance. After the fire, deft. asked pltfs. to go on with & complete the work, & gave them to understand that she would pay over the $2,150 to them:—*Held:* pltfs. were bound to complete the work, & the promise, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—SMITH *v.* DAWSON (1923), 53 O. L. R. 615.—**CAN.**

k i. —— *Although unenforceable under Statute of Frauds.*]—Pltfs. acted as housekeepers for deft. in pursuance of an oral agreement that if they would do so his home would become theirs upon his death. Later he promised them that if they would give up their rights under said agreement & leave his home he would pay them $1,000 on or about Oct. 1, 1934. That offer was accepted & pltfs. left. Pltfs. sued for the $1,000:—*Held:* although the agreement first made was unenforceable because of sect. 4 of Stat. Frauds & although pltfs. could not rely on part performance since the acts performed were not necessarily referable to said agreement, yet there was good consideration to support the promise to pay the $1,000 & pltfs. were entitled to succeed thereon.—FAIRGRIEF *v.* ELLIS, [1935] 1 W. W. R. 363; 2 D. L. R. 806; 49 B. C. R. 413. —**CAN.**

PART V. SECT. 12, SUB-SECT. 1.

1867 i. *Non-performance of condition.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is a part of the consideration, & the observance thereof is a condition precedent to the renewal of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & CO., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—**CAN.**

sl. *Correspondence course in law—Not a qualification for practice.*]—A. signed a contract to receive a correspondence course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the fees agreed to be paid:—*Held:* this insufficiency did not amount to a failure of consideration.—RULE *v.* BRADNER, [1923] 4 D. L. R. 81.—**CAN.**

sm. *Alteration to building—Removed under bye-law.*]—An alteration made to a building proved to be in violation of a bye-law & had to be removed. The owner set up a defence to an action for payment for such alteration that there had been a failure of consideration:—*Held:* the owner was bound to pay.—ORPHEUM THEATRICAL Co. *v.* VULCAN ENGINEERING CON-Co., [1923] 3 D. L. R. 52.—**CAN.**

PART V. SECT. 12, SUB-SECT. 2.

sp. *Option-contract—Non-completion.*]—GOULDING *v.* RABINOVITCH, [1927] 3 D. L. R. 820; 60 O. L. R. 607.—**CAN.**

PART V. SECT. 12, SUB-SECT. 3.—A.

1888 ii. —— ——.]—BUTTERFIELD *v.* CORMACK & MACKIE (1913), 25 W. L. R. 457; 13 D. L. R. 817; 7 Alta. L. R. 26.—**CAN.**

Bernard *v.* Williams (1928), 139 L. T. 22; Low *v.* Fry (1935), 152 L. T. 585.

1914a. *S. P.* ANON (1538), Bro. N. C. 16; 73 E. R. 853.

1919. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1927. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations :*—*As to* (1) **Refd.** L. *v.* L., [1931] P. 63. *Generally,* **Refd.** Sorrell *v.* Smith, [1925] A. C. 700; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1940. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** Nash *v.* Stevenson Transport, Ltd., [1936] 2 K. B. 128.

1952. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1959. *Add. Annotations :*—**Apld.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Haseldine *v.* Hosken, [1933] 1 K. B. 822; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

1961. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1967. *Add. Annotations :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340; Robinson *v.* Graves, [1935] 1 K. B. 579.

1971. *Add. Annotations :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311; *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

1973. *Add. Annotations :*—*As to* (1) **Apld.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. *As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Gilford Motor Co. *v.* Horne, [1933] Ch. 935. *Generally,* **Refd.** Wyatt *v.* Kreglinger & Fernau (1833), 49 T. L. R. 264.

1977. *Add. Annotations :*—*As to* (2) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052.

1979. *Add. Annotation :*—*As to* (2) **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1981. *Add. Annotations :*—*As to* (1) **Consd.** James *v.* British General Insce., [1927] 2 K. B. 311. **Refd.** Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052. As to (2) **Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197. *Generally,* **Refd.** Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

1983. *Add. Annotation :*—*As to* (4) **Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1984. *Add. Annotations :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

1986. *Add. Annotation :*— **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1992. *Add. Annotations :*—*As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *As to* (4) **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052. *Generally,* **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1998. *Add. Annotation :*—**Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

2011. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2011a. —— **Knighthood.**]—If a contract which is illegal as being contrary to public policy has any element of turpitude in it the parties to the contract are *in pari delicto,* & if one of the parties to the contract has been defrauded, no action for damages can be maintained by the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract :—*Held :* a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as P. knew that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the

PART VI. SECT. 2.

c i. *S. P.* KANWAR BHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

PART VI. SECT. 3.

1950 iv. —— ——.] — A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466; 66 D. L. R. 475.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—A.

st. *Manufacture of goods with false description.*] — Pltf. co.'s salesman purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been manufactured in England :—*Held :* at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—BARNET GLASS RUBBER CO., LTD. *v.* MCDONALD, [1922] N. Z. L. R. 767; Gaz. L. R. 213.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

1977 iv. ——.]—A contract will not be declared unenforceable as being against public policy, unless it belongs to a class of contracts that the law recognises as being within that category. The ct. cannot invent a new head of public policy.—WADGERY *v.* FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, [1925] 2 K. B. 1; 93 L. J. K. B. 1066; 133 L. T. 135; 40 T. L. R. 886; 69 Sol. Jo. 107.

Annotation :—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

(*h*) *Agreements Relating to Bankruptcy* (Vol. XII., p. 248).

To the existing cross-references add as follows :—

Agreement for withdrawal of petition.]—*See* BANKRUPTCY, No. 1366a, *ante*.

Agreement for improper distribution of estate.]—*See* BANKRUPTCY, No. 4366a, *ante*.

Agreements not to oppose discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 546, 547.

Agreements for payment of debts barred by discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 589–592.

Agreements for procuring assent of creditors to composition deeds.]—*See* BANKRUPTCY, Vol. V., pp. 1120, 1139–1145.

2028. *Add. Annotation :*—**Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

2075. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2084a. —— Marine insurance—Not expressed in sea policy.]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (LORD SUMNER).—NAGOREMULL *v.* TRITON INSURANCE CO., LTD. (1924), 41 T. L. R. 168, P. C.

2089. *Add. Citation :*—15 Asp. M. L. C. 566.

Add. Annotation :—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

2089a. Agreement for recovery of betting debt.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him & deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement :—*Held :* the agreement was illegal & void, being contrary to pubilc policy, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

2089b. Agreement in breach of trade usage.]—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—BARNETT *v.* SANKER (1925), 41 T. L. R. 660; 69 Sol. Jo. 824.

PART VI. SECT. 4, SUB-SECT. 2.—B. (f) iii.

sz. *Assignment of money due under mail-contract.*]—A mail-contract prohibited the assignment of moneys due thereunder without the consent of the Postmaster-General :—*Held :* such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—HODDER & TOLLEY, LTD. *v.* CORNES, [1923] N. Z. L. R. 876.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (g).

sa. *Evasion of revenue laws—False invoice—Claim by vendor particeps criminis.*]—Where merchants residing in the United States sold goods to deft., & combined with him in furnishing false invoices to evade the revenue laws of this Province in respect of the amount of duties to be paid on the importation of such goods :—*Held :* pltfs. could not recover their value from deft. in this country.—MULLEN *v.* KERR (1841), 6 O. S. 171.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (i) i.

2034 ii. —— ——.]—Deft., a married woman, & known to pltf., with whom she had had illicit relations, to be married, promised him in writing that she would pay him $10,000 if he would "delay getting married until she becomes a widow." Deft. became a widow & pltf. brought an action for the $10,000 :—*Held :* the agreement was unenforceable, on the ground that it was contrary to public policy & morals.—HLIBCZUK *v.* MINUK, [1933] 2 W. W. R. 20.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (i) iii.

sg. *Contract to pay alimony—Collusive divorce.*]—A contract to pay alimony, based on agreement for collusive divorce, the consideration being that after divorce deft. should marry pltf.'s daughter, is illegal as against public policy.—CAMPBELL *v.* CAMPBELL, [1936] 4 D. L. R. 52; 11 M. P. R. 79.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (t).

2086 iii. ——— ———.]—Deft. employed pltf., a land agent & member of a municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deft. commission on the sale :—*Held :* the private interest of pltf. under his agreement with deft. had a tendency to interfere with the proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—WOOD *v.* LITTLE, [1922] V. L. R. 11; 29 C. L. R. 564; 27 Argus L. R. 400.—**AUS.**

2086 iv. ——— ———.]—*Held :* a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—CARR-HARRIS *v.* CANADIAN GENERAL ELECTRIC CO. (1920), 48 O. L. R. 231; 55 D. L. R. 506; 19 O. W. N. 591.—**CAN.**

2086 v. ——— ———.]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with the employees of the Govt. & that he will exercise such influence to bring about the sale :—*Held :* the contract is illegal.—MACMILLAN *v.* MOONEY, [1924] 4 D. L. R. 762; 3 W. W. R. 458.—**CAN.**

sb. *Agreement between soldier & vendor of land to Soldier Settlement Board for payment to vendor by soldier of additional sum.*]—*Held :* not unenforceable as being against public policy.—WADGERY *v.* FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

sc. *Agreement to offer prayers for the success of litigation.*]—An agreement, whereby one party consents to remunerate another for the latter to offer prayers to God for the success of litigation in which the former is engaged, is not contrary to public policy.—BALASUNDARA MUDALIAR *v.* MAHAMED OOSMAN SAHEB (1929), I. L. R. 53 Mad. 29.—**IND.**

PART VI. SECT. 4, SUB-SECT. 4.—B. (a).

2091 viii. ——.]—HENRY *v.* DICKIE (1896), 27 O. R. 416.—**CAN.**

2091 ix. ——.]—*Held :* a deed was an illegal consideration as being the outcome of a bargain to stifle a prosecution against B. for an indictable offence, & was void. The offence for which B. was liable to prosecution was in the nature of larceny, & was an indictable offence of a public nature.—GOLDS-

2098. *Add. Annotation :*—**Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2102a. ——.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160 ; 5 Vin. Abr. 408, pl. 20 ; 22 E. R. 130, L. C.

2112. *Add. Annotation :*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2114. *Add. Annotation :*—**Refd.** Greenwood *v.* **Martins Bank, Ltd. (1931), 47 T. L. R. 607 ;** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2118. *Add. Annotation :*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

2122. *Add. Annotations :—As to* (1) **Refd.** Wylie *v.* **Lawrence Wright Music Co. (1932), 96 J. P.** 156 ; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509. *As to* (2) **Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2127. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2129. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2136. *Add. Annotation :*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

2147. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2152. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2153. *Add. Annotation :*—**Apld. Mansfield *v.* Robinson, [1928] 2 K. B. 353.**

2154a. Agreement not to disclose confession of misdemeanour.] — Extensive frauds were being carried out on certain newspapers which promoted prize competitions. A sorter, who had been in the employ of the proprietors, & was, as a condition of his employment, a member of the appropriate trade union, made a written statement to the proprietors implicating himself & others in the frauds. A condition of the agreement was that the contents of the statement should not be divulged to any third party. Deft. co. later forwarded the statement to pltf.'s trade union, & pltf. was expelled, in consequence of which he was unable to obtain further employment. In an action for damages for breach of the agreement :—*Held :* (1) the agreement was contrary to public policy & therefore invalid ; (2) on the assumption that the agreement was a valid one, any loss suffered by pltf. was due to his own wrongful act, & he would be entitled only to nominal damages.—HOWARD *v.* ODHAMS PRESS, LTD., [1937] 2 All E. R. 509 ; 106 L. J. K. B. 675 ; 157 L. T. 191 ; 53 T. L. R. 570 ; 81 Sol. Jo. 376, C. A.

2156. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v* Driscoll, [1929] 1 K. B. 470 ; Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2185a. —— Contract between wife & third party—Valid.]—MATHER *v.* RHODES (1934), 78 Sol. Jo. 414.

2186. *Add. Annotations :*—**Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2187. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2188. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2189. *Add. Annotations :*—**Apld.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2190a. —— —— Inference of new promise after divorce.]—Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy :—*Held :* although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of the wedding, & pltf. was entitled to recover.—SKIPP *v.* KELLY (1926), 42 T. L. R. 258, P. C.

Annotation :—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2190b. Promisor married—Promise made after decree nisi—Immoral relationship before promise.] — Resp.'s wife petitioned for a divorce on the ground of resp.'s adultery with applt., & a decree *nisi* was duly pronounced. On two occasions after the pronouncement of the decree *nisi*, but before the decree was made absolute, resp. promised to marry applt. immediately after the decree had been made absolute. The decree was made absolute in due course, but resp. then

BROUGH, MORT & CO., LTD. *v.* BLACK (1926), 29 W. A. L. R. 37.—**AUS.**

2091 x. ——.]—*Held :* an agreement the consideration of which was the compounding of a compoundable offence was not forbidden by law & was valid ; (2) an agreement to compound a non-compoundable offence is void in law.—AHMED HASSAN *v.* HASSAN MAHOMED MALEK (1928), I. L. R. 52 Bom. 693.—**IND.**

2091 xi. ——.]—Pltf. paid deft. $100 & made in deft.'s favour a chattel mtge. for $400 in order to stifle a prosecution for a public offence :—*Held :* pltf. was entitled to a judgment setting aside the chattel mtge. ; for pltf., upon the evidence, was not *in pari delicto* with deft.—STEINBERG *v.* COHEN, [1930] 2 D. L. R. 916 ; 64 O. L. R. 545.—**CAN.**

sd. *Compromise signed in hope of avoiding prosecution—No promise not to prosecute.*]—DIKUR *v.* SHAVCHOOK (Alta.), [1929] 2 D. L. R. 232.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.—B. (b).

2096 i. ————.]—A contract is not vitiated because it was induced by a threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution. — BOW *v.* PFEIFFER & GILBERT, [1924] 3 D. L. R. 854 ; 2 W. W. R. 1149.—**CAN.**

2098 iv. —— —— ——.]—D. was in the employ of pltfs. & was charged with criminal breach of trust in respect of a cheque for Rs.30,000 which he cashed for pltfs. D. paid pltfs. Rs.15,000, & D. & his brother R. executed a mtge. in favour of pltfs. with a view to withdrawal of the prosecution. Pltfs. put in a petition stating the facts, & the prosecution was dropped :—*Held :* the agreement was not against public policy.—DWIJENDRA NATH MULLICK *v.* GOPIRAM GOBINDARAM (1925), I. L. R. 53 Calc. 51.—**IND.**

PART VI. SECT. 4, SUB-SECT. 5.—G.

2190 i. *Promisee married—Promise to marry conditioned on divorce.*]—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce :—*Held :* any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—CAULFIELD *v.* ARNOLD (No. 1), [1925] 1 D. L. R. 295 ; [1925] 1 W. W. R. 664 ; 34 B. C. R. 404.—**CAN.**

refused to marry applt., who thereupon brought an action for breach of promise:—*Held:* (1) there was no rule of public policy which prevented the contract from being enforced; (2) the enforcement of a contract is not against public policy unless the impugned contract leads, or is likely to lead, to injurious action; (3) the duty of the cts. is to expound & not to expand public policy, & the doctrine should be invoked only in clear cases, in which the harm to the public is substantially incontestable, & does not depend upon the idiosyncratic inferences of a few judicial minds; (4) the whole position of married parties is changed & fixed not by a mere separation or the lodging of a petition for divorce, but by the pronouncement of a decree *nisi*, & the further period of waiting after that decree is imposed in the public interest in order to secure full disclosure before the ct.—FENDER *v.* MILDMAY, [1937] 3 All E. R. 402; 106 L. J. K. B. 641; 157 L. T. 340; 53 T. L. R. 885; 81 Sol. Jo. 549, H. L.

2190c. —— Promise to marry conditioned on obtaining decree of nullity.]—*Semble:* an agreement between a married man & an unmarried woman, who knows that he is married, that they will marry if & when he obtains a decree of nullity of his marriage, is illegal & void as being contrary to public policy.

Semble: where an unmarried woman, in reliance on representations by a married man that he can obtain a decree of nullity of his marriage & will marry her thereafter, enters into an immoral association with him & thereby suffers damage, she cannot, on the representations proving to have been false, maintain against him an action for deceit, being herself a party to the immoral association.—SIVEYER *v.* ALLISON, [1935] 2 K. B. 403; 104 L. J. K. B. 597; 153 L. T. 239; 51 T. L. R. 534; 79 Sol. Jo. 479.

2195. *Add. Annotation:*—**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

2195a. ——.]—Pltfs., a private inquiry agency, carried on the business of providing to approved subscribers confidential reports on cos., firms & persons engaged in trade. The terms upon which the reports were issued were (*inter alia*) that all statements were strictly confidential, & that every subscriber should indemnify pltfs. against any loss or damage they might suffer from the breach by the subscriber of any of the conditions of the contract. Deft. co., an approved subscriber, through its managing director, requested pltfs. to furnish information regarding the X. Co. for whom they were agents. The report, being of an unfavourable nature, was communicated by deft. co. to their own solrs. Deft. M., a director of deft. co., with the approval of its managing director, applied for & was furnished with similar information regarding the X. Co., & on the same terms & conditions. M. at once informed the managing director of deft. co. of its contents. The matter having been brought to pltfs.' notice by the co. reported on, both defts. at the request of pltfs. returned the unfavourable reports. Pltfs., an action for libel having been brought against them in the King's Bench Division, commenced proceedings against both defts. for an injunction to restrain disclosure of the unfavourable reports which had been furnished, & a declaration that they were liable to indemnify pltfs. against any loss or damage arising from this disclosure. They also claimed damages:—*Held:* (1) deft. co. did not disclose the report to any person other than its own solrs. & that this did not constitute a breach of contract with pltfs. within the meaning of the agreement; (2) deft. M. became a subscriber to pltfs.' confidential reports for the purpose of obtaining a report on the X. Co. & communicating the result to the managing director of deft. co.; (3) neither M. nor the managing director of deft. co. was acting as the agent of the deft. co. & no breach of contract committed by M. was induced by deft. co. The action against deft. co. therefore failed; (4) the agreement entered into by M. not to disclose the confidential information furnished to him & to indemnify pltfs. for any loss or damage which they might suffer from a breach by a subscriber of the conditions upon which reports were furnished, was not void as being against public policy; (5) the disclosure by deft. M., although a breach of this contract, did not create the liability of pltfs. to be sued for libel; this liability did not arise directly or indirectly out of any act of deft. M., & was not therefore within the scope of the express indemnity contained in pltfs.' agreement with M. The only liability for damages, therefore, resulted from M.'s own breach of contract, & that in the circumstances such damages were merely nominal.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL & CARAPANAYOTI & CO., LTD., [1933] Ch. 190; 102 L. J. Ch. 34; 148 L. T. 111; 48 T. L. R. 670.

2199. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1. K. B. 470.

2214. *Add. Annotation:*—**Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2215. *Add. Annotation:*—**Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2217. *Add. Annotation:*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

PART VI. SECT. 4, SUB-SECT. 5.—H.

sl. *Agreement for support of adulterine bastard.*]—*Held:* a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable.—KIJKO *v.* BACYZSKI (1922), 51 O. L. R. 225.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

2200 iii. ——.]—If a person contracting to operate a boiler & engine has not a certificate or permit under Boilers Act, R. S. A., 1922 (c. 191), authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*.—MILNE *v.* PETERSON, [1925] 1 D. L. R. 271; [1924] 3 W. W. R. 957.—**CAN.**

2200 iv. ——.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—MURSHIDABAD (NAWAB) *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

p i. —— *Action for transport of goods —No certificate held.*]—Pltf.'s claim against deft. was for a balance due for goods sold & delivered & for services rendered by pltf. by the transportation in their motor truck of deft.'s store stock & furniture. Deft. contended that pltfs. could not recover for this

2220. *Add. Annotation :*—**Refd.** Siveyer *v.* Allison, [1935] 2 K. B. 403; Nash *v.* Stevenson Transport, Ltd., [1936] 2 K. B. 128.

SUB-SECT. 2.—PARTICULAR CONTRACTS RENDERED VOID OR ILLEGAL BY STATUTE (Vol. XII., p. 272).

Add the following cross-reference :—

Sale by other than imperial weights & measures.]—*See* WEIGHTS & MEASURES.

2226. *Add Citation :*—*See*, [1906] 1 Ch. 747, n.

Add. Annotation : — **Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2227. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2228. *Add. Annotations :*—**Apld.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97; *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2229. *Add. Annotation :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2231. *Add. Annotation :*—**Refd.** Anderson *v.* 1 K. B. 138.

2232. *Add. Annotations :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138. **Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2233. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2234. *Add. Annotation :*—**Refd.** Harte *v.* Williams, [1934] 1 K. B. 201.

2236. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel 130 L. T. 418.

2241. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

2245. *Add. Annotation :*—**Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2248a. ——.]—Pltf. cannot recover for goods sold which he knows are to be applied to an illegal purpose, though he be not active himself in their being so applied, & be no sharer in the advantage to be derived therefrom.— *v.* WEY (1827), 5 L. J. O. S. K. B. 220.

2251. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2265. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2267. *Add. Annotation :*—**Consd.** Alexander Rayson, [1936] 1 K. B. 169.

2268. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2269. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2269a. —— **Totalisator club.**]—Pltfs. claimed a quarter's rent in advance for premises let to defts. to be used by them as a tote (totalisator) club. Defts. pleaded that the contract was unenforceable as made for an illegal purpose—namely, the carrying on of a tote club :—*Held :* a tote club can be conducted in a legal manner on a credit basis, *i.e.* where no money or valuable thing is staked at the time the bet is made, but all that takes place is that the customer at that time promises to pay if he loses in consideration of the promise that he is to be paid if he wins, & pltfs. were entitled to a legal manner only, & there was no evidence that they knew that in fact it had been conducted in an illegal manner, *i.e.* on a cash basis, which, at the date of the quarter's rent becoming due, it had ceased to be.— STREATHAM CINEMA, LTD. *v.* JOHN MCLAUCHLAN, LTD., [1933] 2 K. B. 331;

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transportation service because at the time it was rendered they did not hold a certificate or permit under Public Service Vehicles Act, 1933. Judgment for deft.—WASEL BROS. *v.* LASKIN, [1934] 2 W. W. R. 577; 3 D. L. R. 798.—**CAN.**

p ii. —— *Contract in contravention of Liquor Act, s.* 252.]—Pltf.'s statement of claim alleged that the personal defts. acting for themselves, or, in the alternative, on behalf of Drewrys (Regina) Limited, entered into an agreement with him under which he was to obtain a lease of hotel premises from the owner to a nominee of the personal defts., defts. were to obtain a licence for the sale of beer on said premises, & pltf. was to be appointed manager of the licensed premises. He alleged breach of the contract, & prayed for specific performance or damages or a *quantum meruit*. On a motion to have the statement of claim struck out & the action dismissed :—*Held :* the motion must succeed, since according to the statement of claim, not only was deft. co. a brewer, but the personal defts. were also brewers, within the definition of "brewer" in Liquor Act, R.S.S., 1930, & the agreement sued on was, therefore, one that contemplated a violation of sect. 252 of said Act & was, therefore, void.—POPOFF *v.* CAIL, [1936] 3 W. W. R. 689.—**CAN.**

2218 i. *Action arising out of illegal contract—Recovery of money paid.*]—Money paid under an illegal contract cannot be recovered back.—MERKEL *v.* MCKENDRY, [1926] 2 D. L. R. 995; [1926] 2 W. W. R. 7; 35 Man. L. R. 506.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 1.

s i. —— ——.]—In an action upon the covenants for payment contained in two mtges. made by deft. in favour of pltf. C., it was found upon the evidence that the real consideration for the advances made by C. in respect of which the mtges. were professedly made was deft.'s participation in a scheme which involved the defrauding of the Govt. of Canada in the matter of sales tax or income tax, & the smuggling of intoxicating liquor into the United States :—*Held :* to establish the illegality of an agreement it is not necessary that the illegality should be an integral part of it; it is enough if one of the parties contemplated an illegal act or transaction, & that the other party was aware of it.—HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734; 64 O. L. R. 392; *revsd.*, [1930] 2 D. L. R. 199; 64 O. L. R. 658.—**CAN.**

c. *Revsd. sub nom.* DOMINION FIRE INSURANCE CO. *v.* NAKATA, 52 S. C. R. 294; 26 D. L. R. 722.

PART VI. SECT. 7, SUB-SECT. 2.

2248 i. *General rule.*]—A contract for the sale of goods that is in violation of the law will not be enforced by the ct. —ERNST *v.* CHRISTIAN, [1929] 1 D. L. R. 207; 60 N. S. R. 447.—**CAN.**

2250 i. *Goods supplied for illegal purpose—To knowledge of vendor—Smuggling.*]—An action brought by a brewery co. against the owners of a dock on the Ontario side of the D. river to restrain defts. from shipping from their dock beer other than that brewed by pltfs. in violation of a contract between the parties was dismissed upon the ground that the ct. should not entertain it. It is common knowledge that for several years there has existed in Ontario an industry known as the "liquor export business" or "rum-running," consisting in the exportation of intoxicating liquors to the United States by smuggling & in contravention of the laws of that country. The ct. is bound to take judicial notice of that which is commonly & publicly known. Viewing the evidence before the ct. in the light of that knowledge it clearly indicated that pltfs. were not only the lessees of a dock & warehouse that were being used by them for "rum-running" purposes, but were the employers or abettors of one of the gang of smugglers that infested the D. river frontier.—WALKERVILLE BREWING CO. *v.* MAYRAND, [1928] 4 D. L. R. 500; 63 O. L. R. 5; *revsd.*, [1929] 2 D. L. R. 945; 63 O. L. R. 573.—**CAN.**

2253 i. —— —— *Sale of intoxicating liquor for use in place where Temperance Act in force.*]—Price not recoverable.— FURLONG *v.* RUSSELL (1885), 24 N. B. R. 478.—**CAN.**

2253 ii. —— —— ——.]—SMITH *v.* BENTON (1890), 20 O. R. 344.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 3.

sg. *Letting premises for storage of goods to be smuggled to foreign country.*]—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643; 64 O. L. R. 358.—**CAN.**

102 L. J. K. B. 536; 149 L. T. 447; 97 J. P. 273; 49 T. L. R. 471; 31 L. G. R. 219.

2283. *Add. Annotation :*—**Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2285. *Add. Annotations :*—**Folld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886. **Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2288. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46; Haseldine *v.* Hosken, [1933] 1 K. B. 822; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2292a. ——.]—NAGOREMULL *v.* TRITON INSURANCE CO., LTD., No. 2084a, *ante*.

2297. *Add. Annotations :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2301a. —— Recovery of wages—Contract in breach of Shops Act.]—A shop assistant was employed under a contract of employment which had no reference to holidays. An order under Shops Act, 1912 (c. 3), s. 11 (1), had been made by the local authority for the district in which the shop was situated, suspending the general obligation to close shops on the weekly half-holiday, but only on condition that all the assistants in any shop which remained open were given a holiday of not less than two weeks in each year, & a notice to that effect was affixed in the shop. The employers kept the shop open on the weekly half-holiday, but did not fulfil the above conditions. The assistant, who had no holiday for a number of years, brought an action against his employers, claiming wages in lieu of statutory holidays: —*Held :* as the terms of the assistant's employment were in contravention of the Act, both the assistant & his employers had been parties to an illegal contract & neither could have any claim against the other in respect of it. The assistant was, therefore, not entitled to recover.—WYLIE *v.* LAWRENCE WRIGHT MUSIC CO. (1932), 96 J. P. 156; 48 T. L. R. 295; 76 Sol. Jo. 249; 30 L. G. R. 197.

2306. *Add. Annotation :*—**Dbtd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

2310a. ——.]—Where goods become forfeited in consequence of any fraud or neglect in respect of the revenue laws, the loss, as between the buyer & seller, must fall upon him whose fraud or neglect occasioned the forfeiture; but if the seller be a party to the intended fraud or neglect, or connive at it, he shall not recover, although the act of fraud or the neglect was committed by, or was chargeable upon, the buyers.—STUDDY *v.* SANDERS (1826), 5 B. & C. 628; 8 Dow. & Ry. K. B. 403; 4 L. J. O. S. K. B. 290; 108 E. R. 234.

Annotation :—**Refd.** Johnson *v.* Kirkaldy (1840), 4 Jur. 988.

2317. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751.

2319. *Add. Annotations :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2325. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2329a. —— Contract contrary to public policy.]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2333. *Add. Annotations :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158. **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

PART VI. SECT. 7, SUB-SECT. 5.

sj. *Money advanced to carry on gaming house.*]—An action does not lie for the recovery of money lent with the knowledge that the borrower would use it in participating in the carrying on of a common gaming house.—MILLER *v.* WALL, [1933] 2 W. W. R. 574; 4 D. L. R. 422; 41 Man. L. R. 325.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B.

2288 ii. ——.]—TURNER & JONES *v.* CURRAN (1891), 2 B. C. R. 61.—**CAN.**

2288 v. —— *Sale of land for immoral purpose.*]—Knowledge of the vendor under a contract for the sale of property, real or personal, that the purchaser intends to apply it to an illegal or immoral purpose will not avoid the contract unless, from the circumstances, such as the particular nature of the property & the character, condition in life & occupation of the purchaser, a just inference can be drawn from the facts in evidence that the agreement was made with the intent & for the purpose, operating in the mind of the vendor, that the property should be applied to the illegal purpose alleged. In other words, if there is a consent to or a participation by the vendor in the subsequent illegal user or if the contract of sale was for the purpose of enabling the purchaser to carry out the illegal, or immoral, purpose the ct. will not aid either party.—ROSE *v.* DONALDSON, ROSE *v.* BRISCOE, ROSE *v.* YATES, [1931] 3 W. W. R. 480.—**CAN.**

sm. *Imposing terms on defendant—At what stage of proceedings.*]—While equitable terms may be imposed on deft. seeking relief from a contract on the ground of illegality, they can be given only when asked for on the dismissal of the action to enforce the contract; they cannot be enforced as a cause of action, or allowed when first asked for on appeal from such dismissal.—DEMCHENKO *v.* FRICKE, [1926] 2 D. L. R. 1096; [1926] 2 W. W. R. 221; 20 Sask. L. R. 492.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—C. (b).

2318 iii. ——.]—*Held :* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2318 iv. ——.]—*Held :* where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

sp. *Pleading.*]—Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach :—*Held :* a decree for repayment of the money paid could not be passed, unless the plaint was amended. —HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

PART VI. SECT. 9, SUB-SECT. 1.—C. (c) i.

2326 iv. ——.]—Plff., an insurance agent, induced deft. to apply for insurance on the promise that he would share his commission with deft. :—*Held :* the promise to share commission was prohibited by Insurance Act, 1917 (Can.), & the transaction was illegal.—BERNSTEIN *v.* ERICKSON, [1921] 1 W. W. R. 834; 56 D. L. R. 616.—**CAN.**

2326 v. ——.]—*Held :* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2326 vi. *Contract of carriage at prohibited rate.*]—In an action brought by a railway co. to recover from the shipper the difference between the minimum tariff freight rate under the Dominion Railway Act, 1927, s. 330, & a lower rate mistakenly quoted to the shipper by an agent of the rail- [illegible] the shipper :—

Held : pltf. could not recover the difference as the contract was illegal & the parties were *in pari delicto*.—CANADIAN NATIONAL RAILWAY *v.* KOVINSKY & SONS, [1932] 3 D. L. R. 451; O. R. 529.—**CAN.**

2337. For the cross-reference following this case, "**Whether parties in pari delicto.**] — *See* Nos. 2356, 2363, *post*," read "Whether parties *in pari delicto*, *see* Nos. 2353–2363, *post*."

2339. *Add. Annotations:*—**Distd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2350a. —— **Subscription to charity—On promise of knighthood—Promise by secretary.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2351. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

2356. *Add. Annotation:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2358. *Add. Annotation:*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2359a. —— **Marine insurance—Breach of Marine Insurance Act, 1906 (c. 41), s. 84, & Stamp Act, 1891 (c. 39).**]—In 1920 the E. co. & the Y. co. entered into a participation agreement effective as from Jan. 1, 1920, which was a reinsurance treaty binding the E. co. to cede & the Y. co. to accept a participation of all risks therein mentioned of the share retained by the E. co. accepted after Jan. 1, 1920. In Sept. 1921, the E. co. arranged that the N. co. should take over the Y. co.'s position as from Jan. 1, 1920; & in Jan. 1922, an agreement, hereinafter called "the Outwards Treaty," on the same lines & with the same provisions as those of the agreement with the Y. co. was entered into between the E. co. & the N. co. In 1921 the N. co. & the E. co. entered into another participation agreement, hereinafter called "the Inwards Treaty," the N. co. ceding & the E. co. accepting a share of all marine risks. The Inwards Treaty had no provisions for the issuing of policies, or for particulars sufficient to make possible the issuing of policies, to satisfy the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41). No stamped policies were in fact issued under any of the three agreements, & no premiums were ever actually paid to the N. co., which was credited with the proper proportion of the net premiums received by the E. co. On the compulsory winding-up of the N. co. the E. co. claimed to be entitled to prove for sums paid by it for premiums under the Outwards Treaty, after allowing for sums paid or credited to it by the N. co. under the Inwards Treaty. The Official Receiver rejected the claim on the ground that both treaties were invalid & inadmissible in evidence, because they were contracts of marine insurance which did not comply with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), & were unlawful; & upon a summons asking for an order that the proof should be allowed:—*Held:* money paid by the E. co. upon the N. co.'s taking over the reinsurance treaty with the Y. co. could not be recovered on the ground of total failure of consideration, as both parties knew that a continuous breach of the law was contemplated, & as the treaty, assuming it to be illegal, had been partially carried into effect.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1931] 1 Ch. 46; 100 L. J. Ch. 38; 144 L. T. 171; [1929–30] B. & C. R. 256.

2360. The cross-reference following this case should follow No. 2359.

2372. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2375. *Add. Annotations:*—*As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *As to* (2) **Consd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102. *Generally*, **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

2387. *Add. Annotation:*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2391. *Add. Annotation:*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

2391a. ——.]—A promise may be enforceable, notwithstanding that the promisor has in the same document made promises, supported by the same consideration, which are void, provided that the severed parts are independent & that not the kind but only the extent of the promisor's obligations will be changed by the partial enforcement.—PUTSMAN *v.* TAYLOR, [1927] 1 K. B. 637; 96 L. J. K. B. 315; 136 L. T. 285; 43 T. L. R. 153, D. C.; *affd.*, [1927] 1 K. B. 741, C. A.

2401. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

2402. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2407. *Add. Annotation:*—**Refd.** *Re* A Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

2412. *Add. Annotation:*—**Distd.** Milsted *v.* Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.

2427. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

PART VI. SECT 9, SUB-SECT. 1.—D.

2373 i. *Damages for breach.*]—Pltf. agreed to sell certain leasehold premises to deft., a person of enemy origin within War Legislation & Statute Law Amendment Act, 1918, s. 6, of which fact pltf. was ignorant:—*Held:* pltf. might either (1) sue on the contract & claim damages for deft.'s breach of contract in which case deft. would be estopped from alleging that the contract was illegal & void, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegal nature of the contract, & before its repudiation by deft.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 3.

2384 ii. ——.]—Pltf. in ignorance that deft. was of enemy origin sold to him certain premises, the price to be paid by instalments. Deft. was given possession, but before all instalments were paid he repudiated the agreement. An action by pltf. for unpaid purchase-money having failed on the ground that the contract was illegal:—*Held:* pltf. might either (1) sue deft. on the contract & claim damages for the breach, in which case deft. would be estopped from alleging that the contract was illegal, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegality, & before repudiation of the contract.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 4.—A.

2388 vii. ——.]—FLANNAGHAN *v.* HEALY (1900), 4 TERR. L. R. 391.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 6.

sq. *Contract partly illegal—Performance of illegal part waived—Illegality no defence to action on security.*]—INGLEBLOM *v.* BLAKEMAN, [1930] 1 W. W. R. 565; 2 D. L. R. 824; 42 B. C. R. 259; *affg.*, [1929] 4 D. L. R. 377; 41 B. C. R. 456.—**CAN.**

2435a. ——.]—In order to deprive pltf. of his right to relief in equity on the ground of illegality in the transaction in respect of which such relief is sought, there must be such a degree of illegality as is free from all doubt. —BARTON *v.* MUIR (1874), L. R. 6 P. C. 134; 44 L. J. P. C. 19; 31 L. T. 593; 23 W. R. 427, P. C.

Annotations:—**Distd.** Tooth *v.* Power, [1891] A. C. 284. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

2443. *Add. Annotations:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509; Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2444. *Add. Annotation:*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2454. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

2456. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

2496. *Add. Annotations:*—**Refd.** Crown Milling Co. *v.* R., [1927] A. C. 394; English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

Part VII.—Performance and Excuses for Non-Performance.

2505a. —— **"Unforeseen contingencies excepted" —Goods obtainable from source not contemplated by sellers.**]—A contract provided for the delivery of goods "unforeseen contingencies excepted." No particular source from which they were to come was stipulated. Unforeseen political complications prevented the supply of the goods from the source contemplated by the sellers, but it was not shown that the goods could not have been procured from other sources:—*Held:* the above clause did not protect the sellers from liability to deliver the goods.—WILLS (GEORGE) & SONS, LTD. *v.* CUNNINGHAM (R. S.) SON & Co., [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

2533. *Add. Annotation:*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

2536. *Add. Annotation:*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

2544. *Add. Annotations:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172; Hogarth *v.* Cory (1926), 95 L. J. P. C. 204; United States Shipping Board *v.* Strick, [1926] A. C. 545; Vergottis *v.* Cory (1926), 95 L. J. K. B. 1002.

2545. *Add. Annotations:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69; United States Shipping Board *v.* Strick, [1926] A. C. 545.

2547. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137. **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Anastasia S.S. Owners *v.* Ugleexport Charkow (1933). 149 L. T. 342; Dampskibsselskabet Heimdal *v.* Russian Wood Agency, Ltd. (1933), 149 L. T. 342; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158.

2553. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137. **Refd.** Hall *v.* Pinn (1927), 137 L. T. 585.

2560. *Add. Annotations:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22. **Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

2564. *Add. Annotation:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2567. *Add. Annotation:*—*As to* (2) **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2579. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2585. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2590. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* K. B. 352.

2594. *Add. Annotation:*—**Refd.** Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198.

2597. *Add. Annotation:*—**Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

2607. *Add. Annotation:*—**Consd.** *Re* Wait, [1927] 1 Ch. 606.

PART VII. SECT. 1.

c. *Revsd.*, 51 D. L. R. 509.

f i. —— *Breach of collateral contract—Strict proof necessary.*]—BOURDON *v.* SELWYN, [1926] 3 D. L. R. 561.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

2506 iv. ——.]—Where W. agreed to pay H. £10 as damages for assault & give an admission in writing that the assault was unjustified:—*Held:* a tender of £10 under protest coupled with a statement that the assault was justified was not a compliance with the agreement.—WARREN *v.* HESLOP (1925), 46 N. L. R. 89.—**S. AF.**

PART VII. SECT. 3, SUB-SECT. 1.—A.

2532 vi. ——.]—Where on the sale of a piano to be manufactured for the buyer there was a failure to deliver in four months, no time being specified for delivery:—*Held:* this was not a lapse of a reasonable time.—FOSTER *v.* HEINTZMAN & Co., [1923] 4 D. L. R. 166.—**CAN.**

2532 vii. ——.]—WEBBER *v.* COPEMAN (Sask.) (1912), 21 W. L. R. 961.—**CAN.**

2532 viii. ——.]—HOPE (HENRY) & SONS, LTD. *v.* CANADA FOUNDRY CO. (1917), 40 O. L. R. 338; 39 D. L. R. 308.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

n i. ——.]—Where time is of the essence of the contract, it is the business of the party, who has promised to pay, to see that the money reaches the other party by or before the due date.—RAGHBIR DAS *v.* SUNDAR LAL (1930), I. L. R. 11 Lah. 699.—**IND.**

PART VII. SECT. 3, SUB-SECT. 2.—C. (b).

st. *Extension of contract.*]—JONES *v.* CUSHING (1909), 7 E. L. R. 190.—CAN.

sw. *Sale of shares.*]—ROUNTREE *v.* WOOD (1920), 56 D. L. R. 395.—CAN.

PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

2607 ii. ——.]—Pltf. contracted to sell to deft. certain Oregon timbers to be procured from America:—*Held:* the contract being a mercantile one, & therefore *prima facie* one in which time was of the essence of the contract, & there being nothing in the contract or the surrounding circumstances to show that the parties had a different intention, time was of the essence of the contract.—JACKSON & Co., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922 N. Z. L. R. 2; Gaz. L. R. 176.—**N.Z.**

2621. *Add. Annotation :*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2621a. —— **From indefinite to definite date.**]—*Held :* in the circumstances, time was of the essence of the contract.—BERNARD *v.* WILLIAMS (1928), 139 L. T. 22 ; 44 T. L. R. 437, D. C.

2624. *Add. Annotation :*—**Consd.** Martin *v.* Stout, [1925] A. C. 359.

2652. *Add. Citation :—sub nom.* MUFFATT *v.* PARSONS, 1 Marsh, 55.

2693a. ——.]—KRAUS *v.* ARNOLD (1822), 7 Moore, C. P. 59.

2698. *Add. Annotation :—As to* (1) **Consd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2703. *Add. Annotation :*—**Refd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2705. *Add. Annotation :*—**Consd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2734. *Add. Annotation :*—**Refd.** Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

2737. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2738. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

2825. *Add. Annotation :*—**Refd.** British & Benington *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2828. *Add. Annotation :*—**Refd.** British & Benington *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2829a. Subsequent agreement unenforceable at law.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

2830. *Add. Annotations :*—**Apprvd.** Martin *v.* Stout, [1925] A. C. 359. **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2831. *Add. Annotations :* — **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169, C. A. **Refd.** The British Trade, [1924] P. 104 ; Berners *v.* Fleming, [1925] Ch. 264 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2832a. —— ——.]—Under agreements made in 1923 & 1925, pltfs. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon pltfs. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Pltfs. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with pltfs. on the ground that same had lapsed owing to pltfs.' delay in exercising the option of calling for a renewal of the licence to occupy defts.' land in favour of a purchaser of the railway undertaking :—*Held :* by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & pltfs. were entitled to damages. — NEVER-STOP RY. (WEMBLEY) *v.* BRITISH EMPIRE EXHIBITION (1924) INCORPORATED, [1926] Ch. 877 ; 95 L. J. Ch. 411 ; 135 L. T. 405 ; 70 Sol. Jo. 735.

PART VII. SECT. 3, SUB-SECT. 2.—G.

2620 iii. ——.]—Where the evidence showed no binding agreement to enlarge the time for delivery, but defts. merely permitted pltfs. for their own convenience to postpone the time for delivery :—*Held :* defts. were entitled at any time before delivery to require pltfs. to perform the contract according to its original terms.—JACKSON & CO., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922] N. Z. L. R. 2 ; Gaz. L. R. 176.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 2.—A.

2628 i. *Duty of promisee to attend.*]—GREAT WEST SADDLERY CO., LTD. *v.* PRIME, [1929] 2 D. L. R. 274 ; 23 S. L. R. 276 ; [1928] 3 W. W. R. 705. —**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

2640 i. *Stranger.*]—Where a creditor refuses to entertain the idea of payment by his debtor or by some one acting on his behalf, & puts it out of the power of the tenderor to offer payment in a manner acceptable to the creditor, the offer of performance by a person then able to carry out the promise in its entirety is a valid tender, in spite of the form of it being itself not legal tender.—VENKATRAMA AYYAR *v.* GOPALAKRISHNA PILLAI (1928), I. L. R. 52 Mad. 322.—**IND.**

PART VII. SECT. 5, SUB-SECT. 6.—C.

2704 ii. —— —— ——.]—Deft., an owner of land, informed D. & M., prospective purchasers, that he would sell it at a certain price to that one of the two who would first deposit the purchase-money with deft.'s solr. ; & he so instructed his solr. D., pltf., obtained the amount in currency & called on the solr., telling him that he had come to pay the money. The solr. informed him that he was too late, since the night before he had agreed with M.'s solr., who had telephoned him that M. wished to pay the money, that he would treat that as an offer if completed in the morning. A few minutes later a letter arrived from M.'s solr. containing a cheque (there was no evidence adduced that it was certified) & the solr. informed D., pltf., that M. had got the land :—*Held :* what pltf. did constituted a legal tender & therefore brought him within the terms of deft.'s offer & entitled him to the land.—DUNN *v.* HANSON (Alta.), [1928] 4 D. L. R. 606 ; [1928] 3 W. W. R. 178.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

2778 i. *General rule.*]—A valid tender on a contract of debt is as much a performance & discharge of debtor's duty as an actual payment.—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624. —**IND.**

PART VII. SECT. 6, SUB-SECT. 2.

2809 v. ——.]—PENMAN MANUFACTURING CO. *v.* BROADHEAD (1892), 21 S. C. R. 713.—**CAN.**

q i. —— ——.]—*Held :* the agreements relied on to establish a new contract were only in the nature of security.—MCCUTCHEON BRICK CO. *v.* GARDINER (Man.) (1912), 21 W. L. R. 72 ; 4 D. L. R. 487.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) i.

2833 viii. ——.]—Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer.—BRILLIANT SILK MANUFACTURING CO. *v.* KAUFINAN, [1925] 2 D. L. R. 91 ; [1925] S. C. R. 249.—**CAN.**

2833 ix. ——.]—Where a co. renounced a contract before breach & the other party made a new arrangement with the co. with the object of minimising his damages :—*Held :* he had adopted the renunciation & was entitled to damages.—GARRISON *v.* THOMSEN & CLARKE TIMBER CO., [1926] 2 D. L. R. 803 ; [1926] 2 W. W. R. 81 ; 37 B. C. R. 224.—**CAN.**

2833 x. ——.]—Y. P. BARLEY PRODUCERS, LTD. *v.* E. C. ROBERTSON PTY., LTD., [1927] V. L. R. 194 ; 48 A. L. T. 151 ; [1927] Argus L. R. 116. —**AUS.**

2833 xi. ——.]—Under an agreement between pltf. & defts. the former agreed to cut a certain number of railway ties & saw lumber, & the work was to be begun on Dec. 15 & completed by the following Mar. 15. After pltf. had carried on the work for some weeks defts., on Jan. 31, instructed pltf. to stop work & put their own men on the land to take charge of the work ; —*Held :* the fact that at the end of Jan. pltf. did not appear to have completed a proper proportion of the contract did not warrant defts. in concluding that he could not fulfil it by Mar. 15. Defts.' conduct was an inexcusable breach of the contract which justified pltf. in treating it as at

2835. *Add. Annotations :*—**Consd.** Martin *v.* Stout, [1925] A. C. 359; Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Tyldesley U. D. C. *v.* Leigh R. D. C. (1925), 23 L. G. R. 243; Robert B. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

2835a. ——.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch.—BERNERS *v.* FLEMING, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.

Annotation :—**Refd.** Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2838. *Add. Annotations :*—**Refd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

2841. *Add. Annotations :* — **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Berners *v.* Fleming, [1925] Ch. 264; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2846. *Add. Annotation :*—**Refd.** Akt. Reidar *v.* Arcos, [1927] 1 K. B. 352.

2847. *Add. Annotation :*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

2861. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

2861a. —— **For fixed period—Afterwards determinable on notice—Time for giving notice.**]—By an agreement dated July 12, 1927, pltfs. & defts. agreed that pltfs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, pltfs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous week's shipments. The agreement also contained the following clause: "It is understood that the above agreement is to hold good for the period of twelve months from Apr. 22, 1927, with six months' notice thereafter on either side to terminate, & that should any misunderstanding arise in connection with this agreement, an arbitrator should be appointed by the president for the time being of the London Chamber of Commerce." Disputes having arisen between the parties about the prices which pltfs. ought to charge for the pig iron which they sold, defts. notified pltfs. that they terminated the agreement as from Apr. 22, 1928. Pltfs. acknowledged the notice & accepted it as a notice terminating the agreement at a date six months after Apr. 22, 1928, but defts. insisted that the agreement

an end, & entitled him to recover as damages the amount of the profits which he would have made had he been allowed to complete the work, as well as the contract price for the ties completed.—BOON *v.* BELL & BELL, [1932] 2 W. W. R. 304.—**CAN.**

2838 i a. ——.]—Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated. — FARSHIND, ETC. *v.* BECHELY-CRUNDALL, [1922] S. C. (H. L.) 173.—**SCOT.**

2838 v. ——.]—On the facts :—*Held :* deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle pltf. to terminate it.—FREEDMAN *v.* FRENCH (1921), 50 O. L. R. 432.—**CAN**

2838 vi. ——.]—If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration.—CLAUSEN *v.* CANADA TIMBER & LANDS, LTD., [1923] 4 D. L. R. 751.—**CAN.**

2838 vii. ——.]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon :—*Held :* not a breach of contract nor repudiation.—TOWNSEND *v.* MOON MOTOR CO., [1924] 1 D. L. R. 511.—**CAN.**

2838 viii. —— *Partial non-performance—Agreement substantially performed.*]—By a tripartite agreement between the two applts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which applts. alleged to be an office which B. was entitled to under the agreement :—*Held :* the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle applts. to rescind.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2838 ix. ——.]—ALBERT MINING CO. *v.* SPURR (1883), 22 N. B. R. 346.—**CAN.**

2838 x. ——.]—ROBINSON *v.* PETERS (Sask.), [1927] 3 D. L. R. 131.—**CAN.**

2838 xi. ——.]—STEIN *v.* KILEEL (1929), 1 M. P. R. 263.—**CAN.**

2838 xii. ——.]—DOOLAN *v.* SCHAFFER, LTD. (1932), 5 M. P. R. 424.—**CAN.**

sx. *Contract with Commonwealth—Reasonable belief that contract not being carried out—Powers of Minister.*]—An agreement between the Commonwealth & applt. whereby applt. agreed to provide & maintain an efficient coastal shipping service in the Northern Territory contained a provision that, if at any time the Minister for Home & Territories should "have reason to believe" that the agreement was not being carried out by applt. in accordance with the agreement, the Minister might determine the contract :—*Held :* in exercising the power the Minister's function was administrative & not quasi-judicial, & therefore he might determine the contract without giving applt. an opportunity of being heard.—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH (1927), 40 C. L. R. 98.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) ii.

2a. *Contract by correspondence — Refusal to sign formal contract.*]—Certain correspondence & memoranda were relied on by pltfs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms :—*Held :* assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it & clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do. — FUJITA & CO., LTD. *v.* NORTHERN FRUIT CO., LTD., [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59.—**CAN.**

sc. *Contract for correspondence course —Refusal to accept papers sent.*]—Where pltfs. were ready & willing to carry out their contract to give a correspondence course in accounts & were only prevented by the refusal of deft. :—*Held :* pltfs. were entitled to judgment for fees.—ALEXANDER HAMILTON INST. *v.* MCNALLY (1919), 53 N. S. R. 303.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) iii.

2851 ii. —— ——.]—Pltf. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by pltf.'s default in payment of rent :—*Held :* pltf.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that pltf. had elected to treat the contract as void, the plea was bad.—MANNINGTON *v.* CLIFFORD (1921), 17 Tas. L. R. 13.—**AUS.**

h i. —— *Endurance test—Agreement among competitors to drop out in turn.*]—The last eleven couples of a walking endurance competition agreed to drop out in turn by drawing lots & then divide the prize money :—*Held :* this was a breach of the original contract which justified the promoters in terminating the contest & giving no prize money.—ZAVAGLIA *v.* ROGERS (1932), 45 B. C. R. 471.—**CAN.**

was terminated on Apr. 22, 1928. Pltfs. brought an action for breaches of contract, (*a*) in terminating the contract before the expiry of the agreed term, & (*b*) because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron":—*Held:* defts. were not entitled to terminate it on Apr. 22, 1928. It could only be terminated by a six months' notice, which could not be given before twelve months had elapsed, but could be given at any time after the expiration of the twelve months.—JACKS (WILLIAM) & Co. *v.* PALMER'S SHIPBUILDING & IRON Co. (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.

2877a. ——.]—Deft. was the chairman of the S. Co. which at the end of 1921 was seeking to issue £15,000 First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount; & deft. having interested pltf. in the matter, sent him a letter of indemnity dated Feb. 17, 1922, in these terms: "Regarding the issue of £15,000 First Lein Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80 which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf. having repurchased the debentures from his son, brought these proceedings to recover his loss:—*Held:* in selling the debentures pltf. had committed a breach of an implied term of the contract & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169; 99 L. J. Ch. 520; 143 L. T. 247, C. A.

2884. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

2885a. —— **Necessity for licence to operate vessel—Election to operate another vessel.**]—Resps. were owners & applts. were charterers of a steam trawler which was fitted with, & could operate as a trawler only with, an otter trawl. By the charterparty the vessel could be used only in the fishing industry. The charterparty was renewed for a year from Oct. 25, 1932. At that date both parties knew that a Canadian statute, which was applicable, made it an offence to leave a Canadian port with intent to fish with a vessel using an otter trawl, except under licence from the Minister. In Mar. 1933, applts. applied to the Minister for licences for five trawlers which they were operating. The Minister intimated that only three licences would be granted, & requested applts. to name the three trawlers in respect of which the three licences should be granted. Applts. named three trawlers, excluding the trawler now in question, & accordingly licences were granted for those three only. Applts. thereupon claimed that they were no longer bound by the charterparty, & to an action claiming the charter hire pleaded that the charterparty had become impossible of performance & their obligations under it ended:—*Held:* there had been no frustration of the charterparty, as the absence of a licence was due to the election of applts., who remained liable for the hire.—MARITIME NATIONAL FISH, LTD. *v.* OCEAN TRAWLERS, LTD., [1935] A. C. 524; 104 L. J. P. C. 88; 153 L. T. 425; 79 Sol. Jo. 320; 18 Asp. M. L. C. 551, P. C.

2888. *Add. Annotations:*—**Apld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

2896. *Add. Annotations:*—**Consd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368. **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505.

2899a. Effect of part-performance—Major part of consideration received.]—Pltf., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counterclaimed for negligence & unskilful treatment. The jury found for pltf. on the claim; & on the counterclaim they awarded deft. 20*s.*, finding that pltf. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held:* as deft. had received a substantial part of the consideration, pltf.'s breach of duty did not go to the root of the contract so as to be a defence to pltf.'s entire claim, & judgment must be entered in accordance with the verdict.

PART VII. SECT. 6, SUB-SECT. 3.—A. (6).

3b. *Provision in contract for liquidated damages.*]—A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held:* not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524. —AUS.

—MEYRICK *v.* DYSON (1925), 41 T. L. R. 368; *subsequent proceedings*, 41 T. L. R. 575, C. A.

2911. *Add. Annotation :*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

2911a. —— —— —— **Election to treat contract as at an end.**]—In 1929 defts. contracted to deliver to pltf. 25,000 tons of cement to be delivered as & when required at 28*s.* per ton. Pltf. at that time anticipated the completion of a contract which would enable him to dispose of this cement, but the contract never materialised. The contract was then allowed to sleep till 1931 when, after correspondence, the contract was revived or a new contract entered into upon the old terms as to about 24,000 tons of cement. Some deliveries were made, but in 1933 there was such a slump in the trade that it was not profitable for the pltf. to take the cement at 28*s.* He did by arrangement take several deliveries at a lower figure. In 1935 pltf., upon prices improving, again attempted to revive the contract. Defts. at no time gave pltf. notice to take delivery or determine the contract :—*Held :* (1) the acceptance of deliveries at a figure below the contract price in 1933 was an election on the part of pltf. to treat the contract as at an end ; (2) the contract had been abandoned.—FISHER, LTD. *v.* EASTWOODS, LTD., [1936] 1 All E. R. 421.

2927. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2932. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2934. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2936a. —— ——.]—By a deed of separation dated Mar. 4, 1920, the husband covenanted to pay a monetary allowance to the wife. By an agreement in writing not under seal dated June 25, 1928, the parties agreed that the terms of the deed regarding the allowance should be varied in certain respects. In Mar. 1929, the wife instituted proceedings claiming arrears of allowance under the deed : —*Held :* applying the rules of equity which must prevail when there is any conflict or variance between them & the rules of the common law with reference to the same matter, the plea by the husband of the simple contract of June 25, 1928, was a good defence to the wife's action under the deed.—BERRY *v.* BERRY, [1929] 2 K. B. 316 ; 98 L. J. K. B. 748 ; 141 L. T. 461 ; 45 T. L. R. 524.

2938. For "**Validity of rescission of parol.**]" read "**Validity of rescission by parol.**]"

2938a. *S. P.* INGE *v.* LIPPINGWELL (1772), 2 Dick. 469 ; 21 E. R. 352.

2938b. *S. P. Ex p.* ILCHESTER (EARL) (1803), 7 Ves. 348 ; 32 E. R. 142.

Annotations :—**Refd.** Andrew *v.* Andrew (1855), 3 Sm. & G. 130 ; Dickenson *v.* Stidolph (1861), 11 C. B. N. S. 341 ; Louis *v.* Louis (1864), 3 New Rep. 369 ; *In the Estate of* Tollemache, [1917] P. 246 ; Ward *v.* Van Der Loeff, Burnyeat *v.* Van Der Loeff, [1924] A. C. 653.

2941. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

2944. *Add. Annotation :*—**Refd.** Knapp-Fisher *v.* Crisp, [1936] 3 All E. R. 560.

2945. *Add. Annotations :*—**Apld.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2946a. ——.]—BESSLER, WAECHTER & GLOVER & CO., LTD. *v.* SOUTH DERWENT COAL CO., LTD., [1937] 4 All E. R. 552 ; 54 T. L. R. 140.

2958a. *Add. Citation :*—28 Com. Cas. 265.

Add. Annotations :—*As to* (1) **Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

PART VII. SECT. 6, SUB-SECT. 3.—C.

2900 v. ——.]—Where applt. had an election to rescind :—*Held :* he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2900 vi. ——.]—Defts. ordered certain goods manufactured by pltfs. With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods were returned & an adjustment made concerning them :—*Held :* defts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D.

se. *Contract absolutely terminated.*]—Where there was a distinct & unequivocal refusal by pltfs. to perform their contract :—*Held :* so long as defts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that pltfs.' attitude was unalterable, defts. decided to acquiesce in it, & communicated such acquiescence to pltfs., the contract between the parties was put an end to.—JHANDOO MAL-JAGAN NATH *v.* PUHL CHAND-FATEN CHAND (1924), I. L. R. 5 Lah. 497.—**IND.**

sd. —— *Collateral contract not terminated.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1061.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 4.

se. *Agreement under seal.*]—Long delay in bringing action cannot defeat the enforcement of an agreement under seal where the twelve years specified by Stat. Limitations have not expired. —MCCORMACK *v.* ROBINSON, [1924] 3 D. L. R. 876 ; 2 W. W. R. 1110.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 5.

sf. *Rights of parties—Indemnification if party misled from obligations of contract.*]—Where rescission of a contract is ordered the ct. has full power to make a just allowance & to do what is practically just, although it may not be able to restore the parties precisely to the state they were in prior to the contract. The right of the party misled to be put into the position in which he was before the contract, includes the right to be indemnified from the consequences & obligations which are the result of the contract set aside.—LEWIS & LEWIS *v.* HOWSON, [1928] 4 D. L. R. 207 ; [1928] 2 W. W. R. 197 ; 22 Sask. L. R. 624.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (a).

2938 iii. *S. P.* STANLAKE *v.* RINGHAND (Sask.), [1922] 3 W. W. R. 758 ; 70 D. L. R. 546.—**CAN.**

2938 iv. ——.]—Where the real nature of the transaction is a compromise of a claim for breach of warranty, an agreement to rescind a sale of goods of the value of £10 or upwards by the mutual return of the consideration is enforceable although not in writing.—BOOTH, MCDONALD & CO., LTD. *v.* HALL, [1931] N. Z. L. R. 1086.—**N.Z.**

2938 iii. ——.]—A verbal contract, whether enforceable or not, is sufficient to rescind a written contract.—MASON *v.* SCOTT, [1934] 3 D. L. R. 769 ; 8 M. P. R. 219 ; *revsd.*, [1935] S. C. R. 656 ; 2 D. L. R. 641.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) i.

2947 iii. —— ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983 ; 1 M. P. R. 383.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) ii.

c i. ——.]—A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—NUGENT *v.* DAVIES, [1923] 1 D. L. R. 1040 ; 53 O. L. R. 458.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iii.

2962 i. *Extension of time—For delivery of goods.*]—*Held :* since the contract of sale was one which was required by Stat. Frauds to be in writing, a verbal postponement of the date of delivery was not a variation of the contract.—DOWLING *v.* RAE

2963. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2964. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2965. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

2967. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2970. *Add. Citation :*—28 Com. Cas. 244.

2975. *Add. Annotations :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287 ; Berners *v.* Fleming, [1925] Ch. 264.

2991. *Add. Annotation :*—*As to* (2) **Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

3033. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

3038. *Add. Annotation :*—**Refd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

3040. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

3041. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

3042a. ——.]—An alteration in a deed is presumed to have been made before execution.—*Re* SPOLLON & LONG'S CONTRACT, [1936] Ch. 713 ; [1936] 2 All E. R. 711 ; 105 L. J. Ch. 347 ; 155 L. T. 554 ; 80 Sol. Jo. 510.

3069. *Add. Annotation :*—**Consd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

3077. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3078. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

3078a. ——.]—BARROW, LANE & BALLARD, LTD. *v.* GILBERT J. MCCAUL & CO. (1929), 73 Sol. Jo. 451.

3081a. ——.]—Under the will of her then husband made in 1902, & a separation deed & settlement made in 1903, V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :—*Held :* (1) there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document ; (2) even assuming there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—KENNEDY *v.* THOMASSEN, [1929] 1 Ch. 426 ; 98 L. J. Ch. 98 ; 140 L. T. 215 ; 45 T. L. R.

3082a. ——.]—SHALES *v.* SEIGNORET, No. 3103a, *post.*

3083. *Add. Annotations :*—*As to* (1) **Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. *As to* (2) **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

3084. *Add. Annotation :*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

3088. *Add. Annotations :*—**Refd** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3090. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

3090a. For the existing paragraph substitute the following paragraph :—

—— **Absolute contract.**]—By a contract dated Aug. 16, 1922, the sellers sold to the pur-

H. G. HAMILTON PTY., LTD. *v.* RAE, KELLY *v.* RAE (1927), 39 C. L. R. 363 ; [1927] V. L. R. 294 ; [1927] Argus L. R. 149.—**AUS.**

e i. —— *For cutting & removal of timber.*]—LAWRENCE *v.* ERRINGTON (1874), 21 Gr. 261.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iv.

sa. *Contract relating to log scaling.*]—GODO *v.* GALBRAITH & SONS, [1930] 1 D. L. R. 484.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—C. (a).

sb. *What amounts to.*]—Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out :—*Held :* the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 7.

2988 vii. ——.]—After repudiation by mutual consent, a contract cannot be revived by a unilateral act.—WELLINGTON OIL & GAS CO. *v.* ALBERTA PIPE LINE CO., [1934] 2 D. L. R. 440 ; *affd.*, [1936] 2 D. L. R. 335.—**CAN.**

sc. *On good shipped under contract.*]—BELGIAN INDUSTRIAL CO., LTD. *v.* CANADA CEMENT CO., LTD., [1926] 1 D. L. R. 496 ; [1926] S. C. R. 244.—**CAN.**

PART VII. SECT. 7.

sj. *Distinguished from rescission.*]—There is a difference between cancellation & rescission. The logical consequences of true rescission are the returning by each party of the benefits he has received, or *restitutio in integrum.* Cancellation means determination of the contract without restitution.—PRIMEAU & IMPERIAL LUMBER YARDS, LTD. *v.* MEAGHER, [1923] 4 D. L. R. 1096 ; 3 W. W. R. 1308.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 3.

sk. *Substitution of party.*]—To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal :—*Held :* the contract was avoided by this alteration.—ROYAL BANK OF CANADA *v.* FRANK, [1923] 4 D. L. R. 1213.—**CAN.**

sl. *Addition of provision for payment of compound interest.*]—*Held :* an alteration in a material respect.—PARBATI CHARANMUKHERJEE *v.* AMARENDRA NATH BHATTACHARJEE (1925), I. L. R. 53 Calc. 418.—**IND.**

sm. *Alteration in writing of printed form.*]—In the case of a conflict between different clauses of an agreement arising from the expunging or alteration by pen & ink of certain provisions of a printed form in general use, a greater effect is to be attributed to the writing than to the printed words.—KNIGHT SUGAR CO., LTD. *v.* WEBSTER, [1929] 4 D. L. R. 591 ; 2 W. W. R. 505 ; 24 Alta. L. R. 174 ; *revsd. on facts,* [1930] S. C. R. 518 ; 4 D. L. R. 343.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 8.—A.

3045 i. *General rule.*]—THORNE *v.* WILLIAMS (1887), 13 O. R. 577.—**CAN.**

chasers about one thousand boxes of Smyrna sultanas at 60s. a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the ct. under Arbn. Act, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made:—*Held:* mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract: in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & Co. (1923), 129 L. T. 471; 39 T. L. R. 378.

3093. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; May *v.* May, [1929] 2 K. B. 386; Graves *v.* Cohen (1929), 46 T. L. R. 121; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3094. *Add. Annotation:*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

3094a. —— ——.]—SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & Co., No. 3090a, *ante*.

3095. *Add. Annotations:*—**Refd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3099. *Add. Annotation:*—*As to* (1) **Distd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3099a. —— ——.]—The lessees of a hotel entered into two contracts with a firm of advertising agents, under the terms of which the latter were entitled to erect & exhibit, for a term of years, upon the roof of the hotel, electrically illuminated advertisements. An electric sign was duly erected. Before the expiration of the term the local authority, in exercise of its statutory powers, served the lessees with a notice to treat for the purchase of their estate & interest in the hotel, &, ultimately, having acquired the reversion to the lessees' term, took possession, closed the hotel, & began to demolish it. The electric sign was removed by arrangement with the advertising agents, who subsequently commenced an action against the lessees to recover damages for breach of the two contracts:—*Held:* the local authority had acquired defts.' interest in the premises by compulsion; the two contracts did not confer upon pltfs. any proprietary interest or estate in the hotel; &, as it could not be said that both parties to those contracts had made their bargain upon the footing that if the local authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD.

PART VII. SECT. 9, SUB-SECT. 2.—B.

3096 v. ——.]—Where a contract to thresh a whole crop does not provide for the rights & liabilities of the parties in the event of the threshing being interrupted by weather conditions, it will be held that the contract was based on the assumption that the state of the weather would remain such as to permit the threshing being done with nothing more than temporary interruption, &, therefore, although the contract will not be determined by a slight storm, a permanent break in the weather making threshing impossible for an indefinite period will put an end to it: & when so ended the thresher is entitled to recover for the threshing which he has already done.—KLEIN *v.* SANDERSON, [1928] 3 D. L. R. 294; [1928] 2 W. W. R. 289; 23 Alta. L. R. 467.—**CAN.**

sd. *Earthquake.*]—On July 14, 1927, pltf. & deft. entered into a written contract for the supply of electrical energy by the former to the latter. The agreement was to be for a period of five years from the date of commencement of supply (Nov. 1, 1927), & "therefore shall be continued subject to its being determinable by either party giving to the other six months' notice in writing from the first day of any month." The agreement contained clauses providing that deft. agreed to pay the minimum amount of £1,000 *per annum*, during the currency of the agreement, whether the deft. took electrical energy to such value or not from pltf.; that if, as the result of action by constituted authority, deft. was prevented from operating or passing over the contract, the contract was to determine; & providing also as to failure of supply due to accidents to mains & suchlike, & for rebate in price of current for interruptions. There was no exemption provided for in the event of fire in deft.'s works. On the contrary, deft. agreed to indemnify pltf. from injury or destruction by fire or otherwise of pltf.'s meters or apparatus on deft.'s premises; & express provision was inserted in respect of certain specified untoward interruptions so far as pltf. was concerned. The earthquake on Feb. 3, 1931, extensively damaged deft.'s meat-freezing works, & it would have involved some nine or ten months' work & the expenditure of £33,000 to have reinstated the premises ready for use as a meat-freezing works. Deft. did not reinstate, & from Feb. 3 (except for a trifling immaterial supply) took no power from pltf. Deft.'s contentions in pltf.'s action claiming moneys alleged to be due under contract were, *inter alia*, that the contract was for five years only, & that frustration by the damage caused by the earthquake had excused performance on deft.'s part:—*Held:* (1) the earliest time within which the contract could be determined by notice was five years & six months; (2) the defence of frustration by the Napier earthquake had not been established, & the contract had not been discharged by reason of the damage to deft.'s freezing works by that earthquake, on the following grounds: earthquakes occur frequently in New Zealand, & most business men in charge of large business premises either insure or consider whether the risk shall be taken by the business itself. The clauses referred to above, the fact that no exemption was provided for in the event of fire in deft.'s premises, & the circumstances of the case, made it impossible to apply the test propounded by LORD LOREBURN in *Tamplin S.S. Co., Ltd.* v. *Anglo-American Petroleum Products Co., Ltd.*, [1916] 2 A. C. 404, *viz.*, "Were the altered circumstances such that, had they thought of them, they would . . . as sensible men have said, 'If that happens, of course, it is all over between us.'"—HAWKE'S BAY ELECTRIC-POWER BOARD *v.* THOMAS BORTHWICK & SONS (AUSTRALIA), LTD., [1933] N. Z. L. R. 873.—**N.Z.**

v. WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

Annotation :—**Refd.** Mussett v. Standen (1935), 79 Sol. Jo. 816.

3100a. Abolition of office.]—In pursuance of an Order in Council applt. was appointed by letters patent to be a member of a Board established by a statute of Canada which specified the period of the appointment & the salary attaching to it. During the currency of the appointment, as extended by subsequent Orders in Council, the Parliament of Canada abolished the office by repealing the provision which established the Board; no compensation to the member was provided. By a petition of right applt. claimed damages for breach of contract :—*Held :* the claim failed, because so far as applt.'s rights were contractual further performance of the contract had become impossible by statute; as any right under the appointment was subject to determination in that manner, the Interpretation Act, R.S.C., 1927, s. 19 (*c*), which preserves rights acquired under a repealed enactment, did not assist applt., & the repealing statute did not interfere with any civil right in the Province.—REILLY v. R., [1934] A. C. 176; 103 L. J. P. C. 41; 150 L. T. 384; 50 T. L. R. 212, P. C.

3101a. —— All available shipping requisitioned.]—In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by pltf. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the requisitioning of ships by the British Govt. :—*Held :* Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909), s. 5 (1), which provides that in all questions which arise for decision in the Colony "with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power. —SENG DJIT HIN v. NAGURDAS PURSHOTUMDAS & Co., [1923] A. C. 444; 92 L. J. P. C. 141; 128 L. T. 780; *sub nom.* HIN v. PURSHOTUMDAS & Co., 39 T. L. R. 226, P. C.

Annotation :—**Consd.** Shaik Sahied Bin Abdullah Bajerai v. Sockalingam Chettiar, [1933] A. C. 342.

3103a. ——.]—(1) If a man covenants to accept £1,000 bank stock on three days' notice upon or before a particular day, it is no excuse for him that the party to make the transfer had no stock before the day on which he was to make it. (2) A man cannot be sued for money he covenanted to pay on the performance of a particular act if he prevents such performance.—SHALES v. SEIGNORET (1699), 1 Ld. Raym. 440; 12 Mod. Rep. 248; 91 E. R. 1192.

3115. *Add. Annotations :*—**Consd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522. **Refd.** Maloney v. St. Helens Industrial Co-operative Society, Ltd., [1933] 1 K. B. 293.

3121. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

3122. *Add. Annotation :*—**Refd.** Maloney v. St. Helens Industrial Co-operative Society, Ltd., [1933] 1 K. B. 293.

3123. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

3124. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

3137. *Add. Annotations :—As to* (2) **Consd.** Haskell v. Marlow, [1928] 2 K. B. 45. *Generally*, **Refd.** Cruse v. Mount, [1933] Ch. 278.

3143. *Add. Annotation :*—**Consd.** Jardine v. A.-G. for Newfoundland (1932), 48 T. L. R. 199.

3149. *Add. Annotation :*—**Expld.** *Re* Wait, [1927] 1 Ch. 606.

3153. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. v. Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3162. *Add. Annotation :—As to* (3) **Apld.** Sargant v. Paterson (1923), 129 L. T. 471.

3166. *Add. Annotations :*—**Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497; The Penelope, [1928] P. 180; May v. May, [1929] 2 K. B. 386; Ottoman Bank v. Chakarian, [1930] A. C. 277; Walton Harvey, Ltd. v. Walker & Homfrays, Ltd., [1931] 1 Ch. 145; Barras v. Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402; Chandler Bros., Ltd. v. Boswell, [1936] 3 All E. R. 179.

3166a. Contract for band performances—Public mourning.]—Pltf. was the leader of an orchestra whose performance was of a light & comic nature. His contract of employment with the defts. contained a "no play, no pay" clause. On Mon. Jan. 20, 1936, the news having spread that the condition

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PART VII. SECT. 9, SUB-SECT. 2.—D. (c).

sk. *Sale of apparatus to be installed—Apparatus dismantled by purchaser.*]—On sale of a heating apparatus the vendor failed to complete the installation in minor details. The purchaser dismantled the unit :—*Held :* he had rendered performance of the contract impossible, & was liable for the contract price, less the costs of completing installation.—DOMINIQUE v. WORKMAN, [1935] 4 D. L. R. 726.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 2.—H. (b).

sk. *Crop-sharing lease—Weather rendering tillage impossible.*]—*Held :* applying the principle established by the cases as to the legal effect of the frustration of a contract, the proper order to make was to declare that the circumstances which were the basis of & essential to the fulfilment of the agreements between the parties ceased to exist & performance became impossible prior to the commencement of the action.—COOKE v. MOORE, [1935] 1 W. W. R. 374; *affd.*, [1935] 3 W. W. R. 256.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 2.—I.

sn. *Contract to instal furnace & maintain specified temperature of heat—Change of furnace.*]—MILLS v. GLACE BAY HOUSING COMMISSION, [1926] 1 D. L. R. 608; 58 N. S. R. 317.—**CAN.**

sp. *Covenant to pay under separation agreement—Alteration of income.*]—In an action for payments due a wife under a separation agreement the defence was set up that it was an implied condition that deft.'s income should continue unchanged & that, as it had been substantially reduced, the contract was frustrated :—*Held :* it could not be said that the purpose of the contract was frustrated. Moreover the parties contemplated during the negotiations the contingency in question although they considered its occurrence improbable; & the taking place of a thing known to be possible & considered by the parties when making the agreement is not "frustration."—LANE v. LANE, [1935] 3 W. W. R. 592; [1936] 1 D. L. R. 655.—**CAN.**

of His Majesty King George V. was serious, pltf. was informed by defts. that his performance would not be required; & following upon the King's death, pltf.'s performance was again postponed until the end of the same week. Pltf. & his orchestra were at all these times ready & willing to perform. In answer to pltf.'s claim for the contract fee for the six days defts. alleged that circumstances over which defts. had no control had intervened to make the performance impossible:—*Held:* the refusal of deft. to allow the performance on the Mon. & Tues. was reasonable, but there was no good reason for the refusal on the other four days, & pltf. was entitled to be paid his fee for those days.—MINNEVITCH *v.* CAFÉ DE PARIS (LONDRES), LTD., [1936] 1 All E. R. 884; 52 T. L. R. 413; 80 Sol. Jo. 425.

3168. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3170. *Add. Annotations:*—*As to* (2) **Refd.** The Lord Strathcona, [1925] P. 143; The Penelope, [1928] P. 180.

3171. *Add. Annotation:*—**Refd.** The Penelope, [1928] P. 180.

3172a. ——.]—(1) By a charterparty made in Nov. 1916, resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her:—*Held:* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 17 Asp. M. L. C. 8; 31 Com. Cas. 199, P. C.

Annotations:—*Generally,* **Refd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 446; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

3175. *Add. Annotation:*—**Refd.** Hirji Mulji *v.* Cheong Yue S. S. Co., [1926] A. C. 497; Carras *v.* London & Scottish Assurance Corpn., Ltd., [1936] 1 K. B. 291; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3177. *Add. Annotations:*—**Refd.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420; The Erik Boye (1929), 142 L. T. 335.

3178a. ——.]—In a charterparty there was a marginal memorandum that in the event of "war, blockade, or prohibition of preventing loading, this charter to be celled":—*Held:* the charterparty was an end to *ipso facto* by the happening of any or either of the contingencies mentioned in the memorandum to the charterparty.—ADAMSON *v.* NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCN. (1879), 4 Q. B. D. 462; 48 L. J. Q. B. 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150, D. C.

Annotations:—**Consd.** Mercantile S.S. Co. *v.* Tyser (1881), 7 Q. B. D. 73; Moel Tryvan Ship Co. *v.* Weir Andrew, [1910] 2 K. B. 844.
L. T. 921. **Refd.** *Re* Freight Insce. Assocn. (1895), 11 T. L. R. 196.

3178b. ——.]—A time charter was entered into on Mar. 24, 1926, whereby it was agreed that deft.'s ship, during twelve months from a date to be fixed between May 20 & June 20, 1926, should be employed in carrying successive cargoes of coal for pltfs. from one of the South Wales ports to one of certain specified Mediterranean ports. There were various exceptions relating to strikes & stoppages of labour, &, by an additional clause, the ship was not to be ordered to any loading port at which there was a strike in force, & she was to be free to interpose a substantially similar voyage if the charterers were unable forthwith to order her to another loading port stipulated in the charter free of strike. On May 1, 1926, the general coal strike began, & no coal could be exported from any of the named ports until towards the end of Dec. 1926. Meanwhile, the ship performed two voyages with the assent of pltfs. & one to which they did not assent. At the end of December pltfs. ordered the ship to go to Mumbles Road for orders. Deft. refused to comply with the order on the ground that the strike had frustrated the commercial object of the adventure. Pltfs. claimed damages for breach of contract:—*Held:* the strike provisions in the charter contemplated an interruption of work due to a local withdrawal of labour & not the total impossibility of any export of coal for upwards of eight months; that the change of circumstances prevented performance of the charter according to its true intent, & that the action failed.—THE PENELOPE, [1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 44 T. L. R. 597; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.

3179. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3181. *Add. Annotation:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3182. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183a. —— —— **Ship ordered to leave port—Subsequent permission to return & load.**]—A charterparty of an Italian ship provided that 216 running hours, Sundays & holidays excepted, weather permitting, should be allowed the charterers for loading & discharging, & that the lay days should commence from the time the steamer was ready

to receive or discharge her cargo, the captain giving six hours' notice to the charterers' agents, berth or no berth. The exceptions clause excepted "restraint of princes, rulers & people." The ship arrived at Batoum, & notice of readiness to load was given, & the lay days began to run. Owing, however, to a dispute between the Russian & Italian Govts. the ship was ordered by the port authorities to leave Batoum & also Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum:—*Held:* interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—CANTIERE NAPHTHA EXPORT, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R. 355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

Annotation:—**Refd.** *Re* Ropner Shipping Co. & Cleeves Western Valleys Anthracite Collieries, [1927] 1 K. B. 879.

3184. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

3185. *Add. Annotations:*—**Refd.** Sargant *v.* Paterson (1923), 129 L. T. 471; Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3188. *Add. Annotations:*—**Consd.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284; Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579. **Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3189. *Add. Citations:*—92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.

Add. Annotations:—**Consd.** Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3193. *Add. Annotation:*—**Refd.** Perry *v.* Equitable Life Assce. Soc. of U.S.A. (1929), 45 T. L. R. 468.

3194. *Add. Annotations:*—**Consd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274. **Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179; Kirk *v.* Eustace, [1937] 1 K. B. 278.

3198. *Add. Annotations:*—*As to* (1) **Apld.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284. **Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. *As to* (2) **Apld.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497. **Refd.** May *v.* May, [1929] 2 K. B. 386. *Generally*, **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

3199. *Add. Annotation:*—*As to* (1) **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & [illegible] A. C. 226.

3199a. —— ——.]—HIRJI MULJI *v.* CHEONG YUE S.S. Co., No. 3172a, *ante*.

3201. *Add. Annotations:*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

3202. *Add. Annotation:*—*As to* (2) **Consd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3206. *Add. Annotation:*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

3207. *Add. Annotation:*—**Refd.** Finlay *v.* Kwik Hoo Tong Handel Maatschappij (1928), 98 L. J. K. B. 251.

3208. For "national" read "notional."

3211. *Add. Annotations:*—*As to* (1) **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3216. *Add. Annotation:*—**Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3218. *Add. Annotations:*—*As to* (2) **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *Generally*, **Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

3220. *Add. Annotation:*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3221. *Add. Annotation:*—**Refd.** Compagnie Continentale d'Importation *v.* Handelsvertretung der Union der Russian Soviet Republic in Deutschland (1928), 138 L. T. 663.

PART VII. SECT. 9, SUB-SECT. 3.—B.

3194 i. *Time charter—Ship requisitioned by Government.*]—*Held:* a condition was not to be implied in the contract that an interruption should excuse the party from the further performance of it, unless substantially the whole contract became impossible of performance.—DOMINION COAL CO. *v.* LORD STRATHCONA S.S. Co., [1924] 2 D. L. R. 66; 57 N. S. R. 113.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—C.

3204 v. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

3217 i. —— *Difficulties in way of shipment.*]—By a contract, made in 1916, deft. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels: —*Held:* the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it.—RINGSTAD *v.* GOLLIN & CO. PROPRIETARY, LTD. (1925), 35 C. L. R. 303; 31 Argus L. R. 221.—**AUS.**

3224 i. *Importation restricted by Government.*]—Applt., a manufacturer of yeast, entered into a written contract under which he undertook to supply a certain portion of his output to resp. during 1927. Clause 8 of the contract provided that "in the event

3225a. Confiscation by foreign Government.]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated :—*Held :* the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—

L. J. K. B. 569 ; 135 L. T. 223 ; 42 T. L. R. 435, C. A.

3226. *Add. Annotation :*—**Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

3231. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

3233. *Add. Annotations :*—*As to* (2) **Consd.** Canticre Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569 ; The Penelope, [1928] P. 180 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; May *v.* May (1929), 98 L. J. K. B. 770. *As to* (2) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3238. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3239. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3240. *Add. Annotations :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522 ; The Bathori, [1933] P. 22.

3243. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3249. *Add. Annotation :*—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3275. *Add. Annotations :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528 ; Pockney *v.* Atkinson (1929), 142 L. T. 135 ; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

3276. *Add. Annotation :*—*As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3280. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

3282. *Add. Annotations :*—**Consd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226 ; Graves *v.* Cohen (1929), 46 T. L. R. 121. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3303. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood, [1929] A. C. 72.

3305. *Add. Annotation :*—**Distd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., Ltd., [1933] 2 K. B. 141.

3306. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood (1927), 44 T. L. R. 17.

3309. *Add. Annotation :*—**Refd.** Edmonson *v.* Ropner (Sir R.) & Co. (1935), 79 Sol. Jo. 777.

3310. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

3314. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundry, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

of legislation being passed . . . which may in any wise restrict or prohibit the sale of yeast in any quantity or to any class or race, this agreement shall become void," while clause 9 provided that " if such legislation . . . relates only to imported yeast then your selling price . . . may be increased at your option " in certain respects. In June, 1927, by Act 24 of 1927, the importation of yeast into the Union was prohibited except with the permission of the Comr. of Police. Applt. thereupon repudiated the contract, pleaded it was null & void under clauses 8 & 9 thereof :—*Held :* legislation prohibiting the importation of yeast did not fall within the terms of either clause of the contract, inasmuch as it did not prohibit or restrict the sale of yeast.—COMPRESSED YEAST, LTD. *v.* DISTRIBUTING AGENCY, LTD., [1928] App. D. 301.—**S. AF.**

k i. ——.]—A contract being for export only :—*Held :* its object was frustrated.—MAYER & LAGE INC. *v.* ATLANTIC SUGAR REFINERIES, LTD., [1926] 2 D. L. R. 783 ; 58 O. L. R. 531.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—D.

sp. *Strike of workmen—Lease of salt works.*]—*Held :* the contract to pay rent had not become impossible of performance.—HARI LAXMAN JOSHI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 52 Bom. 142.—**IND.**

Refusal of municipal licence for ess contemplated.] — FONG *v.* KERWIN (Ont.), [1929] 3 D. L. R. 612. —**CAN.**

PART VII. SECT. 9, SUB-SECT. 5.

l i. —— *Lease of hotel.*]—The lessees of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence :—*Held :* the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—CHERRIER & ORTON *v.* MCCREIGHT & PENNINGTON, [1917] 2 W. W. R. 8 ; 11 Alta. L. R. 270 ; 33 D. L. R. 689.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 6.

3278 i. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

PART VII. SECT. 11, SUB-SECT. 1.—A.

3305 i. *Performance by one to satisfaction of other party—Whether party bound to decide reasonably or entitled to decide arbitrarily—Bonâ fide decision.*] —Pltf. agreed to place sods around defts.' power house to their satisfaction. Defts., not being satisfied with the sods or the work, cancelled the contract. In an action for damages for breach of contract, the jury found that defts. had acted honestly but unreasonably :—*Held :* the judgment of defts. honestly arrived at was final. & pltf. was not entitled to recover.—TRUMAN *v.* FORD MOTOR CO. OF CANADA, LTD., [1926] 1 D. L. R. 960 ; 58 O. L. R. 317.—**CAN.**

s i. *Receipt of money — Duty to collect.*]—A contract provided for a percentage of the moneys received by one party to be paid to the other :—*Held :* liability could not be evaded by failure to collect the moneys ; but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—NORTHERN PIPE LINE CO. *v.* CANADIAN GAS CO., [1924] 4 D. L. R. 1111.—**CAN.**

PART VII. SECT. 11, SUB-SECT. —B. (a).

a i. —— *Agreement to sell dealer's business subject to granting of licence by licensing officer.*]—RAJAH *v.* S[illegible] (1927), 48 N. L. R. 309.—**S. AF.**

3324. *Add. Annotations :*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224 ; Caney *v.* Leith, [1937] 2 All E. R. 532.

3324a. —— ——.]—In an agreement for the assignment of a certain lease it was stated that the agreement was "subject to the purchaser's solr. approving the lease." The purchaser's solr. did not approve the existing lease by reason of various terms therein contained. The vendors sought to enforce the agreement by specific performance :—*Held :* the agreement was conditional on the purchaser's solr. approving the lease, &, in the absence of *mala fides* or unreasonable conduct on the part of the solr., there was no enforceable contract unless & until the solr.'s approval was obtained.

Per FARWELL, J. : it is not, in a case of this sort, for the ct. to consider & hear evidence from the solr. with regard to what view he took of the matter, or anything of that sort. The ct. has to look at the document of which the solr. has expressed disapproval, &, if that disapproval can be given *bonâ fide* & without any unreasonable conduct on the part of the solr., then the ct. is bound to say that the condition has not been fulfilled.—CANEY *v.* LEITH, [1937] 2 All E. R. 532 ; 156 L. T. 483 ; 53 T. L. R. 596 ; *sub nom.* CAREY *v.* LEITH, 81 Sol. Jo. 357.

3326. *Add. Annotation :*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

3327. *Add. Annotations :*—*As to* (2) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *As to* (5) **Apld.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368. *Generally*, **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

3328. *Add. Annotations :*—**Apld.** Baldry *v.* Marshall, [1925] 1 K. B. 260 ; Barker *v.* Agius (1927), 43 T. L. R. 751 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Andrews Bros. (Bournemouth), Ltd. *v.* Singer & Co., [1934] 1 K. B. 17 ; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

After this case add "*See, also*, COMPANIES, No. 814a."

3330. To the cross-references following this case add "**As regards bills of exchange.**]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 79–93."

3339a. ——.]—It is a general rule that covenants are to be treated as independent rather than as conditions precedent, especially where some benefit has been derived by the covenantor (POLLOCK, C.B.).—NEWSON *v.* SMYTHIES (1858), 3 H. & N. 840 ; 28 L. J. Ex. 97 ; 32 L. T. O. S. 110 ; 157 E. R. 707.

Annotation :—**Refd.** Kidner *v.* Stimpson (1918), 34 T. L. R. 434.

3340. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3346. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3351. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3379a. —— **Provided "undertaking" carried out.**]—BRUFF *v.* CONYBEARE (1868), 17 L. T. 664, Ex. Ch. ; *revsg.* (1862), 13 C. B. N. S. 263.

—— —— —— London Corpn. *v.* Sandon, London Corpn. *v.* Met. Ry., Met. Ry. *v.* London Corpn. (1872), 26 L. T. 86.

3382. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

3406. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3407. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3408. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3447. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

3487. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

3490. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

PART VII. SECT. 11, SUB-SECT. 1.—D. (a).

c i. ——.]—HALIFAX & CAPE BRETON COAL & RY. CO. *v.* GREGORY, Cass. Dig. 2nd ed. 727.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (o).

3375 i. *Promise by party to pay—Out of particular fund.*]—Deft. insurance assocn. was incorporated on Apr. 10, 1929. Two days later, in a letter on the assocn.'s notepaper, signed by the deft. M. as chairman of directors & by the secretary, & addressed to pltf. co., an agreement was made, in consideration of an advance by pltf. of a sum not exceeding £500 for preliminary expenses to secure members, "to refund the amount advanced as moneys are received from the members' applications." The last paragraph of the letter stated (*inter alia*), "In consideration of your doing this we agree to refund the full amount of money received for expenses." Pltf. co. sued both M. & the assocn. to recover the money so advanced :—*Held :* the letter contained an unequivocal undertaking by deft. assocn. to refund the amount advanced, & did not make the receipt of moneys from members' applications a condition precedent to its liability.—ASSOCIATED INVESTMENT UNDERWRITERS (N.Z.), LTD. *v.* MACKENZIE & DOMINION MUTUAL INSURANCE [1932] N. Z. L. R. 221.—**N.Z.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (q).

sa. *Timber licence—Condition against employment of Chinese or Japanese.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & CO., [1922] 3 W. W. R. 9 ; 63 S. C. R. 466.—**CAN.**

sd. *Contract for sale of currency—Payment condition precedent to delivery.*] BROWN (1868), 18 C. P. 60.—**CAN.**

sf. *Selling agency agreement.*]—AUCHTERLONIE *v.* ARMS (1875), 25 C. P. 403.—**CAN.**

sk. *Agreement to sell land for church—If congregation brought together.*]—*Held :* although at first conditional, the contract, by reason of a congregation having assembled, became absolute.—A.-G. *v.* CHRISTIE (1867), 13 Gr. 495.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—E.

3422 i. *General rule.*]—Where a document is sufficiently clear & certain, & payment depends on some simple condition or event, it is sufficient for pltf. to allege that the condition has been complied with or the event has happened. The *onus* then lies on deft. to show that what was intended by the document sued on to be a condition precedent to entitle pltf. to succeed has not been complied with.—UNION SHARE AGENCY & INVESTMENT, LTD. (LIQUIDATORS) *v.* SPAIN (1927), 48 N. L. R. 348.—**S. AF.**

3494. *Add. Annotations :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. [illegible] Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536; Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204.

3495. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

3500. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3505. *Add. Annotation :*—**Refd.** Suhr (R. F. H.) *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

3508. *Add. Annotation :*—**Distd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

3509. *Add. Annotation :*—**Refd.** Samuel *v.* Dumas, [1924] A. C. 431.

3513. *Add. Annotations :*—**Consd.** Acties Nord-Osterso Rederiet *v.* Casper, Edgar (1923), 28 Com. Cas. 222. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

3514. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

3519. *Add. Annotations :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

3520. *Add. Citation :*—*Revsd. sub nom.* NICHOLS *v.* NORTH METROPOLITAN RAILWAY & CANAL CO. (1894), 71 L. T. 836, C. A.

Part VIII.—Defences to Actions for Breach of Contract.

3553. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3555. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3556. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3560. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3561. *Add. Annotations :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48. **Mentd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

3563. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3569. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3573. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3575. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3576. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3578. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3585. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3586. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3587. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3593a. ——.]—Accord & satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valu-

PART VII. SECT. 11, SUB-SECT. 3.—A. (b).

p 1. ——.]—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere :—*Held :* as it was clearly meant that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving him, deft. was not obliged to provide for her support elsewhere.—COMEAN *v.* LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201.—CAN.

PART VII. SECT. 11, SUB-SECT. 3.—A. (c).

3509 i. *What amounts to waiver.*]—BOWES *v.* CHALEYER, [1923] V. L. R. 295; 32 C. L. R. 159.—AUS.

PART VII. SECT. 11, SUB-SECT. 3.—C.

3521 i. *Right of defaulting party to sue other party—Recovery of deposit.*]—Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded :—*Held :* an action by pltf. to recover a deposit paid on the contract must be [illegible]. — GLENNIE *v.* RUSHTON (1922), 55 N. S. R. 530.—CAN.

PART VIII. SECT. 2, SUB-SECT. 2.—A.

3542 i. *General rule.*]—WHITEFORD *v.* MCLEOD (1868), 28 U. C. R. 349.—CAN.

3547 ii. ——.]—Prior to foreclosure proceedings on a mtge. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withd. aw from all negotiations to accept a quit-claim deed :—*Held :* there was an accord but no satisfaction.—CAIRNS *v.* [illegible]. R. 590; 3

able consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged, & the satisfaction is the consideration which makes the agreement operative. It is not necessary that the consideration should be executed; the consideration on each side may be an executory promise, the two mutual promises making an agreement enforceable at law.

T., who owned a paper, formed a co. with a capital of £500 in £1 shares, & transferred his paper to the co. in consideration of the allotment to him of the 500 shares. T. gave Miss P., who was the editor of the paper, 475 shares, retaining 25 shares himself. T. & Miss P. were the directors of, & the only shareholders in the co. Defts. published in one of their papers two articles which T. considered to be a libel upon himself & the co. to which he had transferred his paper. T. & the co. commenced actions for libel against defts. There was a meeting between T. & H., a representative of defts., with the object of settling the litigation, & eventually terms of settlement were arranged on Oct. 10, 1932, & initialled by T. & H. The terms, which were headed with the names of the two actions, provided: "I accept the sum of 1,000 guineas on account of costs & expenses incurred in full discharge & settlement of my claims against" defts. "& the claims of the" co. "& the officers of that co., arising out of the articles published in the *Daily Mail* . . . & I will forthwith instruct my solrs. to serve notice of discontinuance, or to take such other steps or to agree to such other steps being taken to end the proceedings now pending." Provision was also made for a letter in the terms of an agreed draft to be written to T. by H. Pltf. co. & Miss P. did not agree to the proposed settlement, although defts. were ready & willing to carry out the settlement, & the actions proceeded to trial. Defts. counterclaimed against T. for breach of warranty of authority. The jury returned a verdict for both T. & pltf. co., & judgment was entered for each of pltfs. with costs. The Ct. of Appeal, however, held that the alleged libel was not a libel on pltf. co., & set aside the judgment in favour of pltf. co. The judge at the trial held that T. represented & warranted that he had authority to settle the action on behalf of pltf. co. whereas in fact he had no such authority, & defts. were entitled to an inquiry as to the damages they had thereby sustained. Defts. appealed (*inter alia*) by leave of the trial judge, on the question of costs in both actions. Pltf. T. appealed against the judgment against him for damages for breach of warranty of authority on the ground that he had never represented that he had authority to settle the action on behalf of pltf. co., & because the transaction relied on in the counterclaim was only an executory accord giving rise to no rights:—*Held:* the document initialled by T. & H. on Oct. 10, 1932, was an agreement in which the consideration on each side was an executory promise by the other side, & further, a third party was included in the promise. The agreement was therefore enforceable in law, at any rate, by counterclaim.—BRITISH RUSSIAN GAZETTE & TRADE OUTLOOK, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD., TALBOT *v.* ASSOCIATED NEWSPAPERS, LTD., [1933] 2 K. B. 616; 102 L. J. K. B. 775; 149 L. T. 545, C. A.

3606. *Add. Annotation:*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

3614. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

3622. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3641. *Add. Annotations:*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Barclay *v.* Malcolm (1925), 133 L. T. 512.

3646. *Add. Annotations:—As to* (1) **Distd.** The Baarn (1933), 49 T. L. R. 554. **Refd.** *Re* British American Continental Bank, Lisser & Rosenkranz's Claim, [1923] 1 Ch. 276; *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166; The Baarn (No. 2), [1934] P. 171.

3654. *Add. Annotation:*—**Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

3658. *Add. Annotation:*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3661. *Add. Annotation:*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

PART VIII. SECT. 2, SUB-SECT. 3.—D.

si. *Discharge of mortgage on execution of agreement between mortgagor & mortgagee.*]—WEST *v.* ACCIDENTAL FIRE INSURANCE CO., [1927] 3 D. L. R. 260.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.—C.

3614 i. *Satisfaction by one.*]—Judgments recovered by pltf. & another against eleven defts. were assigned to a co. These judgments remaining unpaid. T., one of defts., under a compromise agreement arrived at in 1925 after negotiations with the co., paid to the co. a sum which he contended was paid to & accepted by the co. in full satisfaction of his indebtedness. Originally all defts. were jointly & severally liable in respect of the judgment debts. After the agreement was made, the co. sought to examine deft. W. as a judgment debtor:—*Held:* the effect of the agreement was to release T. unqualifiedly in respect of the two judgments & to release his co-defts. also; &, therefore, W. was not examinable as a judgment debtor.—LUGSDIN *v.* BALL, [1929] 4 D. L. R. 543; 64 O. L. R. 251.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.

sm. *Payment by instalments—First payment to be expedited.*]—The question was as to the meaning of the following clause: "It is hereby agreed that the said E. will, upon the 11th day of every month, beginning upon the 11th day of Aug., A.D. 1927 (with the exception of the first payment, which is to be made upon the signing, sealing, & delivery of these presents) pay to the said L. the sum of $40 per month," etc. A payment was made on July 11, the date of the agreement:—*Held:* the payments were to be made on the 11th day of every month, beginning upon Aug. 11. The payment due on Aug. 11 was to be expedited, &, therefore, no fresh payment would be due on Aug. 11.—ATKINSON *v.* ATKINSON (1928), 60 N. S. R. 138.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.

3655 viii. —— ——.]—If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—GOKUL DAS *v.* NATHU (1925), I. L. R. 48 All. 310.—**IND.**

3656 i. —— —— *Unless creditor abroad.*]—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—BANSILAL ABIRCHAND *v.* GHULAN MAHBUB KHAN (1925), 53 L. R. Ind. App. 58.—**IND.**

p i. ——
(1854), 4 C. P. 293.—**CAN.**

——.]—DORNBERG *v.* ——————, [1929] 1 D. L. R. 811; 40 B. C. R. 415.—**CAN.**

3667. *Add. Annotations :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492 ; Bremer *v.* Oeltransport G.M.B.H. & Drewry, [1933] 1 K. B. 753.

3671. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3673. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

3680. *Add. Annotations :*—**Refd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256 ; Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3701. *Add. Annotation :*—**Apld.** Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3707. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3709. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3713. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3715a. Forbearance—Agreement for payment by instalments—Whole sum due on default of one instalment.]—Deft. owed pltf. £266 17*s.* 6*d.* for gaming debts. In consideration of pltf.'s forbearance to press his claim at Tattersalls, deft. agreed that in settlement of the debt he would give pltf. two bronzes, & pay him two instalments of £20 each on specified dates. The agreement provided that, upon default in due payment of any instalment : " the whole then remaining balance of the original sum above-mentioned shall become due & payable forthwith." Deft. defaulted in payment of the second instalment of £20, & pltf. sued him for £218 17*s.* 6*d.*, giving credit for the first instalment & the two bronzes at a valuation of £28 :—*Held :* (1) the expression " the original sum above-mentioned " meant the original debt of £226 17*s.* 6*d.*, & could not be regarded as the two bronzes & the two money instalments of £20 ; (2) to ascertain the balance of the original sum payable on default, a money value would have to be put upon the bronzes, & evidence of such value was therefore admissible ; (3) the clause which provided that the remaining balance of the original sum should become payable in the event of default was not a penalty clause.—LATTER *v.* COLWILL, [1937] 1 All E. R. 442 ; 53 T. L. R. 383 ; 81 Sol. Jo. 79, C. A.

3749. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3751. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3752. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

3763. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3781. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784a. ——.]—HALL *v.* PADLEY (1923), 156 L. T. Jo. 83.

3784b. ——.]—Pltf. granted a bill of sale over certain furniture to a moneylender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale :—*Held :* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

3784c. ——.]—If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor, If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—ALLEN *v.* ROYAL BANK OF CANADA (1925), 95 L. J. P. C. 17 ; 134 L. T. 194 ; 41 T. L. R. 625, P. C.

3803. *Add. Annotation :*—**Consd.** Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3806. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3813. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3817. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3818. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

PART VIII. SECT. 3, SUB-SECT. 5.—F. sp. *Manager of debtor agent of creditor—Fraudulent entry of payment.*] —MCMORRIS *v.* EMPRESS THEATRE CO., LTD., [1923] 2 D. L. R. 555 ; 16 Sask. L. R. 504 ; [1923] 1 W. W. R. 1144.—**CAN.**

PART VIII. SECT. 3, SUB-SECT 5.—G. (b) i.

3766 iv. ——.]—BABINEAU *v.* BOUR- D. L. R. 852.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

3799 i. *Acceptance in satisfaction question of fact.*]—The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction ; whether it was accepted in satisfaction of the claim is a question of fact.—

. . . . . *v.* FLACK, [1923] 3 132 ; 16 Sask. L. R. 493, 1 W. W. R. 1289.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—G. (c) i.

3822 iv. ——.]—In an action for damages pltf. alleged that deft. had negligently set out a fire which destroyed pltf.'s granary & wheat therein. The defence pleaded was that deft. had given pltf. a promissory

3833. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3864. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3869a. Payment into bank to account of creditor's solicitors.]—Variation in the performance of a promise is no consideration for forbearance by the promisee where in fact it is allowed at the promisor's own request.

Pltf., being indebted to defts., an agreement was made between him & defts.' solrs. that, if he would pay the amount of the debt into a bank in the country for the credit of defts.' solrs. in London, that payment would satisfy all sums which he owed to defts. & a bkpcy. notice which they had issued in respect of part of the debt would not be served on him. Pltf. alleged that he carried out his part of the agreement, but that, in breach thereof, defts., by a clerk of their solrs., served him with the bkpcy. notice. In an action for damages for breach of the agreement it was held, that, as pltf. by the agreement was not to pay his debt to his creditors, but was to pay the money to the account of defts.' solrs., which he was not under any obligation to do, there was sufficient consideration to prevent the agreement being *nudum pactum* & pltf. was entitled to maintain an action for breach of the agreement. On appeal :—*Held :* on the evidence the concession made by defts. as to time & place of payment of the debt was entirely to oblige pltf. & that no benefit thereby accrued to defts. ; &, that being so, the agreement was a mere *nudum pactum* & gave no cause of action for breach of contract.—VANBERGEN *v.* ST. EDMUNDS PROPERTIES, LTD., [1933] 2 K. B. 223 ; 102 L. J. K. B. 369 ; 149 L. T. 182, C. A.

SUB-SECT. 6.—IN WHAT CURRENCY AND AT WHAT RATE OF EXCHANGE PAYMENT MUST BE MADE.

See MONEY AND MONEY-LENDING, Vol. XXXV., pp. 169-176, & Supp.

3874. *Add. Annotation :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

3880. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3882. *Add. Annotation :*—*As to* (2) **Consd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3883a. ——.]—On Sept. 17, 1935, a certain sum was owing by resp., a licensed street trader, to applt. corpn., in respect of removal of refuse & other services. During the period from Sept. 18, 1935, to Mar. 17, 1936, further sums became due for similar services, &, during the same period, certain payments were made by resp. to applt. corpn. Resp. did not specifically appropriate any of these payments to any particular charges. Applt. corpn. purported to appropriate the payments in satisfaction of the arrears of earliest date, &, on Mar. 17, 1936, sought to recover the balance alleged to be due. The justices thought that resp. believed that he was making payments towards current dues, & decided that the appropriation by applt. corpn. was not, & could not be properly made, & they held that applt. corpn. could not recover a sum larger than the difference between the money due in respect of the period from Sept. 18, 1935, to Mar. 17, 1936, & the amount paid by resp. during that period. Applt. corpn. appealed, contending that, in the absence of specific appropriation by resp., applt. corpn. was entitled to appropriate the payments, to satisfy any arrears, even though the arrears might be irrecoverable at law :—*Held :* the justices had not found that there has been any appropriation by resp.—STEPNEY CORPN. *v.* OSOFSKY, [1937] 3 All E. R. 289, C. A.

3905. *Add. Annotations :*—**Apld.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652. **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3909. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

note in satisfaction of his claim. The note had not been paid :—*Held :* in the absence of evidence of an express or implied agreement under which pltf. took the note in satisfaction of his claim, the action lay ; the only effect of the note being to convert the claim from an unliquidated one to a liquidated one, the amount of the note being taken to be the amount which the parties had agreed on as that for which the tortfeasor was liable, subject, in the present case, to a deduction of the net amount received by pltf. on a sale of part of the wheat which the parties had agreed pltf. should deduct from the note.—GJESDAL *v.* BERGH, [1935] 3 W. W. R. 296.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—K.

sr. *Agreement by creditors to work mine—Conditional on mine proving valuable—Mine valueless—Formation of company by creditors—Whether conclusive as to accord & satisfaction.*]—WHITLA *v.* PHAIR (1898), 12 Man. L. R. 122.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 7.—A.

3871 i. *By debtor—How far creditor bound by debtor's appropriation.*]—A creditor cannot appropriate in option to his debtor's expressed inten[illegible] GHOSE *v.* ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

3871 ii. —— ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983 ; 1 M. P. R. 383.—**CAN.**

3876 i. ——.]—A debt owing from a creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.—MATTHEWSON *v.* THOMPSON, [1925] 2 D. L. R. 1211 ; [1925] 2 W. W. R. 161 ; 19 Sask. L. R. 420.—**CAN.**

3876 ii. ——.]—A person who pays money has a right to apply that payment to any of the debts which he owes.—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—**CAN.**

3884 iii. ——.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.—MANISTY *v.* JAMESON (1925), I. L. R. 5 Pat. 326.—**IND.**

3884 iv. —— ——.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.—RELU MAL *v.* AHMAD (1925), I. L. R. 7 Lah. 17.—**IND.**

3884 v. —— ——.]—FRASER *v.* LOCIE (1863), 10 Gr. 207.—**CAN.**

3884 vi. —— ——.]—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

m i. —— *Appropriation to interest.*]—When payments are received generally on account of a debt, which is in part interest & in part principal & no specific appropriation is made, they are treated as applicable to interest in priority to principal.—FALK *v.* HAUGH (1935), 53 C. L. R. 163 ; [1935] V. L. R. 238 ; 41 Argus L. R. 255 ; 9 A. L. J. 70.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 7.—C.

3913 i. —— *Mortgage debt—Or simple contract debt.*]—A mtgee., in receipt of the rents & profits of the mortgaged premises, sold goods to the mtgor., & the latter assented to the receipts being applied first in payment of the account for goods sold :—*Held :*

3929. *Add. Annotation :*—**Refd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3930. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3946. *Add. Annotations :*—**Consd.** Leeson *v.* Leeson, [1936] 2 K. B. 156. **Refd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3949a. —— —— ——.]—Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor, the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

3950a. ——.]—An appropriation of a payment cannot be inferred from an intention in the mind of the debtor uncommunicated to the creditor. It can only be inferred from circumstances known to both parties.

A husband & wife separated under an oral agreement by which the husband agreed to pay his wife £3 a week for the maintenance of herself & their child, B. Later the parties entered into a written agreement by which the husband agreed to pay the wife £300 by weekly instalments of £2 a week in respect of certain premises which belonged to them jointly. The agreement provided that on the failure of the husband to pay any instalment he became liable to pay forthwith the balance of the £300 then due. The husband afterwards sent to his wife £5 each week under the two agreements. The wife subsequently obtained a decree *nisi* for the dissolution of her marriage, & the husband after the lapse of a week, on the advice of his counsel in the Divorce Ct., sent each week to the wife £3 only. The wife sued the husband to recover £92 as being due under the written agreement in respect of the purchase of the house. The husband alleged that he had appropriated the £3 which he sent each week as to £2 in respect of the weekly instalments due under the written agreement, & as to £1 for the maintenance of the child B., & he alleged that he sent a slip to his wife with the first payment of £3 containing the words : " This is for the house & B." The wife, however denied having received the slip. No notice to produce it was given. The county ct. judge, however, admitted secondary evidence of its contents, & held that, even if the slip was not sent, the husband had appropriated the payments to the weekly instalments due in respect of the house. On appeal by the wife it was admitted that secondary evidence as to the contents of the slip was inadmissible :—*Held :* there must be something more than an intention of the debtor uncommunicated to the creditor to amount to an appropriation by the debtor ; there must be a notice, express or implied, to the creditor to inform him of the appropriation. There was no evidence upon which the county ct. judge could find that there had been an appropriation by the debtor.—LEESON *v.* LEESON, [1936] 2 K. B. 156 ; [1936] 2 All E. R. 133 ; 105 L. J. K. B. 362 ; 154 L. T. 710 ; 52 T. L. R. 461 ; 80 Sol. Jo. 424, C. A.

Annotation :—**Consd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3961. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365 ; Philadelphia National Bank *v.* Price, [1937] 3 All E. R. 391 ; Taylor *v.* Taylor, [1937] 3 All E. R. 571.

3977. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

3990. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3998. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4000. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606 ; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432 ; Taylor *v.* Taylor, [1937] 3 All E. R. 571.

4001. *Add. Annotation :*—**Refd.** *Re* Wheeler & Co., Trustee *v.* Kirby & Grainger (1933), 102 L. J. Ch. 341.

an incumbrancer, whose rights accrued after the settlement, was not entitled to take the position that the rents & profits necessarily & irrevocably reduced the mtge. as they were received. —MITCHELL *v.* SAYLOR (1901), 21 C. L. T. 224 ; 1 O. L. R. 458.—**CAN.**

3913 ii. —— —— ——.]—*Re* BROWN (A BANKRUPT) (1851), 2 Gr. 111.—**CAN.**

n i. —— *Running account.*]—PETRIE (L.), LTD. *v.* FRIZZLE, [1925] 4 D. L. R. 845 ; *on appeal*, [1926] 2 D. L. R. 419 ; [1926] 1 W. W. R. 905.—**CAN.**

3926 ii. —— —— ——.]—Although, in the absence of an appropriation by the debtor, a creditor may apply a payment or part thereof towards satisfaction of a statute-barred debt, such an appropriation will not revive the residue of that debt.—BURTON *v.* HUNTER, [1931] 2 W. W. R. 301.—**CAN.**

3934 i. —— *Earlier debt.*]—Under an agreement whereby defts. undertook to pay through a co-operative assocn. for goods supplied up to a certain amount by pltf. to the assocn. :—*Held :* money paid to pltf. by the assocn. after the execution of the agreement could not be appropriated to a debt owing to pltf. under a former agreement of the same kind.—CODVILLE CO., LTD. *v.* GODDARD, [1926] 1 W. W. R. 602 ; 22 Alta. L. R. 41.—**CAN.**

3934 ii. —— —— *Arrears of salary—Unless appropriation by debtor to current salary.*]—*Re* LOGAN (H. J.) CO. (Ont.), [1926] 2 D. L. R. 946 ; 7 C. B. R. 325. —**CAN.**

q i. —— ——.]—MCGREGOR *v.* GAULIN (1848), 4 U. C. R. 378.—**CAN.**

s i. —— *Disputed debt.*]—*Semble :* where a creditor is owed more than one debt by the same debtor, but the amount of one of the debts is disputed, a payment made by the debtor generally cannot be appropriated by the creditor to the disputed debt.—JONES *v.* UZELMAN, [1929] 2 D. L. R. 464 ; 1 W. W. R. 143 ; 23 S. L. R. 354.—**CAN.**

t i. —— ——.]—ROSS *v.* PERRAULT (1867), 13 Gr. 206.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 7.—E. (a).

3961 i. *Statement of rule.*]—SCOTT & PEDEN *v.* ELLIOTT, [1926] 2 D. L. R. 504 ; [1926] 2 W. W. R. 154 ; 37 B. C. R. 143.—**CAN.**

3961 ii. ——.]—The rule in *Clayton's Case* is at best merely a presumption.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135 ; 3 Alta. L. R. 299.—**CAN.**

3962 v. —— ——.]—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135 ; 3 Alta. L. R. 299.—**CAN.**

3962 vi. —— ——.]—LAKE *v.* CROSBIE (1911), 9 Nfld. L. R. 490.—**NFLD.**

3962 vii. —— ——.]—A debtor has the right to apply a payment in any way he thinks fit, & if there are several debts he has a right to say to which of the debts the payment shall be applied. When there is no appropriation by the debtor, the creditor has the right to appropriate, & it seems that he may appropriate a payment to an unguaranteed debt. If neither the debtor nor the creditor makes any appropriation, the law appropriates the payment upon equitable principles, & *primâ facie* to the earliest debt —NASH-SIMINGTON CO., LTD. *v.* CALDWELL, [1931] 1 W. W. R. 183.—**CAN.**

a i. ——.]—PARADIS & SONS *v.* SILESSE, [1931] 3 M. P. R. 565.—**CAN.**

4003. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4008. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

4009. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

4017. *Add. Annotation :*—**Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4059a. ——.]—FEENEY *v.* FIRBECK MAIN COLLIERIES, LTD., [1926] 2 K. B. 218; 95 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.

4077. *Add. Annotations :*—**Refd.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

4095a. Loan by director to private company—Part of loan remitted—Agreement that full loan provable in winding up.]—The managing director of a private co. lent to the co. £3,400. In Mar. 1935, he agreed that of that sum £1,612 6*s.* 8*d.*, being the amount of the loss incurred in the first trading year of the co., should only be repaid to him by the co. while it was a going concern out of profits, but, if the co. went into liquidation, the whole debt was to rank on a par with the other unsecured creditors of the co. The agreement was set out in a minute of a board meeting & accounts drawn up by the accountants to give effect to that minute were signed by the managing director & his co-director. On the assets side of the account there was a statement with respect to general profit & loss account "Net loss. £1,612 6*s.* 8*d.* less T.S. loan fund £1,612 6*s.* 8*d.*," & nothing was carried into the assets column in respect of the debit balance of the profit & loss account. The liquidator postponed the director's proof as to this sum of £1,612 6*s.* 8*d.* until all creditors had been paid in full :—*Held :* in the absence of proof that any creditor had acted to his own detriment after having seen the balance sheet, there was no case of estoppel & the managing director was entitled to prove for the sum in question in competition with the ordinary creditors.—*Re* GENERAL PRESERVING CO., LTD., [1937] 1 All E. R. 693; 81 Sol. Jo. 237.

4119. *Add. Annotation :*—**Consd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

4130. *Add. Annotation :*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

4132. *Add. Annotation :*—**Consd.** Josselson Borst, [1937] 3 All E. R. 722.

4133. *Add. Annotation :*—*As to* (2) **Consd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4193. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4203. *Add. Annotation :*—**Folld.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

4285. *Add. Annotations :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Humphery *v.* Wilson (1929), 141 L. T. 469.

4317a. ——.]—(1) One bond, be it of record or not, cannot merge another bond.—HIGGENS' CASE (1605), 6 Co. Rep. 44 b; 77 E. R. 320.

Part IX.—Constructive Contracts.

4325. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4340a. Double payment by bank to client's order.]—Pltfs., a London bank, on telegraphic instructions from a bank in Warsaw, which was acting for a Polish co., paid to defts. £2,000 on account of a sum of over £4,000 owed by the Polish co. to defts. The Warsaw bank then wrote a letter of confirmation, but pltfs. mistook the letter for a direction to pay defts. a further sum of £2,000 & did so. Afterwards the Polish co., believing the sum paid off to be £2,000, told the Warsaw bank to arrange for the payment of another £1,000, but the

PART VIII. SECT. 3. SUB-SECT. 8.

g i. —— *Defence to action on I.O.U.*]—A. & B. were in partnership for some years up to 1907. In that year the partnership was dissolved, &, as the result of an arbn. for the settlement of matters outstanding between the partners, A. paid B. £2,000. Thereafter the two were on unfriendly terms, & B. was in poor circumstances. B. died in 1923, & A. in 1927. In 1928, when the arbiter & the clerk to the arbn. were both dead, & the papers relating to it could not be traced, B.'s executrix found, lying among some papers of no value, an I.O.U. for £200, dated 1897, granted by A. in favour of B. She thereupon brought an action against A.'s trustees for payment of the sum in the I.O.U. :—*Held :* in order to establish that the debt had been discharged, it was sufficient to prove a state of facts inconsistent with its continued subsistence, &, particularly in view of the creditor's delay in asserting the claim, defenders had discharged that onus.—M'KENZIE'S EXECUTRIX *v.* MORRISON'S TRUSTEES, [1930] S. C. 830.—**SCOT.**

PART VIII. SECT. 3, SUB-SECT. 9.—A. (a).

4028 iv. ——.]—ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

4050 iii. ——.]—GJESDAL *v.* BERGH, [1935] 3 W. W. R. 296.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 5.—A.

4134 ii. ——.]—MOODIE *v.* MACKENZIE, [1925] 1 D. L. R. 801.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7.—A. (a).

4200 iii. ——.]—Where several debtors are bound jointly, a release given to one discharges the others unless the creditor, when granting the release, reserves his right against them; this rule applies as much to a judgment debt as to any other obligation.—CASTLE *v.* BILSKY (1921), 50 O. L. R. 536.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 9.

sr. *On security for debt.*]—The release of a debt operates as a release of any security held in respect of it.—A.-G. *v.* SMITH & FRANCE, [1925] N. Z. L. R. 217.—**N.Z.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

4282 i. *Whether court will give effect to intention—Gathered from instrument.*]—MCKEIGAN *v.* MCQUEEN, [1931] 2 D. L. R. 993; 3 M. P. R. 235.—**CAN.**

PART IX. SECT. 1, SUB SECT. 1.—A.

4325 i. *General rule.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—C.

st. *Payment to enable fulfilment of contract.*]—Where a timber contract contained the terms that Govt. & all other dues should be paid by the contractor, & deft. co. reserved the right to retain Govt. dues from the contractor until clearance had been furnished :—*Held :* money paid by deft. co. to furnish the clearance was paid on behalf of the contractor to fulfil his contract & was chargeable against him.—KEANE *v.* CANADIAN PACIFIC RY. CO. (1924), 34 B. C. R. 127.—**CAN.**

instructions accordingly sent by the Warsaw bank to pltfs. were lost in transmission & were never received. On discovering the facts pltfs. were willing to credit defts. with the above-mentioned £1,000 & brought an action to recover £1,000, the balance of the £2,000, as money paid under a mistake of fact:—*Held:* (1) there was no such mistake of fact as entitled pltfs. to maintain that the amount claimed was money paid to their use, & the action failed; (2) pltfs. had been negligent as between themselves & defts.—BARCLAY & CO., LTD. *v.* MALCOLM & CO. (1925), 133 L. T. 512; 41 T. L. R. 518; 69 Sol. Jo. 675.

4341. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4351. *Add. Annotation:*—**Consd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

4358a. Payment of rates on tithe rentcharge by occupier—Demand after Tithe Act, 1891 (c. 8).]—At the date of the passing of the above Act rates upon a tithe rentcharge were due & in arrears, owing to the omission of the overseers to demand payment thereof from the occupiers of the land out of which the tithe rentcharge issued. The tithe rentcharge for the period in respect of which the rates in arrear were due had been paid to the tithe-owner in full. After the passing of the Act, the overseers, purporting to act under Tithe Act of 1837 (c. 69), s. 8, demanded payment of the arrears of rates from the occupiers of the land, who paid them, & were allowed the amount thereof by their landlord, the owner of the land, out of the half-year's rent next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid by them:—*Held:* having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, ROBERTS *v.* POTTS, JONES *v.* COOKE, [1894] 1 Q. B. 213; 58 J. P. 333; 42 W. R. 294; 9 R. 230; *sub nom.* JONES *v.* POTTS, JONES *v.* COOKE, 63 L. J. Q. B. 381; 69 L. T. 849; 10 T. L. R. 111, C. A.

Annotation:—**Distd.** Lewis *v.* Hughes, [1916] 1 K. B. 831.

4359. For "—— **Payment to clear off maritime lien—No request from mortgagees**" read "**Payment to clear off maritime lien—No request from mortgagees.**"

Add. Annotations:—**Refd.** The St. George, [1926] P. 217; The Goulandris, [1927] P. 182; The Stream Fisher, [1927] P. 73.

4360. For "—— **Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife**" read "**Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.**"

4372. *Add. Annotation:*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

4377a. Double payment by bank.]—BARCLAY & CO., LTD. *v.* MALCOLM & CO., No. 4340a, *ante.*

4379. *Add. Annotations:*—**Consd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534. **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4382. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

4385. *Add. Annotations:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4390. *Add. Annotation:*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

4400. *Add. Annotation:*—*As to* (1) **Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

4410. *Add. Annotation:*—*As to* (2) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4418. *Add. Annotation:*—**Dbtd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

4429. *Add. Annotation:*—*As to* (1) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4432. *Add. Annotation:*—**Consd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

4435. *Add. Annotations:*—**Consd.** The Chekiang, [1925] P. 80. **Apprvd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

4437. *Add. Annotation:*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

4438. After this case add "*See, further,* COMPANIES, Vol. IX., pp. 328–331."

4440a. Unenforceable promissory note to moneylender paid by surety—Promise by debtor to repay surety.]—In 1930, at the request of C., who wished to borrow £120 from certain moneylenders, S. signed with C. a promissory note by which he & C. promised jointly & severally to repay to the moneylenders £156 by 5 equal consecutive monthly instalments of £6, the first payment to be made on Nov. 24, 1930, & the balance of £126 to become due & payable on Apr. 24, 1931. In the event of default in payment of any instalment so much of the balance as represented principal became payable forthwith. The note or memorandum of the contract signed by C. & S. did not comply with Moneylenders Act, 1927 (c. 21), s. 6. C. duly paid the first instalment but made default in respect of the second. S. was in communication with the moneylenders in Jan.

PART IX. SECT. 1, SUB-SECT. 1.—D. (a).

4341 iii. ——.]—A volunteer cannot recover over the debt of another paid without request of such other & without any legal obligation on his part.—MARTELL *v.* WHITTEM (1867), 5 Nfld. L. R. 200.—**NFLD.**

4341 iv. ——.]—The principle that a payment made by one person for the benefit of another cannot be recovered from the latter, no matter how clearly he has benefited therefrom, if he had not expressly or impliedly requested the making of it or has not elected to adopt its benefit; & that the mere fact that he accepted the benefit of that which he had no opportunity to refuse is not evidence of his adoption or ratification was applied herein in an action brought to recover amounts paid for freight & for the feeding in transit of cattle shipped by defts.—MCKISSICK ALCORN, MAGNUS & CO. *v.* HALL (Sask.), [1929] 1 D. L. R. 48; [1928] 3 W. W. R. 509.—**CAN.**

1931, &, without referring to C., he discharged the whole liability on the promissory note for £138. When C. heard that S. had discharged the whole liability he wrote to S offering to pay interest on the £138 so that S. should suffer no loss. No payment, however, was ever made by C. to S. An administration action was brought after C.'s death against his exors. & in that action S. applied to rank as a creditor for £138, basing his claim on a request by C. implied by law that S. should pay the moneylenders & an implied promise by C. to repay S., supported by C.'s letter ratifying what S. had done. The application was opposed on the grounds that: (i) as the note was not enforceable, the request ought not to be implied, & (ii) in the circumstances in which S. made the payment, it ought not to be decided that the payment was made in pursuance of any implied request by C., but for the purposes of protecting S.'s own interests:—*Held:* (1) in the circumstances of the case a request to discharge the liability ought to be implied; (2) although S. was discharging a liability of his own, he ought to be presumed to be acting, so far as the person accommodated, C., was concerned, in pursuance of the request which the law implied.—*Re* CHETWYND'S ESTATE, DUNN TRUST, LTD. *v.* BROWN, [1937] 3 All E. R. 530; 106 L. J. Ch. 330; 157 L. T. 125; 53 T. L. R. 917; 81 Sol. Jo. 626, C. A.

4455. *Add. Annotation:*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

4471. *Add. Annotation:—Generally,* **Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4472. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

4478. *Add. Annotations:*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1. **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

4487. *Add. Annotations:*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4520. *Add. Annotation:*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

4523. *Add. Annotation:*—**Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

4534. *Add. Annotations:*—**Apld.** Holt *v.* [1923] 1 K. B. 504. **Refd.** Jones *v.* & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4534a. —— ——.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. Deft. was a demobilised officer of the Royal Air Force. Pltfs., who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that deft. was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid deft. his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before notice of the mistake, deft. spent the money. In an action to recover back the excess payment as money paid under a mistake of fact; —*Held:* pltfs. could not recover on the grounds that plfts.' mistake was not a mistake of fact causing the payment; & that as deft. had been led by plfts.' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, pltfs. were estopped from alleging that it was paid under a mistake.—HOLT *v.* MARKHAM, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314, C. A.

Annotations:—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

4542. *Add. Annotations:—Generally,* **Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

PART IX. SECT. 1, SUB-SECT. 2.—D.

4441 i. *Action defended at request of defendant.*]—SPLAN *v.* BARRETT-LENNARD, [1931] 2 D. L. R. 857.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

sv. *Effect of arrangement between co-contractors.*]—Where co-contractors arrange between themselves that one of them, although liable to their creditor, is not to be called upon by the others to pay any portion of the debt, no action lies against him for contribution with respect to payments made by one of said others to the creditor.—STAINSLEIGH *v.*

PART IX. SECT. 3, SUB-SECT. 1.

m i. ——.]—BARNHART *v.* ROBERTSON (1842), 6 O. S. 542.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—A.

sw. *Company & municipality.*]—A suit by a co. for the recovery of a sum wrongfully collected by a municipality under Madras Municipalities Act, V. of 1920, s. 92, is essentially an equitable action for "money had & received" & not a suit for "damages & compensation."—DINDIGUL MUNICIPAL COUNCIL *v.* BOMBAY CO. (1928), I. L. R. 52 Mad. 207.—**IND.**

PART IX. SECT. 3, SUB-SECT. 3.—C.

4556 i. *General rule.*]—The corpn. by one resolution directed that $300 should be granted to each councillor, deft. being one, to be by them expended on the roads; & by another, that $100 should be placed to the credit of each councillor, to be expended by them on the roads & bridges in their respective divisions. This was in accordance with an established practice, by which the councillors superintended the laying out of moneys in their respective divisions. Deft. granted several orders on the treasurer to different persons as for "work done," which were paid, & it appeared that such work, though contracted for, had not been performed. There was no evidence, however, of any fraud or collusion on deft.'s part, or of any gain to himself, except the usual charge to the corpn. of the commission on such moneys as were expended:—*Held:* there could be no recovery on the common counts, for deft. had received no money.—CHATHAM TOWNSHIP CORPN. *v.* HOUSTON (1868), 27 U. C. R. 550.—**CAN.**

4558a. Goods consigned to two agents for sale—Sale by one.]—Goods were consigned to two for sale by commission; upon a dissolution of partnership the commission to sell was assumed by one:—*Held:* he, having sold, was rightly sued for money had & received, which action could not have been maintained against both, although an action for not accounting would have lain against both.—Ross (1817), 7 Taunt. 403; 129 E. R. 161.

4563. *Add. Annotation:*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4569a. Damages recovered by holder of bill of exchange against sheriff—Bill held in trust for plaintiff.]—Where the holder of a bill of exchange, who held it in trust for pltf., sued the drawer, &, pending that suit, became bkpt., & his assignees afterwards brought an action against the drawer in bkpt.'s name, in which action, the sheriff having been guilty of an escape on mesne process, the assignees recovered against the sheriff in an action for the escape, damages to the amount of the bill:—*Held:* pltf. might maintain money had & received against the assignees for the damages so recovered, allowing to them the costs & expenses.—RANDOLL *v.* BELL (1813), 1 M. & S. 714; 105 E. R. 266.

Annotation:—**Distd.** Neale *v.* Reid (1823), 1 B. & C. 657.

4578. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

4578a. Solicitor acting as banker—Cheque paid out of funds belonging to plaintiff—To party indebted to plaintiff.]—Pltfs were a limited co. formed to amalgamate certain firms & cos. controlled by F., two of the directors of pltfs. being F. & deft. T. The latter was a member of the firm of T. & C., who were the solrs. of pltfs. & also of F. Pltfs. had moneys standing to their credit in the books of T. & C., & F. also had a running account with T. & C. During a period when F. was in debt to pltfs. he drew for his own purposes on the moneys standing to the credit of pltfs. in the books of T. & C. At the time of these transactions deft. T. was not aware of F.'s indebtedness to pltfs., but the ct. found that deft. T. knew enough of F.'s methods to be put on inquiry as to what F. was doing. Subsequently pltfs. brought the present action against T. in respect of these moneys on the ground of conversion & for money had & received & for breach of duty & negligence as one of their directors & as their solr. Deft. T. pleaded acquiescence by pltfs.:—*Held:* deft. T. was liable in conversion, & even if there had been acquiescence he was liable for money had & received, & pltfs. were entitled to recover.—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS (1929), 45 T. L. R. 264, C. A.

4582. *Add. Annotation:*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4583. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool & Martins, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4587. *Add. Annotation:*—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

4590a. —— —— To bank named by principal—Money returned by bank to agent.]—in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpcy. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to pltfs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived pltfs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Pltfs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that, the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to pltfs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held:* (1) as at the time pltfs. paid the francs to defts. the purchasers had already repudiated their contract, although pltfs. did not know that fact & consequently had not accepted the repudiation, pltfs. were under no legal obligation to pay, &, having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had discovered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore pltfs. to the same position as that which they occupied before defts paid it away, & that position was unaffected by the fact that before redemand of the money by pltfs. the trustee in bkpcy. of the purchasers had directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to pltfs.—BRITISH AMERICAN CONTINENTAL BANK *v.* BRITISH BANK FOR FOREIGN TRADE, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

4591. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

PART IX. SECT. 3, SUB-SECT. 3.—D.

sx. *General rule.*]—Deft. having sold a cargo & remitted the proceeds to C. & S., an action was brought by pltfs. on the common counts as for money received to their use:—*Held:* after the sale deft. held the proceeds for the benefit of pltfs., & in remitting them to C. & S. did so in his own wrong, & the verdict for deft. should be set aside.—MORTON *v.* MCLEOD (1874), 10 N. S. R. (1 R. & C.) 71.—**CAN.**

sy. *Money paid to revenue officer—Representing value of seizure & fine—Action by informer for share.*]—WRIGHT *v.* CURLESS (1888), 21 N. S. R. 232.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 3.—H.

4596 i. *General rule.*]—*Re* CAIRNS & MCNAIRN, [1927] 2 D. L. R. 444; 60 O. L. R. 194.—**CAN.**

4597. *Add. Annotations :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773 ; Rowland *v.* Divall, [1923] 2 K. B. 500.

4598. *Add. Annotation :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

4600. *Add. Annotation :*—**Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4617. *Add. Annotation :*—**Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

4623. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

4635. *Add. Annotations :*—**Consd.** Brocklebank *v.* R., [1924] 1 K. B. 647 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

4639. *Add. Annotation :*—**Consd.** China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375.

4640. *Add. Annotations :*—**Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52 ; China Navigation Co *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4644. *Add. Annotations :*—**Apld.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343. **Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52 ; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4647. *Add. Annotation :*—**Refd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4649. After this case add "**Payment as condition of licence to sell ship to foreigner.**]—*See* CONSTITUTIONAL LAW, Nos. 526a–526d, *ante*."

4650. *Add. Annotation :*—**Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

4676a. ——.]—Pltf. cannot abandon his claim in tort & still pursue his claim for money had & received which depends upon the alleged tort.—HARDIE & LANE, LTD. *v.* CHILTERN, [1928] 1 K. B. 663 ; 96 L. J. K. B. 1040 ; 138 L. T. 14 ; 43 T. L. R. 709 ; 71 Sol. Jo. 664, C. A.

Annotation :—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

4679. *Add. Annotations :*—**Consd.** Ellis *v.* Stenning & Son, Ltd., [1932] 2 Ch. 81 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4691. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4700. *Add. Annotation :*—**Refd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

4710. *Add. Annotation :*—**Refd.** *Re* Wheeler & Co. Trustee *v.* Kirby & Grainger (1933), 102 L. J. Ch. 341.

4713. *Add. Annotations :*—*As to* (2) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232 ; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

4716. *Add. Annotations :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

4725a. —— **Conversion by creditor of bankrupt—Proceeds paid to defendant.**]—A. after committing an act of bkpcy. in order to procure his discharge from an arrest at the suit of B. draws & indorses to B. a bill of exchange, which C. accepts in expectation of receiving goods of A.'s into his hands. C. receives the goods, sells them, & pays the amount of the bill to B. ; the assignees of A. cannot maintain an action against B. for this money as money had & received to their use.—WALLER *v.* DRAKEFORD (1816), 1 Stark. 481 ; 171 E. R. 536.

4731. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4742. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4751. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612 ; *Re* Mason, [1929] 1 Ch. 1 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

PART IX. SECT. 3, SUB-SECT. 4.—B. (a).

sa. *Money paid under decree—Decree unreversed.*]—Money recovered under a decree cannot be recovered back in a fresh suit while the decree remains in force ; but if the decree has been reversed or superseded the money paid is recoverable.—NAGANNA *v.* VENKATAPPAYYA (1923), I. L. R. 46 Mad. 895.—**IND.**

sd. *Money paid to obtain possession of goods.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

m i. ——.]—RICHARDS *v.* TAYLOR (1896), 28 N. S. R. (16 R. & G.) 311.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (c).

4616 ii. ——.]—Pltf.'s action against deft. was dismissed with costs. Pltf. appealed. After service of notice of appeal deft. threatened to distrain for the costs, & pltf.'s solr. paid the amount to deft.'s solr. The appeal was allowed & deft. ordered to pay the costs of the action & of the appeal. Neither deft. nor his solr. would refund the amount paid for the costs :—*Held :* the money could be recovered from deft. as money received to pltf.'s use.—BURKE *v.* BEATTY & WHITE, [1928] I. R. 91.—**IR.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (f).

se. *Excessive tolls for electric light—Threat to cut off supply.*]—LEWIS *v.* ANDOVER & PERTH ELEC. L. COMRS. (N. B.), [1929] 1 D. L. R. 34.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (h).

4654 i. *Cause of action known to defendant.*]—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615 ; 24 B. C. R. 73, 81 ; 34 D. L. R. 26.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (i).

sf. *Payment made to clear title.*]—Pltf., believing that certain taxes imposed upon his land by the council of the municipality in which he lived were illegally imposed under Local Improvement Act, declined to pay them but subsequently paid them under protest to rid his land of the burden of the taxes, which he was obliged to do in order to obtain a loan upon mtge. of the land :—*Held :* pltf. was under such compulsion as prevented the payment from operating as a voluntary payment & he was entitled to recover the money paid.—PILLSWORTH *v.* COBOURG, [1930] 4 D. L. R. 757 ; 65 O. L. R. 541.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—C. (i).

sg. *Proceeds of sale of crop—Agreement for delivery of part of crops.*]—DUCAT *v.* SWEENEY (1839), 2 Ont. Dig. 4259.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—E.

sk. *Purpose illegal—Purpose partly fulfilled.*]—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279 ; 1 W. W. R. 243 ; 18 Sask. L. R. 48.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.

4764 vii. ——.]—An account stated may be constituted by an admission of existing indebtedness, although there is no definite balance struck on mutual accounts.—CANADIAN FERTILIZER CO. *v.* MARITIME UNITED FARMERS CO-OPERATIVE, [1931] 4 M. P. R. 106.—**CAN.**

4766a. ——.]—An account stated may take the form only of a mere acknowledgment of a debt; in that case though it amounts to a promise from which the existence of a debt may be inferred that inference may be rebutted, & then there is no consideration & no binding promise. But there is another form in which the account stated includes items on both sides, & the parties have agreed that there shall be a set-off & that only the balance shall be paid; in that case there is a promise for good consideration to pay the balance even though some of the debts were barred by limitation. The account stated in the present case being in the latter form, it was unnecessary to decide whether the implied promise was "a promise made in writing" so as to be, by sect. 25 (3) of Indian Contract Act, 1872 (which applied locally), an effective agreement to pay statute barred debts although it was made without consideration. —SIQUEIRA *v.* NORONHA, [1934] A. C. 332; 103 L. J. P. C. 63; 151 L. T. 6, P. C.

Annotation:—**Consd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

4769. *Add. Annotation:*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

4770a. ——.]—PRESTON *v.* STRUTTON (1792), 1 Anst. 50; 145 E. R. 797.

Annotation:—**Consd.** Rawson *v.* Samuel (1841), Cr. & Ph. 161.

4824. *Add. Annotation:*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

4824a. Debt owing by directors—Account stated in balance-sheet signed by directors.]—Defts., who were directors of & were indebted to pltf. co., agreed to terms of settlement by which (*inter alia*) the first deft. should resign his office as governing director, that the co. should appoint independent persons as permanent directors, that the two defts. with three others, should be ordinary directors, that the co.'s articles should be altered so as to provide that the defts. should have no control over, & have no right to vote in respect of, their debts, that an accountant should certify the amount of defts.' liability, that the dividends payable to defts. should be retained by the co. on account of those debts, which, however, were not to be called in for twenty years, & that these terms should be embodied in an agreement under seal & sanctioned by special resolutions of the co. Special resolutions embodying that agreement were thereafter passed which provided also that all the ordinary directors should have no right at directors' meetings to vote in respect of the co.'s financial affairs, & that with regard to other business they were to have only such rights of voting & control over the management as might be conferred upon them by the permanent directors. An accountant prepared a balance-sheet which showed the amount due to the co. by each of the two defts., & that balance-sheet, which was signed thus: "Peter Shaw, John Shaw, Directors," was adopted at a general meeting of the co. at which defts. were present. The agreement under seal containing the above terms of settlement was sealed by the co., but defts. having declined to execute it, as they objected to certain of its terms, the permanent directors, at a meeting to which none of the ordinary directors was summoned, resolved that instructions be given for writs to be issued against defts. for the recovery of the debts owing by them, & although by a resolution passed subsequently by the shareholders at an extraordinary meeting of the co. the chairman was directed to discontinue proceedings, a writ was issued against each deft. claiming the amount as "found & admitted by deft. to be due to pltfs. as shown by pltfs.' balance-sheet." To these actions defts. pleaded that they had been brought without proper authority, & they denied that the alleged or any account was stated between pltfs. & them:—*Held:* as to the cause of action relied upon, the balance-sheet was not an account stated involving a fresh promise by defts. to pay the amounts debited to them therein, inasmuch as it was signed by them not *animo contrahendi* but in performance of their duties as directors.—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

4853a. ——.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co. B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co.: —*Held:* where an agreement is wholly void, items alleged to be due in respect of it are not a proper basis for an action on an account stated, & that a proof based on an account stated in such circumstances must be rejected. —*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

Annotation:—**Folld.** Motor Union Insurance Co. *v.* Mannheimer Versicherungs Gesellschaft, [1933] 1 K. B. 812.

4853b. ——.]—MOTOR UNION INSURANCE CO., LTD. *v.* MANNHEIMER VERSICHERUNGS GESELLSCHAFT, [1933] 1 K. B. 812; 102 L. J. K. B. 671; 149 L. T. 94; 48 T. L. R. 522; 76 Sol. Jo. 495; 37 Com. Cas. 407; 18 Asp. M. L. C. 345.

4859. *Add. Annotations:*—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102; Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332.

4868. *Add. Annotations:*—*As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *As to* (2) **Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793. *Generally*, **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

4873. *Add. Annotations :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465 ; Siqueira *v.* Noronha, [1934] A. C. 332.

4878. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

Part X.—Personal Contracts.

4907. *Add. Annotations :*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776 ; National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4908. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4908a. ——.]—The element of personal confidence which renders a contract unassignable is not confined to cases where the purchaser relies on the personal skill of the vendor or manufacturer, or where the manufacturer relies on the personal idiosyncrasies of the buyer with regard to his requirements or with regard to his performance to the covenants other than his obligation to pay. Where the ability of the buyer to pay is the subject-matter of personal confidence, the contract is just as much taken out of assignability as where the manufacturing skill of the seller is the subject-matter of the buyer's personal confidence.

Defts. entered into a contract with H. to supply him with 10,000 tons of coal, the delivery of which was to be extended over two years. H. had been carrying on the business of a coal merchant for some years, the business consisting of carting coals from defts.' depots round the streets of a certain district & there selling it to the working classes by weight in relatively small quantities, it being a regular practice to give short credit. H. assigned the contract to pltf., who up to the time of the assignment had no experience of the coal trade :—*Held :* there was that degree of difference between H.'s & pltf.'s knowledge of the business, which, having regard to the nature of the business, constituted an element of personal confidence in the matter personal to H. which made the contract unassignable.—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER (1912), 107 L. T. 457 ; 56 Sol. Jo. 706.

4913. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1928] 97 L. J. K. B. 251.

4915. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4916. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4918. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4919. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4921. *Add. Annotation :*—**Distd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

4922a. Agreement as to right to perform play.]—By an agreement pltf. grant to E. " the sole & exclusive right of representing or performing " in certain areas a play, of the music of which pltf. was the composer :—*Held :* the agreement was not limited to performance at a theatre & was not a mere licence, but was an assignment to E. of rights which either he or his exors. could assign.—MESSAGER *v.* BRITISH BROADCASTING CO., LTD., [1929] A. C. 151 ; 98 L. J. K. B. 189 ; 140 L. T. 227 ; 45 T. L. R. 50, H. L.

Annotation :—**Refd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272.

4929a. Contract by jockey to ride horses.]—A contract by a jockey to ride the horses of an owner is dissolved by the death of either party.

That it was a personal contract . . . is clear beyond words. A jockey is chosen because of the confidence reposed in his personal skill & judgment & his ability in racing (WRIGHT, J.).—GRAVES *v.* COHEN (1929), 46 T. L. R. 121.

4931a. ——.]—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER, No. 4908a, *ante*.

4934. *Add. Annotation :*—**Consd.** Graves *v.* Cohen (1929), 46 T. L. R. 121. (Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co., per* WRIGHT, J.)

4935. *Add. Annotation :*—**Refd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

PART X. SECT. 1.

sb. *Advertising agreement.*]—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising. J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name :—*Held :* not assignable.—SWINSON (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250 ; Gaz. L. R. 69.—**N.Z.**

sc. *Agreement for easement — Construction & use of tramway.*]—Deft. & another in 1916 granted to S. a right to lay down a tramway through deft.'s land for the purposes of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf. The assignment was known to deft., who raised no objection. Deft. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge :—*Held :* the grant or contract was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

PART X. SECT. 2.

4930 viii. ——.]—Under an agreement for the purchase of bonds of deft. co. one of the considerations for the purchase was a covenant by deft. co. that during the lifetime of the bonds the placing of all insurance taken out by deft. co. should be under the control of the purchasing co. The latter co. thereafter assigned all its insurance business including the benefit of all pending contracts to pltf. co., which had been incorporated for the purpose of taking over all said insurance business. Deft. co. refused to place any of its insurance with pltf. co. :—*Held :* the covenant fell within the rule that a contract which involves in its performance an element of personal skill or personal confidence is not assignable, & the action was dismissed.—ROYAL FINANCIAL INSURANCE, LTD. *v.* NATIONAL BISCUIT & CONFECTION CO., LTD., [1933] 1 W. W. R. 43, 302 ; 46 B. C. R. 294.—**CAN.**

PART X. SECT. 3.

sb. *On contract for maintenance of illegitimate children.*]—In a contract for the maintenance of illegitimate children, there is an implied condition that the death of either party shall end the contract.—MCGUIGAN *v.* CAMPBELL (1935), 8 M. P. R. 524.—**CAN.**

4936a. *S. P.* JACKSON *v.* BRIDGE (1702), 12 Mod. Rep. 650; 88 E. R. 1580.

Annotations :—**Refd.** Tasker *v.* Shepherd (1861), 6 H. & N. 575; Farrow *v.* Wilson (1869), L. R. 4 C. P. 744; Hinkins *v.* Alder (1906), 50 Sol. Jo. 258.

4936b. —— ——.]—GRAVES *v.* COHEN, No. 4929a,

4947. *Add. Annotation :*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

Part XI.—Ratification and Confirmation of Contracts.

4950. *Add. Annotation :*—**Refd.** International Ry. Co. *v.* Niagara Parks Commission, [1937] 3 All E. R. 181.

Part XII.—Assignment of Contracts.

4956. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Bennett *v.* Whitehead, [1926] 2 K. B. 380; De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

4957. *Add. Annotation :*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

4957a. —— —— ——.]—An agreement for the purchase & sale of a newspaper business contained a term or condition that the vendors should sell, & the purchasers should purchase "the full benefit of all pending contracts & engagements & of all other property to which the vendors are or may be entitled in connection with the said journal": —*Held :* the purchasers took the burden of pending contracts, & did not merely acquire an option to take the benefit of such contracts.—BOWATER & SONS *v.* MIRROR OF LIFE CO., LTD. (1902), 50 W. R. 381.

4959. *Add. Annotation :*—**Refd.** De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

4963. *Add. Annotation :*—**Consd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

4966. *Add. Annotation :—As to* (1) **Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

4985. *Add. Citations :*—33 L. T. 760; *sub nom. Re* EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, *Re* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE, 45 L. J. Ch. 332.

5002. *Add. Annotation :*—**Refd.** Churchill & Sim *v.* Goddard, [1937] 1 K. B. 92.

5022. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

Part XIII.—Interpretation of Contracts.

5031. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 130; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5032. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

5033. *Add. Annotations :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.*

PART XII. SECT. 2, SUB-SECT. 1.

4957 i. *When implied.*]—MORRISON *v.* GALE (1872), 1 N. B. R. (Pug.) 203.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (a).

4958 iii. —— ——.]—A business was transferred to a new co. Pltf. brought an action for an unpaid balance against the old firm. Evidence showed that pltf. had disclosed no intention to accept the new co. as the debtor :—*Held :* the old firm were liable.—SIMPSON & ORS *v.* COUSINS, [1923] 1 D. L. R. 106.—**CAN.**

4958 iv. —— ——.]—SY (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—**N.Z.**

4958 v. —— ——.]—MCCULLY *v.* MARITIME UNITED FARMERS' CO-OPERATIVE, CARTER *v.* MARITIME UNITED FARMERS' CO-OPERATIVE (N. B.), [1926] 4 D. L. R. 727.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (b) i.

4967 i. *Clear proof of intention required—Onus on party alleging novation.*]—CRAYTHORNE *v.* JENKINS, [1926] N. Z. L. R. 858.—**N.Z.**

PART XII. SECT. 2, SUB-SECT. 2.—B.

4999 iv. ——.]—MCCANNELL *v.* [1925] 1 D. L. R. 911.—**CAN.**

sd. *What constitutes — Bill of exchange of new firm taken in payment—Bill dishonoured.*]—Pltf. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., pltfs.' manager, was told of it. H. took an acceptance of S. for the amount due to pltfs. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a demand note from S. for the whole amount then due to pltf. co. :—*Held :* C. was not released from his liability to pltfs. until after notice of dissolution given by S. on Feb. 7. There was no novation & pltfs. were entitled to recover from the members of the firm their account down to the date of notice.—HANTSPORT FRUIT CO., LTD. *v.* COLDWELL, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—**CAN.**

5042. *Add. Annotations :—As to* (1) **Apld.** Livock *v.* Pearson (1928), 33 Com. Cas. 188 ; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455 ; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739 ; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274 ; Matthews *v.* Hanscombe, [1936] 1 All E. R. 562. *As to* (2) **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

5042a. ——.]—By the terms of a registered transfer of certain property, a right was given to the transferors & their successors in title of land adjoining the property transferred at any time within a period of 15 years to complain.—Matthews *v.* Hanscombe, [1936] 1 All E. R. 562 ; 80 Sol. Jo. 325.

5045. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739. **Refd.** Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536.

5047a. ——.]—Pltfs. & defts. entered into an agreement, which contained a recital that defts. had purchased some land & were intending to build a theatre thereon, & by which it was agreed that pltfs. should contribute in a certain proportion towards the expenses of building, & should become managing directors of the theatre at a salary for a term of years :—*Held :* there was no implied obligation on defts. to build the theatre.—Morell *v.* New London Discount Co. (1902), 18 T. L. R. 507.

5048. *Add. Annotations :*—**Consd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57 ; Wallems Rederij A./S. *v.* Muller,

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PART XIII. SECT. 2, SUB-SECT. 1.—B.

5034 ii. ——.]—In construing a contract, a term or condition not expressly stated may, in certain circumstances, be implied by the ct., if it is clear, from the nature of the transaction, that the contracting parties must have intended such a term or condition to be a part of the agreement between them. The implication is founded upon the presumed intention of the parties & upon reason.—Pioneer Bank *v.* Canadian Bank of Commerce (1915), 9 O. W. N. 96 ; 34 D. L. R. 531.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—C.

5048 ii. ——.]—While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a failure of consideration as cannot have been within the contemplation of either side.—Connors *v.* McGregor, [1924] 2 D. L. R. 86 ; 2 W. W. R. 294 ; 20 Alta. L. R. 289.—**CAN.**

5048 iii. ——.]—A term or condition may be implied by the ct., if it is clear, on a reasonable & business like consideration of all the terms of the contract, that the parties must have intended such a term or condition.—Wells *v.* Blain, [1927] 1 D. L. R. 687 ; [1927] 1 W. W. R. 223 ; 21 Sask. L. R. 194.—**CAN.**

5048 iv. —— *Whether period of agency included.*]—A contract of agency contained no express stipulation as to the term of the agency :—*Held :* it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the contract could be terminated only on reasonable notice, & such a term could not therefore be implied.—Pollard *v.* Gibson, [1924] 4 D. L. R. 354 ; 55 O. L. R. 424.—**CAN.**

5048 v. ——.]—Morgan *v.* Hudson Bay Mining & Smelting Co., [1930] 2 D. L. R. 587.—**CAN.**

Batavia, [1927] 2 K. B. 99; G. W. Ry. *v.* Durnford (1928), 139 L. T. 145; Livock *v.* Pearson (1928), 33 Com. Cas. 188; G. W. Ry. *v.* Monmouthshire County Council (1929), 93 J. P. 142. **Consd.** Campbell *v.* Hopkins & Sons (Clerkenwell), Ltd. (1931), 49 R. P. C. 38; Lamb & Sons *v.* Goring Brick Co., [1932] 1 K. B. 710. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates' De Medulla (1923), 92 L. J. K. B. 455; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; United States Shipping Board *v.* Strick, [1926] A. C. 545; Marbe *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113; Rogerson *v.* Scottish Automobile & General Insurance Co. (1930), 144 L. T. 460; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110; Lensen Shipping Co. *v.* Anglo-Soviet Shipping Co., Ltd. (1935), 40 Com. Cas. 320.

5051. *Add. Annotations :—As to* (1) **Refd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. *Generally*, **Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

5052. *Add. Annotations :*—**Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

5054. *Add. Citation :*—15 Asp. M. L. C. 544.

Add. Annotations :—**Apld.** Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5054a. ——.]—Pltf. & defts., who were respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the other. The agreement recited the acknowledgment by the parties of the validity of the respective patents of the other, & contained a covenant by defts. not at any time hereafter to dispute the validity of pltf.'s patent. The agreement also contained a clause referring to arbn. any dispute between the parties other than the question of infringement or the recovery of royalties. In an action for royalties under the agreement & damage for infringements committed prior to it defts. pleaded that pltf.'s patent was invalid & that there was an implied term in the agreement that pltf. should accept the same in satisfaction of all claims in respect of infringements then ——— to whether in view of the agreement defts. could put the pltf.'s patent in issue, & whet term as pleaded in the defence implied were set down for hearing liminary questions of law :—*Held :* in view of the covenant in the agreement defts. were not entitled to dispute the validity of pltf.'s patent, & such a term as pleaded in the defence must be implied in the agreement in order to give business efficacy to the contract. —Campbell *v.* Hopkins (G.) & Sons (Clerkenwell), Ltd. (1931), 49 R. P. C. 38.

5056. *Add. Annotations :*—**Refd.** Willis *v.* Willis, (1927), 96 L. J. P. 177; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5059. *Add. Annotation :*—**Apld.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

5060. *Add. Annotation :*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

5066a. Term customary during war.]—The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by *force majeure* such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken to have contracted on this basis.—Caraman Rowley & May *v.* Aperghis (1923), 40 T. L. R. 124.

5067. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

5073. *Add. Annotation :*—**Refd.** Einar Bugge *v.* Bowater (1925), 31 Com. Cas. 1.

5085. *Add. Annotations :*—**Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667: Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

5086. *Add. Annotations :*—**Apld.** Boorne *v.* Wicker, [1927] 1 Ch. 667. **Refd.** Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Gilford Motor Co. *v.* Horne [1933] Ch. 935; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64.

5087. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

5088. *Add. Annotation :—As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

PART XIII. SECT. 2, SUB-SECT. 1.—F.

5073 iii. ——.]—Where having regard to the nature of a contract it is the duty of a party to assist in the fulfilment of a condition in the contract, such condition is deemed to be fulfilled if such party refuses his assistance with the intention of defeating the fulfilment of the condition, whether his refusal is *bonâ fide* or not.—Koeing *v.* Johnson & Co., Ltd., [1935] App. D. 262.—**S AF.**

PART XIII. SECT. 2, SUB-SECT. 1.—G. (o).

5101 i. *General rule.*]—Pltf., who had been given an option to purchase shares of a mining co., released the option in consideration of deft. entering into the agreement in question herein. At the same time, & as a result of negotiations between pltf., the mining co. & deft., the mining co. granted deft. an option to purchase the shares not yet taken up under pltf.'s option & an option to purchase an additional block of shares. These options were to run for a period of six months provided deft. carried out the conditions of the said agreement. These conditions were duly fulfilled. By the agreement between deft. & pltf., deft. agreed to pay pltf. two cents on each & every share of the mining co. which it took up under the options granted to it & also one-half of all moneys received by it as commission on sales of such shares covered by said option as should be made by pltf. There was no obligation on pltf. to attempt to sell shares. The market-price for the shares having

5102. *Add. Annotations :*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; May *v.* May, [1929] 2 K. B. 386. **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

5103. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

5104. *Add. Annotation :*—**Expld.** *Re* Wait, [1927] 1 Ch. 606.

5105. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

5107. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

5113. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5117. *Add. Annotation :*—**Refd.** Sweet *v.* Williams (1922), 128 L. T. 379.

5119. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

5120. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Distd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583.

5121. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5122a. Actor.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary, & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* (1) upon the construction of the contract, it bound applts. to give resp. an opportunity of appearing in public in a part answering the stipulated description; (2) it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

Annotation :—As to (2) **Follid.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

5123. *Add. Annotations :*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

5126. *Add. Annotations :*—**Refd.** Sweet *v.* Williams (1922), 178 L. T. 379; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5132. *Add. Annotations :*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1930] 2 Ch. 117. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

fallen sharply, deft. & the mining co. cancelled the option & agreement between them before the expiration of the six months. Pltf. alleged that said cancellation was a breach of the agreement between him & deft. :—*Held :* applying the principle of *Lazarus* v. *Cairn Line of Steamships*, No. 5101, that there could not be read into the agreement with pltf. a provision not expressed therein that deft. would retain its option from the mining co. for the life of such option, viz., six months.—CLEGG *v.* PACIFIC STOCK CO., LTD., [1935] 1 W. W. R. 369.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—G. (e).

sg. *Agreement to buy goods—Obligation to supply.*]—Implied.—CANADA CYCLE & MOTOR CO., LTD. *v.* MEHR (1919), 45 O. L. R. 576; 48 D. L. R. 579; 16 O. W. N. 253.—**CAN.**

sh. *S. P.* BERLINER GRAMAPHONE CO., LTD. *v.* N. H. PHINNEY & CO., LTD. (1921), 54 N. S. R. 295; 57 D. L. R. 596.—**CAN.**

si. *Employment of non-union men—Withdrawal from manufacturers' association.*]—A shop agreed to withdraw from its manufacturers' assocn. in consideration of certain workmen withdrawing from their union. The shop was besieged by the union & had to abandon the scheme. In an action for breach of contract by workmen not reinstated by their union & dismissed by the shop :—*Held :* it was an implied term that the shop should keep open as an independent shop, & being unable to do so they were not liable.—ZIGER *v.* SHIFFER & HILLMAN, [1933] 2 D. L. R. 691; O. R. 407. **CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) i.

sm. *Lease of tobacco stall with electric light connected—Implied promise to continue supply.*]—Pltf. took a lease from deft. of a tobacco stall in the city. At the time the lease was granted, the stall was supplied with electric light, connected with the city electricity supply through portion of the premises retained by deft. For some time after the lease, pltf. used the electricity to light the stall for business purposes. The lease was silent as to the supply of electricity. Deft. later cut off the supply. He then brought an action for damages, & in his claim alleged a promise by deft. not to interfere with the supply of electricity nor to prevent the continuance of such supply :—*Held :* there was an implied promise by deft. in the terms sued upon by pltf.—JENKINS *v.* LEVINSON (1929), 29 S. R. N. S. W. 151; 46 N. S. W. W. N. 38.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) iii.

sn. *Commission payable out of purchase-money.*]—Pltf., an agent, made a special contract with deft. whereby he was to obtain a portion of the purchase price :—*Held :* in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

st. *Agreement to sell & share in proceeds of sale of goods—Obligation to supply.*]—LOCK *v.* PURDON (1850), 7 N. B. R. (2 All.) 33.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (b).

5133 i. *Agreement fixing prices.*]—The military authorities accepted a tender from pltf. whereby he agreed to supply at prices specified so much of the goods mentioned therein as the officer in charge might require during the period mentioned in the tender :—*Held :* pltfs.' tender amounted merely to an offer to supply the goods mentioned at the prices specified, & the military authorities were not bound by their acceptance of the tender to purchase all or any of the said goods

5143. *Add. Annotation :*—**Refd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

5152. *Add. Annotations :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447 ; Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

5161. *Add. Annotation :*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5167. *Add. Annotation :*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

After this case add "*See, further,* GIFTS, Vol. XXV., p. 525."

5168. *Add. Annotation :*—**Apld.** London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

5168a. Agreement to "exert influence"—No obligation to pay money if necessary.]—Deft. co. made an agreement with pltf. co. to use such "rights" as they might possess & such influence as they could exercise to procure a third co. to deliver to pltfs. a percentage of the crude oil produced from a concession belonging to the third co., in which defts. had the preponderating shareholders' vote. No delivery of oil from the concession in question was made by defts. to pltfs., &, in answer to an inquiry by pltfs. as to when delivery was to begin, defts. replied that they were not in a position to make delivery as they could not enforce it against the other members of the third co. without making a payment to them & that they were under no obligation to make such payment. In an action for breach of contract defts. admitted that if they gave consideration there would be no impossible barrier to their getting the oil :—*Held :* as defts. could not use their preponderating vote in the third co. to dispose of a product of the third co. in order to satisfy an obligation of their own to the detriment of the interests of the minority shareholders, & as the word "rights" in the agreement did not mean that defts. were bound to exercise their right of spending money to procure the oil, the action failed.—GENERAL ASPHALT CO. *v.* ANGLO-SAXON PETROLEUM CO., LTD. (1932), 48 T. L. R. 276, H. L. ; *revsg.*, 75 Sol. Jo. 191.

5168b. Contract to print bank-notes—Implied duty not to use plates for unauthorised purpose.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud pltfs. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion :—*Held :* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214 ; 75 Sol. Jo. 81 ; *on appeal* (1931), 100 L. J. K. B. 465, C. A. ; [1932] A. C. 452.

—**Refd.** The Edison (1931), 47 T. L. R. 635.

SUB-SECT. 3.—IMPLIED WARRANTIES (Vol. XII., p. 628).

Add the following case :—

5168c. Of fitness—Turkish baths.]—Defts. were the owners of Turkish baths, & customers who came late at night were permitted to use the beds in the cubicles till early the next morning. Pltf. & his brother slept one night at the baths, & when they woke up they found that they had been bitten badly by insects, proved afterwards to be bugs :—*Held :* there had been a breach of an implied warranty that the beds or couches supplied for the use of customers should be reasonably fit for the purpose, & defts. owed a duty to pltfs. to take reasonable care that no bugs or other dangerous insects should infest their premises.—SILVERMAN *v.* IMPERIAL LONDON HOTELS, LTD. (1927), 137 L. T. 57 ; 43 T. L. R. 260.

5168d. —— Gridiron berth.]—EASTER *v.* MARVIN (1930), 74 Sol. Jo. 122.

For the cross-reference "**Of fitness—Sale of animals.**]—*See, generally,* ANIMALS, Vol. I., pp. 260 *et seq.*" read "**—— Sale of animals.**]—*See, generally,* ANIMALS, Vol. I., pp. 260 *et seq.*"

needed by them from pltf. in the absence of a covenant to that effect.—SECRETARY OF STATE *v.* MADHO RAM (1928), I. L. R. 10 Lah. 493.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 1.—N.

sw. *Agreement to furnish planters for fishery with supplies—Obligation to turn in produce to supplier.*]—Implied.—JOHNSON *v.* FINLAY (1882), 6 Nfld. L. R. 363.—**NFLD.**

sy. *Supply of water—For particular period—Expiration of original contract—Continuation under terms of old contract.*]—R. *v.* PUBLIC UTILITIES BOARD OF COMRS., *Ex p.* TOWN OF MILLTOWN (N. B.) (1919), 47 D. L. R. 219.—**CAN.**

sz. *Agreement for use of hockey arena—Proceeds divisible between parties—Obligation to use arena.*]—CANADA HOCKEY CLUB *v.* ARENA AMUSEMENTS, LTD., [1930] 1 D. L. R. 127.—**CAN.**

sb. *Sale of tickets to queue—Duty of seller to preserve order of priority.*]—Pltf. claimed damages for an alleged breach of contract in that deft. had failed to preserve the order of priority in queue & had failed to offer for sale the full number of tickets stated to be available. Deft. advertised tickets for sale & limited the number to which each person was entitled to four. Pltf. who had been commissioned by a large number of people to secure tickets, employed men who stood with others in a queue all night waiting for the office to open. Others who came later took up positions ahead of pltf.'s men, with the result that some of them failed to secure tickets :—*Held :* the number of tickets sold was but a reasonable shortage of the estimated number & as there was no express contract between the parties & pltf. had not proved a custom binding upon deft. to preserve the order of priority in the queue, the claim must fail.—BELL *v.* NEW ZEALAND RUGBY FOOTBALL UNION (1931), 26 M. C. R. 39 (New Zealand).—**N.Z.**

COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, *see* Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

Part I.—The Manor.

41. *Add. Annotation:—As to* (1) **Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

122. *Add. Citation:*—92 L. J. Ch. 55.

128. *Add. Annotation:—As to* (1) **Refd.** Jay *v.* Jay, [1924] 1 K. B. 826.

Part III.—Custom of the Manor.

229. For catchwords "—— —— In consideration of assistance to persons wrecked—Good.]" read "To seize best anchor & cable—Of ship wrecked on shore of manor—In consideration of assistance to persons wrecked—Good.]"

Part IV.—Manorial Courts.

325. *Add. Annotation:—As to* (1) **Apld.** *Re* Holliday, [1922] 2 Ch. 698.

Part V.—The Court Rolls and other Manorial Documents.

393. *Add. Annotation:*—**Consd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

394a. —— **Purchaser for value.**]—(1) Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action:—*Held:* in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls.

Held: (2) even if an action of detinue would lie, yet, upon the true construction of Limitation Act, 1623, s. 3, the words "goods & chattels" were mentioned only in reference to actions of replevin, & that as the action was an action of detinue & the cause of action, namely, the assertion by deft. of an adverse title by advertising the rolls for sale, arose more than six years before the commencement of the action, the action was barred by the statute.—BEAUMONT *v.* JEFFERY, [1925] Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246; 40 T. L. R. 796; 68 Sol. Jo. 867.

—— ——.]—*See, now,* Law of Property Act, 1922 (c. 16), s. 144a, *added by* Law of Property (Amendment) Act, 1924 (c. 5), Sched. II., para. 2.

404a. **Recovery of possession—Limitation of action—When time begins to run.**]—BEAUMONT *v.* JEFFERY, No. 394a, *ante.*

423. *Add. Citation:*—2 Dowl. N. S. 20.

461. *Add. Annotation:*—**Refd.** Love *v.* Bentley (1707), 11 Mod. Rep. 134.

482. *Add. Annotation:* — **Refd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

Part VI.—Officers of the Manor.

491. *Add. Citations:*—2 Show. 21; Freem. K. B. 473.

Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

798a. —— **Grandnephew as subsequent taker.**]—*Qu.:* whether it is a good & reasonable custom that upon the death of a tenant in possession of lands holden of a manor for lives, the next life in reversion for which the estate is holden shall be entitled to enjoy the estate; & if such custom be good & reasonable, whether, where a party takes a grant of such lands for the life of himself & his grandnephews & dies, the grant shall operate as an advancement for the grandnephews, so as to rebut a resulting trust in favour of other parties claiming under the purchaser.—EDWARDS *v.* EDWARDS (1836), 2 Y. & C. Ex. 123; 6 L. J. Ex. Eq. 79; 160 E. R. 337.

992. For existing citations read "(1887), 37 Ch. D. 312; 57 L. J. Ch. 466; 58 L. T. 620; 36 W. R. 393; *affd. on other grounds* (1888), 40 Ch. D. 14, C. A."

Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

1157a. Fine payable by executor—Effect of Law of Property Act, 1922 (c. 16), s. 128, & Administration of Estates Act, 1925 (c. 23), ss. 1, 3, 22.]—The custom of a manor was that copyholders pay fines "upon descent or alienation when they take up their several lands & tenements." A copyholder in fee of settled copyholds died in 1928 after the copyholds had been enfranchised under Law of Property Act, 1922 (c. 16), s. 128, but before the manorial incidents (including fines) saved thereby had been extinguished under sect. 138. He had devised the property under a testamentary power:—*Held:* his special exor. in whom the settled land was vested under Administration of Estates Act, 1925 (c. 23), ss. 1, 3, 22, must pay a fine on the death, although he had not assented to the devise, or conveyed the property to a purchaser, or done any other act formerly involving admittance & payment of a fine.—A.-G. TO THE PRINCE OF WALES *v.* BRADSHAW, [1930] 2 Ch. 279; 99 L. J. Ch. 433; 143 L. T. 430; 46 T. L. R. 551.

1164. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1176. *Add. Annotation:*—**Consd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123.

1192. *Citations:*—For "12 E. R. 1126" read "125 E. R. 1126."

1241. *Add. Annotation:*—**Refd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

1272a. —— —— ——.]—Though a bill in equity lies to recover a small quit-rent, yet it ought to appear that pltf. has no remedy for the same at law. Lord of a manor brings a bill against a tenant to hold a down belonging to the manor, discharged of the tenant's claim of a right of common thereto; this an improper bill. But a bill for a quit-rent may be proper in some circumstances & what.—HOLDER *v.* CHAMBURY (1734), 3 P. Wms. 256; 24 E. R. 1052, L. C.

Annotations:—**Consd.** Bouverie *v.* Prentice (1783), 1 Bro. C. C. 200; Leeds (Duke) *v.* New Radnor Corpn. (1789), 2 Bro. C. C. 518; Basingstoke Corpn. *v.* Bolton (Lord) (1852), 1 Drew. 275; Searle *v.* Cooke (1890), 43 Ch. D. 519.

1274. *Add. Annotations:*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142; Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

Part XII.—Descent of Copyholds.

1326. *Add. Citation:*—39 L. J. Ch. 426.

1354. For existing citations read "(1852), Bail. Ct. Cas. 111; 22 L. J. Q. B. 39.

Part XIV.—Mortgage of Copyholds.

1461a. ——.]—FRASER *v.* THOMAS (1852), 3 Seton's Judgments & Orders, 7th ed. 2171.

Annotation:—**Folld.** Ashton *v.* Corrigan (1871), L. R. 13 Eq. 76.

Part XV.—Devise of Copyholds.

1506. *Add. Annotation:* — **Refd.** *Re* Brooke, Brooke *v.* Dickson, [1923] 2 Ch. 265.

1508. *Add. Annotation:* — **Refd.** *Re* Brooke, Brooke *v.* Dickson (1923), 92 L. J. Ch. 504.

1533a. —— Remainder to his heir-at-law—Rule in Shelley's Case applies.]—By his will testator, among other devises of freeholds & copyholds, devised his two copyhold houses, gardens, & premises situate in the parish of B., & also a piece of copyhold land adjoining, to his nephew G. for life without impeachment of waste, & after his death he devised the same premises to the "heir-at-law" of the said G. There was no special custom of descent in the manor of B. affecting these copyholds:—*Held:* the use of the expression "heir-at-law" did not exclude the operation of the rule in *Shelley's Case*, which accordingly applied, & G. was entitled in customary fee simple for an estate to him & his heirs according to the custom of the manor.—*Re* HACK, BEADMAN *v.* BEADMAN, [1925] Ch. 633; 94 L. J. Ch. 343; 133 L. T. 134; 69 Sol. Jo. 662.

See, now, Law of Property Act, 1922 (c. 16), ss. 128–145, Scheds. 12–15; Law of Property Act. 1925 (c. 20), s. 131.

1533b. Devise to "right heirs"—Common law & not customary heir entitled.]—Testatrix by her will dated Mar. 31, 1873, in exercise of a general testamentary power of appointment, devised her copyhold lands upon trusts in favour of certain relatives & their respective issue in tail, all which trusts determined by their deaths without issue, with an ultimate trust for "my own right heirs (other than & except my nephew Robert John Smith & his issue)." On Oct. 2, 1875, by an award of the Copyhold Comrs., the copyhold lands so devised were enfranchised. R. S., who would have been testatrix's heir at common law had he survived her, died on May 12, 1879. Testatrix died on Sept. 11, 1883, leaving J. S., the eldest son of the said R. S., her heir at common law, a nephew A. S., her heir at common law if R. S. & his issue were excluded, & a brother G. S., her heir according to the custom of the manor, which was borough-English:—*Held:* the words "my own right heirs" must be construed to mean her heirs at common law & not her customary heirs: the limitation was ineffectual, & accordingly the lands so devised were unappointed.—*Re* SMITH, BULL *v.* SMITH, [1933] Ch. 847; 102 L. J. Ch. 359; 149 L. T. 382.

Part XVIII.—Mode of Transmission of Copyholds inter vivos.

1772. After this case add:—

Endorsement of assurances of enfranchised land by stewards.]—*See* Law of Property Act, 1922 (c. 16), s. 129.

Part XIX.—Determination and Suspension of Tenant's Estate.

1947. *Add. Citation:*—1 Eq. Cas. Abr. 121.

1950. *Add. Annotation:*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

1951. *Add. Annotation:*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

1978. *Add. Annotation:*—**Reld.** *Re* Price, [1928] Ch. 579.

Part XX.—Enfranchisement.

1989. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

1998. *Add. Annotation:*—**Reld.** *Re* Price, [1928] Ch. 579.

2032. After this case add as follows:—

SECT. 3a.—UNDER LAW OF PROPERTY ACTS.

2032a. Estate tail in undivided share—Interest in personalty.]—Where before 1926 an undivided share in copyhold land was the subject of an estate tail, the enfranchisement of such copyhold land after 1925 can result in turning the estate tail into an absolute interest; & where, by reason of the statutory trusts under Law of Property Act, 1925 (c. 20), such land becomes personalty, the absolute interest into which the estate tail is turned is an interest in personalty.—*Re* PRICE, [1928] Ch. 579; 97 L. J. Ch. 423; 139 L. T. 339.

Annotations:—**Reld.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208; *Re* Jones, Public Trustee *v.* Jones, [1934] Ch. 315.

.]—*See, now*, Law of Property (Entailed Interests) Act, 1932 (c. 27).

2032b. Equitable joint tenancy in copyholds—Subject to rentcharge—Vesting of legal estate.]—On July 5, 1802, Bryan Abbs & another trustee who predeceased him were admitted to certain copyhold plots A., B. & C. upon trust out of the rents & profits to raise & pay an annual rent of £7 10*s.* to Harrison & his heirs & subject thereto in trust for Wilson & his heirs. Many years after Bryan Abbs' death his customary heir H. C. Abbs, since deceased, was admitted to A. & C., but no one was admitted to B.; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of H. C. Abbs & Bryan Abbs. On the same date the equitable title to the land stood vested in Thompson & Collins as joint tenants in

fee, subject to the equitable rentcharge then vested in Aylmer, subject to proof of his title.

On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested :—*Held :* (1) under the 1922 Act, Sched. XII., para. 8 (*b*), the freehold estate in the land vested in the first instance in the personal representative of H. C. Abbs & the customary heir of Bryan Abbs as trustees, Bryan Abbs having no known personal representative ; (2) either under the 1922 Act, Sched. XII., para. 8 (*d*), or under the 1925 Act, Sched. I., Part II., paras. 4, 6 (*d*), the rentcharge vested as a legal rentcharge in Aylmer or other the persons entitled thereto ; (3) on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform ; (4) under the 1925 Act, Sched. I., Part II., paras. 3, 6 (*d*), the initial vesting in the trustees was divested, & the legal estate subject to the legal rentcharge vested in Thompson & Collins as joint tenants in fee simple ; (5) sect. 36 of the 1925 Act did not come into operation until after the vesting provisions had done their work. It then merely attached a trust for sale to the joint legal estate in Thompson & Collins. It did not previously attach a trust for sale to the initial estate in the trustees so as to put the divesting provisions of the 1925 Act, Sched. I., Part II., out of operation. Still less did it bring in the undivided share provisions of the 1925 Act, Sched. I., Part IV. —*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, [1929] 1 Ch. 483 ; 98 L. J. Ch. 109 ; 140 L. T. 463.

2032c. —— —— **Vesting of rentcharge.**]—*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, No. 2032b, *ante*.

COPYRIGHT AND LITERARY PROPERTY.

Part I.—Nature of Copyright.

1. *Add. Annotation:—As to* (2) **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

14. *Add. Annotations:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

15. *Add. Annotation:*—**Refd.** Mansell *v.* Star Printing & Publishing Co. of Toronto, Ltd., [1937] 3 All E. R. 912.

16. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

16a. **Dramatic work—No "first publication" within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.]** —Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling outside British territory was entitled to secure dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since, (1) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result, & (2) it constituted an admission by defts.' predecessors in title.

(3) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (*a*) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty's dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing rights.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) (*b*), coupled with sects. 24 & 35 of the Act, & sched. 1 to the Act, the right to the cinematograph & film rights of that play also.

An American corpn. made a film & sent a negative & two positives of it to an English co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were interworking organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.'s copyright:—*Held:* (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.'s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

Annotations:—As to (6) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *Generally,* **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

PART I. SECT. 1.

ei. ——— ——— ———.]—"Copyright" in Commonwealth Copyright Act, 1912, s. 13 (1), includes the right to perform.—POLLOCK *v.* WILLIAMSON (J. C.), LTD., [1923] V. L. R. 225; 29 Argus L. R. 133; 44 A. L. T. 161.—**AUS.**

sk. *Trust in respect of copyright.*]—An implied or constructive trust in respect of a copyright existing under Copyright Act, 1913, may be enforced; & enforced to the ultimate extent of the acquisition of the title to the copyright by the *cestui qui trust* who is entitled to get in the legal estate. Sect. 44 of Copyright Act, 1913, contemplates that any trust created in the manner which the law permits for personal property may exist in respect of copyright or of any right in copyright, whether the title to those rights is acquired by assignment, license, or transmission. Once a parol transaction in respect of copyright has reached a stage when, by reason of the payment & receipt of the purchase price, the vendor becomes a mere trustee of the property of the purchaser, the only question will be not whether the transaction is in writing or not, but the method of its enforcement.—BROOKER *v.* JOHN FRIEND, LTD., [1936] N. Z. L. R. 743; G. L. R. 560; 12 N. Z. L. J. 249.—**N. Z.**

Part II.—Subject-Matter.

18. *Add. Annotation:*—**Refd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

22. *Add. Annotation:*—*As to* (1) **Folld.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

23. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

-.]—A series of articles entitled "[pltf.'s] racing secrets" was published in a newspaper. Pltf. had done none of the actual writing of any of the articles, but he had related his experiences to F., who had made notes from which F. had written up the articles. The articles were read over to pltf. before publication, & alterations suggested by him were sometimes adopted. F. did not take down pltf.'s information verbatim, but in the articles pltf.'s experiences were in some case given in the form of dialogues. Articles based upon the original series of articles were later published in another publication & entitled "My Racing Secrets. By Steve Donoghue," *i.e.*, pltf.:—*Held:* (1) pltf. was neither the owner nor the joint owner of the copyright in the original articles; (2) the presumption under Copyright Act, 1911 (c. 46), s. 6 (3), that pltf. was the author of the later articles was rebutted.—DONOGHUE *v.* ALLIED NEWSPAPERS, LTD., [1937] 3 All E. R. 503; 157 L. T. 186; 53 T. L. R. 907; 81 Sol. Jo. 570.

41. *Add. Annotation:*—*As to* (3) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91; Lane (John), Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379.

42. *Add. Annotations:*—*As to* (1) **Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Folld.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** Chabot *v.* Davies, [1936] 3 All E. R. 221. *As to* (5) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1. *Generally*, **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

—— **Letter written by manufacturer to trade customer.**]—(1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of criticism, is not "fair dealing" within sect. 2 (1) (*i*) of the Act.—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

43b. —— **Single sentence.**]—Pltf. had, since 1925, dealt with the treatment of the human face, & had advertised extensively in connection with that treatment. He claimed to have the copyright in a slogan in connection with those advertisements. The phrase was, "Beauty is a social necessity, not a luxury." Sometimes there were variations in the words used. Sometimes the words "youthfulness," or "good looks," or "youthful appearance" were substituted for "beauty." In May 1926 deft. inserted an advertisement containing the phrase "A youthful appearance is a social necessity." Some years before 1925 an advertiser had used a similar phrase, "Beauty is a modern necessity":—*Held:* (1) the only originality, if any, in pltf.'s phrase consisted in the substitution of the word "social" for the word "modern," & pltf.'s phrase was not an original composition; (2) although copyright might subsist in an advertisement, to quote a piece of a sentence from a literary work was too small a matter to afford ground for an action for infringement of copyright; (3) the doctrine *de minimis non lex curat* applied, & the matter in which copyright was claimed was too small for the ct. to attach any importance to it.—SINANIDE *v.* LA MAISON KOSMEO (1928), 139 L. T. 365; 44 T. L. R. 574, C. A.

51. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

55. *Add. Annotation:*—*As to* (5) **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

60. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

65. *Add. Annotation:*—**Refd** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

70a. **Blue-print of shop-front—1911 Act, sec. 22.**]—Pltf. sent to defts., at their request, a blueprint plan & elevation of a shop-front & an estimate for the work. No order

PART II. SECT. 3, SUB-SECT. 1.

o i. —— *Form of contract for sale of land.*]—*Held:* such a document was capable of copyright, but if copies were sold, there might be an implied authority to reproduce them where necessary in connection with the transaction for which they were purchased.—REAL ESTATE INSTITUTE OF N.S.W. *v.* WOOD (1923), 23 S. R. N. S. W. 349; 40 N. S. W. W. N. 60.—**AUS.**

o ii. —— *Compilation.*]—A compilation may be an "original literary work" within Copyright Act.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

o iii. —— *Translation.*]—Translations are original literary works.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B.

sd. *Slight alterations — Works of foreign author.*]—Where a publisher in Scotland brought out an edition of the works of a foreign author, which had all been originally published abroad, & in which there was no copyright in this country:—*Held:* alterations upon the writings, neither important nor extensive, made with the assistance of the author, did not create a copyright in the edition, so as to give the publisher a right to prevent the publication of a reprint of it in a different form.—HEDDERWICK *v.* GRIFFIN (1841), 3 Dunl. (Ct. of Sess.) 383.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C.

54 i. *Immoral works.*]—There is nothing in the Copyright Act to deny an author a copyright on the grounds that his work is indecent, obscene or immoral. Where his work is of such a character that the law will not permit him to publish it, the cts. will deny him damages, since if he cannot sell it he cannot prove damages. But apart from damages, there is no reason why the pirating of an author's original work should not be restrained by injunction, provided it is honest work, & not a fraud on the public.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

sk. *Plan—Of harbour.*]—LYSHAR *v.* GISBORNE HARBOUR BOARD, [1924] N. Z. L. R. 13.—**N.Z.**

was given to pltf. for the erection of the shop-front. The shop-front was, however, erected for defts. by a firm which worked on a tracing of pltf.'s plan & elevation. Pltf. brought an action against defts. for infringement of his copyright by authorising the reproduction of the plan. Defts. contended that a plan could not be reproduced by a shop-front:—*Held:* (1) the shop-front was a reproduction of the plan, & as the plan was an original literary work within 1911 Act, defts., by authorising the reproduction, had infringed pltf.'s copyright in the plan; (2) the plan was not a design within 1911 Act, s. 22.—CHABOT *v.* DAVIES, [1936] 3 All E. R. 221; 106 L. J. Ch. 81; 155 L. T. 525; 53 T. L. R. 61; 80 Sol. Jo. 875.

73. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. *Add. Annotation:*—*As to* (1) **Consd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433. *As to* (3) **Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

76. *Add. Annotation:*—**Consd.** Sinanide *v.* La Maison Kosmeo (1928), 139 L. T. 365.

77a. —— —— **For type—Protected.**]—Pltf. co., which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words used in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter alia*) that pltfs.' catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—*Held:* on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltfs. in their catalogue was granted.—MASSON SEELEY & CO., LTD. *v.* EMBOSOTYPE MANUFACTURING CO. (1924), 41 R. P. C. 160.

80. *Add. Annotation:*—*Generally*, **Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

85a. Programmes.]—Pltfs. were a limited co. formed to acquire the Postmaster-General's licence for the establishment & working of broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltfs. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltfs. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each performance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour &

PART II. SECT. 3, SUB-SECT. 4.—A.

77 i. *Illustrated catalogue—Collection of designs—Not protected.*]—Copyright Act, 1912, Sched., s. 22 (1), read in conjunction with sect. 9 (c) of the Act, provides as follows: "This Act shall not apply to designs capable of being registered under Designs Act, 1906, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process":—*Held:* (1) the term "multiplied by any industrial process" in that sub-sect. is not limited to the multiplication of the design as a design, but extends to & includes the multiplication by any industrial process of that design in any material form whatsoever; (2) consequently, a manufacturer of articles of metal who had published a catalogue containing illustrations of designs of those articles, with appropriate letterpress, & was registered under Copyright Act as the owner of the copyright in such catalogue, was not entitled to copyright in respect of such of the designs as had been or could be registered under Designs Act, 1906–1912.—BUTLER & CO., LTD. *v.* DUTCH (1929), 30 S. R. N. S. W. 22.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—D.

si. *List of acceptances for horse race.*]—Pltf. co. carried on the business of horse racing & was registered under Copyright Act, 1912, as the owner of the copyright in a sheet of letterpress entitled "names of horses & weights for horses accepted for races to be held at C. Park Races on Sat., June 6, 1931." Prior to each meeting the co. published a similar list of acceptances & caused itself to be registered as the owner of the copyright therein. In the compilation of those lists, in order to arrive at a final result, various preliminary processes were gone through in which pltfs., the handicapper & secretary of the co. respectively, had a part. Deft. without the permission of pltf. co. published in his newspaper the information contained in the list of acceptances of June 6, 1931, & claimed the right to publish similar lists of acceptances:—*Held:* copyright in the list of acceptances for June 6, 1931, was vested in pltfs. or some one or more of them & that such copyright had been infringed.—CANNING PARK RACE COURSE CO., LTD. *v.* HOPKINS (1932), 49 N. S. W. W. N. 27.—**AUS.**

sd. *Race programme.*]—A published programme showing the names of horses entered for particular races, the weights & the barrier positions, is the subject of copyright under the Copyright Act, 1912 (Cth.). The addition of the names of the sires & dams of the horses, the names of the riders, & the colours to be carried by them do not prevent a publication containing the other particulars appearing in the published programme from being an infringement of the copyright in the programme.—MANDER *v.* [illegible] [1934] S. A. S. R. 87.—**AUS.**

sk. *Forms for use of Road Boards.*]—[illegible] Regulations [illegible] tricts Act, 1919–1933, provide that certain books & records shall be kept by every Road Board, & appropriate forms are prescribed. Pltf. was the printer & publisher of a "combined register," which was a compilation of the prescribed forms & claimed copyright therein:—*Held:* there was no selection or peculiar labour, skill, or experience involved in the compilation, & it was not the subject of copyright.—SAMPSON *v.* BROKENSHA & SHAW, LTD., [1935] W. A. L. R. 90.—**AUS.**

expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pltfs. sued for infringement of copyright:—*Held:* (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pltfs. were allowed to trade & publish them, the copyright belonged to pltfs. & not to the Crown. (3) *Semble:* there may be copyright in an individual programme.—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

86a. Starting prices.]—Where after the start of a horse race lists are prepared on the course of the starting prices of the horses engaged in the race, these are not the subject of copyright.—ODHAMS PRESS, LTD. *v.* LONDON & PROVINCIAL SPORTING NEWS AGENCY (1929), LTD., [1935] Ch. 672; 104 L. J. Ch. 323; 153 L. T. 327; 51 T. L. R. 554; 79 Sol. Jo. 541; *on appeal*, [1936] Ch. 357.

88. *Add. Annotations:—As to* (2) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

91a. Slogan or catch-phrase.]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante*.

92a. Abridgment—May be new work.]—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting merely of extracts taken verbatim from a work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—MACMILLAN & CO. *v.* COOPER (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130 L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 235, P. C.

Annotation:—**Refd.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160.

After this case for "**Abridgment—May be new work.**]—*See* Nos. 422, 426, *post*," read "——.]—*See, also*, Nos. 422, 426."

95. *Add. Annotation:*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

97. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

99a. —— Of descriptive character.]—(1) A song which relates the burning of a ship at sea, & the escape of those on board, describes their feelings in vehement language, & sometimes expresses them in the supposed words of the suffering parties, is dramatic, & therefore at all events within the meaning of the statute, though it be sung only by one person, sitting at a piano, giving effect to the verses by his delivery, but not assisted by scenery or appropriate dress.

(2) A room where the song is performed, & to which persons paying for tickets are admitted for the purpose of hearing it, is, for the time, a place of dramatic entertainment within the meaning of the statutes, though the room be ordinarily used for different purposes.—RUSSELL *v.* SMITH (1848), 12 Q. B. 217; 17 L. J. Q. B. 225; 11 L. T. O. S. 286; 12 Jur. 723; 116 E. R. 849.

Annotations:—As to (1) **Apld.** Clark *v.* Bishop (1872), 25 L. T. 908. **Distd.** Fuller *v.* Blackpool Winter Gardens & Pavilion Co., [1895] 2 Q. B. 429. **Refd.** Hatton *v.* Kean (1859), 29 L. J. C. P. 20. *As to* (2) **Consd.** Wall *v.* Taylor, Wall *v.* Martin (1882), 9 Q. B. D. 727. **Apld.** Duck *v.* Bates (1883), 12 Q. B. D. 79. *Generally*, **Refd.** Lacy *v.* Rhys. (1864), 4 B. & S. 873; Edwardes *v.* Cotton (1902), 19 T. L. R. 34.

108a. Frock reproduced from sketch.]—Pltf., B., having made a sketch of a red frock worn upon a lady, pltf. co., with the consent of B., made a frock which followed the lines of the frock which the lady was shown wearing in the sketch. It was the practice of pltf. co.

PART II. SECT. 3, SUB-SECT. 6.

sm. *Advertisement of dental plate.*]—An advertisement relating to the manufacture & sale of dental plates, which contains sufficient originality of expression & arrangement to entitle it to come within the words "original literary work" as used in sect. 3 (1) of Copyright Act, 1913, may be the subject of copyright. The fact that the claims of such an advertisement amount to no more than that certain standards to which every manufacturer of dental plates may work had been reached is no defence to an action for an injunction for infringement of copyright when the presentation of those claims is novel & reached by a combination of skill, labour, & expenditure contributed by its author & owner.—COTTON *v.* FROST, [1936] N. Z. L. R. 627; G. L. R. 520; 12 N. Z. L. J. 250. —**N. Z.**

PART II. SECT. 4.

100 l. *Sketch—Radio sketch.*]—Deft. co. employed pltf., a dramatic author & producer, to prepare a radio sketch for use in advertising deft.'s business, deft. suggesting the general outline of the work. Pltf. prepared & procured production of the sketch through deft. G. Pltf. & deft. co. entered into a written agreement covering production of the sketch, the agreement containing (*inter alia*) the following clause: "The feature is only to be used as arranged through Fred W. Kantel." Subsequently deft. co. purported to cancel the agreement & continued to broadcast the sketch under the deft. G.'s direction. Later deft. G. broadcasted the sketch on his own account, for a short time, without pltf.'s consent. In an action for infringement of copyright & for damages:—*Held:* (1) pltf. was the sole author of the sketch, he having given it form & expression although certain ideas had been suggested by the deft.; (2) the sketch was a dramatic work within the meaning of copyright law which does not require that the expression must be in an original or novel form, but that the work must not be copied from another work. Nor did it matter that the original manuscript was departed from in each broadcast as, in the presentation of a dramatic work in whatever form, it is open to the performer to depart from the literal text of the work; (3) there was infringement of pltf.'s copyright since deft. co. for several months caused to be performed or broadcasted through deft. G. the sketch originally prepared & broadcasted by direction of pltf. without his consent.—KANTEL *v.* GRANT, NISBET & AULD, LTD., WATSON & DOMINION BATTERY CO., LTD., [1933] Ex. C. R. 84.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

sf. *Design for trade purposes.*]—A firm of advertising agents made a sketch for pltfs. entitled a "Design for Shirt Box." Pltfs. did not use it:—*Held:* pltfs. could not be treated as owners of an artistic work ordered & made for valuable consideration within Copyright Act, 1927, s. 12 (1).—TORONTO CARTON CO. *v.* MANCHESTER, MCGREGOR, LTD., [1935] 2 D. L. R. 94; O. R. 144.—**CAN.**

sl. *Sketches prepared from design.*]—The preparation of coloured sketches of a submitted design does not involve artistic skill or come within the definition of sketches with Copyright Act.—COMMERCIAL SIGNS *v.* GENERAL MOTORS PRODUCTS, [1937] 2 D. L. R. 310.—**CAN.**

not to sell a frock of the same design to any customer other than the particular customer for whom it was designed. Defts., without the consent of pltfs. or either of them, made a frock which was precisely the same as pltf.' co.'s frock & made & offered for sale & sold frocks which were substantially reproductions of the frock made by pltf. co. & threatened to continue so to do:—*Held:* (1) the frock made by defts. whether spread out or held up to view, was not a reproduction of B.'s sketch within 1911 Act, s. 1 (2), & consequently, B.'s copyright in the sketch was not infringed; (2) the frock copied by pltf. co. from the sketch was not an original "work of artistic craftsmanship" within the definition of "artistic work" in sect. 35 of 1911 Act, as pltf. co. were not the originators of the artistic element in the work.

Qu.: whether, if B. herself made the frock from her own design, she would be entitled to copyright therein.—BURKE & MARGOT BURKE, LTD. *v.* SPICERS DRESS DESIGNS, [1936] Ch. 400; [1936] 1 All E. R. 99; 105 L. J. Ch. 157; 154 L. T. 561; 52 T. L. R. 242; 80 Sol. Jo. 147.

Annotation:—As to (1) **Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221.

111a. —— Wolf-cub head for Boy Scouts' pole—1911 Act, s. 22.]—Apart from 1911 Act, s. 22. a model of a wolf-cub's head produced from a mould in papier mache & intended to be displayed as their totem on the tops of poles by the Boy Scouts Assocn., is an artistic work in which copyright would subsist under that Act. But, as the model consisted of "features of shape, configuration, pattern, or ornament applied to any article" of manufacture or artificial substance by an industrial process, & was therefore a design within Patents & Designs Act, 1907 (c. 29), s. 93, as amended by Patents & Designs Act, 1919 (c. 80), s. 19, & consequently was capable of being registered under the Act of 1907 &, further, was not a design which was "not used or intended to be used as a model or pattern to be multiplied by any industrial process," it was by Copyright Act, 1911 (c. 46), s. 22, excluded from the operation of that Act & not the subject of copyright thereunder.

In an action by pltfs. for infringement of copyright which they claimed in the model, against the defts. who admittedly had copied & reproduced the model:—*Held:* for the reasons stated above, pltfs. had no copyright in the model under 1911 Act, & the design not having been registered as a design under the Patents & Designs Act, 1907 (c. 29), the action failed.

Semble: if pltfs. had had copyright in the model, the defts. could not successfully plead, under 1911 Act, s. 8, that they had no reasonable ground for suspecting the subsistence of copyright in the model owing to the absence of registration marks under Patents & Designs Act, 1907 (c. 29), under which they alleged that in their view of the law the model was capable of [illegible] since, relying upon that view, they abstained from making any inquiries whether copyright in the model was claimed.—PYTRAM, LTD. *v.* MODELS (LEICESTER), LTD., [1930] 1 Ch. 639; 99 L. J. Ch. 381; 143 L. T. 227; 46 T. L. R. 290.

118a. Adaptation of old play—Original musical composition.]—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.

Pltf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pltf. complained that defts. were passing off these records as records of pltf.'s music:—*Held:* defts. had borrowed from pltf.'s work in a way which was more than mere coincidence, & had infringed pltf.'s copyright.—AUSTIN *v.* COLUMBIA GRAPHOPHONE CO. (1923), 67 Sol. Jo. 790.

Annotation:—**Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

119. *Add. Annotations:*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790; Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450.

120. *Add. Annotations:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

121a. Right of maker of record to restrain public performance.]—*Held:* (1) owners of a subsisting original copyright under 1911 Act, sect. 1, can restrain public performance by owners of a special copyright under sect. 19, which is subordinate to copyright under sect. 1, though it may co-exist with it; (2) an owner of a special copyright under sect. 19 in a record has the sole right to use the record for public performance except as against the owner of a subsisting original copyright.—GRAMOPHONE CO., LTD. *v.* STEPHEN CAWARDINE & CO., [1934] Ch. 450; 103 L. J. Ch. 248; 150 L. T. 396; 50 T. L. R. 140; 77 Sol. Jo. 914.

125. *Add. Annotations:*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller General of Patents (1926), 44 R. P. C. 38; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

128. *Add. Annotation:*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

133. *Add. Annotation:*—**Apld.** Sinanide *v.* La Maison Kosmeo, (1928) 139 L. T. 365.

135a. —— "Official Guide" — Protected.]—REUTER'S TELEGRAM CO., LTD. *v.* INTERNATIONAL GUIDE SYNDICATE & INTERNATIONAL EXPRESS, LTD. (1893), 37 Sol. Jo. 325.

137. *Add. Annotation:—As to* (2) **Follid.** Ridgway Co. *v.* Hutchinson (1923), 40 R. P. C. 335.

147. *Add. Annotation:*—**Refd.** Odham's Press, Ltd. *v.* London & Provincial Sporting News Agency (1929), Ltd., [1935] Ch. 672.

Part III.—Publication.

151. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

164. *Add. Annotations :—As to* (1) **Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474. *As to* (8) **Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

165. *Add. Annotation :*—**Folld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

180a. **What documentary evidence admissible—Letters—From author's agent to assignee of performing rights.**]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

180b. —— **Entry in register at Stationers' Hall—Entry incorrect.**]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

Part IV.—Ownership.

190. *Add. Annotation :*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

194. *Add. Annotations :*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

196. *Add. Annotation :*—**Apld.** Black *v.* Stacey, [1929] 1 Ch. 177.

196a. —— **By compiler of book of reference—From information received from biographees.**]—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the persons supplying the information are not, for the purposes of 1911 Act, the authors of the paragraphs containing the information.—A. & C. BLACK, LTD. *v.* CLAUDE STACEY, LTD., [1929] 1 Ch. 177; 98 L. J. Ch. 131; 140 L. T. 402; 44 T. L. R. 347.

197a. **Automatic writing by medium.**]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one :—*Held :* pltf. was the sole owner of the copyright.—CUMMINS *v.* BOND, [1927] 1 Ch. 167; 76 L. J. Ch. 81; 136 L. T. 368; 70 Sol. Jo. 1003.

198. *Add. Annotations :*—**Refd.** Samuelson *v.* Producers' Distributing Co. (1931), 146 L. T. 37; O'Gorman *v* Paramount Film Service, Ltd., [1937] 2 All E. R. 113.

205. *Add. Annotation :*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206. *Add. Annotation :*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206a. —— —— ——.]—SASHA, LTD. *v.* STOENESCO (1929), 45 T. L. R. 350.

210. *Add. Annotation :*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

211. *Add. Annotation :*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

226. *Add. Annotation :—Generally,* **Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

229a. **Sketches for advertisement show cards—Ordered by & made for advertiser for valuable consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).**]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered the sketches as designs under the above Act. In an action by pltfs. for infringement of copyright :—*Held :* (1) under 1911 Act, s. 5 (1) (*a*), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect.; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pltfs. could not succeed.—CON PLANCK, LTD. *v.* KOLYNOS INCORPORATED, [1925] 2 K. B. 804; 94 L. J. K. B. 923; 133 L. T. 798.

229b. **Advertisement—Prepared by advertisement agent.**]—Where an advertisement agent prepares an advertisement on instructions & information given to him by the advertiser, the ct. will, in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copy-

PART IV. SECT. 1, SUB-SECT.

s1. *Contract of service—What amounts to.*]—B. was engaged as an "artist contributor" to a newspaper under agreement to supply each week certain drawings at a weekly remuneration, to comply with all orders, directions & regulations of the co. to properly conduct himself, & to refrain from divulging the co.'s affairs or from accepting engagement in any undertaking in competition with the co. :—*Held :* B. was employed under a "contract of service" within sect. 5 (1) (*b*) of the Sched. to Copyright Act, 1912.—SUN NEWSPAPERS, LTD. *v.* WHIPPIE (1928), 28 S. R. N. S. W. 473; 45 N. S. W. W. N. 126.—AUS.

right in the advertisement should belong to the advertiser.—HAROLD DRABBLE, LTD. *v.* HYCOLITE MANUFACTURING CO. (1928), 44 T. L. R. 264 ; 72 Sol. Jo. 102.

232a. Choreography.]—MASSINE *v.* DE BASIL (1937), 81 Sol. Jo. 670.

234a. Copyright Act, 1911 (c. 46), s. 17—Application to dispositions after commencement of statute.]—*Re* DICKENS, DICKENS *v.* HAWKSLEY, No. 275a, *post*.

234b. —— Ownership of unpublished manuscript—When proof of ownership of copyright.]—*Re* DICKENS, DICKENS *v.* HAWKSLEY, No. 275a, *post*.

235. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part V.—Assignment, Licence and Royalties.

247. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

251. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

254. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272. **Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

256. *Add. Annotation :—As to* (1) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

268. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

275. After this case add "**Assignment on bankruptcy—Bankruptcy Act, 1914 (c. 59), s. 60—Whether applicable to winding up.**]—*See* COMPANIES, Nos. 6409b, 6409c, *ante*."

275a. Bequest of private papers—Manuscripts of unpublished work.]—(1) An author's incorporeal copyright in an unpublished work does not necessarily pass with the corporeal paper on which it is written. Therefore, a bequest to A.B. of "all my private papers" in a will (which also contains a bequest of "manuscripts of my published works" & a direction to sell "copyright") operates to pass the property in an unpublished manuscript to A.B. but not the copyright in the work recorded in the manuscript.

(2) Copyright Act, 1911 (c. 46), applies to a bequest of manuscript & copyright in a will although the testator died before the Act came into force.

(3) By sect. 17 (2) of the Act it is provided that ownership acquired under a testamentary disposition of an author of an unpublished manuscript of that author is *primâ facie* proof of the copyright being with the owner of the manuscript. That *primâ facie* proof is displaced by the author bequeathing the copyright independently.—*Re* DICKENS, DICKENS *v.* HAWKSLEY, [1935] Ch. 267 ; 104 L. J. Ch. 174 ; 152 L. T. 375 ; 51 T. L. R. 181 ; 78 Sol. Jo. 898, C. A.

278. *Add. Annotation :*—**Refd.** The Lord Strathcona, [1925] P. 143.

289. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

290a. —— —— Rights of assignee as to mechanical performance.]—Where the author of a musical work has made an assignment of his rights in the work before July 1, 1912, the exclusive right conferred upon him by 1911 Act, of making or authorising the making of contrivances by means of which the work may be mechanically performed, does not enable him to restrain the assignees from performing or authorising the performance of the work by means of such contrivances.—THOMPSON *v.* WARNER BROTHERS PICTURES, LTD., [1929] 2 Ch. 308 ; 98 L. J. Ch. 427 ; 141 L. T. 411 ; 45 T. L. R. 553, C. A.

Annotations :—**Consd.** Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450. **Refd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co., [1934] Ch. 121.

294. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

302. *Add. Annotations :*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

305. *Add. Annotation :*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

305a. Grant of licence giving sole & exclusive right of representation—Assignment.]—Applt. was the composer of the music of a French opera, an English version of which was produced at a London theatre on the terms of an agreement of Mar. 23, 1905. By this agreement, made between the composer (the applt.) & the authors of the opera (thereinafter called "the licencors") of the one part & the proprietor of the theatre (thereinafter called "the licencee") of the other part, after reciting that the licencors had delivered the play to the licencee, with the score of the music, with a view to its production in London & elsewhere "on the terms hereinafter mentioned," the licencors granted the licencee the sole & exclusive right of representing the play in the U.K., America, & the British Colonies & Dominions. The agreement further provided that the copyright in the music of the play should remain the property of applt. ; that on the failure of the licencee to produce the play in London within a certain time all rights of representation as aforesaid should revert to & become again the absolute property of the licencors ; that the licencee should pay to the licencors as royalties certain percentages of the gross profits ; that the licencee should keep proper books showing the gross receipts of the theatres at which the play should be represented, & that the licencors should be entitled to inspect the books, so as to enable them to verify the amount of the percentage payable to them. Resps., in pursuance of a permission granted to them by a theatrical co., to whom on the death of the licencee the benefit of the

PART V. SECT. 1, SUB-SECT. 1.—A. (e).

sx. *Sale of first edition.*]—A sale of the first edition of a book amounts to an assignment of an interest in the copyright until the last copy of that edition is sold.—KAMALA BOOK DEPOT LTD. *v.* SOUREENDRANATH MUKHERJI (), I. L. R. 62 Calc. 57.

agreement had been assigned by his exors., gave a broadcast performance of the opera at their studio in London. In an action by applt. against resps. for infringement of copyright:—*Held:* upon the construction of the agreement, (1) it operated as an absolute assignment of the performing rights of the opera within the prescribed area & was not a mere licence, & (2) it was not limited to representations on the stage of a theatre, & the action failed.—MESSAGER *v.* BRITISH BROADCASTING CO., [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, H. L.

Annotations:—*As to* (1) **Consd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272. *Generally,* **Refd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co. (1933), 49 T. L. R. 410.

308. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

308a. —— —— ——.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forthcoming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films:—*Held:* the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—BARSTOW *v.* TERRY, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.

Annotations:—**Folld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

308b. —— —— ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

308c. Assignment of sole & exclusive right of representation—Includes right to broadcast.]—MESSAGER *v.* BRITISH BROADCASTING CO., No. 305a, *ante.*

311. *Add. Annotation:*—**Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

323a. Licence for reception of wireless—"For domestic & private use only."]—PERFORMING RIGHT SOCIETY, LTD. *v.* HAMMOND'S BRADFORD BREWERY CO., LTD., No. 483c, *post.*

325. *Add. Annotations:*—*As to* (1) **Consd.** Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450. *Generally,* **Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

325a. —— —— —— **Whether labels must be capable of adhering to particular type of record.**]—*Held:* when the copyright owner had supplied a maker of gramophone records with "adhesive labels" within the meaning of Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, the onus was on the maker to show that there were no means by which the labels could be made to adhere to the records. The words "adhesive labels" in the Regulations could not be construed by implication to mean that the labels should be fitted to adhere & capable of adhering to any substance of which the maker might choose to manufacture his records.—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., [1930] 1 Ch. 448; 99 L. J. Ch. 192; 142 L. T. 417; 46 T. L. R. 190; 74 Sol. Jo. 89, C. A.

325b. —— —— —— **Onus of proof that labels incapable of adhering to particular records.**]—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., No. 325a, *ante.*

325c. Reproduction of two works in one volume.]—Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work" includes "works" by Interpretation Act, 1889 (c. 63), s. 1 (1) (*b*).—OSBOURNE *v.* DENT (J. M.) & SONS, LTD., [1925] Ch. 369; 94 L. J. Ch. 308; 133 L. T. 362; 41 T. L. R. 419; 69 Sol. Jo. 590.

Part VII.—Crown Copyright.

332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., No. 85a, *ante.*

332b. Telephone directory—Copyright in Postmaster-General.]—A.-G. *v.* COLMAN'S PUBLICITY SERVICE (1928), *Times,* Mar. 16.

343a. —— **Writs, bonds and indentures — Grant void.**]—YARMOUTH (EARL) *v.* DARREL (1685), 3 Mod. Rep. 75; 87 E. R. 48.

354. After this case add:—
——.]—*See, now,* British Museum Act, 1932 (c. 34).

PART V. SECT. 3.

am. *Gramophone records—Owner of copyright in work on one side unknown—Division of royalties due.*]—ALBERT *v.* O., LTD. (1927), 28 S. R. N. S. W. 70.

Part IX.—Letters.

355. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383 ; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

360. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

364. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

366. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

367a. —— ——.]—A. brought an action against B., the editor of a newspaper, for stating in his paper that pltf. was the author of a certain libellous article which had appeared in the paper. To this action B. pleaded by way of justification, that the matter from which the article had been drawn up had been furnished by pltf. in letters written to him by deft. Upon the action coming on for trial, deft. submitted to a verdict of 40*s.* in favour of pltf. Deft. afterwards showed some of the letters to third persons. Upon a motion before answer, to dissolve an injunction which pltf. had obtained to restrain the publication & production of the letters, the ct. refused the application; more especially as upon the motion for the injunction pltf. had produced an affidavit to the effect that the verdict was taken under an arrangement that the letters should be delivered up, which affidavit was not sufficiently contradicted on the motion to dissolve. —PALIN *v.* GATHERCOLE (1844), 1 Coll. 565 ; 4 L. T. O. S. 251 ; 63 E. R. 545.

Annotation :—**Consd.** Philip *v.* Pennell, [1907] 2 Ch. 577.

369. *Add. Annotation :*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

369a. —— **Letters alleging breach of Official Secrets Act.**]—COOKSON *v.* POUNTNEY (1937), 81 Sol. Jo. 528.

Part XIa.—Application to British Possessions.

See 1911 Act, ss. 25–28.

389a. Irish Free State.]—(1) As by 1911 Act, s. 25 (1), that Act extended throughout His Majesty's dominions, except to a self-governing dominion which did not adopt it, & s. 35 (1) restricted the meaning of "self-governing dominion" to the dominions which are therein specifically named, Ireland not being included, the Act was in force in the Irish Free State when the constitution came into operation, & consequently by art. 73 thereof continued of full force & effect until it was repealed by the Industrial & Commercial Property (Protection) Act, 1927, of the Irish Free State. Sect. 174 (1) of that Act which provides that rights acquired under the Act of 1911 before Dec. 6, 1921, shall not be affected by the repeal, preserves rights the inception of which was before that date although they have been assigned after it.

The Judicial Committee, although of opinion that the judgment of the Supreme Court was wrong in holding that the appellants were not entitled to any remedy in respect of an infringement in 1926 of their rights under 1911 Act, advised that the judgment should be discharged only so far as it dealt with costs, as the Copyright (Preservation) Act, 1929, passed by the Irish Free State legislature after the grant of special leave to appeal, while enacting that rights under 1911 Act were to be deemed always to have subsisted in the Irish Free State, provided by sect. 4 that no remedy or relief should be granted in respect of any infringement which had there taken place before the passing of the Act.

(2) A local authority commits an infringement under 1911 Act, s. 2 (1), if a band which it has engaged to perform in public plays, without consent, copyrighted musical works which are included in a programme approved by the local authority, & the performance is for the "private profit" of the local authority, within sect. 2 (3), although any profit resulting will be applied to the relief of ratepayers.—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, [1930] A. C. 377 ; 99 L. J. P. C. 116 ; 143 L. T. 97 ; 46 T. L. R. 359 ; 74 Sol. Jo. 284, P. C.

Annotation :—Generally. **Refd.** Moore *v.* A.-G. for Irish Free State (1935), 104 L. J. P. C. 50.

389b. Canada.]—Applt., a publisher of fine art colour-prints, resident in England, was the owner of 31 pictures painted before Jan. 1, 1924, prints of which were manufactured by him & sold for various purposes. The pictures were not "produced or reproduced in Canada" prior to Jan. 1, 1924, nor had applt. ever recorded the copyright thereof under Canadian Copyright Act of 1906 (R.S.C., c. 70). Resp. co. published in Canada reproductions of these pictures. In an action for infringement of copyright :—*Held :* (1) as applt. had not complied with the requirements of Canadian Copyright Act of 1906, he had never acquired copyright in Canada in the pictures. He could not, there-

PART XI.

h 1. —— —— *Effect of Canadian Copyright Act on rights of British subject*].—In the case of a British subject, whether resident in Canada or not, the protection which he is given under sect. 4 (1) of Copyright Act, R. S. C., 1927, is not dependent upon or qualified by the provisions of the Revised Convention of Berne of 1908, to which, & the protocol thereto of 1914, Canada gave its adherence in 1923. Therefore there is infringement when a newspaper article, of the class which is the subject of copyright, written by a British subject & first published in His Majesty's Dominions is reproduced in a Canadian newspaper, without the consent of the author or the assignee, if any, of his rights, even though it cannot be protected under the Berne Convention because no notice expressly forbidding its reproduction has been given.—GRIBBLE *v.* MANITOBA FREE PRESS CO., LTD., [1931] 3 W. W. R. 570 ; [1932] 1 D. L. R. 169 ; 40 Man. L. R. 42.—CAN.

fore, assert any copyright under Canadian Copyright Act, 1921, the rights conferred by that Act being substituted for pre-existing Canadian copyright; (2) as the legislature of the Dominion of Canada had never declared the Imperial Copyright Act, 1911 (c. 46), to be in force in Canada, the rights enjoyed by applt. under that Act did not extend to Canada. Applt. could not, therefore, maintain his action.—MANSELL *v.* STAR PRINTING & PUBLISHING CO. OF TORONTO, LTD., [1937] A. C. 872; [1937] 3 All E. R. 912; 106 L. J. P. C. 147; 157 L. T. 445; 53 T. L. R. 1026; 81 Sol. Jo. 764, P. C.

Part XII.—Registration.

To the cross-references in this Part add as follows:—

Effect of—Admissibility of entry in register—To prove first performance of dramatic work in England.]—*See* No. 16a, *ante*.

Part XIII.—Infringement.

394a. Knowledge of infringement — Whether material.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

After this case for "**As to knowledge as a defence.]**—*See* No. 47, *ante*; Nos. 506. 539, 540, 541, 557, *post*," read "—— ——.]—*See, also*, No. 47, *ante*; Nos. 506, 539–541, 557, *post*."

394b. Authorising publication of unpublished work —Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is "to authorise" the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS *v.* HULTON (E.) & CO., LTD. (1924), 131 L. T. 534; 40 T. L. R. 489; 68 Sol. Jo. 616.

Annotations:—**Apprvd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Donoghue *v.* Allied Newspapers, Ltd., [1937] 3 All E. R. 503. **Reid.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

See, also, Nos. 489a, 489b, 489c, 510, *post*.

394c. Statutory defence—What must be proved.]—Defts. published in a newspaper of which they were the proprietors & publishers a short story called "The Gods Decide," which had been submitted to them by one S. as his own original work. "The Gods Decide" was in fact a colourable imitation of a short story entitled "The Interlopers," the copyright in which was owned by pltfs. or one of them. Defts. did not know of the existence of "The Interlopers," nor that it was the subject of copyright, & sought to rely on sect. 8 of 1911 Act, as a defence to pltfs.' claim for damages under sects. 6 & 7:—*Held*: sect. 8 afforded no defence in the circumstances. Defts. had not proved that they were "not aware & had no reasonable ground for suspecting that copyright subsisted in the work," but only that they had the authority of S., whom they believed to be the owner of the copyright.—JOHN LANE, BODLEY HEAD, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD., [1936] 1 K. B. 715; [1936] 1 All E. R. 379; 105 L. J. K. B. 326; 154 L. T. 403; 52 T. L. R. 281; 80 Sol. Jo. 206.

Annotation:—**Reid.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

398a. —— By manufacturer—Of letter written by rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., No. 43a, *ante*.

403a. Shop-front reproduced from blue-print.]—CHABOT *v.* DAVIES, No. 70a, *ante*.

408a. ——.]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante*.

413. *Add. Annotation*:—**Reid.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

414. *Add. Annotation*:—**Reid.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

418. *Add. Annotation*:—**Reid.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

420a. Book of selected essays—Second book of selected essays including essays in first book.]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled "Hazlitt's Selected Essays," edited by G. S., which included thirteen essays & notes on the essays. Defts. published & sold a book entitled "Hazlitt's Selected Essays, Edition Hollingworth" containing twenty of such essays, including the thirteen selected by G. S.:—*Held*: there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS

PART XII.

Copyright

(*c.*

RIGHT SOCIETY *v.*

PLAYERS
A. C. 456; 98 L. J. P.
657; 45 T. L. R. 232, P. C.—CAN.

PART XIII. SECT. 1, SUB-SECT. 1.

c 1. —— *No infringement—If works* odsicad *independently.*]—DEEKS *v.* [1930] 4 D. L. R. 513; *affd.*, [1931] 4 D. L. R. 513; O. R. 818; [1933] 1 D. L. R. 353, P. C.—CAN.

c li. —— *Biography.*]—Under the guise of copyright a pltf. cannot ask the ct. to close all avenues of scholarship & research & all frontiers of human knowledge. A biography was held, therefore, not to be a colourable imitation of an earlier work, where the later one was much longer & introduced, as a result of further study & research, much extra material & a of new incidents.—

KARTAR
(1934), I. L. R. 16 Lah. 103.—IND.

PART XIII. SECT. 1, SUB-SECT. 2.—A.

sd. *Work for use of schools—Quotation of two passages—Meaning.*]—Copyright Act, s. 2 (1), proviso iv., does not say that two passages from *each* work of the same author are permitted to be used in a compilation for the use of schools; what it permits is two passages in all from works by the same author.—EDUCATIONAL BOOK DEPOT *v.* RABINDRA NATH TAGORE (1933), I. L. R.

v. UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

426a. —— ——.]—MACMILLAN & Co. *v.* COOPER, No. 92a, *ante*.

441. *Add. Annotation :*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

442. *Add. Annotation :*—**Refd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

451. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

457. *Add. Annotation :*—**Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593, C. A.

459. *Add. Annotations :*—**Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221. **Refd.** Burke *v.* Spicer's Dress Designs, [1936] 1 All E. R. 99.

460. *Add. Annotation :*—**Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221.

467a. Frock reproduced from sketch.]—BURKE & MARGOT BURKE, LTD. *v.* SPICER'S DRESS DESIGNS, No. 108a, *ante*.

483. *Add. Annotation :*—**Refd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

483a. —— **In public—What amounts to.**]—The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, &, in determining that question, the *quantum* of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—HARMS INCORPORATED & CHAPPELL & Co. *v.* MARTANS CLUB, [1927] 1 Ch. 526; *sub nom.* HARMS INCORPORATED *v.* EMBASSY CLUB, LTD., 96 L. J. Ch. 84; 136 L. T. 362; 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

Annotations :—**Consd.** Jennings *v.* Stephens, [1936] 1 All E. R. 409. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

483b. —— —— —— **Broadcasting.**]—To broadcast an opera by wireless telephony is to "perform" it "in public" within 1911 Act, s. 1 (2).—MESSAGER *v.* BRITISH BROADCASTING Co., [1927] 2 K. B. 543; 97 L. J. K. B. 65; 137 L. T. 810; 43 T. L. R. 818; *revsd.* without touching this point, [1928], 1 K. B. 660 C. A.; [1929] A. C. 151, H. L.

Annotation :—**Consd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co., [1934] Ch. 121.

483c. —— —— —— —— **Reproduction by receiving set.**]—(1) A person who by means of a receiving set & loud-speaker makes audible to a public audience musical which are being broadcast, gives a "performance" of those works within Copyright Act, 1911 (c. 46), so as to render him, in the absence of consent by the owner of the copyright in the works, liable for infringement of copyright.

(2) *Held :* further, such "performance" was not justified by the licence which had been granted by the owner of the copyright to the broadcasting authorities & which provided (*inter alia*) that it covered "the audition or reception of copyright musical works . . . by means of broadcasting for domestic & private use only."—PERFORMING RIGHT SOCIETY, LTD. *v.* HAMMOND'S BRADFORD BREWERY Co., LTD., [1934] Ch. 121; 103 L. J. Ch. 210; 150 L. T. 119; 50 T. L. R. 16, C. A.

483d. —— —— —— —— ——.]—PERFORMING RIGHT SOCIETY, LTD. *v.* GEORGE (1936), cited in [1936] 3 All E. R. at p. 559.

Annotation :—**Consd.** Performing Right Society, Ltd. *v.* Camelo, [1936] 3 All E. R. 557.

483e. —— —— —— —— ——.]—A loud-speaker was played in a private room adjoining a public restaurant, but the arrangements were such that the door of the room had to be frequently open for the purposes of service. The music broadcast was audible in the restaurant :—*Held :* there was a public performance & an infringement of pltfs.' rights.—PERFORMING RIGHT SOCIETY, LTD. *v.* CAMELO, [1936] 3 All E. R. 557; 80 Sol. Jo. 1015.

483f. —— —— ——.]—An orchestral trio employed at an unlicensed residential hotel played in the lounge of the hotel on a certain evening after dinner. The audience included some of the resident guests & two persons who had dined there, after giving notice of their wish to do so, & who afterwards were in the lounge for the purpose of listening to the music :—*Held :* the performance was a performance "in public" within 1911 Act.—PERFORMING RIGHT SOCIETY, LTD. *v.* HAWTHORNS HOTEL (BOURNEMOUTH), LTD., [1933] Ch. 855; 102 L. J. Ch. 330; 149 L. T. 425; 77 Sol. Jo. 523.

Annotation:—**Consd.** Jennings v. Stephens, [1936] 1 All E. R. 409.

483g. —— **"For private profit"—Local authority engaging band.**] — PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante*.

484. *Add. Annotation :*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

PART XIII. SECT. 1, SUB-SECT. 4.

482 i. *By performance—Permitting place of entertainment to be used.*]—Applt. corpn. let its town hall to W. for a series of four vocal concerts. Resp. informed applt. that a song in which resp. had the copyright would be sung without its authority in the town hall at concerts given by W. The song was sung at two concerts. Applt. did nothing beyond acknowledging the receipt of the information :—*Held :* no inference should be drawn that applt. "permitted" the song to be sung, & therefore there was no infringement of copyright within Copyright Act, 1911 (c. 46), s. 2 (3).—CORPORATION OF CITY OF ADELAIDE *v.* AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. (1928), 40 C. L. R. 481; [1928] Argus L. R. 127.—AUS.

486 i. *By mechanical contrivance—Consent to manufacture.*]—Deft. applt. made certain gramophone records in New South Wales of a song in which pltf.'s copyright existed, & which, apart from Copyright Act, 1912, s. 19, would have been an infringement of pltf.'s copyright. Gramophone records of the song in which pltf.'s copyright existed had been made in England, & also in America with the consent of the owner of the copyright before the alleged infringement in New South Wales :—*Held :* proof of the consent given by pltf. resp. to the manufacture of contrivances in England was sufficient to satisfy the condition imposed by British Copyright Act, 1911, s. 19 (2) (*a*); Federal Copyright Act, 1912, brings into force in Australia British Copyright Act, 1911, & consequently, the making of contrivances, with the consent of the owners of the copyright, in any part of the area to which the Act applies, releases the work throughout the area of the operation of the Act.—GRAMOPHONE Co., LTD. *v.* LEO FEIST INCORPORATED, [1928] V. L. R. 420; 49 A. L. T. 196; [1928] Argus L. R. 257; *affd.*, 41 C. L. R. 1.—AUS.

486 ii. —— *Broadcast records.*]—Pltf. was the owner of the performing right in certain musical works. Without the authority of pltf. deft., a wireless broadcasting co., broadcast those works by reproducing them from gramophone records & pianola rolls :—*Held :* deft. had thereby committed an infringement of pltf.'s copyright in the musical works.—AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. *v.* 3DB BROADCASTING CO. PROPRIETARY, LTD., [1929] V. L. R. 107; [1929] Argus L. R. 109.—AUS.

488 i. *By sale of records.*]—Gramophone records which infringe copyright are "infringing copies" of a work within Imperial Copyright Act, 1911,

488a. ——.]—AUSTIN *v.* COLUMBIA GRAPHOPHONE CO., No. 118a, *ante.*

489a. By authorising performance—Director of theatrical syndicate with power to prevent performance.]—Pltfs. were the proprietors of the right of performing in public certain musical pieces, & deft. syndicate were producers of plays at a theatre, & the second deft. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement:—*Held:* since on the facts the second deft. had not authorised or permitted the performance within 1911 Act, s. 1 (2), pltfs. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—PERFORMING RIGHT SOCIETY *v.* CIRYL THEATRICAL SYNDICATE, [1924] 1 K. B. 1; 92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489b. —— Effect of 1911 Act, s. 1 (2).]—The word "authorise" in the above sub-sect. is superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that "only such music as may be played without fee or licence is allowed to be played in this hall." On one occasion the band played certain music, the copyright of which belonged to pltfs., without pltfs.' licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltfs. for damages & an injunction:—*Held:* on its true construction, the agreement between defts. & the band constituted the latter the servant of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltfs. were entitled to damages & an injunction.—PERFORMING RIGHT SOCIETY, LTD. *v.* MITCHELL & BOOKER (PALAIS DE DANSE), LTD., [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534; Egginton *v.* Reader, [1936] 1 All E. R. 7. **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489c. —— Local authority engaging band.]—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante.*

489d. Reproduction in news film—"Fair dealing."]—The owners of the copyright in a musical composition sued two cos. for infringement. The representatives of one of the cos. had made, developed & printed, & the other co. had distributed to cinema theatres, where it was exhibited, a sound film known as a news reel, recording a moving picture of the scene at the public opening of a new school, together with the accompanying sounds, including the playing by a band of part of the musical composition in question. Defts. denied that this was an infringement:—*Held:* there had been an actionable infringement of pltfs.' copyright, as there had been a reproduction of a "substantial part" of the musical composition within 1911 Act, s. 1 (2), the acts of defts. did not constitute a "fair dealing" with the work within 1911 Act, s. 2 (1) (i.), & damage had been proved.—HAWKES & SON (LONDON), LTD. *v.* PARAMOUNT FILM SERVICE, LTD., [1934] Ch. 593; 103 L. J. Ch. 281; 151 L. T. 294; 50 T. L. R. 363; 78 Sol. Jo. 367, C. A.

See, also, Nos. 394a, 510, 510a.

502. *Add. Annotation:*—**Refd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

503. *Add. Annotation:*—**Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

506. *Add. Annotation:*—**Refd.** Jennings *v.* Stephens, [1936] 1 All E. R. 409.

506a. —— —— Room to which public admitted on payment—Ordinarily used for other purpuposes.]—RUSSELL *v.* SMITH, No. 99a, *ante.*

507. *Add. Annotations:*—**Consd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21; Jennings *v.* Stephens, [1936] 1 All E. R. 409. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

508a. —— In public—Performance by Women's Institute—Confined to members.]—On Feb. 23rd, 1933, a play was performed by a dramatic society at a monthly meeting of the Duston Women's Institute without the consent of the owner of the copyright, who brought this action for infringement of the copyright. The Women's Institute was one of a large number founded under the rules of the National Federation of Women's Institutes & consisting of voluntary assocns. of country women formed to improve conditions of rural life & to provide opportunities for mutual help & intercourse. There was an annual subscription of 2*s.*, & monthly meetings of an educational or social nature. The village of Duston contained 1,085 females, of whom 109 were members. At the meeting when the

s. 35.—ALBERT *v.* HOFFNUNG & CO., LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. W. N. 5.—**AUS.**

so. *By broadcasting.*]—Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain musical works, of the copyright in which pltf. was the owner:—*Held:* defts. had infringed pltf.'s copyright.—CHAPPELL & CO., LTD. *v.* ASSOCIATED RADIO CO. OF AUSTRALIA, LTD., [1925] V. L. R. 350; 47 A. L. T. 12; 31 Argus L. R. 297.—**AUS.**

sp. *Reproduction of broadcast on receiving set.*]—Performance by means of a radio set in an hotel constitutes a public performance.—CANADIAN PERFORMING RIGHT SOCIETY *v.* FORD HOTEL, [1935] 2 D. L. R. 391.—**CAN.**

sr. *"Substantial part"—What is.*]—A "substantial part" does not depend on length: it may consist of a few bars if these were recognised.—CANADIAN PERFORMING RIGHT SOCIETY *v.* CANADIAN NATIONAL EXHIBITION ASSOCN., [1934] 4 D. L. R. 154; O. R. 610.—**CAN.**

st. *"Performance at agricultural exhibition of fair."*]—Performance before the grandstand at the Canadian National Exhibition:—*Held:* not a performance at an agricultural exhibition or fair within Copyright Act, 1927, s. 17 (1) (viii).—CANADIAN PERFORMING RIGHT SOCIETY *v.* CANADIAN NATIONAL EXHIBITION ASSOCN., [1934] D. L. R. 154; O. R. 610—**CAN.**

performance took place sixty-two members were present; but, apart from the five performers, there were no guests, it having been made a condition of the performance that no guests should be present:—*Held:* the performance was a performance "in public" within sect. 1 (2) of 1911 Act, & therefore it constituted an infringement of pltf.'s copyright. Although the audience was limited to members of the institute, all the adult women of the village could be members, & the mere fact that the audience resided in the same village in different houses was not sufficient to make it a domestic or quasi-domestic audience.—JENNINGS *v.* STEPHENS, [1936] Ch. 469; [1936] 1 All E. R. 409; 105 L. J. Ch. 353; 154 L. T. 479; 52 T. L. R. 343; 80 Sol. Jo. 264, C. A.

509. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

510. *Add. Annotations:*—**Consd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

510a. ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

See, also, Nos. 394a, 489a, 489b, *ante*.

513a. —— —— ——.]—Pltfs. were the publishers of a magazine, published in America at frequent intervals, called "Adventure." Defts. proposed to publish a monthly magazine called "Hutchinson's Adventure Story Magazine." In an action by pltfs. to restrain such publication:—*Held:* where any one adopted a descriptive word, as pltfs. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltfs. had no monopoly of the word "Adventure," & on the evidence no real confusion existed between pltfs.' & defts.' periodicals.—RIDGWAY CO. *v.* HUTCHINSON (1923), 40 R. P. C. 335.

523a. —— **Title of film.**]—(1) Pltfs. who were the trustees of the will of the late S. H., the author of a play called "The Younger Generation," brought this action to restrain defts., Film Booking Offices, Ltd. & Universal Pictures, Ltd., from selling, letting for hire or exhibiting in public a cinematograph film under the title "The Younger Generation" in such a way as to represent to the trade or public that such cinematograph film was a film version of the play by S. H. The play was first performed in Manchester in 1910, & in 1912 it was produced in London & subsequently was performed at intervals by touring companies up to the commencement of the action. The play was published in 1910 & the demand for copies was still active. There was a continuing demand for the play in respect of amateur performances. Three films having nothing in common with the subject-matter of, & from their nature unlikely to be confused with, the pltfs.' play had been shown in this country under the title "The Younger Generation" in the years 1913, 1915, & 1926. Defts.' film was released for exhibition to the public in Sept. 1929:—*Held:* the evidence fell short of establishing the fact that the title "The Younger Generation" used in connection with a film meant in the mind of the film-going public a film based on the play of that name by S. H.

(2) Defts., Universal Pictures, Ltd., by their defence denied all liability to pltfs., & at the same time paid five guineas into ct. in satisfaction of any claim for damages & offered to submit to an injunction or to give an undertaking in the terms claimed by pltfs. Upon the undertaking being drawn up these defts. refused to pay pltfs. the costs of a motion for an interlocutory injunction which they contended should be apportioned between defts. Accordingly the action was continued against these defts. No order was made on the motion except costs to be costs in the action. The action against both defts. was dismissed with costs.—HOUGHTON *v.* FILM BOOKING OFFICES, LTD. (1931), 48 R. P. C. 329.

Annotation:—As to (1) **Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

523b. —— ——.]—Pltf., whose professional name was L. W., wrote a sketch which was first produced under the title "Washing a Car." He sent it to G. C., a comedian, who thought he could improve it, & only left in eight passages of pltf.'s, the *dramatis personæ* & the *mise-en-scène*. The sketch so altered was produced, & after a time was called "The New Car." In 1928 it was acted for six months by G. C., & in 1930 was acted by him at a Command Performance. Afterwards a paragraph appeared in a newspaper: "The King's Enjoyment. . . . It was George Clarke in Laurie Wylie's capital sketch 'The New Car' who first set the fun going." Pltf. had received payment for the scenic rights of the sketch. Defts. then made a film which in fact did not follow the lines of "The New Car," but in May, 1930, they sent a notice to the newspapers: "The man who made the Queen laugh, George Clarke, in 'His First Car.' Come & see the talking version. A P. D. C. Picture." The writ was then issued by pltf. for damages for passing off & for an injunction; defts. paid £5 into ct. in satisfaction of all claims. On a motion in the action defts. undertook not to repeat the advertisements until trial. Defts. shortly after giving the undertaking, made an announcement at a trade performance that their film "His First Car" had no connection with a sketch by Laurie Wylie entitled "Washing a Car" or "The New Car." Pltf. had parted with the performing rights of his sketch for five years from 1928. The judge held that pltf. was the owner of the copyright in the sketch "The New Car," & entitled to prevent defts. from passing off their film as a film version of that sketch. The injunction was not granted owing to what was said by the directors of deft. co. at the trial preventing its necessity, but an inquiry was ordered as to damages:—*Held:* in substance the sketch renamed "The New Car" was the production of pltf., who was entitled to the copyright in it; there had been an attempt to pass off & the action was rightly made a passing off action, &, though by what had taken place at the trial an injunction had become unnecessary, pltf. was entitled to go to trial. The inquiry as to damages was not necessary, however, as the £5 paid into ct. was sufficient, having regard to the fact that pltf. had parted with his film rights for five years & that there had appeared shortly after the advertisements an account

in the newspapers of the interlocutory proceedings, & having regard to the announcement made at the trade show. Decision affirmed, with the exception that the order for an inquiry as to damages was held to be unnecessary.—SAMUELSON *v.* PRODUCERS DISTRIBUTING CO., LTD., [1932] 1 Ch. 201; 101 L. J. Ch. 168; 146 L. T. 37; 48 R. P. C. 580, C. A.

Annotation:—**Refd.** O'Gorman *v.* Paramount Film Service, Ltd., [1937] 2 All E. R. 113.

523c. —— ——.]—Pltf. was part author & composer of a play entitled *Irish & Proud of It*, & the owner of the copyright in the words & music of it. The play was first produced in 1914 & continued to be produced until 1924. It had never been published in book form. In 1936 defts. produced a film which was given the name of *Irish & Proud of It*. It was admitted that the film had nothing to do with pltf.'s play, & it was found as a fact that no ordinary member of the public would think that the film was an adaptation of the play. Pltf. contended that his copyright gave him the exclusive right to present a film representation of his play, that in doing so he would naturally use the title of the play, that the production of a film under the same title by defts. was an interference with his rights, & that unless his rights were protected he might suffer damage by reason of defts. using that title:—*Held:* as there was no immediate prospect of any film version of the pltf.'s play being produced in public, he was not entitled to an injunction restraining defts. from continuing to produce their film under the title *Irish & Proud of It*.—O'GORMAN *v.* PARAMOUNT FILM SERVICE, LTD., [1937] 2 All E. R. 113.

525. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

531. *Add. Annotations:*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

536. *Add. Annotation:*—**Refd.** Osbourne *v.* Dent, [1925] Ch. 369.

546a. —— **Joint tortfeasor.**]—Where printers know that what they are printing is a piracy, & the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors, jointly with the persons for whom such copies are printed, & are jointly liable in damages to the persons whose copyright is infringed.—LAMB *v.* EVANS, [1895] W. N. 156.

547a. **Liability for printing—Notwithstanding previous judgment against author.**]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *post*.

548. *Add. Annotations:*—*As to* (1) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *As to* (2) **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Hughes *v.* Satchell (1925), 134 L. T. 93. *Generally*, **Mentd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

553. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

555. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

559a. —— **For conversion—Issue of infringing copies.**]—Copyright Act, 1911, gives the owner of the copyright in a literary work the sole right of reproducing the work or any substantial part thereof, & the sole right of authorising such reproduction. Those rights are separate & distinct, & the infringement of each is a distinct & separate tort.

Pltf., the author of a book, sued & obtained judgment against D. for infringement of his copyright therein. Subsequently pltf. sued the publishers of the infringing work claiming damages for infringement under sect. 6 & for conversion under sect. 7 of 1911 Act. He also sued the printers claiming damages in respect of the printing of the infringing copies:—*Held:* (1) the judgment in the previous action against D. for infringement was, by reason of the rule in *Brinsmead* v. *Harrison* (1872), L. R. 7 C. P. 547, a bar to the present action against the publishers, who were joint tortfeasors with D. in the publication of the infringing work; (2) the publishers were liable in damages for conversion under sect. 7 of 1911 Act, in respect of the issue to the public in Aug. 1933, of copies of the offending work; (3) the printers were liable in damages for infringement in respect of the separate tort of printing the work.—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., [1936] Ch. 489; [1936] 2 All E. R. 1496; 106 L. J. Ch. 303; 155 L. T. 46; 52 T. L. R. 429, C. A.

Annotation:—**Consd.** Oliver *v.* Dickin, [1936] 2 All E. R. 1004.

560a. —— **Printer & person ordering pirated copies.**]—LAMB *v.* EVANS, [1895] W. N. 156.

560b. —— **Action against publisher—After judgment against author—Estoppel.**]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *ante*.

561a. **Person exhibiting copyright work—What amounts to "knowledge" of infringement.**]—Where a deft. acquires the work, in the first instance, in good faith & without any knowledge that it infringes copyright, he is entitled to a reasonable time & opportunity to find out whether or not it does infringe copyright. No offence is committed against 1911 Act, s. 2 (2), unless the infringement is deliberate, in the sense of deliberately continuing to use or exhibit the work when the exhibitor knows that it infringes copyright. A mere complaint by the owner of the copyright, together with copies of the work said to be infringed, will not suffice to impute to a deft. "knowledge" within the sub-sect.

Pltf. was the owner of copyright in fashion

PART XIII. SECT. 2.

525 i. *Equitable owner.*]—An equitable owner of copyright is entitled to obtain an injunction against an infringement of his right, in an action in which the legal owner of the copyright is a party.—CLAYTON *v.* VINCENT'S PRODUCTS, LTD. (1934), 34 S. R. N. S. W. 214; 51 N. S. W. W. N. 86.—AUS.

531 ii. —— *Of performing rights.*]—An assocn. was the registered owner of the performing rights of two pieces of music, & pltf. in a suit to restrain deft. from permitting the use of his hall for infringing copyrights. Another pltf. was the assignor of those rights, but there was no evidence that he was the legal owner of the remaining part of the copyright:—*Held:* the assocn., as the legal owner of the performing rights, could maintain the suit.—AUSTRALIAN PERFORMING RIGHT ASSOCN. & J. LEIST, INCORPORATED *v.* TURNER & SON (1927), 27 S. R. N. S. W. 344; 44 N. S. W. W. N. 76.—AUS.

illustrations for men's clothes. In 1935, deft., a tailor, cause to be exhibited in his shop, show-cards displaying a man in morning-dress. He also put up posters at railway stations displaying a man in evening-dress. On Oct. 16 pltf. wrote to deft. complaining that the posters & show-cards infringed copyright. On Oct. 18 pltf. supplied deft.'s solr. with copies of the work said to be infringed. Deft. at once removed the show-cards from his premises, & took steps to find out whether or not he was infringing pltf.'s copyright. On Oct. 23 he wrote to pltf. saying that although he did not admit any infringement of pltf.'s copyright, he thought it best to remove any cause of complaint by discontinuing the exhibition. On the same day pltf. issued a writ claiming from deft. damages for infringement of copyright. The judge found on the facts that there had been no unreasonable delay on deft.'s part in investigating pltf.'s complaint:—*Held:* no "knowledge" within the sub-sect. could be imputed to deft. until he had had a reasonable time & opportunity to find out whether he was exhibiting by way of trade any work which infringed copyright. On the evidence, the time when deft. acquired that knowledge was Oct. 23. Therefore, at the time the writ was issued, there was no exhibition by way of trade or any work which, to deft.'s knowledge, infringed pltf.'s copyright. The writ was issued prematurely & the action failed.—VAN DUSEN *v.* KRITZ, [1936] 2 K. B. 176; 105 L. J. K. B. 498; 155 L. T. 258; 80 Sol. Jo. 226.

Part XIV.—Remedies.

564a. Action by publisher—Presumption of ownership—Effect of Copyright Act, 1911 (c. 46), s. 6 (3).]—In 1896, there was published a new edition of a handbook entitled "The Perfect Ceremonies of Craft Masonry" which, for the purposes of Copyright Act, 1842 (c. 45), was a new work, but the name of its author was unknown. That edition & all the subsequent editions, which were mere reprints of the 1896 edition & contained no new or original work, bore on their flyleaves the imprint: "Privately printed for A. Lewis." From about the year 1906 to the date of his death on Aug. 2, 1909, one John Hogg carried on the business of publishing masonic rituals at 13 Paternoster Row, London, under the name of A. Lewis. Thereafter Godfrey Hogg down to the date of his death in 1922 & thenceforth his widow, pltf. Charlotte Hogg, carried on the same business under the name of A. Lewis. In an action by Charlotte Hogg, who claimed to be the owner of the copyright in the work entitled "The Perfect Ceremonies of Craft Masonry," for infringement thereof the defts. put in issue the existence of any copyright in the work & the title of pltf. to copyright, if any, therein; &, in the absence of proof of her derivative title to copyright, pltf. relied on Copyright Act, 1911 (c. 46), s. 6 (3) (*b*), & claimed that she, as publisher, whose name was imprinted on the flyleaves of her editions of the work, must be presumed to be the owner of the copyright in the work:—*Held:* the presumption referred to in sect. 6 (3) (*b*) of the Copyright Act, 1911 (c. 46), s. 6 (3) (*b*), that the person whose name is indicated on an anonymous work as the publisher thereof is the owner of the copyright therein, is based on the hypothesis that the publisher whose name is so indicated is not the real owner of the copyright therein & is raised merely for the purpose of giving such a publisher a *locus standi* in proceedings for infringement taken by him under that sect. on behalf of the real owner of the copyright, & accordingly, & in view of the fact that the reprint of the 1896 edition issued by pltf. could not be the subject of copyright, the presumption did not enure to the benefit of pltf. further than as aforesaid in the absence of proof of her derivative title to an antecedent copyright.—HOGG *v.* TOYE & CO., LTD., [1935] Ch. 497; 104 L. J. Ch. 232; 152 L. T. 495; 51 T. L. R. 301; 79 Sol. Jo. 270, C. A.

572. *Add. Annotation:—Generally,* **Refd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

573. *Add. Annotation:*—**Consd.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

575a. For infringement & conversion—Cumulative remedies in respect of different torts.]—In an action for an alleged infringement of pltfs.' copyright in a certain publication, pltfs. claimed (*inter alia*) an inquiry as to (i) damages suffered by reason of the infringement, & (ii) damages for conversion. Defts. admitted the infringement, but contended that the remedies given by 1911 Act, ss. 6, 7 were alternative & not cumulative & that pltfs. must elect their remedy:—*Held:* (1) the remedies were cumulative & not alternative & pltfs. could recover damages under both sects. Each claim was in respect of a different wrong, the former for a wrong done to an incorporeal right, the copyright; & the latter for conversion of particular chattels, the infringing copies, which by sect. 7 are deemed to be the property of pltf.; (2) in assessing damages under the two heads, the tribunal making the assessment must avoid any overlap; but, in general, the damages for conversion will be

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PART XIV. SECT. 1.

sg. *Limitation of action.*]—The prescriptive period for bringing actions for infringement laid down by Copyright Act, 1927, s. 24, applies to claims for recovery of possession of infringing copies or in respect of conversion.—MASSIE & RENWICK LTD. *v.* UNDERWRITERS' SURVEY BUREAU. LTD., [1937] S. C. R. 265; 2 D. L. R. 213.—CAN.

PART XIV. SECT. 2, SUB-SECT. 1.

570 ii. ——.]—A person, whose copyright in a book has been infringed, is entitled to demand delivery of all the copies of the offending work in the possession of the person who has infringed the copyright, & payment of the full price received by such person for all copies of the work which have been sold.—BRABY *v.* DONALDSON, [1926] App. D. 337.—S. AF.

the value of the chattels converted.—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD., [1936] Ch. 323; [1936] 1 All E. R. 177; 105 L. J. Ch. 150; 154 L. T. 367; 52 T. L. R. 230; 80 Sol. Jo. 145, C. A.

Annotation :—**Generally, Refd.** Lane (John), The Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379; Ash *v.* Dickie, [1936] 2 All E. R. 71; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

575b. —— ——.]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *ante*.

575c. —— **Limitation of action.**]—C. having published a book which incorporated part of a book already published by S., S. brought an action against C. for damages both for infringement of copyright & for conversion. C. admitted both infringement & conversion & offered to pay damages for either infringement or conversion, but not for both. The Ct. of Appeal decided on a point of law that the damages were cumulative & not alternative, & the action came on for assessment of damages & a decision whether or not damages for conversion came under the limitation of the time for commencement of an action in respect of infringement of copyright to three years next after the infringement, imposed by Copyright Act, 1911 (c. 46), s. 10 :—*Held :* (1) as the expression "an action in respect of infringement of copyright" was wide enough to cover the claim for damages for conversion, the limitation by sect. 10 applied to the conversion; (2) the time ran from the infringement & the infringement was the printing of the infringing copies, & the claim for damages for conversion was limited to copies printed within three years before the issue of the writ; (3) the conversion at the date of which the value of the infringing copies must be assessed was the order by C. to the binders to bind the unbound sheets containing the infringing copies into the bound copies of C.'s book.—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD. (No. 2), [1937] Ch. 294; [1937] 1 All E. R. 338; 106 L. J. Ch. 104; 156 L. T. 191; 53 T. L. R. 277; 81 Sol. Jo. 79; *as to* (1) & (2) *revsd.*, as to (3) *affd.*, [1937] 4 All E. R. 405, C. A.

577a. —— **Value of chattels converted.**]—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD., No. 575a, *ante*.

577b. —— **Newspaper articles infringing copyright in book.**]—When the copyright of a book has been infringed by some of a series of articles appearing in a daily newspaper & the author claims damages for conversion against the newspaper proprietors under sect. 7 of 1911 Act, the basis on which damages should be assessed is by taking the sale price as the value of each copy of the newspaper containing an infringing article & then estimating the proportion of the total value of the infringing copies as so ascertained which should be attributed to the infringing articles appearing therein. The matter must be one of estimate.—ASH *v.* DICKIE, [1936] Ch. 655; [1936] 2 All E. R. 71; 105 L. J. Ch. 337; 154 L. T. 641; 52 T. L. R. 534; 80 Sol. Jo. 364, C. A.

Annotation :—**Distd.** Sutherland Publishing Co. *v.* Caxton Publishing Co. (No. 2), [1937] Ch. 294.

577c. —— **Sale of book.**]—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD. (No. 2), No. 575c, *ante*.

601. *Add. Annotation :*—**Consd.** Macmillan *v.* Cooper (1923), 23 L. J. P. C. 113.

603a. **Offer of undertaking before hearing—Right of plaintiff to reject offer.**]—OLIVER v. DICKIN, No. 652a, *post*.

631. *Add. Annotation :*—**Refd.** Ireland *v.* Wilson, [1936] 3 All E. R. 358.

635a. ——.]—MACMILLAN & CO. *v.* COOPER, No. 92a, *ante*.

638. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

642. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

644. *Add. Citations :*—*Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.

Add. Annotations :—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65. **Refd.** Imperial Tobacco Co. of India *v.* Bonnan, [1924] A. C. 755; Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

647. *Add. Annotation :*—**Refd.** Bendir *v.* Anson, [1936] 3 All E. R. 326.

652a. **Infringement—Particularity necessary.**]—(1) In an action arising out of an alleged infringement of copyright the pltf., after setting out the literary works in which he claimed the copyright, pleaded that "the deft. has authorised the reproduction of the said works." At the hearing the pltf. proceeded to prove that the deft. had reproduced such substantial parts of the said works as to amount to an illegal act. The deft. objected that if that was the pltf.'s case it ought to have been plainly so stated in the pleadings & the deft. was thereby embarrassed :—*Held :* the pleading was sufficient in law but was undesirable in such a case. (2) The deft. in her defence, while denying liability, offered an undertaking not to repeat the reproduction of copyright matter, referring particularly to one passage, to deliver up all copies & to pay costs & to submit to an order in these terms :—*Held :* the pltf. could disregard such offer & proceed with the action in a case where liability was denied & extensive infringement had been proved.—OLIVER *v.* DICKIN, [1936] 2 All E. R. 1004.

656a. —— **Of whole poem—Proceedings in respect of part.**]—SITWELL *v.* SUN ENGRAVING CO., LTD., [1937] 4 All E. R. 366; 81 Sol. Jo. 942, C. A.

657a. —— ——.]—ASTRA-NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

670a. —— —— **After payment into court with denial of liability.**]—HOUGHTON *v.* FILM BOOKING OFFICES, LTD., No. 523a, *ante*.

PART XIV. SECT. 2, SUB-SECT. 4—B.

sg. *Delay—No substantial injury—Injunction refused.*]—*Held :* since the acts complained of by pltfs. as constituting an infringement of their copyright had continued for a number of years, & there was evidence that pltfs. were aware of such, interlocutory injunctions should not be granted as no substantial injury would be done pltfs. by causing them to await the final disposition of the several actions.—UNDERWRITERS SURVEY BUREAU, LTD. *v.* WILLIS, FABER & CO. OF CANADA, LTD., UNDERWRITERS SURVEY BUREAU, LTD. *v.* MASSIE & RENWICK, LTD., UNDERWRITERS SURVEY BUREAU, LTD. *v.* J. E. CLEMENT INCORPORATED, UNDERWRITERS SURVEY BUREAU, LTD. *v.* SHAW & BEGG, LTD., [1936] Ex. C. R. 47; 2 D. L. R. 341.—CAN.

693. *Add. Annotations:—As to* (1) **Consd.** Preston *v.* Raphael Tuck, [1926] Ch. 667; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

694a. —— **Sale must be of work represented to be unaltered.**]—Pltf., the author of two original drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act:—*Held:* to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was either expressly or by necessary impli a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—PRESTON *v.* RAPHAEL TUCK & SONS, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

700a. **Under Dramatic & Musical Performers' Protection Act, 1925 (c. 46)—Effect of Act—No right of property given.**]—Above Act does not give a right of property to persons who perform a musical work for the purpose of enabling another person to make a record of it.—MUSICAL PERFORMERS' PROTECTION ASSOCN., LTD. *v.* BRITISH INTERNATIONAL PICTURES, LTD. (1930), 46 T. L. R. 485.

PART XIV. SECT. 3.

sp. *Under Copyright Act, R. S. C.*, 1906 (c. 70).]—Pltf. seeking to recover penalties under sect. 39 of the above Act cannot succeed if the ct. is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law."—NATIONAL BREWERIES *v.* PARADIS, [1925] 3 D. L. R. 875; [1925] S. C. R. 666; *affg.*, [1924] 1 D. L. R. 1082; 30 R. L. N. S. 429.—**CAN.**

CORONERS.

Part I.—Status of Coroner and Coroner's Court.

1. *Add. Annotation :—Generally,* **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

2. *Add. Citation :*—5 Dow. & L. 249.

Part III.—Appointment and Removal of Coroners.

14. After this case add :-
'*ee, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 1.

23. After this case add :—
Abolition.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 4.

Part IV.—Remuneration and Compensation payable to Coroners.

37. In place of cross-references before this case, "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 5."

48. After this case add :-
-.]—*See* note *after* No. 23, *ante.*

Part VI.—Deputy Coroners.

108. To cross-reference before this case add "*See* Coroners (Amendment) Act, 1926 (c. 59), ss. 9–11."

Part VII.—Inquests.

137. Before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 13."

147. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

152a. **Summoning "regular jurymen" — Improper.**]—(1) *Semble :* for a coroner before an inquest is held to take a person who is subsequently to serve on the jury & privately investigate with him any of the facts of the case, whether or not it can be shown that there was anything in the nature of discussion between them, is contrary to public policy, "misconduct" at common law, & ground for quashing the inquisition under Coroners Act, 1887 (c. 71), s. 6 (1).

(2) *Semble :* the fact that at a view, by a coroner's jury, of the scene of a collision where two vehicles had collided, a police constable, who had already been sworn & given evidence at the inquest, was allowed to point out to the jury where had been the marks in the roadway of the two vehicles which were said to have met, & where one of the vehicles had come to rest, the distance between which points the jury measured, ground for quashing an inquisition under sect. 6, sub-sect. (1), of the Coroners Act, 1887 (c. 71), s. 6 (1).

The ct. expressed the following opinions :—

(3) The practice of summoning eleven jurors to serve on a coroner's jury from a list or panel of only sixteen or seventeen persons in a large city so that some of the same persons are summoned time after time, is very objectionable, & is contrary to the principle of the jury system. The practice of calling a small panel of "regular jurymen," whether or not it is illegal, is improper.

(4) Probably, as a general rule, it is better that a coroner should not accompany his jury upon a view of the scene of a collision between vehicles or upon a view of the vehicles. (5) But if he does so accompany the jury he should carefully abstain from any discussion of the case with the jury at such view.

(6) A coroner is not bound to allow others, such as those concerned or their representatives, to be present on such a view by the coroner. It is a matter for his discretion.

no statutory requirement that

PART V. SECT. 1, SUB-SECT. 3.—A. 52 iv. —— —— *Writ of fieri facias.*]—If the sheriff of a jurisdiction is a [illegible] against his goods may be dir[illegible] practice [illegible] Act, [illegible] ems [illegible] await the [illegible] y the [illegible] al action this [illegible] W. Iliffe [illegible] is a deputy sheriff appointed by the Crown.—WILLIAMS *v.* RICHARDS, [1923] 1 W. W. R. 1021; 32 B. C. R. 58.—

the depositions of a witness at the coroner's ct. should be read over to him. The High Ct. has no right to add such a requirement to those which Parliament has enacted. But if a coroner thinks there is any uncertainty as to what a witness meant, & particularly if a witness, before he signs his deposition, requests that it be read over to him, the coroner ought to do so. No doubt a witness would be entitled to refuse to sign until this had been done.—R. *v.* DIVINE, *Ex p.* WALTON, [1930] 2 K. B. 29; 99 L. J. K. B. 433; 143 L. T. 235; 94 J. P. 129; 46 T. L. R. 321; 28 L. G. R. 283, D. C.

153. To cross-reference before this case add "*See* Coroners (Amendment) Act, 1926 (c. 59), s. 14."

156a. ——.]—The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, &, since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held.—R. *v.* HASLEWOOD, *Ex p.* MARGERISON, [1926] 2 K. B. 468; 95 L. J. K. B. 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505, D. C.

SUB-SECT. 4A.—VIEW OF PLACE.

165a. Whether coroner should accompany jury.] R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

165b. Duty of coroner—Not to discuss case with jury at view.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

165c. Presence of persons other than jury—Discretion of coroner.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

171a. ——.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

180. For cross-reference before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), ss. 21–24."

186. Before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 20."

193. For cross-reference before this case, "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 15."

237. *Add. Annotations:*—*As to* (5) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (6) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (7) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *Generally*, **Refd.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

308a. Coroner present during jury's deliberations.]—At the conclusion of the evidence in an inquest the jury retired, & after some time sent for the coroner, who went into the jury room & remained with the jury in private for a quarter of an hour:—*Held:* in going into the jury room during the deliberations of the jury, the coroner was guilty of misconduct, & the inquisition must be quashed & a fresh inquest held before the coroner for an adjoining district.—R. *v.* WOOD, *Ex p.* ANDERSON, [1928] 1 K. B. 302; 97 L. J. K. B. 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 446, D. C.

Annotations:—**Consd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

308b. Private investigation by coroner & member of jury.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

310. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

313. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

xi. *Other Cases.*

320a. Permitting constable to give information to jury at view.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

345. After this case add:—
To adjourn inquest until termination of criminal proceedings.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 20.

387. *Add. Citation:*—1 E. & B. 8.

403a. —— **As to insanity.]**—*Re* PITTS, Cox *v.* KILSBY (1931), *as reported in* 47 T. L. R. 293.

408. *Add. Annotations:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284; *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

409a. —— —— ——.]—It is undesirable that the depositions taken at an inquest before a coroner should be used by consent as evidence at the trial of an action under Fatal Accidents Act, 1846 (c. 93), arising out of

PART VII. SECT. 4, SUB-SECT. 4.

153 i. *Essential to jurisdiction of coroner.*]—Resp., a justice of the peace, began on Oct. 17, 1929, an inquiry into the death of a young woman who had died from taking strychnine on Aug. 20, 1929. Her body had been subjected to a post-mortem examination by the Govt. medical officer, & buried soon afterwards, without having been viewed by resp. At the inquiry, resp. was asked by counsel, on behalf of a subpœnaed witness, whether he had received a request in writing, but refused to give any such information. Upon application by the witness in question for a prohibition directed to resp., & restraining him from proceeding further with the inquiry:—*Held:* it was immaterial whether he had received a written request to hold such inquest, since his jurisdiction arose independently of it; notwithstanding the abolition of the coroner's jury by Inquests of Death Act, 1866, s. 5, he had no jurisdiction to hold the inquiry except *super visum corporis;* & appct. was entitled to prohibition.—R. *v.* STAINES, *Ex p.* O'CONNOR (1930), S. R. (Q.) 142; 24 Q. J. P. 19.—AUS.

153 ii. ——.]—B. was charged with the murder of S. Pending the hearing of the charge against B., a coronial inquiry as to the alleged death of S. was begun. The body of S. had not been viewed by the coroner, but an arm found under extraordinary circumstances had been produced to him, & by means of certain tattoo marks this had been identified as being the arm of S. Objection was taken by counsel for the accused to the jurisdiction of the coroner to hold an inquiry save *super visum corporis,* but the objection was overruled. A rule *nisi* for a prohibition was therefore obtained to restrain the coroner from proceeding:—*Held:* inasmuch as an arm was not sufficient to constitute a body & the coroner had no jurisdiction in the absence of a view of the body, the rule should be made absolute.—*Re* ORAM, *Ex p.* BRADY (1935), 52 N. S. W. W. N. 109.—AUS.

PART VII. SECT. 4, SUB-SECT. 6.

ss. *Refusal of witness to testify—Power of coroner to imprison for contempt.*]—A coroner has power to imprison for contempt witnesses who refuse to testify when present at an inquisition held by him, even though they were not duly summoned or in any way ordered to appear, but were brought *nolens volens* before him by the police when in their custody after being arrested without warrant.—R. *v.* LITTLE, R. *v.* MILLER (Man.), [1926] 2 W. W. R. 762; 46 Can. Crim. Cas. 136.—CAN.

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) v.

n. Read now "**308a i.**"

the same matter.—CALMENSON *v.* MERCHANTS' WAREHOUSING Co. (1921), 90 L. J. P. C. 134; 125 L. T. 129; 65 Sol. Jo. 341, H. L.

Annotation:—Folld. Barnett *v.* Cohen, [1921] 2 K. B. 461.

417a. —— **No duty to hold inquest—Death from natural causes.**]—Three applts. who were husband, wife & daughter, were convicted of obstructing a coroner in the execution of his duty. Evidence was given that a male child had been born to the daughter on Nov. 3, 1932; that on several occasions during the months of Jan. & Feb. 1933, the family had been seen with this child, & that on all those occasions the child appeared to be suffering from a bad cough; & that on Feb. 16 the dead body of the child was found concealed in a hedge. Subsequently the husband & wife made statements in which they admitted having put the body in the hedge, & the daughter stated that she had seen her parents take the body away & return without it. A medical witness, who had made a post-mortem examination, said that death was due to natural causes:—*Held:* the foundation of a charge of this kind was that the case should be one in which there was a duty on the part of a coroner to hold an inquest; the evidence in the present case had not established that there was any such duty; &, further, even if that had been established, there was no evidence that applts., or any of them, intended to obstruct the coroner. The convictions must, accordingly, be quashed.—R. *v.* PURCY (1933), 149 L. T. 432; 97 J. P. 153; 24 Cr. App. Rep. 70; 29 Cox, C. C. 657, C. C. A.

CORPORATIONS.

Part I.—Nature and Attributes.

41. *Add. Annotations:* — **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517; Metropolitan Meat Industry Board *v.* Sheedy, [1927] A. C. 899.

54a. ——.]—The canons residentiary of a cathedral who are entitled under 4 & 5 Vict. (c. 39), s. 25, to a fixed share in the corporate revenues, have no freehold qualification in respect of shares in the freehold lands of the corpn.—HARRIS *v.* PHILLIPS, [1891] 1 Q. B. 267; 55 J. P. 281.

73. *Add. Annotations:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Liverpool Corn Trade Association, Ltd. *v.* Hurst, [1936] 2 All E. R. 309.

79. *Add. Annotations:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., Sisson *v.* West Ham Corpn. (1926), 90 J. P. 99.

133a. —— —— ——.]—A legacy was given to the Provost & Fellows of Queen's College. The proper name of the corpn. was "The Provost & Scholars":—*Held:* the Provost & Scholars were entitled.—QUEEN'S COLLEGE, OXFORD *v.* SUTTON (1842), 12 Sim. 521; 11 L. J. Ch. 198; 6 Jur. 906; 59 E. R. 1233.

176. *Add. Annotations:*—**Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

179. *Add. Annotations:*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

181. *Add. Annotations:*—**Apld.** Kreditbank Cassel G. M. B. H. *v.* Schenkers, [1927] 1 K. B. 826. **Folld.** South London Greyhound Racecourses, Ltd. *v.* Wake (1930), 74 Sol. Jo. 820. **Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

After this case add:-

—— —— —— —— —.]—*See, also,* COMPANIES, No. 1794a, *ante.*

182. After this case add:—

Presumption of due execution of deed.]—*See* Law of Property Act, 1925 (c. 20), s. 74.

182a. —— **What amounts to deed—Share certificate.**]—I am not prepared to hold that this share certificate is a deed within that sect. (CLAUSON, J.).—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE (1931), 1 Ch. 496; 100 L. J. Ch. 169; 144 L. T. 607; 74 Sol. Jo. 820.

190. *Add. Annotation:*—**Refd.** Stoke Newington B. C. *v.* Richards (1929), 45 T. L. R. 650.

Part II.—Creation of Corporations.

243. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

264. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 51 T. L. R. 563.

265. *Add. Annotation:*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

304. *Add. Annotation:*—**Refd.** *Re* British Celanese, Ltd., Patents (Nos. 326777 & 326778) (1932), 49 R. P. C. 283.

Part III.—The Members.

326. *Add. Annotation:*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

326a. **S.P.**—BROWNSCOMBE *v.* JOHNSON (1898), 78 L. T. 265; 62 J. P. 326; 19 Cox. C. C. 25; 14 T. L. R. 328 D. C.

327. *Add. Annotation:*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

340. *Add. Annotations:*—**Folld.** Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. **Consd.** Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401. **Apld.** R. *v.* Bedwellty Urban District Council *Ex p.* Price, [1934] 1 K. B. 333.

340a. —— ——.]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, "under proper conditions." That

PART I. SECT. 1.

7 v. ——.]—The effect of incorporating a number of persons into a body corporate is to make that body corporate a separate legal entity or *persona.*

The juridical conception of a body corporate under the Indian law is not different from that under the English law.—HARIHAR PRASAD *v.* BANSI MISSIR (1932), I. L. R. 11 Pat. 174.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.

sa. ***Miner's union.***]—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.

sd. ***Sheriff—Of Bombay.***]—*Held:* not a corpn. sole.—BOMBAY (SHERIFF) *v.* HUKMOJI MOTAJI & Co. (1926), I. L. R. 51 Bom. 749.—**IND.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sf. ***Conviction.***]—A corpn. can be convicted of an offence only under the exact name which it legally possesses.—R. *v.* PELISSIERS, LTD., [1926] 1 D. L. R. 574; [1926] 1 W. W. R. 189; 45 Can. Crim. Cas. 161; 35 Man. L. R. 404.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.

c. seal used—Validity.]—*Re* Baird, [1937] 3 W. W. R. 13.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

sk. *Commissions created by municipalities—Under New Brunswick Electric Power Act,* 1920.]—ST. JOHN POWER COMMISSION *v.* NEW SYSTEM LAUNDRY, LTD. (N. B.), [1928] 2 D. L. R. 661.—**CAN.**

right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *mala fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, [1924] 1 Ch. 116; 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.

Trade unions generally, *see* TRADE & TRADE UNIONS.

345a. —— ——.]—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, No. 340a, *ante*.

Part IV.—Officers.

416. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

421. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

471. *Add. Annotation :*—**Consd.** Perrott & Perrott, Ltd. *v.* Stephenson, [1934] Ch. 171.

474. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

512. *Add. Annotations :*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

536. *Add. Citation :*—1 Com. 86.

Part V.—Election to Corporate Office.

578a. —— **Enforceable by mandamus—Notwithstanding quo warranto pending against officer.**] —*Mandamus* granted to compel a mayor & the capital burgesses of a corpn. to fill up two vacancies occasioned by the deaths of two capital burgesses, though there was a *quo warranto* information depending against the mayor, questioning his title.—R. *v.* GRAMPOUND CORPN. (1795), 6 Term Rep. 301; 101 E. R. 564.

583. For "**How tested—Not by mandamus directed against person elected.**]" read "**How tested—Not by quo warranto directed against person elected.**]"

596a. **Office not vacant—Election not referable to another office.**]—An election of A. to a corporate office in place of a supposed vacancy created by B., cannot be referred to an existing vacancy created by G.—R. *v.* SMITH (1814), 2 M. & S. 406; 105 E. R. 432.

Part VI.—Regulations and Bye-laws.

631. *Add. Annotations :*—**Consd.** A.-G. *v.* Denby, [1925] Ch. 596; Roberts *v.* Hopwood, [1925] A. C. 578. **Apld.** Everton *v.* Walker (1927), 137 L. T. 594. **Refd.** Owner *v.* King (1922), 128 L. T. 307; Mills *v.* L. C. C. (1924), 41 T. L. R. 122; R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Lee *v.* McGrath (1934), 50 T. L. R. 518.

652. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

691. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

700a. —— —— —— ——.]—WOOLLEY *v.* IDLE (1766), 4 Burr. 1951; 98 E. R. 16.

Annotations :—**Apld.** York Corpn. *v.* Welbank (1821), 4 B. & Ald. 438. **Refd.** Graves *v.* Colby (1838), 9 Ad. & El. 356.

707a. —— —— ——.]—SHAW *v.* POPE (1831), 2 B. & Ad. 465; 109 E. R. 1215.

736a. ——.]—CLARK'S CASE, No. 751, *post*.

770a. **Presumption of—From non-observance.**]—*v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations :—**Refd.** A.-G. *v.* Foundling Hospital (1793), Bro. C. C. 165; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

PART IV. SECT. 2, SUB-SECT. 2.

sh. *Proceeding by corporation against former member—Whether maintainable.*]—Two of defts. & another were duly elected school trustees in Oct. 1873. In Dec. defts., without the concurrence of the third trustee, removed the school house from its then site. In June, 1874, the comrs. of schools dismissed the three trustees, & appointed three others. The newly appointed trustees brought an action of trespass against the two trustees who had removed the school house, & their servants, for such removal:—*Held :* no action would lie at their suit against defts. for acts committed during their term of office.—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.—A.

631 i. *Test of reasonableness—General rule.*]—Every bye-law, whether made under a power to prohibit or a power to restrain or a power to regulate, must contain adequate information as to the duties of those who are to obey it, & such information must appear from the bye-law itself.—MILLER *v.* CITY OF BRIGHTON, [1928] V. L. R. 375; 49 A. L. T. 249; [1928] Argus L. R. 209.—AUS.

PART VI. SECT. 3, SUB-SECT. 4.

713 i. *Whether bye-law void in toto.*]—A municipal bye-law may be good in part & bad in part.—BROWN TRANSFER CO. *v.* TOWNSHEND (Sask.), [1927] 1 W. W. R. 916.—CAN.

PART VI. SECT. 6, SUB-SECT. 1.

sk. *Who may sue.*]—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—A.-G. & LUMLEY *v.* T. S. GILL & SON, PTY., LTD., [1927] V. L. R. 22; [1927] Argus L. R. 223.—AUS.

PART VI. SECT. 7.

sl. *Bye-laws made under statute—Not abrogated by repeal of statute.*]—A bye-law passed by the police comrs. of a city in 1915, admittedly valid when passed, provided that it should not be lawful for vehicle in the "jitney bus service"

Part VII.—Meetings.

794. *Add. Annotation:*—**Refd.** Neuschild *v.* British Equitorial Oil Co., [1925] Ch. 346.

819a. —— **Exception to rule—Companies under Companies Acts.**]—The common law rule of corpn. law that " where no special provision is made by the constitution of a corpn., the whole are bound by the acts, not only of the major part, but by the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole body or not," has no application to cos. under the Cos. Acts.—PERROTT & PERROTT, LTD. *v.* STEPHENSON, [1934] Ch. 171; 103 L. J. Ch. 47; 150 L. T. 189; 50 T. L. R. 44; 77 Sol. Jo. 816.

861a. Validity—Proxy by annual subscriber—What amounts to payment.]—By the rules of an infirmary, which is a voluntary assocn. supported by voluntary contributions, for the purpose of providing medical advice & assistance gratis, the medical officers are to be elected by the governors. Any person subscribing one guinea or more annually is a governor during the continuance of his subscription; on the occasion of the election of a candidate to the office of surgeon, all ladies, who are governors, subscribers of one guinea *per annum*, whose subscriptions are not more than one year in arrear, are allowed to vote by proxy, other governors voting in person; & all annual subscriptions become due on Aug. 1, in each year. Pltf. was a candidate with two others at an election on Dec. 29, of a medical officer; a governor tendered proxies for him which were refused by the chairman, on the ground that they appeared by their dates to have been signed before the persons signing them had become subscribers. The proxies were signed by persons who each, about the time of signing, paid over one guinea as a first subscription to the infirmary, to the governor who tendered the proxies. Just before the meeting this governor gave the treasurer of the infirmary his cheque for the whole amount, the treasurer giving him a separate receipt for each guinea in the name of each person subscribing. The chairman declared one of the other two candidates elected, although pltf. would have the majority of votes, if his proxies had been received. The governor who tendered the proxies that same day stopped the payment of his cheque, but three days afterwards he paid the amount to the treasurer. Pltf. subsequently entered the infirmary, & claimed the right to do the duties of medical officer. Defts., who were the chairman & honorary secretary of the governors, resisted his claim & used force sufficient to turn him out, for which pltf. brought an action for assault at a county ct. The judge found a verdict for defts., on the ground that the subscriptions of those persons, whose proxies were rejected, had not been paid before the election, but reserved the question for the ct. on appeal:—*Held:* these facts constituted payment before the election by the persons whose proxies were rejected, but the validity of the proxies might depend upon the intention of those persons to be annual subscribers; also pltf., not having been in fact elected medical officer, could not question the validity of the election in this action.—WORTHINGTON *v.* HARGOOD (1873), 27 L. T. 786; 37 J. P. 484.

Part VIII.—Corporation Books and Documents.

865. *Add. Citations:*—*sub nom.* R. *v.* SANKEY, 5 Ad. & El. 423; 6 Nev. & M. K. B. 839; 5 L. J. K. B. 255; 111 E. R. 1226.

Add. Annotation:—**Distd.** Newington L. B. *v.* Eldridge (1879), 12 Ch. D. 349.

866. *Add. Citations:*—*sub nom.* R. *v.* RYE (MAYOR), 2 Keny. 485; 96 E. R. 1253.

Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations:*—**Apld.** The Devon (1923), 130 L. T. 448. **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North

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for gain without being licensed so to do. S. had a "jitney" licence, but it expired on June 30, 1928. He continued to operate without a licence, & was convicted of a breach of the bye-law. The comrs. had ceased to issue jitney licences, because of an Ontario Statute passed in 1927, validating an agreement between the city corpn. & a street railway co., which provided that the corpn. should not issue any new jitney licences, & that existing licences should not continue in force after June 30, 1928:—*Held:* the validity of the bye-law was not destroyed.—R. *v.* SHAWRA, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—**CAN.**

sm. *Statute forbidding future bye-laws—Existing bye-law valid—Where no repeal of existing bye-law.*]—R. *v.* SHAWRA, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—C.

gi. —— *Voting for improper payment—Municipal Act, R. S. M.*, 1913—*Meaning of "any other purpose."*]—WOULD *v.* HERRINGTON, [1932] 2 W. W. R. 385; 4 D. L. R. 308; 40 Man. L. R. 365.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—D.

836 i. *Must be exercised in accordance with constitution.*]—KAIK *v.* BOBASKI (Sask.), [1926] 3 D. L. R. 916.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

sq. *No powers to authorise by bye-law — Charitable Associations Act R. S. M.*, 1913.—FITZSIMONS *v.* TESKEY [1934] 2 W. W. R. 285.—**CAN.**

PART VIII. SECT. 3.

878 i. *By strangers—Ratepayer—In Ontario.*]—JOURNAL PRINTING CO. *v.* MCVIETY (1915), 33 O. L. R. 166; 7 O. W. N. 633, 796; 21 D. L. R. 81.—**CAN.**

PART IX. SECT. 1.

fi. ——.]—An assocn. of individuals does not always require the special sanction of the State in order to enable it to hold property & to sue in its corporate name in South Africa. Whether it can or cannot depends upon the nature of the assocn., its constitution, its objects, & its activities.—MORRISON

Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

888. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

891. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614; Law Society *v.* United Services Bureau, Ltd. (1933), 103 L. J. K. B. 81. **Refd.** Davies *v.* Winstanley (1930), 47 T. L. R. 104.

898. *Add. Annotation :*—**Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

901. In line 10 of headnote. after "was" read "not."

902. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

902a. —— ——.]—A limited co. is not liable to the penalties prescribed by the above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox, C. C. 68.

Annotation :—**Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

903a. —— **Settled Land Act, 1925 (c. 18), ss. 19 (1), 20 (1).**]—The above sub-sects. are applicable to a corpn., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corpn.—*Re* CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, *Re* CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES, [1927] 1 Ch. 138; 96 L. J. Ch. 49; 136 L. T. 241; 70 Sol. Jo. 977.

Annotations :—**Refd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253; *Re* Ogle's S. E., [1927] 1 Ch. 229; *Re* Pedley, Wallace *v.* Wallace, [1927] 2 Ch. 168.

903b. —— **Sunday Observance Act, 1781 (c. 49).**]—A limited co. can be the "keeper" of a house, or a "person managing or conducting an entertainment," within Sunday Observance Act, 1781 (c. 49), s. 1. But, where a co. has committed an offence against that sect., the directors are not liable merely because they are directors. To make the directors liable under sect. 2 of the Act there must be evidence that in respect of a particular Sunday they acted as persons having the management of the house.—ORPEN *v.* HAYMARKET CAPITOL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

Annotation :—**Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

907a. —— **Local tramway Act.**]—A local tramway Act authorised the Board of Trade to make bye-laws providing that engines should be brought to a stand at cross streets, & a penalty was imposed on any person offending: —*Held :* the word "person" included a co., & there was no contrary intention to that effect shown in the other words of the sect.—ST. HELENS TRAMWAYS CO. *v.* WOOD (1891), 56 J. P. 71, D. C.

910. *Add. Annotation :*—**Consd.** *Re* Gibbs & Houlder's Lease, Houlder *v.* Gibbs, [1925] Ch. 575.

911. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

914. For cross-references before this case read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 161.

922. *Add. Annotations :*—*As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. *Generally,* **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

927. *Add. Annotation :*—*As to* (1) **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

928. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

932. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Consd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

935. *Add. Annotation :*—*As to* (2) **Refd.** Morris *v.* Harris, [1927] A. C. 252.

v. STANDARD BUILDING SOCIETY, [1932] App. D. 229.—**S. AF.**

ss. *Exercise of—Must be by bye-law.*]—In Ontario, when a municipal council is acting under the Municipal Act, its powers must be exercised by bye-law unless it is otherwise expressly authorised.—DONOVAN *v.* BELLEVILLE, [1930] 3 D. L. R. 434; 65 O. L. R. 246; *affd.,* [1931] 4 D. L. R. 288; O. R. 731.—**CAN.**

sd. *Appeal to Court of Appeal—Administrative powers not given to Court.*]—Sect. 57 (1) of Municipal & Public Utility Board Act, 1926, authorising an appeal from the Board thereunder to the Ct. of Appeal does not transfer administrative jurisdiction to the ct.—*Re* GREY GOOSE BUS LINES, LTD. & LIEDERBACH BUS LINES, INCORPORATED, [1936] 1 W. W. R. 221; 1 D. L. R. 438; 43 Man. L. R. 502.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

r i. —— *British Columbia Government Liquor Act, ss. 26, 46—Does not include Army & Navy Veterans in Canada (Victoria Unit)—Branch association established by corporation.*]—*v.* VICTORIA UNIT (ARMY & NAVY VETERANS), [1921] 3 W. W. R. 594; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 248.—**CAN.**

r ii. —— *Liquor Act, 1912, s. 156—Includes corporation.*]—SMITH *v.* TROCADERO DANSANT, LTD., [1927] S. R. O. 39; 21 Q. J. P. 6.—**AUS.**

r iii. —— *Acts Interpretation Act, company—Order in Council relating to summary offences.*]—On Jan. 11, 1930, an Order in Council, called Samoa Seditious Organisations Regulations, 1930, was made under Samoa Act, 1921, s. 46, being primarily directed at an organisation known as the "Mau," which had been creating very serious trouble in Samoa :—*Held :* except in the particular sub-clauses of clause 3 of the regulations in which it appears from the context that "person" is to be read as meaning only a physical person, in the construction of the Order in Council relating to offences punishable on summary conviction the expression "person" must be construed according to the Acts Interpretation Act, 1924, as including a co.—NELSON (O. F.) & CO., LTD. *v.* POLICE, [1932] N. Z. L. R. 337.—**N.Z.**

935a. —— ——.]—Pltfs. were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse & Foss, in Yorkshire, with power to charge such tolls, within limits, as the corpn. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corpn. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corpn. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assigns, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corpn. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corpn. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. Defts. were the successors of H. L. & Sons:—*Held:* the agreements were *ultra vires*, because during their currency, which depended on the wishes of defts., the corpn., no matter what emergency might arise, had disabled itself from exercising its statutory powers to increase the tolls so far as might be necessary; &, being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—YORK CORPN. *v.* LEETHAM (HENRY) & SONS, LTD., [1924] 1 Ch. 557; 94 L. J. Ch. 159; 131 L. T. 127; 40 T. L. R. 371; 68 Sol. Jo. 459; 22 L. G. R. 371.

Annotations:—**Dbtd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

948. *Add. Annotation:*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

949a. No power to waive powers & duties.]—If a person or public body is entrusted by the Legislature with certain powers & duties expressly or impliedly for public purposes, those persons or bodies cannot divest themselves of these powers & duties. They cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties.—BIRKDALE DISTRICT ELECTRIC SUPPLY CO., LTD. *v.* SOUTHPORT CORPN., [1926] A. C. 355; 95 L. J. Ch. 587; 134 L. T. 673; 90 J. P. 77; 42 T. L. R. 303; 24 L. G. R. 157, H. L.

952. *Add. Annotations:*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

955. *Add. Annotations:*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

962. *Add. Annotation:*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

964. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

970. *Add. Annotation:*—**Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

972. *Add. Annotations:*—**Consd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

974. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

986a. Expenses of running omnibuses—Power to run omnibuses on authorised routes—Omnibuses run to connect up authorised routes.]—The corpn. of L., a municipal corpn., had by virtue of their special Act power to maintain & run a service of omnibuses within the city or outside the city boundaries. In the latter case, their special powers only extended to the running of omnibuses along the route of any tramways which the corpn. should be authorised to construct. There were in fact two such authorised tramway routes. The expenditure in connection with the running of these authorised tramways could, under the corpn.'s statutory powers, be borne out of the city fund. The corpn. began an omnibus service in pursuance of their statutory powers, but it appeared that for a very small portion of the omnibus route, namely, for a distance of forty yards, the service of omnibuses ran outside the boundaries of the city, joining up with the tramway routes slightly further on, & that the expenses in connection therewith were borne by the city fund. An action was commenced by a ratepayer for a declaration (*inter alia*) that the running of these omnibuses over this particular stretch, & payment of the expenses in connection therewith out of the city fund, was *ultra vires* the statutory powers of the corpn., & ought to be prohibited. The question at issue was whether, so far as the forty yards stretch was concerned, the corpn. were entitled to spend moneys out of the city fund in connecting an authorised route of omnibuses outside the city with a route of omnibuses within the city boundaries. Under their statutory powers the corpn.'s service of omnibuses along the route of a tramway outside the city which they were authorised to construct was a part of their tramways undertaking, & they were also authorised to apply the city fund in discharging the expenses in connection with the tramways undertaking:—*Held:* the expense of running omnibuses over the forty yards so as to connect the two routes was an expense fairly incidental to the tramways undertaking, & that it was not

PART IX. SECT. 5, SUB-SECT. 2.—A. d 1. —— *Power to take mortgage.*]—An insurance co. was, by its charter, authorised to hold real estate for the immediate accommodation of the co., "or such as shall have been *bonâ fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts"; & having sold & conveyed a vessel, took from their vendee mtges. on real estate for securing the purchase money:—*Held:* a transaction within the charter, the price of the vessel being a debt existing previously to the execution of the mtge.—WESTERN ASSURANCE CO. *v.* TAYLOR (1862), 9 Gr. 471.—CAN.

ultra vires the corpn.'s statutory powers to expend any part of the city fund in working & running the omnibuses over the forty yards which connected the two services, & which were branches of the corpn.'s tramways undertaking.—A.-G. *v.* LEEDS CORPN., [1929] 2 Ch. 291 ; 99 L. J. Ch. 9 ; 141 L. T. 658 ; 93 J. P. 153 ; 27 L. G. R. 351.

991. *Add. Annotation :*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

991a. Purchase of land for street widening & pleasure garden—Subsequent use of pleasure garden for street widening.]—A local authority bought land in 1896 for the purposes of: (*a*) street widening ; (*b*) making new streets ; (*c*) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution :—*Held :* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436 ; 45 T. L. R. 618 ; 93 J. P. Jo. 480 ; *affd.*, [1930] 1 Ch. 168, C. A.

991b. Provision of entertainment—Construction of powers.]—A.-G. *v.* EASTBOURNE CORPN. (1934), 78 Sol. Jo. 633, C. A.

Add. Annotations :—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416 ; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

Add. Annotations :—**Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67. **Refd.** A.-G. *v.* Gravesend Corpn., [1930] Ch. 550.

997. *Add. Annotation :*—*As to* (1) **Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

997a. Power to erect information bureau on promenade—Discretionary powers to erect "conveniences" for persons using promenade for pleasure or health.]—A.-G. *v.* BLACKPOOL CORPN. (1928), 92 J. P. 50 ; 26 L. G. R. 160, C. A.

997b. Power to supply gas, water & transport—Payments out of reserve funds for benefit of unemployed.]—Defts. were authorised by the Oldham Corpn. Act, 1925, to supply gas, water & transport services, & their duties as regards the revenue from & expenses incurred in connection with these services are set out in sects. 310, 311 of that Act. Defts., with the object of providing work for the unemployed, transferred from each of the reserve funds of the gas, water & transport undertakings £5,000 to the general rate fund. An action was brought at the relation of neighbouring councils, in whose areas defts. were authorised to supply the above services, for (i) a declaration that the transfer was contrary to Oldham Corpn. Act, 1925, s. 311, & *ultra vires*, (ii) an order that defts. transfer the sums back to the respective reserve funds, & (iii) for an injunction restraining defts. from transferring any sums from any of those reserve funds to their general rate fund. Defts. contended that the spending of the money was not *ultra vires*. Alternatively they counterclaimed for a declaration that the sums of £5,000 might have been charged against revenue :—*Held :* (1) the language of Oldham Corpn. Act, 1925, s. 311 (1) (*g*) was imperative, & the transfer of the sums of £5,000, not being one of the purposes mentioned in that paragraph, was *ultra vires ;* (2) it would have been *ultra vires* the defts. to have spent money upon the relief works in question out of the revenues of the three undertakings & the declaration asked for in the counterclaim could not be made.—A.-G. *v.* OLDHAM CORPN., [1936] 2 All E. R. 1022 ; 100 J. P. 395 ; 52 T. L. R. 649 ; 80 Sol. Jo. 654 ; 34 L. G. R. 505.

998. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291 **Consd.** A.-G. *v.* Smethwick Corpn. (1932).96 J. P. 105 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** A.G. *v.* Westminster City Council, [1924] 2 Ch. 416 ; A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

1000. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

1000a. —— By commons conservators.]—It is within the powers conferred upon the Wimbledon & Putney Commons Conservators, a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871, c. cciv., to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from

IX, SECT. 5, SUB-SECT. 2.—B. (a).

sk. *Excessive powers conferred by statute—Effect on position of members.*]—The members of the Ontario Municipal Board are not unlawfully in office when exercising administrative powers, merely because the legislature has, in excess of its powers, purported to confer certain judicial powers upon the Board —R. (STAMFORD) [illegible] O. R. 109.—CAN.

PART IX. SECT. 5, SUB-SECT. D. (b).

sm. *Power to change rates charged for* [illegible] MONCTON TRAM-ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—CAN.

st. *Power to erect shops—On land vested in corporation.*]—There is no power in a municipal corpn. to expend money in the erection of shops on land vested in it either as endowments or otherwise.—TAURANGA BOROUGH CORPN. *v.* A.-G., [1927] N. Z. L. R. [illegible]

sx. *Power to provide school requisites [illegible] of department to manufacture school* [illegible] trates & town council of a burgh passed a resolution to establish a department to manufacture & provide exercise books & other school requisites of the education authority. A ratepayer having challenged the resolution as being *ultra vires* of a purely administrative body such as a municipal corpn. :—*Held :* on a construction of sect. 3 (6) of Education (Scotland) Act, 1908, the power therein conferred for "providing" writing materials, stationery, & other articles of a similar nature, included a power to manufacture exercise books & other school requisites, & that, accordingly, the resolution was *intra vires* of the council.—GRAHAM *v.* CORPN., [1936] S. C.

SCOT.

such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190; 100 L. J. Ch. 77; 144 L. T. 310; 47 T. L. R. 17; 74 Sol. Jo. 819; 29 L. G. R. 78.

1002. *Add. Annotation :—As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] 5 A. C. 691.

1006. *Add. Annotations :* — **Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176.

1033. *Add. Annotation :*—**Refd.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1048. *Add. Annotation :*—**Refd.** The Jupiter, No. 3, [1927] P. 122.

Part X.—Contracts.

1103. *Add. Annotations :—As to* (1) **Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82. **Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1935), 179 L. T. Jo. 475.

1126. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1127a. —— —— **Local authority acting under Housing of Working Classes Act, 1890 (c. 70).**] —The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50. — NIXON *v.* ERITH URBAN COUNCIL, [1924] 1 K. B. 819 93 L. J. K. B. 756; 131 L. T. 303; 88 J. P. 115; 40 T. L. R. 373; 68 Sol. Jo. 537; 22 L. G. R. 448, C. A.

1127b. —— ——.]—Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention " of the parties " when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs.: —*Held :* even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were incapable of entering into a contract with H. other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to.—HIGGINS (W.), LTD. *v.* NORTHAMPTON CORPN., [1927] 1 Ch. 128; 96 L. J. Ch. 38; 136 L. T. 235; 90 J. P. 82.

Annotation :—**Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1936), Ch. 375.

1131. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1133. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1134a. —— —— —— ——.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense :— *Held :* deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary.—LEICESTER GUARDIANS *v.* TROLLOPE (1911), 75 J. P. 197; 2 Hudson's B. C., 4th ed., 419.

1135. *Add. Annotation :*—**Consd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1143. *Add. Annotation :*—**Refd.** Burnham-on-Sea Urban District Council *v.* Channing (1933), 77 Sol. Jo. 177.

PART IX. SECT. 6, SUB-SECT. 5.—B. (a).

sa. *Corporation under Native Land Act, 1909—To member* — TAIRUAKENA *v.* CARR, [1927] N. Z. L. R. 688.—N.Z.

PART IX. SECT. 6, SUB-SECT. 5.—B. (d).

1059 ii. ——.]—Pltfs. had demised by parol for one year the land to F. & put him in possession. Shortly afterwards defts. entered, turned him out & retained possession. On the trial it was contended that F. being tenant in possession the action should have been brought in his name, & not in that of pltfs., & pltfs. were nonsuited. In support of a rule to set this non-suit aside it was contended that the corpn. could only demise under seal & the parol demise to F. was therefore void & the corpn. properly made pltfs.:—*Held :* the demise was void.—ST. ANDREW'S COLLEGE TRUSTEES *v.* GRIFFIN (1853), 1 P. E. I. 80.—CAN.

PART X. SECT. 1, SUB-SECT. 1.

sd. *Co-operative association—Formed to carry on labour or trade—Right to contract for work or services—R. S. O.*, 1877 (c. 158).]—ONTARIO CO-OPERATIVE STONE CUTTERS' ASSOCN. *v.* CLARKE (1880), 31 C. P. 280.—CAN.

PART X. SECT. 2, SUB-SECT. 1.

a i. —— —— *Position of purchases from corporation.*]—TRUST & LOAN CO. *v.* MONK (1868), 14 Gr. 385.—CAN.

b i. —— —— *Municipal District Act, 1926.*]—The requirement of the seal under sect. 24 of Municipal District Act, 1926, is not merely directory, but mandatory; & the fact that the written application for the consent of the Minister was under the seal of deft. municipality is not a sufficient compliance with this requirement — POOLER *v.* PATRICIA MUNICIPAL DISTRICT, [1934] 3 W. W. R. 754.—CAN.

PART X. SECT. 2, SUB-SECT. 4.

1128 i. *General rule—Contract over £50 in value—How calculated.*]— The " value or amount " of a contract within Public Health (Ireland) Act, 1878, s. 210 (1), is the amount which, in the light of the facts within the contemplation of the parties, & in reference to which the contract is made, would be recoverable by the contractor from the sanitary authority on completion. — MUNRO *v.* MALLOW URBAN DISTRICT COUNCIL, [1911] 2 I. R. 130.—IR.

PART X. SECT. 3, SUB-SECT. 3.

r i. ——.]—Where the purposes of a corpn. requires work to be done or

1165. *Add. Annotation :*—**Apld.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1176. *Add. Annotation :*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

1184. *Add. Annotation :*—**Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1185. *Add. Annotation :*—**Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1193. *Add. Annotations :*—**Distd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87. **Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1205. *Add. Annotation :*—**Consd.** Michaud *v.* Montreal (City) (1923), 92 L. J. P. C. 161.

After this case add :—

Law of Property Act, 1925 (c. 20), s. 180 (3).

Part XI.—Liability and Remedies in Tort.

1218. *Add. Annotation :*—**Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1223. *Add. Annotations :*—**Distd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85 ; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1224. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1225. *Add. Annotations :*—**Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832 ; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1 ; Monk *v.* Warbey, [1935] 1 K. B. 75.

1227. *Add. Annotations :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Welden *v.* Smith, [1924] A. C. 484.

1228. *Add. Annotation :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1229. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1230. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

1231. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1235. *Add. Annotation :*—**Refd.** Pronek *v.* Winnipeg, Selkirk & Lake Winnipeg Ry. Co., [1933] A. C. 61.

1235a. ——.]—By a local Act a canal was vested in applts., who were required by the Act to keep the navigation & locks, & all works to be thereafter executed for the improvement thereof, in an efficient state for the traffic thereon. Applts. raised the coping on both sides of one of their locks & the banks behind it to prevent the lock from being flooded. Resps., adjacent landowners, objected that the effect of the works was to pen back the water in the part of the canal above the lock & to occasion the flooding of their lands, & applts. removed the coping without prejudice to their rights, but they did not reduce the height of the banks :—*Held :* there being no evidence of negligence, applts., in constructing works in the exercise of their statutory powers for the protection of their navigation, were not liable for the flooding of resps.' lands.—LAGAN NAVIGATION CO. *v.* LAMBEG BLEACHING, DYEING & FINISHING CO., [1927] A. C. 226 ; 96 L. J. P. C. 25 ; 136 L. T. 417 ; 91 J. P. 46 ; 25 L. G. R. 1, H. L.

1236. *Add. Annotation :*—**Consd.** Howard—Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1243. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 45 T. L. R. 85. *Re*, Simeon, [1937] 3 All E. R. 149.

1261. *Add. Annotations :*—**Apld.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299. **Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364. **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1262. *Add. Citations :*—86 J. P. 201 ; 20 L. G. R. 605.

1262a. —— **By solicitor conducting proceedings for corporation—Corporation not liable.**]—EGGINGTON *v.* LICHFIELD CORPN. (1855), 5 E. & B. 100 ; 24 L. J. Q. B. 360 ; 26 L. T.

goods supplied the corpn. cannot take the benefit of a contract for work or goods & refuse to pay on the ground that the contract is not under seal.—PURDY & HENDERSON CO., LTD. *v.* ST. PATRICK PARISH CORPN., [1917] 3 W. W. R. 710.—CAN.

PART X. SECT. 4, SUB-SECT. 1.—B.

s1. *To restrain city taking script from Province—In lieu of cash.*]—Interim injunction granted to restrain city from taking script in lieu of cash relief from Province.—*Re* WATSON *v.* EDMONTON, [1936] 4 D. L. R. 424.—CAN.

PART X. SECT. 5, SUB-SECT. 1.—A. (a).

t 1. —— ——.]—Where a workman is hired to do work for a corpn. by a person who has no authority to hire him, & the corpn. has not ratified the employment, the fact that he does the work does not create the relationship of employer & workman between him & the corpn.—STUART *v.* PENNANT SCHOOL DISTRICT, [1927] 2 D. L. R. 940 ; [927] 1 W. W. R. 949 ; 21 Sask. L. R. 465.—CAN.

PART X. SECT. 5, SUB-SECT. 1.—B.

s8. *Right of corporation to enforce contract.*]—The municipal committee held an auction to sell to the highest bidder a contract entitling him to take for one year all the sweepings of that town, that were to be collected regularly in certain godowns belonging to the municipal committee. The contract was knocked down to deft., who paid one-third down & agreed to pay the balance by monthly instalments, & signed the list of bids, as well as a document embodying all the terms of the contracts, both of which documents were also signed by the president of the committee, but neither of which was under the seal of that corporate body. The committee sued deft. for the unpaid balance of the price of the contract :—*Held :* notwithstanding the imperative provisions of Punjab Municipal Act, 1911, s. 47, if deft. had received benefit from the contract at the expense of the committee, he must pay for what he had actually received & enjoyed, as if there was an implied contract between the parties ; & the absence of a contract under the seal of the corpn. was therefore no answer to the action brought by the committee. — GUJRANWALA MUNICIPAL COMMITTEE *v.* FAZAL DUN (1929), I. L. R. 11 Lah. 121.—IND.

PART X. SECT. 5, SUB-SECT. 4.

s9. *Sale of land—Part performance.*]—In an action by a town for the balance of the purchase-money under an agreement for the sale of land :—*Held :* there had been sufficient part performance of the agreement to render the defence founded on Town Act, 1927, s. 23, of the lack of the corporate seal, unavailable.—BOW ISLAND HALPIN, [1936] 1 W. W. R. 401 ; 2 D. L. R. 237.—CAN.

PART X. SECT. 7.

s1. *Ultra vires contract — Benefit received by corporation — Duty to account.*]—COUNTY OF HALTON *v.* TOWNSHIP OF TRAFALGAR, [1927] 4 D. L. R. 134 ; 61 O. L. R. 45.—CAN.

PART XI. SECT. 4, SUB-SECT. 1.

1252 ii. ——.]—BURRIS *v.* DARTMOUTH CORPN. (1927), 59 N. S. R. 227.—CAN.

O. S. 27; 19 J. P. 819; 1 Jur. N. S. 908; 119 E. R. 418.

Annotation :—**Refd.** Flood *v.* Jackson, [1895] 2 Q. B. 21.

1262b. —— **By police appointed by watch committee—Borough corporation not liable.**]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—FISHER *v.* OLDHAM CORPN., [1930] 2 K. B. 364; 99 L. J. K. B. 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154.

1263. *Add. Annotations :*—**Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108; Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1266. *Add. Annotation :*—**Refd.** Sorrell *v.* Smith, [1925] A. C. 700.

1275a. ——.]—A public corporate body, although not formed for the acquisition of gain & making no profits, is liable to pay damages in respect of injury caused by its negligence.—A.-G. & DOMMES *v.* BASINGSTOKE CORPN. (1876), 45 L. J. Ch. 726; 24 W. R. 817.

Annotation :—**Refd.** Glossop *v.* Heston & Isleworth L. B. (1879), 12 Ch. D. 102.

1277. *Add. Annotations :*—**Consd.** Strangeways-Lesmere *v.* Clayton, [1036] 1 All E. R. 484. **Distd.** Lindsey County Council *v.* Marshall, [1936] 2 All E. R. 1076. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535.

1278. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

1279. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

Part XII.—Criminal and Quasi-Criminal Proceedings.

1286. *Add. Annotations :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810; Law Society *v.* United Services Bureau, Ltd. (1933), 103 L. J. K. B. 81, D. C.

1288. *Add. Annotations :*—**Consd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102. **Refd.** R. *v.* Leinster, [1924] 1 K. B. 311; Allen *v.* Whitehead (1929), 45 T. L. R. 655.

1292. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1292a. —— ——.]—(1) An indictment will not lie against a corpn. either for a felony or for a misdemeanour involving personal violence under Offences against the Person Act, 1861 (c. 100), s. 31.

(2) Criminal Justice Act, 1925 (c. 86), s. 33, is mere machinery to avoid the inconvenience arising from the fact that previously a corpn. could not be indicted at assizes, & does not alter the substantive law so as to render a corpn. liable to be indicted where previously it was not liable.—R. *v.* CORY BROTHERS & Co., [1927] 1 K. B. 810; 96 L. J. K. B. 761; 136 L. T. 735; 28 Cox, C. C. 346.

1293. *Add. Annotation :*—**Refd.** Gough *v.* Rose (1929), 46 T. L. R. 103.

1297. *Add. Annotations :*—**Consd.** R *v.* Cory, [1927] 1 K. B. 810. **Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102.

1298. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1303. *Add. Annotation :*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1303a. —— **Effect of Criminal Justice Act, 1925 (c. 86), s. 33.**]—R. *v.* CORY BROTHERS & Co., No. 1292a, *ante*.

1304. *Add. Citations :*—27 Cox, C. C. 225; 16 Cr. App. Rep. 131.

After this case add "*See, now,* Criminal Justice Act, 1925 (c. 86), s. 33."

1307. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1308. After this case add "**Appeal by case stated from justices—Recognisance—How made.**]—*See* MAGISTRATES, Vol. XXXIII., p. 413, No. 1229."

Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

PART XI. SECT. 4, SUB-SECT. 2.

l i. —— ——.]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

t i. —— *Dangerous step—Of public library.*]—Library Board liable.—NICKELL *v.* CITY OF WINDSOR, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—**CAN.**

PART XI. SECT. 6.

g i. —— ——.]—A corpn. has no reputation apart from its property or trade. It cannot maintain an action for libel merely affecting personal reputation. It cannot bring a prosecution for words which merely affect its honour or dignity.—MAUNG CHIT TAY *v.* MAUNG TUN NYUN (1935), I. L. R. 13 Ran. 297.—**IND.**

PART XII.

n i. ——.]—Objection to a magistrate proceeding with a preliminary inquiry against an accused on the ground that being a corpn. the offence charged could be prosecuted by indictment only, is without force since the passing of sect. 782 of the Criminal Code.—R. *v.* ROBERTSON'S BAKERIES, LTD. (1931), 3 D. L. R. 437; 55 Can. C. C. 163; 43 B. C. R. 377.—**CAN.**

ag. *Possessing skin of protected animal.*]—A limited co. may, under sect. 8 of Birds & Animals Protection Act, 1918, be convicted of the offence of knowingly having in its possession skins of protected animals.—ALFORD *v.* RILEY NEWMAN, LTD. (1934), 34 S. R. N. S. W. 261; 51 N. S. W. W. N. 82.—**AUS.**

Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

1329. *Add. Annotation :*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1330. *Add. Annotation :*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1365. *Add. Citation :*—*on appeal* (1880), 5 App. Cas. 473, H. L.

Add. Annotations :—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

1366. *Add. Annotation :*—**Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

1370. *Add. Annotations :*—*As to* (1) **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1377. *Add. Annotation :*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1409. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

SECT. 9A.—HABEAS CORPUS.

1411a. To whom addressed.]—If it had been necessary to enforce the writ [of *habeas corpus*], the writ would have had to have been amended by adding to it the name of Mr. B. or some other responsible officer of the Society. I am unable to find in the books any record of any case where *habeas corpus* has issued against a corporation *eo nomine*. Crown Office rule 55, which provides for a writ of *mandamus* directed to companies & corporations being served on such & so many persons as are competent to do the act required to be done, is silent with regard to *habeas corpus* (SLESSER, L.J.).—*Re* CARROLL, [1931] 1 K. B. 317 ; 100 L. J. K. B. 113 ; 144 L. T. 383 ; 95 J. P. 25 ; 47 T. L. R. 125 ; 75 Sol. Jo. 98 ; 29 L. G. R. 152, C. A.

1438. *Add. Annotation :*—*As to* (1) **Refd.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

1493. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1493a. —— —— ——.]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the "return" of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 42, r. 31 :—*Held :* (1) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5 ; (2) the remedy against a director of a co. by attachment given by R. S. C., Ord. 42, r. 31, was an alternative remedy, & pltf. co. could not pursue that remedy unless they were also in a position to proceed against deft. co., & that they could not do because the copy of the order served upon deft. co. did not comply with R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87 ; 101 L. J. K. B. 701 ; 147 L. T. 399 ; 48 T. L. R. 292 ; 76 Sol. Jo. 249.

1495. *Add. Annotation :*—**Folld.** R. *v.* Poplar B. C., *Ex p.* L. C. C., R. *v.* Poplar B. C. (No. 2), [1922] 1 K. B. 95.

1496. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1502. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1503. *Citation :*—For "13 T. L. R. 56" read "[1897] W. N. 7."

1510. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1520. After this case insert "*See, further*, CROWN PRACTICE, Vol. XVI., pp. 405, 406."

1522. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

1526. *Add. Annotations :*—*As to* (1) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** Em-

PART XV. SECT. 4.

sa. *For transgression of statutory powers—Action by Attorney-General.*]—If a public body constituted under the laws of the Commonwealth transgresses its statutory power, the A.-G. for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain & to obtain a declaration of transgression, &, if necessary, an injunction.—COMMONWEALTH & A.-G. FOR COMMONWEALTH *v.* AUSTRALIAN COMMONWEALTH SHIPPING (1926), 39 C. L. R. 1 ; [1927] L. R. 61.—AUS.

sb. *In what name—Trustees of schools.*]—Pltf. brought action against defts. for a *mandamus* to compel them to provide for a debt due to him by the trustees of a school section. The writ was against defts. personally, but contained a statement that they were trustees, etc., & that deft. D. was secretary. Evidence was taken as to the existence of the debt, & the case came on for hearing under the pleadings & evidence :—*Held :* the trustees could only be sued in their corporate name.—COOK *v.* DAVIDSON (1877), R. E. D. 37.—CAN.

PART XV. SECT. 5, SUB-SECT. 1.

f i. —— —— ——.]—SASS *v.* ST. NICHOLAS MUTUAL BENEFIT ASSOCN. OF WINNIPEG, [1936] 3 W. W. R. 305 ; 4 D. L. R. 474 ; 44 Man. L. R. 280.—CAN.

PART XV. SECT. 8.

1394 i. *To whom*

mandamus proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT No. 552, [1922] 3 W. W. R. 857 ; 70 D. L. R. 559.—CAN.

PART XV. SECT. 10, SUB-SECT. 3.—C.

sd. *Bye-laws.*]—A clerk in the office of the treasurer of a municipal corpn., not being the custodian of the bye-laws of the corpn., is not compellable to produce any of them, upon his cross-examination on an affidavit made by him on behalf of the corpn. for use on a motion to which the corpn. is a —— —— *v.* FLEMING (1900), P. R. 203.—CAN.

ployers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1527. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1528. *Add. Annotation :—As to* (1) **Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1529. *Add. Annotations :*—**Consd.** New Zealand Shipping Co. *v.* Thew (1922), 8 Tax Cas. 208; Bradbury *v.* English Sewing Cotton Co., [1923] A. C. 744; Swedish Central Ry. *v.* Thompson, [1925] A. C. 495. **Apld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Refd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

1531. *Add. Annotation :*—**Expld. & Distd.** The Lalandia, [1933] P. 56.

1532. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1534. *Add. Annotation :*—**Consd.** The Lalandia, [1933] P. 56.

1536. *Add. Annotations :*—**Consd.** The Lalandia, [1933] P. 56. **Refd.** Wilcocks *v.* Pinto (1924), 69 Sol. Jo. 178.

1536a. Agent primarily carrying on own business.]—Pltfs., the owners of a vessel damaged in collision with a vessel owned by defts., a foreign corpn., served a writ upon a member of an English firm, E. M. & Co., who acted as defts.' agents. The writ was served at E. M. & Co.'s London offices. Defts. moved to set aside the writ & service on the ground that they were not resident within the jurisdiction. It appeared that E. M & Co. were one of defts.' agents in this country for the booking of freight, issue of passenger tickets, & the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, & they had no concern with the management of deft. corpn. The only name appearing on the door of E. M. & Co.'s offices was their own name, but upon the window of the ground floor their name was exhibited as agents for the deft. corpn. together with the names of other foreign shipping cos. for whom E. M. & Co. acted :—*Held :* E. M. & Co. were a firm who "sold" & did not "make" contracts on behalf of defts., & defts. did their business in this country "through" E. M. & Co. & not "by" them; defts. accordingly, were not resident within the jurisdiction & the writ & service must be set aside.—THE LALANDIA, [1933] P. 56; 102 L. J. P. 11; 148 L. T. 97; 49 T. L. R. 69; 18 Asp. M. L. C. 351.

1537. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. *v.* Thompson, [1924] 2 2 K. B. 255.

1540. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

1544a. —— Manager of London branch.]—Pltf. issued a writ against deft. co. & A., its managing director, & the writ was served upon A. Some years ago the co. had established a branch of their business in London under the management of A., who had, in obedience to Cos. (Consolidation) Act, 1908 (c. 69), s. 274, on behalf of the co. registered himself as a person resident in the United Kingdom authorised to accept service of process, & the evidence showed that, although at the date of the service of the writ upon A. the co. had long ceased to carry on trade in London, yet certain administrative activities, *e.g.*, the remittance of dividends to shareholders, were then being carried out there, & at no other place, on behalf of the co. :—*Held :* (1) upon the evidence, deft. co., at the date of the service of the writ upon A., had a place of business within the United Kingdom, within sect. 274 of the above Act, & service upon A. was effective service upon the co.; (2) even if the co. had not at the date aforesaid a place of business within the United Kingdom, such service was effective service upon the co.—SABATIER *v.* TRADING Co., [1927] 1 Ch. 495; 96 L. J. Ch. 211; 136 L. T. 574; 71 Sol. Jo. 104.

1544b. —— On person authorised to accept service—Sufficiency of indorsement of writ & affidavit of service.]—FESTER FOTHERGILL & HARTUNG *v.* RUSSIAN TRANSPORT & INSURANCE Co., [1927] W. N. 27, C. A.

See, also, COMPANIES, No. 8527a, *ante.*

1546. *Add. Annotation :*—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1548. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Richardson *v.* Richardson, [1927] P. 228.

1557. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

Part XVI.—Dissolution.

1603a. On equity of redemption—Companies Act, 1929 (c. 23), s. 296.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled

PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

m i. —— ——.]—A writ was issued against a co., registered & carrying on business in England, but not registered nor carrying on business in Tasmania. The writ was served in London :—*Held :* the writ must be set aside, as there was no authority for the issue of a writ for service upon the co. in London.—PORT HUON FRUITGROWERS' CO-OPERATIVE ASSOCN., LTD. *v.* LARKINSON (SAMUEL), LTD. 20 Tas. L. R. 1.—**AUS.**

to the property absolutely, & the Crown claimed the equity of redemption as *bonâ vacantia :—Held :* (1) Cos. Act, 1929 (c. 23), s. 296, did not apply, as that sect. was not retrospective, & (2) after the disappearance of the legal entity which had the right of redemption the Crown was entitled to the property as *bonâ vacantia.—Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, [1933] Ch. 29 ; 101 L. J. Ch. 346 ; 148 L. T. 5 ; 48 T. L. R. 617, C. A.

1604. *Add. Annotations :*—**Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—

-.]—*See, now,* Companies Act, 1929 (c. 23), s. 296.

CORROBORATION.

See BASTARDY ; CRIMINAL LAW ; EVIDENCE.

COUNCILS.

See LOCAL GOVERNMENT ; METROPOLIS.

COUNTY BOROUGH COUNCIL.

See LOCAL GOVERNMENT.

COUNTY COURTS.

Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation :*—15 B. W. C. C. 91.

18. "above Act" in the holding refers to 15 & 16 Vict. c. lxxvii.

19. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

21. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

22 *Add. Annotation :—As to* (1) **Consd.** A. W. *v.* Cooper & Hall, [1925] 2 K. B. 816.

Part II.—Liability and Protection of Judges and Officers of Court.

49. *Add. Annotation :*—**Refd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

61. *Add. Annotations :*—**Apld.** Freeborn *v.* Leeming, [1926] 1 K. B. 160; Morriss *v.* Winter (1929), 45 T. L. R. 643. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

Part III.—Jurisdiction.

65. *Add. Annotation :*—**Apld.** Parsons *v.* Burgess (1927), 43 T. L. R. 713.

66. *Add. Annotation :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

70a. Action for breach of promise of marriage.]—Resp. brought a county ct. action against appct. for the return of money & articles, alleging that the parties had promised to marry one another & that appct. had broken the promise. Resp. contended that the action was brought on a bailment, which was within the county ct. jurisdiction :—*Held :* in substance the claim was for damages for breach of promise of marriage, & a writ of prohibition must issue.—PARSONS *v.* BURGESS (1927), 96 L. J. K. B. 787 ; 138 L. T. 134 ; 43 T. L. R. 713.

71. *Add. Annotation :*—**Folld.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

71a. Question of repairs—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).]—Deft. was the tenant of a tied public-house with living accommodation, of which pltfs. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltfs. a new lease : " To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120." The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase :—*Held :* the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—BRAKSPEAR (W. H.) & SONS, LTD. *v.* BARTON, [1924] 2 K. B. 88 ; 93 L. J. K. B. 801 ; 131 L. T. 538 ; 40 T. L. R. 607 ; 68 Sol. Jo. 718.

83. *Add. Citation :—sub nom.* GLENNIE *v.* DELMAR, 1 L. M. & P. 402.

92. *Add. Citation :—sub nom.* SHEILS *v.* RAIT (1849), 7 C. B. 116 ; 137 E. R. 47.

99. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

106. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

138a. Guarantee—Payment by instalments.]—A person, who resided in Shadwell, entered into a contract in writing for the purchase of a bicycle from appcts., on the terms that a certain amount of money should be deposited, & the balance of the price should be paid by instalments, & that, in the event of default in payment of the instalments, the whole balance should become due. Arising out of the said contract, a contract of guarantee was entered into by the purchaser's father, whereby he agreed that, in the event of default in payment of the said instalments, he would pay the sum which thereby became due to the appcts. in London. Default having been made, appcts. desired to sue the guarantor, not in the ct. for the district in which deft. resided or carried on business, but under the provisions of the County Ct. Rules, 1936, Ord. 2, r. 1, which provides that an action may be commenced in the ct. of the district in which the cause of action wholly or in part arose, unless the action is founded on a contract for the sale or hire of goods & payment is to be made by instalments. Appcts. contended that, as the proposed action against the guarantor arose out of a

contract in writing by the guarantor providing for payment in London, the cause of action partly arose at the office of appcts. in London :—*Held :* as the action on the guarantee was in substance founded on a contract for the sale of goods where payment was to be made by instalments it came within the exception to the above rule & should be commenced in the ct. for the district where the guarantor resided.—R. *v.* SHOREDITCH COUNTY COURT REGISTRAR, *Ex p.* SAXON FINANCE CORPN., LTD., [1937] 4 All E. R. 231 ; 54 T. L. R. 53 ; 81 Sol. Jo. 964, D. C.

139a. —— —— **Issue of summons before leave obtained—Irregularity.**]—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two plaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the plaint was entered, a plaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, & the date thereof shall be the commencement of the action :—*Held :* (1) the irregular entry of the plaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft. ; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had waived the irregularity ; the action must therefore be taken to have commenced on Jan. 30, & pltf. was entitled to recover.—PRINGLE *v.* HALES, [1925] 1 K. B. 573 ; 94 L. J. K. B. 458 ; 132 L. T. 785, C. A.

143a. **Partnership action—Commencement in wrong county court—Jurisdiction to hear under 1919 Act, s. 10.**]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *post*.

147a. —— **Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.**]—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement :—*Held :* the county ct. judge had no power to make a declaration which might involve the payment of sums of money by deft. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—SMITH *v.* SMITH, [1925] 2 K. B. 144 ; 94 L. J. K. B. 813 ; 133 L. T. 345, D. C.

Annotation :—**Refd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492.

148. After this case add "**Sum lent beyond jurisdiction—Action for relief under Money-lenders Act, 1900 (c. 57).**]—*See* MONEY & MONEY-LENDING, No. 377a."

197. *Add. Annotation :*—**Consd.** Dudley & District Benefit Bldg. Soc. *v.* Gordon, [1929] 2 K. B. 105.

198a. **Duty of judge to make order—On proof of right to possession.**]—The words "may order" in 1888 Act, s. 138, are enabling words only, but where the legal right of a landlord to the possession of premises has been established it is the duty of the judge, notwithstanding the permissive form of the sect., to make an order for possession. In exercising the discretion given him as to the period for the coming into operation of the order, the judge must fix a period reasonably adjusted to the circumstances of the case, including the nature & term of the tenancy. The county ct. judge in two cases of weekly tenants whose tenancies had been validly terminated by notice to quit, refused to make any order in one case, & in the other, while making an order, postponed its operation for twelve months :—*Held :* this was not a judicial exercise of his discretion, in either case.—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, [1929] 2 K. B. 180 ; 98 L. J. K. B. 512 ; 141 L. T. 265 ; 93 J. P. 235 ; 45 T. L. R. 491 ; 73 Sol. Jo. 367, D. C.

198b. **Terms of order—Postponement of operation—What must be considered.**]—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, No. 198a, *ante*.

205. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

206. *Add. Annotation :*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

206a. **Claim for declaration.**]—(1) The county ct. has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles* v. *Ecclestone*, No. 211, *post*, overd.

Upon a contract for the sale of real property at a price exceeding £500 the vendor brought an action in the county ct. against the purchaser, claiming a declaration that deft. had forfeited the deposit paid under the contract by deft. to stake-holders, who were not parties to the action, & that he was entitled to receive payment of the deposit from the stake-holders. No other claim appeared in the plaint or the summons or the particulars of claim :—*Held :* the county ct. had no jurisdiction to entertain the claim, (1) on the above ground, & (2) on the further ground that the claim was for partial specific performance of an agreement for the sale of property within 1888 Act, s. 67, where the purchase-money exceeded £500, the amount limited by that sect.—DE VRIES *v.* SMALLRIDGE, [1928] 1 K. B. 482 ; 97 L. J. K. B. 244 ; 138 L. T. 497, C. A.

Annotation :—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

206b. ——.]—Observations as to declarations in county cts.—HUMBER CONSERVANCY BOARD *v.* FEDERATED COAL & SHIPPING CO., LTD., [1928] 1 K. B. 492 ; 97 L. J. K. B. 136 ; 138 L. T. 334 ; 17 Asp. M. L. C. 338, D. C.

-.]—*See, also*, Nos. 147a, 212.

208. *Add. Annotation :*—**Consd.** Smith *v* Smith, [1925] 2 K. B. 144.

209. *Add. Annotation :*—**Refd.** Upton *v.* Farmer (1930), 142 L. T. 526.

211. *Add. Annotation :*—**N.F.** De Vries *v.* Smallridge, [1928] 1 K. B. 482.

212. *Add. Annotations:*—**Distd.** Davey *v.* Robinson, [1923] 1 K. B. 563. **Apld.** Smith *v.* Smith, [1925] 2 K. B. 144. **Folld.** De Vries *v.* Smallridge, [1928] 1 K. B. 482. **Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

213. *Add. Annotations:*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** De Vries *v.* Smallridge, [1928] 1 K. B. 482; Olive *v.* Paynter, [1932] 2 K. B. 666.

After this case add "**In remitted action.**]—*See* No. 373a, *post.*"

221. To cross-reference before this case add "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 203."

235. For "**Not within jurisdiction**" read "**Within jurisdiction.**"

235a. ——.]—DE VRIES *v.* SMALLBRIDGE, No. 206a, *ante.*

240a. —— —— **After mortgage of interest by legatee.**]—Legatees, who have mtged. their interest in a legacy, will be restrained from prosecuting a suit in the county ct. to obtain payment of the same from the exors.—NEIGHBOUR *v.* BROWN (1857), 26 L. J. Ch. 670.

244a. Partnership—Action for dissolution or winding up—Effect of denial of partnership on jurisdiction.]—(1) The jurisdiction conferred by 1888 Act, s. 67 (7), which gives the county ct. power to entertain actions for the dissolution or winding-up of a partnership where the property does not exceed the value specified, is not limited to an action in which the existence of the partnership alleged by pltf. is admitted by the deft., but extends to an action in which it is not so admitted.

(2) An action in which pltf. claims a declaration of partnership between himself & deft. & an account of his share of the profits of the partnership business is in substance an action for the dissolution or winding up of a partnership within 1888 Act, s. 67 (7).

(3) Where, contrary to 1888 Act, s. 75, an action in the county ct. for the dissolution or winding up of a partnership is brought in a district other than that in which the partnership is being carried on, the county ct. judge before whom the action comes has a discretion under 1919 Act, s. 10, to hear & determine it.—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, [1932] 1 K. B. 568; 101 L. J. K. B. 321; 146 L. T. 316; 48 T. L. R. 208, C. A.

244b. —— —— **What amounts to—Action for declaration & account.**]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *ante.*

249. *Add. Annotations:* — **Consd.** Rossiter *v.* Langley, [1925] 1 K. B. 741; Russoff *v.* Lipovitch (1925), 94 L. J. K. B. 355. **Refd.** De Vries *v.* Sparks (1927), 137 L. T. 441. **Mentd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

257a. Right of solicitor to practise—Without signing court roll.]—An admitted solr. of the Supreme Ct. has a statutory right to practise in the county ct. when it is exercising its bkpcy. jurisdiction & may therefore do so without signing the roll of the ct. as required by Ord. 54, r. 7, of the County Ct. Rules, 1903-32.—*Re* DEBTOR (No. 29 of 1931), [1934] Ch. 280; 103 L. J. Ch. 130; 150 L. T. 126; 50 T. L. R. 38; [1933] B. & C. R. 228, C. A.

272a. —— —— ——.]—*Re* BANE *v.* FOXALL & CANFOR IN THE COUNTY COURT OF NORFOLK (1856), 20 J. P. Jo. 293.

295. *Add. Annotation:*—**Refd.** Salter *v.* Lask, [1923] 2 K. B. 798.

297. *Add. Annotation:*—**Refd.** Salter *v.* Lask, [1923] 2 K. B. 798.

315a. —— **Disputes in relation to fishing boats—Merchant Shipping Act, 1894 (c. 60), s. 387.**]—Pltfs., who were the owners of a steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within above sect. which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages: —*Held:* the county ct. had jurisdiction to entertain the action notwithstanding the sect., inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the sect. did not either expressly or by implication exclude that jurisdiction; &, further, the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677; 99 L. J. K. B. 197; 142 L. T. 484; 46 T. L. R. 236; 18 Asp. M. L, C. 97.

326. *Add. Annotation:*—**Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

327a. —— **Appearance—Raising defence not challenging jurisdiction.**]—PRINGLE *v.* HALES, No. 139a, *ante.*

Part IV.—Remitted Actions.

331. After this case add "**Action for relief under Money-lenders Act, 1900 (c. 51).**]—*See* MONEY & MONEY-LENDING, No. 434a."

335a. —— **Meaning of "amount . . . remaining in dispute"—Discount retained on payment of claim.**]—LEE (A.) & CO., LTD. *v.* BEATRICE STEPHENSON, LTD., [1932] W. N. 33; 173 L. T. Jo. 75, C. A.

341a. —— **Damages for personal injury.**]—In exercising his discretion under County Cts. Act, 1919 (c. 73), s. 2, the judge ought to have serious regard to the gravity of the case & the magnitude of the interests involved & to the question whether deft. has *primâ facie* a good defence to the action.

Where in an action brought by a pltf.

who sustained grave injuries by the overturning of the lorry in which he was a passenger against the owner of the lorry for damages for negligence, deft. applied before delivering her defence for security for costs & in default for the transfer of the action to the county ct., but by her affidavit in support made no allegation that she had a good defence on the merits :—*Held :* there was no sufficient material available for the exercise by the judge of his discretion by making the order asked for, & accordingly that the order must be set aside.—STEVENS *v.* WALKER, [1936] 2 K. B. 215 ; [1936] 1 All E. R. 892 ; 106 L. J. K. B. 683 ; 154 L. T. 550 ; 52 T. L. R. 502 ; 80 Sol. Jo. 404, C. A.

Annotations :—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301. **Refd.** Evans *v.* Bartlam, [1937] A. C. 473.

341b. —— ——.]—Pltf. in an action for damages for negligence was an infant & a poor person. The injuries alleged were of a serious character, & might result in permanent injury affecting her earning capacity. Defts. applied to have the action transferred to the county ct. The judge who heard the application had before him the statement of claim & the defence ; pltf.'s counsel urged that the transfer should not be ordered on the ground that the injuries were serious. An order was made remitting the case to the county ct. Pltf. appealed :—*Held :* (1) there was a statutory discretion vested in the judge, & his exercise thereof ought not to be disturbed unless it could be clearly shown that he had acted upon a wrong principle ; (2) an order under County Cts. Act, 1919 (c. 73), s. 2, can be made in a poor persons case, since it does not order security for costs to be given but merely orders remission to the county ct. if security is not given.—CULVER *v.* BEARD, [1937] 1 All E. R. 301 ; 81 Sol. Jo. 156, C. A.

343. *Add. Annotation :*—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

349a. —— —— **Affidavit should contain allegation as to defence.**]—STEVENS *v.* WALKER, No. 341a, *ante.*

351. *Add. Annotation :*—**Refd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

352. *Add. Citation :*—91 L. J. K. B. 771.
Add. Annotation :—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.
After this case add :—
——.]—*See, now,* County Court Rules, Ord. 33, r. 20.

352a. ——.]—CULVER *v.* BEARD, No. 341b, *ante.*

360. *Add. Annotation :*—**Distd.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter equal to or the same as that of the High Ct.

Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act, s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim, asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial :—*Held :* the decision of the Div. Ct. was correct.—DAVEY *v.* ROBINSON, [1923] 1 K. B. 563 ; 92 L. J. K. B. 336 ; 128 L. T. 513 ; 39 T. L. R. 163 ; 67 Sol. Jo. 246, C. A.

379. *Add. Annotation :*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

382. *Add. Annotation :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

394. *Add. Annotation :*—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

403a. Discretion of county court judge.]—GOADBY *v.* ORRIDGE, [1937] 4 All E. R. 610 ; 54 T. L. R. 239, C. A.

404a. Duty of county court judge to specify scale of costs.]—In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble :* in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount recovered.—GOLD BROTHERS & NASH, LTD. *v.* FULLER (1925), 134 L. T. 151 ; 70 Sol. Jo. 284, D. C.

Annotation :—**Consd.** Davies *v.* Davies (1927), 96 L. J. K. B. 1066.

404b. —— **Order for costs on higher scale—Necessity for certificate.**]—A county ct. judge cannot award to pltf. in a remitted action costs on a scale higher than that applicable to the amount recovered without giving a certificate in accordance with 1888 Act, s. 119. —DAVIES *v.* DAVIES, [1928] 1 K. B. 364 ; 96 L. J. K. B. 1066 ; 137 L. T. 567, D. C.

407a. Claim reduced by giving credit—Scale of costs—Discretion of Court of Appeal.]—An action was brought in the High Ct. for £94 5*s.* 11*d.* The master in Chambers reduced the claim to £43 5*s.* 11*d.* by giving credit to deft. for £51, gave deft. leave to defend as to the remainder, & remitted the case to the County Ct. Deft. then entered a counterclaim, which the Ct. of Appeal found to be unfounded, but the facts upon which the counterclaim was based further reduced the claim to £14 10*s.* 11*d.* :—*Held :* (1) in the circumstances there was no judgment in the High Ct. upon which costs on the High Ct. scale could be given. (2) The Ct. of Appeal exercising the discretion vested in the County Ct. Judge by the County Cts. Act, 1919 (c. 73), s. 12, awarded costs on Scale "B" throughout the proceedings, refusing to make three separate orders as to costs.—HARDMAN *v.* CAUSTON, [1936] 1 All E. R. 61, C. A.

408. *Add. Annotation :*—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

410a. Discretion of county court judge—To deprive successful party of costs.]—Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C., Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct. with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be taxed on the High Ct. or on the county ct. scale. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—JENKINS & Co. *v.* SIMON, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 134 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

Annotations :—**Distd.** Hardman *v.* Causton, [1936] 1 All E. R. 61. **Refd.** Gallivan *v.* Warman (1930), 169 L. T. Jo. 327.

420a. Recovery of less than £50—Joinder of actions—Whether total sums recovered to be considered.]—GALLIVAN *v.* WARMAN (1930), 169 L. T. Jo. 327; [1930] W. N. 96.

Part V.—Procedure.

438. *Add. Annotation :—Generally,* **Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

455. *Add. Citations :*—91 L. J. Ch. 627; [1922] B. & C. R. 155.

472. *Add. Citation :*—20 L. G. R. 567.

472a. Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 5—Recovery of possession.]—(1) Sect. 5 of Rent (Restrictions) Act, 1920, is not a statutory defence or one of which notice must be given under County Ct. Rules, 1903, Ord. 10, r. 18.

(2) The Div. Ct. thought that as no one had expressly mentioned the Rent (Restrictions) Act in the county ct. they ought not to consider its effect. I do not agree with that decision. In my opinion the Act imposes upon the county ct. judge the duty of deciding whether the property comes within its provisions &. if it does, whether he should make or refuse an order for possession (SCRUTTON, L.J.).—SALTER *v.* LASK, [1924] 1 K. B. 754; 93 L. J. K. B. 685; 130 L. T. 323; 68 Sol. Jo. 420; 22 L. G. R. 296, C. A.

Annotation :—As to (2) **Folld.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

489. *Add. Annotation :—As to* (2) **Refd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

497a. —— Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.]—On May 10, 1923, pltf. commenced proceedings claiming from defts. damages for personal injuries caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury. The application for trial without a jury was made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion :—*Held :* the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the sect. gave him a discretion which must be exercised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a jury merely because it was inconvenient; on the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds for so exercising his discretion.—WINN *v.* LONDON COUNTY COUNCIL (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 68 Sol. Jo. 502, D. C.

497b. —— —— Onus on party objecting to jury.]—On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are congested is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—CALCRAFT *v.* LONDON GENERAL OMNIBUS CO., [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

Annotation :—**Consd.** Winn *v.* L. C. C. (1923), 130 L. T. 350.

499a. —— Action in which fraud alleged—Whether mere allegation sufficient.]—To come within the proviso to Administration of Justice Act, 1920 (c. 81), s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for pltf. merely to allege that deft. acted fraudulently.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

Part VI.—Trial, Judgment and Execution.

526a. To refer to registrar—Necessity for consent of parties.]—Apart from the special cases referred to in County Cts. (Amendment) Act, 1934 (c. 17), s. 20, a county ct. judge has no power to make an order referring the whole of an action to the registrar for inquiry &

report, unless the parties consent thereto. Such an order if made without consent renders the proceedings void *ab initio* & is not cured by the subsequent conduct of the parties.—MORGAN *v.* CULLEN, [1936] 2 K. B. 324; [1936] 2 All E. R. 147; 105 L. J. K. B. 560; 155 L. T. 245; 80 Sol. Jo. 425, C. A.

534a. —— —— **Damages claimed.**]—In an action for damages & an injunction in respect of alleged trespass, neither the *præcipe* nor the particulars of claim stated the amount of the damages claimed. The particulars of claim stated that neither the value nor the reserved rent of the dominant tenement exceeded £100 *per annum*, but did not state the value or reserved rent of the servient tenement. The judge allowed two amendments of the particulars of the claim, the first, a statement that the damages claimed were £25; & the second, an allegation that neither the value nor the reserved rent of the servient tenement exceeded the value of £100 by the year: *Held:* the county ct. judge had power under the above sect. to make the second amendment, & the first amendment also.—UPTON *v.* FARMER (1930), 142 L. T. 526; *sub nom.* FARMER *v.* UPTON, 46 T. L. R. 252; 94 J. P. Jo. 136.

534b. —— —— **Rent of servient tenement.**]—UPTON *v.* FARMER, No. 534a, *ante*.

535a. Action for ejectment—Action for recovery of possession appropriate.]—Where an action for ejectment is brought in the county ct. under County Courts Act, 1888 (c. 43), s. 59, & the proper course would have been to claim recovery of possession under sect. 138, the judge has power & ought, under sect. 87, to allow the amendments necessary to enable him to deal with the real rights of the parties.—DAVY *v.* MAGNUS (1931), 47 T. L. R. 609; 75 Sol. Jo. 660, D. C.

554. *Add. Annotation:*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

563. *Add. Annotations:*—**Consd.** Jaeger Co. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

565. *Add. Annotations:*—**Consd.** Ord *v.* Ord, [1923] 2 K. B. 432; The Koursk, [1924] P. 140; Debenhams *v.* Perkins (1925), 133 L. T. 252. **Apld.** Conquer *v.* Boot, [1928] 2 K. B. 336.
See, also, ESTOPPEL, No. 447a, *post*.

578. *Add. Annotations:*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Desborough *v.* Portsmouth (1934), 27 B. W. C. C. 192.

578a. —— —— ——.]—A county ct. judge has no right to dismiss a workman's claim for arbn., without hearing any evidence, on counsel stating in his opening that money paid into ct. by the employer, representing the full compensation due to date, had already been taken out by the workman.
A judge has no right to non-suit a pltf. on counsel's opening (LORD HANWORTH, M.R.).—DESBOROUGH *v.* PORTSMOUTH (1934), 27 B. W. C. C. 192, C. A.

593. *Add. Annotation:*—*As to* (2) **Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

606. *Add. Annotation:*—**Consd.** Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49.

608. *Add. Annotation:*—**Consd.** Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49.

617. *Add. Citation:*—15 B. W. C. C. 43.
Add. Annotation:—**Refd.** Moore *v.* Cunard S.S. Co. (No. 2) (1935), 28 B. W. C. C. 469.

619. *Add. Annotations:*—**Consd.** Manners *v.* Manners & Fortescue, [1936] 1 All E. R. 41. **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191; Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49; Moore *v.* Cunard S.S. Co. (No. 2) (1935), 28 B. W. C. C. 469; Rowell *v.* Pratt, [1937] 3 All E. R. 660.

621. *Add. Annotation:*—**Refd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

626. *Add. Annotation:*—**Refd.** Manners *v.* Manners & Fortescue, [1936] 1 All E. R. 41.

645a. —— **Goods already in possession of sheriff.**]—A. W., LTD. *v.* COOPER & HALL, LTD., No. 783a, *post*.

648a. —— **Sum deposited by claimant to goods less than value of goods—More than judgment debt & costs.**]—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him:—*Held:* as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—NEWSUM, SONS & CO., LTD. *v.* JAMES, [1909] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.

651. *Add. Annotation:*—**Refd.** Domine *v.* Cohen & Co., [1936] 1 All E. R. 55.

652. *Add. Annotation:*—**Refd.** Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

653a. Debt deposited with bailiff by third party—Pending new instalment order.]—Pltf. obtained judgment against defts. for the sum of £53 8*s*. payable in instalments of £2 monthly. One of these instalments being in arrear pltf. levied execution for the whole amount then owing & seized certain property. A friend of defts. then paid the bailiff the whole amount outstanding & costs of the execution, & was given a receipt stating that the sum was paid as a deposit pending an application to the ct. It was intended that upon an application to the ct. deft. should pay the one instalment & the costs of execution & that a new order for payment for instalments should be made. The order made by the ct. followed these terms, but went on to add that

if deft. did not pay the costs of execution, the so-called deposit should remain in ct. until further order:—*Held:* this course was quite irregular as it did not appear whether the friend paid the money as agent of defts. or otherwise. If he paid as such agent the debt was discharged & the execution was at an end, & no further order could be made with regard to it. If, in fact, he was not an agent of defts. no order could be made in respect of the said sum paid as a deposit as the person paying it was not a party to the action.—DOMINE *v.* COHEN & Co., [1936] 1 All E. R. 55, C. A.

Annotation:—**Refd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

Part VII.—Costs.

677. *Add. Annotation:*—**Refd.** Russoff *v.* Lipovitch (1924), 69 Sol. Jo. 276.

684. After this case insert "*See, also*, Nos. 566-573, *ante*."

686. *Add. Annotation:*—**Refd.** Temperance Loan Fund *v.* Erwood (1927), 137 L. T. 449.

690. After this case add "—— —— **Action by money-lender.**]—*See* MONEY & MONEY-LEND- No. 442a."

691. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

691a. —— **Order for costs on lower scale.**]—When the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part.—HUGHES (W.) & SON *v.* SATCHELL (1925), 134 L. T. 93, D. C.

691b. —— **In remitted action.**]—JENKINS & Co. *v.* SIMON, No. 410a, *ante*.

693. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

695a. ——.]—Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts. At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs:—*Held:* on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—JACKSON *v.* ANGLO-AMERICAN OIL Co., [1923] 2 K. B. 601; 92 L. J. K. B. 1000; 129 L. T. 792; 67 Sol. Jo. 640, D. C.

695b. —— **Order for costs on lower scale.**]—On a claim by an unsuccessful deft. against an insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113:—*Held:* there was no jurisdiction to make the order.—BEVINGTON *v.* PERKS & BELL ASSURANCE SOCIETY, [1925] 2 K. B. 229; 94 L. J. K. B. 829; 133 L. T. 511, D. C.

Annotation:—**Apld.** Hughes *v.* Satchell (1925), 134 L. T. 93.

722a. —— **Joined with claim for specific performances & damages.**]—Pltf. sued deft. for breach of contract to let him a house-boat for a short period, claiming specific performance, an injunction & damages, & served deft. with notice of motion for an injunction. Before the motion came on for hearing deft. let the house-boat to another person. This fact was disclosed when the motion came on, & the action proceeded to trial on the question of damages only, judgment being thereat given to pltf. for £25 damages & the costs of the action:—*Held:* the substantial claim being for specific performance & an injunction, which could not be obtained owing to deft.'s having let the boat in breach of her contract, the case was not within County Cts. Act, 1888 (c. 43), s. 116 (1), & pltf. was entitled to costs on the High Ct. scale.—DEVERELL *v.* MILNE, [1920] 2 Ch. 52; 89 L. J. Ch. 305; 123 L. T. 565.

734a. **Scale maxima exceeded—Powers of judge & registrar.**]—MURRAY *v.* REDPATH, BROWN Co., LTD., [1937] 4 All E. R. 478; 54 T. L. R. 155, C. A.

739a. —— **Recovery of costs paid under protest.**]—Pltf. & deft. by an agreement contracted (*inter alia*), that pltf. should pay certain costs to deft. Deft.'s solrs. sent in the bill to pltf., who paid it, but as to a part of it under protest, stating that the agreement did not cover certain items, for the recovery of which she subsequently brought an action in the county ct. Deft. put in a special defence to the effect that as pltf. had not taken any steps to tax the bill pursuant to Solicitors Act, 1843 (c. 73), ss. 37, 38, 41, the action was not maintainable. The county ct. judge upheld this view, & refused to try the action:—*Held:* he was wrong, & that he had jurisdiction to try the action.—MOSLEY *v.* KITSON (1912), 57 Sol. Jo. 12; 1 L. J. (C. C.) 71.

750. *Add. Annotation:*—**N.F.** Warwick *v.* Butler & Lauritzen, [1925] 2 K. B. 294.

750a. ——.]—Where under the above rule the registrar, on the application of a deft. who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of deft., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made.—WARWICK *v.* BUTLER & LAURITZEN [1925] 2 K. B. 294; 94 L. J. K. B. 657; 133 L. T. 240, D. C.

750b. **"Court in which plaint is entered."—Court to which remitted action sent.**]—Where an action of tort commenced in the High Ct.

has been remitted to a county ct. in default of security for costs, that county ct. becomes "the ct. in which the plaint was entered," & the judge may order pltf. to give security for costs under Ord. XII., r. 9, of the county ct. rules on the application of a deft. who neither resides nor carries on business within twenty miles of the ct.—RIDDLE *v.* PLAYLE, [1930] 1 K. B. 363; 99 L. J. K. B. 64; 142 L. T. 92; 46 T. L. R. 27; 73 Sol. Jo. 796, D. C.

Part VIII.—Appeals.

757. *Add. Annotation:*—**Consd.** Conway *v.* New Ideal Homesteads, Ltd., [1936] 3 All E. R. 78.

761. *Add Annotation:*—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

763a. —— ——.]—WARWICK *v.* BUTLER & LAURITZEN, No. 750a, *ante*.

770a. **On ground of perverse verdict.**]—CREED *v.* WRIGHT (1932), 73 L. Jo. 412, C. A.

776a. **Debt or damage claimed not exceeding £20.**]—An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal "in an action" within 1888 Act, s. 120, & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—WARD *v.* SNEIMAN (1925), 133 L. T. 560; 41 T. L. R. 598, D. C.

Annotation:—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

779a. —— **Claim less than £20.**]—There is no appeal without leave from a county ct. judge's refusal to review a taxation of costs, where the amount claimed is less than £20.—HIVES *v.* DAWSON (1927), 138 L. T. 238; 44 T. L. R. 37, D. C.

783a. **Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).**]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession of the goods, & made an order for payment of the fees claimed:—*Held:* (2) the possession of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not withdraw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right.—A. W., LTD. *v.* COOPER & HALL, LTD., [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.

787a. —— **Preliminary question of law—Whether "judgment" within 1888 Act, s. 120.**]—DAWS *v.* NETTLESHIP, LTD. (1929), 168 L. T. Jo. 518.

789. *Add. Annotations:*—**Consd.** Ward *v.* Sneiman (1925), 133 L. T. 560. **Distd.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733. **Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

797a. **Exception from rule—Appeal under Rent Restriction Acts.**]—SALTER *v.* LASK, No. 472a, *ante*.

797b. —— ——.]—The general rule that it is a condition precedent to the raising by an applt. of a point of law on appeal from a county ct. that that point should have been raised at the trial of the action does not apply to cases within r. 18 of Increase of Rent & Mtge. Interest (Restrictions) Rules, 1920.—LEFEVRE *v.* HIRST (1931), 100 L. J. K. B. 733.

809. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

812. *Add. Annotation:*—**Apprvd.** Blewett *v.* Blewett, [1936] 2 All E. R. 188.

812a. —— ——.]—The rule that a point of law cannot be raised on appeal from a county ct. if it was not raised in the ct. below applies only to applt. Resp. can support the judgment at the hearing of the appeal upon any legal ground arising on the evidence.—WALLER & SON, LTD. *v.* THOMAS, [1921] 1 K. B. 541; 90 L. J. K. B. 656; 125 L. T. 21; 37 T. L. R. 325; 19 L. G. R. 109.

Annotation:—**Refd.** Isaacs *v.* Keech (1925), 94 L. J. K. B. 676.

818. *Add. Annotation:*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

824a. ——.]—The same principles apply in an appeal such as this on questions of a right of way from a county ct. as have long been applied in regard to such issues where a trial has been before a jury. Indeed, the case of an appeal from a county ct. is, if

anything, *a fortiori:* it is the only appropriate tribunal of fact that can decide the issue whether or not a right of way is established, because that issue depends on whether the tribunal is satisfied that there has been, in fact, a dedication, which can only be found if the necessary intention has been made out. —WILLIAMS-ELLIS *v.* COBB, [1935] 1 K. B. 310; 104 L. J. K. B. 109; 152 L. T. 133; 99 J. P. 93; 51 T. L. R. 131; 79 Sol. Jo. 11; 33 L. G. R. 39, C. A.

832. *Add. Annotations:*—*As to* (1) **Distd.** Martin *v.* Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

846. *Add. Annotation:*—**Refd.** Conway *v.* New Ideal Homesteads, Ltd., [1936] 3 All E. R. 78.

847a. Necessity for.]—Pltf. in an action in the county ct. claimed £1 5*s.* 4*d.* damages for breach of contract, & judgment was given in his favour for that amount. Defts. applied to the county ct. judge for leave to appeal, which was refused. Defts. thereupon applied to the Ct. of Appeal for leave to appeal, offering to pay pltfs. costs in any event. The attention of the Ct. of Appeal was not drawn to the County Cts. Act, 1888 (c. 43), s. 120, & *per incuriam* the ct. gave leave to defts. to appeal against the county ct. judge's judgment. At the hearing of the appeal pltf. raised the preliminary objection that the Ct. of Appeal had no jurisdiction to hear an appeal from the judgment of a county ct. judge in an action for breach of contract where the claim was for less than £20, when the county ct. judge had not given leave to appeal:—*Held:* upon a consideration of the County Cts. Act, 1888 (c. 43), ss. 120, 124, there was no jurisdiction in the Ct. of Appeal to hear the appeal—CONWAY *v.* NEW IDEAL HOMESTEADS, LTD., [1936] 3 All E. R. 78; 155 L. T. 483; 53 T. L. R. 12; 80 Sol. Jo. 873, C. A.

851. After this case add the following cross-reference:—**Order directing arbitrator under Agricultural Holdings Acts to state special case.**]—*See* AGRICULTURE, No. 266gg, *ante.*

852. *Add. Annotation:*—**Consd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

890a. —— All circumstances considered.]—Security for costs will be ordered, although there is a point of law reasonably fit for argument, if the ct. considers it necessary, having regard to all the circumstances of the case.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] W. N. 72, D. C.

900. *Add. Citation:*—20 L. G. R. 653.

900a. Statement that no point of law raised.]—Where no point of law is raised at the trial of a county ct. action, the judge is justified in adding a statement to that effect to his note of the evidence taken by him at the trial; & in such a case, if the point of law could have been then raised, there is no right of appeal.—CLIFFORD *v.* THAMES IRONWORKS & SHIPBUILDING CO. (1898), as reported in 67 L. J. Q. B. 314.

903. *Annotations:*—For the existing annotations substitute as follows:—

Annotations:—**Overd.** Abrahams *v.* Dimmock, [1915] 1 K. B. 662. *Cook* v. *Gordon* was wrongly decided (BUCKLEY, L.J.). **Refd.** The Crescent, Great Northern S.S. Fishing Co. *v.* S.S. Crescent (1893), 62 L. J. P. 63.

913. *Add. Annotation:*—**Refd.** Simmons *v.* Crossley, [1922] 2 K. B. 95.

928a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308, D. C.

938. *Add. Annotation:* — **Distd.** Rackham *v.* Tabrum (1923), 129 L. T. 24.

945. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

954. *Add. Annotation:*—**Folld.** Koffman *v.* Sun shine, [1932] 1 K. B. 606.

962a. —— Appeal under Poor Persons Rules.]—The ct. may award costs against applt. who appeals under the Poor Persons Rules, if the appeal is entirely frivolous & vexatious & is an abuse of the process of the ct.—DRUMMOND *v.* HERVEY (1927), 138 L. T. 200; 44 T. L. R. 14, D. C.

Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotations:*—**Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43. **Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

980a. —— Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari.*

(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* GUISTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, No. 980a, *ante.*

1012. *Add. Citation:*—15 Jur. 1196.

1016. *Add. Annotations:*—**Consd.** *Re* Stanton [1928] 1 K. B. 464. **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1038. *Add. Annotations:*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** Hunter *v* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; **Mansfield** *v.* Robinson [1928] 2 K. B. 353.

Add. Citations :—sub nom. HARDY *v.* WALKER, *Ex p.* M'FEE (1853), 9 Exch. 261 ; 2 C. L. R. 278 ; 23 L. J. Ex. 57 ; 17 J. P. 824 ; 156 E. R. 112.

1064. *Add. Annotation :*—**Apld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

1076. *Add. Annotation :*—**Expld. & Apld.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

1085. *Add. Annotation :*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1086. *Add. Annotation :*—**N.F** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1087a. —— —— ——.]—*Held :* 1888 Act, s. 131, enables the High Ct. to make an order as to costs incurred in the county ct., & not merely as to costs in the proceedings before the ct. itself.—KOFFMAN *v.* SUNSHINE, [1932] 1 K. B. 606 ; 101 L. J. K. B. 784 ; 147 L. T. 199.

1093. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1120a. —— ——.]—In an administration suit in a county ct., the judge decreed a sale, to be carried out by pltf., of a deceased testator's property, & declared that one of defts. was not a trustee under the will. Defts. wished to appeal, & a case was duly settled under the County Ct. Acts & Orders. After some months delay the judge fixed a day for the case to be presented to him for signature, but defts. did not receive notice of this until too late to present the case on that day. On the case being presented for signature a short time afterwards, the judge declined to sign it :—*Held :* defts. were entitled to an order directing the judge to sign the case.—CLARKE *v.* ROCHE (1877), 46 L. J. Ch. 372 ; 36 L. T. 727 ; 25 W. R. 309, C. A.

Part XI.—Rules and Fees.

1133. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1135. For "IRVING *v.* ASKEW, No. 1093, *ante*," read :—

By sect. 15 of 13 & 14 Vict. c. 61, an appeal from a county ct. shall be in the form of a case agreed upon between the parties, " & if they cannot agree, the judge of the county ct. . . . shall settle the case & sign it." Rule 192 of the County Ct. Rules of 1867 provides that " all cases on appeal shall . . . be presented to the judge for signature " within a certain time, " & shall then be signed by the judge & be sealed with the seal of the ct." :—*Held :* Rule 192 was not repugnant to sect. 15, & was therefore valid.—IRVING *v.* ASKEW (1870), L. R. 5 Q. B. 308 ; 39 L. J. Q. B. 118 ; 18 W. R. 467.

Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case for " *See, generally,* INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES " read " *See, generally,* INSURANCE."

Add the following cross-reference :—

Landlord & Tenant Act, 1927 (c. 36).]—*See* LANDLORD & TENANT, Nos. 2306a *et seq., post.*

CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, *see* Criminal Justice Act, 1925 (c. 86).

Part I.—Principles of Criminal Liability.

3. *Add. Annotations :*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

5a. —— **Prevention of Crimes Act, 1871 (c. 112), s. 20.**]—Attempted burglary is not a " crime " within Prevention of Crimes Act, 1871 (c. 112), s. 20.—R. *v.* BATES (1930), 22 Cr. App. Rep. 49, C. C. A.

21. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

22. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

23. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

36. *Add. Annotation :—As to* (1) **Distd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

38. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

40. *Add. Annotation :*—**Consd.** Allard *v.* Selfridge (1924), 88 J. P. 204.

40a. Right of defendant to give evidence—As to his state of mind.]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.

(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time.—R. *v.* FITZPATRICK (1926), 19 Cr. App. Rep. 91, C. C. A.

45. *Add. Annotation :*—**Folld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

53. *Add. Citations :*—[1897] 1 Q. B. 772 ; 66 L. J. Q. B. 569 ; 76 L. T. 624 ; 18 Cox, C. C. 609.

55. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

72. *Add. Annotations :*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388. **Folld.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

72a. —— ——.]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeon taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

Annotation :—**Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

PART I. SECT. 1.

8a. *Misdemeanour.*]—*Semble :* at common law disobedience to a statute is a misdemeanour.—O'DEA *v.* MIDWIVES REGISTRATION BOARD (1924), 26 W. A. L. R. 129.—**AUS.**

e i. —— *Proceedings under Liquor Control Act*, 1930 (*N. S.*).]—R. *v.* MACK (1931), 56 Can. C. C. 368.—**CAN.**

24 i. *Statutory offences—" Offence "—Prevention of Crimes Act*, 1871 (c. 112), *s.* 7.]—STRATHERN *v.* PADDEN, [1926] S. C. (J.) 9.—**SCOT.**

24 ii. —— —— .]—The word " offence " in Indian Penal Code, s. 149, is confined to offences under the Code & does not include within its meaning offences under Indian Railways Act.—*Re* VASUDEVA MUDALI (1929), I. L. R. 52 Mad. 882.—**IND.**

24 iii. —— *" Crime "—Prevention of Crimes Act*, 1871 (c. 112), *ss.* 7, 20.]—To be relevant a charge of a contravention of sect. 7 must libel upon its face a conviction on indictment of an offence, & a previous conviction of an offence, both of which offences must be " crimes " as defined in sect. 20.—MURRAY *v.* MACMILLAN, [1927] S. C. (J.) 14.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 1.

29 ii. —— *Criminal Code, s.* 247.]—R. *v.* HURT (1923), 48 Can. Crim. Cas. 82 ; 55 O. L. R. 48.—**CAN.**

29 iii. —— ——.]—R. *v.* CANADIAN ALLIS-CHAMBERS, LTD. (1923), 48 Can. Crim. Cas. 63 ; 54 O. L. R. 38.—**CAN.**

30 ii. ——.]—A fish merchant was convicted on a charge of clandestinely taking possession of fish boxes, the property of various fish merchants, well knowing that he had not, & would not have, received permission from the owners to his doing so, & with using the boxes by filling them with fish & dispatching them to the fish market at Glasgow :—*Held :* as there was nothing clandestine in the conduct of accused, he was not guilty of the offence charged. —MURRAY *v.* ROBERTSON, [1927] S. C. (J.) 1.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 2.—A.

38 ii. —— ——.]—R. *v.* CRAWFORD (N. B.), [1927] 2 D. L. R. 565 ; 47 Can. Crim. Cas. 134.—**CAN.**

o i. —— ——.]—The general rule that when on a trial for murder the Crown succeeds in establishing such a *primâ facie* case as, in the absence of any explanation, will justify the jury in finding the accused guilty of murder, the burden then devolves upon him of making out such circumstances of alleviation, excuse or justification as will afford a foundation for his defence, does not apply to the case where such circumstances arise out of the evidence against him. Therefore, where various circumstances were brought out in the course of the Crown's own case which bore materially on the question of the accused's intent, & the issue was raised thereon whether the Crown had adduced sufficient proof to discharge its own burden of establishing the offence of murder :—*Held :* the judge in charging the jury should have given them to understand, without imposing any *onus* on the accused, that if, in view of such circumstances, they entertained any reasonable doubt as to the prisoner having a murderous intent, they could not properly find him guilty of murder.—R. *v.* PRIMAK, [1930] 1 W. W. R. 755 ; 3 D. L. R. 345 ; 53 Can. C. C. 203 ; 24 S. L. R. 417.—**CAN.**

p i. —— *Assisting police.*]—On a charge of burglary the accused stated he was instructed by a police officer to take part in a burglary in order to assist the police in bringing a criminal to justice. He informed the police before the burglary as to where & when it was to take place, accompanied the real burglar in his breaking into a house & taking goods, then instructed the police where the goods were to be found & gave information leading to the arrest of the criminal. There was conflict between the evidence of the accused & that of the police officer who instructed him. The magistrate convicted the accused, stating he was relieved from weighing the evidence of the police officer & the other witnesses, as the evidence showed that accused helped to commit the crime :—*Held :* reversing the decision of the magistrate, if accused's evidence is believed, what he did was not with the intention of committing felony, but with the intention of helping the police.—R. *v.* GILMORE (1930), 43 B. C. R. 57.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

a (p. 34) **i.** —— *Weights & Measures Act, R. S. C.*, 1927, *s.* 63.]—*Mens rea* is not an essential element of the offence created by sect. 63 of Weights & Measures Act, R. S. C., 1927, which penalises the selling or delivering of anything by weight, measure or number which is short of the quantity ordered or purchased.—R. (GRINDEY) *v.* PIGGLY WIGGLY CANADIAN, LTD., [1933] 2 W. W. R. 475 ; 4 D. L. R. 491 ; 60 C. C. C. 104 ; 41 Man. L. R. 249.—**CAN.**

59 i. *Notification of contagious disease —Public Health Act, R. S. O.*, 1914 (*c.* 218), *s.* 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable :—*Held :* there was no *mens rea*, & he could not be guilty of a criminal offence.—R. *v.* GORDON, [1921] 2 D. L. R. 358 ; 42 Can. Crim. Cas. 26 ; 54 O. L. R. 355.—**CAN.**

o (p. 38) **i.** ——.]—*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to

72b. —— ——.]—To an information under Larceny Act, 1861 (c. 96), s. 23, for unlawfully & wilfully killing a house pigeon it is not a defence, either that deft. killed the pigeon honestly believing that it was a wild pigeon which he might lawfully kill, or that he killed it because he entertained an apprehension that, although it had not as yet done so, it might possibly proceed to damage his crops.—COTTERILL *v.* PENN, [1936] 1 K. B. 53; 105 L. J. K. B. 1; 153 L. T. 377; 99 J. P. 276; 51 T. L. R. 459; 79 Sol. Jo. 383; 33 L. G. R. 307; 30 Cox, C. C. 258, D. C.

72c. **Refusal to maintain wife & family.**]—It is no defence to a charge of "wilfully refusing & neglecting to maintain" a wife & family, whereby they have become chargeable to the common fund of a union, that the husband *bonâ fide* but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial.—BIGGS *v.* BURRIDGE (1924), 89 J. P. 75; 22 L. G. R. 555, D. C.

100. *Add. Annotation :*—**Refd.** R. *v.* Wicks, [1936] 1 All E. R. 384.

102. *Add. Annotation :*—**Refd.** Orpen *v.* Hay market Capital, Ltd. (1931), 145 L. T. 614.

112. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

122. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead, [1930] 1 K. B. 211.

133. *Add. Annotation :*—**Apld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

134. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

147. *Add. Annotation :*—*As to* (1) **Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

150. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

167. *Add. Annotations :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258; R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

177. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

178. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

180. *Add. Annotation :*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

181a. —— ——.]—(1) The offence of uttering & publishing an obscene libel is established as soon as the prosecution has proved the publication & obscenity of the matter charged, & a jury should not be directed that, beyond this, they must find an intent to corrupt public morals.

(2) The test of obscenity is that laid down by COCKBURN, C.J., in *R.* v. *Hicklin*, No. 8070, "whether the tendency of the matter charged as obscenity is to deprave & corrupt those whose minds are open to immoral influences."

(3) *Semble :* it is a good defence to the charge that the publication of matter *primâ facie* obscene was for the public good, as being necessary or advantageous to religion, science, literature or art, provided that the manner & extent of the publication does not exceed what the public good requires.—R. *v.* DE MONTALK (1932), 23 Cr. App. Rep. 182, C. C. A.

183. *Add. Annotation :*—**Consd.** R. *v.* Walker (1934), 24 Cr. App. Rep. 117.

A. Infants under Seven (p. 53).

Read, now, "Infants under Eight" (*see* Children & Young Persons Act, 1933 (c. 12), s. 50.)

212. *Add. Annotations :*—*As to* (3) **Consd.** R. *v.* Bailey, [1924] 2 K. B. 300. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

229. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* Kenneally (1930), 22 Cr. App. Rep. 52. *As to* (2) **Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197. *Generally,* **Refd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (No. 2) (1930), 23 B. W. C. C. 135; Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462; Sodeman *v.* R., [1936] 2 All E. R. 1138.

Inland Revenue Act, s. 180 (*e*). This does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.—R. (JACKSON) *v.* HUTCHINSON, [1925] 3 W. W. R. 744.—**CAN.**

sb. *Keeping beer over legal strength—Ontario Temperance Act,* 1916 (c. 50), *s.* 40.]—*Held : mens rea* necessary element.—R. *v.* HYDE, [1925] 2 D. L. R. 958; 44 Can. Crim. Cas. 1.—**CAN.**

sc. —— ——.]—*Held : mens rea* not necessary element.—R. *v.* BURKE, [1925] 3 D. L. R. 625; 44 Can. Crim. Cas. 234.—**CAN.**

sf. *Using bottle for liquor incorrectly labelled.*]—*Held : mens rea* essential ingredient.—R. *v.* SAVICH (Ont.) (1927), 47 Can. Crim. Cas. 262.—**CAN.**

sj. *Branding animal without authority of owner—Brand Act, R. S. S.,* 1920 (c. 123), *s.* 17(*b*).]—*Held : mens rea* essential ingredient.—CLARK *v.* LAWSON (Sask.), [1926] 1 W. W. R. 173; 46 Can. Crim. Cas. 118.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—A.

f i. —— *Driving motor—Breach of provisions of Motor Vehicle Act.*]—R. *v.* DOYLE (Ont.), [1928] 50 Can. Crim. Cas. 233.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

o. Delete the word "not."

PART I. SECT. 4, SUB-SECT. 1.

d i. —— ——.]—A foreign subject comes within the purview of all Acts in force in British India, if he chooses to come into this country, unless such Act specially exempts him. Ignorance of law enforceable in British India might be pleaded in mitigation of sentence, but affords him no sort of privilege or immunity.—JITENDRA-NATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVERNMENT (1932), I. L. R. 60 Calc. 364.—**IND.**

PART I. SECT. 4, SUB-SECT. 2.

o i. —— ——.]—Mistake of fact in order to be a defence in criminal law must not only be a *bonâ fide* belief, but must also be a reasonable belief. The standard to be adopted in deciding whether mistake of fact is reasonable is the standard of the reasonable man & the race & the idiosyncrasies or the superstitions or the intelligence of the person accused do not enter into the question.—R. *v.* MBOMBELA, [1933] App. D. 269.—**S. AF.**

PART I. SECT. 5, SUB-SECT. 1.—B. (b).

201 ii. —— *Proof that accused under fourteen—Onus of proof lies on accused.*]—R. *v.* SCHNEIDER (Sask.), [1927] 1 D. L. R. 999; [1927] 1 W. W. R. 306; 47 Can. Crim. Cas. 61.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—B. (b).

229 xiii. —— ——.]—A man may appreciate the nature & quality of his deed as an illegal act, & may yet be insane in respect that he fails to recognise that the act is morally wrong; & it is sufficient to justify a finding that accused is incapable of instructing his defence that, although sane in ordinary matters, he is insane in regard to the particular subject-matter of the charge which is made against him.—H.M. ADVOCATE *v.* SHARP, [1927] S. C. (J.) 66.—**SCOT.**

229 xiv. —— ——.]—TOLA RAM *v.* R. (1927), I. L. R. 8 Lah. 684.—**IND.**

229 xv. —— ——.]—The word "and" in Criminal Code, R. S. C., 1927, s. 19, should be construed as "or."—R. *v.* JEANOTTE, [1932] 2 W. W. R. 283.—**CAN.**

o i. —— —— ——.]—A man may be suffering from some form of insanity, in the sense in which the word would be used by an alienist, but may not be suffering from unsoundness of mind, as defined in Indian Penal Code, s. 84. The law recognises nothing but incapacity to realise the nature of the act, & presumes that where a man's

230a. ——— ———.]—The Ct. of Criminal Appeal has no power to alter the rules in *McNaghten's Case*, No. 229, *ante*.—R. *v.* FLAVELL (1926), 19 Cr. App. Rep. 141, C. C. A.

Annotation :—**Refd.** Sodeman *v.* R., [1936] 2 All E. R. 1138.

237a. ——— ———.]—Petitioner, who was a labourer, took a young girl for a ride on his bicycle, strangled her, tied her hands behind her back, stuffed some of her clothing into her mouth, & left her for dead. The cause of death was suffocation. Petitioner had committed three previous murders in very similar ways. Petitioner's defence was that he was insane at the time. At the trial two government prison doctors & a specialist in mental diseases gave evidence in support of that defence. No expert evidence on that issue was tendered by the Crown :—*Held :* (1) the law with regard to insanity was stated in *M'Naghten's Case*, & there was not to be added to that statement another rule that where a man knew that he was doing wrong, but was forced to do the act by an irresistible impulse produced by disease, he could rely upon a defence of insanity ; (2) the burden in cases in which an accused had to prove insanity might fairly be stated as not being higher than the burden which rested upon a pltf. or deft. in civil proceedings.—SODEMAN *v.* R., [1936] 2 All E. R. 1138 ; 80 Sol. Jo. 532, P. C.

244a. *S.P.*—R. *v.* KÖPSCH (1925), 19 Cr. App. Rep. 50, C. C. A.

Annotation :—**Refd.** Sodeman *v.* R., [1936] 2 All E. R. 1138.

256. *Add. Annotation :—As to* (2) **Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

260a. ——— **No higher than in civil proceedings.**]—SODEMAN *v.* R., No. 237a, *ante*.

302. *Add. Annotation :—As to* (1) **Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

306. *Add. Annotations :*—**Consd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526 ; R. *v.* Stone, [1937] 3 All E. R. 920. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

359. After this case add :—

Abolition of presumption.]—*See* Criminal Justice Act, 1925 (c. 86), s. 47.

408. *Add. Annotation :*—**Apld.** Calmenson *v.* Merchants' Warehousing Co. (1921), 90 L. J. P. C. 134.

417. *Add. Annotations :*—**Consd.** A.-G. for Straits Settlmt. *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Badman *v.* R., [1924] 1 K. B. 64.

mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.—MANI RAM *v.* R. (1926), I. L. R. 8 Lah. 114.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.—B. (c).

241 v. ———.]—Accused, who was charged with murder, gave evidence at his trial stating that he remembered nothing from some time shortly before the commission of the crime, when he had a conversation with his wife, until some hours afterwards, when he was charged with the crime in the police station. The defence was that during that period the accused's mind was blank, that he acted unconsciously & automatically, that his mind was so dissociated from his actions that he could not know the nature & quality of his act, or that it was wrong, & that his mind was inactive as a result of mental disease, to which he was predisposed & the onset of which was attributable to his physical & nervous constitution & the happening of certain events. The jury found him guilty & he was sentenced to death. On appeal to the Ct. of Criminal Appeal the trial Judge's charge to the jury was challenged on the ground (*inter alia*) that the Judge did not direct the jury to the question of "irresistible impulse," which, it was contended, was of itself a good defence in law, that was to say, that even if the accused knew the nature & quality of his act & knew it was wrong, he had a complete defence in law if he nevertheless perpetrated the crime in obedience to an uncontrollable or irresistible impulse to do the act :—*Held :* by the Ct. of Criminal Appeal, there was no evidence to sustain this contention ; it was inconsistent with the case made at the trial, & the accused's appeal must be dismissed.—A.-G. *v.* O'BRIEN, [1936] I. R. 263.—**IR.**

245 iii. ——— ———.]—The driver of a motor car was charged with causing the death of a pedestrian by his reckless driving. He stated that he was not guilty "in respect that by the incidence of temporary mental dissociation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manœuvring of the car :—*Held :* if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty.—H.M. ADVOCATE *v.* RITCHIE, [1926] S. C. (J.) 45.—**SCOT.**

253 iv. ——— ———.]—R. *v.* BROCKENSHIRE & CLARKSON, [1932] 1 D. L. R. 156 ; [1931] O. R. 806 ; 56 Can. C. C. 340.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—E.

279 i. *Need not be scientific evidence.*]—R. *v.* MCCOSKEY, [1927] 2 D. L. R. 539 ; 47 Can. Crim. Cas. 122 ; 60 O. L. R. 44.—**CAN.**

e i. ———.]—R. *v.* BROCKENSHIRE & CLARKSON, [1932] 1 D. L. R. 156 ; [1931] O. R. 806 ; 56 Can. C. C. 340.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.—A.

h i. ——— ———.]—WARYAM SINGH *v.* R. (1926), I. L. R. 7 Lah. 141.—**IND.**

PART I. SECT. 5, SUB-SECT. 3.—B.

297 iv. ———.]—Evidence of drunkenness falling short of a proved incapacity in accused to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.—SHERU & GAMA *v.* R. (1923), I. L. R. 7 Lah. 50.—**IND.**

303 viii. ——— ———.]—The accused appealed from his conviction for murder. It had been contended in his defence that at the time of his act his condition from drink was such that the act could not be murder ; & he alleged misdirection by the trial judge to the jury on this question, which involved the law as to what state of incapacity resulting from drink will reduce a crime from murder to manslaughter :—*Held :* in the circumstances of the case, an essential question for the jury was : given the existence of some degree of capacity in the accused, & assuming the facts deposed to by Crown witnesses, if credited, in describing the accused's act in striking the fatal blow & his conduct & expressions before & after that act, whether or not he was so affected by drink as to be incapable of having the intent to kill or of having the intent, in reckless disregard of the consequences, to cause some bodily injury, "known" to him to be "likely to cause death." That question was one upon which the jury must pass in order to enable them to determine the existence or non-existence of the intent in fact. As the trial judge, while properly directing the jury's attention to the defence as put forward by accused's counsel, that accused was in such a state that his mind was not functioning, that his "mind was gone," that he was incapable of a degree of "thought" enabling him to be aware of the nature of his physical acts, did not direct them to the question above defined, there should be a new trial.—MACASKILL *v.* R., [1931] S. C. R. 330 ; 3 D. L. R. 166 ; 55 Can. C. C. 81 ; *revsg.*, S. C. *sub nom.* R. *v.* MCASKILL [1931] 1 D. L. R. 979.—**CAN.**

303 ix. ——— ———.]—Prisoner was indicted for the murder of a police officer. The only defence was that he was so drunk as to be incapable of forming an intent & therefore was at most guilty of manslaughter. The judge charged the jury thus : "What you must determine is if this man can show that his mind was so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous & so likely to inflict serious injury. That is your test. If upon the whole evidence you feel honestly that this man was drunk to the extent that he did not know what he was doing was dangerous & likely to cause serious injury, then the offence ought to be reduced to manslaughter, but that is for you" :—*Held :* a misdirection.—R. *v.* KOVACH, [1931] 1 D. L. R. 977 ; 66 O. L. R. 398 ; 55 Can. C. C. 40.—**CAN.**

303 x. ——— ———.]—R. *v.* MCASKILL, [1930] 3 M. P. R. 469.—**CAN.**

303 xi. ——— ———.]—R. *v.* G [1937] 3 W. W. R. 109.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

456 iv. —— ——.]—Where several persons join in beating another with *lathis*, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction.—R. *v.* UMED (1923), I. L. R. 45 All. 727.—**IND.**

456 v. —— ——.]—The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.—GHOSH *v.* R. (1924), 41 T. L. R. 27; L. R. 52 Ind. App. 40.—**IND.**

PART I. SECT. 6, SUB-SECT. 3.—A. (a) i.

f i. —— *Rape—Putting hand over girl's mouth.*]—R. *v.* HEWSTON & GODDARD (1930), 55 Can. C. C. 13.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—A. (b).

h i. ——.]—The mere standing by ready to render assistance if necessary in the commission of a crime is enough to constitute aiding & abetting, as the fact that help is at hand is of assistance to the actual perpetrator & facilitates the commission of the crime.—R. *v.* MBANDE, [1933] A. D. 382.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 3.—B. (a).

n i. ——.]—A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter.—R. *v.* RASOOL, [1924] App. D. 44.—**S. AF.**

n ii. ——.]—*Held:* it did not follow as a matter of law that, if appct. aided & abetted the shopbreaking by keeping watch outside, he was criminally responsible for the homicide committed by his confederates within. Whether it followed from the facts was a question for the jury, depending on the conclusion they drew as to the nature of the plan to which he lent his aid & as to his knowledge of his confederate's intention.—BRENNAN *v.* R. (1936), 55 C. L. R. 253; 42 Argus L. R. 318; 10 A. L. J. 116.—**AUS.**

512 i. *Larceny.*]—To sustain a conviction against several for taking a car without the owner's consent, it must be shown that each participated or that they were acting together.—R. *v.* RICE, [1936] 1 D. L. R. 141; 10 M. P. R. 71; 65 Can. C. C. 97.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—B. (b).

530 i. *Manslaughter—Death in a fight.*]—R. *v.* SILVERSTONE, [1931] 3 D. L. R. 760; O. R. 50; 55 Can. C. C. 270.—**CAN.**

530 ii. *Wife drowning herself & children—Husband present & conniving.*]—The prisoner was charged with the murder of his wife & their two young children, who met their deaths by drowning. The jury asked to be directed as to the responsibility of the prisoner on the assumption that his wife took the children into the water without his assistance, while he stood by "conniving to" the act. The jury found the prisoner guilty of the manslaughter of his wife & the children:—*Held:* the verdicts of manslaughter of the children should stand; the verdict of manslaughter of the wife should also stand. The legal result of that finding was, in the circumstances, that the accused was guilty as a participator or principal in the second degree.—R. *v.* RUSSELL, [1933] V. L. R. 59; Argus L. R. 76.—**AUS.**

sd. *Assault.*]—M. assaulted S. with intent to rob him. D. was not present at the assault, but there was evidence that he had been seen earlier in the evening driving in his car with M., that M., when pursued by S., immediately after the assault, took refuge in D.'s car, in which D. was then seated, & which was stationary by the roadside, with its lights off, in a dark spot close to where the assault had been committed:—*Held:* the jury was entitled to draw the inference that the assault was committed in pursuance of a common purpose agreed upon by M. & D.—M. & D. R. *v.* DUNN (1930), 30 S. R. N. S. W. 210; 47 N. S. W. W. N. 79.—**AUS.**

sg. *Murder—Attempt to kidnap.*]—In a charge of murder an accomplice in a kidnapping needs no corroboration. Homicide committed during an attempt at kidnapping is murder.—R. *v.* BANNISTER (ARTHUR), [1936] 2 D. L. R. 795; 66 Can. C. C. 38; 10 M. P. R. 391; 6 F. L. J. (Can.) 4.—**CAN.**

sh. —— ——.]—An accomplice to kidnapping cannot be held for murder committed by another accomplice in the absence of proof of common intention or purpose.—R. *v.* BANNISTER (DANIEL), [1936] 3 D. L. R. 540; 10 M. P. R. 422; 66 Can. C. C. 352; 6 F. L. J. (Can.) 52.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—B. (f) ii.

se. *Common design to escape—Shooting with intent to murder by one.*]—The mere fact that two men were attempting together to escape arrest does not justify a conviction of both of them for an offence committed by one in resisting apprehension.—R. *v.* SCOTT & KILLICK, [1932] 2 W. W. R. 124.—**CAN.**

ing prostitutes contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week, & there was no evidence that any offence had been committed in his presence or with his knowledge:—*Held:* having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction. — ALLEN *v.* WHITEHEAD, [1930] 1 K. B. 211; 99 L. J. K. B. 146; 142 L. T. 141; 94 J. P. 17; 45 T. L. R. 655; 27 L. G. R. 652; 29 Cox, C. C. 8, D. C.

Annotation:—**Refd.** Wilson *v.* Murphy, [1937] 1 All E. R. 315.

708a. —— **Not supported by evidence that defendant accessory after the fact.**]—R. *v.* FITZPATRICK, No. 40a, *ante*.

732a. ——.]—R. *v.* FITZPATRICK, No. 40a, *ante*.

750. *Add. Annotation:*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311.

751. *Add. Annotation:*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

751a. ——.]—On a charge of attempting to obtain by false pretences, "intent" & "attempt" must be carefully distinguished.—R. *v.* PUNCH (1927), 20 Cr. App. Rep. 18, C. C. A.

Two letters were written by the accused to a man who had advertised for a situation & were sent to him by post. The letters, which were couched in obscene & lecherous terms, purported to be written by a woman, & invited the recipient to come to the place where the accused lived, & to have immoral relations. The recipient, on reading them, believed they were written by a woman. He did not go to the place where the accused lived, & no meeting between them took place. The accused was charged with attempting to procure the commission of an act of gross indecency by the recipient of the letters with himself. At the trial the jury were asked to say only (i) whether the accused was the writer of the letters, & (ii) if so, whether the letters amounted to an attempt to procure the commission of the offence charged. The jury received no direction in regard to what was necessary in law to constitute an attempt, as distinguished from mere intention, to commit an offence. The jury convicted the accused:—*Held:* the accused's acts were only remotely, & not immediately, connected with the commission of the offence, & the jury should have been directed that such acts did not in law constitute an attempt to procure the commission of the offence charged. The conviction must, accordingly be quashed.—R. *v.* WOODS (1930), 143 L. T. 311; 46 T. L. R. 401; 29 Cox, C. C. 165; 22 Cr. App. Rep. 41, C. C. A.

751c. ——.]—R. *v.* FREEDMAN, No. 10779a, *post*.

755. *Add. Annotation:*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

756. *Add. Annotations:*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311. **Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

782. *Add. Annotation:*—**Refd.** R. *v.* Manley (1932), 97 J. P. 6.

788a. —— **Of first marriage—Bigamy.**]—A., a married woman, in the lifetime of her husband, married B., who was a widower, B. having been the husband of A.'s deceased sister:—*Held:* if B. knew at the time of his marriage with A. that she was a married woman, he might be convicted of the felony of counselling A. to commit bigamy.—R. *v.* BRAWN (1843), 1 Car. & Kir. 144; *sub nom.* R. *v.* BAWN (1843), 1 L. T. O. S. 528; 7 J. P. 530; 1 Cox, C. C. 33.

795. *Add. Annotation:*—**Refd.** R. *v.* Manley, [1933] 1 K. B. 529.

799. *Add. Annotation:*—**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

PART I. SECT. 6, SUB-SECT. 4.—F.

693 i. *May be indicted as principal.*]—An accessory before the fact to a felony may be indicted as a principal, but if it is sought to prove that he was an accessory & not a principal it is an essential part of the Crown case to prove that there was a felony committed.—R. *v.* SEE LUN & WELSH (1922), 32 S. R. N. S. W. 363; 49 N. S. W. W. N. 116.—**AUS.**

PART I. SECT. 6, SUB-SECT. 5.—B.

734 i. *Indictment as accessory to murder—Acquittal of principal.*]—A husband was found guilty on a charge of being an accessory after the fact to the murder of a child by his wife. The wife was subsequently charged with the murder & acquitted:—*Held:* the acquittal of the wife was not sufficient ground for quashing the conviction of the husband.—R. *v.* WILLIAMS (1932), 32 S. R. N. S. W. 504; 49 N. S. W. W. N. 144.—**AUS.**

PART I. SECT. 6, SUB-SECT. 6.—B. (a).

750 v. ——.]—R. *v.* RUMP, [1929] 2 D. L. R. 824; 1 W. W. R. 649; 51 Can. Crim. Cas. 236; 41 B. C. R. 36.—**CAN.**

sd. *Overt act followed by change of mind.*]—Where the prisoner has so far prosecuted his criminal purpose as otherwise to be guilty of an attempt, he is not exculpated by the fact that owing to a mere change of mind he desists, of his own free will, from completion of his purpose. With intent to break & enter a shop, a confederate of the prisoner climbed to a suitable position & inserted a lever under a window. Before he exerted any force on the lever he changed his mind & descended:—*Held:* the acts were sufficient to constitute an attempt to break & enter the shop.—R. *v.* PAGE, [1933] V. L. R. 351; Argus L. R. 374.—**AUS.**

PART I. SECT. 6, SUB-SECT. 6.—B. (b).

763 vi. ——.]—R. *v.* DUFFY, [1931] 4 M. P. R. 81; 57 C. C. C. 186.—**CAN.**

PART I. SECT. 6, SUB-SECT. 6.—C.

772 i. *Liability for attempt—Larceny.*]—R. *v.* SHAID, [1926] 3 D. L. R. 553; [1926] 2 W. W. R. 319; 46 Can. Crim. Cas. 209; 36 Man. L. R. 64.—**CAN.**

772 ii. —— ——.]—Accused was convicted of attempting to steal money from the person of a man in a public street. It was proved that the accused put his hand towards the man's pocket with the object of stealing money therefrom, but it was not proved that there was anything in the pocket:—*Held:* in order to support a conviction of attempt to steal, it was not necessary to prove the existence of anything which could have been stolen; & conviction sustained.—LAMONT *v.* STRATHERN, [1933] S. C. (J.) 33.—**SCOT.**

PART I. SECT. 6, SUB-SECT. 6.—D.

sf. *Charge of assault with intent to commit rape—Amounts to charge of attempted rape.*]—R. *v.* MACINTYRE (1925), 43 Can. Crim. Cas. 356.—**CAN.**

sg. *Where full offence not proved.*]—Where complete commission is not proved, the depositions must be considered *de novo* in deciding whether the evidence establishes an attempt.—R. *v.* CUTT, [1937] 1 D. L. R. 238; 67 Can. C. C. 240.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—A.

h i. —— ——.]—Every person of legal responsibility who knowingly & voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—R. *v.* GAL[illegible]ER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

n ii. —— ——.]—An accused may be convicted on a charge of counselling an offence, although the person counselled did not actually commit the offence.—R. *v.* YEE JAM HONG (**Sask.**), [1929] 1 D. L. R. 179; 50 **Can. Crim.** Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

812. *Add. Annotations :*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

814. *Add. Annotations :*—*As to* (1) **Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. *As to* (2) **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. *Generally*, **Refd.** G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

860. *Add. Annotation :*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

861. *Add. Annotations :*—*As to* (1) **Consd.** R. *v.* Manley (1932), 97 J. P. 6. *Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

862a. Conspiracy to procure admission to Inn of Court—Forged certificates.]—The Benchers of the Inns of Ct. owe a duty to the public in respect of admission to the Bar : therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222 ; 75 Sol. Jo. 121 ; 22 Cr. App. Rep. 160, C. C. A.

902. *Add. Annotation :*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

912a. —— ——.]—On a prosecution for a crime, the proof whereof is supposed to consist wholly or in part of evidence of a conspiracy entered into by the party then indicted, & under trial, so that the conspiracy is to be given in evidence against him, general evidence of the existence of the conspiracy charged, may be received in the first instance, though it cannot affect such deft., unless brought home to him or to an agent employed by him.—THE QUEEN'S CASE (1820), 2 Brod. & Bing. 302 ; 129 E. R. 983.

930. *Add. Annotation :*—**Refd.** R. *v.* Luberg (1926), 135 L. T. 414.

933a. —— **Though no direct communication between conspirators.**]—R. *v.* MEYRICK, R. *v.* RIBUFFI (1929), 45 T. L. R. 421 ; 21 Cr. App. Rep. 94, C. C. A.

Part II.—Original Criminal Jurisdiction.

960a. ——.]—GREY'S (LORD) CASE (1541), 1 State, Tr. 439.

961a. Right of Scotch peer.]—SANCHAR'S (LORD) CASE (1612), 9 Co. Rep. 117a ; 77 E. R. 902 ; *sub nom.* SANQUIRE'S (LORD) CASE, 2 State Tr. 743.

Annotations :—**Consd.** R. *v.* Graham (1791), 2 Leach, 547. **Refd.** Clarendon's Case (1667), 6 State, Tr. 291.

967a. —— **Not by articles exhibited by peer in House of Lords.**]—CLARENDON'S (EARL) CASE (1667), 6 State, Tr. 291.

975a. ——.]—SOMERSET'S (DUKE) CASE (1551), 1 State, Tr. 515.

985a. Right to take advice of judges as to submission of defence.]—DE CLIFFORD'S (LORD) TRIAL, [1936] W. N. 4 ; 81 L. Jo. 60.

986. *Add. Annotations :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices, [1931] 2 K. B. 442. **Refd.** R. *v.* Edwards, *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

989. For "R. *v.* ELLIOT" read "R. *v.* ELLIOT, HOLLIS & VALENTINE."

Add. Annotations :—**Refd.** R. *v.* Paty (1704), 2 Ld. Raym. 1105 ; Burdett *v.* Abbot (1811), 14 East, 1.

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h iii. —— ——.]—Under sect. 69 (*d*) of Criminal Code a person who counsels another to commit an offence is guilty of the substantive offence of counselling, even though the offence counselled is not committed or attempted.—R. *v.* GORDON & GORDON, [1937] 2 W. W. R. 455.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—A.

s i. ——.]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence. —R. *v.* SEGAL, [1925] 4 D. L. R. 762 ; Q. R. 39 K. B. 436.—**CAN.**

s ii. *What amounts to—Conspiring with another ignorant of intended fraud.*] —R. *v.* SEGUIRE (Ont.) (1928), 49 Can. Crim. Cas. 266.—**CAN.**

sk. *Conspiracy to effect public mischief.*]—Conspiracy to effect a public mischief, or to prevent the administration of justice, is a crime at common law.—R. *v.* CAMERON, [1935] 4 D. L. R. 447 ; 64 Can. C. C. 224 ; 50 B. C. R. 179.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—C.

831 i. *One alone cannot conspire.*]—There can be no conspiracy unless two or more minds are *ad idem* as to their object.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

835 i. *Husband & wife.*]—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy. —R. *v.* MCKECHIE, [1926] N. Z. L. R. 1.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 8.—N.

881 ii. —— ——.]—Although conspiracy to commit a crime, being in itself an indictable offence, may be charged alone in an indictment & independently of the crime conspired to be committed, it is nevertheless necessary that a count charging conspiracy alone, without the setting out of any overt act, should describe it in such a way as to contain in substance the fundamental ingredients of the particular agreement which is charged, or, in other words, in such a way as to specify in substance, the specific transaction intended to be brought against the accused.—BRODIE *v.* R., [1936] S. C. R. 188 ; 3 D. L. R. 81 ; 65 Can. C. C. 289.—**CAN.**

894 ii. —— ——.]—R. *v.* BOOKHALTER & LANIN, [1924] 3 D. L. R. 122 ; 42 Can. Crim. Cas. 186.—**CAN.**

894 iii. —— ——.]—R. *v.* PORTER & MARKS (B. C.), [1928] 4 D. L. R. 825 ; 50 Can. Crim. Cas. 399.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O (a).

921 i. *Conspiracy may be inferred from facts proved.*]—R. *v.* SIMINGTON (B. C.) (1926), 45 Can. Crim. Cas. 249.—**CAN.**

921 ii. *S. P.* R. *v.* THORNTON (B. C.) (1926), 46 Can. Crim. Cas. 249.—**CAN.**

q i. —— ——.]—If an information charges a conspiracy between A., B., C. & D., together & with E. & F. & others, & a conviction finds A. guilty of a conspiracy with B. & with E. & F. & others, the conspiracy on which A. is convicted is not a different conspiracy from the one on which he was charged.—R. *v.* MARINO & CRISOFI, [1927] 2 W. W. R. 468 ; 47 Can. Crim. Cas. 348 ; 38 B. C. R. 452.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O. (c).

935 x. —— ——.]—The rule of evidence that, on charges of conspiracy, the acts & declarations of each conspirator in furtherance of the common object are admissible against the rest, is applicable on a charge of bribery, since the crime of bribery involves corrupt conduct of, & the acting in concert by, & the existence of a common purpose between, the persons concerned. It is immaterial whether the existence of the common purpose or the participation therein of those alleged to have participated in the crime be proved first, though either element is nugatory without the other.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

935 xi. —— ——.]—Evidence of statements made by one conspirator against an alleged co-conspirator after the former had been arrested held not admissible against the latter.—R. *v.* PEPPER, [1937] 1 W. W. R. 62 ; 1 D. L. R. 517 ; 44 Man. L. R. 412 ; 6 L. Jo. 212 ; 67 C. C. C. 311.—**CAN.**

990. *Add. Annotation :*—**Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. [illegible]

991. *Add. Annotation :*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

992. *Add. Annotation :*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1005. *Add. Annotation :*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1016a. Power to order payment of taxes in respect of honorarium payable to clerk of court.]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36).—R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43 ; 94 L. J. K. B. 479 ; 132 L. T. 666 ; 89 J. P. 65 ; 41 T. L. R. 269 ; 69 Sol. Jo. 381 ; 27 Cox, C. C. 734, D. C.

1022a. —— ——.]—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 1138, *post.*

1030. *Add. Annotation :*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031. *Add. Annotation :*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031a. —— —— ——.]—It is not necessary in order that a person may be dealt with as an incorrigible rogue under Vagrancy Act, 1824 (c. 33), s. 5, on a second conviction for any of the offences named in sect. 4 of that Act, that the previous conviction should use the actual words "rogue & vagabond," since the statute itself provides that a person convicted of any of those offences "shall be deemed a rogue & vagabond."—R. *v.* TEESDALE (1927), 138 L. T. 160 ; 91 J. P. 184 ; 44 T. L. R. 30 ; 28 Cox, C. C. 438 ; 20 Cr. App. Rep. 113, C. C. A.

1032. *Add. Annotation :*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1032a. —— —— —— **Before charge gone into.**]—Deft., who was represented by a solr., was charged before a ct. of summary jurisdiction with an offence for which, if convicted, he would be liable to imprisonment for a term exceeding three months. He was not informed of his right to trial by a jury on appearing before the ct., before the charge was gone into, but he was so informed afterwards, when all the evidence had been heard, but before the ct. had announced their decision. Deft. protested twice by his solr. that he could not at that stage be put to this election, but on being informed by the chairman that if he did not elect, the case would be sent for trial, he stated by his solr. that he would be dealt with summarily. Deft. was then convicted & fined :—*Held :* the proceedings were a nullity as the giving of that information to the person charged on his appearing before the ct., "before the charge is gone into," in accordance with Summary Jurisdiction Act, 1879 (c. 49), s. 17, is a condition precedent to the validity of the subsequent proceedings. Accordingly the conviction was quashed.—R. *v.* DIXON, SOUTHAMPTON JUSTICES ; *Ex p.* PORTEOUS (1929), 142 L. T. 597, 598 ; *sub nom.* R. *v.* HAMPSHIRE JUSTICES, *Ex p.* PORTEOUS, 94 J. P. 70 ; 46 T. L. R. 157 ; 28 L. G. R. 84 ; 29 Cox, C. C. 113, D. C.

1034. *Add. Annotation :*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1042. *Add. Annotation :*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART II. SECT 1, SUB-SECT. 5.

sa. *Election for speedy trial.*]—R. *v.* CUMMINS (N. S.) (1928), 50 Can. Crim. Cas. 375.—**CAN.**

sb. ——.]—When a prisoner has elected a speedy trial, his consent to be so tried, on additional charges which it is sought to prefer against him, is required only when they are not founded on the facts or evidence disclosed in the depositions.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152 ; 50 Can. Crim. Cas. 246 ; [1928] 3 W. W. R. 550.—**CAN.**

sc. ——.]—R. *v.* YEE JAM HONG (Sask.), [1929] 1 D. L. R. 179 ; 50 Can. Crim. Cas. 372 ; [1928] 3 W. W. R. 490.—**CAN.**

sd. ——.]—R. *v.* SPEIDEL (Alta.) (1929), 52 Can. Crim. Cas. 311.—**CAN.**

se. ——.]—When a prisoner has consented to a speedy trial before the district ct. judge's criminal ct. on the charge for which he has been committed for trial, he may be so tried without any further consent on any other charge founded on the facts or evidence disclosed in the depositions.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748 ; 52 Can. Crim. Cas. 370.—**CAN.**

sf. ——.]—A good election for a speedy trial was held not to be affected by the fact that a subsequent election, made after a slight correction in the charge, may not have been taken in the proper manner.—R. *v.* WONG CHEUN [illegible], [1930] 3 W. W. R. 281.—**CAN.**

sh. ——.]—When a prisoner has elected for a speedy trial on the charge or charges for which he has been committed for trial, his consent to be so tried on additional charges which it is sought to prefer against him is required only when they are not founded on the facts or evidence disclosed in the depositions.—R. *v.* COODIN, [1934] 1 W. W. R. 784 ; 2 D. L. R. 709 ; 61 C. C. C. 353 ; 42 Man. L. R. 322.—**CAN.**

sk. —— *New trial.*]—On appeal by the Crown from the acquittal of the accused on a speedy trial of a charge under Opium & Narcotic Drug Act, 1929, the Ct. of Appeal ordered a new trial. The accused was, without re-election, tried again before the County Ct. Judge's Criminal Ct. & convicted. On an application for *habeas corpus* with *certiorari* in aid :—*Held :* said ct. had become *functus officio* upon the acquittal of the accused, &, in the absence of the consent of the accused, was without jurisdiction to re-try him. Sect. 1014 (4) of the Code applies only to the case of an "applt. convicted" ; & the fact that in this case the Ct. of Appeal did not direct the mode of new trial was, presumably, because it had no power to do so.—R. *v.* CHOW WAI YAM, [1937] 1 W. W. R. 435.—**CAN.**

sl. *Right of accused to be tried by jury—Receiving stolen property.*]—(1) Although property alleged to have been stolen or to have been received knowing it to have been stolen does not exceed $10 in value & the offences are, therefore, triable summarily by a police magistrate under Part VI. of the Criminal Code, they are nevertheless indictable offences & need not be tried summarily.

(2) Where there was nothing to suggest that the judge was of the opinion, & he could not properly be of the opinion, that the property alleged to have been received knowing it to be stolen did not exceed $200 in value, the case fell under sect. 67 of North-West Territories Act, 1886 (which is still in force), & when the accused elected for a jury trial a jury of six was a properly constituted tribunal. (3) When the stolen property alleged to have been knowingly received consisted of cancelled share certificates which appeared to be when received by the accused valid certificates with a market value far in excess of $200, & it was not shown that he was implicated in any way in the erasing of the cancellation marks :—*Held :* it could not properly be said, for the purpose of the application of sect. 67, that their value did not exceed $200.—R. *v.* DUSENBERG, [1930] 1 W. W. R. 717 ; 53 Can. C. C. 166 ; 24 Alta. L. R. 415.—**CAN.**

PART II. SECT 2, SUB-SECT. 1.

r i. *Offence committed before jurisdiction granted—Trial subsequent to* [illegible]—R. *v.* HEISLER (N. S.), [1928] 3 D. L. R. 221 ; 49 Can. Crim. Cas. 341.—**CAN.**

triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—R. v. LYLE (1924), 18 Cr. App. Rep. 59, C. C. A.

1090. *Add. Annotation:—As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1100. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

1101. *Add. Annotation:*—**Distd.** The Fagernes, [1927] P. 311.

1124. *Add. Annotations:—As to* (2) **Refd.** The Fagernes, [1926] P. 185. *As to* (4) **Refd.** The Fagernes, [1926] P. 185. *Generally*, **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1138. For the existing paragraph in original volume substitute the following paragraph:—

—— —— —— —— ——.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, &, some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—*Held:* quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admlty. of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.

SUB-SECT. 2.—STATUTORY PROVISIONS.

(Vol. XIV., p. 147.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11.

SUB-SECT. 3.—CHANGE OF VENUE.

(Vol. XIV., p. 150.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11 (1).

PART II. SECT. 2, SUB-SECT. 4.—A.

sa. *Offence within Admiralty jurisdiction—By alien—Consent to prosecution.*]—Criminal Code, s. 591, requires the consent of the Governor-General to proceedings against an alien for offences within Admiralty jurisdiction. This does not apply to offences against provincial statutes.—R. *v.* FLAHAUT, [1935] 2 D. L. R. 685; 9 M. P. R. 32; 63 Can. C. C. 308.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.—B.

g i. —— *Arrival in Calcutta—Jurisdiction of magistrate.*]—When some sailors committed an offence on board a British ship on high seas, which subsequently arrived in Calcutta, the Chief Presidency Magistrate had jurisdiction under Merchant Shipping Act, 1894 (c. 60), ss. 684, 686, to entertain a complaint against them, in the absence of evidence to show that they were not in Calcutta at the time. In any case, when the accused surrendered before the ct. it had jurisdiction to proceed with the trial.—BENGAL SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS *v.* RAISALEE (1932), I. L. R. 60 Calc. 44.—**IND.**

PART II. SECT. 2, SUB-SECT. 5.

c i. ——.]—Sect. 591 of the Criminal Code does not apply to an offence committed on a ship moored at Lapointe Pier in Burrard Inlet.

Even where the sect. applies, the leave of the Governor-General is effective if obtained before the committal of the accused for trial.—R. *v.* FURUZAWA (No. 2), [1930] 1 W. W. R. 953, 955; 53 Can. C. C. 398; 42 B. C. R. 541, 548.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

1148 iv. —— ——.]—Accused, charged with inflicting grievous bodily harm, was arrested on a warrant & brought before two justices for summary trial in a judicial district other than that in which the offence was committed. Justices of the peace in Saskatchewan have jurisdiction as such throughout the Province. He pleaded to the charge & made his defence, & it was not until he appealed from his conviction that he objected to the place of trial:—*Held:* applying Criminal Code, s. 577, applt. was properly charged & tried, even if 884 did apply; & even if he had a right to be tried in the district where the offence was committed, his objection to the place of trial was raised too late.—R. *v.* ROBERTS, [1928] 1 D. L. R. 260; 49 Can. Crim. Cas. 171; 22 Sask. L. R. 242; [1927] 3 W. W. R. 844.—**CAN.**

1162 i. *Where act is act of omission—Embezzlement — Non-accounting for money received—Place to which account should have been rendered.*]—In a case of criminal breach of trust by a servant whose duty it is to render account at one place, & there is no evidence to show where the alleged misappropriation was committed other than the fact of non-accounting, the *venue* may be laid in the place where the accused failed to account. If, however, there is evidence to show where the misappropriation was committed, the *venue* must be laid either in that place or the place where the property was received or retained. In the latter case there is no alternative *venue* in the place where the account was to be rendered. — PAUL DE FLONDOR *v.* EMPEROR (1931), I. L. R. 59 Calc. 92.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a).

t i. —— ——.]—*Held:* a letter written by deft. from a city in Pennsylvania to Ontario, enclosing money for travelling expenses & containing instructions to proceed to Montreal, was deft.'s act committed in Ontario, & a taking & enticing away within sect. 316 of the Code.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390; 59 O. L. R. 65.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

e i. —— —— ——.]—Where an offence charged is the fraudulent conversion of securities which consists of a continuity of acts, & where the beginning of the operation was in one county, & the continuation & completion in another county, the accused may be proceeded against in either county.—R. *v.* SOLLOWAY, [1934] O. R. 31; 61 C. C. C. 297.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

1254 xvi. —— ——.]—R. *v.* DE BRUGE (1927), 47 Can. Crim. Cas. 311; 60 O. L. R. 277.—**CAN.**

1254 xvii. —— ——.]—A change of venue will not be granted on the ground of local prejudice against the accused unless it plainly appears that such prejudice exists as will prevent a fair & impartial trial being had at the place where the offence is alleged to have been committed.—R. *v.* BRONFMAN, [1930] 1 W. W. R. 382; 53 Can. C. C. 32; 24 S. L. R. 321.—**CAN.**

sd. *Appeal from refusal to change—British Columbia.*]—Accused was convicted at Prince Rupert on a charge of murder. The Supreme Ct. of Canada on appeal set aside the conviction & ordered a new trial. An application was then made by accused to change the venue & was dismissed. An appeal from the order was dismissed for want of jurisdiction, as no appeal has been provided for by the Dominion Statute nor by the law of England applicable to this province.—R. *v.* SANKEY (1927), 49 Can. Crim. Cas. 195; 39 B. C. R. 247.—**CAN.**

Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation :*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

Part IV.—Bail.

1334a. Estreatment — Removal of.] — R. *v.* Stewart (1931), 23 Cr. App. Rep. 82, C. C. A.

1337. *Add. Annotation :*—**Apld.** *Ex p.* Hatry, (1929), 168 L. T. Jo. 303.

1345a. ——— ——— ———.]—*Ex p.* Hatry (1929), 168 L. T. Jo. 303.

PART III. SECT. 1.

sc. *Offence for which penalty one year's imprisonment.*]—A prosecution for an offence under a sect. of a Commonwealth Act for which the only penalty provided is imprisonment for one year, may be commenced at any time after the commission of the offence.—*Re* Huntley, *Ex p.* O'Regan (1934), 51 N. S. W. W. N. 93.—**AUS.**

se. *Vicennial prescription—Scotland.*]—The vicennial prescription of crime does not form part of the law of Scotland.—Sugden *v.* H.M. Advocate, [1934] S. C. 103.—**SCOT.**

PART III. SECT. 2.

1285 xv. ———.]—A prosecution under Lands & Forest Act, 1926, is begun by the laying of the information & not by the issue of the summons.—R. *v.* McDonnell, [1934] 3 D. L. R. 146; 7 M. P. R. 324; 61 C. C. C. 268.—**CAN.**

PART IV. SECT. 1.

1301 vii. ——— ———.]—R. *v.* Cooperbloom (1924), 43 Can. Crim. Cas. 394.—**CAN.**

1301 viii. ——— ———.]—The main, although not necessarily the only, consideration that should determine the exercise of a magistrate's discretion is the question of securing the attendance of accused.—Kok *v.* R. (1927), 48 N. L. R. 267.—**S. AF.**

m i. ——— ———.]—Criminal Code, s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. One justice has no jurisdiction to take the recognisances, &, if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner.—R. *v.* Moore, [1924] 1 W. W. R. 111; 41 Can. Crim. Cas. 164; 18 Sask. L. R. 60.—**CAN.**

m ii. ——— *Justice of the peace.*]—Under s. 664 of the Criminal Code a justice of the peace has jurisdiction to admit an accused to bail before he is brought before the justice in ct. on the charges preferred against him.—R. *v.* McKenzie, [1929] 3 D. L. R. 799; 2 W. W. R. 421; 51 Can. C. C. 423; 38 Man. L. R. 241; *affg.*, [1929] 1 W. W. R. 249.—**CAN.**

sf. *Amount of bail—Power to increase.*]—Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand:—*Held :* it was competent for the magistrate to reconsider the amount of the bail.—Swart *v.* R. (1923), 44 N. L. R. 133.—**S. AF.**

sg. *Effect of bail—Whether reckoned as part of imprisonment.*]—The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was *ultra vires.*—R. *v.* Iaci, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 363.—**CAN.**

sh. ——— ———.]—The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal.—R. *v.* Sipes, [1925] 3 D. L. R. 361; [1925] 2 W. W. R. 325; 44 Can. Crim. Cas. 60; 35 Man. L. R. 151.—**CAN.**

sj. *Estreatment of bail.*]—The procedure to be followed on an application to estreat bail is to be found in Bail Act, s. 12 (2).—R. *v.* Briggs (1923), 33 B. C. R. 297.—**CAN.**

sk. ——— *Application to remit — Appeal.*]—No appeal lies from the refusal by a county ct. judge of a motion to remit & discharge the estreat of appct.'s bail-bond.—R. *v.* Schneider (1923), 40 Can. Crim. Cas. 206; 56 O. L. R. 215.—**CAN.**

sl. ——— *No right where act of State prevents discharge of bond.*]—R. *v.* Getlin (1930), 54 Can. C. C. 225.—**CAN.**

sm. ——— *Record must be before court.*]—R. *v.* Gallivan (1930), 54 Can. C. C. 223.—**CAN.**

so. *Failure to surrender.—Liability of surety.*]—Salter *v.* Ogilvie, [1931] 2 D. L. R. 384; 2 M. P. R. 488.—**CAN.**

PART IV. SECT. 2.

p i. ———.]—R. *v.* Murray (1926), 59 N. S. R. 119.—**CAN.**

p ii. ———.]—In non-capital criminal cases, the general rule is that an accused person is entitled to bail unless there are reasonable grounds for supposing that he will not answer to his bail at the trial. As to what constitutes such reasonable grounds there is no definite rule. It is in the discretion of the judge, who is entitled to take into consideration, not only matters before him in evidence, but also such things as are matters of common knowledge.—R. *v.* McIver, [1929] V. L. R. 50.—**AUS.**

1336 iii. ———.]—The fundamental test on bail motions is the probability of prisoner's evading justice.—The State *v.* Purcell, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1336 iv. ———.]—When an accused person who is bailable at discretion in terms of Crimes Act, 1908, s. 368, applies for bail, the ct. should apply the rule & the three tests laid down by Coleridge, J., in *Re Robinson*, No. 1337, & adopted by Stout, C.J., in *R.* v. *Valli*, No. 1336 ii, when the Crown opposes bail in the absence of exceptional circumstances. The fact that conditions such as wireless, passport, restriction, transport development, & the like, have changed since the said rule & tests were laid down & adopted in 1854 & 1903 respectively, does not render the said decisions inapplicable at the present time; & the fact that the accused is a married man with four children, & the Crown's admission that the Crown had no special reason to suppose that the accused would be likely to abscond, are not such exceptional circumstances as to afford sufficient ground for modifying the rule.—*Re* Hewer, [1935] N. Z. L. R. 883.—**N.Z.**

1344 i. ——— ——— *Severity of punishment.*]—The ct. may have regard to (*a*) the seriousness of the crime charged; (*b*) the severity of the punishment; (*c*) the strength of the case on the depositions; (*d*) the prospect of a reasonably speedy trial; & (*e*) the opposition of the A.-G.—The State *v.* Purcell, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1344 ii. ——— ——— ———.]—Krishna Chandra Jagati *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

d i. ——— *Punishable with long term—Rich prisoner.*]—Except in exceptional circumstances persons accused of crimes punishable with long terms of imprisonment should not be released on bail. The richer the accused & the more easy it is for him to find bail, the less it is desirable that he should be released, & in no circumstances whatever, without an order of the High Ct., should any person accused of murder be allowed bail.—Hikayat Singh *v.* King-Emperor (1932), I. L. R. 11 Pat. 280.—**IND.**

1349 i. *Conduct of prisoner—Tampering with Crown witnesses.*]—Tampering with the prosecution witnesses may be a good reason for refusing bail.—Krishna Chandra Jagati *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

1349 ii. ——— ———.]—Where bail was opposed, on the ground that accused had been arrested before investigations were complete to prevent his tampering with Crown witnesses:—*Held :* the magistrate was not warranted in refusing bail for that reason.—Kok *v.* R. (1927), 48 N. L. R. 267.—**S. AF.**

PART IV. SECT. 4.

1361 v. ——— ———.]—R. *v.* Stagg (1925), 44 Can. Crim. Cas. 128.—**CAN.**

1361 vi. ——— ———.]—The State *v.* Purcell, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1361 vii. ——— ———.]—R. *v.* Nga San Htwa (1927), 5 I. L. R. Ran. 276.—**IND.**

1361 viii. ——— ———.]—Two persons were charged with murder & committed for trial. The coroner refused an application for bail made in his ct. Whereupon the appcts. applied to a judge in chambers by summons:—*Held :* in capital offences there must be exceptional circumstances to entitle the appcts. to bail.—R. *v.* Strong & Stannard (1935), 52 N. S. W. W. N. 179.—**AUS.**

1410a. Pending appeal to Privy Council—From Colonial Court.]—The accused, who was convicted of manslaughter in Cyprus, was granted special leave to appeal by the Judicial Committee. The latter had no jurisdiction to grant bail, & an application to the Supreme Ct. of Cyprus was also refused for want of jurisdiction. An application to be admitted to bail was then made to the King's Bench Division & was granted.—SUTTON *v.* R., [1932] W. N. 272 ; 74 L. Jo. 440.

1411a. —— When granted—Only in special circumstances.]—R. *v.* GREGORY (1928), 20 Cr. App. Rep. 185, C. C. A.

1416. *Add. Annotation :*—**Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67.

1416a. Breach of—Powers of court.]—If an applt. breaks a recognisance entered into before this ct. it will, on a further conviction, deal with him although the ct. below may have dealt with him.—R. *v.* HIBBERT (1924), 18 Cr. App. Rep. 36, C. C. A.

1436a. —— When term of imprisonment short.]—In the case of a short sentence, where an appeal cannot be speedily heard, the ct. may grant bail.—R. *v.* SELKIRK (1925), 18 Cr. App. Rep. 172, C. C. A.

1437. After this case add :—

.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 16 (2).

1442a. —— ——.]—The ct. grants bail only in exceptional circumstances.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 173, C. C. A.

1442b. —— ——.]—Applications for bail refused after grant of a certificate for appeal from the trial judge, the ct. holding that there were no exceptional circumstances sufficient to justify the granting of bail.—R. *v.* HOWESON, R. *v.* HARDY (1936), 25 Cr. App. Rep. 167, C. C. A.

1443a. —— Vacation intervening.]—In considering applications for bail the ct. has regard to the interval of a vacation.—R. *v.* CHARAVANMUTTU (1929), 21 Cr. App. Rep. 184, C. C. A.

1443b. —— ——.]—R. *v.* WAXMAN (1930), 22 Cr. App. Rep. 81, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443c. —— —— Intricate case.]—Bail granted in view of complexity of the case & of the interval of the Long Vacation.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App. Rep. 66, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443d. —— ——.]—Bail granted in view of the interval of the Long Vacation.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 68, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443e. —— ——.]—The interval of the Christmas vacation before an appeal can be heard may be a ground for the ct.'s granting bail.—R. *v.* HARDING, TURNER & KING (1931), 23 Cr. App. Rep. 143, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443f. —— ——.]—The existence of the Long Vacation held, in the circumstances, not to be a sufficient ground for granting bail to an appct.—R. *v.* STARKIE (1932), 24 Cr. App. Rep. 1, C. C. A.

1445. *Add. Citation :*—87 J. P.

Add. Annotation :—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66.

1445a. ——.]—The ct., in granting an application for leave to appeal against conviction & sentence, offered appct., in view of the interval before the hearing, bail on his own recognisance of £50 & that of a surety in the same sum.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 26, C. C. A.

1446a. ——.]—R *v.* DAVIDSON, No. 3129b, *post.*

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o i. ——.]—The opposition of the A.-G. to the giving of bail, while entitled to great weight, does not bind the discretion of the ct.—THE STATE *v.* PURCELL, [1926] I. R. 207 ; 59 I. L. T. 141.—**IR.**

PART IV. SECT. 5.

1383 ii. ——.]—After conviction for rape & a new trial ordered bail was refused. Rape is an offence punishable with death, & unless there is unreasonable & unjust delay in bringing on the second trial, bail will not be granted.—R. *v.* AUGER (1929), 52 Can. C. C. 80 ; 64 O. L. R. 198.—**CAN.**

1383 iii. ——.]—*Re* R. *v.* AUGER (Ont.) (1929), 52 Can. C. C. 281.—**CAN.**

st. *Obtaining by false pretences.*]—R. *v.* GIFFORD, [1931] 2 W. W. R. 414.—**CAN.**

PART IV. SECT. 8.

1401 v. —— ——.]—Where a police magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of *habeas corpus* for accused's release on bail was granted.—R. *v.* MACDONALD, [1925] 2 W. W. R. 643.—**CAN.**

PART IV. SECT. 12.

sb. *Grounds for granting.*]—While it is not possible to lay down an inflexible rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person.—R. *v.* SMITH, R. *v.* BARNARD (1924), 43 Can. Crim. Cas. 24 ; 56 O. L. R. 244.—**CAN.**

sd. ——.]—A prisoner who had been convicted on a charge of shop & warehouse breaking & sentenced to two years & four calendar months' imprisonment, applied for bail pending the hearing of an appeal against his conviction. The grounds of his application were that he might search for two persons who might prove that his identity had been mistaken ; the prisoner did not know the names or addresses of these persons, but knew their descriptions ; further grounds were personal to himself & family, such as a statement that he surrendered to his bail during trial & a desire to assist his family. There was little prospect of the appeal being successful :—*Held :* bail should not be granted.—R. *v.* RYAN, [1930] S. A. S. R. 125.—**AUS.**

sf. ——.]—R. *v.* VERIGIN (No. 1), [1932] 2 W. W. R. 489.—**CAN.**

sm. *By Supreme Court of Canada.*]—A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal, such jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a judge of that ct. designated by him.—STEELE *v.* R., [1924] 2 D. L. R. 470 ; [1924] S. C. R. 1 ; 42 Can. Crim. Cas. 47.—**CAN.**

si. *Time for entering into recognisance.*]—On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognisance which may be given under sub-sect. c.—R. *v.* BARILKO, [1924] 4 D. L. R. 832 ; 3 W. W. R. 424.—**CAN.**

sii. —— ——.]—R. *v.* DESJARLAIS, [1924] 3 W. W. R. 145.—**CAN.**

sn. *When application for release can be made—Before return by gaoler showing cause of commitment.*]—*Re* HOOD, [1928] 1 D. L. R. 624 ; 49 Can. Crim. Cas. 191 ; 59 N. S. R. 471.—**CAN.**

PART IV. SECT. 13.

so. *plaint.*]—*Held :* an appeal to the High Ct. of Justiciary against a refusal of bail was not confined to cases tried upon indictment. — LIDDELL *v.* [1926] S. C. (J.) 107.—**SCOT.**

Part V.—Proceedings Preliminary to Indictment.

1458. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

1459. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

1467. After cross-references following this case add "**Person outside jurisdiction.**]—*See* Criminal Justice Act, 1925 (c. 86), s. 31."

1467a. —— **Joint trial with another person necessary or expedient.**]—TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D. C.

1484. *Add. Citation :*—31 T. L. R. 401.

1512. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

1513a. ——.]—R. *v.* BOULTON (1871), 12 Cox, C. C. 87.

1536a. ——.]—R. *v.* BOULTON (1871), 12 Cox, C. C. 87.

1549. *Add. Annotation :*—**Refd.** Clubb *v.* Wimpey & Co., [1936] 1 All E. R. 69.

1555a. —— —— ——.]—WHITE *v.* TAYLOR (1801), 4 Esp. 80 ; 170 E. R. 648.

1562a. —— —— **Grounds for.**]—A constable may arrest a person without a warrant if at the time of effecting the arrest he has reasonable & probable cause to suspect that a crime has been committed, & that the person arrested is guilty of it. The question of whether the constable had reasonable & probable cause for making the arrest is for the judge & not for the jury. Amongst the facts which the constable may properly take into consideration in deciding whether to make the arrest is the fact that clothing belonging to the suspected person has been found near the scene of the crime.

Per LORD WRIGHT : It is doubtful whether the constable may consider the fact that the person arrested was well known to the police & was absent from his home at the material date.—MCARDLE *v.* EGAN (1934), 150 L. T. 412 ; 98 J. P. 103 ; 32 L. G. R. 85 ; 30 Cox, C. C. 67, C. A.

1583. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

1611. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

1619. *Add. Annotation :*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B.

1621. *Add. Annotation :*—**Consd.** Ledwith Roberts, [1937] 1 K. B. 232.

1622. *Add. Annotations :*—**Folld.** Isaacs *v.* Keech, [1925] 2 K. B. 354. **Consd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1622a. —— **Town Police Clauses Act, 1847 (c. 89), s. 28.**]—Under the above sect. in order to entitle a constable to take a person into

PART V. SECT. 1, SUB-SECT. 2.—A.

1488 ii. —— ——.]—Where a man who knows that he is under detention acquiesces in the situation there is an arrest, even though there has been no actual touching of his person.—HIGGINS *v.* MACDONALD (B. C.), [1928] 4 D. L. R. 241 ; [1928] 3 W. W. R. 115 ; 50 Can. Crim. Cas. 353.—**CAN.**

1498 i. *Necessary to inform prisoner under what power constable acting.*]—A person about to be arrested is entitled to know under what power the constable is arresting him &, if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one.—APPASANU MUDALIAR *v.* R. (1924), I. L. R. 47 Mad. 442.—**IND.**

sp. *Second arrest justified—First arrest irregular.*]—*Ex p.* MALATSKY, [1925] 2 D. L. R. 242 ; 43 Can. Crim. Cas. 306.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

1523 iv. —— —— ——.]—Where an accused has been charged with an offence, *e.g.* murder, over which a District Ct. judge has no jurisdiction, & with respect to which he cannot grant or withhold bail he has no power to order that a chattel, which is in the possession of the accused after his committal for trial & has not been impounded as an exhibit, shall be removed from his possession & delivered to the police, although it is an article which may afford evidence against the accused at the trial.

Semble : a judge of the Ct. of King's Bench has the power to grant the application for such order in such a case.—R. *v.* BOHUN, [1933] 3 W. W. R. 146 ; 60 C. C. C. 114.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (a).

1534 xvi. ——.]—A police officer is not justified in arresting a person without a warrant where he does not believe that person has committed an offence, even though he suspects that the arrested person has knowledge which will enable him to identify those guilty of an offence which has actually been committed.—WARNOCK *v.* FOSTER, [1936] 3 W. W. R. 625 ; 51 B. C. R. 179.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (b).

1555 v. ——.]—Telegrams from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.—SUBODH CHANDRA ROY CHOWDHRY *v.* R. (1924), I. L. R. 52 Calc. 319.—**IND.**

PART V. SECT. 1, SUB-SECT. 2.—E. (c) ii.

r i. —— ——.]—The keeping of a common gaming house is not an offence which one can be found committing & arrested for by a peace officer without a warrant under sect. 648 of the Criminal Code.—R. *v.* ROACH, [1923] 1 W. W. R. 433.—**CAN.**

r ii. —— ——.]—*Held :* an offence which a police officer can find a person committing & can legally arrest him without warrant.—R. *v.* SELOCK, [1931] 2 W. W. R. 745 ; 56 Can. C. C. 243 ; 25 Alta. L. R. 504.—**CAN.**

r iii. —— *Keeping disorderly house.*]—The keeping of a common bawdy house is an offence which a peace officer may find being committed &, therefore, one for which, under sect. 648 of the Criminal Code, he may arrest without a warrant for arrest where he does find the accused committing the offence. It follows that, under sect. 30 of the Code, he is justified in arresting without a warrant for arrest where on reasonable & probable grounds he believes that said offence has been committed.—WHITWORTH *v.* DUNLOP, [1934] 1 W. W. R. 604 ; 3 D. L. R. 727 ; 62 C. C. C. 41 ; 48 B. C. R. 161.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (e) i.

a i. —— *Liquor Act, R. S. A.*, 1922 (c. 226), *s.* 85.]—Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his premises &, without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant :—*Held :* accused was "found actually committing" an offence, & could be arrested without a warrant.—R. *v.* HILLS, [1924] 1 W. W. R. 651 ; 44 Can. Crim. Cas. 329 ; 20 Alta. L. R. 156.—**CAN.**

a ii. —— *Manitoba Temperance Act, C. A.*, 1924 (*c.* 118), *s.* 114.]—R. *v.* ZENICK (Man.), [1927] 3 W. W. R. 424 ; 48 Can. Crim. Cas. 398.—**CAN**

e i. —— ——.]—While where an offence consists not of an individual act but of a course of conduct, *e.g.*, the keeping of a disorderly house, it may be that if a peace officer saw over a period of time all the essential elements of the offence he could be said to have found the accused committing it, &, therefore, would be justified under s. 648 of the Code in arresting without warrant, yet, if the evidence is not sufficient to warrant a conviction it follows that the peace officer who made the arrest could not have found the accused committing the offence.—R. *v.* BOTTLEY, [1929] 3 D. L. R. 766; 2 W. W. R. 76 ; 51 Can. Crim. Cas. 384 ; 24 Alta. L. R. 43.—**CAN.**

custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—ISAACS *v.* KEECH, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.

Annotation :—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1622b. —— **Vagrancy Act, 1824 (c. 83), s. 4.**]—The special powers of arrest given to constables by Vagrancy Act, 1824 (c. 83), s. 4, are confined to apprehending persons who are of the class of persons described as "suspected persons" or "reputed thieves." Such persons can only be apprehended without warrant if they already are at the time of their arrest & imprisonment suspected persons or reputed thieves. That does not mean that if a constable suspects the person whom he apprehends he is entitled to arrest & imprison him without warrant. The person so apprehended must be some person who belongs to the class of suspected persons by reason of his antecedent conduct. "Suspected person" means a person who has acquired the character of a suspect & does not mean every person whom the apprehending constable suspects to be loitering with intent to commit a felony. Municipal Corpns. Act, 1882 (c. 50), s. 193, empowers a constable to apprehend an idle & disorderly person whom he has just cause to suspect of intention to commit a felony, but if in an action against a constable for false imprisonment it is not pleaded in the defence that the pltf. was an idle or disorderly person the deft. cannot rely on the sect.

Sect. 513 (2), (3) of Liverpool Corpn. Act, 1921, empowers a constable to arrest & detain without warrant any loose, idle, or disorderly person whom he has good cause to suspect of having committed or being about to commit any felony, misdemeanour, or breach of the peace, or who is found between certain hours lying or loitering in any street & not giving a satisfactory account of himself. To justify apprehension & detention under this section it must be established that the person apprehended belongs to the class of loose, idle, or disorderly persons. The power to apprehend does not arise where all that can be proved is that the constable honestly believed on reasonable grounds that the person apprehended was a loose, idle, or disorderly person. Sect. 513 of 1921 Act is contained in a private Act of Parliament which by its title gives no indication that it is an Act dealing with the authority of police-constables, & if a deft. in an action for false imprisonment desires to rest his defence on any part of that section he should give notice of it in the defence.

Per SCOTT, L.J.—Powers of arrest without warrant should be expressed in unambiguous & simple language which anyone can understand & the occasions for reliance on a constable's discretion should be defined with care in any statutory provision conferring such a power.—LEDWITH *v.* ROBERTS, [1937] 1 K. B. 232; [1936] 3 All E. R. 570; 106 L. J. K. B. 20; 155 L. T. 602; 101 J. P. 23; 53 T. L. R. 21; 80 Sol. Jo. 912; 35 L. G. R. 1; 30 Cox, C. C. 500, C. A.

1622c. —— **Municipal Corporations Act, 1882 (c. 50), s. 193.**]—LEDWITH *v.* ROBERTS, No. 1622b, *ante*.

1622d. —— **Private Act.**]—LEDWITH *v.* ROBERTS, No. 1622b, *ante*.

1647. *Add. Annotation :*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1663a. ——.]—BROWN'S CASE (1647), cited in 2 Hale, P. C. at p. 111.

Annotation :—**Refd.** Howard *v.* Gossett (1845), 5 L. T. O. S. 144.

1674. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1675. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676a. —— **Application of Criminal Justice Act, 1925 (c. 86), s. 44.**]—Pltf. having left his wife & two children, his wife obtained a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), for the payment by him of a weekly sum. Pltf. having failed to comply with the order, his wife made complaint to a magistrate at D., which was within the county of Chester, that £19 12*s.* 6*d.* was then in arrear under the order, & thereupon the magistrate issued a warrant, addressed to each & all of the

PART V. SECT. 1, SUB-SECT. 2.—F. (a)

k i. *Warrant prematurely issued—Discharge on habeas corpus—Re-arrest.*]—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

l i. —— ——.]—R. *v.* LEADBETTER (N. S.), [1929] 1 D. L. R. 666; 51 Can. C. C. 66.—**CAN.**

l ii. —— ——.]—*Re* DI LORENZO (1931), 55 Can. C. C. 326; 3 M. P. R. 214.—**CAN.**

——— *after pardon.*]—A prisoner was pardoned by the Lieutenant-Governor & discharged :—*Held :* this was a voluntary escape & he could not be retaken on the same warrant.—*Re* MACKIE (JOHN V.) (1932), 5 M. P. R. 333; 59 C. C. C. 68.—**CAN.**

sb. *Warrant must be in constable's possession.*]—Sect. 50 of Police Act, 1916, has not altered the rule that at the time when an officer executes a warrant of commitment for non-payment of a fine imposed under Motor Omnibus Act, 1926, he must have the warrant of commitment in his possession.—BULL *v.* LAING (1929), S. A. S. R. 65.—**AUS.**

sd. *Defective warrant—Habeas corpus—Issue of valid warrant.*]—Previous discharge on *habeas corpus* by reason of defective warrants does not preclude the issue of a subsequent valid warrant.—*Re* RANSOME (1932), 4 M. P. R. 271; 57 C. C. C. 282.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (b).

sl. *Inclusion of words not applicable.*]—Where deft.'s arrest was justified, as he was not prejudiced in any way :—*Held :* application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—OVERSEERS OF THE POOR *v.* MARRYATT (1924), 42 Can. Crim. Cas. 132; 57 N. S. R. 315.—**CAN.**

sl. *Description of prisoner—Sufficiency.*]—Appct. was arrested under the name of "Mrs. Richard F. Wade" :—*Held :* the description was sufficient as no one could possibly be misled by the description of the person contained in the warrant.—*Re* WADE (1918), 53 N. B. R. 424.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (c).

1674 iii. ——.]—Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant.—R. *v.* LINDER, [1924] 3 D. L. R. 505; 2 W. W. R. 646; 20 Alta. L. R. 415.—**CAN.**

constables of the county of Chester, commanding them to apprehend pltf. & convey him before a ct. of summary jurisdiction at D. to be dealt with according to law. The warrant showed on its face that £19 17*s.* was payable by pltf. & was in the form prescribed by the Bastardy (Forms) Order, 1915, but it did not contain the words " unless the said sum & all costs & charges be sooner paid " which were directed to be inserted in such warrants by the Bastardy (Forms) Amendment Order, 1921. The warrant was delivered to deft., the superintendent of police at D., & some time later pltf. was arrested by a constable acting under deft.'s orders. Pltf. was taken in custody through the streets & placed in a cell by deft.'s order. At the time the arrest was effected the warrant was in deft.'s possession at the police station & was not in the possession of the constable who made the arrest. Pltf.'s father immediately after the arrest tendered £19 17*s.* to deft. & asked for his son's release, but deft. refused to accept the money. Pltf.'s solr. then sent a letter to deft. enclosing the £19 17*s.* & demanding pltf.'s release, but deft. did not open the letter & pltf. was kept over-night in the cell. Pltf. was brought on the following morning before a court of summary jurisdiction at D., when solr.'s letter was produced & found to contain £19 17*s.*, whereupon the magistrates ordered pltf.'s immediate release. Pltf. brought an action against deft. for false imprisonment, & the jury returned a verdict in pltf.'s favour & awarded £175 as damages for the arrest, & £175 as damages for the unlawful detention at the police station after the tender of the money :—*Held :* (1) the warrant was invalid by reason of the omission therefrom of the words " unless the said sum & all costs & charges be sooner paid," inasmuch as the provision in the Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that " the payment of any sum of money directed to be paid by any order under this Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation," refers not to the date when that Act was passed, but to the date when it was sought to enforce the order, & in the present case at that date the Bastardy (Forms) Amendment Order, 1921, requiring the insertion of those words in the warrant, was in force ; (2) the arrest was wrongful, because the constable had not the warrant in his possession at the time he effected the arrest ; (3) deft. was not protected by Criminal Justice Act, 1925 (c. 86), s. 44, for in order to obtain that protection the warrant must have been lawfully issued, & the person apprehended must have been charged with an " offence," whereas in fact the warrant was invalid & pltf. was not charged with an " offence " within Criminal Justice Act, 1925 (c. 86).—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355 ; 101 L. J. K. B. 177 ; 146 L. T. 280 ; 96 J. P. 123 ; 30 L. G. R. 153 ; 29 Cox, C. C. 422.

1678a. —— ——.]—BLATCHER *v.* KEMP (1782), 1 Hy. Bl. 15, n. ; 126 E. R. 10.

Annotations :—**Consd.** R. *v.* Weir (1823), 1 B. & C. 288. **Apld.** A.-G. *v.* Jefferys (1824), M'Cle. 270.

1678b. —— —— **Except when issued to A. & constable.**]—WEATHERELL *v.* WATSON (1822), 1 L. J. O. S. K. B. 2.

1683. In line 2 of the headnote, for " assisting " read " arresting."

1694. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

1700. *Add. Annotation :*—**Consd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

1680 v. —— —— ——.]—R. *v.* (1923), 53 O. L. R. 569.—**CAN.**

1685 v. ——.]—An arrest on a Sunday under a warrant issued for an offence against Manitoba Temperance Act, C. A., 1924 (c. 118), is not illegal, —R. *v.* SMITH, [1927] 2 D. L. R. 982 ; [1927] 1 W. W. R. 734 ; 47 Can. Crim. Cas. 345 ; 35 Man. L. R. 386.—**CAN.**

sv. *Accused illegally under arrest without warrant.*]—Where, when a warrant was issued, accused was illegally under arrest because previously arrested without a warrant :—*Held :* it did not affect the validity of the warrant.—R. *v.* BARILKO, [1924] 1 W. W. R. 60 ; 41 Can. Crim. Cas. 193 ; 20 Alta. L. R. 126.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

d i. —— *By other constables acting in concert.*]—The authority given by a search warrant to the constable to whom it is addressed extends to the other constables acting in concert with him under it.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033 ; 1 W. W. R. 444 ; 42 Can. Crim. Cas. 90 ; 20 Alta. L. R. 60.—**CAN.**

d ii. —— *On Sunday—Invalid unless authorised by statute.*]—R. *v.* BOUGHNER (1930), 53 Can. C. C. 170.—**CAN.**

d iii. —— *Necessity for possession of warrant.*]—A police officer searching on a gaming charge must have his warrant with him. He must use no more force than is reasonably necessary.—WAH KIE *v.* CUDDY (1914), 23 Can. C. C. 383.—**CAN.**

d iv. —— ——.]—A peace officer must have his search warrant with him at the time of execution.—FANNING *v.* GOUGH (1908), 18 Can. C. C. 66.—**CAN.**

l i. —— *Validity of information.*]—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialled.—R. *v.* WILSON, *Ex p.* HARRINGTON (1911), 40 N. B. R. 384.—**CAN.**

l ii. —— ——.]—A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.—R. *v.* NICKERSON, *Ex p.* WESTON (1911), 40 N. B. R. 382.—**CAN.**

m i. ——.]—A search warrant issued under the Criminal Code which does not state or refer to the offence with respect to which the search is to be made is invalid.—*Re* R. & SOLLOWAY MILLS & Co., LTD., [1930] 1 W. W. R. 779 ; 3 D. L. R. 293 ; 53 Can. C. C. 261 ; 24 Alta. L. R. 410.—**CAN.**

sw. *Necessity for—Seizure of goods.*]—An officer of police, not acting under a search warrant, has no power to seize goods for the purpose of preserving them as evidence in a prosecution which he intends to launch against the person in possession of them, except as an incident of the arrest of that person.—LEVINE *v.* O'KEEFE, [1929] Argus L. R. 330.—**AUS.**

sx. *To search disorderly house—Form of police officer's report.*]—The objection that the police officer's report on which a search warrant was issued under sect. 641 of Criminal Code for an alleged disorderly house stated that the premises are " kept or used as a disorderly house as defined by the Criminal Code," although the words of sect. 641 are " kept or used as disorderly house as defined by sect. 229," was overruled, on the ground that since sect. 229 is the only section of the Code which defines a " disorderly house " the objection was without substance.—R. *v.* PLUMMER (Man.), [1930] 1 D. L. R. 766 ; 38 Man. L. R. 391 ; [1929] 3 W. W. R. 518 ; 52 Can. Crim. Cas. 288.—**CAN.**

sw. *Presumption of proper warrant—On search by constable.*]—R. *v.* MARTIN (Sask.) (1929), 52 Can. Crim. Cas. 367.—**CAN.**

sx. *Duty of magistrate.*]—*Held :* it was the duty of a constable who seized books & papers of defts. under a search warrant to carry them before the magistrate who issued the warrant or some other magistrate in the same territorial division, as required by sect. 629 of the Criminal Code, & it then became the magistrate's duty to deal with them according to law ; that duty is a judicial one, not to be exercised arbitrarily, & the owner of the things seized is entitled to be heard by the magistrate before he decides what disposition is to be made of them. —R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 248 ; 65 O. L. R. 667 ; *affd.* Can. C. C. 335 ; 65 O. L. R. 218.—**CAN.**

sy. —— —.]—Where a charge was laid in Alberta a search warrant issued by a magistrate for that province with the intention of having it backed by a

1701. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

1702. *Add. Annotation :*—**Refd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

1702a. Seizure of documents without warrant—At time of arrest—Validity.]—In order to effect the arrest of H., defts., police officers, entered pltfs.' premises. While there they seized & carried away documents found on the premises, being (*a*) documents which were afterwards used on the trial of E., (*b*) a document found on H. & used on his trial, & (*c*) documents which did not constitute evidence on these trials. At the conclusion of the trials the documents under (*a*) & (*b*) were not returned ; those under (*c*) were returned soon after seizure :—*Held :* (1) although the original seizure of the documents was unlawful, it was excused as regards documents under (*a*) & (*b*), it being to the interest of the State that material evidence should be preserved ; (2) the police had a right to search H. on his arrest, & also to seize any documents in his possession which would form material evidence against him or anybody else on a criminal charge. Any property so taken might be retained by the police until the conclusion of proceedings under any such charge. The police, having lawfully entered the premises to arrest H. did not by reason of the subsequent unlawful seizure of the documents under (*c*) become trespassers *ab initio* as to the land, but only as to the documents.—ELIAS *v.* PASMORE, [1934] 2 K. B. 164 ; 103 L. J. K. B. 223 ; 150 L. T. 438 ; 98 J. P. 92 ; 50 T. L. R. 196 ; 78 Sol. Jo. 104 ; 32 L. G. R. 23.

1704a. —— To rehear charge—Justices equally divided.]—Appct. was charged with the indictable offence of causing grievous bodily harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appct. should be committed for trial, & they decided that appct. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appct. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pursuance of Indictable Offences Act, 1848 (c. 42), s. 25 :—*Held :* under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, &, as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—R. *v.* HERTFORDSHIRE JJ., *Ex p.* LARSEN, [1926] 1 K. B. 191 ; 95 L. J. K. B. 130 ; 134 L. T. 143 ; 89 J. P. 205 ; 42 T. L. R. 77 ; 28 Cox, C. C. 90. D. C.

1708. After this case add :—

Right to free legal aid.] — *See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 2.

1714. After this case add :—

—— —— ——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12 ; Indictable Offences Rules, 1926, Sched. (N.).

1718. After this case add :—

—.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12.

1720a. Necessity for compliance with statutory requirements.]—Applts. were charged with shopbreaking. Before the committing justices the depositions were not taken in the manner prescribed by Indictable Offences Act, 1848 (c. 42), s. 17, but the witnesses were examined by the chief constable from a typewritten statement which was checked by the clerk & ultimately signed by each witness. Nothing was taken down by the magistrates or their clerk in writing. Defts. were not furnished with copies of the statement. Applts. having been committed for trial & convicted :—*Held :* the proceedings before the committing justices were so defective by reason of non-compliance with Indictable Offences Act, 1848 (c. 42), s. 17, that there was no lawful committal for trial within Administration of Justice (Miscel-

magistrate in British Columbia & which was so backed was held lawfully issued & backed &, therefore, one which could be lawfully executed in the latter province ; & another warrant which was issued by a magistrate for the province of British Columbia authorising a search of a building therein with respect to the same prosecution was also held one which could be lawfully executed.—SOLLOWAY MILLS & CO., LTD. *v.* FRAWLEY, [1930] 2 W. W. R. 231 ; *sub nom.* SOLLOWAY MILLS & CO. *v.* A.-G. OF ALBERTA, [1930] 4 D. L. R. 235 ; 53 Can. C. C. 306 ; 42 B. C. R. 524 ; *revg.*, [1930] 4 D. L. R. 238 ; 53 Can. C. C. 234 ; 42 B. C. R. 513.—**CAN.**

sz. —— —— ——.]—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214 ; 65 O. L. R. 677.—**CAN.**

sc. *Existence of warrant—tion from search.*]—When a constable has searched the premises of a person suspected of an offence it will be presumed, in the absence of proof to the contrary, that the constable was armed with the proper authority to make the search, especially when the evidence of the findings of the constable while making the search was admitted without objection.—R. *v.* MARTIN, [1930] 1 W. W. R. 598 ; 53 Can. C. C. 407.—**CAN.**

se. *Issue in one Province—In aid of prosecution in another.*]—A justice of the peace in the Province of Ontario has power to issue a search warrant in aid of a criminal prosecution in another Province.—R. *v.* SOLLOWAY & MILLS, [1930] 3 D. L. R. 770 ; 53 Can. C. C. 271 ; 65 O. L. R. 303.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

a i. —— ——.]—R. *v.* MLAKER [1923] 2 W. W. R. 296 ; 39 Can. Crim. Cas. 384.—**CAN.**

a ii. —— *To try charge without inquiring as to arrest.*]—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—R. *v.* ALBERTS, [1924] 2 D. L. R. 863 ; 1 W. W. R. 863.—**CAN.**

c i. —— ——.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—QUN *v.* R., [1924] 4 D. L. R. 182.—**CAN.**

e i. —— *To hear charge on subsequent information—Prior illegal arrest.*]—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—R. *v.* JOHNSON, [1924] 3 D. L. R. 470 ; 1 W. W. R. 828 ; 34 Man. L. R. 100.—**CAN.**

e ii. —— —— *Prior illegal search.*]—*Held :* assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—R. *v.* DIPENTA (1924), 42 Can. Crim. Cas. 152 ; 57 N. S. R. 204.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—C.

g i. —— —— ——.]—*Qu. :* whether depositions may be signed by a magistrate after accused has been committed for trial & just before hearing.—R. *v.* MCIVER (1932), 5 M. P. R. 506 ; 59 C. C. C. 213.—**CAN.**

PART V. SECT 2, SUB-SECT. 2.—E.

sw. *Admissibility of—Whether notice to accused essential.*]—BRUNET *v.* R., [1928] 2 D. L. R. 254 ; [1928] S. C. R. 161 ; 49 Can. Crim. Cas. 257.—**CAN.**

laneous Provisions) Act, 1933 (c. 36), s. 2 (2), & consequently no bill of indictment could be preferred against applts. The document purporting to be an indictment was not an indictment, & applts. could not be tried upon it; further, though the trial was a nullity & the ct. had jurisdiction to order a proper trial, in view of the time spent by applts. in custody, the ct. would quash the convictions.—R. *v.* GEE, R. *v.* BIBBY, R. *v.* DUNSCOMBE, [1936] 2 K. B. 442; [1936] 2 All E. R. 89; 105 L. J. K. B. 739; 155 L. T. 31; 100 J. P. 227; 52 T. L. R. 473; 80 Sol. Jo. 536; 34 L. G. R. 265; 30 Cox, C.C. 432; 25 Cr. App. Rep. 198, C. C. A.

1790a. —— **Under Criminal Justice Act, 1925 (c. 86).**]—R. *v.* STROUD, *Ex p.* STROUD (1928), 72 Sol. Jo. 826, D. C.

1790b. —— —— **Meaning of "next assizes."**]—"Next assizes" in the proviso to sect. 14 (1) of above Act means next assizes after the date of committal, & cannot refer to assizes which have already begun at that date.

Applt. was committed for trial to Northamptonshire Autumn Assizes, which began on Oct. 15, 1935, by justices sitting in the county of Bedford. The day on which committal took place was Oct. 11, 1935, which was the commission day for the Bedfordshire Autumn Assizes:—*Held:* the "next assizes" for the purposes of the above proviso were in this case the Bedfordshire Winter Assizes, which would be held in Jan. 1936. The proviso, therefore, did not apply, & the justices were entitled to commit applt. to the Northamptonshire Autumn Assizes, as being more convenient.—R. *v.* MURRAY (1935), 154 L. T. 164; 100 J. P. 57; 52 T. L. R. 141; 79 Sol. Jo. 965; 25 Cr. App. Rep. 129; 34 L. G. R. 4; 30 Cox, C. C. 298, C. C. A.

1793. *Add. Annotations:*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736. **Refd.** Statham *v.* Statham, [1929] P. 131.

1794. *Add. Annotation:*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

1798a. Several prisoners charged on same facts—Differentiation of charges—One prisoner punishable summarily—Other prisoner punishable on indictment.]—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—R. *v.* COPE (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418, 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

1799. *Add. Annotation:*—**Distd.** R. *v.* Sheridan, [1936] 2 All E. R. 883.

1804. *Add. Annotation:*—**Consd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

1810a. *Add. Citations:*—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

1810b. —— **How proved.**]—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct.—R. *v.* SMITH, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 799; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

Annotation:—As to (2) **Refd.** R. *v.* Haddon (1935), 79 Sol. Jo. 180.

—— ——.]—Breach of recognisance must be strictly proved.—R. *v.* BUTLER (1926), 19 Cr. App. Rep. 127, C. C. A.

1810d. ——.]—R. *v.* HADDON (1935), 79 Sol. Jo. 180, C. C. A.

PART V. SECT. 2, SUB-SECT. 3.

1781 i. *When remand granted.*]—On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed both by the prisoner & by telegram from a counsel that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance:—*Held:* the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by the Criminal Code to make a full defence & have his counsel present.—R. *v.* HALLCHUK (ELCHUK) (Man.), [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 646.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

a i. —— —— *Justifiable homicide.*]—R. *v.* DU GUAY, [1928] 2 W. W. R. 596; 50 Can. Crim. Cas. 318; 37 Man. L. R. 403.—**CAN.**

1801 i. *Form of commitment—Omission of time of offence.*]—A warrant of commitment did not comply with Summary Convictions Act, B.C., 1915, in not fixing the time when the offence was committed:—*Held:* bad.—R. *v.* RODGERS, [1923] 3 W. W. R. 955; 41 Can. Crim. Cas. 190; 33 B. C. R. 16.—**CAN.**

1801 ii. —— *Error in statutory description of offence.*]—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

g i. ——.]—R. *v.* MCARTHUR'S BAIL (1897), 3 Terr. L. R. 37.—**CAN.**

sz. *Estreatment of recognisance.*]—The estreating of a recognisance by a magistrate may be carried out under Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects. without the requirement of any order of the cts.—R. *v.* MCCOY & BROWN (1924), 34 B. C. R. 14.—**CAN.**

sb. ——.]—R. *v.* MARRIOTT (1924), 57 N. S. R. 227.—**CAN.**

sc. —— *Notice of motion to accused & sureties necessary.*]—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

se. —— *When ordered.*]—R. *v.* LEFICKI, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 44 Can. Crim. Cas. 263.—**CAN.**

sf. —— —— *One surety bound instead of two.*]—R. *v.* CARVERY, *Ex p.* HOWE, [1925] 3 D. L. R. 414; 44 Can. Crim. Cas. 69.—**CAN.**

sg. —— ——.]—R. *v.* SULLIVAN (1914), 29 W. L. R. 115; 18 D. L. R. 535; 23 Can. Crim. Cas. 174.—**CAN.**

sl. —— —— *Within discretion of court.*]—The necessity of notice to an accused & his sureties of a motion for an order to estreat a recognisance does not depend on the existence of a Rule to that effect. Natural justice requires that before such an order be made the accused & his sureties should be given an opportunity of being heard. A judge before whom a motion for the estreat of a recognisance is made has a discretion, in view of all the circumstances, to refuse the order.—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

sm. —— *Discharge of.*]—R. *v.* SCHRAM (1845), 2 U. C. R. 91.—**CAN.**

so. —— *Avoidance of.*]—R. *v.* MACDONALD (1925), 43 Can. Crim. Cas. 311.—**CAN.**

Part VI.—Indictments.

1821. *Add. Annotation :*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1823. *Add. Annotations :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Stevens *v.* Aldershot Gas, Water & District Lighting Co. (Now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12.

1826. *Add. Annotation :*—**Apld.** Hart *v.* Hudson, [1928] 2 K. B. 629.

1867. *Add. Annotation :*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1900a. Receiving property—Known to have been obtained by fraud or false pretences.]—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law. —R. *v.* SCHWELLER (1924), 18 Cr. App. Rep. 52, C. C. A.

SECT. 3.—**PREFERRING AN INDICTMENT** (p. 208).

See, now, Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), ss. 1, 2.

1910a. Fresh indictment in respect of another offence—Founded on facts disclosed in depositions.]—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within Vexatious Indictments Act, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

1913a. Multiplication of indictments—Disapproved.]—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE) (1924), 18 Cr. App. Rep. 25, C. C. A.

Annotation :—*Generally,* **Refd.** R. *v.* Taylor (1926), 19 Cr. App. Rep. 146.

1913b. —— ——.]—R. *v.* CLARKE, No. 2115a, *post.*

1913c. —— ——.]—R. *v.* TYREMAN, No. 5359b, *post.*

1913d. —— ——.]—Offences which may lawfully be charged in one indictment ought not to be distributed into more.—R. *v.* SMITH (1926), 19 Cr. App. Rep. 151, C. C. A.

1913e. *S. P.* R. *v.* CARVER (1927), 20 Cr. App. Rep. 3, C. C. A.

1914a. Leave—Discretion of judge.]—R. *v.* ROTHFIELD, [1937] 4 All E. R. 320, C. C. A.

1934. *Add. Annotation :*—**Follid.** R. *v.* Mosley, [1924] 2 K. B. 187.

1937a. —— ——.]—Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on facts disclosed on the depositions.—R. *v.* MOSLEY, [1924] 2 K. B. 187; 93 L. J. K. B. 894; 130 L. T. 831; 88 J. P. 91; 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

Annotation :—**Refd.** R. *v.* Morgan, [1925] 1 K. B. 752.

1978a. Larceny—Specific articles stolen must be set out.]—R. *v.* DOUGLAS (1926), 19 Cr. App. Rep. 119, C. C. A.

1981a. —— ——.]—An indictment for obtaining by false pretences that omits the false pretence alleged is bad.—R. *v.* THOMAS (1931), 23 Cr. App. Rep. 21, C. C. A.

1985a. Children Act, 1908 (c. 67), s. 12—Omission of "wilfully."]—(1) Applt. was indicted for cruelty to a child, contrary to Children Act, 1908 (c. 67), s. 12 (repealed by the Children & Young Persons Act, 1933 (c. 12). & substantially re-enacted by sect. 1 thereof), the particulars of offence alleged being that she "being a person over the age of sixteen years,

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PART VI. SECT. 1.

sq. *Proceedings must be carried on in the King's name.*]—R. *v.* WOO TUCK (1928), 51 Can. C. C. 365; 46 Que. K. R. 437.—**CAN.**

sr. ——.]—CLARK *v.* MACWORTH (1931), 55 Can. C. C. 268.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. —— *Newly created offence.*]—A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—R. *v.* ROCCO, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

ff. —— ——.]—Where an application for leave to prefer a charge of criminal libel is made after the refusal of a magistrate to commit & the A.-G. to prefer a charge, the judge should not give his consent unless there is a reasonable probability that the person charged will be found guilty.

There is no right of appeal from the exercise of the judge's discretion in refusing his consent to the preferring of a charge of criminal libel although if appct. can adduce further evidence upon which a grand jury should find a true bill any judge of the ct. would have the right to grant the consent notwithstanding its previous refusal. —MALONEY *v.* FILDES, [1933] 1 W. W. R. 33; 3 D. L. R. 752; 60 C. C. C. 7.—**CAN.**

1907 i. *Separate indictments in respect of same transaction—Where act constitutes more than one offence—Attempted carnal knowledge of young girl & indecent assault.*]—R. *v.* LANGLEY (N. B.), [1927] 3 D. L. R. 934; 48 Can. Crim. Cas. 293.—**CAN.**

sw. *Binding over prosecutor—No application to Alberta.*]—None of the provisions of the Criminal Code as to binding over to prefer & prosecute an indictment has any application or force in Alberta. Such provisions are applicable only in those provinces in which there is a grand jury.—MALONEY *v.* FILDES, [1933] 1 W. W. R. 33; 3 D. L. R. 752; 60 C. C. C. 7.—**CAN.**

sy. *New indictment—Loss of indictment previously laid.*]—If the original indictment to which accused pleaded at a former assize has been lost or mislaid, the judge may order a new indictment to be preferred.—R. *v.* MCAULIFFE (1906), 17 Can. C. C. 495.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.

ti. ——.]—Where the indictment was in the words of the enactment describing the offence :—*Held :* sufficient.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

ki. ——.]—R. *v.* CANADIAN ALLIS-CHALMERS, LTD. (1923), 54 O. L. R. 38.—**CAN.**

ni. *Identity of language with that of statute creating offence—"Car" used instead of "motor car."*]—R. *v.* YOUNG, [1928] 3 D. L. R. 225; 49 Can. Crim. Cas. 349; 60 N. S. R. 128.—**CAN.**

oi. —— *Value of stolen property.*]—An information should, therefore, state the value of the property alleged to have been stolen so as to determine to which class of crime the offence belongs & the nature of the proceedings to be taken.—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

sa. *Rape.*]—R. *v.* ROSS, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—**CAN.**

having the custody, charge, or care of M., a child, neglected the said child in a manner likely to cause the said child unnecessary suffering or injury to its health." The word "wilfully," which occurs in the sect., was omitted from the particulars, the form employed being substantially Form 6 of the Forms of Indictment in the Appendix to the Rules made under Indictments Act, 1915 (c. 90):—*Held:* as the indictment had followed the above form, it could not be regarded as bad in law, but it is better that in such a case the particulars of offence should include the word "wilfully."

(2) Conviction quashed on the ground that the summing-up contained no proper direction on the meaning of "wilful neglect," the proper direction in such a case being in accordance with the direction in *R.* v. *Senior*, [1899] 1 Q. B. 283, at p. 290.—R. *v.* WALKER (1934), 24 Cr. App. Rep. 117, C. C. A.

1991a. ——.]—Indictment for the murder of a bastard child:—*Held:* a bastard was improperly described by his mother's name, he not having gained that name by reputation.—R. *v.* CLARK (1818), Russ. & Ry. 358.

Annotations:—**Consd.** R. *v.* Sheen (1827), 2 C. & P. 634. **Refd.** R. *v.* Drake (1850), 14 J. P. 483.

1991b. ——.]—In an indictment for the murder of a bastard child, the absence of a name is sufficiently accounted for by the child being described as "then lately before born of the body of J. H." Sentence of death may, since the statute 6 & 7 Will. 4, c. 30, be recorded against a person convicted of murder.—R. *v.* HOGG (1841), 2 Mood. & R. 380; 174 E. R. 324.

Annotation:—**Apprvd.** R. *v.* Willis (1845), 1 Cox, C. C. 136.

1991c. ——.]—Indictment stated that the prisoner, a single woman, on Aug. 27, 1844, brought forth a male child alive; that she afterwards, to wit, on the day & year aforesaid, killed the said child. Objection that the judgment ought to have either stated the name of the child, or that its name was unknown to the jurors; overruled by COLERIDGE, J., at the trial, on the ground that there was no presumption, from the mere fact of birth, that the child had a name, it being a bastard: that the indictment afforded no presumption of its having acquired a name by reputation or baptism: that an averment that the name was unknown, implied the acquisition of some name. Conviction held right.—R. *v.* WILLIS (1845), 1 Car. & Kir. 722; 1 Den. 80; 1 Cox, C. C. 136.

1992a. *S. P.* R. *v.* DRAKE (1850), 14 J. P. 483; 4 Cox, C. C. 333.

2011. *Add. Citation:*—2 Roll. Rep. 225.

2040a. —— ——.]—A prisoner was a count of an indictment in the following te " Statement of Offence. Accessory afte fact. Particulars of Offence. H. Q., . . ., knowing that one J. D. had committed a felony, to wit, housebreaking & larceny, did receive, comfort, harbour, or assist the said J. D." After verdict the judge permitted this count to be amended, the amendment consisting in striking out the words "housebreaking & larceny" in the particulars of offence & substituting the words "receiving stolen property":—*Held:* the count as originally drawn was bad, in that it omitted in the statement of offence to specify any felony, & the amendment was bad in that it did not in the particulars of offence describe the alleged felony as "receiving stolen property well knowing it to have been stolen" & the conviction must be quashed.—R. *v.* QUINTNER (1934), 25 Cr. App. Rep. 32, C. C. A.

2048. *Add. Annotation:*—**Refd.** Joel *v.* Barclay, [1937] 1 All E. R. 309.

2064a. Obtaining by false pretences—"On divers dates."]—R. *v.* ROBERTSON (1936), 80 Sol. Jo. 691; 25 Cr. App. Rep. 208, C. C. A.

2066. In headnote, after the word "forged" add "a bill of lading."

2076. *Add. Annotations:*—**Apld.** R. *v.* Disney (1933), 49 T. L. R. 284; R. *v.* Wilmot (1933), 97 J. P. 149. **Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

2076a. Offences under Night Poaching Act, 1828 (c. 69).]—Applt. was convicted on a count of an indictment which charged that he "by night unlawfully took or destroyed game or rabbits in land at C. . . . or was in the said land by night with a gun, net, or other instrument for the purpose of unlawfully taking or destroying game," contrary to Night Poaching Act, 1828 (c. 69), s. 1:—*Held:* the count was bad, as it alleged two offences in the alternative & it was impossible to say of which offence applt. had been convicted.—R. *v.* DISNEY, [1933] 2 K. B. 138; 102 L. J. K. B. 381; 149 L. T. 72; 97 J. P. 103; 49 T. L. R. 284; 77 Sol. Jo. 178; 24 Cr. App. Rep. 49; 31 L. G. R. 176; 29 Cox, C. C. 635, C. C. A.

Annotation:—**Apld.** R. *v.* Wilmot (1933), 149 L. T. 407.

2076b. Shooting with intent to do grievous bodily harm or to maim, disfigure or disable.]—R. *v.* OTTAWAY (1933), 175 L. T. Jo. 424.

Offence under Road Traffic Act, 1930 (c. 43), s. 11 (1).]—*See* STREET TRAFFIC, No. 222c, *post.*

2102a. —— **Prejudice to one defendant.**]—Persons arrested together need not be tried together,

PART VI. SECT. 4, SUB-SECT. 2.

a i. ——.]—The inclusion of a number of *aliases* unnecessarily in a bill of indictment is contrary to the practice, is a deviation from the ordinary course of criminal justice, & should be deprecated. Whether it amounts to a substantial wrong to the accused is a question of degree.—R. *v.* NOLAN (1930), 43 B. C. R. 357.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 7.

sm. *Indecent exposure*—*"With intent to offend."*]—Where the facts alleged necessarily implied that the act charged was committed "wilfully":—*Held:* notwithstanding the omission of that word, the information was sufficient.—R. *v.* SMOTHERS (1924), 57 N. S. R. 179.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

f i. ——.]—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code, s. 710 (3):—*Held:* prisoner was entitled to his discharge.—R. *v.* CHUE, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—B. 2087 iii. ——.]—R. *v.* MCDONALD (Ont.), [1928] 2 D. L. R. 787; 50 Can. Crim. Cas. 65.—**CAN.**

2087 iv. ——.]—R. *v.* JENKINS, [1932] 3 W. W. R. 505.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—C.

r. Read now "**2102a i.**"

s. Read now "**2102a ii.**"

t. Read now "**2102a iii.**"

u. Read now "**2102a iv.**"

2102a v. —— ——.]—R. *v.* WISER & MCCREIGHT, [1930] 1 W. W. R. 976; 54 Can. C. C. 117; 42 B. C. R. 517.—**CAN.**

&, if any one of them is likely to be embarrassed in his defence, ought not to be so tried. —R. *v.* TOWNSEND, R. *v.* HILDER (1924), 18 Cr. App. Rep. 117, C. C. A.

2105a. ——.]—When a statement by one accused intended to be put in evidence implicates another, the ct. should consider whether accused should not be tried separately.—R. *v.* SEYMOUR (1927), 20 Cr. App. Rep. 98, C. C. A.

2108. *Add. Annotation :*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

2109. *Add. Annotation :*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

2115a. —— ——.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—R. *v.* CLARKE (1925), 18 Cr. App. Rep. 166, C. C. A.

2115b. —— ——.]—Observations on the form of indictment where several defts. are charged with various offences of obtaining money by false pretences & conspiracy to defraud.—R. *v.* CARLESS, R. *v.* STAPLEY (1934), 25 Cr. App. Rep. 43, C. C. A.

2119a. Leaving counts on file — Undesirable practice.]—R. *v.* TEAPE-WHITE (1930), 22 Cr. App. Rep. 93, C. C. A.

2119b. —— **When justified.**]—(1) If, on a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness called for the defence, counsel for the prosecution ought to cross-examine that witness or, at any rate, to make it plain, while the witness is in the box, that his evidence is not accepted.

(2) An indictment should be allowed to remain on the file only in exceptional circumstances, as, for example, where it appears that the conviction on the first indictment may be quashed on appeal on some technical ground, & the indictment left on the file relates to a similar matter.—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

2119c. Offence must be of similar character.]—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

2138. *Add. Annotation :*—**Refd.** R. *v.* Davis, [1937] 3 All E. R. 537.

2140. After this case add :—

—— **Manslaughter & dangerous driving under Road Traffic Act, 1930 (c. 43), s. 11.**]—*See* STREET & AERIAL TRAFFIC, No. 222e, *post*.

2147a. —— —— **Two murders.**]—Applt. was charged upon an indictment which contained two counts, the first charging that on a day between Apr. 20 & Apr. 29, 1937, he murdered his wife, & the second charging that on a day between Apr. 21 & Apr. 29, 1937, he murdered his niece. Applt. was convicted of murder : —*Held :* although the joinder of two murders in one indictment was undesirable, the fact that in the present case there were two counts did not, in the circumstances, invalidate the conviction.—R. *v.* DAVIS, [1937] 3 All E. R. 537 ; 81 Sol. Jo. 591 ; 26 Cr. App. Rep. 95, C. C. A.

2150. *Add. Annotation :*—**Consd.** R. *v.* Southern (1929), 142 L. T. 383.

2151. *Add. Annotations :*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748. **Folld.** R. *v.* Carless, R. *v.* Stapley (1934), 25 Cr. App. Rep. 43.

2103 iii. ——.]—A man & a woman were tried jointly on the charge of having murdered the husband of the woman. They were convicted & sentenced to death. Each of the accused had applied to the trial judge for a separate trial, on the ground that statements had been made by each which would be admissible in evidence against the person making the statements, but which tended to incriminate the other accused, against whom the statements would be inadmissible. The trial judge had refused the applications :—*Held :* the refusal of the trial judge to grant separate trials did not amount to a miscarriage of justice, & afforded no ground of appeal. —A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—IR.

se. *Charge of vagrancy.*]—*Ex p.* WRIGHT, *Ex p.* PARKER (1910), 54 Can. C. C. 310.—CAN.

PART VI. SECT. 4, SUB-SECT. 10.—A.

g i. —— *Acquittal on two counts—Conviction on third—Validity.*]—*Held :* it was open to the jury to find as they did.—BARTON *v.* R., [1929] 1 D. L. R. 634 ; S. C. R. 42 ; 51 Can. C. C. 1 ; *affg.*, 63 O. L. R. 299.—CAN.

se. *Conspiracy—Count relating to one conspirator—Joinder of count relating to all.*]—In an indictment for conspiracy it is improper to try together a count relating to one accused & a count relating to that one jointly with the other two.—R. *v.* CHAMANDY, [1934] 2 D. L. R. 48 ; O. R. 208 ; 61 C. C. C. 224.—CAN.

PART VI. SECT. 4, SUB-SECT. 10.—B.

2120 v. ——.]—Where the trial judge had tried together fifteen charges against the prisoner for different offences :—*Held :* there was no reason disclosed to question his discretion in doing so, since he sat without a jury, & the offences were all of a similar character & connected together by being parts of a systematic course of criminal conduct pursued by prisoner. —R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152 ; 50 Can. Crim. Cas. 246 ; [1928] 3 W. W. R. 550.—CAN.

2120 vi. ——.]—The judge has jurisdiction to try separate counts at the same time whether or not the accused consents to their trial together.—R. *v.* NECEMBER, [1931] 2 W. W. R. 810 ; 56 Can. C. C. 110 ; 44 B. C. R. 210.—CAN.

2120 vii. ——.]—R. *v.* NECEMBER (No. 2), [1931] 3 W. W. R. 356 ; 56 Can. C. C. 391.—CAN.

PART VI. SECT. 4, SUB-SECT. 10.—C.

p i. —— ——.]—R. *v.* CARTER, [1931] 2 W. W. R. 127 ; 55 Can. C. C. 196.—CAN.

p ii. —— *Suborning perjury & fabricating evidence.*]—The accused, who was charged in the one indictment with suborning perjury &, also, with fabricating evidence in connection with said offence, applied for an order requiring the Crown to sever the indictment & elect to proceed first on one or other of the two charges :—*Held :* the joinder was not conducive to the ends of justice &, therefore, the order should be granted.—R. *v.* BRAUN (Sask.), [1928] 3 W. W. R. 226 ; 50 Can. Crim. Cas. 292.—CAN.

PART VI. SECT. 4, SUB-SECT. 10.—D.

r i. —— *Shopbreaking & receiving stolen goods.*]—R. *v.* CROSS (Sask.), [1927] 4 D. L. R. 923 ; [1927] 3 W. W. R. 432 ; 49 Can. Crim. Cas. 77.—CAN.

a i. —— *Murder & accessory after fact of murder.*]—An indictment may contain a count charging an accused person with murder & also a count charging him with being an accessory after the fact of murder. *Semble :* in such a case the presiding judge may, in his discretion, call upon the prosecutor to elect as to which charge he will proceed with.—R. *v.* WILLIAMS (1932), 32 S. R. N. S. W. 504 ; 49 N. S. W. W. N. 144.—AUS.

a ii. —— *Conspiracy—Arson.*]—Joinder of counts upheld.—R. *v.* KADISHEVITZ, [1934] O. R. 213 ; 61 C. C. C. 193.—CAN.

a iii. —— *Obtaining by false pretences & conversion.*]—Accused was charged on an indictment containing 30 counts, some of which were in respect of obtaining sums of money by false pretences & others were in respect of fraudulently converting to his own use the same sums, being moneys entrusted to him for a particular purpose :—*Held :* the indictment was not bad by reason of Larceny Act, 1916 (c. 50), s. 40 (5) (*d*), which limits the joinder of charges of embezzlement & fradulent application or disposition, that provision being inconsistent with the provisions of Criminal Justice (Administration) Act, 1924.—ATTORNEY-GENERAL *v.* REILLY, [1937] I. R. 118.—IR.

PART VI. SECT. 4, SUB-SECT. 10.—E.

2152 i. *Cases requiring separate trial—Indecent assault & theft—Acts forming part of one transaction.*]—R. *v.* CASSIDY (Ont.), [1927] 4 D. L. R. 1106 ; 49 Can. Crim. Cas. 93.—CAN.

2155a. —— ——.]—R. *v.* LUBERG, No. 3156d,

2195. *Add. Annotation :*—**Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2204a. —— —— **Wrong statute inserted—Later statute in similar words.**]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div., the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words :—*Held :* (1) the indictment was defective within Indictments Act, 1915 (c. 90), s. 5 (1), by reason of the wrong statute having been inserted, but in view of the fact that the offence under the earlier Act was defined in almost the same words as those used in the later Act, applt. could not have been prejudiced by the amendment, nor could injustice have been done to any defence that he might have had. The amendment was, therefore, rightly allowed ; (2) the accused was not protected from prosecution by Larceny Act, 1861 (c. 96), s. 85, either in regard to acts disclosed by his affidavit or in regard to acts disclosed by his preliminary examination in bkpcy., as such disclosures were not " in consequence of any compulsory process of any court of law " ; (3) the admissions in the preliminary examination in bkpcy. were not admissions made " in any compulsory examination or deposition before any ct. on the hearing of any matter in bkcpy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701 ; 45 T. L. R. 357 ; 21 Cr. App. Rep. 85 ; 28 Cox, C. C. 610, C. C. A.

2219a. ——.]—Applt. was accused of having obtained sums of money by way of deposit from persons, who desired to be employed as managers of public-houses, by representing to them that he would appoint them to those positions. The indictment contained eighteen counts, relating to nine distinct offences, which were charged alternatively as obtaining sums of money by false pretences, & as larceny by a trick of the same sums. In every one of the counts relating to false pretences, the indictment as originally framed ran : " by falsely pretending that he would appoint . . . as manager." At the close of the case for the prosecution the judge thought it right to amend the counts relating to false pretences so as to read " by falsely pretending that he was in a position to appoint," etc. The jury convicted applt. on all counts :—*Held :* (1) the conviction for false pretences must be quashed, as the amendment of an indictment allowed by Indictments Act, 1915 (c. 90), s. 5 (1), is an amendment of a defect in form, & not the alteration & revision of the substance of a charge, such as had taken place in this case, which must necessarily prejudice accused ; (2) the conviction for larceny must be quashed, because there was no evidence of larceny, as the persons seeking employment had in each case intended to part with their money ; (3) Larceny Act, 1916 (c. 50), s. 44 (3), could not apply where the indictment had charged false pretences & was up to the last moment wrong in substance.—R. *v.* HUGHES (1927), 136 L. T. 671 ; 91 J. P. 39 ; 43 T. L. R. 250 ; 28 Cox, C. C. 336, C. C. A.

2161 i. *Cases not requiring separate trials—Similar acts—Separate indecent assaults.*]—An indictment charged accused with indecent assault upon one little girl, & indecent assault, involving murder, upon another little girl. Both offences were libelled as having been committed on the same day at S. :—*Held :* the offences charged were so connected in time, circumstances, & character as to justify their inclusion in one indictment, & no sufficient reason had been shown for separation of the charges.—H.M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—**SCOT.**

a ii. —— *Indecent assault & carnal knowledge—Second count added in new trial.*]—A new trial having been ordered after conviction on a charge, preferred by the agent of the A.-G., of indecent assault on a young girl :—*Held :* the agent of the A.-G. was entitled on the second trial to arraign the accused on a new charge containing, in addition to counts alleging indecent assault, counts alleging carnal knowledge of the same girl at the same time.

In answer to the contention that by proceeding on the count for carnal knowledge the agent of the A.-G. deprived the accused of the right to elect a speedy trial thereon :—*Held :* the accused had already made a sufficient election to cover that charge ; it was admitted that the charge of carnal knowledge was one which might be founded upon the evidence disclosed in the depositions taken on the preliminary inquiry on which the accused had been committed for trial & that he had been brought before a District Ct. judge to make his election upon the charge in respect to which he had been committed & that he then demanded a jury trial ; therefore, it must be assumed that his demand for a jury trial related to the charge of carnal knowledge as well as to the other offences charged.—R. *v.* DREW (No. 2), [1933] 2 W. W. R. 243 ; 4 D. L. R. 592 ; 60 C. C. C. 229.—**CAN.**

sg. *Attempted subornation of perjury & attempt to dissuade witness.*]—Counts for attempted subornation of perjury & attempt to dissuade a witness from giving evidence may be joined in the same indictment.—R. *v.* SOLOMON (1932), 5 M. P. R. 67.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 13.

k i. —— *Attempt to give jurisdiction.*]—A person committed on a charge which a district ct. judge has no jurisdiction to try under any circumstances, cannot be tried by such judge on a substituted charge over which the judge has jurisdiction, on the election of accused.—R. *v.* CROVI, [1924] 4 D. L. R. 1072 ; 3 W. W. R. 534.—**CAN.**

r i. —— ——.]—An indictment disclosing no offence & bad in law, was amended at the trial so as to make it an entirely different charge :—*Held :* the amendment ought not to have been made.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390 ; 59 O. L. R. 65.—**CAN.**

s (p. 236) i. —— ——.]—Defts. were convicted that they " did wrongfully & unlawfully break & enter by night the shop of S. with intent to commit an indictable offence ; to wit, to assault one S. contrary to the form of the statute in that behalf made & provided." The Crown intended to prefer a charge of shop breaking within sect. 461 of the Criminal Code :—*Held :* charge defective as lacking an averment of intent to commit an indictable offence in the shop.—R. *v.* MCNEIL, [1931] 3 M. P. R. 423.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 14.

2241 i. *Application must be made to court of trial.*]—R. *v.* HANEY, [1925] 2 D. L. R. 83 ; 43 Can. Crim. Cas. 297 ; 65 O. L. R. 293.—**CAN.**

SECT. 5.—**FINDING OF AN INDICTMENT BY A GRAND JURY** (p. 237).

Note :—The grand jury is now abolished by Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 1.

2265. *Add. Annotation :*—**Refd.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

2295a. Bill for rape—True bill found for indecent assault—Necessity for fresh indictment.]—An indictment for rape was put before the grand jury & they indorsed on it, " No true bill for rape. A true bill for indecent assault (aggravated)," but no indictment for indecent assault was put before the grand jury. The prisoner was convicted :—*Held :* as there was no true bill for rape, & as there was no indictment for indecent assault, the conviction must be quashed.—R. *v.* KITCHING (1929), 141 L. T. 687 ; 45 T. L. R. 569 ; 21 Cr. App. Rep. 116, C. C. A. ; *subsequent proceedings*, 21 Cr. App. Rep. 144, C. C. A.

2316. For " Criminal Law Amendment Act, 1835 (c. 35)," read " Criminal Law Amendment Act, 1885 (c. 69)."

Part VII.—Trial of Indictments.

2365. *Add. Annotations :*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K. B. 867. **Apld.** R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163. **Refd.** R. *v.* Williams (1925), 19 Cr. App. Rep 67 ; R. *v.* Gee, R. *v.* Bibby, R. *v.* Dunscombe, [1936] 2 All E. R. 89.

2365a. —— ——.]—A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—R. *v.* DENNIS, R. *v.* PARKER, [1924] 1 K. B. 867 ; 93 L. J. K. B. 388 ; 130 L. T. 830 ; 88 J. P. 84 ; 40 T. L. R. 420 ; 68 Sol Jo. 563 ; 27 Cox, C. C. 632 ; 18 Cr. App Rep. 39, C. C. A.

2365b. —— ——.]—A simultaneous trial of two indictments is a nullity.—R. *v.* MCDONNELL (1928), 20 Cr. App. Rep. 163, C. C. A.

Annotation :—**Folld.** R. *v.* Wilde (1933), 176 L. T. Jo. 110.

2365c. —— ——.]—Applt. was charged on two indictments, which were tried together, & he was convicted on both :—*Held :* the trial was a nullity &, in the circumstances of the case, the ct. would not exercise its power of ordering a *venire de novo*, but would merely quash the conviction.—R. *v.* WILDE (1933), 24 Cr. App. Rep. 98, C. C. A.

2401a. —— ——.]—The ct., disagreeing with the ct. below on the evidence of corroboration, recommends that persons accused of rape should be defended by counsel.—R. *v.* KELLY (1929), 21 Cr. App. Rep. 151, C. C. A.

2404a. —— **Warranted in case of alibi.**]—(1) The police have no right to suggest by questions to a person detained in custody that they have evidence of his guilt ; answers to such a suggestion are not admissible in evidence. (2) When the defence is an alibi defts. would do well to disclose it in the ct. below. Such a defence usually warrants legal aid.—R. *v.* BROWN & BRUCE (1931), 23 Cr. App. Rep. 56, C. C. A.

2409. After this case add :—

——.]—This Act is now replaced by Poo Prisoners' Defence Act, 1930 (c. 32).

2458a. —— **When necessary.**]—On a plea of guilty to a charge of murder, the judge asked counsel to interview the prisoner & explain the position to him. After interviewing the prisoner, counsel told the judge that the question had occurred to him whether the prisoner was fit to plead to the indictment. The senior medical officer of the prison where the prisoner had been in custody was called, & said that he saw no reason to depart from the view he had put forward in a report, which was before the Judge, & that the prisoner was, in his opinion, fit to plead. The indictment was again put to the prisoner, & he again pleaded guilty, & was sentenced to death :—*Held :* the procedure followed was perfectly proper & there was, in the circumstances, no necessity to empanel a jury to try the issue whether the prisoner was

PART VI. SECT. 6.

2338 iii. ——.]—There is no authority in the Criminal Code allowing the A.-G. to grant a stay of proceedings upon an indictment or, as it was formerly termed, to enter a *nolle prosequi*, & then to remove the stay & allow such indictment to be again proceeded with. The proper procedure is for the Crown to prefer another " charge."—R. *v.* TAKAGISHI, [1933] 1 W. W. R. 54 ; 46 B. C. R. 281 ; 60 C. C. C. 34.—**CAN.**

2353 i. *Reasons for entering.*]—A *nolle prosequi* is usually granted where any improper & vexatious attempts are made to oppress deft., as by repeatedly preferring defective indictments for the same supposed offence or if it is clear that an indictment is not suitable against deft.—SHER SINGH *v.* JITENDRANATH SEN (1931), I. L. R. 59 Calc. 275.—**IND.**

PART VII. SECT. 1.

2365 i. *Separate indictments—Cannot be tried jointly.*]—A purported trial of two or more persons on separate charges for different offences is a nullity, even though their counsel offers no objection, or consents, thereto. —R. *v.* THEIRLYOCK (Alta.), [1928] 4 D. L. R. 431 ; [1928] 3 W. W. R. 225 ; 50 Can. Crim. Cas. 296.—**CAN.**

2365 ii. —— ——.]—R. *v.* HART, R. *v.* KOZARUK (1929), 51 Can. Crim. Cas. 145 ; 24 Alta. L. R. 15 ; [1929] 1 W. W. R. 425.—**CAN.**

a i. —— *Stealing parcels from mails & receiving parcels so stolen.*]—*Held :* accused entitled to be tried by a jury, even though the value of the property stolen did not exceed $200.—R. *v.* IWANCHUK, [1927] 3 D. L. R. 539 ; [1927] 2 W. W. R. 325 ; 48 Can. Crim. Cas. 213 ; 22 Alta. L. R. 595.—**CAN.**

a ii. —— *Right to elect for trial by judge without jury—After true bill found—Criminal Code, s. 825.*]—R. *v.* THOMPSON, R. *v.* FOULKES (1908), 16 Man. L. R. 608.—**CAN.**

a iii. —— —— *Effect of election.*]—R. *v.* RELF (Alta.), [1927] 1 D. L. R. 874 ; [1927] 1 W. W. R. 29 ; 47 Can. Crim. Cas. 38.—**CAN.**

aa. *Offence punishable on indictment or on summary conviction—Decision as to method of trial.*]—Where a statute makes an offence punishable on indictment or on summary conviction, it makes it either an indictable offence or a non-indictable offence, & confers on the Crown prosecutor or on the trial magistrate, perhaps partly on each, the right or " option " of deciding how each particular offence shall be considered, tried & punished.—R. *v.* DENIS (Man.), [1927] 3 W. W. R. 400 ; 49 Can. Crim. Cas. 8.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.—B. (b).

2399 i. *Defence by counsel—Accused must consent to representation.*]—No ct. has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them.—R. *v.* SUKH DEV (1929), I. L. R. 11 Lah. 220. —**IND.**

or was not fit to plead.—R. *v.* VENT (1935), 25 Cr. App. Rep. 55, C. C. A.

2567. *Add. Annotations :*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121 ; R. *v.* Hancock (1931), 145 L. T. 168.

2567a. ——.]—(1) Applt. was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial applt. pleaded guilty to entering only, which plea was treated as a plea of guilty generally :—*Held :* there was no plea of guilty & the case must go back, & prisoner asked to plead again to the indictment.

(2) Applt. at the trial asked that five charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to housebreaking :—*Held :* the ct. would not make an order that the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—R. *v.* LLOYD (1923), 130 L. T. 319 ; 27 Cox, C. C. 576 ; 17 Cr. App. Rep. 184, C. C. A.

2571a. Plea of guilty—By person fit to plead but not responsible for his actions—Effect of plea.]—R. *v.* TEBBITT (1912), *Times*, Apr. 26.

2582. *Add. Annotation :*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

2585a. Crime involving more serious offence in foreign country—Possibility of prosecution by foreign Government.]—R. *v.* FRIEDERIKSEN (1927), 164 L. T. Jo. 45.

2710. *Add. Annotation :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

2730. *Add. Annotations :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385 ; R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

2730a. —— —— ——.]—Where, at the trial of an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—R. *v.* BIRCH (1924), 93 L. J. K. B. 385 ; 88 J. P. 59 ; 40 T. L. R. 365 ; 68 Sol. Jo. 540 ; 18 Cr. App. Rep. 26, C. C. A.

2731a. After close of case for defence.]—A judge at a criminal trial has the right to call a witness not called by either the prosecution or the defence, without the consent of either the prosecution or the defence, if in his opinion that course is necessary in the interests of justice, but in order that injustice should not be done to accused, a judge should not call a witness in a criminal trial after the case for the defence is closed, except in a case where a matter arises *ex improviso*, which no human ingenuity can foresee, on the part of prisoner.—R. *v.* HARRIS, [1927] 2 K. B. 587 ; 96 L. J. K. B. 1069 ; 137 L. T. 535 ; 91 J. P. 152 ; 43 T. L. R. 774 ; 28 Cox, C. C. 432 ; 20 Cr. App. Rep. 86, C. C. A.

Annotation :—**Distd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

2731b. —— **Where defence of alibi raised.**]—R. *v.* LIDDLE (1928), 21 Cr. App. Rep. 3, C. C. A.

Annotation :—**Consd.** R. *v.* McMahon (1933), 24 Cr. App. Rep. 95.

2767. *Add. Annotation :*—**Refd.** Jacobs *v.* Jacobs & Solomon, [1936] 1 All E. R. 67.

2810. *Add. Citation :*—1 Chit. 352.

2822a. —— **To acquaint himself with indictment.**]—R. *v.* PECKHAM, No. 5876a, *post*.

2823. *Add. Annotation :*—**Apld.** R. *v.* Baggott (1927), 20 Cr. App. Rep. 92.

2839a. Reference to fact that photographs of accused shown to witnesses.]—(1) Counsel for the prosecution should not employ as

PART VII. SECT. 5, SUB-SECT. 1.

2563 ii. ——.]—Acceptance of plea of guilty.—R. *v.* BLISS, [1937] 1 D. L. R. 1 ; 67 Can. C. C. 1.—**CAN.**

p i. —— *Effect of—Accused estopped from calling on prosecution to establish guilt.*]—R. *v.* ROVONELLI (1925), 44 Can. Crim. Cas. 354.—**CAN.**

p ii. —— ——.]—A plea of guilty is a plea to the charge & does not necessarily amount to a confession of all the facts alleged.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—**IND.**

p iii. —— *Induced by mistake—Right to withdraw.*]—R. *v.* AH TOM, [1928] 2 D. L. R. 748 ; 49 Can. Crim. Cas. 204 ; 60 N. S. R. 1.—**CAN.**

p iv. —— *Power of court to enter plea of not guilty.*]—Where an accused pleads guilty the ct. has inherent power to enter a plea of not guilty if for any reason the ct. deems it advisable in the interests of justice to put such a plea on the record.—R. *v.* KUMALO, [1930] App. D. 193.—**S. AF.**

q i. —— ——.]—Where accused is indicted for murder, the question of insanity is raised by a plea of not guilty as much as the fact of killing.—R. *v.* MCCOSKEY, [1927] 2 D. L. R. 539 ; 47 Can. Crim. Cas. 122 ; 60 O. L. R. 44.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

2574 ii. ——.]—A plea of guilty under the Motor Vehicles Act, 1928 (N. S.), may be withdrawn.—R. *v.* MCNEIL, [1933] 1 D. L. R. 349 ; 6 M. P. R. 8 ; 59 C. C. C. 169.—**CAN.**

sm. *Prisoner induced to plead guilty —Failure of inducement.*]—Prisoner pleaded guilty on a promise by the prosecution to cause a minimum fine to be imposed :—*Held :* prisoner could withdraw this plea on appeal, a maximum fine having been imposed.—R. *v.* STONE (1932), 4 M. P. R. 455 ; 58 C. C. C. 262.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.—B.

s i. —— *Evidence must be shown to be material.*]—R. *v.* CARRIER (Sask.) (1929), 51 Can. Crim. Cas. 420.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 6.—C.

sc. *Effect of cross-examination of party's own witness.*]—Where a party is allowed to cross-examine his own witness, the effect of that cross-examination must be to discredit that witness altogether & not merely to get rid of part of his testimony, & hence that witness's evidence must be excluded altogether. In the case of a witness for the prosecution, this means, so far as it supports the case for the prosecution, for obviously the defence is entitled to rely on so much of his evidence as supports their case.—R. *v.* MOKBUL KHAN (1928), I. L. R. 56 Calc. 145.—**IND.**

PART VII. SECT. 7, SUB-SECT. 6.—D.

se. *After close of case for prosecution—Witness called to supply omission in evidence.*]—R. *v.* HEPWORTH, [1928] App. D. 265.—**S. AF.**

sf. *After plea of guilty—Taking evidence of complainant—For purpose of deciding sentence.*]—While it is within the power of the judge, after a plea of guilty has been entered & before sentence is passed, to hear the evidence of the complainant in order to assist him in deciding on the proper sentence, he must avoid the danger of giving consideration, in passing sentence, to aggravating circumstances disclosed by such evidence which may change the character of the offence charged against the prisoner.—R. *v.* WHEELDALE, [1927] 3 W. W. R. 704 ; 49 Can. Crim. Cas. 62 ; 22 Sask. L. R. 148.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 5.

b i. —— ——.]—R. *v.* YUEN YICK JUN, [1937] 3 W. W. R. 113.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—B.

2816 iii. —— ——.]—The duty of a Public Prosecutor is to represent, not the police, but the Crown, & this duty should be discharged fairly & fearlessly & with a full sense of the responsibility attaching to the position. In a capital case the duty of the Crown is to place before the ct. all materials irrespective of the question as to whether they exculpate accused or incriminate him.—KUNJA SUBUDHI *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.

(2) Where a police witness has been asked by prisoner "where did I stay on the night of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence, even though there has been no application by applt. to that effect.—R. *v.* HASLAM (1925), 134 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

Annotations:—As to (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; R. *v.* Hinds, [1932] 2 K. B. 644.

2839b. Second trial—Reference to quashed conviction.]—(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *venire de novo* the conviction quashed should not be mentioned to the jury at the second trial.—R. *v.* LLOYD (1924), 18 Cr. App. Rep. 12, C. C. A.

2839c. Overstatements.]—R. *v.* DRISCOLL & ROWLANDS (1928), 20 Cr. App. Rep. 161, C. C. A.

2840a. Duty of prosecution to disclose everything.]—(1) The prosecution ought to disclose at the trial all relevant evidence. (2) Deft. who gives evidence of his previous conviction cannot set up that that evidence has been wrongly admitted.—R. *v.* GUERIN (1931), 23 Cr. App. Rep. 39, C. C. A.

2867. *Add. Annotations:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

E. Reading Deposition of Absent Witness.
(Vol. XIV., p. 276.)

See, now, Criminal Justice Act. 1925 (c. 86), s. 13.

2879a. —— ——.]—On a plea of guilty (1) there must be legal proof of any previous convictions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled.—R. *v.* FINNEY (1924), 18 Cr. App. Rep. 41, C. C. A.

2895a. *S. P.* R. *v.* HUNT (1847), 2 Cox, C. C. 261.

2978. For "R. *v.* WOOD" read "R. *v.* WOODS & MAY."

2986a. Defence of alibi—Should be raised at earliest possible moment.]—R. *v.* JONES (1928), 21 Cr. App. Rep. 27, C. C. A.

2986b. —— **Should be raised in court below.**]—R. *v.* BROWN & BRUCE, No. 2404a, *ante.*

2988a. —— **Should not refer to probable consequences of verdict of guilty in murder trial.**]—R. *v.* FRAMPTON (1928), 21 Cr. App. Rep. 17, C. C. A.

2990a. Right of counsel for accessory to discuss medical evidence.]—MAHADEO *v.* R., No. 8541a, *post.*

PART VII. SECT. 7, SUB-SECT. 7.—D. (a).

2843 ii. ——.]—Counsel need not call all witnesses on the back of the indictment, but they should be in ct., & if called by the defence, become witnesses for the defence.—R. *v.* SING, [1936] 1 D. L. R. 36; 64 Can. C. C. 328; 50 B. C. R. 32.—**CAN.**

2859 i. *Accused may insist on witness being called—By prosecution.*]—R. *v.* MACKINNON, [1930] 3 W. W. R. 548.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—E. (a).

h i. ——.]—*Held:* the mere fact that accused did not have the assistance of a legal adviser did not show that he had not had a full opportunity for cross-examination, as he was present when the deposition was taken & made no request for time or delay.—R. *v.* MCDONALD, [1927] App. D. 110.—**S. AF.**

k i. ——.]—R. *v.* MCDONALD, [1927] App. D. 110.—**S. AF.**

p i. —— —— *Whether attendance procurable under subpœna.*]—G. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear, having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged: —*Held:* the conviction should be quashed, as it had not been shown that the attendance of the witness, whose deposition had been put in evidence, could not have been procured by service on her of a writ of subpœna under the Irish Free State Act, 1924.—R. *v.* GILCHRIST, [1925] N. 27.—**IR.**

p ii. —— ——.]—R. *v.* BELL, [1930] 2 D. L. R. 647; 53 Can. C. C. 44; 42 B. C. R. 136.—**CAN.**

p iii. —— —— *Seaman.*]—On applying sect. 999 of the Criminal Code, with respect to the depositions of certain witnesses alleged to have recently left Vancouver as part of the Japanese crew of a steamer bound for the Orient & therefore to be "absent from Canada":—*Held:* the fact that names appeared on the crew list similar to the names of said witnesses was, in the absence of evidence to the contrary, & in view of the regulations governing the landing of Japanese sailors & the other circumstances, sufficient to show the identity of said members of the crew with said witnesses & to justify the inference that the witnesses were absent from Canada.—R. *v.* FURUZAWA (No. 1), [1930] 1 W. W. R. 953; 955; 53 Can. C. C. 398; 42 B. C. R. 541, 548.—**CAN.**

p iv. —— *Witness dangerously ill—Use of.*]—Under Crimes Act, 1900, s. 406, only so much of a deposition tendered in evidence should be read to the jury as is relevant & properly admissible in evidence.—R. *v.* GLOVER (1928), S. R. N. S. W. 482; 45 N. S. W. W. N. 148.—**AUS.**

sp. *Proof of absence.*]—CAUFIELD *v.* R. (1926), 48 Can. Crim. Cas. 109; Q. R. 42 K. B. 449.—**CAN.**

sr. *Evidence given in former trial—Admission by counsel of facts essential to admission.*]—Applts. were convicted of removing, & two of them of importing, goods of over $200 in value & liable to forfeiture, contrary to Customs Act, R. S. C., 1927. At their trial the Crown proposed to put in, under sect. 999 of the Code, evidence given at previous trials, at which the juries had disagreed, by one W. Counsel for the accused admitted "every fact essential to the admission of the evidence," & the evidence offered was put in:—*Held:* the admission of counsel, while it rendered unnecessary the establishment of the various facts required by sect. 999 to be proved before the evidence of W. could have been admitted, did not in any way identify the documents read to the jury as the evidence given by W. on the former trials; &, there being no proof that the statements put in were in fact the evidence of W., & there being no consent that they were, they were wrongly received, & applts. were entitled to a new trial.—MCDONALD, CONTER & O'HEARN *v.* R., [1930] S. C. R. 569; 54 Can. C. C. 349.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—B.

sq. *Full cross-examination impossible through act of prosecution—Right to acquittal.*]—QUEBEC LIQUOR COMMISSION *v.* GOULET (Que.) (1929), 52 Can. Crim. Cas. 392.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—C.

k i. —— ——.]—Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—R. *v.* FIEGEL (1924), 42 Can. Crim. Cas. 150.—**CAN.**

st. *Trial without jury—Defending counsel entitled to make submission that evidence for Crown insufficient.*]—R. *v.* JONES (Sask.), [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380; [1926] 3 W. W. R. 313.—**CAN.**

2995a. ——.]—If the ct. is of opinion that there is no case against accused, it ought to be withdrawn from the jury.—R. *v.* HASLAM (1926), 19 Cr. App. Rep. 163, C. C. A.

3007a. ——.]—(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—R. *v.* MOORE (1924), 18 Cr. App. Rep. 29, C. C. A.

3008. *Add. Annotation :*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

3009. *Add. Annotation :*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

3009a. —— ——.]—A prisoner was charged with breach of recognisance, the Crown relying on a conviction at petty sessions during the period of the recognisance as constituting the breach. Evidence was given by a police officer that he had been present on the occasion of the alleged conviction at petty sessions, but no certificate of any such conviction was produced. The accused was given an opportunity of cross-examining the police officer, but was not given any opportunity of going into the witness-box or of calling witnesses on his behalf or of making any statement in answer to the charge :—*Held :* it was at least doubtful whether there was any proper evidence of the conviction at petty sessions ; but, apart from that consideration, the conviction must be quashed on the ground that the accused had been afforded no opportunity of giving evidence or of making any answer to the charge.—R. *v.* PINE (1932), 24 Cr. App. Rep. 10, C. C. A.

3010a. Should give evidence from witness box.]—A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct. in ordering otherwise must exercise a judicial discretion.—R. *v.* SYMONDS (1924), 18 Cr. App. Rep. 100, C. C. A.

3011a. ——.]—A deft. witness may in a proper case be asked in cross-examination whether he imputes improper motives to the witnesses against him.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

3051. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

3056. *Add. Annotation :* — **Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3060. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3063. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3065. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3090. *Add. Citations :*—[1924] 1 K. B. 602 ; 93 L. J. K. B. 479 ; 130 L. T. 317 ; 88 J. P. 24 ; 68 Sol. Jo. 461 ; 27 Cox, C. C. 571.

Add. Annotation :—As to (2) **Apld.** Lawrence *v.* R., [1933] A. C. 699.

3090a. Accused writing & handing in signature.]—Counsel for the prosecution is not entitled to a second speech against accused, because at the jury's request the latter writes his signature & hands it in.—R. *v.* BAGGOTT (1927), 20 Cr. App. Rep. 92, C. C. A.

3120a. —— **To assist undefended prisoner—To cross-examine.**]—The ct. should assist an undefended prisoner in putting questions by way of cross-examination.—R. *v.* BARKER (1927), 20 Cr. App. Rep. 70, C. C. A.

3120b. —— —— **To inform prisoner of right to give evidence on oath.**]—R. *v.* VILLARS (1927), 20 Cr. App. Rep. 150, C. C. A.

3122a. —— **Does not include making disparaging suggestions.**]—There ought not to be a suggestion from the judge that deft. on trial has previously appeared in a criminal ct.—R. *v.* MILLER (1926), 19 Cr. App. Rep. 84, C. C. A.

3124. *Add. Annotation :*—**N.F.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. (*See special anno. to* No. 5919, *post.*)

PART VII. SECT. 7, SUB-SECT. 8.—D.

3011 iii. —— *As to previous conviction.*]—R. *v.* CIPPOLA (Ont.) (1928), 49 Can. Crim. Cas. 129.—**CAN.**

o i. —— ——.]—Two panels, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898, s. 1. In the opinion of the judge the evidence of neither incriminated the other :—*Held :* neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow panel.—GEMMELL & M'FAYDEN *v.* MACNIVEN, [1928] S. C. (J.) 5.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 9.—A.

3061 i. —— *Evidence omitted inadvertently.*]—R. *v.* GREGOIRE (1927), 47 Can. Crim. Cas. 288; 60 O. L. R. 363.—**CAN.**

k i. ——.]—*Held :* it was incompetent for the prosecutor to recall a witness after the case for the prosecution had been closed ; the only circumstances in which a witness might be recalled after the case had been closed being when this was done by the judge *ex proprio motu* in order to clear up an ambiguity in the witness's evidence.—M'NEILIE *v.* H.M. ADVOCATE, [1929] S. C. (J.) 50.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 10.—B.

f i. ——.]—Where it was objected that the A.-G. exercised the right of reply, although deft. had called no witnesses :—*Held :* the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 11.

h i. —— *To decide whether evidence admissible.*]—If evidence is tendered to prove the inadmissibility of evidence *primâ facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

h ii. —— *To decide whether witness by his admission is accomplice.*]—It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice.—R. *v.* YOUNG, [1923] S. A. S. R. 35.—**AUS.**

l i. —— ——.]—Since it is competent for a judge trying a criminal case with a jury to express his own opinions on the evidence, provided he makes it clear to them that they are the judges of the facts, including the credibility of the witnesses, the fact that during the cross-examination of a witness the judge interjected without qualification the remark, "She is telling the truth," thereby invading the exclusive province of the jury, was held, in view of his full & very careful charge which left them in no doubt that it was their exclusive duty to pass on the truth of the evidence, not to have brought about a miscarriage of justice within the Criminal Code, s. 1014 (*c*).—R. *v.* OLSON, [1929] 2 D. L. R. 300 ; 1 W. W. R. 431 ; 51 Can. Crim. Cas. 122 ; 23 S. L. R. 321.—**CAN.**

3122 i. *Function of judge—Includes asking leading questions—& suggesting to counsel to waive their rights to address jury.*]—R. *v.* WEST (1925), 44 Can. Crim. Cas. 109 ; 57 O. L. R. 446.—**CAN.**

3122 ii. —— *Does not include asking leading questions.*]—A judge is not entitled to put leading questions to a witness, the answers to which are calculated to prejudice accused.—R. *v.* LAUBSCHER, [1926] App. D. 276.—**S. AF.**

3129a. ——.]—A direction must make it clear that the *onus* of proof is on the prosecution. —R. *v.* HAYTON (1925), 18 Cr. App. Rep. 169, C. C. A.

3129b. ——.]—(1) When the evidence on the facts is in direct conflict, the jury should be directed that, if they are in doubt which version of the facts to accept, they should acquit.

Observations on (2) the granting of bail by the trial judge, & on (3) the relation of his opinion of the verdict to the appeal.—R. *v.* DAVIDSON (1927), 20 Cr. App. Rep. 66, C. C. A.

3129c. ——.]—A summing up must make it clear to the jury, especially where there is conflicting evidence, that the *onus* of proof is on the prosecution.—R. *v.* REES (1928), 21 Cr. App. Rep. 35, C. C. A.

3133a. —— —— ——.]—While a judge is entitled to express his view of any evidence, he ought not to "invite" the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—R. *v.* MASON (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. Avoidance of unhappy expressions suggesting guilt of accused.]—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to consider whether deft. is "the sort of person" likely to commit the offence charged.—R. *v.* MARSHALL (1925), 18 Cr. App. Rep. 164, C. C. A.

3136b. Abandoned counts not to be referred to.]—(1) A summing-up must not call attention to counts that have been abandoned.

(2) On an indictment for obtaining by false pretences representations which did not lead to delivery of the property must be carefully distinguished from those which did.

(3) In dealing with intent to defraud the possibility of mistake should be considered in directing the jury.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 46, C. C. A.

3137a. Where identity of accused in issue.]—(1) When the issue is identity of accused, especial care is needed in the charge to the jury; there ought to be a direction to them on his silence, if & when he hears a prejudicial statement.

(2) After notice of appeal, supplementary grounds should only be presented to the ct., if they disclose new matter.—R. *v.* PORTER (1927), 20 Cr. App. Rep. 55, C. C. A.

Annotation:—Generally, **Refd.** R. *v.* Walters (1927), 20 Cr. App. Rep. 69.

3145a. ——.]—A judge in summing up is bound to put deft.'s case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury.—R. *v.* MARRIOTT (1924), 18 Cr. App. Rep. 74, C. C. A.

3145b. ——.]—A summing-up must deal carefully with statements by deft. which are not necessarily admissions though they may be so construed. Full effect must be given to the evidence of witnesses for the defence.—R. *v.* ROSEN (1931), 23 Cr. App. Rep. 70, C. C. A.

3146. *Add. Annotations:*—**Folld.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

3146a. —— ——.]—Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of man-

PART VII. SECT. 7, SUB-SECT. 12.—A.

3129 i. *Direction as to onus of proof.*]—R. *v.* KOLOMEYC (Man.), [1926] 2 W. W. R. 126; 46 Can. Crim. Cas. 35.—**CAN.**

3133 iv. —— —— ——.]—A judge, in summing up to a jury in a criminal case, is entitled to comment strongly on the facts.—R. *v.* SUTHERLAND, [1927] App. D. 88.—**S. AF.**

3133 v. —— —— ——.]—R. *v.* GALLEN (1930), 53 Can. C. C. 396.—**CAN.**

g (p. 297) i. —— *Where jury disagree.*]—A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent them from giving full consideration to the view of the majority:—*Held:* not a misdirection.—R. *v.* OLHOLM & MCPHERSON, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—**AUS.**

g (p. 297) ii. ——.]—It is advisable, but not essential, for the judge to explain to the jury that they are the sole judges of fact & are to rely upon their recollection of the evidence.—R. *v.* BECKETT (1931), 3 D. L. R. 660; 55 Can. C. C. 304; 3 M. P. R. 416.—**CAN.**

h (p. 297) i. —— —— ——.]—A judge's charge must be read as a whole, & leave to appeal will be refused if the ct. is satisfied that no miscarriage can have been caused by the charge taken as a whole.—R. *v.* (1933), 6 M. P. R. 100; 60 C. C. C. 4.—**CAN.**

a i. —— —— *Statements as to powers of Court of Criminal Appeal.*]—A judge in his charge to the jury made statements to the effect that "In the Ct. of Criminal Appeal, in the event of your finding a verdict of guilty, prisoner's counsel is entitled to have the whole matter reviewed," & "When a case goes to the Ct. of Criminal Appeal the natural bent of their minds is to give prisoner the benefit of the doubt":—*Held:* the statements, taken in their proper context, did not amount to misdirection of such a character as to render the trial unsatisfactory, though it was desirable that such references to the Ct. of Criminal Appeal should not be made.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

a ii. —— —— *Reading passages from law reports.*]—Though reading passages from law reports is, as a rule, undesirable, it is not a misdirection.—R. *v.* NGA TIN GYI (1926), I. L. R. 4 Ran. 488.—**IND.**

a iii. —— —— *Reference to opinion in text book.*]—It is irregular & improper for the presiding judge in his summing up to the jury in a criminal trial to refer to an opinion expressed in a text-book, even though another passage in the same book has been put to a witness during the course of the trial.—R. *v.* MOFOKENG, [1928] App. D. 132.—**S. AF.**

k (p. 298) i. —— *Failure to make—Effect.*]—A fair test of the propriety of a trial judge's charge to the jury is that no objection was taken to it at the time it was delivered.—R. *v.* MELYNIUK & HUMENIUK, [1930] 2 W. W. R. 179; 4 D. L. R. 462; 53 Can. C. C. 296; 24 Alta. L. R. 545; *affd.*, [1931] S. C. R. 143; 2 D. L. R. 518.—**CAN.**

g (p. 298) i. —— *Distinction between evidence of facts & expert opinions.*]—Where there is not only no direct testimony of eye-witnesses that an alleged criminal act was committed, but there is the direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of scientific witnesses are referred to as an important link, the charge to the jury should point out the importance of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proven as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent.—R. *v.* HISLOP, [1925] 1 W. W. R. 887; 43 Can. Crim. Cas. 384.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 12.—B.

3140 ii. —— ——.]—R. *v.* ARMSTRONG (1933), 59 C. C. C. 172.—**CAN.**

slaughter to the jury, where there is no evidence upon which such a verdict could be based.—R. *v.* THORPE (1925), 133 L. T. 95; 89 J. P. 148; 41 T. L. R. 468; 69 Sol. Jo. 525; 28 Cox, C. C. 4; 18 Cr. App. Rep. 189, C. C. A.

Annotation:—**Consd.** R. *v.* Waddingham (1936), 80 Sol. Jo. 325.

3151a. —— **Defendant's explanation of facts.**]—The direction to the jury should deal with deft.'s explanation of facts alleged against him.—R. *v.* MORDECAI (1930), 22 Cr. App. Rep. 146, C. C. A.

3151b. —— **Alibi.**]—(1) Detailed evidence of an *alibi* & other evidence must be carefully dealt with in the charge to the jury. (2) The judge should not put questions to a witness suggesting that he, the judge, is satisfied of deft.'s guilt.—R. *v.* RABBITT (1931), 23 Cr. App. Rep. 112, C. C. A.

3151c. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point.—R. *v.* ALEXANDER (1924), 18 Cr. App. Rep. 139, C. C. A.

3155. *Add. Annotation:*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other.—R. *v.* Ross (1924), 18 Cr. App. Rep. 141, C. C. A.

3156b. —— ——.]—Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count by looking at the evidence as a whole.—R. *v.* BAILEY, [1924] 2 K. B. 300; 93 L. J. K. B. 989; 132 L. T. 349; 88 J. P. 72; 27 Cox, C. C. 692; 18 Cr. App. Rep. 42, C. C. A.

Annotation:—**Apld.** R. *v.* Southern (1929), 142 L. T. 383.

3156c. —— ——.]—If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence.—R. *v.* MACLENNAN (1925), 19 Cr. App. Rep. 37, C. C. A.

3156d. —— —— **Indictment containing count for conspiracy.**]—(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—R. *v.* LUBERG (1926), 135 L. T. 414; 90 J. P. 183; 28 Cox, C. C. 264; 19 Cr. App. Rep. 133, C. C. A.

3156e. —— ——.]—(1) In cross-examination of a person accused of a sexual offence, questions should not be asked tending to show that he is a person likely to commit the offence alleged.

(2) If separate charges are included in an indictment, the jury should be carefully cautioned against allowing one to corroborate the other.—R. *v.* COULMAN (1927), 20 Cr. App. Rep. 106, C. C. A.

3156f. —— ——.]—(1) A prisoner was charged with two distinct sexual offences, one against a young boy, & the other against a girl aged five. The charges were included in one indictment & were tried together. In his summing-up the judge referred first to the evidence relating to one offence, & subsequently to the evidence relating to the other, but he did not warn the jury that they must be careful to distinguish the evidence relating to one offence from the evidence relating to the other, & that they must not supplement the evidence in regard to one of the offences by looking at the evidence as a whole, nor were the jury directed to find separate verdicts on each charge:—*Held:* the conviction must be quashed.

(2) With regard to the offence against the girl, corroboration was required by Children Act, 1908 (c. 67), s. 30, & there was evidence which might be regarded as corroboration of her story. The judge, in his summing-up, referred to this evidence, but made no reference either to the statute or to the necessity for corroboration in this case:—*Held:* though the mere omission to refer to the statute would not in itself be a ground for quashing the conviction, yet since neither the statute nor the necessity for corroboration had been brought to the attention of the jury, the conviction must be quashed on that ground also.

(3) Where corroboration is not required by statute but only as a rule of practice, the jury should be directed in regard to corroboration in the terms laid down in *R.* v. *Cratchley*, 9 Cr. App. Rep. 235.

(4) *Qu.:* whether the evidence of a young child can be admitted unsworn under Children Act, 1908 (c. 67), s. 30, unless the judge has affirmatively satisfied himself, in the presence of the accused & jury, that the child possesses a degree of intelligence sufficient to justify the reception of its evidence & understands the duty of speaking the truth.—R. *v.* SOUTHERN (1929), 142 L. T. 383; 29 Cox, C. C. 61; 22 Cr. App. Rep. 6, C. C. A.

Annotation:—*As to* (2) **Distd.** R. *v.* Gregg (1932), 102 L. J. K. B. 126.

3156g. Need not include all defendant's evidence.]—(1) A summing-up need not include a reading of the whole of deft.'s evidence.

(2) Severity of sentence in the case of a subordinate acting under orders.—R. *v.* SPELLEN (1931), 23 Cr. App. Rep. 130, C. C. A.

3152 i. *Need not go into every detail of evidence.*]—R. *v.* BOAK (B.C.) (1925), 44 Can. Crim. Cas. 225.—**CAN.**
3152 ii. ——.]—DELISLE *v.* R. (Que.) (1929), 51 Can. Crim. Cas. 253.—**CAN.**

3157. For "**second trial before same jury—Clear direction essential—Same defendant**" read "**Second trial—Before same jury—Clear direction essential—Same defendant.**"

3157a. —— ——.]—A jury trying a second or other charge against accused should be warned to disregard the evidence in the previous trial.—R. *v.* LEE (1927), 20 Cr. App. Rep. 68, C. C. A.

3158. For "—— —— **Different defendants**" read **Different defendants.**"

3158a. —— **First trial set aside on venire de novo —Reference to first conviction.**]—R. *v.* LLOYD, No. 2839b, *ante.*

3165a. —— ——.]—(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases.

(2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (4), "seven days" means seven clear days.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 21, C. C. A.

3165b. —— —— **Counts for other offences included.**]—When two persons are jointly indicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 153, C. C. A.

3165c. —— ——.]—When several accused are jointly charged with knowingly receiving stolen property, there must be a careful ruling about the possession of each.—R. *v.* PECKHAM (THE YOUNGER) (1927), 20 Cr. App. Rep. 72, C. C. A.

3165d. —— ——.]—A charge to a jury trying co-defts. must carefully distinguish between the cases of each.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 33, C. C. A.

3165e. —— ——.]—In charging the jury the judge must distinctly put the defence of each prisoner to them.—R. *v.* BROOKS (1929), 21 Cr. App. Rep. 112, C. C. A.

3165f. —— ——.]—On the trial of an indictment for breaking & entering & receiving stolen property against more than one deft., care must be taken to put the defence of each deft. to the jury & to warn them against convicting on mere suspicion of breaking or of possession.—R. *v.* SMITH (1931), 23 Cr. App. Rep. 135, C. C. A.

3165g. —— ——.]—A summing-up on a joint indictment containing several counts must carefully distinguish the evidence against each deft., & when fraudulent intent is the gist of the offence must insist that guilty knowledge must clearly be found to justify a conviction.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App Rep. 105, C. C. A.

3172a. Where unsworn statement & evidence on oath of witness in conflict.]—R. *v.* HARRIS (1927), 20 Cr. App. Rep. 144, C. C. A.

3174a. ——.]—On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—R. *v.* BALL (1924), 18 Cr. App. Rep. 149, C. C. A.

3178. *Add. Annotation:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179. *Add. Annotation:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179a. ——.]—R. *v.* THORPE, No. 3146a, *ante.*

3179b. —— ——.]—R. *v.* WADDINGHAM (1936), 80 Sol. Jo. 325, C. C. A.

3179c. —— **Where defence of manslaughter raised.**]—R. *v.* HALL, No. 8338a, *post.*

3180. After this case add "*See, also,* Nos. 5933–5938, *post.*"

3180a. —— ——.]—On an indictment for obtaining by false pretences, the jury must be charged that intent to defraud is of the essence of the offence.—R. *v.* MARCK (1928), 21 Cr. App. Rep. 65, C. C. A.

3180b. —— **Possibility of mistake.**]—R. *v.* GREEN, No. 3136b, *ante.*

3180c. Direction as to breaking & entering—Defence of bonâ fide claim of right.]—A defence of breaking & entering under a *bonâ fide* claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—R. *v.* CURTISS (1925), 18 Cr. App. Rep. 174, C. C.

3180d. Direction as to larceny by trick—Facts pointing to false pretences.]—On the trial of an indictment for larceny by a trick, the essential elements of that offence should be explained to the jury, & if the facts of the case point to an obtaining by false pretences, the difference between the two offences

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3172a i. *Where unsworn statement & evidence on oath of witness in conflict.*]—When a witness whom the party calling him is allowed to treat as hostile admits making or is proved to have made a previous statement inconsistent with his present testimony said party may be permitted to cross-examine him upon that statement; but the use which may be made before the jury of the statement is a limited one; it can be so used only to impeach the witness' credit & thus remove any prejudicial effect which his present testimony might otherwise have on the case of said party, but not as evidence of the allegations of fact contained in the statement. Therefore the duty devolves upon the trial judge, in summing up, to make the limitation of such use clear to the jury; & his failure to make it clear constitutes a misdirection which may be held to have occasioned a substantial wrong or miscarriage.—R. *v.* FRANCIS & BARBER, [1929] 3 D. L. R. 593; 2 W. W. R. 104; 51 Can. Crim. Cas. 343; 23 S. L. R. 517.—**CAN.**

3177 i. —— *Where defence of manslaughter is not raised.*]—Where, on a trial for murder, there is no evidence which would justify the jury in finding a verdict of manslaughter, there is no duty on the judge to leave to the jury that defence.—R. *v.* BURGESS & MCKENZIE, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 243; 39 B. C. R. 492.—**CAN.**

ss. *Incorrect statement as to effect of evidence.*]—Where in his summing up to the jury in a criminal case the trial judge made a statement of the evidence which was not exactly correct, the fact that there was sufficient evidence apart from that with respect to which the mistake occurred to justify the verdict of guilty does not justify the ct., on appeal, from disregarding the mistake under the Code, s. 1014 (2), if it is impossible for it to say that the jury "must" have reached the same conclusion regardless of the mistake.—R. *v.* BRAND (Alta.), [1929] 1 D. L. R. 815; 51 Can. Crim. Cas. 46; 24 Alta. L. R. 5; [1928] 3 W. W. R. 641.—**CAN.**

3180 i. *Direction as to intent to defraud—Charge of obtaining by false pretences.*]—A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—**AUS.**

qi. ——.]—R. *v.* TONG WAH (1931), 44 B. C. R. 260; 56 Can. C. C. 194.—**CAN.**

sa. *Evidence as to alibi.*]—Evidence as to alibi must be properly put to the jury.—R. *v.* MCKENZIE (1932), 58 C. C. C. 106.—**CAN.**

sd. *Must inform jury that accused entitled to reasonable doubt.*]—In a trial for perjury:—*Held:* the judge must adequately instruct the jury that the accused is entitled to any reasonable doubt as to his guilt.—R. *v.* FIALKA, [1935] 1 D. L. R. 394; 62 C. C. C. 38.—**CAN.**

must be made clear to them in view of a possible verdict of guilty of the latter.—R. *v.* FISHER (1926), 19 Cr. App. Rep. 166, C. C. A.

3180e. Direction as to larceny by bailee—Defence of sale on credit.]—R. *v.* WARD (1928), 20 Cr. App. Rep. 167, C. C. A.

3180f. Obtaining by false pretences—Duty to distinguish representations.]—R. *v.* GREEN, No. 3136b, *ante*.

3185. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

3243. After this case add :—

Criminal Justice Act, 1925 (c. 86), s. 15.

3261. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

3266. *Add. Annotation :*—**Refd.** Ras Behari Lal *v.* King-Emperor (1933),77 Sol. Jo. 571.

3272. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

3277a. ——.]—R. *v.* MOORE (1931), 23 Cr. App. Rep. 138, C. C. A.

3283a. —— ——.]—R. *v.* ABRAHAMS & GERSTEIN (1928), 20 Cr. App. Rep. 183, C. C. A.

3286a. Effect of rider.]—(1) Mere suspicion of adultery by a wife is not enough to reduce killing by the husband from murder to manslaughter.

(2) A finding of guilty is not affected by a rider to the verdict.—R. *v.* MILLWARD (1931), 23 Cr. App. Rep. 119, C. C. A.

3287a. Necessity for—Withdrawal of plea of not guilty.]—After a prisoner charged on indictment has pleaded "Not Guilty" & been given in charge of the jury, he can only be convicted by a verdict of that jury. Until a verdict is given the record is not complete & he can neither be convicted nor sentenced. Where therefore a prisoner who had duly been given in charge of the jury admitted his guilt during the progress of the trial & was thereupon treated as having been convicted on his own confession & was sentenced to a term of penal servitude without any verdict having been given by the jury :—*Held :* the conviction must be quashed & the prisoner re-tried.—R. *v.* HANCOCK (1931), 100 L. J. K. B. 419 ; 145 L. T. 168 ; 75 Sol. Jo. 345 ; 23 Cr. App. Rep. 16 ; 29 Cox, C. C. 294, C. C. A.

3288. *Add. Annotations :*—*As to* (1) **Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462. *As to* (3) **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

3318a. —— ——.]—Where an indictment charges two persons with certain offences "with one another," if one is acquitted the other may sometimes but not always be convicted.—R. *v.* EDWARDS (1924), 18 Cr. App. Rep. 140, C. C. A.

3318b. —— ——.]—Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted.

PART VII. SECT. 7, SUB-SECT. 12.—C.

3186 vii. —— ——.]—A judge must not comment on the failure of the prisoner to give evidence, even if his counsel comments to the jury on his reasons for failing to call him.—R. *v.* ZICARI, [1936] 2 D. L. R. 542 ; 65 Can. C. C. 386.—**CAN.**

b i. —— —— ——.]—R. *v.* BRAYDEN (N. B.), [1926] 4 D. L. R. 765 ; 46 Can. Crim. Cas. 336.—**CAN.**

b ii. —— —— ——.]—BIGAOUETTE *v.* R., [1927] 1 D. L. R. 1147 ; [1927] S. C. R. 112 ; 47 Can. Crim. Cas. 271.—**CAN.**

b iii. —— —— —— ——.]—On the trial of a charge of stealing a pencil from the person by means of violence, it was shown that the pencil had been found in the accused's pocket on his arrest two days after the robbery. The accused's counsel did not call any witness in defence ; & the Crown counsel in his address to the jury said : "I think there should be some explanation. . . ." [The ct. here warned him to "be careful."] He proceeded : "Should not there be some explanation on the part of the defence ?" On appeal from the conviction :—*Held :* said words did not constitute a violation of sect. 4 (5) of Canada Evidence Act, R. S. C., 1927, prohibiting comments by the judge or counsel for the prosecution on the failure of an accused to testify.—R. *v.* FERRIER, [1932] 3 W. W. R. 113 ; 58 C. C. C. 370 ; 46 B. C. R. 136.—**CAN.**

b iv. —— —— ——.]—To say of an accused person's statement from the dock that it is an unsworn statement & one not subject to cross-examination does not amount to comment on the failure of such person to give evidence, which is forbidden by sect. 407 (2) of Crimes Act, 1900.—R. *v.* EARSMAN (1906), 53 N. S. W. W. N. 118.—**AUS.**

sc. *To express his own view.*]—In summing up the judge is entitled to express his own view.—COULTER & TREFFENE *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

sd. *To read definitions of law from cases & textbooks.*]—LEBLANC *v.* R. (1927), 49 Can. Crim. Cas. 207 ; Q. R. 42 K. B. 503.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 14.—A.

t i. —— —— *Crown witness kept away.*]—The judge should exercise his discretionary power to discharge the jury & adjourn the trial when it appears that a necessary & material Crown witness is absent through the instrumentality of a labour union.—R. *v.* KENDALL & PITTON (1934), 61 C. C. C. 389.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 14.—B.

3217 ii. ——.]—*Primâ facie* any complete separation of the jury during a trial in a capital case will make the verdict bad, but where the separation occurs through inadvertence, & the result of the trial has not been influenced by what has occurred the verdict ought to stand.—R. *v.* WALTERS, [1926] 1 D. L. R. 501 ; 45 Can. Crim. Cas. 77 ; 58 N. S. R. 306.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 15.—A.

o i. —— *Evidence ruled inadmissible after it has been given.*]—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

PART VII. SECT. 7, SUB-SECT. 15.—B.

k i. —— ——.]—Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before a succeeding judge :—*Held :* such procedure was irregular, & consent of accused did not cure the irregularity.—UMAR HAJEE *v.* R. (1922), I. L. R. 46 Mad. 117.—**IND.**

PART VII. SECT. 7, SUB-SECT. 16.—A.

3270 viii. ——.]—In a criminal trial, with the help of a jury, a judge is not obliged to accept an absurd verdict, either as a verdict of guilty or as a verdict of not guilty. It is no part of a judge's duty to accept & interpret for himself a verdict of an unintelligible character, when the members of the jury are there & can give a proper verdict.—HAMID ALI HALDAR *v.* KING-EMPEROR (1929), I. L. R. 57 Calc. 61.—**IND.**

3275 viii. —— ——.]—On an indictment charging accused with assault the jury returned a verdict of "guilty of common assault under provocation" :—*Held :* the verdict was one of guilty.—R. *v.* BROGAN, [1926] N. Z. L. R. 635 —**N.Z.**

3278 vi. —— —— *Carnal knowledge & indecent assault—Same evidence.*]—Where accused is charged with unlawful carnal knowledge & indecent assault, & the same evidence is given on each count, a verdict of acquittal on the first & guilty on the second cannot be given.—R. *v.* MCLEAN (1931), 57 C. C. C. 239.—**CAN.**

3281 iv. —— ——.]—An indictment contained three separate counts, viz., rape, assault with intent to commit rape, & indecent assault. The jury, although properly instructed, found the prisoner guilty without assigning the verdict to any one or more of the said counts ; & the judge sentenced the prisoner on the assumption that the conviction was one for rape. On appeal :—*Held :* while it was open to the ct. to sustain the verdict on the least of the three counts & to reduce the sentence to one appropriate thereto, it was also open to the ct. to order a new trial ; & that under all the circumstances the latter was the better course to adopt.—R. *v.* ROSS (B. C.), [1929] 3 W. W. R. 601 ; 52 Can. Crim. Cas. 315.—**CAN.**

sd. *Verdict given after discharge.*]—A jury which has been discharged is not competent to return a verdict.—R. *v.* SMITH, [1934] 3 W. W. R. 639.—**BERMUDA.**

—R. *v.* GORDON (1925), 133 L. T. 734; 89 J. P. 156; 41 T. L. R. 611; 28 Cox, C. C. 41; 19 Cr. App. Rep. 20, C. C. A.

3324. Add para. & citation :—

A judge is not entitled to insist on the jury returning a verdict against each or any one of several co-defts. if the jury state that they are unable to agree about any one.—R. *v.* EVANS & PRITCHARD (1920), 15 Cr. App. Rep. 111, C. C. A.

3362a. Indictment for shooting with intent to murder—Verdict of assault.]—On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—R. *v.* STOKES (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.

3366. *Add. Annotation :*—**Reld.** R. *v.* Stokes (1925), 134 L. T. 479.

3388. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389a. —— Of fruit—Verdict of larceny at common law.]—On an indictment for stealing under Larceny Act, 1861 (c. 96), s. 36, larceny at common law cannot be found: hence the direction to the jury must make it clear that fruit, etc., the subject of the charge, was growing & had not been severed at the material time.—R. *v.* FRIEND (1930), 22 Cr. App. Rep. 130, C. C. A.

3391a. —— By trick—Verdict of false pretences—Indictment charging larceny by trick & false pretences alternatively—Indictment for false pretences wrong in substance.]—R. *v.* HUGHES, No. 2219a, *ante*.

3391b. —— Verdict of fraudulent conversion.]—On an indictment for simple larceny there cannot be a conviction of fraudulent conversion, contrary to Larceny Act, 1916 (c. 50), s. 20.—R. *v.* STEVENS (1933), 24 Cr. App. Rep. 85, C. C. A.

3394. *Add. Annotation :*—**Reld.** R. *v.* Stokes (1925), 134 L. T. 479.

3398a. —— Duty of jury to find.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

3402. *Add. Annotations :*—**Reld.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

3407. For "**Second indictment to be tried—Right of prosecution to trial by another jury,**" read "**Second indictment to be tried—Whether trial by another jury.**"

3407a. —— ——.]—It cannot be laid down as a general rule that a jury which has acquitted deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. *v.* KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.

3413. *Add. Annotation :*—**Reld.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3420. *Add. Annotations :*—**N.F.** R. *v.* Thomas (1933), 49 T. L. R. 546. **Reld.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571; R. *v.* Thomas, [1933] 2 K. B. 489.

3424. *Add. Annotation :*—**Reld.** R. *v.* Thorpe (1925), 133 L. T. [illegible]

3452. After this case add :—

—.]—*See, now*, Sentence of Death (Expectant Mothers) Act, 1931 (c. 24).

3495. *Add. Annotation :*—**Mentd.** Broome *v.* Agar (1928), 138 L. T. 698.

PART VII. SECT. 7, SUB-SECT. 16.—D. (a).

m i. —— —— *Not where prosecution for lesser offence barred by lapse of time.*]—R. *v.* HOSKINS (Alta.) (1929), 52 Can. Crim. Cas. 365.—**CAN.**

m ii. —— ——.]—Where a prosecution for a certain offence created by statute must be begun within a period prescribed by the statute & that time limit has expired without the proper proceedings having been taken pursuant to the enactment creating the offence, it is not competent for the ct. on a prosecution for a greater offence to convict for the offence already barred.—R. *v.* HOSKINS, [1930] 1 W. W. R. 84.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—D. (b).

3348 v. —— —— *Effect of verdict.*]—*Held :* the finding was to be regarded as an acquittal on the charge of murder, & Code of Criminal Procedure, s. 439 (4), precluded the High Ct. from having jurisdiction upon revision to convict on that charge.—KISHAN SINGH *v.* R. (1928), 55 L. R. Ind. App. 390.—**IND.**

b (p. 319) i. —— *Verdict of criminal negligence.*]—The driver of a motor car which struck & instantly killed a pedestrian was charged with manslaughter. The jury, after expressly finding the accused not guilty of manslaughter, found him guilty of criminal negligence under sect. 284, Criminal Code :—*Held :* by virtue of sub-sect. (3) added to sect. 951 of the Criminal Code by 1930, c. 11, s. 25, it was open to the jury to so find.—R. *v.* KENNEDY, [1936] 1 W. W. R. 513; 65 Can. C. C. 158; 44 Man. L. R. 8; 5 Can. L. Jo. 276.—**CAN.**

b (p. 319) ii. —— ——.]—Where the death of a person is caused by the criminally negligent operation of a motor vehicle & the driver is charged with manslaughter, sub-sect. (3) added to sect. 951 of the Criminal Code leaves it open to the jury to find either manslaughter or criminal negligence under sect. 284, Criminal Code.—R. *v.* PREUSANTANZ, [1936] 1 W. W. R. 520; 65 Can. C. C. 129; 44 Man. L. R. 33; 5 Can. L. Jo. 291.—**CAN.**

n (p. 320). Read now "**3362a i.**"

o (p. 320). Read now "**3362a ii.**"

3371 v. —— ——.]—R. *v.* O'BRIEN (1926), 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

3371 vi. —— ——.]—On a trial for rape upon G., the latter swore to occurrences which, if true, proved the crime charged, & was corroborated. The jury after retiring announced that they were not inclined to bring in a verdict of guilty, adding that if the charge were indecent assault it would be different. They were informed by the trial judge that it was rape or nothing. They then brought in a verdict of guilty :—*Held :* on the evidence there was nothing upon which to base a charge of a lesser offence, & deft.'s appeal must be dismissed.—R. *v.* O'BRIEN, [1929] 1 D. L. R. 266; 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

l (p. 322) i. —— —— *Carnal knowledge of girl under fourteen—Verdict set aside.*]—R. *v.* MARCUS & RICHMOND (1931), 55 Can. C. C. 322.—**CAN.**

t (p. 323 i. *Indictment for robbery—Verdict of receiving stolen property.*]—A verdict of receiving stolen property well knowing it to have been stolen is not competent on an indictment for robbery.—R. *v.* PAPIAH (1929), 50 N. L. R. 19.—**S. AF.**

sa. *Indictment for extortion—Verdict of attempting to obtain by false pretences.*]—On a charge of extortion the jury are entitled to find a verdict of attempting to obtain by false pretences.—HAMMOND *v.* R., [1934] 3 D. L. R. 722; 62 C. C. C. 1.—**CAN.**

sd. *Indictment for theft—Verdict of housebreaking.*]—On a charge of theft accused cannot be found guilty of housebreaking.—R. *v.* DOYLE (1934), 7 M. P. R. 521; 62 C. C. C. 131.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—G'

3411 iii. ——.]—R. *v.* WALTERS, No. 3217 ii, *ante*.

PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. —— *Meaning of "new trial."*]—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words "new jury" a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. *v.* WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—C.

3481 i. *Felony.*]—It is an essential principle of our criminal law that the trial of an indictable offence has to be conducted in the presence of the accused; & for this purpose trial means the whole of the proceedings, including

3526. *Add. Annotation :—Generally,* **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

3538. *Add. Annotation :—***Consd.** R. *v.* Hertfordshire JJ., *Ex p.* **Larsen** (1925), 89 J. P. 205.

Part VIII.—Special Pleas.

3555a. ——.]—On Jan. 20, 1937, two summonses came before justices sitting in petty sessions charging appct. with certain motor car offences. When the summonses were called on appct. was not present. The service of the summonses was proved, evidence was given by the police & the justices fined the appct. Before the decision of the justices had been entered in the register of convictions & orders of the ct. kept under Summary Jurisdiction Act, 1879 (c. 49), s. 22 (1), the justices, while they were still sitting, were informed of certain previous convictions of appct. in respect of motoring offences & that there had been delay on his part in paying the fines imposed for those offences. In view of that information the justices formed the opinion that the matters raised by the summonses ought to be dealt with in the presence of appct. & they issued a warrant for his arrest. Appct., accordingly, appeared before a differently constituted bench of justices on Jan. 23, when he pleaded guilty to the two summonses & was ordered to pay fines larger than those imposed on Jan. 20 :—*Held :* the decision of the justices on Jan. 20 constituted a complete & effective conviction of appct., although it had not been entered in the register, &, therefore, on Jan. 23 appct. was entitled to plead *autrefois convict* of the offences with which he was then charged.—R. *v.* MANCHESTER JJ., *Ex p.* LEVER, [1937] 2 K. B. 96 ; [1937] 3 All E. R. 4 ; 106 L. J. K. B. 519 ; 157 L. T. 68 ; 101 J. P. 407 ; 53 T. L. R. 687 ; 81 Sol. Jo. 571 ; 35 L. G. R. 281, D. C.

3566. *Add. Annotation :—***Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3567. *Add. Annotation :—***Refd.** Nadan *v.* R., [1926] A. C. 482.

3570a. Finding of guilty—No sentence.]—Deft. was charged at petty sessions with an indictable offence & consented to be dealt with summarily. That ct., after hearing the evidence on both sides, announced that it found deft. guilty. Certain previous convictions of deft. were then proved, whereupon the ct., without passing sentence upon him, committed him for trial at quarter sessions. At the trial deft. raised a plea of *autrefois convict,* but the ct. of quarter sessions overruled it & convicted him :—*Held :* by the Ct. of Criminal Appeal, there had been a conviction of deft. at petty sessions ; in order to support the plea of *autrefois convict* it was not necessary that the conviction should have been followed by sentence, & the quarter sessions should have accepted that plea ; & the conviction of deft. by the latter ct. should be quashed.—R. *v.* SHERIDAN, [1937] 1 K. B. 223 ; [1936] 2 All E. R. 883 ; 106 L. J. K. B. 6 ; 155 L. T. 207 ; 100 J. P. 319 ; 52 T. L. R. 626 ; 80 Sol. Jo. 535 ; 34 L. G. R. 447 ; 26 Cr. App. Rep. 1 ; 30 Cox, C. C. 447, C. C. A.

*Annotation :—***Consd.** R. *v.* Grant, [1936] 2 All E. R. 1156, C. C. A.

3570b. Plea of guilty.]—Applt. was charged before a metropolitan police magistrate with larceny. He pleaded guilty. The learned magistrate committed him to quarter sessions for trial & wrote to the clerk of the peace for the County of London as follows : "I am committing for trial to-day J. G. He pleaded guilty & consented to my jurisdiction. In view of his record & age I obtained a report during remand on bail from the Institute of Scientific Delinquency. I enclose a copy of that report. I feel it is a case quarter sessions should deal with." At the trial, before quarter sessions, applt. was unrepresented & he did not put forward any defence or cross-examine the witnesses for the prosecution. He stated, however, that he had not had a fair trial as

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sentence. There is authority for saying that in cases of misdemeanour there may be special circumstances which permit a trial in the absence of the accused, but on trials of felony the rule is inviolable, unless possibly the violent conduct of the accused himself intended to make trial impossible renders it lawful to continue in his absence. The result is that, except possibly where there has been such conduct by the accused, sentence passed for felony in the absence of the accused is totally invalid.—R. *v.* LAWRENCE, [1933] 3 W. W. R. 102,—CAN.

PART VII. SECT. 7, SUB-SECT. 17.—F.

o i. *Right of public to copy.*]—Any member of the public has a right to obtain a copy of a judgment of any criminal ct.—EMPEROR *v.* LADLI PRASAD ZUTSHI (1931), I. L. R. 53 All. 724.—IND.

ss. *Omission of essential element of crime—Conviction invalid.*]—R. *v.* ING YICK ING (1924), 43 Can. Crim. Cas. 392.—CAN.

PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. —— *In prisoner's absence.*]—*Held :* the ct. was not *functus officio.*—R. *v.* HUGHES (1924), 35 B. C. R. 55.—CAN.

3536 iii. —— *After removal of conviction by certiorari.*]—R. *v.* KNAPP (1925), 44 Can. Crim. Cas. 338.—CAN.

PART VIII. SECT. 1, SUB-SECT. 1.

g i. ——.]—Where a person has been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. *v.* GEIGER, [1923] 3 W. W. R. 763 ; 41 Can. Crim. Cas. 185 ; 17 Sask. L. R. 412.—CAN.

PART VIII. SECT. 1, SUB-SECT. 3.—A.

3567 iv. —— ——.]—A. was prosecuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded *autrefois convict.*—*Held :* a good plea.—QUEBEC LIQUOR COMMISSION *v.* DUBOIS, [1924] 2 D. L. R. 861 ; 42 Can. Crim. Cas. 65.—CAN.

3567 v. —— ——.]—REED & ROBERTS (*alias* McLEAN) *v.* R. (1926), 47 Can. Crim. Cas. 142 ; Q. R. 42 K. B. 35.—CAN.

3567 vi. —— ——.]—YEOK KUK *v.* R. (1928), I. L. R. 6 Ran. 386.—IND.

3567 vii. —— —— *Offences under different statutes.*]—*Re* WILNEFF (N. S.), [1928] 4 D. L. R. 869 ; 50 Can. Crim. Cas. 196.—CAN.

3567 viii. —— ——.]—R. *v.* TRACHUK, R. *v.* KOLYK (No. 2), [1929] 2 W. W. R. 418 ; 51 Can. Crim. Cas. 404 ; 38 Man. L. R. 236.—CAN.

si. *Meaning of "same matter"—Criminal Code, s.* 730.]—R. *v.* BADIUK (No. 2), [1930] 1 W. W. R. 210 ; 2 D. L. R. 318 ; 53 Can. C. C. 63 ; 38 Man. L. R. 421.—CAN.

sk. *Offence against bye-law—Acquittal on ground that enabling legislation ultra vires.*]—An acquittal of an offence against municipal bye-law on the ground that the enabling legislation is *ultra vires* is not *res judicta* upon a subsequent prosecution of the same accused for another offence against the same bye-law.—R. *v.* STEINBURG (1934), 63 Can. C. C. 92.—CAN.

the magistrate told him he would give him six months' hard labour & had then changed his mind & committed him for trial:—*Held:* applt. had already been convicted of the offence charged & therefore a plea of *autrefois convict* should have been entered on the file, or the jury should have been directed to find him not guilty.—R. *v.* GRANT, [1936] 2 All E. R. 1156; 106 L. J. K. B. 89; 155 L. T. 209; 100 J. P. 324; 52 T. L. R. 676; 80 Sol. Jo. 572; 34 L. G. R. 452; 30 Cox, C. C. 453; 26 Cr. App. 8, C. C. A.

Annotation:—**Refd.** R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96.

3603. *Add. Annotation:*—**Refd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3608a. Demanding with menaces—Threatening to print or publish with intent to extort.]—The test whether a plea of *autrefois convict* has been established is not whether the facts relied on by the Crown are the same in the two trials, but whether the accused has been convicted of an offence which is the same, or practically the same, as that with which he is charged on the second trial. The offences of threatening to publish with intent to extort, contrary to Larceny Act, 1916 (c. 50), s. 31 (2), & of uttering a letter demanding money with menaces, contrary to sect. 29 (1) (i), of the same Act, are quite distinct & separate, & the fact that the accused has already been convicted of the former will not sustain a plea of *autrefois convict* if he is subsequently charged with the latter, even though the two charges be supported by the same evidence.—R. *v.* KENDRICK & SMITH (1931), 144 L. T. 748; 23 Cr. App. Rep. 1; 29 Cox, C. C. 285, C. C. A.

3644a. Acquittal for absence of jurisdiction.]—R. *v.* WALLACE (1928), 166 L. T. Jo. 339.

3647a. —— Contradictory endorsement on indictment.]—An indictment against applt. for rape was endorsed by the grand jury: "No true bill for rape. A true bill for indecent assault

PART VIII. SECT. 1, SUB-SECT. 3.—B.

a i. *Indictment for occasioning bodily harm—Previous acquittal for murder.*]—After being acquitted on a trial for murder accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *autrefois acquit:—Held:* the plea of *autrefois acquit* furnished no answer to the charge in question.—R. *v.* GOSSELIN & GOSSELIN (Man.), [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287.—**CAN.**

sg. *Indictment for carnal knowledge of girl under fourteen—Previous conviction under Juvenile Delinquents Act.*]—To a charge, under sect. 301 (1) of Criminal Code, of carnally knowing, on or about Apr. 14, 1934, a girl under fourteen years of age, the accused pleaded *autrefois convict*, relying on a prior conviction under sect. 33 of Juvenile Delinquents Act, 1929, for contributing to the juvenile delinquency of the same girl by having sexual intercourse with her on or about Apr. 25, 1934. On the trial under said Act it was established that the girl had had sexual intercourse prior to the occasion with respect to which she had given evidence in support of the charge then being tried. This prior act of intercourse was the basis of the charge under the Code. The girl's fourteenth birthday was Apr. 25, 1934; so that, under sect. 2 (2) of the Code, she was deemed to have been under fourteen until the end of that day. The trial judge, before whom the point was argued in the absence of the jury, upheld the plea & dismissed the charge. The Crown appealed:—*Held:* that the appeal should be allowed & the charge remitted for trial.—R. *v.* PEDERSEN, [1935] 2 W. W. R. 207; 3 D. L. R. 203; 63 Can. C. C. 262.—**CAN.**

si. *Indictment for negligently causing bodily harm to B.—Previous acquittal for same offence to A.*]—An acquittal on a charge of having negligently caused bodily harm to A. is no defence to a charge of having injured B.—R. *v.* ROBBINS (1934), 62 Can. C. C. 273.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—C.

sh. *Preparation of still—Previous acquittal for possessing still—No bar to prosecution.*]—R. *v.* SLAUGHENWHITE (1930), 54 Can. C. C. 104.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—D.

3619 i. *Perjury — Previous acquittal for forgery.*]—The accused, who had been acquitted on a charge of forging the endorsement of a cheque, was subsequently tried & convicted on a charge of perjury committed on the first trial in swearing that he had not endorsed the cheque. On the second trial the evidence for the prosecution, apart from that proving the making of the alleged false statements, was confined strictly to the alleged endorsement by the accused. Two witnesses swore on both trials that they had seen the accused sign the endorsement. No evidence was offered for the defence. The accused pleaded *res judicata:—Held:* the conviction must be sustained.—R. *v.* BAYN, [1932] 2 W. W. R. 113; [1933] 1 D. L. R. 497; 59 C. C. C. 89.—**CAN.**

b i. —— *Previous acquittal for assaulting constable while discharging another duty.*]—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. *v.* DIAMOND, [1924] 3 D. L. R. 359; 2 W. W. R. 621; 20 Alta. L. R. 419.—**CAN.**

sm. *Prosecution under Customs Act, R. S. C., 1906 (c. 48), s. 215—Previous conviction under Customs Act, R. S. C., 1906 (c. 48), s. 185.*]—R. *v.* SACCO (Ont.), [1926] 3 D. L. R. 771; 46 Can. Crim. Cas. 243.—**CAN.**

so. *Offences under Lottery & Gaming Act.*]—Resp. was charged with the breach of Lottery & Gaming Act, 1917, s. 39, & the complaint was dismissed owing to the rejection of secondary evidence of a document. Later resp. was charged under s. 63 with being the occupier of a tobacconist shop which was used for the purpose of the occupier betting with persons resorting thereto. Resp. pleaded *autrefois acquit:—Held:* as the two offences were substantially different, this plea did not avail.—ALLCHURCH *v.* BERESFORD, [1928] S. A. S. R. 450.—**AUS.**

sp. *Prosecution under Prohibition Act (P. E. I.), s. 52—Previous acquittal on prosecution under Excise Act, R. S. C., 1927, s. 181—Failure of plea.*]—R. *v.* FITZPATRICK (P. E. I.), [1929] 4 D. L. R. 95; 52 Can. Crim. Cas. 119.—**CAN.**

sr. *Conspiracy — Subsequent conspiracy with additional persons.*]—Where a person has been charged with conspiracy, with certain other persons, to commit offences relating to exporting & importing opium & cocaine interprovincially & has been convicted or acquitted, such conviction or acquittal is no bar to a subsequent trial for conspiracy with the same persons, together with others, to commit the same offences together with the offences of exporting from British India & importing into British India opium & cocaine.—ABDUL RAHAMAN *v.* EMPEROR (1935), I. L. R. 62 Cal. 749.—**IND.**

PART VIII. SECT. 1, SUB-SECT. 4.

1 i. ——.]—A plea of *autrefois convict* will not lie in respect of a conviction which has been quashed.—R. *v.* PURCELL, [1934] 1 D. L. R. 778; 7 M. P. R. 275; 61 C. C. C. 261.—**CAN.**

p i. ——.]—Unless it can be said on the facts of the particular case that there has been an adjudication on the merits, the permission of the ct. to withdraw a charge is not equivalent to a dismissal which can be pleaded in bar of subsequent proceedings.—R. *v.* SOMERS (B. C.), [1929] 3 D. L. R. 772; 2 W. W. R. 366; 51 Can. Crim. Cas. 356.—**CAN.**

p ii. ——.]—BLANCHARD *v.* JENKINS, [1931] 1 D. L. R. 985; 55 Can. C. C. 77.—**CAN.**

p iii. *Withdrawal of charge.*]—Withdrawal of a charge is not an acquittal which will entitle accused to a certificate of dismissal so as to support a defence of *autrefois acquit.*]—*Ite* BOND, [1936] 3 D. L. R. 769; 66 Can. C. C. 271; 10 M. P. R. 506.—**CAN.**

sr. *No conviction—Proceedings adjourned.*]—*Ite* R. *v.* ECKER, *Re* R. *v.* FRY, [1929] 3 D. L. R. 760; 51 Can. Crim. Cas. 409; 64 O. L. R. 1.—**CAN.**

st. *Conviction under Provincial statute—No bar to conviction under Federal Statute.*]—BULLER *v.* WINDOVER, [1931] 1 D. L. R. 986; 55 Can. C. C. 143.—**CAN.**

sv. —— ——.]—R. *v.* RUNIONS, R. *v.* MACDONALD (1931), 56 Can. C. C. 390.—**CAN.**

sw. *Prosecution for libel—Award of damages in civil proceedings.*]—In criminal proceedings for libel an award of damages will not support a plea of *autrefois convict.*—MENARD *v.* R., [1934] 1 D. L. R. 155; 60 C. C. C. 334.—**CAN.**

sz. *Carrying offensive weapon with possession of smuggled goods—Previous conviction for possession of same goods.*]—A conviction for unlawfully having possession of goods whereon the duties had not been paid is not a bar to an indictment for carrying an offensive weapon when found with goods (the same goods) liable to seizure.—R. *v.* ROSS, [1934] 2 D. L. R. 237; 7 M. P. R. 84; 61 C. C. C. 67.—**CAN.**

(aggravated)," but no indictment for indecent assault was put before the grand jury. Applt., having been convicted, appealed, & the conviction was quashed on the grounds that there was no true bill for rape & that there was no indictment for indecent assault. On the same facts applt. was afterwards indicted for indecent assault, & he pleaded *autrefois acquit* but was convicted :—*Held :* although the first conviction had been recorded on the first indictment, applt. was never in peril on that self-contradictory document, & the plea of *autrefois acquit* failed, & the second conviction must be affirmed.—R. *v.* KITCHING (1929), 45 T. L. R. 634 ; 21 Cr. App. Rep. 144 ; 28 Cox, C. C. 671, C. C. A.

3650. *Add. Annotation :—As to* (1) **Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

Part X.—Informations.

3665. *Citations :*—For "17 W. R. 567" read "47 W. R. 567."

3718. *Add. Annotation :*—**Refd.** R. *v.* Evening News, *Ex p.* Hobbs, [1925] 2 K. B. 158.

3751a. By constables to extort money.]—*Held :* there being *bonâ fide* instructions to the constables to watch appct., on which they had acted without unduly harassing him, & there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted.—*Ex p.* WOLFF (1863), 28 J. P. 23.

Part XII.—Evidence and Proof.

3789. *Add. Annotation :*—**Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

3790a. —— Identification of handwriting.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

3792a. ——.]—R. *v.* TAYLOR, WEAVER & DONOVAN (1928), 21 Cr. App. Rep. 20, C. C. A.

3801. *Add. Annotation :*—**Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

3801a. —— ——.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.

(2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.

(3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—R. *v.* DWYER, R. *v.* FERGUSON, [1925] 2 K. B. 799 ; 95 L. J. K. B. 109 ; 132 L. T. 351; 89 J. P. 27 ; 41 T. L. R. 186 ; 27 Cox, C. C. 697 ; 18 Cr. App. Rep. 145, C. C. A.

Annotations :—As to (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. *As to* (2) **Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. **Refd.** R. *v.* Wainwright (1925), 19 Cr. App. Rep. 52. *Generally,* **Consd.** R. *v.* Hinds, [1932] 2 K. B. 644.

PART X. SECT. 1.

sf. *Offence charged under repealed Act.*]—R. *v.* CHEW DEB, [1928] 1 W. W. R. 966 ; 49 Can. Crim. Cas. 332 ; 39 B. C. R. 559.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

c i. —— *Inland revenue officer—Statement of capacity.*]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—R. *v.* WITSIEWICZ (Man.), [1928] 2 W. W. R. 19 ; 49 Can. Crim. Cas. 330.—**CAN.**

PART XII. SECT. 1.

3786 i a. ——.] — Evidence is not admissible of the actions of dogs while engaged in tracking down a person accused of a crime, even though the owner of the dogs testifies as to their character & training & their fitness for tracking men.—R. *v.* WHITE, [1926] 3 D. L. R. 1 ; [1926] 2 W. W. R. 481 ; 45 Can. Crim. Cas. 328 ; 37 B. C. R. 43.—**CAN.**

3786 iii. ——.]—GHANSHYAM SINGH *v.* R. (1927), I. L. R. 6 Pat. 627.—**IND.**

3786 iv. ——.]—The rule against a mere *scintilla* is especially applicable in a case in which a state of facts is alleged that would make the opposite party guilty of a crime.—TOBER *v.* LAMPMAN, [1930] 3 D. L. R. 269 ; 65 O. L. R. 236.—**CAN.**

3791 i. *Circumstantial evidence—Exclusion of other causes.*]—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—R. *v.* TYMKO (1924), 42 Can. Crim. Cas. 147.—**CAN.**

a i. *S. P.* GAUNS *v.* R. (1926), I. L. R. 7 Lah. 561.—**IND.**

b i. —— ——.]—R. *v.* DEMETRIO (1926), 46 Can. Crim. Cas. 133 ; 59 O. L. R. 249.—**CAN.**

b ii. —— ——.]—R. *v.* YOK YUEN, [1930] 1 D. L. R. 716 ; 52 Can. C. C. 300.—**CAN.**

b iii. —— ——.]—The force & effect of circumstantial evidence depend upon its incompatibility with, & incapacity of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove. On appeal from a conviction for arson, after a trial by a magistrate on which he found that the defence of *alibi* was established but that the accused had a motive for starting the fire & that on the evidence it must have been set by some one else with his knowledge & approval & at his request :—*Held :* the *alibi* being established, the other circumstances in evidence did not compel the conclusion that there was an understanding or a concerting or conspiracy between the accused & the unidentified actual perpetrator of the deed, even if the former did profit by the fire, & therefore the conviction must be set aside.—R. *v.* VINEGRATSKY (ALIAS VINE) (No. 2), [1933] 3 W. W. R. 197; 60 C. C. C. 258.—**CAN.**

b iv. —— ——.]—The trial judge should instruct the jury that, in so far as they relied upon circumstantial evidence in the case before them, they must be satisfied not only that the circumstances proved were all consistent with the guilt of the accused, but also that they were inconsistent with any other rational conclusion.—MCLEAN *v.* R., [1933] S. C. R. 688 ; [1934] 2 D. L. R. 440 ; 61 C. C. C. 9.—**CAN.**

b v. —— ——.]—R. *v.* JONES ; R. *v.* ANDERSON (1933), 47 B. C. R. 473.—**CAN.**

b vi. —— ——.]—R. *v.* MACCHIONE, [1937] 1 W. W. R. 151 ; 1 D. L. R. 593 ; 67 C. C. C. 381.—**CAN.**

sg. *Commercial documents — When admitted.*]—On a charge of theft from railway cars, documents, such as shipping bills, car checkers' records, etc., not made by the accused & of which he had no knowledge, have no probative value *per se ;* &, therefore, should not be admitted as evidence against the accused where it is not shown that the persons who made them are dead.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152 ; 50 Can. Crim. Cas 246 ; [1928] 3 W. W. R. 550.—**CAN.**

3801b. —— —— **But may be shown before arrest.**]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was picked out by the prosecutor from a number of men in a room:—*Held:* there was no ground for complaint against the method of identification.—R. *v.* MELANY (1924), 18 Cr. App. Rep. 2. C. C. A.

Annotation:—**Refd.** R. *v.* Dwyer, R. *v.* Ferguson, [1925] 2. K. B. 799.

3801c. —— —— ——.]—R. *v.* DWYER, R. *v.* FERGUSON, No. 3801a, *ante*.

3810. *Add. Annotations:*—**Folld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47.

3817a. —— ——.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—R. *v.* WAINWRIGHT (1925), 19 Cr. App. Rep. 52, C. C. A.

3819. *Add. Annotation:*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3820a. —— **Reference to meritorious discharge from army.**]—A mere reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—R. *v.* PARKER (1924), 18 Cr. App. Rep. 14, C. C. A.

3820b. —— **Evidence suggesting normal respectability.**]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.

(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character.—R. *v.* BALDWIN (1925), 133 L. T. 191; 89 J. P. 116; 69 Sol. Jo. 429; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A.

Annotations:—*As to* (1) **Consd.** R. *v.* Eidinow (1932), 23 Cr. App. Rep. 145. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

3820c. ——.]—"Good character" of accused within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), means not only general good character, but any claim to good character incidentally put forward by accused.—R. *v.* WALKER (1927), 20 Cr. App. Rep. 31, C. C. A.

3827. *Add. Annotation:*—**Consd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834. *Add. Annotation:*—**Refd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834a. *S. P.* R. *v.* NOBLE (1928), 20 Cr. App. Rep. 191, C. C. A.

3835. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

PART XII. SECT. 2.

3807 iv. —— —— ——.]—Finger-print impressions of accused, compulsorily taken before his committal to gaol, are admissible in evidence against him.—R. *v.* MANGOLD, [1926] App. D. 440.—**S. AF.**

g i. —— —— ——.]—Identification by finger prints is opinion evidence & a matter of expert knowledge & practice.—R. *v.* WISWELL, [1935] 1 D. L. R. 624; 8 M. P. R. 317; 63 C. C. C. 94.—**CAN.**

o i. —— ——.]—Evidence of identification is sufficient although the witness suffered from impaired vision, if she was capable of recognising the prisoners without glasses.—R. *v.* ZARICHNEY (1936), 65 Can. C. C. 214.—**CAN.**

p i. —— *Reference by magistrate to exhibits.*]—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which he stated his evidence was to be found. The documents were put on the record as his evidence:—*Held:* the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—LAL SINGH *v.* R. (1924), I. L. R. 5 Lah. 396.—**IND.**

3814 ii. —— ——.]—*Held:* not a ground for allowing accused's appeal against his conviction.—R. *v.* BAGLEY (B. C.), [1926] 3 D. L. R. 717; [1926] 2 W. W. R. 513; 46 Can. Crim. Cas. 257.—**CAN.**

3814 iii. —— ——.]—R. *v.* HARRISON (B. C.), [1928] 3 D. L. R. 224; [1928] 1 W. W. R. 973; 49 Can. Crim. Cas. 356.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 1.—A.

3835 i. *Confined to general reputation —What amounts to.*]—Evidence of general repute does not mean the placing of a heterogeneous mass of more or less general statements by any witness who can be produced to say something on hearsay or otherwise & label it "general repute." A man's general repute is just as much a fact as any other fact which can be proved by a witness, & the witness should be asked questions to show that he is in a position to know what the general reputation of the accused is, & as to when & in what circumstances he has heard the character of accused discussed.—EMPEROR *v.* RAM LAL (1929), I. L. R. 51 All. 663.—**IND.**

PART XII. SECT. 3, SUB-SECT. 1.—B.

3848 vii. ——.]—Evidence cannot be given on a prosecution to prove that the accused is a bad character, or has a propensity to commit criminal acts of similar nature to the offence charged.—TAYLOR *v.* R., 22 Tas. L. R. 22.—**AUS.**

3848 viii. ——.]—For the purpose of determining what will be the appropriate sentence to impose on a convicted accused the judge is justified in taking into consideration statements by the Crown counsel as to previous convictions of, & charges against, the accused, where neither the accused nor his counsel question the correctness of said statements.—R. *v.* SCHEER, [1932] 3 W. W. R. 555; 26 Alta. L. R. 489.—**CAN.**

3848 ix. ——.]—Two prisoners, brother & sister, charged jointly with the murder of another brother, were convicted & sentenced to death. During the course of the trial the following questions were put by the judge to one of the witnesses:—The judge: "What kind of a woman was H. (the female prisoner) in disposition—was she cross?" Witness: "She was not cross to us." The judge: "Had you any opportunity of observing her demeanour about her own place? Was she cross or good-tempered?" Witness: "When she would meet us she would not want to talk. That is how she would treat us." The judge: "Was she different from M. A. (another sister)?" Witness: "Yes, she was." The judge: "M. A. was a good-tempered, pleasant woman?" Witness: "Yes, my Lord." On appeal to the Ct. of Criminal Appeal objection was taken, on behalf of the prisoners, to the admissibility of this as evidence; it was submitted that it was evidence of the bad character or disposition of the female prisoner, which could only be admitted if evidence had first been offered by her as to her own good character; & could only be proved by evidence of general reputation & not by the experience of the particular witness:—*Held:* the evidence & the answers of the witness did not refer to moral character, nor to general reputation, nor to a moral disposition or tendency to commit the crime of murder. & the witness stated nothing but the demeanour & manners of the prisoner & of her sister as manifested to the witness, & accordingly, as the evidence was, in the circumstances, relevant, the objection to its admissibility was unsustainable.—A.-G. *v.* O'LEARY, [1926] I. R. 445.—**IR.**

3848 x. ——.]—On the trial of the accused on a charge of unlawfully retaining in his possession certain stolen money knowing that it had been stolen, counsel for the Crown asked one of the police officers who had arrested the accused: "Did you recognise him?" & was answered: "I thought I recognised him as being the subject of a

3850a. —— Cross-examination of witness for defence constituting attack on character of accused.]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—R. *v.* McCraig (1925), 134 L. T. 160; 90 J. P. 64; 42 T. L. R. 215; 28 Cox, C. C. 109; 19 Cr. App. Rep. 68, C. C. A.

3855a. —— —— ——.]—Evidence was given that upon the arrest of a prisoner a substantial sum of money in notes was found on him. The prisoner had been previously convicted on several occasions, but the judge, being unaware of this & with a view to ascertaining what explanation of the possession of these notes the prisoner had to offer, put to him a number of questions with regard to his occupation & history for several years past. At the conclusion of this cross-examination, defending counsel felt that he had no alternative but to inform the jury that the prisoner had been in prison during part of that time. The judge subsequently warned the jury not to be influenced adversely towards the prisoner by reason of this disclosure:—*Held:* the trial must be regarded as unsatisfactory & the conviction must be quashed.—R. *v.* Taylor (1934), 25 Cr. App. Rep. 46, C. C. A.

3855b. ——.]—A reference in evidence to accused's previous conviction may become relevant by the nature of the cross-examination.—R. *v.* Lester (1927), 20 Cr. App. Rep. 25, C. C. A.

3919a. ——.]—R. *v.* Hobday (1933), 77 Sol. Jo. 915, C. C. A.

3921. *Add. Annotations:*—**Refd.** Maxwell *v.* Director of Public Prosecutions, [1935] A. C. 309; R. *v.* Porter (1935), 25 Cr. App. Rep. 59; R. *v.* Mortimer (1936), 25 Cr. App. Rep. 150.

3924. *Add. Annotations:*—**Apld.** R. *v.* Hobday (1933), 77 Sol. Jo. 915. **Consd.** R. *v.* Mortimer (1936), 25 Cr. App. Rep. 150. **Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273; Maxwell *v.* Director of Public Prosecutions, [1935] A. C. 309; Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

3925. *Add. Annotations:*—**Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3925a. —— ——.]—R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79, C. C. A.

3940. *Add. Annotation:*—**Refd.** Maxwell *v.* Director of Public Prosecutions (1934), 151 L. T. 477.

3941. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3943a. ——.]—On an indictment for embezzlement evidence that, on a series of occasions before & after those mentioned in the indictment, precisely similar errors [to those alleged against prisoner] had been made, &

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police photograph which was on file at the office"; & the officer later testified that he had shown the accused "the police photographs." The evidence was objected to by counsel for the accused. The accused was found guilty by the jury & appealed:—*Held:* the evidence infringed the rule that the prosecution cannot, in the first instance, give evidence to impeach the character of the accused in order to establish a probability of his guilt; & it was immaterial whether or not it was offered with that object in view, for it could have no other effect on a jury.—R. *v.* McLaren, [1935] 2 W. W. R. 188; 3 D. L. R. 165; 63 Can. C. C. 257; 5 F. L. J. (Can.) 67.—**CAN.**

s i. —— ——.]—The fact that a person has on a previous occasion been bound over may be stated & proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender.—R. *v.* Kumera (1928), I. L. R. 51 All. 275.—**IND.**

sa. *What is evidence of bad character—Not statements by witness as to disposition & demeanour of prisoner & prisoner's sister.*]—A.-G. *v.* O'Leary, [1926] I. R. 445.—**IR.**

PART XII. SECT. 3, SUB-SECT. 2.

a i. *Charge of indecent assault.*]—R. *v.* Bell, [1930] 1 W. W. R. 433; 2 D. L. R. 414; 53 Can. C. C. 80; 24 Alta. L. R. 519.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—A.

1 i. —— ——.]—R. *v.* Bristol (N. S.), [1926] 4 D. L. R. 753; 46 Can. Crim. Cas. 156.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 3.—B. (a).

3920 iii. ——.]—On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—R. *v.* Morrison (1923), 33 B. C. R. 244.—**CAN.**

3920 iv. ——.]—Where the only question is whether the accused committed the act charged evidence of similar acts is not admissible.—R. *v.* Boynton (1934), 63 Can. C. C. 95.—**CAN.**

3923 ii. ——.]—Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar but unconnected acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *primâ facie* case against accused, sufficient without the help of any such evidence to go to the jury.—R. *v.* Cooper, [1923] N. Z. L. R. 1237; Gaz. L. R. 528.—**N.Z.**

3923 iii. ——.]—R. *v.* Dziwra (Ont.), [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 229.—**CAN.**

3923 iv. ——.]—Prisoner was indicted for the murder of his wife by strychnine poisoning. Evidence adduced in support of the indictment was that of three children of a former marriage by prisoner, going to show the latter's persistent cruelty towards his wife over a considerable period, in the case of two of the children terminating two years & of the third one year before the wife's death. Other evidence of happenings between the time up to which the children were able to testify & the wife's death tended to show that prisoner had become tired of her:—*Held:* the children's evidence was properly admitted both as evidence of the malicious mind with which prisoner killed his wife & of the fact that he killed her, & also as rebutting the possible defences that the wife had taken the poison herself, either suicidally or accidentally.—R. *v.* Munn, [1930] N. Z. L. R. 1017.—**N.Z.**

3926 iii. ——.]—While proof of the commission by an accused of a crime other than that with which he is charged does not prove the crime charged, this rule will not be allowed to stand in the way of the bringing out of admissible facts when the accused's part in the other crime is so interwoven with them that they cannot be established otherwise than by giving evidence of the whole occurrence. On a criminal trial if circumstances other than those connected with the crime charged are relevant to other matters which the Crown has to prove as properly part of its case, evidence of them may be admissible in certain cases even though they incriminate the accused with respect to other offences. At the same time, great care must be taken in determining the immediate purpose in view in tendering such evidence. On the trial of a man on a charge of murdering a newly born infant, the mother of the child who described the alleged murder also testified that the accused had subsequently murdered in a similar way three other newly born children of hers. The accused was convicted, & appealed on the ground (*inter alia*) that the evidence of said subsequent alleged murders should not have been admitted:—*Held:* the appeal should be dismissed.—R. *v.* Stawyczny, [1933] 2 W. W. R. 495; 4 D. L. R. 725; 60 C. C. C. 153; 41 Man. L. R. 281.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (b).

3943 ii. ——.]—Htin, Gyaw *v.* R. (1927), I. L. R. 6 Ran. 6.—**IND.**

3943 iii. ——.]—Evidence admitted to prove a system or course of conduct.—Harris *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

3943 iv. ——.]—R. *v.* Publicover (1930), 53 Can. C. C. 265; 1 M. P. R. 333.—**CAN.**

advantage taken of them, by him: admissible to explain motives & intentions.—R. *v.* RICHARDSON (1861), 2 F. & F. 343; 8 Cox, C. C. 448.

Annotations:—**Consd.** R. *v.* Stephens (1888), 58 L. T. 776. **Refd.** R. *v.* Balls (1871), L. R. 1 C. C. R. 328; R. *v.* Francis (1874), L. R. 2 C. C. R. 128; R. *v.* Bond, [1906] 2 K. B. 389.

3947a. ——.]—Applt. was charged with obtaining money by false pretences, the allegation of the prosecution being that a certain business carried on by him had falsely been represented to be a *bonâ fide* assocn. honestly carried on & in a position to offer advantages in return for the subscriptions of members. Applt. had carried on in 1930 a similar business & had made representations similar to those made in the present case & had, as a result, been convicted of obtaining money by false pretences. He was asked in cross-examination a number of questions about the previous business, but no reference was made by the prosecution to that business having resulted in any charge or conviction:—*Held:* as there was sufficient *nexus* in method & circumstance between the two businesses, the cross-examination on the previous business was admissible.—R. *v.* PORTER (1935), 25 Cr. App. Rep. 59, C. C. A.

3959a. —— **Murder.**]—R. *v.* MORTIMER (1936), 80 Sol. Jo. 227; 25 Cr. App. Rep. 150, C. C. A.

3971. *Add. Annotation:*—**Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

3972. *Add. Annotation:*—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

3992. *Add. Annotation:*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

4009. *Add. Annotation:*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

4009a. —— ——.]—In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—R. *v.* HEWITT (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 64, C. C. A.

4048. *Add. Annotations:*—**Refd.** R. *v.* Stuart, R. *v.* Leonard, R. *v.* Maples, R. *v.* Tannen, R. *v.* Taylor (1927), 43 T. L. R. 715; R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

4049. *Add. Annotation:*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

4057. *Add. Annotation:*—*As to* (2) **Dist.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

4064a. —— ——.]—Applt. was charged with obtaining food from one K. by false pretences, the false pretences alleged being that applt. had certain money, was connected with a certain firm, & was then in a position to buy & pay for K.'s business. Evidence was

PART XII. SECT. 4, SUB-SECT. 2.—B. (e).

3960 i. *General rule.*]—Evidence admitted to rebut a suggestion of accident or mistake.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

sd. *Embezzlement.*]—R. *v.* WILDER, [1933] 1 W. W. R. 191; 60 C. C. C. 81. —**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) i.

p i. —— *Disguise as revenue officer.*]—B. & others were convicted of the murder of the captain of a boat containing a cargo of liquor intended to be illegally delivered in the United States. It was proved that B. had bought a yachtman's cap with a white top & ornamented with gold braid in order to give himself the appearance of a revenue officer, & in concert with the others had attacked the crew of the boat, under the pretence that he & his associates were officers of the law. Evidence was offered by the Crown that B. on one occasion recently, & on another at a considerably earlier date, had employed similar equipment & precisely the same ruse for the purpose of deceiving & disarming the opposition of bootleggers while he took over their illegal possessions:—*Held:* such evidence was admissible as tending to establish a practice.—BAKER *v.* R., SOWASH *v.* R., [1926] 1 D. L. R. 115; [1926] S. C. R. 92; 45 Can. Crim. Cas. 19.—**CAN.**

sf. *Poison ordered by accused—Delivered at her house.*]—Where a wife is charged with poisoning her husband there is evidence to convict on proof that she ordered the poison & that it was delivered to her house, & that deceased died as the result of such poison.—R. *v.* TILFORD, [1935] 4 D. L. R. 691; O. R. 35; 64 Can. C. C. 356.—**CAN.**

PART XII. SECT 4, SUB-SECT. 2.—B. (h) ii.

r i. —— *Use of instruments on other women.*]—Accused was charged with unlawfully using an instrument on one M. S., "with intent to procure" her miscarriage. The Crown called M. S. as a witness. In further support of the onus on it to establish intent the Crown tendered the testimony of three or more witnesses to prove that accused had unlawfully used on them instruments of the same kind & for the same purpose as the kind & purpose testified to by M. S.:—*Held:* the Crown was justified in tendering the evidence in chief, & the judge should, in the proper exercise of his discretion, have admitted it when so offered or, at least, have reserved the question of its admission for later consideration after the defence had been clearly identified.—R. *v.* ANDERSON, [1935] 3 W. W. R. 272; 4 D. L. R. 432; 64 Can. C. C. 205; 50 B. C. R. 225.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iii.

4011 iii. ——.]—On a charge of incest, evidence given by the girl of prior alleged acts of incest is admissible, not as further proof of guilt, but to establish guilty relations & that a sexual passion existed.—R. *v.* PEGELO, [1934] 1 W. W. R. 573; 2 D. L. R. 798; 48 B. C. R. 146; 62 C. C. C. 78.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iv.

k i. —— *Indecent assault involving murder on another child.*]—In reaching a conclusion on a charge of indecent assault, involving murder, upon a little girl:—*Held:* the jury were neither bound, nor entitled, to shut their eyes to what they might consider to have been proved under a charge of indecent assault upon another little girl, in view of the close association in time, character, & circumstances of the incidents alleged with regard to the two charges.—H. M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—**SCOT.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) viii.

4052 xiv. —— ——.]—A person accused of obtaining goods on false pretences from B. & S. was convicted on the two counts. The pretence consisted, in the B. case, of representations that accused was a bank officer, at a certain place, was low in clothes & was about to take a holiday, & giving an assumed name; in the S. case, accused wrote a letter with similar false statements of his name & employment & stating that he desired to obtain personal requirements, as he was about to be married. Subsequently accused called & obtained goods at S.'s warehouse. The statements as to the holiday & the marriage were not proved to be untrue. Accused wrote a similar letter to M., but it was not shown that he obtained goods there. Accused also obtained credit from F. The only false representation to F. was the giving of the false name:—*Held:* evidence of the representations to M. & F. was rightly admitted on the question of intent.—R. *v.* REYNOLDS, [1927] S. A. S. R. 228.—**AUS.**

4052 xv. —— —— *Similar crime abroad.*]—In an indictment the charges against accused were that, having conceived a fraudulent scheme for obtaining money from the public in Scotland & elsewhere by means of counterfeit drafts, he (*a*) on Sept. 21, 1927, uttered in a bank in Dundee a forged document which purported to be a draft of a finance co. in New York, & (*b*) on Sept. 23, in the same bank pretended, by telephone from London, that the draft was genuine. The indictment further charged accused with pretending, in pursuance of the scheme, in an hotel in Brussels, in Oct., that a forged document was a genuine draft of the same finance co.:—*Held:* while admittedly the incident in Belgium could not be made the subject of a substantive charge, that incident & the crime charged were sufficiently closely connected to admit of evidence relating to that incident being used by the prosecution for the purpose of supporting the other charges.—H.M. ADVOCATE *v.* JOSEPH, [1929] S. C. (J.) 55.—**SCOT.**

admitted at the trial that, subsequently to the offence charged, applt. had obtained food & lodging from one C. by falsely representing that he wished to buy C.'s farm & could find the money in a few days:—*Held:* in the circumstances of the particular case, without laying down any general principle, the evidence was inadmissible, & the conviction must be quashed.—R. *v.* BOOTHBY (1933), 24 Cr. App. Rep. 112, C. C. A.

4100. *Add. Annotation:*—**Refd.** R. *v.* Tomasso (1934), 25 Cr. App. Rep. 14.

4129a. Statement by wife—In absence of husband.]—A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—R. *v.* FINDEN (1926), 19 Cr. App Rep. 144, C. C. A.

4129b. Statement by co-defendant—In answer to questions by police.]—(1) A statement relative to a pending charge, obtained in the course of a question addressed by a police officer to a person under arrest on that charge, is not a voluntary statement.

(2) Such a statement is not evidence against a co-deft., but if the jury have been adequately warned on that point the ct. will not interfere on the ground of an ambiguous sentence in the summing up.—R. *v.* TURNER (1926), 19 Cr. App. Rep. 171, C. C. A.

4151. *Add. Annotation:*—**Refd.** R. *v.* Parker, [1933] 1 K. B. 850.

4189. *Add. Citation:*—27 Cox, C. C. 510.

4194. *Add. Annotations:*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106; Sutton *v.* R., [1933] A. C. 348.

4199. *Add. Annotations:*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) ix.

4070 vi. ——— ———.]—In a trial on a charge of forging & uttering a cheque with intent to defraud, evidence of other similar offences is admissible both to prove the intent with which the particular act charged was done & to rebut by anticipation a defence open to the accused, *e.g.*, one of accident or mistake; & the term "similar offences" in this rule means offences of a similar character & not offences precisely similar in nature & fact. Applt., was charged with having forged a cheque with intent to defraud, & with having uttered it. At the trial, evidence was admitted that shortly after the date of the offence charged, applt. forged another cheque, &, yet a little later, also forged two promissory notes:—*Held:* the evidence was admissible as evidence of similar offences both to prove the intent to defraud & to rebut by anticipation the defence raised at the trial that the cheque, the subject of the charge, had been received honestly & without knowledge that it was a forged instrument.—R. *v.* MANNING (1933), 33 S. R. N. S. W. 285; 50 N. S. W. W. N. 129.—**AUS.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) xi.

f i. ——— ——— *Previous fires on insured property.*]—R. *v.* PETRISOR, [1931] 2 W. W. R. 712; 56 Can. C. C. 389.—**CAN.**

f ii. ——— *Count for false pretences—Evidence of other fires—Sufficiency of direction to jury.*]—R. *v.* PINSK, [1934] 3 W. W. R. 752; [1935] 1. D. L. R. 307; 63 Can. C. C. 201.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) xii.

so. *Conspiracy—Evidence of previous attempt.*]—On a charge of conspiracy evidence of a previous attempt to commit a similar offence is relevant & admissible.—PARADIS *v.* R., [1934] S. C. R. 165; 2 D. L. R. 88; 61 C. C. C. 184.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—A.

4129a i. *Statement by wife — In absence of husband.*]—A statement made by the wife of accused was handed to him at his own request, & he admitted the signature was that of his wife, & made the remark, "I did not think she would let me down like this. Anyhow, it is not true I was sacked from. . . . I got testimonials from both places when I left":—*Held:* an acknowledgment of the truth of the statement in whole or in part might be inferred, & the contents of the statement were properly submitted to the jury, the question of admission or not of the truth of the contents being left to them.—R. *v.* GRIGG, [1926] N. Z. L. R. 784.—**N.Z.**

t i. ———.]—R. *v.* BROWN (Sask.), [1927] 4 D. L. R. 779; [1927] 3 W. W. R. 335; 49 Can. Crim. Cas. 37. —**CAN.**

sa. *May be admissible as showing state of mind.*]—R. *v.* WYSOCHAN (1930), 54 Can. C. C. 172.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—C.

4139 xvi. ——— ———.]—Statements made in the presence & hearing of accused are admissible in evidence against him.—R. *v.* MCKEVITT, [1936] 3 D. L. R. 750; 10 M. P. R. 531; 66 Can. C. C. 70.—**CAN.**

4147 i. ——— ——— *Should be excluded unless some evidence of admission by accused.*]—It is only when accused, by "word or conduct, action or demeanour," has accepted what they contain, & to the extent that he does so, that statements made by other persons in his presence have any evidentiary value.—STEIN *v.* R., [1929] 1 D. L. R. 143; 50 Can. Crim Cas. 311; [1928] S. C. R. 553.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—E.

4172 vii. ———.]—In a charge of murder or culpable homicide, words uttered by the deceased person not in the presence or hearing of the accused but to the first person encountered & so immediately as to preclude opportunity to devise a story to the disadvantage of accused, are part of the *res gestæ* & admissible in evidence.—R. *v.* NICHOLLS, [1931] N. L. R. 557. —**S. AF.**

4175 ii. ——— ———.]—Applt. & twenty-one others were convicted of faction fighting within Act 11, 1896. In the course of the fight a native was stabbed & subsequently died. At least a quarter of an hour after he was wounded he stated that it was applt. who had wounded him. The magistrate admitted evidence of this statement as part of the *res gestæ* &, in consequence thereof, sentenced applt. to 18 months' imprisonment with hard labour, none of the other accused receiving more than 6 months:—*Held:* the statement was not part of the *res gestæ* & was wrongly admitted. —KAWULA *v.* R. (1929), 50 N. L. R. 39.—**S. AF.**

4175 iii. ——— ———.]—*Held:* declarations made by deceased that he had been poisoned by his wife were not admissible as forming part of the *res gestæ*. These declarations were made at the hospital nearly two weeks after the date of the alleged offence & four or five days before his death: therefore they were too much separated by time & circumstance from the actual commission of the alleged criminal act.—CHAPDELAINE *v.* R., [1935] S. C. R. 53; [1935] 2 D. L. R. 132; 63 C. C. C. 5.—**CAN.**

sd. *Statement by person injured immediately before hurt received.*]—Where deceased fled from her house to a neighbour's & stated that accused had tried to kill her & that he was liable to shoot through the window, & she was then shot through the window, these statements were admitted as part of the *res gestæ*.—R. *v.* WILKINSON, [1934] 3 D. L. R. 50; 62 C. C. C. 63; 7 M. P. R. 562.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—A.

4182 ii. ——— ———.]—The words in Cyprus Criminal Evidence & Procedure Law, 1929, s. 7, that "any ct. before which any person accused of any offence . . . is being tried may receive in evidence, on behalf of the complainant or of the prosecution, the particulars of any complaint or statement," mean that the ct. may receive in evidence the particulars in support of the charge & as evidence of the facts to which the statement relates. Applt. was accused of manslaughter in Cyprus. A witness gave evidence that the man just before he died asked him to ask the accused: "Why did he beat me?": another witness in evidence said that the man said: "Why did he strike me?":—*Held:* on the above construction of sect. 7 of the Law of 1929, those two questions were properly admitted not merely as evidence that they were asked, but as evidence of the facts implied therein.—SUTTON *v.* R., [1933] A. C. 348; 102 L. J. P. C. 82; 148 L. T. 536; 49 T. L. R. 346, P. C.—**CYPRUS.**

PART XII. SECT. 4, SUB-SECT. 6.—B.

4200 viii. ———.]—On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had complained to her sister of the crime:—*Held:* evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—R. *v.* PROTEAU (1923), 33 B. C. R. 39.—**CAN.**

4216a. —— ——.]—On the trial of an indictment for corruptly giving or receiving a gift, a paper found on accused, which may refer to the bribery charged, is admissible in evidence against him.—R. *v.* CHESSHIRE, LUCAS & BOTTOM (1927), 20 Cr. App. Rep. 47, C. C. A.

4222a. ——.]—(1) A disorderly house at common law is a house which is so conducted as to violate law & good order.

(2) Letters, if found in such a house referring to unnatural practices, may be given in evidence against a person charged with keeping such a house.—R. *v.* BERG, BRITT, CARRÉ & LUMMIES (1927), 20 Cr. App. Rep. 38, C. C. A.

4222b. ——.]—Applt. was charged with larceny & conspiracy. The facts of the crime were that with two others applt. obtained £2,300 from a person by a trick in the course of a transaction in which that person intended to purchase a number of Kruger sovereigns for that sum. At the trial evidence, to which objection was taken, was given that Kruger sovereigns had been found in applt.'s flat. In fact these sovereigns belonged to an employee of applt.'s wife. The recorder upheld the objection & in his summing up said more than once that the jury ought to exclude that evidence from their consideration. The jury convicted & applt. appealed on the ground that the evidence ought not to have been admitted:—*Held:* the evidence that Kruger sovereigns were found in applt.'s flat was material & admissible & no objection could be taken to the fact that it was admitted.—R. *v.* KURASCH, [1937] 2 All E. R. 130; 53 T. L. R. 441; 81 Sol. Jo. 296; 26 Cr. App. Rep. 25, C. C. A.

4254a. —— ——.]—If the judge at the trial is satisfied that deft. was properly cautioned before he made a statement, that statement is admissible in evidence: deft. is not entitled at that stage to give evidence that the statement was improperly obtained.—R. *v.* BALDWIN (1931), 23 Cr. App. Rep. 62, C. C. A.

4275a. —— —— —— **Preliminary examination.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

4279. *Add. Annotation:*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4286. *Add. Annotation:*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

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q i. —— ——.]—Upon appeal from a conviction for rape it was argued that evidence of a complaint, made by complainant to her husband many hours after the alleged offence, was improperly admitted, she having had earlier opportunities to complain to others, though not to her husband:—*Held:* it was for the trial judge to decide whether the complaint was made in circumstances which rendered it properly admissible—the material point was whether it was made on the first reasonable opportunity—& the judge found that it would not have been reasonable for the woman to have complained to other persons.—R. *v.* HILL, [1928] 2 D. L. R. 736; 49 Can. Crim. Cas. 161; 61 O. L. R. 645.—**CAN.**

4209 vi. —— ——.]—R. *v.* STONEHOUSE & PASQUALE, [1928] 1 D. L. R. 506; [1928] 1 W. W. R. 161; 49 Can. Crim. Cas. 122; 39 B. C. R. 279.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 7.

b i. —— ——.]—The fact that incriminating documents have been obtained from accused does not make them objectionable.—R. *v.* HAWKINS (1923), 42 Can. C. C. 305.—**CAN.**

4221 iii. ——.]—It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communistic) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate:—*Held:* the evidence was admissible.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

4232 i. *Must be material—Charge of acts of gross indecency—Evidence of possession of lewd pictures—Admitted on general issue.*]—Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—R. *v.* DAVIS, [1925] App. D. 30.—**S. AF.**

PART XII. SECT. 5, SUB-SECT. 1.

l i. *Actual words & not substance of confession should be given.*]—The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—NUR ALI *v.* R. (1924), I. L. R. 5 Lah. 140.—**IND.**

l ii. ——.]—It is not the law that the statement of accused must be rejected if not in his *ipsissima verba*, but it is a matter for consideration by the judge in arriving at his decision as to the admission or not of the statement.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

sd. *Previous written statement inconsistent with prisoner's evidence at trial.*]—*Held:* admissible.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

se. *Statement inculpating co-prisoners.*]—Three applts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculpating applts. under whose compulsion she said she had been acting:—*Held:* the statement was not a confession, & had been improperly admitted in evidence against applts.—R. *v.* CAMANE, [1925] App. D. 570.—**S. AF.**

sf. *Statement overheard in cells.*]—At the trial of four persons, on charges including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deponed that prisoners were shouting to each other in the cells to see who was in. He was then asked by counsel for the Crown, "What did you hear?":—*Held:* the question must be disallowed.—H.M. ADVOCATE *v.* KEEN, [1926] S. C. (J.) 1.—**SCOT.**

sg. *What amounts to—Under* 1917 *Act* (*c.* 31), *s.* 273.]—The test to be applied in determining whether a statement made by accused is a confession within 1917 Act (c. 31), s. 273, is whether the acknowledgment of guilt on the part of the accused is such that, if made in a ct. of law, it would have amounted to a plea of guilty.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sk. *Written confession—Must be put in if referred to.*]—The jury should not be informed that accused has made a written confession unless it is put in as evidence.—R. *v.* SAMPSON (1934), 8 M. P. R. 237; 62 C. C. C. 49.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.

n i. —— ——.]—The accused had been committed for trial on a charge of murdering another man whose remains were for a time thought to be those of the victim in the present case. On the preliminary hearing of that charge the accused, after being asked whether he wished to make any statement, was sworn in & made a statement under oath. There was no doubt that he made the statement of his own free will & after the usual ample warnings. The trial judge in the present case allowed that statement, except that part of it which was extracted on cross-examination, to be read into the record:—*Held:* while the administering of the oath was an irregularity, it did not operate to the accused's prejudice & did not render the statement allowed in invalid as evidence.—R. *v.* BAHREY, [1934] 1 W. W. R. 376.—**CAN.**

o i. —— ——.]—Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression:—*Held:* the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—R. *v.* DEO DAT (1922), I. L. R. 45 All. 166.—**IND.**

PART XII. SECT. 5, SUB-SECT. 3.

s (p. 406) **i.** —— *Document marked for identification only—Not admissible.*]—R. *v.* SMITH (1931), 3 M. P. R. 97.—**CAN.**

t (p. 408) **i.** ——.]—The evidence of a judgment debtor on an examination for discovery in aid of execution is admissible against him on a subsequent criminal charge, unless he at the time objected to answer on the ground that his answers might tend to incriminate him.—R. *v.* NOZAKI, [1926] 4 D. L. R. 955; [1926] 3 W. W. R. 332; 46 Can. Crim. Cas. 168; 37 B. C. R. 305.—**CAN.**

ri. —— *Subsequent charge of perjury.*]—At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a

4308. *Add. Annotations:*—**Refd.** Nadan *v.* R., [1926] A. C. 482; Attygalle *v.* R., [1936] 2 All E. R. 116.

4314a. —— **Proof of inducement.**]—Where an alleged confession by a prisoner is tendered in evidence by the prosecution & objection is taken by the defence to its admission on the ground that it has been induced by threats, it is not permissible for the judge to decide the issue whether such threats have been made or not by reference to the depositions. The proper course is for the judge to hear evidence on that issue in the absence of the jury, & upon that evidence rule whether the confession should be admitted or not.—R. *v.* CHADWICK (1934), 78 Sol. Jo. 279; 24 Cr. App. Rep. 138, C. C. A.

4317a. —— ——.]—The fact that an accused person makes a voluntary confession without a caution does not exclude its admissibility at the trial.—R. *v.* PATTISON (1929), 21 Cr. App. Rep. 139, C. C. A.

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witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge:—*Held:* the conviction for perjury should be quashed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

sl. *Inquiry by Fire Commissioners.*]—A. was indicted for felony. At the trial the Crown put in evidence depositions sworn to by him, without being cautioned that what he so deposed to might be given in evidence against him, before Fire Comrs. empowered by the Quebec Statutes, 31 Vict. c. 31, & 32 Vict. c. 29, to investigate the origin of any fires occurring in Quebec, & before any charge or accusation had been made against him:—*Held:* the depositions were properly admitted as evidence against the prisoner at the trial.—R. *v.* COOTE (1873), L. R. 4 P. C. 599.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 4.

4303 x. ——.]—Neither the fact that accused was not cautioned before making a statement to a person in authority, nor the fact that it was made in answers to questions put by a police officer, is sufficient to render it inadmissible in law, but they are circumstances which the judge should consider in exercising his discretion to exclude or admit the statement.—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4303 xi. ——.]—*Held:* evidence as to a voluntary statement made by prisoner to the police, after being cautioned, was admissible, although the effect of the statement was to indicate the previous bad character of accused.—H.M. ADVOCATE *v.* M'FADYEN, [1926] S. C. (J.) 93.—**SCOT.**

4303 xii. ——.]—R. *v.* HAGERUP (Sask.) (1927), 48 Can. Crim. Cas. 95.—**CAN.**

4303 xiii. ——.]—BOISSEAU *v.* R. (1927), 49 Can. Crim. Cas. 222; Q. R. 43 K. B. 105.—**CAN.**

4303 xiv. —— *Effect of retraction.*]—A retracted confession is admissible in evidence, but should have no weight attached to it unless it is corroborated in material particulars, or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight, & may be used against a co-accused.—SHEONARAIN SINGH *v.* R. (1928), I. L. R. 8 Pat. 262.—**IND.**

4303 xv. ——.]—R. *v.* RASMUSSEN, [1935] 1 D. L. R. 97; 62 C. C. C. 217; 9 M. P. R. 41.—**CAN.**

4303 xvi. ——.]—There is no general rule of law that a person cannot be convicted of a crime on the sole evidence of a confession by him of his guilt.—MCKAY *v.* R. (1936), 54 C. L. R. 1.—**AUS.**

m p. (411) i. —— ——.]—R. *v.* PRICE, [1931] 3 D. L. R. 155; 55 Can. C. C. 206.—**CAN.**

s (p. 412) i. —— ——.]—If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.—R. *v.* WARD (1924), 41 Can. Crim. Cas. 418.—**CAN.**

s (p. 412) ii. —— ——.]—The burden is upon the prosecution to satisfy the judge that statements made by the prisoner on interrogation by a person in authority were voluntary.—R. *v.* NELSON PRICE, [1931] 3 M. P. R. 303.—**CAN.**

s (p. 412) iii. —— ——.]—When a confession is tendered in evidence, its voluntary character must, apart from Evidence Act, 1928 (Vict.), s. 141, appear before it is admissible. The trial Judge must determine whether a confession is voluntary, &, if a promise or threat has been made, whether it is really calculated to cause an untrue admission of guilt.—CORNELIUS *v.* R. (1936), 55 C. L. R. 235; [1936] V. L. R. 222; 42 Argus L. R. 278; 10 A. L. J. 118.—**AUS.**

b (p. 412) i. —— *Though not in accused's native tongue—Confession read over & explained.*]—R. *v.* IWANCHUK (Alta.), [1929] 1 D. L. R. 279; 50 Can. Crim. Cas. 405.—**CAN.**

4311 vi. ——.]—A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

4311 vii. —— *Made under influence of mental suggestion.*]—R. *v.* BOOHER (Alta.), [1928] 4 D. L. R. 795; [1928] 3 W. W. R. 203; 50 Can. Crim. Cas. 271.—**CAN.**

4311 viii. —— *Promise or threat by third party—In presence of person in authority.*]—A promise or threat made to an accused by a third person in the presence of a person in authority & with that person's apparent acquiescence renders a confession thereby obtained from the accused inadmissible in the same manner as if the promise or threat had been made directly by the person in authority himself. If the whole of the evidence discloses that a confession by an accused was made as a voluntary statement it ought to be admitted.—R. *v.* BAHREY, [1934] 1 W. W. R. 376.—**CAN.**

4311 ix. ——.]—After entering a house in execution of a search warrant a police officer "called together" the accused & a woman who was there &, without warning them, asked which of the two was the responsible tenant. The accused answered that he was & that he paid the rent; & the woman stated in the presence of the accused that that was so:—*Held:* although no charge had yet been made against the accused & he was not then under arrest, the question was tantamount to a command &, therefore, accused's answer was not voluntary & should not have been admitted in evidence against him. Consequently, also, the statement made by the woman should not have been admitted.—R. *v.* MINOGUE, [1935] 3 W. W. R. 337; 4 D. L. R. 504; 64 Can. C. C. 318; 50 B. C. R. 259; 5 F. L. J. (Can.) 131.—**CAN.**

l (p. 413) i. —— ——.]—Applt. was convicted of murder. Evidence was given at the trial that in the middle of the night, one day after the murder, the accused was removed from his cell &, escorted by three police officers, was taken on a road in search of the revolver that shot the victim. The accused was cross-examined on the incidents of that trip & one police officer testified in rebuttal as to the course of conduct & the conversation of the accused on that occasion:—*Held:* there should be a new trial. Under the circumstances of the case, such evidence was inadmissible in the absence of proof that the statements made by the accused were voluntary & upon proper warning.—MARKADONIS *v.* R., [1935] S. C. R. 657; 3 D. L. R. 424; 64 Can. C. C. 41.—**CAN.**

m (p. 413) i. —— *Officer must be called.*]—R. *v.* BRYGA (1930), 53 Can. C. C. 198.—**CAN.**

sc. *Admissibility question of law for judge.*]—The question of the admissibility of an alleged confession made by an accused is one of law & for the judge alone. The proper practice is to have all the evidence on the preliminary point whether the confession is admissible taken at one time as a "trial within a trial" & in the absence of the jury.—R. *v.* BASCHUK, [1931] 2 W. W. R. 713; 56 Can. C. C. 208; 39 Man. L. R. 554.—**CAN.**

sm. *Confession to excise officer.*]—An excise officer is not a police officer within Evidence Act, 1872, s. 25, & therefore a confession made to such an officer in course of his investigation is admissible in evidence.—RAHHA KISHUN MARWARI *v.* KING-EMPEROR (1933), I. L. R. 12 Pat. 46.—**IND.**

sp. *Undue detention by police.*]—Undue detention raises a doubt as to whether a statement by the prisoner was voluntary.—CHAPDELAINE *v.* R., [1935] 1 D. L. R. 805; 62 Can. C. C. 209.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.

4326 i. *Before accused is in custody—Inquiries as to offences may be made—Answers admissible in evidence—Caution not necessary.*]—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4326 ii. —— —— —— ——.]—It is not the law that a statement must be excluded on the sole ground that either the statement was made in answer to questions put by a police officer to accused, or that it was made without a caution having been first administered. It is a matter for the judge to decide whether, in his discretion, he will admit the statement or not, having regard to all the circumstances, & observing the legal require-

4348. *Add. Annotation :*—**Apld.** R. *v.* Brown & Bruce (1931), 23 Cr. App. Rep. 56.

4351. *Add. Annotation :*—**Refd** R. *v.* Turner (1926), 19 Cr. App. Rep. 171.

4351a. —— —— ——.]—R. *v.* BOOKER, No. 8793a, *post.*

4351b. —— —— ——.]—R. *v.* TURNER, No. 4129b, *ante.*

4351c. —— —— ——.]—R. *v.* BROWN & BRUCE, No. 2404a, *ante.*

4351d. —— —— ——.]—Evidence of conversation between a prisoner in custody & a police officer may not be admissible on the trial of the accused, if the prisoner has not been cautioned.—R. *v.* DWYER (1932), 23 Cr. App. Rep. 156, C. C. A.

4357a. —— **Form of statement.**]—R. *v.* O'DONOGHUE, No. 8266a, *post.*

4359a. ——.]—Larceny. The prosecutor asked the prisoner, on finding him, for the money he, the prisoner, had taken out of the prosecutor's pack, but before the money was produced said, " He only wanted his money, & if the prisoner gave him that, he might go to the devil if he pleased " ; upon which the prisoner took 11*s.* 6½*d.* out of his pocket said it was all he had left of it :—*Held :* the confession ought not to have been received.—R. *v.* JONES (1809), Russ. & Ry. 152 ; 168 E. R. 733, N. P.

4394a. ——.]—The prisoners, two children, one aged eight & the other a little older, were tried for attempting to obstruct a railway train. It was proved that, the mothers of the prisoners & a policeman being present, after they had been apprehended, the mother of one of the prisoners said : " You had better, as good boys, tell the truth " ; whereupon both the prisoners confessed :—*Held :* this confession was admissible in evidence against the prisoners.—R. *v.* REEVE & HANCOCK (1872), L. R. 1 C. C. R. 362 ; 41 L. J. M. C. 92 ; 26 L. T. 403 ; 20 W. R. 631 ; 12 Cox, C. C. 179, C. C. R.

Annotations :—**Refd.** R. *v.* Hatts & Culffe (1883), 49 L. T. 780 ; R. *v.* Jackson (1936), 80 Sol. Jo. 977.

4526. *Add. Annotation :*—**Consd** Minter *v.* Priest, [1929] 1 K. B. 655.

4534. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4536a. —— **False answer in Chancery—Solicitor present when put in.**]—Attorney present at putting in an answer cannot be obliged to swear.—R. *v.* WATKINSON (1739), 2 Stra. 1122 ; 93 E. R. 1072.

Annotation :—**Consd.** Greenhough *v.* Gaskell (1833), Coop. *temp.* Brough. 96.

ment that the statement shall be voluntary, though not necessarily volunteered.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

4326 iii. —— —— —— ——.]—Where a statement made by accused, at the time suspected but not then arrested, to a police officer was freely & voluntarily made :—*Held :* the fact that such officer failed to caution accused did not render the statement inadmissible.—R. *v.* BARLIN, [1926] App. D. 459.—**S. AF.**

4336 xvi. —— —— ——.]—A statement made to the police by a boy, between sixteen & seventeen years of age, detained on suspicion of murder, not admitted, in view of the youth of accused, his abnormal physical & mental condition at the time he made the statement, a doubt as to the adequacy of the warning given by the police, the fact that he had not the benefit of the advice of a law-agent, & the fact that the statement had followed upon a conversation with an inspector in which questions put to accused had some bearing on the subject-matter of the charge.—H.M. ADVOCATE *v.* AITKEN, [1926] S. C. (J.) 83.—**SCOT.**

4336 xvii. —— —— ——.]—A statement made to the police by a man detained on suspicion of murder, in reply to a question addressed by one police officer to another, not admitted, as prisoner might have thought that the question was addressed to him, & his statement could not be regarded as voluntary.—H.M. ADVOCATE *v.* LIESEIT, [1926] S. C. (J.) 88.—**SCOT.**

4336 xviii. —— —— —— *Burden of establishing voluntary character of statement on Crown.*]—R. *v.* BELLOS, [1927] 3 D. L. R. 186 ; [1927] S. C. R. 258 ; 48 Can. Crim. Cas. 126.—**CAN.**

4336 xix. —— —— —— *How burden discharged.*]—SANKEY *v.* R., [1927] 4 D. L. R. 245 ; [1927] S. C. R. 436 ; 48 Can. Crim. Cas. 97.—**CAN.**

4336 xx. —— —— ——.]—R. *v.* SEABROOKE, [1932] 4 D. L. R. 116 ; O. R. 575 ; 58 C. C. C. 328.—**CAN.**

4336 xxi. —— —— ——.]—Determination of any question raised as to the voluntary character of a statement by an accused elicited by interrogatories administered by police officers is not a mere matter of discretion for the trial judge. Where such a statement is elicited in the presence of several officers, the statement ought, as a rule, not to be admitted unless (in the absence of some adequate explanation of their absence) those who were present are produced by the Crown as witnesses, at least for cross-examination on behalf of the accused ; &, where the statement professes to give the substance of a report of oral answers given by the accused to interrogatories, without reproducing the questions, then the written report ought not to be admitted in evidence unless the person who is responsible for its compilation is (here again in the absence of some adequate explanation of his absence) called as a witness. —THIFFAULT *v.* R., [1933] S. C. R. 509 ; 3 D. L. R. 591.—**CAN.**

k i. —— *Duty of police in examining suspect.*]—R. *v.* BOHUN (No. 2), [1933] 3 W. W. R. 609.—**CAN.**

sk. *Before charge laid—After caution.*] —Statements made by an accused in answer to questions put by police officers during their investigation of the crime, & after he had been warned that anything he said might be used as evidence, but before he had been charged with the crime :—*Held :* inadmissible against him, since, on the evidence, it could not be said that they were made voluntarily.—R. *v.* BUCHAM, [1936] 1 W. W. R. 597 ; 43 Man. L. R. 581.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—A.

4380 xiii. ——.]—Where the village panch told accused that the truth had come out, & that he had better say what he knew, & accused thereupon confessed his guilt :—*Held :* the confession was inadmissible in evidence. —KUNJA SUBUDHI *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

4380 xiv. ——.]—A police officer to whom a confession was said to have been made had said to deft. that " it would be better to tell the truth " :—*Held :* such an expression imports the probability of benefit to be derived by the accused from telling the truth & therefore a statement so induced is inadmissible.—R. *v.* BROWN, [1931] 3 D. L. R. 592 ; O. R. 154 ; 55 Can. C. C. 258.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (b).

4474 i. *Medical man.*]—R. *v.* ROADHOUSE, [1934] 1 W. W. R. 349 ; 61 C. C. C. 191 ; 48 B. C. R. 10.—**CAN.**

q i. ——.]—A collecting & an assistant " panchayet " are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—R. *v.* GANESH CHANDRA GOLDAR (1922), I. L. R. 50 Calc. 127.—**IND.**

sc. *Authority in relation to inquiry.*] —The words " person in authority " in Evidence Act, 1872, s. 24, have reference to a person who has authority to interfere in the matter under inquiry, as, for example, a person engaged in the apprehension, detention or prosecution of the accused, or who is empowered to examine him.—SANTOKHI BELDAR *v.* KING-EMPEROR (1933), I. L. R. 12 Pat. 241.—**IND.**

sf. *Informant.*]—An informant is a person in authority within the meaning of the rule with respect to the admission in evidence of a confession made by an accused. In order for the Crown to satisfy the burden on it of showing affirmatively that the confession was voluntary it is necessary to show all the circumstances under which the confession was made, not merely what the accused said but also what was said by others & any circumstances which may have had any effect on the accused's mind.—R. *v.* NEWES, [1934] 1 W. W. R. 295 ; 3 D. L. R. 237 ; 61 C. C. C. 316.—**CAN.**

PART XII. SECT. 6, SUB-SECT. I.

4540 iii. ——.]—In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—R. *v.* DERBY (1924), 42 Can. Crim. Cas. 152.—**CAN.**

4540 iv. ——.]—R. *v.* MYERS (Ont.) (1928), 50 Can. Crim. Cas. 350.—**CAN.**

k l. ——.]—R. *v.* BRYANT (Sask.) (1929), 52 Can. Crim. Cas. 410.—**CAN.**

4543a. —— ——.]—In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner & malice of the prisoner. When evidence of death & malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.—WOOLMINGTON *v.* PUBLIC PROSECUTIONS DIRECTOR, [1935] A. C. 462; 104 L. J. K. B. 433; 153 L. T. 232; 51 T. L. R. 446; 79 Sol. Jo. 401; 25 Cr. App. Rep. 72; 30 Cox, C. C. 234, H. L.; *revsg.* S. C. *sub nom.* R. *v.* WOOLMINGTON, 179 L. T. Jo. 256, C. C. A.

Annotations:—**Refd.** Mahadeo *v.* R., [1936] 2 All E. R. 813; R. *v.* Jackson (1936), 80 Sol. Jo. 977.

4545. *Add. Annotation:*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426. **Refd.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116.

4548a. —— **Murder.**]—WOOLMINGTON *v.* PUBLIC PROSECUTIONS DIRECTOR, No. 4543a, *ante*.

4548b. —— ——.]—R. *v.* JACKSON (1936), 80 Sol. Jo. 977, C. C. A.

4552. *Add. Annotation:*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

4564a. —— —— ——.]—The prisoner was charged with the murder of his son, whose body had not been found. The prisoner prior to trial had made several confessions to the effect that he had murdered the boy & disposed of the body, but at the trial he retracted these & gave evidence that he had found the dead body of the boy in a canal. Apart from the prisoner's statements, there was no direct evidence that the boy was dead:—*Held:* the evidence was sufficient to justify a conviction.

Observations on evidence of the *corpus delicti* on a charge of murder.—R. *v.* DAVIDSON (1934), 78 Sol. Jo. 821; 25 Cr. App. Rep. 21, C. C. A.

4588. *Add. Annotation:*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

4598. *Add. Annotation:*—**Expld.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

4606. *Add. Annotation:*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

4608. *Add. Annotation:*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

4620. *Add. Annotation:*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

4645. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

4650. *Add. Annotation:*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

4659. *Add. Citation:*—1 Leach, 300, n.

Add. Annotation:—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

4662a. —— ——.]—A deft. is entitled to see a written description of himself given by a police officer to his superior, with a view to cross-examining that officer on alleged discrepancies between the contents of that document & his sworn testimony.—R. *v.* CLARKE (1930), 22 Cr. App. Rep. 58, C. C. A.

4662b. —— ——.]—R. *v.* THOMAS, No. 5910a, *post*.

4692. In the cross-reference following this case, for "*See* Part XXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post*," read "*See* Part XXXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post*."

4693a. —— **During hearing.**]—(1) When one joint deft. pleads guilty to two larcenies, the summing-up must not assume against another only indicted in respect of one that he is implicated.

(2) A witness who has been present at the proceedings before being called is not thereby disqualified from giving evidence.—R. *v.* BRIGGS (1930), 22 Cr. App. Rep. 68, C. C. A.

PART XII. SECT. 6, SUB-SECT. 2.

s (p. 430) i. —— *Lawful possession of liquor in lawful place.*]—R. *v.* CAIN (Ont.) (1929), 52 Can. Crim. Cas. 179.—**CAN.**

s (p. 430) ii. —— *When discharged.*]—R. *v.* SMITH (Alta.) (1929). 52 Can. Crim. Cas. 193.—**CAN.**

c (p. 431) i. —— —— ——.]—Where, on a charge of unlawfully wounding a certain person with intent to maim or disable him, the Crown proves that the accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to the accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART, [1927] 3 W. W. R. 753; 49 Can. Crim. Cas. 75; 23 Alta. L. R. 349.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. *Sufficiency of proof—Question of fact for jury.*]—The question of intent is for the jury & not for the Crown.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

4620 i. *Whether special intent must be proved—In malicious damage to property.*]—R. *v.* MASHARIGN, [1924] D. 11.—**S. AF.**

PART XII. SECT. 6, SUB-SECT. 4.—A.

sh. *Admissibility not affected by means of procuring evidence.*]—R. *v.* PERRY (P. E. I.) (1929), 52 Can. Crim. Cas. 166.—**CAN.**

PART XII. SECT. 6, SUB-SECT.

sm. *Matter for discretion of court.*]—Act 31 of 1917, s. 256 (1), which makes provision for the taking of evidence on commission in criminal proceedings, is permissive & confers on a superior ct. the discretion, whether, under the circumstances of any particular case, it is in the interest of justice to have the evidence of a witness taken on commission or not.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 1.

b i. —— *Policemen or spotters—Sale of intoxicating liquors.*]—R. *v.* CANCILLA, [1928] 2 D. L. R. 783; [1928] 1 W. W. R. 852; 50 Can. Crim. Cas. 48; 37 Man. L. R. 315.—**CAN.**

ff i. —— *Informer.*]—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 2.—A.

a i. —— —— *Preliminary enquiry.*]—Although sect. 686 of Criminal Code, R. S. C., 1927, does not expressly give an accused the right to give evidence on his own behalf at the preliminary enquiry, he may, nevertheless, exercise that right, by virtue of the competence conferred on him by sect. 4 of Canada Evidence Act. R. S. C., 1927.—R. *v.* ROTELIUK, [1936] 1 W. W. R. 278; 65 Can. C. C. 205.—**CAN.**

b i. *Can be compelled to furnish specimen of handwriting.*]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him.—R. *v.* WHITTAKER, [1924] 3 D. L. R. 63; 2 W. W. R. 706; 42 Can. Crim. Cas. 162.—**CAN.**

g i. —— —— *Breach of city bye-law.*]—R. *v.* HART (1891), 20 O. R. 611.—**CAN.**

g ii. —— *By prisoner's counsel—Whether ground for new trial.*]—The refusal of counsel to permit the prisoner to give evidence, against his own wishes, is not ground for a new trial.—R. *v.* MACTEMPLE (FRED), [1935] 3 D. L. R. 436; O. R. 389; 64 Can. C. C. 11.—**CAN.**

4695 i. *May be cross-examined.*]—A.-G. *v.* MURRAY, [1926] I. R. 286.—**IR.**

4697a. Cross-examination by judge.]—Observations on the undesirability of a prisoner when giving evidence-in-chief on his own behalf being unduly subjected to cross-examination by the judge.—R. *v.* CAIN (1936), 25 Cr. App. Rep. 204, C. C. A.

4705a. Duty of counsel—To apply for leave to cross-examine as to character.] — When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination. —R. *v.* MCLEAN (1926), 134 L. T. 640; 19 Cr. App. Rep. 104, C. C. A.

4705b. —— To refrain from cross-examining as to character.]—R. *v.* DUNKLEY, No. 4734a, *post*.

4711a. —— ——.]—R. *v.* BALDWIN, No. 3820b, *ante*.

4712. *Add. Annotation:*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

4712a. —— Cross-examination tending to show accused likely to commit offence charged.]—R. *v.* COULMAN, No. 3156e, *ante*.

4712b. What amounts to imputation of crime—Question as to having been at industrial school—Admissible.]—R. *v.* CRAVITZ (1931), 172 L. T. Jo. 324; 23 Cr. App. Rep. 74; 76 Sol. Jo. 50, C. C. A.

4715. *Add. Annotations:*—**Consd.** R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75. **Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4716. *Add. Annotation:*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

4717b. —— Suggesting other offences.]—A prisoner was asked in cross-examination questions tending to show that he had committed other offences. The jury were warned in the summing up that they ought to disregard the effect of those questions:—*Held:* the mischief caused by the questions was incurable & the conviction must be quashed.—R. *v.* MORRISSEY (1932), 23 Cr. App. Rep. 188, C. C. A.

4717c. ——.]—Applt., who was charged with receiving part of the proceeds of several cases of shopbreaking & housebreaking, put his character in issue at the trial, & was asked in cross-examination a series of questions suggesting that he had feloniously received other portions of the stolen property, of which there was no evidence, & that a sum of money found on him on arrest represented the proceeds of the sale by him of those portions of the property:—*Held:* the cross-examination was inadmissible as offending against the principles laid down by the House of Lords in *Maxwell's Case*, No. 4729a, *post*, & the conviction must be quashed.—R. *v.* SUGARMAN (1935), 79 Sol. Jo. 966; 25 App. Rep. 109, C. C. A.

4717d. Prisoner's character in issue—Statement that prisoner struck off Medical Register.]—*Held:* cross-examination as to the prisoner's character was rightly allowed.—R. STARKIE (1932), 76 Sol. Jo. 780, C. C. A.

4717e. Character not in issue—Question as to previous conviction—Inadmissible.]—R. *v.* TOMASSO (1934), 25 Cr. App. Rep. 14, C. C. A.

4729a. Question as to previous acquittal—Admissibility.]—A person charged with an offence, who has put his character in issue, within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii.), as a rule cannot be asked in cross-examination whether he has been charged with an offence other than that wherewith he is then charged when that charge has resulted in an acquittal; for such a question does not satisfy the crucial test of relevance. In general, no question as to whether a prisoner has been convicted or charged or acquitted should be asked or, if asked, allowed by the judge, who has a discretion under proviso (*f*), unless it helps to elucidate the particular issue or goes to credibility. Such a question, even if it goes to credibility, ought not to be admitted if the jury may be misled by it into thinking that it goes not to credibility but to the probability of his having committed the offence of which he is then charged. The mere fact of a charge cannot in general be evidence of bad character & is no proof that the person charged had committed the offence.—MAXWELL *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1935] A. C. 309; 103 L. J. K. B. 501; 151 L. T. 477; 98 J. P. 387; 50 T. L. R. 499; 32 L. G. R. 335; 24 Cr. App. Rep. 152; 30 Cox, C. C. 160, H. L.

Annotations:—**Distd.** R. *v.* Waldman (1934), 24 Cr. App. Rep. 204. **Consd.** R. *v.* Sugarman (1935), 79 Sol. Jo. 966.

4729b. ——.]—Applt. charged with receiving property knowing it to be stolen had put his character in issue & was asked in cross-examination about a previous conviction & a previous acquittal for the same offence:—*Held:* the conviction must be upheld.—R. *v.* WALDMAN (1934), 78 Sol. Jo. 634; 24 Cr. App. Rep. 204, C. C. A.

4729c. ——.]—Applt. was charged with indecent assault on three young girls, & put his character in issue. In cross-examination he was asked a number of questions with regard to previous complaints by other young girls of similar conduct on his part. Those complaints had led to charges which in every case had been either dismissed or not proceeded with. Similar questions were put in cross-examination to a witness called by applt. as to character:—*Held:* the cross-examination was inadmissible, & the conviction must be quashed.—R. *v.* WADEY (1935), 25 Cr. App. Rep. 104, C. C. A.

4733. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4g. *Evidence as to character—Warning of consequences—Duty of legal adviser.*]—It is the duty of a person who, at the trial, acts as the legal representative of an accused person who makes a statement from the dock, to warn the accused of the probable consequences of a reference to character &, in such circumstances, there is no duty on the Crown to see that such a warning is given.—R. *v.* BENNETT (1936), S. R. N. S. W. 329; 53 N. S. W. W. N. 57.—AUS.

PART XII. SECT. 12, SUB-SECT. 2.—C. (c).

ii. ——.]—A prisoner giving evidence on his own behalf, may be cross-examined as to a previous conviction. — R. *v.* DALTON, [1935] 3 D. L. R. 773; 9 M. P. R. 481; 64 Can. C. C. 140; 5 F. L. J. (Can.) 84.—CAN.

PART XII. SECT. 12, SUB-SECT.—2. C. (d).

4733 ii. —— ——.]—The fact that a deft. on a larceny charge stated in giving evidence that one of the chief witnesses for the prosecution (the owner of the article stolen) told lies in giving evidence does not involve an imputation on the character of the witness of the prosecution so as to justify a question relating to previous

4734a. —— Suggestion that witness deliberately committing perjury.]—(1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), so as to render cross-examination of prisoner as to character admissible.

(2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine.—R. *v.* DUNKLEY, [1927] 1 K. B 323; 96 L. J. K. B. 15; 134 L. T. 632; 90 J. P. 75; 28 Cox, C. C. 143; 19 Cr. App. Rep. 78, C. C. A.

4735. *Add. Annotations:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4742. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4747. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4748. *Add. Annotations:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4749. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4750. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4751a. ——.]—Statements by a defendant in evidence which do not *per se* import "imputations" within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), may do so by reason of "the nature or conduct of the defence."—R. *v.* POLLINGER (1930), 22 Cr. App. Rep. 75, C. C. A.

4754a. ——.]—(1) Questions ought not to be put in cross-examination to a prisoner in such a form as may involve him inadvertently in an attack on the character of a witness for the Crown.

(2) A threat to a prisoner-witness that his character may be disclosed as the result of his not withdrawing an imputation on the truthfulness of a witness for the Crown, which leads to such withdrawal is, in effect, preventing his defence being put to the jury. —R. *v.* EIDINOW (1932), 23 Cr. App. Rep. 145, C. C. A.

4756a. Meaning of "same offence."]—Applt. was charged & convicted at Quarter Sessions under the Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (*a*), with fraudulently converting certain property entrusted to him. On the same indictment another prisoner, M., was charged under sect. 32 (1) of the same Act with causing by false pretences money to be paid to applt. Applt. stated in evidence against M. that M. had signed certain documents in his presence. Counsel for M. then cross-examined applt. as to a previous conviction of his:—*Held:* as applt. & M. were not charged with the same offence, it was not open to M.'s counsel by virtue of Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (iii), to question applt. on his previous convictions, & the conviction must be quashed.—R. *v.* ROBERTS, [1936] 1 All E. R. 23; 154 L. T. 276; 100 J. P. 117; 52 T. L. R. 234; 80 Sol. Jo. 208; 25 Cr. App. Rep. 158; 34 L. G. R. 147; 30 Cox, C. C. 356, C. C. A.

4764a. —— —— Grievous bodily harm.]—Upon an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown.—R. *v.* KING (1925), 19 Cr. App. Rep. 34, C. C. A.

4765a. ——. ——.]—A wife is not bound in case of high treason to discover her husband's treason, therefore by the common law she shall not be examined.—ANON. (1612), 1 Brownl. 47; 123 E. R. 656.

4770. *Add. Annotation:*—**Refd.** Statham *v.* Statham, [1929] P. 131.

4771a. —— —— ——.]—At common law, on a charge against a husband of assaulting his wife, the wife is not only a competent but a compellable witness.—R. *v.* LAPWORTH, [1931] 1 K. B. 117; 100 L. J. K. B. 52; 144 L. T. 126; 95 J. P. 2; 29 L. G. R. 61; 29 Cox, C. C. 183; 47 T. L. R. 10; 74 Sol. Jo. 735; 22 Cr. App. Rep. 87, C. C. A.

4789a. —— ——.]—Three prisoners were charged jointly with shopbreaking, & all were convicted. The wife of one of the prisoners was called as a witness for the Crown, &, after stating that she was willing to give evidence, gave evidence which was vital to the case against the other two prisoners. These two prisoners appealed:—*Held:* as the wife of the third prisoner was not a competent witness for the prosecution, the convictions must be quashed.—R. *v.* MOUNT, R. *v.* METCALFE (1934), 78 Sol. Jo. 225; 24 Cr. App. Rep. 135, C. C. A.

4799. *Add. Annotation:*—**Refd.** R. *v.* Mount, R. *v.* Metcalfe (1934), 78 Sol. Jo. 225.

convictions of the deft.—HEWITT *v.* LENTHALL, [1931] S. A. S. R. 314.—**AUS.**

PART XII. SECT. 12, SUB-SECT. 2.—C. (e).

4755 ii. —— ——.]—Two prisoners, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898 (c. 36), s. 1. In the opinion of the judge the evidence of neither incriminated the other:—*Held:* neither was entitled to cross-examine the other, such right of cross-examination limited to the case where, in the [illegible]on of the judge, the evidence even incriminated, or tended to incriminate, the fellow
GEMMELL & M'FADYEN *v.* [1928] S. C. (J.) 5.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 3.—A. (a).

sc. *Crime affecting property of band.*]—A married woman was tried on an indictment which charged her with uttering as genuine cheques on which her husband's signature had been forged by her. The husband was adduced by the prosecutor as a witness, his evidence consisting of a repudiation of his signature:—*Held:* there was nothing in principle or on the authorities to warrant the restriction of evidence given by one spouse against the other spouse to cases where the alleged offence involved injury to his person only & not to his property. —FOSTER *v.* H.M. ADVOCATE, [1932] S. C. (J.) 75.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 3.—B.

q i. —— ——.]—On the trial of a person charged with an offence other than one within the classes of offences excepted by sub-sect. (2) of sect. 4 of Canada Evidence Act from the operation of sub-sect. (1) thereof, neither the accused nor the husband or wife, as the case may be, of the accused is competent to give evidence on behalf of the prosecution; but either the accused or the husband or wife of the accused may, but *semble* the husband or wife is not compellable, give evidence on behalf of the defence; provided, however, that in no case shall the husband or wife be compellable to disclose any communication made to him or her by his or her spouse during their marriage. —R. *v.* ARNESON, [1930] 3 W. W. R. 163; 54 Can. C. C. 330.—**CAN.**

s i. *Children Act,* 1908 (*c.* 67)—*Whether competent—Offence involving bodily injury.*]—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six:—*Held:* an offence involving bodily injury to the child within the

4800. *Add. Annotation :*—**Distd.** R. *v.* Lapworth, [1931] 1 K. B. 117.

4804. After this case add :-

now, Criminal Law Amendment Act, 1912 (c. 20), s. 7 (6).

4816a. —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

4818. *Add. Annotations :*—**Consd.** R. *v.* Bailey, [1924] 2 K. B. 300. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

4819. *Add. Annotations :*—**Consd.** R. *v.* Gregg (1932), 102 L. J. K. B. 126. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

4822. *Add. Annotations :*—**Refd.** R. *v.* Southern (1929), 142 L. T. 383 ; R. *v.* Gregg (1932), 102 L. J. K. B. 126.

4823a. —— —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

4824a. —— —— ——.]—R. *v.* STEVENS (1913), 135 L. T. Jo. 442 ; 9 Cr. App. Rep. 132.

4824b. —— —— ——.]—Where the evidence of a young child requires corroboration as a matter of law or practice, the unsworn testimony of another child, which itself requires to be corroborated, cannot be treated as supplying the requisite corroboration.—R. *v.* MANSER (1934), 78 Sol. Jo. 769 ; 25 Cr. App. Rep. 18, C. C. A.

4826a. —— —— ——.]—Appct. was convicted of unlawful carnal knowledge of a girl under thirteen, & was sentenced to three years' penal servitude. The girl, whose age was eight & a half years, gave unsworn testimony under the above sect., proviso (a) of which renders necessary corroboration of such evidence " by some other material evidence in support thereof implicating the accused." The only corroboration of the child's testimony was the evidence of an older girl to whom she stated her version of what had occurred immediately after the alleged offence had taken place :—*Held :* corroboration must not only connect, or tend to connect, the accused with the crime, but must come from an independent quarter, & the evidence of the older girl originated from prosecutrix herself.—R. *v.* EVANS (1924), 88 J. P. 196 ; 18 Cr. App. Rep. 123, C. C. A

4826b. —— —— ——.]—Corroboration of the unsworn evidence of a child must be " material evidence implicating accused."—R. *v.* STANLEY (1927), 20 Cr. App. Rep. 58, C. C. A.

above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness. —H.M. ADVOCATE *v.* LEE, [1923] S. C. (J.) 1.—**SCOT.**

s ii. —— —— ——.]—A man was tried upon indictment for striking at, & attempting to cut with a razor, a child aged six weeks :—*Held :* an offence involving bodily injury to the child within the above Act, although the child had not been physically injured or actually touched, & the wife of accused could be called & examined by the Crown as a witness.—H.M. ADVOCATE *v.* MACPHIE, [1926] S. C. (J.) 91.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 4.—B.

4816 i. *Admissibility under Children Act*, 1908 (c. 67), *s.* 30—*Conditions of reception.*]—*Held :* the purpose of sect. 30 of Children Act, 1908, was to enable a child " of tender years," age not defined by the statute, who does not, in the opinion of the ct., understand the nature of an oath, to give evidence not upon oath if, in the opinion of the ct., the child has sufficient intelligence to justify the reception of the evidence & understands the duty of speaking the truth. The sect. did not alter the previous law as to the reception of the evidence of children on oath, which was & is a question, not of age, but of the intelligence & actual mental capacity of the child witness, his sense & reason of the danger & impiety of falsehood. Strictly speaking, the objection to the reception of the child's evidence on oath should be taken, & the witness interrogated by the ct., on the *voir dire*, but the practice became established that the objection might be taken on facts elicited, after the person was sworn as witness, during the direct examination or even during the cross-examination, &, if it prevailed, the judge would strike out the evidence & withdraw it from the jury.—A.-G. *v.* O'SULLIVAN, [1930] I. R. 552.—**IR.**

a i. —— *Criminal Code, s.* 1003.]—R. *v.* GEMMILL (1924), 43 Can. Crim. Cas. 360.—**CAN.**

f i. —— ——.]—Prisoner was indicted for an indecent assault on a girl under thirteen. At the trial there was admitted the unsworn testimony of the child alleged to have been assaulted & of two other children of tender years, & the evidence of the mother of the girl that she had asked the child what she was crying about, & that the child's reply was a complaint of prisoner's conduct to her :—*Held :* (1) the unsworn testimony of a child of tender years could not be corroborated by the unsworn testimony of any number of such children ; (2) the answers of the girl to her mother's questions were not evidence of the facts complained of, & could not constitute corroboration of those facts.—R. *v.* COYLE, [1926] N. 208.—**IR.**

f ii. —— ——.]—A panel was tried before a sheriff & jury upon an indictment which set forth certain lewd, indecent & libidinous practices towards a boy six years of age. The boy gave evidence in support of the charge, & his father & mother deponed to the condition of his person & clothing shortly after the offence, &, also, to the statements which he had made to them *de recenti*. The sheriff charged the jury that the evidence was sufficient in law to entitle them to convict, & the panel was convicted. On appeal : —*Held :* the boy's evidence was sufficiently corroborated in law by the evidence of his parents, & evidence of statements made by a victim *de recenti* afforded corroboration of that victim's evidence.—M'LENNAN *v.* H.M. ADVOCATE, [1928] S. C. (J.) 39.—**SCOT.**

f iii. —— —— *Canada Evidence Act, s.* 16.]—The effect of Canada Evidence Act, s. 16, is that the evidence corroborating a child must show that a crime has been committed & that the accused is implicated.—R. *v.* SILVERSTONE, [1934] 1 D. L. R. 726 ; O. R. 94 ; 61 C. C. C. 258.—**CAN.**

n i. *S. P.* R. *v.* LAMOND, [1926] 1 D. L. R. 826 ; 45 Can. Crim. Cas. 200 ; 58 O. L. R. 264.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 1.

r i. ——.]—The question whether a witness is an accomplice is one of fact for the jury, after the judge has instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059 ; 3 W. W. R. 357.—**CAN.**

4828 ii a. *S. P.* R. *v.* RODGERS (Ont.), [1926] 4 D. L. R. 609 ; 46 Can. Crim. Cas. 372.—**CAN.**

4828 ii b. *S. P.* R. *v.* BANDEL (Ont.) (1927), 47 Can. Crim. Cas. 266.—**CAN.**

4828 xvi. ——.]—R. (LESLEY) *v.* MOREL, [1931] 1 W. W. R. 209 ; 25 S. L. R. 262.—**CAN.**

4828 xvii. ——.]—R. *v.* TOMMY, R. *v.* KINNEY, R. *v.* MCKINLEY, [1930] 1 D. L. R. 973 ; 52 Can. C. C. 321 ; *on appeal*, [1931] 3 D. L. R. 668 ; 55 Can. C. C. 350 ; 2 M. P. R. 242.—**CAN.**

c i. *Person giving bribe.*]—A. & B. were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money :—*Held :* C. was not an accomplice.—R. *v.* OLHOLM & MCPHERSON, [1925] V. L. R. 377 ; 47 A. L. T. 10 ; 31 Argus L. R. 228.—**AUS.**

so. *Person implicated in crime—Whether as principal or accessory.*]—A person implicated, either as principal or as accessory in the crime under investigation, is an " accomplice " within the rule.—A.-G. *v.* LINEHAN, [1929] I. R. 19.—**IR.**

sp. *Person cognisant of act of accused.*]—A witness, whose evidence had been admitted as corroborating a girl, was shown to have known of the act of accused & to have assisted him to procure certain drugs to be used to bring about a miscarriage, but there was no evidence to show he knew of the girl's age :—*Held :* there was no evidence to show that the witness was an accomplice & the judge was right in not directing the jury that his evidence was not corroborative.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287. —**AUS.**

sq. *Person taking woman to accused to perform illegal operation.*]—R. *v.* SYNOWIZSWA, [1931] 2 D. L. R. 65 ; 55 Can. C. C. 63.—**CAN.**

sr. *Person purchasing liquor—& reporting purchase to police.*]—A person

4867. Substitute following para. & citations :—

Where two prisoners are jointly indicted for a felony & plead not guilty, but one only is given in charge to the jury, the other is an admissible witness, although his plea of not guilty remains on the record undisposed of.—WINSOR *v.* R. (1866), L. R. 1 Q. B. 390 ; 7 B. & S. 490 ; 35 L. J. M. C. 161 ; 14 L. T. 567 ; 30 J. P. 374 ; 12 Jur. N. S. 561 ; 14 W. R. 695 ; *sub nom.* R. *v.* WINSOR, 10 Cox, C. C. 327, Ex. Ch.

4867a. —— ——.]—Where two prisoners are indicted & tried together, one is not a competent witness for the other.—R. *v.* PAYNE (1872), L. R. 1 C. C. R. 349 ; 41 L. J. M. C. 65 ; 26 L. T. 41 ; 36 J. P. 452 ; 20 W. R. 390 ; 12 Cox, C. C. 118, C. C. A.

Annotations :—**Apld.** R. *v.* Thompson (1872), L. R. 1 C. C. R. 377. **Consd.** R. *v.* Wilde & Taylor (1895), 59 J. P. 296 ; R. *v.* Hadwen, [1902] 1 K. B. 882.

4878a. —— ——.]—R. *v.* SMITH, No. 6066a, *post.*

4891. *Add. Annotation :*—**Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

4900. *Add. Annotation :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736.

4902. *Add. Annotations :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736. **Refd.** Statham *v.* Statham, [1929] P. 131.

4903a. ——.]—If this ct. is satisfied, in a case where there ought to be corroboration of a charge, that there is not corroboration, it will quash a conviction.—R. *v.* PARKER (1924), 18 Cr. App. Rep. 103, C. C. A.

4919a. Corroboration required by statute—Case must be withdrawn from jury in absence of corroboration.]—There are, with regard to certain offences, statutory provisions that no person shall be convicted upon the evidence of one witness unless such witness be corroborated in some material particular implicating the accused. In these cases the law is that the judge, in the absence of such corroborative evidence, must stop the case at the close of the prosecution & direct the jury to acquit the accused. Where no such statutory provision is applicable to the offence charged, & the evidence for the prosecution consists of the uncorroborated testimony of an accomplice or accomplices, the law is that the judge should leave the case to the jury after giving them the caution already mentioned (Lord READING, C.J.).—R. *v.* BASKERVILLE, [1916] 2 K. B. 658 ; 86 L. J. K. B. 28 ; 115 L. T. 458 ; 80 J. P. 446 ; 60 Sol. Jo. 696 ; 25 Cox, C. C. 524 ; 12 Cr. App. Rep. 81, C. C. A.

Annotation :—**Refd.** R. *v.* Manser (1934), 25 Cr. App. Rep. 18.

4934. *Add. Annotations :*—**Apld.** R. *v.* Evans (1924), 88 J. P. 196 ; R. *v.* Beebe (1925), 133 L. T. 736. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141 ; R. *v.* Harris, [1927] 2 K. B. 587 ; R. *v.* Manser (1934), 25 Cr. App. Rep. 18 ; Mahadeo *v.* R., [1936] 2 All E. R. 813.

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who purchases liquor from accused & then reports the purchase to the police is neither an accomplice nor an *agent provocateur* & his evidence does not require corroboration.—R. *v.* MCKAY, [1935] 2 D. L. R. 754 ; 8 M. P. R. 563 ; 63 Can. C. C. 355.—**CAN.**

sw. *Person procuring liquor for accommodation of purchaser.*]—A purchaser of liquor is an accomplice of a seller who procured liquor for the accommodation of the purchaser, & requires corroboration.—MCDONALD *v.* R. (1935), 10 M. P. R. 38.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 2.

st. *Effect of Criminal Evidence Act, 1898.*]—*Held :* the evidence of one co-accused was admissible as evidence against the others, the provisions of the Criminal Evidence Act, 1898 (c. 36), necessarily implying the admissibility of such evidence.—YOUNG *v.* H.M. ADVOCATE, TODD *v.* H.M. ADVOCATE, [1932] S. C. (J.) 63.—**SCOT.**

PART XII. SECT. 13, SUB-SECT. 4.—A.

sv. *Whether evidence corroborates—Functions of judge & jury.*]—It is a preliminary question of law for the judge to determine whether there is any evidence that does corroborate the story of the approver, so far as the complicity of the accused is concerned. The judge must not tell the jury that such or such witness does in fact corroborate the approver. That is the function of the jury & depends upon whether they believe the witness or not.—REBATI MOHAN CHAKAVARTY *v.* R. (1928), I. L. R. 56 Calc. 150.—**IND.**

PART XII. SECT. 13, SUB-SECT. 4.—B.

4891 xi.——.]—R. *v.* DAVIDSON (1925), 44 Can. Crim. Cas. 311.—**CAN.**

4891 xii. ——.]—After trial before a judge & jury, deft. was convicted of the offence of stealing cattle. The cattle were in fact stolen—the defence was that deft. was not the thief. The only evidence against deft. was the testimony of an accomplice, one L. ; & the trial judge, in charging the jury, told them that if they agreed that there was no evidence, but that of an accomplice, it was not safe to convict upon that, but if they were satisfied they might convict :—*Held :* the jury were properly directed.—R. *v.* SKELLY, [1928] 1 D. L. R. 619 ; 49 Can. Crim. Cas. 179 ; 61 O. L. R. 497.—**CAN.**

4904 ii a. *S. P.* R. *v.* RODGERS (Ont.), [1926] 4 D. L. R. 609 ; 46 Can. Crim. Cas. 372.—**CAN.**

4904 vii a. ——.]—The law as to an accomplice's testimony is the same in British India as in England.—AUNG PE *v.* KING-EMPEROR, I. L. R. [1937] Ran. 110.—**IND.**

4904 xii. ——.]—R. *v.* SWITZER (Ont.) (1925), 45 Can. Crim. Cas. 377.—**CAN.**

4904 xiii. ——.]—A charge cannot be said to be established merely on the unsuported testimony of an accomplice.—R. *v.* SATISH CHANDRA SINGHA (1927), I. L. R. 54 Calc. 721.—**IND.**

4904 xiv. ——.]—*Held :* it is not a rule of law that the evidence of an accomplice must be corroborated, but it is the general practice to require corroboration.—COULTER & TREFFENE *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

4904 xv. ——.]—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing on appeal a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day.—R. *v.* BEALE, [1928] 2 D. L. R. 325 ; [1928] 1 W. W. R. 657 ; 49 Can. Crim. Cas. 292 ; 22 Sask. L. R. 293.—**CAN.**

4904 xvi. ——.]—R. *v.* MILLIGAN (Sask.) (1929), 52 Can. Crim. Cas. 400.—**CAN.**

4904 xvii. ——.]—R. *v.* BROWN, [1934] 1 W. W. R. 531 ; 61 C. C. C. 201.—**CAN.**

4904 xviii. ——.]—R. *v.* MCDONALD (1935), 5 F. L. J. (Can.) 117.—**CAN.**

4904 xix. ——.]—R. *v.* AH JIM (1905), 10 Can. C. C. 126.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—C.

4941 ii. ——.]—Affidavit of accused contradicting his testimony not sufficient corroboration of one witness.—R. *v.* ROBERTSON, [1936] 3 D. L. R. 508 ; 66 Can. C. C. 45 ; 10 M. P. R. 346 ; 6 F. L. J. (Can.) 69.—**CAN.**

***g* i.** ——.]—General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.—R. *v.* KALWA (1926), I. L. R. 48 All. 409.—**IND.**

sb. *Possession of safe-breaker's outfit.*]—Applt. was convicted by a police magistrate of shop-breaking with intent. The only direct evidence was that of a confessed accomplice. In a room occupied by applt. in a rooming house there were found a revolver, sticks of dynamite, a battery & other articles used by safe-breakers :—*Held :* although there was nothing but the accomplice's testimony, & applt.'s lies with respect to some of the articles, to connect the articles so found with the crime, &, although neither the fact that the revolver was identified by the accomplice & proven to be applt.'s property by an independent witness, nor the separate finding of any of the other articles, would in itself constitute corroboration, nevertheless in view of the fact that those articles constituted, as a whole, the usual & complete outfit of a safe-breaker, their findings did constitute corroboration.—R. *v.* WURCH, [1932] 2 W. W. R. 183 ; 40 Man. L. R. 328 ; 58 C. C. C. 204.—**CAN.**

4942. *Add. Annotations* :—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Consd.** Statham *v.* Statham, [1929] P. 131.

4943a. ——.]—(1) It is an insufficient direction to the jury that material witnesses may be accomplices; it must be added that if this is found, there ought not to be a conviction unless there is corroboration.

(2) The silence of the accused, on being charged, is not a matter to be left to the jury.

(3) Where similar offences are indicted on different dates the greatest care must be taken in charging the jury that evidence concerning one date should not be used as corroboration of that concerning another.—R. *v.* CHARAVANMUTTU (1930), 22 Cr. App. Rep. 1, C. C. A.

4972a. ——.]—R. *v.* SMITH, No. 6066a, *post.*

4972b. ——.]—R. *v.* BEEBE, No. 6066b, *post.*

4972c. ——.]—R. *v.* LEWIS, [1937] 4 All E. R. 360, C. C. A.

Part XIII.—Punishment and Prevention of Crime.

4974a. ——.]—R. *v.* JONES, R. *v.* POOLE, R. *v.* TERRY (1924), 18 Cr. App. Rep. 135, C. C. A.

4974b. ——.]—R. *v.* WRIGHT (1925), 19 Cr. App. Rep. 19, C. C. A.

4974c. ——.]—R. *v.* BUGGS (1910), 6 Cr. App. Rep. 74, C. C. A.

4985a. —— —— ——.]—A sentence of greater severity than the sentence appropriate to a particular offence ought not to be imposed merely because a prisoner has, in the opinion of the trial judge, committed perjury in the witness-box.—R. *v.* QUINN (1932), 23 Cr. App. Rep. 196, 198, C. C. A.

4994a. —— —— ——.]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 143, C. C. A.

4994b. —— —— ——.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into a railway station booking-office & stealing some cigarettes & bottles of horse medicine.—R. *v.* PRICE (1924), 18 Cr. App. Rep. 138, C. C. A.

4994c. —— —— ——.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England :—*Held :* in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—R. *v.* DURAND (1924), 18 Cr. App. Rep. 137, C. C. A.

4994d. —— —— ——.]—R. *v.* WALLS (*alias* RUSSELL) (1925), 19 Cr. App. Rep. 35, C. C. A.

4994e. —— —— ——.]—R. *v.* DENT (1925), 19 Cr. App. Rep. 18, C. C. A.

4994f. —— —— ——.]—R. *v.* GUMBS (1926), 19 Cr. App. Rep. 74, C. C. A.

4994g. —— —— ——.]—In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—R. *v.* D'ARCY (1926), 19 Cr. App. Rep. 122, C. C. A.

PART XII. SECT. 13, SUB-SECT. 4.—E.

4960 viii. ——.]—Where the evidence of an accomplice has not been corroborated, & the charge to the jury merely tells them that if they believe the accomplice they should convict accused, the jury is not properly directed; &, where it is impossible to say that if properly directed they must inevitably have come to the same conclusion, the conviction must be quashed.—R. *v.* STASIUK (Sask.), [1926] 4 D. L. R. 811; [1926] 2 W. W. R. 723; 46 Can. Crim. Cas.

4960 ix. ——.]—In charging the jury the trial judge said : "Unless you are convinced beyond any real doubt that the girl has given testimony which is true in the material particulars, namely : the date & place of connection with the accused, then the accused is entitled to your verdict. But if you are so convinced, then, of course, it will be your duty to declare your verdict accordingly." *Held :* as there was corroborative evidence, this direction, together with other parts of the summing up, was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

b i. —.]—R. *v.* GALLAGHER, No. 6064 —**CAN.**

—.]—A woman was charged with the murder of the illegitimate child of her granddaughter. The case against her rested entirely on the evidence of her granddaughter, & this evidence, as regards the main facts, was practically wholly uncorroborated. This evidence went to show that the granddaughter implicated in the crime. The woman was convicted & sentenced to death :—*Held :* the rule requiring corroboration of the evidence of an accomplice applied to the facts of the case, & the jury should have been warned as to the danger of acting upon the granddaughter's evidence alone without corroboration. Accordingly the conviction was reversed, & a re-trial ordered under Courts of Justice Act, 1928, s. 5.—A.-G. *v.* LINEHAN, [1929] I. R. 19.—**IR.**

h ii. —— *Extent of corroboration necessary.*]—It is not sufficient for a trial judge to explain to a jury that, where witnesses are accomplices, they must be corroborated in some material particular before it is safe for a jury to convict. He must go further & explain that the evidence should confirm in some material particular not only the evidence that the crime has been committed but, also, that the prisoner committed it.—R. *v.* GLOVER (1928), 28 S. R. N. S. W. 482; 45 N. S. W. W. N. 148.—**AUS.**

c i. —— ——.]—Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so :—*Held :* the conviction should be affirmed.—R. *v.* SHEMIT, [1925] 2 D. L. R. 1004; 44 Can. Crim. Cas. 10; 58 N. S. R. 116.—**CAN.**

See, also, cases in Part XIV, Sect. 7, Sub-sect. 7, B, *post.*

PART XIII. SECT. 1, SUB-SECT. 1.

p i. —— ——.]—R. *v.* LEAF, [1926] 1 W. W. R. 888; 45 Can. Crim. Cas. 236; 20 Sask. L. R. 542.—**CAN.**

4991 i. *Sentence must be proportionate to offence—Trifling offence—Previous convictions.*]—R. *v.* CROSS, [1927] 3 W. W. R. 432.—**CAN.**

si. *Power of judge to hear evidence of complainant to decide on proper sentence—After plea of guilty—Must avoid consideration of aggravating circumstances likely to change character of offence charged.*]—R. *v.* WHEFDALE (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—**CAN.**

sv. *Offence punishable with fine & imprisonment—Power to inflict fine or imprisonment.*]—On trial of an offence for which the punishment is fine & imprisonment the judge may by Criminal Code, s. 1028, impose a fine alone or imprisonment alone.—R. *v.* —— (1919), 61 D. L. R. 286.—**CAN.**

4994h. —— —— ——.]—R. *v.* CHARLES (1927), 20 Cr. App. Rep. 129, C. C. A.

4994j. —— —— ——.]—The mere fact that a prisoner has been previously convicted is not necessarily a ground for inflicting a severe sentence for dishonestly obtaining goods of small value.—R. *v.* WOODWARD (1929), 21 Cr. App. Rep. 137, C. C. A.

4994k. —— —— ——.]—R. *v.* SMITH (1929), 21 Cr. App. Rep. 138, C. C. A.

4994l. —— —— ——.]—R. *v.* WILLIAMS (1930), 22 Cr. App. Rep. 78, C. C. A.

4994m. —— —— ——.]—R. *v.* EDWARDS (1930), 22 Cr. App. Rep. 79, C. C. A.

4994n. —— —— ——.]—Sentence mitigated, despite a very bad "record," in view of the trifling nature of the offence.—R. *v.* JONES (1931), 23 Cr. App. Rep. 69, C. C. A.

4998a. —— ——.]—Sentence reduced, in view of the small value of the property stolen & of prisoner's youth.—R. *v.* ROATH (1927), 20 Cr. App. Rep. 138, C. C. A.

4998b. —— ——.]—Sentence reduced, in view of the small value of the property stolen, notwithstanding previous convictions.—R. *v.* WATSON (1927), 20 Cr. App. Rep. 119 C. C. A.

4998c. —— ——.]—Sentence reduced, in view of the small value of the property obtained by false pretences & of prisoner's youth, notwithstanding previous convictions.—R. *v.* BOREHAM (1928), 20 Cr. App. Rep. 182, C. C. A.

5003a. —— ——.]—R. *v.* UPTON (1929), 21 Cr. App. Rep. 156, C. C. A.

5003b. —— ——.]—R. *v.* TEARNE (1930), 22 Cr. App. Rep. 15, C. C. A.

5010a. Manslaughter—Negligent driving.]—Sentence of three years' penal servitude passed upon applt. for manslaughter caused by the negligent driving of a motor car reduced to one of twelve months' imprisonment with hard labour.—R. *v.* STUBBS (1913), 29 T. L. R. 421, C. C. A.

5012a. Offence under Criminal Law Amendment Act, 1922 (c. 56), s. 2—Acquittal on major charge—Conviction on minor charge.]—The ct. declines to lay down a general rule concerning sentence in cases under above sect. where deft. is acquitted of the major charges therein referred to but convicted of a minor charge.—R. *v.* KEECH (1929), 21 Cr. App. Rep. 125, C. C. A.

Annotation:—**Refd.** R. *v.* Blackman (1929), 21 Cr. App. Rep. 132.

5012b. —— —— ——.]—R. *v.* BLACKMAN (1929), 21 Cr. App. Rep. 132, C. C. A.

5014a. ——.]—Sentence of five years' penal servitude imposed upon applt. for receiving reduced to one of three years' penal servitude, on the ground that it did not appear that applt. was habitually a receiver or that he kept any place for the deposit of stolen property.—R. *v.* KNIGHT (1912), 28 T. L. R. 481; 7 Cr. App. Rep. 281, C. C. A.

5014b. Evasion of military service.]—The ct. will usually treat offences committed to escape military service as ordinary crimes.—R. *v.* CHISWELL (1930), 22 Cr. App. Rep. 67, C. C. A.

5018a. ——.]—R. *v.* DEALER (1929), 21 Cr. App. Rep. 165, C. C. A.

5024a. —— ——.]—R. *v.* POWELL (1928), 21 Cr. App. Rep. 67, C. C. A.

5024b. —— ——.]—R. *v.* ATKINSON (1929), 21 Cr. App. Rep. 111, C. C. A.

5028a. —— **Prisoners jointly accused.**] — There should be discrimination between the sentences of persons jointly accused, in view of their previous records & ages, & account should be taken of the period of detention before trial.—R. *v.* ANDREWS (1927), 20 Cr. App. Rep. 37, C. C. A.

5035a. ——.]—(1) Despite a plea of guilty, the ct. will review a conviction when there is a good defence in law.

(2) The ct. does not accept the principle that a sentence must necessarily be severer than that passed on the prisoner on a previous conviction.

(3) A deft. must distinctly consent to the ct. of trial taking into consideration charges other than those in the indictment before it can do so.—R. *v.* GRIFFITHS (1932), 23 Cr. App. Rep. 153; 76 Sol. Jo. 148, C. C. A.

5036a. *S. P.* R. *v.* MOLDON (1926), 19 Cr. App. Rep. 116, C. C. A.

5039a. —— ——.]—Previous convictions of a prisoner on trial must be strictly proved.—R. *v.* TURNER (1924), 18 Cr. App. Rep. 161, C. C. A.

Annotation:—**Refd.** R. *v.* O'More (1926), 19 Cr. App. Rep. 175.

5046a. —— ——.]—R. *v.* DRIVER (1926), 19 Cr. App. Rep. 86, C. C. A.

5046b. —— ——.]—R. *v.* O'MORE (1926), 19 Cr. App. Rep. 175, C. C. A.

5046c. —— ——.]—R. *v.* BERRY (1928), 21 Cr. App. Rep. 47, C. C. A.

5046d. —— ——.]—R. *v.* DOBSON (1930), 22 Cr. App. Rep. 141, C. C. A.

PART XIII. SECT. 1, SUB-SECT. 2.

sw. *Perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—**CAN.**

sx. *Attempted theft.*]—On a trial by a magistrate, by consent under sect. 773 (*b*) of the Criminal Code, of a charge of attempted theft, where the sum attempted to be stolen exceeds $200, the accused is liable on conviction to a sentence of two years & six months' imprisonment.—R. *v.* BLACKMAN & SMITH, [1931] 2 W. W. R. 111; 56 Can. C. C. 48; 44 B. C. R. 115.—**CAN.**

sy. *Effect of Prisons & Reformatories Act, 1927, s. 46.*]—A person convicted in Ontario of non-support of his wife, under s. 242 of the Criminal Code, may be lawfully sentenced to the term of imprisonment mentioned in sect. 46 of Prisons & Reformatories Act, R. S. C., 1927. While sect. 242 declares what shall generally be the sentence throughout Canada, sect. 46 enacts an exception applicable to Ontario in the circumstances therein mentioned. — R. *v.* OLDAKER, [1930] 1 D. L. R. 648; 52 Can. C. C. 318; 64 O. L. R. 564.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—A.

5028 ii. ——.]—R. *v.* NGA BA SHEIN (1928), I. L. R. 6 Ran. 391.—**IND.**

5036 i. *Previous acquittals must not influence adversely.*]—R. *v.* JOHNSON (1925), 44 Can. Crim. Cas. 319.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—B.

d i. ——.]—Previous convictions are to be considered in passing sentence, although not strictly proved, if not challenged by the prisoner.—R. *v.* SCHIER, [1933] 1 D. L. R. 310.—**CAN.**

— — .]—A judge may consider the previous record to determine sentence although not proved if no objection is taken to statements by the Crown counsel.—R. *v.* SCHIER, [1933] 1 D. L. R. 310; 59 C. C. C. 180.—**CAN.**

sg. *No ground for heavy sentence—Where offence trivial.*]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* WEBB, [1933] 3 W. W. R. 431; 62 C. C. C. 279.—**CAN.**

5046e. —— ——.]—R. *v.* WESTGATE (1931), 23 Cr. App. Rep. 15, C. C. A.

5046f. —— ——.]—R. *v.* BRAY (1931), 23 Cr. App. Rep. 30, C. C. A.

5046g. Subsequent sentence need not be heavier.]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

5049a. —— ——.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work :—*Held :* (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to twenty-one months' imprisonment with hard labour.

(2) The term of first sentence to penal servitude must depend on the circumstances : there is no general rule that it is three years. —R. *v.* TOWNSEND (1924), 18 Cr. App. Rep. 99, C. C. A.

5049b. —— ——.]—R. *v.* BOURNE, R. *v.* COLEMAN (1925), 19 Cr. App. Rep. 17, C. C. A.

5049c. —— ——.]—R. *v.* TROTT (1927), 20 Cr. App. Rep. 120, C. C. A.

5049d. —— ——.]—R. *v.* ETTRIDGE (1927), 20 Cr. App. Rep. 126, C. C. A.

5049e. —— ——.]—R. *v.* HINKS (1927), 20 Cr. App. Rep. 137, C. C. A.

5049f. —— ——.]—R. *v.* HILL (1928), 20 Cr. App. Rep. 170, C. C. A.

5049g. —— ——.]—R. *v.* WAYE (1928), 20 Cr. App. Rep. 171, C. C. A.

.]—Sentence mitigated in view of a long period of honest work.—R. *v.* WINTER (1924), 18 Cr. App. Rep. 139, C. C. A.

5057b. —— ——.]—Sentence reduced in view of a long period of honest work.—R. *v.* PORTER (1926), 19 Cr. App. Rep. 90, C. C. A.

5057c. —— ——.]—Sentence mitigated in view of an interval of three years' honest life.—R. *v.* GUNTRIP (1925), 19 Cr. App. Rep. 45, C. C. A.

5057d. —— ——.]—R. *v.* WHITBY (1926), 19 Cr. App. Rep. 115, C. C. A.

5057e. —— ——.]—R. *v.* PEARCY (1929), 21 Cr. App. Rep. 160, C. C. A.

5057f. —— ——.]—Sentence for "outstanding charges" should not ignore a long period without conviction.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 94, C. C. A.

5057g. —— ——.]—R. *v.* ROCHE (1931), 23 Cr. App. Rep. 28, C. C. A.

5057h. —— ——.]—R. *v.* SCHOFIELD (1931), 22 Cr. App. Rep. 194, C. C. A.

5057j. —— ——.]—R. *v.* WILLIAMS (1931), 23 Cr. App. Rep. 103, C. C. A.

5065. *Add. Citations :*—130 L. T. 319 ; 27 Cox, C. C. 576.

5065a. ——.]—R. *v.* ANDREWS, No. 5028a, *ante*.

5074a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

5081a. —— ——.]—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE), No. 1913a, *ante*.

5089a. —— —— —— **Truth of charges must be admitted.**]—Where a prisoner asks for outstanding charges to be taken into consideration in a sentence to be passed upon him, the presiding judge should make it clear that this can be done only if the prisoner admits the truth of those charges.—R. *v.* BERKOFSKY (1935), 25 Cr. App. Rep. 66, C. C. A.

5089b. —— **Charges which ought to have been considered in court below.**]—In a proper case, with the consent of applt., the ct. in awarding sentence will take into account outstanding charges which ought to have been considered in the sentence of the ct. below.—R. *v.* MACMILLAN (1921), 16 Cr. App. Rep. 3, C. C. A.

5089c. —— **Jurisdiction to try other offences necessary.**]—R. *v.* WARN, [1937] 4 All E. R. 327, C. C. A.

5092a. —— **Duty of police to supply list of charges.**]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence :—*Held :* as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (*a*) the places where the other offences had been committed ; (*b*) the dates & (*c*) the nature of such offences ; (*d*) if possible, whether or not warrants had been issued in respect of such offences.—R. *v.* HICKS (1924), 88 J. P. 68 ; 18 Cr. App. Rep. 11, C. C. A.

5092b. Other court should be informed before sentence passed.]—R. *v.* TAYLOR, No. 5314a, *post*.

5097a. —— ——.]—R. *v.* PEACE (1925), 19 Cr. App. Rep. 58, C. C. A.

5099. *Add. Annotation :*—**Refd.** R. *v.* Peace (1925), 19 Cr. App. Rep. 58.

5108a. Mistake of law]—R. *v.* GIBSON (1930), 22 Cr. App. Rep. 13, C. C. A.

5110a. —— **Great provocation.**] — R. *v.* CARMICHAEL (1930), 22 Cr. App. Rep. 142, C. C. A.

5110b. ——.]—R. *v.* CURTIS (1932), 23 Cr. App. Rep. 158, C. C. A.

5111a. ——.]—There is no rule of law or practice that a co-prisoner should receive a lighter sentence, in view of his giving evidence for the Crown.—R. *v.* O'DARE, DAVIS & MORTON (1927), 20 Cr. App. Rep. 79, C. C. A.

5116a. Long interval free from conviction.]—Sentence mitigated.—R. *v.* HODSON (1927), 20 Cr. App. Rep. 11, C. C. A.

5116b. Inability to obtain work.]—R. *v.* POMFRET (1931), 23 Cr. App. Rep. 31, C. C. A.

5116c. Attempt to earn honest living.]—Sentence reduced in view of a period of honest work.—R. *v.* MARTIN (1931), 23 Cr. App. Rep. 52, C. C. A.

5116d. ——.]—Mitigation of sentence in view of a period of honest work.—R. *v.* PHILLIPS (1931), 23 Cr. App. Rep. 127, C. C. A.

5119a. —— ——.]—Applts. treated as first offenders, & sentences reduced.—R. *v.* SEATON & FLANAGAN (1928), 20 Cr. App. Rep. 192, C. C. A.

5125a. ——.]—R. *v.* COX (1924), 18 Cr. App. Rep. 152, C. C. A.

5125b. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5125c. ——.]—R. *v.* WARD (1926), 19 Cr. App. Rep. 126, C. C. A.

5125d. ——.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account of her youth.—R. *v.* CHICK (1925), 19 Cr. App. Rep. 57, C. C. A.

5125e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5125f. ——.]—R. *v.* WOOD (1930), 22 Cr. App. Rep. 53, C. C. A.

5125g. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5125h. ——.]—R. *v.* VARLOW (1931), 22 Cr. App. Rep. 189, C. C. A.

5125j. ——.]—R. *v.* BETTS, QUINT, & CRESSET TRUST, LTD. (1931), 23 Cr. App. Rep. 10, C. C. A.

5125k. ——.]—R. *v.* WILSON (1931), 23 Cr. App. Rep. 104, C. C. A.

5125l. ——.]—R. *v.* ORMESHER (1932), 23 Cr. App. Rep. 172, C. C. A.

5129a. —— ——.]—R. *v.* HOLMES (1931), 23 Cr. App. Rep. 46, C. C. A.

5148a. ——.]—Sentence mitigated in view of youth.—R. *v.* HARDY (*alias* EMMETT) (1925), 18 Cr. App. Rep. 168, C. C. A.

——.]—R. *v.* CHICK, No. 5125d, *ante*.

5148c. ——.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—R. *v.* LEATHERLAND (1926), 19 Cr. App. Rep. 85, C. C. A.

5148d. ——.]—R. *v.* GETHING (1926), 19 Cr. App. Rep. 112, C. C. A.

5148e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5148f. ——.]—R. *v.* COOK (1931), 23 Cr. App. Rep. 47, C. C. A.

——.]—R. *v.* HUGHES & ADAMS (1930), 22 Cr. App. Rep. 145, C. C. A.

5148h. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5148j. ——.]—R. *v.* MORGAN (1931), 22 Cr. App. Rep. 177, C. C. A.

5148k. ——.]—R. *v.* MALT (1931), 23 Cr. App. Rep. 45, C. C. A.

5148l. ——.]—R. *v.* HAYWOOD (1931), 22 Cr. App. Rep. 193, C. C. A.

5148m. ——.]—R. *v.* BROWN (1931), 23 Cr. App. Rep. 38, C. C. A.

5148n. ——.]—R. *v.* JONES (1932), 23 Cr. App. Rep. 162, C. C. A.

5148o. ——.]—R. *v.* HANSLOW (1932), 23 Cr. App. Rep. 160, C. C. A.

5148p. ——.]—R. *v.* TROWBRIDGE (1932), 23 Cr. App. Rep. 162, C. C. A.

5148q. ——.]—R. *v.* SCHOLES (1932), 23 Cr. App. Rep. 161, C. C. A.

5155a. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5156a. —— —— **What is post office offence.**]—Where a postman had altered the time on a letter in order to make it appear to have been sent before the result of a competition for which he had entered :—*Held :* a sentence of three years' penal servitude was too severe, as the offence was not a post office offence in the ordinary sense.—R. *v.* TANNER (1910), 6 Cr. App. Rep. 62, C. C. A.

5170a. **Failure to make restitution—After postponement.**]—The ct. does not approve of a sentence being increased because, after a postponement, prisoner has failed to make fuller restitution.—R. *v.* PRITCHARD (1929), 21 Cr. App. Rep. 152, C. C. A.

5173. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5174. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175a. —— ——.]—There is no rule of law or of practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour.—R. *v.* ROBERTS & MORRISS (1926), 134 L. T. 635 ; 42 T. L. R. 373 ; 28 Cox, C. C. 150 ; *sub nom.* R. *v.* MORRISS, 90 J. P. 84 ; 42 T. L. R. 373 ; 70 Sol. Jo. 426 ; 19 Cr. App. Rep. 75, C. C. A.

5180. After this case add :—

Substitution of penal servitude.]—*See* Penal Servitude Act, 1926 (c. 58).

5184 For " in the case of consecutive sentences " read " in the case of concurrent sentences."

5184. *Add. Annotation :*—**Refd.** R. *v.* Fielder (1926), 135 L. T. 64.

5190a. —— ——.]—The term of a sentence must precede the serving of a *remanet*.—R. *v.* HARVEY (1927), 20 Cr. App. Rep. 37, C. C. A.

5190b. —— ——.]—A *remanet* term cannot be served concurrently with a fresh sentence.—R. *v.* NALL (1927), 20 Cr. App. Rep. 85, C. C. A.

5190c. —— ——.]—A sentence of penal servitude to run concurrently with a *remanet* cannot be imposed.—R. *v.* REYNOLDS (1932), 23 Cr. App. Rep. 173, C. C. A.

5190d. —— —— **Powers of Prison Commissioners & Secretary of State.**]—Neither the Prison Comrs. nor the Secretary of State has power to order the *remanet* of a sentence,

PART XIII. SECT. 2, SUB-SECT. 5.—C.

5142 ii. ——.]—Sentence mitigated in view of youth.—R. *v.* HOPPER & GLAVEEN (1924), 57 N. S. R. 438.—**CAN.**

5142 iii. *S.P.*—R. *v.* HAMILTON (1925), 58 N. S. R. 46.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.

5g. *Proof of aggravating circumstances.*]—While aggravating circumstances accompanying a particular offence, such as the age of the victim & the character & previous record of the accused, are matters which may be taken into consideration, after verdict, in determining the appropriate punishment, all such matters must be brought before the ct. properly & regularly.—R. *v.* PILUK (JOHN), R. *v.* PILUK (MIKE), R. *v.* WORONIUK, [1933] 2 W. W. R. 56 ; 60 C. C. C. 92.—**CAN.**

5k. ——.]—In determining the quantum of punishment information as to the general character of the accused & of other material circumstances may be given after conviction, even though not in the form of evidence proper, & it follows that where the accused has pleaded guilty & no evidence has been given the judge or magistrate may hear a statement from a police officer of the facts gathered by him in his investigation of the crime, but all such information or statements must be given in the presence of the accused & his right to challenge them should be protected &, if he exercises that right, proper proof should be required or the information so obtained should be ignored in passing sentence.—R. *v.* MARKOFF, [1936] 3 W. W. R. 667 ; [1937] 1 D. L. R. 77 ; 67 Can. C. C. 308.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

5182 i. *Concurrent sentences—Imprisonment & penal servitude.*]—A prisoner having been found guilty upon two charges, the ct. sentenced him to five years' penal servitude in respect of the first charge & to imprisonment for one year in respect of the second charge, the two sentences to run concurrently.—H.M. ADVOCATE *v.* CARSON, [1927] S. C. (J.) 70.—**SCOT.**

either of imprisonment or penal servitude or preventive detention, to be served concurrently with a fresh sentence.—R. *v.* POWELL (1933), 24 Cr. App. Rep. 88, C. C. A.

5194. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

5194a. —— **Not interrupted by period of special treatment pending appeal against another conviction.**]—In a proper case the ct. will order that the period of "special treatment" under Criminal Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—R. *v.* FOX (1925), 18 Cr. App. Rep. 192, C. C. A.

5194b. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante*.

5198a. —— —— **No previous conviction.**]—R. *v.* EMMOTT (1928), 21 Cr. App. Rep. 42, C. C. A.

5201a. —— ——.]—The ct. leans against a longer term of imprisonment with hard labour than two years.—R. *v.* LONG (1927), 20 Cr. App. Rep. 101, C. C. A.

5208a. —— ——.]—The fact that a convicted prisoner has undergone terms of penal servitude does not of itself justify sentence to a further term ; all the circumstances of the case must be considered, including the magnitude of the latest offence.—R. *v.* KNELL (1926), 19 Cr. App. Rep. 169, C. C. A.

5208b. —— —— **Second offence of different nature.**]—A previous sentence to penal servitude is not *per se* a ground for the infliction of penal servitude on a subsequent conviction, especially for an offence of a different nature.—R. *v.* FITT (1928), 21 Cr. App. Rep. 41, C. C. A.

5211a. When to be awarded under Penal Servitude Act, 1926 (c. 58).]—R. *v.* ASCOLI (1927), 20 Cr. App. Rep. 156, C. C. A.

5217. *Add. Annotation :*—**Refd.** R. *v.* Townsend (1924), 18 Cr. App. Rep. 99.

5217a. —— ——.]—R. *v.* TOWNSEND, No. 5049a, *ante*.

5217b. —— ——.]—There is no rule of law or practice that the term of a first sentence of penal servitude is limited to three years.—R. *v.* BASIRE (1926), 19 Cr. App. Rep. 174, C. C. A.

5238a. —— **Power of court to call for expert reports.**]—R. *v.* HOBBS (1928), 21 Cr. App. Rep. 14, C. C. A.

5239a. When justified—Necessity for compliance with statute.]—The mere fact that accused is within the statutory limits of age does not justify a sentence to Borstal discipline ; the other statutory conditions of Prevention of Crime Act, 1908 (c. 59), s. 1 (1), must be fulfilled.—R. *v.* STENSON & WINTERBOTTOM (1930), 22 Cr. App. Rep. 18, C. C. A.

5239b. —— ——.]—Whether a young offender is a person "of criminal habits & tendencies" or in "association with persons of bad character," within Prevention of Crime Act, 1908 (c. 59), s. 1 (1) (*b*), is a question of fact in each case ; but, *semble :* the evidence of such facts must be clear & certain : trifling offences or casual association with one criminal are not sufficient to satisfy the statute.—R. *v.* CONNELL & IRVINE (1930), 22 Cr. App. Rep. 102, C. C. A.

PART XIII. SECT. 3, SUB-SECT. 2.

s i. —— —— *Sentence imposed under provincial statute.*]—Sect. 3 of Prisons & Reformatories Act, R. S. C., 1927 (c. 163), & sect. 42 (2) of Penitentiary Act, R. S. C., 1927 (c. 154), which provide that a term of imprisonment shall, unless otherwise directed in the sentence, begin to run from the date of the sentence, do not apply to sentences imposed under a provincial statute unless the provincial statute itself, either directly or indirectly, makes them applicable. At common law the period of imprisonment is reckoned from the time the defendant is received into custody.—HIRSCH *v.* ANDERSON & WEDDERSPOON, [1930] 1 W. W. R. 405 ; 2 D. L. R. 576 ; 53 Can. C. C. 359 ; 24 S. L. R. 358.—**CAN.**

t i. —— *Release on bail—Whether time counts.*]—*Re* HOOD, [1928] 1 D. L. R. 624 ; 49 Can. Crim. Cas. 191 ; 59 N. S. R. 471.—**CAN.**

sy. *Of accused acquitted on ground of insanity—Powers of Lieutenant-Governor.*]—R. *v.* COLEMAN (N. S.) (1927), 47 Can. Crim. Cas. 148.—**CAN.**

sz. *Alternative sentences—Prisons & Reformatories Act, R. S. C., 1927, s. 46 —Criminal Code, s. 242 (3).*]—R. *v.* OLDAKER (Ont.) (1929), 52 Can. Crim. Cas. 318.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 4.

a viction on a charge of robbery with violence the judge ordered prisoner to be whipped, &, not having stated the number of times he was to be whipped, provided for this in the record of conviction in prisoner's absence :—*Held :* the sentence was not illegal.—R. *v.* HUGHES (1924), 35 B. C. R. 55.—**CAN.**

g i. —— *Seduction offences.*]—The maximum punishment under Criminal Code, s. 213, is two years, & whipping is not authorised & cannot be added to the punishment provided.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342 ; 42 Can. Crim. Cas. 153.—**CAN.**

g ii. —— *Assault—By young person under sixteen.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

5230 i. —— *First offenders.*]—Circumstances in which :—*Held :* whipping should not be imposed on a first offender only twenty years old.—R. *v.* WHEPDALE (Sask.), [1927] 3 W. W. R. 704 ; 49 Can. Crim. Cas. 62.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 5.

h i. —— *Power of court.*]—HALIFAX CORPN. *v.* BROWN (1885), 18 N. S. R. (6 R. & G.) 103.—**CAN.**

h ii. —— ——.]—Where an offence is punishable by imprisonment for mere than five years, a sentence of a fine & imprisonment in default of payment is improper.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11 ; 19 Sask. L. R. 165 ; [1925] 1 W. W. R. 237.—**CAN.**

h iii. —— *Jurisdiction of Supreme Court.*]—Applt. was tried in the Supreme Ct. of the Northern Territory on an information charging him with maliciously publishing a defamatory libel, was convicted & was sentenced to pay a fine & directed to be imprisoned until the fine was paid :—*Held :* apart from statutory restriction the direction for imprisonment was lawful, & the direction was not made unlawful by Criminal Law Consolidation Act, 1876 (S. A.), ss. 365–367, for the enforcement of fines.—MCKINNON *v.* R. (1927), 40 C. L. R. 217.—**AUS.**

m i. —— *Fine not paid—Warrant not acted on for five years.*]—Arrest after five years upheld.—R. *v.* MONDSHEIN (Man.), [1927] 1 D. L. R. 964 ; [1927] 1 W. W. R. 101 ; 47 Can. Crim. Cas. 63.—**CAN.**

o i. *Fine for violation of Criminal Code—Judge may not order payment to private individual.*]—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11 ; 19 Sask. L. R. 165 ; [1925] 1 W. W. R. 237.—**CAN.**

sa. *Reduction of fine on appeal—Effect of—On person by whom fine paid.*]—LEVINE *v.* WANLESS (Ont.) (1927), 47 Can. Crim. Cas. 273.—**CAN.**

sc. *Right of municipality to fine.*]—A municipality has a right to fines where it has paid any part of the expense of proceedings, whether the judge or the Ct. of Appeal imposed the fines.—WINDSOR *v.* A.-G. OF ONTARIO, [1933] 4 D. L. R. 735 ; 60 C. C. C. 401.—**CAN.**

sf. *Fine under Excise Act—Whether property of Dominion or Province.*]—D. was convicted by an Ontario magistrate under sect. 176 of Excise Act, R.S.C., 1927, & sentenced to imprisonment for one month & a fine of $200, & in default of payment, to a further term of imprisonment for six months. He served the definite term of one month's imprisonment in the common gaol at North Bay & was then transferred to Burwash Industrial Farm, an institution maintained & administered by the Govt. of Ontario. While there, the fine of $200 was paid to that institution & the money was transmitted to the Treasurer of Ont. from whom it was demanded by the Comr. of Excise on behalf of the Receiver General of Canada. This action was brought to determine the ownership of the money :—*Held :* having regard to a consideration of sect. 1036 of the Criminal Code, sect. 133 of Excise Act, & sect. 40 of Prisons & Reformatories Act, 1927, the money in question is the property of His Majesty in the right of the Dominion.—R. *v.* A.-G. FOR ONTARIO, [1934] Ex. C. R. 25 ; 3 D. L. R. 483 ; 61 C. C. C. 359.—**CAN.**

(1931), 23 Cr. App. Rep. 55, C. C. A.

5239d. —— ——.]—A number of offences committed on the same day are not conclusive of "criminal habits or tendencies" as they might be if they had taken place at some intervals of time.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 61, C. C. A.

5239e. —— ——.]—In certain circumstances the very nature of the offence of which a young offender is convicted may justify a ct. in drawing the inference that he is of "criminal habits or tendencies," & accordingly amenable to a sentence of detention in a Borstal institution.—R. *v.* WALDING (1931), 144 L. T. 672; 22 Cr. App. Rep. 178; 29 Cox, C. C. 283, Q. C. A.

5240. *Add. Annotation:*—**Refd.** R. *v.* Scoffin, [1930] 1 K. B. 741.

5240a. —— **Misstatement of age—Subsequent true statement & good conduct—Sentence changed in favour of detention in Borstal.**]—R. *v.* CURRAN (1930), 22 Cr. App. Rep. 57, C. C. A.

5240b. —— **Time for ascertaining age—Date of sentence.**]—Where an accused person is convicted at petty sessions & remitted to quarter sessions or assizes for sentence under Criminal Justice Administration Act, 1914 (c. 58), s. 10, as amended, the material time at which to ascertain his age in connection with the power of the ct. to order his detention in a Borstal institution is that when sentence is passed, not that of his conviction.—R. *v.* SCOFFIN, [1930] 1 K. B. 741; 99 L. J. K. B. 521; 143 L. T. 121; 46 T. L. R. 311; 74 Sol. Jo. 216; 29 Cox, C. C. 151; 22 Cr. App. Rep. 27, C. C. A.

5241a. —— **Youth of prisoner.**]—Detention in a Borstal institution substituted for a sentence of imprisonment with hard labour passed on a boy sixteen years of age.—THORPE'S CASE (1918), 13 Cr. App. Rep. 176, C. C. A.

5241b. —— ——.]—R. *v.* RANKIN (1932), 23 Cr. App. Rep. 200, C. C. A.

5243a. —— ——.]—Sentence of detention quashed.—R. *v.* SMEE (1928), 20 Cr. App. Rep. 192, C. C. A.

5244a. —— **Sentence manifestly excessive.**]—R. *v.* GORE (1929), 21 Cr. App. Rep. 175, C. C. A.

5244b. —— ——.]—R. *v.* THOMPSON (1931), 23 Cr. App. Rep. 76, C. C. A.

5244c. —— ——.]—R. *v.* PHELPS & ROBERTS (1931), 23 Cr. App. Rep. 77, C. C. A.

5244d. —— **Corruption of others in Institute likely.**]—The ct. will not permit youths with very bad records, who are likely to corrupt others, to be sent to Borstal institutions.—R. *v.* KNEALE (1931), 23 Cr. App. Rep. 73, C. C. A.

5246a. —— ——.]—As a general rule, the term of detention in a Borstal institution should be three years.—R. *v.* REVILL (1925), 19 Cr. App. Rep. 44, C. C. A.

5246b. —— ——.]—Term of detention in a Borstal institution increased to the maximum in applt.'s own interest.—R. *v.* FRIER (1927), 20 Cr. App. Rep. 30, C. C. A.

5252a. Report of Prison Commissioners—Duty to state reasons.]—The Prison Commissioners in reporting, under Prevention of Crime Act, 1908 (c. 59), s. 1 (1), that a case is not suitable for Borstal treatment would do well in future to attach their reasons.—R. *v.* NAYLOR, [1937] 2 All E. R. 379; 81 Sol. Jo. 379; 26 Cr. App. Rep. 77, C. C. A.

5255. *Add. Annotation:*—**Apld.** R. *v.* Baxter (1924), 18 Cr. App. Rep. 127.

5258. *Add. Annotations:*—**Folld.** R. *v.* Dean (1924), 18 Cr. App. Rep. 21. **Refd.** *Re* Hector Whaling, Ltd., [1936] Ch. 208.

5261a. —— —— ——.]—R. *v.* DEAN, No. 3165a, *ante*.

5269. *Add. Annotation:*—**Refd.** R. *v.* Hayward (1927), 137 L. T. 64.

5279a. —— —— **Effect of failure to refer to remanet.**]—R. *v.* MURRAY, No. 5309a, *post*.

5279b. —— —— **Allegation of crime—No conviction or admission.**]—(1) In the statutory notice which must be served under Prevention of Crime Act, 1908 (c. 59), s. 10 (4), upon a person whom it is intended to charge with being a habitual criminal, the prosecution are entitled to include an allegation that the accused has committed a crime, although he has neither been convicted of that crime nor admitted his guilt in respect of it.

(2) The argument . . . is that the judge ought not to have discharged the first jury, but the judge in so doing exercised his discretion & we have no power to interfere with the exercise of that discretion, which was exercised entirely in the interests of the accused (HEWART, L.C.J.).—R. *v.* BEADELL (1933), 77 Sol. Jo. 158; 24 Cr. App. Rep. 39, C. C. A.

5279c. —— —— **Misdescription of one offence.**]—In the statutory notice served under Prevention of Crime Act, 1908 (c. 59), s. 10 (4), on a prisoner who was to be charged as a habitual criminal, in the case of one of the three previous convictions on which it was intended to found the charge the offence was described as "attempted shopbreaking & being in possession of housebreaking implements," whereas in fact the prisoner had been convicted of attempted shopbreaking & being found by night armed with an offensive weapon with intent to break & enter a shop. The date of the conviction, the ct. of trial, & the sentence were correctly set out:—*Held:* the prisoner had not been

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PART XIII. SECT. 3, SUB-SECT. 8.

sg. *Under Probation of Offenders Act*, 1907 (c. 17).]—A licensed publican pleaded guilty to opening his licensed premises for the sale of intoxicating liquor during prohibited hours. His house was well conducted, & this was his first offence. The magistrate having given deft. the benefit of the above Act:—*Held:* as there was nothing in the evidence as to character to bring the case within sect. 1, & the offence was not a trivial one, & there were no extenuating circumstances, the magistrate was not correct in law in giving deft. the benefit of the Act.

Before a magistrate deals with a case under the above Act, he should be satisfied that the case falls under one of the specific heads of sect. 1, & should state explicitly on which of the grounds he relies if he exercises the discretion conferred on him by the Act.—GILROY *v.* BRENNAN, [1926] I. R. 482.—**IR.**

sm. *"Suspended sentence"—Meaning of.*]—The expression as used in Criminal Code, s. 1081, does not mean or infer that sentence must be passed & its operation then suspended; it means that no sentence will be passed unless & until the offender is called upon to appear & receive judgment.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—**CAN.**

sd. *Release on probation—No power to impose fine.*]—Where an offender is released on probation under Criminal Procedure Code, s. 562 the imposition of a fine is illegal.—KARIM BAKHSH *v.* R. (1928), I. L. R. 10 Lah. 722.—**IND.**

misled by the wrong description of the offence, & the notice was not thereby invalidated.—R. *v.* WHELAN (1934), 24 Cr. App. Rep. 189, C. C. A.

5282. *Add. Annotation :*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5283a. —— —— **Nothing must be stated to jury about charge until substantive offence dealt with.**]—R. *v.* TYREMAN, No. 5359b, *post.*

5285a. —— ——.]—An allegation of being a habitual criminal ought to be tried.—R. *v.* NASH (1927), 20 Cr. App. Rep. 1, C. C. A.

Annotation :—**Folld.** R. *v.* Rutt (1928), 20 Cr. App. Rep. 186.

5285b. —— ——.]—R. *v.* RUTT (1928), 20 Cr. App. Rep. 186, C. C. A.

5288. *Add. Annotation :*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289. *Add. Annotation :*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289a. —— ——.]—No two or more persons should be tried together on charges of being habitual criminals, even though they have been included in one indictment for the purpose of trial for the crime of which they have been convicted immediately before the preferring of the charges of being habitual criminals.—R. *v.* LONSDALE, [1931] 1 K. B. 191 ; 100 L. J. K. B. 212 ; 144 L. T. 192 ; 47 T. L. R. 80 ; 29 Cox, C. C. 209 ; 22 Cr. App. Rep. 122, C. C. A.

5290a. Admission of being habitual criminal—Duty of court to explain charge.]—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—R. *v.* DONOVAN (1925), 19 Cr. App. Rep. 2, C. C. A.

5290b. Plea of guilty—Meaning should be explained.]—A plea of guilty on the allegation of being a habitual criminal should not be accepted until its meaning has been explained to the prisoner.—R. *v.* WALLACE (1929), 21 Cr. App. Rep. 70, C. C. A.

5290c. Direction to jury—Necessary contents.]—R. *v.* DINSDALE (1926), 19 Cr. App. Rep. 123, C. C. A.

5290d. —— ——.]—R. *v.* WEALE (1927), 20 Cr. App. Rep. 153, C. C. A.

5290e. Objection to statutory notice—Discharge of jury.]—R. *v.* BEADELL, No. 5279b, *ante.*

5299. *Add. Annotation :*—**Refd.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5300. *Add. Annotation :*—**Consd.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5303a. ——.]—During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of accused beyond his participation in the substantive offence which accused had confessed. The answer was : " I know he has been associating with convicted persons." Association with convicted persons was not one of the grounds set out in the statutory notice to accused :—*Held :* evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed.—R. *v.* BAXTER (1924), 132 L. T. 256 ; 27 Cox, C. C. 689 ; 18 Cr. App. Rep. 127, C. C. A.

5303b. ——.]—No misconduct, whether criminal or not, may be given in evidence on the trial of an allegation of being a habitual criminal unless the statutory notice thereof has been served.—R. *v.* STOKELL (1924), 18 Cr. App. Rep. 155, C. C. A.

5303c. ——.]—R. *v.* TYREMAN, No. 5359b, *post.*

5303d. ——.]—Evidence that accused is an associate of thieves is not admissible, as an allegation of being a habitual criminal, unless notice has been given of it.—R. *v.* YARWOOD (1928), 21 Cr. App. Rep. 25. C. C. A.

5303e. —— **Unless verdict unaffected by admission of other matters.**]—Despite irregular admissions in evidence of offences not in the list of the statutory notice to persons alleged to be habitual criminals, the ct. may refuse to interfere if it is satisfied that in the absence of such evidence the jury would have found the same verdict.—R. *v.* HERBERT (1931), 23 Cr. App. Rep. 123, C. C. A.

5304a. Admission of offence made before trial—For particular purpose.]—When a prisoner is charged with being a habitual criminal an admission by the prisoner that he has committed an offence made before the trial may be given in evidence at the trial, & cannot be excluded on the ground that it was made for some particular or limited purpose.—R. *v.* WILLIAMS (1929), 141 L. T. 544 ; 21 Cr. App. Rep. 121 ; 28 Cox, C. C. 654, C. C. A.

5304b. Must go to question whether prisoner habitual criminal when charged.]—R. *v.* WINN, No. 5355a, *post.*

5307. *Add. Annotation :*—**Consd.** R. *v.* Hayward (1927), 137 L. T. 64.

5308a. ——.]—When accused is charged with being a habitual criminal, the three convictions forming the basis of the charge under Prevention of Crime Act, 1908 (c. 59), s. 10 (2) (*a*), must be strictly proved ; but evidence of other convictions may be given, without production of the record & evidence identifying accused with those convictions, as " evidence of character & repute " under sect. 10 (5), on the question whether accused is or is not leading persistently a dishonest or criminal life. Even apart from the statutory provision, such evidence can be given if there is any evidence that accused has admitted the convictions.—R. *v.* HAYWARD (1927), 137 L. T. 64 ; 28 Cox, C. C. 342 ; *sub nom.* R. *v.* HAYWARD, R. *v.* LAWRENCE, 43 T. L. R. 356 ; 20 Cr. App. Rep. 33, C. C. A.

PART XIII. SECT. 4, SUB-SECT. 3.—A.

5308 ix. *By accused to rebut charge—Though previous sentence of preventive detention proved.*]—Where accused is charged, under Prevention of Crime Act, 1908, with being a habitual criminal, & it is proved that he has on a previous occasion been found to be a habitual criminal & has been sentenced to preventive detention, the jury are not bound to convict him ; the accused is entitled to lead evidence to show that he is not, at the date of the charge, a habitual criminal, & it is for the jury to determine, as a question of fact, whether, on the whole evidence adduced, the charge has or has not been established.—M'DONALD *v.* H.M. ADVOCATE, [1929] S. C. (J.) 76.—**SCOT.**

PART XIII. SECT. 4, SUB-SECT. 3.—C.

5307 ii. ——.]—Where a person is charged under Prevention of Crime Act, 1908, with being a habitual criminal, Criminal Procedure (Scotland) Act, 1887, s. 67, does not apply. & the sched. of previous convictions appended to an extract conviction which is itself competently proved cannot be used as evidence of those convictions for the purpose of supporting the charge.—O'DONNELL *v.* H.M. ADVOCATE, [1930] S. C. 1 (J.).—**SCOT.**

5309a. —— **Conviction in Scotland.**]—(1) Upon a charge against a person in England of being a habitual criminal under Prevention of Crime Act, 1908 (c. 59), s. 10, a previous conviction of that person in Scotland upon indictment of a crime may be proved as one of the three previous convictions of a crime which must be proved against him under sect. 10 (2) before he can be found to be a habitual criminal, provided that the offence of which he was convicted in Scotland would also be a "crime" in England within the definition of that expression as set out in the Sched. to Prevention of Crime Act, 1908 (c. 59).

(2) The notice of intention to charge the prisoner with being a habitual criminal wrongly stated the particulars of one of his previous convictions in that the sentence was for two years' imprisonment plus a period of 522 days *remanet*, & in the notice there was no information as to the *remanet* :—*Held :* the notice sufficiently informed the prisoner of what was alleged against him & was therefore a valid notice.—R. *v.* MURRAY, [1932] 1 K. B. 599 ; 146 L. T. 487 ; 48 T. L. R. 255 ; 76 Sol. Jo. 166 ; 29 Cox, C. C. 441 ; 23 Cr. App. Rep. 166 ; *sub nom.* R. *v.* MORRISON (1932), 101 L. J. K. B. 257, C. C. A.

5312a. —— ——.]—Applt. was convicted of shopbreaking, & was sentenced to three years' penal servitude. He was also found to be a habitual criminal on the ground that he had been convicted on three previous occasions & that he was leading persistently a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shopbreaking for which he had now been sentenced on Jan. 2, 1925 :—*Held :* it was questionable whether, on these facts, the jury could properly have found applt. to be a habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life ; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—R. *v.* DRISCOLL (1925), 89 J. P. 104 ; 41 T. L. R. 425 ; 18 Cr. App. Rep. 184, C. C. A.

5312b. —— ——.]—A jury trying the issue of being a habitual criminal or not must be expressly warned, where the Crown proves such a previous finding, that the onus of proving that the accused is still a habitual criminal at the material period rests on the Crown & not that of disproving it on him.—R. *v.* KNIGHT (1929), 21 Cr. App. Rep. 72, C. C. A.

5314a. —— ——.]—(1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect : his whole career must be considered by the jury.

(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges.—R. *v.* TAYLOR (1926), 19 Cr. App. Rep. 146, C. C. A.

5319a. —— —— ——.]—R. *v.* HAYWARD, No. 5308a, *ante*.

5322. *Add. Annotation :*—**Refd.** R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5331a. ——.]—On the trial of an allegation of being a habitual criminal, the interval between the last two convictions is only one of several elements to be considered by the jury ; others are accused's silence on his life during that interval, the nature of the crime, & the possession of housebreaking instruments & their number & character at the time of arrest.—R. *v.* WHITE & SHELTON (1927), 20 Cr. App. Rep. 61, C. C. A.

5341a. ——.]—R. *v.* WHITE & SHELTON, No. 5331a, *ante*.

5347. *Add. Annotations :*—**Refd.** R. *v.* Lavender (1927), 20 Cr. App. Rep. 10 ; R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5352a. —— ——.]—The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal.—R. *v.* HAYES (1926), 90 J. P. 190 ; 19 Cr. App. Rep. 157, C. C. A.

5355a. —— —— **Duty of judge.**]—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.

(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—R. *v.* WINN (1925), 69 Sol. Jo. 574 ; 19 Cr. App. Rep. 1, C. C. A.

5355b. —— —— ——.]—A direction on the allegation of being a habitual criminal must deal with an interval of honest work.—R. *v.* HARRY (1928), 21 Cr. App. Rep. 21, C. C. A.

5355c. —— ——.]—On the charge of being a habitual criminal, it is not a conclusive defence that accused has done honest work since his last release ; it is for the jury on all the facts, including the most recent offence proved against him, to say whether he was, at the time of its commission, "leading persistently a dishonest or criminal life."—R. *v.* LAVENDER (1927), 20 Cr. App. Rep. 10, C. C. A.

5356a. Periods without conviction—Should be put to jury.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

5357. *Add. Annotation :*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5358. *Add. Annotation :*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5359a. For the existing paragraph in original volume substitute the following paragraph :—

—— —— ——.]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above

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PART XIII. SECT. 4, SUB-SECT. 3.—D. (a).

5328 iii. —— ——.]—To support a charge of habitually consorting with reputed thieves it must be shown that the persons with whom the accused habitually consorts are thieves with the reputation of being thieves, but evidence that they are so reputed amongst the police is sufficient evidence of reputation.—GABRIEL *v.* LENTHALL, [1930] S. A. S. R. 318.—**AUS.**

sub-sect., the jury are not bound to find prisoner to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to preventive detention, to call evidence to show that he is not at the material time a habitual criminal.—R. *v.* NORMAN, [1924] 2 K. B. 315; 93 L. J. K. B. 883; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 119, C. C. A.

Annotation:—**Reld.** R. *v.* Tyreman (1925), 19 Cr. App. Rep. 4.

5359b. —— —— —— **Conviction remitted.**]—(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—R. *v.* TYREMAN (1925), 19 Cr. App. Rep. 4, C. C. A.

5361a. —— ——.]—Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.—R. *v.* PAUL, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 293; 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

Annotation:—**Expld.** R. *v.* Turnbull (1926), 19 Cr. App. 155.

5369a. —— —— ——.]—A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose preventive detention; it must be warranted by the primary offence.—R. *v.* TURNBULL (1926), 19 Cr. App. Rep. 155, C. C. A.

5369b. —— —— ——.]—R. *v.* THOMAS (OTHERWISE WILLIAMS) (1928), 20 Cr. App. Rep. 172, C. C. A.

5372a. ——.]—R. *v.* PAUL, No. 5361a, *ante*.

5373a. ——.]—R. *v.* MCCARTHY (1910), 4 Cr. App. Rep. 198, C. C. A.

5373b. ——.]—R. *v.* HENRY (1927), 20 Cr. App. Rep. 117, C. C. A.

5373c. ——.]—Observations upon the term of penal servitude preliminary to preventive detention.—R. *v.* SEARLE (1922), 17 Cr. App. Rep. 35, C. C. A.

5376a. —— ——.]—Sentence of preventive detention on habitual criminal quashed.

Criticism of the practice of charging a prisoner after his release with offences committed prior to the commencement of his term of imprisonment.—R. *v.* SILVERMAN (1935), 25 Cr. App. Rep. 101, C. C. A.

5385a. —— ——.]—R. *v.* BEARD (1927), 20 Cr. App. Rep. 155, C. C. A.

5398. *Add. Annotations:*—**Distd.** R. *v.* Douglas (1926), 19 Cr. App. Rep. 119. **Expld.** R. *v.* Williams (1929), 141 L. T. 544. **Consd.** R. *v.* Beadell (1933), 77 Sol. Jo. 158.

SECT. 6.—**YOUTHFUL OFFENDERS** (p. 491).

See, now, Children & Young Persons Act, 1932 (c. 46), ss. 15–23.

5414a. —— **Not certified lunatic.**]—There is a legal presumption that a certified lunatic is incapable of entering into a recognisance.—R. *v.* GREEN-EMMOTT (1931), 144 L. T. 671; 22 Cr. App. Rep. 183; 29 Cox, C. C. 280, C. C. A.

5415. *Add. Annotation:*—**Consd.** R. *v.* Sandbach, *Ex p.* Williams (1935), 51 T. L. R. 430.

5416. *Add. Annotation:*—**Consd.** R. *v.* Sandbach, *Ex p.* Williams (1935), 51 T. L. R. 430.

PART XIII. SECT. 6.

k i. —— *Conviction for assault—May be sentenced to whipping.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

q i. —— ——.]—*Re* R. *v.* SLINN (1926), 47 Can. Crim. Cas. 77; 37 B. C. R. 275.—**CAN.**

sa. *Notice to parent or guardian—Reasonable notice.*]—(1) A child who pleaded guilty to a charge of theft was ordained to appear for sentence on a later date. On the specified date the magistrate, instead of pronouncing sentence, ordered the child to be sent to an industrial school in terms of the Children Act, 1908 (c. 67), on the ground that he had been found wandering, & had a parent who did not exercise proper guardianship over him:—*Held:* this order was a new proceeding under the Children Act, & involved the abandonment of the former proceedings under the charge of theft; & accordingly, the order was not affected by defects which existed in the former proceedings.

(2) It is enough under Children Act, 1908 (c. 67), s. 98 (1), if the parent has reasonable notice of the diets in the proceedings against the child, & it is not necessary formally to cite the parent to attend the ct.—WHITE *v.* JEANS, [1911] S. C. (J.) 88.—**SCOT.**

sb. —— ——.]—The father of a "young person" charged with theft was served by a constable with a written notice, signed by the constable, stating that his son had been summoned to appear at the police ct. on a charge of theft, & that the father or some other guardian must attend the diet. The notice also narrated the powers of the ct. over the parent conferred by Children Act, 1908 (c. 67):—*Held:* the father had been sufficiently certiorated that he must attend, & an objection that, in the case at any rate of a "young person," as opposed to a child, an antecedent warrant of the ct. citing the parent to attend was necessary, repelled.—MONTGOMERY *v.* GRAY, [1915] S. C. (J.) 94.—**SCOT.**

PART XIII. SECT. 8.

f i. —— *Given after illegal arrest.*]—R. *v.* HOLTZER, *Re* LEVINE & PYZER (Man.), [1928] 3 D. L. R. 222; [1928] 1 W. W. R. 910; 49 Can. Crim. Cas. 352.—**CAN.**

f ii. —— *Appeal re-opened—No direction as to person to whom surrender to be made.*]—R. *v.* WAH LUNG (*alias* WONG WA) (B. C.), [1928] 3 W. W. R. 232; 50 Can. Crim. Cas. 182.—**CAN.**

f iii. —— *Notice of motion must be given to sureties.*]—R. *v.* RUNNER, [1928] 1 W. W. R. 921; 22 Sask. L. R. 478.—**CAN.**

f iv. —— *Whether discretion in court to refuse application.*]—On an application on behalf of the Crown for the estreat of a recognisance of bail under

5420. *Add. Annotations :*—**Apld.** R. *v.* Sandbach, *Ex p.* Williams, [1935] 2 K. B. 192 ; Thomas *v.* Sawkins, [1935] 2 K. B. 249.

5420a. ——.]—Appct. was convicted of obstructing a police constable in the execution of his duty, by warning a street bookmaker of the approach of the police & so enabling him to evade arrest. Evidence was given at the police ct. that appct. had already been convicted of similar offences several times & that the infliction of a fine was no deterrent. The magistrate ordered appct. to enter into a recognisance to be of good behaviour in the sum of £20 with two sureties of £10 each, or in default to be imprisoned for two months. Appct. sought a rule for a *certiorari* to quash the magistrate's order on the ground that the magistrate had no jurisdiction to make it, because (*a*) there was no actual or apprehended breach of the peace, by, or as a result of the conduct of the appct., & (*b*) the order, in effect, imposed a penalty different from & possibly more severe than the maximum which would be imposed for the offence of which appct. was actually convicted :—*Held :* the rule must be discharged, because the matter was within the discretion of the magistrate, who had exercised his discretion properly.—R. *v.* Sandbach, *Ex p.* Williams, [1935] 2 K. B. 192 ; 104 L. J. K. B. 420 ; 153 L. T. 63 ; 99 J. P. 251 ; 51 T. L. R. 430 ; 79 Sol. Jo. 343 ; 33 L. G. R. 268 ; 30 Cox, C. C. C.

5448a. Recognisance imposed by Court of Appeal—Breach of—Restoration of original sentence.]—R. *v.* Wood (1930), 22 Cr. App. Rep. 128, C. C. A.

5448b. —— —— **Offence of different character from original offence—Imposition of fresh recognisance.**]—R. *v.* Gore (1930), 22 Cr. App. Rep. 129, C. C. A.

5448c. Possibility of breach of the peace—Right of public to attend public meeting—On private premises.]—Applt. was one of the conveners of a meeting held to protest against a Bill then before Parliament in a private hall which had been hired for the purpose by one of the other conveners of the meeting. The meeting was extensively advertised & the public were invited to attend it & no charge for admission was made. Resp., a police sergeant, & other police officers were refused admission to the hall, but they insisted on entering it & remaining there during the meeting. No criminal offence was committed by any person at the meeting, nor was there any actual breach of the peace or disorder, but resp. & the other officers had reasonable grounds for believing that, if they were not present at the meeting, seditious speeches would be made & that incitements to violence & breaches of the peace would occur :—*Held :* resp. & the other officers were entitled, in the execution of their duty to prevent the commission of any offence or breach of the peace, to enter & remain on the premises.—Thomas *v.* Sawkins, [1935] 2 K. B. 249 ; 104 L. J. K. B. 572 ; 153 L. T. 419 ; 99 J. P. 295 ; 51 T. L. R. 514 ; 79 Sol. Jo. 478 ; 33 L. G. R. 330 ; 30 Cox, C. C. 265, D. C.

5452. *Add. Annotations :*—**Apld.** Freeborn *v.* Leeming (1925), 89 J. P. 179. **Refd.** Morriss *v.* Winter, [1930] 1 K. B. 243.

5458. *Add. Annotations :*—**Refd.** Lewis *v.* Guest, Keen & Nettlefold, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (Cyfarthfa) (1927), 96 L. J. K. B. 664 ; North's Navigation Co. (1889), Ltd. *v.* Batten (1933), 150 L. T. 186.

5464. *Add. Annotations :*—**Consd.** R. *v.* Sheridan, [1936] 2 All E. R. 883 ; R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96.

5466a. Prevention of Crimes Act, 1871 (c. 112), s. 20—Attempted burglary.]—R. *v.* Bates, No. 5a, *ante.*

5478a. ——.]—(1) In order that a person may be convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being " found by night having in his possession without lawful excuse implements of housebreaking ", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be possession by a free man.

(2) Where a person has pleaded " Not guilty " to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—R. *v.* Harris (1924), 94 L. J. K. B. 164 ; 132 L. T. 672 ; 89 J. P. 37 ; 41 T. L. R. 205 ; 27 Cox, C. C. 746 ; 18 Cr. App. Rep. 157, C. C. A.

5481a. ——.]—*Qu.* : whether in an indictment in which it is necessary to allege a previous

Crown Suits Act, 1908, s. 5, the ct., on proof of the particular case, is bound to estreat, leaving the person affected to the remedy provided by sect. 7 of the Act.—*Re* King & Scott, [1931] N. Z. L. R. 162.—**N.Z.**

sk. *Breach of recognisance—Whether sentence for original crime may be given.*]—Where accused is bound over for two years & is charged before the expiration of the two years, he cannot be sentenced for the original crime without an information charging breach of recognisance.—R. *v.* Glasgow, [1937] 1 D. L. R. 659 ; 11 M. P. R. 142 ; 67 Can. C. C. 392 ; 6 F. L. J. (Can.) 229.—**CAN.**

PART XIII. SECT. 10, SUB-SECT. 1.

k i. —— ——.]—Pltf., after conviction for manslaughter, began an action for possession of premises in which she & her husband, deft., lived, the property standing in her name & being registered under Real Property Act :—*Held :* there was no disability or incapacity of bringing the action, by virtue of Forfeiture Act, 1870 (c. 23).—Zawojowska *v.* Zawojowska (Man.), [1922] 3 W. W. R. 492.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.

sq. *Previous conviction — Second offence not identical—Both included in one section.*]—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for any one of the acts which s. 78 declares to be offences & who is subsequently convicted for another of such acts is ty of a second offence even though two offences are not exactly of the same kind.—R. *v.* Pollard (Sask.), [1928] 4 D. L. R. 623 ; [1928] 3 W. W. R. 78 ; 50 Can. Crim. Cas. 157. —**CAN.**

sr. —— *Under repealed Act.*]—'Previous conviction" in Government Liquor Control Act, 1928, c. 31, s. 178, means a conviction under that Act, & does not refer to convictions under prior Acts now repealed.—R. *v.* Riceberg (Man.), [1929] 1 D. L. R. 220 ; 50 Can. Crim. Cas. 387 ; [1928] 3 W. W. R. 534.—**CAN.**

st. *Interval between prosecutions longer than period limited for prosecutions under Act.*]—*Ex p.* Woods (N. S.), [1928] 2 D. L. R. 771 ; 49 Can. Crim. Cas. 141.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 4.

b i. ——.]—A document headed " Certificate of Conviction " & purporting to be a copy of a conviction under Manitoba Temperance Act, 1924, is not proof, under s. 151 (4) of Govt. Liquor Control Act, 1928, of a conviction under the former Act.—R. *v.* Riceberg (Man.), [1929] 1 D. L. R. 220 ; 50 Can. Crim. Cas. 387 ; [1928] 3 W. W. R. 534.—**CAN.**

conviction under above sect., the fact that at the same time prisoner was convicted of being a habitual criminal should be alleged.—R. *v.* WESTFALL (1928), 21 Cr. App. Rep. 40, C. C. A.

5494. *Add. Annotation :*—**Refd.** Jones *v.* Thomas, [1934] 1 K. B. 323.

5509. *Add. Annotation :*—**Refd.** Williams *v.* Russell (1933), 149 L. T. 190.

Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

5528. *Add. Annotation :*—**Consd.** R. *v.* Parkin (1928), 20 Cr. App. Rep. 173.

PART XIII. SECT. 11, SUB-SECT. 5.

5504 i a. ——.]—Deft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as deft. had been previously convicted before the same magistrate :—*Held :* the evidence was sufficient.—R. *v.* ATKINSON (N.S.) (1910), 44 N. S. R. 521 ; 9 E. L. R. 212.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

p i. —— —— *Sentence already served.*]—A motion on behalf of the Crown under sect. 1013 (2) of Criminal Code for leave to appeal from a sentence is not "a further or other criminal proceeding for the same cause" within sect. 1079 of the Code. Therefore the fact that the term of imprisonment has been suffered before said motion has been made or, if granted, before the appeal comes on for hearing, does not take away the jurisdiction to grant the leave or entertain the appeal.—R. *v.* KIRKHAM, [1935] 3 W. W. R. 55 ; 4 D. L. R. 333 ; 64 Can. C. C. 255 ; 50 B. C. R. 197.—**CAN.**

t i. ——.]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS *v.* R., [1924] 4 D. L. R. 843 ; [1924] S. C. R. 522.—**CAN.**

t ii. ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193 ; [1927] S. C. R. 454 ; 48 Can. Crim. Cas. 118.—**CAN.**

t iii. —— *Whether grounds of dissent must be specified in judgment.*]—Applt. was convicted, & upon appeal the conviction was affirmed by a majority of the ct., the dissent of one judge being merely mentioned in the formal judgment. Under a recent amendment sub-sect. (6) was added to sect. 1013 Criminal Code providing that, in case of a dissenting opinion, the formal judgment should specify the grounds in law on which such dissent was based. The Crown contended that, owing to the failure of the appellate ct. so to specify the grounds of dissent, an appeal to this ct. was not open to applt. :—*Held :* this ct. had jurisdiction to entertain this appeal. The only sect. of the Criminal Code dealing with the jurisdiction *de plano* of the Supreme Ct. of Canada is sect. 1023, under which the fact there has been a dissent on a question of law is the sole condition for the foundation of its jurisdiction : the circumstance that the grounds of dissent are not specified in the formal judgment of the appellate ct. does not avoid the fact of there having been a dissent, which is the only requirement contained in Criminal Code, s. 1023.—REINBLATT *v.* R., [1933] S. C. R. 694 ; [1934] 1 D. L. R. 648 ; 61 C. C. C. 1.—**CAN.**

a i. —— ——.]—R. *v.* BOAR, [1926] S. C. R. 481 ; 46 Can. Crim. Cas. 164.—**CAN.**

a ii —— ——.]—GURDITTA *v.* R., [1927] 2 D. L. R. 577 ; [1927] S. C. R. 80 ; 47 Can. Crim. Cas. 154.—**CAN.**

a iii. —— ——.]—BARRE *v.* R., [1927] 2 D. L. R. 1097 ; [1927] S. C. R. 284 ; 48 Can. Crim. Cas. 91.—**CAN.**

a iv. —— ——.]—HOWLEY *v.* R., [1927] 3 D. L. R. 265 ; [1927] S. C. R. 529 ; 48 Can. Crim. Cas. 139.—**CAN.**

a v. —— ——.]—CARDINAL *v.* R., [1927] 4 D. L. R. 325 ; [1927] S. C. R. 541 ; 48 Can. Crim. Cas. 243.—**CAN.**

a vi. ——.]—The general appellate jurisdiction of the Supreme Ct. of Canada is confined to civil matters ; to found an appeal to the ct. in any criminal matter, resort must be had to some special statutory provision enacted by the Dominion Parliament. Save for the special case provided for by sect. 1025 of the Criminal Code, the only right of appeal to the ct. in any criminal cause is that conferred by sect. 1023. For an appeal to come within sect. 1023, the conviction must have been affirmed by the ct. below & there must have been dissent by some member thereof on a question of law.—STEINBERG *v.* R., [1931] S. C. R. 421 ; 4 D. L. R. 8 ; 56 Can. C. C. 9.—**CAN.**

a vii. ——.]—An appeal from the judgment of Appellate Div. Ont. affirming applt.'s conviction for stealing was dismissed, on the ground that there was no jurisdiction to hear the appeal, the questions raised, & on which there was dissent in the Appellate Div., being all questions of fact, in regard to which there was no right of appeal to this ct. Assuming that the question whether there was any evidence to support a conviction should be deemed a question of law, yet the question whether the proper inference has been drawn by the trial judge from facts established in evidence, is not a question of law but one of fact.—GAUTHIER *v.* R., [1931] S. C. R. 416 ; 4 D. L. R. 582 ; 56 Can. C. C. 113.—**CAN.**

a viii. ——.]—Applts. were tried & convicted on a charge of assault occasioning actual bodily harm. On the hearing of their grounds of appeal before the Ct. of Appeal, applts. moved also for leave to admit new evidence. This motion was dismissed by a majority of the Ct. of Appeal, two judges expressing dissenting opinions. Later on, the Ct. of Appeal rendered judgment affirming unanimously the conviction of applts. ; & such judgment contained also a paragraph mentioning the fact that dissenting opinions had been expressed by two members of the ct. on the motion to adduce new evidence :—*Held :* the dissent in the Ct. of Appeal on the motion for leave to introduce new evidence is not a dissent of that ct. against the affirmance of applts.' conviction on a question of law within sect. 1023 of the Criminal Code.—YIP SING *v.* R., [1935] S. C. R. 635 ; 3 D. L. R. 798 ; 64 Can. C. C. 47.—**CAN.**

a ix. —— *Conflict of judgments.*]—Applt. was an insolvent trader & had been convicted under sect. 417*c* Cr. C. for not having kept proper books of account. Application for leave to appeal under sect. 1025 Cr. C. was made on the ground that, inasmuch as sect. 417*c* Cr. C. was alleged to have been virtually abrogated by sect. 193 of Bkpcy. Act subsequently enacted, the decision of the appellate ct. in affirming the conviction failed to apply the principle of law that a subsequent statutory enactment has the effect of abrogating an anterior enactment which is inconsistent with it ; &, at the hearing, counsel for appct. cited three judgments which were alleged to be in conflict with the above decision :—*Held :* the application for leave to appeal should be dismissed as the judgments cited were not rendered "in a like case" & by an "other ct. of appeal" within the provisions of sect. 1025 Cr. C. ; they were not in conflict with the decision intended to be appealed from : the appellate ct. had clearly admitted the principle of law above cited ; but it had held that sect. 193 of the Bkpcy. Act was not inconsistent with the provisions of sect. 417*c* Cr. C.—LIEBLING *v.* R., [1932] S. C. R. 101 ; [1932] 1 D. L. R. 232 ; 57 C. C. C. 113.—**CAN.**

a x. —— ——.]—The provisions of sect. 1025 of the Criminal Code, giving right of appeal to the Supreme Ct. of Canada, upon leave to appeal being granted, "if the judgment appealed from conflicts with the judgment of any other ct. of appeal," must be taken to refer to cts. within the jurisdiction of the Dominion Parliament & not to cts. outside the Canadian territory.—ARCADI *v.* R., [1932] S. C. R. 158 ; [1932] 2 D. L. R. 429 ; 57 C. C. C. 117.—**CAN.**

a xi. —— ——.]—CHALMERS *v.* R., [1933] S. C. R. 196 ; 2 D. L. R. 789.—**CAN.**

a xii. —— ——.]—In order to obtain leave to appeal to the Supreme Ct. of Canada in a criminal case under sect. 1025 of the Criminal Code, it is not necessary that the judgment from which it is sought to appeal & that of any other ct. of appeal should have been rendered in cases in all respects the same ; but there should be a conflict between the two judgments upon a question of law similar in both cases.—THIFFAULT *v.* R., [1933] S. C. R. 242 ; 3 D. L. R. 591 ; 60 C. C. C. 97.—**CAN.**

a xiii. —— ——.]—In regard to the right to appeal under sect. 1025 of the Criminal Code, "in a like case" means that the same point of law was involved, with conflicting judgments.—LEVESQUE & GRAVELINE *v.* R., [1934] 4 D. L. R. 416 ; 62 C. C. C. 241.—**CAN.**

a xiv. —— ——.]—When the conviction of an accused is grounded exclusively on circumstantial evidence, the rule acted upon by the decisions of several cts. of appeal throughout Canada has been that "in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused & incapable of any other reasonable hypothesis than that of his guilt" ; & when that principle is compared

5528a. —— ——.]—After a trial at quarter sessions, the recorder granted a certificate, upon counsel submitting that he desired to argue the accuracy of the direction to the jury on one part of the case. The recorder stated that he adhered to his direction & granted the certificate merely to obviate any injustice:—*Held:* such certificate was wrongly granted. The convicted person was entitled to make an application to the Ct. of Criminal Appeal for leave to appeal, & there was no possibility of injustice.—R. *v.* BOSELEY, [1937] 4 All E. R. 100, C. C. A.

5528b. —— **In what circumstances.**]—R. *v.* PARKIN (1928), 20 Cr. App. Rep. 173, C. C. A.

5532. *Add. Annotations:*—**Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

5534. *Add. Annotation:*—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662.

5535. *Add. Annotation:*—**Refd.** R. *v.* Teesdale (1927), 91 J. P. 184.

5535a. —— ——.]—The Ct. will not review a summary conviction of an incorrigible rogue, with the principle expounded in this case by the reasons of judgment of the appellate ct., it must be held that there exists, between the above decisions & the judgment appealed from, the conflict required by sect. 1025 of the Criminal Code; &, therefore, leave to appeal to this ct. should be granted, as such rule of law is of sufficiently general importance to justify such leave.—FRASER *v.* R., [1936] S. C. R. 1; 65 Can. C. C. 1; 1 D. L. R. 530; 5 Can. L. Jo. 275.—**CAN.**

a xv. —— —— *Criminal proceedings.*]—Under the provisions of sect. 1025 of the Criminal Code, a party applying for leave to appeal must show that "the judgment appealed from conflicts with the judgment of any other Ct. of Appeal in a like case":—*Held:* (1) a judgment of a Ct. of Appeal "in a like case" must be a judgment rendered in criminal proceedings or upon criminal matters; (2) the Supreme Ct. of Canada is comprised among the Cts. of Appeal contemplated in that sect.—MINDEN *v.* R., [1935] S. C. R. 609; 4 D. L. R. 593; 64 Can. C. C. 322.—**CAN.**

a xvi. —— *Plea of autrefois convict.*]—R. *v.* BALLARD, [1932] 4 D. L. R. 461; 58 C. C. C. 215.—**CAN.**

cc i. —— *Effect of repeal of provisions for stating case pending appeal.*]—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed, & the ct. set aside the conviction & ordered a new trial:—*Held:* the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. *v.* TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212; 56 N. S. R. 500.—**CAN.**

ff i. —— *By Crown—Principles applicable.*]—On an appeal by the Crown from an acquittal those rules are not appropriate in aid of the Crown which when an accused is appealing from a conviction are applicable in aid of his appeal, since they are based on the traditional policy of the English law for the safeguarding of life & liberty that everything must be assumed in favour of innocence & that guilt must be established beyond reasonable doubt.—R. *v.* CURLETT, [1936] 2 W. W. R. 528; 3 D. L. R. 199; 66 Can. C. C. 256.—**CAN.**

ff ii. —— —— ——.]—On an appeal by the Crown from an acquittal the ct. should not set aside the verdict or grant a new trial, even if misdirection of the jury on a material matter be shown, if the accused can satisfy it that upon the evidence adduced such room exists for the entertainment of a reasonable doubt as to his guilt that according to every reasonable probability an impartial jury properly instructed would have returned the same verdict; but in such event the ct. should hold that no "substantial wrong or miscarriage of justice," within the meaning of sect. 1014 (2) of Criminal Code, has occurred. In interpreting "substantial wrong or miscarriage of justice" in sect. 1014 (2) on appeals by accused persons & formulating for that purpose the rule that, misdirection in a material matter having been shown, the onus is on the Crown to satisfy the ct. that the jury, charged as it should have been, could not as reasonable men have done otherwise than find the accused guilty, the cts. have always had in mind the safeguards which under our criminal law accused persons have thrown about them to protect them from the possibility of injustice, such as the presumption in favour of life, liberty & innocence, & the maxim that no one is to be twice placed in jeopardy for the same offence. These safeguards are, however, alien to the status of the Crown, or, in other words, an accused should not lose their benefit on an appeal by the Crown merely because the Crown has now been given the right to appeal & the amendment giving that right says nothing about changing said rule.—R. *v.* BOURGEOIS, [1937] 2 W. W. R. 97.—**CAN.**

kk i. ——.]—R. *v.* COWELL (Sask.) (1928), 50 Can. Crim. Cas. 381.—**CAN.**

kk ii. ——.]—R. *v.* WIGGINS (N. B.) (1928), 50 Can. Crim. Cas. 193.—**CAN.**

kk iii. —— *Evidence to support conviction.*]—R. *v.* FLETCHER & PINEL (1930), 54 Can. C. C. 116.—**CAN.**

kk iv. ——.]—On an appeal by the Crown from an acquittal, the ground of appeal being that the trial judge was without jurisdiction, he having been compulsorily retired under sect. 26 of Judges Act, 1927:—*Held:* since the only ground on which the Crown has a right of appeal under sect. 1013 (4) Criminal Code is one involving a question of fact, the appeal must be dismissed.—R. *v.* GROTSKY, [1936] 1 D. L. R. 128; [1935] 3 W. W. R. 257; 64 Can. C. C. 345; 5 F. L. J. (Can.) 132.—**CAN.**

sd. *Jury illegally constituted—Leave of Court of Appeal necessary.*]—R. *v.* BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218.—**CAN.**

se. *After dismissal of information—Failure of informant to appear.*]—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—GHITTERMAN *v.* RALPH (Sask.), [1928] 2 W. W. R. 631; 50 Can. Crim. Cas. 282.—**CAN.**

sf. *Objection to transcript of evidence—Translation.*]—Part of the evidence on a charge of murder was given in Irish, which was translated into English, so that it might be understood by the judge, the jury, & others concerned in the case. This evidence was not officially recorded in Irish as given, but only as it was translated into English, & objection to the transcript was taken on behalf of the accused, who sought leave to amend their notices of application for leave to appeal (which had already been served) by including this objection:—*Held:* as it is not an essential requisite for the purpose of an application for leave to appeal to have a complete transcript or any transcript of the evidence before the ct., the ct., being satisfied that the transcript of the note of the interpreter's rendering of the evidence was a completely accurate record & fully adequate for the purpose of disposing of the applications for leave to appeal, & having regard to all the facts, refused to allow the notices of application for leave to appeal to be amended.—A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—**IR.**

sg. *To county court—Under Summary Convictions Act—Whether trial de novo.*]—R. *v.* LAURIENTE (B. C.), [1928] 3 W. W. R. 265.—**CAN.**

5528 i. *Certificate granted — Only where judge has doubt on case.*]—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved; the burden on him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—**CAN.**

5528 ii. —— *Form of certificate.*]—A certificate stated generally that the case was a fit one for appeal:—*Held:* not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. *v.* SCOTT & WILLIAMSON (1924), 56 O. L. R. 325; 43 Can. Crim. Cas. 364.—**CAN.**

5528 iii. *Whether applicable to trial without jury.*]—R. *v.* TEWS, [1926] 1 W. W. R. 321; 45 Can. Crim. Cas. 116; 22 Alta. L. R. 161.—**CAN.**

sh. *No formal conviction before court.*]—On an appeal from a summary conviction under the Government Liquor Act, R. S. B. C., 1924, c. 146:—*Held:* applt. was not deprived of his right to appeal by the fact that on the opening of the appeal no formal conviction had yet been drawn up & returned to the ct.; nor by the fact that the fine & costs imposed by the magistrate & paid by applt. had been remitted by the magistrate to a government department & were not in his possession when the notice of appeal was served on him.—R. *v.* KAMWAY (B. C.), [1929] 3 W. W. R. 165; 52 Can. Crim. Cas. 188.—**CAN.**

si. *Appeal by Crown against acquittal—Power of High Court to review evidence.*]—SHEO SWARUP *v.* KING-EMPEROR (1934), 78 Sol. Jo. 600, P. C.—**IND.**

so. *Summary conviction—Plea of guilty.*]—R. *v.* UNDERHILL, [1937] 3 W. W. R. 321.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.

a i. ——.]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred:—*Held:* not the function of the ct. to retry the case.—R. *v.* COOKE (1923), 57 N. S. R. 362.—**CAN.**

but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 133, C. C. A.

Annotations :—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662; R. *v.* Cadwell (1927), 20 Cr. App. Rep. 60.

5536b. —— ——.]—The machinery of Vagrancy Act, 1824 (c. 83), must not be used merely because a crime is suspected, but the legal evidence to establish it fails. Sentence reduced.—R. *v.* CADWELL (1927), 20 Cr. App. Rep. 60, C. C. A.

5542a. —— **Good defence in law.**]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

5542b. —— **Plea due to improper inducement.**]—Leave to appeal granted where applt. was tricked into pleading guilty by a detective.—R. *v.* CHADWICKE (1932), "The Times," Nov. 22.

5542c. ——.]—The ct. will not grant leave to appeal against conviction after a plea of guilty pleaded by counsel's advice.—R. *v.* DAWSON (1924), 18 Cr. App. Rep. 111, C. C. A.

5549a. —— ——.]—R. *v.* LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation :*—**Consd.** R. *v.* Smith, [1925] 1 K. B. 603.

5550a. ——.]—R. *v.* SMITH, No. 1810b, *ante*.

5554a. Order for payment of compensation—Forfeiture Act, 1870 (c. 23), s. 4.]—There is an appeal to the Ct. of Criminal Appeal against an order made under above sect., for the payment of compensation by a person convicted of felony to a person aggrieved by loss of property suffered by him through the felony, because by the sect. such compensation constitutes & is enforceable as a judgment debt, & is therefore a "sentence" within Criminal Appeal Act, 1907 (c. 23), s. 21.—R. *v.* JONES, [1929] 1 K. B. 211; 98 L. J. K. B. 174; 140 L. T. 144; 21 Cr. App. Rep. 59; 28 Cox, C. C. 572, C. C. A.

5560a. —— —— ——.]—**Refusal of applications for an extension of time within which to appeal made after considerable delay & only upon the quashing of the convictions of two co-defts., the ct. holding that it was the practice not to grant any considerable extension of time, unless it appeared on the application that there were such merits that the appeal would probably succeed.**—R. *v.* MARSH, R. *v.* BICKERDIKE, R. *v.* GLEN (1935), 25 Cr. App. Rep. 49, C. C. A.

5565a. —— —— ——.]—The fact that a fellow prisoner's conviction has been quashed is no reason for extending the time.—R. *v.* RIGBY (1923), 128 L. T. 800; 87 J. P. 123; 39 T. L. R. 453; 67 Sol. Jo. 681; 17 Cr. App. Rep. 111; 27 Cox, C. C. 411, C. C. A.

5570a. ——.]—R. *v.* MACWILLIAM (1928), 21 Cr. App. Rep. 31, C. C. A.

5570b. —— **Computation of time—Whether Sunday included.**]—For the purpose of the statutory notice of appeal Sunday is not a *dies non*.—R. *v.* GREVILLE (1929), 21 Cr. App. Rep. 108, C. C. A.

5572. *Add. Annotation :*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5574a. —— —— **Registrar must be informed at earliest possible moment.**]—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—R. *v.* HODGSON (1924), 18 Cr. App. Rep. 7, C. C. A.

5k. *Meaning of conviction.*]—A conviction, at common law, in strictness, consists of verdict, judgment, & sentence. The word, however, is sometimes used as meaning the verdict of a jury &, at other times, the sentence of the ct. Criminal Procedure Code uses the word in both senses. The meaning of the word "conviction" in sect. 439 (6), in relation to a case like the present, limits the accused to impugning the judgment of the ct. which sentenced him.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—**IND.**

PART XIV. SECT. 1, SUB-SECT. 3.

5 i. —— *What is—Not sentence for rape.*]—R. *v.* DE YOUNG, R. *v.* LIDDIARD, R. *v.* DARLING (1927), 47 Can. Crim. Cas. 207; 60 O. L. R. 155.—**CAN.**

5l. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*]—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate cts., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER *v.* R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. B. R. 129.—**CAN.**

5m. *Leave to appeal — Adequate reason must be shown.*]—R. *v.* HARLTON (Ont.) (1929), 52 Can. Crim. Cas. 310.—**CAN.**

PART XIV. SECT. 2.

5566 i. —— *Discretion of court.*]—It is not the practice of the Ct. of Criminal Appeal to entertain any application for an extension of time, whether to apply to the trial judge for a certificate for leave to appeal, or to give notice of appeal, or to give notice of application for leave to appeal, if appct. does not, at the time of applying for such extension of time, show that he proposes to rely upon grounds of appeal, or grounds for applying for leave to appeal, which are grounds such as can be entertained by the ct. in the exercise of its statutory jurisdiction.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

5n. —— *Notice of appeal defective.*]—R. *v.* MOYLE (Ont.), [1927] 3 D. L. R. 639; 47 Can. Crim. Cas. 349.—**CAN.**

5o. *Under Criminal Code, s.* 750.]—R. *v.* NORMAN (Ont.) (1923), 49 Can. Crim. Cas. 405.—**CAN.**

5p. ——.]—R. *v.* FRASER (P. E. I.), [1928] 1 D. L. R. 803; 49 Can. Crim. Cas. 189.—**CAN.**

5q. ——.]—R. *v.* WENN (Ont.) (1928), 49 Can. Crim. Cas. 401.—**CAN.**

5r. *Under Criminal Code, s.* 750 (*b*).]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

5 t i. —— —— *Want of means.*]—On an application for an extension of time within which to appeal, which was not made until six months after conviction :—*Held :* (1) want of means was not a sufficient ground on which to base the application; & (2) in view of the delay in applying, very exceptional circumstances would have to be established before the ct. would be justified in granting the application.—R. *v.* SUNDERLAND & SUNDERLAND (1927), 28 S. R. N. S. W. 26.—**AUS.**

5 t ii. —— *After removal to penitentiary — Special reasons must be shown.*]—R. *v.* SCOTT, [1929] 1 D. L. R. 842; 1 W. W. R. 320; 51 Can. Crim. Cas. 104; 24 Alta. L. R. 42.—**CAN.**

5 t iii. ——.]—A statute required notice of appeal more than fourteen days before a sitting. Notice was filed on Dec. 2, the next sitting being Dec. 16 :—*Held :* the appeal could not be heard.—R. *v.* OGILVIE, *Re* OGILVIE *v.* FINLEY (1931), 57 C. C. C. 195; *sub nom.* OGILVIE *v.* FINLEY (1933), 45 B. C. R. 76.—**CAN.**

5 t iv. —— *After acquittal—Application ex parte.*]—Leave to extend the time for giving notice of appeal from an acquittal will be granted *ex parte* where are circumstances justifying this course.—R. *v.* CHOW WAI YAM, [1936] 2 D. L. R. 106; 50 B. C. R. 347; 65 Can. C. C. 189.—**CAN.**

5u. *Application for—To whom made.*]—When the Ct. of Appeal is sitting an application under sect. 1018 (2) of the Criminal Code for an extension of the time for an appeal should be made to the ct. & not to a judge thereof in Chambers.—R. *v.* HARRY CHOW (B. C.), [1929] 1 W. W. R. 270.—**CAN.**

PART XIV. SECT. 3.

5572 iii. —— ——.]—*Re* R. *v.* LEBLANC, [1928] 1 D. L. R. 539; 49 Can. Crim. Cas. 136.—**CAN.**

5x. *Service—Upon Attorney-General.*]—Notice of appeal must be served upon the Attorney-General, & not upon the Crown Prosecutor.—CONNELLY *v.* R., [1934] 1 D. L. R. 729; 60 C. C. C. 368.—**CAN.**

5z. ——.]—Notice of appeal must be served upon resp. & upon the justice who tried the case, or the appeal is invalid.—ELENIUK *v.* TURNBULL, [1935] 2 D. L. R. 736; 63 Can. C. C. 357.—**CAN.**

1428a. —— ——.]—GAINER *v.* CUNYNGHAM (1750), 1 Bli. 27, n.; 4 E. R. 10, L. C.

Annotation :—**Consd.** Ker *v.* Wauchope (1819), 1 Bli. 1.

1438a. —— ——.]—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held :* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.

1462. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings (Parochial Church Council), [1933] Ch. 244.

1516a. Two claims under marriage settlement—One claim statute-barred but satisfied by legacy in will—Other claim ignored by will.]—A testator by a settlement made on his first marriage in 1884 covenanted (*a*) that he would take out a policy of insurance of £2,000 payable on his death to the trustees of the settlement, & (*b*) that he would by his will bequeath to the same trustees all his interest in every copyright to which he was entitled. Testator never took out a policy of insurance, but by his will he bequeathed to the trustees of the settlement £2,000 in full satisfaction of all obligations arising out of the covenant to effect such a policy, & he left the residue of his property, which included the copyrights, by way of a general bequest to his widow, who was a second wife & not a party to the marriage settlement. Testator died in 1935, & a summons was taken out to determine whether the trustees of the settlement could claim both the £2,000 under the will & an assignment to them of the copyrights or damages in lieu thereof, or whether they were put to their election between the two claims :—*Held :* (1) the covenant applied to all copyrights to which testator was entitled at the date of his death; (2) if the trustees claimed the benefit under the will, they ought on the general principles of election to give effect to the whole will, including testator's plain intention that the copyrights should not go to them, although any remedy upon the covenants in the marriage settlement was statute-barred.—*Re* FLETCHER'S SETTLEMENT TRUSTS, MEDLEY *v.* FLETCHER, [1936] 2 All E. R. 236; 80 Sol. Jo. 486.

1552a. Provision for forfeiture in case of dispute—Election.]—*Re* WHITWELL, SENIOR *v.* WILSON, [1890] W. N. 171.

Annotation :—**Refd.** Haynes *v.* Foster, [1901] 1 Ch. 361.

1578a. ——.]—Where successive irrevocable appointments are made in favour of the same person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.—ENGLAND *v.* LAVERS (1866), L. R. 3 Eq. 63; 15 W. R. 51.

Annotations :—**Expld.** *Re* Tancred's Settlmt., Somerville *v.* Tancred, *Re* Selby, Church *v.* Tancred, [1903] 1 Ch. 715. **Refd.** *Re* Eardley's Will, Simeon *v.* Freemantle, [1920] 1 Ch. 397.

1580a. Appointment to object within extent of power—No object in fact in existence—No election.]—BULWER *v.* HOARE (1825), 3 L. J. O. S. Ch. 227.

1581a. Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.]—*Re* STEVENS (1912), 134 L. T. Jo. 83.

1619a. —— **Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.**]—CROKER *v.* MARTIN (1827), 1 Bli. N. S. 573; 1 Dow. & Cl. 15; 4 E. R. 987, H. L.

Annotation :—**Consd.** Anstey *v.* Newman (1870), 39 L. J. Ch. 769.

1637a. —— —— ——.]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands :—*Held :* the heir was not bound to elect.—BACK *v.* KETT (1822), Jac. 534; 37 E. R. 952.

Annotations :—**Consd.** Churchman *v.* Ireland (1831), 1 Russ. & M. 250. **Refd.** Schroder *v.* Schroder (1854), 3 Eq. Rep. 97; Hance *v.* Truwhitt (1862), 2 John. & H. 216.

1643a. Bequest of debt to mortgagor—Devise of reversion in property mortgaged.]—Testator having a debt secured on lands, gives the mtge. money to the mtgor., & desires that he will give a reversionary interest therein to a third person. The mtgor. selling the estate shall bring the mtge. money into ct., for the use of the devisee, subject to the life estate.—LEWIS *v.* KING (1789), 2 Bro. C. C. 600, 29 E. R. 330, L. C.

Annotation :—**Consd.** Whittaker *v.* Whittaker (1792), 4 Bro C. C. 31.

1724. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

PART X. SECT. 2, SUB-SECT. 1.—B. (e).

so. *Income of estate left to widow by will for life—Widow's property left after her death to son by codicil—Income received by widow till will & codicil proved—Liability of widow on election against will.*]—Testator by his will left the income of his estate to his wife for life, & directed that after her death it should be disposed of as set out in a codicil, not to be opened until after her death. By the codicil he disposed of all his estate among his children, giving to two of them, after the death of his wife, a certain property, which in reality belonged to her. His widow, without proving the will, received all the income of the estate for five years after the lapse of which the will & codicil were proved. She then elected against the will :—*Held :* her election related back to, & she was liable to account from, the date of testator's death; but, as she was not called upon to elect until this action was brought, she should not be charged with interest in the meantime.—DAVIS *v.* DAVIS (1896), 27 O. R. 532.—CAN.

PART X. SECT. 3, SUB-SECT. 9.

sp. *Widow taking different interests under will.*]—Under S.'s will his widow took absolutely thirty-four acres devised to her worth $1,000; she also took for life his house & lot garden worth about $1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land, worth about $3,500, & at the widow's death took "the house & lot & garden" also :—*Held :* the widow was not put to her election.—*Re* SEXSMITH (1925), 57 O. L. R. 283.—CAN.

sq. *Gift of legacy & maintenance to son—Gift of mortgage debt to mortgagor—Mortgage debt previously assigned to son.*]—ROSBOROUGH *v.* ST. ANDREW'S CHURCH, THE TRUSTEES OF (1917), 55 S. C. R. 360, 38 D. L. R. 119.—CAN.

sr. *Preferred beneficiary under policy—Election between policy & will.*]—A wife who is a preferred beneficiary under Insurance Act, R. S. O., 1927, cannot be compelled to elect between the policy & her husband's will.—*Re* MULLISS, [1933] 3 D. L. R. 573; O. R. 638.—CAN.

PART X. SECT. 7, SUB-SECT. 2.

1691 ii. —— ——.]—P. in Feb. 19 .1, conveyed certain lands to a trust co., & by a declaration of trust of even date,

Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation :*—**Folld.** *Re* Ware, Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1769. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1772a. ——.]—WALPOLE *v.* CONWAY (LORD) (1740), Barn. Ch. 153 ; 27 E. R. 593, L. C.

Annotations :—**Distd.** Tolson *v.* Collins (1799), 4 Ves. 483. **Apld.** Douglas *v.* Willes (1849), 7 Hare, 318. **Refd.** Kirkham *v.* Smith (1749), 1 Ves. Sen. 258.

1840. *Add. Annotation :*—**Distd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1873. *Add. Annotation :*—**Apld.** *Re* Ware, Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873a. —— ——.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father ; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement ; in such a case the intention to advance is a question of evidence.—BENNET *v.* BENNET (1879), 10 Ch. D. 474 ; 40 L. T. 378 ; 27 W. R. 573.

Annotation :—**Refd.** *Re* Orme, Evans *v.* Maxwell (1883), 50 L. T. 51.

1873b. —— ——.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will :—*Held :* the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—*Re* WARE, *Re* ROUSE, WARE *v.* ROUSE (1926), 70 Sol. Jo. 691.

1878. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1894a. ——**Funds transferred by trustees—In pursuance of appointment & surrender of life interest.**]—Funds transferred by the trustees of a marriage settlement to a son in pursuance of an appointment in his favour made by his father in exercise of a special power of appointment amongst his children & of a surrender of the father's life interest, are not money or property by way of advancement paid to the son by the father within Administration of Estates Act, 1925 (c. 23), s. 47 (1) (iii), & are not liable to be brought into account in or towards satisfaction of that son's share in the estate of the father upon the father's death intestate. Even assuming the life interest of the intestate in the appointed share of the settlement funds surrendered by him to the appointee to be money or property paid by way of advancement within clause (iii) aforesaid, in view of the fact that the value of that life interest to be brought into account under that clause has to be reckoned as at the date of the death of the intestate & therefore could be of no value, the surrender could have no effect upon the proposition first above stated.—*Re* REEVE, REEVE *v.* REEVE, [1935] Ch. 110 ; 104 L. J. Ch. 101 ; 152 L. T. 254.

1895a. ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

1912. After this case add :—

——.]—*See, now,* Administration of Estates Act, 1925 (c. 23), s. 49 (a).

1918a. ——.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—BRIDGES *v.* HALES (1729), Mos. 108 ; 25 E. R. 298, L. C.

1920a. ——.]—BRIDGES *v.* HALES, No. 1918a, *ante*.

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accepted by the trust co., declared certain trusts upon which the lands were to be held. P.'s wife was to have a life interest in three of the parcels conveyed, & certain other benefits, & at her death the property was to be distributed among P.'s children ; this life interest was to be in lieu of dower in all P.'s lands. On Feb. 21, 1921, P., by letter, requested the trust co. to sign a declaration of trust to the effect that it held one of the parcels of land conveyed to it, in which the wife was given a life interest, in trust, for payment to an investment society of $7,500 " which pays off the loan on stock for that amount held by my wife," & this the trust co. did. By P.'s will, made on the date of the execution of the conveyance & declaration, he appointed the trust co. his exor. & trustee. The wife took nothing under the will. P. died in July, 1921. In Jan. 1923, the trust co. made a mtge. in favour of an assurance co. upon three of the properties in which the widow claimed a life estate, to secure repayment of a large sum of money which was advanced to the trust co. & which the trust co. applied in paying off loans made to P. In an action by the widow against the assurance co. for a declaration as to her rights under the trust deed & declaration & for other relief :—*Held :* pltf. having taken & continued in possession of the properties in which she claimed to have a life interest, had elected to take the benefits given to her by the trust deed & declaration, & was, therefore, tenant for life of the three properties referred to.—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679 : 63 O. L. R. 12 ; *affd. sub nom.* FIDELITY TRUST CO. OF ONTARIO *v.* PURDOM & NORTHERN LIFE ASSCE. CO. OF CANADA, [1930] S. C. R. 119 ; 1 D. L. R. 1003.—**CAN.**

PART XI. SECT. 1.

1743 l. *Satisfaction defined.*]—Satisfaction is the donation of a thing, with the intention, either expressed or implied, that it is to be taken, either wholly or in part, in extinguishment of some prior claim of the donee. The doctrine has no application to cases where the prior portion has actually been transferred or paid.

One whose life was insured assigned to his son a portion of the insurance moneys $1,000, in consideration of an undertaking by the son to advance from time to time moneys necessary to pay parts of the premiums. Subsequently the insured made his will by which he gave to his son $1,000 " out of the money payable at my death out of my life insurance policy " :—*Held :* the $1,000 given by the will could not be regarded as a satisfaction of the $1,000 assigned to the son.—*Re* MARKS (1921), 64 D. L. R. 516 ; 60 O. L. R. 473.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—A. (a).

sr. *By payments to legatee—In testator's lifetime.*]—*Held :* a sum of money paid by testator to persons to whom he had bequeathed one-half of his effects, was an anticipated payment of their provision, & not a donation.—BUCHANAN *v.* CRAWFORD (MOLLISON) (1824), 2 Sh. Sc. App. 445. —**SCOT.**

PART XI. SECT. 3, SUB-SECT. 3.—C.

1902 l. *In respect of realty.*]—DOE d. SHORE *v.* SAUNDERS (1842), 2 Kerr, 18. —**CAN.**

2006a. ——.]—The principle deducible from the dictum of the Ct. of Appeal expressed in *Re Scott, Langton* v. *Scott*, No. 1840, namely that, in the distribution of a testator's estate amongst his children & the children of deceased children, children claiming to take by substitution the share of their deceased parent must bring into account an advancement made by testator, in his lifetime to their parent, is not applicable to the case of a parent's indebtedness to testator; so that, where a testator gave his residuary estate in trust for his children living at the period of distribution & the children of any child then dead, grandchildren are not liable, upon claiming their deceased parents' share, to bring into account a debt owing by the parent to testator's estate.—*Re* BINNS, PUBLIC TRUSTEE *v.* INGLE, [1929] 1 Ch. 677; 98 L. J. Ch. 307; 141 L. T. 91.

2009. *Add. Annotation :*—**Consd.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2012. *Add. Annotation :*—**Mentd.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 345.

2046a. —— **Although interest unpaid at date of death.**]—A person, who borrowed £100 carrying interest at 5 per cent. *per annum*, by his will left a legacy of £100 free of duty to his creditor. The will did not contain any direction to pay debts. At the date of the debtor's death there was interest due & unpaid in respect of the debt. The exors. of the deceased paid the creditor the amount of the legacy & interest on the debt, up to the date of payment. The creditor then sued for the amount of the debt :—*Held :* the rule, that a legacy to a creditor of an amount equal to or greater than the debt owed by the testator to the creditor operated as a satisfaction of the debt, applied notwithstanding that there was interest due & unpaid in respect of the debt at the date of testator's death.—FITZGERALD *v.* NATIONAL BANK, LTD., [1929] 1 K. B. 394; 98 L. J. K. B. 382; 140 L. T. 406.

2047a. —— **Bequest antecedent to debt.**]—ROBERTS *v.* BENNET (1690), 2 Vern. 136; 23 E. R. 695.

Annotation :—**Refd.** Northcote *v.* Northcote (1702), Colles 287, H. L.

2057a. —— **Although interest unpaid at date of death.**]—FITZGERALD *v.* NATIONAL BANK, LTD., No. 2046a, *ante*.

2075a. ——.]—*Re* SHAFTO, FAWCETT *v.* SHAFTO (1903), 48 Sol. Jo. 68, C. A.

2102a. ——.]—HOBBS *v.* TAITE (1738), West *temp.* Hard. 582; 25 E. R. 1096, L. C.

Annotation :—**Consd.** Wallace *v.* Pomfret (1805), 11 Ves. 542.

2138. *Add. Citation :*—3 Bro. C. C. 242.

2188a. —— ——.]—KEMP (LADY) *v.* KEMP (1671), 2 Rep. Ch. 63; 21 E. R. 617.

2224. *Add. Annotation :*—*Generally*, **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

Part XII.—Performance.

2280a. —— —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

2291. *Add. Annotation :*—**Folld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2294a. Covenant by tenant for life—To pay money to trustees—Expenditure on improvement of trust property.]—The tenant for life under a settlement voluntarily expended monies in erecting necessary buildings on the trust property. He also paid the expenses of the investment of the trust funds in land: *Held :* his exors. could not set off this outlay as a satisfaction *pro tanto* of a covenant, on his part, to pay £3,000 to the trustee of the settlement.—HORLOCK *v.* SMITH (1853), 17 Beav. 572; 23 L. J. Ch. 962; 22 L. T. O. S. 232; 2 W. R. 117; 51 E. R. 1157.

PART XI. SECT. 4, SUB-SECT. 2.—A.

2037 ii. —— ——.]—A testator by his will, after directing the payment of all his just debts, appointed F. to be one of his three exors. & trustees, & went on to declare that F. should "be paid out of my estate the debt or sum of money owing by me to him the amount of which the said F. will disclose to my other trustees." F. renounced probate & lodged with the exors. a statement of the amount of his claim :—*Held :* the words of the will did not create a legacy, but the testator's purpose was to acknowledge that he was indebted to F. in an uncertain amount & that F. was entitled to payment of the sum which he named as owing, without further investigation or inquiry on the part of the exors.]—FITZPATRICK *v.* GILBERT, GILBERT *v.* FITZPATRICK, 22 Tas. L. R. 29.—**AUS.**

PART XI. SECT. 4, SUB-SECT. 3.—B.

2069 i. *Addition to annuity.*]—COLE *v.* COLE (1838), 5 O. S. 744.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 3.—G.

2102 i. *Presumption of satisfaction rebutted.*]—A legacy to a creditor equal to or greater than the debt owing him by the testator is presumed to be a satisfaction of the debt, but this presumption will be rebutted by slight circumstances, either appearing in the will or incident to the nature of the debt & of the legacy. A simple direction to pay debts is sufficient to rebut the presumption, *a fortiori* a direction, as in this instance, to pay debts & "thereafter" legacies.—SPARROW *v.* ROYAL TRUST CO., [1932] 1 W. W. R. 379; 40 Man. L. R. 211.—**CAN.**

PART XI. SECT. 5.

sj. *Separation agreement providing for support of infant son—Provision in will for support.*]—By a separation agreement the husband agreed to pay the wife a certain sum *per annum* for "support & otherwise" of their child until it should become self-supporting or attain majority or leave the custody of the wife; & she agreed to accept said sum in full settlement of all claims which she then had or might thereafter have for the support & otherwise of the child. By his will executed four years later, which disposed of all his property, the husband directed his trustees to pay the income of the residue of his estate "towards the maintenance & education of" said child "during his minority" :—*Held :* said provision in the will was in substitution for, & not in addition to, that in the agreement; & the wife had an election between them, but was not entitled to both.—Ross *v.* Ross, [1930] 1 W. W. R. 375; 2 D. L. R. 42; *sub nom.* Ross *v.* FOSSUM & TORONTO GENERAL TRUSTS CO., 42 B. C. R. 272.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 2.

sk. *Failure to pay contributions—Joint venture—Whether abandonment.*]—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286 22 Sask. L. R. 253.—**CAN.**

PART XIII. SECT. 3.

sv. *General rule.*]—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—ROYAL BANK OF CANADA *v.* IZEN, [1921] 2 W. W. R. 929.—**CAN.**

Part XIV.—Merger of Estates and Charges.

2345. *Add. Annotation :*—**Apld.** Symons Southern Ry. Co. (1935), 153 L. T. 98.

2348. *Add. Annotation :*—**Apld.** Symons Southern Ry. Co. (1935), 153 L. T. 98.

2367a. —— ——.]—NORFOLK *v.* GIFFORD (1690) 2 Vern. 208 ; 23 E. R. 735.

2373a. —— ——.]—Where under a marriage settlement the trusts of the wife's property were for the wife for her life & after her death for the husband for his life, with a common form protected life interest proviso in respect of the husband's interest, & the usual trusts for the issue of the marriage, with a gift over in default of issue, which event happened, as the wife should by deed or will appoint with an ultimate trust for next of kin, & the wife died & her will operated as an exercise of the power of appointment in the husband's favour, on an application by the husband to have the trust transferred to him on the ground of merger of his interests :—*Held :* there had been no merger of the husband's life estate in the reversion, because the two estates were not coterminous, & an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.—*Re* CHANCE'S SETTLEMENT TRUSTS, CHANCE *v.* BILLING (1918), 62 Sol. Jo. 349.

2379. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

2395. *Add. Annotation :—As to* (2) **Distd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

2397. *Add. Annotations :—As to* (2) **Consd.** *Re* Chesters, Whittingham *v.* Chesters, [1934] W. N. 174. **Foll.** *Re* Chesters, Whittingham *v.* Chesters, [1935] Ch. 77.

2399a. ——.]—When a tenant for life in remainder pays off a mtge. on the property the mtge. is, in the absence of evidence of a contrary intention, kept alive for his benefit.—*Re* CHESTERS, WHITTINGHAM *v.* CHESTERS, [1935] Ch. 77 ; 104 L. J. Ch. 65 ; 152 L. T. 210 ; 78 Sol. Jo. 634.

Part XV.—Subrogation.

2424. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

Part XVII.—Equitable Relief in Cases of Fiduciary Relationships.

SECT. 1.—**THE FIDUCIARY CHARACTER.**

(p. 521.)

2478a. Agreement to form club—One party to engage other as secretary.]—MITCHELL *v.* ALEXANDER (1935), 79 Sol. Jo. 381. C. A.

PART XV.

2424 l. *Definition.*]—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by way of getting in a security, or the like. —COURSOLLES *v.* FOOKES (1889), 16 O. R. 691.—**CAN.**

ax. *Whether doctrine applicable to volunteer paying debt.*]—Subrogation is never applied in aid of a mere volunteer who pays the debt of another.—CAMPBELL AUTO FINANCE CO., LTD. *v.* WARREN, [1933] O. R. 774 ; 4 D. L. R. 509.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—A.

2428 l. *What is a penalty—Goods delivered under hire-purchase agreement —Right to seize goods on failure to pay instalment.*]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due, but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract :—*Held :* the clause of the agreement which enabled the owner to seize the truck, & keep it without making any payment to the hirer even though the value of the truck may be very greatly in excess of the amount due under the agreement, was a stipulation by way of penalty which the ct. can relieve against under Contract Act, s. 74.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

PART XVI. SECT. 1, SUB-SECT. 2.—C.

sw. *Discount for prompt payment.*]—*Held :* a penalty, & relief granted.—COLGROVE *v.* GUNDY (1914), 28 W. L. R. 731 ; 17 D. L. R. 45.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—D.

1i. —— ——.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—*Re* STANLEY & BUNTING, [1924] 3 D. L. R. 599 ; 5 C. B. R. 18.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sz. *Penalty being reservation only of existing legal right—Relief not granted.*] —BOLAND *v.* MCCARROLL (1876), 38 U. C. R. 487.—**CAN.**

Part XVIII.—Equitable Defences.

2483. *Add. Annotation :*—**Apld.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

2489a. ——.]—WHALLEY *v.* WHALLEY (1860), 2 De G. F. & J. 310 ; 45 E. R. 641, L. JJ.

2490. *Citations :*—For " 3 Bro. C. C. 646 " read " 3 Bro. C. C. 639, n."

Add. Annotation :—As to (2) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation :—As to* (1) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations :—As to* (4) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2513. *Citations :*—For " L. R. 5 C. P. 221 " read " L. R. 5 P. C. 221."

Add. Annotations :—As to (2) **Apld.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2520. *Add. Annotation :*—**Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2521. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2525. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2527. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; Queen Anne's Bounty *v.* Blacklocks' Executors, [1934] 1 K. B. 599.

2552. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

2554. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

Part XIX.—Ne exeat regno.

2637a. —— ——.]—A.-G. *v.* MUCKLOW (1815), 1 Price, 289 ; 145 E. R. 1405.

2667a. Not residuary legatee.]—A residuary legatee cannot have a writ of *ne exeat regno* against a debtor of testator, on the ground that he colludes with the exor.—GRAVES *v.* GRIFFITH (1820), 1 Jac. & W. 646 ; 37 E. R. 514, L. C.

Part XX.—Quia Timet Actions.

2702a. Nature of action.]—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290 ; 97 L. J. Ch. 111 , 138 L. T. 354, C. A.

2703. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

2705. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

2705a. Threatened injury to property by waterworks.]—It is open to the owners of property threatened with injury by authorised waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600 ; 71 Sol. Jo. 681 ; *affd.* on another point, [1928] Ch. 235, C. A. ; [1929] A. C. 344, H. L.

2710. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2712. *Add. Annotations :*—**Consd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2713. *Add. Annotations :*—**Refd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793.

2713a. Threatened disclosure of confidential information.]—The manager of deft. cos. endeavoured by dishonest means to procure for his cos. information to which they had no right whatever. He had attempted to secure this information from employees of pltf. co., but the attempts were unsuccessful. These employees were under stringent service agreements, prohibiting them from disclosing confidential matters. Pltfs. & defts. were interested in television, & pltfs. were a research co., going through the preparatory stages in order to perfect & render commercial a method of television which had not yet reached a commercial stage. The disclosure of the information to defts. would have caused pltfs. irreparable damage. Pltfs. prepared a draft letter complaining of these matters, which was shown to defts., & the latter promised that the attempts should cease ; but whatever was done proved quite ineffective to stop such attempts. Pltfs. then issued the writ in this action asking for an injunction to restrain defts. & their

servants & agents from making such attempts:—*Held:* (1) it being proved that defts. through their manager were wrongfully endeavouring to persuade employees of pltfs. to disclose information, & that such disclosure would cause irreparable damage to pltfs., the latter were entitled to the injunction asked for, although such attempts had been wholly unsuccessful; (2) pltfs. were not under any duty to take any further steps before issuing the writ in this action; (3) it was no answer to the claim for an injunction that the manager who made the attempts was now employed by defts. in a different capacity. The important fact was that he was still in their employment.—SCOPHONY, ... *v.* TRAUB, [1937] 4 All E. R. 279; 81 Sol. Jo. 981, C. A.

ESTATE AND OTHER DEATH DUTIES.

Part I.—In General.

1. *Add. Annotations :—As to* (1) **Refd.** Straits Settlements Comr. of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378. *As to* (2) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

Part II.—Estate Duty.

19. *Add. Annotation :—Generally,* **Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

22a. —— ——.] — Testator bequeathed "B. House & contents" & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed "the rent, outgoings, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate." C. having died, was succeeded as tenant for life by L. :—*Held :* (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1 ; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs. ; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House. —*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, [1927] 2 Ch. 275 ; 96 L. J. Ch. 483 ; 137 L. T. 785 ; 43 T. L. R. 743 ; 71 Sol. Jo. 804.

Annotations :—As to (1) **Consd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327 ; Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. *As to* (2) **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

26. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** De Trafford *v.* A.-G., [1935] A. C 280 ; Scott *v.* I. R. Comrs., [1937] A. C. 174. *As to* (3) **Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. *Generally,* **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

27. *Add. Annotations :—As to* (1) **Apld.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275. **Folld.** De Trafford *v.* A.-G., [1935] A. C. 280. **Appld.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393. **Refd.** Parr *v.* A.-G., [1926] A. C. 239 ; Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286. *As to* (5) **Consd.** Parr *v.* A.-G., [1926] A. C. 239 ; Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129 ; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268 ; Scott *v.* I. R. Comrs., [1935] Ch. 246 ; A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. *Generally,* **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

27a. **Interest passing free from liability to pay annual sum.**]—At the date of the order of the Chancery Div. hereinafter mentioned an estate of great value consisting of real property, invested funds, & policies of insurance was by a deed of resettlement &

PART II. SECT. 3, SUB-SECT. 1.—A.

d i. ——.]—A testator directed his trustees to divide the balance of the annual income of his estate into ten equal shares, & (*inter alia*) to pay one such share to each of his four daughters during their respective lives, & further, on the death of any daughter leaving issue, to apply her share for her issue. Testator further directed that, after the death of his widow, the amount payable in respect of each of these shares was not to exceed £600 *per annum*. One of the four daughters, who survived testator, predeceased his widow leaving issue. At the time of the daughter's death her one-tenth share of income amounted to £2,800 *per annum*. The trustees having been assessed to estate duty upon one-tenth of the trust estate, they & the daughter's exors. petitioned for recall of the assessment. Petitioners maintained that, on the daughter's death, a passing of property, within Finance Act, 1894, s. 1, had taken place, & that, the daughter's interest in income being restrictable upon the widow's death to £600, the principal value of the property passing on her death fell to be estimated, under sect. 7 (5) of the Act, upon an actuarial basis :—*Held :* the case was one in which property passed on the death of the daughter within sect. 1, & the property which passed was the property which produced the one-tenth share of the income which she enjoyed immediately before her death, & which immediately thereafter became applicable for the benefit of her issue, no account falling to be taken of the circumstance that the beneficiaries' interest in the property was restrictable on the death of testator's widow.—DUNDERDALE'S TRUSTEES *v.* INLAND REVENUE, [1936] S. C. (H. L.) 20.—SCOT.

ss. *Licence—& interest in licensed premises.*]—The interest of a deceased person in the business carried on in licensed premises leased from him & in the license thereof is "property" within Death Duties Act, 1909, s. 5, [illegible]

N. Z. L. R. 61.— [illegible]

sb. *Provincial bonds exempt from succession duty.*]—Alberta provincial bonds, exempt from succession duty, must be included in the net value of an estate in order to arrive at the pe[illegible] benenciary, but such [illegible] make the amount of the bonds [illegible]

two private Acts of Parliament vested in trustees for the life of Sir H. F. de T., the late baronet, to uses for raising £250,000 for portions for the late baronet's younger children & subject thereto to the use of Sir H. E. de T., the present baronet, for life with remainder to his first & other sons in tail male; & it was provided that the annual income of the estate should during the life of the late baronet be held & applied by the trustees in making certain payments & among them a payment of an annual sum of £8,000 to the present baronet during the joint lives of the late baronet & the present baronet; furthermore, the present baronet was authorised to charge the estate with sums amounting to £50,000, not to be raised or paid during the life of the late baronet. The late baronet exercised to its full extent his power of appointing portions for his younger children by various deeds poll charging the estate with various sums to be raised & paid after his death. The present baronet borrowed from the trustees sums amounting to £50,000 &, in pursuance of the authority above mentioned, charged the estate with payment thereof after the death of the late baronet. By an order of the Chancery Div. dated July 28, 1928, & referred to above, the trustees were empowered to raise & pay in the lifetime of the late baronet the two sums of £250,000 & £50,000. At some time after Aug. 15, 1928, the £250,000 was accordingly raised & paid as portions to the younger children of the late baronet, & the £50,000 was treated as repaid to the trustees. On Jan. 10, 1929, the late baronet died. On an information by the A.-G. claiming estate duty at the appropriate rate under Finance Act, 1894 (c. 30), s. 1, in respect of the principal value of the estate as property passing on the death of the late baronet, including the sums of £250,000 & £50,000 as property deemed to have passed thereon under Finance Act, 1900 (c. 7), s. 11, as amended by Finance (1909-10) Act, 1910 (c. 8), s. 59 (1), the trustees contended that they were entitled to deduct from the estate alleged to pass: (1) a principal sum sufficient to produce a yearly sum of £8,000, being the yearly sum payable to the present baronet immediately before the death of the late baronet; (2) the two sums of £250,000 & £50,000 mentioned above:—*Held:* (1) the property passing on the death of the late baronet included the principal sum sufficient to produce the yearly £8,000 inasmuch as the yearly sum ceased to be payable on the death of the late baronet; (2) the sums of £250,000 & £50,000 fell within the words of the 1900 Act, s. 11, as amended by 1910 Act, s. 59 (1), being sums in which the trustees had an interest limited to cease on the death of the late baronet, which had been surrendered within three years before the death for the benefit of persons entitled to an interest in reversion, & which therefore were deemed to pass on the death of the late baronet.—DE TRAFFORD *v.* A.-G., [1935] A. C. 280; 104 L. J. K. B. 396; 153 L. T. 17; 51 T. L. R. 298; 79 Sol. Jo. 194, H. L.

Annotation:—As to (1) **Refd.** Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286.

27b. Restricted estate under protective trust—Lands passing to tenant in tail.]—By a deed of settlement made in July, 1889, the Fifth Earl of C. & his eldest son settled the C. Estates to the use of the eldest son as tenant for life with remainder to the use of his sons successively in tail male & in default of such issue to the use of the second son of the said Fifth Earl for life with remainder to the use of his sons successively in tail male with remainders over. In 1893 the Fifth Earl bought the life estate of his said second son, & this interest was conveyed to trustees their heirs & assigns for the life of the said second son upon discretionary trusts in favour of the said second son, his wife & his children or remoter issue &, subject to this trust, upon trust to accumulate the surplus of the rents & profits, invest it, & apply the proceeds in discharging debts or incumbrances upon the estates, with a proviso limiting the duration of this trust. In 1908 the eldest son of the Fifth Earl died. In 1910 the only son of that son died. In 1915 the Fifth Earl died & was succeeded by his said second son as Sixth Earl & the life estate of the Sixth Earl became an estate in possession. In 1933 the Sixth Earl died & was succeeded by his only son as Seventh Earl & tenant in tail male in possession of the estates:—*Held:* estate duty became payable on the death of the Sixth Earl when the property passed to the Seventh Earl & his estate became an estate in possession instead of an estate in remainder; he then became entitled to receive the whole income of the property which was formerly applicable for the benefit of the objects of the discretionary trust, & it mattered not that he was himself one of the objects of that trust.—SCOTT & COUTTS & CO. *v.* INLAND REVENUE COMRS., [1937] A. C. 174; [1936] 3 All E. R. 752; 106 L. J. Ch. 36; 156 L. T. 33; 53 T. L. R. 130; 81 Sol. Jo. 12, H. L.

Annotation:—**Refd.** Burrell & Kinnaird *v.* A.-G. [1937] A. C. 286.

27c. Discretionary trust for payment to class—Death of member of class—Trust for payment to new class.]—A testator devised all his real property to trustees in fee simple upon trust in their absolute discretion to pay a yearly allowance of such amount as the trustees should think fit to his son H. for life or to pay or apply the same for the benefit of H. or his wife or children or other specified persons & after the death of H. in trust for the first & other sons of H. successively in tail male; & in default of such issue to pay to his son R. during his life a similar yearly allowance & after the death of R. in trust for the first & other sons of R. successively in tail male; & in default of such issue as therein directed. The will contained a proviso that if any equitable tenant in tail should be born in testator's lifetime the interest of such person should be excised from the will, & the trustees should hold the property in trust to pay him a yearly allowance of such amount from time to time as they should in their uncontrollable discretion think fit, & after his death in trust for his first & other sons in tail male. After certain other dispositions the will devised the property in ultimate remainder to testator's right heirs. Each beneficiary who should be entitled to an allowance was given power to appoint a jointure to his wife & to charge

the property with portions for his children. During the life of H. the persons who were beneficially interested in the discretionary trusts were H. himself, his wife, his sons W. & M. & his daughter G. After the death of H. the persons beneficially interested in the trust were W., his wife & his brother M. :—*Held :* on the death of H. the title to the beneficial interest in the property passed under Finance Act, 1894 (c. 30), s. 1, from the first named group of persons to the secondly named group, notwithstanding that certain persons were members of both groups. —BURRELL & KINNAIRD *v.* A.-G., [1937] A. C. 286 ; [1936] 3 All E. R. 758 ; 106 L. J. K. B. 134 ; 156 L. T. 36 ; 81 Sol. Jo. 96, H. L.

33a. Death gratuity payable to representatives of teacher.]—Estate duty is payable on a death gratuity granted under Teachers (Superannuation) Act, 1925 (c. 59), s. 5 (1), by the Board of Education to the personal representatives of a deceased intestate teacher as property passing on the death of the teacher, such gratuity being property of which the deceased was at the time of her death competent to dispose within Finance Act, 1894 (c. 30), ss. 2 (1) (*a*), 22 (2) (*a*) as deceased had an authority enabling her to appoint or dispose of the gratuity as she thought fit, whether exercised by instrument, *inter vivos*, or by will, or by both.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652 ; 141 L. T. 288 ; 93 J. P. 227 ; 45 T. L. R. 455 ; 27 L. G. R. 693, C. A.

Annotation :—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485.

35. *Add. Annotation :—Generally,* **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

36. *Add. Annotation :*—**Consd.** A.-G. *v.* Adamson (1932), 146 L. T. 358.

37. *Add. Annotations :*—**Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24 ; Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

39. *Add. Citation :*—132 L. T. 704.
After this case add :—
-.]—*See, now,* Finance Act, 1930 (c. 28), s. 39.

40a. —— Liability to reduction in lifetime of annuitant.]—Testator by a trust disposition & settlement & codicils thereto, after providing for his debts & other expenses & making other dispositions, directed his trustees to divide the balance of the annual income of the trust into ten equal shares & to pay five of these to his wife & one to each of his four daughters & his sister-in-law during their respective lives. Should any of his daughters die leaving issue, the share of income which would have been payable to her was to be applied for the maintenance & education of her issue until the youngest of them should have attained the age of twenty years & thereafter should be paid in equal portions during their lives to such of them only as were daughters. After certain other declarations he further provided that after the death of his wife no beneficiary should receive more than £600 *per annum* from the income of the trust & that the balance should be otherwise disposed of as directed. Testator was survived by his wife, his four daughters & his sister-in-law, & for a time the income of the trust fund belonged, & was paid, as to one moiety to the widow, as to one-tenth to the sister-in-law, & as to one-tenth to each of the four daughters. One-tenth of the income of the fund amounted annually to £2,800. Mrs. N., one of the four daughters, died leaving three children her surviving. At the date of her death her mother was still living :—*Held :* as Mrs. N. was immediately before her death entitled to the income of one-tenth of the residuary estate property which produced that income passed on her death under sect. 1 of 1894 Act.—CHRISTIE *v.* LORD ADVOCATE, [1936] A. C. 569 ; [1936] 1 All E. R. 443 ; 105 L. J. P. C. 65 ; 154 L. T. 441 ; 80 Sol. Jo. 384, H. L.

Annotation :—**Refd.** Inland Revenue Comrs. *v.* Crossman Inland Revenue Comrs. *v.* Mann, [1936] 1 All E. R. 762.

42. *Add. Annotations :*—**Consd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605 ; A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24.

42a. ——.]—DE TRAFFORD *v.* A.-G., No. 27a, *ante.*

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

45 ii. —— *By deed incompletely executed.*]—**FEDERAL COMR. OF TAXATION *v.* TAYLOR (1929), 42 C. L. R. 80 ; 3 A. L. J. 65 ; [1929] Argus L. R. 169. —AUS.**

sc. *Gift made within three years before death—Money spent on improving house —Whether gift to wife.*]—A husband & wife, with their children, lived together in a house which belonged to the wife ; each enjoyed a separate income. The husband paid to a builder with whom he had made contracts about £3,000 for improvements & repairs to the house. A few months later he died at the age of fifty-three. It was found that the transaction was not entered into with intent to diminish the value of the husband's estate, but that the object was simply to improve the family home in accordance with their means & station in life : & that there was no reason to believe that the husband would not enjoy the normal span of life, or that he would necessarily predecease his wife :—*Held :* the payments did not constitute a gift to the wife of the deceased within Death Duties Act, 1921, of New Zealand, ss. 38, 39, so as to be deemed to be part of the husband's estate for the purposes of that Act.—FINCH *v.* STAMP DUTIES COMR., [1929] A. C. 427.—**N.Z.**

sd. —— *Shares in company issued to children of deceased—Payment by company's cheque debited to deceased's personal account—Subsequent transfer of debits to children's accounts—Retransfer of debits to deceased's account within three years of death.*]—**PERPETUAL TRUSTEE CO *v.* COMR. OF STAMP DUTIES (1929), 29 S. R. 153 ; 46 W. N. 58 ;** *revsd.,* **43 C. L. R. 247 ; 30 S. R. N. S. W. 215 ; 47 N. S. W. W. N. 108 ; (1930), Argus L. R. 33.—AUS.**

sf. —— *Settlement—Trust property not transferred to trustees.*]—In 1918 a resident in New Zealand held mtges. & debentures securing £57,200, the deeds & certificates being in the custody of his agents, who managed his private affairs under a general power of attorney, & kept accounts relating thereto. He wrote to them giving particulars of a settlement of £30,000 which he proposed to make on his children, & instructing them to take that sum from his capital for the trusts. Thereupon they debited his capital account with £30,000, & credited it to a special trust account. By the deed of settlement, which was executed by all the necessary parties, the trustees acknowledged the receipt of the £30,000, & the trusts were declared. No money, however, was paid, nor any securities transferred, to the trustees. Further sums were settled in 1919, 1920, & 1924, similar entries being made in the agents' books. Interest at a flat rate was paid to the beneficiaries on the sums settled on them respectively, the payments being made out of the income received by the settlor from the securities in his agents' custody. Those securities varied from time to time, but the amount always exceeded that settled. Upon the settlor's death in 1928, his estate was assessed to duty under Death Duties Act, 1921 (N.Z.), as including the settled sums, less capital which more than three years before the settlor's death had been paid out to two of the beneficiaries under power in the settlements, & subject to an allowance for gift duty paid when the sums were settled :—*Held :* having regard to sect. 5 (1) of the Act the assessment had been rightly made, as the settlements could not be treated as gifts perfected either by transfer of property or declaration of trust ;

47. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

48. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

54. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

55. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

59. *Add. Annotation :—As to* (2) **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

61. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. *(1924), 12 Tax Cas. 785.*

63. *Add. Annotation :*—**Folld.** A.-G. *v. Farrell* (1930), 99 L. J. K. B. 605.

63a. —— —— —— **Disentailing deed & resettlement.**]—By a disentailing deed & a deed of resettlement, A. & his mother appointed property to trustees upon trust for the mother for life, & then upon certain trusts for management. There followed a discretionary trust in favour of A., his wife or children, with remainder in trust for A.'s sons, & with ultimate remainder to E. The mother died in 1925, & estate duty was paid on the value of the settled property. The trustees, under their discretion, then paid £50 a month to A. & the balance of income to E. In 1926 A. died, unmarried, & estate duty was claimed :—*Held :* A., in executing the disentailing deed & resettlement, had acted as a person "competent to dispose of property" within 1894 Act, s. 22 (2) (*a*), & the discretionary trust in his favour was a reservation by him of an "interest" in the property within Customs & Inland Revenue Act, 1881 (c. 12), s. 38 (2) (*c*). Therefore, by that sub-sect. read with 1894 Act, s. 2 (1) (*c*), the property was deemed to have passed on A.'s death & estate duty was payable.—A.-G. *v.* FARRELL, [1931] 1 K. B. 81 ; 99 L. J. K. B. 605 ; 143 L. T. 639 ; 46 T. L. R. 587, C. A.

Annotation :—**Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393.

67a. —— **Contingent succession—Accumulations.**] By a deed, dated Mar. 1924, appointing trustees of a large sum of money, the settlor, who died in Mar. 1928, provided that during his life the income of the whole was to be paid or applied by the trustees for the benefit of all or any of his children in such manner as he should direct, & so far as any direction should not extend the income was to be held as an accretion to the capital of the settled funds. After his death the capital & income of the funds not already distributed were to be held in trust for his children living at his death in such manner as he should by deed or will appoint, & in default of appointment in trust as to two-fifths for his son, & the remaining three-fifths for equal division among his three daughters as tenants in common. The settlor made no direction by deed or will, & on his death the Crown claimed that the property the subject of the trust "passed" within Finance Act, 1894 (c. 30), s. 1, or that the children's interests which arose on his death were interests provided by the settlor within sect. 2 (1) (*d*), & that in either case estate duty was payable on the whole of the funds & accretions :—*Held :* the funds & accretions did not pass on the settlor's death & estate duty was not payable in respect thereof under sect. 1, but that on the true construction of sect. 2 (1), the beneficial interest of each child of the settlor in the settled funds & accumulations

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though a charge probably was created upon the settlor's capital it was not a debt for which, by the terms of sect. 9 (2), an allowance could be made. —GOULD *v.* STAMP DUTIES COMR., [1934] A. C. 69 ; 103 L. J. P. C. 25 ; 150 L. T. 162.—N.Z.

sg. —— *Land transferred to children subject to partnership agreement.*]—In 1909 M., the owner of 35,000 acres of land in New South Wales on which he carried on the business of a grazier, verbally agreed with his six children that thereafter the business should be carried on by him & them as partners under a partnership at will, the business to be managed solely by M., & each partner to receive a specified share of the profits. In 1913, by six registered transfers in the form prescribed by the Real Property Act, 1900, M. transferred by way of gift all his right title & interest in portions of his land to each of his four sons & to trustees for each of his two daughters & their childen. The evidence showed that the transfers were taken subject to the partnership agreement, & on the understanding that any partner could withdraw & work his land separately. In 1919 M. & his children entered into a formal partnership agreement, which provided that during the lifetime of M. no partner should withdraw from the partnership. On the death of M. in 1929 the land transferred in 1913 was included in assessing his estate to death duties under Stamp Duties Act, 1920–1931 (N. S. W.), on the ground that they were gifts dutiable under sect. 102 (2) (*a*), of that Act :—*Held :* (1) the property comprised in the transfers was the land separated from the rights therein belonging to the partnership, & was excluded by the terms of sect. 102 (2) (*a*) from being dutiable, because the donees had assumed & retained possession thereof, & any benefit remaining in the donor was referable to the partnership agreement of 1909, not to the gifts ; (2) the transfers did not mention the rights of the partnership, & therefore under sect. 42 of Real Property Act, 1900 (N. S. W.), might in law give a title free from those rights, was not material, because the substance of the transaction had to be ascertained, as liability to taxation ought not to be based upon refinements but on clear words.—MUNRO *v.* STAMP DUTIES COMR., [1934] A. C. 61 ; 103 L. J. P. C. 18 ; 150 L. T. 145.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—E.

p l. —— ——.]—By an indenture T., who was entitled in fee simple to certain lands subject to certain leases then current, conveyed the lands to A., his daughter, for life, or until the happening of certain events, with remainder to her children, in consideration of covenants by her to make annual payments to him & his wife during their lives, & to indemnify him in respect of covenants contained in the unexpired leases. T. & his wife predeceased the daughter, & she died leaving children. Her life estate had not determined in her lifetime :—*Held :* the lands comprised in the indenture did not form part of the dutiable estate of A. by virtue of sect. 102 (2) (*k*) of "Stamp Duties Act, 1920–24." The dominant words of that provision are "under or by virtue of any agreement made by the deceased," & they mean that the passing of the property shall proceed from the volition of deceased.—ANGUS *v.* COMR. OF STAMP DUTIES (1930), Argus L. R. 337 ; 4 A. L. J. 163.—AUS.

se. *Reservation of life interest to settlor —On surviving wife.*]—By a marriage settlement made in 1876, £30,000 was settled upon trust to pay the income to the settlor's wife for life, after her death to the settlor for life, & after the death of the survivor upon trust for the children or remoter issue as they should by deed jointly appoint, or in the absence of a joint appointment as the survivor should by will or deed appoint, & in default of appointment for the children as therein provided. The settlor died in 1925, without having exercised the joint power of appointment, leaving his wife & children him surviving. For the purpose of death duty under the Stamp Duties Act, 1920–1924, of N. S. W. :—*Held :* as the settlement contained a trust to take effect "after the death" of the deceased settlor & in reference thereto, his property was to be "deemed to include" the property subject to the trust, without deducting the value of his widow's life interest therein.—RABETT *v.* STAMP DUTIES COMR., [1929] A. C. 444.—AUS.

sf. —— *Jointly with wife.*]—In 1896 a husband settled property in N. S. W., directing that the income therefrom should be paid to his wife during their joint lives, & upon the death of either of them to their daughters equally for their respective lives. The settlor died in 1914, & was survived by his wife :—*Held :* the settlement contained a trust "to take effect after his" (the settlor's) "death" within Stamp Duties Act, 1898, of New South Wales, s. 58, & accordingly upon the death of the settlor duty under that sect. became payable.—THOMSON *v.* STAMP DUTIES COMR., [1929] A. C. 450.—AUS.

to the extent to which the principal value of such beneficial interest upon the death of the settlor exceeded the actual value, if any, of the expectant beneficial interest of each child before such death was an interest accruing or arising on his death, & was, therefore, to be deemed to be property passing on the death of the settlor, & that estate duty on the principal value of such excess was leviable & payable accordingly.—ADAMSON *v.* A.-G., [1933] A. C. 257; 102 L. J. K. B. 129; 49 T. L. R. 169; *sub nom.* A.-G. *v.* ADAMSON, 148 L. T. 365, H. L.

nnotations :—**Consd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24. **Apld.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268. **Expld. & Folld.** A.-G. *v.* Lloyds Bank, Ltd., [1935] A. C. 382. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393; Scott *v.* I. R. Comrs., [1937] A. C. 174.

67b. ——————.]—By a deed of settlement the settlor caused to be issued to or transferred into the names of trustees certain shares in a co. in trust for all such one or more of her children or remoter issue, or the husbands or wives of the children or remoter issue, as she, the settlor, should by deed revocable or irrevocable or by will appoint, & until & in default of appointment upon trust to divide the trust fund into three equal shares & appropriate one share to each of her three named children, but so that the three shares should be retained by the trustees upon the trusts therein declared.

By a deed of appointment the settlor directed the trustees of the settlement to hold the trust fund in trust during her life to accumulate the income & after her death to stand possessed of the trust fund & accumulations in trust for her three named children in equal shares, but so that the share which after her death was to be held for each of the said three children should not vest absolutely, but should be retained by the trustees upon trust during the life of each child to pay to him or her the income of his or her share & after the death of such child to hold that child's share in trust for the children or remoter issue of that child as he or she should appoint, & in default of such appointment in trust for all or any of the children of that child who being sons or a son should attain the age of twenty-one years or being daughters or a daughter should attain that age or marry if more than one in equal shares. There followed a hotchpot clause, & an accruer clause in case the trusts declared concerning the share of any child should fail. Finally, the deed reserved to the settlor a power of revocation by deed or will. The settlor died without having revoked the appointment. She left her surviving the three children unmarried :—*Held :* the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, applied to the settlement; under it the three children took absolute & immediate interests in the trust fund (though liable to defeasance) & nothing passed to them under it on the death of the settlor within Finance Act, 1894 (c. 30), s. 1; also, the life interest of each child was deemed to be property passing on the death of the settlor within sect. 2 (1) (*d*) of the Act, & the duty thereunder was leviable on the excess, if any, of the value of the expectant life interest of each child after the death of the settlor over its previous value.—A.-G. *v.* LLOYDS BANK, LTD., [1935] A. C. 382; 104 L. J. K. B. 523; 152 L. T. 577, H. L.

Annotations :—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485; Scott *v.* I. R. Comrs., [1937] A. C. 174.

72. *Add. Annotation :—As to* (2) **Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

75. *Add. Citations :*—94 L. J. K. B. 139; 132 L. T. 717.
Add. Annotation :—Generally. **Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R.

76. *Add. Annotation :*—**Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

90a. —— —— **Trust established in England.**]—By his will, made in English form, testator,

PART II. SECT. 3, SUB-SECT. 2.—J.

82 i. *Benefit retained by disponer.*]—By deed of Apr. 11, 1927, a farm, together with the farmhouse & its contents, the live stock thereon & the chattels & effects, were assigned absolutely to deft., A. O'D., in consideration of natural love & affection by his cousin J. O'D. "subject however to the right of the said J. O'D. to the exclusive use of a room in the dwelling-house upon the said lands with the use in common with the said A. O'D. of the kitchen & passages of the said house & to the right of his support therein which is to include all necessary fuel at the expense of the said A. O'D. & to the use of a donkey & trap when required." Deft. also covenanted with the said J. O'D. to permit him to enjoy the said rights & to provide personal attendance on him. On the death of J. O'D., deft. was assessed to estate duty upon all the property comprised in the said deed. Upon a motion for attachment for failure to pass an estate duty account: —*Held :* the property transferred by J. O'D. to deft. was not possessed or enjoyed by the latter to the entire exclusion of the donor or of any benefit to him by contract or otherwise &, accordingly, estate duty was payable thereon under sect. 2 (1) (*c*) of Finance Act, 1894.—REVENUE COMRS. *v.* O'DONOHOE, [1936] 1. R. R. 342.—**IR.**

sh. ***Property situate abroad—Shares.***] Deceased, not a British subject, was at the date of his death domiciled in the Colony of the Straits Settlements. The Comr. of Stamps for the Colony in determining the value of deceased's estate for the purposes of estate duty included the value of his movable property outside the Colony, which consisted chiefly of shares valued at over $27,000,000 :—*Held :* such movable assets outside the Colony fell within the words "all property which passes on the death" in sect. 68 (1) of Ordinance No. 103 (Stamps) of the Colony & were accordingly assessable to estate duty.—STRAITS SETTLEMENTS COMR. OF STAMPS *v.* OEI TJONG SWAN, [1933] A. C. 378; 102 L. J. P. C. 90; 149 L. T. 145; 49 T. L. R. 428, P. C.—**STRAITS SETTLEMENTS.**

PART II. SECT. 3, SUB-SECT. 3.

si. ***Shares in company domiciled in Irish Free State—Testator & life tenant domiciled in Northern Ireland—Death of life tenant.***]—Testatrix, B., died domiciled in Northern Ireland. By her will she gave all her property to trustees to allow same to remain in the state of investment in which it might be at the time of her death or to change said investments as the trustees in their absolute discretion might think fit & to pay the income [illegible] daughter N. ughter, pointed W. & her daughter, N., exors. of her will. The assets included shares in a co. situate in the Irish Free State. N., the life tenant, died on Apr. 23, 1928, within two months of the death of B., & before representation to the estate of B. had issued. A claim for estate duty arose on the death of N. in respect of the residuary estate of B., passing on the death of N. under the will. It was contended on behalf of the Crown that the residuary estate of B. as at the death of N., constituted a Northern Ireland chose in action, as B. died domiciled in Northern Ireland & the forum of administration of her estate was the Northern Ireland Cts. The exor. of the estate of B., however, contended that the estate of B. passed in specie on the death of N. :—*Held :* after the death of B., N. has a proprietary interest in her mother's estate & estate duty was payable in the Irish Free State & not in Northern Ireland, the residuary estate having passed on the death of N., & having consisted of shares in a co. situate in the Irish Free State.—A.-G. *v.* WALKER, [1934] N. I. 179.—**IR.**

so. *Situs of shares.*]—The *situs* of shares is at the place where the register of shareholders is kept, & duty is payable there in accordance with the law of the locality, & this is so even though the name of a deceased owner was not actually on the register at the time of death.—*Re* FERGUSON, [1935] I. R. 21. —**IR.**

who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct. by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad:—*Held:* the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2). —A.-G. *v.* BELILIOS, [1928] 1 K. B. 798; 97 L. J. K. B. 139; 138 L. T. 294; 44 T. L. R. 214; 72 Sol. Jo. 49, C. A.

Add. Annotation:—**Apld.** A.-G. *v.* Howe (1925), 94 L. J. K. B. 540.

—— —— **Shares.**]—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof:—*Held:* (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, [1927] 1 Ch. 313; 96 L. J. Ch. 205.

9. *Add. Annotation:*—*As to* (4) **Refd.** *Re* Bateman, [1925] 2 K. B. 429.

02a. —— **Release of life interest—In exchange for remainder.**]—Deceased, under a settlement, was entitled to certain lands & capital moneys for life with remainder to deft. By a deed of exchange made between deceased & deft., deft. conveyed to deceased his remainder in the above lands, & in return the deceased conveyed to deft. his life interest in the capital moneys to the intent that the life interest should merge in deft.'s estate in remainder. Deceased died within three years. The Crown claimed estate duty on these moneys:—*Held:* the property, the life interest, did not pass by reason of the purchase, because that interest ceased on death, & consequently 1894 Act, s. 3 (1), did not apply, &, deceased having died within three years of the making of the deed, Finance Act, 1900 (c. 7), s. 11, as amended, applied, & the property was deemed to pass notwithstanding its disposition by the above deed.—A.-G. *v.* LLEWELYN, [1935] 1 K. B. 94; 103 L. J. K. B. 497; 152 L. T. 345.

06. *Add. Annotation:*—*As to* (2) **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

07a. —— —— ——.]—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements:—*Held:* (1)

PART II. SECT. 4, SUB-SECT. 1.

s i. *S. P.* HOLMES *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 753.—**N.Z.**

s ii. —— *Discharge by son of legit* —A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000:—*Held:* the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—LORD ADVOCATE *v.* WARRENDER'S TRUSTEES (1906), 8 F. (Ct. of Sess.) 371.—**SCOT.**

the transaction was a *bonâ fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re* BATEMAN (BARONESS). [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re* BATEMAN (BARONESS). A.-G. *v.* WREFORD-BROWN, 134 L. T. 153.

117a. —— —— **Who is person "competent to dispose"—Donee of power.**]—The donee of a power who can freely appoint the whole of the fund to himself & so acquire the right to dispose of the fund in accordance with his own volition is "competent to dispose" of that fund within Finance Act, 1894 (c. 30), s. 5 (2). The word "power" in the phrase "power . . . to appoint or dispose of property as he thinks fit" in Finance Act, 1894 (c. 30), s. 22 (2) (*a*), is not used in the strict sense attaching to it when used with reference to a power of appointment, but in the sense of capacity.—*Re* PENROSE, PENROSE *v.* PENROSE, [1933] Ch. 793; 102 L. J. Ch. 321; 149 L. T. 325; 49 T. L. R. 285.

120. *Add. Annotation:—As to* (4) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4.

121. *Add. Annotations:—As to* (2) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

121a. —— —— —— **Enures for benefit of residuary legatees—Where annuities free of duty given out of residue.**]—Testator who died in 1910 directed the payment of an annuity to his son E., & on the latter's death "to his present wife," free of duty. Settlement estate duty was paid on so much of testator's residuary estate as was required to provide for the annuities payable under the will. E. died in 1930 & his widow, A., became entitled to the annuity. Estate duty was payable, but an allowance of interest was claimed under Finance Act, 1914 (c. 10), s. 14 (*b*), as a set-off in respect of the settlement estate duty already paid on testator's death:—*Held:* the annuities having been paid in full, the persons entitled to the allowance were the persons entitled to the residuary estate.—*Re* GRINLINTON, PUBLIC TRUSTEE *v.* GRINLINTON, [1933] Ch. 344; 102 L. J. Ch. 4; 148 L. T. 191.

PART II. SECT. 4, SUB-SECT. 2.

c i. —— *Annuity paid out of general income—No property settled.*]—Sect. 4 of Estate Duty Ordinance, 1932, of Hong Kong, provides that estate duty shall be paid on the principal value of "all property passing on the death" of a deceased person, which, by sect. 5 (1), "shall be deemed to include . . . (*b*) property in which deceased or any other person had an interest ceasing on the death of deceased, to the extent to which a benefit accrues or arises by the cesser of such interest, . . ." By sect. 25 (1) of the Ordinance: "If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property. (2) For the purposes of this section, the term settlement means any . . . will, . . . under or by virtue of which instrument . . . any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, & the term settled property means the property comprised in a settlement."

A testator by his will bequeathed to his wife an annuity of £10,000 during her life. No specific fund was set aside by the trustees of the will to meet the annuity, which was in fact paid out of the general income of the estate. The whole of that income was not applied in meeting the annual payments. The annuitant was not at any time competent to dispose of the property out of the income of which her annuity was payable. Estate duty had been paid in Hong Kong on the whole of the testator's estate when probate was granted. On a claim by the Estate Duty Comr. that upon the death of the annuitant estate duty became payable under sect. 5 (1) of Estate Duty Ordinance, 1932, to the extent to which a benefit accrued by the cesser of the annuity:—*Held:* (1) there was property of testator in which the annuitant had an interest ceasing at her death within the meaning of sect. 5 (1) (*b*) of the Ordinance, & therefore to the extent to which a benefit accrued by the cesser of the annuity that property was deemed to be included in property passing on the death of the annuitant; (2) there was not a "settlement" within the meaning of sect. 25 (2) of the Ordinance, under or by virtue of which any property, or any estate or interest in property, stood during the lifetime of the annuitant limited to or in trust for any person by way of succession, & therefore the exemption conferred by sect. 25 (1) did not operate, & estate duty was accordingly payable. The phrase "any property, or any estate or interest in any property" in sect. 25 (2) of the Ordinance, coupled with the words "stands limited," referred to definite property or an estate or interest in it which actually existed & could be precisely defined. There was no such definite property allocated in the present case, & a hypothetical slice of the property passing by the will could not properly be treated as an interest in that property within the meaning of sect. 25 (2).—ARMSTRONG *v.* ESTATE DUTY COMR., [1937] A. C. 885; [1937] 3 All E. R. 484; 106 L. J. P. C. 133; 157 L. T. 376; 81 Sol. Jo. 587, P. C.—**HONG KONG.**

ss. "*Interest in business*"—*What is*—1914 *Act*, s. 15.]—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held:* the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credit* of the loan.—GLEN *v.* INLAND REVENUE, [1926] S. C. 44.—**SCOT.**

ss. —— —— ——.]—The proprietor of a wine & spirit business, by his trust-disposition & settlement, directed his trustees to convey the residue of his estate to his only daughter on her attaining twenty-five years of age, with a destination over in the event of her predeceasing the period of conveyance, & to pay her the income of the residue until that date. He directed his trustees to sell the business. The daughter died eight days after testator, under the age of twenty-five, & before the direction to sell had been implemented. The trustees having claimed a reduction, under Finance Act, 1914, s. 15, of the estate duty payable on the daughter's death, in so far as assessable on the value of the business, the Comrs. of Inland Revenue refused the claim:—*Held:* sect. 15 applied, in respect that the beneficial possession & enjoyment of the residue, including the business, had passed to the daughter on testator's death, & had again passed on her death: & the trustees were, accordingly, entitled to the relief claimed.—WARREN'S TRUSTEES *v.* INLAND REVENUE, [1928] S. C. 806.—**SCOT.**

127a. Property in which deceased never had an interest—Accumulations of income of voluntary settlement.]—Deceased transferred certain stocks & shares to trustees on trust to accumulate the income thereof at compound interest during a certain period by way of accretion to the settled fund, & after that period to deal with that fund on certain trusts for the benefit of others. The income was so accumulated for several years. On the death of the deceased the Comrs. contended that for determining the rate of estate duty the said accumulations should under Finance Act, 1894 (c. 30), s. 4, be aggregated with the rest of the settled property passing on the death, & that they were not property in which deceased " never had an interest " within the meaning of the proviso to that sect. :—*Held :* the contention of the Comrs. was correct.—A.-G. *v.* DICKINSON & BARON, [1937] 2 K. B. 574 ; [1937] 2 All E. R. 485 ; 106 L. J. K. B. 615 ; 157 L. T. 550 ; 53 T. L. R. 568 ; 81 Sol. Jo. 339.

128. *Add. Annotations :*—**Refd.** *Re* Exmouth's Annuity, [1925] Ch. 280 ; *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

128a. —— " Land & chattels " — What are " chattels."]—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (*a*) upon the capital of the sum of Consols, or (*b*) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (*a*) to be aggregated with the other property, or (*b*) to be treated as an estate by itself :—*Held :* " chattels " in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personalty generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not " chattels " within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re* EXMOUTH'S ANNUITY, [1925] Ch. 280 ; 94 L. J. Ch. 208 ; 133 L. T. 39 ; 69 Sol. Jo. 411.

129a. —— Where duty commuted—Not aggregated with unsettled property.] — Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the commutation has been made is not property on which " estate duty is leviable " within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—A.-G. *v.* HOWE (EARL) (1925), 94 L. J. K. B. 540 ; 133 L. T. 801 ; 41 T. L. R. 610 ; 69 Sol. Jo. 791, C. A.

131. *Add. Citations :—affd. sub nom.* PARR *v.* A.-G., [1926] A. C. 239 ; 95 L. J. K. B. 417 ; 134 L. T. 321 ; 42 T. L. R. 217, H. L.

After cross-reference following this case add :—

Death after July 29, 1927.]—*See, now,* Finance Act, 1927 (c. 10), s. 51.

PART II. SECT. 4, SUB-SECT. 4.

d. For " *Charitable purposes—In Australia & abroad,*" read " *Charitable purposes—In Australia—& abroad.*"

d i. —— ——.]—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed " for religious, scientific, charitable or public educational purposes " :—*Held :* as no contrary intention appeared, the word " charitable " was to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128 ; 95 L. J. P. C. 39 ; 134 L. T. 360 ; 42 T. L. R. 121.—**AUS.**

d ii. —— " *Public benevolent institution "—What is.*]—*Held :* the expression " public benevolent institution " in sect. 8 (5) of Estate Duty Assessment Act, 1914–1928, does not include organisations which do not promote the relief of poverty, suffering, distress or misfortune. The " Royal Naval House " is, therefore, not a " public benevolent institution " within the sect. — PERPETUAL TRUSTEE CO., LTD. *v.* TAXATION COMR., [1931] Argus L. R. 240 ; 5 A. L. J. 109.—**AUS.**

PART II. SECT. 6.

132 i. *Aggregated property—Whether property aggregated more than once on same death.*]—Testator, who had two sons, H. & J., by his will devised certain real property to his son, H., in trust for H. for his life, with remainder to H.'s children as H. should appoint, &, if there should be no son of H. who should attain the age of 21 years, then in trust for his, testator's, other son, J. Testator died in 1893, & H. entered into possession of the lands under the trusts of the will. J. died intestate & unmarried in 1897, leaving his brother, the said H., his heir-at-law. By an order of the ct. made in 1908 it was declared that on the death of J., H. took an estate for life, with a vested absolute interest in remainder, subject to being divested if he left issue, in the freehold lands devised by his father's will, &, accordingly, that H. could make a valid testamentary disposition or otherwise dispose of his estate or interest in the lands. On the death of J., H. took out a grant of administration, & paid duty in respect of the personal property which passed on the death of J., but he did not pay any estate duty in respect of the contingent interest in the lands which had been devised to J. by his father's will, & which passed to him, H., as his brother's heir-at-law. H. died without issue in 1920, & estate duty was paid by his exor. on the value of the property which passed on his death, including the lands in question :—*Held :* the Revenue Comrs. were entitled to claim estate duty on the death of J. in respect of his contingent estate in the lands which passed on his death to H., & the rate of estate duty was to be calculated according to the value of that interest when it fell into possession on the death of H., together with the value of the rest of the estate of J.—*Re* O'CONNOR'S ESTATE, HENDRICK *v.* REVENUE COMRS., [1931] I. R. 98.—**IR.**

sd. *Degree of relationship—Calculation of—Beyond third degree.*]—The words " not beyond the third degree " occurring in Deceased Persons' Estates Duties Act, 1921, Sched. (2), Part II., para. 2, refer to the method of calculation according to the civil law, in which the degrees were calculated up to the common ancestor, & then down to the beneficiary in question : —*Held :* a son of a first cousin of testatrix was beyond the third degree of relationship to testatrix, & the Comr. of Taxes had rightly assessed the duty payable in respect of the benefit he took under her will, in accordance with Sched. (2), Part II., para. 3, of the said Act.—*Re* COOK (1925), 21 Tas. L. R. 11.—**AUS.**

se. —— *Selected class of relatives.*]—The benefit of Estate Duty Assessment Act, 1914–1922, s. 8 (6), extends to all property which by force of the will, or by the law as to the distribution of the estates of intestates, passes directly from testator or intestate to a member of the selected class, provided in the case of a will that on the death of testator it can be shown, from the terms of the will & by reference to the state of his family, that the property must go directly from him to persons within the class & that in no conceivable event can it pass from the testator to any person who is outside the class. —SMITH *v.* THE FEDERAL COMR. OF TAXATION (1928), 40 C. L. R. 467 ; [1928] Argus L. R. 189.—**AUS.**

PART II. SECT. 7, SUB-SECT. 1.

m i. —— ——.]—Testator was, at the time of his death, chairman & managing director of a co. carrying on business as tea & wine merchants. The business had been established by testator's grandfather many years ago, & had been carried on by his family ever since. The business had been turned into a limited co. in 1898, with a share capital of £30,000, divided into 30,000 shares of £1 each, of which 23,007 had been issued, & it was turned into a private co. in 1908. At the date of his death the testator held 18,501 shares, & his son, the assistant managing director, held 4,251. The shares were transferable, subject to the right of the directors to refuse to register any transfer of shares upon which the co. had a lien, or a transfer to a transferee of whom the directors did not approve. The co. was a solvent one ;

136a. —— Shares.]—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, No. 96a, *ante*.

136b. —— —— Subject to restriction on transfer.]—A testator at the time of his death was entitled to a number of ordinary shares of £100 each in a co. the articles of assocn. of which imposed rigid restrictions upon the alienation & transfer of the shares in the co.: —*Held:* the value of the shares for the purpose of estate duty was to be estimated at the price which they would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered & to be regarded as the holder of the shares, & should take & hold them subject to the provisions of the articles of assocn., including those relating to the alienation & transfer of shares in the co.

There was evidence that the value of the shares in the open market would be enhanced if Trust Cos. were to be included among possible competitors in the open market:—*Held:* the value of the shares should not be appreciated by reason of the special value of the shares to such cos.—INLAND REVENUE COMRS. *v.* CROSSMAN, INLAND REVENUE COMRS. *v.* MANN, [1937] A. C. 26; [1936] 1 All E. R. 762; 52 T. L. R. 415; 80 Sol. Jo. 485, H. L.; *revsg.* S. C. *sub nom. Re* PAULIN, *Re* CROSSMAN, [1935] 1 K. B. 26, C. A.

136c. —— How ascertained—Special facts to be considered.]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante*.

137. *Add. Annotation:*—**Consd.** A.-G. *v.* Burrell

137a. Bequests of shares of residue—Accruer clause—Calculation of value of interest of deceased beneficiary.]—Viscount N. by his will & three codicils thereto disposed by clause 6 of his will of 74¼ hundredths of the income of his residuary estate. By sub-clause 28 he provided that on the death of any of the legatees, his or her share should accrue to the survivors. By sub-clause 29 he provided for the application of the remaining income in payment of other legacies, & these being paid the remainder was to be applied in the same manner as the 74¼ hundredths. By clause 10 it was directed that the capital should go in moieties to charities. By an order made on July 28, 1924, the income was divided into one hundred & thirds. Two of the income beneficiaries had now died. On a summons taken out in these circumstances asking whether the estate duty payable by reason of the death of any person entitled to any share of the income was to be paid upon the value of the share in the capital equal to that of the income previously enjoyed by such person or upon the like proportion of the actuarial capital value of the income during the respective lives of the several persons entitled thereto or other the period during which the trusts in respect of such income should be subsisting or how otherwise the same ought to be calculated & out of what fund the same was payable:—*Held:* (1) the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, & that estate duty must be paid on the value of such share; (2) the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, & must be borne by the corpus of such estate.—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, [1929] 1 Ch. 327; 98 L. J. Ch. 65; 140 L. T. 300.

Annotation:—As to (1) **Refd.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443.

146. To cross-references before this case add "*See, also*, Law of Property Act, 1925 (c. 20), s. 17 (3)."

147a. Payment by instalments—Real property—Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *post*.

147b. —— —— —— ——.]—A.-G. *v.* PUBLIC TRUSTEE & TUCK, No. 209e, *post*.

155. *Add. Annotations:—As to* (1) **Expld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559; *Re* Lomer, Public Trustee *v.* Victoria Hospital for Children, [1929] 1 Ch. 731. **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

161. *Add. Annotations:*—**Folld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

the last balance sheet, prior to the date of the death of the testator, showed a surplus of assets over liabilities of £36,399, the principal asset consisting of the stock-in-trade, valued in the last balance sheet at £23,329. The shares, which were all held by members of testator's family, had never been dealt with on the Stock Exchange, & therefore they had no market quotation. As the co. was a private co., in which practically no one was interested except the directors, the profits could be divided up either as salaries or dividends as the directors chose, & they decided to give the profits as salaries. At the time of his death the salary of testator was £2,000 & that of his son £1,000 *per annum*. For the six years previous to testator's death the actual dividend paid averaged 5–3 per cent. on the issued capital of £23,007. Both testator & his son had special knowledge of the business, to which they gave constant daily attention. Testator's exors. when making their return for the purpose of estate duty, valued testator's shares at 15*s.* each, basing their estimate of value on the average dividend for the preceding period of six years & the market price of similar shares, a valuation which they subsequently offered to increase to 17*s.* 6*d.*, but the Revenue Comrs. declined to accept these values:—*Held:* the co. could be fairly regarded as capable of earning on a commercial basis 10 per cent. on its capital, but, taking this as the principal test of value, it must be subject to the consideration, on the one hand, of the restriction upon the transfer of the shares, &, on the other, to the added value by reason of the security of the co.'s position. Also, the Comrs.' contention that testator's shares would be most likely sold *en bloc* to a single purchaser, & that their value should be fixed accordingly, was unsustainable as the possibility of the shares being divided up among several purchasers, either members of testator's family or of the public, must be considered, for Finance Act, 1894 (c. 30), s. 7 (5), does not contemplate in the term "open market" not only a market which is hypothetical, but also only hypothetical purchasers wanting a block of shares.—SMYTH *v.* REVENUE COMRS., [1931] I. R. 643.—IR.

m ii. —— *At date of death—Property transferred by gift within three years of death.*]—A mother transferred certain securities in gift to each of her children, the total value of the securities at the date of transfer being £406,662. She died within three years of the date of the gifts. The value of the securities at the date of her death was £453,212:—*Held:* the value of the securities for the purpose of estate duty was the value at the date of the donor's death, & not that at the date of the gifts—STRATHCONA, LORD *v.* INLAND REVENUE COMRS., [1929] S. C. 800.—SCOT.

PART II. SECT. 7, SUB-SECT. 2.

b i. —— *Secured on home & foreign assets—Foreign assets alone sufficient security.*]—The estate of a deceased person consisted of property in N. S. W. & of property outside the State. Amongst other debts there was one of £32,279 which was secured by mtge. or charge over a part of his home assets &, also, over certain of his foreign assets which were valued at £33,427:—*Held:* the case fell within Stamp Duties Act, 1920, s. 109 (3), & in assessing death duty on the estate no allowance should be made for the debt or any part thereof.—SOLLAS *v.* STAMP DUTIES COMR. (1928), 28 S. R. N. S. W. 207; 45 N. S. W. W. N. 52.—AUS.

161a. —— ——.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued :—*Held :* the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act ; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment ; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re* PORTMAN (VISCOUNT) (No. 2), [1925] Ch. 294 ; 94 L. J. Ch. 329 ; 133 L. T. 389.

166a. Effect of hotchpot clause—Whether advances made over three years before death brought into charge.]—*Re* TOLLEMACHE, FORBES *v.* PUBLIC TRUSTEE (1930), 69 L. Jo. 423 ; 169 L. T. Jo. 519 ; [1930] W. N. 138.

170a. ——.]—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, No. 137a, *ante*.

173a. —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

176. *Add. Annotation :—As to* (1) **Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

186. *Add. Annotations :—As to* (1) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347 ; *Re* Bullock-Webster, Royal Exchange Assurance *v.* Royal Trust Co. of Canada, [1936] Ch. 1.

203. *Add. Annotation :*—**Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

209a. Effect of Law of Property Act, 1925 (c. 20), s. 16 (5).]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations :—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77 ; *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209b. ——.]—The above sub-sect. preserves the liability of real estate to pay its own duties.—*Re* MORRIS, SKINNER *v.* SANDERS (1927), 71 Sol. Jo. 472.

209c. —— **Incorporation of Form 8 of Statutory Will Forms, 1925.**]—Testator by his will, after making specific & pecuniary bequests, gave to his wife absolutely any freehold or leasehold house belonging to him & in which he should be residing at his death. He declared that all legacies thereby given should be free of all death duties & devised & bequeathed all his residuary real & personal estate to his trustees, & declared that (*inter alia*) Form 8 of the Statutory Will Forms, 1925, should be incorporated in his will so far as it was applicable to his residuary estate. The only real estate testator possessed at the time of his death was a freehold house in which he was then residing. Questions arose : (*a*) whether having regard to Form 8, clause 4 (*c*), of the Statutory Will Forms, 1925, the estate duty payable in respect of testator's freehold house on his death should be borne by the testator's widow or by the residuary estate, & (*b*) whether upon the true construction of the will, the estate & succession duties payable by reason of the testator's death in respect of the freehold house were payable out of the residuary estate :—*Held :* (1) although the exor. was by reason of the provisions of Law of Property Act, 1925 (c. 20), s. 16, now accountable for estate duty on realty, the incidence of the duty remained unchanged & was still charged by virtue of the Finance Act, 1894 (c. 30), s. 9 (1), on the realty in respect of which it was paid. Form 8, clause 4 (*c*), therefore, had no application, & apart from the question of construction the estate duty on the freehold house must be borne by the widow ; (2) on the true construction of the will testator had used the word "legacies" not in its strict sense, but as including the gift of the house in which he was residing at his death, although that house was of freehold tenure.

PART II. SECT. 9, SUB-SECT. 1.—B. a i. ——.]—By his will testator directed that all his debts & funeral & testamentary expenses should be paid as conveniently as might be after his decease, & thereafter proceeded by his will to devise & bequeath all his real & personal property not otherwise dis- of :—*Held :* (1) estate duty was under the direction payable actually out of the residuary estate ; (2) in the event of the residuary estate being insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—CALDWELL, ETC. *v.* FLEMING, [1927] N. Z. L. R. 145.—N.Z.

The estate & succession duties payable by reason of testator's death in respect of the freehold house in question were therefore ...ble out of the residuary estate. STURGES *v.* PREVITÉ, [1931] 1 Ch. 447; 100 L. J. Ch. 286; 145 L. T. 40.

209d. Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—Where an undivided share in land disposed of by will has become subject to a statutory trust, the incidence of estate duty remains unchanged & where the exors. in such a case have, as exors., paid the estate duty on the share as a testamentary expense, the amount so paid is repayable to them by the devisee of the share, & the repayment may, at his option, be by instalments.—*Re* WHEELER, JAMESON *v.* COTTER, [1929] 2 K. B. 81, n.; 141 L. T. 322.

Annotations:—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209e. —— ——.]—Notwithstanding the provisions of Law of Property Act, 1925 (c. 20), which abolish tenancies in common of land & direct such land to be held by certain persons as trustees for sale upon statutory trusts, the death duty to be paid on freehold land which just before the commencement of Law of Property Act, 1925 (c. 20), was held in undivided shares, & in respect of which there have been no dealings since the commencement of that Act, is, even where the duty only became payable after the commencement of that Act, deemed to be "duty due upon an account of real property" within Finance Act, 1894 (c. 30), s. 6 (8), & under that sub-sect. as amended by Finance Act, 1896 (c. 28), s. 18, & Finance Act, 1919 (c. 32), s. 30, the duty may be paid by instalments extending over a period of eight years with interest at 4 per cent. *per annum* as therein provided.—A.-G. *v.* PUBLIC TRUSTEE & TUCK, [1929] 2 K. B. 77; 98 L. J. K. B. 462; 141 L. T. 398; 73 Sol. Jo. 299.

220. *Add. Annotation:*—*Generally*, **Consd.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275.

226. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392; *Re* Trimble, Wilson *v.* Turton, [1931] 1 Ch. 369. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31. *As to* (2) **Refd.** *Re* Hicks, Bach *v.* Cockburn, [1933] Ch. 335.

227a. —— ——.]—By his will a testator who died on Nov. 3, 1915, directed that all legacies & annuities thereby given should be paid & enjoyed free of death duties, & the question arose whether the exemption from duties was limited to duties payable on the death of testator or extended to those payable in future in respect of settled legacies:—*Held:* the duties, other than the legacy duties from which the legatees were relieved, were those payable on the death of testator & not those accruing in the future.—*Re* LAIDLAW, WILKINSON *v.* LYDE, [1930] 2 Ch. 392; 99 L. J. Ch. 463; 143 L. T. 761.

227b. —— ——.]—Testator by his will dated Feb. 24, 1930, after giving several pecuniary & specific legacies, directed by clause 6 that all the pecuniary legacies & specific bequests & devises given by his will "shall be free from all death duties which (whether presently or presumptively or prospectively payable) shall be paid out of any general personal estate."

He then directed his exors. to invest a sum of £5,000 upon trust to pay the income to his daughter L. during her life with provision for forfeiture in certain events & after her death or forfeiture to hold the investments in trust for her daughter A. absolutely. He devised & bequeathed his residuary real & personal estate to his exors. upon trust for sale & conversion & out of the proceeds (*inter alia*) to pay his testamentary expenses (including all estate duty leviable at his death in respect of his residuary estates). Testator died on Dec. 6, 1931. Questions arose whether under the terms of the will the estate duty which would become payable on the death of the daughter & the legacy duty which might become payable in the event of the forfeiture of her life interest would be payable out of the residuary estate or out of the settled legacy:—*Held:* as the words used in clause 6 were found in precedent books published prior to the passing of Finance Act, 1914, they could not be held to apply exclusively to the future estate duties imposed by that Act, the words of the will showed that the mind of testator was directed to the duties payable at his death, & did not provide a context which would justify a more extended construction being imposed upon clause 6, & the estate duties which would become payable on the death of the tenant for life upon the settled legacy would not be payable out of the residuary estate, but the legacy duty would be so payable.—*Re* HICKS, BACH *v.* COCKBURN, [1933] Ch. 335; 102 L. J. Ch. 177; 148 L. T. 466.

229. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

232. *Add. Annotation:*—**Distd.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392.

233. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234. *Add. Annotation:*—**Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234a. Bequest to pay duties—Duties payable at death of testator.]—Testator who died in 1912

PART II. SECT. 9, SUB-SECT. 3.

af. *Aggregation of settled funds—Whole estate subject to duty at higher rate.*]—Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6¼ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference:—*Held:* the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—BROWN *v.* BROWN, [1924] N. Z. L. R. 427.—**N.Z.**

PART II. SECT. 9, SUB-SECT. 4.

216 l. *Gift inter vivos—Gift within three years of settlor's death.*]—Testator, after devising & bequeathing all his real & personal estate upon certain trusts, declared that "all probate & estate duties shall be paid by each beneficiary in proportion to the value of the share or interest taken by him o her under this my will." Within three years prior to his death testator disposed of a certain su by way of gift to his wife, & after his death that sum had been assessed for State death duty:—*Held:* the death duty payable in respect of the gift *inter vivos* fell within the words "all probate & estate duties" in the declaration in the will.—ASHBY *v.* HAYDEN (1931), 31 S. R. N. S. W. 324; 48 N. S. W. W. N. 61.—**AUS.**

5576. *Citation :*—" For WYMAN *v.* WYMAN " read " R. *v.* WYMAN."

Annotation :—**Consd.** R. *v.* Adler (1923), 17 Cr. App. Rep. 105.

5577a. —— —— ——.]—**Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.**—R. *v.* CAIRNS (1927), 43 T. L. R. 455 ; 20 Cr. App. Rep. 44, C. C. A.

5577b. —— **Supplementary grounds — When allowed.**]—R. *v.* PORTER, No. 3137a, *ante*.

5579. *Add. Annotation :*—**Consd.** R. *v.* Van Dyn (1932), 23 Cr. App. Rep. 150.

5581a. ——.]—The ct. permits a notice of abandonment of appeal to be withdrawn only in exceptional circumstances.—R. *v.* SCOTT (1924), 18 Cr. App. Rep. 10, C. C. A.

5581b. ——.]—Only in special circumstances will the ct. allow the abandonment of a withdrawal of a notice of appeal.—R. *v.* VAN DYN (1932), 76 Sol. Jo. 112 ; 23 Cr. App. Rep. 150, C. C. A.

5584a. Application for leave to appeal—May be treated as final appeal.]—In a proper case the ct. will treat an application for leave to appeal as the final appeal.—R. *v.* HOBERN (1924), 18 Cr. App. Rep. 110, C. C. A.

5585. *Add. Annotation :*—**Refd.** R. *v.* Thompson (1925), 18 Cr. App. Rep. 167.

5585a. ——.]—An applt. may only in exceptional circumstances consent by counsel to be absent.—R. *v.* THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5593a. —— **Delay in sending in documents.**]—Statements sent to the ct. at the last moment may cause an application to be adjourned, & the loss of time would run against appct. It is well that appcts. should be reminded of this matter (CHARLES, J.).—R. *v.* WILLMOTT (1933), 24 Cr. App. Rep. 54, C. C. A.

5593b. —— ——.]—In this case the observations made in *R.* v. *Willmott* by CHARLES, J., apply with added force. Appct. was convicted on Jan. 20, & his notice of appeal was dated Jan. 31. The notice contained five paragraphs & was in itself a very long document. On Feb. 9 he sent in a further document of fourteen closely-written sheets which he called " further grounds of appeal." On Feb. 23 he sent in a mass of further documents & a great many pages of further grounds of appeal. This morning there have arrived a great many more documents from appct. & among them twelve or fourteen closely-written pages relating to the old & new grounds of appeal. In these circumstances, the ct. desires me to say that this case is one in which the ct. would normally adopt the course of adjourning the application, with the result that, unless leave to appeal were given, appct. would remain a longer time in prison than otherwise. Such a practice causes the greatest possible inconvenience. In this case, however, for special reasons, the ct. does not propose to take this course (HUMPHREYS, J.).—R. *v.* MCLAREN (1933), 24 Cr. App. Rep. 54, C. C. A.

5595a. Appellant not entitled to be heard—When represented by counsel.]—R. *v.* CHUNG YI MIAO (1928), 21 Cr. App. Rep. 56, C. C. A.

5595b. No argument heard—Appeal pro forma as condition precedent to appeal to House of Lords.]—R. *v.* INMAN (1929), 21 Cr. App. Rep. 159, C. C. A.

5596a. Official transcript of judgment at trial—How far binding.]—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein. —R. *v.* MARTIN (1927), 20 Cr. App. Rep. 103, C. C. A.

5604. *Add. Annotation :*—**Refd.** R *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605. *Add. Annotation :*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605a. Application to three judges—Reference to larger court.]—R. *v.* CHAPMAN (1931), 23 Cr. App. Rep. 45, C. C. A.

5607a. ——.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention ; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging ; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation ; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude ; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—R. *v.* ROSE, R. *v.* FRIEND, R. *v.* BEATTIE, R. *v.* LLEWELLYN, R. *v.* YOUNG (1924), 131 L. T. 26 ; 88 J. P. 90 ; 40 T. L. R. 617 ; 27 Cox, C. C. 615 ; 18 Cr. App. Rep. 55, C. C. A.

5616a. —— ——.]—In a proper case, especially with the concurrence of the Crown, the ct. will allow an application for leave to appeal against conviction to be treated as one for leave to appeal against sentence, & may thereupon deal with it as such.—R. *v.* TOWERS (1929), 21 Cr. App. Rep. 74, C. C. A.

PART XIV. SECT. 4, SUB-SECT. 1.

sb. *Appeal dismissed — Dissenting judgment on point of law—Details to be given in rule.*]—A rule dismissing an appeal should specify the nature of a question of law raised in a dissenting judgment.—R. *v.* SETTLE (1932), 5 M. P. R. 142 ; 58 C. C. C. 152.—**CAN.**

sd. *Affidavit—When necessary.*]—An appeal on the ground that accused was not offered the statutory alternatives under sect. 781 (2) (*b*) of the Criminal Code should be supported by affidavit. —R. *v.* SULLIVAN, [1935] 3 D. L. R. 197 ; 8 M. P. R. 546 ; 63 Can. C. C. 294. —**CAN.**

sf. *Leave to appeal—When granted.*]—Leave to appeal should only be granted after adequate reasons have been given.—R. *v.* LE COURT, [1937] 1 D. L. R. 607 ; 6 F. L. J. (Can.) 213 ; 11 M. P. R. 133.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—A.

sg. *Functions of Court of Criminal Appeal.*]—It is one of the functions of a Ct. of Criminal Appeal to standardise so far as possible the penalties imposed by cts. of first instance. A Ct. of Criminal Appeal does not interfere to reduce a penalty unless it is excessive or awarded upon some erroneous principle. When there has been a manifest departure from " customary penalties imposed in other cts." in respect of like offences, it is the duty of the Ct. of Criminal Appeal to examine the case & to pass upon the propriety of the particular penalty, & for that purpose upon the propriety of the standard suggested by the customary penalties.—WADE *v.* TROTTER, [1934] S. A. S. R. 62.—**AUS.**

testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of the testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property :—*Held :* that the Governors having acquired the land, not under any disposition by testator, but by the voluntary act of P. in selling instead of retaining the property, took no benefit under testator's will, & they acquired the land expressly subject to annuities & road-making charges, but impliedly free from any charge for death duties.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131 ; 98 L. J. Ch. 281 ; 141 L. T. 198.

271a. —— **By devisee—Estate duty on undivided moiety of land paid out of residuary estate.**]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927) cited in [1929] 2 K. B. at p. 82, n.

Annotations :—**Folld.** *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Refd.** A.-G. *v.* Tuck, Public Trustee, [1929] 2 K. B. 77 ; *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren [1932] 1 Ch. 42.

271b. —— —— ——.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *ante.*

272a. —— **By Dominion executors—Duty paid on Dominion property—Out of English assets.**]—The right conferred by sect. 9 (4) of 189 Act on exors. who have paid estate dut on property not passing to them as such t be repaid by the trustees or owners of th property the rateable part of the estate dut on the estate, in proportion to the value o the property not passing to them as such applies to personal property in British possessions to which sect. 20 of the Act applies notwithstanding the special relief given by sect. 20 in respect of the estate duty on any such property. The charge in respect of th rateable part enacted by sect. 9 (1) is mad inapplicable to property in such a British possession by sect. 20 (2), but there is nothing in sect. 20 to take away the right conferred by sect. 9 (4).—*Re* BULLOCK-WEBSTER, ROYAL EXCHANGE ASSURANCE *v.* ROYAL TRUST OF CANADA, [1936]Ch. 1 ; 105 L. J. Ch. 291 ; 153 L. T. 448, C. A.

272b. **To trustees—Duty paid in respect of forfeited interest.**]—On the death of a settlor in 1924 estate duty had been paid by testator's trustees in the belief that testator's residuary estate passed on that event, & the rate of duty was computed on the same footing :—*Held :* the trustees were entitled to recover the amount of the estate duty paid, the settlor having forfeited his interest in the estate before his death.—INLAND REVENUE COMRS. *v.* RAPHAEL, INLAND REVENUE COMRS. *v.* EZRA, [1935] A. C. 96 ; 51 T. L. R. 152, *sub nom. Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, 104 L. J. Ch. 24 ; 152 L. T. 217, H. L.

272c. **Surrender of Victory Bonds—Amount repayable—Whether assessed duty or market value.**]—*Re* TICEHURST'S SETTLEMENT, WYATT *v.* TICEHURST (1930), 170 L. T. Jo. 9 ; [1930] W. N. 166.

274a. **Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.**]—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re* ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) *v.* NEVILL, [1926] Ch. 465 ; 95 L. J. Ch. 289 ; 134 L. T. 662 ; 70 Sol. Jo. 634.

277a. —— **Deduction of income tax.**] — In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax :—*Held :* for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—INVERCLYDE'S (LORD) TRUSTEES *v.* MILLAR, [1924] A. C. 580 ; 9 Tax Cas. 14 ; *sub nom.* INVERCLYDE'S (LORD) TRUSTEES *v.* INLAND REVENUE COMRS., 93 L. J. P. C. 266 ; 131 L. T. 739, H. L.

PART II. SECT. 11.

c. Add the following para. :—

A. disponed an estate to himself in liferent, & after his death to B. in liferent & to C. in fee. On A.'s death B. paid estate duty & presented a petition for an order on C. to grant a bond & disposition in security over the estate in her (B.'s) favour for the amount of the duty :—*Held :* (1) the subject chargeable with the duty was the fee of the estate & not merely the liferent, & B. was entitled to have the duty charged on the estate by way of bond & disposition in security, & was not bound to charge it by way of terminable charge ; (2) B. was entitled to an order on C. to grant the bond notwithstanding an averment by C. that B. had in her hands the proceeds of sales of timber, the fee of which belonged to him.—TURNBULL *v.* TURBULL (1910), 47 Sc. L. R. 688.—SCOT.

Part III.—Settlement Estate Duty.

287. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

288. *Add. Annotations :*—**Refd.** *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62; Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

290. *Add. Annotation :*—*As to* (1) **Consd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

292. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253. **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

293. *Add. Annotation :*—*Generally*, **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

296. *Add. Annotations :*—**Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. **Refd.** Scott *v.* I. R. Comrs., [1935] Ch. 246

Part IV.—Legacy Duty.

337. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

345. *Add. Annotations :*—**Consd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485. **Refd.** Jones *v.* Wright (1927), 44 T. L. R. 128.

349. *Add. Annotation :*—**Refd.** Jones *v.* Wright [1928] A. C. 143.

359. *Add. Annotation :*—*As to* (1) **Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

384a. **Gift of equitable life interest in personalty—Absolute interest on payment of debts in lifetime of life tenant—Beneficiary legatee.**]—Testator by his will conveyed to trustees all his personalty in Scotland, & after providing for the payment of his debts, directed the trustees to make an inventory of the collection of "marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, & the library," in his house, which were to remain vested in the trustees as part of the trust estate, the life-rent use thereof being given to his son D., whom failing to the heir of entail entitled to succeed to the estate. He further provided that, if all his debts were paid in the lifetime of D., the trustees should convey the whole of the personalty by deed to D. The debts were paid in the lifetime of D., but the art collection was never conveyed by the trustees to him, but was held by them during his life :—*Held :* the collection had vested in D. as beneficial owner, & that his estate was liable to pay duty thereon.—HAMILTON (DUKE) *v.* LORD ADVOCATE (1892), 68 L. T. 94 ; 1 R. 70. H. L.

385. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

386. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

405. *Add. Annotations :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

413. *Add. Annotation :*—**Apld.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

414. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

430. *Add. Annotations :*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588 ; Ross *v.* Ross, [1930] A. C. 1 ; Peal *v.* Peal (1930), 143 L. T. 768 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9 ; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

448. *Add. Annotation :*—**Apld.** A.-G. *v.* Rudge, [1928] 2 K. B. 515.

459. *Add. Citation :*—L. R. 4 Ex. 327.

462a. **Settled articles not yielding income.**]—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—A.-G. *v.* RUDGE, [1928] 2 K. B 515 ; 97 L. J. K. B. 710 ; 140 L. T. 536 ; 44 T. L. R. 708; 72 Sol. Jo. 487.

PART IV. SECT. 2, SUB-SECT. 2.

334 ii. —— *Subject to condition.*]—A will contained the following provision : "I desire that J. S. shall assist my wife in the working & management of my property during her life, or as long as she retains any interest therein, & in recognition of such services I direct that my said wife shall pay to J. S. an annuity of fifty pounds, the first payment to be made at the expiration of twelve months from my decease, but such annuity shall only be payable so long as the said J. S. shall act as aforesaid" : —*Held :* this constituted a legacy to J. S., in respect of which he was bound to furnish an account to the Revenue Comrs., & to pay such duty as might be assessed thereon.—REVENUE COMRS. *v.* SHIRLEY & BROWN, [1930] I. R. 45.—IR.

348 i. *Legacy to executor—Secret verbal trust.*]—Testator by his will bequeathed (*inter alia*) £850 to his exors. "to be disposed of by them as I shall verbally direct them." The verbal direction given to the exors. by the testator was to pay the said sum to testator's widow, & this was communicated to the exors. by testator contemporaneously with the making of the will. The exors. paid the said sum to the window. The Revenue Comrs. claimed legacy duty from the exors. in respect of this sum, which claim the exors. declined to pay, contending that the money was given to them upon a secret trust, viz. for testator's widow, who was the actual beneficiary, & that it had been paid to her :—*Held :* the gift was a legacy to the exors. & liable to legacy duty notwithstanding that a secret trust appeared on the face of the will ; the benefit to the *cestui que trust* under the secret trust was a benefit derived *dehors* the will & not by virtue of the will.—REVENUE COMRS. *v.* STAPLETON & O'BRIEN, [1937] I. R. 225.—IR.

PART IV. SECT. 3.

6 i. —— *Not restricted to purposes in Province.*]—Application by exors. for determination of certain questions arising under a will whereby testatrix bequeathed "unto the society called the British Union for the abolition of vivisection $75,000 free of legacy duty" :—*Held :* 9 Edw. 7, c. 12, s. 6 (2), absolving from succession duties "property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario," only applied to objects which must of necessity be carried out in Ontario, not to those which might be carried out in Ontario without occasioning a breach of trust.—*Re* GWYNNE (1912), 22 O. W. R. 405 ; 3 O. W. N. 1428 ; 5 D. L. R. 713.—CAN.

531a. —— ——.]—*Re* HICKS, BACH *v.* COCKBURN, No. 227b, *ante.*

576a. —— **Direction to pay legacies free of duty.**]—*Re* TANQUERAY, SEWELL *v.* WOODFIELD, [1924] W. N. 142; 59 L. Jo. 252; 157 L. T. Jo. 324.

577. *Add. Annotation :*—**Distd.** *Re* Tanqueray, Sewell *v.* Woodfield, [1924] W. N. 142.

Part V.—Succession Duty.

591. *Add. Annotation :*—*As to* (3) **Refd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460.

602. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798; A.-G. *v.* De Trafford, [1934] 1 K. B. 1.

622. *Add. Annotations :*—*Generally*, **Refd.** Parr *v.* A.-G., [1926] A. C. 239; *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286.

627. *Add. Annotation :*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

632. *Add. Annotations :*—*As to* (1) **Distd.** A.-G. *v.* Adamson, [1932] 2 K. B. 159. *As to* (2) **Refd.** Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

640. *Add. Annotation :*—**Apld.** A.-G. *v.* Adamson, [1932] 2 K. B. 159.

PART IV. SECT. 7, SUB-SECT. 2.—B.

m i. —— *"Free of probate, legacy succession duties."*]—The will in question herein held not to direct that all probate, legacy & succession duties be paid out of the corpus of the estate, but only such duties with respect to three legacies.—*Re* BLOWEY ESTATE, [1935] 3 W. W. R. 95; 50 B. C. R. 222.—**CAN.**

PART V. SECT. 1.

sg. *Distinct from estate & probate duty—Application of doctrine of mobilia sequuntur personam.*]—Ontario Succession Duty Act is a succession duty Act, & not an estate & probate duty Act; the duty is imposed on the succession, & the doctrine of *mobilia sequuntur personam* applies.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1928] 1 D. L. R. 739; 61 O. L. R. 507; *revsd.*, 40 T. L. R. 33, P. C.; *affg.*, [1929] 2 D. L. R. 754; 63 O. L. R. 469. —**CAN.**

sj. *Jurisdiction of court to determine validity of Act.*]—The ct. has not jurisdiction on proceedings taken under sect. 35 of Succession Duties Act, 1932 (Alta.), to determine whether that Act is *ultra vires.*—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (NO. 1), [1934] 1 W. W. R. 824.—**CAN.**

sk. *Determination of liability.*]—(1) The exors. of an estate are entitled as a matter of right under sect. 35 of Succession Duties Act, 1932 (Alta.), to have the amount of the duty for which the estate is legally liable determined in the manner provided by that sect. regardless of the state of the payments between them & the Minister. This right is not affected by the fact, if it be a fact, that there is no way of obtaining, without the consent of the Crown, repayment of any sums overpaid.

(2) Whatever liability by the Crown, if any, may arise as a result of overpayment of succession duties, it is not a "liability under this Act," within the meaning of said sect. 35. Said words refer only to the liability of the subject to the Crown. Therefore, exors. are not entitled in proceedings under said sect. to a declaration that the Crown is liable to repay any moneys paid it.—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (NO. 2), [1934] 1 W. W. R. 831.—**CAN.**

sl. *Bond by executors to secure payment—Succession Duty Act declared ultra vires—No further liability for duty.*]—GODSON *v.* A.-G. FOR BRITISH COLUMBIA, [1934] 3 W. W. R. 475; [1935] 1 D. L. R. 92; 49 B. C. R. 131.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

599 i. *"Property"—Transfer of stock, etc., to wife—Dividends paid to husband.*]—*Held :* deceased retained an interest in the gift to his wife to the extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—FOWKES *v.* MINISTER OF FINANCE, [1927] 2 D. L. R. 717; 38 B. C. R. 395.—**CAN.**

d i. —— —— ——.]—*Held :* taxes imposed on movable property by the Quebec Succession Duty Act, 1892, & the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; & have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.—LAMBE *v.* MANUEL, [1903] A. C. 68, P. C.—**CAN.**

sp. *Includes life insurance moneys.*]—Life insurance was held chargeable with succession duty, although it was payable to a preferred beneficiary, & the estate was insolvent even after including the life insurance.—*Re* A.'s ESTATE (1933), 43 Man. L. R. 89.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A.

e i. —— *Property appointed.*]—*Re* NORMAN'S TRUSTS, [1926] 3 M. P. R. 571.—**CAN.**

g i. ——.]—*Re* LITTRIDGE (B. C.), [1927] 3 D. L. R. 250.—**CAN.**

g ii. —— *Marriage settlement.*]—A transfer of property by a husband to trustees for the benefit of his wife & the issue of their marriage, pursuant to a covenant in an ante-nuptial settlement, is not a "gift" so as to be chargeable upon his death with succession duty under Ontario Succession Duty Act, 1914, s. 7 (2) (*b*), as amended in 1914.

The words at the end of the above enactment, beginning "of which property actual & *bond fide* possession & enjoyment shall not have been assumed by the donee . . .," apply only to the third description of "property taken" there mentioned.—A.-G. FOR ONTARIO *v.* PERRY, [1934] A. C. 477; 153 L. J. P. C. 145; 151 L. T. 405; 10 T. L. R. 1; 78 Sol. Jo. 488, P. C.—**CAN.**

sh. *Insurance policy.*]—A policy of life-insurance on the life of the manager of a co. was taken out at the instance of the co. Assured, the manager, signed the application. The co. was named as sole beneficiary. Two years later the co. transferred for a cash consideration its beneficial interest in the policy to the assured; & on his application his wife was substituted as beneficiary. Thereafter the premiums were paid by or on behalf of assured. Later the assured created a trust fund comprising (*inter alia*) said policy, & at the request of himself & wife the trustee was substituted as beneficiary, &, at the time of assured's death, the trustee held the policy pursuant to the terms of said trust :—*Held :* the policy was dutiable under sect. 7 (2) (*c*) of Succession Duty Act, 1930, as an "interest purchased or provided by the deceased . . . to the extent of the beneficial interest accruing . . . on the death of the deceased."—*Re* THACKER ESTATE, [1931] 1 W. W. R. 97; 1 D. L. R. 1015; 39 Man. L. R. 375.—**CAN.**

—.]—*Re* BYRNE ESTATE, [1931] 1 W. W. R. 228; 43 B. C. R. 396.—**CAN.**

sm. ——.]—Deceased was one of three holders of a policy of assurance & was the first of them to die. The policy provided that in consideration of an annual premium the insurers should, on the death of the first to die of the three policy-holders, pay the survivors a certain sum. The annual premium was paid by the policy-holders in equal proportions. On the death of deceased in Apr. 1931, the assurance moneys were paid to the two survivors. Succession duty was assessed on one-third of the proceeds of the policy, on the ground that there was a disposition within sect. 4 of Succession & Probate Duties Acts, 1892 to 1931 :—*Held :* there was no disposition of property; further, the covenant by the insurers to pay moneys was not a disposition of property, but a mere contract.—*Re* ISLES, [1933] S. R. (Q.) 338.—**AUS.**

PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. *When succession accrues.*]—STAMP DUTIES COMR. (QUEENSLAND) *v.* DONALDSON (1927), 39 C. L. R. 539. —**AUS.**

642 i. *Death as cause or occasion of succession.*]—EASTERN TRUST CO. *v.* PLUMMER, [1932] 3 D. L. R. 158.—**CAN.**

642 ii. ——.]—A. executed a deed under which securities were delivered to pltf., dividends from them being payable to A.'s son until a certain date when the securities were to be transferred to the son or his nominees, if the son die before that date, to his personal representatives to be held by them on the same trusts as they held the estate of the son as a gift from

660. *Add. Annotations :—As to* (2) **Apld.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *As to* (5) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798

662. *Add. Annotations :—***Overd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

666. *Add. Citation :—*132 L. T. 699.

*Add. Annotation :—***Overd.** A.-G. *v.* De Trafford, *[1934]* 1 K. B. 1.

666a. —— ***Effect of disentailing deed.]***—A tenant in tail in remainder of settled estates barred the entail & by a re-settlement dated May 8, 1914, granted the settled estates (subject to his father's life estate) to the use that trustees should raise a sum of £160,000 as portion for the younger children of the tenant for life & their issue as the tenant for life should appoint with remainders over. By various appointments the tenant for life appointed the sum of £160,000 between his two younger sons & the issue of one of them. The tenant for life died in 1929 & the question arose whether succession duty was payable on his death in respect of this sum at the rate of 5 per cent. as on a succession from the tenant in tail or at the rate of 1 per cent. as on a succession from the tenant for life :—*Held :* the tenant in tail's succession had to the extent of this sum of £160,000 become vested during the lifetime of the tenant for life by " alienation " within Succession Duty Act, 1853 (c. 51), s. 15 ; & succession duty was therefore payable by virtue of that sect. at the same rate as if there had been no alienation, with the result that duty was payable at the rate of 1 per cent. only as on a succession from the tenant for life.—A.-G. *v.* DE TRAFFORD, [1934] 1 K. B. 1 ; 103 L. J. K. B. 401 ; 150 L. T. 24 ; 49 T. L. R. 577, C. A. ; *affd. on another point, sub nom.* DE TRAFFORD *v.* A.-G., [1935] A. C. 280, H. L.

694. *Add. Annotations :—As to* (1) **Refd.** *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286. *As to* (8) **Refd.** Parr *v.* A.-G., [1926] A. C. 239 ; A.-G. *v.* De Trafford (1933), 150 L. T. 24.

694a. Resettlement by party with defeasible estate & party with contingent interest subject thereto.]—By the combined effect of a settlement & a will, E. T. T. D. in 1915 became entitled to certain real property absolutely, should he survive the Great War, &, if he failed so to survive, such property went to G. P. T. D. absolutely, subject only to an annuity of £1,200 to the widow of E. T. T. D. In 1917, E. T. T. D., being in want of money, agreed with G. P. T. D. that certain of these hereditaments should be settled, subject to certain prior charges, upon E. T. T. D. for life, after his death to secure an annuity of £1,200 to the surviving wife of E. T. T. D., subject thereto to secure portions for the younger children of E. T. T D., subject thereto for the first & other sons of E. T. T. D. successively in tail male with remainder to G. P. T. D. for life & then to his sons successively in tail male. In consideration of the settlement, G. P. T. D. was to release his contingent interest in other hereditaments subject to the will. A settlement in pursuance of the agreement of 1917 was executed in 1921, the grantors being both E. T. T. D. & G. P. T. D., & upon the death of E. T. T. D. in 1933, without sons, the property passed to T. T. D., the eldest son of G. P. T. D., under the last limitation, subject to the annuity for the widow & portions for the daughter of E. T. T. D. The question then arose whether, for the purposes of the payment of succession duty, E. T. T. D. was the sole predecessor of the beneficiaries or whether E. T. T. D. & G. P. T. D. were joint predecessors :—*Held :* for the purposes of this case the settlement of 1921 must be treated as coming into operation in 1917. As T. T. D. then became entitled to a vested estate in tail male in remainder, & as that interest could be created only by E. T. T. D. & G. P. T. D. acting together, E. T. T. D. & G. P. T. D. were joint predecessors.—*Re* DRAKE'S SETTLEMENT TRUSTS, WILSON *v.* DRAKE, [1937] 4 All E. R. 171 ; 157 L. T. 559 ; 54 T. L. R. 98 ; 81 Sol. Jo. 921, C. A.

697. *Add. Annotation :—***Refd.** *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286.

699. *Add. Annotations :—As to* (1) **Apld. A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605. Refd. A.-G. *v.* De Trafford, [1934] 1 K. B. 1.**

the grantor to the beneficiaries of the estate who are members of his family. The son died before the date fixed for the transfer of the securities :—*Held :* they were liable to succession duty as property passing or deemed to pass.—*Re* PLUMMER'S ESTATE (1932), 5 M. P. R. 161.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

h i. —— *Person entitled after death of successor before property paid over.*]—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator :—*Held :* the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re* LUNN ESTATE (B. C.), [1925] 2 W. W. R. 608.—**CAN.**

ii. —— *Residuary gift in trust for Presbyterian Church of New ——— For purpose of assisting foreign missionary work.*]—*Held :* the Presbyterian church was a " successor " under Death Duties Act, 1921, s. 16.—PERPETUAL TRUSTEES, ESTATE & AGENCY CO., LTD., OF NEW ZEALAND *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 714.—**N. Z.**

sd. " *Competent to dispose* "—*Heir of entail—Consent necessary to disentail.*]—The right to charge succession duty on an entailed estate depends on the provisions (as amended) of Finance Act, 1894, s. 18 (1), &, accordingly, an heir of entail who is not entitled to disentail the estate without consents is not entitled to charge succession duty on the estate.—BLYTHSWOOD'S (LORD) JUDICIAL FACTOR *v.* DOUGLAS, [1935] S. C. 511.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 5.—A.

670 iv. —— *Donor of trust fund—Succession Duties Act, R. S. A.*, 1922 (*c.* 28), *s.* 6.]—A.-G. OF ALBERTA *v.* COWAN, [1926] 1 D. L. R. 29 ; [1926] S. C. R. 142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—B. (b).

sf. *Succession Duty Act*, 1915 (*c.* 27) (*N. B.*)—*Absolute power of appointment.*]—PROVINCIAL SECRETARY-SURER *v.* SCHOFIELD (N. B.), [1923] 2 D. L. R. 1144.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—A.

p i. —— *Bonds issued by Dominion Government to testator resident in province.*]—Certain bonds were issued to a testator resident in Alberta by the Govt. of Canada under statutory authority, & on his death his exors. raised the question whether succession duties with respect to the bonds were assessable by the Province of Alberta under Succession Duties Act of Alberta, s. 27, which provided that " all property of the owner thereof situate within the Province & passing on the death shall be subject to succession duties." The bonds passed on the death of testator. The register of bondholders was at Ottawa in Ontario : —*Held :* as the bonds constituted a statutory obligation they were debts by specialty & therefore in point of liability to taxation had their local situation at the testator's place of residence in Alberta & were subject to the duties in question.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA [1930] A. C. 144 ; 46 T. L. R. 25.—**CAN.**

714. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

718. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

719. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

724. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Realty outside province—Devised under trust for sale—Testator domiciled in province.*]—Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

q i. —— —— *Agreement for sale.*]—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement :—*Held :* V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—VAUGHN *v.* A.-G. FOR ALBERTA, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—**CAN.**

sk. *Mortgages on land outside province—Owner domiciled within province.*]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* PARKER, [1926] 1 D. L. R. 783; [1926] 1 W. W. R. 1105; 60 B. C. R.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—C.

b i. —— *Shares held in company incorporated in province.*]—Shares in a co. incorporated in Ontario, which were recorded in the name of a foreigner domiciled in the State of Michigan, who died there, were held liable to succession duty in Ontario.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161, P. C.—**CAN.**

b ii. —— *Shares held in company with head office in province.*]—The Province has no power to levy succession duty on the shares of a co. merely because the co. has a head office within the province.—*Re* MACFARLANE, [1933] 1 D. L. R. 345; O. R. 44.—**CAN.**

b iii. —— *Simple contract debt.*]—For the purpose of succession duty a simple contract debt owed by a co. with its head office & place of business outside the Province is property outside the Province.—A.-G. FOR ONTARIO *v.* FASKEN, [1935] 1 D. L. R. 718; *affd.*, [1935] 3 D. L. R. 100; O. R. 288.—**CAN.**

k i. —— ——.]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA *v.* WILSON (B. C.), [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 265.—**CAN.**

k ii. —— ——.]—Testator, whose domicil was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan :—*Held :* the securities were subject to duty under Succession Duty Act, R. S. O., 1914 (c. 24).—A.-G. FOR ONTARIO *v.* BABY, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—**CAN.**

k iii. —— ——.]—Debenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick :—*Held :* not liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n i. —— *Specialty debt.*]—A mtge. debt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—ROYAL TRUST CO. *v.* PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK, [1925] 2 D. L. R. 49; [1925] S. C. R. 94; *revsg.*, 52 N. B. R. 21.—**CAN.**

n ii. —— ——.]—Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death :—*Held :* liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n iii. —— ——.]—The Crown, in the right of the province of Quebec, by its action claimed the sum of $15,775.95, as representing succession duties alleged to be due by resp., as sole trustee & exor. of the estate of the late S. who died in New York in 1929 & was at the time of his death domiciled in the province of Ontario. Amongst the assets of his estate were certain bonds or debentures of the Grand Trunk Pacific Railway Co. & the Canadian National Railway Co., respectively, guaranteed by the Govt. of Canada. These bonds or debentures, registered in Montreal, were at the time of S.'s death in the possession of the latter in Toronto. Succession duties were paid to the Govt. of the province of Ontario; but the Govt. of the province of Quebec also claimed succession duties on the ground that these bonds or debentures were to be considered for succession duty purposes as property situate in the province of Quebec according to the definition of the word "property" in sect. 5 of Succession Duties Act, because the two cos. debtors had their head offices at Montreal & the bonds & debentures were registered & transferable on the cos.' registers in that city :—*Held :* those bonds or debentures had not, in the relevant sense, a local situation within the province of Quebec, &, therefore, were not subject to the payment of succession duties in that province. Debentures authorised by the Parliament of Canada & charged by statute upon the Consolidated Revenue Fund have the character of specialties. The Grand Trunk Pacific Railway Co. has statutory powers to create bonds having the character of specialties. The bonds in this case must, as respects the obligation of the railway co., be considered specialties, although the head office of the co. is fixed by statute in Quebec; &, in view of the statute law applicable to the case, it must be held such a specialty has its *situs* in Ontario. Neither, for the reasons fully stated in the judgment, have the bonds of the Canadian National Railway Co. in question in this case a *situs* in Quebec. —R. *v.* NATIONAL TRUST CO., [1933] S. C. R. 670; 4 D. L. R. 465.—**CAN.**

n iv. —— ——.]—The vendor under an agreement for the sale of land in Sask. died domiciled in Alta. At his death there was a large amount still payable under the agreement. The agreement was made in Sask. & described the parties as both resident at S. in that province; & the purchaser continued to live there. It also provided that the money payments as well as the deliveries of grain thereunder were to be made in Sask. & that it should for all purposes be construed according to the laws of Sask. All the beneficiaries of the estate were domiciled elsewhere than in Alta. The agreement was executed in duplicate under seal. Upon the vendor's death his copy was found in his safety deposit box in Edmonton & was there reduced into the possession of the administrator of his estate; the purchaser's copy was then & had at all material times been in the possession of the purchaser within Sask. The province of Alta. contended that the debt due under the agreement was subject to succession duties under Succession Duty Act, 1934 (Alta.) :—*Held :* the rule that the *situs* of a specialty debt is the place where it is found in the creditor's possession at his death was not affected by the fact that the purchaser's copy of the duplicate agreement was in the latter's possession in Sask. Therefore, Alta. had the right to impose the tax. All the cases dealing with the *situs* of specialty debts in which the test put is where is the specialty "found," or where is it "conspicuous," or where does it happen "to be," relate as a matter of course to the specialty as the property of the creditor in his possession or in some place where he has placed it.—SCHMIDT *v.* ALBERTA PROVINCIAL TREASURER & A.-G. FOR ALBERTA, [1935] 3 W. W. R. 498; 4 D. L. R. 752; 5 F. L. J. (Can.) 211.—**CAN.**

n v. —— ——.]—B., who died domiciled & residing in Minnesota, had deposited $50,000 in the Winnipeg branch of a Canadian bank & received a receipt by which the bank undertook to repay the money to him or order, on 15 days' notice, with interest at 2½ per cent. "until further notice," & which stated : "This receipt is negotiable." The receipt was found among B.'s possessions in Minneapolis upon his death there. His exors. & beneficiaries all live in the United States. Manitoba contended that duties under Succession Duties Act, 1934, were payable on said deposit & interest. Montague, J., allowed the claim, & the exors. appealed :—*Held :* the appeal should be allowed.—*Re* BENNETT ESTATE, MANITOBA PROVINCIAL TREASURER *v.* BENNETT, [1936] 1 W. W. R. 691; 2 D. L. R. 291; 44 Man. L. R. 63; *on appeal*, [1937] S. C. R. 138; 2 D. L. R. 1.—**CAN.**

o i. —— —— *Registered outside province.*]—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province" :—*Held :* as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained. —BRASSARD *v.* SMITH, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—**CAN.**

o ii. —— —— ——.]—The words "or elsewhere" in sect. 42 (5) of Bank

725. *Add. Annotation:*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

726. *Add. Annotation:*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798

732. *Add. Annotation:*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

755a. ——.]—*Re* BATEMAN (BARONESS), No. 107a, *ante*.

765. *Add. Annotation:* — **Consd.** *Re* Bateman, [1925] 2 K. B. 429.

777a. —— **Devise for life "free of all duties"—Liability for succession duty on death of tenant for life.**]—Testator devised "free of all duties" certain premises to his trustees upon trust to permit S. to have the use & occupation of the same during her life, & after her death he directed his trustees to stand possessed thereof in trust for M. absolutely in fee simple. He also devised & bequeathed the residue of his real & personal estate to his trustees upon trust, after payment of his debts, funeral & testamentary & trust expenses & legacy, succession & other duties, to divide the same into thirty-four equal parts, & to stand possessed of one of such equal parts in trust for each of thirty-four residuary legatees named therein. A question arose whether the succession duty payable on the death of S. would be payable out of the residuary estate or out of the property so devised & by the person or persons entitled thereto upon her death:—*Held:* upon the true construction of the will the words "free of all duties" applied only to the succession duty presently payable on the death of testator, & did not extend to the succession duty payable on the death of S.—*Re* TRIMBLE, WILSON *v.* TURTON, [1931] 1 Ch. 369; 100 L. J. Ch. 73; 144 L. T. 612.

780. *Add. Annotations:*—*As to* (1) **Consd.** A.-G. *v.* De Trafford (1933), 49 T. L. R. 577. *As to* (2) **Consd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *Generally*, **Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

796. *Add. Annotations:*—**Consd.** A.-G. *v.* Bedford, [1926] 2 K. B. 184. **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

796a. —— —— **Finance Act, 1925 (c. 36), s. 24.**]—Circumstances (*see* No. 90a, *ante*) in which:—*Held:* succession duty was not payable, since the above sect. was not retrospective.—A.-G. *v.* BELILIOS [1927] 2 K. B. 439; 43 T. L. R. 669; *revsd.* without affecting this point, [1928] 1 K. B. 798, C. A.

Act, both under their ordinary meaning & in the light of prior legislation, are adequate to provide for the establishment of places for registration & transfer of shares outside the Canadian territory, in respect of shares owned by persons not resident in Canada.—R. *v.* CUTTING, [1932] S. C. R. 410; 3 D. L. R. 273.—**CAN.**

p. For the paragraph in the original volume substitute the following paragraph:—

—— *Owner not domiciled within province—Recognition of status of "wives."*]—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sl. *Declaration of trust several years before death.*]—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died:—*Held:* the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—COWAN *v.* A.-G., [1925] 2 D. L. R. 647; [1925] 1 W. W. R. 993; 21 Alta. L. R. 241; *revsd.*, [1926] 1 D. L. R. 29.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

sm. *When exemption applicable.*]—The exemption from the payment of the 1 per cent. succession duty payable under Succession Duty Act, 1853 (c. 51), s. 10, & the additional ten shillings per cent. payable under Customs & Inland Revenue Act, 1888 (c. 8), only arises where estate duty is payable under Finance Act, 1894 (c. 30), & the principal value of the estate does not exceed £15,000.—A.-G. *v.* JAFFÉ, [1935] N. I. 97.—**IR.**

PART V. SECT. 3, SUB-SECT. 7.

cl. —— *Validity.*]—There is nothing in Succession Duty Act, 1923 (c. 13), or other statutes of Saskatchewan to prevent a testator from directing that legacies be paid free from succession duty.—*Re* ANDERSON ESTATE, CANADA PERMANENT TRUST CO. *v.* MCADAM, [1928] 4 D. L. R. 51; [1928] 2 W. W. R. 365; 22 Sask. L. R. 610.—**CAN.**

c ii. —— *Bequest of residue not exonerated.*]—Testator made bequests out of residue, *inter alia*, to two educational institutions in Ontario & to two Minnesota charities. By the will, all legacies, funds & stocks transferred to trustees were declared to be "free of succession duty" & certain other legacies were to be "free of all succession duty":—*Held:* the gifts of residue to the four charities not being in any sense free of succession duties, each must bear its share of the duties imposed in respect of its share of the residue.—*Re* WHITNEY (1930), 66 O. L. R. 339.—**CAN.**

sq. *Legacy subject to payment of all succession duty payable on estate—Whole legacy included in estate in determining rate of duty—Portion of legacy applied in payment of duty exempt from duty.*]—STAMP DUTIES COMR. *v.* LANSDOWNE (1927), 40 C. L. R. 115.—**AUS.**

PART V. SECT. 4.

so. *Provincial duty — Assets in province forming part of larger estate—Deceased domiciled outside province.*]—Deceased, domiciled outside British Columbia, left personal property of $1,000,000 of which $10,000 was in British Columbia:—*Held:* under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first $100,000, 2½ per cent. on the second $100,000 & 5 per cent. on the balance; of the sum thus ascertained the $10,000 within the province was charged with its proportion which was taken by the province.—*Re* SUCCESSION DUTY ACT, *Re* HECHT, [1924] 1 W. W. R. 1153; 33 B. C. R. 154.—**CAN.**

sd. *Construction of Succession Duty Act*, 1930 (*Man.*), *s.* 8 (1).]—*Re* TILT ESTATE, [1933] 1 W. W. R. 694.—**CAN.**

se. *Deceased domiciled outside Province—Property within Province.*]—Under Succession Duty Act, R. S. B. C., 1924, in the case of an estate subject to sect. 7 thereof, all the property subject to duty is taxed, not under a graduated scale, but at the rate opposite the highest group in Sched. "D" in which the estate is arranged when classified for the purposes of said schedule according to its net value, even though only part of the estate is property situate within the Province.—*Re* UNTERMEYER ESTATE, [1933] 1 W. W. R. 705; 46 B. C. R. 547.—**CAN.**

sf. *Surtax under* 1932 *Act—Not applicable where death before Act in force.*]—*Re* MCINTYRE ESTATE, [1933] 2 W. W. R. 257.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

d i. —— —— *Shares.*]—*Held:* with respect to a very large block of shares in a mining co., the "fair market value" could not be said to be the price which probably would have been obtained had the whole block of shares been put on the market at once, in view of the number of shares & the limited market, that course would undoubtedly have depressed the market price, & the exors. were not bound to offer the shares for sale at one time or at all; nor should said value be fixed at the price which would probably have been obtained from underwriters had a sale *en bloc* been made to them at the time of the death.—UNTERMEYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1928] 3 D. L. R. 311; [1928] 2 W. W. R. 209; 39 B. C. R. 533; *affd.*, [1929] 1 D. L. R. 315; S. C. R. 84.—**CAN.**

d ii. —— ——.]—"The fair market value" in sect. 3 of Succession Duty Act, 1934, is the price which could probably have been obtained in the open market at said date.—*Re* LEISER, FORMAN & FOWKES *v.* MINISTER OF

799a. ——.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—A.-G. *v.* BEDFORD (DUKE), [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

824. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

853. *Add. Annotation:*—**Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

861. For citation read "No. 268, *ante*."

SUB-SECT. 2.—POWER TO RAISE THE DUTY (p. 114).

861a. Provision for payment by court—Extent of powers.]—The power of the ct. under sect. 53 of the Succession Duty Act, 1853 (c. 51), s. 53, to direct payment out of any fund under the control of the ct. in an administration action, of legacy or succession duty, does not

FINANCE, [1937] 2 D. L. R. 341; 2 W. W. R. 428; 51 B. C. R. 368.—**CAN.**

h i. —— ——.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty &, being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—BLACKMAN *v.* R., [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—**CAN.**

h ii. —— ——.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed $5,000 & no duty was payable:—*Held:* the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—R. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Alta.), [1926] 4 D. L. R. 874; [1926] 3 W. W. R. 461.—**CAN.**

h iii. —— ——.]—The essential precedent to the jurisdiction of the ct. under Succession Duties Act, 1922, c. 28, s. 38, is that there is property the liability of which to duty is in question & has to be determined by the judge. Therefore, when an exor. on applying for probate placed a valuation on the estate for the purpose of succession duty & this valuation was accepted by the Crown, the ct. cannot grant relief under said section.—*Re* SPENCE ESTATE, [1928] 1 D. L. R. 644; [1928] 1 W. W. R. 71; 23 Alta. L. R. 109.—**CAN.**

sp. *Aggregate value—Succession Duty Act, C. S.*, 1903 (c. 17).]—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

sq. *Legacy to beneficiary — Share of residue to same beneficiary.*]—Testator gave a pecuniary legacy to A., & the residue of his estate upon trust to pay the income to the mother of A. for life, & after her death to divide the capital among her children, of whom A. was one. Succession duty was assessed as if A. were the sole survivor entitled to the residue, & to this amount was added the legacy. Duty was then assessed at the rate appropriate to this total:—*Held:* duty was not to be assessed on the legacy as though the whole of residue had been given to A. subject only to the life interest.—*Re* SHORT, SHORT *v.* REGISTRAR OF PROBATES, [1928] S. A. S. R. 220.—**AUS.**

sr. *Gift inter vivos—Value at time of death.*]—Succession Duty Act of Ontario by sect. 8 charges to duty all property situate in Ontario passing on the death of any person, & provides that property so passing is to be deemed to include (*inter alia*) any property taken under a disposition operating as an immediate gift *inter vivos* made since July 1, 1892. It is provided by sect. 4 that the dutiable value of property is to be its fair market value at the date of the death of the deceased. A resident of Ontario died in 1929, having in 1925 transferred to his wife as a gift shares in a co. registered & having its office in Ontario. The value of the shares at the date of the gift was $50,240, & at the date of the death of the deceased $264,183.50. It was not disputed that the shares were dutiable under the Act:—*Held:* the duty was payable upon the value at the date of the death of deceased.—A.-G. FOR ONTARIO *v.* NATIONAL TRUST CO., LTD., [1931] A. C. 818; 100 L. J. P. C. 15; 145 L. T. 673; 47 T. L. R. 625, P. C.—**CAN.**

st. —— ——.]—Under Succession Duty Act, R. S. A., 1922, the value of property which was the subject of a gift *inter vivos* is to be taken for the purpose of calculating the duty as of the date of the death of the donor.—A.-G. FOR ALBERTA *v.* PEARCE, [1931] 3 W. W. R. 400; [1932] 1 D. L. R. 587; 25 Alta. L. R. 553.—**CAN.**

sv. —— *Sale at undervalue.*]—R. & A.-G. FOR SASKATCHEWAN *v.* MEILICKE, [1937] 3 W. W. R. 433.—**CAN.**

sw. *Agreement between parties as to value.*] — *Re* RYALL ESTATE, *Re* MCMENEMY ESTATE, [1934] 2 W. W. R. 288.—**CAN.**

sz. *Determination of present value of income.*]—*Held:* sect. 30, Succession Duty Act, 1934, does not authorise the finding of an annual income by a calculation of 5 per cent. on the net value of an estate; its sole purpose is to fix the present value of a known fixed annual income.—*Re* HAMILTON ESTATE, [1935] 1 W. W. R. 549; 5 F. L. J. (Can.) 51.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sv. *"Net value"—Mode of calculation—Aggregate value including life insurance money.*]—R. *v.* MEIBACH, [1927] 2 D. L. R. 1020; [1927] 1 W. W. R. 981; 22 Alta. L. R. 482.—**CAN.**

sx. *Debts, encumbrances & expenses.*] —*Held:* under Succession Duty Act, R. S. N. B., 1927, the debts, encumbrances & expenses should be deducted from the value of all the property passing on the death of testator within the meaning of the Act, including both the assets liable for the payment of debts, encumbrances & expenses & the property not so liable.—FRASER *v.* PROVINCIAL SECRETARY-TREASURER, [1935] S. C. R. 133.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

sw. *Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C.*, 1911 (c. 217).]—MINISTER OF FINANCE *v.* CALEDONIAN INSURANCE CO., *Re* LAND REGISTRY ACT & HIGGINSON, [1923] 4 D. L. R. 439; [1923] 3 W. W. R. 925.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.

sa. *Postponement — Disputed claim against estate.*]—Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor.—*Re* SUCCESSION DUTY ACT & SPROULE, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—**CAN.**

sg. *Before interest vested in possession.*]—The word "passes" in Succession Duty Act, 1934, s. 38 (1), is not restricted to property finally vesting in the beneficiary upon distribution of the estate.—*Re* DRUMMOND ESTATE, MINISTER OF FINANCE *v.* DRUMMOND, [1936] 2 W. W. R. 635; 4 D. L. R. 164; 50 B. C. R. 485.—**CAN.**

PART V. SECT. 6, SUB-SECT. 3.—A.

sb. *"Sister" of deceased—Succession Duty Act Amendment Act*, 1899, s. 2 (4) *—Includes half-sister.*]—*Re* OLIVER (1901), 8 B. C. R. 91.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.

sd. *From what date payable—Succession Duty Act, R. S. B. C.*, 1924 (*c.* 244).]—*Re* OLDFIELD ESTATE, *Re* SUCCESSION DUTY ACT (B. C.), [1927] 4 D. L. R. 711; [1927] 3 W. W. R. 361.—**CAN**

se. —— ——.]—Where under Succession Duty Act, R. S. B. C. 1924, c. 244, the exors. elect to pay the duty on a contingent estate within two years from the death of the deceased, & a time is fixed by the Lieutenant-Governor in Council for the payment thereof, no interest on said duty is chargeable except from the date so fixed. — WILSON *v.* MINISTER OF FINANCE, [1928] 3 D. L. R. 253; [1928] 2 W. W. R. 585.—**CAN.**

sf. —— *Succession Duty Act*, 1924, *declared ultra vires—Interest under new Succession Duty Act*, 1931.]—Testator died on Aug. 16, 1933, when the then Succession Duty Act, R.S.B.C., 1924, purported to be in force. By a judgment delivered on Nov. 29, 1933, & affirmed by the Ct. of Appeal on Feb. 20, 1934, said Act was declared to be *ultra vires*. On Mar. 29, 1934, the new Succession Duty Act, 1934, came into force: & sect. 50 of that Act provided that it should be retroactive & should apply in respect of persons who had died since Apr. 11, 1894, & further provided that that Act should be deemed to be & to declare the law relating to the matter of succession duty payable upon the death of any person dying before the commencement of the Act, whether or not the

enable the duty payable in respect of a bequest, etc., to one person to be deducted from the assets comprised in a bequest, etc., to another person. It only enables duty owing by a legatee to be paid out of any other property to which he is entitled & which is under the control of the ct.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524; 104 L. J. Ch. 254; 153 L. T. 295; 51 T. L. R. 404.

Part VI.—Probate Duty.

894. *Add. Annotation:*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

902. *Add. Annotation:*—*As to* (1) **Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

914. *Add. Annotations:*—**Apprvd.** Brassard *v.* Smith, [1925] A. C. 371. **Apld.** Baelz *v.* Public Trustee, [1926] Ch. 863; Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771. **Consd.** Erie Beach Co., Ltd. *v.* A.-G. for Ontario, [1929] 46 T. L. R. 33. **Refd.** A.-G. *v.* Sudeley, [1896] 1 Q. B. 354; A.-G. *v.* New York Breweries Co., [1898] 1 Q. B. 205; *Re* Aschrott, Clifton *v.* Strauss, [1927] 1 Ch. 313; London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

917. *Add. Annotations:*—*As to* (1) **Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58. *Generally*, **Refd.** Inland Revenue Comrs. *v.* Smith, [1930] 1 K. B. 713.

919. *Add. Citation:*—*Subsequent proceedings* (1833), 5 B. & Ad. 78.

949. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

Part VIII.—Foreign Duties.

958. *Add. Annotation:*—**Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

959. *Add. Annotation:*—*Generally*, **Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

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matter was pending or has been adjudicated on by any ct., etc.:—*Held:* since an *ultra vires* Act is one which never had any legal being the present application must be dealt with as if there had been no succession duty Act prior to the present one, & since the present Act was not passed until more than six months after the death of testator, appct. had brought himself within said sect. 38 (1); &, therefore, interest should be chargeable from May 31, 1934.—*Re* MERCER ESTATE, [1934] 3 W. W. R. 382; 49 B. C. R. 294.—**CAN.**

sg. *Extension of date from which interest runs—Application for—Time for making.*]—*Held:* such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—*Re* FARMER, [1926] 1 D. L. R. 894; [1926] 1 W. W. R. 366; 36 B. C. R. 334.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.

sj. *Hearing of summons under Succession Duty Act, R. S. B. C.* 1924 (c. 244), s. 34—*Must be before judge who issued summons.*] — *Re* CLAPHAM, MINISTER OF FINANCE *v.* BURKE-ROCHE (B. C.), [1925] 4 D. L. R. 325; *on appeal sub nom.* R. *v.* BURKE-ROCHE (1926), 37 B. C. R. 313.—**CAN.**

PART V. SECT. 9.

sl. *When repayment carries interest.*]—Succession Duties Act, 1893, s. 34 (2), relating to the payment of interest on succession duty repaid applies only to the repayments of succession duty assessed under sect. 34 (1).—*Re* KNOX (1927), S. A. S. R. 264.—**AUS.**

PART VI. SECT. 1.

so. *Payment to registrar.*]—Probate duty is assessed & collected by the registrar, who is an "officer of the ct. generally." On payment he must issue probate.—*Re* SAYWARD (1934), 49 B. C. R. 307.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—B.

886 i. *Not liable to duty—Under Probate Duty Act, R. S. B. C.*, 1924 (c. 202).]—BOWMAN *v.* A.-G. (B. C.) [1926] 4 D. L. R. 834.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

900 iv. ——.]—S. at the time of his death was beneficially entitled to a certain share in his deceased father's estate. That estate was vested in a certain co. & one W. E. S. as trustee. The co. carried on business & had its head office in Victoria &, although registered in N.S.W., had no independent office of its own there but carried on its business in the office of another co. W. E. S. resided in N.S.W. All the administrative work in the estate had always been done in Melbourne, where all meetings of the trustees were held, all income received, & all investments made. Duty on the assets in question had been paid in Victoria:—*Held:* S.'s interest in his deceased father's estate was not subject to probate duty in N.S.W.—PERPETUAL TRUSTEE CO., LTD. *v.* STAMP DUTIES COMR. (SARGOOD'S CASE), (1936), S. R. N. S. W. 160; 53 N. S. W. W. N. 28.—**AUS.**

PART VI. SECT. 3.

a i. —— —— *Deed of gift.*]—STAMPS COMR. *v.* SKINNER (1926), 29 W. A. L. R. 58.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 1.

d i. ——.]—The value on an open market is the best guide to the value of stocks for valuation purposes.—*Re* COLLINS, TORONTO GENERAL TRUSTS *v.* A.-G. FOR BRITISH COLUMBIA, [1935] 3 D. L. R. 603.—**CAN.**

ESTOPPEL.

Part I.—Nature and Classification.

5. *Add. Annotation :—As to* (3) **Refd.** H. *v.* H., [1928] P. 206.

7. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

8. *Add. Annotations :* — **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Russell (Countess) *v.* Russell (Earl), [1935] P. 39; Knott *v.* Knott, [1935] P. 158.

9. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

10. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

10a. ——.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

11. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

28. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557; Bartlam *v.* Evans, [1936] 1 K. B. 202.

Part II.—Estoppel by Matter of Record.

52. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

63. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

96. *Add. Annotations :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Refd.** L. *v.* L. (1934), 50 T. L. R. 441; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

103a. ——.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—COHEN *v.* JONESCO, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *revsd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.

104a. —— ——.]—An order by consent is binding unless & until it has been set aside in proceedings constituted for that purpose. Pltf. in an action based upon charges which he has withdrawn by a consent order in a previous action between the parties is estopped by

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PART II. SECT. 1.

sa. *Prior action must be identical.*]—Upon appeal from the order of a judge summarily dismissing an action upon the ground that the issues therein had been determined by a ct. of concurrent jurisdiction in an earlier action between the same parties :—*Held :* the identity of the issues in the two actions was not clear upon the material before the ct., & therefore the order should be set aside & the action allowed to proceed to trial, the question of *res judicata* being left open.—ANDERSON *v.* AMELIASBURG, [1931] 2 D. L. R. 359; 66 O. L. R. 583.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) i.

sx. *Issue withdrawn from jury.*]—In a petition for restitution the husband alleged cruelty in his cross-petition. After evidence had been given counsel abandoned the claim on the cross-petition & the jury were thereupon discharged from finding upon this issue. In a subsequent suit where cruelty was again alleged :—*Held :* these facts did not amount to an estoppel.—CARNEGIE *v.* CARNEGIE (1886), 17 L. R. Ir. 430.—**IR.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) ii.

sb. *Irregularities in procedure.*]—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re* DOTY & MARKS, [1925] 4 D. L. R. 740.—**CAN.**

sc. *Action on immoral contract.*]—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that "this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs" :—*Held :* the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—GUILBAULT *v.* BROTHIER (1904), 24 C. L. T. 342; 10 B. C. R. 449.—**CAN.**

sf. *Dismissal of motion for mandamus.*]—Dismissal of a motion for *mandamus* to levy a tax for school purposes is *res judicata* barring renewal of such motion.—*Re* OTTAWA COLLEGIATE INSTITUTE, [1937] 2 D. L. R. 230.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iii.

p i. —— ——.]—While a judgment dismissing an action on default of appearance by pltf. at the trial has the same effect as a judgment for deft. upon the merits it does not follow necessarily that from such a judgment an estoppel by *res judicata* arises. On that question being raised in a subsequent action it is the duty of the ct. to look into the proceedings in the previous action & ascertain definitely what matters were in fact decided by the judgment therein. & if that judgment was founded on proceedings which do not disclose a vital defect which existed in a contract set up therein, such as the defect of illegality or invalidity, it cannot be said to have made that contract valid & enforceable notwithstanding the defect.—ELIAS *v.* DUERKSEN & DUERKSEN, [1930] 2 W. W. R. 481; 4 D. L. R. 677; 24 S. L. R. 562.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iv.

104 i. —— *Consent order.*]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct. :—*Held :* the consent order operated as an estoppel.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

104 ii. —— ——.]—*Re* DRUMMOND, BENN *v.* HAWTHORNE, [1931] 4 D. L. R. 188; [1932] S. C. R. 73.—**CAN.**

t i. ——.]—Action for foreclosure of a mtge. Pltf. & deft. P. had been parties to a prior action in which the main issue was the ownership of the land covered by the mtge. & in which a consent judgment was given dismissing the action as against the present pltf. & declaring that the title to the land was subject to the mtge. now sought to be foreclosed & vesting the land in P. subject to said mtge. P. now raised the defence of adverse possession, a point which had not been brought forward by her in the former action :—*Held :* on the principle of *res judicata* or, at least, on the principle

the order, & cannot effectively plead in reply that his consent was induced by fraudulent concealment.—KINCH *v.* WALCOTT, [1929] A. C. 482 ; 98 L. J. P. C. 129 ; 141 L. T. 102, P. C.

114. *Add. Annotation :*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

122. *Add. Annotation :*—**Refd.** King *v.* Sunday Pictorial Newspapers (1920), Ltd. (1924), 133 L. T. 397.

140. *Add. Annotation :—As to* (2) **Refd.** Lindsay *v.* Lindsay, [1934] P. 162.

148. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

151. After this case add "**Decree for restitution of conjugal rights.**]—*See* HUSBAND & WIFE, No. 4767a."

153a. Re-registration of birth of illegitimate child.] —The re-registration, as provided for in the schedule to Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In authorising the re-registration the Registrar-General does not act in a judicial capacity & the re-registration of the birth does not create a *res judicata.* —JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192.

163. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

183. *Citation :*—For "*subsequent proceedings*" read "*affd.*"

190. After this case add "—— ——.]—*See, also,* INSURANCE, Vol. XXIX., pp. 122, 182–184, Nos. 752, 1404–6, 1408, 1409, 1420, 1422."

204a. —— **For deduction of costs—Not res judicata.**] —Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay the balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final :—*Held :* the master's order allowing the deduction of costs was not *res judicata,* but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—ALLNUTT *v.* MILLS (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "**In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20).**]—*See* MINES, Vol. XXXIV., pp. 635, 636, No. 325."

213. *Add. Annotations :—As to* (1) **Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241; Freshwater *v.* Bulmer Rayon Co., Ltd., [1933] 1 Ch. 162 ; Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408 ; Lindsay *v.* Lindsay, [1934] P. 162 ; Rentit, Ltd. *v.* Duffield, [1937] 3 All E. R. 117. *As to* (4) **Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

214a. ——.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—EASTWOOD & HOLT *v.* STUDER (1926), 31 Com. Cas. 251.

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that a judgment is conclusive proof between the parties of the matters actually decided, said defence was not open to P.—CANADA PERMANENT CORPN. *v.* CHRISTENSEN (B. C.), [1929] 3 D. L. R. 864 ; 2 W. W. R. 198.—**CAN.**

h l. ——.]—AIKINS *v.* BLAIN (1865), 11 Gr. 212.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) viii.

r l. —— *Code of Civil Procedure, s.* 207.]—Applt., who had brought an action in his unregistered business name against resp. to recover the balance of moneys alleged to be due on a running account, obtained a decree of the District Ct. in his favour subject to his complying with the terms of the Ceylon Business Names Registration Ordinance within a limited period. Against that decree resp. appealed to the Supreme Ct. of Ceylon, & the present applt., faced with the possibility that if resp.'s appeal succeeded any further proceedings might be barred by limitation, instituted a second suit against resp. in respect of the same subject-matter. This second action was dismissed in the District Ct. on the ground of *res judicata,* & against that decision the present applt. appealed. The Supreme Ct. of Ceylon allowed resp.'s appeal in the first action, & dismissed the present applt.'s appeal in the second action. On an appeal to the Privy Council in the second action :—*Held :* under sect. 207 of the Civil Procedure Code no decree from which an appeal lies & has in fact been taken, but not yet determined, is final between the parties so as to form *res judicata,* & therefore the second action would be remitted to the District Ct. to proceed as accords.—ANNAMALAY CHETTY *v.* THORNHILL, [1931] A. C. 697 ; 145 L. T. 415 ; 47 T. L. R. 459 ; 75 Sol. Jo. 393, P. C. ; *sub nom.* CHETTY *v.* THORNHILL, 100 L. J. P. C. 174.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.—B. (c).

201 i. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator.*]—D.'s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non.* Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father's directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form :—*Held :* being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—DOOLEY *v.* DOOLEY, [1927] I. R. 190.—**IR.**

204 i. ——.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—DIAMOND *v.* WESTERN REALTY CO., [1924] 2 D. L. R. 922 ; [1924] S. C. R. 308.—**CAN.**

sf. *Order striking out guardian ad litem's name from record.*]—*Held :* not to operate as *res judicata.*—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND.**

sk. *Order giving leave to renew application for security for costs.*]—SEDZIAK *v.* POLISH WORKERS ASSOCIATION (NO. 2), [1937] 3 W. W. R. 527.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

213 x. ——.]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044 ; 61 O. L. R. 327.—**CAN.**

215. *Add. Annotations:—As to* (2) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251. *As to* (4) **Refd.** Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408.

222a. ——.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921–22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held:* the Special Comrs. were not bound by the decision of the recorder regarding the 1920–21 appeal to discharge the 1921–22 assessment. — EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotation:—**Refd.** I. R. Comrs. *v.* "Old Bushmills" Distillery Co., Ltd. (1927), 12 Tax Cas. 1148.

224a. Finding of adultery.]—A finding of adultery as a fact on which a decree *nisi* has proceeded is not *res judicata*, so that it cannot subsequently be questioned in the Divorce Div. in any event, nor is resort to the Ct. of Appeal the only means of reviewing it.—CHALMERS *v.* CHALMERS, [1930] P. 154; 99 L. J. P. 60; 142 L. T. 654; 46 T. L. R. 269; 74 Sol. Jo. 216.

229a. Judgment in action on bond—Subsequent action on another bond of same series.]—Defts. issued on Aug. 1, 1884, 6,000 First Mtge. Gold Bonds of like amount, tenor & date. The bonds were secured by a mtge. trust deed & all became due on Aug. 1, 1934. The bonds stated that on that date defts. for value received promised "to pay to the bearer or registered holder thereof £100 sterling gold coin of Great Britain of the present standard of weight & fineness at its agency in London, England, with interest thereon" at 5 per cent. *per annum* payable in London or at the holder's option at deft.'s office in New Brunswick. The interest coupon stated that the co. would pay the bearer £2 10*s.* sterling at its agency in London, England, or at its office in New Brunswick on Aug. 1, 1934. Pltfs., a holder of 992 such bonds, claimed in respect of each bond the sum in sterling calculated on Aug. 1, 1934, then representing the gold value of £100 on Aug. 1, 1884:—*Held:* pltfs. were not entitled to be paid on such gold basis, but only £100 sterling; because upon the true construction of the bond, & the question was purely one of construction, the contract was not one for a payment of gold *in specie*, but one for the repayment of £100 sterling. The interest was similarly payable in sterling.

In an action between the same parties upon one of the said bonds pltfs. obtained judgment on Nov. 7, 1934, upon the gold basis now claimed, the present defts. not having put in any defence to that action. The statement of claim in that action did not allege that all the bonds were identical in their terms:—*Held:* there was no estoppel by record, because each bond was a distinct contract &, further, the record of the previous action did not show that all the bonds were in the same terms.—BRITISH & FRENCH TRUST CORPN. *v.* NEW BRUNSWICK RY. CO., [1936] 1 All E. R. 13; 154 L. T. 191; 80 Sol. Jo. 148; *revsd.*, [1937] 4 All E. R. 516, C. A.

PART II. SECT. 3, SUB-SECT. 1.—B.

sk. *Agency.*]—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—PLUMB *v.* MACDONALD (W. C.) REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD., [1926] 1 D. L. R. 899; 58 O. L. R. 322.—**CAN.**

sl. *Decided by jury in ejectment action.*]—The judgment in an action of ejectment is only an estoppel between the parties as to the statutory issue whether the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169; 45 N. S. W. W. N. 23; *affd.*, 41 C. L. R. 540.—**AUS.**

sm. *In action of ejectment.*]—The judgment in an action of ejectment is only an estoppel between the parties on the statutory issue as to whether or not the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1928), 29 S. R. N. S. W. 51; 46 N. S. W. W. N. 22.—**AUS.**

PART II. SECT. 3, SUB-SECT. 1.—B. (c).

225 i. *General rule.*]—Where the cause of action is different from what it was in the first action, the matter is not *res judicata*.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 1.—B. (d).

230 xvii. ——.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922–23;—*Held:* the recorder's decision on the assessment for 1921–22 was binding, & the question was *res judicata*.—ALYMER *v.* MAHAFFEY, [1925] N. 167 10 Tax Cas. 594.—**IR.**

230 xviii. ——.]—WILSON *v.* CAMERON (1842), 1 Kerr, 542.—**CAN.**

230 xix. ——.]—CHAMBERS *v.* DOLLAR & STEVENSON (1870) 29 U. C. R. 599.—**CAN.**

230 xx. ——.]—JONES *v.* CITY OF ST. JOHN (1901), 31 S. C. R. 320.—**CAN.**

230 xxi. ——.]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—**CAN.**

r i. —— ——.]—A vendor of land sued for cancellation of the agreement for sale, & for possession, alleging the purchaser's default in payment of interest & taxes; & [illegible] ment for possession & a declaration that the agreement had become null & void. The purchaser counterclaimed for repayment of all amounts paid by him &, by the judgment, recovered all amounts in excess of the first payment. The vendor subsequently brought the present action, claiming damages for loss on a re-sale of the land, & sums expended by him in repairs & for taxes:—*Held:* while, in the first action, the claims now made were not all claimed directly as specific relief to which the vendor would be entitled upon cancellation of the agreement, yet they were all urged as separate reasons why the amount recovered by the purchaser should not be returned to him. The claims now made were thus all before the ct. in the first action; & therefore could not be made the subject of another action.—KRAUSE *v.* YORK, [1932] S. C. R. 548; 2 D. L. R. 701; *affg.*, [1932] 1 D. L. R. 270; O. R. 29. —**CAN.**

sh. *Action to set aside fraudulent conveyance — Finding that plaintiff secured creditor.*]—In an action by a judgment creditor against a husband & wife to set aside as in fraud of the husband's creditors a transfer made by him to his wife:—*Held:* a finding, in a prior action by the same creditor against the husband, that pltf. was an amply secured creditor at the time of the transaction, estopped pltf. as against the husband, who had pleaded *res judicata*, from again raising the issue as to the sufficiency of the pl f.'s security.—BAXTER *v.* DERKASZ & DERKASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

232. *Add. Annotations :*—**Apld.** Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay, [1934] P. 162.

253. *Add. Annotation :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

253a. **Judgment relating to right of set-off—Claim to set off contingent liability under guarantee—Subsequent application as to disposition of dividend—After payment under guarantee.**]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof

Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidation of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported *Re Fenton*, [1931] 1 Ch. 85, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof :—*Held :* the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings. —*Re* FENTON (NO. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (NO. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

256a. ——.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period :—*Held :* the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—BROKEN HILL PROPRIETARY CO. *v.* BROKEN HILL MUNICIPAL COUNCIL, [1926] A. C. 94; 95 L. J. P. C. 33; 134 L. T. 335, P. C.

Annotation :—**Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

257. *Add. Annotation :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

259a. **Order for maintenance out of fund—Subsequent order negativing title to fund.**]—*Semble :* the existence of an order for the maintenance of an infant out of the income of a fund does not prevent the ct., in a subsequent proceeding in which the title to the principal comes directly in question, from making an order negativing the infant's title to the fund.—SAUNDERS *v.* VAUTIER (1841), Cr. & Ph. 240; 10 L. J. Ch. 354; 41 E. R. 482, L. C.

265a. **Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.**]—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counterclaimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims :—*Held :* the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the

PART. II SECT. 3, SUB-SECT. 1.—B. (e).

254 xi. ——.]—CHAMBERS *v.* UNGER (1875), 25 C. P. 180.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (f).

274 ix. ——.]—*Re* GLOBE WINE CO. (Sask.), [1926] 1 D. L. R. 213.—**CAN.**

274 x. ——.]—CASSIDY *v.* INGOLDSBY (1875), 36 U. C. R. 339.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

276 ii. ——.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares :—*Held :* deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. —FRASER RIVER MINING CO. *v.* (1896), 5 D. C. R. 82.—**CAN.**

276 iii. ——.]—FORSYTH *v.* BURY (1887-8), 15 S. C. R. 543.—**CAN.**

276 iv. ——.]—If the *res*, the thing actually & directly in dispute, has been adjudicated upon by a competent ct. it cannot be litigated again. Pltf. having raised in a former action a dispute as to the precise facts & questions involved in the second action must admit that which has been judicially declared to be the truth with respect to that dispute. The plea of *res judicata* applies, except in special cases, not only to points upon which the ct. was actually required by the parties to form an opinion & pronounce a judgment, but to every point which properly belonged to the of litigation, & which the exercising reasonable diligence, might have brought forward at the time. CAMERON *v.* ROUNSEFELL, W. W. R. 121; 47 B. C. R. 40.

previous action.—HIGGINSON & ARUNDEL *v.* PYMAN, SAME *v.* SAME (1926), 43 R. P. C. 291, C. A.

276. *Add. Annotations:—As to* (3) **Apprvd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213; West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; Mould *v.* Mould (1933), 49 T. L. R. 242.

285. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

291. *Add. Annotation:—Generally,* **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

293. *Add. Annotation:*—**Refd.** Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

294. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

296a. —— Action for arrears of maintenance—Agreement to release—Judgment by consent—No evidence that consent based on agreement.]—Pltf. & deft. were divorced in 1925, & an interim order for maintenance was made on Dec. 21, 1925, for payment to pltf. of £3 10*s.* a week. In Feb. 1927, an agreement was entered into whereby deft. was to continue to pay £182 *per annum* but the payments were to be quarterly. The agreement also provided *inter alia*, that each party should give to the other full discharge of all sums claimed & that all actions, claims, demands at law & otherwise were withdrawn by consent. Payment fell into arrears & pltf. brought an action in the Mayor's Ct. for the amount then owing. The defence was withdrawn & judgment consented to. Payments again fell into arrears & the present action was brought in respect of them. Deft. contended that, as the agreement provided for the payment of a sum which deft. was already liable to pay, it was void for want of consideration. Pltf. replied that deft. was estopped from relying on this defence by th proceedings in the Mayor's Ct. which arose out of a breach of the same agreement:—*Held:* (1) there was no estoppel inasmuch as there was no evidence that judgment in the Mayor's Ct. was based on the agreement. It might have been consented on because the money was in any event due under the maintenance order; (2) the settlement of all accounts & claims was good consideration for the agreement & pltf. was entitled to succeed.—MANN *v.* MANN, [1936] 1 All E. R. 952; 80 Sol. Jo. 324.

296b. Admission.]—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment; (2) six. Upon the assessment for 1919–1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:—*Held:* the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—HOYSTEAD *v.* TAXATION COMR., [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

Annotations:—**Consd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241. **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

315a. —— Fraud—Fraud alleged in letter to registrar in previous proceedings.]—Resp. co. took proceedings to recover certain instalments, amounting to about £6, due under a hire-purchase agreement. In the ordinary course, & under County Cts. (Amendment) Act, 1934 (c. 17), s. 19, the case came before the registrar. Resp. co. was represented & was admittedly a consenting party; applt. was not represented, but he wrote to the registrar alleging that the contract had been obtained by fraud. The registrar gave judgment for resp. co. Subsequently resp. co. started a second action to recover further amounts due under the same contract. Applt. counterclaimed for cancellation of the contract on the ground that it had been obtained by fraud. The county ct. judge found that the contract had been obtained by fraud, but he held that applt. was estopped from raising this defence, as the registrar had already decided this point against him. On appeal applt. contended that the registrar had had no jurisdiction to hear the case, as applt. had not applied to the registrar to hear the case:—*Held:* applt.'s letter to the registrar amounted to an application to the registrar to hear the case, & applt. could not therefore raise the question of fraud which was *res judicata*.—RENTIT, LTD. *v.* DUFFIELD, [1937] 3 All E. R. 117, C. A.

PART II. SECT. 3, SUB-SECT. 1.—B. (i).

303 i. *General rule.*]—CARPENTER *v.* COMMERCIAL BANK OF CANADA (1862), 2 E. & A. 111.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a) i.

329 xxvii. —— *Co-defendants.*]—If the relief given to pltf. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree pltf. obtains.—MA PAN NYUN *v.* MAUNG SIT PHAUNG (1928), I. L. R. 6 Ran. 575.—**IND.**

329 xxviii. —— ——.]—The Judicial Committee have approved of the *dictum* acted upon by the cts. in India that to apply the doctrine of *res judicata* as between co-defts. three conditions are requisite, *viz.* (1) there must be a conflict of interest between the defts. concerned; (2) it must be necessary to decide this conflict in order to give pltf. the relief he claims; (3) the question between defts. must have been finally decided.—LALMOHAN DHUPI *v.* RAMLAKSHMI DASEE (1931), I. L. R. 59 Calc. 636.—**IND.**

329 xxix. ——.]—A judgment was obtained against A. & two others without service of process on A. or his having any knowledge of the suit; an attorney retained by the other defts. having appeared for A. also. He was afterwards arrested on a *ca. sa.* issued on the judgment, & was discharged by a judge's order on an affidavit denying knowledge of the suit & of any authority to the attorney to appear for him.

334. *Add. Annotation :*—**Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

339a. Between co-defendants.]—A decision operates as *res judicata* between co-defts. provided that (*a*) there was a conflict of interest between them ; (*b*) it was necessary to decide that conflict in order to give pltf. the relief which he claimed ; (*c*) the question between co-defts. was finally decided.—MUNNI BIBI *v.* TIRLOKI NATH (1931), 58 L. R. Ind. App. 158, P. C.

366. *Add. Annotation :*—**Reld.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

382a. ——.]—KNIGHT *v.* LEGH (1828), 4 Bing. 589 ; 1 Moo. & P. 528 ; 6 L. J. O. S. C. P. 128 ; 130 E. R. 895.

385a. ——.]—Pltfs.' steamer stranded in the Black Sea, & deft. L. agreed to try to salve her on the terms (*inter alia*) that security for payment of his remuneration should be arranged in London & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, the deft. L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct., awarded L. £23,890. L. then disposed of the ship, & pltfs. brought this action, (*a*) for damages for breach of contract, (*b*) for a declaration that the Turkish judgment was invalid, & (*c*) for an injunction to prevent the Turkish judgment from being enforced :—*Held :* as pltfs. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—ELLERMAN LINES, LTD. *v.* READ (1927), 44 T. L. R. 7 ; *on appeal*, [1928] 2 K. B. 144, C. A.

398. *Add. Annotations :*—*As to* (2) **Reld.** *Re* Davy, [1935] P. 1. *Generally*, **Reld.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

404a. Decision as to property passing on death—Crown not a party—Not binding on Crown.]—The Crown is not bound by a decision as to construction in proceedings to which it is not a party, where that decision implicitly determines whether or not property passed on the death of a person who is already dead.—*Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, [1933] Ch. 858 ; 102 L. J. Ch. 374 ; 149 L. T. 217 ; 49 T. L. R. 407, C. A. ; *affd.*, [1935] A. C. 96.

405. *Add. Annotation :*—**Reld.** Wilson *v.* Maple Mill (1925), 95 L. J. K. B. 666.

422. *Add. Annotations :*—**Reld.** Ingenohl *v* Wing On (Shanghai) (1927), 44 R. P. C. 343 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

432. *Add. Annotation :*—**Reld.** A.-G. *v.* Denby, [1925] Ch. 596.

443. *Add. Annotation :*—*As to* (2) **Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

447a. ——.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—CONQUER *v.* BOOT, [1928] 2 K. B. 336 ; 97 L. J. K. B. 452 ; 139 L. T. 18 ; 44 T. L. R. 486, D. C.

Annotation :—**Folld.** Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90.

447b. ——.]—Pltfs., a limited co., were the successors in business of a firm A. R. & Sons. They had taken over the firm's business as a going concern & had (*inter alia*) acquired all the firm's stock-in-trade & the benefit of all the firm's pending contracts. In the course of the business it was necessary to use

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In an action for false imprisonment against pltf. in that suit :—*Held :* A. was not estopped by the judgment from denying his liability.—SULIS *v.* FERGUSON (1861), 10 N. B. R. (5 All.) 110.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

346 ii. —— *Exception to—Action on covenant of indemnity.*]—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—LONDON GUARANTEE & ACCIDENT CO. *v.* DAVIDSON, [1926] 1 D. L. R. 66 ; [1926] 1 W. W. R. 148 ; 36 B. C. R. 301.—**CAN.**

g i. —— *One plaintiff president of company defendant in other proceedings.*]—LONDON LOAN & SAVINGS CO. *v.* OSBORN, [1928] 3 D. L. R. 258 ; [1928] S. C. R. 451.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (c).

sm. *Action by reversioner—How far binding on other reversioners.*]—*Held :* it is well settled that a suit for a declaration by a reversioner to contest an alienation made by a widow in possession, is a representative suit on behalf of all the reversioners, & a decree fairly & properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand, & the alienee or his representatives on the other.—THAKARSINGH *v.* UTTAMKAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

sp. *Action by ratepayer against municipality.*]—A judgment rendered upon an action brought by a ratepayer of a municipality in which it was alleged that a resolution adopted by a municipal council was illegal, constitutes *res judicata* as to all other ratepayers of that municipality ; & such judgment can be invoked as such in a subsequent action where the legality of the same resolution is challenged. Municipal corpns. represent before the cts. all the ratepayers, & a judgment rendered in favour of the corpn. or against it in an action brought by a ratepayer can be opposed to any other ratepayer.—DE DESCHÊNES CORPN. *v.* LOVEYS & BETCHERMAN, [1936] S. C. R. 351.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (d).

374 ii. ——.]—SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR (1927), I. L. R. 51 Mad. 128.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (g).

so. *Ejectment—Fictitious lessee party to first action—Second action against lessor.*]—At the trial of an ejectment, under 14 & 15 Vict. c. 114, recovery was proved in favour of John Doe, on the demise of the now deft. against the now pltf. : & it appeared that the question there decided, being one of boundary, was precisely the same as that again brought up in this case :—*Held :* clearly no estoppel, for that judgment was between different parties, & under the old practice.—CLUBINE *v.* MCMULLEN (1854), 11 U. C. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—E.

sg. *Libel.*]—Liability in an action for damages for libel is not *res judicata* in criminal proceedings for libel, nor *vice versa*.—MENARD *v.* R., [1934] 1 D. L. R. 155 ; 60 C. C. C. 334.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

a i. —— ——.]—Where an application for a writ of possession was dismissed because no notice of determination of the lease had been given :—*Held :* the landlord was not thereby barred from making another application after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498 ; [1928] 2 W. W. R. 628.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) 1.

g i. —— ——.]—JONES *v.* RYDER, [1928] 3 D. L. R. 301 ; [1928] 2 W. W. R. 302 ; 39 B. C. R. 547.—**CAN.**

caustic soda, & before the assignment of the business to pltfs. the firm had bought from defts., who knew the purpose for which it was required, a supply of caustic soda sufficient to last for three years. This caustic soda turned out to be of inferior quality, & in consequence the firm, using it without knowledge of its defects, suffered a loss in their business before the date of the assignment to pltfs. After the assignment pltfs., not knowing that the loss had been caused by the fact that the caustic soda was defective, continued to use it in the business, & suffered further loss in consequence. Ultimately, when the loss had been traced to the caustic soda, pltfs. brought an action against defts. for damages in respect of the loss suffered by the firm before the assignment, & in that action obtained judgment for a sum of £292 10*s.* 3*d.* Subsequently they brought this action to recover damages from defts. in respect of the loss which they had themselves suffered by using the remainder of the caustic soda after they had taken over the business. Defts. pleaded *res judicata* & contended that the action was not maintainable, & an order was made for the trial of a preliminary issue, whether pltfs. had a cause of action:—*Held:* where the same breach of contract has caused the same kind of damage a pltf. cannot bring two actions for different parts of the same kind of damage; he can recover in one action for all damage actual or prospective, & if he does not ask for both in that action he cannot afterwards bring another action for damages for which he omitted to ask in the first action.—ROWNTREE (ALFRED) & SONS, LTD. *v.* ALLEN (FREDERICK) & SONS (POPLAR), LTD. (1935), 41 Com. Cas. 90.

454a. ——.]—Deft., in an action in a county ct., gave notice of set-off, but failed in proving it, through the improper rejection of evidence, & the judge adjudicated against it:—*Held:* the adjudication was a bar to an action for the same claim.—DANKS *v.* FARLEY (1853), 1 C. L. R. 95; 1 W. R. 291.

457. *Add. Annotation:*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

463. *Add. Annotations:*—**Refd.** *Re* Wilson, Wilson *v.* Bland, [1937] 3 All E. R. 297; *Re* Wilson, *Ex p.* Wilson *v.* Trustee, [1937] Ch. 675.

464. *Add. Annotation:*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

473. *Add. Annotations:*—**Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

480. *Add. Annotations:*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90; Rose *v.* Ford, [1937] 3 All E. R. 359; Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

482. *Add. Annotation:*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

483. *Add. Annotation:*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

489. *Add. Annotation:*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

492. *Add. Annotation:*—*As to* (1) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

494. *Add. Annotation:*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

498a. ——.]—*Held:* a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (SCRUTTON, L.J.).—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

505. *Add. Annotation:*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. *Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.*]—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction:—*Held:* resp. was not debarred from relying on the conviction by reason of the fact that in the first of re-entry which it gave him.—COHEN *v.* LAPIN (1924), 35 C. L. R. 247; 25 S. R. N. S. W. 291; 42 N. S. W. W. N. 7.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) iii.

474 i. *Fraud — Action for fraudulent conversion of partnership assets.*]—EASTERN TRUST CO. *v.* BUSCH, [1930] 1 D. L. R. 723; 1 M. P. R. 140.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

496 iii. ——.]—WILLIAMS & SEARS *v.* RICHARDS (1918), 25 B. C. R. 19.—CAN.

496 iv. ——.]—**The chief test of *res judicata* is identity of issue.** The issue raised in the present motion for an extension of time for serving the statement of claim held not to be identical with any issue that had been adjudicated in the earlier proceedings in this matter.—GOODBUN *v.* MITCHELL, [1928] 2 W. W. R. 12.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

507 vi. ——.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL *v.* NUGENT, [1924] 3 D. L. R. 679; [1924] 2 W. W. R. 1138; 18 Sask. L. R. 592; *revsg.*, [1924] 2 D. L. R. 97; [1924] 1 W. W. R. 939.—CAN.

507 vii. ——.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground of attack in the former suit, pltfs. were not bound to do so.—ABID-UD-DIN *v.* BISHARAT, ALI, ETC., RAOOF-UN-DIN, ETC. (1927), I. L. R. 8 Lah. 308.—IND.

507 viii. ——.]—SOKOLOSKI *v.* WINISKI, [1927] 2 D. L. R. 1029; [1927] 1 W. W. R. 972; 21 Sask. L. R. 455.—CAN.

507 ix. ——.]—WINTER *v.* DEWAR & CO., [1929] 4 D. L. R. 389; 2 W. W. R. 518.—CAN.

508a. ——.] — MACKENZIE-KENNEDY *v.* AIR COUNCIL, No. 498a, *ante*.

510. *Add. Annotations :*—**Consd.** West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

511. *Add. Annotation :—As to* (2) **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

520. *Add. Annotation :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

521a. **Proceedings in respect of registered trade mark—Former proceedings before registration.**]—Pltfs. commenced an action for infringement of their registered trade marks & passing off, & delivered their statement of claim alleging acts of infringement & passing off by defts. Defts. moved to strike out the statement of claim, on the ground that the alleged acts of infringement & passing off had been already adjudicated upon or were subsequent to the issue of the writ in the present action. The judge held that there was a total absence of any evidence that the alleged acts had ever been adjudicated upon. Defts. appealed :—*Held :* the reasons for the decision of the judge were right.—JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

529a. **Judgment against separate estate of married woman—Action to obtain payment into court.**]—Where the ct. in giving judgment against a married woman who is a defaulting trustee orders that the judgment be satisfied out of her separate estate & execution proves useless it is not open to pltf. in a new action to obtain against her judgment in a different form for payment of the moneys into ct. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft. a married woman judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless pltf. now brought this action alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for pltf., & that the second deft. received the money as constructive trustee :—*Held :* in regard to the first deft. the matter was *res judicata*, as pltf. had already obtained judgment against her separate estate & therefore could not now on the same facts obtain against her another form of judgment for payment of the moneys into ct.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213 ; 98 L. J. Ch. 369 ; 142 L. T. 216 ; 45 T. L. R. 494.

538. *Add. Annotations :—As to* (1) **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300. **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780. *Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

540. *Add. Annotations :*—**Apld.** Pirie *v* Richardson, [1927] 1 K. B. 448. **Refd.** *Re* Pennington & Owen, [1925] Ch. 825 ; Bennett *v.* Whitehead (1926), 96 L. J. K. B. 268 ; Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773 ; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

546. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

550. In the last line for " case of the law " read " case out of the law."

Add. Annotations :—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448; Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

After this case add " *Compare* Contract, No. 163a."

555. Before this case add :—

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

Add. Annotation :—**Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

555a. ——.]—BARKER *v.* MARTIN (1647), Sty. 20 ; 82 E. R. 498.

556. *Add. Annotations :—As to* (1) **Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 101 L. J. Ch. 401. **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Apld.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489. *Generally*, **Refd.** Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

557. *Add. Annotation :—As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

559. *Add. Annotations :—As to* (1) **Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252 ; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90 ; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

c i. —— *Action for judicial separation—Subsequent action for separation & restitution of conjugal rights.*]—HOPKINSON *v.* HOPKINSON, [1931] 3 W. W. R. 62 ; *affd.*, [1932] 1 W. W. R. 623.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held :* the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (g).

ss. *Action for rent—Eviction pleaded by tenant—Reduction of rent granted—Right to bring action for trespass.*]—If a tenant defends an action for rent, & a reduction is made on the amount claimed on the ground that he has been evicted by the landlord from part of the premises, he cannot afterwards maintain trespass against the landlord for the same action which he relied on as an eviction in the former action.—ROURKE *v.* MCCULLOUGH (1859), 9 N. B. R. (4 All.) 361.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (b) i.

546 i. —— —— *Application to set aside judgment & add new party.*]—HUDSON'S BAY CO. *v.* SCOTT (B. C.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 232.—**CAN.**

566. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Sons, Ltd., [1932] 2 Ch. 81. **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

567. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Unchumatan *v.* Bulmer Rayon Co.,

568. *Add. Annotation :*—*As to* (1) & (2) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

569a. ——.]—Where two are bound, jointly & severally, & the obligee has judgment against one, he may sue the other.—HIGGENS' CASE (1605), 6 Co. Rep. 46a; 77 E. R. 322.

573. *Add. Annotation :*—*As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

—— —— **Power to set aside judgment.**] —A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., [1926] A. C. 761; 135 L. T. 645; *sub nom.* FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY *v.* M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197; 42 T. L. R. 686, P. C.

Annotation :—**Folld.** Kinch *v.* Walcott, [1929] A. C. 482.

577. *Add. Annotations :*—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380. **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557; De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

577a. —— **Action against partner—Subsequent action against firm.**]—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., No. 575a, *ante*.

579. *Add. Annotations :*—*As to* (2) **Consd.** Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation :* — **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

581a. —— —— —— **Judgment for debt incurred after separation.**]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. *v.* PERKINS (1925), 133 L. T. 252, D. C.

582. Before this case add :—
See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

585. *Add. Annotations :*—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

585a. Nuisance—Unsatisfied judgment against one tortfeasor—Action against another tortfeasor.] —In 1931, the owners & occupiers of a farm on the banks of a river brought an action against a limited co. (hereinafter called the selling co.), manufacturers of artificial silk, for polluting the stream & causing damage & injury to the farm & to their business as farmers from 1925 to May, 1928. The selling co. in their defence pleaded that in Mar. 1928, they sold the goodwill of their business & all their property to a purchasing co. as from Feb. 1, 1928, & that it was agreed between them & the purchasing co. that the latter should satisfy & discharge all liabilities & obligations of the selling co. & indemnify them against all actions & claims in respect thereof; that in Sept. 1928, the same pltfs. had brought an action against the purchasing co. in respect of the same damage & injury from May, 1928, & that it was then agreed between pltfs. & the purchasing co. that, for the purpose of calculating the amount of damages suffered by pltfs., the damages caused by the selling co. should be added to those caused by the purchasing co.; that in Oct. 1929, pltfs. recovered judgment whereby an inquiry was directed what damages pltfs. had sustained through the pollution of the river by the purchasing co. or their predecessors in title, the selling co. that these damages were assessed at £265, & that the judgment remained in force. Sub sequently an order was made for the compulsory winding-up of the purchasing co. & the judgment was wholly unsatisfied :— *Held :* the facts pleaded in the defence

PART II. SECT. 3, SUB-SECT. 2.—C. (c)

572 i. *Unsatisfied judgment.*]—The fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN *v.* BROADY NORMAN & CO., [1928] S. C. 351.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) i.

n i. ——.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment :—*Held :* a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS *v.* RODGERS, [1927] 2 W. W. R. 185; 56 D. L. R. 691; 60 S. C. R. 664.—**CAN.**

o i. —— *Judgment by default against husband.*]—Where two persons are sued jointly & judgment by default is entered against one of them pltf. then cannot turn round & say that that deft. was an agent of the other & recover judgment against the latter as the principal.—CARROLL *v.* KENNERLEY (Sask.), [1929] 4 D. L. R. 1062; 2 W. W. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) ii.

sa. *Libel.*]—A judgment for libel against a wholesale news agency with respect to its distribution of defamatory matter to its several retail selling agents is not a bar to actions against the retail agents based on the sale of the same matter to the public. The wholesale agency & the retail vendor are not joint tortfeasors.—LAMBERT & LAMBERT *v.* ROBERTS DRUG STORES, LTD., [1933 2 W. W. R. 508; 4 D. L. R. 193.—**CAN.**

afforded no answer to the action against the selling co., inasmuch as they suggested neither a release of the selling co. from the causes of action complained of, nor *semble* an accord & satisfaction thereof or any merger of them in the judgment.—BULMER RAYON CO., LTD. *v.* FRESHWATER, [1933] A. C. 661 ; 102 L. J. Ch. 318 ; *sub nom.* FRESHWATER *v.* BULMER RAYON CO., LTD., 149 L. T. 409, H. L.

586. *Add. Annotation :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

589. *Add. Annotations :—As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

590. *Add. Annotation :*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

593. *Add. Annotations :*—**Apld.** Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

597a. —— —— —— **Meaning of "forthwith".**]—" Forthwith " means, forthwith upon demand by the person entitled to the certificate, & not forthwith upon the dismissal of the complaint. A certificate was applied for by the person entitled, five days after the complaint had been dismissed, & granted two days after the application, but dated as of the day upon which the complaint was made :—*Held :* to have been made out " forthwith " within Offences Against the Person Act, 1828 (c. 31), s. 27, & to be a good defence, under sect. 28, to a subsequent action for the same assault.—COSTAR *v.* HETHERINGTON (1859), 1 E. & E. 802 ; 8 Cox, C. C. 175 ; 28 L. J. M. C. 198 ; 33 L. T. O. S. 105 ; 23 J. P. 663 ; 5 Jur. N. S. 985 ; 7 W. R. 413 ; 120 E. R. 1111.

599a. —— —— —— **What amounts to conviction.**]—To an action for an assault deft. pleaded that, before action brought, pltf. caused deft. to be summoned before a magistrate to answer a complaint in respect of the assault, & that the magistrate " adjudged & determined the said complaint & charge, & then ordered deft. then to pay, & then convicted him, deft., in the costs as well of the said complaint & charge as of the hearing thereof, but did not further order or convict deft." The magistrate had decided only that deft. should enter into recognisances to keep the peace & pay the costs thereof, & such costs only had been paid. No record of a conviction was produced, but the magistrate's clerk stated that it was not the practice to draw up a formal conviction in such cases :—*Held :* the plea was no bar to the action within Offences Against the Person Act, 1861 (c. 100), s. 45, & taking it as it stood it was not proved.—HARTLEY *v.* HINDMARSH (1866), L. R. 1 C. P. 553 ; Har. & Ruth. 607 ; 35 L. J. M. C. 255 ; 14 L. T. 795 ; 12 Jur. N. S. 502 ; 14 W. R. 862.

Annotations :—**Expld.** R. *v.* Miles (1890), 24 Q. B. D. 423. **Refd.** Police Comr. for the Metropolis *v.* Donovan (1903), 52 W. R. 14.

600a. —— **Defendant bound over—Subsequent action for same assault.**]—JONES *v.* LAMOND (1935), 79 Sol. Jo. 859, C. A.

623. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

631. *Add. Annotation :—As to* (1) **Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

647. *Add. Annotation :—As to* (1) **Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

659. *Add. Annotation :—As to* (2) **Apld.** The Point Breeze, [1928] P. 135.

After this case add " *See, also,* ADMIRALTY, No. 706b."

PART II. SECT. 3, SUB-SECT. 2.—C. (e).

586 iv. ——.]—ABDUR RAHIM *v.* MAHOMED BARKAT ALI (1927), 55 L. R. Ind. App. 96.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—E.

594 i. *Summons for assault—Dismissal—Subsequent action for same assault.*]—In an action for assault & battery, deft. pleaded that an information had been made against him by pltf. before a magistrate in respect to the trespass declared on, under Dominion Act, 32 & 33 Vict. c. 20, s. 43, & that the magistrate, after hearing, dismissed the information & gave deft. a certificate of dismissal, whereby & by force of the statute he was released from the action :—*Held :* the plea was insufficient in not stating that the complainant had prayed the magistrate to proceed summarily.—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

sc. *Acquittal on charge of murder—Subsequent charge of assault occasioning actual bodily harm.*]—After being acquitted on a trial for murder the accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *res judicata :—Held :* since the fact of the assault in question was involved in the alleged murder, *i.e.* if there was a murder it could only be because there was the assault, &, therefore, it must have been considered & directly adjudicated on by the jury, the acquittal on the charge of murder rendered the matter of the assault *res judicata* as between the Crown & the accused, & was a bar to the second charge.—R. *v.* GOSSELIN, [1928] 1 W. W. R. 134 ; 50 Can. Crim. Cas. 287. —**CAN.**

598 iii. —— —— —— *Necessity for certificate of conviction.*]—JUDE *v.* ARCHER & GOODMAN, [1924] 1 D. L. R. 448 ; [1924] 1 W. W. R. 279 ; 41 Can. Crim. Cas. 289 ; 18 Sask. L. R. 32.—**CAN.**

g i. —— *Subsequent conviction for same offence—Whether appeal in action constituted "further proceedings."*]—Pltf. sued deft. by civil bill for £20 damages for assault. The Recorder held in pltf.'s favour, & gave a decree for £14 5*s.* Deft. appealed from the decree, & entered into a recognisance as provided by 45 & 46 Vict. c. 29, s. 6. After the case had been at hearing before the judge of Assize for a short time, deft. admitted the assault & the reasonableness of the damages awarded, & raised a new defence which had not been available to him in the county ct. Deft. relied upon Offences Against the Person Act, 1861, c. 100, s. 43, & it was contended on his behalf that deft.'s conviction coupled with the payment of the penalty operated as a release from " all further or other proceedings," including the re-hearing of the civil bill on appeal :—*Held :* the appeal did not constitute " further or other proceedings " within Offences Against the Person Act, 1861, s. 45.—MAGEE *v.* STOREY, [1929] N. I. 134.—**IR.**

g ii. —— *Conviction for same offence—Whether bar to action.*]—A conviction of a servant for having refused & neglected to obey the lawful commands of his master :—*Held :* to render the servant's claim herein for damages for wrongful dismissal *res judicata.*—SCHILL *v.* BALFOUR, [1937] 2 W. W. R. 249.—**CAN.**

sf. *Order for maintenance of infant—Subsequent criminal proceedings—No bar.*]—*Re* BROOKS (1930), 54 Can. C. C. 334.—**CAN.**

PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

638 x. ——.]—JOURNEAY *v.* RAILWAY PASSENGERS ASSURANCE CO., [1924] 1 D. L. R. 308 ; 50 N. B. R. 501.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARKE (B. C.), [1926] 4 D. L. R. 971 ; [1926] 3 W. W. R. 459.—**CAN.**

sa. *Should not be pleaded in counterclaim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARKE (B. C.), [1926] 4 D. L. R. [1926] 3 W. W. R. 459.—**CAN.**

Part III.—Estoppel Quasi of Record.

672. *Add. Annotation :*—**Reld.** Hyman *v.* Hyman, [1929] A. C. 601.

686. *Add. Annotations :*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284. **Reld.** *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

687. *Add. Annotation :*—**Reld.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

Part V.—Estoppel by Deed.

734. *Add. Annotation :*—**Reld.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

736. *Add. Annotation :*—**Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

771. *Add. Annotation :—As to* (2) **Consd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

776. *Add. Annotation :—As to* (1) **Reld.** Parr *v.* A.-G., [1926] A. C. 239.

786a. ——.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—GILLETT *v.* ABBOTT (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & H. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

Annotation :—**Reld.** Fishmongers Mystery Wardens & Commonalty *v.* Robertson & Staines (1848), 18 L. J. C. P. 55.

813a. Existence of shares.]—By a deed of arantee for the repayment of a loan of £250,000 & interest, which recited that the lenders had at the request of the guarantors advanced to the borrowers £250,000 upon security of a charge on certain shares, the guarantors covenanted, in the event of the borrowers failing to make the repayments provided for, forthwith to repay to the lenders the said sum of £250,000 with interest at the rate of 8 per cent. *per annum*. The deed further provided that whatever the position between the lenders & the borrowers, the guarantors should be liable for all moneys due as principal debtors & they were not to be released from liability by reason of time being given by the lenders or by their taking no steps to protect their securities. The shares above mentioned were at no time secured & had not in fact been issued. Upon default in repayment of part of the loan the liquidator of the guarantors rejected the proof by the liquidators of the lenders, contending that the security of the charge on the shares was a condition precedent to the guarantee :—*Held :* (1) upon a proper construction of the deed of guarantee, the contention of the liquidator of the guarantors was correct, & the guarantors were not bound by the guarantee. The existence of the shares was the basis of the contract of guarantee & this was not affected by the clause making the guarantors liable as principal debtors ; (2) the guarantors were not bound by the recital in the deed & were not estopped from setting up the facts relating to the shares.—*Re* PARENT TRUST & FINANCE CO., LTD., [1936] 3 All E. R. 432; 155 L. T. 562; 80 Sol. Jo. 992, C. A. **affd.** [1937] 4 All E. R. 396 H. L.

828. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Reld.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

828a. ——.]—In order to keep the trusts of a settlement off the title, the settlor conveyed the property to certain grantees by deed of gift in consideration of his love & affection for them. The grantees at the same time executed a deed poll declaring trusts in favour of the settlor & other beneficiaries. The conveyance & the title deeds were handed

PART III. SECT. 1, SUB-SECT. 5.

5b. *Dismissal of first petition based on alleged fraudulent preference.*]—The doctrine of *res judicata* is applicable to proceedings in insolvency. Therefore, the dismissal of a petition in respect of a sale by the insolvent on the ground that the sale did not amount to a fraudulent preference :—*Held :* a bar to a subsequent petition by a creditor in respect of the same sale.—RANGAPPA *v.* RANGAPPA (1933), I. L. R. 56; Mad. 395.—**IND.**

PART V. SECT. 1.

5c. *Inapplicable in India.*]—The doctrine of "estoppel by deed" in its technical sense cannot be said to exist in India.—JOHNSTON *v.* GOPAL SINGH (1931), I. L. R. 12 Lah. 546.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

5f. *Lease null & void—Lessor under disability.*]—Where the Nawab of M. executed a lease of certain immovable property for a term of 21 years in consideration of the sum of rupees 5 lacs as advance of the total rent payable for & during the said term of 21 years, on a suit being brought by the Nawab for recovery of possession :—*Held :* as the lease contravened condition (1) of the Murshidabad Act it was null & void & the Nawab was entitled to recover possession of the demised property. The Nawab was not estopped from denying the validity of the lease by reason of the Act as he was a person under disability.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*]—T., to whom a patent of land issued, by deed poll made prior thereto, sold the land to L. : —*Held :* in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—ROBERTSON *v.* DALEY (1886), 11 O. R. 352.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

5c. *By nominee of Crown to convey land—Subsequent grant to stranger.*]—Where the nominee of the Crown gave a bond for a deed of the land to be made when the patent should issue, & in the same bond conveyed & covenanted to guarantee the title :—*Held :* on ejectment by a grantee of the nominee under a deed executed after the patent issued, this bond gave to the obligee no title by estoppel.—DOE d. MCGILL *v.* SHEA (1846), 2 U. C. R. 483.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—C.

5x. *Release of mortgage.*]—Deft., a mtgor., wishing to pay off the mtge. & substitute another, arranged with one M. that money in the hands of M.'s solr. should be appropriated for that purpose. A mtge. was executed by deft. in favour of M. & a release of the existing mtge. duly executed by pltfs. was received by the solr. & exhibited to both deft. & M. It was not registered, however, & the solr. absconded without paying over the money to the mtgees. or being requested by the mtgees. to do so, although over a year had elapsed before the solr. left. Pltf., who had particular charge of the transaction, said that he had forgotten the matter. Deft. twice paid interest to M. on his mtge., they both thinking that it was in effect & that pltfs.' mtge. had been satisfied :—*Held :* pltfs. were not entitled to enforce their mtge., since they had put in the power of the wrongdoer to commit the wrong, & because they were estopped by the release & by their conduct from asserting that their mortgage had not been paid.—THOM & LAMONT *v.* WALKER, [1930] 3 W. W. R. 33; 3 D. L. R. 915; 43 B. C. R. 142.—**CAN.**

to the grantees, the deed poll being retained by the settlor's solr. The grantees purporting to be absolute owners created equitable incumbrances on the property in favour of certain incumbrancers for value without notice of the trusts:—*Held:* as the settlor's conveyance contained a direct misrepresentation necessarily implying that the grantees were absolute owners, the settlor & the other beneficiaries claiming under him were estopped from denying this statement against the equitable incumbrancers, & their prior equity was therefore postponed.—*Re* KING'S SETTLEMENT, KING *v.* KING, [1931] 2 Ch. 294; 100 L. J. Ch. 359; 145 L. T. 517.

Annotations:—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

831. *Add. Annotation:*—**Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

847. *Add. Annotation:*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

851. *Add. Annotation:*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

916. *Add. Citation:*—94 L. J. Ch. 159.

965. *Add. Annotation:*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

993a. *S. P.* SEABOURNE *v.* POWEL (1686), 2 Vern. 11; 23 E. R. 619.

Annotation:—**Refd.** Smith *v.* Osborne (1857), 6 H. L. Cas. 375.

993b. ——.]—CLAYTON *v.* NEWCASTLE (DUKE) (1682), 2 Cas. in Ch. 112; 22 E. R. 871, L. C.

Annotation:—**Refd.** Morse *v.* Faulkner (1792), 3 Swan. 429, n.

1018. *Add. Annotation:*—**Consd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

Part VI.—Estoppel in Pais.

1019. *Add. Annotations:*—*As to* (1) **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. *As to* (2) **Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1020. *Add. Annotations:*—*As to* (1) **Refd.** Ropner S.S. Co. *v.* Morgan, Miller *v.* Morgan, [1935] 1 K. B. 1. *As to* (4) **Consd.** Rodenhurst Estates, Ltd. *v.* Barnes, Ltd., [1936] 2 All E. R. 3. *Generally,* **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1021. *Add. Annotations:*—*As to* (1) **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally,* **Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

1022. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch.

PART V. SECT. 4, SUB-SECT. 6.

848 vii. ——.]—Applt. & resp. entered into a contract for the sale & purchase of certain leasehold land & property of applt. at a price payable by instalments. The agreement contemplated a transfer of the lease before payment of the whole purchase, & after transfer applt. had the right either to require resp. to give a mtge. or himself to enter a caveat against dealings. Applt. lodged a caveat. The transfer contained statements acknowledging receipt of the purchase price & that the price was the same as that referred to in the agreement:—*Held:* the statements in the transfer did not work an estoppel by deed, & there was no need to obtain rectification of the transfer.—GOWER *v.* WAPLES, [1930] S. A. S. R. 120.—**AUS.**

853 i. *Operation of rule—Money paid to solicitor producing executed deed—No intention that money should be paid over to party to deed.*]—A solr. obtained from pltf., his client, a cheque for $1,100, representing that he would invest it upon the security of a mtge. upon land which had been mortgaged to his sister, whose mtge. would be paid off by the $1,100. In the receipt given to pltf. by the solr. it was stated that the cheque was given to him "*re* mtge. 10 R. St.", which was a brief description of land upon which defts. had made a mtge. to the solr.'s father's exors. The solr. notified defts. that the exors. desired payment of this mtge., & that he had a client who would advance the money necessary to pay it off. A mtge. by defts. to pltf. upon this land was thereupon prepared by the solr. & executed by defts. in Mar. 1923. They made payments from time to time upon the mtge. by cheque to the solr., who paid off the mtge. held by the exors., & consequently did not obtain a discharge of it. The $1,100 was misappropriated by the solr., who absconded in 1926. It was intended that the mtge. moneys should be paid to the exors. & not to the mtgors., & this pltf. understood. This action was brought to enforce the mtge., & pltf. in her evidence at the trial stated that the solr. showed her the mtge. in Mar. 1923:—*Held:* the facts that the mtgor. delivered the mtge. to the solr. & that he showed it to pltf. did not amount to a representation that the moneys advanced by pltf. had been paid to the holders of the first mtge., & that it had been discharged, & it could not be said that the mtgors. were estopped from disputing the fact that the moneys had been advanced to them.—MURRAY *v.* CROSSLAND, [1929] 4 D. L. R. 721; 64 O. L. R. 403.—**CAN.**

PART V. SECT. 5.

8d. *Transfer under Real Property Act—Without special covenants—Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in the Real Property Act, made by the registered owner & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequenty acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

8e. *Deed of adoption—Accompanied by all necessary ceremonies.*]—Where an adoption had taken place with great publicity & with due performance of all the necessary ceremonies, & a formal deed of adoption had been executed & registered & the adopted son had been received into the family of his adoptive father, & where, further, the adoption was not challenged for several years:—*Held:* an estoppel was created whereby the adoptive mother was precluded from afterward disputing the adoption.—DHARAM PRAKASH *v.* KALAWATI DERI (1928), I. L. R. 50 All. 885.—**IND.**

PART V. SECT. 8, SUB-SECT. 3.—C.

993 vii. ——.]—DOE d. TIFFANY *v.* MCEWAN (1837), 5 O. S. 598.—**CAN.**

PART V. SECT. 9.

See cases in Part II., Sect. 5, subsect. 2, *ante.*

PART VI. SECT. 1.

1019 i. *General rule.*]—The reason for precluding a party from relying upon an actual state of affairs as the foundation of his rights lies in the injustice of permitting him to depart from some contrary assumption if another party has based his conduct upon it. The injustice of allowing him to disregard the assumption must arise from the circumstances attending its adoption by the other party. There are well recognised grounds for compelling adherence to such an assumption. One such ground is that the assumption has been made because a belief in its correctness has been induced by the representation or the conduct of the party seeking to depart from it. But what makes it unjust to permit the departure from an assumption so induced is that, were it permitted, the party so induced would through making the assumption find himself in a position occasioning material detriment to himself. Without this element there is no estoppel. It must appear that upon the faith of his belief by act or omission he has placed himself in a position which, if his belief proved incorrect, would be productive of loss.—NEWBON *v.* CITY MUTUAL LIFE ASSURANCE SOCIETY, LTD. (1935), 52 C. L. R. 723; 9 A. L. J. 78.—**AUS.**

316; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

1032. *Add. Annotations :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371; Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1036. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1036a. ——.]—If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—BEATTIE *v.* EBURY (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.; *affg.* (1872), 7 Ch. App. 777, L. JJ.

1038. *Add. Citation :*—132 L. T. 22.

1039. *Add. Annotation :*—*As to* (1) **Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1040. *Add. Annotations :*—**Apld.** Huddersfield Ice & Worsteds *v.* Todd (1925), 134 L. T. 82. **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1041. *Add. Annotations :*—*As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Bartlam *v.* Evans, [1936] 1 K. B. 202; Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1043. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

1054a. Construction of agreement.]—If a person authorises or permits another to make a representation intended to be acted upon & it is acted upon, that person cannot afterwards be heard to say that the representation is not true. This applies when the representation is as to the legal effect of a document if there is no qualification in the representation suggesting that the document & not its effect as represented is to govern the relations of the parties. In a prospectus issued by deft. co. there was a clause referring to an agreement with that co. & purporting to set out its effect. The statements in this clause were made with the knowledge & acquiescence of the other party to the agreement, & were also known to & acquiesced in by the duly authorised agent of that party :—*Held :* the contracting party & his agent were thereby estopped from setting up any other construction of the agreement than that stated in the clause in the prospectus.—DE TCHIHATCHEF *v.* SALERNI COUPLING, LTD., [1932] 1 Ch. 330; 101 L. J. Ch. 209; 146 L. T. 505.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

1057. *Add. Annotation :*—*As to* (1) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1.

1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."

1066. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Distd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Houghton *v* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1068. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. [illegible]

1081a. ——.]—A man petitioning for a decree of nullity of an English marriage on the ground of the survivorship of a former husband of the woman to whom, as petitioner alleged, she had been married previously in Scotland was met by a plea of estoppel *in pais*. Particulars

PART VI. SECT. 3, SUB-SECT. 1.—A.

1032 i. *How estoppel arises.*]—Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re* MONTGOMERY *v.* DIAMOND, DIAMOND *v.* MONTGOMERY, [1925] 4 D. L. R. 736.—**CAN.**

1040 i. *Where all parties know the truth—No representation.*]—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice :—*Held :* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—JACKS & Co. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

1041 xiv. ——.]—In 1894 applt. granted a lease of land "from year to year" to resps. In 1903 resps. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps. :—*Held :* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—FORBES *v.* RALLI (1925), L. R. 52 Ind. App. 178.—**IND.**

1041 xv. ——.]—The principal question in this case being whether the purchasers of some of the plots abutting on the land in question, which was described in their conveyance as "land kept for the proposed 100 feet drainage road of the Calcutta Improvement Trust," or as "the proposed drainage road of the Trust," had a right of way over the land by reason of any rule of estoppel :—*Held :* in order that a representation may operate as an estoppel, it must be a representation of an existing fact & not of a mere intention or future promises. It was a statement of what the Improvement Trust was going to do with regard to the land, which was described to be on the boundary of the plots sold, & did not confer any title on the purchasers of the plots sold, either by express grant or by implication. Hence no right of easement was created.—HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, LTD. *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 56 Calc. 989.—**IND.**

1044 i. —— ——.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—RAZANSOFF *v.* BROUNSTEIN, [1924] 2 D. L. R. 1170; 2 W. W. R. 500.—**CAN.**

1044 ii. *S. P.* ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

sg. *Construction of contract.*] — A party who represents to another that he places a particular construction upon a clause in a written contract thereby inducing the other to enter into the contract is not entitled in an attempt to enforce the contract to set up a different construction though the latter construction may be correct in law.—SAMPSON *v.* UNION & RHODESIA WHOLESALE, LTD., [1929] A. D. 468.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (f).

1072 x. ——.]—WIETING & RICHTER, LTD. *v.* BRAID TUCK & Co., LTD., [1936] 3 W. W. R. 286; 51 B. C. R. 135.—**CAN.**

of the alleged estoppel were that in an earlier suit in this ct. by the former husband of the woman for divorce from her on the ground of her adultery with the present petitioner, petitioner as co-resp. in that suit had expressly adopted a plea of the woman denying the validity of the Scotch marriage, & further that in certain proceedings then taken by the woman in the Scotch ct. seeking a declaration that she & petitioner were husband & wife & praying that the former husband of the woman should be " put to silence in respect of false & calumnious allegations by him that he was married " to the woman, the petitioner had not only been a party to those proceedings as " curator & administrator " of the woman & " for his own interest in the premises " but had also been a party to the settlement of them, resulting in the former husband of the woman admitting that there had been no legal marriage in Scotland between him & the woman & withdrawing his suit & subsequently marrying another woman in England :—*Held :* none of the requirements for an estoppel had been fulfilled. Although petitioner had adopted the plea by the woman denying the validity of the Scotch marriage he had not done so with intention to mislead the woman, whose knowledge of the facts was greater than his own. Both parties were simultaneously making the same statement for a common purpose, & neither could be estopped as against the other by the making of it. Finally, in the proceedings taken by her in the Scotch ct. the woman relied upon her own knowledge of the facts as to the alleged Scotch marriage in which the petitioner had no part, & if she had acted to her own detriment she did not do so on the faith of any statement by the petitioner.

Qu. : whether the decision of an issue as to the validity of a marriage which involves status & is of public interest can be governed by an estoppel *inter partes*.—SQUARE *v.* SQUARE (OTHERWISE BEWICKE), COWAN (OTHERWISE YOUELL) *v.* COWAN, [1935] P. 120 ; 104 L. J. P. 46 ; 153 L. T. 79 ; 79 Sol. Jo. 403.

1108. *Add. Annotations :*—**Apld.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136 ; United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266 ; The Skarp, [1935] P. 134 ; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120.

1111. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92 ; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1130. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1132a. —— —— **Quantity of estate.**]—Vendor, representing & contracting to sell the estate as his own, cannot object, that he has only a partial interest.—MORTLOCK *v.* BULLER (1804), 10 Ves. 316 ; 32 E. R. 857.

1147. *Add. Annotation :*—**Refd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

1148a. ——.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to pltfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in

PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

1096 xviii. ——.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—ST. JOHN COUNTY HOSPITAL *v.* PECK, [1924] 2 D. L. R. 163 ; 51 N. B. R. 324.—**CAN.**

1096 xix. ——.]—A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice :—*Held :* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—JACKS & CO. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

1096 xx. ——.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation, as true not knowing it to be untrue, thereby altering his position to his prejudice.—HUFFMAN *v.* ROSS (1925), 57 O. L. R. 329.—**CAN.**

1096 xxi. ——.]—Where a person, in reliance on the statement of a third person, pays over money which he has a legal right to get back, it is not true, as a general proposition, that in order to establish prejudice sufficient to support an estoppel against such third person he must show that the payee is insolvent.—BOYES *v.* BORLEY, [1928] 4 D. L. R. 302 ; [1928] 3 W. W. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—F.

sk. *Representation as to value.*]—Where D., the owner of a house, represented to M., who afterwards purchased it, that any person building a house adjoining would have to pay the owner of the existing house £150 for the use of the flank wall thereof :—*Held :* D. was not thereby estopped from showing that the value of such user was less than £150.—MARTIN *v.* DOUGLAS (1867), 16 W. R. 268.—**IR.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

1144 xi. ——.]—Pltf. was induced to buy certain lots of land at R. by the representations of the vendor's agent that a near-by block of land was a public park to the free user of which, as a bathing beach & recreation ground. pltf. & his family would be entitled. The vendor, who owned said block, afterwards fenced it off & demanded a fee from pltf. & others for admission to it :—*Held :* on the ground of estoppel, pltf. was entitled to a declaration that he & all persons claiming through or under him were entitled to free passage to & free use of said block at all times as though it were a public park, & to an injunction restraining vendor from doing anything to prevent such passage & use.—HUGG *v.* Low, [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

1144 xii. ——.]—Pltf. municipality having become the tax-sale purchaser of a quarter section of land leased it, before obtaining title thereto, to the deft. on the crop-payment plan. After deft. had put in his crop the registered owner interfered with deft.'s possession & he invoked the assistance of pltf.'s officials to protect the crop from the registered owner. They decided that pltf. would seize the crop for arrears of taxes due by the registered owner. Pltf.'s secretary made out the seizure & handed a notice of seizure to & deft. accepted it & treated it as a seizure of a quarter of the crop for the arrears of taxes. Later deft. removed & disposed of all the crop, & pltf. sued for the value thereof :—*Held :* even if the arrangement did not amount to a valid seizure deft. could not, under the circumstances, be heard to say that it did not.—HEART'S HILL, RURAL MUNICIPALITY *v.* HELMER, [1930] 2 W. W. R. 535 ; 3 D. L. R. 1004 ; 24 S. L. R. 513.—**CAN.**

sd. *As to fault for* fact that pltf., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car :—*Held :* not to raise any estoppel.—HUNT *v.* MORGAN (Alta.), [1926] 3 W. W. R. 804 ; [1927] 1 D. L. R. 267.—**CAN.**

common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to pltfs., although no appropriation of the 200 quarters had taken place:—*Held:* (1) pltfs. had no claim to the maize; (2) defts. & A. were not estopped from denying that pltfs. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, [1925] 2 K. B. 383; 94 L. J. K. B. 928; 30 Com. Cas. 280; *affd.*, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotation:—As to (1) **Apld.** *Re* Walt, [1927] 1 Ch. 606.

1164. *Add. Annotation:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

1213. *Add. Annotation:—As to* (2) **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Citation:*—1 B. R. A. 210.
Add. Annotation:—As to (1) **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

1223. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

1224a. ——.]—If, whatever a man's real intention may be, he so conducts himself in making a contract that a reasonable man would believe that he was assenting to the terms proposed by the other party, & if that other party upon that belief enters into the contract with him, the man so conducting himself is equally bound as if he had intended to agree to the other party's terms.—SULLIVAN *v.* CONSTABLE (1932), 48 T. L. R. 369, C. A.

1227. *Add. Annotations:*—**Consd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

1228a. As to performance of statutory duty or exercise of statutory discretion.] — Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

Annotation:—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1232. *Add. Annotation:—As to* (1) **Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

1238. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** May *v.* May (1929), 98 L. J. K. B. 770; Bartlam *v.* Evans, [1936] 1 K. B. 202.

1247. *Add. Citations:*—94 L. J. P. C. 93; 132 L. T. 511.

1257. *Add. Annotation:*—**Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

PART VI. SECT. 3, SUB-SECT. 2.—B. (a).

q i. —— —— —— —— ——.]—*Held:* the sellers were not estopped from proving their ownership of the safe.—WALKER *v.* HYMAN (1877), 1 A. R. 345.—**CAN.**

q ii. —— —— —— —— ——.]—*Held:* there was evidence of an estoppel.—WEST *v.* O'LEARY (1894), 32 N. B. R. 286.—**CAN.**

sk. *Statements relating to statutory duty.*]—Estoppel cannot be invoked against a public body in its performance of its statutory duty. A board of assessors cannot bargain in taxation matters so as to give rise to such an estoppel.—TURNBULL REAL ESTATE CO. *v.* SEWELL, [1937] 2 D. L. R. 218.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (c).

1173 iv. —— —— *Allegation of previous judgment—Made by attorney ad litem.*]—Acquiescence in a judgment cannot be presumed & must be unequivocal; it must be made by the party himself or by his attorney specially authorised & it is not binding upon the principal if made by an attorney *ad litem* acting under his general mandate.—DUBUC *v.* CORPN. DE MARSTON, [1928] 1 D. L. R. 225; [1927] S. C. R. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (e).

sf. *Document evidencing loan.*]—Where deft. executed a document evidencing a loan received by him from applt. & constituting an order, for the amount of the advance upon a co. about to be formed for the purpose of acquiring & conducting resp.'s business:—*Held:* the document constituted an estoppel which precluded resp. from giving evidence to contradict or vary the terms thereof, & the money advanced, not having been paid by the co. to applt., resp. was personally liable on the contract.—HEMPENSTALL BROS., LTD. *v.* POULSON (1928), 22 Q. J. P. R. 156.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—A.

1221 i. *General rule.*]—DEMINGS *v.* BEDELL, [1925] 3 D. L. R. 1063.—**CAN.**

1221 ii. ——.]—PATTERSON *v.* SMITH (1877), 42 U. C. R. 1.—**CAN.**

1221 iii. ——.]—Where pltf. induced the ct. to grant him a judgment recognising deft.'s right to timber:—*Held:* he was estopped from afterwards contending that deft. had no right to dispose of timber.—MANLEY *v.* O'BRIEN, *Re* MACKINTOSH (1901), 22 C. L. T. 74; 8 B. C. R. 280.—**CAN.**

1221 iv. ——.]—BAKER *v.* BAKER (1904), 40 N. S. R. 470.—**CAN.**

1225 i. *As to position of party estopped.*]—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—PRESS *v.* MATHERS, [1927] V. L. R. 326; 48 A. L. T. 183; [1927] Argus L. R. 197.—**AUS.**

sk. *Transfer of business.*]—Pltf. sued deft. for the price of goods sold & delivered. For several years pltf. had sold to deft. tailoring materials. Deft. carried on a tailoring business, trading as T. S. & Son. Deft. by deed in 1925 assigned the premises in which he was carrying on his business to E. S. & G. S., who continued to trade as tailors under the name of T. S. & Son. No assignment in writing was made of the business or of the debts due to deft., & no notice of the assignment of the premises or of any change in the ownership of the business was given to pltf. Deft. came to the place of business after the transfer & appeared to act in relation to the business in the same way as before the transfer.—*Held:* deft. was estopped from denying that at the time the goods whose price was sued for were sold & delivered, he was the owner of the business, & pltf. was entitled to judgment.—DUNN *v.* SHANKS, [1932] N. I. 66.—**IR.**

sm. *Payment of mortgagee—Assignment of mortgage as collateral—Payment by mortgagor to assignee.*]—Where a mtgor., knowing that mtgee. has been fully paid, permits mtgee. to assign the mtge. to a bank as collateral, & continues to make payments of interest & principal to the bank, he will be estopped from pleading that the mtge. has been fully discharged.—ROYAL BANK OF CANADA *v.* GREEN, [1935] 2 D. L. R. 724; 9 M. P. R. 387.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 ii. ——.]—The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

1241 i. —— *Property afterwards claimed under another title.*]—CONNORS *v.* MYATT (1915), 49 N. S. R. 139.—**CAN.**

1243 i. —— *Title subsequently acquired by possession.*]—SMITH *v.* SMITH (1884), 5 O. R. 690.—**CAN.**

q i. —— *Sale of reversionary interest.*]—FLEMING *v.* WEST (1881), 14 N. S. R. (& R. & G.) 294; 1 C. L. T. 709.—**CAN.**

a i. *Acceptance of credit from unauthorised agent.*]—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. *v.* CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—**CAN.**

1259. *Add. Citation :*—132 L. T. 99.

Add. Annotation :—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

1265. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

1285a. Acquiescence by trustees—In proceedings for administration of trust.]—DOYLE *v.* DOYLE (1850), 12 Beav. 471 ; 19 L. J. Ch. 246 ; 15 L. T. O. S. 498 ; 50 E. R. 1141.

1294. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

1297a. Preparation of deed by solicitor.]—A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game :—*Held :* the solr. who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—LORD *v.* WARDLE (1837), 3 Bing. N. C. 680 ; 4 Scott, 402 ; 1 Jur. 382 ; 132 E. R. 572.

1311. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

1318a. —— **Payment of rent not due.**]—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to do so under a licence from pltfs. :—*Held :* (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased ; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—BATTEN POOLL *v.* KENNEDY, [1907] 1 Ch. 256 ; 76 L. J. Ch. 162.

1319a. Objections to account stated not pressed.]—BURROUGH'S ADDING MACHINE, LTD. *v.* ASPINALL (1925), 41 T. L. R. 276, C. A.

1326. *Add. Annotations :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1328. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1330. *Add. Annotations :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1331. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1345. *Add. Annotation :*—**Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

PART VI. SECT. 3, SUB-SECT. 3.—C. (a).

1260 iv. ——.]—Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

1260 v. ——.]—In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief ; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.—JAI NARAIN *v.* JAFAR BEG (1926), I. L. R. 48 All. 353.—**IND.**

1260 vi. ——.]—CROCKER *v.* HUTCHINSON (1861), 10 N. B. R. (5 All.) 139.—**CAN.**

1260 vii. ——.]—NAUGLER *v.* JENKINS (1899), 32 N. S. R. 333.—**CAN.**

1262 i. *Who bound—Crown—Entry on Crown lands.*]—R. *v.* CANADIAN PACIFIC RAILWAY (Can. Ex.), [1929] 2 D. L. R. 641 ; 35 Can. Ry. Cas. 248.—**CAN.**

1268 ii. —— *Or ultra vires.*]—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 53 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (b) i.

1270 vi. ——.]—Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times :—*Held :* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (c).

sg. *Assent to sale of goods—Acquiescence in condition of goods.*]—In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request :—*Held :* pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—PEPPARD *v.* WOOD, PEPPARD *v.* CAMERON (1924), 57 N. S. R. 222.—**CAN.**

sh. *In registration of motor car in name of another.*]—CAIRNS *v.* WORTHY (P. E. I.), [1929] 3 D. L. R. 123.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (a).

m i. ——.]—MILLER *v.* R., [1927] Exch. C. R. 52; *affd.*, [1928] S. C. R. 318 —**CAN.**

sn. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.*]—A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—*Held :* it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA *v.* NIXON, [1924] 3 D. L. R. 1073.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (b) ii.

so. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., [1925] 2 D. L. R. 889 ; 5 C. B. R. 629 —**CAN.**

sp. *Delay by vendor in giving notice that goods not paid for by agent—Agent's drafts on principal duly met.*]—In an action by pltf. co. against deft. co. for the price of goods :—*Held :* the latter had accepted the London agency's drafts for the goods in the belief that the amounts due in respect thereof had been paid to pltf. co. & pltf. co. had by its conduct induced deft. co. to believe that such was the case, & was not entitled to recover.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (a).

s i. —— *Adoption of one of two alternative remedies.*]—HUTCHISON *v.* PAXTON, [1928] 4 D. L. R. 704 ; 63 O. L. R. 74.—**CAN.**

1380. *Add. Annotation :*—**Reld.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

1395. *Add. Annotation :—As to* (2) **Reld.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

1402. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater [1929] A. C. 176. **Reld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

1418. *Add. Annotations :*—**Reld.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294; Abigail *v.* Lapin, [1934] A. C. 491.

1419. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Reld.** Abigail *v.* Lapin, [1934] A. C. 491.

1435a. ——.]—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, No. 1148a, *ante*.

1439. *Add. Annotation :*—**Reld.** *Re* Wait, [1927] 1 Ch. 606.

1441a. ——.]—*Held :* in order to exclude an equity in respect of acquiescence it was not necessary that the notice of his claim, given by the claimant to the party in possession, should disclose any particulars relating to his title; nor, if the claim which he made exceeded what he was entitled to, was the party in possession justified in disregarding it, or supposing it to be unfounded.—CLARE HALL *v.* HARDING (1848), 6 Hare, 273; 17 L. J. Ch. 301; 10 L. T. O. S. 439; 12 Jur. 511; 67 E. R. 1169.

1449. *Add. Annotations :*—**Distd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414. **Reld.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1450. *Add. Annotation :*—**Apld.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1456a. —— ——.]—A colliery proprietor constructed a railway from his colliery across the lands of several other persons by agreement, & his solrs. wrote a letter to deft., across whose lands he desired to carry the railway, referring to the powers of a local Act of Parliament, supposed to enable him to take lands within a certain area for roadways, & offering, on the part of the pltf., to pay him for the land at a fair valuation. Deft. did not reply to the letter, & the railway was made across his land without further communication with him. A year or two afterwards pltf. & deft. had an interview, but did not agree as to the price to be paid for the land, & three or four years after the railway was made deft. brought his ejectment, whereupon pltf. filed his bill for an injunction, charging acquiescence. The ct., on motion, restrained the action, upon pltf. giving judgment in the ejectment, & paying a sum into ct. not less than the amount of the utmost valuation of the land.—POWELL *v.* THOMAS (1848), 6 Hare, 300; 67 E. R. 1180.

PART VI. SECT. 3, SUB-SECT. 3.—F. (b).

sq. *Special contract denied—Not available to defeat claims.*]—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (c).

h i. ——.]—*Re* KEARNEY'S ESTATE, WHITEHURST, APPELLANT (1927), 27 S. R. N. S. W. 386; 44 N. S. W. W. N. 117.—**AUS.**

h ii. ——.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order *nisi* for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—STANDARD TRUST CO. *v.* LITTLE (1915), 31 W. L. R. 769.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (a).

q i. —— *Manager of hotel—Whether agent of executors of deceased proprietor.*]—In an action to recover for services rendered & coal supplied for the carrying on of an hotel, defts., who were exors. of the former owner of the hotel, were held liable on the ground that they were estopped from denying that one M., who was operating the hotel & had ordered the coal & services, was their manager or agent for that purpose. An alternative claim for judgment against M. was dismissed. The exors. appealed :—*Held :* the evidence did not support the finding of estoppel, & since it had been properly found that there was no actual contract between the exors. & M. authorising him to act as their agent or manager of the hotel, the appeal must be allowed; & since there was no appeal or cross-appeal against the dismissal of the action as against M. the ct. could make no order respecting it.—WILSON *v.* WILLOUGHBY, [1934] 3 W. W. R. 539.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (b).

sr. *Nationality of party.*]—Where pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—*Held :* in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (c).

1425 i. *Goods transferred to third party—Through third party's fraud.*]—Whenever one of two innocent persons must suffer by the act of a third person, he who has enabled such third person to occasion the loss must sustain it.—DOMINION PAPER CO. *v.* N. RATTENBURY, LTD. (1933), 6 M. P. R. 411.—**CAN.**

h i. ——.]—WELLBAND *v.* WALKER (Man.) (1911), 16 W. L. R. 408.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (a.)

1438 i. *A form of acquiescence.*]—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

o i. ——.]—Departure from an assumption upon which another person has acted to his detriment is not permitted to a party who, knowing or believing the other labours under a mistake in adopting it, has refrained from correcting him when it was his duty to do so Applt. opened an account with resp. bank for the purposes of a business conducted for him by his son, & authorised it to pay cheques drawn on the account by his son & countersigned by his wife. After some months the son arranged with a teller employed by the bank to honour cheques on his signature alone. Some time later this arrangement came to the notice of the applt., but he took no step to stop the practice & made no communication to the bank & in one instance indorsed negotiable instruments so drawn. The practice continued. Later applt. brought an action against the bank to recover moneys paid by it on cheques bearing only the signature of his son :—*Held :* applt. was precluded by his conduct from denying the regularity of the drawings so made from his account & was not entitled to recover the moneys claimed.—WEST *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1936), 55 C. L. R. 315.—**AUS.**

t i. —— ——.]—HUTCHINSON BROTHERS & CO., LTD. *v.* PERKINS (B. C.) (1908), 8 W. L. R. 16.—**CAN.**

st. *Claim to distinctive colour design—Objection not raised in previous proceedings.*]—Pltf. co., which had adopted a certain design of contrasting black & white colours for the painting of its cabs, dissimilar to any previously in use in the city in which it conducted its operations, sought by injunction to restrain defts. from using cabs painted a similar design of contrasting blue & white, on the ground that, although the respective cabs might readily be distinguished in daylight, those of defts. were so got up as to be calculated, at night, to deceive people into believing them pltfs.' cabs. No instance of actual deception on defts.' part was proved, nor was any fraudulent intention of their part to mislead the public established :—*Held :* pltf. having, in previous proceedings, concurred in the painting of defts.' cabs in a particular design & colour now had no ground for complaint.—BLACK & WHITE CABS, LTD. *v.* NICHOLSON, NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 273.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (b).

u .]—The equitable principle prohibiting a party from lying by reaping the benefit of the expenditure of another's money on his property, applied.—PUBLIC PROPERTY TRUSTEES *v.* GILLIS (1881), 14 N. S. R. (2 R. & G.) 262.—**CAN.**

1472. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1472a. ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926 pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J & M. purported to sell the cut timber to the present defts.

Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930 :—*Held :* no special circumstances existed sufficient to constitute any confirmation by pltf. of any title to the timber in J. & M., nor did pltf. by accepting judgment in the form he did against J. & M. confer any title on them or deft. co. by estoppel.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81; 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

1477a. Money paid on forged cheque—Failure to inform bank of forgery.]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51; 101 L. J. K. B. 623; 147 L. T. 441; 48 T. L. R. 601; 76 Sol. Jo. 544; 38 Com. Cas. 54, H. L.

Annotations :—**Apld.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612. **Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1537. *Add. Annotation :*—**Refd.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

1549. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1550. *Add. Annotation :*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52

1556. *Add. Annotation :*—**Refd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

1557. *Add. Annotations :*—**Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Locker & Woolf *v.* Western Australian Insurance Co. (1936), 154 L. T. 667.

1465 i. *Works executed by local authority.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

1465 ii. ——.]—A municipal council prepared plans, specifications & estimates for the construction of a street formed or set out on private property. Before the notice to property owners provided for by the Local Govt. Act, 1915, had been sent out a contract for the work had been entered into by the council & the work commenced. In an action by one of the property owners for a declaration that the municipality was not entitled to a charge on his land for the proportion of the cost of making the said street alleged to be due by him :—*Held :* pltf. had not by conduct waived compliance with the statutory provisions nor was he by conduct estopped from asserting his rights.—DUNN *v.* SHIRE OF BRAYBROOK, [1928] V. L. R. 454; [1928] Agus L. R. 286.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (c).

sk. *Registration of car in name of another.*]—BAZAR *v.* GRANT & GRANT (Man.), [1929] 4 D. L. R. 1075; 1 W. W. R. 281.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (e).

s i. —— *Failure of surety to inform creditor of matter leading to discharge of guarantee.*]—A surety is under no legal duty to the guaranteed party to warn him that something he is doing or some misapprehension he is under may have the legal effect of discharging the suretyship. In an action by an employer on an employee's fidelity bond the fact that deft. co. which had received a letter from pltf.'s solr. allowed him to rest under a misapprehension, disclosed by his letter, as to when the theft was discovered was held not to estop the co. from relying on a term in the contract that an action thereunder must be brought within a specified period after the discovery of the theft.—BIRCH LAKE, MUNICIPAL DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1931] 1 D. L. R. 600; [1930] 3 W. W. R. 634.—**CAN.**

t i. —— *Claim by silent partner.*]—PEARSON *v.* DRAKE, [1937] 1 W. W. R. 12; 1 D. L. R. 417.—**CAN.**

sw. *Acquiescence of agent—Holding goods as agent for sale—Goods seized in execution.*]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* pltf. was not estopped by his agent's silence or conduct from asserting that he was the owner of the lorry.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—I (a) ii.

s i. —— *On policy.*]—DORSHT *v.* TRANS-CANADA INSCE. CO., [1933] O. R. 98.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) ii.

m (p. 387) *Citation :*—For "AGRICULTURAL INSURANCE CO. OF WATERTOWN *v.* ANSLEY" read "ANSLEY *v.* WATERTOWN INSURANCE CO."

1561. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1584. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1593. *Add. Annotation :*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

1594. *Add. Annotation :*—**Refd.** Smith *v.* Kinsey, [1936] 3 All E. R. 73.

1601. *Add. Annotation :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

1602. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

1603. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1604. *Add. Annotations :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

1605. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1928] 97 L. J. K. B. 609; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1610a. ——.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltfs. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltfs., who were under the belief that the delivery orders related to distinct consignments of wheat. B. having afterwards become insolvent :—*Held :* defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltfs. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltfs. for the loss sustained by them through the advances to B.—COVENTRY *v.* GREAT EASTERN RY. Co. (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 694; 49 L. T. 641, C. A.

Annotation :—**Apld.** Seton *v.* Lafone (1887), 19 Q. B. D. 68.

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) iii.

1 i. —— *To nature of goods delivered.*]—*Held :* the purchasers were estopped from alleging that the goods were not as contracted for.—J. I. CASE THRESHING MACHINE CO. *v.* MITTEN (Sask.), [1919] 3 W. W. R. 601; 49 D. L. R. 30.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—J.

s1. *Negotiations with committee of municipal council—Party not estopped from setting up lack of jurisdiction.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75; 2 M. P. R. 470.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—A.

1596 x. ——.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it :—*Held :* the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—COOIL *v.* CLARKSON, [1925] 2 D. L. R. 493; [1925] 1 W. W. R. 1094; 35 B. C. R. 308.—**CAN.**

1596 xi. ——.]—As a general rule the owner of property is not estopped from asserting his title thereto merely because his carelessness in the custody of it, or of his documents of title, has enabled some one to fraudulently sell the property to another.—ANACONDA OIL CO., LTD. *v.* ALADDIN OILS, LTD., [1930] 1 W. W. R. 943; 3 D. L. R. 776.—**CAN.**

1605 vi. ——.]—Where taxes were paid to a municipal employee who had no authority to receive them :—*Held :* the *fact* that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES *v.* CITY OF MOOSE JAW, [1925] 3 D. L. R. 1176; [1925] 3 W. W. R. 127.—**CAN.**

PART VI. SECT. 5.

1619 xii. ——.]—The facts relied upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—HUGHES *v.* J. H. WATKINS & CO., [1927] 3 D. L. R. 302; 60 O. L. R. 448; *affd.*, [1928] 2 D. L. R. 1176; 61 O. L. R. 587—**CAN.**

EXECUTION.

Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

SUB-SECT. 11.—FOREIGN SOVEREIGNS AND AMBASSADORS.

Ambassadors & other diplomatic persons.]—*See* CONSTITUTIONAL LAW, Vol. XI., pp. 536–542, Nos. 390–467.

60. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243 ; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

61. *Add. Annotation :*—**Refd.** Kayley *v.* Hothersall, [1925] 1 K. B. 607.

63. *Add. Citation :*—[1925] 1 K. B. 607.

80a. Procedure by judgment summons.]—In an action by pltf. against an unincorporated body & seventeen named persons, described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy.; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons :—*Held :* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order :—*Held :* (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCIATION (1930), 143 L. T. 334 ; 46 T. L. R. 422.

PART II. SECT. 1. SUB-SECT. 1.

oi. —— *In criminal proceedings.*]—A criminal proceeding is not an "action" within the meaning of sect. 2 of Execution Act, R. S. B. C., 1924, &, therefore, a judgment recovered in a criminal proceeding cannot be enforced under sect. 38 thereof.—R. *v.* BERU, [1936] 2 W. W. R. 574 ; 4 D. L. R. 805 ; 66 Can. C. C. 295 ; 50 B. C. R. 444.—**CAN.**

PART II. SECT. 3.

17 iii. —— ——.]—CULLEN *v.* CULLEN (1866), 2 Ch. Ch. 94.—**CAN.**

17 iv. —— ——.]—*Re* MCLELAN (B. C.), [1926] 1 W. W. R. 198.—**CAN.**

sm. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*]—COTTON *v.* DEMPSTER (Alta.), [1925] 1 W. W. R. 954.—**CAN.**

so. *Before action commenced—Meaning of "writ."*]—Under Attachment of Debts Act a garnishee order may issue before action is commenced. In this connection "has issued a writ" includes a "summons" in the county ct.—FLEISHMAN *v.* ALLAN (T. A.) & SONS (1932), 45 B. C. R. 553.—**CAN.**

PART II. SECT. 4.

sp. *Extension of time for filing renewal—Right of master in chambers to grant.*]—*Re* RENEWAL OF A CERTAIN EXECUTION, [1917] 1 W. W. R. 113.—**CAN.**

sr. ——.]—There is no authority for an extension of the time for renewal of an execution either before the execution has lapsed for want of renewal or after that date. There is no doubt an inherent power in the ct. in exceptional cases to make an order *nunc pro tunc*, *e.g.*, where an officer of the ct. has frustrated an application to renew. An execution, by statutory provision carried into the Rules, has force for a fixed period. At the end of that period, unless previously renewed, it is not in force, & however meritorious it may appear to overlook a slip or omission of pltf. in renewing within the time, there is no provision warranting that procedure.—JOHNSTON *v.* DIMOND, [1934] 3 W. W. R. 340.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

ss. *Solicitor purporting to act for one defendant—Authority to act for second only—Validity of execution against first defendant.*]—OVERN *v.* STRAND, [1931] S. C. R. 720 ; [1932] 1 D. L. R. 490.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.

sg. *One tortfeasor assignee of judgment—May not issue execution against joint tortfeasor.*]—A judgment in tort was assigned by the pltf. to one of the joint defts. :—*Held :* the assignee could not issue execution against the other deft., since he had no right of contribution against him.—REID *v.* ACORN & MCDONALD, [1932] 3 D. L. R. 239 ; 4 M. P. R. 341.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—B.

sk. *Amount recoverable — Judgment debt & six years' interest.*]—KAULBACH *v.* LAVENDER (N. S.), [1929] 1 D. L. R. 238.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—C. (o).

o i. ——.]—The assignee of a judgment debt can enforce execution only after obtaining leave under K. B. Rule 451, even though the assignment expressly purports to assign the execution issued by the judgment creditor.—CONDON *v.* GASSALL & DRINKLE, [1928] 3 W. W. R. 719.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—H.

sm. *Debt Adjustment Acts,—Application to pending actions.*]—In a foreclosure action begun before Debt Adjustment Act, 1932, came into force, an application for a final order of foreclosure can be entertained although the provisions of sect. 6 of said Act have not been complied with. Sect. 5 of said Act applies to the bringing or continuing of the actions therein referred to & the effect of the words "or continued" is that the sect. applies to the continuing of actions or proceedings begun when the Act came into force ; sect. 6, however, which does not contain the words "or continued" applies only to the bringing of the actions or proceedings therein referred to.—EDDY *v.* STEWART, [1932] 3 W. W. R. 71 ; *revsg.*, [1932] 2 W. W. R. 699.—**CAN.**

sn. —— *Whether applicable to execution on judgment for tort.*]—Under Debt Adjustment Act, 1933, a permit from the Debt Adjustment Board is not a prerequisite to the issue of an execution on a judgment recovered in an action founded on tort.—HILL *v.* BAADE (NO. 2), [1934] 2 W. W. R. 16.—**CAN.**

sp. —— *Right to initiate proceedings by way of garnishment.*]—HUTCHISON *v.* CONN, ANDERSON *v.* CONN, [1933] 2 W. W. R. 505.—**CAN.**

sr. —— ——.]—Sub-sect. (5) of sect. 7 of Debt Adjustment Act, 1934, applies only to garnishee proceedings which are incidental to the classes of actions enumerated in sub-sect. (1) (*a*) of said sect. Therefore, garnishee proceedings in an action under the small debt procedure are not subject to the restrictions of sub-sect. (5), even where wages or salary are sought to be attached. In view of the language of said sub-sect. (5) the words "actions or suits" in sub-sect. (1) (*a*) include garnishee proceedings.—FILER *v.* MEYERS & CANADIAN NATIONAL RYS., [1937] 1 W. W. R. 554.—**CAN.**

st. —— *Powers of sheriff.*]—Debt Adjustment Act, 1934, does not prevent the placing of an execution in the sheriff's hands for the purpose of investigating whether anything can be realised thereon, or prevent the sheriff from making inquiry in pursuance thereof & reporting to the execution creditor.—GEORGIA INVESTMENT CO., LTD. *v.* LONDON BUILDING & INVESTMENT CO., LTD., [1936] 1 W. W. R. 3.—**CAN.**

sz. *Orderly Payment of Debts Act, 1932—To what judgments applicable.*]—*Held :* the amount referred to in Orderly Payment of Debts Act, 1932, s. 2 (1) is

87. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

88a. **Against co-surety—Judgment debt paid by surety.**]—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—KAYLEY *v.* HOTHERSALL, [1925] 1 K. B. 607 ; 94 L. J. K. B. 348 ; 132 L. T. 468 ; 69 Sol. Jo. 310, C. A.

146a. **——— Omission to claim costs.**]—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—SMITH *v.* DICKINSON (1844), 5 Q. B. 602 ; Dav. & Mer. 468 ; 13 L. J. Q. B. 151 ; 2 L. T. O. S. 368 ; 8 Jur. 123 ; 114 E. R. 1376.

260. *Add. Annotation :*—**Refd.** *Re* A Debtor, No. 549 of 1928, [1929] 1 Ch. 170.

262. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

263. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

313. *Add. Annotation :*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

318. *Add. Annotation :*—**Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

366a. **Payment of irrevocable sum—Title of plaintiff not proved—Should not be ordered.**]—Pltf. was the widow of a man employed by deft. co. as a derricker. The deceased had left the barge on which he was employed & volunteered to act temporarily as tipper on a second barge in order to relieve a fellow-workman. The fellow-workman was in fact a director of the co., but at the time he was acting merely as a foreman over the job, & was not there as representing the board of directors. While engaged as a tipper in these circumstances he stumbled & fell into the hold, sustaining minor injuries. He was removed to hospital & given an anæsthetic under which he collapsed & died. The post-mortem examination showed that he had a diseased heart, but neither the history of the man's activities nor the use of a stethoscope did or would have disclosed the man's condition. At the trial it was held that the death was due to the negligence of defts., who were ordered to pay to pltf. £785, of which sum £300 was not to be recoverable in any event. On appeal :—*Held :* (1) on the facts there was no negligence on the part of the defts. ; (2) the fact that the fellow-worker was a member of the board of directors did not in a case where he was in fact acting as a foreman bar the defence of common employment ; (3) on the work upon which the deceased was engaged at the time he was merely a volunteer & the defence of *volenti non fit injuria* applied ; (4) the administration of the anæsthetic was not a wrongful act intervening between the accident & the death, & could not be relied on as a case of *novus actus intervenions* ; (5) where there is an appealable matter, the ct. should not, as a condition of granting a stay of execution, order to be paid to pltf. & to be irrecoverable in any event any sum to which it is possible that it may ultimately be decided that pltf. has no title.—BLOOR *v.* LIVERPOOL DERRICKING & CARRYING CO., LTD., [1936] 3 All E. R. 399, C. A.

380. *Add. Citation :—sub nom.* **WALTER *v.* DAVIES, *Ex p.* GLAMORGAN (FORMER SHERIFF), 31 L. T. O. S. 169.**

392a. **——.**]—If a pltf. or his attorney has received the debt & costs, in a case where the debtor had been taken in execution, it is the duty of pltf. or his attorney to discharge him ; & so, if he tenders the amount, it is the duty of pltf. or his attorney to discharge him, & the omission to do so is *primâ facie* evidence of the amount of the original judgment & the application of the clause is not affected by the fact that that amount has been increased by interest, costs of execution or costs of an appeal so as to bring it over $800.—DOMINIK *v.* STRYK, [1935] 2 W. W. R. 555 ; 4 D. L. R. 269 ; 43 Man. L. R. 262.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.

89 i. *Affidavit in support—Attachment of property of absconding debtor—Contents.*]—*Re* LONG, *Ex p.* MOORE (1883), 23 N. B. R. 229.—**CAN.**

89 ii. *—— Sufficiency of—Action by two plaintiffs.*]—In an action by two pltfs. an attachment order under K. B. r. 814, should not be made where the affidavit in support of the application for the order states that "defts. are justly & truly indebted to pltfs. or one of them or are legally liable to pltfs. or one of them," since this is not that positive & definite statement of indebtedness or liability which the rule requires.—FIELDS *v.* NORTHLAND CO., [1933] 1 W. W. R. 734 ; 2 D. L. R. 366 ; 29 Man. L. R. 200.—**CAN.**

PART II. SECT. 11.

sl. Prior proceedings under Absconding Debtors Act.]—*Held :* a subsequent execution was defeated.—KERR *v.* SCOVIL (1870), 13 N. B. R. (2 Han.) 16. —**CAN.**

PART II. SECT. 15, SUB-SECT. 1.

254 i. *Appeal from judgment.*]—The broad principle in India as regards execution matters is that time is not computed from the date when the right to apply accrues, but is postponed in cases where there is an appeal. —NAGENDRANATH BANERJI *v.* AMBIKACHARAN CHAKRAVARTI (1929), I. L. R. 57 Calc. 549.—**IND.**

PART II. SECT. 15, SUB-SECT. 4.—B. (a) i.

315 iii. —— ——.]—In the absence of special circumstances, & where it was unlikely that leave to appeal would be granted by the Privy Council, the Appellate Div. refused to stay execution of a judgment for £2,801 ——— & £1,414 costs pending an application to the Privy Council for special leave to appeal & refused also to order that security *de restituendo* should be given by the party levying execution.—FISMER *v.* THORNTON, [1929] App. D. 17.—**S. AF.**

PART II. SECT. 15, SUB-SECT. 4.—B. (a) ii.

permitted only as suit pending.]—SCUILLI *v.* PLANTA (1928), 39 B. C. R. 450.—**CAN.**

PART II. SECT. 15, SUB-SECT. 5.

sj. Protection of successful party's interests.]—Upon motion by defts. for stay pending appeal :—*Held :* the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltfs. would be adequately protected.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

sl. Necessity for actual seizure.]—Before there is any right to act upon a replevin bond there must be a replevin, & this involves the actual seizure of the goods & putting them in the hands of pltf.—SCOTT *v.* SMITH (1932), 6 M. P. R. 85.—**CAN.**

PART II. SECT. 20, SUB-SECT. 1.—A. (a).

386 ii. ——.] — MCDONALD *v.* MITCHELL (1878), 12 N. S. R. (3 R. & C.) 274.—**CAN.**

malice (PARKE, B.).—TEBBUTT *v.* HOLT (1844), 1 Car. & Kir. 280; 174 E. R. 811.

:—**Refd.** Clissold *v.* Cratchley, [1910] 2 K. B. 244.

417a. Service of writ—On clerk in court.]—*Held:* not good.—ELLISON *v.* PICKERING (1803), 8 Ves. 319; 32 E. R. 377.

Annotation:—**Refd.** Ward *v.* Arch (1839), 8 L. J. Ch. 255.

417b. Sheriff's officer remaining in house—Until money paid.]—MOORE *v.* BEAMONT (1795), 6 Term Rep. 137; 101 E. R. 476.

Part III.—Particular Forms of Execution.

512. *Add. Annotations:*—*As to* (3) **Refd.** The Beldis, [1936] P. 51. *Generally*, **Refd.** The Point Breeze, [1928] P. 135.

556a. ——.]—HODGES *v.* MARKS (1618), Cro. Jac. 485; 79 E. R. 414.

563a. —— ——.]—A sheriff's officer, having a *fi. fa.* against A., called at his house when he was from home, waited till be returned, & then informed him of his business:—*Held:* sufficient evidence to warrant the jury in finding that the writ was executed at the time of the officer's entry.—BIRD *v.* BASS (1843), 6 Man. & G. 143; 5 Scott, N. R. 928; 1 L. T. O. S. 231; 134 E. R. 841.

574a. —— ——.]—ANON. (1704), 6 Mod. Rep. 105; 87 E. R. 864.

574b. —— ——.]—BURDETT *v.* ABBOT (1811), 14 East, 1; 104 E. R. 501; *affd. sub nom.* BURDETT *v.* ABBOT, BURDETT *v.* COLMAN (1817), 5 Dow. 165, H. L.

Annotation:—**Consd.** Harvey *v.* Harvey (1884), 26 Ch. D. 644.

582a. —— Original entry unjustifiable.]—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62; 80 E. R. 211.

Annotations:—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1; Sandon *v.* Jervis (1859), E. B. & E. 942.

614. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

615. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

PART II. SECT. 20, SUB-SECT. 4.—A. (a).

459 i. —— *In action by third party.*]—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *primâ facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—KIRCHHOFFER *v.* CLEMENT (1897), 11 Man. L. R. 460.—**CAN**

PART II. SECT. 20, SUB-SECT. 4.—A. (b).

sa. *Judgment irregular.*]—A seizure of chattels under an execution issued on a judgment which is afterwards set aside as irregular gives rise to a cause of action for damages for the trespass in taking the chattels out of their owner's possession.—DEMERS *v.* DESROSIER (No. 2) (Alta.), [1929] 3 D. L. R. 401; 2 W. W. R. 241.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—B. (a).

q i. —— —— *Onus of proof on sheriff—To justify seizure.*]—JOHNSON *v.* BUCHANAN (1896), 29 N. S. R. (17 R. & G.) 27.—**CAN.**

PART II. SECT. 21.

494 i. *When ordered.*]—HART *v.* RUTTAN (1874), 23 C. P. 613.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*]—WORTH *v.* DAVIE, [1917] 1 W. W. R. 615; 11 Alta. L. R. 461.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—B. (b).

532 iii a. *S. P.* HOWARD *v.* HIGH RIVER TRADING CO. (1899), 4 Terr. L. R. 109.—**CAN.**

532 v. —— ——.]—SNARR *v.* WADDELL (1864), 24 U. C. R. 165.—**CAN.**

532 vi. —— —— *Earlier writ not renewed within year.*]—BANK OF MONTREAL *v.* TAYLOR (1864), 15 C. P. 107.—**CAN.**

g i. —— ——.]—HAMILTON PROVIDENT & LOAN SOCIETY *v.* CAMPBELL (1884), 12 A. R. 250.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (b).

f i. *S. P.* HINCKS *v.* SOWERBY (1879), 4 A. R. 113.—**CAN.**

f i. —— *Goods listed.*]—NOSEWORTHY *v.* CAMPBELL, [1929] 1 D. L. R. 964; 60 N. S. R. 377.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) ii.

si. *Not last cow.*]—MCLEAN *v.* WATSON (1858), 2 Thom. 406.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iii.

sn. *Seisin in fee.*]—*Held:* not saleable under an execution against goods.—DOE d. KEOGH *v.* CALHOUN (1843), 1 U. C. R. 157.—**CAN.**

sp. *Interest of assignee of leasehold property in lease.*]—*Held:* not saleable under an execution against goods.—DOE d. SIMPSON *v.* PRIVAT (1848), 5 U. C. R. 215.—**CAN.**

st. *Interest in land charged for maintenance.*]—*Held:* saleable under execution.—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iv.

607 i. *General rule.*]—DOE d. AUSMAN *v.* MINTHORNE (1846), 3 U. C. R. 423.—**CAN.**

608 iii. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

sv. *Purchaser's interest in land under agreement to buy.*]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. *v.* BULLOCK FARMS, LTD., [1925] 2 W. W. R. 559.—**CAN.**

sx. *When bound by execution.*]—A *chose in action* is not bound by execution put in the sheriff's hands, but only by seizure thereunder.—RENNIE *v.* QUEBEC BANK (1900), 1 O. L. R. 303.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) v.

o i. —— —— *On homestead transferred to wife.*]—Where a husband transfers his homestead to his wife who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—STANDARD TRUSTS CO. *v.* BRIGGS, [1926] 2 D. L. R. 379; [1926] 1 W. W. R. 832; 22 Alta. L. R. 113.—**CAN.**

o ii. —— —— *On wife's farm worked by debtor.*]—*Held:* in the circumstances the crop belonged to the husband & could be seized in execution.—PARENTEAU *v.* HARRIS (1884), 3 Man. L. R. 329.—**CAN.**

o iii. *S. P.* SLINGERLAND *v.* MASSEY MANUFACTURING CO. (1894), 10 Man. L. R. 21.—**CAN.**

p i. —— *Undivided crop—Debtor servant of owner of land.*]—Crop Payments Act, R. S. S., 1920, c. 126, as amended by 1924, c. 28, which allows a sheriff to seize & sell the interest of an execution debtor in an undivided crop, does not apply to a case where the debtor's interest does not arise under a lease, agreement for sale or mtge., but only under an arrangement under which he was to act as manager or servant of the owner of the land on which the crop was grown.—DONOVAN *v.* BELIVEAU (Sask.), [1929] 4 D. L. R. 900; 3 W. W. R. 107.—**CAN.**

p ii. —— —— *What amounts to division.*]—DONOVAN *v.* BELIVEAU, [1931] 1 W. W. R. 158; 1 D. L. R. 992.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) vii.

e i. —— *Interest in shares.*]—SAYRE *v.* GILFOY, [1925] 1 W. W. R. 992.—**CAN.**

e ii. —— ——.]—The ct. has no jurisdiction to appoint a receiver by way of equitable execution for the sale of the equity in shares of a co.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1929] 3 W. W. R. 622; [1930] 1 D. L. R. 580; 38 Man. L. R. 395; *revsg.*, 38 Man. L. R. 298; [1929] 2 W. W. R. 90.—**CAN.**

e iii. —— *Interest of vendor of land.*]—A vendor who has retained the legal

645. *Add. Annotation :*—Reld. Spyer *v.* Phillipson, [1931] 2 Ch. 183.

680. *Add. Citation :—sub nom.* Dickinson *v.* Kitchen, 8 E. & B. 789 ; 120 E. R. 293.

Add. Annotations :—Reld. The Feronia (1868), L. R. 2 A. & E. 65 ; Keith *v.* Burrows (1876), 1 C. P. D. 722.

title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—Weidman *v.* McClary, [1917] 2 W. W. R. 210; 33 D. L. R. 672.—CAN.

e iv. ——.]—The provisions of Land Titles Act (Alta.) are such, that a legal execution against land cannot bind an equitable interest in lands registered in the name of a person other than an execution debtor, some form of equitable execution is necessary for the purpose.—Seay *v.* The Sommerville Hardware Co., Ltd., [1917] 1 W. W. R. 1497 ; 33 D. L. R. 508.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) viii.

sa. *Article claimed as fixture by third party—Interpleader issue directed—Effect of.*]—Where an article seized under a writ of execution against goods is claimed by a third person as a fixture the directing of an interpleader issue with respect to it in no way decides that it is a chattel.—Findlay *v.* Menzies, [1928] 1 W. W. R. 457.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) x.

u i. —— *Paid to debtor's solicitor—For payment of costs of action.*]—*Held :* not liable to attachment.—*Re* Fort Frances Pulp & Paper Co. *v.* Telegram Printing Co., Phillipps & Scarth *v.* London Guarantee & Accident Co., Ltd., [1925] 4 D. L. R. 204.—CAN.

f i. —— —— *In name of wife & son.*]—Robert Dollar Co. *v.* Walker (1926), 36 B. C. R. 405.—CAN.

l (p. 488) i. —— *Shares—Company outside province.*]—Shares in a co. which has no place within Manitoba where service of process may be legally made upon it are not subject under sect. 14 of Executions Act, R. S. M., 1913, c. 66, to legal execution.—Goodbun *v.* Mitchell (No. 5) (Man.), [1930] 1 D. L. R. 580 ; 38 Man. L. R. 395 ; [1929] 3 W. W. R. 622 ; *revg.*, 38 Man. L. R. 298 ; [1929] 2 W. W. R. 90.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xiii.

f i. ——.]—Kassop *v.* Evans (1900), 8 Nfld. L. R. 396.—NFLD.

f ii. —— *Not ship sold under Admiralty judgment.*]—VanEvery *v.* Grant (1862), 21 U. C. R. 542.—CAN.

sl. *Property of wife under bill of sale—Execution creditor of husband.*]—The execution creditor of husband cannot seize a ship owned by the wife under an unregistered bill of sale.—Dicks *v.* Keays, [1936] 2 D. L. R. 58 ; 6 F. L. J. (Can.) 69.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xv.

q i. ——.]—In order to be entitled to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—McLeod *v.* Girvin Central Telephone Assocn. (Sask.), [1926] 1 D. L. R. 216; [1926] 1 W. W. R. 38. —CAN.

s i. *Automobile—Used for business.*]—The judgment debtor, the salaried manager of a building co., claimed exemption for an automobile which he used exclusively & continuously in superintending the erection of houses by his co. in different parts of the city. The contract between him & the co. did not require him to supply an automobile, & did not define his duties or the method to be followed in performing them :—*Held :* the automobile was not exempt under Exemptions Act, R. S. M. 1913, c. 66, s. 29 (*f*), as amended by 1925 Act, c. 20.—Goldsmith *v.* Harris, [1928] 3 D. L. R. 478 ; [1928] 2 W. W. R. 401 ; 37 Man. L. R. 389.—CAN.

s ii. —— *Used for agriculture.*]—An automobile is not exempt under Exemptions Act Amendment Act, 1935, unless *inter alia* it is one used for agricultural purposes.—Western Grocers, Ltd. *v.* Kay, [1935] 3 W. W. R. 320 ; *affd.*, [1936] 1 W. W. R. 381.—CAN.

s iii. ——.]—A motor car used by its owner, whose sole occupation was that of a fisherman, to haul fish from the lake where they were caught to market :—*Held :* a "necessary" within Executions Act, R.S.M., 1913, s. 29 (*f*), as amended, & therefore exempt from seizure.—Zelenisky *v.* Isfield, [1935] 2 W. W. R. 45 ; 43 Man. L. R. 100.—CAN.

sw. *Agricultural implements.*]—Under sect. 29 (*f*) of Executions Act, R.S.M., 1913, which exempts *inter alia* "agricultural implements" to the value of $800, the exemption is not restricted to one set of implements.—Banque Canadienne Nationale *v.* Houde, [1935] 1 W. W. R. 421 ; 2 D. L. R. 808 ; 43 Man. L. R. 27.—CAN.

sz. *Building materials.*]—Materials acquired by a debtor for the purpose of building a house on his homestead to replace one thereon which has been destroyed by fire are not made by Executions Act, R. S. M., 1913, or otherwise, exempt from seizure under executions. The words "or other person" following "mechanic, artisan, machinist, builder, contractor," in sect. 39 of said Act must be construed as *ejusdem generis*.—Rosmus *v.* Bazay, [1936] 2 W. W. R. 175 ; 2 D. L. R. 736 ; 44 Man. L. R. 192.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xvi.

c (p. 493) **i.** —— —— *Part of proceeds consisting of mortgage.*]—*Held :* not exempt. — Massey-Harris Co. *v.* Schram (1902), 5 Terr. L. R. 338.—CAN.

c (p. 493) **ii.** —— —— *Whether proceeds exempt.*]—Purdy *v.* Colton (1908), 1 Sask. L. R. 288 : 7 W. L. R. 820.—CAN.

c. (p. 493) **iii.** —— —— *Effect of Exemptions Act, R. S. M.*, 1913, *s.* 40.]—Property exempt from seizure under a writ of execution, disposed of by the judgment debtor to a third person, cannot be reached by the judgment creditor, whether on grounds of fraud or otherwise. The contention that the claim for exemption must be made by the debtor is met by the prohibition in Exemptions Act, R. S. M., 1913 (c. 66), s. 40.—Sprues *v.* Gregoryk & Boycum, [1930] 1 W. W. R. 378 ; 1 D. L. R. 896 ; 38 Man. L. R. 477.—CAN.

d (p. 493) **i.** ——.]—Massey *v.* McClelland, Baker *v.* McClelland (1895), 2 Terr. L. R. 179.—CAN.

d (p. 493) **ii.** *S. P.* Bocz *v.* Spiller (1905), 6 Terr. L. R. 225 ; 1 W. L. R. 366 ; 2 W. L. R. 280.—CAN.

h (p. 493) **i.** —— ——.]—A motion for final judgment for the sale of land under a registered certificate of judgment will not be granted unless pltf. has pleaded in his statement of claim or shown by affidavit that the land is not exempt as the homestead of the debtor. Where a transfer of a homestead is colourable only & the title is held upon a secret trust for the transferor, it does not deprive him of his right of exemption.—Dayholos *v.* Kuniec, [1928] 1 W. W. R. 691.—CAN.

k (p. 493) **i.** ——.]—Pltf. brought this action for a declaration that executions registered by deft. in the execution register in a land titles office, against the lands of pltf., were not a charge or lien on certain land described, which pltf. claimed as his homestead, & for the removal of the executions from the register :—*Held :* if pltf. had established that the land described was his "homestead," within Exemptions Ordinance, it was so only for the time that it was occupied by the debtor & his family ; there might be a change ; & any declaration would apply only at the particular moment when made.—Gilmore *v.* Callies (1911), 10 W. L. R. 545.—CAN.

k (p. 493) **ii.** ——.]—Pltf. applied to have taken off the register of the title of land transferred to her by her husband, a certain execution obtained against her husband, on the ground that at the time of such transfer the land was her husband's homestead & as such exempt under Exemptions Ordinance. On the facts :—*Held :* the land was, at the time of the transfer to pltf., her husband's homestead, &, therefore, exempt from seizure.—Hart *v.* Rye (1914), 27 W. L. R. 9.—CAN.

k (p. 493) **iii.** ——.]—A homestead under Homesteads Act (Sask.) means the home of the debtor, the actual residence of himself & his family, & includes the lot upon which the dwelling-house is situate, according to the registered plan of the same :—*Held :* Exemptions Act, s. 2 (10), applied.—Overton *v.* Gerrity (1916), 34 W. L. R. 875.—CAN.

k (p. 493) **iv.** —— *Whether exemption extends to members of family.*]—Meunier *v.* Doray (1905), 6 Terr. L. R. 194.—CAN.

k (p. 493) **v.** —— *Whether exemption extends to proceeds of voluntary sale.*]—There is nothing in Exemptions Act, R. S. A., 1922 (c. 95), which carries the exemptions accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor.—John Deere Plow Co., Ltd. *v.* McEachran, [1930] 1 W. W. R. 622 ; 2 D. L. R. 796 ; *affg.*, [1930] 1 W. W. R. 561.—CAN.

k (p. 493) **vi.** —— *Building used for business.*]—Under Exemptions Act, R. S. A. 1922 (c. 95), a debtor's right to the homestead exemption is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes ; nor is it affected by the nature of his title to the land, *e.g.* by the fact that he is a tenant in common. —*Re* Cherniak Estate, [1930] 1 W. W. R. 676 ; 11 C. B. R. 323 ; *affd.*, [1930] 2 W. W. R. 336 ; 3 D. L. R. 994 ; 11 C. B. R. 444.—CAN.

k (p. 493) **vii.** —— ——.]—Under Exemptions Act, R. S. A., 1922, a debtor's right to exemption with respect to his home is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes.—Canadian Credit Men's Trust Assocn. *v.* Umbel & Gillespie Grain Co., Ltd., [1931] 3 W. W. R. 145.—CAN.

k (p. 493) **viii.** —— *Crop grown on*

by public auction— possession—Execution creditor present at sale.]—*Held:* the goods could not be taken in execution by such execution creditor.—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

Annotations:—**Refd.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299; Hickman *v.* Cox (1857), 30 L. T. O. S. 279; Barker *v.* Furlong, [1891] 2 Ch. 172.

730. *Add. Annotation:*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

750. *Add. Citation:*—*previous proceedings*, 3 O. & P. 524. N. P.

homestead.]—Exemptions Act, R. S. S., 1920 (c. 51), does not exempt the crop grown on a homestead.—LUCIUK *v.* KRAUS, [1930] 1 W. W. R. 17; 1 D. L. R. 927; 24 S. L. R. 350.—**CAN.**

k (p. 493) ix. —— *Debtor tenant in common.*]—The fact that the interest of a debtor in the property occupied by him as a home is that of a tenant in common does not disentitle him to the benefits of sect. 2 (*f*) of Exemptions Act, R. S. A., 1922 (c. 95).—NEVE, RANAGHAN & COPE, LTD. *v.* MOTLEY & MOTLEY, [1930] 3 W. W. R. 109; 4 D. L. R. 69.—**CAN.**

k (p. 493) x. ——.]—The homestead exemption which is allowed by Judgments Act, R. S. M., 1913, is more than a mere personal right in the male head of the family. Therefore, where an insolvent husband made a voluntary transfer to his wife of the house, valued at $3,500, in which they & their family were residing & on which they continued after the transfer to reside, & a creditor of the husband who recovered judgment against the husband shortly after the transfer sought an order for the sale of the property without regard to the transfer:—*Held:* the right of exemption continued, & while the judgment creditor could proceed to a sale because it appeared that the property was of a value in excess of $1,500, yet that such proceedings, if taken, must be in accord with the provisions of the statute, which in particular require that $1,500 be provided for by the judgment creditor in advance of the completion of the sale. Deft. wife would in such event be the party to whom such amount should be paid.—DOMINION BANK *v.* LITSTER, [1933] 2 W. W. R. 359; 41 Man. L. R. 404.—**CAN.**

k (p. 493) xi. —— *Personal property of Indian—Motor boat.*]—A gasoline boat of which deft., an unenfranchised Indian, was a part owner:—*Held:* under the circumstances not to be property of an Indian on a reserve & not property which sects. 102 & 105 of Indian Act, R. S. C., 1927, prevented from being seized under execution.—POPE *v.* PAUL, [1937] 2 W. W. R. 449.—**CAN.**

p (p. 493) i. —— —— *Personal residence not necessary.*]—A homestead can be "in the use & enjoyment of the widow & children or widow or children," within sect. 6 of Exemptions Act, R. S. S., 1930, without personal residence by the widow or children thereon. The right to use & enjoy includes the right to let & to the rents & profits therefrom. Therefore where provision must be made for the maintenance & support of a deceased's dependants, & it is not feasible nor in their interests to continue in actual personal residence of the homeplace or homestead, they may claim the rents & profits therefrom for maintenance & support.—*Re* MCEACHEN ESTATE, [1933] 2 W. W. R. 177.—**CAN.**

l i. ——.]—When debtor is in actual residence on certain property belonging to him, such property is *primâ facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—SALTER & ARNOLD, LTD. *v.* DILLMAN, [1924] 2 W. W. R. 1225.—**CAN.**

l ii. ——.]—Under Exemptions Act, R. S. S., 1920, the home of a debtor is free from seizure under execution so long as he uses it as his home, even though its value is in excess of $3,000. There is no power given to the sheriff to sell the home & earmark $3,000 of the proceeds for the benefit of the debtor. The intention of sect. 23 of Bkpcy. Act is that the exemptions Act of each province should stand unimpaired & be effective notwithstanding the federal legislation.—*Re* HAYES, [1931] 1 W. W. R. 301; 25 S. L. R. 257; 42 C. B. R. 225.—**CAN**

m (p. 493) i. —— —— ——.]—BAKER *v.* GILLUM (1908), 1 Sask. L. R. 498; 9 W. L. R. 436.—**CAN.**

q i. —— —— ——.]—MCLATCHIE *v.* MCLEOD (1890), 6 Man. L. R. 452.—**CAN.**

q ii. —— *Exemptions Act, Alta.—Not applicable against Crown.*]—R. *v.* O'BRIEN, [1924] 1 D. L. R. 222; [1924] 1 W. W. R. 104.—**CAN.**

q iii. —— *Rents & profits of.*]—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.—WILKINS *v.* MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.**

q iv. —— *Proceeds of sale of.*]—There is nothing in Exemptions Act, R. S. A., 1922, which carries the exemption accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor, even though he is still in the actual occupation of it.—REGAL DISTRIBUTORS, LTD. *v.* FREELE, [1931] 1 W. W. R. 299; 1 D. L. R. 943; 25 Alta. L. R. 279.—**CAN.**

q v. —— *Crops.*]—The unexpired portion of a lease of land is not exempt under Exemptions Act, R.S.A., 1922.—*Re* SCOTT ESTATE, [1935] 1 W. W. R. 325; 5 F. L. J. (Can.) 3.—**CAN.**

s (p. 493) i. *Goods of business—Carried on in name of wife—Managed entirely by husband.*]—MEAKIN *v.* SAMSON (1878), 28 C. P. 355.—**CAN.**

s (p. 494) i. *Income of trust fund.*]—Deft.'s father devised his estate to trustees upon the trust, among others, "to pay my son A. [deft.] the interest of the sum of $800 annually during the term of his natural life." An order was made by the master in chambers, directing the trustees to pay over the interest, from time to time accruing, to plff., who was a judgment creditor of the son.—LLOYD *v.* WALLACE (1882), 9 P. R. 335.—**CAN.**

s (p. 494) ii. *Goods of third party subject to landlord's lien.*]—Where goods belonging to a third party are subject to a landlord's lien such goods are liable to execution in respect of a magistrate's ct. judgment for arrear rent, without a separate action against the owner of such goods.—COLUMBIA FURNISHING CO. *v.* GOLDBLATT, [1929] App. D. 27.—**S. AF.**

k (p. 494) i. ——.]—RYERS *v.* MURPHY (1893), 3 Terr. L. R. 169.—**CAN.**

sk. *Truck of truckman—Exempt.*]—*Re* LYONS, [1934] 1 D. L. R. 432.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.

710 iii. ——.]—*Re* BANK OF MONTREAL *v.* TANNAS, TANNAS *v.* BANK OF MONTREAL, [1925] 3 D. L. R. 1079.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) ii.

p i. —— *Sale—No change of possession.*]—Judgment in favour of the execution creditor affirmed.—PETTIGREW *v.* THOMAS (1885), 12 A. R. 577.—**CAN.**

p ii. —— —— *Of land.*]—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.—*Re* CANADIAN PACIFIC RY. CO., CROWN LUMBER CO. *v.* MCKENZIE (1916), 10 W. W. R. 1370.—**CAN.**

a i. ——.]—JEANETTE DRESS CO. *v.* HENISH, [1932] 2 D. L. R. 811; 5 M. P. R. 1.—**CAN.**

sm. *Restraint of sale — Interest necessary.*]—In order for a third party claiming an interest in goods seized under execution to be able to prevent the sale of such interest, whether in whole or in part, he must have an exclusive right in such interest.—SEITZ *v.* BANK OF MONTREAL, [1933] 2 W. W. R. 70.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) iii.

b i. ——.]—The fact that goods exempt from seizure under execution are included in a chattel mtge. made by the debtor does not deprive the debtor of his right of exemption.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

c i. —— *Not in possession of debtor—Onus of proof.*]—On an interpleader issue between an execution creditor & a claimant of goods which, at the time of their seizure under the execution, were not in the possession of the execution debtor, the onus is on the execution creditor of showing that the execution debtor was the owner of the goods or had an interest therein capable of being seized under the execution; & he must make out a *primâ facie* case before the claimant can be put to proof of his case.—STEWART *v.* CURRIE, CANADIAN PACIFIC RY. CO. *v.* STEWART, [1928] 1 D. L. R. 842; [1928] 1 W. W. R. 206; 22 Sask. L. R. 351.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) x.

g i. *S. P.* KILBRIDE *v.* CAMERON (1867), 17 C. P. 373.—**CAN.**

g ii. *S. P.* MASSEY-HARRIS *v.* MOORE (1905), 6 Terr. L. R. 75.—**CAN.**

k i. *Transfer of property to trustee—In fraud of creditors—Attachment sustained.*]—THOMPSON *v.* ELLIS (1883), 16 N. S. R. (4 R. & G.) 307.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xi.

d (p. 500) i. —— —— ——.]—SEALE *v.* GRAY, [1932] 3 D. L. R. 567.—**CAN.**

sd. *Property of husband—Standing in name of wife.*]—In an action against

v. STURMEY (1859), 32 L. T. O. S. 259; 23 J. P. 88; 5 Jur. N. S. 45; 7 W. R. 162.

804. *Add. Annotation:*—**Refd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211.

805. *Citations:*—Omit "C. A."

817a. ——.]—TOCOCK *v.* HONYMAN (1602), Yelv. 6; 80 E. R. 5.

Annotations:—**Refd.** Meriton *v.* Stevens (1741), Willes 271; Gilles *v.* Grover (1832), 9 Bing. 128.

835. For "—— —— & finally" read "—— —— **Not finally.**"

880. *Add. Annotation:*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

881a. May be compelled to sell.]—ANON. (1702), 7 Mod. Rep. 118; 87 E. R. 1135.

883a. ——.]—BOTTOMLEY *v.* HEYWARD (1862), 7 H. & N. 562; 31 L. J. Ex. 500; 7 L. T. 44; 158 E. R. 595; *sub nom.* BOTHAMLEY HEYWARD, 8 Jur. N. S. 1156.

954. *Add. Annotation:*—*As to* (3) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

961. *Add. Annotation:*—**Refd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

1002a. —— —— **Who is purchaser for valuable consideration—Creditor-trustee under deed of assignment.**]—Sect. 26 (1) of the Sale of Goods Act, 1893, provides that a writ of *fi. fa.* shall bind the debtor's goods from the time when the writ is delivered to the sheriff, provided that no such writ shall prejudice the title to goods acquired by any person in good faith & for valuable consideration without notice of the writ.

A judgment creditor issued a writ of *fi. fa.* on June 23 & posted it on the same day to a man & his wife, brought by an execution creditor of the man, for a declaration that certain property standing in the name of the wife was exigible under the execution against the husband:—*Held:* the facts & circumstances adduced in evidence did not warrant the inference that the husband intended to defraud creditors. Fraudulent intent should not be found except upon substantial grounds & upon clear evidence.—ROBERTSON *v.* ROBINSON, [1928] 2 D. L. R. 343; 62 O. L. R. 12; *affd.*, [1929] 4 D. L. R. 1072; S. C. R. 175.—**CAN.**

sf. *Business carried on by husband & wife—Determination of ownership of goods.*]—MAYLAND *v.* DICKS, [1930] 3 D. L. R. 393.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xii.

sx. *Execution against hirer—Equitable interest of third party in goods.*]—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.—BLACK *v.* DROUILLARD (1877), 28 C. P. 107.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xiv.

m i. —— —— *Fixtures affixed to mortgaged freehold.*]—CARSON *v.* SIMPSON (1894), 25 O. R. 385.—**CAN.**

n i. ——.]—FERRIE *v.* CLEGHORN (1860), 19 U. C. R. 241.—**CAN.**

n ii. —— *C. S. U. C. c. 45, s. 3—Effect of.*]—ROSS *v.* SIMPSON (1876), 23 Gr. 552.—**CAN.**

n iii. ——.]—SMITH, LTD. *v.* VANCOUVER CREMATION SOCIETY (1914), 29 W. L. R. 150; 20 D. L. R. 214.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xv.

p i. ——.]—GURNEY *v.* JAMES (1860), 10 U. C. R. 156.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.

s i. —— *Assets in futuro.*]—An execution on a judgment of assets *in futuro* is invalid if issued without leave after application made under r. 451.—*Re* SMITH'S ESTATE, CANADIAN GUARANTEE TRUST CO. *v.* DELISLE, [1924] 4 D. L. R. 1288; [1924] 3 W. W. R. 815.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (g) ii.

817 i. *Property still remains in debtor.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—**CAN.**

sy. *Attachment under Absconding Debtors Act.*]—STARR *v.* MUNCEY (1845), 3 N. S. R. (2 Thom.) 244.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—F. (a).

t i. —— —— ——.]—RAPELJE (SHERIFF) *v.* FINCH (1856). 14 U. C. R. 249.—**CAN.**

y i. *Right to place husband or wife of debtor in possession.*]—Though Act 32 of 1917, Ord. 25, r. 5, does not expressly forbid the appointment of the husband or wife of a debtor as a person in whose charge property attached may be left by the messenger, a husband who is a man of no standing & worth nothing is not a suitable person to place in charge of property attached in respect of a debt of his wife.—KOTZE *v.* JOHNSON, [1928] App. D. 313.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.—F. (c).

e i. —— ——.]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re* MURPHY (1927), 27 S. R. N. S. W. 503; 44 N. S. W. W. N. 189.—**AUS.**

PART III. SECT. 1, SUB-SECT. 4.—H. (a).

sz. *Place of sale.*]—A sheriff cannot lawfully sell goods on deft.'s premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—MCMASTER *v.* MCPHERSON (1839), 6 O. S. 16.—**CAN.**

sa. *Payment—What amounts to.*]—CARRALL *v.* MONTREAL BANK (1861), 21 U. C. R. 18.—**CAN.**

sb. *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—AGHA HUSAIN *v.* QASIM ALI (1925), I. L. R. 48 All. 94.—**IND.**

PART III. SECT. 1, SUB-SECT. 4.—H. (b).

sd. *Notwithstanding notice of alleged defect in execution.*]—MCPHAIL *v.* MCKINNON (1868), 7 N. S. R. 168.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (i) ii.

915 vii. —— ——.]—An execution creditor can take only the precise interest, & no more, which the debtor possesses in the property seized.—. MCLEAN, [1928] 4 D. L. R. 917; [1928] 3 W. W. R. 328; 37 Man. L. R. 525.—**CAN.**

sf. *Purchaser estopped from claiming goods as his own.*]—RUTTAN *v.* WELLER (1855), 14 U. C. R. 44.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (j).

940 iv. —— ——.]—MACFIE *v.* HUNTER (1882), 9 P. R. 149.—**CAN.**

sg. *Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—LAMBERT *v.* CLEMENT (1897), 11 Man. L. R. 519.—**CAN.**

sj. *Payment of preference claim for wages—When wage-earner entitled to preference.*]—CAMPBELL *v.* CLEUGH (1920), 28 B. C. R. 359.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.—A.

o i. —— ——.]—STREET *v.* GLASS (1840), 3 N. B. R. (1 Kerr) 165.—**CAN.**

965 ii. —— ——.]—HART *v.* REYNOLDS (1863), 13 C. P. 501.—**CAN.**

967 i. *In respect of what goods—Not ty seized under Absconding 's Act.*]—STANTON *v.* JOHNSTON (1858), 9 N. B. R. (4 All.) 54.—**CAN.**

967 ii. —— *Not goods of third party.*]—ROBINSON *v.* MCINTOSH (1899). 4 Terr. L. R. 102.—**CAN.**

a i. —— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—NOWLIN *v.* ANDERSON 1849), 6 N. B. R. (1 All.) 497.—**CAN.**

sk. *In respect of what goods—Goods held under conditional sale agreement.*]—Where goods in the possession of a tenant under a conditional sale agreement are seized under an execution against the tenant the landlord is entitled to the protection of 8 Anne, c. 14, only to the extent to which his claim for rent exceeds the conditional vendor's lien, even though the agreement was not registered as required by Conditional Sales Act, & was, therefore, invalid as against the execution creditor.—OGILVIE FLOUR MILLS CO., LTD. *v.* BECKER & WOOD & SNIHUR, [1931] 1 W. W. R. 273; 2 D. L. R. 445; 25 Alta. L. R. 257.—**CAN.**

the sheriff's officer, who received it at 9 a.m. on June 24. At 5 p.m. on June 24 the debtors executed a deed of assignment to the claimant as trustee for their creditors. On June 25 the sheriff took possession of the debtors' goods. The trustee was himself one of the creditors, but no other creditor had assented to the deed before the seizure: —*Held:* as the trustee was a creditor he had given consideration by executing the deed of assignment & thereby releasing the debtors from their debt to him & he was therefore within the proviso to Sale of Goods Act, 1893 (c. 71), s. 26 (1).—BEEBEE & Co. *v.* TURNER'S SUCCESSORS (1931), 48 T. L. R. 61.

1043. *Add. Annotation:*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

1069. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1224a. Failure to remove goods—Liability to execution creditor—Measure of damages.]—Pltf. recovered judgment against C. for a certain sum, the order providing for payment by instalments & providing that, in the case of default in payment of any instalment, execution might issue for the whole debt & costs remaining unpaid. C. defaulted in the payment of one instalment & pltf. immediately caused an execution to be levied upon C.'s business premises. The bailiff, by an assistant, went into possession & seized certain furniture. C. paid the amount of an instalment into ct. & the amount then owing, together with certain fees, was £41 19*s.* 8*d.* C. urged the assistant bailiff not to remove the furniture, some of which C. had agreed to sell. L., a friend of C., said there was an application being made to the ct. to stay the execution & that he was ready to pay the money into ct. as a deposit pending the application. The assistant bailiff accepted this arrangement & gave a receipt for the £41 19*s.* 8*d.*, stated to be "received of C. on account of the debt, etc.," with a note at the foot "paid by L. as deposit pending application." Upon the application being made it was ordered that, upon C. undertaking to discharge the balance of the debt & costs by regular instalments & paying the costs of the execution, the warrant of execution should be set aside & the £41 19*s.* 8*d.* returned to L., but in default of the payment by C. of the costs of the execution the £41 19*s.* 8*d.* was to remain in ct. to attend the further order of the ct. Pltf. appealed to the Ct. of Appeal. The appeal was allowed & a new trial ordered to determine whether L. paid the money as agent for C. or otherwise. The county ct. judge's order was held to be irregular, for, if L. paid as such agent, the debt was discharged & the execution was at an end, & no further order could be made with regard to it, & if he was not an agent no order could be made in respect of the sum paid as a deposit, as L. was not a party to the action. Further, the county ct. judge had jurisdiction only to stay the execution & not to set it aside. L. was then joined as a party & at the new trial the judge held that the payment by L. gave pltf. no right to the money, & being satisfied that C. was unable to discharge the instalments due under the judgment he ordered the execution to be suspended upon the terms of a new order for payment by instalments. Pltf. was ordered to pay L.'s costs of that application, & C.'s costs of both applications, such costs to be set off against the costs payable by C. to pltf. under the order of the Ct. of Appeal. C. failed to make any payment under the new order for instalments & pltf. thereupon claimed from the bailiff, as damages suffered by reason of the assistant bailiff's breach of his duty to remove the furniture seized under the execution, the amount of his judgment debt, L.'s costs, C.'s costs, his own costs &

PART III. SECT. 1, SUB-SECT. 7.

q i. —— ——.]—MAHON *v.* CROWE 1896), 28 N. S. R. (16 R. & G.) 250.—**CAN.**

q ii. —— —— *Sale bonâ fide.*]—On an interpleader issue between a buyer of goods from an execution debtor & an execution creditor whose execution was in the hands of the sheriff prior to the sale:—*Held:* the sale was *bonâ fide*, it was followed by "an actual & continued change of possession" sufficient to satisfy Executions Act, R. S. S. 1920, c. 52, s. 2, &, the buyer's absence of knowledge of the execution having been established, the buyer was entitled to the goods under the proviso in said sect.—WILSON *v.* MATTHEWSON BROS. & MAGERNIN, [1928] 3 D. L. R. 276; [1928] 2 W. W. R. 136; 22 Sask. L. R. 543.—**CAN.**

q iii. —— —— *Necessity for continued change of possession.*]—The fact that a purchase of goods from a person against whom the sheriff held writs of execution was made in the utmost good faith does not, under Executions Act, R. S. S., 1930, entitle the buyer to hold the goods against the execution creditor unless he can also establish both that he did not know of the existence of the execution, & that the sale was followed by an actual change of possession of the goods from the debtor to himself which was continued. —MORROW *v.* WESTERN EMPIRE LIFE ASSURANCE CO., LTD., [1933] 2 W. W. R. 393.—**CAN.**

s i. *Assignee—Assignment not filed.*]—*Held:* the execution prevailed.—CARSCALLEN *v.* MOODIE (1856), 15 U. C. R. 92.—**CAN.**

s m. —— *Want of notice of writ—Onus of proof.*]—ROSS *v.* CREIGHTON (1890), 40 N. S. R. 131.—**CAN.**

PART III. SECT. 1, SUB-SECT. 9.

s p. *On application of Creditors' Relief Act*, 1922.]—TERMINAL GRAIN CO. *v.* SODERBERG, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—**CAN.**

s q. —— .]—A seizure of goods having been made under execution an order was obtained for their removal & sale. Before the day set for the sale, the debtor paid the whole amount of the execution to the sheriff:—*Held:* the money so paid was money "levied" within Creditors' Relief Act, 1922, it having been paid by the compulsion of the seizure & the means taken to realise.—BADIUK *v.* MOORE (Alta.), [1930] 1 D. L. R. 47; [1929] 3 W. W. R. 115.—**CAN.**

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—SHUTER *v.* GRAHAM (1848), 2 U. C. R. 164.—**CAN.**

l i. —— *Prisoner not deprived of supersedeas.*]—The issuing of a *fi. fa.*, which is not returned, will not deprive a prisoner of a supersedeas.—JACKSON *v.* BLACK, BAINBRIDGE *v.* BLACK, CARVILL *v.* BLACK (1858), 9 N. B. R. (4 All.) 79.—**CAN.**

ar. *Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

PART III. SECT. 1, SUB-SECT. 11.

d i. —— *Conflicting claims.*]—The ct. will not grant a rule *nisi* to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—SCOTT *v.* ANGUS (1854), 2 N. S. R. (James) 183.—**CAN.**

e i —— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fi. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fi. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—ROSS *v.* FISET, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—**CAN.**

e ii. —— *Time for bringing—Public Officers Protection Act*, 1923 (*c.* 19).] —HOLDEN *v.* MILBURN (Sask.), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—**CAN.**

the costs of the appeal :—*Held :* (1) in view of the prospective sale of some of the furniture by C., there was a chance that in order to prevent the removal of the furniture C. might have made a payment on account of the debt. Pltf. had lost this chance of payment by the bailiff's action, & this chance ought in the circumstances to be valued at £15 ; (2) the bailiff was liable for the amount of the costs of the second hearing. The costs of the ineffective first hearing & of the appeal, for which the bailiff was not responsible, were too remote.—DOMINE *v.* GRIMSDALL, [1937] 2 All E. R. 119 ; 106 L. J. K. B. 386 ; 156 L. T. 456 ; 53 T. L. R. 498 ; 81 Sol. Jo. 295.

1231a. —— —— **What amounts to.**] — Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded :—*Held :* not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—CRONSHAW *v.* CHAPMAN (1862), 7 H. & N. 911 ; 31 L. J. Ex. 277 ; 6 L. T. 54 ; 10 W. R. 323 ; 158 E. R. 738.

1243. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1244. *Add. Annotation :*—**Refd.** Williams *v.* Williams & Nathan, [1937] 2 All E. R. 559.

1244a. —— —— ——.]—Where, on a claim being made to goods seized by a bailiff, the execution creditor does not direct the bailiff to give up the goods to the claimant, but appears & contests his title in interpleader proceedings :—*Held :* no evidence of a ratification by the execution creditor of the bailiff's detention.—TOPPIN *v.* BUCKERFIELD & CROSS (1883), Cab. & El. 157.

1250. *Add. Citations :*—1 New Pract. Cas. 476 ; *sub nom.* ROLLS *v.* SENIOR, 7 L. T. O. S. 60.

1257. *Add. Annotation :*—**Consd.** Swaffer *v.* Mulcahy, Hooker *v.* Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

1281a. Sale without order of court—Sale not confirmed.]—R. *v.* BLUNT (1828), 2 Y. & J. 120 ; 148 E. R. 857.

1293. *Add. Citation :*—8 Dowl. 97.

1334a. —— **Appeal from—Lies to Court of Appeal.**] —SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo 92, C. A.

1370a. —— **Subject to mortgage by sub-demise.**]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1380a. —— ——.]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1381. In para. for " case " read " estate."

PART III. SECT. 1, SUB-SECT. 12.—C.

r i. ——.]—MAY *v.* HOWLAND, FITCH & WEBB (1859), 19 U. C. R. 66.—**CAN.**

1230 v. —— ——.]—A., after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party :—*Held :* A. was answerable for the consequence of what the constable did in obeying his instructions.—GRAVES *v.* SPRAGUE (N. B.) (1920), 53 D. L. R. 337.—**CAN.**

1230 vi. —— ——.]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises ; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* deft. had so intermeddled in the distress as to be liable for conversion.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

1243 i. *Ratification by creditor—Whether giving rise to liability—Wrongful seizure.*]—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—BALLANTYNE *v.* MCCULLOCH & Co. & SIMS (B. C.), [1927] 4 D. L. R. 525 ; [1927] 3 W. W. R. 148.—**CAN.**

PART III. SECT. 1, SUB-SECT. 13.—A.

o i. —— *After receipt of attachment.*] —*Held :* the sale could not be upheld, & the attachment must prevail.—RILEY *v.* NIAGARA DISTRICT BANK (1866), 26 U. C. R. 21.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

st. *Not after debt treated by creditor as satisfied.*]—BANK OF UPPER CANADA *v.* MURPHY (1850), 7 U. C. R. 328.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

sv. *Delivery of writ—Land bound from time of delivery.*]—DOE d. NESMITH *v.* WILLISTON (1844), 4 N. B. R. (2 Kerr) 459.—**CAN.**

sw. —— *Proof of.*]—The sheriff's deed is *primâ facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—MITCHELL *v.* GREENWOOD (1854), 3 C. P. 465.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—C.

1340 i. *False return.*]—YOUNG *v.* BABY (SHERIFF) (1855), 4 C. P. 537.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—A.

f i. —— *Land of patentee of free grant.*] —An execution against the lands of a patentee under the Free Grants & Homesteads Act, R. S. O. 1887, c. 25, on a judgment obtained for a debt incurred before location of the lands, does not operate as a charge against the lands when sold by his devisee, even after the expiry of twenty years from the date of the location.—*Re* BEATTY & FINLAYSON (1896), 27 O. R. 642.—**CAN.**

1356 i. *Land held under joint tenancy.*] —Lands were conveyed to a man & his wife as joint tenants & not as tenants in common :—*Held :* estates by entireties having been abolished, the joint estate was severable, & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142 ; 63 O. L. R. 192.—**CAN.**

sx. *Land held by tenant in common—Claim by other tenants in common for rent received in excess.*]—MCPHERSON *v.* MCPHERSON (1883), 10 P. R. 140.—**CAN.**

sy. ——.]—Under a judgment obtained against a person in a district ct. the registrar of the ct., in executing such judgment, may seize & take under a writ of execution the interests of such person in lands as a tenant in common & upon the writ being forwarded to the Registrar-General, it is his duty to note it on the *folium* of the register which certifies the title of the registered proprietor as a tenant in common.—*In re* GUSS (1927), 28 S. R. N. S. W. 226 ; 45 N. S. W. W. N. 32.—**AUS.**

sz. *Land held by debtor at time of death—On judgment against representative.*]—Lands & tenements held in fee simple by a debtor at the time of his decease, may be legally taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Estate in hands of executor—Judgment against debtor.*]—*In the Estate of* CARTER, ASCOT TIMBER CO. PTY., LTD. *v.* CARTER, [1928] V. L. R. 290 ; [1928] Argus L. R. 199.—**AUS.**

g i. ——.]—RUSSELL *v.* RUSSELL (1881), 28 Gr. 419.—**CAN.**

g ii. —— ——.]—PARKE *v.* RILEY, 3 E. & A. 215.—**CAN.**

g iii. —— *By heir or devisee—Before execution issued.*]—*Held : a bonâ fide* purchaser for value would have a good title as against creditors.—REID *v.* MILLER (1865), 24 U. C. R. 610.—**CAN.**

sc. *Land registered in name of debtor—Ownership vested in third party.*]—*Held :* not executable.—UNION GOVERNMENT (MINISTER OF JUSTICE) *v.* BOLAM, [1927] App. D. 467.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 5.—C.

g i. —— —— ——.]—After a mtge. in fee has become forfeited by nonpayment of the mtge. money, the mtgee.'s interest in the premises cannot be sold under an execution against land.—DOE d. CAMPBELL *v.* THOMPSON (1843), 2 Ont. Dig. 2640.—**CAN.**

g ii. —— *Right of dower in equity of redemption.*]—CANADIAN BANK OF COMMERCE *v.* ROLSTON (1902), 22 C. L. T. 232 ; 4 O. L. R. 106 ; 1 O. W. R. 351.—**CAN.**

k i. *Interest of unpaid vendor.*]—The interest of an unpaid vendor of

1423. To cross-references before this case add "*See, now,* Land Charges Act, 1925 (c. 22)."

1500. *Add. Annotation :—As to* (3) **Refd.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; [1924] 2 W. W. R. 529.—**CAN.**

k ii. *Assignee of purchaser under contract of sale.*]—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—WARD *v.* ARCHER (1894), 24 O. R. 650.—**CAN.**

k iii. ——.]—Pltf. sold certain land to deft. S. under agreement for sale, whereby he became entitled to a transfer upon payment of the agreed purchase price & compliance with stated conditions. Subsequently the A. Co. recovered a judgment against S., & registered execution in usual form against his land. S., after such registration, assigned his whole equitable interest in such land to deft. T. The legal title during this time remained in pltf. In an action by pltf. under the contract, the A. Co. claimed a right to intervene as having an interest in the land under their writ of execution :—*Held :* having regard to the provisions of the Land Titles Act, it was evidently the intention of the Legislature that writs of execution should bind only the interests of registered owners of land, & the execution did not bind the equitable interest of deft. S.; (2) no lien is created by an execution against land, only such rights being acquired as are given by the Land Titles Act, & which are not available as against equitable interests.—CANADIAN PACIFIC RAILWAY *v.* SILZER, 3 S. L. R. 162.—**CAN.**

sd. *Debtor interested in land held by wife—Interest sufficient to discharge debt.*]—MACDONALD & CO. *v.* TEASDALE (1913), 24 O. W. R. 534.—**CAN.**

se. *What interests may be seized—Under amendment to Land Titles Act, s.* 125.]—FOSS *v.* STERLING LOAN (1915), 8 W. W. R. 569; 23 D. L. R. 540; 8 Sask. L. R. 289.—**CAN.**

sf. *Equitable interest held as trustee.*]—C., who had an interest in certain land, as purchaser from W., the full price not having been paid, assigned his interest to pltf. upon trust that the latter should support C. & his wife for the remainder of their lives, & on their death pay all their debts & funeral expenses, whereupon the trust should cease, & pltf. should be entitled to all the interest of C. in the property free from any trust; & pltf. agreed to pay to W. the balance of the purchase price :—*Held :* C.'s equitable interest as a purchaser, if transferred to pltf., gave the latter no estate in the land, save to the extent to which a ct. of equity would give C. specific performance of his agreement with W., & that interest would be taken by pltf. as a trust estate, & would not be saleable under a writ of *fi. fa.* against pltf.'s lands.—KIMNIAK *v.* ANDERSON [1929] 2 D. L. R. 904; 63 O. L. R. 428.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—G.

sg. *Timber.*]—Where the owner of land sells the timber after a writ against his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—BROWN *v.* SAGE (1865), 11 Gr. 239.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

u i. —— —— *Where prior assignment for benefit of creditors.*]—B. made an assignment to C. for benefit of his creditors. Various executions were issued against B.'s lands & notice thereof filed with the Registrar of Titles. C. applied for a certificate of title to B.'s lands :—*Held :* registrar must issue the certificate without endorsing thereon the executions of which he has received notice.—*Re* BROOKS (1900), 12 W. L. R. 303.—**CAN.**

a i. —— *Effect as against assignment for benefit of creditors.*]—MCINTYRE *v.* SHAW (1866), 12 Gr. 295.—**CAN.**

a ii. —— *Effect as against unrecorded deed.*]—GRINDLEY *v.* BLAKIE (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—**CAN.**

c i. —— *Effect on judgment mortgage.*]—*Held :* a judgment mtge. did not obtain priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—REID *v.* MILLER, [1928] N. I. 151.—**IR.**

e i. —— *Judgment for alimony.*]—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—BRIGGS *v.* CARSON, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—**CAN**

e ii. —— *How far binding—Defendant mere conduit pipe to convey title from vendor to third party.*]—OWEN *v.* LYNCH (1877), 11 N. S. R. (2 R. & C.) 406.—**CAN.**

e iii. —— —— 5 *R. S. c.* 84, *s.* 21—*Effect of.*]—LOISBURG LAND CO. *v.* TUTTY (1884), 16 N. S. R. (4 R. & G.) 401.—**CAN.**

p (p. 570) i. —— —— *Priority.*]—An unregistered assignment of a mtge. takes priority over the claim of an execution creditor under an execution registered at a date later than the assignment; & if the unregistered assignment was of the entire mtge. there is no interest in the assignor which can be seized & sold under the writ of execution.—MARKLE *v.* SULLAND & LUDGATE, [1934] 2 W. W. R. 123.—**CAN.**

sh. *Duty of registrar—With notice of writ of execution—Patent not issued for lands entered as homestead.*]—*Re* CLAXTON (1890), 1 Terr. L. R. 282.—**CAN.**

sj. *Judgment not registered—Priority of mortgage.*]—MINERAL PRODUCTS CO. *v.* CONTINENTAL TRUST CO. (1906), 37 S. C. R. 517.—**CAN.**

s (p. 571) i. ——.]—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions :—*Held :* the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

1459 i. *Right to possession—As against third parties in possession—Not asserting title through debtor.*]—EDWARDS *v.* BENNETT (1869), 5 P. R. 161.—**CAN.**

1459 ii. —— —— *Possession taken forcibly.*]—DOE d. PECK *v.* ROE (1845), 2 U. C. R. 27.—**CAN.**

sm. *Duty of sheriff to retain.*]—DOE d. CREW *v.* CLARKE (1841), 1 Ont. Dig. 233.—**CAN.**

PART III. SECT. 2, SUB-SECT. 10.—A.

a (p. 576) i. —— —— *Mortgage not registered.*]—MOFFAT *v.* GROVER (1855), 4 C. P. 402.—**CAN.**

a (p. 576) ii. —— —— *In hands of receiver.*]—A judgment creditor can sell properties in the hands of a receiver of the ct. in execution of a mtge. decree, although the receiver, who was appointed subsequently to the institution of the mtge. suit, was not made a party to the suit.—TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

h (p. 576) i. ——.]—JONES *v.* JONES (1868), 15 Gr. 40.—**CAN.**

bb (p. 576) i. —— *Proof of—In ejectment on sheriff's deed.*]—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

bb (p. 576) ii. —— —— ——.]—DELISLE *v.* DEWITT (1859), 18 U. C. R. 155.—**CAN.**

bb (p. 576) iii. —— —— ——.]—LOW *v.* HICKS (1870), 21 C. P. 113.—**CAN.**

bb (p. 576) iv. —— *Relation back.*]—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—DOE d. PEABODY *v.* MCKNIGHT (1838), 2 N. B. R. (Ber.) 567.—**CAN.**

bb (p. 576) v. —— —— *To day of sale.*]—Although a sheriff's deed relatee back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—GAVILLER *v.* BEATON (1862), 12 C. P. 519.—**CAN.**

cc (p. 576) i. —— —— *Into debtor's title.*]—A purchaser of lands on an execution, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title, or that he was in possession of the premises.—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

cc (p. 576) ii. —— *To growing crops on land sold.*]—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—ANDERSON *v.* STASIUK [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

cc (p. 576) iii. —— *Right to claim partition.*]—An order made on the appln. of purchaser at a sheriff's sale of the interest of a husband, holding as joint tenant, for partition or sale was affirmed.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

t (p. 577) i. —— —— *No issue for two weeks.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 Terr. L. R. 302; 6 W. L. R. 272.—**CAN.**

g (p. 577) i. —— *Land held adversely by third party.*]—A sheriff selling under execution is not within the class of

1506. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

1536a. —— —— **Effect of Law of Property Act, 1925 (c. 20), s. 195 (3).**]—A judgment creditor obtained a judgment for payment of £1,250. A writ of *elegit* was issued & the sheriff took possession of certain freehold land of the debtor. The writ was registered in the [illegible] creditor made an application for an order for the sale of the debtor's interest in the land within one year after the date of the judgment :—*Held :* sect. 4 of the Judgments Act, 1864 (c. 112), s. 4, was not impliedly repealed by Law of Property Act, 1925 (c. 20), & a writ of *elegit* having been issued & registered in the Land Registry, the judgment creditor was entitled to the order he asked for.—*Re* CHANCE, [1936] Ch. 266 ; 105 L. J. Ch. 67 ; 154 L. T. 493.

1552a. —— **Equitable interest—Amendment—Costs.**]—KIDD *v.* TALLENTIRE, [1877] W. N. 21.

1564a. Issue into county palatine—Indorsement for less than £50.]—BROWN *v.* M'MILLAN (1840), 7 M. & W. 196 ; 10 L. J. Ex. 147 ; 151 E. R. 736 ; *sub nom.* BROWN *v.* MACMILLAN, SAME *v.* MACPHERSON, 8 Dowl. 852 ; H. & W. 46 ; 4 Jur. 1090.

1569. *Add*—ANON. (1774), Lofft, 390.

1576a. When completed.]—OWEN *v.* OWEN (1831), 2 B. & Ad. 805 ; 109 E. R. 1341.

1577a. —— **Whether defendant discharged.**]—HODGSON *v.* TOWNING (1837), Will. Woll. & Dav. 53 ; *sub nom.* ANON., 1 Jur. 84.

[illegible]aga Kurboolie Mahomed *v.* R. (1843).

1578a. Right to break outer doors.]—MALEVERER *v.* SPINKE (1537), 1 Dyer, 35 b ; 73 E. R. 79.

1578b. —— **After escape of prisoner.**] —ANON. (1774), Lofft, 390 ; 98 E. R. 709.

1578c. ——.]—HOPKINS *v.* NIGHTINGALE (1794), 1 Esp. 99 ; 170 E. R. 292, N. P.

1579a. —— **Opening of door obtained by trick.**]—*Held :* an unlawful entry.—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62 ; 80 E. R. 211.

Annotations :—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1 ; Sandon *v.* Jervis (1859), E. B. & E. 942.

1579b. ——.]—ANON. (1695), 12 Mod. Rep. 73 ; 88 E. R. 1172.

1580a. —— **What is outer door—Whether hole in wall.**]—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory :—*Held :* if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY *v.* WILLIAMSON (1836), 7 C. & P. 294 ; 173 E. R. 130.

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cases which apply to a person selling land held adversely by another.—DOULL *v.* KEEFE (1901), 34 N. S. R. 15.—**CAN.**

h (p. 577) i. —— —— *Error in judgment.*]—*Held :* the sheriff's deed could give no title.—VAREY *v.* MUIRHEAD (1831), Dra. 486.—**CAN.**

h (p. 577) ii. —— —— *Too much sold.*]—*Held :* no ground for invalidating the sale.—DOE d. HAGERMAN *v.* STRONG (1848), 4 U. C. R. 510.—**CAN.**

h (p. 577) iii. —— —— *Sale in separate lots.*]—*Held :* permissible.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) iv. —— —— *Part only sold—Duty of sheriff to designate portion offered for sale.*]—KNAGGS *v* LEDYARD (1866), 12 Gr. 320.—**CAN.**

h (p. 577) v. —— —— *Sale of undivided interest in township lots.*]—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

h (p. 577) vi. —— —— *Time of sale.*] —*Held :* the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) vii. —— —— *Sheriff disregarding judgment creditor's instructions—Bidding at once full amount instead of bidding gradually.*]—*Held :* the judgment creditor had no ground of action against the sheriff.—MARKLE *v.* THOMAS (SHERIFF) (1856), 13 U. C. R. 321.—**CAN.**

h (p. 577) viii. —— —— *Proof of.*]—ROE *v.* MCNEIL (1863), 13 C. P. 189.—**CAN.**

h (p. 577) ix. —— —— ——.]—FIELDS *v.* LIVINGSTON & WIGHTMAN (1866), 17 C. P. 15.—**CAN.**

h (p. 577) x. —— —— *Purchaser estopped from disputing validity.*]—FERGUSON *v.* FERGUSON (1869), 16 Gr. 309.—**CAN.**

h. (p. 577) xi. —— *Effect of—Sale of equity of redemption—Purchase by assignee from execution creditor—Subsequent conveyance to debtor.*]—CHITTICK *v.* LOWERY (1903), 24 C. L. T. 15 ; 6 O. L. R. 547 ; 2 O. W. R. 957.—**CAN.**

h (p. 577) xii. —— —— *Covenants.*] —The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—ANDERSON *v.* STASIUK (No. 3), [1927] 1 D. L. R. 529 ; [1927] 1 W. W. R. 49 ; 21 Sask. L. R. 276.—**CAN.**

h (p. 577) xiii. —— *Right to proceeds —Two writs lodged with registrar.*]—*Re* THE MASSEY MANUFACTURING CO. *v.* HUNT, THE MCCORMICK HARVESTING MACHINE CO. *v.* HUNT (1895), 2 Terr. L. R. 84.—**CAN.**

h (p. 577) xiv. —— *Under writ of execution lodged prior to agreement for sale to third party—Priorities—Affidavits in support of confirmation of sale irregular.*]—*Re* PRICE (1912), 21 W. L. R. 299.—**CAN.**

dd (p. 577) i. *Lands sold subject to "incumbrances"—Whether subject to subsequent executions.*] — GRIESE *v.* WALKER (1913), 23 W. L. R. 709 ; 4 W. W. R. 77.—**CAN.**

ss. *Confirmation of sale—Right of appeal.*]—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 67, & the only appeal is to the Ct. of Appeal.—ETHIER *v.* NOLLE, [1924] 1 W. W. R. 493.—**CAN.**

sb. *Distribution of proceeds of sale.*]—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL *v.* GEORGE, [1925] 2 D. L. R. 229 ; [1925] 1 W. W. R. 579 ; 35 B. C. R. 134.—**CAN.**

sc. *Right to sell—To realise judgment of county court.*]—Queen's Bench Act, 1895, rr. 804 to 806, do not authorise proceedings to be taken in a summary way under them for the purpose of realising a registered judgment of a county ct. by sale of land, such rules being applicable only to judgments in the Q. B.—PROCTOR *v.* PARKER (1897), 11 Man. L. R. 485.—**CAN.**

sd. *Affidavit of execution of transfer—Sworn before unauthorised person.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272 ; 6 Terr. L. R. 302.—**CAN.**

se. *Proceedings to confirm sale—How intituled.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272 ; 6 Terr. L. R. 302.—**CAN.**

sk. *Interest acquired by purchaser.*]—A purchaser at a sheriff's sale only acquires the interest of the judgment debtor in the land bound by the judgment.—PERRO *v.* ANTIGONISH, [1936] 2 D. L. R. 119 ; 10 M. P. R. 315.—**CAN.**

PART III. SECT 2. SUB-SECT. 11.

1557 i. *Order of court—When court will set aside sale—On equitable grounds.*]—WOOD *v.* LEEMING (1827), Tay. 463.—**CAN.**

1557 ii. —— —— ——.]—CAMPBELL *v.* SMITH (1863), 10 Gr. 206.—**CAN.**

1557 iii. —— —— *Notice of motion not given to purchaser.*]—*Held :* the ct. would not interfere.—MCGILLIS *v.* MCDONALD (1839), 2 Ont. Dig. 2662.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.— A.

sg. *Proceedings after surrender—Set aside.*]—WARD *v.* STOCKING (1825), Tay. 216.—**CAN.**

1581a. ——.]—RING *v.* HYDE (1850), 14 L. T. O. S. 377.

1584a. —— ——.]—*Held:* valid.—ANON. (1702) 7 Mod. Rep. 8; 87 E. R. 1060.

Annotation:—**Apld.** Sandon *v.* Jervis (1858), E. B. & E. 935.

1584b. —— **Window broken to take into custody.**]—*Held:* valid.—LLOYD *v.* SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 F. R. 379.

1614. *Add. Annotations:*—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

1615. *Add. Annotations:*—**Distd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

1617. *Add. Annotation:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81.

1618. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

1658a. —— **More than amount of rent due—Redelivery of surplus**]—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON *v.* WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.

Annotation:—**Refd.** Kelly *v.* Webber (1860), 3 L. T. 124.

1667a. Irregular execution—Part of premises within Rent Acts—Failure to warn sheriff—Liability of landlord.]—The first deft. had obtained a writ of possession in respect of a house; the second deft., who was a sheriff's officer, proceeding under this writ, evicted pltf., who alleged that the portion of the house that he occupied was controlled under the Rent Restrictions Acts. Pltf. brought an action against the landlord & the sheriff's officer for damages for trespass. The landlord was present at the time of the eviction but did not tell the officer that part of the house was controlled:—*Held:* (1) the landlord, although present at the eviction, had not taken any part in it, or given the sheriff's officer any such directions as would make him his agent. He was therefore not liable; (2) the sheriff's officer was, in the course of his duty, executing a judgment of the ct., & so was not liable in an action for damages, however wrong the judgment might have been.—WILLIAMS *v.* WILLIAMS & NATHAN, [1937] 2 All E. R. 559; 81 Sol. Jo. 435, C. A.

1667b. —— —— —— **Liability of sheriff's officer.**]—WILLIAMS *v.* WILLIAMS & NATHAN, No. 1667a, *ante*.

1677. *Add. Citation:*—*sub nom.* WILSON *v.* CHANTON (1862), 6 L. T. 255.

1704. *Add. Annotations:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

1706a. —— —— **Payment of rent—How rent calculated.**]—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT *v.* ROE (1813), 4 Taunt. 883; 128 E. R. 579.

1720. *Add. Annotations:*—**Apld.** Burrowes. *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

1745. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1753. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754a. ——.]—*Semble:* arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON *v.* CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

1758. *Add. Annotation:*—**Refd.** *Re* Nelson, Norris *v.* Nelson, [1928] Ch. 920, n.

1769. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

1847. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1855. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1882a. *S. P. Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.

1912. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1944. *Add. Citations:*—*sub nom.* KIRLEW *v.* BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318.

Add. Annotations:—**Apld.** Britten *v.* Wait (1832), 3 B. & Ad. 915. **Refd.** Newland *v.* Watkin (1832), 2 Moo. & S. 174; Colebrooke *v.* Layton (1833), 1 Nev. & M. K. B. 374.

1955. *Add. Annotation:* — **Refd.** *Re* Woods (Bristol), Ltd. (1931), 47 T. L. R. 464.

PART III. SECT 3, SUB-SECT. 5.—A.

a i. —— *By mistake—Second writ refused.*]—BRADBURY *v.* LONEY (1842), 6 O. S. 291.—**CAN.**

to leave province—Ownership of property sufficient to satisfy debt.]—TOOLE HENNEBERRY, [1928] 3 D. L. R. 38.—**CAN.**

ak. *Not granted—Debtor having interest in land not subject to execution.*]—*Re* GELDERT *v.* HOAR. *Ex p.* GELDERT (1899), 34 N. B. R. 612.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

r i. —— *By whom signed & issued—By clerk of court & not by* ALLENACH *v.* DESBRISAY (1866), N. B. Dig. 493.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.

2020 ii. —— —— *Burden of proof of reasonableness of charges.*]—MCGREG *v.* KLOTZ, [1929] 4 D. L. R. 792; 3 W. W. R. 183.—**CAN.**

Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2058. *Add. Annotations :*—**Apld.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394. **Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2059a. Judgment by default—Against dissolved foreign corporation.]—Before the Bolshevik Revolution of Oct. 1917, in Russia the M. Bank in London owed a Russian Bank a large sum of money. At the same time the Russian Bank was largely indebted to L. Brothers, also bankers in London. Between Oct. 1917, & Aug. 3, 1921, numerous decrees of the Govt. of Russia & orders of various Departments thereof were made & published purporting to nationalise or liquidate all banking corpns. in Russia, including the Russian Bank above mentioned. In Oct. 1930, L. Brothers, having filed an affidavit stating that the Russian Bank was a co. registered & domiciled in Russia, obtained leave under R. S. C., Ord. 9, r. 2, to issue a writ against the Russian Bank & to serve notice of the writ by sending it by registered post to the former address of the Bank in Moscow. Having then signed judgment in default of appearance against the Russian Bank, L. Brothers obtained a garnishee order *nisi* against the M. Bank attaching all debts due from the M. Bank to the Russian Bank, & an issue was subsequently directed to be tried, whether the M. Bank was indebted to the Russian Bank to any & what extent. On the evidence of Russian lawyers who had practised in Russia since the Revolution :—*Held :* the Russian Bank had ceased to exist in & before Oct. 1930, & consequently the writ, the judgment & the garnishee proceedings, were null & void & must be set aside.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289 ; 102 L. J. K. B. 191 ; 148 L. T. 242 ; 49 T. L. R. 94 ; 76 Sol. Jo. 888, H. L. ; *affg.* S. C. *sub nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations :—*As to* (1) **Refd.** BURT *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

2084a. Person out of jurisdiction.]—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches :—*Held :* the foreign balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—RICHARDSON *v.* RICHARDSON, [1927] P. 228 ; 96 L. J. P. 125 ; 137 L. T. 492 ; 43 T. L. R. 631 ; 71 Sol. Jo. 695.

PART V. SECT. 1, SUB-SECT. 2.—A.

sl. *Magistrate's order for maintenance of deserted wife—Affirmed by county court.*]—*Held :* a judgment enforceable by the attachment of a debt due to the husband.—BROWN *v.* BROWN, [1927] 4 D. L. R. 314 ; [1927] 3 W. W. R. 172 ; 38 B. C. R 473.—**CAN.**

sm. *Judgment by consent—Not to be entered till subsequent date.*]—Where a consent judgment provides that it shall not be entered until a subsequent date the party for whom the judgment is given cannot in the meantime truthfully make the affidavit required by King's Bench Act, s. 759, for the obtaining of a garnishee order.—HODGKINS *v.* HARRIS INVESTORS, LTD., [1929] 1 D. L. R. 189 ; [1928] 3 W. W. R. 540.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

n i. —— *Making assignment in bankruptcy.*]—Where after recovering a judgment the judgment creditor makes an assignment in bkpcy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—LANIN *v.* ZAWISLAK & DEMOSKY (Sask.), [1927] 2 W. W. R. 71.— **CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

2077 ii. —— ——.]—An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appct., will not be entertained.—THOMPSON *v.* FRASER (Sask.), [1926] 3 W. W. R. 251.—**CAN.**

k. Read now "**2084a i.** *Person out of jurisdiction.*"

l. Read now "**2084a ii.**"

m. Read now "**2084a iii.**"

n. Read now "**2084a iv.**"

o. Read now "**2084a v.**"

2084a vi. —— *Debt payable within province.*]—While ordinarily Attachment of Debts Act, R. S. S., 1930, does not apply to persons resident outside Saskatchewan, yet it does apply when such persons submit themselves to the jurisdiction of the Saskatchewan cts. & are temporarily within the province & the debt garnished is payable within the province.—MCILRATH LUMBER CO., LTD. *v.* SHORE & SHORE & DENNISSON, [1931] 2 W. W. R. 785 ; 4 D. L. R. 894. —**CAN.**

2084a vii. —— *Licensed to do business in Canada.*]—Applt., in May, 1928, issued in the United States an insurance policy to F., an American subject, by which it agreed to indemnify F. against loss by reason of her legal liability to pay damages to others arising out of the ownership, operation or use of her automobile within the United States or Canada. Resp. adduced evidence that on Mar. 23, 1929, applt. was licensed to carry on the business of automobile & other insurance in Ontario, & showing its head office for the province, & its assets in Ontario (moneys in bank) & its assets deposited with the Receiver-General of Canada for the protection of Canadian policy holders, as shown by its annual statement filed as required by law :—*Held :* applt. was a "person within Ontario" & was "indebted to the judgment debtor," within r. 590 of the Ontario Rules of Ct.—CENTURY INDEMNITY CO. *v.* ROGERS & FITZGERALD, [1932] S. C. R. 529 ; 2 D. L. R. 582 ; *affg.*, [1931] 3 D. L. R. 225 ; O. R. 342.—**CAN.**

so. *Debtor out of jurisdiction—Writ obtained ex parte—Leave to execute.*]—JONES *v.* JONES, [1928] V. L. R. 24.—**AUS.**

sq. *Company in liquidation.*]—When a co. is in liquidation its funds are not subject to garnishment.—RUDDELL GRAIN GROWERS ASS'N., LTD. *v.* CLEATOR & SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., [1928] 1 W. W. R. 222.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

r (p. 621) i. —— ——.]—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—ROYAL BANK OF CANADA *v.* VAN BUREN & MCKAY (Alta.), [1927] 1 W. W. R. 268.—**CAN.**

r (p. 621) ii. —— ——.]—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 84), is not subject to arrestment.—WILLIAM BAIRD & CO. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

r (p. 621) iii. —— *Money deposited with returning officer.*]—*Held :* not attachable.—CREAGH *v.* SUTHERLAND & READE (1895), 3 Terr. L. R. 303.— **CAN.**

k (p. 622) i. —— ——.]—HIME *v.* COULTHARD (1910), 15 W. L. R. 288 ; 20 Man. L. R. 164.—**CAN.**

k (p. 622) ii. —— —— *For destruction of exempt property.*]—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—ROSS *v.* ROGERS & CANADIAN NATIONAL RYS. (Sask.), [1927] 3 W. W. R. 169.—**CAN.**

k (p. 622) iii. —— —— *Interest as.*]—A claim for interest as damages is not one for a debt or liquidated demand within Attachment of Debts Act, R. S. S., 1930.—BUCKOLZ *v.* P. W. GRAHAM & SONS, LTD., [1931] 2

2086a. ——.]—FASSNIDGE *v.* FLINT & SON (1892), 8 T. L. R. 213.

2087a. —— **Third party insurance.**]—An insurance co. agreed to indemnify the owner of a motor car against liability for accidental injury to third persons caused by the use of the car. The policy contained conditions relating to the giving of notice of any accident & the obtaining of an award of an arbitrator, & gave the co. power to control or settle any proceedings which might be brought against the assured by an injured third party. Judgment having been recovered by such a person against the assured:—*Held:* the liability of the co. under the policy was not a debt which could be attached by the judgment creditor in garnishee proceedings under R. S. C., Ord. 45, r. 1.—ISRAELSON *v.* DAWSON, [1933] 1 K. B. 301; 102 L. J. K. B. 387; 148 L. T. 420, C. A.

2088. *Add. Citation:*—*sub nom.* MACDONALD *v.* HOLLISTER (1855), 3 W. R. 522.

2099. *Add. Annotation:*—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2107. *Add. Annotation:*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2108. *Add. Annotation:*—**Expld.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

2120. *Add. Annotation:*—**Refd.** Israelson *v.* Dawson (1932), 102 L. J. K. B. 387.

2121. *Add. Annotations:*—**Apld.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Richardson *v.* Richardson, [1927] P. 228; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

W. W. R. 90; *on appeal*, [1931] 2 W. W. R. 737; 4 D. L. R. 854.—**CAN.**

k (p. 622) iv. —— —— *Against stockbroker.*]—MACKEE *v.* SOLLOWAY MILLS & CO., LTD., [1930] 1 W. W. R. 563; 3 D. L. R. 145; 42 B. C. R. 438.—**CAN.**

l (p. 622) i. —— *Conditional annuity.*]—Testator bequeathed his estate to trustees upon trust (*inter alia*) to pay out of the income to his widow an annuity of £200 "subject to the obligation of maintaining & educating thereout such of my children as shall for the time being be minors & shall not be married. On a motion to make absolute a charging-order *nisi* affecting to attach the widow's interest in the annuity:—*Held:* the annuity, being a debt subject to a condition, could not be attached, & the motion should be dismissed.—PUBLIC TRUSTEE *v.* POLSON, [1931] N. Z. L. R. 321.—**N.Z.**

l (p. 624) i. —— *Deposit paid under agreement to purchase.*]—Judgment debtor by memorandum in writing agreed to purchase from appts. (garnishees) land on which a house was to be erected. He agreed to pay & paid to appts. £100 deposit & "balance" purchase-money when house is completed. No price was specified. It was not clear on the evidence whether the price had been subsequently agreed or not, but, on an account being rendered to debtor for £1,150, he said he would consider the matter, & continued to negotiate either as to the price or arrangements for payment until he was served with the garnishee order *nisi*, when he agreed to take the land for £1,150:—*Held:* the amount of the deposit was neither a debt owing or accruing from the garnishees to judgment debtor, the deposit was intended to remain with appts. until it was certain that negotiations for the contract had failed, & was not subject to attachment.—MAYWALD *v.* RIEDEL, [1927] S. A. S. R. 345.—**AUS.**

m (p. 624). *Revsd.*, [1924] 1 D. L. R. 1154; [1924] 1 W. W. R. 707; 18 Sask. L. R. 158.

m (p. 624) i. —— ——.]—The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—REED *v.* RENTON & PETTINGER, [1924] 2 W. W. R. 223.—**CAN.**

m (p. 624) ii. —— ——.]—MOORE *v.* NYLAND, MCPHERSON, [1930] 1 W. W. R. 627; 3 D. L. R. 203; 42 B. C. R. 444.—**CAN.**

m (p. 624) iii. —— *Balance of payment to mortgagee under policy taken out by mortgagor.*]—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct.:—*Held:* the money in ct. should be paid to the garnishing creditor.—ROYAL BANK OF CANADA *v.* KENWARD, [1925] 4 D. L. R. 905; [1925] 3 W. W. R. 549.—**CAN.**

m (p. 624) iv. —— *Purchase-money deposited in escrow.*]—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance:—*Held:* garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—HANKEY & CO., LTD. *v.* VERNON, [1926] 1 D. L. R. 684; [1926] 1 W. W. R. 375; 36 B. C. R. 401.—**CAN.**

r (p. 624) i. —— *Money due on mortgage.*]—Moneys due on a mtge. of land are subject to garnishment, even though, as in Alberta, Judicature Act requires that, unless the ct. otherwise order, the land be sold before the mtgee. issues execution.—ROYAL BANK OF CANADA *v.* LEE & W. B. MOFFATT & CO. (Alta.), [1929] 4 D. L. R. 975; 3 W. W. R. 260.—**CAN.**

r (p. 624) ii. —— *Money in hands of garnishee as proceeds of sale by debtor—Sale set aside.*]—At the time of the service of the garnishee order herein the garnishees were holding a sum of money under the following circumstances: The garnishee had bought cattle from the judgment debtors; the sale had been set aside as void against creditors; but the garnishees received the money in question from the government as compensation for some of the cattle which the government had ordered to be destroyed. After the service of the garnishee order the garnishees agreed with the judgment debtors that the bill of sale for the cattle should be regarded as *non est* & that the moneys in question should be treated as the property of the judgment debtors:—*Held:* the moneys were attachable.—MARSHMAN *v.* BREADIN, CHRISTIE, SCOTT & PEDEN, [1933] 1 W. W. R. 668; 3 D. L. R. 312. 46 B. C. R. 537.—**CAN.**

2102 i. *Cheque given to satisfy debt.*]—On an issue as to whether a garnishee owed his creditor an amount in excess of that paid by him into ct. it was found that a cheque given by the garnishee to his creditor was delivered before the garnishee summons was served & that it was taken as payment. The fact that the garnishee had an opportunity to stop payment of the cheque after service of the garnishee summons but did not do so did not assist the garnishor.—MCCALLUM *v.* MUNTON, [1936] 3 W. W. R. 32.—**CAN.**

PART V. SECT. 1, SUB-SECT 3.—B.

2113 i. —— *At date of service of order—Necessity for—Salary payable at end of month in which order served.*[—STUMP *v.* BATZOLD & ZION UNITED CHURCH, [1931] 2 W. W. R. 784; 44 B. C. R. 282.—**CAN.**

2115 iii. —— ——.]—Where at the time of the issuance of the garnishee order the obligation to pay the money is dependent upon conditions which may or may not be fulfilled there is no debt due or accruing due. An accruing debt is one which, although not yet payable, is yet an existing obligation.—VATER *v.* STYLES & METROPOLITAN LIFE INSURANCE CO., [1930] 2 W. W. R. 241; 3 D. L. R. 509; 42 B. C. R. 463.—**CAN.**

d (p. 626) i. —— *Payment of purchase-money conditional on clearing off encumbrances.*]—Where payment of purchase-money on a sale of land is conditional on the clearing off of encumbrances, it is not garnishable at a time when a transfer showing a clear title in the purchaser has not yet been registered.—FAAS *v.* MCMANUS (Alta.), [1930] 1 D. L. R. 302; 24 Alta. L. R. 317; [1929] 3 W. W. R. 598.—**CAN.**

sj. *Must be at time of issue of summons.*]—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R.

sk. *Claim by dismissed servant.*]—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:

2124a. Must be recoverable within jurisdiction.]—RICHARDSON *v.* RICHARDSON, No. 2084a, *ante*.

2131. *Add. Annotation :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2135. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2140. *Add. Annotation :—As to* (2) **Dbtd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2140a. —— ——.]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed ; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served ; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVENNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK FOR RUSSIAN TRADE, LTD., [1933] 1 K. B. 47 ; 102 L. J. K. B. 16 ; 147 L. T. 231 ; 48 T. L. R. 578 ; 76 Sol. Jo. 494, C. A.

—Held : there was no debt due or accruing due from the garnishee to deft.—MASON *v.* MCLEOD & FOSTER, [1925] 1 D. L. R. 752 ; [1925] 1 W. W. R. 165 ; 19 Sask. L. R. 221.—**CAN.**

sm. *Debt payable on performance of acts by other party.*]—When a contractor has completed his part of a contract, there is an accruing obligation which can be garnished, notwithstanding that payment is not to be due until after the performance of other acts by the other party.—RAYNER *v.* NEUKAUTER (1932), 45 B. C. R. 353.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—E.

2124 ii. ——.]—PARKER *v.* MCILWAIN (1896), 17 P. R. 84.—**CAN.**

2124 iii. ——.]—To enable a judgment creditor to obtain an order compelling a garnishee to pay to him a debt which he would otherwise have to pay to the judgment debtor, the debtor must be in a position to maintain an action for it against the garnishee.—KIRKHAM *v.* KIRKHAM (1936), 50 B. C. R. 321.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—F.

2131 ii. —— ——.]—Garnishee orders take effect only as against that which debtor can properly, & without violation of any other rights of any one else, grant.—CAMPBELL *v.* GEMMELL (1890), 6 Man. L. R. 355.—**CAN.**

t i. *Debt due to judgment debtor in hands of co-defendant.*]—*Held :* not attachable.—GILCHRIST *v.* WILEY (1881), 28 Gr. 425.—**CAN.**

si. *Debt due from one partnership to debtor of another partnership—One partner common to both firms.*]—MCCORMICK *v.* PARK (1859), 9 C. P. 330.—**CAN.**

so. *Money lodged by candidate for election—Before election held.*]—Moneys lodged by a candidate for election under Local Government Act, 1915, s. 127, are not, before the election has taken place, attachable as a debt due by the returning officer to the candidate.—HUNT *v.* BALFOUR, [1928] V. L. R. 488 ; [1928] A. L. R. 313.—**AUS.**

PART V. SECT. 1, SUB-SECT. 3.—H.

o i. —— *Effect of defect.*]—Pursuant to a garnishee order issued by a judgment creditor in a county ct. action the garnishee, having been notified by a bank that the bank held an assignment from deft. co. of all book debts due to said co., paid the amount into ct. The assignment had been executed by deft. co. under seal by its president & its secretary-treasurer. The president was the garnishor. The assignment stated that it was made "for valuable consideration," & the accompanying affidavit by an agent of the bank stated that the assignment was "for good or valuable consideration, as set forth in said conveyance or assignment" :—*Held :* although the assignment was defective because it did not comply with sect. 3 of Bills of Sale & Chattel Mtge. Act, C.A., 1924, which governed the assignment in question, in that the assignment did not set out the full & true consideration for which it was given, nevertheless said defect was of no avail to the garnishor since the right to garnish depends upon the debt belonging to deft. when the order is taken out, & if the debtor has already parted with the debt under an assignment good as between him & his assignee the defect is immaterial.—MCKAY *v.* BANK OF MONTREAL, [1932] 1 W. W. R. 897 ; 3 D. L. R. 226 ; 40 Mar. L. R. 391.—**CAN.**

p i. *Assignment of earnings of farm implement.*]—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—TURNER *v.* WATERLOO MANUFACTURING CO., [1926] 2 D. L. R. 706 ; [1926] 1 W. W. R. 949 ; 35 Man. L. R. 472.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—I.

2142 iv. ——.]—The word "debts," as used in Code of Civil Procedure, s. 60, applies only to debts actually due ; it cannot include debts, *e.g.* rent, which may become due in the future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim.—LACHMAN *v.* JARBANDHAN (1927), I. L. R. 50 All. 507.—**IND.**

PART V. SECT. 1, SUB-SECT. 3.—J.

o (p. 633) **i.** —— *Amount of exemption —Not affected by payments made on account.*]—CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. *v.* HOBODYSKE & CANMORE COAL CO., LTD. (Alta.), [1927] 1 W. W. R. 401.—**CAN.**

d (p. 633) **i.** —— *Deputy sheriff & gaoler.*]—*Ex p.* BOWES (1896), 34 N. B. R. 76.—**CAN.**

d (p. 633) **ii.** —— *Workman—Duration of employment.*]—DOMINION LUMBER & FUEL CO. *v.* KNAPP, [1928] 2 W. W. R. 257 ; 37 Man. L. R. 353.—**CAN.**

d (p. 633) **iii.** —— *Wages Act, s.* 1.]—Pltfs., having an unsatisfied judgment against deft. attached a sum of money said to be due to him, in the hands of the W. Co., which paid it into ct. Deft. was in the employment of the co. ; he was obliged by his contract with it to give his whole time & attention to its service ; the sum attached was remuneration for the services he rendered to the co. as its manager, being a share of the profits agreed to be paid in addition to salary ; in his employment he agreed to act under the policies prescribed by the directors of the co. ; & the sum attached was not payable to him in any capacity other than that of an employee of the co. :—*Held :* the sum attached was "wages" within Wages Act, s. 1, & should be dealt with in accordance with s. 7.—CRAVEN *v.* LALONDE, [1929] 4 D. L. R. 674 ; 64 O. L. R. 135.—**CAN.**

d (p. 633) **iv.** ——.]—The word "attachment" in rule 661 includes any process by which the wage-earner would be deprived of his wages.—COLEMAN *v.* EIGHT MILE CONSOLIDATED SCHOOL DISTRICT, [1936] 1 W. W. R. 557.—**CAN.**

2146 i. *Superannuation allowance—Civil servant.*]—Money lying to the credit of a retired Govt. servant in the General Provident Fund is not liable to attachment in execution of a decree against him.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HAR CHARAN DAS (1929), I. L. R. 51 All. 845.—**IND.**

e (p. 633) **i.** —— ——.]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore is not subject to attachment by garnishee proceedings. —MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE, [1928] V. L. R. 390 ; [1928] Argus L. R. 234.—**AUS.**

r (p. 634) **i.** —— ——.]—The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.—MCLVENNA *v.* THE ADMIRALTY, [1926] S. C. 842.—**SCOT.**

d (p. 634) **i.** —— ——.]—HAYDON *v.* HAYDON & CANADIAN NATIONAL RAILWAYS, [1937] 3 W. W. R. 537.—**CAN.**

t (p. 634) **i.** —— ——.]—Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641 ; [1927] 2 W. W. R. 439.—**CAN.**

f (p. 634) **i.** —— —— *Assistant surgeon.*]—The pay of a European Military Assistant Surgeon, second-

2156. *Add. Annotation :—As to* (1) **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2169. *Add. Annotations :—* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Richardson *v.* Richardson, [1927] P. 228.

2170. *Add. Annotations :—***Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

2170a. —— —— ——.]—Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register :—*Held :* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK, COLLINS & CO., [1927] A. C. 95; *sub nom.* SEDGWICK, COLLINS & CO., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T 72, H. L.

*Annotations :—***Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

2188. *Add. Annotations :—***Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** Richardson *v.* Richardson, [1927] P. 228; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

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class, of the Indian Medical Dept., who is a warrant officer & not a commissioned officer, is not liable to attachment in execution of an order for alimony & maintenance passed by a civil ct.—NUGENT *v.* NUGENT, I. L. R. [1937] All. 350.—**IND.**

f (p. 634) **ii.** —— *Army surgeon.*]—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—BROWNE *v.* PEARCE (1925), I. L. R. 48 All. 73.—**IND.**

f (p. 634) **iii.** —— *Soldier.*]—The salary of a soldier to whom Army Act, 44 & 45 Vict. c. 58, applies, is attachable in execution of a decree in accordance with the provisions of Civil Procedure Code, s. 60 (1).—HUSAIN BAKESH *v.* BRIGGEN SHAW (1933), I. L. R. 55 All.—**IND.**

h (p. 634) **i.** —— *Police court interpreter.*]—The wages or salary of the official Italian police court interpreter of Vancouver paid by the city is exempt from attachment under Attachment of Debts Act, R. S. B. C. 1924, s. 3.—TODD *v.* DE PAOLA (1932), 46 B. C. R. 278.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

sn. *To what court—Court of division where garnishee resides.*]—*Re* SAVORD *v.* DESJARDINS, [1927] 1 D. L. R. 541; 59 O. L. R. 645.—**CAN.**

s. *Revsd.*, 17 Alta. L. R. 109.

cc. For "the affidavit was not sufficient" read "not insufficient."

d (p. 637) **i.** —— ——.]—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—FROST *v.* ROCHON & VERHELST, [1924] 3 W. W. R. 422.—**CAN.**

d (p. 637) **ii.** —— ——.]—An affidavit in support of a garnishee summons with respect to a judgment debt. need not state the original amount of the judgment, but only the amount still due thereon.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—**CAN.**

d (p. 637) **iii.** —— ——.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—TILLICUM ATHLETIC CLUB *v* BURICK, [1925] 3 W. W. R. 368.—**CAN.**

d (p. 637) **iv.** —— ——.]—Where the affidavit in support of a garnishing order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.—VAN WASSENAER *v.* ADAMS, [1927] 3 D. L. R. 180; [1927] 2 W. W. R. 287; 38 B. C. R. 275.—**CAN.**

d (p. 637) **v.** —— ——.]—An affidavit for garnishing order before judgment must state shortly & concisely the cause of action in common & plain language, & a garnishing order issued where the affidavit filed is defective in this respect will be set aside.—HUHN *v.* BOGACH, [1928] 3 W. W. R. 422.—**CAN.**

d (p. 637) **vi.** —— ——.]—Although in an affidavit in support of a garnishee summons the fact of deft.'s indebtedness to pltf. must be sworn to positively & not on mere information & belief, this does not mean that pltf.'s knowledge thereof must necessarily be absolute & complete.—POMFRET *v.* MORIE & IMPERIAL BANK OF CANADA, [1931] 2 W. W. R. 477; 3 D. L. R. 557; 25 Alta. L. R. 481.—**CAN.**

d (p. 637) **vii.** —— ——.]—WILSON *v.* DOUGLAS, [1931] 2 D. L. R. 413; 3 M. P. R. 84.—**CAN.**

d (p. 637) **viii.** —— ——.]—CURLEY *v.* SINSER, [1931] 3 W. W. R. 763; 45 B. C. R. 20.—**CAN.**

d (p. 637) **ix.** —— ——.]—BANQUE CANADIENNE NATIONALE *v.* LABINE & COURTEMANCHE, [1933] 1 W. W. R. 385; 2 D. L. R. 432.—**CAN.**

d (p. 637) **x.** —— ——.]—SOKOL *v.* PACIFIC FORWARDING CO., LTD., REIFEL & ROYAL BANK OF CANADA, [1933] 3 W. W. R. 352.—**CAN.**

d (p. 637) **xi.** —— ——.]—Garnishing proceedings before judgment are extraordinary remedies & the statutory requirements must be strictly complied with.

Sect. 263 of County Courts Act, R. S. M., 1913, provides that a garnishing order & summons may be issued pending action when there is filed an affidavit "in one of the forms appropriate to the purpose in the schedule of forms." In the present instance the appropriate form was No. 27, which says: "The said primary debtor is justly & truly indebted . . . to the primary creditor in the sum of . . ." The affidavit which was filed said: "The deft. is indebted to pltf. in the sum of $100":—*Held :* the omission from the affidavit of the words "justly & truly" was a substantial variation from the statutory form; &, therefore, the filing of said affidavit did not give the clerk of the county ct. jurisdiction to issue the garnishee summons.—HAUG *v.* BROWN & B. & B. TRANSFER, [1934] 1 W. W. R. 183; 2 D. L. R. 302.—**CAN.**

d (p. 637) **xii.** —— ——.]—Where the affidavit in support of a garnishee summons does not set out sufficiently the nature of pltf.'s claim the summons will be set aside as issued without jurisdiction. Such non-compliance with rule 648 is a fatal defect & cannot be cured under rule 273.—JONCAS *v.* PLOTKINS & LION REFINING CO. & IMPERIAL BANK OF CANADA, [1934] 2 W. W. R. 142; 3 D. L. R. 799.—**CAN.**

h (p. 637) **i.** —— *Time for swearing*]—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued. is ground for setting the garnishee summons aside.—MCPARLAND *v.* SEYMOUR, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsd.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—**CAN.**

h (p. 637) **ii.** —— —— *Made before action begun—Invalid.*]—NEON PRODUCTS OF WESTERN CANADA, LTD. *v.* BANCROFT, [1935] 2 W. W. R. 337; 50 B. C. R. 81.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.—B.

q i. ——.]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERGANT *v.* CAPITAL JOBBERS, LTD., [1925] 3 W. W. R. 719.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (a).

2206 i. *Claim by third party—Duty of court—Rights of third party.*]—*Held :* when it is suggested by the garnishee

2210a. —— Not necessary to make judgment debtor a party.]—LEVENE *v.* MATON (1907), 51 Sol. Jo. 532.

2220a. Irregular service of notice of writ.]—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 2059a, *ante*.

2236. *Add. Annotation :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2236a. —— Of army agent.]—Attachment of the produce of the sale of a commission in the army, in the hands of the army agents, held ineffectual as against the lien & right of set-off of such agents & as against a prior equitable assignment.—WEBSTER *v.* WEBSTER (1862), 31 Beav. 393 ; 31 L. J. Ch. 655 ; 8 Jur. N. S. 1047 ; 10 W. R. 503 ; 54 E. R. 1191.

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on the return of an order *nisi* for the attachment of a debt that there is a claim by a third person in respect of that debt the justices should, in accordance with Justices Act, 1915, s. 131, direct such third person to appear & state the nature & particulars of his claim ; & where such third person appears, & his claim is disregarded by the justices, he has a right to be heard & is entitled to review an order of the justices as a "person who feels aggrieved" within sect. 150 of the same Act.—HUNT *v.* BALFOUR, [1928] V. L. R. 488 ; [1928] Argus L. R. 313.—**AUS.**

h i. —— *Affidavit of denial—Cross-examination on—What questions must be answered.*]—WILSON *v.* FLEMING (1900), 19 P. R. 203.—**CAN.**

h ii. —— *Attachment of Debts Act.*]—There is strong authority for holding that a garnishee has not the right to have a garnishee summons set aside on an application based merely on the ground that there is no debt due from the garnishee to deft., since Attachment of Debts Act, s. 8, makes provision for determining such an issue.—SIMONSON *v.* SIMONSON, [1928] 3 D. L. R. 31 ; [1928] 1 W. W. R. 863 ; 22 Sask. L. R. 481.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (b).

s i. —— —— *Form of issue.*]—An issue directed in garnishee proceedings should be so framed as to dispose of the claims of all the claimants.—DOMINION BANK *v.* R. P. CLARK & CO. (VANCOUVER), LTD.'S TRUSTEE (1933), 46 B. C. R. 486.—**CAN.**

sp. *Onus of proof.*]—ADOLPH *v.* HILTON & STEPHENS (1907), 7 Terr. L. R. 407 ; 6 W. L. R. 119.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (b).

t i. —— *Jurisdiction of district court judge to set aside.*]—RABINOVITCH *v.* FEIST, [1927] 3 D. L. R. 892 ; [1927] 2 W. W. R. 673 ; 21 Sask. L. R. 582.—**CAN.**

st. *Debt not liable to be garnisheed—Indian Act, R. S. C.*, 1906, *ss.* 99, 102.]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sv. *Error in form.*]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sw. *Who may apply.*]—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than pltf., deft. or garnishee, who claims some interest in the money attached by the garnishee summons.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513 ; [1925] 2 W. W. R. 293 ; 19 Sask. L. R. 497.—**CAN.**

sy. ——.]—BOYD & ELGIE *v.* KERSEY (B. C.), [1927] 2 D. L. R. 679 ; [1927] 1 W. W. R. 665 ; 38 B. C. R. 342.—**CAN.**

sz. *Application to set aside—Necessity for appearance.*]—Where a deft. has not entered an appearance in the action he is not entitled to move to have an attaching order obtained by pltf. set aside. If deft. has so moved without having appeared the objection to his right to do so cannot be cured by a subsequent entry of appearance.—MCDONALD *v.* COCOS ISLAND TREASURES, LTD., [1933] 1 W. W. R. 189 ; 46 B. C. R. 360.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (c).

sc. *Money paid into court—Garnishee summons set aside—Second summons—Payment out.*]—SECURITY LUMBER CO., LTD. *v.* ROLICK & ROLICK PLAXIN, [1937] 2 W. W. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 7.

s i. —— *Against execution by sheriff.*]—The service of an attaching summons, although not a transfer of the debt, creates a charge on it in favour of the attaching creditor which is not taken away by the subsequent receipt of writs of execution by the sheriff.—R. B. ANDERSON & SON *v.* DAWBER, 22 B. C. R. 218.—**CAN.**

t i. *Against prior assignment—Validity of assignment—Trial of issue to determine—Power to order.*]—PAQUET CO., LTD. *v.* WIESE & KRANT (Alta.), [1927] 1 W. W. R. 685.—**CAN.**

t ii. —— *Creditors Relief Act, R. S. B. C.*, 1924 (*c.* 59).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

b i. ——.]—Sect. 2A of Builders' & Workmen's Act, R. S. M., 1913, added thereto by 1932 (c. 21), s. 1, does not apply to moneys merely owing to & not yet "received" by the contractor.—CASTELEIN *v.* BOUX, [1934] 1 W. W. R. 772 ; 3 D. L. R. 351 ; 42 Man. L. R. 97.—**CAN.**

sm. *Joint & several debt—Rights of creditor of individual debtor.*]—Where money is levied under an execution with respect to a joint & several debt a creditor to whom one of said debtors is individually indebted is not entitled to share in its distribution under Creditors' Relief Act, R. S. A., 1922, except as to the surplus, if any, which remains after the money has been applied in satisfaction of said debt.—DONAGHUE *v.* CANADIAN BANK OF COMMERCE (Alta.), [1929] 4 D. L. R. 540 ; 3 W. W. R. 109.—**CAN.**

sa. *Of garnishing creditors—Amendment of summons—Power of court.*]—K., an administrator, had in his hands moneys of the estate, a distributive share of which M. as one of the next of kin was entitled to receive. J., a creditor of M., served on K. a garnishee summons, in which K. was described simply as "K." T., another creditor, then served a similar summons on K., in which K. was described as "administrator of the estate." The judge amended J.'s summons by adding "administrator of the estate" :—*Held :* the judge had no power to give retroactive effect to the amendment, & thus give J. priority of T. on the basis of his earlier service.—TURVILLE *v.* MALLOY, [1929] 3 D. L. R. 25 ; 63 O. L. R. 612.—**CAN.**

sb. *Against wage-earners—Effect of Creditors' Relief Act, R. S. A., 1922.*]—Creditors' Relief Act, R. S. A., 1922, s. 5 (14), which gives priority to persons who "at the time of the seizure by the sheriff," or within one month prior thereto, were employed by the execution debtor, does not entitle them to priority with respect to moneys which the sheriff received by virtue of garnishee proceedings.—LINTON *v.* FLANNIGAN, [1929] 3 D. L. R. 911 ; 1 W. W. R. 921 ; 24 Alta. L. R. 27 ; *revg.*, [1929] 1 W. W. R. 495.—**CAN.**

sc. *Priority of equitable assignee—Over subsequent garnishor.*]—M. made an arrangement with an auctioneer to sell her chattels on Nov. 27, 1929. Before that date she gave to a creditor a letter addressed to the auctioneer asking him to pay to the creditor a specified sum of money out of the proceeds of the sale to be held on Nov. 27. By the same document M. purported to assign to the creditor the specified sum out of the proceeds of the sale. She gave similar documents to other creditors & all were delivered to the auctioneer before the day of the sale : —*Held :* these documents were valid equitable assignments ; the subject-matter of the assignments was assignable in that way ; & the claims of the assignees were paramount to the claims of pltfs. in four Division Ct. actions, who sought to garnish the proceeds of the sale in the hands of the auctioneer garnishee.—UXBRIDGE HARDWARE CO. *v.* MUSSELMAN, [1931] 1 D. L. R. 857 ; 66 O. L. R. 435.—**CAN.**

sm. *Against assignee of book debts.*]—A customer made a general assignment of book debts to his bank, the customer continuing to get in & deal with debts until default or notice by the bank. A judgment creditor then garnished one book debt :—*Held :* the bank could not get priority by giving notice of the assignment, since this was in the nature of a floating charge.—GREAT LAKES PETROLEUM CO. *v.* BORDER CITIES OIL, LTD., [1934] 2 D. L. R. 743 ; O. R. 244.—**CAN.**

PART V. SECT. 1, SUB-SECT. 8.

2242 ii. —— ——.]—BRETHOUR *v.* TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—**CAN.**

2242 iii. —— —— *After notice of assignment of reversion.*]—FOULDS *v.* CHAMBERS (1896), 11 Man. L. R. 300.—**CAN.**

sd. —— *By judgment debtor—To sheriff.*]—*Held :* payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—KOLEGA *v.* GENSER (Man.) (1912), 22 W. L. R. 197 ; 6 D. L. R. 188.—**CAN.**

f i. —— *Distribution—Under Creditors Relief Act.*]—WARD (ROBERT & CO., LTD. *v.* WILSON (1907), 7 W. L. R. 37 ; 13 B. C. R. 273.—**CAN.**

f ii. —— *Deduction of solicitor's fee.*]—There is no authority for the deduction of a solr.'s fee when a garnishee in a county ct. action pays the garnished money into ct.—SEGUIN *v.* RANDALL & DOMINION BANK, [1933] 3 W. W. R. 675.—**CAN.**

sl. *Discontinuance of action.*]—Upon discontinuance of an action the garnishment proceedings therein automatically terminate.—INTERNATIONAL PETROLEUM & LAND TRADING CO., LTD. *v.* ROSS & ROYAL BANK OF CANADA, ALDOUS *v.* ROSS & ROYAL BANK OF CANADA, WILLIAMS, MANSON, BROWN & HARVEY, [1933] 3 W. W. R. 648.—**CAN.**

2278. After this case add :—

See, generally, INFANTS, Vol. XXVIII., pp.

2279. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2280. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2295a. —— **Private company.**]—FENTON *v.* EAST (1910), Y. S. C. P.

2311a. Stock held in trust for debtor—Debtor having discretionary trust as to part of fund.]—A testator by his will directed that certain stock should stand in the names of his exors., & the dividends should be paid to G., during his life, & on his death to E., his widow, " she to lay it out for the good of his children," & that when the youngest child should come of age, the fund should be sold out & divided amongst the children. In an action in which E., after the death of G., was a deft. :—*Held :* an order might be made under Judgments Act, 1838 (c. 110), ss. 14, 15, for charging " so much of the dividends as were payable to E. for her own use & benefit."—FOWLER *v.* CHURCHILL (1843), 11 M. & W. 57 ; 2 Dowl. N. S. 562 ; 12 L. J. Ex. 230 ; 7 Jur. 156 ; 152 E. R. 714.

Annotation :—**Consd.** South Western Loan & Discount Co. *v.* Robertson (1881), 8 Q. B. D. 17.

2335. *Add. Citation :*—" *sub nom. Re* HUTCHINSON, *Ex p.* HUTCHINSON (1885), 16 Q. B. D. 215.

2350. After the word " *Held* " add " (ERLE, J., *diss.*) "

Annotations :—For the annotations in the original volume substitute as follows :—

Annotations :—**Dbtd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). **N.F.** Kinderley *v.* Jervis (1856), 22 Beav. 1 ; Scott *v.* Hastings (1858), 4 K. & J. 633. **Consd.** Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480. **N.F.** Benham *v.* Keane (1861), 1 John. & H. 685. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235 ; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). **N.F.** Gill tinental Union Gas Co. (1872), L. R. 7 Exch. 332. Punchard *v.* Tomkins (1882), 31 W. R. 286. The case of *Watts* v. *Porter* is itself unsound law, but ERLE, J.'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). **N.F.** *Re* General Horticultural Co., *Ex p.* Whitehouse (1886), 32 Ch. D. 512 ; *Re* Leavesley, [1891] 2 Ch. 1 ; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757 ; Croft *v.* Lumley (1858), 6 H. L. Cas. 672 ; Baker *v.* Tynte (1860), 2 E. & E. 897. **Mentd.** Whistler *v.* Forster (1863), 14 C. B. N. S. 248.

2430a. —— —— ——.]—5 Vict. c. 5, s. 4, conferred on the ct. no new summary jurisdiction with respect to granting injunctions ; but the remedy provided thereby was intended only for limited & interim purposes, viz. to protect stock until the party having a claim to it can have time to assert that claim by bill. H. obtained a restraining order under the above statute on May 30, but he neglected to file a bill. Upon motion made June 30 to discharge the order :—*Held :* the order could not stand without a bill filed ; & although the ct. had power to continue the order until a bill should be filed, yet that this was not, by reason of H.'s delay in filing a bill, a proper case for the exercise of such power.—*Re* SUISSE (1842), 6 Jur. 597, 654.

2436. *Add. Citation :*—" Madd. & G. 1."

2438a. —— —— **Beneficial owner.**]—A *cestui que trust* or equitable mtgee. of shares who is entitled to restrain a transfer can apply to the High Ct. under Ct. of Chancery Act, 1841 (c. 5), s. 4, & R. S. C., Ord. 46, for an order restraining the co. from allowing a transfer to be made, & this appears to me to be his only remedy where he is not himself a transferee, & as such entitled to be registered as a shareholder (LINDLEY, L.J.).—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO., LTD. (1884), 14 Q. B. D. 424 ; 54 L. J. Q. B. 177 ; 52 L. T. 912 C. A. ; *affd. on other grounds, sub nom.* SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20, H. L.

PART V. SECT. 2, SUB-SECT. 5.—A.

2289 i. *Fund in court—Paid under garnishee proceedings.*]—PRAT *v.* HITCHCOCK, JONAH *v.* HITCHCOCK, [1925] 3 D. L. R. 1142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.—A.

se. *Costs of obtaining orders—On winding-up of company—By whom payable.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., DAVIDSON *v.* SWANSON (S.), [1928] 2 W. W. R. 256.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—D.

2393 i. *Right of assignor to fund.*]—*Re* DAVIDSON & SMITH, *Ex p.* LONDON GUARANTEE & ACCIDENT CO., [1925] 2 D. L. R. 433.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.

i. —— *Compensation for dependants of deceased workman.*]—Money paid into ct. as compensation due to the dependants of a deceased workman under the Workmen's Compensation Act, 1925, is not subject to arrestment.—WILLIAM BAIRD & CO., LTD. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 6.

si. *Order obtained without notice of prior assignment—Notice of assignment entered in accountant's office.*]—COTTINGHAM *v.* COTTINGHAM (1886), 11 O. R. 294.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

2448 i. *Not execution but equitable relief.*]—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course ; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG *v.* BEAL, [1923] 3 D. L. R. 1141 ; 52 O. L. R. 208.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sg. *Of master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—**IR.**

sh. *Effect of County Courts Act, R. S. M.*, 1913, *s.* 57.]—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—MCFARLANE. *v.* FRANKLIN, [1924] 3 D. L. R. 605 ; 2 W. W. R. 1036 ; 34 Man. L. R. 293.—**CAN.**

sj. *Action commenced in one judicial district—Appointment of in another* —— Co., LTD. *v.* KIRK, [1928] 1 W. W. R. 303 ; 22 Sask. L. R. 485.—**CAN.**

sk. *Property outside jurisdiction.*]—The Calcutta High Ct. on its original side can, in a proper case, appoint a receiver of property outside its territorial jurisdiction in execution of a money decree.—PRAMATHANATH MALIA *v.* LOW & CO. (1929), I. L. R. 57 Calc. 964.—**IND.**

PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. ——.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF *v.* SQUIRRELL, [1924] 2 D. L. R. 930 ; [1924] 1 W. W. R. 1265 ; 18 Sask. L. R. 250.—**CAN.**

2453 vi. ——.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST CO. *v.* KRITZWISER, [1924] 3 D. L. R. 596 ; [1924] 2 W. W. R. 760.—**CAN.**

2453 vii. ——.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct. ; but the creditor cannot by this process

2454. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2463. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2465. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2502. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2526. *Add. Annotation:*—**Refd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

Part VI.—Discovery in Aid of Execution.

2547a. —— On foreign debtor—Temporarily within jurisdiction—Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

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reach a kind of asset not exigible under legal execution.—EATON *v.* BRANT (1924), 55 O. L. R. 346.—**CAN.**

2453 viii. ——.]—THOMSON *v.* CUSHING (1889), 30 O. R. 123.—**CAN.**

2453 ix. ——.]—NOVA SCOTIA MINING CO. *v.* GREENER (1898), 31 N. S. R. (19 R. & G.) 189.—**CAN.**

2453 x. ——.]—A receiver will not be appointed by way of equitable execution with respect to property which is capable of being reached by way of ordinary legal process, unless the ct. is satisfied that there are special circumstances which would justly entitle applt. to such relief.—MENNONITE MUTUAL FIRE INSURANCE CO. *v.* HEINRICHS & HEINRICHS, [1932] 1 W. W. R. 218.—**CAN.**

sl. *Whether granted as of right.*]—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A. (b).

sm. *Property exempt from seizure—Homestead.*]—A judgment creditor cannot have equitable execution with respect to property which could not be taken under execution at law if the debtor had the legal, instead of only an equitable interest therein. Therefore equitable execution cannot be obtained against a judgment debtor's equitable interest in land which is his homestead, where homesteads are made exempt from seizure under a writ of execution.—STOEHR & MCPHERSON *v.* MORGAN (Sask.), [1929] 4 D. L. R. 301; 2 W. W. R. 577.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—C.

2490 ii. ——.]—The ct. has no jurisdiction to enforce payment of a judgment debt by appointing a receiver of the future earnings of the judgment debtor.—SIMPSON *v.* SIMPSON (1934), 49 B. C. R. 288.—**CAN.**

n i. *Legal estate in remainder.*]—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

q i. ——.]—BARNES *v.* SHARPE, [1924] 2 D. L. R. 1119 2 W. W R. 462.—**CAN.**

sp. *License.*]—An ordinary hotel lease containing all the usual terms in favour of the lessor with respect to the license shows a *prima facie* interest of the lessor in the license, which a Ct. of Equity will in a proper case protect by the interlocutory appointment of a receiver.—METROPOLITAN THEATRES, LTD. *v.* HARRIS (1935), 35 S. R. N. S. W. 228; 52 N. S. W. W. N. 68.—**AUS.**

sr. *Profits of hotel.*]—Pltfs. claimed to be entitled to possession of the land on which a hotel was erected & also to the furniture in the hotel:—*Held:* an order appointing a receiver of the profits of the business should be set aside, as under no circumstances could pltfs. be entitled to the profits arising from the business carried on by deft.—CLYDESDALE *v.* MCMANUS, [1934] W. A. L. R. 89.—**AUS.**

PART VI.

h i. —— ——.]—Where an order under Rule 478 (1) for the examination of a judgment debtor orders his attendance for examination, it is not necessary to serve him with a *subpœna* under Rule 480; the service of the order & appointment on him with payment of conduct money is sufficient. But if such order provides only that he be orally examined & does not order him to attend for examination or to produce his books or documents, it is then necessary to serve a *subpœna* to compel his attendance or to produce such books & documents as may be required.—GREAT WEST LIFE ASSCE. CO. *v.* WRIGHT, [1928] 4 D. L. R. 144; [1928] 2 W. W. R. 94; 22 Sask. L. R. 409.—**CAN.**

s i. —— —— *Mortgagor—Although execution stayed.*]—FRANCO-BELGIUM INVESTMENT CO. *v.* MCNAMARA (Alta.), [1918] 2 W. W. R. 929.—**CAN.**

s i. —— ——.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

s ii. —— *Mother-in-law of judgment debtor.*]—Order made for examination, where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

b i. —— *Transferee of land in another Province.*]—CRUCIBLE STEEL CO. *v.* FFOLKES (1912), 21 O. W. R. 302; 3 O. W. N. 750; 1 D. L. R. 381.—**CAN.**

2552 i. *Nature of examination.*]—The questions should be limited to the scope of the order for examination.—FLANAGAN *v.* ENGLAND, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—**CAN.**

2552 ii. —— *Judgment on contract readjusting earlier contracts.*]—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—STANDARD TRUST CO. *v.* WALTER, [1926] 1 D. L. R. 86; [1926] 1 W. W. R. 16; 22 Alta. L. R. 176.—**CAN.**

st. *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—SASKATOON HARDWARE CO. *v.* MCMANUS, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

sz. —— *Non-attendance on previous day waived.*]—Where non-attendance on the day fixed by an order for deft.'s attendance for examination as a judgment debtor is waived by pltf., deft. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—HYATT *v.* OWENS, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—**CAN.**

sa. *Scope of examination—Evidence admissible as proof of ability to pay.*]—On an application under King's Bench Act, s. 51 (*a*), the ct. has no jurisdiction to adjudicate upon the question of a fraudulent conveyance, yet the circumstances under which the debtor has transferred his property may be considered for the purpose of assisting the ct. in concluding whether the debtor's failure to pay his debts was due to inability or unwillingness to pay.—BELL *v.* LONG, [1928] 3 W. W. R. 208.—**CAN.**

sb. *What must be shown.*]—Under Alberta, rule 634, it is not necessary for a judgment creditor applying to the clerk of the ct. for an appointment for the examination of the judgment debtor to show that the judgment is still unsatisfied or that an execution has been returned by the sheriff *nulla bona*; nor is he required to obtain a judge's order for the appointment.—CONWAY'S, LTD. *v.* RYAN, [1929] 3 D. L. R. 292; 2 W. W. R. 80; 24 Alta. L. R. 124.—**CAN.**

sd. *Disobedience to order—Contempt of court.*]—STANDARD BANK OF CANADA & CANADIAN BANK OF COMMERCE *v.* RABY (Alta.), [1929] 3 W. W. R. 746.—**CAN.**

EVIDENCE.

Part I.—General Principles.

4. *Add. Annotation :*—**Refd.** Butcher Wetherly & Co. *v.* Norman, [1934] 1 K. B. 475.

31a. **Interview—Dictaphone record.**]—The dictaphone record of an interview may be accepted in evidence.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

37. *Add. Annotations :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

55. *Add. Annotations :*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; Place *v.* Searle, [1932] 2 K. B. 497.

55a. ——.]—At the close of pltf.'s case, deft. applied for a nonsuit, on the ground that there was no evidence given of such negligence as to render deft. liable. The judge refused to stop the case, but reserved leave to move for a nonsuit. The jury having found for pltf. :—*Held :* (1) when at the close of pltf.'s case there was no evidence upon which the jury could reasonably & properly find a verdict, the judge ought to have directed a nonsuit ; (2) in every case before evidence is left to the jury there is a preliminary question for the judge, not whether there is literally any evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.—GIBLIN *v.* MCMULLEN (1869), L. R. 2 P. C. 317 ; 5 Moo. P. C. C. N. S. 434 ; 38 L. J. P. C. 25 ; 21 L. T. 214 ; 17 W. R. 445 ; 16 E. R. 578, P. C.

55b. ——.]—Where pltf. has closed his evidence, & the judge who tries the case is of opinion that there is no case to go to the jury, he ought to direct accordingly.—DANIEL *v.* METROPOLITAN RY. CO. (1871), L. R. 5 H. L. 45 ; 40 L. J. C. P. 121 ; 24 L. T. 815 ; 35 J. P. 708 ; 20 W. R. 37, H. L.

Annotation :—**Refd.** Williams *v.* G. W. Ry. (1874), L. R. 9 Exch. 157.

55c. —— **Power of judge to change ruling.**]—In an action for personal injuries the judge refused to nonsuit on the ground of there being no evidence of negligence, & the jury, having heard the whole case, disagreed :—*Held :* the judge was entitled to enter judgment for deft.—PETERS *v.* PERRY & CO. (1894), 10 T. L. R. 366.

Annotation :—**Consd.** Skeate *v.* Slaters, [1914] 2 K. B. 429.

55d. —— ——.]—SHEARS *v.* MENDELOFF (1914), 30 T. L. R. 342.

55e. —— ——.]—In an action tried with a jury the judge was asked at the conclusion of pltf.'s case to withdraw the case from the jury on the ground that pltf. had failed to make any case against defts. The judge refused to do so. Witnesses were then called for the defence. The jury disagreed. Subsequently an application was made to the judge to enter judgment for defts. upon the above ground & also upon the ground that upon all the evidence in the case the jury could not reasonably have found a verdict for pltf. The judge having refused to enter judgment for defts. :—*Held :* (1) a judge at the trial had power to enter judgment for deft. if upon the case as a whole the evidence of pltf. was so weak that a verdict in his favour would have been set aside as unreasonable.

(2) A judge who at the conclusion of pltf.'s case has ruled that there is some evidence for the jury, is entitled at the conclusion of the whole case to reconsider his ruling & to enter judgment for deft., if he is then of opinion that pltf.'s evidence fails to disclose any cause of action against deft.—SKEATE *v.* SLATERS, LTD., [1914] 2 K. B. 429 ; 83 L. J. K. B. 676 ; 110 L. T. 604 ; 30 T. L. R. 290, C. A.

Annotations :—*As to* (1) **Consd.** Winterbotham, Gurney *v.* Sibthorp & Cox, [1918] 1 K. B. 625. **Refd.** Everett *v.* Griffiths, [1921] 1 A. C. 631. *As to* (2) **Refd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888 ; Place *v.* Searle, [1932] 2 K. B. 497. *Generally*, **Refd.** Gascoigne *v.* Gascoigne (1917), 87 L. J. K. B. 333 ; Croker *v.* Croker (1932), 48 T. L. R. 597.

57. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59a. —— ——.]—GIBLIN *v.* MCMULLEN, No. 55a, *ante*.

77. The names of the parties should be reversed in each court.

80. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

101. *Add. Annotation :*—**Folld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

116. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

117. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

PART I. SECT. 1.

1 i. *Civil & criminal trials distinguished.*]—Where the question to be determined in a civil action is whether or not a criminal offence has been committed, but this question does not arise directly upon the pleadings, the ct., in deciding whether or not an offence has been committed, should apply the ordinary civil rule as to the sufficiency of proof, & not the rule which prevails in a ct. of criminal jurisdiction that the ct. must be satisfied beyond reasonable doubt that the crime alleged has been committed.—MOTCHALL *v.* MASSOUD, [1926] V. L. R. 273 ; [1926] Argus L. R. 271.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.

5 iv. ——.]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1926] 4 D. L. R. 74 ; 59 O. L. R. 205.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

55 ix. ——.]—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514 ; [1927] 2 W. W. R. 499 ; 21 Sask. L. R. 658.—**CAN.**

n i. ——.]—DOE d. PETIT *v.* RENARD (1850), 6 U. C. R. 501.—**CAN.**

n ii. ——.]—MONTREAL TRUST CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 4 D. L. R. 373 ; 61 O. L. R. 137.—**CAN.**

155. *Add. Annotations :*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** The Kite, [1933] P. 154. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

198a. —— **Replevin.**]—In replevin, if there be any affirmative issue on pltf., he is entitled to begin.—CURTIS *v.* WHEELER (1830), Mood. & M. 493; 4 C. & P. 196; 172 E. R. 668, N. P.

198b. —— ——.]—In replevin there was a cognisance for rent in arrear. To this there were two pleas, the one stating that a certain agreement had been entered into between the landlord & tenant, & that the tenant was subsequently induced by the landlord to enter into another agreement, which second agreement was the demise in the cognisance mentioned; & that this latter agreement had been abandoned by mutual consent before any rent became due. The other plea was similar, except, that it averred that the tenant was induced to enter into the second agreement by fraud. Replication to the one, denying the abandonment; & to the other, denying the fraud :—*Held :* on these pleadings, pltf. had the right to begin.—WILLIAMS *v.* THOMAS (1830), 4 C. & P. 234; 172 E. R. 684, N. P.

198c. —— ——.]—In replevin any issue in which the affirmative is on pltf. gives him the right to begin.—JAMES *v.* SALTER (1835), 1 Mood. & R. 501, N. P.

220a. One counsel on each side to be heard.]—Only one counsel on each side is to be heard on the claim of right to begin, & the counsel for deft. has the right to reply.—RAWLINS *v.* DESBOROUGH (1837), 2 Mood. & R. 70.

288. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

Part II.—Admissibility of Evidence.

301a. Effect of letter written by plaintiff's solicitor.]—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—SHORT *v.* EDWARDS (1795), 1 Esp. 373; 170 E. R. 390, N. P.

311a. —— **Murder of employer—Books with false entries on which commission payable to employee found by body.**]—Applt. was indicted for the murder of his employer, whose dead body was found in the latter's locked garage. Evidence was given (*inter alia*) that on the seat of a car in the garage at the time of the discovery of the body there were found books which had contained entries or impressions of fictitious orders showing that applt. had been paid commission thereon. These entries or impressions had apparently been made by applt.'s employer, & the leaves had been torn out. Evidence was also given that in the garage there was found a letter written to applt. by his employer & making an appointment. This letter was found open & crumpled, but it was not

PART I. SECT. 6, SUB-SECT. 1.—A.

119 xxv. —— *Payment.*]—BRONDSON *v.* NORTHGRAVES (Sask.), [1925] 3 W. W. R. 456.—**CAN.**

119 xxvi. —— *Loan not repaid.*]—To establish a claim for money lent pltf. must allege & prove non-payment. On the hearing of a complaint in a ct. of petty sessions for money lent, evidence was given by deft. that he had repaid the money, & by the complainant denying the repayment. The justices, being unable to decide whether or not repayment of the loan had been made, dismissed the complaint :—*Held :* as the complainant had not established his case, the justices were right in dismissing the complaint.—NELSON *v.* CAMPBELL, [1928] V. L. R. 364; [1928] Argus L. R. 221.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

q i. —— ——.]—Where practically all the correspondence between the parties save one letter, had been placed in evidence :—*Held :* the way had been opened, & the entire correspondence was properly admissible.—EAGLES *v.* CANADIAN BANK OF COMMERCE (1920), 47 N. B. R. 480.—**CAN.**

266 ii. ——.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement :—*Held :* the judge was not bound to admit the whole statement.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART I. SECT. 8.

sf. *Evidence tendered after hearing & before entry of formal judgment.*]—While after a trial has been closed & oral judgment rendered the trial judge has jurisdiction to grant either party leave to adduce further evidence before the entry of formal judgment, yet this leave should never be given unless it seems imperative in the interests of justice that the case should be re-opened.—SALES *v.* CALGARY STOCK EXCHANGE, [1931] 3 W. W. R. 392.—**CAN.**

PART II. SECT. 1.

h (p. 54) i. —— *Evidence of absence of previous accident.*]—In an action for damages for injuries resulting from a fall sustained by the female pltf. when entering deft.'s hotel on a visit to one of the sample rooms, evidence of the hotel manager that during the ten years he had been manager he had never heard of any accident at or complaint of the entrance in question was held admissible.—WAY *v.* LELAND HOTEL CO., LTD., [1928] 2 D. L. R. 235; [1927] 3 W. W. R. 224.—**CAN.**

sg. *In action for breach of contract—Correspondence irrelevant to issue—Affecting conduct of parties before & at trial.*]—BURKARD & CO., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sj. *By consent—Evidence otherwise inadmissible.*]—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—RADHA KISHAN *v.* KEDAR NATH (1924), I. L. R. 46 All. 815.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—A.

306 i. —— *Circumstances of case.*]—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection :—*Held :* evidence of the conversation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

Telephone conversation—Proof of authority of agent.]—*Held :* a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re* DREYFUS (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

sl. *Telegrams—Between Civil Commissioner & Mines Dept.—On request for cancellation of certificate.*]—Where a request for the cancellation of a certificate granted to the discoverer of diamonds is made by the holder, who knows that the consent of the Mines Dept. is necessary, telegrams which pass between the Civil Comr. to whom the request is made & the Mines Dept. are admissible against the holder in subsequent legal proceedings in which the cancellation is in issue as part of the *res gestæ*.—CAPE COAST EXPLORATION, LTD. *v.* SCHOLTZ, [1932] App. D. 56.—**S. AF.**

proved that it had reached applt. The theory of the prosecution was that, the fictitious character of the orders having been discovered by the employer, an altercation had arisen & the applt. had murdered him. Applt. was convicted:—*Held:* evidence above described was admissible as part of the circumstances of the case, & the conviction must be affirmed.—R. *v.* PODMORE (1930), 46 T. L. R. 365; 22 Cr. App. Rep. 36, C. C. A.

311b. Charge by deposit of title-deeds—Memorandum relating to charge.]—In an action in which pltfs., exors. of M., claimed that they were entitled as part of their share in the estate of T., the father of M., to a charge for £300 on a farm called "W.," they sought to prove in support of their claim a certain memorandum which was signed by H. the exor. & trustee of the will of T. & with whom the title deeds of "W." had been deposited to secure the sum of £300 with interest, & was also signed by M. & her sister E., which memorandum related the facts upon which pltfs. relied to prove their claim & in which memorandum M. accepted the £300 charge as partial satisfaction of her share in the estate of T.:—*Held:* the memorandum was admissible in evidence because (1) it ought to be treated as part of the *res gestæ*, as it was sufficiently contemporaneous with the allocation of the charge; it might be described as an incident of the event under consideration; & (2) the statement in the memorandum whereby M. accepted the £300 in partial satisfaction of her share was a declaration against her proprietary interest & therefore was excepted from the rule against hearsay evidence.—HOMES *v.* NEWMAN, [1931] 2 Ch. 112; 100 L. J. Ch. 281; 145 L. T. 140.

312. For "**Letters from agent—Forming part of contract**" substitute "**—— Letters from agent—Forming part of contract.**"

In the cross-reference following this case, for "**—— After contract complete**" substitute "**After contract complete.**"

343. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

348a. Public capacity.]—Evidence of T.'s acting as the deputy of the sheriff:—*Held:* sufficient *primâ facie* of his appointment.—FAULKNER *v.* JOHNSON (1843), 11 M. & W. 581; 1 Dow. & L. 346; 12 L. J. Ex. 433; 7 Jur. 584; 152 E. R. 937.

370. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

395. *Add. Annotation:*—**Apld.** Thompson *v.* London, Midland & Scottish Ry. (1929), 98 L. J. K. B. 615.

397. *Add. Annotations:*—*As to* (1) **Refd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692. *As to* (2) **Refd.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

417. *Add. Citation:*—132 L. T. 229.

421a. ——.]—SMITH *v.* WILKINS (1833), 6 C. & P. 180; 172 E. R. 1198, N. P.

425. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

440. *Add. Annotation:*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

447. *Add. Annotation:*—**Refd.** *Re* Davy, [1935] P. 1.

448. *Add. Annotation:*—**Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

PART II. SECT. 3, SUB-SECT. 2.—D. (a).

332 i. *Accident—Statement made after accident.*]—A statement explaining the circumstances of an accident, made by deft.'s employee half an hour afterwards, is not part of the *res gestæ*, nor, in making the statement, is the employee acting within the scope of his employment so as to render his statement admissible against his employer.—WISHART *v.* MASON, [1931] N. C. R. 530.—**S. AF.**

l i. —— *Statement made by driver.*]—An explanation made by the driver of a vehicle as to the circumstances in which injury has been caused by that vehicle to another party is admissible in evidence in an action arising out of the injury if made at, or very near, the time of the injury.—HITCHINS *v.* UMFOLOSI CO-OPERATIVE SUGAR PLANTERS ASSOCN. (1929), 50 N. L. R. 117.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

sn. *Report by agent to principal.*]—*Held:* a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 4.—A.

s i. ——.]—Resp. had sued applt. in the ct. below for the return of certain sheep or their value. The evidence was that resp. had been losing sheep & that seeing sheep at a place near applt.'s kraal he collected a flock in the possession of deft. & undertook certain experiments with them, in which the sheep behaved as though they belonged to resp.:—*Held:* the evidence of the behaviour of the sheep was not hearsay evidence in relation to their identity & was admissible.—POSWA *v.* CHRISTIE, [1934] N. L. R. 178.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 5.—C.

r i. —— *Of defendant.*]—In an action under Customs Act to recover unpaid customs duties & penalties:—*Held:* evidence of a conversation between deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—R. *v.* ZIZU NATANSON (No. 1), [1927] 3 D. L. R. 591; [1927] 2 W. W. R. 139; 48 Can. Crim. Cas. 194; 21 Sask. L. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.—A.

h i. —— *Indecent assault.*]—In an action for damages for indecent assault evidence of the general reputation for unchastity of pltf. is admissible, but evidence of specific acts of impropriety is not.—GROSS *v.* BRODRECHT (1897), 24 A. R. 687.—**CAN.**

n i. ——.]—EDWARDS *v.* OTTAWA RIVER NAVIGATION CO. (1876), 39 U. C. R. 264.—**CAN.**

so. *Sparks from engine causing fire—Previous fires caused by engine.*]—*Held:* admissible.—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.—A

447 vii. ——.]—Before a statement based on information can amount to an admission of the truth of that information there must be an expression by declarant affirming his own acceptance of its truth.—BLACK *v.* HARDWELL & GLOECKLER, [1935] 2 W. W. R. 172.—**CAN.**

447 viii. ——.]—The girl the subject of a charge for ill-treatment of a State child gave evidence under cross-examination that she had made a statement to the police, but was not cross-examined by counsel for the defence as to such statement, nor was its production called for at that stage. Later a constable stated under cross-examination that he had taken the statement which was then called for, but the police magistrate ruled that it was privileged from production. On appeal on the ground of the wrongful rejection of evidence:—*Held:* even if the document were not privileged, it could not have been put in evidence, both because counsel for the defence had not laid the basis, by the cross-examination of the girl, for its admission as an inconsistent statement, & also because the girl not being the complainant, her statement was not admissible as between the parties, & that, therefore, there had been no wrongful rejection of evidence.—MCCLINTOCK *v.* NOFFKE, *Ex p.* NOFFKE, [1937] Q. S. R. 73; 30 Q. J. P. R. 45.—**AUS.**

456 lx. ——.]—IVEY *v.* SMITH (1929), 40 B. C. R. 475.—**CAN.**

496a. Admission relating to cause of accident.]—Evidence of admissions made by a deceased man as to the cause of an accident which resulted in his death is admissible against his widow in an action by her under Fatal Accidents Act, 1846 (c. 93).—MARKS *v.* PORTSMOUTH CORPN. (1937), 157 L. T. 261.

535a. Admissions "without prejudice."]—At the trial of an action, pltfs. proposed to put in evidence the examination, taken on commission, of a representative of pltfs. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice," & that the examination was inadmissible:—*Held:* the examination was inadmissible.—SCOTT PAPER CO. *v.* DRAYTON PAPER WORKS, LTD. (1927), 44 R. P. C. 151; *on appeal*, 44 R. P. C. 529, C. A.

537. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. Admission by author—As to copyright.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *post.*

595. *Add. Annotations:*—**Consd.** Bevis *v.* Bevis, [1935] P. 86. **Refd.** Warren *v.* Warren, [1925] P. 107.

624a. Agent of predecessor in title—Licensee of copyright.]—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (*a*) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result; & (*b*) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] 1 K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

653. *Add. Annotation:*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

688. *Add. Annotation:*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

700. *Add. Annotation:*—**Consd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

PART II. SECT. 4, SUB-SECT. 1.—C.

n i. ——.]—DEVEBER *v.* ROOP (1876), 16 N. B. R. (3 Pug.) 295.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

485 ii. ——.]—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

485 iii. ——.]—Words or conduct amount to an admission receivable in evidence against a party if they disclose an intention to affirm or acknowledge the existence of a fact whatever be the party's source of information or belief. Although the meaning of his words or conduct may depend upon the state of his knowledge, once that meaning appears & an intention is disclosed to assert or acknowledge the state of facts, its admissibility in evidence as an admission is independent of the party's actual knowledge of the true facts. When admitted in evidence, however, its probative force must be determined by reference to the circumstances in which it is made & may depend altogether upon the party's source of knowledge.—LUSTRE HOSIERY, LTD. *v.* YORK. (1936), 54 C. L. R. 134.—**AUS.**

496 ii. ——.]—LARGE *v.* PERKINS (1823), Tay. 62.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—G. (c) ii.

578 i. *Admission by cestui que trust—As against trustee.*]—On a suit by the exor. of A. against the exor. of A.'s wife for a declaration that at the time of her death the wife held certain land in trust for herself & A. as tenants in common, evidence of a statement by the wife that she had executed a declaration of trust to that effect, but had done so under duress, was rejected.—ROBINSON *v.* TRUSTEES EXECUTORS & AGENCY CO., LTD., [1931] V. L. R. 369.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) i.

a i. —— —— *Admission at inquest at which employer not represented.*]—MUIR *v.* SARNIA BRIDGE CO., [1931] 1 D. L. R. 742; 66 O. L. R. 365.—**CAN.**

c i. —— *Admission in former proceeding.*]—By English law, which is by statute the law of evidence in Southern Rhodesia, statements made in evidence by an agent called by his principal in a suit to which the latter is a party will not in general bind the principal in a subsequent action by a stranger & are not admissible in evidence against the principal in such later action.—RHODESIAN CORPN., LTD. *v.* GLOBE & PHŒNIX GOLD MINING CO., LTD., [1934] A. D. 293.—**S. AF.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) ii.

627 ii. ——.]—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

634 i. *As corroborative evidence.*]—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—HOWITH *v.* MCFARLANE, [1925] 2 D. L. R. 395; 56 O. L. R. 375.—**CAN.**

sp. *Must be statement of fact.*]—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped accused would not get into any trouble with the police over it as it was not his fault:—*Held:* inadmissible, as the words only amounted to an expression of hope & opinion.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

sq. *Declaration as to religion.*]—Where the religion of a deceased person is a fact in issue, his own solemn declaration about his religion, made in a formal document, *e.g.*, in his will, is admissible in evidence & is entitled to great weight. Such declaration would be admissible under Evidence Act, ss. 11 (2), 14, & 21 (2).—LEONG HONE WAING *v.* LEON AH FOON (1929), I. L. R. 7 Ran. 720.—**IND.**

st. *Declaration of testator—To prove invalidity of will.*]—Declarations of a testator are not admissible in evidence to show that a will executed by him was invalid.—*Re* ROSENBLAT ESTATE, [1932] 2 W. W. R. 433; 4 D. L. R. 518; 40 Man. L. R. 380.—**CAN.**

sv. *Statement constituting motive for crime—How proved.*]—Where a statement by a deceased person is said to constitute a motive for another to commit a crime, it cannot be proved by one who heard the deceased make the statement.—*Re* VENKATASUBBA REDDI (1931), I. L. R. 54 Mad. 931.—**IND.**

725. *Add. Annotation :—Generally,* **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

730a. ——.]—E. G. by her will gave to R. B., her sole exor., all her residuary real & personal estate for the purpose of creating a fund known as the "E. G. Charity," the income of which was "to be expended by him as I have directed." E. G. died in Nov. 1934, & her will was duly proved by the exor., R. B. Before he died in Apr. 1935, R. B. made a statement in writing as to the purpose or purposes for which E. G. told him to hold her residuary estate :—*Held :* (1) the statement in writing made by R. B., not being against his immediate pecuniary or proprietary interest, was not admissible in evidence ; (2) E. G. had by her will disclosed a general charitable intention, & the fund must be disposed of in accordance with a scheme to be settled by the ct.—*Re* GARDNER'S WILL TRUSTS, BOUCHER *v.* HORN, [1936] 3 All E. R. 938 ; 81 Sol. Jo. 34.

739. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

745. *Add. Annotations :*—**Folld.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436. **Consd.** Homes *v.* Newman, [1931] 2 Ch. 112.

754. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

775. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

811a. Memorandum accepting charge in partial satisfaction of share in estate.]—HOMES *v.* NEWMAN, No. 311a, *ante.*

816. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

819. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

859. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

864. *Add. Annotation :*—**Consd.** Simon *v.* Simon, [1936] P. 17.

864a. Certificate & memoranda of case.]—A husband petitioning for divorce was counter-charged by his wife with adultery with a named woman, who had at a material date been examined by a surgeon as to her sexual condition. The surgeon gave a certificate & in addition made memoranda of the case. He died before the trial of the present counter-charge. On these documents being tendered in evidence :—*Held :* the circumstances founded no exception to the general rule that evidence must be given in open ct. & subject to cross-examination. The exception is limited to cases where it was the duty of deceased to perform a particular act & record having done so. In the present case the surgeon had no duty to perform which brought him within the exception, & the documents were therefore inadmissible.—SIMON *v.* SIMON, HOGARTH, PRESTON & SHAW, [1936] P. 17 ; 105 L. J. P. 14 ; 154 L. T. 63 ; 52 T. L. R. 91 ; 79 Sol. Jo. 861.

871. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

927. *Add. Annotation :*—**Consd.** *Re* Davy, [1935] P. 1.

935. *Add. Annotation :*—**Refd.** *Re* Davy, [1935] P. 1.

959. *Add. Annotation :—As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

968. *Add. Annotations :—As to* (2) **Refd.** *Re* Davy, [1935] P. 1. *As to* (4) **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266. *Generally,* **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation :*—**Refd.** R. *v.* Copestake *Ex p.* Wilkinson (1926), 90 J. P. 191.

979a. —— ——.]—The date of *lis mota* for the purpose of making a dividing line between declarations made before or after is not at the commencement of the actual litigation or the moment when a lawful cause of action arises, but it is when a controversy originates in a family sufficient to create a bias in the minds of members of the family at the moment of their declarations.—*Re* DAVY,

PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ——.]—In so far as words used by deceased were statements of facts :—*Held :* they were inadmissible, as there was nothing to show that deceased knew them to be contrary to his pecuniary or proprietary interests when he made them ; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iii.

858 i. *In diary—As to preparation of deed.*]—Notes made by a deceased solr. for the primary purpose of having a record of what transpired at interviews in regard to negotiations for a deed of family settlement (the negotiations extending over a considerable time) & which it was advisable for the solr. to keep in order properly to discharge his ultimate duty of approving or not approving of the settlement, were held admissible in evidence.—HARRIS *v.* LAMBERT, [1932] I. R. 504. —**IR.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iv.

sk. *Letters, records & statements.*]—Letters, records & statements of a deceased physician made in the course of professional duty held admissible.—PALTER CAP CO. *v.* GREAT WEST LIFE ASSCNE. CO., [1936] 2 D. L. R. 304 ; O. R. 341.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—A

908 iii. ——.]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—B.

936 vi. —— ——.]—CROFT *v.* WAMBOLT, [1930] 2 D. L. R. 996 ; 1 M. P. R. 415.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—E.

965 v. ——.]—Under sect. 32 (6) of the Indian Evidence Act, 1872, as by the long established rule in England, in questions of pedigree the statements of deceased members of the family, made before the question in dispute was raised, are evidence to prove pedigree.—ABDUL GHAFUR *v.* HUSSAIN BIBI (1931), I. L. R. 12 Lah. 336.—**IND.**

965 vi. ——.]—The matter in controversy in resp.'s action involved the title to & ownership of 200 acres of wilderness or woodland. Resp. claimed title to the property through a conveyance dated May 3, 1920, from John & James F., the sons & heirs of one David F., deceased, who, in turn, was alleged to have been the only child of one Elizabeth F., the original grantee from the Crown. Applt. co. claimed a documentary title to the property through a series of five conveyances from the first deed in 1897 to the last in 1909, & also claimed a title by continuous, exclusive & adverse possession in itself & its predecessors in possession for a period of over twenty years. The trial judge, after having admitted as evidence, subject to objection by applt.'s counsel, the declarations made to witnesses by the two brothers, John & James F., concerning their own pedigree, excluded them in his judgment & dismissed resp.'s action, finding that applt. co. had established its title to the property. The Appeal Div. reversed the judgment :—*Held :* the trial judge was justified in excluding the declarations of the deceased grantors in the deed to resp., John & James F., as evidence that they were grandsons of Elizabeth F., the original grantee from the Crown & that he was also justified in re the conclusion that resp. had to establish his title.—PEJ PAPER CO. *v.* FARREN, [1933] S. C. R. 388 ; 4 D. L. R. 92.—**CAN.**

[1935] P. 1; *sub nom.* DAVY *v.* A.-G., 103 L. J. P. 115; 151 L. T. 562; 50 T. L. R. 588; 78 Sol. Jo. 618.

1004. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Trafford *v.* Trafford (1929), 45 T. L. R. 502; A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

1026. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1033. *Add. Annotation :*—**Refd.** Davis *v.* McNamara & Co. (1921), Ltd. (1932), 25 B. W. C. C. 550.

1040. *Add. Annotation :*—**Consd.** Tolley *v.* Fry, J. S. & Sons (1929), 46 T. L. R. 108.

1057. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation :*—*As to* (1) **Refd.** Muscroft *v.* Stewarts & Lloyds (1928), 140 L. T. 64.

1200a. —— ——.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—CROMWELL'S (LORD) CASE (1578), 4 Co. Rep. 12, b; 76 E. R. 877.

1260. *Add. Annotation :*—**Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

1264a. —— ——.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R., [1931] 1 Ch. 169.

1267. *Add. Annotations :*—*As to* (1) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. **Apld.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. *As to* (2) **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242.

1268. *Add. Annotation :*—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8.

1269. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

1270. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

1273a. Constitution of foreign state.]—An English ct. cannot take judicial cognisance of the internal constitution & economy of a foreign state. These matters must be proved by evidence.—A/S RENDAL *v.* ARCOS, LTD., [1936] 1 All E. R. 623, C. A.; *revsd. on other grounds*, [1937] 3 All E. R. 577, H. L.

PART II. SECT. 7, SUB-SECT. 1.

ad. *Number of witnesses.*]—Evidence Act, R. S. O., 1927, s. 9, which requires leave in order to call more than three witnesses to give opinion evidence, refers to expert evidence.—MCLACHLIN *v.* DUNWICH MUTUAL FIRE INSCE. CO., [1935] 3 D. L. R. 194.—**CAN.**

PART II. SECT. 10, SUB-SECT. 1.

1048 ii. ——.]—The first proviso to sect. 33 of Indian Evidence Act, 1872, which prescribes the circumstances in which the evidence of a witness in a judicial proceeding, who has since died, is admissible in a subsequent proceeding, requires, upon its true construction, that the party to the first proceeding should have represented in interest the party to the second proceeding in relation to the question in issue in the first proceeding to which the facts which the evidence states were relevant. The proviso does not reproduce English law on the subject.—KRISHNAYYA RAO *v.* PITTAPUR (RAJA) (1933), 60 L. R. Ind. App. 336.—**IND.**

m i. ——.]—COURT *v.* HOLLAND, *Ex p.* HOLLAND & WALSH (1879), 8 P. R. 219.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

g i. —— *Contract based on terms of another contract.*]—The fact that the parties to a contract have expressly based the contract on the terms of a contract between other parties does not give the former parties the right to have evidence given of the latter contract in order that their contractual rights may be ascertained.—*Re* MACKLIN, TRIBUNE NEWSPAPER CO. *v.* FORT FRANCES PULP & PAPER CO., LTD., [1932] 2 W. W. R. 443; 4 D. L. R. 179; 40 Man. L. R. 401.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—B.

1182 i. *Records of the court.*]—LEVI *v.* COWAN, [1933] 2 W. W. R. 140.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—C.

s i. ——.]—The means by which a judicial officer may become acquainted officially with the law are not limited to those provided by sect. 10 of Manitoba Evidence Act, R. S. M., 1913, for the proof of proclamations, orders, etc.; judges & magistrates are entitled to act on their own knowledge that a certain Act is in force without having before them the proclamation bringing it into force.—R. *v.* WAGNER, [1931] 2 W. W. R. 650; 4 D. L. R. 761; 56 Can. C. C. 213; 39 Man. L. R. 532.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—D.

1217 i. *Duty of court to take notice of—Contract contrary to Lord's Day Act.*]—Although the Lord's Day Act is not pleaded, it is the duty of the ct. to take cognisance of the statute & to raise the point *ex mero motu* even if not pleaded or raised by counsel.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105; 55 Can. C. C. 197; 43 B. C. R. 468.—**CAN.**

1217 ii. —— *Contract against public policy.*]—The ct. will take notice of its own motion of any ground of public policy on which a contract before the ct. is illegal.—BEATTIE *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, LINDAL *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, [1933] 1 W. W. R. 334; *revsd. on other grounds*, [1934] S. C. R. 33; 1 D. L. R. 497.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—E.

st. *Native law, customs & usages.*]—NGCOBO *v.* NGCOBO, [1929] App. D. 233.—**S. AF.**

sv. *Right of privacy.*]—It is well established & recognised that a customary right of privacy exists generally in these Provinces, & it is open to a ct. to take judicial notice under sect. 57 of Evidence Act of the general prevalence of such a custom having the force of law. It is, therefore, not necessary that such a custom should be alleged & proved by evidence produced in each case to establish it.—NIHAL CHAND *v.* BHAGWAN DEI (1935), I. L. R. 58 All. 370.—**IND.**

PART III. SECT. 5, SUB-SECT. 4.

sy. *Time of darkness.*]—A ct. in Manitoba can take judicial notice of the fact that on a fine evening in Aug. in that province it is not dark a few minutes after eight o'clock.—BELL *v.* HUTCHINGS & HUTCHINGS, [1932] 1 W. W. R. 49; 1 D. L. R. 468.—**CAN.**

1301. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 94 L. J. K. B. 48.

1304. *Add. Annotation :—As to* (1) **Refd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125.

1305. *Add. Annotation :*—**Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

1306. *Add. Annotations :—As to* (1) **Refd.** Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358 ; Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184 ; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125. *As to* (2) **Refd.** Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

1319. *Add. Annotations :*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; Sparey *v.* Bath Rural District Council (1930), 23 B. W. C. C. 263. **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758 ; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519 ; Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320 ; Brooker *v.* Thomas Borthwick & Sons (Australasia), Ltd. & Connected Appeals (1933), 77 Sol. Jo. 556 ; Martin *v.* Finch, [1937] 2 All E. R. 631.

1338. *Add. Citations :*—[1925] 1 K. B. 399 ; 94 L. J. K. B. 497 ; 132 L. T. 267 ; 17 B. W. C. C. 221.

Add. Annotations :—**Apprvd.** Keane *v.* Mount Vernon Colliery Co., [1933] A. C. 309. **Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834 ; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

After this case add :—

Compare MASTER & SERVANT, Vol. XXXIV., p. 391, Nos. 3180-3184.

1338a. Production of plan from photograph.]—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, No. 3935a, *post.*

1377. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

1379. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1382a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation :—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1402. *Add. Annotation :*—**Expld.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

PART III. SECT. 5, SUB-SECT. 5.—C.

sb. *What is foreign State within Civil Procedure Code, s.* 84—*Gadwal State.*]—*Held :* Gadwal State is neither a sovereign State nor a foreign State within sect. 84 of the Civil Procedure Code.—VENKATARAMI *v.* RAJA OF GADWAL (1930), I. L. R. 53 Mad. 968.—**IND.**

PART III. SECT. 5, SUB-SECT. 5.—D.

f. For " (1886) " read " (1866)."

PART III. SECT. 5, SUB-SECT. 6.—A.

sd. " *Unorganised territory.*"]—On an appeal by the Crown from the dismissal of a charge under Govt. Liquor Act, it was objected that the notice of intention to appeal was not filed until the 20th day after the conviction, & that there was no proof before the ct. that the place where the cause of the information or complaint arose was situate in unorganised territory :—*Held :* in view of sect. 103 of Summary Convictions Act, & of the definition of " unorganised territory " in the Interpretation Act, the ct. must take judicial notice of the fact that said place was in unorganised territory.—R. *ex rel.* NELSON *v.* CASSANDRA (B. C.), [1929] 1 W. W. R. 866 ; 52 Can. Crim. Cas. 326.—**CAN.**

PART III. SECT. 5, SUB-SECT. 6.—B.

r i. ——.]—The ct. refused to take judicial notice that a place where an offence was alleged to have been committed was within the jurisdiction of the stipendiary magistrate.—R. *v.* MACMILLAN (1932), 4 M. P. R. 499 ; 58 C. C. C. 200.—**CAN.**

e i. ——.]—Judicial notice cannot be taken of the fact that a particular place is within a certain judicial district or of the distance of one place from another or of the identity of a place referred to in one document with that of a place referred to in another document, even though the names be the same.—HYNES *v.* ALTON, [1928] 3 W. W. R. 261.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—A.

sf. *Vicious habits of bees.*]—The ct. will not take judicial notice of the vicious habits of bees.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 7.—B.

1301 i. *Period of gestation.*]—In a case in which a particular period of pregnancy is a material fact to be established a judge is not at liberty to base his finding upon his own scientific knowledge or the testimony of experts given before him in other similar cases, or on the presumption of fact as to the average period of pregnancy. The period in question must be proved, like any other fact, by such evidence, given in that particular case, as may serve to bring conviction to the mind of the judge trying that case. The ct. is entitled to take judicial notice of the course of nature only in so far as it is a notorious fact that nature follows a certain course. It will take judicial notice of the fact that the average period of human gestation is nine calendar months ; it will also, however, take judicial notice that the exact limits of this period are both legally & scientifically unsettled & that it varies in different cases.—FLETCHER *v.* KONDRATIUK, [1933] 2 W. W. R. 225 ; 3 D. L. R. 532 ; 60 C. C. C. 119.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—D.

h i. *Bar-room—Place where liquor kept.*]—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—FRANCE *v.* HUMPHREYS, [1926] S. A. S. R. 214.—**AUS.**

sg. *Financial depression.*]—EDDY *v.* STEWART, [1932] 2 W. W. R. 699.—**CAN.**

sk. ——.]—Judicial notice should be taken of the financial depression throughout the province of Saskatchewan, & especially in the southern portion thereof, during the last three years.—MILLS *v.* ANGUS, [1933] 2 W. W. R. 218.—**CAN.**

sl. *World unemployment.*]—Judicial notice will be taken of the present world-wide unemployment situation & the distress resulting or likely to result therefrom.—*Re* CALGARY CITY CHARTER, [1933] 3 W. W. R. 385.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—G.

q i. *S. P.*—R. *v.* MCPHERSON (1915), 33 W. L. R. 21 ; 9 W. W. R. 613 ; 8 Sask. L. R. 412.—**CAN.**

q ii. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—R. *v.* MARSHALL, [1925] 1 D. L. R. 1132 ; 43 Can. Crim. Cas. 253 ; [1924] 3 W. W. R. 865.—**CAN.**

s i. *Mode of conducting traffic—Stopping-places for trams.*]—*Held :* the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.—*Re* BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, *Ex p.* HILL, [1926] S. A. S. R. 326.—**AUS.**

PART III. SECT. 6, SUB-SECT. 6.—A.

st. *Evidence of—Whether Public Administrator requires same as court of law.*]—*Re* TJERSTROM (1905), 1 W. L. R. 385.—**CAN.**

sv. *Question of fact.*]—Death is a question of fact which must be established by the preponderance of evidence ; either by direct evidence of death or by the proof of such circumstances as may reasonably lead the ct. to conclude, that there can be no other satisfactory accounting for the disappearance or absence of the person whose death is sought to be established. The evidence submitted in the present case was held insufficient to warrant that conclusion.—*Re* BAILLIE ESTATE, MONTREAL TRUST CO. *v.* BAILLIE, [1930] 3 W. W. R. 92 ; 4 D. L. [illegible] —**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—B.

sw. *General rules.*]—There are two grounds upon which the ct. will make an order presuming death : (*a*) when the time elapsing between disappearance & the application is so long as to raise the inference that the person is dead ; (*b*) when the person disappeared

1413a. —— —— ——.]—Ejectment, in 1849, by reversioner for premises demised, in 1801, for three lives, & twenty-one years. Two of the *cestui que vies* had died before 1828. No witness was called who had ever known the third; &, except the mention of him in the lease (which described him as aged ten years), there was no proof that he had ever existed. No evidence of search for him was given:—*Held:* to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person; & that the mere fact that no witness called had heard of him was not sufficient.—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

1418a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

1421a. —— ——.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR (1925), 42 T. L. R. 159, P. C.

1437a. ——.]—A husband appealed from a maintenance order of 2*s.* 6*d.* a week made by justices on the ground that the wife was previously married in 1919, that she had admitted her previous husband was alive in 1922, & she had not proved his death so as to validate her marriage to applt. on Feb. 28, 1930:—*Held:* the justices were wrong in ruling that the onus was upon applt. to prove that the previous husband was alive. The justices ought to have concluded from the wife's evidence that the marriage in Feb. 1930, was void. Fresh evidence, now admitted, showed that the wife & the previous husband were still living together as a married couple in 1925. The appeal was allowed & the order discharged.—IVETT *v.* IVETT (1930), 143 L. T. 680; 94 J. P. 237; 28 L. G. R. 479; 29 Cox, C. C. 172.

Annotation:—**Consd.** Hogton *v.* Hogton (1933), 103 L. J. P. 17.

1437b. ——.]—After twenty-two years of married life a man left his wife & she summoned him for desertion. He claimed that she was not really his wife as she had been previously married & it had not been established that the former husband, who was last heard of alive some six years before the second marriage, was dead at the time of that ceremony, which took place in 1910. The magistrates accepted evidence that fruitless inquiries had been made as to the former husband's whereabouts up to the second marriage, & made an order for maintenance on the basis that husband appealed on the grounds that there was no evidence admissible that the first marriage was not subsisting, & that the magistrates were wrong in law in holding that the burden of proof was on the applt. to prove that that marriage was subsisting:—*Held:* the issue before the magistrates was whether the wife was free to marry in 1910, & whether it could be inferred from the evidence that the former husband was then dead. The magistrates had ample material for their decision, & the appeal failed.—HOGTON *v.* HOGTON (1933), 103 L. J. P. 17; 150 L. T. 80; 97 J. P. 303; 50 T. L. R. 18; 77 Sol. Jo. 780; 31 L. G. R. 391; 30 Cox, C. C. 23 D. C.

in circumstances which lead to the inference that he died at a particular time.—*Re* WIDDICOMBE (1929), 50 N. L. R. 311.—**S. AF.**

1410 xviii. —— —— ——.]—*Re* JELFS, [1925] 1 W. W. R. 735.—**CAN.**

1410 xix. —— —— ——.]—*Re* DE MILLE (Alta.), [1926] 3 D. L. R. 140; [1926] 2 W. W. R. 148.—**CAN.**

1410 xx. —— —— ——.]—*Re* HICKEY, DWYER *v.* HICKEY, [1925] V. L. R. 270; 31 Argus L. R. 261.—**AUS.**

1410 xxi. —— —— ——.]—H. married M. in 1899, who deserted her in 1900. Casual inquiries as to his whereabouts were made, but he was not afterwards heard of. B. made his will on May 14, 1915, & went through a form of marriage with H. on June 24, 1915:—*Held:* the death of M. should be presumed so as to qualify H. to remarry B. in 1915, & therefore B.'s will was revoked by his marriage.—*In the Estate of* BARNETT, 22 Tas. L. R. 83.—**AUS.**

1410 xxii. —— —— ——.]—The ct. has jurisdiction to declare that a person who has not been heard of for more than seven years shall be presumed to be dead, even though the sole object of appct. in obtaining the declaration is to clear the way for his or her remarriage.—*Re* DELOLI, [1929] 3 D. L. R. 763; 2 W. W. R. 327; 38 Man. L. R. 279.—**CAN.**

1410 xxiii. —— —— *Order of court obtained by fraud—Setting aside.*]—Petitioner herein sought the rescission of an order which had been obtained by his present wife allowing her to swear that her former husband was dead prior to a date which was over seven years prior to the making of the order. The order was obtained solely to assist her, appct. therefor, in obtaining a government pension. The present petitioner alleged that the order had been obtained by deceiving the ct. & that she had used it so as to lead him to believe that she was free to marry him:—*Held:* since it had not been shown that the present petitioner has now, or had at the time the order was made, any interest therein or in the effect which might result therefrom, he had no status sufficient to support his petition to have the order set aside.—*Re* HOLL, *Re* COWPER, [1933] 1 W. W. R. 17; 46 B. C. R. 297.—**CAN.**

1410 xxiv. —— ——.]—An order will not be made declaring that a person who has not been heard of for a long time is dead, except as incidental to the exercise of some jurisdiction, *e.g.* the jurisdiction to admit a will to probate.—*Re* SELL (1924), 56 O. L. R. 32.—**CAN.**

1413 v. —— —— ——.]—*Re* TOMES (Man.), [1927] 2 D. L. R. 864; [1927] 1 W. W. R. 429.—**CAN.**

1413 vi. —— —— —— *Strong incentive to disappear—Death not presumed.*]—O'DONNELL *v.* NORTH AMERICAN LIFE ASSURANCE CO., [1927] 3 D. L. R. 412; 60 O. L. R. 502.—**CAN.**

o i. —— *Disappearance at sea.*]—*Re* HONEYMAN, [1930] 1 W. W. R. 999.—**CAN.**

o ii. —— *Disappearance of aged & infirm person.*]—Testator, who was aged seventy-seven, & failing in health & mental vigour, disappeared in 1925 from his home, which was situated in very rough country, & twelve miles from the nearest railway station. A careful search in the surrounding country was made by two constables, assisted by black trackers & about 150 other persons, for a week after his disappearance, but he was not seen or heard of again:—*Held:* was sufficient evidence on which the ct. might presume that he was dead, & he had died on or about the date of his disappearance.—*Re* HORN (1930), Argus L. R. 280.—**AUS.**

sx. *Death of writer of old letters.*]—Where papers about 45 years old are produced before a ct. it may presume, in the absence of evidence to the contrary, that the writer was dead at the time they were produced.—JABBAR ALI SARDAR *v.* MONMOHAM PANDEY (1928), I. L. R. 55 Calc. 1216.—**IND.**

PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ——.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—LAL CHAND MARWARI *v.* RAMRUP GIR (1925), 53 L. R. Ind. App. 24.—**IND.**

1423 iii. ——.]—Although there is a presumption of death after absence for seven years, there is no presumption that death took place at any particular time within the seven years.—HICKEY *v.* GREAT WEST LIFE ASSURANCE CO. (1933), 7 M. P. R. 104.—**CAN.**

1445a. On party to whose title fact essential.]—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR, No. 1421a, *ante*.

1453a. —— ——.]—In July, 1852, H. quitted England for America, & wrote home announcing his safe arrival at New York. There was evidence that he was in declining health when he quitted England, & that, from his character, education, & previous life, he would, if living, have communicated with his friends in England. Advertisements requesting information concerning him had been inserted in the principal American newspapers, but he was never heard of again. The father of H. died in Sept. 1853, intestate. Pltf., who was one of the next of kin of the father, supposing the son to have predeceased him, filed his bill for the administration of the father's estate:—*Held:* there was *primâ facie* evidence of the death of H. in his father's lifetime to entitle pltf. to have the personal estate secured in ct.—DANBY *v.* DANBY (1859), 5 Jur. N. S. 54.

1454. *Add. Annotation:*—**Consd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1459a. —— ——.]—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

Annotations:—**Consd.** Prudential Assce. *v.* Edmonds (1877), 2 App. Cas. 487; Lyell *v.* Kennedy (1887), 56 L. T. 647; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

1472. For cross-reference before this case "*See, now*, Law of Property Act, 1925 (c. 20), s. 184."

1489a. ——.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re* NIGHTINGALE, HARGREAVES *v.* SHUTTLEWORTH (1927), 71 Sol. Jo. 542.

1499a. ——.]—DOE d. BANNING *v.* GRIFFIN, No. 164, *ante*.

1505. *Add. Annotations:*—**Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56; I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

1526a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation:—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1531. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

1550. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

1567. *Add. Annotation:*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1580. *Add. Annotation:*—**Refd.** Saunders *v.* Automotive Spares, Ltd. Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450.

1586. *Add. Annotation:*—**Apld.** *Re* Davis's Trade Marks, Davis *v.* Sussex Rubber Co., [1927] 2 Ch. 345.

1602a. —— —— **Outweighs several negative witnesses.**]—The rule of law is, that one affirmative witness outweighs several negative witnesses (Sir JOHN NICHOLL).—TOCKER *v.* AYRE (1821), 3 Phillim. 539; 161 E. R. 1408.

PART III. SECT. 6, SUB-SECT. 6.—D.

t i. ——.]—*Re* FORSYTH (N. S.). [1927] 2 D. L. R. 72.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—E.

1493 i. *Onus of proof—Rests on party asserting affirmative.*]—CAMPBELL *v.* COX & MITCHELL, [1930] 1 D. L. R. 649; 42 B. C. R. 120.—**CAN.**

b i. ——.]—There is no presumption of survivorship from age or death in case of common death.—*Re* WARWICKER, MCLEOD *v.* TORONTO GENERAL HOSPITAL, [1936] 3 D. L. R. 368; O. R. 379.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—F.

1497 i. *Whether presumption exists.*]—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re* SAUNDERS, PARK *v.* AUSTIN, [1928] N. Z. L. R. 391.—**N.Z.**

PART III. SECT. 6, SUB-SECT. 7.

f i. ——.]—MACRAE *v.* WALSH (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—**AUS.**

PART III. SECT. 6, SUB-SECT. 8.

1526 ii. ——.]—R. *v.* O'HARA (N. B.) (1927), 48 Can. Crim. Cas. 231.—**CAN.**

f (p. 178) **i.** *As to delivery of package by common carrier to consignee.*]—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by

r (p. 179) **i.** *As to party being administrator.*]—SMITH *v.* MCLEAN (1868), 7 N. S. R. (1 G. & O.) 310.—**CAN.**

PART III. SECT. 6, SUB-SECT. 10.

1556 i. *Receipt of letter—Whether presumed from posting.*]—The presumption that a letter shown to have been mailed in the usual course of business to a proper address was received is rebuttable by the addressee's denial of its receipt, where there is nothing to throw doubt on his credibility.—SHUCKETT *v.* LOCKHART & KYLE, [1932] 2 W. W. R. 330; 3 D. L. R. 466; 40 Man. L. R. 344.—**CAN.**

sa. *Identity of persons — From identity of names.*]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

sb. *Accuracy of scientific instrument.*]—The working accuracy of a scientific instrument will not be presumed unless it appears to the ct., either by judicial notice, assisted, if necessary, by consulting standard works of reference, or by appropriate evidence, that the instrument in question is a scientific instrument.—CRAWLEY *v.* LAIDLAW (1930), Argus L. R. 311; V. L. R. 370.—**AUS.**

PART III. SECT. 7, SUB-SECT. 1.

t i. —— ——.]—REILY *v.* LONDON CORP'N. 1891), 14 P. R. 171.—**CAN.**

t ii. —— ——.]—CLOUSE *v.* COLEMAN (1895), 16 P. R. 541.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

i. —— —— *Accretion.*]—A view by the ct. of the place of the alleged accretion is not merely for the purpose of appreciating the other evidence but also for the purpose of assisting the ct. in reaching a proper conclusion.—CLARKE *v.* EDMONTON (Can.), [1928] 4 D. L. R. 1010; *revg.* [1928] 2 D. L. R. 154; 1 W. W. R. 553; 23 Alta. L. R. 233.—**CAN.**

PART III. SECT. 8.

1593 x. —— ——.]—In the estimation of the value of evidence in ordinary cases, the testimony of credible witnesses who swear positively to a fact should receive credit in preference to witnesses who testify to a negative.—HALLETT *v.* BANK OF MONTREAL (1918), 46 N. B. R. 62.—**CAN.**

1593 xi. ——*Nature & application of rule.*]—The principle that the evidence of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. *v.* PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—**CAN.**

1596 i. —— *Telephone conversation overheard by bystander.*]—*Held:* the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & CO. *v.* FORST & CO. (1912), 23 O. W. R. 311; 46 S. C. R. 642.—**CAN.**

n i. ——*Evidence of perjured witness.*]—The evidence of a witness proved to have committed perjury is of no value whatsoever & cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.—EMPEROR *v.* UJA-

Part IV.—Documentary Evidence.

1624a. Document to be put in—Notice should be given.]—It is desirable that notice be given in advance to the other side of the document intended to be put in, so that they may be ready with any other admissible document directed to the same issue.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1633a. Entry in marriage register.]—WYATT *v.* ROCHFORT (1837), 1 Jur. 592, N. P.

1664a. ——.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

1726a. —— —— **Will.**]—Where a person had been dead a great number of years, whose handwriting was required to be proved, it was done by showing the similarity of the handwriting in question to the handwriting of his will, & no objection was taken to it, either at the bar or by the ct.—MOREWOOD *v.* WOOD (1791), 14 East, 327; 4 Term Rep. 157; 104 E. R. 626.

1766. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

1829a. —— —— ——.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON *v.* STARK (1802), 4 Esp. 163; 170 E. R. 677, N. P.

Annotation:—**Refd.** R. *v.* Wrangle (1835), 1 Har. & W. 41.

1867. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

1877. Add para.:—

Parol evidence of inscriptions & devices on banners & flags displayed at a meeting is admissible, without producing the originals. —R. *v.* HUNT (1820), 3 B. & Ald. 566.

1900. *Add. Citation:*—R. *v.* DOUGLAS (1846), 16 L. J. Q. B. 417.

1933a. ——.]—Where pltfs. called defts.' solr.:—*Held:* he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL *v.* HAWS (1863), 3 F. & F. 784, N. P.

1955a. ——.]—A deed may be pleaded as lost by time & accident without *profert*.—READ *v.* BROOKMAN (1789), 3 Term Rep. 151; 100 E. R. 504.

1998a. —— —— **Answers to inquiries.**]—In accounting for the absence of an attesting witness, or loss of a written instrument, general answers to inquiries that nothing is known concerning them, are admissible in evidence; but not declarations as to particular facts, if the party making them is capable of being called.—DOE d. JOHNSON *v.* JOHNSON (1818), 2 Chit. 196.

Annotation:—**Refd.** Pytt *v.* Griffith (1822), 6 Moore, C. P. 538.

PART IV. SECT. 2, SUB-SECT. 10.

1762 ii. ——.]—FOULDS *v.* BOWLER (1908), 8 W. L. R. 189.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B.

s i. —— *Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—DOE d. GILMOUR *v.* WHITNEY (1838), 2 N. S. R. (Ber.) 514.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ——.]—SMITH *v.* NEVILLES (1859), 18 U. C. R. 473.—**CAN.**

b ii. ——.]—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY (Sask.), [1927] 3 D. L. R. 474.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft.:—*Held:* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

o i. —— ——.]—GOUGH *v.* MCBRIDE (1860), 10 C. P. 106.—**CAN.**

q i. —— —— *Reconstructed cash book.*]—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence:—*Held:* said book was not admissible against deft.; its contents were not obtained in the manner contemplated by Rural Municipality Act &, therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done; he had not so recognised or acted upon it as to make its contents evidence against him; it was not secondary evidence of the destroyed cash book; &, the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY, [1928] 3 D. L. R. 306; [1928] 2 W. W. R. 184, 288; 22 Sask. L. R. 559.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

sr. *Affidavit of petitioner—Absence of particulars of search made.*]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

2058 iv. ——.]—MARVIN *v.* CURTIS (1857), 6 C. P. 212.—**CAN.**

2058 v. —— —— *Evidence of subscribing witness.*]—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved:—*Held:* the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH *v.* GREWER (1874), 23 C. P. 533.—**CAN.**

2063 i. *Written declaration by testator —Lost will.*]—A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—*Re* PIKE'S WILL (1882), 6 Nfld. L. R. 445.—**NFLD.**

st. *Lost deed—Memorandum made by predecessor in title.*]—In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

sv. —— *Copy produced from body of successors of grantee—With indorsement signed by three predecessors in title.*]—SEETHAYYA *v.* SUBRAMANYA SOMAYAJULU (1929), L. R. 56 Ind. App. 146.—**IND.**

2088. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

2118. *Citation :*—For "1 Esp. 125" read "1 Esp. 127."

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752 ; 94 L. J. K. B. 672 ; 133 L. T. 94 ; 89 J. P. 135 ; 28 Cox, C. C. 1 ; 18 Cr. App. Rep. 180, C. C. A.

2282. Add para. :—

Where the witness swearing to the words spoken by way of oath by the prisoner when he administered the same, said, that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words ; yet held that parol evidence of what he in fact said was sufficient, without giving him notice to produce such paper.—R. *v.* MOORS (1801), 6 East, 419, n.

2285. *Add. Annotation :*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

2285a. Policy of third party insurance—Prosecution under Road Traffic Act, 1930 (c. 43), Part II.]—Resp. was charged with using a motor vehicle without there being in force in respect of such user a policy of insurance satisfying the requirements of Road Traffic Act, 1930 (c. 43). A police officer sought to give evidence of the contents of a certificate of insurance produced by resp., but it was objected on behalf of resp. that, no notice to produce the policy having been given, secondary evidence of its contents was not admissible. The justices upheld the objection, &, in the absence of other evidence, dismissed the information :—*Held :* the evidence ought to have been received.

Per TALBOT, J. *Semble :* the onus of proving the possession of a policy was on resp., & it was not necessary for the prosecution to tender evidence on the matter at all.—WILLIAMS *v.* RUSSELL (1933), 149 L. T. 190 ; 97 J. P. 128 ; 49 T. L. R. 315 ; 77 Sol. Jo. 198 ; 31 L. G. R. 182 ; 29 Cox, C. C. 640, D. C.

2345a. —— ——.]—DORRETT *v.* MEUX (1854), 15 C. B. 142 ; 2 C. L. R. 807 ; 23 L. J. C. P. 221 : 23 L. T. O. S. 144 ; 2 W. R. 480 ; 139 E. R. 374.

2475a. —— ——.]—DOE d. ST. JOHN *v.* HORE (1799), 2 Esp. 724 ; 170 E. R. 510, N. P.

2476a. —— ——.]—WALLISS *v.* BROADBENT (1836), 4 Ad. & El. 877 ; 2 Har. & W. 40 ; 6 L. J. K. B. 269 ; 111 E. R. 1014.

2477a. —— ——.]—CHEVELEY *v.* FULLER (1853), 13 C. B. 122 ; 1 W. R. 152 ; 138 E. R. 1143 ; *sub nom.* FULLER *v.* CHEVELEY, Saund. & M. 101 ; 20 L. T. O. S. 278 ; 17 J. P. 105 ; 17 Jur. 736.

2480a. —— ——.]—HARRIS *v.* CHAPMAN (1868), 17 L. T. 517, N. P.

2486a. —— **Though receipt for penalty erased.**]—APOTHECARIES' CO. *v.* FERNYHOUGH (1826), 2 C. & P. 438 ; 172 E. R. 199, N. P.

Annotation :—**Refd.** R. *v.* Preston (1834), 3 Nev. & M. K. B. 31.

2513a. To prove amount originally claimed.]—WICKES *v.* TANNER (1848), 10 L. T. O. S. 504, N. P.

2544a. —— —— ——.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred :—*Held :* sufficient to legalise the evidence of such contract.—POWELL *v.* EDMUNDS (1810), 12 East, 6 ; 104 E. R. 3.

Annotations :—**Refd.** Ogilvie *v.* Foljambe (1817), 3 Mer. 53 ; Bradshaw *v.* Bennett (1831), 5 C. & P. 48 ; Shelton *v.* Livius (1832), 2 Cr. & J. 411 ; Bartlett *v.* Pernell (1836), 2 Har. & W. 16 ; Evans *v.* Pratt (1842), 3 Man. & G. 759 ; Eden *v.* Blake (1845), 13 M. & W. 614 ; Brett *v.* Clowser (1880), 5 C. P. D. 376.

2570. *Add. Annotations :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168 ; *Re* National Benefit Assce. (1927), 71 Sol. Jo. 880.

2583a. —— **Objection doubtful.**]—An objection that a document requires a stamp will not be given effect to if the point is doubtful.—WESTLAKE *v.* ADAMS (1858), 1 F. & F. 183, N. P.

2587. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2603. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2639. *Add. Annotation :*—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

PART IV. SECT. 9, SUB-SECT. 3.—A.

sw. *Of power of attorney—Proof of contents of original only.*]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence :—*Held :* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made. —O'KANE *v.* MULLAN, [1925] N. I. 1. —**IR.**

PART IV. SECT. 9, SUB-SECT. 4.—B.

g i. —— —— *Books of Government Liquor Control Commission.*]—Government Liquor Control Commission is a "Department of the Government of Manitoba" within sect. 17 of Manitoba Evidence Act, R. S. M., 1913, &, therefore, copies of entries in its books are receivable in evidence by virtue of said section.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68 ; 2 D. L. R. 339 ; 40 Man. L. R. 117.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. *Revsd.* on other grounds, 18 A. R. 135.

PART IV. SECT. 9, SUB-SECT. 5.—B.

g i. ——.]—The copy of a will bearing the certificate of the Registrar of Deeds that it was registered, but certified by the Registrar of Probate, was held admissible, by the combined effect of sects. 34, 57 of the Registry Act.—MCMILLAN *v.* COLFORD (1932), 5 M. P. R. 127.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 4.—B.

sx. *To what documents rule applicable —Notice of appeal.*]—As a notice of appeal is not an instrument tendered in evidence, but merely a step in the procedure of appeal, the failure to stamp it cannot be rectified under the proviso to sect. 22 (1) of Act 30, 1911.—ANNAMA *v.* EXPRESS COLLECTION AGENCY (1929), 50 N. L. R. 77.—**S. AF.**

PART IV. SECT. 10, SUB-SECT. 8.

2608 i. *Finality of judge's ruling.*]—Once the trial judge, with the question of the want of proper stamp present in his mind, has actually admitted a document in evidence, Stamp Act, s. 36, prevents such admission being called in question, except as provided in s. 61, at any stage of the same suit or proceeding, & hence in appeal, on the ground that the instrument has not been properly stamped.—GURDAS MAHAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

PART IV. SECT. 11, SUB-SECT. 2.

2634 ii. —— —— ——.]—Where, in an action for wages & overtime, based on the award of the Commonwealth Ct. of Conciliation & Arbn., the only e[illegible] of the award was a printed document purporting to be a copy of the award bearing the imprint "By authority : H. J. Green, Govt. Printer, Melbourne" :—*Held :* the award was not proved.—MID-NORTH ELECTRICITY CO., LTD. *v.* RUTHERFORD, [1927] S. A. S. R. 273.—**AUS.**

2642a. —— **Solicitor not bound to produce.**]—The solr. under a commission of bkpcy. is not bound to produce the proceedings under it, though called upon by *subpœna duces tecum*.—BATESON *v.* HARTSINK (1801), 4 Esp. 43, N. P.

Annotation :—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

2707a. ——.]—DAVIES *v.* LOWNDES (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.

2709. *Add. Annotation :*—**Folld.** Little *v.* Little, [1927] P. 224.

After this case add, "*See, also*, HUSBAND & WIFE, No. 2763a."

2722. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson [1925] P. 34.

2723. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2757a. —— ——.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required. —VERNEY *v.* VERNEY (1920), 36 T. L. R. 203.

2880. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

2960a. —— **Inadmissible.**]—Parol evidence of the oaths required by the Toleration Act having been taken, is not admissible.—R. *v.* HUBE (1792), Peake, 180, N. P.; (1794), 5 Term Rep. 542; 101 E. R. 305.

3036. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

3115. *Add. Annotation :*—**Refd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

3122a. —— ——.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

Annotation :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

3122b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 1264a, *ante*.

3122c. —— ——.]—During the course of the argument a question arose as to the nature of the relationship of the Crown to the territory of which the North Charterland Concession formed part, & in order to settle this question I submitted to His Majesty's Secretary of State for the Colonies for his decision under the Foreign Jurisdiction Act, 1890 (c. 37), s. 4, two questions: "Was the territory now known as Northern Rhodesia on Mar. 22, 1928, under the protection of His Majesty?" or "Was it at that date part of His Majesty's Dominions?" The decision of His Majesty's Secretary of State for the Colonies, which by the provisions of the Act is conclusive, is that on Mar. 22, 1928, Northern Rhodesia was a territory under His Majesty's protection. It did not then & does not now form part of His Majesty's Dominions (LUXMOORE, J.).—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169; 99 L. J. Ch. 483; 143 L. T. 623; 46 T. L. R. 566.

3125. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

3157. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation :*—**Overd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3165a. —— **Marriage of parents.**]—In an action brought by pltfs., who claimed to be two of

PART IV. SECT. 11, SUB-SECT. 4.—A.

2667 i. —— *Res inter alios acta—Conviction for murder.*]—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of crime—Presumptive evidence.*]—*Re* NOBLE, No. 2667 i, *ante*.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*]—*Held :* the evidence was inadmissible.—JOHNSON *v.* R. (Ont.) (1911), 13 Exch. C. R. 389.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 12.

3004 i. *How proved—Production of copy printed in Stationery Office.*]—The District Ct. Rules are rules made by a minister within Documentary Evidence Act, 1925, s. 4, & the production of a copy of the rules, printed in the Stationery Office, is *prima facie* evidence that the rules have been validly made.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

PART IV. SECT. 11, SUB-SECT. 15.—A.

sx. *Proof—Writ of execution.*]—STUART *v.* ANDREWS (1827), N. B. Dig. 332.—**CAN.**

sy. —— ——.]—DOE *d.* STOCKING *v.* WATTS (1842), 2 Ont. Dig. 2665.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (b).

sa. *British consul abroad—Certificate on point of law.*]—A British consul may prove by his certificate a point of foreign law which he is competent to prove by affidavit.—*Re* BERGMAN ESTATE, [1928] 1 W. W. R. 601.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (d).

sb. *Certificate of professor of anatomy.*]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—R. *v.* AHILYA (1922), I. L. R. 47 Bom. 74.—**IND.**

PART IV. SECT. 12, SUB-SECT. 10.—B. (b) i.

3157 i. *Admissibility.*]—In an action in which the alleged infancy of pltf. was in issue :—*Held :* (1) his testimony that he had seen his birth certificate, which was not produced, & that he was not of age was not sufficient to prove his minority since it amounted to no more than hearsay evidence; (2) a certificate of registry of birth purporting to be issued under the Births & Deaths Registration Act, 1874 (Imp.), would not be admissible in England as evidence of pltf.'s age, since it did not comply with the requirements of sect. 38 of Births & Deaths Registration Act, 1836, & sect. 38 of 1874 Act, & should not be admissible here. Moreover, since the certificate did not contain or purport to contain a copy of or extract from the original register of births & did not identify or furnish information sufficient to identify pltf. as the person referred to in the certificate, it was not sufficient to establish his minority. —ANTHONY *v.* CHARTER, [1933] 1 W. W. R. 310; 1 D. L. R. 684.—**CAN.**

the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pltfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *primâ facie* or any evidence of the lawful marriage of the parents:—*Held:* the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, overd.—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, [1926] Ch. 284; 95 L. J. Ch. 259; 134 L. T. 430; 90 J. P. 90; 42 T. L. R. 253; 70 Sol. Jo. 385; 24 L. G. R. 173, C. A.

3177a. —— **Marriage of parents of deceased.**]—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, No. 3165a, *ante*.

3179. *Add. Annotation:*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3287. *Add. Annotations:*—**Apprvd.** Hendon Paper Works Co. *v.* Sunderland Assmt. Com., [1915] 1 K. B. 763. **Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3288. *Add. Citation:*—1 B. R. A. 210.

Add. Annotations:—**Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309. **Refd.** Davis *v.* Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C (1916), 85 L. J. K. B. 1545.

3289. *Add. Citation:*—2 B. R. A. 592.

Add. Annotation:—**Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3309. *Add. Annotation:*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296.

3349. *Add. Annotation:*—**Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3371. *Add. Annotation:*—**Refd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3377. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3388. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3389. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3414a. —— **Primâ facie of validity.**]—A petition for nullity of marriage, on the ground that at the time of the marriage, which was a marriage by declaration in Scotland, & which had been registered, neither petitioner nor resp. had lived in Scotland for twenty-one days next preceding the marriage, was dismissed on the ground that petitioner had failed to satisfy the ct. of the untruth of the statement in the register that resp. had lived in Scotland for twenty-one days preceding the marriage.—WINTERBOTTOM *v.* WINTERBOTTOM (OTHERWISE APPLETON) (1922), 38 T. L. R. 813.

3419a. *S. P.* MONEY *v.* MONEY & TURNER (1927), 71 Sol. Jo. 666.

3422a. —— —— ——.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—PRITCHARD *v.* PRITCHARD (1920), 37 T. L. R. 104.

3428a. —— —— ——.]—A marriage performed by a Church of England clergyman in an Anglican Church in British India may be proved either (1) by production of the India Office certificate, or (2) under Evidence (Colonial Statutes) Act, 1907 (c. 16), by production of the marriage certificate issued from the Church & signed by the clergyman,

PART IV. SECT. 12, SUB-SECT. 14.

sc. *Regulation of Minister of Crown—In possession of prosecuting counsel—Whether amounts to production.*]—The fact that counsel for the prosecution has a copy of a regulation made by a Minister of the Crown in his possession at the trial & available for the perusal of the justice hearing the case, does not amount to its "production" within Canada Evidence Act, s. 21, at least when no opportunity is given the accused's counsel to peruse it or object to it.—R. *v.* YEE CLUN & YEE LOW (Sask.), [1929] 1 D. L. R. 194; 50 Can. Crim. Cas. 440; [1928] 3 W. W. R. 558.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 15.—A. (a).

1 i. —— *Value as evidence.*]—HEATH *v.* PORTAGE LA PRAIRIE CORPN. (1909), 18 Man. L. R. 693.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (d) iii.

ss. *Certificate of* ——— *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

sg. *of marriage—Authenticated certificate—India.*]—H. proved desertion by W. & asked for an order for restitution of conjugal rights, failing which a divorce. The marriage had been solemnised in India & was sworn to by H. The marriage certificate was not authenticated:—*Held:* an order for restitution would be granted, but no further proceedings must be taken in the matter until a duly authenticated certificate of the marriage was produced.—DWYER *v.* DWYER, [1933] N. L. R. 598.—**S. AF.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (e).

sc. *Evidence of marriage—Certified extract from register.*]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established:—*Held:* (1) the strict rule of the common law of England relating to the proof of foreign marriages applies in New Zealand despite the greater difficulty in the Dominion of proof & in obtaining evidence; (2) the priest, who, on being recalled, stated that the parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia; (3) the copy of the register was admissible in evidence.—R. *v.* ILLICH, [1935] N. Z. L. R. 90.—**N.Z.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (f).

3406 i. *Admissibility.*]—An extract from a marriage register kept in a Scottish parish & duly authenticated & signed by the registrar is admissible in a Canadian ct. to prove the marriage of accused charged with bigamy, by virtue of 1854 Act (Imp.).—R. *v.* INNES, [1933] 2 D. L. R. 110; O. R. 169; 59 C. C. C. 339.—**CAN.**

together with the relevant Indian Act.—PAWSON *v.* PAWSON (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3428b. —— —— **Of entry in ecclesiastical register—With relevant Indian Act.**]—PAWSON *v.* PAWSON, No. 3428a, *ante*.

3435a. —— —— ——.]—A marriage in the Anglican Cathedral at Shanghai, China, may be proved by the production of the marriage certificate, duly signed by the clergyman, as a common law marriage.—MATTHEWS *v.* MATTHEWS (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3436a. —— —— —— **South Africa.**]—WATERFIELD *v.* WATERFIELD & PRETORIUS (1929), 73 Sol. Jo. 300.

3437a. —— —— —— ——.]—L. (OTHERWISE B.) *v.* L. (1919). 36 T. L. R. 148; 64 Sol. Jo. 225.

3437b. —— —— **British North Borneo.**]—WINMILL *v.* WINMILL (1934), 78 Sol. Jo. 536.

(*e*) *Foreign Countries* (p. 342).

See Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).

3451a. —— —— **Belgium—Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).**]—For the first time in divorce proceedings the solemnisation of a marriage abroad was proved by means of the procedure permitted by above Act, & the Evidence (Belgium) Order, 1933, made thereunder. The duly authenticated Belgian certificate of marriage was accepted as proof of the marriage.—NORTH *v.* NORTH & OGDEN (1936), 105 L. J. P. 56; 154 L. T. 498; 52 T. L. R. 380; 80 Sol. Jo. 208.

3466. *Add. Annotation:*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

3483a. —— ——.]—*Held:* the production of the register from the custom house was conclusive evidence of ownership.—MARSH *v.* ROBINSON (1802), 4 Esp. 98; 170 E. R. 655, N. P.

3513a. Stationers' Hall register—Of first performances of dramatic productions.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *ante*.

3526. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3543. *Add. Annotations:*—*As to* (2) **Consd.** Falcon *v.* Famous Players Film Co. (1926), 135 L. T. 650. **Apld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3547. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

3572. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3580. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3584. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

3589. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3686. *Add. Annotation:*—*As to* (2) **Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3757. *Add. Annotation:*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3784. *Add. Citation:*—2 B. R. A. 582.

3802a. ——.]—HAYNES *v.* HAYTON (1828), 6 L. J. O. S. K. B. 231.

Annotations:—**Consd.** Bessey *v.* Windham (1844), 6 Q. B. 166; White *v.* Morris (1852), 11 C. B. 1015.

PART IV. SECT. 12, SUB-SECT. 19.—G.

sf. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] I. R. 42.—**IR.**

sg. *Proprietor's Registry Book.*]—FULTON *v.* CREELMAN, [1930] 4 D. L. R. 43; *on appeal*, [1931] S. C. R. 221; 1 D. L. R. 733.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 20.

sh. *Weight of evidence.*]—The importance as evidence of revenue records, admissible under Indian Evidence Act, s. 35, varies with the circumstances.—GANGABAI *v.* FAKIRGOWDA (1929), I. L. R. 54 Bom. 336.—**IND.**

PART IV. SECT. 12, SUB-SECT. 21.

si. —— *How proved.*]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—NORTHERN TRUSTS CO. *v.* MCLEAN, [1926] 3 D. L. R. 93; 58 O. L. R. 683.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 22.

sj. *Records of secretary of province—Entry as to delivery of patent—In secretary's handwriting—Whether proof of possession of patent.*]—*Qu.:* whether the evidence of the secretary of the province, that it appears by an entry in his own handwriting, in a book kept for such entries, that a patent was delivered to A., & that he therefore felt sure that it was delivered to A. or his servant, but has no recollection of it, is sufficient to charge A. in trover with the possession of such patent.—HAMPSON *v.* BOULTON (1836), 5 O. S. 23.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—A.

3679 v. ——.]—Account books are admissible in evidence, under Evidence Act, 1872, s. 34, without any formal proof that they were regularly kept in the course of business. The Legislature, in sect. 34, has dispensed with the necessity of such formal proof, which was required by the former Act II. of 1855. In order that account books may be deemed regularly kept in the course of business, it is not necessary to show that they had been entered up as & when the transactions took place.—EMPEROR *v.* NARBADA PRASAD (1929), I. L. R. 51 All. 864.—**IND.**

sl. *Corporation or partnership books.*]—Defts., stockbrokers, were indicted & tried (*a*) for conspiracy by fraudulent means to defraud customers; (*b*) for conspiracy by fraudulent means to affect the public market price of stocks publicly sold; (*c*) for that with intent to make gain or profit by the rise or fall of stocks they made agreements for the sale or purchase of stocks in respect of which no delivery was ever made or intended to be made:—*Held:* books of account, records, & other documents of defts. were properly admitted at the trial.—R. *v.* SMART & YOUNG; R. *v.* PATERSON & CAMPBELL; R. *v.* STOBIE & FORLONG, [1931] 2 D. L. R. 207; O. R. 176; 55 Can. C. C. 310.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B.

sb. *To prove to whom credit given.*]—WHITE *v.* MILLER (1888), 27 N. B. R. 143.—**CAN.**

sd. *To prove sale of goods—Entry in ledger.*]—In an action for the price of goods sold & delivered entries in the pltf.'s ledger are not proof of the sales.—LISCHINSKY *v.* AULD, [1932] 3 W. W. R. 691.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 4.

sf. *Books of railway companies—Repair book.*]—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 5.

di. —— ——.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling:—*Held:* admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—ANANDI *v.* NAND LAL (1924), I. L. R. 46 All. 665.—**IND.**

PART IV. SECT. 13, SUB-SECT. 6.—A.

li. —— *In pursuance of common object.*]—*Held:* letters, written by the mother of a petitioner in a suit for restitution of conjugal rights, which, if written by petitioner would have been evidence of her lack of sincerity, were admissible against her on it being proved that they were written in pursuance of an object common to petitioner & her mother.—THOMAS *v.*

3850a. —— **Following letters.**]—Letters following a letter written " without prejudice " should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters are open.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. *v.* CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

3860. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3889. *Add. Annotation :—As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

3902. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

3907. *Add. Annotation :—As to* (3) **Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

3911. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Trafford *v.* Thrower (1929), 45 T. L. R. 502. **Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

3914. After this case add " *See, also*, HIGHWAYS, Nos. 355a, 355b."

3919a. —— **To prove state of premises.**]—DOE d. FENTON *v.* BUTCHER (1847), 9 L. T. O. S. 82.

3921. After this case add :—

-.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (4).

3932. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3933. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3934. *Add. Annotation :*—**Consd.** United States, Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3935a. —— **Dimensions & relative proportions of subject-matter.**]—(1) Clearly a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, & cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established.

(2) The extent to which & the processes by which an accurate topographic plan can be produced from a pictorial delineation of a scene are matters of common knowledge could hardly be said, though such questions have long occupied the attention of men of science (LORD MERRIVALE, P.).—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632 ; 100 L. J. P. C. 73 ; 144 L. T. 601 ; 47 T. L. R. 245 ; 18 Asp. M. L. C. 196, P. C.

3959. *Add. Citation :*—130 L. T. 445.

THOMAS (1931), 31 S. R. N. S. W. 159 ; 48 N. S. W. W. N. 21.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 7.—B.

3843 ii. *S P.* MERRY *v.* MACHIN (1926), 47 N. L. R. 236.—**S. AF.**

l i. —— *Subsequent correspondence on same subject.*]—In order to render letters written " without prejudice " inadmissible as evidence it must appear that there was a dispute or negotiations pending between the parties & that the letters were written *bonâ fide* with a view to its settlement. Letters written " without prejudice " protect subsequent correspondence on the same subject-matter.—MCLEOD *v.* PEARSON, [1931] 3 W. W. R. 4 ; 4 D. L. R. 673.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 11.

3870 i. *Admissibility.*]—*Held :* a telegram received by pltf. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—ADAMSON *v.* VACHON (Sask.) (1912), 22 W. L. R. 494.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 12.

q i. —— ——.]—Will proved before a notary public, & recorded during the lifetime of testator, properly admitted in evidence.—MURRAY *v.* DUFF (1895), 33 N. B. R. 351.—**CAN.**

sd. *Necessity for production of.*]—Where pltf.'s counsel in opening his case stated it as a question of legitimacy, & that deft. claimed under a will, & the defence was conducted without the production of the will, as if the statement of the counsel had rendered that unnecessary :—*Held :* it ought to have been produced.—DOE d. BREAKEY *v.* BREAKEY (1846), 2 U. C. R. 349.—**CAN.**

PART IV. SECT. 15.

a i. —— ——.]—The maps & surveys made in India for revenue purposes are official documents prepared by competent persons & with such publicity & notice to persons interested as to be admissible as valuable evidence of the state of things at the time they were made.—RAI BAHADUR RADHA KISHUN *v.* SHYAM DAS (1934), I. L. R. 13 Pat. 51.—**IND.**

sa. *Necessity for evidence of nature of plan.*]—A plan will not be admitted where no evidence is called to show what it really was, or that it was a certified copy of a plan deposited in the Crown Land Office.—CORMIER *v.* LEBLANC, [1935] 2 D. L. R. 803 ; 9 M. P. R. 164.—**CAN.**

PART IV. SECT. 17.

sb. *Reconstruction of crime.*]—In the course of a culpable homicide trial arising out of the shooting by the accused, a warder, of one of a gang of convicts in his charge, the Crown tendered in evidence, through the photographer, photographs of the scene of the shooting taken two days afterwards & showing a partial reconstruction of the incident. The evidence was objected to :—*Held :* the photographs were not admissible.—R. *v.* PRETORIUS (1930), 51 N. L. R. 352. —**S. AF.**

sd. *Photograph of body of murdered person.*]—Photographs of the body are admissible against one accused of murder.—R. *v.* O'DONNELL, [1936] 2 D. L. R. 517 ; 65 Can. C. C. 299.—**CAN.**

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held :* not admissible to prove the extent of the lands he was employed to survey.—R. *v.* PRICE BROTHERS & CO., [1925] 3 D. L. R. 595 ; *revsg.*, [1924] 3 D. L. R. 817.—**CAN.**

PART IV. SECT. 20.

3962 i. *Accounts—Carbon copies—Whether books within County Courts Act*, 1913, *s.* 138.]—*Qu. :* whether carbon copies of slips showing an account for goods alleged to have been sold & delivered are " books " within sect. 138 of County Courts Act, R. S. M., 1913, c. 44.—FARGEY *v.* HOLYK, [1929] 3 D. L. R. 682 ; 2 W. W. R. 204 ; 38 Man. L. R. 220.—**CAN.**

q i. —— ——.]—*Held :* a certificate of guardianship was not a public or other official book, register or record within sect. 35 of Evidence Act, & an entry therein relating to the age of a minor was not in itself admissible in evidence to prove the age.—SAID-UN-NISSA BIBI *v.* RUQAIYA BIBI (1930), I. L. R. 53 All. 428.—**IND.**

se. *Certificate of weighmaster.*]—*Held : primâ facie* evidence only of weight at the time of weighing.—TENOLD & TANNAS *v.* CANADIAN PACIFIC RY. CO., [1927] 3 D. L. R. 695 ; [1927] 2 W. W. R. 491 ; 33 Can. Ry. Cas. 86 ; 21 Sask. L. R. 665.—**CAN.**

sg. *Resolution of Bar Association.*]—In order to enable a ct. to admit in evidence a resolution of a Bar Association it is necessary to establish that it was passed at a meeting specially & properly convened for the purpose, which implies that the meeting should have been convened after reasonable notice in the manner prescribed by the regulations of the Association, &, in the absence of any regulations on the subject, personal notice to all the available members of the Association, so that they may have proper opportunity to attend the meeting & to express their views thereat.—CHATUR BHUJ *v.* CROWN (1930), I. L. R. 12 Lah. 385.—**IND.**

Part V.—Witnesses.

3975a. ——.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. *v.* MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

3980a. —— —— **Examination by judge in private—Illegal.**]—The examination of a child witness by the judge in private in order to ascertain whether the witness was capable of understanding the nature of an oath is illegal & is sufficient to invalidate a conviction.—R. *v.* DUNNE (1929), 99 L. J. K. B. 117; 143 L. T. 120; 21 Cr. App. Rep. 176; 29 Cox, C. C. 149, C. C. A.

4013. *Add. Annotations :—As to* (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; Rowell *v.* Pratt, [1936] 2 K. B. 226.

4014. *Add. Annotation :—As to* (1) **Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4015. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4019. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4027. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4028. *Add. Annotations :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76.

4029. *Add. Annotation :*—**Apld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4030. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4077. *Add. Annotations :*—**Apprvd. & Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

4085a. Return to Potato Marketing Board—Agricultural Marketing Act, 1931 (c. 42), s. 17 (2).]—Applt. brought an action against resp. to recover the price of certain potatoes sold & delivered to resp. Resp. counter-claimed damages, on the ground that applt. had agreed to grow 9½ acres of royal kidney potatoes, & to deliver the whole crop to resp. at a fixed price, but that, in breach of his contract, applt. had not delivered to resp. the whole product of the 9½ acres, but had wrongfully sold part thereof to other buyers, at a price higher than that at which he had contracted to sell to resp. For the purpose of proving that applt. had planted only 9½ acres with royal kidney potatoes, resp. subpœnaed the secretary of the Potato Marketing Board to produce the return made by applt. showing the total acreage of potatoes planted on his land. The county ct. judge refused to make an order for the production of the return, on the ground that it was a privileged document, which need not be produced, &, after hearing evidence, he gave judgment for applt. On appeal, his judgment was set aside by the Ct. of Appeal (by a majority), & a new trial ordered, for the reason that Agricultural Marketing Act, 1931 (c. 42), s. 17, did not expressly alter the common law whereby material evidence of this kind could not properly be excluded :—*Held :* (1) on a true construction of the whole of sect. 17 of the Act of 1931, the return in

PART V. SECT. 1, SUB-SECT. 1.—A. (a).

3974 iii. ——.]—New trial ordered in an action for negligence, on the ground that the trial judge had not expressly directed the jury that the law required that the case should not be decided on the testimony of the infant pltf., seven years old, who was not sworn, unless it was corroborated by some other material evidence; although he had warned the jury to consider her testimony very carefully.—ROBINSON *v.* BURNS & CO., LTD. & CHURCH, [1928] 1 D. L. R. 610; [1928] 1 W. W. R. 76; 23 Alta. L. R. 170.—**CAN.**

3974 iv. ——.]—" Other material evidence " within the requirement of Alberta Evidence Act, s. 19, that the unsworn testimony of a child of tender years must be corroborated, means evidence material to the issue which must be sustained by the party on whose behalf the child's evidence is adduced; therefore, where that issue is negligence, it means evidence relating to the alleged negligence. The evidence relied on as corroborative in the present case did not go so far as to touch the question of negligence.—CUTHBERTSON *v.* LETHBRIDGE, [1928] 2 D. L. R. 562; [1928] 1 W. W. R. 815; *revsd.*, [1929] 4 D. L. R. 1052; S. C. R. 176.—**CAN.**

3976 ii. ——.]—A child of ten said, " I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol ":—*Held :* this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—SPOONER *v.* TAYLOR, [1926] S. A. S. R. 396.—**AUS.**

3979 iv. —— —— *Canada Evidence Act, s.* 16.]—SANKEY *v.* R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—**CAN.**

3979 v. —— ——.]—R. *v.* FITZPATRICK, [1929] 1 D. L. R. 806; 1 W. W. R. 393; 51 Can. Crim. Cas. 146; 40 B. C. R. 478.—**CAN.**

3979 vi. —— ——.]—A witness, although only five years & about nine months old, found competent to take the oath :—*Held :* therefore, it was the clear duty of the ct. to administer the oath.—STRACHAN *v.* MCGINN, [1936] 1 W. W. R. 412; 50 B. C. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

g (p. 390) i. —— *Agent conducting case.*]—An agent conducting a case in the Burgh police ct. is a competent witness in the cause.—CAMPBELL *v.* COCHRANE, [1928] S. C. (J.) 25.—**SCOT.**

p (p. 391) i. ——.]—A prosecutor who has conducted a preparatory examination in a magistrate's ct. is a competent witness for the Crown at the trial.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sg. *Juryman in first action—On hearing of new trial.*]—At the hearing of a new trial, a juryman in the first action was called to give evidence as to what he saw whilst on a view with his fellow jurymen. His evidence was rejected on the ground that having been a juryman in the first action he was not competent to give evidence at the new trial :—*Held :* the witness was competent to give evidence of what he actually saw & observed provided the evidence was otherwise admissible.—MACKAY *v.* ELIAS (1928), 28 S. R. N. S. W. 340; 45 N. S. W. W. N. 86.—**AUS.**

4001 i. —— *Solicitor.*]—A solr. is a competent witness for his client, &, when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

1 i. —— ——.]—ANDREWS *v.* HOPKINS, [1932] 3 D. L. R. 459; 5 M. P. R. 7.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ——.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—R. *v.* HALPIN (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ——.]—The refusal " to answer any question touching the case " in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re* ASKWITH (1899), 31 O. R. 150.—**CAN.**

question was a privileged document, & need not be produced; (2) on the assumption that the county ct. judge was wrong in refusing to order production of the return, this was not a case for granting a new trial, as there was no evidence of any substantial wrong or miscarriage of justice.

Per Lord MAUGHAM: There are doubtless cases where leave to appeal should be granted only on the terms that applt. agrees to pay the costs of resp. in any event, but it may well be doubted whether that is right in a case where the Ct. of Appeal by a majority is reversing the decision of the trial judge.—ROWEALL *v.* PRATT, [1937] 3 All E. R. 660; 106 L. J. K. B. 790; 157 L. T. 369; 53 T. L. R. 982; 81 Sol. Jo. 765, H. L.

4130. *Add. Annotation:*—**Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

4148. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4161a. —— **Acting for partner.**]—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him:—*Held:* the relation of solr. & client existed between them, & the communications were privileged.—BEAMISH *v.* OWENS (1846), 7 L. T. O. S. 66.

4190. *Add. Annotation:*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4192. *Add. Annotation:*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4199. *Add. Annotation:*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

4201. *Add. Annotation:*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4213a. —— —— ——.]—(1) Communications passing between a solr. & a prospective client with a view to the client retaining the solr. on professional business are privileged from disclosure, even if the solr. does not accept the retainer.

(2) Conversations between a solr. & client relating to the business of obtaining a loan for the deposit on the purchase of real estate are privileged from disclosure, as the business is professional business within the ordinary scope of a solr.'s employment.

(3) Where the relation of solr. & client is established, any conversation passing between them, to be protected from disclosure, must be fairly referable to that relation; it must be for the purpose of giving or receiving professional advice.—MINTER *v.* PRIEST, [1930] A. C. 558; 99 L. J. K. B. 391; 143 L. T. 57; 46 T. L. R. 301; 74 Sol. Jo. 200, H. L.

Annotation:—*Generally*, **Consd.** Harris *v.* Harris (1930), 47 T. L. R. 15.

4217. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4218a. —— ——.]—MINTER *v.* PRIEST, No. *ante.*

4228a. —— —— ——.]—Pltf., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel pltf.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—HARRIS *v.* HOLLER (1849), 19 L. J. Q. B. 62.

Annotation:—**Refd.** Cox *v.* Bockett (1865), 18 C. B. N. S. 239.

4237a. —— ——.]—Communications made by one of the spouses pending the possible institution of proceedings for divorce to a solr. who has hitherto acted as their common adviser are within the scope of professional privilege. In subsequent matrimonial proceedings in a ct. of summary jurisdiction between the spouses, the solr. is not an admissible witness to prove a statement made by one of them involving an admission of adultery.—HARRIS *v.* HARRIS, [1931] P. 10; 99 L. J. P. 149; 144 L. T. 159; 95 J. P. 1; 47 T. L. R. 15; 74 Sol. Jo. 755; 28 L. G. R. 641; 29 Cox, C. C. 189.

4259. *Add. Annotation:*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4269a. Admission of adultery.]—HARRIS *v.* HARRIS, No. 4237a, *ante.*

4275. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4286. The first line of the text of the paragraph should read "Where at law the party calls."

4305. *Add. Annotation:*—**Consd.** Watt *v.* Longsdon, [1930] 1 K. B. 130.

4409. *Add. Annotation:*—**Refd.** Rowell *v.* Pratt, [1937] 3 All E. R. 660.

4420. *Add. Annotation:*—*As to* (1) **Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

4428a. —— **Application to set aside—Whether "in" action.**]—*Held:* an application by a person, who had been served by one of the parties to an action with a *subpœna duces tecum*, to set the subpœna aside was an application "in" the action within R. S. C., Ord. 52, r. 2, although appct. was not a party to the action, & the application could not be heard.—R. *v.* INVESTORS' REVIEW, LTD., *Ex p.* WHEELER, [1928] 2 K. B. 644; 97 L. J. K. B. 802; 140 L. T. 43; 44 T. L. R. 724; 72 Sol. Jo. 570, D. C.

4461a. ——.]—The possession of a solr. is, for the purpose of a *subpœna duces tecum*, the possession of the client.—JORDAN *v.* ROBERT (1862), 7 L. T. 68.

PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*]—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—R. *v.* MCINTYRE (1909), 7 E. L. R. 50.

PART V. SECT. 2, SUB-SECT.

sh. *Privilege taken away by provincial statute—Right to claim special privilege under Canada Evidence Act, s. 5—Witness must have objected to giving evidence.*]—R. *v.* HARCOURT, [1930] 3 D. L. R. 59; 53 Can. C. C. 156.—**CAN.**

PART V. SECT. 2, SUB-SECT. 9.

c i. ——.]—There is no protection afforded by the Evidence Act to a doctor as such. When a doctor is called to give evidence he is in the same position as any other person not exempted by the Act. It is his duty to assist the ct. in every way possible & to disclose to the ct. all the information in his possession relevant to the matter in issue. He cannot claim privilege, on the allegation that the relationship of doctor & patient is confidential.—HARDLESS *v.* HARDLESS (1932), I. L. R. 55 All. 134.—**IND.**

PART V. SECT. 2, SUB-SECT. 0.

sk. *Whether Act of* **1696**, *c.* **25**, *applies in questions between.*]—GALLOWAY *v.* GALLOWAY, [1929] S. C. 160.—**SCOT.**

4472a. —— Court not entitled to impound.]—*Re* TILL, *Ex p.* PARSONS (1871), 19 W. R. 325.

4477. *Add. Annotations :*—**Refd.** *Re* Cameron's Coalbrook, etc. Ry. (1859), 25 Beav. 1; Lockett *v.* Cary (1864), 3 New Rep. 405; Fowler *v.* Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

4481. *Add. Annotation :*—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4521a. —— Put in witness-box but not examined.]—*Held :* his costs of travelling & attending the trial ought to be allowed.—FLOWER *v.* GARDNER (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.

4586. *Add. Annotation :*—**Refd.** The Massilia, [1926] P. 180.

4594a. —— Witness not called.]—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary :—*Held :* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

4649. For " (*circa* 1660) " read " (*circa* 1670)."

4722. *Add. Annotation :*—**Refd.** R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

4729. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4729a. Whether obligations of oath understood—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

4734. *Add. Annotation :*—**Consd.** Lala Indar Prasad *v.* Lala Jagmohan Das (1927), 43 T. L. R. 536.

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

sa. *Notes made by police officer.*]—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—HINSHELWOOD *v.* AULD, [1926] S. C. (J.) 4.—**SCOT.**

sb. *When amounting to contempt of court.*]—B., the Acting Secretary of the Dried Fruits Board of South Australia, was served with a *subpœna duces tecum* to produce certain minute books of the Board at the hearing of an action against the Minister for Agriculture for the State of South Australia & others. Acting on the direction of the Minister, B. refused to bring the books into ct., but produced a certificate by the Minister that the disclosure of the books would be contrary to public policy & prejudicial to the public interest :—*Held :* the order to bring the books into ct. as directed by the *subpœna* being made by a competent ct., the refusal to obey that order was a contempt of ct.—JAMES *v.* COWAN, *Re* BOTTEN (1929), 42 C. L. R. 305.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. —— *Expert witness.*]—*Held:* a medical witness could not refuse to give evidence because his fees had not been paid.—R. *v.* HUBLEY (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—D. (a).

4548 v. —— ——.]—Where there was sufficient evidence before the trial judge to warrant him in finding that deft. came from Cuba to St. John, not merely because he was a necessary witness & wished to testify at a trial on his own behalf, but that he would have come as he did had there been no trial of the cause expected :—*Held :* deft. was not entitled to be paid travelling expenses under such conditions.—PURITY ICE CREAM CO. *v.* O'CONNELL (1924), 52 N. B. R. 422.—**CAN.**

4548 vi. —— ——.]—A witness, who resides abroad, is entitled to the expenses of being brought before the ct. to give evidence & also to the subsistence money due during the period of detention. The same principle applies to the case of a party whose evidence is reasonably necessary & material for the purpose of his case & on his behalf.—LANGLEY *v.* D'ARCY (1929), I. L. R. 54 Bom. 62.—**IND.**

1 i. —— *Whether applicable to Royal Commission.*]—The right of a witness in a civil proceeding to prepayment of conduct money & expenses to & from where he is ordered to be in attendance is well settled, & the same principle which applies to a civil proceeding in one of H.M. Superior cts. of record must *a fortiori* apply to a Royal Commission in the absence of express statutory power.—R. *v.* MCADAM (1927), 50 Can. Crim. Cas. 31; 39 B. C. R. 101.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—F.

b i. —— *Award silent as to fees of witnesses—Power to grant fees vested in arbitrator.*]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary.—*Re* GALT BROS. & BURNABY (1928), 39 B. C. R. 470; [1928] 1 W. W. R. 798.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (a).

sg. *Quebec—Application of common law.*]—The law applicable in Quebec to the privilege from arrest of witnesses is the English Common Law of the date of the Royal Proclamation of 1763.—QUEBEC LIQUOR COMMISSION *v.* BASTIEN, [1933] 1 D. L. R. 514; 59 C. C. C. 39.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (d).

sz. *Defendant without notice of privilege.*]—An action for false arrest does not lie for the arrest, under a *capias*, of a person who was a witness in another suit.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989; 60 N. S. R. 329.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. *General rule—Clear case must be made out.*]—DESROCHERS *v.* QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—**CAN.**

4649 iv. ——.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence :—*Held :* such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—EBRAHIM MAMOOJEE PAREKH *v.* R. (1926), I. L. R. 4 Ran. 257.—**IND.**

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

e i. ——.]—The fact that a deponent, who on being sworn raised his right hand, did not kiss or touch the Bible held not a ground for holding that the affidavit was not validly sworn.—BOURGOUIN *v.* ROCAN (Man.), [1929] 4 D. L. R. 1006; 3 W. W. R. 399.—**CAN.**

sm. *Oath in English—Subsequent use of interpreter.*]—The fact that during the examination of a Crown witness whose native tongue was a foreign language it was found advisable to make use of an interpreter :—*Held :* not to lead necessarily to the conclusion that he had not understood the nature of the oath which had been administered to him in the English language.—R. *v.* DEFILLIPI, [1932] 1 W. W. R. 545; 26 Alta. L. R. 134; 57 C. C. C. 401.—**CAN.**

sp. *Oath in India—Unsatisfactory.*]—The oath administered in Indian cts. to Indian witnesses is of an unsatisfactory nature.—EMPEROR *v.* UJAGAR (1933), 1. L. R. 55 All. 639.—**IND.**

PART V. SECT. 5, SUB-SECT. 2.

4759 ii. —— —— *Two plaintiffs witnesses.*]—*Semble :* when there are two pltfs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE *v.* MCINTYRE, [1925] 2 W. W. R. 581.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.—A.

sb. *Evidence of foreign witness—When interpreter allowed.*]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF *v.* PONOMOROFF, [1925] 3 W. W. R. 673.—**CAN.**

—— —— *In criminal trials.*]—See CRIMINAL LAW, Vol. XIV., p. 264.

—— ——.]—In an action for revocation of probate the party propounding the will, being obliged to call as a witness one of the attesting witnesses whose evidence was adverse to the plea of due execution, was held to be entitled to cross-examine the witness as a witness of the ct.—OAKES *v.* UZZELL, [1932] P. 19; 100 L. J. P. 99; 146 L. T. 95; 47 T. L. R. 573; 75 Sol. Jo. 543.

4815b. —— **Witness called to produce document.**]—A petitioning creditor called for the mere purpose of producing such a document cannot, although he has been sworn, be cross-examined by deft.—REED *v.* JAMES (1815), 1 Stark. 132, N. P.

4816. *Add. Annotations:—As to* (2) **Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Expld.** Minter *v.* Priest, [1929] 1 K. B. 655. **Consd.** Minter *v.* Priest, [1930] A. C. 558.

4816a. —— **Intention to discredit witness.**]—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

4831a. —— ——.]—There being two claimants as the eldest surviving son of testator's cousin J. referred to in testator's will, one being pltf. in the action & the other a co-deft. with X., on the trial of the issue which of them occupied that position:—*Held:* cross-examination on behalf of X. of witnesses called by her co-deft. could not be allowed.—*Re* WAGSTAFF, WAGSTAFF *v.* JALLAND, [1907] 2 Ch. 35; 76 L. J. Ch. 369; 96 L. T. 605; 23 T. L. R. 426; *on appeal*, [1908] 1 Ch. 162, C. A.

4831b. —— ——.]—Deft. S. performed a minor operation on pltf. in deft. council's hospital. After she had left the hospital pltf. complained of pains, & upon examination by her doctor she was found to be suffering from pyelitis, & a wad of surgical gauze was found in & removed from her body. Pltf. brought an action against S. for breach of duty & neglect to remove the plugging after the operation, & against deft. council for breach of duty & negligence arising out of a failure to nurse her properly. The negligence alleged against the council was that the nurses in their hospital had failed to remove the plugging, had failed to observe or report to the doctor in charge certain symptoms in pltf.'s condition, & had failed to take her temperature on the morning on which she had left the hospital. At the hearing counsel for S. put leading questions to witnesses for deft. council:—*Held:* the causes of action against the two defts. were quite distinct & arose to a substantial extent out of different facts, & counsel for the one deft. was entitled to cross-examine a witness for the other.—DRYDEN *v.* SURREY COUNTY COUNCIL & STEWART, [1936] 2 All E. R. 535; 80 Sol. Jo. 656.

4834a. —— ——.]—OAKES *v.* UZZELL, No. *ante*.

4859. *Add. Annotations:*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249. **Refd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

4859a. As to previous accidents—Running down case.]—Where a deft. in a running-down action is charged with negligence in a particular case it is not competent to ask him a question to obtain an answer which would show that he has been negligent on some other occasion or occasions. Much less is it competent to ask him a question which merely shows that he has been involved in some other accident for which it is not suggested that he was to blame. On the other hand, a question properly directed so as to test his credibility as a witness, or his skill or competence as a driver, if these matters are in issue, is not to be excluded merely because it shows that he has previously been involved in one or more other accidents.—JAMES *v.* AUDIGIER (1932), 48 T. L. R. 600; 76 Sol. Jo. 528, D. C.; *affd.*, 49 T. L. R. 36.

4859b. —— —— **Time for objection.**]—The Ct. of Appeal dismissed this appeal by deft. from the decision of a Div. Ct. as to the permissibility of certain questions, put to deft. in a running-down case, as to another accident which he had had. The ground of the dismissal was that no formal objection to the questions had been taken at the time.—JAMES *v.* AUDIGIER (1932), 49 T. L. R. 36, C. A.

4869a. —— —— ——.]—If a witness called for pltf. be asked, on the part of deft., whether pltf. had any conversation with him on a particular subject, & the witness state anything that pltf. said on that subject, pltf.'s counsel may examine as to every part of the same conversation; but, if the witness state that pltf. had no such conversation with him, this does not let in pltf.'s counsel to examine as to anything else that pltf. said.—DICAS *v.* BROUGHAM (LORD) (1833), 6 C. & P. 249, Ex. Ch.; 1 Mood. & R. 309; 3 State Tr. N. S. 569; 172 E. R. 1228, N. P.

4875. *Add. Annotation:*—**Distd.** R. *v.* Harris, [1927] 2 K. B. 587.

4884a. —— —— **Book written by witness.**]—A book written by a witness cannot be put in as part of his examination-in-chief, but the witness may be cross-examined on its contents.—R. *v.* ALLAWAY (1922), 17 Cr. App. Rep. 15, C. C. A.

4886a. —— ——.]—During a trial, counsel for the prosecution cross-examined the accused on the contents of an alleged document. The document was not produced, but counsel

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PART V. SECT. 6. SUB-SECT. 2.—B.

4830 i. —— *Other defendant & his witnesses.*]—On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—MILLAR *v.* B. C. RAPID TRANSIT CO., LTD., [1926] 1 D. L. R. 1171; [1926] 1 W. W. R. 543; 36 B. C. R. 345.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—D.

4839 vi. ——.]—The testimony of a witness may not be contradicted in respect of a matter relevant only as affecting his credibility. Evidence Act, ss. 45, 46, requires that the statement to be contradicted shall be relative to the subject-matter of the cause, &, therefore, in an action where a wife claims ownership of certain property, evidence of statements made by the husband to a third party indicating that he owned the property are not admissible to contradict the husband's testimony, & should not be acted upon in determining the question of ownership.—ZWICKER *v.* YOUNG, [1929] 1 D. L. R. 602; 60 N. S. R. 233.—**CAN.**

4839 vii. ——.]—In an action for libel a pltf. may not be cross-examined, in mitigation of damages, about violent & abusive language used by him on occasions & about people, having no connection with the libel sued on.—JUDD *v.* SUN NEWSPAPER, LTD. (1929), 30 S. R. N. S. W. 294; 47 N. S. W. W. N. 96.—**AUS.**

PART V. SECT. 6, SUB-SECT. 4

4874 iii. ——.]—*Re* HAYES WILLIAMS (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—**AUS.**

for the prosecution, believing that the original would be in his hands before the end of the trial, suggested to the jury that the original was in existence:—*Held:* such cross-examination, where the original document was in fact incapable of being produced, was irregular & invalidated the conviction.—R. *v.* ANDERSON, (1929), 142 L. T. 580; 21 Cr. App. Rep. 178; 29 Cox, C. C. 102, C. C. A.

4902. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4997. *Add. Annotation:*—**Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

5022. *Add. Annotation:*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5023. *Add. Annotation:*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

5027. *Add. Annotation:*—**Consd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5050. For existing citations substitute "[1916] W. N. 47."

5099. *Add. Annotation:*—**Refd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

5107. The second line of this paragraph should read "out to be unfavourable to the party calling him is not."

5112. *Add. Annotation:*—**Refd.** R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

5140. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5182. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5197. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5199. *Add. Annotation:*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

PART V. SECT. 6, SUB-SECT. 6.—C.

4899 i. *Production of document—Necessity for—Document written by witness.*]—Counsel for defts., in cross-examining pltf., asked him if certain things happened as set out in a letter of his & the reply thereto. At the close of pltf.'s case, counsel for deft. stated that he did not intend to call evidence, & thereupon counsel for pltf. asked that deft. be compelled to put the letters in evidence. The request was refused:—*Held:* the judge was right in not compelling deft. to put the letters in evidence.—WALTON *v.* DEATON (1931), 31 S. R. N. S. W. 393; 48 N. S. W. W. N. 152.—**AUS.**

PART V. SECT. 6, SUB-SECT. 7.—D.

4955 iii. —— *Although inadmissible—Because produced too late.*]—JEWAN LAL DAGA *v.* NILMANI CHAUDHURI (1927), L. R. 55 Ind. App. 107.—**IND.**

sk. *Statement by deceased—Not read over or signed.*]—A statement by a deceasod person of the circumstances leading to his death recorded by a witness but not read over to or signed by such deceased person is admissible in evidence as a record of what deceased said at the time from which the witness could refresh his memory.—*Re* KRISHNAMA NAICKEN (1930), I. L. R. 54 Mad. 678.—**IND.**

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. ——.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. *v.* ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—G.

5012 i. —— *By jury.*]—O'BRIEN *v.* O'BRIEN (1888), Cout. Dig. 554, 992; Cam. Cas. 282.—**CAN.**

sc. *Whether document admissible as evidence.*]—The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—YOUNG *v.* DENTON, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—**CAN.**

PART V. SECT. 6, SUB-SECT. 8.

e i. —— *Resulting presumption.*]—When a deft. refuses to give evidence upon matters at issue, & particularly within his knowledge, the presumption is raised that such facts do not exist.—SHANKLIN *v.* SMITH (1932), 5 M. P. R. 204; *affd.*, [1933] S. C. R. 340; 4 D. L. R. 815.—**CAN.**

5020 i. *Refusal to answer questions—Penalties—Punishment for contempt—Power of magistrate.*]—*Re* AYOTTE (1905), 15 Man. L. R. 156.—**CAN.**

5020 ii. ——.]—Deft. was committed for contempt of ct., for not answering a question asked by the magistrate:—*Held:* the magistrate had power to commit deft.—R. *v.* ENDLER (1909), 7 E. L. R. 150, 151, 152.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

5021 vi. ——.]—BRETT *v.* BRETT (No. 1), [1937] 2 W. W. R. 689.—**CAN.**

5027 i. *Grounds for refusing.*]—In an arbn. under Workmen's Compensation Acts where evidence is known to be available & is not called on the arbn., leave will not be granted by an appeal to ct. to take further evidence.—GATES *v.* WILLIAMS, [1928] S. A. S. R. 252.—**AUS.**

PART V. SECT. 7, SUB-SECT. 2.

n i. —— *Recall by jury.*]—The jury in a criminal case is entitled after it has retired to consider its verdict, to return to ct., & have a witness recalled & questioned.—A.-G. *v.* MCDERMOTT, [1933] I. R. 513.—**IR.**

PART V. SECT. 7, SUB-SECT. 3.—A.

5054 ii. —— ——.]—STERLING TRUSTS CORPN. *v.* MELNECHUK (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—**CAN.**

5059 i. *Whether party entitled to split evidence into two parts—As part of his case—& partly as evidence in reply.*]—Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—HARVEY *v.* CANADIAN PACIFIC RY. CO. (1885), 3 Man. L. R. 266.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A.

5082 ii. —— ——.]—The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—C. (b)

sd. *Statement made on examination for discovery.*]—*Held:* a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—B.

k i. —— *Questions tending to show bad character—Directed to prove issue in case.*]—Evidence Amendment Act, 1925, s. 12 (*c*), provides that a person charged & called as a witness in pursuance of this Act shall not be asked, & if asked, shall not be required to answer, any question tending to show that he is of bad character:—*Held:* questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of issues, are not inadmissible, because they may also tend to show his bad character.—R. *v.* BAXTER, [1927] S. A. S. R. 321.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (a).

n i. —— *To shake evidence given by witness.*]—Evidence of a previous statement inconsistent with the testimony of a witness is not admissible as evidence on the issues to be decided in the action, but can only be looked to to neutralise or cut down the evidence given by the witness.—HAMMER *v.* S. HOFFNUNG & CO., LTD. (1928), 28 S. R. N. S. W. 280; 45 N. S. W. W. N. 71.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (b).

5168 i. *Letter written by witness.*]—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction:—*Held:* not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5309a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

5318. *Add. Annotation:*—Apld. Palin *v.* Ponting, [1930] P. 185.

5320. *Add. Annotation:*—Apld. Palin *v.* Ponting, [1930] P. 185.

5388a. —— ——.]—OAKES *v.* UZZELL, No. 4815a, *ante.*

Part VI.—Expert Evidence.

5403a. Limitation of volume of evidence.]—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; *on appeal*, [1928] Ch. 235, C. A.; [1929] A. C. 344, H. L.

5403b. *S. P.* A.-G. *v.* RINGWOOD RURAL DISTRICT COUNCIL (1928), 92 J. P. 65; 26 L. G. R. 174.

5403c. Limitation of number of expert witnesses.]—In cases involving expert evidence only two experts are to be heard on each side, unless the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN. (1926), 71 Sol. Jo. 142; *subsequent proceedings*, [1928] Ch. 31.

PART V. SECT. 9, SUB-SECT. 1.

5209 i. *Whether necessary.*]—MCNAB *v.* COWARD, [1925] 4 D. L. R. 712; *affg.*, [1925] 1 D. L. R. 741.—**CAN.**

5211 i. *What constitutes corroboration—Whether letter written by witness—About time of event in question.*]—*Held:* a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5211 ii. —— *Evidence of fact essential to success of party.*]—The corroboration required by Evidence Act, R. S. O. 1914, c. 76, s. 12, must be of something essential to be shown before pltf. can, upon his own evidence, obtain a decision in his favour upon the cause of action he is setting up. Evidence which is consistent with two views corroborates neither. The corroborating evidence must be of some fact essential to the success of pltf., though it is not required that all such facts be corroborated.—ELGIN *v.* STUBBS, [1928] 2 D. L. R. 838; 62 O. L. R. 128.—**CAN.**

s i. *Of telephone conversation.*]—A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

PART V. SECT. 9, SUB-SECT. 2.

5213 iv. ——.]—The corroborative evidence required by Evidence Act, R. S. N. S., 1923, s. 37, need not establish pltf.'s whole case, but it must prove more than a suggestion of the genuineness of his claim.—ROCKOLA *v.* NOVA SCOTIA TRUST CO. (1937), 11 M. P. R. 298.—**CAN.**

PART V. SECT. 9, SUB-SECT. 4.

c (p. 494) i. ——.]—The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of pltf., is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon pltf., & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative of the deceased person.—TAMARA TE ANGIANGI *v.* TREADWELL, [1926] N. Z. L. R. 693.—**N.Z.**

c (p. 494) ii. ——.]—PIEPER *v.* ZINKANN (1927), 60 O. L. R. 443.—**CAN.**

c (p. 494) iii. ——.]—B. made a claim against the estate of C., deceased, for services rendered, which was allowed by the surrogate judge of probate:—*Held:* setting aside the decision with costs, under R. S. c. 107, the evidence of B. was inadmissible in support of his claim.—*Re* CONDON ESTATE (1896), 28 N. S. R. (16 R. & G.) 208.—**CAN.**

c (p. 494) iv. ——.]—*In re* MALLOWS, FLETCHER *v.* INTESTATE ESTATES CURATOR (1926), 29 W. A. L. R. 62.—**AUS.**

c (p. 494) v. ——.]—Although a trial judge ought not to disallow a claim against the estate of a deceased merely because the claimant's evidence is not corroborated, nevertheless he should examine such evidence with care, & even suspicion, & should not allow the claim unless completely satisfied of its truth.—JOHNSON *v.* BERRY, [1928] 4 D. L. R. 286; [1928] 2 W. W. R. 410; 22 Sask. L. R. 402.—**CAN.**

c (p. 494) vi. ——.]—*Re* LUTZ, [1928] 1 D. L. R. 72.—**CAN.**

c (p. 494) vii. ——.]—Where an agent accepted commission from both parties, & in consideration thereof his principal since deceased signed an agreement to pay the agent a reduced commission:—*Held:* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

c (p. 494) viii. ——.]—A son filed a claim against the estate of his deceased father for money alleged to have been advanced for a trip to England. Claimant alleged that he drew the money out of the bank & purchased an English draft out of the proceeds:—*Held:* corroboration necessary under Evidence Act, s. 37.—*Re* COOK, *Ex p.* COOK, [1932] 2 D. L. R. 805; 4 M. P. R. 492.—**CAN.**

c (p. 494) ix. ——.]—PAUL *v.* MYLES (1930), 2 M. P. R. 20.—**CAN.**

c (p. 494) x. ——.]—Evidence in corroboration of a claim against the estate of a deceased person required.—COSENS *v.* MCEWAN, [1933] 3 D. L. R. 794; *affd.*, [1934] 4 D. L. R. 802, P. C.—**CAN.**

c (p. 494) xi. ——.]—Under sect. 11 of Evidence Act, R. S. B. C., 1924, a party seeking to establish a claim against an estate is only required in order to succeed on his own evidence to adduce corroboration of something essential to the case to be proved by him; the sect. does not apply when the onus of proof which determines the issue rests upon the representative of deceased.—SHEPPARD *v.* TORONTO GENERAL TRUSTS CORPN., [1937] 2 W. W. R. 9.—**CAN.**

f (p. 495) i. —— *Claim made up of separate items.*]—GERARD *v.* HUDSON, [1928] 1 D. L. R. 839.—**CAN.**

PART V. SECT. 10, SUB-SECT. 2.—C. (a) iv.

f i. ——.]—CUVILLIER *v.* THIBODO (1849), 5 U. C. R. 328.—**CAN.**

PART VI. SECT. 1.

5402 iii. —— *Foreign law as to title.*]—On the question of ability to make title to foreign land, the foreign law is to be proved to the ct., & on that law, as proved, the ct. has to draw the proper conclusion. All that the expert called to prove the foreign law can do is to state the law which affects the documents of title in question; his opinion as to whether they have the legal effect of constituting title is not evidence.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE (No. 2), [1933] 3 W. W. R. 677; *affd.*, [1935] 1 W. W. R. 452.—**CAN.**

m. Read now "**5403c i.**"

n. Read now "**5403c ii.**"

o Read now "**5403c iii.**"

5403c iv. —— *Construction of Ontario Evidence Act, s. 10.*]—BUTTRUM *v.* UDELL, [1925] 3 D. L. R. 45; 57 O. L. R. 97.—**CAN.**

5403c v. —— *Waiver.*]—Sect. 10 of Alberta Evidence Act, R. S. A., 1922, which limits the number of witnesses entitled to give opinion evidence who may be called, deals with practice & procedure in a civil matter & so may be waived by the fact that a party takes no objection to the violation of its provisions at trial.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 3 W. W. R. 232; 4 D. L. R. 618.—**CAN.**

s. For "*Conflict of opinion as to value*" read "*Conflict of opinion—Duty of court—Conflict of opinion as to value.*"

s i. —— ——.]—HAY *v.* BAIN, [1925] 2 D. L. R. 948.—**CAN.**

s ii. —— ——.]—Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, "I doubt & cannot resolve

5407a. —— **Only medical witnesses—Not research student in toxicology.**]— NIGHTINGALE *v.* BIFFEN, HEWITT *v.* BIFFEN (1925), 18 B. W. C. C. 358, C. A.

5433. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

5452. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

5468. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 6.

5478. After this case add :—

——.]—*See, now,* R. S. C., Ord. XXXVIIa.

5479. *Add. Annotations :* — **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

Part VII.—Evidence by Affidavit.

5493. *Add. Citations :*—94 L. J. Ch. 73 ; 132 L. T. 540.

5523a. —— **Proceedings on which affidavit made no longer pending.**]—CATHOLIC PUBLISHING & BOOKSELLING CO., LTD. *v.* WYMAN (1863), 1 New Rep. 468 ; 7 L. T. 849 ; 11 W. R. 399.

5547a. —— ——.]—WARNER *v.* MOSSES, No. 6254, *post.*

5568. After this case add " *See, also,* PRACTICE, p. 306, Nos. 338, 339."

5570. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571a. ——.]—On the trial of a probate action in which a will was propounded in solemn form neither of the attesting witnesses could be called. An affidavit by one of them sworn for the purpose of obtaining probate in common form before the commencement of litigation was admitted as evidence of execution & the state of the will when executed.—PALIN *v.* PONTING, [1930] P. 185 ; 99 L. J. P. 121 ; 143 L. T. 23 ; 46 T. L. R. 310 ; 74 Sol. Jo. 234.

5626. *Add. Annotation :*—**Distd.** Earles Utilities, Ltd. *v.* Jacobs (1934), 51 T. L. R. 43.

5627a. —— **Witness not called.**]—Where a pltf. has filed affidavits & they were read to the ct. at the hearing of a motion for interlocutory relief, deft., when the action comes on for trial, is entitled, if the persons who made the affidavits are not called by pltf., to give evidence, to refer to their affidavits for the purpose of commenting on their testimony & calling attention to what he suggests are discrepancies in the evidence given by witnesses who were called for pltf. & that given in the affidavits of those who were not called.—EARLES UTILITIES, LTD. *v.* JACOBS (1934), 51 T. L. R. 43 ; 52 R. P. C. 72 ; *sub nom.* Practice Note [1934], W. N. 198.

5639a. —— **Affidavit of agent used by principal.**]—An affidavit of an agent cannot be used to prove a fact against his principal where he can himself be called ; but where the principal has used an affidavit of the agent in an

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the doubt because an expert also doubts."—BENNETT *v.* PEATTIE (1925), 57 O. L. R. 233.—**CAN.**

sg. *Weight of evidence.*]—WILLIAM HAMILTON MANUFACTURING CO. *v.* VICTORIA LUMBERING & MANUFACTURING CO. (1896), 26 S. C. R. 96.—**CAN.**

sh. ——.]—GUELPH WORSTED SPINNING CO. *v.* GUELPH CORPN., GUELPH CARPET MILLS CO. *v.* GUELPH CORPN. (1914), 30 O. L. R. 466 ; 18 D. L. R. 73 ; 5 O. W. N. 761.—**CAN.**

sj. ——.]—The law makes no distinction between the evidence given by experts & that given by ordinary witnesses : the testimony of experts must be appreciated & weighed by the cts. in the same manner as that of any other witness. A judgment would therefore be wrong, if based upon the sole fact that the successful party had a greater number of experts testifying on his behalf.—SHAWINIGAN ENGINEERING CO. *v.* NAUD, [1929] 4 D. L. R. 57 ; S. C. R. 341.—**CAN.**

sm. *Must speak from personal knowledge.*]—The evidence of a witness who does not speak from any special knowledge but from information derived from an entry in a confidential record not produced before the ct., is not admissible as expert evidence. —JAFFARUL HOSSAIN *v.* EMPEROR (1931), I. L. R. 59 Cal. 1046.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.

5406 i. *What witnesses may be heard —Nurse.*]—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings :—*Held :* admissible as an expert up to a certain point.—HEPENSTAL *v.* MERRITT (1895), 33 N. B. R. 91.—**CAN.**

a i. —— *Distance at which gun held.*] —R. *v.* PREEPER (1890), 22 N. S. R. 174.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.

e i. —— *Fingerprints.*]—Evidence of an expert as to identification by fingerprints is not conclusive evidence of a fact but is opinion to which the ordinary rules governing such evidence apply. With respect to fingerprints there is no statutory provision, similar to sect. 8 of Canada Evidence Act, R.S.C., 1927, respecting handwriting, which permits fingerprints to be used for the purpose of evidence *per se.*—R. *v.* DE'GEORGIO & SERVELLO, [1934] 3 W. W. R. 374, B. C.—**CAN.**

e ii. —— ——.]—In convicting an accused person on the evidence of a fingerprint expert, the ct. need not insist upon corroboration of the evidence, but the ct. must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence.—FAKIR MAHOMED *v.* EMPEROR (1935), I. L. R. 60 Bom. 187.—**IND.**

PART VII. SECT. 1.

sk. *As proof of settlement of action.*]—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—PULKRABEK *v.* PULKRABEK (Alta.), [1927] 4 D. L. R. 635 ; [1927] 3 W. W. R. 239.—**CAN.**

PART VII. SECT. 4, SUB-SECT 1.

r i. —— *County Courts Act, R. S. M.*, 1913 (*c.* 44), *s.* 138—*Effect of.*]—R. *v.* GUYOT, [1927] 1 D. L. R. 191 ; 36 Man. L. R. 178 ; [1926] 3 W. W. R. 584.—**CAN.**

PART VII. SECT. 6.

sl. *Affidavit on application for security for costs—Right to require production of documents—Relating to defence.*]—On a cross-examination on an affidavit in support of an application for security for costs, the deponent can be required, without an order by a judge to do so, to produce documents relating to the defence alleged in the affidavit, even though such cross-examination is held before the statement of defence is filed.—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sm. *Discretion of judge to order.*] ELSTON *v.* PURDY (1930), 2 M. P. R. 14. —**CAN.**

PART VII. SECT. 11, SUB-SECT. 2.—A.

sp. *Affidavit filed on rule nisi — Intituled differently from rule — Right to amend.*]—Where the heading of an affidavit, on which a rule *nisi* was obtained, differed from the heading of the rule *nisi*, the ct. gave leave for the affidavit to be amended so as to agree with the rule *nisi.*—*Ex p.* HIGGS, *Re* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 85.—**AUS.**

application to the ct., in which a particular fact is stated, the affidavit of the agent may be used as evidence of that fact.—JOHNSON *v.* WARD (1806), 6 Esp. 47 ; 170 E. R. 826.

5676a. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

5873a. —— ——.]—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return having expired.—*Re* TIERNEY (1855), 15 C. B. 761 ; 24 L. T. O. S. 260 ; 139 E. R. 625.

5880a. —— ——.]—*Re* TIERNEY, No. 5873a, *ante*.

5951a. —— **In material part of affidavit—Proof of time of erasure.**]—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re* BINGLE (1854), 15 C. B. 449 ; 2 C. L. R. 1793 ; 23 L. T. O. S. 177 ; 139 E. R. 500.

6052a. ——.]—ANON. (1839), No. 6108a, *post*.

6053a. —— **No commissioner available.**]—*Re* GROOM, No. 6066a, *post*.

6056. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6056a. —— ——.]—*Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re* GROOM (1869), 17 W. R. 589.

6081a. ——.]—*Re* STREET (1845), 2 C. B. 364 ; 135 E. R. 987.

.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

6083. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

UNITED ASSURANCE Jo. 353.

6092a —— ——.]—*Re* CRAWFORD (1847), 4 C. B. 626 ; 136 E. R. 653.

6096a. Italy—British minister.]—The ct. refused to direct the proper officer under Fines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re* DUNSANY (1849), 7 C. B. 119 ; 137 E. R. 49.

6108a. —— —— ——.]—The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

PART VII. SECT. 11, SUB-SECT. 5.—F.

5832 v. ——.]—In the absence of a statute or rule requiring a comr. for oaths or other officer entitled to take an affidavit to state in the *jurat* the official capacity in which he signed it, an affidavit is not rendered invalid because of the fact that the officer before whom it was taken did not add to his signature any designation of such capacity.—CAMERON-HUTT, LTD. *v.* MACMILLEN, [1933] 3 W. W. R. 241. —**CAN.**

PART VII. SECT. 11, SUB-SECT. 7.—B.

5904 i. *What is an interlocutory proceeding—Not an application for prohibition.*]—An application for prohibition is not an interlocutory motion ; hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON, [1928] 3 D. L. R. 692 ; [1928] 2 W. W. R. 497 ; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

f i. —— —— *Where source a corporation.*]—An affidavit which states that deponent has been informed by a certain incorporated co. is objectionable, because a corpn. being a purely legal entity is incapable of itself apprehending facts or giving information, & it can do so only by one or more of its officers, & such officer or officers should be mentioned.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 2 D. L. R. 777 ; 1 W. W. R. 198 ; 24 S. L. R. 290 ; 11 C. B. R. 227.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 1.—B.

6022 iii. —— ——.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—WILDE *v.* CROW (1861), 10 C. P. 406.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—A.

p i. —— *Proof of appointment of notary.*]—The proper method of proving the appointment of a notary public is that provided for by Saskatchewan Evidence Act, s. 7, but where no objection is raised at the trial to the method of proof used thereon leave to file the necessary proof was given.—ADVANCE-RUMELY THRESHER CO. *v.* ZOMAR (Sask.), [1929] 4 D. L. R. 65 ; 2 W. W. R. 544.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—B. (c).

6075 i. *Justice of the peace—New South Wales.*]—An affidavit taken before a justice of the peace in New South Wales, but without any certificate annexed that the person before whom it was sworn was duly authorised to administer oaths in New South Wales, may be used in evidence in the cts. of the Irish Free State.—APPLEBE *v.* APPLEBE, [1931] I. R. 286.—**IR.**

6080 i. *Commissioner—New Guinea.*]—Upon the hearing of a suit for dissolution of marriage the ct. accepted an affidavit purporting to have been sworn in the mandated territory of New Guinea before a comr. of the central ct. of the territory for taking affidavits & bearing a certificate under the seal of that ct. that there was no comr. of the supreme ct. of Victoria or notary public resident in the territory.—CUNNINGHAM *v.* CUNNINGHAM, [1929 V. L. R. 232 ; [1929] Argus L. R. 211.—**AUS.**

sk. *No deputy authorised—Affidavit sworn before deputy inadmissible.*]—Where a statute, *e.g.*, sect. 42 (*d*) of Alberta Evidence Act, R. S. A., 1922, requires affidavits sworn in another province to be sworn before a certain designated official & there is no general statute of Alberta authorising a deputy to act in his place, an affidavit sworn before the deputy is not sworn before the proper officer & should not be received.—GROSE *v.* GROSE, [1936] 2 W. W. R. 210.—**CAN.**

Part VIII.—Evidence out of Court.

6201. *Add. Annotation :*—**Consd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

6269a. —— **To issue pleaded.**]—Pltfs. in an action for passing off, in which they complained of the get-up of defts.' goods as calculated to deceive, asked for a commission to take certain evidence in Australia showing actual deception. It was alleged that defts.' goods were sold in Great Britain, & also were exported to Australia for sale by retail. There was no allegation of actual deception in the statement of claim. Two affidavits were filed by pltfs. in support of the application :—*Held :* upon the pleadings it would not be open to pltfs. to give evidence of actual deception, &, on the present state of the pleadings, & on the materials before the ct., pltfs. had not given any sufficient reason for issuing a commission.—WHITE, TOMKINS & COURAGE, LTD. *v.* UNITED CONFECTIONERY CO., LTD. (1914), 31 R. P. C. 286.

6362a. ——.]—MACAULAY *v.* GLASS (1902), 47 Sol. Jo. 71.

PART VIII. SECT. 1, SUB-SECT. 1

6170 vi. ——.]—NATIONAL TRUST CO. *v.* PORTERFIELD, [1931] 2 W. W. R. 456.—**CAN.**

6176 x. ——.]—KOURI *v.* NEMEROVSKY, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—**CAN.**

6176 xi. ——.]—Although no order has been taken out on a master's fiat or decision an appeal lies therefrom under K.B. Rule 592.—DAVIS *v.* RALLS, [1937] 2 W. W. R. 206.—**CAN.**

8n. *Application on motion to add defendant—No grounds shown for addition.*]—RENE *v.* CARLING EXPORT BREW. & MALT CO., [1928] 1 D. L. R. 634; 61 O. L. R. 495.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

8o. *Extradition proceedings.*]—Commission to take evidence outside Canada cannot be issued in extradition proceedings.—*Re* INSULL, [1934] 2 D. L. R. 696; 61 C. C. C. 336.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A.

f i. ——.]—On appeal from an order granting leave to take evidence on commission :—*Held :* the materials submitted to the judge were so meagre that they did not afford a reasonable ground for the exercise of his discretion in granting the order, &, therefore the appeal should be allowed.—ROMANO *v.* MAGGIORA (No. 2), [1936] 1 W. W. R. 423; 2 D. L. R. 329; 50 B. C. R. 273.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—B.

6258 vii. ——.]—In order to justify the issue of a commission to take evidence abroad, it must be shown that the evidence is directly material to the issue raised.

Applt.'s statement of claim alleged that for the use of "trichlorethylene" for dry-cleaning applt. had installed special machinery & had been trading in New Zealand under the fancy name of "Tri-cleaning" & that resp. co. had been formed under its name "Tri-cleaning" Co. with a view to causing confusion to the public & so obtaining a portion of the goodwill that had been built up by applts., or, alternatively, that the name of resp. co. was calculated to deceive the public into believing that that co. was the applt. co. or a subsidiary thereof. Resps.' defence was a bare denial of the allegations in the statement of claim, from which it might possibly be inferred that the issue raised was whether "Tri-cleaning" was a fancy name. The evidence sought to be taken in Australia was sworn to be material because it was from persons familiar with the trade of dry-cleaning by trichlorethylene & the manner in which the same is described or referred to. These witnesses could only speak as to conditions in Australia, but not as to those as to its use in New Zealand :—*Held :* such evidence could not be material in the action.—NEW ZEALAND TOWEL SUPPLY & LAUNDRY, LTD. *v.* N. Z. TRI-CLEANING CO., LTD., [1935] N. Z. L. R. 204.—**N.Z.**

PART VIII. SECT. 1, SUB-SECT. 5.—D.

6282 i. *As to foreign law.*]—Where in an action to recover the purchase-money alleged to be due under an agreement for the sale of land situated in a foreign state deft. pleaded that under the law of that state pltf. was unable to make title :—*Held :* pltf. was entitled to ascertain through the testimony of witnesses in that state the truth of the allegation, & entitled to a commission to take evidence in that state in support of his allegation that he was ready, willing & able to make title; he was not obliged to allege in his statement of claim what the law of that state is & plead such law as a statement of fact.—CAMPBELL *v.* FUNK, [1935] 3 W. W. R. 561.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—E.

6296 iii. ——.]—Where there is nothing to show that deft. administrator is not lawfully & properly, according to his ordinary course of life, entitled to be away from Saskatchewan, he may obtain an order for his own examination *de bene esse* in the foreign jurisdiction wherein he resides.—JACQUES *v.* JACQUES, [1928] 1 W. W. R. 447.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—F.

m i. ——.]—WILLIAMS & WILLIAMS *v.* FRASER (1925), 35 B. C. R. 481.—**CAN.**

m ii. ——.]—Applt., exor. of the will of a Chinaman killed by a motor lorry owned & driven by resp., sued as such exor. & also on behalf of deceased's widow & her two infant children who had never lived in New Zealand, claiming damages from resp. for alleged negligence. Applt. asked for a commission to examine the widow & others before the Registrar of the Supreme Ct. at Hong Kong to prove that the widow had been married to deceased in a form that the cts. in New Zealand would recognise as valid, that she remained his wife to the date of his death, & that deceased was the father of her children :—*Held :* as the cost of bringing the witnesses to New Zealand made such a course practically impossible & as the commission asked for was to an official of a Supreme Ct. in a British colony equipped with a Judiciary & a Bar trained in English law & procedure, fully competent to elicit the truth from Chinese witnesses & better qualified than the legal profession in New Zealand to investigate the validity of the marriage, resp. would not be unduly prejudiced by the issue of the commission, which should be granted on terms as to applt. finding security for the costs thereof.—WONG DOO *v.* KANA BHANA, [1933] N. Z. L. R. 1455.—**N.Z.**

s i. ——.]—*Re* WEINGARDEN, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—G.

e i. ——.]—BURROUGHS *v.* INTER-COLONIAL GOLD MIN. CORPN. (N. S.), [1927] 3 D. L. R. 371.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—H.

6338 iv. —— —— *Party.*]—PHANINDA KRISHNA DOTT *v.* PRAMATHA NATH MALIA (1927), I. L. R. 55 Calc. 748.—**IND.**

l i. —— *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), pltf. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY *v.* KELLY, [1925] 1 W. W. R. 332.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—I.

6361 vi. ——.]—SHORT *v.* GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY, [1930] 2 W. W. R. 21; 2 D. L. R. 986; 24 S. L. R. 422.—**CAN.**

6362 iii. —— ——.]—Where the inconvenience & expense of compelling a pltf. & his witnesses to appear at the trial would have been equivalent to a denial of justice to him, & deft. would not suffer an injustice through not seeing the witnesses face to face, a foreign commission for the examination of pltf. & his witnesses was granted, on terms as to costs.—CHASE *v.* NORTHERN TRUSTS CO. (No. 2), [1932] 2 W. W. R. 476; 4 D. L. R. 143; 40 Man. L. R. 458.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).

r i. ——.]—The *onus* of establishing that an examination on commission of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—STAPLES *v.* MILOFF (Man.) [1927] 2 D. L. R. 847; [1927] 1 W. W. R. 435.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (c).

6408 i. *Of necessity of examination—Belief of deponent.*]—Evidence based on information & belief, if the grounds thereof are sufficiently stated, is admissible on an application for a commission to examine witnesses out of the jurisdiction of the ct.—SYDNEY FERRIES, LTD. *v.* S.S. TAHITI (1928), 28 S. R. N. S. W. 307; 45 N. S. W. W. N. 74.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 1.—C.

6523 i. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) CO. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

6561a. ——.]—*Re* TIERNEY, No. 5873a, *ante*.

6683a. ——— **Witness out of the jurisdiction.**]—Appointment of an examiner to take orally the evidence of a witness residing out of the jurisdiction of the ct.—CROFTS *v.* MIDDLETON (1852), 9 Hare (App. 1) XVIII.; 22 L. J. Ch. 706; 20 L. T. O. S. 189; 1 W. R. 74; 68 E. R. 765.

6649a. Application by Attorney-General—Affidavit unnecessary.]—Where an information has been filed at the suit of the Crown by Her Majesty's Attorney-General, acting in virtue of his office, a rule for a mandamus may issue to Colonial judges, commanding them to examine witnesses in respect of such information, upon reading the roll containing the information, without the production of any affidavit whatever.—R. *v.* DOUGLAS (1842), 7 Jur. 305.

6743a. —— **Application after judgment entered.**]—COBBOLD *v.* GARRETT, [1929] W. N. 16.

6749. *Add. Annotation :*—**Consd.** *Re* Potts, *Ex p.* Epstein *v.* Trustee & Bankrupt, [1935] Ch. 334.

Part IX.—Action for Perpetuation of Testimony.

6823. *Add. Citation :*—*affd.* (1918), Times, July 24, H. L.

6831a. Depositions in action to perpetuate testimony.]—ANSON *v.* TOOTH & A.-G., [1917] W. N. 234; 143 L. T. Jo. 177.

Part XI.—Colonial and Foreign Law.

6851. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6852a. —— —— ——.]—No doubt in the cts. below the law of Scotland is a matter of fact & must be vouched there by evidence or admission. But in your Lordship's House the law of Scotland is a matter not of fact but of law, for this House is the *commune forum* of both England & Scotland, & your lordships have judicial knowledge of the laws of both countries (LORD MACMILLAN).—ELLIOT *v.* JOICEY, [1935] A. C. 209; 104 L. J. Ch. 111; 51 T. L. R. 261; 79 Sol. Jo. 144; *sub nom.* *Re* JOICEY, JOICEY *v.* ELLIOT, 152 L. T. 398, H. L.

6861. To cross-reference following this case add "now replaced, as to High Ct., by S. C. J. (Consolidation) Act, 1925 (c. 49), s. 102."

6861a. —— ——.]—A question of foreign law is matter of fact to be decided by a judge, not by a jury, upon the evidence given at the trial in each case. Former decisions upon similar questions, but upon other evidence, are not binding.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289; 102 L. J. K. B. 191; 148 L. T. 242; 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.; *affg.*, S. C. *sub. nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

6864. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6865. *Add. Annotations :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4. **Expld. & Distd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52.

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 i. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

a i. —— ——.]—A clerk of the peace should not open a package of documents taken on commission without a judge's order.—SPEYER *v.* R. (1931), 55 Can. C. C. 399.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

6681 vi. ——.]—*Held :* whereas in the present case evidence had been taken on commission & no objection had been raised, & the matter to be proved was purely formal, the ct. was entitled to accept the evidence as *primâ facie* sufficient.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

so. *May be put in by other side.*]—GAINERS *v.* CANADIAN NORTHERN RY. Co., [1925] 3 D. L. R. 369.—**CAN.**

PART VIII. SECT. 4.

m i. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—**SCOT.**

PART VIII. SECT. 5.

6739 i. *Whether allowed to successful party—When order obtained by consent.*]—A commission to examine a witness was granted of consent of parties in a case in which proof had been allowed by the sheriff-substitute. The allowance of proof was subsequently recalled by the sheriff, whose decision was affirmed on appeal. While the appeal against the sheriff's interlocutor was pending, the commission was executed :—*Held :* in this particular case, the expenses of obtaining & executing the commission fell to be allowed, in respect that it had been granted of consent.—GILCHRIST *v.* NATIONAL CASH REGISTER CO., [1929] S. C. 272.—**SCOT.**

PART IX. SECT. 2.

sp. *To prove testamentary capacity—Will made before testator found insane.*]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—RANKEN *v.* PEARCE (1927), 27 S. R. N. S. W. 410; 44 N. S. W. W. N. 123.—**AUS.**

PART XI. SECT. 1.

sq. *Jurisdiction to order.*]—*Held :* even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—HIGGINS *v.* EWING'S TRUSTEES, [1925] S. C. 440.—**SCOT.**

sr. *Decree passed by foreign Government before recognition.*]—Observations upon the powers & duties of the ct. to examine & construe for itself foreign written law : (1) where the expert evidence adduced to prove the law was conflicting, & (2) where the law under consideration was a decree abolishing inheritance, which had been passed by the Soviet Govt. of Russia before its recognition by the British Govt.—KOLBIN & SONS *v.* KINNEAR & CO., [1930] S. C. 724; *affd.*, [1931] S. C. 128.—**SCOT.**

PART XI. SECT. 2.

n i. —— ——.]—The Supreme Ct. of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—CANADIAN PACIFIC RY. Co. *v.* PARENT (1917), 86 L. J. P. C. 123.—**CAN.**

q i. ——.]—The cts. of one country do not take judicial notice of the laws of another country : they must be proved like any other fact.—WALKERVILLE BREW. CO. *v.* MAYRAND, [1928] 2 D. L. R. 945; 63 O. L. R. 573; *revsg.*, [1928] 4 D. L. R. 500; 63 O. L. R. 5.—**CAN.**

6866. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6867. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

6869. *Add. Annotation :*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

6872. *Add. Annotations :* — **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6874. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930 ; De Beéche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148.

6876a. —— ——.]—Pltf. divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life :—*Held :* (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point ; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—DENNISTOUN *v.* DENNISTOUN (1925), 69 Sol. Jo. 476.

6880a. —— ——.]—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 6861a, *ante*.

6894a. —— ——.]—In the absence of evidence to the contrary one must assume that the foreign law is the same as the English (SLESSER, L.J.).—THE TORNI, [1932] P. 78, 90 ; 101 L. J. P. 44 ; 147 L. T. 208 ; 48 T. L. R. 471 ; 18 Asp. M. L. C. 315, C. A.

6898. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6900. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6901. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

6904a. —— **Legal adviser to Governor—Marriage in Malta.**]—GOSSAGE *v.* GOSSAGE & HEATON (1934), 78 Sol. Jo. 551.

6906. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6907. *Add. Annotation :*—**Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6916. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242.

6917. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6917a. —— —— **As to law of Russia.**]—PERRY *v.* EQUITABLE LIFE ASSCE. SOCIETY OF UNITED STATES OF AMERICA (1929), 45 T. L. R. 468.

6918. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183. *As to* (2) **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

6923. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6928. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6937a. ——.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable : "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first-class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined inter-

PART XI. SECT. 3.

6869 vi. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

PART XI. SECT. 4, SUB-SECT. 2.

6890 xv. —— ——.]—The genera[l] foreign law is presumed to be the same as our own ; & the *onus* of proving that it is different is on those who contend that it is.—KEY *v.* KEY, [1930] 3 D. L. R. 327 ; 65 O. L. R. 232.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 2.

a i. —— ——.]—The opinion of a lawyer alone does not prove the law—he must be in a position to testify that such is in fact the law.—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643 ; 64 O. L. R. 358.—**CAN.**

a i. —— —— ——.]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established :—*Held :* the priest, who, on being recalled, stated that the parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the Cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia.—R. *v.* ILICH, [1935] N. Z. L. R. 90.—**N.Z.**

b i. —— ——.]—Foreign law, being a question of fact, must be proved as any other fact by a competent & qualified witness. Any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification being a matter for the appreciation of the ct.—HANSON *v.* COLLETTE (1931), 5 M. P. R. 363.—**CAN.**

b ii. —— *Holder of position requiring knowledge of law.*]—In order to prove the law of a foreign country it is not necessary that the witness should be a lawyer actually practising his profession in that country ; but, inasmuch as foreign law is a question of fact which must be proved as any other fact by a competent & qualified witness, any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification of such witness being a matter for the appreciation of the ct.—GOLD *v.* REINBLATT, [1929] 1 D. L. R. 959 ; S. C. R. 74 ; *affg.*, 45 Que. K. B. 136 ; *revsg.*, Que. S. C. 17.—**CAN.**

national exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & document of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first-class bills on London. The evidence accepted was that "payable in Chile in first-class bills on London" had a special mercantile meaning in Chile, namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation:—*Held:* (1) the conditions precedent to the admissibility of evidence as to the meaning in Chile of first-class bills on London had been fulfilled, namely, the evidence did not conflict with a statutory definition, was of a usage common to the place in question & expoinded without contradicting the terms of the contract; (2) though witnesses could be called to prove foreign law, the ct. was at liberty to look at a translation of the passages in question & to consider what was their proper meaning, but the ct. would have regard not only to its own view of the foreign law but to the interpretation put upon it by a competent foreign authority.—DE BEÉCHE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., & CHILIAN STORES (GATH & CHAVES), LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

6957a. Document under seal of U.S.A.—Photostatic copy—Certificate of naturalisation.]—At the trial of applt., who was a British subject by birth, for an offence against art. 6, para. 1 (*a*) of Aliens Order, 1920, & for making an untrue statement for the purpose of procuring a passport, the prosecution endeavoured to prove by means of a photostatic copy of a certificate of naturalisation authenticated by the seal of the United States of America that applt. had lost his British nationality. Applt. was convicted on both charges, & on appeal it was conceded by the Crown that the document ought not to have been admitted in evidence, inasmuch as the mode of authenticating the document did not fulfil the requirements of Evidence Act, 1851 (c. 99), s. 7:—*Held:* though the prosecution might have proceeded at the trial on the basis that under Aliens Restriction Act, 1914 (c. 12), s. 1 (4), the burden of proving that he was not an alien lay on applt., they had not taken this course, but had themselves accepted the burden of proof & endeavoured to discharge it by putting in evidence an inadmissible document, & accordingly the conviction must be quashed.—R. *v.* BEADON (1933), 24 Cr. App. Rep. 59, C. C. A.

6957b. Secondary evidence—When admissible.]—FINSKA ANGFARTYGS A/B *v.* BARING BROS. & CO., LTD. (1937), 157 L. T. 585; 54 T. L. R. 147; 81 Sol. Jo. 1022.

PART XI. SECT. 8, SUB-SECT. 1.

6939 xi. ——.]—TILTON *v.* MCKAY (1874), 24 C. P. 94.—**CAN.**

PART XI. SECT. 10.

s v. *Who may refer—Lord Ordinary.*] —*Held:* while it was to a "superior" ct. of another part of the Dominions that a remit in terms of British Law Ascertainment Act, 1859, s. 1, fell to be made, nevertheless the interlocutor making the remit, in view of the expression "any ct." in sect. 1, might competently be pronounced by a Lord Ordinary without the intervention of the Inner House.—MACOMISH'S EXORS. *v.* JONES, [1932] S. C. 108.—**SCOT.**

EXECUTORS AND ADMINISTRATORS.

Part I.—The Office of Executor or Administrator.

4a. Limitation of number—Appointment of four general executors—Limited appointment of fifth—Invalid.]—A testator by his will appointed four persons as exors. & trustees of his will, & after certain bequests appointed a fifth person literary exor. in respect of certain papers. The usual exors.' oath was sworn by the four general exors. for the purpose of a grant to them of the estate save & except the papers in respect of which the fifth person was appointed literary exor. The oath was refused by the Registry on the ground that by reason of Jud. Act, 1925 (c. 49), s. 160, one of the five exors. must renounce. The exors. applied to the ct. asking that the oath tendered by them might be received :—*Held :* as the oath asked in effect for grants to five exors. it contravened Jud. Act, 1925 (c. 49), s. 160, & ought not to be received.—*In the Estate of* HOLLAND, [1936] 3 All E. R. 13 ; 105 L. J. P. 113 ; 155 L. T. 417 ; 53 T. L. R. 3 ; 80 Sol. Jo. 838.

10. *Citations :*—For "3 Phillim." read "8 Phillim."

16. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

17a. ——.]—*In the Goods of* EVANS (1923), 128 L. T. 669.

17b. Appointment written in margin.]—An appointment of exors., written vertically in the margin of a will, excluded from the probate, there being no signature at the bottom of the clause in the margin.—*In the Goods of* TOOKEY (1847), 5 Notes of Cases, 386.

54a. *S. P. In the Goods of* COLES (1871), L. R. 2 P. & D. 362 ; 41 L. J. P. & M. 21 ; 25 L. T. 852 ; 36 J. P. 120 ; 20 W. R. 214.

Annotation :—**Refd.** Foundling Hospital *v.* Crane (1911), 105 L. T. 187.

63a. —— —— ——.]—*In the Goods of* WAY, [1901] P. 345 ; 71 L. J. P. 13 ; 85 L. T. 643 ; 17 T. L. R. 758.

133. *Add. Annotation :*—**Follid.** *Re* Hack (A.) (1930), 169 L. T. Jo. 284.

138a. —— Effect of death of husband in wife's lifetime.]—*Re* HACK (A.) (1930), 169 L. T. Jo. 284.

134a. Grant to trustees of settlement as special executors—Incapacity of one—Fresh grant to continuing special executor—Jointly with ordinary executor.]—Probate of the will of deceased was granted to A. B. his exor. save & except settled land vested in deceased settled previously to his death & not by his will. Deceased appointed no special exor. At his death the trustees of the settlement of the land were C. D. & E. F., & a grant of probate was made to them as special exors. limited to the settled land. Before the administration of the estate was complete, C. D. became incapable of acting in the trusts & A. B. was appointed in his place for the purposes of the Settled Land Act, 1925. On motion to revoke the grant of probate to the special exors. & for a fresh grant limited to the settled land to E. F. along with A. B. :—*Ordered* that the grant of probate limited to the settled land be revoked & fresh probate granted to E. F., power being reserved to C. D. to apply for probate on his recovering capacity, & it was further *ordered* under Administration of Estates Act, 1925 (c. 23), s. 23 (2), that A. B. be appointed as a special personal representative in respect of the settled land jointly with E. F. & that the grant to E. F. after it had passed the seal be noted accordingly, the security, if any, to be given by A. B. to be settled by the registrar.—*In the Estate of* CLIFTON, [1931] P. 222 ; 100 L. J. P. 121 ; 146 L. T. 14 ; 47 T. L. R. 618.

134b. —— —— —— Reservation of power to apply on recovery of capacity.]—*In the Estate of* CLIFTON, No. 134a, *ante*.

134c. —— —— —— Application to Chancery Division for leave to apply to Probate Division.]—*Re* CLIFTON, DUCKWORTH *v.* FAIR, [1931] W. N. 202.

150. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART I. SECT. 1.

sx. *Nature of office.*]—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—SMART *v.* SMART, [1926] S. C. 392.—SCOT.

PART I. SECT. 2, SUB-SECT. 1.

sy. *Public Trustee.*]—Testator, domiciled in the Irish Free State, appointed the Public Trustee to be his exor. & trustee :—*Held :* neither the Irish Public Trustee nor the English Public Trustee could accept the appointment. —*In the Goods of* LEESON, [1928] I. R. 168.—IR.

PART I. SECT. 3, SUB-SECT.

sz. *Right of testator to delegate.*]—The power of appointing exors. may lawfully be delegated, & the time during which they are to act may be limited either as to beginning or end.—*Re* CLEGHORN, [1931] 2 D. L. R. 865 ; O. R. 31.—CAN.

PART I. SECT. 3, SUB-SECT. 2.—A. (a).

42 v. —— ——.]—Testator bequeathed two farms of land to F. & T. in trust for his wife & family ; he directed that the farms should be sold & that the proceeds should be divided by his exors. The will contained no appointment of exors. :—*Held :* that F. & T. were entitled to probate as exors. according to the tenor.—*In the Goods of* DRUMM, [1931] N. I. 12.—IR.

47 i. *S. P. Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18.—CAN.

PART I. SECT. 3, SUB-SECT. 2.—A. (b).

so. *Universal legatee—Trust to divide between legatee & others.*]—A will reading, "I bequeath all my estate to Mrs. S. to be divided equally among Mrs. S. & her brothers & sister" :—*Held :* not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re* MCMILLAN, [1925] 3 W. W. R. 584.—CAN.

PART I. SECT. 4, SUB-SECT. 1.—A.

sd. *Appointment of executors for New Zealand property & executors for English property—Probate granted to New Zealand executors.*]—Where testator dies domiciled in England, leaving property in New Zealand & in England, & having by his will appointed separate exors. to deal with his New Zealand & his English property, a ct. in New Zealand may grant probate to the New Zealand exors. in respect of the property within the jurisdiction, reserving leave to the English exors. to apply in England for probate in respect of the remainder of the property. For the purpose of facilitating the latter appln. the New Zealand ct. may permit the removal from its file of the original will upon condition that an exact copy of such will, certified by the Registrar, be left upon the file of the local ct.—*Re* WRIGHTON, [1929] N. Z. L. R. 96.—

151. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

152. *Add. Annotations :*—**Apld.** *Re* Comberbach. Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

153. *Add. Annotation :—Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

154a. —— **Appointment of one of several makers of promissory note.**]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof : —*Held :* the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was (1) at common law that the debt was discharged by release at the date of the death of testator, & (2) in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action was brought.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501 ; 97 L. J. K. B. 400 ; 139 L. T. 119 ; 44 T. L. R. 483 ; 72 Sol. Jo. 319, D. C.

165a. —— **Appointment of wife of debtor.**] —*Re* PRICE, PRICE *v.* PRICE (1879), 11 Ch. D. 163 ; 48 L. J. Ch. 478 ; 40 L. T. 668 ; 27 W. R. 698, C. A.

165b. ——.]—JENKINS *v.* JENKINS, No. 154a, *ante.*

181a. —— —— **After intermeddling.**]—An individual & a bank having been appointed exors. & trustees under a will, the individual exor. intermeddled technically with the estate, & both of them subsequently refused to act as exor. or prove the will. By a codicil testator directed that in the event of a "vacancy" occurring "in the office of the individual exor. & trustee whether from death, resignation, refusal to serve, inability to act, or otherwise," one of two named persons, in the order named, should fill the vacancy. The first named person renounced :—*Held :* the ct. was entitled to appoint one of the substituted exors. & probate was granted to the second named person on his application.—*In the Estate of* FREEMAN (1931), 146 L. T. 143 ; 48 T. L. R. 1 ; 75 Sol. Jo. 764.

209a. *S. P.* ANON. (1806), 12 Ves. 4 ; 33 E. R. 2. *Annotation :*—**Refd.** Browell *v.* Reid (1842), 11 L. J. Ch. 272.

238. *Add. Annotation :*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

258. *Add. Annotation :—As to* (1) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

296. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

425a. Exercise of option to purchase by surviving partner—Notice to executor before probate—Validity.]—Under a partnership deed the surviving partner had an option of acquiring the deceased partner's interest at a valuation on his giving to the "personal representatives" of the deceased partner notice within three months from the death of such partner. The notice was given within the time, but before the exors. had obtained probate :—*Held :* the notice was properly given, & the option had been duly exercised.—KELSEY *v.* KELSEY (1922), 91 L. J. Ch. 382 ; 127 L. T. 86.

427. *Add Citations :*—Moore, K. B. 146 ; *sub nom.* RUSSEL *v.* PRAT, 1 And. 177 ; *on appeal* (1589), 1 Leon. 193, Ex. Ch.

492. *Add. Annotation :—As to* (2) **Refd.** Macleay *v.* Treadwell, [1937] A. C. 626.

493. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

677. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

PART I. SECT. 9.

202 i. *Jurisdiction to release—Surrogate court.*]—A surrogate ct. judge has no power to make an order releasing exors. "from their exorship."—*Re* DENTON ESTATE (Sask.), [1926] 3 W. W. R. 186.—**CAN.**

o i. ——.]—Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.—SMALL *v.* PACKARD, [1925] 1 W. W. R. 897.—**CAN.**

l (p. 46) **i.** —— *Executor—Desiring to be released—Co-executor necessary party.*]—When some of several co-exors. apply to be released from the trust, the ct. will require the other co-exors. to be brought before the ct. before they will refer it to a master to report on suitableness of persons to be substituted.—*Re* TOBIN'S ESTATE (1858), 3 N. S. R. (2 Thom.) 338.—**CAN.**

l (p. 46) **ll.** —— —— *Conduct of co-executor prejudicial to trust property.*]—On the appln. of an exor. held that an order should go for the removal of his co-exor. on the ground that the latter's conduct had been such as to endanger the trust property, although nothing in the nature of fraud or dishonesty was imputed against him.—*Re* SOMERSET ESTATE, [1928] 2 W. W. R. 697 ; 40 Man. L. R. 566.—**CAN.**

se. *Contested motion—Costs of.*]—The costs of a contested motion, for the removal of an administrator & the appointment of another in his place, should not be taxed as between solr. & client.—*Re* GAMMON ESTATE, PAYNE *v.* GAMMON, [1927] 2 D. L. R. 605 ; [1927] 1 W. W. R. 506 ; 38 B. C. R. 153.—**CAN.**

sf. *Order for made upon originating notice—Direction to pass accounts—& replace trust fund.*]—An order under Trustee Act, R. S. O. 1927, c. 150, s. 36, for the removal of an exor., may now be made summarily upon originating notice. An order removing an exor. & trustee directed him to pass his accounts. It was not denied that he was liable for the loss or jeopardy of a considerable sum of money. He made a claim for the statutory compensation for his services which was not admitted ; & he was required, pending the taking of the accounts, to replace the trust fund for which he was not able to show any security in hand.—*Re* PATTERSON, [1928] 3 D. L. R. 197 ; 62 O. L. R. 255.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.—C.

274 ia. *S. P.* PUBLIC TRUSTEE *v.* REGISTRAR-GENERAL OF LAND, [1927] N. Z. L. R. 839.—**N.Z.**

PART I. SECT. 12, SUB-SECT. 1.

sg. *What amounts to renunciation—Right reserved to infant to come in & prove.*]—Probate was granted to adult exors., reserving to infant exor. a right to be admitted to executorship upon attaining majority :—*Held :* as the infant exor. had not declined to prove the will, & his right to prove was reserved to him by the letters probate, his minority did not prevent his taking.—*Re* GRACEY (1928), 63 O. L. R. 218.—**CAN.**

PART I. SECT. 12, SUB-SECT. 5.—A.

d i. ——.]—The ct. in a proper case will allow an exor. who has renounced probate to retract his renunciation.—*Re* FOSTER, [1930] N. Z. L. R. 60.—**N.Z.**

PART I. SECT. 13, SUB-SECT. 2.

n i. —— ——.]—The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated.—MEGHRAJ *v.* KRISHNA CHANDRA BHATTACHARJI (1923), I. L. R. 46 All. 286.—**IND.**

r i. ——.]—*Re* CROFT ESTATE, [1937] 1 W. W. R. 463 ; 51 B. C. R. 359.—**CAN.**

PART I. SECT. 13, SUB-SECT. 8.—B.

471 i. *General rule.*]—Although an exor., who elects to act, may be sued before probate, the ct. has no jurisdiction over a person as exor., who has obtained a grant of probate in a foreign country, unless there were assets of testator within the jurisdiction at the time of his death, in respect of which the ct. may reasonably assume that the exor. will clothe himself in due course with the necessary representative character by an application for probate or the resealing of the foreign probate.—NAGEL *v.* HOUGH (1927), 27 S. R. N. S. W. 418 ; 44 N. S. W. W. N. 121.—**AUS.**

PART I. SECT. 14, SUB-SECT. 3.—A.

b i. ——.]—Letters of administration relate back to the death of the intestate so as to enable the administrator to

Part II.—Probate and Letters of Administration.

701. Before this case add :—

Grant of probate or administration where no estate.]—*See* Administration of Justice Act, 1925 (c. 55), s. 2 (1).

718a. —— —— ——.]—CHAMBERLAIN *v.* AGAR (1813), 2 Ves. & B. 259 ; 35 E. R. 317.

Annotation :—**Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm 525.

734a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669 ; 36 J. P. 696 ; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

771a. —— **Letters referred to must be produced or accounted for.**]—On an application for leave to depose as to the death of a person who had disappeared, the affidavit of appct. referred to letters from that person which were not produced or accounted for, & did not explain the delay which had occurred in making the application, & there was no corroborative statement of belief of the death :—*Held :* the hearing must be adjourned for a further & better statement.—*In the Goods of* CLARKE, [1896] P. 287 ; 66 L. J. P. 9.

774a. *S. P. In the Goods of* BARBER (1886), 11 P. D. 78 ; 56 L. T. 894 ; 35 W. R. 80.

784. *Add. Annotation :*—**Refd.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

858. *Citation :*—For " 34 Ch. D. 177 " read " 24 Ch. D. 177."

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bring action in respect of matters done between the death & his appointment. —DOE d. MCKINLAY *v.* ELLIOTT (1851), 3 Nfld. L. R. 180.—**NFLD.**

PART I. SECT. 14, SUB-SECT. 3.—B. (b).

sh. *Liability on agreement—Entered into before grant.*]—LARRY *v.* BAKER (1902), 7 Terr. L. R. 145.—**CAN.**

sk. *Action on life assurance policy.*]—Pltf., the only child of J., who on Sept. 30, 1926, as the result of an accident, died, intestate & a widower, commenced this action on Nov. 26, 1926, upon an accident insurance policy issued by defts. upon the life of J. Pltf. was not named as beneficiary in the policy. On May 9, 1927, while the action was pending, pltf. obtained from a Surrogate Ct. letters of administration to the estate of J., &, when the action came on for trial, in 1928, applied for leave to amend the proceedings by describing himself as the administrator of the estate of J. :—*Held :* the amendment should be allowed & pltf. awarded judgment for the amount of the policy. The letters of administration related back so as to validate the action already commenced by pltf.—JOHNSON *v.* GENERAL ACC. ASS'CE CO., [1929] 1 D. L. R. 597 ; 63 O. L. R. 296.—**CAN.**

PART I. SECT. 15, SUB-SECT. 2.

g i. ——.]—*Held :* the sale of the reversion in a term of years, under a *fi. fa.* on a judgment against an exor. *de son tort*, was a valid sale as against the rightful administrator.—BAIN *v.* MCINTYRE (1867), 17 C. P. 500.—**CAN.**

603 i. *When binding—When lawful.*]—An exor. *de son tort* is not necessarily a wrong-doer & his possession cannot always be regarded as wrongful at its inception. His intentions in respect of the acts attributed to him must be taken into account, to determine when the conversion took place & as on what date liability is to be fastened on him.—SHIVAPRASAD SINGH *v.* PRAYAGKUMARI DEBEE (1933), I. L. R. 61 Calc. 711.—**IND.**

613 i. *Rights of buyer from executor de son tort.*]—TRUSTS & GUARANTEE CO. *v.* NELSON, [1930] 3 W. W. R. 241 ; 4 D. L. R. 1032 ; *revsg.*, [1930] 3 D. L. R. 985.—**CAN.**

sl. *On whom binding—Third party—Estoppel.*]—Where a buyer of goods under a conditional sale agreement induces a buyer of the same goods from him under a similar agreement to deliver up the goods to the exor. *de son tort* of the original seller in settlement of his, the first buyer's claim, he will not be allowed, in an action against such second buyer, to deny the authority of the exor. *de son tort* to take over the goods.—LARSON *v.* COATES (Sask.), [1926] 4 D. L. R. 561 ; [1926] 3 W. W. R. 397.—**CAN.**

sm. —— *Administrator of estate—Onus on administrator.*]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by the deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels :—*Held :* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1928] 3 W. W. R. 723.—**CAN.**

PART I. SECT. 15, SUB-SECT. 4.—B. (a).

m i. ——.]—In an action by a creditor of a deceased against an exor. *de son tort* it is proper to sue deft. as executor as well as personally, & if pltf. establishes his claim the judgment should be that the amount thereof be paid out of the assets of deceased, if deft. have so much, &, if not, then out of deft.'s personal assets.—BURNS P. & CO. *v.* CZERNIJ, [1928] 4 D. L. R. 854 ; [1928] 3 W. W. R. 294.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.—A. (a).

697 i. *Construction of documents—Only for purposes of admission to probate.*]—NANDKISHORE LAL *v.* PASUPATI NATH SAHU (1928), I. L. R. 7 Pat. 396. —**IND.**

sd. *Will already administered—Not matter of construction.*]—Testator had, by his will, bequeathed his farm to his son J. on condition that he should reside on the farm & assist in the management thereof until he attained twenty years, with a gift over to testator's son W. in the event of this condition not being fulfilled. In 1928 J. attained twenty-one years, whereupon the surviving trustee of the will gave him possession of the farm. On the death of J. in 1930, W. brought a summons for the construction of the will. It was contended that J. was not entitled to the farm by reason of the fact that he had failed to comply with the conditions of the bequest. Pltf. submitted that the ct. had jurisdiction to determine the matter either under R. S. C., Ord. 54A, r. 4 or Ord. 55, r. 4 :—*Held :* the trustee having administered & allowed J. into possession the question at issue was not a proper one to be determined on an originating summons either as a matter arising in the administration or upon the construction of the will.—WIGHTMAN *v.* COUSINS, [1931] N. I. 138 ; *affd.*, [1932] N. I. 61.—**IR.**

PART II. SECT. 1, SUB-SECT. 1.—A. (b).

703 i. *For letters of administration—Grant required to assist prosecution of claims abroad.*]—It is not the duty of the ct., by determining the abstract question who is the deceased's proper representative, to assist such representative to prosecute claims to titles & property abroad.—*In the Goods of* CAMPBELL WILSON, [1929] S. R. (Q.) 59.—**AUS.**

PART II. SECT. 1, SUB-SECT. 1.—D.

c i. ——.]—The judge of a Surrogate Ct. cannot adjudicate on a claim to moneys of a deceased person under an allegd *donatio mortis causâ.*—*Re* GRAHAM (1911), 25 O. L. R. 5.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

sg. *Will mutilated—By accident.*]—Testator made a will, which was discovered, a year after his death, mutilated by the destruction of parts thereof containing certain words of the will. The state of the will when discovered was due to the way in which it had been kept by testator. Testator had also made a draft will, as well as a pretended will, but no copy of his last will, & no oral evidences as to the precise form of the last will as it stood before becoming mutilated was forthcoming. The ct. made an order for probate of the will, in so far as the same was legible, & so far as the same was illegible, in the words & figures contained in a copy of the will which, as regards the missing portions, had been reconstructed from the context of the will, from the draft will & from the pretended will.—*In the Goods of* WRIGHT (1908), 44 I. L. T. 137.—**IR.**

sk. —— *Intentionally.*]—Testator made a will. Subsequently he stated to witnesses that he had cut a certain beneficiary out of his will. To one of these witnesses, after having stated what he had done, he showed a strip of paper, which he informed the witness was the piece of his will which he had cut out, & which he thereupon threw into the fire, where the witness saw it burning. After his death, on the will being opened, it was found to have a piece cut out of it. Probate

884. For "—— —— **Will proved in France.**]" read "—— —— —— **Will proved in France.**]"

885. For "—— —— ——.]" read "—— ——

902. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

911a. —— **Who is—Holder of office appointed executor.**]—Where the holder of an office has been appointed exor., the person entitled to probate is the holder of that office, not at the time when the will was executed, but at the date of testator's death.—*In the Estate of* JONES (1927), 43 T. L. R. 324.

912. *Add. Annotation :*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

919a. —— **Power to act as executor given by Act of Irish Free State.**]—By Public Trustee Act, 1906 (c. 55), & Public Trustee (Custodian Trustee) Rules, 1926, r. 30, made thereunder, a corpn. constituted under the law of the United Kingdom or any part thereof & having a place of business there & empowered by its constitution to undertake trust business within the meaning of Public Trustee Act & the rules in question is expressly empowered to act as trustee & exor. & administrator, & power to grant representation to a trust corpn. is conferred by Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 161. By an Act of the Irish Free State passed in 1929, after the separation from Great Britain, the Bank of Ireland was for the first time authorised to act as exor. or administrator. The Bank of Ireland has places of business in Northern Ireland, therefore in the United Kingdom. A testator domiciled in the Irish Free State, by his will dated in 1931, appointed the governor & co. of the Bank of Ireland his exor. Amongst the assets was personal estate domiciled in England. As a preliminary to the issue of a grant of probate in England to the English estate the Bank moved for leave to swear by its representative that it fulfilled the definition of a " corpn." in the Acts & Rules : —*Held :* the Bank having been empowered to undertake the business in question only since the establishment of the Irish Free State, had that power within the Free State only & was not for the purpose of the motion a " corpn. constituted under the law of the United Kingdom or any part thereof," & the motion accordingly failed.—*Re* BARLOW (H. T.), [1933] P. 184 ; 102 L. J. P. 84 ; 149 L. T. 456 ; 49 T. L. R. 544 ; 77 Sol. Jo. 524.

924a. ——.]—Ct. of Probate Act, 1857 (c. 77), s. 73, confers wide powers on the ct. Under it an exor., not willing or competent to take probate, may be replaced by an administrator to be appointed by the ct., if it shall appear to be necessary or convenient by reason of special circumstances. Misfeasance on the part of an exor. with regard to the estate of his testator is a ground for proceeding under the sect., even after the exor. has intermeddled.

Exors. had intermeddled & neglected to prove the will, & had made an agreement with the universal legatee that the will should not be proved. In passing them over the ct. ordered that a grant of administration should be made to a third person to be agreed upon by the exors. & the legatee, or in default to be appointed by the ct.—*In the Estate of* POTTICARY, [1927] P. 202 ; 96 L. J. P. 94 ; 137 L. T. 256.

931. *Add. Citation :*—*sub nom. In the Goods of* HETT, 6 Jur. 350.

931a. —— —— **Failure to prove will.**]—*In the Estate of* POTTICARY, No. 924a, *ante*.

931b. —— ——.]—Where property was left to an exor. in trust for a minor the ct. passed over the exor. without citation, on proof that his interest was adverse, that he had delayed obtaining probate & that he was unfit, although he resided in England & apparently was competent & not unwilling to act.—*In the Goods of* RAY (1926), 96 L. J. P. 37 ; 136 L. T. 640.

Annotations :—**Refd.** *In the Estate of* Potticary, [1927] P. 202 ; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

938a. ——.]—(1) No rule of the common law as to evidence is contravened by the admission of secondary evidence as to the contents of a lost document, & when the due execution of a no longer existing testamentary paper is established, & its contents are shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of such execution.

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decreed of the will in its mutilated condition.—*In the Goods of* BENTLEY, [1930] I. R. 455.—**IR.**

PART II. SECT. 5, SUB-SECT. 5.

r i. —— —— *Photostat copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England, & was deposited in the Principal Probate Registry of the High Ct., London. The ct. admitted a photostat copy of the will to probate, it having been sealed & certified. Such a document, if consisting of several pages, should be sealed on every page & certified on the last.—*In the Goods of* TRACEY, LENNON *v.* GRAY, [1931] I. R. 374.—**IR.**

r ii. —— —— *Will proved in Sweden.*]—When a will has been probated, or recognised as a valid will, in a jurisdiction other than a British country or a State of the United States of America, probate may be granted by a Surrogate Ct. in Saskatchewan upon production of a copy of the will & of the decree of probate or other act of recognition thereof, & without requiring further evidence of its validity. The extract in question herein, from the records of a District Ct. in Sweden, & the sworn translation thereof, quoted in the judgment, held admissible in evidence on an appln. for letters of administration with the will annexed of the estate of a husband who with his wife had executed a joint will in Sweden.—*Re* BERGMAN, [1928] 1 W. W. R. 601.—**CAN.**

r iii. —— —— *Will proved in Scotland.*]—*Re* CLAEY, [1928] 2 D. L. R. 971 ; [1928] 1 W. W. R. 974.—**CAN.**

PART II. SECT. 5, SUB-SECT. 11.

sn. *Where suspicion arises only as to particular provisions.*]—In all cases in which a will is prepared under circumstances which raise the suspicion of the ct. that it does not express the mind of testator, it is for those who propound the will to remove that suspicion, & it is only when that has been done that the onus is thrown on those who oppose the will to prove fraud or undue influence. Where the suspicion arises only as to one particular provision which is severable, & that suspicion is not removed the ct. can admit the rest of the document to probate.—SARAT KUMARI DEBI *v.* SAKHI CHAND (1928), L. R. 56 Ind. App. 62, P. C.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—A.

n i. —— ——.]—Probate may be granted to an extrix., even though at the date of testator's death & of the application she was resident out of the jurisdiction of the ct.—*Re* WALLEN, [1926] N. Z. L. R. 729.—**N.Z.**

n ii. —— *Declaratory judgment.*]—The High Ct. of Ontario has no jurisdiction to pronounce a declaratory judgment that an exor. is entitled to probate.—MUTRIE *v.* ALEXANDER (1911), 23 O. L. R. 396.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—C.

r i. —— *Allegation of undue influence.*]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment.—SMITH *v.* BIRD (1924), 45 N. L. R. 381.—**S. AF.**

(2) Declarations of testator made after execution of the will are not admissible as to the fact of execution itself, as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed, & no longer in existence.—BARKWELL *v.* BARKWELL, [1928] P. 91; 44 T. L. R. 207; 72 Sol. Jo. 69; *sub nom. In the Estate of* BARKWELL, BARKWELL *v.* BARKWELL, 97 L. J. P. 53; 138 L. T. 526.

956a. ——.]—OAKES *v.* UZZELL, No. 968a, *post.*

962. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

968a. —— ——.]—One of the attesting witnesses of the execution of a will must always be called by the party propounding the document. The attesting witness is then the witness of the ct., & the party by whom he is called may cross-examine to disprove a statement made, or evidence given by him, which appears to be hostile to due execution. —OAKES *v.* UZZELL, [1932] P. 19; 100 L. J. P. 99; 146 L. T. 95; 47 T. L. R. 573; 75 Sol. Jo. 543.

970. *Add. Annotation :*—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

979. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

986. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

991. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

992. *Add. Annotation :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

993a. —— ——.]—Where there is a defect in the attestation clause, the evidence of one witness is required. But where an affidavit is necessary to account for alterations, & where two witnesses are required to make an affidavit, & these join in one affidavit, both shall depose to the execution (SIR H. JENNER FUST).—*In the Goods of* BATTEN (1849), 2 Rob. Eccl. 124; 7 Notes of Cases, 288; 163 E. R. 1264.

1011a. —— ——.]—*In the Goods of* BRINING (1870), 22 L. T. 630; 34 J. P. 694.

1016. *Add. Annotation :*—**Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1017. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1018. *Add. Annotation :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1019. *Add. Annotations :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91. *Generally,* **Refd.** *In the Estate of* Jessop (1924), 132 L. T. 31.

1019a. —— ——.]—Circumstances in which the ct. will grant probate of the contents of a lost will.—*Re* SPAIN (1915), 31 T. L. R. 435.

1022a. —— ——.]—BARKWELL *v.* BARKWELL, No. 938a, *ante.*

1031a. —— **Will gnawed by rats.**]—A will torn in pieces with rats, if a stranger by laying the pieces together could make the devise appear, good; if gnawed before the death, against the will.—ETHERINGHAM *v.* ETHERINGHAM (1646), Aleyn. 2; 82 E. R. 883.

1031b. —— **Belief that will useless.**]—*In the Goods of* LEGG (1848), 6 Notes of Cases, 528.

Annotation :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301.

1031c. —— **Accidental destruction.**]—The ct. will not admit the draft of a will, which has been inadvertently destroyed. to probate on motion.—*In the Goods of* BODY (1865), 4 Sw. & Tr. 9; 34 L. J. P. M. & A. 55; 164 E. R. 1418.

Annotation :—**Apld.** *Re* Sainsbury (1896), 12 T. L. R. 428.

1031d. —— **Destruction by third party—After testator's death.**]—A. devises lands to several persons, & after his death, one who was a friend to the heir at law, snatches the will out of the exor.'s hands & tears it in pieces. The pieces being gathered up, & stitched together, a bill was brought to establish the will, & decreed the devisees to hold & enjoy, & the heir to convey to them.—HAINES *v.* HAINES (1702), 2 Vern. 441; 23 E. R. 883; *sub nom.* HAYNE *v.* HAYNE, Dick. 18.

Annotations :—**Consd.** Davies *v.* Evans (1851), 4 De G. & Sm. 440. **Refd.** Cowgill *v.* Rhodes (1863), 33 Beav. 310.

1031e. —— —— ——.]—A will destroyed after death of testator, who had consented to its destruction before his death. A copy admitted to probate.—*In the Goods of* CARTER (1843), 2 Notes of Cases, 105.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** *In the Goods of* Legg (1848), 6 Notes of Cases, 528.

1031f. —— —— **Without testator's knowledge.**]—A will destroyed in the lifetime of testator, but without his knowledge; substantiated & admitted to proof.—TREVELYAN *v.* TREVELYAN (1810), 1 Phillim. 149; 161 E. R. 944.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** Lister *v.* Smith (1863), 3 Sw. & Tr. 282.

PART II. SECT. 6, SUB-SECT. 3.—B.

949 iii. —— *Attestation clause not read by witnesses.*]—A will was prepared for a testator by his brother, who was sole beneficiary. The will was witnessed in an hotel lounge by two waiters, who gave evidence at the trial to the effect that the execution was informal. The brother & his wife, who were present at the time of the execution, gave evidence to the effect that the will had been duly executed. The evidence of the attesting witnesses was found to be unreliable:—*Held:* notwithstanding the attestation clause was not read by the attesting witnesses, the presumption in favour of due execution applied. Also, no ground of suspicion being suggested, except that the will was prepared by & executed in the presence of the sole beneficiary, & there being no evidence to show that this beneficiary exerted any influence, the presumption was not displaced.—*Re* SPICER, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* MORRIS, [1929] S. A. S. R. 28.—**AUS.**

PART II. SECT. 6, SUB-SECT. 3.—G.

1002 i. *Testator deaf & dumb.*]—Circumstances in which probate of an alleged will of a deaf & dumb person was refused.—*Re* EWEN (DECEASED), [1927] N. Z. L. R. 881.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 5.—A.

k i. —— *At death of testator.*]—On proof of a lost will by a carbon copy produced by the solr. who prepared the original it is not necessary to prove that the original will was in existence at the date of testator's death.—*Re* BARKER'S ESTATE (1933), 6 M. P. R. 327.—**CAN.**

PART II. SECT. 6, SUB-SECT. 5.—B.

1035 i. *Proof of contents—Need of stringent proof.*]—*Re* PERRY [illegible] D. L. R. 930; 56 O. L. R. [illegible].

D. Other Cases.

See case, *infra.*

1042. *Add. Annotation :—As to* (1) **Consd.** *In the Estate of* Birkby (1929), 73 Sol. Jo. 556.

1044. *Add. Annotations :—As to* (1) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *As to* (2) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *Generally*, **Refd.** Smith *v.* Thompson (1931), 146 L. T. 14 ; *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n.

1164. *Add. Annotation :—***Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

1191. *Add. Annotation :—Generally*, **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1247a. —— ——.]—LAMKIN *v.* BABB (1752), 1 Lee, 1 ; 161 E. R. 1.

1271. *Add. Annotation :—***Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1294. *Add. Annotations :—***Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264 ; Robins *v.* National Trust Co., [1927] A. C. 515.

1301a. —— ——.]—Testatrix having directed the person whom she made her residuary legatee to prepare her will, he did so, but by mistake the name of one of the legatees was omitted. Subsequently she directed that three additional bequests should be inserted in the will, which the residuary legatee promised but neglected to do. The will was afterwards read over to testatrix by the residuary legatee, & having declared herself satisfied, she executed it :—*Held :* although the residuary legatee was aware at the time of the execution of the will by testatrix, that her further instructions were not complied with, & that testatrix was ignorant of that fact, still in the absence of fraud on his part the will was entitled to probate.—MITCHELL *v.* GARD (1863). 3 Sw. & Tr. 75 ; 32 L. J. P. M. & A. 129 ; 8 L. T. 438 ; 27 J. P. 487 ; 9 Jur. N. S. 673 ; 11 W. R. 773 ; 164 E. R. 1280.

*Annotation :—***Refd.** Guardhouse *v.* Blackburn (1866), 35 :—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1310. *Add. Annotation :—***Refd.** *Re* Belliss, Polson *v.* Parratt (1929), 141 L. T. 245.

1313a. —— —— ——.]—*In the Estate of* AUSTIN (1929), 73 Sol. Jo. 545.

1317. *Add. Annotation :—As to* (3) **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1318. *Add. Annotation :—***Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1320a. —— ——.]—Where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation & in procuring its execution, probate should not be granted unless the evidence removes suspicion & clearly proves that testator approved the will.—VELLASAWMY SERVAI *v* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

PART II. SECT. 6, SUB-SECT. 5.—D.

sn. *Will in custody of English Probate Court—Sealed & certified photographic copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England & was deposited in the Principal Probate Registry of the High Court, London. The English Probate ct., having been requested to allow the will to be produced at the trial of the action in the Irish Free State, refused, on the ground of absence of jurisdiction : — *Held :* secondary evidence of the will could be given, & a sealed & certified photographic copy was admitted.—LYONS & BLENNERHASSETT *v.* CHALMERS, [1919] I. R. 674.—**IR.**

PART II. SECT. 6, SUB-SECT. 8.—A.

so. *Nature of proof required.*]—The proof necessary to establish a will is not an absolute or conclusive one, but such proof as would satisfy a prudent man.— SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**IND.**

PART II. SECT. 6, SUB-SECT. 8.—B.

1048 ii. ——.]—Where a will is impeached on the ground that testator was not at the time of its execution a person of testamentary capacity, the onus is on those propounding the will to show that it was the will of the testator & that he was a person of testamentary capacity.—PAINTER *v.* HODGKIN (No. 2), [1935] 1 W. W. R. 410.—**CAN.**

1053 i. —— *Wherever ground for suspicion.*]—HOWIE *v.* CHATTERTON, [1926] N. Z. L. R. 595.—**N.Z.**

1053 ii. —— ——.]—The burden of proof as to the execution & the testamentary capacity of testator at the time of the execution of a will lies upon its propounder who has to explain away the suspicious circumstances appearing in the case.—SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**CAN.**

1065 iii. ——.]—If a party propounding a will for probate has satisfied the ct. that testator executed it with due formalities, & that when he did so he was of sound & disposing mind & memory, had full knowledge & appreciation of its contents, & actually comprehended what he was doing, the party propounding has fulfilled the onus upon him ; he does not have to go farther & disprove or negative the alleged exercise of undue influence or fraud ; it is for the party impugning the will to satisfy the ct. of the exercise of undue influence or fraud.—RIACH *v.* FERRIS, [1934] S. C. R. 725 ; [1935] 1 D. L. R. 118.—**CAN.**

sp. *Verbal will.*]—The onus of establishing a verbal will is always a very heavy one ; it must be proved with the utmost precision & with every circumstance of time & place.—VENKAT RAO *v.* NAMDEO (1931), 58 L. R. Ind. App. 362.—**IND.**

PART II. SECT. 6, SUB-SECT. 9.—A.

st. *Non-compliance with Wills Act, R. S., 1923 (c. 146), s. 15.*]—Application refused.—*Re* COX, [1927] 1 D. L. R. 441 ; 59 N. S. R. 103.—**CAN.**

PART II. SECT. 6, SUB-SECT. 9.—D. (g).

1196 i. *Evidence—Witness not available—Attesting witness to will—Affidavit made on proof in common form inadmissible.*]—The affidavit of an attesting witness in statutory form upon probate in common form, is inadmissible after the death of the witness upon proof in solemn form.—*Re* ROBERSON, [1936] 1 D. L. R. 53 ; 5 F. L. J. (Can.) 85.—**CAN.**

PART II. SECT. 6, SUB-SECT. 9.—E.

t i. —— *Plea of forgery.*]—Deft. in a probate action pleaded that the will which pltf. sought to establish was not signed by testatrix or by any other person in her presence & by her direction :—*Held :* as this amounted to a plea of forgery, deft. must disclose the name of the person by whom, & the time when it was alleged the document was signed.—GALLAGHER *v.* KENNEDY, [1931] N. I. 207.—**IR.**

PART II. SECT. 8.

1238 i. *Double grants—Discouraged.*]—When a will appoints one exor. for general purposes & another one for limited purposes, only one grant should be made, & the respective powers of the two exors. should be distinguished therein. The ct. should discourage double grants, & upon the application for probate made by either exor., the other one should be cited.—*Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18. —**CAN.**

PART II. SECT. 9, SUB-SECT. 4.

1241 i. *When knowledge & approval presumed.*]—LIDSTONE *v.* MCWILLIAMS, [1931] 3 D. L. R. 455 ; S. C. R. 695 ; *affg.*, 1 M. P. R. 350.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—A.

1244 i. *Exercise of influence must be proved.*]—MURRAY *v.* HAYLOW, [1927] 3 D. L. R. 1036 ; 60 O. L. R. 629.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—C.

1271 i. *Onus of proof—On party alleging undue influence.*]—*Re* MCWILLIAMS (1930), 1 M. P. R. 350.—**CAN.**

PART II. SECT. 10, SUB-SECT. 3.

b i. ——.]—Where the draftsman of a will empowered by testator to use his own judgment makes a mistake of law or error in drafting, testator is bound by the mistake, but where the draftsman in doing the merely ministerial act of copying what he thinks the testator

1344. *Add. Annotation*:—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1348a. —— **Misdescription of relationship.**]—Where in a will the residue had been left to the grandchildren of a person named & described as "my uncle," whereas he was in fact the cousin of testatrix, the ct. ordered that the words "my uncle" be excluded from probate, which had been granted but not published.—*Re* CLARK (1932), 101 L. J. P. 147 L. T. 240; 48 T. L. R. 544; 76 Sol. Jo. 461.

1351. *Add. Annotation*:—**Folld.** Kitcat *v.* King, [1930] P. 266.

1351a. —— ——.]—A testamentary paper headed "Codicil to be attached to my will," & proceeding "This is the last will & testament of A. B." did not expressly or by implication revoke an earlier will although it effected a substantial difference in the destination of a large portion of the property passing. The same paper bore, in addition to the signature of the testator, the signatures of four persons, two of whom were beneficiaries under it; all four signatures had been placed on the paper at the time of attestation, & there was evidence that the two beneficiaries signed otherwise than as attesting:—*Held*: the words "last will & testament" did not preclude the admission to probate of both papers, & probate of the codicil might go without including the names of the two beneficiaries as attesting witnesses.—KITCAT *v.* KING, [1930] P. 266; 99 L. J. P. 126; 143 L. T. 408; 46 T. L. R. 617; 74 Sol. Jo. 488.

1367. *Add. Annotation*:—**Distd.** *In the Estate of* Caie, *In the Estate of* Davis (1927), 71 Sol. Jo. 898.

1369a. —— —— ——.]—The ct. directed that certain non-testamentary words of an offensive nature should be omitted from the probate of a will, but declined to order their expungement from the will itself.—*Re* MAXWELL (1929), 140 L. T. 471; 45 T. L. R. 215; *sub nom. In the Estate of* MAXWELL, 73 Sol. Jo. 159.

1369b. —— —— ——.]—*In the Estate of* RAWLINGS (1934), 78 Sol. Jo. 338.

1369c. —— —— **Repugnant to testator's family.**]—The ct. will permit words of a will which are not dispositive to be omitted from the probate, though they make no personal allusion to any individual, if they are otherwise offensive & objectionable & repugnant to the members of the family of the testator.—*In the Goods of* BOWKER, [1932] P. 93; 101 L. J. P. 30; 146 L. T. 572; 48 L. R. 332; 76 Sol. Jo. 344.

1371a. —— ——.]—*In the Estate of* CAIE (1927), 43 T. L. R. 697; *sub nom. In the Estate of* CAIE, *In the Estate of* DAVIS, 71 Sol. Jo. 898.

1375a. Settlement—Identical bequests.]—Where a will contained bequests identical with the trusts of a marriage settlement the ct. did not require the whole of the marriage settlement to be set out in the probate, but only such extracts as were necessary to explain the bequests.—*In the Goods of* GARBET (1869), 33 J. P. 792; 21 L. T. 366.

1383. *Add. Annotation*:—**Consd.** *In the Estate of* Todd, [1926] P. 173.

1388a. —— ——.]—*In the Estate of* TODD, No. 1398a, *post*.

1398a. —— **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.

Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expressly directed that the American will should be "probated" in America:—*Held*: (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America.—*In the Estate of* TODD, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.

1410a. ——.]—*In the Estate of* TODD, No. 1398a, *ante*.

1431a. Where minority interest.]—*Re* HERBERT, No. 1883a, *post*.

1431b. ——.]—Under Jud. (Consolidation Act), 1925 (c. 49), ss. 160 (1) & 162 (1), the ct. cannot make a grant of administration to less than two individuals, when it is aware that there is a minority interest.—*Re* WHITE, [1928] P. 75; 96 L. J. P. 157; 138 L. T. 68; 43 T. L. R. 729; 71 Sol. Jo. 603, C. A.

1431c. —— **Administrator pendente lite.**]—*Re* PRICE (1931), 75 Sol. Jo. 295.

has written in his instructions inserts a word in error & the mistake is not brought to the notice of testator the word so inserted must be omitted from probate.—PERPETUAL TRUSTEE CO. *v.* WILLIAMSON (1929), 29 S. R. N. S. W. 487; 46 N. S. W. W. N. 151.—AUS.

PART II. SECT. 10. SUB-SECT. 4.—B.

1369 i. *Objectionable matter—Unconnected with testamentary dispositions—Scandalous or defamatory matter.*]—The Supreme Ct. has jurisdiction, to be exercised with great care, to order that words in a will, which are scandalous or defamatory & in no way germane to the dispositions of the will, be omitted from the probate.

Testator stated: "I make no provision for my wife on account of her intemperate habits & other misconduct." The ct. refused to order those words be omitted from the probate.—*Re* O'REILLY'S WILL, [1927] V. L. R. 533; [1927] Argus L. R. 396.—AUS.

PART II. SECT. 11, SUB-SECT. 1.

sn. *Appeal from refusal to grant.*]—*Re* MACDONALD, R. *v.* SURROGATE COURT JUDGE (No. 2), [1930] 2 D. L. R. 995; 1 W. W. R. 261; 38 Man. L. R. 471.—CAN.

sp. ——.]—Appeal from refusal to grant administration under Surrogate Ct. Act only lies where the grant is contested.—DICKSON *v.* MONTEITH (1887), 14 O. R. 719.—CAN.

PART II. SECT. 11, SUB-SECT. 4.—A

1423 iii. ——.]—The rule that in granting letters of administration the grant will follow the majority of interests is a stronger rule than that under which the preference is usually given to a man over a woman. The fact that one of appcts. has a large claim against the estate is a circumstance to be considered.—BELL *v.* SPELLISCY, [1932] 1 W. W. R. 174.—CAN.

PART II. SECT. 11, SUB-SECT. 4.—B.

sp. *To attorney of executors.*]—*Re* BULLEN (DECEASED) (1926), 37 B. C. R. 240.—CAN.

1463a. —— **" Special circumstances."**]—This was an application by two nominees for a grant of letters of administration of the estate of an intestate, whose next of kin were unable to agree on any one or more of them administering the estate. Being all *sui juris*, they signed an act of renunciation in which they consented to the appcts. taking the grant subject to the approval of the ct. It was submitted that though normally the ct. would make a grant only to kindred of an intestate, in " special circumstances " it would make a grant to a stranger. The ct. exercised that power under sect. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 162, as amended by Administration of Justice Act, 1928 (c. 26), s. 9 :—*Held :* in the " special circumstances " the order would be made as prayed.—*Re* MORGANS (W. A.) (1931), 145 L. T. 392 ; 47 T. L. R. 452.

1464a. Nominee of plaintiff—Action against estate under Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41).]—In the absence of a personal representative of a deceased intestate, against whose estate a cause of action survived by virtue of Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, the ct. appointed as administrator of deceased the nominee of a party intending to prosecute the cause of action in order that proper parties to the action should be constituted. The machinery of Administration of Justice Act, 1928 (c. 26), s. 9, proviso (*b*), applied.—*In the Estate of* SIMPSON, *In the Estate of* GUNNING, [1936] P. 40 ; 105 L. J. P. 7 ; 154 L. T. 136 ; 52 T. L. R. 117 ; 79 Sol. Jo. 861.

1464b. —— ——.]—*Re* CUMMING (1935), 79 Sol. Jo. 861 ; *sub nom. In the Estate of Gunning* [1935] W. N. 206 ; 80 L. Jo. 399 ; 180 L. T. Jo. 388.

1474. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

1485. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

1508. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1509. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1510. For " —— **Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary** " read " —— **Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary.**"

1566. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1650a. ——.]—Testatrix commenced a will with the words : " This is my last will, the former one being cancelled," having substituted for the German word " *ungültig* " its English equivalent " cancelled." This will made dispositions quite different from those in an earlier will, without however disposing of the residue :—*Held :* the later will revoked the earlier, &, testatrix being illegitimate, the ct. granted letters of administration to the Treasury Solicitor with the will annexed.—JONES *v.* TREASURY SOLICITOR (1932), 147 L. T. 340 ; 48 T. L. R. 615 ; 76 Sol. Jo. 690 ; *affd.* 49 T. L. R. 75.

1651. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

1653. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1656. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines, [1927] A. C. 185.

1675a. —— **Death of foreigner domiciled abroad—Estate insolvent—No proof by executor.**]—Deceased, a Peruvian, died in Peru on Feb. 6, 1932, leaving a will of which his son was the surviving exor. The estate was insolvent & consisted in part of English assets which formed the subject of pending proceedings in Chancery. The exor. had not been cited & had not renounced probate. There was evidence that the exor., who had been in this country since the death of deceased, had taken no steps to obtain probate & had withdrawn a retainer given to English solrs., intending to leave the country without taking probate. The ct., in the exercise of its general jurisdiction, passed over the exor., & made a grant of administration with the will annexed to English creditors of deceased.—*In the Estate of* LEGUIA, *Ex p.* ASHWORTH, *Ex p.* MEINERTZHAGEN, [1934] P. 80 ; 103 L. J. P. 34 ; 150 L. T. 339 ; 50 T. L. R. 177 ; 78 Sol. Jo. 136.

PART II. SECT. 11, SUB-SECT. 4.—C.

1447 ii. —— ——.]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—STONEY *v.* STONEY (1923), I. L. R. 2 Pat. 508.—**IND.**

PART II. SECT. 11, SUB-SECT. 4.—F. (c).

sr. *Widow separated from husband for eighteen years.*]—A widow having had good reason for discontinuing to live with her husband :—*Held :* the fact that she had not lived with him for 18 years prior to his death & they had had nothing to do with one another during that long period was not a sufficient reason, there having been no misconduct on her part, for refusing her a grant of administration directly or through her attorney.—*Re* HOLMES ESTATE, [1931] 3 W. W. R. 665.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—G. (a).

1596 ii. —— *Application by former nominee for widow—English Noncontentious Business Rules, r.* 28.]—After the refusal of a grant to the nominee of the widow the widow renounced her right to administer, & the nominee made another application based on the fact that he was one of the next of kin :—*Held :* appct. being *prior petens* & there being nothing in the circumstances requiring a strict application of English Noncontentious Business Rules, r. 28, the letters of administration should be granted to him. The English Noncontentious Business Rules 28, 33, 34, are in force in Saskatchewan.—*Re* KRAUSE ESTATE (Sask.), [1929] 4 D. L. R. 1082 ; 1 W. W. R. 896.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—G. (d) i.

1 i. —— *Those with majority of interests preferred.*]—Between next of kin of the same degree, the ct. will appoint as administrators those with the majority of interests.—*Re* MCCARTHY, [1936] 1 D. L. R. 735 ; 5 F. L. J. (Can.) 199.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—H.

st. *Preferred to official administrator—Though resident out of jurisdiction—Agent managing estate.*]—*Re* LELAIRE (1903), 9 B. C. R. 429.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—K. (a).

sv. *Creditor with judgment against debtor—Right to file bill against real representative—Before suing out execution.*]—DUFFY *v.* GRAHAM (1869), 15 Gr. 547.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—M.

sm. *Ex-convict.*]—A person who has been convicted of felony, & has served his sentence, is in the same position as if pardoned, & can be appointed administrator.—*In the Goods of* COLEMAN. [1926] I. R. 327.—**IR.**

sp. *Adopted child.*]—*Re* WLADYSLAW DZURMAN ESTATE (1936), 44 Man. L. R. 151.—**CAN.**

1701. After this case add :—

Compare No. 1773a, *post.*

1772a. Remainderman—Settlement determined on death of life tenant.]—Where a woman died intestate without known next of kin & was, at the time of her death, the life tenant of an estate previously settled upon her by will, the settlement was determined on her death, & the legal estate vested in the personal representative of the life tenant. The ct. made a general grant of administration to the remainderman under the settlement, following the non-appearance of persons interested in the life tenant's estate who had been cited. —*In the Estate of* BORDASS, [1929] P. 107 ; 98 L. J. P. 65 ; 140 L. T. 120 ; 45 T. L. R. 52 ; 72 Sol. Jo. 826.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1772b. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164 ; 98 L. J. P. 66 ; 141 L. T. 32 ; 73 Sol. Jo. 221.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1773a. Poor law guardians—Administration of estate of orphan's deceased parent.]—By Poor Law Act, 1927 (c. 14), a board of guardians may act in certain circumstances as *in loco parentis* in respect of an orphan child, & in that capacity is entitled to take out letters of administration of the estate of the child's deceased parent for the benefit of the child.—*Re* PETERS (1929), 142 L. T. 328 ; 46 T. L. R. 119 ; 74 Sol. Jo. 13.

1774. *Add. Annotation :*—**Refd.** *Re* White, [1928] P. 75.

1780. *Add. Annotation :*—**Refd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

1785. *Add. Annotation :*—**Refd.** *In the Estate of* Potticary, [1927] P. 202.

1873a. Doubt as to capacity in which person entitled—Refusal to take grant in either capacity.]—An intestate was presumed to have died in or since 1905. Owing to the uncertainty of the date of his death it was not known whether he was survived by his father, who in that event would have been entitled to a grant of administration. The father died in 1909 leaving a will, & a brother of the presumed deceased was now entitled to a grant of administration of his estate whether as his next of kin or as the exor. of his father. The brother of the presumed deceased refused either to renounce his derivative right as exor. of his father or to take the grant in his original right as next of kin of his brother, & he had become bkpt. The ct. granted administration under Ct. of Probate Act, 1857 (c. 77), s. 73, to the Public Trustee.—*In the Estate of* PARNALL, [1936] P. 47 ; 105 L. J. P. 20 ; 154 L. T. 374 ; 52 T. L. R. 160 ; 80 Sol. Jo. 94.

E. To whom Grant may be made.

(Vol. XXIX., p. 170.)

See, also, Administration of Justice Act, 1928 (c. 26), s. 9.

1883a. —— **During minority.**]—Jud. (Consolidation) Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested ; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857 (c. 77), s. 73.—*Re* HERBERT, [1926] P. 109 ; *sub nom. In the Goods of* HERBERT, 95 L. J. P. 53 ; 135 L. T. 123 ; 42 T. L. R. 469.

Annotations :—**Consd.** *Re* White (1927), 43 T. L. R. 729. **Dbtd.** *Re* White, [1928] P. 75. **Consd.** *Re* Price (1931), 75 Sol. Jo. 295.

2056a. ——.]—Testator made his will leaving all his money to A. There was no appointment of an exor. A. moved for administration with the will annexed. The parties interested in intestacy resisted the application :—*Held :* in the circumstances the application failed, the persons entitled in intestacy taking the grant in priority to a legatee or devisee under Non-contentious Rules, r. 119, operating since Jan. 1, 1926, in the case of an estate not wholly disposed of.—*In the Goods of* GATES, [1928] P. 128 ; 97 L. J. P. 76 ; 138 L. T. 714 ; 44 T. L. R. 353 ; 72 Sol. Jo. 172 ; *varied*, [1928] P. 178, C. A.

2314a. —— ——.]—An administrator with a will annexed being also universal legatee & devisee under the will was declared bkpt. & a trustee of his estate was appointed. At the expiration of twelve months from the death of testator the administrator had absconded from the country & had not since been heard of. A grant of special administration was made to the trustee in bkpcy. as a person interested in the estate within Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 164 (1).—*In the Goods of* ROSSE, [1934] P. 29 ; 103 L. J. P. 32 ; 150 L. T. 220 ; 50 T. L. R. 72 ; 78 Sol. Jo. 30.

PART II. SECT. 11, SUB-SECT. 5.—D. (c).

1834 i. *Conviction for killing intestate.*]—A husband, who has been convicted of killing his wife, who died intestate, has no claim to her estate, & neither he nor his attorney is entitled to administer it.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART II. SECT. 11, SUB-SECT. 5.—E. (c).

sw. *Right of next of kin to be appointed guardian.*]—*Re* BELL ESTATE (Sask.), [1929] 3 W. W. R. 68.—**CAN.**

PART II. SECT. 12, SUB-SECT. 1.—B. (a).

sy. *Dependent on value of interest.*]—The priority of right to the grant of administration with will annexed is regulated by the value of the interest under the will, the widow (as such) having no such priority of right as she would have in the case of the grant of general letters of administration without a will.—*Re* CAMPBELL, [1933] N. Z. L. R. 817.—**N.Z.**

PART II. SECT. 12, SUB-SECT. 1.—B. (h).

2155 i. *Where estate insolvent—Assets assigned before death to executrix—Executrix neither proving nor renouncing.*]—*Held :* letters of administration with a copy of the will annexed should be granted to a duly appointed syndic of the creditor, who might be one of its officers.—*Re* RANDALL, [1927] V. L. R. 535 ; 49 A. L. T. 89 ; [1927] Argus L. R. 395.—**AUS.**

PART II. SECT. 12, SUB-SECT. 1.—B. (j).

sg. *Nominee of renouncing executor.*]—Where a sole executrix who was also the sole beneficiary, an Assyrian by birth & illiterate, renounced probate, the ct. allowed a grant of administration with the will annexed to her nominee who was the son of herself & testator.—*Re* MOSES (1931), 48 N. S. W. W. N. 104.—**AUS.**

2321a. —— **" Person interested in the estate "—Trustee in bankruptcy of administrator.**]—*In the Goods of* ROSSE, No. 2314a, *ante*.

2327a. —— —— **Fresh attorney appointed by surviving executor—Whether entitled to grant.**]—Several exors. out of the jurisdiction gave a power to an attorney to take administration with a will & codicils annexed without reference to survivorship amongst the exors. The attorney took a grant of administration & partly administered the estate. The surviving exor. appointed fresh attorneys. The ct. revoked the grant to the original attorney & made a fresh grant to the fresh attorneys.—*In the Goods of* DINSHAW, [1930] P. 180; 99 L. J. P. 118; 142 L. T. 652; 46 T. L. R. 308; 74 Sol. Jo. 264.

2398a. Where minority interest.]—*Re* PRICE (1931), 75 Sol. Jo. 295.

2436. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2440. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2441a. ——.]—Where administration is taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator, & the foreign principal is not by the law of the domicil an exor., but by virtue of his interest under the foreign will is charged by the law of the domicil with the duties which under English law are imposed on an exor., the ct. will authorise such administrator, after satisfying all English liabilities & all foreign liabilities of which he has notice, to hand over the surplus in his hands to the foreign principal, whose receipt will be a good & sufficient discharge. In such a case the administrator need not issue any foreign advertisements or take any active steps abroad to ascertain the position with regard to debts, as the foreign principal, who by the law of the domicil is in the position of an exor., is in such a case directly responsible for the payment of foreign debts. —*Re* ACHILLOPOULOS, JOHNSON *v.* MAVROMICHALI, [1928] Ch. 433; 97 L. J. Ch. 246; 139 L. T. 62.

2459a. Existence of Spanish civil war.]—PRACTICE NOTE, [1937] W. N. 298.

2485. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2495. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2511a. —— ——.]—COLLISS *v.* HECTOR (1875), L. R. 19 Eq. 338; 44 L. J. Ch. 267; 23 W. R. 485.

2516. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2516a. —— —— **Official Solicitor.**]—In the first case defts. in an action for personal injuries attributed the blame to a third person, who had since died. He left no estate, but he had been insured against such claims for negligence by an insurance co. Pltf. applied under R. S. C., Ord. 16, r. 46, for an order that the Official Solicitor should represent deceased's estate & be added to the record as a deft. The order asked was made without the consent of the Official Solicitor. In the second case, the facts were similar, except that deceased was one of defts. in the action, & that the order was made without the knowledge of the Official Solicitor. The Official Solicitor appealed in both cases:—*Held:* there is no power under R. S. C., Ord. 16, r. 46, to appoint a person against his will to represent the estate of a deceased person.—PRATT *v.* LONDON PASSENGER TRANSPORT BOARD, GREEN *v.* VANDEKAR, [1937] 1 All E. R. 473; 156 L. T. 265; 53 T. L. R. 355; 81 Sol. Jo. 79, C. A.

2518a. —— **Solicitor of deceased defendant.**]—On the death of a deft., the Ct. of Appeal directed his legal personal representative to be added as deft. & discharged an order which had been made appointing deceased's solr. to represent his estate.—HARDY *v.* HOLMES & SPRINZ (1913), H. No. 1314 (unreported), Y. S. C. P.

2523. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2555a. Notice of appointment—Change of title of proceedings.]—Where an order has been made under R. S. C., Ord. 16, r. 46, appointing a person to represent an estate, the order should be left at the Central Office for entry, & the person appointed should file a notice of his appointment & the name & address of his solr., & thenceforward the title of the proceedings should contain the name of the person appointed, described as " A. B., appointed by order dated, etc., to represent the estate of C. D. deceased." The person appointed will then be entitled to be represented in ct. at the hearing as a party (CLAUSON, J.).—*Re* PROSSER, PROSSER *v.* GRIFFITH, [1929] W. N. 85.

2585a. Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).]—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held:* B. was entitled under Jud. (Consolidation) Act, 1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate. —*Re* DALLEY (1926), 136 L. T. 223; 70 Sol. Jo. 839.

2585b. Property subject to life tenancy—Settled Land Act, 1925 (c. 18), s. 20 (1)—Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 6 (c).]—*In the Estate of* JAMES (1926), 162 L. T. Jo. 498.

2585c. Settled land.]—Grants of probate to special exors. are not to be confined to those persons whose qualifications fall within Settled Land Act, 1925 (c. 18), s. 30 (1), & the effect of that Act is not to limit the operation of Administration of Estates Act, 1925 (c. 23), ss. 1, 13 & 22.—*In the Estates of* GIBBINGS, [1928] P. 28; 97 L. J. P. 4; 138 L. T. 272; 44 T. L. R. 230; 71 Sol. Jo. 911.

2585d. —— **Death of settlor fifty years earlier—Personal representatives not traced.**]—G. died in 1882 & the chain of representation to his estate was not known & could not be ascertained without considerable expense. E., testator, died on Mar. 27, 1930, & the present appcts., who were his exors., had taken probate of his will in due course save

& except land vested in testator which was settled previously to his death & not by his will & remained settled land notwithstanding his death. Testator was interested in land settled by the will of G. as follows: (*a*) he was tenant for life for the purposes of Settled Land Act, 1925 (c. 18), of a portion of the N. estate subject to a compound settlement consisting of the will of G. together with an indenture of resettlement of the N. estate dated Sept. 25, 1909; (*b*) he was absolute owner of certain portions of the N. estate, which by reason of a rentcharge upon them continued to be settled land after his death. These portions were included in a settlement created by the will of G. but were not subject to the compound settlement or the resettlement. They were therefore the subject of a separate settlement; (*c*) certain portions of the N. estate of which testator was absolute owner were subject to the same conditions as to title as (*b*) but testator had exonerated these latter from the incidence of the rentcharge as between the various portions of the estate, but he could only do so in so far as the income from both (*b*) & (*c*) was adequate to meet the rentcharge. As regards the burden of the rentcharge as a whole both (*b*) & (*c*) remained subject to it in favour of the chargee. Of these interests in settled land of testator all three remained subject to the rentcharge, the object of which was to provide an annuity to the still surviving widow of G., & apart from the operation of Settled Land Act, 1925 (c. 18), s. 30 (3), for the purposes of that Act, there were originally no trustees of any of these interests of testator under the settlement created by the will of G. On July 22, 1931, S. & W. had already as trustees of the compound settlement & resettlement obtained a grant of special probate to testator as his special exors. limited to settled land, vested in him as tenant for life under the compound settlement & resettlement. Probate of testator's will having excluded settled land there was no representation in respect of the settled land of which he was absolute owner which remained settled land because of the existence of the rentcharge. On the application of the general exors. of the will of testator the ct. revoked the earlier probate & granted general probate to them save & except settled land, of which special exors. had already been appointed by the grant dated July 22, 1931, under the authority of Judicature (Consolidation) Act, 1925 (c. 49), s. 155, without citing the personal representatives (if any) of the settlor, G.—*In the Estate of* POWELL, [1935] P. 114; 104 L. J. P. 33; 152 L. T. 515; 51 T. L. R. 413 79 Sol. Jo. 321.

2603a. —— ——.]—A will duly executed was on the death of testator in the custody of the sole exor., & universal legatee named in it. It was never proved, there not being at that time any property which could pass under it, & was subsequently lost or mislaid. No draft or copy of it was forthcoming. The ct. granted administration of the effects of deceased, limited until the will, or an authentic copy of it, shall be brought into the probate registry.—*In the Goods of* JOHNSON (1865), 11 Jur. N. S. 184.

2617. *Add. Annotation:*—**Consd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2618. *Add. Annotations:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2619. *Add. Annotations:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2744a. Threatened breach—Surety entitled to apply to court—For relief by way of indemnity against liability under bond.]—Sureties who have entered into the usual bond for the proper administration by the administrator of an intestator's estate are entitled to apply to the ct. for relief *quia timet*, & will be granted the same by way of indemnity against their liability thereunder in a case where they have reasonable ground for anticipating jeopardy owing to a threat by the administrator, persisted in up to the issue of the writ, to distribute the estate without providing for contingent liabilities in contravention of the bond.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.

2754a. Right to allege several breaches.]—A party had obtained from a prerogative ct. a general order to put an administration bond in suit against the surety, on the sole ground that the principal had not paid over the residue. On *non est factum* being pleaded, the pltf. suggested breaches, not only for not paying over the residue, but on several other distinct parts of the condition; the Exchequer Ct. refused to compel him to strike out the breaches on the other parts of the condition, or to allow deft. to let judgment go by default, & pay nominal damages on those breaches. —CANTERBURY (ARCHBP.) *v.* ROBERTSON (1832), 1 Cr. & M. 181; 149 E. R. 365.

2777a. —— ——.]—THOMPSON *v.* JUDGE (1854), 2 Drew. 414; 61 E. R. 780; *sub nom.* TOMSON *v.* JUDGE, 2 Eq. Rep. 1141; 23 L. J. Ch. 929; 23 L. T. O. S. 217; 2 W. R. 574.

PART II. SECT. 13, SUB-SECT. 6.—B.

so. *Payment to surety—When allowed to administrator.*]—Where a person who is entitled to a grant of administration, but is otherwise unable to give justifying security, procures a surety bond from an insurance co. & pays a premium thereon, it is within the discretion of the ct. to allow the amount of such premium out of the general personal estate, where the circumstances of the case show that reliable security could not otherwise be obtained, & that the course adopted was reasonable & proper, & for the interest of all parties entitled to the assets.—*Re* LUCAS, PARR *v.* BLAIR, [1900] 1 I. R. 292.—**IR.**

PART II. SECT. 13, SUB-SECT. 7.—B. (b).

oi. —— *Insolvency of administrator.*]—*Re* ELLIOTT SMITH'S ESTATE, [1931] 3 M. P. R. 485.—**CAN.**

sx. *Right of sureties—Anticipated waste by administrator—Injunction & receiver.*]—*In the Estate of* HUNTER (1928), 45 N. S. W. W. N. 170.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—A.

sy. *Foreign will—Incorrect translation annexed.*]—Where letters of administration, *cum testamento annexo*, have been granted with an incorrect translation of a foreign will annexed thereto, the ct. will, upon evidence to its satisfaction, order the substitution of a correct translation in lieu of the incorrect one.—*Re* KLEINSANG (No. 2) (1928), 28 S. R. N. S. W. 559; 45 N. S. W. W. N. 150.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—B. (c).

n i. ——.]—Probate is conclusive proof of the due execution of the will by testator.—CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAP NARAIN SINGH (1926), I. L. R. 5 Pat. 777.—**IND.**

2877. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

2911. *Add. Annotations :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155 ; Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336.

2979a. —— Twenty years after death of testator.]—Administration revoked.—*In the Estate of* MUSGROVE, DAVIS *v.* MAYHEW, [1927] P. 264 ; 96 L. J. P. 140 ; 137 L. T. 612 ; 43 T. L. R. 648 ; 71 Sol. Jo. 542, C. A.

2993. *Add. Annotation :*—**Refd.** Burr *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405.

3011. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

3022a. Absence of necessary party—Non-disclosure of material facts.]—On an *ex parte* motion in this matter in Dec. 1933, a grant of administration with the will annexed was made to creditors of deceased, & the ct., in dispensing with the citation of the exor., expressed it as an exceptional course which should not be regarded as justifying in ordinary cases any relaxation of the usual practice of giving an exor., by a formal notice, the opportunity of appearing before the ct. In July, 1935, the exor. applied for the revocation of the grant, & after fresh evidence the President revoked the grant which he had made, on the ground that on the original motion material facts had not been disclosed which, had they been disclosed, would have caused him to require the citation of the exor. In the order embodying the grant the administrators were not described as creditors, & it was directed that in all future grants of administration to a creditor he should be so described in the order. The administrators appealed against the revocation of the grant :—*Held :* the decision of the President must be affirmed, owing to non-disclosure of material facts. The President had jurisdiction to revoke his own grant, because it had been made in the absence of a necessary party.—*In the Estate of* LEGUIA (A. B.) (1936), 105 L. J. P. 72 ; 155 L. T. 270, C. A.

3074. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

3111. *Add. Annotation :*—**Apld.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

3111a. —— —— Sale of English real estate.]—Scottish exors. with a confirmation resealed under Jud. (Consolidation) Act, 1925 (c. 49), s. 168, can make a good title to English real estate without the necessity of any separate grant in respect thereof.—*Re* HOWDEN & HYSLOP'S CONTRACT, [1928] Ch. 479 ; 97 L. J. Ch. 313 ; 139 L. T. 309 ; 72 Sol. Jo. 400.

PART II. SECT. 15, SUB-SECT. 2.—B. (e).

p. *Revsd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 15, SUB-SECT. 4.—C.

st. *As to title to land.*]—*Held :* probate was not sufficient.—SUTHERLAND *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

PART II. SECT. 15, SUB-SECT. 6.

h i. —— ——.]—Pltfs., who were the exors. of the will of one McA., had obtained from a competent ct. in British Columbia a grant of probate of his will. McA. & deft. had made an agreement under seal by which McA. agreed to sell & deft. agreed to purchase certain land in Alberta, & under which part of the purchase-price was to be met by the assumption of a mtge. The mtge. was foreclosed & title to the land obtained by the mtgee. The agreement for sale was in the possession of McA. in British Columbia at the time of his death & came into the possession of pltfs. there. Pltfs., who were unable to give title to the land to deft., brought an action in Alberta on the personal covenant in the agreement, without having obtained any grant of letters probate, ancillary or otherwise, or any grant of letters of administration with will annexed from any ct. in Alberta :—*Held :* the action was maintainable.—MCALLISTER & MCALLISTER *v.* BEDARD, [1932] 2 W. W. R. 577.—**CAN.**

h ii. —— ——.]—SUTTON *v.* SOUDAK & SOUDAK (GEORGE) FUR CO., [1932] 2 W. W. R. 82; 41 Man. L. R. 38.—**CAN.**

PART II. SECT. 16, SUB-SECT. 1.—B.

n i. ——.]—The High Ct. of Ontario has no power to revoke letters of administration granted by a Surrogate Ct.—BELANGER *v.* BELANGER (1911), 24 O. L. R. 439.—**CAN.**

n ii. ——.]—The judge of the Surrogate Ct. on receiving information that his ct. had issued letters of administration on a false statement of facts has an inherent right to cancel them ; & a further right to appoint a trust co. to act as administrator for the protection of any persons whose interests may have been affected by the mistaken action of the ct.—*Re* PAYNE ESTATE, [1934] 3 W. W. R. 631 ; [1935] 1 D. L. R. 474.—**CAN.**

PART II. SECT. 16, SUB-SECT. 2.—C.

sb. *As to person entitled—Advocate consenting without instructions.*]—Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters : —*Held :* if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261. —**IND.**

PART II. SECT. 16, SUB-SECT. 2.—E.

2988 i. *Administration granted on false affidavit—As to person entitled.*]—Where a grant of administration is made to a man on his fraudulent representation that he was the intestate's lawful widower, but his alleged marriage to the intestate was illegal, he having a wife then living, the grant is void, & neither he nor his exors. can claim any right to or interest in the estate.—IRELAND *v.* PAYNE, [1933] 3 W. W. R. 363 ; *on appeal*, [1934] 2 W. W. R. 188.—**CAN.**

PART II. SECT. 16, SUB-SECT. 2.—J.

sc. *Validity of will not proved.*]—ODYNAK *v.* FESCHUK (Alta.), [1927] 3 D. L. R. 842 ; [1927] 3 W. W. R. 64 ; *revsd.* [1928] 1 D. L. R. 423 ; [1928] 1 W. W. R. 113 ; 23 Alta. L. R. 263. —**CAN.**

PART II. SECT. 16, SUB-SECT. 3.—H.

3055 iii. —— ——.]—On an application to revoke a grant of probate on the grounds that persons who ought to have been cited were not cited, & that the will was a forgery, if the first ground is established the *onus* is upon the opposite party to prove that the will is genuine.—RAMAUANDI KUER *v.* KALAWATI KUER (1927), 55 L. R. Ind. App. 18.—**IND.**

PART II. SECT. 16, SUB-SECT. 4.—A. (b) i.

3063 i. *On acts of administration.*]—Letters of administration were granted to the brother of a man who was erroneously presumed to have died intestate. The administrator, as personal representative of deceased, sold & conveyed to a purchaser a portion of the land belonging to deceased. Upon the subsequent discovery of a will, pltf. obtained a grant of probate :—*Held :* the grant of administration was not void *ab initio* & purchaser had acquired a good title.—MCPARLAND *v.* COULSON, [1930] N. I. 138.—**IR.**

PART II. SECT. 18, SUB-SECT. 1.

3097 ii. —— *Irish Free State—Resealing in Victoria.*]—Letters of administration c.t.a. having been granted in the Irish Free State, & application to have them sealed in Victoria under sect. 81 of Administration & Probate Act, 1928, was made by the attorney under power appointed by the administratrix for that purpose :—*Held :* the letters had not been granted "in the United Kingdom" & consequently could not be sealed under the sect.—*Re* STOKES, [1934] V. L. R. 352. —**AUS.**

PART II. SECT. 18, SUB-SECT. 3.

sd. *Grounds for granting or refusing application for resealing.*]—The ct. has the right, on an application under Alberta Rules, r. 945 (24), for resealing, to inquire as to the original appointment of the administrator, & should refuse the application, where the exors. have the right & duty to apply in Alberta for probate.—*Re* BLAGBURN ESTATE, [1927] 1 W. W. R. 716 ; *affd.*, [1927] 2 W. W. R. 206.—**CAN.**

PART II. SECT. 19.

e i. ——.]—An extrix., to whom probate of a will had been granted in England, appointed appct. as attorney under power in Victoria to procure the resealing of the probate in Victoria :—*Held :* appct. was authorised to produce the probate & obtain the sealing thereof under

3125. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3126. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3127. *Add. Annotations :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139. **Refd.** Thomas *v.* Jones, [1928] P. 162.

3127a. ——.]—The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably propound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of* PLANT, WILD *v.* PLANT, [1926] P. 139 ; *sub nom. Re* PLANT, WILD *v.* PLANT, 95 L. J. P. 87 ; 135 L. T. 238 ; 42 T. L. R. 443 ; 70 Sol. Jo. 605, C. A.

Annotation :—**Refd.** Thomas *v.* Jones, [1928] P. 162.

3127b. ——.]—The principle of the decision in *In the Estate of Plant, Wild* v. *Plant*, No. 3127a, *ante*, that exors. who have established the validity of their will are entitled to their whole costs of the litigation, although they fail in establishing a codicil, does not extend in all cases to costs incurred by them by reason of their insisting upon probate not only of clauses in a will expressing the testamentary mind of their testator, but also of a clause which is found not to be his testamentary act. If a residuary gift is excluded from probate on the ground of want of capacity the question still arises whether the costs so incurred by the exors. are due to their "violation or culpable neglect of duty." If the ct. finds on this issue that an exor. is a wrongdoer, his *primâ facie* right to receive out of the estate costs not otherwise provided for is displaced.—THOMAS *v.* JONES, [1928] P. 162 ; 139 L. T. 214 ; 44 T. L. R. 467 ; 72 Sol. Jo. 255 ; *sub nom. In the Estate of* JONES, THOMAS *v.* JONES, 97 L. J. P. 81.

3130a. —— **In interest suit.**]—In interest suits the unsuccessful party is, as a general rule, condemned in costs. But where the only issue raised was as to the fact of the marriage of deft., who gave to pltf.'s attorney false information as to the place of her marriage, & whose own attorney, although in possession of the certificate of the marriage, returned no answer to two letters he received from the pltf.'s attorney asking for the production of the certificate to save further expense, & only produced it to him on the day of the trial, the ct. refused to condemn the pltf., the unsuccessful party, in costs.—WISEMAN *v.* WISEMAN (1866), L. R. 1 P. & D. 351 ; 35 L. J. P. & M. 22 ; 15 L. T. 415 ; 31 J. P. 40.

3163. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3164. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3171a. —— ——.]—There is no authority for allowing costs out of the estate in a probate action to an unsuccessful party who merely seeks to prove, in the case of a will executed by testator of sound disposing mind, that testator had a domicil under the law of which that party would take a large part of testator's estate in opposition to his wishes. The costs should follow the event in such a case.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669 ; 44 T. L. R. 315.

3175. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3181. *Add. Annotation :*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

3184. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3186. *Add. Annotation :*—*As to* (1) **Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

3303. *Add. Annotation :*—**Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3312. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

Administration & Probate Act, 1915, s. 51, that being the proper procedure for him to adopt in order to procure himself to be constituted the legal representative of testator in Victoria.—*Re* FAIRER'S WILL, [1927] V. L. R. 580 ; [1927] Argus L. R. 462.—**AUS.**

se. *Revocation.*]—When a foreign probate which has been sealed in Victoria is subsequently revoked by the foreign ct., the Supreme Ct. has power to revoke the sealing.—*Re* HALL (1930), V. L. R. 309 ; Argus L. R. 264. —**AUS.**

sf. *Duty of registrar—Supreme Court of New Zealand.*]—Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseal letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re* WILLCOX, [1925] N. Z. L. R. 525.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 3.—A. (b).

3187 iv. ——.]—Testator 87 years old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will :—*Held :* the caveators should be relieved of the Public Trustee's costs, but should not be granted costs out of the estate.—*Re* PATERSON (DECEASED), [1924] N. Z. L. R. 441.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 4.—B.

sg. *Taxation.*]—*Re* MOREN, [1927] 1 D. L. R. 648 ; 59 N. S. R. 58.—**CAN.**

PART II. SECT. 20, SUB-SECT. 6.

n i. —— *Determined by substantial position of parties.*]—While an exor. who has taken proof in common form may be required by a party whose interest is adversely affected by the will to bring in the probate & be put upon proof of the will in solemn form, the circumstances may make it proper that appct. should bear the *onus* of attacking the will, thus of taking over the role of pltf. In the Probate Ct. the question whether or not security for costs should be given must be decided by the substantial & not by the nominal positions of deft. & pltf. in the proceedings.—*Re* WILLIAMS ESTATE, WILLIAMS *v.* ROBINSON, [1934] 1 W. W. R. 632 ; 2 D. L. R. 32 ; 42 Man. L. R. 124.—**CAN.**

3315. *Add. Annotation :—* **Distd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3380. *Add. Annotations :—***Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717 ; Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

3431a. Application to presume death—Application for special grant of administration—Combination in one motion.]—An application for leave to swear that a person has died on or since a certain date & an application for a grant of letters of administration of that person's estate may be combined in a single motion.—*In the Estate of* LEVER (1935), 105 L. J. P. 9 ; 154 L. T. 270 ; 52 T. L. R. 97 ; 79 Sol. Jo. 861.

3478a. —— For purpose of lawsuit out of the jurisdiction.]—There is no power in the Probate Ct. to allow a will admitted to probate in England to go out of the jurisdiction, even in the custody of an official, for the purposes of a lawsuit in a British Dominion or elsewhere abroad.—*Re* GREER (1929), 45 T. L. R. 362 ; 73 Sol. Jo. 349.

*Annotation :—***Folld.** *In the Estate of* Guinee (1929), 73 Sol. Jo. 569.

3478b. —— ——.]—*In the Estate of* GUINEE (1929), 73 Sol. Jo. 569.

3487. *Add. Annotation :—***Refd.** Capron *v.* Capron, [1927] P. 243.

Part III.—Interest of Representative in Deceased's Property.

3509. *Add. Annotation :—***Refd.** Toates *v.* Toates, [1926] 2 K. B. 30.

3517a. Right of selection under will.]—Testator bequeathed to his wife such articles as she should within two months select from the articles in certain rooms in a house. Five days after his death his wife died without having made any selection :—*Held :* the right of selection did not pass to the wife's exors.—*Re* MADGE, PRIDIE *v.* BELLAMY (1928), 44 T. L. R. 372 ; *sub nom. Re* MADGE, PUDEE *v.* BELLAMY, 72 Sol. Jo. 284.

3518a. Loan posted to but not received by deceased.]—On the receipt of a signed promissory note a money-lender forwarded an agreed sum to the borrower through the post. The borrower, the secretary to a co., died between the times of the posting & delivery of the letter. The joint acting secretary of the co. having notice of the secretary's death, opened the money-lender's letter & retained possession of the enclosed money until such time as he could hand it over to the personal representatives of the borrower. In an action by the money-lender to recover the sum lent from the joint acting secretary :—*Held :* deft. received the money on behalf of deceased's estate, & the proper course for the money-lender was to litigate with the borrower's representatives.—MICHAELSON *v.* CRISP (1927), 71 Sol. Jo. 982.

3521. *Add. Annotation :—***Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

3524. *Add. Annotation :—As to* (1) **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

3543. *Add. Annotation :—As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

I. Choses in Action Accruing in Lifetime of Deceased (p. 288).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

3553. *Add. Annotation :—***Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

3554. *Add. Annotation :—***Refd.** Graves *v.* Cohen, (1929), 46 T. L. R. 121. [Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co.*, (*per* WRIGHT, J.)]

3569. *Add. Annotation :—As to* (3) **Distd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

3572a. —— ——.]—NOBLE *v.* CASS (1828), 2 Sim. 343 ; 57 E. R. 817.

*Annotations :—***Refd.** Richards *v.* A.-G. of Jamaica (1848), 6 Moo. P. C. C. 381 ; *Re* Francis, Barrett *v.* Fisher (1905), 74 L. J. Ch. 198 ; *Re* Lacon's Settlmt., Lacon *v.* Lacon, [1911] 2 Ch. 17.

3575. *Add. Annotation :—***Apprvd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

3594. *Add. Annotation :—***Consd.** *Re* Walker, Walker *v.* Patterson (1934), 177 L. T. Jo. 325.

3605. *Add. Annotation :—***Refd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

PART II. SECT. 21, SUB-SECT. 2.

q i. —— *Duty to make inquiries.*]—Although no hard & fast rules can be laid down, a caveat should not be filed against the granting of probate of a will without substantial grounds, &, before filing, the intending caveator should make full inquiry. Where a caveat was filed without substantial grounds & without proper inquiry, a caveatrix, who was unable to carry the matter further was ordered to pay costs.—*In the Will of* ELIZABETH O'DRISCOLL (1929), 29 S. R. N. S. W. 558 ; 46 N. S. W. W. N. 176.—**AUS.**

sh. *Caveator setting up different will.*]—If on a petition for probate, the caveator sets up another will of testator, it is obligatory on him to file a separate petition to propound the will set up by him. The result in such a case is, that there are two separate suits which may either be heard together or be consolidated.—VENIDAS NEMCHAND *v.* BAI CHAMPATAVI (1928), I. L. R. 53 Bom. 829.—**IND.**

PART II. SECT. 21, SUB-SECT. 10.

sk. *Jurisdiction of court—To alter previous order.*]—In addition to its powers under Succession Act, s. 234, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

sl. *Duty to sell—& pay beneficiary share of proceeds.*]—*Re* MONTGOMERY, LUMBERS *v.* MONTGOMERY (1912), 22 W. L. R. 634 ; 22 Man. L. R. 735.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (a) v.

p i. —— ——.]—An option to purchase contained in a will is *primâ facie* not purely personal, but is assignable by the optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222 ; 45 N. S. W. W. N. 30 ; *revsd. sub nom.* ABBOTT *v.* UNION TRUSTEE CO. (1928), 41 C. L. R. 375.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) i.

q i. ——.]—The common law maxim *actio personalis moritur cum persona* in India has been very largely abrogated

.]—ANON. (1457), Y. B. 36 Hen. 6, fo. 7, pl. 4; 7 Jur. 494, n.

Annotations :—**Apld.** Tharpe *v.* Stallwood (1843), 5 Man. & G. 760. **Refd.** Wangford *v.* Wangford (1704), 11 Mod. Rep. 38.

3611b. —— ——.]—EAST *v.* NEWMAN (1601), Gouldsb. 152; 75 E. R. 1059; *sub nom.* EASON *v.* NEWMAN, Cro. Eliz. 495.

3611c. —— ——.]—BEAR *v.* SOPER (1759), 2 Keny. 441; 96 E. R. 1238.

3617. *Add. Citations :—sub nom.* MASON & DAVY *v.* DIXON, Latch 167; Noy 87.

Add. Annotations :—**Refd.** Saunders *v.* Plummer (1662), O. Bridg. 223; Finlay *v.* Chirney (1888), 57 L. J. Q. B. 247.

3624a. —— —— **Injury must have been committed within six months of death.**]—BUSH *v.* LONDON COUNTY COUNCIL (1933), 77 Sol. Jo., 388, D. C.

iv. *Personal Injury* (p. 297).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, & NEGLIGENCE, Nos. 953b-953f, *post.*

3631. *Add. Annotation :*—**Consd.** *Re* Dickens. Dickens *v.* Hawksley, [1935] Ch. 267.

3638. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3646. *Add. Annotation :*—**Refd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

3655. *Add. Annotation :*—**Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

3658. *Add. Annotations :*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611. **Refd.** Price *v.* Corpn. d'Energie de Montmagny, [1927] A. C. 363.

3671. *Add. Annotation :—As to* (1) **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

3687a. ——.]—APPLETON *v.* DOILY (1609), Yelv, 135; 80 E. R. 91.

Annotations :—**Refd.** Shuttleworth *v.* Garnett (1688), Carth. 90; Hudson *v.* Jones (1706), 1 Salk. 90.

3691. *Add. Annotations :*—**Distd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

3692. *Add. Annotations :—As to* (1) **Apprvd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117; Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687.

3692a. —— —— ——.]—In my view *Collis* v. *Flower*, No. 3691, was wrong, for the reasons that I have been stating. The common law tenancy was terminated. The exor. had a common law tenancy, & it was terminated by notice to quit. He did not remain in occupation of the house, &, in my view, the original tenant having no right, as we have now decided, to dispose of the property by will, had no right to give any statutory right to the exor., & the exor., who had not lived in the house, could not claim to be a statutory tenant. In my view, therefore, *Collis* v. *Flower*, No. 3691, is no longer an authority.

The administrator case stands on a different footing, because one has to look in all these cases to see what the facts were. The administrator case is the case of *Mellows* v. *Low*, No. 3692. There the facts were different. The original tenant was a weekly tenant. It was a common law tenancy, & during her tenancy she died intestate. Consequently, whatever rights she had in

by statutory provisions contained in Succession Act. s. 306.—DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO. *v.* HANSRAJ (1935), I. L. R. 58 All. 342.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) ii.

3617 i. *Application of rule—Detinue.*]—The administrator of the estate of a deceased person cannot recover damages, in respect of a chattel belonging to the deceased, for its detention or seizure during his lifetime, or prior to the issue of the letters of administration, unless there is evidence to show that the chattel was damaged, or that the estate of the deceased was depreciated by the seizure or detention in that period. The administrator, however, is entitled to recover for the estate damages for being deprived of the use & possession of the chattel after the issue of the letters of administration.—DAY *v.* HORTON (1913), 26 W. L. R. 72; 5 W. W. R. 751; 14 D. L. R. 763; 23 Man. L. R. 623.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iii.

sn. *Whether right continues in personal representative.*]—Under the provisions of R. S. c. 113, s. 1, the right to maintain or to institute an action for an injury to land, committed within six months of the death of the owner, survives to his personal representative. The clear & reasonable meaning of the statute is that the exor. or administrator may commence an action or carry on an action instituted by testator or intestate.—MILLER *v.* CORKUM (1899), 32 N. S. R. 358.—**CAN.**

so. ——.]—In an action for trespass to land brought in 1895, the statement of claim included a claim for erecting & maintaining fences & depasturing cattle. Pltf. died in 1897, & his extrix. was made a party in 1898 :—*Held :* R. S. c. 113, s. 21, in relation to a continuing cause of action, applied.—GRANT *v.* WOLFE (1899), 32 N. S. R. 444.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iv.

sp. *Whether right continues in representative.*]—In case of tort, for alleged negligence resulting in the death of the person injured, the right to maintain an action dies with the person.—HAWLEY *v.* WRIGHT (1904), 37 N. S. R. 77.—**CAN.**

sq. ——.]—An action for injury to the person now survives to the exor. of pltf., who can, in case of his death, *pendente lite* on entering a suggestion of the death & obtaining an order of revivor, continue the action.—MASON *v.* PETERBOROUGH TOWN (1893), 20 A. R. 683.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—J. (a) ii.

3660 i. *Right to receive dividends.*]—Dividends paid out of the profits of industrial cos. in Quebec, Canada, declared periodically so far as circumstances permit, are generally speaking to be treated as "civil fruits" within art. 449 of the Civil Code of Quebec, & must, pursuant to art. 451, be considered as having been acquired day by day & belonging to the usufructuary in proportion to the duration of his usufruct.

E., who was entitled under the will & a deed of gift of his father to certain dividends payable by a co. of which his father had been the founder & sole shareholder, died three days before the declaration of dividends on its preferred & common stocks out of profits admittedly earned during E.'s lifetime. On a claim by applt., the widow & executrix & universal legatee of E., to the proportionate share of the dividends so declared which she alleged was due to her husband at the date of his death under the will & deed of gift :—*Held :* (1) although E. was not a usufructuary under the deed of gift, having only a right as beneficiary to share in certain "fruits & revenues" (the dividends) distributed from time to time by the trustees under the deed of gift, he was, by virtue of the provisions of art. 981 (*a*) to (*p*) of the Civil Code of Quebec, a beneficiary under the deed of gift & the will with personal rights against the fiduciary donees & the fiduciary legatee respectively; (2) art. 451 of the Civil Code was applicable by analogy to the rights of a beneficiary under the will & deed of gift in respect of the dividends declared by the co. The dividends in question, therefore, were civil fruits subject to the principle contained in art. 451 that they should be considered to have been acquired day by day, & E.'s widow was accordingly entitled to her husband's proportionate share of the dividends which were in fact declared three days after his death.—LAVERDURE *v.* DU TREMBLAY, [1937] A. C. 666; 106 L. J. P. C. 107, P. C.—**CAN.**

her common law tenancy remained to her representatives in an intestacy. No notice to quit was ever given. Consequently the common law tenancy remained. Then the landlord claimed that on the death of the tenant intestate, with no member of her family residing in the house, the tenancy lapsed. It was held that the administratrix was a person who derived title under the original tenant, &, consequently, that the residence could not be interfered with. The point of that case which renders it a right decision is that no notice to quit the common law tenancy had ever been given. The common law tenancy, therefore, remained, & it remained in the person who at common law was entitled to it, & her tenancy had never been terminated. Consequently, *Mellows* v. *Low*, No. 3692, on the facts, is right, but if notice to terminate the common law tenancy had been given the ct. could not, in my opinion, have said, unless the matter could be brought within the very curious clause about intestacy to which I have referred, that such an administratrix not being in possession is entitled to be protected by the Act (SCRUTTON, L.J.).—SKINNER *v.* GEARY, [1931] 2 K. B. 546; 100 L. J. K. B. 718; 145 L. T. 675; 95 J. P. 194; 47 T. L. R. 597; 29 L. G. R. 599, C. A.

3699. *Add. Annotation:*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3702. *Add. Annotation:*—**Folld.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3710. *Add. Annotations:*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39; *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372; Morris *v.* Baines & Co., [1933] 1 K. B. 540.

3711. *Add. Annotation:*—**Consd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

3732a. ——.]—BATHO *v.* FULTON (1824), 2 L. J. O. S. Ch. 196.

3766a. —— ——.]—CURLING *v.* AUSTIN (1862), 2 Drew. & Sm. 129; 10 W. R. 682; 62 E. R. 570.

Annotation:—**Refd.** Lawrie *v.* Lees (1881), 7 App. Cas. 19.

3795. *Add. Annotations:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321; Parker *v.* Judkin, [1931] 1 Ch. 475.

3796. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3800. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3818a. ——.]—The effect of Land Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an "express trust" within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—TOATES *v.* TOATES, [1926] 2 K. B. 30; 95 L. J. K. B. 526; 135 L. T. 25; 90 J. P. 103, D. C.

SUB-SECT. 4.—IN CASE OF PERSONS DYING SINCE 1925 (Vol. XXIII., p. 317).

3819a. Settled land—Termination of settlement on death of tenant for life.]—Administration of Estates Act, 1925 (c. 23), s. 22 (1), does not apply where the settlement comes to an end on the death of the tenant for life, & his exor. when constituted can sell, & he is not deemed to have appointed the sole surviving trustee of the settlement as his special exor. pursuant to such sect.—*Re* BRIDGETT & HAYES' CONTRACT, [1928] Ch. 163; 97 L. J. Ch. 33; 138 L. T. 106; 44 T. L. R. 222; 71 Sol. Jo. 910.

Annotation:—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

3819b. —— ——.]—*In the Estate of* BORDASS, No. 1772a, *ante*.

3819c. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164; 98 L. J. P. 66; 141 L. T. 32; 73 Sol. Jo. 221.

Annotation:—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

3819d. —— Grant of probate to tenant for life as special executor.]—Land was devised by H. on trusts providing for limited ownerships & in default of issue for the right heirs of H. C. who was the right heir of H., by his will appointed the applicant T. exor. & trustee & devised his lands to the use of the applicant for life with remainders over. On Jan. 1, 1926, the commencement of Settled Land Act, 1925 (c. 18), the lands passing under the wills of H. & C. remained subject to the settlement created by the will of H., &, in the event of the termination of the limited ownership under the will, also subject to the settlement created by the will of C. On the same date J. was tenant for life under the will of H. By a vesting deed dated Apr. 16, 1926, the lands were declared to be vested in J. in fee upon the trusts operating from time to time under the will of H. or otherwise. J. died Apr. 27, 1928. General probate of his will including the settled land was granted to his exors. in the first place. Later the grant was amended limiting it "save & except the settled land vested in testator settled previously to his death & remaining settled notwithstanding his death." J. having died without issue appct. T. then became tenant for life in possession under the settlement created by the will of C. as well as the trustee of that settlement. On appeal from the registrar a grant of probate of the will of J. limited to the settled land was directed to issue to the appct. as special exor. of J.—*In the Estate of* TAYLOR, [1929] P. 260; 98 L. J. P. 145; 141 L. T. 200; 45 T. L. R. 481; 73 Sol. Jo. 385.

Part IV.—Duties of Representative.

3888. *Add. Annotation :—As to* (2) **Consd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

3899. *Add. Annotation :—As to* (2) **Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3934. *Add. Annotation :—***Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

3959a. —— —— ——.]—Exor. charged with interest on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481 ; 148 E. R. 1269.

3966a. —— **Application to court—Order for inquiry as to sufficiency.**]—*Re* LETHERBROW, HOPP *v.* DEAN, [1935] W. N. 34 ; 179 L. T. Jo. 161.

*Annotation :—***Refd.** *Re* Holden, Isaacson *v.* Holden (1935), 179 L. T. Jo. 235.

3973a. ——.]—*Re* HOLDEN, ISAACSON *v.* HOLDEN, [1935] W. N. 52 ; 179 L. T. Jo. 235.

3999a. —— ——.]—HUDSON *v.* MARTIN (1726), 2 Eq. Cas. Abr. 461 ; 22 E. R. 393.

4013. *Add. Annotation :—***Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

4021. *Add. Annotation :—As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

4040a. Income accruing after death—Administration of Estates Act, 1925 (c. 23), s. 32 (1).]—*Re* TONG, HILTON *v.* BRADBURY, No. 5917b, *post.*

4086a. Devise in trust to pay debts—Until son attain twenty-one—Death under twenty-one—Debts unpaid.]—Devise of the rents & profits of lands till his son attain twenty-one, towards payment of debts ; & if my son die before twenty-one, my debts being paid, then to A., & the son dies before twenty-one ; yet the rents & profits not only till he would have attained twenty-one, but also beyond, till the debts be paid, shall be applied for that purpose.—MARTIN *v.* WOODGATE (1691), Prec. Ch. 34 ; 24 E. R. 18.

4089a. Foreign estate—Produce in transit at time of death.]—CLIFFE *v.* GIBBONS (1714), 2 Ld. Raym. 1324 ; 92 E. R. 364, L. C.

*Annotation :—***Refd.** Goodtitle d. Hart *v.* Knot (1774), 1 Cowp. 43.

PART IV. SECT. 1, SUB-SECT. 1.

3823 iii. —— —— ——.]—Payments made by exors. for a concrete curbing & foot marker at the grave of testator approved since apart from the provisions, if any, therefor in a will the law contemplates reasonable outlays for such purposes.—*Re* ROGERS ESTATE, [1937] 1 W. W. R. 455 ; 2 D. L. R. 79.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—A.

3891 i. *Duty to get in debts—Liability for neglect.*]—*Re* JOHNSTON, JOHNSTON *v.* HOGG (1877), 25 Gr. 261.—**CAN.**

ar. *Executor debtor to testator.*]—Where an exor. was indebted to his testator at the latter's death the debt is considered in equity to have been paid by the debtor to himself as executor, & he is chargeable in the accounts with the amount thereof at the time of probate with legal interest thereafter during default in payment. —*Re* GIBSON ESTATE, [1930] 2 W. W. R. 400 ; [1931] D. L. R. 159 ; 39 Man. L. R. 564.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (a) iii.

3927 i. *Power to retain—What are investments—Not right to receive payment on quantum meruit.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

3927 ii. —— —— *Not right to appointment as architect.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (e).

n i. ——.]—Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—*Re* WALTERS, [1925] 2 W. W. R. 557.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.

p i. —— *Deceased with foreign domicil.*]—In the case of the estate of a deceased who died domiciled outside of Saskatchewan the exor.'s advertisement for claims against the estate was published at the last place of residence of deceased in said foreign domicile :—*Held :* there had been a sufficient compliance with rule 43 of the Surrogate Ct. Rules, & an order under rule 45 (2) dispensing with the passing of accounts was granted.—*Re* JACOBSON, BROWN & ATCHESON ESTATES, [1935] 3 W. W. R. 513.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

st. *Claim disputed—Effect of service of notice of appointment for passing accounts on claimant.*]—The act of an administrator in serving claimants against the estate with orders & appointments for passing accounts both with, & subsequent to, the service upon them of notice of dispute, held to have estopped him from setting up said notice as a bar to such claims.—*Re* KURYLO ESTATE, [1922] 2 W. W. R. 815 ; 68 D. L. R. 784 ; 15 Sask. L. R. 463.—**CAN.**

sw. *Payment of doubtful claim to legatee.*]—Exors. cannot pay claims of doubtful validity, conditional upon their being deducted from legacies to the claimant in the event of validity not being established.—*Re* GILLIS, [1936] 2 D. L. R. 658.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

sv. *Undisposed of realty & personalty —Before personal estate charged with payment.*]—In the administration of the estate of testator, who has died testate as to some assets & intestate as to others, the primary fund for payment of his debts, funeral & testamentary expenses, in the absence of a contrary intention expressed in the will, is that constituted by both the real & personal estate of which testator has died intestate & is in priority to personal estate, charged with their payment.—PUBLIC TRUSTEE *v.* LEITCH (1928), 28 S. R. N. S. W. 313 ; 45 N. S. W. W. N. 85.—**AUS.**

sw. *Property exempt under Executions Act.*]—In construing Devolution of Estates Act, R. S. M., 1913, s. 3, which provides that an intestate's real or personal estate or both, "except in so far as either or both may be excepted by any law or enactment," shall be chargeable with his debts, property exempt under Executions Act, R. S. M., 1913, is to be considered one of the "exceptions."

A farmer died intestate leaving four dependent infant children. The administrator of his estate sold certain chattels which were during the lifetime of the deceased "exemptions" under Executions Act, s. 29. On an application by the administrator for directions as to the disposition of the moneys realised from the sale, the creditors of the deceased, none of whom had recovered judgment, contended that the right of exemption terminated on the deceased's death ; that all the assets of the deceased, including the exemptions, were liable for his debts ; & that even if the chattels continued to be exempt, the proceeds of their sale was not exempt : —*Held :* the administrator, who had also been appointed guardian, held the money received from the sale of the exemptions for the benefit of the children.—*Re* MCKENZIE ESTATE (Man.), [1930] 1 D. L. R. 49 ; [1929] 3 W. W. R. 358 39 Man. L. R. 155.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

3985 i. *General rule.*]—By her will a testatrix having bequeathed all her personal property to her sister-in-law, *inter alia*, directed that certain land should be sold & "from the proceeds of the sale, & after payment of all outstanding debts," gave certain pecuniary legacies. On an originating summons to decide whether the general personalty had been exonerated from the payment of debts :—*Held :* as there was no express or implied provision in the will to indicate that testatrix wished to override the statutory order of application of assets, the statutory order applied & the general personalty was liable for the payment of debts.—FULLER *v.* FULLER (1936), 36 S. R. N. S. W. 600 ; 53 N. S. W. W. N. 222.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b) i.

sn. *Under 5 Geo. 2, c. 7.*]—*Held :* land was assets in the hands of exors. for the payment of unliquidated damages in an action of covenan .—SICKLES *v.* ASSELSTINE (1853), 10 U. C. R. 203.—**CAN.**

4101a. Liability to contribute rateably—Under Administration of Estates Act, 1925 (c. 23), ss. 32, 33, 34—Notwithstanding devolution of beneficial interest to heir-at-law of lunatic.]—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six :—*Held :* her real estate went to her heir at law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption sect. read with the definition sect., sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver. However, the exemption in sect. 51 (2) only extends to the devolution of the beneficial interest, & the real estate must bear its rateable share of the funeral, testamentary & administration expenses, debts, & liabilities, under sects. 32, 33, 34, & Sched. I.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199 ; 99 L. J. Ch. 161 ; 142 L. T. 327.

4101b. —— "According to value"—Meaning of "value."]—In Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., para. 6, "Property specifically devised or bequeathed, rateably according to value," the word "value" means the value to testator. Where, therefore, property is devised subject to a mtge. created by testator, & other property is devised burdened with the payment of specified legacies, & the personal estate of testator is insufficient to pay pecuniary legacies & debts, in order to ascertain the proportion payable the word "value" means the value of the property to testator & not the value of the property to the devisees. The "value" in the case of the property burdened with the mtge. is the value of the property less the amount of the mtge., whereas in the case of the property burdened with the payment of legacies the amount of the legacies is not to be deducted to ascertain the "value" of the property.—*Re* JOHN, JONES *v.* JOHN, [1933] Ch. 370 ; 102 L. J. Ch. 72 ; 148 L. T. 450.

4134. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

4154a. Solicitor entitled to payment of testamentary charges not paid by deceased executor.]—TANNER *v.* CARTER (1856), 25 L. J. Ch. 664 ; 27 L. T. O. S. 195 ; 2 Jur. N. S. 413 ; 4 W. R. 533.

4158. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4163a. Income tax—For any year ending before testator's death.]—*Held :* the Crown's preferential claim for income tax could be made for tax assessed for any one year ending before testator's death.—*Re* COCKELL, JACKSON *v.* A.-G. (No. 2) (1932), 76 Sol. Jo. 495 ; 16 Tax Cas. 681, 721.

4193. *Add. Annotation :*—**Refd.** Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68.

4210a. —— —— ——.]—A judgment was signed in 1854, but was not registered till after the death of the judgment debtor in 1862 :—*Held :* the judgment had no preference over simple contract debts against the estate of the judgment debtor.—KEMP *v.* WADDINGHAM (1866), L. R. 1 Q. B. 355 ; 7 B. & S. 301 ; 35 L. J. Q. B. 114 ; 13 L. T. 709 ; 14 W. R. 390.

4221. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4225. Delete the cross-reference immediately preceding this case.

4351. *Add. Annotations :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389 ; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

4853a. How exerciseable—Equitable assignment of future assets.]—A personal representative's right to prefer creditors, preserved by Administration of Estates Act, 1925 (c. 23), s. 34 (2),

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PART IV. SECT. 2, SUB-SECT. 3.—A.

p i. —— *Preferred to mortgagee of property devised beneficially to executor.*]—*Re* SCULTHORPE (Ont.), [1926] 2 D. L. R. 739 ; 7 C. B. R. 505.—**CAN.**

so. *Widow's right to money payable under marriage contract.*]—O'REILLY *v.* O'REILLY (1910), 16 O. W. R. 75 ; 21 O. L. R. 201.—**CAN.**

sp. *Claim for breach of trust.*]—The fact that a claim against the estate of a deceased person arose in consequence or by means of a breach of duty as a trustee, affords no ground for giving such claim a preference over other creditors of the estate ; as, under Property & Trusts Act, R. S. O. 1877, c. 107, s. 30, the claimant can only rank *pari passu* with other creditors.—BROCK *v.* CAMERON (1878), 25 Gr. 369.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B.

4162 i. *Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.*]—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—*Re* MCMAHON, LAWSON *v.* INTESTATE ESTATES CURATOR, [1921] V. L. R. 549.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

4167 i. *Priority over specialty & simple contract debts.*]—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—FRONTENAC LOAN CO. *v.* MORICE (1886), 3 Man. L. R. 462.—**CAN.**

4178 i. *Degrees of priority—Between judgment creditors — Judgment for balance of legacy charged on realty—Judgment by creditor secured by mortgage.*]—CAMERON *v.* HARPER (1892), 21 S. C. R. 273.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

4206 i. *Against deceased.*]—FRONTENAC LOAN CO. *v.* MORICE, No. 4167 i., *ante*.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

4245 iii. ——.]—An administrator may pay a statute-barred debt without incurring personal liability.—*Re* GREEN, [1932] 3 D. L. R. 48 ; 4 M. P. R. 482.—**CAN.**

sq. *Right of widow to pay husband's debt.*]—The payment of a husband's debt, though barred, has been held to be a pious duty on the part of the widow, & it is not necessary that there should be any danger to the estate, in order to entitle the widow to incur debts, or to alienate the property of her husband in order to pay off barred debts. The Hindu law does not take cognisance of any bar of limitation.—ASHUTOSH SIKDAR *v.* CHIDAM MANDAL (1929), I. L. R. 57 Calc. 904.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (c) i.

d i. *S. P.* WATKINS *v.* WASHBURN (1846), 2 U. C. R. 291.—**CAN.**

4272 i. *By representative—Inclusion of debt in probate affidavit.*]—The setting out of a debt in an affidavit for estate duty is not a sufficient acknowledgement to take it out of the Statute of Limitations.—PRENDERGAST *v.* O'GORMAN, [1933] I. R. 460.—**IR.**

sr. *By executor de son tort.*]—An exor. *de son tort* cannot give a new starting point to Stat. Limitations as against the rightful administrator, or the parties beneficially interested in the estate.—GRANT *v.* MCDONALD (1860), 8 Gr. 468.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

st. *Claim for wages by manager of intestate's farm—Claim by execution creditor.*]—GILMOUR *v.* GILMOUR (1894), 3 B. C. R. 397.—**CAN.**

can be exercised not only by payment in cash, or by a legal charge equivalent thereto, but also by an equitable assignment of future assets that materialise before an administration decree. — *Re* WILLIAMS, RICHARDS *v.* WILLIAMS, [1930] 2 Ch. 378; 99 L. J. Ch. 476; 143 L. T. 630.

4368. For existing citation substitute the following paragraph & citations :—

If, after a decree, an exor. thinks fit to pay a creditor, he does so at his own risk, & he is only entitled to stand in the place of his creditor against the estate.—IRBY *v.* IRBY (1857), 24 Beav. 525; 3 Jur. N. S. 1314; 53 E. R. 460.

4392. *Add. Annotation :—As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4418. *Add. Annotation :—As to* (3) **Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4423. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4428a. Against Crown—Administration of Estates Act, 1925 (c. 23), s. 34 (2).] — A.-G. *v.* JACKSON, No. 4538a, *post.*

4429. *Add. Annotation :—***Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4432. *Add. Annotation :—***Refd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

4433. *Add. Annotation :—***Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4484. *Add. Annotations :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **Refd.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4485. *Add. Annotations :—***Overd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **N.F.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4485a. —— —— Bankruptcy Act, 1914 (c. 59), s. 36 (2)—Administration of Estates Act, 1925 (c. 23), s. 34, Sched. I., Part I.]—S. P., the debtor, died in Oct. 1934, intestate & insolvent. His widow, who had taken out letters of administration, having in her husband's lifetime advanced him certain moneys for the purpose of his business, & having after his death received certain sums which formed part of his estate & which equalled the amount so advanced by her, on Feb. 1, 1935, paid them as his administratrix into her own private account. On Feb. 8 an order was made for the administration of her deceased husband's estate in bkpcy., the sums then still remaining in her hands. These sums paid into her own private account having been claimed by the official receiver as trustee of the husband's estate, who alleged that by virtue of Bkpcy. Act, 1914 (c. 59), s. 36 (2) (replacing Married Women's Property Act, 1882 (c. 75), s. 3) & Administration of Estates Act, 1925 (c. 23), the widow had no right of retainer as against other creditors, a special case was at the request of both parties sent by the county ct. judge, before whom the matter first came, for the opinion & determination of the High Ct. :—*Held :* on Feb. 8, the widow had in her hands the sums in question forming part of her husband's estate & she had not made these sums her own by paying them in to her private account on Feb. 1, for she had no right of retainer as against the other debts due from the estate, which were all of higher degree than the debt owing to her, & the sums must accordingly be handed over to the official receiver.—*Re* S. P., *Ex p.* OFFICIAL RECEIVER, [1936] Ch. 735; 105 L. J. Ch. 371; 156 L. T. 31; [1936-7] B. & C. R. 8; *sub nom. Re* PATTEN, OFFICIAL RECEIVER *v.* PATTEN, [1936] 2 All E. R. 1119; 80 Sol. Jo. 673.

4511. *Add. Annotation :—As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4527. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson, [1932] A. C. 365.

4533. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4535. *Add. Annotations :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **Refd.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4538a. —— Administration of Estates Act, 1925 (c. 23), s. 34 (1).]—Under sect. 34 (1), & the rules set out in Part I. of Sched. I., to Administration of Estates Act, 1925 (c. 23), in the administration of insolvent estates an exor. has no right of retainer of a simple contract debt against the Crown so far as the Crown has priority under the bkpcy. rules affecting debt priorities; consequently the Crown has priority for a claim for taxes, not exceeding in the whole one year's assessment.

In my opinion there are now only two, or possibly three, degrees of priority of debts, being, first, those which are by the Bkpcy. Act expressly given priority; secondly, those which are expressly directed to be paid *pari passu*; & possibly, thirdly, those mentioned in Bkpcy. Act. 1914 (c. 59), s. 36, & in sect. 3 of the Partnership Act, 1890 (c. 39), the effect of the latter section being expressly retained in the Bkpcy. Act, 1914 (c. 59), s. 33. It follows that the balance of any Crown debt in excess of that portion which is given priority is now of the same degree as the debt of the executrix in the present case, & that she can retain against such balance (LORD ATKIN).

The right still remains as before, the right to retain against debts of equal degree. Some debts have been put in a higher degree than they were before; but the exor.'s right always has been subject to changes of that description. What has been affected is not the right, but the classes in respect of which the right is exercised (LORD ATKIN).—A.-G. *v.* JACKSON, [1932] A. C. 365; 48 T. L. R. 261; 76 Sol. Jo. 146; *sub nom. Re* COCKELL, A.-G. *v.*

PART IV. SECT. 3, SUB-SECT. 1.

sv. *Future liability contingent — Rights of executor to distribute residue.]* —The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death :—*Held :* as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim. — EDINBURGH PARISH COUNCIL *v.* COUPER, [1924] S. C. 139.—**SCOT.**

PART IV. SECT. 4, SUB-SECT. 1.

sp. *Necessity for valid debt.]* —The right of the exor. of a creditor of a legatee to retain out of the legacy an amount sufficient to satisfy the debt due to testator depends upon the existence of a valid debt.—PARKES PROPERTY & STOCK CO., LTD. *v.* PERPETUAL TRUSTEE CO., LTD. (19.6), 36 S. R. N. S. W. 457; 53 N. S. W. W. N. 185.—**AUS.**

JACKSON, 101 L. J. Ch. 186; [1931] B. & C. R. 167; *sub nom. Re* COCKELL, JACKSON *v.* A.-G., 146 L. T. 450; 16 Tax Cas. 681, H. L.

Annotations :—**Followed.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119. **Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

4584. In line 6 of the paragraph, before the words "secured by bond," add the word "not."

4587a. —— —— ——.]—By his will a testator bequeathed to his son "the sum of £3,000 to be paid to him out of the share of my capital & loans in the business of W. & B., & I direct that provided [the son] shall within 6 months of my death be accepted by the remaining partners in the said business as a partner as from the date of my death upon terms mutually acceptable to [the son] & the remaining partners of the said business the said legacy of £3,000 or any part thereof shall not be withdrawn by [the son] until after the expiration of 12 months from the date of my death, & in the meantime shall bear interest at the rate of £5 per cent. *per annum*" :—*Held :* the bequest was a demonstrative legacy & not a specific one.—*Re* WEBSTER, GOSS *v.* WEBSTER, [1937] 1 All E. R. 602; 156 L. T. 128, C. A.

4591. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

4607. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Consd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4613a. —— —— **Devisee requiring conveyance—Liability of estate for costs.**]—*Re* STRINGER, HILL *v.* STRINGER (1899), Y. S. C. P.

4630. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4651. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

4653. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* Inland Revenue Comrs., Duff-Dumbar *v.* Inland Revenue Comrs. (1928), 14 Tax. Cas. 58.

4661. For "(1844)" read "(1842)."

4664a. Incomplete gift inter vivos—Completion by appointment as executor—No necessity for assent.]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

4685. *Add. Annotation :*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

4687a. —— **Advances by co-legatees barred by Statute of Limitations—Not interest on such advances.**]—POOLE *v.* POOLE (1871), 7 Ch. App. 17; 25 L. T. 771; 20 W. R. 133, L. JJ.

Annotations :—**Consd.** *Re* Rees, Rees *v.* George (1881), 17 Ch. D. 701. **Refd.** *Re* Milnes, Milnes *v.* Sherwin (1885), 53 L. T. 534.

4699. *Add. Annotations :*—**Refd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626; *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

4712a. —— ——.]—FRYER *v.* BUTTAR (1837), 8 Sim. 442; 59 E. R. 175.

Annotations :—**Consd.** *Re* Parry, Scott. *v.* Leak (1889), 42 Ch. D. 570. **Refd.** Harbin *v.* Masterman [1896] 1 Ch. 351.

4714. *Add. Annotation :*—**Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

4727. *Add. Annotation :*—**Refd.** Brown *v.* Brown, [1937] P. 7.

4738a. —— ——.]—HORNER *v.* SAYNER (1838), Coop. Pr. Cas. 168; 47 E. R. 450, L. C.

4753. After this case add "**Sale of legacy to executor—In return for annuity—Validity of transaction.**]—*See* FRAUDULENT & VOIDABLE CONVEYANCES, No. 895a, *post.*"

4763a. —— ——.]—*Re* LYMAN'S TRUST & TRUSTEE RELIEF AMENDMENT ACT, 1860 (1860), 2 L. T. 662.

4764a. Payment on account—No appropriation between principal & interest—Right of legatee to appropriate.]—Where there are insufficient funds to pay legacies when due, & interest thereon becomes payable, the legatees are entitled, when payments are made on account at a later date & there is no appropriation between principal & interest, to appropriate such payments *pro tanto* as payments of interest due to them at the time of payment

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PART IV. SECT. 5, SUB-SECT. 1.—B.

4548 i. *What are—Bequest of stock—Testator possessing no such stock at death.*]—*Re* MILLAR, [1927] 3 D. L. R. 270; 60 O. L. R. 434.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

n i. —— *No power to impose terms as condition precedent to immediate payment.*]—BEDDY *v.* SMITH (1845), 1 L. T. O. S. 390.—**IR.**

sw. *Discretion given by will.*]—A will contained a bequest (para. 5) to pltf. of $300 per annum during his lifetime, "to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that "it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. "at any time to withhold any payment of legacy or bequest until such time as they may consider it advisable to make same" :—*Held :* nothing in paras. 5 & 7 authorised deft. to withhold payment of pltf.'s legacy; & the discretion given by para. 12 did not put deft. in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—SEYMOUR *v.* PRATT (1925), 57 O. L. R. 278.—**CAN.**

sx. *Before letters of administration—Legacy very small.*]—ROSS *v.* ROSS (1872), 4 Ch. Ch. 27.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*]—Testator by his will directed his exors. "to pay to the legatees mentioned in the will of my late wife amounting in all to $20,000 which sum is represented by bonds in a "certain bank" in a parcel separate from my own securities" :—*Held :* the legacies were to be treated as legacies from testator, payable out of that portion of his estate earmarked in the way indicated.—*Re* LASHAM (1924), 56 O. L. R. 137.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (a).

4703 i. *Direction for postponement or accumulation—When legatee may require payment.*]—Where testator gives a legatee an absolute vested interest in a defined fund, the ct. will order payment on his attaining twenty-one, notwithstanding that by the terms of the will payment is postponed to a subsequent period.—GOFF *v.* STROHM (1897), 28 O. R. 553.—**CAN.**

4703 ii. —— ——.]—Where a testator gives a legatee an absolute vested interest in a certain defined fund, so that, according to the ordinary rule, he would be entitled to receive it on attaining the age of 21 years, but by the terms of the will payment is postponed until a subsequent period, *e.g.* till the legatee attains the age of 25 years, the ct. will nevertheless order payment on his attaining 21 years.—*Re* TANNER ESTATE, GOULD *v.* TANNER & TANNER, [1931] 2 W. W. R. 794.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (b).

r i. —— —— ——.]—*Re* MCSWEENEY, EASTERN TRUST CO. *v.* MCSWEENEY (1931), 2 M. P. R. 583.—**CAN.**

sy. *Annuity charged on land—Duty of representative on transferring land to devisees—Land Titles Act.*]—*Re* CREST ESTATE (1914), 7 W. W. R. 614; 19 D. L. R. 190.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (d).

sz. *Duty of executors to buy bonds to satisfy specific legacies.*]—*Re* BANNERMAN'S ESTATE, [1936] 3 W. W. R. 520.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

sb. *Question for court.*]—*Re* ARMOUR (1926), 23 S. L. R. 525.—**CAN.**

on account of such legacies.—*Re* PRINCE, HARDMAN *v.* WILLIS (1935), 51 T. L. R. 526.

Annotation :—**Refd.** *Re* Morley's Estate, Hollenden *v.* Morley, [1937] Ch. 491.

4764b. Settled legacy—Payment by instalments—Apportionment between principal & interest.]—Where owing to the nature of a testator's estate it has been impossible to realise it so as to pay legacies in full until after a lapse of some years from the date of the death, but payments on account of the principal & interest of legacies have been made at intervals under orders of the ct., the rule of administration is that each such payment must be appropriated first to interest at 4 per cent. *per annum*, & after satisfying all interest due, to the principal, & this rule must be applied, unless there is any direction in the will or in any order, previously made by the ct. in the matter, to the contrary.—*Re* MORLEY'S ESTATE, HOLLENDEN *v.* MORLEY, [1937] Ch. 491 ; [1937] 3 All E. R. 240 ; 157 L. T. 547 ; 53 T. L. R. 768 ; 81 Sol. Jo. 458.

4770. *Add. Annotation :—As to* (2) **Refd.** Dewar *v.* I. R. Comrs., [1935] 2 K. B. 351.

4812. *Add. Annotation :*—**Consd.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

4849. *Add. Annotation :—As to* (3) **Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

4869a. —— ——.]—The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—*Re* BRINTON, BRINTON *v.* PREEN (1923), 67 Sol. Jo. 704.

4877a. Capitalisation of reserve fund.]—A testator bequeathed to his son & grandson on the death of his wife the shares belonging to him at his death in a certain co. Between the death of testator & the subsequent death of his wife each of the 460 shares of the value of £35 each which belonged to him at the date of his death became, as the result of the capitalisation of a portion of the reserve fund of the co., consolidated with a new share of the value of £15 into a share of the value of £50. Testator's estate, as the result of the capitalisation, also became entitled, in consequence of his holding of 460 ordinary shares, to 920 preferred ordinary shares of £10 each :—*Held :* (1) following *Smell* v. *Dee* (1707), 2 Salk. 415, the gifts were contingent. & (2) the original 460 shares together with the accretions became, on the death of testator's wife, the property of the specific legatees.—*Re* BUXTON, BUXTON *v.* BUXTON, [1930] 1 Ch. 648 ; 99 L. J. Ch. 334 ; 143 L. T. 37.

4895a. —— —— —— ——.]—Testatrix gave legacies of £100 to each of her exors. & trustees & then bequeathed all her plate, jewellery, ornaments, china, & other household effects to two specific legatees absolutely. The whole of her residuary property of every kind she devised, bequeathed & appointed to her trustees upon trust to sell & out of the proceeds, first, to pay her funeral & testamentary expenses, debts, & the legacy duty ; secondly, to appropriate & set apart two sums of £4,000 & £2,000 to be held upon certain trusts for life & then over ; & thirdly, to pay a number of pecuniary legacies, including one of £600. Testatrix declared that should her residuary personal estate be insufficient to pay all the legacies then the legacy of £600 should be reduced to £500 ; & every legacy

PART IV. SECT. 5, SUB-SECT. 5.—B. (a).

4765 vii. —— ——.]—*Re* DALY, [1926] 1 D. L. R. 822 ; 58 O. L. R. 301.—**CAN.**

4765 viii. —— ——.]—Testator died in 1888, & legacies became payable in 1890. His estate was heavily insolvent, & the last of the debts was not finally discharged until 1919. From that date the trustees accumulated funds until 1924, when they brought an action of multiplepoinding & exoneration for distribution of the estate :—*Held :* (1) while as a general rule interest was allowed upon legacies from the death of testator or from the prescribed date of payment, there was no absolute rule compelling the ct. in all cases to allow such interest, the general rule being displaced if circumstances showed it to be inapplicable ; (2) the general legatees were not entitled to interest on their legacies from 1890 to 1919, in respect that, owing to the insolvency of the estate during that period, there was no asset realisable to meet the legacies nor any interest-bearing subject ; (3) there was no absolute rule to the effect that the rate of legal interest should be 5 per cent., the rate of interest being in every case for the discretion of the ct. in the particular circumstances.—WADDELL'S TRUSTEES *v.* CRAWFORD, [1926] S. C. 654.—**SCOT.**

sf. *On termination of preceding life interest.*]—A will directed that the estate should be sold & exors. should hold proceeds in trust to pay an annuity & then pay residue of income to testator's widow for life & on her death divide the corpus, paying to two grandchildren $1,000 each & dividing the rest among testator's children. The will declared that the two legacies to the grandchildren were subject to the widow's life interest & directed that they should be paid when the grandchildren should attain twenty-one. but in case the estate should be divided before they attained that age, interest should be paid on their legacies. If the grandchildren died before attaining twenty-one, the legacies were to fall into the estate. Both the grandchildren attained twenty-one before the death of the widow :—*Held :* interest on the legacies was payable by the estate only from the death of the widow.—*Re* SCADDING (1902), 4 O. L. R. 632.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—B. (d).

4827 iii. —— ——.]—In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors.' year" as the exors. had in hand realised assets which could rightfully be applied to the payment of such legacies.—MORPETH *v.* WILLIAMSON, [1926] N. Z. L. R. 39.—**N.Z.**

sd. *Legacy payable "when & how he likes."*]—A will provided that : "the exor. has the power given him to pay these three bequests when & how he likes—the estate is not to be sacrificed in any way to pay them." The exor., acting prudently, disposed of the estate many years after the death of testator :—*Held :* the legacies did not carry interest from the end of the year of testator's death.—PLANTA *v.* GREENSHIELDS (No. 2), [1932] 2 W. W. R. 60 ; 3 D. L. R. 423 ; 45 B. C. R. 228.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—C.

4868 i. *When more than 4 per cent. allowed — Special circumstances.*]—WADDELL'S TRUSTEES *v.* CRAWFORD, No. 4765 viii. *ante*.—**SCOT.**

PART IV. SECT. 5, SUB-SECT. 6.—A.

4883 iv. —— —— ——.]—A. by his will directed that certain pecuniary legacies, amounting in all to the sum of £710, should be paid "with & out of the proceeds" of the sale of his investments comprising stocks & shares. The investments realised the sum of £487 0*s.* 4*d.* At the date when the will was made they were worth approximately the sum of £481 12*s.* 6*d.* There was a further direction that the legacies were to be paid free of all Crown duties. Testator further dealt with the residue of his property item by item. On a summons raising the question whether the balance of the legacies was payable out of the general residue of the estate :—*Held :* the balance was not payable & as the fund specified by testator for their payment was insufficient to pay them in full, they must abate rateably *inter se*.—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14.—**IR.**

& annuity was bequeathed free of legacy duty. There was a deficiency in the estate; —*Held:* (1) there were sufficient indications in the will that the testatrix intended the distribution of her estate to be in accordance with the priorities mentioned, & the settled legacies must be paid in full before all the other pecuniary legacies; (2) the legacy of £600 must be reduced to £500 & this reduced legacy, plus the duty, must abate *pro rata* with the other postponed legacies, including those to the exors.; (3) the costs of packing & delivering specific legacies must be borne by the specific legatees.—*Re* LEACH, MILNE *v.* DAUBENY, [1923] 1 Ch. 161; 92 L. J. Ch. 225; 128 L. T. 525; 67 Sol. Jo. 198.

4903. *Add. Annotation:*—**Consd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

4910. *Add. Annotation:*—**Refd.** Jones *v.* Wright (1927), 139 L. T. 43.

4914. *Add. Annotation:*—*As to* (1) **Folld.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4917. *Add. Annotation:*—**Distd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183.

4918. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183. *Generally*, **Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4924. *Add. Annotation:*—**Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4936. *Add. Annotation:*—**Refd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

4953. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

4972a. Legacy to creditor after composition.]—One by will gives several legacies, & *inter alia* to such of his creditors with whom he had formerly compounded their debts; this but a legacy & not to be preferred to other legacies.—COPPIN *v.* COPPIN (1725), 2 P. Wms. 291; Cas. *temp.* King, 28; 24 E. R. 735.

5002a. ——.]—Executrix having, in mistake, made payments to A. in respect of his annuity for two years before he attained twenty-one, was entitled to retain them out of the future payments of the annuity.—LIVESEY *v.* (1827), 3 Russ. 287; 6 L. T. O. S. Ch. 13; 38 E. R. 583.

5022. *Add. Annotation:*—**Consd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

5057a. —— ——.]—A testatrix guaranteed her son's loan account at a bank. She then made a will appointing him one of her exors. & giving him a legacy of £100 & a protected life interest in the income of her residuary estate. She then guaranteed the son's overdraft on his current account. On each occasion the son charged his estate & interest in a public-house to secure such sum as the testatrix might be called upon to pay. The estate of testatrix was about to be called upon to pay a sum of over £5,000. The son after the death of testatrix executed a deed of assignment for the benefit of his creditors:—*Held:* (1) the fact that testatrix required security for the repayment of the debt after the execution of her will showed an intention not to release the debt, & the son was liable to the estate in the amount which would have to be paid to the bank; (2) notwithstanding that the debt or some part might remain unpaid, the trustees of the will were entitled to pay in their discretion such part of the income as they might think necessary for the son's maintenance & support.—*Re* EISER'S WILL TRUSTS, FOGG *v.* EASTWOOD, [1937] 1 All E. R. 244.

5065. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins,

5072. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

5075. *Add. Annotation:*—**Refd.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

5079. *Add. Annotation:*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825.

5085. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

5110a. ——.]—LLOYD *v.* STODDART (1752), Amb. 152; 27 E. R. 100, L. C.

5160a. —— ——.]—WILSON *v.* LESLIE (1857), 5 W. R. 815.

Annotation:—**Dbtd.** *Re* Dacre, Whitaker *v.* Dacre (1916), 85 L. J. Ch. 274.

PART IV. SECT. 5, SUB-SECT. 6.—D.

4961 ii. —— ——.]—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14. —**IR.**

PART IV. SECT. 5, SUB-SECT. 8.

sa *Judgment for balance of legacy—Priority over creditors.*]—HARPER *v.* HARPER (1890), 2 B. C. R. 15.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 12.—A.

5056 i. *Release of debts.*]—A. by his will gave to a nephew the amount owing by him to A. under a mtge. & bill of sale, & in addition gave him a pecuniary legacy of £1,000, & a motor car. To five other nephews & nieces he gave legacies of £2,000 each, & to another nephew £1,000. He directed his trustees to invest the surplus of his residuary estate, to accumulate & invest the income, & at the end of five years to convert those investments into money & hold the proceeds for such of the seven nephews & nieces who were pecuniary legatees as should then be living "in the same proportions as the legacies herein bequeathed to them bear to one another absolutely": —*Held:* the gift of the amount of the debt to the debtor was a legacy, & the amount of applt.'s indebtedness as well as the gift of £1,000 to him should be taken into account in calculating the share in the residuary estate to which applt. was entitled.—DAWES *v.* EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. (1935), 52 C. L. R. 291; [1935] A. L. J. 470.—**AUS.**

5057 i. —— *What amounts to release.*]—A bequest of "all moneys owing" by the legatee shows an intention to forgive all debts owed by the legatee to the testator.—*Re* HICKS, [1935] 4 D. L. R. 781; O. R. 538; 5 F. L. J. (Can.) 164.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 13.—A. (a).

5111 v. —— *Appointment by codicil of new executors—Provision in codicil for remuneration of executors.*]—*Held:* the exors. were entitled only to the commission mentioned in the codicil, notwithstanding a provision in the codicil that the will should be construed as if the names of the exors. were inserted throughout in place of those —*Re* BOSSI (1897),

5111 vi. ——.]—Where testator gives a legacy to an executor or trustee, stating that it is given for his services in that capacity, & particularly where testator declares it to be in lieu of commission or remuneration, such exor. or trustee, if he accepts the trust, is not entitled to anything more than he is given by the will, unless under exceptional circumstances, such as the gift being so small as to be illusory; & the mere inadequacy of the remuneration given by the will is not of itself a sufficient reason for departing from that practice.—*Re* MURPHY (1928), S. R. Q. 1.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—C.

5189 i. —— *Parent.*]—An exor. cannot discharge himself by paying a legacy given to an infant to the father or mother, as guardian, unless the ct. allows it in special circumstances.—*Re* NAKAUCHI ESTATE, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673—**CAN.**

sb. *Payment into court—Estate in Australia—Infant legatee & guardian domiciled in England.*]—By his will

5202. *Add. Annotation :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5206. After this case add "*See, also,* CONFLICT OF LAWS, No. 548a, *ante.*"

5240a. —— ——.]—Testator bequeathed sums of stock to his grandchildren, to be paid to them on attaining twenty-one, with benefit of survivorship to those attaining that age, but in case they should all die under twenty-one, then he willed the interest arising from such sums to their father for life, with remainder over :—*Held :* the grandchildren were entitled during their minority to have the interest arising from their legacies applied towards their maintenance.—BODDY *v.* DAWES (1836), 1 Keen, 362 ; 6 L. J. Ch. 145 ; 48 E. R. 346.

Annotations :—**Refd.** Festing *v.* Allen (1844), 5 Hare, 573 ; Dundas *v.* Wolfe Murray (1863), 1 Hem. & M. 425 ; *Re* Judkin's Trusts (1884), 50 L. T. 200.

5245. *Add. Annotations :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Refd.** *Re* Senior, Senior *v.* Wood, [1936] 3 All E. R. 196.

5246. *Add. Annotations :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5249. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71. *As to* (2) **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642. **Refd.** Stern *v.* I. R. Comrs. (1930), 15 Tax Cas. 148. *As to* (4) **Refd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5250. *Add. Annotation :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5251a. —— —— ——.]—A contingent or future pecuniary legacy payable to an infant upon attaining twenty-one does not carry intermediate income under Law of Property Act, 1925 (c. 20), s. 175, & there is no power under Trustee Act, 1925 (c. 19), s. 31, to apply the interest, or intermediate income thereof, when invested, for the infant's maintenance, unless testator is the parent of or *in loco parentis* to the infant, or has indicated an intention by his will that the infant should be maintained out of the income, or has directed the legacy to be appropriated & invested for the benefit of the infant.—*Re* RAINE, TYERMAN *v.* STANSFIELD, [1929] 1 Ch. 716 ; 98 L. J. Ch. 244 ; 141 L. T. 25.

Annotation :—**Refd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5251b. —— —— ——.]—Testatrix, who died after the commencement of Trustee Act, 1925 (c. 19), by her will directed the trustees thereof to set apart a specific sum, to accumulate & capitalise the income thereof, until A. should attain the age of twenty-one years ; &, if A. should attain that age, then to pay to her the income of that sum during her life, & after her death to hold the capital sum in trust for her children :—*Held :* as the trust for A., for a contingent interest for her life, did not carry the intermediate income, the trustees had, upon the proper construction, Trustee Act, 1925 (c. 19), s. 31, no power to apply that income towards A.'s maintenance. — *Re* READE-REVELL, CRELLIN *v.* MELLING, [1930] 1 Ch. 52 ; 99 L. J. Ch. 136 ; 142 L. T. 177.

5251c. —— ——.]—Where a testator, being the parent, or *in loco parentis*, of an infant, gives a legacy to that infant, contingently on his attaining an age other than full age, & makes no provision for maintenance, it is within the discretion of the ct. to order the interest on the legacy to be applied in maintaining the legatee until the legacy vests.—*Re* JONES, MEACOCK *v.* JONES, [1932] 1 Ch. 642 ; 101 L. J. Ch. 307 ; 147 L. T. 137.

5251d. ——.]—Testatrix by her will directed a fund to be accumulated. She expressly directed that no payment from the fund should be made to the beneficiary during a certain period. If the beneficiary died during that period the fund was to fall into residue. The gift was one which would carry the intermediate income :—*Held :* the terms of Trustee Act, 1925 (c. 19), s. 31 (1) (ii) imposed a statutory duty on the trustees to pay the income of the fund to the beneficiary upon the beneficiary attaining 21 during the period & the provision in the will to the contrary would then become ineffective & the statutory duty would prevail.—*Re* RICARDE-SEAVER'S WILL TRUSTS, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* SANDBROOK, [1936] 1 All E. R. 580 ; 154 L. T. 599 ; 52 T. L. R. 508 ; 80 Sol. Jo. 385.

Annotation :—**Consd.** *Re* Turner's Will Trusts, District Bank, Ltd. *v.* Turner, [1936] 2 All E. R. 1435.

5256. *Add. Annotation :*—**Expld. & Distd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5273. *Add. Annotations :*—**Folld.** *Re* Stokes, Bowen *v.* Davidson, [1928] Ch. 716. **Expld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5273a. ——.]—Where a legacy given to an infant is clearly indicated by the will to be intended for the support of the infant, interest on such legacy will run from the death of testator, as the support of the infant must begin immediately upon such death ; & where such legacy is one of two or more legacies all in the same category & all given in the same group to the trustees of the will, no distinction being made between any of the legacies, the other legacy or legacies will likewise carry interest from the date of

testator, domiciled in California, bequeathed money on deposit in banks in Australia, amounting to about £12,000, to the infant daughters of E., & appointed E. as guardian of the estate of his daughters, & appointed two residents of Brisbane as exors. of the testator's estate in Australia. E. & his two daughters were domiciled in England :—*Held :* in the circumstances the exors. should pay the legacies into ct., leaving E. to make appropriate application for payment out to him.—*Re* TUDOR, [1928] S. R. Q. 299.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—D. (b) i.

u i. —— ——.]—The ct. may allow maintenance to an infant (1) out of property to which the infant is contingently entitled under a disposition made by its father or a person standing *in loco parentis* to it if the infant is unprovided for, or (2) out of the income earned by a contingent legacy bequeathed to an infant which is directed to be set apart for the infant so that if & when the contingency happens, the legacy will become payable to the infant, or

infant's share in the income of property subject of a gift to a class, all or some of whose members must take where the chance of taking is equal as to all of them, or a gift to such a class or an individual & the doucee over in default of the class consent. But the ct. will apply money for an infant's maintenance in disregard of the trust only when the result of not doing so will leave the infant in such adverse circumstances that it must be assumed that if they had been foreseen by testator he would have provided for the case.—*Re* [illegible] L. R. 35.—**AUS.**

testator's death.—*Re* STOKES, BOWEN *v.* DAVIDSON, [1928] Ch. 716; 97 L. J. Ch. 273; 139 L. T. 331; 72 Sol. Jo. 384.

Annotations:—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Refd.** Dewar *v.* I. R. Comrs., [1935] 2 K. B. 351.

5273b. Whether infant entitled to whole of income.]—Testator, standing *in loco parentis*, gave to trustees a legacy of £4,000, on trust to pay it to A., on his attaining twenty-one. He authorised them to raise it by mtge. of his real estates, & out of the money thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance:—*Held:* the legatee, during minority, was entitled to maintenance only, & not to the whole amount of interest on the legacy.—RUDGE *v.* WINNALL (1849), 12 Beav. 357; 18 L. J. Ch. 469; 14 L. T. O. S. 325; 13 Jur. 737; 50 E. R. 1098.

Annotations:—**Refd.** *Re* Rouse's Estate (1852), 9 Hare, 649. **Mentd.** *Re* Roose, Evans *v.* Williamson (1880), 17 Ch. D. 696.

5276. *Add. Annotation:*—**Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5287. *Add. Annotation:*—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5293. *Add. Annotation:*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5301. *Add. Annotation:*—**Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5320. *Add. Annotation:*—**Refd.** *Re* King, Public Trustee *v.* Aldridge, [1928] Ch. 330.

5322. *Add. Annotation:*—**Apld.** *Re* Maber, Ward *v.* Maber, [1928] Ch. 88.

5331. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5334. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5335. *Add. Annotation:*—**Apld.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

5337. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5340a. ——.]—Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C.'s children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & " to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares ":—*Held:* the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was an intestacy as to the undivided aliquot shares of persons who predeceased testator.—*Re* WHITROD, BURROWS *v.* BASE, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.

5341. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5353a. —— ——.]—*Re* COPE'S TRUSTS (1877), 36 L. T. 437.

5354. *Add. Annotations:*—**Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58.

5358. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345. **Distd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096. **Refd.** *Re* Oldham, Oldham *v.* Myles (1927), 71 Sol. Jo. 491.

5360a. —— —— ——.]—The interim interest from a fund set apart to meet future vested legacies, which do not carry interest in the meantime, is capital & not income of residue, & must, therefore, be invested, & the income only of such investment paid to the tenant for life of the residuary estate. The rule adopted in *Allhusen* v. *Whittell*, No. 5358, *ante*, in reference to contingent legacies, has no application to vested legacies.—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

Annotation:—**Distd.** *Re* Hawkins, White *v.* White, [1916] 2 Ch. 570.

5363a. —— —— —— **Contingent legacies.**]—Contingent legacies are excluded from the rule in *Allhusen* v. *Whittell*, No. 5358, *ante*, & the whole of the legacy duty payable on contingent legacies given free of duty is a charge on the corpus of the estate.—*Re* FENWICK'S WILL TRUSTS, FENWICK *v.* STEWART, [1936] Ch. 720; [1936] 2 All E. R. 1096; 105 L. J. Ch. 351; 155 L. T. 199; 80 Sol. Jo. 553.

5363b. —— —— **Gross or net amount.**]—In applying the rule in *Allhusen* v. *Whittell*, No. 5358, *ante*, the income of the estate should be calculated, not on the basis of the gross amount received, but at the net amount after deduction of tax.—*Re* OLDHAM, OLDHAM *v.* MYLES (1927), 71 Sol. Jo. 491.

5369. *Add. Annotation:*—**Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

5371. *Add. Annotations:*—**Apld.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345. **Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

5373. *Add. Annotations:*—**Consd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550; *Re* Corelli (1925), 69 Sol. Jo. 525; *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Apld.** *Re* Trollope's Will Trusts, Public Trustee *v.* Trollope, [1927]

PART IV. SECT. 6, SUB-SECT. 1.—A.

sk. *Law-agent's business books.*]—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—*Held:* pursuer was entitled to delivery.—ROBERTSON *v.* ROBERTSON'S EXECUTORS, [1925] S. C. 606.—**SCOT.**

PART IV. SECT. 6, SUB-SECT. 1.—B.

5351 1. *Right to have residue ascertained & paid over.*]—When the personal estate of a testator has been fully administered by his exors. & the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred & paid to him; but until that time he has no property in any specific investment forming part of the estate or in the income from any such investment, & both corpus & income are the property of the exors. & are applicable by them as a mixed fund for the purposes of administration.—NG AUN THYE *v.* EWE KEOK NEOH, [1933] 3 W. W. R. 129, P. C.—**STRAITS SETTLEMENTS.**

sm. *Mistake as to value of assets—New distribution ordered.*]—CLARKE *v.* HAWKE (1865), 11 Gr. 527.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 3.

sn. *Duty of administrator—To distribute under Devolution of Estates Act.*]—*Re* BOWER (1905), 5 O. W. R. 383; 9 O. L. R. 199.—**CAN.**

1 Ch. 596. **N.F.** *Re* Brooker, Brooker *v.* Brooker (1926), 70 Sol. Jo. 526. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

For the cross-reference following this case substitute "———— ————.]—*See, further*, SETTLEMENTS, Vol. XL., pp. 672–674; WILLS."

5375. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

5387. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

5407. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

(*c*) *After* 1925 (*p.* 472).

5408a. General rule.]—A will made on a printed form contained an appointment of testator's wife as executrix & a direction to pay debts & funeral & testamentary expenses, but no gift or disposition of property to any person : —*Held :* the executrix took testator's estate as trustee for the persons entitled to the property of an intestate, including herself, as set out in sect. 46 of the Administration of Estates Act, 1925 (c. 23). The repeal by that Act of Exors. Act, 1830 (c. 40), has not restored the law in force before the latter Act was passed under which an exor. took property which was undisposed of beneficially.—*Re* SKEATS, THAIN *v.* GIBBS, [1936] Ch. 683; [1936] 2 All E. R. 298; 105 L. J. Ch. 262; 155 L. T. 451; 52 T. L. R. 558; 80 Sol. Jo. 406.

5408b. ——.]—*Re* CARVILLE, SHONE *v.* WALTHAMSTOW BOROUGH COUNCIL, [1937] 4 All E. R. 464.

5411. *Add. Annotation :*—**Refd.** *Re* Jones, Johnson *v.* A.-G. (1925), 133 L. T. 601.

5412. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R 617.

5416. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5417. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5423a. ——.]—By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin :—*Held :* there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re* JONES, JOHNSON *v.* A.-G., [1925] Ch. 340; 94 L. J. Ch. 341; 133 L. T. 601; 69 Sol. Jo. 460.

5440. *Add. Annotation :*—**Refd.** *Re* Rooke. Jeans *v.* Gatehouse, [1933] Ch. 970.

5442a. ———— ————.]—Testatrix by her will, dated June 2, 1913, after making numerous specific bequests, bequeathed to her trustees all her horses & all her carriages not thereby otherwise disposed of wherever the same might be at her death . . . upon trust to sell & stand possessed of the proceeds for G. & C. in equal shares as tenants in common. In 1918 testatrix, having become through senility unable to manage her affairs, a receiver of her estate was appointed by the Master in Lunacy, who authorised the sale of her motor-car. A part of the purchase-money was applied for her maintenance. She died in 1920, having no horses or carriages, but the receiver still held the balance of the purchase-money. The estate proved insufficient to pay all the legacies in full. On an originating summons taken out by the trustees, asking, among other things, whether the above-named legatees were entitled to the

PART IV. SECT. 6, SUB-SECT. 4.—A. (b).

5378 i. *General rule.*]—Testator by his will gave certain legacies & devised certain land to his widow for life or widowhood; upon her death or marriage this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors. :—*Held :* the change made in the law by the Imperial Act of 1830, adopted in this province & now found in Trustee Act, R. S. O., 1927, s. 53, does not apply in cases in which testator himself has given the property to his exors.; the Act applies only where there is a bare appointment of exors. so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*. In this case, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260; 63 O. L. R. 218.—**CAN.**

5382 i. *Whether intention for executor to take beneficially apparent by will—Construction of will.*]—Testator by his will gave certain legacies & devised certain land to his widow for life, or widowhood, & upon her death, or marriage, this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors. One of these was at the date of the will an infant of tender years, & was only 13 years old at the time of testator's death. Probate was granted to the adult exors. reserving to the infant a right to be admitted to exorship upon attaining majority :—*Held :* the change made in the law of the Imperial Act of 1830, known as Sugden's Act, adopted in this Province, & now found in Trustee Act. R. S. O. 1927, c. 150, s. 53, does not apply to cases in which testator himself has given the property to his exors., the Act applies only to cases where there is a bare appointment of exors., so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*; &, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260; 63 O. L. R. 218. —**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (a).

5425 v. ———— ————.]—P. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid :—*Held :* testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved insufficient.—*Re* PATTON, CAUGHEY *v.* COPELAND, [1925] N. 206.—**IR.**

o i. ———— ———— ————.]—Testator directed payment of debts, expenses & taxes & made certain specific bequests & then gave the residue of his estate including the proceeds of all policies on his life in trust for his wife, daughter, & grandchildren :—*Held :* the proceeds were part of his estate.—*Re* HOARE, [1933] 2 D. L. R. 780; O. R. 474.—**CAN.**

sc. *Payment of death duties—Exemption by statute—Full effect to be given.*]—*Re* AIKINS, [1928] 2 D. L. R. 415; 62 O. L. R. 33.—**CAN.**

balance of the purchase-money & whether specific legatees were to bear the cost of packing & dispatching the articles specifically bequeathed to them :—*Held :* (1) the above-mentioned gift included the motor-car & the legatees were entitled to such of the proceeds of the sale thereof as had not been applied by the receiver ; (2) the specific legatees must bear the cost of packing & dispatching the several articles bequeathed to them.—*Re* SIVEWRIGHT, LAW *v.* FENWICK (1922), 128 L. T. 416 ; 67 Sol. Jo. 168.

Annotation :—**Folld.** *Re* Leach, Milne *v.* Daubeny, [1923] 1 Ch. 161.

5442b. —— ——.]—*Re* LEACH, MILNE *v.* BENY, No. 4895a, *ante*.

5447. *Add. Annotation :*—Folld. *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

5447a. —— ——.]—The costs of the preservation & upkeep of property specifically devised & bequeathed between the date of testator's death & the date of exors.' assent are payable by the specific devisees & legatees.—*Re* ROOKE, JEANS *v.* GATEHOUSE, [1933] Ch. 970 ; 102 L. J. Ch. 371 ; 149 L. T. 445.

5448a. ——.]—*Held :* the direction for payment of the "testamentary expenses" of testator's widow extended to the costs & expenses in obtaining letters of administration, & in connection with the administration of the estate of the widow ; & the costs of an action in the probate division.—*Re* CLEMOW, YEO *v.* CLEMOW, [1900] 2 Ch. 182 ; 69 L. J. Ch. 522 ; 82 L. T. 550 ; 48 W. R. 541 ; 44 Sol. Jo. 428.

Annotations :—**Refd.** *Re* Treasure, Wild *v.* Stanham, [1900] 2 Ch. 648 ; *Re* Sharman, Wright *v.* Sharman, [1901] 2 Ch. 280 ; *Re* Fearnsides, Baines *v.* Chadwick, [1903] 1 Ch. 250 ; *Re* King, Travers *v.* Kelly, [1904] 1 Ch. 363 ; *Re* Spencer Cooper, Poë *v.* Spencer Cooper, [1908] 1 Ch. 130 ; Porte *v.* Williams, [1911] 1 Ch. 188 ; O'Grady *v.* Wilmot, [1916] 2 A. C. 231 ; *Re* Massey, Ram *v.* Massey (1920), 90 L. J. Ch. 40.

5449a. Costs of probate action.]—*Re* CLEMOW, YEO *v.* CLEMOW, No. 5448a, *ante*.

5451a. —— ——.]—Land which had been delivered in execution, under a writ of *elegit*, to judgment creditors of a testator, was specifically devised by the subsequent will of testator :—*Held :* Locke King's Acts applied, & the devisee was not entitled to have the land exonerated by the personal estate.—*Re* ANTHONY, ANTHONY *v.* ANTHONY, [1892] 1 Ch. 450 ; 61 L. J. Ch. 434 ; 66 L. T. 181 ; 40 W. R. 316 ; 36 Sol. Jo. 255.

5452. *Add. Citation :*—*previous proceedings*, [1892] 1 Ch. 450.

5466. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538.

5483a. —— ——.]—DIXON *v.* DUTFIELD, No. 6014b, *post*.

5540. Add MELLERSH *v.* BRIDGER, SMITH *v.* (1853), 17 Jur. 908.

5556. *Add. Annotation :*—**Apld.** *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

5560a. Collateral security.]—A sum of £400 borrowed by an intestate on his promissory note, but secured also by a memorandum & deposit of even date of title deeds of real estate in terms as collateral security :—*Held :* within Locke King's Act.—COLEBY *v.* COLEBY (1866), L. R. 2 Eq. 803.

5565a. ——.]—(1) Prior to his death, testator entered in a contract to purchase certain freehold property & paid a deposit. He then became ill & was quite unable to attend business matters, & there was no one with authority to sign cheques upon his banking account. In these circumstances the bank opened a special account in the name of testator's solrs., advanced a sufficient sum to that account to meet the payment, & the solrs. received & held the title deeds of the property. By his will testator devised this property to his wife :—*Held :* the result of the above transactions was that the property became charged in favour of the solrs. with the amount of the balance of the purchase-money ; the testator's wife took the property, subject to that charge.

(2) Certain repairs of the property were, with the approval of testator, carried out, but not paid for during his life-time :—*Held :* the cost of these repairs was a debt of testator & should be discharged by the

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PART IV. SECT. 7, SUB-SECT. 1.—A. (b).

5462 i. *Specific legacy—Of incumbered chattel.*]—As between a specific legatee of an incumbered chattel & other specific legatees & devisees, the former must bear the burden of the incumbrance, & a general direction that debts shall be paid will not alter this.—*Re* SIMPSON, [1927] 2 D. L. R. 1043 ; 60 O. L. R. 310.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (e) ii.

5511 i. *Whether mixed fund primarily liable.*]—Where testator has devised his real & personal estates to his exors., to sell or convert same into money & out of the proceeds to pay his debts & legacies, he has created a mixed fund for the purpose.—GRAYSON *v.* WALSH, [1926] 1 D. L. R. 206 ; [1926] 1 W. W. R. 125 ; 20 Sask. L. R. 288.—**CAN.**

5511 ii. ——.]—Testatrix devised & bequeathed one-half of her estate to G., & after all her debts had been paid certain legacies to others, & the balance to G. The assets consisted mainly of realty, & were sufficient to discharge the debts & the funeral & testamentary expenses without recourse to the share given to G. :—*Held :* the second half of the estate was charged with the payment of debts in exoneration of G.'s share, &, the ordinary rules as to the abatement of different parts of the estate for the payment of debts being applicable to the payment of funeral & testamentary expenses, G.'s shares was exempt also from the payment of those expenses.—*Re* HOWE, GRASS *v.* MCCLELLAND, [1929] V. L. R. 290 ; [1929] Argus L. R. 211.—**AUS.**

5513 i. *Whether mixed fund primarily liable—Necessity for direction in will for payment out of mixed fund.*]—Since the Wills Act a residuary devise must for the purposes of administration be regarded as a specific devise, & in the order of assets for the payment of debts ranks with specific devises & specific bequests. A residuary devise does not lose its right to contribution from specifically bequeathed personalty for the payment of debts so far as the general personal estate is insufficient, merely by reason of the facts that it is given together with the general personal estate on trust for conversion & the proceeds of conversion are made a mixed fund for the purposes of disposition, & that the whole estate is subject to a general constructive charge for the payment of debts. To entitle specifically bequeathed personalty to be exonerated from such liability by the residuary realty further evidence of testator's intention to that effect is necessary ; such as a direction that the debts are to be paid out of the mixed fund, or that the proceeds of conversion are to be regarded as personal estate.—*Re* FORSYTH, WYATT *v.* FORSYTH (1929), 29 S. R. N. S. W. 411 ; 46 N. S. W. W. N. 127.—**AUS.**

PART IV. SECT. 7, SUB-SECT. 1.—C. (a).

5540 vi. ——.]—RICKER *v.* RICKER (1868), 14 Gr. 264.—**CAN.**

5540 vii. ——.]—SCOTT *v.* SUPPLE (1893), 23 O. R. 393.—**CAN.**

5546 i. *Personal estate insufficient.*]—LAPP *v.* LAPP (1869), 16 Gr. 159.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—C. (b) iii.

5561 ii. ——.]—Where land is devised which testator held as a purchaser subject to a vendor's lien, unless a contrary intention appears, it is primarily liable for the unpaid purchase-money.—*Re* MACDOUGALL, [1927] 3 D. L. R. 464 ; [1927] 1 W. W. R. 612 ; 21 Sask. L. R. 397.—**CAN.**

5561 iii. ——.]—*Re* NAGEL, [1928] 3 D. L. R. 36.—**CAN.**

exors. out of the estate.—*Re* RIDDELL, PUBLIC TRUSTEE *v.* RIDDELL, [1936] Ch. 747; [1936] 2 All E. R. 1600; 105 L. J. Ch. 378; 155 L. T. 247; 52 T. L. R. 675; 80 Sol. Jo. 595.

Annotation :—Generally, **Reld.** *Re* Robert's Will Trusts, Younger *v.* Lewins, [1937] Ch. 274.

5594. *Add. Annotation :*—**Apld.** *Re* **Fegan, Fegan** *v.* **Fegan, [1928] Ch. 45.**

5594a. Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct. 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate :—*Held :* (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re* BEIRNSTEIN, BARNETT *v.* BEIRNSTEIN, [1925] Ch. 12; 94 L. J. Ch. 62; 132 L. T. 251; *sub nom. Re* BERNSTEIN, BARNETT *v.* BERNSTEIN, 69 Sol. Jo. 88.

(*c*) *After* 1925 (Vol. XXIII., p. 495).

5620a. Special fund for payment of debts—"Contrary or other intention"—Administration of Estates Act, 1925 (c. 23), s. 35.]—The provision by testator in his will of a special fund, not being any of the funds mentioned in sect. 35 (2) of the above Act, for payment of his debts operates as the expression of a "contrary or other intention" within the sect., so as to exonerate, as between the different persons claiming through testator, a personalty fund which at testator's death was subject to a mtge. from the primary liability to discharge it; but the fund is only exonerated to the extent that the special fund is available for discharging the mtge. debt, &, in so far as it is inadequate, the mortgaged property remains primarily liable.—*Re* FEGAN, FEGAN *v.* FEGAN, [1928] 1 Ch. 45; 97 L. J. Ch. 36; 138 L. T. 265; 71 Sol. Jo. 866.

5640. *Add. Annotation :—As to* (4) **Consd.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79.

5641a. ——.]—MARCH (LADY) *v.* FOWKE (1679), Cas. *temp.* Finch, 414; 23 E. R. 226, L. C.

5654a. —— —— **To revert to residue on death of legatee.**]—By his will, testator bequeathed a legacy of £16,000 to trustees for his daughter A. during her life & after her death directed that the legacy should revert to & be added to his general residuary personal estate & go as the same was bequeathed by his will. Testator then gave his general residuary personal estate to B. Testator devised his estates in certain places to other trustees as a fund for the discharge of his debts, funeral & testamentary expenses & his pecuniary legacies in aid of his personal estate, with power to his trustees, if they thought it expedient or necessary either before or after his residuary personal estate should be exhausted to raise money for those purposes by sale or mortgage & subject thereto upon trust for B., in fee. The personal estate of testator was insufficient for the payment of his debts & legacies, & B. supplied such deficiency, including the annual payments to A. in respect of her legacy. A. survived both testator & B. On the death of B., the question arose whether, as testator's personalty was insufficient for the payments before mentioned, testator intended that the corpus of the legacy should be raised out of the real estate devised to B. for the benefit of B.,

who was testator's residuary legatee :—*Held :* the words " revert to & be added to my general residuary estate " in the will, showed that the testator meant the legacy to be restored to the funds from which it was taken ; & it was not to be taken from the real estate merely for the purpose of augmenting the personal estate.—*Re* SOMERSET (DUKE), THYNNE *v.* ST. MAUR (1886), 55 L. T. 753.

5697a. ——.]—EYLES *v.* CARY (1687), 1 Vern. 457 ; 23 E. R. 583.

Annotation :—**Dbtd.** Mallison *v.* Middleton (1739), 1 Eq. Cas. Abr. 198, n.

5697b. ——.]—BOWDLER *v.* SMITH (1706), Prec. Ch. 264 ; 2 Eq. Ca. Abr. 371 ; 24 E. R. 128.

5697c. ——.]—PARKER *v.* WILCOX (1723), 2 Eq. Cas. Abr. 371 ; 22 E. R. 316.

5697d. ——.]—WILLAN *v.* LANCASTER (1826), 3 Russ. 108 ; 38 E. R. 516.

5723a. —— ——.]—Testatrix, who had power, under her brother's will, to appoint real & personal estate, gave the real estate to trustees to raise £1,000, & pay the amount as legacies to various persons & subject thereto for P. & his heirs. She then gave several legacies, payable out of her own personal estate, & other legacies payable out of an unappointed moiety of her brother's personal estate, after the decease of his widow, & she directed the duty on all the foregoing legacies to be paid out of her personal estate, & if deficient for full payment either of duty or legacies, such deficiency was to be made good out of the real estate, on which she charged same. By two codicils, testatrix left other legacies, & directed that the sums bequeathed out of her brother's estate should be paid, with the other legacies, immediately after her decease :—*Held :* the legacies given by the codicils were charged on the real estate.—WILLIAMS *v.* HUGHES (1857), 24 Beav. 474 ; 27 L. J. Ch. 218 ; 30 L. T. O. S. 215 ; 4 Jur. N. S. 42 ; 6 W. R. 94 ; 53 E. R. 441.

5734. *Add. Citations :—sub nom.* NYSSEN *v.* GRETTON, 2 Y. & C. Ex. 222 ; 160 E. R. 378.

5737a. ——.]—Testator directed his debts & funeral & testamentary expenses to be paid out of his personal estate. He then devised his freeholds to trustees to be sold, & the proceeds, after deducting costs, to be deemed part of the residue of his personal estate, & to be subject to the dispositions thereinafter made of the same. Testator then gave a legacy of £1,000 upon certain trusts, & finally directed all the rest & residue of his personal estate to go to his wife for life, remainder over. The pure personal estate being insufficient to pay all the debts & legacies :—*Held :* the legacy of £1,000 ought to be paid out of the moneys arising from the sale of the real estate.—*Re* WOOLLARD'S TRUST (1854), 18 Jur. 1012.

Add. Annotation :—**Consd.** *Re* Thompson, Public Trustee *v.* Husband, [1936] 2 All E. R. 141.

5762a. ——.]—A testator bequeathed an annuity & certain legacies & devised & bequeathed all his real & personal estate not otherwise devised or bequeathed to certain persons. He left personal estate & real estate of considerably greater value. Questions arose in connection with the incidence of certain death duties, whether an annuity & legacies were for that purpose to be treated as payable primarily out of the residuary personalty or out of the realty & personalty in proportion to their values :—*Held :* the law in force before Administration of Estates Act, 1925 (c. 23), as regards the primary fund for payment of legacies as between the personal & real estate has not been altered by sect. 34 (3) of clauses 2 & 8 (*b*) of Part II. of Sched. I., to that Act, & the personal estate must be treated as primarily liable, & recourse will not be made to the real estate until the personal estate has been exhausted. In any case for the purpose of determining the incidence of death duties this result is effected by clause 8 (*b*) of Part II. of the Sched.—*Re* THOMPSON, PUBLIC TRUSTEE *v.* HUSBAND, [1936] Ch. 676 ; [1936] 2 All E. R. 141 ; 105 L. J. Ch. 289 ; 155 L. T. 474 ; 80 Sol. Jo. 466.

5839a. ——.]—A general charge of debts & legacies upon all the real estates of testator not annulled by a subsequent power to sell a particular estate only & apply the produce to the same purpose : but that estate was first applied.—COXE *v.* BASSET (1796), 3 Ves. 155 ; 30 E. R. 945.

Annotation :—**Consd.** Wrigley *v.* Sykes (1856), 21 Beav. 337.

5864. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

5864a. ——.]—WATERHOUSE *v.* CLOUT, *Ex p.* BOOKER (1871), 41 L. J. Ch. 223 ; 20 W. R. 277.

5908a. Charge of debts, legacies & expenses on specific bequest—Variation of statutory order of administration.]—By a will, testatrix gave & bequeathed " All my farm stock, implements & tenant-right but charged with payment of all my just debts, & funeral & testamentary expenses, & also with the payment thereout of the legacies mentioned in the will of my late husband W., & an additional legacy of £50 which I bequeath to my step-daughter E. unto & equally between my step-son G. & my son F." :—*Held :* Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., in the case of wills, *a fortiori* in the case of those executed before 1926, indicating with reasonable clarity the intention of deceased, is to take effect subject to variations necessary to give effect to the intention, & therefore the farm stock, implements, & tenant-right were primarily applicable for

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) i.

b i. ——.]—WRIGHT *v.* WRIGHT, [1928] N. Z. L. R. 331.—**N.Z.**

r i. —— *Balance of proceeds of sale of land sold by mortgagee treated as land.*]—ARMSON *v.* THOMPSON (1877), 25 Gr. 138.—**CAN.**

r ii. ——.]—Testator devised to his daughter a lot of land charged with a legacy. The daughter predeceased testator, leaving two children, to whom the lot descended. On an appln. by the exors. at the instance of the official guardian :—*Held :* it was the duty of the exors. to sell the land & pay the legacy.—*Re* EDDIE (1892), 22 O. R. 556.—**CAN.**

r iii. ——.]—*Re* SISKIN ESTATE. SISKIN *v.* BOGOCH & HOCHMAN, [1929] 4 D. L. R. 1086 ; 1 W. W. R. 820 ; 23 S. L. R. 626.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) ii.

c i. ——.]—If under a will there are general gifts of legacies & then of the rest & the residue, real & personal, blending the whole in one mass, the legacies are a charge on the realty.—*Re* CONNER, [1930] 1 W. W. R. 442 ; 2 D. L. R. 348.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 4.

5874 i. *Before specific legacies.*]—*Re* HUNT, [1924] 3 W. W. R. 241.—**CAN.**

payment of the funeral & testamentary expenses & debts.—*Re* LITTLEWOOD, CLARK *v.* LITTLEWOOD, [1931] 1 Ch. 443; 100 L. J. Ch. 243; 144 L. T. 718; 47 T. L. R. 79.

5917a. —— —— —— —— **Administration of Estates Act, 1925 (c. 23), Sched. I., Part II.**]—A share of residuary estate which lapses owing to the person who would have been entitled to it under the will of a testator predeceasing testator is "property undisposed of by will" within clause 1 of above Part, & therefore under sect. 34 (3) of the Act primarily liable, subject to any direction to the contrary in the will, to the discharge thereout of funeral & testamentary expenses, debts & legacies.—*Re* LAMB, VIPOND *v.* LAMB, [1929] 1 Ch. 722; 98 L. J. Ch. 305; 141 L. T. 60; 45 T. L. R. 190; 73 Sol. Jo. 77.

Annotations:—**Distd.** *Re* Petty, Holliday *v.* Petty, [1929] 1 Ch. 726. **Foll'd.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch 47. **Dbtd. & Distd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268, C. A. **N.F.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Apprvd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202.

5917b. —— —— —— —— ——.]—A testator by his will, after directing his executors to pay all legacies free of estate duty & to pay out of his estate any duty which might become payable on any gift made before his decease & after bequeathing certain legacies & annuities & the use & benefit of two freehold cottages, directed them to collect the income from the remainder of his estate & to pay 75 per cent. thereof to E. H. during her life & on her death the income of the whole of the estate to be invested for the benefit of the children of M. & A. on their attaining the age of twenty-one years, & if there should be no children then the whole of the accumulated funds was to be divided between two named charities. Testator died on Mar. 12, 1929. It having been held upon the originating summons that, in consequence of the will having been attested by the husband of E. H., the 75 per cent. share of the income of the residuary estate was undisposed of by the will, until the death of E. H. or the birth of a child to either M. or A., the question then arose whether testator's funeral, testamentary & administration expenses, debts & liabilities other than the estate duty in the will mentioned ought to be paid primarily out of such undisposed of income or out of the corpus of his estate:—*Held:* (1) the "real & personal" estate of a deceased person made assets for the payment of his debts by Administration of Estates Act, 1925 (c. 23), s. 32 (1), include the share of income of testator's residuary estate accruing after his death as to which he died intestate; (2) that property "undisposed of by will," made by sect. 34 (3), Sched. I., Part II., para. 1, of that Act the primary fund for payment of the expenses, debts, & liabilities mentioned in that subsect. includes a share of future income of residuary estate which lapses by reason of the statutory inability of the legatee to take under the will; (3) upon the proper construction of the will & the sub-sect. there was no provision for payment of the funeral, testamentary, & administration expenses, debts, & liabilities, with the result that those expenses & the debts & liabilities, except the estate duty in the will mentioned, must be paid primarily out of the share of income which lapsed & any other property undisposed of by the will.—*Re* TONG, HILTON *v.* BRADBURY, [1931] 1 Ch. 202; 100 L. J. Ch. 132; 144 L. T. 260, C. A.

Annotation:—*As to* (3) **Foll'd.** *Re* Worthington, Nichols *v.* Hart, [1933] Ch. 771.

5917c. —— —— —— —— ——.]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

5917d. —— —— —— —— ——.]—Testatrix by her will after appointing a sole exor. thereof & bequeathing a number of pecuniary legacies gave devised & bequeathed all the residue of her estate both real & personal to E. S. & L. M. H. in equal shares absolutely. E. S. died in the lifetime of testatrix, & her moiety lapsed & passed as on an intestacy:—*Held:* the order of the application prescribed by Administration of Estates Act, 1925 (c. 23), s. 33 (2), & Sched. I., Part II., being under sect. 33 (7), sect. 34 (3), & Sched. I., Part II., expressly subject to variation by the provisions of the will, & there being in this case no such provisions, the statutory order must be followed, & both the debts, funeral & testamentary expenses & the legacies were payable primarily out of the lapsed share of the residue.—*Re* WORTHINGTON, NICHOLS *v.* HART, [1933] Ch. 771; 102 L. J. Ch. 273; 149 L. T. 296; 49 T. L. R. 444; 77 Sol. Jo. 371, C. A.

5917e. —— —— —— —— —— **Contrary intention of testator.**]—Testator devised & bequeathed his residuary real & personal estate upon trust for sale & conversion, & after directing payment of his debts, etc., out of that mixed fund gave the residue thereof thereinafter referred to as the residuary trust fund, as to one-half to his wife & as to the other half to two daughters in settled shares. Testator died in 1928. His wife having predeceased him, her moiety lapsed & passed as on an intestacy:—*Held:* the order of application of assets prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., being under sects. 33 (7), 34 (3), & Sched. I., Part II., para. 8 (*a*), expressly subject to variation by the provisions of the will, which in this case clearly threw the debts, etc., rateably on the mixed fund, those debts, etc., were payable out of that mixed fund rateably, & not primarily out of the lapsed moiety.—*Re* PETTY, HOLLIDAY *v.* PETTY, [1929] 1 Ch. 726; 98 L. J. Ch. 207; 141 L. T. 31.

Annotations:—**Distd.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch. 47. **Apprvd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268.

5917f. —— —— —— —— —— ——.]—By his will dated Dec. 2, 1911, a testator devised to his brother C. "all my freehold & copyhold property," & gave all his leasehold property & personal estate & effects, subject to payment of his funeral & testamentary expenses, debts, & legacies upon trust for division amongst his brothers & sisters as therein mentioned. Testator died on Aug. 15, 1928, & was at his death entitled, subject to the effect of the provisions of the Law of Property Act, 1925 (c. 20), to two equal ninth shares of certain freehold property comprised in his father's residuary estate, & to one equal fourth part of certain freehold minerals purchased by him. He also owned the entirety of certain other freehold property. The residuary gift of personalty lapsed as regards three equal seventh parts

owing to the death of two legatees in the testator's lifetime: — *Held:* testator by directing that his debts should first be paid out of the residue before division amongst the residuary legatees had shown an intention that in regard to the lapsed shares of residue the order of administration prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., should not apply, inasmuch as the net amount of the residue available for distribution could not be ascertained until after the debts had been paid. The debts were therefore not payable out of the lapsed shares in exoneration of the other shares. — *Re* KEMPTHORNE, CHARLES *v.* KEMPTHORNE, [1930] 1 Ch. 268; 99 L. J. Ch. 107; 142 L. T. 111; 46 T. L. R. 15, C. A.

Annotations:—**Apld.** *Re* Littlewood Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Distd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42. **Distd.** *Re* Worthington, Nichols *v.* Hart, [1933] Ch. 771. **Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

5919a. —— As property undisposed of by will—Contrary intention of testator.] — In the administration of the solvent estate of a testator who died after the commencement of Administration of Estates Act, 1925 (c. 23), a direction in his will to the trustees to pay his funeral & testamentary expenses & debts out of the proceeds of the sale & conversion of his personal estate is a provision within the meaning of sect. 34 (3) of that Act. Its effect is to make the personal estate applicable towards the discharge of testator's funeral, testamentary, & administration expenses, debts, & liabilities payable out of his estate, except death duties imposed on real estate, in priority to testator's real estate which, owing to the death of the devisee thereof in testator's lifetime, was property undisposed of by his will & which, but for the provision in his will, would be primarily liable according to the order of application of assets specified in Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., cl. 1.—*Re* ATKINSON, WEBSTER *v.* WALTER, [1930] 1 Ch. 47; 99 L. J. Ch. 35; 142 L. T. 129.

Annotations:—**Consd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268. **Apld.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Tong, Hilton *v.* Bradbury, [1930] 2 Ch. 400.

Part V.—Powers and Rights of Representative.

5973. *Add. Annotation:*—**Refd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

5977a. One executor carrying on business in competition with testator's business—Breach of trust.]—By his will testator who, at the date thereof, was carrying on the business of a yacht broker, appointed pltfs., namely, his daughter B. & one W. & deft. exors. & trustees thereof, & directed them to carry on his business after his death; & in the event of a sale thereof by the exors. the whole of the proceeds were bequeathed to B. Testator died on Aug. 1, 1928, & his exors., in pursuance of the directions contained in the will, carried on his business, until Feb. 1, 1929, when, testator's tenancy of the business premises being about to expire, they removed the business to other premises, a lease of which was shortly afterwards granted to deft. alone, of which lease to deft. pltfs. did not become aware until a few weeks after the grant thereof, when deft. claimed the right to hold the lease of the new premises for his own benefit, to exclude pltfs. from the new premises & to set up & carry on his own account a business similar to & in competition with testator's business. Deft. having, since the issue of the writ in the action, assigned the lease of the new premises to B. & the goodwill of the business also having been assigned to her, it became no longer necessary to grant any of the relief claimed & necessary to determine only whether deft. was entitled at the date of the issue of the writ to the right which he then claimed, for the purpose of deciding how the costs of the action ought to be borne:—*Held:* (1) in face of the claim made by deft. to the benefit of the lease, pltfs. were justified in bringing the action; (2) having regard to the special nature of the business of a yacht broker which necessarily involved competition between every individual broker with all the others, it would have been a breach by deft. of his fiduciary duty towards the beneficiaries under the will, if he had at the date of the issue of the writ set up on his own account an independent business of a yacht broker in competition with pltfs., carrying on their testator's business; with the result that deft. must pay all the costs of the action.—*Re* THOMSON, THOMSON *v.* ALLEN, [1930] 1 Ch. 203; 99 L. J. Ch. 156; 142 L. T. 253.

PART IV. SECT. 7, SUB-SECT. 9.—A.

t i. —— ——.]—Testator, whose estate was subsequently sequestrated on the petition of his exors., & who had effected several whole life policies of assurance upon his own life with the Australian Mutual Provident Society, in respect of which the total amount payable at his death was £4,628 18*s.* 3*d.*, & which were protected under Australian Mutual Provident Society's Act, 1857, s. 14, to the extent of either £1,500 or £1,780 1*s.* 9*d.*, had during his lifetime assigned the policies in question to the Society by way of mtge. as collateral security for the repayment of certain advances totalling £3,500, in respect of which advances the amount of £3,560 12*s.* 3*d.* was due at the date of his death:—*Held:* the equitable doctrine of marshalling applied, & the mtgee. must resort primarily to the protected fund to satisfy the mtge. debt, so as to leave the unprotected portion of the policy moneys available for the unsecured creditors, with the result that the protection afforded by the Act was entirely destroyed.—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369; 45 N. S. W. W. N. 88.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.—A.

5972 iii. —— ——.]—MCCALLUM *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 1 D. L. R. 271; 43 B. C. R. 31; *revsd.*, [1931] 4 D. L. R. 926; 43 B. C. R. 342.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

b i. —— —— *No power to give guarantee.*]—By the will of her husband, under which deft. was made an extrix., his business "now being carried on by me in the City of Vancouver" was devised to her & two other trustees in trust to continue to carry it on until

6014a. —— ——.]—Testator devised & bequeathed to trustees estate A. & also all & singular his freehold & leasehold estates & effects in H. & W. together with the steam engines & machinery, money in hand, etc., together with all & singular other his real & personal estates & effects, upon trust, that his trustees, etc., should carry on his cotton manufactory in the best & most proper manner they possibly could & he empowered them to retain as much ready money, as a capital in the business, as by them might be considered necessary, with full power to carry on the same, & to keep the whole in good repair, & to renew the machinery: & directed that at the end of every twelve months next after his decease, provided his daughters L. & E. were living, the profits, if any, & the surplus income from his H. & W. estates, after paying certain annuities, after retaining a sufficient capital to carry on the manufactory, should be equally divided between his two daughters, share & share alike; but if his trustees were not inclined to carry on the cotton manufactory, he empowered them to let the same, when he directed the reserved capital to be immediately divided between his two daughters L. & E. share & share alike: & he further directed that the surplus rents of his H. & W. estates, after paying the annuities, were to be equally divided every twelve months after his decease between such two daughters, share & share alike. He directed his trustees to allow his daughter E. to receive all the rents, etc., of his estate A. for her life & declared that at her death her issue were to be entitled to such estates, but if she left no issue then such estates were to go to his daughter L. & if she should then be dead, having left issue, such issue were to take; he then gave to L. an annuity of £600 during her life, & charged the same on all his real & personal estates in H. & W. & bequeathed the same at her death to her issue equally: &, if she should die without leaving lawful issue, his daughter E. if she should be living, was to take the annuity of £600 & the whole of the surplus rents, etc., of his H. & W. estates, both real & personal: & if neither of his daughters left issue, the whole of his estates, both real & personal, were to go to R. H. for life, with remainder to his issue, remainder to his heir at law. L. & E. survived testator: E. & L. both died without issue:—*Held:* (1) the representatives of L. & E. were absolutely entitled, in equal shares, to all such personal estate as was situate in H. & W. & which was not retained by the trustees as capital for carrying on the manufactory; (2) on the death of the survivor of E. & L. without leaving issue, the whole of testator's personal estate described in his will as situate in H. & W. consisting of his leasehold estate & the manufactory, & the capital retained by the trustees for carrying on the business, subject to the trusts declared in favour of R. H.; (3) R. H. was entitled for his life to the whole of the income of the freehold estates at A., H. & W. & to the income of the capital retained & employed by the trustees in carrying on the business.—HORSEFIELD *v.* ASHTON (1856), 26 L. T. O. S. 300; 2 Jur. N. S. 193, L. C. & L. JJ.; *affirmed, sub nom.* ASHTON *v.* HORSFIELD, HORSFIELD *v.* SIDEBOTHAM (1860), 2 L. T. 1; 6 Jur. N. S. 355, H. L.

Annotations:—Generally, **Refd.** Tyrone Earl *v.* Waterford Marquis (1860), 1 De G. F. & J. 613; Guthrie *v.* Walrond (1883), 22 Ch. D. 573.

6014b. —— ——.]—Testator directed that his business should be carried on for the benefit of his widow or until her second marriage, with very full powers to the trustees to carry on the same, & "to increase or abridge his said business, & his capital, stock & implements therein," & generally to act "as most advantageous & mostly for the benefit of the persons claiming under his will." He also directed that all his debts, funeral & testamentary expenses, & the "costs, charges & expenses of carrying into effect the trusts of his said will," should be paid out of the capital of said business:—*Held:* (1) the widow was entitled for life or until her second marriage, to the whole of the profits made by such business after testator's death; the cash at the banker's & the trade debts being assets or part of the capital of such business; (2) the debts, funeral & testamentary expenses, & the costs of suit, etc., should be borne out of the capital of such business; testator having exonerated his residuary estate from any such or similar charges.—DIXON *v.* DUTFIELD (1862), 5 L. T. 741.

6016. *Add. Annotation:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6016a. —— **No right to priority—Assent to carrying on business.**]—*Re* MURPHY (ELIJAH) ESTATE, MORTON *v.* MARCHANTON (1930), 74 Sol. Jo. 321.

6020a. —— **Right to interest.**]—Where exors. have carried on a business belonging to testator after his death, under a power in his will, &, in an action for administration of testator's estate, the debts incurred in so carrying on the business have been certified, those debts will be paid with interest as from the date of the certificate, before distribution to beneficiaries; but R. S. C., Ord. LV., rr. 62, 63, under which interest is allowed to creditors of a deceased upon their debts as from the date of the order for administration, does not extend to creditors of his exors.—*Re* BRACEY, HULL *v.* JOHNS, [1936] Ch. 690; [1936] 2 All E. R. 767; 105 L. J. Ch. 270; 155 L. T. 473; 80 Sol. Jo. 511.

6025. *Add. Annotation:*—**Refd.** *Re* Bracey, Hull *v.* Johns, [1936] 2 All E. R. 767.

his son should become of a certain age. Testator was interested in, & doubtless a shareholder in, a certain coal mining co., & had given pltf. bank a guarantee of its debt to the bank. After his death a further guarantee for a later debt of the co. to the bank was executed by the three trustees, of which deft. is the survivor. Deft. was sued as extrix. on this guarantee:—*Held:* deft. had no authority to bind the estate by a guarantee of the debt of another business entity, &, therefore, the appeal from the judgment for pltf. must be allowed.—BANK OF MONTREAL *v.* MORROW, [1936] 2 W. W. R. 566; 4 D. L. R. 331; 50 B. C. R. 510.—**CAN.**

b ii. —— *Manner of carrying on—Admissibility of evidence.*]—Where testator directs his business to be carried on "as heretofore," extrinsic evidence may be admitted as to the manner in which it was carried on.—*Re* SAINT-[illegible] [1933] 1 D. L. R. 386; *on appeal,* [illegible] —**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

so. *Before death duties paid—Where security for payment given.*]—R. *v.* CALEDONIAN INSURANCE CO., [1924] 2 D. L. R. 649; [1924] S. C. R. 207.—**CAN.**

6053a. Effect of Administration of Estates Act, 1925 (c. 23), s. 39.]—The expression " personal representatives " in the Administration of Estates Act, 1925 (c. 23), s. 39, does not include trustees in the ordinary sense, even when the personal representatives themselves become trustees upon an assent. The introductory words of sect. 39, conferring powers on personal representatives " during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives," are explained by the fact that under the new law of intestate succession the existence of an infant beneficiary or of a beneficiary, such as a widow, entitled to a life interest only may postpone distribution, & that in these cases sect. 33 places the personal representatives substantially in the position of trustees. The provision in sect. 39 (1) (ii), conferring on personal representatives " all the powers, discretions & duties conferred or imposed by law on trustees holding land upon an effectual trust for sale " does not operate referentially to make Law of Property Act, 1925 (c. 20), s. 28 (2), applicable to pure personalty. Accordingly, where under the will of a testator unauthorised investments are retained under a power to postpone conversion, the rule laid down in *Howe* v. *Lord Dartmouth* (1802), 7 Ves. 137a, still remains applicable in regard to the income payable to a tenant for life.—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

6062. *Add. Annotation :*—**Apld.** Johnson *v.* Clarke, [1928] Ch. 847.

6074a. —— To pay specialty debt—Mortgage valid as against bond—Executor without notice of bond.]—WATERLOO INSURANCE CO. *v.* HIND (1862), 1 New Rep. 64.

6082. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713.

6085. *Add. Annotation :*—**Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378.

6117. *Add. Annotation :—As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6138a. Effect of Administration of Estates Act, 1926 (c. 23), s. 39.]—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, No. 6053a, *ante*.

6147. *Add. Annotation :—As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6161. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1031] 1 Ch. 475.

PART V. SECT. 2, SUB-SECT. 2.—B. (a) i.

6046 ii. —— ——.]—A trustee has implied power to sell the residuary estate for the purpose of distribution when it is vested in him to pay expenses & debts.—*Re* WALKER'S ESTATE, MACRAE *v.* DRUMMIE (1932), 4 M. P. R. 358.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (a) i.

r (p. 577) i. —— ——.]—Where testator charged his debts on his land : —*Held :* the mere failure of testator to enumerate all his land did not detract from the conclusion that all the land was so charged, & the direction that his debts should be paid by his exors. conferred an implied power of sale upon them for the purpose of paying the debts out of the proceeds.—YOST *v.* ADAMS (1886), 13 A. R. 129.—**CAN.**

t (p. 577) i. —— —— *Where executor's power coupled with interest.*]—WESSELS *v.* CARSCALLEN (1860), 10 C. P. 215.—**CAN.**

bb (p. 577) i. —— *Legal estate in executors.*]—A devise of land to exors., in trust for the purpose of selling the lands, passes the legal estate & the beneficiaries take an equitable interest. —TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

t (p. 578) i. —— ——.]—Where testator directed his trustees to hold property for twenty-one years, & then sell it :—*Held :* there was no power to sell contrary to the express provisions of the will, except perhaps in a case of emergency.—DOBBEL *v.* LOUDOUN, [1920] N. Z. L. R. 131.—**N.Z.**

b (p. 578) i. —— —— *Under Devolution of Estates Act.*]—*Re* LOGAN, [1927] 4 D. L. R. 1074; 61 O. L. R. 323.—**CAN.**

h (p. 578) i. —— *Interference by court—Whether court will restrain executor from selling.*]—SAMUELSON *v.* SCHWANDT, [1927] 3 D. L. R. 565; [1927] 1 W. W. R. 620; 21 Sask. L. R. 341.—**CAN.**

h (p. 578) ii. —— *Sale not necessary for administration purposes—Title of bond fide purchaser.*]—An exor. or administrator has no absolute power to dispose of the property of deceased if it is not necessary for the purpose of administration of the estate, but a *bonâ fide* purchaser may be protected in certain cases where a transfer is not for that purpose.—TARAKESWAR DAS GUPTA *v.* AMBICA CHARAN BHATTACHARJEE (1927), I. L. R. 55 Calc. 892.—**IND.**

h (p. 578) iii. —— *Option to purchase given—Whether valid.*—Testator devised all her property to her exors. upon certain trusts, to carry out which they were empowered (*inter alia*) " to sell & dispose of my real estate . . . in such manner & at such times as they may deem advisable." Being unable to effect a sale of a certain dwelling-house property which upon its conversion into money would form part of the residuary estate, the exors. leased it for 16 months, reserving to themselves the right to determine the lease if they should wish to sell. A few weeks later they & the tenant entered into an agreement, called an " option to purchase," under which he made a cash payment & agreed to make monthly payments thereafter in addition to rent, & which also provided that on $1,000 being thus paid, or at any sooner time, he would be entitled to a conveyance, the amounts so paid as well as the rent to be credited on the purchase price, & the balance to be secured by mtge. payable in monthly payments. The " option " was stated to be irrevocable within the time for " acceptance " thereof, but was to remain in force only so long as the purchaser remained tenant of the property, & payment of $1,000 at any time during the continuance of the agreement, was to constitute the " acceptance " of the option :—*Held :* a sale within the power given by the will.—CLOSE *v.* MCMEANS, [1931] 3 W. W. R. 550; [1932] 1 D. L. R. 210; 40 Man. L. R. 31.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (a) ii.

l i. *S. P.* MCCURDY *v.* MCDANIEL (1868), 7 N. S. R. (1 G. & O.) 267.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (b).

p i. —— ——.]—Testator gave his real & personal property to trustees upon certain trusts. He charged his estate with the payment of his debts & succession duties. The personal property was not sufficient to satisfy them, & it was not in the interests of the estate, owing to market conditions, to sell the real estate. The will gave the trustees no express power to mtge. :—*Held :* the trustees had power to mtge. the real estate for the purpose of paying the debts & succession duties, & they could borrow by way of mtge. from one of themselves.—*Re* HIGGINS, HIGGINS *v.* HIGGINS (1932), 4 M. P. R. 365.—**CAN.**

6145 ii. —— ——.]—*Held :* although there was no express devise of realty to the exors., a devise was implied by the terms of the will, &, there being a general charge of debts, the exors. had full power to give a mtge.—BANQUE PROVINCIALE DU CANADA *v.* CAPITAL TRUST CORPN., [1927] 3 D. L. R. 199; 60 O. L. R. 452.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (c).

sp. *Power to reserve benefit to one beneficiary—Out of lands devised to another beneficiary.*]—MCKENZIE *v.* GRANT (1856), 13 U. C. R. 180.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—C. (a).

h i. *Sale under licence of Probate Court—Whether licence conclusive—Licence obtained improperly.*]—DOE *v.* THOMPSON (1860), 9 N. B. R. (4 All.) 483.—**CAN.**

h ii. —— —— *Sufficient personal property for payment of debts.*]—DOE d. SULLIVAN *v.* CURREY (1872), 14 N. B. R. (1 Pug.) 175.—**CAN.**

st. *Conveyance inoperative.*]—TEAHON *v.* LEAMEY (1861), 21 U. C. R. 216.—**CAN.**

sw. *Effect of sale after three years—Devolution of Estates Act*, 1927 *s.* 12.] —C., the owner of land, died on Dec. 20, 1925, intestate. Letters of administration were granted to his daughter A., who was his sole heiress-at-law & next of kin. On Feb. 17, 1926, she, as administratrix, conveyed in fee to R., who, on the same day, conveyed in fee to A. & her husband, as joint tenants. No caution having been registered by A. as administratrix & no

6177. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6178. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321 ; Parker *v.* Judkin, [1931] 1 Ch. 475.

6271. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

6281a. ——.]—Testator, who died on May 17, 1916, by his will appointed appcts. exors. & trustees. & bequeathed a number of absolute & settled pecuniary legacies. Testator gave all his estate whatsoever unto appcts. upon trust for sale & conversion at such time & manner as they should think fit, with power & discretion to postpone sale & conversion & charged the moneys to arise with the legacies bequeathed by his will. Testator's will contained a residuary bequest, investment clause in wide terms, & a power to appcts. to appropriate any part of the estate in its actual condition in satisfaction of any legacy. The principal asset of testator's estate was a sum of nearly a quarter of a million pounds Irish Three per cent. Guaranteed Stock, & the estate was insufficient for payment in full of all the legacies. The Irish stock could not be sold even at a reduced market value of £151,411 & in the interests of the estate it was inexpedient to realise it at once. Appcts. having caused to be prepared a scheme of apportionment, appropriation & abatement among & between the legacies, applied by an originating summons issued on June 27, 1917, to the ct. for its sanction :—*Held :* appcts. could exercise the discretionary power of appropriation notwithstanding the fact that some of the legacies were settled by testator's will.—*Re* DANIELS, LONDON CITY & MIDLAND EXECUTOR TRUSTEE CO., LTD. *v.* DANIELS (1918), 87 L. J. Ch. 661 ; 118 L. T. 435.

6326a. Grant to trust corporation.]—Where letters of administration are granted to a trust corpn., the ct. may give the corpn. power to charge on the authorised scale.—*In the Estates of* YOUNG (1934), 103 L. J. P. 75 ; 151 L. T. 221 ; 50 T. L. R. 424 ; 78 Sol. Jo. 431.

6330. *Add. Annotations :*—**Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6331. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6334. *Add. Annotations :*—**Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913 ; *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623.

6341. *Add. Annotation :*—**Consd.** Jones *v.* Wright (1927), 139 L. T. 43.

6341a. —— —— **Charges for work in execution of statutory trusts.**]—By his will testator directed that his trustees should stand possessed of certain hereditaments upon certain trusts, & declared that any exor. or trustee of his will, who was a solr. or a person engaged in any profession or business, might individually, or through his firm, act in the course of his profession or business on behalf of the exors. & trustees, & charge for so doing :—*Held :* as the land was vested in the trustees upon the statutory trusts, any exor. or trustee of the will, who was a solr. or a person engaged in a profession or business, was entitled, under the will, to charge for work or business done in the execution of the statutory trusts, because such work or business would be done on behalf of the exors. & trustees.—*Re* PEDLEY, WALLACE *v.* WALLACE, [1927] 2 Ch. 168 ;

certificate of *lis pendens* having been registered by any creditor :—*Held :* after Dec. 20, 1928, the three-year period during which the estate was vested in A. as administratrix having elapsed, she & her husband were entitled, by Devolution of Estates Act, s. 12, to convey, to a purchaser in good faith & for valuable consideration, who has no notice of the existence of any claims of creditors, a title free from any liability for the debts of C.—*Re* DOWN & STINBERG, [1929] 3 D. L. R. 70 ; 63 O. L. R. 541.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—C. (b).

o i. ——.]—*Held :* testator having charged a legacy on his estate, having devised his estate to his exor. gave his exor. a power of sale apart from the residuary clause which might be exercised without the purchaser being put on inquiry to ascertain if it was duly exercised.—KENNEDY *v.* SUYDAM (1916), 36 O. L. R. 512.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sa. *Power to reduce debt—& execute quit-claim deed.*]—Where testator had agreed to sell land to K., & the exors. reduced the purchase price in order to keep K. on the land, & later gave T., from whom testator had bought the land, a quit-claim deed of all their interest in the land :—*Held :* (1) the action of the exors. in reducing the price payable by K. was reasonable & proper ; (2) they should not have executed the quit-claim deed without applying, under Trustee Act, R. S. S., 1920 (c. 75), s. 64, to a judge of the King's Bench for advice, but, since they had acted honestly & in what they considered to be the best interests of the estate, their failure to do so should be excused under sect. 44.—LEMCKE *v.* NEWLOVE (Sask.), [1926] 4 D. L. R. 293 ; [1926] 2 W. W. R. 830 ; *varied* [1927] 2 D. L. R. 1049 ; S. C. R. 389.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

a (p. 597) i. —— ——.]—*Re* VINNICOMBE ESTATE, [1934] 1 W. W. R. 780.—**CAN.**

dd i. —— ——.]—Where by a will part of the corpus of the estate was set aside & a life interest in the income thereof given to the widow :—*Held :* (1) all the costs of administering the trusts relating to the devised property must be borne by the subject-matter of the gift, which comprised the income as well as the corpus ; & the percentage allowed to the exors. for collecting the rents must be charged against the income ; (2) expense incurred for repairs to a building upon the land devised was properly charged against the corpus ; (3) interest on money borrowed to meet the expenditure made in order to preserve the property was chargeable to income.—AIR (1923), 54 O. L. R. 497.—**CAN.**

l (p. 601) i. —— *Under Trustee Act, R. S. B. C.*, 1924 (c. 262), s. 80—*Amount limited to 5 per cent. of gross value of estate.*]—*Re* BECKMAN'S ESTATE (1925), 37 B. C. R. 41.—**CAN.**

n (p. 601) i. ——.]—A fee amounting to 5 per cent. of the total value of the estate in question held to be an exorbitant fee, under the circumstances, to allow executors for their services ; & a fee of 1 per cent. of the total value was held ample. The exors. were also allowed their disbursements actually made or actually incurred.—*Re* BEYER ESTATE, [1932] 3 W. W. R. 587.—**CAN.**

n (p. 601) ii. ——.]—Compensation to be allowed an exor. or trustee is a matter of wide discretion.—*Re* MORTIMER, [1936] 3 D. L. R. 380 ; O. R. 438.—**CAN.**

t (p. 601) i. —— ——.]—*Re* BUSCH, [1927] 2 D. L. R. 344 ; 59 N. S. R. 254.—**CAN.**

g (p. 602) i. —— *Not after estate properly administered & accounts passed.*]—*Re* OXENHAM, [1925] 2 D. L. R. 662.—**CAN.**

sb. *Liability for—Beneficiary entitled to specific bequest benefited by work of executor.*]—There is no jurisdiction in the ct. to order that the remuneration of an exor. be paid out of a specific bequest on account of its benefiting by the work of the exor.—*In the Estate of* RATHBONE, [1929] N. Z. L. R. 123. **N.Z.**

sd. *Management fee.*]—Sect. 80 of Trustee Act, R.S.B.C., 1924, does not confer any power on the ct. to allow management fee to [illegible] McINNES [illegible] (1924) 255 ; 49 B. C. R. 297.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

n i. ——.]—STORY *v.* DUNLOP (1867), 13 Gr. 375.—**CAN.**

n ii. ——.]—*Re* WILLIAMS (1895), 22 A. R. 196.—**CAN.**

96 L. J. Ch. 438; 137 L. T. 636; 71 Sol. Jo. 583.

6348. *Add. Annotations :*—**Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6350. *Add. Annotation :*—**Distd.** *Re* Gertzenstein, Ltd., [1936] 3 All E. R. 341.

6370. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

6388a. —— ——.]—Leasehold property belonging to testator, who was original lessee, having been directed to be sold & the proceeds divided :—*Held :* the exors. were entitled to be indemnified out of the proceeds.—SMITH *v.* SMITH (1854), 2 Eq. Rep. 727.

6405. *Add. Annotation :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6409. *Add. Annotation :*—*As to* (2) **Distd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

Part VI.—Liability of Representative.

6446a. —— —— **Sale of goodwill of business—Solicitation of customers.**] — The rule in *Trego* v. *Hunt*, [1896] A. C. 7, extends to a vendor's exor. completing a contract for the sale of the goodwill of a business, & the exor. will be restrained at the suit of the purchaser from soliciting customers of the business.—BOORNE *v.* WICKER, [1927] 1 Ch. 667; 96 L. J. Ch. 361; 137 L. T. 409; *sub nom.* BORNE *v.* WICKER, 71 Sol. Jo. 310.

Annotations :—**Distd.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. **Refd.** Farey *v.* Cooper, [1927] 2 K. B. 384.

6467. *Add. Annotation :*—**Refd.** London & North-Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 145 L. T. 269.

6526. *Add. Annotation :*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

6595. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6596. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6597. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6598. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6600. *Add. Annotations :*—**Folld.** Firman *v.* Royal, [1925] 1 K. B. 681. **N.F.** *Re* Hedderwick, Morton *v.* Brinsley, [1933] Ch. 669.

6602. *Add. Annotation :*—*As to* (1) **Refd.** A.-G. *v.* Midland Bank Executor & Trustee Co. (1934), 19 Tax Cas. 136.

6610. *Add. Annotation :*—*Generally*, **Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

PART V. SECT. 7, SUB-SECT. 2.—A.

r i. —— —— *In respect of guarantee—Distribution of estate in ignorance of guarantee.*] — SAUDRY *v.* HAMPTON, [1927] N. Z. L. R. 673.—**N.Z.**

r ii. —— —— *In respect of debt contracted for estate—Right of creditor to benefit of representative's right to indemnification.*]—Where an exor. contracts a debt on behalf of the estate the creditor is in equity entitled to the benefit of the exor.'s right to be indemnified out of the assets of the estate in the hands of the beneficiaries.—NETHERLANDS INVESTMENT CO. *v.* DESBRISAY, [1928] 1 D. L. R. 581; [1928] 1 W. W. R. 461; 23 Alta. L. R. 291.—**CAN.**

PART V. SECT. 7, SUB-SECT. 3.

s. *Representative not authorised by will—Beneficiaries claiming profits of business—Right of representative to be indemnified.*]—M'GINLEY *v.* GALLAGHER, [1929] I. R. 307.—**IR.**

PART V. SECT. 8.

sh. *To receive payment of lump sum for which pension commuted by deceased.*]—R. *v.* MCCORRISTON, [1926] 4 D. L. R. 1086.—**CAN.**

sl. *To bring action—To set aside tax sale of land belonging to estate.*]—RODGER *v.* MORAN (1896), 28 O. R. 275.—**CAN.**

PART V. SECT. 9.

6426 i. — —*Power of executor to bind — Co-executor.*] — *Held :* a settlement made by an exor. precluded the co. exor. & *cestuis que trust* from opening up the estate so settled.—*Re* BATH'S ESTATE (1879), 12 N. S. R. (3 R. & C.) 604.—**CAN.**

PART V. SECT. 10.

6438 iii. —— ——.]—*Re* HEWETT *v.* JERMYN (1898), 29 O. R. 383.—**CAN.**

PART VI. SECT. 1.

sl. *For failure to prove—Who may sue for penalty.*]—Next of kin, although taking no interest under the will, is a "person having an interest in the estate" within Probate Act, R. S. N. S., 1923, s. 137 (1), & so may sue for the statutory penalty against an exor. who fails to prove the will.—DUNN *v.* MACGREGOR, [1934] 3 D. L. R. 463.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

6501 i. *Covenant to pay debt—Under mortgage.*]—In a will, the only provision for the payment of debts, was the usual one, that all testator's first debts should be paid by his exors. At the time of his death, a parcel of land was held in joint tenancy by testator & his wife, subject to a mtge.: —*Held :* the wife on death of testator, became owner subject to the mtge., & as between her & testator's estate, she was not entitled to call upon the estate to pay the mtge.; but if mtgee. could recover from testator's estate upon a covenant by testator for payment, dissolution of testator's interest could not deprive mtgee. of that right.—*Re* GRACEY (1925), 63 O. L. R. 218.—**CAN.**

sg. *Covenant in mortgage.*]—A claim for money due under mtge. is not a "claim or demand" against the estate within Ontario Surrogate Cts. Act, R. S. O., 1927.—LONDON & WESTERN TRUST CO. *v.* SALE, [1936] 2 D. L. R. 297; O. R. 244.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.

6521 ii. ——.]—WHYATT *v.* MARSH (1848), 4 U. C. R. 485.—**CAN.**

g. *Add. Citation :*—*revsd. sub nom.* M'GUGAN *v.* SMITH 1892), 21 S. C. R. 263.—**CAN.**

g i. —— ——.]—MURDOCH *v.* WEST (1895), 24 S. C. R. 305.—**CAN.**

g ii. —— ——.]—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

g iii. —— ——.]—JEFFERSON *v.* MUISE, [1930] 4 D. L. R. 208.—**CAN.**

k i. ——.]—*Re* STRETTON ESTATE, CAY & HILL *v.* MARCOTTE, [1930] 1 W. W. R. 824; 2 D. L. R. 700; 24 S. L. R. 481.—**CAN.**

sk. *Necessity for consideration.*]—The mother of pltf. made a will by which she devised certain land with a house on it to pltf., who was at that time living in it with her husband. Before the will was made, according to pltf.'s story, her husband wished to live elsewhere, & her mother said: "Do not leave; stay on here & fix this house up & I will leave it to my daughter (pltf.) at my death." The husband & wife stayed on & made improvements, relying on the promise, & the mother made the will leaving the property to pltf. Subsequently the mother made a new will leaving the property to another daughter. In an action for specific performance of the alleged agreement :—*Held :* there was no corroboration of pltf.'s evidence & no consideration passing to deceased for the binding contract alleged.—HOLLIDAY *v.* TURNER, [1930] 3 D. L. R. 205; 65 O. L. R. 206.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. —— *Matrimonial causes—Order for costs against husband.*]—A wife, whose husband had died after a decree *nisi* for divorce & before the date when it could have been made absolute :—*Held :* not entitled, there being no funds in ct., to costs against his estate.—JARVIS *v.* JARVIS, [1925] 3 D. L. R. 415; [1925] 1 W. W. R. 247.—**CAN.**

6611. *Add. Annotation :*—**Refd.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

6667a. —— Non-repair by representative.]—In debt for rent against an administrator, as of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet, for an unexpired term, to a tenant who had become insolvent & unable to pay rent ; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall ; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them ; & that he had fully administered, etc. Replication ; that the premises were of more value than the sum mentioned in the plea, viz. of the value of the rent ; & that deft. did not offer to surrender, etc. Issue thereon :—*Held :* (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself committed a breach of a covenant to repair in the original lease ; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent.—HORNIDGE *v.* WILSON (1840), 11 Ad. & El. 645 ; 3 Per. & Dav. 641 ; 9 L. J. Q. B. 72 ; 113 E. R. 559.

:—*As to* (1) **Consd.** *Re* Bowes, Strathmore *v.* Vane, Norcliffe's Claim (1887), 37 Ch. D. 128. **Refd.** Rendall *v.* Andreæ (1892), 61 L. J. Q. B. 630.

B. Effect of Death (p. 644).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

6711. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

6712. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713. *Add. Annotation :*—*As to* (1) **Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713a. —— —— ——.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & m[illegible] the contemplation of the parties at the alleged promise was made.—RILEY *v.* BROWN (1929), 98 L. J. K. B. 739 ; 142 L. T. 42 ; 45 T. L. R. 613 ; 73 Sol. Jo. 499.

6723. *Add. Annotation :*—**Consd.** Firman *v.* [1925] 1 K. B. 681.

SECT. 3.—**FOR TORTS OF DECEASED** (p. 646).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

6730. *Add. Annotation :*—**Refd.** A.-G. *v.* Midland Bank Executor & Trustee Co. (1934), 19 Tax Cas. 136.

6762. *Add. Annotation :*—**Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

6770a. Negligence.]—A co. was formed for the purpose of buying the business of a firm of bill brokers, & by the memorandum of assocn. the directors were empowered to buy it upon such terms & under such stipulation as to guarantee or otherwise as might be agreed upon. The prospectus referred to the memorandum of assocn. & to a certain deed of covenant. By that deed the business was assigned to the co., & all accounts, except such as the directors should require to be reserved & excepted, were to be carried on by the co., & the partners in the business guaranteed that all debts due to the firm & taken over by the co. were good. By a second deed of the same date, not mentioned or disclosed to the shareholders, assets of the firm to the nominal value of £4,213,896 were reserved & excepted, & provisions were made for guaranteeing payment by the partners of the balance which, after a certain period & under certain arrangements, should not be got in on this account. The co. carried on business for some time, & then stopped payment. A bill was filed by the co. against the living directors & the exors. of a deceased director stating these facts, & that the co. had lost £1,500,000 by taking the liabilities of the business, & by the insufficiency of the guarantee, & charged that the directors had been guilty of a breach of duty in buying the business without obtaining the sanction of a general meeting, & in not taking mtges. on the property of the partners in order to secure the guarantee, but no fraud was charged

PART VI. SECT. 2, SUB-SECT. 12.—B. (b) i.

6678 i. *Personal liability — As* [illegible].]—In Mar. 1921, pltf. executed a lease of land & buildings to H., & M. covenanting to allow the lessees to erect a partition on the ground floor of the chief building, & himself to contribute $1,000 towards the cost. The partition was built, pltf. contributed the $1,000 & the lessees went into possession. H. died in Jan. 1923, & his wife, deft. A. & deft. co., the executors named in the will, obtained probate thereof. In Oct. 1923, M. made an assignment in bkpcy. & deft. co. was appointed custodian of the bkpt. estate. Pltf.'s claim in this action was to recover a large sum made up of rent, taxes, cost of repairs & interest. He alleged that defts. entered into, & from Jan. 1923, continued in possession & receipt of the rents & profits & claimed payment from them personally :—*Held :* co. entered upon the premises not merely in its representative capacity as exor., but personally as assignee of the term, & as such was personally chargeable with the amount of rents & profits which it received, & with such further sums as it might have received if it had used due diligence, but not exceeding in the aggregate the full amount of the actual rental value of the premises.—RYCKMAN *v.* TRUSTS & GUAR. CO., [1929] 1 D. L. R. 545 ; 63 O. L. R. 285 ; 10 C. B. R. 414.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

6726 i. *General rule—Representatives not liable.*]—CONNOLLY *v.* SHIVES (1879), 18 N. B. R. 606.—**CAN.**

6726 ii. —— ——
CALVIN (1885), 9 O. R. 267.—

of ship.]—CAMERON *v.* MILLOY [illegible]. $31.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

k i. ——.]—An action of tort for damages for the destruction of personal property because of the negligence of deceased in driving a motor-car in which pltf. was a passenger falls within Administration Act, R. S. B. C., 1924, s. 71 ; but claims for personal injuries & a claim by a father for the death of a child fall within the rule *actio moritur cum persona.*—

PART VI. SECT. 3, SUB-SECT. 4.

s i. *Negligence & fraud.*]—An action by a bank against one of its directors for negligence & fraud is not one to which the maxim *actio personalis moritur cum persona* applies, being an action for breach of quasi-contract. —PEOPLES BANK OF NORTHERN [illegible] *v.* HARGOPAL (1735), I. L. R. 17 262.—**IND.**

against the directors :—*Held :* on demurrer by the exors. of the deceased director, that as regarded any loss beyond the money placed in the directors' hands, the remedy, if any, was at law, by an action of negligence, which would not survive against exors.—OVEREND, GURNEY & Co. *v.* GURNEY (1869), 4 Ch. App. 701 ; 21 L. T. 73 ; 39 L. J. Ch. 45, L. C. ; *affd. on other grounds, sub nom.* OVEREND, GURNEY & Co. *v.* GIBB (1872), L. R. 5 H. L. 480, H. L.

6835. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

6840. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

6850. *Add. Annotation :*—**Consd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

6850a. Disturbance of easement.]—D. sold to pltf. a house, No. 10, together with a right of way over a strip of land 10 ft. broad to the garden of the house. D. died, & at the time of his death was under contract with the purchaser of the adjoining house, No. 11, to erect a garden fence for him & to give him a similar right of way to his garden. Pltf. entered No. 10 shortly after the death of D. & a few days later H., a sub-contractor, on the orders of W., the builder of the houses, erected the fence at the back of No. 11 so as to constrict the right of way granted by D. to pltf. Pltf. sued defts., the exors. of D. as exors., & by his amended statement of claim founded his action (*a*) in breach of covenant, & (*b*) in nuisance, but it was argued solely as an action of tort. These facts being proved by pltf., defts. called no evidence, & there was no evidence of the contract of D. with W., the builder. The trial judge found that the fence was erected by W. on the instructions of the exors. of D., defts., & gave judgment for pltf. :—*Held :* the appeal must be dismissed.—FLOWER *v.* PRECHTEL (1934), 150 L. T. 491, C. A.

6861a. —— ——.]—BEAUMONT *v.* GROVER (1701), 1 Eq. Cas. Abr. 8 ; 21 E. R. 833.

6861b. —— ——.]—KEMISH *v.* BETSON (1732), Kel. W. 74 ; 25 E. R. 497.

6911. *Add. Annotation :*—**Apld.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

6915a. —— —— **Liability of executor for "wilful default"—What amounts to.**]—Pltfs. were the two sons of testatrix, entitled in equal shares to her estate undisposed of by her will, including £214 14*s.* 5*d.* in the Post Office Savings Bank & £62 4*s.* in Savings Certificates. Deft., as sole exor. of testatrix, employed to wind up her estate a solr. who, unknown to him, had at one time been suspended from practice, & who obtained from the first pltf. the Post Office Savings Bank deposit book & the Savings Certificates. Deft. heard for the first time of the solr.'s suspension three months later, when the first pltf. told him of it. Under deft.'s written authority, a warrant valued at £62 4*s.* had been issued in favour of the solr.'s firm, & the first pltf. wrote to deft. objecting to his having taken that course. Later, the first pltf. asked deft. to employ another solr., but deft. did not do so, as the solr. was then promising to settle the matter. Ultimately the solr. absconded, & the sums of £14 14*s.* 5*d.* & £62 4*s.* were not recovered. In an action by pltfs. for a declaration that deft. was guilty of a breach of trust in permitting the sums to be retained by the solr., & for payment of them, deft. in his defence relying upon Trustee Act, 1925 (c. 19), s. 23 :—*Held :* Trustee Act, 1925 (c. 19), s. 23 (1), authorised deft. in signing the authorities to the solr.'s firm to collect the sums ; (2) by virtue of sect. 30 (1) of the Act, trustees are not liable for losses due to the default of "any banker, broker, or other person with whom any trust money or other securities may be deposited" unless the losses are caused by the trustees' own wilful default ; (3) an exor. employing an agent to receive moneys belonging to the estate & relying on sect. 23 (1), will not be liable if the money is lost through the agent's misconduct, unless the exor. has himself been

PART VI. SECT. 4, SUB-SECT. 1.

sd. *Release by co-executor—Whether binding on beneficiary.*]—A release of an exor. from liability for breach of trust by a deceased co-exor. will not be set aside when it has been adopted by the beneficiary with knowledge of his right to take proceedings.—BELLIVEAU *v.* TAIT, [1935] 1 D. L. R. 726 ; 8 M. P. R. 567.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

c i. ——.]—A contract made by an exor. or administrator on behalf of the estate, but not relating to an obligation incurred by testator or intestate, renders him personally liable, even though it is expressed to be made "as exor," or "as administrator."—WALCH *v.* NORDQUIST, [1926] 4 D. L. R. 126 ; [1926] 2 W. W. R. 854 ; 36 Man. L. R. 46.—**CAN.**

d i. —— *Administrator guilty of fraud.*]—DOE d. DOBIE *v.* VANDERLIP (1836), 5 O. S. 85.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 3.

6849 i. *Executor primarily liable—Right to indemnity—From testator's estate—If acting in interests of estate.*]—An exor. is personally liable for tort committed by him & should be sued personally. He is entitled to an indemnity from the estate if the tort was committed while acting reasonably in the interests of the estate.—GROUNDWATER *v.* GROUNDWATER (1935), 10 M. P. R. 56.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (a).

6851 i. *Sale of testator's estate—Below proper value.*]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, pltfs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Pltfs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of pltfs. for the recovery of damages :—*Held :* the evidence established no negligence on the part of defts., & no breach of trust.—DAVIES *v.* NELSON, [1928] 1 D. L. R. 254 : 61 O. L. R. 457.—**CAN.**

6863 ii. ——.]—Where exors. are held liable to the estate for what it has lost by their disposition of an agreement for the sale of land entered into by testator under the crop-payment plan, the main consideration in determining the value of the asset lost to the estate is the value of the purchaser's covenant to pay.—LEMCKE & CRAIK *v.* NEWLOVE & NEWLOVE (Sask.), [1929] 2 D. L. R. 516 ; 1 W. W. R. 761.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (c).

6906 i. *Insurance of property.*]—In Ontario exors. are bound to insure, against fire, buildings forming part of the estate in their hands, & are liable on a *devastavit* if they fail to insure.—*Re* GAMBLE, [1925] 4 D. L. R. 768 ; 57 O. L. R. 504.—**CAN.**

s i. —— ——.]—AULD *v.* DAVIS, [1937] 3 W. W. R. 368.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (d).

6913 i. *Misappropriation—By agent—Agent previously employed by deceased.*]—Exors., relying in good faith on the statement of their testator's solr. that he had in his hands securities sufficient to answer a fund they were directed by the will to invest for an annuitant, distributed the estate. Subsequently it was found that before testator's death the solr. had misappropriated the money given to him by testator to invest, & had, in fact, at the time of the representation, no securities or money in his hands :—*Held :* the exors. were protected by Trustee Limitation Act, R. S. O. 1897, c. 129, s. 32.—CLARKE *v.* BELLAMY (1900), 27 A. R. 435.—**CAN.**

guilty of wilful default; (4) deft. was guilty only of an error of judgment which, where losses are due to a solr.'s dishonesty, does not amount to "wilful default" on the part of an exor.—*Re* VICKERY, VICKERY *v.* STEPHENS, [1931] 1 Ch. 572; 100 L. J. Ch. 138; 144 L. T. 562; 47 T. L. R. 242.

6922. *Add. Annotations:*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

7059. *Add. Annotation:*—**Refd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

7163. *Add. Annotation:*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

7169a. ——.]—FLOCKTON *v.* BUNNING (1868), 8 Ch. App. 323, n.

7190a. ——.]—Exors. must be allowed a reasonable time for breaking up testator's domestic establishment & discharging his servants. Two months:—*Held:* not to be an unreasonable delay, having regard to the circumstances.—FIELD *v.* PECKETT (No. 3) (1861), 29 Beav. 576; 9 W. R. 525; 54 E. R. 751.

7190b. ——.]—BROWNE *v.* COLLINS, No. 6308, *ante*.

7214. *Add. Annotation:*—**Refd.** *Re* Bracey, Hull *v.* Johns, [1936] 2 All E. R. 767.

7219. *Add Annotation:*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

7225a. Assets improperly obtained.]—Where two exors. obtained part of the assets improperly, by signing joint receipts in favour of each other, while they had large balances in their hands respectively, the ct. gave interest on those sums at five per cent. against both exors.—BICK *v.* MOTLEY (1835), 2 My. & K. 312; 39 E. R. 962; *sub nom.* BECK *v.* MOTLEY 4 L. J. Ch. 63.

7250a. ——.]—Where there is a direction in the will to accumulate a residue, with which the exor. does not comply, he must pay interest from the expiration of one year after testator's decease up to the date of filing the answer.—AMISS *v.* HALL (1857), 3 Jur. N. S. 584.

Annotation:—**Dbtd.** *Re* Emmet's Estate, Emmet *v.* Emmet (1881), 17 Ch. D. 142.

7256a. —— ——.]—Exor. charged with interest on divdends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481; 148 E. R. 1269, Ex. Ch.

7273a. —— ——.]—GILROY *v.* STEPHENS, No. 7268, *ante*.

7276a. —— **To authorise maintenance.**]—CHARLTON *v.* SADEN (1836), Donnelly, 36; 47 E. R. 210.

6913 ii. —— ——.]—An administrator acting for infants who pays funds to his solr. to be paid to the official guardian of the infants, which funds are never received, is guilty of gross negligence & breach of trust.—BENJAMIN *v.* HASKELL, [1936] 4 D. L. R. 465.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—C. (a).

6979 i. *Bar to enforcement of remedy—Conduct of party injured—Delay.*]—MEACHAM *v.* DRAPER (1851), 2 Gr. 316.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

f i. —— *Liability of executor for solicitor's costs.*]—An exor. who fails to keep proper records may be personally liable to a solr. for extra work in preparing accounts due to the exor.'s default.—*Re* A SOLICITOR, [1934] 2 D. L. R. 761; O. R. 241.—**CAN.**

sd. *Jurisdiction of court—To call upon executors to account.*]—The Surrogate Ct. has jurisdiction to call upon an exor. to account even before the expiration of the two years provided for in his letters probate.—*Re* NORDTOMME ESTATE, [1928] 3 W. W. R. 290.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.—B. (b).

sm. *Not where administration granted on application of party interested adversely to executor.*]—HARRISON *v.* MCGLASHAN (1859), 7 Gr. 531.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—B.

sn. *Counsel's fee—For general work & advice—Not allowed.*]—*Re* DODGE ESTATE, [1925] 1 D. L. R. 1140; [1925] 1 W. W. R. 776.—**CAN.**

so. —— —— —— *Unless estate difficult to manage or solicitor required to render services by way of business management.*]—*Re* ROEMER (Sask.), [1927] 3 W. W. R. 603; *varied sub nom. Re* ROEMER ESTATE, *Re* MOTT *v.* ROEMER, [1928] 3 D. L. R. 860; [1928] 2 W. W. R. 566.—**CAN.**

sr. *Upkeep of family vault.*]—An exor. is entitled to a reasonable allowance for the perpetual upkeep & care of the family vault.—*Re* MURRAY, [1936] 1 D. L. R. 463.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—C. (a).

7200 i. *Under special circumstances.*]—Where the circumstances of the case render it reasonable that they should do so exors. are entitled to employ the services of such agents as may be necessary.—*Re* LEVEL ESTATE, [1927] 1 D. L. R. 900; [1927] 1 W. W. R. 1000; 38 B. C. R. 211.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—D. (a).

sp. *Increased fee to counsel—Necessity of notice to parties interested.*]—In a proper case, an increased counsel fee should be allowed the solr. of the exor. as between solr. & client. It is impossible to lay down any fixed rule governing such amounts. The increased fee should not be applied for or granted without notice to the parties interested; but in the present case, since the parties were all before the ct. & had argued the point, an increased counsel fee on the passing of accounts was allowed to save further expense, although notice that it would be applied for had not been given.—*Re* MACDONALD, ESTATE, [1928] 2 D. L. R. 338; [1928] 1 W. W. R. 652; 22 Sask. L. R. 288.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 6.—C. (a).

sx. *Payment to wrong beneficiary—Delay in application to court for interpretation of will.*]—Acting upon what they considered sufficient evidence that the conditions entitling X. to an annuity had not been satisfied, & upon their own interpretation of the will, the exors. for several years ignored the possibility of X. ever establishing a claim to the annuity, & paid over to C., who herself was one of the exors. & under the will was entitled to the residuary income, the moneys which, if X. were entitled, ought to have been paid to him. The Privy Council decided in his favour as to the annuity & on a claim to be paid interest by the exors.:—*Held:* C.'s right was so doubtful that the exors. had been guilty of negligence & were liable to pay interest upon the annuity at 5 per cent. *per annum* without rests.—*Re* PATTON, [1931] 3 D. L. R. 544; O. R. 348.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 7.—A.

sq. *Jurisdiction of registrar—Should not pass upon his own accounts.*]—*Re* BENT, [1927] 1 D. L. R. 592; 59 N. S. R. 107.—**CAN.**

sv. ——.]—Registrar of Probate Ct. has no jurisdiction, on petition of creditors, to cite an administratrix to account for funds in her hands & to require her to deposit them in a chartered bank.—*Re* MOSELEY, [1936] 4 D. L. R. 503.—**CAN.**

sr. *Jurisdiction of Surrogate Court.*]—*Re* MACINTYRE (1906), 11 O. L. R. 136.—**CAN.**

st. ——.]—Upon an audit of the accounts of the exors. of B. deceased, the judge of a Surrogate ct. took evidence with a view to determining a question as to ownership of certain mtges., each of which had been taken jointly in the names of deceased & another person. These mtges., according to the contention of resps., should be regarded as assets of the estate & accountable for by the exors. While the surviving mtgee. in each case contended that he was entitled as survivor to the security & the fund represented by it:—*Held:* the judge had jurisdiction to make the proposed inquiry.—*Re* BAECHLER, [1931] 2 D. L. R. 997; 66 O. L. R. 483.—**CAN.**

7296 i. *Passing accounts—Costs—Form of order.*]—*Re* HASLETT, MCKENNA *v.* HASLETT, [1927] W. L. R. 21; 48 A. L. R. 125; [1927] Argus L. R. 12.—**AUS.**

7296 ii. —— *Application of King's Bench rules to Surrogate court.*]—The Surrogate ct. in Saskatchewan is governed with respect to the passing of accounts by K. B. rules 301-319 so as they are applicable.—*Re* KRAUSS ESTATE (Sask.), [1929] 3 W. W. R. 205.—**CAN.**

sg. *Grounds for ordering accounts.*]—*Re* BARRICK ESTATE, [1934] 2 W. W. R. 337.—**CAN.**

7311a. Who may re-open.]—A., entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the exors. upon himself & afterwards on C., a volunteer:—*Held:* C. could not, against the will of A., open the settlement of accounts with the exors.—PARKER *v.* BLOXAM (1855), 20 Beav. 295; 52 E. R. 616.

Part VII.—Actions by and against Representative.

7489a. In whose name—Deceased's property assigned to assignees before death.]—The property of an intestate was assigned to assignees previous to his death; pltf. administered, & applied to deft. for payment for goods sold him by the intestate, in the name of the assignees, & afterwards brought an action in his character of administrator:—*Held:* such action was well brought.—BRANDT *v.* HEATIG (1818), 2 Moore, C. P. 184.

7475. *Add. Annotation:*—Refd. Flower *v.* Prechtel (1934), 150 L. T. 491.

7492a. Suit for account of testator's estate.]—Lapse of time will not of itself bar an exor. of an exor. of his right to have an account of his exor.'s testator's estate taken, with a view to ascertain such exor.'s liabilities as an accounting party.—SMITH *v.* O'GRADY (1870), L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 106; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

7531. *Add. Annotation:*—Consd. *Re* Richardson, Richardson *v.* Nicholson, [1933] W. N. 90.

7531a. —— In respect of matters relating to estate—Action by representative in own right.]—*Re* RICHARDSON, RICHARDSON *v.* NICHOLSON, [1933] W. N. 90; 175 L. T. Jo. 269, C. A.

7584. *Add. Annotation:*—Refd. *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

7617a. May be joined to plea of ne unques executor.]—A deft. sued as exor., on an affidavit that he was advised that he would be put to great difficulty if he were not permitted to do so, was allowed to plead *ne unques executor*, & also *plene administravit*.—TYSON *v.* KENDALL (1850), 19 L. J. Q. B. 434; 14 Jur. 1044.

PART VI. SECT. 6, SUB-SECT. 9.

sj. *Although order passed by Court of Appeal.]*—An action to set aside exor.'s accounts will lie although the order passing the accounts has been sustained by the Ct. of Appeal.—MCFARLANE *v.* FLEMING, [1935] 2 D. L. R. 814.—CAN.

PART VII. SECT. 1, SUB-SECT. 7.

h i. —— *Will.]*—In an action by exors. to recover money paid by deceased, his will is not admissible as evidence to prove that a loan & not a gift was intended.—MCDONALD *v.* YOUNG, [1934] 4 D. L. R. 172.—CAN.

l i. —— —— *Evidence of opposite or interested party.]*—TAYLOR *v.* REGIS (1895), 26 O. R. 483.—CAN.

PART VII. SECT. 1, SUB-SECT. 9.—A.

sv. *General rule.]*—In litigating with third persons, exors. are, with respect to costs, in the same position as parties who litigate in their own right.—GREAT WESTERN RY. CO. *v.* JONES (1867), 13 Gr. 355.—CAN.

sw. *Liability on failure of appeal—Appeal without merit or substance.]*—The costs of an appeal without merit or substance taken by a personal representative:—*Held:* to be payable by such representative in his individual capacity.—STRELIOFF *v.* FIRST NATIONAL BANK OF JOLIET, [1925] 2 W. W. R. 501.—CAN.

PART VII. SECT. 1, SUB-SECT. 9.—B.

7545 iv. —— ——.] — BILLETT *v.* BILLETT, [1929] 2 D. L. R. 944; 1 W. W. R. 778; 23 S. L. R. 630.—CAN.

PART VII. SECT. 2, SUB-SECT. 3.

sx. *Application to presume death of executor.]*—Pltf. in an action against exors. alleged to be surviving exors. may, under rule 928 (h), apply by originating notice for an order declaring that the other exor. named in the will is deemed or presumed to be dead, even though the allegation in the statement of claim of his death is formally denied in the statement of defence.—*Re* BRICKER ESTATE (Man.), [1929] 3 W. W. R. 697; [1930] 2 D. L. R.

sz. *Action against widow & heirs.]*—In an action of debt against a widow as representing all persons interested in the estate:—*Held:* the action was not maintainable in that form since any judgment against the widow & heirs must be against the separate property of defts. & not against the estate.—MAPLE LEAF FRUIT CO., LTD. *v.* MACUMBER 1933), 7 M. P. R. 158.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (a).

sm. *Appointment by foreign court.]*—An exor. or administrator cannot, as a general rule, be sued as such in the cts. of any State or country other than that in which he received his appointment.—GOODBUN *v.* MITCHELL, [1926] 2 D. L. R. 540; [1926] 2 W. W. R. 67; 35 Man. L. R. 569.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (c) ii.

so. *To action by widow—Under Widow's Relief Act—Six months after death of husband.]*—KROGMAN *v.* DICKSON, [1928] 2 D. L. R. 948.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (g) i.

s. *Action commenced within one year from death—Necessity for leave of court—Probate Act (N. S.), s. 43 (7).]*—WALSH *v.* EASTERN TRUST CO., [1932] 3 D. L. R. 525.—CAN.

PART VII. SECT. 2, SUB-SECT. 6.—A.

p i. —— *Claim for deceased's board during lifetime.]*—*Re* THOMPSON (1926), 58 N. S. R. 489.—CAN.

PART VII. SECT. 2, SUB-SECT. 8.—A.

s i. —— —— ——.]—The proper form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors; upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re* HEATALL ESTATE, [1921] 1 W. W. R. 118; 56 D. L. R. 710.—CAN.

PART VII. SECT. 2, SUB-SECT. 8.—C.

d i. —— *Judgment against defendant administrator of estate.]*—A certificate of a county ct. judgment against "A. B., administrator of the estate of X.," charges A. B. personally & not the estate.—*Re* JOYCE & SCARRY (1889), 6 Man. L. R. 281.—CAN.

f i. —— *Contribution from devisees.]*—EMERSON *v.* CANNIFF (1878), 26 Gr.

PART VII. SECT. 2, SUB-SECT. 8.—D

7731 v. ——.]—Where following the recovery of a judgment against an administrator as such the judgment creditor garnishes money owing to the estate & then moves for payment out of ct. of the moneys paid in by the garnishee, the administrator, notwithstanding that he had allowed the judgment to go against him by default, has a right to appear on the motion to show that the estate is insolvent & to oppose the motion in so far as its allowance may tend to operate against a *pari passu* distribution of the assets of the estate as between its creditors.—WINNIPEG TRUSTEE CO. *v.* WOLFMAN, [1933] 1 W. W. R. 381; 47 Man. L. R. 27.—CAN.

PART VII. SECT. 2, SUB-SECT. 9.—A.

s i. —— *Widow's costs of application for relief under Devolution of Estates Act, R. S. S.*, 1920 (c. 73), s. 24.]—*Re* MOWCHENKO, [1926] 1 D. L. R. 265; [1926] 1 W. W. R. 139; 20 Sask. L. R. 279.—CAN.

s ii. —— *Litigation caused by legatee.]*—O'SULLIVAN *v.* HARTY (1885), 11 S. C. R. 322.—CAN.

sk. *Payment out of fund in court.]*—*Re* MORRIS ESTATE, [1933] 2 W. W. R. 80; 47 B. C. R. 239.—CAN.

PART VII. SECT. 2, SUB-SECT. 10.—A.

7763 i. *Garnishee proceedings—Decree in administration suit—Damages recovered by administratrix under Fatal Accidents Act—Garnishee summons set aside.]*—MCEWAN *v.* SPECKT (N. W. T.) (1906), 4 W. L. R. 325.—CAN.

7763 ii. —— *Against debt due to estate—For contract with executor.]*—HALL *v.* MACINTYRE & SARTORIO, [1934] 2 W. W. R. 145; 3 D. L. R. 559, 48 B. C. R. 306.—CAN.

Part VIII.—Administration by Court.

7812a. Public trustee—Appearing as plaintiff & defendant—Improper.]—The same person may not be both pltf. & deft. &, where the Public Trustee appeared in both capacities, the ct. amended the summons by striking out the Public Trustee as deft. & substituting a person beneficially interested.—PHILLIPS, *Re*, PUBLIC TRUSTEE *v.* MEYER (1931), 101 L. J. Ch. 338; 76 Sol. Jo. 101.
Compare No. 8757a, *post.*

7867. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

7990. *Add. Annotation :*—**Refd.** *Re* Robertson's Application (1929), 46 T. L. R. 17.

7993. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

8014. *Add. Annotations :—As to* (1) **Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or 69 L. Jo. 61.

8018. *Add. Annotations :*—**Refd.** Hunter *v.* [illegible]ische Hochseefischerei Gesselschaft, [1925] 2 K. B. 493; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

8166a. —— Unpaid debts—Death of testator over six years before judgment.]—PRACTICE DIRECTION, [1937] W. N. 416.

8259. *Add. Annotation :—As to* (2) **Consd.** *Re* Morley's Estate, Hollenden *v.* Morley, [1937] Ch. 491.

8270a. —— Separate sets of trustees of settled shares.]—*Re* SCOTT, SCOTT *v.* SCOTT (1926), 17 Sol. Jo. 430.

PART VII. SECT. 2, SUB-SECT. 10.—B. (a).

sz. *Priority of execution—Over purchaser from executor.*]—HENRY *v.* SHARP (1871), 18 Gr. 16.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 10.—B. (b).

1i. ——.]—*Held :* land & tenements, held in fee simple by debtor at the time of his decease, might be taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Judgment by default—Notwithstanding insufficient personal assets.*]—*Held :* the exor. was not entitled to an injunction against proceedings on the judgment.—DONER *v.* ROSS (1872), 19 Gr. 229.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

b i. —— *Cannot entertain claim for balance on mortgage by executors to pay debts & legacies.*]—*Re* RICHARDSON'S ESTATE (1890), 22 N. S. R. 416.—**CAN.**

g i. —— *Application for directions—Previous decree to deliver property in sub-court.*]—Where a decree was obtained by a legatee against the exor. for delivery of the property in a suit in a sub-court, & subsequently the exor. filed a petition in the High Ct. under Indian Succession Act, XXXIX of 1925, s. 302, for directions as to the fund relating to a charity mentioned in the will but not dealt with by the decree of the lower ct., the High Ct. had jurisdiction to give directions, as the matter was not adjudicated in the suit, but would not give directions where the matter had been definitely settled in a properly constituted suit.—AKKAYYA *v.* VANAMA LAKSHAMMA (1927), I. L. R. 51 Mad. 849.—**IND.**

g ii. —— *To determine who are beneficiaries.*]—The ct. has jurisdiction to make an order determining who are the beneficiaries entitled under a given will, & in such a case it may direct the registrar to conduct an inquiry for the purpose of obtaining the information upon which such jurisdiction could properly be exercised.—*Re* FLANAGHAN, [1929] N. Z. L. R. 746.—**N.Z.**

sm. *Surrogate Court — Accounts.*]—An order directing an inquiry upon the footing of wilful default into the accounts of an exor. or administrator is beyond the jurisdiction of a Surrogate Ct. in Saskatchewan; it being one which can be made only by the Ct. of King's Bench. The jurisdiction conferred on the Surrogate Cts. in Saskatchewan is confined to "matters & causes testamentary," *i.e.*, matters & causes relating to the grant & revocation of the probate of wills & of administration & incidental matters.—*Re* MCELHINNEY ESTATE, STANDARD TRUSTS CO. *v.* MCELHINNEY (Sask.), [1929] 3 W. W. R. 664; [1930] 2 D. L. R. 290; 24 S. L. R. 160; *revsg.*, [1929] 4 D. L. R. 783; 3 W. W. R. 105.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

ss. *Share of next of kin—Mortgagee of.*]—*Held :* entitled to bring proceedings.—SWEENEY *v.* GALLAGHER (1888), 22 I. L. T. 82.—**IR.**

sb. —— *Assignee of.*]—*Held :* entitled to bring proceedings.—TEVLIN *v.* GILSENAN (1901), 36 I. L. T. 35.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

sc. *All creditors.*]—An exor. cannot maintain an action for administration against one creditor as sole deft., even where, from the exor. being the universal devisee & legatee, no next of kin or *cestui que trust* could become pltf. or be named deft.—MANDEVILLE *v.* MANDEVILLE (1888), 23 I. L. R. 339.—**IR.**

sd. ——.]—An action for administration cannot be maintained against one creditor as sole deft.—*Re* ROE, ROE *v.* SQUIRE (1911), 45 I. L. T. 144.—**IR.**

PART VIII. SECT. 3, SUB-SECT. 2.—B.

7987 ii. ——.]—SORBY *v.* PARKER (1920), 52 D. L. R. 692.—**CAN.**

7989 i. *Questions between parties claiming under will—& adverse claimant.*]—On an originating summons to determine whether certain property belonged to the estate of deceased :—*Held :* although without a special inquiry there appeared to be no jurisdiction to determine the question on such an application, yet there was jurisdiction upon the application to direct a special inquiry &, if the person against whom the inquiry is directed submits to it as if an action had been brought against him, the question may be proceeded with.—*Re* ROYAL TRUST CO. & RATTENBURY, [1937] 1 W. W. R. 451; 51 B. C. R. 334.—**CAN.**

sm. *Not question whether property part of estate.*]—*Re* COLLINS, [1927] 4 D. L. R. 770; 61 O. L. R 225.—**CAN.**

so. *Question whether executors might act without consent of named person.*]—*Re* ROGERS, [1929] 1 D. L. R. 116; 63 O. L. R. 180.—**CAN.**

sq. *Questions arising out of negotiations for purchase by widow of heirs' interests.*]—*Re* DELAERE ESTATE & ROYAL TRUST CO., [1933] 2 W. W. R. 258; [1934] 1 D. L. R. 70.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

sr. *Failure of claimant to appear—Effect on right to appeal.*]—A claimant against the estate who has not appeared personally or by a representative at the passing of accounts cannot appeal from the decree passing the accounts & ordering distribution.—*Re* PECK'S ESTATE (1933), 6 M. P. R. 349.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.

n i. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—G

8199 ii. —— —— *Where personal estate sufficient if properly administered—Limit of time for application for sale.*]—PEOPLE'S BANK *v.* MARROW (1825-1897), N. B. Dig. 312.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (b).

h i. —— *Balance on bond—After foreclosure & sale by mortgagee.*]—*Re* CHANDLER'S ESTATE (1884), 5 R. & G. 78.—**CAN.**

h ii. —— *Not debt arising out of illegal transaction.*]—*Re* GHEE, *Ex p.* LOWE KING, PUBLIC TRUSTEE *v.* LOWE KING, [1928] N. Z. L. R. 266.—**N.Z.**

8228 i. —— *Mortgage debt—Purchase of land by deceased—Payment of mortgage as part of purchase price.*]—*Held :* the mtgee. was entitled to prove for the balance of the mtge. debt against the general estate of the purchaser.—*Re* COZIER, PARKER *v.* GLOVER (1877), 24 Gr. 537.—**CAN.**

sr. *Valuation of securities—To what securities applicable.*]—*Held :* a mtge. security held by a bank, as collateral to deceased's general indebtedness to it, is not a security on the estate of deceased or on the estate of a third person for whom the estate of deceased was only indirectly or secondarily liable. The bank, therefore, was not obliged to value its security by Trustee Act, R. S. O., 1927, s. 56.—ST. LOUIS *v.* CANADIAN BANK OF COMMERCE, [1934] O. R. 50; 1 D. L. R. 472.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (d).

sl. *Parol evidence.*]—*Held :* the master had properly received parol evidence to establish the widow's claim in question.—ROSS *v.* MASON (1862), 9 Gr. 568.—**CAN.**

8280a. Power of court to order—Ancillary to order relating to management of property—R. S. C. Ord. 55, r. 2 (13).]—When, in an administration action upon a summons connected with the management of the property, under above sub-rule, a judge of the Ch. Div. sitting in chambers makes an order sanctioning the expenditure of a certain sum out of capital for the purposes authorised, he has ancillary jurisdiction under that sub-rule, by the same order, to give full practical effect thereto by further directing payment of the sum so authorised out of a fund of whatever amount standing in ct. to the general credit of the action.—*Re* TERRY, TERRY *v.* TERRY, [1929] 2 Ch. 412; 98 L. J. Ch. 436; 141 L. T. 536; 45 T. L. R. 539.

8310. For " Ord. 45 " read " Ord. 15."

8337. *Add. Annotation:* — **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8342a. Action against representative—Payment into court—Subsequent action by creditors—Whether creditors entitled to fund in court.]—A bill was filed by a *cestui que trust* against a surviving trustee & the representative of B., a defaulting trustee, to obtain a proper investment of the trust fund. B.'s representative did not admit assets, but admitted that he had in his hands part of B.'s estate, which he paid into court under the order of the ct. A decree was obtained, by which B.'s estate was declared liable to make good the trust fund, & accounts were ordered to be taken of B.'s estate. A creditors' suit was instituted for the administration of B.'s estate, & the common decree obtained:—*Held:* the decree in the first suit did not entitle pltfs. therein to the whole fund paid into ct. in that suit, but only to a proportional part of it with the other creditors of B.—SMITH *v.* BIRCH (1840), 3 Beav. 10; 9 L. J. Ch. 349; 4 Jur. 670; 49 E. R. 5.

Annotation:—**Refd.** Tomlin *v.* Tomlin (1841), 1 Hare, 236.

8349. *Add. Annotation:*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

8351a. Estate found insolvent in beneficiary's action—Form of order.]—*Re* VAN OPPEN, ROBERTS *v.* GRAY, [1935] W. N. 51; 179 L. T. Jo. 255.

8371. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

8484. *Add. Annotation:—As to* (1) **Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8484a. —— Valuation of annuity payable under payment included.]—In order to qualify an annuitant, to whom a person who died in 1922 was liable under a judgment by consent to pay the annuity, to prove for the value thereof in the administration by the ct. of the deceased person's estate, it is sufficient for the annuitant to prove, as a fact, that if the annuity continues for the period normally to be expected, the estate will not suffice to meet the debts & the annuity in full.—*Re* PINK, ELVIN *v.* NIGHTINGALE, [1927] 1 Ch. 237; 96 L. J. Ch. 202; 136 L. T. 399; 70 Sol. Jo. 1090.

8487. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8492a. Counsel's fees—Estate of deceased solicitor.]—Counsel has no right to prove for his fees in the administration of the insolvent estate of a deceased solr. in a case where the client reimbursed the solr. the amount of the fees upon the faith of the solr.'s false representation that he had in fact paid them to counsel. Further, as the exor. of a deceased solr. is not, as a trustee of a bkpt.'s property is, an officer of the ct., the rule followed by the Ct. of Bkpcy. that the ct. ought to be as honest as other people will not be so extended as to give the ct. jurisdiction to order the exor. to refund fees to counsel. The rules laid down in Administration of Estates Act, 1925 (c. 23), Sched. I., Part I., do not authorise the application of the rule followed by the Ct. of Bkpcy. to such a case.—*Re* SANDIFORD (No. 2), ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1935] Ch. 681; 104 L. J. Ch. 335; 154 L. T. 7.

8505. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8507. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8509. *Add. Annotations:*—**Apld.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930], 2 Ch. 202. **Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

8512. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART VIII. SECT. 5, SUB-SECT. 4.—C.

n 1. —— *Disposal of assets.*]—Where a creditor or one of the next of kin institutes an administration suit against an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless pltf. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—LEE LIM MA HOCK *v.* SAW MA HONE (1923), I. L. R. 2 Ran. 4.—**IND.**

PART VIII. SECT.6, SUB-SECT. 2.

sp. *Executor buying in property for himself.*]—A case for an administration action is shown by evidence that an exor. bid in property to himself at a low price in foreclosure of a m under a power of attorney of testator, immediately prior to administration.—MARSHALL *v.* MARSHALL, [1937] 2 D. L. R. 227.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 2.—B. (b).

sy. *Insurance policy—Protected for payment of debts—Under Life Insurance Act,* 1908, *s.* 65.]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof; funeral & the other testamentary expenses are borne by the protected policy moneys & the remainder of the estate in proportion to their value.—MAITLAND *v.* PUBLIC TRUSTEE, [1924] N. Z. L. R. 840.—**N.Z.**

PART VIII. SECT. 7, SUB-SECT. 2.—B. (c).

sz. *Overpayment— Liability of executor.*]—TAYLOR *v.* BRODIE (1874), 21 Gr. 607.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 3.—B. (c).

sb. *Insolvency of deceased administrator—Priority of original estate—Over claim by surety company on administrator's bond.*]—NOVA SCOTIA TRUST CO. *v.* UNITED STATES FIDELITY & GUARANTEE CO., [1931] 3 D. L. R. 279.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 1.—A.

8559 ii. —— —— *Costs of mortgagee's action to realise security & for administration.*]—LEONARD *v.* KELLETT (1891), 27 L. R. Ir. 418.—**IR.**

PART VIII. SECT. 8, SUB-SECT. 2.—A.

ii. —— *Establishing claim as such.*]—Next of kin who are successful in establishing their claims as such before the chief clerk are entitled to be paid their costs incurred in so doing out of the estate of the intestate.—*Re* GRAZEBROOK, CHASE *v.* LAYTON (No. 2), [1928] V. L. R. 212.—**AUS.**

8516a. ——— **In creditor's action—Beneficiary's action followed by creditor's action.**]—*Re* SAGAR, RUSSIAN COMMERCIAL & INDUSTRIAL TRADE *v.* KOGAN, KOGAN *v.* KOGAN (1930), 70 L. Jo. 10; 169 L. T. Jo. 557; [1930] W. N. 149.

8517. *Add. Annotation:*—**Consd.** *Re* Prince, Hardman *v.* Willis (1935), 51 T. L. R. 526.

8520a. Rate of interest.]—Where an intestate dies insolvent proof can be made in respect of interest claimed by a creditor at the rate of 7 per cent. *per annum* calculated down to the date of payment, & Bkpcy. Act, 1914 (c. 59), s. 66, does not apply to such a case.—*Re* WELLS, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323; [1929] B. & C. R. 119.

Annotations:—**N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202. **Folld.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

8520b. ——.]—In the administration of the estates of deceased insolvents by the Chancery Div., Bkpcy. Act, 1914 (c. 59), s. 66 (1), applies, & creditors are entitled to be paid interest only at a rate not exceeding 5 per cent. until all the debts proved in the estate have been paid in full.—*Re* BUSH, LIPTON (B.), LTD. *v.* MACKINTOSH, [1930] 2 Ch. 202; 99 L. J. Ch. 503; 143 L. T. 700; [1929] B. & C. R. 216.

Annotations:—**N.F.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

8520c. ——.]—*Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8558. After cross-reference following this case add:—

(*n*) *Set-Off.*

8558a. Effect of agreement to exclude.] — *Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8757a. Costs of Public Trustee—As plaintiff in one capacity—Defendant in another capacity.]—*Re* ABERCROMBIE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* ABERCROMBIE, [1931] W. N. 109; 171 L. T. Jo. 416.

Annotation:—**Expld.** *Re* Phillips, Public Trustee *v.* Mayer (1932), 76 Sol. Jo. 10.

Compare No. 7812a, *ante.*

8758a. Claims against legatee exceeding legacy.]—By the decree sums due from a legatee were ordered to be set-off against her share of testator's estate, & her costs were ordered to be paid to her solr. It being found that the claims against her exceeded her portion of the estate, & the legatee being insolvent, an application was made by motion, that the costs ordered to be paid to her solr. might be carried to the credit of her account. The ct. stayed the payment of the costs for a month, in order that the matter might be set right.—NICHOLSON *v.* NORTON (1844), 7 Beav. 67; 13 L. J. Ch. 140; 2 L. T. O. S. 345; 49 E. R. 988.

8768a. Costs of proving debt before master.]—Costs of proving a debt before the master under the usual decree upon a creditor's bill not allowed.—ABELL *v.* SCREECH (1804), 10 Ves. 355; 32 E. R. 882.

Annotation:—**Consd.** Watkins *v.* Maule (1821), Jac. 105.

8790a. ——.]—A bill was filed for the administration of the real & personal estate. A part of the real estate was specifically devised, & gave rise to questions of construction; other part was devised to charities, which devise was void under the Statute of Mortmain. The residuary real estate descended on the heir, & the residuary personal estate was undisposed of, & went to the next of kin:—*Held:* the costs of suit attributable to the administration of the trusts of the real estate were payable out of the descended estates, & that those relating to the execution of the trusts of the personal estate out of the residuary personal estate.—SANDERS *v.* MILLER (1858), 25 Beav. 154; 53 E. R. 595; *sub nom.* SAUNDERS *v.* MILLER, 6 W. R. 454.

Annotations:—**Consd.** *Re* Middleton, Thompson *v.* Harris (1882), 19 Ch. D. 552. **Refd.** Randfield *v.* Randfield (1863), 32 L. J. Ch. 668; Patching *v.* Barnett (1881), 51 L. J. Ch. 74.

8802. *Add. Annotation:*—*As to* (2) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

8815. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

8819a. ——— ——— ———.]—"Testamentary expenses" directed to be paid out of a particular part of testatrix's property include the costs of unsuccessful claimants to a legacy made defts. to a summons by trustees for obtaining the direction of the ct. as to whom the legacy should be paid. The costs of unsuccessful claimants to a legacy who are made defts. to a summons by the trustees of the will for obtaining the direction of the ct. as to who is entitled to the legacy will be ordered to be paid out of the estate, notwithstanding the objection of the residuary legatee or other person entitled to that part of the estate out of which such costs will become payable; & such costs will be ordered to be paid as between solr. & client, notwithstanding the objection of the same person.—*Re* CLARKE, CLARKE *v.* ST. MARY'S CONVALESCENT HOME (1907), 97 L. T. 707.

Annotation:—**Consd.** *Re* Hall-Dare, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272.

8829. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

8841a. ——— ——— ———.]—*Re* POTTS, HOOLEY *v.* FOUNTAIN, [1884] W. N. 106.

8866. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

8891. *Add. Annotation:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

9014. *Add. Annotation:*—*As to* (4) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

PART VIII. SECT. 8, SUB-SECT. 2.—C.

8771 i. *Legatee & assignee—Whether legatee's costs only allowed.*]—Orders for costs, in administration suits, should be made in such a form that a person who has not encumbered his share will be relieved as far as possible in the matter of costs created by the fact that another co-sharer has assigned or encumbered his share.—NATIONAL INSURANCE CO., LTD. *v.* NISSIM ABRAHAM GUBBAY (1928), I. L. R. 56 Calc. 447.—**IND.**

PART VIII. SECT. 8, SUB-SECT. 3.—E.

b i. ——— ——— *Inquiry as to next of kin.*]—Where a testator devises his residuary estate in trust to sell & out of the proceeds *inter alia* to pay testamentary expenses, & to divide the ultimate residue into aliquot parts & to hand the same respectively to named persons, the costs of ascertaining who are entitled to a lapsed share of residue are testamentary expenses which should be paid out of the whole residuary estate, & not out of the lapsed share only.—*Re* STONE, READ *v.* DUBUA (1936), 36 S. R. N. S. W. 508; 53 N. S. W. W. N. 214.—**AUS.**

EXTRADITION AND FUGITIVE OFFENDERS.

Part I.—Extradition to Foreign Countries.

B. Particular Offences (p. 872).

Add See Extradition Act, 1932 (c. 39).

32. *Add. Annotation:—Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

37. *Add. Annotation:—As to* (1) **Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

66. *Add. Annotation:*—**Distd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

74a. —— ——.]—Applts. were brought before a magistrate in Trinidad under sect. 5 of the French Guiana Extradition Ordinance of Trinidad charged with being fugitive criminals from French Guiana, where there is a penal settlement. At the hearing it was proved that they had each been convicted in France of a specified crime, & had each received a sentence of imprisonment which was unexpired. The magistrate made an entry in his magistrate's book against their names "extradition ordered." He did not, however, make, as he should have done, an order under Extradition Act, 1870 (c. 52), s. 10 (made applicable by sect. 5 of the Ordinance), for committal to await the Governor's warrant for surrender. Instead another magistrate, who had not heard the case, made a detention order under sect. 3 of the Ordinance, which section applies to suspected fugitives. Upon *habeas corpus* proceedings:—*Held:* the appellants should be released: (1) because under the terms of the extradition treaty with France they could be extradited only if the crimes of which they had been convicted were committed in French territory, & there was no evidence that that was so, nor was it necessarily involved in the convictions; (2) because sects. 11 & 12 of the local Summary Conviction Offences (Procedure) Ordinance did not make the entry in the magistrate's book equivalent to an order under Extradition Act, 1870 (c. 52), s. 10, & the irregularities with regard to the order signed prevented the detention of applts. from being warranted.—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, [1932] A. C. 78; 101 L. J. P. C. 17; 146 L. T. 101; 29 Cox, C. C. 394; 48 T. L. R. 27; 75 Sol. Jo. 741, P. C.

PART I. SECT. 1, SUB-SECT. 1.

e i. —— ——.]—The East Indian Dependencies of France, having been expressly excluded from the Extradition Treaty of 1876, & not being States or parts of a State to which the Extradition Acts of 1870 & 1873 apply, are not "Foreign States" within Indian Extradition Act of 1903. Extradition in the East Indian possessions of Great Britain & France is governed by Art. IX. of the Treaty of Mar. 7, 1815; & that article contemplating summary delivery at the request of any authority of either High Contracting Party & not providing any special procedure for the purpose of extradition, the British Indian Govt. may, on the statement of the Govt. of Pondicherry that a British Indian subject has committed the offence of theft within its territory & on its demand, deliver him up to the Govt. of Pondicherry, without holding an inquiry to satisfy itself that there is a *primâ facie* case against the person whose extradition is sought.—*Re* MUTHU REDDI (1930), I. L. R. 53 Mad. 1023.—**IND.**

sg. *Obligation to surrender.*]—Technicalities of the surrendering State will not be allowed to prevent the discharge of an obligation imposed by an extradition treaty.—*Re* LOW, [1932] O. R. 681; 4 D. L. R. 542; 59 C. C. C. 97; *revsd.*, [1933] 2 D. L. R. 608; O. R. 393; 59 C. C. C. 346.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A

r i. —— ——.]—Forgery must be an offence by the law of Canada, & of the demanding country.—*Re* MURPHY (1895), 2 C. C. C. 578.—**CAN.**

r ii. —— *By law of State where committed.*]—*Semble:* in order for an offence to be extraditable under the extradition treaties with the United States of America it is not necessary to show that it is a crime in every part of both Canada & the United States; it is sufficient if it is a crime in Canada & in the state wherein it is alleged to have been committed, & that it is made extraditable by the treaties.—UTAH STATE *v.* PETERS, [1936] 2 W. W. R. 9; 4 D. L. R. 509; 66 Can. C. C. 75.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

g (p. 873) i. ——.]—A charge of larceny & embezzlement in Illinois is an extradition crime, for theft in the Canadian Criminal Code includes larceny & other fraudulent conversions of property.—*Re* INSULL, [1934] 2 D. L. R. 696; 61 C. C. C. 336.—**CAN.**

sa. *Obtaining by false pretences—Extraditable offence.*]—*Re* MARTIN (No. 2) (1897), 2 Terr. L. R. 304.—**CAN.**

sb. —— *Not extraditable.*]—Goods are not "other property" within the meaning of the words, "obtaining money, valuable security or other property by false pretences," which is clause 7 of the sched. to the Extradition Treaty with the United States of America. Therefore, the offence of obtaining goods by false pretences is not extraditable under said treaty.—*Re* ROSEN, [1931] 2 W. W. R. 799; 56 Can. C. C. 162; 44 B. C. R. 203.—**CAN.**

sc. *Procuring abortion.*]—The procuring abortion held extraditable on the demand of the State of Alabama.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

sd. *Revenue offences — Breach of Harrison Anti-narcotic Law.*]—The government of the United States of America is entitled to apply for extradition for alleged breaches of the "Harrison Anti-Narcotic Law" with respect to the "having in possession" or "buying" or "selling," etc., drugs. Although the Supreme Ct. of the United States has declared said Act to be within the powers of Congress because the incorporation therein of provisions for a tax or licence fee rendered it a revenue measure, yet on an application for extradition for such offences, the Act having been declared constitutional, both the judgment, which recognises the dual aspect of the legislation, & the Act itself must be taken as a whole; &, therefore, the contention that said offences are breaches of a revenue law & therefore not extraditable was not sustained.—*Re* GIFFORD (No. 2) (Man.), [1929] 3 W. W. R. 496; [1930] 1 D. L. R. 752; 52 Can. Crim. Cas. 293.—**CAN.**

se. —— ——.]—In view of the decisions of the Supreme Ct. of the United States holding that the "Harrison Anti-Narcotic Law" is a revenue measure & that the provisions thereof for the suppression of narcotics are constitutional only because they are regarded as in aid of the collection of the taxes imposed by the Act, offences against said provisions are breaches of a revenue law & therefore not extraditable.—*Re* SIEMAN, [1930] 1 W. W. R. 970.—**CAN.**

sf. —— ——.]—*Re* SIEMAN (No. 2), [1930] 2 W. W. R. 111.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

39 iv. —— *Application by French Republic—Extradition to Saar Basin of Germany.*]—*Re* INCAMPE, [1928] 3 D. L. R. 240; 49 Can. Crim. Cas. 386.—**CAN.**

t i. ——.]—Extradition proceedings need not originate in the foreign country.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (a) i.

68 i. *Identity of accused.*]—Evidence which under Canadian law may be inadmissible on a trial because the prisoner had not been properly warned of the possible consequences of the making of a statement or giving answers to a policeman's question is at least admissible on extradition proceedings to prove the identity of the person arrested with the person charged.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

Necessity for signature by magistrate hearing case.]—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, No. 74a, *ante*.

126. *Add. Annotation:*—*As to* (1) **Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

127. *Add. Annotation:*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

136. *Add. Annotation:*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

Part II.—Extradition from Foreign States.

146a. Onus of proof of surrender under treaty.]—Applt. was brought before a tribunal in France on a claim for his extradition on a charge of false pretences. He waived all the formalities of extradition & was handed over to the English police. He was convicted in England on a charge of fraudulent conversion based upon the facts contained in the information upon which the claim for extradition was made:—*Held:* (1) the onus of showing that he had been surrendered in accordance with the extradition treaty between this country & France lay on applt., & he had failed to discharge that onus; (2) Extradition Act, 1870 (c. 52), s. 19, which, in effect, enacts that a person extradited may be tried for any offence which can be proved by the facts upon which the surrender was grounded, was not abrogated by the provisions of Art. IV. of a treaty of extradition made between this country & France, applied to the Act of 1870 by & embodied in an Order in Council, which prohibited the trial of such person for any offence other than that upon which he had been surrendered, &, consequently, the ct. had jurisdiction to try applt. for fraudulent conversion.—R. *v.* CORRIGAN, [1931] 1 K. B. 527; 100 L. J. K. B. 55; 144 L. T. 187; 47 T. L. R. 27; 29 Cox, C. C. 198; 22 Cr. App. Rep. 106, C. C. A.

146b. For what offences triable—Extradition Act, 1870 (c. 52), s. 19—Effect of Treaty with France, 1878.]—R. *v.* CORRIGAN, No. 146a, *ante*.

Part III.—Surrender between British Dominions inter se and the United Kingdom.

153. *Add. Annotation:*—*As to* (1) **Apprvd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

153. *Add. Annotation:*—**Consd.** R. *v.* Brixton Prison Governor, *Ex p.* Bidwell, [1937] 1 K. B. 305.

PART I. SECT. 3, SUB-SECT. 3.—C. (a) ii.

83 iv. ——.]—While the imputed offence must be shown to be a crime under the law of the demanding State, yet, in determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, & extradition is permitted if there exists the elements of the imputed offence according to Canadian law.—WASHINGTON STATE *v.* FLETCHER, [1926] 3 D. L. R. 426; [1926] 2 W. W. R. 508; 46 Can. Crim. Cas. 226; 20 Sask. L. R. 575.—**CAN.**

c i. —— *Whether admissible as proof of law of demanding State.*]—*Re* WAGNER, [1928] 4 D. L. R. 615; 50 Can. Crim. Cas. 254.—**CAN.**

f i. ——.]—*Re* CLARK (P. E. I.), [1929] 3 D. L. R. 737; 51 Can. Crim. Cas. 302.—**CAN.**

f ii. ——.]—Where on an application before an extradition comr. for an order for the surrender of the accused the evidence adduced shows a *primâ facie* case of a crime known to the common law, the burden rests on the accused to show that the alleged facts do not constitute a crime under the law of the demanding state.—*Re* SULLIVAN & STATE OF CALIFORNIA, [1932] 3 W. W. R. 167.—**CAN.**

f iii. ——.]—A *primâ facie* case in proceedings before an Extradition Comr. is sufficient to justify a warrant of commitment.—LOOSBERG *v.* SEGUIN, [1934] 2 D. L. R. 218; 61 C. C. C. 77.—**CAN.**

sl. *Foreign law—Mode of proof.*]—UTAH STATE *v.* JONES (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

98 i. After this case add:—

—— —— ——.]—*See, now,* Chinese Extradition Amendment Ordinance, 1915, s. 18, as amended by Chinese Extradition Amendment Ordinance, 1927.

sm. *Only evidence admissible under lex fori—Not hearsay.*]—*Re* GRABOWSKY (1930), 53 Can. C. C. 75.—**CAN.**

sn. *Evidence of customs inspector—Proof of foreign law.*]—In proceedings in which extradition was sought of one alleged to have bribed a United States Customs Inspector in the State of New York:—*Held:* the criminal law of the United States on this point could be proved by a United States Customs Inspector.—*Re* LOW, [1932] O. R. 681; 4 D. L. R. 542; 59 C. C. C. 97; *revsd.*, [1933] 2 D. L. R. 608.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—D.

so. *Power of judge or commissioner to grant.*]—An extradition judge or comr. has the power in his direction to grant bail, but before it will be granted especially strong grounds should be shown in support of the application therefor.—UNITED STATES GOVERNMENT *v.* GIFFORD (Man.), [1929] 1 W. W. R. 879; [1930] 1 D. L. R. 800; 52 Can. C. C. 355.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

b i. ——.]—*Re* MARTIN (No. 2) 1897), 2 Terr. L. R. 304.—**CAN.**

PART II.

l i. —— ——.]—Where a person who has been accused of an extraditable offence & arrested in the United States under instructions from the Canadian authorities waives extradition proceedings, he may be tried here for any other offence committed before he was brought back, even though such other offence is not an extraditable one, & it was not until he was taken before an extradition comr. & charged before him that he agreed to return without extradition.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748; [1930] 1 D. L. R. 892; 24 Alta. L. R. 325; 52 Can. Crim. Cas. 370.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

n i. —— ——.]—The Commonwealth of Australia having, by passing the Commonwealth Extradition Act, 1903, acted as a central legislature under the Extradition Act, 1870 (Imperial), may be assumed to have power to deal under the external affairs power of the Constitution with the rendition of fugitive offenders. If this is so, the effect of the Commonwealth Constitution Act upon the definition of "legislature" in **Fugitive Offenders Act, 1881 (c. 69), s. 39, is to create an**

159. *Add. Annotations :*—**Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

159a. —— **Indorsement of warrant—Whether indorsement by Secretary of State as well as magistrate necessary.**]—Fugitive Offenders Act, 1881 (c. 69), s. 3, provides that : " Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part . . . in or on the way to which the fugitive is or is suspected to be : that is to say (1) a judge of a superior ct. in such part ; & (2) in the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police ct. in Bow Street ; & (3) in a British possession the governor of that possession, . . . may indorse such warrant . . . " :—*Held :* that in category (2) of the authorities who may indorse the warrant the word " and " is used disjunctively, & that a warrant issued in a part of the Sovereign's dominions for the apprehension of a suspected fugitive from that part may be indorsed in the United Kingdom by a magistrate of the said police ct. alone, & need not be indorsed both by a magistrate & a Secretary of State.

Fugitive Offenders Act, 1881 (c. 69), s. 5, provides : " A fugitive when apprehended shall be brought before a magistrate. . . . If . . . such evidence is produced as . . . raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant . . . the magistrate shall commit the fugitive to prison to await his return " :—*Held :* in requiring, as a condition of committing an alleged fugitive, such evidence as raises " a strong or probable presumption " that he committed the offence, the sect. means such evidence as, if it remained uncontradicted at the trial, would entitle a reasonable jury to convict the alleged fugitive upon it.

Where, in proceedings under this sect., a magistrate has found that the evidence produced before him raises a strong or probable presumption that the alleged fugitive is guilty of the offence & has committed him, & the alleged exception to the definition so that it must now be read as meaning that the expression " legislatures," where there are local legislatures as well as a central legislature, means the central legislature only ; but, in respect of the Commonwealth of Australia, means the Parliament of the Commonwealth only when it has exercised its powers to deal with the surrender of fugitive offenders between the Commonwealth & other parts of His Majesty's dominions. The Commonwealth Service & Execution of Process Act, 1901, was not an exercise by the Commonwealth of any overriding powers which the Commonwealth possesses in respect of the subject-matter of the Fugitive Offenders Act, 1881 (c. 69).—*Re* MUNRO, [1935] N. Z. L. R. 271.—**N.Z.**

n ii. —— *Jurisdiction of States.*]—For the purposes of the Fugitive Offenders Act, 1881, Australia is one British possession. But within the several States, State judicial officers have authority under the law of the " possession " & so are competent to act under the provisions of that statute. A New Zealand warrant was brought to Australia & indorsed by a police magistrate for New South Wales under sect. 13 of Fugitive Offenders Act, 1881. Deft. was arrested under the warrant & was brought before a stipendiary magistrate at Sydney, who made an order reciting that he was satisfied, as required by sect. 14 of Fugitive Offenders Act, that the warrant was issued by a person having lawful authority to issue it & directing that the deft. be returned to New Zealand :—*Held :* the New South Wales magistrate had jurisdiction to order the return of deft. under sect. 14 of Fugitive Offenders Act, 1881.—MCARTHUR *v.* WILLIAMS (1936), 55 C. L. R. 324 ; 42 Argus L. R. 239 ; 10 A. L. J. 40.—**AUS.**

PART III. SECT. 1, SUB-SECT. 3.

sk. *Not absconding from jail.*]—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

f (p. 891) i. ——.]—Objection was taken to the form of a warrant, as failing to show jurisdiction, since it did not show that M. was a fugitive offender & that he was charged with an offence to which the Act applied :—*Held :* this objection was unsustainable in view of the facts alleged in the warrant, & also because the Act did not require the warrant to state that the offence charged was an offence within the Act ; moreover, the warrant was merely one to apprehend, & had been endorsed in the manner provided by the Act.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—**IR.**

b (p. 893) i. —— *Whether counsel entitled to cross-examine.*]—On the taking of depositions for the purposes of the Fugitive Offenders Act, 1881 (Imp.), the counsel of accused has no right to cross-examine the witnesses.—*Re* CAMPBELL, [1935] N. Z. L. R. 352.—**N.Z.**

st. *Cancellation of warrant—Jurisdiction of High Court.*]—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

sb. *Authentication of warrant & depositions.*]—In proceedings before a magistrate under Fugitive Offenders' Act, 1881, the endorsed warrant for the apprehension of the fugitive bore the signature of a person who signed as a magistrate ; the signature was certified by the Acting British Resident of the locality. A witness before the magistrate gave evidence identifying the signature of the magistrate & of the Resident, & stated that the magistrate was *de facto* exercising jurisdiction. Depositions put before the magistrate bearing the endorsement " True Copy " were similarly signed, certified, & identified :—*Held :* both the warrant & the copy of the depositions were duly authenticated as required by Fugitive Offenders Act, 1881, ss. 5, 29. —*Re* POUNDALL, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 228.—**AUS.**

sd. *Application of Order in Council—How proved.*]—Promulgation of an Order in Council may be proved by the production of a copy of the Government Gazette containing the notice of proclamation of the Order in Council. The application of Fugitive Offenders' Acts, 1881 & 1915, to a Protected State by Order in Council, which is proclaimed in the London Gazette, may be proved as an Act of State by tendering a copy of such Gazette. An Order in Council of the State of Perak made the penal code of the Straits Settlements applicable in Perak " upon the publication thereof in the Gazette." A book containing such Order was in evidence before a magistrate & contained a note that the Order was published in the Perak Government Gazette of a certain date :—*Held :* this notification afforded *prima facie* evidence of the due publication of the penal code in the State of Perak since it fell within the terms of N.S.W. Evidence Act, 1898, No. 11, s. 19 (1).—*Re* SEERY, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 221.—**AUS.**

sf. *Application must be made in good faith.*]—An application for the return of a prisoner is not made " in good faith in the interests of justice . . . " within Fugitive Offenders Act, 1881 (c. 69), s. 19, where the whole purpose & object of the laying of the information & the issuing of the warrant is to secure the return to a country of a person so that he might be there when certain civil proceedings, then pending, are heard & so that the pltfs. in those proceedings might be in a more advantageous position to obtain civil redress.—*Re* COOK, *Ex p.* MCELWAIN (1932), 49 N. S. W. W. N. 153.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.

k i. —— ——.]—*Held :* the President of the High Ct. is " a Judge of a Superior Ct." within sect. 3 of Fugitive Offenders Act, 1881, & a District Justice of Dublin Metropolis is " a magistrate " who may exercise the powers conferred by sect. 5 of the Act.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—**IR.**

sg. *Warrant for offence punishable by State of Commonwealth.*]—Where the warrant is for an offence punishable by a law of the State of the Commonwealth, & the evidence in support of the application for the warrant of remand to the Commonwealth is that the offence charged is an offence under the law of that State, & there is no evidence that it is an offence under the law of the Commonwealth, a warrant of remand for the return of the prisoner is invalid, & he is entitled to a writ of *habeas corpus.*—*Re* MUNRO & CAMPBELL, [1935] N. Z. L. R. 159.—**N.Z.**

fugitive has obtained an order *nisi* for a *habeas corpus*: *Qu.:* whether on the argument of the order *nisi* it is open to the High Ct. to consider whether the evidence produced before the magistrate is sufficient to raise a strong or probable presumption of the guilt of the alleged fugitive.—R. *v.* BRIXTON PRISON GOVERNOR, *Ex p.* BIDWELL, [1937] 1 K. B. 305; [1936] 3 All E. R. 1; 106 L. J. K. B. 599; 155 L. T. 453; 100 J. P. 458; 53 T. L. R. 1; 80 Sol. Jo. 876; 34 L. G. R. 461; 30 Cox, C. C. 462, D. C.

160. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

FACTORIES AND SHOPS.

Part I.—Classification and Definitions.

1. *Add. Annotation :—As to* (1) **Refd.** Kearns *v.* Gee, Walker & Slater, Ltd., [1936] 3 All E. R. 151.

8. *Add. Annotation :—As to* (1) **Consd.** Mumby *v.* Volp (1929), 141 L. T. 663.

13. After cross-reference following this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

17. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 653.

18. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 653.

22. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

28. *Citation :*—For "2 B. & S. 153" read "3 B. & S. 153."

29. *Add. Annotations :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

36a. —— **Need not be by owner of building.]**—MUMBY *v.* VOLP, No. 98a, *post.*

38. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

39. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

40. *Add. Annotations :—***Dbtd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

41. After this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

44a. **"Occupier" of factory.]**—Resp. co. was charged, as occupier of a factory, which was subject to certain regulations made in pursuance of the Factory & Workshop Act, 1901 (c. 22), s. 79, for the generation, transformation & distribution & use of electrical energy, with having neglected to observe a certain provision of the regulations, in that, certain work having to be done on a switchboard for high pressure situated in the power-station, the co. failed to make dead the switchboard, contrary to the requirements of the regulations, & that, in consequence of such neglect, a workman was killed. The work on the switchboard was being carried out by another co., & at the time of the accident the work had not yet been completed nor had the switchboard been handed over in working order to resp. co. The justices dismissed the charge, on the ground that in the circumstances resp. co. was not the occupier within the meaning of the Act at the time of the accident :—*Held :* (1) as the object of the switchboard was to control the distribution of extremely powerful electrical energy which came from resp. co.'s power-house, resp. co. was the occupier, within the meaning of the Act, & was therefore guilty of the offence with which it was charged ; (2) as the switchboard in question was not a "machine or implement moved by steam, water or other mechanical power," within sect. 142 of the Act of 1901, that sect. was of no avail to the resp. co.—TURNER *v.* COURTAULDS, LTD., [1937] 1 All E. R. 467 ; 81 Sol. Jo. 239, D. C.

Part II.—Health and Sanitation.

57. *Add. Annotation :—***Consd.** Yates *v.* Burnley Rating Authority (1933), 97 J. P. 226.

Part III.—Accidents.

62. *Add. Annotations :—***Consd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

PART I. SECT. 1, SUB-SECT. 1.

sa. *Flour mill.]—Held :* a "factory" within Factories Act, 1894.—SELBY *v.* BANNIGAN (1901), 3 S. A. L. R. 21.—AUS.

k i. —— ——.]—R. *v.* WONG SAM (B. C.), (1929) 52 Can. Crim. Cas. 357.—CAN.

m i. ——.]—*Held :* a drying yard, situate about five or six yards from a factory, was part of the factory.—RAMANATHAM *v.* R. (1926), I. L. R. 50 Mad. 834.—IND.

63. *Add. Annotations :*—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. *Generally,* **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

68. *Add. Annotation :*—**Consd.** Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

68a. —— ——.] — Resps., the occupiers of a factory, provided adequate guards for securely fencing the mill-gearing, & exhibited a notice prohibiting workmen from removing any guard without special instructions. The workmen removed nine guards for the purpose of setting the rollers, &, having replaced only eight of the guards, started the rollers. Owing to their neglect, one workman, who slipped & fell, was dragged into the coupling gear & was killed. An information against resps. under 1901 Act, s. 136, for neglecting to observe the provision of sect. 10 (1) (*c*) that the mill-gearing must be securely fenced, was dismissed, on the grounds that resps. had taken all adequate precautions by providing the necessary guards, & that it was the fault of the workmen that caused the accident :—*Held :* under sect. 10 it was the duty of resps. not merely to provide guards, but to fence the machinery securely, & as they had not performed this duty, the justices ought to have convicted them.—THOMAS *v.* BOLTON (THOMAS) & SON, LTD. (1928), 139 L. T. 397 ; 92 J. P. 147 ; 44 T. L. R. 640 ; 26 L. G. R. 459 ; 28 Cox, C. C. 529, D. C.

68b. —— ——.]—Resps. were charged with having failed to have certain mill gearing in their factory securely fenced, or in such position or of such construction as to be equally safe to every person employed or working in their factory, in consequence of which one of their workmen was injured. The mill gearing consisted of a countershaft 12½ ft. from the ground to which a belt was attached, & the workman was injured in replacing the belt. The justices dismissed the charge, holding that the said mill gearing need not be fenced, as it was as safe as it would be if fenced :—*Held :* as the essential purpose of Factory & Workshop Act, 1901 (c. 22), s. 10 (1) (*c*), is to provide absolute safety, so far as fencing can provide it, it was clear that the sect. had been contravened, & the offence charged was, therefore, proved. —FINDLAY *v.* NEWMAN, HENDER & CO., LTD., [1937] 4 All E. R. 58 ; 81 Sol. Jo. 901, D. C.

71. *Add. Annotations :*—**Consd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113 ; Peacock *v.* Gyproc Products, Ltd. (1935), 79 Sol. Jo. 904 ; Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85 ; Walker *v.* Bletchley Flettons, Ltd., [1937] 1 All E. R. 170. **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

71a. —— —— ——.]—PEACOCK *v.* GYPROC PRODUCTS, LTD. (1935), 79 Sol. Jo. 904, D. C.

71b. —— —— ——.]—Resps. were charged with having failed to have the pinion-wheels of parts of their machinery securely fenced so as to be safe to every person employed or working in their factory, in consequence of which one of their workmen was injured while engaged in greasing the machinery while it was in motion. Resps. had put up a notice in the factory as follows : " Do not put your hands in the machinery while it is in motion. Persons disregard this notice at their own risk." The pinion-wheels, although usually stopped, were occasionally allowed to remain in motion, for the purpose of greasing. The magistrate dismissed the charge, holding that the pinion-wheels were not dangerous parts of the machine unless in motion, when it was not usual for greasing to be done :—*Held :* as the wheels were dangerous parts of the machinery, they ought to have been securely fenced, despite the fact that greasing was not usually done while the machinery was in motion, as it cannot be assumed that every person will always exercise the necessary care. The offence charged was therefore proved.—CHASTENEY *v.* NAIRN (MICHAEL) & CO., LTD., [1937] 1 All E. R. 376 ; 81 Sol. Jo. 238 ; 35 L. G. R. 195, D. C.

72. *Add. Annotation :*—**Refd.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

72a. —— ——.] — An infant workgirl lost the ring finger of her right hand by accident arising out of & in the course of her employment. She received compensation under the Workmen's Compensation Act for a time, & then accepted £20 in purported settlement on the promise by the employer to re-employ her. No memorandum of this agreement was recorded. She worked at this employment for five years, when, by reason of trade conditions, she was discharged. She then commenced an action against the employer for damages for personal injuries resultant from the employer's alleged breach of statutory duty to fence the machine. The action was tried by a judge alone, who found that the injury had been caused by the employer's breach of statutory duty to fence, & that there was no contributory negligence on the part of pltf. He, however, also found, having regard to the fact that the infant had received employment for five years after her accident under the agreement, that the agreement to accept compensation, though not registered, was for her benefit & therefore binding, with the result that the action was barred by Workmen's Compensation Act, 1925 (c. 84), s. 29, of the Act. The infant appealed :—*Held :* (1) without deciding whether the agreement was for the infant's benefit or whether further proceedings might be taken under the Workmen's Compensation Act, the action for breach of statutory duty

PART III. SECT. 1, SUB-SECT. 1.—A.

70 iii. —— —— ——.]—A co. was charged under 1901 Act, s. 10 (1) (*c*), with failing to keep its factory in conformity with that Act, in respect that a dangerous part of the machinery, the cutter of a horizontal milling machine, was not either securely fenced, or in such a position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it had been securely fenced :—*Held :* (1) the question whether a part of the machinery was " dangerous " within the Act was one of degree, & the risk involved in the use of the cutter did not reach a degree sufficient to justify that part being classified as " dangerous " ; (2) in any event, to secure a conviction, facts must be established to support the second branch of the complaint, &, on the facts, the charge was not proven.—LAUDER *v.* BARR & STROUD, [1927] S. C. (J.) 21.—SCOT.

failed because, on the evidence, the machine was not a dangerous machine within Factory & Workshop Act, 1901 (c. 22), s. 10, & therefore there was no duty on the employer to fence it; (2) on the evidence, the accident was caused by the negligence of pltf., which was a complete defence to the action even if such negligence had only been of a contributory character.—HIGGINS *v.* HARRISON (1932), 25 B. W. C. C. 113, C. A.

Annotations:—As to (1) **Consd.** Rudd *v.* Elder Dempster & Co. (1932), 49 T. L. R. 202; Walker *v.* Bletchley Flettons, Ltd., [1937] 1 All E. R. 170. *Generally*, **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

72b. ——— **What amounts to "dangerous."**]—Pltf. was employed by defts., a firm of brickmakers, & was being taught to drive a mechanical excavator. When going, as he was entitled to do, to the tool-box, he slipped & his leg was caught & severely injured by a wheel of the machine which was not cased or fenced. No negligence on the part of anyone was alleged. Pltf. claimed that the absence of fencing made the machine a dangerous machine, & claimed damages for breach of statutory duty:—*Held:* in considering whether machinery is dangerous, it must not be assumed that everybody will always be careful. A part of a machine is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur. In the circumstances the part of the machine complained of was a dangerous one within Factory & Workshop Act, 1901 (c. 22), s. 10.—WALKER *v.* BLETCHLEY FLETTONS, LTD., [1937] 1 All E. R. 170.

76a. ——— ———.]—A workman in a factory injured his hand in a machine so constructed that it could only be operated by the workman actuating a safety device with one hand & the operating lever with the other. On the hearing of an information against the occupiers of the factory charging them with an offence against sect. 10 of 1901 Act, the justices held that the machine was "equally safe to every person employed or working in the factory as it would be if it were securely fenced" within sub-sect. (1) (*c*) of that sect., & they therefore dismissed the information:—*Held:* the word "safe" in the sub-sect. meant actually safe, not merely reasonably or practically safe, & the justices ought to have convicted resps.—SOWTER *v.* STEEL BARREL CO., LTD. (1935), 154 L. T. 85; 99 J. P. 379; 33 L. G. R. 376, D. C.

Annotation:—**Refd.** Chasteney *v.* Nairn (Michael) & Co., [1937] 1 All E. R. 376.

Machinery equally safe fenced or unfenced—Overhead shaft.]—Resps. were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of resps. attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to resps.' instructions. Resps. were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case:—*Held:* the finding of the justices was not equivalent to a finding that the shaft was "in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced," which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding.—ATKINSON *v.* LONDON & NORTH EASTERN RY. CO., [1926] 1 K. B. 313; 95 L. J. K. B. 266; 134 L. T. 217; 90 J. P. 17; 42 T. L. R. 79; 23 L. G. R. 702: 28 Cox, C. C. 112, D. C.

Annotation:—**Consd.** Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

76c. **Statutory duty to use guard.**]—An infant employee in a woodworking factory was injured while operating a spindle machine. The machine had been supplied with a guard, but in view of the waste of time caused by the use of the guard, the employee was instructed by his employers to operate the machine without the guard, & was doing so at the time of the accident. Having accepted compensation under Workmen's Compensation Act, the infant employee brought an action alleging a breach by his employers of Factory & Workshop Act, 1901 (c. 22), s. 10, & argued that the compensation he had accepted had been paid under a contract that was not for his benefit & one that, being an infant, he was entitled to repudiate. The employers contended that the obligation to use a guard imposed upon a workman by the Woodworking Machinery Regulations, 1922, reg. 23, is absolute, & cannot be waived or abrogated by an order of his employers, & that the accident was due to the breach of the employee's statutory duty:—*Held:* (1) the employers, by ordering their employee not to use the guard, had failed to provide a guard within the meaning of the regulations. There was therefore no guard provided within reg. 23, & there had been no breach by the employee of that regulation; (2) (*per* GREER, L.J.) the employers were not entitled to take advantage of their own wrong in ordering the guard not to be used; (3) the infant employee's election to accept compensation under the Workmen's Compensation Acts was not for his benefit & was therefore not binding upon him.—MURRAY *v.* SCHWACHMAN, LTD., [1937] 2 All E. R. 68; 106 L. J. K. B. 354; 156 L. T. 407; 53 T. L. R. 458; 81 Sol. Jo. 294, C. A.

76a 1. ——— ———.]—Defts. were the occupiers of a factory. A workman in their employment, following his daily duties, climbed up a ladder to the shafting in the dye-house to fix a belt on a pulley, & was caught in the shafting, whirled round & killed. No one actually saw the occurrence, but, as portions of deceased's clothing were on the shaft, they probably got caught in it. An information against defts. charged that, contrary to Factory & Workshop Act, 1901, s. 10 (1) (*c*), a part of the mill gearing, namely, a line of shafting, was neither securely fenced nor in such a position nor of such construction as to be equally as safe to every person employed or working in the factory as if it had been securely fenced. The justices dismissed the information, but stated a case for the opinion of the K. B. D.:—*Held:* defts., in failing to fence the line of shafting, had contravened Factory & Workshop Act, 1901, s. 10 (1) (*c*), & should be convicted.—MINISTRY OF LABOUR FOR NORTHERN IRELAND *v.* COWDY & SONS, [1929] N. I. 110.—IR.

79. *Add. Annotations :—As to* (1) **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1. *As to* (2) **Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206.

80. *Add. Annotations :—As to* (1) **Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628. **Apld.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113. **Distd.** Rudd *v.* Elder Dempster & Co. (1932), 49 T. L. R. 202. *As to* (2) **Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669. **Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206; Kearns *v.* Gee, Walker & Slater, Ltd., [1936] 3 All E. R. 151; Murray *v.* Schwachman, Ltd., [1937] 2 All E. R. 68. *Generally*, **Refd.** Craze *v.* Meyer-Dumore Bottlers' Equipment Co., [1936] 2 All E. R. 1150.

81a. —— —— ——.]—HIGGINS *v.* HARRISON No. 72a, *ante*.

——.]—Defts. installed in their factory a circular saw, which in breach of a statutory duty was improperly fenced. A workman was injured while testing the machinery of the saw in a manner which was held to be the direct cause of the accident. In an action for damages for personal injuries it was argued on behalf of the workman that, in order to prevent him from obtaining compensation based upon a breach of a statutory duty, there must be contributory negligence on the part of the workman limited to acts done in breach of some order or done outside the ambit of his employment :—*Held :* the negligence of a workman which would prevent him from obtaining compensation based upon a breach of a statutory duty was negligence of the ordinary kind, & as the workman had been negligent in the present case he could not recover.—CRAZE *v.* MEYER-DUMORE BOTTLERS' EQUIPMENT CO., LTD., [1936] 2 All E. R. 1150; 80 Sol. Jo. 552, C. A.

91. *Add. Annotation :—As to* (2) **Consd. & Expld.** Mumby *v.* Volp (1929), 141 L. T. 663.

92. For " 69 L. T. 622 " read " 79 L. T. 622."

98a. Duty to keep in repair & free from obstruction —Part of factory in occupation of lessee.]—[supply of mechanical power referred to in Factory & Workshop Act, 1901 (c. 22), s. 149 (1), is not limited to the case of supply by the owner of the building, & there is no reason to read into the sub-sect. after the word " supplied " the words " by the owner."

X. owned a building which was a factory where more than forty persons were employed, & carried on business as a shirt manufacturer in the basement & on the ground & first floors. The second floor was unoccupied. The third & fourth floors were let to Y., who carried on business there as a blouse manufacturer, employing more than forty persons. The factory of X. & that of Y. were respectively worked by separate & distinct electric motors, driven by electricity generated & supplied by the electricity undertaking of a municipal corpn. & each factory had a separate meter. Without this supply of electricity the electric motors could not be driven :—*Held :* mechanical power, namely, electrical current, was supplied to different parts of the same building within sect. 149 (1). Accordingly, as the building was a tenement factory, etc., the owner, was responsible under sect. 14 (6), (7) of the Act that the means of escape in case of fire provided throughout the factory, including the two floors occupied by Y., should be maintained in good condition & free from obstruction.—MUMBY *v.* VOLP, [1930] 1 K. B. 460; 99 L. J. K. B. 213; 141 L. T. 663; 93 J. P. 197; 27 L. G. R. 594, D. C.

Part IV.—Dangerous and Unhealthy Industries.

118. *Add. Annotations :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547. **Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472. **Refd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmins *v.* Same (1926), 96 L. J. K. B. 295; Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Bevan *v.* Nixon's Navigation Co., [1929] A. C. 44.

136. *Add. Annotations :*— **Refd.** Russell *v.* Criterion Film Productions, Ltd., [1936] 3 All E. R. 627; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

137. *Add. Annotation :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138. *Add. Annotations :*—**Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472. **Refd.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138a. —— Docks Regulations, 1925.] Reg. 34 provided : " (*a*) Where there is more than one hatchway, if any hatch of a hold exceeding five feet in depth measured from the level of the deck in which the hatch is situated to the bottom of the hold, is not in use for the passage of goods, coal, or other

81 iii. —— —— ——.]—In an action by the widow of a deceased employee against his employer pltf. alleged that deft. in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for deft. :—*Held :* in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted.—COFIELD *v.* WATERLOO CASE CO., LTD. (1924), 34 C. L. R. 363.—AUS.

81 iv. —— —— ——.]—Contributory negligence is not a defence to an action to recover damages for personal injury, caused by a breach of an absolute statutory duty imposed for the benefit of a class which pltf. is a member. ... BUTTERFIELD & LEWIS, LTD. (1927), 38 C. L. R. 354; 27 S. R. N. S. W. 339; [1927] Argus L. R. 3.—AUS.

PART IV. SECT. 2, SUB-SECT. 1.—D.

135 ii. —— *Interpretation of regulations—Question for court.*]—BISSETT *v.* HEITON & CO., LTD., [1930] I. R. 17.—IR.

material, or for trimming, & the coamings are less than two feet six inches in height, such hatch shall either be fenced to a height of three feet or be securely covered . . .":—*Held:* (1) the duty of fencing or covering a hatch, in compliance with reg. 34, which was not in use but which had been used during the process of unloading a ship lay upon the person who by himself, his agents, or workmen carried on the process of unloading, & not upon the owner, master, or officer in charge of the ship; (2) for the purposes of the 1901 Act, the covering of a hatch which had been used for the purpose of unloading the ship was ancillary to the main work of unloading, & the work of unloading was not completed till the hatch was covered.—MANCHESTER SHIP CANAL CO. *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1930] 1 K. B. 547; 99 L. J. K. B. 230; 143 L. T. 113; 46 T. L. R. 163; 18 Asp. M. L. C. 140, D. C.

Annotation:—As to (2) **Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472.

138b. —— ——.]—A workman in a ship in dock fell through a hatchway of which the fencing had become loose & was injured. He was employed in replacing the insulation on refrigerator pipes, & his employers were in no way connected with either of defts. He sued the stevedores working on the hatch, & the owners, for negligence & breach of their statutory duty to light the ship efficiently & to fence the hatchway while it remained open. The Factory & Workshop, Dangerous & Unhealthy Industries Regulations, 1934, reg. 12, provides that decks where work is being done must be efficiently lighted when "processes," which include unloading, are being carried on. Defts. contended that the "process" was finished when the hatchways had been fenced in accordance with the regulations; & also that pltf., who was not engaged in any of the processes, was not within the benefit of reg. 37, which provides for the fencing of hatchways:—*Held:* (1) the process of unloading continues until all the hatch covers have been replaced; (2) on the authority of *Manchester Ship Canal Co.* v. *Director of Public Prosecutions*, No. 138a, the effect of Docks Regulations, 1925, was to protect any workman employed in the ship even if not employed on any of the processes & the 1934 Regulations did not withdraw this protection.—HAWKINS *v.* THAMES STEVEDORE CO., LTD. & UNION COLD STORAGE CO., LTD., [1936] 2 All E. R. 472; 80 Sol. Jo. 387.

-.]—Pltf., employed as a labourer, was assisting in the unloading of timber from defts.' ship. Having finished unloading one kind of timber, a different skid was required to unload the next kind. It was suggested to pltf. that a suitable skid was to be found in the after part of the ship & he proceeded there in search of one. In a badly lighted part of the deck space he fell down an open hatch & was injured. It was contended for defts. that there was no invitation to pltf. to go to the part of the ship where the accident happened. Pltf. relied upon a breach of the regulations made under the Factory & Workshops Act, 1901 (c. 22), s. 79, namely, that in breach of reg. 12 (*c*) the deck space was insufficiently lighted & in breach of reg. 37 (*a*) the hatch was insufficiently fenced. The only fence in the present case was some distance from the hatch & in any event of an insufficient height:—*Held:* (1) pltf. was an invitee & was entitled to recover; (2) in the above reg. 12 (*c*) "required to proceed" does not necessarily mean ordered to proceed; but includes any place where a workman might properly go for ropes, slings, skids, etc.; (3) in the above reg. 37 (*a*) "accessible" means accessible without reasonable let or hindrance & the "fence" is a fence situated in close proximity to a single hatch.—HENAGHAN *v.* REDERIET FORANGIRENE, [1936] 2 All E. R. 1426.

138d. Hatch covering not strengthened—Docks Regulations, 1934.]—Five stevedores were loading a ship, &, following instructions given to them by the hatch foreman, a servant of deft. co., placed 49 tons of iron upon a between-deck hatch covering. The hatch covering collapsed & pltfs. fell into the hold & were injured. The claim in negligence was barred by the doctrine of common employment, & reliance was placed upon a breach of statutory duty imposed by Docks Regulations, 1934, regs. 36, 38, made under Factory & Workshop Act, 1901 (c. 22). Reg. 36 requires a deck-stage or cargo-stage to be substantially constructed, & reg. 38 provides that no cargo shall be loaded or unloaded by a fall or sling at any intermediate deck unless either the hatch at that deck is securely fastened or a secure landing platform has been placed across it:—*Held:* (1) the ct. was bound by the dictum of SCRUTTON, L.J., in *Hillen & Pettigrew* v. *I.C.I. (Alkali), Ltd.*, to hold that the hatch of a ship is not a deck-stage or cargo-stage within the meaning of that word in reg. 36; (2) the placing of the weight of iron upon the hatch coverings when they were not so strengthened & reinforced as to be capable of bearing the weight imposed upon them was a breach of reg. 38; (3) reg. 38 imposes a duty upon the shipowner & does not impose a duty upon the persons employed in the process of loading or unloading. It could not, therefore, be said that pltfs. were guilty of any breach of statutory duty.—HANLON *v.* PORT OF LIVERPOOL STEVEDORING CO., LTD., [1937] 4 All E. R. 39.

153. *Add. Annotation:*—**Refd.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

153a. —— **"Temporarily used"—Machinery not in actual use.**]—By Factory & Workshop Act, 1901 (c. 22), s. 79, the Secretary of State may make regulations in respect of dangerous

PART IV. SECT. 2, SUB-SECT. 4.

q 1. —— *Defective hoist—Liability of scaffolding firm.*]—A scaffolding firm were employed by builders to erect a hoisting machine for use in the construction of a building which the builders were erecting. The scaffolding firm erected the machine & handed it over to the builders. It was not used until after it was handed over; when it collapsed, owing to defects in its construction, causing injuries to certain workmen:—*Held:* the scaffolding firm were guilty of an offence under para. 4 (*a*) of the Building (Amendment) Regs., 1931, in respect that a duty of compliance with the Regs. was imposed upon them as well as upon the builders; & the fact that the Regs. applied only to premises in which machinery was "temporarily used" did not preclude the commission of an offence under para. 4 (*a*) before the date on which the machine was brought into actual use.—SCAFFOLDING (GREAT BRITAIN), LTD. *v.* STHERN, [1936] S. C. (J.) 9.—**SCOT.**

machinery. By sect. 105 the provisions of the Acts with respect (*inter alia*) to fines in respect of death or injury are applicable as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," & as if the person who by himself, his agents or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of a factory. The Secretary of State, in pursuance of s. 79, made certain regulations casting upon employers of workmen the duty of fencing floor-openings with a suitable guard rail & toe board or other efficient means:—*Held:* (1) the words "temporarily used" are not confined to the actual moment when the machinery is in use, but extend to the whole period during which the machinery is available for use in the constructional work, & therefore that persons who had brought such machinery upon the premises were liable to conviction as the occupiers of a factory in respect of the death of a workman who fell through an unfenced shaft at a time when the mechanical hoist for which the shaft was made was not in use; (2) the words "employers of workmen" imposed upon sub-contractors, engaged in laying floors in a building in course of erection, liability in respect of the death of one of their workmen who fell through an unguarded well hole which the sub-contractors had left for a staircase in the construction of which the sub-contractors were not concerned.—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD. (1928), 140 L. T. 138; 93 J. P. 59; 45 T. L. R. 141; 27 L. G. R. 27; 28 Cox, C. C. 558, D. C.

153b. —— **Electric crane.**]—By para. 31 of the Building Regulations, 1926, made under Factory & Workshop Act, 1901 (c. 22), which apply to all premises on which machinery worked by steam, water or other mechanical power is temporarily used for the purpose of the construction of a building: "Any part of the premises in which any person is habitually employed shall be covered in such a manner as to protect any person who is working in that part from being struck by any falling material or article."

Pltf., a bricklayer, having been struck while at work on a building under reconstruction by bricks falling from a higher floor & thereby injured, claimed damages for negligence, as having been due to the breach of a statutory regulation—namely, para. 31 set out above. The county ct. judge dismissed the action on the ground that the scaffolding where the accident happened having only been in position for a day & a half, neither pltf. nor any other person was habitually employed there. On appeal:—*Held:* (1) "mechanical power" includes an electric crane; (2) the regulation assumed that workmen would have to move about from one part of the premises to another & imposed a duty upon the employers to afford protective cover against falling material in all parts of the building where it might be required, for the benefit of any person who might be working there. Pltf. was therefore entitled to recover damages for his injury.—KEARNS *v.* GEE, WALKER & SLATER, LTD., [1937] 1 K. B. 187; [1936] 3 All E. R. 151; 106 L. J. K. B. 16; 155 L. T. 519; 52 T. L. R. 38; 80 Sol. Jo. 854, C. A.

180a. —— **Regulations binding on "employer of workman"—Liability of sub-contractor.**]—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD., No. 153a, *ante*.

180b. —— **Extensive building site—House on site completed.**]—Injuries were sustained by two workmen in the employ of resps., who were contractors engaged in the erection of a number of houses on a large area of unenclosed land. At one point on the building site was a mortar mill driven by a petrol engine, & there was also on the site a concrete mixer on wheels, which was moved about the site as occasion required. In the first case the workman injured himself while working on the roof of a house which had almost been completed. The mortar mill was 100 yds. distant from the house, & was not within its curtilage or precincts. In the second case the accident occurred in a completed house from which the mortar mill was 25 yds. & the concrete mixer about 400 yds. distant; neither of these machines had any connection with the accident. In both cases the workmen were disabled for more than three days, but resps. did not send written notice to the inspector of the district. Informations for failing to give notice were preferred against resps. under the Notice of Accidents Act, 1906 (c. 53), as amended by Workmen's Compensation Act, 1923 (c. 42). The justices dismissed both informations:—*Held:* (without deciding whether an extensive building site may be a "factory" within Factory & Workshop Act, 1901 (c. 22), s. 105 (1)), the question of the extent of "premises on which machinery . . . is temporarily used for the purpose of the construction of a building" was one of degree & therefore of fact; & the justices had not misdirected themselves in holding that a house on such a site, when completed, or nearly completed, became a separate set of premises, which could not be deemed to be a "factory" within the Act.—PEASE *v.* SIMMS (W. J.), SONS & COOKE, LTD., [1932] 1 K. B. 723; 101 L. J. K. B. 805; 146 L. T. 366; 96 J. P. 66; 48 T. L. R. 176; 30 L. G. R. 87, D. C.

180c. "**Habitually employed.**"]—KEARNS *v.* GEE, WALKER & SLATER, LTD., No. 153b, *ante*.

Part V.—Conditions as to Employment and Wages.

186. *Add. Annotation :*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428.

190. After this case add :—
——.]—*See* Hairdressers' & Barbers' Shops (Sunday Closing) Act, 1930 (c. 35), s. 3.

192. *Add. Annotation :—As to* (1) **Consd.** Rutherford *v.* Trust Houses, [1926] 1 K. B. 321.

193. *Add. Annotation :—As to* (2) **Distd.** Rutherford *v.* Trust Houses (1925), 89 J. P. Jo. 682.

206a. —— —— **Shops Act, 1913 (c. 24), s. 1.**—Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under sect. 1 (1) of the above Act that instead of the provisions of Shops Act, 1912 (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.—RUTHERFORD *v.* TRUST HOUSES, LTD., [1926] 1 K. B. 321 ; 95 L. J. K. B. 371 ; 134 L. T. 630 ; 90 J. P. 62 ; 42 T. L. R. 148 ; 24 L. G. R. 245 ; 28 COX, C. C. 161, D. C.

208. Before this case add "*See, now,* Shops (Hours of Closing) Act, 1928 (c. 33)."

211. *Add. Annotation :*—**Distd.** Moore *v.* Tweedale, [1935] 2 K. B. 163.

211a. —— **Failure to complete work in time Permanent hair-waving.**]—On a day on which, by Shops Act, 1912 (c. 3), s. 4, & an Order made thereunder, a shop in the occupation of a hairdresser was required to be closed at 1 p.m., two customers attended at the shop by previous appointment for a hairdressing operation which would necessarily last for four hours more or less for the production of what was known as a "permanent wave." One of these customers arrived at the shop at 10.45 a.m., & in her case the operation began at that hour & continued until 2 p.m. The other customer arrived at the shop at 11 a.m., & in her case the operation began at that hour & continued until almost 4 p.m. : —*Held :* though the customers were served for the periods of time indicated after the hour at which the shop was required to be closed under above sect., yet, inasmuch as they were in the shop & being served before that hour, the cases came within the proviso to sub-sect. 7 of the sect., & the occupier

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PART V. SECT. 3, SUB-SECT. 1.

q i. —— *Automatic vending machine.*]—An automatic vending machine attached to a telegraph pole in a public street is not a "shop" within Shops & Offices Act, 1921-22. *Qu. :* the case of an automatic machine which is part of a shop but which can be operated from outside the shop.—LIGHTFOOT *v.* HUGH & G. K. NEILL, LTD., [1929] N. Z. L. R. 848.—**N.Z.**

sk. *Meal-times—Interval for meals—Whether part of hours of employment—Shops Act, 1912 (c. 3), s. 1 (3) & Sched. I.*]—Two employees in a shop began work at 7 a.m. & stopped work at 6.45 p.m. One of them was allowed away for dinner from 10.45 a.m. until 11.45 a.m., the other from 2 p.m. to 3 p.m. approximately :—*Held :* although each of the employees was away during part of the period 11.30 to 2.30, their hours of employment included those hours, & their employer had contravened the above Act by not allowing them an interval of three-quarters of an hour between those hours.—HUTCHISON *v.* CUMMING, [1926] S. C. (J.) 110.—**SCOT.**

sl. *Failure to give annual holidays—Right of action for wages in lieu.*]—Under Shops Act, 1912, s. 21 (6), Sched. V., on failure to comply with the provisions of that Sched. the occupier of the shop is guilty of an offence against the Act & is liable to the penalty therein prescribed. The Sched. provides for an annual holiday for shop assistants without deduction from wages or salary. Pltf. brought a civil bill claiming the sum of £9 0*s.* 0*d.*, being the amount due by deft. for four weeks wages in lieu of the holidays which he had not received :—*Held :* pltf. had a right of action for deft.'s breach of statutory duty to give him a fortnight's holiday with full pay in each year & this right was available in addition to the remedy for recovery of a penalty.—REILLY *v.* MOORE, [1935] N. I. 196.—**IR.**

PART V. SECT. 3, SUB-SECT. 2.—A.

e i. —— ——.]—It is unlawful for the keeper of a shop in which goods of different classes, including fruit & vegetables, are kept for sale, to keep his shop open for the purpose of selling groceries during hours in which the sale of groceries is prohibited, although the same shop is used for the conduct of a "furtive tea-room," & for the sale of fruit & vegetables.—HUNN *v.* REYNOLDS, 22 Tas. L. R. 64.—**AUS.**

e ii. —— ——.]—It is lawful for the keeper of a shop, in which goods of different classes are kept for sale, to keep such shop open for the *bonâ fide* conduct of a tea room during hours in which the sale of goods which are not exempted by Shops Act, 1925, is prohibited.—WEYMOUTH *v.* SHACKCLOTH, 22 Tas. L. R. 7.—**AUS.**

f i. —— *Meaning of "open."*]—A shop is open for trading when it is made accessible to customers for that purpose.—DEVONISH *v.* PORTER, [1928] S. A. S. R. 296.—**AUS.**

o i. ——.]—Where a municipal bye-law, *e.g.*, one requiring shops to be closed on certain afternoons, is in strict accordance with the powers conferred by the Act under which it was passed, it cannot be held to be invalid or unenforceable on the ground that its provisions are unreasonable, uncertain or oppressive.—WINNIPEG MERCHANDISERS, LTD. *v.* WINNIPEG CITY, [1936] 3 W. W. R. 530.—**CAN.**

211 i. *Customer in shop before closing hour—Failure to complete purchase in time—Shops (Early Closing) Act, 1920 (c. 58), Sched. I, Art. 2 (1).*]—An auctioneer, who had closed his premises to the public at the appointed hour, but continued after that hour to conduct retail sales by auction to persons who were already collected within the premises, was held rightly convicted, in respect that, while an auctioneer might complete any transaction which was in progress at the time of closing for the benefit of those then present, he was not entitled thereafter to put up further articles to auction.—GORDON *v.* SOMERVILLE, [1928] S. C. (J.) 45.—**SCOT.**

sf. *Exemption—Sale of "medical & surgical appliances"—Contraceptives.*]—A shopkeeper sold a rubber contraceptive to a customer after the closing hour. Such contraceptives are used to prevent conception & the communication of disease, & their use is sometimes advised by medical men. On the occasion of the sale the door of the shop was not locked, & entrance could be obtained by any one. A notice was exhibited stating that the shop was closed except for the sale of medical & surgical appliances. An assistant was in attendance to serve customers. The shopkeeper having been convicted of a contravention of Shops (Hours of Closing) Act, 1928 (c. 33), s. 1 :—*Held :* the contraceptive was a medical or surgical appliance within Sched. I. of the Shops Act ; &, in order to comply with the provisions of the Act, it was not necessary for the shop to be closed in the physical sense, an intimation that it was open only for the sale of permitted articles being sufficient. Conviction quashed. —WADE *v.* ADAIR, [1933] S. C. (J.) 28.—**SCOT.**

sg. *Application for bye-law—Time for making.*]—The provision that a municipal council shall pass a bye-law within one month of application for early closing of shops, contained in Factory, Shop & Office Building Act, 1932, s. 85 (5), is directory only.—*Re* GREIG & TORONTO, [1934] 4 D. L. R. 248 ; O. R. 514.—**CAN.**

was not guilty of an offence against the Act.—MOORE *v.* TWEEDALE, [1935] 2 K. B. 163; 104 L. J. K. B. 594; 153 L. T. 96; 99 J. P. 221; 51 T. L. R. 437; 79 Sol. Jo. 288; 33 L. G. R. 216; 30 Cox, C. C. 229, D. C.

211b. Right of local authority to make closing order "not being earlier than 8 o'clock"—Order requiring closing at 7 o'clock—Effect of Shop (Hours of Closing) Act, 1928 (c. 33), s. 4.]—*Held:* a closing order under Shops Act, 1912 (c. 3), requiring sweet shops to close at 7 p.m. was not saved by Shops (Hours of Closing) Act, 1928 (c. 33), s. 4, since the provision fixing the closing hour at 7 p.m. was inconsistent with the special provision of the 1928 Act that a closing order in respect of such shops might fix an hour "not being earlier than 8 o'clock in the evening."—KENYON v. STREET, [1931] 1 K. B. 305; 100 L. J. K. B. 214; 144 L. T. 403; 95 J. P. 36; 47 T. L. R. 107; 29 L. G. R. 100; 29 Cox, C. C. 227, D. C.

229a. Silk weavers—Price variable with speed.]—It is no objection to a ticket delivered to a silk weaver under 8 & 9 Vict. c. 128, ss. 1, 2, that, by a condition annexed thereto, the price is made to vary according to the quickness with which the work is done & returned to the master.—SEDDON *v.* COCKER (1861), 25 J. P. 196.

233. *Add. Citation:—previous proceedings, sub nom.* SHARMAN *v.* UNION IRON WORKS CO. (1852), 3 Car. & Kir. 298, N. P.

236. *Add. Annotation:*—**Refd.** Pritchard *v.* James Clay (Wellington) (1925), 42 T. L. R. 139.

261. *Add. Annotations:*—**Consd.** Kenyon *v.* Darwen Cotton Manufacturing Co., [1936] 1 All E. R. 310. **Distd.** Penman *v.* Fife Coal Co., [1936] A. C. 45. **Refd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

263. *Add. Annotations:*—**Apld.** Jones *v.* Harris (1926), 43 T. L. R. 1. **Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Expld. & Distd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310. **Consd.** Kenyon *v.* Darwen Cotton Manufacturing Co., [1936] 1 All E. R. 310; Penman *v.* Fife Coal Co., [1936] A. C. 45.

264a. ——.]—Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5¾*d.* for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, *e.g.*, 5½*d.* for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act:—*Held:* the agreement was a clear attempt to evade the above Act. The workman was employed to make pipes of full length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer."—PRITCHARD *v.* JAMES CLAY (WELLINGTON), LTD., [1926] 1 K. B. 238; 95 L. J. K. B. 107; 134 L. T. 244; 90 J. P. 15; 42 T. L. R. 139; 70 Sol. Jo. 266; 28 Cox, C. C. 122, D. C.

Annotation:—**Distd.** Riversdale Mill Co. *v.* Hart, [1927] 1 K. B. 624.

264b. ——.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by applts., was negligent in performing certain work &, in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the "standard list" rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages:—*Held:* this deduction was not illegal as being in contravention of the Truck Acts.—HART *v.* RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *affg.* S. C. *sub nom.* RIVERSDALE MILL CO. *v.* HART, [1927] 1 K. B. 624, D. C.

Annotation:—**Apld.** Sagar *v.* Ridehalgh, H. & Son, Ltd. [1931] 1 Ch. 310.

264c. ——.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices agreed between the employer's & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deduction to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions:—*Held:* this practice was not rendered illegal by the Truck Act, 1831 (c. 37), s. 3, as it did not involve a deduction for bad work from ascertained wages, but a deduction for bad work made in calculating the wages.—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310; 100 L. J. Ch. 220; 144 L. T. 480; 95 J. P. 42; 47 T. L. R. 189; 29 L. G. R. 421, C. A.

PART. V. SECT. 3, SUB.-SECT. 2.—B.

g i. —— *Trade of tobacconist carried on—No exemption if other trades carried on.*]—In sect. 222 of City Act, 1934, which authorises bye-laws for Wednesday afternoon closing of shops, the definition of "shop," in sub-sect. (11), excludes therefrom any place "where the only trade or business carried on is that of a tobacconist":—*Held:* the exception applies only to those shops in which the trade of a tobacconist is the only trade, it does not apply to shops in which in addition to tobacco articles not connected with the trade in tobacco are sold—R. [illegible], [1936] 3 W. R. 332.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.—B. (b).

n i. —— *Debt owed to third party.*]—Pltf., who was employed by deft. indebted to the W. co. Deft., wit consent of pltf., paid the am owing to the W. co. out of pltf.'s wages. Pltf. subsequently sued to recover this amount on the ground that the pay ment to the W. co. was a contravention of the Truck Act:—*Held:* payment in such circumstance was not a contravention of Truck Act. PILBARRA COPPER FIELDS, LTD. *v.* NEILSEN (1930), W. A. L. R. 34.—**AUS.**

275a. Deduction of rent payable by father of employee.]—Applt. was an oncost workman in resps.' colliery. His father had been in resps.' employment & was tenant of a house owned by them. The father ceased to be employed by resps., but remained tenant of the house, in which he lived with his family including applt. The father failed to pay the rent for the house, & resps. deducted the rent from applt.'s wages, applt. signing a written consent to the deduction in order to save the family from eviction. Applt. brought an action to recover sums amounting to £37 15*s.* 4*d.*, which he alleged were illegally deducted :—*Held :* he was entitled to recover the sum claimed as the deductions were illegal, null & void under Truck Act, 1831 (c. 37), ss. 2, 3.—PENMAN *v.* FIFE COAL CO., LTD., [1936] A. C. 45 ; 104 L. J. P. C. 74 ; 153 L. T. 261 ; 51 T. L. R. 494 ; 79 Sol. Jo. 478, H. L.

Annotation :—**Consd.** Kenyon *v.* Derwen Cotton Manufacturing Co., Ltd., [1936] 1 All E. R. 310.

275b. Scheme for re-opening factory—Employee's shares—Payment by deduction from wages.]—Shortly after entering the employment of defts., pltf. signed two documents. One was an application to defts. to allot to her a number of shares in deft. co. The other contained (*inter alia*) a request that " you [the co.] should deduct from my wages each week & allocate towards payment for my shares the following amounts. . . . Similar applications & requests were later made in respect of further shares. For some weeks pltf. received her net wages in coin & an envelope containing the share subscription in coin, which was immediately handed back to defts. Thereafter pltf. was handed only the net amount & a receipt for the deductions made. Pltf. sued to recover the amount of her wages which had been applied in payment of shares. Defts. counterclaimed the amount due in respect of unpaid instalments of shares :—*Held :* (1) the agreement that deductions should be made from pltf.'s wages was illegal under Truck Acts, & pltf. was entitled to recover the sum claimed, there being no distinction between the two methods employed for the deductions ; (2) the agreement to take & pay for shares was not severable from the illegal agreement relative to deductions, & the counterclaim failed.—KENYON *v.* DARWEN COTTON MANUFACTURING CO., LTD., [1936] 2 K. B. 193 ; [1936] 1 All E. R. 310 ; 105 L. J. K. B. 342 ; 154 L. T. 553 ; 52 T. L. R. 294 ; 80 Sol. Jo. 147, C. A.

276. *Add. Annotations :*—**Apld.** Hart *v.* Riversdale Mill Co., [1928], 1 K. B. 176 ; Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

277. *Add. Annotations :*—**Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

279. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

Part VI.—Administration and Penalties.

299. *Add. Annotations :*—**Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132 ; Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

PART VI. SECT. 3.

296 ii. ——.]—Resp. was charged with selling certain non-exempted goods after prohibited hours. A complaint purporting to be for a similar offence was laid against an employee ; this complaint was bad in law ; both complaints inferentially referred to the same transaction. The employee pleaded guilty ; & thereupon the special magistrate dismissed the complaint against the employer, the two complaints, by consent, being heard together. There was no evidence of a statutory defence provided by sect. 83 of Early Closing Act that the employer had used due diligence to enforce the provisions of the Act or that the offence had been committed without the employer's knowledge, consent or connivance. There was, however, in the complaint against the employee an allegation that he had committed the act charged without the employer's knowledge, consent or connivance :—*Held :* the dismissal of the complaint against the employer was wrong.—ELLIS *v.* NORTHCOTE, LTD., [1929] S. A. S. R. 40.—**AUS.**

xi. *Prosecution by Chief Inspector of Factories—Liability as to costs.*]—The Chief Inspector of Factories for Tasmania may quite properly prosecute offences under Shops Act, 1925, in his official capacity, & so long as he acts *bonâ fide*, he will not be ordered to pay deft.'s costs of an unsuccessful prosecution.—REYNOLDS *v.* GEMMELL, 22 Tas. L. R. 57.—**AUS.**

FAMILY ARRANGEMENTS.

Part I.—Meaning and Formation.

38. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39a. ——.]—A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained.

On the death of W. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. & his wife, who predeceased him, & for whom W. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, & it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. had been discovered, & he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505 ; 101 L. J. Ch. 269 ; 146 L. T. 527.

Part II.—Validity and Effect.

87. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

131. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

164. *Add. Annotation :*—**Refd.** Parr *v.* A.-G., [1926] A. C. 239.

165. *Add. Annotation :*—**Consd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E., [1927] 1 Ch. 138.

PART I. SECT. 3.

32 ii. ——.]—In the usual type of family arrangement, unless any item of property which is admitted by all the parties to belong to one of them is allotted to another there is no "exchange" or other transfer of ownership.

A binding family arrangement of this type can be made orally, & if made orally, no question of registration arises. If such arrangement is followed by a writing containing reference to it, then the question is whether thereby the terms of the arrangement have been "reduced to the form of a document," *i.e.* formally recorded in a document with the purpose that they should be evidenced by that document, & that is a question of fact in each case to be determined upon a consideration of the nature & phraseology of the writing & the circumstances in which & the purpose with which it is written. —RAM GOPAL *v.* TULSHI RAM (1928), I. L. R. 51 All. 79.—**IND.**

PART II. SECT. 1.

n i. ——.]—SIDH GOPAL *v.* BIHARI LAL (1927), I. L. R. 50 All. 284.—**IND.**

t i. ——.]—Where it is proposed to substitute the trusts of a deed of family arrangement for those contained in a will of which probate has been granted to certain named exors. it is proper to provide in such deed for the release of the said exors. from their obligations under the will & for the vesting of the property in the exors., or in such person or persons as are to hold it, upon the trusts comprised in the deed ; & when the approval of the ct. is sought for such a deed, & when there are infant beneficiaries, there should be evidence before the ct. from which it could properly be inferred that the deed is beneficial to such infants.—*Re* SNELLING, SNELLING *v.* HANNA, [1930] N. Z. L. R. 426.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 1.

65 i. *What is sufficient consideration.*] —*Held :* a promise by a married man to abandon the intention which he & his wife had formed of starting life elsewhere & to remain in the homestead & build a house is sufficient consideration for the promise of his uncles, aunt, & grandmother to give him 100 acres of the homestead lands.—ROBERTSON *v.* ROBERTSON (1933), 6 M. P. R. 370.—**CAN.**

PART II. SECT. 7.

136 ii. —— ——.]—HAWKINS *v.* AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

8a. *Compromise between husband & wife—Respecting wife's property—Concealment of fact by husband.*]—Specific performance decreed of an agreement in the English form made between husband & wife, Armenian Christians, in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement :—*Held :* under the circumstances, that fact even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity.—GREGORY *v.* COCHRANE (1860), 8 Moo. Ind. App. 275.—**IND.**

FEDERAL CONSTITUTIONS.

See DEPENDENCIES AND DOMINIONS.

FERRIES.

Part I.—Definition and Nature of Ferries.

6. *Add. Annotation :—Generally,* **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

8. For the paragraph in the original volume substitute the following paragraph :—

——.]—Defts., under a statute of 1791, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held :* as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—YORKSHIRE, EAST RIDING, COUNTY COUNCIL *v.* SELBY BRIDGE CO. OF PROPRIETORS, [1925] Ch. 841 ; 95 L J. Ch. 86; 133 L. T. 628 ; 41 T. L. R. 602 ; 69 Sol. Jo. 775 ; 23 L. G. R. 547.

13a. —— —— —— **Persons able to cross on foot at low water.**]—Pltfs. were the owners of a ferry connecting the highway at South Benfleet with the highway at Canvey Island over a tidal creek which at low water could be traversed on foot & they sought to establish their right to an ancient ferry. They proved that as long as living memory went there had always been at this place a ferry with a uniform rate of charge during the day, though at night a different charge had been made, & at times during the night there had been refusal to carry passengers :—*Held :* there was evidence from which a presumption ought to be made of a grant in times gone by of a franchise ferry of which pltfs. were not in possession, & though there was evidence of acts which were not permissible by the owner of the ferry, & which were wrongful as between him & the public, such acts were due to ignorance of his rights, & were not sufficient to rebut the evidence of a franchise ferry.—LAYZELL *v.* THOMPSON (1926), 91 J. P. 89 ; 43 T. L. R. 58 ; *affd.* (1927), 96 L. J. Ch. 332, C. A.

31a. —— ——.]—The landing stage constructed in Poole Harbour at South Haven Point by the Bournemouth-Swanage Motor Road & Ferry Co. under their private Act of 1923 is the private property of the co., & they are entitled to prevent any one from using it except in connection with their ferry & on payment of the appropriate tolls.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS (1930), 144 L. T. 132 ; 95 J. P. 9; 47 T. L. R. 16 ; 29 L. G. R. 22, C. A.

Part II.—Creation and Transfer of Ferries.

34. *Add. Annotations :—As to* (3) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58. *As to* (5) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

35. *Add. Annotations :*—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

35a. ——.] — LAYZELL *v.* THOMPSON, No. 13a, *ante.*

51. *Add. Annotation :—As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

55a. Extent of right—Whether exclusive right of ferry—Construction of Act.]—By a private Act pltfs. were empowered to make & maintain a motor road from South Haven Point in the parish of Studland in the county of Dorset to a public road leading from Studland to Swanage. By sect. 56 of the Act they were empowered to establish, maintain, work & use a ferry service for passengers, animals, vehicles & goods between the Sandbanks & South Haven Point within Poole Harbour. By sect. 62, passed for the protection of the Poole Harbour Comrs., pltfs. were required to establish or acquire & thereafter continuously work the ferry by means of a vessel propelled by steam on a chain cable system, & by sects. 62, 97, passed for the benefit of certain landowners, they were required to provide from seven o'clock in the forenoon when summer time should be in force & from eight o'clock in the forenoon at all other times of the year until one hour after sunset on every day a minimum hourly service of vessels from each shore. The two sects. contained provisions

PART I. SECT. 1.

9 i. *A franchise—Under licence from Crown.*]—A ferry is a franchise, that no one can erect without a licence from the Crown. It is *publici juris,* & when a ferry is erected, another cannot be erected without a licence ; the Crown has a remedy *a quo warranto,* & the former grantee has a remedy by action.—SIRAJGANJ LOCAL BOARD (CHAIRMAN) *v.* BUDHISWAR PATNI (1930), I. L. R. 57 Calc. 1261.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.—A.

sc. *Extinguishment of right of owner of termini.*]—The general right of the owner of land on either bank of a river to establish a ferry for profit must give way if it comes in competition with the grantee of the Government who has previously enjoyed a monopoly under his grant.—DHANPAT PANDEY *v.* PASPUT PRATAP SINGH (1931), I. L. R. 53 All. 764.—**IND.**

enabling Poole Harbour Comrs. & the landowners respectively to exercise certain powers & rights in case pltfs. should cease working the ferry or fail to work it continuously & efficiently. They established a ferry service in accordance with these provisions :—*Held :* the Act did not confer on pltfs. an exclusive right of ferry, & that they were not entitled to an injunction restraining defts., who for many years before the Act had in fact carried passengers between the Sandbanks & South Haven Point without claiming any franchise entitling them to do so, from carrying passengers bicycles & goods across the mouth of Poole Harbour within or near the limits of pltfs.' said ferry.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS, [1930] A. C. 549 ; 99 L. J. Ch. 337 ; 143 L. T. 313 ; 46 T. L. R. 439 ; 28 L. G. R. 351, H. L.

Part III.—Rights, Duties and Liabilities of Ferry Owner.

63. *Add. Annotation :—As to* (1) **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

65. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

66. *Add. Annotations :—As to* (1) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. *Generally*, **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254 ; Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

71a. Exemption from tolls—Crown.]—By a local Act of Parliament private landowners were authorised to establish & maintain a ferry service at Torpoint, Cornwall, across the river Tamar, & to charge tolls for its use. Avoidance of the tolls by the running of any boat service for hire in competition with the ferry was penalised by the Act, but officers & other servants of His Majesty were exempted from this provision, & their vessels were allowed free passage between the points served by the ferry. By another sect. of the Act, the ferry owners & their successors were exempted from the payment of rates & taxes in respect of the ferry. By Ferries (Acquisition by Local Authorities) Act, 1919 (c. 75), deft. council became the owners of the Torpoint ferry. Upon a summons to determine what, if any, officers, men, or other persons in His Majesty's service were entitled to be borne free of charge or toll, by the Torpoint ferry : —*Held :* the Crown's general prerogative of exemption from the payment of tolls cannot be deemed to have been abandoned by implication, in respect of tolls created by any Act of Parliament, either (*a*) by reason merely of the specific exemption in such Act of any class of His Majesty's servants from the payment of tolls, nor (*b*) from the fact that the Crown has foregone or curtailed its rights in any other direction (*e.g.* that of imposing taxation) elsewhere in such Act.—A.-G. *v.* CORNWALL COUNTY COUNCIL (1933), 97 J. P. 281 ; 31 L. G. R. 364.

87. *Add. Annotation :—As to* (2) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

Part IV.—Disturbance of Ferries and Remedies Therefor.

109. *Add. Annotation :—Generally*, **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

150. *Add. Annotations :—As to* (1) **Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758. *As to* (3) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686, *Generally*, **Refd.** Layzell *v.* Thompson (1926). 43 T. L. R. 58.

151a. —— ——.]—LAYZELL *v.* THOMPSON, No. 13a, *ante*.

PART IV. SECT. 2, SUB-SECT. 3.—B.

sb. *Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held :* conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers, in the absence of any rival title in favour of defender, a *primâ facie* title to sue, without the necessity of averring on what their author's titles were founded.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 4.

sd. *Right of ferry exercised by others.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held :* a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

Part VI.—Taxation and Rating of Ferries.

167. *Add. Annotation* :—**Consd.** Cadbury Bros., Ltd. *v.* Sinclair (1933), 103 L. J. K. B. 29.

FIDELITY INSURANCE.

See INSURANCE.

FISHERIES.

Part I.—In General.

2. *Add. Annotations :—As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (3) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

3. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Add. Annotations :—**Expld. & Folld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

Part II.—Public Fisheries.

29. *Add. Annotation :—As to* (2) **Refd.** The Fagernes, [1926] P. 185.

48. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

50. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

57. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. **Refd.** South Staffordshire Mines Drainage Comrs. *v.* Elwell (1927), 91 J. P. 153.

Part III.—Private Fisheries.

111. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

173. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

176. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac-Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

176a. Fishing rights—Whether part of " premises " within Landlord & Tenant Act, 1927 (c. 36),

PART II. SECT. 1, SUB-SECT. 1.—A.

9 iii. —— —— *Whether right to interfere with obstruction.*]—Though every subject has a common right of fishery in the sea, a person in possession of a weir built below low water mark may maintain trespass against a wrong-doer who interferes with his possession, though, as against the Crown, the weir was wrongfully there.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

20 i. —— *Between high & low water mark—Effect of grant of soil.*]—The fact that the soil between high & low water marks has been granted does not interfere with the public right of fishery.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.—B.

40 i. *Exclusion of public right—By private fishery—Grant by Crown.*]—An exclusive right of fishery in public, tidal & navigable rivers may be granted by the Crown to private individuals.—ARJUN KAIBARTA *v.* MANORANJAN DE BHOUMIK (1933), I. L. R. 61 Cal. 45.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.—B.

109 ii. —— —— *Whether prescriptive right of fishing from old banks exercisable from new banks.*]—Where the right of salmon-fishing had been exercised from banks on the bed of a river for more than forty years, but, from changes in the river, new banks had been formed, one of which had existed for less than that period :—*Held :* the possession of the fishings from this new bank was only an exercise of the right of fishing previously exercised from the former banks, the substantial right of fishing being the matter to be regarded & not the particular stations from which the right was exercised.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469 ; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 1, SUB-SECT. 5.

130 i. *Inland non-tidal lake—Land vested in Crown—Rights of owner or lessee of land extending to lake.*]—MCDONALD *v.* LINTON (N. B.), [1926] 3 D. L. R. 779.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A.

k i. ——.]—By the charter of the City of St. John, all the lands & waters within certain defined limits, bounded by low water mark, were granted by the Crown to the city, with all the rights & privileges appurtenant thereto, including fishing ; & to the freemen & inhabitants of the city was granted the sole & exclusive privilege of fishing, & erecting weirs between high & low water marks :—*Held :* the exclusive right of fishing granted by the charter did not extend to any part of the sea shore beyond the bounds of the city, though it was within the harbour of St. John.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

154 xi. —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

the validity of the documentary title relied on, & further contended that, by the provisions of Magna Carta, the Crown was prohibited from granting a several or sole & exclusive fishery in the *locus in quo* in case such was not existing in or before the year 1189, & any grant by the Crown contrary to the provisions aforesaid was null & void ; that a several or sole & exclusive fishery in the *locus in quo* in or before the year 1189 did not in fact exist, & was not historically possible ; & that the said documents of title & the historical evidence given showed that the claim to a several or sole & exclusive fishery in the *locus in quo* was modern in origin, & dated at the earliest from the times of Queen Elizabeth & King James I. :—*Held :* there was nothing in the terms of Magna Carta, c. 16, or the writings of ancient lawyers, or the judgments in modern cases to support the proposition that, whether the several fishery was actually in the hands of the Crown at the time of the death of Henry II., or in the hands of an assignee or feudatory of the Crown, or even of an intruder, the original act of appropriation must have been effected by the Crown itself.—MOORE *v.* A.-G., [1929] I. R. 191 ; *revsd.*, [1934] I. R. 44.—**IR.**

PART III. SECT. 3, SUB-SECT. 2.

sb. *Right of lessee to cut bushes along bank necessary for fishing.*]—Pltf. by indenture under seal, leased to deft. for a term of years, with the right to renew, pltf.'s land on the E. River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by pltf. were for cutting bushes along the bank of the river :—*Held :* the burden of proof was upon pltf., & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—MCKEEN *v.* PATTILLO (1927), 59 N. S. R. 452.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

sf. *Under Fisheries Act—Effect.*]—*Held :* the licences granted to pltf. under Fisheries Act gave him no several right of fishery, & he could not therefore succeed in an action for interference with the fishery by pollution.—FILLION *v.* NEW BRUNSWICK INTERNATIONAL PAPER CO., [1934] 3 D. L. R. 22 ; 8 M. P. R. 89.—**CAN.**

s. 5.]—Where an incorporeal right, such as a right of fishing, is demised along with corporeal hereditaments by the same lease, & the lessee uses both for the purpose of his trade or business, the incorporeal right is part of the " premises " within above sect. Therefore, on the expiration of such a lease, the lessee, if he can show that the compensation for goodwill to which under the Act he would be entitled would not compensate him for the loss of goodwill if he removed to & carried on his trade or business in other premises, may require a new lease of the premises which shall include the incorporeal right demised by the original lease.—WHITLEY *v.* STUMBLES, [1930] A. C. 544; 99 L. J. K. B. 518; 143 L. T. 441; 46 T. L. R. 555; 74 Sol. Jo. 488, H. L.; *affg.* S. C. *sub nom.* STUMBLES *v.* WHITLEY, [1930] 1 K. B. 393, C. A.

278. *Add Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

289. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

312a. —— **& arrest of angler—Outside limits of fishery—Reasonable belief that angling within limits.**]—Defts., servants of P., apprehended pltf. while fishing in the night-time near the mouth of the river O., in Carnarvonshire, in which river P. had a several fishery. In an action of trespass for this arrest, defts. gave much evidence to show that P.'s fishery included the place where the pltf. was apprehended. The jury, however, defined the limits of the fishery so as to exclude that place by a few yards; but they also found that P. & defts. believed that it included that place:—*Held :* defts. were entitled to the protection of the 7 & 8 Geo. 4, c. 29, ss. 35 & 63.—HUGHES *v.* BUCKLAND (1846), 15 M. & W. 346; 3 Dow. & L. 702; 15 L. J. Ex. 233; 7 L. T. O. S. 91; 10 J. P. 725; 10 Jur. 884; 153 E. R. 883.

318. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

343a. —— —— **No pecuniary damage.**]—Pltf. was the owner of two several & exclusive fisheries in the River Ouse below Ely. Defts. carried on the business of beet sugar manufacturers at a factory abutting on the Ouse some miles above pltf.'s fisheries. Pltf. alleged that in the course of defts.' manufacturing operations, & in particular from Sept. 1933, to Jan. 1934, following the beet harvest, large quantities of refuse & effluent were discharged from the factory into the river, & by reason of that he had suffered damage & his fisheries had been prejudicially affected. He claimed an injunction accordingly & damages. At the hearing evidence was also given as to injury to the fisheries between Sept. 1934, & Jan. 1935:—*Held :* disturbance of a several fishery is an invasion of a legal right, & in such a case it is not necessary to prove pecuniary loss, but the injury to the legal right carries with it the right to damages; but pltf. had failed to show that the injury to his fisheries had been caused by the acts of defts.—NICHOLLS *v.* ELY BEET SUGAR FACTORY, LTD., [1936] Ch. 343; 105 L. J. Ch. 279; 154 L. T. 531; 80 Sol. Jo. 127, C. A.

353a. —— ——.]—In May & Oct. 1922, some dead fish were observed in a river, at a spot below that from which a drain-pipe leading from certain gasworks entered the river. Samples of the effluent from this pipe were taken on each occasion, which, on analysis, were found to contain matter highly poisonous to fish. The owner of the fishing rights over that part of the river affected commenced an action for an injunction & damages against the owners of the gasworks:—*Held :* it was satisfactorily proved that the effluent from the gasworks was, on each occasion, the cause of the death of the fish, & pltf. was entitled to an injunction & damages.—GRANBY (MARQUIS) *v.* BAKEWELL URBAN DISTRICT COUNCIL (1923) 87 J. P. 105; 21 L. G. R. 329.

354. *Add. Annotation :*—**Expld. & Distd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

Part IV.—Fisheries in relation to Navigation.

356. *Add. Annotation :*—*As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

366. *Add. Annotation :*—**Refd.** The Carlgarth, The Otarama, [1927] P. 93.

368. *Add. Annotation :*—*As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

PART III. SECT. 3, SUB-SECT. 4.

d i. —— *Extent of rights acquired.*]—*Held :* the right which may be acquired by possession of forty years on a grant of salmon-fishings pertaining to lands situated on one side of a river (*a*) is not limited to the fishings in that part of the river which is *ex adverso* of the lands; & (*b*) may extend to fishings beyond the *medium filum* of the river.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 2.

sh. *Ownership of land abutting on river—Tenant at will.*]—A person in possession of land bordering on a non-tidal river, as a tenant at will of the owner, is entitled to be treated as a riparian owner, so far as regards the right of fishing.—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.—A.

m i. —— —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

PART III. SECT. 5, SUB-SECT. 2.—C.

c i. —— *Centuries.*]—MOORE *v.* A.-G., [1929] I. R. 191.—**IR.**

PART III. SECT. 7.

286 i. *Right of way—& right to repair embankments.*]—Where right of fishery had been granted in respect of two pieces of land, surrounded on all sides by embankment, & described in the lease as " *bheri jami jalkar* ":—*Held :* the expression " rights over fisheries " to be found in Bengal Tenancy Act, s. 193, includes, also, the user of land for the purpose of fishing or for the purpose of repairing embankments in the interest of fishing.—NANI LAL MANDAL *v.* PRIYA NATH RAY (1929), I. L. R. 56 Calc. 1170.—**IND.**

Part V.—Statutory Enactments relating to Salmon and Freshwater Fisheries.

387. *Add. Annotation :*—**Refd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

Part VI.—Statutory Enactments relating to Salt Water Fisheries and Sea Fishing.

485. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

497a. —— **Jurisdiction of superintendent—When arising.**]—Pltfs., who were the owners of a

PART V. SECT. 1, SUB-SECT. 2.

c i. —— *Power to restrict fishing for salmon—Riparian owners on non-tidal river.*]—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

c ii. —— —— *Riparian owners on estuary—Titles acquired prior to July, 1867.*]—DELANEY *v.* MCDONALD (1883), 23 N. B. R. 139.—**CAN.**

PART V. SECT. 3.

g i. —— *To seize nets.*]—Ontario Game & Fisheries Act, s. 6 (5), makes it the duty of every overseer to seize all nets used contrary to the regulations, & sect. 80 of the Dominion Act makes a similar provision; by s. 5 of the Dominion Act the Governor in council is empowered to appoint fishery officers, & by order in council the Provincial officers are in substance made Dominion officers.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.—D. (a).

sk. *Within two hundred yards of weir—Weir used for supplying water to mills, factories, or for navigation—Fisheries (Ir.) Act*, 1850 (*c.* 88), *s.* 37.]—IRELAND *v.* QUIRKE, [1928] I. R. 231.—**IR.**

sl. *Keeping purse-seine open.*]—R. *v.* MCPHERSON (B. C.), [1929] 2 W. W. R. 141; 51 Can. Crim. Cas. 419.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

n i. —— ——.]—The owners of a bag-net fishery duly removed the leaders of their bag-nets during the weekly close time. In spite of this, they caught 165 salmon during eleven successive weekly close times :—*Held :* the owners were guilty of a contravention of Salmon Fisheries (Scotland) Act, 1868 (c. 123), s. 15 (2), in respect that compliance with bye-laws did not avoid the duty of observing the statutory prohibition against fishing for or taking salmon during the weekly close time.—ABERDEEN HARBOUR COMRS. *v.* STOTT, [1927] S. C. (J.) 35.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 1.

sp. *Election of conservators—Validity of proxy.*]—A proxy to vote "at the next election" does not sufficiently "specify" the day of the meeting at which such proxy is to be available within Stamp Act, 1870 (c. 97), s. 102 (1).—R. *v.* M'INERNEY (1891), 30 L. R. Ir. 49.—**IR.**

PART V. SECT. 6, SUB-SECT. 1.

sr. *Duty to erect grating in tail race of mill—Although banks of adjoining owner affected.*]—Deft. was fined at petty sessions for failing to erect a grating or lattice across the tail race of his mill at a point where the tail race re-enters the river "F." The river "F." is a river in which there are salmon. For a certain distance before & at the point where the tail race re-enters this river it is bounded on both sides by lands that belong to an adjoining owner, & not to the deft., the owner of the mill. There was no grating or lattice on the tail race where it diverged from or re-entered the river; to construct the grating or lattice, it would be necessary to erect piers that would project into the banks, on the side of the tail race, the property of the adjoining owner. Deft. had started the necessary work of erecting the grating, but had abandoned it in consequence of the objection of the adjoining owner to any trespass on his lands. Deft. had the use of the tail race from the moment it left his own lands until it reached the river :—*Held :* deft. was under a statutory obligation by 5 & 6 Vict. c. 106, s. 76, to erect the grating even though it entailed an interference with the banks of the adjoining owner.—R. (STEWART) *v.* RECORDER & JJ. FOR LONDONDERRY, [1930] N. I. 104.—**IR.**

PART V. SECT. 9.

sw. *Action against Crown servants—Jurisdiction of Exchequer Court.*]—At Livingstone's Cove, Nova Scotia, is a breakwater owned by the resp., to provide a shelter for boats of shallow draught. In this cove suppliant had set a salmon trap net under licence from the Department of Marine & Fisheries. Dredging operations were being carried on in the vicinity of the breakwater by the Department of Public Works under the supervision & direction of one of its officers. The tug *A.*, hired by resp., whilst moving a loaded scow to the dumping grounds came into contact with suppliant's net, seriously damaging the same. The action was to recover the value, or cost of repairing the net & the loss of the use thereof for about one month :—*Held :* the master & crew of the tug *A.*, the crew of the scow, & the master & crew of the dredge were servants of the Crown employed upon a public work within sect. 19c of Exchequer Ct. Act, & the ct. had jurisdiction to hear & entertain the action. On the evidence, the net in question was not an interference to navigation within sect. 33 of Fisheries Act, 1927, & the master of the tug *A.*, was negligent in moving the scow as & when he did; suppliant was entitled to damages for the injury caused to his net & damages for the loss of the use of his net.—MASON *v.* R., [1933] Ex. C. R. 1; *affd.*, [1933] S. C. R. 332; 4 D. L. R. 309.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 4.

sz. *Order to proceed to nearest port—Onus of proof as to port.*]—The master of a trawler, who had refused to comply with a direction to proceed to Stornoway given by a British sea fishery officer, was charged with contravening Sea Fisheries Act, 1883 (c. 22), s. 14 (2). Stornoway was not the nearest port to the place where the direction was given, & the prosecutor made no attempt to prove that it was the most convenient port :—*Held :* the fact that a sea fishery officer directed accused to go to Stornoway raised a strong presumption that Stornoway was the most convenient port within Sea Fisheries Act, 1883, s. 12 (8); it was open to accused to rebut that presumption; &, as accused had not been allowed to cross-examine the prosecution witnesses on the question of convenience, it was impossible to hold that he ought to have been convicted.—MACKENZIE *v.* JINKS, [1934] S. C. (J.) 48.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

r i. —— *Grant of licence—Validity of regulations.*]—Sect. 69A of the Fisheries Act provided, among other things: that, under licence from the Minister a vessel registered as a British ship in Canada & owned by "a Canadian or a Canadian co. with its principal place of business in Canada," is allowed to use an "otter" or other similar trawl. Moreover under this Statute, rules & regulations might be made by Order in Council, & the same were made providing that such licence could be granted only to "Canadian built" vessels, & that after Apr. 1932, none but such would be eligible for licence, & further providing that after Apr. 1, 1930, a licence fee of one cent a pound on the fish caught should be payable. This fee in the case of deft. would amount to between $130,000 to $150,000 a year :—*Held :* as the regulations ignore the statutory limitation to British ships registered in Canada or owned by a Canadian, etc., & fix as the condition upon which the licence would issue that such ships be Canadian built, & such condition being obviously beyond the scope of the Act, & the delegated powers, such regulations are *ultra vires*, unenforceable, null & void.—R. *v.* NATIONAL FISH CO., LTD., [1931] Ex. C. R. 75.—**CAN.**

sm. *Prohibition against use of nets—Accused charged as "master or person in charge"—No evidence that accused on board.*]—*Held :* as there was no statutory provision making the master of a vessel liable, as such, for a contravention of the bye-law, &, as the bye-law might be contravened by "any person," the prosecutor was bound to prove that the accused was on board the vessel at the time.—SHIACH *v.* FARQUHAR, [1929] S. C. (J.) 88.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 1.—C.

so. *Prohibition against use of crayfish pots—Condemnation of boat & appurtenances—Failure to summon joint*

steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within Merchant Shipping Act, 1894 (c. 60), s. 387, which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages: —*Held:* (1) the county ct. had jurisdiction to entertain the action notwithstanding the section, inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the section did not either expressly or by implication exclude that jurisdiction; (2) the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677; 99 L. J. K. B. 197; 142 L. T. 484; 46 T. L. R. 236; 18 Asp. M. L. C. 97.

497b. —— **Jurisdiction of county court.** *v.* POWELL, No. 497a, *ante*.

Part VII.—Whale and Seal Fisheries.

507. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

508. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

owners.]—FISHERIES COMRS. *v.* BUTTON, (1925), 21 Tas. L. R. 8.—**AUS.**

PART VI. SECT. 4, SUB-SECT. 4.

sp. *Bounty—Time of service on ship—Regulations of December* 10, 1897.]—SNOW *v.* R. (1907), 11 Exch. C. R. 164. —**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

h i. —— ——.]—(1) To justify an entry by a foreign fishing vessel into Canadian territorial waters on the ground of "stress of weather," the weather must be such as to produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. In each case the questions whether the master fairly & honestly on reasonable ground believed it necessary to take shelter, & whether he exercised reasonable skill, competence & courage in the circumstances, are questions of fact for the tribunal whose duty it is to find the facts.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, did not apply to the Pacific waters so far as fisheries were concerned, & therefore could not be available as justification for the entry in question.—THE MAY *v.* R., [1931] S. C. R. 374; 3 D. L. R. 15.—**CAN.**

h ii. —— ——.]—(1) To justify, as against incurrence of penalty under the Customs & Fisheries Protection Act, R. S. C., 1927, s. 10, a foreign fishing vessel entering Canadian territorial waters on the ground of "stress of weather," there must be such a condition of atmosphere & sea as would produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. A want of *bona fides* would abrogate any right or privilege to shelter given by the statute. Further, weaknesses in a vessel may be such, as instanced in certain respects in the present case, as, *e.g.*, glass of inadequate thickness in pilot house windows a small height from the sea, constituting a special danger from waves, that any distress arising from them should be deemed a distress created by the owner or master himself.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, has no application to Canadian territorial waters on the Pacific Coast, so far as fisheries are concerned. Even if it had, deft. vessels could claim no privilege under it, as the only permission to take shelter in Canadian waters given by the proviso to art. 1 thereof is permission to enter "bays or harbours," & the place where they were seized was not shown to be a bay or harbour.—THE QUEEN CITY *v.* R., THE TILLIE M. *v.* R.; THE SUNRISE *v.* R., [1931] S. C. R. 387; [1931] 3 D. L. R. 147; *affg.*, 43 B. C. R. 494.—**CAN.**

h iii. —— ——.]—The *N. S.* entered the port of North Sydney, from the fishing grounds off Ingonish, N. S., for the alleged purpose of effecting repairs to her engines. On the same day, after effecting certain repairs & after clearing outwards, her master purchased 5¼ tons of ice from a local dealer, without licence or permit. The *N. S.* was shortly afterwards seized for an infraction of sect. 10 (*c*) of Customs & Fisheries Protection Act: —*Held:* though an American vessel may, under Fisheries Treaty, 1818, enter a Canadian port for the purpose of making repairs therein, this did not render lawful the act of her master in purchasing ice as aforesaid, contrary to the provision of Customs & Fisheries Act, & the vessel was lawfully seized & forfeited.—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155.—**CAN.**

PART VII. SECT. 2.

b i. —— *Division of proceeds—Ship-wrecked sailors on board sealer.*]—CONNELL *v.* RORKE (1859), 4 Nfld. L. R. 394.—**NFLD.**

PART VIII. SECT. 1.

a i. —— ——.]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held:* the omission invalidated the conviction.—TANGNEY *v.* KERRY COUNTY DISTRICT JUSTICE, [1928] I. R. 358.—**IR.**

a ii. —— ——.]—O'S. was also convicted at the same time on another summons for unlawfully using a net for the purpose of taking salmon or trout in the said tidal waters without being duly licensed, contrary to 13 & 14 Vict. c. 88, s. 12. That section provides for such offence a pecuniary penalty, & also the forfeiture of the net used. The district justice's conviction on this summons did not order the forfeiture of the net. It was the same net the forfeiture of which was ordered by the justice in the other conviction:—*Held:* the conviction was bad for not ordering the forfeiture of the net, notwithstanding the fact that its forfeiture was ordered by the other conviction. — THE STATE (O'SULLIVAN) *v.* CIRCUIT COURT JUDGE OF CORK, [1931] I. R. 733.—**IR.**

sg. *Fishing quahangs without licence.*] —Fine for fishing quahangs without a licence reduced because of mitigating circumstances.—GILLIS *v.* R., [1936] 1 D. L. R. 769; 65 Can. C. C. 127.—**CAN.**

PART VIII. SECT. 5.

526 i. *General rule — Jurisdiction ousted.*]—R. (MOORE) *v.* O'HANRAHAN, [1927] I. R. 406.—**IR.**

m i. ——.]—R. *v.* HARRAN (1912), 21 O. W. R. 951; 3 O. W. N. 1107; 3 D. L. R. 753.—**CAN.**

FOOD AND DRUGS.

Part II.—Adulteration and Impoverishment.

of Food & Drugs Acts, 1875-1927, *are consolidated by Food & Drugs (Adulteration) Act*, 1928 (c. 31).

76. *Add. Annotation :*—**Follld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78. *Add. Annotation :—As to* (2) **Apld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78a. —— ——.]—(1) Where a person is charged with selling to the prejudice of a purchaser an article of food which is not of the nature, substance & quality demanded, & the article is one for which there is no recognised standard of quality, it is the duty of the ct. to fix a standard, in the sense of having regard to a minimum below which the article must be regarded as deficient.

(2) Where an analyst expresses in a certificate an opinion as to the quality or genuineness of an article, the ct. must accept it, if uncontradicted.

(3) A wholesale merchant cannot be convicted of aiding & abetting a retailer, if the wholesaler was not present when the retail sale complained of took place, nor if there is no evidence that he knew the composition of the article.—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., [1928] 1 K. B. 217; 96 L. J. K. B. 750; 137 L. T. 347; 91 J. P. 118, 43 T. L. R. 516; 25 L. G. R. 306; 28 Cox, C. C. 397, D. C.

Annotation :—As to (3) **Refd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

98a. Liability of wholesaler—Sale by retailer.]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

101. *Add. Annotation :—As to* (1) **Refd.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

135. *Add. Citations :*—23 L. G. R. 15; 27 Cox, C. C. 672.

140. *Add. Citations :*—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.

Add. Annotation :—As to (2) **Refd.** Preston *v.* Grant (1924), 94 L. J. K. B. 125.

147. *Add. Annotation :—As to* (1) **Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

148. *Add. Annotation :*—**Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150. *Add. Annotation :—As to* (1) **Consd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150a. —— **Absence of recognised standard.**]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

169a. Vinegar.]—PRESTON *v.* JACKSON (1928), 73 Sol. Jo. 712.

174. *Add. Annotation :*—**Follld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

187. After this case insert "**Addition of colouring matter to milk.**]—*See* No. 218a, *post*."

198. *Add. Annotation :*—**Refd.** Woolworth & Co. *v.* Pottier (1935), 33 L. G. R. 527.

217a. Warranty on order form—Order form retained by seller.]—By Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 29 (1), it is a defence on a prosecution for selling drugs not of the nature, substance or quality demanded by the purchaser for deft. to prove that he purchased the drugs as being of the nature, substance & quality so demanded & with a written warranty to that effect & that he had no reason to believe at the time he sold the drugs that they were otherwise, & that he sold them in the same state as when he bought them. Applts. gave an order for drugs on an order form specifying that the goods were ordered on the condition that the suppliers warranted them to be of the nature, substance & quality described in the order. The suppliers placed their initials on the order form & in due course delivered the goods, retaining the order form in their own possession :—*Held :* the initialled order form was a written warranty within sect. 29 (1), notwithstanding that it did not come into the possession of applts. until after the prosecution had been instituted.—WOOLWORTH (F. W.) & CO., LTD. *v.* POTTIER (1935), 80 Sol. Jo. 111; 33 L. G. R. 527, D. C.

218a. —— **Milk adulterated with colouring matter.**]—The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a

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PART II. SECT. 2, SUB-SECT. 4.—B. (c).

r i. ——.]—Under the Sale of Food & Drugs Acts the certificate of a public analyst is *primâ facie* but not conclusive evidence.—TODD *v.* COCHRANE (1901), 38 Sc. L. R. 801.—SCOT.

PART II. SECT. 3, SUB-SECT. 3.—B. (b).

101 ii. —— —— *Sale by servant or agent.*]—To prove a limited co. guilty of the offence of selling an article which does not conform with the regulations made under Food & Drugs Act, 1903, it must be shown that the sale was made on its behalf by a servant or agent who had authority to sell. Where a sale was made by a servant who had no authority to sell anything, it was held that the sale did not constitute an offence by the co.—MITTON *v.* R. G. LOCK & CO., LTD., [1928] S. A. S. R. 444.—AUS.

PART II. SECT. 3, SUB-SECT. 3.—C. (a).

110 iii. —— *Whether property passed —Food & Drugs Act*, 1903, *ss.* 5, 22.]—WALTERS *v.* MITTON, [1926] S. A. S. R. 261.—AUS.

PART II. SECT. 3, SUB-SECT. 3.—C. (b) iv.

142 i. —— *Notice not seen by purchaser—Onus of proof.*]—Where an article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness :—*Held :* the seller must prove that the contents of the label were brought to the notice of the purchaser.—PATTERSON *v.* FINDLAY, [1925] S. C. (J.) 53.—SCOT.

PART II. SECT. 3, SUB-SECT. 3.—D. (b).

sd. *Coffee.*]—K. having asked accused for coffee, received a mixture containing at least 67 per cent. of chicory. When he asked for coffee K. expected to get an addition of chicory according to commercial usage :—*Held :* what K. got was substantially chicory containing an addition of some coffee, & the commodity was not of the nature, substance & quality demanded.—MOODLEY *v.* R. (1927), 48 N. L. R. 395.—S. AF.

defence nor contains any provision that it is to be read with any Act containing such a defence.—REEMAN *v.* KNAPP (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.

243a. What amounts to.]—Applts., who manufactured an article called "R.'s rum & butter toffee," supplied it to a confectioner with a warranty, & on analysis it was found to contain rum & butter, & coconut fat. On a summons against applts. for giving a false warranty there was evidence that toffee made partly with coconut fat had been sold for years as "rum & butter toffee." The justices convicted applts.:—*Held:* the description "butter toffee" implied that no fat, except butter, was used in the manufacture, & the conviction must be affirmed.—RILEY BROTHERS (HALIFAX), LTD. *v.* HALLIMOND (1927), 44 T. L. R. 238, D. C.

261a. —— Proceedings against previous seller—Previous analysis before proceedings against retailer.]—An inspector appointed under the Sale of Food & Drugs Acts bought a sample of ground ginger from a retail shop. He complied with the provisions of Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 18, with regard to the division of the sample into three parts, delivering one part to the seller & having an analysis made. Upon analysis the ground ginger was found to contain an added preservative, contrary to the provisions of the Public Health (Preservatives, etc., in Food) Regulations, 1925. The retailer was convicted upon an information charging him with the sale of the ground ginger to the prejudice of the purchaser under Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 2. Subsequently, proceedings were commenced against the previous seller of the ground ginger for wilfully neglecting to obey the Public Health (Preservatives, etc., in Food) Regulations, 1925, by selling the ground ginger to the retailer. No further sample was taken of the ground ginger & no further analysis made. No part of the sample that was taken in the first instance was sent to the previous seller of the ground ginger. The magistrate refused to convict on the ground that the provisions of sect. 18 of 1928 Act had not been complied with:—*Held:* the magistrate was wrong in holding that compliance with the formalities prescribed by sect. 18 of 1928 Act was a condition precedent to the institution of proceedings against the previous seller for a sale to which art. 7 of the Regulations of 1925 applied. When the formalities prescribed by sect. 18 of 1928 Act with regard to taking of sample, division & analysis had been complied with in proceedings as between the purchaser & the retailer, there was no necessity for those formalities to be repeated when proceedings were subsequently taken against the previous seller under art. 7 of the Regulations of 1925.—TWYNHAM *v.* BADCOCK, [1932] 2 K. B. 549; 101 L. J. K. B. 755; 147 L. T. 35; 96 J. P. 219; 48 T. L. R. 389; 30 L. G. R. 239; 29 Cox, C. C. 448.

283. *Add. Annotation:—As to* (3) **Reld.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part III.—Sale of Unwholesome Food.

358. *Add. Annotation:*—**Reld.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

Part V.—Particular Articles of Food.

414a. Exposure for sale—What amounts to.]—A baker was delivering bread from an open car; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency:—*Held:* there was both an offering & an exposure for sale of the bread left in the car,

PART II. SECT. 5, SUB-SECT. 1.—A

c 1. —— —— ——.]—Where, under Food & Drugs Act, 1899 (c. 51), s. 2, the Local Govt. Board, or Board of Agriculture, through their officer, procure samples of an article of food (*e.g.* margarine) for analysis, & communicate the certified result of the analysis, when made, to the secretary of the local authority, the secretary of the local authority may, without any special resolution, transmit such certificate to the inspector appointed under Food & Drugs Act, 1875 (c. 13); & he without antecedent authorisation may proceed in his own name to prosecute for any penalties to which the vendor may be liable.—CONNOR *v.* BUTLIN, [1902] 2 I. R. 569.—**IR.**

PART II. SECT. 5, SUB-SECT. 4.—A.

sl. *When returnable—Under Health Act, 1919, s. 262 (d).*]—The provision in above section, that where any prosecution or proceeding under Part XII. of the Act relates to any food, drug or substance, the summons "shall not be made returnable in less than fourteen days from the day on which it is served," means that such summons is to be "returnable in not less than fourteen clear days" from such date.—DOWNES *v.* FRKSHNEY, [1928] V. L. R. 64; [1928] Argus L. R. 6.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—D.

1i. —— *Supply of milk to boarders by boarding-house keeper.*]—The supplying of milk by a boarding-house keeper to boarders for use with meals does not constitute a sale within the meaning of the Pure Food Act, 1908.—PATTON *v.* MOULD (1931), 48 N. S. W. W. N. 158.—**AUS.**

sg. *Article sold—Mens rea—Whether knowledge of disease necessary.*]—*Held:* there was no evidence on which the magistrate could find that deft. sold meat affected by tuberculosis, knowing at the time that it was so affected, & the conviction should be quashed.—DIXON *v.* SEILER, *Ex p.* SEILER, [1928] S. R. Q. 93.—**AUS.**

PART V. SECT. 2, SUB-SECT. 6.

sl. *Exposure of several loaves—Whether separate offences.*]—Sale of Food (Weights & Measures) Act, 1926, s. 3, enacts that "a person shall not . . . in exposing or offering any article of food for sale, make any misrepresentation . . . or commit any other act calculated to mislead the purchaser or prospective purchaser, as to the weight or measure of the article." Sect. 11 (3) renders a person contravening sect. 3 liable to a fine "not exceeding in the case of a first offence five pounds":—*Held:* in the case of a first offence, a shopkeeper, who had exposed for sale at the same place & time twenty-five loaves deficient in weight, had committed not one, but twenty-five offences, for each of which he could be penalised, &, accordingly, a penalty of £25 imposed by the magistrate was within his powers. *Semble:* in the circumstances, each of the offences would fall to be regarded as a first offence.—MONTROSE CO-OPERATIVE SOCIETY *v.* MARR, [1935] S. C. (J.) 69.—**SCOT.**

since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—KEATING *v.* HORWOOD (1926), 135 L. T. 29; 90 J. P. 141; 42 T. L. R. 472; 24 L. G. R. 362; 28 Cox, C. C. 198, D. C.

439a. Protection of employer under Sale of Food (Weights & Measures) Act, 1926 (c. 63)—When applicable.]—(1) *Held:* the language of Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 12 (2), has no relation & does not apply to a case where a defect of deft.'s machinery or a default of an employee under deft.'s control is the cause of the deficiency. This sub-sect. deals with the case where the deficiency is due to a *bonâ fide* mistake or accident or other causes beyond deft.'s control, that is to say, not with negligence or other conduct of deft.'s servants or other persons under his control. In such a case deft. may avail himself of the provisions of sect. 12 (5) if he satisfies the provisions of that sub-sect., by having any other person, including an employee, whom he charges as the actual offender, brought before the ct.

(2) On the question whether proceedings against defts. for contravening this sub-sect. were " proceedings under this Act in respect of an alleged deficiency of weight " within sect. 12 (2), whilst LORD HEWART, C.J., did not express a decided opinion, one way or the other, AVORY, J., expressed the view that proceedings under sect. 6 (2) of the Act were in respect of an alleged deficiency of weight, & TALBOT, J., expressed an opinion to the contrary.

(3) On proceedings against bakers under sect. 6 (2) of the Act defts. duly laid an information against one of their employees under sect. 12 (5); having him brought before the ct. as the actual offender & tendering evidence in order to prove that they had used due diligence to enforce the execution of the Act, & that their employee had committed the offence without their consent, connivance, or wilful default. At petty sessions, the information against the employee was dismissed, but defts. were convicted. Defts. appealed to Quarter Sessions:—*Held:* the Ct. of Quarter Sessions had no power to exempt defts. from any penalty under sect. 12 (5) on the ground (*per* LORD HEWART, C.J., & TALBOT, J.) that having regard to the fact that the employee had been acquitted at petty sessions, it was not open to defts. to contend at Quarter Sessions that the employee was wrongly acquitted, & on the ground (*per* AVORY, J.) that in any case on the facts the employee charged was not the actual offender within the sub-sect.—WALKLING, LTD. *v.* ROBINSON (1930), 99 L. J. K. B. 171; 143 L. T. 105, 106; 94 J. P. 73; 46 T. L. R. 151; 28 L. G. R. 88; (1929), 29 Cox, C. C. 131.

Annotations:—As to (2) **Distd.** Wolfenden *v.* Oliver (1932), 96 J. P. 202. **Consd.** Cave *v.* Dudley Co-operative Society, Ltd. (1934), 98 J. P. 265. *As to* (3) **Consd.** Hammett (R. C.), Ltd. *v.* Crabb, Hammett (R. C.), Ltd. *v.* Beldam (1931), 47 T. L. R. 623.

439b. —— —— Exercise of due diligence by employer—Question of fact.]—(1) Where an employer who is charged with an offence against the Sale of Food (Weights & Measures) Act, 1926 (c. 63), brings another person before the ct. under sect. 12 (5), as being the actual offender, the question whether the employer has used due diligence to enforce the execution of the Act is one of fact & not of law. (2) The result of compliance with sect. 12 (5) is that both the employer & the other person are convicted, but that the latter alone is liable to any penalty. (3) *Qu.:* whether in a case where the justices have convicted the employer & have refused to convict the actual offender, the employer may not appeal to quarter sessions. *Walkling, Ltd.* v. *Robinson*, No. 439a, is no authority to the contrary, since in that case the employee was found as a fact not to be the actual offender, & an appeal would have involved the allegation that he was wrongly acquitted.—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM (1931), 145 L. T. 638; 95 J. P. 180; 47 T. L. R. 623; 29 L. G. R. 515; 29 Cox, C. C. 364, D. C.

Annotation:—As to (1) **Consd.** R. C. Hammett, Ltd. *v.* London County Council (1933), 49 T. L. R. 209.

439c. —— —— Failure of branch manager to exercise due diligence.]—Applts., a co. owning a large number of butchers' shops, were charged with an offence at one of their shops under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 5 (2). They brought before the ct. as the actual offender one P., a salesman employed at the shop. Applts. were convicted, & the summons against P. was dismissed. On appeal quarter sessions found that B.. the manager of the branch, had not exercised due diligence to enforce the execution of the Act, but that in all other respects applts. had exercised due diligence. They held that the manager's failure was the failure of applts., & dismissed the appeal:—*Held:* quarter sessions were entitled so to hold.

Qu.: whether an appeal lay to quarter sessions.—HAMMETT (R. C.), LTD. *v.* LONDON COUNTY COUNCIL (1933), 97 J. P. 105; 49 T. L. R. 209; 31 L. G. R. 155, D. C.

439d. —— Effect of compliance with sect. 12.]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

439e. —— What are " proceedings in respect of an alleged deficiency of weight "—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2).]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

—— —— ——.]—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2), against a person for having in his possession for sale loaves of bread the net weight of which is not one pound or an integral number of pounds may be proceedings " in respect of an alleged deficiency of weight " within sect. 12 (2), of the Act, so as to entitle deft. to rely on the defences provided by that sub-section.—WOLFINDEN *v.* OLIVER (1932), 147 L. T. 80; 96 J. P. 202; 48 T. L. R. 394; 30 L. G. R. 263; 29 Cox, C. C. 471, D. C.

439g. —— Acquittal of employee—Power of Quarter Sessions to exempt employer from penalty.]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

439h. —— —— Conviction of employer—Right of appeal to quarter sessions.]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

439i. —— —— —— ——.]—HAMMETT (R. C.), | LTD. *v.* LONDON COUNTY COUNCIL, No.

439j. Comparison with other loaves—Reasonable number to be weighed.]—Two informations under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2), were preferred against defts. (i.) for having in their possession for sale thirty-seven loaves of bread, the net weight of each loaf not being one pound or an integral number of pounds; (ii.) for selling a loaf of bread the net weight of which was not one pound or an integral number of pounds. Under the supervision of an inspector of weights & measures fifty-six loaves, purporting to be 2-lb. loaves, were taken from a considerably larger number in a cart from which defts.' vanman was delivering bread, & weighed. Nineteen proved to be either of correct weight or of a weight in excess of 2 lb., but thirty-seven were deficient in weight, & in the case of one loaf the deficiency amounted to 2 ozs. 4 drams. That loaf was purchased by the inspector. The justices dismissed both informations, on the ground that defts. were in each case protected by sect. 12 (1):—*Held:* on the first charge, with respect to each of the thirty-seven loaves, the justices were entitled to look at the average weight of a number of other loaves offered for the sale on the same occasion, but it was not possible for them to hold that thirty-six was not a reasonable number; but on the second charge, the variation from the proper weight in the case of the single article being clearly considerable, they ought not to have had regard to the average weight of other loaves sold, as that inquiry arose only where the variation was inconsiderable.—CAVE *v.* DUDLEY CO-OPERATIVE SOCIETY (1934), 103 L. J. K. B. 569; 151 L. T. 448; 98 J. P. 265; 30 Cox, C. C. 151; 32 L. G. R. 515, D. C.

445a. Deficiency in weight—Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 4—Pre-packed butter—Material time of making up.]—Resps. had in their possession for sale pre-packed packages of butter purporting to be in the quantities prescribed by Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 4 (2) (*a*), namely, in multiples of a quarter of a pound, which, however, when weighed by applts.' food inspector, were deficient in weight. It was contended that as the packages were correct in weight at the time of making up, four days earlier, they were "made up for sale" in the prescribed quantities, & that the offence of having in their possession for sale pre-packed articles of food not being made up in the quantities prescribed by the above sub-sect., had not been committed:—*Held:* "made up for sale" does not refer to the moment of making up only but to the moment of having in possession for sale, & resps. were guilty of the offence charged.—LONDON COUNTY COUNCIL *v.* ROYAL ARSENAL CO-OPERATIVE SOCIETY, LTD., [1936] 1 K. B. 154; 105 L. J. K. B. 58; 154 L. T. 214; 100 J. P. 25; 52 T. L. R. 98; 80 Sol. Jo. 77; 34 L. G. R. 42; 30 Cox, C. C. 318, D. C.

447. *Add. Annotation:*—**Refd.** Preston *v.* Grant, [1925] 1 K. B. 177.

465. *Add. Citation:*—27 Cox, C. C. 637.

475. *Add. Annotation:*—**Distd.** Burrows *v.* Rapson (1927), 25 L. G. R. 397.

475a. —— —— **Grocer occasionally selling bottled milk.**] — Applt. carried on business as a general grocer. He purchased for resale sterilised milk in sealed bottles, & resold about three dozen bottles a week in the condition in which the milk was received from the factory. He was not registered as a dairyman or purveyor of milk:—*Held:* there was evidence to support a conviction of applt. for carrying on the trade of a dairyman or purveyor of milk without being registered.—BURROWS *v.* RAPSON (1927), 25 L. G. R. 397, D. C.

476. *Add. Annotation:*—**Refd.** Easington Rural District Council *v.* Gilson (1929), 46 T. L. R. 107.

476a. —— **Necessity for registration in every district where business carried on.**]—A person carrying on business as purveyor of milk must be registered under art. 6 of the Milk & Dairies Order, 1926, with the sanitary authority of each district in which he carries on business. It is not sufficient that he is registered with the sanitary authority of the district where his cowsheds & dairy are situated if he also carries on business in other districts where he has a regular milk round.—EASINGTON RURAL DISTRICT COUNCIL *v.* GILSON (1929), 142 L. T. 429; 94 J. P. 56; 46 T. L. R. 107; 28 L. G. R. 49; 29 Cox, C. C. 86.

—— **Change of tenancy—Removal of predecessor from register—Whether new tenant "person aggrieved."**]—On May 1, 1930, applt. succeeded a predecessor as annual tenant of premises used as a dairy. On May 12, 1930, resps., who were the local authority, having in the meantime given a similar notice to his predecessor, gave to applt. a notice purporting to be given under Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 2 (1), calling upon him to show cause why they should not remove his pre-

PART V. SECT. 3, SUB-SECT. 4.—B.

s i. —— —— *Words descriptive of article sold.*]—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held:* the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction quashed.—SOMERVILLE & BARR, LTD. *v.* CHALMERS, [1925] S. C. (J.) 70.—**SCOT.**

PART V. SECT. 4, SUB-SECT. 1.

m i. —— *Relating to property in milk vessels.*]—A dairyman, charged with contravening art. 12 of Milk & Dairies (Scotland) Order, 1925, maintained that the article was *ultra vires* of the Board, in respect that the Board was empowered to make Orders only for the purpose of ensuring the purity of milk, whereas the purpose of art. 12 was, not to ensure purity of milk, but to preserve the rights of property in milk vessels. It was stated for the complainer that the Board regarded the article as in the interests of public health, since it assisted the tracing of sources of infection:—*Held:* although art. 12 *primâ facie* appeared to be *ultra vires* as being directed solely to preserving rights of property in milk vessels, yet, since it was possible that further information might show that it did tend to ensure the purity of milk, the ct. could not decide, in these proceedings & on the information before it, that the article was *ultra*

[1932] S. C. (J.) 55.—**SCOT.**

decessor from the register of purveyors of milk in respect of the premises on the ground that they were satisfied that by default of the latter the premises were not in a fit condition for the purposes of a dairy. On May 13, 1930, resps., after hearing applt., decided to remove his predecessor from the register on that ground, & thereupon gave applt. notice that they had so decided. An appeal by applt. under the above sub-sect. against the decision of resps. was dismissed by the magistrate on the ground that applt. was not a "person aggrieved" by the decision within the sub-sect. On an appeal from the magistrate by case stated :—*Held :* applt. was a "person aggrieved" within the sub-sect., & the case should be remitted to the magistrate to be heard by him on the merits.—PROSSER *v.* MOUNTAIN ASH URBAN DISTRICT COUNCIL, [1931] 2 K. B. 132 ; 100 L. J. K. B. 266 ; 144 L. T. 549 ; 95 J. P. 84 ; 29 L. G. R. 218 ; 29 Cox, C. C. 265, D. C.

476c. Artificial Cream Act, 1929 (c. 32)—Application.]—Applts. were convicted on informations preferred against them under Artificial Cream Act, 1929 (c. 32), in respect of the sale by them of certain confectionery, described as "cream filled Swiss rolls" & "vanilla cream sandwich," containing a cream-like paste or substance, which was not cream as defined in Artificial Cream Act, 1929 (c. 32) : —*Held :* the Act applies only to the sale of cream or artificial cream as a separate article of food, & has no application to confectionery or to a composite substance in connection with confectionery. It applies only to a substance purporting to be cream & not to a substance purporting to contain cream.—LYONS (J.) & CO., LTD. *v.* KEATING, [1931] 2 K. B. 535 ; 100 L. J. K. B. 513 ; 145 L. T. 263 ; 95 J. P. 150 ; 47 T. L. R. 442 ; 75 Sol. Jo. 489 ; 29 L. G. R. 407 ; 29 Cox, C. C. 323, D. C.

476d. Breach of Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 3 (1) (b)—Offence by licence holders.]—Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 3 (1) (*b*), which prohibits the use, except under licence from the Minister of Health or with his authority, in connection with the sale of milk, of certain prescribed designations, is not limited in its application to acts committed by persons who do not hold licences.

On a charge of an offence under this sect. the question of sale to the prejudice of the purchaser does not arise.—PYATT *v.* LLOYD (1932), 148 L. T. 137 ; 96 J. P. 479 ; 49 T. L. R. 14 ; 30 L. G. R. 505 ; 29 Cox, C. C. 569, D. C.

476e. Sale of pasteurised milk at several shops in area—Necessity for licence for each shop.]—Milk (Special Designations) Order, 1923, made by the Minister of Health under Milk & Dairies (Amendment) Act, 1922 (c. 54), which provides for the grant of licences to sell milk under special designations, including pasteurised milk, in Sched. IV., sets out the following table of fees payable for licences : "Licence in respect of the establishment in which the process of pasteurising is carried on, & of any shop or other premises in the area of the same licensing authority from which the milk is sold—£1 1*s*." "Licence in respect of any other shop or other premises at or from which the milk is sold—5*s*." Pltfs., who carried on the sale of pasteurised milk at fourteen establishments in the area of the same licensing authority, claimed against the licensing authority a declaration that on the true construction of the above Order they were entitled to receive from the authority, on payment of the sum of 5*s*., a licence for the sale of pasteurised milk within the area :—*Held :* on the construction of the Order, a dealer's licence at a fee of 5*s*. must be obtained for each shop or premises at which the pasteurised milk is to be sold. The local authority is not authorised by the Order to grant a dealer in return for payment of one sum of 5*s*. a licence to sell at & from as many places as he may choose within the area.

Semble : if a preliminary objection had been taken *in limine* to the action on the grounds that a person aggrieved by the Order is confined, as regards his remedy, to an appeal to the Minister of Health under clause 9 (2) of the Order, & that the Minister of Health was not a party to the action, that objection would have succeeded, & the action would not have been maintainable.—UNITED DAIRIES (LONDON), LTD. *v.* HACKNEY BOROUGH COUNCIL (1934), 151 L. T. 56 ; 98 J. P. 236 ; 50 T. L. R. 307 ; 78 Sol. Jo. 278 ; 32 L. G. R. 158.

476f. Refusal of licence for sale—Whether action lies.]—UNITED DAIRIES (LONDON), LTD. *v.* HACKNEY BOROUGH COUNCIL (1934), No. 476e, *ante*.

476g. Milk Marketing Board—Imposition of fine—Excess of jurisdiction—Certiorari.]—R. *v.* [illegible] *p.* (1934), 50 T. L. R. 559 ; 78 Sol. Jo. 536.

476h. —— Imposition of penalty—Registration disputed—Prohibition.]—*Ex parte* WENHAM (1934), 78 Sol. Jo. 414, D. C.

476i. —— —— Registered producer having not more than four milch cows.]—The Milk Marketing Scheme, which has statutory force

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476g i. *Milk Marketing Board—Right to accounts.*]—A distributor of milk entered into contracts for the supply of milk by registered producers, under which he agreed to make payments direct to the producers for the milk supplied. In an action against him by the Board, established by the Scottish Milk Marketing Scheme, 1931, made under Agricultural Marketing Act, 1931 (c. 44), concluding for an accounting of the milk purchased by him & the payment of the sum due by him as the balance of his intromissions, he maintained that, as a distributor, he was under no obligation to count & reckon with the Board :—*Held :* the Board, in virtue of their statutory monopoly right to market milk, were entitled to an accounting from a distributor in respect of milk purchased by him from registered producers.—SCOTTISH MILK MARKETING BOARD *v.* FERGUSON, [1935] S. C. 252.—**SCOT.**

476g ii. —— *Power to restrain sale to unapproved customers.*]—An interim interdict will be granted to restrain a producer from selling to unapproved customers, although he claims to do so in virtue of a wholesaler's licence, if the administration of the Board's scheme is interfered with.—SCOTTISH MILK MARKETING BOARD *v.* PARIS, [1935] S. C. 287.—**SCOT.**

st. *Milk Control Board—Validity of regulation.*]—A regulation of the Milk Control Board requiring licensees to be solvent is *ultra vires*.—*Re* KENDRICK & MILK CONTROL BOARD, [1935] 3 D. L. R. 198 ; O. R. 308 ; 63 Can. C. C. 385.—**CAN.**

sv. —— *Charge of levy by agent association—Validity.*]—BROOKE *v.* INDEPENDENT MILK PRODUCERS CO-OPERATIVE ASSOCN., [1937] 3 W. W. R. 401.—**CAN.**

sw. *Milk Board—Liability to garnishee proceedings.*]—The Milk Board by reason of the provisions of Milk Act, 1934, s. 12, may be made liable to garnishee proceedings under Small Debts Recovery Act, 1912-1933.—*Re* FARMERS' FERTILIZERS CORPN. LTD., *Ex p.* MILK BOARD (1935), 52 N. S. W. W. N. 200.—**AUS.**

sz. *Sale without licence—Onus of proof.*]—Where on a charge of selling

under the Milk Marketing Scheme (Approval) Order, 1933, empowers the Milk Marketing Board to impose fines on registered producers who sell milk under contracts not in the form prescribed in the Scheme. The Scheme further provides by para. 38 that the Board shall keep a register of producers, & by para. 40 (*a*) that producers who have in their possession not more than four milch cows, & who do not sell by retail shall be exempt from registration. By para. 41, the Board, on being satisfied that a person who is registered has ceased to be a producer or is exempt from registration, shall remove his name from the register, provided that the name of a person shall not, by reason only that he is exempt from registration, be removed from the register without his consent.

Deft., a farmer, was registered as a producer in 1933, at which time he possessed six milch cows. Later in that year he disposed of two of them, & thereafter never had in his possession more than four milch cows. In 1934 he entered into a contract for the sale of milk, not by retail, which contract was not in the prescribed form :—*Held :* the Board had power to impose a fine on deft., notwithstanding that at the date of the alleged offence he possessed not more than four milch cows, since he remained a registered producer until his name was removed from the register with his consent.—MILK MARKETING BOARD *v.* WILLIAMS (1935), 153 L. T. 115 ; 79 Sol. Jo. 363, C. A.

476j. —— **Right to recover costs of operating scheme—What amounts to.**]—Applt. was liable as a registered producer & retailer of milk to contribute to the costs of operating the scheme contained in the Scottish Milk Marketing Scheme (Approval) Order, 1933, made under & in terms of Agricultural Marketing Act, 1931 (c. 42), s. 1 (8), & administered by resps. Under the scheme, which came into operation on Dec. 1, 1933, resps. fixed a price for the sale of milk & realised the unmarketable surplus of milk by selling it in a cheaper market. In computing the costs of operating the scheme resps. included as a cost of operation the difference between the lower price received by them for the surplus milk & the price in the liquid market, upon which basis resps. sought to recover rateably from all registered members of the scheme, including applt., a charge or levy calculated at so much per gallon of milk disposed of by each member. Applt., when called upon to pay this charge or levy for each of the months of Dec. 1933, to July, 1934, inclusive, declined to do so, &, without disputing the arithmetical correctness of the sum claimed, contended that resps. had wrongly & illegally included in their computation of costs the amount of the alleged loss relating to the said sale of surplus milk, & that, as their method of computation & disposal of contributions provided a benefit to ordinary producers to the detriment of producers & retailers, they had acted *ultra vires* & contrary to the provisions of the scheme. Resps.' basis of computation was in accordance with a previous decision of the Second Division of the Ct. of Session in a recent special case to which applt. was not a party :—*Held :* the difference between the lower price received by resps. & the price in the liquid market was not a " cost " of operating the scheme ; & the contributions claimed from applt. being unauthorised by the scheme, resps. had acted *ultra vires* in respect that the disposal of the said contributions conferred a benefit upon the class of ordinary producers at the expense of the class of producers & retailers including applt. —FERRIER *v.* SCOTTISH MILK MARKETING BOARD, [1937] A. C. 126 ; [1936] 2 All E. R. 1131 ; 105 L. J. P. C. 135 ; 155 L. T. 425 ; 80 Sol. Jo. 718, H. L.

476k. —— **Construction of order.**]—DRIED MILK PRODUCTS, LTD. *v.* MILK MARKETING BOARD, [1937] 4 All E. R. 669 ; 54 T. L. R. 112 ; 81 Sol. Jo. 924.

476l. —— **Explanatory leaflet—Whether warranty.**] —The Milk Marketing Board was established under the Agricultural Marketing Act, 1931 (c. 42), s. 6, & regulated by a scheme which was one of the Statutory Rules & Orders. The Board also issued an explanatory leaflet which contained (*inter alia*) the following : " In various parts of the country at the present time the producer-retailer is feeling the pinch of severe undercutting, & the stabilisation of the industry which will result from the operation of the scheme will end all his anxiety under this head since undercutting will be impossible." In an action to enforce certain levies under the scheme deft. set up that the above passage was a representation that undercutting would be stopped by the operation of the scheme & that the Board had failed to stop undercutting. He set this up as a defence upon the footing that the above statement was a warranty or agreement, & also as the basis of a counterclaim claiming damages for breach of duty :— *Held :* (1) if the passage amounted to a representation at all, it applied wholly to the future, & there was no representation as to any present fact that could be relied upon in law ; (2) there was no duty upon the Board to stop undercutting ; (3) upon the facts the Board had taken all reasonable steps to prevent undercutting.—MILK MARKETING BOARD *v.* WARMAN & SONS, [1937] 3 All E. R. 541 ; 81 Sol. Jo. 651.

476m. Milk Act, 1934 (c. 51), s. 4—Calculation of price.]—An agreement to fix prices for a marketing scheme by reference to market quotations included the phrases " exceptional quotations being disregarded " & " the average of the mean prices for the two kinds of cheese " :—*Held :* (1) " exceptional quotations " did not mean quotations for goods which were in fact exceptional owing to their quality or character but to quotations so described in the market report ; (2) the " mean " is the figure mid-way between two extremes whereas the " average " is ascertained by adding all the items together & dividing by the number of items.—UNITED DAIRIES (WHOLESALE), LTD. *v.* LEMON, [1937] 2 All E. R. 618, C. A.

milk without a licence it has been proved *primâ facie* that a sale of milk has taken place, the onus is on deft. to establish that he was duly licensed to sell milk.—KIRKPATRICK *v.* BARTLETT, [1936] S. A. S. R. 10.—**AUS.**

sc. *Whether " beverage " within Criminal Code.*]—Milk is not a beverage within the provision of the Criminal Code requiring a duly registered trade mark on any bottle of beverage for sale.—R. *v.* ROUSE, [1936] 4 D. L. R. 797 ; 66 Can. C. C. 225.—**CAN.**

495. *Add. Annotation :*—**Refd.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

508. *Add. Citation :*—28 Cox, C. C. 7.

515a. Meat—Sale of Food (Weights & Measures) Act, 1926 (c. 63)—Butchers' Meat—Whether stuffed meat included.]—A sale of a piece of stuffed butchers' meat, so labelled & asked for as such by the purchaser & weighed together with the stuffing, is not a sale of butchers' meat otherwise than by net weight within the prohibition in Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 5 (1), the meat not being sold as butchers' meat but as a composition called stuffed meat.—DEWHURST, LTD. *v.* EDDINS, [1935] 2 K. B. 105; 104 L. J. K. B. 274; 153 L. T. 16; 99 J. P. 219; 51 T. L. R. 341; 79 Sol. Jo. 287; 33 L. G. R. 207; 30 Cox, C. C. 222, D. C.

Protection of employer.]—*See* Nos. 439b, 439c, *ante.*

Part VI.—Control in Wartime.

519. *Add. Annotations :*—**Folld.** Brocklebank *v.* R., [1925] 1 K. B. 52. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

555. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. ——— ——— ———.]—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B, requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F. requisitioned all bacon landed after such date : —*Held :* in assessing the compensation to be paid for the bacon requisitioned under reg. 2F. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B. —SWIFT & CO. *v.* BOARD OF TRADE, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.; *previous proceedings*, [1925] A. C. 520, H. L.

570. *Add. Annotation :*—**Refd.** R. *v.* Kent J.J. *Ex p.* Metropolitan Police Comr., [1936] 1 K. B. 547.

572. *Add. Annotation :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

PART V. SECT. 4, SUB-SECT. 3.

508 iii. —— —— —— ——.]—A dairyman was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established, but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise : —*Held :* accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—M'CALLUM *v.* BROOKS, [1926] S. C. (J.) 39.—**SCOT.**

k i. —— *Price of milk varying with quality supplied—Genuine milk to be supplied.*]—Deft. was a shareholder in a certain co-operative dairy society, & she & the other suppliers of milk to the creamery of the said society delivered daily to the creamery quantities of milk. The quantity of milk delivered by each supplier was recorded by weight in pounds, dependent on the number of gallons, & the manager or other official of the creamery took a sample of each delivery, tested it, & ascertained its contents of butter-fats. In return for the said milk delivered by her, deft. received from the creamery : (*a*) at the end of every month a cash payment per pound of milk delivered, calculated on the average percentage of butter-fats contained in the milk delivered during the month—the greater the content of the butter-fats, the higher the price paid; & (*b*) each day a quantity of separated milk, which was determined in accordance with the rules of the society & was proportionate to the quantity of milk delivered by deft. to the creamery, or, instead, a cash payment. A sample of deft.'s milk taken by an Inspector of Food & Drugs when the milk was in the course of delivery to the creamery was found on analysis to be inferior to the standard prescribed by regs. 1 & 2 of Sale of Milk (Ir.) Regulations, 1901, & deft. was charged for selling to the creamery, to the prejudice of the purchaser, *i.e.* the said creamery, within Sale of Food & Drugs Act, 1875 (c. 63), as amended by Sale of Food & Drugs Act Amendment Act, 1879 (c. 30), s. 3, an article of food, to wit, milk, which was not of the nature, substance, & quality demanded by the purchaser. No evidence was given by deft. to rebut the presumption of abstraction or adulteration which applied to the said sample by reason of the said regulations. The district justice dismissed the summons :—*Held :* the district justice was wrong in law in dismissing the summons, as although the price paid by the creamery varied with the quality of the milk supplied, the contract contemplated the supply of genuine milk, & the milk of which the sample was taken was not genuine milk as defined by Sale of Milk (Ir.) Regulations, 1901. —MURPHY *v.* NICHOLSON, [1931] I. R. 582.—**IR.**

PART V. SECT. 4, SUB-SECT. 4.

sp. *Sale by driver of cart—Name of defendant on cart—Whether evidence of sale by defendant.*]—On the hearing of an information against resp. co. for selling adulterated milk the evidence showed that an inspector saw in the street a milk-cart bearing the same name & address as those of the co., & purchased from the driver of the cart milk which was adulterated :—*Held :* the evidence was insufficient to establish, even *primâ facie*, that the milk-cart was the cart of the co. or used in its business, or that there was any relationship between the driver of the cart & the co.—HOUSTON *v.* WITTNER'S PTY., LTD., [1928] V. L. R. 539; [1928] Argus L. R. 356.—**AUS.**

PART V. SECT. 6.

st. *Flour—Sale in unmarked barrels—Seller not liable—Manufacturer or packer liable.*]—R. *v.* BEEKMAN (1844), 2 U. C. R. 57.—**CAN.**

sw. *Meat—Validity of bye-law.*]—City Act, R. S. S., 1930, sect. 216, paras. 64 (*f*) & (*g*), do not allow a choice between two systems of inspection, but are intended to dispense with the necessity of further inspection only in the case of meat marked "approved" by the Dominion inspector being offered for sale in the city, & therefore a city bye-law, which without providing for inspection by an inspector appointed by the city prohibits the selling of the meat of an animal which was not inspected by an inspector appointed under Meat & Canned Foods Act, R. S. C., 1927, & marked "approved" by him, is *ultra vires.*—R. (ORME) *v.* STONEHOUSE, [1934] 2 W. W. R. 131.—**CAN.**

sz. *Eggs—Regulations under Live Stock & Live Stock Products Act—Not applicable to consumers.*]—R. *v.* MALIAN, [1934] 3 W. W. R. 545; [1935] 1 D. L. R. 249; 62 C. C. C. 330.—**CAN.**

sa. ——— ———.]—R. *v.* THORSBY TRADERS, LTD., [1935] 3 W. W. R. 475; [1936] 1 D. L. R. 592; 65 Can. C. C. 109; 5 F. L. J. (Can.) 197.—**CAN.**

sc. —— —— ——.]—Reg. 11 (2) of the regulations under Live Stock & Live Stock Products Act, R. S. C., 1927, held to be an authorised regulation.—R. *v.* GREENBERG, [1936] 1 W. W. R. 599; 2 D. L. R. 802; 65 Can. C. C. 190; 44 Man. L. R. 104.—**CAN.**

sb. —— —— *Validity.*]—R. *v.* ZASLAVSKY, [1935] 2 W. W. R. 34; 3 D. L. R. 788.—**CAN.**

FRAUDULENT AND VOIDABLE CONVEYANCES.

Part I.—Conveyances Impeachable by Creditors under Statute.

45. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

123. *Add. Annotation :*—*As to* (1) **Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

126. *Add. Annotation :*—**Apld.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

133. *Add. Annotation :*—*As to* (4) **Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

220a. ——.]—A voluntary settlement may be declared void, as against the settlor's trustee in bkpcy., without proof of actual intention to defeat or delay creditors, if the circumstances of the particular case be such that

PART I. SECT. 1.

sa. *Homestead.*]—MEUNIER *v.* DORAY (1905), 6 Terr. L. R. 194.—**CAN.**

sb. —— *Transfer prior to Land Titles Act*, 1917.]—13 Eliz. c. 5, which is practically re-enacted by R. S. S. 1920, c. 204, s. 1, does not apply to property which at the time of the alleged fraudulent conveyance was not subject to the payment of the grantor's debts or liable to be taken in execution. So where a transfer of a homestead was completed before Land Titles Act, 1917, which altered the law with regard to executions against land, came into force, & was, because of the above rule, unimpeachable at the time of the transaction, it cannot be affected retrospectively by said change in the law.—PACHAL *v.* MARKHAM, [1922] 1 W. W. R. 818; 63 D. L. R. 97; 15 Sask. L. R. 308.—**CAN.**

sd. *Exempt property.*]—A transaction which would otherwise be voidable because in fraud of creditors cannot be successfully attacked or set aside if the goods involved are the exemptions of the person who made the conveyance.—POPOFF *v.* DOOTOFF, [1937] 2 W. W. R. 186.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

a i. ——.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204): —*Held :* deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity the property should be available for his creditors.—COLONIAL INVESTMENT & LOAN CO. *v.* HUSH, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157.—**CAN.**

d i. —— ——.]—KEENLEYSIDE *v.* PARTRIDGE, [1925] 3 D. L. R. 961.—**CAN.**

d ii. —— ——.]—Where a voluntary conveyance has the effect of rendering the grantor insolvent it is void as against his creditors no matter what his intent in making it was.—BAXTER *v.* DERASZ & DERASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

n i. —— *Saskatchewan.*]—13 Eliz. c. 5, is in force in Saskatchewan.—BANK OF MONTREAL *v.* REIS, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423.—**CAN.**

sc. *Transfer by administrator to estate.*]—In an action to have a transfer of land from deft. E. as registered owner to herself as administratrix of her husband's estate declared void as against her creditors & alternatively, void as a preference in favour of the estate :—*Held :* on the evidence, E.'s position up to, at, & subsequent to, her husband's death was that of a trustee of the land for her husband, &, alternatively, if he was not the equitable owner of the land, but it belonged in whole or part to her absolutely, then she must be held to have elected by her conduct to take under & not in opposition to his will under which his whole estate real & personal was divided between her & the testator's children, &, therefore, in transferring the land to the estate she did only what she could have been compelled to do.—SKOGMAN *v.* ELLERGODT & WISEMAN (Alta.), [1929] 4 D. L. R. 710; 3 W. W. R. 235.—**CAN.**

sd. *Mortgage—Summary procedure to set aside conveyance.*]—The word "conveyance" in rule 462, which provides a summary procedure under which a judgment creditor may have a fraudulent "conveyance" of land set aside, does not include a mtge.—NERLAND *v.* CROSSFIELD SCHOOL DISTRICT, [1929] 4 D. L. R. 216; 2 W. W. R. 330; 24 Alta. L. R. 214.—**CAN.**

sm. *Agreement between co-operative association & pool.*]—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SOUTHERN ALBERTA CO-OPERATIVE ASSOCN., LTD., [1934] 3 W. W. R. 76.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

se. *Assignment to cover money taken from trust account.*]—*Held :* it could not be attacked by a creditor of the assignor.—BANK OF HAMILTON *v.* BLACK (1918), 37 D. L. R. 801; 24 B. C. R. 394.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—B. (b).

sf. *Bonâ fide sale in course of trade—In consideration of debt due to buyer & other creditors.*]—The sale of wheat in question herein, the consideration for which was an indebtedness of the seller to the buyer & the payment by the buyer of certain other creditors of the seller, held to be protected as against attack under Fraudulent Preferences Act, s. 4, by sect. 7 thereof, which provides that the prior provisions of the Act shall not apply to a *bonâ fide* sale made in the ordinary course of trade or calling to innocent purchasers or parties. The proceeds of the wheat amounted to more than the amount of the consideration expressed in the bill of sale, but this could not be foreseen at the time of the transaction, & it was held that the excess was not large enough to be regarded as an element of fraud.—DESJARDINE *v.* CALLISON, [1928] 3 D. L. R. 147; [1928] 2 W. W. R. 250. —**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—C.

185 ii. —— ——.]—Circumstances in which the purchaser was estopped from setting up consideration.—MCCARTY *v.* MCMURRAY (1871), 18 Gr. 604.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

157 ii. —— —— ——.]—MULHOLLAND *v.* WILLIAMSON (1868), 14 Gr. 291.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

177 i. *Exceptions to general rule—Settlement supported by other consideration—Agreement to separate—Followed by immediate separation.*]—HILL *v.* HILL (Man.), [1926] 4 D. L. R. 588.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

204 ii. —— *Partition by father on remarriage—Allegation by settlor that conveyance in fraud of creditors—Onus of proof.*]—In 1904 a Burman executed on his remarriage a deed of partition by which he purported to convey to his daughter, the only child of his first marriage & then eight years of age, immovable property as her one-quarter share of the joint property of that marriage, & he appointed his own mother to take care of it. He remained in possession, but contributed to the support of his daughter, who resided with her maternal grandmother. At the time of the conveyance the father was considerably indebted, & his creditors, finding that they could not attach the property, settled with him upon easy terms. In 1915 the father promised his daughter & her maternal uncle that the property would be restored to her. In 1925 the daughter sued for possession. The father pleaded that the conveyance was in fraud of his creditors, & that the suit was barred by limitation :—*Held :* upon the whole facts the father had failed to discharge the burden, which was heavily upon him of proving that the conveyance was in fraud of his creditors, & not a genuine conveyance of his daughter's share, possibly liberally calculated; & consequently his possession was not adverse to his daughter, but on her behalf.—MA NGWE NAING *v.* MAUNG THA MAUNG (1928), I. L. R. 7 Ran. 4.—**IND.**

PART I. SECT. 4, SUB-SECT. 1.

209 xix. ——.]—HALIFAX BANKING CO. *v.* MATTHEW (1888), 16 S. C. R. 721.—**CAN.**

k i. —— *Suspicious circumstances insufficient.*]—Mere suspicious circumstances are not sufficient to support a finding of fraud even in a case wherein a husband & wife are alleged to have been mixed up in it.—KOSTZSHYN *v.* SZCZURKO & KOSTZSHYN (Sask.), [1929] 3 D. L. R. 474; 2 W. W. R. 289.—**CAN.**

sg. *Plan to bring property into existence—Valid.*]—KEARL *v.* WONNACOTT (Alta.), [1927] 4 D. L. R. 1051 [1927] 3 W. W. R. 693.—**CAN.**

the settlement must necessarily have that effect.—CARRUTHERS *v.* PEAKE (1911), 55 Sol. Jo. 291.

227. *Add. Annotation :*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

250. *Add. Annotations :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22. **Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

252. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

293. *Add. Annotation :*—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

339a. —— —— Subsequent sale to third party—Purchaser from sheriff entitled to recover.]—KIDD *v.* RAWLINSON (1800), 2 Bos. & P. 59 ; 126 E. R. 1155.

Annotations :—**Consd.** Arundell *v.* Phipps & Taunton (1804), 10 Ves. 139. **Apld.** Watkins *v.* Birch (1813), 4 Taunt. 823 ; Latimer *v.* Batson (1825), 7 Dow. & Ry. K. B. 106. **Consd.** Cook *v.* Walker (1855), 25 L. T. O. S. 51. **Refd.** Jezeph *v.* Ingram (1817), 1 Moore, C. P. 189 ; Cromack *v.* Heathcote (1820), 4 Moore, C. P. 357 ; Steward *v.* Lombe (1820), 1 Brod. & Bing. 506.

368. *Add. Annotation :*—**Refd.** Fleetwood Hesketh *v.* I. R. Comrs. (1935), 180 L. T. Jo. 99.

377. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

395. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

396. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

408a. —— With consent of trustees or Chancery court.]—On Mar. 19, 1932, the settlor executed a voluntary deed of settlement by which he assigned all his interests under two wills to trustees upon certain trusts. By clause 5 he gave himself power at any time to raise the sum of £150, without the consent of the trustees. At the date of the settlement his debts did not exceed £100. On Feb. 22, 1935, he was adjudicated bkpt. Clause 7 of the deed gave the settlor power to revoke the whole of the trusts in the settlement with the consent either of the trustees or of a judge of the Chancery Division :—*Held :* the deed was not void under Law of Property Act, 1925 (c. 20), s. 172 (1), against the trustee in bkptcy.—*Re* BAKER, [1936] Ch. 61 ; 105 L. J. Ch. 33 ; 154 L. T. 101 ; *sub nom. Re* BAKER, *Ex p.* TRUSTEE *v.* BAKER & ARNOLD, [1934–5] B. & C. R. 214.

PART I. SECT. 4, SUB-SECT. 2.—A.

224 ii. —— ——.]—DOE d. STEEL *v.* MCGILL (1842), 2 Ont. Dig. 2918.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—B.

229 v. ——.]—A conveyance by a husband to a wife in consideration of natural love & affection will be set aside at the instance of a secured creditor holding a mtge. on the property at the time of conveyance.—DIXON *v.* WALSH, [1937] 1 D. L. R. 585.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—C.

q i. —— ——.]—SCHUBERT *v.* KOCH, [1928] 3 W. W. R. 623.—**CAN.**

t i. —— ——.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom :—*Held :* fraudulent.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474 ; [1925] 1 W. W. R. 87 ; 19 Sask. L. R. 207 ; 5 C. B. R. 448.—**CAN.**

t ii. —— ——.]—The transfer by a husband to his wife of his homestead, which is exempt from seizure under execution, cannot be set aside for the benefit of the husband's creditors.—RUSSIAN MERCANTILE CO., LTD. *v.* SLOBODA & SLOBODA (Alta.), [1927] 4 D. L. R. 931 ; [1927] 3 W. W. R. 451.—**CAN.**

a i. — — *Husband trustee for wife of property conveyed.*]—GRAY *v.* FORD, [1925] 1 W. W. R. 943 ; 34 B. C. R. 517.—**CAN.**

— — *Goods purchased with wife's money—& goods of husband exempt from seizure for debt.*]—REVELSTOKE SAWMILL CO., LTD. *v.* STRATFORD, [1928] 4 D. L. R. 772 ; [1928] 3 W. W. R. 260.—**CAN.**

sm. *To child—To defraud secured creditor.*]—A voluntary conveyance to a daughter in order to put the property out of reach of a secured creditor is a fraudulent conveyance within the Statute of Elizabeth.—SMITH *v.* ROBERTSON, [1936] 1 D. L. R. 505 ; O. R. 134.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—D.

sh. *Conveyance by husband to wife—Proof of validity against creditors—*

is claimed by or on behalf of a under a conveyance to her during coverture, an explanation of the transaction should be given on oath to show that it was *bonâ fide*, & good as against the husband's creditors ; the affidavits for this purpose should be by the petitioners, & should be satisfactorily corroborated by disinterested persons of known credibility.—*Ex p.* LYONS (1869), 2 Ch. Ch. 357.—**CAN.**

sk. *Reconveyance by wife to husband—Land held by wife on trust for husband.*]—WINDSOR AUTO SALES AGENCY *v.* MARTIN (1915), 7 O. W. N. 471 ; 8 O. W. N. 130, 252 ; 25 D. L. R. 549 ; 33 O. L. R. 354.—**CAN.**

sl. *Voluntary conveyance—To person of same name as owner—Necessity for explanation.*]—*Ex p.* WRIGHT (1869), 2 Ch. Ch. 355.—**CAN.**

sm. *Family arrangement—Without consideration.*]—HAWKINS *v.* AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

n i. —— *Payment of charges & incumbrances.*]— The promise of a transferee to pay the charges & incumbrances against the property transferred is not a sufficient consideration to support the transaction as against the creditors of the transferor. The question whether a transfer was a voluntary one or not for good consideration is only important as against creditors where it was made *bonâ fide*.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170 ; [1928] 2 W. W. R. 150 ; 22 Sask. L. R. 533.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. —— ——.]—GALIBERT *v.* SOCIETE D'ADMINISTRATION GENERALE & BANQUE NATIONALE & CIE. GENERAL D'ENTREPRISES PUBLIQUES, [1925] 3 D. L. R. 1206 ; [1925] S. C. R. 683.—**CAN.**

264 iv. —— ——.]—CUMMINGS & ELLIS *v.* O'FLYNN (1924), 34 B. C. R. 275.—**CAN.**

264 v. —— ——.]—A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference :—*Held :* void.—HUNTER *v.* LAWRIE, [1925] 1 D. L. R. 658 ; [1925] 1 W. W. R. 411 ; 35 Man. L. R. 126.—**CAN.**

264 vi. —— ——.]—ENFIELD REALTY CO. *v.* PETERSON (Sask.), [1926] 2 D. L. R. 1005.—**CAN.**

264 vii. —— ——.]—CANADIAN OIL CO., LTD. *v.* JAMIESON (Sask.), [1926] 2 D. L. R. 1046.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sd. *Under guarantee—Voluntary conveyance set aside.*]—ONTARIO WIND ENGINE & PUMP CO. *v.* BOBO (Alta.), [1926] 1 D. L. R. 57 ; [1926] 1 W. W. R. 45.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.—A.

se. *Under sale by parol.*]—*Held :* the sale was void as against subsequent creditors.—WILLIAMS *v.* RAPELJE (1880), 8 C. P. 186.—**CAN.**

PART I. SECT. 4, SUB-SECT. 7.

sf. *Conveyance to wife—Onus of proof—Discharge of onus.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693 ; 1 W. W. R. 389 ; 20 Alta. L. R. 286.—**CAN.**

sg. *Grantee instrument of benefit to grantor.*]—A deed which contains a sweeping assignment of personal property without any valuation, & which makes the grantee the instrument of subsequent benefit to the grantor, will be set aside as fraudulent.—PRINCE EDWARD ISLAND MUTUAL FIRE INSCE. CO. *v.* BEST (1933), 7 M. P. R. 107.—**CAN.**

PART I. SECT. 4, SUB-SECT. 11.

418 i a. ——.]—The assignment of a lease by the lessee to a trustee, for a *bonâ fide* creditor of the assignor, with the intention of thereby evading the creditors of the lessee, is not a fraudulent assignment.—DOE d. BIGGARD *v.* —— (1839), 1 Ont. Dig. 480.—**CAN.**

418 xiii. ——.]—SHAVER *v.* GOLDHAR, [1925] 2 D. L. R. 1216.—**CAN.**

418 xiv. ——.]—*Re* RICE, [1928] 2 D. L. R. 96.—**CAN.**

a i. —— ——.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void : but the existence of the intent may be

422a. ——.]—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., No. 428a, *post.*

428. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428a. —— **Issue of debentures to one creditor—Issue postponed for benefit of company.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (ROMER, J.).—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

446. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

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negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. —GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—**CAN.**

aj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage void.*]—MILLER *v.* OSIER, [1925] 4 D. L. R. 692.—**CAN.**

ak. *What constitutes preference—Security given to creditor—Debtor insolvent.*]—W., secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtge., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential :—*Held :* under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

al. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

t i. —— *On crops raised by vendee.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations. —JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—**CAN.**

t ii. —— ——.]—The fact that a sale of land is found to be fraudulent & voidable as against execution creditors of the vendor, does not entitle them to seize crops grown thereon by the vendee, although the rule is otherwise if the transaction is shown to be a mere sham.—BANQUE CANADIENNE NATIONALE *v.* TENCHA, [1927] 4 D. L. R. 665.—**CAN.**

sg. *Purchase of Government annuity.*]—Where the result of the purchase of a Dominion government annuity was to put beyond reach of an existing creditor of the annuitant all of his property, except a house, & it could be rendered exempt or partially so by his occupying it as a home :—*Held :* he had brought himself, although perhaps involuntarily, within the scope of sect. 11 (2) of Government Annuities Act, R. S. C., 1927, which provides that if an annuity is applied & paid for "with intent to delay, hinder or defraud creditors" they shall be entitled to the remedy therein provided. The creditor who was held herein to be so entitled was the annuitant's wife with whom before the purchase of the annuity he had entered into a separation agreement under which he was under a definite continuing liability subject to termination or to variation of the amount payable only upon the happening of the events, or one of them, mentioned therein.—LANE *v.* LANE (No. 2), [1937] 2 W. W. R. 49; *subsequent proceedings,* LANE *v.* LANE (No. 3), [1937] 3 W. W. R. 612.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—A.

sn. *Not receiver of company—Alleged fraudulent preference made before receiver appointed.*]—FOX *v.* NIPISSING RY. CO., GOODERHAM *v.* NIPISSING RY. CO. (1881), 29 Gr. 11.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—C.

e i. —— *Personal representative.*]—Pltf., a daughter of R., deceased, purchased judgments which had been obtained against R. in his lifetime. She later became administratrix of his estate. She then, as administratrix & in her personal capacity, sued her brother, deft., attacking transfers made by R. to deft. as having been made to defraud creditors :—*Held :* pltf.'s position as administratrix did not entitle her to attack the fraudulent transfers. A debtor who fraudulently transfers his property cannot himself attack his fraudulent transaction, & his administrator has no greater right. —RYAN *v.* CHARLESWORTH, [1930] S. C. R. 427; 3 D. L. R. 431.—**CAN.**

sl. *Broker negotiating conveyance.*]—A broker who negotiates the conveyance of land to a purchaser's wife cannot attack the conveyance as being in fraud of creditors, since he is a consenting party.—ROSCOE *v.* BOZYK, [1933] 4 D. L. R. 585; 41 Man. L. R. 505.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (a).

m i. —— —— ——.]—In the absence of evidence to the contrary, it is presumed that a mtgee.'s security is sufficient to satisfy his claim; & unless it is shown that the mtge. security at the time of the loan was less than the amount of the mtge. the mtge. debt is not within 13 Eliz. c. 5. —CLARK *v.* SMITH, [1933] 3 W. W. R. 116; 41 Man. L. R. 438.—**CAN.**

sp. *Secured creditor.*]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

sq. *S. P.* MCLEAN *v.* RATEKIN (Sask.), [1926] 4 D. L. R. 174; [1926] 2 W. W. R. 671.—**CAN.**

st. *Not creditor advising conveyance.*]—BLACKLEY *v.* KENNY (1889), 16 A. R. 522.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (c).

m i. ——.]—Pltf. suing for a tort, such as slander or malicious prosecution, is not a creditor of deft. until he has recovered judgment in the action, & has no status to impeach a conveyance as fraudulent against him, even though it was made because of the threatened action.—FISHER *v.* KOWSLOWSKI (1913), 25 W. L. R. 417; 5 W. W. R. 91; 13 D. L. R. 785; 23 Man. L. R. 769.—**CAN.**

m ii. ——.]—A judgment creditor may in his own name maintain an action to set aside a conveyance as fraudulent & void, without having a lien by virtue of an execution in the hands of the sheriff.—BROWN *v.* WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—**CAN.**

sw. *Judgment for alimony.*]—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105) :—*Held :* even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 "creditors & others" were protected.—SHEPHARD *v.* SHEPHARD, [1925] 2 D. L. R. 897; 56 O. L. R. 555; *affg.*, [1924] 3 D. L. R. 566.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

sx. *Whether proceeds may be followed.*]—The fact that a conveyance is set aside as fraudulent against the transferor's creditors does not render available to them the proceeds of a policy of insurance which, after said transfer, was effected by the transferee in his own favour & paid for by him.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* CHOW LUN, [1931] 1 W. W. R. 211; 1 D. L. R. 1000.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

k (p. 219) **i.** —— ——.]—The rule that in an action by a judgment creditor to set aside a transfer by his debtor as fraudulent against creditors the debtor is not a necessary or proper party when he has no interest in the land transferred & no relief is asked against him does not apply where it is alleged that he still has an interest in said land & a sale of the land is stayed for to satisfy the judgment.—RUSSELL (DUKE OF BEDFORD) *v.* MURPHY & CARON (Sask.), [1929] 3 D. L. R. 787; 2 W. W. R. 324.—**CAN.**

l (p. 219) **i.** —— *No benefit retained by grantor.*]—The grantor is not a proper party to an action to set aside a deed in fraud of creditors, unless he has retained some benefit for himself.—RITCHIE *v.* RAYNER (1932), 7 M. P. R. 419.—**CAN.**

d (p. 220) **i.** —— *Unless execution*

525a. —— —— **Refusal of fair offer.**]—After bill filed on behalf of creditors to set aside as fraudulent & void a voluntary settlement by A., their debtor, & a composition signed by the creditors in ignorance of such prior voluntary settlement, the debtor was adjudicated bankrupt, & an order was made by the Ct. of Bkpcy. setting aside the voluntary settlement. Pltfs., whose claim to prove under the bkpcy. had been admitted notwithstanding the opposition of the trustees of the settlement, wrote to them proposing to dismiss the bill without costs as against them, & that pltfs.' costs should come out of the estate. The trustees declined this proposal, but offered to consent to an order staying all proceedings in the suit without costs, or dismissing the bill without costs :—*Held :* the trustees of the settlement, who, by their refusal of pltfs.' offer, had compelled them to bring the suit to a hearing, must pay all pltfs.' costs incurred since the date of that offer.—TANQUERAY *v.* BOWLES (1872), L. R. 14 Eq. 151.

525b. —— —— **Negligent solicitor-trustee.**]—A decree being made for setting aside a voluntary settlement, on the ground of the omission of a power of revocation :—*Held :* the solr. who prepared the deed, & who was one of the trustees named in it, must pay his own costs as a penalty for not having called the settlor's attention to the absence of the power.—HENSHALL *v.* FEREDAY (1873), 27 L. T. 743 ; 21 W. R. 240 ; *on appeal*, 29 L. T. 46, L.JJ.

Part II.—Conveyances Impeachable by Subsequent Purchasers under Statute.

594. *Add. Annotation :—As to* (1) **Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

604a. Settlement with uses in remainder.] —*Held :* fraudulent against a purchaser.—ANON. (1606), Lane, 22 ; 145 E. R. 267.

619a. ——.]—HEISIER *v.* CLARKE (1709), 2 Eq. Cas. Abr. 46 ; 22 E. R. 41, L. C.

Part III.—Conveyances Impeachable from Position of Parties.

807a. ——.]—A conveyance by a weak man for a small consideration set aside.—CLARKSON *v.* HANWAY (1723), 2 P. Wms. 203 ; 24 E. R. 700, L. C.

Annotations :—**Consd.** Cray *v.* Mansfield (1750), 1 Ves. Sen. 379. **Refd.** Hawes *v.* Wyatt (1790), 2 Cox, Eq. Cas. 263 ; Blachford *v.* Christian (1829), 1 Knapp, 73.

811. *Add. Annotation :*—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

831a. Deed not fully explained to donor.]—PHILLIPSON *v.* KERRY (1863), 32 Beav. 628 ; 9 L. T. 40 ; 11 W. R. 1034 ; 55 E. R. 247.

Annotation :—**Apld.** Ellis *v.* Ellis (1909), 26 T. L. R. 166.

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creditor.]—An execution creditor, who sues to set aside a transfer by his debtor on the ground that it is fraudulent against creditors, is not obliged to sue on behalf of all other creditors of debtor as well as himself. Origin of the distinction in this respect between execution creditors & simple contract creditors reviewed.—ST. GREGOR MERCANTILE CO. *v.* HALBACH & BANK OF MONTREAL, [1927] 1 D. L. R. 761 ; [1927] 1 W. W. R. 247 ; 21 Sask. L. R. 315.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—D.

h i. —— ——.]—*Semble :* in an action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204), the *onus* is always on pltf. of proving debtor's insolvency.—MCLEAN *v.* RATEKIN (Sask.), [1927] 4 D. L. R. 739 ; [1927] 3 W. W. R. 444 ; *affd.*, [1928] 4 D. L. R. 18 ; [1928] 2 W. W. R. 421 ; 22 S. L. R. 633 ; 10 C. B. R. 156.—**CAN.**

o (p. 223) i. —— ——.]—In an action to set aside as fraudulent against creditors a transfer between sisters :—*Held :* the corroborative evidence necessary to meet the *prima facie* case which pltf. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—LUNDQUIST *v.* PUIS, [1925] 3 D. L. R. 84 ; [1925] 1 W. W. R. 834.—**CAN.**

o (p. 223) ii. —— ——.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697 ; [1927] 3 W. W. R. 328.—**CAN.**

s (p. 223) i. —— ——.]—KNOX *v.* SHAW, [1927] 3 D. L. R. 1185 ; [1927] 2 W. W. R. 494 ; 31 Sask. L. R. 593.—**CAN.**

s (p. 223) ii. —— ——.]—BROWN *v.* WEIL, [1927] 4 D. L. R. 218 ; 61 O. L. R. 55.—**CAN.**

s (p. 223) iii. —— ——.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697 ; [1927] 3 W. W. R. 328.—**CAN.**

c (p. 223) i. —— *Of bona fides.*]—MCNEILL *v.* CAIRNS (1931), 3 M. P. R. 195.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a).

572 i. *Necessity for valuable consideration.*]—DOE PROUDFOOT *v.* MCCRAE (1842), 6 O. S. 502.—**CAN.**

PART III. SECT. 1.

k i. ——.]—B., a person of full age & understanding, who at the time was suffering under emotional distress & loss of interest in life, executed a voluntary transfer of her property in favour of A. with whom she was then living. In a suit by B. to set aside the transfer :—*Held :* the facts did not show want of capacity, nor did the circumstances constitute a fiduciary relationship, & in the absence of fraud or overreaching the ct. could not entertain the suit.—BOYD *v.* ALEXANDER (1931), 31 S. R. N. S. W. 645 ; 48 N. S. W. W. N. 202.—**AUS.**

l i. —— —— *Grantor without business experience.*]—*Held :* the instruments were void in equity.—EDINBURGH LIFE ASSURANCE CO. *v.* ALLEN (1871), 18 Gr. 425.—**CAN.**

p i. —— ——.]—The social relationship between donor & donee, the former a man of 83 years whose mental powers were greatly weakened, added to the facts that he had made the donee his financial agent with respect to a certain transaction, & reposed much confidence in him, was held to raise the presumption of undue influence.—*Re* MCPHERSON, TRUSTS & GUARANTEE CO., LTD. *v.* BRADFORD, [1930] 3 W. W. R. 368 ; 4 D. L. R. 915 ; *affg.*, [1930] 3 D. L. R. 378.—**CAN.**

p ii. —— ——.]—Pltf., an aged, ignorant, & worn man, transferred his land to his son, deft., the only consideration to pltf. being a lease for 30 years, in consideration of one dollar, of a small house & garden, part of the land conveyed, and an agreement to supply pltf. periodically with certain provisions :—*Held :* the transaction should be set aside on the ground that it was an improvident transaction made practically without consideration & without advice, in favour of a person who had a duty at least to see that the transaction went no further than was actually necessary.—HRYNYK *v.* HRYNYK, [1932] 1 W. W. R. 82 ; 1 D. L. R. 672 ; 40 Man. L. R. 175.—**CAN.**

p iii. —— *Grant in consideration of maintenance for life.*]—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence :—*Held :* the transaction was properly set aside. —WATKINS *v.* COOMBES (1922), 30 C. L. R. 180.—**AUS.**

p iv. —— *& illiterate.*]—Conveyances set aside on grounds of improvidence, & want of proper professional advice.—

presumption that the donee [illegible] gift unless the donee establishes was the spontaneous act of the donor acting in circumstances which enabled him to exercise an independent will, & which justified the ct. in holding that it was the result of a free exercise of the donor's will. If the evidence establishes the fact above stated it should not be disregarded merely because the donor did not receive independent legal advise. On the other hand, the receipt of independent legal advice may rebut the presumption although it is not acted upon. But to have that effect it must be given with a knowledge of all the relevant circumstances, & be such as a competent & honest adviser would give if acting solely in the interest of the donor.

A Malay woman, who was a great age & wholly illiterate, executed a deed of gift of landed property in Singapore in favour of her nephew, who had the management of all her affairs. Before executing the deed the donor had independent advice from a lawyer who acted in good faith. He was unaware, however, that the gift constituted practically the whole of the donor's property, & did not bring home to her mind that she could more prudently, & equally effectively, benefit the donee by bestowing the property upon him by will:—*Held:* the gift should be set aside, as the presumption which arose was not rebutted.—INCHE NORIAH *v.* SHAIK ALLIE BIN OMAR, [1929] A. C. 127; 98 L. J. P. C. 1; 140 L. T. 121; 45 T. L. R. 1, P. C.

Annotation:—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

835. *Add. Annotation:*—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

844. *Add. Annotation:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

844a. ——.]—GREENLAW *v.* KING (1841), 10 L. J. Ch. 129; 5 Jur. 18, L. C.

Annotations:—**Refd.** Llewellyn *v.* Baaeley (1842), 1 Hare, 527; Walsingham *v.* Goodricke (1843), 3 Hare, 122; Beaden *v.* King (1852), 9 Hare, 499; Boyd *v.* Barker (1859), 28 L. J. Ch. 445; Guest *v.* Smythe (1870), 5 Ch. App. 553, n.; Fenner *v.* L. & S. E. Ry. (1872), L. R. 7 Q. B. 767.

845. *Add. Annotations:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

889a. —— **Independent adviser unaware of extent of property.**]—Applt., a medical practitioner & an intimate friend of resp., an elderly widow, attended her professionally during two illnesses in the years 1928 & 1930. He made no charge for his professional services or for the medicines supplied, & had stated that he did not regard her as a paying patient. After her recovery from the second illness, resp. in 1931 executed a deed by which she purported to convey to applt. certain freehold land, together with the building thereon, for the sum of £1,500, but it was not in dispute that no consideration money was paid. Subsequently resp. instituted proceedings to have the conveyance set aside & a reconveyance of the property made to her, alleging that the deed was executed by her under the influence of applt., her medical attendant, & without independent advice. The deed was explained to the patient by her solr., but he was unaware of the proportion the property conveyed bore to her whole estate. Both parties were alive at the date of the trial, & gave evidence:—*Held:* (1) the relationship of doctor & patient existed between the parties; (2) a person giving independent advice must be aware of the total amount of the donor's property & the proportion the part given bears to the whole; (3) the onus, which lay upon applt., to prove that the gift was the result of the free exercise of resp.'s independent will having been discharged to the trial judge's satisfaction, the ct. in the circumstances of this case could reverse such finding only if there was no evidence at all to support it.—WILLIAMS *v.* JOHNSON, [1937] 4 All E. R. 34; 81 Sol. Jo. 784; *sub nom.* WILLIAMS *v.* WILLIAMS, [1937] W. N. 321, P. C.

895a. ——.]—If a legatee agrees to sell to the exor. of the will his legacy for an annuity, the burden will lie on the exor. to show that there was no unfairness in the transaction.—*Re* BIEL'S ESTATE, GRAY *v.* WARNER (1873),

SHANAGAN *v.* SHANAGAN (1884), 7 O. R. 209.—**CAN.**

r i. —— *Deaf & illiterate—Onus of proof.*]—Action to set aside a conveyance obtained from an old woman who was deaf & unable to write, & who had no relatives or friends, by the reeve of the township in which she lived, & who was well known as a justice of the peace, & an active, shrewd business man, engaged in many enterprises:—*Held:* the onus was not on deft., & pltf. must prove her case.—MCEWAN *v.* MILNE (1884), 5 O. R. 100. —**CAN.**

Onus of proof.]—The fact that deft., who had set up the defence of fraud to an action on a guarantee, proved that he could not read or write the English language, that in which the guarantee was written, was held not to be sufficient of itself in the present case to raise such a *primâ facie* presumption of fraud as to justify the trial judge in placing on pltf. the burden of proving affirmatively that that portion of the document, which deft. attacked, was in fact read over to him & that he understood the same. —LASBY *v.* JOHNSON, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

832 ii. ——.]—KRYS *v.* KRYS, [1929] 1 D. L. R. 289; 8 C. R. 153.—**CAN.**

832 *iii.* ——.]—Where suspicious circumstances coupled with relationship are proved there is a *primâ facie* case for setting aside a conveyance.—SYRJA *v.* SYRJA (1931), 45 B. C. 321.—**CAN.**

e (p. 259) i. ——.]—PLAETZER *v.* RAYMOND (Ont.), [1927] 2 D. L. R. 389; 8 C. B. R. 181.—**CAN.**

s (p. 259) ii —— ——.]—BARRY *v.* MCGUIRE (1932), 4 M. P. R. 573.—**CAN.**

sp. *Evidence in rebuttal.*]—BRETT *v.* BRETT (No. 2), [1937] 2 W. W. R. 693. —**CAN.**

PART III. SECT. 2, SUB-SECT. 2. —A

sw. *Fiduciary relationship—Where no independent advice.*]—GOULET *v.* TARDIF (Man.), [1929] 4 D. L. R. 128.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

sx. *Onus of proof—On party alleging fairness of transaction—Sale by parent to son.*]—In an action by a father against his son to set aside a transfer on the ground of fraud, where admittedly no pecuniary consideration passed at the time, the father could not speak English, the solr. who drew the transfer spoke only English, & the document was in English, & the father was entirely dependent on the son for information as to what was said & done, the burden of proof was held to be upon the son that his father knew well the nature & effect of the instrument.—IWANCHUK *v.* IWANCHUK (Alta.), [1919] 3 W. W. R. 363; 48 D. L. R. 381.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—C.

sz. *Aunt & niece.*]—A presumption of undue influence was held to arise as between a lady of eighty-seven, nearly blind, & her niece & niece's husband.—DONNELLY *v.* JESSEAU, DONNELLY *v.* MORRISSEY (1936), 11 M. P. R. 1.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—F

sy. *When presumed—Husband in impaired physical & mental condition—Wife with business ability.*]—MCCAFFREY *v.* MCCAFFREY (1891), 18 A. R. 599.—**CAN.**

L. R. 16 Eq. 577; 42 L. J. Ch. 556; 28 L. T. 835; 21 W. R. 808.

Annotation :—**Refd.** Harloe *v.* Harloe (1875), 44 L. J. Ch. 512.

909a. ——.]—DEANE *v.* RASTRON (1792), 1 Anst. 64; 145 E. R. 801.

940. *Add. Annotation :*—**Refd.** Permanent Trustee Co. of New South Wales, Ltd. *v.* Bridgewater, [1936] 3 All E. R. 501.

961. *Add. Annotation :*—**Refd.** Permanent Trustee Co. of New South Wales, Ltd. *v.* Bridgewater, [1936] 3 All E. R. 501.

962a. —— ——.]—Resp. was entitled to certain contingent & reversionary interests under his grandfather's & father's wills, the exact nature & extent of which interests were the subject of some doubt, & several counsel had advised upon them & their opinions differed. One M., a moneylender whose exors. were applts., had advanced various sums to the resp. between the end of 1927 & Sept., 1928, amounting in all to £2,203 17*s.* 7*d.* In Sept., 1928, M. refused to make any further advance, but offered to purchase the whole interest under the grandfather's will & the interest under the father's will to the extent of £1,450 to £125. Resp. saw an independent solr. with whom, however, he only had one short interview, & who seemed to have acquiesced in the transaction resp. said he was determined to sell. the time of the earlier advances, had on policies for £2,500 on the life of be taken out & assigned to him, & they assigned to him absolutely. It seemed able that resp. paid the first premium & in the surrender of one of them resp. & M. acted jointly & both signed all documents :—*Held :* (1) the sale had been made at a substantial undervalue, & resp. had had no proper separate advice; (2) the position of the parties was such that it was incumbent on the exors. of M. to prove affirmatively that the transaction was just & equitable, & this they had failed to do; (3) the judge of first instance having decided that the policies had become the absolute property of M. there was nothing in the facts which rendered this view wrong in law.—PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD. *v.* BRIDGEWATER, BRIDGEWATER *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1936] 3 All E. R. 501; 80 Sol. Jo. 973, P. C.

964a. Purchase by devisee—Representation that defective will duly executed.]—BRODERICK *v.* BRODERICK (1713), 1 P. Wms. 239; 24 E. R. 369, L. C.

Annotation :—**Refd.** Baugh *v.* Price (1752), 1 Wils. 320.

PART III. SECT. 2, SUB-SECT. 2.—M.

82. *Fiancée & fiancé's father.*]—Where shortly after the death of assured the beneficiary, his fiancée, assigned to his father, without consideration, all her interest in the policy & the benefits thereof :—*Held :* in the circumstances she should be declared entitled to the insurance money.—REDMOND *v.* BOUEY (Man.), [1927] 1 D. L. R. 1057; [1927] 1 W. W. R. 386; *affd.*, [1928] 4 D. L. R. 806; [1928] 3 W. W. R. 345; 37 Man. L. R. 458.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

r i. ——.]—Pltf. purchased land from deft. Subsequently pltf.'s husband having been convicted of a crime & sentenced to imprisonment, deft. induced pltf. to retransfer the land to him :—*Held :* pltf. having been imposed on, & having conveyed the land for less than the real value thereof & without independent advice, the transfer should be set aside.—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

928 iii. ——.]—MCEACHERN *v.* SOMERVILLE, MCEACHERN *v.* WHITE (1876), 37 U. C. R. 609.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

935 i. *Principles of relief—Presumption of incapacity.*]—Expectant heirs & reversioners need to be protected against the consequences of their own improvidence in dealing with designing men.—MOREY *v.* TOTTEN (1857), 6 Gr. 176.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

c i. —— ——.]—Pltf., a person of little or no business ability, who was possessed of a life interest in a capital sum of considerable amount, had been adjudicated bkpt., & under threat of his creditors to realise the life interest, had approached deft., a money-lender, for assistance. Notwithstanding the business ignorance of pltf. & the financial straits in which he was placed, of which deft., by reason of previous transactions with him, must have been well aware, & without pltf. being independently advised, a sale of the life interest to deft. was arranged at a figure considerably under its real value. In an action brought some eleven years later to have the transaction set aside :—*Held :* although inadequacy of consideration for a transaction is not of itself sufficient to give rise to a presumption of undue influence, the surrounding circumstances in the present case were sufficient to show that pltf. was in the hands of deft. & the subsequent delay in bringing action, & the conduct by pltf., in effecting further insurance in pursuance of the transaction having taken place, while pltf. yet remained in ignorance of its impeachable nature, did not amount to a confirmation & same should be set aside.—HARRIS *v.* RICHARDSON, [1929] N. Z. L. R. 668.—**N.Z.**

PART V. SECT. 6.

1077 i. *Onus of proof that purchaser with notice.*]—In India the onus lies on a third party, who takes the benefit of a transaction with notice or knowledge of circumstances raising a presumption or probability of undue influence by the other party to the contract on the party complaining of undue influence, of proving that he, the third party, derived no unfair advantage or that the party complaining of undue influence acted as a free agent.—RAMA PATTER *v.* LINGAPPA GOUNDER (1934), I. L. R. 58 Mad. 454.—**IND.**

FRIENDLY SOCIETIES.

Part III.—Unregistered Societies.

17. *Add. Annotation :—As to* (3) **Reid.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

Part IV.—Collecting Societies.

85. *Add. Annotation :*—**Apld.** Bell *v.* Harker (1927), 91 J. P. 189.

85a. ——.]—Where a person allows a policy with a collecting society or industrial assurance company to lapse & takes out instead of it a similar policy in another society, a transfer takes place within the contemplation of Industrial Assurance Act, 1923 (c. 8), s. 26 (1), notwithstanding that before the date of the policy with the second society the person already held other policies with that society, or that after that date he continues to hold other policies in the first society, or that before the lapse of the earlier policy the two policies for a time co-exist.—BELL *v.* HARKER, [1928] 1 K. B. 368 ; 97 L. J. K. B. 155 ; 138 L. T. 226 ; 91 J. P. 189 ; 44 T. L. R. 33 ; 25 L. G. R. 505 ; 28 Cox, C. C. 451, D. C.

Part VIII.—Privileges of Registered Societies.

51a. **" Demand in writing "—What amounts to.**]—Friendly Societies Act (c. 63) requires the assignees, etc., of the officers of such societies " upon demand in writing " to pay the debts due from such officers in priority of his other creditors :—*Held :* a bill filed to recover the amount is a sufficient " demand in writing." —ABSOLOM *v.* GETHING (1863), 32 Beav. 322 ; 32 L. J. Ch. 786 ; 8 L. T. 132 ; 9 Jur. N. S. 1263 ; 11 W. R. 332 ; 55 E. R. 126.

Part XI.—Rules.

73a. **What majority required—Levy on prosperous branches—In aid of non-prosperous.**]—The ct. held that the Ancient Order of Foresters were entitled to alter the general laws of the Order without a nine-tenths' majority so as to compel branches or cts. of the society which were in a good financial position to contribute 7½ per cent. of any surplus on valuation for the support of branches which were not prospering.—BUNDEY *v.* SEABROOK (1932), 48 T. L. R. 361 ; 76 Sol. Jo. 289.

Part XII.—Officers.

109a. **Agent—Termination of employment—Under amended rules.**]—Pltf. was appointed an agent of defts., a friendly society, whose rules, though subject to alteration, provided at that time for the retention of agents in office so long as their conduct was satisfactory. After pltf. reached the age of sixty-five defts. altered their rules, by providing that agents should be compulsorily retired at the age of sixty-five, & defts. terminated pltf.'s employment :—*Held :* as the rules, on the face of them, were alterable, pltf. was not entitled to a declaration that defts. were not entitled to terminate his employment.—PAGE *v.* LIVERPOOL VICTORIA FRIENDLY SOCIETY (1927), 43 T. L. R. 712, C. A.

Part XIII.—Membership.

133. *Add. Annotation :*—**Apld.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

145a. **Illegal policy—Liability of company—" False representation " by proposer.**]—PEARL ASSURANCE CO., LTD. *v.* BROMLEY, No. 174a, *post.*

PART I.

s. *Charitable Associations Act, R. S. M.*, 1913.]—SASS *v.* ST. NICHOLAS MUTUAL BENEFIT ASSOCIATION OF WINNIPEG, [1937] S. C. R. 415.—**CAN.**

PART XI. SECT. 5.

s 1. —— *Rules affecting rights given by Ontario Insurance Act, 1927, s. 153.*]—The rules of a mutual benefit society cannot affect the right to surrender, assign or dispose of the contract between society & beneficiary given by the Ontario Insurance Act, R.S.O., 1927, s. 153.—*Re* MCKINNON, [1935] 1 D. L. R. 428 ; O. R. 33.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—A.

ss. *Conditions precedent—Delivery of*

155a. —— **What must be disclosed to directors.**]—On the construction of Geo. 3, c. lxxiii., by which the Customs' Annuity & Benevolent Fund was established, & of the rules made under the authority of that Act:—*Held:* (1) in appointing a "nominee" of a subscriber's interest in the fund the directors ought to be informed for what purpose the nominee is appointed & to whom money is to be paid. This may be done by the instrument appointing the nominee or by some other instrument signed by the subscriber, or by his will; (2) *Semble:* a "nominee" may be a person who is intended to take as a trustee for others.—URQUHART *v.* BUTTERFIELD (1887), 37 Ch. D. 357; 57 L. J. Ch. 521; 57 L. T. 780; 36 W. R. 376; 4 T. L. R. 161, C. A.

155b. —— **Who may be nominee—Trustee.**]—URQUHART *v.* BUTTERFIELD, No. 155a, *ante.*

174a. **Industrial Assurance Act, 1923 (c. 8), s. 3—"Grandparent"—Step-grandparent.**]—(1) By Industrial Assurance Act, 1923 (c. 8), s. 3, "Amongst the purposes for which . . . industrial assurance cos. may issue policies of assurance there shall be included insuring money to be paid for the funeral expenses of a parent, child, grandparent, grandchild, brother, or sister. . . .":—*Held:* "grandparent" does not include a step-grandparent.

(2) By sect. 5 of the same Act "Any . . . industrial assurance co. which issues policies of industrial assurance which are illegal . . . shall, without prejudice to any other penalty, be liable to pay to the owner of the policy a sum equal to the surrender value of the policy . . . or, if the policy was issued after the commencement of this Act, a sum equal to the amount of the premiums paid, unless it is proved that owing to any false representation on the part of the proposer, the . . . co. did not know that the policy was illegal . . .":—*Held:* the "false representation" here referred to includes any untrue statement, whether made innocently or fraudulently.—PEARL ASSURANCE CO., LTD. *v.* BROMLEY (1933), 49 T. L. R. 446; 77 Sol. Jo. 404.

175a. **Insurance of child for more than statutory amount.**]—Resps., an industrial assurance co., issued three policies of insurance in respect of the life of a child, for sums which aggregated more than the statutory maximum, though each was for a sum less than that maximum. Each policy contained a provision that no payment would be made which either alone or in conjunction with other such payments exceeded the statutory maximum. On a charge of having committed an offence within Industrial Assurance Act, 1923 (c. 8), s. 39 (2):—*Held:* (1) the words in sect. 4 (1) "relating to payments on the death of children" were merely descriptive of the group of sects in the 1896 Act headed "Payments on death of children," & did not limit those sects. in their application to industrial assurance cos. to payment only, but included the provisions as to insurance; (2) the above provision in each policy had no legal effect at all, & it could not be contended that in fact the co. did not insure for more than the statutory amount; (3) the proceedings were in time because, for this purpose, the insurance co. did not insure from the time only when the policies were taken out, but (LORD HEWART, C.J.) either insured on every occasion when a premium was paid, or (AVORY, J.) continued to insure during the time that the assured was not in default & the policies were in force.—HARKER *v.* BRITANNIC ASSURANCE CO., LTD., [1928] 1 K. B. 766; 97 L. J. K. B. 359; 138 L. T. 395; 91 J. P. 51; 44 T. L. R. 243; 72 Sol. Jo. 121; 26 L. G. R. 136; 28 Cox, C. C. 475, D. C.

Annotations:—As to (2) **Distd.** Hirst *v.* Liverpool Victoria Friendly Society, Clark *v.* London & Manchester Assce Co., [1930] 2 K. B. 209; *Re* Smith & Britannic Assurance Co., Ltd.'s Arbn., [1933] 1 K. B. 109.

175b. —— **Proviso in policy limiting sum assured.**—In 1920 H. took out a policy of industrial insurance on the life of his daughter, then aged three months, at a premium of twopence per week, & in 1925 he effected a similar policy on the life of his son, then aged one month, in each case assuring the amount respectively set out in a Table contained in the policy. The Table in the policy of 1920 was made out on the basis of a premium of one penny per week & insured sums payable

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policy & payment of premium.]—In an action wherein plts. sought to recover benefits from a fraternal society as the beneficiaries of a deceased who was alleged to have become a member thereof:—*Held:* applying sects. 81 (3) & 86 (1) of Insurance Act, 1925, deceased's application for membership & the acceptance thereof did not effect a contract binding on the society because no policy, or certificate of membership, was delivered & payment of the first premium or at least all of it had not been made, which, under said sects., were conditions precedent to a binding contract.—PEDERSON *v.* EMPIRE HOME BENEFIT ASSOCN., [1931] 2 W. W. R. 858.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.

142 1. *Necessity for insurable interest.*]—A woman, C., on the suggestion of the agent of a friendly society, agreed to take out a policy of industrial assurance on the life of her stepmother, T., & she left it to the agent to take the necessary steps to effect the insurance. She signed no proposal for a policy in favour of T., nor was such a proposal signed by T., who was unaware of the transaction, & there was no evidence to show by whom the proposal, which bore to be signed by T., was in fact signed; but a policy in favour of T. was issued by the society & handed to C., who retained it, & paid premiums on it. C. had no insurable interest in the life of T., & she had no intention of benefiting T., C. having claimed repayment from the society of the premiums paid by her:—*Held:* C. was entitled to repayment, as, owing to the absence of *consensus ad idem*, no concluded contract was disclosed either between C. & the society, or between T. & the society.

Opinions, that, on the assumption that a policy on the life of T. for the benefit of C. had been entered into, it was an illegal policy within Life Assurance Act, 1774 (c. 48), & C. was, on that ground also, entitled to repayment of the premiums under Life Assurance Act, 1774 (c. 48), s. 5.—CAME *v.* CITY OF GLASGOW FRIENDLY SOCIETY, [1933] S. C. 69.—**SCOT.**

1 1. ——.]—Deft. club, which was incorporated under Charitable Assocns. Act, R.S.M., 1913, held to be a corpn. carrying on the business of insurance & a "friendly society" within Manitoba Insurance Act, 1932. Sect. 118 (5) of Manitoba Insurance Act, as to the effect of the understating of the age of the insured in the application or contract, held to apply to the contract of insurance in question herein.—BROADBENT *v.* 1600 CLUB OF SOUTHERN MANITOBA, [1935] 1 W. W. R. 353; 2 D. L. R. 802; *on appeal*, [1935] 2 W. W. R. 539, 4 D. L. R. 224, 43 Man. L. R. 221.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 2.—C.

ss. *Benevolent association incorporated under Charitable Associations Act, R. S. M., 1913 (c. 27)—Validity of by-law as to nomination.*]—THEOBALD *v.* WINNIPEG MUSICIANS ASSOCN., [1927] 1 D. L. R. 57; 36 Man. L. R. 163; [1926] 3 W. W. R. 337.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 3.—B.

1 i. —— *Sum payable by rules to "widow or heirs or representatives"—"Or" not read as "and."*]—APPLEBY *v.* SEARLE (1930), 2 M. P. R. 319.—**CAN.**

on the death of the life assured varying in amount according to age & the time the policy had been in force; it also contained the following statement: "Twopence per week will assure double the above sums provided that in any case where the amount secured by the larger premium would exceed the limits of assurance prescribed by Friendly Societies Act, 1896 (c. 25), viz., £6 for children under five years of age, & £10 for children under ten years of age, the sum assured shall be limited to £6 or £10 as the case may require." In the policy of 1925 was a statement that the amount payable under it was subject to the limitations of Friendly Societies Act, 1924 (c. 11):—*Held:* in view of the statements in the two policies limiting the amount insured in each case to the statutory maximum, neither policy contravened the provisions of the Friendly Societies Acts, 1896 & 1924, & was valid.

In 1925 C. signed a proposal for a whole life assurance on the life of her son, then aged one year next birthday, at a weekly premium of one penny for a sum to be assured increasing as per scale up to £15. On the same day she signed a proposal for an endowment assurance on the same life at a weekly premium of threepence for a "sum to be assured £7 14*s.* payable on attainment of age fifteen or in the event of previous death as per scale." Two policies were issued on the basis of these proposals. On the whole-life policy there was this memorandum: "This life is also assured under [the endowment] policy. Accordingly, the full sum assured printed in the schedule will not come into operation until the attainment of the age of ten. The combined amount payable in the event of earlier death shall not exceed £6 on death under age three, £10 under age six, & £15 under age ten":—*Held:* as the above quoted memorandum cut down the sums payable under the combined policies to the statutory limit, the policies did not contravene the Friendly Societies Act, 1924 (c. 11), & were valid.—*Re* HIRST & LIVERPOOL VICTORIA FRIENDLY SOCIETY, *Re* CLARK & LONDON & MANCHESTER ASSURANCE CO., [1930] 2 K. B. 209; 99 L. J. K. B. 138; 142 L. T. 291; 94 J. P. 81; 73 Sol. Jo. 832; 28 L. G. R. 53, C. A.

Annotation:—**Apld.** Smith *v.* Britannic Assurance Co. (1932), 174 L. T. Jo. 44.

175c. —— ——.]—Applt. insured her child, who was born on May 2, 1927, a month after its birth, the premium to be 2*d.* a week. Friendly Societies Act, 1924 (c. 11), s. 2 (1), stated that Friendly Societies Act, 1896 (c. 25), s. 62, should have effect "as if for that section the following section were substituted," & provided that a society should not insure or pay on the death of a child under three years of age any sum of money which exceeded or which, when added to any amount payable on the death of that child by any other society or branch or by any trade union, exceeded £6. By Industrial Assurance Act, 1923 (c. 8), s. 21, it was required that any such policy of insurance should set out in distinctive type a statement of the effect of sect. 62. Applt. claimed from resp. co. the return of her premiums on the grounds that (*a*) under sect. 62 as amended by sect. 2 (1) of the Act of 1924 the sum insured exceeded the amount allowed, & (*b*) under sect. 21 of the Act of 1923 the policy did not set out a statement of the effect of sect. 62 as amended. Sect. 62 of the Act of 1896 was left unamended & unrepealed by the Act of 1924, but under the latter Act was to be read as provided by the Act of 1924. The policy was issued for a penny premium, & that was altered to twopence premium, & it was then stated that the amount payable on death was ascertainable from Sched. B., but that, the premium in this case being twopence, the amounts stated in Sched. B were increased in proportion. That would bring the amounts over what was allowed by sect. 62 as amended, but to the above statement was added "subject to the conditions of the Friendly Societies Act." In a second proviso on the face of the policy it was stated that the policy was issued "subject to the provisions of sect. 62 of Friendly Societies Act, 1896 (c. 25), as amended by the Industrial Assurance Act, 1923 (c. 8)—the provisions of which would, it was argued, make it illegal." Then followed the effect of sect. 62 without the express language introduced by the Act of 1924:—*Held:* the child had not been insured for sums in excess of the amounts permitted by sect. 62 of the Act of 1896 as amended by sect. 2 (1) of the Act of 1924, having regard to the effect of the statements in the policy, & particularly the proviso, & to the fact that sect. 62 of the Act of 1896 still existed, not having been repealed, though the amendment of it in the Act of 1923 had been repealed, & though sect. 62 had now to be read as if it had the effect set out in sect. 2 (1) of the Act of 1924. The co. had not committed an offence against sect. 21 of the Act of 1923, as it used the very language in its policy which had been used by the Legislature from 1896 to 1924, & did introduce the effect of sect. 62, & it was immaterial that the Act of 1924 was not specifically mentioned.—*Re* SMITH & BRITANNIC ASSURANCE CO.'S ARBITRATION, [1933] 1 K. B. 109; 102 L. J. K. B. 51; *sub nom.* SMITH *v.* BRITANNIC ASSURANCE CO., LTD., 147 L. T. 367, C. A.

175d. Who is "child" within Industrial Assurance Act, 1923 (c. 8), s. 3—Illegitimate child.]—Above sect. provides that: "Amongst the purposes for which industrial assurance cos. may issue policies of assurance, there shall be included insuring money to be paid for the funeral expenses of a parent, child, grandparent, grandchild, brother or sister, & the issuing of such policies shall be treated as part of the industrial assurance business of the society or co.":—*Held:* the word "child" in the above sect. includes an

PART XIII. SECT. 5.

sd. *For funds improperly divided—Unauthorised distribution.*] — *Held:* under the rules of the Ancient Order of Foresters & under Friendly Societies Act, 1896 (c. 25), s. 78 (1) (*c*), a dissolution of a ct. required the consent of the central body, & as this had not been obtained, the members of the ct. which had dissolved were personally liable for the money they had divided.—KELLY *v.* PEACOCK (1917), 55 Sc. L. R. 65.—**SCOT.**

PART XIII. SECT. 6, SUB-SECT. 2.—A.

sg. *Construction of rule—Membership to cease when deposit two months in arrear.*]—Rule 17 of a Chinese benevolent assocn. at Penang provided that

illegitimate child, & policies taken out by a mother for the purpose of insuring money to be paid for the funeral expenses on the death of her illegitimate children were valid. —MORRIS *v.* BRITANNIC ——— LTD., [1931] 2 K. B. 125; 100 L. J. K. 263; 145 L. T. 45; 47 T. L. R. 318; Sol. Jo. 206.

Part XVII.—Accounts and Inspection of Affairs.

223a. Power of commissioner or inspector to hold public inquiry—Industrial Assurance Act, 1923 (c. 8), s. 17.]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co., is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsection & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392; 101 L. J. Ch. 177; 147 L. T. 41; 48 T. L. R. 296; 76 Sol. Jo. 217, H. L.

Annotation:—**Consd.** O'Connor *v.* Waldron, [1935] A. C. 76.

Part XVIII.—Disputes.

224a. ———.]—TIMMS *v.* WILLIAMS (1842), 3 Q. B. 413; 2 Gal. & Dav. 621; 11 L. J. Q. B. 210; 6 J. P. 685; 6 Jur. 1012; 114 E. R. 565.

250. *Add. Annotation:*—**Refd.** Paul, Ltd. Wheat Commission (1935), 152 L. T. 352.

251. *Add. Annotation:*—**Refd.** Paul, Ltd. Wheat Commission (1935), 152 L. T. 352.

Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation:*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

329a. ——— **False return.**]—An information for making a false return under the Friendly Societies Act, 1896 (c. 25), s. 84 (*c*), is good if laid within six months from the date when the return is sent to the registrar.—WINDRIDGE *v.* ANCIENT ORDER OF FORESTERS' FRIENDLY SOCIETY, [1933] 1 K. B. 42; 102 L. J. K. B. 62; 148 L. T. 285; 96 J. P. 483; 49 T. L. R. 16; 30 L. G. R. 510, D. C.

363a. Parent society—Improper dealings with funds of branch.]—It was alleged that a local branch of a friendly society had improperly purchased certain freehold property, & the parent society sued for a declaration that the purchase was an improper one, in breach of the rules, & a breach of trust, & that defts. the monthly deposit to be made under rule 16 should be payable by each member in advance on the 15th day of the month, & that "if his monthly deposit shall be two months in arrear" he was to be notified, & failing payment within twenty-one days was *ipso facto* to cease to be a member & forfeit all privileges:—*Held:* upon the true construction of rule 17 a member could be notified of default only if payment of a monthly deposit was two months in arrear; it was not sufficient that at the date of the notification two monthly deposits were in arrear. Appeal dismissed.—CHEE WOR LOK *v.* YEOH SAW GEOK, [1935] A. C. 69; 104 L. J. P. C. 25; 152 L. T. 193, P. C.—**STRAITS SETTLEMENTS.**

PART XV. SECT. 1.

sd. *Subscriptions—Whether capital or income.*]—Subscriptions paid by the members of a benefit society or association to the society or association to enable it to carry on its business are its "income" & not "capital."—VIZAGAPATAM MUNICIPAL COUNCIL *v.* TEA DISTRICTS LABOUR ASSOCN. (1932), I. L. R. 55 Mad. 282.—**IND.**

PART XV. SECT. 3.

sf. *Unauthorised investments—Liability of auditors.*]—Failure of auditors to report irregularity in investment of funds amounts to misconduct, & the auditors are responsible for any resulting loss.—CANADIAN WOODMEN OF THE WORLD *v.* HOOPER, [1933] 1 D. L. R. 168.—**CAN.**

PART XVII.

sk. *Order for investigation by Attorney-General — Validity.*] — The Workers' Benevolent Society of Canada, incorporated in 1923 under Charitable Associations Act, R. S. M., 1923 (now superseded by Part VIII. of Cos. Act, 1932), appealed from the dismissal of its motion for an order prohibiting the making of an investigation of the books, accounts & securities of the society & into the general conduct of its business, pursuant to an order of the A.-G. made under sect. 414 of Cos. Act, 1932, & amendments thereto:—*Held:* the appeal should be allowed & the issue of the order of prohibition be directed.—*Re* WORKERS BENEVOLENT SOCIETY OF CANADA & HARRISON, [1933] 3 W. W. R. 498; [1934] 1 D. L. R. 257; 41 Man. L. R. 519.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 1.—A. (a).

sb. *Action for libel—Whether proof of special damage necessary.*]—*Held:* pltfs. were entitled to maintain an action to recover damages for defamation of the society as such; it was unnecessary, in the case of a trading corpn., society or partnership, to allege & prove special damages where defamatory words were spoken or written of the corpn., society or partnership, in relation to its trade or business; & damages limited to the injury done to the joint adventure might be awarded without proof of special damage.—IRISH PEOPLES ASSCE. CO. *v.* DUBLIN CITY ASSCE. CO., [1929] I. R. 25.—**IR.**

were to make good to the lodge the money spent upon the purchase :—*Held :* the parent society had a vested interest in the fund of the local lodge, although the amount of such interest could be ascertained only upon a proper valuation in accordance with the rules, & was entitled to maintain the action under Friendly Societies Act, 1896 (c. 25), s. 94.—TOMLEY *v.* SHREEVE, [1937] 3 All E. R. 75 ; 81 Sol. Jo. 498.

Part XXII.—Dissolution.

430. *Add. Annotations :—As to* (1) **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103; *as to* (2) **Reld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART XX. SECT. 3.

sc. *Right to secede.*]—In the absence of statutory provisions there is no power in a branch lodge of a friendly society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble :* even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose. —INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sd. *Effect of secession—On property & funds.*]—A mere right to secede does not confer a power in the seceding lodge to take away the funds constituted under the rules of the order A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires.*—INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sf. *Secession by Scottish branch of English society—Refusal to grant certificate of secession—Jurisdiction of Scottish courts.*]—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate :—*Held :* the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—SONS OF TEMPERANCE FRIENDLY SOCIETY, [1926] S. C. 418.—**SCOT.**

GAME.

Part IV.—Persons having Rights over Game.

44. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

53. *Add. Annotations :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

55. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

64. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

69. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

71. After this case add :—

——— ———.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

76. *Add. Annotations :*—**Refd.** Swayne *v.* Howells (1926), 43 T. L. R. 14 ; Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

87. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

90. *Add. Annotations :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

91. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92a. Sale of part of land for erection of racing stables—Breach of covenant for quiet enjoyment.]—A landowner who has granted a lease of sporting rights over land to a tenant together with a covenant for quiet enjoyment & afterwards during the currency of the tenancy sells part of that land to a third party so that it is or may be used for the erection of racing stables, is thereby derogating from his grant so as to become liable in damages to his tenant.—PEECH *v.* BEST, [1931] 1 K. B. 1 ; 99 L. J. K. B. 537 ; 143 L. T. 266 ; 46 T. L. R. 467 ; 74 Sol. Jo. 520, C. A.

Annotation :—**Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

98. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

100a. ——— ——— Grant of licence to gliding association.]—The user of land for gliding flights may be an actionable interference with sporting rights granted over the land.—WENNER *v.* MORRIS (1935), 79 Sol. Jo. 252.

Part VI.—Remedies for Infringement of Rights.

127. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

129. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

142. *Add. Annotation :*—**Refd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

145. *Citation :*—substitute " 57 J. P. 423."

247a. Summing up—Necessary contents.]—There must be a careful direction to the jury on the nature of common enterprise in the case of

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PART II. SECT. 1.

sx. " *Taking or killing* " *game under one year of age—What amounts to.*]—Sect. 4 of Game Act, R. S. S., 1930, provides that " no person shall hunt, trap, take, shoot at, wound or kill . . . the young under one year of age of any of the animals mentioned in the sect." :—*Held :* (1) the application of the word " take " therein is limited to the act of capturing an animal &, in order to constitute an offence, the capture would have to be of a living animal, notwithstanding that sect. 2 (5) provides that " game " means such animals dead or alive ; (2) although the killing of such an animal is done when the animal is found lying wounded by some other person, & in order to end its suffering, the killing nevertheless comes within the terms of the section & is, therefore, an offence.—R. *v.* ZIMMER & ZIMMER, [1931] 2 W. W. R. 562.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

sy. *Provincial game Act—Killing of game by white man on Indian reserve.*]—The fact that the Dominion Parliament has exclusive legislative authority over " Indians & lands reserved for Indians " does not prevent a provincial game protection Act which prohibits the killing of game out of season from being applied to the killing of game on an Indian reserve where the offender is a white man.—R. *v.* MCLEOD, [1930] 2 W. W. R. 37 ; 54 Can. C. C. 107.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sa. *Right to shoot game—Under Game Act Amendment Act,* 1925.]—Game Act Amendment Act, 1925, does not give a farmer an absolute right to shoot game birds found doing damage to his crop, provided he does not shoot across a public highway ; it means merely that so far as the penalties imposed by said Act are concerned they shall not be enforceable against a farmer shooting under the circumstances therein described. The right of a municipality to protect its citizens by prohibiting the discharge of firearms within its limits is not interfered with.—R. *ex rel.* RANKIN *v.* PENDRAY, [1929] 1 W. W. R. 30 ; 51 Can. Crim. Cas. 27 ; 40 B. C. R. 410.—**CAN.**

PART IV. SECT. 4.

f i. ———.]—R. *v.* SYLIBOY, [1929] 1 D. L. R. 307 ; 50 Can. Crim. Cas. 389.—**CAN.**

f ii. ———.]—Indians in Alberta entitled to the benefits of the articles of treaty made between the Queen & the Blackfeet, Stony, & other Indians on Sept. 12, 1877, may, regardless of the provisions of a provincial Game Act, when hunting for food kill all kinds of wild animals regardless of age or size wherever they may be found on unoccupied Crown lands or other lands to which such Indians have a right of access, at all seasons of the year, & may hunt such animals with dogs or otherwise as they see fit, & they need no licence beyond the language of Alberta Natural Resources Act, 1930, s. 12, to entitle them to do so.—R. *v.* WESLEY, [1932] 2 W. W. R. 337 ; 4 D. L. R. 774 ; 58 C. C. C. 269 ; 26 Alta. L. R. 433.—**CAN.**

f iii. ———.]—A treaty Indian is bound by the provisions of Game Act, R.S.S., 1930, & prohibited thereby from shooting, hunting, trapping or carrying fire-arms within certain areas of Crown lands which are declared to be game preserves & which are particularly described in Sched. B. of Game Act.—R. *v.* SMITH, [1935] 2 W. W. R. 433 ; 3 D. L. R. 703.—**CAN.**

f iv. ———.]—Indians have no right of access to a game reserve beyond that of other persons under the Game Act, R. S. S., 1930.—R. *v.* SMITH (1935), 64 Can. C. C. 131.—**CAN.**

poachers charged with violence.—R. v. [illegible] (1929), 21 Cr. App. Rep. 79, C. C. A.

265a. More than one offence in same count.]—Applt. was convicted on a count of an indictment which charged an offence against Night Poaching Act, 1828 (c. 69), s. 1, in the following terms: "A. D. on the 13th day of December in the year 1932 in the county of L. by night unlawfully took or destroyed game or rabbits in [certain land] or was in the said land by night with a gun, net or other instrument for the purpose of unlawfully taking or destroying game or rabbits": —*Held:* the count charged two offences in the alternative & was, therefore, bad in law, & the conviction must be quashed.—R. v. DISNEY, [1933] 2 K. B. 138; 102 L. J. K. B. 381; 149 L. T. 72; 97 J. P. 103; 49 T. L. R. 284; 77 Sol. Jo. 178; 24 Cr. App. Rep. 49; 31 L. G. R. 176; 29 Cox, C. C. 635, C. C. A.

Annotation:—**Consd.** R. v. Wilmot (1933), 149 L. T. 407.

299. *Add. Annotation:*—**Consd.** Farey v. Welch, [1929] 1 K. B. 388.

Part VII.—Gamekeepers.

354. *Add. Annotations:*—**Consd.** Cotterill v. Penn, [1936] 1 K. B. 53. **Refd.** Barnard v. Evans, [1925] 2 K. B. 794.

Part VIII.—Licences.

375a. —— Coursing—What amounts to.]—Resp. was charged with having killed a hare when he had no licence to kill game, as required by sect. 4 of Game Licences Act, 1860 (c. 90). Resp. owned three greyhounds, which he kept for coursing & sport. On the day of the alleged offence he was riding his horse in a field, with the permission of the owner, & had with him two of his greyhounds. There were no other persons or dogs present. The two greyhounds chased a hare, overtook & killed it. Thereupon resp. galloped across the field to where the greyhounds were, picked up the hare, put it in a bag, & placed the bag in the bottom of a hedge:—*Held:* these facts constituted the killing of a hare by coursing with greyhounds within the meaning of the third exception in Game Licences Act, 1860 (c. 90), s. 5, which excepted from the duties & provisions of that Act: "(3) the pursuing & killing of hares . . . by coursing with greyhounds, . . ."; therefore, the justices were right in acquitting resp. The exception is not restricted to any organized sport of coursing hares.—DOLBY v. HALMSHAW, [1937] 1 K. B. 196; [1936] 3 All E. R. 229; 106 L. J. K. B. 169; 155 L. T. 533; 100 J. P. 486; 53 T. L. R. 48; 80 Sol. Jo. 877; 34 L. G. R. 553; 30 Cox, C. C. 484.

387. *Add. Annotation:*—**Refd.** Clark v. Westaway, [1927] 2 K. B. 597.

PART VIII. SECT. 1, SUB-SECT. 4.

393 1. *Defences—Coursing hare.*]—Deft. was prosecuted for pursuing a hare with a greyhound without having a game certificate, contrary to Game Certificates (Ireland) Act, 1842, ss. 2, 5. Deft. had coursed a hare with a single greyhound on certain lands, but produced a written permission from the owner of the lands to do so. The resident magistrate held that failure to take out a licence under Game Licences Act, 1860, formed the basis of the charge, & deft. was exempted on sect. 5, exception 3, of that Act, in respect of coursing a hare with his greyhound, & dismissed the summons. On a case stated:—*Held:* the resident magistrate was wrong in deciding that deft. came within Game Licences Act, 1860, s. 5, exception 3.—R. (NEVIN) v. CLARKE, [1930] N. I. 174.—**IR.**

PART IX. SECT. 2.

sz. *Possessing the "green hide of a moose" during close season—Possession of small piece—No offence.*]—R. v. MASON, [1931] 2 D. L. R. 288; 55 Can. C. C. 25; 2 M. P. R. 457.—**CAN.**

GAMING AND WAGERING.

Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation :*—69 Sol. Jo. 824.

2. *Add. Annotations :*—**Apld.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321. **Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

5. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

7. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

13. *Add. Annotations :*—**Folld.** Barnett *v.* Sanker (1925), 41 T. L. R. 660. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 497; Ellesmere *v.* Wallace, [1929] 2 Ch. 1. **Refd.** Cooper *v.* Stubbs, [1925] 2 K. B. 753; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321; Townsend *v.* Grundy (1933), 18 Tax Cas. 140.

15. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

15a. **Limited to two parties.**]—ELLESMERE (EARL) *v.* WALLACE, No. 15c, *post.*

15b. **Agreement to refer betting disputes to arbitration.**]—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—JOE LEE, LTD. *v.* DALMENY (LORD), SAME *v.* TATTERSALL'S COMMITTEE, [1927] 1 Ch. 300; 96 L. J. Ch. 174; 136 L. T. 375; 43 T. L. R. 119; 71 Sol. Jo. 20.

15c. **Contract between Jockey Club & racehorse owner.**]—(1) At the invitation of the Jockey Club, which was issued subject to the Club's Rules of Racing, deft. nominated a horse for two races, namely, (*a*) the Peel Handicap, & (2) a long course Selling Plate of 200 sovereigns. The horse did not run in either race. In an action by E. on behalf of himself & the other members of the Club, the trustees of the Club & W. & Sons as stakeholders, to enforce payment by the deft. of the entrance fees or the part of them agreed to be forfeited :—*Held :* the contracts for the two races, which were between the Club & deft. & not between the various entrants *inter se*, were in neither case by way of gaming or wagering within Gaming Act, 1845 (c. 109), s. 18, & the Club were entitled to recover from deft. the amount of the fees agreed to be forfeited in the two races.

(2) There cannot be more than two parties or two sides to a bet (RUSSELL, L.J.).—ELLESMERE (EARL) *v.* WALLACE, [1929] 2 Ch. 1; 98 L. J. Ch. 177; 140 L. T. 628; 45 T. L. R. 238; 73 Sol. Jo. 143. C. A.

15d. **Transactions in foreign currencies.** — IRONMONGER & CO. *v.* DYNE (1928), 44 T. L. R. 497, C. A.

Annotations :—**Consd.** Weddle, Beck *v.* Hackett (1928), 45 T. L. R. 67. **Refd.** Woodward *v.* Wolfe, [1936] 3 All E. R. 529.

24. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

26. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

47. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

51. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

52. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

53. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

55. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407. **Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

PART I. SECT. 1.

1 i. *Distinguished from speculative transactions.*]—The mere fact that a transaction is speculative does not make it a wagering one.—KANWAR BHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

1 ii. ——.]—Every forward contract is to some extent speculative, but is not necessarily a wagering contract. The recognised test to be applied is whether at the time of entering into the contract there was a definite agreement or understanding between the parties that the performance of the contract by delivery of goods was not to be demanded, but that differences in price only should become payable.—RAMDIN HAZARI LAL *v.* MANSARAM MURLIDHAR (1929), I. L. R. 51 All. 1027.—**IND.**

10 i. *Severable contract.*]—Pltf. & deft. entered into an agreement whereby pltf. was to train deft.'s horses for trotting, & deft. was to pay £2 per week for each horse, give pltf. one-fourth of stakes won, & further, when a horse was in a race & had a reasonable chance of winning, deft. was to put £5 on the totalisator & pay to pltf. any dividend received :—*Held :* (1) an agreement by an owner to pay to his trainer one-fourth of the stakes won was valid & enforceable; (2) the term of the contract whereby investment was to be made on the totalisator by deft. in pltf.'s interest was unlawful; (3) the whole contract was not rendered unlawful thereby, the promises being independent, & the lawful promises being capable of enforcement.—WILSON *v.* HOGARTH, [1927] N. Z. L. R. 332.—**N.Z.**

d i. ——.]—WILSON *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

sa. *Agreement for payment of differences—Arising out of wagering contract.*]—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—JIVANCHAND GAMBHIRMAL, ETC. *v.* LAXMINARAYAN GANESHRAM (1925), I. L. R. 49 Bom. 689.—**IND.**

sb. *Agreement by racehorse owner to pay trainer share of stakes won.*]—— *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

sc. *Contract to buy & sell on margin—Onus ondefendant to prove illegal.*]—Defts., Toronto merchants, engaged pltfs., Chicago brokers, to buy & sell grain in Chicago on margin, which the latter did, advancing them money for which they sued. Defts. having refused to settle for losses sustained :—*Held :* assuming the State law to be that if the contract was to deal in such a way that only the differences in prices should be settled according to the rise & fall of the market, & no grain be either delivered or accepted, the contract would be a gambling contract & illegal, it lay upon defts. to establish clearly that such was the character of the dealing.—RICE *v.* GUNN (1881), 4 O. R. 579.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—C.

55 i. —— *Forbearance to post as defaulter.*]—A wagering contract under Indian Contract Act is void to the extent that no ct. will enforce such a contract, but it is not illegal. A collateral agreement, therefore, based upon a transaction which was originally a wagering transaction, is not on that account illegal.

A cheque arising out of a betting transaction, but given in consideration of a person's promise to refrain from posting the drawer of the cheque before the Turf Club, & having him declared a defaulter, is valid, & for good consideration. — BANVARD *v.* MOOLLA (1928), I. L. R. 7 Ran. 263.—**IND.**

o i. —— *Forbearance to post as defaulter—Authority of agent.*]—**In Apr. 1931, deft. became heavily indebted to**

58. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; **Eldridge & Morris** *v.* Taylor, [1931] 1 K. B. 416. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; Evans *v.* Bartlam, [1937] A. C. 473 ; Latter *v.* Colwill, [1937] 1 All E. R. 442.

-.]—An agreement by debtor to pay a debt resulting from a betting transaction : *Held :* to be enforceable, although obtained under the threat that, notwithstanding ct. proceedings were pending, he would be reported to Tattersall's.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

63. *Add. Annotation :*—**Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

64. *Add. Annotation :*—**Distd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

64a. —— ——.]—Pltf. backed a horse with deft. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that deft. had agreed to abide by the decision of the Committee :—*Held :* as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by deft. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—HYDE *v.* TYLER (1926), 42 T. L. R. 652 ; 70 Sol. Jo. 856, C. A.

70. *Add. Annotation :*—**Apld.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

70a. —— **Agreement to compromise action.**]—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—BURRELL & SON *v.* LEVEN (1926), 42 T. L. R. 407.

76. *Add. Annotation :*—*As to* (1) **Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

83. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

94. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

98. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

107. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

108. *Add. Annotation :*—*As to* (1) **Apld.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

148. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

152. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

164. *Add. Annotation :*—*As to* (1) **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

171. *Add. Annotation :*—**Refd.** Ramdutt Ramkissen Dass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58.

173. *Add. Annotation :*—**Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

181. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

182. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

185. For " Gaming Act, 1838 " read " Gaming Act, 1738."

Add. Annotation :—*As to* (1) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

188a. —— **Loan to bookmaker for general purposes of business.**]—A loan to a firm of bookmakers for the general purposes of the business & charged by deed on the assets of the partnership in the absence of proof that the money was required for the purpose of making bets, is not illegal as being " for the reimbursing or repaying any money knowingly lent or advanced for betting " within Gaming Acts, 1710 & 1835.—HUMPHERY *v.* WILSON (1929), 141 L. T. 469 ; 45 T. L. R. 535, C. A.

188b. ——.]—Money lent in England on a security with a view to its being used by the borrower in playing here a game of cards for money cannot be recovered in an English Ct.—CARLTON HALL CLUB *v.* LAURENCE, [1929] 2 K. B. 153 ; 98 L. J. K. B. 305 ; 140 L. T. 534 ; 45 T. L. R. 195 ; 73 Sol. Jo. 127, D. C.

189. *Add. Annotations :*—**Refd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

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a number of bookmakers. On settling day, being unable to pay, he consulted a solr., whose managing clerk, W., happened to be a member of the Committee of Tattersall's Club. After a general discussion of the position W. was sent to Tattersall's Club to inform some, or all, of the bookmakers concerned, including pltf., that deft. could not pay at that time, but would pay them when he could. It was alleged that W., as deft.'s agent, entered into an agreement with pltf. to the effect that if pltf. did not " post " deft. as a defaulter at Tattersall's Club, he would pay what he owed in full within a reasonable time, & that thereby a legal obligation to pay the debt was created :—*Held :* W. had no authority from deft. to enter into any such contract on his behalf.—O'MALLEY *v.* GORMAN, [1935] W. A. L. R. 39.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.—D.

se. *Gaming Act*, 1835, *s.* 2—*Cheque in name of company—Personal transaction of president.*]—In the present action, one by a co. to recover the amount of various cheques given deft., a bookmaker, in payment of bets on horse races which bets were lost :—*Held :* on the evidence, although the cheques were drawn in the co.'s name, the bets had been the personal transactions of its president, &, therefore, it had no status to maintain the action.—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249 ; [1935] 1 D. L. R. 616 ; 62 C. C. C. 247.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

h i. ——.]—Where deft. sold for pltf. horses won by pltf. at a raffle, & received the purchase money :—*Held :* he could not refuse to pay it over, on the ground that pltf. had obtained the horses by gambling.—JAMIESON *v.* SHERWOOD (1856), 14 U. C. R. 282.—**CAN.**

PART I. SECT. 5.

165 i. *Action between partners—Defences.*]—GIBBS *v.* CANN, [1932] 1 D. L. R. 282 ; 56 Can. C. C. 346.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

181 iii. ——.]—Where during a game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—GOGGINS *v.* MORRISON, [1925] 2 D. L. R. 1203 ; [1925] 2 W. W. R. 75.—**CAN.**

m i. —— *Gambling on grain exchange.*]—Money advanced or lent to enable the borrower to carry out an illegal purpose as, *e.g.*, gambling transaction on a grain exchange, cannot be recovered where, at least, the purpose has been carried out wholly or to a substantial extent.—THOMAS *v.* PARLEY (Sask.), [1929] 3 D. L. R. 755 ; 2 W. W. R. 317.—**CAN.**

191. *Add. Annotation :*—**Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469.

192. *Add. Annotations :*—*As to* (2) **Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469. **Consd.** Woolf *v.* Freeman, [1937] 1 All E. R. 178.

.]—Gibson *v.* Roberts (1936), 80 Sol. Jo. 596.

192b. ——.]—Pltf. was the proprietor of a club where card games were played for money, chips or counters being used for money in the actual play. Deft. purchased from the club chips to the value of £30 for which he gave the cheque of a third party, which was subsequently dishonoured. There was a practice in the club whereby, in the event of the loser having insufficient chips to pay his losses, both winner & loser proceeded to the office of the club & the office paid the sum agreed as won direct to the winner. The office had so paid £18 19*s.* on behalf of deft. In an action for £30, the price of the counters, or, alternatively, for the same sum as money lent, & for the sum of £18 19*s.*, money lent :—*Held :* (1) the giving of the counters on credit was a transaction in the nature of a promise void & unenforceable under Gaming Act, 1892 (c. 9), s. 1, as it was a promise to pay money paid under contracts void under Gaming Act, 1845 (c. 109), s. 18 ; (2) the sum of £18 19*s.*, being paid direct to the person who had already won the money upon wagers, was money lent to deft. for the purpose of gaming or wagering & therefore irrecoverable under the Gaming Acts ; (3) bridge is not an unlawful game, but *qu. :* whether poker is an unlawful game.—Woolf *v.* Freeman, [1937] 1 All E. R. 178 ; 156 L. T. 219 ; 80 Sol. Jo. 995.

192c. ——.]—*Re* Brice's Estate, Brice *v.* Frere (1937), 81 Sol. Jo. 238.

203. *Add. Annotations :*—*As to* (1) **Consd.** Ellesmere, Earl *v.* Wallace, [1929] 2 Ch. 1. *As to* (2) **Apld.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153. **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

205a. —— ——.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque :—*Held :* a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed. Richardson *v.* Moncrieffe (1926), 43 T. L.

213. *Add. Annotation :*—**Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

224. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Wilson, *Ex p.* Salaman *v.* Keith, Prowse (1925), 133 L. T. 814.

226. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

227. *Add. Annotation :*—**Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

229. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L.R. 91.

239. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

240. *Add. Annotations :*—**Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789 ; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

243. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

245. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

245a. —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—Société Anonyme des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789 ; 136 L. T. 799 ; 43 T. L. R. 278.

Annotation :—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

PART I. SECT. 7, SUB-SECT. 1.—A.

sp. *Cheque cashed during game.*]—During a game of poker one player cashed a cheque for another :—*Held :* the giving of the cheque was founded upon, arose out of, & was connected with, the game of poker, which was a gambling transaction, & it was therefore void.—Le Blanc *v.* Thomas 1932), 5 M. P. R. 401.—**CAN.**

PART I. SECT. 7, SUB-SECT. 2.

o i. —— —— *Containing words "value received."*]—Deft. gave D., a fellow player in a game of dice to whom he had lost $400, a promissory note for $1,200 to cover said $400 & $800 in cash which D. then lent to deft. On maturity of the note, deft. paid $700 & gave D. a new note for $500, which note D. endorsed before maturity & for value to pltf. who had no notice of the consideration for which that note or the original note had been given. The $500 note bore the words "value received." In an action in the county ct. on the $500 note the defence was set up that it had been given in whole or in part for a gambling debt ; &, therefore, because of sect. 56 (*a*) & (*c*) of County Cts. Act, R. S. M., 1913, the county ct. had no jurisdiction. Judgment for pltf.—Hammer *v.* Finkelstein, [1931] 1 W. W. R. 769 ; 2 D. L. R. 738 ; 39 Man. L. R. 447.—**CAN.**

PART I. SECT. 7, SUB-SECT. 3.

s i. —— *Contract to buy & sell on margin.*]—Pearson *v.* Carpenter & Son (1904), 35 S. C. R. 380.—**CAN.**

s ii. —— *Contract not speculative transaction on part of plaintiff.*]—Woodward & Co., Ltd. *v.* Koeford (1921), 62 D. L. R. 431 ; 37 Can. Crim. Cas. 329 ; 31 Man. L. R. 286 ; [1921] 3 W. W. R. 232.—**CAN.**

Part II.—Games, Gaming and Gaming Houses.

247. *Add. Annotation :* — **Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

251. *Add. Annotations :*—**Apld.** Ankers *v.* Bartlett, [1936] 1 K. B. 147. **Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

252. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

253. *Add. Annotations :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1 ; Joel *v.* Barclay, [1937] 1 All E. R. 309.

254. *Add. Annotations :—As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12 ; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570. **Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

255. *Add. Annotation :*—**Refd.** Davis *v.* Parker, [1931] 2 K. B. 210.

255a. —— —— ——.]—The questions whether a house is used for unlawful gaming within sect. 4 of the above Act, & whether a game is unlawful within Betting Act, 1853 (c. 119), s. 3, are for the judge, & not the jury.—R. *v.* KIRBY, PARKER & PATRICK (1927), 20 Cr. App. Rep. 12, C. C. A.

260. *Add. Annotations :—As to* (4) **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. *As to* (6) **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. *Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38 ; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570 ; Daniels *v.* Pinks, [1931] 1 K. B. 374.

261. *Add. Annotation :*—**Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

267a. ——.]—Progressive whist, where the partners are shuffled as well as the cards, is not a game of skill, &, if played for money prizes, is an unlawful game.—R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570 ; 73 Sol. Jo. 451 ; 21 Cr. App. Rep. 119, C. C. A.

275. *Add. Annotation :*—**Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510.

276. *Add. Annotation :*—**Consd.** Davis *v.* Parker, [1931] 2 K. B. 210.

PART II. SECT. 1, SUB-SECT. 1.

252 i. —— *Prizes provided out of admission money.*]—A person hired a hall for one night, & another hall for two nights, & advertised that whist drives, open to the public on payment of one shilling for admission, would be held in the halls on those nights. A large number of people attended, & prizes were awarded to the successful players. The purchase of the prizes was defrayed out of the admission money, any balance over being retained by the promoter :—*Held :* (1) the playing of progressive whist was gaming, in view of the facts that the element of chance predominated in the game, & that the prizes were derived from the admission money, & it was immaterial whether the proceedings were or were not detrimental to the morals of the community ; (2) accused had managed, conducted, or carried on gaming in the premises, although his operations had been restricted to three isolated occasions.—BUNTON *v.* MILLER, [1926] S. C. (J.) 120.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 2.—C. (a).

o i. ——.]—M. was the manager of a Sports Club. On a prosecution under sect. 3 of Gaming & Betting Act, 1912, charging M. with being the keeper of a common gaming house the police gave evidence that they saw people playing poker with both money & counters, & heard expressions used which indicated that gambling was in progress. It was proved that the club was open every day of the week to a very late hour, & that it was competent for any member of the public to join the club upon paying 2*s.* entrance fee & having his name approved. M. was convicted :—*Held :* poker is not an unlawful game ; however, there was evidence upon which the magistrate could find that the club tended to cause a public mischief & was, accordingly, a common gaming house & the rule *nisi*, therefore, should be discharged with costs.—*Re* LISLE, *Ex p.* MCCROHON (1936), 53 N. S. W. W. N. 132.—**AUS.**

sv. *Whiffle board.*]—The owner of a restaurant having therein a machine called whiffle board, which is a game of chance, is guilty of keeping a common gaming house.—R. *v.* DUMONT, [1936] 3 D. L. R. 257 ; 65 Can. C. C. 365.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—D.

270 ii. —— *Game played by problem checker boards.*]—D'ORIO *v.* LEIGH & CUTHBERTSON, LTD., [1929] 2 W. W. R. 171 ; 41 B. C. R. 153 ; *affg.*, [1929] 1 W. W. R. 122.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—E.

b i. ——.]—R. *v.* ARNOLD, [1927] 4 D. L. R. 206 ; 48 Can. Crim. Cas. 101 ; 60 O. L. R. 582.—**CAN.**

b ii. ——.]—An automatic vending machine which answers the description in sect. 986 (4) of the Criminal Code, as amended by 1930 (c. 11), s. 27, is a " means of contrivance for playing a game of chance," within subsect. (2) of sect. 986, regardless of whether there is any real or material value in what the operator, *i.e.* the player, of the machine receives at times, as the result of operating it.—R. *v.* FREEDMAN, [1931] 1 W. W. R. 775 ; 55 Can. C. C. 288 ; 39 Man. L. R. 407.—**CAN.**

b iii. ——.] —R. *v.* WILKES, R. *v.* HISCOCK, R. *v.* ROBERTSON [1931], 1 D. L. R. 995 ; 66 O. L. R. 319 ; 56 Can. C. C. 1.—**CAN.**

b iv. ——.]—Accused had on his premises an automatic vending machine in which customers placed a five cent coin, pulled a lever, & received from the machine a package of candy, with or without " slugs," varying in number, which had no commercial or exchangeable value but might be used to operate the machine to show printed legends for amusement only, no candy being emitted. The candy package emitted for the coin deposited was such as that sold over the counter for five cents, & on the sale of the candy emitted the accused made a profit :—*Held :* accused was not guilty, under the Criminal Code, of keeping a common gaming house.—ROBERTS *v.* R., [1931] S. C. R. 417 ; 3 D. L. R. 225 ; 56 Can. C. C. 144.—**CAN.**

b v. ——.]—R. *v.* ATHONAS (1931), 56 Can. C. C. 146.—**CAN.**

b vi. ——.]—In view of the manner in which the automatic vending machine in question herein was operated by accused, its lessee, in exchanging for merchandise the slugs which the players received in varying numbers from the machine :—*Held :* it was a " means or contrivance for playing a game of chance," within sect. 986 (2), (4) of the Criminal Code.—R. *v.* RICHARDS, [1932] 1 W. W. R. 148 ; 2 D. L. R. 361 ; 44 B. C. R. 430 ; 57 C. C. C. 208.—**CAN.**

b vii. ——.]—R. *v.* RICHARDS (No. 2), [1932] 1 W. W. R. 177.—**CAN.**

b viii. ——.]—R. *v.* HEIT (1931), 57 C. C. C. 107.—**CAN.**

b ix. ——.]—R. *v.* GLENFIELD, R. *v.* STEIN, R. *v.* AMBREY, R. *v.* HUGHES, R. *v.* WONG CHEW, [1934] 3 W. W. R. 465 ; [1935] 1 D. L. R. 37 ; 62 C. C. C. 334.—**CAN.**

f i. —— ——.]—*Held :* a machine known as the " Caille Victory Vendor " was one to which the prohibition in Gaming Machines (Scotland) Act, 1917 (c. 23), s. 1 (1), applied.—ULIVI *v.* MILLER, [1927] S. C. (J.) 87.—**SCOT.**

276 i. *Whether dominant element of skill.*]—Deft. kept for use by the public on his premises a number of machines, known by the name of " Diddler." Any one wishing to use one of these machines purchased from deft. discs at the price of seven for 6*d.* He inserted one disc in a slot & pulled a handle, which caused three rollers to revolve. On each roller was printed a number of devices, such as cherries, roses, etc. If certain combinations of these devices stopped opposite a pointer on the face of the machine, the player won a certain number of discs. With these he could purchase on the premises certain goods. The winning combinations & the odds for each were printed on the front of the machine in view of the player. If none of these combinations stopped opposite the pointer, the player lost his disc. The machine was fitted with a control, by which the player could stop the rollers, one at a time, & so endeavour to obtain a winning combination. There were 15 machines on the premises. Deft. was prosecuted under Gaming Houses Act, 1854, s. 4, that he, being the occupier of the premises, did use them for the purpose of unlawful gaming. The justice was satisfied on the evidence that the majority of the persons who used the machine would be players of less than average skill, &, therefore, held that the game was one in which the chances were not favourable alike to all players, including the owner of the machine, & accordingly convicted the deft. :—*Held :* the conviction was right.—

278. *Add. Annotations:—As to* (1) **Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510. *As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12.

278a. ——.]—R. *v.* PERRY, R. *v.* DRANSFIELD, (1936), 80 Sol. Jo. 896, C. C. A.

278b. Certainty of winning something.]—(1) A machine may be used for the purposes of "gaming" & "betting" even though, if the directions affixed to it are obeyed, it is certain that the user will win something.

(2) In a conflict of evidence it is for the jury to decide for what purposes persons "resort" to the premises in question.—R. *v.* BRENNAND (1930), 47 T. L. R. 22; 74 Sol. Jo. 788; 22 Cr. App. Rep. 95, C. C. A.

278c. Order for destruction of machines—Proceedings under Gaming Houses Act, 1854 (c. 38).]—Applt. was convicted before petty sessions of unlawfully gaming with automatic machines, & a number of machines in his possession were ordered by the justices to be destroyed:—*Held:* the proceedings being taken under Gaming Houses Act, 1854 (c. 38), the justices had no jurisdiction to order the destruction of the machines, such jurisdiction being conferred only by Gaming Act, 1845 (c. 109), s. 8, & in cases brought before them by a warrant issued under that Act.—EYRE *v.* BRUMFIELD, [1936] 2 All E. R. 1; 154 L. T. 696; 100 J. P. 209; 52 T. L. R. 454; 80 Sol. Jo. 368; 34 L. G. R. 249; 30

284a. House used for game where chances not alike favourable to all players.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming:—*Held:* in order that a house should be a common gaming house within s. 2 of the Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favour- club members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120; 29 Cox, C. C. 221, D. C.

284b. Game must be unlawful.]—Applts., proprietors of a place known as "Fun Fair," invited the public to resort thereto, & the

GORDON *v.* DUNLEVY, [1928] I. R. 595. —**IR.**

276 ii. ——.]—R. *v.* LIPTROT, [1928] 3 W. W. R. 60; 50 Can. Crim. Cas.

276 iii. ——.]—The operation of the slot machine in question herein, when, at least, it is exposed for use with the object of gain to the proprietor, & operated by his customers, held to be a "mixed game of chance & skill" within Criminal Code, s. 226 (*a*).—R. *v.* CANADA MINT CO., [1928] 4 D. L. R. 539; [1928] 3 W. W. R. 195; 50 Can. Crim. Cas. 384.—**CAN.**

276 iv. ——.]—R. *v.* WOLFE, [1928] 4 D. L. R. 941; [1928] 2 W. W. R. 689; 50 Can. Crim. Cas. 189.—**CAN.**

sa. *Confiscation—Necessity for search warrant.*]—R. *v.* ROCCO, [1931] 2 W. W. R. 55; 55 Can. C. C. 323; 39 Man. L. R. 453.—**CAN.**

sd. *Licensed machines operated for gambling.*]—The fact that slot machines are licensed in Quebec does not make them legal if operated for gaming.—R. *v.* BERNIER (1916), 27 Can. C. C. 225.—**CAN.**

sf. *Liability of person supplying.*]—A person furnishing a restaurant with a slot machine to be operated for his benefit is liable for "assisting" in keeping a disorderly house.—R. *v.* BELAND, [1936] 1 D. L. R. 44; 64 Can. C. C. 354.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sd. *General rule.*]—Where a game as played on premises encourages an indulgence in all classes of the community of the propensity to gamble, & is injurious to public morals & a common law nuisance, the premises are a common gaming house.—DAWSON *v.* SINCLAIR, [1926] N. Z. L. R. 721.—**N.Z.**

284 i. *Proprietary club—Need not be open to public.*]—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re* CHINNIAH (1923), I. L. R. 47 Mad. 426.—**IND.**

284 ii. —— *In which poker played.*]—An incorporated co., the proprietor of a "club" in which membership was secured by payment of a periodical fee, & where stud poker was played, the players being required to buy cards from the "club" & gum, fruit, candy or soft drinks being supplied on each sale of cards:—*Held:* to have been properly convicted for keeping a common gaming house.—R. *v.* TRAINMEN'S CLUB (1926), 45 Can. Crim. Cas. 231; 20 Sask. L. R. 461; [1926] 1 W. W. R. 830.—**CAN.**

c i. *Place or office kept for making contracts for sale of stocks & goods on differences.*]—R. *v.* HARKNESS (1905), 6 O. W. R. 219; 10 O. L. R. 555.—**CAN.**

—— ——.]—On a prosecution for keeping a common gaming house:—*Held:* premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were "provided with any means or contrivance for unlawful betting or gaming" within Criminal Code, s. 986.—R. *v.* COY, [1925] 3 W. W. R. 538; 44 Can. Crim. Cas. 119.—**CAN.**

——.]—The keeping of a "multiseller" for gain:—*Held:* to render the place in which it was kept & where it was "played" by persons

public did so resort, for the purpose of playing for money at a game with an automatic machine called the "Circle of Skill," which the justices found was a game of skill:—*Held:* applts. could not be convicted of permitting the above place to be opened for the purpose of unlawful gaming.—DAVIS *v.* PARKER, [1931] 2 K. B. 210; 100 L. J. K. B. 590; 95 J. P. 146; 47 T. L. R. 418; 29 L. G. R. 387; *sub nom.* PARKER *v.* DAVIS, 145 L. T. 188; 75 Sol. Jo. 312; 29 Cox, C. C. 297, D. C.

Add. Annotation:—**Refd.** Ankers *v.* Bartlett, [1936] 1 K. B. 147.

286. *Add. Annotation:*—**Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

288a. —— —— Members of committee of members' club.]—DANIELS *v.* PINKS, No. 284a, *ante*.

295. *Add. Annotation:*—**Apld.** Ankers *v.* Bartlett, [1936] 1 K. B. 147.

295a. Gaming in refreshment house—What amounts to—Metropolitan Police Act, 1839 (c. 47), s. 44.]—In Metropolitan Police Act, 1839 (c. 47), s. 44, the word "gaming" includes the playing of any game played for money or money's worth, whether the game be lawful or unlawful & whether it involves or does not involve skill.—ANKERS *v.* BARTLETT, [1936] 1 K. B. 147; 105 L. J. K. B. 161; 154 L. T. 260; 100 J. P. 65; 79 Sol. Jo. 988; 34 L. G. R. 31; 30 Cox, C. C. 338, D. C.

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resorting thereto, a common gaming house.—R. *v.* ELASZ (1926), 45 Can. Crim. Cas. 257; 20 Sask. L. R. 605; [1926] 2 W. W. R. 368.—**CAN.**

e iii. —— ——.]—R. *v.* DONALD, [1931] 44 B. C. R. 514.—**CAN.**

sf. *Under Gaming Act*, 1908, s. 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

sk. *What evidence admissible.*]—The question being whether a place was a common gaming house, the things which persons brought to the place & the words they uttered there in relation to those things were all parts of the *res gestæ* & admissible as such.—LENTHALL *v.* MITCHELL, [1933] S. A. S. R. 231.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.

h i. —— —— *Acting as "banker" but not residing in common gaming house.*]—*Held:* not to justify a conviction as keeper of the house.—R. *v.* MARK (1924), 43 Can. Crim. Cas. 368.—**CAN.**

h ii. —— —— *Under Gaming Act*, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

h iii. —— —— *Trading in sale & purchase of cotton—On payment of differences.*]—EMPEROR *v.* THAVARMAL RUPCHAND (1928), 1. L. R. 53 Bom. 367.—**IND.**

h iv. —— —— *Acting as dealer.*]—A person who acts as "dealer" in a game of chance but is not a player & not interested in any way in the profits made from the carrying on of the game is not "assisting in the care, government, or management" of the place in which the game is played, within sect. 229 (2) of Criminal Code, &, therefore, cannot be deemed a "keeper" thereof.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; [1930] 1 D. L. R. 625; 38 Man. L. R. 365; 52 Can. Crim. Cas. 305.—**CAN.**

h v. —— —— *Assisting caterer other than club controlling premises.*]—A person who has nothing whatever to do with the care, management, or government of a common gaming house can be liable as the keeper thereof only if his acts were in aid of the keeper. In the present case what the accused did was held to have been, not in aid of the club which controlled & managed the premises, but in aid of a caterer other than the club, although both the co. & the club were managed by one & the same person.—R. *v.* NELSON, [1929] 2 D. L. R. 317; 1 W. W. R. 665; 51 Can. Crim. Cas. 213; 24 Alta. L. R. 59.—**CAN.**

h vi. —— —— *Persons in minor positions.*]—Parliament did not intend that clerks & others in minor positions not charged or appearing to be charged with the care, government or management of a disorderly house should be deemed to be keepers.—R. *v.* SELOCK, [1931] 2 W. W. R. 745; 56 Can. C. C. 243; 25 Alta. L. R. 504.—**CAN.**

n i. —— ——.]—The mere fact that the room in which a game of chance is played is in the same premises as & communicating with a shop under the same management as the room does not justify the finding that there was in the game an element of "gain" within the meaning of sect. 226 (*a*) of Criminal Code, if there is no evidence that any purchase was made from the shop by any of the players at any time.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; 52 Can. Crim. Cas. 305.—**CAN.**

n ii. —— ——.]—The fact that the accused, who was charged with keeping a common gaming house, sold beer, on the occasion in question, to the players on his premises held not sufficient in itself to justify the inference that "gain," within the meaning of sect. 226 of the Code, resulted to him, where there was no evidence that he was carrying on the business of selling beer.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

n iii. —— ——.]—R. *v.* RADINSKY (B. C.), [1929] 3 W. W. R. 212; 52 Can. Crim. Cas. 131.—**CAN.**

n iv. —— ——.]—R. *v.* FORDER (1930), 54 Can. C. C. 388.—**CAN.**

r i. —— —— ——.]—R. *v.* CHARLIE SAM, [1929] 1 D. L. R. 166; 50 Can. Crim. Cas. 364; [1928] 3 W. W. R. 424.—**CAN.**

r ii. —— —— ——.]—Before the presumption arising under sect. 985 of Criminal Code from the finding of cards, dice, etc., can be held to have been established all the conditions of its existence which are provided for in the section must be strictly proved; therefore where the search warrant under which the place in which they were found is alleged to have been entered is not properly proved the presumption does not exist.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

r iii. —— —— ——.]—On an appeal from a conviction for unlawfully keeping a common betting house:—*Held:* certain perforated pasteboard cards marked in duplicate, & similar to those used for checking hats at a hotel, constituted, under all the circumstances & in the absence of any explanation of their presence, a "means or contrivance for betting" within sect. 986 (2) of the Criminal Code, &, therefore, the finding of them on the accused premises raised a *primâ facie* case against him under said sub-sect. In order to raise a *primâ facie* case under sect. 986 (2) it is not necessary that the search on which the means or contrivances for betting were found should have been made under a valid search warrant.—R. *v.* MILLER, [1931] 1 W. W. R. 537; 3 D. L. R. 213; *affd.*, [1931] S. C. R. 483; 3 D. L. R. 795; 56 Can. C. C. 272.—**CAN.**

e i. —— *Keeping bank—Proof of—When necessary.*]—Accused was charged originally with keeping a disorderly house, to wit, a common gaming house, contrary to sect. 229 of Criminal Code. On the trial before the magistrate the charge was amended to read that the accused kept a disorderly house, to wit, a common gaming house, "as defined in sub-sect. (b), part (1), of sect. 226 of the Criminal Code," contrary to sect. 229 of the Criminal Code. The accused was convicted. On appeal:—*Held:* because of the amendment, the accused was not charged merely with keeping a common gaming house but with keeping a place used for playing therein at any game of chance or any mixed game of chance & skill in which a bank was kept by one or more of the players exclusively of the others, &, therefore, the Crown was bound to prove that in the place in question a bank was so kept, &, as proof of this was not to be found within the appeal book, the conviction must be set aside.—R. *v.* ROBERTS, [1936] 2 W. W. R. 387; 4 D. L. R. 492; 66 Can. C. C. 298; 6 F. L. J. (Can.) 131.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

301 i. *What amounts to suffering gaming—Actual knowledge not necessary—But some proof necessary.*]—Where betting lasting for an hour & a half with a considerable number of men went on in a room in a hotel near the bar where the licensee was serving:—*Held:* on the evidence, notwithstanding the denial of the licensee that he did not know betting was taking place, he was properly convicted of an offence under Licensing Act, 1917, s. 139.—NORVAL *v.* NOBLETT, [1928] S. A. A. R. 38.—**AUS.**

g i. ——.]—Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.—R. *v.* WHELAN (1908), 9 W. L. R. 424.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

q i. —— —— *Whether charge to be laid as soon as possible.*]—The limitation of time ("as soon as possible") in sect. 641 (2) of Criminal Code does not apply to a charge under sect. 229 of the Code, of keeping a common gaming house.—R. *v.* LEE HAI, [1935] 2 W. W. R. 177; 3 D. L. R. 448; 64 Can. C. C. 49; 43 Man. L. R. 134.—**CAN.**

s i —— —— *Effect of inaccuracy.*]—*Held:* as the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality & attempt to find the place intended to be raided with the help

304. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

305. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

Part III.—Betting and Betting Houses.

310. After this case add "**Agreement to collect betting debts—Contrary to public policy.**]—*See* ACTION, No. 599a, *ante.*"

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41).

318. *Add. Annotation :*—**Apld.** Richards *v.* Price, [1931] 2 K. B. 204.

319a. "**Loitering for purpose of bookmaking**"—**Distribution in street of entry forms of football pool.**]—Resps., on behalf of N., distributed forms in the street containing an invitation to participate in football pools, together with an entry form & particulars of the terms of participation therein. The recipients who accepted the invitation sent to N. forecasts

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of the warrant, it did not amount to more than a misdescription & was not of a nature to vitiate the warrant.—EMPEROR *v.* THAVARMAL RUPCHAND (1928), I. L. R. 53 Bom. 367.—**IND.**

a i. —— *Invalid—Effect.*]—A conviction for keeping a common gaming house may be sustained, even though the search warrant, under which entry was made, was defective.—R. *v.* PIDGEON (1926), 45 Can. Crim. Cas. 233; 37 B. C. R. 309; [1926] 3 W. W. R. 765.—**CAN.**

d i. —— *Sufficiency.*]—A charge of keeping a common gaming house is sufficient, although it gives no particulars of the kind of gaming house.—R. *v.* WONG GAI, [1936] 4 D. L. R. 453; 50 B. C. R. 475; 66 Can. C. C. 265.—**CAN.**

p (p. 432) **ii.** —— —— ——.]—A charge under sect. 229 of Criminal Code, R. S. C., 1927, that the accused between certain dates, at a certain place, did unlawfully keep a disorderly house, to wit, a common gaming house, is well laid. It is not necessary that the particular kind of gaming house alleged to have been conducted should be specified as defined by sect. 226 (*a*) (*b*) of the Code.—R. *v.* WONG GAI, [1936] 2 W. W. R. 645.—**CAN.**

p (p. 432) **i.** —— —— ——.]—Two separate & distinct offences are defined by sect. 226 of Criminal Code, R. S. C., 1927, which defines a common gaming house. A conviction for that the accused at a certain time & place did unlawfully keep a disorderly house, to wit "a common gaming house," is, therefore, bad, either as disclosing no offence or as leaving it uncertain as for which one of several separate & distinct offences he was convicted.—R. *v.* SOO KIT SANG, [1936] 1 W. W. R. 382; 2 D. L. R. 608; 65 Can. C. C. 220; 50 B. C. R. 386.—**CAN.**

p (p. 432) **ii.** —— —— ——.]—R. *v.* WONG GAI, [1936] 2 W. W. R. 645.—**CAN.**

sm. —— ——.]—On summary conviction for keeping a common gaming house, a magistrate has power to order the destruction of a slot machine used.—R. *v.* MILES (1936), 65 Can. C. C. 88.—**CAN.**

sp. —— *Whether appeal lies.*]—R. *v.* MILES (1935), 5 F. L. J. (Can.) 212.—**CAN.**

sg. *Witness—Required to be examined—Right to certificate of freedom.*]—R. *v.* SCOTT, *Ex p.* SCOTT, [1927] S. A. S. R. 492.—**AUS.**

sk. *Confiscation of gaming machines—Validity.*]—Accused who had pleaded guilty to a charge of keeping a common gaming house & had been fined appealed from the order confiscating the gambling machines :—*Held :* since in certain cases gaming instruments may be seized without a search warrant, & there was nothing before the Ct. of Appeal by way of affidavit or otherwise as to the manner in which the search warrant was executed or as to whether one was necessary, it must be assumed that the process was regular in all respects.—R. *v.* GREEN, [1935] 1 W. W. R. 526; 43 Man. L. R. 105.—**CAN.**

PART III. SECT. 1.

t i. —— *Cards on premises—No facilities for innocent use.*]—MILLER *v.* R., [1931] 3 D. L. R. 795; S. C. R. 483; 56 Can. C. C. 272.—**CAN.**

310 i. *Betting or betting business—Not illegal ipso facto.*]—Neither in India nor in England has the legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that in both countries the legislature regards it as undesirable in the public interest that any assistance should be afforded by cts. of law to enforce obligations which have been created in connection with betting or wagering transactions.—MITCHELL *v.* TENNENT (1925), I. L. R. 52 Calc. 677.—**IND.**

310 ii. —— ——.]—It is not a crime to make a bet with a bookmaker. Sect. 235 of the Criminal Code applies only to the bookmaker & his aiders & assistants in the forbidden acts.—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249; [1935] 1 D. L. R. 616; 62 C. C. C. 247.—**CAN.**

sg. *Provision of "facilities" for carrying on bookmaker's business.*]—A greyhound racing co. received from each of certain bookmakers not only the maximum authorised charge for a bookmaker's admission but also a payment of 7*s.* 6*d.* In consideration of this payment the co. supplied to the bookmaker such material as he required for carrying on his business on the track, including betting lists, easels, boards & stools, & provided him with special lighting, the services of an attendant & a hut for storing his gear. It was not made a condition of a bookmaker's being allowed to carry on his business that he should use the materials, etc., provided, or that he should pay the 7*s.* 6*d.* or any part thereof :—*Held :* the materials supplied & the services rendered by the co. to the bookmakers in question were "facilities" for the carrying on of their business, within Betting & Lotteries Act, 1934, s. 13 (2), & the co. was properly convicted under that section.—IRVINE GREYHOUND RACING CO. *v.* MACMILLAN, [1936] S. C. (J.) 96.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 1.

b i. —— *Verandah.*]—*Held :* in the definition of "street" in Gaming & Betting Act, 1912, s. 5, the word "land" means all enclosed or unenclosed land, other than land upon which or above which a house is built or stands, & the word "house" must be taken to include any adjoining structure such as a verandah roof, which is attached to the fabric of the building in such a way as to form part thereof.—WOODS *v.* TONKIN (1933), 50 N. S. W. W. N. 5.—**AUS.**

b ii. —— ——.]—Applt. was charged with being in a public place for the purpose of betting except by a totalisator. The evidence showed that applt. was on a verandah in front of his hotel & made several bets with one man. There was no evidence of bets with any one else or that applt. carried on business as a bookmaker. Applt. stated that his purpose for sitting out on the verandah was to be in a cool place :—*Held :* the evidence did not raise a preponderance of probability, nor was it a reasonable inference, that applt. was on the verandah for the purpose of betting.—LANE *v.* GILES, [1934] S. A. S. R. 311.—**AUS.**

b iii. —— *Hotel area.*]—On a charge of street betting, under sect. 104 of Police Offences Act, 1928, the place in which the offence was alleged to have been committed was a tiled area in front of an hotel & abutting on the public footpath. The area, which was open, uncovered, & raised three or four inches above the level of the footpath, formed part of the allotment on which the hotel was built :—*Held :* the area was not a "street."—WEAVING *v.* MAHNKEN, [1933] V. L. R. 90; Argus L. R. 153.—**AUS.**

b iv. —— *Hotel yard.*]—The enclosed yard of an hotel which forms no part of the land upon which the actual hotel building itself stands, is a street within Gaming & Betting Act, 1912.—*Re* O'DONNELL, *Ex p.* COURTNEY (1933), 50 N. S. W. W. N. 217.—**AUS.**

314 i. *Enclosed grounds — Cricket ground.*]—A grass field occupied by a cricket club, was bounded on all four sides by a wire fence in good condition. The fence along its western side ran at the foot of a railway embankment, which was admittedly not a public place within Street Betting Act, 1906, s. 1 (4). Between the northern end of this fence & the fence bounding the northern side of the ground was a gateway, 3 feet wide, giving access to the ground. The gateposts were in position, but the gate had been missing for some time. The portion of the field adjoining the gateway was not used for cricket, & the public had unrestricted access to that portion & gathered there in numbers every day. In a prosecution for loitering for the purpose of betting :—*Held :* the cricket ground was not a "public place" within sect. 1 (4) in respect that it could not be described as "unenclosed."—FOGGO *v.* HILL, [1932] S. C. (J.) 6.—**SCOT.**

sk. *Pathway—Sole access to three houses.*]—A pathway leading from public land to three separate dwelling-houses, to which it provided the only means of access, was entered from the lane through a gate which was never locked :—*Held :* the pathway was a "public passage," & a "street" within Street Betting Act, 1906 (c. 43), s. 1.—MACKIE *v.* CROMBIE, [1926] S. C. (J.) 29.—**SCOT.**

of the results of football matches specified in the forms, together with a statement of the amount they were prepared to stake thereon. This was not payable until after the matches had been played. The aggregate of these amounts was divided among those sending correct forecasts, less a commission retained by N. :—*Held :* resps. were guilty of loitering on behalf of N. for the purpose of bookmaking—*i.e.* the negotiating by N. of bets made between the participants in the pool *inter se.*—RICHARDS *v.* PRICE, [1931] 2 K. B. 204 ; 100 L. J. K. B. 526 ; 145 L. T. 189 ; 95 J. P. 151 ; 47 T. L. R. 411 ; 75 Sol. Jo. 345 ; 29 L. G. R. 396 ; 29 Cox, C. C. 301, D. C.

321a. —— **Rolled down slide into squares.**]—EVANS *v.* EXWORTH (1936), 81 Sol. Jo. 59, D. C.

322. *Add. Annotation :*—**N.F.** Everett *v.* Shand (1931), 145 L. T. 216.

322a. Totalisator—Not included.]—*Held :* persons betting by means of the contrivance known as a totalisator on a dog-race do not act in contravention of Vagrant Act (Amendment) Act, 1873 (c. 38), s. 3, inasmuch as a dog-race is not in itself a " game or pretended game of chance " within the sect. ; &, consequently, where a dog-racing track & a totalisator thereat belonged to a co., the contrivance being worked by its clerks, that charges against the secretary & managing director of the co. & some of the clerks, of aiding & assisting persons betting at the track by means of the contrivance on dog-races in contravention of the section, were not maintainable & should be dismissed.—EVERETT *v.* SHAND, [1931] 2 K. B. 522 ; 100 L. J. K. B. 612 ; 145 L. T. 216 ; 95 J. P. 147 ; 47 T. L. R. 415 ; 75 Sol. Jo. 393 ; 29 L. G. R. 390 ; 29 Cox, C. C. 309.

323. *Add. Annotation :*—**Consd.** Everett *v.* Shand (1931), 145 L. T. 216.

325a. —— ——.]—EVERETT *v.* SHAND, No. 322a, *ante.*

326. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

330. *Add. Annotation :*—**Consd.** Everton *v.* Walker (1927), 137 L. T. 594.

339. *Add. Annotation :*—*As to* (4) **Refd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

358. *Add. Annotations :*—*As to* (2) **Consd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69. *As to* (4) **Expld. & Distd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400. **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *As to* (5) **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *Generally,* **Refd.** Schneiders *v.* Abrahams, [1925] 1 K. B. 301.

358a. Totalisator—Greyhound racing track.]—The words " such owner, occupier, keeper, or person as aforesaid " in the latter part of Betting Act, 1853 (c. 119), s. 1, are not to be read as limited to the class of persons who come within the ambit of the earlier part of the sect.—namely, persons who themselves are parties to bets or to transactions of the nature of bets. A person, therefore, such as the proprietor of a totalisator on a greyhound racecourse, who merely provides facilities for other persons to bet, & is not himself a party to any bet, may be guilty of an offence under the latter part of the sect.

Resp. Assocn. were the occupiers of a totalisator within the inclosure of their greyhound racecourse. The totalisator was a

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PART III. SECT. 2, SUB-SECT. 3.

f i. —— *Investment received elsewhere than at totalisator itself.*]— During the progress of a trotting club's meeting, totalisator tickets having been sold at the members' & stewards' stands from boxes not situated in the totalisator building, applt., a servant of the club, was convicted of the offence of permitting an investment on the totalisator to be received elsewhere than at the totalisator itself :—*Held :* an investment received in an entirely separate building with no connection & no attempt at synchronising with the main totalisator is a payment made elsewhere than at the totalisator itself, & applt. was rightly convicted under Gaming Act, 1908, s. 30 (3).—GOGGIN *v.* YOUNG, [1928] N. Z. L. R. 753.—**N.Z.**

p i. ——.]—A pak-a-pu ticket is an instrument of gaming within Gaming & Betting Act, 1912, s. 37.—JENNINGS *v.* YET CHING (1931), 48 N. S. W. W. N. 248.—**AUS.**

r i. *Paraphernalia for conducting betting house.*]—R. *v.* BRENNAN & NEWLANDS (1928), 49 Can. Crim. Cas. 54.3—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—A.

m (p. 438) i. —— ——.]—A person standing stationary in a public street for a considerable period is not thereby guilty of the offence of loitering under Lottery & Gaming Act, 1917, s. 40, although he has been requested by a police constable to cease from loitering.—MATTIN *v.* CURRIE, [1927] S. A. S. R. 459.—**AUS.**

m (p. 438) ii. —— *" Frequenting."*]—In a trial on a charge of having, *inter alia,* frequented certain streets for the purpose of receiving bets, contrary to Street Betting Act, 1906, s. 1, it was established that, on five occasions on one day & on two occasions on another, accused had driven along the streets in question in a motor car ; that, at certain street corners he had slowed down, & a man standing at each corner had thrown a packet into the car ; that, on the last occasion, accused had stopped in one of the streets & taken up two men as passengers ; that the police had thereafter followed accused's car, &, after overtaking it, had apprehended accused & his companions ; & that, on searching the men, they had discovered envelopes containing betting slips & other similar papers on their persons :—*Held :* accused was guilty of " frequenting " the streets in question for the purpose of receiving bets, within sect. 1 of 1906 Act.—CASSIDY *v.* LANGMUIR, [1935] S. C. (J.) 65.—**SCOT.**

m (p. 438) iii. —— ——.]—A person who is sitting in a stationary motor car in a street may be said to loiter within Lottery & Gaming Act, 1917, s. 40. The natural sense of the word " loiter " in this section is that of staying in the street or place without any sufficient & lawful reason for being there.—JOHNS *v.* BERRY & DALTON, [1934] S. A. S. R. 111.—**AUS.**

k (p. 439) i. *S. P.* MUHAMMAD KHAN *v.* R. (1927), I. L. R. 9 Lah. 255.—**IND.**

t (p. 440) i. —— —— ——.]—Where certain persons rented an enclosure, part of a larger enclosure abutting on a public road, & invited others to come there & make bets :—*Held :* any person found betting there was rightly convicted of gambling in a public place.—R. *v.* TULSHI DAS (1924), I. L. R. 46 All. 787.—**IND.**

si. *Shed—Used by workmen for meals.*]—At the trial of a workman, who was charged with using a place for the purpose of betting it was proved that on five dates libelled, between the hours of 12 noon & 1 p.m., he had engaged in ready-money betting with fellow-workmen in a shed in the employers' premises. The workmen were allowed to use the shed for the purpose of taking their meals, but the accused's betting transactions were carried on without the permission or knowledge of his employers :—*Held :* the shed was a " place " used by the accused for the purpose of betting.—YOUNG *v.* DARRAH, [1929] S. C. (J.) 17.—**SCOT.**

so. *Part of premises.*]—Conviction for keeping a disorderly house upheld on evidence that the use of part of the premises for betting was not a single or casual occasion.—R. *v.* EDWARDS (1936), 66 Can. C. C. 117.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—B.

g i. ——.]—Deft. assocn. was incorporated as a co. by letters patent, which were amended by adding certain objects & purposes, viz., to encourage horse-racing, to construct, maintain, & operate race-courses, & other like objects & purposes. The co. established a race-course & held race-meetings, at which betting on the races was permitted, & was convicted under Criminal Code, ss. 228, 235, of the offences of keeping a common betting house, & recording & registering bets, etc. :—*Held :* the co. was not protected by sect. 235 (2).—R. *v.* LONG BRANCH RACING ASSOCN., [1925] 2 D. L. R. 46 ; 43 Can. Crim. Cas. 283 ; 56 O. L. R. 303.—**CAN.**

one-storey wooden building equipped with windows for paying & receiving money, & an indicator forming a separate part, both within the racecourse. Access to both, dependent on access being obtained by payment to the racecourse, was by payment & receipt of a ticket. In the totalisator were windows at which 10*s*. tickets & 2*s*. tickets were sold, & three or four paying-out windows. Tickets were bought at the respec tive windows with a number indicating the number on the race-card of a dog running in the race, the purchaser of the ticket stating the number of the dog selected before purchasing his ticket. After the race the stakes received, after certain deductions, were divided in certain proportions among the persons who held tickets bearing the numbers of the winning & second & third dogs:—*Held:* resp. Assocn. had been guilty of an offence under Betting Act, 1853 (c. 119), s. 1.—SHUTTLEWORTH *v.* LEEDS GREYHOUND ASSOCN., LTD., [1933] 1 K. B. 400; 102 L. J. K. B. 264; 148 L. T. 424; 97 J. P. 37; 49 T. L. R. 143; 77 Sol. Jo. 48; 31 L. G. R. 100; 29 Cox, C. C. 583, D. C.

Annotations:—**Consd.** Streatham Cinema, Ltd. *v.* John McLauchlan, Ltd., [1933] 2 K. B. 331. **Apld.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

362. *Add. Annotation:*—**Consd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

362a. —— **Not person on premises for innocent purpose.**]—Police officers raided a public-house where betting was being carried on. Among other persons, they arrested a builder who was on the premises solely for the purpose of doing repair work, & charged him under Betting Act, 1853 (c. 119), with unlawfully resorting to a house for the purpose of betting on horse-racing. Later this charge was dropped & replaced by a charge under Unlawful Games Act, 1541 (c. 9), s. 9, of unlawfully resorting to a common gaming-house. Justices, although they found that deft. was on the premises for a wholly innocent purpose & knew nothing about the betting, convicted him & bound him over not to resort to gaming houses, ordering him to pay 4*s*. costs:—*Held:* there could be no conviction or binding over of deft. after a finding that he was on the premises for a proper & innocent purpose. The conviction must, therefore, be quashed.—RODEN *v.* BRETT, [1936] 2 All E. R. 136; 155 L. T. 28; 100 J. P. 296; 52 T. L. R. 471; 80 Sol. Jo. 596; 34 L. G. R. 286; 30 Cox, C. C. 425, D. C.

395. *Add. Annotation:*—**Refd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

399. *Add. Annotation:*—**Consd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

399a. Question for jury.]—R. *v.* BRENNAND, No. 278b, *ante*.

399b. —— **Social club communicating by telephone with bookmaker's office.**]—Pltf. let premises to defts. on condition that they should not be used for any illegal purpose. Defts. per-

PART III. SECT. 4, SUB-SECT. 2.—A.

o i. —— *Sale of totalisator vouchers.*]—A co. occupying a greyhound racecourse on which a totalisator was erected, & the manager of the totalisator, were charged with contravening Betting Act, 1853, s. 1. It was proved that persons betting through the totalisator purchased vouchers costing 2*s*. each, which were marked with the name of the dog on which the purchaser desired to bet. These vouchers represented the stakes, & after the race the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent. to cover expenses:—*Held:* the purchasers of vouchers entered into the betting transactions with each other, & not with the co. or the manager; & the fact that a charge was made for the use of the totalisator & for the service of operating it did not involve the co. or the manager in a contravention of the sects. libelled.—STRATHERN *v.* SCOTTISH GREYHOUND RACING CO., [1930] S. C. (J.) 24.—**SCOT.**

o ii. —— ——.]—The tenant of certain premises in which a totalisator was installed, & his assistants, were charged with a contravention of sect. 407 of Burgh Police (Scotland) Act, 1892. It was proved that members of the public resorted to the premises in large numbers for the purpose of betting through the totalisator on the results of dog races. Those betting purchased vouchers costing 1*s*. each, which were marked with the number of the dog selected for backing. The money thus paid represented the stakes, &, after each race, the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent. which was retained by the tenant of the premises for himself & his assistants:—*Held:* sect. 407 of Burgh Police Act, applied only to the same class of premises as that to which Betting Act, 1853 (c. 119), s. 1, applied, namely, premises where the betting carried on took place between the management & persons resorting thereto, &, as the premises were not of this description, the conviction fell to be quashed.—GIBSON *v.* LAIRD, [1933] S. C. (J.) 6.—**SCOT.**

o iii. —— ——.]—A co. occupying a greyhound racecourse on which a totalisator was erected were charged with a contravention of Betting Act, 1853, s. 1. It was admitted that members of the public betting through the totalisator purchased vouchers costing 1*s*. each, which were marked with the number of the dog on which the purchaser desired to bet. The money paid for these vouchers represented the stakes, & after the race the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent., which was retained by the co.

Persons concerned in the management of premises in which totalisators were erected were charged with a contravention of sect. 15 of Glasgow Police (Further Powers) Act, 1892, which imposes a penalty on the owner or manager of a gaming or betting house. It was proved that the public were admitted to the premises which were designated as a club, on payment of a nominal membership fee. Betting on the result of horse races & dog races run elsewhere was carried on through the totalisators in the same way as in the case of the co. referred to above:—*Held:* the accused in each case were guilty of a contravention of the sections.—STRATHERN *v.* ALBION GREYHOUNDS (GLASGOW), LTD.; STRATHERN *v.* RUSSELL, [1933] S. C. (J.) 91.—**SCOT.**

o iv. —— *Keeping means of betting.*]Appeal from a conviction for keeping a common betting house at a certain hotel. Accused, who was a roomer at the hotel, was found in the rotunda looking at a copy of "The Morning Digest," a turf publication, which was spread out on a desk, & writing on a small pad of paper. One or two men were with him, also looking at the publication. A copy of another turf publication was also on the desk, but behind a glass case. Certain letters & figures on the pad were written by the accused in the sight of a constable, unnoticed by the accused. The sheet contained 15 other entries of the same class & in the same handwriting. Figures in pencil were written after the name of each of the horses listed in the publications, & a witness, who was a bookmaker, testified that the figures were such as would be put there by one intending to take bets. He also gave the opinion that the entries on the pad, except the last two items, showed bets on horses. The last item was that which the constable saw the accused write. With respect to those two items the witness said that they might be entries of a bet but that if he had been making the entries he would have made them in another way:—*Held:* the evidence was not sufficient to sustain the conviction.—R. *v.* MCCANN, [1936] 3 W. W. R. 497; 4 D. L. R. 788; 67 Can. C. C. 121; 6 F. L. J. (Can.) 164.—**CAN.**

363 i. *What persons liable to penalties —Persons "keeping"—Servant in sole charge.*]—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the premises of the owner.—DAVIS *v.* NUTTALL, [1924] N. Z. L. R. 65.—**N.Z.**

363 ii. —— *Licensee of hotel—Permitting others to use premises for betting purposes.*]— DEELEY *v.* DICK, [1928] V. L. R. 121, [1928] A. L. R. 62.—**AUS.**

mitted a social club to occupy the premises for carrying out its objects as such. That club made an arrangement with a bookmaker to act for its members & open an account with them. Telephones were installed connecting the club premises with the bookmaker's office, & the members of the club thereby communicated their proposed bets to the bookmaker for his acceptance. The bookmaker supplied to the club premises information as to races which was published there. A commission was paid by the bookmaker to the club on all bets made with its members through him. Pltf. brought an action against defts. for breach of the contract of letting in permitting the premises to be used for a purpose which was illegal under Betting Act, 1853 (c. 119), & claiming a declaration to that effect, an injunction, & damages :—*Held :* defts. were permitting the premises to be " used " for the purpose of a person (the bookmaker) " procured " by the occupier (the club) betting with persons resorting thereto within & contrary to sect. 1 of the Act, & pltf. was entitled to the relief which he claimed.—SAMUEL *v.* ADELAIDE CLUB, LTD., [1934] 2 K. B. 69 ; 103 L. J. K. B. 561 ; 151 L. T. 116 ; 98 J. P. 257 ; 50 T. L. R. 341 ; 78 Sol. Jo. 318 ; 32 L. G. R. 129.

401. *Add. Annotation :*—**Distd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

401a. Holding whist drive.]—Whist drives, where an entrance fee is charged & prizes offered, are illegal under Betting Act, 1853 (c. 119), s. 1.—BENNETT *v.* EWENS, [1928] 2 K. B. 510 ; 97 L. J. K. B. 801 ; 139 L. T. 335 ; 92 J. P. 120 ; 44 T. L. R. 545 ; 72 Sol. Jo. 354 ; 28 Cox, C. C. 522 ; 26 L. G. R. 396, D. C.

406. *Add. Annotation :—As to* (2) **Consd.** Joel *v.* Barclay, [1937] 1 All E. R. 309.

408a. Receipt of whole stake—Whether " deposit."]—The charge against applt. was that being the occupier of a place used for a betting game he unlawfully did receive money as a deposit on certain bets, contrary to the Betting Act, 1853 (c. 119), s. 4. The date in the information was " between May 30, 1936, & June 1, 1936." Persons taking part in the game paid 1*d.* It was found as a fact that on May 30, 1936, pennies were laid on the table by the players & taken by applt. or his assistants before the game was decided. On May 31 & June 1, 1936, the pennies paid by the players were paid after the game was decided. Applt. contended (i) that the information was bad for duplicity, & (ii) that what was paid by the players could not properly be called a deposit on any bet :—*Held :* (1) the information charged only one offence, & the fact that three days were comprised in the period named in the information did not make it bad ; (2) although the players paid the whole stake payable in respect of the game this was none the less a " deposit " within Betting Act, 1853 (c. 119), s. 4.—JOEL *v.* BARCLAY, [1937] 1 All E. R. 309, D. C.

415a. —— ——.]—Applts. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6*d.* a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a " Free Football Competition " with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Applts. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that applts. had circulated coupons of a ready-money football betting business, & they convicted applts. :—*Held :* the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—SUTTLE *v.* CRESSWELL, [1926] 1 K. B. 264 ; 95 L. J. K. B. 367 ; 134 L. T. 144 ; 90 J. P. 3 ; 42 T. L. R. 75 ; 23 L. G. R. 695 ; 28 Cox, C. C. 94, D. C.

Annotations :—**Apld.** Turf Publishers *v.* Davies, [1927] W. N. 190. **Expld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366. **Consd.** Baker *v.* Sillitoe (1931), 47 T. L. R. 632.

415b. —— ——.]—TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D. C.

Annotation :—**Apld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366.

—— ——.]—Where a daily newspaper contained as one among its various features coupons in which the names of football teams were set out, & the public were invited to forecast the winners of matches in which the teams were shortly to be engaged, the person who most nearly got the correct results receiving a prize :—*Held:* the proprietors & publishers of the newspaper were guilty of an offence under sect. 1 of the above Act,

PART III. SECT. 4, SUB-SECT. 4.

sd. *Receipt from agent.*]—No bets were made at accused's office, but he engaged & paid bookmakers to make bets on the streets & elsewhere. He supplied these bookmakers with betting slips & football coupons, from which, when returned to his office, he made up an account of the gains & losses of each bookmaker. He received at his office daily from each bookmaker any balance of gains on the bets made on the preceding day, & he transmitted to the bookmakers any sum required to make good a deficiency on the day's transactions :—Held : accused had contravened the section libelled, in respect that he used the office for the receipt of money accruing from ready-money bets, although the money was paid over elsewhere by the persons betting.—REID *v.* HILL, [1931] S. C. (J.) 19.—**SCOT.**

PART III. SECT. 6.

415 i. *" Printing or knowingly circulating coupons "—Construction of Football Betting Act,* 1920 (c. 52), *ss.* 1, 2.]— Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business :—*Held :* the paper was a circular or coupon of the business of applts., & conviction sustained.—JAMESON *v.* SINCLAIR, [1925] S. C. (J.) 1.—**SCOT.**

sn. *" Ready-money football betting business "—Newsagents settling with publishers monthly.*]— Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts weekly ; the wholesale newsagent ran monthly accounts with the commission agents, who paid the prizewinners. The prize money was paid, although the monthly accounts had not been settled :—*Held :* there was evidence on which the magistrates might hold that applts.' business was a ready-money football betting business.—SINCLAIR, [1925] S. C. (J.)

although the evidence only showed that some, & not the majority, of the purchasers of the newspaper bought it, wholly or partly, for the sake of the coupon, & although no competitor was allowed to send in more than one coupon from one & the same issue of the newspaper.—SIR W. C. LENG & CO. [illegible]FIELD TELEGRAPH), LTD. *v.* SILLITOE, 1 K. B. 366; 98 L. J. K. B. 262; 140 L. T. 500; 93 J. P. 26; 45 T. L. R. 94; 72 Sol. Jo. 810; 28 Cox, C. C. 593, D. C.

415d. —— ——.]—Resp. employed about 10,000 collectors in different parts of the United Kingdom for the purpose of conducting & carrying on football pool betting businesses. He issued printed instructions to every collector not to accept or collect money invested by clients until after the matches had been played, as it was illegal to accept it at the time the investment was made. One collector sometimes accepted money at the time of investment without resp.'s knowledge, but did not send the money to resp. until after the results of the matches were known. The words "credit only" were printed on every coupon in bold type. In consequence of the said collector's conduct, resp. was charged with publishing coupons of two ready money football betting businesses, contrary to the Ready Money Football Betting Act, 1920 (c. 52), s. 1:—*Held:* as resp. published coupons of a credit business & gave most careful instructions to his collectors not to take money at the time of investment, he was innocent of the offences with which he was charged.—WILSON *v.* MURPHY, [1937] 1 All E. R. 315; 53 T. L. R. 308; 81 Sol. Jo. 139, D. C.

415e. —— **Prizes of indeterminate amount.**]—Applts. were the promoters of a scheme by which working men were invited to forecast the results of football matches & pay an entrance fee of one penny with each forecast. Prizes of an amount at the discretion of the promoters were awarded to the senders of the most correct forecasts:—*Held:* the fact that the amount of the prizes was indeterminate was immaterial, & applts. were rightly convicted of circulating coupons of a ready money football betting business, contrary to the Ready Money Football Betting Act, 1920 (c. 52).—BAKER *v.* SILLITOE (1931), 145 L. T. 635; 95 J. P. 182; 47 T. L. R. 632; 29 L. G. R. 521; 29 Cox, C. C. 356, D. C.

416. *Add. Annotation:*—**Consd.** Joel *v.* Barclay [1937] 1 All E. R. 309.

416a. —— ——.]—JOEL *v.* BARCLAY. No. 408a, *ante*.

420. *Add. Annotations:*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

421. *Add. Annotation:*—**Consd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

422. *Add. Annotation:*—*As to* (1) **Apld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

423. *Add. Annotation:*—*As to* (1) **Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

424a. —— **Information under Licensing Consolidation Act, 1910 (c. 24)—Form of conviction.**]—An information was preferred against applt. under sect. 79 (1) (*b*) of the above Act for that he, being the holder of a justices' licence, suffered his premises to be used in contravention of Betting Act, 1853 (c. 119). Applt. was convicted, & appealed to quarter sessions, who allowed the appeal, on the ground that the conviction was bad on the face of it because it did not specify what contravention of Betting Act, 1853 (c. 119), was alleged:—*Held:* applt. was entitled to the precise information to which he would have been entitled if he had been prosecuted under Betting Act, 1853 (c. 119), & the decision of quarter sessions was right.—POINTON *v.* COX (1926), 136 L. T. 506; 91 J. P. 33; 43 T. L. R. 175; 25 L. G. R. 101; 28 Cox, C. C. 308, D. C.

PART III. SECT. 7.

q i. ——.]—An information for keeping a common betting house need not specify which of the special heads of the definition in sect. 227 were contravened.—R. *v.* GRISS, [1937] 1 D. L. R. 279; [1936] O. R. 604; 67 Can. C. C. 184.—**CAN.**

b i. —— *Lottery & Gaming Act Amendment Act, 1921, s. 14.*]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

b ii. —— ——.]—LAMPARD *v.* WEST, [1926] S. A. S. R. 293.—**AUS.**

b iii. —— *Similar transactions on other days—Admissible.*]—PINCHBECK *v.* GLEESON, [1926] S. A. S. R. 379.—**AUS.**

c i. —— —— ——.]—PATERSON *v.* MACPHERSON, [1924] S. C. (J.) 38.—**SCOT.**

c ii. —— —— —— *Right to open closed envelopes.*]—*Held:* the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed envelopes, for the purpose of ascertaining whether they contained documents relating to betting.—STRATHERN *v.* BENSON, [1925] S. C. (J.) 40.—**SCOT.**

421 i. *Power of arrest.*]—Police, having obtained a warrant to enter a stable (number 4), watched the stable for a period of twenty minutes, during which it was visited by about twenty men, six of whom carried what appeared to be betting slips in their hands. On the police approaching the stable, accused, who had been in the stable all the time, ran into a neighbouring stable (number 3), one of them carrying a bundle of betting lines. The police took them back into stable number 4, where they were searched & taken into custody, & the money found on them was seized. The accused were convicted & sentenced:—*Held:* the escape of the accused with their papers from the premises to which the warrant applied & the fact that they were thereafter taken back by the police to these premises did not render the subsequent arrest & seizure illegal under the warrant.—MORRIS *v.* LANGMUIR, [1929] S. C. (J.) 103.—**SCOT.**

h i. —— *Joint complaint—One defendant calling no evidence, but wishing to give evidence for co-defendant—Mode of trial.*]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

h ii. —— *Whether summons or information condition precedent.*]—Deft. was arrested on a warrant issued under Betting Act, 1853 (c. 119), s. 11. He was brought before the petty sessions ct. on the charge, that he being the user of a certain house situate in the city of B., did use the same for the purpose of betting with persons resorting thereto. On the charge being proceeded with before the magistrates a preliminary objection was raised to the hearing of the charge on the ground (*inter alia*) that no summons had been served on deft. charging him with the offence alleged, a summons being, it was submitted, a condition precedent to any proceedings under the Act charging an offence. The magistrates dismissed the case without prejudice, but stated a case for the opinion of the K. B. D.:—*Held:* the magistrates were wrong in point of law in dismissing the charge on the ground that the information or summons was a condition precedent to the exercise of their jurisdiction & it should be remitted to them to proceed according to law.—R. (LOCKHART) *v.* MCKENNA, [1933] N. I. 21.—**IR.**

sp. *Appeal—Principles on which court acts.*]—R. *v.* SMITH (1926), 37 B. C. R. 248.—**CAN.**

Part IV.—Lotteries.

See, now, Betting & Lotteries Act, 1934 (c. 58), ss. 21–28.

433a. —— **Provision for commission without control over sales.**]—A co., having bought a quantity of note cases at a price of less than 1*s.* 6*d.* each, devised a scheme for selling them at a profit, & issued to the public a leaflet in accordance with the terms of which the scheme was conducted. The leaflet informed a person desirous of participating in the scheme that on filling up & sending in an attached order form together with £1 there would be sent to him a note case & a supply of the leaflets, the order forms of which would be marked with a number allotted to him; that he should get other persons to give orders for note cases, using these forms; that he would be entitled to no benefit from the first three of these orders, but would be paid a commission of 10*s.* on every other order received on his forms & on sales made as a result of these orders; that whenever an order was received on one of his forms, after the first three, a supply of forms also marked with his number would be sent to the buyer, & that the participant would be paid a commission of 10*s.* on each of the first three sales made by every one to whom one of the forms so numbered was sent; & that there was no time limit to the scheme, but that the maximum commission payable to a participant was £20,000:—*Held:* inasmuch as, with the exception of commissions resulting from orders directly obtained by the participant himself, all the commissions which he received would result from orders given by persons over whom he had no control & would depend so far as he was concerned not upon his skill or work but upon pure chance, the scheme was a "lottery" within Lotteries Act, 1823 (c. 60), s. 41.—PUBLIC PROSECUTIONS DIRECTOR *v.* PHILLIPS, [1935] 1 K. B. 391; 104 L. J. K. B. 73; 152 L. T. 190; 98 J. P. 461; 51 T. L. R. 54; 78 Sol. Jo. 735; 32 L. G. R. 464; 30 Cox, C. C. 195, D. C.

433b. —— **Crossword puzzle.**]—A newspaper published an advertisement of a crossword puzzle competition with a money prize, for which a competitor entered by posting his solution along with a specified fee to the office of the newspaper. The puzzle was so constructed that in a number of instances a clue could be satisfied by only one word having no alternative, while in other instances the clue suggested two or more alternative words which might not all be equally appropriate. The competition editor had prepared beforehand a test solution of the puzzle, & the prize was to be awarded to

PART IV. SECT. 1.

d i. —— ——.]—POWER *v.* CANNIFF (1859), 18 U. C. R. 403.—**CAN.**

d ii. —— ——.]—LLOYD *v.* CLARK (1862), 12 C. P. 320.—**CAN.**

—— ——.]—The accused, who was the agent of a cigarette co. at Belfast, published a pamphlet advertising a prize of Rs.5 which could be automatically obtained by purchasers of Park Drive cigarettes. Accused sent ten currency notes of Rs.5 each to the manufacturers of Park Drive cigarettes at Belfast, who put each note in a packet of cigarettes, mixed those packets with other packets which contained no notes, & sent them out to accused in India. On a prosecution of accused under second part of Indian Penal Code, s. 294A:—*Held:* the scheme published by accused for distribution of prizes by lot or chance amounted to a lottery.—EMPEROR *v.* VAZIRALLY (1928), I. L. R. 53 Bom. 57. —**IND.**

430 ii. —— ——.]—Accused invited the public to subscribe a large sum for an assocn. whose object was said to be the relief of people in debt or distress. There was no provision for the return of the capital sum, but one-sixth of the interest derived therefrom was to be used for the objects of the assocn., whilst the remainder became divisible every three months among the subscribers as cash bonuses. These bonuses were distributed by lot:—*Held:* a lottery.—A. D. RAJ *v.* KING-EMPEROR (1932), I. L. R. 10 Ran. 232. —**IND.**

n i. —— *Bonds in series—Payment not dependent on knowledge or skill.*]—In a prosecution for a contravention of Lotteries Act, 1823, it was established that the promoters had formed & put into execution a scheme for the sale of bonds, each of which entitled the holder on certain conditions to £150. To qualify for this sum a participant had first to obtain a bond at the cost of 1*s.* either from the promoters or from a friend. This was the parent of a family of bonds which was brought into existence by a process of sub-sales. The holder of the parent bond had to buy from the promoters four bonds for 3*s.* & to sell them to four friends for 1*s.* each. These four bonds were the first generation, & each of the four holders of them had to repeat the same process, thus bringing the second generation of sixteen bonds into existence. The process had to be repeated until the sixth generation of 4096 bonds had come into existence, making, for the complete series, 5461 bonds. On the occurrence of this event the holder of the parent bond became entitled to £150. Not only was each individual bond a member of a family of bonds, but it could itself become the parent of a new family, & the holder of it was entitled to £150 as soon as its sixth generation was completed:—*Held:* the scheme was a lottery, in respect that the occurrence of the event upon which payment fell to be made could neither be approximately predicted nor materially influenced by the exercise of any knowledge, experience, art, or skill on the part of the holder of the parent bond.—BARNES *v.* STRATHERN, [1929] S. C. (J.) 41. —**SCOT.**

p i. —— —— *Not dependent on skill alone.*]—The chance, which the prohibition in Criminal Code against lotteries & other species of gambling, has in contemplation is the chance or risk which the competitor is taking. Therefore, in a case where he is required to estimate a number, the prohibition applies unless the correct number can be ascertained by skill alone without any element of chance, even though the number to be estimated is an actually existing number at the time the estimate is made.—R. *v.* IRWIN, R. *v.* LONG, [1928] 4 D. L. R. 625; [1928] 2 W. W. R. 597; 50 Can. Crim. Cas. 159; 23 Alta. L. R. 506.—**CAN.**

b (p. 454) i. —— *Conducting "suit clubs."*]—*Held:* a violation of Criminal Code, s. 236 (c) (d).—R. *v.* A. D. MURRAY TAILORING, LTD., [1925] 3 W. W. R. 483; 44 Can. Crim. Cas. 346. —**CAN.**

b (p. 454) ii. —— *Club distributing "chances" for prizes with membership cards.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* GRATTON (Ont.) (1926), 46 Can. Crim. Cas. 41.—**CAN.**

b (p. 454) iii. —— *Giving purchasers of goods tickets for club—Club distributing prizes.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* RODERICK (Ont.) (1926), 45 Can. Crim. Cas. 110.—**CAN.**

b (p. 454) iv. —— —— ——.]—A firm of tailors gave each of its customers on the weekly payment plan the privilege of being a member of a "club," each member of which had the chance week by week while the payments under his contract were uncompleted of having his name arbitrarily chosen by the management as the member to receive a receipt for the unpaid balance which entitled him to a suit at once, without further payment:—*Held:* the scheme was a lottery & the conducting of it a violation of sect. 236 (1) (c) of the Criminal Code.—R. *v.* HARRISON, [1931] 1 W. W. R. 621; 55 Can. C. C. 238.—**CAN.**

b (p. 454) v. ——.]—R. *v.* UNITED PROFIT SHARING SYSTEM, LTD. (Ont.), [1927] 4 D. L. R. 619; 48 Can. Crim. Cas. 154.—**CAN.**

b (p. 454) vi. —— *Free distribution of option certificates.*]—A free distribution of option certificates drawn by lot is not a lottery.—R. *v.* ROBINSON (1917), 29 Can. C. C. 153.—**CAN.**

b (p. 454) vii. —— *Contest of signatures.*]—A contest of signatures is a contest of skill, taste & judgment, &, therefore, not a lottery.—BROWN *v.* BONNYCASTLE, [1935] 3 W. W. R. 536; [1936] 1 D. L. R. 295.—**CAN.**

b (p. 454) viii. ——.]—Appct. in pursuance of a scheme for advertising its wares obtained customers to purchase certain cabinets of cutlery upon terms which provided that customers would be formed into groups

the competitor whose solution happened to correspond most closely to that of the competition editor, although, if all the solutions sent in were examined & compared on their merits, the solution of that competitor might not be found to be intrinsically the best :—*Held :* the proprietors & the printer of the newspaper were guilty of the offence of printing & publishing an advertisement of a " lottery " under Betting & Lotteries Act, 1934 (c. 58), s. 22 (1) (*c*) (i).—COLES *v.* ODHAMS PRESS, LTD., [1936] 1 K. B. 416 ; 105 L. J. K. B. 208 ; 154 L. T. 218 ; 100 J. P. 85 ; 52 T. L. R. 119 ; 79 Sol. Jo. 860 ; 34 L. G. R. 34 ; 30 Cox, C. C. 329, D. C.

Annotation :—**Distd.** Witty *v.* World Service, Ltd., [1936] Ch. 303.

433c. ——— ———.]—STEVENSON *v.* WILLIAMS (1936), 80 Sol. Jo. 933, C. A.

433d. —— **Betting scheme.**]—A limited co. employed agents to distribute tickets bearing the names of races, horses & jockeys, & also the name of the co., & an offer to exchange the tickets for goods on demand. A member of the public receiving a ticket was entitled to bet on the combinations named on the ticket, in which case if he won he received the amount of his bet ; if he lost he was entitled to exchange the ticket for goods worth sixpence, through the firm's agents. By conditions on the ticket he paid no money to the agents, but undertook to pay 6*d.* if he lost. The co. & its directors were convicted at petty sessions under Betting Lotteries Act, 1934 (c. 58), & appealed :—*Held :* (1) the scheme was a lottery ; (2) the appearance of the name of the co. on the tickets, together with evidence that the same agent had distributed similar tickets which had been exchanged by the co. for goods, was evidence connecting the agent with the co.—GORDON, MACKAY & CO., LTD. *v.* WATSON, [1936] 2 All E. R. 33, D. C.

434. *Add. Annotation :*—**Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

443. *Add. Annotations :*—**Apld.** Howgate *v.* Ralph (1929), 141 L. T. 512. **Consd.** Public Prosecutions Director *v.* Phillips, [1935] 1 K. B. 391. **Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

449. *Add. Citations :*—94 L. J. K. B. 919 ; 133 L. T. 606 ; 89 J. P. 142 ; 23 L. G. R. 574 ; 28 Cox, C. C. 27.

451a. Lotteries authorised by Act of Parliament—Must be Parliament of United Kingdom.]—The exception in Lotteries Act, 1823 (c. 60), s. 41, which prohibits the sale of tickets in any lottery, " except such as are or shall be authorised by this or some other Act of Parliament," does not include a lottery authorised by any body other than the Parliament of the United Kingdom.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197 ; 100 L. J. K. B. 638 ; 145 L. T. 522 ; 95 J. P. 137 ; 47 T. L. R. 383 ; 29 L. G. R. 452, C. A.

should pay certain weekly sums towards the purchase price of the cutlery & that at monthly intervals, up to a total of three selections, appct. would select one of its customers from the group. The customer would be selected after careful consideration & not capriciously & each person so selected would receive the cutlery without further payments :—*Held :* the scheme was a lottery, & the offence proved was an offence within sect. 3 of Lotteries & Art Unions Act, 1901.—*Re* WILLARD, *Ex p.* BRITISH PRODUCTS PROPRIETARY, LTD. (1935), 35 S. R. N. S. W. 152 ; 52 N. S. W. W. N. 39.—**AUS.**

b (p. 454) ix. —— *Picture competition.*]—A. was the manager of a certain co. which conducted & advertised the holding of certain competitions known as the " Bran Tub Competition." The scheme of the competition was to take a sentence from an Australian newspaper & reproduce it in puzzle form. The competitors were invited to interpret in words the pictorial rendering of the sentence. The prize was awarded to the person who reproduced the precise words of the sentence chosen or who got nearest to that particular collection of words :—*Held :* the competition was a matter of chance &, therefore, a lottery within sect. 3 (6) of Lotteries & Art Unions Act, 1901-1929.—*Re* CHRISTENSEN, *Ex p.* ATMORE (1936), 53 N. S. W. W. N. 66.—**AUS.**

b (p. 454) x. ———.]—A. published an advertisement in a newspaper setting out the terms of a " competition " of which he was the promoter & controller. The nature of the competition was as follows :—A " frame " was set out in the advertisement consisting of a number of vertical rows of squares, each row containing a different number of squares. In each row one of the squares contained a letter of the alphabet. To each row was allotted a " clue " & to each letter a number. The competitor was asked to fill in the blank squares with letters so as to make each row contain a word of as many letters as there were squares in the row, the word filled in being " suitable to the clue " allotted to the particular row. Each letter in the word was then given its numerical value & the competitor who supplied words the total numerical value of which was the highest won the competition. The advertisement stated that the " missing words " were " ordinary everyday words " & that they must be " recognised words suitable to the clues " & must be found in Chambers's dictionary. In the conduct of the competition unusual & obsolete words used were accepted :—*Held :* the magistrate was entitled to find that the conduct of the competition was such as to preclude the fair consideration of the answers & the competition was a lottery within Lotteries & Art Unions Act, 1901-1929.—*Re* CHRISTENSEN, *Ex p.* ATMORE (1936), 53 N. S. W. W. N. 217.—**AUS.**

sq. *Conducting lottery—Sufficiency of evidence—Finding of tickets & paraphernalia.*]—Where a charge is laid under Criminal Code, s. 236, evidence that tickets & other paraphernalia suitable for lottery purposes were found on the premises of the accused does not amount to a *prima facie* case.—R. *v.* WONG SIM, [1929] 1 D. L. R. 240 ; 50 Can. Crim. Cas. 231 ; [1928] 3 W. W. R. 492.—**CAN.**

sr. *Distribution of cash commissions dependent on chance.*]—The system under a scheme known as the Multiplication Bureau operated as follows : " A." enrolled as a member at a fee of £1 & when he got four new members he was entitled to a commission of 15*s.* on the enrolment of the fourth member ; when this fourth member got three new members " A." was entitled to 12*s.* 6*d.* commission on each, & when these three each got three new members " A." was entitled to 12*s.* 6*d.* commission on the resulting nine enrolments, & the process continued until the commissions accruing to " A." totalled £1,500 :—*Held :* the scheme is to be regarded, in substance, as one in which the main source of the cash commissions is the indirect enrolments & the receipt of commissions arising from such enrolments, or any of them, depends purely on chance so far as the receiving member is concerned ; & the scheme is accordingly a lottery.—MCLEAN *v.* MURCH, [1934] N. Z. L. R. Supp. 7 ; G. L. R. 61.—**N.Z.**

sv. " *Drawing* " — *Meaning of.*]—The word " drawing " used in sect. 294A of the Indian Penal Code, in relation to lotteries, must be given its usual physical interpretation, & its meaning relative to a lottery therefore is that lots should be drawn by some mechanical or human agency involving their chance extraction.—GURBAKHSH SINGH *v.* R. (1934), I. L. R. 16 Lah. 51. —**IND.**

PART IV. SECT. 3.

st. *Art unions—Whether exempt under Criminal Code, s.* 236.]—R. *v.* LEBLANC (Ont.) (1926), 46 Can. Crim. Cas. 38.—**CAN.**

sw. *State lottery—Liability for re sale of tickets.*]—Sect. 5 of State Lotteries Act, 1930, provides that " Any subscriber or contributor to a state Lottery . . . shall be freed & discharged from all penalties, suits, prosecutions & liabilities to which by law he would be liable but for this Act as being concerned in an illegal lottery, littlegoe, or unlawful game. . . ." N. subscribed to a State Lottery & purchased a number of tickets. Shares in each of the tickets so obtained were sold to other persons. N. was charged with knowingly allowing a room to be used for the sale of shares in chances for the disposal of money by chance in contravention of the Gaming & Betting Act, 1912 :—*Held :* (1) appct. was guilty of an offence within sects. 4 & 17 of Gaming & Betting Act, 1912 ; (2) sect. 5 of State Lotteries Act did not afford him protection, as that sect. is limited to the acquisition of tickets in State Lotteries & does not confer an unfettered transferable right on the holder of a ticket.—RUSSELL *v.* NAYLOR (1932), 32 S. R. N. S. W 168 ; 49 N. S. W. W. N. 63.—**AUS.**

462. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

—— —— —— **Liability of individual directors.**]—(1) Liability under above sect. attaches, if there has been publication of a proposal or scheme for a lottery, although the matter has not actually proceeded to a lottery.

(2) A limited co. is not liable to the penalties prescribed by above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox, C. C. 68. *As to* (2) **Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

464. *Add. Annotation :*—**Apld.** Ranson *v.* Burgess (1927), 137 L. T. 530.

464a. —— ——.]—A printer printed and sold to a purchaser a set of tickets adapted for use in a lottery, but no lottery was then in existence. The purpose was that the purchaser should institute & carry on a lottery by means of the tickets, by reselling them singly & providing out of the proceeds a prize for the holder of the winning ticket. The printer took no further interest, financial or otherwise, in the matter, beyond the original purchase price for the sale of the tickets as a set:—*Held :* the printer was properly convicted of publishing a proposal or scheme for the sale of tickets or chances in a lottery contrary to the above sect.—RANSON *v.* BURGESS (1927), 137 L. T. 530; 91 J. P. 133; 43 T. L. R. 561; 25 L. G. R. 378; 28 Cox, C. C. 425, D. C.

Annotations :—**Folld.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

464b. —— —— **Distribution of circulars advertising lottery.**]—**Resp.** employed canvassers to call from house to house, inviting persons to undertake to buy tea from her regularly. Each week the canvassers carried with them handbills which declared that: "To advertise our famous tea we will distribute among our customers cash gifts of £3 and £6," as the purchaser bought one or two packets of tea per week. The circular continued: "Each customer's name is entered in rotation in our ledger and cash gifts are paid out accordingly." The names & addresses of new customers were entered in the ledger in the exact order in which they had been obtained, the list of one canvasser's customers on his return to the office being completely entered before that of the next was begun. Resp. awarded her bonus each week to the next customer whose name was on the list after that of the customer last to receive a bonus, provided that the customer was still regularly buying the tea. The names of customers who ceased to buy the tea weekly were struck out of the list, thus advancing the names of customers below them. It was stated in one of the circulars that during the twenty-four weeks ending in June, 1928, resp. had paid out £1,920 by way of bonus gifts. Applt., a superintendent of police, preferred an information against resp., charging her with publishing a proposal or scheme for the sale of chances in a lottery not authorised by Act of Parliament, contrary to above Act. The stipendiary magistrate dismissed the information holding that resp. had not published a proposal or scheme for the sale of chances in a lottery:—*Held :* there were no materials to justify the magistrate in so holding. The case must be remitted to him with the direction to convict.—HOWGATE *v.* RALPH (1929), 141 L. T. 512; 93 J. P. 127; 45 T. L. R. 426; 73 Sol. Jo. 253; 27 L. G. R. 432; 28 Cox, C. C. 633, D. C.

Annotation :—**Refd.** Public Prosecutions Director *v.* Phillips, [1935] 1 K. B. 391.

466a. **"Shall be deemed to be a rogue & vagabond —What must be proved—Lotteries Act, 1823 (c. 60), s. 41.**]—When a person is charged under Lotteries Act, 1823 (c. 60), s. 41, with selling tickets in a lottery it is not necessary to show that he has the "status" or "mode of life" of a rogue & vagabond. The effect of the section is that any person selling such tickets is to be punished as if he were a rogue & vagabond.—PROTHERO *v.* WATSON (1931), 145 L. T. 643; 95 J. P. 184; 47 T. L. R. 627; 75 Sol. Jo. 629; 29 L. G. R. 528; 29 Cox, C. C. 370, D. C.

466b. **Selling "tickets in any lottery"—Lotteries Act, 1823 (c. 60), s. 41—Proposed lottery.**]—The expression "tickets in any lottery" in Lotteries Act, 1823 (c. 60), s. 41, means tickets in a proposed lottery.—BARKER *v.* WOOD (1932), 48 T. L. R. 402; 76 Sol. Jo. 307, D. C.

PART IV. SECT. 5, SUB-SECT. 1.

q 1. ——.]—Defts. conducted in public a series of games known as "diggers' bagatelle." Bystanders were invited to take part in each game on payment of threepence to defts. The winner of a game received from defts. the sum of ninepence, & became entitled to join in the next game without charge:—*Held :* defts. did not thereby "dispose" of any "property" within Police Offences Act, 1915, s. 88 (*b*).—DEELEY *v.* MCEVOY, [1928] V. L. R. 117; [1928] Argus L. R. 47.—**AUS.**

b (p. 459) 1. —— *"Property" includes money.*]—"Property" in sect. 236 (*c*) of Criminal Code includes money, & the fact that there may be a period during which the amount to be given away under the scheme in question is unascertained is immaterial.—R. *v.* BREWERTON, [1936] 3 W. W. R. 433; 4 D. L. R. 702; 6 Can. C. C. 60; 6 F. L. J. (Can.) 211.—**CAN.**

sw. *Sale of gambling device.*]—A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the devise in question, *e.g.*, a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—R. *v.* HEISE, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—**CAN.**

sy. *Knowingly conveying articles for use in lottery.*]—Accused, the driver of a motor truck who had a contract with a mercantile co. to transport its goods, was under its instructions bringing 30 cases of goods to its premises from the customs warehouse when he was stopped under a search warrant & 10 of the cases were found to contain the paper slips in question. These papers when seized were in a state in which they could be adapted to either a lawful or unlawful use:—*Held :* the conviction must be quashed, since, assuming that the finding that the co. had imported the papers with the intention of illegal use was justified, there was no evidence to support the finding that applt. had knowledge of that intention.—R. *v.* LOUIE HOW, [1936] 2 W. W. R. 638.—**CAN.**

sz. *Exemptions—Lessee of fair grounds association.*]—A lessee of a fair grounds assocn. is within the exemptions proviso relating to lotteries in Criminal Code, s. 236 (*e*).—R. *v.* BEASLEY, [1936] 2 D. L. R. 377; O. R. 299; 65 Can. C. C. 337.—**CAN.**

sd. *Conveying tickets—Necessity for mens rea.*]—A truckman conveying lottery tickets without knowledge of their character commits no offence.—R. *v.* How, [1936] 4 D. L. R. 389; 66 Can. C. C. 250; 50 B. C. R. 554.—**CAN.**

of lottery—Refusal of Home Secretary to exercise jurisdiction—Whether bona vacantia.]—MAY *v.* THOMAS (1934), 78 Sol. Jo. 413.

466d. Possession of ticket for sale or distribution—Possession as custodian for syndicate.]—Applt., received from the purchaser a block of forty-eight tickets in a lottery on behalf of a syndicate comprising twenty-one persons, including applt. He collected from each member 2*s.* a week & himself set aside a similar amount weekly, & subsequently paid over the money collected by him to the purchaser of the tickets. The whole of the forty-eight tickets were held by the syndicate on behalf of all the members, each member holding a twenty-first part in the whole of the tickets. No individual member w entitled to any ticket or tickets, & any prize won by means of any of the tickets have been divided equally between members of the syndicate. Applt. was convicted under Betting & Lotteries Act, 1934 (c. 58), s. 22 (1) (*b*) of having the tickets in his possession for the purpose of sale or distribution:—*Held:* there was no evidence that any ticket was in applt.'s possession for either purpose, as the intention was that all the tickets should be held by him as custodian on behalf of all the members & no sub-sale of tickets between members was ever in contemplation, & the conviction must, accordingly, be quashed.—CORFIELD *v.* DOLBY (1935), 154 L. T. 266; 100 J. P. 75; 52 T. L. R. 139; 80 Sol. Jo. 128; 34 L. G. R. 97; 30 Cox, C. C. 341, D. C.

Part V.—Races and Racecourses.

472. *Add. Annotation:*—**Refd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

479. *Add. Annotation:*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

SECT. 2.—RACECOURSES.

(Vol. XXV., p. 460.)

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41); Betting & Lotteries Act, 1934 (c. 58), ss. 1–20.

480a. —— Powers of Control Board—Payment of commission for placing bets on totalisators of Board.]—The Racecourse Betting Control Board was established as a statutory body with powers to set up & operate totalisators on approved racecourses for the purposes of betting, subject to the conditions required by the Act being observed. In the years 1929 to 1933 inclusive the Board had entered into a series of agreements with two cos., in order to procure the collection of bets from persons not on the racecourse on race days, & the placing of such bets on the totalisator on the course. The Board agreed to pay commission at certain rates dependent on the amount of money placed by means of such bets, & also the expenses of its agents in collecting & telephoning the bets to the course, such commission & expenses being paid by the Board out of the totalisator fund. The Board also agreed with one of the cos. to provide at its own expense all reasonable facilities required by the co. for the purpose of its business on the authorised racecourses & to make contributions towards the initial expenses of that co. In an action brought at the relation of the secretary of a bookmakers' organisation, asking for a declaration that such agreements & payments were invalid & *ultra vires* the Board:—*Held:* (1) the action of the Board in agreeing to pay the commission & the expenses of providing facilities on the authorised racecourses was reasonably incidental to the power conferred on the Board by Racecourse Betting Act, 1928 (c. 41), & was therefore not *ultra vires*. In so doing the Board was only taking steps to increase the bets placed on the totalisators on the courses; (2) in contributing towards the preliminary expenses of one of the cos. the Board was acting *ultra vires*, as it was thereby assisting in the general business of the co. which as between itself & its customers was carrying on "off-the-course" betting.—A.-G. *v.* RACECOURSE BETTING CONTROL BOARD, [1935] Ch. 34; 104 L. J. Ch. 13; 152 L. T. 146; 51 T. L. R. 36; 78 Sol. Jo. 783, C. A.

480b. —— —— Contribution to expenses of company collecting bets.]—A.-G. *v.* RACECOURSE BETTING CONTROL BOARD, No. 480a, *ante*.

PART IV. SECT. 5, SUB-SECT. 2.

82. *Action by wife against husband.*]—In an action by a common informer under sect. 236 (3) of the Criminal Code, pltf. being wife of deft.:—*Held:* judgment should not be granted since there was a suspicion of collusion & also that there was no proof that by the law of Canada a wife can sue her husband.—DINNING *v.* DINNING, [1932] O. R. 208; 2 D. L. R. 205; 57 C. C. C. 393.—**CAN.**

83. *Proceedings for penalty—Security for costs—Whether ordered.*]—Pltf. brought an action to have it declared that a contest in connection with an automobile show in which deft. won an automobile was contrary to sect. 236 (3) of the Criminal Code, & that said automobile be forfeited to him. Upon an application by deft., the referee, pursuant to K. B. R. 987, ordered pltf. to secure deft.'s costs. Pltf. appealed:—*Held:* sect. 236 (3) of the Criminal Code confers a right of action which in no way can be diminished or impaired by K. B. R. 987; nor is it required that said rule shall apply, in order that due enforcement of the rule shall be upheld.—BROWN *v.* KEELE, [1934] 2 W. W. R. 570; 4 D. L. R. 508; 42 Man. L. R. 329; 62 C. C. C. 84.—**CAN.**

84. *Forfeiture of property won.*]—There is no discretionary power not to adjudge a forfeiture of property won in a lottery.—SAUNDERS *v.* MOLLISON (4931), 62 Can. C. C. 274.—**CAN.**

85. *Destruction of "documents"—What are.*]—A bookmaker was convicted, under Betting & Lotteries Act, 1934, s. 22, of having conducted an illegal lottery. The sheriff-substitute ordered forfeiture of one ten-shilling note, & the destruction of all coupons produced in the case, but refused to order destruction of postal orders, money orders & cheques, which represented payments to the accused by persons taking part in the lottery in respect of their tickets therein:—*Held:* the postal orders, etc., in question, since they represented the price of tickets in the lottery, were "documents" relating to the conduct of the lottery within 1934 Act, s. 30 (3), &, accordingly, they fell to be destroyed.—STRANG *v.* ADAIR, [1936] S. C. (J.) 56.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 3

86. *Coursing—Use of mechanical hare—Whether within Gaming & Betting Act, 1912, s. 7.*]—Resp. attended a

483. *Add. Annotations :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1 ; Cipriani *v.* Burnett, [illegible]

483a. —— ——.]—A contract may make the award of a specified tribunal a condition precedent to an action at law without doing so in terms.

The tickets sold for a sweepstake in connection with a race meeting in Trinidad stated : " This ticket is sold subject to the condition that in the event of any dispute arising with respect to any matters connected with the drawing of the sweepstake, or the awarding of the prizes, the decision of the stewards of the Trinidad Turf Club thereon shall be accepted as final " :—*Held :* the terms of the ticket, having regard to the circumstances belonging to it, made a decision by the stewards a condition precedent to any action to recover the stakes.—CIPRIANI *v.* BURNETT, [1933] A. C. 83 ; 102 L. J. P. C. 118 ; 148 L. T. 148, P. C.

484. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

490. *Add. Annotation :*—**Refd.** Cipriani *v.* Burnett, [1933] A. C. 83.

Part VI.—Competitions.

496. *Add. Annotations :*—**Distd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

497. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

498. *Add. Annotations :*—**Apld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75. **Consd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

501. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

501a. Betting & Lotteries Act, 1934 (c. 58), s. 26—Betting pool business—What amounts to.]—A co. whose only trade or business was that of a bookmaker as defined in Part I. of the Betting & Lotteries Act, 1934 (c. 58), advertised a " football pool " in a weekly newspaper. Readers were thereby invited to fill in coupons relating to any one or more of a series of football matches to be played on the following Saturday, with their respective forecasts of the results, including the score, & to stake a named sum thereon. Under the rules of the pool entrants were required on the day before the matches were played to remit the coupons they had filled up to the co. with a promise in writing, duly signed, to pay the amount they were staking in case they lost, on the Tuesday following. The total amount received from entrants, less 10 per cent., was distributed by the co. among those whose forecasts turned out to be correct, or most nearly correct. On a motion by pltf., a director of deft. co., for an injunction to restrain them from so conducting the pool :—*Held :* the pool was not a " competition in which prizes are offered for forecasts of the result . . . of a future event " within the prohibition contained in Betting & Lotteries Act, 1934 (c. 58), s. 26, but a pari-mutuel or pool betting operation conducted by a bookmaker, & therefore lawful within sect. 3 & the proviso to sect. 26 of the Act.—ELDERTON *v.* UNITED KINGDOM TOTALISATOR CO., LTD., [1935] Ch. 373 ; 104 L. J. Ch. 105 ; 152 L. T. 549 ; 99 J. P. 179 ; 51 T. L. R. 237 ; 79 Sol. Jo. 126 ; 33 L. G. R. 176.

502. *Add. Annotations :*—*As to* (1) **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

licensed racecourse on which a sport consisting of the pursuit of a mechanical hare by dogs was held, & made bets on several of the dogs. He was charged before a magistrate with an offence under above sect., & the magistrate held, as a matter of law, on the evidence before him, that the pursuit of a mechanical hare by dogs was " coursing " within above sect., & dismissed the information :—*Held :* the pursuit of a mechanical hare by dogs was not " coursing " within above sect., & the determination of the magistrate was erroneous in point of law.—KELSO *v.* MCLACHLAN (1928), 28 S. R. N. S. W. 510 ; 45 N. S. W. W. N. 143.—**AUS.**

PART V. SECT. 2.

sc. *Refusal of admission—Validity of bye-law.*]—NAYLOR *v.* STEPHEN, [1937] 2 W. W. R. 601.—**AUS.**

PART V. SECT. 3.

484 i. *Finality of decision—Absence of final decision.*]—Where a challenge cup, to be won in a bicycle race between competing clubs, was held by trustees under an instrument of trust, by which all arrangements pertaining to the course, race, protests & matters " connected with the welfare of the cup " were to be decided by the trustees according to certain rules, the ct., upon the mere allegation of fraud, & before any decision of the trustees, refused to exercise jurisdiction restraining the trustees from parting with the cup to an alleged winner under protest, upon the ground that one of the winning riders did not go round the course, that being a matter of fact for the decision of the trustees.—ROSS *v.* ORR (1894), 25 O. R. 595.—**CAN.**

484 ii. —— *Appeal to committee of Turf Club—Powers of committee.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

PART VI. SECT. 1.

d i. —— —— *Receipt of money with coupons—Whether offence under Street Betting Act.*]—In a complaint under Street Betting Act, 1906, it was proved that accused received in the street from various persons a large number of slips accompanied by sums of money. The slips were odd pieces of paper, upon each of which were written the names of at least one group of eight football teams, to which was added a name, number or other symbol, for identifying the sender of the slip. Accused did not submit lists of football teams for the purpose of selection, the names of such teams being selected by the senders of the slips from lists of teams advertised or reported in the public press to play on the Saturday following the date on which the slips were received by accused. The teams selected were those which the senders of the slips predicted would be winning teams on that Saturday. Along with each slip was sent 1*s.*, the understanding being that, after the results of the matches were published, accused would examine the forecasts made, & thereafter would deduct from the money received a sum in name of commission, & hand over the balance to the person sending in the correct forecast if only one forecast was correct, or, if more than one forecast was correct, an equal share of such balance to each of the senders of correct forecasts. If no correct selection was sent in there was no distribution, & the whole contributions were carried forward to the next week ; which procedure was repeated until a correct forecast was made, or until the end of the football season arrived, when if there had been no correct selection received, the money in hand, less a commission to the accused, was distributed among those who had sent it :—*Held :* accused was engaged in betting transactions & was guilty of an offence under Street Betting Act, 1906.—YEUDALL *v.* [illegible], [1928] S. C. (J.) 54.—**SCOT.**

PART VI. SECT. 2.

n i. —— *Estimate of future temperatures.*]—The publication of the scheme in question herein by which deft. offered prizes for the nearest estimates

As to (3) **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

503. *Add. Annotation :*—**Refd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

504a. —— **Determination of order of popularity of specified articles.**]—The proprietors of a number of commodities organised, for advertisement purposes, a competition in which customers were asked to place thirteen named articles in the order of their popularity as shown by the actual voting of the entrants themselves. A number of money & other prizes were offered to those whose lists most nearly agreed with that shown by the voting as a whole. No entrance fee was charged, but each entrance form had to be accompanied by part of a bag or wrapper from one of the named articles :—*Held :* since the competitors were not asked to judge the real merits of the articles but to guess how other people would guess at their popularity, there was material on which a magistrate was justified in finding that the result depended entirely on chance & in convicting the advertising manager of the promoters of an offence under Lotteries Act, 1823 (c. 60), s. 41, —HOBBS *v.* WARD (1929), 93 J. P. 163 ; 45 T. L. R. 373 ; 27 L. G. R. 410, D. C.

Annotations :—**Folld.** Challis *v.* Warrender (1930), 144 L. T. 437. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

504b. —— **Determination of order of popularity of theatrical rôles.**]—Resps. sent to members of the theatrical profession & to persons whose names appeared in " Who's Who " books of 10*s.* tickets in a " Grand National Mutual Subscription Fund in aid of the Ellen Terry Memorial Museum " with a request to sell the tickets among their friends & return the counterfoils & money by a certain date. An accompanying circular explained that 25 per cent. of the money subscribed would be devoted to the museum & that the remaining 75 per cent. would be distributed " in such manner as the organisers in their absolute discretion shall think fit," but that £20,000 would be distributed in prizes. It was apparently originally contemplated that the money should be used for a sweepstake on the Grand National horse race, but owing to a communication from the police there was substituted a scheme whereby subscribers were invited to place in order of popularity, as shown by the general votes of the competitors, ten rôles played by the late Dame Ellen Terry :—*Held :* the scheme was a lottery. The fact that the original books of tickets were sent only to members of the theatrical profession & persons in " Who's Who " did not so limit the class of competitors as to render it possible by any element of skill to arrive at a reasonable forecast of how they would vote ; especially as they might be expected to sell many tickets to persons outside those two categories, so that the competition was in effect open to the public.—CHALLIS *v.* WARRENDER (1930), 144 L. T. 437 ; 95 J. P. 39 ; 47 T. L. R. 123 ; 29 L. G. R. 109 ; 29 Cox, C. C. 251.

505. *Add. Annotations :*—**Apld.** Hobbs *v.* Ward (1929), 93 J. P. 163. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

506. *Add. Annotations :*—**Distd.** Hobbs *v.* Ward (1929), 93 J. P. 163. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

506a. —— **Picture puzzle competition.**]—A competition was advertised in a newspaper in which a money prize was offered to the reader sending in the best solution of a picture puzzle illustrated in the same issue. The puzzle consisted of a set of nine small sketches each intended to depict the name, as spelt or pronounced, of some place in the United Kingdom. A list of names providing clues was given. Competitors were required to fill in blank forms with their solutions & send them in to the editor with entrance fees. The artist who drew the sketches was instructed to make some of them capable of representing one or other of two or three different places. In an action brought to test the legality of the competition :—*Held :* (1) success in the competition depended on the exercise of a substantial degree of skill, there being no predetermined solution of the puzzle, & therefore it did not come within the prohibition contained in Betting & Lotteries Act, 1934 (c. 58), s. 26 (1) (*b*) ; (2) the competition was not a " game " within the prohibition of Betting Act, 1853 (c. 119), s. 1.—WITTY *v.* WORLD SERVICE, LTD., [1936] Ch. 303 ; 105 L. J. Ch. 63 ; 154 L. T. 491 ; 100 J. P. 68 ; 52 T. L. R. 235 ; 79 Sol. Jo. 966 ; 34 L. G. R. 150 ; 30 Cox, C. C. 375.

of the average temperatures of seven named cities on a future date & the attendance at the Regina Fair on certain future days, & under which those invited to compete were supplied with statistical information to assist them in making their estimates, was held not to be a violation of s. 326 (*a*) of the Criminal Code.—R *v.* REGINA AGRICULTURAL & INDUSTRIAL EXHIBITION ASSOCN., LTD., [1932] 2 W. W. R. 131.—**CAN.**

GARAGE.

See NUISANCE.

GAS.

Part II.—Lands and Works.

10. *Add. Citations :*—94 L. J. Ch. 382 ; 133 L. T. 565 ; 89 J. P. 177 ; 23 L. G. R. 525.

—— —— **Country road.**]—The word "street," as used in Gasworks Clauses Act, 1847 (c. 15), s. 6, is not necessarily confined to what is ordinarily known as a street, & over which there is a public right of way. A country lane with certain residences abutting upon it may be a street, although it has not been dedicated to the public & no public right of way exists.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884 ; 97 L. J. Ch. 479 ; 139 L. T. 636 ; 92 J. P. 153 ; 26 L. G. R. 530.

27. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

Part III.—Supply of Gas.

31. *Add. Annotations :*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

37. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191.

40. *Add. Annotation :*—**Distd.** Granger *v.* South Wales Electric Power Distribution Co., [1931] 1 Ch. 551.

51a. Duration of agreement to supply—Power to terminate.]—In 1906 a co. was incorporated by statute to supply gas in a certain area in the place of a limited co., & by sect. 7 the statutory co. took the benefit of all contracts & engagements of the limited co. which had been supplying gas to the defts., an urban council, for public lighting. In 1909 the co. entered into an agreement under seal with the council in which it was recited that before the passing of the Act "it was agreed by & between the predecessors of the gas co. & the council that the agreement then in force for public lighting should continue to remain in force & be binding on both parties until the council should determine the same," & that "it has been deemed desirable by the said parties hereto that the terms of the said agreement for the public lighting shall be set out as hereinafter mentioned." By the operative part of the agreement the co. agreed to light all the public lamps within the district "from & after the first day in Sept. in every year up to the following first day of May inclusive" on certain terms ; & provisions were made for increasing the number of lamps. There was no provision as to the period for which the agreement was to run or giving either party a right to determine it. By a supplemental agreement dated June 30, 1921, the times of lighting & the charges were varied, & clause 1 (*c*) provided that new lanterns supplied by the co. should become the property of the council without payment after fifteen years if the agreements continued for so long, "& if the said agreements be determined before the expiration of such period" the council were to pay for them. On Apr. 30, 1927, the council gave notice to determine the agreement on Aug. 31, 1927 :—*Held :* having regard to the recitals in the original agreement & clause 1 (*c*) of the supplementary agreement & to the nature of the contracts they were determinable by notice.—CREDITON GAS CO. *v.* CREDITON URBAN DISTRICT COUNCIL, [1928] Ch. 447 ; 97 L. J. Ch. 184 ; 138 L. T. 723 ; 92 J. P. 76 ; 44 T. L. R. 369 ; 72 Sol. Jo. 225 ; 26 L. G. R. 325, C. A.

PART I. SECT. 3.

sd. *Franchise granted to company—Option of town to purchase.*]—It cannot be said that clauses 37 & 39 of sect. 162 of Town Act, R. S. A., 1922, as it stood at the time the agreement in question herein was entered into, relate to different kinds of agreements & that clause 39 does not apply to an agreement by which a special franchise is granted by a town. Whether or not clause 39 (*b*) applies to agreements granting special franchises, clause 11 of the agreement herein is binding as a term of the contract so far as it is not *ultra vires*.—*Re* WAINWRIGHT TOWN & WAINWRIGHT GAS CO., LTD., [1930] 3 W. W. R. 49.—**CAN.**

PART III. SECT. 1.

sx. *Power to run pipes under highway through municipality—No power to supply municipality—Right of municipality to sue for illegal supply.*]—NELSON *v.* DOMINION NATURAL GAS CO., LTD., [1931] 2 D. L. R. 229 ; 66 O. L. R. 271.—**CAN.**

sg. *Grant of right to supply gas in district—District added to municipality—Municipality not entitled to interfere with right to supply.*]—The effect of a bye-law passed by the council of a township in Ontario under Consolidated Municipal Act, 1903 (Ont.), s. 566 (3), authorising a co., incorporated with suitable powers, to lay mains under the streets of the township & to supply its inhabitants with gas, together with an agreement by the co. accepting the bye-laws & its conditions, is to confer upon the co. (the conditions being fulfilled or waived) a valid & perpetual franchise, not subject to repeal, applying to the geographical territory which at the date of the bye-law was comprised in the township. Upon parts of that territory being annexed to an adjacent city, under provisions of the above Act as amended & Municipal Act, 1913 (Ont.), the franchise remains effective in & applicable to the annexed areas. In those areas the municipality of the city after the annexation takes the place *mutatis mutandis* of the municipality of the township to all intents & purposes as regards the rights & obligations created by the bye-law & relative agreement.—UNITED GAS & FUEL CO. OF HAMILTON, LTD. *v.* DOMINION NATURAL GAS CO., LTD., [1934] A. C. 435 ; 103 L. J. P. C. 94 ; 151 L. T. 385, P. C.

PART III. SECT. 2, SUB-SECT. 5.

sa. *Powers of municipality as undertaker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 6.

sb. *Refusal to pay increased rates—Right to cut off gas.*]—*Held :* Natural Gas Conservation Acts, 1921 (c. 17), & 1922 (c. 23), were valid.—SANDWICH *v.* UNION NATURAL GAS CO. (Ont.), [1925] 4 D. L. R. 795 ; *affg.*, [1925] 2 D. L. R. 707 ; 56 O. L. R. 399.—**CAN.**

Part IV.—Protection of Property of Undertakers.

62. ***Add. Annotations :—As to*** (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

Part V.—Negligence and Nuisance.—Liability of Undertakers.

74. ***Add. Annotations :—*** **Refd.** Stein *v.* Gates (1935), 79 Sol. Jo. 252; Burnham *v.* Boyer & Brown, [1936] 2 All E. R. 1165.

80a. Excavation by local authority—Failure of gas company to inspect operations.]—A hotel belonging to & insured by resps. respectively was destroyed by fire caused by the escape & ignition of natural gas which percolated through the soil & penetrated into the hotel basement from a fractured welded joint in a 12-in. intermediate pressure main, 3 ft. 6 ins. below the street level, belonging to applts., a public utility co. who supplied natural gas to consumers in the City of Edmonton, Alberta. The cause of the break in the welded joint through which the gas leaked was found to be the operations of the City of Edmonton in constructing a storm sewer, involving underground work immediately beneath applts.' main. On a claim for damages by resps. against applts. :—*Held :* that the words "locate & construct" in Alberta Water, Gas, Electric & Telephone Cos. Act, 1922, s. 13, refer only to the initial location or construction of the works, & do not include "maintain," & applts. were not subject to the rule of strict or absolute liability, but were entitled to the protection accorded to persons acting under statutory authority; but as applts. were carrying gas at high pressure which was very dangerous, if it should escape, they owed a duty to the owners of the hotel, to exercise reasonable care & skill that the owners should not be damaged. The degree of care which that duty involved must be proportioned to the degree of risk involved. The City might at any time be conducting operations in connection with their sewers in the vicinity of applts.' mains, & it was the duty of applts. to watch such operations. The operations in question were, from their public nature & conspicuous character & from the time during which they went on, such that a failure by applts. to know of them was plainly not consistent with due care on their part in the interests of members of the public likely to be

PART IV. SECT. 2, SUB-SECT. 1.

62 i. *Gas main—Damage by subsidence.*]—A gas co. opened a street in a city & laid down a gas main. The city corpn. constructed an underground drain, &, by reason of a subsidence of the drain, the gas main was broken. The co. opened the street & repaired the gas main & the corpn. reinstated the drain & roadway. In an action by which the corpn. sought to recover from the co. the cost of such reinstatement, the co. by counterclaim sought to recover from the corpn. the cost of repairing the gas main :—*Held :* the liability of the corpn. for the damage to the gas main depended upon negligence in the exercise of its statutory powers causing unnecessary damage to the co., & the *onus* of proving such negligence had not been discharged by the co.—METROPOLITAN GAS CO. *v.* MELBOURNE CORPN., [1925] V. L. R. 132; 35 C. L. R. 186; 31 Argus L. R. 25.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.—B.

o i. —— ——.]—EMPIRE MARBLE & TILE CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1933] 3 W. W. R. 225.—**CAN.**

—— an action for —— from an explosion of gas alleged to have been caused by the negligent installation of a pipeline serving pltf.'s premises :—*Held :* deft. co. was not protected from liability by virtue of a certain clause of its rules & regulations, incorporated in the contract between pltf. & deft., & which read : "The property line shall be the place of delivery of all gas in this contract & all expenses, risks & liability in utilising & using the gas after its delivery at the property line shall be borne exclusively by the consumer" : it being held that the escape of gas from a fracture in a pipe caused by the negligence of deft.'s servants was not a "utilising" or "using" of the gas, &, moreover, that the clause meant a utilisation or use by the consumer.—EMPIRE MARBLE & TILE CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1933] 3 W. W. R. 225.—**CAN.**

q. For "*Escape of gas from gas main*" read "*Escape of gas—From gas main.*"

q i. —— *During installation of gas connections—Destruction of buildings by fire following explosion.*]—*Held :* the gas co. were liable.—CONSUMERS' GAS CO. *v.* R., [1927] 1 D. L. R. 564; [1926] S. C. R. 709.—**CAN.**

q ii. —— *Necessity for proof of negligence.*]—In an action for damages for injuries to pltfs. caused by the escape of gas from deft. gas co.'s main :—*Held :* since the co. had laid & was operating its system under statutory power, & there was nothing in its incorporating Act providing that nothing therein should exonerate the co. from liability for nuisance, the co.'s liability depended upon proof that it had been negligent & that its negligence caused pltfs.' sufferings.—SCHEER *v.* WINNIPEG ELECTRIC CO., [1936] 2 W. W. R. 369; 3 D. L. R. 494; 44 Man. L. R. 179.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

q i. —— *Liability of city.*]—A provision in a city charter imposing on the city the duty of constructing all public works & apparatus appertaining thereto so as not to endanger the public health or safety includes the duty to keep said works & apparatus in such repair as will effect the same object. In the present case :—*Held :* deft. city had not met the obligation of this provision with respect to a service pipe connecting a natural gas main with pltf.'s premises; the gradual development & enlargement of a leak in the stopcock in said service pipe was not a "breaking" of the pipe or attachments within a section of the charter giving the city immunity for damages caused by "breaking."—REID *v.* MEDICINE HAT CITY, [1933] 1 W. W. R. 65.—**CAN.**

sp. *Escape of gas—Act of stranger.*]—An action for damages for an injury to pltf.'s health caused by an escape of gas owing to the breaking of deft.'s service pipe in premises in which pltf. resided. Pltf. lived with her mother, who was the householder & who apparently, had contracted for the supply of gas. No contractual relation between pltf. & deft. was established, & no negligence was proven against deft. The pipes had been properly laid & were in sound condition when the break occurred. The cause of the break was the action of an occupant of the front part of the lot in so altering his premises that additional weight was thrown laterally against the sunken pipe until it broke at a joint, permitting gas to escape & pass under ground to the basement, whence it reached pltf.'s bedroom. Deft.'s charter required it "so to construct & locate their works & all apparatus & appurtenances thereto appertaining or therewith connected & wheresoever situated as in no wise to endanger the public health, convenience, or safety." The sect. then goes on to provide for inspection at all reasonable times by the municipal authorities of the co.'s works, apparatus & appurtenances, & the obeying by the co. of all reasonable orders & directions following such inspection with penalties for disobedience of the same :—*Held :* deft. was not liable.—DARBEY *v.* WINNI-

affected. Although under the exception to the rule in *Rylands* v. *Fletcher*, applts. would not be liable for damages caused, without default on their part, by the independent, conscious act of a third party, they were negligent in failing to foresee & guard against the consequences to their works of the City's operations.—NORTHWESTERN UTILITIES, LTD. *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1936] A. C. 108; 105 L. J. P. C. 18; 154 L. T. 89; 52 T. L. R. 93; 79 Sol. Jo. 902, P. C.

Annotation :—**Refd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

84. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

85. *Add. Annotation :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

99. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

Part VIII.—Gas Supply in the Metropolis.

114. *Add. Annotation :*—**Consd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

117. *Add. Annotations :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566; Pearce *v.* London County Electric Supply Co. (1935), 34 L. G. R. 349.

125. *Add. Annotation :*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

PEG ELECTRIC CO., [1933] 1 W. W. R. 566; 4 D. L. R. 252; 41 Man. L. R. 123.—**CAN.**

sr. ——.]—Deft. gas co. held not liable for an explosion in pltf.'s house, there being no evidence as to how the gas escaped into pltf.'s house, & no evidence that deft. co. was in any way responsible.—SNYDER *v.* MONCTON ELECTRICITY & GAS CO., LTD., [1936] 2 D. L. R. 31; 10 M. P. R. 138.—**CAN.**

sw. *Meter placed in inaccessible position.*]—In an action of damages for personal injuries which was brought against Glasgow Corpn., the pursuer, an elderly woman, averred that her house was originally supplied by defenders, under their statutory powers, with gas for cooking & lighting purposes through a meter of ordinary type which was placed above a cupboard 7 feet 9 inches in height; that this meter was subsequently removed & a slot meter, operated by a lever after the insertion of a coin, was installed in exactly the same position by defenders' servants, notwithstanding a request by the pursuer that it could be placed in a more accessible position within the cupboard; that, while standing on a stepladder which she had to use when proceeding to obtain a fresh supply of gas from the meter, she overbalanced, fell to the floor, & was injured; that it was the duty of defenders, if they chose to instal a slot meter, to place it in a position reasonably accessible to persons using it; & that they had negligently failed in that duty. She further explained that, prior to the accident, she had continued to use the meter because of the repeated assurances of defenders' servants that it would be placed in a more accessible position :—*Held :* the averments of pursuer relevantly set forth a case for inquiry.—POLLOCK *v.* GLASGOW CORPN., [1936] S. C. 428.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

r i. —— —— *Natural use of property.*]—The laying of gas pipes by a landlord for the supply of gas to dwelling-houses owned by him is a natural use of his property, & accordingly, ownership of an ordinary service pipe for the conveyance of gas to a tenant's house is insufficient *per se*, & without negligence to render the landlord liable for injury resulting to the occupants of the house through an escape of gas from the pipe.—MILLER *v.* ROBERT ADDIE & SONS' COLLIERIES, [1934] S. C. 150.—**SCOT.**

GIFTS.

Part I.—In General.

9. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

10. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

Part II.—Capacity to Give and to Receive Gifts.

17. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

19. *Add. Annotation :*—**Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

—— ——.]—It is within the powers conferred upon the Wimbledon & Putney Commons conservators (a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871) to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190; 100 L. J. Ch. 77; 144 L. T. 310; 47 T. L. R. 17; 74 Sol. Jo. 819; 29 L. G. R. 78.

20. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

Part III.—Gifts inter vivos.

26a. Gift for public purposes—Whether formalities for compulsory acquisition apply.] — The formalities required for the exercise of the compulsory powers given by statute for taking land for public improvements have no application to the case of a voluntary gift of land.—MICHAUD *v.* MONTREAL (CITY) (1923), 92 L. J. P. C. 161; 129 L. T. 417, P. C.

54a. ——.]—Declarations by an intestate, that he meant that a person with whom he resided should have his furniture & effects for what he owed her :—*Held :* sufficient to entitle such person to take, & retain possession of the property.—ROYSTON *v.* HANKEY (1833), 3 Moo. & S. 381.

69. *Add. Citations :*—*sub nom.* BINION *v.* STONE, Freem. Ch. 169; Nels. 68.

PART I.

2 i. *Essentials of gift—Transfer of property—Intention alone insufficient.*]—JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

b i. ——.]—MCMURCHY *v.* STEWART (Alta.), [1926] 3 D. L. R. 448; [1926] 2 W. W. R. 463.—**CAN.**

sb. *Purchase by father for pupil daughters—Disposition & registration in daughters' names.*]—*Held :* the father had made a complete & effective donation.—LINTON *v.* INLAND REVENUE COMRS., [1928] S. C. 209; 13 TAX CAS. 448.—**SCOT.**

sc. *Gift by Mahomedan resident in Ceylon.*]—A Mahomedan resident in Ceylon executed in 1904 a deed purporting to give immovable property to his son, subject to conditions & restrictions inconsistent with an intention to make a gift as recognised by Mahomedan law but creating a valid *fidei commissum* according to Roman-Dutch law :—*Held :* the deed was not invalid on the ground that there had been no delivery of possession to the donee as required by Mahomedan law for the validity of a gift.—WEERASEKERA *v.* PEIRIS, [1933] A. C. 190; 102 L. J. P. C. 28; 148 L. T. 389, P. C.—**CEYLON.**

PART III. SECT. 1, SUB-SECT. 2.—B. (a).

f i. ——.]—DICKSON *v.* CHAMBERLAND, [1927] 2 D. L. R. 429; [1927] 1 W. W. R. 794; 22 Alta. L. R. 393.—**CAN.**

sd. *What amounts to — Conduct recognising right of donee.*]—GRIFFITHS *v.* CARLETON (1927), 30 W. A. L. R. 1.—**AUS.**

sk. *Delivery to agent of donor.*]—A gift of a debt covered by a promissory note given by an invalid codicil, is not good as a gift *inter vivos* where the promissory note is given to the husband of the intended donee in testator's lifetime, but only as exor. or agent for testator.—ALLEN *v.* GRAHAM, [1934] 3 D. L. R. 797.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (b).

36 vi. ——.]—In an action of trover brought to recover the value of eight hundred seals alleged to have been wrongfully taken at the seal-fishery, it appeared that pltf. had found a quantity of seals panned & flagged by one W., who had abandoned them himself, but had sent a message to deft. that he might take the seals so left on the ice. Deft. proceeded to the locality where the seals were & found that pltf. had taken some of them on board his vessel, had counted others of the patch, & was in the act of taking on board his vessel the remainder, his crew being then in charge. Deft. then took charge of the remainder of the seals & had them conveyed on board his own vessel, & refused to permit pltf. to participate in the same. In an action by pltf. for the seals so taken the jury found for pltf.; on a rule *nisi* to set aside the verdict :—*Held :* there was a valid gift from W. to deft. such as would cause a legal transfer of property; &, further, it was in the power of W. to transfer property floating on the sea which he had himself the power to secure.—DOYLE *v.* BARTLETT (1872), 5 Nfld. L. R. 445.—**NFLD.**

36 vii. ——.]—LANGER *v.* MCTAVISH BROS., LTD., [1932] 4 D. L. R. 90; 45 B. C. R. 494.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (c).

51 i. *Whether immediate gift intended.*]—GARLAND *v.* O'REILLY (1911), 11 S. C. R. 197.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (e).

n i. —— *To bank manager.*]—The payee of a promissory note payable on demand left it with his bank for the purpose of having the interest on it collected. Subsequently he indorsed the note to his nephew & left it with the bank manager, telling him that he wished to collect the interest on it while he lived & to have the note delivered to his nephew on his death, & the manager put the note into a large envelope in the bank which held documents belonging to the nephew :—*Held :* there had been a complete gift *inter vivos* of the note.—DICKSON *v.* CHAMBERLAND, [1926] 3 D. L. R. 765; [1926] 2 W. W. R. 570; 22 Alta. L. R. 270.—**CAN.**

73a. —— ——.]—ANON. (1667), Freem. Ch. 128; 22 E. R. 1104.

73b. —— ——.]—SHALES *v.* SHALES (1701), Freem. Ch. 252; 1 Eq. Cas. Abr. 382; 22 E. R. 1191.

77. *Add. Annotation:*—**Refd.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

83a. —— ——.]—When a father purchases property with his own money, & takes a conveyance in the name of his son, the law presumes it to be an advancement for the son, & not a trust for the father. Those who allege that it is a trust are bound to prove it, & the evidence for that purpose consists mainly, if not exclusively, of contemporaneous circumstances. Testator has transferred property into the names of his sons:—*Held:* they were advancements, but there being doubts as to his solvency at the time, inquiries were directed on the point.—CHRISTY *v.* COURTENAY (1849), 13 Beav. 96; 51 E. R. 38.

Annotation:—**Consd.** Batstone *v.* Salter (1874), L. R. 19 Eq. 250.

88a. **Business in son's name—Receipt of profits by father—Presumption of advancement.**]—LEWIS & BARDER *v.* PICZENICK (1930), 74 Sol. Jo. 107.

103a. —— ——.]—*Re* COLLINSON, COLLINSON *v.* COLLINSON (1853), 3 De G. M. & G. 409; 21 L. T. O. S. 234; 43 E. R. 160, L. C.

Annotation:—**Consd.** Bennet *v.* Bennet (1879), 10 Ch. D. 474.

108. *Add. Annotation:*—**Refd.** Gopeekrist Gosain *v.* Gungapersaud Gosain (1854), 6 Moo. Ind. App. 53.

119. *Add. Annotation:*—**Refd.** Lewis & Barder *v.* Piczenick (1930), 74 Sol. Jo. 107.

PART III. SECT. 2.

sx. ——.]—Before it can be said that influence which a donee is found to have had with his donor was such as to justify the ct. in setting aside the gift, under the doctrine of presumed undue influence, it must appear that the relations between the donor & donee were such that the latter was under some duty to advise or manage for, or look after the interest of, the donor.—BRADLEY, LANG & SCRAGG *v.* CRITTENDEN, [1932] S. C. R. 552; 3 D. L. R. 193; *affg.*, [1931] 2 W. W. R. 669; 4 D. L. R. 384; 25 Alta. L. R. 562; *revsg.*, [1931] 2 D. L. R. 961.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

q i. —— ——.]—The question whether a purchase of property by a parent in the name of his wife or child was a gift by way of advancement must be determined by what took place at the time the property was purchased. A gift to a parent from a child under age & under the parental dominion stands on the same footing as any other gift once the presumption of parental influence is rebutted.—ROYAL TRUST CO. *v.* JONES, [1935] 1 W. W. R. 46.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

89 i. *Whether presumption arises.*]—The facts that a daughter (her mother standing *in loco parentis* to her) was not informed of the deposit by her mother of a sum of money in her name, & that the mother died before the daughter assented to or accepted such intended gift, do not prevent the gift, if intended, being complete subject to the donee's right to disclaim, the acceptance of a gift by a donee being presumed until his dissent is signified, even though the donee is not aware of the gift:—*Held:* on the evidence, the presumption of a gift to the daughter had not been rebutted.—IRVIN *v.* BROOKES, [1937] N. Z. L. R. 73; 13 N. Z. L. J. 20.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 2.—D.

sg. *Grandfather & grandchild.*]—The relationship of grandfather & grandson, when the grandfather is not *in loco parentis* & the father is living, raises no presumption of a gift.—MACDONALD *v.* YOUNG (1934), 7 M. P. R. 602.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

113 i. *Contrary intention of donor—Investments as trustee for daughters.*]—*Held:* the circumstances did not rebut the presumption that the money was intended as an advancement to the children.—JONES *v.* KINNEAR (1882), N. S. R. (4 R. & G.) 1.—**CAN.**

sv. —— .]—A father purchased land, the transfer of which was taken in the name of his daughter. The price paid was £700, of which the daughter contributed £286 10*s.*, the father providing the balance. The title, when issued, was held by the father. Rents & outgoings were shared equally by the father & daughter during the father's life. At the request of the father the daughter signed an acknowledgment that the father owned "one equal half part of 'the house' in her name," being the property purchased. The father died leaving his widow a life interest in his residuary estate & until her death she received one-half of the nett rents of the property. There were statements by the father contemporaneous with the gift showing that he might give his daughter the whole of the property, but he had never done so:—*Held:* on these facts, any presumption of advancement of the whole property to the deft. was rebutted.—MILLARD *v.* LUCAS, [1936] S. A. S. R. 166.—**AUS.**

sw. —— .]—In 1920 deft. S. had an account with a savings bank the amount of which exceeded the amount permitted to bear interest. Acting on a suggestion made either by his own banker or an employee of the savings bank, & desiring to keep his money at call & earning interest, S. opened at various times three trust accounts, signing on each occasion the declaration of trust required by the bank whereby he constituted himself trustee for each of his three infant daughters of all moneys standing at any time to his credit in each of the three accounts. By these declarations he declared that the moneys should be the exclusive property of the respective daughters & that he would not own or be interested (otherwise than as trustee) in any of the moneys. It was clear on the evidence of deft. that he always regarded & treated the moneys as his own, & thought of the declarations as formalities designed to overcome a technical obstacle, & that he never had any intention of disposing of the beneficial interest in any of the moneys deposited:—*Held:* deft. had not constituted himself a trustee of any of the moneys, & was entitled thereto as beneficial owner.—STARR *v.* STARR, [1935] S. A. S. R. 263.—**AUS.**

PART III. SECT. 4.

124 viii. —— ——.]—A., having large sums on deposit, gave the manager of his bank a number of deposit receipts in the joint names of A. & P., payable to them or either of them. He frequently took out sums & redeposited in the same terms. In an action by P. against A.'s exors. claiming that the sums in the joint names of A. & P. did not form part of A.'s estate:—*Held:* pltf. had failed to rebut the implication of a resulting trust which arose in favour of A. & his representatives, pltf. having failed to prove any intention on the part of A. to part with his property in the deposited money during his life, & a disposition to take effect only upon his death, if he should not previously have disposed of the money, could only be effected by a declaration of trust, which was admitted not to have been made by him.—OWENS *v.* GREEN, [1932] I. R. 225.—**IR.**

124 ix. —— ——.]—Where money was put on deposit receipt in the joint names of the owner of the money & that of a stranger, & where the latter, at the request of the original owner, refused to sign the joint deposit receipt, & upon the death of the owner refused to sign the receipt to enable his personal representative to receive the money:—*Held:* in the absence of proof of intention on the part of the original owner to benefit the stranger or proof of a relationship from which a presumption of advancement might be drawn, the proceeds must go to the personal representative of the deceased original owner of the money.—DOYLE *v.* BYRNE (1922), 56 I. L. T. 125.—**IR.**

124 x. —— ——.]—Money was deposited in a bank by X. in the joint names of X. & an infant X. kept possession of the bank-book:—*Held:* on X.'s death the remainder of the account did not pass to the infant, since the gift was testamentary & void.—MCKNIGHT *v.* TITUS (1933), 6 M. P. R. 282.—**CAN.**

124 xi. —— ——.]—An elderly lady & her nephew opened a joint account in the Commonwealth Savings Bank by the transfer of a large sum from an account in the lady's name. The nephew, who assisted his aunt in all her matters of business, did not contribute to the account, which was kept in funds by payments from the aunt's investments. The account was used solely for the purpose of supplying the aunt's needs. Moneys for this purpose were withdrawn by the nephew as required, the withdrawal slips being signed by both the aunt & the nephew. When the account was opened the aunt told the nephew & others that any balance remaining in the account at her death would belong to the nephew. Upon his aunt's death the nephew claimed the balance of the account:—*Held:* (1) the presumption of a resulting trust in favour of the aunt & her estate was rebutted by the evidence of her intention to benefit the nephew; consequently, his legal right to the balance by survivorship prevailed; (2) the gift thus conferred upon the nephew was not a testamentary disposition.—RUSSELL *v.* SCOTT (1936), 55 C. L. R. 440; 36 S. R. N. S. W. 454; 53 N. S. W. W. N. 178; 42 Argus L. R. 375; 10 A. L. J. 211.—**AUS.**

127a. —— ——.]—J. M., being in failing health & expecting death in a short time, deposited a sum of £10,000 with the B. Bank & received from the Bank a deposit receipt in this form: "£10,000 . . . Received from J. M. & J. D. M. (a minor)," the son of J. M., . . . "the sum of ten thousand pounds sterling for credit in deposit account. Not transferable. . . . Payable to either or the survivor. . . . This receipt must be produced when payment of either principal or interest is desired." By his will, after giving certain legacies, J. M. directed his exors. to hold the rest of his property in trust for J. D. M. until he should attain the age of twenty-five years, &, on his attaining that age, for him absolutely. Until J. D. M. attained that age the business of testator was to be carried on by the exors. There were other dispositions in case J. D. M. died under that age, an event which did not happen. On the death of J. M. the exors. withdrew & redeposited the sum of £10,000 & obtained a new deposit receipt for that sum in their own names. The business of testator was carried on at a loss. The business account kept by the exors. with the B. Bank was continually overdrawn. The exors. repeatedly paid the overdrafts out of the £10,000 & in so doing finally exhausted the whole sum. Both before & after he came of age J. D. M. took part in the management of the business. Soon after attaining the age of twenty-five J. D. M. claimed that he was entitled to the £10,000 deposited by J. M., & brought an action against the B. Bank to recover that sum as having been wrongfully & without his authority paid by the Bank to the exors.:—*Held:* by LORD WARRINGTON & LORD MACMILLAN, the exors. were entitled to receive the money & to apply it in due course of administration as directed by the will of J. M.; LORD THANKERTON agreeing on the ground that on the evidence as a whole J. M. did not purport to act as agent for J. D. M. in making the contract with the Bank, so as to make J. D. M. a contracting party, but that he alone contracted with the Bank, though for the benefit of J. D. M. as a third party; by LORD ATKIN, the contract was made by J. M. on behalf of himself & J. D. M., & if J. D. M. had ratified the act done on his behalf he would have made himself a party to the contract; but by his conduct he had represented to the Bank that he did not intend to ratify the act done on his behalf, having so acted he could not afterwards ratify it, & consequently he had never become a party to the contract.—MCEVOY *v.* BELFAST BANKING CO., LTD., [1935] A. C. 24; 103 L. J. P. C. 137; 151 L. T. 501; 40 Com. Cas. 1, H. L.

133. *Add. Annotation:*—*As to* (1) **Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

135. *Add. Annotation:*—**Refd.** Beebee & Co. . . . Turner's Successors (1931), 48 T. L. R. 61.

169a. —— —— ——.]—BERKLEY *v.* RYDER (1752), 2 Ves. Sen. 533; 28 E. R. 340, L. C.

171. *Add. Annotation:*—**Consd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

172. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

173. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

174. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175a. —— —— ——.]—(1) If a man who has promised to marry a woman, & has given to her an engagement ring in contemplation of marriage, refuses without legal justification to carry out his promise, he cannot demand the return of the engagement ring.

(2) *Semble:* if a woman who has received an engagement ring in contemplation of marriage refuses to fulfil the conditions of the gift & to carry out her promise, she must return the ring.

(3) *Semble:* if an engagement to marry be dissolved by mutual consent, then in the absence of an agreement to the contrary the engagement ring & like gifts must be returned by each party to the other.—COHEN *v.* SELLAR, [1926] 1 K. B. 536; 95 L. J. K. B. 629; 135 L. T. 21; 42 T. L. R. 409; 70 Sol. Jo. 505.

191. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

192. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

194. *Add. Annotation:*—**Consd.** *Re* Mainwaring, Mainwaring *v.* Verden, [1936] 3 All E. R. 540.

PART III. SECT. 7, SUB-SECT. 1.

sg. *Gift subject to condition—Whether absolute gift & condition void—Or gift of life estate.*]—AMJAD KHAN *v.* ASHRAF KHAN (1929), 56 L. R. Ind. App. 213.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

172 v. —— —— ——.]—A present made by an engaged man to his fiancée, in view of marriage, & intended for the use of both of them during their courtship & after their marriage, is recoverable by his personal representative where he dies before the marriage & during the continuance of the engagement.—SHEPPARD *v.* ROBINSON [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461.—**CAN.**

172 vi. —— —— ——.]—Gifts which are given by the bridegroom, at the time of the betrothal of a girl, to the girl's parents on her behalf according to Burmese Buddhist custom must be returned by the parents if the betrothal is broken off.—MAUNG LAW PHYU *v.* MA BAW (1933), I. L. R. 11 Ran. 143.—**IND.**

PART III. SECT. 8.

185 iv. —— ——.]—In absence of statute, there is no hard-and-fast rule that where a gift is alleged to have been made by a donor, since deceased, the evidence of the alleged donee as to the making of the gift must be disbelieved unless corroborated. It must be examined with care, even with suspicion, but if it brings conviction to the tribunal trying the case, that conviction will be acted upon.—NATIONAL TRUST CO., LTD. *v.* AYTON, [1934] 1 W. W. R. 285; 2 D. L. R. 404.—**CAN.**

187 i. *Onus of proof on purporting to be for con*
Where a conveyance or ... expressed to be for valuable consideration, but the fact is that none was paid nothing but the clearest evidence can avail to show that a gift was intended. Where there is nothing but the instrument itself before the ct. from which to draw conclusions, it must be held to be the exclusive & conclusive evidence of the contract between the parties.—JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103; 23 S. L. R. 218; [1928] 3 W. W. R. 686.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.

gn. *Gift of land subject to mortgage.*]—Where a father makes a gift of land to his son, the presumption is that it is made subject to mtges. which then actually exist against the land, including a mtge. which had not been registered at the date of the gift.—ORENCZUK *v.* DOLINSKY (Alta.), [1927] 3 W. W. R. 596.—**CAN.**

Part IV.—Incomplete Gifts.

206. *Add. Annotations :*—**Distd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

227. *Add. Annotation :*—**Overd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

228. For the paragraph in original volume substitute the following paragraph :—

Non-payment due to suspicious signature —Subsequent death of donor.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] 1 Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Annotation :—**Consd.** Timpson's Executors *v.* Yerbury (1935), 79 Sol. Jo. 523.

Compare original volume, p. 542, No. 292.

259. *Add. Annotations :*—**Distd.** Royal Exchange Assc. *v.* Hope, [1928] Ch. 179. **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

268. *Add. Annotations :*—**Apld.** *Re* Comberbach, Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403. **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

269. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

276a. —— **Incomplete gift of real estate.**]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

SUB-SECT. 4.—APPOINTMENT OF DONEE AS ADMINISTRATOR.

280a. Intention expressed in donor's lifetime—Continuing intention.]—The legal estate acquired by an administrator is no less effectual than that of an exor. appointed by will to perfect an imperfect gift made by deceased owner of the estate to the administrator.

On the death of his father, J. handed over the furniture & title deeds of a certain house & premises, forming part of his father's estate, to S. & allowed her to occupy the house rent free. J. died intestate, & S. was appointed an administratrix :—*Held :* there was a continuing intention on the part of the donor up to the time of his death to give the property to the donee, & by her appointment as an administratrix she had acquired the legal estate.—*Re* JAMES, JAMES *v.* JAMES, [1935] Ch. 449; 104 L. J. Ch. 247; 153 L. T. 277.

Part V.—Gifts mortis causâ.

286. *Add. Annotation :*—*As to* (2) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

292. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

294a. —— —— ——.]—*Semble :* when testator, in his lifetime, hands over to a person a sum of money, & directs him, out of it, to pay the expenses consequent on his sickness, & in case of death, his funeral expenses, such money

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PART IV. SECT. 1, SUB-SECT. 1.

h i. ——.]—MORTON *v.* BRIGHOUSE, [1927] 1 D. L. R. 1009; [1927] S. C. R. 118.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

245 ii. ——.]—Equity will not perfect an incomplete gift.—JACQUES *v.* HOPKINS & HOPKINS, [1931] 2 W. W. R. 277; 3 D. L. R. 410; 25 Alta. L. R. 372.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

r i. —— *Document not completed—Nor proved to be document made by donor.*]—REILLY *v.* WOODWORTH (1924), 51 N. B. R. 153.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

s i. —— ——.]—X. put his son Y. & his wife in possession of land & told them they could have it as long as they wished. He assisted Y. to build a fence & Y. then built a house :—*Held :* this amounted in equity to a gift of the land.—CAMPBELL *v.* CAMPBELL, [1932] 3 D. L. R. 501; 4 M. P. R. 502.—**CAN.**

t i. —— —— ——.]—HOVEY *v.* FERGUSON (1871), 18 Gr. 498.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

c i. ——.]—*Re* JENKINS & BRASH *v.* VULCAN IRON WORKS, BRAY *v.* VULCAN IRON WORKS (B.C.), [1927] 1 D. L. R. 1099.—**CAN.**

c ii. ——.]—W., a member of a stockbroking partnership, credited his son's account in the client's ledger with £5,000 & debited his own account in the partners' ledger with the same sum. This was balanced on the other side of the account with shares to the face value of £13,000, which stood in the name of a certain bank as collateral for the loan account of W. The investments were sold from time to time & others substituted, & at the time of the death of W. were represented by securities to the face value of £9,000 which were in the name & custody of the bank. W. never informed the bank that he had made the shares over to his son, but requested them to accept release orders signed by his son & all dividends on the original & substituted securities were credited to the account of the son in the books of the firm. By a letter handed to his son W. informed the exors. of his will that the shares were the property of his son & did not form part of his assets & so informed one of the exors. verbally. W. did nothing further to perfect the gift of the securities but appointed his son as one of the exors. of the will :—*Held :* the securities did not form part of the estate of W. but were the property of his son, subject to the limitation that the excess, if any, of the value of the securities, when realised, over the sum of £5,000 belonged to the exors. as assets of the testator.—*Re* WILSON, GROVE-WHITE *v.* WILSON, [1933] I. R. 729.—**IR.**

PART IV. SECT. 3.

sp. *Donor repossessing himself of transfer & certificate of title—Before transfer registered.*]—Registered owner of land, with intention of making a gift of it to S., delivered to the father of S. a transfer of the land to S. & the duplicate certificate of title. He subsequently repossessed himself of the transfer & certificate before S. had an opportunity to register the transfer which he destroyed :—*Held :* the inchoate gift to S. was effectually revoked & S. was not entitled to be recorded as owner of the land.—SMITH *v.* SMITH (1915), 21 D. L. R. 861; 31 W. L. R. 607; 8 W. W. R. 1077.—**CAN.**

PART V. SECT. 1.

sr. *Grounds for setting aside—Undue influence—Gift by parishioner to parish priest.*]—BOHAN *v.* WALKER, [1928] 4 D. L. R. 630.—**CAN.**

does not pass under the will.—*In the Goods of* TOOMY (1864), 3 Sw. & Tr. 562; 34 L. J. P. M. & A. 3; 28 J. P. 824; 13 W. R. 106; 164 E. R. 1393.

303. *Add. Annotation:*—*As to* (1) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

307. *Add. Annotation:*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

327. *Add. Annotation:*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

330a. —— ——.]—*Re* WHILE, WILFORD *v.* WHILE [1928] W. N. 182.

331. *Add. Annotation:*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

337a. ——.]—Where testator, in his last illness, said he wanted to leave something to C., & then directed her father to get mtge. deeds out of a box in his room, & said he should give the deeds for C., & handed them over to her father:—*Held:* the gift was a good *donatio mortis causâ*, & the donee was entitled to the money secured by the deeds.—*Re* PATTERSON, MITCHELL *v.* SMITH (1864), 10 L. T. 520; 10 Jur. N. S. 578; *on appeal*, 4 De G. J. & Sm. 422.

347. *Add. Citations:*—95 L. J. Ch. 204; 133 L. T. 405.

351. *Add. Annotation:*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

356a. Gift made in contemplation of death from incurable disease—Death from different illness—Gift valid.]—A *donatio mortis causâ* is not generally conditioned upon the donor dying from the same disorder as that from which he is suffering, & contemplates the probability of death, at the time it is made.

By a mtge. made in 1922 the widow of J., who was tenant for life under his will, mortgaged a farm to W., a brother of J., to secure £1,000 & interest at 5 per cent. The widow died in 1923, having appointed her two daughters, E. & X., exors. of her will. The mtge. contained no personal covenant for payment of the principal, & the mtgee. accepted interest at 3½ per cent., reduced in 1924 to 3 per cent. In 1924 W., who was on very friendly terms with his brother's family, gave the deeds relating to the farm, other than the mtge. deed, to E. & X., to retain in their custody. On Dec. 11, 1927, W., who had since 1922 been suffering from an incurable disease & knew that he could not possibly live long, called upon his nieces, who were aware of his state of health, & gave them an envelope indorsed in his own handwriting: "Deeds relating to X. farm to be given up at death. W.," saying: "I have brought this down for you; put it away." After he had left the house the envelope was opened, & was found to contain the mtge., which the nieces placed in their safe. On Jan. 23, 1928, W. died of pneumonia following a chill. In an action by his exors. for a declaration that the mtge. was a subsisting security & to enforce it:—*Held:* there was a valid *donatio mortis causâ* by W., & a release of the mtge. to the two daughters of J. for the benefit of his estate.—WILKES *v.* ALLINGTON, [1931] 2 Ch. 104; 100 L. J. Ch. 262; 144 L. T. 745; 47 T. L. R. 307; 75 Sol. Jo. 221.

369a. —— ——.]—*Re* HARRISON, PUBLIC TRUS- *v.* BEST (1934), 78 Sol. Jo. 135.

372. *Add. Annotation:*—**Refd.** *Re* Swinburne Sutton *v.* Featherley, [1926] Ch. 38.

379. *Add. Annotation:*—**Consd.** *Re* Craven's Estate, Lloyds Bank, Ltd. *v.* Cockburn, [1937] Ch. 423.

386a. Instructions to use power of attorney.]—A testatrix had given her son a power of attorney in very wide terms over certain shares & money standing in her name at a bank abroad. When about to undergo an operation she told the son to get such shares & money transferred into his own name, as she wanted him to have them if anything should happen to her. The son accordingly, acting

PART V. SECT. 2, SUB-SECT. 2.—A.

st. *Receipts issued to transferee of stock by Banks of England & Ireland.*]—Neither the receipt issued by the Bank of England to a transferee of India 5½ per cent. stock, 1932, which contained particulars of the consideration paid for the "interest or share in the stock transferred," nor the receipt issued by the Bank of Ireland to a transferee of 3 per cent. local loans stock, can be the subject of a *donatio mortis causâ*.—*Re* M'WEY. RYAN *v.* CASHIN & COSTELLO, [1928] I. R. 486.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—B. (b).

311 xxiii. —— ——.]—A *donatio mortis causâ* may be made by the donor placing money upon deposit receipt in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—FAYNE *v.* MARTIN (1924), 59 I. L. T. 14.—**IR.**

311 xxiv. —— ——.]—A woman, engaged in domestic service & without a home of her own, placed her savings in deposit-receipt in 1900 in name of herself & her sister to be drawn by either of them or the survivor. The receipt was then handed to the sister, who kept it at her home, but periodically the deposit was uplifted by the depositor & redeposited with interest & further savings added to it. The depositor had a niece & nephew, her sister's children, &, on the sister's death in 1921, the name of the niece was substituted as the second name in the receipt, the receipt being thereupon handed by her to him. The depositor regarded her sister's family as her only relatives & their home as her own, &, on several occasions, she had stated to third persons that the sum on deposit was to go to the survivor of the persons named in the receipt. The depositor having died in 1930, survived by the nephew:—*Held:* the terms of the deposit-receipt, taken in conjunction with the depositor's expressions of intention, were sufficient to instruct a donation *mortis causâ* of the sum on deposit in favour of the nephew.—MACPHERSON'S EXECUTRIX *v.* MACKAY, [1932] S. C. 505.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 2.—B. (c) ii.

326 i. *Cheque—Cashed before death.*]—The gift of a cheque three days before death, & cashed the day before death:—*Held:* not testamentary, & either a valid completed gift *inter vivos*, or a *donatio mortis causâ*.—CAMPBELL *v.* FENWICK, [1934] 4 D. L. R. 787; O. R. 692.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B. (f).

341 i. *Life insurance policy—Document delivered to third party for donee.*]—*Held:* all the essential conditions of a valid & effectual *donatio mortis causâ* had been established.—NELSON *v.* PRUDENTIAL ASSURANCE CO., [1929] N. I. 113.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

357 v. *affd.* (1920), 48 O. L. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B.

374 v. —— ——.]—The delivery by a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours":—*Held:* to operate as a *donatio mortis causâ* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—**CAN.**

sl. *Delivery of paper expressing gift.*]—A valid *donatio mortis causa* is constituted by the giving of a paper expressing a gift of furniture, etc. a year & a half prior to the death.—*Re* ROSEMERGEY (1934), 49 B. C. R. 93.—**CAN.**

as her agent under the power of attorney, instructed the bank to transfer the shares & money into his name. Testatrix died a few days later. The question arose as to whether there had been a good *donatio mortis causâ* of the shares & money or whether they formed part of the estate of testatrix. By her will testatrix gave her trustees a power of advancement in favour of the son, *inter alia*, for " the purchase of a business or a share in a business " :—*Held:* (1) the mere giving of the power of attorney was not in itself a sufficient parting by testatrix with her dominion over the shares & money to make it a *donatio mortis causâ*, but when testatrix instructed her son to transfer the shares & money into his own name, she parted with her dominion over the property, & there was a good *donatio mortis causâ;* (2) the question was one which arose in the administration of the estate, &, as the estate was being administered in England according to English law, it was a question which ought to be determined according to the law of England, subject to the condition that, the property being situated abroad, that which was said to constitute the parting with dominion ought to be something which would be an effective parting with dominion in the place abroad where the property was situated; (3) the power of advancement did not extend to an advance of a sum to be applied & invested with the trustees of Lloyd's as a fund which would be available to meet the son's liabilities, so as to enable him to become an underwriter at Lloyd's; (4) as such an advance would not be expedient for the trust as a whole, the ct. could not sanction it under Trustee Act, 1925 (c. 19), s. 57 (1).—*Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* COCKBURN (No. 1), [1937] Ch. 423; [1937] 3 All E. R. 33; 106 L. J. Ch. 308; 157 L. T. 283; 53 T. L. R. 694; *sub nom. Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN, 81 Sol. Jo. 398.

399a. Donee with access to keys — Presumption of fraud.]—SIMMS *v.* COX (1824), 3 L. J. O. S. K. B. 44.

PART V. SECT. 3, SUB-SECT. 3.—C.

387 iv. ——.]—Shortly before her death deceased handed to her servant a locked box with the key & told her to keep it for A. D. until the latter returned from England, & then give it to her. The servant was instructed to tell A. D. that what was in the box was for her. The box was not delivered until after the death of deceased, &, on being opened, it was found to contain a post office savings bank-book, which showed a certain sum standing to the credit of deceased. It was not disputed that there was an intention to make a *donatio mortis causâ*:—*Held:* the intended *donatio mortis causâ* failed, as there was no delivery, actual or constructive, to A. D., since the mere instructions by deceased to her servant, & the obedience to these instructions, were not sufficient to make the servant an agent of the intended donee.—*Re* THOMPSON'S ESTATE, [1928] I. R. 606.—IR.

GRAIN.

See AGRICULTURE.

GUARANTEE AND INDEMNITY.

Part II.—Requisites of Guarantee.

41. *Add. Annotations :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

45. *Add. Annotations :—As to* (2) **Refd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38. *Generally*, **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

54. *Add. Annotations :*—**Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536 ; Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

83. *Add. Annotation :*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

121. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

134. *Add. Annotations :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330. **Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759 ; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co., Ltd. (1931), 24 B. W. C. C. 71 ; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

156. *Add. Annotation :*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

Part III.—Proof of Guarantee.

257. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

285. *Add. Annotation :*—**Refd.** Stanley (Montagu) & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

PART I.

b i. —— —— *Original distinguished from collateral contract.*]—*Re* THOMSON, [1927] 2 D. L. R. 254 ; 60 O. L. R. 165. —**CAN.**

13 i. ——.]—The mere fact that a particular agreement may terminate in a liability for the debt of another does not make it a guarantee instead of an indemnity where the former is not its immediate or main object.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45 ; 37 Man. L. R. 508.—**CAN.**

sa. *Distinguished from direction to furnish goods on credit of principal.*]—GRASETT *v.* HUTCHINSON (1860), 10 C. P. 265.—**CAN.**

sb. *Distinguished from novation of contract.*]—NATIONAL POLE & TREATING CO. *v.* BLUE RIVER POLE & TIE CO. (B. C.), [1929] 3 D. L. R. 638 ; *revsd. on facts*, [1930] 3 D. L. R. 996 ; 43 B. C. R. 98.—**CAN.**

PART II. SECT. 1.

sc. *Fidelity guarantee — Primary obligation of principal.*]—R. *v.* BLACK (Ont.) (1899), 8 Exch. C. R. 236.—**CAN.**

se. *Necessity for mutuality.*]—GANONG *v.* GAULT, [1934] 2 D. L. R. 353.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

23 i. *What constitutes offer.*]—Goods were supplied by a manufacturer to a buyer upon the faith of a document addressed to the manufacturer, & signed by a third person, containing these words—" I am prepared to back him, the buyer, for 1 month credit to £30 " :—*Held :* the document amounted to a guarantee.—DAVISON (A. A.) PTY., LTD. *v.* SEABROOK, [1931] Argus L. R. 156.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

44 ii. —— —— *For benefit of third party.*]—Where a married woman signs an instrument at the request of her husband, not for his benefit, but for the accommodation of a friend or relative of his, the evidence necessary to prove that undue influence was exercised by the husband must be much stronger than would be necessary had the signature been obtained for the husband's benefit.—WATKINS (J. R.) Co. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526 ; [1926] 1 W. W. R. 156. —**CAN.**

—— —— *For benefit of husband.*]—*See* HUSBAND & WIFE, Nos. 1370 i, 1370 ii, *post.*

PART II. SECT. 3, SUB-SECT. 5.

1 i. ——.]—Pltf. entered into a contract with an incorporated building co. for the installation of heating equipment. Deft., as president of the co., wrote a letter to pltf. in which he said, " I shall personally see to it that you get your payments regularly as per contract " & signed it :—*Held :* the document was not a guarantee by the co. of its own account & the signature was sufficient to charge deft. personally. —MILES *v.* ZUCKERMAN, [1931] 1 D. L. R. 448 ; *affd.*, [1931] 4 D. L. R. 370 ; O. R. 368.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

55 vi. ——.]—CAMPBELL *v.* MCISAAC (1873), 9 N. S. R. (3 G. & O.) 287.—**CAN.**

55 vii. ——.]—R. had a contract with deft., the owner of a building, to do some work thereon. Pltfs. supplied R. on credit, with material for the work ; &, alleging a promise by deft. to pay for the material if R. did not, sued deft. as upon a guarantee. R. having failed to pay :—*Held :* there being nothing in the evidence to suggest that there was any bargain with deft. that pltfs. would not register a mechanic's lien on deft.'s property, there was no consideration for the alleged promise of deft.—ERSKINE-SMITH CO. *v.* BORDELEAU, [1929] 2 D. L. R. 877 ; 63 O. L. R. 621.—**CAN.**

PART II. SECT. 4, SUB-SECT. 3.—A.

sd. *Agreement by bailee to deliver goods to purchaser—Promise by vendor to indemnify bailee against loss if goods not according to contract.*]—*Held :* the agreement to deliver, & not the delivery itself, formed the consideration for the promise to indemnify.—CUNNARD *v.* PLUMMER (1844), 4 N. B. R. (2 Kerr) 418.—**CAN.**

PART II. SECT. 4, SUB-SECT. 5.—A.

157 i. *Insufficiency of past consideration.*]—Pltf. sued deft. for moneys due under an agreement in writing whereby he undertook that if a co. in which pltf. had at his request taken shares, failed to pay a ten per cent. dividend in certain years, he would pay pltf. within seven days the amount of such ten per cent. dividends. The agreement was executed some months after pltf. had taken up shares. Pltf. alleged that the agreement was made in pursuance of an agreement made antecedent to his purchase of the shares. Deft. denied the antecedent agreement & claimed that the guarantee having been given for a past consideration, was not enforceable :—*Held :* on the facts, although the question of a guarantee had been raised between the parties prior to pltf.'s taking up the shares, there had been no *animus contrahendi* on the part of deft. to give the guarantee before the shares were acquired & the guarantee being therefore given for a past consideration was a *nudum pactum* & unenforceable.—POWER *v.* AHERN (1935), 29 Q. J. P. R. 85 ; [1935] Q. W. N. 22.—**AUS.**

PART III. SECT. 1, SUB-SECT. 1. A.

se. *Verbal agreement of guarantee or suretyship.*]—*Held :* unenforceable because of Stat. Frauds.—DOYLE *v.* MCKINNON, [1925] 3 D. L. R. 334 ; 57 O. L. R. 104.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1. - B.

sf. *Promise to guarantee dividend & stock.*]—*Held :* not a guarantee to which Stat. Frauds, R. S. O., 1914 (c. 102), s. 6, applied.—QUANCE *v.* BROWN, [1926] 2 D. L. R. 824 ; 58 O. L. R. 578.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

190 i. *Representations within Statute of Frauds Amendment Act*, 1828 (c. 14), *s. 6—Representation by partner as to credit of firm.*]—A representation made by one of two or more partners as to

295. *Add. Annotation :*—**Apld.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

307. *Add. Annotation :*—**N.F. McCall Bros., Ltd.** *v.* Hargreaves (1932), 48 T. L. R. 450.

308. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

309. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

310. *Add. Annotations :*—**Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

310a. —— ——.]—Pltfs., who were creditors of the W. co., agreed with the W. co. & with deft. that they would take bills in respect of the past & future indebtedness of the W. co. if deft. would indorse the bills. Bills payable to pltfs.' order were then drawn by pltfs. & accepted by the W. co., &, before pltfs. had indorsed them, deft. wrote his name on the back. Subsequently pltfs. indorsed the bills by writing their name beneath, instead of above, that of deft. In an action on the bills deft. contended that as they had never been negotiated he did not incur the liabilities of an indorser & that his agreement, if any, was a guarantee & was not in writing, & he pleaded the Statute of Frauds :—*Held :* in the above circumstances pltfs. had authority under Bills of Exchange Act, 1882 (c. 61), s. 20, to complete the bills by adding their indorsement, & that even if deft.'s agreement was a contract of guarantee the Statute of Frauds was no answer to a claim on the bills, & therefore the action succeeded.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423 ; 101 L. J. K. B. 733 ; 147 L. T. 257 ; 48 T. L. R. 450 ; 76 Sol. Jo. 433.

312. *Add. Annotations :*—**Followed.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

312a. Signature of drawer below that of third party—Intention of parties considered.]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completing them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser :—*Held :* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.* BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188 ; 100 L. J. K. B. 386 ; 145 L. T. 48 ; 47 T. L. R. 380 ; 36 Com. Cas. 270.

Annotation :—**Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

323. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

345. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

Part IV.—Interpretation.

377. *Add. Annotation :*—*As to* (2) **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

421. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 95 L. J. P. C. 17.

433. *Add. Annotation :*—**Consd.** Mann, Taylor & Co., Ltd. *v.* Royal Bank of Canada (1935), 40 Com. Cas. 267.

the credit of his firm is a representation as to the credit " of any other person " within sect. 6 of Lord Tenterden's Act, but a firm is not liable for such a representation made by one of its partners, even though the other partners knew & approved of it ; the only person who can be charged being the partner who actually signed the representation. In an action against partners founded upon fraudulent misrepresentations as to the credit of the firm, one of the defts. pleaded non-compliance with sect. 6 of Lord Tenterden's Act :—*Held :* sects. 8, 12 & 13 of Partnership Act had not the effect of impliedly repealing sect. 6 in so far as it related to false representations by a partner, & the plea was a good defence to the cause of action except in so far as the representations were in writing signed by deft.—TURNBULL & CO. *v.* MACKAY, [1932] N. Z. L. R. 1300 ; G. L. R. 444.—**N.Z.**

196 iii. ——.]—TUPPER *v.* CROWE (1862), 15 N. S. R. (3 R. & G.) 261.—**CAN.**

196 iv. ——.]—CARR *v.* BANK OF MONTREAL, [1929] 3 D. L. R. 54 ; 63 O. L. R. 544.—**CAN.**

sq. *Representations within C. S. U. C., c. 46, s. 10—As to solvency of trader—Necessity for writing.*]—MCLEAN *v.* DUN (1877), 1 A. R. 153.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B. (a).

232 i. *Whether credit given to surety alone.*]—A promise " you haul the wood & I'll see you paid " creates a primary liability & not a contract of suretyship.—WAMBOLT *v.* ARENBURG, [1936] 4 D. L. R. 399.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

263 i. *Promise to stranger—Surety, guarantor or bail.*]—A promise to indemnify one who is a surety, guarantor or bail for a third person is not within Stat. Frauds.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45 ; 37 Man. L. R. 508.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

st. *Lapse of signed offer—Resuscitation.*]—Where a signed offer of guarantee has lapsed, it may be resuscitated either by the signatory's re-opening the offer to the other party, or by the other party offering to accept it as a binding agreement, & upon an agreement resulting the document containing the signed offer is sufficient to satisfy Stat. of Frauds.—O'YOUNG & LUM *v.* REID & CO., LTD., [1932] Argus L. R. 278 ; 6 A. L. J. 76.—**AUS.**

PART IV. SECT. 1.

369 ii. —— ——.]—A contract of guarantee must be strictly construed ; but it must be read as a whole & given an intelligible construction.—BANK OF NOVA SCOTIA *v.* ZINK (1934), 7 M. P. R. 476.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—No collateral agreement will be admitted to affect a guarantee complete upon its face.—

Part V.—Liability of the Surety.

479. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

516. *Add. Annotations :—As to* (1) **Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

517. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

525. *Add. Annotation :—Generally,* **Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

546. *Add. Annotation :* — **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1932), 146 L. T. 336.

557. *Add. Annotation :—As to* (1) **Refd.** *Re* Parent Trust & Finance Co. (1936), 155 L. T. 159.

559a. Guarantee of payments to contractor—Subject to due execution of work.]—A limited co. employed a building contractor to execute certain repairs & decorations to a building by an agreement under seal made between the co., one T. therein called the guarantor, & a bank, & the contractor. The agreement provided that the contractor should do the work for the sum of £1,500, to be paid in four equal instalments on named dates "subject to the said works being duly executed in accordance with this agreement." By clause 11 of the agreement the guarantor agreed with the contractor & with the bank, & undertook, that the co. should, subject to the said works being duly executed in accordance with the agreement duly & punctually make to the contractor the payments mentioned above, & that upon any default for three days on the part of the co. (written notice of which should be given by the contractor to the bank within six days of the default) in making any payment on the prescribed date, the guarantor would himself immediately make the payment so in default to the contractor. By clause 12 the bank agreed with the contractor & undertook, that upon any default for three days or more (written notice of which should be given to the bank by the contractor within three days of the default) on the part of the guarantor in making any payment under clause 11 the bank would immediately make the payment so in default to the contractor. The co. did not pay the first instalment. The contractor gave no notice either to the guarantor or to the bank. The contractor then issued a specially indorsed writ against the bank claiming the first instalment. The case was heard by an Official Referee, who found that at the date of the writ it was necessary to spend £80 in order to complete the work in accordance with the agreement. He deducted this sum from the amount claimed, & gave judgment for pltf. for the balance :—*Held :* the defts. were not liable.

By SCRUTTON & SLESSER, L.JJ., because it was a condition precedent to their liability that the works should be duly executed in accordance with the agreement, & the works were not so executed. By GREER & SLESSER, L.JJ., because the liability of defts. depended upon that of T., & he was never liable, because it was a condition precedent to his liability that pltf. should have given him notice of the co.'s default, & this notice had never been given.—ESHELBY *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 1 K. B. 423 ; 101 L. J. K. B. 245 ; 146 L. T. 336, C. A.

BANK OF NOVA SCOTIA *v.* WIGMORE (1933), 7 M. P. R. 115.—**CAN.**

sh. *To supply name of principal debtor — Not admissible.*]—IMPERIAL BANK OF CANADA *v.* NIXON, [1926] 4 D. L. R. 1052 ; 59 O. L. R. 538.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

p i. —— *For definite engagement.*]—Where a guarantee has been given for the performance of a definite engagement, which has already come into existence & is not contingent, & the consideration for which is not variable as the result of future dealings between the parties, the guarantee is not a continuing guarantee.—HASAN ALI *v.* WALI ULLAH (1930), I. L. R. 52 All. 997.—**IND.**

sl. *No notice of cancellation.*]—CANADIAN BANK OF COMMERCE *v.* MOTHERSILL, [1937] S. C. R. 169 ; 2 D. L. R. 81 ; 6 F. L. J. (Can.) 291.—**CAN.**

PART V. SECT. 1.

449 i. *Disposition by surety of property—To evade liability—Void.*]—A guarantor is not more justified in placing the whole of his property out of the reach of liability to pay the debt than is the principal debtor.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170 ; [1928] 2 W. W. R. 150 ; 22 Sask. L. R. 533.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—B.

k i. —— *Given for due performance of duties by inspector—Inspector liable for default of his deputy—Deputy also covered by guarantee.*]—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B.

f i. —— ——.]—By an agreement in writing pltf. let a house & shop to a tenant to hold the same as a monthly tenant at a certain monthly rent, the said rent to be paid regularly on the first of each month. There was a proviso that either party should have the right at any time to determine the tenancy by giving to the other one month's notice in writing of his intention so to do, the said notice to determine on any gale day. The following guarantee for the payment of the rent was endorsed on the agreement & signed by deft. : "I hereby guarantee the full & punctual payment of the rent reserved by the within agreement." Eight months' rent being in arrear pltf. sued deft. on his guarantee to recover the amount. Deft. admitted liability for the first month's rent but denied liability in respect of the seven other months, contending that he offered to guarantee payment of the rent on the implied condition that he should receive notice of any default by the tenant in making full & punctual payment, & that no notice was given to him, & accordingly he was unable to exercise his right to revoke his offer :—*Held :* deft.'s contention was unsustainable & pltf. was entitled to judgment for the amount claimed.—O'CONNOR *v.* SORAHAN, [1933] I. R. 591.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—C.

498 i. *General rule—Not necessary.*]—A Scottish co., by a contract which was declared to be deemed an English contract, contracted to supply certain engineering plant to a colonial municipal council. A bond, in English form, guaranteeing the fulfilment of the contract, was granted by an individual. The municipal council brought an action of damages for breach or non-fulfilment against the co. & also against the guarantor, & used arrestments on the dependence against the latter :—*Held :* the action as against the guarantor was not premature, & the arrestments should not be recalled.—JOHANNESBURG MUNICIPAL COUNCIL *v.* STEWART (D.) & CO. (1902), LTD. (1909), 47 Sc. L. R. 20, H. L.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 2. — D. (b).

sd. *Refusal by one creditor.*]—A condition precedent to the liability of a guarantor being the acceptance of 100 per cent. of the creditors of a compromise, his liability does not arise on refusal by one creditor to accept.—JAEGER CO. *v.* CONNORS, [1935] 3 D. L. R. 573 ; 5 F. L. J. (Can.) 36.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—F.

sj. *Failure of consideration—Surety discharged.*]—The rule of law is firmly established that the total failure of the consideration for a surety's promise of guarantee has the effect of discharging him.—GURDAS MALRAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

561a. Guarantee of secured loan—Whether security for loan condition precedent.]—By a deed of guarantee for the repayment of a loan of £250,000 & interest, which recited that the lenders had at the request of the guarantors advanced to the borrowers £250,000 upon security of a charge on certain shares, the guarantors covenanted, in the event of the borrowers failing to make the repayments provided for, forthwith to repay to the lenders the said sum of £250,000 with interest at the rate of 8 per cent. *per annum*. The deed further provided that whatever the position between the lenders & the borrowers, the guarantors should be liable for all moneys due as principal debtors & they were not to be released from liability by reason of time being given by the lenders or by their taking no steps to protect their securities. The shares above mentioned were at no time secured & had not in fact been issued. Upon default in repayment of part of the loan the liquidator of the guarantors rejected the proof by the liquidators of the lenders, contending that the security of the charge on the shares was a condition precedent to the guarantee :—*Held :* (1) upon a proper construction of the deed of guarantee, the contention of the liquidator of the guarantors was correct, & the guarantors were not bound by the guarantee. The existence of the shares was the basis of the contract of guarantee & this was not affected by the clause making the guarantors liable as principal debtors ; (2) the guarantors were not bound by the recital in the deed & were not estopped from setting up the facts relating to the shares.—*Re* PARENT TRUST & FINANCE CO., LTD., [1936] 3 All E. R. 432; 155 L. T. 562; 80 Sol. Jo. 992, C. A. ; *affd. sub nom.* Greer *v.* Kettle, *Re* PARENT TRUST & FINANCE CO., LTD., [1937] 4 All E. R. 396, H. L.

571. *Add. Annotations :—As to* (2) **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70. *As to* (3) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *Generally,* **Refd.** Liverpool Corn Trade Assocn., Ltd. *v.* Hurst, [1936] 2 All E. R. 309.

574. *Add. Citation :*—11 Exch. 623.

587. After this case add " —— **Sufficiency of consideration.**]—*See* LANDLORD & TENANT, No. 4142a."

608. *Add. Annotations :*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422. **Consd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

608a. —— Claim for repayment of income tax—Whether maintainable.]—Where the payment of a sum advanced by a bank to a customer together with interest due or to become due thereon is guaranteed, & subsequently the whole sum due is paid by the guarantor, that is not a payment of interest by the guarantor but is a payment by him of a debt under the guarantee, not of a debt in respect of an advance made to him. He cannot, therefore, claim repayment of tax on " interest " on an advance from a bank under the provision of Income Tax Act, 1918 (c. 40), s. 36 (1). The question whether, where the interest on such an advance is added to capital each half-year in accordance with the custom of bankers & that is acquiesced in by the customer, the payment of the whole sum by the guarantor was only a payment of capital, was not necessary to be decided.—HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624 ; 101 L. J. K. B. 306 ; 48 T. L. R. 365 ; 76 Sol. Jo. 307 ; *sub nom.* INLAND REVENUF COMRS. *v.* HOLDER, 147 L. T. 68 ; 16 Tax Cas. 540, H. L.

628. *Add. Annotations :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

631. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

638a. —— —— ——.]—B., being indebted to the firm of W. & P., gave them a memorandum of charge on certain leasehold premises, subject to a prior mtge. The memorandum charged the premises " with the payment of the sum of £100 for goods delivered, or to be delivered, to me by you to that amount." The prior mtge. was afterwards transferred to defts. Between the date of the memorandum of charge & the transfer of the prior mtge., W. & P. had delivered goods to B., & received cash from him on account to the sum of £120 ; but on the balance of account, just before the transfer, a sum of £81 4*s.* 4*d.* was due to W. & P. :—*Held :* the security given by the memorandum of charge of £100 & payment thereon did not expire upon the delivery of goods to the amount, but was a continuing security.—WESTON *v.* EMPIRE ASSURANCE CORPN., LTD. (1868), L. R. 6 Eq. 23 ; 19 L. T. 305.

657a. —— —— ——.]—Where a warrant of attorney was given with a defeasance, stating it to be given " as a security for £4,000 & lawful interest thereon " :—*Held :* it was to be construed as a continuing security, & not merely as a security for money then due.—WOOLLEY *v.* JENNINGS (1826), 5 B. & C. 165 ; 7 Dow. & Ry. K. B. 824 ; 108 E. R. 61.

PART V. SECT. 3, SUB-SECT. 1.

566 iv. ——.]—S. lent G. a large sum of money on a mtge. by G., & a guarantee by applts. for the " debt that shall ultimately be due to S. from G." with a maximum liability of Rs. 18 lakhs :—*Held :* the guarantee was to the effect that the debt that shall remain due after realising the securities was to be borne by the guarantors limited to the maximum mentioned ; & the suit was consequently premature.—PHILLIPS *v.* MITCHELL (1929), I. L. R. 57 Calc. 764. —**IND.**

sk. *Under guarantee for payment of compensation for land compulsorily acquired.*]—MURRAY *v.* THOMPSON, 3 Ont. Dig. 5953-4.—**CAN.**

sl. *Under guarantee for price of goods.*] —— *v.* MCLEOD (1862), 11 C. P. 348.—**CAN.**

sm. ——.]—HENEY CO., LTD. *v.* BIRMINGHAM (1909), 7 E. L. R. 163.—**CAN.**

sn. *Under guarantee for delivery of goods.*]—GEORGE *v.* BRAYLEY (1873), N. B. Dig. 397-8.—**CAN.**

so. ——.]—HIGBY *v.* CUMMINGS (1853), 10 U. C. R. 222.—**CAN.**

sp. *Under guarantee for payment of demurrage.*]—WARREN *v.* NAT'L SURETY CO., [1927] 1 D. L. R. 554.—**CAN.**

sq. *Notice by surety to creditor—Asking for limitation of liability to fixed sum—Not acted upon by creditor—Effect of.*]—WATKINS J. R. CO. *v.* ROBERTSON, [1928] 1 D. L. R. 979.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A.

sr. *Money received by* SUMMERS *v.* HAMILTON (1840), 6 O. S. 113.—**CAN.**

Money received by de facto sheriff colore officii.]—KENT *v.* MERCER (1862), 12 C. P. 30.—**CAN.**

PART V. SECT. 4, SUB-SECT.

sv. *Admissibility of parol evidence—To show liability limited to specific transactions.*]— The guarantee bonds in question herein which were given to pltf. bank held to be on the face of them continuing guarantees, &, therefore, parol evidence was not admissible to show that the liability thereunder was intended to be limited to certain specific transactions.—CANADIAN BANK OF COMMERCE *v.* KOFFMAN & CHERRY, [1928] 4 D. L. R. 87 ; [1928] 2 W. W. R. 662.—**CAN.**

665a. —— Right of creditor to retain securities of surety.]—Pltfs., M.T., an English co. carrying on business in London, opened a branch in New York, M.L., & requested defts. to instruct their New York branch to give financial accommodation to M.L. Defts. agreed to do so up to a specified amount if pltfs. would sign a guarantee protecting defts. against loss through M.L. failing to meet their liabilities. In the events which happened M.L. received advances from the New York branch of defts. which they were unable to repay. Defts. had in their custody cash & securities belonging to pltfs. & refused to deliver them to pltfs. on demand, on the ground that the indebtedness of M.L. exceeded the value of the cash & securities. Pltfs. brought this action to recover possession of the cash & securities, together with interest, & defts. counterclaimed for, *inter alia*, a declaration that they were entitled to retain the cash & realise the securities & retain the proceeds in part satisfaction of the indebtedness of M.L. :—*Held :* the indebtedness of M.L. to the New York branch of defts. was covered by the guarantee given to defts. by M.T., & the total amount of that indebtedness exceeded the value of the cash & securities of pltfs. which were in the possession of defts. ; & defts, were therefore entitled to retain the cash & securities in part satisfaction of their claim under the guarantee.—MANN, TAYLOR & Co., LTD. *v.* ROYAL BANK OF CANADA (1935), 40 Com. Cas. 267.

679. *Add. Annotations :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12.

697. *Add. Annotation :*—**Consd.** Hay *v.* Carter, [1935] Ch. 397.

698. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

705. *Add. Annotation :*—**Consd.** McCall Bros. Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

Part VI.—Surety's Rights against Creditor.

750. *Add. Annotation :*—**Refd.** De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

759. *Add. Annotation :* — **Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

782a. —— — —.]—BECKETT *v.* BOOTH (1708), 2 Eq. Cas. Abr. 595 ; 22 E. R. 500, L. C.

788. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

792a. Rights of co-sureties inter se—Agreement that one should be primarily liable.]—Deft. & her husband guaranteed an overdraft upon a co.'s account at a bank, deft. depositing as security certain stock, & her husband the title deeds of certain property. As between themselves it was agreed that the husband should be primarily liable, but the bank did not recognise any such primary liability. The husband was adjudicated bkpt. & his property was sold by the trustee in bkpcy., with the bank's consent, the purchase price of the property charged to the bank being duly paid over to the bank. The bank also realised the stocks deposited by deft. Deft. claimed that the agreement between herself & her husband that the husband was to be primarily liable on the guarantee had the effect of creating an equitable charge in her favour on the husband's property & she alleged that the trustee in bkpcy. wrongfully sold the property charged to the bank by her husband for less than he could have obtained for it, & she claimed from the trustee in bkpcy. the difference between the purchase price obtained & the price which she alleged ought to have been obtained :—*Held :* the agreement between deft. & her husband did not have the effect of creating an equitable charge upon the husband's property, & deft. had no cause of action against the trustee in bkpcy.—PRATT'S TRUSTEE *v.* PRATT, [1936] 3 All E. R. 901 ; 81 Sol. Jo. 34.

PART V. SECT. 4, SUB-SECT. 2.

sw. *Inspector—Default of deputy inspector.*]—*Held :* the surety was liable, & the fact of there being a remedy also on the deputy inspector's bond was no answer.—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

sx. *After judgment by default—Whether amendment allowed.*]—SCOTT *v.* M'DONALD (1841), 6 O. S. 238.—**CAN.**

PART V. SECT. 7, SUB-SECT. 6.

728 ii. —— —— ——.]—*Re* THOMSON, [1926] 4 D. L. R. 755 ; 59 O. L. R. 449.—**CAN.**

sz. *Whether specialty or simple contract—Guarantee in writing—Confirmation by deed.*]—C. & others, by writing not under seal, agreed to payment of advances by a bank to a co. Later, by writing under seal, all the sureties but one consented to discharge the latter from liability under the guarantee, the document providing that the parties did in every respect "ratify & confirm the said guarantee & consent to be bound thereby as if the said O. C. had never been a party thereto" :—*Held :* the last-mentioned instrument did not convert the original guarantee into a specialty, & C. having died an action thereon by the bank against his exors. instituted more than six years after his death was barred by Stat. Limitations.—UNION BANK OF CANADA *v.* CLARK (1910), 43 S. C. R. 299.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.

775 ii. —— ——.]—REVILLON WHOLESALE, LTD. *v.* NEMIRSKY, [1926] 2 D. L. R. 374 ; [1926] 2 W. W. R. 166 ; 7 C. B. R. 583.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

782 iv. —— —— *Against assignee of interest in security.*]—GARRETT *v.* JOHNSTONE (1867), 13 Gr. 36.—**CAN.**

782 v. —— —— *Rights of mortgagee of surety.*]—QUAY *v.* SCULTHORPE (1869), 16 Gr. 449.—**CAN.**

782 vi. —— —— *Further advance by creditor to debtor.*]—*Re* HAMILTON TRUSTS (1895), 10 Man. L. R. 573.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (b).

793 viii. —— *Payment as surety.*]—The vendor of a motor car, sold under a conditional sale agreement, sold his interest in the car & in the balance of the purchase-price to a finance co., the transaction being carried out by the assignment to said co. of a new lien agreement & lien note made by the purchaser. The new agreement & note were signed by the purchaser & also by a co. of which he was the president & practically the sole owner. The charter of this co. gave no power to guarantee the debts of another. The first two subsequent instalments due the vendor were paid by the purchaser

809. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

815. *Add. Annotation :—As to* (2) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

824. *Add. Annotation :—As to* (2) **Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

849. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205

851. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

Part VII.—Surety's Rights against Principal Debtor.

879. *Add. Annotation :*—**Refd.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

898. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

902. *Add. Annotations :—As to* (1) **Refd.** *Re* Fenton *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *Generally*, **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

907. *Add. Annotation :—As to* (1) **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

908. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

913. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

915. *Add. Annotations :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

931a. Guarantor of preference dividends.]—The only right which a guarantor of dividends on preference shares has in respect of sums paid under the guarantee is a right to be subrogated to the preference shareholders. He has no right to proceed as a creditor against the co. in respect of those sums.—*Re* WALTERS' DEED OF GUARANTEE, WALTERS' "PALM" TOFFEE, LTD. *v.* WALTERS, [1933] Ch. 321 ; 102 L. J. Ch. 149 ; 148 L. T. 473 ; 49 T. L. R. 192 ; 77 Sol. Jo. 83.

937. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

939. *Add. Annotation :*—**Refd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

947. *Add. Annotations :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443 ; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

948. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1010. *Add. Annotation :*—**Refd.** Ridley *v.* Lee, [1935] Ch. 591.

1021. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

& later instalments were paid by cheques of his co. written by him & signed by him as president & also by the manager. In replevin proceedings issued in an action brought by the finance co. against the purchaser & his co., his wife claimed the car as her property under a gift from her husband & on the question whether there had been a gift of the car to her the ct. found in her favour. Her husband's co. set up the right of subrogation because of the payments made by it :—*Held :* to be entitled to stand in the creditor's shoes & take over by subrogation the lien on the car, said co. was required to establish beyond question that the payments made by it were made in its character as surety ; & the car not having been transferred to the co. it must be assumed in the absence of evidence to the contrary that the cheques of the co. were advances to him. The claim of the co. was dismissed.—ASHWIN *v.* ASHWIN & FORT ROUGE COAL CO., LTD., [1933] 1 W. W. R. 141 ; 1 D. L. R. 577; 41 Man. L. R. 34.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (c) ii.

822 i. *Assignment of judgment.*]—____ *v.* BURN (1880), 30 C. P. 630.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—E. (a).

sm. *Right of subrogation—Money paid to avoid tax-sale.*]—The guarantor of a mtge. who pays money to avoid the sale of the land for taxes is entitled to be subrogated to the rights of the mtgees. against the mtgor.—HARRIS *v.* CARNEGIE, [1933] 4 D. L. R. 760 ; O. R. 844.—**CAN.**

PART VII. SECT. 1.

sz. *Where land transferred as security.*]—SCHULTZ *v.* CAN. SURETY CO. (Alta.), [1927] 2 D. L. R. 580.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

872 ii. ——.]—A surety who enters into an agreement to procure the discontinuance of an action against his principal, & pays the amount of his guarantee, is entitled to be reimbursed.—GOUGH *v.* GOODWIN, [1931] 1 D. L. R. 701 ; 3 M. P. R. 435.—**CAN.**

872 iii. ——.]—E., an administrator, whose sureties under the administration bond were a bonding co. & himself in his personal capacity, employed a solr. to act as solr. for him as administrator. E. covenanted with the co. that the moneys of the estate should be deposited in a certain bank & should be drawn upon only by cheques countersigned by the same solr. as its agent ; & he also covenanted to indemnify the co. against all loss which it might incur under its bond. Moneys of the estate were stolen by the solr. through the use of blank cheques which E. had left with him after E. had signed them. In an action by a beneficiary of the estate judgment was given against E. as administrator & against the co. as surety. By third party notice the co. claimed to be entitled to be indemnified by E. This claim was dismissed & the co. appealed :—*Held :* the co. by requiring the estate moneys to be so deposited & by requiring the cheques to be countersigned by the solr. as its agent did not clothe him with such authority to intermeddle in the administration of the estate that it must now be said that in stealing the moneys the solr. was acting as agent for the co. ; the extent of his authority as agent for the co. was to countersign cheques, & the loss to the estate was not caused by the countersigning but by the use of the cheques, over which the administrator had full control, after they had been so signed ; & in handling the cheques so signed & the proceeds thereof the solr. was acting as solr. for the administrator & not as agent for the co. The appeal was, therefore, allowed.—RAMSDELL *v.* ELLIOTT & UNITED STATES FIDELITY & GUARANTY CO., [1937] 1 W. W. R. 37 ; 1 D. L. R. 269 ; 6 L. Jo. 259.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

g i. ——.]—SUTTON *v.* HINCH (1910), 19 Man. L. R. 705.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B.

m i. —— —— *Or partner of debtor.*]—Where a surety has taken a cession of action from the creditor against payment of the debt, he is entitled not only to sue the debtor, but also the debtor's partner where such partner is under the circumstances liable to the creditor for the debt.—AFRICAN GUARANTEE & INDEMNITY CO., LTD. *v.* THORPE, [1933] App. D. 330.—**S. AF.**

PART VII. SECT. 4, SUB-SECT. 3.

937 iv. —— ——.]—READ *v.* MCLEAN, [1925] 3 D. L. R. 716.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.

964 i. *Rights after debtor discharged—Debt due before discharge—Payment by surety after.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay :—*Held :* the order of discharge was a ban to the suit.—GANGADHAR *v.* KANHAI (1928), 1. L. R. 50 All. 606.—**IND.**

PART VII. SECT. 4, SUB-SECT. 6.

sa. *On debtor's property—Agreed to be deposited in bank to meet surety's promissory notes—Property garnished by creditor.*]—A surety having been called upon to pay the principal's

Part VIII.—Rights and Liabilities of Co-Sureties inter se.

1050. *Add. Annotation :*—**Apld.** Hay *v.* Carter, [1935] Ch. 397.

1062a. Joint & several guarantee by three—Payment by two—No contribution.]—Three persons bind themselves jointly & severally in a bond of indemnity & two of them pay the whole money, they cannot join in an action for contribution against the third.—KELBY & VERNON *v.* STEEL (1805), 5 Esp. 194 ; 170 E. R. 783, N. P.

1069. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1070. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1074. *Add. Annotation :—Generally,* **Refd.** Hay *v.* Carter, [1935] Ch. 397.

1080. *Add. Annotation :* —**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1099. *Add. Annotations :—As to* (1) **Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* Chetwynd's Estate, Dunn Trust, Ltd. *v.* Brown, [1936] 3 All E. R. 254.

1111. *Add. Annotation :*—**Consd.** Hay *v.* Carter, [1935] Ch. 397.

1112a. —— ——.]—When a surety sues his co-sureties for contribution he must make the principal debtor a party to the action unless the principal debtor's insolvency is proved or can be reasonably inferred by the ct. from the facts of the case.—HAY *v.* CARTER, [1935] Ch. 397 ; 104 L. J. Ch. 220 ; 152 L. T. 445, C. A.

1115a. Form of order.] — KENT *v.* ABRAHAMS, [1928] W. N. 266 ; 66 L. Jo. 323.

Part IX.—Determination of the Guarantee.

1149. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1165a. —— ——.]—Bankers made an advance to a customer, on the security of a joint promissory note of himself & a surety. The customer afterwards paid into the bank, generally, sums exceeding the amount of the advance, but also drew out a still larger amount, & became bkpt. :—*Held :* the surety was not entitled to have the payments appropriated in discharge of the sum secured by the note.—*Re* MAYOR, *Ex p.* WHITWORTH (1841), 2 Mont. D. & De G. 164.

1177. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

1186. *Add. Annotation :—As to* (3) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1198a. Agreement that variation should not discharge surety—What amounts to variation.] —One L. entered into two agreements with pltfs. for the hire-purchase of two vehicles, & deft. guaranteed L.'s payments thereunder, debt, paid the creditor part of it in cash & gave him his promissory notes for the balance. The principal, who was selling his house, repaid the surety out of the proceeds the cash previously paid by him & promised to deposit the balance of the proceeds in a bank to the joint credit of the surety & himself. Instead of doing so, he deposited it in his own name & it was garnished by pltf. when the notes given by the surety were not yet due & were still unpaid. On an interpleader issue between the garnishor & the surety who contended that there had been an equitable assignment of the money so deposited : —*Held :* said promise was nothing more than a voluntary one, never carried to completion, &, therefore, unenforceable as against the claims of the principal's other creditors.—HENSCHEL *v.* HOFFMAN & BANK OF MONTREAL & HENSCHEL, [1928] 2 D. L. R. 543 ; [1928] 1 W. W. R. 763.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

1054 i. *Sureties for different portions of debt.*]—Two persons independently guaranteed the current account of a customer of a bank, each guarantee being for a limited sum only. The indebtedness of the customer exceeded that limited sum :—*Held :* the guarantors were not sureties for independent debts, but for the whole for the floating balance of the customer. Each of the guarantors agreed with the bank that his guarantee was independent of any other guarantee or security held by the bank, & that he would not claim the benefit of any such guarantee or security :—*Held :* this agreement had not the effect of destroying the right to contribution of the sureties *inter se*, & therefore one of the guarantors who had paid more than his due proportion in liquidation of the amount due by the customer to the bank, was entitled to recover the excess from his co-surety.—CORNFOOT *v.* HOLDENSON, [1931] Argus L. R. 376.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).

1058 iv. —— ——.]—The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.—STEWART *v.* BRAUN, [1925] 2 D. L. R. 423 ; [1925] 1 W. W. R. 871.—**CAN.**

1058 v. —— ——.]—MCNEILL *v.* SHORT (Alta.), [1926] 4 D. L. R. 951.—**CAN.**

1058 vi. —— ——.]—CADWELL *v.* CAMPEAU (1912), 21 O. W. R. 263 ; 3 O. W. N. 616 ; 3 D. L. R. 555.—**CAN.**

1058 vii. —— ——.]—TUCKER *v.* BENNETT, [1927] 2 D. L. R. 42 ; 60 O. L. R. 118.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1068 i. *Revsd.*, 35 C. L. R. 48.

PART VIII. SECT. 2, SUB-SECT. 4.—B.

1116 i. *Application of Mercantile Laws Amendment Act,* 1856 (*c.* 97), *s.* 5—*Assignment of judgment—Necessity for leave to issue execution.*]—Where a creditor takes judgment against two or more sureties & issues execution against each, & one of them pays the judgment, the surety so paying is entitled to stand in the place of the creditor & carry on, in his own name, any proceedings already taken to enforce the judgment against the other surety until he receives the amount of the other's contributive share, & he is not required to obtain leave to issue execution in his own name.—FAST *v.* ZARCHEKOFF, [1926] 4 D. L. R. 355 ; [1926] 2 W. W. R. 577 ; 20 Sask. L. R. 596.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

1179 vii. —— ——.]—NASH-SIMINGTON CO., LTD. *v.* THOMAS (Sask.), [1926] 2 D. L. R. 462.—**CAN.**

1179 viii. —— ——.]—TOOKE BROS. *v.* WALTERS, LTD., [1935] 1 D. L. R. 295 ; 49 B. C. R. 195.—**CAN.**

1179 ix. —— ——.]—A guarantor will be discharged if the creditor changes the terms of liability by accepting notes & selling a mtge. held as collateral.—DE BLOIS BROS. *v.* CHISHOLM, [1936] 1 D. L. R. 514 ; 10 M. P. R. 47 ; 5 F. L. J. (Can.) 212.—**CAN.**

a i. —— ——.]—*Held :* the surety was not released from his guarantee.—DUNN *v.* THICKETT (Man.), [1925] 3 W. W. R. 736.—**CAN.**

a ii. —— ——.]—WINSLOW *v.* VERNER (1890), 30 N. B. R. 150.—**CAN.**

the guarantee in each case providing that it should not be avoided by any "variation in the terms" of the agreement. L. fell into arrears, & pltfs. made a new agreement with him whereby the two old agreements were consolidated & both vehicles were to be regarded as hired together & L. could not acquire the property in either unless he had paid all instalments in respect of both. L. having again fallen into arrears, pltfs. sued the guarantor:—*Held:* the new agreement was only a variation of the old agreements & not such a new agreement as would release the guarantor, & therefore the action succeeded. —BRITISH MOTOR TRUST CO., LTD. *v.* HYAMS (1934), 50 T. L. R. 230.

1200. *Add. Annotation:*—**Distd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1200a. —— —— —— **Hire-purchase agreement.**] —Pltfs. were the assignees of the rights of the R. Co. under a hire-purchase agreement dated July 6, 1927, whereby the co., "the owners," agreed to let to one T., "the principal," a motor car on the terms that he should be at liberty to purchase the car at a fixed price, paying as a first payment £22 0*s.* 8*d.*, & thereafter monthly payments of £14 3*s.* 4*d.*, until the whole was paid. The payments by the principal under this agreement were guaranteed by deft. as surety under a document signed by her on July 6, 1927. The principal afterwards fell in arrears in payment of the monthly instalments, & on Feb. 3, 1928, he wrote to the owners offering a cheque for £20 drawn by a friend in part payment. On Feb. 4 the owners wrote accepting this cheque & stipulating that the rest of the arrears should be paid within one month. The cheque was sent to the owners, but the arrears, which amounted to £79, were not paid within one month, & the owners then took back the car, acting upon their powers under the hire-purchase agreement. On Sept. 18, 1928, the owners assigned their rights under that agreement to pltfs., who claimed £122 in all from deft. as surety:—*Held:* (1) there was a binding contract by the owners to give time to the principal debtor; (2) the liability for payments under the hire-purchase agreement was one & indivisible, & deft. was entirely discharged from her suretyship.—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, [1929] 2 K. B. 256; 98 L. J. K. B. 490; 141 L. T. 230; 45 T. L. R. 499, C. A.

1216. *Add. Annotations:*—*As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250. *As to* (2) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487; Johnson Bros. (Dyers), Ltd. *v.* Davison (1935), 79 Sol. Jo. 306.

1216a. —— **Assignment—Lease contemplating assignment.**]—JOHNSON BROS. (DYERS), LTD. *v.* DAVISON (1935), 79 Sol. Jo. 306.

1217. *Citations:*—Delete 9 Bing. 746; 3 Moo. & S. 191; 131 E. R. 794.

1222. *Add. Annotations:*—**Apld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487; Smith *v.* Wood (1928), 139 L. T. 250. **Refd.** Sassoon *v.* International Banking Corpn, [1927] A. C. 711; Midland Motor Showrooms, Ltd. *v.* Newman, [1929] 2 K. B. 256.

1223. *Add. Annotation:*—*As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

1223a. Charge by several persons of properties—Release of deeds deposited by one.]—By a joint & several memorandum of charge twelve persons, including six resps., deposited deeds with applt. as security to relieve applt. from the entire burden of a guarantee given by him to a bank for the overdraft of S. & Co., & they thereby respectively charged the hereditaments to which the deeds related with repayment of all money to become due

PART IX. SECT. 2, SUB-SECT. 1.—C. (b).

st. *Renewal of loan.*]—The condition of a bond securing repayment of a mtge. loan is to be strictly construed as against the obligee, & therefore, where its language with reference to an extension or renewal of the loan is singular & not plural it cannot be construed as providing for an advance consent by the obligors to more than one renewal or extension.—HOLLAND-CANADA MORTGAGE CO., LTD. *v.* HUTCHINGS (No. 2), [1935] 1 W. W. R. 133; 2 D. L. R. 800; *affd.*, [1935] 2 W. W. R. 338; 3 D. L. R. 527; 5 F. L. J. (Can.) 83; *affd.*, [1936] S. C. R. 165; 2 D. L. R. 481; 5 F. L. J. (Can.) 307.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C (c).

sb. *Wrongful withdrawals.*]—Failure by a bank to inform a guarantor of wrongful withdrawals by a debtor whose account is guaranteed does not discharge the guarantor. — ROYAL BANK OF CANADA *v.* FLEMING, [1933] 3 D. L. R. 353; O. R. 601.—**CAN.**

sw. *Promissory notes exchanged for new note.*]—Sums were borrowed by a committee from a bank against promissory notes. A guarantee was given to the bank guaranteeing the payment of any sums due or which might become due. A new note was signed by one of the committee & endorsed by one of the guarantors, & given to the bank in exchange for the other notes:—*Held:* the other signatories to the guarantee were not discharged.—TREMBLAY *v.* BANQUE CANADIENNE NATIONALE, [1934] 4 D. L. R. 673.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (g).

sd. *Change of system of audit.*]—The fact that a municipality, which had taken out a fidelity bond based on an application in which it stated that the bonded employee's books would be audited quarterly, thereafter changed said auditing system to a system of "continuous audit," held not to be a breach of the contract of such a nature as to avoid the contract.—PENTICTON DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1932] 1 W. W. R. 812; 45 B. C. R. 464; *revsd.*, [1933] 1 W. W. R. 712; 3 D. L. R. 216; 46 B. C. R. 515.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (h).

sf. *Surrender of some chattels bought under lien note—No detriment to value of chattels.*]—*Held:* the surety who signed the note was not released.—TOOVEY *v.* BROCK & BROCK (1916), 34 W. L. R. 973.—**CAN.**

sk. *Sale of goods exceeding stipulated amount.*]—*Held:* the sureties were not liable.—TEXAS CO. (S. A.), LTD. *v.* WEBB & TOMLINSON (1927), 48 N. L. R. 24.—**S. AF.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (i).

sm. *Making principal debtor bankrupt.*]—Where a surety contended that, by making debtor bkpt., the creditor had so prejudiced the surety as to discharge him from liability:—*Held:* no duty was owed by a creditor to a surety either to put debtor into bkpcy. or to refrain from doing so.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 86; 59 O. L. R. 1.—**CAN.**

sn. *Retaking possession of chattels under conditional sale agreement.*]—*Held:* the contract constituted a relationship of mtgor. & mtgee. between vendor & purchaser, & the surety continued to be liable under the guarantee.—STEPHEN *v.* BLACK (1902), Cout. 217.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 2.—A.

so. *Surety not prejudiced—Onus of proving prejudice on surety.*]—CLOSE *v.* STEWART, [1928] 2 D. L. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A. (a).

e 1. ——.]—*Held:* it was not necessary to show that the surety was prejudiced by the giving time.—DARLING *v.* MCLEON (1861), 20 U. C. R. 372.—**CAN.**

sw. *Agreement may be implied.*]—An agreement to give time to the principal debtor may be implied & need not be express.—JOHNSTON & WARD *v.* MCCARTNEY, [1934] 2 D. L. R. 800; S. C. R. 494.—**CAN.**

from S. & Co. Applt., at the request of C., one of the twelve persons, allowed her to take the deeds deposited by her away for the purpose of raising a loan. S. & Co. having gone into liquidation, the bank called upon applt. to make good his guarantee. Thereupon resps. brought an action claiming that they were entitled to have all the deeds deposited by them under the terms of the charge discharged from the debt to which they were made liable to contribute under the charge, on the ground that, by applt. allowing C. to withdraw the deeds deposited by her, their risk had been increased :—*Held :* (1) there had been an alteration made in the position of those whose properties remained deposited as securities under the charge by reason of applt. allowing the withdrawal by C. of the deeds deposited by her, & they not having consented to the alteration, their properties, the deeds of which they had deposited, were discharged from all claims under the charge ; their right of marshalling had been affected by the withdrawal of the deeds of one of the parties, & the materiality of the alteration was a question to be decided by them ; (2) the same reasoning was applicable, whether what was contributed were securities or personal liability.—SMITH *v.* WOOD [1929], 1 Ch. 14 ; 98 L. J. Ch. 59 ; 139 L. T. 250 ; 72 Sol. Jo. 517, C. A.

1224a. Guarantee of call on shares—Forfeiture of shares—Discharge of surety.]—On Dec. 29, 1920, D. & P., who afterwards became bkpt., joined with others in entering into an agreement with a co., whereby they guaranteed to them the payment of all the instalments then owing upon the shares in the co. specified in the schedule to the agreement, the amount of D. & P.'s liability being limited to the sum therein mentioned. The shareholders having been served with notice calling upon them to pay the instalments due on their respective shares on pain of forfeiture, & D. & P. also having been required to pay the same on or before Feb. 17, 1925, in case of non-compliance by the shareholders with the notice, & default in payment having been made by both the shareholders & by D. & P., the co. forfeited the bulk of the shares in pursuance of the power conferred upon them by their arts. of assocn. Art. 31 was as follows : "Any member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the co. all calls or other moneys, interest & expenses, whether presently payable or not, owing in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of 10 per cent. *per annum* or such less rate as may be fixed by the Board." On Sept. 9, 1925, a receiving order in bkpcy. was made against D. & P., & on Apr. 10 the co. lodged their proof for the amount claimed to be due on the guarantee. Upon a motion by the co. for the reversal of the decision of the trustee in rejecting their proof :—*Held :* (1) the right created by art. 31 was a new right which arose upon the forfeiture of the shares & one which placed a more onerous obligation upon the shareholders than if the shares had not been forfeited. The forfeiture, therefore, was an interference with the rights of the sureties as against the principal debtor ; (2) the co. had by exercising their option to forfeit the shares deprived the sureties of their lien on the shares which they would have been entitled to, had the co., in lieu of forfeiture, compelled them to pay the calls ; with the result that, upon the principles stated in *Polak* v. *Everett*, No. 1222, *ante*, D. & P. were discharged from their liability as sureties under the guarantee & the decision of the trustee in their bkpcy. in rejecting the proof of the co. was right.—*Re* DARWEN & PEARCE, [1927] 1 Ch. 176 ; 95 L. J. Ch. 487 ; 136 L. T. 124 ; 70 Sol. Jo. 965 ; [1926] B. & C. R. 65.

1329. *Add. Annotation :—As to* (1) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1342. *Add. Annotations :—***Refd.** *Re* Darwen & Pearce, [1927] 1 Ch. 176; Smith *v.* Wood (1928), 139 L. T. 250.

1343. *Add. Annotation :—***Consd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1345a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1357. *Add. Annotation :—***Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1372. *Add. Annotation :—***Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1379a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1397. *Add. Annotation :—Generally.* Refd. Berry *v.* Berry, [1929] 2 K. B. 316.

PART IX. SECT. 2, SUB-SECT. 4.—A. (o).

1322 iii. ——.]—CORRIGAL *v.* BOULTON (1898), 17 U. C. R. 131.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (a).

1340 i. *Consent to judgment—Debt & costs payable by instalments.*]—When on an application for attachment before judgment, a surety executes a bond in form 6 in App. F to Civil Procedure Code, 1908, he is discharged from his obligations if a compromise decree is passed between pltf. & deft. allowing deft. to pay the decretal amount by instalments, unless it is proved that the compromise which was subsequently embodied in the decree was in the contemplation of pltf. & the surety when the latter executed the bond.—MAHOMEDALLI IBRAHIMJI *v.* ——— (1929), I. L. R. 54 Bom. 118.—**IND.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (d).

sp. *Alteration in number of instalments.*]—*Held :* not made on a basis of extension of time, so as to release the surety from liability.—MALKIN (W. H.) Co., LTD. *v.* SHERMAN (1925), 35 B. C. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—C. (a).

1364 xv. ——.]—BURNARD *v.* LYSNOR, [1927] N. Z. L. R. 757.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 7.—C.

1448 iii. ——.]—There must be some positive act done by the employer to the surety's prejudice, or such degree of negligence as to imply connivance & amount to fraud.—LONDON GUARANTEE & ACCIDENT Co., LTD. *v.* CITY OF HALIFAX, [1927] 1 D. L. R. 1120 ; [1927] S. C. R. 165.—**CAN.**

1451 i. *Fraud of employee—Neglect of employer to supervise conduct—Neglect must be gross.*]—Circumstances in which :—*Held :* gross negligence in checking accounts discharged the surety. — FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

1455 i. ——— *Checking accounts.*]—FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

sq. *Failure to observe statutory requirement.*]—The observations of LORD BROUGHAM in *Mactaggart* v. *Watson*, 3 Cl. & F. 525, & the decision in *Madden* v. *McMullen*, 13 I. C. L. R. 305, establish that failure to observe statutory requirements does not necessarily relieve a surety (MURNAGHAN, J.). —WICKLOW COUNTY COUNCIL *v.* HIBERNIAN FIRE & GENERAL INSCE. Co., [illegible] 581.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—A.

sr. *General rule.*]—If it is an express or implied condition of, or collateral to, the arrangement for a guarantee,

1478. *Add. Annotations :*—**Distd.** Smith *v.* Wood, [1929] 1 Ch. 14. **Refd.** West Bromwich Building Society *v.* Bullock, [1936] 1 All E. R. 887.

1522. *Add. Annotations :*—**Folld.** Morris & Sons, Ltd. *v.* Jeffreys (1932), 148 L. T. 56. **Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

1522a. —— —— —— ——.]—Disclaimer of a lease by a trustee in bkpcy. operates as a discharge of a surety for payment of the rent, notwithstanding that part of the demised premises have been sublet before the bkpcy.

The lessee of certain premises was adjudicated a bkpt., & his trustee, acting in pursuance of the powers conferred on him by 1914 Act, s. 54, disclaimed the lease. Prior to the bkpcy., the lessee had sublet a portion of the premises. Deft. had guaranteed the payment of the rent, & the lessors obtained from him sums equal to the rent which would have accrued if the lease had still been in existence :—*Held :* the disclaimer discharged the surety, on the ground that if the surety were called on to pay he would have a right of proof against the bkpt.'s estate, whereas the intention of sect. 54 was that the bkpt. & his property should be released from all liability.—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 148 L. T. 56 ; 49 T. L. R. 76.

1523. *Add. Annotations :*—**Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

1561. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1570. *Add. Annotations :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Refd.** Firm of R. M. K. R. J. *v.* Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780 ; Jenkins *v.* Jenkins, [1928] 2 K. B. 501 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

1571. *Add. Annotations :*—**Refd.** Freshwater *v.* Bulmer Raynon Co., [1933] Ch. 162 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

1574a. —— **Creditor member of trade association.**]—The Liverpool Corn Trade Assocn., Ltd., is an organisation for promoting & protecting the interests of those engaged in the corn trade. Membership is confined to individuals, but cos., either public or private, engaged in the trade can have the advantages of membership by nominating, in the case of a private co., one representative, on condition that a guarantee by the directors is given to the assocn. that the co. will duly discharge its liabilities to members, & for the conduct of its representative. Deft. in 1931 had joined with S. & two other directors of S. & Co., Ltd., a private co., in a joint & several guarantee to the assocn., given in accordance with this provision. This action was brought by pltfs. claiming a declaration that they were entitled as trustees for ten firms & cos. who were creditors of S. & Co., Ltd., to enforce the guarantee in question. S. & Co., Ltd., got into financial difficulties & in 1935 S. executed a deed of assignment for the benefit of his creditors under which he was released from all " debts, claims, & demands whatsoever " which the other parties to the deed might have against him with the usual reservation of rights against sureties. Pltfs. & the ten firms & cos. whose debts made up the sum claimed were parties amongst others, to the deed of assignment :—*Held :* (1) the release in the deed of assignment operated to release all the joint guarantors & the position was in no way affected by the reservation of rights against sureties ; (2) " members of the assocn." meant members of the assocn. or any incorporated co. whose nominee or nominees is or are members of the assocn. ; (3) the assocn. was entitled to sue for the benefit of the members entitled & as trustee for them ; (4) " liabilities " in the guarantee meant all liabilities to individual members or to cos. whose nominees were members.—LIVERPOOL CORN TRADE ASSOCN., LTD. *v.* HURST, [1936] 2 All E. R. 309 ; 80 Sol. Jo. 673.

1576. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

that an existing security, whether inchoate or complete, should be made or kept effective by the creditor for the benefit of the parties as a counter-security, failure to observe that condition discharges the surety absolutely, inasmuch as he has not got the contract he bargained for.

If there is, in fact, in the possession of the creditor such a counter-security, it is the duty of the creditor, whether its existence is known to the surety or not, to exercise reasonable care in maintaining it for the benefit of the surety, so as to be available, unimpaired by reason of any negligence, on the discharge of the debt. If he fails in this duty, the surety is entitled to credit against his liability for the damages suffered by such breach of duty by the creditor.—NORTHERN BANKING CO., LTD. *v.* NEWMAN & CALTON, [1927] I. R. 520.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—B.

1477 i. *Sale of security—Failure to get best price.*]—MACDONALD *v.* HIRSCH, [1932] 4 D. L. R. 121 ; 5 M. P. R. 469.—**CAN.**

1477 ii. ——.]—The mere fact of a sale by a creditor of property comprised in a bill of sale, given to the creditor by the principal debtor as security for a loan, does not operate to discharge from liability the guarantor of such loan.—TOOTH & CO., LTD. *v.* LAPIN (1936), 53 N. S. W. W. N. 224.—**AUS.**

1480 i. *Release of mortgage debt.*]—*Held :* the surety was not liable under the guarantee.—ORCHISTON *v.* [1924] N. Z. L. R. 1170.—**N.Z.**

st. *Failure to renew chattel mortgage.*]—LEACROFT *v.* MCCANNELL, [1930] 2 W. W. R. 105 ; 3 D. L. R. 988.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

1496 i. *When surety discharged—Release obtained by fraud—Of debtor.*]—When the release of the principal debtor by the creditor is accomplished by means of fraud, on the part of the former, the surety is not discharged, even if he is not a party to the fraud by which the release was secured.—R. *v.* THE CANADIAN SURETY CO., [1929] Ex. C. R. 216 ; *affd. with variations,* [1930] S. C. R. 434 ; 3 D. L. R. 321.—**CAN.**

1499 i. *When surety discharged—Release of debtor.*]—MILNE *v.* YORKSHIRE GUARANTEE & SECURITIES CORPN. (1906), 37 S. C. R. 331.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (a).

sv. *Sale of debtor's equity of redemption.*]—*Held :* not a release of debtor, nor of his surety.—STEWART *v.* CLARK (1863), 13 C. P. 203.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (c).

sw. *Release of co-lessee—Surety discharged.*]—ISMAN *v.* WIDEN (Sask.), [1926] 1 D. L. R. 247.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—C. (b).

1561 iv. —— ——.]—HOLLIDAY *v.* HOGAN (1893), 20 A. R. 298.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 11.—B.

sy. *Whether revocable by notice—Fidelity guarantee.*]—Resp. executed a bond guaranteeing the fidelity of a servant of applt.'s. Subsequently he purported to withdraw the guarantee by a written notice :—*Held :* (1) the guarantee, in the nature of a security for the servant's fidelity, is not a

1577. *Add. Annotation :*—**Refd. Jenkins *v.* Jenkins,** [1928] 2 K. B. 501.

1581. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

1582. *Add. Annotation :*—*As to* (2) **Consd. Smith *v.*** Wood (1928), 139 L. T. 250.

1608. *Add. Annotation :*—**Refd.** *Re* **Darwen &** Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

Part X.—Avoidance of the Guarantee.

1656a. —— Power to contract out of duty to disclose.]—A Harbour & Dock Board, having resolved to enlarge their dock, invited tenders for the work from numerous contractors, informing them where the contract for the work might be inspected & instructing them that they must make local & independent inquiries as to the nature of the surface, strata, soil & sub-soil or ground to be excavated, & the nature & height of the tides, & generally must obtain their own information on all matters affecting the construction, completion & maintenance of the works, & as to all matters which might influence them in making their tender & fixing the rates & prices therein, & that the Board would not be responsible for any information the contractors might obtain except such as was given in reply to a written inquiry addressed to the clerk or manager of the Board. Of several tenders received that of a co., K. & R., Ltd., was by far the lowest. The Board informed K. & R., Ltd., that they were not prepared to accept that tender unless K. & R., Ltd., procured a guarantee to the amount of £50,000 for the due performance of the contract. In compliance with this demand K. & R., Ltd., procured a joint & several bond from an insurance co. whereby that co. & K. & R., Ltd., jointly & severally bound themselves to the Board for the due performance of the contract by K. & R., Ltd. The Board accepted this guarantee, & K. & R., Ltd., entered upon the work in pursuance of the contract, which made the final certificate of the Board's engineers final & binding between the parties. In the course of the work the contractors encountered an unexpected quantity of water in the soil, & the expense of pumping was such that they could not continue the work without further funds. Thereupon the Board advanced them two sums of £20,000 & £25,000 to be repaid upon certain terms; but, notwithstanding these loans, the contractors failed to complete the contract & went into liquidation, & the Board's engineers made a final certificate showing over £78,000 due from the contractors to the Board. This sum included so much of the £45,000 lent to the contractors as remained unpaid at the date of their default. The Board sued the insurance co. on the joint bond :—*Held :* (1) the bond was a contract of guarantee & not a contract of insurance; (2) there was no such misrepresentation or non-disclosure of material facts by the Board as to invalidate the bond; (3) the loans of £20,000 & £25,000 being outside & independent of the contract, the amount due thereon ought not to have been included in the engineers' final certificate; inasmuch as the amount due & unpaid on the loans was unascertained, the amount due on the bond being equally undefined, the Board could not recover upon it.—TRADE INDEMNITY CO., LTD. *v.* WORKINGTON HARBOUR & DOCK BOARD, [1937] A. C. 1; [1936] 1 All E. R. 454; 105 L. J. K. B. 183; 154 L. T. 507; 41 Com. Cas. 186, H. L.

1658. *Add. Annotation :*—**Refd.** *Re* **Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze,** [1931] 1 Ch. 289.

continuing guarantee which may be revoked by the guarantor at will; (2) a guarantor for the fidelity of a servant is allowed as a measure of equitable relief, to recall his guarantee from such time as the servant is proved guilty of misconduct or from such time as the position of the parties has completely changed.—MYINGYAN MUNICIPALITY *v.* MAUNG PO NYUN (1930), I. L. R. 8 Ran. 320.—**IND.**

PART X. SECT. 2.

d i. ——.]—There is no universal obligation on a creditor entering into a contract of suretyship to make disclosure to the surety of all the facts relative to the dealings between the creditor & the principal. There must, however, be no undue concealment, which consists not merely in the omission to disclose such facts as need be mentioned in answer to the surety's questions, but also in the non-disclosure of those facts which the creditor must spontaneously disclose to him. The omission by the creditor to reveal to the surety every fact which under the circumstances the surety would expect not to exist amounts to an implied representation that it does not exist: & it depends upon the nature of the transaction in each case whether the fact not disclosed is so impliedly represented. Where a guarantee was given for the payment of "all moneys which are now or at any time hereafter may be due or owing to the co. from . . . on the general balance of his account with the co." there could not be at the time of its making any implied representation by the co. arising from the co.'s non-communication to the surety of the state of the account that there was no indebtedness to which the guarantee could apply.—NATIONAL MORTGAGE & AGENCY CO. OF NEW ZEALAND, LTD. *v.* STALKER, [1933] N. Z. L. R. 1182.—**N. Z.**

PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*]—An offer, by an employer, who has knowledge of dishonesty on the party of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that, so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—EBY-BLAIN, LTD. *v.* MATTHEWS, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—**CAN.**

1685 ii. ——.]—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of appct., such non-disclosure releases the surety.—RURAL MUNICIPALITY OF CHURCHBRIDGE NO. 211 *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—**CAN.**

1685 iii. *S. P.* MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

g i. —— *Statement made in ignorance & without fraud.*]—For the purpose of a renewal of a fidelity policy, pltfs. certified to defts. that the employee "is not at present in arrears or default." The employee was in fact in arrears & default at the time, but the certificate was made without knowledge of this & without fraud :—*Held :* pltfs. could not recover under the policy.—DOMINION OF CANADA GUARANTEE & ACCIDENT CO., LTD *v.* HOUSING COMMISSION OF CITY OF HALIFAX, [1927] 4 D. L. R. 161; [1927] S. C. R. 492.—**CAN.**

1686. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

1691. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

1704a. —— —— ——.]—A contract of guarantee, like any other contract, is liable to be avoided if induced by material misrepresentation, even if made innocently.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 151 L. T. 486; 78 Sol. Jo. 471, P. C.

1721. *Add. Annotation :*—*As to* (1) **Refd.** With *v.* O'Flanagan, [1936] Ch. 575.

1725. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1726. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1737. *Add. Annotation :*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

1741. *Add. Annotations :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

Part XII.—Indemnity.

1745. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

1745a. **Distinguished from del credere agency.**]—Defts. agreed in writing with pltfs., stockbrokers on the Stock Exchange, that in consideration of 50 per cent. of the commissions received by pltfs. in respect of business introduced to them by defts. the latter would be liable for 50 per cent. of "any loss sustained" by pltfs. on such business. X., who had been introduced by defts., became indebted to pltfs. in respect of such business. When X. executed an assignment for the benefit of creditors, pltfs. thereupon claimed that a "loss" had been sustained within the meaning of the above letter at the time when the assignment was executed :—*Held :* (1) the agreement was one of indemnity & not in the nature of a *del credere* agency; (2) in the absence of evidence of actual loss sustained after taking into consideration the value of pltfs.' rights under the assignment, there must be judgment for defts.—STANLEY (MONTAGU) & CO. *v.* SOLOMON (J. S.), LTD., [1932] 1 K. B. 611; 76 Sol. Jo. 272; *affd.*, [1932] 2 K. B. 287.

1747. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1750. *Add. Annotation :*—**Refd.** Strathlorne S.S. Co., Ltd. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1751. *Add. Annotation :*—**Apld.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1756. *Add. Annotations :*—**Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433. **Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1760. *Add. Annotation :*—*As to* (1) **Refd.** Strathlorne S.S. Co., Ltd. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1762. *Add. Annotation :* —**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

1762a. —— —— ——.]—Pltfs., a private inquiry agency, carried on the business of providing to approved subscribers confidential reports on companies, firms & persons engaged in trade. The terms upon which the reports were issued were (*inter alia*) that all statements were strictly confidential, & that every subscriber should indemnify pltfs. against any loss or damage they might suffer from the breach by the subscriber of any of the conditions of the contract. Deft. co., an approved subscriber, through its managing director, requested pltfs. to furnish information regarding the X. Co. for whom they were agents. The report, being of an unfavourable nature, was communicated by deft. co. to their own solrs. Deft. M., a director of deft. co., with the approval of its managing director, applied for & was furnished with similar information regarding the X. Co., & on the same terms & conditions. M. at once informed the managing director of deft. co. of its contents. The matter having been brought to pltfs.' notice

PART X. SECT. 4, SUB-SECT. 3.

1702 x. —— —— ——.]—JOHN DEERE PLOW CO. *v.* MAGUSS, [1929] 2 D. L. R. 262; 1 W. W. R. 669; 24 Alta. L. R. 65.—**CAN.**

h 1. —— *Separate obligations—Only one explained—Sureties illiterate.*]—WATKINS J. R. CO. *v.* MINKE, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

1713 i. *As to nature of transaction.*]—It is a good defence to an action on a guarantee that it was executed by the surety in the belief, induced by the fraudulent misrepresentations of debtor, that it is a document of another nature.—WATKINS (J. R.) CO. *v.* HANNAH (Sask.), [1926] 4 D. L. R. 93; [1926] 2 W. W. R. 800.—**CAN.**

PART X. SECT. 5, SUB-SECT. 2.

1730 ii. —— ——.]—*Held :* the influence exerted by the husband was not undue influence, & the wife executed the guarantee as the result of her own considered judgment of the consequences thereof.—CANADIAN BANK OF COMMERCE *v.* FOREMAN, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.—**CAN.**

1730 iii. ——————.]—When a married woman disputes her liability to a creditor of her husband upon a guaranty signed by her at her husband's request, the *onus* is on her to prove that the husband had executed an overpowering influence upon her to induce her to sign it, & that the giving of the guaranty was an immoderate & irrational act on her part.—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 32 Man. L. R. 301.—**CAN.**

PART XII. SECT. 1.

1744 iii. —— *Person indemnified insolvent.*]—Where a person entitled to be indemnified is insolvent:—*Semble :* the contract to indemnify him has the same effect as if it were a guarantee to the principal creditor of payment of the debt.—*Re* WINDING-UP ACT & FRANCO-CANADIAN [illegible] CO., LTD., *Re* BANK OF [illegible] (Alta.), [1927] 1 W. W. R. 403; 8 C. B. R. 176.—**CAN.**

xz. *Does not extend to doing unlawful acts.*]—*Held :* the fact of a municipal council having undertaken to indemnify an officer for lawful acts done in his official capacity, does not entitle him to look to them for indemnity against the consequences of unlawful acts.—IRWIN *v.* MARIPOSA CORPN. (1872), 22 C. P. 367.—**CAN.**

by the co. reported on, both defts. at the request of pltfs. returned the unfavourable reports.

Pltfs., an action for libel having been brought against them in the K. B. Div., commenced proceedings against both defts. for an injunction to restrain disclosure of the unfavourable reports which had been furnished, & a declaration that they were liable to indemnify pltfs., against any loss or damage arising from this disclosure. They also claimed damages:—*Held:* (1) deft. co. did not disclose the report to any person other than its own solrs. & that this did not constitute a breach of contract with pltfs. within the meaning of the agreements; (2) deft. M. became a subscriber to pltfs.' confidential reports for the purpose of obtaining a report on the X. Co. & communicating the result to the managing director of deft. co.; (3) neither M. nor the managing director of deft. co. was acting as the agent of deft. co. & no breach of contract committed by M. was induced by deft. co. The action against deft. co. therefore failed; (4) the agreement entered into by M. not to disclose the confidential information furnished to him & to indemnify pltfs. for any loss or damage which they might suffer from a breach by a subscriber of the conditions upon which reports were furnished, was not void as being against public policy; (5) the disclosure by deft. M., although a breach of this contract, did not create the liability of pltfs. to be sued for libel; this liability did not arise directly or indirectly out of any act of the deft. M. & was not therefore within the scope of the express indemnity contained in pltfs.' agreement with M. The only liability for damages, therefore, resulted from M.'s own breach of contract, & in the circumstances such damages were merely nominal.—BRADSTREETS BRITISH, LTD. *v.* HAROLD MITCHELL & CARAPANAYOTI & CO., LTD., [1933] Ch. 190; 102 L. J. Ch. 34; 148 L. T. 111; 48 T. L. R. 670.

1782. *Add. Annotation:*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1787. *Add. Annotation:*—**Reld.** Pontypridd Grdns. *v.* Drew, [1926] 1 K. B. 567.

1789. *Add. Annotation:*—**Reld.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790. *Add. Annotation:*—**Overd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790a. —— —— ——.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians* v. *Brookes*, No. 1790, overd.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

1800. *Add. Annotation:*—**Consd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1826a. Limited to claims by third parties.]—Pltfs. took a lease of premises from deft. railway co., &, by an agreement supplemental to the lease, defts. gave pltfs. permission to use a portable gangway, which could be moved over certain of defts.' railway lines. One of the terms was that pltfs. "agree & undertake to indemnify the co. against all claims & demands or liability whatsoever, whether in respect of damage to person or property, arising out of or in connection with the existence or user of the gangway." When pltfs. were using the gangway some trucks were shunted down the line, & the gangway was destroyed. In an action for damages for negligence &/or breach of duty defts. denied liability & pleaded the above term of the supplemental agreement:—*Held:* the undertaking was only one to hold defts. harmless against claims by third parties.—GREAT WESTERN RY. CO. *v.* DURNFORD (JAMES) & SONS, LTD. (1928), 139 L. T. 145; 44 T. L. R. 415; 33 Com. Cas. 251, H. L.; *affg.*, S. C. *sub nom.* DURNFORD (JAMES) & SONS, LTD. *v.* GREAT WESTERN RY. CO. (1927), 138 L. T. 137, C. A.

Annotations:—**Distd.** Furness Shipbuilding Co. *v.* London & North Eastern Ry. Co. (1934), 103 L. J. K. B. 180. **Consd.** London Passenger Transport Board *v.* T. Walton (London), Ltd. (1934), 78 Sol. Jo. 224. **Reld.** The Carlton (1931), 47 T. L. R. 517.

1826b. Claims arising "in connection with the works."]—By a contract made in 1929, applts. were employed by the resps. to reconstruct a bridge of the railway near West Ham Station; & clause 34 (*a*) provided that: "The contractor shall be responsible for & provide against all risks & contingencies whatever that may arise in respect of the works, & shall be liable to make good & pay

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PART XII. SECT. 5. SUB-SECT. 1.

1805 ii. ——.]—Pltfs. took a son of testator, represented by deft., into their employ upon testator's oral promise that he would indemnify them against any loss sustained by them through embezzlement by the son. The ct. found that the substance of the conversation, when the contract was made, was that testator said to pltfs. "If you take my son into your employ, & he makes default by embezzlement, you look to me":—*Held:* testator's promise was a direct, unconditional & original promise of indemnity, to which sect. 4 of "The Statute of Frauds" did not apply.—CONNOR *v.* TASMANIAN PERMANENT EXORS. & TRUSTEES ASSOCN., LTD. (1935), 28 Tas. L. R. 93.—**AUS.**

PART XII. SECT. 6, SUB-SECT. 1.—A.

1825 ii. ——.]—RUTHERFORD *v.* STOVEL (1861), 12 C. P. 9.—**CAN.**

1825 iii. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* VICTORIA-VANCOUVER STEVEDORING CO. (1919), 13 D. L. R. 231.—**CAN.**

ag. Supply of information—Indemnity against loss.]—Resp. carried on a business of financing motor car dealers. Applt. carried on a business of obtaining & giving information as to credit, character, etc., & including the checking of cars in dealers' hands & reporting thereon. Applt. made an agreement to supply its service to resp. Resp. signed an "indemnity agreement," agreeing to treat in confidence the information furnished, to hold applt. harmless on account of any damages arising from publication or dissemination of information or careless handling of reports, & agreeing, "in consideration of receiving this service, & as a condition of its rendition," that neither applt. nor its employees should be responsible "for any loss that may occur to resp. through the use of the information furnished." Through careless car-checking reports, made without personally checking over the cars, in respect of a dealer, made by a local inspection agent of applt. & passed on to resp., resp. was misled, to its loss, & sued applt. for damages. Applt. claimed that it had not bound itself for more than reasonable care in the selection of its inspection agents, &, further, that, in any case, it was relieved from liability by the concluding clause of the indemnity agreement:—*Held:* resp. should recover. The concluding clause of the indemnity agreement did not, on proper construction of that agreement, relate to car-checking reports.—RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & MERCHANT'S CASUALTY INSURANCE CO., RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & WESTERN ASSURANCE CO., [1932] S. C. R. 33.—**CAN.**

for any interruption, accident, damage, loss or injury of, or to any person, property or rights, whether public or private, & any loss of life caused in connection with the works." On Dec. 20, 1929, a train was dispatched by resps.' servants from London, & as it approached the bridge one of the carriage doors, which had swung open, struck two of applts.' workmen, killing one & seriously injuring the other. Resps. were adjudged to pay the representatives of deceased workman & the injured workman £3,614 1*s*. Resps. claimed indemnity in respect of that liability from applts. The trial judge found that the railway carriage door swung open by reason of its having been insecurely fastened at Fenchurch Street Station, owing to the negligence of resps.' servants, but held that under clause 34 (*a*) applts. were liable to indemnify resps. The Ct. of Appeal affirmed that decision :—*Held :* the accident arose in connection with the bridge where the men were working, & the contractors, therefore, under clause 34 (*a*), must indemnify resps. in respect of the accident.—FURNESS SHIPBUILDING CO. *v.* LONDON & NORTH EASTERN RY. (1934), 103 L. J. K. B. 180 ; 50 T. L. R. 257 ; 39 Com. Cas. 182 ; *sub nom.* LONDON & NORTH-EASTERN RY. CO. *v.* FURNESS SHIPBUILDING CO., LTD., 150 L. T. 382, H. L.

1826c. Property of defendant "direct or contributing cause of the accident."]—LONDON PASSENGER TRANSPORT BOARD *v.* T. WALTON (LONDON), LTD. (1934), 78 Sol. Jo. 224.

1830. *Add. Annotation :—As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

1867. *Add. Annotations :—***Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58 ; Hoods' Trustees *v.* Southern Union General Insce. of Australasia, [1928] Ch. 793.

1877. *Add. Annotation :—***Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1881. *Add. Annotation :—***Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1882. *Add. Annotation :—***Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Des Olivaes (Visconde), [1929] 1 Ch. 221.

1889. *Add. Annotations :—As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65. *As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] A. C. 601. *Generally,* **Refd.** May & May, [1929] 98 L. J. K. B. 770.

1895a. —— Against "loss sustained"—Actual loss necessary—Effect of deed of assignment by debtor.]—STANLEY (MONTAGU) & CO. *v.* SOLOMON (J. C.), LTD., No. 1745a, *ante.*

1908a. —— —— Indemnity against loss on debentures—Sale of debentures by party indemnified.]—Deft. was the chairman of the S. Co., which at the end of 1921 was seeking to issue £15,000 First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount ; & deft., having interested pltf. in the matter, sent him a letter of indemnity, dated Feb. 17, 1922, in these terms : "Regarding the issue of £15,000 First Lien Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80, which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf., having repurchased the debentures from his son, brought these proceedings to recover his loss :—*Held :* in selling the debentures pltf. had committed a breach of an implied term of the contract, & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169 ; 99 L. J. Ch. 520 ; 143 L. T. 247, C. A.

PART XII. SECT. 7, SUB-SECT. 1.

b 1. —— ***Claim by liquidator of indemnified party—Before payment of liability.***]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability :—*Held :* he could recover the amount even though the agents having gone into liquidation had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—**IND.**

HIGHWAYS, STREETS AND BRIDGES.

Part I.—Definitions and Characteristics.

4. *Add. Annotation :*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

5. *Add. Annotations :—As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (4) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1930), 144 L. T. 132.

Add. Annotation :—Generally, **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

9a. —— **Land flooded at spring tides.**]—In 1928 pltf. purchased a large strip of foreshore & let part of it for caravans & bungalows. She erected a fence round the land side, with gates at three places at which persons other than local inhabitants were charged 1*d.* toll. Deft., the proprietor of a tea shop at the Western end of pltf.'s land, claimed that the fence obstructed five public or customary rights of way. Four of the alleged public ways were over land flooded at spring tides. For the purpose of asserting these rights, deft. pulled down some of pltf.'s fence, & did not absolve himself from association with a mob which also pulled down another part of the fence. Deft., without joining the A.-G., counterclaimed for a declaration that the five ways were public, alleging that his tea shop gave him an interest in their remaining open which was not possessed by the general public & that therefore the fiat of the A.-G. was not necessary :—*Held :* (1) there was a public right of way over three of the ways claimed ; (2) the damage done by deft. was excessive ; (3) the fiat of the A.-G. was necessary.—SEATON *v.* SLAMA (1932), 77 Sol. Jo. 11 ; 31 L. G. R. 41.

18. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 24 J. P. 10.

20. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

29a. ——.]—A.-G. *v.* TASKER, No. 263a, *post.*

52a. Road leading to the sea.]—Pltf. claimed damages against several defts. for trespassing over his land, & asked for an injunction. Defts. alleged that they were lawfully exercising public rights of way. Evidence was given of public user by five different classes of persons, extending over the whole period of living memory, of two defined ways over pltf.'s land from a public high road to the sea at high-water mark. It was also proved that pltf.'s land was in strict settlement from 1856 to 1908, & that during that period there was never an owner capable of dedication. The county ct. judge held that there being no owner capable of dedication during the period of proved public user, he was not entitled to infer dedication from such user. He held also that the ways claimed by defts. had no sufficient *terminus ad quem.* On appeal :—*Held :* (1) although the public have only limited rights over the foreshore, the sea may be a sufficient *terminus ad quem* for a public way, which may now be proved, even though it does not lead to a public place ; (2) where there is evidence of public user of a way throughout the period of living memory, but there has been no owner of the land capable of dedication during that period, the tribunal of fact which has to decide the issue of dedication or no dedication may infer a dedication at some date anterior to the earliest proved user by an owner capable of dedication ; (3) there is no *præsumptio juris* to compel the tribunal to draw such an inference even from unrebutted evidence of long-continued & uninterrupted user.—WILLIAMS-ELLIS *v.* COBB, [1935] 1 K. B. 310 ; 104 L. J. K. B. 109 ; 152 L. T. 133 ; 99 J. P. 93 ; 51 T. L. R. 131 ; 79 Sol. Jo. 11 ; 33 L. G. R. 39, C. A.

65. To the existing paragraph add as follows :—

(3) The words " annual payment towards the cost of the maintenance & repair " in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.

Annotations :—As to (1) **Consd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763. **Apld.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

66. *Add. Annotations :—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. *As to* (4) **Consd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

79. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

91a. Not confined to public highway.]—*Held :* the word " street " even in London does not necessarily mean a public highway.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479 ; 99 L. J. Ch. 274 ; 142 L. T. 626.

97. *Add. Annotation :*—**Refd.** Postmaster-General *v.* Birmingham Corpn., [1936] 1 K. B. 66.

137. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

PART I. SECT 1, SUB-SECT. 1.

10 i. *Once a highway always a highway.*]—A highway once laid out & recorded, the public acquire permanent rights in it, which are unaffected by non-user.—LEBLANC *v.* SAULNIER, [1934] 4 D. L. R. 109 8 M. P. R. 20.—**CAN.**

PART I. SECT. 1, SUB-SECT. 3.

45 i. *Cul-de-sac.*]—Scavenging may not be sufficient evidence that a *cul-de-sac* is a public highway.—JATINDRANATH BARAT *v.* CALCUTTA CORPN. (1930), I. L. R. 58 Calc. 1124.—**IND.**

PART I. SECT. 1, SUB-SECT. 4.

sk. *Religious procession.*]—There is a right in every community to take a religious procession, with its appropriate observances, along a highway. This is an inherent right & does not depend on the proof of any custom or long-established practice.—MUHAMMAD JALIL KHAN *v.* RAM NATH KHAN (1930), I. L. R. 43 All.—**IND.**

137a. —— ——.] — A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL, No. 951a, *post.*

146. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

164a. Whether public highway—Claim of dedication.]—Pltfs. claimed a declaration that a way over deft.'s land was a public highway for vehicular traffic up to a certain point & for foot traffic from that point to Cockington Church on the ground that dedication should be presumed from evidence of uninterrupted use by the public throughout living memory & from evidence of reputation. The church was surrounded by deft.'s grounds, &, apart from a private path from his grounds, there was no access to the church except by the way in question. Deft. admitted that there was a church way for parishioners along the way, but he denied that there was any public right of way. Since 1774 the title to the property had been such that the owners could, if so minded, have dedicated the way to the public. The freehold of the church was in the incumbent & it had fulfilled all the functions of a parish church, but no person had a right to enter it without the permission of the vicar & churchwardens when it was not open for Divine service. The ct. found that apart from parishioners comparatively few persons had visited the church until about 1890, but since the War large numbers of persons had done so by the way in question & no one had ever been turned back. Owing to the increased use of the way notices were put up that visitors must keep to the path & not pick the flowers & that there would be no admission through the gate after 6 p.m. There was also a notice "No thoroughfare except to the church." In 1923 annoyance from visitors began & the gate was ordered to be locked after dusk, but no complaint was ever made, though some persons were actually prevented from going along the way to the church :—*Held :* on the evidence, the use of the way could properly be explained as having taken place by permission, & there was no reason why the ct. should presume from that use dedication to the public, & therefore the action failed.—A.-G. *v.* MALLOCK (1931), 146 L. T. 344 ; 48 T. L. R. 107 : 30 L. G. R. 141.

Part II.—Highway Statutes, Areas and Authorities.

SECT. 2.—**HIGHWAY AREAS AND AUTHORITIES** (p. 279).

See, now, Local Government Act, 1929 (c. 17), ss. 29–45.

Part III.—Origin and Proof of Highways.

177. *Add. Annotations :*—*As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

178. *Add. Annotations :*—*As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

181. *Add. Annotation :*—*As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

187. *Add. Annotations :*—**Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

189. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Tasker (1928), 92 J. P. 157 ; A.-G. *v.* Manchester Corpn. (1930), 46 T. L. R. 629. **Folld.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Consd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

194. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254. *As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107 ; Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

196. *Add. Annotation :*—*As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

201a. No legal presumption from long user.]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante.*

212. After this case add :—

Erection of notices.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (3).

216. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

PART I. SECT. 5, SUB-SECT. 1.

s1. *Street declared residential—Effect.*]—Once a street has been declared residential by the municipality under Ontario Municipal Act the owner of a building thereon may not conduct an undertaking business on the premises. —ST. CATHARINES *v.* HULSE, [1935] 4 D. L. R. 732 ; *revsd.*, [1936] 2 D. L. R. 453.—CAN.

PART I. SECT. 6, SUB-SECT. 2.

s8. *By Government survey—Prevails against previous possession.*]—MOUNTJOY *v.* R. (1861), 1 E. & A. 429.—CAN

PART III. SECT. 1.

r 1. —— ——.]—POINT ABINO ASS'N. *v.* BERTIE TOWNSHIP, [1927] 4 D. L. R. 503 ; 61 O. L. R. 120 ; *affd.*, 1928] 2 D. L. R. 31 ; 61 O. L. R. 610. —CAN.

PART III. SECT. 2, SUB-SECT. 2.

206 vi. —— *Crown patents issued in accordance with plan showing highway.*]—EDMONTON TOWN *v.* BROWN & CURRY (1893), 1 Terr. L. R. 454.—CAN.

206 vii. ——.]—*Re* PETERS, [1931] 3 D. L. R. 89.—CAN.

PART III. SECT. 2, SUB-SECT.

218 ii. —— ——.]—*Held :* no presumption of dedication from user by the public could be made against an owner who was in fact out of possession or control ; to justify such presumption it must be shown that there was some period during which the owner could

219. *Add. Annotations :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

236. *Add. Annotation :—As to* (1) **Consd.** Symes & Jaywick Assocn. Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551.

247a. —— **Land in settlement during living memory.**]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante*.

251. *Citations :*—For "L. R. 3 Exch. 316" read "L. R. 2 Exch. 316."

Add. Annotations :—As to (1) **Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159 ; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. *Generally*, **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

256. *Add. Annotation :—As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

263a. ——.]—Where nothing is known about a way except that it is used, the origin of the way is to be found in the user ; & in such a case the user raises a legal presumption of dedication.

Upon proof that a path had been used by the public on foot & on horseback as of right during the period of living memory & that such right was reputed to exist theretofore back to the early part of last century : —*Held :* the path was dedicated to the public as a bridleway at or about the commencement of, or prior to the commencement of, last century.—A.-G. *v.* TASKER (1928), 92 J. P. 157.

266. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

270. *Add. Annotation :*—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

270a. Motive of user immaterial.] — HUE *v.* WHITELEY, No. 298a, *post*.

274a. —— **Reputed to exist for over one hundred years.**]—A.-G. *v.* TASKER, No. 263a, *ante*.

278. After this case add :—

Statutory periods.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (1), (2).

278a. —— **"Actual enjoyment."**]—The public had for forty years used a roadway at C. &, though there was some evidence of people being stopped or turned away, it was clear that in the majority of cases it had been used as a public highway without challenge. The owner had acquiesced in its inclusion in a town planning scheme as a public highway. No notice had been placed upon the way or served upon the local authority. No fence or gate had been erected to prevent its use before the end of 1934, & it was the removal of a fence or gateway then erected that was complained of in this case as an act of trespass :—*Held :* (1) upon the evidence, the roadway had been dedicated & used as a public highway ; (2) "actually enjoyed by the public as of right" in Rights of Way Act, 1932 (c. 45), s. 1 (1), means actually enjoyed by the public as of right, & the exercise of such right has been actually suffered by the owner for the period of 20 years ; (3) "as of right" in the same sub-sect. means in the exercise of a right vested in the public & not by permission of the owner from time to time given ; (4) "without interruption" in the same sub-sect. means without actual & physical stopping of the enjoyment of the right ; (5) defts. were entitled under Public Authorities Protection Act, 1893 (c. 61), s. 1 (*b*), to costs to be taxed between solr. & client.—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, [1937] 2 K. B. 77 ; [1936] 2 All E. R. 422 ; 106 L. J. K. B. 603 ; 100 J. P. 381 ; 52 T. L. R. 516 ; 80 Sol. Jo. 615 ; 34 L. G. R. 356.

278b. —— **"As of right."**]—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, No. 278a, *ante*.

278c. —— **"Without interruption."**]—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, No. 278a, *ante*.

285. *Add. Annotations :—As to* (1) **Distd.** Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; A.-G. *v.* Mallock (1931), 48 T. L. R. 107 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Consd.** Trafford *v.* Thrower (1929), 45 T. L. R. 502.

298. *Add. Annotations :—As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *Generally*, **Refd.** Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98.

have taken action to exclude the public. —A.-G. *v.* DUNEDIN, [1929] N. Z. L. R. 261.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 4.—B. (a).

257 xi. ——.]—In an action of trespass, deft. alleged a public right of way across plffs.' land :—*Held :* the evidence as to uninterrupted public user of the alleged road for a period coextensive with the memory of witnesses, along with other circumstances in evidence, justified a finding of dedication.—FULTON *v.* CREELMAN, [1931] S. C. R. 221 ; 1 D. L. R. 733 ; *affg.*, [1930] 4 D. L. R. 43.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—B. (c).

sd. ***Lane less than prescribed minimum width of private streets—No dedication inferred.***]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

sf. ***Track leading to foreshore.***]—A proprietor, who owned the foreshore *ex adverso* of his lands, brought an action of declarator that there existed no right of way over a track about a quarter of a mile in length leading from a public road to the foreshore. The track was held to have been part of a road extending to the foreshore which became a public road in 1819, but which ceased to be maintained at public expense in 1836. It was proved that from 1865 to 1934, when the proprietor first attempted to close the track, it had been used by the public as an access to the foreshore for the bathing & recreation. The

been at one time a public road, the foreshore at its terminus had acquired the character of a public place which it had never lost ; & further that, even if it was not established that the track had ever been part of a public road, the resort by the public to the foreshore for recreation had made the foreshore a public place prior to 1894, when the prescriptive period began ; (2) the extent of the public use of the track throughout the prescriptive period was consistent, not with tolerance by the proprietor, but with the assertion of a right by the public.

Opinion, *per* Lord MONCRIEFF, that a public road could not lose its character as such merely by failure on the part of the road authority to maintain it & without resort by them to the statutory procedure for closing ....—BUTE (MARQUIS) *v.* M'KIRDY & M'MILLAN, [1937] S. C. 93.—**SCOT.**

298a. —— —— —— Paths joining existing highways.]—Evidence of long public user, as of right, of a pathway or roadway for the purpose of passing from one public place to another, is not the less ground for inferring dedication because recreation may have been the sole motive of such user.

H. & W. were neighbouring freeholders, & the sites of their properties originally formed part of the D. estate. The property of H. was originally let on a long lease in 1878 to one G., together with a right of way over a rough road, of the nature of a timber road, leading up from the London Road towards the property & past the property to Box Hill. In 1916 H. acquired the freehold of the property, & took a conveyance of the roadway in 1924. W., without the consent of H., opened a small gate for pedestrians in the boundary fence. In the action H. claimed a declaration that he was the freeholder of the said roadway & an injunction to restrain W. from trespassing thereon. Evidence was given of public user between Box Hill & the London Road for purposes of pleasure:—*Held:* the evidence of public user led to a presumption that the land had been dedicated, & that the motive of such user was irrelevant.—HUE *v.* WHITELEY, [1929] 1 Ch. 440; 98 L. J. Ch. 227; 140 L. T. 531.

310a. ——.]—A local authority acquired, in 1875, an area of land under its Act, in accordance with which it laid out streets & made improvements in the area. But a plot of land included in the area was practically neglected for sixteen years, & was then handed over to the local authority's Parks Committee for use as an open space & was drained & gravelled. Later, a fountain & certain structures were erected on the plot, & the public used the plot freely & continuously. In or about 1928 the local authority wished to build a tuberculosis dispensary & offices on the plot, & the Minister of Health approved its appropriation for that purpose. In an action by the Attorney-General on relation for an injunction to restrain the local authority from building so as to interfere with the right of user & enjoyment of the plot by the public:—*Held:* the public had not acquired by user a public right of way over the plot; the public rights over the plot were general & to some extent precarious, & could be destroyed under Public Health Acts (Amendment) Act, 1907 (c. 53), s. 95.—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112; 46 T. L. R. 629; 28 L. G. R. 634.

Annotation:—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

311a. Footpath along sea cliff.]—Where there was evidence of the user by the public of a footpath along a sea cliff for some distance when its direction continued on a line slanting inland, & during the course of some twenty years, owing to erosion by the sea, the footpath so used had receded about twenty or thirty feet inland, though the ct. was always slow to infer the dedication of a public right of way along a sea cliff, such a dedication could be here inferred, having regard to the fact that part of the footpath did not run along the sea cliff, & no objection to its user had been made by the owner of the land over which the footpath continued after leaving the sea cliff. Pltfs. having claimed that there was no public right of way over a strip of land under a portion of a fence removed by defts.:—*Held:* the public had wandered from the original right of way over the land of pltfs. when it was in the hands of their predecessor in title & was derelict, but the user of the new way by the public had never been acquiesced in, & there had never been a dedication of it to the public use, & pltfs. were entitled to a declaration that there was no such public right of way.—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL (1928), 92 J. P. 98.

313a. Road leading to seashore.]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante*.

322a. —— User by sufferance.]—Deft. council claimed that there was a public footpath over pltf.'s park. On a plan attached to an inclosure award of 1816 no such public footpath was set out, & since that time down to 1901 the park had been in settlement with no one capable of dedicating a right of way to the public. The alleged footpath led from the public road over part of the carriage drive to the hall, & then turned off through the park, leading to only three farms & three or four cottages, & by its use a distance of about sixty-four yards was saved. There was no evidence of dedication, & the evidence of user was by the occupants of the farms & cottages & their friends:—*Held:* the proof of uninterrupted user was no more than evidence from which the ct. could infer that at some time the owner of the soil had dedicated the path to the public of which there was no evidence, & the evidence of user was user by sufferance only since 1816, before which no such public footpath was shown to exist.—FENWICK *v.* HUNTINGDON RURAL DISTRICT COUNCIL (1928), 92 J. P. 41.

329a. —— ——.]—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL, No. 311a, *ante*.

333. *Add. Annotation:*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

355a. —— ——.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of

PART III. SECT. 2, SUB-SECT. 4.—B. (d).

317 ii. ——.]—Where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or usage that has become a customary law of the place in respect of the persons or things in which it is concerned. But the establishment of such right only does not include the right to erect substantial structures over & round the tomb which would be an infringement of the possessory rights of its owner.—DAWSON ROUHAE ZAMANI BEGUM (PRINCE (1928), I. L. R. 6 Ran. 456.—**IND.**

PART III. SECT. 2, SUB-SECT. 4.—B. (e).

ss. *Right to obstruct—Locus in quo conveyed with adjoining property.*]—LEARY *v.* ARMSTRONG (1850), 12 N. B. R. (1 Han.) 22.—**CAN.**

the last purchase for value by those through whom the vendor claimed. Pltf. produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked :—*Held :* the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other than as regards tithe ; they were not, therefore, *primâ facie* evidence enabling pltf. to contend that the dedication was at a subsequent date, so as to shift upon deft. the *onus* of proving that the dedication was prior to 1782.—STONEY *v.* EASTBOURNE RURAL COUNCIL, [1927] 1 Ch. 367 ; 95 L. J. Ch. 312 ; 135 L. T. 281 ; 90 J. P. 173 ; 70 Sol. Jo. 690 ; 24 L. G. R. 333, C. A

Annotation :—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

355b. —— ——.]—A tithe map & award produced from the proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after Mar. 20, 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory as evidence, (1) that there was at the date of the award a carriage-way along the line shown on the map, & (2) of reputation that the way so shown had by the date of the award been dedicated to the public.—A.-G. (FEVERSHAM'S (EARL) TRUSTEES) *v.* STOKESLEY RURAL DISTRICT COUNCIL (1928), 26 L. G. R. 440.

356. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106

357. After this case add :—

Deposited with council.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (4).

361. *Add. Annotation :*—*As to* (1) **Distd.** Great Western Ry. *v.* Monmouthshire County Council (1929), 94 J. P. 6.

390a. —— **Persons going to church.**]—A.-G. *v.* MALLOCK, No. 164a, *ante*.

407. *Add. Annotations :*—**Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339. **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

Part IV.—Width of Highways.

443a. —— ——.]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post*.

454. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

476. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

Part V.—Rights in Connection with Highways.

486. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

491. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

492. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

494. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

496. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

546. *Add. Annotation :*—**Expld.** Spillers, Ltd. *v.* Cardiff Assessment Committee & Cardiff Revenue Officer, [1931] 2 K. B. 21.

587. *Add. Annotations :*—**Distd.** Curtis *v.* Geeves (1930), 143 L. T. 48. **Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339.

588. *Add. Annotation :*—*As to* (2) **Consd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

597. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

601. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

605a. —— ——.]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post*.

607. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

608. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

616. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Apld.** Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433.

PART III. SECT. 2, SUB-SECT. 7.

404 i. *Non-user by public.*]—BRITISH COLUMBIA HOP CO., LTD. *v.* DISTRICT OF KENT, [1925] 3 D. L. R. 171 ; [1925] 2 W. W. R. 31.—**CAN.**

PART III. SECT. 3.

434 i. *Compliance with statutory requirements—Failure of commissioners to file return of laying out—Laying out not invalidated.*]—BROWN *v.* MCKEEL (1841), 1 Kerr, 311.—**CAN.**

—R. *v.* ROY, *Ex p.* DUGUENNE, [1931] 4 D. L. R. 748 ; 3 M. P. R. 104.—**CAN.**

sw. *Reservation in Crown grants.*]—In all grants under Public Lands Act, R. S. O., 1927, there is reserved to the Crown 5 per cent. of the lands for purposes of roads.—CRANE LUMBER CO. *v.* BRISSON, [1936] 3 D. L. R. 744 ; O. R. 457.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

481 i. *Right to walk in carriage-way—Extent of liability of highway*

foot

render the way safe for vehicles.—BELLING *v.* HAMILTON CITY (1902), 3 O. L. R. 318.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

si. —— —— ——.]—HASAN *v.* ZAMAN (1924), 41 T. L. R. 88.—**IND.**

616a. —— **Trees.**]—As owner of a house at C., which was bounded on the west & north by public highways known as Mill Lane & St. Andrew's Road respectively, pltf. claimed the property in certain polled lime trees, proved to be about 110 years old, standing along the edge of the footpaths on the eastern & southern sides of those two highways. Pltf. having refused to comply with defts.' notice to remove the trees on the ground that they were dangerous & obstructions to traffic & defts. having, in consequence of her refusal, themselves removed three of the trees in St. Andrew's Road, pltf. brought this action, by which she claimed an injunction to restrain defts. from removing the remaining trees & for certain other relief. She claimed that the trees had been planted before the dedication of the roads as public highways, & that there had been excepted from such dedication the portions of the roads in which the trees were planted. There was no evidence of such restricted dedication as pltf. asserted, but, on the contrary, evidence that the trees in both roads were planted in areas over which, as ancient highways, the public had rights of passage. It was proved that some of the trees were, through disease & decay, so unstable as to be an immediate danger to the public & a nuisance to the highway, that others threatened to become a similar danger at short notice, & that the rest, including the three trees which defts. had removed, were a danger to traffic & a nuisance. On Aug. 16, 1920, the boundary of the borough of New Windsor was altered so as to include the parish of C. (Without), & it was admitted that the two roads were highways repairable by the inhabitants at large :—*Held :* (1) the roads were ancient highways upon which, after dedication to the public use, the trees were planted ; (2) even assuming pltf. had property in the trees, defts. as to those trees which had been proved to be a nuisance to the highway, had not merely a right but a duty to remove them, & as to the remaining trees, they were entitled to remove them as being obstructions to the rights of the public over the entire width of the roads, which were not limited to the use of the carriageways ; (3) the trees, as being parts of the " streets " or as produce of the soil thereof, vested under Public Health Act, 1875, in & came under the control of defts. as the highway authority, with the result that pltf. was not in a position to complain, & her action failed.—STILLWELL *v.* NEW WINDSOR CORPN., [1932] 2 Ch. 155 ; 101 L. J. Ch. 342 ; 147 L. T. 306 ; 76 Sol. Jo. 433 ; 30 L. G. R. 477.

618. *Add. Annotations :*—**Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

626a. Road built upon open arches.]—The vesting of a highway in a local authority as highway authority includes, in addition to the surface of the road, the " area of user," *i.e.*, so much of the soil & sub-structure as is necessary to enable the authority to perform its statutory duties of repair & maintenance of the highway. In a case where a public carriage road was built upon a raised viaduct resting upon open arches & descending to the ground level upon embankments :—*Held :* (1) vesting of the road included (*a*) the whole masonry & structure of the viaduct, together with such soil as it actually occupied, (*b*) the soil of the embankments ; but not (*c*) the soil lying beneath & between the arches of the viaduct. The local authority, however, was entitled to a right of access to the latter at all times for the purpose of inspection & maintenance ; (2) such right of access was not forfeited by laches or acquiescence on the part of the local authority where it was necessary to enable such authority to perform its statutory duties.—HERTFORDSHIRE COUNTY COUNCIL *v.* LEA SAND, LTD. (1933), 98 J. P. 109 ; 32 L. G. R. 279.

627. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

634. *Add. Annotations :*—**Consd.** Marshall *v.* Blackpool Corpn. (1932), 102 L. J. K. B. 91. **Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

637. *Add. Annotation :*—**Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

641a. —— ——.]—Applt. was convicted of driving a motor car across the pavement in Thread-

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PART V. SECT. 2, SUB-SECT. 3.

616 iv. ——.]—In the United Provinces all public streets are vested in the municipality by statute. The Municipal Board sanctioned the erection of a portico resting upon pillars standing on the footpath. Pltf., who was, subject to the statutory rights of the municipality, the owner of the soil of the highway, claimed a mandatory injunction ordering its demolition & damages, basing his action upon a trespass to his property in the land :—*Held :* although the municipality under the statute took only a restricted interest in the street sufficient to safeguard its use as a highway, they had power to sanction the erection of the portico, & pltf. had no right of action in trespass. The ct. expressed no opinion as to pltf.'s right to complain of the portico as a nuisance in a properly constituted action.—SEWAI JAIPUR *v.* ARJUN LAL, [1937] 4 All E. R. 5 ; 81 Sol. Jo. 763, P. C.—**IND.**

n i. *Under Town Planning & Development Act, 1920.*]—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked " private roads to be vested in " the owner :—*Held :* the fee-simple of these roads did not vest by virtue of Town Planning & Development Act, 1920, in the district council.—LOXTON DISTRICT COUNCIL *v.* BRUCE, [1927] S. A. S. R. 463.—**AUS.**

PART V. SECT. 3, SUB-SECT. 1.

636 i. —— *From any part of land.*]—Where land is described in a grant as abutting on a road the grantee may come upon the road from any part of the premises & the grantor is estopped from denying the existence of the road.—DALHOUSIE LAND CO., LTD. *v.* BEARCE (1933), 6 M. P. R. 399.—**CAN.**

sd. *Interference with right — Passengers waiting for cars—Nuisance.*]—BUTLER *v.* NOVA SCOTIA L. & P. Co., [1930] 2 D. L. R. 680 ; 1 M. P. R. 407. —**CAN.**

se. *Effect of Municipal Act, R.S.O 1927.*]—At common law an owner of land was entitled to access to an adjoining public highway at any point at which his land actually touched such highway, for any kind of traffic which was necessary for the reasonable enjoyment of his premises & which would not, as he proposed to conduct it, cause a substantial nuisance. A municipal authority, in the absence of an express right to the contrary, was not entitled to deprive him of the full enjoyment of such right. But in Ontario Municipal Act, R. S. O., 1927, & Local Improvement Act, R. S. O., 1927, have created an interference with such common law rights.—TORONTO TRANSPORTATION COMMISSION *v.* SWANSEA VILLAGE CORPN., [1935] S. C. R. 455 ; 3 D. L. R. 619.—**CAN.**

sf. *Extent of right.*]—An adjoining landowner cannot compel a municipality to permit a change in the level of the sidewalk in front of his land to make it suitable for the purpose for which he proposes to use his land.—T. T. C. *v.* SWANSEA, [1935] 3 D. L. R. 619.—**CAN.**

needle Street, contrary to City Police Act, 1839 (c. xciv.), s. 35 (7), which provides that, "Every person who shall . . . draw or drive any cart or carriage . . . so that it can stand across or upon any footway," shall be guilty of an offence. He drove across the pavement into a courtyard forming part of the premises of the National Provincial Bank, there being no evidence of any other means of access to the courtyard from the highway. The footway was not constructed to allow of vehicular traffic crossing it, & there was a kerb six inches high. There were no pedestrians on the footway at the time, & the right of passage by the public was not interfered with. Applt. was an employee of the bank authorised to drive the car into the courtyard. There was no evidence either as to the ownership of the footway or of any prior user of the courtyard for vehicular traffic:—*Held:* since access to the courtyard by vehicles was not shown to be essential to any user of the premises, the magistrate was entitled to convict.—CURTIS *v.* GEEVES (1930), 143 L. T. 48; 94 J. P. 71; 46 T. L. R. 187; 28 L. G. R. 103; 29 Cox, C. C. 126, D. C.

Annotation:—**Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339.

642a. —— **Construction of communication for vehicles—Effect of local Act.**]—By sect. 62 of the Blackpool Improvement Act, 1879: "Every person desirous of forming a communication for horses or vehicles across any footpath so as to afford access to any premises from a street shall first submit to the corpn. a plan of the proposed communication, showing where it will cut the footpath, & what provision (if any) is made for kerbing & for a paved crossing, & the dimensions & gradients of the necessary works, & after having obtained the sanction of the corpn. may execute the works at his own expense under the supervision & to the satisfaction of the surveyor, & not otherwise, & if any person drives or permits or causes to be driven any horse or vehicle across any footway unless & until such a communcation as aforesaid has been so made he shall be liable to a penalty not exceeding five pounds."

Applts., proprietors of motor coaches, were owners of land bounded by a wall & abutting upon a street which was partly a footpath & partly a carriage-way. The footpath ran along the wall, & the carriage-way ran along the footpath. Applts., being minded to open a passage for vehicles from their land across the footpath & so into the carriageway, submitted to resps. a plan of the proposed works in accordance with the above enactment, & applied to them to sanction the works. Resps. found no fault with the proposed works as works, but they refused to sanction them, having regard to the safety of the public & the convenience of pedestrians & vehicular traffic which might use the highway:—*Held:* resps. were not authorised by the above sect. to take these matters into consideration in deciding whether to give their sanction to the proposed works; for the owner of land adjoining a highway has at common law a right of access to any part of the highway unless some statute has deprived him of the right, which sect. 62 of the Blackpool Improvement Act, 1879, did not purport to do.—MARSHALL *v.* BLACKPOOL CORPN., [1935] A. C. 16; 103 L. J. K. B. 566; 151 L. T. 286; 98 J. P. 376; 50 T. L. R. 483; 78 Sol. Jo. 488; 32 L. G. R. 329, H. L.

645a. **Restriction on development—Compensation.**]—MELKSHAM URBAN DISTRICT COUNCIL *v.* WILTSHIRE COUNTY COUNCIL, [1937] 4 All E. R. 142, D. C.

648. *Add. Annotation:*—**Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

651. *Add. Annotation:*—*As to* (1) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

657. *Add. Annotation:*—*As to* (2) **Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

661. *Add. Annotation:*—**Dbtd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

664. *Add. Annotation:*—*As to* (2) **Refd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

665. *Add. Annotation:*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

676. After this case add "—— **Grant void for uncertainty.**]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 564, No. 637."

756. *Add. Annotation:*—**Apld.** Powell Lane Manufacturing Co. *v.* Putnam (1928), [1931] 2 K. B. 305, n.

757. *Add. Annotation:*—**Consd.** Race *v.* Postmaster-General (1932), 146 L. T. 489.

779a. —— **Use of competing bridge.**]—A statutory co., formed for the purpose of building a bridge across the river Derwent, were empowered by their Act of Parliament to exact tolls from persons using the bridge, & the Act further provided that it should not be lawful for any person for hire or recompense to convey any other person, carriage, article or thing across the Derwent within one mile of the said bridge, with intent to evade payment of tolls. Another bridge was built by a local authority within one mile of the co.'s bridge, & a co. owning motor omnibuses made use of the new bridge for the purpose of conveying passengers & goods across the river in motor omnibuses:—*Held:* the motor omnibus co. had not substituted as a means of taking persons & articles across the river some means of conveyance other than the co.'s bridge & had not, therefore, contravened the provisions of the statute, & accordingly the proprietors of the old bridge were not entitled to an injunction restraining the motor omnibus co. from conveying passengers & goods across the new bridge.—LOFTSOME BRIDGE CO. OF PROPRIETORS *v.* EAST YORKSHIRE MOTOR SERVICES, LTD. (1933), 97 J. P. 268; 31 L. G. R. 317.

PART V. SECT. 4.

r 1. —— —— ——.]—LODGE *v.* MONCTON, [1936] 4 D. L. R. 66; 10 M. P. R. 435; 6 F. L. J. (Can.) 37.—**CAN.**

e 1. —— —— —— *Grade of street lowered causing subsidence.*]—NEW WESTMINSTER CITY CORPN. *v.* BRIGHOUSE (1892), 20 S. C. R. 520.—**CAN.**

e ii. —— *Street closed by agreement between municipality & railway company.*]—The closing of a street under a joint agreement between a railway co. & a municipality will entitle an adjoining owner to damages.—HOLEPROOF HOSIERY CO. *v.* LONDON, [1936] 4 D. L. R. 302.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

sf. *Power of International Bridge Company—To regulate charges.*]—CANADA SOUTHERN RY. CO. *v.* INTERNATIONAL BRIDGE CO. (1883), 8 App. Cas. 723.—**CAN.**

Part VI.—Repair of Highways.

786a. —— —— **Increased burden of traffic.**]—*A road was constructed by pltf. corpn. under powers conferred by a private Act of 1875, which enacted that the road should be constructed according to a certain specification & that it should thereafter be maintained at* pltfs.' expense. The road was completed in 1878 as a waterbound macadamised road in accordance with the statutory requirements & was fully maintained by them for many years, but ultimately it deteriorated owing to the increase of traffic of a kind unknown in 1878, & unless resort was had to tar-spraying, or to some similar modern expedient, the existing traffic would rapidly destroy the road:—*Held:* (1) pltfs. were liable to maintain the road in the condition in which it was completed in 1878, & that liability still continued, notwithstanding the change of circumstances brought about by the increase of traffic; (2) the obligation to maintain the road rested on pltfs. alone.—MANCHESTER CORPN. *v.* AUDENSHAW URBAN COUNCIL & DENTON URBAN COUNCIL, [1928] Ch. 763; 97 L. J. Ch. 276; 139 L. T. 509; 92 J. P. 163; 44 T. L. R. 628; 72 Sol. Jo. 452; 26 L. G. R. 343, C. A.

795a. Returning wall—Repair sufficient to support highway.]—A.-G. & TAYLOR & SON, LTD. *v.* TODMORDEN BOROUGH COUNCIL, [1937] 4 All E. R. 588.

797. *Add. Annotation:—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

819. *Add. Annotation:—As to* (1) **Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

834. *Add. Annotation:—As to* (1) **Refd.** Skilton *v.* Epsom and Ewell Urban District Council, [1937] 1 K. B. 112.

876. *Add. Annotation:—Generally,* **Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

882. *Add. Annotation:*—**Consd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

892. *Add. Annotations:—As to* (1) **Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Refd.** Reigate Corpn. *v.* Surrey County Council [1928] Ch. 359.

945. *Add. Annotation:*—**Consd.** Garnett *v.* Pratt, [1926] Ch. 897.

951. *Add. Annotation:*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

951a. —— ——.]—Relators were trustees of two wills, & as such owned lands abutting upon a certain road in the Metropolitan Borough of W. By notices dated Feb. 14, 1928, the trustees were required to pay to defts. two sums amounting to £1,473 11*s.* 2*d.*, being the estimated expenses of making up as a new street certain portions of the road upon which their lands respectively abutted. The A.-G. claimed a declaration that those portions of the road were highways repairable by the inhabitants at large, & relators as co-pltfs. claimed a declaration that those portions of the road were not "new streets" within Metropolis Management Acts, 1855 & 1862. Defts. contended that the road in question had not been dedicated to the public before Mar. 20, 1836, & was therefore not repairable by them. Further, they said that each of the portions of the road was in fact & in law a "new street" within Metropolis Management Acts, & that neither they nor their predecessors had at any time taken into charge or assumed the maintenance of the paving or roadway of the street of which the said portions of the road formed part:—*Held:* (1) on the evidence there was nothing to show that the road in question was anything else than a public highway repairable by the inhabitants at large. The fact that repairs had been done by private owners for their own benefit was no evidence of any liability on their part to repair *ratione tenuræ;* (2) neither of the portions of road in respect of which the claim arose constituted a "new street" within Metropolis Management Acts.—A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL (1929), 93 J. P. 173; 27 L. G. R. 700.

997. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92

1002a. Walls & roof of tunnel.]—In 1823 a road was constructed as a private road by S., on.

PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 ii. —— —— *Every portion of road.*]—A municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523; [1925] 2 W. W. R. 657; 35 Man. L. R. 190.—**CAN.**

789 iii. —— —— ——.]—Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.—BLACKIE *v.* MUNICIPALITY OF MINIOTA, [1925] 4 D. L. R. 1054; [1925] 3 W. W. R. 561.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

sg. *Liability of village—Village Act, R. S. A.* 1922 (c. 109), *s.* 88.]—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—GREENAWAY *v.* CANADIAN PACIFIC RY. CO., [1925] 1 D. L. R. 992; [1925] 1 W. W. R. 667; 21 Alta. L. R. 331; *varying*, [1924] 4 D. L. R. 977; [1924] 3 W. W. R. 498.—**CAN.**

sd. *Improved road—Under control of Minister—Liability of adjoining owners.*]—When a municipal corpn. has passed a resolution placing under the control of the Minister of Roads the maintenance & repairs of an improved road, the costs incurred by the corpn. are levied only on the properties whose owners are bound to maintain the road, if there is a byelaw then in force to that effect, notwithstanding the facts that the resolution of the corpn. was adopted years after the enactment of the byelaw & that the cost of improvements made under the authority of the Minister was higher than anticipated by the ratepayers, when they petitioned for an improved road, & by the byelaw describing the work & imposing the expense on certain interested landowners.—LANCTOT *v.* ST. CONSTANT CORPN., [1931] S. C. R. 614.—**CAN.**

se. *Unincorporated police village.*]—The trustees of an unincorporated police village are under no duty to keep the sidewalks & highways in repair, & they are not therefore liable in damages to any one who is injured as a result of the non-repair of such sidewalks or highways.—BROOKS *v.* WHYTE, [1934] O. R. 55; 1 D. L. R. 463.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.

sf. *Covenant to "repair"—Reconstruction not included.*]—*Held:* as a covenant to repair is not a covenant to make a new thing, & inasmuch as to do what the suppliant now required of resp. would practically amount to reconstruction of the whole of said wall, such work did not come within the meaning of "repairs" called for by the covenant in the contract.—ST. JOHN CITY *v.* R., [1932] S. C. R. 537; 2 D. L. R. 803; *affd.*, [1931] Ex. C. R. 188.—**CAN.**

through, & under his own land. In order to make the road S. tunnelled under an existing footpath. In 1923 the road became a main road, pltfs., S.'s successors in title to the soil through which the tunnel was driven, being the road authority. In 1924 it became necessary to repair the walls & roof of the tunnel:—*Held:* (1) the walls & roof of the tunnel either formed part of the highway or were necessary for its maintenance, & the costs of their repair were costs within Local Govt. Act, 1888 (c. 41), s. 11 (2), towards which defts. were bound to make an annual payment; (2) even if S., having in tunnelled under an existing highway, became liable *ratione nocumenti* to repair the part of the tunnelled road under the highway, that liability did not descend to pltfs. under Local Govt. Act, 1888, s. 97, because pltfs. were not only S.'s successors in title but also a highway authority.—REIGATE CORPN. *v.* SURREY COUNTY COUNCIL, [1928] Ch. 359; 97 L. J. Ch. 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278.

Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

1082. *Citations:*—For "2 Saund." read "2 Wm. Saund." For "185 E. R." read "85 E. R."

Part VIII.—Powers, Duties and Liabilities of Highway Authorities.

1146a. Removal of footway.]—A municipal corpn., in exercise of its powers as highway authority under Public Health Act, 1875 (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to defts. to restore the footway to a width of 1 ft. less than before:—*Held:* the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of defts. in removing the footway was unreasonable & arbitrary, & it was not sufficient for the action to be *bonâ fide;* & the order was properly made.—HOWARD-FLANDERS *v.* MALDON CORPN. (1926), 135 L. T. 6; 90 J. P. 97; 70 Sol. Jo. 544; 24 L. G. R. 224, C. A.

Annotation:—**Refd.** Symes & Jaywick Association Properties, Ltd., *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551.

1164a. Duty to inspect trees—On private ground adjoining highway—Patent danger.]—MACKIE *v.* DUMBARTONSHIRE COUNTY COUNCIL, WESTERN DISTRICT COMMITTEE (1927), 71 Sol. Jo. 710; 91 J. P. Jo. 634, H. L.

PART VII. SECT. 1.

1006 ii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sk. *Not suspended by provision of statutory remedy.*]—R. *v.* TOWN OF PARIS (1862), 12 C. P. 445.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.—B.

1107 i. *Neglect to repair after conviction—Writ de nocumento amovendo.*]—R. *v.* PORTAGE LA PRAIRIE RURAL MUNICIPALITY (1905), 2 W. L. R. 141; 10 Can. Crim. Cas. 125.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

b i. ——.]—STRONG *v.* ARRAN (1913), 28 O. L. R. 106: 4 O. W. N. 765: 12 D. L. R. 44.—**CAN.**

sm. *No power to alienate part of old road.*]—CHAPPUS *v.* LA SALLE, [1927] 3 D. L. R. 764; 60 O. L. R. 564; *affd.*, [1928] 2 D. L. R. 386; 62 O. L. R. 139.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

f i. —— —— 18 *Vict. c.* 100.]—QUEBEC NORTH SHORE TURNPIKE ROAD TRUSTEES *v.* VEZINA (1884), Cass. Dig. (2nd ed.) 758.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

1164a i. *Duty to inspect trees.*]—A tree planted in a city highway fell upon a motor car. The tree had long been in a decaying condition:—*Held:* the city corpn., having by bye-law assumed the duty of caring for the trees planted upon the highway, were liable for discharging that duty negligently.—HUESTIS *v.* CITY OF TORONTO, [1926] 3 D. L. R. 142; 58 O. L. R. 648.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.

c i. *S. P.* PHEASEY *v.* EDMONTON (Alta.), [1927] 2 W. W. R. 445.—**CAN.**

r (p. 389) **i.** ——.]—Pltf. slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous condition. Pltf.'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger:—*Held:* the city corpn. were guilty of gross negligence within Consolidated Municipal Act, 1922, 460 (3), & were liable.—COKERS *v.* [1925] 2 D. L. R. 230; 56 O. L. R. 451; *revsg.*, [1924] 2 D. L. R. 333.—**CAN.**

r (p. 389) **ii.** —— *Dangerous condition known to pedestrian.*]—Where a person, who knows that a sidewalk is in a dangerous condition because of a pile of slippery snow thereon, deliberately makes use of it, instead of walking on the road as he has previously done, & thereby sustains injuries, the maxim *volenti non fit injuria* is applicable.—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—**CAN.**

r (p. 389) **iii.** —— *Depression caused by permitting children to use sidewalk as slide—Gross negligence.*]—MAITLAND *v.* PEMBROKE, [1929] 1 D. L. R. 191.—**CAN.**

r (p. 389) **iv.** —— *Exemption from liability except for gross negligence.*]—MCKEE *v.* WINNIPEG CITY, [1929] 1 D. L. R. 65; [1928] 3 W. W. R. 561.—**CAN.**

r (p. 389) **v.** —— *Used by children as slide.*]—MAITLAND *v.* PEMBROKE (Ont.), [1929] 1 D. L. R. 191.—**CAN.**

so. *Method adopted temporarily dangerous—Whether gross negligence.*]—Where ice or icy snow covered the surface of a sidewalk in a city & the method of removing it used by men

1191a. —— Obstruction during construction of new road.]—A corpn., in making a new road connecting two existing roads in the same straight line with a bridge across a ravine dividing them, pulled down an old wall which closed a *cul de sac* in which one of the roads terminated, partly constructed the new road & erected a wooden fence at the end, beyond which was the ravine. Pltf. drove his car after dark down a public road leading straight into the new road under construction, & not seeing the fence in time, which had no red lamp or other warning of danger upon it, & was not watched, drove through it & fell with his car into the ravine, sustaining serious personal injury & damage to the car:—*Held:* the corpn. being in occupation of the land under construction as a new road, pltf. was not a trespasser upon private property, but an invitee, to whom they owed a duty to warn of any hidden danger; the unlighted fence was in the circumstances a concealed trap, &, pltf. not being guilty of contributory negligence, defts. were liable to him in damages for negligence.—OLDHAM *v.* SHEFFIELD CORPN. (1927), 136 L. T. 681; 91 J. P. 69; 43 T. L. R. 222; 25 L. G. R. 94, C. A.

Annotation:—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

1191b. —— Trench dug in unfinished road.]—Defts. in execution of a housing scheme were laying out a new road running eastwards from a certain highway & closed at its eastern end by a quickset hedge. Footpaths had already been laid out & edged with kerbstones; houses were being built on the northern side & heaps of earth & building materials made the footpath on this side impassable; the footpath on the south side was still unfinished, but was traversable; it was bounded by a fence of wooden posts & bars; the middle of the road was levelled but not metalled; across it, for laying an electric cable, defts. had cut a trench which they left unfenced & by night unlighted. They did not prevent persons, whether intending occupiers of houses or others, from walking down the new road. Pltf. on a Sept. evening, while there was still daylight, walked with a companion down the highway & into the new road along the southern footpath. Through a gap in the fence they went across other land occupied by defts. to a golf course. They returned somewhat hurriedly when it was growing dark, & pltf fell into the trench & was injured:—*Held:* the trench being apparent to all, there was nothing in the nature of a concealed danger or trap, & defts were not liable to pltf., who was a mere licensee.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

1197. *Add. Annotation:*—**Reld.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1216. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 127.

1219. *Add. Annotation:*—**Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

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employed by the city corpn. was such as to make the sidewalk temporarily dangerous to pedestrians who chose to walk on it while the work of removal was in progress, & an accident happened to a passer-by:—*Held:* the adoption of this method was not in itself evidence of "gross negligence."—LYONS *v.* OTTAWA CITY, [1928] 1 D. L. R. 171; 61 O. L. R. 405.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 7.

o i. —— ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietors of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road:—*Held:* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1929] S. C. 1.—**SCOT.**

o ii. —— ——.]—Defts. constructed a bridge across a navigable stream, having in it a draw or swing to enable vessels to ply on the river. There was not any gate or other protection to guard the approaches to the bridge when swung. A horse belonging to pltf. broke away from the person in charge of him, escaped out upon the public road, & ran a distance of about two miles to the bridge, reaching it while the draw was open to allow a vessel to pass, & rushing into the gap was drowned:—*Held:* deft. municipality could not be made answerable for the loss of the horse.—STEINHOFF *v.* KENT CORPN. (1887), 14 A. R. 12.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 8.

sq. *Restriction during repairs—What is sufficient warning of danger.*]—The duty of those making repairs upon a travelled road, is to take such reasonable care, by notice, lighting, guarding or otherwise, as may be reasonably necessary to prevent damages as the result of the temporary condition of the road. When this is done, & the condition of non-repair & of temporary danger is brought home to a person using the highway, he is called upon to use reasonable care on his part for his own safety.—WISE *v.* TORONTO TRANSPORTATION COMMISSION, [1928] 2 D. L. R. 557; 62 O. L. R. 120.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 9.

sd. *Street railway track adjacent to highway.*]—Pltfs. in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltfs. were injured & the car damaged:—*Held:* the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—JAMES *v.* TORONTO (1925), 57 O. L. R. 322; *affg.* 27 O. W. N. 233.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 11.—A.

1190 i. *Liability for failure to light—Statutory duty to light.*]—A motor car driven at night came into collision with a tramway island, & was damaged. In an action against defenders, as the local authority charged, under Edinburgh Municipal & Police Act, 1879, with the lighting of the streets, it was proved that a red lamp situated on the island was not lit at the time of the accident. It was also established that defenders had not failed in their duty with respect either to the construction & condition of the lamp, or to the precautions taken to ensure that it should remain alight during the hours of darkness:—*Held:* the standard of performance could not be absolute, but must be relative to the best available means of achieving exact performance, &, in the absence of evidence of any failure on the part of defenders to take every reasonable means of carrying out their statutory obligations, they fell to be assoilzied.—KEOGH *v.* EDINBURGH MAGISTRATES, [1926] S. C. 814.—**SCOT.**

r i. ——.]—A corpn. planted trees along one of its streets, & resp. sustained injuries through his motor car colliding with one of the trees on a dark night. There was a street-lamp in the vicinity, but it had gone out:—*Held:* the corpn. having caused a dangerous obstruction on the street, it was its duty to light & keep lighted the obstruction, so as to make it visible to persons using the street.—OAMARU (MAYOR) *v.* CLARKE, [1927] N. Z. L. R. 464.—**N.Z.**

PART VIII. SECT. 1, SUB-SECT. 11.—D.

1210 i. *Liability of driver—Accidental injury.*]—*Held:* the driver of a horse van, which was capsized against a lamp-post by a gust of wind, was not liable in damages under General Police & Improvement (Scotland) Act, 1862 (c. 101), s. 128, in respect that the breaking of the lamp was not his act.—HOGG *v.* MACPHERSON, [1928] S. C. (J.) 15.—**SCOT.**

1228a. Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).] —SANDGATE URBAN DISTRICT COUNCIL v. KENT COUNTY COUNCIL, No. 65, *ante*.

1236. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1237. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1239. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

1242. *Add. Annotation :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1251. *Add. Annotations :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1252. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1253. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1254. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1255. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1264. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

PART VIII. SECT. 2, SUB-SECT. 2.

sa. *Right to rebate—Basis of calculation.*]—Resp. village, an urban municipality within applt. county, was subject by statute to an annual general levy by the council of the county for county road purposes. Under a provision of an Ontario statute of 1926, repealed & re-enacted as sect. 28 (5) of Highway Improvement Act, R. S. Ont., 1927, the village first became entitled to a rebate in each year of 75 per cent. of the general annual rate raised in the village in the previous year. The annual general rate imposed in the years 1926, 1927 & 1928 included sums required by the council of the county to meet the interest & sinking fund charges upon debentures issued by it before 1926 in order to raise money for constructing & improving roads forming part of the county road system :—*Held :* in fixing the sum upon which resp. village was entitled to the 75 per cent. rebate the applt. county was bound to include the amount raised by it in the village towards the interest & sinking fund charges upon the debentures.—LINCOLN COUNTY CORPN. *v.* PORT DALHOUSIE VILLAGE CORPN., [1931] A. C. 808; 100 L. J. P. C. 219; 145 L. T. 653; 47 T. L. R. 613, P. C.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—A.

1240 xiv. —— ——.]—Sect. 730 of the Winnipeg Charter, which gives the city a right of indemnity "of & from all costs, claims, & damages" caused by any obstruction, encroaching or nuisance placed on any public road by any person, firm, or corpn. whether pursuant to permit or agreement with the city or not, does not apply to claims for damages arising out of encroachment or nuisances created by the joint act of the city & the third party.—SCHALER *v.* WINNIPEG (Man.), [1929] 4 D. L. R. 683; 2 W. W. R. 358.—**CAN.**

1252 vii. —— —— ——.]—In the absence of a statute imposing the duty to keep a sidewalk in repair :—*Held :* deft. municipality was not liable for injuries sustained by a pedestrian as the result of its decay, where its construction was authorised by statute & there was no evidence of original faulty construction; the fact that no bye-law authorising its construction could be found, was held immaterial since no statutory provision made a bye-law necessary for the laying of sidewalks in streets the possession of which was already vested in the municipality.—GILROY *v.* BURNABY CORPN., [1931] 3 W. W. R. 1; 4 D. L. R. 411; 44 B. C. R. 171.—**CAN.**

1260 xxii. —— ——.]—GREER *v.* MULMUR TOWNSHIP, [1926] 4 D. L. R. 132; 59 O. L. R. 259.—**CAN.**

1260 xxiii. —— ——.]—LINGRELL *v.* STOCKS No. 363 MUNICIPAL DISTRICT (Alta.), [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 313.—**CAN.**

1260 xxiv. —— ——.]—JESSON *v.* RURAL MUNICIPALITY OF LIVINGSTONE (Sask.), [1929] 2 D. L. R. 474; 1 W. W. R. 474.—**CAN.**

1260 xxv. —— ——.]—A break in a water main of deft. city having occurred about Jan. 22, the city made a cut in the granolithic sidewalk at that point & excavated the earth to the water pipe. The excavated earth & some gravel were thrown back into the hole, &, beginning about the following Apr. 10, the excavated surface was kept under observation for subsidence, but it was not until about the following July 5 that the city's department in charge of resurfacing sidewalks was requested to act, & from Apr. 10 to July 9 there was a subsidence of about 24 inches & on nine occasions refilling was found necessary. On the intervening June 5 pltf. wife tripped, in a hole in the excavation area where a subsidence of four or five inches had taken place, & was injured. She had passed over the place in question many times, the latest, earlier on the evening of the accident. The trial judge found that the delay in repairing the sidewalk was intentional & due to the awaiting of such a rainfall or rainfalls as would in the opinion of some official cause a final settlement. The expert testimony was that now the curing & placing of cement may be done in winter months at a cost but little greater than at other seasons :—*Held :* said testimony had not been reasonably met & could not be ignored as merely theoretical; &, aside from it, the city should be held negligent in delaying the repair work beyond Apr. or May.—BRENNAN *v.* WINNIPEG CITY, [1936] 2 W. W. R. 38; 6 F. L. J. (Can.) 3.—**CAN.**

t (p. 402) i. —— —— ——.]—THORESON *v.* COULEE, [1930] 1 D. L. R. 916.—**CAN.**

g (p. 403) i. —— —— ——.]—The law does not impose an unvarying obligation on a traveller using a city or country road of remembering all the pitfalls & dangers therein which he may have seen on previous journeys. The most that can be expected of a traveller who has knowledge of dangerous conditions is that the degree of care which he exercises should be reasonably commensurate with his knowledge. Where a municipality digs, for its own purposes, a pit extending into the road allowance it is bound to make the adjoining road safe for travellers.

Although country roads cannot be expected to be perfectly safe the public have a right to be protected against excavations or obstructions on or near the travelled way which render the road unsafe for travellers using it.—KELSO *v.* ROBLIN RURAL MUNICIPALITY, [1930] 3 W. W. R. 291; 4 D. L. R. 471.—**CAN.**

g (p. 403) ii. —— —— ——.]—Pltf. sued for damages to his separator caused by its overturning when a rear wheel dropped into a hole in a road. The road was a graded main market highway. The hole was near the centre of the grade & had been there during the whole of the summer, to the knowledge of the councillor of the division, &, at the time of the accident, Nov. 10, was frozen over & in the nature of a trap :—*Held :* the municipality was liable.—SHUPE *v.* PLEASANTDALE RURAL MUNICIPALITY, [1932] 1 W. W. R. 627.—**CAN.**

g (p. 403) iii. —— —— ——. *Contributory negligence.*]—R. *v.* GILBERT, [1933] 1 D. L. R. 795.—**CAN.**

g (p. 403) iv. —— —— ——.]—REYNOLDS *v.* VANCOUVER (CITY), [1937] 3 W. W. R. 46.—**CAN.**

g (p. 403) v. —— —— —— *Ditch without guards or railings.*]—WALTON *v.* YORK COUNTY CORPN. (1881), 6 A. R. 181.—**CAN.**

g (p. 403) vi.—— —— *Defective street in railway subway.*]—Where a city which is under a statutory duty to keep its streets in repair is charged in an action for damages with non-repair, the fact that the particular piece of pavement from the non-repair of which pltf.'s injury is alleged to have resulted happens to be under a subway constructed at the instance of, or for the benefit of, the city under a contract, approved by the Board of Railway Comrs. for Canada, between the city & a railway co. & under which the city agreed to maintain & repair said pavement, does not change the character or origin of the liability, if any, of the city to pltf.—SCHALER *v.* CITY OF WINNIPEG (No. 2) (Man.), [1930] 1 D. L. R. 499; [1929] 3 W. W. R. 433; 36 C. R. C. 224; *affd.*, [1931] 2 W. W. R. 709; 4 D. L. R. 198.—**CAN.**

g (p. 403) vii. —— *Failure to make proper provision at level crossing.*]—Where a city, under a statutory duty to keep its streets & sidewalks in repair, builds sidewalks up to the rails at a railway crossing, thus inviting pedestrians to use them & so cross the railway, it should see to it that suitable provision for such crossing is made & it is liable to a person who is injured because of its failure to do so.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392; [1931] 1 D. L. R. 87; 25 Alta. L. R. 104; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

g (p. 403) viii. —— *Sewers frozen over.*]—Municipality held not liable for damage caused by sewers becoming frozen over, since this was nonfeasance.—MCLEOD *v.* SYDNEY, [1935] 2 D. L. R. 807.—**CAN.**

g (p. 403) ix. —— *Culvert overgrown with weeds.*]—Pltf. while being driven on a summer afternoon in a motor car

1266. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1266a. —— **Non-repair of traffic stud.**]—Pltf. whilst cycling along a road in defts.' area reached a line of traffic studs at the same time as a motor-car. As the car passed her one of the studs which had become loose shot out & struck her bicycle with such force as to overturn it, & pltf. was thrown to the ground & injured. The studs were inserted in the road by defts. as the highway authority under the powers conferred on them by Road Traffic Act, 1930 (c. 43), s. 48, for the purpose of regulating the traffic, & there was evidence that the particular stud had been defective for some time. In an action brought by pltf. for damages for personal injury defts. contended that the stud formed part of the highway, & that pltf. had not proved misfeasance, for which alone a highway authority could be held liable :—*Held :* assuming, but without deciding, that the stud was physically part of the highway, the placing therein of the stud in such a manner that it became defective amounted to the placing of a nuisance on the highway, & defts. could not take advantage of the cases which dealt with maintenance of the highway, because the stud was not brought on to the highway as part of the maintenance of the highway under the Highway Act, 1835 (c. 50), but for the purposes of traffic direction under the powers conferred on defts. by Road Traffic Act, 1930 (c. 43).—SKILTON *v.* EPSOM & EWELL URBAN DISTRICT COUNCIL, [1937] 1 K. B. 112 ; [1936] 2 All E. R. 50 ; 106 L. J. K. B. 41 ; 154 L. T. 700 ; 100 J. P. 231 ; 52 T. L. R. 494 ; 80 Sol. Jo. 345 ; 34 L. G. R. 389, C. A.

1268. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1270. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1274. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1278. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1280. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

owned by the driver was injured by the car running into a ditch dug by the deft. village across a street at an intersection. Over the ditch was a culvert 24 feet long, which was covered in by road material, except for a space of about two feet at each end. Deft. was under a statutory duty to keep its roads, culverts, etc., " in a reasonable state of repair, having regard to the character of the road, culvert . . . & the locality in which the same is situated," & the statute made it liable for damages sustained by reason of default in carrying out that duty. Pltf. alleged that his injuries were caused by deft.'s negligence in allowing the ditch to become filled with growing weeds & grasses which obscured it, & in not erecting signals or barriers around the ditch :—*Held :* the village was not negligent in constructing the ditch & maintaining it in the condition in which it was at the time of the accident.—BARTOK *v.* TANTALLON VILLAGE, [1937] 2 W. W. R. 81.—**CAN.**

h (p. 404) **i.** —— *Rocks near highway.*]—Owing to the failure of the driver of pltf.'s car to follow a diversion of the highway the car, after travelling over a grass plot, hit rocks imbedded in the earth by nature :—*Held :* the fact that the municipality had not erected a sign or signal indicating the diversion or placed a guard rail at said point was not negligence & the presence of the rocks in question near the highway did not render it liable.—PARKINS *v.* COULEE, [1930] 3 W. W. R. 609.—**CAN.**

h (p. 404) **ii.** —— *Stone slightly projecting.*]—Accident on highway, through striking a stone which projected less than 6 inches above the lowest depression in the roadway & was partly situate on the shoulder of the road, off the *via trita :*—*Held :* the highway was not in a state of non-repair.—WEIR *v.* TURNBERRY & HALLIDAY TOWNSHIP, [1932] O. R. 692 ; [1933] 1 D. L. R. 23.—**CAN.**

k (p. 404) **i.** —— *Failure of traveller to see.*]—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—KING *v.* RILEY, [1925] 2 D. L. R. 218.—**CAN.**

k (p. 404) **ii.** —— *Imbedded wire.*]—Pltf. was injured by tripping over a wire imbedded in a street :—*Held :* defts. had not discharged the *onus* of removing the presumption that they had failed in their duty.—WOODCOCK *v.* VANCOUVER (B. C.), [1927] 3 W. W. R. 759.—**CAN.**

k (p. 404) **iii.** —— *Projecting iron covering of excavation.*]—Pltf., while walking on a sidewalk, stumbled & fell as a result of the projection over the cement part of the sidewalk of the iron covering of an excavation which the city had allowed the abutting owner to make :—*Held :* the accident happened because of want of proper repair of the sidewalk, & the city had not shown that it had done all that could reasonably be done to prevent the want of repair.—MORAN *v.* VANCOUVER CITY, [1929] 1 D. L. R. 461 ; 40 B. C. R. 450 ; [1928] 3 W. W. R. 660.—**CAN.**

k (p. 404) **iv.** —— *Projecting slab of concrete.*]—*Held :* the defect was one which, in such a location, should have been remedied : it would have been negligence to have there constructed the sidewalk with such a rise, & deliberately to allow it to remain was not less a fault.—HENNESSY *v.* TORONTO CITY, [1928] 4 D. L. R. 378 ; 62 O. L. R. 541.—**CAN.**

k (p. 404) **v.** —— *Causing obstruction of view.*]—The failure of a municipality to cut down scrub & bush so growing at the side of a road-allowance near an intersection that it prevents persons travelling on the road from having a clear view of vehicles approaching on the intersecting road does not constitute a breach of the municipality's duty to repair under Rural Municipality Act, s. 196.—PARTRIDGE *v.* RURAL MUNICIPALITY OF LANGENBURG (Sask.), [1929] 3 W. W. R. 555 ; [1930] 1 D. L. R. 939 ; 24 S. L. R. 153.—**CAN.**

k (p. 404) **vi.** —— *Failure to erect substantial barricade during repairs.*]—When work of excavation on a highway was begun, the contractor put up two signs on the right-hand side of the road : " Drive slowly, men at work," & " closed to traffic." These signs were at some distance from the excavation. The road-superintendent put up a barricade with a red lantern & a detour sign at a place where the roads fork. This consisted of a board extending about half-way across the travelled portion of the highway, supported at one end by a telegraph pole & at the other by an iron rod set into the road :—*Held :* not a " substantial barricade " within Highway Improvement Act.—RUTTAN *v.* R., [1931] 1 D. L. R. 301 ; 66 O. L. R. 133.—**CAN.**

k (p. 404) **vii.** —— *Safety platform.*]—Pltf. while driving a motor car at night was injured by colliding with a safety island or platform which, under authority given deft. city by its charter, had been placed by it on the street for the use of persons using tram cars. The judge held that the platform was a " trap," because of the fact that it differed very little in colour, if at all, from the rest of the highway ; & he awarded pltf. damages. Deft. appealed :—*Held :* the appeal should be allowed, since the platform was properly placed, & there was no evidence that deft.'s failure to furnish more light at or near the platform than it did supply or to paint the platform amounted to misfeasance which left the highway in disrepair.—KNIGHT *v.* WINNIPEG, [1930] 1 W. W. R. 234 ; 1 D. L. R. 874 ; 38 Man. L. R. 430.—**CAN.**

cc i. ——.]—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523 ; [1925] W. W. R. 657 ; 35 Man. L. R. 190.—**CAN.**

cc ii. ——.]—In an action against a town for damages for injuries resulting from falling on a slippery sidewalk :—*Held :* the town which had received oral notice of the accident within 24 hours thereof had not been prejudiced by the failure to give written notice of the accident within the time stipulated by sect. 627 (3) of Municipal Act, & there was reasonable excuse within the meaning of sect. 628 of said Act for the delay in giving the written notice.—O'BRIEN *v.* DAUPHIN TOWN, [1930] 1 W. W. R. 907 ; 3 D. L. R. 330.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

1274 ii. —— ——.]—JACOBSON *v.* MUNICIPAL DISTRICT CROWN, [1930] 1 D. L. R. 847.—**CAN.**

1290a. —— **Road raised—Dangerous drop on to adjoining land.**]—Where a danger has been created on a highway by something done on the highway & not by anything done on the adjoining land, the owner of the adjoining land is not bound to make any alteration on or to his land to do away with that danger. Thus, where, in consequence of a highway having been made up by a highway authority, the level of the adjoining land, which is unfenced, has been lowered so as to cause a dangerous drop from the edge or kerb of the reconstructed highway, & a pedestrian slips down from the highway on to the adjoining land & is thereby injured, the owner of the adjoining land is not liable, but the highway authority is.—NICHOLSON *v.* SOUTHERN RY. CO. & SUTTON & CHEAM URBAN DISTRICT COUNCIL, [1935] 1 K. B. 558; 104 L. J. K. B. 265; 152 L. T. 349; 99 J. P. 141; 51 T. L. R. 216; 79 Sol. Jo. 87; 33 L. G. R. 140.

1316. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1322. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

1327. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

Part IX.—Nuisances and Remedies.

1330a. —— —— **Enclosing highway.**]—R. *v.* OGDEN (1702), Fortes. Rep. 251; 7 Mod. Rep. 45; 92 E. R. 839.

1346. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

1363. *Add. Annotation :*—*As to* (1) **Consd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

1364. *Add. Annotation :*—**Consd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

1282 ii. —— —— —— *Injury to unlicensed driver.*]—The fact that a taxi driver has not obtained the chauffour's permit from the chief of police, & has not procured the driver's licence required by deft. city's byelaw, does not affect the liability of the city for injuries caused him by its negligence in allowing an obstruction, *e.g.*, a barrier around repairs, to remain on a highway without guarding it sufficiently with warning signs or lights.—BURCHILL *v.* VANCOUVER CITY, [1932] 1 W. W. R. 641; 3 D. L. R. 287; *affd.*, [1932] S. C. R. 620; 4 D. L. R. 200.—**CAN.**

1289 i. —— *Damage to adjoining owners—Construction of road causing flood.*]—Municipality :—*Held :* liable.—MEIER *v.* FRANKLIN, LIMPRECHT *v.* FRANKLIN, STREICH *v.* FRANKLIN (Man.), [1926] 3 D. L. R. 433; [1926] 2 W. W. R. 330.—**CAN.**

1289 ii. —— —— *Negligent construction of ditches causing flood.*]—STADNICK *v.* BIFROST MUNICIPALITY, [1927] 4 D. L. R. 61; [1927] 3 W. W. R. 40; 37 Man. L. R. 26.—**CAN.**

1289 iii. —— —— *Road materials carried into raceway by violent storm.*]—*Held :* defts. were not liable.—SNOOK *v.* BRANTFORD TOWN COUNCIL, (1856), 14 U. C. R. 255.—**CAN.**

q (p. 408) **i.** —— ——.]—Deft. municipality when in pursuance of its statutory powers it was constructing a sewer along the side of a highway erected a barricade of planks against which the earth taken from the excavation was piled up. The barricade & the pile of earth occupied so much of the sidewalk that a path only 18 inches wide was left behind the barricade for the use of pedestrians. Owing to ordinary rainfall & the moist character of the earth so piled up, there was a seepage of water carrying slimy particles of clay through the spaces between the planks resulting in the surface of the pathway becoming dangerously muddy & slippery. Pltf. while walking along the pathway slipped on said surface & was seriously injured :—*Held :* deft. had created & continued a nuisance which was the proximate & sole cause of pltf.'s injuries.—WATTS *v.* DISTRICT OF BURNABY (B. C.), [1929] 4 D. L. R. 142; 2 W. W. R. 612.—**CAN.**

r (p. 408) **i.** —— *Highway repaired with inflammable material.*]—While pltf. was driving a motor car along a side road, which although a legal highway was not often used, the rear wheels of the car suddenly sank down & the car became immovable. It then caught fire & was totally destroyed. The loam underneath the surface of the road was found to be on fire, although the surface appeared to be intact & there was nothing to indicate that the sub-surface was in the condition in which it actually was :—*Held :* taking into consideration all of the circumstances, including the locality, general nature of the soil & materials at hand, & the extent of the use of the road, the fact that deft. municipality used loam or swamp earth of an inflammable nature in constructing the road did not constitute negligence on its part.—CONROY *v.* SPRUCE GROVE, MUNICIPAL DISTRICT OF, [1931] 1 D. L. R. 555; [1930] 3 W. W. R. 605; 25 Alta. L. R. 193.—**CAN.**

r (p. 408) **ii.** —— *Upheaval of road—Construction according to expert opinion.*]—*Held :* no misfeasance.—TRUEMAN *v.* R., DEWAN *v.* R., [1932] O. R. 703; 4 D. L. R. 676.—**CAN.**

r (p. 408) **iii.** —— *Omission to take precautions during repair.*]—Omission to take precautions while repairing a highway is misfeasance & not nonfeasance.—CRAWFORD *v.* FRANKLIN MUNICIPALITY, [1924] 3 D. L. R. 964.—**CAN.**

r (p. 408) **iv.** —— *Street level raised—Adjacent property damaged.*]—Injury to property resulting from raising the street level under statutory authority is not actionable by virtue of Halifax City Charter, s. 528.—STONEMAN *v.* HALIFAX, [1936] 2 D. L. R. 504; 10 M. P. R. 466; 6 F. L. J. (Can.) 53.—**CAN.**

sk. *Road under repair by Minister of Highways.*]—*Held :* as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—HORSFIELD *v.* CANA RURAL MUNICIPALITY NO. 214, [1925] 2 D. L. R. 874; [1925] 1 W. W. R. 1067; 19 Sask. L. R. 378.—**CAN.**

so. *Who may sue—Accident to car—Guest of driver—Condition of road unknown to driver.*]—A passenger accept a ride in another's car, for the gross purpose of testing it on a rough road, cannot recover for an injury incurred by reason of the condition of the highway unknown to the driver.—KARBERG *v.* GRANTHAM TOWNSHIP, [1936] 1 D. L. R. 221.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (o).

1300 ix. ——.]—A municipal corpn. is not liable for injury caused by failure to make minor repairs to a street, but is liable if the damage occurs through negligence or fault in the original construction, & if it can be shown that the construction in the first place by those who were responsible for it was of a negligent, improper, or faulty description, they will be liable if damages result.—STEWART *v.* MONCTON (1925), 53 N. B. R. 427.—**CAN.**

sl. *Acts of inhabitants.*]—A municipality cannot be held liable on the ground of misfeasance because of the acts of its inhabitants where there is no evidence that in doing the acts complained of they were acting on behalf of the municipality & not merely for their own convenience.—DANBERG & DANBERG *v.* CANWOOD VILLAGE, [1932] 2 W. W. R. 320.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—A.

k i. —— *Obstruction on part not used by public.*]—R. *v.* BENNETT (1825), N. B. Dig. 400.—**CAN.**

sm. *Obstruction permitted—Duty of person causing obstruction to provide lights at night.*]—HERVEY *v.* FRENCH (1839), 4 Ont. Dig. 7433.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—D.

sn. *Areas forming part of sidewalk—Left uncovered.*]—On a dark night one of pltfs., wife of her co-pltf., stepped into an area, one of several, in the sidewalk of a street in a town & was injured. The areas were constructed as part of a building adjacent to the sidewalk & were for the benefit of the owners or tenants of the building. No authorisation by the town corpn. for the construction of the areas was shown, but it appeared that, since the year 1900, the corpn had looked after the coverings of the areas, treating them as part of the sidewalk. Before the accident, the area into which pltf. stepped had been

1366. *Add. Annotation :*—**Refd.** Wilchick *v.* Marks & Silverstone, *[1934] 2 K. B. 56.*

1369a. Fireplug — Projection above pavement—Liability of water company.]—A fireplug had been lawfully fixed in a footpath by defts. Originally the top of the fireplug had been level with the pavement, but in consequence of the ordinary wearing away of the footpath the fireplug projected half an inch above the level of the pavement. The fireplug itself was in perfect repair. Pltf., whilst passing along the footpath, fell over the fireplug & was hurt :—*Held :* as the fireplug was in good repair, & had been lawfully fixed in the footpath, no action by pltf. would lie against defts.—MOORE *v.* LAMBETH WATERWORKS CO. (1886), 17 Q. B. D. 462 ; 55 L. J. Q. B. 304 ; 55 L. T. 309 ; 50 J. P. 756 ; 34 W. R. 559 ; 2 T. L. R. 587, C. A.

Annotations :—**Apld.** Thompson *v.* Brighton Corpn., Oliver *v.* Horsham L. B., [1894] 1 Q. B. 332. **Consd.** Hartley *v.* Rochdale Corpn., [1908] 2 K. B. 594. **Apld.** G. C. Ry. *v.* Hewlett, [1916] 2 A. C. 511. **Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108. **Refd.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602 ; Steel *v.* Dartford L. B. (1891), 60 L. J. Q. B. 256 ; Dawson *v.* Bingley U. D. C. (1910), 75 J. P. 17 ; Papworth *v.* Battersea B. C. (1914), 79 J. P. 105.

1372a. —— —— Liability of water company.]—A water co., at the request & expense of the owner of a house, laid down a service pipe leading from their main under the street into the house, in which they placed a stop cock for the purpose of regulating the supply of water. This stop-cock was protected by a cover or guard-box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement, & pltf. while passing along the street tripped over it & sustained injury. The apparatus could not be repaired without being removed, or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repair of the hinge :—*Held :* the co., who alone had power to break up the street for the purpose of repairing the guard-box, were responsible for its repair, & liable in respect of the injuries sustained by pltf.—CHAPMAN *v.* FYLDE WATERWORKS CO., *[1894] 2 Q. B. 599 ; 64 L. J. Q. B. 15 ; 71 L. T. 539 ; 59 J. P. 5 ; 43 W. R. 1 ; 10 T. L. R. 580 ; 38 Sol. Jo. 629 ; 9 R. 582, C. A.*

Annotations :—**Consd.** Colne Valley Water Co. *v.* Hall (1907), 96 L. T. 395. **Distd.** Stacey *v.* Gas Light & Coke Co., Metropolitan Water Board & West End Tailoring Co. (1910), 9 L. G. R. 174. **Consd.** Batt *v.* Metropolitan Water Board, [1911] 2 K. B. 965. **Refd.** Grand Junction Waterworks Co. *v.* Rodocanachi, [1904] 2 K. B. 230.

1378a. —— In contravention of City Police Act, 1839, c. xciv, s. 35 (7)—Claim of right.]—CURTIS *v.* GEEVES, No. 641a, *ante.*

1380a. Overcrowded inn yard—Vehicles left in highway.]—An innkeeper had for some years, when his yard was full, placed the vehicles of his guests on a triangular piece of ground at the corner of two streets. This piece of ground having been ascertained to be part of the highway :—*Held :* deft. was rightly convicted of an obstruction under Highway Act, 1835 (c. 50), s. 72.—GORING *v.* BARFIELD (1864), 4 New Rep. 284.

1381a. ——.]—A person placing a dangerous obstruction in a highway, or in a private road over which persons have a right of way, is bound to take all necessary precautions to protect persons exercising their right of way ; & if he neglects to do so, is liable for the consequences.—CLARK *v.* CHAMBERS (1878), 3 Q. B. D. 327 ; 47 L. J. Q. B. 427 ; 38 L. T. 454 ; 42 J. P. 438 ; 26 W. R. 613.

Annotations :—**Consd.** Bull *v.* Shoreditch Corpn. (1902), 67 J. P. 37 ; Ruoff *v.* Long, [1916] 1 K. B. 148. **Apld.** Glasgow City Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** A.-G. *v.* Tod-Heatly & Brownrigg (1879), 76 L. T. 174 ; Tolhausen *v.* Davies (1888), 59 L. T. 436 ; McDowall *v.* G. W. Ry., [1902] 1 K. B. 618 ; Latham *v.* Johnson & Nephew, [1913] 1 K. B. 398.

1391. *Add. Annotations :*—**Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339 ; Templeton *v.* Parkin & Co. (1929), 140 L. T. 519.

1399. *Add. Annotation :*—**Distd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1405. *Add. Annotation :*—**Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

1408a. Subsidence of filled-in trench.]—NEWSOME *v.* DARTON URBAN DISTRICT COUNCIL (1937), 81 Sol. Jo. 1012.

1414. *Add. Annotation :*—**Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

covered with a plank, but on the night of the accident it was uncovered :—*Held :* the town corpn., having knowledge of the condition, & having taken no steps to close the areas, or to see that they were adequately protected, were liable to pltfs.—MCMICHAEL *v.* GODERICH TOWN, [1928] 4 D. L. R. 536 ; 62 O. L. R. 547.—**CAN**

so. *Lift forming part of pavement—Well of lift inadequately fenced.*]—HAYMAN *v.* CITY PROPERTY INVESTMENT TRUST CORPN., LTD., [1929] S. C. (H. L.) 65.—**SCOT.**

sp. *Petrol pump.*]—BRITISH AMERICAN OIL CO. *v.* SHURR (Ont.), [1929] 3 D. L. R. 119.—**CAN.**

st. *Truck on footpath.*]—MCVEIGH *v.* SMITH TRANSPORT, LTD. (1935), 5 F. L. J. (Can.) 4.—**CAN.**

sv. *Guard wire round park strip.*]—Guard wire round a park strip of the sidewalk, to prevent it being trampled on, is not necessarily a nuisance so as to make the municipality liable if the pedestrian stumbles over it.—ROSEN *v.* KITCHENER, [1935] 4 D. L. R. 644 ; O. R. 522.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—I.

st. *Use of street as golf course.*]—Part of the golf course used by deft. club was land which was shown on a registered plan of subdivision as a street. Under the governing legislation, the dedication of said land as a public street was effective forthwith on registration of the plan. The street was never graded or used as a street, & there were golf tees, greens, etc., thereon. After the street had been so used for a number of years, pltf. bought a tract of land bounded by the street & erected a small house thereon in which he lived. Pltf. complained that many golf balls were driven on to his property & that players trespassed thereon in search of the balls & that he was obstructed by said use by the club of said land in his right to use it as a public street. Pltf. asked for damages & an order for the removal of the tees, etc., as against both the golf club & the municipality & for an injunction restraining the club's members from playing on the street ;—*Held :* the club should be enjoined against using the street as part of its golf course & ordered to restore it to its normal state.—CHISWELL *v.* CHARLESWOOD & ALCREST GOLF CLUB, LTD., RURAL MUNICIPALITY (No. 2), [1937] 1 W. W. R. 177 ; 1 D. L. R. 776 ; 44 Man. L. R. 469 ; 6 F. L. J. (Can.) 244.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—K. (c) i.

sv. *Street traders—Licence—"Article or thing"—What included.*]—*Held :* a live pig was an "article or thing" within Street Trading (Regulation) Act (Northern Ireland), 1929, s. 1 (1).—R. (U. D. C. OF PORTADOWN) *v.* ARMAGH CHAIRMAN & JUSTICES, [1931] N. I. 211.—**IR.**

of bye-law.]—A street trader, who held no permit from the chief constable, hawked fruit & vegetables from a cart in various streets in E. which he visited usually twice a week. On arrival at each street he cried his wares, & when customers came he stopped his cart. The cart remained standing, sometimes for a period of over half an hour, until the last of the customers was served, & the trader then moved on. In a prosecution for infringing a bye-law :—*Held :* accused did not carry on business on a stance, within the bye-law, in respect that he did not occupy a permanent position where he waited for customers.—GRIEVE *v.* MACPHERSON, [1933] S. C. (J.) 65.—**SCOT.**

1435a. Street traders—Licence—Application to renew—Duties of borough council.]—(1) The remedy by appeal to petty sessions given by London County Council (General Powers) Act, 1927 (c. xxii.), s. 35 (2), to a street trader who is aggrieved by the refusal of the renewal of his licence as a street trader is equally beneficial, convenient & effectual as *mandamus* would be. *Mandamus* will therefore not lie to a Metropolitan borough council to compel them to hear & determine a street trader's application for renewal of a licence.

(2) In deciding such applications, the council is an administrative body, not a judicial one; it may therefore properly take into account a report of a committee, & its decision will not be invalidated merely by the fact that some members taking part in it were not present at an earlier meeting when the applicant was heard.

(3) *Semble:* the Act does not contemplate the calling of evidence before the council on such applications; but the justices at petty sessions who hear an appeal can conveniently hear such evidence as may be necessary.—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON (1929), 93 J. P. 171; 73 Sol. Jo. 318; 27 L. G. R. 416, D. C.

1435b. —— —— Refusal to renew—Appeal to petty sessions—Evidence.]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435c. —— —— —— Mandamus.]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435d. —— —— Liability for trading without—Notwithstanding legal impossibility of grant.]—(1) The fact that a borough council is precluded by the existence of Sunday Observance Act, 1677 (c. 7), from granting a licence for street trading on Sunday does not render impossible the conviction for trading without a licence of a trader who in fact trades on Sunday without a licence.

(2) An information for so trading may be laid by a person duly authorised on behalf of the council, such as a solr.'s managing clerk, instructed by the Town Clerk, though not himself an officer of the council.—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH COUNCIL (1931), 145 L. T. 260; 95 J. P. 153; 47 T. L. R. 436; 75 Sol. Jo. 511; 29 L. G. R. 400; 29 Cox, C. C. 315.

1435e. —— —— —— Information—By whom laid.]—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH COUNCIL, No. 1435d, *ante*.

1435f. —— —— Refusal to grant—Appeal—Discretion of magistrate.]—An appeal was brought to a ct. of summary jurisdiction under sect. 35 (2) of the London County Council (General Powers) Act, 1927, from a refusal of a Metropolitan Borough Council to grant a street trading licence on the ground that the streets named in the application were not streets ordinarily prescribed by them in street trading licences:—*Held:* the jurisdiction of the ct. was not confined to considering whether the streets were or were not in fact ordinarily prescribed, but it was entitled to consider the question whether, notwithstanding that the streets were not ordinarily prescribed, a licence ought nevertheless to be granted on the merits of the particular case.—FULHAM METROPOLITAN BOROUGH COUNCIL *v.* SANTILLI, [1933] 2 K. B. 357; 102 L. J. K. B. 728; 149 L. T. 452; 97 J. P. 174; 49 T. L. R. 480; 31 L. G. R. 257; 29 Cox, C. C. 608, D. C.

1435g. —— —— One day licence.]—Resp. sold apples from a barrow in a street within the Metropolitan Borough of P. It was the custom of the P. Borough Council to issue one-day licences to street traders, but though resp. had been issued with several of these licences in the past, he was not in possession of one on the day in question. He was summoned for selling goods from a barrow without a licence contrary to L.C.C. (General Powers) Act, 1927, s. 39. The magistrate dismissed the summons on the ground that the borough council having granted a licence, they could dispute its validity; & also upon the ground that the prosecution was instituted to test the system of one-day licences & was not *bona fide*:—*Held:* licences could only be granted in accordance with the provisions of the Act, & any licence issued otherwise was invalid. Resp. had not therefore a valid licence & ought to have been convicted.—DENNIS *v.* WILLMORE, [1936] 2 All E. R. 407, D. C.

1435h. —— Removal of refuse—Liability for charges.]—The "other services" mentioned in London County Council (General Powers) Act, 1927 (c. xxii.), s. 37, are services *ejusdem generis* as the removal of refuse.

Applts., a borough council, claimed payment of their charges in respect of "other services" rendered by them to resp., a licensed street trader, being charges in respect of the general administration of Part VI. of the Act dealing with the regulation of street trading:—*Held:* in the absence of evidence of the removal of refuse or of services *ejusdem generis* as the removal of refuse, applts. were not entitled to recover.—WESTMINSTER CORPN. *v.* ARMSTRONG, [1929] 2 K. B. 451; 142 L. T. 263; 98 L. J. K. B. 707; 45 T. L. R. 634; 94 J. P. 18; 27 L. G. R. 671; 29 Cox, C. C. 49, D. C.

1441. *Add. Annotations:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Consd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

1442. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1443. *Add. Annotations:*—**Consd.** Vanderpant Mayfair Hotel Co. (1929), 27 L. G. R. 752 **Refd.** Harper *v.* Haden & Sons, Ltd. 102 L. J. Ch. 6.

1447. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1456. *Add. Annotations:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

PART IX. SECT. 1, SUB-SECT. 1.—L.

r i. —— *Parked car—Liability of municipality.*]—A motor car parked on a street may constitute a nuisance; but in order to render the municipality liable for damages caused by such nuisance it must have had actual knowledge thereof, or the nuisance must have existed for a time sufficient to entitle the ct. to hold that the municipality ought to have had knowledge thereof & that a further reasonable period had elapsed before the accident within which the cipality could have proceeded to remove the nuisance.—BERTRAND *v.* NEILSON & VANCOUVER CITY, [1934] 3 W. W. R. 433; 49 B. C. R. 150.—CAN.

1457a. —— **Causing horse to shy.**]—In an action for a nuisance it appeared that pltf. was driving at night in a cart drawn by a horse along a public highway, when the horse shied at a heap of earth & refuse placed by defts. on their land adjoining the highway, & the cart was upset & pltf. injured. Evidence was tendered by pltf. to prove that other horses had shied at the heap on the same day:—*Held:* if the heap was of such a nature as to be dangerous by causing horses passing on the highway to shy, it was a public nuisance.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 60 L. T. 266; 53 J. P. 342; 5 T. L. R. 242, D. C.; *on appeal*, 22 Q. B. D., at p. 393, C. A.

Annotation:—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

1464a. —— **Dangerous condition—Duty of local authority to remove.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante*.

1465. After this case add "*See, also*, AGRICULTURE, Nos. 970a, 970b."

1473. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1475. *Add. Annotation:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1481a. Noise from loudspeaker—Advertisement of entertainment — Information.] — ADAMS *v.* BALDWIN (1935), 79 Sol. Jo. 922, D. C.

1486. *Add. Annotation:*—**Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

1500. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1509. *Add. Citation:*—95 L. J. K. B. 81.

1511. *Add. Annotation:* County Borough *v.* Fuller & Sons 93 J. P. 29.

1512. *Add. Annotation:*—**Distd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357 n.

1513a. ——— ——.]—When any one places a motor omnibus or other vehicle which is likely to skid upon the highway, such person may be liable for placing a nuisance upon the road, & for negligent use of the highway.—WALTON (ISAAC) & CO., LTD. *v.* VANGUARD MOTOR BUS CO., GIBBONS *v.* VANGUARD MOTOR BUS CO. (1908), 72 J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82; 7 L. G. R. 349, D. C.

nnotations:—**Overd.** Parker *v.* L. G. O. Co. (1909), 101 L. T. 623. **Refd.** Barnes U. D. C. *v.* L. G. O. Co. (1908), 7 L. G. R. 359; Wing *v.* L. G. O. Co., [1909] 2 K. B. 652.

1514. *Add. Annotation:*—*Generally*, **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

1519. *Add. Annotations:*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. **Refd.** Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

1540. *Add. Annotation:*—**Refd.** Manchester Corpn. Farnworth, [1930] A. C. 171.

1546. *Add. Annotation:*—**Refd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125.

1546a. Heap of refuse—Horse frightened.]—Pltf.'s horse shied at a heap of road-scrapings placed by defts. by the side of a public highway on land belonging to them, & personal injuries were, in consequence sustained by pltf.'s wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap, on the

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PART IX. SECT. 1, SUB-SECT. 1.—N.

sq. *Prickly bush protruding through fence.*]—Where deft. permitted a gorse bush growing on his land to project over a street, & pltf. was injured by a thorn of the bush penetrating one of his eyes:—*Held:* deft. was liable.—CULL *v.* GREEN (1924), 27 W. A. L. R. 62.—**AUS.**

sr. *Suffering trees to grow—Causing obstruction—Madras Local Boards Act.*]—The allowing of prickly-pear to spread on to a road used by the public is a public nuisance within Indian Penal Code, s. 268.—*Re* MOLAIPPA GOUNDAN (1928), I. L. R. 52 Mad. 79.—**IND.**

PART IX. SECT. 1, SUB-SECT. 1.—P.

sp. *Crowds collected by speaking into microphone in shop.*]—In order to constitute the offence of obstructing a footpath, within sect. 5 (14) of Police Offences Act, 1928, the act complained of must in itself be obstructive. Speaking into a microphone inside a shop, with the result that persons gather outside the shop so as to obstruct the footpath, does not constitute an offence under the sub-sect.—CAMPBELL *v.* HANNAFORD, [1934] V. L. R. 246; 40 Argus L. R. 312.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 4.

1501 iii. —— *Obstruction of access.*]—Whether it is or is not unlawful to use a locomotive engine in a public street depends on the manner & extent of the user. In an action for nuisance by obstructing access to pltf.'s garage by the unreasonable user of a locomotive engine & trucks for the purpose of delivering to & loading goods from the deft.'s factory:—*Held:* a nuisance had been proved, & an injunction against unreasonable user & damages should be awarded.—MCCARRON *v.* NOSKE BROS. PROPRIETARY, LTD. (1929), S. A. S. R. 433.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 6.

1517 i. *Danger to persons on highway—Unguarded gap in area railings.*]—In an action brought by a father against (*a*) a road authority, (*b*) the proprietrix of a sunk area, and (*c*) a police constable, to recover damages in respect of injuries to his pupil son, aged 6, pursuer averred that, about 4 p.m. on an Oct. afternoon, a motor car collided with, & made a large gap in the railing guarding the area, & that the child, when playing the street about 7.30 p.m. after it was dark, fell through the gap while it was unguarded, & was injured:—*Held:* pursuer had relevantly averred fault against the constable, who had left his post where he had been stationed to guard the gap; both the road authority & the proprietrix had a duty to guard the gap; pursuer had relevantly averred failure by both in that duty as the cause of the accident, in respect that a jury might find that the posting of the constable did not discharge the road authority of their responsibility, & the proprietrix's duty to guard revived when she knew that the constable had left his post, & further, it did not appear so clearly that the proximate cause of the accident was the negligence of the constable that the action must be dismissed as against the other two defenders, & also, *per* Lord Anderson, in respect that both the road authority & the proprietrix must be held to have delegated their duties to the constable & therefore to be responsible for his negligence. It was for the jury to decide whether the child had been guilty of contributory negligence.—STEVENSON *v.* EDINBURGH MAGISTRATES, [1934] S. C. 226.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 11.

st. *Encroachment on private street—Authorised by Dean of Guild.*]—The proprietors of a building adjoining a private street in G., who were, also, the owners of the *solum* of the street, applied to the Dean of Guild for authority to extend their building over part of the foot pavement of the street. The master of works lodged objections in the public interest, on the ground that, under Glasgow Police Acts, 1866 to 1924, the Dean of Guild had no jurisdiction to sanction an encroachment on a private street:—*Held:* nothing in these Acts deprived the Dean of Guild of jurisdiction to grant a lining for the erection of a building on a private street within the burgh.—SAXONE SHOE CO., LTD. *v.* SOMERS, [1929] S. C. 232.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 14.

k i. *Broken-down motor car—Not left on highway for unreasonable time—Owner not liable.*]—PEDERSON *v.* PATERSON (1916), 31 D. L. R. 368.—**CAN.**

sv. *House left in street at night—Street blocked—Person moving house liable.*]—SCOTT *v.* CALGARY & RIDDOCK, [1927] 2 D. L. R. 263; [1927] 1 W. W. R. 524; 22 Alta L. R. 467.—**CAN.**

same day, was rejected :—*Held :* such evidence was admissible, for if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, & whatever showed it to be likely to cause horses to shy was evidence for pltfs.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391 ; 58 L. J. Q. B. 212 ; 5 T. L. R. 284, C. A.

Annotation :—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

1576a. Obstruction unreasonable.]—Where a highway is obstructed for building operations, & the obstructor has obtained the appropriate licence from the local authority, a person suffering inconvenience or loss from the inconvenience can only recover damages in a case where the obstruction is unreasonable, either as to *quantum* or duration.

Per LAWRENCE, L.J. : When the owner of a house abutting on a public street desires to undertake building operations, & has obtained the appropriate licence from the local authority under Metropolis Management Act, 1855 (c. 120), or similar statutes relating to other places, it cannot be contended that the necessary scaffolding & hoardings are illegal & a public nuisance unless they were erected in a manner or place not authorised by the licence, or maintained for a longer period than by the licence authorised.—HARPER *v.* HADEN (G. N.) & SONS, [1933] Ch. 298 ; 102 L. J. Ch. 6 ; 148 L. T. 303 ; 96 J. P. 525 ; 76 Sol. Jo. 849 ; 31 L. G. R. 18, C. A.

1590. *Add. Annotation :—As to* (2) **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

1592. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1926), 91 J. P. 89 ; London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

1616. *Add. Annotation :*—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1623. *Add. Annotation :* — **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1634. *Add. Annotations :* — **Consd.** Swadling *v.* Copper (1930), 46 T. L. R. 597. **Apld.** Tart *v.* Chitty & Co., [1933] 2 K. B. 453. **Consd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. **Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59 ; Tidy *v.* Battman, [1934] 1 K. B. 319.

1637. *Add. Annotations :* — **Consd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59 ; Swadling *v.* Cooper (1930), 46 T. L. R. 597 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. **Refd.** The Vectis, [1929] P. 204 ; The Chatwood, [1930] P. 272 ; M'Lean *v.* Bell (1932), 48 T. L. R. 467.

1639. *Add. Annotation :*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1649. *Add. Annotation :*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1652. *Add. Annotation :—Generally,* **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

PART IX. SECT. 1, SUB-SECT. 16.

q i. —— *Contributory negligence—Failure to wear adequate footwear.*]—In an action for damages for injuries sustained by slipping on an icy sidewalk, held that deft. city had not negligently permitted snow or ice to remain on the sidewalk ; &, moreover, pltf. was guilty of negligence which occasioned or contributed to the accident in that the kind of footwear which she was wearing was not ordinarily adequate to the circumstances.—KNIGHT *v.* SASKATOON, CITY OF, [1930] 3 W. W. R. 101 ; 4 D. L. R. 1010.—**CAN.**

q ii. —— —— ——.]—In an action for injuries sustained through slipping on an icy sidewalk :—*Held :* deft. municipality was not grossly negligent within sect. 469 (3) of Municipal Act, R. S. O., 1927, & pltf. did not exercise reasonable care in going out in the dark wearing Oxford shoes with rubber heels, but without rubbers or overshoes & without the aid of a cane. —BURGESS *v.* SOUTHAMPTON TOWN, [1933] O. R. 279 ; 2 D. L. R. 582.—**CAN.**

q iii. —— *Municipality liable only for gross negligence.*]—The effect of the term " gross negligence " in a statute which imposes on a municipality the duty of keeping its streets in repair, but provides that it shall not be liable for injuries resulting from snow or ice upon a sidewalk " except in cases of gross negligence," is that its duty in cases within the proviso is substantially lower than its duty to keep its streets free from other defects & dangers not so specified.—JOHNSON *v.* ST. JAMES RURAL MUNICIPALITY, [1930] 3 W. W. R. 85 ; 4 D. L. R. 120.—**CAN.**

q iv. —— ——.]—In an action for damages for personal injuries sustained by falling on a patch of ice which had formed on a sidewalk the night before the accident :—*Held :* the fact that deft. city, which under its charter is not liable for injuries so caused except in cases of gross negligence had not placed sand or cinders on the particular patch of ice before the time of the accident, nine in the morning, did not under all the circumstances constitute gross negligence.—STINSON *v.* EDMONTON CITY, [1932] 1 W. W. R. 839 ; *affd.*, [1933] 3 W. W. R. 224.—**CAN.**

q v. —— ——.]—In an action for injuries sustained by a pedestrian through a fall due to a slippery street : —*Held :* deft. city had been grossly negligent in not taking more care to prevent such injuries.—WOLFE & WOLFE *v.* EDMONTON CITY, [1932] 1 W. W. R. 129 ; *affd.*, [1932] 1 W. W. R. 855 ; 3 D. L. R. 370 ; 26 Alta. L. R. 310.—**CAN.**

q vi. —— ——.]—In an action against a rural municipality for injuries sustained by falling on a sidewalk in a village therein of a few hundred people, the sidewalk having been made slippery by snow :—*Held :* although the municipality did not have any system of inspecting such streets during the winter & did not remove the snow therefrom or sprinkle cinders or sand thereon, it was not guilty of " gross negligence " within sect. 626 of Municipal Act, R.S.M., 1913. It cannot be " gross negligence " not to do what it is the custom not to do.—CHRISTIANSON *v.* CLANWILLIAM RURAL MUNICIPALITY, [1933] 3 W. W. R. 415.—**CAN.**

q vii. —— ——.]—On appeal from the dismissal of an action against a city for damages for personal injuries caused by falling on an icy sidewalk :—*Held :* there was no evidence of gross negligence on the part of deft. ; &, therefore, since its charter provided that the city should not be such accidents unless in cases negligence, the action failed.—WALLER *v.* ST. BONIFACE CITY, [1935] 2 W. W. R. 378 ; 4 D. L. R. 135.—**CAN.**

q viii. —— ——.]—HOLLAND *v.* TORONTO CITY (1925), 59 O. L. R. 628. —**CAN.**

q ix. —— ——.]—HOLLAND *v.* TORONTO CITY, [1927] S. C. R. 242.—**CAN.**

q x. —— ——.]—MURPHY *v.* OTTAWA CITY (1928), 63 O. L. R. 248.—**CAN.**

q xi. —— *Liability for acts of contractor.*]—City corpn. held liable for negligence of contractors in course of relaying pavement, whereby rainwater was obstructed & flooded premises in the street.—KITCHENER CITY *v.* ROBE & CLOTHING CO., [1925] S. C. R. 106.—**CAN.**

q xii. —— *From snow plough—Municipality not liable.*]—A municipality is not liable to a pedestrian for injuries due to ice & snow formed on the sidewalk by the snow plough.—POTTER *v.* SYDNEY MINES, [1936] 1 D. L. R. 764.—**CAN.**

sa. *Flow of water—Meaning of.*]—Water which soaks or seeps through a bank on land on to a road does not flow on to such road.—JARRAD *v.* LOADER, [1928] S. A. S. R. 35.—**AUS.**

sd. *Ice & snow from driveway.*]—Action for damages for injuries sustained through slipping on a sidewalk, owing to ice & snow from defts.' cement driveway :—*Held :* defts. were liable for nuisance.—TAYLOR *v.* ROBINSON, [1933] 3 D. L. R. 73 ; O. R. 535. —**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.

m i. —— *Not mandamus—Nuisance by municipality.*]—No mandamus lies to a municipal corpn. to compel it to remove a gasoline pump from the street. If it amounts to a public nuisance the A.-G. is the proper person to intervene. —*Re* METRO OIL, LTD. & TORONTO, [1935] 3 D. L. R. 303.—**CAN.**

1657a. —— **Trees.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante.*

1668. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

1672. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1674. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1675. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1677. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway *(1931), 100 L. J. K. B. 401.*

1680a. — — ——.]—Deft. co. built a large hotel, *including a kitchen, close to pltf.'s private residence & with windows overlooking pltf.'s premises ; & a hitherto quiet highway, with very little traffic passing over it, became a* busy street with vehicles constantly coming & going in connection with deft.'s hotel business. These vehicles made use of a very small yard adjoining pltf.'s house, opening into the street, & the roadway there became congested at times. In consequence, pltf. complained of nuisance : (*a*) by obstruction of access to his residence ; (*b*) by depriving him of reasonable use of the public highway :—*Held :* on the result of the authorities, a private individual who seeks to restrain the obstruction of a public highway must, in order to maintain his suit, prove that he has sustained particular & substantial & direct damage beyond the general inconvenience & injury to the public.—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., [1930] 1 Ch. 138 ; 99 L. J. Ch. 84 ; 142 L. T. 198 ; 94 J. P. 23.

Annotation :—**Refd.** Medcalf *v.* Strawbridge, Ltd., [1937] 2 K. B. 102.

1683a. —— —— —— ——.]—SEATON *v.* SLAMA No. 9a, *ante.*

1684. *Add. Annotations :*—*As to* (1) **Apprvd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1686. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1687. *Add. Annotation :*—*As to* (1) **Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

1688. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1689. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1690. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1691. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1694. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., *[1931] 2 K. B. 334.*

1700. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway *(1931), 100 L. J. K. B. 401.*

707a. Claim by frontagers—Damage to unadopted road by skid-pan.]—Frontagers on a road not repairable by the inhabitants at large have such an interest, over & beyond that of the general public, in preventing damage to the road as to entitle them to sue for an injunction against any one causing unnecessary damage to the road, & the A.-G. need not be a party to the action.—MEDCALF *v.* STRAWBRIDGE (R.), LTD., [1937] 2 K. B. 102 ; [1937] 2 All E. R. 393 ; 106 L. J. K. B. 630 ; 157 L. T. 137 ; 53 T. L. R. 638 ; 81 Sol. Jo. 438.

709. *Add. Annotation :*—*As to* (2) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1710. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

1711. *Add. Annotation :*—**Distd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1717a. Remedy trespass not ejectment.]—DOE d. ST. JULIAN SHREWSBURY (PARISH) *v.* COWLEY (1823), 1 C. & P. 123 ; 171 E. R. 1129, N. P.

1718. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1747. After this case add " *Compare* MAGISTRATES, Nos. 503a, 503b."

1760. *Add. Annotation :*—**Refd.** R. *v.* Newport Salop Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

PART IX. SECT. 3, SUB-SECT. 3.—A.

1670 v. —— ——.]—In an action for a mandatory injunction requiring deft. to remove a verandah & steps attached to her house, which encroached upon a street in a village, & caused inconvenience to pltf. & other persons using the street :—*Held :* the inconvenience was such only as was common to all persons using the street, & pltf., whose house was so situated that persons coming from it, in order to gain access to the principal street of the village, had to make a detour by reason of the verandah & steps, suffered no special damage or injury by reason of the nuisance, & was not entitled to the relief claimed.—WHALEY *v.* KELSEY, [1928] 2 D. L. R. 268 ; 61 O. L. R. 679.—**CAN.**

1670 vi. —— ——.]—ARDESAR JIVANJI *v.* AJMAI KUVARJI (1928), I. L. R. 53 Bom. 187.—**IND.**

1670 vii. —— *Rule not applicable to India.*]—Any individual member of the public has the right to maintain a suit for removal of obstruction of a public highway, if his right of passage through it is obstructed, without proving special damage. The principle of English law which requires proof of special damage in such cases is not applicable to India.—MANDAKINEE DEBEE *v.* BASANTAKUMAREE DEBEE (1933), I. L. R. 60 Cal. 1003.—**IND.**

q i. ——.]—The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.—SAMPSON *v.* ROBERTSON, [1925] 1 D. L. R. 624 ; 57 N. S. R. 498.—**CAN.**

q ii. —— *Notice of claim.*]—The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 542, to be given the municipality is a bar to an action for damages for injuries caused by snow or ice on a sidewalk.—HICKMAN *v.* MOOSE JAW CITY, [1925] 1 D. L. R. 115 ; [1924] 3 W. W. R. 839.—**CAN.**

q iii. —— —— *Sufficiency of.*]—MCGREGOR *v.* R. (Ont.), [1929] 1 D. L. R. 181.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 5.

sw. *Cost of fencing bank—Whether within Burgh Police (Scotland) Act,* 1892, *s.* 190.]—The magistrates of a burgh, founding upon the section, brought an action against the owners of a steep natural bank, which sloped down from the side of a street to the sea shore, in order to recover the cost of fencing the bank :—*Held :* the sect. was inapplicable, in respect that, in view of their ambiguity, the words " any other place " fell to be construed in the light of the context & of the heading of the group of sects. in which they occurred, &, so construed, the places to which the section referred

Part X.—Interference with Highways under Statutory Powers.

1761a. Duty of local authority—On request to exercise statutory powers.] — A local authority, requested to carry out in a "street laid out but not dedicated" constructive works under its statutory powers, need not necessarily inquire into the title of those making the request. But it must, in considering whether compliance with the request will be a lawful exercise of the powers, have regard primarily to the physical conditions obtaining in the area of the proposed operations; & those physical conditions will be one of the principal factors in determining whether relevant statutory definitions are complied with. This applies to powers conferred by either public general or private local statutes.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884; 97 L. J. Ch. 479; 139 L. T. 636; 92 J. P. 153; 26 L. G. R. 530.

Part XI.—Excessive Weight and Extraordinary Traffic.

1765. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29

1771. *Add. Annotation:*—**Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1772. *Add. Annotation:—As to* (1) **Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J P. 29.

1775a. ——.]—Defts., who owned & used traction engines for the purposes of their business, drove two of these engines on a very hot day in July over a highway belonging to pltfs., who were the highway authority for the district. The highway, which had been constructed as a first class main road for the purpose of bearing traffic of all sorts, had a mexphalte surface. In passing along the most exposed part of the highway, the driving wheels of these engines sank into the road at a point where the surface was very soft, with the result that the road was damaged. Pltfs. thereupon brought an action against defts. to recover extraordinary expenses, pursuant to Highways & Locomotives (Amendment) Act, 1878 (c. 77), s. 23, as amended by Locomotives Act, 1898 (c. 29), s. 12. They also claimed damages for wrongful abuse of the highway by defts. & for nuisance & negligence:—*Held:* as agricultural traffic, including heavy traction engines, was admittedly part of the ordinary traffic, & the weights in the present case were normal, no claim for excessive weight or for extraordinary traffic could arise under the Act of 1878; there was no excess whatever by defts. of the lawful use of the highway & no wrongful abuse of their rights of passing & repassing: the injury to the highway was due to a peculiar & unique conjunction of heat & of atmospheric & other conditions; defts.' vehicles did not constitute a nuisance, & there was no negligence on the part of defts.—EASTBOURNE COUNTY BOROUGH *v.* FULLER & SONS (1928), 93 J. P. 29; 72 Sol. Jo. 762.

1810. *Add. Annotation:*— **Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1841. After this case add "*See, also,* No. 1852, *post.*"

1844. To the existing paragraph add as follows:—

The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships:—*Held:* the first certificate was good, &, with regard to expenses incurred before it was made, the period of six months limited by Summary Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add "*See, also,* No. 1841, *ante.*"

1852a. —— **Where more than one certificate given.**]—WIRRAL HIGHWAY BOARD *v.* NEWELL, No. 1844, *ante.*

1858a. —— **Where several contracts.**]—EPSOM URBAN COUNCIL *v.* LONDON COUNTY COUNCIL, No. 1818, *ante.*

1872. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1876. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

were limited to places rendered dangerous by some artificial construction connected with buildings or streets.—BUCKIE MAGISTRATES *v.* SEAFIELD'S (DOWAGER COUNTESS) TRUSTEES, [1928] S. C. 525.—**SCOT.**

PART IX. SECT. 3, SUB-SECT. 6.

d i. —— ——.]—R. *v.* FITZGERALD (1876), 39 U. C. R. 297.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 1.

t. Add *affd.*, [1913] 2 I. R. 250, C. A.

PART XI. SECT. 4, SUB-SECT. 5.

1872 i. *General rule.*]—It is not the total sum actually spent on repair that is recoverable by the road authority, whether that repair involves reconstruction or not. Regard must be had to all the circumstances of the case; the state of the roads when the extraordinary traffic commenced, its general character & suitability for the traffic reasonably to be expected thereon, the amount of ordinary traffic whether of defts. or other persons, & the extent & nature of the repairs reasonably required. Deductions should also be made if roads when repaired are in a better condition than before extraordinary traffic commenced.—DOWN COUNTY COUNCIL *v.* T, [1927] N. 49.—**IR.**

1881 i. *Deductions & allowances—Improvement of road due to repair.*]—DOWN COUNTY COUNCIL *v.* STEWART, No. 1872 i, *ante.*—**IR.**

Part XII.—Stopping-up or Diversion of Highways.

1887. *Add. Annotation :*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

1894a. —— **Consent of owners of land abutting on highway—Condition precedent.**]—By sect. 59 of a local Act "the corpn. may from time to time by order stop up wholly or partially any highway which in their opinion is unnecessary on such terms as to the vesting of the soil & other matters as may be agreed on between the corpn. & the owners & lessees of buildings & lands abutting on the highway & on any highway being so stopped up all public & other rights of way & other rights in, over or upon the same shall be absolutely extinguished." By sect. 117 : "Any person deeming himself aggrieved by any order or determination of the corpn. or by any conviction or order made by a ct. of summary jurisdiction under any provision of this Act may appeal . . . to the next practicable ct. of quarter sessions under & according to Public Health Act, 1875 (c. 55), s. 269" :—*Held :* (1) it was a condition of the making of an order under sect. 59 that there should be an agreement between the corpn. & the owners & lessees of buildings & lands abutting on the highway ; (2) the "highway" must mean the whole highway & not any part thereof ; & the applt. was therefore a person aggrieved although his land did not abut on the part of the highway stopped up.—LINTON *v.* NEWCASTLE-UPON-TYNE CORPN. (1929), 142 L. T. 49 ; 94 J. P. 20 ; 27 L. G. R. 607, H. L.

1894b. —— —— —— **Meaning of highway—Not confined to part of highway stopped up.**]—LINTON *v.* NEWCASTLE-UPON-TYNE CORPN., No. 1894a, *ante*.

1897. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1922. *Add. Annotation :*—**Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

1958. *Add. Annotation :*—**Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

1979a. —— **Not costs of preparing for appeal—Order abandoned.**]—R. *v.* WING (1825), 4 B. & C. 184 ; 6 Dow. & Ry. K. B. 323 ; 3 Dow. & Ry. M. C. 184 ; 3 L. J. O. S. K. B. 201 ; 107 E. R. 1028.

1984. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1985a. ——.]—A ry. co. were empowered by Act of Parliament to stop up a certain street for the purpose of providing additional warehouses. The co. stopped up & enclosed part of such street & formed a cul-de-sac. They constructed a warehouse abutting upon the pavement in such cul-de-sac. The warehouse had flaps which opened across the pavement, & for forty years the co. loaded & unloaded goods from such flaps across the pavement into & from vans standing in the cul-de-sac from 6 a.m. to 7 p.m. daily. The London County Council by a private Act, which incorporated the Lands Clauses Acts, were empowered to make a new street, & they gave notice to treat for certain premises in the possession of the ry. co. The new street included the pavement above referred to. The co. claimed compensation (*inter alia*) for injurious affection of the above-mentioned warehouse by reason of the works of the council preventing them from delivering goods from the warehouse across the pavement to vans in the way they had therefore done :—*Held :* the use which the ry co. had made of the pavement an stopping up of such pavement under their statutory powers above referred to, although such pavement had not been enclosed the council were bound to acquire an easement over such pavement for the purpose of making the new street, & the co. were entitled to compensation for injurious affection of the warehouse.—*Re* GREAT EASTERN RY. CO. & LONDON COUNTY COUNCIL (1907), 98 L. T. 116 ; 72 J. P. 1, C. A.

1986. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1988. *Add. Annotation :*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1988a. **On liability to repair.**]—A part of an old footpath, repairable by the inhabitants at large, was diverted & the substituted highway was a road 60 feet wide. All the usual steps were taken under Highways Act, 1835 (c. 50), in respect of the diversion, except that at no time did the justices view the new highway in accordance with sect. 91 of the Act. From 1911 the old highway had been built over and the new highway continuously used. Two frontagers claimed a declaration that the new highway was repairable by the inhabitants at large :—*Held :* (1) the proper proceedings to test this question were proceedings in a ct. of summary jurisdiction under the Private Streets Works Act, 1892 (c. 57) ; (2) this was not a proper case for the ct. in the exercise of its discretion to make a declaration ; (3) the Attorney-General was not a necessary party to the action ; (4) the substituted highway would not be repairable by the inhabitants at large until Highways Act, 1835 (c. 50), s. 91, had been complied with ; (5) it could not be assumed in a recent case that all formalities had been complied

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PART XII. SECT. 2, SUB-SECT. 1.

sx. *Necessity for compliance with statutory formalities.*]—*Held :* a public highway cannot be closed without complying with the statutory formalities.—LARCHER *v.* SUDBURY TOWN (1913), 24 O. W. R. 659 ; 4 O. W. N. 1289 ; 11 D. L. R. 111.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A.

1898 ii. —— ——.]—By Municipal Act, R. S. O., 1927, s. 483 (1) (c), a municipality may pass a bye-law stopping up a highway. The obligation of the municipality to supply "another convenient road or way of access" is not satisfied by the municipality conveying the freehold in the closed highway to a grantee & exacting from such grantee a covenant to keep the roadway open & in repair for highway purposes for the benefit of the person whose means of ingress & egress is affected.—HODSON *v.* GLENHODSON COUNTY CLUB & WHITBY TOWNSHIP, [1933] O. R. 271 ; 2 D. L. R. 277.—**CAN.**

h i. —— *Under Highway Act, R. S. N. B., 1927—Duty of jury under sect. 30 to consider whether highway necessary.*]—R. *v.* BELLIVEAU, *Ex p.* LE BLANC (1930), 1 M. P. R. 28.—**CAN.**

h ii. —— —— *Duty of supervisor to view lands—Amounts to judicial act.*]—R. *v.* BELLIVEAU, *Ex p.* LE BLANC (1930), 1 M. P. R. 28.—**CAN.**

with & the local authority was not estopped from asserting such non-compliance.—STOCKWELL *v.* SOUTHGATE CORPN., [1936] 2 All E. R. 1343; [1937] 3 All E. R. 627; 155 L. T. 437; 34 L. G. R. 527.

1990. *Add. Annotation:*—**Refd.** Stockwell v. Southgate Corpn., [1936] 2 All E. R. 1343.

1991. *Add. Annotation:*—**Consd.** Stockwell v. Southgate Corpn., [1936] 2 All E. R. [illegible]

Part XIII.—Streets.

SECT. 1.—METROPOLITAN.

For references to London Building Act, 1894 (c. ccxiii.), *see, now*, London Building Act, 1930 (c. clviii.), which replaces the 1894 Act.

1997. *Add. Annotation:*—**Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

2032. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2039. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2044. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2075. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2076. *Add. Annotation:*—**Apprvd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2087a. —— **Boundary wall.**]—In defining a general line of buildings under London Building Act, 1930 (c. clviii.), s. 22, a boundary wall cannot be taken into consideration either by the superintending architect or by the Tribunal of Appeal on an appeal from his certificate. —MOLINS MACHINE CO., LTD. *v.* LONDON COUNTY COUNCIL, [1932] 1 K. B. 764; 101 L. J. K. B. 259; 147 L. T. 457; 95 J. P. 202; 29 L. G. R. 627.

2093. *Add. Annotation:*—**Consd.** Black *v.* George Parker & Sons, Ltd. (1929), 142 L. T. 130.

2100. *Add. Annotations:*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120. **Refd.** Molino Machine Co. *v.* L. C. C. (1931), 95 J. P. 202.

2102. *Add. Annotation:*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120.

2120. *Add. Citation.*—68 J. P. 490.

2170a. **Consent to lay out—Whether deed necessary.**]—B. was the owner of a house which had its front & only entrance in F. street, & behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, of which the dead wall at the end of B.'s garden was part of the line of street. This new street was a mews which the metropolitan board allowed to be made of 20 feet width:—*Held:* the consent of the metropolitan board to the mews being of 20 feet did not require to be given under the seal of the board.—PADDINGTON VESTRY *v.* BRAMWELL (1880), 44 J. P. 815.

2173. *Add. Annotation:*—**Refd.** Smith *v.* Benabo, [1937] 1 K. B. 518.

2178a. **Proceedings for removal—Whether restrained by injunction.**]—Pltf., having purchased certain premises in the metropolis, erected buttresses for the purpose of improving the wall abutting on the highway. The local authority took out a summons before a magistrate against pltf. under Metropolis Management Act, 1855 (c. 120), s. 119, to compel pltf. to remove the buttresses, on the ground that they were an encroachment on the highway. Pltf., alleging that the site of the buttresses was not part of the highway, then brought an action against the local authority & moved for an injunction to restrain them from interfering with the buttresses & from going on with the proceedings before the magistrate to determine any questions to be determined in the action:—*Held:* though the ct. had jurisdiction to restrain proceedings before a magistrate if it was satisfied that he had no jurisdiction or that owing to the special circumstances the proceedings before the magistrate ought not to be allowed, yet in the present case, as the magistrate had jurisdiction, & as there were no special circumstances, the motion must be dismissed.—WILLIAMS *v.* DEPTFORD URBAN DISTRICT COUNCIL (1924), 41 T. L. R. 47.

2195a. —— **Dead shores.**]—Sect. 75 of Metropolis Paving Act, 1817 (c. xxix) (Michael Angelo Taylor's Act), is impliedly repealed by sects. 122 & 123 of Metropolis Management Act, 1855 (c. 120). Therefore a charge, framed under sect. 75 of the Act of 1817, of setting up dead shores in a public street without a licence, failed, the same offence, with different penalties & procedure, being dealt with in sects. 122 & 123 of the later Act.

Semble: the dead shores could properly be described as hoards or scaffolding.—SMITH *v.* BENABO, [1937] 1 K. B. 518; [1937] 1 All E. R. 523; 106 L. J. K. B. 367; 156 L. T. 194; 101 J. P. 141; 53 T. L. R. 353; 81 Sol. Jo. 200; 30 Cox, C. C. 540; 35 L. G. R. 130.

2196a. **Metropolis Paving Act, 1817 (c. xxix.), s. 75—Whether repealed by Metropolis Management Act, 1855 (c. 120), ss. 122, 123, 247.**] —SMITH *v.* BENABO, No. 2195a, *ante*.

2202. *Add. Annotation:*—**Refd.** Fredman *v.* Minister of Health (1935), 154 L. T. 240.

2203. *Add. Annotations:*—**Apld.** Ashby-de-la-Zouch Grdns. *v.* Summers, [1928] 2 K. B. 397. **Consd.** West Ham Corpn. *v.* Benabo (Charles) & Son, [1934] 2 K. B. 253.

2204a. —— **Recovery of expenses of repairing dangerous structure—London Building Act, 1894, s. 116—Summary Jurisdiction Act, 1848 (c. 43), s. 11.**]—A building in the metropolis having been certified to be dangerous, the county council did the work necessary to make it safe, & on Sept. 15, 1924, demanded from the owner the amount of the expenses. The amount not having been paid, the council on Jan. 1, 1926, applied to a magistrate under sect. 116 (1) of the above Act of 1894 to fix the amount of the expenses &

to make an order that no part of the structure should be let for occupation until after payment thereof. The magistrate dismissed the complaint on the ground that more than the period of six months limited by sect. 11 of the above Act of 1848 had elapsed between the time when the matter of the complaint arose & the date when the complaint was made :—*Held :* the six months' limitation of time applied to proceedings under sect. 116 (1) of the Act of 1894, & the time ran from the date of the demand, & the magistrate's decision must be affirmed.—LONDON COUNTY COUNCIL *v.* OWNER OF 14, LEE-STREET STEPNEY (1926), 135 L. T. 182 ; 90 J. P. 145 ; 42 T. L. R. 543 ; 24 L. G. R. 386, D. C.

2229a. Part of premises fronting another street.]—Deft. in 1903 purchased a house which fronted on G. road. In 1907 she bought a strip of land which she used to form a carriage drive to the house. In 1904 her husband became the tenant of a field to the south of & adjoining the house & land. The field fronted on E. road. In 1907 deft. purchased the field, but entered into a tenancy agreement letting it to her husband, & from that time the field & the house & land had been separately assessed by the local authority though in fact the tenancy agreement between deft. & her husband ceased to exist about 1918. In 1920 E. road was made up, the usual course being followed under Public Health Act, 1875 (c. 55), ss. 150 & 257, with the result that pltfs. claimed a charge, for the admitted proportion due from deft. of the expenses incurred in making up E. road, on the whole of deft.'s property, including her house & grounds as well as the field, as fronting, adjoining or abutting on E. road :—*Held :* the house & grounds & the field must be considered as being one close, & as such the whole was liable to a charge for making up E. road as fronting, adjoining or abutting thereon. — ALTRINCHAM URBAN DISTRICT COUNCIL *v.* O'BRIEN (1927), 91 J. P. 149 ; 25 L. G. R. 369.

2244a. —— ——.]—(1) A notice given to a frontager to make up the portion of the street opposite to his premises under Public Health Act, 1875 (c. 55), s. 150, is not rendered inoperative because all the frontagers on the street are not served, but he will be liable only for his proportion of the sum expended in making up those portions of the street which abut on the premises of such of the frontagers as are served with the notice, no change of ownership occurring during the course of the proceedings.

(2) The words " the same " contained in the form of notice given in the above Act refer to that portion only of the street abutting on the premises of the owner on whom such notice is served, & not to the whole street.

(3) Two winter months given as the time within which to execute works under a notice given under the above sect. is sufficient.—SUNDERLAND CORPN. *v.* GRAY, [1928] Ch. 756 ; 97 L. J. Ch. 411 ; 136 L. T. 405 ; 91 J. P. 52 ; 25 L. G. R. 139.

2252a. —— **" The same."**]—SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2253. *Add. Annotation :*—**Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254. *Add. Annotation :—As to* (3) **Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254a. —— ——.] — SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2268. *Add. Annotation :—As to* (2) **N.F.** Sunderland Corpn. *v.* Gray (1926), 136 L. T. 405.

2276. *Add. Annotation :*—**Consd.** Finney *v.* Birkenhead Corpn., [1936] 2 All E. R. 590.

2277. *Add. Annotation :*—**Consd.** Finney *v.* Birkenhead Corpn., [1936] 2 All E. R. 590.

2279a. —— **Asphalt in place of flags.**]—The predecessors of resp. corpn. by notice adopted H. Road under Public Health Act, 1875 (c. 55), s. 152. In accordance with the provisions of Public Health Act, 1925 (c. 71), resps. prepared a list of roads repairable by the inhabitants at large. H. Road was therein stated to be repairable by the local authority as to the carriageway, but not as to the footway. There was some evidence that the road had never been made up. Resps. were empowered by a local Act to serve notice upon the frontagers to make, curb, flag, & complete the footway, & if through the frontagers' default, they executed the work themselves, to apportion the whole cost on the frontagers in the case of a road not repairable by the inhabitants at large, & half the cost in the case of a road repairable by the inhabitants at large. Such notice was served in respect of H. Road &, resps. having done the work, apportioned the whole cost on the frontagers. The notices required the frontagers to make, flag & complete, but in fact the resps. did not flag the road, but asphalted it :—*Held :* (1) H. Road was a road repairable by the inhabitants at large &, in any event, resps. could only recover half the cost ; (2) the work specified in the notice must be carried out & the use of asphalt in place of flags was not a proper compliance with the notice, & resps. could not recover the cost of the work done.—FINNEY *v.* BIRKENHEAD CORPN., [1936] 2 All E. R. 590 ; 80 Sol. Jo. 655.

PART XIII. SECT. 2, SUB-SECT. 2.

sa. *Purchase for widening & improvement—What is due compensation.*]—*Re* MACDONALD & TORONTO CORPN. (1912), 27 O. L. R. 179 ; 4 O. W. N. 54 ; 8 D. L. R. 303.—**CAN.**

sb. —— *Power to acquire land beyond quantity actually required.*]—*Held :* under Municipal Corpns. Act, 1920, s. 192, a municipal corpn. is empowered when widening a street, to acquire not only what land is required for that purpose, but also to acquire, if the corpn. deems it expedient, land additional thereto on either or both sides of the street in question, provided land is required for the purpose of widening the street & that the land proposed to be taken, is on either or both sides of the street & whether or not the land is owned in part by one owner & in part by another.—WELLINGTON CORPN. *v.* DEALY, [1929] N. Z. L. R. 352.—**N.Z.**

PART XIII. SECT. 2, SUB-SECT. 3

o i. ——.]—SOUTH GRIMSBY TOWNSHIP *v.* COUNTY OF LINCOLN & NORTH GRIMSBY TOWNSHIP, COUNTY OF LINCOLN *v.* SOUTH GRIMSBY TOWNSHIP (1921), 19 O. W. N. 576 ; 58 D. L. R. 599.—**CAN.**

sd. *Meaning of " forming " & " making " street.*]—To " form " a street is to alter its natural surface so as to provide the desired shape or contour. To " make " a street involves adding where necessary an artificial surface to the natural or formed surface of the street.—ROWE *v.* DISTRICT COUNCIL OF PROSPECT (1929), S. A. S. R. 462.—**AUS.**

2280. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2282a. —— **Two streets repaired at same time.**]—A local authority which has executed repairs to streets under Public Health Acts Amendment Act, 1907 (c. 53), s. 19, is not entitled to include two streets in the same account & apportion the combined expenses among the frontagers of both streets. Nor have the justices, before whom the local authority seek to recover such expenses, any jurisdiction to investigate the accounts & separate the expenses of the two streets for the purpose of making a proper apportionment.—NASH *v.* GILES (1926), 96 L. J. K. B. 216 ; 136 L. T. 352 ; 91 J. P. 19 ; 43 T. L. R. 121 ; 25 L. G. R. 66, D. C.

2285a. Effect of agreement between frontagers—Frontager not to be liable for maintenance of road until taken to by local authority—Frontager not entitled to repayment of apportioned share of cost of making up road.]—MOORE *v.* TODD (1903), 68 J. P. 43 ; 19 T. L. R. 642 ; 2 L. G. R. 376, C. A.

2316. *Add. Annotations :*—**Consd.** West Ham Son, [1934] 2 K. B. 253. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2318. *Add. Annotations :*—**Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602. **Refd.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397 ; London County Council *v.* Harling Street Owners, [1935] 2 K. B. 322.

2319. *Add. Annotation :*—**Consd.** Croydon Corpn. Oldaker, [1937] 1 K. B. 337.

2322. *Add. Annotation :*—**Refd.** Croydon Corpn. *v.* Oldaker, [1937] 1 K. B. 337.

2322a. —— **Under local Act.**]—By the C. Corpn. Act, 1884, s. 39, it is provided that whenever the corpn. put in force the provisions of the Public Health Act, 1875 (c. 55), s. 150, "they may before themselves executing any works as therein provided recover in a summary manner the amount of the estimated cost thereof from the owners in default." On June 27, 1935, the local authority served a notice, under Public Health Act, 1875 (c. 55), s. 150, upon resp., the owner of premises fronting on a certain road, requiring him to do certain street works. On June 28, 1935, resp. conveyed the premises to a third person. On Oct. 4, 1935, the local authority served a notice upon resp., under C. Corpn. Act, 1884, s. 39, demanding payment of certain sums in respect of the estimated cost of the works, which works had not then been executed. Resp. refused to pay any part of the amount claimed & the local authority thereupon on Dec. 20, 1935, lodged a complaint claiming payment. The magistrates were of opinion that there could be no default until the expiration of the time given in the notice to repair, & that as at the expiration of that time resp. was no longer the owner of the premises, resp. was not the "owner in default" within C. Corpn. Act, 1884, s. 39, & they held that he was not liable to pay the amount claimed. The local authority appealed :—*Held :* "owner" in the C. Corpn. Act, 1884, s. 39, referred to the owner at the time of the service of the notice to execute the street works, & if such owner failed to execute the works, he became & remained for the purposes of that sect. the "owner in default," notwithstanding a conveyance of the property to a third person. Resp. was therefore liable to pay the amount claimed by the local authority.—CROYDON CORPN. *v.* OLDAKER, [1937] 1 K. B. 337 ; [1936] 3 All E. R. 360 ; 106 L. J. K. B. 190 ; 155 L. T. 557 ; 100 J. P. 519 ; 53 T. L. R. 79 ; 80 Sol. Jo. 954 ; 34 L. G. R. 574.

2326. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2340. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch.

2344. *Add. Annotation :*—**Expld.** Allen *v.* Waters & Co., [1935] 1 K. B. 200.

2351. After this case add the following new subsection :—

vi. *Other Cases.*

2351a. Action to recover expenses—Form of writ—Names & addresses of owners not known.]—Pltfs., being entitled under Public Health Acts to recover the expenses of making up a road from the owners of the lands abutting on the roadway & being unable to discover who some of those owners were, issued a writ against A., a known owner of some of the land, "& the owners of certain lands adjoining" the road "more particularly described in the indorsement" on the writ, "whose names & addresses are not known to pltfs." Upon the summons for directions pltfs. desired to amend the writ by adding after the word "owners" the words "at the time of the completion of the works referred to in the indorsement hereon," & they also asked for leave to effect substituted service on defts. so described by affixing copies of the writ on the respective premises : —*Held :* the writ, in not giving the names & addresses of defts. other than A., did not comply with the form of writ which had the

PART XIII. SECT. 2, SUB-SECT. 4.—A. (l) iii.

2314 i. *Finality of award.*]—Where certain works in a private street had been carried out by an urban district council & the total expenses as certified to by the surveyor had been apportioned according to their respective linear frontages on the owners of premises fronting both sides of the street. Resp. objected to the apportionment on the ground that the works included a footpath on one side only of the street & opposite to resp.'s premises. The arbitrator in his award varied the surveyor's apportionment by abating the amount payable by resp. by the sum attributable to his contribution to the cost of the footpath :—*Held :* the umpire had no authority to go behind the certificate of the amount expended or to inquire into the reasonableness of the amount apportioned or to apportion it on the basis of the proportionate benefit derived from the works by each owner. Equitable relief might, however, have been obtained by petition in due form to the Local Government Board.—BANGOR U. D. C. *v.* MCKEE (1914), 48 I. L. T. 92.—**IR.**

PART XIII. SECT. 2, SUB-SECT. 4.—A. (m) ii.

sc. *Owner at time of ... of action.*]—A municipal certain pacing, kerbing, & guttering work in a public road. At that time defts. were the joint owners of land on the same side of the road & adjacent to the work done. Before any steps were taken to recover any part of the cost defts. parted with the ownership of the land. ... brought an action against them recover half the cost of the work : *Held :* the words "the owner for the time being" in Local Government Act, 1919, s. 243, meant the owner at the time of the commencement of the action, & therefore that defts. were not liable.—ULMARRA MUNICIPAL COUNCIL *v.* NOTARAS (1929), 29 S. R. N. S. W. 501 ; 46 N. S. W. W. N. 179 ; 9 L. G. R. 80.—**AUS.**

basis of statutory authority & was prescribed by R. S. C., Ord. 2, r. 3; & Appendix A, Part 1; the writ, whether as originally issued or as proposed to be amended, was bad as against the persons so sought to be made defts., & the words following A.'s name must be struck out.—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, [1927] 2 Ch. 25; 96 L. J. Ch. 145; 136 L. T. 649; 91 J. P. 60; 25 L. G. R. 75, C. A.

2353. *Add. Annotations:*—*As to* (1) **Refd.** Sunderland Corpn. *v.* Priestman, [1927] 2 Ch. 107. *As to* (2) **Consd.** Payne *v.* Cardiff R. D. C. (1931), 47 T. L. R. 532.

2357. *Add. Annotations:*—**Apld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622. **Refd.** Paddington B. C. *v.* Finucane, [1928] Ch. 567.

2360. *Add. Annotation:*—**Distd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2364. *Add. Annotations:*—**Apld.** Paddington B. C. *v.* Finucane, [1928] Ch. 567. **Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

2366. *Add. Annotation:*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

2367a. —— —— **Form of writ.**]—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, No. 2351a, *ante*.

2367b. —— **Before expiry of time for summary proceedings.**]—The two remedies conferred by Public Health Act, 1875 (c. 55), s. 257, are concurrent, & a local authority need not wait till the six months, during which the summary remedy is available, have expired before commencing proceedings to enforce the charge created by the sect.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

2367c. —— **Form of order.**]—BROMLEY RURAL DISTRICT COUNCIL *v.* BROOKER, ORPINGTON URBAN DISTRICT COUNCIL *v.* BROOKER, [1934] W. N. 237.

2386a. —— **Outside area of authority—Validity of order.**]—Deft. co. made an application to the local authority under Private Street Works Act, 1892 (c. 57), stating that it had made up a street to the satisfaction of the surveyor & asking that this street should be taken over by the authority as a street repairable by the inhabitants at large. The local authority thereupon made the order asked. The street was described both in the application & in the order as: 1–15 inclusive, Front Newbottle Row. It was proved in evidence that the street in question so far as Nos. 1–5 abutted upon it was not within the area of the local authority:—*Held:* as part of the street was outside the area of the local authority & the order referred to the whole street, the order was *ultra vires* & invalid. It was impossible to sever the application & the order & treat the order as valid so far as the street was within the area of the local authority.—NEWTON *v.* LAMBTON HETTON & JOICEY COLLIERIES, LTD., [1937] 2 All E. R. 150, C. A.

2401a. —— **Used for deposit of ashes.**]—By Carlisle Corpn. Act, 1887, s. 192, it was provided that "No ry. co. shall be deemed to be an owner or occupier in respect of any land of such co. upon which any street shall wholly or partially front or abut & which shall be used by such co. solely as part of their line of railway or sidings & shall have communication with such street & the expenses incurred by the corpn. under the powers of the Public Health Acts . . . shall be paid by the other owners having frontages abutting on such street . . .":—*Held:* land used by a ry. co. for the purpose of depositing ashes thereon did not fall within the exemption contained in that sect.

I am of opinion Mr. Macmorran's argument cannot prevail. Indeed, had it been addressed to me upon sect. 22 of the Private Street Works Act, 1892, I should have doubted much whether this land had been used by the ry. co. solely for the purposes of their line of railway, sidings, station or works (PHILLIMORE, J.).—*Re* CARLISLE CORPN. & SAUL'S EXORS. (1907), 71 J. P. 502; 5 L. G. R. 1128; *sub nom.* CARLISLE CORPN. *v.* SAUL (S. G.) EXORS., 97 L. T. 514.

2405a. **Burial ground "attached" to place of worship.**]—The exemption from liability for the expenses of private street works given by Private Street Works Act, 1892 (c. 57), s. 16, to a burial ground "attached" to a "place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor," extends only to a burial ground in physical attachment or contiguity to the building, & does not include a burial ground at a distance, "attached" to the place of worship in the functional sense that it is owned & maintained by the congregation of the place of worship for their members.—HOLY LAW SOUTH BROUGHTON BURIAL BOARD *v.* FAILSWORTH URBAN DISTRICT COUNCIL, [1928] 1 K. B. 231; 96 L. J. K. B. 713; 137 L. T. 483; 91 J. P. 104; 43 T. L. R. 519; 25 L. G. R. 324, D. C.

2405b. **Vacant land adjoining chapel.**]—An objection was made by the trustees of a chapel to the inclusion in a provisional apportionment under Private Street Works Act, 1892 (c. 57), of certain vacant land adjoining the chapel, on the ground that the land was exempt from expenses under sect. 16 of that Act & Poor Rate Exemption Act, 1833 (c. 30), s. 1. The trustees were owners of the land, & at the time of the provisional apportionment it was their intention to erect a Sunday school thereon communicating by a corridor with the chapel:—*Held:* the land was not exempt from expenses as a "place" or "premises" exclusively appropriated to religious worship within the above Acts, as the words "place" & "premises" refer to buildings only, & cannot include a piece of vacant land; & there was no evidence on which it could be held that the land was within the curtilage of or formed part of the site of the chapel.—ILFORD CORPN. *v.* MALLINSON (1932), 147 L. T. 37; 96 J. P. 185; 48 T. L. R. 358; 30 L. G. R. 201.

2409. *Add. Annotation:*—**Refd.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2419. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2423a. ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430a. —— ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430b. —— **After completion of works.**]—When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57),

s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices have no jurisdiction to determine an objection under sect. 7.—FAULKNER *v.* HYTHE CORPN., [1927] 1 K. B. 532; 96 L. J. K. B. 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60, D. C.

Annotation :—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2432. *Add. Annotation :*—**Reld.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2433. *Add. Annotation :*—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2436. *Add. Annotation :*—**Reld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2439a. —— **Sale by owner—Necessity for demand on purchaser—Limitation of action.**]—Defts. being a local authority having duly made a final apportionment under Private Street Works Act, 1892 (c. 57), s. 12, of the expenses of certain private street works, demanded in 1910 the amount thus apportioned from an owner of land abutting on the street thus made up. In 1927 the latter sold the land in question to pltf. without having satisfied defts.' demand, & pltf. then proceeded to erect houses on the land in respect of which he became entitled to a subsidy. Defts. thereupon claimed to set off against the subsidy the amount of their claim against the owners for the time being of the land in respect of the apportioned expenses, together with interest thereon :—*Held :* (1) although defts. might have lost their right to sue the original owner for the expenses they were not prevented from suing pltf. as a subsequent owner for the time being. A demand on such owner was necessary to complete the cause of action for such expenses & Stat. Limitations did not begin to run until such demand had been made; (2) on the footing that Real Property Limitation Act, 1874 (c. 57), s. 8, was applicable, that sect. did not apply to defeat a claim against pltf., the owner for the time being, because defts. had no present right to receive the sum set off from pltf. until he became owner & twelve years from that date had not elapsed.—DENNERLEY *v.* PRESTWICH URBAN DISTRICT COUNCIL, [1930] 1 K. B. 334; 99 L. J. K. B. 25; 141 L. T. 602; 94 J. P. 34; 45 T. L. R. 659; 73 Sol. Jo. 530; 27 L. G. R. 618, C. A.

2440a. —— **On default of instalment.**]—A local authority had carried out certain street improvements, & premises had, under Private Street Works Act, 1892 (c. 57), s. 13 (1), become charged with the sum apportioned to them in respect of the improvements, that sum being ordered to be paid by instalments:—*Held :* the local authority, under the powers conferred by Private Street Works Act, 1892 (c. 57), s. 13 (1), & Law of Property Act, 1925 (c. 20), s. 101, had power to sell the premises, not merely when the whole of the apportioned sum was due, but also when an instalment was in default.—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, [1932] 1 K. B. 241; 100 L. J. K. B. 626; 145 L. T. 575; 95 J. P. 173; 47 T. L. R. 532; 29 L. G. R. 507.

2443. *Add. Annotation :*—**Reld.** Faulkner *v.* Hythe Corpn. (1926), 48 T. L. R. 55.

2446. *Add. Annotation :*—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2447. *Add. Annotation :*—**Folld.** Chatham Corpn. *v.* Wright (1929), 142 L. T. 431.

2447a. —— ——.]—An urban sanitary authority, acting under the Private Street Works Act, 1892 (c. 57), resolved to execute certain private street works in a street in their district, & to contribute a certain portion of the expenses thereof, & that in settling the apportionment of the balance of the expenses thereof, regard should be had to the greater or less degree of benefit to be derived from the works, by the premises of the frontagers, & they approved provisional apportionments on the frontagers which were duly served & deposited in accordance with the provisions of the Act. Two of the frontagers objected to the provisional apportionments on their premises, before justices, who expressed the opinion that the proposed works were not unnecessary; that the estimated expenses were not excessive; that the premises of the objectors should not be excluded from the apportionment; but they stated that they considered the proposed works were unreasonable in that it was not reasonable that the objectors should bear the whole of the amounts shown in their provisional apportionments. Accordingly they approved the plans, sections, specifications, & estimates of the urban sanitary authority, but quashed in part the apportionments on the objectors' premises, by reducing each of these two apportionments by £100. They confirmed the apportionments on the other frontagers: —*Held :* the justices had sought to compel the urban sanitary authority to increase their contribution at the risk alternatively of sacrificing the scheme as a whole. It was not within the province of the justices, directly or indirectly, to compel the urban sanitary authority to make a larger contribution than that which they had already agreed to grant.

Upon the further consideration of the case, the justices must adopt one of three courses: increase the apportionments on the other frontagers to satisfy the balance of £200; quash the whole of the apportionment; or adjourn the matter, giving the urban sanitary authority the opportunity of considering whether they would pass a new resolution increasing their contribution by the £200 (*per* CUR.).—CHATHAM CORPN. *v.* WRIGHT (1929), 142 L. T. 431; 94 J. P. 43; 28 L. G. R. 4, D. C.

2449a. Time fixed by order—Reasonable time—What must be considered.]—Under sects. 33, 34 of Cardiff Corpn. Act, 1884, the corpn. made an order that a street, not being a highway repairable by the inhabitants at large, should be paved, kerbed, etc., within two months. The estimate & plan deposited in accordance with sect. 33 of the Act showed that under part of the street a sewer was to be laid by the corpn. while the work was being done, & the order showed that some of the frontagers were required to connect the works which they were required to do with the new sewer. Certain frontagers did not comply with the order, & the work was done by the corpn., &, after service of notice of apportionment of the expense of the demand for payment, the corpn. applied to the ct. by originating summons, for a

declaration that the proper proportion of the costs of the work, with interest to date of payment, was a charge upon the premises of those frontagers, in accordance with sect. 54 of the Act:—*Held:* the time fixed by the order was not, in the circumstances, unreasonable; nor was there any evidence to establish that if the frontagers had done the work themselves the corpn. would have hampered them by laying the sewer simultaneously with their work. The frontagers were entitled to comply with the order & to restrain any interference with them in doing so, but not having so complied, they were liable for the expense of the work being done for them & the corpn. were entitled to the relief claimed.—CARDIFF CORPN. *v.* CARDIFF PURE ICE & COLD STORAGE CO., LTD. (1930), 95 J. P. 11; 29 L. G. R. 29, C. A.

2452. *Add. Annotation:—As to* (2) **Refd.** Allen *v.* Waters & Co., [1935] 1 K. B. 200.

2466a. —— **Powers of magistrate.**]—B. Corpn. proposed to execute certain private street works under Birmingham Corpn. (Consolidation) Act, 1883, ss. 46-50, which were substantially identical with Private Street Works Act, 1892 (c. 57). The corpn. duly complied with the formalities required & made a provisional apportionment on resps., the frontagers on the street, according to their respective frontages. Resps. objected that the works were unnecessary. On the hearing of this objection resps. called no evidence. The stipendiary magistrate held that some works were necessary, but was of opinion that the estimated expenses were too heavy. He reduced the estimate & ordered that one resp. should pay one-half & each other resp. two-thirds of the respective sums named in the provisional apportionment:—*Held:* inasmuch as the corpn. had not resolved that the apportionment should be on any basis other than frontage, the stipendiary magistrate could not direct an apportionment on any other basis. Subject to that limitation, he must consider & determine, upon evidence, whether the proposed works were in any, & what, respect unnecessary, & must have regard to any alternative proposals, if resps. made any & supported them by evidence, & to the cost thereof.—BIRMINGHAM CORPN. *v.* MOTHER-GENERAL OF CONVENT OF SISTERS OF CHARITY OF ST. PAUL (1927), 91 J. P. 186; 44 T. L. R. 31; 25 L. G. R. 517, D. C.

2470a. —— **Not mortgagee of pews & vaults in & under church.**]—CHORLTON UPON MEDLOCK (CONSTABLES & BURGESSES) *v.* WALKER (1842), 10 M. & W. 742; 12 L. J. Ex. 88; 7 J. P. 162; 152 E. R. 671.

2471a. —— **Insufficient particulars.**]—By the Birkenhead Improvement Act, 1884, Sched. II, it is provided that, when certain works for the improvement of private streets are undertaken by the corpn., the estimated expenses of executing the works shall be provisionally apportioned among the premises fronting or adjoining or abutting on such street, & that the provisional apportionment "shall also state whether the apportionment is made according to the frontage of the respective premises, or not, & the measurements of the frontages & the other considerations (if any) on which the apportionment is based." The corpn. proposed to carry out certain works, & made a general provisional apportionment which purported to be "principally according to the frontage of the respective premises & having regard to all the circumstances of the case & the amount & value of the work already executed by or on behalf of certain frontagers," but which did not specify the particular "circumstances of the case" or particulars of the "value of the work already executed," with the result that it was not possible for the correctness of the amount of the apportionment to be checked by each individual frontager, including applt., who took the preliminary objection that the requirements of the statute

PART XIII. SECT. 2, SUB-SECT. 4.—C. (a) ii.

2451 i. *Validity of notice—Works specified in excess of those provided for in bye-law.*]—SKREMILKA *v.* WINNIPEG CITY, [1935] 2 W. W. R. 455; 43 Man. L. R. 154.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—A.

sd. *Single scheme for several streets communicating with one another—Right of authority to recover cost from owners.*]—A municipal council in proceeding under Local Govt. Act, 1925, ss. 526, 527, may properly adopt a specification, estimate & scheme of distribution of the cost of forming, levelling, etc., several streets communicating with one another & enforce payment of a proportionate part of the cost of the whole scheme against the owner of premises adjoining or abutting on one or more only of such streets.—MACGOWAN *v.* ST. KILDA CITY, [1928] V. L. R. 462; [1928] Argus L. R. 254.—**AUS.**

se. *"Opening or establishing new street" — What amounts to.*] — *Re* TORONTO & SAUNDERS, [1931] 2 D. L. R. 840; O. R. 116.—**CAN.**

sf. *Notice to property owners—Defective notice—For less than prescribed period.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

sg. —— *Necessity for—Before works entered upon.*]—DUNN *v.* BRAYBROOK SHIRE, [1928] V. L. R. 454; [1928] Argus L. R. 286.—**AUS.**

sx. *Statutory liability of City—Non-fulfilment—Validity of subsequent statute imposing liability on frontagers.*]—By a Quebec statute of 1910 the City of Montreal within six months was to macadamise certain streets, including S. Street, in a township thereby annexed to the City, but later statutes postponed until May, 1925, the date for completing the work. In 1910 the City had no power to charge the cost of paving streets against the frontagers, but statutes of 1911 & 1914 gave the City that power in the case of permanent paving. In July, 1925, the City passed a resolution that S. Street, which had not been macadamised, should be permanently paved & that the frontagers thereon should be taxed in respect of the cost. Accordingly, S. Street was permanently paved with asphalt. In 1928 resps., as frontagers, were assessed to tax under a statute of that year, which provided that the cost of all pavings laid since Jan. 1, 1919, should be charged to the frontagers at a specified rate. All the statutes above mentioned were enacted as amendments of the City's statutory charter of 1899:—*Held:* having regard to the specific terms of the statute of 1928 it applied to S. Street, notwithstanding the unfulfilled obligations of the City under the statute of 1910, & accordingly the assessment was valid.—MONTREAL (CITY) *v.* MONTREAL INDUSTRIAL LAND CO., LTD., [1932] A. C. 700; 101 L. J. P. C. 172; 147 L. T. 517, P. C.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—B.

sh. *Bye-law authorising opening of street—Before land acquired.*]—A bye-law passed by the council of a town authorising the opening & improving of a street shown upon a registered plan, as a local improvement under Local Improvement Act, R. S. O. 1927, c. 235, was held not to be invalid or illegal because the land for the street had not been acquired by the corpn. before the bye-law was passed.—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sk. *Bye-law providing for construction of sidewalks—Street not opened—Ultra vires.*]—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sl. *Width of entrance to new street—Existing entrance a narrow road—Over land of third party.*]—ROSE *v.* SYDENHAM LOCAL ADMINISTRATION & HEALTH BOARD (1928), 49 N. L. R. 203.—**S. AF.**

sm. *Bye-law closing part of road allowance—No alternative way of access to private land—Invalid.*]—GILMORE *v.* WESTMINSTER, [1929] 4 D. L. R. 1; 64 O. L. R. 344.—**CAN.**

not been complied with. The justices decided that the apportionment sufficiently complied with the statute, "having regard to the difficulties in showing all the details of any such proposed works in a document such as the provisional apportionment." Thereupon this appeal was brought:—*Held:* the provisional apportionment was too general, & did not comply with the requirements of the statute, as it did not contain sufficient particulars to enable each individual owner to ascertain & check the basis of computation.—SMITH *v.* BIRKENHEAD CORPN., [1937] 3 All E. R. 75; 54 T. L. R. 24; 81 Sol. Jo. 863; L. G. R. 575.

2508a. —— ——.]—One of the bye-laws of deft. Board provided that 15 square feet air space should be left open in the rear of any new building. It was held that where a person built in contravention of that bye-law within the 15 square feet the Board might pull down the offending building consistently with safety in any way they pleased, but not in a dangerous way; so that where there had been excess in pulling down the building they were not liable unless the damage done was appreciable.—JAGGER *v.* DONCASTER UNION RURAL SANITARY AUTHORITY (1890), 54 J. P. 438.

2508b. —— ——,]—Applt. was the owner of certain old premises from which he removed the roof & commenced to erect on the walls thereof, & on the ground surrounding it, a new building without giving any notice to the local surveyor or delivering plans. The building was completed in Apr. 1901, & in Nov. 1901, applt. was summoned to show cause why the said building should not be pulled down, & on Nov. 4, 1901, resps. made an order requiring him to pull down the building:—*Held:* the order was rightly made though, no plans having been deposited, there had been no disapproval by the local authority, & though six months had elapsed from its completion.—FAIRBRASS *v.* CANTERBURY CORPN. (1902), 67 J. P. 181; 1 L. G. R. 181.

2523. *Add. Annotations:*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566. *As to* (2) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *Generally*, **Refd.** A.-G. *v.* Premier Line, Ltd., [1932] 1 Ch. 303.

2584. *Add. Annotations:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

2572. *Add. Annotation:*—**Refd.** A.-G. *v.* Sharp (1930), 143 L. T. 367.

2575. *Add. Annotation:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

2580. *Add. Annotation:*—**Consd.** A.-G. *v.* Prices' Tailors (1928), Ltd., [1930] 2 Ch. 316.

2580a. —— **Conversion of two shops into** Defts., who had purchased two houses with the shops on the ground floors projecting towards the street on which the premises fronted a few feet beyond the exterior walls of the two upper floors, submitted to the local authority plans of some proposed alterations. These consisted in the main in the conversion of the two shops into one continuous shop with a single entrance from the street in a new position. The local authority took the view that the proposed alterations amounted to taking down the front of the premises for the purpose of rebuilding, so as to entitle them to prescribe a new building line under the Public Health Act, 1875 (c. 55), s. 155. They therefore refused to approve the plans & called on defts. to set the ground floor front back to the existing exterior walls of the floors above. Defts. having refused to comply, this action was brought on the relation of the local authority & pltf. moved for a declaration that defts. were not entitled to build beyond the prescribed line & for an order on them to remove so much of the new front of the shop as projected beyond that line:—*Held:* the local authority had no power to prescribe a new building line under sect. 155, because (1) on the true construction of the sect. "the front" included the exterior walls of the two upper floors as well as the exterior wall of the ground floor, & (2) in any case the alterations made to the premises did not amount to taking down the front of the ground floor.—A.-G. *v.* PRICES' TAILORS (1928), LTD., [1930] 2 Ch. 316; 99 L. J. Ch. 511; 143 L. T. 416; 94 J. P. 226; 29 L. G. R. 15, C. A.

2580b. —— **"Front" of the premises—What included.**]—A.-G. *v.* PRICES' TAILORS (1928), LTD., No. 2580a, *ante*.

2584. *Add. Annotation:*—**Refd.** Fredman *v.* Minister of Health (1935), 154 L. T. 240.

2591a. Meaning of "new building"—Reconstructed building not included.]—BALLARD *v.* HORTON'S ESTATE, LTD. (1926), 24 L. G. R. 499, D. C.

2592a. Meaning of "erections" & "obstructions" — Includes petrol pumps.] — Clause 36 (*a*) of a town planning scheme, provided that "where a building line is shown upon the map (prepared for the scheme) in respect of any existing street or proposed new street no building or erection other than boundary walls & fences shall be erected or set up nearer to the street than such building line." Clause 40 (*b*) of the scheme provided that "no post, rail, fence, or other obstruction shall be erected in front of any shop or business premises in advance of the building lines fixed by clause 36, clause 37, clause 39 or this clause." Clause 70 of the scheme provides penalties for breach of these clauses. Applt., who was the proprietor of a motor garage, which was situated in an existing street for which a building line was shown on the map referred to in the scheme,

PART XIII. SECT. 2, SUB-SECT. 6.—D.

b 1. —— *Lots bordering on navigable river.*]—Land Registry Act, c. 23 of 1906, s. 68, dealing with the subdivision of land into town or other lots, provides, *inter alia*, that, in case a lot borders on the shores of any navigable water, streets leading to & continuing to such water must be shown at a not greater distance apart than 600 feet:—*Held:* the object of the section was to require land abutting on navigable waters to be subdivided so as to provide straight & continuous access to the water at intervals of no less than 600 feet.—*Re* LONSDALE ESTATE (1907), 12 B. C. R. 366.—**CAN.**

erected two petrol pumps in a forecourt in front of his premises, which was nearer to the highway & abutted thereon & was in advance of the building line shown upon the map & between that building line & the front boundary of the premises:—*Held:* the pumps were " erections " within clause 36 (*a*) of the scheme & also " obstructions " within *clause 40 (b), & applt. had been rightly convicted of offences under those clauses.*—MACKENZIE *v.* ABBOTT (1926), 24 L. G. R. 444 D. C.

2592b. Building already erected when building line prescribed—Right to compensation—In respect of restriction on future extensions.]—SURREY COUNTY COUNCIL *v.* CATERHAM ENTERTAINMENTS, LTD. (1930), 94 J. P. Jo. 189, D. C.

SUB-SECT. 8.—IMPROVEMENT LINE IN STREETS.

For "Public Health Act, 1875," read " Public Health Act, 1925."

2592c. " New erection "—What amounts to.]—*Held:* the object of Public Health Act, 1925 (c. 71), s. 33, is to facilitate the widening of streets by enabling local authorities to prescribe an improvement line to which buildings will eventually be set back, & it is contemplated that the authorities will for that purpose then exercise the power conferred them by Public Health Act, 1875 (c. 55), s. 1 of purchasing premises. In order not to increase the burden of compensation which the exercise of that power involves, Public Health Act, 1925 (c. 71), s. 33 (5), enacts that no new erection can be placed on the street side of the improvement line. Resps.' shop had in 1908 been moved back, leaving a paved forecourt in front of the shop so moved back upon which they used to expose their goods. After an improvement line had been prescribed in 1927, resps. again enclosed the forecourt into the shop, bringing the shop front back to its old level, which was beyond and on the street side of the improvement line:—*Held:* this was a " new . . . erection " within sect. 33 (5).—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., [1931] 1 K. B. 539; 100 L. J. K. B. 109; 144 L. T. 241; 95 J. P. 18; 47 T. L. R. 120; 29 L. G. R. 83, D. C.

2592d. —— Increase of burden on local authority.]—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., No. 2592c, *ante*.

2596. *Add. Annotation:—Generally,* **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

Part XIV.—Footpaths.

2609. *Add. Annotation:—As to* (2) **Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

2619. *Add. Annotation:*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2622. *Add. Annotation:*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

Part XV.—Bridges and Approaches thereto.

2630. *Add. Citation:*—95 L. J. Ch. 86.

2630a. Covenant to erect & maintain.]—A strip of land running the length of the vendor's property was conveyed to purchasers for use in connection with a reservoir, with the result that the vendor's property was severed from the highway by a conduit. The purchasers accordingly convenanted in the conveyance that they would at their own expense erect & maintain across the conduit a bridge of not less than 30 ft. in width to connect the severed portion of the vendor's land with the highway. There was no means of access to the vendor's land except by means of this bridge. The vendor's successor in title, desiring to develop the land as a building estate, claimed to be entitled to use the bridge for the laying of pipes & cables for the supply of water, gas & electricity & other services:—*Held:* upon the true construction of the conveyance the vendor's successor in title was not entitled to place & maintain upon the bridge anything of a permanent nature which must necessarily be maintained, & he was not entitled to lay pipes or cables on the bridge for any purpose.—METROPOLITAN WATER BOARD *v.* WATKINS, [1937] 1 All E. R. 489; 81 Sol. Jo. 158.

2644a. Agreement to maintain bridge over canal—Extent of duty—Tow-path raised to avoid flooding—Whether council bound to raise bridge.]—The construction of a canal involved the interception of a certain public road; & the canal co., in accordance with its statutory

PART XV. SECT. 2, SUB-SECT. 1.—A. (a)

d l. —— ——.]—Upon an application to a county ct. judge for an order declaring a bridge about to be built across a stream to replace a bridge that had been carried away by a storm, to be a county bridge, the sole question was whether the bridge was or would be " of a greater length than 300 feet " within sect. 458 of the Municipal Act. Before the approaches on the west side of the bridge were constructed, the waters sometimes crossed the highway considerably west of a point 300 feet west of the eastern bank, & an embankment that far west was rendered necessary on account of the waters overflowing the highway & being then constructed, became part of the highway:—*Held:* the embankment was rendered necessary within the meaning of the Act & the bridge was therefore of greater length than 300 feet.—*Re* PICKERING & ONTARIO, [1930] 1 D. L. R. 820; 64 O. L. R. 611.—**CAN.**

.]—*Re* SANDUSK CREEK BRIDGE (Ont.), [1926] 3 D. L. R. —— **CAN.**

obligations, carried the road over the canal by means of a bridge. The canal subsequently became vested in a railway co., who were required under sect. 17 of the Regulation of Railways Act, 1873 (c. 48), to keep the canal open & navigable. At a later date the railway co. entered into an agreement with the county council having jurisdiction in the locality under which the council agreed to remove the bridge & to construct a new bridge in substitution therefor; & the council covenanted that they would "from time to time & at all times thereafter well & sufficiently maintain & repair the new bridge & the roadway & footpaths upon the same & the approaches thereto." The agreement provided for a headway of six feet between the arch of the new bridge & the towing-path passing under it. The bridge & the neighbouring part of the canal for considerable distances on both sides of the bridge were in a mining area which had been subsiding for a long time prior to the agreement; & within sixteen years thereafter, owing to further subsidences, there was a general sinking of the bridge & the towing path. As, however, the water level remained the same, the railway co. found it necessary, in order to avoid flooding, to raise the towing path, the resulting effect being that the headway between the bridge & the towing path was reduced to four feet six inches, which was insufficient for the convenient working of the canal:—*Held:* the covenant on the part of defts. to "maintain" the bridge did not impose upon them an obligation to raise the bridge so as to obtain the six feet of clearance for the use of the water way, even although pltfs. had found it necessary to raise the towing path.—GREAT WESTERN RY. *v.* MONMOUTHSHIRE COUNTY COUNCIL (1929), 94 J. P. 6; 27 L. G. R. 569, C. A.

2650. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2661. *Add. Annotation:—As to* (2) **Distd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

2705. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2708a. Dock swing bridge—Liability for maintenance.]—Pltf. was injured by tripping over a nail projecting from the footway of a swing bridge which defts., the Port of London Authority, were under a statutory duty to maintain in repair, & which the public had a right to use only when it was not required to be swung open for dock traffic. The cause of the accident was the failure of defts. to maintain the footway in good condition. In an action for damages:—*Held:* the swing bridge was not a highway & were not in the position of a surveyor of highways, & therefore defts. could not avoid liability on the ground of nonfeasance or on the ground that a surveyor of highways is not liable to pay damages to persons injured by his neglect of duty, & pltf. was entitled to recover.—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, [1932] 1 K. B. 336; 101 L. J. K. B. 91; 146 L. T. 91; 95 J. P. 217; 48 T. L. R. 55; 75 Sol. Jo. 763; 29 L. G. R. 659.

2712. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2716. *Add. Annotations:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763. **Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2717. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2719. *Add. Annotation:*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2719a. —— Damage by locomotive passing over bridge—Locomotive Act, 1861 (c. 70), s. 7.]—In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that damage.—SOUTHERN RY. CO. *v.* GOSPORT CORPN., [1926] 2 K. B. 89; 95 L. J. K. B. 545; 90 J. P. 161; 70 Sol. Jo. 651; *varied*, [1927] 1 K. B. 331, C. A.

2766a. Liability of borough council—Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.]—In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges:—*Held:* having regard to the fact that the word "street," as defined by the above sect., includes, if this is not inconsistent with the context, any bridge, not being a county bridge, pltf. was entitled to the declaration.—A.-G. *v.* HORNSEY BOROUGH COUNCIL, [1927] 1 Ch. 331; 96 L. J. Ch. 164; 136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260.

PART XV. SECT. 2, SUB-SECT. 1.—A. (b).

p i. —— —— ——.]—*Re* CALEDONIA & HALDIMAND (1912), 22 O. W. R. 961; 3 O. W. N. 1654; 6 D. L. R. 267.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 1.—C.

t i. —— *Too dilapidated to repair.*]—Ontario Municipal Act, R. S. O., 1927, s. 469, does not impose any duty, enforceable at the suit of an affected landowner, on a municipality to reconstruct a bridge which has deteriorated to such an extent that the cost of repair would be more than the subject-matter of repair is reasonably worth & which it is no longer economically feasible to repair.—BRYANT *v.* TORONTO, [1932] 3 D. L. R. 590; O. R. 538; *affd.*, [1933] 1 D. L. R. 535; O. R. 105.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 2.—B. (c).

o i. —— *Transfer of area to municipality.*]—A railway co. constructed & maintained a bridge & approaches a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side of the road:—*Held:* assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or extended these obligations.—MAGISTRATES OF LEVEN *v.* LONDON & NORTH EASTERN RY. CO., [1926] S. C. 528.—**SCOT.**

2776. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2777. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2778. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, *[1936] 1 All E. R. 692.*

2778a. —— Road over bridge & approaches.]—The Act of Parliament incorporating the predecessors of applts. provided *(inter alia)* : "In all cases in which the railway shall cross any . . . public highway . . . such public highway shall be carried over the said railway . . . at the expense of the said co., by means of a bridge." It was admitted that applts. were liable for the repair & maintenance of the bridge in question in this case, but they contended that they were not liable to repair the road over it :—*Held :* the word "bridge" included the highway over it applts. were therefore liable to repair as much of the road as ran over the bridge & the approaches thereto.—LONDON & NORTH EASTERN RY. CO. *v.* NORTH RIDING OF YORKSHIRE COUNTY COUNCIL, [1936] A. C. 365 ; [1936] 1 All E. R. 692 ; 105 L. J. Ch. 133 ; 154 L. T. 409 ; 52 T. L. R. 260 ; 80 Sol. Jo. 423, H. L.

2780. *Add. Annotations :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112. **Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

2782. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

2782a. —— Against Port of London Authority—Dock swing bridge.]—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, No. 2708a, *ante.*

2787. *Add. Annotation :*—*As to* (3) **Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

PART XV. SECT. 3.

k i. —— *Apportionment of cost—Bridge across railway.*]—PUBLIC HIGHWAYS DEPT., ONTARIO *v.* CANADIAN PACIFIC RY. CO. (CLAPPISON BRIDGE CASE) (1924), 30 Can. Ry. Cas. 5.—CAN.

k ii. —— —— *Bridge over boundary river.*]—In order to give jurisdiction to the Municipal Comr. to apportion the costs of building a bridge over a river or stream forming the boundary between two municipalities, the latter must previously have agreed to construct the bridge.

The power of a municipality to contract with another municipality to build by joint action such a bridge must be exercised by bye-law.—RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE *v.* RURAL MUNICIPALITY OF CARTIER, [1925] 4 D. L. R. 1035 ; [1925] S. C. R. 691 ; *affg.*, [1924] 4 D. L. R. 601 ; [1924] 3 W. W. R. 244 ; 34 Man. L. R. 405 ; *revsg.*, [1924] 1 D. L. R. 775 ; [1924] 1 W. W. R. 225.—CAN.

HUSBAND AND WIFE.

Part I.—Contracts to Marry.

14. *Add. Annotations :—As to* (1) **Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

15. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

20. *Add. Annotation :*—**Refd.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

24. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1935] 2 K. B. 334.

25. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

26. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

30. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

36. *Add. Annotation :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

* *C. Survival of Right* (p. 27).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1 (1), (2) (*b*).

38. *Add. Annotation :*—**Refd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

39. *Add. Annotations :—As to* (2) **Apld.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. *Generally,* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

40. *Add. Annotation :—As to* (1) **Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

40a. —— ——.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & must relate to matters within the contemplation of the parties at the time the alleged promise was made.—RILEY *v.* BROWN (1929), 98 L. J. K. B. 739 ; 142 L. T. 42 ; 45 T. L. R. 613 ; 73 Sol. Jo. 499.

81. *Add. Annotation :—As to* (3) **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

87. *Add. Annotations :*—**Refd.** Cohen *v.* Sellar, [1926] 1. K. B. 536 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739.

114. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

Part II.—Marriage.

123. *Add. Annotations :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

127. *Add. Annotations :—As to* (1) **Refd.** Nachimson *v.* Nachimson, [1930] P. 217. *As to* (2) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Inverclyde *v.* Inverclyde, [1931] P. 29. *Generally,* **Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

PART I. SECT. 5, SUB-SECT. 1.

sr. *Effect of Jewish betrothal.*]—Among Jews the betrothal ceremony "Kaseph Kiddushim," if it is a valid ceremony, is something more than a betrothal between Christians. It is not a mere contract which the parties can set aside at will, but confers some of the rights & obligations of the married state. If the betrothal is upon certain conditions & the conditions are not fulfilled, the betrothal becomes void. It is then not necessary to execute a "Get" or a bill of divorcement to nullify the effect of the "Kaseph Kiddushim" ceremony.—EZEKIEL *v.* REUBEN (1931), I. L. R. 55 Bom. 803.—**IND.**

PART I. SECT. 6, SUB-SECT. 1.—A.

30 ii. ——.]—MUNN *v.* HAAHTI (1926), 37 B. C. R. 71.—**CAN.**

m i. —— *Agreement to marry after obtaining divorce.*]—L. alleged that in Apr. 1928, she & D. verbally agreed to marry one another as soon as she could obtain a divorce & that D. also agreed to pay the costs of obtaining it. She was then a married woman who had been deserted by her husband for upwards of twenty years. She obtained her decree absolute, but D. then refused to marry her or to pay the costs of the divorce. She brought an action against him for damages for alleged breach of promise, & for special damages to the amount of the costs of the divorce proceedings. The following questions of law were argued before trial : (*a*) whether the alleged promise to marry as soon as pltf. could obtain a divorce was actionable in view of the fact that pltf. was a married woman at the time of the alleged promise ; & (*b*) whether the alleged promise to pay the costs of obtaining the divorce was a valid promise in view of the above facts. It was contended for pltf. that, as in New Zealand the law recognises as a ground for divorce a mere agreement for separation subsisting for three years, the fact that pltf. had been deserted by her husband for upwards of twenty years at the time of the alleged promise was sufficient to relax the rigidity of the rule of public policy :—*Held :* (1) it would be contrary to public policy to allow an action to be maintained on a promise such as was alleged by pltf., as, in principle, there is no distinction between a promise to marry after the wife's death & one to marry after a divorce is obtained, & it is immaterial that no harm resulted or that the possibility of harm is remote ; (2) although in New Zealand the law recognises an agreement for separation subsisting for three years as a ground for divorce, the argument that there should on that ground be a relaxation of the rule of public policy disregards the principle that it is the tendency, not the actual result, of the recognition of contracts such as sued on in this case that affords the ground for the rigidity of the rule ; & on that test pltf. must fail ; (3) the agreement as to the costs of the divorce is covered by the principle applicable to the promise to marry.—LAMBERT *v.* DILLON, [1933] N. Z. L. R. 1059.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 5.

r i. —— ——.]—In an action for breach of promise of marriage, corroboration may be found in circumstances which according to ordinary experience would be accepted as showing that the relationship of engaged persons existed between the parties, but evidence of the most affectionate relations between a man & his mistress is no evidence at all from which the ct. might draw the conclusion that the relationship of engaged persons existed.—SAWDON *v.* DALE (1929), 29 S. R. N. S. W. 573 ; 46 N. S. W. W. N. 196.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

st. *Not facts discovered subsequent to breach.*]—SWYRIPA *v.* VACULCHIK (Alta.), [1926] 3 W. W. R. 795.—**CAN.**

sw. *Immoral consideration.*] Where a promise of marriage was given on the condition that pltf. enter, as she did, into an immoral relationship :—*Held* the breach of the promise did not give rise to a cause of action.—*B. v. B.*, [1936] 3 W. W. R. 76 ; *revsd.* [1937] 1 W. W. R. 363 ; 41 *Man. L. R.* 191 ; *sub nom.* BAKER *v.* BALDERSTON, [1937] 1 D. L. R. 736.—**CAN.**

PART I. SECT. 7, SUB-SECT. 5.

89 ii. —— *Necessity to plead & prove.*]—The fact that in an action for breach of promise of marriage the trial judge found that both parties had repented of their bargain held not to support the plea that the agreement had been rescinded by mutual consent before any breach thereof, there being no suggestion in such finding that they had translated their feelings into the performance of any act or acts which

134. *Add. Annotation :*—**Refd.** De Pret-Roose *v.* De Pret-Roose (1934), 78 Sol. Jo. 914.

140a. ——.]—Where a Jewess went through a form of marriage with a Jew at a Register Office under the mistaken belief that it was merely a ceremony of betrothal, & where conjugal relations had never taken place, the ct. granted her a decree of nullity.—KELLY (OTHERWISE HYAMS) *v.* KELLY (1932), 148 L. T. 143; 49 T. L. R. 99; 76 Sol. Jo. 832.

Add. Annotation :—As to (1) **Refd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

175. After this case add

:e of Marriage Act, 1929 (c. 36).

175a. —— ——.]—CARR (otherwise FOWLER) CARR (1936), 80 Sol. Jo. 57.

193. *After this case add :—*

——.]—*See, now,* Marriage (Prohibited Degrees of Relationship) *Act,* 1931 (c. 31), s. 1 (1).

199. After this case add :—

——.]—*See, now,* Marriage (Prohibited Degrees of Relationship) Act, 1931 (c. 31), s. 1 (

217a. **Husband of mother's deceased sister.**]—RESTALL OTHERWISE LOVE ... TALL (1929), 45 T. L. R. 513; 73 Sol. Jo. 38

219. After this case add :—

——.]—*See, now,* Marriage Act, 1835 (c. 54), s.

SUB-SECT. 4.—REMARRIAGE OF DIVORCED PERSONS.

(Vol. XXVII., p. 43.)

To cross-reference add "*See, also,* Marriage (Prohibited Degrees of Relationship) Act 1931 (c. 31), s. 2."

235. After this case add :-

Usual place of worship of either party.]—Marriage Measure, 1930 (No. 3).

would terminate the contract whether by mutual consent or otherwise. Where in such an action deft. wishes to contend that pltf. was not ready & willing to marry him, he should in his defence plead that specifically as a condition precedent & allege its non-performance; otherwise its due performance is presumed.—LAFAYETTE *v.* VIGNON, [1928] 3 D. L. R. 613; [1928] 2 W. W. R. 506.—**CAN.**

PART I. SECT. 8, SUB-SECT. 2.—A.

1 i. ——.]—In cases of breach of promise of marriage the elements usually considered in estimating the amount of damages are the monetary loss which pltf. has sustained, the financial position of deft., the social position of the parties, & the extent to which the feelings of pltf. have been wounded.—MCCALMAN *v.* THORNE, [1934] N. L. R. 86.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 1.

131 i. *Necessity for voluntary consent.*]—SOBUSH *v.* SOBUSH, [1931] 2 W. W. R. 900.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

142 i. *General rule.*]—KAWALUK *v.* KAWALUK (Sask.), [1927] 3 D. L. R. 493.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

sa. *Marriage between Protestant & Roman Catholic in Quebec.*]—A marriage between a Protestant & a Roman Catholic, by a Protestant minister in Quebec, is, civilly valid.—CARMICHAEL *v.* KENT, [1935] 4 D. L. R. 620.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

166 i. *General rule.*]—For a Christian marriage in India in 1926 the age of consent is twelve for the girl, that being the then state of the law in England.—GOODAL *v.* GOODAL (1932), I. L. R. 55 All. 243.—**IND.**

167 i. *Effect of want of age.*]—Application for decree of nullity where pre-marital intercourse had taken place refused because (1) the jurisdiction of the Supreme Ct. of Ontario to declare marriages null by Marriage Act, R. S. O., 1927, s. 34, is limited to cases where the action is brought "by the person who was at the time of the ceremony under the age of eighteen years"; & (2) a false statement as to age in an application for a marriage licence was not a ground for nullity according to the law of England in 1870, within the meaning of Divorce Act, 1930, declaring the same to be in force in Ontario.—KERR *v.* KERR, [1932] O. R. 601; 4 D. L. R. 289; *affd.,* [1934] 2 D. L. R. 369; S. C. R. 72.—**CAN.**

sd. *Child Marriage Restraint Act, 1929—Restriction to British India.*]—The Child Marriage Restraint Act, 1929, is limited in its operation to British India, & only strikes at marriages contracted in British India.—NARAYAN MUDLAGIN *v.* EMPEROR (1935), I. L. R. 59 Bom. 745.—**IND.**

PART II. SECT. 4, SUB-SECT. 5.

177 i. *Effect of—Marriage void.*]—Where in an action for a decree of nullity of marriage it is proved that at the time of the marriage a person to whom deft. had been legally married was still alive & there is nothing to show that this prior marriage had ever been dissolved, the decree will be granted.—ENGLISH *v.* ENGLISH, [1928] 1 D. L. R. 419; [1928] 1 W. W. R. 14.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.—A.

1 i. ——.]—A marriage between an uncle & his niece cannot be lawfully solemnised in Alberta whether the parties are domiciled in the province or elsewhere.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—**CAN.**

sv. *Aunt by marriage.*]—A marriage between a man & his aunt by marriage is within the prohibited degrees of affinity & is therefore invalid.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.

21[9] iii. ——.]—Where the parties to a marriage are within the prohibited degrees of consanguinity & both parties are aware of the fact prior to the marriage the ct. has jurisdiction to grant a decree of nullity.—C. *v.* C., [1932] N. Z. L. R. 1425.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 1.

sb. *Failure to comply with requirements—Effect of.*]—Although a marriage licence, the publication of banns, or the consent of parents is made by statute a prerequisite to the solemnisation of marriage, the non-fulfilment of said requirement does not render a marriage void or voidable, unless the statute expressly or by clear necessary intendment so provides; & even the fact that the statute prohibits under a penalty other than nullity solemnisation without observance of the requirement does not imply nullity. The fact that a marriage was solemnised without the licence or publication of banns required by sect. 3 of Marriage Act, 1924, does not make the marriage void or voidable.—WYLIE (OTHERWISE PATTON) *v.* PATTON, [1930] 1 W. W. R. 216; 1 D. L. R. 747; 24 S. L. R. 285.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.

t i. —— ——.]—In Dec. 1928, a woman brought an action of declaratory of marriage against the representatives of a man who had died in Sept. of that year, averring that a marriage had been entered into between them by declaration *de praesenti* in Dec. 1922. It was proved that the parties had for many years prior to that date been on terms of intimate friendship, & that deceased had more than once proposed marriage to the pursuer. On Dec. 28, 1922, at an hotel at which the parties were staying, they stated in the presence of three witnesses that they accepted one another as husband & wife. A document attesting the marriage was signed by the parties & by the witnesses. The pursuer & the three witnesses to the document deponed that the interchange of consent was serious, & was intended to constitute marriage, & that no other person was present at the ceremony. On the other hand, a witness B. deponed that she was present during part of the ceremony, & that the proceedings were of the nature of a joke. At the date of this ceremony the deceased was seventy-six & the pursuer was about forty. The pursuer & one witness deponed that the parties occupied the same bedroom after the ceremony. The witness B. gave evidence to the contrary effect.

The parties did not take up residence together. The pursuer continued to carry on her profession as a teacher under her maiden name. Several witnesses deponed that deceased had subsequently introduced the pursuer to them as his wife. Other witnesses gave evidence that deceased had denied that he was married to the pursuer. Deceased died on Sept. 2, 1928, leaving about £20,000. In his will, made two days before his death, he left the pursuer a legacy of £200 under her maiden name :—*Held :* the exchange of serious matrimonial consent had been clearly established by the document & the evidence of the pursuer & the three witnesses thereto, & the subsequent conduct of the parties did not displace this conclusion.—DUNN *v.* DUNN'S TRUSTEES, [1930] S. C. 131.—**SCOT.**

t ii. —— *Subsequent belief by one party that marriage invalid.*]—Mere consent makes marriage, & the validity of the contract is not affected by the fact that one of the parties subsequently forms an erroneous view that it was invalid for lack of some formality.

335. *Add. Annotation:*—Reld. Nachimson *v.* Nachimson, [1930] P. 217.

341. *Add. Annotation:*—Follod. R. *v.* Lamb (1934), 150 L. T. 519.

342. *Add. Annotation:*—*As to* (1) Follod. R. *v.* Lamb (1934), 150 L. T. 519.

342a. —— —— ——.]—On a prosecution for bigamy it was proved that prisoner's first marriage had taken place in a register office by certificate after notice & that prisoner, with the knowledge & consent of the woman, gave the notice in a false name; & that subsequently the prisoner went through a form of marriage with another woman:—*Held:* the giving of the notice in a false name, with the knowledge & consent of the other party, did not prevent the notice from being "due notice" within Marriage Act, 1836 (c. 85), s. 4. The first marriage was therefore valid, & the prisoner could properly be convicted of bigamy.—R. *v.* LAMB (1934), 150 L. T. 519; 50 T. L. R. 310; 78 Sol. Jo. 279; 24 Cr. App. Rep. 145; 30 Cox, C. C. 91, C. C. A.

347. *Add. Annotation:*—*As to* (1) Consd. Lamb (1934), 150 L. T. 519.

446. *Add. Annotation:*—Reld. Nachimson Nachimson, [1930] P. 217.

453a. —— ——.]—The detail & strictness of proof of a marriage required in a criminal prosecution for bigamy is of a totally different standard from that required before a magistrate who is dealing with the question of the maintenance of a wife alleged to have been deserted. In civil cases, where there is evidence of the fact of a ceremony of marriage, followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary, even though it may be necessary to presume the grant of a special licence. The burden of impeaching the factum of a marriage & the presumption of law *semper præsumitur pro matrimonio*, lies upon the impeaching party.

Statement in Halsbury's "The Laws of England," Vol. 16, Husband & Wife, Part II.,

—COURTIN *v.* ELDER, [1930] S. C. 68.—SCOT.

PART II. SECT. 7, SUB-SECT. 1.—E. (b) ii.

sd. *Rule in India.*]—The English law that non-publication of banns makes the marriage void only if lack of publication is within the knowledge of both parties is no guide to the Indian cts., for in the Indian Christian Marriage Act there is nothing equivalent to the wording in sect. 22 of the English Marriage Act.—JONES *v.* TITLI (1932), I. L. R. 55 All. 185.—IND.

PART II. SECT. 7, SUB-SECT. 3.—C. (a).

sf. *To widow—Presumption of death of first husband—Form of declaration.*]—*Re* SHOOK, [1935] 3 W. W. R. 115.—CAN.

PART II. SECT. 7, SUB-SECT. 3.—C. (b).

c i. —— *Parties within prohibited degrees.*]—Where it is disclosed to an issuer of marriage licences that there is a legal impediment to the proposed marriage by reason of the relationship of the appcts. by consanguinity he acts properly in refusing to issue the licence.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—CAN.

PART II. SECT. 7, SUB-SECT. 5.—G. (a).

g i. —— *Formal consent filed after marriage—Verbal consent given before.*]—LE ARROWSMITH *v.* LE ARROWSMITH, [1931] 2 D. L. R. 608; 1 W. W. R. 616.—CAN.

sk. *When marriage invalidated by.*]—Sect. 52*a* of Marriage Act, 1933, which empowers the ct. to declare that a form of marriage gone through by a minor without the consent required by the Act & which has not been consummated was not a valid marriage, does not apply to a marriage solemnised before the passing of the amendment. *Qu.:* whether if said amendment is to be construed so as to make it possible for persons of marriageable age who deliberately went through such a form of marriage, having obtained the licence on false statutory declarations as to age, to have it declared a nullity on their own testimony that the marriage was not consummated, does not the amendment invade the Federal field of jurisdiction.—GRAHAM (OTHERWISE BRUCE) *v.* GRAHAM, [1937] 2 W. W. R. 444.—CAN.

PART II. SECT. 8, SUB-SECT. 1.—A.

so. *Person other than contracting parties.*]—Marriage Act, R. S. M., 1913, contemplates that the official or person solemnising a marriage must be a person distinct from either of the contracting parties. Sect. 30 of said Act was never intended to validate a ceremony performed by one of the contracting parties. *Semble:* the words "other person" as used in said sect. refer to those persons other than ministers & clergymen who are named in sect. 2 of said Act but who are not qualified within the language used in the various sub-sects. thereof.

Deft. after obtaining from an issuer of marriage licences a licence for the marriage of himself & pltf. handed it to her, saying, "You married woman, I your husband, you my wife," & informed her (a foreigner, who had recently come to Canada) that it was not necessary in Manitoba to have a marriage solemnised by a minister or "the church." The parties regarded themselves as legally married, & lived together as husband & wife for fifteen years. Pltf. filed a petition praying for a decree that she & deft. had been legally married & a declaration that she was his lawful wife. Resp. (deft. herein) filed an "answer" & the matter was treated as a matrimonial cause:—*Held:* Divorce & Matrimonial Causes Act, 1857, & the amending Acts in force in Manitoba, did not give the ct. jurisdiction to grant the relief asked, but an order was made on the hearing, counsel for resp. agreeing thereto, converting the proceedings into an ordinary action in the ct. & the same was then heard, whereupon it was held that the parties were not legally married.—STOCKHOLDER *v.* STOCKHOLDER, [1934] 1 W. W. R. 365; 42 Man. L. R. 85.—CAN.

PART II. SECT. 8, SUB-SECT. 2.—A.

sa. *Marriage of Doukhobortsi.*]—CHERNENKOFF *v.* CHERNENKOFF, [1930] 2 W. W. R. 165; 3 D. L. R. 1001.—CAN.

PART II. SECT. 8, SUB-SECT. 4.

sb. *Under Indian Christian Marriage Act, 1872—Between Roman Catholics.*]—A civil marriage contracted before a registrar in accordance with the provisions of Indian Christian Marriage Act, 1872, by persons professing the Roman Catholic faith is valid & legal. That Act deals with the forms of solemnisation of marriages of all Christians in India, including Roman Catholics.—SALDANHA *v.* SALDANHA 1929), I. L. R. 54 Bom. 288.—IND.

PART II. SECT. 9.

sc. *Marriage in foreign State—Celebration by person with power to do so.*]—MELLEN *v.* DOBENKO, [1927] 4 D. L. R. 1128; 61 O. L. R. 340.—CAN.

PART II. SECT. 10.

b i. —— —— *Marriage Act, R. S. A.*, 1922 (*c.* 213), *s.* 20.]—The above sect. cannot apply to an alleged marriage of which there was no solemnisation whatever, other than the purchase of two wedding rings from an issuer of marriage licences & the placing of one of them on a finger of each of the parties, who did not belong to any sect or nationality which recognises this proceeding as a valid marriage ceremony.—PETSCHL *v.* BUCHI (Alta.), [1926] 4 D. L. R. 1185; [1926] 3 W. W. R. 598.—CAN.

PART II. SECT. 11, SUB-SECT. 1.

e i. —— ——.]—The doctrine, that a person who goes through a form of marriage must be presumed to have acted innocently & legally & that, until this presumption is rebutted, it must prevail over the presumption that a first husband or wife whose death was not proved, but who had not been heard of for over seven years before the second marriage, was alive at the time thereof, can have no application where it is found that the person relying on such doctrine did not act in innocent good faith in going through the form of a second marriage.—IRWIN *v.* IRWIN (Man.), [1926] 2 D. L. R. 794; [1926] 1 W. W. R. 849.—CAN.

e ii. —— *Compliance with Marriage Act, s.* 21 (*b*).]—MCGINN *v.* ELLERTON, ELLERTON *v.* ELLERTON, [1925] 2 D. L. R. 1136; [1925] 1 W. W. R. 962.—CAN.

e iii. ——.]—A marriage *primâ facie* valid affords a strong presumption that there was no legal impediment thereto, & the presumption is not to be broken in upon by a mere balance of probability; the evidence for the purpose of repelling it must be strong, distinct & satisfactory. In an action attacking the validity of K.'s second marriage & seeking a declaration that the six children born thereof should be excluded from participating in an estate bequeathed to their father & lawful children, upon the ground that at the time of the said marriage K.'s first wife was living:—*Held:* the only

Marriage, para. 604 [2nd Ed., para. 932] *approved.*—SPIVACK *v.* SPIVACK (1930), 99 L. J. P. 52; 142 L. T. 492; 94 J. P. 91; 46 T. L. R. 243; 74 Sol. Jo. 155; 28 L. G. R. 188; 29 Cox, C. C. 91.

508a. —— ——.]—Evidence by a witness of reputation of marriage is admissible so long as it appears to be of a general reputation; so soon as it appears, however, upon cross-examination or otherwise, that the witness is speaking from information given to him by some individual, even of the existence of a general reputation, such evidence is merely hearsay, &, as such, inadmissible.—SHEDDEN *v.* A.-G. (1860), 2 Sw. & Tr. 170; 30 L. J. P. M. & A. 217; 3 L. T. 592; 6 Jur. N. S. 1163; 9 W. R. 285; *affd., sub nom.* SHEDDEN *v.* PATRICK & A.-G. (1869), L. R. 1 Sc. & Div. 470, H. L.

510. *Add. Annotation:*—**Refd.** Skipp *v.* Kelly *(1926), 42 T. L. R. 258.*

536. *Add. Annotation:*—**Apld.** *Spivack v. Spivack (1930), 99 L. J. P. 52.*

. ——.]—*T. B. lived in Rockhampton from 1860–1870 with a certain lady; they held themselves out to be husband & wife, & they & their children were received in local society, which would not have been the case had there been any suggestion of irregularity. T. B. at his death was one of the most prominent solrs. in Rockhampton. The certificates of the children recorded marriage of the parents as having place at Ballan, Victoria, on Jan. 10, but no such marriage was registered although registration had there been pulsory for some years. In 1873, T father, who lived in England, execu deed covenanting to make certain pay to the children or their mother & this contained these words: "the foll reputed children of his deceased son," " which children are now in England their mother E. M., otherwise E. B Held:* (1) the absence of any entry i register of marriages was not sufficie rebut the presumption of marriage of T (2) the words in the deed of 1873 insufficient to rebut the presumption; (presumption of marriage can be rebutted by evidence of the most cogent kind, & children in question ought to be declar be the lawful children of T. B. & his wife E. B.—*Re* TAPLIN, WATSON *v.* TATE, [1937] 3 All E. R. 105; 81 Sol. Jo. 526.

568a. ——.]—SPIVACK *v.* SPIVACK, No. 453a, *ante.*

580a. ——.]—RALSTON *v.* RALSTON, No. 2293a, *post.*

583. *Add. Annotation:*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

Part III.—Personal Rights and Obligations arising from Marriage.

595a. —— **Bankruptcy of husband.**]—The bkpcy. of a husband who has entered into a separation deed is an answer to any claim for the payment of agreed sums under the deed, but does not convert his wife's agreement to live apart with an allowance into an agreement to live apart without maintenance. Her right to that maintenance is

possible inference from the proved facts was that the first wife was dead when the disputed marriage was contracted & therefore the children thereof were legitimate & entitled to participate in the said estate. Also, as the result of the action had settled the question of the legitimacy of K.'s children by his second marriage, thus enabling the Public Trustee to distribute a fund that had been held by him pending such settlement, pltf. should be awarded costs.—KEMPTON *v.* PUBLIC TRUSTEE, [1932] N. Z. L. R. 1380; G. L. R. 647.—**N.Z.**

e iv. —— *Compliance with necessary ceremonies.*]—In an action under Families' Compensation Act, R.S.B.C., 1924, for the benefit of the alleged wife & children of the deceased, a Chinese, deceased & the alleged wife were alleged to have been married in China where, apparently, they were both domiciled at the time. There was no proof of the marriage by record or by anyone present thereat, but evidence was given as to the intention of the two to marry & of a betrothal contract, & there was sufficient to show that they cohabited together in China after the alleged marriage & were there regarded by their friends, neighbours & relatives as man & wife:—*Held:* in the absence of proof, as a fact, as to what, if any, presumption would be drawn under Chinese law from such cohabitation, the ct. could not presume from said evidence that a valid marriage took place.—LEONG SOW NOM *v.* CHIN YEE YOU, [1934] 3 W. W. R. 686; 49 B. C. R. 244.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—B. (a).

478 i. *Many years.*]—P., a Natal native, from about 1897 until just before her death in 1916 cohabited continuously with A., a half-caste woman. When the cohabitation began A. had a husband, who was still living. There was evidence to show that P. & A. had both said before 1902 that they were not married, & there was no evidence of any registration of a marriage between P. & A. There was some evidence that P. & A. were reputed to be man & wife since the birth of their five children, all of whom had been brought up & educated by P.'s brother C., who had treated them as his nephews & nieces:—*Held:* the evidence adduced was not strong enough to rebut the presumption of marriage arising from the lengthy cohabitation of P. & A.—NYOKANA *v.* NYOKANA (1925), 46 N. L. R. 227.—**S. AF.**

PART II. SECT. 11, SUB-SECT. 2.—B. (c).

521 iv. —— —— ——.]—R. *v.* PROUD, [1926] 3 D. L. R. 664; [1926] S. C. R. 599.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—E.

553 ii. ——.]—DAHLBERG *v.* SWANSON, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—**CAN.**

PART II. SECT. 13.

580 i. *General rule.*]—The ct. in an ordinary action can make a declaration as to the validity of a marriage.—STOCKHOLDER *v.* STOCKHOLDER, [1934] 1 W. W. R. 365; 42 Man. L. R. 85.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

k (p. 76) i. —— —— —— —— *Effect of repeal of Judicature Act, 1922, pendente lite.*]—An alimony action begun before the coming into force of Domestic Relations Act, 1927, c. 5, s. 75, is governed as to pltf.'s rights & deft.'s liability by Jud. Act, R. S. A. 1922, c. 72, s. 21, notwithstanding its repeal by said sect. 75.—CLARKE *v.* CLARKE, [1928] 1 D. L. R. 249; [1927] 3 W. W. R. 728.—**CAN.**

s (p. 76) i. —— —— —— —— *Provoked by wife's misconduct.*]—WEITZEL *v.* WEITZEL, [1928] 3 D. L. R. 261.—**CAN.**

m (p. 77) i. —— —— —— *Invalidity of marriage.*]—*Held:* pltf. was not entitled to succeed on an alternative claim for a *quantum meruit* for her services as deft.'s housekeeper.—HOLMES *v.* HOLMES (Alta.), [1927] 2 D. L. R. 979; [1927] 2 W. W. R. 253.—**CAN.**

ff i. —— —— *Liability for interim disbursements.*]—The Supreme Ct. of Alberta has the power in an alimony action to grant the wife an order for payment of interim disbursements.—DREWRY *v.* DREWRY, [1928] 3 W. W. R. 460.—**CAN.**

hh i. —— —— —— *Husband purposely denuding himself of his property.*]—LIGHTHEART *v.* LIGHTHEART, [1927]

not in contract but is an incident of matrimonial status at common law. An agreement under a separation deed to receive an allowance merely suspends, but does not annul, that right, which revives as soon as the agreement is terminated by bkpcy., notwithstanding the receipt of a dividend. The dividend is not a transaction between husband & wife, but an incident in the bkpcy., & its receipt does not operate as a new bargain with the husband compounding the common law right of the wife The separation agreement thus put an end to does not debar the wife from alleging the wilful neglect of the husband to provide reasonable maintenance for her within Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925.—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, [1928] P. 113; 97 L. J. P. 65; 138 L. T. 552; 92 J. P. 32; 44 T. L. R. 274; 72 Sol. Jo. 69; 26 L. G. R. 191.

Annotation :—**Refd.** Markovitch *v.* Markovitch (1934), 151 L. T. 139.

601. *Add. Annotations :*—**Refd.** Grubb *v.* Grubb (1934), 150 L. T. 420; Markovitch *v.* Markovitch (1934), 151 L. T. 139.

611. *Add. Annotations :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

640. *Add. Annotation :*—*As to* (1) **Folld.** Place *v.* Searle, [1932] 2 K. B. 497.

641. *Add. Annotation :*—**Consd.** Place *v.* Searle, [1932] 2 K. B. 497.

642. *Add. Annotation :*—**Consd.** Place *v.* Searle, B. 497.

643. *Add. Annotation :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428.

643a. —— Whether necessary to prove wife's will overborne by defendant.]—For pltf. to succeed he must show that his wife did not elect to leave him, but was overborne by a stronger will (DARLING, J.).—SANDERSON *v.* HUDSON (1923), *Times*, Jan. 29, 1923.

Annotation :—**Overd.** Place *v.* Searle (1932), 101 L. J. K. B. 465.

643b. —— ——.]—A wife owes the duty to her husband to reside & consort with him, & any one who, without justification, procures, entices or persuades her to violate this duty commits a wrong towards the husband for which he is entitled to recover damages. In order to succeed in such an action the husband need not prove that the will of the wife was overborne by the stronger will of the deft.—PLACE *v.* SEARLE, [1932] 2 K. B. 497; 101 L. J. K. B. 465; 147 L. T. 188; 48 T. L. R. 428, C. A.

Annotations :—**Consd.** Newton *v.* Hardy (1933), 149 L. T. 165; **Refd.** Menon *v.* Menon & Warth, [1936] 1 All E. R. 900.

643c. Postponement of hearing—Until after hearing of divorce proceedings.]—PACHECO DE CESPEDES *v.* MCCANDLISH (1935), 79 Sol. Jo. 964, C. A.

644. *Add. Annotation :*—*As to* (1) **Consd.** Newton *v.* Hardy (1933), 149 L. T. 165.

645. *Add. Annotations :*—**Consd.** Place *v.* Searle, [illegible]

645a. —— ——.]—(1) A married woman has a legal right to the *consortium* of her husband & can recover damages from any one who violates that right. In order to recover such damages she must prove that her husband has been enticed, procured, or persuaded by

1 D. L. R. 386; [1927] 1 W. W. R. 393.—**CAN.**

hh ii. —— —— —— *Alimony provided for in prior separation agreement—Power of court to increase.*]—KAWIN *v.* KAWIN, [1927] 3 D. L. R. 383; [1927] 1 W. W. R. 690; 21 Sask. L. R. 415.—**CAN.**

rr i. —— —— *Necessity for written demand for cohabitation & restitution of conjugal rights.*]—*Held :* pltf. not entitled to decree for alimony, because she had not before action made a written demand for cohabitation & restitution of conjugal rights.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

rr ii. —— —— ——.]—FREEMAN *v.* FREEMAN, [1935] 1 W. W. R. 477; 2 D. L. R. 809; 49 B. C. R. 554.—**CAN.**

rr iii. —— —— *Variation—Jurisdiction of Supreme Court of Nova Scotia.*]—MCLEOD *v.* MCLEOD, [1931] 2 D. L. R. 364; 2 M. P. R. 559; *revsg.*, [1930] 3 D. L. R. 157.—**CAN.**

rr iv. —— —— *Effect of decree as res judicata—Subsequent action for annulment.*]—THOMPSON *v.* CRAWFORD, [1932] 2 D. L. R. 466; O. R. 281; *affd.*, [1932] 4 D. L. R. 206.—**CAN.**

s (p. 78) **i.** —— ——.]—*Semble :* there is no common law rule that a husband is bound to maintain his wife while she is incarcerated in a lunatic asylum without his consent.—A.-G. *v.* RAND (1931), S. R. N. S. W. 568; 48 N. S. W. W. N. 154.—**AUS.**

PART III. SECT. 1, SUB-SECT. 4.

d i. ——.]—The duty of a husband to support his wife is not limited to the providing of such "necessaries" as food & clothing but includes also the duty to provide shelter; & although the wife is living in a house which is the family home & although it is owned by her, she may, nevertheless, be in necessitous circumstances within the meaning of sect. 242 (3) of Criminal Code.—R. *v.* HARENSLAK, [1937] 1 W. W. R. 1; 1 D. L. R. 337; 67 C. C. C. 277; 6 L. Jo. 259.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A.

sm. *Court cannot order wife to live apart from husband.*]—A judge awarded a wife alimony & also expressed the opinion that it would be better for the parties to live apart for a time. The formal judgment contained a clause adjudging that pltf. vacate the premises :—*Held :* the ct. had no power to order the wife to leave her husband's roof; &, even if the jurisdiction existed, it would not be exercised at the instance of the wife against the protest of the husband.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—A. (b).

a i. —— ——.]—In an action by a husband against his wife's parents for unlawfully harbouring & detaining her against his wishes :—*Held :* where the harbouring & enticing could only be proved against the father, the mother could not be held liable.—MCBAY *v.* MERRITT, [1936] 4 D. L. R. 319; 11 M. P. R. 20.—**CAN.**

k i. ——.]—The enticing away of a wife by a third person is an infringement of the absolute right of the husband to the benefit of the society & services of the wife, & the husband can maintain a suit for damages for such actionable wrong. It is immaterial that at that time the husband may have been away at another town; it is not the mere depriving of a husband for a day or two of the society of wife which gives rise to the action, but the fact that deft. has acted in a way towards the wife of pltf. which is an infringement of pltf.'s right under the contract of marriage. The case of a wife, therefore, stands on a different footing from that of seduction of a daughter or a servant.—SOBHA RAM *v.* TIKA RAM (1936), I. L. R. 58; All. 903.—**IND.**

PART III. SECT. 2, SUB-SECT. 3.—B.

645 ii. —— ——.]—The statement of claim in an action by a wife alleged that deft. had induced pltf.'s husband to depart & remain absent from the home, whereby pltf. had been deprived of the society comfort & protection of her husband & partially of his support : —*Held :* the statement of claim was bad in law & disclosed no cause of action.—WRIGHT *v.* CEDZICH, [1929] V. L. R. 117; [1929] Argus L. R. 102; *affd.*, 43 C. L. R. 493; (1930), V. L. R. 141; 3 A. L. J. 437; (1930), Argus L. R. 105.—**AUS.**

l i. ——.]—In an action by a wife against her husband's father for alienating the affections of her husband, she alleged that she was prevented from the companionship of her husband & infant daughter by deft.'s conduct in keeping her husband away from her, so that she was compelled to support herself as best she could. There was no allegation of making defamatory statements by deft., & there was no allegation of malice : —*Held :* no reasonable cause of action was shown. [illegible] [1928] 3

l ii. ——.]—In Ontario an action by a married woman to recover damages against a third person for alienation of her husband's affections does not lie. —BARKS *v.* DONE, [1934] 1 D. L. R. 789.—**CAN.**

the deft. to cease from cohabiting & consorting with her. Where, therefore, a pltf. proved that deft. had committed adultery with her husband, but failed to prove that deft. had induced him to cease from cohabiting & consorting with her, the action failed.

(2) *Qu.:* whether the deft.'s husband can be made liable in such an action as being in law responsible for his wife's torts.—NEWTON *v.* HARDY (1933), 149 L. T. 165; 49 T. L. R. 522; 77 Sol. Jo. 523.

647. *Add. Annotation:*—**Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

Part IV.—Effect of Marriage with Regard to Wife's Property.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), ss. 1, 2.

656. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

Part V.—Effect of Divorce or Separation with Regard to Wife's Property.

753. *Add. Annotation:*—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

755a. Effect of remarriage.]—In 1916 a post-nuptial settlement by P. was executed with his trustees whereby it was agreed among other things that they should hold two-thirds of the settled fund upon trust to pay the income to the wife for her life. If she survived P. & married again she was to have the income of one-fifth for her life of the two-thirds during the subsequent coverture. Power to appoint the two-thirds was given to her by deed or will for the benefit of her children by the settlor, such power to cease

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PART IV. SECT. 1.

n 1. —— *Acquired & disposed of through husband—Belong to husband.*]—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband:—*Held:* they did not belong to the wife as against the husband's creditors.—JOHN DEERE PLOW CO. *v.* BOWEN, [1925] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—**CAN.**

sb. *Legacy to wife—Death before reduction into possession—Right of husband as representative of wife.*]—If a legacy is bequeathed to a married woman, who dies before any act done by husband to reduce it into possession, he can only maintain an action for it as the representative of his wife, though he may be beneficially entitled to it.—COLLINS *v.* CAHIR (1850), 7 N. B. R. (2 All.) 103.—**CAN.**

sc. *Husband not constituted agent of wife by marriage.*]—A husband is not *primâ facie* an agent for his wife by reason of their relationship. The *onus* is on the person alleging such agency to prove that he is her agent.—MILLARD *v.* BEVAN LUMBER & SHINGLE CO., LTD., [1928] 2 D. L. R. 367; 39 B. C. R. 430.—**CAN.**

sd. *Division of property of husband & wife—Married Women's Property Act, R. S. B. C.,* 1924.]—WARD *v.* WARD, [1932] 3 D. L. R. 774; 45 B. C. R. 248.—**CAN.**

PART IV. SECT. 2.

sf. *Reversionary interest.*]—STANDARD BANK *v.* BOULTON (1878), 3 A. R. 93.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.

sg. *Not business carried on in partnership with husband.*]—COHN *v.* CANARY (B. C.), [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *revsg.,* [1925] 3 D. L. R. 223; [1925] 2 W. W. R. 563.—**CAN.**

sh. *Crops grown by wife—On husband's land—Strict proof necessary.*]—ANDERSON *v.* JOHN DEERE PLOW CO., LTD. (Sask.), [1926] 4 D. L. R. 255; [1926] 2 W. W. R. 667.— **CAN.**

sj. —— *On wife's land—Burden of proof.*]—BANQUE CANADIENNE NATIONALE *v.* TENCHA (Can.), [1927] 4 D. L. R. 665.—**CAN.**

sk. —— ——.]—In determining as between an execution creditor & the wife of the debtor whether the crops grown on certain land were the property of the debtor or his wife, held that the effect of the judgment in *Banque Canadienne Nationale* v. *Tencha,* is that the issue must be decided on the answer to the question, whose land was it that produced the crops, & not on the answer to the question, whose business was the farming operations which produced them.—MAYER (F.) BOOT & SHOE CO. *v.* MOELLENDORF, [1930] 3 W. W. R. 58; 4 D. L. R. 506; [1931] 1 D. L. R. 360; [1930] 3 W. W. R. 311; *revsd.,* 25 Alta. L. R. 76.—**CAN.**

sl. —— ——.]—The crop of grain in question herein grown on a farm leased by an execution debtor's wife & on which the farm work was done by the wife & the debtor with the assistance of grown-up children:—*Held:* to have been raised by the wife in carrying on the business of farming separately from her husband, &, therefore, to be her property. The fact that the lease had previously been taken by the husband & that he & the wife & the children agreed that, in order to protect themselves, it should thereafter be taken in the name of the wife & that he should work for her, their real intention being to run the farm for the wife & through her for the family, & there being no attempt to conceal or dispose of any assets of the husband to evade their seizure, was not to constitute an illegal arrangement in fraud of his creditors, even though its effect, & possibly one of its purposes, was to defeat them.—UNIVERSAL MOTORS, LTD. *v.* WURCH, [1933] 1 W. W. R. 696; 3 D. L. R. 329; 41 Man. L. R. 188.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

so. *Conveyance to husband & wife—Creates tenancy in common.*]—At common law, under a conveyance of land to husband & wife, they took an estate by entireties; but the effect of Married Women's Property Act is to enable the wife to take as though she were a *feme sole* & so the effect of the marital relationship is ended so far as real property is concerned. Under Conveyancing & Law of Property Act, R. S. O., 1927, c. 137, s. 12, they now take as tenants in common.—SPRING *v.* KINNEE, [1928] 4 D. L. R. 723; 62 O. L. R. 562.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 3.—A.

730 i. *General rule.*]—Moneys received by a married woman, while living with her husband, out of the proceeds of his business or saved by her out of an allowance given her by him for housekeeping expenses, dress or the like, belong to the husband though they may be invested in her own name, unless it appears that he intended that any such savings should belong to her as her separate property as a gift from him.—ASHTON *v.* ASHTON, [1934] 3 W. W. R. 63.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

s. *Right of wife to jus relictæ—How calculated—Whether husband's life-rent included.*]—Resp. obtained a Scottish divorce from her husband, appt., who at the date of the divorce was entitled, under his father's trust disposition & settlement, among other movable estate, to a life-rent interest in a share of the trust estate. In an action by resp. against appt. to establish her right to her legal provision of *jus relictæ,* which, under Scots law, the dissolution of the marriage conferred on her:—*Held:* appt.'s life-rent interest ought to be taken into account in determining the amount of the *jus relictæ.*—SELSDON *v.* SELSDON (1934), 50 T. L. R. 469; 78 Sol. Jo. 471, H. L.—**SCOT.**

on remarriage except as to the one-fifth, to the income of which she would still be entitled & without prejudice to any appointment she might previously have made otherwise than by precluding her from exercising on remarriage any power of revocation reserved to her so far as regarded that part of the two-thirds in which her interest then ceased. If she survived & remarried, the power to appoint new trustees conferred on her by the deed was to cease. There were four children of the marriage, all born before the execution of the deed. In 1919 the marriage was dissolved, & by a deed poll in 1922 the wife appointed the two-thirds to the four children of the marriage, reserving a power of revocation & new appointment. Shortly after she remarried. On a summons taken out by the trustees asking whether as from the remarriage they should pay her the income of the two-thirds or of one-fifth thereof, whether she was entitled to exercise the power of revocation & new appointment reserved by the deed poll, & whether she still retained the power to appoint new trustees: —*Held:* except in so far as the wife's power of appointment in future was concerned, her position under the deed was wholly unaffected by the remarriage she had contracted. —*Re* PILKINGTON'S SETTLEMENT, PILKINGTON *v.* WRIGHT (1923), 129 L. T. 629; 67 Sol. Jo. 679.

Annotation:—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

755b. —— Trust for wife after husband's death "until she shall marry again"—Not applicable to remarriage during first husband's lifetime.]—By a marriage settlement property therein called "the husband's fund" was assigned to the trustees on trusts which provided that from & after the husband's death the trustees should pay the income of the husband's fund to the wife, if she should survive the husband, "during her life or until she shall marry again. . . ." The settlement provided also that from & after the husband's death & the wife's death or re-marriage the trustees should stand possessed of the husband's fund & the income of it in trust for the issue of the marriage as the husband & wife should by deed jointly appoint, or in default of & subject to any such appointment as the survivor of them should by deed or will appoint, & in default of & subject to any such appointment by the survivor in trust for the child or children of the marriage as therein mentioned. The marriage was dissolved in 1916 upon the wife's petition. The wife married again in 1930. In 1932 the husband died:—*Held:* the words "until she shall marry again" must be construed to mean a marriage entered into by the wife after the husband's death, & the wife was therefore entitled to the income of the husband's fund (until she should marry again) & could still exercise the power of appointment over the husband's fund given to her as survivor of the husband & herself.—*Re* MONRO'S SETTLEMENT, MONRO *v.* HILL, [1933] Ch. 82; 102 L. J. Ch. 89; 148 L. T. 279.

757a. Husband entitled to income of trust fund during separation.]—DUNCAN *v.* CAMPBELL (1842), 12 Sim. 616; 6 Jur. 677; 59 E. R. 1269.

Annotation:—**Apld.** *Re* Barnard, Barnard *v.* White (1887), 56 L. T. 9.

774. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

786. *Add. Annotation:*—**Refd.** A.-G. for Alberta A. C. 444.

787. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

Part VI.—Disposition of Property.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), ss. 1, 2.

799. *Add. Annotation:*—**Refd.** *Re* Horne's Settlement, Coutts & Co. *v.* Duchessa Dusmet de Smours, [1932] 2 Ch. 180.

807a. Accrued arrears of annuity—Payment of dividend in bankruptcy.]—A marriage having been dissolved by a decree absolute in 1925, the wife remarried shortly afterwards. Immediately before the remarriage the former husband executed a settlement on his former wife in consideration of her release of any claim to alimony or maintenance from him. By the settlement the husband covenanted with his former wife & as a separate covenant with the trustees to pay her, during their joint lives, an annuity of such an amount as after deduction of income tax would yield the clear sum of £3,000 a year for her separate use without power of anticipation whilst under coverture. In 1929 the former husband was adjudicated bkpt. Pltfs., as trustees of the settlement, & deft., the former wife, jointly proved in the bkpcy. for a large sum made up of several items, of which £41,723 represented the capital value of the annuity of £3,000. The proof was admitted, & in Dec. 1931, a dividend of 6*d.* in the pound was paid to pltfs. This amounted to £2,322, of which £1,043 1*s.* 6*d.* was the proportion attributable to the annuity. On a summons taken out by pltfs. to determine the question whether they ought to pay to deft. the dividend so far as it was attributable to the annuity, notwithstanding the restraint upon anticipation, or whether they ought to invest the same, as being capital, in purchasing an annuity for the life of deft.:—*Held:* the trustees could properly pay the whole dividend to deft.—*Re* HORNE'S SETTLEMENT, COUTTS & CO. *v.* DUSMET DE SMOURS (DUCHESSA), [1932] 2 Ch. 180; 101 L. J. Ch. 359; 147 L. T. 492.

809. *Add. Annotation:*—**Refd.** Sutherland *v.* German Property Administrator (1933), 149 L. T. 47.

815. *Add. Annotation:*—**Apld.** *Re* Horne's Settlement, Coutts & Co. *v.* Duchessa Dusmet de Smours, [1932] 2 Ch. 180.

827. *Add. Annotation:*—**Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

906. *Add. Citations:*—*revsd. sub nom.* PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92

L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.

965. *Add. Annotation :*—**Apld.** Townshend *v.* Child *(1932), 48 T. L. R. 575.*

973. *Add. Annotation :*—**Refd.** MacCarthy *v.* Agard, *[1933] 2 K. B. 417.*

986. *Add. Annotation :—Generally,* **Refd.** Capron *v.* Capron, [1927] P. 243.

1007. *Add. Annotation :*—**Refd.** Bosworthick *v.* Bosworthick, [1926] P. 159.

1036. *Add. Annotation :*—**Refd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253.

1053a. —— **Cause of action arising before marriage —Liability for costs arising after marriage.**]—A widow commenced an action against a professional man, from whom she claimed damages for alleged negligence. Before the trial of the action she remarried. At the trial judgment was given for deft. with costs :—*Held :* (1) the liability to pay costs was one wholly arising at a date when pltf. was a married woman, & was therefore payable out of her separate estate & not otherwise; (2) there was jurisdiction under Married Women's Property Act, 1893 (c. 63), s. 2, to order & enforce the payment of costs out of that separate estate whether subject to a restraint on anticipation or not; (3) such an order ought to be made having regard to the circumstances in which the action had been commenced & prosecuted.—TOWNSHEND *v.* CHILD, [1933] 1 K. B. 181; 102 L. J. K. B. 685; 147 L. T. 278; 48 T. L. R. 575.

1054. *Add. Annotation :—As to* (1) **Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1057. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1063. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1066. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1067. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1079. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1097. *Add. Annotation :*— **Refd.** R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

1106. *Add. Annotation :*—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283.

1162. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

PART VI. SECT. 1, SUB-SECT. 5.—B. (a) i.

911 i. *Assignment inoperative—Transfer to pay husband's debts.*]—RODRIGUE *v.* DOSTIE & VACHON, [1927] 4 D. L. R. 1139; [1927] S. C. R. 563.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—C. (a).

951 v. —— ——.]—UNION BANK *v.* BENEDICT, [1925] 4 D. L. R. 1057.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

d i. —— —— *Not on conveyance of equitable estate.*]—ADAMS *v.* LOOMIS (1875), 22 Gr. 99.—**CAN.**

e i. —— ——.]—HARTLEY *v.* MAYCOCK (1897), 28 O. R. 508.—**CAN.**

k i. ——.]—ELLIOTT *v.* BROWN (1884), 11 A. R. 228.—**CAN.**

k ii. —— *Sale as spinster—Conveyance not impeachable on ground of non-compliance with statutory formalities.*]—GRAHAM *v.* MENCILLY (1869), 16 Gr. 561.—**CAN.**

so. *Pledge of wife's shares as security for husband—Absence of independent advice—Onus of proof of duress.*]—In an action by a married woman against a bank to set aside, on the ground of the undue influence of her husband & of misrepresentation, a guarantee (with pledge of securities) given by her for the indebtedness of a co. in which her husband was the principal shareholder, there is not an onus upon the bank to prove that she had independent advice; in the absence of substantive proof of the undue influence (particulars of which should be pleaded) the action fails so far as it is based upon that ground.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 78 Sol. Jo. 471, P. C.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

1190 i. *Purchase out of wife's income —Land conveyed in own name—Resulting trust.*]—A resulting trust held to have arisen in favour of a wife whose money, it was found, had been used in the purchase of land the title to which was taken in the name of her husband.—MORRIS *v.* MORRIS & FRENCH, [1931] 3 W. W. R. 427.—**CAN.**

o i. *Conveyance by husband alone—Effect.*]—WALLIS *v.* BURTON (1855), 5 Gr. 352.—**CAN.**

o ii. —— ——.]—*Held :* an effectual transfer of his marital rights in the land conveyed.—ALLAN *v.* LEVESCONTE, (1857), 15 U. C. R. 9.—**CAN.**

o iii. —— ——.]—*Held :* a deed of gift executed by a Burmese Buddhist husband without his wife's consent of part of the joint property of the marriage is wholly void & conveys no title to the donee in respect of the property which it purports to convey.—U. PO. U. *v.* MATOK GYI (1929), I. L. R. 7 Ran. 374.—**IND.**

si. *Property used & maintained by husband—No presumption of gift by wife.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808; [1927] 3 W. W. R. 429.—**CAN.**

l i. —— ——.]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

l ii. —— —— *Wife not examined—Certificate of examination fraudulently signed.*]—Title set aside, subject to the rights of an innocent purchaser from the transferee to obtain the land on the terms of his agreement with the transferee.—FROSTAD *v.* LIBEK, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—**CAN.**

l iii. —— ——.]—The fact that the husband makes his home on certain land, in which he & another have each a one-half interest, brings it within Homesteads Act, 1915 (c. 29).—MCDOUGALL *v.* MCDOUGALL, [1919] 2 W. W. R. 637; 12 Sask. L. R. 289.—**CAN.**

l iv. —— ——.]—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—DOUGLAS *v.* ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37; *affd.*, [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 403.—**CAN.**

l v. —— *Order dispensing with consent of wife to disposition—When granted under Dower Act.*]—Where a husband had refused, without lawful reason therefor, to live with his wife or support her & his treatment of her was found to have conduced to her adultery, it was held that it would not be "fair & reasonable under the circumstances," to grant an order under Dower Act, R. S. A. 1922, c. 135, s. 8, dispensing with her consent to his disposition of his homestead within said Act. Under Dower Act, s. 3, as it now stands a disposition of the homestead by the husband without the wife's consent, when there is no order dispensing with it, is absolutely null & void, & not so merely as it affects the wife's interest therein.—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

l vi. —— *Action by wife to set aside agreement for sale by husband.*]—BAKER *v.* BAKER, [1932] 3 W. W. R. 375; 40 Man. L. R. 631.—**CAN.**

l vii. —— *No consent by wife—Conveyance of joint property—Void.*]—SCHMIDT *v.* MILLER, [1934] 2 W. W. R. 593; 4 D. L. R. 98; 42 Man. L. R. 340.—**CAN.**

l viii. —— *Acknowledgment — Who may take.*]—*Held :* that where the wife's acknowledgment to a document to which sect. 3 (1) of Homesteads Act, R. S. S., 1930, applies is taken by the person who prepared the document the effect is the same as if no acknowledgment were taken at all & as if the wife were not a party to the transaction; & it follows, under sect. 11 of said Act, that she is entitled to have it set aside & cancelled. The husband is not a necessary party to the action brought by her for said purpose.—WILGUZKI & WILGUZKI *v.* MIAZGA, [1936] 1 W. W. R. 21.—**CAN.**

n i. —— —— *Residence condition precedent.*]—PENDLETON *v.* PENDLETON, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—**CAN.**

o i. —— *Signature of wife—When dispensed with.*]—ASKIN *v.* ASKIN, [1929] 4 D. L. R. 1068; 1 W. W. R. 663; 23 S. L. R. 631.—**CAN.**

o ii. —— —— ——.]—Where a wife is living apart from her husband, pursuant to the terms of a separation agreement, which does not provide that she shall be disentitled to alimony, & in which there is nothing in the nature of a release or an agreement for the release of dower, it cannot be said that she is so living "under such circumstances as disentitle her to alimony"; & an order dispensing with her signature, for the purpose of

1203. *Add. Citation :*—8 W. R. 333.

1211. *Add. Annotation :*—*As to* (1) **Consd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1220. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

1223a. —— **Necessity for survivorship of wife.**]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured " for the benefit of his wife " in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors. administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899 :—*Held :* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble : Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37 ; 143 L. T. 329 ; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXORS., 99 L. J. Ch. 241 ; [1929] B. & C. R. 173.

Annotation :—**Dbtd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1224. *Add. Annotation :*—**Consd.** *Re* Gladitz, Guaranty Executor & Trustee Co. *v.* [1937] 3 All E. R. 173.

1225. *Add. Annotation :*—**Apld.** *Re* Fleetwood's Policy, [1926] Ch. 48.

1226. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126 ; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89 ; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

1226a. —— —— **If living at his death—Cash value of policy sought to be taken by insured during life.**]—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £288 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimatelypaid it into ct. : —*Held :* (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events ; (2) insured must be taken to have exercised the option for the benefit of the trust ; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re* FLEETWOOD'S POLICY, [1926] Ch. 48 ; 95 L. J. Ch. 195 ; 135 L. T. 374.

Annotations :—**Consd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126 ; *Re* Gladitz, Guaranty Executor & Trustee Co. *v.* Gladitz, [1937] 3 All E. R. 173.

barring her dower, to a deed of conveyance of land of the husband will not be made under sect. 13 of Dower Act. R. S. O., 1927.—*Re* DAVIDSON, [1930] 2 D. L. R. 84 ; 65 O. L. R. 19. —**CAN.**

o iii. —— —— *Renewal of lease of homestead.*]—Under the Homesteads Act, R.S.S., 1930, which provides that " homestead " shall also " include any property which has been such a homestead at any time," & that every transfer, etc., of an interest in a homestead shall be signed by the owner's wife, if any, the signature of the wife is required to a renewal of a lease of a homestead although they had not resided on the homestead since the making of the original lease.—AUDOORN *v.* AUDOORN & PELSMA, [1935] 1 W. W. R. 717 ; *on appeal*, [1935] 2 W. W. R. 362 ; 5 F. L. J. (Can.), 37.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—A.

e i. —— *Separate estate.*]—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—GRAHAM *v.* CANADA LIFE ASSURANCE CO., PROCTOR *v.* GRAHAM (1894), 24 O. R. 607.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—B.

n i. —— —— *Bankruptcy of husband.*]—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S.'s estates were afterwards sequestrated : —*Held :* the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—STEWART *v.* HODGE (1901), 8 S. L. T. 436.—**SCOT.**

n ii. —— ——.]—Money due under a policy of insurance payable to the wife of the insured after his death forms part of the estate of the insured. No trust is created in favour of the wife by a life policy expressed to be for the benefit of the wife of the assured.—KRISHNA LAL SADHU *v.* PRAMILA BALA DASI (1928), I. L. R. 55 Calc. 1315.—**IND.**

n iii. —— ——.]—A husband insured his life for £2,000 payable on his death. The policy stated : " This policy is for the benefit of M.T.R., the wife of the assured " :—*Held :* the trust so created in favour of the wife in virtue of Married Women's Property Act, 1915, s. 14 (2), was one which immediately & unconditionally conferred on her the entire beneficial interest in the policy. Therefore, on the death of the husband the policy moneys were not dutiable under Administration & [illegible] as property

taining trusts & dispositions to take effect after his death.—*Re* REYNOLDS, REYNOLDS *v.* VICTORIA COMR. OF TAXES, [1931] V. L. R. 254 ; Argus L. R. 231.—**AUS.**

n iv. —— *Whether assignable.*]—A policy of assurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignation which bore to have been executed with the consent & concurrence of the wife :—*Held :* the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—SCOTTISH LIFE CO. *v.* DONALD (1901), 9 S. L. T. 200.—**SCOT.**

o i. —— *What amounts to.*]—A life insurance policy, in the column headed " to whom payable " contained the following words, viz. " the assured or his wife if he predeceases her " :—*Held :* the said words express on the face of the policy that the same is for the benefit of his wife, & as such it enures & is deemed to be a trust for the benefit of the wife within sect. 6 of Married Women's Property(Act II of 1874).—ABHIRAMAVALLI *v.* MADRAS OFFICIAL TRUSTEES (1932), I. L. R. 55 Mad. 171—**IND.**

1226b. —— —— **Death of wife in husband's lifetime.**]—Where a husband has insured his life under the provisions of the Married Women's Property Act, 1882 (c. 75), for the benefit of his wife, & she dies in his lifetime, the policy & the surrender value become the property of the wife's legal personal representatives, & the husband has no claim to them.—COUSINS *v.* SUN LIFE ASSURANCE SOCIETY, [1933] Ch. 126; 102 L. J. Ch. 114; 148 L. T. 101; 49 T. L. R. 12, C. A.

Annotation :—**Refd.** *Re* Smith, Bilham *v.* Smith, [1937] 3 All E. R. 472.

1226c. —— —— **Lien of husband for premiums paid.**]—A husband took out a policy of life assurance for £1,000 payable after ten years or upon his earlier death & expressed to be for the benefit of his wife, therein named, under Married Women's Property Act, 1882 (c. 75). Two years later, & before the policy possessed any surrender value, the wife died. The husband kept the policy on foot, paying the premiums, until it matured, when the insurance co. paid the policy moneys into a deposit account in the joint names of the husband & another as personal representatives of the deceased wife. The husband having died, his widow, as his administratrix, claimed a lien on the policy moneys for the amount of the premiums paid after his first wife's death :—*Held :* while the policy moneys belonged to the first wife's estate, in accordance with the decision in *Cousins* v. *Sun Life Assurance Society*, [1933] Ch. 126, the estate of the husband was entitled to a lien thereon for the amount of the premiums paid by him since his first wife's death, as being money expended by him as a trustee to preserve property of a *cestui que trust*.—*Re* SMITH'S ESTATE, BILHAM *v.* SMITH, [1937] Ch. 636; [1937] 3 All E. R. 472; 106 L. J. Ch. 377; 157 L. T. 511; 53 T. L. R. 910; 81 Sol. Jo. 611.

1227. *Add. Annotations :*—**Apld.** *Re* Collier, [1930] 2 Ch. 37. **Refd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1227a. —— —— **Adopted child.**]—A policy effected by the assured under & by virtue of the Married Women's Property Act, 1882 (c. 75), s. 11, was stated to be for the benefit of the wife of the assured, & if she were dead at the time the policy moneys became payable then for his daughter, naming her, & if both of them were then dead for the exors., administrators or assigns of the assured. The daughter was an adopted child, & there had been no legal adoption under Adoption of Children Act, 1926 (c. 29) :—*Held :* (1) there was no effective trust for the adopted child by virtue of Married Women's Property Act, 1882 (c. 75), s. 11, & the infant was outside the scope of that sect.; (2) the adopted child had no legal right to claim the policy moneys from the insurance co. The only persons who had such a right were the assured & his wife, who could surrender the policy or otherwise deal with it without reference to the infant.—*Re* CLAY'S POLICY OF ASSURANCE, CLAY *v.* EARNSHAW, [1937] 2 All E. R. 548.

1228. *Add. Citation :*—95 L. J. Ch. 24.

1228a. —— —— **Accident policy.**]—A policy of insurance provided for the payment of certain specified sums by the underwriters on death on disablement of the assured caused by accident. It contained a memorandum stating that it was understood & agreed that all claims thereunder should be payable to his wife, "if she is living at the happening of the event upon which the claim becomes payable, or if she is dead, then to the exors., administrators & assigns of the assured." The assured died as the result of an accident within the policy, his wife surviving him :—*Held :* (1) the policy was one effected by the assured on his own life within Married Women's Property Act, 1882 (c. 75); (2) it was expressed to be for the benefit of his wife within the same sect.; (3) accordingly, his wife was solely & beneficially entitled to the moneys payable thereunder.—*Re* GLADITZ, GUARANTY EXECUTOR & TRUSTEE CO., LTD. *v.* GLADITZ, [1937] Ch. 588; [1937] 3 All E. R. 173; 106 L. J. Ch. 254; 157 L. T. 163; 53 T. L. R. 857; 81 Sol. Jo. 527.

1233a. Number of trustees—Fund to be retained for infants—Single trustee not appointed.]—*Re* HOWSON'S POLICY TRUSTS, [1885] W. N. 213.

1234. *Add. Annotations :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Smith *v.* Wood (1928), 139 L. T. 250; *Re* Smith, Bilham *v.* Smith, [1937] 3 All E. R. 472.

1302. In second paragraph for "on which" read "or child."

PART VI. SECT. 8, SUB-SECT. 4.

sp. *Pledge by wife to secure advances for joint support—Account.*]—Securities pledged by a wife as collateral for advances to the husband for their joint support will not entitled her to an accounting by the creditor.—PIPER *v.* UNVERZAGT, [1937] 2 D. L. R. 319; 51 B. C. R. 379.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

t i. —— ——.]—WHITEHEAD *v.* (1887), 14 O. R. 621.—**CAN.**

t ii. —— ——.]—BELL *v.* BELL, [1928] 2 D. L. R. 311.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (a).

1302 v. —— ——.]—Plff., deft.'s husband, became entitled to a conveyance of certain land vested in a solr. By plff.'s direction the solr. conveyed the land to deft. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deft had been told nothing about it :—*Held :* though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of plff. having ultimately made up his mind that his wife should have the property.—HARRINGTON *v.* HARRINGTON, [1925] 2 D. L. R. 849; 56 O. L. R. 568.—**CAN.**

1302 vi. —— ——.]—DE BURY *v.* DE BURY (1903), 36 N. B. R. 37; 22 C. L. T. 184.—**CAN.**

1302 vii. —— ——.]—CHALLONER *v.* CHALLONER, [1930] 4 D. L. R. 18.—**CAN.**

1302 viii. —— ——.]—Expenditures made by a husband in purchasing property in the name of his wife, or in improving her property, must *primâ facie* be considered as gifts to the wife, but this presumption may be rebutted by evidence; & this evidence may consist of the surrounding & accompanying circumstances, & of parol testimony. Or she may create a trust in his favour after the property has become hers.—BEEMER *v.* BROWNRIDGE, [1934] 1 W. W. R. 545.—**CAN.**

1302 ix. —— ——.]—A presumption of advancement arises on conveyance of land to a wife by a husband.—HYMAN *v.* HYMAN, [1934] 4 D. L. R. 532.—**CAN.**

—— *Subsequent deed of gift by* —Plff., who was the former wife of deft. & the registered owner of a property known as the G. Hotel, sued to have a *caveat* registered by him discharged, on the ground that he had no interest in the property. The *caveat* was based upon the following document : "I hereby agree to give D. half of the property known as the G. Hotel, & to give him half the rent of the same from the present date, & he agrees to pay half of all debts against the above property up to date for the said half interest." The land had been purchased in 1902 by deft. in the name of plff., his then wife. Upon that purchase & the erection & equipment of the hotel building he applied the proceeds of the sale of two quarter sections, one of which was in his name

1306. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1311a. ——.]—A husband opened a banking account in his wife's name, all payments into the account being made by the husband. The account was used for domestic & other purposes. The wife always asked her husband's consent before she drew on the account & she had given the bank a mandate to allow her husband to draw on the account. Judgment creditors of the wife sought to garnishee the account :—*Held :* on the facts there was a resulting trust in favour of the husband & as the moneys were therefore the property of the husband, the wife's creditors could not garnishee the account, although it was in her name.—HARRODS, LTD. *v.* TESTER, [1937] 2 All E. R. 236 ; 157 L. T. 7 ; 81 Sol. Jo. 376, C. A.

1318. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1336. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1339. *Add. Annotation :*—*As to* (2) **Refd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

& the other in hers. They ran the hotel business together, until 1905, he acting as manager, she as cook & housekeeper. Having agreed to separate, they sold the furniture, & leased the hotel, & borrowed money on mtge. to help pay off the floating liabilities. The husband signed the mtge. as a joint covenantor, & the lease as a consenting party. Before leaving her he asked her to sign the memorandum above set out which she did without demur :—*Held :* an express trust existed in favour of deft. for one half of the estate in question.—REYNOLDS *v.* BETSON, [1931] 1 W. W. R. 793 ; 2 D. L. R. 760 ; 39 Man. L. R. 411.—**CAN.**

1306 i. —— —— *As between husband & wife—Notwithstanding intention to defraud creditors.*]—In Mar. 1931, applt., who was registered as the owner of an " E." motor car, signed an application under Motor Vehicles Act requesting cancellation of his registration as he had disposed of the car to resp. his wife ; the wife signed a form stating she had acquired the car from applt. In Aug. 1931, the " E." car, by arrangements to which applt. was a party, was traded in for a " N." car, applt. paying a deposit & also the balance of the price, after allowing for the value of the " E." The prescribed documents showing that the " N." car had been disposed of to & acquired by the wife, were signed by the vendor & the wife. The car was kept in a garage at the matrimonial home, to which both husband & wife had keys, but the wife, although able to drive, did not drive the " N." car. There was evidence to show that applt. put the car into the wife's name to avoid financial liabilities in case of accident, & as a safeguard against creditors. It is an offence under Motor Vehicles Act to make a false statement in an application & by that Act a certificate relating to the ownership of a car is *primâ facie* evidence of the truth of its contents. In proceedings by applt. to establish his ownership & right to possession :—*Held :* the evidence disclosed a purchase by applt. in the name of resp. ; the presumption was that of a gift by applt. to resp. ; &, therefore, the covinous arrangement alleged by applt. could not be permitted to rebut the presumption of ownership, which arose from the acts of the parties as well as under the Statute.—MUSMAN *v.* MUSMAN, [1933] S. A. S. R. 327.—**AUS.**

1309 ii. ——.]—A gift is presumed where moneys of the husband are deposited by the wife, with his knowledge, in her sole name.—*Re* NORTHAGE, [1936] 2 D. L. R. 78 ; 10 M. P. R. 248 ; 5 F. L. J. (Can.) 245.—**CAN.**

sm. *Grain & stock on land conveyed to wife.*]—A husband conveyed to his wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before : —*Held :* the husband was the owner of grain grown on, & animals situate on, the quarter section.—NATIONAL TRUST CO. *v.* HOLOWAYCHUK, [1925] 3 W. W. R. 382.—**CAN.**

sn. *Purchase in husband's name—Subsequent transfer to wife—Failure of consideration.*]—Husband & wife purchased a house in Oct. 1920. The house was in plff.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out :—*Held :* plff. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action would be either for specific performance or damages.—BODY *v.* BODY (1924), 34 B. C. R. 315.—**CAN.**

so. *Conveyance by husband without consideration — Husband solvent— Certificate of title issued to wife.*]—Where land was transferred, as a gift, to a married woman by her husband, during the time that Married Woman's Act, R. S. M. 1892, c. 95, was in force, the husband being then solvent, & a certificate of title therefor issued in her name under Manitoba Real Property Act :—*Held :* the beneficial, as well as the legal, interest in the land vested in her for her separate use, & neither the land nor its proceeds could be taken in execution for debts of the husband subsequently incurred, notwithstanding Married Woman's Act, s. 2, respecting property received by a married woman from her husband during coverture.—FRASER *v.* DOUGLAS (1908), 40 S. C. R. 384.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (b).

1337 iii. —— ——.]—The deposit by a Hindu of his own money in a bank in the joint names of himself & wife, & on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife there being in India no presumption of an intended advancement in favour of a wife.—GURAN DITTA *v.* RAM DITTA (1928), 55 L. R. Ind. App. 235.—**IND.**

m i. ——.]—*Held :* to raise a presumption of joint tenancy.—MATHEWS *v.* NATIONAL TRUST CO. (Ont.), [1925] 4 D. L. R. 774.—**CAN.**

m ii. ——.]—D. deposited a sum of money in a bank to the joint credit of himself & his wife, & they both signed a document authorising the bank to pay all moneys at the credit of the account to either of them, & in the case of the death of either to pay the same to the survivor. After D.'s death, his widow became insane & was confined in a public hospital. Money was paid by the bank to the Public Trustee. Having been restored to sanity the widow redeposited in the bank what was left of the money to the joint credit of herself & two relatives :—*Held* the money originally deposited belonged to D. & was placed to the credit of himself & wife as a means of conveniently managing the affairs of himself & his family ; &, therefore, the presumption in favour of the right of his wife to what remained of the fund on his death was rebutted. —STADDER *v.* CANADIAN BANK COMMERCE, [1929] 3 D. L. R. 651 ; 64 O. L. R. 69.—**CAN.**

m iii. ——.]—The rule of English law that where a deposit is made in the joint names of husband & wife, a gift is to be presumed in favour of the wife, the gift being defeasible on the death of the wife in the lifetime of the husband, does not apply to India. In India the case is governed by sect. 123 of Transfer of Property Act, under which a gift of movable property must be effected either by a registered instrument or by delivery.—PAUL *v.* NATHANIEL GOPAL NATH (1931), I. L. R. 53 All. 633.—**IND.**

m iv. ——.]—Money in a bank deposit account which had been opened in the joint names of deceased & his wife under an agreement with the bank signed by both of them, which provided that the death of either should not affect the right of the survivor to withdraw moneys deposited therein, held to belong to the wife by virtue of her survivorship.—ROBERTSON *v.* BATCHELOR (No. 2), [1935] 3 W. W. R. 292.—**CAN.**

sp. *Banking account in joint names.*]—A wife & husband opened a joint account in a bank, & both signed a direction to the bank : " All money which may be deposited by us or either of us to the account is our joint property, but such money may be withdrawn by either one of us, or the survivor of us." The money was all the husband's, & was deposited to pay the expenses of the wife & her child, during the husband's absence, & to make payments in connection with his property :—*Held :* the wife was not entitled to half the money to the credit of the account.—SOUTHBY *v.* SOUTHBY (1917), 40 O. L. R. 429 ; 38 D. L. R. 700.—**CAN.**

—— *Right of wife as survivor.*]—*See* Nos. 1335-1338.

sr. *Rebuttal of presumption.*]—The presumption of gift arising from deposit by a husband in the joint names of his wife & himself may be rebutted by showing that it was a matter of convenience.—MCLEAN *v.* VESSEY, [1935] 4 D. L. R. 170 ; *sub nom. Re* VESSEY, MCLEAN *v.* VESSEY, 10 M. P. R. 16 ; *sub nom.* VESSEY *v.* VESSEY, 5 F. L. J. (Can.) 116.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (d).

sw. *Money sent to wife to be saved.*]—Money sent by a husband to his wife to be saved for their old age, belongs to them equally.—CARROLL *v.* CARROLL, [1937] 2 D. L. R. 314.—**CAN.**

1368. *Add. Annotations :—As to* (1) **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380. *As to* (3) **Consd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 83.

1365. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1369. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1373. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1378. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1394. *Add. Annotation :—***Consd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

*Add. Annotation :—***Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

Part VII.—Liability for Ante-Nuptial Obligations of Wife.

SECT. 1.—**LIABILITY OF HUSBAND** (p. 175.)

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 3.

Part VIII.—Contracts of Wife during Coverture.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1.

1469. *Add. Annotations :—***Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213. **Apld.** Townshend *v.* Child (1932), 48 T. L. R. 575. **Consd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

1479. *Add. Annotation :—***Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

1489a. —— Settlement of insurance policies on life of husband.]—By a post-nuptial settlement made in pursuance of ante-nuptial articles, certain policies of insurance on the life of the husband were assigned to trustees upon trust to receive the money & pay the income to the wife during her life for her separate use, independently of any future husband whom she might marry. There was no restraint on anticipation. During the life of her first husband the wife made promissory notes in favour of pltf., & pltf., the first husband being still alive, brought an action claiming a charge on the policies :—*Held :* the trust for separate use did not arise till after the death of the husband, & as the contracts of a married woman can only be enforced against property which formed part of her separate estate at the date of the contract, the action could not be maintained. —KING *v.* LUCAS (1883), 23 Ch. D. 712, 713; 53 L. J. Ch. 64; 49 L. T. 216; 31 W. R. 904, C. A.

PART VI. SECT. 9, SUB-SECT. 3.—A. (a).

1363 i. —— —— *Understanding transaction.*]—Where a wife signed a quit-claim deed before a lawyer, transferring her half interest in the home to her husband, but she alleged that she thought they went to the lawyer solely to obtain a divorce, the deed was upheld in an action for cancellation, there being no evidence that she did not know what she was doing, or of undue influence.—HEATHORN *v.* HEATHORN (1932), 46 B. C. R. 413.—**CAN.**

1370 i. *Wife not independently advised—Guarantee for husband.*]—Want of independent advice standing alone is insufficient to justify relief, but where there has been undue influence by the husband & knowledge of its exercise or facts from which such knowledge should be inferred, & the transaction is contrary to the wife's interests, a sufficient case has been made out for the granting of relief.—CANADIAN BANK OF COMMERCE *v.* FOREMAN (Alta.), [1926] 4 D. L. R. 844; [1926] 3 W. W. R. 486; *revsd.* on the facts, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.——**CAN.**

1370 ii. ——. ——.]—BRADLEY *v.* IMPERIAL BANK OF CANADA, [1926 3 D. L. R. 38; 58 O. L. R. 650.—**CAN.**

1370 iii. —— *Promissory note.*]—FRYERS & Co., LTD. *v.* STEEVES (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

1382 iv. —— ——.]—On an interpleader issue between an execution creditor & the wife of the debtor as to the ownership of a motor car, the wife & her husband testified that the car had been bought with her money, which had come to her from the keeping of boarders & from the sale of her property. These moneys were all collected by the husband & left by the wife in his hands to use as he saw fit, & he placed them in his own account & used them indifferently with his own. He had never rendered her an account of them, nor had she ever called on him to do so. They had lived together in amity since their marriage & he had maintained her. The wife testified that she had an arrangement with the husband under which said moneys were to remain her property, but the circumstances under which it was entered into were not disclosed, & its terms were indefinite :—*Held :* the moneys in question had become the husband's by way of gift from his wife. —PEAREN *v.* BLACK & ARMSTRONG, [1928] 3 D. L. R. 471; [1928] 2 W. W. R. 98; 22 Sask. L. R. 502.—**CAN.**

sq. *Presumption of undue influence—Guarantee for husband—Promissory note—Transaction not explained.*]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 1 D. L. R. 1003.—**CAN.**

sr. —— —— —— ——.]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 4 D. L. R. 605.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.—A. (b).

st. *Funds of wife managed by husband.*]—Where a husband is entrusted by his wife with the management of her funds out of which he is to pay their expenses & make such investments as they from time to time agree upon, the decision of the question whether the law implies a gift to the husband depends on the particular facts of the case.—WALKER & ROBERTS *v.* SILK, [1930] 2 W. W. R. 407; 4 D. L. R. 201; 43 B. C. R. 43.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.—B. (b) ii.

1422 i. *Joint earnings—Investment in realty in husband's name.*]—KROPIELNICKI *v.* KROPIELNICKI, [1935] 1 W. W. R. 249; 2 D. L. R. 100.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

d i. —— *Property purchased with man's money—Woman realising property & appropriating proceeds ordered to account.*]—ST. ELOI *v.* ENO (1925), 36 B. C. R. 153.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

sv. *Married Women's Property Act R. S. O., 1927—Effect.*]—The repeal, by Married Women's Property Act, R. S. O., 1927, of sect. 18 of the Act as found in R. S. O., 1914, had not the effect of reviving the husband's common law liability for the debts of his wife contracted before the marriage. —PENNY *v.* HUNT, [1929] 2 D. L. R. 473; 63 O. L. R. 510.—**CAN.**

1491a. ——.]—A woman, married since the passing of Married Women's Property Act, 1870 (c. 93), joined her husband in signing a joint & several promissory note for money lent to him. The husband became bkpt.:—*Held:* her separate estate was liable for the amount due on the note, & it was not necessary to make any trustees for the wife parties to the action.—DAVIES *v.* JENKINS (1877), 6 Ch. D. 728; 26 W. R. 260.

Annotations:—**Refd.** Flower *v.* Buller (1880), 15 Ch. D. 665; Pike *v.* Fitzgibbon (1880), 14 Ch. D. 837.

1498. *Add. Annotation:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1576a. ——.]—STONE *v.* WALTER (1649), O. Bridg. 618; 124 E. R. 778.

1656. *Add. Annotation:*—**Refd.** Dewe *v.* Snowdon *v.* Snowdon, [1928] P. 113.

1664. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

1665. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1669. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1680. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1717. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1732. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

PART VIII. SECT. 1, SUB-SECT. 6.

1 i. —— ——.]—*Held:* a married woman, having separate real property, was not entitled to contract debts for its improvement so as to make herself liable individually, or jointly with her husband.—WRIGHT *v.* GARDEN (1869), 28 U. C. R. 609.—**CAN.**

1 i.—— ——.]—Deft., a married woman, married to her present husband in 1877 or 1878, & carrying on business separate from him by farming one of her former husband's farms, in 1883 & 1884 contracted the debt sued on. She was entitled to dower in the lands of her first husband, who died in 1875, which were sold, realising a large sum, & also to her share in his personal estate, neither of which she had received:—*Held:* the Act of 1884, 47 Vict. c. 19 (O.), had not the effect of repealing the prior Acts, & it was not necessary to show that deft. had married or had acquired separate estate since the Act of 1884 came into force; it was sufficiently shown that she was possessed of separate estate, & that she intended it should be bound.—ROBERTSON *v.* LAROCQUE (1889), 18 O. R. 469.—**CAN.**

sa. *Wife carrying on separate business—Signatures by wife at request of husband—Liability of wife.*]—Where a married woman, in carrying on a business with the assistance of her husband, signs everything that he asks her to sign & asks no questions, she should be held responsible for her signature, in the absence of clear proof of undue influence, whether it turns out to be in her interest or otherwise.—WATKINS (J. R.) Co. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—**CAN.**

sb. *Lease taken by wife—Liability of wife—For breach of lease.*]—*Held:* the husband was not liable, although he lived in the premises for about two months prior to the time he & his family vacated it & twice paid the rent during that period.]—NATIONAL SECURITIES, LTD. *v.* DARLING (Alta.), [1927] 1 W. W. R. 413.—**CAN.**

sc. *Entered into in married name—No reference to husband.*]—The effect of Married Women's Act, R. S. A., 1922, c. 214, is that a married woman has as full & complete freedom to bind herself by her own contracts as a man has. A married woman who contracted for the purchase of goods in her own name, *i.e.* as Mrs. McDonald, without informing the seller or without his knowing that she was in fact acting as agent for her husband or that she had a husband, held personally liable.—REID-WELCH FURNITURE CO. *v.* MACDONALD, [1928] 2 D. L. R. 608; [1928] 1 W. W. R. 789; 23 Alta. L. R. 317.—**CAN.**

sd. *Contract to work by husband & wife—Liability to employer for children's keep—Joint.*]—Deft. engaged pltf. & her husband to work for him for wages & their board, & it was a term of the bargain that deft. would be entitled to charge a certain rate per day for the board of the couple's three children, although no specific promise to pay said amounts was made by either pltf. or her husband:—*Held:* considering the circumstances under which the bargain was made & the dealings between the parties as disclosed by the evidence, the liability to pay deft. for the board of the children was a joint one on the part of pltf. & her husband, &, therefore, each of them was liable for the whole cost of the keep of the children.—FORSBERG *v.* UGLUM, [1931] 3 W. W. R. 612.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

1499 ii. ——.]—A. HOBRECKER, LTD. *v.* WILSON (1932), 4 M. P. R. 469.—**CAN.**

1500 i. —— *Supply of goods not necessaries.*]—Authority may be given by implication that the husband intends the wife to take means to supply herself with necessaries, the implication being for the benefit of the wife & not of those who supply her. It is only for what is reasonably necessary that the implied agency is, not for what the wife may see fit to order.—ROBERT SIMPSON CO., LTD. *v.* RUGGLES, [1930] 3 D. L. R. 174; 65 O. L. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.

1514 i. *Wife acting under express authority not disclosed—Liability of husband.*]—FOULDS *v.* CURTELETT (1871), 21 C. P. 368.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.

1515 i. *Credit given to wife—Husband not liable.*]—Where an article was sold by pltfs. to a married woman & not to her husband, & credit was given to her alone:—*Held:* the husband was not liable for the price.—BEATTY BROS., LTD. *v.* MURPHY, [1930] 3 D. L. R. 448; 65 O. L. R. 293.—**CAN.**

sx. *Credit given to wife—Goods purchased for wife's business—Managed by husband—Whether husband's creditors can take in execution.*]—DOMINION SAVINGS & INVESTMENT SOCIETY *v.* KILROY (1888), 15 A. R. 487.—**CAN.**

PART VIII. SECT. 2. SUB-SECT. 6.

q i. —— —— *Several liability.*]—TOBIN & Co. *v.* SMITH, [1930] 3 D. L. R. 350.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 12.—D.

sz. *What amounts to.*]—The fact that a husband instructed a shop to close his account, to which his wife was allowed to charge purchases, because it "ran too high," does not amount to a termination of the wife's authority.—SIMPSON (ROBERT) & Co. *v.* GODSON, [1937] 1 D. L. R. 454.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 13.—A.

t i. —— ——.]—On appeal from the dismissal as against the husband of an action against him & his wife for the balance of the purchase-price of a player-piano, purchased by the wife:—*Held:* although the wife's prior authority to act as agent for her husband with respect to the purchase was not proven, the facts showed a definite ratification by him with full knowledge of all the circumstances. Appeal allowed.—WINNIPEG PIANO CO., LTD. *v.* WAWRYSHYN, [1935] 2 W. W. R. 220; 3 D. L. R. 181.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—A. (a).

1576 iv. —— ——.]—ARSENAULT *v.* BISHOP, [1931] 2 D. L. R. 325; 3 M. P. R. 334; [1932] 2 D. L. R. 814.—**CAN.**

1576 v. —— ——.]—A wife is presumed to have her husband's authority to pledge his credit for necessaries while they are living together.—MOORE, MCLEOD & CO., LTD. *v.* JARDINE (1932), 5 M. P. R. 327.—**CAN.**

1601 iii. ——.]—In an action against a husband for medical services rendered to a wife it is a defence that as to services rendered during cohabitation there was an express prohibition against pledging credit; & as to services rendered while they were living apart the wife had such means as precluded agency of necessity.—LINEHAM *v.* HOLDEN, [1933] 4 D. L. R. 187.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1642 i. *Jewellery.*]—A ring supplied to a working miner's wife:—*Held:* not a necessary.—PIANTA *v.* MACROW & SONS PTY., LTD. (1925), 27 W. A. L. R. 99.—**AUS.**

sy. *Fur coat.*]—The question whether a fur coat is a necessary is one of fact depending on the circumstances of each case.—GEBBIE & FORREST *v.* KERSHAW, [1927] 3 D. L. R. 156; [1927] 2 W. W. R. 166; 21 Sask. L. R. 489.—**CAN.**

sz. *Surgical operation.*]—Even if a wife has money of her own, she is armed to have authority to pledge husband's credit for necessaries. rgical operations.—SELDON

[illegible]
205.—**CAN.**

sa. *Employment of detective—To obtain evidence for divorce proceedings.*]—BARNETT *v.* MILNER (1927), 49 N. L. R. 1.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

1691 ii. *Revsd.*, 9 O. R. 198.

1735. *Add. Annotations :*—**Refd.** Grubb *v.* Grubb (1934), 150 L. T. 420; Markovitch *v.* Markovitch (1934), 151 L. T. 139.

1739. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1741. *Add. Citation :*—2 C. & P. 25, n.

1748. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1750. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753a. —— **Inadmissible.**]—Statements by an alleged adulterous wife that she had committed adulterty cannot be evidence against persons who are without knowledge & without means of knowledge of the truth of those statements & to whom they have not been communicated.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE (1930), 46 T. L. R. 239; *affd. on other grounds*, [1930] 2 K. B. 8, C. A.

1755. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1760. *Add. Annotation :*—**Consd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

1800. *Add. Annotations :*—**Folld. & Extd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8. **Refd.** Welton *v.* Welton, [1927] P. 162; Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584.

1800a. —— —— —— **Proceedings instituted against wife.**]—A husband took divorce proceedings against his wife on the ground of her adultery. She consulted a solr., who upon her instructions put in a defence denying the charge & briefed counsel to appear for her. At the hearing the wife failed to appear, & a decree was made against her dissolving the marriage on the grounds alleged in the petition. The wife's counsel applied for costs, but as no security for her costs had been obtained, no costs were granted. The wife's solr. brought an action in the K. B. Div. to recover the costs from the husband, on the ground of his wife's agency of necessity at common law. The judge found as a fact that the solr. had acted without negligence, honestly believing that the wife was innocent & that she would be successful in her defence : —*Held :* in those circumstances the wife had no authority to bind her husband, so as to make him liable for the costs of her defence to his petition for divorce.—ARNOLD & WEAVER *v.* AMARI, [1928] 1 K. B. 584; 97 L. J. K. B. 238; 138 L. T. 591; 44 T. L. R. 221; 72 Sol. Jo. 138.

Annotation :—**Consd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8.

1800b. —— —— —— ——.]—The rule that a solr. acting for a wife, who is living apart from her husband, cannot, in a common law action, recover his costs from the husband, if when those costs were incurred the wife, although the fact was unknown to the solr., had been guilty of a matrimonial offence, applies not only where the wife has been living in adultery but also where she has committed an isolated act of adultery. The rule applies alike whether in the particular matter the wife was proceeding against the husband, or was defending a suit brought against her by the husband.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, [1930] 2 K. B. 8; 99 L. J. K. B. 444; 143 L. T. 452; 46 T. L. R. 402; 74 Sol. Jo. 319, C. A.

1800c. —— —— —— **Single act of adultery.**]—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, No. 1800b, *ante*.

1803a. ——.] — WITHERS, BENSONS, CURRIE, WILLIAMS & Co. *v.* CAWSTON (1928), 72 Sol. Jo. 191.

1826. *Add. Annotation :*—**Refd.** Gottliffe *v.* ston, [1930] 2 K. B. 378.

1833. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

PART VIII. SECT. 3, SUB-SECT. 2.—D. (d) i.

1749 i. *Subsequent condonation by husband.*]—Condonation by a husband of his wife's adultery does not render him liable for necessaries supplied to her subsequently to the adultery & prior to the condonation.—WINGROVE *v.* FRASER, [1936] V. L. R. 132; 42 Argus L. R. 233.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 2.—G.

1774 i. For "A husband is liable" read "A husband is not liable."

sb. *Purchase of husband's property by wife—Improvements made by husband after sale.*]—A purchase by a wife from her husband, the consideration being paid out of her separate estate, was held to be maintainable against creditors of whose debts she had no notice. The husband, after the purchase, expended money in improving the property. In a suit by a judgment creditor of the husband to obtain the benefit of such expenditure :—*Held :* the wife was entitled to show that the debt for which the judgment was recovered had been satisfied before action brought.—HILL *v.* THOMPSON (1870), 17 Gr. 445.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—H.

sd. *Medical expenses—Birth of husband's child.*]—A husband, whose wife has left him without any reasonable ground & against his wish, cannot avail himself of that fact against a claim for reasonable & proper charges for medical services rendered to her in the delivery, either alive or dead, of the husband's child; more particularly when the wife's condition is such that the medical services were necessary to save her life.—GOBEY *v.* MOORE, [1935] N. Z. L. R. 739.—**N.Z.**

sh. *Hotel expenses—During convalescence.*]—A husband living apart from his wife is liable for her hotel expenses during convalescence after an operation.—MCDONALD *v.* JARDINE, [1936] 1 D. L. R. 250; 10 M. P. R. 43; 5 F. L. J. (Can.) 228.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

f i. —— *Summary application for delivery up of title deeds.*]—*Re* MELLOR B. C.) (1905), 2 W. L. R. 17.—**CAN.**

n i. —— ——.]—A wife does not fall within the class of "protected" persons in respect of whom in certain relationships there is a presumption of undue influence.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 78 Sol. Jo. 471, P. C.—**CAN.**

sb. *Work done by husband for wife before marriage—Effect of marriage on mechanic's lien.*]—HAUGEN *v.* HAUGEN (Alta.), [1929] 3 D. L. R. 16.—**CAN.**

sc. *Marriage invalid—Annulment—Action by "wife" for rent & wages—No implied contract.*]—Pltf. & deft. had lived together for a number of years as man & wife under the belief that they were legally married. Deft. then secured an annulment of the alleged marriage. Pltf. then brought the present action claiming general damages for fraud, on the ground that deft. had falsely represented to pltf. that pltf. was free to marry him. Under an alternative claim, not based on fraud, pltf. alleged that she had married deft. in reliance on his assurance that she was at liberty to marry. She claimed also rent for the time deft. lived in her house, wages as housekeeper on a *quantum meruit* basis, a sum alleged to have been paid by her for household expenses, & an amount due on a promissory note :—*Held :* the claims based on fraud & on said assurance had not been substantiated; there had been no express or implied agreement by deft. to pay rent or wages; there was proof of deft.'s promise to repay the amounts advanced by her for household expenses prior to 1919, but Stat. Limitations barred recovery thereof, & there had been no express or implied authority from deft. to incur said expenses thereafter; & the claim on the note had been released for good consideration.—MARSHALL *v.* MARSHALL, [1931] 3 W. W. R. 369.—**CAN.**

Part X.—Wrongs of Wife during Coverture.

2.—TORTS (p. 213).

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 3.

1851. *Add. Annotations :*—**Refd.** **Gottliffe** *v.* **Edelston**, [1930] 2 K. B. 378; **Greenwood** *v.* **Martins Bank, Ltd.**, [1933] A. C. 51.

1852a. Enticing husband of another woman—Whether husband of defendant liable.]—NEWTON *v.* HARDY, No. 645a, *ante*.

1852b. Law Reform (Married Women & Tortfeasors' Act, 1935 (c. 30), s. 3—Whether retrospective.]—By a writ dated Aug. 16, 1935 (after the coming into operation on Aug. 2, 1935, of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30)), pltf., a married woman, sued defts., husband & wife, claiming damages in respect of slanders alleged to have been uttered by the female deft. on divers dates in 1931 & in the early months of 1935, the claim as against the male deft. being that he authorised or caused the female deft. to utter the words complained of. Defts. denied the publication, & the male deft. denied that he authorised or caused the female deft. to utter the alleged defamatory words. At the trial the judge left the case against both defts. to the jury without directing them that if they found for pltf. they should return a separate verdict with separate damages in respect of each publication. No objection was taken to this direction at the time. The jury found a single verdict against both defts. & judgment was entered against them accordingly. On appeal :—*Held :* (1) there was evidence entitling the jury to find that the female deft. uttered the slanders complained of & therefore that the verdict & judgment against her must stand; (2) there was no evidence that the male deft. authorised or caused the female deft. to utter the words complained of; (3) Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), has a retrospective operation, & by virtue of its provisions the male deft. was not liable for his wife's tort; (4) as no objection was taken at the trial to the jury being asked to consider the different publications as a whole instead of separately, or not being asked to assess separate damages in respect of each publication, the female deft. could not be heard to say that the verdict was a nullity.

Per SCOTT, L.J. There is nothing in the Judicature Acts or in the Rules of the Supreme Ct. that separate verdicts & judgments are invariably necessary in respect of separate causes of action contained in the same writ. The question whether one or more causes of action can be included in one verdict or judgment depends upon the exercise of the trial judge's judicial discretion upon all the circumstances of the case.

Per SCOTT, L.J. The canon against giving a retrospective interpretation to a statute, in the absence of specific provision, expresses no rigid or absolute rule. It does not apply to a statute dealing with procedure, nor, *semble*, does it apply to a statute abolishing old legal fictions.—BARBER *v.* PIGDEN, [1937] 1 K. B. 664; [1937] 1 All E. R. 115; 106 L. J. K. B. 858; 156 L. T. 245; 53 T. L. R. 246; 81 Sol. Jo. 78, C. A

1860a. Liability of husband—Goods delivered to husband & wife.]—ANON. (1364), Y. B. 38 Edw. 3, fol. 1A.

Annotation :—**Consd.** Isaack v. Clark (1615), 2 Bulst. 306.

1875. *Add. Annotation :*—**Refd.** **Greenwood** *v.* **Martins Bank, Ltd.** (1931), 47 T. L. R. 607.

1880. *Add. Annotation :*—*As to* (1) **Refd.** Green-

PART X. SECT. 2, SUB-SECT. 1.

r i. —— ——.]—A husband may be made jointly liable with his wife for her torts, notwithstanding Married Women's Property Act, R. S. M., 1913 (c. 123).—DENOVICH *v.* HUCAL (Man.), [1927] 1 D. L. R. 879; [1927] 1 W. W. R. 179.—**CAN.**

r ii. ——.]—In Saskatchewan a husband is liable for his wife's post-nuptial torts.—DAVIDNER *v.* SCHUSTER, RIESENBERG *v.* SCHUSTER & MRAZEK, [1936] 1 W. W. R. 45; 1 D. L. R. 560; 5 F. L. J. (Can.) 199.—**CAN.**

t i. —— ——.]—A husband is not liable for his wife's post-nuptial torts.—HALL *v.* WILKINS (1933), 33 S. R. N. S. W. 220; 50 N. S. W. W. N. 44.—**AUS.**

sd. *False representation by wife—As to authority of husband to order goods—Whether coverture good defence.*]—Deft. pleaded coverture :—*Held :* plea good: Administration of Justice Act could not assist pltf., & Married Woman's Act, R. S. O., 1877, c. 125, ss. 6, 20, did not create any new liability against a married woman for her torts or *quasi* torts, but merely allowed her to be sued alone, where formerly she could have been sued with her husband, & the authorities showed that if so sued the action would have failed.—STONE *v.* KNAPP (1879), 29 C. P. 605.—**CAN.**

—— —— —— *Joint liability of husband—Confined to actual personal negligence of wife.*]—An innocent husband is liable to be sued at common law jointly with his wife for the actual personal negligence of his wife while driving a vehicle, her own or another's; but he is not liable to be so sued for the actual personal negligence of a third party when the wife's liability for the negligence of that party arises out of her sole ownership of a chattel & the power of control resulting therefrom.—BLACK *v.* MACFARLANE, [1931] N. Z. L. R. 112.—**N.Z.**

sf. —— *Liability of husband when wife husband's agent.*]—Whether or not a husband is liable under Married Women's Property Act, N. S. W. B., 1927, s. 15, for his wife's torts is immaterial when the husband is being made liable for her negligent acts as his agent in driving his car.—WHITE *v.* JACKSON, [1936] 2 D. L. R. 707.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.

sm. *Joint conversion by husband & wife—Liability of wife's separate estate.*]—Where pltf. proved a joint wrongful occupation & conversion of the rents & profits of his land by a husband & wife :—*Held :* the husband & wife were jointly liable to pltf., & pltf. was entitled to recover against the separate property of the wife, for it could not be inferred that the latter was acting under the direction or coercion of her husband so as to exempt her from liability.—BARKER *v.* WESTOVER (1882), 5 O. R. 116.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.

1861 iv. —— ——.]—Married Women's Property Act, R. S. O., 1927, s. 3, does not take away the right of a person injured to sue a husband & wife jointly for the wife's naked tort committed during coverture. In an action for slander uttered by the wife, without the husband's suggestion or approval, judgment was directed to be entered against both jointly for the damages assessed, the wife being still alive when judgment was reached.—HERCZEG *v.* BARSEY, [1930] 1 D. L. R. 758; 64 O. L. R. 529.—**CAN.**

d i. —— *Saskatchewan.*]—In Saskatchewan a husband is not liable for damages awarded against his wife in an action on the statutory cause of action given to a woman for slander of her chastity.—PALIUK *v.* MASORUK & MASORUK, [1931] 3 W. W. R. 380.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

sg. *Joint trespass by husband & wife—Damage to adjoining property—Due to acts of husband—Liability of wife.*]—In an action of trespass against husband & wife for placing logs against pltf.'s building & causing damage, & for placing a spout, by which the water from the roof of deft.'s house ran against & injured pltf.'s building, the evidence showed that the property was owned by the wife, but that she did not interfere with the management of it, or participate in the acts complained of :—*Held :* the wife was not liable.—MCDONALD *v.* LESTER (1890), 30 N. B. R. 137.—**CAN.**

wood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1883. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1885. *Add. Annotation :*—**Dbtd.** Greenwood *v.* Martin's Bank, Ltd., [1933] A. C. 51.

1897a. —— ——.]—LANHAM *v.* PIRIE (1857), 29 L. T. O. S. 171 ; 3 Jur. N. S. 704 ; 5 W. R. 540, L. C. & L. JJ.

Part XI.—Contracts for Separation.

1920. *Add. Annotation :—Generally,* **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1930. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1932. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1934. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1935. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1936a. ——.]—Deft., in consideration of pltf. persuading her husband to go to New Zealand &/or consenting to forgo the consortium of her husband, promised to pay to pltf. an allowance of £4 per week until either deft. should pay pltf.'s fare to join her husband or her husband's fare back to England. The statement of claim averred that pltf. was & always had been ready & willing to join her husband. The husband sailed for New Zealand, & weekly payments were made for a period of about one year, &, upon deft. then ceasing to make them, pltf. sought to enforce the agreement. Deft. pleaded that the agreement was against public policy, & this question was argued as a preliminary point of law :—*Held :* the contract was not void as against public policy. The issue had to be tried upon the facts set out in the statement of claim, &, as it did not appear therefrom that there was anything immoral in the contract, it was not illegal as against public policy ; but it might be otherwise when all the facts were before the ct.—DAVIES *v.* ELMSLIE, [1937] 4 All E. R. 68 ; 157 L. T. 502 ; 54 T. L. R. 15 ; 81 Sol. Jo. 865 ; *affd.*, [1937] 4 All E. R. 471.

1937. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1939. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender . Mildmay, [1937], 3 All E. R. 402.

1941. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1943. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender *v.* Mildmay, [1936] 1 K. B. 111.

1944. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1936] 1 K. B. 111.

1948. *Add. Annotations :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47 ; British Homophone, Ltd. *v.* Kunz• & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

1954. *Add. Annotation :—As to* (1) **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

1965. *Add. Annotations :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113. Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1969. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1989. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; May *v.* May (1929), 98 L. J. K. B. 770.

1995. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews (1932), 48 T. L. R. 511.

1996. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

1999a. —— **Threat to remove children from jurisdiction.**]—DE PRET-ROOSE *v.* DE PRET-ROOSE (1934), 78 Sol. Jo. 914.

2014a. Covenant to pay one quarter of gross income—Right to deduct outgoings.]—*Re* HISCOTT'S INDENTURE, HISCOTT *v.* HISCOTT (1937), 54 T. L. R. 147 ; 81 Sol. Jo. 963.

2019. *Add. Annotations :—As to* (1) **Refd** Hyman, *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. *As to* (7) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2037. *Add. Annotation :*—**Consd.** Kirk *v.* Eustace., [1937] 1 K. B. 278.

2037a. —— —— ——.]—By a deed made in 1922 providing for a separation between husband & wife, & containing mutual covenants to live separate & apart, the husband covenanted with his wife to pay her the weekly sum of £2 during her life for her maintenance & support, but determinable upon reconciliation. In 1936 the husband died. The widow claimed that his estate was liable to continue paying the maintenance during the rest of her life, but the exors. contended that the liability had come to an end by the husband's death :—*Held :* as the deed provided that the weekly payment to the wife should continue during her life & as there was nothing in the language used to show an intention that the husband's obligation should continue only during his life, his estate remained liable to pay the weekly sum to the widow.—KIRK *v.* EUSTACE, [1937] A. C. 491 ; [1937] 2 All E. R. 715 ; 106 L. J. K. B. 617 ; 157 L. T. 171 ; 53 T. L. R. 748 ; 81 Sol. Jo. 376, H. L.

PART XI. SECT. 1, SUB-SECT. 3.—A.

1928 ii. *S. P.* WOODS *v.* WOODS, [1927] 3 D. L. R. 321 ; 60 O. L. R. 438.—**CAN.**

1941 i. *What amounts to—Agreement contemplating reconciliation.*]—Although the separation agreement between husband & wife in question herein " prospectively looked " to the parties living together again, it was held not to provide for a future separation thereafter, &, therefore, was not void as against public policy.—MORGAN *v.* MORGAN, [1931] 3 W. W. R. 292 ; 44 B. C. R. 482.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.

n i. ——.]—Where a wife understood the agreement, had independent advice, & was not misled or influenced by her husband in regard to her legal rights or the meaning & effect of the document :—*Held :* it could not be set aside for fraudulent misrepresentation & duress.—THOMSON *v.* THOMSON, [1927] 1 D. L. R. 653 ; 59 O. L. R. 661.—**CAN.**

2038. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. **Apld.** May *v.* May, [1929] 2 K. B. 386.

2039. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Apld.** May *v.* May, [1929] 2 K. B. 386. **Consd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2039a. —— —— ——.]—By a deed of separation reciting that differences had arisen between a husband & a wife, it was agreed that the wife should during the life of the husband live separate & apart from him & free from his marital control & authority as if she were unmarried, & that the wife should retain as her separate property certain articles which, if she should die in the lifetime of the husband without having disposed of them, should devolve as if she had died possessed thereof intestate & a widow. The husband covenanted that he would during the life of the wife pay to her an annual sum of £600. The wife was also to be entitled to certain furniture & effects for the use of herself during her life. Throughout the deed the parties were referred to as "the husband" & "the wife" respectively. It was provided that if the husband & the wife should be reconciled to each other & return to cohabitation the deed should become void. The husband subsequently committed adultery & the wife obtained a decree dissolving the marriage. He then made default in paying the full annual sum provided for by the deed, & she brought an action to recover the arrears:—*Held:* the deed was not subject to any implied term that it should only operate so long as the marriage relation continued to exist between the parties, & pltf. was entitled to recover.—MAY *v.* MAY, [1929] 2 K. B. 386; 98 L. J. K. B. 770; 141 L. T. 629, C. A.

Annotations:—**Refd.** Mann *v.* Mann, [1936] 1 All E. R. 952; Kirk *v.* Eustace, [1937] 1 K. B. 278.

2040a. —— **Bankruptcy of husband.**]—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, No. 595a, *ante*.

2049. *Add. Annotation:*—**Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177.

2061a. —— —— **Refusal of nominee to undertake custody—Effect on deed.**]—Where the parties to a matrimonial suit had agreed to settle it, & a deed of separation had been approved to give effect to such settlement:—*Held:* the refusal of the husband's brother to undertake the custody of one of the children, as nominee of the husband, which custody had been agreed on between the husband & wife as one of the terms of the deed, was not a failure of such a vital term as to prevent the settlement from being carried into effect.—WILLIS *v.* WILLIS, [1928] P. 10; 96 L. J. P. 177; 137 L. T. 621; 43 T. L. R. 657, C. A.

2067. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2080. *Add. Annotation:*—**Consd.** Lindsay *v.* Lindsay, [1934] P. 162.

2083. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2084. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2085. *Add. Annotations:*—**Overd.** Hyman *v.* Hyman, [1929] A. C. 601; Lambert *v.* Lambert, [1936] 3 All E. R. 20.

2085a. —— ——.]—A woman who, in a deed of separation, covenants in consideration of certain benefits not to claim from her husband in the future maintenance or alimony, & is afterwards granted a decree absolute of divorce, is not debarred from petitioning for maintenance after the dissolution of marriage, notwithstanding that the deed contained no provision for its termination on the marriage being dissolved.—HYMAN *v.* HYMAN, [1929] A. C. 601; 98 L. J. P. 81; 141 L. T. 329; 93 J. P. 209; 45 T. L. R. 444; 73 Sol. Jo. 317; 27 L. G. R. 379, H. L.

Annotations:—**Expld.** May *v.* May, [1929] 2 K. B. 386. **Consd.** L. *v.* L., [1931] P. 63; Lambert *v.* Lambert, [1936] 3 All E. R. 20. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44; Russell (Countess) *v.* Russell (Earl), [1935] P. 39; Mann *v.* Mann, [1936] 1 All E. R. 952.

2090. *Add. Annotations:*—*Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601; Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

PART XI. SECT. 6, SUB-SECT. 7.

1 i. —— ——.]—Where a separation agreement was not invalid on the ground that the father had therein waived his rights to the control & guardianship of the children:—*Held:* before the wife could ask for maintenance for them, she must show that she had failed to perform those duties to them amounting to guardianship which she had assumed under the agreement.—HOLOWACHUK *v.* HOLOWACHUK (Man.), [1927] 2 W. W. R. 470.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 11.

2073 ii. —— —— ——.]—A separation agreement, which provided for the payment of a specific sum by instalments to be secured by a mtge., & which did not contain a *dum casta* clause:—*Held:* enforceable by the wife, although there had been subsequent adultery by her & she had been divorced & had married again.—RUST *v.* RUST, [1927] 2 D. L. R. 248; [1927] 1 W. W. R. 491; 22 Alta. L. R. 430.—**CAN.**

2073 iii. —— —— —— ——.]—A husband is liable on a separation deed, notwithstanding the wife's subsequent adultery, unless there is a *dum casta* clause.—JASPER *v.* JASPER, [1935] 3 D. L. R. 64; O. R. 269; *affd.*, [1936] 1 D. L. R. 193; O. R. 57.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 12.

2086 i. *Covenant by wife not to claim further maintenance—Subsequent judicial separation.*]—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held:* the petition must be dismissed.—K. *v.* K., [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641.—**CAN.**

si. *Covenant by wife not to claim alimony—Subsequent adultery of husband—Whether covenant still binding—Right of court to award maintenance for children.*]—HOLTEN *v.* HOLTEN, [1928] 1 D. L. R. 546.—**CAN.**

si. —— —— ——.]—An agreement between a husband & wife before a decree *nisi* of divorce, in which, in consideration of the payment of a certain weekly sum for her maintenance, she covenanted to take no proceedings for alimony, does not prevent the ct. under Divorce & Matrimonial Causes Act, 1857, from entertaining an application for alimony.—X. *v.* X., [1933] 2 W. W. R. 413; 41 Man. L. R. 209.—**CAN.**

PART XI. SECT. 7, SUB-SECT. 2.—B.

sx. *Jurisdiction of court—King's Bench Act, s. 22.*]—DAVIS *v.* DAVIS, [1926] 1 W. W. R. 942; 20 Sask. L. R. 543.—**CAN.**

2102 ii. —— ——.]—*Held:* a covenant by the wife that she would not "molest, disturb or annoy" her husband was not broken by her taking the children to England without her husband's knowledge or consent, thereby depriving him of his right of access given by the deed of separation, since such removal had been effected in order to protect the wife & children from the importunity & probable violence of the husband. If there had been a breach, such breach was no defence to an action by the wife for arrears of maintenance of the children, the husband's remedy being a counter-claim for damages.—WILLIAMS *v.* WILLIAMS, [1933] N. Z. L. R. 94; G. L. R. 592.—N.Z.

2102 iii. ——*Breach of condition—As to access to child—Reply alleging husband's bad character.*]—A separation agreement provided that the wife should be given the custody of the son, but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—*Held:* a reply alleging the husband's

2106. *Add. Annotations :—As to* (1) **Refd.** Hyman *v.* Hyman, [1929] A. C. 601. *Generally,* **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2111. *Add. Annotation :—***Refd.** H. *v.* H., [1928] P. 206.

2144. *Add. Annotations :—***Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2151. *Add. Annotations :—***Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Kirk *v.* Eustace, [1937] 1 K. B. 278.

2158. *Add. Annotation :—***Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2164. *Add. Annotation :—***Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2174. *Add. Annotations :—***Consd.** Melvill *v.* Melvill & Woodward, [1930] P. 159. **Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64 ; Hyman *v.* Hyman, [1929] A. C. 601 ; Brown *v.* Brown, [1936] 2 All E. R. 1616.

2176. *Add. Annotations :—***Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64 ; Hyman *v.* Hughes *v.* Hughes (1928), 139 L. T. 416.

2177. *Add. Annotations :—***Consd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211. **Apld.** May *v.* May, [1929] 2 K. B. 386. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416 ; Cooper *v.* Cooper & Ford (1932), 48 T. L. R. 275.

2178a. —— —— —— ——.]—On a husband's petition for the cancellation of a post-nuptial settlement, after decree absolute of divorce granted on the ground of her adultery subsequent to the date of the settlement, the registrar's order extinguishing resp.'s interest in the settlement was varied by the amount payable thereunder being reduced & by a limitation *dum sola et casta.*—COOPER *v.* COOPER & FORD, [1932] P. 75 ; 101 L. J. P. 28 ; 147 L. T. 16 ; 48 T. L. R. 275 ; 76 Sol. Jo. 249.

2179. *Add. Annotation :—***Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

Part XII.—Legal Proceedings.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1.

2184. *Add. Annotation :—***Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2189a. —— ——.] — PRACTICE NOTE, [1926] W. N. 8.

2199. *Add. Annotation :—***Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

2210. *Add. Annotation :—***Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2212. *Add. Annotation :—***Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2213. *Add. Annotation :—***Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2223a. —— —— **Power to amend—Woman in fact widow.**]—Deft. was sued, & judgment was obtained against her, as Mrs. A., a married woman, the judgment being in the form settled in *Scott* v. *Morley.* In fact, deft. was not Mrs. A. or a married woman, but was Mrs. W., a widow, she having kept back from, & actively misrepresented to, the ct. her real name & status. On the real facts being ascertained pltf. applied by summons

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bad character was no excuse for a breach of the condition.—MCLENNAN *v.* MCLENNAN, [1925] 3 D. L. R. 281 ; [1925] S. C. R. 279 ; *affg.,* [1925] 1 D. L. R. 277 ; 57 N. S. R. 480.—**CAN.**

2103 i. *For arrears of annuity.*]—BARLOW *v.* BARLOW (1927), 30 W. A. L. R. 8.—**AUS.**

sy. *For agreed sum for maintenance—Covenant not to sue.*]—By a separation agreement it was provided, *inter alia,* that the husband would pay the wife £150 for her maintenance & support ; that the wife would keep the husband indemnified against her debts ; that the wife would not commence proceedings for maintenance against the husband, & that she would not molest him. Custody of, & the duty of maintaining, two children of the marriage were conferred on the wife. The husband did not pay the £150 mentioned ; the wife sued for this sum :—*Held :* the wife was entitled to recover.—MEZZINE *v.* MEZZINE, [1927] S. A. S. R. 167.—**AUS.**

sz. —— ——.]—BAKEWELL *v.* BAKEWELL (1927), 38 S. R. N. S. W. 94 ; 45 N. S. W. W. N. 45.—**AUS.**

PART XI. SECT. 7, SUB-SECT. 2.—C.

sa. *Claim for—Whether claim for alimony can be joined.*]—A claim for specific performance of a separation agreement is inconsistent with a claim for alimony & so long as the former claim stands it is a bar to the obtaining alimony *pendente lite* or interim costs.—HENKE *v.* HENKE, [1928] 1 D. L. R. 1090 ; [1928] 1 W. W. R. 337 ; 22 Sask. L. R. 267.—**CAN.**

PART XI. SECT. 8.

2165 iii. —— —— ——.]—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—NATIONAL TRUST CO., LTD. *v.* BELL, [1925] 4 D. L. R. 1029 ; [1925] 3 W. W. R. 712.—**CAN.**

sb. *Agreement for—Failure of consideration.*]—WAKARUK *v.* WAKARUK (Alta.), [1926] 1 D. L. R. 493.—**CAN.**

sf. *Power of court to set aside deed.*]—H. & W. had entered into a private deed of separation. H. now sued for an order setting it aside. He desired to resume matrimonial relations with W. & could provide her with a home. There were no grounds for a judicial separation & there were no longer any grounds for a private separation. W. was in breach of the deed, & was in default in the action :—*Held :* it was competent for the ct. to set aside a private deed of separation, & by granting the relief sought the ct. would be encouraging the parties to resume their married life.—ORAM *v.* ORAM (1936), N. L. R. 287.—**S. AF.**

PART XI. SECT. 9.

p i. —— *Good reason for variation—Onus of proof.*]—A husband & wife having entered into a separation agreement under which the custody of their two eldest children were given to the father & that of the youngest child to the mother, & provision was made for access of both parents to all the children, the mother subsequently launched a petition to obtain the custody & control of the eldest boy, the second child had been accidentally drowned in the meantime :—*Held :* the mother had failed to show any good reason why the ct. should interfere with the arrangement made by the separation agreement.—BRUIN *v.* BRUIN (B. C.), [1929] 4 D. L. R. 802 ; 2 W. W. R. 218.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—A.

e (p. 249) i. —— ——.]—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as deft. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—SAMPSON *v.* THOMAS, [1925] 1 W. W. R. 1018.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—F. (a).

2221 ii. ——.]—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman.—BISHOP *v.* BLACK, [1925] 3 W. W. R. 679.—**CAN.**

c i. ——.]—Defts. who were husband & wife, signed a promissory note payable to pltf. on demand. Upon default being made in payment, pltf. obtained judgment against defts. in the county court of Victoria. The judgment against Mrs. R. was against her personally :—*Held :* a nullity.—MAYER FINANCE CO. *v.* ROSS, [1929] N. Z. L. R. 748.—**N.Z.**

c ii. ——.]—SILLIKER *v.* FRASER, [1931] 4 D. L. R. 326.—**CAN.**

to the master asking that the judgment should be altered to a personal judgment against deft. as Mrs. W., a widow :—*Held :* there was no jurisdiction to amend the judgment either under the slip rule or under the inherent jurisdiction of the ct. inasmuch as the judgment had been intentionally given in the form it was.—MACCARTHY *v.* AGARD, [1933] 2 K. B. 417; 102 L. J. K. B. 753; 149 L. T. 595, C. A.

2225. *Add. Annotations :*—**Consd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417. **Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2238. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2245. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2249. *Add. Annotation :—As to* (2) **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

2282. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2286. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2287a. Action for libel by wife against husband—Wife in business.]—RALSTON *v.* RALSTON, No. 2293a, *post.*

2290. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2291a. Claim by husband against wife—Interpleader proceedings.]—A wife deposited certain furniture & other goods with warehousemen for safe storage. Her husband claimed that the furniture & other goods were his property, & issued a writ in detinue against the warehousemen claiming the delivery up of the goods. The wife also claimed the goods as being her property. The warehousemen disclaimed any interest in the goods except for storage charges, & took out an interpleader summons in the action, making the wife the claimant. An order was made by a master directing the trial of an issue in the King's Bench Division to determine whether the goods were the property of the husband or the wife, & directing that in that issue the husband was to be pltf. & the wife was to be deft. The judge in chambers affirmed the order. Upon an appeal by the wife on the ground that such an order could not be made as between a husband & a wife :—*Held :* the interpleader issue which was directed was not an action by the husband against the wife but a proceeding in the action by the husband against the warehousemen, & the order for interpleader was necessary in order to give relief to the warehousemen, who had two claimants making claims against them in respect of the property, & there was jurisdiction under R. S. C., Ord. LVII, r. 7, to make the order directing an interpleader issue to be tried, & the husband was properly directed to be in the position of pltf. in the issue, & the wife in the position of deft., because the deposit of the property with the warehousemen had been made by the wife, & the husband had to make out his case.—DE LA RUE *v.* HERNU, PERON & STOCKWELL, LTD., [1936] 2 K. B. 164; [1936] 2 All E. R. 411; 105 L. J. K. B. 430; 154 L. T. 713; 52 T. L. R. 499, C. A.

2292. *Add. Annotation :*—**Consd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

PART XII. SECT. 1, SUB-SECT. 1.—I.

sc. *Liability of husband—Participating in litigation.*]—In an action by a married woman against a third party : —*Held :* notwithstanding Married Women's Property (Scotland) Act, 1920 (c. 64), s. 3 (1), pursuer's husband, in respect that he had actively participated in the litigation, fell to be made jointly & severally liable in expenses along with his wife.—M'MILLAN *v.* MACKINLAY, [1926] S. C. 673.—**SCOT.**

PART XII. SECT. 1, SUB-SECT. 2.—A.

e i. —— *Interference with business carried on by wife.*]—Pltf., a married woman, carried on business as an hotelkeeper, & owned the chattels in the hotel. Deft., her husband, interfered with pltf. in her business by taking the receipts, giving orders to servants, & maltreating pltf. An injunction was granted restraining deft. from interfering in the business or with the servants or agents, or removing any of pltf.'s chattels.—DONNELLY *v.* DONNELLY (1885), 9 O. R. 673.—**CAN.**

e ii. ——.]—The effect of sects. 10 & 11 of Married Women's Property Act, R. S. M., 1913, is that, other than an action for tort, all civil remedies are open to a husband against his wife. [illegible] deft. had [illegible]lly broken open a trunk & taken [illegible]m a sum of currency belonging to him, & that she had deposited a certain amount thereof to her credit under an assumed name in the [illegible] office savings bank at Winnipeg, where the money remained, & that she had refused on demand to transfer or return it to him. He prayed that the money be declared his property, for an injunction restraining her from withdrawing it, & for an order that the money be paid to him or that she [illegible] therefor to his order :—*Held :* pltf. was not suing for a tort but to have it declared that the money was his & for enforcement of his title thereto. The appeal was allowed, the injunction was made permanent, & pltf. was declared to be entitled to the money.—SEREDOWICZ *v.* SEREDOWICZ, [1934] 1 W. W. R. 665; 3 D. L. R. 47; 42 Man. L. R. 35.—**CAN.**

sd. *Action for breach of trust.*]—*Held :* under the Married Women's Property Act, 1890, a husband can maintain an action against his wife for breach of trust, & in cases where another person is sued with the wife, & that person sets up a claim to portion of the property, the right of action given by sect. 21 of that Act is not an exclusive remedy.—ANHAEUSSER *v.* ANHAEUSSER & ROTH (1930), S. R. (Q.) 55.—**AUS.**

sf. *Proceedings for possession order—Husband's house in possession of wife.*] —A husband cannot obtain a possession order against his wife for his house in which she continues to reside after separation unless he provides another home for her.—MCLEOD *v.* MCLEOD, [1935] 2 D. L. R. 648; *revsd. sub nom.* M. *v.* M., [1935] 3 D. L. R. 551; O. R. 329.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—B.

2292 i. *Action by wife against husband —For negligence.*]—Pltf., a married woman, brought this action against her husband & another for negligence in the operation of a motor vehicle driven by her husband, in which she was a passenger, whereby she was injured, & she claimed damages for her injury. The statement of claim contained no allegation of any express or implied contract :—*Held :* the action was for a tort within Married Women's Property Act, 1926, s. 8, & was not maintainable against pltf.'s husband.—GOLDMAN *v.* GOLDMAN, [1928] 2 D. L. R. 152; 61 O. L. R. 657.—**CAN.**

2292 ii. —— ——.]—A wife, who was being driven by her husband in his motor car, was injured in a collision between the motor car & a motor lorry. She brought an action of damages against the owner of the lorry & against her husband :—*Held :* the action against the husband was incompetent, in respect that (*a*) at common law the relationship existing between husband & wife is of so intimate a character that it is against public policy that the one should have a right of action against the other in consequence of a wrong done, & (*b*) Married Women's Property (Scotland) Act, 1920, has not altered the law in this respect.—HARPER *v.* HARPER, [1929] S. C. (Ct. of Sess.) 220.—**SCOT.**

2292 iii. —— ——.]—COUPLAND *v.* MARR. [1931] O. R. 707.—**CAN.**

2292 iv. —— *Married Women's Act, R.S.A.* 1922, *s.* 2.]—Married Women's Act, R. S. A. 1922, c. 214, s. 2, which provides, *inter alia*, that a married woman shall be capable of suing & being sued in any form of action as if she were an unmarried woman cannot be relied on to support an action in tort by a wife against her husband.

Semble : the Act, if, and so far as, it purports to enable a wife to sue her husband in tort, is *intra vires* the Province as being legislation in relation to a "civil right."—HILL *v.* HILL, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 1, 873; *affd.*, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105. —**CAN.**

sp. *Action by wife against husband—To set aside fraudulent conveyance.*]—Pltf., who had obtained a judgment for alimony & costs, sued on behalf of herself & all other creditors of her husband to set aside, as fraudulent & void under the Fraudulent Conveyances Act, R. S. B. C., 1924, a prior conveyance made by him to his daughter :

2293a. —— ——.]—(1) Pltf. married deft. in 1893. In 1899 the parties separated under a deed of separation & thenceforward lived apart. By the deed of separation deft. covenanted to pay an annuity to pltf., & the deed also contained a covenant for further assurance. After the separation pltf. set up in business as a garage proprietor, & she subsequently converted this business into a private limited co. in which she held the majority of the shares & also was the chairman & managing director. In 1929 she saw in a churchyard near her husband's residence a tombstone on which was the following inscription: "In loving memory of Jennie the dearly beloved wife of W. R. Crawshay Ralston of the Bungalow, Valley. Died 20th May, 1916." Deft. was the W. R. Crawshay Ralston mentioned in the inscription & he had caused the inscription to be made. Pltf. brought an action against her husband for libel & also for a declaration that she was the lawful wife of deft.:—*Held:* though the inscription was capable of a defamatory meaning, pltf., by reason of Married Women's Property Act, 1882 (c. 75), s. 12, could not sue her husband on it, the action being for a tort & not for the protection & security of her separate property.

(2) If there were any doubt as to the validity of the marriage, in my opinion, an action at law in the K. B. Div. of the High Ct. is not the proper proceeding in which to have that matter determined. I think it would be necessary, if there were any doubt as to the validity of the marriage, to take proceedings under the Legitimacy Declaration Act, 1858 (c. 93) (MACNAUGHTEN, J.).—RALSTON *v.* RALSTON, [1930] 2 K. B. 238; 99 L. J. K. B. 266; 142 L. T. 487.

2294. *Add. Annotation:*—**Consd.** RALSTON *v.* RALSTON, [1930] 2 K. B. 238.

2294a. —— **For negligence—Injury sustained before marriage.**]—Although by Married Women's Property Act, 1882 (c. 75), s. 12, a married woman has the same civil remedies for the protection & security of her own separate property as if it belonged to her as a feme sole, & by sect. 24 "property" includes a thing in action, nevertheless a right of action for a pure tort which accrued before the marriage of the parties is not a thing in action within sect. 24, & consequently such right is not part of the wife's separate property.

An unmarried woman sustained injuries through a man's negligent driving, & issued a writ against him claiming damages in respect thereof. Before the trial of the action she married him:—*Held:* her right of action was not such a thing in action as would become her separate property within the meaning of the Act, but was barred by the general disability of husband & wife to sue each other for a tort.—GOTTLIFFE *v.* EDELSTON, [1930] 2 K. B. 378; 99 L. J. K. B. 547; 143 L. T. 595; 46 T. L. R. 544; 74 Sol. Jo. 567.

2310. *Add. Annotations:*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

Part XIII.—Matrimonial Causes.

2317. *Add. Annotations:*—*As to* (2) **Apld.** Cavendish *v.* Cavendish, [1926] P. 10. **Distd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

2318. *Add. Annotation:*—**Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2321. *Add. Annotations:*—**Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Raeburn *v.* Raeburn (1928), 138 L. T. 672.

—*Held:* pltf.'s action was one upon the statute & not one of tort within Married Women's Property Act, R. S. B. C., 1924.—FUHR *v.* FUHR, [1936] 2 W. W. R. 237; 50 B. C. R. 438.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—D.

sd. *Jurisdiction to decide on originating notice—Right to direct an issue.*]—FOSTER *v.* FOSTER, [1928] 3 W. W. R. 573.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.

m i. —— —— ——.]—A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85).—CLAMAN *v.* CLAMAN (1925), 35 B. C. R. 137.—**CAN.**

m ii. —— —— ——.]—The Supreme Ct. of British Columbia has jurisdiction to entertain a petition for divorce between persons domiciled in that Colony & in respect of matrimonial offences alleged to have been committed therein.—WATTS & A.-G. FOR BRITISH COLUMBIA *v.* WATTS, [1908] A. C. 573, P. C.—**CAN.**

q i. —— —— ——.]—The parties went through a form of marriage in Nova Scotia. In an action for declaration of nullity based on absence of consent & fraud:—*Held:* the Supreme Ct. of Ontario had no jurisdiction to entertain the action, & would have had none even if the marriage had been an Ontario marriage. The jurisdiction of the Ecclesiastical Cts. in England has not been conferred upon the Supreme Ct. of Ontario.—VAMVAKIDIS *v.* KIRKOFF, [1930] 2 D. L. R. 877; 64 O. L. R. 585.—**CAN.**

q ii. —— —— —— *Adultery before Divorce Act, 1930, in force.*]—Divorce Act, 1930, is retroactive & confers on the Supreme Ct. of Ontario jurisdiction to dissolve a marriage if pltf. can establish an act of adultery on the part of deft. at any time after the celebration of the marriage even though the act of adultery occurred before the Divorce Act came into force.—UPPER *v.* UPPER, [1933] O. R. 1; 1 D. L. R. 244.—**CAN.**

a i. —— *High Court—Bombay—To hear matrimonial suits between Jews.*]—The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require."—BENJAMIN *v.* BENJAMIN (1925), I. L. R. 50 Bom. 369.—**IND.**

a ii. —— *Proceedings for nullity—Under Christian Marriage Act, 1872.*]—A suit for a declaration that a marriage is null & void under Christian Marriage Act, 1872, s. 4, because it was not solemnised in accordance with the rules, rites & ceremonies of the Church must be instituted in the appropriate subordinate civil ct. & cannot be entertained by the High Ct. direct.—TITLI *alias* TEREZA *v.* JONES (1933), I. L. R. 56 All. 428.—**IND.**

ai. —— *Court of Appeal—British Columbia.*]—The Ct. of Appeal has no jurisdiction to entertain appeals in divorce & matrimonial causes.—TYTLER *v.* JAMIESON, [1935] 3 W. W. R. 510; 4 D. L. R. 705; 50 B. C. R. 263.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 3.

2320 i. *Practice of Ecclesiastical Courts followed—Proceedings in formâ pauperis in Manitoba.*]—COLERIDGE *v.* COLERIDGE (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

ss. *Rule inconsistent with Divorce & Matrimonial Causes Act, 1857—Validity.*]—The fact that K. B. Rule 598 differs from sect. 28 of Divorce & Matrimonial Causes Act, 1857, does not render the rule invalid. Said sect. 28 deals wholly with rules of practice & procedure, & even if they were ever effective in Saskatchewan they, as the result of sect. 12 of King's Bench Act, 1920, have been superseded by K. B. Rule 598.—MAY *v.* MAY & MCKINLAY, [1934] 3 W. W. R. 471.—**CAN.**

2327. *Add. Annotation :*—**Reld.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2328a. No. 6069a, *post*.

2328b. Distinguished from other grounds for annulling marriage.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a [illegible] which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 29 L. G. R. 353.

Annotation :—**Reld.** White (otherwise Bennett) *v.* White, [1937] P. 111.

2331. *Add. Annotation :*—**Reld.** Inverclyde *v.* Inverclyde, [1931] P. 29.

2334. *Add. Annotations :*—**Reld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29; Newbould *v.* A.-G., [1931] P. 75; Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2340. *Add. Annotations :*—**Reld.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190; Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2342a. —— **Repudiation of marriage by other party.**]—In a suit for nullity of marriage on the ground of incapacity to consummate it the ct. granted a decree to a petitioner who was the incapable spouse, finding as a fact that the other spouse had repudiated the marriage contract, but expressly refrained from deciding that there is jurisdiction to entertain such a suit at the instance of an incapable petitioner in the absence of repudiation of the contract by the other spouse.—DAVIES (OTHERWISE MASON) *v.* DAVIES, [1935] P. 58; 104 L. J. P. 9; 152 L. T. 264; 51 T. L. R. 151; 78 Sol. Jo. 878.

2345. *Add. Annotation :*—**Folld.** H. *v.* H. (otherwise N.) (1929), 45 T. L. R. 618.

2345a. —— ——.]—Where the ct. finds in a for nullity of marriage that both the [illegible] to the ceremony of marriage are impotent, each being incapable as regards the other, a decree *nisi* may be granted to each of the parties & either may apply in due course for a decree absolute.—H. *v.* H. (OTHERWISE N.) (1929), 98 L. J. P. 155; 45 T. L. R. 618.

2350. *Add. Annotation :*—**Apld.** Snowman *v.* Snowman, [1934] P. 186.

2351a. —— —— **Miscarriage resulting from fecundation ab extra.**]—Where in a woman's suit for nullity of marriage on the ground of the man's incapacity it was established that there had only been imperfect intercourse, as a result of which fecundation *ab extra* took place on two occasions & miscarriages followed, & the woman still remained *virgo intacta*, the ct. pronounced a decree *nisi* of nullity.—SNOWMAN (OTHERWISE BENSINGER) *v.* SNOWMAN, [1934] P. 186; 103 L. J. P. 87; 151 L. T. 180; 50 T. L. R. 445.

2369. For "DICKINSON *v.* DICKINSON" read "DICKINSON *v.* DICKINSON (OTHERWISE PHILLIPS)."

2370. *Add. Annotation :*—**Reld.** Newbould *v.* A.-G., [1931] P. 75.

2377. For "B. *v.* B." read "B. (OTHERWISE H.) *v.* B."

2381. *Add. Annotations :*—**Reld.** Inverclyde *v.* Inverclyde, [1931] P. 29; Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

2382. *Add. Annotation :*—*As to* (1) **Reld.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2383. *Add. Annotation :*—**Consd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

2384a. ——.]—During three years' cohabitation following a ceremony of marriage the man made no attempt to consummate the marriage, & in fact it was never consummated. The ct. granted the woman on her petition a decree *nisi* of nullity, acting on the presumption of law that resp. was incapable.—KAY (OTHERWISE GUNSON) *v.* KAY (1934), 152 L. T. 264; 51 T. L. R. 152; 78 Sol. Jo. 899.

2405. *Add. Annotation :*—**Consd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

PART XIII. SECT. 3, SUB-SECT. 1.

p i. ——.]—The fact that, at the time of her marriage, a wife has living a child born as a consequence of illicit intercourse with another man, of which intercourse her husband had no knowledge, does not entitle the latter to have the marriage set aside.—STANDER *v.* STANDER, [1929] App. D. 349.—**S. AF.**

PART XIII. SECT. 3, SUB-SECT. 2.—A.

2329 v. ——.]—The law of Ontario as to annulment of marriage is the law of England as of July 15, 1870, unless modified by provincial law. Relief for persistent refusal of intercourse can only be given where an inference of impotence can be drawn.—BETHELL *v.* BETHELL, [1932] O. R. 300; 2 D. L. R. 663.—**CAN.**

2329 vi. ——.]—DAWSON *v.* DAWSON, [1937] 3 W. W. R. 8.—**CAN**

PART XIII. SECT. 3, SUB-SECT. 2.—B.

s i. ——.]—A decree for nullity of marriage cannot according to the principles of the ecclesiastical law as administered in the Matrimonial Ct. be granted to petitioner on the ground merely of petitioner's own impotence; but, if a petitioner can in addition to his own impotence satisfy the ct. that there has been & is conduct on the part of resp. which has destroyed the *verum matrimonium*, as, by a genuine & deliberate repudiation of the marriage contract & its obligations, the ct. may *ex justa causa* grant the relief.—McM. *v.* McM., McK. *v.* McK., [1936] I. R. 177.—**IR.**

PART XIII. SECT. 3, SUB-SECT. 2.—C.

2346 iii. —— ——.]—Where the husband was potent & there was no structural incapacity on the part of the wife, but the marriage had never been consummated owing to the opposition of the wife without any legitimate reason, the ct. granted a decree of nullity of the marriage on the ground that there was an invincible repugnance on the part of the wife to the act of consummation resulting in paralysis of the will, which was consistent only with incapacity.—S. *v.* S. (1926), 29 W. A. L. R. 52.—**AUS.**

2356 i. *Not mere incapacity of conception—Where intercourse possible.*]—Persistent & wilful refusal to consummate by a wife is not of itself a ground for annulment, except so far as it is evidence of abnormal physical condition. If there is capacity to consummate, incapacity of conception is no ground for annulment.—TICE *v.* TICE, [1937] 1 D. L. R. 660; O. R. 233.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—D. (b).

2366 i. —— *Wilful & persistent refusal—Refusal to be medically examined.*]—Wilful & persistent refusal by a wife to consummate, & refusal to submit to a medical examination, raise an inference of impotence entitling the husband to have the marriage annulled.—SZREJHER *v.* SZREJHER, [1936] 2 D. L. R. 413; O. R. 250.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—D. (e).

sk. *Whether age a defence.*]—The advanced age of the parties is not in itself a bar to the annulment of a marriage on the ground of impotency.—MARTIN *v.* MARTIN, [1937] 1 W. W. R. 95; 1 D. L. R. 417; 6 L. Jo. 229; 44 Man. K. B. 436.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—E.

2397 i. *Sufficiency of.*]—HATE *v.* HATE, [1927] 3 D. L. R. 481; [1927] 2 W. W. R. 366; 22 Alta. L. R. 565.—**CAN.**

2412a. Right to begin.]—In a suit of jactitation of marriage, resp. begins; but, *semble*, petitioner's counsel has a right of reply.—GOLDSTONE *v.* GOLDSTONE (1922), 127 L. T. 32; *sub nom.* GOLDSTONE *v.* SMITH (OTHERWISE GOLDSTONE, 38 T. L. R. 403.

2452a. ——.]—MANN *v.* MANN, No. 2496, *post.*

2453a. ——.]—In this suit two questions arose: (*a*) whether a memorandum of agreement permitting the wife to live separate & apart was a deed of separation; (*b*) whether her proposal, after having herself separated from her husband & signed the agreement, that they should set up house together in the interests of the children, constituted a sincere desire for resumption of cohabitation. For petitioner it was submitted that the memorandum of agreement relied upon was not a deed of separation, but merely an agreement for maintenance for a limited period. Even if it were a deed of separation, the wife was entitled to change her mind, & she had in fact shown a sincere desire to live together again with her husband, though her motive might have been the welfare of the children: —*Held:* the memorandum of agreement was a valid & binding & subsisting agreement to live separate & apart. The wife's proposal, not being made to restore the connubial relationship *simpliciter*, but merely so that she & her husband & the children should set up house together, was not a sincere desire that they should live together. Petition dismissed.—LACEY *v.* LACEY (1931), 146 L. T. 48: 95 J. P. 179; 47 T. L. R. 577; 75 Sol. Jo. 572; 29 L. G. R. 566.

2477a. ——.]—LYNCH *v.* LYNCH (1933), 78 Sol. Jo. 30.

2479a. Extravagance of wife.]—(1) Extravagance of living on the part of a wife affecting the financial position & prospects of her husband may be a matter "so grave & weighty" within *Yeatman* v. *Yeatman*, No. 3001, as to render it contrary to the real truth of the case to treat the husband as guilty of desertion without reasonable cause, & therefore may afford a defence to a petition for restitution of conjugal rights.

(2) A husband is not to be taken as having deserted his wife without reasonable cause because his work in life compels him to live away from her.—G. *v.* G., [1930] P. 72; 142 L. T. 311; 94 J. P. 79; 46 T. L. R. 69; *sub nom.* G.-M. *v.* G.-A. D., 99 L. J. P. 14; 74 Sol. Jo. 59; *subsequent proceedings, sub nom.* GORDON *v.* GORDON (1931), 75 Sol. Jo. 139.

2479b. Husband's work requiring him to live apart from wife.]—G. *v.* G., No. 2479a, *ante.*

2484a. —— Together with aversion from husband's work & interests.]—RUSSELL (MARCHIONESS OF TAVISTOCK) *v.* RUSSELL (MARQUIS OF TAVISTOCK) (1935), 80 Sol. Jo. 16.

2487a. —— ——.]—LACEY *v.* LACEY, No. 2453a, *ante.*

2490. *Add. Annotations:*—*As to* (2) **Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1. *Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601; Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

2492. *Add. Annotation:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

2494. *Add. Annotation:*—*As to* (1) **Refd.** Lacey *v.* Lacey (1931), 47 T. L. R. 577.

2498. *Add. Annotations:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender *v.* Mildmay, [1937] 2 All E. R. 402.

2501. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2511. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

PART XIII. SECT. 3, SUB-SECT. 4.

st. *What must be proved.*]—Before a decree of dissolution of marriage can be made on the ground set out in sect. 10 (f) of Divorce & Matrimonial Causes Act, 1928, which is as follows: "That resp. is a person of unsound mind & is unlikely to recover, & has been confined as such in New Zealand in an institution within Mental Defectives Act, 1911, or in a like institution in any other country of the British dominions, for a period or periods not less in the aggregate than seven years within the period of ten years immediately preceding the filing of the petition." Petitioner has to establish not merely that resp. is a person of unsound mind & is unlikely to recover, but also that resp. has been confined as such in an institution for the required period—*i.e.*, confined as a person afflicted with unsoundness of mind to a degree that warrants the making of a committal order. Consequently, it is not permissible under the above-quoted para. (f) to count any period of detention as a voluntary boarder in a mental institution which resulted in relief & temporary cure & discharge merely because the person ultimately became a person of so unsound a mind as to warrant & result in committal, or to treat a voluntary boarder as having been actually confined as a person of unsound mind merely because it is established by evidence that such resp. could have been lawfully confined as a person of unsound mind.—G. *v.* G., [1936] N. Z. L. R. 752; G. L. R. 555; 12 N. Z. L. J. 248.—**N. Z.**

PART XIII. SECT. 5, SUB-SECT. 1.—D.

2435 ii. ——.]—A prior request in writing for restitution of conjugal rights is not a prerequisite to the bringing of an action in Saskatchewan for restitution of conjugal rights.—POLOVNIKOFF *v.* POLOVNIKOFF, [1930] 2 W. R. R. 177.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—E.

2452 ii. ——.]—On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse.—WOODLANDS *v.* WOODLANDS (1924), 35 C. L. R. 446.—**AUS.**

2452 iii. ——.]—After a husband & wife had separated & had been living apart, each of them being content to do so, the wife sincerely but unsuccessfully endeavoured to induce him to resume cohabitation. She then petitioned for restitution of conjugal rights. There was no suggestion of any matrimonial offence by either party which would bar the restitution:—*Held:* she was entitled to the decree.—WALTON *v.* WALTON, [1934] 3 W. W. R. 588; [1935] 1 D. L. R. 79; 42 Man. R. 538.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1. F. (a).

sd. *Petitioner guilty of*

A suit for restitution of conjugal rights lies under Burmese Buddhist law; but a husband will not obtain such restitution on account of his misconduct.—MATHEIN NWE *v.* MAUNG KHA (1929), I. L. R. 7 Ran. 451.—**IND.**

se. *Defendant in prison.*]—The ct. has no power to dispense with the preliminary order of restitution in an action for restitution of conjugal rights failing which a divorce on the ground of malicious desertion. In such an action the mere fact that deft. is in prison is no bar to the granting of a restitution order.—ALDRED *v.* ALDRED, [1929] App. D. 356.—**S. AF.**

sg. *Agreement to settle differences—Not acted upon.*]—A memorandum of agreement of settlement of matrimonial differences signed after the close of the pleadings in proceedings for judicial separation, but not acted upon, has no effect, & will not bar petitioner from obtaining her remedy in proceedings for restitution.—COLDICUTT *v.* COLDICUTT (1932), 46 B. C. R. 354.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—F. (b).

sk. *Petitioner suffering from venereal disease.*]—The fact that a husband is suffering from venereal disease is no bar to an action by him against his wife for restitution of conjugal rights failing which a divorce.—AINSBURY *v.* AINSBURY, [1929] App. D. 109.—**S. AF.**

2518a. ——.]—A husband & wife intermarried in Feb. 1922, & continued to cohabit until July, 1927, when the wife left the husband. On Nov. 2, 1927, the wife petitioned for a divorce founded upon an act of sodomy alleged to have been committed on her by the husband in Mar. 1922, & alleged acts of cruelty consisting of (*a*) acts of shameless uncleanness & invitations to repeat them, & (*b*) ordinary acts of cruelty, such as acts of ill-temper & abuse.

At the trial the judge in summing up to the jury did not warn the jury against finding that the sodomy alleged had been committed on the uncorroborated evidence of the wife, who was an accomplice; nor did he clearly point out that before it could be held that there was cruelty as regards the sexual malpractices it must be shown that they caused danger to life, limb or health, bodily or mental, or a reasonable expectation of it. The jury's verdict was that sodomy had been committed as alleged; that the husband had been guilty of cruelty of the class (*a*), & that he had not been guilty of cruelty of class (*b*). The judge then made a decree *nisi* for dissolution of the marriage. On appeal:—*Held:* (1) the judge ought to have warned the jury that cogent evidence was required to overcome the presumption of innocence of sodomy, & that they should not convict on the wife's uncorroborated evidence; (2) the ct. must take notice of the fact that there had been condonation of the offence, even though the husband did not plead it; (3) the judge had misdirected the jury by saying that the sexual malpractices were cruelty in themselves, as there could not be legal cruelty without danger to life, limb, or health, physical or mental, or reasonable apprehension of it; & (4) instead of directing a new trial the ct. should dismiss the wife's petition.

(5) The wife having on the evidence been a consenting party to the act of sodomy alleged to have been committed it would be impossible for her to obtain a decree of divorce based solely on that act.

(6) The rules with regard to condonation & connivance as a bar to a decree for divorce were well established in the practice of the Ecclesiastical Cts. before the Act of 1857. In my judgment these rules apply to cases in which the ground alleged for divorce is sodomy (GREER, L.J.).—STATHAM *v.* STATHAM, [1929] P. 131; 98 L. J. P. 113; 140 L. T. 292; 45 T. L. R. 127; 72 Sol. Jo. 847, C. A.

Annotation:—As to (1) **Consd.** D. B. *v.* W. B., [1935] P. 80

2554. *Add. Annotation:*—*Generally*, **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

2602. Add the following para.:—

Though there was no suggestion that the children had been cruelly or improperly treated by the husband, the ct. directed the children to remain in the custody of the mother so long as she maintained & properly educated them without expense to her husband, he to have proper access to them, till they should respectively attain fourteen years of age.

2648a. Unnatural offences.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2661. *Add. Annotations:*—**Apld.** Statham *v.* Statham, [1929] P. 131. **Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2671. *Add. Annotation:*—**Refd.** W——, M. J. *v.* W——, H. R. W., [1936] 2 All E. R. 1112.

2704a. —— ——.]—Where the ct. was satisfied that a wife had been raped by a man unknown, with the result that she gave birth to a child, it held that there was no adultery & dismissed the husband's petition for divorce. —CLARKSON *v.* CLARKSON (1930), 143 L. T. 775; 46 T. L. R. 623.

PART XIII. SECT. 5, SUB-SECT. 2.—B. (a).

2521 i. *Question of fact & degree.*]—Cruelty is a matter of degree.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

2521 ii. ——.]—The question whether pltf. herein was actually afraid of her husband or not held not to affect the question whether his conduct amounted to legal cruelty as defined in *Russell* v. *Russell*, No. 2661.—DESABRAIS *v.* DESABRAIS, [1928] 3 D. L. R. 549; [1928] 2 W. W. R. 394; 22 Sask. L. R. 417.—**CAN.**

2534 i. *Cumulative effect of acts not cruelty per se.*]—The acts constituting cruelty may be treated as cumulative.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (c).

2560 ix. ——.]—A course of conduct calculated to break the spirit of the sufferer & continued until health breaks down, or is likely to break down, under the strain, is cruelty.—KAUFIELD *v.* KAUFIELD (Sask.), [1926] 1 W. W. R.

PART XIII. SECT. 5, SUB-SECT. 2.—B. (h).

sg. *Spending earnings on mistress—Telling wife of preference for mistress.*]—Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife's mind that, to his knowledge, it undermines her health, it constitutes cruelty. —JONES *v.* JONES, [1925] 2 D. L. R. 1144; [1925] 1 W. W. R. 449; 19 Sask. L. R. 262; 44 Man. L. R. 233.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (l).

sh. *Husband describing himself on enlistment as widower—Deserting wife during pregnancy.*]—A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife:—*Held*: the husband's conduct amounted to cruelty.—STUART *v.* STUART (1926), I. L. R. 53 Calc. 436.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 2.—E.

2683 iii. ——.]—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued knowing that it provoked deft.—CONNOLLEY *v.* CONNOLLEY, [1925] 2 W. W. R. 426.—**CAN.**

sl. *Refusal of marital intercourse.*]—A wife's refusal of marital intercourse is not a justification of legal cruelty. Legal cruelty is sufficient ground for judicial separation; desertion is not a necessary element when such cruelty is proved.—GUSTAFSON *v.* GUSTAFSON, [1935] 2 W. W. R. 286.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—A.

c i. —— *Evidence of marriage.*]—On an indictment for adultery under R.S.N.B., 1854, evidence of marriage is subject to the same rules as on an indictment for bigamy.—R. *v.* FOSTER, [1935] 1 D. L. R. 252; 62 C. C. C. 263; 8 M. P. R. 10.—**CAN.**

e i. ——.]—Attempted intercourse does not in law constitute adultery unless actual penetration has been proved or must be inferred, but complete penetration is not essential.—ANTHONY *v.* ANTHONY & CORDATO (1932), 49 N. S. W. W. N. 103.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (a).

2712 i. *Single act—For purpose of supplying evidence.*]—An act of adultery committed solely for the purpose of supplying evidence on which the spouse of the party so committing it may base an action for divorce will not entitle pltf. to a decree. Although under ordinary circumstances the evidence herein would support the inference that adultery had in fact been committed, yet, since it appeared plain that said evidence was "staged" by deft. for the purpose of enabling pltf. to bring the action, it was held that the inference was at

2718a. ——.]—**An infection of resp. with "crabs" is, in the absence of prior misconduct or infection of petitioner, *primâ facie* evidence that resp. has committed adultery.**—STEAD *v.* STEAD (1927), 71 Sol. Jo. 391.

2722a. —— **Staying with unknown woman in same bedroom—Presumption of adultery.**]—WOOLF *v.* WOOLF, No. 2770c, *post.*

2723a. ——.]—HALLAM *v.* HALLAM (1930), 47 T. L. R. 207; 75 Sol. Jo. 157.

2730. *Add. Annotation:*—**Refd.** Woolf *v.* Woolf, [1931] P. 134.

2733a. —— —— **Hotel evidence.**]—On the trial of an undefended petition for divorce, on the ground of adultery with a woman unknown, the ct. declared its intention of refusing to sanction the practice of resorting to hotels to establish a *primâ facie* case for dissolution of marriage, & dismissed the petition.—AYLWARD *v.* AYLWARD (1928), 44 T. L. R. 456.

2737a. —— ——.]—Applt. in 1915 ceased to live with resp. as his wife, though she joined him sometimes in America, London & Scotland, & letters passed between them of an affectionate nature. In 1919 applt. met D. in New York, who was living with her husband & two daughters on terms of affection &, up to the date of these proceedings, continued to be on these terms with them. In Dec. 1920, with her husband's consent, she went on a big game shooting expedition to Africa with applt.; applt.'s wife consented, though against her desire. Applt. & D. were drawn together through their mutual enthusiasm for sport. An expert photographer was with them on the expedition but fell ill. Applt. & D. were away on trips with no one but natives for several days & nights together. D. was, in 1920, forty-five years of age, & there was no direct evidence of familiarity between them:—*Held:* there was not sufficient ground for the inference that adultery might reasonably be assumed as the result of an opportunity for its occurrence.—ROSS *v.* ELLISON (OR ROSS), [1930] A. C. 1; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

2743. *Add. Annotations:*—**Distd.** Mart *v.* Mart, [1926] P. 24. **Apld.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573; Grubb *v.* Grubb (1934), 150 L. T. 420. **Consd.** Snowman *v.* Snowman (1934), 50 T. L. R. 445. **Distd.** Farnham *v.* Farnham, [1937] P. 49; *Re* Hamer's Estate, Public Trustee *v.* A.-G., [1937] 1 All E. R. 130. **Consd.** Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; S. *v.* S. & P. (1927), 44 T. L. R. 52; *Re* A. B.'s Petn., [1928] P. 25; Inverclyde *v.* Inverclyde, [1931] P. 29; Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

2746. *Add. Annotations:*—**Refd.** Mart *v.* Mart, [1926] P. 24; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395.

2747. *Add. Citations:*—[1926] P. 24; 95 L. J. P. 29; 134 L. T. 446.

Add. Annotations:—**Distd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573. **N.F.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Folld.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

2749. *Add. Annotation:*—**Consd.** Rimmer *v.* Rimmer (1930), 46 T. L. R. 624, n.

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most a highly improbable one.—DE ARMOND *v.* DE ARMOND (Sask.), [1929] 2 D. L. R. 121; 1 W. W. R. 554.—**CAN.**

2717 i. *Contraction of venereal disease.*]—The fact that a husband has communicated venereal disease to his wife is in law sufficient evidence of adultery. It also amounts to legal cruelty.—HARDLESS *v.* HARDLESS (1932), I. L. R. 55 All. 134.—**IND.**

2719 i. *Evidence of private detectives.*]—Evidence of professional investigator not corroborated & divorce not granted on the ground of insufficiency of evidence.—ALBERT *v.* ALBERT, [1934] 3 D. L. R. 792.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (b).

2725 vii. —— ——.]—STEPHEN *v.* STEPHEN, [1931] 2 D. L. R. 892.—**CAN.**

2725 viii. —— ——.]—BOURGOIN *v.* BOURGOIN, [1930] 2 D. L. R. 797.—**CAN.**

2725 ix. —— ——.]— S. *v.* S. & M., [1931] 1 W. W. R. 116; *affd.*, [1931] 2 W. W. R. 126.—**CAN.**

2725 x. —— ——.]—On appeal by co-resp. in a divorce action:—*Held:* the evidence justified the trial judge's finding that co-resp. & deft. had been guilty of adultery.—ROOKE *v.* ROOKE & DULMAGE, [1935] 2 W. W. R. 59.—**CAN.**

2725 xi. —— ——.]—In a suit for divorce, where there is no proof that the parties charged with adultery had at least a disposition to take advantage of the opportunities for misconduct, no number of equivocal incidents, each compatible with innocence, will justify the inference of adultery. Nor can that inference be drawn from the untruthfulness of the parties charged, where there is no evidence *aliunde* to support petitioner's case.—EDMUNDS *v.* EDMUNDS & AYSCOUGH, [1935] V. L. R. 177.—**AUS.**

2725 xii. —— ——.]—In an action by a husband for divorce held that, although the incidents in evidence if taken separately might not justify a finding of adultery, yet their cumulative effect was such that adultery must necessarily be inferred. The custody of the children was given to pltf., deft. to have reasonable access. Costs of her defence & counterclaim were given deft., & pltf. was awarded costs of action & on the counterclaim against co-deft., said costs to include those payable by pltf. to deft.—PAULIN *v.* PAULIN & MARTIN, [1937] 1 W. W. R. 753.—**CAN.**

2736 i. *Whether necessary to prove direct fact—When opportunity shown to exist—Letter from defender admitting incident.*]—SMITH *v.* SMITH, [1929] S. C. (Ct. of Sess.) 75.—**SCOT.**

sj. *Failure to deny evidence given by other side.*]—*Held:* a strong circumstance to be taken into account.—STACEY *v.* STACEY (Alta.), [1927] 2 D. L. R. 854; [1927] 1 W. W. R. 821.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (c).

2743 i. *Proof of non-access—Evidence of either spouse.*]—The rule of *Russell* v. *Russell*, No. 2743, does not apply so as to exclude evidence of non-access, where there is no possibility of bastardising a child.—ROBERTS *v.* ROBERTS (Alta.), [1928] 1 D. L. R. 227; [1927] 3 W. W. R. 625.—**CAN.**

2743 ii. —— ——.]—*Held:* the evidence of spouses was admissible to bastardise a child born during wedlock; the rule to the contrary, applied in *Russell* v. *Russell*, No. 2743, not being part of the law of Scotland.—BURMAN *v.* BURMAN, [1930] S. C. 262.—**SCOT.**

2743 iii. —— ——.]—In an action by a husband for divorce on the grounds of adultery evidence by the husband of non-access by him to his wife to show that deft. became pregnant during the period of non-access is admissible if such pregnancy, in consequence of a surgical operation performed upon deft., cannot result in the birth of a child.—VENTER *v.* VENTER, [1932] N. L. R. 90.—**S. AF.**

2743 iv. —— ——.]—Where, in a suit for divorce on the ground of the wife's adultery, it was proved that eight months after the filing of the petition of divorce the wife had a miscarriage & produced a fœtus six weeks old:—*Held:* the husband could give evidence of non-access to his wife at the material date.

It is a question whether the rule in *Russell* v. *Russell* applies to India or not, having regard to sects. 112, 120 of the Evidence Act.—COCKMAN *v.* COCKMAN (1933), I. L. R. 56 All. 570.—**IND.**

2743 v. —— ——.]—The rule that evidence by a husband or wife of non-access is inadmissible, is the same in British India as in England, & is applicable not only to cases in which the legitimacy of the child is in issue but also to proceedings instituted in consequence of adultery, where the wife's adultery is sought to be established by proof that she has given birth to a child of which the husband is not the father. The fact of non-access can, however, be proved by evidence *aliunde*.—SWEENEY *v.* SWEENEY (1935), I. L. R. 62 Cal. 1080.—**IND.**

v. ROAST, [1937] 4 All E. R. 423; 54 T. L. R. 107; 81 Sol. Jo. 965, D. C.

2751a. —— —— **Nullity suit.**]—On a petition by the man for nullity of a marriage celebrated in Apr. 1933, the ct. found on the facts, subject to the admissibility of evidence, that the marriage had never been consummated by reason of the woman being *frigida quoad hunc* & that she had given birth to a child in Aug. 1935, after leaving the man in Sept. 1933, & had confessed intercourse with another man to whom she ascribed paternity. On these findings the ct. held that the evidence tendered was not rendered inadmissible in a case of nullity by the rule in *Russell* v. *Russell*, [1924] A. C. 687. The exclusion by that rule of the evidence of a spouse negativing the legitimacy of offspring does not extend to the exclusion of evidence negativing the existence of married intercourse. The right of the man to prove that the woman is unable to consummate the marriage with him cannot be destroyed by reason of her having given birth to a child who is from the nature of the case illegitimate.

In a suit for nullity of marriage for want of consummation there is no issue as to adultery; non-consummation once established, adultery becomes an irrelevant though necessary inference, as also bastardisation, when the birth of a child has occurred.—FARNHAM *v.* FARNHAM (OTHERWISE DANIELS), [1937] P. 49; [1936] 3 All E. R. 776; 106 L. J. P. 6; 155 L. T. 621; 53 T. L. R. 123; 81 Sol. Jo. 60.

Annotation :—**Folld.** Burgess (otherwise Leadbetter) *v.* Burgess, [1937] P. 60.

2751b. —— —— ——.]—On a petition by the woman for nullity of marriage on the ground of the impotence of the man the ct. admitted as evidence statements by the woman that a child born in wedlock was the result of her ante-marital intercourse with another man & ascribing the paternity of a second child born before the hearing to a second man.—BURGESS (OTHERWISE LEADBETTER) *v.* BURGESS, [1937] P. 60; [1937] 1 All E. R. 374; 106 L. J. P. 20; 156 L. T. 200; 53 T. L. R. 190; 81 Sol. Jo. 240.

2753. *Add. Annotation :*—**Refd.** Sloggett *v* Sloggett, [1928] P. 148.

2753a. —— **Evidence of petitioner's father—That petitioner living apart from wife at material period.**]—In this undefended petition for a divorce by a labourer the evidence of adultery depended upon the proof of the birth of a child to the wife some eighteen months after they had ceased to live together. Both parties continued to live at different addresses in South London, & the ct. accepted as evidence of non-access the evidence of the petitioner's father that the petitioner had been living with him during the material period & had not slept away one night.—HADLOW *v.* HADLOW (1930), 143 L. T. 774; 46 T. L. R. 624; 74 Sol. Jo. 582.

Annotation :—**Refd.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

2762. *Add. Annotation :*—**Folld.** Little *v.* Little, [1927] P. 224.

2763a. —— —— ——.]—The adultery of a husband in his wife's suit for dissolution of marriage is sufficiently established, subject to identification, by the production of the decree in a former suit, upon which it appears that damages have been assessed against him as co-resp. in respect of the same adultery, & that he has been ordered to pay such damages, without the decree in question containing any express & separate finding that he committed the adultery in question.—LITTLE *v.* LITTLE, [1927] P. 224; 96 L. J. P. 131; 137 L. T. 495; 71 Sol. Jo. 493.

2765a. Conviction for perjury—In action in which immorality alleged.]—A conviction for perjury committed during a slander action, for falsely swearing that sexual intercourse with a certain woman had not occurred, is equivalent to a finding that there had been such intercourse, & the certificate of conviction is admissible as *primâ facie* evidence of the intercourse in a subsequent suit for dissolution of marriage in which the man convicted is resp.—O'TOOLE *v.* O'TOOLE (1926), 134 L. T. 542; 42 T. L. R. 245.

2768. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2770a. —— **Entry in register of births.**]—An entry in a register of births, signed by the wife, is admissible against her as a confession of adultery.—BRIERLEY *v.* BRIERLEY & WILLIAMS, [1918] P. 257; 87 L. J. P. 153; 119 L. T. 343; 34 T. L. R. 458; 62 Sol. Jo. 704.

2770b. Admission of adultery by husband—Sufficiency of.]—BOOTH *v.* BOOTH (1929), 73 Sol. Jo. 159.

2770c. —— **Refusal to disclose name of woman.**]—On an undefended petition by a wife for dissolution of marriage by reason of the adultery

2755 i. *Statement by wife—As to illegitimacy of child—Admissible to establish fact of wife's adultery.*]—BLEEKER *v.* BLEEKER (1927), 48 N. L. R. 133.—**S. AF.**

2755 ii. —— —— ——.]—On the hearing of a petition by a husband for divorce on the ground of his wife's adultery, evidence of a statement by the wife that a man other than her husband is the father of a child born to her is admissible, not as evidence of the paternity of the child, but as constituting an admission of misconduct.—GINN *v.* GINN, [1931] V. L. R. 298; Argus L. R. 263.—**AUS.**

sk. *Birth of child while parties separated—Proof of maternity necessary.*]—In a case where it is proposed to prove the alleged adultery by calling evidence as to the birth of a child, since the separation of the husband & the wife, the evidence should be directed to the maternity of the mother & the mere statement that a child has been found or seen living in the same house with the wife is not ordinarily sufficient to establish that the child is her child.—SIMON LAKRA *v.* MUSSAMMAT SUGAN BAKHLA (1932), I. L. R. 11 Pat. 627.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (d).

h i. —— *In regular course of business.*]—Where a person, *e.g.* a tradesman, physician, mechanic or taxi-driver, is called to the house of a prostitute in the regular course of his business, the inference that he committed adultery there should not be drawn against him in a divorce action in the absence of evidence in addition to that of the fact of such visits.—WRIGHT *v.* WRIGHT, [1928] 1 D. L. R. 934; [1928] 1 W. W. R. 383.—**CAN.**

PART XIII. SECT. 5, B. (f) i.

2770 i. *Admission of adultery by wife—Sufficiency of.*]—In July, 1923, petitioner & resp. entered into a separation agreement, & thereafter lived separate & apart. During the separation resp., in May, 1924, gave birth to a child. The husband petitioned for divorce. The evidence of adultery consisted of admissions by resp.:—*Held:* this evidence was admissible.—HENLEY *v.* HENLEY, [1927] S. A. S. R. 364.—**AUS.**

sm. *Admissions by respondent.*]—Admissions, whether written or verbal, made by resp. in a suit for dissolution of marriage are not in themselves sufficient proof of adultery; but when other facts, tending to establish such adultery, have been adduced, the admissions are corroborated evidence

of her husband, the evidence was that the husband passed two nights in a bedroom at an hotel with a woman. He then informed his wife of the fact, but disclosed no name or address of the woman in question either to his wife or to her solrs. or to the King's Proctor to whom the papers in the case had been sent by the ct., although both the solrs. & the King's Proctor applied to him for these particulars. As the result of inquiries by the King's Proctor there was no evidence of any association of the husband with a woman other than his wife, still less of illicit association :—*Held :* the appeal must be allowed & a decree *nisi* granted on the ground that if evidence were tendered in good faith which under all usual circumstances clearly pointed to adultery, it was the duty of the ct. to act upon it, unless the King's Proctor could adduce cogent evidence to rebut the obvious conclusion, & in the present case there were circumstances on which the ct. ought to be satisfied in accordance with what had hitherto been the practice that adultery had been established.—WOOLF *v.* WOOLF, [1931] P. 134 ; 100 L. J. P. 73 ; 145 L. T. 36 ; 47 T. L. R. 277, C. A.

Annotation :—**Refd.** Wyatt *v.* Wyatt, [1937] 3 All E. R. 885.

2771a. Discretion statement in former suit.]—In Dec. 1932, a husband presented a petition for divorce against his wife on the ground of her alleged adultery in which he prayed the ct. to exercise its discretion in his favour & filed the usual discretion statement. The petition was dismissed & it became therefore unnecessary to have recourse to the discretion statement. In Dec. 1933, the wife presented a petition for divorce against the husband at the hearing of which he did not appear. The wife then sought to use the admissions in the husband's discretion statement as evidence against him of his adultery : —*Held :* (1) inasmuch as it was not the practice of the Divorce Ct. to reserve discretion statements solely for the use of the ct. but to permit access to them by to the suits, they were analogous to depositions under Cos. Act, 1929 (c. 23), s. 214, & the evidence obtained by an inspection of them might be treated as admissions & used, if necessary, in other proceedings. Therefore, the wife was entitled to rely on the husband's discretion statement as evidence of his adultery ; (2) this decision was based on the practice as it existed before Jan. 1, 1934, when the Matrimonial Causes (Amendment) Rules, 1934, came into force, & would apply only to divorce proceedings which had been commenced before that date.—BEVIS *v.* BEVIS, [1935] P. 86 ; 104 L. J. P. 41 ; 152 L. T. 545 ; 51 T. L. R. 291 ; 79 Sol. Jo. 194, C. A.

Annotations :—**Consd.** B. — *v.* B— & G—, [1936] 2 All E. R. 1254. **Refd.** Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

——.]—*See, now,* Matrimonial Causes (Amendment) Rules, 1934, S. R. & O., 1934 No. 1348.

2777. *Add. Annotation :—As to* (1) **Consd.** Bevis *v.* Bevis, [1935] P. 86.

2792a. ——.]—In this petition by a husband for dissolution of marriage, the only evidence of adultery was the wife's own oral admission to petitioner, coupled with statements in her own letters as to associations with men & a letter after petition in which she admitted her unfaithfulness :—*Held :* it was strong corroboration that the wife made the admission & stood by it though she had everything to lose thereby. Decree *nisi* pronounced.—SIMPSON *v.* SIMPSON (1931), 146 L. T. 47 ; 75 Sol. Jo. 542.

F. Remedies (Vol. XXVII., p. 304).

Add the following case :—

2813a. Petition for judicial separation—Whether petition brought only for collateral purpose.]—A wife petitioned for judicial separation from her husband, on the ground of his adultery.

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of such facts so adduced.—WILKIE *v.* WILKIE, [1928] N. Z. L. R. 406.—**N.Z.**

sp. ——.]—GOWDY *v.* GOWDY, [1933] 2 W. W. R. 128 ; 3 D. L. R. 797 ; 41 Man. L. R. 275.—**CAN.**

sx. *Diary — Inadmissible against co-respondent.*]—In an action of divorce on the ground of adultery :—*Held :* entries made by the defender in a private diary kept by her, the import of which was that she had committed adultery with the co-defender, although evidence against her, could not be founded on as evidence against the co-defender.—CREASEY *v.* CREASEY, [1931] S. C. 9.—**SCOT.**

sz. *Torn-up draft letter.*]—In an action of divorce for adultery brought by a husband against his wife, pursuer averred that he had discovered, in an open bureau in the drawing-room of the house in which he & defender were then residing, a torn-up draft letter from defender to co-defender & an envelope addressed to co-defender, & that the letter, which was couched in passionate terms, was in defender's handwriting, & referred to the period of the alleged adultery. Defender, who denied adultery, pleaded that pursuer's averments relative to the letter & envelope were irrelevant, & should not be remitted to probation :—*Held :* the mere facts that the letter in question had not been dispatched, or that it had been torn up were not sufficient to render it inadmissible as evidence, if it might be directly relevant to the issue under trial ; &, further, it might be so relevant as showing defender's state of mind at the time when it was written, & the relationship which existed between defender & co-defender.—WATSON *v.* WATSON, [1934] S. C. 374.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (f) ii.

2773 i. —— *To petitioner's solicitor.*] —*Semble :* a decree for divorce should not be granted on evidence merely of deft.'s admissions of adultery, especially when made to pltf.'s solr. or other officer of the ct. or on deft.'s testimony admitting adultery.—SANBORN *v.* SANBORN, [1928] 1 D. L. R. 881 ; [1928] 1 W. W. R. 78 ; 22 Sask. L. R. 168.—**CAN.**

2773 ii. *By respondent—Whether evidence against co-respondent.*]—HARRIS *v.* HARRIS, [1931] 4 D. L. R. 933.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (f) iii.

2780 vi. ——.]—In an action for divorce the ct. is bound to act on any evidence legally admissible by which the fact of adultery is established ; &, therefore, if there is evidence, not open to exception, of admissions of adultery by the principal resp. it is the duty of the ct. to act on such admissions, although there may be a total absence of all other evidence to support them, & the action is undefended.—GORDON *v.* GORDON & WATT, [1935] 2 W. W. R. 419.—**CAN.**

sq. *Admissibility.*]—Admissions being that resp. had given birth to a child of which pltf., her husband, was not the father, were inadmissible ; the birth certificate in which the child was registered by resp., in accordance with sect. 52 of Vital Statistics Act, R. S. S., 1930, as illegitimate, *held,* however, to be admissible evidence & to be sufficient ground for finding that resp. had committed adultery.—LASKO *v.* LASKO & MILLER, [1935] 3 W. W. R. 363.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—E. (a).

2802 i. *Acts other than those charged in petition—Subsequent acts of adultery.*] —Evidence of acts of adultery subsequent to the date of the petition can only be admitted where preceded by some evidence upon which the jury, without more, might find a charge of adultery, as alleged in the petition, to have been proved.—ELLIOTT *v.* ELLIOTT, [1927] N. Z. L. R. 338.—**N.Z.**

PART XIII. SECT. 5, SUB-SECT. 3.—F. (a).

sz. *Divorce—Mere adultery on part of husband.*]—Mere adultery on the part of the husband does not by itself entitle a wife to a divorce according to Burmese Buddhist law.—MATHEIN NWE *v.* MAUNG KHA (1929), I. L. R. 7 Ran. 451.—**IND.**

She needed no protection against interference from her husband, but she required orders for permanent maintenance & for custody. The judge, following his usual custom, asked petitioner why she prayed for judicial separation & not dissolution of the marriage. Petitioner stated that she did not wish her husband to marry the woman who had ruined her home :—*Held :* permanent maintenance & custody being, at any rate, a part of the purpose for which the suit was brought, petitioner had a right to a decree of judicial separation. The ct. had a discretion to refuse such a decree, but not an unlimited discretion, & that discretion must be exercised upon some legal ground, such as the absolute & discretionary bars & the ground that the suit was not brought *bonâ fide*, but only for some collateral purpose. It was not such a legal ground that the ct. thought it would be better that the relief to be granted should be dissolution, & not judicial separation.—BLANCHARD *v.* BLANCHARD (1928), 138 L. T. 176 ; 44 T. L. R. 313 ; 72 Sol. Jo. 138.

SUB-SECT. 4.—INCESTUOUS ADULTERY

(p. 306).

2828a. Proof of relationship.]—In a suit by a wife for divorce on the ground of her husband's incestuous adultery with her sister, a certificate of birth to prove the relationship should, as a rule, be produced.—GREEN *v.* GREEN (1913), 29 T. L. R. 357.

2828b. Whether defendant estopped by previous decree absolute—Finding as to adultery.]—After a husband was granted a decree *nisi* for the dissolution of his marriage on an undefended petition he proceeded to present a separate petition, claiming damages against co-resp. The latter filed an answer alleging connivance & conduct conducing. The second petition was heard after the decree had been made absolute :—*Held :* co-resp. was estopped from setting up a case of connivance, by reason of the decree having been made absolute ; but the plea of conduct conducing, being only a discretionary bar, could be left to the jury.—HOPKINS *v.* HOPKINS & CASTLE (1933), 103 L. J. P. 33 ; 150 L. T. 279 ; 50 T. L. R. 99 ; 78 Sol. Jo. 64.

2828c. —— Conduct conducing—Not raised in previous proceedings.]—HOPKINS *v.* HOPKINS & CASTLE, No. 2828b, *ante*.

2828d. —— Finding as to connivance.]—___ *v.* HOPKINS & CASTLE, No. 2828b, *ante*.

2829a. —— With her consent.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2830. *Add. Annotation :*—**Apld.** Statham *v.* Statham, [1929] P. 131.

2830a. —— ——.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833a. Whether amounting to cruelty.] — STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833b. Condonation—Whether special plea necessary.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833c. Bestiality.]—R. *v.* R. (1932), 173 L. T. Jo. 264.

2845. *Add. Annotation :—As to* (2) **Consd.** Papadopoulos *v.* Papadopoulos, [1936] P. 108.

2846. *Add Annotation :—As to* (1) **Refd.** Papadopoulos *v.* Papadopoulos, [1936] P. 108.

2850. *Add. Annotation :—As to* (3) **Refd.** Courage *v.* Courage (1931), 47 T. L. R. 395.

2858. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos, [1936] P. 108.

PART XIII. SECT. 5, SUB-SECT. 3.—F. (b).

b i. —— ——.]—In an action for damages for criminal conversation by deft. with pltf.'s wife, evidence was given that pltf. & A. J. M., his alleged wife, had lived together as man & wife & were generally reputed as such. Pltf. & his alleged wife gave evidence of the actual celebration of the marriage. No other evidence was given or produced on behalf of pltf. The judge decided that strict proof of a marriage being essential, pltf. had not discharged the onus of proof, & he directed the jury to find a verdict for deft., which they accordingly did. Pltf. brought a new trial motion to set aside the verdict & judgment :—*Held :* the evidence given by & on behalf of pltf. constituted sufficient *primâ facie* proof of the marriage, & the case should not have been withdrawn from the jury. The appeal was allowed, & a new trial ordered.—MCCARTHY *v.* HASTINGS, [1933] N. I. 100.—**IR.**

f i. —— *Unsatisfactory evidence.*]—DOWLINSKI *v.* RAWLUK (Man.), [1929] 4 D. L. R. 20.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 7.

2834 i. *Proof—Independent of verdict on criminal charge.*]—A criminal record of a conviction for an offence necessarily involving actual sexual intercourse is admissible against deft. in an action for divorce. If the case is undefended, proof of the conviction is *primâ facie* evidence of deft.'s adultery, & will be regarded as sufficient unless there is evidence rebutting the presumption created by the conviction, provided deft. is identified with the person convicted.—DICKASON *v.* DICKASON, [1934] N. L. R. 97.—**S. AF.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (a).

2844 ii. ——.]—In order to establish desertion, proof of a refusal to acknowledge the obligations of the married state may suffice.

Semble : the bringing of a prior suit, which was abandoned, for divorce can be relied on as constituting desertion.—BRUCE *v.* BRUCE (Alta.), [1926] 4 D. L. R. 1117 ; [1926] 3 W. W. R. 605.—**CAN.**

sb. *Husband not heard of for over seven years.*]—The husband deserted the wife in 1920, & desertion continued since then until the date of hearing. Some months after the desertion began the wife left Australia for England, & returned in 1931. During that time she had not heard of or from her husband. There was no evidence that any one who would be likely to have heard from the husband, if living, had done so :—*Held :* in the absence of proof of death, the wife was entitled to a decree *nisi* of divorce.—SELWAY *v.* SELWAY, [1931] S. A. S. R. 381.—**AUS.**

sd. *No intention to cohabit—Separation after ceremony.*]—In 1931, the parties married for the purpose of giving a name to an expected child. Immediately after the ceremony at a Registry Office the parties separated & had never seen each other since. The petitioner knew before the marriage that her husband did not intend to make a home for her, & there was no intention that the parties should live together as man & wife :—*Held :* desertion, within the meaning of that word as used in the Divorce Act, had not been proved.—SEAMAN *v.* SEAMAN, [1935] W. A. L. R. 7.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (b).

2860 i. *What amounts to cohabitation—Parties living under same roof—Husband not recognising or treating wife as such.*]—*Held :* the husband was living apart from his wife without sufficient excuse in circumstances entitling her to restitution of conjugal rights.—LINKHART *v.* LINKHART, [1925] 2 D. L. R. 1180.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (c).

2868 ii. ——.]—Petition by wife for dissolution of marriage on the ground of the husband's desertion :—*Held :* desertion begins when the intention to desert is complete, & that in this case there never was any intention on the part of the husband to desert his wife.—LITTLE *v.* LITTLE, [1928] W. A. L. R. 60.—**AUS.**

2868 iii. —— *Mental infirmity o defendant.*]—Deft. (who had had a nervous breakdown in the year 1926, on which occasion he was mentally affected) now, under a delusion that people thought & spoke evilly of him—a delusion that engendered moroseness & melancholia, though it did not deprive him of the capacity to understand his duties to his wife—ignored pltf. & withdrew himself from all co njugal intercourse with her, & for twel e months, from Oct. 1927, to Oct. 1928, the spouses occupied separate bedrooms. At the end of that time, deft.

2910. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos, [1936] P. 108.

2925. *Add. Annotation :*—**Refd.** Clark *v.* Clark (1931), 145 L. T. 487.

2940. *Add. Annotation :*—**Refd.** Diggins *v.* Diggins (1926), 43 T. L. R. 37.

2954. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews (1932), 48 T. L. R. 511.

2956. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

2960. *Add. Annotations :*—**Consd.** Statham *v.* Statham, [1929] P. 131. **Refd.** Welton *v.* Welton, [1927] P. 162.

2973a. Separation based on mistaken belief of invalidity of marriage—Revival of right to cohabitation by proceedings for maintenance.] —The parties were married in England in 1912. In 1913 the husband left the wife & they formally separated in 1914 by consent under an agreement which at the time both believed to be valid, the wife receiving a sum of money in full satisfaction of all claims on the husband. Thereafter there was no change in the marital relations of the parties *inter se* & they remained apart & the husband later went through a form of marriage with another woman. The agreement was based upon the mistake of law that the marriage had been invalid by reason of it not complying with the law of the foreign domicil of the husband, & in 1929, in proceedings in which an order for maintenance of the wife made by a ct. of summary jurisdiction was upheld by a Divisional Ct., the agreement was held to be illegal. In 1934 the wife, relying on this decision & on the footing of her resulting right to cohabitation, sued the husband, who had returned to England, for judicial separation on the ground of desertion. In discussing the definition of desertion in *Fitzgerald* v. *Fitzgerald* (1869), L. R. 1 P. & M. 694, 698, & similar cases & with reference to the necessary cessation of an existing state of cohabitation to constitute desertion, the ct. doubted whether time had ever ceased to run for the purpose of two years' desertion from 1913 onwards owing to the illegality of the agreement made in 1914, but :—*Held :* the wife, having reasserted her rights in 1929, the husband had now been guilty of desertion for not less than two years during the period since 1913.—

having refused to seek work & being unable to support pltf. & the children of the marriage, pltf. left the house & obtained employment in B. On Feb. 16, 1933, she signed a petition for the dissolution of her marriage on the ground of continuous desertion for five years & upwards as from Apr. 1927 :—*Held :* on the facts, deft.'s conduct towards pltf. was a result of mental infirmity caused by delusions consequent on his nervous breakdown, & did not amount to desertion without cause.—STEPHENSON *v.* STEPHENSON, [1933] S. R. (Q.) 256.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (d).

2887 iv. ——.]—In order to legitimate a child, petitioner & resp. agreed to marry & then separate & not live together as man & wife, an agreement void as against public policy. Immediately after the marriage, in the street, they *bonâ fide* verbally agreed in their capacity as married persons to an immediate separation, which continued in full force for not less than three years :—*Held :* the petitioner was entitled to her decree.—BRYMONT *v.* BRYMONT, [1937] N. Z. L. R. 98 ; 13 N. Z. L. J. 31.—**N. Z.**

2887 v. ——.]—Petitioner & resp. in a divorce suit had been intimate before marriage & a child was expected. They arranged to marry, to execute a deed of separation prepared before marriage providing for the child, & then to part. After the marriage they executed the deed, parted, & lived separate & apart for more than three years. The ground for the petition was that the deed had been in full force for not less than three years :—*Held :* there had been a genuine agreement made after the marriage for an immediate separation & that the parties were relying upon a post-nuptial, & not as in *Brodie* v. *Brodie*, [1917] P. 271, upon a pre-nuptial, agreement, & the petitioner was entitled to her decree.—SMITH *v.* SMITH, [1937] N. Z. L. R. 94 ; 13 N. Z. L. J. 31.—**N. Z.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (e) i.

2901 iii. ——.]—During the statutory period of five years required for desertion the wife, except for a period when a position obtained by her with her husband's consent kept her away from home, lived in the matrimonial home, usually had her meals with her husband, & conversed with him. During part of the time when the wife was at the matrimonial home the husband paid her wages. She had told the husband & a friend on several occasions that she regarded herself as a single woman, & she went out at night against the husband's wishes & had pawned her wedding ring, but when this was done the spouses were in impecunious circumstances. During the whole of this period she refused her husband sexual intercourse :—*Held :* on these facts, desertion had not taken place.—TONKIN *v.* TONKIN, [1936] S. A. S. R. 100.—**AUS.**

sm. *Non-compliance with decree for restitution—What amounts to.*]—After a decree for restitution of conjugal rights had been made against a wife she returned to her husband & lived with him for three months. She returned sincerely willing to stay with him if her affection for him was felt by her to be sufficient, but she had in her mind a condition unexpressed that she would not stay with him if she found her affection insufficient. At the end of three months she left & refused thereafter to resume cohabitation :—*Held :* the wife's conduct did not amount to a compliance with the decree, &, therefore, that her husband was entitled to a dissolution of marriage.—HARRIS *v.* HARRIS (1929), 30 S. R. N. S. W. 59 ; 47 N. S. W. W. N. 9.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (e) ii.

n i. ——.]—**Malicious denial of carnal intercourse persisted in for four years may constitute desertion, but the standard of proof, both of the denial itself & of the absence of consent by the offended spouse, must be exacting.**—GOOLD *v.* GOOLD, [1927] S. C. 177.—**SCOT.**

sp. *Motive immaterial.*]—If a wife living apart from her husband without excuse is *bona fide* desirous of living with her husband & performing the duties of a spouse, her motive for so doing is immaterial. Nothing more than genuine intention to amend the deserting party's conduct by resumption of the performance by overt acts of the matrimonial duties is required.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (f).

2933 ii. —— —— ——.]—**LEE *v.* LEE, [1927] 1 D. L. R. 94 ; 59 O. L. R. 561.—CAN.**

PART XIII. SECT. 5, SUB-SECT. 8. B. (g).

2940 ii. ——.]—**A divorce refused, on the ground that a separation agreement prevented a finding of desertion.**

In an action for divorce the existence of a separation agreement is not to be disregarded by the ct. merely because deft. does not set it up as a bar.—WALSH *v.* WALSH & KIRKLAND, [1925] 2 D. L. R. 794 ; [1925] 1 W. W. R. 957 ; 19 Sask. L. R. 509.—**CAN.**

2941 ii. —— *Deed not acted upon.*]—Proposition, that, when a deed of separation is treated as a nullity or set at nought, & the spouse who repudiates it persists in leaving the other as if deserted, the former is from that time guilty of desertion, doubted.—HOGGETT *v.* HOGGETT, [1926] V. L. R. 505 ; 48 A. L. T. 62 ; [1926] Argus L. R. 330.—**AUS.**

PART XIII. SECT. 5, SUB-SECT 8.—C.

2958 i. *Failure to obey restitution decree—What amounts to.*]—Compliance with a decree for restitution of conjugal rights is the aggregate effect of a great number of acts & consists in a course of behaviour, & the acts & conduct of the spouse bound to obey must not be opposed or repugnant to the maintenance of the matrimonial relationship. Sexual intercourse is not necessary to obedience, but its refusal is a matter material to be considered.—BARTLETT *v.* BARTLETT (1934), 50 C. L. R. 3.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—D. (a).

2964 i. *From time of intention to ——.*]—Petition by wife for dissolution of marriage on the ground of the husband's desertion :—*Held :* desertion begins when the intention to desert is complete, & in this case there never was any intention on the part of the husband to desert his wife.—LITTLE *v.* LITTLE (1927), 30 W. A. L. R. 60.—**AUS.**

PAPADOPOULOS *v.* PAPADOPOULOS. [1936] P. 108; 105 L. J. P. 21; 154 L. T. 242; 52 T. L. R. 190; 80 Sol. Jo. 56.

2980. *Add. Annotations :*—**Refd.** R. *v.* Middlesex Justices, *Ex p.* Bond, [1933] 1 K. B. 72; Higgs *v.* Higgs, [1935] P. 28.

2984. *Add. Annotation :*—**Consd.** Sandler *v.* Sandler, Davies & Johnstone, [1934] P. 149.

2995. *Add. Annotations :*—*As to* (1) **Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Russell (Countess) *v.* Russell (Earl), [1935] P. 39. **Refd.** Statham *v.* Statham, [1929] P. 131.

2999a. —— —— ——.]—Under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), justices are empowered on the application of a wife to make an order containing a provision that the applicant be no longer bound to cohabit with her husband, & this provision while in force has the effect in all respects of a decree of judicial separation on the ground of cruelty. But where the wife's application is based upon a charge of desertion only, such a clause should not be inserted in the order, inasmuch as it prevents the continuance of desertion in strict law after the date of the order. In the present case the wife was granted a separation order on the ground of desertion, & the non-cohabitation clause was inserted in the order :—*Held :* the justices were entitled to find as they did, but were wrong in allowing the non-cohabitation clause to be included in the order. In cases of cruelty it might be necessary for the protection of the wife, but that was not so in cases of desertion; & the non-cohabitation clause was struck out.—SAYERS *v.* SAYERS (1929), 93 J. P. 72; 27 L. G. R. 366, D. C.

3001. *Add. Annotation :*—Refd. Lynch *v.* Lynch (1933), 78 Sol. Jo. 30.

3010a. —— —— **False assertion of pregnancy.**]—On an application by a wife against her husband for an order for maintenance on the ground of desertion, the justices have no discretion to refuse an order on the ground that the wife had deceived the husband into marrying her by an untrue statement that she was pregnant.—DAWSON *v.* DAWSON (1929), 93 J. P. 187; 45 T. L. R. 397; 73 Sol. Jo. 367; 27 L. G. R. 368, D. C.

3019a. Respondent second husband of petitioner—First husband having disappeared—Whether bar to relief.]—SPURGEON *v.* SPURGEON (1930), 46 T. L. R. 396.

3024. *Add. Citations :*—" *affg.*, [1892] P. 222; 61 L. J. P. 115."

PART XIII. SECT. 5, SUB-SECT. 8.—E.

2975 i. *During imprisonment—Manifest intention to desert.*]—A husband, who was married in July, 1916, lived with his wife for six weeks, & thereafter did not live with her again for over three years. In Nov. 1919, he met her accidentally & lived with her for a few days, & then he went abroad to take up an appointment. On the voyage out he wrote informing her that the appointment had been cancelled. Thereafter he never lived with his wife or communicated with her again. From Apr. 1920 till June 1923 he was in prison, & in Oct. 1923 he was again imprisoned. In Oct. 1925, after his release, he wrote to his wife's father stating that he was about to go abroad, & offering to supply material for divorce :—*Held :* pursuer had relevantly averred desertion commencing in Nov. 1919 & including the periods of defender's incarceration, in respect that, when liberated from prison, defender had shown no disposition to alter his intention to persist in his desertion.—PARKER *v.* PARKER, [1926] S. C. 574.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 8.—F. (b).

2981 i. *Whether desertion terminated—Filing of petition.*]—ADEY *v.* ADEY, [1928] S. R. Q. 303.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—G. (c).

3003 i. *What is " reasonable cause "—Conduct falling short of matrimonial offence—Not mere frailty of temper & habits.*]—Mere infirmity of temper accompanied by the free use of a vulgar & abusive tongue, an occasional resort to physical violence not directed against the person of her husband & futile threats of bodily harm to him, are not sufficient to justify a husband's desertion of his wife.—CLARKE *v.* CLARKE (Alta.), [1928] 1 D. L. R. 249; [1927] 3 W. W. R. 728.—**CAN.**

s i. —— —— ——.]—N. H. brought a petition for divorce against her husband on the ground of desertion. It appeared that subsequently to the commencement of the desertion alleged she had committed adultery. It did not appear that the resp. knew of the adultery before the commencement of the suit. He did not enter an appearance nor appear at the hearing :—*Held :* as the adultery was not in any way connected with the continuance by the resp. of his desertion of petitioner it did not afford him any " just cause or excuse " for continuing to desert her.—HOPKINS *v.* HOPKINS, [1936] V. L. R. 218; 42 Argus L. R. 328.—**AUS.**

s ii. —— *Petitioner's cruelty.*]—Soon after the marriage of the parties in 1923 the husband was guilty of acts of cruelty to the wife, which resulted in permanent injuries to her. Following on this conduct the wife left her husband in Feb. 1923, & although he repeatedly requested her to return to him, she did not do so. The husband petitioned for divorce on the ground of desertion :—*Held :* the husband must be presumed to have intended the consequence of his acts; by his conduct he had compelled his wife to leave him, & his petition must be dismissed.—LAWRENCE *v.* LAWRENCE (1929), W. A. L. R. 86.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 1.

t i. —— *Knowledge of impotence.*]—A woman married a man who was at the date of the marriage, & remained thereafter, impotent in consequence of paralysis. The parties had cohabited, & had occupied the same bed, for two months prior to the marriage, & the woman was aware of the man's condition. Her reason for entering into the marriage was to obtain support for herself & for an illegitimate child, which she had previously had by another man. After the marriage the parties lived together for over four years. In an action of declarator of nullity of marriage brought by the woman :—*Held :* she was barred from founding on defender's impotency, in respect that she entered into the marriage in knowledge of it, &, in the circumstances of the case, it would be inequitable to allow her to found upon it.—L. *v.* L., [1931] S. C. 477.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 3.—A. (a).

3026 i. *Dissolution suit—Previous suit.*]—A former suit for divorce brought by pltf. was dismissed on the ground that by his wilful neglect of his wife he had conduced to her adultery. In a subsequent suit for divorce he proved that his wife & co-resp. had, since the former suit, left the province & were living as man & wife in California :—*Held :* the dismissal of the former suit was not a bar to the subsequent suit.—KESLERING *v.* KESLERING (OTHERWISE NEVERKA) & NEVERKA (Sask.), [1927] 4 D. L. R. 767; [1927] 3 W. W. R. 273.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—A. (b).

3027 i. *Suit for dissolution—Same evidence as in former suit—For judicial separation.*]—A petitioner in the absence of any fresh matrimonial offence, is not entitled to a decree for dissolution of marriage upon precisely the same grounds as those on which she obtained previously judicial separation.—COLLINS *v.* COLLINS (1928), I. L. R. 56 Calc. 166.—**IND.**

3027 ii. —— *Same evidence as in former proceedings for maintenance.*]—A finding on proceedings under Deserted Wives' Maintenance Act, R.S.B.R., 1924, that the wife had not committed adultery estops the husband, on the principle of *res judicata*, from setting up the same alleged act of adultery in a subsequent petition for divorce.—HARRAP *v.* HARRAP, [1935] 1 W. W. R. 729; 2 D. L. R. 816; 49 B. C. R. 496.—**CAN.**

3032 ii. —— *Previous proceedings under Wives' & Children's Maintenance & Protection Act.*]—SCOTT *v.* SCOTT, [1937] 1 W. W. R. 375; 1 D. L. R. 796.—**CAN.**

sk. *Counterclaim for judicial separation & alimony—Same evidence as in former suit for same relief.*]—In an action by a husband for judicial separation the wife counterclaimed for judicial separation & alimony, setting up, in substance, the same facts as were alleged & adduced in evidence in a former action, in which she, as pltf., claimed the same relief against the present pltf., but which was decided against her. There was no subsequent resumption of marital relations or other change in circumstances :—*Held :* the husband was entitled to have the counterclaim struck out on the ground of *res judicata*, even if Domestic

3039. *Add. Annotations :*—**Folld.** L. *v.* L., [1931] P. 63. **Refd.** Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

3040a. Agreement not to sue for matrimonial offences prior to separation deed—Validity.]—By a separation deed executed by spouses who were then parties to a suit for judicial separation on the ground of the cruelty of the husband, it was agreed that neither of them should sue the other for any misconduct which had theretofore taken place, & the deed further stipulated that any offence that either of them had committed should be forgiven or condoned, & that in case either of them should take proceedings against the other in respect of any complaint thereafter arising no offence antecedent to the deed should be pleaded or alleged by either or be admissible in evidence. The wife subsequently sued the husband for dissolution of marriage on the ground of his adultery alleged to have been committed since the date of the deed. The husband traversed the allegation, & by his answer countercharged the wife with adultery antecedent to the deed. The wife disputed the right of the husband to make the counter-charge, having regard to the deed. The husband contended that the provisions of the deed were against public policy, in that they provided for the withholding from the ct. matters material & necessary for its consideration by virtue of Judicature (Consolidation) Act, 1925 (c. 49), s. 178 (3) :—*Held :* on a motion by the wife to strike out the allegation in the answer of the husband of her adultery, the deed was not against public policy, & it did not constitute any bargain between the parties to pervert the course of justice by withholding from the ct. any matter material for its consideration, & the agreement made by the deed being one honestly entered into was good, & it was no answer to it to say that if the intention of the parties had been to obtain a collusive divorce or to cloak the past, the deed could have had a dishonest & illegal operation.—L. *v.* L., [1931] P. 63 ; 100 L. J. P. 76 ; 144 L. T. 723 ; 47 T. L. R. 260 ; 75 Sol. Jo. 192.

Annotations :—**Expld.** Russell (Countess) *v.* Russell (Earl), [1935] P. 39. **Refd.** Knott *v.* Knott, [1935] P. 158.

3042. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3044. *Add. Annotation :*—**Consd.** Hyman *v.* Hyman Hughes *v.* Hughes (1928), 139 L. T. 416.

3047. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3051. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932 P. 103.

3064. *Add. Annotation :*—*As to* (1) **Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3066. *Add. Annotations :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670. **Consd.** Clayton *v.* Clayton & Sharman, [1932] P. 45.

3067a. Payment to commit adultery.]—MIRANDA *v.* MIRANDA (1931), 171 L. T. Jo. 309.

3068. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3069. *Add. Annotations :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670 ; Clayton *v.* Clayton & Sharman, [1932] P. 45.

3069a. —— ——.]—A decree of a foreign ct. in a country where the parties were not domiciled, purporting to annul an English marriage at the instance of the wife on the sole ground of want of cohabitation, was consented to by the husband, & the wife subsequently went through a form of marriage with another man with whom she cohabited. The husband filed in this ct. a petition claiming dissolution of his marriage on the ground of the adultery constituted by cohabitation under the form of marriage last mentioned. It appeared that both the husband & the wife honestly believed at the time of the proceedings in the foreign ct. that those proceedings were competent & that their marriage was effectually dissolved :—*Held :* there was no guilty intention amounting to connivance on the part of the husband at the subsequent adultery of the wife, &, further, although the facts might technically raise the discretionary bar of conduct conducing on his part, the latter offence was in the circumstances present of a degree which justified the exercise of the discretion of the ct. in his favour.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45 ; 101 L. J. P. 23 ; 146 L. T. 327 ; 48 T. L. R. 191 ; 76 Sol. Jo. 96.

3077a. —— —— **Petitioner in fear of co-respondent.**] — In an undefended divorce petition by a husband it was admitted that he had spent many week-ends at his home under the same roof with his wife & co-resp. when the two latter were, to his knowledge, committing adultery ; & that before the husband filed his petition citing his wife's paramour as co-resp., he entered into a deed of separation which in terms permitted his wife to " reside at such places, & with such persons as she may from time to time think fit." The case was remitted from assizes to the Divorce Ct. on the question of connivance :—*Held :* there was a strong case for the husband being an accessory to his wife's adultery, but, though almost terrified to be under the same roof as co-resp., he resented & resisted as far as he dared the continuance of the adulterous relations. He did not encourage it. They defied him. He was not an accessory, & did not enter into the deed with the idea of consenting to his

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Relations Act, 1927, c. 5, s. 6 (2), which had been passed after the dismissal of the first action, had a retrospective effect.—DAVIS *v.* DAVIS, [1928] 3 D. L. R. 69 ; [1928] 2 W. W. R. 130 ; 23 Alta. L. R. 355.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—A. (d).

sq. *Suit for dissolution by wife—Acts of cruelty prior to separation.*]—In a suit for dissolution of marriage by the wife against the husband, after the execution of a deed of separation by them containing (*inter alia*) a clause to the effect :—" No proceedings shall be taken by or on behalf of the husband or the wife against the other of them in respect of any misconduct or alleged misconduct previous to the date of these presents & any offence which may have been committed or permitted by either of them against the other is hereby condoned," the wife cannot rely upon the husband's acts of cruelty alleged prior to the said deed of separation, though coupled with allegations of adultery committed by him subsequently to the deed.—MONK *v.* MONK (1932), I. L. R. 60 Calc. 318.—**IND.**

PART XIII. SECT. 7, SUB-SECT. 3.—B. (a).

sq. *Suspicion of adultery—Watching wife—To obtain evidence.*]—The fact that a husband who suspected that his wife had been guilty of adultery secretly watched, & had others so watch, her without interfering, for the purpose of obtaining proof of her guilt : —*Held :* not to establish connivance.—W. *v.* W. & M., [1933] 3 W. W. R. 588.—**CAN.**

wife's living in adultery with co-resp. Decree *nisi* granted & papers sent to the King's Proctor.—KING *v.* KING & EVANS (1929), 142 L. T. 162; 73 Sol. Jo. 833.

3082. *Add. Annotation :—As to* (1) **Consd.** Clayton *v.* Clayton & Sharman, [1932] P. 45.

3092a. —— **Agreement between husband & co-respondent as to damages.**]—Petitioner filed a petition for divorce on the ground of his wife's adultery with co-resp., & it was disclosed to the ct. that petitioner & co-resp. had agreed that co-resp. should pay petitioner £2,500 damages, of which £1,750 was to be paid down, & the rest later, & that petitioner should claim no further damages from co-resp. & should put no obstacles in the way of a decree *nisi* being made absolute. The petition was dismissed on the ground that the suit was collusive. After the dismissal resp. & co-resp. continued to live in adultery, & petitioner, who had received the £1,750, presented a second petition against them, complaining of the adultery since the date of the former petition :—*Held :* petitioner had by the agreement prevented himself from complaining of any adultery whether past or future, & he had connived at the adultery of which in his second petition he complained, & the second petition must be dismissed.—GIFFORD *v.* GIFFORD & FREEMAN (1926), 43 T. L. R. 141.

3093. *Add. Annotations :—***Distd.** Preger *v.* Preger (1926), 134 L. T. 670. **Refd.** Greenwood *v.* Greenwood, [1937] P. 157.

3094. *Add. Annotation :—***Distd.** Preger *v.* Preger (1930), 134 L. T. 670.

3095a. —— ——.]—A wife, desirous that her husband should return to her, continued for thirteen years to receive an allowance from him knowing at all material times that he was living with another woman. She then filed a petition for divorce, but was induced to compromise it for an increase in the allowance, fearing that her husband might lose his employment as a result of exposure. After a further lapse of time she accepted a deed of separation with a mutual condonation of past offences & the payment of a lump sum of cash in lieu of maintenance. Having exhausted this provision, she now filed the present petition for divorce :—*Held :* petitioner was from the date of the compromise of the first petition for divorce guilty of unreasonable delay & also of connivance & the petition must be dismissed.—GREENWOOD *v.* GREENWOOD, [1937] P. 157; [1937] 3 All E. R. 63; 106 L. J. P. 74; 157 L. T. 168; 53 T. L. R. 716; 81 Sol. Jo. 480.

3122. *Add. Citation :*—134 L. T. 670.

3124a. —— ——.]—TOWNEND *v.* TOWNEND (1928), 72 Sol. Jo. 518.

3132a. Original petition collusive—Effect on supplemental petition.]—SANDLER *v.* SANDLER, No. 3670a, *post.*

3133. *Add. Annotation :—As to* (3) **Refd.** Sandler *v.* Sandler, Davies & Johnstone (1934), 103 L. J. P. 88.

3135a. ——.]—A husband & wife separated in the summer of 1935, there being no suggestion of adultery up to that time. Before parting, discussions had taken place as to a divorce based upon evidence to be provided by the husband, the wife even suggesting that, for the sake of the husband's career, he should divorce her, but this the husband refused to consider. There was some suggestion that a separation was all that was required, but subsequently the husband wrote to the wife to the effect that a divorce after a lapse of six months or a year would be better. Later the husband sent an hotel bill upon which the wife based a petition for divorce. The judge found that the wife at no time wanted a divorce & that she never really assented to the husband's proposal that, whatever the reality of the matter might be, she should present a petition on evidence which he would provide. The petition was later amended to include an additional charge of adultery

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PART XIII. SECT. 7, SUB-SECT. 3.—B. (b) iii.

3078 i. *General rule.*]—A husband who has allowed his wife to carry on a dangerous intimacy & has shown a reckless disregard of her chastity, may be refused a divorce notwithstanding her adultery.—STEELE *v.* STEELE, [1932] 1 D. L. R. 76; O. R. 50.—**CAN.**

3081 i. *Invitation to commit adultery.*]—MCEWEN *v.* MCEWEN (Man.), [1926] 3 D. L. R. 430.—**CAN.**

3085 i. *Consent to residence in paramour's house.*]—Where a husband who has no reason to believe that his wife & co-resp. have already committed adultery acquiesces in & is accessory to his wife's leaving him & going to live with co-resp., he will be held to have connived at his wife's ultimate misconduct &, therefore, to be without the right to a divorce.—LACERF *v.* LACERF & EVANS (Sask.), [1929] 4 D. L. R. 134; 2 W. W. R. 524; *affg.*, [1929] 2 D. L. R. 136; 1 W. W. R. 569.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—B. (b) iv.

3089 i. *Connivance at acts during separation—Construction of separation deed.*]—Although a separation deed intended to provide for the wife's adulterous intercourse or for a renewal thereof establishes connivance in the husband's action for divorce, yet where such a deed purports so to provide it is open to the ct. to investigate the circumstances under which the separation was entered into & to entertain the broad question whether, taking the deed itself & all of said circumstances into consideration, the husband did in fact consent that the wife should live in adultery.—CULVER *v.* CULVER & GAMMIE, [1933] 1 W. W. R. 395; 2 D. L. R. 535.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) i.

3135 ii. ——.]—"Collusion" is a species of statutory fraud on the ct., &, like "fraud," is incapable of exhaustive definition, & will ever be widened to prevent the mischief which the statute was intended to prevent. Collusion is possible in a good case, *i.e.* although the ct. is convinced that matrimonial misconduct was proved, yet if evidence of collusion, too gross & palpable to admit of being overlooked or explained, appeared, no decree should be made.

In the present case the ct., having concluded that there was an arrangement between the parties to obtain a divorce & as to the testimony which should be offered to support the claim therefor, & that the testimony given by the resp. was in accordance with this arrangement, & largely untrue, refused the decree, holding that, aside from the admission as to the arrangement, the appearances of collusion were too gross & palpable to admit of being overlooked or explained, & that the arrangement itself was clearly collusive.—SANBORN *v.* SANBORN, [1928] 1 D. L. R. 881; [1928] 1 W. W. R. 78; 22 Sask. L. R. 168.—**CAN.**

3135 iii. ——.]—Collusion is established (*a*) if there be an agreement or understanding or concerted action between the parties which has the effect of deceiving the ct. either by causing untrue facts to be placed before the ct. or by suppressing facts which are material or pertinent; & (*b*) if there be an agreement or understanding or concerted action between the parties which, from the nature of such agreement or understanding or action may be calculated to have that effect: but where the facts to be placed before the ct. are such as to support a prayer for either of two forms of relief, it is not collusion for a petitioner, for valuable consideration, to agree with a resp. to change merely the form of relief prayed for in the petition.—DOUTREBANDE *v.* DOUTREBANDE (1929), 29 S. R. N. S. W. 456; 46 N. S. W. W. N. 160.—**AUS.**

3135 iv. ——.]—To establish collusion in an action for divorce it is necessary to show some understanding or agreement which involves some

with another woman :—*Held :* (1) if the petition as originally presented was tainted with collusion, no kind of amendment by adding a different charge would cure the defect ; (2) the mere fact that the adultery charged is with a woman known or unknown on an isolated occasion at a hotel is not of itself evidence of collusion ; (3) the reality of the case was that the wife decided to act upon the evidence of the hotel bill, not in pursuance of any existing understanding, but because for the first time she had made up her mind that it was the proper thing to do in the circumstances. The petition was accordingly not presented as a result of collusion, & a decree *nisi* ought to be pronounced.—WYATT *v.* WYATT, [1937] 3 All E. R. 885.

3135b. —— **Coercion.**]—Resp., a solr., was anxious to obtain a divorce from his wife. In 1934 the wife had, with the approval of the husband, agreed to purchase a house, & found herself in the greatest straits to find £115 19*s.* 3*d.* required to complete the purchase. On Nov. 30, 1934, resp. wrote to his wife informing her of adultery at an hotel & suggesting action being taken thereon. On Jan. 28, 1935, the wife, who did not desire a divorce, instructed her solrs. to file a petition. On Feb. 4, resp. gave his solrs. a sealed envelope for transmission to his wife. Although there was nothing to prevent such solrs. sending the envelope direct to the wife, it was in fact sent to the wife's solrs. with a request that they would hand it to her on her next attending at their office. On Feb. 6 the wife attended at her solrs.' office, signed the petition for divorce, & received the sealed envelope, which was found to contain a cheque signed by resp. for £116. On Jan. 8 the wife's solrs. had written that upon all arrears due to her being paid to her account, the necessary steps " in the other matter " would be taken, & the clerk of those solrs. admitted that he deliberately withheld the envelope until the petition had been signed. The wife, petitioner, attempted throughout the proceedings to conceal from the ct. the motives for her actions :—*Held :* (1) it could not be held upon the facts that the collusive bargain was obtained by duress, so that, there being in law no bargain at all, there was no collusion ; (2) the facts disclosed that, as petitioner did not desire a divorce, there was no real injury to her, & amounted to collusion & an abuse of the process of the ct.—WOODS *v.* WOODS, [1937] 4 All E. R. 9 ; 81 Sol. Jo. 815.

3143. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416 ; Sandler *v.* Sandler, Davies & Johnstone (1934), 103 L. J. P. 88.

3155. *Add. Annotation :*—**Refd.** Sandler *v.* Sandler, Davies & Johnstone (1934), 103 L. J. P. 88.

3163a. —— **Application of rules to condonation of sodomy.**]—STATHAM *v.* STATHAM, No. 2518a, *ante.*

3166. *Add. Annotations :—As to* (1) **Refd.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27. *As to* (3) **Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3171. *Add. Annotation :—As to* (1) **Refd.** Statham *v.* Statham, [1929] P. 131.

3179a. ——.]— (1) Condonation has been defined as " the complete forgiveness & blotting out of a conjugal offence followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven."

(2) Petitioner alleged, but in the opinion of the ct. failed to prove, that he was induced to resume cohabitation by his belief, brought about by the fraudulent representation of his wife, that she was innocent :—*Semble :* such a belief would not be material if proved.—SNEYD *v.* SNEYD & BURGESS, [1926] P. 27 ; 95 L. J. P. 22 ; 135 L. T. 124 ; 42 T. L. R. 247.

3182a. ——.]—SNEYD *v.* SNEYD & BURGESS, No. 3179a, *ante.*

3183a. Agreement for temporary separation after confession of adultery—Parties continuing to live apart for several years.]—After a wife's confession of adultery she & her husband agreed to live apart for six months, she to receive an allowance, & it was agreed that at the end of that time their mutual position was to be reconsidered. After the six months they continued to live apart, & ten years after the admitted adultery the husband sued for divorce on that ground :—*Held :* the

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imposition on the ct. An agreement between the parties which does not involve such an imposition or a suppression of facts, but merely facilitates proof & smoothes the asperities of litigation is not collusion, although it is liable to be looked into by the ct. Nor does the fact that an agreement involves monetary consideration necessarily render it collusive.—BEALE *v.* BEALE & LINDON, [1929] 3 D. L. R. 1 ; 2 W. W. R. 1 ; 23 S. L. R. 548.—**CAN.**

3135 v. ——.]—An agreement between a husband & wife which does not involve an imposition on the ct. or a suppression of facts but which is merely for the purpose of facilitating proof in an action by one of them for divorce does not constitute collusion, but it is liable to be scrutinised carefully.—CURELL *v.* CURELL & HANSEN, [1937] 2 W. W. R. 128.—**CAN.**

sl. *Acts regarded as unobjectionable by solicitor.*]—Collusion cannot be imputed from ordinary acts of parties which a solr. would naturally regard as inoffensive & unobjectionable.—LINTON *v.* GUDERIAN (1928), I. L. R. 56 Calc. 530.—**IND.**

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) ii.

3138 iii. —— ——.]—The fact that a husband's suit for divorce has been brought at the request of a man, with whom deft. has been living for a number of years, & who has promised pltf. to pay all the costs in order that deft. may be made free to marry him, does not constitute collusion.—CHRISTMANSON *v.* CHRISTMANSON (Alta.), [1927] 1 D. L. R. 651 ; [1927] 1 W. W. R. 149.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) v.

3159 i. *Respondent assisting in identification.*]—The fact that deft. to a divorce action admitted to pltf.'s solr. before the trial that she had been guilty of adultery with co-resp., & supplied the solr. with her photograph to be used for the purpose of identification, is not proof of collusion, where there is no evidence that pltf. ever had any arrangement with deft. that she should provide him with grounds for divorce.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95 ; [1926] 2 W. W. R. 185 ; 20 Sask. L. R. 474.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (a).

sm. *Is defence to suit for divorce on ground of bestiality.*]—A. *v.* A., [1925] 2 D. L. R. 1195 ; [1925] 2 W. W. R. 154 ; 19 Sask. L. R. 346.—**CAN.**

st. *Proof of renewal of intercourse unnecessary.*]—DEANE *v.* DEANE & FAY, [1929] S. R. (Q.) 124.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (b) i.

3169 iii. ——.]—PREMCHAND HIRA *v.* BAI GALAL (1927), I. L. R. 51 Bom. 1026.—**IND.**

3169 iv. ——.]—*Held :* condonation of adultery may be made subject to the express condition that the guilty spouse shall not see or correspond with the other guilty person, so that when the condition is broken the condonation is cancelled & the right to found an action on the adultery revived.—BAUER *v.* BAUER & HASS, [1930] 2 W. W. R. 16 ; 4 D. L. R. 36 ; 24 S. L. R. 409.—**CAN.**

agreement was made by a man who was distraught by the domestic calamity. There was no condonation in the legal sense of complete reinstatement of the wife in the rights of a wife. The delay was excusable by the effect which the wrongdoing had upon the petitioner's mind.—LETBE *v.* LETBE & WHITEHEAD (1928), 140 L. T. 199; 45 T. L. R. 6; 72 Sol. Jo. 745.

3196. *Add. Annotation :*—**Refd.** M. *v.* M., [1928] P. 123.

3213. *Add. Annotation :*—*As to* (1) **Refd.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27.

3223. *Add. Citations :*—[1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.

3224a. ——.]—HOWARD *v.* BURTONWOOD (1742), Selwyn's N. P. 13th edn., p. 9, n.

Annotation :—**Consd.** Bernstein *v.* Bernstein, [1893] P. 292.

3234. *Add. Annotation :*—**Consd.** Statham *v.* Statham, [1929] P. 131.

3288. *Add. Annotations :*—*As to* (1) **Expld.** Apted *v.* Aptd & Bliss, [1930] P. 246. **Refd.** Cullen *v.* Cullen, [1933] P. 218.

3289. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3292. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3293. *Add. Annotations :*—**Refd.** Apted *v.* Apted & Bliss, [1900] P. 246; Bainbridge *v.* Bainbridge, [1934] P. 66.

Add. Annotation :—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3315a. How time calculated—Whether from execution of separation deed.]—GREENWOOD *v.* GREENWOOD, No. 3095a. *ante.*

3317a. —— ——.]—A husband petitioner for divorce separated from his wife about eighteen years after their marriage because of her assocn. with co-resp., with whom she cohabited in adultery for about twenty years. The husband was willing to take proceedings for a divorce, but resp. & co-resp. desired their relations not to be made public & the husband was indifferent & no step was taken. Thereafter the husband maintained an adulterous connection with another woman for many years. He had since separated from this woman, but having about thirty-eight years after his marriage met another woman whom he desired to marry he now presented the present petition for the dissolution of his existing marriage. The ct., construing delay within the meaning of the statute to be culpable delay in the nature of acquiescence, held the facts of the case to amount to culpable delay, & dismissed the petition.—BINNEY *v.* BINNEY & HILL, [1936] P. 178; [1936] 2 All E. R. 409; 105 L. J. P. 81; 155 L. T. 144; 52 T. L. R. 481; 80 Sol. Jo. 449.

Annotation :—**Refd.** Greenwood *v.* Greenwood, [1937] P. 157.

PART XIII. SECT. 7, SUB-SECT. 3.—D (b) ii.

3195 i. *Parties sleeping in same house.*]—Where a wife had deserted her husband & the spouses afterwards lived for a few days in the same flat occupying the same room, but no marital intercourse took place, & the husband endeavoured to induce the wife to discontinue her desertion. *Semble :* these facts did not establish condonation.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R 85.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (c).

3204 iii. ——.]—In 1919 petitioner entertained some suspicion of his wife's adultery, & this suspicion, although partially allayed by what a medical practitioner had told him, was not entirely removed from his mind. Having this suspicion, he continued & resumed sexual intercourse with his wife for some years, until he obtained evidence of the adultery charged in the petition, which adultery had taken place in 1918 :—*Held :* sexual intercourse in these circumstances did not amount to condonation.—DONNITHORNE *v.* DONNITHORNE, [1930] S. A. S. R. 182.—**AUS.**

3204 iv. ——.]—In questions of condonation suspicion of a conjugal offence cannot be regarded as "substantial knowledge."—HERBERT *v.* HERBERT, [1936] 3 D. L. R. 141; O. R. 432.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (g).

sh. *Duty of wife's advisers to investigate the facts before pleading condonation.*]—LOUIS *v.* LOUIS & STEAD, [1929] S. R. (Q.) 184.—**AUS.**

sk. *Agreement for revocation of condonation.*]—A husband & wife cannot by agreement between themselves make the condonation of a matrimonial offence revocable on the non-performance of an undertaking (*e.g.*, one not to have anything more to do with the paramour) the breach of which is not in law a sufficient reason for a decree of divorce.—BAGGALEY *v.* BAGGALEY, [1934] 1 W. W. R. 5.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (h) iii.

3255 iii. ——.]—Any matrimonial offence which in itself is ground for divorce but which has been condoned may be revived by the subsequent commission of any other legally recognised matrimonial offence, *e.g.*, cruelty.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (h) iv.

3274 i. *By desertion—For two years without reasonable excuse.*]—Condoned adultery revived.—SPRING *v.* SPRING (Alta.), [1926] 2 D. L. R. 893; [1926] 2 W. W. R. 78.—**CAN.**

l. For "l. *By desertion*" read "**3274 ii.** ——."

m i. ——.]—L. *v.* L. (Man.), [1930] 1 D. L. R. 72; 38 Man. L. R. 333; [1929] 3 W. W. R. 396; *revsg.*, [1929] 4 D. L. R. 801.—**CAN.**

m ii. ——.]—Subsequent desertion will revive adultery which has been condoned.—LALEUNE *v.* LALEUNE, [1930] 1 D. L. R. 72; 38 Man. L. R. 333; [1929] 3 W. W. R. 396; *revsg.*, [1929] 4 D. L. R. 801.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (a).

3312 ii. ——.]—Unreasonable & unexplained delay between a petitioner's knowledge of the adultery committed by resp. & the filing of his petition for dissolution of the marriage may induce the ct. to dismiss the petition, as indicating acquiescence in the injury complained of.—KING *v.* KING (1929), I. L. R. 57 Calc. 215.—**IND.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (b).

sk. *What delay unreasonable—Twenty-four years.*]—In an undefended action of divorce on the ground of desertion brought by a wife against her husband twenty-four years after the alleged desertion :—*Held :* the fact that the pursuer had delayed to bring her action was not *per se* sufficient to deprive her of her remedy.—MONAHAN *v.* MONAHAN, [1930] S. C. 221.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (c).

so. *When a bar—Proceedings brought to obtain alimony from pension.*]—An action for judicial separation after a lapse of 6 years, & mainly brought for the purpose of obtaining alimony from a Government pension, held barred by laches.—PHILLIPS *v.* PHILLIPS, [1936] 2 D. L. R. 543.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (d) i.

3338 i. *General rule.*]—LACHANCE *v.* ROCHON (Que.), [1927] 1 D. L. R. 1190.—**CAN.**

3338 ii. ——.]—A marriage, one of the parties to which is incapable of properly consummating it, may, nevertheless, be so approbated by the acts & conduct of the other as to preclude the latter from impeaching its validity. Lapse of time, though not in itself under ordinary circumstances an absolute bar to a suit for nullity, is yet an important factor for consideration, & may operate with other circumstances as a bar to such a suit. Where a husband petitioned, over eight years after the marriage, for nullity of his marriage because of his wife's malformation & impotence :—*Held :* the husband, on the facts & circumstances established, should have known years before the suit, & would have so known had he acted as any ordinarily reasonable & prudent man would have acted in the circumstances, that his wife's condition was one which could not be rectified by surgical skill, & his explanation at the trial for his inaction was one which should not be accepted

3339. *Add. Annotations :—As to* (2) **Consd.** T. *v.* T. (1931), 47 T. L. R. 629. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29; Dodworth *v.* Dale, [1936] 2 All E. R. 440. Generally, **Refd.** Newbould *v.* A.-G., [1931] P. 75.

3345. *Add. Annotation :—***Consd.** T. *v.* T. (1931), 47 T. L. R. 629.

3358a. —— **Fourteen years.**]—On a husband's petition for nullity of marriage on the ground of his wife's incapacity through alleged invincible repugnance, it was held that as the petition was not presented until over 14 years after the marriage a very special burden of proof rested on the petitioner. After hearing the evidence of the parties & their witnesses & expert medical witnesses, the ct. dismissed the petition.—T. *v.* T. (OTHERWISE J.) (1931), 146 L. T. 18; 47 T. L. R. 629.

3360a. —— ——.]—T. *v.* T. (OTHERWISE J.), No. 3358a, *ante*.

3369a. ——.]—Want of means is a sufficient excuse for delay.—WILSON *v.* WILSON (1872), L. R. 2 P. & D. 435; 41 L. J. P. & M. 74; 27 L. T. 351; 20 W. R. 891.

3397. *Add. Annotations :—***Consd.** Apted *v.* Apted & Bliss, [1930] P. 246. **Refd.** Cullen *v.* Cullen, [1933] P. 218.

3429a. ——.]—Petitioner married resp. in 1873, & they lived together very happily till the birth of the only child, early in 1874, shortly after which event resp.'s mind became temporarily unhinged, & she was removed to an asylum, from which, towards the end of the same year, she was discharged as cured. Petitioner was, however, advised by his wife's medical attendant that further cohabitation, if it resulted in pregnancy, would probably prove dangerous to resp. & any future offspring. By the consent of the families of both parties, it was arranged that they should live apart, the wife having the child with her, & the husband making her an allowance. Petitioner corresponded with his wife until 1880, when he refused all further direct communication, but continued the allowance through his solr.; & throughout the separation he declined all private interviews with his wife, although urgently & repeatedly requested & begged for by her. In 1870 he wrote that she was not to inquire into his mode of life, & he would not interfere with hers :—*Held :* he was not disentitled to a divorce, on the ground of his wife's subsequent adultery.—LANDER *v.* LANDER, TEMPLE, FOX & FOX (1890), 63 L. T. 257.

3433. *Add. Annotation :—***Refd.** Welton *v.* Welton, [1927] P. 162.

3436a. ——.]—PLOWS *v.* PLOWS (1928), 44 T. L. R. 263.

3445a. —— **Statement in sealed envelope—Wife not entitled to disclosure.**]—Where a petitioner for a divorce by his or her petition admits that he or she has been guilty of adultery & asks for the exercise of the discretion of the ct. in his or her favour, the ct. has, in the exercise of its power under the proviso to Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 178, a discretion to direct that the particulars of the adultery should be disclosed to the ct. by a statement signed by petitioner to be enclosed in a sealed envelope & lodged in ct., to be opened by the registrar for the purpose of his certificate & resealed by him, but not to be disclosed to the other parties to the suit.—CULLEN *v.* CULLEN, [1933] P. 218; 102 L. J. P. 81; 149 L. T. 323; 49 T. L. R. 469; 77 Sol. Jo. 447, C. A.

*Annotation :—***Refd.** Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

3445b. Duty of solicitor to inquire as to adultery by petitioner.]—MOYSE *v.* MOYSE & CRICK (1929), 73 Sol. Jo. 192.

3446. *Add. Annotation :—***Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

as valid & sufficient in the circumstances disclosed.—B. *v.* B., [1935] S. C. R. 231; 1 D. L. R. 695.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (f) iii.

sk. *Parties living apart.*]—Delay for a number of years after discovery of adultery, the parties meanwhile living apart, will not bar a right to divorce on the ground of laches.—GRAINGER *v.* GRAINGER, WARD *v.* WARD, [1937] 2 D. L. R. 125; 6 F. L. J. (Can.) 278.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—C. (a) i.

3397 iii. —— ——.]—MCNALLY *v.* MCNALLY, [1927] 2 D. L. R. 604; 59 N. S. R. 268.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—C. (a) iii.

Letter instigating adultery.]—[illegible]CHER *v.* GALLACHER, [1928] S. C. (Ct. of Sess.) 586.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) i.

3445 i. *Disclosure of petitioner's adultery—Duty to disclose.*]—It is the duty of a petitioner who has been guilty of a matrimonial offence to admit the fact in his petition, for the information both of the ct. & of the A.-G., & specifically to ask for the discretion of the ct.—DEANE *v.* DEANE & FAY, [1929] S. R. (Q.) 124.—**AUS.**

3445 ii. —— ——.]—In a divorce action in Alberta a pltf. guilty of adultery is not under a duty to disclose that fact either in his or her statement of claim or on the trial. If such adultery is established by deft. or by any stranger or by the intervention of the King's Proctor it then, & not till then, becomes the duty of the trial judge to exercise his discretion under the proviso to sect. 31 of Divorce & Matrimonial Causes Act, 1857 (Imp.), & in doing so care should be taken to see that pltf. suffers no prejudice because of his or her non-disclosure. Pltf., however, is entitled, if he or she considers it expedient in his or her own interest to do so, to make the disclosure either in the statement of claim or in evidence at the trial.—SHERMAN *v.* KING'S PROCTOR, [1936] 2 W. W. R. 152; 3 D. L. R. 90; *sub nom.* SHERMAN *v.* SHERMAN, 6 F. L. J. (Can.) 51.—**CAN.**

3445 iii. —— *Ontario.*]—Divorce Act (Ontario), 1930, introduced the law of England as at 1870, but it did not introduce the practice of the English cts. relating thereto. There is no provision in the Ontario Rules requiring a pltf. to disclose his or her adultery in the pleadings or in a written confidential statement.—HOWE *v.* HOWE, [1937] 1 D. L. R. 508; O. R. 57; 6 F. L. J. (Can.) 213.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) ii.

3446 i. *Principle on which court* [illegible].]—There is nothing in Marriage Act, 1915, s. 131 (1), to indicate that the general rule is that the discretion of the ct. should be exercised against a petitioner who has himself been guilty of adultery, or that it should only be exercised in his favour in exceptional circumstances. The discretion of the ct., on the wording of the section, is quite open. If anything, the words would appear to indicate that ordinarily the decree *nisi* would be granted notwithstanding the adultery of the petitioner, but that in such a case the ct. is not bound to grant it. Under the section the ct. has an unfettered discretion, & it is neither desirable nor possible to lay down definite & rigid rules by which the ct. should be guided in all cases. The mere non-disclosure in his affidavit by a petitioner of the fact that he has during the marriage committed adultery is not a sufficient ground for refusing a decree *nisi* to which he would otherwise be entitled.—ADAMS *v.* ADAMS, [1928] V. L. R. 90; [1928] A. L. R. 89.—**AUS.**

3446 ii. ——.]—A ct. administering divorce jurisdiction in India has a discretion, where petitioner has been guilty of adultery during the marriage, to grant or refuse a decree for dissolution. This discretion is unfettered, but must not be exercised capriciously. The dicta of English judges laying down tests in this matter do not constitute rules or principles which in any way fetter cts. in India.—LILLY SWAINE *v.* DENNIS SWAINE (1932), I. L. R. 10 Man. 299.—**IND.**

3448. *Add. Annotations :*—**Expld.** Apted *v.* Apted & Bliss, [1930] P. 246. **Refd.** Bainbridge *v.* Bainbridge, [1934] P. 66 ; Fender *v.* Mildmay, 154 L. T. 94.

3448a. ——.]—Although in suitable cases the limits for the exercise of discretion laid down in *Hines* v. *Hines & Burdett*, No. 3296, might be extended on the lines indicated by the decision of the President in *Wilson* v. *Wilson*, No. 3448, this was not such a case, as the petitioner's misconduct had been long continued, & he had concealed it from the ct. —HENSLEY *v.* HENSLEY & NEVIN (1920), 122 L. T. 814 ; 36 T. L. R. 288.

3449. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1935] 2 K. B. 334.

3449a. ——.]—GRAYSON *v.* GRAYSON (1927), 43 T. L. R. 225.

Annotation :—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3449b. ——.]—The discretionary power of the ct. to grant a decree of divorce to a petitioner guilty of adultery is a regulated discretion which it is the duty of the ct. to reduce to method. The primary essential for the exercise of its power by the ct. is that there should be secured to it the means of knowledge of the material facts with reasonable certainty. With this end in view the fact that the exercise of the discretion is sought should appear on the face of the petition. There should be lodged along with the application for the certificate of a registrar that the proceedings are in order, preliminary to setting down, a statement of the matters in respect of which the exercise of the discretion is prayed & the grounds on which the petition in this behalf is based. The intervention of the King's Proctor following suppression of fact or presentment of falsehood by a petitioner in these matters is not the only safeguard for the observance of due procedure. A party to a divorce proceeding who is asking to have the discretion of the ct. favourably exercised & who in doing so acts in such a manner as to obstruct or divert the course of justice is guilty of a contempt of ct. & liable to its consequences. The multiplication of the tribunals in whom is vested the jurisdiction to decree divorce has rendered necessary a more precise procedure to secure the presentment to them of the facts in each case material to the exercise of the discretion &, if necessary, cases can then be adjourned for further consideration & the services of the King's Proctor made available. To late & limit with precision the grounds for the exercise of the discretion when the facts are once before the ct. is a practical impossibility ; they cannot be rigidly defined but certain broad principles can be gathered from authority. The more strict & early view that two or at most three classes of cases only called for the exercise of the discretion savoured more of estoppel than of the powers of the ct. as defined by statute. Those two classes arose either when resp. had induced petitioner to believe in the death of resp. or when a petitioning wife had been forced by a resp. husband to lead an immoral life, & the question was treated as open whether condonation of petitioner's adultery constituted a third class. To-day these may be stated as guiding principles ; a governing consideration is now the interest of the community at large in maintaining the sanctions of honest matrimony ; a strong affirmative case is still necessary to justify the ct. in departing from the discretionary prohibition of relief to a guilty petitioner ; it is manifestly contrary to law that a judicial discretion in favour of a litigant who has been guilty of adultery should be exercised when that course will probably encourage immorality : if the exercise is not unlikely to have that effect there is an argument against leniency. On the one hand condonation by a resp. of a petitioner's adultery is, though not so in the earlier time, admittedly now a ground for exercising the discretion ; on the other hand, it is now a ground for refusing to exercise the discretion that the adultery of petitioner has in some serious degree conduced to that of resp. & conversely that a resp. should not escape the consequences of his or her proved adultery by putting forward similar acts of petitioner for which resp. was in any serious degree responsible. Further matters now considered are the interests of children, the position of a mother in whose care children are, & possible conditions as regards the future of the guilty parties. All these considerations are held to affect the interest of the community at large.—APTED *v.* APTED & BLISS, [1930] P. 246 ; 99 L. J. P. 73 ; 143 L. T. 353 ; 46 T. L. R. 456 ; 74 Sol. Jo. 338.

Annotations :—**Consd.** Bainbridge *v.* Bainbridge, [1934] P. 66. **Refd.** Bevis *v.* Bevis, [1935] P. 86 ; Russell (Countess) *v.* Russell (Earl), [1935] P. 39 ; Fender *v.* Mildmay, [1935] 2 K. B. 334 ; Sheldon *v.* Sheldon, [1937] 1 All E. R. 779.

3448 i. *Factors governing exercise of.*]—When it is admitted by petitioner that he has been guilty of adultery, the ct. will exercise its discretion in his favour in a case that comes clearly within the principles laid down in *Wilson* v. *Wilson*, No. 3448.—LAIRD *v.* LAIRD (1927), 38 B. C. R. 297.—**CAN.**

3448 ii. ——.]—A wife who was deserted by her husband, having reason to believe he was dead, married a second time. The first husband, turning up, petitioned for divorce. It appeared from the evidence that petitioner had been guilty of an infraction of substantially all the matters set out in Divorce & Matrimonial Causes Act, s. 16, & that the wife was a very deeply injured woman without a stain on her character :—*Held :* although there is power to refuse petitioner a decree, the judge's discretion is left unfettered & absolute by the legislature. & it is in the best interests of the wife, in the circumstances, to be set free ; the marriage will, therefore, be dissolved on condition that petitioner gives security for the maintenance of resp. in the terms of sect. 17 of the statute.—HARNEY *v.* HARNEY (1926), 39 B. C. R. 275.—**CAN.**

3448 iii. ——.]—*Held :* even if the evidence against the pltf. justified the inference that he had committed adultery, the circumstances of the case, including the interests of pltf.'s child, warranted the ct. in exercising its judicial discretion in his favour.—WRIGHT *v.* WRIGHT, [1928] 1 D. L. R. 934 ; [1928] 1 W. W. R. 383.—**CAN.**

3448 iv. ——.]—The ct. will not grant a man divorce from a wife who has deserted him, to enable him to marry a woman with whom he has been cohabiting, & to legitimate their issue.—NEWSON *v.* NEWSON, [1936] 1 D. L. R. 696 ; O. R. 117.—**CAN.**

3b. *Adultery coupled with cruelty & desertion—Discretion not exercised.*]—In divorce proceedings, consisting of a petition by a husband & a cross-petition by his wife, it was proved that resp. had committed adultery, as set out in the petition, that petitioner had committed adultery & was guilty of cruelty to resp. & of wilfully deserting her & had been convicted of theft & sentenced to a term in gaol, & petitioner was in goal when resp. committed the acts of adultery upon which the husband's petition was founded :—*Held :* petitioner had been guilty of such wilful neglect & misconduct as conduced to resp.'s adultery, & the discretion conferred by sect. 31 of Divorce & Matrimonial Causes Act, 1857, should not be exercised in his favour.—CARSWELL *v.* CARSWELL, [1934] 3 W. W. R. 488 ; 42 Man. L. R. 485.—**CAN.**

5576. *Citation :*—" For WYMAN *v.* WYMAN " read

Annotation :—**Consd.** R. *v.* Adler (1923), 17 Cr. App. Rep. 105.

5577a. —— —— ——.]—Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.—R. *v.* CAIRNS (1927), 43 T. L. R. 455 ; 20 Cr. App. Rep. 44, C. C. A.

5577b. —— **Supplementary grounds — When allowed.**]—R. *v.* PORTER, No. 3137a, *ante*.

5579. *Add. Annotation :*—**Consd.** R. *v.* Van Dyn (1932), 23 Cr. App. Rep. 150.

5581a. ——.]—The ct. permits a notice of abandonment of appeal to be withdrawn only in exceptional circumstances.—R. *v.* SCOTT (1924), 18 Cr. App. Rep. 10, C. C. A.

5581b. ——.]—Only in special circumstances will the ct. allow the abandonment of a withdrawal of a notice of appeal.—R. *v.* VAN DYN (1932), 76 Sol. Jo. 112 ; 23 Cr. App. Rep. 150, C. C. A.

5584a. Application for leave to appeal—May be treated as final appeal.]—In a proper case the ct. will treat an application for leave to appeal as the final appeal.—R. *v.* HOBERN (1924), 18 Cr. App. Rep. 110, C. C. A.

5585. *Add. Annotation :*—**Refd.** R. *v.* Thompson (1925), 18 Cr. App. Rep. 167.

5585a. ——.]—An applt. may only in exceptional circumstances consent by counsel to be absent.—R. *v.* THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5593a. —— **Delay in sending in documents.**]—Statements sent to the ct. at the last moment may cause an application to be adjourned, & the loss of time would run against appct. It is well that appcts. should be reminded of this matter (CHARLES, J.).—R. *v.* WILLMOTT (1933), 24 Cr. App. Rep. 54, C. C. A.

5593b. —— ——.]—In this case the observations made in *R.* v. *Willmott* by CHARLES, J., apply with added force. Appct. was convicted on Jan. 20, & his notice of appeal was dated Jan. 31. The notice contained five paragraphs & was in itself a very long document. On Feb. 9 he sent in a further document of fourteen closely-written sheets which he called " further grounds of appeal." On Feb. 23 he sent in a mass of further documents & a great many pages of further grounds of appeal. This morning there have arrived a great many more documents from appct. & among them twelve or fourteen closely-written pages relating to the old & new grounds of appeal. In these circumstances, the ct. desires me to say that this case is one in which the ct. would normally adopt the course of adjourning the application, with the result that, unless leave to appeal were given, appct. would remain a longer time in prison than otherwise. Such a practice causes the greatest possible inconvenience. In this case, however, for special reasons, the ct. does not propose to take this course (HUMPHREYS, J.).—R. *v.* MCLAREN (1933), 24 Cr. App. Rep. 54, C. C. A.

5595a. Appellant not entitled to be heard—When represented by counsel.]—R. *v.* CHUNG YI MIAO (1928), 21 Cr. App. Rep. 56, C. C. A.

5595b. No argument heard—Appeal pro forma as condition precedent to appeal to House of Lords.]—R. *v.* INMAN (1929), 21 Cr. App. Rep. 159, C. C. A.

5596a. Official transcript of judgment at trial—How far binding.]—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein.—R. *v.* MARTIN (1927), 20 Cr. App. Rep. 103, C. C. A.

5604. *Add. Annotation :*—**Refd.** R *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605. *Add. Annotation :*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605a. Application to three judges—Reference to larger court.]—R. *v.* CHAPMAN (1931), 23 Cr. App. Rep. 45, C. C. A.

5607a. ——.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention ; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging ; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation ; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude ; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—R. *v.* ROSE, R. *v.* FRIEND, R. *v.* BEATTIE, R. *v.* LLEWELLYN, R. *v.* YOUNG (1924), 131 L. T. 26 ; 88 J. P. 90 ; 40 T. L. R. 617 ; 27 Cox, C. C. 615 ; 18 Cr. App. Rep. 55, C. C. A.

5616a. —— ——.]—In a proper case, especially with the concurrence of the Crown, the ct. will allow an application for leave to appeal against conviction to be treated as one for leave to appeal against sentence, & may thereupon deal with it as such.—R. *v.* T (1929), 21 Cr. App. Rep. 74, C. C. A.

PART XIV. SECT. 4, SUB-SECT. 1.

sb. *Appeal dismissed — Dissenting judgment on point of law—Details to be given in rule.*]—A rule dismissing an appeal should specify the nature of a question of law raised in a dissenting judgment.—R. *v.* SETTLE (1932), 5 M. P. R. 142 ; 58 C. C. C. 152.—**CAN.**

sd. *Affidavit—When necessary.*]—An appeal on the ground that accused was not offered the statutory alternatives under sect. 781 (2) (*b*) of the Criminal Code should be supported by affidavit.—R. *v.* SULLIVAN, [1935] 3 D. L. R. 197 ; 8 M. P. R. 546 ; 63 Can. C. C. 294.—**CAN.**

sf. *Leave to appeal—When granted.*]—Leave to appeal should only be granted after adequate reasons have been given.—R. *v.* LE COURT, [1937] 1 D. L. R. 607 ; 6 F. L. J. (Can.) 213 ; 11 M. P. R. 133.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—A.

sg. *Functions of Court of Criminal Appeal.*]—It is one of the functions of a Ct. of Criminal Appeal to standardise so far as possible the penalties imposed by cts. of first instance. A Ct. of Criminal Appeal does not interfere to reduce a penalty unless it is excessive or awarded upon some erroneous principle. When there has been a manifest departure from " customary penalties imposed in other cts." in respect of like offences, it is the duty of the Ct. of Criminal Appeal to examine the case & to pass upon the propriety of the particular penalty, & for that purpose upon the propriety of the standard suggested by the customary penalties.—WADE *v.* TROTTER, [1934] S. A. S. R. 62.—**AUS.**

sessions.—R. *v.* HATCH (1930), 22 Cr. App Rep. 83, C. C. A.

5628a. —— Not where delay due to misstatement of appellant.]—The ct. will not permit sentence to run from the date of conviction when the period between conviction & the hearing of the appeal has been prolonged through the mis-statement of applt.—R. *v.* WESTLAKE (1920), 15 Cr. App. Rep. 100, C. C. A.

5628b. —— Consecutive sentences—One quashed.]—(1) When consecutive sentences have been passed on two convictions & the ct. quashes one of them, it may allow the sentence for the other to run from the date of conviction.

In summing-up larceny & obtaining credit by fraud must be carefully distinguished.—R. *v.* LEE (1930), 22 Cr. App. Rep. 85, C. C. A.

5628c. —— Fresh evidence heard—Appeal dismissed.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

5628d. —— Sentence of penal servitude—Sentence of preventive detention set aside.]—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 125, C. C. A.

5629a. Sentence runs from session in which convicted—Although passed in later session.]—Sentence generally runs from the date of the first sitting of the ct. of trial, at whatever date it may be passed.—R. *v.* ROBERTS (1929), 21 Cr. App. Rep. 69, C. C. A.

5629b. —— No power to antedate beyond commencement of sessions.]—Sentence cannot be antedated beyond the first day of the sessions in which it is inflicted.—R. *v.* CROCKETT (1929), 21 Cr. App. Rep. 164, C. C. A.

5629c. —— ——.]—The ct. below cannot antedate a sentence before the first day of the sessions.—R. *v.* HATCH (1930), 22 Cr. App Rep. 83, C. C. A.

5629d. Sentence ordered to run from passing o sentence—Abnormal delay in preparing transcripts for court.]—R. *v.* MEYRICK, R. *v* RIBUFFI (1929), as reported in 21 Cr. App Rep. 94, C. C. A.

5643a. ——.]—R. *v.* TURKINGTON, No. 5965a *post.*

5673a. —— ——.]—The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.—R. *v.* CANHAM (1925), 18 Cr. App. Rep. 163, C. C. A.

5680a. ——.]—Applt. was convicted on a count of an indictment in the following terms: "Statement of offence. Driving motor vehicle in a manner dangerous to the public, contrary to Road Traffic Act, 1930 (c. 43), s. 11 (1). Particulars of offence. Charles Wilmot . . . on a certain road . . . in the county of Lincoln, drove a motor car recklessly, or at a speed or in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the road, & the amount of traffic which was actually at the time, or which might reasonably have been expected to be, on the said road." Applt. was represented by counsel at the trial, but no objection to the validity of the count was taken until after verdict:—*Held;* the point with regard to the validity of the count was one which under the old practice could have been taken on a writ of error &, although it had not been taken at the trial, the ct. were bound to allow it to be raised on appeal. As the count charged several offences in the alternative, it was bad for duplicity, & the conviction must be quashed.—R. *v.* WILMOT (1933), 149 L. T. 407; 97 J. P. 149; 49 T. L. R. 427; 77 Sol. Jo. 372; 31 L. G. R. 189; 24 Cr. App. Rep. 63; 29 Cox, C. C. 652, C. C. A.

5739a. *S. P.* R. *v.* HATCH & SMITH (1928), 20 Cr. App. Rep. 181, C. C. A.

PART XIV. SECT. 5, SUB-SECT. 1.—A.

5630 v. ——.]—The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.—R. *v.* DE BRUGE, [1924] 4 D. L. R. 496; 55 O. L. R. 507.—**CAN.**

5630 vi. ——.]—R. *v.* BURKE (1924), 44 Can. Crim. Cas. 205.—**CAN.**

5630 vii. ——.]—A ct. of appeal will not retry cases upon issues which have properly been left to the jury, & the fact that the jury might properly have found the other way is in itself no justification for interfering with a verdict.—R. *v.* SETTLE (1932), 5 M. P. R. 142; 58 C. C. C. 152.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 2.—A.

5666 i. —— *Insanity.*]—At the trial of accused for murder there was, in the ct.'s opinion, evidence which, had the point been taken, would of necessity have raised in the mind of the trial judge a doubt whether accused was then, on account of insanity, capable of conducting his defence: but the point was not brought to the attention of the trial judge, & the course prescribed by Criminal Code, s. 967, was not adopted:—*Held:* the omission of counsel ought not to deprive accused of the right given him by the sect. & new trial directed.—R. *v.* WILLIAMS, [1929] 1 D. L. R. 343; 50 Can. Crim. Cas. 230; 63 O. L. R. 191.—**CAN.**

5666 ii. —— ——.]—R. *v.* SMITH, [1936] 1 W. W. R. 67; 1 D. L. R. 717; 65 Can. C. C. 231.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 2.—C.

5b. *Objection to conviction on ground of defect in information.*]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 3.

5i. —— *What amounts to.*]—The trial judge prepared, two or three months after the trial, a certificate containing a number of statements made by him in answer to a corresponding number of objections to his charge which formed the grounds of appeal & stating, according to his recollection, that in fact his direction was precisely the contrary of that reported:—*Held:* such certificate of the trial judge was not a report within sect. 1020 Criminal Code: it did not contain the judge's "notes of the trial" nor was it a "report giving his opinion upon the case or upon any point arising in the case."—BARON *v.* R., [1930] S. C. R. 194; 2 D. L. R. 945; 53 Can. C. C. 154; *revsg.* 47 Que. K. B. 371.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 1.

5d. *In Ireland.*]—Practice & procedure, as to applications to allow fresh evidence on appeal, laid down by the Ct. of Criminal Appeal.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

PART XIV. SECT. 6, SUB-SECT. 2.

5f. *Conviction improper—Claim to substitute sentence for lesser offence—Leave to obtain further evidence—Confined to lesser offence.*]—Where on an appeal from a conviction for unlawfully having carnal knowledge of a girl 14 years of age, it appeared that the accused had not been properly convicted, but there being no majority of the ct. in favour of directing a new trial, the Crown asked the ct. to proceed under Criminal Code, s. 1916 (2), & substitute a sentence for indecent assault, whereupon the accused's counsel moved for leave to obtain & present new evidence from one Z., who would have been a compellable witness at the trial:—*Held:* such leave should be granted, the additional evidence to be confined to the charge of indecent assault, & the hearing of the appeal should stand over until further order, &, in the meantime, the evidence of said witness should be taken before the registrar of the Supreme Ct. & forwarded by him to the registrar of the Ct. of Appeal.—R. *v.* SHUMARIN (B. C.), [1928] 1 W. W. R. 300.—**CAN.**

5746. *Add. Annotation :*—**Refd.** R. *v.* Littleboy, [1934] 2 K. B. 408.

5783a. Not evidence of appellant.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

5783b. Medical evidence—Cause of death.]—Conviction of murder quashed after the ct. had heard fresh medical evidence as to the cause of death, the ct. emphasising the fact that such reception of fresh evidence was to be regarded as wholly exceptional.—R. *v.* HARDING (1936), 25 Cr. App. Rep. 190, C. C. A.

5792a. —— Fresh evidence proving impossibility of guilt.]—R. *v.* BINNEY (1935), 79 Sol. Jo. 419, C. C. A.

5800a. Conflicting medical views.]—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—R. *v.* THORNE (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.

5802a. Unsatisfactory identification.]—Conviction quashed.—R. *v.* HITCHCOCK (1926), 19 Cr. App. Rep. 181, C. C. A.

5802b. Photograph of accused published in newspaper.]—R. *v.* MORRISON (1911), 6 Cr. App. Rep. 159, C. C. A.

5802c. Insanity — Supervening after trial.]—R. *v.* DRISCOLL & ROWLANDS (1928), 20 Cr. App. Rep. 161, C. C. A.

5802d. Illegal committal—Conviction quashed.]—R. *v.* GEE, R. *v.* BIBBY, R. *v.* DUNSCOMBE, No. 1720a, *ante*.

PART XIV. SECT. 6, SUB-SECT. 3.

5740 iii. ——.]—An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—R. *v.* CRONAN (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 25.—**CAN.**

5766 ii. ——.]—The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution :—*Held :* the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

5766 iii. ——.]—R. *v.* CHOW KEE (1929), 42 B. C. R. 67.—**CAN.**

st. *No opportunity of cross-examining former witness on statement at trial.*]—R. *v.* VYE (1925), 44 Can. Crim. Cas. 249; [1925] 3 W. W. R. 100.—**CAN.**

sw. *On recommendation of Minister of Justice.*]—Ontario Ct. of Appeal will re-open a conviction for conspiracy to defraud the Govt., on recommendation of the Minister of Justice, after 11 years for the purpose of reviewing the case on new evidence.—R. *v.* JARVIS (1936), 66 Can. C. C. 20.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 4.

sv. *Evidence material & relevant to show verdict wrong.*]—The purpose of the ct. in allowing applt. to lead additional evidence under Criminal Appeal (Scotland) Act, 1926, s. 6 (*b*), is to give him an opportunity of showing that the verdict was pronounced in the absence of matter material & relevant to lead to a contrary result.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

PART XIV. SECT. 6, SUB-SECT. 5.

m. Read now "**5793 i.**"

5793 ii. —— ——.]—R. *v.* HUBLEY (1925), 57 N. S. R. 537.—**CAN.**

5793 iii. —— *Evidence not incompatible with evidence at trial.*]—R. *v.* ADORE (1930), 54 Can. C. C. 211.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

p i. —— *Criminal Appeal (Scotland) Act*, 1926 (c. 15).]—The Ct. of Criminal Appeal is not a ct. of review in the sense in which that term is used in civil procedure; it cannot upset a verdict merely because it disagrees with the view either of the evidence or of the credibility of the witnesses on which it proceeded; it cannot interfere unless it thinks the verdict unreasonable. The test of unreasonableness is similar to that applied to verdicts obtained in civil jury trials, viz., was the verdict so flagrantly wrong that no reasonable jury, acting honestly under proper direction, could have given it.—WEBB *v.* H.M. ADVOCATE, [1927] S. C. (J.) 92.—**SCOT.**

p ii. ——.]—*Held :* an appellate ct. could not, under Criminal Code, s. 1016 (2), substitute for the conviction under s. 405 a conviction under s. 406.—R. *v.* LEROUX, [1928] 3 D. L. R. 688; 50 Can. Crim. Cas. 52; 62 O. L. R. 336.—**CAN.**

p iii. ——.]—Applt. was tried for murder by intentionally causing the death of another native. He was convicted by the Additional Sessions judge & four assessors of culpable homicide not amounting to murder, & was sentenced to a term of rigorous imprisonment. The Govt. applied for a revision of the judgment, & the High Ct. altered the conviction to one of murder & sentenced the applt. to death :—*Held :* on an application for revision, as distinguished from an appeal, the High Court had no jurisdiction to convert the finding of an acquittal of murder into one of conviction & to sentence the man to death.—KISHAN SINGH *v.* R. (1928), 44 T. L. R. 690, P. C.—**IND.**

p iv. ——.]—R. *v.* RIWMY (1930), 53 Can. C. C. 196.—**CAN.**

p v. ——.]—R. *v.* HENDERSON (1929), 1 M. P. R. 277.—**CAN.**

q i. ——.]—On an appeal, from a conviction for theft, based on the ground that a statement made by the trial judge when imposing sentence indicated that he entertained reasonable doubt of the accused's guilt :—*Held :* taking the judgment as a whole, the contention could not be supported, & the appeal should be dismissed.—R. *v.* WALKER, [1931] 1 W. W. R. 584; 55 Can. C. C. 102; 25 Alta. L. R. 336.—**CAN.**

b i. ——.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an " attempt to commit " that offence :—*Held :* the evidence was sufficient to sustain the verdict, & his appeal must be dismissed.—R. *v.* GING (1924), 57 N. S. R. 196.—**CAN.**

b ii. ——.]—Where accused is charged with having committed a crime at a named place in a named county & province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held :* not such an omission as to give ground for an appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—**CAN.**

b iii. ——.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters :—*Held :* a conviction founded on such evidence could not be sustained.—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN**

b iv. ——.]—R. *v.* MCKENZIE (1926), 58 N. S. R. 464.—**CAN.**

b v. ——.]—Findings of the ct. or a jury on questions of fact are only to be set aside where the findings are obviously & palpably wrong, or are unreasonable & cannot be supported by the evidence.—R. *v.* M. (1926), 46 Can. Crim. Cas. 80; 58 N. S. R. 512.—**CAN.**

b vi. ——.]—Appeal dismissed.—R. *v.* DAVIDSON (1926), 47 Can. Crim. Cas. 80; 59 N. S. R. 179.—**CAN.**

b vii. ——.]—Appeal dismissed.—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

b viii. ——.]—Appeal dismissed.—R. *v.* HADDAD (1927), 47 Can. Crim. Cas. 163; 59 N. S. R. 187.—**CAN.**

b ix. ——.]—Circumstances in which an appeal against a conviction for forgery, by making interlineations in a document, was allowed.—R. *v.* ZEREBKO (Sask.) (1927), 48 Can. Crim. Cas. 87.—**CAN.**

b x. —— *Variance between evidence & charge—As to date of offence.*]—Conviction quashed.—R. *v.* DAVIES (Alta.), [1927] 2 W. W. R. 605; 49 Can. Crim. Cas. 86.—**CAN.**

b xi. ——.]—The Ct. of Criminal Appeal quashed a verdict & sentence, where the evidence was defective in some important respects, & the evidence, such as it was, was not presented to the jury in such a way as to bring sufficiently clearly before them the questions they had to determine.—A.-G. *v.* SMITH, [1927] I. R. 564.—**IR.**

b xii. ——.]—If the evidence is sufficient to justify a conviction, & the jury are properly directed, the Ct. of Appeal cannot interfere with their verdict because in the opinion of the presiding judge it is based on evidence which was untrustworthy & ought not to have been accepted.—R. *v.* THOMAS (1928), 28 S. R. N. S. W. 490; 45 N. S. W. W. N. 146.—**AUS.**

st. *Court may reduce sentence—Although no appeal from sentence.*]—R. *v.* MUSGRAVE (N. S.) (1926), 46 Can. Crim. Cas. 45.—**CAN.**

sv. *Non-indictable offence tried as indictable offence.*]—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

sw. *Conviction not in form required by Act—Omission of order for forfeiture.*]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act :—*Held :* the omission invalidated the conviction.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

sb. *Interference with jury — Committal for contempt—Prisoner not prejudiced.*]—R. *v.* STEWART (1930), 2 M. P. R. 400.—**CAN.**

5805. *Add. Annotations:*—**Apld.** R. *v.* Disney (1933), 49 T. L. R. 284; R. *v.* Wilmot (1933), 97 J. P. 149. **Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

5806a. —— **Indictment alleging offence under repealed section of statute.**]—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction. —R. *v.* TAYLOR (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.

5807. *Add. Annotation:*—**Apld.** R. *v.* Wilmot (1933), 97 J. P. 149.

5816a. ——.]—If a judge has distinctly reached the conclusion that the case against a deft. is merely one of suspicion, he ought to withdraw it from the jury.—R. *v.* JOHNSON (1928), 21 Cr. App. Rep. 66, C. C. A.

5816b. ——.]—If the ct. is of opinion that at the close of the case for the prosecution there is no evidence to go to the jury it will, in the absence of evidence of such evidence from the defence, quash a conviction.—R. *v.* HOCHGLICK (1929), 21 Cr. App. Rep. 161, C. C. A.

5840a. —— ——.]—R. *v.* DANIELS (1927), 20 Cr. App. Rep. 127, C. C. A.

5840b. —— ——.]—Conviction quashed on the ground of there being no evidence of guilt.—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 44, C. C. A.

5840c. —— ——.]—The ct. will quash a conviction founded on mere suspicion.—R. *v.* WALLACE (1931), 75 Sol. Jo. 459; 23 Cr. App. Rep. 32, C. C. A.

5840d. —— ——.]—There ought not to be a conviction when the evidence is equally consistent with innocence & guilt.—R. *v.* BOOKBINDER (1931), 23 Cr. App. Rep. 59, C. C. A.

5840e. —— ——.]—R. *v.* CARTER (1931), 23 Cr. App. Rep. 101, C. C. A.

5845a. —— ——.]—This case turned on the manner in which the witnesses gave their evidence; there was a proper direction to the jury, & the ct. does not see that it can interfere with the verdict without substituting itself for the jury, which was the proper tribunal to decide the matter (PICKFORD, J.). —R. *v.* HANCOX (1913), 29 T. L. R. 331; 8 Cr. App. Rep. 193, C. C. A.

5850. *Add. Annotation:*—**Refd.** R. *v.* Rice (1927), 20 Cr. App. Rep. 21.

5850a. —— ——.]—The exercise of the jurisdiction under Criminal Appeal Act, 1907 (c. 23), s. 4, depends on the circumstances of the particular case, whatever may be the opinion of the judge who tried it.—R. *v.* RICE (1927), 20 Cr. App. Rep. 21, C. C. A.

Annotation:—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66.

5850b. —— ——.]—R. *v.* DAVIDSON, No. 3129b, *ante*.

5855a. Conviction of one co-defendant quashed—Quashing conviction of other co-defendant.]—As a general rule if the conviction of one of two defts. only for conspiracy is quashed, that of the other will be quashed.—R. *v.* HILLMAN (1931), 23 Cr. App. Rep. 53, C. C. A.

5856a. ——.]—R. *v.* RICHARDS, No. 6230a, *post*.

PART XIV. SECT. 7, SUB-SECT. 4.

5824 v. —— ——.]—R. *v.* BERGER, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—**CAN.**

5824 vi. —— ——.]—Defts. were convicted of the offences of conspiring to defraud a city corpn. of money due to the corpn. for taxes:—*Held:* an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—R. *v.* EPSTEIN, R. *v.* WALKER, R. *v.* SPERON (1925), 43 Can. Crim. Cas. 348; 56 O. L. R. 587.—**CAN.**

5824 vii. —— ——.]—Deft. was convicted of rape:—*Held:* having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—R. *v.* HUBLEY (1925), 58 N. S. R. 113.—**CAN.**

5824 viii. —— ——.]—R. *v.* WAH SING CHOW (B. C.) (1927), 48 Can. Crim. Cas. 144.—**CAN.**

5824 ix. —— ——.]—*Held:* a finding that deft., while intoxicated, was in charge of a motor-vehicle, did not justify a conviction for driving while intoxicated, nor could deft. be convicted of the alternative offence, for Criminal Code, s. 285 (4), cannot apply to a vehicle which is out of commission & cannot be operated by its own power.—R. *v.* HIGGINS, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—**CAN.**

5824 x. —— ——.]—R. *v.* J., [1929] 1 W. W. R. 625; 52 Can. Crim. Cas. 72; 38 Man. L. R. 144.—**CAN.**

5824 xi. —— ——.]—Where on an appeal from a conviction by a judge without a jury it was apparent that the evidence of one or both of the two witnesses for the Crown was perjured & in direct conflict with that of two of the defence witnesses, one of whom at least was a completely disinterested witness:—*Held:* the charge had not been proved beyond a reasonable doubt & the conviction was quashed.—R. *v.* SMITH, [1929] 3 W. W. R. 387; 1 D. L. R. 605; 52 Can. C. C. 174; 38 Man. L. R. 325.—**CAN.**

5824 xii. —— ——.]—Appeal from a conviction for shooting with intent to do grievous bodily harm allowed & the conviction quashed on the ground that on the evidence for the Crown there was grave doubt as to the identification of applt. (one of two accused tried jointly) as one of those who took part in the crime & the jury had not given him the benefit of it.—R. *v.* HAYDUK, [1935] 2 W. W. R. 513; 4 D. L. R. 419; 64 Can. C. C. 194; 43 Man. L. R. 209.—**CAN.**

1 **i.** —— —— *Evidence circumstantial only.*]—R. *v.* YOR YUEN (Ont.) (1929), 52 Can. Crim. Cas. 300.—**CAN.**

1 **ii.** —— —— *Criminal Code*, 1927, *s.* 1014.]—On an appeal from a conviction for murder, held that the case fell within sect. 1014 of the Criminal Code in that the verdict was one which could not be supported by the evidence, &, therefore, must be set aside. There being no question of a new trial or a verdict of manslaughter, the conviction was quashed.—R. *v.* NAHIRNIAK, [1931] 2 W. W. R. 604; 56 Can. C. C. 225; 39 Man. L. R. 509.—**CAN.**

5843 viii. —— ——.]—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

5843 ix. —— ——.]—R. *v.* —— (Sask.), [1927] 1 D. L. R. 753; 47 Can. Crim. Cas. 118.—**CAN.**

5843 x. —— ——.]—Where the evidence in a criminal case is purely circumstantial & the jury has been properly instructed within the rule as to the value of circumstantial evidence, the verdict of the jury finding the accused guilty is equivalent to a finding that, in the minds of the jury, the inferences to be drawn from the evidence were consistent with the guilt of the accused & inconsistent with any other reasonable conclusion, *i.e.*, with the absence of guilt. Likewise, an appellate ct. could also decide, on the evidence, whether the facts were such as to be equally consistent with the innocence as with the guilt of the accused, & accordingly quash the verdict. But, before this ct., when the accused does not urge any ground of complaint against the direction of the trial judge & the evidence is such that the jury might, & could, legally & properly draw an inference of guilt, as held by the appellate ct., it is not for the ct. to decide whether the jury ought or not to have inferred that the accused was guilty.—FRASER *v.* R., [1936] S. C. R. 296; 3 D. L. R. 463; 66 Can. C. C. 240.—**CAN.**

sx. *Conviction for offence not charged in summons.*]—HALIFAX CORPN. *v.* O'CONNOR (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 5.

5856 vii a. *S. P.* R. *v.* CHIN CHONG (1921), 29 B. C. R. 527.—**CAN.**

5856 xvi. ——.]—R. *v.* ORTYNSKY, [1927] 2 D. L. R. 973; [1927] 1 W. W. R. 957; 47 Can. Crim. Cas. 319; 21 Sask. L. R. 448.—**CAN.**

s (p. 522) **i.** —— *Irregularities at former trial—Prosecution for perjury.*]—The ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial, the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

5856b. ——.]—Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—R. *v.* HOWARTH (1926), 19 Cr. App. Rep. 102, C. C. A.

5856c. ——.]—R. *v.* BERRY (1926), 19 Cr. App. Rep. 113, C. C. A.

5858. *Add. Annotations :*—**Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

5859. *Add. Annotation :*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

5863. *Add. Annotation :*—**Refd.** Maxwell *v.* Director of Public Prosecutions (1934), 151 L. T. 477.

5863a. —— ——.]—It is a misdirection, on a charge of obtaining credit by fraud, that the jury may consider other cases of alleged stealing, which have not been established in evidence.—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

5867. *Add. Annotation :*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

5870a. —— ——.]—Convictions quashed on the ground of evidence of previous convictions having been wrongly admitted.—R. *v.* GRAHAM, R. *v.* ANDERSON (1924), 18 Cr. App. Rep. 8, C. C. A.

5870b. —— ——.]—R. *v.* KING (1927), 20 Cr. App. Rep. 158, C. C. A.

5870c. —— —— **Disclosed by prisoner.**]—R. *v.* GUERIN, No. 2840a, *ante*.

5870d. —— **Evidence of bad character.**]—R. *v.* FLEMING, No. 6106a, *post*.

5873a. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante*.

5873b. —— **Evidence by witnesses on abandoned charge.**]—R. *v.* DUNNICO (1931), 23 Cr. App. Rep. 77, C. C. A.

5876a. —— ——.]—(1) It is the duty of counsel for the prosecution before opening to acquaint themselves with the contents of the indictment.

(2) Where a statement prejudicial to a prisoner with regard to his previous record has been inadvertently made to the jury by a witness, & counsel for the prisoner applies for the trial to be started afresh, the ct. ought to begin the trial again before a new jury.

A prisoner, who was charged upon two indictments, was given in charge to the jury upon one indictment, but, owing to a misunderstanding, evidence was admitted which was relevant only to the other indictment. In the course of the trial a witness for the prosecution stated in answer to a question put to him in cross-examination that he had been in the prisoner's house while the latter was away in prison. Counsel for the prisoner objected & applied for the trial to be started afresh, but his application was refused & the prisoner was convicted :—*Held :* the conviction must be quashed.—R. *v.* PECKHAM (1935), 154 L. T. 275 ; 100 J. P. 59 ; 52 T. L. R. 159 ; 79 Sol. Jo. 989 ; 25 Cr. App. Rep. 125 ; 34 L. G. R. 1 ; 30 Cox, C. C. 353, C. C. A.

5877a. —— ——.]—R. *v.* HOMER (1926), 19 Cr. App. Rep. 118, C. C. A.

5877b. —— **Statement prior to trial in hearing of jury.**]—Before the trial of applt., in the presence & hearing of the jury who were to try her, counsel appearing for her son, who had been put up for sentence on another charge, stated by way of mitigation that his client was the son of a notorious shoplifter. In the summing up at applt.'s trial the jury were warned to disregard that statement :—*Held :* in view of the above disclosure with regard to applt.'s character, the proper course would have been to adjourn the case of the applt. & try it before another jury, & in the circumstances the conviction must be quashed.—R. *v.* PALMER (1935), 25 Cr. App. Rep. 97, C. C. A.

5884. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

5887. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632 ; R. *v.* McLean (1926), 134 L. T. 640 ; R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75.

5906. *Add. Annotation :*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

5910a. —— ——.]—(1) Rejection of evidence legally admissible may be ground for quashing a conviction. (2) The prosecution, *semble*, should put in at the trial all documents put in below.—R. *v.* THOMAS (1931), 23 Cr. App. Rep. 36, C. C. A.

5910b. —— ——.]—Applt. was charged with incest with his daughter B. The case for the prosecution rested mainly on the evidence of B. & her younger sister I. The defence was that the charge was a fabrication, & that the children had been schooled by their mother, with whom applt. was on bad terms, into giving evidence against him. Applt. had some months previously been convicted of indecent assault on B. before a ct. of summary jurisdiction. Counsel for applt. put to each of the children in turn the suggestion that each of them had admitted to another person that their mother had told them what to say in evidence on that occasion, & that their evidence was not true. Each of the children denied this suggestion, & counsel for applt. sought to call the two persons to whom the alleged admissions were said to have been made. The judge refused to admit their evidence, on the ground that the above questions had been put to the children solely for the purpose of testing their credit : —*Held :* the questions were directed not to the credibility of the witnesses but to the very foundation of applt.'s answer to the charge, & the evidence of the two persons to whom the alleged statements had been made by the children ought to have been admitted. The conviction must, in the circumstances, be

e (p. 523) **i.** —— ——.]—R. *v.* BARCLAY (Ont.) [1930] 1 D. L. R. 489 ; 52 Can. Crim. Cas. 134.—**CAN.**

k (p. 524) **i.** —— *Evidence of previous bad character.*]—CASSIDY *v.* R., [1931] 4 D. L. R. 192 ; 56 Can. C. C. 194.—**CAN.**

s (p. 526) **i.** —— *Admission of confession—No prejudice.*]—R. *v.* BARCLAY, [1930] 1 D. L. R. 489 ; 52 Can. C. C. 134.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 6.

5909 i. *Conviction quashed—Evidence for defence excluded.*]—WINNING *v.* TORRANCE, [1928] S. C. (J.) 79.—**SCOT.**

sg. *Evidence of ballistic expert.*]—CROCKET, J., took also the ground that the trial judge erroneously refused to allow a certain ballistic expert witness to state his opinion as to whether or not the bullet which caused the death had been fired from the revolver produced. RUNFRET, LAMONT & SMITH, JJ., while holding that the trial judge's ruling out was wrong, were of opinion that, in view of later evidence from the same witness, the ruling ou had not much effect.—PITRE *v.* R., [1933] S. C. R. 69 ; 1 D. L. R. 417 ; 59 C. C. C. 148.—**CAN.**

quashed.—R. *v.* PHILLIPS (1936), 156 L. T. 80; 101 J. P. 117; 30 Cox, C. C. 536; 35 L. G. R. 36; 26 Cr. App. Rep. 17, C. C. A.

5910c. —— **Cross-examination as to credit disallowed.**]—The legal representative of applt. at the ct. of trial was precluded from cross-examining the chief witness for the Crown, an accomplice, as to credit:—*Held:* the conviction must be quashed.—R. *v.* HUGHES (1933), 24 Cr. App. Rep. 52, C. C. A.

5915a. —— ——.]—**An inadequate summing up may be a ground for quashing a conviction.**—R. *v.* BREED (1931), 22 Cr. App. Rep. 166, C. C. A.

5915b. —— ——.]—If a direction to the jury treats as corroborative evidence that which is not in fact corroborative, the ct. may quash a conviction.—R. *v.* PHILLIPS (1924), 18 Cr. App. Rep. 115, C. C. A.

5919. *Add. Annotation:*—**N.F.** (It would be better to regard the case of *Newman* as a misprint, LORD HEWART, C.J.). R. *v.* Currell (1935), 25 Cr. App. Rep. 116.

5926a. ——.]—R. *v.* HOWARTH, No. 5856b, *ante.*

5926b. —— **Sexual offence.**]—Applt. was charged on an indictment containing ten counts alleging carnal knowledge of three girls aged ten, eleven & twelve respectively during a period extending over a year. It was alleged that applt. committed the offences upon each of the girls in turn, while the other two kept watch. On four of the counts in the indictment there was no evidence against applt. beyond that of the particular girl on whom it was alleged that the offence had been committed. The judge, in his summing-up, drew no distinction between the different counts, omitted to warn the jury as to the care they should exercise in accepting the evidence of young children, & failed to direct the jury that they ought to consider in the case of each girl whether she was to be regarded as a victim or as a participant in the offence:—*Held:* the summing-up was so inadequate as to necessitate the quashing of the conviction.—R. *v.* BRAMHILL (1933), 24 Cr. App. Rep. 79, C. C. A.

5926c. ——.]—Conviction of receiving stolen property quashed on the ground of non-direction on this charge in the summing-up, the ct. reiterating the rule laid down in *R.* v. *Schama & Abramovitch*, 11 Cr. App. Rep. 45, at p. 49, that "it is essential in cases of this character that there should be a careful & proper direction."

R. v. *Newman*, 9 Cr. App. Rep. 134, is not now to be relied upon as an authority that there may be cases of receiving where a careful summing-up is not essential.—R. *v.* CURRELL (1935), 25 Cr. App. Rep. 116, C. C. A.

5927a. —— ——.]—**Where the defence is an *alibi*, the jury must be pointedly directed on the identification.**—R. *v.* PHILLIPS (1924), 89 J. P. 16; 41 T. L. R. 190; 18 Cr. App. Rep. 151, C. C. A.

5927b. —— **Direction as to time.**]—R. *v.* SMITH, No. 6066a, *post.*

5927c. ——.]—Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—R. *v.* CHEW (1926), 19 Cr. App. Rep. 73, C. C. A.

5927d. **Contradictory statements by sole witness to identity.**]—Where the only witness to identification of the accused has at one time expressed doubt about his own correctness, the attention of the jury ought to be drawn to this fact.—R. *v.* MCLOCKLIN (1930), 22 Cr. App. Rep. 138, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 7.—A. (a).

a i. —— ——.]—R. *v.* AVERILL, [1927] 2 W. W. R. 310; 48 Can. Crim. Cas. 121; 21 Sask. L. R. 679.—**CAN.**

a ii. —— ——.]—R. *v.* COOPER (Ont.), [1927] 4 D. L. R. 1093; 49 Can. Crim. Cas. 87.—**CAN.**

5920 iii. ——.]—Accused & one M. left a room in an hotel together, both intoxicated. On reaching the rotunda of the hotel M. said to the night clerk "I got hit in the eye, but the other fellow got worse than I did," & the clerk saw that there was blood on both of M.'s hands. Immediately after they had left the hotel, a third man, who came to the hotel with them, was found dead & in a battered condition in the room they had left. On appeal from the conviction of accused for manslaughter:—*Held:* there was non-direction amounting to misdirection in the charge of the judge, to the jury, the result of which was that the strongest evidence in favour of accused, viz., M.'s appearance after coming out of the room & his statement of his actions, was not submitted to the jury's consideration as it ought, & there should be a new trial.—R. *v.* NICHOLSON (1927), 49 Can. Crim. Cas. 228; 39 B. C. R. 264.—**CAN.**

5920 iv. ——.]—**An indictment was presented against three accused persons for breaking & entering & for stealing. The trial judge left the case to the jury as being one of breaking & entering only, & did not point out to the jury that it was, under Criminal Code, s. 575, open to the jury to find the prisoners, or some of them, guilty of stealing:—*Held:* this omission was in itself sufficient to amount to a miscarriage of justice.**—R. *v.* SHORT, GREALEY & PLINT, [1928] St. R. Qd. 246; 22 Q. J. P. 108.—**AUS.**

5920 v. ——.]—On an appeal from a conviction on a trial for perjury on which an interpreter had been employed it was contended that the judge in his charge to the jury had failed to refer to the fact that objection had been taken by the defence counsel to the ability of the interpreter, & it was contended that this non-direction amounted to misdirection:—*Held:* since even had the judge placed the matter before the jury they could not, as reasonable men, have concluded otherwise than that the interpreter was well qualified & had translated the accused's answers correctly, the objection could not be sustained.—R. *v.* VERIGIN (No. 2), [1932] 2 W. W. R. 491.—**CAN.**

5920 vi. ——.]—Failure of the judge to instruct the jury that, in order to determine the real meaning of a written statement by accused, they were entitled to consider those parts of it which were exculpatory & explanatory of accused's adverse admissions constituted a material non-direction tantamount to a misdirection necessitating a new trial.—R. *v.* JACKSON, [1933 O. R. 522; 60 C. C. C. 52.—**CAN.**

sy. *Direction alleged to be unfair.*]—R. *v.* HUM KING, [1928] 2 D. L. R. 687; 49 Can. Crim. Cas. 174; 60 N. S. R. 5.—**CAN.**

sz. *Failure to direct jury how to view circumstantial evidence.*]—R. *v.* THIBEAULT, [1930] 3 D. L. R. 312; 53 Can. C. C. 178; 1 M. P. R. 345.—**CAN.**

sa. *Conflicting medical evidence.*]—A new trial will be ordered when the conflicting medical evidence as to cause of death is not adequately explained to the jury.—R. *v.* KIRK, [1934] 3 D. L. R. 642; O. R. 443; 62 C. C. C. 19.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (b).

sb. *Bigamy — Felonious intent.*] — Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent:—*Held:* this direction was right.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—**AUS.**

sc. *Manslaughter—Criminal negligence.*]—New trial ordered because the judge did not explain to the jury the elements of the crime of manslaughter, & did not differentiate between the degree of negligence which is necessary to constitute criminal liability, & also because he did not tell the jury that they were justified in entering upon the inquiry as to the accused's guilt of the offence of criminal negligence under sect. 284 only if they found the accused not guilty of the crime of manslaughter. —R. *v.* MERRITT, [1933] 4 D. L. R. 483; O. R. 786; 60 C. C. C. 295; *affd.*, [1934] 1 D. L. R. 153; 60 C. C. C. 304.—**CAN.**

sd. *Wounding—Intent.*] — Accused was prosecuted under sects. 273 & 274 of the Criminal Code. The jury found him not guilty under sect. 273,

5929a. —— ——.]—When in a trial for larceny asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—R. *v.* JONES (1925), 19 Cr. App. Rep. 39, C. C. A.

5932a. —— **By bailee—Intent to defraud.**]—R. *v.* MOORE, No. 3007a, *ante*.

5932b. —— **Shopbreaking.**]—On an indictment for shopbreaking & larceny the jury should be informed of the various verdicts open to them on the evidence.—R. *v.* NEVILLE (1931), 22 Cr. App. Rep. 163, C. C. A.

5932c. Breaking & entering—Breaking.]—R. *v.* LLOYD, No. 2839b, *ante*.

5932d. —— ——.]—On an indictment charging breaking & entering, a breaking in law must be proved, & the jury must be distinctly charged on this point.—R. *v.* BRI (1924), 18 Cr. App. Rep. 136, C. C. A.

5934. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5936. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5938a. —— ——.]—The gist of the crime of obtaining by false pretences is an intent to defraud : direction on this point must be clear.—R. *v.* RENTON (1925), 19 Cr. App. Rep. 33, C. C. A.

5938b. —— ——.]—On a charge of obtaining by false pretences there must be a direction on the issue of intent.—R. *v.* KAY (1925), 19 Cr. App. Rep. 42, C. C. A.

5938c. —— ——.]—On an indictment for obtaining by false pretences the jury must be explicitly charged that they should not convict unless they find an "intent to defraud," the legal purport of which should, except in the clearest cases, be indicated.—R. *v.* SMITH (1931), 22 Cr. App. Rep. 180, C. C. A.

5938d. —— ——.]—It is a misdirection to suggest that evidence on a charge of obtaining by false pretences which tends to disprove an intent to defraud is "subsidiary" to the real issue, even though that evidence *per se* does not constitute a defence.—R. *v.* PICKUP (1931), 22 Cr. App. Rep. 186, C. C. A.

5938e. —— ——.]—It depends on the circumstances of each case whether a jury must be *expressly* directed that an intent to defraud is an essential ingredient of the offence.—R. *v.* Moss (1931), 23 Cr. App. Rep. 132, C. C. A.

5939a. —— ——.]—R. *v.* NEWBERY & ELMAN, No. 3165g, *ante*.

5943a. —— **Larceny.**]—On a charge of knowingly receiving stolen goods it is imperative that the jury should be directed that the larceny implied must be proved.—R. *v.* MCGUIRE (1930), 22 Cr. App. Rep. 31, C. C. A.

5943b. —— **"For & on account of" person defrauded.**]—On an indictment for fraudulent conversion the jury must be directed on the question whether what was received by deft. was "for & on account of" the person(s) alleged to be defrauded.—R. *v.* BROWN (1931), 23 Cr. App. Rep. 18, C. C. A.

5947. *Add. Annotation :*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

5947a. ——.]—R. *v.* WOODS, No. 751b, *ante*.

5947b. ——.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

5947c. Failure to distinguish larceny & obtaining credit by fraud.]—R. *v.* LEE, No. 5628b, *ante*.

5959. *Add. Annotations :*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

5965a. ——.]—(1) An alternative theory put forward by the defence which is consistent with the evidence ought not to be ignored in the summing-up & the ct. will consider it.

having found the injury was caused "without malicious intent." The second count in the indictment was under sect. 274 which does not contain words making intent material. The judge in his charge to the jury said : "the second count charges the accused with unlawful wounding only. . . . No question of intent involved there." The jury convicted the accused under this count. On appeal, his counsel contended that intent was a fundamental factor in the offence under sect. 274, although not specified as such & that the direction to the jury was misdirection :—*Held :* there was no misdirection & the appeal should be dismissed.—R. *v.* WHITE, [1934] 2 W. W. R. 513 ; 62 C. C. C. 76.—**CAN.**

sf. *Definition of criminal negligence.*]—Where on the trial of a charge of manslaughter arising out of the operation of a motor vehicle the judge directed the jury that it was open to it, under sect. 951 of Criminal Code as amended by 1930 (c. 11), to bring in a verdict of criminal negligence, & the jury did find the accused guilty of criminal negligence :—*Held :* the direction was objectionable on the ground that the judge did not define criminal negligence.—R. *v.* GUDMONDSON (1933), 60 C. C. C. 332.—**CAN.**

sk. *Murder.*]—Where on the trial of a charge of murder the accused relies on provocation & drunkenness as grounds why the verdict should be manslaughter, not murder, the judge is not in error in charging the jury that, on account of the words "to deprive an ordinary person" in sect. 261 (2) of the Code, they should when determining the question of provocation make no more allowance for a man under the influence of liquor than for a sober one. But he should direct the jury's attention to those portions of the evidence which, if believed, might actually show provocation by indicating that the accused was suddenly attacked by the deceased, since under said subsection the question whether any particular wrongful act or insult amounts to provocation is expressly one of fact for the jury. He should also instruct the jury that even if provocation, sufficient to deprive an ordinary person of the power of self-control, has been established to their satisfaction, they will then have to determine whether the accused had acted in the heat of sudden passion or from premeditation, &, if satisfied that he was intoxicated, they may take into account the fact that a man in such a condition is more susceptible to passion than he otherwise would be. Moreover, in addition to telling them that the rigor of the rule as to the presumption of intent has been relaxed to the extent that when a particular intent is of the essence of the crime, as it is in murder, drunkenness is an element to be taken into consideration, so that if they found drink had made the accused incapable of the intent to kill they should return a verdict of manslaughter, he should also explicitly direct their attention to those portions of the evidence which would indicate the existence or non-existence of an intent to cause death or grievous bodily harm.—R. *v.* HARMS, [1936] 2 W. W. R. 114 ; 3 D. L. R. 497 ; 66 Can. C. C. 134 ; 6 F. L. J. (Can.) 21.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (c).

5948 vi. *Whether ground for quashing conviction.*]—BROOKS *v.* R., [1928] 1 D. L. R. 268 ; 48 Can. Crim. Cas. 333 ; [1927] S. C. R. 633.—**CAN.**

5948 vii. ——.]—R. *v.* YOUNG (1931), 3 M. P. R. 221 ; 55 Can. C. C. 372.—**CAN.**

5948 viii. —— *Defence of insanity.*—An appeal from a conviction for murder. The only defence was insanity ; & to establish it the defence called two physicians who were provincial officials & had examined the accused after being instructed by the A.-G. so to do. Since this defence was not raised at the beginning but only in course of the trial, the question of the accused's fitness to take his trial was put to the jury only at the same time as the main issue & the verdicts of fitness & guilt were read together :—*Held :* considering the trial judge's charge to the jury as a whole, its effect might very well have been to cause the jury not to give to the medical testimony the earnest & careful consideration which it called for. A new trial was, therefore, ordered.—R. *v.* MACKIE, [1933] 1 W. W. R. 273 ; 2 D. L. R. 685 ; 59 C. C. C. 254 ; 41 Man. L. R. 9.—**CAN.**

if the reasonably arrive at the verdict.—R. *v.* TURKINGTON (1930), 22 Cr. App. Rep. 91, C. C. A.

5965b. ——.]—If a summing-up ignores evidence of a prisoner's attempt to get honest work it may be quashed.—R. *v.* COUNTER (1931), 23 Cr. App. Rep. 22, C. C. A.

5965c. ——.]—R. *v.* SMITH, No. 3165f, *ante*.

5965d. ——.]—Conviction of murder quashed in the case of one of two applts. jointly charged, on the ground that his defence had not been adequately put to the jury in the summing-up.—R. *v.* MILLS (1935), 25 Cr. App. Rep. 138, C. C. A.

5976. *Add Annotation :*—**Folld.** R. *v.* Moore (1924), 18 Cr. App. Rep. 29.

5992a. ——.]—R. *v.* TAVENER & TOBITT (1928), 21 Cr. App. Rep. 63, C. C. A.

5992b. ——.]—A misdirection on a material fact is sufficient to invalidate conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 24, C. C. A.

5992c. ——.]—A definite mistake in a summing-up about the identification of a chattel charged in the indictment to have been stolen may be ground for quashing a conviction.—R. *v.* BRIDGER (1930), 22 Cr. App. Rep. 21, C. C. A.

6013. *Add. Annotation :*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

6019. *Add. Annotations :*—**Folld.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. **Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426.

6026a. Wilful neglect of child.]—R. *v.* WALKER, No. 1985a, *ante*.

6034a. ——.]—R. *v.* BRIGGS, No. 4693a, *ante*.

6034b. ——.]—A summing-up must distinguish clearly between the charge of larceny & that of knowingly receiving, &, if there is more than one deft., between their respective shares in the offences alleged.—R. *v.* EBBAGE (1930), 22 Cr. App. Rep. 50, C. C. A.

6034c. ——.]—On an indictment against more than one person the summing-up must discriminate carefully the case against each deft.—R. *v.* BROWN (1930), 22 Cr. App. Rep. 139, C. C. A.

6034d. ——].—Applts., who were father & son, were each convicted of receiving stolen property. There was no evidence that the father had even been in physical possession of the property, or that he had ever seen it before the police found it in a shed occupied by him in which the son was at the time sleeping. On being questioned by the police, the father said : "My boy will tell you all about it," but there was a conflict of testimony as to what the son had said. According to his own evidence, he had given the police a detailed account of the circumstances in which the property was brought to the shed. Applts. were represented at the police ct., & neither made any statement or gave evidence. Both applts. appealed on the ground that the summing-up contained misdirection & nondirection in law :—*Held :* the summing-up was unsatisfactory in that (*a*) it drew no distinction between the cases of the two applts., though such was essential in a case of this kind ; (*b*) the jury were not told that they could convict the father only if they were satisfied either that he knew of the theft beforehand & that some kind of prearrangement between him & the thief, or thieves, existed, or that he subsequently adopted the receiving of the goods by his son, & at the time of such adoption had guilty knowledge ; (*c*) adverse comments on the silence of applts. when before the magistrate had been improperly made, & both convictions must be quashed.—R. *v.* SMITH (1935), 25 Cr. App. Rep. 119, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).

6006 v. —— —— ——.]—In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender :—*Held :* a misdirection, & new trial ordered.—R. *v.* DUTCHAK, [1924] 4 D. L. R. 973.—**CAN.**

6016 iv. —— ——.]—It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place :—*Held :* as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (*c*), & the objection had no effect.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

6016 v. —— ——.]—The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.—STEELE *v.* R., [1924] 4 D.L. R. 175 ; [1924] 1 W. W. R. 1146.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) i.

6019 iii. ——.]—Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up :—*Held :* the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial wrong entitling him to a new trial.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747 ; 44 Can. Crim. Cas. 209 ; 35 B. C. R. 81.—**CAN.**

6019 iv. ——.]—Upon the trial of an indictment charging receiving stolen goods, knowing them to have been stolen, the jury was charged "the possession of recently stolen property throws on the possessor the *onus* of showing that he got it honestly. If he fail to give a reasonable account of it, he is reasonably presumed to be in possession of it dishonestly" :—*Held :* the charge was not in accordance with the principles of law as laid down in *R.* v. *Schama*, No. 6019, & the conviction must be set aside & a new trial had.—R. *v.* MORTON, [1929] 1 D. L. R. 720 ; 51 Can. Crim. Cas. 96 ; 60 N. S. R. 302.—**CAN.**

6019 v. ——.]—A direction, in effect, that the prisoner must establish his innocence beyond a reasonable doubt, in a charge of perjury, is a misdirection.—R. *v.* FIALKA (1934), 62 Can. C. C. 389.—**CAN.**

6019 vi. ——.]—R. *v.* LABINE, [1937] 3 W. W. R. 241.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) ii.

d i. ——.]—The omission to place clearly before the jury the law as to the right of private defence of the person, as bearing on the facts set up, & to direct their attention to the point whether, & how far, accused was justified in attacking deceased, in order to prevent injury to himself :—*Held :* a misdirection vitiating the trial.—R. *v.* ASERUDDIN (1926), I. L. R. 53 Calc. 980.—**IND.**

d ii. ——.]—R. *v.* DELL 'OSPEDALE, [1929] 1 D. L. R. 892 ; 51 Can. Crim. Cas. 117 ; 60 N. S. R. 336.—**CAN.**

se. *Rape.*]—R. *v.* HALL (Ont.) (1927), 49 Can. Crim. Cas. 146.—**CAN.**

sf. *Criminal negligence—Sufficient to read Code with brief comment.*]—DE BEAUJEU *v.* R., [1931] 4 D. L. R. 661 ; 56 Can. C. C. 217.—**CAN.**

sg. *Shooting cattle.*]—The omission to charge the jury that shooting cattle must be wilful, to sustain a charge under sect. 510 of Criminal Code, is not a misdirection, when the defence is a denial of the shooting.—R. *v.* STEWART (1930), 57 C. C. C. 169.—**CAN.**

sk. *Perjury.*]—A new trial ordered of a charge of perjury, on the ground that the trial was an unsatisfactory one because the judge's summing up to the jury was defective in that it did not define perjury or tell the jury that even though it concluded that the accused's statement was false it must also be satisfied that she made it knowing it to be false & with the intention of misleading the ct. ; & also because a part thereof was prejudicial to the defence, & rendered it not unlikely that the jury may have been moved thereby to bring in a verdict against the prisoner for reasons not founded in the evidence.—R. *v.* SAFRONIUK, [1936] 1 D. L. R. 46 ; [1935] 3 W. W. R. 477 ; 64 Can. C. C. 330.—**CAN.**

6047a. Comment on failure to disclose defence at preliminary hearing.]—At the preliminary investigation of an indictable offence before a magistrate, at the close of the case for the prosecution, the formula prescribed by Criminal Justice Act, 1925 (c. 86), s. 24, asking the prisoner whether he wished to say anything in answer to the charge, was read to the prisoner, who merely said, "I don't wish to say anything except that I am innocent." In the summing-up at the trial, severe comments were made on the fact that the prisoner had not disclosed his defence in the ct. below :—*Held :* in view of the language of the statutory formula, the comments ought not to have been made, & the conviction must be quashed.—R. *v.* NAYLOR, [1933] 1 K. B. 685 ; 102 L. J. K. B. 561 ; 147 L. T. 159 ; 23 Cr. App. Rep. 177 ; 29 Cox, C. C. 493, C. C. A.

Annotations :—**Distd.** R. *v.* Parker (1932), 147 L. T. 502. **Expld. & Distd.** R. *v.* Littleboy, [1934] 2 K. B. 408.

6047b. ——.]—At the preliminary investigation of an indictable offence before justices, two of three prisoners who were charged together disclosed their defences, which were *alibis*, & called witnesses. The third prisoner, in answer to the statutory formula, said that he did not wish to give evidence or call witnesses. At the trial he, too, put forward the defence of an *alibi*, & the judge, in his summing up, commented adversely on the fact that this defence, unlike that of the other two prisoners, had not been put forward in the ct. below :—*Held :* the judge was bound, in the interest of the other two prisoners, to point out this difference between their cases & that of the third prisoner, & no exception could, therefore, be taken to the comments.—R. *v.* PARKER, [1933] 1 K. B. 850 ; 102 L. J. K. B. 766 ; 147 L. T. 502 ; 24 Cr. App. Rep. 2 ; 29 Cox, C. C. 550, C. C. A.

6047c. ——.]—Applt. was charged with an offence against a girl above the age of thirteen & under the age of sixteen years. When formally charged in the police ct. & when asked before being committed for trial if he desired to give evidence on his own behalf or to call witnesses, he said : "I am not guilty. I reserve my defence." At the trial at the assizes, he adduced evidence that, at the material time, he was away from the place where the offence was alleged to have been committed. The trial judge commented on the failure of the accused to disclose his defence in the police ct. & said to the jury that it was unfortunate that the accused did not then & there state where he was at the material time, so as to afford the prosecution an opportunity of making their own inquiries to test the truth of the statement :—*Held :* the comment did not constitute misdirection. Observations on the failure to disclose a defence at some date earlier than the trial should be made with care & with fairness to the accused person in all the circumstances of the case, but there was no general proposition of law that in no circumstances could comment be made on the failure to disclose the defence in the police ct.

Per LORD HEWART, C.J. : there is a great difference between making the comment that silence on the part of the prisoner is unfortunate & a matter to be regarded with reference to the weight of the defence, when the defence of *alibi* is raised, & saying that the fact that the prisoner was silent may be treated as evidence against him or as corroborating the evidence of an accomplice.—R. *v.* LITTLEBOY, [1934] 2 K. B. 408 ; 103 L. J. K. B. 657 ; 151 L. T. 570 ; 98 J. P. 355 ; 32 L. G. R. 345 ; 24 Cr. App. Rep. 192 ; 30 Cox, C. C. 179, C. C. A.

6047d. ——.]—R. *v.* SMITH, No. 6034d, *ante*.

6048. *Add. Annotation :*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

6049a. Failure to warn jury that they cannot safely convict.]—R. *v.* O'CONNELL, No. 6112b, *post*.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) iv.

sd. *Direction that evidence as to accused's immoral character relevant—Presumption of innocence.*]—The judge directed the jury that the facts proved with reference to prisoner's character were relevant for their consideration, & that the presumption of innocence applied with less effect to prisoner than to a man of proved good character. The jury found the prisoner guilty by a narrow majority :—*Held :* the judge had misdirected the jury in law, in respect that the immoral character of the panel was irrelevant, & the presumption of innocence applied equally in all cases, & could only be displaced by evidence relevant to prove the crime charged.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

PART XIV. SECT. 7, SUB-SECT. 7 — C. (b) v.

se. *Failure to direct jury as to degree of proof necessary.*]—R. *v.* ——, [1929] 2 D. L. R. 279 ; 1 W. W. R. 470 ; 51 Can. Crim. Cas 377 ; 23 S. L. R. 299.—**CAN.**

sf. *Reference to possibility of commutation.*]—The judge told the jury that, if they found murder the man's sentence would be reduced perhaps to imprisonment for life, but that was not to influence their verdict :—*Held :* a misdirection.—R. *v.* CRACKNELL, [1931] O. R. 634 ; 4 D. L. R. 657 ; 56 Can. C. C. 190.—**CAN.**

sh. *Direction as to effect of failure to produce document.*]—On a trial for perjury the trial judge directed the jury that the fact that the accused did not produce a notebook in which he had made a certain entry was a circumstance from which the jury could properly infer that the accused's story was not true. The book was a self-serving document &, apart from the use that might have been made of it by the accused to refresh his memory, the only way in which it could have been lawfully used at the trial was by Crown counsel in the manner provided by the Canada Evidence Act, 1927, s. 10, for the purpose of contradicting the testimony of the accused :—*Held :* a misdirection.—R. *v.* BEAUCHESNE, [1933] 1 W. W. R. 216 ; 4 D. L. R. 38 ; 60 C. C. C. 25.—**CAN.**

sj. *Expression of personal opinion.*]—R. *v.* KERVIN (1932), 5 M. P. R. 35 ; 57 C. C. C. 403 ; *affd.* (1932), 57 C. C. C. 249.—**CAN.**

sl. *Conflicting stories by prosecution witnesses—Failure to direct jury as to different legal consequences.*]—The accused was tried on a charge of unlawful wounding with intent to murder. The Crown adduced in evidence two conflicting stories of the occurrence, viz., that of the complainant & that of two witnesses. The complainant, a Chinaman, testified that he was followed by the accused & on being overtaken was shot & robbed. He said that three shots were fired by the accused, two after the robbery. The witnesses, two white English-speaking men, said that they saw two men fleeing from a third & when the pursuer, shouting & gesticulating, came up with the two one of them turned & fired a shot which brought the pursuer to his knees, whereupon the person who fired the shot stopped & stooping toward the pursuer fired two other shots & then continued his flight. It was proved that the accused did the shooting. The accused was convicted, & appealed on the ground of misdirection of the jury in that (*inter alia*) the alleged different legal consequences flowing from the differences between the two stories were not adequately put before the jury. The appeal was on an equal division of the

40 ; *affd.*, [1934] S. C. R. 605 ; 8 D. L. R. 459 ; 62 C. C. C. 90.—**CAN.**

so. *Comment on alibi.*]—R. *v.* RUSSELL, [1936] 3 W. W. R. 81 ; *affd. sub nom.* RUSSELL *v.* R., [1936] 4 D. L. R. 744 ; 67 Can. C. C. 28.—**CAN.**

sq. *Comment on defence relating to absence of common intent.*]—R. *v.* DUNBAR, [1936] 3 W. W. R. 99 ; *affd. sub nom.* DUNBAR *v.* R., [1936] 4 D. L. R. 737 ; 67 Can. C. C. 20 ; 6 F. L. J. (Can.) 211.—**CAN.**

6049b. Failure to direct jury as to weight of evidence of identification.]—It is not essential to the sufficiency of the summing-up that the judge should state that the evidence of witnesses who have identified the deft. at an identification parade may possibly be of less weight by reason of their having previously picked out his photograph from amongst those of other persons.—R. *v.* HINDS (A. G.), [1932] 2 K. B. 644; 101 L. J. K. B. 762; 147 L. T. 501; 24 Cr. App. Rep. 6; 29 Cox, C. C. 547, C. C. A.

6054a. Direction that complaint might be corroboration—Proviso to Criminal Appeal Act, 1907 (c. 23), s. 4 (1), applied.]—It is a misdirection to refer to a complaint by a person against whom a sexual offence is alleged to have been committed as corroboration of complainant's testimony. Such a complaint may be evidence of the consistency of complainant's story, but is not to be treated as corroboration in the strict sense of that term.

Proviso to Criminal Appeal Act, 1907 (c. 23), s. 4 (1), applied on the ground that in the circumstances of the particular case there had been "no substantial miscarriage of justice."—R. *v.* COULTHREAD (1933), 148 L. T. 480; 97 J. P. 95; 31 L. G. R. 138; 24 Cro. App. Rep. 44; 29 Cox, C. C. 598, C. C. A.

6056. *Add. Annotations:*—**Consd.** R. *v.* Evans (1924), 88 J. P. 196. **Apld.** R. *v.* Beebe (1925), 133 L. T. 786. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141; R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Manser (1934), 25 Cr. App. Rep. 18.

Add. Annotation:—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

6064. *Add. Annotations:*—**Consd.** Statham *v.* Statham, [1929] P. 131. **Refd.** R. *v.* Whitehead, [1929] 1 K. B. 99.

6066a. ——— Direction that corroboration exists not warranted on facts.]—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because

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PART XIV. SECT. 7, SUB-SECT. 8.—A.

r i. ——— *Criminal Code, s.* 1002.]—Deft. was convicted of having had carnal knowledge of a feeble-minded girl:—*Held:* as there was no evidence in corroboration, the conviction must be quashed.—R. *v.* SIMMS (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—**CAN.**

r ii. ——— ———.]—HUBIN *v.* R., [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—**CAN.**

r iii. ——— ———.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497; 24 Alta. L. R. 296; [1929] 3 W. W. R. 258; 52 Can. Crim. Cas. 149.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 8.—B.

6064 vii. ——— ———.]—The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

6064 viii. ——— ———.]—A charge to the jury, that, while it was dangerous to convict on the evidence of an accomplice without corroboration, yet in this case it was the right & duty of the jury, if on the accomplice's evidence they felt no reasonable doubt of the guilt of accused, to convict him:—*Held:* a misdirection.

If a judge discusses the evidence of an accomplice & points out its consistency, he should explain to the jury the considerations which prompt an accomplice to testify against accused.—R. *v.* SLEE, [1926] 1 D. L. R. 729; 45 Can. Crim. Cas. 190; 58 O. L. R. 313.—**CAN.**

6064 ix. ——— ———.]—When the evidence against a prisoner is the uncorroborated evidence of an accomplice, it is wrong for the judge to tell the jury that, if they are quite certain that the accomplice is telling the truth, they have not only the right to convict prisoner but that it is their duty to do so. In such a case, the judge should follow the rule laid down in *R. v. Baskerville*, No. 6056; the judge should warn the jury of the danger of convicting prisoner on the uncorroborated testimony of an accomplice &, in his discretion, may advise them not to convict upon such evidence, but he should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.—GOUIN *v.* R., [1926] S. C. R. 539.—**CAN.**

6064 x. ——— ———.]—Where the evidence of accomplices is uncorroborated, juries should be instructed as nearly as possible in the language in which the rule of practice laid down in *Gouin* v. *R.*, No. 6064 ix *ante*, is expressed.

A charge which in effect puts the evidence of an accomplice on the same footing as that of an ordinary witness amounts to a miscarriage of justice.—R. *v.* BACHIU (Sask.), [1927] 3 D. L. R. 1179; [1927] 2 W. W. R. 171; 48 Can. Crim. Cas. 53.—**CAN.**

6064 xi. ——— ———.]—*Held:* it was the first duty of the trial judge to have instructed the jury as to what in law would constitute a man an accomplice; he should then have proceeded to direct their attention particularly to any facts in evidence which would serve to indicate B.'s complicity in the conspiracy at any stage thereof, & to submit to them the issue as to whether what he was proved to have done made him, having regard to the direction in law already given, an accomplice; he should then have instructed the jury that, if they concluded that the witness was, at any stage of the proceedings, an accomplice in the crime charged against the accused, there would be danger in convicting them of that crime upon his evidence standing alone and uncorroborated, although the law did not preclude their doing so.—VIGEANT *v.* R., [1930] S. C. R. 396; 54 Can. C. C. 301; [1931] 3 D. L. R. 512.—**CAN.**

6064 xii. ——— ———.]—R. *v.* GAUM (1930), 54 Can. C. C. 166.—**CAN.**

6064 xiii. ——— ———.]—Where the judge's charge to the jury, after warning them that it was unsafe to convict on the evidence of an accomplice without corroboration, proceeded to give reasons why the evidence of the accomplice in the case before them should be accepted, & impliedly invited them to act on that evidence if they believed it, the warning was held defective; & the conviction quashed & a new trial ordered.—R. *v.* SEGAL, [1930] 1 W. W. R. 372; 3 D. L. R. 301; 53 Can. C. C. 192; 38 Man. L. R. 474.—**CAN.**

6064 xiv. ——— ———.]—BOULIANNE *v.* R., [1931] S. C. R. 621; [1932] 1 D. L. R. 285; 56 Can. C. C. 338.—**CAN.**

6064 xv. ——— ——— *Question whether witness accomplice left to jury.*]—R. *v.* YAUM, [1930] 3 M. P. R. 464.—**CAN.**

6064 xvi. ——— ———.]—*Held:* certain unsatisfactory comments in the judge's warning to the jury as to the danger of convicting on the evidence of an accomplice unless corroborated were not so material as to cause a substantial miscarriage of justice. The fact, also, that after directing their attention to such danger he proceeded to tell them where such corroboration might be found was not objectionable, for in doing so he was only performing his duty.—R. *v.* TODOREK, [1932] 1 W. W. R. 328.—**CAN.**

6064 xvii. ——— ———.]—It is a misdirection on a material matter for a judge to direct the jury that if he believes the uncorroborated evidence of accomplices it must or should or ought to convict.—R. *v.* HAYMAN, [1932] 1 W. W. R. 86; 2 D. L. R. 525; 40 Man. L. R. 204; 57 C. C. C. 189.—**CAN.**

6064 xviii. ——— ———.]—The jury should be told that it is within their legal province to convict, but should be warned that it is dangerous to convict, & may be advised not to convict, on the uncorroborated evidence of an accomplice.—PITRE *v.* R., [1933] S. C. R. 69; 1 D. L. R. 417; 59 C. C. C. 148.—**CAN.**

6064 xix. ——— ———.]—An appeal on the ground that the judge failed to warn the jury of the danger of relying on accomplice's evidence will be dismissed if the judge did not believe him to be an accomplice.—R. *v.* WILLIAMS, [1935] 2 D. L. R. 651; 63 Can. C. C. 216; 49 B. C. R. 379.—**CAN.**

6064 xx. ——— ———.]—CANNING *v.* R., [1937] S. C. R. 421.—**CAN.**

See, also, **cases in Part XII., Sect. 13 Sub-sect. 4, E.,** *ante.*

object is to mitigate his own punishment (1924), 18 Cr. App. Rep. 19, C. C. A.

6066b. —— ——.]—Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.—R. *v.* BEEBE (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R. 635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

Annotation:—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

6067a. —— —— ——.]—On a charge of indecent assault, when the corroboration of the prosecutrix is very slight, the desirability of effective corroboration should be made clear to the jury.—R. *v.* KILLICK (1924), 18 Cr. App. Rep. 120, C. C. A.

6067b. —— —— ——.]—The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury, if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.—R. *v.* JONES (1925), 19 Cr. App. Rep. 40, C. C. A.

Annotation:—**Consd.** R. *v.* Freebody (1935), 25 Cr. App. Rep. 69.

6067c. —— —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

6067d. —— —— ——.]—On a charge of indecent assault or any sexual offence, even though the person against whom the offence is alleged to have been committed be an adult & not a child of tender years, the jury should be directed that it is not safe to convict upon the uncorroborated testimony of the complainant, but that, if they are satisfied of the truth of the complainant's evidence, they may, after paying attention to that warning, nevertheless convict.—R. *v.* FREEBODY (1935), 25 Cr. App. Rep. 69, C. C. A.

6068a. —— —— —— ——.]—When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of the female's story.—R. *v.* SALMAN (1924), 18 Cr. App. Rep. 50, C. C. A.

6068b. —— —— —— ——.]—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

6069a. —— —— —— ——.]—When the only witness for the Crown on a charge of larceny is the receiver of the stolen property, the jury should be warned that they may require corroboration.—R. *v.* DIXON (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. —— ——.]—Summing up must be emphatic on the danger of accepting the uncorroborated evidence of accomplices & care must be taken that suggested corroboration is in fact adequate.—R. *v.* CLIVE (1930), 22 Cr. App. Rep. 19, C. C. A.

6072b. —— ——.]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

6072c. —— —— **Inadmissible evidence referred to as corroboration.**]—M., A. & R. were jointly charged with murder. The only direct evidence against A. & R. was that of their accomplice M., & the judge properly warned the jury that they should look for corroboration of his evidence. There were certain matters, which the judge enumerated in his summing-up, capable of being regarded as corroboration, but the total effect of those matters taken together was slight. The judge then referred to a further matter as amounting to possible corroboration of M.'s evidence, namely, a conversation between M. & one of the Crown witnesses after the commission of the crime:—*Held:* as this matter was not even admissible evidence against A. & R., in view of the circumstances of the case, the convictions of A. & R. must be quashed.—R. *v.* MARTIN, R. *v.* ANSELL, R. *v.* ROSS (1934), 24 Cr. App. Rep. 177, C. C. A.

6072d. —— **Evidence of young children.**]—R. *v.* MARSHALL, No. 3136a, *ante*.

6073a. —— **Similar offences on different dates.**]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

6076. *Add. Annotations:*—**Apld.** R. *v.* Gregg (1932), 102 L. J. K. B. 126. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

6078. *Add. Annotations:*—**Refd.** R. *v.* Southern (1929), 142 L. T. 383; R. *v.* Gregg (1932), 102 L. J. K. B. 126.

6078a. —— —— ——.]—Even though a summing-up omits express direction on the relation of accomplices to corroboration of their evidence, the ct. may, if it is satisfied that throughout the trial it has been made clear that the issue is whether the testimony of accomplices is adequately confirmed by that of other witnesses, decline to quash a conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 33, C. C. A.

6067 iii. —— —— ——.]—A verdict of indecent assault founded solely on the testimony of prosecutrix not allowed to stand, where the judge did not warn the jury properly with respect to corroboration.—R. *v.* ELLERTON (Sask.), [1927] 4 D. L. R. 1126; [1927] 3 W. W. R. 564; 49 Can. Crim. Cas. 94.—**CAN.**

6067 iv. —— —— ——.]—On the trial of a charge for indecent assault on a girl of under sixteen years, the trial judge, in the course of warning the jury of the danger of convicting on the uncorroborated testimony of the girl, said: "In such a case, it is usual, in fact, necessary, to caution the jury against the danger of acting upon the uncorroborated testimony of the girl," &, also, "unless she is supported by independent testimony which implicates the accused, her evidence is not an entirely safe or satisfactory foundation for a verdict against him":—*Held:* this direction was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

6067 v. —— ——.]—R. *v.* MUDGE (Sask.) (1929), 52 Can. Crim. Cas. 402.—**CAN.**

6067 vi. —— —— ——.]—On the trial of a charge of rape there is a misdirection where the judge, although he warns the jury that it is unsafe to convict on the uncorroborated evidence of the prosecutrix, goes on to say in effect that corroboration is necessary only if they are not satisfied from the girl's story alone that she is telling the truth.—R. *v.* MUDGE, [1930] 1 W. W. R. 193; 1 D. L. R. 617; 52 Can. C. C. 402; 24 S. L. R. 257.—**CAN.**

6068 i. —— —— —— *Consenting party.*]—Upon a trial for rape, the vital issue was consent or non-consent, & the only evidence of non-consent was that of prosecutrix, so that her evidence on the vital issue was uncorroborated:—*Held:* while the jury might have convicted upon the uncorroborated evidence of prosecutrix, it was the duty of the trial judge to direct their attention to the absence of corroboration, the danger of convicting on her uncorroborated testimony, &, therefore, the necessity of their exercising great care in determining the weight to be attached to her evidence. His not having done so was non-direction, equivalent to misdirection, & constituted a miscarriage of justice within sect. 1014 of the Criminal Code.—R. *v.* AUGER, [1929] 4 D. L. R. 864; 52 Can. Crim. Cas. 2; 64 O. L. R. 181.—**CAN.**

6078b. —— —— ——.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

6078c. —— —— ——.]—Applt. was convicted of indecent assault on a girl aged seven, whose testimony was received without her being sworn. The jury were not warned in the summing-up that it was a case where corroboration of the child's evidence was required by statute, or that it was dangerous to convict unless her evidence was corroborated. There was, in fact, corroboration of the child's evidence consisting, for the most part, in the evidence of another girl aged nine, who had witnessed the offence & who had given evidence on oath :—*Held :* despite the defectiveness of the summing-up, in the circumstances of the case no injustice had been caused, & the conviction must be affirmed.—R. *v.* GREGG (1932), 102 L. J. K. B. 126 ; 96 J. P. 511 ; 24 Cr. App. Rep. 13, C. C. A.

6078d. —— **Corroboration required by rule of practice only.**]—R. *v.* SOUTHERN, No. 3156f, *ante*.

6088a. Offence under Road Traffic Act, 1930 (c. 43), ss. 11, 15—Verdict of guilty of being under influence of drink—Ambiguous verdict.]—R. *v.* HAWKES (1931), 75 Sol. Jo. 247 ; 22 Cr. App. Rep. 172, C. C. A.

6090. *Add. Annotations :*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K. B. 867. **Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67 ; R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163 ; **Refd.** R. *v.* Gee, R. *v.* Bibby, R. *v.* Dunscombe, [1936] 2 All E. R. 89.

6094. *Add. Annotations :*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121 ; R. *v.* Hancock (1931), 145 L. T. 168.

6097a. —— **Necessity for proof.**]—When no reason is shown to the ct. to believe that a plea of guilty has been improperly accepted, it will decline to interfere.—R. *v.* CLARK (1929), 21 Cr. App. Rep. 81, C. C. A.

6100. *Add. Annotation :*—**Consd.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571.

6106a. Disagreement of first jury—Second jury hearing way in which first divided.]—(1) If a jury, unable to agree, has announced in open ct., & therefore in presence of the jurors in waiting, the numbers of their members for & against a conviction, it is wrong to proceed with the second trial before such jurors. Even if there is no other jury available the Bench ought not to threaten to deprive accused of bail, unless he will consent to be tried by those jurors.

(2) Inadmissible evidence of accused's bad character volunteered by a witness may invalidate a conviction.—R. *v.* FLEMING (1929), 21 Cr. App. Rep. 149, C. C. A.

6110. *Add. Annotation :*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6111. *Add. Annotation :*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6112a. Improper question put to prisoner—Prisoner undefended.]—R. *v.* WEEKS (1928), 20 Cr. App. Rep. 188, C. C. A.

6112b. Prisoner giving evidence—Unfair treatment.]—When the ct. thinks that at the close of the case for the prosecution the judge, though he cannot hold that there is no case to go to the jury, might well suggest to them that in view of the evidence of the principal witness they could not safely convict & fails to lay sufficient stress on the need of corroboration, it may quash a conviction, as not being supported by the evidence & a miscarriage of justice within sect. 4, sub-sect. (1) of the Criminal Appeal Act, 1907 (c. 23), s. 4 (1). The ct. disapproves of a deft.-witness in the box being treated by any one engaged in the case in such a way that he cannot give his evidence in his ownway.—R. *v.* O'CONNELL (1931), 23 Cr. App. Rep. 8, C. C. A.

6114a. Questions by judge implying belief in guilt.]—R. *v.* RABBITT, No. 3151b, *ante*.

PART XIV. SECT. 7, SUB-SECT. 10.

a (p. 538) **i.** *One juryman not sworn.*]—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced that the panel was exhausted, which made it necessary to secure an additional juryman from among those who had stood aside :—*Held :* an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

f (p. 540) **i.** ——.]—A new trial was refused where the informant had communication with the jury during a view of the *locus*, but there was no evidence that the communication was improper or in any way influenced the jury.—R. *v.* WARNER (1933), 7 M. P. R. 174 ; 61 C. C. C. 36.—**CAN.**

k (p. 540) **i.** —— *Conversation with Crown witness.*]—R. *v.* MINNESS & MORAN, [1933] 1 W. W. R. 657 ; [1934] 1 W. W. R. 21 ; 59 C. C. C. 336 ; 61 C. C. C. 169 ; 47 B. C. R. 321.—**CAN.**

r (p. 541) **i.** *Mental incompetence of juror.*]—Apart altogether from the Jury Act it is a fundamental principle of law that where an accused is tried by a jury all the members thereof must be qualified to act. On an appeal from a conviction for murder on the ground that one of the members of the jury was disqualified from acting as such owing to mental infirmity & impairment :—*Held :* the juror in question was afflicted with mental infirmity incompatible with the discharge of duties of a juror & therefore there had been a mistrial.—R. *v.* WESTGATE, [1929] 1 D. L. R. 699 ; 1 W. W. R. 49 ; 51 Can. Crim. Cas. 52 ; 38 Man. L. R. 34.—**CAN.**

sf. *Policeman informant making arrest, conducting prosecution & giving evidence—Failure to employ counsel or attorney.*]—The fact that, in a summary conviction proceeding, the informant, who was the policeman in charge of the case, acted as the prosecutor at the hearing, & was also a witness thereon, & had sworn to & executed the search warrant in person & arrested the accused held not a ground for setting aside the conviction.—R. *v.* CRUIT, [1928] 4 D. L. R. 581 ; [1928] 2 W. W. R. 377 ; 50 Can. Crim. Cas. 143 ; 22 Sask. L. R. 525.—**CAN.**

sg. *Failure to call witness.*]—The error of counsel in omitting to call witnesses is no ground for setting aside a verdict or for granting any relief.—R. *v.* FONTAINE & LACASSE (1930), 53 Can. C. C. 164 ; 65 Q. L. R. 173.—**CAN.**

sj. *Disqualification of juror.*]—The conviction of resp. was set aside by the appellate ct. on the ground that one of the jurors at the trial was disqualified to act as such for the reason that he had been convicted of an indictable offence within sect. 6*c* of Jury Act, R. S. B. C., 1924 :—*Held :* the fact of a defect of that kind in the constitution of the petit jury constituted no ground for an appeal to the appellate ct. in view of the provisions of sect. 1011 Cr. C., the more so as no objection to it had been taken at the trial.—R. *v.* STEWART, [1932] S. C. R. 612 ; 4 D. L. R. 337.—**CAN.**

sl. *Plea of guilty on advice of stranger.*]—The unauthorised advice of a stranger to the accused to plead guilty is no ground for setting aside the conviction.—GUERIN *v.* R. (1933), 60 C. C. C. 350.—**CAN.**

so. *Comment on failure of accused to give evidence—What amounts to.*]—R. *v.* SANFORD (1935), 9 M. P. R. 526.—**CAN.**

sq. *Extent of powers of Court of Appeal.*]—The principle applied in *R. v. Steinberg*, [1931] O. R. 222, that a Ct. of Appeal, in considering whether notwithstanding faults in the trial it ought to pass them over under sect. 1014 (2) of the Criminal Code, can take notice of the fact that the accused did not testify, should be confined to cases of faults that do not go to the root of the matter.—R. *v.* DROUX, [1936] 1 W. W. R. 587, 650 ; 2 D. L. R. 780 ; 65 Can. C. C. 221 ; 44 Man. L. R. 75 ; 5 F. L. J. (Can.) 307.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 11.—D.

6115 vi. —— ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193 ; [1927] S. C. R. 454 ; 48 Can. Crim. Cas. 118.—**CAN.**

6122. *Add. Annotation :*—**Apld.** R. *v.* Wright (1934), 78 Sol. Jo. 879.

6136. *Add. Annotation :*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

6141a. ——.]—Woolmington *v.* Public Prosecutions Director, No. 4543a, *ante.*

6144a. Refusal to permit accomplice to be called in mitigation — Count against accomplice withdrawn.]—Proviso to Criminal Appeal Act, 1907, s. 4, applied despite a manifest error in procedure.—R. *v.* Gaskell (1929), 21 Cr. App. Rep. 83, C. C. A.

6144b. Omission to order production of police report.]—R. *v.* Clarke, No. 4662a, *ante.*

6148a. Answer by witness implying previous conviction.]—A witness for the Crown, in the course of being examined-in-chief with regard to his identification of the prisoner, made an isolated statement to the effect that he had seen a photograph of him in the "rogues' gallery" at Scotland Yard. No further reference to this statement was made by counsel on either side or by the presiding judge :—*Held :* although such a statement would inevitably convey to the jury the suggestion that the prisoner had been previously convicted or was of bad character, in the circumstances of the case the proviso to sect. 4 of Criminal Appeal Act, 1907 (c. 23), should be applied & the conviction affirmed. Where by accident an isolated statement of this nature has been made by a witness, it may be the best course for the presiding judge to make no reference to the matter.—R. *v.* Wright (1934), 78 Sol. Jo. 879; 25 Cr. App. Rep. 35, C. C. A.

6152. *Add. Citation :*—31 T. L. R. 401.

6169a. —— ——.]—R. *v.* Brombilla (1930), 22 Cr. App. Rep. 74, C. C. A.

6169b. —— ——.]—R. *v.* Bishop (1930), 22 Cr. App. Rep. 136, C. C. A.

6169c. —— ——.]—R. *v.* Canham & Cushing (1929), 21 Cr. App. Rep. 174, C. C. A.

6169d. —— ——.]—R. *v.* O'Brien (1930), 22 Cr. App. Rep. 20, C. C. A.

6169e. —— ——.]—R. *v.* Brown (1931), 23 Cr. App. Rep. 48, C. C. A.

6169f. —— ——.]—The Ct. of Criminal Appeal does not make slight reductions of sentences. The ct. only interferes on matters of principle & on the ground of substantial miscarriages of justice.—R. *v.* Dunbar (1928), 21 Cr. App. Rep. 19, C. C. A.

6169g. —— ——.]—R. *v.* Brooks (1931), 22 Cr. App. Rep. 172, C. C. A.

6169h. —— ——.]—R. *v.* Jones (1931), 22 Cr. App. Rep. 165, C. C. A.

6169j. —— ——.]—R. *v.* Adams (1931), 23 Cr. App. Rep. 51, C. C. A.

6169k. —— ——.]—R. *v.* Blake & Hines (1931), 22 Cr. App. Rep. 175, C. C. A.

6169l. —— ——.]—R. *v.* Williams (1930), 22 Cr. App. Rep. 137, C. C. A.

6169m. —— ——.]—R. *v.* Slender (1931), 23 Cr. App. Rep. 11, C. C. A.

6169n. —— ——.]—R. *v.* Sharp (1931), 23 Cr. App. Rep. 7, C. C. A.

6169o. —— —— **Subordinate acting under orders.**]—R. *v.* Spellen, No. 3156g, *ante.*

6169p. —— ——.]—R. *v.* McGrath (1932), 32 Cr. App. Rep. 176, C. C. A.

6169q. —— ——.]—R. *v.* Carr (1932), 23 Cr. App. Rep. 176, C. C. A.

6169r. —— ——.]—Reduction of deterrent sentence of unusual severity passed in view of the prevalence of a particular class of crime in the locality.—R. *v.* Withers (1935), 25 Cr. App. Rep. 53, C. C. A.

6115 vii. —— ——.]—Brooks *v.* R., [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333.—**CAN.**

6115 viii. —— ——.]—Conviction not disturbed for error in charge, no substantial wrong being done.—R. *v.* Bryson, [1936] 4 D. L. R. 801; 67 Can. C. C. 115.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 11.—E.

q i. —— *After juryman called—By person on panel.*]—*Held :* a miscarriage of justice.—R. *v.* McNamara, [1926] 4 D. L. R. 880; 46 Can. Crim. Cas. 230; 59 O. L. R. 342.—**CAN.**

sj. *Disqualification of juror.*]—*Held :* such disqualification did not cause a miscarriage of justice.—R. *v.* Boak, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218; *revsg.*, [1925] 2 D. L. R. 803; [1925] 2 W. W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. R. 256.—**CAN.**

sm. *Untrue statements by Crown counsel.*]—*Held :* in view of the general fairness of counsel's comments, it was impossible to believe that the jury were diverted by certain statements from the main points.—R. *v.* Merritt (1934), 62 Can. C. C. 57.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 1.—A.

sk. *Jurisdiction of court.*]—R. *v.* Fox, R. *v.* Sansome (1925), 44 Can. Crim. Cas. 262.—**CAN.**

h i. ——.]—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of mitigation.—R. *v.* Finlay, [1924] 4 D. L. R. 829; 3 W. W. R. 427.—**CAN.**

h ii. ——.]—A sentence should be interfered with by a ct. of appeal only where the trial judge proceeded on some wrong principle or gave too great weight to particular circumstances; the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—R. *v.* Gallagher, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

h iii. ——.]—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—R. *v.* Hicks, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 13; 19 Sask. L. R. 359.—**CAN.**

h iv. ——.]—Dustoor *v.* R. (1927), Q. R. 42 K. B. 520.—**CAN**

h v. ——.]—Where prisoner was convicted of rape & sentenced to death :—*Held :* circumstances, such as low mentality & baneful environment, which were not brought to the attention of the judge, were sufficient to warrant a reduction of the penalty to twenty years' imprisonment & twenty lashes.—R. *v.* McCathern, [1927] 2 D. L. R. 1142; 48 Can. Crim. Cas. 54; 60 O. L. R. 334.—**CAN.**

k i. —— *Abortion.*]—An appeal by an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—R. *v.* Petch, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 434; 35 Man. L. R. 299.—**CAN.**

k ii. ——.]—Deft. was convicted of breaking & entering with intent to commit an indictable offence. On appeal, there was sufficient evidence to support the conviction, & the trial judge having had the advantage of seeing prisoner & hearing his evidence, & no sufficient reason having been shown for reducing the sentence :—*Held :* the conviction be affirmed & deft.'s appeal dismissed.—R. *v.* Johnson (1927), 59 N. S. R. 385.—**CAN.**

sl. *Variation of sentence—Assistance given to police.*]—Where an accused, convicted on his own confession, has given assistance to the police by denouncing & giving evidence against a guilty receiver, although there is no evidence of restitution or repentance on the part of the prisoner, the sentence may be reduced.—R. *v.* Paul, [1928] S. A. S. R. 16.—**AUS.**

so. *Excessive sentence.*]—Appeal lies to the Ct. of King's Bench in Quebec, from an excessive sentence against a prisoner tried without his consent by a magistrate for theft.—Ampleman *v.* Court of Sessions of the Peace, [1935] 2 D. L. R. 774; 63 Can. C. C. 222.—**CAN.**

sr. *Jurisdiction to reduce sentence—No appeal against sentence.*]—The ct. may reduce sentence on appeal, although there is no appeal as to sentence.—R. *v.* MacKay (1934), 62 Can. C. C. 188.—**CAN.**

6177a. —— ——.]—A prisoner was convicted in Jan. 1926, of bigamy committed in 1920. He was already serving a sentence of six months' imprisonment passed in Dec. 1925, for three offences of false pretences committed in 1923. The judge took the view that as the bigamy & the false pretences arose out of the same circumstances there should be one sentence of twelve months' imprisonment to cover both offences, & accordingly sentenced the prisoner to six months' imprisonment, the term to commence at the expiration of the sentence already being served. Subsequently, however, in view of the provisions of Criminal Law Act, 1827 (c. 28), s. 10, the judge, doubting whether the bigamy, having been in fact committed at an earlier date, was a "subsequent offence" within the meaning of that section, altered the sentence to one of eleven months' imprisonment, the first five months to run concurrently with the existing sentence. The result was to lengthen the sentence originally intended by eight days. The prisoner appealed against the sentence:—*Held:* as the effect of the alteration of the sentence was inadvertently to compel the prisoner to serve eight days longer than the judge originally intended, the sentence ought to be reduced by that amount.—R. *v.* FIELDER (1926), 135 L. T. 64; 90 J. P. 96; 28 Cox, C. C. 186; 19 Cr. App. Rep. 87, C. C. A.

viction.]—R. *v.* KENNEALLY (1930), 22 Cr. App. Rep. 52, C. C. A.

delay.]—When an appeal has been adjourned through no fault of appellant the ct. may for that reason make a reduction in the sentence. —R. *v.* HILDEBRAND & HILDEBRAND (1930), 22 Cr. App. Rep. 79, C. C. A.

6178c. —— **Court in doubt as to facts.**]—R. *v.* SAUNDERS (1931), 22 Cr. App. Rep. 169, C. C. A.

Other disciplinary action pending Army deserter.]—Sentence reduced in view of other disciplinary action.—R. *v.* SOANES (1931), Cr. App. Rep. 142, C. C. A.

6178e. —— **Principles upon which court acts.**]—R. *v.* BARKER (1937), 81 Sol. Jo. 719, C. C. A.

6181a. —— —— **Relative severity.**]—A sentence of three years' penal servitude is now to be regarded as more severe than one of two years' imprisonment with hard labour.—R. *v.* JONES (1932), 23 Cr. App. Rep. 208, C. C. A.

6183a. —— ——.]—The ct. will amend an incorrect record, though it may not vary the sentence.—R. *v.* SHARMAN (1925), 19 Cr. App. Rep. 43, C. C. A.

-.]—R.
App. Rep. 101, C. C. A.

6186b. —— ——.]—Rectification of sentence not warranted in law.—R. *v.* TREMAYNE (1932), 23 Cr. App. Rep. 191, C. C. A.

6187a. —— **Sentence illegal.**]—Sentence in view of its illegality.—R. *v.* JACKSON (1926), 19 Cr. App. Rep. 159, C. C. A.

6187b. —— ——.]—R. *v.*
App. Rep. 131, C. C. A.

6187c. —— ——.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

6187d. —— ——.]—R. *v.* DALE (OTHERWISE MANDERS) (1929), 21 Cr. App. Rep. 114, C. C. A.

6199a. ——.]—R. *v.* CLUE (1928), 21 Cr. App. Rep. 68, C. C. A.

6203a. **Previous conviction—Court reluctant to hear evidence of in justificaton of sentence—No previous conviction proved at trial.**]—R. *v.* GANS (1928), 21 Cr. App. Rep. 1, C. C. A.

6203b. **Youth & provocation.**]—R. *v.* LINES (1929), 21 Cr. App. Rep. 175, C. C. A.

6209a. **Offer of employment—By old employer.**]—Sentence reduced.—R. *v.* JACKSON (1927), 20 Cr. App. Rep. 130, C. C. A.

6209b. *S. P.* R. *v.* USHER (1927), 20 Cr. App. Rep. 130, C. C. A.

6209c. **Inaccurate statements as to previous record.**]—The ct. will revise a sentence when after conviction or plea inaccurate statements by the police about prisoner's record

PART XIV. SECT. 8, SUB-SECT. 1.—B.

6170 i. *Whether fresh sentence can be substituted—Plea of guilty.*]—On an appeal against sentence in a case wherein accused pleaded guilty the Ct. of Appeal is in as good a position as the trial judge to determine the sentence which should be imposed.—R. *v.* VINEGRATSKY (*alias* VINE), [1928] 3 D. L. R. 201; [1928] 1 W. W. R. 542; 49 Can. Crim. Cas. 298; 37 Man. L. R. 327.—CAN.

6170 ii. —— ——.]—R. *v.* ALTOMARE (B. C.), [1928] 3 W. W. R. 487.—CAN.

6172 i. *Variation of sentence—Increase of sentence.*]—The Ct. of Appeal is justified in increasing a sentence, if it clearly deems it justice to do so.—R. *v.* GASCO (1927), Q. R. 43 K. B. 116; 8 C. B. R. 291.—CAN.

6185 ii. —— ——.]—R. *v.* ROBINSON (1930), 53 Can. C. C. 173.—CAN.

n i. —— ——.]—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered in whole or in part.—R. *v.* LOW QUONG, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—CAN.

n ii. —— *Recommendation to mercy—Effect of misunderstood by trial judge.*]—R. *v.* WHITTAKER (1928), 28 S. R. N. S. W. 411; 45 N. S. W. W. N. 172; [1928] Argus L. R. 303.—AUS.

n iii. —— *Petition for leniency—Improperly received.*]—R. *v.* LIM GIM, [1928] 1 D. L. R. 1038; 49 Can. Crim. Cas. 255; 39 B. C. R. 457.—CAN.

n iv. ——.]—R. *v.* GASCO, [1928] 2 D. L. R. 751; 49 Can. Crim. Cas. 196; Q. R. 43 K. B. 116.—CAN.

n v. —— *Imprisonment substituted for fine—Fine inadequate.*]—R. *v.* SYDORIK & ZOWATSKI (Sask.), [1926] 3 W. W. R. 458.—CAN.

n vi. —— *Not after sentence partly served.*]—R. *v.* NORTHUP (N. S.) (1926), 46 Can. Crim. Cas. 74.—CAN.

n vii. —— *Imposed by mistake.*]—R. *v.* HALE (1926), 49 Can. Crim. Cas. 253.—CAN.

n viii. —— *Youth of prisoner—Previous good character.*]—R. *v.* BURNS [1929] 3 W. W. R. 675; 53 . 87.—CAN.

—— *Sentence inadequate.*]—R. [1931] 4 M. P. R. 85.—CAN.

— *Discretion of Court of Criminal Appeal.*]—The Ct. of Criminal Appeal, in the exercise of the powers vested in it by Criminal Appeal Act, 1912, s. 6 (3), has an unfettered judicial discretion to review sentences imposed upon convicted persons without the necessity of considering whether in imposing any sentence under review, the trial judge proceeded upon any wrong principle, or upon any misapprehension of the facts.—R. *v.* GOSPER (1928), 28 S. R. N. S. W. 568; 45 N. S. W. W. N. 165.—AUS.

sq. —— *Conviction for perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—CAN.

sr. *Reduction of sentence—Mitigating circumstances.*]—R. *v.* ERICKSON, [1931] 2 W. W. R. 710; 57 Can. C. C. 111.—CAN.

PART XIV. SECT. 8, SUB-SECT.

6202 i. *Prisoner's state of health.*]—While a convict's physical state may be taken into consideration in passing sentence, yet changes in his health thereafter more properly afford ground for an application for the clemency of the Crown than for an appeal against the sentence.—R. *v.* ZIMMERMAN, [1926] 2 W. W. R. 882; 46 Can. Crim. 8; 37 B. C. R. 277.—CAN.

may have influenced that sentence.—R. *v.* BOLTOLPH (1928), 21 Cr. App. Rep. 37, C. C. A.

6209d. Several charges for same offence.]—R. *v.* KENNY (1929), 21 Cr. App. Rep. 78, C. C. A.

6209e. Improper discrimination between co-defendants.]—R. *v.* LEAF (1931), 22 Cr. App. Rep. 171, C. C. A.

6209f. Delay between conviction & appeal.]—When there has been an unusually long interval between the setting down & the hearing of an appeal the ct. may take it into consideration for the purpose of sentence.—R. *v.* TURNER (1932), 23 Cr. App. Rep. 175, C. C. A.

6215a. —— ——.]—R. *v.* READE (1927), 20 Cr. App. Rep. 60, C. C. A.

6215b. —— ——.]—R. *v.* MARTIN (1928), 20 Cr. App. Rep. 187, C. C. A.

6215c. —— ——.]—Increase of sentence to penal servitude in a grave case of uttering a letter demanding money with menaces.—R. *v.* HARRIS (1937), 26 Cr. App. Rep. 22, C. C. A.

6219a. —— ——.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

6222a. Full offence—To attempt—Incest.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

6228a. Attempted larceny—To attempt to obtain by false pretences.]—On an indictment for attempted larceny the ct. has no power to substitute a conviction for an attempt to obtain by false pretences.—R. *v.* GALLAGHER (OTHERWISE HEMINGWAY) (1929), 21 Cr. App. Rep. 172, C. C. A.

6230a. Housebreaking—To receiving stolen property.]—(1) Evidence improperly admitted at the trial may be a ground for quashing a conviction.

(2) On an indictment charging housebreaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for receiving, as applt. was not, in fact, called upon to explain his possession.—R. *v.* RICHARDS (1924), 18 Cr. App. Rep. 144, C. C. A.

6230b. Breaking, entering & stealing—To breaking & entering with intent to steal.]—When on an indictment for breaking & larceny there is no evidence of the latter, the jury must be directed so to find.—R. *v.* CROSS (1931), 22 Cr. App. Rep. 192, C. C. A.

6234a. —— —— **Exclusion of women from jury.**]—The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—R. *v.* VAQUIER (1924), 18 Cr. App. Rep. 112, C. C. A.

6234b. —— —— **Denial of right of challenge.**]—If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*.—R. *v.* WILLIAMS (1925), 19 Cr. App. Rep. 67, C. C. A.

6237a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

6237b. —— ——.]—*Venire de novo* awarded in the case of a deft. whose plea of guilty had possibly been misunderstood.—R. *v.* HUSSEY (1924), 18 Cr. App. Rep. 121, C. C. A.

Annotation:—**Folld.** R. *v.* Hancock (1931), 145 L. T. 168.

6237c.—— ——.]—R. *v.* HANCOCK, No. 3287a, *ante*.

6238a. —— **Trial of two indictments at same time.**]—R. *v.* WILDE, No. 2365c, *ante*.

6249a. —— —— **Procedure.**]—R. *v.* KNIGHTON (1927), 20 Cr. App. Rep. 45, C. C. A.

PART XIV. SECT. 9.

6222 i. *Carnal knowledge—To indecent assault.*]—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN.**

6225 i. *Obtaining by false pretences—To attempting to obtain.*]—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, *e.g.* attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting:—*Held*: a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—**CAN.**

sa. *Breaking & entering dwelling-house by day—To stealing in dwelling-house.*]—R. *v.* SAM CHIN, [1926] 2 D. L. R. 287; 45 Can. Crim. Cas. 291; 36 B. C. R. 397.—**CAN.**

sb. *Smuggling—Not to attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

sc. *Wounding with intent to do bodily harm—To common assault.*]—R. *v.* LEE FOON, [1928] 1 W. W. R. 747; 49 Can. Crim. Cas. 233; 39 B. C. R. 298.—**CAN.**

PART XIV. SECT. 10.

aa i. —— —— *Fresh evidence available but not given at trial.*]—R. *v.* MCDONALD (No. 1) (1927), 49 Can. Crim. Cas. 35.—

aa ii. —— —— —— *Raising doubt as to correctness of verdict.*]—R. *v.* HASKINS (Ont.), [1929] 1 D. L. R. 282; 50 Can. Crim. Cas. 412.—**CAN.**

ee i. —— *Insanity—Plea not raised at trial.*]—R. *v.* SLOANE, [1930] 4 D. L. R. 129; 53 Can. C. C. 342.—**CAN.**

ee ii. —— *No objection by counsel at trial.*]—A new trial may be ordered although no objection to the judge's charge was taken by counsel at the trial.—R. *v.* MACTEMPL (FRANK), [1935] 3 D. L. R. 442; 64 Can. C. C. 18.—**CAN.**

sf. —— *Misleading statements in summing up.*]—*Held*: as there was a probability that some statements in the summing up had misled the jury, a miscarriage of justice had occurred; & a new trial was ordered.—R. *v.* WILLIAMS, R. *v.* MCLAUGHLIN, [1928] St. R. Qd. 133; 22 Q. J. P. 53.—**AUS.**

sg. —— *Failure to charge jury as to need for corroboration.*]—R. *v.* GOODFELLOW (AN. B.), [1928] 2 D. L. R. 598; 49 Can. Crim. Cas. 268.—**CAN.**

sh. —— *Admission of depositions.*]—A new trial may be directed under Criminal Code, s. 1014 (3) (*b*), on the ground that it was not proved that certain of the conditions precedent prescribed by s. 999 for the admission of depositions had been fulfilled, & one, at least, of the depositions might have turned the scale of the jury's verdict the accused.—R. *v.* MORELLE, 1 W. W. R. 68; 49 Can. Crim. 5; 39 B. C. R. 140.—**CAN.**

sj. —— *Statement by prisoner—Admission of erroneous translation.*]—A written exculpatory statement made by the accused in a foreign language while he was in custody & handed by him to the constable in whose custody he was, was received as evidence & was given to the jury & referred to by the judge in his charge. On appeal from the conviction it was shown that the translation admitted at the trial was erroneous in certain respects alleged to be prejudicial to the accused:—*Held*: since in so far as the translation was incorrect it undoubtedly gave rise to an inference prejudicial to the accused it had resulted in a miscarriage of justice, &, therefore, a new trial must be directed.—R. *v.* FREDERICK, [1931] 3 W. W. R. 747; 44 B. C. R. 547; 57 C. C. C. 340.—**CAN.**

sk. *Duty of court on trial de novo—To give weight to findings of court below.*]—R. *v.* AULENBACH, [1930] 1 D. L. R. 865; 52 Can. C. C. 374; 1 M. P. R. 129.—**CAN.**

sb. *Difference between trial & trial de novo.*]—R. *v.* RICE, [1930] 3 D. L. R. 911; 53 Can. C. C. 322.—**CAN.**

sd. *Majority in favour of new trial—On different grounds—Effect.*]—The fact that two of the majority (three) of the ct. who held that there should be a new trial gave different grounds for their conclusion that there had been a miscarriage of justice did not prevent the case being one within sect. 1014 (*c*) of the Criminal Code. The new trial was, therefore, properly ordered.—R. *v.* GEORGE (No. 2), [1935] 2 W. W. R. 657; 2 D. L. R. 765; 63 Can. C. C. 304; 49 B. C. R. 393; 5 F. L. J. (Can.) 67.—**CAN.**

6249b. —— —— **Fresh evidence.**]—R. *v.* FRATSON (1930), 22 Cr. App. Rep. 29, C.C.A.

6257. For "R. *v.* BEAUCHAMP, No. 6027, *ante*," read :—

In the event of a discrepancy between the judge's notes & those of the shorthand reporter, the former will generally be preferred. —R. *v.* BEAUCHAMP (1909), 2 Cr. App. Rep. 40, C. C. A.

6261a. —— —— **Plea in one court & trial in another.**]—Where a prisoner's plea is taken in one ct., & the trial takes place in another ct., the transcript of the shorthand note ought to cover the whole of the proceedings from beginning to end.—R. *v.* STRICKSON (1936), 25 Cr. App. Rep. 206, C. C. A.

6261b. —— **Written police report.**]—When at any trial a written police report of the prisoner's record is handed to the presiding judge by a police witness, a copy of the report ought to be handed to the shorthand writer for incorporation in the shorthand note of the case.—R. *v.* MINIGHAN (1935), 25 Cr. App. Rep. 108, C. C. A.

6263. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

6271. Before this case insert "*See, also,* CROWN PRACTICE, No. 797a."

Add. Annotations :—**Follid.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710. **Refd.** *Re* Carroll (1930), 100 L. J. K. B. 62.

6273. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 104.

6279. *Citations :*—Delete [1892] 1 Q. B. 104.

6284. *Add. Annotation :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925). 133 L. T. 710.

6293a. Order to repair highway—Highway Act, 1862 (c. 61), s. 18.]—*Held :* not a judgment in a "criminal cause or matter."—LOUGHBOROUGH HIGHWAY BOARD *v.* CURZON (1886), 17 Q. B. D. 344; 55 L. J. M. C. 122; 55 L. T. 50; 50 J. P. 788; 34 W. R. 621; 2 T. L. R. 678, C. A.

Annotations :—**Refd.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602; Payne *v.* Wright (1892), 61 L. J. M. C. 114.

6298a. —— **Invalidity of bye-law.**]—Applt. was charged with frequenting a street for the purpose of betting contrary to a bye-law of a borough, but the charge was dismissed on the ground that the bye-law was *ultra vires* & unreasonable. On a case stated, the High Ct. held that the bye-law was valid :—*Held :* this being a "criminal cause or matter," there was no appeal except for error of law apparent on the record, &, even if the bye-law were, on the face of it, invalid, that would not be an error of law apparent on the record.—BURNETT *v.* BERRY (1896), 60 J. P. 550; 12 T. L. R. 464; 40 Sol. Jo. 564, C. A.

Annotations :—**Apld.** McVittie *v.* Bolton JJ., [1924] W. N. 149. **Refd.** Godwin *v.* Walker (1896), 12 T. L. R. 367; Teale *v.* Harris (1896), 60 J. P. 744; Jones *v.* Walters. (1898), 78 L. T. 167; Kitson *v.* Ashe, [1899] 1 Q. B. 425; White *v.* Morley, [1899] 2 Q. B. 34; Thomas *v.* Sutters, [1900] 1 Ch. 10; Sutton Harbour Improvement Co. *v.* Foster (1920), 123 L. T. 549; Everton *v.* Walker (1927), 137 L. T. 594.

6298b. "**Error of law apparent on record.**"]—BURNETT *v.* BERRY, No. 6298a, *ante*.

6298c. ——.]—The effect of Jud. Act, 1873 (c. 66), s. 47, & Criminal Appeal Act. 1907 (c. 23), s. 20, is that there is no right of appeal to the Ct. of Appeal in a criminal cause o matter, even where the error is apparent on the record. —MCVITTIE *v.* BOLTON JJ., [1924] W. N. 149, C. A.

After this case add the following new section :—

SECT. 15.—**APPEALS.**

To House of Lords.]—*See* Part XV.

Part XV.—Appeal to House of Lords and Judicial Committee of the Privy Council.

6301. *Add. Annotations :*—*As to* (1) **Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Distd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. *Generally,* **Refd.** Statham *v.* Statham, [1929] P. 131.

Part XVI.—Costs, Compensation, Rewards and Restitution.

6408. *Add. Annotation :*—**Refd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

6434a. —— —— **Case not sent for trial.**]—When justices are sitting as examining justices to inquire whether a person charged with an indictable offence ought to be committed for trial, a refusal by the justices to commit is a "dismissal" within Costs in Criminal Cases Act, 1908 (c. 15), s. 6 (3), entitling deft. to apply for costs. The use of the word "dismiss" in that sect. is inappropriate, for justices have no power to "dismiss" an indictable charge not dealt with summarily,

PART XIV. SECT. 15.

sd. *To Supreme Court—Condition precedent—Certificate—By what court granted.*]—The ct. to grant a certificate that a decision of the Ct. of Criminal Appeal involves a point of law of exceptional public importance, & that it is desirable in the public interest that an appeal should be taken, is the Ct. of Criminal Appeal, & not the Supreme Ct.—A.-G. *v.* MURRAY (No. 2), [1926] I. R. 300.—**IR.**

such as is given by Summary Jurisdiction Act, 1879 (c. 49), s. 27 (4), in the case of a charge of an indictable offence which is dealt with summarily.—R. *v.* ESSEX, JJ., *Ex p.* CHURCHILL (1933), 148 L. T. 498; 97 J. P. 124; 49 T. L. R. 283; 31 L. G. R. 178; 29 Cox, C. C. 602. D. C.

6434b. Practice.]—PRACTICE NOTE (1936), 26 Cr. App. Rep. 13, C. C. A.

Costs of poor prisoners.]—*See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 3.

6446a. —— —— **Appeal from order—To Court of Criminal Appeal.**]—R. *v.* JONES, No. 5554a, *ante*.

6496a. *S. P.* R. *v.* D'EYNCOURT (1888), 21 Q. B. D. 109; 57 L. J. M. C. 64; 52 J. P. 628; 37 W. R. 59; 4 T. L. R. 455, D. C.

Annotations:—**Refd.** Inkpin *v.* Roll (1922), 126 L. T. 517; Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

6505. *Add. Annotation*:—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

Part XVII.—Offences against the Sovereign.

6722. For "(1628)" read "(1541)."

6723. For "(1628)" read "(1539)."

6726. For "(1628)" read "(1443)."

6727. For "(1628)" read "(1494)."

6732. For "(1628)" read "(1453)."

6733. For "(1628)" read "(1462)."

Part XVIII.—Offences against Public Tranquillity.

6735a. Effecting public mischief—False allegation of robbery.]—Conduct causing or tending to cause public mischief constitutes a misdemeanour at common law.

Where a person makes a false statement to the effect that he has been robbed by a man of a given description, thereby leading officers of the police to waste their time & exposing individuals of that description to suspicion, he commits the misdemeanour of causing a public mischief.—R. *v.* MANLEY, [1933] 1 K. B. 529, 102 L. J. K. B. 323; 148 L. T. 335; 97 J. P. 6; 49 T. L. R. 130; 77 Sol. Jo. 65; 31 L. G. R. 81; 24 Cr. App. Rep. 25; 29 Cox, C. C. 574, C. C. A.

PART XVI. SECT. 1, SUB-SECT. 3.

6441 i. *Costs of defendant on acquittal—Libel.*]—In Criminal Code, s. 1045, the word "information" means "criminal information," & a dismissal by the magistrate of a charge laid in the usual way by information & complaint is not a "judgment for deft."—BUCZKO *v.* CHOBOTAR (B. C.), [1926] 1 D. L. R. 1024; [1926] 1 W. W. R. 379; 45 Can. Crim. Cas. 216.—**CAN.**

6441 ii. —— ——.]—The discharge of the accused on a *nolle prosequi* on a charge for criminal libel constitutes a "judgment for deft." within sect. 1045 of Criminal Code; & thereupon entitles the accused "to recover from the prosecutor the costs incurred by him by reason of such indictment or information. . . . The costs of a former abortive trial in the criminal prosecution on which the jury disagreed are legal & proper costs which may be allowed under said sect., & the ct. in the criminal case has jurisdiction to order them to be paid by the private prosecutor. The costs properly ordered by the criminal ct. to be paid under sect. 1045 may be taxed pursuant to said order & then made the subject of a civil action by the accused or by his assignee.—YOUNG *v.* UCHIYAMA, [1934] 1 W. W. R. 401; 61 C. C. C. 313; 48 B. C. R. 55.—**CAN.**

sg. *Order for payment of costs of prosecution—Speedy trial in county court.*]—R. *v.* THOEM, [1933] 3 W. W. R. 637; 62 C. C. C. 276.—**CAN.**

PART XVI. SECT. 2.

g i. —— —— ——.]—R. *v.* JACKOW, [1934] 1 W. W. R. 340; 62 C. C. C. 277; 42 Man. L. R. 121.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.—A.

sk. *Offence tried on summary conviction.*]—Sects. 795, 817, & 1050 of the Criminal Code dealing with the restitution of stolen property do not apply to an offence tried on summary conviction under Part XV. of the Code.—R. *ex rel.* ARNOLD *v.* WESTERLAND (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*]—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandatory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—R. *v.* CHRISTIAN, [1924] App. D. 101.—**S. AF.**

PART XVII. SECT. 1, SUB-SECT. 3.—E. (a).

sb. *Conspiracy to establish independence of India.*]—Any conspiracy to establish the complete independence of India, as distinct from obtaining for it the status of a self-governing Dominion within the British Empire, would be tantamount to conspiring to deprive His Majesty of the sovereignty of British India. The same result would follow if there was a conspiracy to establish a perfectly democratic or republican form of government in India outside the British Empire.—EMPEROR *v.* JHABWALA (1933), I. L. R. 55 All. 1040.—**IND.**

PART XVII. SECT. 1, SUB-SECT. 4.

e i. ——.]—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt.:—*Held*: accused had been properly convicted of treason.—R. *v.* ERASMUS, [1923] App. D. 73.—**S. AF.**

e ii. ——.]—When a multitude arises & assembles to attain by force & violence any object of a general public nature, it amounts to levying war against the King. A deliberate & organised attack upon the Crown forces would amount to a waging of war if the object of the insurgents was by armed force & violence to overcome the servants of the Crown & thereby prevent the general collection of the capitation tax.—AUNG HLA *v.* KING EMPEROR (1931), I. L. R. 9 Ran. 404.—**IND.**

PART XVIII. SECT. 1.

6735a i. *Effecting public mischief—False allegation of motor accident.*]—The making of a false representation to the police that a motor accident had occurred, with the object of causing investigation to be made, constitutes a crime, even though the representation does not include a charge against any individual.—KEER *v.* HILL, [1936] S. C. (J.) 71.—**SCOT.**

6816. After this case add :—

Unlawful possession.]—*See* Firearms & Imitation Firearms (Criminal Use) Act, 1933 (c. 50).

6839a. ——— ———.]—Divers persons assembled in a room, entrance money being paid, to witness a fight between two persons. The combatants fought in a ring with gloves, each being attended by a second, who acted in the same way as a second at prize fights. The combatants fought for about forty minutes with great ferocity, & severely punished each other. The police interfered & arrested defts., who were among the spectators. Upon the trial of an indictment against them for unlawfully assembling together for the purpose of a prize fight, the Chairman directed the jury that, if it was a mere exhibition of skill in sparring, it was not illegal; but, if the parties met intending to fight till one gave in from exhaustion or injury received, it was a breach of the law & a prize fight, whether the combatants fought in gloves or not, & left it to the jury to say whether it was a prize fight or not :—*Held :* the jury were properly directed.—R. *v.* ORTON (1878), 39 L. T. 293; 43 J. P. 72; 14 Cox, C. C. 226, C. C. R.

Annotation :—**Reld.** R. *v.* Coney (1882), 8 Q. B. D. 534.

6854. *Add. Annotation :*—**Consd.** Duncan *v.* Jones, [1936] 1 K. B. 218.

6870. *Add. Annotation :*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

6887. *Add. Annotation :*—**Reld.** Motor Union Insce. *v.* Boggan (1923), 130 L. T. 588.

6890. *Add. Annotation :*—**Reld.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

6916. In line eight of headnote, delete " are."

6931. *Add. Annotation :*—**Reld.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

7026. *Add. Annotation :*—**Reld.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

7033a. ———.]—ANON. (1701), 12 Mod. Rep. 495; 88 E. R. 1472.

7095a. ——— ——— ——— **Unauthorised service.**]—The words " divine service " in the earlier part

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PART XVIII. SECT. 2, SUB-SECT. 3. —A.

6750 iii. ——— ———.]—Advocating expressly any form of rebellion is not a necessary element in an offence under Indian Penal Code, s. 124A. It is quite possible by the abuse of Govt. officials to make an endeavour to bring into hatred or contempt the Govt. established by law in British India.—EMPEROR *v.* SATYA RANJAN BAKSHI (1929), I. L. R. 56 Calc. 1085.—**IND.**

6750 iv. ——— ———.]—R. *v.* EVANS, [1934] 2 W. W. R. 326; 62 C. C. C. 29; 48 B. C. R. 223.—**CAN.**

h i. ——— ———.]—Where a book, which professes to be a history of the East India Co., is in no sense merely a history of the times with which it deals, but teems with propaganda directed against British rule, & the intention & general trend of the book is to bring into contempt & hatred the present Govt., the book is rightly prescribed under sect. 99A of the Criminal Procedure Code.—EMPEROR *v.* SAIGAL (1930), I. L. R. 52 All. 775.—**IND.**

PART XVIII. SECT. 7.

6821 ii. ——— ——— *Meaning of "prize-fight."*]—R *v.* PELKEY (1913), 24 W. L. R. 804; 4 W. W. R. 1055; 11 D. L. R. 701; 6 Alta. L. R. 103.—**CAN.**

6821 iii. ——— ——— *Restaurant.*]—A restaurant is not a public place within Criminal Code, s. 238 (*f*), since the public has no rights, as such, to resort there; &, therefore, the causing of a disturbance therein by one of the methods referred to in s. 238 (*f*), does not render the disturber subject to conviction thereunder.—R. *v.* BENSON, [1928] 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

PART XVIII. SECT. 8, SUB-SECT. 1.

6841 ii. ——— *Unemployed rushing town hall.*]—R. *v.* BEATTIE, [1931] 1 W. W. R. 764; 55 Can. C. C. 380; 39 Man. L. R. 394.—**CAN.**

6841 iii. ———.]—Deft. led a parade of unemployed men through the streets of a city, the purpose being to demonstrate the extent of unemployment & to excite public sympathy. The chief constable forbade deft. to lead the parade through a certain restricted area in the city, but deft. refused to obey & was arrested by the police; he then instructed his followers to enter the restricted area in defiance of the police, & they, pushing the police aside, carried the parade through the restricted area. No physical violence doing bodily harm resulted, apparently because the police realised the wisdom of yielding to a crowd of men who were unarmed & apparently harmless :—*Held :* deft. was a member of an assembly lawful in its inception, but unlawful in its execution, because it was determined to meet force by force & to resist the officers of the law.—R. *v.* PATTERSON, [1931] 3 D. L. R. 267; 66 O. L. R. 461; 55 Can. C. C. 218.—**CAN.**

6841 iv. ———.]—R. *v.* PAVLETICH (1932), 58 C. C. C. 285.—**CAN.**

sn. *Meeting to maintain right bonâ fide believed to be possessed.*]—Where five or more persons assemble for maintaining by force, or show of force, a right which they *bonâ fide* believe they possess, & not for enforcing by such force, or show of force, a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under India Penal Code, s. 143.—*Re* VEERABADRA PILLAI (1927), I. L. R. 51 Mad. 91.—**IND.**

so. *Circumstances to be considered.*]—To constitute an " unlawful assembly " within sect. 87 of Criminal Code there need be no intention on the part of any member of the assembly to commit an offence, but it is the manner in which the assembly conducts itself that brings it within the purview of the sect. All the circumstances, including the conditions of the time, must be considered in determining whether a particular assembly was in the beginning or had become an unlawful one. The common purpose of the members & the likelihood of a disturbance resulting from the assembly are matters which are ordinarily not determined by direct evidence but by inference from the conduct of the meeting & all the circumstances surrounding it. Therefore, the reception of evidence that on the day before the assembly in question a circular, urging the unemployed to refuse to accept relief work & to " strike," was distributed in the city was held not to afford a valid ground of appeal from a conviction on a charge of being a member of an unlawful assembly although no connection of the accused with the circular was shown.—R. *v.* JONES & SHEININ, R. *v.* THERNES, R. *v.* FARBY & DWORKIN, R. *v.* CAMPBELL, [1931] 3 W. W. R. 716; 57 Can. C. C. 81, 90, 92; 26 Alta. L. R. 97.—**CAN.**

sq. *Membership of Communist party.*]—R. *v.* BUCK, [1932] 3 D. L. R. 97; 57 C. C. C. 290.—**CAN.**

PART XVIII. SECT. 8, SUB-SECT. 2.

sr. *Whether justices may disperse.*]—A justice of peace has no authority to disperse a meeting not shown to be unlawful because he reasonably believes it to be held with an unlawful intent.—O'KELLY *v.* HARVEY (1883), 15 Cox, C. C. 435.—**IR.**

PART XVIII. SECT. 8, SUB-SECT. 3.

g i. ———.]—No person can be convicted of membership of an unlawful assembly unless he was present, nor of counselling others to become members unless they do in fact do so.—R. *v.* STEWART, [1934] 3 D. L. R. 61; 1 W. W. R. 423; 61 C. C. C. 217.—**CAN.**

PART XVIII. SECT. 9, SUB-SECT. 7.

st. *Whether municipal corporation liable.*]—GLOBE & RUTGERS FIRE INSURANCE CO. *v.* GLACE BAY CORPN. (N. S.), [1927] 1 D. L. R. 80.—**CAN.**

PART XVIII. SECT. 10, SUB-SECT. 1.—A.

r i. ———.]—A forcible entry made with intent to repossess chattels upon certain lands & not made for the purpose of taking or attempting to take possession of the lands is not a forcible entry within Statute of Forcible Entry 1381, 5 Rich. II., Stat. I., c. 7. An indictment in respect of a charge of forcibly entering upon lands is defective in charging a common law offence if he does not allege a breach of the peace; & it is defective in charging an offence under the Statute of Forcible Entry, 1381, if it does not allege an entry with the strong hand.—R. *v.* WAUGH (1935), 52 N. S. W. W. N. 20.—**AUS.**

PART XVIII. SECT. 10, SUB-SECT. 1. —C.

sv. *Vacant premises.*]—The gist of the offence of forcible entry under sect. 102 of Criminal Code is the forcible depriving of another person of actual & peaceable possession in a manner likely to cause a breach of the peace or reasonable apprehension thereof. An entry by the breaking of the lock of vacant premises is not one likely to cause a breach of the peace &, therefore, not within sect. 102. " Forcible entry " as defined in the decisions under the English statutes is distinguishable from " forcible entry " as defined by sect. 102.—R. *v.* CZEGLEDI, [1931] 1 W. W. R. 480; 55 Can. C. C. 114.—**CAN.**

of Ecclesiastical Courts Jurisdiction Act, 1860 (c. 32), s. 2, are used in their widest sense; & the words " any divine service, rite, or office in any cathedral, church, or chapel " in the latter part of the sect. are used to cover all the services in the Church of England in these places, including the celebration of the sacraments, & the special mention immediately preceding these latter words of " any sacrament " refers to the celebration of any sacrament outside a cathedral, church, or chapel.

A parish church, at the time of the service hereinafter mentioned, contained a sanctus bell, a figure of the Madonna & Child, & a blue votive lamp, all of which had been directed to be removed by an order of the Consistory Ct. On a certain Sunday, in the absence through illness of the incumbent of the church, a clergyman in holy orders, being a canon, ministered or celebrated a service in the church in the course of which he performed the ceremony of the Asperges with the use of lighted candles although it was not prescribed or ordered by the Book of Common Prayer; celebrated the holy communion service omitting therefrom the ten commandments & the lengthy exhortation; wore during the sermon or some parts of it an amice, an alb, a maniple, a stole, a cope, & a biretta; & elevated the elements from the altar after consecration. During the service incense was used ceremonially, the sanctus bell was rung before, during, & at the end of the consecration prayer, & during that prayer one of the church bells was rung. It did not appear that any order had been made by lawful authority for the use of the service in question in so far as it differed from the form of service prescribed by the Book of Common Prayer, or for the use of any form of service other than that there prescribed, but it was stated that the service in question had the sanction of the bishop of the diocese: —*Held:* (1) the service in question, assuming it to be legally valid, was not a sacrament only, but a " divine service " within Ecclesiastical Cts. Jurisdiction Act, 1860 (c. 32), s. 2; (2) although the above-mentioned articles, acts & omissions were departures from the laws of the Church of England, yet such departures did not prevent the service from being a " divine service " within that sect.; &, consequently, persons who disturbed the clergymen while conducting the service disturbed a clergyman ministering or celebrating divine service within the sect. & were liable to conviction for an offence thereunder.—MATTHEWS *v.* KING, [1934] 1 K. B. 505; 103 L. J. K. B. 509; 150 L. T. 133; 97 J. P. 345; 50 T. L. R. 62; 31 L. G. R. 379; 30 Cox, C. C. 27, D. C.

Part XIX.—Offences in Respect of Public Offices.

7153. *Add. Annotation:*—**Refd.** R. *v.* Manley, [1933] 1 K. B. 529.

Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation:*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

7304a. —— ——.]—A. brought an action against B. & his partners, for the price of wheat, & recovered a verdict on the bought & sold notes. B. & his partners filed a bill in equity against A., which stated, that the bought & sold notes did not contain all the terms of the contract, as it had been also agreed by parol between A. & B., that the wheat should be paid for by a draft at three months; & the prayer of the bill was, that A. should be restrained from suing out execution. A., by his answer, denied the statement in the bill; & the bill was dismissed:—*Held:* if the denial by A. was wilfully false, it amounted to perjury.—R. *v.* YATES (1841), Car. & M. 132; 5 Jur. 636; 174 E. R. 441.

PART XIX. SECT. 4.

sb. *Judicial officer—Member of licensing court.*]—*Held:* an attempt to bribe a member of a licensing ct., in order to influence his vote on an application for a licence, was an offence indictable at common law, in respect that the functions & procedure of a licensing ct. were of a judicial character. —LOGUE *v.* H.M. ADVOCATE, [1932] S. C. (J.) 1.—SCOT.

PART XX. SECT. 1.

sd. *Offer to influence juror—No overt act—Lunacy inquiry.*]—*Held:* the mere offer of services to work upon the jurors in a lunacy inquiry so as to induce them, whatever the evidence might be, to find that X. was of sound mind & capable of managing her own affairs, not followed by any act in attempted fulfilment of that offer, did not amount to an interference, or an attempt to interfere, with the administration of justice by tampering with the jury.—*Re* M. M. & H. M., [1933] I. R. 299.—IR.

PART XX. SECT. 2, SUB-SECT. 1.

7236 i. *Nature of the offence.*]—Perjury is in itself a contempt of ct.—R. *v.* ZIZU NATANSON, [1927] 3 D. L. R. 758; [1927] 2 W. W. R. 155; 48 Can. Crim. Cas. 227; 21 Sask. L. R. 532.—CAN.

PART XX. SECT. 2, SUB-SECT 2.

7237 v. ——.]—A charge of perjury may be based on an oath consisting of an affirmation to tell the truth followed by kissing the Bible, although there is no invocation of the Deity.—R. *v.* KLINE, [1937] 2 D. L. R. 269.—CAN.

PART XX. SECT. 2, SUB-SECT. 5.—A.

r i. —— —— *Absence of examiner—to file affidavit.*]—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined.—R. *v.* ALLEN, [1925] 1 D. L. R. 57; [1925] 1 W. W. R. 718; 43 Can. Crim. Cas. 118.—CAN.

r ii. *S. P.* R. *v.* KOHEL (Sask.), (1926), 46 Can. Crim. Cas. 279; [1926] 3 W. W. R. 478.—CAN.

c i. —— *Investigation by Canadian National Railway—Not a judicial proceeding—Although a justice on the Board.*]—BOIVIN *v.* R. (1929), 54 Can. C. C. 290; 48 Que. K. B. 81.—CAN.

7416. *Add. Annotation :*—**Reld.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

——.]—On the trial of applt. for perjury, the only witness who gave direct evidence of the falsity of applt.'s statement was herself admittedly a perjured accomplice :—*Held :* the jury should have received the strongest possible warning that her evidence was of no value, & as it was not possible to say that, if that warning had been given, the other evidence relied on by the prosecution was such that the jury must have convicted, the conviction must be quashed.—R. *v.* ATKINSON (1934), 24 Cr. App. Rep. 123, C. C. A.

7434. *Add. Annotation :—As to* (2) **Consd.** R. *v.* Southern (1929), 142 L. T. 383.

7523. *Add. Annotation :*—**Reld.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

7544. *Add. Annotation :*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

PART XX. SECT. 2, SUB-SECT. 6.

m i. ——.]—In a prosecution for perjury it is not necessary to allege or to prove that the subject-matter of the perjury was material to the issue in which the perjury was committed.—R. *v.* ROSS (1884), 28 L. C. J. 261.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 7.

s i. —— ——.]—R. *v.* FERRISH & DE VASSE (1926), 58 N. S. R. 370.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—A.

a i. —— *Witness protected by Evidence Act,* 1912 (c. 27).]—Evidence given at a trial at which the witness is granted the protection of Canada Evidence Act, 1912, is not receivable against him on a prosecution for perjury on other occasions, *e.g.,* on an inquest & preliminary hearing.—R. *v.* KRUSCHKOVSKI, [1925] 2 D. L. R. 167 ; [1925] 1 W. W. R. 426 ; 43 Can. Crim. Cas. 299.—**CAN.**

a ii. ——.]—Accused was convicted of perjury in testifying in a civil action brought by the Crown against his brother for evading the payment of the proper duty on goods introduced into Canada by accused. The perjury was charged in respect of the statement by accused that he had intended such goods for the members of his family :—*Held :* the testimony of customs officials as to statements made by accused's brother to the customs appraiser on the strength of which the goods had been cleared, should not have been admitted.—R. *v.* NATANSON (No. 2) (Sask.), [1927] 4 D. L. R. 1035 ; [1927] 3 W. W. R. 550 ; 49 Can. Crim. Cas. 80.—**CAN.**

sy. *Circumstantial evidence.*]—A conviction for perjury may be founded on circumstantial evidence alone.—R. *v.* NATANSON, [1927] 3 D. L. R. 308 ; [1927] 2 W. W. R. 127 ; 48 Can. Crim. Cas. 158 ; 21 Sask. L. R. 505.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—B.

7380 iv. —— ——.]—On a trial for perjury with respect to testimony taken by a magistrate on a preliminary inquiry based on a sworn information, the information itself must be produced to establish that the magistrate had power to hold the inquiry & that it was, in consequence, a "judicial proceeding" under the Code ; &, in the absence of proof that the original information had been lost or destroyed so as to admit secondary evidence thereof, the oral testimony of the magistrate or of the official reporter on the inquiry as to the nature of the proceedings before the magistrate, although received without objection, is insufficient to prove that the inquiry in which the alleged perjury was committed was held in respect to an indictable offence & was a "judicial proceeding."—R. *v.* CHERER, [1930] 2 W. W. R. 498 ; 54 Can. C. C. 297 ; 24 Alta. L. R. 610.—**CAN.**

sa. *Writ of summons.*]—*Held :* the evidence that the proceeding was a judicial proceeding was sufficient, although the writ of summons therein had not been produced.—R. *v.* GURDITTA, [1927] 1 W. W. R. 273 ; 47 Can. Crim. Cas. 103 ; 38 B. C. R. 66.—**CAN.**

sb. *Certified copy of record—Prior notice not necessary where admission by accused that impeached statements were made in judical proceedings.*]—R. *v.* KOBOLD, [1927] 3 W. W. R. 294 ; 49 Can. Crim. Cas. 290 ; 37 Man. L. R. 37.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—C.

7385 iii. —— ——.]—Where the testimony of an accused on a trial before two justices of the peace is taken down in writing in the manner required by sect. 721 (3) of Criminal Code, R. S. C., 1927, & the accused is afterwards charged with having committed perjury in giving said testimony, the parol testimony of the justices or of other persons as to the accused's alleged false statements is not admissible where there is no reason given to account for the absence of the depositions.—R. *v.* CHASTAKOFF, [1936] 2 W. W. R. 441 ; 4 D. L. R. 74 ; 67 Can. C. C. 129.—**CAN.**

f i. —— *Copy of affidavit.*]—Where deft. was charged with making a false affidavit in the United States of America :—*Held :* a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted.—UNITED STATES *v.* SNYDER, [1925] 1 D. L. R. 200 ; 43 Can. Crim. Cas. 692 ; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—D.

m i. ——.]—The dictum of English common law that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a safe guide for the Indian cts., which are bound by the statute law enacted in sects. 3 & 134 of Evidence Act.—EMPEROR *v.* ARJUN SINGH (1931), I. L. R. 53 All. 598.—**IND.**

7415 iii. ——.]—Although a person charged with perjury cannot be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused, there need not be two witnesses to prove every fact necessary to make out the offence ; corroboration is required merely for the perjured fact as a whole, & not of every detail or constituent part of it.—R. *v.* MCKENZIE, [1930] 2 W. W. R. 602 ; 54 Can. C. C. 153.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 11.

sd. *Evidence—Of falsity of statement—Corrobation unnecessary.*]—R. *v.* MCBETH, [1926] 2 D. L. R. 801 ; [1926] 1 W. W. R. 931 ; 45 Can. Crim. Cas. 357 ; 22 Alta. L. R. 222.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—A.

q i. —— *In bankruptcy proceedings.*]—"Thereupon" in sect. 175 of Criminal Code refers to the statement that the accused is required or authorised by law to make.

Bkpcy. Rule 109 does not, it seems, absolve the official receiver from doing personally what sect. 128 of Bkpcy. Act says he shall do. In any event before the debtor can be held guilty under sect. 175 of the Criminal Code with respect to statements made in answers to questions put under Bkpcy. Rule 109 it must be shown that the official receiver either personally or by delegation ordered said questions to be propounded to the debtor.—R. *v.* DAVIDSON, [1933] 2 W. W. R. 285.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—B.

a i. —— *To obtain permit to purchase liquor.*]—Sect. 176 of Criminal Code does not apply to a statement which is neither under oath nor a statutory declaration made "knowing it to have the same force & effect as if made under oath."—R. *v.* WHITE (B. C.), [1929] 3 W. W. R. 729.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—C.

m i. —— *Affidavit required by foreign law.*]—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law :—*Held :* notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada.—UNITED STATES *v.* SNYDER, [1925] 1 D. L. R. 200 ; 43 Can. Crim. Cas. 92 ; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 4.

7496 i. *Persuading witness—To induce complainant to withdraw charge.*]—The essence of the crime of attempting to defeat the course of justice consists in the wilful intent to obstruct the due administration of justice, coupled with an act calculated to further & done in furtherance of that intent. If these elements are present it does not matter that what was done was done under a mistaken belief that it would have the effect intended. An attempt to induce, by threats or other corrupt means, a witness to prevail upon complainant to withdraw a criminal complaint amounts to an attempt to defeat the course of justice, notwithstanding that the attempt was made before a criminal charge had been preferred by the prosecuting authority.—HATTINGH *v.* R. (1929), 50 N. L. R. 105.—**S. AF.**

se. *Liability for fabricating—Although no proceeding pending.*]—R. *v.* SEVICK (1930), 54 Can. C. C. 92.—**CAN.**

PART XX. SECT. 7.

sg. *Advice not to prosecute.*]—R. *v.* M., [1936] 2 W. W. R. 494, *sub nom.* R. *v.* MURDOCK (1936), 67 Can. C. C. 142 ; 6 F. L. J. (Can.) 36.—**CAN.**

sl. *Removal of defendant from jurisdiction.*]—Appeal by the Crown from the acquittal of the accused on a charge under sect. 180 (*d*) of Criminal Code of attempting to obstruct, pervert or defeat the course of justice. Accused's wife had been charged under the Female Minimum Wage Act but failed to appear at the adjourned hearing of the charge (the adjournment having been made before the hearing was begun) owing to the fact that accused had taken her to the United States :—*Held :* the appeal must be dismissed.—R. *v.* KADIN, [1937] 2 W. W. R. 345.—**CAN.**

7564a. —— **On constables to execute warrant.**]—COLEMAN'S CASE (1619), 2 Roll. Rep. 78; 81 E. R. 671.

Annotation:—**Refd.** Miller *v.* Knox (1838), 4 Bing, N. C. 574.

7584a. —— ——.]—On an indictment against the stewards, etc., of a benefit society for disobeying an order of two justices, commanding them to re-admit A. B. to be a member of that society, it is no defence, that A. B. was a person, who, by the rules of the society, was ineligible to be a member of it, as that was matter of defence before the justices; & if it be proved that the order was served on one of the defts., & that the others, when A. B. applied to be re-admitted, said, that they would not admit him, & did not care for the justices' order; that is presumptive evidence of a service of the order upon them.—R. *v.* GILKES (1827), 3 C. & P. 52.

Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7641. *Add. Annotation:*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

7657a. —— ——.]—SMITH *v.* STEVENS (1929), 45 T. L. R. 429.

7662. *Add. Annotation:*—**Refd.** Duncan *v.* Jones, [1936] 1 K. B. 218.

7663a. —— ——.]—Applt. was about to address a number of people in a street when a police officer, who reasonably apprehended that a breach of the peace would occur if the meeting were held, forbade her to do so. Applt. persisted in trying to hold the meeting & obstructed the police officer in his attempts to prevent her doing so. Neither applt. nor any of the persons present at the meeting committed, incited, or provoked a breach of the peace:—*Held:* as it is the duty of a police officer to prevent breaches of the peace which he reasonably apprehends, applt. was guilty of wilfully obstructing the officer when in the execution of his duty.—DUNCAN *v.* JONES, [1936] 1 K. B. 218; 105 L. J. K. B. 71; 154 L. T. 110; 99 J. P. 399; 52 T. L. R. 26; 79 Sol. Jo. 903; 33 L. G. R. 491: 30 Cox, C. C. 279, D. C.

7663b. ——.]—Resp., a police officer, believing that an offence had been committed by the servants of applt. in causing an obstruction in the highway with a motor lorry, followed the lorry into applt.'s garage to make inquiries as to the person responsible for the supposed obstruction. Resp. did not obtain applt.'s permission to enter the garage, nor had he a warrant authorising him to enter it. Applt. directed resp. to leave the premises, but resp. claimed to be entitled to remain on them & applt. assaulted him:—*Held:* even if resp. had a right to enter the garage to make inquiries, he became a trespasser after applt. had told him to leave the premises, & he was not therefore acting thenceforward in the execution of his duty, with the result that applt. could not be convicted of assaulting or obstructing him in the execution of his duty.—DAVIS *v.* LISLE, [1936] 2 K. B. 434; [1936] 2 All E. R. 213; 105 L. J. K. B. 593; 155 L. T. 23; 100 J. P. 280; 52 T. L. R. 475; 80 Sol. Jo. 409; 34 L. G. R. 253; 30 Cox, C. C. 412, D. C.

7674. *Add. Annotation:*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

PART XX. SECT. 12.

b i. —— ——.]—Where a defeated litigant wrote, subsequent to the judgment, insulting letters to the special magistrate presiding, there being no litigation pending:—*Held:* neither an instant order for imprisonment nor a rule for the issue of a writ of attachment should be made, there being no reason why the ordinary remedy of information for criminal libel should not be adopted.—*Ex p.* SANDERSON (1928), S. A. S. R. 448.—**AUS.**

PART XXI. SECT. 4.

l i. —— ——.]—A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is leaving the premises with liquor, when no liquor has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—**CAN.**

l ii. —— *Evidence that person assaulted an officer.*]—Where on a trial on a charge of assaulting a police officer in the discharge of his duty the person alleged to have been assaulted is asked whether he is a constable in a certain police force & answers "yes," there is, in the absence of anything to qualify it, sufficient evidence of his status or occupation as a police officer not only at the time of the trial but also a few days previously.—R. *v.* SMITH, [1930] 3 W. W. R. 287; 54 Can. C. C. 359.—**CAN.**

7666 v. —— *Keeping constable at arm's length—Whether flight to avoid arrest.*]—The fact that a person violently assaulted by a police officer who is attempting to arrest him, tries to evade a repetition of the assault by keeping at arms' length from the officer, does not constitute a taking to "flight to avoid arrest" within Criminal Code, s. 41.—VIGNITCH *v.* BOND & C. P. Ry. Co., [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

7675 vi. —— —— *Failing to stop vehicle when ordered to do so.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671; 51 Can. Crim. Cas. 209.—**CAN.**

7675 vii. —— —— ——.]—R. *v.* D'ENTREMONT, [1932] 2 D. L. R. 236; 4 M. P. R. 142; 57 C. C. C. 174.—**CAN.**

7675 viii. —— ——.]—A mere criticism or expression of opinion does not constitute an obstruction of a police officer engaged in regulating the parking of cars.—TITUS *v.* KINCH (1934), 8 M. P. R. 359.—**CAN.**

7675 ix. —— ——.]—Under sect. 20 of Police Act it is an offence to hinder a police constable in the execution of his duty:—*Held:* a constable is "hindered" by any obstruction or interference that makes his duty substantially more difficult of performance.—PLUNKETT *v.* KROEMER, [1934] S. A. S. R. 124.—**AUS.**

7675 x. —— ——.]—Appeal from a conviction for wilfully obstructing a peace officer in the execution of his duty dismissed. The accused, who had been offering flowers for sale on a street, was told by a constable, "I am stopping you now from selling flowers because you have no city licence . . . & you will have to move." Accused then moved across the street to the other corner, & there began again to offer the flowers for sale. The constable followed him & told him that "he was to move off the street altogether & to cease selling the flowers or soliciting," &, on his not doing so, told him he was under arrest, & the accused submitted himself peacefully to the arrest.—R. *v.* GOLDEN, [1937] 1 W. W. R. 337; 1 D. L. R. 350; 51 B. C. R. 236; 67 C. C. C. 292.—**CAN.**

7683. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

7685a. Assaulting warder on duty.]—A convict who assaults a warder on duty is liable to be sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty. —POINTING *v.* WILSON, [1927] 1 K. B. 382; 96 L. J. K. B. 309; 136 L. T. 307; 91 J. P. 5; 43 T. L. R. 44; 70 Sol. Jo. 1091; 28 Cox, C. C. 291, D. C.

Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7758. *Add. Annotation :*—*As to* (2) **Refd.** Best *v.* Butler (1932), 48 T. L. R. 481.

7767. After this case add :—

-.]—*See, now,* Counterfeit Currency (Convention) Act, 1935 (c. 25).

7773. *Annotation :*—For "**Consd.**" read "**Dbtd.**" *Add. Annotation :*—**Overd.** R. *v.* Ion (1852), 2 Den. 475.

7785. *Add. Annotation :*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

7786. *Add. Annotations :*—**Consd.** R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96. **Refd.** R. *v.* Sheridan, [1936] 2 All E. R. 883.

7800a. —— **Previous conviction—Whether admissible.**]—Applt., who was charged with possessing counterfeit coins with intent to utter them, contrary to Coinage Act, 1861 (c. 99), s. 11, did not put his character in issue. He admitted possession of the coins, with knowledge that they were counterfeit, but denied that he had any guilty intent. He was cross-examined as to a previous conviction for a similar offence :—*Held :* the cross-examination was inadmissible, & the conviction must be quashed.—R. *v.* TOMASSO (1934), 25 Cr. App. Rep. 14, C. C. A.

7817. *Add. Annotation :*—**Refd.** R. *v.* Tomasso (1934), 25 Cr. App. Rep. 14.

Part XXIV.—Offences on the High Seas.

7840. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; *Re* Piracy Jure Gentium, [1934] A. C. 586.

7841. *Add. Annotation :*—**Refd.** *Re* Piracy Jure Gentium, [1934] A. C. 586.

7850. *Add. Citation :*—*sub nom. Re* TIVNAN, 5 B. & S. 645; 121 E. R. 971; *sub nom.* R. *v.* TIVNAN, 10 L. T. 499; *sub nom. Re* TURNAN, 12 W. R. 858.

7851a. —— **Distinguished from belligerent act.**]—In time of peace any act of depredation on a ship is *primâ facie* an act of piracy; but in time of war between two countries the presumption is that depredation by one of them on a ship of the other is an act of legitimate warfare. It is immaterial whether the act was done by soldiers or volunteers, & whether it was commended by the belligerent state, or when done ratified by it.—*Re* TIVNAN (1864), 5 B. & S. 645; 122 E. R. 971; *sub nom. Ex p.* TIRNAN, 4 New Rep. 225; *sub nom. Re* TERNAN, 33 L. J. M. C. 201; 28 J. P. 548; 11 Jur. N. S. 34; 9 Cox, C. C. 522; *sub nom. Re* TURNAN, 12 W. R. 858; *sub nom.* R. *v.* TIVNAN, 10 L. T. 499.

sf. *Obstructing peace officer—Who is.*]—A writ of assistance issued under sect. 79 of Excise Act, 1934, conferred upon a certain corporal of the R.C.M.P. the powers set forth in sect. 77 of said Act :—*Held :* applying sects. 7 & 8 of c. 37, 1932, amending the Royal Canadian Mounted Police Act, & sect. 2 (27) of Criminal Code, defining "peace officer," that said corporal in entering the house of the accused under the powers conferred on him by the writ was a peace officer & carrying out one of his duties as a peace officer, &, therefore, the accused in obstructing him in the search which he was authorised by the writ to make was guilty of a violation of sect. 168 of Criminal Code. The obstruction consisted in the emptying, when the officer entered the accused's house, of a bottle containing a liquid.—R. *v.* HNATIUK, [1937] 1 W. W. R. 666.—**CAN.**

PART XXI. SECT. 6, SUB-SECT. 2.

e i. —— *Prisoner at large—Unlawful act of magistrate.*]—R. *v.* POKITRUSKI (1931), 55 Can. C. C. 152.—**CAN.**

PART XXII. SECT. 2, SUB-SECT. 1.

7761 iii. —— ——.]—For a thing to be termed "counterfeit" according to the definition given in Indian Penal Code, s. 28, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons, & the capacity of the materials with which they worked, were not such as to produce a currency note which would take in even the most ignorant villager :—*Held :* there could be no conviction under Indian Penal Code, s. 489a, read with s. 511.—R. *v.* JWALA (1928), I. L. R. 51 All. 470.—**IND.**

PART XXII. SECT. 4.

o i. *Possession of package received from unknown source—No proof given that duty not paid.*]—R. *v.* MOYLE (Ont.) (1928), 49 Can. Crim. Cas. 375.—**CAN.**

sf. *What constitutes smuggling—Customs Act, s.* 206.]—R. *v.* MAYALL (1926), 45 Can. Crim. Cas. 366; 37 B. C. R. 211.—**CAN.**

sg. —— ——.]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

sh. *Burden of proof—That goods imported legally—On accused.*]—*Re* R. *v.* MCKENZIE (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—**CAN.**

sk. —— —— ——.]—R. *v.* LE BLANC (N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.—**CAN.**

where goods alleged to have been smuggled are found & seized in the possession of any person, the onus, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, &, if so, to prove that the duty upon them was paid.—WEISS *v.* R., [1928] Exch. C. R. 106.—**CAN.**

sm. *Indictment for smuggling—No power to substitute conviction for attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

7851b. —— Actual robbery not essential.]—Actual robbery is not an essential element in the crime of piracy *jure gentium*. A frustrated attempt to commit a piratical robbery is equally piracy *jure gentium*.—*Re* PIRACY JURE GENTIUM, [1934], A. C. 586; 103 L. J. P. C. 153; 152 L. T. 73; 51 T. L. R. 12; 78 Sol. Jo. 585; 18 Asp. M. L. C. 528, P.C.

7864. *Citation :*—Delete 33 J. P. 791.

7866. *Add. Annotation :*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

7873. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

7903. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

Part XXVI.—Offences against Religion.

7932. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

7948. *Add. Annotations :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678.

Part XXVII.—Offences relating to Marriage.

7950. In citation delete "2 F. & F. 551."

7959. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7960. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7971a. Notice in false name.]—On a prosecution for bigamy it was proved that the prisoner's first marriage had taken place in a register office by certificate after notice & that the prisoner, with the knowledge & consent of the woman, gave the notice in a false name; & that subsequently the prisoner went through a form of marriage with another woman :—*Held :* the giving of the notice in a false name, with the knowledge & consent of the other party, did not prevent the notice from being "due notice" within Marriage Act, 1836 (c. 85), s. 4. The first marriage was therefore valid & the prisoner could properly be convicted of bigamy.—R. *v.* LAMB (1934), 150 L. T. 519; 50 T. L. R. 310; 78 Sol. Jo. 279; 24 Cr. App. Rep. 145; 30 Cox, C. C. 91, C. C. A.

7980. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

7989a. ——.]—On an indictment for bigamy the validity of a foreign marriage must be proved by the evidence of a professional lawyer, or of a person who is to be deemed by reason of his office to be skilled in the law of the country where it was celebrated.—R. *v.* MOSCOVITCH (1927), 138 L. T. 183; 44 T. L. R. 4; 28 Cox, C. C. 442; 20 Cr. App. Rep. 121, C. C. A.

7991. *Add. Annotation :*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

7992. *Add. Annotation :*—**Refd.** Pilot *v.* Gainfort (1931), 145 L. T. 22.

7996. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

8026. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

PART XXVI. SECT. 1, SUB-SECT. 1.

p i. ——.]—A blasphemous libel consists of a written opinion on a religious matter expressed so offensively as to lead to a possible breach of the peace.—R. *v.* RAHARD, [1936] 3 D. L. R. 230; 65 Can. C. C. 344.—**CAN.**

sc. *Form of indictment.*]—An allegation that the blasphemous words were published with the intent to revile is not necessary in an indictment for blasphemy.—R. *v.* WEBB, [1934] A. D. 493.—**S. AF.**

PART XXVII. SECT. 1, SUB-SECT. 1.—A.

7956 ii. —— —— ——.]—On an indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made & precludes the necessity for proof.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—B.

sd. *Marriage between Roman Catholics —Domiciled in Quebec—By Protestant clergyman.*]—*Held :* valid, & subsequent marriage therefore bigamous, notwithstanding belief in invalidity of first marriage.—R. *v.* SIMARD (1931), 56 Can. C. C. 269.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—C.

sf. *Necessity for.*]—On a charge of bigamy it must be proved that the previous marriage was still subsisting at the time the offence was committed.—TRUDEAU *v.* R., [1935] 2 D. L. R. 786; 63 Can. C. C. 206.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—A.

8013 v. —— ——.]—R. *v.* WELCH, [1931] 4 M. P. R. 149; 57 C. C. C. 202.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—C.

n i. —— *Sufficiency of belief—Onus of proof.*]—In Nov. 1924, M. went through a form of marriage with D. & lived with him until 1928 when they separated. In Nov. 1929, she went through a form of marriage with E., who then knew of her marriage with D. & that D. was still alive. M. & E. were prosecuted for bigamy. The defence was that D. was a married man in 1924. In May, 1915, D. married R. In Jan. 1927, she left him & disappeared & he had never since learned whether she was alive or dead.

8031. *Add. Annotations:* — **Consd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52. **Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

8035. *Add. Citation:—sub nom.* SUGDEN *v.* LOLLEY, 2 Cl. & Fin. 567, n.

8038. *Add. Annotation:*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

Part XXVIII.—Offences against Decency and Morality.

8062. *Add. Annotation:*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

8070. *Add. Annotation:*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8070a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8087a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8087b. Advancement of literature as defence.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8098. *Add. Annotation:*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8104. *Add. Annotation:*—**Refd.** Statham *v.* Statham, [1929] P. 131.

8110. *Add. Annotations:*—**Refd.** R. *v.* Bailey, [1924] 2 K. B. 300; R. *v.* Southern (1929), 142 L. T. 383.

8112. *Add. Annotations:*—**Consd.** R. *v.* Whitehead, [1929] 1 K. B. 99; Statham *v.* Statham, [1929] P. 131.

8121a. Offence may be committed by woman.]—(1) A woman can be convicted of an indecent assault on a boy under Offences against the Person Act, 1861 (c. 100), s. 62.

(2) *Semble:* a woman can be convicted of an indecent assault on another female, under sect. 52 of the same Act.—R. *v.* HARE, [1934] 1 K. B. 354; 103 L. J. K. B. 96; 150 L. T. 279; 98 J. P. 49; 50 T. L. R. 103; 24 Cr. App. Rep. 108; 32 L. G. R. 14; 30 Cox, C. C. 64, C. C. A.

8123. *Add. Annotation:*—**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

8123a. —— By letter purporting to be written by woman.]—R. *v.* WOODS, No. 751b, *ante*.

8127. *Add. Annotation:*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

8128a. —— What is disorderly house.]—R. *v.* BERG, BRITT, CARRÉ & LUMMIES, No. 4222a, *ante*.

8129. *Add. Annotation:*—**Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

8133. *Add. Annotation:*—**Consd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

According to his evidence, she had been continuously absent for more than seven years immediately preceding his marriage with M., & it was not proved that he knew his first wife was alive at any time during those seven years:—*Held:* the Crown having proved the unexplained absence of D.'s first wife for seven years immediately preceding his marriage with M., & the presumption that she was then dead arising & discharging the *onus* which was upon the Crown, it was for the accused to rebut it; that they had not done, & therefore were rightly convicted.—R. *v.* MCCRORY; R. *v.* EDDY (1931), 55 Can. C. C. 117; 66 O. L. R. 530.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

8038 i. *Effect of mistaken belief.*]—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—R. *v.* CARSWELL, [1926] N. Z. L. R. 321.—**N.Z.**

p i. ——.]—Accused & his wife were Roman Catholics; they had never lived together as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman:—*Held:* accused had been under no mistake of law & was rightly convicted.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—**AUS.**

PART XXVIII. SECT. 3.

8079 ii. —— ——.]—The Glasgow Corpn. Order Confirmation Act, 1914, s. 21, penalises the keeping for sale of indecent or obscene prints, photographs, or other representations. In a prosecution of a shopkeeper for a contravention of the section, it was proved that the accused had kept for sale a large number of photographs of nude women, which were exhibited in the windows of his shop. The magistrate, who convicted the accused, stated that he considered that, while a picture similar to those which were the subjects of the complaint might fittingly be exhibited in a public gallery, yet the indiscriminate exposure, sale, & circulation of such prints were calculated to prejudice good morals:—*Held:* the magistrate, in considering whether the photographs were indecent or obscene, was entitled to take into account the circumstances in which they were kept for sale; & assuming that similar pictures might fittingly be exhibited in a public gallery, yet the circumstances in which the photographs were kept for sale by the accused entitled the magistrate to hold that a contravention of the section had been committed.—MCGOWAN *v.* LANGMUIR, [1931] S. C. (J.) 10.—**SCOT.**

m i. —— *Medicine intended to restore virility.*]—R. *v.* DAVIDSON, [1931] 1 W. W. R. 474; 55 Can. C. C. 203; 25 Alta. 332.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 1.

8105 ii. —— ——.]—There is no irrebuttable presumption that a boy under the age of fourteen years is physically incapable of committing buggery.—R. *v.* PACKER, [1932] V. L. R. 225; Argus L. R. 412.—**AUS.**

8109 i. —— *Evidence—Complaint—Effect of delay.*]—R. *v.* [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 2.

8120 vii. ——.]—Consent or non-consent makes no difference so far as accused is concerned in offences against Criminal Code, ss. 202 & 203.—R. *v.* ELLIOTT, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1.—A.

d i. —— ——.]—Evidence of the general reputation of a house is admissible to show that it is a bawdy house.—R. *v.* THEIRLYNCK, [1931] 1 W. W. R. 352; *affd.*, [1931] S. C. R. 478; 4 D. L. R. 591; 56 Can. C. C. 156.—**CAN.**

d ii. —— ——.]—The decision in *R.* v. *Theirlynck* is not to be taken as laying down a rule that the bare fact that a police officer was delayed in entering a house may be relied upon to support the inference that the house is a common bawdy house & that people found therein must be deemed to be keepers or inmates of such a house. A provincial Ct. of Appeal should set aside a conviction for keeping or being an inmate of a common bawdy house where the conviction is based exclusively upon the fact that there was delay in opening up the premises to police officers. Evidence of the reputation of the house, while admissible to show that the house is a bawdy house, is not by itself sufficient to support a conviction of the people who live therein for being keepers or inmates of a bawdy house. The *Theirlynck* case stands for nothing more than that the cumulative effect of the circumstances proven in that case was sufficient to support the conviction.—R. *v.* MCEWAN & LEE, [1932] 3 W. W. R. 564; [1933] 1 D. L. R. 398; 59 C. C. C. 75.—**CAN.**

8140. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143a. —— —— By sub-lessee—Whether "lessee" within statute.]—Deft. was & had been for about seven years the lessee of premises consisting of four floors & a basement. He used the ground floor & basement as a shop in which he carried on the business of a tailor. He sub-let unfurnished the first & second floors respectively as flats to two women. These flats were approached not through the shop but by a separate entrance, & apart from his position as landlord deft. had no right to enter them & did not occupy them. It was stated by the police that the women were known to them as prostitutes, each of whom took men to her own flat. Deft. was charged for that he being the lessee of the premises unlawfully & knowingly permitted part of them, namely, the first & second floors, to be used for the purposes of habitual prostitution contrary to Criminal Law Amendment Act, 1885 (c. 69), s. 13 (2): —*Held :* deft. was not the "lessee" of the flats within the sub-sect. & the charge should be dismissed.—SIVIOUR *v.* NAPOLITANO, [1931] 1 K. B. 636; 100 L. J. K. B. 151; 144 L. T. 408; 95 J. P. 72; 47 T. L. R. 202; 75 Sol. Jo. 80; 29 L. G. R. 195; 29 Cox, C. C. 236, D. C.

8143b. —— What must be proved—Frequenting by prostitutes & receipt of money unnecessary.]—On an information under Criminal Law Amendment Act. 1885 (c. 69), s. 13 (2), against the occupier of premises, for unlawfully & knowingly permitting them to be used as a brothel, it is not necessary for the Crown to prove that the women resorting to the premises are prostitutes, known, as such, to the police, or that they received payment for acts of fornication, or of indecency, committed by them with men; it is sufficient to prove that with the knowledge of the occupier persons of opposite sexes were permitted there to have illicit sexual intercourse.—WINTER *v.* WOOLFE, [1931] 1 K. B. 549; 100 L. J. K. B. 92; 144 L. T. 311; 95 J. P. 20; 47 T. L. R. 145; 29 L. G. R. 89; 29 Cox, C. C. 214, C. C. A.

8154. *Add. Citations :—sub nom.* GUAGLIENI *v.* MATTHEWS, 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. N. S. 636; 13 W. R. 679.
Add. Annotation :—As to (1) **Distd.** R. *v.* Tucker (1877), 2 Q. B. D. 417.

8174. *Add. Annotation :*—**Refd.** A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226.

8175. *Add. Annotation :*—**Refd.** A.-G. *v.* Southport Corpn. (1933), 49 T. L. R. 584.

8176. *Add. Annotations :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; Kitchener *v.* Evening Standard Co., [1936] 1 All E. R. 48.

8177a. —— Company.] — The expressions "keeper" of a house & "person managing or conducting an entertainment" in Sunday Observance Act, 1781 (c. 49), s. 1, must be taken to include a limited co., but the directors are not liable merely because they are directors. To make them liable it must be shown that they acted as persons having the management of the house on the particular Sunday on which the performance complained of took place.—ORPEN *v.* HAYMARKET CAPITOL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

Annotation :—**Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

8177b. —— Promoter.]—KELLY *v.* ALLEN (1936), 80 Sol. Jo. 148.

8177c. —— Manager.]—(1) B. was the general manager of the Ring, Blackfrairs, of which the proprietors were a limited co. A boxing performance to which there was no free admission took place at the Ring on Sunday, May 5, 1935. B. knew of all the arrangements made in connection with the performance & his name appeared as general manager on all advertisements of that

PART XXVIII. SECT. 6, SUB-SECT. 1. —B.

r (p. 755) i. ——.]—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends of the tenants, with their knowledge & consent :—*Held :* if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused. —GIRGAWAY *v.* STRATHERN, [1925] S. C. (J.) 31.—**SCOT.**

s (p. 756) i. —— *Arrest under search warrant.*]—R. *v.* FRIEDMAN (Sask.) (1927), 49 Can. Crim. Cas. 225.—**CAN.**

h (p. 757) i. —— *Omission of "knowingly."*]—A conviction which does not state that accused "knowingly" permitted his premises to be used for the illegal purpose described, is materially defective.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—**CAN.**

h (p. 757) ii. ——.]—On a charge of keeping a bawdy house the precise locality of the house within the jurisdiction need not be given unless ordered.—R. *v.* JAMES (1915), 25 Can. C. C. 23.—**CAN.**

h (p. 757) iii. ——.]—R. *v.* BADIE, [1935] 3 D. L. R. 75; 63 Can. C. C. 192; 8 M. P. R. 378.—**CAN.**

sf. *House must be "common" & "public."*]—R. *v.* LAPORTE (1931), 56 Can. C. C. 158.—**CAN.**

sh. *Punishment.*]—*Held :* the measure of punishment on summary conviction for keeping a bawdy house is governed by sects. 228 (2), 779 of the Criminal Code, & under sect. 779 there are three alternative punishments: imprisonment for six months, a fine not exceeding $200, or both fine & imprisonment.—*Ex p.* THOMAS, [1931] 3 M. P. R. 350.—**CAN.**

sm. *Form of conviction.*]—A conviction for keeping a bawdy house should show whether a "house," "room," etc., was so used.—R. *v.* SHEPHERD (1902), 6 Can. C. C. 463.—**CAN.**

PART XXVIII. SECT. 7, SUB-SECT. 3.

8176 i. *Concert—Free admission—Collection taken.*]—Applt. corpn. existed for the purpose of disseminating the doctrines of Rationalism. Without a consent of any kind from the Municipal Corpn., it held a concert on a Sunday evening in a picture theatre, to which no charge was made for admission. There was a notice reading, "Unless you contribute sixpence we run at a loss," & a silver-coin collection was made. The concert consisted, in part, of a lecture which might have had some educational value, &, in part, of diversions of a light character. Applt. was convicted of an offence under Municipal Corpns. Act, 1928, s. 309. On an appeal by way of rehearing :—*Held :* an entertainment had been held & applt. had been rightly convicted.—NEW ZEALAND ASSOCN. FOR ADVANCEMENT OF RATIONALISM, INC. *v.* HOGAN, [1931] N. Z. L. R. 907.—**N.Z.**

sn. *Exhibition of films—Integral part of function.*]—Where the exhibition of motion-picture films constitutes an integral, although possibly a merely subsidiary, part of a function to which the public are invited & have access, there is an "entertainment" within Municipal Corpns. Act, 1920, s. 309, which provides as follows: "No concert or entertainment of any kind which is open to the public, whether by the purchase of tickets or otherwise, shall be held or given on any Sunday, Good Friday, or Christmas Day without the written consent of the Council, & then only subject to such conditions in every respect as the Council may impose."—MARTIN *v.* HOGAN, [1932] N. Z. L. R. 427.—**N.Z.**

performance. A letter dealing with a charitable collection, which was made during that performance, contained in its heading: "General Manager; B.," & was signed with his name. B. was not at the performance complained of:—*Held:* B. had not ceased by reason of his absence to be manager & in control of the performance, & was the "keeper" within Sunday Observance Act, 1780 (c. 49), ss. 1, 2.

(2) H. was alleged to have announced the fights, introduced the boxers, announced the results & to have conducted the collection. H. was not identified as the person who had performed these duties, but he did not give evidence to deny the charge:—*Held:* H. was master of the ceremonies within sect. 1 of above Act.

(3) A handbill bearing the imprint of S.P., Ltd., dated May 5, 1935, & giving details of the performance & of the price of seats was handed to a person awaiting admission:—*Held:* the imprint was not in itself sufficient evidence that S.P., Ltd. had printed the handbill.

(4) F.P., Ltd. in their paper "Boxing" announced one of the contests which was to take place at the performance in question. No price of the seats was mentioned & no payment was received for the announcement:—*Held:* the announcement was an advertisement within sect. 3 of the above Act.

(5) Pltf. in one action sued the four parties above mentioned for penalties under Sunday Observance Act, 1780 (c. 49). It was contended that the four defts. were being sued for four different debts, & that such a joinder was not permitted under R. S. C., Ord. XVI., rr. 3, 4, 6:—*Held:* exercising the discretion of the ct., no inconvenience was shown & the joinder should be allowed.—GREEN *v.* BERLINER, [1936] 2 K. B. 477; [1936] 1 All E. R. 199; 105 L. J. K. B. 662; 155 L. T. 486; 52 T. L. R. 221; 80 Sol. Jo. 247.

Annotation:—**Consd.** Gordon, Mackey & Co. *v.* Watson, [1936] 2 All E. R. 33.

8177d. Who is master of ceremonies.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8178a. Advertisement—All-in wrestling.]—In an action by a common informer claiming penalties under Sunday Observance Act, 1780 (c. 49), s. 1, against defts. as "persons advertising, or causing to be advertised, any public entertainment on the Lord's day, to which persons are to be admitted by the payment of money":—*Held:* what is to be looked at, in order to ascertain whether the advertisement offends against the sect., is the intention of the advertiser at the time of publication, not what is in fact done afterwards. But the intention of the advertiser, being a question of fact, may be proved, if the wording of the advertisement is not such as to be conclusive, by any relevant evidence, including what was in fact done afterwards.—KITCHENER *v.* EVENING STANDARD CO., LTD., [1936] 1 K. B. 576; [1936] 1 All E. R. 48; 105 L. J. K. B. 313; 154 L. T. 253; 52 T. L. R. 213; 80 Sol. Jo. 166.

8178b. —— Boxing match.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

—— **Whether of place or entertainment.**]—A newspaper issued on Aug. 8, 1936, included an advertisement as follows: "Kursaal Gardens. Amusement Park & Attractions open daily (including Sundays). Dancing." An informer claimed penalties under Sunday Observance Act, 1780 (c. 49), against defts. for advertising entertainments on Sundays, they being the printers & publishers of the newspaper:—*Held:* (1) defts. were not advertisers within sect. 3 of the Act. The claim should have been brought against defts. as printers or publishers under the same sect.; (2) an amendment of the claim ought not to be allowed as 6 months had elapsed since the alleged offence, & to allow an amendment would be to allow an action to be brought after the expiration of the period of limitation applicable to the proceedings under sect. 5 of the Act; (3) the advertisement in its terms was an advertisement of a place & not of an entertainment, & no offence had been committed against sect. 3 of the Act.—GREEN *v.* KURSAAL (SOUTHEND-ON-SEA) ESTATES, LTD., [1937] 1 All E. R. 732; 81 Sol. Jo. 279.

8178d. —— Proceedings against printer & publisher.]—GREEN *v.* KURSAAL (SOUTHEND-ON-SEA) ESTATES, LTD., No. 8178c, *ante*.

8178e. Evidence of printing—What amounts to.]—Pltf., as a common informer, claimed from deft. a penalty of £50 on the allegation that deft. contrary to Sunday Observance Act, 1780 (c. 49), s. 3, had printed an advertisement of a display of all-in wrestling which was to take place on a Sunday & to which persons were to be admitted against payment of money for tickets:—*Held:* the evidence did not establish that deft. was the printer of the advertisement & the action failed. The ct. ought not to assume in a quasi-criminal matter that, because the name of a person appears on a document as the printer, he is in fact the printer.—TARLING *v.* ROME (1936), 52 T. L. R. 220; 80 Sol. Jo. 166.

Annotation:—**Consd.** Green *v.* Berliner, [1936] 1 All E. R. 199; Gordon, Mackey & Co. *v.* Watson, [1936] 2 All E. R. 33.

8178f. —— ——.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8178g. Joinder of parties.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8178h. Amendment of claim—Limitation of action.]—GREEN *v.* KURSAAL (SOUTHEND-ON-SEA) ESTATES, LTD., No. 8178c, *ante*.

Part XXIX.—Offences affecting Public Health, Safety and Convenience.

SECT. 2.—OFFENCES BY INNKEEPERS.
(Vol. XV., p. 761).
After this sect. add the following new sect

SECT. 3.—DANGEROUS DRUGS.
See **FOOD & DRUGS**, Vol. XXV., pp. 115, 116, No. 388, *&c, generally*, **MEDICINE & PHARMACY.**

Part XXXI.—Offences relating to Trade.

8195. *Add. Annotations :*—**Apld.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Brimelow *v.* Casson, [1924] 1 Ch. 302; Thompson *v.* British Medical Assocn., [1924] A. C. 764; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383; L. *v.* L., [1931] P. 63; Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793; Fender *v.* Mildmay, [1937] 3 All E. R. 402; Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

8198. *Add. Annotations :*—**Distd.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Brimelow *v.* Casson, [1924] 1 Ch. 302; G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376; Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

8208. *Add. Annotations :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

8219. *Add. Annotations :*—*As to* (1) **Apld.** Pointon *v.* Cox (1926), 136 L. T. 506. *As to* (2) **Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

8236a. Conviction—Acts of intimidation must be set out.]—A conviction under Conspiracy & Protection of Property Act, 1875 (c. 86), for intimidation is bad, & will be quashed on appeal, unless it sets out the particular act or acts of intimidation proved in evidence.—METCALFE *v.* WISEMAN (1888), 52 J. P. 439.

Part XXXIII.—Offences against the Person.

8240. *Add. Annotation :*—**Overd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

8247. *Add. Annotation :*—**Consd.** R. *v* Bateman (1925), 94 L. J. K. B. 791.

8266a. "Newly-born" child.] — (1) Applt. was charged with the murder of her child, who had been born on Aug. 19, 1927, & had been strangled by her on Sept. 21, 1927. The trial judge held that there was no evidence to go to the jury that the child was "newly-born" within Infanticide Act, 1922 (c. 18), s. 1 (2):—*Held :* that ruling was correct.

(2) Observations on the form of statements made by accused persons while under arrest.—R. *v.* O'DONOGHUE (1927), 97 L. J. K. B. 303; 138 L. T. 240; 91 J. P. 199; 44 T. L. R. 51; 71 Sol. Jo. 897; 28 Cox, C. C. 461; 20 Cr. App. Rep. 132, C. C. A.

8284. *Add. Annotations :*—**Consd.** Williams *v.* Guest, Keen & Nettlefolds, [1926] 1 K. B. 497. **Refd.** Carr *v.* Port of Glasgow (1923), 16 B. W. C. C. 331; Hutchinson *v.* Kiveton Park Colliery Co., [1926] 1 K. B. 279.

PART XXXI. SECT. 3, SUB-SECT. 3.—B.

8221 a. *Nature of offence.*]—On an indictment under Conspiracy & Protection of Property Act, 1875 (c. 86), s. 7, for persistently following employer & watching his place of business & his private residence with a view to coerce him to take back a dismissed employee into his employment, the evidence being that defts. with other persons had continually watched & walked up & down before prosecutor's business premises, & had followed him through the streets to his private residence:—*Held :* (1) under the circumstances if the acts of "watching" & "persistently following" were done with the intention of coercing the employer to take back the dismissed employee, defts. ought to be found guilty; (2) Trade Disputes Act, 1906 (c. 47), s. 2 (1), did not apply as regards the "watching" of the private residence.—R. *v.* WALL (1907), 21 Cox, C. C. 401.—**IR.**

PART XXXI. SECT. 3, SUB-SECT. 3.—D.

8224 iv. —— ——.]—The accused appealed on a case stated under Part XV. of the Criminal Code from a conviction under sect. 501 (*f*) of the Code for watching & besetting a theatre in New Westminster with a view to abstain picture a certain labour council. Owing to a dispute employees belonging to the union affiliated with said council notified the manager of the theatre that they would strike unless their demands were complied with. The outcome of this demand was that other projectionists, properly licensed but not members of said union, were employed. In protest accused donned yellow slickers bearing on the back the legend: "The Edison Theatre does not employ Union Picture Projectionists affiliated with the New Westminster & Vancouver Trades & Labour Council," & so equipped walked up & down the adjacent street. The statements so made were true. The accused did not accost any one or interfere in any way with patrons going into or leaving the theatre. Some loss of business, however, followed, by reason of these activities. Upon the foregoing facts accused were convicted. The appeal was dismissed.—R. *v.* RICHARDS & WOOLRIDGE, [1934] 2 W. W. R. 390; 3 D. L. R. 332; 61 C. C. C. 321; 48 B. C. R. 381.—**CAN.**

8a. *Besetting "wrongfully & without authority".—What amounts to.*]—were convicted under sect. 501 of the Criminal Code of besetting a theatre, wrongfully & without lawful authority, with a view to compel the manager of the theatre to enter into a contract to employ operators belonging to a trades union. The besetting was admitted & also the fact that the acts proved were done with the view stated. The acts proved were parading in front of the theatre wearing coats on which were printed, "This theatre is trying to destroy union working conditions" & other similar legends. The conduct of defts. was peaceable; there was no uproar or disturbance, no one accosted, no crowd gathered; & there was no evidence of any threats, obstruction, molestation, or incommoding of patrons:—*Held :* proof merely that defts. acted with the view stated in sect. 501 was not proof that they acted "wrongfully & without lawful authority."—R. *v.* BALDASSARI, [1931] O. R. 169; 55 Can. C. C. 318.—**CAN.**

8d. *Watching & besetting—Object—Betterment of conditions—Whether defence.*]—In an action based on the watching & besetting of pltf.'s business the fact that the ultimate or general object which defts. had in mind was the bringing about of better working conditions for labour generally does not constitute a defence if unlawful means were taken to achieve defts.' immediate object of compelling pltf. to comply with their particular demands.—ALLIED AMUSEMENTS, LTD. *v.* REANEY, KERSHAW THEATRES, LTD. *v.* REANEY, [1936] 3 W. W. R. 129; 4 D. L. R. 406; 67 Can. C. C. 94; 6 F. L. J. (Can.) 100; *affd.* [1937] 3 W. W. R. 193.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—A.

h i. —— —— ——.]—H.M. ADVOCATE *v.* SAVAGE, [1923] S. C. (J.) 49.—**SCOT.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—D.

8285 iii. —— ——.]—Criminal Code, s. 258, which provides for the case of the causing of an injury of a dangerous nature, the treatment of which brings about death, does not apply to a case wherein there is no evidence from which it might be inferred that the injury was in any way increased or its con-

8306. *Add. Annotation :*—**Consd.** Woolmington *v.* Public Prosectutions Director, [1935] A. C. 462.

8317. *Add. Annotation :*—**Apld.** R. *v.* Hall (1928), 140 L. T. 142.

8338. *Add. Annotations :*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8338a. —— ——.]—(1) If in a trial for murder the defence of manslaughter is raised the judge ought not to ignore that defence in his charge to the jury.

(2) The rule on provocation in *R.* v. *Hayward*, No. 8317, *ante*, accepted.—R. *v.* HALL (1928), 140 L. T. 142 ; 21 Cr. App. Rep. 48 ; 28 Cox, C. C. 567, C. C. A.

8384a. ——.]—R. *v.* MILLWARD, No. 3286a, *ante*.

8398a. —— ——.]—All persons who by their presence encourage a fight from which death ensues to one of the combatants are guilty of manslaughter, although they neither say nor do anything. But if the death be caused not by blows given in the fight itself, but by other parties breaking the ring, & striking the deceased with bludgeons, the persons who merely encouraged the fight by their presence are not answerable.—R. *v.* MURPHY (1833), 6 C. & P. 103 ; 2 Nev. & M. M. C. 149 ; 172 E. R. 1164.

Annotation :—**Consd.** R. *v.* Coney (1882), 8 Q. B. D. 534.]

8459a. —— —— ——.]—ANON. (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.

Annotations :—**Consd.** Howard *v.* Gosset (1845), 10 Q. B. 359. **Refd.** Marshalsea Case (1613), 10 Co. Rep 68b.

8460. *Add. Annotation :*—**Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

8468. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

8498. *Add. Annotations :*—**Consd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526 ; R. *v.* Stone, [1937] 3 All E. R. 920. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8498a. —— ——.]—Applt. was charged with the murder of a girl. At the trial the jury asked the judge : " If, as a result of an intention to commit rape, a girl is killed, although there was no intention to kill her, is the man guilty of murder ? " The judge answered, " Yes " : —*Held :* the judge had answered the jury correctly.—R. *v.* STONE, [1937] 3 All E. R. 920 ; 53 T. L. R. 1046 ; 81 Sol. Jo. 735, C. C. A.

8502. *Add. Annotation :*—**Consd.** R. *v.* Stone, [1937] 3 All E. R. 920.

8503. *Add. Annotation :*—**Refd.** R. *v.* Stone, [1937] 3 All E. R. 920.

8505. *Add. Annotation :*—**Refd.** R. *v.* Stone, [1937] 3 All E. R. 920.

sequences accelerated by the treatment which was given the deceased with the obvious object of overcoming the effects thereof. Where a person alleged to have been murdered was operated on for the injuries alleged to have been inflicted by the accused, but there is no apparent reason for inferring that said treatment was the immediate cause of death, there is no authority for holding that the *onus* is, nevertheless, on the Crown of calling the surgeon to describe the operation in detail.—R. *v.* BURGESS & MCKENZIE, [1928] 2 D. L. R. 694 ; [1928] 1 W. W. R. 633 ; 49 Can. Crim. Cas. 243 ; 39 B. C. R. 492.—**CAN.**

sg. *Death by exposure.*]—Accused was charged on an indictment which set forth that on a public highway & in an adjoining field " you did assault " a woman named, " & did compress her throat with your hands, beat her with your fists, knock her down & kick her repeatedly on the face, head, arms, body & legs with your booted feet, & did expose her in said field while in an injured & unconscious condition to the inclemency of the weather, & you did murder her." Objections were taken to the relevancy of the indictment on the grounds that the branch of the charge libelling exposure disclosed no crime known to the law & was irrelevant for lack of specification.

Lord Mackay repelled the objections, but expressed an opinion that, in cases where exposure was libelled as a cause of death, specific statements should be made in the indictment of all facts & conditions connected with the exposure.—**H.M. ADVOCATE** *v.* **M'PHEE, [1935] S. C. (J.) 46.—SCOT.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —F. (a).

8312 i. *Provocation answered by use of weapon.*]—Appct., who had grounds of suspicion that his wife had misconducted herself with another man, stabbed her in the legs & lower part of the body with a long knife, causing her to bleed to death in a few minutes : —*Held :* an application for leave to appeal from a conviction for murder must be dismissed.—R. *v.* BUTELEZI, [1925] App. D. 160.—**S. AF.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —F. (d) i.

b i. ——.]—The provocation necessary to enable a jury to find a verdict of manslaughter instead of murder must be such provocation as would make an ordinary reasonable man lose his self-control. Words may be sufficient.—R. *v.* SAMPSON (No. 2), [1935] 2 D. L. R. 197 ; 8 M. P. R. 328 ; *affd.*, [1935] 3 D. L. R. 128 ; 63 C. C. C. 24 ; *affd.*, [1935] S. C. R. 634 ; 63 C. C. C. 384.—**CAN.**

sp. *Refusal to cohabit.*]—On an appeal from a conviction for murder held that the refusal of the victim, the wife of the accused, to cohabit with him was not provocation within sect. 261 of the Criminal Code.—R. *v.* MCGRATH, [1932] 1 W. W. R. 385 ; 40 Man. L. R. 139.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —F. (d,) ii.

d i. ——.]—The fact that while a child is flouting its father's authority its mother " eggs it on " may be found to constitute provocation within Criminal Code, s. 261, under which culpable homicide, which would otherwise be murder, may be reduced to manslaughter.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747 ; 44 Can. Crim. Cas. 209 ; 35 B. C. R. 81.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —H. (a).

m i. —— —— ——.]—R. *v.* BEVIS, [1925] 1 D. L. R. 747 ; 43 Can. Crim. Cas. 229 ; 57 N. S. R. 513.—**CAN.**

m ii. —— ——.]—R. *v.* HARLTON (Ont.), [1929] 3 D. L. R. 688 ; 51 Can. Crim. Cas. 329.—**CAN.**

m iii. —— ——.]—R. *v.* GEORGE (No. 3), [1936] 3 W. W. R. 177 ; 51 B. C. R. 81 ; 66 Can. C. C. 365 ; *affd.*, [1936] 4 D. L. R. 749 ; 67 Can. C. C. 33.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —H. (b).

o i. —— *Omission to specify cause of arrest.*]—The appeal was, *inter alia*, on the ground, based on sect. 40 of Criminal Code, that in arresting E., Constable G. had not notified him of the cause of arrest :—*Held :* there must be a new trial.—R. *v.* GEORGE, [1935] 1 W. W. R. 145 ; 2 D. L. R. 516 ; 63 C. C. C. 225 ; 49 B. C. R. 345.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —I.

8494 viii. —— —— *Attempt to kidnap.*]—Killing during an attempt to kidnap is murder & an accomplice armed & on guard is guilty of murder as having a " common intention."—R. *v.* BANNISTER (DANIEL) (No. 2), [1936] 4 D. L. R. 417 ; 11 M. P. R. 417 ; 66 Can. C. C. 357.—**CAN.**

8503 iv. —— ——.]—Applt. was convicted on a charge of feloniously slaying one B. Death was due to septicæmia following a miscarriage. There was evidence that applt. had undertaken to perform an operation on B. to procure abortion ; that he had introduced her to, & arranged for her to " lie up " at the house of, a certain nurse ; that he told B. that the nurse " would start on " her " & he would finish her " ; that an illegal operation had taken place ; & that the nurse had been concerned in the operation ; but there was no further evidence to show that applt. had carried out his expressed intention to take part in the operation :—*Held :* as the evidence failed to connect the expressed intention with the actual performance of the operation, the conviction should be quashed. Also that, in the circumstances, the law officers would have been justified in bringing a charge of conspiracy against applt.—R. *v.* BENNETT (1936), 36 S. R. N. S. W. 329 ; 53 N. S. W. W. N. 57.—**AUS.**

8506 iii. —— ——.]—A man who strikes another in the throat with a knife must know that the blow is so imminently dangerous that it must in all probability cause death, & the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. — JUDAGI MALLAH *v.* KING-EMPEROR (1929), I. L. R. 8 Pat. 911.—**IND.**

8518. *Add. Annotation :*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

8541a. —— **Stopping fight.**]—Applt., a lad of 16, in separating two boys who were fighting, caused the death of one of them. The only witness was one S., who was present at the time & was charged as accessory after the fact. At the trial a letter was read from the solrs. acting for defts. asking for the production of all statements made by defts. & S. This was characterised as improper & production was refused. Also at the trial counsel for defts. agreed that the medical aspect of the case should be argued by one counsel only, & it was agreed that this should be done by counsel for an accessory. This counsel was not allowed to deal with this subject, & was told to confine himself to the question whether his client was an accessory : —*Held :* (1) in the circumstances the killing only amounted to manslaughter, there being no presumption of malice ; (2) the letter asking for production of the statements was quite a proper one & the statements should have been produced ; (3) counsel for the accessory was quite entitled to argue whether there had been a murder or not, & this would be so even if the prisoner had pleaded guilty. He was, therefore, fully entitled to discuss the medical aspect of the case ; (4) S. being an accomplice, his evidence required corroboration. The fact that he kept silence as to the death of the boy was not corroboration.—Mahadeo *v.* R., [1936] 2 All E. R. 813 ; 80 Sol. Jo. 551, P. C.

8575. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8588. *Add. Annotation :*—**Consd.** R. *v.* Walker (1934), 24 Cr. App. Rep. 117.

8640. *Add. Annotations :*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311 ; Haseldine *v.* Hosken, [1933] 1 K. B. 822 ; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052.

8640a. ——.]—R. *v.* Rose (1928), 20 Cr. App. Rep. 164, C. C. A.

8644. *Add. Annotation :*—**Refd.** R. *v.* Baldessare (1930), 22 Cr. App. Rep. 70.

8645. *Add. Annotation :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

8652a. Liability of persons other than driver—Common purpose.]—Both of two persons, in pursuit of a common purpose, may be guilty of criminal negligence by driving, although only one of them actually drives.—R. *v.* Baldessare (1930), 144 L. T. 185 ; 29 Cox, C. C. 193 ; 22 Cr. App. Rep. 70, C. C. A.

8665. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666a. *S. P.* R. *v.* Markuss (1864), 4 F. & F. 356. *Annotation :*—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8667. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8506 iv. —— ——.]—R. *v.* Constable, [1936] 2 W. W. R. 273 ; 3 D. L. R. 391 ; 6 F. L. J. (Can.) 115 ; 66 Can. C. C. 206.—**CAN.**

8a. *Wrongful act.*]—Where, although there is no intent to do injury to the person or property of another, death results from the doing of an act which is merely *malum prohibitum*, the wrongful act is not the kind of act that the criminal law requires as a foundation for a charge of manslaughter, unless the statute or prohibition violated is one designed & intended to prevent injury to the person, or the prohibited act is accompanied by negligence.—R. *v.* D'Angelo, [1927] 4 D. L. R. 593 ; 48 Can. Crim. Cas. 127 ; 60 O. L. R. 512.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (a).

8584 iii. —— —— ——.]—A Christian Science practitioner who gave a sick child "absent treatment," *i.e.* prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain from providing proper medical attendance for the child :—*Held :* wrongly convicted of manslaughter of the child.—R. *v.* Elder, [1925] 3 D. L. R. 447 ; [1925] 2 W. W. R. 545 ; 44 Can. Crim. Cas. 75 ; 35 Man. L. R. 161.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (c) i.

8612 i. *Must be calculated to endanger life.*]—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission ; the danger itself is not a consequence within the sect.—R. *v.* Hubt (1923), 56 O. L. R. 48.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (b).

8639 iv. ——.]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces :—*Held :* accused was not guilty of causing death by a rash & negligent act.—Smith *v.* R. (1925), I. L. R. 53 Calc. 333.—**IND.**

8639 v. —— *Gross negligence or wanton misconduct necessary.*]—R. *v.* Greisman, [1926] 4 D. L. R. 738 ; 49 Can. Crim. Cas. 172 ; 59 O. L. R. 156.—**CAN.**

8639 vi. —— ——.]—To constitute criminal negligence within sect. 284 of the Criminal Code, the unlawful act must result in gross negligence or wanton misconduct. Therefore an accused who drove a wagon on the highway a short time after dusk, without a light, contrary to Highway Traffic Act, R. S. O., 1927, was not *ipso facto* guilty under sect. 284.—R. *v.* Costello, [1932] 2 D. L. R. 410 ; O. R. 213 ; 58 C. C. C. 3.—**CAN.**

8639 vii. ——.]—A direction to the jury which sufficiently brought to their mind the difference between the quantum of negligence required to be found in a civil & a criminal trial :—*Held :* sufficient.—Moore *v.* R., [1926] S. A. S. R. 52.—**AUS.**

8639 viii. ——.]—The test of negligence to be applied in criminal trials is the same as that applied in civil cases, namely, the standard of skill & care which would be observed by a reasonable man.—R. *v.* Meiring, [1927] App. D. 41.—**S. AF.**

8639 ix. ——.]—Proof of ordinary negligence justifies a conviction for manslaughter under Criminal Code, s. 247.—R. *v.* Field (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

8639 x. ——.]—R. *v.* Coupland, [1930] 3 W. W. R. 410.—**CAN.**

8639 xi. ——.]—In a collision between a motor truck driven by the accused & a motor cycle the cyclist received injuries which resulted in his death. The accident occurred on a country highway on a dark night, when the cyclist, who was riding ahead of the truck, suddenly, & without, it seems, giving any warning, turned to the left in order to cross the road, at the same time as the truck was about to pass him. The truck carried strong headlights ; the motor cycle had a headlight & a rear light reflector. The accused's evidence was that he had blown his horn before the accident, but a man who was riding on the truck testified that he was not sure whether the horn was blown then or not. The accused was convicted of manslaughter. On appeal :—*Held :* the appeal should be allowed & the conviction quashed.—R. *v.* Dolynchuk, [1934] 1 W. W. R. 200 ; 2 D. L. R. 96 ; 61 C. C. C. 275.—**CAN.**

sg. *Injury to passenger alighting from street car.*]—R. *v.* Dahl, [1936] 3 W. W. R. 385 ; 4 D. L. R. 629 ; 67 Can. C. C. 37 ; 6 F. L. J. (Can.) 195.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —O (f).

t i. —— —— ——.]—Where a medical practitioner is charged under sect. 246 of the Code for that he undertook to administer surgical or medical treatment to deceased, & being under a legal duty to use reasonable skill, omitted without lawful excuse to discharge that duty, such omission resulting in death, it is necessary to sustain a conviction to establish that some treatment, operative or medicinal, known (or which should have been known) to a professional man using reasonable skill, was omitted without lawful excuse & that the omission caused the death.—R. *v.* Watson, [1936] 2 W. W. R. 560 ; 4 D. L. R. 358 ; 66 Can. C. C. 233 ; 50 B. C. R. 531.—**CAN.**

8667a. —— ——.]—R. *v.* MARKUSS (1864), 4 F. & F. 356.

Annotation :—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8668. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8671. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

8672a. —— ——.]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—R. *v.* BATEMAN (1925), 94 L. J. K. B. 791; 133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.

Annotations :—**Consd.** Andrews *v.* Director of Public Prosecutions, [1937] A. C. 576. **Refd.** Rose *v.* Ford, [1936] 1 K. B. 90.

8674. Delete second para. of headnote.

Add. Annotation :—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8674a. —— ——.]—A person acting as a medical man, whether licensed or unlicensed, is not criminally responsible for the death of a patient, occasioned by his treatment, unless his conduct is characterised either by gross ignorance of his art, or gross inattention to his patient's safety. On an indictment for manslaughter, where the death is occasioned by the application of a lotion to the skin, evidence may be given of the effect of the lotion when applied to other patients.—R. *v.* LONG (1831), 4 C. & P. 398.

8676. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8677. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8679. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8680. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8681. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8682. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8684. *Add. Annotations :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791; Andrews *v.* Director of Public Prosecutions, [1937] A. C. 576.

8688. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8701. *Add. Annotation :*—**Refd.** R. *v.* Davis, [1937] 3 All E. R. 537.

8771. *Add. Citation :*—1 Lew. C. C. 79.

8793a. —— ——.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, *i.e.* whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—R. *v.* BOOKER (1924), 88 J. P. 75; 18 Cr. App. Rep. 47, C. C. A.

8794. *Add. Citation :*—2 Cox, C. C. 239.

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (g).

8694 v. ——.]—R. *v.* CHOTEM (1924), 42 Can. Crim. Cas. 156.—**CAN.**

8694 vi. ——.]—The negligence of the victim is not a defence to a charge of manslaughter unless it was the sole cause of the accident.—R. *v.* FIELD (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) i.

8 i. —— ——.]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration. —RANGA *v.* R. (1924), I. L. R. 5 Lah. 305.—**IND.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) ii.

8731 ii. ——.]—Accused was convicted of manslaughter on a charge of murder for having caused the death of K. by counselling or procuring S. unlawfully to use instruments upon her with intent to procure her miscarriage, contrary to the combined effect of sects. 69 & 303 of Criminal Code. The dying declaration was a lengthy narrative by deceased which day by day she related to her mother, who wrote down the story; this narrative, which concluded with the words "I wish C. punished," appeared to have been read over to deceased shortly before her death & adopted by her at that time as a true statement; a number of questions at the same time were submitted to her by police officers, & her answers with the questions were the subject-matter of two separate declarations. The narrative, together with the two short statements containing the questions & answers, were all put before the jury. It was common ground that the case against the accused could not be established without evidence of the dying declaration: —*Held :* the dying declaration was inadmissible. Therefore the conviction was quashed & a judgment & verdict of acquittal was directed to be entered. —SCHWARTZENHAUER *v.* R., [1935] S. C. R. 367; 3 D. L. R. 711; 64 C. C. C. 1.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) iii.

8741 xix. ——.]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made a statement inculpating applt.:—*Held :* deceased when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—R. *v.* NGCOBO, [1925] App. D. 561.—**S. AF.**

8746 i. *Must believe death to be* statement made when deceased had no expectation of death, but confirmed when he had a belief in impending death :—*Held :* admissible. —DEBORTOLI *v.* R., [1926] 4 D. L. R. 722; [1926] S. C. R. 492; 46 Can. Crim. Cas. 115.—**CAN.**

8754 i. —— *Not necessarily immediate.*]—On the trial of a charge of murder based on an alleged abortion or attempts to bring about an abortion, evidence of deceased given on an examination taken more than six weeks before her death was admitted as a dying declaration & evidence given by her husband on cross-examination of an admission made to him by the deceased indicating that she had tampered with herself was withdrawn from the jury :—*Held :* there should be a new trial.—R. *v.* MCINTOSH, [1937] 2 W. W. R. 1.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 2.

8838 ii. —— ——.]—The necessity of dispersing a riotous crowd, which would become dangerous unless dispersed, & which threatens serious injury to persons & property, justifies a peace officer in using firearms to prevent violent & felonious outrage to persons & property. A ringleader who, under such conditions & while assaulting a peace officer, is shot dead, dies by justifiable homicide; & the peace officer who fired is free from any liability in damages.—HEBERT *v.* MARTIN, [1931] S. C. R. 145; 2 D. L. R. 484; 54 Can. C. C. 257.—**CAN.**

o i. —— —— ——.]—R. *v.* PURVIS (Ont.) (1929), 51 Can. Crim. Cas. 273.—**CAN.**

8863. *Add. Annotation :*—**Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

8927. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

9023a. Within Children Act, 1908 (c. 67), s. 12 (1).] —An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

Applt., who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that applt. committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth :—*Held :* this was not an assault within the sect.—R. *v.* HATTON, [1925] 2 K. B. 322 ; 94 L. J. K. B. 863 ; 133 L. T. 735 ; 89 J. P. 164 ; 41 T. L. R. 637 ; 28 Cox, C. C. 43 ; 19 Cr. App. Rep. 29, C. C. A.

9025a. ——.]—An act, unlawful *per se* as being criminal, cannot be rendered lawful because the person to whose detriment it is done consents to it.

Applt., being charged with caning a girl of seventeen for purposes of sexual gratification, pleaded in defence that the prosecutrix had consented, & the chairman of quarter sessions in summing up directed the jury that " consent or no consent " was the vital issue in the case :—*Held :* there was misdirection, in that the question should have first been put to the jury, whether the blows struck were likely or intended to do bodily harm. If this were answered in the negative, then only would it have been necessary for the jury to consider the further question, whether the prosecutrix had proved absence of consent.—R. *v.* DONOVAN, [1934] 2 K. B. 498 ; 103 L. J. K. B. 683 ; 152 L. T. 46 ; 98 J. P. 409 ; 50 T. L. R. 566 ; 78 Sol. Jo. 601 ; 32 L. G. R. 439 ; 25 Cr. App. Rep. 1 ; 30 Cox, C. C. 187, C. C. A.

9030. *Add. Annotation :*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

9030a. Direction to jury.]—R. *v.* DONOVAN, No. 9025a, *ante.*

9036. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

9042. *Add. Annotation :*—**Apld.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

9042a. —— ——.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable ; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law :—*Held :* the decision of the justices was right, no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JJ., *Ex p.* WRIGHT, [1929] 2 K. B. 416 ; 98 L. J. K. B. 555 ; 141 L. T. 563 ; 93 J. P. 179 ; 45 T. L. R. 477 ; 73 Sol. Jo. 384 ; 27 L. G. R. 518 ; 28 Cox, C. C. 658, D. C.

9043. *Add. Annotation :*—**Consd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

9046. *Add. Citation :*—*sub nom.* BLEKE *v.* GROVE (1664), 1 Keb. 661.

9057. *Add. Annotations :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

PART XXXIII. SECT. 6, SUB-SECT. 1. —B.

8923 i. *Attempt to discharge weapon—Condition making discharge impossible.*] —Where although a rifle was loaded & pointed at the body of the complainant the mechanism of the trigger was in such condition that it was impossible to discharge the rifle, & the accused made no attempt to use the trigger, he cannot be convicted under sect. 273 of Criminal Code, R. S. C., 1927, of attempting to discharge a loaded rifle at complainant.—R. *v.* BROOME, [1936] 1 W. W. R. 709 ; 44 Man. L. R. 194.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —C.

d i. —— *Injury resulting in death.*]—Deft. was convicted upon two charges of criminal negligence causing bodily or grievous bodily harm under Criminal Code, ss. 284 & 285 :—*Held :* deft. was properly convicted, notwithstanding that death resulted from the injuries inflicted by his negligence.—R. *v.* STARK, [1927] 3 D. L. R. 433 ; 47 Can. Crim. Cas. 356 ; 60 O. L. R. 375.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —D.

sd. *Meaning of " actual bodily harm."*]—The above words in sect. 295 of the Code mean little, if anything, more than " battery."—R. *v.* TRESEGNE (1926), 45 Can. Crim. Cas. 270 ; 58 O. L. R. 634.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 2.

m i. —— *Burden of proof.*]—Where on a charge of unlawfully wounding a person with intent to maim or disable him, the Crown proves that accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART (Alta.), [1927] 3 W. W. R. 753 ; 49 Can. Crim. Cas. 75.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 1.

sb. *Running down by motor car—No intent to assault.*]—Prisoner was indicted for assault occasioning bodily harm. The evidence showed that the injury in question, a fracture of the collar bone, was due to an accident caused by a motor car driven by prisoner in a public thoroughfare at 2.50 a.m. There being no evidence of an intention to assault, the indictment was amended, at the suggestion of the learned trial judge, so as to allege negligence in the control of a dangerous thing, in substitution for the charge of assault.—R. *v.* MCIVER, 22 Q. J. P. 173.—**AUS.**

PART XXXIII. SECT. 7, SUB-SECT. 2 —C. (a).

9041 i. *Schoolmaster & scholar.*]—Teacher entitled to inflict reasonable punishment.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2. —C. (b).

9066 iv. ——.]—Punishment causing temporary pain & discolouration of the flesh for a few days :—*Held :* not excessive.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

9071 ii. ——.]—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.— D.

9078 v. ——.]—On appeal from a conviction for an assault occasioning actual bodily harm :—*Held :* the force used by the accused, in defending himself, as he did, against an assailant armed with a hammer, was not disproportionate to the nature of the attack made on him, although it caused

9103a. ——— ———.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—R. *v.* HUSSEY (1924), 89 J. P. 28; 41 T. L. R. 205; 18 Cr. App. Rep. 160, C. C. A.

9111. *Add. Annotation:*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

9135a. Removal of interrupter from council meeting.]—MARSHALL *v.* TINNELLY (1937), 81 Sol. Jo. 902.

9154. *Add. Annotation:*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

9154a. ——— **Detention after receipt of remission marks.**]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to injure M. & that he had not made a false statement:—*Held:* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison; the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243; 99 L. J. K. B. 101; 142 L. T. 67; 45 T. L. R. 643; 28 Cox, C. C. 687.

9161. *Add. Annotation:*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

9207. After this case add:—

SUB-SECT. 4.—CHILD DESTRUCTION.

See Infant Life (Preservation) Act, 1929 (c. 34).

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the fracture of his assailant's skull, & he had brought himself within, & was justified by, Criminal Code, s. 23.—R. *v.* OGAL, [1928] 3 D. L. R. 676; [1928] 2 W. W. R. 465; 50 Can. Crim. Cas. 71; 23 Alta. L. R. 511.—**CAN.**

9078 vi. ———.]—A blow with an automobile crank during a drunken brawl cannot be justified on the ground of self defence.—R. *v.* RECALLA, [1935] 4 D. L. R. 353; O. R. 479; 64 Can. C. C. 276.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—E.

sj. *Defence of son by father.*]—The conviction of a father for assaulting a boy who had been kicking & punching his boy set aside.—R. *v.* WIGGS, [1931] 3 W. W. R. 52; 44 B. C. R. 364.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—G.

9119 i. *To effect arrest—Must not use unnecessary force.*]—A police officer who applies to an arrested person more force than is reasonably necessary to effect his object, even though it be a legitimate one, is guilty of an assault; his belief in the guilt of the arrested person is no extenuation for the use of the excessive force.—R. *v.* MCDONALD; R. *v.* HUNTER, [1932] 3 W. W. R. 418; [1933] 1 D. L. R. 46; 26 Alta. L. R. 460; 59 C. C. C. 56.—**CAN.**

PART XXXIII. SECT. 9.

sk. *Injury caused in attempting to stop breach of peace.*]—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control:—*Held:* justified in striking back.—R. *v.* MANSON (1925), 43 Can. Crim. Cas. 30; [1925] 1 W. W. R. 671.—**CAN.**

sm. *What is unlawful act—Not breach of municipal bye-law.*]—R. *v.* GOSLING (Alta.) (1927), 47 Can. Crim. Cas. 211.—**CAN.**

sn. *Criminal negligence — Under Criminal Code, s. 284—What amounts to.*]—R. *v.* BAKER, [1929] 2 D. L. R. 282; S. C. R. 354; 51 Can. Crim. Cas. 352; 63 O. L. R. 641; *affg.*, [1929] 1 D. L. R. 785; 51 Can. Crim. Cas. 71; 63 O. L. R. 275.—**CAN.**

sp. ——— ———.]—R. *v.* MCCOWAN, [1936] 1 W. W. R. 703; 2 D. L. R. 490; 65 Can. C. C. 203; 44 Man. L. R. 117.—**CAN.**

PART XXXIII. SECT. 11, SUB-SECT. 3.

9206 i. *Woman not pregnant.*]—*Held:* an indictment charging accused with performing an operation on a woman, in the belief that she was pregnant, for the purpose of causing her to abort, & with attempting to cause her to abort, was irrelevant, in respect that it did not set forth that the woman was at the time pregnant.—H.M. ADVOCATE *v.* ANDERSON, [1928] S. C. (J.) 1.—**SCOT.**

sr. *When offence complete.*]—The offence under Crimes Act, 1908, s. 221, of a person who, with intent to procure the miscarriage of any woman or girl, unlawfully uses any instrument is complete as soon as he makes use of the instrument, *i.e.*, as soon as he inserts it; & it is not a continuing offence so long as the instrument remains inserted. Consequently, a person cannot be convicted under sect. 90 of the Act of "aiding" the unlawful use of an instrument who, after the instrument has been used by another, does some act to assist abortion.—R. *v.* BEUTH, [1937] N. Z. L. R. 282; 13 N. Z. L. J. 92.—**N.Z.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—A.

9261 iv. ———.]—An indictment charged accused with ravishing a woman "while she was in a state of insensibility or unconsciousness from the effects of intoxicating liquor":—*Held:* as the crime of rape consisted in having connection with a woman against her will, the indictment did not set forth a relevant charge of the crime of rape.—H.M. ADVOCATE *v.* GRAINGER & RAE, [1932] S. C. (J.) 40.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—C.

sr. *Physical force essential.*]—Working upon a girl's passions to break down her resistance & induce consent does not constitute either rape or indecent assault, which require physical force.—R. *v.* LANDRY, [1935] 3 D. L. R. 639; 9 M. P. R. 254; 64 Can. C. C. 104; 5 F. L. J. (Can.) 36.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—D.

9281 i. *Consent obtained by fraud—What amounts to fraud.*]—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates consent. The only sorts of fraud which destroy the effect of a woman's consent are frauds as to the nature of the act itself or as to the identity of the person who does the act.—PEOPLE OF CALIFORNIA STATE *v.* SKINNER, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—**CAN.**

9293 i. *Conditions negativing consent—Drunkenness.*]—Where a man obtains sexual intercourse with a woman while she is insensible owing to intoxication, the crime committed is rape, if the woman has been plied with drink of a deadly kind, the nature of which has been concealed from her, for the purpose of overcoming her resistance or making her incapable of resistance; but the crime is indecent assault only, if the woman through indulgence has voluntarily taken the drink, & it has not been doped or given to her for the purpose of making her insensible, even though she has been

9307a. ——.]—On the trial of a prisoner for having had unlawful carnal knowledge of a girl under sixteen years of age, the judge directed the jury that although what the girl said to her mother several months after the offence was committed was not evidence, yet the jury could infer what the girl said, namely, that the prisoner was responsible for her condition, from what the mother did, because the prisoner was at once accused, & that that amounted to corroboration of the girl's story. Further, that the fact that the prisoner when he was charged by a police officer & cautioned made no denial of the charge was also corroboration of her story :—*Held :* both directions were wrong. Any inference as to what the girl told her mother could not amount to corroboration of the girl's story, as it proceeded from the girl herself, & the girl could not corroborate herself. The fact that the prisoner when charged & cautioned made no denial of the charge could not be corroboration.—R. *v.* WHITEHEAD, [1929] 1 K. B. 99 ; 98 L. J. K. B. 67 ; 139 L. T. 640 ; 92 J. P. 197 ; 27 L. G. R. 1 ; 28 Cox, C. C. 547 ; 21 Cr. App. Rep. 23, C. C. A.

Annotations :—**Folld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Extd. & Apld.** R. *v.* Naylor (1932), 23 Cr. App. Rep. 177. **Consd.** R. *v.* Parker, [1933] 1 K. B. 850.

9311. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

9320a. ——.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—R. *v.* BERRY (1924), 18 Cr. App. Rep. 65, C. C. A.

9320b. What amounts to corroboration.]—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence : nor is his mere silence when he

invited & coaxed to drink.—H.M. ADVOCATE *v.* LOGAN, [1936] S. C. (J.) 100.—**SCOT.**

c. For "**c.** *By misrepresentation or fraud—Personation of husband*" read "**9295 i.** *Conditions negativing consent—Personation of husband.*"

d. Read now "**9295 ii.**"

9295 iii. —— —— *Former husband.*]—*Held :* an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—H.M. ADVOCATE *v.* MONTGOMERY, [1926] S. C. (J.) 2.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1. —E.

9307 i. *What amounts to corroboration.*] — Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—STEELE *v.* R., [1924] 4 D. L. R. 175 ; [1924] 1 W. W. R. 1146.—**CAN.**

9307 ii. ——.]—Evidence of facts which are open to two interpretations is not corroborative of either. To constitute corroboration in a criminal case there must be independent evidence of facts which are not consistent with the innocence of the accused.—R. *v.* GALSKY, [1930] 1 W. W. R. 690 ; 53 Can. C. C. 219 ; 38 Man. L. R. 581, C. A.—**CAN.**

9307 iii. ——.]—R. *v.* GALSKY (No. 2), [1930] 2 W. W. R. 577 ; 54 Can. C. C. 199 ; 39 Man. L. R. 74, C. A.—**CAN.**

9307 iv. ——.]—In order for testimony to constitute corroboration of evidence against an accused it must be independent testimony which affects the accused by connecting or tending to connect him with the crime charged. In the present case, a prosecution for rape, in which the only question in issue was whether the intercourse which took place was without the complainant's consent :—*Held :* there was nothing in the evidence which the trial judge could properly tell the jury they might accept as corroborative of complainant's testimony on that issue. —R. *v.* STERN, [1932] 3 W. W. R. 688.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 2.

9308 v. ——.]—R. *v.* GOSSELIN (Ont.) (1927), 47 Can. Crim. Cas. 318.—**CAN.**

9316 v. ——.]—On a charge of attempting to have carnal knowledge of a girl under fourteen :—*Held :* corroboration was not necessary.—R. *v.* LIZOWYJ (1927), 48 Can. Crim. Cas. 255 ; 61 O. L. R. 93.—**CAN.**

9316 vi. ——.]—Nature of corroboration required under Criminal Code, s. 1002, on a charge of carnally knowing a girl under fourteen.—HUBIN *v.* R., [1927] 4 D. L. R. 760 ; [1927] S. C. R. 442 ; 48 Can. Crim. Cas. 172.—**CAN.**

9316 vii. ——.]—R. *v.* BROWN (N. S.), [1928] 3 D. L. R. 214 ; 49 Can. Crim. Cas. 334.—**CAN.**

9316 viii. ——.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497 ; 24 Alta. L. R. 296 ; [1929] 3 W. W. R. 258 ; 52 Can. Crim. Cas. 149.—**CAN.**

9316 ix. ——.]—Where on a trial on a charge of carnal knowledge the jury can properly find on the evidence that the prisoner had communicated a venereal disease to complainant by sexual contact, & does so find, it is open to the jury to treat complainant's condition as corroboration of her story. Mere proof that the prisoner & complainant were affected with the disease does not, however, amount to corroboration of her story, unless the jury is satisfied on sufficient evidence that she got it from him by sexual contact. —R. *v.* DREW (No. 2), [1933] 2 W. W. R. 243 ; 4 D. L. R. 592 ; 60 C. C. C. 229.—**CAN.**

9316 x. ——.]—On the trial of a charge of having carnal knowledge of a girl under fourteen, evidence merely of an opportunity to commit the offence is not sufficient corroboration to satisfy the Code.—R. *v.* NEWES, [1934] 1 W. W. R. 295 ; 3 D. L. R. 237 ; 61 C. C. C. 316.—**CAN.**

9316 xi. ——.]—On appeal from a conviction & sentence on a summary trial of a charge of having had carnal knowledge of a girl under 14 years of age :—*Held :* the testimony of two other girls who had accompanied the accused & complainant to the place of the alleged offence was sufficient, if believed to corroborate the testimony of complainant as required by sect. 1002 of the Code ; & the appeal should be dismissed.—R. *v.* TAYLOR, [1937] S. C. R. 351 ; 1 D. L. R. 801 ; 67 Can. C. C. 228.—**CAN.**

sp. *Charge of seduction under Criminal Code, s. 211—Burden of proof.*]—R. *v.* SCHEMMER (Sask.), [1927] 3 W. W. R. 417.—**CAN.**

sq. *Seduction under promise of marriage—Sufficiency of promise.*]—R. *v.* SEYMOUR, [1931] 3 W. W. R. 271 ; 57 Can. C. C. 95.—**CAN.**

sr. —— ——.]—To sustain a conviction for seduction under promise of marriage there must be a promise to marry in any event, not merely a promise to marry if the girl should become pregnant as a result of the proposed intercourse.—R. *v.* MCISAAC, [1933] 2 D. L. R. 802 ; 60 C. C. C. 71.—**CAN.**

st. *Charge of attempted carnal knowledge—Sufficiency of evidence.*]—R. *v.* YELDS, [1928] N. Z. L. R. 18.—**N.Z.**

sw. *Effect of previous intercourse with accused—"Previous chaste character."*]—*Semble :* a woman who has been guilty of unchaste conduct may subsequently become chaste in legal contemplation & be seduced a second time. "Previously chaste character" refers to the actual moral status of the woman.—R. *v.* LOUGHEED (1903), 8 Can. C. C. 184.—**CAN.**

sx. —— ——.]—A resumption of illicit intercourse will not support a charge of seducing a woman of previously chaste character unless there is evidence of intervening conduct amounting to reform & rehabilitation in chastity.—R. *v.* HAUBERG (1915), 24 Can. C. C. 297.—**CAN.**

sz. —— ——.]—On a prosecution for having carnal knowledge of a girl between fourteen & sixteen, she being of "previous chaste character," the fact that he has had intercourse with her before does not prevent her being of "previous chaste character," especially if she submitted through fear.—R. *v.* STINSON, [1934] 2 D. L. R. 544 ; 1 W. W. R. 593 ; 61 C. C. C. 227 ; 48 B. C. R. 92.—**CAN.**

sb. ——.]—The term "seduce" in sect. 366 of Indian Penal Code, 1860, is used in the general sense of "enticing or tempting," & not in the limited sense of committing the first act of illicit intercourse. Hence a person can be guilty of an offence under this sect. even where the girl kidnapped had illicit intercourse with him before the kidnapping took place.—EMPEROR *v.* LAXMAN BALA (1935), I. L. R. 59 Bom. 652.—**IND.**

is charged with the offence.—R. *v.* MARSH (1925), 19 Cr. App. Rep. 27, C. C. A.

9323a. —— —— —— **All sources of belief must be put to jury.**]—On an indictment for rape & carnal knowledge full & sufficient direction must be given to the jury on the need of corroboration of the story of the prosecutrix, & on the issue of deft.'s belief about her age every source from which the jury may infer her age must be referred to, even though each one separately may be open to criticism.—R. *v.* SIMMONS (1931), 23 Cr. App. Rep. 25, C. C. A.

9323b. —— —— **Question for jury.**]—*Held:* upon the trial of a person charged with the offence of having carnal knowledge of a girl under sixteen the question whether the prisoner had reasonable cause to believe that the girl was of or above the age of sixteen is a question of fact for the jury.—R. *v.* FORDE, [1923] 2 K. B. 400; 92 L. J. K. B. 501; 128 L. T. 798; 87 J. P. 76; 39 T. L. R. 322; 67 Sol. Jo. 539; 27 Cox, C. C. 406; 17 Cr. App. Rep. 99, C. C. A.

Annotation:—**Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

—— **Reasonable cause for belief in marriage.**]—*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9323c. Defence that prisoner "of twenty-three years of age or under"—Prisoner between twenty-three & twenty-four—Defence available.]—R. *v.* DUMONT (1930), 69 L. Jo. 234; 169 L. T. Jo. 239 (Recorder of London).

9323d. —— —— ——.]—R. *v.* WOOLLEY (1931), 171 L. T. Jo. 209.

9323e. —— —— ——.]—By Criminal Law Amendment Act, 1922 (c. 56), s. 2, a certain defence is open to "a man of twenty-three years of age." The accused was twenty-three years & six months of age at the time the offence charged was committed. He contended that he was "a man of twenty-three years of age":—*Held:* the language of the sect. being ambiguous, the accused was entitled to the benefit of the doubt, & was entitled to rely on the said defence.—R. *v.* CHAPMAN, [1931] 2 K. B. 606; 100 L. J. K. B. 562; 146 L. T. 120; 95 J. P. 205; 47 T. L. R. 620; 75 Sol. Jo. 660; 29 L. G. R. 487; 23 Cr. App. Rep. 63; 29 Cox, C. C. 407, C. C. A.

9329. *Add. Citation:*—27 T. L. R. 152.

9333. *Add. Annotation:*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

9336. *Add. Annotation:*—**Refd.** R. *v.* Mosley, [1924] 2 K. B. 187.

9337. *Add. Annotation:*—**Consd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

9340. *Add. Annotation:*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

9340a. —— **What amounts to.**]—A letter to a woman in fact procured, alluding to the writer as her future husband, is corroboration of evidence that he procured her by "false pretences," etc., within Criminal Law Amendment Act, 1885 (c. 69), s. 3.—R. *v.* BROWN (1929), 21 Cr. App. Rep. 185, C. C. A.

9347. In the cross-reference before this case, for "Vagrancy Act, 1878" read "Vagrancy Act, 1898."

9361a. —— —— **Prosecutrix over sixteen.**]—If on any of the material dates alleged in an indictment for incest the female has reached the age of sixteen, she may be liable as an accomplice &, therefore, if she is a witness she must be corroborated. It is a misdirection in such a trial to tell the jury that they must first decide whether they believe such a female witness; they should be instructed not to make up their minds until they find that she is corroborated.—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

PART XXXIII. SECT. 13, SUB-SECT. 5.—A.

sp. *Sufficiency of corroboration.*]—An admission of having taken a girl to a café & registered with her is sufficient corroboration of a charge of procuring under Criminal Code, s. 216 (*a*).—R. *v.* SCOTT (1932), 58 C. C. C. 381.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 5.—C.

t i. ——.]—The seduction & illicit connection with a girl under twenty-one & of previously chaste character is "under promise of marriage" & punishable under sect. 212 of Criminal Code, whether it follows immediately after the promise of marriage or afterwards during the engagement if it can be inferred that the subsistence of the promise induced the girl's consent to carnal intercourse.—R. *v.* RONANS (1908), 13 C. C. C. 68.—**CAN.**

sv. *Meaning of seduction.*]—"Seduction" in the sect. is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.—PRAFULLAKUMAR BASU *v.* EMPEROR (1929), I. L. R. 57 Calc. 1074.—**IND.**

sw. ——.]—A person may be guilty of kidnapping a girl for the purpose of seducing her to illicit intercourse even though he had also had such intercourse prior to the kidnapping.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

sa. ——.]—The term "seduction" can only properly be held applicable to the first act of illicit intercourse, unless there be proof of a return to chastity on the part of the girl meanwhile, or unless possibly there is an intention on accused's part that the girl should be seduced by some different man.—EMPEROR *v.* BALNATH (1932), I. L. R. 54, All. 756.—**IND.**

sb. —— *Distinguished from mere illicit connection.*]—Illicit connection & seduction do not mean the same thing. Legislative recognition of this distinction is strongly indicated by the history of sect. 211 of Criminal Code. The word "seduces" imports not only illicit connection but also the surrender by a woman of her chastity to a man as the result of his persuasion, solicitation, promises, bribes or other means without the employment of force.—R. *v.* GASSELLE, [1934] 3 W. W. R. 457; [1935] 1 D. L. R. 131; 62 C. C. C. 295.—**CAN.**

sd. *Girl under eighteen—Necessity for corroboration.*]—Prisoner was tried & convicted before a county ct. judge of having seduced a girl of previously chaste character & under the age of 18 years, contrary to sect. 211 of the Criminal Code:—*Held:* under sect. 1002, the evidence of the girl must be corroborated in some material particular by evidence implicating the accused, & that means that there must be corroboration as to commission of the crime & also as to the prisoner's identity or connection with or implication in that commission.—R. *v.* AUGER (1930), 54 Can. C. C. 209; 65 O. L. R. 448.—**CAN.**

sf. *Seduction of girl employee under twenty-one—Whether married woman included.*]—A married woman is not a "girl" within sect. 213 (*b*) of Criminal Code.—R. *v.* JONES, [1935] 2 W. W. R. 270; 3 D. L. R. 237; 63 C. C. C. 341; 49 B. C. R. 537.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 6.

9348 i. *Whether corroboration necessary.*]—Since the charge under sect. 216 (*l*) of Criminal Code, viz., that the accused "being a male person" lived wholly or in part on the earnings of prostitution, is one which cannot be laid against the woman involved, she is not an accomplice of the man so charged; &, therefore, her evidence need not be corroborated, but in such a case the judge is justified in warning the jury not to accept it without most careful scrutiny.—R. *v.* WILLIAMS, [1935] 2 W. W. R. 640; 2 D. L. R. 696; 63 C. C. C. 360.—**CAN.**

sk. *Acts of accused must be for own benefit.*]—There cannot be a conviction for living on the profits of prostitution where the acts of the accused are not for his own benefit.—R. *v.* RICHARD, [1935] 2 D. L. R. 640; 8 M. P. R. 544; 63 C. C. C. 306.—**CAN.**

9362a. Evidence of relationship—Admission of accused.]—A father was charged with incest with his daughter, & the only evidence of the relationship on which the Crown relied was a statement by the prisoner to the following effect: "G. is my daughter & I am sorry to say that I have had connection with her & I am responsible for the condition she is now in," to which he subsequently added: "I have never looked on G. as my daughter, more like a sister to me. We (*i.e.* G.'s mother & I) did not get married until five years after G. was born." The prisoner was convicted:—*Held:* there was evidence of relationship to go to the jury & the conviction must be affirmed.—R. *v.* JONES (1933), 149 L. T. 143; 77 Sol. Jo. 236; 24 Cr. App. Rep. 55; 29 Cox, C. C. 637, C. C. A.

9364a. What is an aggravated assault.]—MUNDAY *v.* MAIDEN (1875), 33 L. T. 377; 39 J. P. 742; 24 W. R. 57.

9367. *Add. Annotations:*—**Expld.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125. **Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

9367a. —— ——.]—The ct. disapproves the defence open under above sect. to a charge of carnal knowledge, not being open on that of indecent assault.—R. *v.* LAWS (1928), 21 Cr. App. Rep. 45, C. C. A.

Annotations:—**Consd.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125. **Refd.** R. *v.* Blackman (1929), 2 Cr. App. Rep. 132.

9367b. —— ——.]—R. *v.* MAUGHAN (1933), 76 L. Jo. 338.

9367c. —— ——.]—On a charge of indecent assault on a girl under sixteen years of age, a reasonable & *bonâ fide* belief that the girl was over the age of sixteen can never be an available defence.—R. *v.* MAUGHAN (1934), 24 Cr. App. Rep. 130, C. C. A.

—— **Reasonable cause of belief in marriage.**]—*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9370. *Add. Annotation:*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

9370a. Offence may be committed by woman.]—R. *v.* HARE, No. 8121a, *ante*.

9399a. —— ——.]—Resp. married his wife in 1916 & a child was born in 1917. In 1920 resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25*s.* a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp. failed to make the payments under the agreement & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67):—*Held:* the fact of the separation agreement, without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—BROOKS *v.* BLOUNT, [1923] 1 K. B. 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9412. *Add. Citation:*—1 Lev. 257.

9414. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

9439a. —— —— **Girl kept secretly.**]—Applt. was charged with taking an unmarried girl, being under the age of sixteen, out of the possession & against the will of her father. The girl left home quite voluntarily, & went to applt. He kept her secretly. The judge persuaded applt. to plead guilty, telling him that he had no defence to the charge if he kept the girl secretly & did not inform her parents:—*Held:* there had been a miscarriage of justice, as applt. had not really pleaded guilty to an offence under Offences against

PART XXXIII. SECT. 13, SUB-SECT. 7.

9362a i. *Evidence of relationship—Mother's evidence of non-access.*]—On a trial for incest by intercourse between a father & his illegitimate daughter:—*Held:* the rule in *Russell* v. *Russell* that neither a husband or wife may give evidence of non-intercourse applies in all cases & in all cts.—R. *v.* SEATON, [1933] N. Z. L. R. 548.—**N.Z.**

k i. ——.]—In relation to the crime of incest, "cohabit" implies sexual intercourse.—R. *v.* FOURNIER (1934), 62 Can. C. C. 397.—**CAN.**

l i. *Sister includes half-sister.*]—A prisoner was convicted of incest with his half-sister. On a case stated by the trial judge:—*Held:* the word "sister" as used in the definition of "incest" contained in sect. 222 of the Criminal Code, included half-sister.—R. *v.* THOMPSON (1933), 27 Q. J. P. R. 93.—**AUS.**

R. (1927), 40 C. L. R. 206.—**AUS.**

sf. *Daughter of deceased wife's brother.*]—*Held:* sexual intercourse between a man & the daughter of his deceased wife's brother constitutes the crime of incest by the law of Scotland.—C. & W. *v.* H.M. ADVOCATE, [1929] S. C. (J.) 1.—**SCOT.**

sk. *Corroboration of one witness—Unnecessary.*]—BERGERON *v.* R. (1930), 56 Can. C. C. 62.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 8.

sd. *On child—Corroboration—What amounts to.*]—(1) On an appeal from a conviction under sect. 292 of Criminal Code for an indecent assault on a girl eight years of age:—*Held:* the fact that the child was found to have gonorrhœa & that the accused had that disease at the time of his arrest was not, under all the circumstances, corroboration of the girl's testimony sufficient to satisfy the requirements of sect. 1003 of the Code.

(2) While proof merely of an opportunity for the commission of the offence charged is not corroboration, yet a false statement made by the accused may give to a proved opportunity a different complexion from what it would have borne had no such false statement been made. Therefore, the trial judge charged the jury properly when he told it that if it accepted the testimony of a certain witness, which contradicted the accused's testimony as to his whereabouts on the evening of the alleged offence, it could conclude that there was some corroboration of the girl's story.—R. *v.* DREW, [1933] 1 W. W. R. 225; 4 D. L. R. 329; 60 C. C. C. 37.—**CAN.**

PART XXXIII. SECT. 14, SUB-SECT. 1.—A.

q i. ——.]—A person having a domicil out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—R. *v.* SCOTT (1925), 44 Can. Crim. Cas. 117.—**CAN.**

PART XXXIII. SECT. 14, SUB-SECT. 1.—B.

sp. *"Without lawful excuse"—Onus of proof.*]—The onus of proving that a failure to provide necessaries for an infant was "without lawful excuse," is on the Crown.—R. *v.* JOUDREY, [1935] 3 D. L. R. 754; 64 Can. C. C. 130.—**CAN.**

PART XXXIII. SECT. 15, SUB-SECT. 1.

f i. —— *Girl out of parents' control.*]—R. *v.* JOE (Ont.) (1928), 50 Can. Crim. Cas. 152.—**CAN.**

PART XXXIII. SECT. 15, SUB-SECT. 3.

sz. *Taking from custody of mother.*]—Applt. was convicted of the offence of taking an unmarried girl under the age of 18 from the custody of her mother with the intent that she might be unlawfully carnally known by him. The evidence showed that immoral relations had existed between the applt. & the girl for some prior to the alleged offence, & that when applt. informed the girl that he was leaving N. on a visit to C., she expressed a desire to go with him, so he paid her railway fare & she accompanied him:—*Held:* the conviction should be quashed.—STEPHENS *v.* R. (1930), W. A. L. R. 9.—**AUS.**

the Person Act, 1861 (c. 100), s. 55, & the conviction must be quashed.—R. *v.* ALEXANDER (1912), 107 L. T. 240; 76 J. P. 215; 28 L. G. R. 200; 23 Cox, C. C. 140; 7 Cr. App. Rep. 110, C. C. A.

9458. *Add. Annotations :*—**Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130. **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

9480. *Add. Annotations :*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450. **Refd.** R. *v.* Wilmot (1933), 97 J. P. 149.

9480a. —— —— ——.]—Appct. was summoned under Motor Car Act, 1903 (c. 36), s. 1, for, & convicted of, driving a motor car on a highway "recklessly & at a speed which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the said highway, & to the amount of traffic which actually was at the time, or might reasonably have been expected to be, on the said highway" :—*Held :* as the driving of the car was one indivisible act which might constitute both the offences charged, the conviction was not bad for duplicity.—R. *v.* JONES, *Ex p.* THOMAS, [1921] 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 37 T. L. R. 299; 19 L. G. R. 354; 26 Cox, C. C. 706, D. C.

Annotation :—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

9482. *Add. Citation :*—*sub nom.* HOUGHTON *v.* MANNING (1905), 49 Sol. Jo. 446.

9488. *Add. Annotation :*—*As to* (1) **Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

9490. After this case add :—

—.]—*See, now,* Road Traffic Act, 1930 (c. 43), ss. 10, 11, 12.

9490a. —— **Motor coach—Advertised times of departure & arrival—Necessitating speed in excess of statutory maximum.**]—Resps. owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of resps. between London & Plymouth. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.' servant was stopped by the police, & resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held :* resps. ought to have been convicted of counselling & procuring.—NEWMAN *v.* OVERINGTON, HARRIS & ASH, LTD. (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

Part XXXIV.—Offences against Property.

9498. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 1 K. B. 366.

9499. *Add. Annotations :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51; Lowther *v.* Harris (1926), 43 T. L. R. 24; Buller & Co., Ltd. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206; Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

9500. *Add. Annotations :*—**Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertson (London), Ltd., [1934] 2 K. B. 206. **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586; Lowther *v.* Harris (1926), 43 T. L. R. 24.

PART XXXIII. SECT. 15, SUB-SECT. 4.

9458 i. *Belief that girl over sixteen no defence.*]—It is not a good defence to a charge of kidnapping under sect. 366 of the Penal Code that the accused honestly believed the kidnapped girl to be over 16 years of age.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

PART XXXIII. SECT. 18.

f i. —— ——.]—R. *v.* ——— (1934), 62 Can. C. C. 326.—**CAN.**

g i. —— ——.]—R. *v.* W——— (Ont.) (1929), 52 Can. Crim. Cas. 336.—**CAN.**

—.]—Deft. was convicted for that he did, having charge of an automobile, by wanton or furious driving, cause bodily harm to N. There was conflicting evidence as to speed & evidence that the cause of the accident was the car "shimmying" :—*Held :* there was absence of conclusive evidence that deft. was driving furiously, & he was entitled to the benefit of the doubt.—R. *v.* WILMOT, [1930] 1 D. L. R. 778; 52 Can. C. C. 336; 64 O. L. R. 605.—**CAN.**

g iii. —— *Insufficient brakes.*]—It would not be sufficient merely that a car was insufficiently braked to warrant a charge of reckless or negligent driving. It would depend on the pace of the car & other considerations.—SHERALLY *v.* R. (1929), 50 N. L. R. 309.—**S. AF.**

g iv. —— *Crowded front seat & "shimmying" wheels.*]—R. *v.* STRICKY, [1931] 1 D. L. R. 993; 55 Can. C. C. 68; 2 M. P. R. 448.—**CAN.**

g v. —— *Projecting unlighted load.*]—The mere fact that a motor car is driven at night with materials projecting beyond the body of the car & without lights on the projections is not in itself an unlawful act.—R. *v.* GILBERTSON & FULLER, [1930] 2 W. W. R. 10; 53 Can. C. C. 286; 24 S. L. R. 380.—**CAN.**

g vi. —— *Reduction of sentence.*]—R. *v.* DUGUAY [1933] 1 W. W. R. 590; 59 C. C. C. 328; 41 Man. L. R. 211.—**CAN.**

g vii. —— *Failure to obey "stop" sign.*]—Conviction for wanton & reckless driving in failure to obey "stop" sign.—R. *v.* JACKSON, [1937] 1 D. L. R. 32; [1936] O. R. 594; 67 Can. C. C. 220.—**CAN.**

sa. *Wilful misconduct—Sufficiency of evidence.*]—Where on the trial of a charge under s. 285 of the Criminal Code of causing bodily harm by wanton or furious driving, etc., it is found that anterior to the collision the accused was driving at a very fast rate of speed & was under the influence of liquor, either of these findings is sufficient to show the existence of that anterior wilful misconduct or wilful negligence leading to the collision which the tribunal trying the case must find before convicting on said charge.—R. *ex rel.* KENDALL *v.* O'SULLIVAN (Alta.), [1929] 2 W. W. R. 322; 51 Can. Crim. Cas. 422.—**CAN.**

9478 i. *Motor car—High speed in fog.*]—R. *v.* WILLIS (1931), 55 Can. C. C. 107.—**CAN.**

sb. *Duty of driver to avoid accident.*]—There is an absolute duty on the driver of a motor vehicle to take reasonable precautions to avoid danger, irrespective of the degree of negligence, under sect. 247 of the Criminal Code.—R. *v.* CAHILL (1932), 5 M. P. R. 534.—**CAN.**

sd. *Indictment for manslaughter & causing grievous bodily harm—Acquittal on first count—Conviction on second set aside.*]—Upon an indictment for manslaughter & causing grievous bodily harm by negligently driving an automobile, a conviction on the second count following an acquittal on the first will be set aside.—R. *v.* MONDT, [1934] 1 D. L. R. 382; 60 C. C. C. 273, —**CAN.**

PART XXXIII. SECT. 21.

sc. *Of wife & children—Genuine inability to provide necessaries.*]—*Held :* a "lawful excuse."—R. *v.* BUNTING (1926) 45 Can. Crim. Cas. 135; 58 O. L. R. 373.—**CAN.**

9537. *Add. Annotations:*—**Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24; Lake *v.* Simmons, [1927] A. C. 487. **Refd.** Buller & Co. Ltd., *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.
After this case add "*See, also,* INSURANCE, Vol. XXIX., p. 417, No. 3258."

9553. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

9557. *Add. Annotation:*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

9614a. ——.]—R. *v.* HUGHES, No. 2219a, *ante*.

9702a. *S. P.* R. *v.* BANKS (1821), Russ. & Ry. 441, C. C. R.

Annotation:—**Refd.** R. *v.* Stear (1848), 1 Den. 349.

9769. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

9773a. ——.]—Where a clerk or servant, who has the mere custody of goods, disposes of them for his own benefit, & in a manner alien from the purposes for which he was intrusted with them, he is guilty of larceny.—R. *v.* ROBINSON (1840), 4 J. P. 620.

9900. *Add. Annotation:*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co. (1930), 143 L. T. 650.

9944. *Add. Annotation:*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388.

9954. For "—— ——."] read "**Live animals feræ naturæ—Larcenable if reduced into possession.**]"

9956. *Add. Annotation:*—**Consd.** Farey *v.* Welch, [1929] 1 K. B. 388.

PART XXXIV. SECT. 1, SUB-SECT. 1. —A. (a) iii.

9510 iii. ——.]—Where the driver of a motor car had it supplied with gasoline & oil at a service station without arranging for credit &, on the proprietor requesting payment & stating that the car must be left until the goods were paid for, he drove the car away without paying:—*Held:* he was guilty of theft.—R. *v.* THOMAS, [1928] 2 W. W. R. 608; 50 Can. Crim. Cas. 177; 23 Alta. L. R. 523.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 1. —B.

9587 i. *Property in goods parted with —Induced by fraud.*]—Where the owner of an article, being induced thereto by the fraud of another, delivers the article to that other for the purpose of his endeavouring to find a purchaser, & empowers him to pass the property in the article to the purchaser, the case is not one of larceny by a trick. M. handed a ring to P. "on sale or return on demand," giving P. the power to dispose of it to anybody he chose at a price fixed by M. or at any price provided he accounted to M. for the price fixed. P., who had a fraudulent intent when he received the ring, pledged it with C.:—*Held:* as M. had conferred on P. a power to dispose of the ring, P. had not been guilty of larceny by a trick & was able to pass the property in the ring to C.—LAMBELL *v.* MOORE, [1929] V. L. R. 149; [1929] Argus L. R. 146.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 4. —A.

9647 iii. ——.]—Where the trial judge directed the jury that, where a person is found to be in possession of anything stolen, shortly after it has been stolen, he may be convicted of the stealing or of receiving; that the accused might get rid of this fact by a satisfactory explanation, but the burden is on him to give this explanation:—*Held:* this was sufficient direction when the accused was found guilty of larceny by finding, but would have been insufficient on a conviction for larceny or receiving.—R. *v.* WESTON, [1927] S. A. S. R. 439.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —B.

e i. —— *Taking car without consent of owner.*]—R. *v.* SCHMIDT & EDLUNG, [1930] 2 W. W. R. 497; 54 Can. C. C. 168; 42 B. C. R. 479.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —C.

9762 i. *Retaking own property—Improper execution by sheriff.*]—Where a sheriff has no special property or interest in goods except by virtue of a writ of execution under which he has seized the goods & that writ was improperly issued, a person cannot be convicted for theft for taking the goods from him.—R. *v.* MUDRY, [1935] 2 W. W. R. 225; 4 D. L. R. 358; 64 C. C. C. 177; 43 Man. L. R. 274.—**CAN.**

m i. ——.]—KENNEDY *v.* R. (Que.), (1929), 52 Can. Crim. Cas. 324.—**CAN.**

sg. *Taking property pledged.*]—HAMMOND *v.* R. (1931), 55 Can. C. C. 301.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 8.—B.

9810 ii. ——.]—R. *v.* KRATHY (1931), 55 Can. C. C. 150.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 9. —A.

sk. *Partner.*]—W. & R. carried on business in partnership as customs agents & income tax adjusters. W. attended to the customs agency only. A customer sent the firm a cheque, to be paid for income tax, drawn in favour of the Income Tax Comr.; worded "Credit payee's account only," & crossed "Not negotiable." The cheque was received by an employee of the firm, handed to a fellow employee & banked by him, cleared by the bank, & the amount of the cheque paid to the firm's account. R. then drew a cheque on the firm's banking account, for a similar amount & paid it into W.'s banking account. W. subsequently used for his own purposes practically the whole of this amount. There was no evidence that W. knew of either the receipt of the customer's cheque or of the dealings with it until after the cheque drawn by R. had been paid into his account:—*Held:* as, when R.'s cheque was credited to W.'s account, a debt due from the bank to W. was created, which was property of which W. remained a bailee, the jury might find W. guilty of larceny of the original cheque, if, on the evidence, it could find that he knew, after the payment into his account of the cheque drawn by R., of the existence of the bailment, & then converted portion of the debt to his own use.—R. *v.* WALL (1932), 32 S. R. N. S. W. 171; 49 N. S. W. W. N. 41.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 9. —B. (b).

sl. *Goods on approval—Conversion of good.*]—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others:—*Held:* the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments.—KHITISH CHANDRA DEB ROY *v.* R. (1924), I. L. R. 51 Calc. 796.—**IND.**

sk. *Goods left behind by passenger.*]—A passenger, R., on a tramcar lost her watch on the tram, & the evidence showed that a watch was picked up by another passenger L., & handed to the conductor, who did not report the finding to the trust:—*Held:* on the evidence, larceny by the conductor had not been established beyond reasonable doubt; also as R. had full right to the possession of the watch, the property in the watch could rightly be laid on her; on R. leaving the car the watch was in the possession of the Municipal Tramways Trust, & L., in assisting the Trust to protect its possession of the watch, did not take it out of the Trust's possession.—VERCO *v.* CRAFTER, [1935] S. A. S. R. 12.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 11.

9859 i. *What constitutes.*]—A bank official was sorting banknotes on the counter of the bank when the accused entered. The official placed the notes on a shelf under the counter in front of him. One of the accused presented a revolver at him, & another passed round the counter, struck the official on the back of the head with a tyre-lever, & took the money from under the counter. They then left the bank:—*Held:* the statutory offence of larceny from the person had been established.—R. *v.* STEWART (1929), S. A. S. R. 500.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 13.

sm. *Crop-payment lease—Lessee disposing of whole crop & appropriating proceeds—Not offence of theft.*]—R. *v.* HANDSBEE, [1924] 1 D. L. R. 1194; 41 Can. Crim. Cas. 177; [1923] 2 W. W. R. 661.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 14.—A.

9880 i. *From sheriff—Valid seizure must be proved.*]—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

sn. *From peace officer—Who is.*]—There is no offence of theft under sect. 348 when the owner of goods removes goods seized by the agent of a landlord who is bailiff only under Landlord & Tenant Act, 1927, as such an agent is not a peace officer.—R. *v.* LIPMAN, [1935] 3 D. L. R. 122; 63 C. C. C. 148.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 14.—B.

so. *By partner.*]—Where there is a partnership agreement by which neither partner could withdraw profits as salary without the other's consent, such withdrawal without authority is theft.—TREMBLAY *v.* R. (1936), 65 Can. C. C. 387.—**CAN.**

10,013. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,015. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,027. After this case add :—

I. Motor Vehicles.

See Road Traffic Act, 1930 (c. 43), s. 28.

10,050. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

10,060a. ——.]—Applt. broke into a dwelling-house which was then occupied only by a maidservant, & he attacked her & demanded money & clothes. The servant handed over a mackintosh belonging to her master. Applt. was convicted of robbing the servant of the mackintosh :—*Held :* as the servant was in charge of her master's belongings she had a special property in the mackintosh, & applt.'s conviction for robbing her of it was right.—R. *v.* HARDING (1929), 142 L. T. 583 ; 94 J. P. 55 ; 46 T. L. R. 105 ; 73 Sol. Jo. 853 ; 28 L. G. R. 69 ; 21 Cr. App. Rep. 166 ; 29 Cox, C. C. 108, C. C. A.

10,116. *Add. Citations :*—93 L. J. K. B. 236 ; 130 L. T. 320 ; 68 Sol. Jo. 389 ; 27 Cox, C. C. 579.

Add. Annotation :—**Consd.** R. *v.* Hughes (1927), 136 L. T. 671.

10,143. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762 ; R. *v.* Davies, *Ex p.* Penn (1932), 48 T. L. R. 666 ; R. *v.* Morris (1933), 24 Cr. App. Rep. 105.

10,200a. Steward & clerk to guardians.]—*Held :* guilty of embezzlement, though not duly appointed, nor even appointed at all under the common seal.—R. *v.* BEACALL, R. *v.* WELLINGS (1824), 1 C. & P. 457.

10,279a. —— **Meaning of "entrusted."**]—A bank clerk employed to post into the ledger & read from the cash-book, bank-notes from £100 in value up to a £1,000, & who in the course of that occupation had, with other clerks, access to a file, upon which paid notes of every description were filed ; took from that file a paid bank-note for £50 :—*Held :* the prisoner could not be considered as entrusted with the possession of this note, so as to bring him within 15 Geo. 2, c. 13, s. 12, although he had access to it.—R. *v.* BAKEWELL (1802), Russ. & Ry. 35 ; 2 Leach, 943 ; 168 E. R. 670.

Annotation :—**Refd.** R. *v.* Aslett (No. 2) (1803), 2 Leach, 958.

10,315a. —— **Question of fact for jury.**]—(1) Where a deft. is charged with the fraudulent conversion of money the question whether he has been entrusted with the money or has received it for or on behalf of the persons

PART XXXIV. SECT. 1, SUB-SECT. 17.—C.

sp. *Obtaining signature to promissory note.*]—Deft. was convicted under Criminal Code, s. 405, of the offence of obtaining by false pretences a promissory note for $1,000 from one B. The evidence showed that deft. procured the signature of B. to a form of promissory note, giving his own note in exchange therefor. The printed form was not the property of B. :—*Held :* merely inducing B. to sign his name was not "obtaining anything capable of being stolen" within s. 405.—R. *v.* LEROUX, [1928] 3 D. L. R. 688 ; 50 Can. Crim. Cas. 52 ; 62 O. L. R. 336.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 17.—E.

sr. *Crops.*]—Where a provincial statute provides that in the case of a crop-payment lease the lessor shall be deemed to be & to have been the owner of the share of the crop reserved to him as rent from the moment of the sowing of the crop, his ownership & interest in said share is such as may be the subject of theft thereof by the lessee under sect. 347 & sect. 352 of the Criminal Code.—R. *v.* CASSILS, [1932] 1 W. W. R. 572 ; 26 Alta. L. R. 180 ; 57 C. C. C. 366.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 20.

10,121 i. For "R. *v.* MCINTYRE (1898), 31 N. S. R. 422," read "R. *v.* MCCAFFREY (1900), 33 N. S. R. 232."

10,123 xiii. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,123 xiv. —— ——.]—R. *v.* WILSON (1924), 35 B. C. R. 64.—**CAN.**

10,123 xv. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313 ; [1927] 3 D. L. R. 679 ; 47 Can. Crim. Cas. 380.—**CAN.**

10,123 xvi. —— ——.]—Accused was found on May 17 in possession of a bicycle stolen on Feb. 11 :—*Held :* the period of three months was not too long to cast upon accused the duty of accounting, or giving some reasonable explanation, for his possession, & in the absence of a reasonable explanation the ct. might infer guilt & convict.—JAMES *v.* R. (1927), 48 N. L. R. 289.—**S. AF.**

10,123 xvii. —— ——.]—Recent possession of stolen goods is evidence of stealing or of receiving according to the circumstances of the case. It is open to question whether the possession of goods stolen six weeks prior to the finding of them in the possession of the accused can be considered recent under some circumstances.—R. *v.* IWANCHUK & IWANCHUK, [1929] 1 D. L. R. 279 ; 1 W. W. R. 125 ; 50 Can. Crim. Cas. 405 ; 24 Alta. L. R. 8.—**CAN.**

10,123 xviii. —— ——.]—Where on a trial of a charge of theft the Crown relies on the fact that property proved to have been recently stolen was in the accused's possession, he is entitled to an acquittal if his explanation of the possession is one which may reasonably be true, even though the tribunal is not convinced of its truth.—R. *v.* KORINEY, [1931] 2 W. W. R. 566 ; 56 Can. C. C. 90.—**CAN.**

10,126 i. *Possession of recently stolen property—As evidence of larceny.*]—Unexplained possession of goods recently stolen is evidence of theft by the possessor. He is entitled to acquittal, however, if he gives an explanation consistent with innocence.—R. *v.* WILSON, [1936] 3 D. L. R. 317 ; 66 Can. C. C. 245 ; 10 M. P. R. 537 ; 6 F. L. J. (Can.) 86.—**CAN.**

10,129 i. *Possession of recently stolen property—When explanation required—Reasonableness of explanation for magistrate.*]—R. *v.* MURPHY, KITCHEN & SLEEN, [1931] 4 M. P. R. 158.—**CAN.**

PART XXXIV. SECT. 2, SUB-SECT. 3.

d. For "**AUS.**" read "**S. AF.**"

PART XXXIV. SECT. 2, SUB-SECT. 6.

10,298 iv. ——.]—Where a law-agent did not account for sums collected for a client, notwithstanding repeated applications made for the money, & only remitted the sums after he had been arrested :—a conviction for embezzlement was justified.—EDGAR *v.* MACKAY, [1926] S. C. (J.) 94.—**SCOT.**

10,298 v. —— *Sufficient money of agent in possession of principal—No mens rea.*]—PIKE *v.* R. (1930), 54 Can. C. C. 375 ; 48 Que. K. B. 239.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 1.

10,314 ii. ——.]—H. entered the offices of F., Ltd., in V., & in exchange for $1,000 received £23 in cash & a draft for £200 drawn on P. Bank, Ltd., London, reciting "pay from our credit balance to the order of H. £200," & signed F., Ltd. H. indorsed the draft "pay to the order of L. Bank, Ltd., for deposit to my credit." When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an *alias* for F. himself ; that F. knew of the transaction carried out by his clerk ; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not remit H.'s money to London as undertaken :—*Held :* on the facts stated the case did not come within sect. 355, & the conviction was set aside.—R. *v.* FAULDS (1922), 40 Can. Crim. Cas. 300 ; 31 B. C. R. 421.—**CAN.**

10,314 iii. ——.]—Where a person hands over money to another pursuant to a proposal & undertaking of the latter to invest the money in certain securities, there is in substance a "direction," within Criminal Code, s. 357, so to invest it.—R. *v.* CAMPBELL (1926), 45 Can. Crim. Cas. 159 ; 22 Alta. L. R. 219 ; [1926] 1 W. W. R. 671.—**CAN.**

3 (1931),

10,315a i. —— *Question of fact for ry.*]—*Held :* on a charge of fraudulent conversion under sect. 20 (1) (iv) (*b*) of Larceny Act, 1916, the question whether money has been received by the accused "for or on account of" other persons is a fact to be decided

specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person who is entitled to it.—R. *v.* SHEAF (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

10,315b. —— ——.]—Whether a transaction is an "entrusting" within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury.—R. *v.* SMITH, [1924] 2 K. B. 194; 93 L. J. K. B. 1006; 131 L. T. 28; 88 J. P. 108; 69 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.

Annotation:—**Folld.** R. *v.* Sheaf (1925), 89 J. P. 207.

10,315c. ——.]—The true test in a charge under Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (*a*), is whether accused had control of the property charged or not, in circumstances whereby he became entrusted.—R. *v.* MORTER (1927), 20 Cr. App. Rep. 53, C. C. A.

10,316. *Add. Annotations:*—**Apld.** R. *v.* Tuttle [illegible] **Refd.** R. *v.* [illegible] [1924] 2 K. B. 194.

10,317. *Add. Annotation:*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

10,322. *Add. Annotation:*—**Dbtd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,326a. Indictment—Necessary averments.]—R. *v.* SHEAF, No. 10,315a, *ante*.

10,326b. —— **Count charging conversion of general balance.**]—A count in an indictment should not charge the fraudulent conversion of a general balance alleged to be due.—R. *v.* MORRIS (1933), 24 Cr. App. Rep. 105, C. C. A.

10,333. *Add. Annotation:*—**Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,345. *Add. Annotation:*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

10,345a. —— —— **Preliminary examination in bankruptcy.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

10,345b. —— —— **Affidavit in defence to action for account by co-trustee.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

10,352a. —— **Prospectus to be read as a whole—Effect of omissions.**]—A prospectus for the issue of debenture stock issued by a co. of which applt. was chairman was composed of statements which in themselves were perfectly true, but it omitted information about the co.'s affairs, with the result that the prospectus, taken as a whole, gave a false impression of the position of the co. On the trial of applt. for an offence under Larceny Act, 1861 (c. 96), s. 84, the judge directed the jury that a written statement might be false within the meaning of the section not only because of what it stated, but also because of what it concealed, or omitted, or implied:—*Held:* this was a correct statement of the effect of the section, & applt. was rightly convicted of an offence under it.—R. *v.* KYLSANT (LORD), [1932] 1 K. B. 442; 101 L. J. K. B. 97; 146 L. T. 21; 48 T. L. R. 62; 75 Sol. Jo. 815; 23 Cr. App. Rep. 83; 29 Cox, C. C. 379.

Annotation:—**Consd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

10,352b. —— —— ——.]—Applts. were associated in the publication of a certain prospectus, which invited subscriptions for shares in an old-established co. of metal dealers & brokers. Part of the sum to be subscribed was to be used in acquiring a controlling interest in another co. which was said to have similar interests. The prospectus intimated that "the substantial amount of the additional working capital which will now become available should assist materially in extending both the volume & the scope of the co.'s activities." In fact the co. to be acquired was engaged in a gamble to make a corner in pepper:—*Held:* there was such a partial & fragmentary statement of fact in the prospectus that the withholding of that which

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by the jury; as it is vital, they must be expressly directed to find on the point, it is not sufficient that it has not been withdrawn from them; accordingly, as no such direction had been given by the trial judge, the trial was unsatisfactory, & the accused must be re-tried.—A.-G. *v.* LAWLESS, [1930] I. R. 247.—**IR.**

sb. *Conversion by stockbroker.*]—There is no authority which justifies a stockbroker in speculating with his customers' margins & securities for his own account. Appeal from the conviction of a stockbroker for theft from a co., a "one man co." of which he had sole control & was practically the sole owner, affirmed. The money in question represented cash & securities which had been deposited with the co. by its customers as security for their trading accounts.—R. *v.* MARTIN, [1932] 3 W. W. R. 1; [1933] 1 D. L. R. 434; 40 Man. L. R. 524; 59 C. C. C. 8.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ——.]—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—R. *v.* CONNORS (1923), 51 N. B. R. 247.—**CAN.**

10,327 v. ——.]—Where A. delivers goods to B. requiring him to account to him, A., for them, the case is not within Criminal Code, s. 355.—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

sd. *Intention to repay—Offence committed.*]—R. *v.* THOMSON (1930), 54 Can. C. C. 175.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ——.]—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge.—R. *v.* SWITYK, [1925] 1 D. L. R. 1015; [1925] 1 W. W. R. 656; 43 Can. Crim. Cas. 245.—**CAN.**

10,334 vi. ——.]—Misappropriation of money given to a person to pay off a mtge. & used for other purposes held on the facts not to constitute theft.—R. *v.* POTTER; R. *v.* VAN OUDENAL, [1937] 1 D. L. R. 469; 67 Can. C. C. 249; 51 B. C. R. 361.—**CAN.**

n i. ——.]—Though there may be circumstances under which a person who has paid trust money into his overdrawn banking account may be able to negative the presumption of fact that he intended to convert it to his own use & to deprive the owner of his property in it, yet, if the accused fails satisfactorily to displace this presumption, the ct. is entitled to draw the inference that the crime of theft has been proved.—R. *v.* WEISS, [1934] A. D. 41.—**S. AF.**

sf. *Money must be received as trustee.*]—FOURNIER *v.* R. (1933), 60 C. C. C. 135.—**CAN.**

PART XXXIV. SECT. 4.

s i. —— *Knowledge of falsity.*]—Accused, who was managing director of a mining co., in the statements which he made, adopted & relied upon reports made by the mine manager, which he believed to be accurate & true:—*Held:* his statements did not go beyond the meaning to be attributed to the mine manager's reports of the result of the work upon the ground; & it could not therefore be said that accused published statements which were false to his knowledge in any material particular, within sect. 414 of the Criminal Code.—R. *v.* HARCOURT, [1930] 1 D. L. R. 736; 52 Can. C. C. 342; 64 O. L. R. 566.—**CAN.**

was not stated made that which was stated false, & the publication of the prospectus was an offence within Larceny Act, 1861 (c. 96), s. 84.—R. *v.* BISHIRGIAN, R. *v.* HOWESON, R. *v.* HARDY, [1936] 1 All E. R. 586; 154 L. T. 499; 52 T. L. R. 361; 25 Cr. App. Rep. 176; 30 Cox, C. C. 379, C. C. A.

10,354. *Add. Annotation :*—**Consd.** R. *v.* Bassey (1931), 47 T. L. R. 222.

10,410a. ——.]—Any violence is sufficient in law to sustain an indictment of robbery with violence.—R. *v.* HARRISON (1930), 22 Cr. App. Rep. 82, C. C. A.

10,433. Add the following para. :—

Where it was proved that a prisoner, to obtain money, said to a prosecutor, " If you do not assist me, I will say you took indecent liberties with me some time ago " :—*Held :* not sufficient to sustain a count which charged that he threatened to accuse the prosecutor of having attempted & endeavoured to commit with him " the abominable crime," etc.

10,471. *Add. Annotation :*—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

10,475. *Add. Annotation :*—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

10,480. *Add. Annotations :*—**Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258; Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

10,487a. Demand of money as alternative to inclusion in stop list—Protection of trade interests.]—D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn., namely, the payment of a certain sum, & the publication of an undertaking to observe protected prices of motor cars, etc. :—*Held :* D. was rightly convicted of uttering a letter demanding money with menaces contrary to Larceny Act, 1916 (c. 50), s. 29 (1), & it was immaterial that his motive in writing the letter was the protection of a trade interest.—R. *v.* DENYER, [1926] 2 K. B. 258; 95 L. J. K. B. 699; 134 L. T. 637; 42 T. L. R. 452; 28 Cox, C. C. 153; 19 Cr. App. Rep. 93, C. C. A.

Annotations :—**N.F.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. (NOTE.—For the purposes of the administration of criminal law, unless & until *R. v. Denyer* is reversed by the only competent tribunal [viz., the House of Lords], it is binding upon, & will be enforced by, the Ct. of Criminal Appeal against any person or persons offending in like manner (LORD HEWART, C.J.) (1928), 20 Cr. App. Rep., at pp. 185 & 186). **Dbtd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** Auto-Mart (London) *v.* Chilton (1927), 43 T. L. R. 463.

10,505a. ——.]—Applts. were convicted of threatening to accuse of a crime within Larceny Act, 1916 (c. 50), s. 29 (2) (*b*), with intent to extort money. They had enticed a man into a compromising situation with one of themselves & then threatened to accuse him of " improper conduct " :—*Held :* the mere fact of the words being capable of being understood to mean some offence not within the sect. was no defence, as it was a question for the jury what was the effect on the mind of the man on whom they were intended to operate, & as there was evidence on which the jury could properly come to the conclusion that the threat was a threat to accuse of the particular crime mentioned in the indictment, & the convictions must be affirmed.—R. *v.* STUART, R. *v.* LEONARD, R. *v.* MAPLES, R. *v.* TANNEN, R. *v.* TAYLOR (1927), 43 T. L. R. 715; 20 Cr. App. Rep. 74, C. C. A.

10,516a. Agreement not to report defaulter to Tattersalls.]—BURDEN *v.* HARRIS, [1937] 4 All E. R. 559; 54 T. L. R. 86; 81 Sol. Jo. 924.

10,603. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

10,725a. —— **Finding must be by night.**]—R. *v.* HARRIS, No. 5478a, *ante*.

PART XXXIV. SECT. 8, SUB-SECT. 2.

10,459 i. —— *Letter addressed to non-existent person.*]—Deft. was convicted of sending a threatening letter addressed to " Sir James W. Moir " at 40, Duke St., Halifax. There was no such person as " Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received :—*Held :* deft.'s appeal from the conviction failed.—R. *v.* VARBEFF (1922), 57 N. S. R. 415.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 3. —B.

10,465 ii. —— ——.]—Where a person is indicted on a charge under Crimes Act, 1900, s. 99, of having by menaces demanded property with intent to steal the same, & where the threats or menaces used for the purpose of obtaining the property are manifestly of such a character that there can be no doubt that they would operate on the mind, not only of the victim, but of any reasonable person, a judge may in his summing up direct the jury as a matter of law, that if they believe the evidence for the Crown, the threats or menaces used would constitute a menace within the meaning of the sect.—R. *v.* RASMUSSEN & SPIEGELGLASS (1928), 28 S. R. N. S. W. 349; 45 N. S. W. W. N. 87.—**AUS.**

p i. —— —— *Extortion by constable.*]—R. *v.* LAPHAM (1913), 24 O. W. R. 111; 4 O. W. N. 838; 21 Can. Crim. Cas. 79; 10 D. L. R. 315.—**CAN.**

PART XXXIV. SECT. 9, SUB-SECT. 1. —D.

10,594 ii. —— ——.]—BAKER *v.* R. (1930), 54 Can. C. C. 353; 49 Que. K. B. 193.—**CAN.**

PART XXXIV. SECT. 9, SUB-SECT. 3.

10,679 i. *Intent must be alleged.*]—R. *v.* ROSS, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—**CAN.**

PART XXXIV. SECT. 10, SUB-SECT. 3.

n i. —— *Form of indictment.*]—The charge, intended to be of an offence under sect. 461, lacked an allegation essential to constitute the crime, namely, that the intent was to commit the assault, that is, on C. P., as charged, in the shop that was broken into; & there was no evidence that supplied this omission, so as to give foundation for an amendment under sect. 889 (2) that would make it in reality a charge under sect. 461. Without amendment, & without proof of the crime intended to be described, there was a finding of guilty of the charge, as set out, which did not describe any crime. The conviction must therefore be quashed.—MCNEIL *v.* R., [1931] S. C. R. 505; 3 D. L. R. 762; 55 Can. C. C. 253.—**CAN.**

sk. *Intent to commit indictable offence —Offence need not be specified.*]—On a charge of breaking & entering a dwelling-house with intent to commit an indictable offence therein, it is unnecessary to allege a specific indictable offence in the indictment.—R. *v.* DELORY & RICHARDSON (1932), 4 M. P. R. 524.—**CAN.**

sl. *Intent to commit common assault—Evidence.*]—Entry with intent to recover property or commit assault is sufficient to support an indictment for breaking & entering with intent to commit a common assault.—R. *v.* DELOREY (1933), 60 C. C. C. 244; 6 M. P. R. 93.—**CAN.**

PART XXXIV. SECT. 13.

sm. *Found disguised—No intention to commit indictable offence—Intent to interfere with private rights.*]—R. *v.* PHILLIPS, [1931] 2 D. L. R. 461; 55 Can. C. C. 49.—**CAN.**

so. *Essentials of offence.*]—The fact that a man has housebreaking instruments in his household or business repositories ordinarily used by him for the conservation of his personal belongings does not bring him within the purview of sect. 464 (*a*) of Criminal Code until he takes them out & goes with them abroad at night as if to use them. It is of the essence of the offence under said section that the offender be discovered in the possession of the instrument rather than that it should be discovered in his possession.—R. *v.* MITCHELL & MCLEAN, [1932] 1 W. W. R. 657.—**CAN.**

10,727. *Add. Annotation :*—**Consd.** R. *v.* Hatch (1933), 24 Cr. App. Rep. 100.

10,729a. —— —— Electric torch, pliers, & gloves.]—ROWLATT, J., said that he very much doubted whether an electric torch could be described as an instrument for housebreaking any more than could a pair of gloves. The pliers, too, were a tool anybody might possess with no intention of housebreaking.—R. *v.* STEWART (1932), 96 J. P. Jo. 137.

10,731a. —— —— Possession must be by night.]—R. *v.* HARRIS, No. 5478a, *ante*.

10,732a. —— Marks on doors corresponding with implements—Admissibility of evidence.]—At the trial of applt., who was charged with being found by night in possession of an implement of housebreaking, evidence was given that marks corresponding with the particular implement had been found on the doors of two houses. Applt. had been informed by the police that they did not intend to charge him with attempting to break into either of those houses, but in the summing-up the jury were, in substance, invited to come to the conclusion that applt. had attempted, by means of the particular implement, to break into those two houses :—*Held :* in view of the admission of the evidence, in the circumstances of this particular case, & of the direction in the summing-up the conviction must be quashed.

Semble : apart from the circumstances of this particular case, if the evidence had been confined to the fact that marks had been found on doors which might have been made by a similar implement, it would have been admissible.—R. *v.* HATCH (1933), 24 Cr. App. Rep. 100, C. C. A.

10,752. *Add. Citation :*—68 Sol. Jo. 254.

Add. Annotation :—**Folld.** R. *v.* Klein (1932), 23 Cr. App. Rep. 185.

10,752a. ——.]—Applt. was convicted on an indictment which charged him with receiving sums of money knowing them to have been obtained under circumstances amounting to misdemeanour, to wit, conspiracy to defraud, contrary to Larcency Act, 1916 (c. 50), s. 33 (1). It was contended on his behalf that, as the actual obtaining of the goods by the conspirators had been effected by a different misdemeanour, namely, false pretences, the indictment was bad in law :—*Held :* as the words of the Act are " obtained . . . under circumstances which amount to . . . misdemeanour " & not " obtained . . . by misdemeanour," the indictment was properly laid & the conviction must be upheld.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 185, C. C. A.

10,754a. ——.]—R. *v.* HYMAN (1926), 19 Cr. App. Rep. 125, C. C. A.

10,754b. —— Or obtained—Meaning.]—" Obtained " in Larceny Act, 1916 (c. 50), s. 33, means obtained physically.—R. *v.* MISSELL, R. *v.* RINGLE, R. *v.* ERRINGTON (1926), 19 Cr. App. Rep. 109, C. C. A.

10,762a. —— Necessity for.]—On a charge of knowingly receiving stolen goods there must be unequivocal evidence of the receiving of a chattel proved to be stolen.—R. *v.* EVENS (1930), 22 Cr. App. Rep. 16, C. C. A.

10,779. *Add. Annotation :*—**Reld.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

10,779a. ——.]—(1) To sustain an indictment for knowingly receiving stolen property some possession or control must be proved.

(2) Evidence of intention to commit a crime is not sufficient for a conviction of that crime.—R. *v.* FREEDMAN (1930), 22 Cr. App. Rep. 133, C. C. A.

10,779b. —— Possession of cheque in payment for stolen goods.]—Evidence that a prisoner has been in possession of a cheque given in payment for the purchase of stolen goods is not sufficient evidence of possession of the stolen goods to justify a charge of receiving them knowing them to have been stolen.—R. *v.* BARROW (1934), 24 Cr. App. Rep. 141, C. C. A.

PART XXXIV. SECT. 14, SUB-SECT. 1.

c i. —— *Distinct from receiving goods knowingly stolen.*]—R. *v.* YEAMAN, [1924] 2 D. L. R. 1116 ; 2 W. W. R. 452 ; 42 Can. Crim. Cas. 78 ; 33 B. C. R. 390.—**CAN.**

c ii. —— *Effect of participation in theft.*]—On the trial of a charge of retaining stolen goods knowing them to have been stolen, the trial judge found that the three accused had jointly & actually participated in stealing the goods in question, &, therefore, dismissed the charge, on the ground that the accused having themselves stolen the goods, could not be convicted of retaining them. On appeal by the Crown :—*Held :* the appeal must be dismissed.—R. *v.* BROWN, [1936] 1 W. W. R. 539 ; 2 D. L. R. 265 ; 65 Can. C. C. 244 ; 50 B. C. R. 339.—**CAN.**

sp. *Receiving or retaining—Criminal Code, s.* 399—*Two separate offences.*]—R. *v.* SEARLE, [1929] 1 W. W. R. 491 ; 51 Can. Crim. Cas. 128 ; 24 Alta. L. R. 37.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —A.

10,773 iv. —— *Proof of suspicion that goods stolen.*]—Where, on a charge of unlawful possession, neither of the arresting police constables swore that he actually entertained a suspicion that the article had been stolen or unlawfully obtained, & the evidence only rendered it probable that such suspicion existed :—*Held :* deft. could not be convicted.—CORSTEN *v.* NOBLET, [1927] S. A. S. R. 421.—**AUS.**

10,773 v. —— *What evidence necessary.*]—A person cannot be called on to account for his possession of property under Police Act, XIII of 1856, s. 35 (1), unless there is evidence which satisfies, not the police officer, but the ct., after judicial consideration, that such property " may be reasonably suspected of being stolen or fraudulently obtained."—R. *v.* DHANJIBHAI EDULJI (1895), I. L. R. 20 Bom. 348.—**IND.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —B.

10,789 iii. ——.]—The mere finding of stolen property in the house where accused lived is not of itself sufficient to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453 ; 40 Can. Crim. Cas. 312 ; 33 Man. L. R. 103.—**CAN.**

h i. ——.]—Applt. was charged on complaint with having in his possession on premises of which he was the reputed tenant or occupier, gold reasonably suspected of being stolen or unlawfully obtained. He was present when police officers discovered in an old underground working on a mining lease of which he was the holder a lighted furnace, which was well hidden, & a considerable quantity of gold-bearing ore in a crucible in the furnace. Applt. stated he had abandoned the lease, denied all knowledge of the existence of the furnace, expressed his opinion that the gold had been stolen, & blamed some Indian miners who were in the vicinity :—*Held :* (1) applt. was the tenant of premises upon which gold reasonably suspected of being stolen or unlawfully obtained was found, & that by Police Act Amendment Act, 1902, s. 3, the *onus* of proving he was not in possession of such gold lay on applt. ; (2) applt. had failed to prove that he was not in possession of such gold.—HOEPNER *v.* MANNING, [1929] W. A. L. R. 42.—**AUS.**

10,815a. —— Under Frauds by Workmen Act, 1777 (c. 56), s. 10—"Dwelling-house"—Includes warehouse not attached to dwelling-house.]—R. *v.* EDMUNDSON (1859), 2 E. & E. 77; 28 L. J. M. C. 213; 33 L. T. O. S. 237; 23 J. P. 710; 5 Jur. N. S. 1351; 7 W. R. 565; 8 Cox, C. C. 212; 121 E. R. 30.

10,865. *Add. Annotations:*—**Folld.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. **Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426.

10,878a. —— ——.]—R. *v.* DAWSON (1926), 19 Cr. App. Rep. 128, C. C. A.

10,878b. —— ——.]—The proper direction on a charge of receiving with guilty knowledge is that, if the jury are satisfied that deft.'s explanation is consistent with his innocence, they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence.—R. *v.* KETTERINGHAM (1926), 19 Cr. App. Rep. 159, C. C. A.

10,898. *Add. Annotation:*—**Refd.** Eadie *v.* I. R. Comrs., [1924] 2 K. B. 198.

10,905a. —— ——.]—R. *v.* REYNOLDS (1927), 20 Cr. App. Rep. 125, C. C. A.

10,906a. ——.]—On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—R. *v.* BAGULEY (1925), 19 Cr. App. Rep. 54, C. C. A.

10,927a. Several accused charged with receiving—Direction as to possession.]—R. *v.* PECKHAM (THE YOUNGER), No. 3165c, *ante*.

10,940. *Add. Annotations:*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6. **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

10,954. *Add. Annotation:*—*As to* (2) **Apld.** R. *v.* Woods (1930), 143 L. T. 311.

10,997. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

11,032. *Add. Annotation:*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

11,038a. ——.]—False pretences are not proved, unless the falsity of the words used is unequivocal & intentional.—R. *v.* SEELY (1928), 21 Cr. App. Rep. 18, C. C. A.

PART XXXIV. SECT. 14, SUB-SECT. 4.—A.

10,823 i. *Inferred from circumstances.*]—Knowledge that goods stolen presumed from purchase from a stranger at less than wholesale price.—R. *v.* POMEROY, [1936] 4 D. L. R. 523; 67 Can. C. C. 71; 51 B. C. R. 161.—**CAN.**

10,828 i. *Onus of proof.*]—R. *v.* BERELOVITCH (N. S.) (1926), 46 Can. Crim. Cas. 148.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 5.

5 i. ——.]—While it is true that the recent possession of stolen property raises a presumption of fact that, if not reasonably explained, the possessor is the thief, yet for the raising of such a presumption the exclusiveness of the possession or access is material.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 703.—**CAN.**

10,851 i. *What is recent—Materiality of nature of article.*]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,852 iv. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,852 v. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 6.

10,861 iv. ——]—FROZOCAS *v.* R. (1933), 60 C. C. C. 324.—**CAN.**

10,861 v. ——.]—There is no common law, or statutory rule that possession of recently stolen goods is *prima facie* evidence of knowledge that they were stolen, although a jury may, with other circumstances, properly infer such knowledge from the recent possession.—R. *v.* WERB; R. *v.* SCHWARTZ, [1936] 1 W. W. R. 225; 1 D. L. R. 685; 65 Can. C. C. 43; 43 Man. L. R. 507.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 8.

10,901 i. *Recent possession of stolen property—As evidence of receiving.*]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,903 i. *Evidence of thief—Must be corroborated.*]—It appears to be now undoubted that, on a trial on a charge of receiving, the testimony of the thief should, under said rule of practice, be corroborated.—R. *v.* GALSKY, [1936] 3 W. W. R. 491; 4 D. L. R. 732; 44 Man. L. R. 364; 67 Can. C. C. 108; 6 F. L. J. (Can.) 148.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 9.

sn. *Several articles received by different persons—Receivers triable jointly.*]—MUSSAMMAT GULJANIA *v.* R. (1927), I. L. R. 6 Pat 583.—**IND.**

PART XXXIV. SECT. 16, SUB-SECT. 1.

10,975 ii. ——.]—In order to constitute the offence of obtaining money by false pretences, it is not necessary that the fraud should operate in precisely the way intended or expected by prisoner. If in fact the fraud operated as a direct cause of the payment of money, it is immaterial that the chain of causation was different from that which prisoner intended or expected.—R. *v.* LAMBASSI, [1927] V. L. R. 349; 49 A. L. T. 23; [1927] Argus L. R. 297.—**AUS.**

10,975 iii. ——.]—Obtaining by false pretences involves a false representation of fact made with intent to defraud, inducing the party to part with the money obtained.—R. *v.* BRINE (1936), 11 M. P. R. 131.—**CAN.**

so. *Liability although facts amount to larceny.*]—A charge of unlawfully obtaining goods from F., by false pretences, with intent to defraud. F. was not the owner of the goods, but the bailee for a special purpose:—*Held:* when deft., by fraud, with intent to obtain the goods from F., induced him to part with them, he deprived F. of the special property in them which he had as bailee, as well as of the possession thereof, & he was rightly convicted.—R. *v.* CRAMGLY (1931), 3 D. L. R. 640; O. R. 145; 55 Can. C. C. 292.—**CAN.**

sq. *Included in "theft."*]—Obtaining money by false pretences is included in the offence of theft.—DUPLESSIS *v.* R., [1936] 2 D. L. R. 174; 65 Can. C. C. 255.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—A.

e i. —— *Waiver of lien rights.*]—*Held:* not a valuable security.—R. *v.* HOLMES (1931), 56 Can. C. C. 353.—**CAN.**

sg. *Bad cheque in payment of account not sufficient.*]—The giving of a bad cheque in payment of an account does not amount to obtaining money by false pretences, unless additional goods & money are obtained thereby.—R. *v.* FREEDMAN, [1936] 1 D. L. R. 763; 65 Can. C. C. 34.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—B.

11,001 ii. —— ——.]—Where accused was found guilty of an offence under Crimes Act, 1915, s. 181 (a), for obtaining goods by false pretences:—*Held:* under the above sect. it was not necessary that the property in the goods obtained should pass to accused, the passing of the property from the person defrauded being sufficient.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—C.

11,010 ii. —— ——.]—A person may be convicted for obtaining goods by false pretences contrary to sect. 405 of the Criminal Code although the false pretence was not made to the person to defraud him. It is not essential under the Code, as it is in England, that the charge should set out the false pretence or give the name of the person to whom it was made.—R. *v.* PARK, [1937] 1 W. W. R. 49; 1 D. L. R. 497; 67 C. C. C. 295; 6 L. Jo. 275.—**CAN.**

1 i. —— *Charge laid as to another person.*]—R. *v.* LEXIER, [1933] 1 W. W. R. 588; 59 C. C. C. 343; 41 Man. L. R. 78.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—D.

m i. —— ——.]—Where a party is induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B R. 255.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—E.

11,051 ii. ——.]—A contract procured by false pretences, which describes an advance as a loan, is no

11,116. *Add. Annotation :*—**Distd.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

11,120. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

11,346. *Add. Annotations :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18; R. *v.* Woods (1930), 143 L. T. 311.

11,375. *Add. Citations :*—[1924] 1 K. B. 311 ; 93 L. J. K. B. 144 ; 130 L. T. 318 ; 27 Cox, C. C. 574 ; [1924] B. & C. R. 78.

SUB-SECT. 1 (p. 1012.)

13 Eliz. c. 5, is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

11,419. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

11,461. *Add. Annotation :*—**Refd.** Woolmington *v.* Public Prosecutions Director (1935), 104 L. J. K. B. 433.

11,467. *Add. Annotation :*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

11,503a. —— **Subsequent experiments.**]—Evidence of experiments made subsequently to the fire is admissible in order to show the way in which the building was set fire to.—R. *v.* HESELTINE (1873), 12 Cox, C. C. 404.

11,591a. Form of indictment.]—An indictment for an offence under Malicious Damage Act, 1861 (c. 97), s. 7, is bad in law if it does not contain

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defence to a charge of obtaining by false pretences.—R. *v.* JAMES (1932), 59 C. C. C. 64.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —A.

11,068 xv. ——.]—A statement of intention to do something in the future is not such a pretence as will support a presentment for obtaining property by false pretences. The prisoner was convicted on presentment charging that with intent to defraud he obtained from the prosecutrix £100 by falsely pretending that he desired to marry her & intended to do so :—*Held :* the pretence alleged was insufficient to found the charge, & the conviction must be quashed.—R. *v.* SAWYER, [1936] V. L. R. 1 ; 42 Argus L. R. 43.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —B.

11,114 i. *By advertisement.*]—Advertisements published in newspapers & followed by circular letters addressed to persons who answered the advertisements, related to an alleged puzzle for the correct solution of which prizes were offered, but it was in fact no puzzle & the advertisements & letters contained misrepresentations which deluded those who supposed themselves to be competing for prizes into sending money to deft. :—*Held :* deft. was guilty of obtaining by false pretences with intent to defraud. It is not necessary that the false pretence should be made in express words, if the idea is conveyed.—R. *v.* MARSHALL, [1930] 2 D. L. R. 855 ; 53 Can. C. C. 118 ; 65 O. L. R. 279.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —D. (a).

sa. *Property represented as adequate security.*]—R. *v.* HAMILTON, [1931] 3 D. L. R. 121 ; 66 O. L. R. 537 ; 55 Can. C. C. 85.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —D. (d).

11,191 i. *Value or extent of business.*]—R. *v.* PENNY (1925), 35 B. C. R. 414.—**CAN.**

11,191 ii. ——.]—R. *v.* BOYD, [1931] 1 W. W. R. 332 ; 55 Can. C. C. 168 ; 25 Alta. L. R. 462.—**CAN.**

sc. *Sale of patent rights—Representation by vendor as to possibility of sales.*]—R. *v.* BAILEY (1931), 55 Can. C. C. 170—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (e).

se. *Authority to purchase.*]—Applt. was convicted of theft by false pretences upon evidence which proved that he had obtained goods on credit from the C. Co. by falsely representing that he had authority to purchase them on behalf of the E. Co. Applt. did not give evidence but made an unsworn statement that he had used the E. Co.'s name in order to obtain the goods at a lower price :—*Held :* applt.'s representation that the E. Co. would pay for the goods could only mean that he himself did not intend to pay for them, & he was therefore rightly convicted.—CHIPPS *v.* R. (1931), 52 N. L. R. 18.—**S. AF.**

sg. *Own stock represented as treasury stock.*]—A representation that stock sold is treasury stock when it is stock of accused is a false representation.—R. *v.* JONES & MANLOVE, [1935] 2 D. L. R. 718 ; 63 Can. C. C. 145 ; 49 B. C. R. 422.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (h).

so. *Misrepresentation by building company—Property represented as free from mortgages.*]—R. *v.* JOHNSTON, [1932] 1 D. L. R. 655 ; O. R. 79 ; 57 C. C. C. 132.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 4.

11,266 i. —— —— *Reasonable belief in ability to pay.*]—R. *v.* REYNOLDS, [1927] S. A. S. R. 228.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 7.

n i. —— *Alleged false representation of market value of bonds—No averment that market value not as represented.*]—R. *v.* ROBERTSON (N. S.), [1928] 4 D. L. R. 778 ; 50 Can. Crim. Cas. 179. —**CAN.**

sf. *Obtaining contract with hotel to supply banquet—Criminal Code, s. 405, is appropriate section.*]—R. *v.* HALL (1930), 53 Can. C. C. 312.—**CAN.**

PART XXXIV. SECT. 21, SUB-SECT. 2.

11,383 i. *Who is a "creditor."*]—A person who sells goods, other than necessaries, to an infant, & who has no enforceable claim for the price, is not a "creditor" within Criminal Code, s. 417.—R. *v.* RASH (1923), 41 Can. Crim. Cas. 215 ; 53 O. L. R. 245. —**CAN.**

PART XXXIV. SECT. 23, SUB-SECT. 1.

si. *Personating candidate.*]—Where A. falsely represented himself to be a candidate S. at a University examination, & answered question papers in the name of S., he was held to have caused damage to the University in reputation & thereby committed the offences of cheating by personation & forgery for the purpose of cheating.—ASHWINI KUMAR GUPTA *v.* EMPEROR, I. L. R., [1937] 1 Cal. 71.—**IND.**

PART XXXIV. SECT. 25, SUB-SECT. 1.

sc. *Sale of land.*]—An appeal from a conviction on a charge of conspiring to defraud affirmed. The accused induced one B. to agree to buy for $21,000 certain land, worth not more than $3,300, by representing to B. that another man had already taken an option to buy the land for $31,000. B. had never seen the land & knew nothing of its value. In pursuance of the scheme, the accused had given an option to one W. & introduced him to B. as a *bonâ fide* purchaser at the advanced price, when in fact he was but a dummy with whom it had been arranged that he should make a substantial payment on the purchase from B. practically out of B.'s own money, & then default on the contract. Appeal dismissed.—R. *v.* BURNS, [1931] 2 W. W. R. 58 ; 1 D. L. R. 914 ; 55 Can. C. C. 70 ; 25 Alta. L. R. 306. —**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 1. —B.

l i —— *Accidental burning of ship.*]—Where a sailor on board a ship entered a part of the vessel where spirits were kept, for the purpose of stealing rum, &, while tapping a cask of rum, a lighted match, held by him, came in contact with the spirits which were flowing from the cask tapped by him, & a conflagration ensued, which destroyed the vessel :—*Held :* a conviction for arson of the ship could not be upheld.—R. *v.* FAULKNER (1877), 13 Cox, C. C. 550.—**IR.**

sd. *Intentional wrongful injury.*]—To constitute the crime of malicious injury to property, all that is necessary is an intentional wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—R. *v.* MASHARIGN, [1924] App. D. 11.—**S. AF.**

PART XXXIV. SECT. 26, SUB-SECT. 2. —B.

e i. —— —— ——.]—K. was charged under Malicious Damage Act, 1861 (c. 97), s. 3, with maliciously setting fire to a house with intent to defraud. The house was K.'s own house, & in order to establish an intent to defraud, it was alleged that the house was insured. The policy of insurance was not produced at the trial, & K. objected to secondary evidence of it being given, no notice to produce having been served on him or on any one else. K. was convicted & sentenced. On appeal :—*Held :* it was not necessary that the policy of insurance should have been produced ; certain admissions which had been made by K. constituted admissible evidence proper to be submitted to the jury that the house was in fact insured, & the appeal must be dismissed.—R. *v.* KYLE, [1933] I. R. 15. —**IR.**

PART XXXIV. SECT. 26, SUB-SECT. 6.

se. *Possession of explosive substance—Explosive Substances Act, s. 4—Meaning of "unlawfully" & "maliciously."*]—*Held :* the word "unlawfully" in Explosive Substances Act, s. 4, signifies "not for a lawful object," & the word "maliciously" means & implies an intention to do an act which is wrongful, to the detriment of another person.—DULA SINGH *v.* R. (1928), I. L. R. 9 Lah. 531.—**IND.**

words corresponding to the words in the sect. " under such circumstances . . . amount to felony."—R. *v.* HYDE (1934), 151 L. T. 20; 98 J. P. 213; 78 Sol. Jo. 300; 32 L. G. R. 200; 24 Cr. App. Rep. 149; 30 Cox, C. C. 103, C. C. A.

11,612a. ——.]—A person may be tried as an accessory before the fact to the offence of setting fire to a vessel, of which he was at the time a part owner.

There may be a felonious intent to prejudice underwriters in such a case, although the goods insured were never put on board. —R. *v.* WALLACE (1841), Car. & M. 200; 2 Mood. C. C. 200, C. C. R.

11,642a. Charge under Metropolitan Police Courts Act, 1839 (c. 71), s. 38—Time for bringing—Existing tenancy.]—Where a landlord, during the existence of a tenancy, charged his tenant under the above sect. with having three months before wilfully damaged his premises: —*Held:* the charge should have been made within one month.—DOWELL *v.* BENINGFIELD (1841), Car. & M. 9.

11,686. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co. (1926), 95 L. J. Ch. 272.

11,709. *Add. Annotations:*—**Consd.** Cotterill *v.* Penn, [1936] 1 K. B. 53. **Refd.** Barnard *v.* Evans, [1925] 2 K. B. 784.

11,738. *Add. Annotation:*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part XXXV.—Forgery.

11,748. To cross-references following this case add " *See, also,* Criminal Justice Act, 1925 (c. 86), s. 35 (1)."

11,770. For existing headnote substitute:—

(1) A. authorised by B., his master, to fill up a cheque for a certain sum, fills it up for a greater sum:—*Held:* a forgery, & the circumstance of the prisoner, alleging a claim on his master for the greater sum, as salary then due, was immaterial, even if true.

(2) Drawer's signature laid as John McNicole & Co., proved to be John McNicoll & Co.:—*Held:* no variance.

11,797. *Add. Annotation:*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

11,834. *Add. Annotations:*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 423; Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

11,837. *Add. Annotation:*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

11,843. *Add. Annotation:*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

11,935. To cross-reference before this case add " *See, also,* Criminal Justice Act, 1925 (c. 86), s. 38; Counterfeit Currency (Convention) Act, 1935 (c. 25).

11,946a. —— **Request to pay to third party.**]—A customer in the country had an account open with a wholesale house in London: a letter purporting to come from him was delivered at their place of business; it was in the

PART XXXIV. SECT. 26, SUB-SECT. 17.

11,699 ii. ——.]—The fact that a stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 510 (B) (b), for maiming or wounding the stray bull.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—**CAN.**

st. *What is "wilfully" killing.*]—A charge laid under Criminal Code, s. 537, of wilfully killing a silver black fox which had escaped from its cage was dismissed on the ground that the accused's shooting of the fox was not done "wilfully," within the meaning of that term in said section, but was justified to protect his property.—R. *v.* PETERSON (Sask.), [1928] 3 W. W. R. 516.—**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 19.—C.

d i. ——.]—On appeal from a conviction for wilfully damaging by night one window, two cans of paint & office furniture to the amount of $20, the accused, who had thrown a rock at the office window behind which were the cans of paint, contended that the cost of cleaning up the office was merely consequential & could not properly be taken into account in finding the value of the property damaged, &, as the damage to the window & the cans of paint actually amounted to less than $5, he had been convicted improperly of damaging property to the value of $20:—*Held:* the contention could not be sustained; the cost of cleaning up the office was not "consequential damage," but was the value of the direct damage to those premises; & said damage was part of the "event" which, under the definition of "wilfully" in sect. 509 of the Code, the accused must be held to have known that he would probably cause by throwing the rock through the window.—R. *v.* SLUSAR, [1936] 1 D. L. R. 96; [1935] 3 W. W. R. 284; 65 C. C. C. 91.—**CAN.**

PART XXXVI. SECT. 26, SUB-SECT. 20.

ii. ——.]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—R. *v.* KRUTZEL, [1924] 1 D. L. R. 621; 1 W. W. R. 342; 41 Can. Crim. Cas. 279; 20 Alta. L. R. 19.—**CAN.**

PART XXXV. SECT. 1.

sw. *Effect of Customs Act, 1927.*]—Customs Act, R.S.C., 1927, does not supersede the Criminal Code in the matter of forgery.—R. *v.* LAPIERRE, [1935] 2 D. L. R. 545; 63 C. C. C. 114. —**CAN.**

PART XXXV. SECT. 2, SUB-SECT. 2.

11,762 i. *Ante-dating.*]—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—R. *v.* GOBIND SINGH (1926), I. L. R. 5 Pat. 573.—**IND.**

PART XXXV. SECT. 3, SUB-SECT. 5.

sx. *Wife signing husband's name.*]—Since forgery requires a criminal intent, a wife who signs her husband's name on a promissory note, having a general mandate to conduct household affairs, is not guilty of forgery.—VALLIERES *v.* R. (1936), 65 Can. C. C 383.—**CAN.**

PART XXXV. SECT. 5, SUB-SECT. 1.

11,882 vii. ——.]—Accused wrote to a rubber stamp co. ordering a bank's acceptance stamp. The letter falsely purported to be signed by the manager of the branch of the bank in question. The stamp was made, delivered to the accused & paid for, but before it could be used the accused was arrested:—*Held:* the accused was properly convicted of forgery under sect. 466 of Criminal Code, even though he did not intend to prejudice anyone by the letter itself.—R. *v.* KENNEY, [1935] 2 W. W. R. 104; 3 D. L. R. 123; 63 C. C. C. 379; 5 F. L. J. (Can.) 86.—**CAN.**

following form :—" I shall feel obliged by your paying Mr. B. the sum of £2 7*s.* 8*d.* & debiting me with the same. You will please have a receipt, & add the amount to invoice of order on hand." It appeared to be the practice of the house in London to pay to country customers on requests of a similar description. The party who sent it by an innocent agent, & obtained the money on it, was indicted for forging & uttering it. The instrument was described in the indictment as an undertaking—a warrant—& an order, each for the payment of £2 7*s.* 8*d.* The prisoner having been convicted of uttering, the fifteen judges held the conviction wrong, being of opinion that the instrument was neither an undertaking, a warrant, or an order.—R. *v.* THORN (1841), Car. & M. 206 ; 2 Mood. C. C. 210 ; 174 E. R. 473.

Annotations :—**Refd.** R. *v.* Vivian (1844), 1 Car. & Kir. 719 ; R. *v.* Dawson (1851), 5 Cox, C. C. 220.

11,962. *Add. Annotation :*—**Refd.** R. *v.* FERGUSON (1845), 5 L. T. O. S. 458.

12,061a. Certificates procuring admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

12,083a. Delivery of box containing forged stamps.] —Delivering a box containing, among other things, forged stamps, to the party's own servant that he may carry them to an inn to be forwarded by a carrier to a customer in the country, is an uttering. If the delivery is in one county & the inn to which the servant is to carry them in another, the party may be indicted in the former county. —R. *v.* COLLICOTT (1812), Russ. & Ry. 213, 229 ; 168 E. R. 766.

Annotations :—**Refd.** R. *v.* Burdett (1820), 4 B. & Ald. 95. **Consd.** Pearson *v.* M'Gowran (1825), 3 L. J. O. S. K. B. 95.

12,089. In *Citations*, for " 2 Den. 475 " read " 3 Den. 475."

12,123a. Forged certificates—Obtaining admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

Part XXXVI.—Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

12,167a. —— In newspaper article.]—N. was the author of an article in a newspaper, headed " What the Stars Foretell," which purported to forecast general events according to the positions of the stars. It also gave a particular forecast for each dated day of the current week purporting to relate what would be the fortunes of people who were born on these particular dates. N. was charged with pretending to tell fortunes contrary to the Vagrancy Act, 1824 (c. 83), s. 4, & the charge was dismissed upon the ground that the article was too vague to come within the sect. :—*Held :* the article being addressed to the public generally, & stating or forecasting the future of all persons born on a certain day did not purport to tell the fortune of an individual & was not within the above sect.—BARBANELL *v.* NAYLOR, [1936] 3 All E. R. 66 ; 101 J. P. 13 ; 80 Sol. Jo. 876 ; 35 L. G. R. 10, D. C.

12,169a. —— ——.] — The offence under Vagrancy Act, 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed, Merely to tell fortunes is an offence in itself. whatever the state of mind of deft.—STONEHOUSE *v.* MASSON, [1921] 2 K. B. 818 ; 91 L. J. K. B. 93 ; 125 L. T. 463 ; 85 J. P. 167 ; 37 T. L. R. 621 ; 19 L. G. R. 477 ; 27 Cox C. C. 23, D. C.

Annotation :—**Follid.** Irwin *v.* Barker (1925), 69 Sol. Jo. 589.

12,169b. —— ——.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—IRWIN *v.* BARKER (1925), 69 Sol. Jo. 589, D. C.

PART XXXV. SECT. 6, SUB-SECT. 9.

sy. *Seal & stamps of Liquor Control Board.*]—R. *v.* MILLER (1931), 56 Can. C. C. 97.—**CAN.**

PART XXXV. SECT. 8, SUB-SECT. 1.

sz. *Utterer need not be actual forger.*]—BARR *v.* H.M. ADVOCATE, [1927] S. C. (J.) 51.—**SCOT.**

CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

Part I.—Contempt of Court Generally.

1. *Add. Annotation :—As to* (2) & (3) **Apld.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert, [1930] 2 Ch. 368. *As to* (3) **Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

3. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

7. *Add. Annotation :*—**Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

Part III.—Jurisdiction to Commit or Fine for Contempt.

28. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

43. *Add. Annotations :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350. **Refd.** R. *v.* Edwards, *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

46. *Add. Citations :—sub nom.* R. *v.* BROWNELL, 1 Ad. & El. 598 ; 3 L. J. M. C. 118 ; 110 E. R. 1335.

Add. Annotation :—**Folld.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

46a. —— —— —— ——.]—The King's Bench Div. has no power to attach for contempt a witness who has disobeyed a *subpœna* from quarter sessions. A clear distinction still exists between contempt which consists in interfering with the administration of justice by acts done or writings published, & contempt which consists in interfering with an order or other process of the inferior cts.—R. *v.* JUDGE, *Ex p.* ISLE OF ELY JUSTICES, [1931] 2 K. B. 442 ; 100 L. J. K. B. 350 ; 144 L. T. 647 ; 95 J. P. 97 ; 47 T. L. R. 263 ; 75 Sol. Jo. 120 ; 29 L. G. R. 418, D. C.

49. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

54. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

54a. **Consistory Court.**]—The publication of a statement tending to prejudice the fair hearing of a complaint preferred in a Consistory Ct. constitutes a contempt of that ct., & the K. B. Div. of the High Ct. has inherent jurisdiction to protect the Consistory Ct. by issuing a writ of attachment for contempt of ct. against the person or persons making the statement with a view to publication or publishing it or causing it to be published.—R. *v.* DAILY HERALD, EDITOR, PRINTERS & PUBLISHERS OF, *Ex p.* NORWICH (BP.), R. *v.* EMPIRE NEWS, EDITOR, PRINTERS & PUBLISHERS OF *v.* NORWICH (BP.), [1932] 2 K. B. 402 ; 101 L. J. K. B. 305 ; 146 L. T. 485 ; 48 T. L. R. 253 ; 76 Sol. Jo. 165, D. C.

54b. **County court.**]—The King's Bench Division has jurisdiction to punish a contempt of a county ct. consisting in an obstruction of a sale under a distraint levied in pursuance of an order of the county ct.—R. *v.* EDWARDS, *Ex p.* WELSH CHURCH TEMPORALITIES COMRS. (1933), 49 T. L. R. 383, D. C.

Part IV.—Criminal Contempt.

98. *Add. Citation :—sub nom. Re* DAVIES, BUTSON *v.* DAVIES, 4 T. L. R. 580.

152. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

PART III. SECT. 2.

25 iii. ——.]—Cts. of Record have an inherent power of punishing in a summary way any act done or writing published, calculated to bring the ct. or judge into contempt, or to lower its authority.—*Re* TUSHARKANTI GHOSH (1935), I. L. R. 63 Calc. 217.—**IND.**

h i. ——.]—Under Letters Patent of the Patna High Ct., clause 28, a Div. Bench has power to issue a rule to show cause against committal for contempt. — *Re* MURLI MANOHAR PRASAD (1928), I. L. R. 8 Pat. 323.—**IND.**

k i. —— *Irish Free State.*]—The High Ct. of Justice of the Irish Free State has jurisdiction to commit for contempt of ct.—A.-G. *v.* O'KELLY, [1928] I. R.—308. **IR.**

k ii. ——.]—The High Ct. of Madras as a ct. of record has jurisdiction in all matters of contempt of ct. arising within its territorial jurisdiction, even if the offender happens to reside outside it.—RAJAH *v.* WITHERINGTON (1934), I. L. R. 57 Mad. 831.—**IND.**

k iii. ——.]—Non-Presidency High Cts. in India as Superior Cts. of Record have an inherent power to punish contempt of themselves & this power has not been taken away or in any wise limited by the Contempt of Cts. Act.—HARKISHEN LAL *v.* R., I. L. R. [1937] Lah. 69.—**IND.**

k iv. ——.]—The power to commit for contempt of ct. was inherited by the High Ct. at Fort William from the Supreme Ct. at Fort William & has since been retained in the High Ct. by subsequent legislation. The jurisdiction is *quasi*-criminal & has in no way been affected by the Codes of Civil & Criminal Procedure.—CHANDAN MALL KARNANI *v.* SARDARI LAL THAPAR, I. L. R. [1937] 1 Cal. 345.—**IND.**

sa. *Supreme Court of Alberta.*]—The Supreme Ct. of Alberta has inherent jurisdiction to punish by summary process a criminal contempt of ct., even though committed outside the courtroom.—*Re* CAMPBELL & COWPER, [1934] 3 W. W. R. 593 ; 63 C. C. C. 36.—**CAN.**

sb. *Contempt of inferior courts.*]—No power to punish for contempt of an inferior ct. now exists independently of the Indian Penal Code & the Contempt of Courts Act.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

PART IV. SECT. 1.

97 iv. —— ——.]—The phrase "contempt of ct." does not in the least describe the true nature of the

153a. ——.]—Whether the authority & position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises freely the ordinary right of criticising temperately & fairly, in good faith, in private or in public, any episode in the administration of justice. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, & are genuinely exercising a right of criticism & not acting in malice, or attempting to impair the administration of justice, they are immune from proceedings for contempt of ct.—AMBARD *v.* A.-G. FOR TRINIDAD & TOBAGO, [1936] A. C. 322; [1936] 1 All E. R. 704; 105 L. J. P. C. 72; 154 L. T. 616; 52 T. L. R. 335; 80 Sol. Jo. 344, P. C.

164a. ——.]—Observations on the distinction between legitimate criticism of a judge & such an imputation of unfairness & lack of impartiality as constitutes contempt of ct.—R. *v.* NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR (1928), 44 T. L. R. 301, D. C.

165a. ——.]—R. *v.* NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 164a, *ante*.

166. *Add. Annotations:—As to* (1) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. *As to* (2) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. **Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

167. *Add. Annotation:*—**Refd.** R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494.

177a. —— —— **Poster implying that charge amounts to murder.**]—R. *v.* DAILY HERALD (EDITOR, PRINTERS & PUBLISHERS), *Ex p.* ROUSE (1931), 75 Sol. Jo. 119.

179. *Add. Annotations:*—**Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

179a. —— —— ——.]—R. *v.* "SURREY COMET" (EDITOR, PRINTER & PUBLISHER), *Ex p.* BALDWIN (1931), 75 Sol. Jo. 311.

179b. —— —— **Results of investigations of private detectives.**]—When an accused person is under arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime & to publish the results of that investigation.—R. *v.* EVENING STANDARD, *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, R. *v.* MANCHESTER GUARDIAN, *Ex p.* SAME, R. *v.* DAILY EXPRESS, *Ex p.* SAME (1924), 40 T. L. R. 833, D. C.

180a. Charge to grand jury.]—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a

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class of offence committed, viz., interfering with the administration of the law in impeding & preventing the course of justice. Imprisonment for breach of interdict being in vindication of public law, it must not be assumed that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though such apology is accompanied by a statement on behalf of complainer that he no longer requires the protection which the original interdict gave him.—JOHNSON *v.* GRANT, [1923] S. C. 789.—**SCOT.**

97 v. ——.]—Upon an application made to the High Ct. that the editor & the proprietor of a certain newspaper be punished for contempt of that ct. in publishing certain articles & letters in the newspaper purporting to criticise a decision of the High Ct.:—*Held:* the legal principles applicable in such a case are: (*a*) The High Ct. has ample jurisdiction to punish summarily those responsible for publications calculated to obstruct or interfere with the administration of justice, whether such publications take the form of comment referring to proceedings pending in the ct., or that of unjustified attacks upon the members of the ct. in their public capacity. (*b*) In the case of attacks upon the ct. or its members, the summary remedy of fine or imprisonment is applied only where the ct. is satisfied that it is necessary in the interests of the ordered & fearless administration of justice, & where the attacks are unwarrantable. (*c*) It is the duty of the ct. to protect the public against every attempt to overawe or intimidate the ct. by insult or defamation, or to deter actual & prospective litigants from complete reliance upon the ct.'s administration of justice. (*d*) The facts forming the basis of the criticism must be accurately stated, & the criticism must be fair & not distorted by malice. (*e*) Even although the criticism exceeds the bounds of fair comment so that other remedies of a civil or criminal nature are or may be available, the ct. will not apply the summary remedy unless upon the principles stated above. (*f*) In all cases of contempt the ct. has power to act not only summarily but *ex mero motu*. (*g*) Summary proceedings for contempt are criminal in character; therefore resps. are entitled to invoke the principle that guilt should be proved beyond reasonable doubt.—R. *v.* FLETCHER, *Ex p.* KISCH (1935), 52 C. L. R. 248; 41 Argus L. R. 134; 8 A. L. J. 390.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 10.

sd. *Disposal of subject-matter of action.*]—There is no rule of law or practice which prevents a litigant from disposing of property merely because it is the subject-matter of the action. Unless some proceeding prescribed for the preservation of the property *pendente lite* is availed of, a party disposing of the property after the action has been brought cannot be said to be guilty of contempt of ct.—AUSTMAN & ODDSON *v.* BJARNASON, [1932] 2 W. W. R. 20.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sp. *Sending letter to judge containing offensive references to judgment.*]—*Re* MILLER (1921), 54 N. S. R. 529.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

166 ii. ——.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others:—*Held:* (1) the publication of an article referring to a case which had been decided might amount to contempt; (2) an article scandalising a ct. or judge was a contempt of ct.—R. *v.* SAYYAD HABIB (1925), I. L. R. 6 Lah. 529.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

r i. —— ——.]—*Re* SMITH'S NEWSPAPERS, LTD., *Ex p.* HIGGS (1927), 28 S. R. N. S. W. 85.—**AUS.**

170 i. —— *No proceedings pending.*]—Applt. was fined for contempt in respect of matter published by him:—*Held:* (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply; (2) there was nothing in the published matter which was calculated to prejudice the course of justice; (3) the order must be set aside.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—**AUS.**

178 i. *Prisoner committed for trial—Antecedent character of prisoner.*]—Appct. was charged with breaking & entering with intent, & on the morning of the hearing of the proceedings in the police ct. & the subsequent morning an account of the alleged crime & other offences apparently connected therewith was published in a newspaper. Appct. was committed for trial at the criminal sessions. The articles contained statements that the accused was concerned in the commission of crimes other than that with which he was charged, & that the arrest of the accused, with another man, was a "clean-up" of many recent burglaries:—*Held:* these statements might prejudice the fair trial of the accused, & constituted a contempt of ct.—*Re* THOMAS (1928), S. A. S. R. 210.—**AUS.**

charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—R. *v.* EVENING NEWS, *Ex p.* HOBBS, [1925] 2 K. B. 158; 94 L. J. K. B. 511; 132 L. T. 767; 41 T. L. R. 291; 27 COX, C. C. 764, D. C.

180b. Anticipation of defence—Similar statement made by accused before arrest.]—When appct. was under remand on a charge of murdering his son, defts. published, in addition to the formal evidence which had been given before the magistrates, the following statement: "It was suggested that he met his death in an accidental manner through the family dog, Prince, knocking over a fully loaded double-barrelled gun left against the barn door." On an application to commit defts. for contempt of ct. in publishing what purported to be a statement of the defence which would be put forward & so prejudicing the defence, it appeared that a similar statement had been made by the accused man himself to the police before his arrest:—*Held:* in the circumstances the statement complained of did not come within the mischief against which proceedings for contempt were directed.—R. *v.* NEWS OF THE WORLD, EDITOR, PRINTERS & PUBLISHERS, *Ex p.* KITCHEN (1932), 48 T. L. R. 234; 76 Sol. Jo. 147, D. C.

182a. Publication of statement that money paid into court—Libel action against newspaper—Libel Act, 1845 (c. 75), s. 2.]—(1) The amount of a payment into ct. by deft. under Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, &, where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule *nisi* for attachment, but to proceed by notice of motion in the action.—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL (1925), 41 T. L. R. 508; 69 Sol. Jo. 642, D. C.

183a. Caption of news film.]—During a procession in London, in which the King was riding, a revolver fell close to His Majesty's horse. It appeared that it was either thrown by or knocked out of the hand of a man who was subsequently charged with being in unlawful possession of firearms. A news film of the man's arrest was shown with the caption "Attempt on the King's life":—*Held:* the caption was liable to prejudice the accused's fair trial & was a contempt of ct.—R. *v.* HUTCHISON, *Ex p.* MCMAHON, [1936] 2 All E. R. 1514; 155 L. T. 455; 80 Sol. Jo. 723.

190. *Add. Annotations:—As to* (1) **Apld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508. *As to* (1) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368; R. *v.* Daily Herald, *Ex p.* Rouse (1931), 75 Sol. Jo. 119. **Apld.** R. *v.* News of the World, Editor, Printers & Publishers, *Ex p.* Kitchen (1932), 48 T. L. R. 234; R. *v.* Daily Worker (Proprietor, Printer & Publishers), *Ex p.* Goulding, R. *v.* Star, Daily Telegraph & New Leader (Proprietor, Printer & Publishers), *Ex p.* Goulding (1934), 78 Sol. Jo. 860. **Consd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595; R. *v.* Associated Newspapers, Ltd., *Ex p.* Beyers, R. *v.* Co-operative Press, Ltd., *Ex p.* Beyers, R. *v.* Daily Sketch & Sunday Graphic, *Ex p.* Beyers (1936), 80 Sol. Jo. 247. **Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303. *As to* (2) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas, [1930] 2 Ch. 368.

192a. —— ——.]—A publication made with the clear intention of prejudicing the fair trial of an issue pending before a ct. is obviously a contempt of ct., & will be punished as such. But where the ct. is satisfied that there was no such intention & yet the publication might prejudice a pending trial, the ct. will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, & no attachment will be granted unless (*inter alia*) the ct. is satisfied that the pending proceeding is a genuine proceeding, brought & intended to be prosecuted to effect its avowed purpose.—R. *v.* DAILY MAIL (EDITOR), *Ex p.* FACTOR (1928), 44 T. L. R. 303, D. C.

197a. —— ——.]—R. *v.* ASSOCIATED NEWSPAPERS, LTD., *Ex p.* BEYERS. R. *v.* CO-OPERATIVE PRESS, LTD., *Ex p.* BEYERS, R. *v.* DAILY SKETCH & SUNDAY GRAPHIC, *Ex p.* BEYERS (1936), 80 Sol. Jo. 247, D. C.

200. *Add. Annotations:*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303; *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

204a. —— ——.]—R. *v.* "DAILY WORKER" (PROPRIETOR, PRINTER & PUBLISHERS), *Ex p.* GOULDING, R. *v.* "STAR," "DAILY TELEGRAPH" & "NEW LEADER" (EDITORS,

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PART IV. SECT. 3, SUB-SECT. 3.—A. (d) i.

193 ii. —— ——.]—R. *v.* MCINROY, *Re* WHITESIDE (1915), 32 W. L. R. 764; 9 W. W. R. 846.—**CAN.**

193 iii. —— ——.]—MERIDEN BRITANNIA CO., LTD. *v.* WALTERS. *Re* LEWIS (1915), 9 O. W. N. 87; 34 O. L. R. 518.—**CAN.**

193 iv. ——.]—**The publication of comments on a case pending trial in a ct. amounts to contempt of ct., i. the comments are such as are likely to prejudice the administration of justice in the case.**—R. *v.* MAUNG TIN SAW (1927), I. L. R. 6 Ran. 39.—**IND.**

194 i. —— *Creation of prejudice essence of offence.*]—A contempt of ct. which tends to prejudice the interest of a litigant in pending litigation is criminal contempt.—*Re* CAMPBELL & COWPER, [1934] 3 W. W. R. 593; 63 C. C. C. 36.—**CAN.**

sg. *Charge under sect. 297 (b)—Newspaper article on mob rule.*]—A newspaper article attacking mob rule held not to amount to contempt of ct. because a deft. stands charged with an offence under sect. 297 (*b*) of the Criminal Code.—R. *v.* WALLBRIDGE, [1936] 4 D. L. R. 376; O. R. 482; 67 Can. C. C. 89; 6 F. L. J. (Can.) 53.—**CAN.**

PRINTERS & PUBLISHERS), *Ex p.* GOULDING (1934), 78 Sol. Jo. 860, D. C.

218. *Add. Annotation :* — **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

224a. —— —— **Appointment of receiver for debenture holders.**]—Contempt of ct. may include conduct which, while it cannot directly influence a judge's mind, is calculated to affect the conduct of parties to proceedings, & the ct.'s jurisdiction to commit for contempt is not confined to cases in which its orders may directly be affected.

On the application of pltfs. in a debenture holders' action, a receiver of the shipping co. was appointed on the ground of jeopardy. A director of a co. which managed the shipping co.'s business, who was also a guarantor of debentures issued by the shipping co., authorised newspapers to publish interviews in which he adversely criticized the conduct of pltfs. in having obtained the appointment of a receiver, & he further stated that by so doing they had " smashed the goodwill & organisation of the business in a day " & that " no one in shipping circles can understand this line of conduct." The interviews did not state that the appointment was on the ground of jeopardy or that, as was the fact, the co. could not continue to carry on business unless money was immediately found. On a motion by pltfs. for an order to commit the director, & also the managing editor & the owners & publishers of the newspapers :—*Held :* the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings may amount to contempt of ct., because it may cause those parties to discontinue or to compromise, & because it may deter persons with good causes of action from coming to the ct., & is thus likely to affect the course of justice.—*Re* WILLIAM THOMAS SHIPPING CO., LTD., DILLON (H. W.) & SONS, LTD. *v.* THE CO., *Re* THOMAS (SIR ROBERT), [1930] 2 Ch. 368 ; 99 L. J. Ch. 560 ; 144 L. T. 104.

Annotation :—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

224b. —— —— **Appeal against Clearance Order.**] —*Re* SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931 (1932), 173 L. T. Jo. 76, D. C.

234. *Add. Annotation :*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303.

236. *Add. Annotation :*—**Dbtd.** R. *v.* Payne, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J.).

267a. —— ——.]—MULLARD RADIO VALVE CO., LTD. *v.* ROTHERMEL CORPN., LTD. (1933), 51 R. P. C. 1.

270. *Add. Annotation :*—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

271. *Add. Annotation :*—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

274. *Add. Annotation :*—**Refd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

274a. —— ——.]—Pltfs. were manufacturers of apparatus for conveying beer from cellar to bar in hotels & public-houses, & defts. were competing manufacturers of different apparatus for the same purpose. Pltfs. brought an action against defts. alleging that defts. had caused to be published to brewers letters disparaging pltfs.' said apparatus, & that pltfs. had thereby been prejudiced in their business, & claiming damages & an injunction A circular letter, purporting to be issued by defts., was thereupon published to certain brewers which enclosed a copy of pltfs.' statement of claim, & contained further adverse references to apparatus of the kind manufactured by pltfs., & a statement that defts. intended " to contest this ' cock & bull ' claim to the uttermost degree." It appeared that the circular letter & the enclosed copies of the statement of claim had been sent out by the publicity agent of defts. without their knowledge. On behalf of pltfs., a motion was made in the action for a writ of attachment against defts. for contempt of ct. in publishing the statement of claim & the covering circular letter, & an order *nisi* was obtained for a similar writ against the publicity agent for circulating these documents, on the ground that his doing so was calculated to prejudice the fair trial of the action. The agent stated that in doing what he had done he had no intention of prejudicing the fair trial of the action, & that if he had acted improperly he made his apologies to the ct. :—*Held :* the motion against defts. should be dismissed, & in the circumstances the order *nisi* against the publicity agent should also be discharged.—GASKELL & CHAMBERS, LTD. *v.* HUDSON, DODSWORTH & CO., R. *v.* HUDSON, *Ex p.* GASKELL & CHAMBERS, LTD., [1936] 2 K. B. 595 ; 105 L. J. K. B. 734 ; 155 L. T. 507 ; 80 Sol. Jo. 721, D. C.

274b. —— **With names of parties.**]—R. *v.* FITZHUGH, *Ex p.* LIVINGSTON (1937), 81 Sol. Jo. 258, D. C.

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) ii.

sm. *Charge of dishonesty against director—Pending trial of misfeasance summons.*]—Newspaper article charging deft. with dishonesty pending trial of a misfeasance summons in bkpcy. held, a contempt.—*Re* R. *v.* SOLLOWAY, *Ex p.* CHALMERS, [1936] 4 D. L. R. 321 ; O. R. 469 ; 67 Can. C. C. 77.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) iv.

sq. *General rule.*]—A newspaper may not, in the guise of reporting public judicial proceedings, indicate the writer's own opinion of the demeanour of a witness & so comment on that demeanour.—A.-G. *v.* DAVIDSON, [1925] N. Z. L. R. 849.—**N.Z.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

• **i.** —— *Liability of printer.*]—A printer cannot escape liability, by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications.—R. *v.* MAUNG TIN SAW (1927), I. L. R. 6 Ran. 39.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—C.

sm. *Will.*]—The publication, as an advertisement, by a newspaper of the copy of a will, with the knowledge that the will was being propounded by one party & impugned by the other in a pending suit, the object of the publication obviously being to create an atmosphere in favour of the will & adverse to the contesting party by making the public believe in the existence & genuineness of the will, was calculated to interfere with the fair administration of justice & amounted to a contempt of ct.—GURU CHARAN PRASAD *v.* BABURAO VISHNU PARARKAR (1931), I. L. R. 53 All. 712. —**IND.**

283a. Photograph of prisoner—Identity in issue.]—It is a contempt of ct. in a newspaper to publish the photograph of a person charged with a criminal offence, where it is reasonably clear that the question of the identity of accused with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—R. *v.* DAILY MIRROR, *Ex p.* SMITH, [1927] 1 K. B. 845; *sub nom.* R. *v.* "DAILY MIRROR" (EDITOR & PROPRIETORS), R. *v.* "DAILY MAIL" (EDITOR & PROPRIETORS), *Ex p.* SMITH, 96 L. J. K. B. 352; 136 L. T. 539; 43 T. L. R. 254; 28 Cox, C. C. 324.

283b. —— Identity not in issue.]—R. *v.* LAWSON, *Ex p.* NODDER (1937), 81 Sol. Jo. 280, D. C.

298a. Advertisement misrepresenting result of proceedings.]—GILLETTE SAFETY RAZOR CO. *v.* GAMAGE (A. W.), LTD. (1906), 24 R. P. C. 1.

Annotation:—**Reld.** St. Mungo Manufacturing Co. *v.* Hutchison Main (1908), 25 R. P. C. 356.

301. *Add. Annotations:*—*As to* (1) **Consd.** McPherson *v.* McPherson, [1936] A. C. 177. **Reld.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124. *As to* (2) **Consd.** *Re* A. B.'s Petn. (1927), 97 L. J. P. 104. *As to* (6) **Reld.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

341. *Add. Annotation:*—**N.F.** R. *v.* Jones, *Ex p.* McVittie, [1931] 1 K. B. 664.

341a. —— ——.]—Pltf. obtained judgment in a county ct. against deft. for a sum of money & costs, & an appeal to the Div. Ct. by deft. was dismissed with costs. Pltf.'s solr. made various but futile efforts to obtain the fruits of the judgment. Deft. disobeyed a bkpcy. notice & an order for payment of the judgment debt & costs by instalments. Several judgment summonses were obtained against deft., but deft. evaded service of them. Eventually pltf.'s solr. served deft. with a judgment summons within the precincts of a ct. of justice where deft. was waiting for a case, in which he was pltf., to be called on. Deft. applied for a writ of attachment against pltf.'s solr. for contempt of ct. in so doing:—*Held:* in the circumstances, no contempt had been committed & the rule must be discharged.

The rule laid down in *Cole* v. *Hawkins*, No. 341, that the serving of process upon a party attending his cause in ct. was a contempt of ct. is now obsolete.—R. *v.* JONES, *Ex p.* MCVITTIE, [1931] 1 K. B. 664; 100 L. J. K. B. 193; 144 L. T. 597.

343a. Order for distress for tithe—Obstruction of sale.]—R. *v.* EDWARDS, *Ex p.* WELSH CHURCH TEMPORALITIES COMRS., No. 54b, *ante*.

351a. Dissuading witness from giving evidence.]—The ct. refused to grant an attachment against deft. for an attempt to persuade a material witness for pltf. not to give evidence at the trial, it not being shown that the witness was prevented from being subpœnaed by means of deft.'s interference.—SCHLESINGER *v.* FLERSHEIM (1845), 2 Dow. & L. 737; 14 L. J. Q. B. 97; 4 L. T. O. S. 340; 9 Jur. 282.

377. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

378. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

386. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

389. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

393a. Exercise of discretion sought by petitioner in divorce—Effect of suppression of facts or false statement.]—A party to a divorce proceeding who is asking to have the discretion of the ct. exercised, & who in doing so acts in such a manner as to obstruct or divert the course of justice is guilty of a contempt of ct. & liable to its consequences.—APTED *v.* APTED & BLISS, [1930] P. 246; 99 L. J. P. 73; 143 L. T. 353; 46 T. L. R. 456; 74 Sol. Jo. 338.

PART IV. SECT. 3, SUB-SECT. 3.—D.

so. *Misleading headlines.*]—Garbled & misleading headlines in a newspaper, amounting to a criticism of the prosecution's case in the guise of a summary of the proceedings in cts. calculated to produce an atmosphere of prejudice in which the proceedings go on, is contempt of ct.—BENGAL GOVERNOR IN COUNCIL *v.* TUSHARKANTI GHOSH (1932), I. L. R. 60 Calc. 603.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—E.

283a i. *Photograph of prisoner—Identity in issue.*]—It is a grave contempt of ct. to publish in a newspaper before trial the photograph of a person charged with a criminal offence, where it should have been apparent to the mind of any reasonable person that the necessity, or possible necessity, of proof of identity of the accused person with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—A.-G. *v.* TONKS, [1934] N. Z. L. R. 141.—**N.Z.**

283a ii. ——.]—The test to be applied in order to determine whether the publication of the photograph of an accused person, in such a way as to state or suggest that it is he who is accused, is a contempt of ct. calling for summary action, is to see whether, as at the time when the photograph was published, there was a likelihood that the identity of the accused would come in question in some aspect of the case, so that the publication of the photograph would be likely to prejudice a fair trial. If the ct. is satisfied, beyond reasonable doubt, that there was such a likelihood, a case for intervention is made out. The question is not whether, on the facts then known, a defence based on identity is likely to be successful or likely to be set up; it is whether it is not reasonably probable that identity may come in question.—*Re* CONSOLIDATED PRESS, LTD., *Ex p.* AULD (1936), 36 S. R. N. S. W. 596; 53 N. S. W. W. N. 206.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 4.

sr. *Necessity for interference with administration of justice.*]—It is contempt of ct. to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action; but the summary jurisdiction possessed by a High Ct., to punish for contempt, ought only to be exercised when it is probable that the publication will substantially interfere with the due administration of justice.—THE GOVERNMENT ADVOCATE, BURMA *v.* SAYA SEIN (1929), I. L. R. 7 Ran. 844.—**IND.**

PART IV. SECT. 5, SUB-SECT. 1.

sl. *Serving subpœna ad test. on party attending proceedings.*]—Service within the precincts of a ct. of justice of a *subpœna ad testificandum* upon a party attending his cause in ct. does not constitute a contempt of ct.—*Re* TOLE, *Ex p.* TOLE (1933), 50 N. S. W. W. N. 216.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 4.

sm. *Barristers—Slander tending to embarrass conduct of case.*]—Aspersions cast upon an advocate, with reference to the conduct of his case, which tends to embarrass him in the further conduct of his client's case is contempt of ct.—ANANTALAL SINGHA *v.* WATSON (1930), I. L. R. 58 Calc. 884.—**IND.**

Part V.—Contempt in Procedure.

406a. ——.]—OWEN *v.* PRITCHARD, [1876] W. N. 147 ; 3 Char. Pr. Cas. 367.

406b. ——.]—RANSOM *v.* BOYD, [1877] W. N. 236.

429a. —— **Consent order—Breach of scheduled terms.**]—There is a distinction between a case where there is in the body of an order an express direction or undertaking, & a case where the ct. is merely staying an action on terms which the parties have agreed, & only keeping the action alive for the purpose of enforcing those terms. In the latter case the terms are not an order of the ct. capable of being enforced by proceedings for contempt, but must be enforced by an action for specific performance of the terms or for an injunction to restrain breach of the terms, followed by proceedings for contempt in the event of further breach, while in the former case contempt proceedings can be launched forthwith on breach.—DASHWOOD *v.* DASHWOOD (1927), 71 Sol. Jo. 911.

432. Add the following paragraph :—

The proper course was for an order to be made, under R. S. C., Ord. 37, r. 13, before the writ of attachment was issued.

484. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

Part VI.—Attachment and Committal.

487. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

524. *Add. Annotation :*—**Refd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

528a. Must be order to do an act.]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the " return " of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 41, r. 31 :—*Held :* (1) the judgment or order for the " return " of the shares was not a judgment or order to do an act & therefore could not be enforced by attachment ; (2) the order was unenforceable also, because it was not served on deft. co. or its directors until after the expiration of the time limited by the order for the " return " of the shares ; (3) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87 ; 101 L. J. K. B. 701 ; 147 L. T. 399 ; 48 T. L. R. 292 ; 76 Sol. Jo. 249.

536. *Add. Annotation :*—*As to* (2) **Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201.

537. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

564. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

PART V. SECT. 1, SUB-SECT. 1.—B. (a).

st. *Discretion of court to commit—Party unable to obey order.*]—Where a party could neither be said to have refused nor neglected to comply with an order of the ct. :—*Held :* he was not guilty of contempt.—R. *v.* OTTY, *Ex p.* ROBERTS, R. *v.* WHITE, *Ex p.* ROBERTS (1922), 50 N. B. R. 401, 411. —**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

sv. *Costs & expenses by husband respondent.*]—An order requiring the husband, resp. in a divorce cause, to lodge money in ct. to cover costs & expenses, or to give a bond therefor, is an order for the payment of money within sect. 2 of Arrest & Imprisonment for Debt Act, R. S. B. C., 1924.—HUMBER *v.* HUMBER, [1936] 2 W. W. R. 414 ; 50 B. C. R. 427.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

sz. *Disobedience must be by party to whom order addressed.*]—If A. is prohibited from doing an act, B. & C. cannot be committed for contempt in doing the act unless they are assisting or aiding A.—BASSEL'S LUNCH, LTD. *v.* KICK, [1937] 1 D. L. R. 235 ; 67 C. C. C. 254.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers—By one solicitor to another—Offer to comply subject to condition.*]—A solr. was ordered by the ct. to hand over papers to another solr. & failed to do so :—*Held :* guilty of contempt.

An offer was made to hand over subject to certain specified conditions : —*Held :* a refusal of this offer was justified.—*Re* BRYANT, ISARD & CO., *Ex p.* LANGLEY, [1924] 1 D. L. R. 49.—**CAN.**

sx. *To refrain from interference with business.*]—CUMBERLAND RAILWAY & COAL CO. *v.* MCDOUGALL (N. S.) (1911), 9 E. L. R. 289.—**CAN.**

sy. *To re-invest money—In purchase of house—Registration in specified names.*]—An order made in a divorce action commanded resp., in the event of his selling his residue, to reinvest the purchase-moneys " immediately " in the purchase of a new home & to register it in the joint names of the official guardian & resp. in trust for his children :—*Held :* the failure of resp. to comply with the terms of the order as to the registration of the new home in which he had invested the proceeds of the sale of the home referred to in the order constituted a contempt of ct. which under its inherent powers the ct. could punish by committal, although the order was made when the applicable Divorce rules did not contain any provision similar to sect. 79 or sect. 97 of the present Divorce rules.—MIDGLEY *v.* MIDGLEY (B. C.), [1929] 3 W. W. R. 121.—**CAN.**

sz. *Order forbidding picketing.*]—Employees who disobey an injunction forbidding picketing are guilty of contempt.—BASSEL'S LUNCH, LTD. *v.* KICK, [1936] 4 D. L. R. 106 ; O. R. 445 ; 67 Can. C. C. 131.—**CAN.**

s. ——.]—TSANG *v.* LOCAL NO. 816, HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE, [1937] 3 W. W. R. 621.—**CAN.**

PART VI. SECT. 3.

523 i. *Not limited company—Fine appropriate remedy.*]—*Held :* although the ct. cannot order the issue of a writ of attachment against a limited co. for contempt of ct., it can, where it is satisfied that a contempt has been committed, inflict the appropriate punishment, namely, order the co. to pay a fine.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* TORONTO ELECTRIC SUPPLY CO., LTD., [1935] EX. C. R. 16.—**CAN.**

582. Add the following para. :—
But where such an injunction has been granted, it ought, in the absence of unnecessary delay, to be obeyed until the motion is substantially disposed of upon the merits.

607. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

631. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

631a. —— ——.]—IBERIAN TRUST, LTD. FOUNDERS TRUST & INVESTMENT CO., LTD., No. 528a, *ante*.

689a. —— **Not enforceable by attachment.**]—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., No. 528a, *ante*.

698. *Citations :*—For " 3 Bing. 223 ; 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57 ; 130 E. R. 498 " read " 3 Bing. 223 ; 130 E. R. 498 ; *sub nom.* THORPE *v.* GISBOURNE, 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57."

709. *Add. Annotation :*—**Folld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508.

709a. ——.]—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL, No. 182a, *ante*.

710. *Add. Annotation :*—*As to* (1) **Refd.** Shrager *v.* Dighton, [1924] 1 K. B. 274.

776a. Substituted service—When ordered.]—*Re* A SOLICITOR, [1892] W. N. 22 ; 36 Sol. Jo. 271.

781a. On former clerk—At place where solicitor's name on door.]—*Held :* the service was not sufficient.—BRAGG *v.* HATCHARD (1858), 28 L. J. Ex. 35 ; *sub nom. Re* BRAGG & HATCHARD, 32 L. T. O. S. 132.

882a. Court of first instance—Enforcement of order of Court of Appeal.]—The appropriate ct. of first instance is the proper tribunal to enforce injunctions granted by the Ct. of Appeal.—POTT *v.* STUTELEY, [1935] W. N. 140 ; 180 L. T. Jo. 113 ; 8 L. Jo. 134.

894. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

SUB-SECT. 7.—SECOND ORDER.

(Vol. XVI., p. 75.)

926a. First not executed—Whether second irregular.]—It is no objection to the regularity of a writ of attachment that another similar writ has previously issued against the same party, but which has not been acted on.—ANDREWS *v.* WALTON (1845), 1 Ph. 619 ; 41 E. R. 768.

931a. —— **Irregularity of attachment.**]—*Re* BEVAN & GIRLING (1863), 12 W. R. 196, L. JJ.

950a. Accused already in custody—Need not be brought into court.]—It is not necessary to bring up a party who is in custody for non-payment of costs.—OLDFIELD *v.* COBBETT (1849), 12 Beav. 91 ; 50 E. R. 995.

1005. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

1039a. —— —— ——.]—After an order for a writ of attachment had been made against a solr. in default further time was given by his client, the creditor, on part payment being made. On further default the writ was executed, & the solr. imprisoned :—*Held :* the right to enforce the writ had not been waived.—*Re* A SOLICITOR (1895), 64 L. J. Ch. 894.

1071a. Deposit of permit or passport in court—Imprisonment for taking infant out of jurisdiction.]—ADAMI *v.* ADAMI (1929), 73 Sol. Jo. 557.

PART VI. SECT. 5, SUB-SECT. 3.—B. (a) ii.

574 i. *General rule—Notice sufficient without service.*]—If a person enjoined by a prohibitory injunction becomes aware without personal service of the existence of the order & nevertheless commits a fault, he is just as liable to attachment as if he had been personally served.—ELLIOTT *v.* APPLETON (1923), 19 Tas. L. R. 20.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 5.—C.

697 iv. —— ——.]—On an application by notice of motion for committal for an alleged contempt of ct. by publishing an article in a newspaper, it was shown that a space of over three months had elapsed between the publication & the motion :—*Held :* the jurisdiction of the ct. should not be exercised on notice of motion.—R. *v.* JOYCE, *Ex p.* PORT PIRIE CORPN., [1930] S. A. S. R. 56.—**AUS.**

s i. —— *Disobedience by sheriff.*]—An application to commit the sheriff for not paying a sum of money into ct. as ordered by a judgment must be made promptly.—OVERN *v.* STRAND (No. 2), [1933] 3 W. W. R. 85 ; 4 D. L. R. 541 ; 47 B. C. R. 38.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 8.

p i. ——.]—Before an order for committal for contempt will be made for failing to carry out an undertaking given the ct. there must be the clearest evidence that there has been an actual breach of the undertaking.—LOWE CHONG *v.* GILMORE, [1936] 3 W. W. R. 595 ; 51 B. C. R. 157.—**CAN.**

PART V SECT. 6, SUB-SECT. 4.

sz. *Direction to issue writ of attachment may be to clerk of Supreme Court—Writ to be entitled in Supreme Court.*]—*Re* DROUGHT AREA RELIEF ACT, SNOWDEN *v.* BAKER, [1922] 3 W. W. R. 1002.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 3.

974 i. *Attachment—Whether sheriff can take bail—Before return of writ.*]—LANE *v.* KINGSMILL (1850), 6 U. C. R. 579.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A.

h i. —— *Not breach of undertaking by solicitor.*]—*Re* KEAN & BIRD, [1927] 4 D. L. R. 561 ; [1927] 3 W. W. R. 369 ; 48 Can. Crim. Cas. 363.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—D.

m i. ——.]—It is competent for the Judicial Committee to give leave to appeal & to entertain appeals against orders of cts. of record overseas imposing penalties for contempt of ct. In such cases the discretionary power of the Board to grant leave to appeal will be exercised with great care. When interferences with the administration of justice amount to contempt of ct., they are *quasi*-criminal acts, & orders punishing them should, generally speaking, be treated as orders in criminal cases, & leave to appeal against them should be granted only on the well-known principles on which leave to appeal in criminal cases is given. Whether the authority & position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice.—A.-G. FOR TRINIDAD & TOBAGO *v.* AMBARD, [1936] 2 W. W. R. 252.—**CAN.**

n i. ——.]—No appeal lies to the Privy Council against a committal for contempt of ct.—*Re* TUSHAR-KANTI GHOSH (1935), I. L. R. 63 Calc. 287.—**IND.**

PART VI. SECT. 10, SUB-SECT. 6.—A.

b i. ——.]—HARRIS *v.* MYERS (1864), 1 Ch. Ch. 229.—**CAN.**

PART VII. SECT 1, SUB-SECT. 5.

1144 iii. —— *By filing objections to report of official referee.*]—In a case where a deft., having been peremptorily ordered by the ct. to file her accounts before the official referee, failed to do so, but subsequently wanted to file her exceptions to the report of the referee : —*Held :* she could do so even though she continued to be in contempt, confining herself strictly to the defence of her rights.—CHANDRA DAS *v.* RASESWARI CHAUDHURANI (1928), I. L. R. 55 Calc. 1110.—**IND.**

COURTS.

Part I.—What is a Court.

2. *Add. Annotations:*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76.

3. *Add. Annotations:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378.

5. *Add. Annotations:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76. **Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685; Collins *v.* Whiteway, [1927] 2 K. B. 378.

6. *Add. Annotations:* — **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

9. *Add. Annotation:*— **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

10. *Add. Annotations:*—**Consd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B 685. **Apld.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 138 L. T. 234; R. *v.* Hendon Rural District Council, *Ex p.* Chorley (1933), 97 J. P. 210.

11. *Add. Annotations:*—**Consd.** Veal *v.* Heard (1930), 46 T. L. R. 448. **Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

11a. —— **Assessment Committee.**]—It may be that, like some kinds of licensing justices, the Assessment Committee is not a " court "; it does not hear evidence on oath, & has no particular rules of procedure, though it acts under a statutory duty & authority (SCRUTTON, L.J.).—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40; 145 L. T. 592; 95 J. P. 186; 47 T. L. R. 468; 29 L. G. R. 576, C. A.

15. *Add Annotations:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

17a. **Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).**]—*Held:* a ct. discharging administrative duties only.—COLLINS *v.* WHITEWAY (HENRY) & CO., [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

Annotation:—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

17b. **Matters for consideration.**]—(1) A tribunal is not necessarily a ct. in the strict sense of exercising judicial power because it gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a ct.; (6) nor because it is a body to which a matter is referred by another body (*per* CUR.).—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, [1931] A. C. 275; 100 L. J. P. C. 55; 144 L. T. 421.

Annotation:—*As to* (2) **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

Part IV.—Jurisdiction.

22a. **Death of judge during trial—Jurisdiction of another judge to continue hearing.**]—*Semble:* a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before a jury & another judge.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

Annotations:—**Distd.** British Reinforced Concrete Engineering Co. *v.* London & North Eastern Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 78. **Refd.** Fulker *v.* Fulker, [1936] 3 All E. R. 636.

22b. —— ——.]—Where during proceedings without a jury, after some of the witnesses have been called, the presiding judge dies, another judge, if there is no conflict of evidence, may at the request of the parties preside at the continuation of the hearing, after reading the shorthand notes of the evidence, & need not have the witnesses recalled.—*Re* BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD.'S APPLICATION (1929), 45 T. L. R. 186; 20 Ry. & Can. Tr. Cas. 78.

PART I.

a 1. —— *Commission of inquiry.*]—The inquiry of a Commission appointed to inquire into & report upon the working of any existing law & regarding the necessity or expediency of any proposed legislation is not of such a nature as to admit parties, & such Commission exercises no judicial functions & is not a judicial tribunal in any legal sense, the inquiry is not a judicial inquiry, & therefore prohibition will not lie, & no question of bias or interest on the part of a member of such Commission can arise.—TIMBERLANDS WOODPULP, LTD. *v.* A.-G., [1934] N. Z. L. R. 270; G. L. R. 269.—**N.Z.**

sa. *Not income tax board of appeal.*]—A board of appeal created under Income Tax Assessment Act, 1922-1923, s. 41, is not a High Ct. or a federal ct.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—**AUS.**

sb. *Not Medical Council of Physicians.*]—The Medical Council of Physicians & Surgeons of Saskatchewan acting under Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not a ct.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—**CAN.**

22c. Retirement of judge after judgment reserved—Judgment read by consent.]—HALLAM *v.* HALLAM (1930), 47 T. L. R. 207; 75 Sol. Jo. 157.

22d. Court with local jurisdiction—Acts to be done within jurisdiction—In absence of contrary intention.]—Where an Act of Parliament establishes a ct. for a particular part of the United Kingdom, the true construction of it is, that everything which is to be done under the authority of the ct. is to be done within the jurisdiction of the ct., unless the Act either in express terms or by necessary implication says that it may be done out of the jurisdiction.—*Re* O'LOGHLEN, *Ex p.* O'LOGHLEN (1871), 6 Ch. App. 406; 40 L. J. Bcy. 28; 23 L. T. 878; 19 W. R. 459, L. JJ.

Annotation:—**Refd.** *Re* Morton, *Ex p.* Robertson (1875), L. R. 20 Eq. 733.

25. *Add. Annotation:*—**Consd.** Sassoon *v.* Graham & Oriental Navigation Co. (1925), 133 L. T. 805.

30. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

33a. Will not try hypothetical case.]—It is not the function of a ct. of law to advise parties as to what would be their rights under a hypothetical state of facts (LORD LOREBURN, C.).—GLASGOW NAVIGATION CO. *v.* IRON ORE CO., [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. L. C. 387, H. L.

33b. Will not decide academical question.]—TINDALL *v.* WRIGHT (1922), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521; 66 Sol. Jo. 524; 27 Cox, C. C. 212, D. C.

35. *Add. Annotations:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

37. *Add. Annotation:*—**Consd.** The Fagernes, [1926] P. 185.

37a. —— **Waters within fauces terrae.**]—Defts., an Italian co., moved to set aside an order for service of notice of a writ *in personam* upon them in Italy, in respect of a collision between their vessel, which sank, & pltfs.' vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases. The ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—*Held:* having regard to the statement of the A.-G. (*see* CONSTITUTIONAL LAW, No. 136a, *ante*), the place where the collision took place was not within the jurisdiction of the High Ct., & the order for service of notice of the writ on defts. in Italy must be set aside.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

38. *Add. Annotations:*—*As to* (1) **Consd.** The Fagernes, [1926] P. 185. *Generally*, **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART IV. SECT. 1.

sb. *Jurisdiction of Debt Adjustment Board—Not possessed by courts.*]—The powers conferred on the Debt Adjustment Board by Debt Adjustment Act, 1933, to act upon compassionate grounds in dealing with disputes between debtors & creditors are not possessed by the cts., & for the cts. to presume to act on such grounds would be to assume a power & a jurisdiction which they do not possess.—TRUST & LOAN CO. OF CANADA *v.* LINDQUIST, [1933] 2 W. W. R. 410.—**CAN.**

sc. *Judgment written on leave—Or in retirement.*]—There does not appear to be any ground for drawing a distinction between the writing of a judgment while a judge is on leave & the writing of a judgment by a judge who has gone on retirement. Both are validly pronounced.—BARAMDEO PANDE *v.* DEBIDATT SINGH (1930), I. L. R. 53 All. 133.—**IND.**

sf. *Jurisdiction to hear case in which judge interested—Application of Income Tax Act to civil servants.*]—"Wages," as defined in said Act, includes the salary "of any judge of any Dominion or provincial Ct." With respect to the consequent apparent disqualification of the judge below & of the Ct. of Appeal to deal with the present case:—*Held:* there being no judges who are not in like position, the ct. must proceed *ex necessitate*.—A.-G. FOR MANITOBA *v.* HARPER; A.-G. FOR MANITOBA *v.* FORBES; A.-G. FOR MANITOBA *v.* BROOKES, [1934] 3 W. W. R. 681; [1935] 1 D. L. R. 410; 42 Man. L. R. 569; *affd.*, [1936] S. C. R. 40; 1 D. L. R. 465.—**CAN.**

sk. ——.]—*Re* CONSTITUTIONAL QUESTIONS ACT, *Re* INCOME TAX ACT, 1932, [1936] 2 W. W. R. 443.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

24 vi. ——.]—The ct. is an institution organised by the people through their representatives for the purpose of giving to those applying to it their rights according to law, the law not being made by the ct. but laid down for it by authority.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 640 L. R. 422.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—A.

sd. *Power to act as appeal court from inferior court.*]—Where an inferior ct. is acting within its jurisdiction the Superior Ct. has no power at common law to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

45 vii a. —— —— ——.]—DEPUTY FEDERAL COMR. OF TAXATION FOR TASMANIA *v.* THOMAS (1924), 35 C. L. R. 299.—**AUS.**

45 vii b. —— —— ——.]—Jurisdiction of a county ct. action against a non-resident of the judicial division in which the action is entered cannot be sustained on the ground that the cause of action arose within the division, unless the whole cause of action arose therein.—COMBA *v.* SIMPSON, [1925] 4 D. L. R. 1002; [1925] 3 W. W. R. 541; 35 Man. L. R. 235.—**CAN.**

45 vii c. —— —— ——.]—*Re* NOBLE *v.* CLINE (1889), 18 O. R. 33.—**CAN.**

45 vii d. —— —— ——.]—*Re* LEWIS, *Ex p.* ELECTROLUX, LTD. (1928), 28 S. R. N. S. W. 578; 45 N. S. W. W. N. 185.—**AUS.**

45 vii e. —— —— ——.]—In County Cts. Act, R.S.M. 1913, c. 44, s. 69, which provides that any suit may be entered & tried in the ct. holden in the judicial division in which the cause of action arose, or in which deft. or one of defts. resides or carries on business at the time the action is brought, the words "carries on business" are not to be read literally, but confer jurisdiction only when the business is carried on by deft. in person; *i.e.* if the cause of action did not arise within the division the condition of jurisdiction is presence of deft. within the division either by residence or by carrying on business therein.—MILLER *v.* AIKINS (Man.), [1929] 1 D. L. R. 140; [1928] 3 W. W. R. 520.—**CAN.**

45 xii a. —— —— ——.]—*Re* PIKE *v.* WALKER, [1926] 3 D. L. R. 439; 59 O. L. R 47.—**CAN.**

45 xiv. —— —— *Municipal Courts Act, R. S., 1923 (c. 219), s. 9 (4).*]—BISHOP *v.* KILOUP, [1927] 1 D. L. R. 231; 59 N. S. R. 109.—**CAN.**

45 xv. —— —— *Suit against non-resident foreigner.*]—*Held:* Code of Civil Procedure, s. 21, applied only to cts. which are subject to the provisions of the Code, & does not apply to a suit instituted in a British Indian ct. against a non-resident foreigner on a cause of action which arose wholly outside British territory, &, therefore, the decree passed in this case must be set aside as being without jurisdiction.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

e (p. 105) i. —— ——.]—HUTTON, MCLEA & CO. *v.* KELLY (1818), 1 Nfld. L. R. 105.—**NFLD.**

e (p. 105) ii. —— ——.]—MORRIS *v.* CAMERON (1862), 12 C. P. 422.—**CAN.**

e (p. 105) iii. —— ——.]—FLEMING *v.* LIVINGSTONE (1873), 6 P. R. 13.—**CAN.**

e (p. 105) iv. —— ——.]—CANADIAN OIL COS., LTD. *v.* MARGESON (1917), 51 N. S. R. 331.—**CAN.**

66. *Add. Annotation :—Generally,* **Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

72. *Add. Annotation :—***Consd.** *Re* Coletta (1931), 146 L. T. 180.

74. *Add. Annotation :—***Refd.** Owl Mill Co. (1920) *v.* Croft, Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 635.

137a. ——.]—LEADER *v.* MOXON (1773), 2 Wm. Bl. 924 ; 3 Wils. 461 ; 95 E. R. 1157.

142. *Add. Annotations :—***Apld.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

143a. ——.]—Where an issue arises upon the proceedings before the Court the jurisdiction of the Court to dispose of that issue can only be ousted by plain words (HAMILTON, J.).—A.-G. *v.* BODEN, [1912] 1 K. B. 539 ; 81 L. J. K. B. 704 ; 105 L. T. 247.

147. *Add. Annotations :—***Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Consd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941 ; Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58 ; Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88 ; Farrow *v.* Orttewell, [1933] Ch. 480 ; Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

148. *Add. Annotation :—***Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

149. *Add. Annotations :—***Apld.** Hallen *v.* Spaeth' [1923] A. C. 684. **Consd.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.**

e (p. 105) v. —— —— *Whether plaintiff may abandon part of claim.*]—CHAPMAN *v.* DOHERTY (1885), 25 N. B. R. 271.—**CAN.**

e (p. 105) vi. —— —— *Application to mining jurisdiction.*]—County Courts Act, s. 34, which provides *inter alia* that, if in any action of tort pltf. shall claim over $250, & deft. objects to the action being tried in the county ct. & gives security for trial in the Supreme Ct., the proceedings in the county ct. shall be stayed, applies to proceedings in the county ct. under its mining jurisdiction.—MUIRHEAD *v.* SPRUCE CREEK POWER CO., LTD. (1904), 2 M. M. Cas. 155 ; 11 B. C. R. 1.—**CAN.**

e (p. 105) vii. —— —— *Amount ascertained by act of parties.*]—Deft. employed pltfs. as his brokers to sell on his account 200 shares of stock at a named price, pltfs. undertaking that, in the event of loss, deft.'s liability should not exceed $200. In an action upon this contract pltfs. recovered $200 & interest :—*Held :* the amount of $200 recovered was ascertained by the act of the parties within County Courts Act, R. S. O. 1897, c. 55, s. 23, &, therefore, recoverable in a county ct.—THOMPSON *v.* PEARSON (1899), 18 P. R. 420.—**CAN.**

e (p. 105) viii. —— —— *Legacy charged on land—Value of land beyond limit.*]—A county ct. has jurisdiction under 59 Vict. c. 19 (O.), s. 3 (13), in an action brought by the legatee against the devisee of land, to recover a legacy of $5 charged on the land, as involving equitable relief in respect of a matter under $200. The subject-matter involved in such an action is the amount of the legacy & not the value of the land.—RUSTIN *v.* BRADLEY (1896), 28 O. R. 119.—**CAN.**

f (p. 105) i. ——.]—CURRIE *v.* NICHOLSON (1925), 58 N. S. R. 234.—**CAN.**

f (p. 105) ii. —— *Whether amount liquidated by act of parties.*]—WALLBRIDGE *v.* BROWN (1859), 18 U. C. R. 158.—**CAN.**

f (p. 105) iii. —— ——.]—WATSON *v.* SEVERN (1881), 6 A. R. 559.—**CAN.**

f (p. 105) iv. —— ——.]—BROWN *v.* HOSE (1890), 14 P. R. 3.—**CAN.**

f (p. 105) v. —— ——.]—OSTROM *v.* BENJAMIN (1894), 21 A. R. 467.—**CAN.**

f (p. 105) vi. —— ——.]—EVANS *v.* CHANDLER (1900), 19 P. R. 160.—**CAN.**

g (p. 106) i. —— —— *Right of appeal.*]—By Division Courts Act, s. 125, an appeal lies "where the sum in dispute exceeds $100, exclusive of costs." The "sum in dispute" means the sum in dispute at the time of the appeal ; & where in a division ct. action pltf. claimed $55.88 & deft. admitted $47.15, part of pltf.'s claim, disputed the balance, & counterclaimed for $103.55, & the judge in the division ct. allowed pltf. the disputed portion of his claim, & wholly disallowed the counterclaim, & deft. appealed generally :—*Held :* even assuming that deft. could not counterclaim for more than $100, the amount in dispute on the appeal exceeded $100, & the appeal lay.—CAMPBELL *v.* MCGREGOR, [1928] 2 D. L. R. 70 ; 61 O. L. R. 649.—**CAN.**

k (p. 106) i. *May not entertain counterclaim—Amounting to action for specific performance.*]—A counterclaim by a vendor for the moneys alleged to be due under an agreement for the sale of land being in reality an action for specific performance is beyond the jurisdiction of the district ct.—BURRELL *v.* WATT & HARDINGE (Sask.), [1928] 3 D. L. R. 505 ; [1928] 2 W. W. R. 482.—**CAN.**

n i. —— —— *Unconnected items.*]—READ *v.* WEDGE (1870), 29 U. C. R. 456.—**CAN.**

b (p. 107) i. ——.]—Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the ct. has no jurisdiction.—TRAINOR *v.* HOLCOMBE (1850), 7 U. C. R. 548.—**CAN.**

e (p. 107) i. —— *Exceptions to rule—District court of Thunder Bay—47 Vict. c.* 14 (*O.*).]—MCQUAID *v.* COOPER (1886), 11 O. R. 213.—**CAN.**

e (p. 107) ii. ——.]—Summary Ejectment Act (Consol. Stat. c. 83, s. 22), is not applicable to a case where the title to the land is brought in question. If, in such a case, the question of title is *bonâ fide* raised, the county ct. judge or justices should not continue the trial.—*Ex p.* TOWER (1889), 28 N. B. R. 159.—**CAN.**

63 i. *May set aside judgment—For matters of irregularity.*]—*Re* MOMBROQUETTE (N. S.) (1928), 50 Can. Crim. Cas. 308.—**CAN.**

sk. *Injunction — Power of district court.*]—ROSE *v.* DILKE VILLAGE, [1926] 1 D. L. R. 190 ; [1926] 1 W. W. R. 85 ; 20 Sask. L. R. 259.—**CAN.**

sl. *Action for rescission—Agreement for sale of land—Cannot be entertained by county court.*]—RICHARDS *v.* TROTTIER (1914), 28 W. L. R. 553 ; 18 D. L. R. 508 ; 6 W. W. R. 1123 ; 24 Man. L. R. 473.—**CAN.**

sm. *Action for specific performance—Agreement for sale of land—Cannot be entertained by district court.*]—BYERS *v.* SINGLETON, [1921] 2 W. W. R. 71 ; 14 Sask. L. R. 195.—**CAN.**

sn. *Application under Vendors & Purchasers Act—Cannot be entertained by local judge.*]—*Re* LEVY & JACOBS, [1927] 4 D. L. R. 937 ; 61 O. L. R. 296.—**CAN.**

sp. *Petition for amendment of registered plan of land—Under Registry Act, R. S. O.,* 1897 (c. 136)—*Jurisdiction of county court other than that of county in which land lay.*]—*Re* MCDONALD & LISTOWEL (1903), 24 C. L. T. 8 ; 6 O. L. R. 556 ; 2 O. W. R. 1000.—**CAN.**

st. *Local masters — Jurisdiction —* LORCH *v.* OLSON (Sask.), [1927] 3 W. W. R. 780.—**CAN.**

sw. —— —— *To order transfer of action.*]—HAMELIN *v.* PHILLIPS (Sask.), [1927] 4 D. L. R. 1107 ; [1927] 3 W. W. R. 504.—**CAN.**

sx. *Action for breach of contract—Neglect in using horse.*]—A plaint in a division ct. charging that deft. hired of pltf. a horse, etc., to go from A. to B. & back, & agreed to take good care of the same as bailee, with an averment that deft. so carelessly, etc., drove said horse, etc., that the horse was killed, etc., is a plaint in contract & not in tort, & therefore within the jurisdiction.—*Re* RUMBLE *v.* WILSON (1869), 5 P. R. 38.—**CAN.**

sy. —— ——.]—Pltf. sued in a division ct. for $90 as the value of his horse employed by deft., the injury complained of being that deft. allowed the horse to be worked after he took sick, by which his death was occasioned : —*Held :* this was an action for breach of contract in not taking proper care of the horse, & that the division ct. had jurisdiction.—O'BRIEN *v.* IRVING (1878), 7 P. R. 308.—**CAN.**

sz. *Right to order writ or process outside jurisdiction.*]—Since the passing of Judicature Act, 1909, under County Cts. Act, 11 Geo. 5, 1921 (N. B.), c. 3, s. 71, a county ct. judge can order a writ or process outside the jurisdiction.—SMITH *v.* GORDON (1927), 53 N. B. R. 316.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 1.

137 x. ——.]—The Minister of Pensions & National Health, under sect. 30 (8) of 18-19 Geo. 5, c. 38, referred to this ct. a dispute as to the jurisdiction of the Appeal Board to render a certain judgment :—*Held :* the jurisdiction of a ct. of record, when it has once obtained, cannot be ousted by any forced interpretation, & the jurisdiction of this ct. to proceed with the present reference was not taken away by 20-21 Geo. 5, c. 35.—*Re* SKITCH, [1931] Ex. C. R. 12.—**CAN.**

Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269. **Consd.** Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586. **Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Sturley *v.* Powell, [1930] 1 K. B. 677; Cipriani *v.* Burnett, [1933] A. C. 83; Israelson *v.* Dawson, [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

150. *Add. Citations:*—15 Asp. M. L. C. 566; *affg.* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.

Add. Annotations:—*As to* (1) **Consd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. *As to* (2) **Refd.** Reed *v.* Page & East, [1927] 1 K. B. 743; Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

170. *Add. Annotations:*—**Refd.** St. Magnus Parochial Church Council, etc. *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

172. *Add. Annotation:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

185. *Add. Annotation:*—**Folld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

199. *Add. Annotation:*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

218. *Add. Annotation:*—**Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

Part VI.—Right of Public to Admission.

260a. ——.]—A judge of a ct. of justice in England (save in a few exceptional cases) has no discretion whether he will sit in private or in public (LAWRENCE, L.J.).—HEARTS OF OAK ASSURANCE Co., LTD. *v.* A.-G., [1931] 2 Ch. 370; 100 L. J. Ch. 340; 145 L. T. 662; 47 T. L. R. 579; 75 Sol. Jo. 615, C. A.; *revsd. on other grounds*, [1932] A. C. 392, H. L.

Annotation:—**Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

276. *Add. Annotations:*—**Folld.** *Re* A. B.'s Petn. (1927), 97 L. J. P. 104. **Consd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Apld.** McPherson *v.* McPherson, [1936] A. C. 177.

277a. ——.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camerâ*.—MOOSBRUGGER *v.* MOOSBRUGGER, MOOSBRUGGER *v.* MOOSBRUGGER & MARTIN (1913), 29 T. L. R. 658.

277b. ——.]—At the trial of a divorce action which took place during the luncheon interval in the judges' law library in the Court House of Edmonton, Alberta, not one of the regular cts. in the Court House, neither the judge nor counsel were robed. The judge was attended by the assistant-clerk of the ct. & by an official shorthand writer, & before taking his seat he announced that he was sitting in open ct. The only other persons present throughout the proceedings were petitioner & his two witnesses, the action being undefended.

Access to the judges' law library was through a double swing door in the wall of a public corridor. One wing of that door was always fixed, the other, although swinging close, was usually unfastened. On the

PART IV. SECT. 10, SUB-SECT. 1.—A.

153 xv. —— ——.]—The consent, or request, of the parties concerned does not empower the Supreme Ct. in its equitable jurisdiction to entertain a suit involving the determination of purely legal claims.—PRESCOTT, LTD. *v.* PERPETUAL TRUSTEE Co., LTD. (1928), 28 S. R. N. S. W. 324; 45 N. S. W. W. N. 80.—**AUS.**

PART IV. SECT. 10, SUB-SECT. 1.—B.

sa. *Effect of acquiescence—Accused present but not professionally represented—Objections by judge.*]—At the hearing of a summons charging an offence under Customs Acts, deft. was present, but was not professionally represented. No preliminary objections to the jurisdiction of the district justice were made by her, but certain objections were made by the district justice himself:—*Held:* there had not been any waiver of such objection by deft.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

PART IV. SECT. 12.

sb. *Claim reduced below amount conferring jurisdiction—Claim dismissed.*]—In an action by pltf., a seaman, to recover a balance of wages alleged to be due to him, the evidence showed that with respect to two months' wages, part of the time claimed for, pltf. had received an amount which reduced his claim below the jurisdiction of the ct., &, as to the balance of the time claimed for, pltf. had forfeited his claim to wages by desertion:—*Held:* pltf.'s claim be dismissed with costs.—FORBES *v.* WASSON (1928), 60 N. S. R. 20.—**CAN.**

PART VI.

259 i. *General rule.*]—A criminal trial must be conducted in open ct. except where justice cannot be secured otherwise than by ordering the ct. to be cleared.—R. *v.* HAMILTON (1929), 30 S. R. N. S. W. 277; 47 N. S. W. W. N. 84.—**AUS.**

259 ii. ——.]—The inherent right of the Supreme Ct. to order that its proceedings be conducted *in camera* is recognised by sect. 220 (4) of Criminal Procedure & Evidence Act, & where the ct. is satisfied that there may be some prejudice to the course of justice unless certain witnesses are allowed to give their evidence without the presence of the public, the ct. will order the public to be excluded.—R. *v.* LADBROOKE, [1931] N. L. R. 475.—

sc. *Right of judge to exclude press.*]—The judge of the Central Supreme Ct., resenting certain criticism that had been published in a local newspaper concerning his exercise of the judicial office, made an order, in the absence of the proprietor, a registered co., forbidding the reporters of that newspaper & of another newspaper owned by the same co. to sit at the reporters' desk or to take notes of the proceedings in his ct. elsewhere than in the public gallery, & directed that this restriction should remain in force until the printer & publisher of both newspapers should apologise to the ct.:—*Held:* on appeals by the printer & publisher & by the co., that representatives of the newspaper press have no greater right of access to the Supreme Ct. than ordinary members of the general public; in the exercise of his right to regulate & control the conduct of his ct., it was competent for the judge to make the order in question; & the order was not a judicial order, but an administrative direction which did not affect any one in his proprietary rights, in his status or in his person, & was therefore not subject to appeal.—*Re* DUNN & MORNING BULLETIN, LTD., [1932] S. R. (Q.) 1.—**AUS.**

fixed wing was a brass plate with the word "Private" in black letters. The double swing door opened on to an inner corridor in which, opposite, was a door of the judges' library. The opening wing of the swing door was unfastened during the trial, & the inner door of the library was kept open throughout. At the conclusion of the proceedings a decree *nisi* was pronounced, which was subsequently made absolute. In an action by resp. in the divorce suit, brought after the expiry of the time for appealing against the decree absolute, & after petitioner had remarried, seeking to have the decrees *nisi* & absolute rescinded & set aside on the ground (*inter alia*) that the trial of the divorce action in the judges' law library had not been a trial in open ct. according to law, & that the resultant decrees *nisi* & absolute were null & void :—*Held :* even although the actual exclusion of the public resulted only from the word "Private" on the outer door, the judge on the occasion of the divorce trial, albeit unconsciously, was denying his ct. to the public in breach of their right to be present.—MCPHERSON *v.* MCPHERSON, [1936] A. C. 177 ; 105 L. J. P. C. 41 ; 154 L. T. 221 ; 52 T. L. R. 166 ; 80 Sol. Jo. 91, P. C.

280a. In proceedings under Legitimacy Act, 1926 (c. 60).]—A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ*.—*Re* A. B.'s PETITION (1927), 97 L. J. P. 104 ; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208 ; *sub nom.* GREENWAY *v.* A.-G., 44 T. L. R. 124 ; 71 Sol. Jo. 882.

285a. To inquiry under Industrial Assurance Act, 1923 (c. 8), s. 17.]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co. is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute ; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsect. & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392 ; 101 L. J. Ch. 177 ; 147 L. T. 41 ; 48 T. L. R. 296 ; 76 Sol. Jo. 217, H. L.

Annotation :—**Reid.** O'Connor *v.* Waldron, [1935] A. C. 76.

289a. —— Includes justices hearing ex parte application for summons.]—KIMBER *v.* PRESS ASSOCN., [1893] 1 Q. B. 65 ; 62 L. J. Q. B. 152 ; 67 L. T. 515 ; 57 J. P. 247 ; 41 W. R. 17 ; 9 T. L. R. 6 ; 37 Sol. Jo. 8 ; 4 R. 95, C. A.

Annotation :—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

Part VII.—Classification of Courts.

292. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

293. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

302a. Justices.]—ANON. (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.

Annotations :—**Reid.** Nector *v.* Gennet (1596), Cro. Eliz. 466 ; Marshalsea Case (1613), 10 Co. Rep. 68b ; Butt *v.* Conant (1820), 1 Brod. & Bing. 548 ; Howard *v.* Gossett (1845), 10 Q. B. 359.

Part IX.—Court of Lord High Steward.

315. *Add. Citation :*—18 State Tr. 441.

320. After this case for "*See, also,* PARLIAMENT," read "*See, also,* CRIMINAL LAW, Vol. XIV., pp. 125, 126, Nos. 965-985."

PART VII. SECT. 3, SUB-SECT. 1.

sd. *Board of Valuation & Revision —Under Winnipeg Charter, s.* 341.]—*Re* WINNIPEG CHARTER, *Re* COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY, [1922] 2 W. W. R. 253 ; 68 D. L. R. 506.—**CAN.**

se. *Local court continued under Local Courts Act,* 1926.]—The local ct. continued by Local Cts. Act, 1926, s. 6, is the ct. of record, not the officers or instrumentalities by whom the jurisdiction was formerly exercised.—METROPOLITAN ABATTOIRS BOARD *v.* SCHOLE, [1927] S. A. S. R. 444.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 1.

s. i —— ——.]—A notice of motion for leave to appeal to the Privy Council was filed & served within fourteen days after the judgment complained of, but did not come on for hearing until some months later. An affidavit filed on behalf of appct. alleged that the construction of certain Acts was involved in the decision that the judgment would cover a great number of claims made against the appct. none individually exceeding £500, but aggregating a sum exceeding £10,000, & that the decision would affect many future claims against appct. Upon the hearing of the motion :—*Held :* (1) the application was made within the time prescribed by rule 4 of the Order-in-Council of Apr. 2, 1909, although not heard within 14 days ; (2) no appeal lay as of right under rule (2) (*a*) of the said Order-in-Council, but the ct. would in its discretion grant leave under rule 2 (*b*) upon terms that appct. should pay the costs of the appeal in any event.—BENSON *v.* ROAD TRANSPORT & RAILWAYS COMR. (1935), 52 N. S. W. W. N. 202.—**AUS.**

Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation :*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

339. *Add. Annotation :*—**Apprvd.** Campbell *v.* Pollak, [1927] A. C. 732.

341. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

342. *Add. Annotation :*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

344. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 96 L. J. K. B. 1093.

345. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

348a. Interlocutory order.]—As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.—BEVOY KRISHNA MUKHERJIR *v.* SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.

350. *Add. Annotation :*—**Refd.** Ware *v.* Whitlock, [1923] 2 K. B. 418.

352a. Affidavit of service of notice of intended application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.]—PRACTICE NOTE, [1925] W. N. 164, P. C.

352b. Appeal in forma pauperis—When allowed.]—A professional man making a substantial income & having outstanding book debts cannot be said not to be worth £25 within rule 8 of the Judicial Committee Rules, 1925.—GRANT *v.* AUSTRALIAN KNITTING MILLS, LTD., [1933] W. N. 275 ; 176 L. T. Jo. 485 ; 77 L. Jo. 9, P. C.

355a. Necessity for statement of primâ facie case—Appeal against conviction.]—PRACTICE NOTE, [1935] W. N. 167 ; 80 L. Jo. 339, P. C.

363a. ——.]—By r. 8, sub-r. (1) of the Rules of the Ct. of Appeal for Eastern Africa as to appeals from the Supreme Ct. of Kenya :

"The memorandum of appeal shall be presented in civil cases within three months . . . from the date of the decree appealed against. . . ." By a judgment delivered in the Supreme Ct. of Kenya on Aug. 19, 1932, applt. was directed to furnish an account of his administration of certain trust property. No formal decree following upon that judgment was drawn up until the account had been taken & confirmed by the ct. on June 26, 1933. A decree was then drawn up on that date, & entered, & ante-dated to Aug. 19, 1932, the date of the judgment. On an application by applt. for leave to appeal out of time against the decree :—*Held :* it was the duty of applt., if he wished to appeal against the judgment of Aug. 19, 1932, & to ensure his appeal being within time, to take steps to have that judgment drawn up in the form of a decree. Having failed in that duty his application was dismissed.—RIBEIRO *v.* SIQUEIRA E FACHO, [1936] A. C. 300 ; [1936] 1 All E. R. 537 ; 105 L. J. P. C. 132 ; 154 L. T. 473 ; 80 Sol. Jo. 263, P. C.

365a. No application to lower court for leave to appeal.]—Petition for leave to appeal from the decision of a colonial ct. of appeal. No application was made by the petitioner within fourteen days to the ct. of appeal, as required by the rules relating to appeals from the Leeward Islands, to grant leave to appeal, on the ground that the ct. of appeal was not properly constituted to entertain the application. The Lords of the Judicial Com-

PART X. SECT. 1.

321 i. *Status of Judicial Committee—Advisers of Crown.*]—The Judicial Committee sit in the capacity of judges ; their report is acted on by the Sovereign in full Privy Council, so that proceedings before the Committee are in substance strictly judicial The Judicial Committee is not an English body in any exclusive sense ; it is not a body with any location. The Sovereign is everywhere throughout the Empire in the contemplation of the law He may as well sit in Dublin, or at Ottawa or in South Africa, or in Australia, or in India, as in London. & it is only for convenience & because the members of the Privy Council are conveniently in London that the Judicial Committee do sit there.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R 402.—**IR.**

PART X. SECT. 2, SUB-SECT. 8.

348 ii. ——.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011 ; 94 L. J. P. C. 21 ; 132 L. T. 210 ; 40 T. L. R. 814.—**CAN.**

sf. *Maintenance granted to wife—No miscarriage in method of computing.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—ERADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind App. 182.—**IND.**

sk. *Income tax reference.*]—Under the provisions of sect. 66A (2) of the Income Tax Act the right of appeal to the Privy Council is restricted to cases of appeals from any judgment of the High Ct. delivered on a reference made under sect. 66, in any case which the High Ct. certifies to be a fit one for appeal to His Majesty in Council. Before the case can be certified to be a fit one for appeal, there must be a judgment of the High Ct. delivered on a reference made under sect. 66. But the stage of a reference made to the High Ct. does not arrive at all when the High Ct. declines to require the Comr. to state the case & refer it.—GURMUKH RAI *v.* SECRETARY OF STATE FOR INDIA (1934), I. L. R. 57 All. 306.—**IND.**

so. *Railway franchise agreement.*]—A railway franchise agreement providing for arbn. & appeal to the Ct. of Appeal, but not expressly limiting a further right of appeal, will not bar an appeal to the Privy Council.—INTERNATIONAL RAILWAY CO. *v.* NIAGARA PARKS COMMISSION, [1936] 2 D. L. R. 405 ; O. R. 220.—**CAN.**

PART X. SECT. 3, SUB-SECT. 1.—A. (a).

352b i. *Appeal in forma pauperis—What costs allowed.*]—Petitioner, who had been granted special leave to appeal to His Majesty in Council against his conviction of murder & sentence of death, further petitioned for leave to prosecute his appeal *in forma pauperis*, & asked for an order that the India Office should provide for the expenses of printing & binding the record & his case, & the fees of counsel & solr. to prosecute the appeal. The India Office did not dispute that petitioner was a pauper, & they agreed to pay for the printing & binding of the record & case, but were not prepared to pay for his counsel & solr. :—*Held :* in view of rule 81 of the Judicial Committee Rules, 1925, the order asked for in respect of counsel's & solr.'s fees could not be made.—MANGAL-SINGH *v.* KING EMPEROR (1937), L. R. 63 Ind. App. 75.—**IND.**

PART X. SECT. 3, SUB-SECT. 1.—A. (c).

361 ii. —— *When application granted.*]—The Ct. of Appeal has no power to extend the time limited by rule 4 of Order in Council on June 4, 1918, for applying for leave to appeal to His Majesty in Council. Since the question involved in the proposed appeal (what amounts to "fraud" within sect. 216 of the Land Titles Act) was by reason of its great general importance one which ought to be submitted for decision to His Majesty in Council, leave to appeal would have been granted had the application herein been in time.—HACKWORTH *v.* BAKER (No. 2), [1936] 2 W. W. R. 322. – **CAN.**

sg. *Time occupied in prosecuting application for review—Addition to prescribed period.*] — Applt. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149. —**IND.**

mittee held, that either under protest or perhaps without protest, the petitioner might have applied to the ct. of appeal of the colony without damaging his case, & refused leave to appeal.—*Ex p.* KENNINGTON (1862), 8 Jur. N. S. 1111 ; *sub nom. Ex p.* KENSINGTON (1863), 15 Moo. P. C. C. 209 ; 15 E. R. 473, P. C.

373. *Add. Citations :—sub nom. Ex p.* KENSINGTON, 15 Moo. P. C. C. 209 ; 15 E. R. 473.

388a. —— —— **When further security ordered.**]—CORPORATION AGENCIES, LTD. *v.* HOME BANK OF CANADA, [1926] W. N. 58, P. C.

403a. ——.]—In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal :—*Held :* special leave to appeal should be granted limited to the question of the maintenance allowance. — ANNAPURNABAI *v.* RUPRAO (1924), L. R. 51 Ind. App. 319, P. C.

427a. —— **Immaterial documents—Inclusion disapproved.**]—Documents not material to an appeal should not be included in the record. If one party wishes a document to be included, but the other party considers it unnecessary, the matter should be referred to the High Ct. or its registrar. It does not follow that because unnecessary documents have been printed in India they should be included in the books for the Judicial Committee. It is the duty of the solr. in England to make a selection of the necessary documents, the other papers being ready in case they are required. In cases of doubt, the solr. should take counsel's advice, for which purpose, on application being made, a fee will be allowed. —SONATON PAL *v.* GALSTAUN (1927), 54 L. R. Ind. App. 118 ; 43 T. L. R. 224, P. C.

453a. —— —— **Of some respondents—Practice where parties numerous.**]—In an appeal in which there were very numerous resps. whose interests were not conflicting, delay in the hearing having been caused by the death of some of them & the consequent substitution & revivor proceedings in compliance with the rules, & further similar delay being apprehended from that cause, the Judicial Committee ordered & directed (1) that the appeal be set down that day against such of resps. as had appeared or had been served with notice of any Order in Council bringing them upon the record ; & (2) all questions how any other resps. should be proceeded against should stand for determination if necessary at the hearing of the appeal.—ZAHID HUSAIN *v.* MOHAMMAD ISMAIL (1929), 57 L. R. Ind. App. 94, P. C.

456a. **Death of respondent before hearing—Notice to Board after hearing—Effect on delivery of judgment.**]—In an appeal to the Privy Council against the making of a decree absolute in a divorce suit resp. died two days before the hearing of the appeal. As resp. had not appeared & was not represented at the appeal, the appeal was heard in ignorance of his death. The Board reserved judgment & when the report of the Board had been prepared & was ready for delivery, the fact of the death of resp. became known : —*Held :* the appeal abated at the moment of the death & the reserved judgment could not be delivered.—HODGE *v.* MARSH, [1936] 1 All E. R. 848 ; 80 Sol. Jo. 364, P. C.

483a. **Form of case—Necessity for signature of one of counsel appearing at hearing.**]—MONTREAL LIGHT, HEAT & POWER CO. *v.* MONTREAL (CITY) (1924), 68 Sol. Jo. 419, P. C.

486. *Add. Annotations :*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155 ; Green *v.* Weatherill, [1929] 2 Ch. 213. **Refd.** West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398.

493. After this case add :—

For bail—Application to High Court.]—*See* SUTTON *v.* R., CRIMINAL LAW, No. 1410a, *ante*.

PART X. SECT. 3, SUB-SECT. 1.—B.

371 iii. ——.]—An order directing a new trial is not a final judgment or order within Order in Council of Jan. 10, 1910, r. 2, & there is consequently no jurisdiction to grant leave to appeal therefrom to the Privy Council.—BLACK & WHITE CABS, LTD. *v.* ANSON, [1928] N. Z. L. R. 613.—**N.Z.**

sh. *Point settled by previous decision.*]—Where their Lordships of the Privy Council have clearly laid down the law which is applicable to a particular set of facts, leave to appeal to His Majesty in Council under such circumstances would be refused.—MAUNG SHWE AN *v.* MA THE NU (1929), I. L. R. 7 Ran. 271.—**IND.**

si. *Appeal from refusal to grant habeas corpus—Period of detention expiring before appeal can be heard.*]—The ct. will not grant leave to appeal to the Privy Council from a decision refusing a writ of *habeas corpus* where the period of detention will have expired before the appeal can be heard & the matter is not of general or public importance.—HAZLETT *v.* BUTTIMORE (No. 2), [1931] N. Z. L. R. 32.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 1.—C.

379 iia. —— ——.]—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238 ; 54 O. L. R. 629.—**CAN.**

389 iia. —— —— ——.]—The ct. can, under Civil Procedure Code (Act V. of 1908), 1908, Ord. 45, r. 17, read with Privy Council Rules, 1920, r. 9, enlarge the time for furnishing security & making the deposit, beyond the period prescribed by Ord. 45, r. 7.—NILKANTH BALWANT NATU *v.* SHRI SATCHIDANAND VIDYA NARSINHA BHARATI (1927), I. L. R. 51 Bom. 430.—**IND.**

390 i. —— *Form of security.*]—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not afterwards.—ARUNACHALA NAIDU *v.* BALAKRISHNA & Co. (1924), I. L. R. 48 Mad. 559.—**IND.**

sg. *Appeal as of right—Conditions.*]—If a party is entitled to appeal to the Privy Council as of right, the ct. can impose only such condition as the rules prescribe.—*Re* LYON, LYON *v.* PUBLIC TRUSTEE (No. 2), [1934] N. Z. L. R. Supp. 156 ; G. L. R. 413.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 2.

427 ii. —— *Report on value of subject-matter.*]—When on a petition to the High Ct. for a certificate that a case is a fit one for appeal to the Privy Council a question has arisen as to the value of the subject-matter & a report thereon has been ordered under Ord. 45, r. 5, the report & full information on the matter should be included in the record in the appeal to the Privy Council.—ANUP MAHTO *v.* MITA DUSADH (1933), 60 L. R. Ind. App. 366.—**IND.**

PART X. SECT. 3, SUB-SECT. 5.

447 i. *When allowed—Suits involving same question.*]—Actions brought by pltf. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO. (No. 2) (1920), 29 B. C. R. 60.—**CAN.**

PART X. SECT. 3, SUB-SECT. 9.—A.

487 iv. ——.]—The operation of a judgment restraining defts. from selling certain goods under certain trade names is not stayed pending an appeal of defts., to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by defts., execution shall be stayed in the original cause.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

503a. ——.]—The Code of Civil Procedure does not restrict the power of the Judicial Committee to admit evidence rejected by the High Ct.—PARSOTIM *v.* LAL MOHAR (1931), 58 L. R. Ind. App. 254, P. C.

507. *Add. Annotation :*—**Refd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

513a. Official translation.]—The practice of the Judicial Committee is to accept an official translation.—RAJENDRA PRASAD BOSE *v.* GOPAL PRASAD SEN. (1930), 57 L. R. Ind. App. 296, P. C.

532a. ——.]—The Judicial Committee does not sit as a ct. of criminal appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice. —PRACTICE NOTE (1932), 48 T. L. R. 300 ; *sub nom.* MOHINDAR SINGH *v.* KING EMPEROR, 59 L. R. Ind. App. 233, P. C.

535a. ——.]—It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.—HURNANDRAI FULCHAND *v.* PRAGDAS BUDHSEN, *Ex p.* PRAGDAS BUDHSEN (1924), L. R. 52 Ind. App. 118.

—— —— ——.]—It is only in very exceptional circumstances that an issue dropped in the intermediate ct. of appeal can be revived upon appeal to the Privy Council.—AHAMATH *v.* SARIFFA UMMA, [1931] A. C. 799 ; 100 L. J. P. C. 211 ; 145 L. T. 650, P. C.

548a. ——.]—Where it is sought to raise a point of law for the first time before a ct. of last resort the ct. may exercise a discretion not to entertain the point when it would involve the consideration of matters of fact with which the cts. below were in a more advantageous position to deal & with which they have in fact dealt.—MOOLLA (M. E.) SONS, LTD. (OFFICIAL LIQUIDATOR OF) *v.* BURJORJEE (1932), 48 T. L. R. 279 ; 76 Sol. Jo. 185, P. C.

551. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd., [1932] A. C. 161. **Consd.** Moolla (M. E.) Sons, Ltd. (Official Liquidator) *v.* Burjorjee (P. R.) (1932), 48 T. L. R. 279 ; Ley *v.* Hamilton (1934), 151 L. T. 360.

555. *Add. Annotation :* — **Consd.** Chesebrough Manufacturing Co., Consolidated *v.* Kudhoos (1929), 47 R. P. C. 25.

566a. Abandoned in effect in lower court.]—An Indian patent was granted for " an improved machine for removing the husks & shells from mahsoor & the like." Claim 1 was for " a machine for husking mahsoor or the like comprising a stationary outer casing with a rotatable roller mounted on an axial or longitudinal shaft therein said roller having a roughened or other suitable abrading surface thereon & the outer casing having a perforated panel in its lower part mahsoor being caused to travel through the machine in the annular space between said abrading roller & said casing the husks & particles ground off the grain being rejected through said perforated panel whilst the husked grain is delivered through an opening in the end wall of the casing." In an action for infringement of the patent defts. denied

PART X. SECT. 3, SUB-SECT. 10.—A.

so. *Pleadings—Form of.*]—The Judicial Committee are disinclined to stress the structure of pleadings too strictly, if fair notice of pltf.'s case has been given & issue has been joined on an inquiry but faintly adumbrated.—SOMESHWAR DUTT *v.* TIRBHAWAN DUTT 1934), L. R. 61 Ind. App. 224.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—B.

sk. *Documents not produced at trial.*]—The Judicial Committee has unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation.—INDRAJIT PRATAP SAHI *v.* AMAR SINGH (1923), L. R. 50 Ind. App. 183.—**IND.**

sm. *Document in vernacular—Translation.*]—When the accuracy of an English translation of a document written in the vernacular language is challenged, the Judicial Committee ordinarily accepts as correct the translation made by a translator appointed by a ct. in India & not challenged before the judges who had dealt with the case. If, however, the Judicial Committee is satisfied that there is a genuine doubt about the correctness of the translation, they will remit the matter to the High Ct. in India from which the matter has been brought for an inquiry, & direct that ct., if necessary, to have another translation made under the direction of the ct. & to transmit it to the Registrar of the Judicial Committee.—SARAT CHANDRA BASU *v.* BIJOY CHAND MAHATAB MAHARAJADHIRAJ BAHADUR (1937), L. R. 63 Ind. App. 77.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—C. (a).

524 i. *To assess damages—Remuneration of agent—Quantum meruit.*]—LEVESQUE *v.* TRUCHON, [1930] 1 D. L. R. 705, P. C.—**CAN.**

529 i. *To order new trial.*]—Where the trial judge after reserving judgment decided the case in deft.'s favour on an issue or plea that had not, throughout the proceedings, been raised or tried, & on appeal the Ct. of Appeal amended the record in favour of defts. & dismissed pltf.'s appeal on the point discovered by the trial judge, but no opportunity had been given pltfs. of dealing with the matters involved on the new basis which the amendment established, the Judicial Committee ordered a new trial.—LUIGI AMBROSINI, LTD. *v.* BAKARE TINKO, [1930] 1 W. W. R. 63.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 v. ——.]—The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.—BROWN *v.* MOORE, [1924] 2 D. L. R. 545 ; *affg.*, 69 D. L. R. 14 ; 55 N. S. R. 460.—**CAN.**

536 vi. ——.]—A new contention, which involves an amendment of the plaint, cannot be entertained. —GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

536 vii. ——.]—The Privy Council declined to entertain an argument which had not been presented to, or sifted by, the cts. in India, especially as the subject to be decided concerned the diversified & complicated law of India as to tenure of land.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAJA JYOTI PRASHAD SINGH (1926), 53 L. R. Ind. App. 100.—**IND.**

536 viii. ——.]—Where a question whether minor members of a family were bound by a decree in a former suit brought by the managing member, has been abandoned in the High Ct., it cannot be raised before the Judicial Committee, as the question is one of mixed law & fact.—LINGANGOWDA *v.* BASANGOWDA (1927), 54 L. R. Ind. App. 122.—**IND.**

536 ix. ——.]—A contention which a party to an appeal to the Privy Council has raised at the trial, but not upon appeal to the High Ct., cannot be raised by him in the appeal to the Privy Council, unless there are exceptional circumstances which make it necessary for doing justice. The rule applies whether the party was applt. or resp. in the High Ct.—SKINNER *v.* BANK OF UPPER INDIA, LTD. (1935), L. R. 62 Ind. App. 115.—**IND.**

536 x. ——.]—S.S. PHILIP T. DODGE *v.* DOMINION BRIDGE CO. (1935), 5 Can. L. Jo. 131.—**CAN.**

546 ii. —— —— ——.]—A contention which a party to an appeal to the Privy Council has raised at the trial but not upon appeal to the High Ct. cannot be raised by him in the appeal to the Privy Council, unless there are exceptional circumstances which make it necessary to the doing of justice. The above rule applies whether the party was applt. or resp. in the High Ct.—SKINNER *v.* BANK OF UPPER INDIA, LTD. (1935), L. R. 62 Ind. App. 115.—**IND.**

infringement & alleged (*in* ... ., that the patent was invalid by reason of prior publication in various British & Indian specifications. Defts. moved to revoke the patent. The trial judges of the High Ct. of Judicature at Patna held that the patent was invalid by reason of anticipation & want of subject-matter & ordered the patent to be revoked. Pltf. appealed by leave to the Privy Council: —*Held:* in the particular circumstances it was not necessary to consider the patent on its merits as applt. had admitted that, if Martin's British Specification (No. 5641 of 1883) was published in India prior to the date of his patent, then his patent was invalid; & the question to be decided was whether applt. could now contend that Martin's Specification was not in fact published in India & was not in law an anticipation of the patent; applt. had in effect, though not expressly, abandoned that contention at the trial, & it would be contrary to natural justice to allow him to maintain a contention not argued in India. The appeal was dismissed with costs.—GHANSHAYAM DAS JAGNANI *v.* RAMNARAYAN GANESHNARAYAN (1935), 53 R. P. C. 160, P. C.

578a. —— ——.]—Applt. obtained leave to appeal conditionally upon entering into a bond, & the native agent of applt., who had conducted the litigation, executed a bond on his behalf in the presence of the chief registrar of the ct., who accepted it without objection. Upon the appeal coming on for hearing, the appellate ct. dismissed it, upon a preliminary objection that the authority of the agent to execute the bond should have been strictly proved. Under the rules of the ct. there was power to make any order which was considered necessary for doing justice:—*Held:* there had been a failure to do justice between the parties, & the case should be remitted to be heard, the appellate ct. giving an opportunity to prove the authority, if that was deemed necessary in the circumstances.—KOJO PON *v.* ATTA FUA, [1927] A. C. 693; 96 L. J. P. C. 121; 137 L. T. 706, P. C.

585a. ——.]—A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

592a. —— ——.]—CHEESEBROUGH MANUFACTURING CO. *v.* KUDHOOS (1929), 46 T. L. R. 95; 47 R. P. C. 25, P. C.

599a. —— ——.]—Where, on an application made *ex parte*, special leave to appeal had been granted on the ground that there was a right of appeal under Code of Civil Procedure, 1908, s. 110, but it appeared at the hearing that applts. had not that right, the Board dismissed the appeal as incompetent, resps. having given due notice of the objection.—MUKHLAL SINGH *v.* KISHUNI SINGH (1930), 57 L. R. Ind. App. 279, P. C.

609. *Add. Citation:*—128 L. T. 10.

611a. Matter of terms.]—In default of evidence the Judicial Committee will accept the decision of the local ct. as to what terms are proper in a particular case, that ct. being better informed on the subject than the Board can be.—SUNDER MULL *v.* SATYA KINDER SAHANA (1927), 55 L. R. Ind. App. 85.

622a. ——.]—Where the trial judge has come to a conclusion upon a pure question of fact, the appellate tribunal cannot, merely because the question is one of fact, & because it has been decided in one way by the trial judge, abdicate their duty to review his decision, & to reverse it, if they deem it to be wrong; but the functions of the appellate tribunal when dealing with a pure question of fact in which questions of credibility are involved are limited in their character & scope.—CALDEIRA (ANTONIO DIAS) *v.* GRAY, [1936] 1 All E. R. 540; 80 Sol. Jo. 243, P. C.

634a. ——.]—CALDEIRA (ANTONIO DIAS) *v.* GRAY, No. 622a, *ante*.

PART X. SECT. 3, SUB-SECT. 10.—C. (c).

sm. *Effect of order—Case remitted "to the jury" for assessment of damages—Not order for assessment by original jury.*]—LEW *v.* WING LEE, [1926] 1 D. L. R. 678: 37 B. C. R. 81.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—D. (a).

607 i. *Matter of discretion—Exercised by Indian courts.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind. App. 182.—**IND.**

sk. *Construction of will.*]—The Judicial Committee are slow to disturb an interpretation of a provision in a will unless they are very clearly satisfied that some wrong principle of interpretation has been applied, or some manifest error of interpretation committed.—KAMAKHYA DAT RAM *v.* KUSHAL CHAND (1933), L. R. 61 Ind. App. 145.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—D. (b) i.

627 ii. ——.]—Where in addition to the oral evidence, a vital part of the evidence in the case consists of the documents & the admitted circumstances:—*Held:* their Lordships, like the judges in the Ct. of Appeal, could not, in view of that other evidence, treat the matter as concluded by the judge's opinion as to the credibility of the oral witnesses. Though it is important to give the fullest possible weight to the findings of a judge who has seen & heard the witnesses every appeal from a judge alone is by way of hearing.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

sn. *Amount of maintenance.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHNASIN *v.* HOMESHWAR SINGH (1929), I. L. R. 8 Pat. 840.—**IND.**

sp. *Evidence of experts.*]—In an action against a physician for damages, professional negligence being alleged, two conflicting theories were adduced by the expert witnesses as to the cause of pltf.'s disability. The trial judge sitting without a jury accepted the view of pltf.'s witnesses & rejected that of the witnesses for deft.:—*Held:* the respective theories having been carefully & dispassionately weighed by the trial judge & a clear conclusion of fact having been reached by him, it would not be proper or safe, or in accordance with sound practice, to reverse that conclusion.—GRAY *v.* CALDEIRA, [1936] 1 W. W. R. 615.—**CAN.**

649a. Compromise affecting minors.]—Where, in an appeal to the Judicial Committee of the Privy Council, a compromise affecting the interests of minors is submitted for their Lordships' approval, the proposed compromise should be considered by the ct. from which the case comes upon appeal & such ct. should certify to their Lordships whether in their opinion the proposed compromise is or is not in the interests of the minor or minors.—SHAIKH SHUKRULLAH *v.* MUSAMMAT ZOHRA BIBI, [1936] 3 All E. R. 1011; 53 T. L. R. 139; 80 Sol. Jo. 990, P. C.

653. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

653a. —— Applicable to appeals from every court in Empire.]—The rule of practice of the Judicial Committee that concurrent findings of fact will not be interfered with, in the absence of very definite & explicit grounds, applies from whatever ct. in the Empire the appeal is made.—ROBINS *v.* NATIONAL TRUST CO., [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

Annotations:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

653b. ——.]—*Held:* it would be a procedure contrary to the practice of the Privy Council to permit an appeal to succeed where a finding dependent upon a definite fact was agreed to by a Ct. of Appeal, & applt.'s claim could be defeated on other grounds. The appeal was dismissed with costs.—GROAT *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (1929), 47 R. P. C. 1, P. C.

668a. Separation of joint Hindu family.]—Whether a member of a joint Hindu family has affected a separation is a question of fact, & the Judicial Committee will not interfere with concurrent findings that he has so separated where they are supported by evidence.—BAL KRISHNA *v.* RAM KRISHNA (1931), 58 L. R. Ind. App. 220, P. C.

671. *Add. Annotation:*—**Consd.** St. Francis Hydro Electric Co. *v.* R., [1937] 2 All E. R. 541.

671a. —— ——.]—In a case where resps. have the benefit of concurrent findings of fact in the ct. below unless there are special circumstances, the Judicial Committee of the Privy Council will not advise His Majesty to interfere. Applts. contended that as the evidence which led to the findings consisted mainly, if not entirely, of documentary or historical evidence, the true effect of which might well be discussed in an appellate ct., the ordinary rule ought not to be applied:—*Held:* if the question were that of the construction of deeds or other documents, it would be one of law; but the question being as to the effect to be given as evidence to certain historical writings the ordinary rule applied.—ST. FRANCIS HYDRO ELECTRIC CO., LTD. *v.* R., [1937] 2 All E. R. 541; 53 T. L. R. 546; 81 Sol. Jo. 396, P. C.

676. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

679a. Passing-off action—Improper finding of fraud.]—Pltfs. in Nov. 1929, began to sell cigarettes in tins of one hundred, which tins bore a trade mark of crossed swords in gold on a red ground, the words "Golden Sword" & a price indication 2 for 1, meaning 2 cigarettes for 1 cent. On the cigarettes themselves was the trade mark of crossed 2 1 printed in red. In May, 1931, defts. put upon the market cigarettes in packets of ten, which packets bore a representation of an ace & a king of hearts & the words "Twenty One" (that hand in Vingt-et-un & also in a Chinese game counting twenty-one). Each cigarette bore the words "Twenty One Cigarettes" in blue. Pltfs. commenced an action in the Supreme Ct. at Singapore & claimed an injunction to restrain defts. from applying a mark consisting of the words or numbers "Twenty One" to containers for cigarettes sold by them & from passing off, by using such mark, cigarettes not of pltfs.' manufacture as & for pltfs.' cigarettes. Pltfs. also claimed the usual other relief. The trial judge held that pltfs. had established their case, & that they were entitled to the relief which they sought. An injunction was granted. Defts. appealed to the Ct. of Appeal of the Straits Settlements. The findings of fact by the trial judge were unanimously upheld & the appeal was dismissed. Defts. appealed, by special leave, to the Privy Council:—*Held:* having regard to the short time between the appearance in the market of applts.' cigarettes & the issue of the writ the action was in effect a *quia timet* action, resps. had never suggested that there could be any confusion between the cigarettes of resps. & those of applts. so far as concerned dealers & distributors to whom such dealers sold, that the market referred to in certain paragraphs of the statement of claim was admittedly that in which the consumer bought & not that in which dealers & retailers bought; the case was not opened on a footing of fraud, & it was doubtful whether the statement of claim would have justified such an opening; but there was by the lower cts. a finding of fraud although (i.) no plea of fraud had been properly raised on the pleadings, (ii.) fraud had not been opened, & (iii.) no questions had been put to the witnesses to suggest that fraud was being charged; there was no evidence on which a finding of fraud could be based; the trial judge had founded his judgment upon an

PART X. SECT. 3, SUB-SECT. 10.—D. (b) ii.

650 vi. ——.]—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—LAING *v.* TORONTO GENERAL TRUSTS CORPN., [1924] 4 D. L. R. 1138.—**CAN.**

650 vii. ——.]—MONTREAL TRANSPORTATION CO., LTD. *v.* R., [1926] 2 D. L. R. 862.—**CAN.**

650 viii. ——.]—When in a suit to set aside a sale for arrears of revenue both cts. in India have found that there were no arrears, the Judicial Committee, in accordance with its practice as to concurrent findings, will not interfere, although the findings depend upon the meaning & effect of somewhat obscure revenue records, & are based upon the view that the records show payments in advance.—NARENDRA NATH DUTTA *v.* ABDUL HAKIM (1928), 55 L. R. Ind. App. 380.—**IND.**

650 ix. ——.]—GROAT *v.* ONTARIO HYDRO-ELECTRIC POWER COMMISSION, [1930] 1 D. L. R. 481.—**CAN.**

650 x. ——.]—It is not a cast-iron rule that the Judicial Committee will not examine the evidence in order to interfere with the concurrent findings of two cts. on a pure question of fact. The rule is one of conduct which the Judicial Committee has laid down for itself, & is not a rule based on any statutory provision.—CANADIAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* PATERSON STEAMSHIPS, LTD., [1935] 1 W. W. R. 5.—**CAN.**

inaccurate statement of the evidence; this finding of fraud had coloured the minds of the judges when dealing with the question of likelihood of confusion in the relevant market; that in these circumstances the Board ought, notwithstanding concurrent findings of fact by the cts. below, to reconsider the possibility of confusion; upon such reconsideration likelihood of deception had not been proved; & the appeal be allowed with costs.—UNITED KINGDOM TOBACCO CO. (1929), LTD. *v.* MALAYAN TOBACCO DISTRIBUTORS, LTD. (1933), 51 R. P. C. 11, P. C.

684a. Reasons for—Whether read.]—The reasons for a judgment of the Judicial Committee are not read as of course, but only on the application of counsel for special reason, or at the desire of a member of the Board. The printed reasons are handed to the parties & the Press, leaving counsel to ask any questions necessary at the mid-day adjournment or at some other convenient time.—PRACTICE NOTE, [1922] W. N. 169.

685. *Add Annotation :—Generally,* **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

685a. —— ——.]—The Judicial Committee of the Privy Council has jurisdiction to recommend the alteration of a former Order in Council on the ground that, by inadvertence, it did not give effect to the intention of the Board as expressed in their judgment. — RAI JATINDRA NATH CHOWDHURY *v.* UDAY KUMAR DAS (1931), 47 T. L. R. 274; 58 L. R. Ind. App. 141, P. C.

690. *Add. Annotation :—***Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690a. *Add. Annotation :—***Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690b. ——.]—There is no inherent incompetency in the Judicial Committee of the Privy Council to order the rehearing of a case which has already been decided by the Judicial Committee, even where a question of a right of property has been involved, but such an indulgence will only be granted in very exceptional circumstances.—*Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re* ARTICLE X. OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND, 45 T. L. R. 57, P. C.

698. For existing citations read, " As reported in 86 L. T. 506, at p. 507."

701a. —— —— ——.]—Where there has been unexplained delay in proceedings a successful applt. to the Privy Council may be refused costs.—LOUIS DREYFUS & Co. *v.* ARUNACHALA AYYA (1931), 58 L. R. Ind. App. 381, P. C.

774. After this case add :—

—.]—*See, now,* Judicial Committee Rules, 1925, r. 81.

Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for " Judicature Acts, 1873 (c. 66) to 1902 (c. 31) " read " Judicature (Consolidation) Act, 1925 (c. 49); Administration of Justice Act, 1928 (c. 26).

776. *Add. Annotation :—***Refd.** R. *v.* Edwards *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

779. *Add. Annotation :—***Apld.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

781. *Add. Annotation :—***Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

784. *Add. Annotation :—As to* (1) **Refd.** Campbe *v.* Pollak, [1927] A. C. 732.

786. *Add. Annotation :—***Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

789. *Add. Annotation :—***Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

790. *Add. Annotation :—***Refd.** The Fagernes, [1926] P. 185.

PART X. SECT. 3, SUB-SECT. 10.—D. (c).

680 i. *Want of prosecution—Jurisdiction of Court of Appeal over costs.*]—CLEAVE *v.* MCDONALD, [1927] N. Z. L. R. 433.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 11.

t i. —— ——.]—If execution in the Supreme Ct. is required in respect of an order of His Majesty in Council made in respect of an appeal from a judgment of the Supreme Ct. or Ct. of Appeal, an allocatur under the Ct. of Appeal seal embodying a certificate that the judgment of the Privy Council has been filed in the Ct. of Appeal should be endorsed on a true copy of the King's Order & filed in the Supreme Ct., whereupon, in terms of r. 27 of the Privy Council Rules, execution can issue without any further entry of judgment. There is no power in the Supreme Ct. to order a stay of execution on such a judgment except in exercise of its inherent jurisdiction, which, after judgment, must, if at all permissible, be exercised only in the clearest cases involving impropriety or grave abuse of the procedure of the ct.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD. (NO. 3), [1935] N. Z. L. R. 756.—**N.Z.**

t ii. ——*Against legal representatives of respondents.*]—Where some of resps. in the appeal before the Privy Council were dead, & their legal representative had not been brought on the record when the appeal was heard & judgment delivered by the Privy Council:—*Held:* the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.—KALYANI PILLAI *v.* THIRUVENKADASWAMI AYYANGAR (1924), I. L. R. 47 Mad. 618. —**IND.**

t iii.——*Order directing restitution.*]—Where an application is made to obtain restitution as the necessary result of an order of His Majesty in Council, that application must be taken as one to " enforce " an order in Council & will be governed by Art. 183, & not by the general Art. 181 of Indian Limitation Act, 1908.—SOHAN BIBI *v.* BALNATH DAS (1928), I. L. R. 50 All. 767.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A. (a) i.

719 ii. —— *Not appearing but lodging case.*]—Resps., who did not appear, but had lodged a case, allowed costs up to the date of doing so.—GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A (c).

sm. *Out of sum deposited as security —Order for payment to solicitors.*]—Solrs. in England may, in a proper case, obtain from the High Ct. an order for payment to them of moneys deposited in the High Ct., as security for their clients' costs of an appeal to the Privy Council.—BIKRAMKISHORE MANIKYA *v.* ALI AHMAD (1930), I. L. R. 58 Calc. 1034.—**IND.**

PART XI. SECT. 2, SUB-SECT. 1.—A. (a).

sp. *To hear action.*]—A judge of the High Ct. may direct the whole of a case which comes before him for hearing to be argued before the Full Ct.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—**AUS.**

809. *Add. Annotations :* — **Refd.** Rackham *v.* Tabrum (1923), 129 L. T. 24 ; Millensted *v.* Grosvenor House (Park Lane), Ltd., [1937] 1 K. B. 717.

816. To cross-reference before this case add " *See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 24, 25."

819. For cross-reference at head of this section read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (2)."

820. For cross-reference at head of this section read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (1)."

827. For cross-reference before this case read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (3)."

Add. Annotation :—**Refd.** Capron *v.* Capron, [1927] P. 243.

831a. —— ——.]—When a judge adjourns a chambers summons into ct. under R. S. C., Ord. 54, r. 22, & does not direct that it is to be heard in ct. as chambers, the matter is in ct. for all purposes & is open to the press.—HARDIE & LANE *v.* CHILTERN (1927), 96 L. J. K. B. 773 ; 43 T. L. R. 477 ; *on appeal,* [1928] 1 K. B. 663 ; 96 L. J. K. B. 1040 ; 138 L. T. 14, C. A.

834a. —— ——.]—HARDIE & LANE *v.* CHILTERN, No. 831a, *ante.*

840a. To order amendments—Judge trying causes in short cause list.]—Although it may be a condition precedent to the master's power to order a cause to be tried in the short cause list, that the claim specially indorsed on the writ should be for a liquidated demand, yet when once he has made the order giving leave to defend, & has ordered the cause to be put in the short cause list, there is no restriction whatever on the powers of the judge to order such an amendment as he is authorised to make under the rules of ct. The judge trying causes in the short cause list has the full powers of amendment that are given to him by the rules of ct. as though he were hearing the cause in the ordinary list. —THOMAS *v.* ALDERTON, LTD., [1928] 1 K. B. 638 ; 97 L. J. K. B. 259 ; 138 L. T. 315, C. A.

865. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

889. For cross-references before this case read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 6–8."

891. For cross-references before this case read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 26–29."

895a. Enforcement of undertaking given to Court of Appeal.]—The Ct. of Appeal have jurisdiction to deal with the enforcement of an undertaking given to that ct.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* AN UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340 ; 110 L. J. K. B. 447 ; 147 L. T. 49, C.

902. *Add. Annotation :*—**Folld.** *Re* Carroll (1930), 47 T. L. R. 20.

903a. —— ——.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus,* & where an appeal is brought from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL, [1931] 1 K. B. 104 ; 100 L. J. K. B. 62 ; 144 L. T. 154 ; 47 T. L. R. 20 ; 74 Sol. Jo. 770, C. A.

904. *Add. Annotation :*—**Consd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

908. *Add. Annotation :*—**Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

912. *Add. Annotation :*—**Consd.** Butcher Wetherly & Co. *v.* Norman, [1934] 1 K. B. 475.

915. *Add. Annotation :*—**Apld.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

919. *Add. Citation :—sub nom.* R. *v.* ILLINGWORTH, 32 W. R. 451.

After this case add "*See, now,* Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

925. *Add. Annotation :*—**Consd.** Bowater & Sons, Ltd. *v.* Davidson's Paper Sales, Ltd., [1936] 1 All E. R. 110.

944. *Add. Annotations :*—**Refd.** Davey *v.* Robinson, [1923] 1 K. B. 563 ; Shrager *v.* Dighton, [1924] 1 K. B. 274.

SECT. 5.—OFFICERS AND CENTRAL OFFICE (Vol. XVI., p. 189).

Add the following case :—

949a. Officer—Right to institute suit—Personal interest.]—It is against public policy to allow an officer of the ct. to institute suits, in the conduct of which he may have a direct personal interest.—HOSANNA ARATHOON KERAKOOSE *v.* SERLE (1844), 3 Moo. Ind. App. 329 ; 4 Moo. P. C. C. 459 ; 18 E. R. 523.

PART XI. SECT. 2, SUB-SECT. 3.

sl. *To rescind patent—Although voidable or void at law.*]—MARTIN *v.* KENNEDY (1850), 2 Gr. 80.—**CAN.**

sw. *To try validity of will—Important questions involved—Transfer of action from surrogate court.*]—Where the validity of a will relating to both real & personal estate was in dispute, the personal property being worth, at least, £2,000, & it was sworn & not denied that the questions to be determined were of such importance that they could be more effectually tried & disposed of in the ct. of chancery than in the surrogate ct. an order for removal was made.—*Re* ECCLES (1865), 1 Ch. Ch. 376.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 6.—A.

sy. *Local masters—Jurisdiction of.*]—Local masters have no authority to sit on the final hearing & adjudge the merits on applications to the summary jurisdiction of a judge of the K. B. over exors., administrators & trustees, no matter how such applications may be commenced ; nor have they jurisdiction to refer such applications to a judge of the K. B. The office of a master or local master in Saskatchewan is to be distinguished from that of a master in England & from that of a county ct. judge exercising jurisdiction as a local judge of the Superior Ct. in those Provinces in which he is appointed a local judge.—LORCH *v.* OLSON (Sask.), [1928] 1 D. L. R. 365 ; [1927] 3 W. W. R. 780.—**CAN.**

Part XVII.—Forest Courts.

974a. Court books—Duty of clerk to produce for inspection.]—A.-G. *v.* BROWN (1844), 2 L. T. O. S. 424 ; 8 J. P. 711.

Part XXI.—Palatine Courts.

1014a. —— —— ——.]—DYKE *v.* STEPHENS (1885), 29 Sol. Jo. 682.

1016. For cross-reference after this case read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 28."

Part XXIII.—Borough and Local Courts of Record.

1024a. *S. P.* PENDRED *v.* CHAMBERS (1591), Cro. Eliz. 256 ; 78 E. R. 512.
Annotation :—**Refd.** Goodson *v.* Duffield (1612), Cro. Jac. 313.

1053. To the reference before this case add "; Liverpool Corporation Act, 1921 (c. lxxiv), ss. 224–263."

Part XXV.—Judicial Commissioners.

1126. *Add. Annotations:*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

COUSIN.

See DESCENT; WILLS.

COVER.

See STOCK EXCHANGE.

COWS.

See ANIMALS; DISTRESS; PUBLIC HEALTH.

CREAM.

See FOOD AND DRUGS.

CREW.

See MASTER AND SERVANT; SHIPP'NG.

CROSS-EXAMINATION.

See EVIDENCE.

CROWN COLONY.

See DEPENDENCIES & DOMINIONS.

CROWN PRACTICE.

Part I.—Proceedings on the Revenue Side of the King's Bench Division.

35. *Add. Annotation :*—**Consd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

46a. **Bail to answer & pay penalties—Liability of sureties.**]—Where a person is proceeded against in the High Ct. by writ of *capias*, under Customs Consolidation Act, 1876 (c. 36), s. 247, for the recovery of penalties for offences against the Customs Acts he shall be bound to answer & pay all the penalties sued for with two or more sureties who shall be jointly & severally sufficient for the amount of the bail indorsed on the writ.—*Re* ATTFIELD (1924), 93 L. J. K. B. 1064.

52. *Add. Annotation :*—**Refd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1936] 1 All E. R. 258.

155a. **Land held in trust for debtor.**]—If one indebted to the king for customs by covin enfeoff his friend of lands purchased with the king's money, himself taking the profits ; it shall be seized into the king's hands until, etc.—DE CHIRTON'S CASE (1558), 2 Dyer, 160 ; 73 E. R. 349.

Annotations :—**Refd.** Coke's Case (1623), Godb. 289 ; R. *v.* Smith (1810), Wight. 34.

166. *Add. Annotation :*—**Refd.** Food Controller *v.* Cork (1923), 130 L. T. 1.

240a. —— **Bills of exchange—Transmitted from abroad by foreign agents.**]—R. *v.* HUNTER (1817), 4 Price, 258 ; 146 E. R. 457.

246a. **Rights of landlord—Not entitled to payment from sheriff of rent due before writ.**]—R. *v.* DE CAUX (1815), 2 Price, 17 ; 146 E. R. 7.

246b. —— **Subsequent arrears of rent—Goods kept locked up by sheriff for long time.**]—The ct. refused to interfere, so far as to order the effects to be sold, & the rent in arrear to be paid out of the produce.—R. *v.* HILL (1818), 6 Price, 19 ; 146 E. R. 729.

248a. —— ——.]—R. *v.* BINGHAM (1831), 2 Cr. & J. 130 ; 2 Tyr. 46 ; 1 L. J. Ex. 62 ; 149 E. R. 55.

293. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

298a. **Secret profits received by agent of Crown.**]—An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743 ; 45 T. L. R. 609 ; 73 Sol. Jo. 514.

308. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

309. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

312 *Add. Annotation :*—**Refd.** *Re* Kent Coal Concessions, Burn *v.* The Co., [1923] W. N. 328.

316. After cross-refs. following this case add :—

SECT. 7.—**WRIT OF SUMMONS.**

For Crown debt.]—*See* Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 4.

Part II.—Petition of Right.

319. *Add. Annotations :*—**Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730 ; Buckland *v.* R. (1933), 102 L. J. K. B. 404.

320. *Add. Annotation :*—**Refd.** Badman *v.* R., [1924] 1 K. B. 64.

PART I. SECT. 1, SUB-SECT. 4.—A.

sa. *Power of court to give relief to debtor.*]—R. *v.* BONTER (1843), 6 O. S. 551.—**CAN.**

PART I. SECT. 1, SUB-SECT. 4.—C. (c).

sb. *General issue pleaded—Subsequent proof of Crown's title to reversion—Withdrawal of plea—Costs.*]—In an information of intrusion, the rule to plead was served on Nov. 21, 1832. Deft. from time to time obtained further time to plead, & on Apr. 15, 1833, pleaded the general issue. Notice of trial was served for the sittings after Michaelmas term, 1837 ; & the trial was postponed at the instance of deft. On Jan. 23, 1838, deft. discovered certain documents, showing, as he alleged, that the reversion was vested in the Crown. The ct. allowed him to withdraw the plea of the general issue, & plead his title specially, upon payment of all costs incurred by the Crown, consequent on the plea of the general issue.—A.-G. *v.* LANGFORD (LORD) (1838), 2 Jo. Ex. Ir. 619.—**IR.**

PART I. SECT. 1, SUB-SECT. 4.—C. (d).

85 ii. —— —— ——.]—R. *v.* WATSON (1828), N. B. Dig. 447.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

sd. *Effect of writ — On accrual of prerogative rights.*]—Prerogative rights which might accrue to the Crown by virtue of a writ of extent are dependent upon the issue of the writ itself. As it was too late to issue the writ :—*Held :* there was no direct liability to the Crown by the insolvent co.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176 ; 52 O. L. R. 225 ; 2 C. B. R. 599.—**CAN.**

PART II. SECT. 1.

317 i. *Purposes.*]—Upon petition of right there is no power in the ct. to compel the Crown to make a grant of land.—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS CO., LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1926] 4 D. L. R. 531 ; 59 O. L. R. 406.—**CAN.**

317 ii. ——.]—*Qu. :* whether a petition of right lies to test the constitutionality of a Dominion statute.—LOVIBOND *v.* G. T. R., C. N. R., & A.-G. FOR CANADA, [1933] 1 D. L. R. 798 ; *affd.*, [1933] 4 D. L. R. 425 ; O. R. 727.—**CAN.**

317 iii. *Purposes.*]—Except in cases specially provided for by statute, *e.g.*, the provision of the Finance Act of 1894 (Imp.), s. 10, for the recovery back of estate duty, the only way by which a subject is enabled to obtain back out

322. *Add. Annotations :*—**Distd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

322a. —— —— —— **Ministry of Health.**]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), "The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name": —*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86; 101 L. J. Ch. 81; 146 L. T. 231; 47 T. L. R. 439.

323. *Add. Annotation :*—**Refd.** *Re* Mason, [1928] Ch. 385.

323a. **Claim against Dominion.**]—A petition of right cannot be brought in the High Ct. of Justice of England which has for its object a judgment against the Crown, which is to be satisfied out of the Exchequer of a Dominion.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 568; 41 T. L. R. 576; 69 Sol. Jo. 744, H. L.; *revsg.* S. C. *sub nom.* Great Southern & Western Ry. Co. of Ireland *v.* R., [1924] 2 K. B. 450, C. A.

333. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

339. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

347. *Add. Citation :*—15 Asp. M. L. C. 574.

Add. Annotation :—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

351. *Add. Annotation :*—**Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

352. *Add. Annotations :*—*As to* (1) **Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Jamieson *v.* Downie, [1923] A. C. 691; Badman *v.* R., [1924] 1 K. B. 64; Buckland *v.* R. (1933), 102 L. J. K. B. 404.

353a. —— —— **Detinue.**]—I should like to express my own view that a petition of right lies against the Crown in respect of goods wrongs fully detained by its servants (MCCARDIE, J.). —BUCKLAND *v.* R., [1933] 1 K. B. 329; 49 T. L. R. 39; 76 Sol. Jo. 850; *on appeal*, [1933] 1 K. B. 767, C. A.

353b. —— **Compensation for injury to property in Ireland.**]—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—PRICE *v.* R. (1925), 42 T. L. R. 179.

355. After this case add "—— **Effect of Indemnity Act, 1920 (c. 48).**]—*See* CONSTITUTIONAL LAW, Nos. 293a, 499a, 499b, 526a–526d, 534a, *ante*."

356. *Add. Annotation :*—**Folld.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

356a. —— ——.]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—

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of the hands of the Crown either land, money or goods, upon which the Crown has, rightfully or wrongfully, laid its hands, is by a petition of right; & where, as in the present instance, declarations are sought as foundations upon which to base a claim that the Crown is wrongfully holding money which of right belongs to pltf. the ct. has no jurisdiction to make such declarations except as incidental to a claim which can only be the subject of a petition of right.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA (No. 3), [1936] 2 W. W. R. 337; 4 D. L. R. 98. —**CAN.**

k i. —— ——.]—A petition of right is not an appropriate remedy for obtaining a declaratory judgment against the Crown.—SMITH *v.* A.-G. FOR ONTARIO (1922), 52 O. L. R. 469.—**CAN.**

e i. —— *Claim against Crown—What amounts to.*]—Applt. was the registered holder of certain preference & common stock of the Grand Trunk Ry. Co. of Canada. By virtue of legislation & orders in council, the whole of such stocks were vested in the Minister of Finance of Canada in trust for His Majesty. A new co. called the Canadian National Ry. Co. having been incorporated to amalgamate an old co. of that name & the Grand Trunk Co., the Minister surrendered the stocks in question to the new co. for cancellation & received from the new co. one share for the value of the stock surrendered. Applt. claimed on behalf of himself & all other holders of such stocks that the legislation, orders in council & agreements, whereby the above transaction was carried through were invalid & void, & asked for the rectification of the register of the Grand Trunk Co. He also claimed damages against the ry. cos. for breach of duty in removing his name from the register of the Grand Trunk Co. The question was also raised whether this appeal was a mere question of jurisdiction & procedure, or whether there was a matter in controversy exceeding in value 4,000 dollars & thus giving an appeal as of right to the Privy Council. The damages claimed were greatly in excess of 4,000 dollars :—*Held :* (1) the first claim was a claim against the Crown & could only be prosecuted by petition of right, & the Exchequer Ct. of Canada had exclusive jurisdiction in such a matter; (2) the claim for damages was not against the Crown, & as to that the action should be allowed to proceed.—LOVIBOND *v.* GRAND TRUNK RY. CO. OF CANADA [1936] 2 All E. R. 495; 80 Sol. Jo. 734, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

o i. —— *Property in possession of third party.*]—A.-G. FOR ONTARIO *v.* MCLEAN GOLD MINES, LTD., [1927] A. C. 185; 95 L. J. P. C. 217; 136 L. T. 194, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

336 i. *General rule.*]—A petition of right is the proper remedy when the Crown has in its hands property to which a subject has a legal title: this does not extend to torts.—COYLE *v.* BLACK (1933), 7 M. P. R. 412.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—A.

346 ii. —— ——.]—MAUNSELL *v.* R., [1925] Exch. C. R. 133.—**CAN.**

346 iii. ——.]—R. *v.* CANADA STEAMSHIP LINES, LTD., [1927] 1 D. L. R. 991; [1927] S. C. R. 68.—**CAN.**

346 iv. ——.]—KENNEY *v.* R. (1882), 1 Exch. C. R. 68.—**CAN.**

s i. ——.]—By two contracts in writing suppliant agreed with resp., represented by the Minister of Marine & Fisheries, to construct six steel cargo steamers; the first contract covered four ships, & the second contract two ships. Both contracts provided that any dispute or difference arising between the parties thereto, during the term of the agreements or within six months after the termination thereof, in relation to the various matters therein set forth, should be referred to three arbitrators to be chosen as therein provided & whose decision should be final & binding. Suppliant claimed that it required certain disputes be submitted to arbn. but that resp. refused to do so. Resp. denied that such request was made or refused, or that any dispute was referred to or settled by arbn., & contended that the arbn. clause in such contracts was a bar to the various claims set forth in the petition :—*Held :* since resp. had granted suppliant a fiat & also had pleaded a defence, the arbn. claims had been waived & another forum substituted.—COUGHLAN & SON, LTD. *v.* R., [1937] Ex. C. R. 29.—**CAN.**

s*f*. *Refund of part of price of mineral rights in land under sea.*]—KETCHEN *v.* R. (B. C.), [1927] 3 W. W. R. 152.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—C.

351 viii. —— ——.]—KENDALL *v.* R., [1926] Exch. C. R. 34.—**CAN.**

A.-G. FOR STRAITS SETTLEMENTS *v.* PANG AH YEW, [1925] A. C. 555 ; 94 L. J. P. C. 150 ; 133 L. T. 106, P. C.

357. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

360. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

361. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

After this case add :—

-.]—*See, further*, REVENUE, Vol. XXXIX., pp. 307, 308, Nos. 836–841.

363a. Bona vacantia—Recovery by next of kin.]—*Re* MASON, No. 374b, *post.*

364. *Add. Annotation :—Generally*, **Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

368. *Add. Annotations :*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

369. *Add. Annotations :*—**Folld.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581. **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

370. *Add. Annotations :*—**Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apprvd.** Civilian War Claimants Assocn., Ltd. *v.* R., [1932] A. C. 14. **Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

370a. —— ——.]—By Art. 232 of the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her Allies, & moneys were received by the Crown under

By a petition of right the suppliants, assignees of civilian claimants who suffered loss or damage by German aggression out of the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office, &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Government, that these claims had been duly verified by the Government, & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of the claimants :—*Held :* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14 ; 101 L. J. K. B. 105 ; 146 L. T. 169 ; 48 T. L. R. 83 ; 75 Sol. Jo. 813, H. L.

Annotation :—**Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

371. After this case add "**Compensation for use of invention by Crown.**] — *See* PATENTS, No. 1673a, *post.*"

372. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

374. *Add. Annotation :*—**Apld.** Badman *v.* R., [1924] 1 K. B. 64.

—— —— **When allowed.**]—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has jurisdiction to allow a petition of right to be amended, provided the amendment does not involve a substantial alteration in the cause

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PART II. SECT. 2, SUB-SECT. 3.—E.

s. *Sales tax paid by mistake—Under compulsion of legal process.*]—WALKERVILLE BREWERY, LTD. *v.* R., [1937] Ex. C. R. 99.—**CAN.**

PART II. SECT. 3.

374a i. —— *May be amended by court—When allowed.*]—Where a suppliant seeks to substitute or add a substantially new cause of action, the amendment should not be allowed in the absence of the Lieutenant-Governor's fiat or the consent of the A.-G. ; but if the substance of the case is not changed, the ct. can help the suppliant by amendment.—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069 ; 2 W. W. R. 759.—**CAN.**

374a ii. —— —— ——.]—HANSEN *v.* R., [1933] Ex. C. R. 197.—**CAN.**

374a iii. —— —— ——.]—Even if the ct. has power in some cases to amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—FLEXLUME SIGN CO. *v.* MACEY SIGN CO., [1923] 1 D. L. R. 1185 ; 51 O. L. R. 595.—**CAN.**

374a iv. —— —— ——.]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

374a v. —— —— ——.]—FITZPATRICK *v.* R. (1925), 57 O. L. R. 178.—**CAN.**

374a vi. —— —— ——.]—The practice of the ct. permits amendments to a petition of right provided the same do not state a new cause of action. The test whether a particular amendment should be allowed is : If the petition has originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused ? After a fiat "Let Right be Done" is granted, & the petition is filed in ct., it becomes a pleading, & under the Rules of Ct. is subject to any reasonable amendment, providing it does not involve any substantial alteration in the cause of action, or does not set up a fresh cause of action.—HANSEN *v.* R., [1933] Ex. C. R. 197.—**CAN.**

374a vii. —— —— ——.]—Resp. presented a petition of right, which was granted, praying that she be authorised to bring action against the "Minister of Roads" to recover the sum of $10,000 as damages for the death of her husband who was killed following a collision of his automobile on a provincial highway with a tractor belonging to the Department of Roads. Resp., after the hearing of the case but prior to judgment, made a motion before the trial judge for leave to amend the prayer of her petition of right by replacing the words "Minister of Roads" by the words "His Majesty the King." The motion was granted by the trial judge at the same time that judgment was given awarding damages, which judgment was affirmed by the appellate ct. Applt.'s counsel before this ct., besides denying any liability of the Crown upon the facts of the case, contended that the trial judge should not have allowed the substitution of the name of "His Majesty the King" for the "Minister of Roads" without the previous authority of a new fiat :—*Held :* it was competent to the Superior Ct. to grant the motion to amend the petition of right, if that were considered necessary.—R. *v.* DEMERS, [1935] S. C. R. 485.—**CAN.**

of action, so that the allowance of it without a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—BADMAN BROTHERS *v.* R., [1924] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. T. 264; 68 Sol. Jo. 166, C. A.

374b. —— **Service of copy on person in possession of property claimed—Petitions of Right Act, 1860 (c. 34), s. 5.**]—A lunatic, at the date of her death in 1798, was entitled to certain funds in Court representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of these funds to certain persons & obtained an indemnity in respect of these grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties agreed to confine themselves, for the present, to seeking a determination of the following questions: (*a*) whether the petition was maintainable on the assumption that no part of the funds in question ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (*b*) whether the petition was barred by any Statute of Limitations; (*c*) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, the suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made: —*Held:* Petitions of Right Act, 1860 (c. 34), s. 5, did not apply to the case.—*Re* MASON, [1928] 1 Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *on appeal*, [1929] 1 Ch. 1, C. A.

Annotation:—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

375. *Add. Annotations:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581.

381. *Add. Annotations:*—*As to* (1) **Refd.** Jamieson *v.* Downie, [1923] A. C. 691. *As to* (3) **Apprvd.** Badman *v.* R., [1924] 1 K. B. 64.

388. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Mason, [1929] 1 Ch. 1. **Refd.** Cayzer, Irvine *v.* Board of Trade (1925), 95 L. J. K. B. 134; Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383.

Part III.—Scire Facias.

426. *Add. Annotation:*—**Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

449. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part V.—Habeas Corpus.

464. *Add. Annotation:*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

469. *Add. Annotations:*—*As to* (1) **Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. *As to* (4) **Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.

470. *Add. Citations:*—[1923] 2 K. B. 361; 92 L. J. K. B. 797; 129 L. T. 419; 87 J. P. 166; 21 L. G. R. 419; 27 Cox, C. C. 433; *sub nom.* O'BRIEN *v.* SECRETARY OF STATE *Generally*, **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

379 i. *Parties—Joinder of—Not Crown with another respondent.*]—I can find no authority in which it has been decided that a resp. may be joined with the Crown in a petition of right, & a. applts. object to being so joined, I think they are entitled to succeed (DRAPER, J.).—MCNEIL'S EXORS. & DE BERNALES *v.* R. & PENDERGAST (1930), W. A. L. R. 4.—**AUS.**

380 iii. —— ——.]—The Crown expropriated certain lands, & in the plan & description deposited in the registry office, named M. as the owner of a part. M., then, having obtained a fiat from the Crown, filed a petition of right in this ct. claiming the value of the land expropriated. M. later discovered that his wife & not himself was the owner of the land expropriated, & a motion was made for leave to amend the petition of right by substituting the wife's name for that of M. as suppliant:—*Held:* as no action can be taken against the Crown without first obtaining its fiat which gives the ct. jurisdiction, such an amendment could not be allowed & the motion was, under the circumstances, dismissed without costs.—MORENCY *v.* R., [1927] Exch. C. R. 238.—**CAN.**

g i. —— *Defence—When particulars ordered.*]—O'BRIEN & DOHENY *v.* R., [1925] Exch. C. R. 1.—**CAN.**

sk. *Claim against individual as well as Crown—Necessity for separate action against individual—Action & petition of right tried together.*]—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

393 i. *Discovery—Suppliant's right as against Crown.*]—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—CROMBIE *v.* R., [1923] 2 D. L. R. 542; 52 O. L. R. 72.—**CAN.**

393 ii. —— ——.]—A suppliant proceeding by way of petition under Part II. of Crown Suits Act, 1908, is not entitled to an order for discovery of documents against the Crown.—RAYNER *v.* R., [1929] N. Z. L. R. 805. —**N.Z.**

394 i. *Evidence—Burden of proof—Negligence charged against officers & servants of Crown.*]—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the *onus* in such actions under Exch. Ct. Act, 1906, s. 20.—MONTREAL TRANSPORTATION CO. *v.* R., [1924] 4 D. L. R. 808.—**CAN.**

PART III. SECT. 1.

sl. *Whether writ will issue against heir—After return of nulla bona by administrator.*]—A *sci. fa.* will not issue against an heir under 5 Geo. 2, although an execution may have issued against the goods & chattels in the hands of the administrator & been returned *nulla bona*.—PATERSON *v.* MCKAY (1823), Tay. 43.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

sm. *Civil proceeding—Appeal to Court of King's Bench.*]—The writ of *habeas corpus* is a civil proceeding whatever may be the cause of detention, whether a criminal or supposed criminal or civil matter or any other illegal detention. A judgment maintaining a writ of *habeas corpus* is a judgment in a civil case, & is susceptible of appeal to the Ct. of K. B.—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; Q. R. 44 K. B. 476.—**CAN.**

sn. ——.]—*Ex p.* FONG, *Ex p.* YOU *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; 44 Que. K. B. 476.—**CAN.**

HOME AFFAIRS, 67 Sol. Jo. 553; *on appeal, sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L.

Add. Annotation:—**Refd.** Campbell *v.* Pollak, [1927] A. C 732.

492. *Add. Annotation:*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

493. *Add. Annotation:*—*As to* (1) **Consd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

498. *Add. Annotations:*—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386; Eshugbayi Eleko *v.* Nigeria Government, [1931] A. C. 662.

508. *Add. Annotations:*—*As to* (1) **Apld.** [illegible] *v.* Pollak, [1927] A. C. 732. **Refd.** *Re* Carroll (1930), 47 T. L. R. 20. *Generally*, **Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

553. *Add. Annotation:*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

554. *Add. Annotations:*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127. **Refd.** R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.

555. *Add. Annotation:*—**Consd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

PART V. SECT. 1, SUB-SECT. 2.—A.

c i. —— —— *Commitment not in any criminal case under any Act of Parliament of Canada.*]—Petitioner was convicted, in July & October, 1928, on charges under Intoxicating Liquor Act of New Brunswick, & was committed to gaol in York County, N.B. He applied to a judge of this ct. for a writ of *habeas corpus*, alleging that, on & prior to Dec. 10, 1917, Canada Temperance Act was in force in said county, that, on that date, an Order in Council, passed pursuant to Statutes of Canada, 1917, c. 30, became effective, suspending the operation of the Canada Temperance Act in said county; that, at the time of the passing of said Order in Council, there was in force the New Brunswick Intoxicating Liquor Act, 1916, referred to in said Order in Council as being as restrictive as the Canada Temperance Act; that, in 1927, New Brunswick Intoxicating Liquor Act, 1927, c. 3, came into force, which repealed the 1916 Act, & was less restrictive than Canada Temperance Act; & he contended that, as a result, the said suspension of the operation of Canada Temperance Act automatically ceased, & that Act came into force in said county, & that the offences for which he was convicted & committed to gaol were offences against that Act & not against the Provincial Act:—*Held:* a judge of this ct. had no jurisdiction to issue the writ applied for, as the commitment was not "in any criminal case under any Act of Parliament of Canada" within Supreme Court Act, s. 57.—DOHERTY *v.* HAWTHORNE, [1929] 1 D. L. R. 136; 50 Can. Crim. Cas. 209; [1928] S. C. R. 559.—**CAN.**

c ii. —— —— ——.]—The jurisdiction of the Supreme Ct. of Canada in respect of *habeas corpus* extends only to cases of commitment following upon charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force, even if these last offences have also been declared to be criminal by a federal statute.—SMITH *v.* R., BLACKMAN *v.* R., [1931] S. C. R. 578; 4 D. L. R. 465; 56 Can. C. C. 51.—**CAN.**

so. *Right to apply to different judges successively—Extradition proceedings.*]—The common law right to make successive applications to different judges for a writ of *habeas corpus* still exists with respect to extradition proceedings.—*Re* O'CONNOR, [1928] 1 D. L. R. 588; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

501 iv. ——.]—REID *v.* DRAKE (1867), 4 P. R. 141.—**CAN.**

501 v. —— *Not granted where detention lawful—Not available as means of appeal.*]—A writ of *habeas corpus* will not issue where the accused is being held in custody in virtue of a valid judgment of a ct. having jurisdiction. It is not intended & cannot be used as a means of appeal.—HOWLEY *v.* PIEUZE (1927), Q. R. 65 S. C. 483.—**CAN.**

501 vi. —— —— ——.]—*Ex p.* BOUCHER (Que.) (1928), 50 Can. Crim. Cas. 161.—**CAN.**

501 vii. ——.]—In order to make a case for *habeas corpus* in criminal matters, there must be an actual confinement or, at least, the present means of enforcing it. A person may apply for the writ while in the custody of a constable, immediately upon being arrested, & need not wait until he is actually incarcerated. But a person at large on bail is not so restrained of his liberty as to entitle him to the writ.—*Re* ISBELL, [1930] S. C. R. 62; 1 D. L. R. 393; 52 Can. C. C. 170.—**CAN.**

501 viii. ——.]—31 Car. 2, c. 2, which aims at reiterated commitments, has no application to cases where the prisoner is imprisoned under a warrant in execution.—*Re* RANSOME (1932), 4 M. P. R. 271.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (a).

511 ii. ——.]—It is only where a ct. is wholly without jurisdiction that *habeas corpus* will lie. The Supreme Ct. of New Brunswick has no right to interfere with the record of a county ct. judge's criminal ct. of Nova Scotia, or with an increase of sentence by the Supreme Ct. of Nova Scotia.—*Ex p.* BURNS (NO. 2), [1932] 3 D. L. R. 29; 4 M. P. R. 564; 58 C. C. C. 231.—**CAN.**

512 v. —— —— *Costs not stated.*]—*Ex p.* HENDERSON, *Ex p.* BRODER, *Ex p.* STEWART, *Ex p.* JOE GO GET (Can.), [1930] 1 D. L. R. 420; 52 Can. Crim. Cas. 95.—**CAN.**

519 i. *Indictment for murder—Committal by magistrate—Evidence disclosing criminal negligence.*]—R. *v.* RIESY (1931), 55 Can. C. C. 328.—**CAN.**

sb. *Detention after purging contempt.*]—*Re* SINGER (Ont.) (1929), 52 Can. Crim. Cas. 243.—**CAN.**

sd. *Consent to trial—Not shown in clerk's copy of conviction—Shown in magistrate's original.*]—*Habeas corpus* refused.—*Re* ZWICKER (1932), 4 M. P. R. 331.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (b).

523 i. *Where warrant primâ facie valid.*]—R. *v.* WONG YUEN (1925), 44 Can. Crim. Cas. 338.—**CAN.**

sf. *Power of court to amend.*]—*Re* MCNEILL (1931), 3 M. P. R. 185.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (e).

sq. *Commissioner under Combines Investigation Act.*]—The jurisdiction of a judge of the Supreme Ct. of Canada, under Supreme Ct. Act, 1927, s. 57, to issue a writ of *habeas corpus* held not to extend to the case of a commitment by a comr. appointed under Combines Investigation Act, 1927, for contempt of an order made by the comr. under sect. 22 thereof.—*Re* SINGER, [1929] 4 D. L. R. 878; S. C. R. 614; 52 Can. Crim. Cas. 1.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (h).

sr. *Applicant at liberty on bail—Writ refused.*]—VERRAULT *v.* LACHANCE (Que.), [1929] 2 D. L. R. 900.—**CAN.**

st. —— ——.]—*Re* ISBELL (Can.), [1930] 1 D. L. R. 393; 52 Can. Crim. Cas. 170.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—C.

552 iv. —— ——.]—Where an inferior ct. is acting within its jurisdiction, the superior ct. has no power, at common law, to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

552 v. —— *Sufficiency of evidence not considered.*]—On an application for *habeas corpus* the ct. has no jurisdiction to consider the sufficiency of the evidence, where jurisdiction exists.—*Re* DAVISON, [1936] 1 D. L. R. 60; 9 M. P. R. 497; 64 Can. C. C. 335; 5 F. L. J. (Can.) 228.—**CAN.**

554 i. —— —— *On ground that decision against weight of evidence.*]—Application by way of *habeas corpus* & *certiorari* in aid to quash a conviction made by a police magistrate on a charge, under Excise Act, s. 181, of unlawful possession of spirits unlawfully manufactured:—*Held:* assuming that the evidence before the magistrate might be examined to determine its sufficiency, the magistrate having had some evidence before him on which to base his finding, the ct. was not justified in interfering with the conclusion or inference drawn by him therefrom.—R. *v.* SCHARF (Man.), [1928] 3 W. W. R. 398.—**CAN.**

554 ii. —— ——.]—R. *v.* HILL (N. S.), [1929] 1 D. L. R. 349; 50 Can. Crim. Cas. 319.—**CAN.**

557 i. —— *Acting without jurisdiction—Magistrate.*]—*Ex p.* MOHAMET ALI (N. S.) (1919), 32 Can. Crim. Cas. 65.—**CAN.**

557 ii. —— —— *County court judge.*]—*Habeas corpus* lies where a county ct. judge sitting in appeal from a summary conviction has exceeded his jurisdiction.—R. *v.* PETIT, [1932] 1 W. W. R. 161; 40 Man. L. R. 207; 57 C. C. C. 216.—**CAN.**

o. For "4 C. L. R. 101" read "4 V. L. R. 101."

r i. —— —— ——.]—R. *v.* MOORE, [1924] 3 W. W. R. 923.—**CAN.**

sv. *Where proceedings so irregular as to preclude fair trial.*]—Accused discharged upon a writ of *habeas corpus*.—

562. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

585a. —— **Form of summons.**]—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of appct. before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made. —R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127 ; 95 L. J. K. B. 361 ; 134 L. T. 317 ; 28 Cox, C. C. 126 ; [1926] B. & C. R. 1, D. C.

601. *Citations :*—For "*sub nom.* R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A. ; *sub nom.* HOME SECRETARY *v.* O'BRIEN, *Times*, May 15, H. L.," read "*sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A. ; *sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L." *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

611. *Add. Annotations :*—**Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

613a. May be made to successive judges.]—Each judge of the High Ct. established by Jud. Act, 1873 (c. 66), has jurisdiction to entertain an application for a writ of *habeas corpus*, in term time or in vacation, & is bound to hear & determine the application on its merits, notwithstanding that some other judge has already refused a similar application ; & this principle applies in the case of the judges of the Supreme Ct. of Nigeria.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1928] A. C. 459 ; 97 L. J. P. C. 97 ; 139 L. T. 527 ; 44 T. L. R. 632 ; 72 Sol. Jo. 452, P. C.

Annotation :—**Consd.** *Re* Carroll (1930), 47 T. L. R. 20.

650a. —— **Judge abstaining from inquiry into facts.**]—CARUS WILSON'S CASE, No. 650, *ante*.

656a. ——.]—RUDYARD'S CASE (1670), 2 Vent. 22 ; 86 E. R. 286.

Annotations :—**Refd.** R. *v.* Wilkes (1763), 2 Wils. 151 ; Wood's Case (1771), 3 Wils. 172 ; R. *v.* Dunn (1840), 12 Ad. & El. 599.

660a. ——.]—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison, to whom a rule *nisi* for a writ of *habeas corpus* has been directed, that appct. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—R. *v.* MAIDSTONE PRISON

R. *v.* CAMPBELL (1924), 43 Can. Crim. Cas. 340.—**CAN.**

sw. *Not decisions of court of record—County court judge's criminal court.*]—*Ex p.* MARTIN, [1927] 3 D. L. R. 1134 ; 48 Can. Crim. Cas. 23 ; 60 O. L. R. 577.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—D. (c).

d i. ——.]—Neither the doctrine that an alien friend has no right enforceable by action to enter British territory nor the prerogative of the King to exclude an alien from his realm can operate to prevent the ct. from entertaining an application of *habeas corpus* to inquire into the legality of the imprisonment of the alien by a private person.—R. *v.* CARTER, *Ex p.* KISCH (1935), 52 C. L. R. 221 ; 41 Argus L. R. 125.—**AUS.**

sx. *Person outside British India.*]—The High Ct. can issue a writ of *habeas corpus* for the production of a person outside British India, provided he is in the custody, or under the control, of a person within its jurisdiction.—MAHOMEDALLI ALLABUX *v.* ISMAILJI ABDULALI & SARDAR SYEDNA TAHER SAIFUDDIN MULLAJI SAHEB (1926), I. L. R. 50 Bom. 616.—**IND.**

PART V. SECT. 1, SUB-SECT. 4.—A. (b).

sz. *To court in another province—Conviction under Opium & Narcotic Drug Act, 1923—Not without good reason.*]—R. *v.* JUNGO LEE (No. 2), [1927] 1 W. W. R. 578 ; 47 Can. Crim. Cas. 255 ; 38 B. C. R. 313.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (c).

595 v. ——.]—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—R. *v.* MURRELL, [1924] 2 D. L. R. 647 ; 40 Can. Crim. Cas. 298. —**CAN.**

595 vi. ——.]—R. *v.* LEE (B. C.), [1926] 3 W. W. R. 264.—**CAN.**

595 vii. ——.]—In *habeas corpus* proceedings the ct. has jurisdiction notwithstanding the absence of an affidavit from the prisoner.—R. *v.* SLIPP *Ex p.* GARDINER, [1934] 3 D. L. R. 381 ; 61 C. C. C. 401 ; 7 M. P. R. 392.—**CAN.**

599 ii a. —— —— ——.]—R. *v.* MURRELL, No. 595 v., *ante*.—**CAN.**

599 ii b. *S. P.* R. *v.* BANNITI, [1926] 1 D. L. R. 424 ; 45 Can. Crim. Cas. 75 ; 58 O. L. R. 165.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (d).

611 vi. —— ——.]—An appct. for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—*Re* LOO LEN (No. 2), [1924] 1 D. L. R. 910 ; 1 W. W. R. 735 ; 41 Can. Crim. Cas. 388 ; 33 B. C. R. 213.—**CAN.**

611 vii. —— ——.]—An appct. for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions. —R. *v.* GEE DEW (No. 1), [1924] 3 D. L. R. 153 ; 2 W. W. R. 773 ; 42 Can. Crim. Cas. 188 ; 33 B. C. R. 524.—**CAN.**

611 viii. —— ——.]—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229 ; 2 W. W. R. 351 ; 42 Can. Crim. Cas. 231 ; 34 Man. L. R. 371.—**CAN.**

611 ix. —— ——.]—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge.—R. *v.* IACI, [1925] 2 W. W. R. 129 ; 43 Can. Crim. Cas. 363.—**CAN.**

611 x. *May not be made to successive courts — Allahabad.*] — The common practice of English cts., permitting successive identical applications for a writ of *habeas corpus* to be made to the judges, one after another, of the High Ct., is not applicable to the High Ct. of Allahabad in the case of applications under sect. 491 of the Criminal Procedure Code, inasmuch as the common law of England is not in force in this Province, & this High Ct. has not the common law right of issuing a writ of *habeas corpus*, but only the power, conferred upon it by statute for the first time in 1923, of making directions of the nature of a *habeas corpus*.—HAIDARI BEGAM *v.* JAWAD ALI SHAH (1933), I. L. R. 56 All. 271. —**IND.**

PART V. SECT. 1, SUB-SECT. 4.—B.

sb. *Order nisi—Notification of prosecutor & magistrate not necessary.*]—R. *v.* KUZYCK, [1924] 1 W. W. R. 872 ; 42 Can. Crim. Cas. 144.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (c).

641 i. *General rule—Original writ.*]—There is nothing in King's Bench Act or Rules which expressly or impliedly provides that a writ of *habeas corpus* in a civil proceeding can be properly served by the delivery of a copy.—BUSSELL *v.* STONER (Man.), [1928] 1 W. W. R. 749.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (d).

g i. —— ——.]—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229 ; 2 W. W. R. 351 ; 42 Can. Crim. Cas. 231 ; 34 Man. L. R. 371.—**CAN.**

(GOVERNOR), *Ex p.* MAGUIRE, [1925] 2 K. B. 265; 94 L. J. K. B. 679; 133 L. T. 710; 89 J. P. 89; 41 T. L. R. 456, D. C.; *no appeal*, 95 L. J. K. B. 55, C. A.

666. *Add. Annotation :—As to* (3) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

682a. ——.]—SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, No. 801, *post.*

696a. —— ——.]—Where a commitment is after conviction, the ct. is bound to look at the conviction in order to see whether there is more than a technical defect in the commitment, & a good conviction will cure a defect in the commitment.—R. *v.* LEWES PRISON GOVERNOR, *Ex p.* DOYLE, [1917] 2 K. B. 254; 86 L. J. K. B. 1514; 116 L. T. 407; 81 J. P. 173; 33 T. L. R. 222; 25 Cox, C. C. 635, D. C.

750. *Add. Annotation :—As to* (2) **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

784. *Add. Annotation :*—**Refd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

787. *Add. Citation :*—17 Jur. 1163.

792. *Add. Annotations :—As to* (1) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. *As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732. *Generally*, **Refd.** *Re* Carroll (1930), 47 T. L. R. 20.

793. *Add. Annotations :*—**Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. **Refd.** G. *v.* G. (1928), 45 T. L. R. 7; *Re* Carroll, [1931] 1 K. B. 317.

795. *Add. Annotations :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710; *Re* Carroll (1930), 47 T. L. R. 20.

796. *Add. Annotation :*—**Apld.** *Re* Carroll (1930), 47 T. L. R. 20.

797. After this case add " —— ——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (*a*)."

797a. —— —— **Person sentenced to penal servitude.**]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a criminal cause or matter.—R. *v.* MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE (1925), 95 L. J. K. B. 55; 133 L. T. 710; 89 J. P. 161; 41 T. L. R. 554; 69 Sol. Jo. 691, C. A.

PART V. SECT. 1, SUB-SECT. 4.—D. (f) ii.

726 v. —— ——.]—The ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appct.—R. *v.* MONTEMURRO, [1924] 2 W. W. R. 250.—**CAN.**

726 vi. —— ——.]—If, on an application to make absolute an order for a writ of *habeas corpus*, no want or excess of jurisdiction appears on the face of the documents filed with the return to the rule *nisi*, affidavits are admissible to establish such want or excess of jurisdiction, even although they may directly contradict facts stated in the documents filed with such return.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—**N.Z.**

726 vii. —— ——.]—R. *v.* CHIN YOW HING (B. C.), [1929] 2 W. W. R. 73; 51 Can. Crim. Cas. 407.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (g).

740 iii. ——.]—Where a prisoner is held under an invalid commitment, but before the return to a *habeas corpus* a valid commitment is lodged, he is in proper custody.—*Re* DAUPHINEE (1936), 10 M. P. R. 277.—**CAN.**

740 iv. ——.]—Where a prisoner is illegally arrested, & later held on a valid vagrancy charge, he will not be discharged on *habeas corpus* because of the original illegality.—*Re* GIGLIOTTI, [1936] 1 D. L. R. 319; 65 Can. C. C. 55.—**CAN.**

PART V SECT. 1, SUB-SECT. 4.—D. (i).

sm. *Detained person sent to immigration station outside province.*]—Upon the return to a writ of *habeas corpus* directed to F., a certain officer of the R.C.M.P., it was shown that, in pursuance of an order addressed to said officer by the Minister of Immigration & Colonisation, the prisoner in question had been duly arrested & proceeded against under Immigration Act, R. S. C., 1927, & had thereupon been sent under escort from Winnipeg to the custody of the chief immigration officer at Halifax, & was beyond the control of F. :—*Held :* the return made by F. was a sufficient answer to the writ.—R. *v.* HOLMES (OR CHOMICKI), [1932] 3 W. W. R. 76.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—E.

sd. *Duty of court—To consider all evidence, records & proceedings taken.*]—R. *v.* PAGE (1923), 41 Can. Crim. Cas. 59.—**CAN.**

sa. *S. P. Re* HILLMAN (N. S.), [1927] 1 D. L. R. 725; 46 Can. Crim. Cas. 308.—**CAN.**

sb. —— *Findings of fact—Right to question.*]—R. *v.* HILL (N. S.), [1929] 1 D. L. R. 349; 50 Can. Crim. Cas. 319.—**CAN.**

sc. —— *To raise technical points—Extradition proceedings.*]—Since the judge must look at the evidence to ascertain whether the conditions of the extradition treaty & statute have been fulfilled, it is not the duty of the *habeas corpus* judge to interfere with the proceedings on merely technical grounds.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

sm. *What may be considered—Destruction of notes of evidence—Necessity for certiorari in aid.*]—*Ex p.* WON LAI (1930), 54 Can. C. C. 143.—**CAN.**

sp. *Jurisdiction of judge to refer to appeal court.*]—R. *v.* KEEPER OF KING'S COUNTY GAOL, *Ex p.* DUNN (1929), 2 M. P. R. 37.—**CAN.**

sr. *Reference to Appeal Division for advice—Not permissible.*]—*Ex p.* BURNS (No. 1), [1932] 3 D. L. R. 27; 4 M. P. R. 562; 58 C. C. C. 229.—**AN.**

PART V. SECT. 1, SUB-SECT. 4.—G.

788 i. *Re-arrest on same cause—Warrant of commitment prematurely issued.*]—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

788 ii. —— *First arrest premature.*]—R. *v.* RANSOME, [1931] 3 D. L. R. 193; 55 Can. C. C. 193.—**CAN.**

f (p. 269) **i.** *Not where prisoner detained under warrant of arrest from another Province—Legality of arrest not questioned.*]—*Re* NETTLETON (B. C.), [1929] 1 D. L. R. 692; 51 Can. Crim. Cas. 413; 40 B. C. R. 413; [1928] 3 W. W. R. 735.—**CAN.**

g (p. 269) **i.** —— *Commitment for default of payment of fine—Fine partly paid.*]—*Ex p.* WHYNOT (N. S.), [1928] 1 D. L. R. 528; 49 Can. Crim. Cas. 155.—**CAN.**

g (p. 269) **ii.** —— *Unauthorised order as to costs.*]—In making a conviction under Liquor Act, 1925, 1924-25, c. 53, a justice of the peace has no authority to order that the costs be paid to him & such a provision in the conviction cannot be treated as a nullity on an application for *habeas corpus*.—R. *v.* RABIUK, [1928] 1 W. W. R. 588; 50 Can. Crim. Cas. 348; 22 Sask. L. R. 479.—**CAN.**

so. *Discretion of court.*]—*Ex p.* LEADLEY (N. S.) (1926), 46 Can. Crim. Cas. 298.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—H.

q i. —— —— *Keeping liquor for sale.*]—In sect. 36 of Supreme Ct. Act, as amended by 10 & 11 Geo. 5, c. 32 (Dom.), which excepts from the appellate jurisdiction of the Supreme Ct. of Canada " proceedings for or upon a writ of *certiorari* arising out of a criminal charge," the word " criminal " is used in contradistinction to " civil," & is not limited to the sense in which " criminal " legislation is received exclusively to the Dominion Legislature by B. N. A. Act, 1867, s. 91. The Supreme Ct. of Canada therefore has not jurisdiction to hear an appeal from a decision of the Supreme Ct. of Alberta upon a motion for a writ of *certiorari* to quash a conviction for unlawfully keeping liquor for sale contrary to sect. 23 of Liquor Act (Alberta).—R. *v.* NAT BELL LIQUORS, LTD., [1922] 2 A. C. 128, P. C.—**CAN.**

q ii. ——.]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *habeas corpus* in aid of criminal matters.—R. *v.* MCADAM, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

a i. —— *Grounds for allowing or refusing.*]—*Re* WOOD (N. S.), [1927] 4 D. L. R. 537; 48 Can. Crim. Cas. 146.—**CAN.**

801. For the existing paragraph in original volume substitute as follows :—

From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State ; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency :—*Held :* notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 59), s. 3, the House had no jurisdiction to entertain the appeal.—SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603 ; 92 L. J. K. B. 830 ; 129 L. T. 577 ; 87 J. P. 174 ; 39 T. L. R. 638 ; 67 Sol. Jo. 747 ; 21 L. G. R. 609 ; 27 Cox, C. C. 466, H. L. ; *previous proceedings, sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.

Annotation :—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

804a. From refusal to grant—Power of Court of Appeal to order security for costs.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus*, & where an appeal is brought from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL, [1931] 1 K. B. 104 ; 100 L. J. K. B. 62 ; 144 L. T. 154 ; 47 T. L. R. 20 ; 74 Sol. Jo. 770, C. A.

Part VI.—Mandamus.

890. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

892. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

893. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 148 L. T. 180.

894. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

894a. Proper practice must be followed.]—Upon an application for a high prerogative writ, such as a writ of *mandamus*, it is important that the proper practice should be followed, & that the precise order asked for & made should be carefully defined.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652 ; 100 L. J. P. C. 124 ; 145 L. T. 265, P. C.

Annotation :—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

899. *Add. Annotation :*—**Consd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

900. *Add. Annotations :—As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345 ; Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 49 ; Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180 ; Kilbane *v.* Whitehaven Colliery Co. (1933), 26 B. W. C. C. 76 ; De Keyser *v.* British Railway Traffic & Electric Co., [1936] 1 K. B. 224.

912. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

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798 v. —— ——.]—When a judge or the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229 ; 2 W. W. R. 351 ; 42 Can. Crim. Cas. 231 ; 34 Man. L. R. 371.—**CAN.**

798 vi. —— ——.]—R. *v.* DUNN (N. B.), [1928] 3 D. L. R. 674 ; 50 Can. Crim. Cas. 37.—**CAN.**

sg. *Appeal from discretionary order as to custody of infants—Whether Court of Appeal will interfere.*]—*Re* PAISLEY (N. B.), [1928] 1 D. L. R. 403.—**CAN.**

sh. *Time for—More than sixty days after date of judgment.*]—On appeal to the Supreme Ct. of Canada in matters of *habeas corpus* the first step is the filing of the case in appeal with the registrar. Judgment of the Ct. of Appeal in a *habeas corpus* proceeding was pronounced Nov. 13, 1888 ; notice of appeal was immediately given, but the case in appeal was not filed in the Supreme Ct. until Feb. 18, 1889 :—*Held :* the appeal was not brought within sixty days from the date on which the judgment sought to be appealed from was pronounced, & there was no jurisdiction to hear it.—*Re* SMART (Ont.) (1889), 16 S. C. R. 396.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—I.

g i. *Not against informant—Nova Scotia Judicature Act.*]—*Re* BROWN, [1928] 3 D. L. R. 234 ; 49 Can. Crim. Cas. 402 ; 60 N. S. R. 76.—**CAN.**

sm. *When not given—Application of Crown Costs Act.*]—R. *v.* TEN CHINAMEN (1924), 34 B. C. R. 349.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

so. *Who may issue—Patna High Court.*]—The Patna High Ct., which was constituted long after Specific Relief Act, 1877, had been passed, cannot be said to have inherited any power from the High Ct. of Calcutta to issue a writ of mandamus.—SURAJMULL BRIJLAL *v.* INCOME TAX COMR., BIHAR & ORISSA (1931), I. L. R. 10 Pat. 218.—**IND.**

PART VI. SECT. 1, SUB-SECT. 2.

895 iv. ——.]—The granting or refusal of a mandamus is a matter of discretion.—*Re* PIONEER SAVINGS & LOAN SOCIETY, *Re* REGISTRAR OF COMPANIES, [1928] 1 D. L. R. 830 ; [1928] 1 W. W. R. 361 ; 39 B. C. R. 372.—**CAN.**

895 v. —— *Where order not for public benefit.*]—PETERSON *v.* MONTREAL (1928), 31 Q. P. R. 164.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—A.

919 i. *Writ sought for ulterior motive—To satisfy personal enmity & spite—Mandamus refused.*]—*Ex p.* SWIM (1921), 49 N. B. R. 207.—**CAN.**

919 ii. ——.]—Applts. seek a mandamus to compel resp. municipality

925a. ——.]—It is not appropriate to order a body to hear & determine an application which they had no power to hear (AVORY, J.). —R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD. (1930), 47 T. L. R. 111, D. C.

925b. ——.]—The powers of the Ct. of K. B. are not unlimited. That ct. has general power to direct other persons to do that which by law they ought to do; it has no power to require a body to do something which in fact it has no power to do (HUMPHREYS, J.).—R. *v.* STEPNEY CORPN., *Ex p.* WALKER (JOHN) & SONS, LTD. (1932), 96 J. P. 360; 48 T. L. R. 660; 30 L. G. R. 416, D. C.; *on appeal*, [1933] 2 K. B. 273, C. A.; *sub nom.* STEPNEY BOROUGH COUNCIL *v.* WALKER (JOHN) & SONS, LTD., [1934] A. C. 365, H. L.

926a. ——.]—*Re* HEWARD (1845), 2 Dow. & L. 753; *sub nom. Re* HEYWARD, 14 L. J. Q. B. 113.

957. *Add. Annotation :*—**Apld.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

958. *Add. Annotation :*—**Apld.** R. *v.* Harris, [1927] 2 K. B. 587.

965. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1003. *Add. Annotation :*—*As to* (3) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1022. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1063. For the words "the affidavit on which it was granted was irregular" read "there was no affidavit & the proceedings were irregular."

1066. *Add. Citation :*—*sub nom.* R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* LONDON COUNTY COUNCIL, R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* METROPOLITAN ASYLUMS BOARD, 2 B. R. A. 810.

Add. Annotation :—*As to* (2) **Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1088. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1090. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1091. *Add. Annotation :*—**Refd.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

1092. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd. (1934), 151 L. T. 42.

1095. *Add. Annotation :*—**Consd.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

1108. *Add. Annotation :*—*As to* (1) & (2) **Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1141a. Income Tax Act, 1918 (c. 40), s. 125, Sched. A., No. V., rr. 7, 8—Remedy by way of appeal.]—As a result of information disclosed in connection with a claim to relief for the year 1920–21 under the above r. 8 the Inspector of Taxes discovered that the rents of certain properties had been increased during that year & that, by the above r. 7 (2), the owners were not entitled to the deductions in respect of repairs which had previously been granted from the Sched. A.

to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held:* applts. could not succeed, as they had failed to bring their case within the terms of Article 1141 C.C. or to establish agency of such third party in making the payment for the alleged debtor. On the first point, the debt of the secretary-treasurer was not admitted by resp. & was even contested by the former; it could not then be said that the payment was "for the advantage of the debtor." On the second point, the evidence showed that the payment by the third party was not made by him as agent of the debtor but on his own behalf.—PERRON *v.* CORPORATION DU VILLAGE DU SACRE-CŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—B. (b).

948 ii. ——.]—A writ of *mandamus* will not issue except to command the fulfilment of some duty of a public nature which remains unperformed. If a tribunal, charged by law with the duty of ascertaining or determining facts upon which rights depend, has undertaken the inquiry & announced a conclusion, the prosecutor who seeks a writ of *mandamus* must show that the ostensible determination is not a real performance of the duty imposed by law upon the tribunal: but the correctness or incorrectness of the conclusion reached by the tribunal is beside the question whether the writ lies. It is also beside the question that the determination, although not void, is yet one which, because of some failure to proceed in the manner directed by law, or of some collateral defect or impropriety, is liable to be quashed by a ct. which on appeal, *certiorari* or other process is competent to examine it.—R. *v.* WAR PENSIONS ENTITLEMENT APPEAL TRIBUNAL, *Ex p.* BOTT (1934), 50 C. L. R. 228.—**AUS.**

949 ii. ——.]—An application for a mandamus was dismissed, where it was an attempt to secure the performance of an alleged private right by a public body, & not to secure the performance of any public duty.—R. (BUTLER) *v.* NAVAN URBAN DISTRICT COUNCIL, [1926] I. R. 92, 466.—**IR.**

PART VI. SECT. 1, SUB-SECT. 3.—C.

954 vi. ——.]—Before a mandatory order can be obtained, appct. must show that he has some specific right in law to enforce the duty, performance of which he asks the aid of the ct. to compel.—*Re* WATSON & COBOURG TOWN, [1924] 4 D. L. R. 459; 55 O. L. R. 531.—**CAN.**

954 vii. ——.]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

954 viii. ——.]—When the extraordinary remedy of mandamus is sought to compel a municipality to issue a building permit the applicant must show that there was a reasonably strict compliance with the provisions of the bye-law regulating the issue of such permits. In the present case an order granting such a mandamus was set aside on appeal because the bye-law was not complied with in that the application for the permit was not made by the "owner"; although on the application for the mandamus the relator, who was the owner, swore that the permit application was made on his behalf.—R. *v.* WINNIPEG, [1930] 1 W. W. R. 914; 4 D. L. R. 205; 38 Man. L. R. 621.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—E. (a).

1004 viii. ——.]—CONDS *v.* KABOTA, [1925] 3 D. L. R. 376; [1925] 2 W. W. R. 620.—**CAN.**

1004 ix. ——.]—A writ of mandamus will not issue unless the party to whom it is directed has power to obey it.—R. *v.* MINSHULL & RHIND (1932), 4 M. P. R. 251; 57 C. C. C. 192.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—E. (c).

1027 ii. ——.]—Mandamus will not be granted if the person to whom it is directed has no power to obey its directions.—R. *v.* MINSHULL & RHIND (1932), 4 M. P. R. 251; 57 C. C. C. 192.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—F. (a).

1038 iv. ——.]—An application for a mandamus was dismissed, where appcts. had an adequate alternative remedy.—R. (JOHANNESSON) *v.* CARTIER RURAL MUNICIPALITY, [1922] 2 W. W. R. 670; 68 D. L. R. 741.—**CAN.**

1038 v. ——.]—A mandamus is not available if another remedy is given by statute.—*Re* VIKING MUNICIPAL HOSPITAL DISTRICT NO. 10, [1923] 4 D. L. R. 1123.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—F. (b) viii.

1110 ii. ——.]—Mandamus to a city to remove certain gasoline curb pumps refused since an indictment for nuisance provided the proper remedy. *Re* METRO OIL, LTD. & TORONTO, [1935] O. R. 338.—**CAN.**

assessments on the properties for that year. Additional assessments to income tax, Sched. A., were accordingly made in respect of the tax undercharged, & the Inspector of Taxes refused to certify the claim under r. 8 on the ground that relief under that rule applied only to assessments which were reduced for purposes of collection under r. 7. Notice of appeal was given by the owners against the additional assessments & against the refusal of the Inspector to certify the claim under r. 8, but at the owners' request the hearing of the appeals was postponed pending the decision of the ct. on rules *nisi*, which the owners had applied for & obtained, calling upon (*a*) the General Comrs. & the Inspector of Taxes to show cause why a writ of prohibition should not issue, prohibiting them from proceeding with the additional assessments; & (*b*) the Inspector of Taxes to show cause why writs of *certiorari* & mandamus should not issue, quashing his refusal to certify the claim under r. 8, & commanding him to furnish the requisite certificate in connection with the claim:—*Held:* discharging the rules *nisi*, the General Comrs. & the Inspector of Taxes had acted within their jurisdiction, &, as the statute prescribed procedure for appealing against the additional assessments & against the Inspector's refusal to certify the claim under r. 8, prohibition, *certiorari* & mandamus would not lie.—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES (1922), 8 Tax Cas. 327.

Annotations:—**Refd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250; Anderton & Halstead, Ltd. *v.* Birrell, [1932] 1 K. B. 271.

1147. *Add. Annotation:*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1150. *Add. Annotations:*—**Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485; Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1152. *Add. Annotations:*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200; Ashton *v.* Wainwright, [1936] 1 All E. R. 805.

1156. *Add. Annotation:*—*As to* (1) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1162. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1185. *Add. Annotations:*—*As to* (2) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38, *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1186. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1213. *Add. Annotation:*—**Distd.** Port of London Authority *v.* I. R. Comrs. (1919), 12 Tax Cas. 122.

1217. *Add. Annotations:*—**Refd.** R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Roberts *v.* Hopwood, [1925] A. C. 578; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

1219. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn., [1926] Ch. 66.

1221. *Add. Citations:*—3 Nev. & M. K. B. 802; 3 L. J. M. C. 117.

1225. *Add. Citations:*—3 L. T. O. S. 180; 8 J. P. 662.

1228. *Add. Citation:*—*sub nom.* R. *v.* LEICESTER, DEPUTIES OF FREEMEN, 15 Q. B. 671; 117 E. R. 613.

Add. Annotations:—**Folld.** R. *v.* Monmouth Corpn., R. *v.* Bolton Corpn. (1870), L. R. 5 Q. B. 251. **Refd.** *Ex p.* Portingell, [1892] 1 Q. B. 15; R. *v.* Somerset JJ. (1900), 16 T. L. R. 166.

1230a. —— **No fresh grounds for rehearing advanced.**]—Appct. was the owner of certain houses situated in West Norfolk. These houses were entered in the valuation list for 1929 at £30 gross & at £22 rateable value. On July 30, 1929, appct. made a proposal in writing to the rating authority for the amendment of the list under Rating & Valuation Act, 1925 (c. 90), s. 37 (1), with the result that the assessments were reduced to £25 gross & £18 rateable value. Not being satisfied with that decision, appct., acting under sect. 37 (8) of the Act, on Nov. 18, gave notice of appeal to the clerk of the peace, but by reason of delay a copy of such notice was not served on the assessment committee within the period specified in Sched. V., Part I. of the Act & the appeal was withdrawn. A second proposal was then made by appct. on Dec. 30, 1929, for the amendment of the valuation list upon the ground (*inter alia*) that the assessment was excessive, but without proposing what the amendment should be. On Feb. 7,

PART VI. SECT. 1, SUB-SECT. 4.—A.

1157 iv. —— —— ——.]—A mandamus lies against a minister of the Crown to compel the discharge of a duty laid upon him in the interest of the public.—MORIN *v.* PERRON (1927), Q. R. 44 K. B. 181.—**CAN.**

a i. *Income Tax Commissioner—To perform a discretionary act.*]—*Held:* inasmuch as Specific Relief Act, s. 45, did not apply to this High Ct. it has no power to issue a mandamus directing the Income Tax Comr. to do what the Act gives him a discretion to do.—MOHAMMAD FARID-MOHAMMAD SHAFI *v.* LAHORE INCOME TAX COMR. (1927), I. L. R. 9 Lah. 317.—**IND.**

a ii. —— *To state case on points of law not raised at hearing.*]—*Held:* where an assessee seeks for a mandamus from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had urged before the Comr. to state a case, his application cannot be entertained.—A. K. A. C. T. V. CHETTYAR (FIRM) *v.* INCOME TAX COMR. (1928), I. L. R. 6 Ran. 492.—**IND.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (b).

a i. —— *Architects Registration Board.*]—Where an application by for registration as an architect had been refused by the above Board:—*Held:* mandamus would not lie directing the Board to register resp.—ARCHITECTS REGISTRATION BOARD OF VICTORIA *v.* HUTCHISON, [1925] V. L. R. 195; 35 C. L. R. 404; 31 Alta. L. R. 93.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (d).

1221 vii. —— *Not to hear case without its jurisdiction.*]—R. *v.* BRINDA, [1924] 3 D. L. R. 1092; 57 N. S. R. 323.—**CAN.**

1221 viii. —— *In criminal matter.*]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judge's criminal ct. to try, according to the procedure of Criminal Code, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814.—**CAN.**

1930, the rating authority caused notice to be served on the appct. that they intended to object to appct.'s proposal on the ground that the present assessments were fair & reasonable. The proposal then came before the assessment committee on Feb. 18, 1930, when the chairman intimated that the committee refused to give a decision or to hear & determine the said proposal, whereupon the appct. applied for a rule *nisi* for a *mandamus*:—*Held*: the assessment committee ought in fulfilment of their statutory duty to have heard & determined the application made to them, but appct. had not satisfied the ct. that there were any merits additional to those put forward at the first hearing, & on that ground the ct. in its discretion refused to make the rule absolute. —R. *v.* WEST NORFOLK ASSESSMENT COMMITTEE, *Ex p.* WARD (F. B.) (1930), 94 J. P. 201; (1926–31), 1 B. R. A. 418, C. A.

1231. *Add. Citation*:—(1857), 3 W. R. 447.

1247. *Add. Citation*:—6 Ry. & Can. Tr. Cas. 60, D. C.

1269. *Add. Annotation*:—**Consd.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

1269. After this case add:—

—— ——.]—*See Re* BARNES CORPN., *Ex p.* HUTTER, ELECTIONS, No. 1109a, *post*.

1269a. —— **After void election.**]—If it appear with sufficient certainty to the ct. that a person has been elected mayor of a borough who is not qualified to accept the office, they will grant a mandamus to the electors to proceed to a new election.—R. *v.* BEDFORD CORPN. (1800), 1 East. 79; 102 E. R. 31.

Annotation:—**Consd.** R. *v.* Stoke Damerel, Minister & Churchwardens (1836), 5 Ad. & El. 584.

1293. *Add. Annotation*:—*As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1308. *Add. Annotation*:—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1310. *Add. Annotation*:—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1317. *Add. Annotation*:—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1323. *Add. Annotation*: — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

PART VI. SECT. 1, SUB-SECT. 5.—A. (e).

e i. ——.]—The Supreme Ct. of Ontario has jurisdiction to grant a mandamus to a judge of a division ct. to hear an appeal from a conviction of deft., by a police magistrate, of an offence contrary to Inland Revenue Act, 1906, s. 180 (f).—R. *v.* SPEIRS (1924), 55 O. L. R. 290.—**CAN.**

f i. —— *Rating appeal.*]—The Council of a municipal corpn. had from time to time delayed the hearing of an appeal against an assessment for rates, & finally refused to hear it until after the determination of the Local Ct. of an appeal from the decision of the Council on an appeal against rates made by another ratepayer in respect of different land:—*Held*: a mandamus lay to compel the Council to hear the appeal.—*Re* PORT PIRIE CORPN., *Ex p.* EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD., [1934] S. A. S. R. 97.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (g).

1237 ii. —— ——.]—*Re* HOLLAND (1875), 37 U. C. R. 214.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (h).

sp. *To sign record of acquittal—After retirement of judge.*]—A retired judge of a county ct. criminal ct. cannot be compelled by mandamus to sign a record of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the record signed, the only competent person is the present judge.—*Re* HALL (1922), 38 Can. Crim. Cas. 55.—**CAN.**

sq. *To grant administration—Surrogate Court.*]—The Surrogate Ct. is subject to mandamus from the Ct. of King's Bench.

On the application by the daughter & sole heir of an intestate for a grant of administration, the Surrogate Ct. judge offered to grant temporary administration to a trust co. The appct. refused to accept this offer, & applied to the Ct. of King's Bench for a mandamus requiring the Surrogate Ct. to issue letters of administration in the terms of her petition. No material was produced at the hearing of this application contradicting the statements in the affidavit filed in support of the application or showing that there was any lack of qualification or capacity in the appct., or that there was in fact any opposition to her petition, or that any one else had any interest in the estate:—*Held*: an order directing the judge of the Supreme Ct. & the clerk thereof to issue letters of administration to the appct. should be granted.—*Re* MACDONALD ESTATE, *Re* SURROGATE COURTS ACT (Man.), [1929] 3 W. W. R. 693; *varied*, [1930] 1 W. W. R. 242; 2 D. L. R. 177; 38 Man. L. R. 446.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. —— *Not where dismissal justified.*]—*Re* MONAGHAN (1924), 57 N. S. R. 242.—**CAN.**

1270 v. ——.]—ADAMS RIVER LUMBER CO. *v.* KAMLOOPS SAWMILLS, LTD. (1921), 70 D. L. R. 863; 30 B. C. R. 354.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—D.

1292 i. *General rule—Bill pending to repeal Act.*]—Where a duty is imposed upon a local authority to carry out an Act, the fact that a bill has been introduced to repeal that Act does not justify the local authority in refusing to carry out the duty, & mandamus lies to compel performance.—R. *v.* RATHMINES URBAN DISTRICT COUNCIL, [1928] I. R. 260.—**IR.**

1294 ii. ——.]—Health Act, 1919, s. 147, gives the Commission of Public Health power to order a municipal council to combine with other councils in providing, equipping & maintaining a common hospital. On the refusal by a council to obey such an order the Commission obtained an order *nisi* for the issue of a writ of mandamus:—*Held*: where the issue of a writ is obligatory under the statute, vagueness in the order sought to be enforced is immaterial & the writ must issue.—R. *v.* ROCHESTERSHIRE COUNCIL, *Ex p.* PUBLIC HEALTH COMMISSION, [1928] V. L. R. 492; [1928] Argus L. R. 315. —**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—E.

e i. —— *To register transfer.*]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

sr. *Municipal council—Imposing conditions to permission to erect petrol pump outside legitimate scope of council's functions.*]—*Held*: a mandamus should be granted.—*Re* RANDWICK MUNICIPAL COUNCIL, *Ex p.* BOWSER & CO. (1927), 27 S. R. N. S. W. 209; 44 N. S. W. W. N. 57.—**AUS.**

st. *Mayor—Refusing to put motion to meeting.*]—R. *v.* FOLEY, *Ex p.* MILLER, [1928] V. L. R. 1.—**AUS.**

sv. *Municipal corporation—Refusal to accept payment of money.*]—Applts. sought a mandamus to compel the resp. municipality to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held*: applts. could not succeed, as they had failed to bring their case within the terms of art. 1141 C. C. or to establish agency of such third party in making the payment for the alleged debtor.—PERRON *v.* CORPN. DU VILLAGE DU SACRE-CŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326; *affg.*, 44 Que. C. B. 400.—**CAN.**

sw. *Local authority—To take proceedings under local Act.*]—A writ of mandamus will not issue against a local authority to compel it to institute legal proceedings for alleged contravention of a local Act.—ELWOOD *v.* BELFAST CORPN. (1923), 57 I. L. T. 138.—**IR.**

sz. *Official seat outside jurisdiction of court.*]—In respect of a function which must be performed by a State official in respect of a person domiciled within Natal, the ct. has jurisdiction to order the exercise of that function by him, notwithstanding that the official seat of that official is outside the jurisdiction of the ct.—*Ex p.* GREET, [1934] N. L. R. 118.—**S. AF.**

sd. *As to manner of performance—Mandamus not granted.*]—Mandamus does not lie as to the *manner* in which a public duty is to be performed, *e.g.* the proper method of assessment of corporate income.—*Ex p.* MCSWEENEY, [1935] 4 D. L. R. 237; 10 M. P. R. 122; 5 F. L. J. (Can.) 84.—**CAN.**

sl. *Council levying rate insufficient to meet bond interest.*]—R. (LARSON) *v.* DAVISON & CALGARY CITY, [1936] 3 W. W. R. 23.—**CAN.**

PART VI. SECT. 2.

1326 iv. —— ——.]—CASTLEMAN *v.* JOHNSON, [1921] 3 W. W. R. 830; 70 D. L. R. 862; 30 B. C. R. 354.—**CAN.**

sk. *To levy tax to pay full interest on municipal bonds.*]—Mandamus does not lie to compel a city council to enact a bye-law levying a tax to pay full interest on municipal bonds.—*Re* LARSEN, [1936] 3 D. L. R. 753; *revsd. sub nom.* R. (LARSEN) *v.* DANSON, [1936] 4 D. L. R. 816.—**CAN.**

1486a. ——**Cross-examination of deponent—When ordered—Only in very special circumstances.**] —R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137, D. C.

1486a. —— ——.]—R. *v.* HANCOCK, ALDERMAN OF NORTH WEST WARD OF BOROUGH OF POOLE (1839), 3 J. P. 723.

1517. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1566. On sixth line of headnote, after " borough " insert " to raise a rate."

1580a. —— ——.]—Undoubtedly the principle is true, that returns must be certain, & not argumentative (LORD MANSFIELD, C.J.).—R. *v.* LYME REGIS CORPN. (1779), 1 Doug. K. B. 177 ; 99 E. R. 116.

Annotations :—**Refd.** R. *v.* Brewer's Case (1824), 4 Dow. & Ry. K. B. 492 ; R. *v.* Bowman (1834), 6 C. & P. 337.

1644a. —— ——.]—The mandamus issued, reciting the book to be in deft.'s custody, power, & control ; & was tested the day on which the rule for the mandamus was made absolute. Return, that the book was not at the time of the *teste*, nor since, nor at the time of the return, in the custody, etc. The ct. refused to take the return off the file, or quash it, on motion, upon affidavit of the facts as above stated, & of the belief of deponents that deft.'s object was to evade the process of the ct. But the ct. refused deft. the costs of the last motion, though moved with costs.—R. *v.* PAYN (1837), 6 Ad. & El. 392 ; 1 Nev. & P. K. B. 524 ; Nev. & P. M. C. 214 ; Will. Woll. & Dav. 142 ; 6 L. J. M. C. 62 ; 1 J. P. 37 ; 1 Jur. 54 ; 112 E. R. 150.

1726a. —— ——.]—A peremptory writ of mandamus was duly served on ten members of a borough council in 1897, commanding the corpn. to obey an order of the Local Govt. Board limiting a time for the carrying out of a sewerage scheme, pursuant to a local Act passed in 1885. The writ after service was left in the hands of one of the members, who lost it. In Mar. 1903, of the forty-eight members of the council only seven remained who were originally served in 1897, & in that month all forty-eight members were served with an order of the ct. to make a return to the peremptory writ served in 1897, a copy of which accompanied the order. On a rule *nisi* to show cause why the return should not be taken off the file, & calling on the forty-eight individual members to show cause why writs of attachment should not issue against them for disobedience to the peremptory writ, the ct. was of opinion that, under the circumstances, all forty-eight members were duly served with the peremptory writ in Mar. 1903. It was ordered that writs of attachment should issue against the seven members originally served, the writs to lie in the Crown Office until a certain date, leaving the onus on the seven members to satisfy the ct. that the writ was obeyed. The matter was allowed to stand over as against the other forty-one.—R. *v.* WORCESTER CORPN. (1903), 68 J. P. 130 ; 2 L. G. R. 51, D. C.

1736. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1739. After this case add " —— ——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (*a*)."

1740. *Add. Citation :*—2 B. R. A. 639.

Add. Annotation :—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

1745a. ——.]—Where a party, required by law to pronounce a decision on certain points, is brought before the ct. by a motion impugning such decision, the general rule is that he shall have costs if the application fails.—R. *v.* BRIDGNORTH CORPN. (1839), 10 Ad. & El. 66 ; 2 Per. & Dav. 317 ; 8 L. J. M. C. 86 ; 8 L. J. Q. B. 236 ; 3 J. P. 674 ; 3 Jur. 384 ; 113 E. R. 26.

Annotation :—**Apld.** R. *v.* Chipping Wycombe Corpn. (1875), 44 L. J. Q. B. 82.

PART VI. SECT. 3.

1341 i. *When action for mandamus pending.*]—An interlocutory mandamus should not be granted, unless it can be shown that pltf. will suffer injury by waiting for the result of the trial. Proof of the claim for damages is not a condition precedent to the granting of an interlocutory mandamus.—RIDINGS *v.* ELMHURST SCHOOL TRUSTEES (Sask.), [1926] 4 D. L. R. 81 ; [1926] 2 W. W. R. 752.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1350 i. *Necessary parties — Mandamus against municipal corporation.*]—In mandamus proceedings against a municipal corpn. it is the better practice to make parties to the proceedings the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT NO. 552, [1922] 3 W. W. R. 857 ; 70 D. L. R. 559.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (b).

sd. *Not judge in chambers.*]—Order *nisi* for mandamus must be granted by a full ct., not by a judge in chambers.—*Ex p.* MCSWEENEY, [1935] 3 D. L. R. 780 ; 9 M. P. R. 276 ; 5 Can. L. Jo. 53.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (d) i.

1371 i. *Application must be prompt.*]—It is within the discretion of the ct. to grant or refuse a writ of *mandamus*. It will be refused if there is serious unexplained delay in prosecuting the claim, although the Statute of Limitations is not applicable to an action for *mandamus*.—CANADIAN FERTILIZER CO., LTD. *v.* MARITIME FARMERS CO-OPERATIVE, LTD., [1934] 2 D. L. R. 424 ; 7 M. P. R. 10.—**CAN.**

1373 i. *Effect of delay—Poverty of applicant.*]—An appct. for a writ of mandamus must apply to the ct. within a reasonable time of the happening of the event on which he grounds his claim, &, in view of the benefits conferred on poor persons by Poor Persons Legal Remedies Act, 1918, want of means is not a sufficient excuse for unreasonable delay.—*Re* MANUFACTURERS' MUTUAL INSURANCE, LTD., *Ex p.* ANLEZARK (1931), 31 S. R. N. S. 53 ; 48 N. S. W. W. N. 24.—**AUS.**

PART VI. SECT. 6, SUB-SECT. 5.—C. (e).

sw. *To named county court judge—To hear appeal from conviction—Compliance by another judge—Prohibition.*]—*Re* R. *v.* POCHREBNY, R. *v.* STACPOOLE & STUBBS, [1930] 3 W. W. R. 48 ; *sub nom. Ex p.* POCHREBNY, 54 Can. C. C. 185 ; 39 Man. L. R. 177.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 9.

sm. *Affidavit of Minister—Whether admissible.*]—On appeal from an order that a writ of *mandamus* do issue directed to the Minister of Lands commanding him to determine the rights of an appct. for a lease of a certain lot & of an objection thereto, & to proceed in accordance with sect. 139 of Land Act, an application to put in an affidavit of the Minister to show what actually took place before him was refused.—R. *v.* MINISTER OF LANDS (1926), 37 B. C. R. 106.—**CAN.**

1749a. —— ——.]—R. *v.* VAYLE (1844), 8 J. P. Jo. 212.

1766. *Add. Citation :*—1 Q. B. 751.

1805a. —— **Costs of obtaining writ.**] — Two parishioners, for themselves & other parishioners, entered traverses to the denials to a writ for mandamus. In taxing the costs, the costs of obtaining the writ were included, without applying to the ct. :— *Held :* to be right.—R. *v.* FALL (1842), 1 Q. B. 653 ; 13 L. J. Q. B. 187 ; 113 E. R. 1282 ; *sub nom.* FALL *v.* R., 2 Gal. & Dav. 803, Ex. Ch.

1809. *Add. Annotations :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53 ; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

Part VII.—Quo Warranto.

1837. *Add. Annotations :*—**Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

For cross-reference at end of section read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 48."

1846. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1847. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1848. *Add. Citation :*—*sub nom.* Carter's (Sir John) Case, Lofft, 516.

1852. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1876. *Add. Annotation :*—**Consd.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

1952. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1954. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1960. Add the following para. :-

The ct. will not make such a rule absolute where a relator appeared to be a man in low & indigent circumstances, & there were strong grounds of suspicion that he was applying, not on his own account, or at his own expense, but in collusion with a stranger.

2007. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

PART VII. SECT. 2.

1840 i. *Discretion of court—Court bound to consider all circumstances.*]—On application for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appct.—R. (BOUDROT) *v.* JOHNSTON, [1923] 2 D. L. R. 278 ; 56 N. S. R. 214.—**CAN.**

1840 ii. —— ——.] — Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the discretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each case.—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905 ; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—A. (d).

1871 iii. ——.]—An application for a *quo warranto*, to test the validity of the appointment of an inspector, on the ground that the appointment was illegal because there was already an inspector in office, was dismissed, as the municipality had power to appoint "one or more inspectors."—R. *v.* THIBAULT (1926), 59 N. S. R. 93.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—F.

1908 iiia. —— —— ——.]—On a motion for an order *nisi* for information in the nature of *quo warranto* in respect of a recount on the election of a member of the House of Commons the ct. should not exercise its discretion to grant the order, since the Dominion Controverted Elections Act provides another remedy.—R. *v.* ELLIS (1935), 50 B. C. R. 325.—**CAN.**

sx. —— *Failure to post name of candidate.*]—Where after being legally nominated as a councillor for a rural municipality, a candidate informs the clerk & returning officer that he is considering withdrawing, but does not withdraw, & the returning officer does not post his name as one of the nominees but declares another candidate elected by acclamation, a *quo warranto* proceeding is the correct method for testing the latter's right to the office.—R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712 ; 66 D. L. R. 763.—**CAN.**

sy. —— *Disqualification of candidate.*]—Where a person elected to a municipal office is at the time of his election disqualified for election, the election can only be attacked by an election petition ; but where he is disqualified from holding municipal office his case comes under the category of continuing disqualifications which afford good ground for a proceeding by *quo warranto*.—R. (NUTTALL) *v.* BROWN [1923] 2 W. W. R. 511 ; 33 Man. L. R. 184.—**CAN.**

Statutory remedy available.]—The remedy by *quo warranto* is not excluded by another statutory remedy, unless the Legislature has so declared expressly or by necessary implication.—R. (MCARTHUR) *v.* MAYCOCK, [1924] 4 D. L. R. 1222 ; 3 W. W. R. 540.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (a).

t i. —— —— *Proof of interest.*]—R. *v.* MCKENZIE (1851), 2 C. L. Ch. 36.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (b).

c i. ——.]— R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905 ; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

1958 iii. —— ——.]—R. *v.* ADAMS (1850), 1 C. L. Ch. 203.—**CAN.**

1969 i. *What is acquiescence.*]—Acquiescence by a relator in the alleged offence, to be fatal, must be acquiescence at the time the alleged offence is committed. The subsequent conduct of a relator in agreeing to

W. W. R. 596.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

1990 i. *Effect of delay.*]—Unnecessary delay in making an application for a rule *nisi* for *quo warranto* is a bar to that remedy. A delay from Oct. to Apr., the ct. having sat twice in the meantime, is a delay of such length.—*Re* CROSMAN & MCLEOD'S, ELECTION, *Ex p.* HOWARD (1922), 70 D. L. R. 589.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—A.

sa. *Necessity for — That motion made at instance of relator.*]—On a motion for a *quo warranto*, an affidavit stating that the motion is made at the instance of the relator must be filed before the service of the notice of motion or petition, & where it has not been so filed the motion will fail. —R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712 ; 66 D. L. R. 763.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—C.

2017 i. *Acceptance of office—Acceptance or acting in office need not be stated.*]—R. *v.* STEPHENSON (1851), 1 C. L. Ch. 270.—**CAN.**

PART VII. SECT. 5.

2025 ii. —— ——.] — An appeal from an order *nisi* for a *quo warranto* information. Appct. sought the removal of a police comr. from his office on the ground that he had been convicted of a criminal offence. The objections to the order appealed from were : (*a*) that there had been too long a delay, about seven weeks, in making the application after the relator discovered the alleged disqualification ; (*b*) that an amendment to the notice of motion, by which the citation of the sects. of the Act which applied to the case were changed, should not have been allowed ; (*c*) that the alleged convictions, which were by a police magistrate, were not properly proved :—*Held :* all the objections should be overruled & the appeal dis-

2046a. —— **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.**]—PRACTICE NOTE, [1926] W. N. 308.

2088. *Add. Citation :*—5 Dow. & L. 249.

2093. *Add. Annotation :*—**Apld.** R. *v.* L. C. C., *Ex p.*, Swan & Edgar (1927) (1929), 141 L. T. 590.

Part VIII.—Prohibition.

2109. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

2110. *Add. Annotations :*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2112. *Add. Annotation :*—*As to* (1) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2121. *Add. Annotation :*—*As to* (2) **Folld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2129. *Add. Annotations :*—**Apld.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2130. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641; *Ex p.* Wenham (1934), 78 Sol. Jo. 414.

2132. *Add. Annotations :*—**Consd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2132a. —— —— ——.]—R. *v.* KINGSLAND PARISH, INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES, No. 1141a, *ante*.

2142a. ——.]—A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—R. *v.* NORFOLK JJ., *Ex p.* DAVIDSON (1925), 69 Sol. Jo. 558, D. C.

2149a. ——.]—Appcts. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or otherwise proceeding upon an assessment to income tax :—*Held :* prohibition would not lie to the General Comrs., who had acted in accordance with their statutory duty in making the assessment & had not exceeded their jurisdiction.—R. *v.* SWANSEA INCOME TAX COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 437; *sub nom.* R. *v.* INCOME TAX GENERAL COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., LTD., 69 Sol. Jo. 606.

2168. *Add. Annotations :*—**Apprvd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491. **Consd.**

1 i. —— ——.]—R. (MCARTHUR) *v.* DOUCET, [1924] 3 D. L. R. 812.—**CAN.**

1 ii. —— *Burden of proof.*]—On the hearing of an information in the nature of *quo warranto* proceedings to oust resp. from his office as one of the committee of adjustment under Dairy Products Sales Adjustment Act, the onus is on resp. to prove that he is entitled to hold the office so attacked.—R. *v.* SHANNON (1930), 43 B. C. R. 129.—**CAN.**

sb. *Defence—Failure to answer objection—Is admission of truth of objection.*]—R. *v.* SCOTT (1851), 2 C. L. Ch. 98.—**CAN.**

sc. *Service of notice of motion—Time for—Mistake as to day of week subsequently amended.*]—R. *v.* PONSFORD (1902), 3 O. L. R. 410; 22 C. L. T. 146; 1 O. W. R. 645.—**CAN.**

PART VIII. SECT. 1.

2109 i. *Whether grantable ex debito justitiæ—On excess or want of jurisdiction—Apparent from proceedings.*]—Where want of jurisdiction is apparent on the face of the proceedings a stranger is entitled to a writ of prohibition, *ex debito justitiæ*.—R. *v.* KNYVETT, *Ex p.* WEBER (1928), 22 Q. J. P. 138.—**AUS.**

PART VIII. SECT. 2.

2127 ii. —— —— ——.]—A candidate aggrieved by proceedings of the judge on a recount cannot resort to prohibition as he has other statutory remedies.—PLANTE *v.* FOREST, [1936] 1 D. L. R. 706; *revsd.*, [1936] 4 D. L. R. 627.—**CAN.**

]—MINISTER FOR LABOUR & INDUSTRY (N. S. W.) *v.* MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD. (1922), 30 C. L. R. 488; 28 Argus L. R. 252; 22 S. R. N. S. W. 610; 39 N. S. W. W. N. 94; (1922), N. S. W. Ind. Arbn. Cas. 20.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 1.

a i. —— *Interference with discretion of judge.*]—*Ex p.* BORG (1928), 28 S. R. N. S. W. 564; 45 N. S. W. W. N. 167.—**AUS.**

ii. ——.]—Until a charge is preferred & dealt with by trial or stay in the ct. to which an accused has been committed for trial, he cannot be committed for trial again for the same offence. Where a right of appeal exists, an order of prohibition will issue only if something has been done contrary to the laws of the land or so vicious as to violate some fundamental principle of justice. Once it is conceded that a magistrate has jurisdiction, a mistaken exercise thereof is a ground for appeal & not for prohibition. Prohibition has always been used to prevent inferior cts. from acting without authority & not to remedy wrong decisions by them.—*Re* FRASER & HALPIN, [1933] 1 W. W. R. 255; 1 D. L. R. 781; 59 C. C. C. 230.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.

2150 vi. ——.] — Prohibition is granted where there is want of jurisdiction in an inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

2150 vii. ——.]—*Re* WOODROOF, [1925] 3 D. L. R. 966; 44 Can. Crim. Cas. 199.—**CAN.**

2150 viii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

2150 ix. ——.]—Prohibition should not issue, unless it is clear on the face of the proceedings that there is want of jurisdiction. — CHILDREN'S AID SOCIETY OF ST. ADELARD *v.* STE. ROSE RURAL MUNICIPALITY (Man.), [1926] 4 D. L. R. 466; [1926] 3 W. W. R. 8; 46 Can. Crim. Cas. 305.—**CAN.**

2150 x. ——.]—The writ of prohibition may be resorted to only where there is a complete lack of jurisdiction.—R. *v.* DEE (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—**CAN.**

2150 xi. *S. P.* R. *v.* JOYCE, *Ex p.* MEREDITH, [1927] V. L. R. 481; 49 A. L. T. 57; [1927] Argus L. R. 348.—**AUS.**

2150 xii. ——.]—GREVAS *v.* [1936] 2 W. W. R. 644.—**CAN.**

c ii. —— —— *Court having power to amend—No prohibition.*]—CONTINENTAL MARBLE CO., LTD. *v.* LANGS, [1937] 3 W. W. R. 336.—**CAN.**

2161 ix. ——.]—Prohibition does not lie to a magistrate where there is no lack of jurisdiction.—R. (FRASER) *v.* HALPIN, [1933] 1 D. L. R. 781; 59 C. C. C. 230; [1933] 1 W. W. R. 255.—**CAN.**

Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

2187a. ——.]—In the case of the misinterpretation of an Act by an inferior ct., the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, a prohibition will not lie, unless it be made appear to the superior ct. that the party applying for the prohibition has, in the course of the proceedings in the inferior ct., alleged the grounds for a contrary interpretation of the Act on which he applies for the prohibition, & that the inferior ct. has proceeded notwithstanding such allegation.—HOME *v.* CAMDEN (EARL) (1795), 6 Bro. Parl. Cas. 203; 2 Hy. Bl. 533; 126 E. R. 687; *affg.* S. C. *sub nom.* CAMDEN (LORD) *v.* HOME (1791), 4 Term Rep. 382.

Annotations :—**Consd.** Gould *v.* Gapper (1804), 5 East, 345. **Distd.** Wadsworth *v.* Spain (1851), 17 Q. B. 171. **Apld.** R. *v.* Greenwich County Court Judge (1888), 60 L. T. 248. **Refd.** Gare *v.* Gapper (1803), 3 East, 472; Veley *v.* Burder (1841), 12 Ad. & El. 265; *Re* Appledore Commutation (1845), 8 Q. B. 139; Egyptian Bonded Warehouses Co. *v.* Yeyasu Goshi Kaisha, [1922] 1 A. C. 111.

2196. *Add. Annotation :*—**Apld.** McPherson *v.* McPherson, [1936] A. C. 177.

2200. *Add. Annotations :*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2206. Add the following para. :—

But at the suit of the King, prohibition lies.

2220. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2221. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619.

2237. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

2254. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2287. *Add. Annotation :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2287a. Assessment committee.]—A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on resp. assessment committee. The applicant had given notice of objections to his assessment to resp. committee, & on learning the above facts, obtained a rule *nisi* for a prohibition to that committee from hearing & determining his objection :—*Held :* a writ of prohibition would lie to an assessment committee.—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, [1929] 2 K. B. 397; 98 L. J. K. B. 605; 141 L. T. 557; 93 J. P. 190; 45 T. L. R. 525; 27 L. G. R. 458; (1926–31), 1 B. R. A. 279.

Annotation :—**Refd.** R. *v.* Salford Assessment Committee, [1937] 2 K. B. 1.

2289. *Add. Annotation :*—**Consd.** *Re* Wingate's Patent, [1931] 2 Ch. 272.

2290. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

2303. For the existing paragraph in original volume substitute as follows :—

Electricity Commissioners.]—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order giving effect to an *ultra vires* scheme.—R. *v.* ELECTRICITY COMRS., *Ex p.* LONDON ELECTRICITY JOINT COMMITTEE CO. (1920), LTD., [1924] 1 K. B. 171; 93 L. J. K. B. 390; 130

PART VIII. SECT. 4, SUB-SECT. 4.—A.

2184 iv. ——.]—*Re* WILTON FARMERS' CO-OPERATIVE ASSOCN. *v.* BURGESS, [1924] 4 D. L. R. 435; 55 O. L. R. 534.—**CAN.**

2187 iii. ——.]—TUFTS *v.* THOMSON, [1929] 1 D. L. R. 896; 1 W. W. R. 329; 38 Man. L. R. 51; *affg.*, [1928] 3 W. W. R. 666.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 4.—B.

2192 iii. ——.]—Prohibition does not lie where the lower ct., having properly entered upon an inquiry, has erroneously found a fact which, though essential to the validity of its order, it was competent to try.—R. *v.* MAGISTRATES COURT & ESMOND, *Ex p.* BEAZLEY, [1928] St. R. Qd. 349; 22 Q. J. P. 97.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.

sc. *Before hearing.*]—A writ of prohibition prohibiting a district ct. judge from hearing an appeal from a summary conviction, on the ground of want of jurisdiction :—*Held :* good.—R. (LAMSON) *v.* SHARPE & INGLIS, [1921] 3 W. W. R. 674; 66 D. L. R. 521; 36 Can. Crim. Cas. 326; 15 Sask. L. R. 35.—**CAN.**

sd. ——.]—A motion for prohibition being commenced before the magistrate has heard the evidence in a charge may be dismissed without prejudicing appct. as to any motion he may make at a later stage.—R. *v.* JAEGER CO. (1922), 38 Can. Crim. Cas. 180.—**CAN.**

sf. *Before appeal.*]—After an appeal has been launched to a ct. which can grant relief, prohibition will not be granted.—GREAVAS *v.* ALMAS, [1936] 2 D. L. R. 191; 50 B. C. R. 491.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

2217 vi. ——.]—The want of jurisdiction appearing on the face of the proceedings, prohibition may be granted either before or after judgment.—*Re* MONARCH DRESS CO. *v.* AARONSON, [1929] 2 D. L. R. 514; 63 O. L. R. 525.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A.

sf. *Before defence filed or matter dealt with.*]—Where want of jurisdiction does not appear on the face of the proceedings, the application should be made before judgment. The fact that a defence has not been filed, or that the matter has not been dealt with by the inferior ct., is not a ground against deft. applying for prohibition.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—B.

2257 ii. ——.]—NEARLY *v.* CREDIT SERVICE EXCHANGE (B. C.), [1929] 3 D. L. R. 107; 2 W. W. R. 287.—**CAN.**

PART VIII. SECT. 6.

2287 i. —— *Not to persons without lawful authority purporting to act as court.*]—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

n i. *S. P.*—WATERSIDE WORKERS' FEDERATION OF AUSTRALIA *v.* GILCHRIST, WATT & SANDERSON, LTD. (1927), 34 C. L. R. 482.—**AUS.**

b. Add "*revsd.* on other grounds, 16 S. C. R. 707."

sk. *Recorder's Court.*]—Prohibition refused when applied for against Recorder's Ct. for proceeding in respect of violations of sales tax ordinance.—FERLAND CORSET CO. *v.* MONTREAL, [1936] 1 D. L. R. 124.—**CAN.**

L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.

Annotations :—**Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1920] 1 Ch. 513; R. *v.* Hendon Rural District Council, *Ex p.* Chorley (1933), 97 J. P. 210. **Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191; Shell Co. of Australia, Ltd. *v.* Federal Comr. of Taxation (1930), 47 T. L. R. 115; R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226; R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559; Errington *v.* Minister of Health, [1935] 1 K. B. 249; Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

2309. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2309a. Milk Marketing Board.]—Order *nisi* for prohibition directed to Milk Marketing Board.

We think that you may take a rule, but it must be clearly understood that the ct. expresses no opinion that prohibition will lie to this particular body (HUMPHREYS, J.).—*Ex p.* WENHAM (1934), 78 Sol. Jo. 414, D. C.

2310. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2310a. —— ——.]—Prohibition will not lie against the Comptroller-General in respect of any act or decision which is either done or taken at the direction of the Law Officer, or which is subject to an appeal to him, nor in these respects against the Law Officer.—*Re* WINGATE'S PATENT, [1931] 2 Ch. 272; 100 L. J. Ch. 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416.

2310b. —— **Law officer.**]—*Re* WINGATE'S PATENT, No. 2310a, *ante*.

2312. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2321. *Add. Citation :*—[1923] P. 38.

2322. *Add. Annotation :*—*Generally*, **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

2326a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

2345. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

2382. *Add. Annotation :*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2388. *Add. Annotations :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 43 T. L. R. 659; R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746; R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), (1929), 141 L. T. 590.

2400. *Add. Annotation :*—**Consd.** Simbro Trading Co., Ltd. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

2401. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part IX.—Certiorari.

2421. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *As to* (1) **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. *As to* (3) **Consd.** R. *v.* Hendon Rural District Council, *Ex p.* Chorley (1933), 97 J. P. 210.

PART VIII. SECT. 7.

2319 via. —— —— ——.]—Circumstances in which :—*Held :* resp., by applying to the judge of the Division Ct., under Division Cts. Act, to set aside a judgment, had not waived his rights to move for prohibition.—*Re* ORR *v.* KREPSKY, [1925] 3 D. L. R. 1018; 57 O. L. R. 353.—**CAN.**

2319 viii. —— ——.]—Where a person appears at the hearing of an affiliation summons only to protest & to object to the jurisdiction, he does not, by remaining there after his objection is overruled, & by endeavouring to discredit complainant's story, voluntarily submit himself to the jurisdiction or deprive himself of the right to apply for a prohibition.—*Ex p.* HOLMES (1927), 27 S. R. N. S. W. 253; 44 N. S. W. W. N. 82.—**AUS.**

PART VIII. SECT. 8, SUB-SECT. 3.

sd. *Calcutta High Court.*]—The Calcutta High Ct. has power to issue a writ of prohibition.—*Re* NATIONAL CARBON CO. (1934), I. L. R. 61 Cal. 450.—**IND.**

PART VIII. SECT. 8, SUB-SECT. 4.

sg. *Against parties.*] — Prohibition lies against parties as well as against the judge of the inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 6.

sh. *Admissibility of statements made on information & belief.*]—An application for prohibition is not an interlocutory motion, hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON (Sask.), [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 10.

2401 i. *Not from order as to costs.*]—On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs were given against the informant. On appeal as to costs:—*Held :* the appeal should be dismissed.—R. *v.* LEONARD, [1921] 3 W. W. R. 768; 66 D. L. R. 497; 36 Can. Crim. Cas. 255; 15 Sask. L. R. 29.—**CAN.**

2402 i. *Not from order in "criminal cause or matter"—Supreme Court of Judicature Act (Ireland), 1877.*]—By a proclamation dated Dec. 10, 1920, the Lord-Lieutenant of Ireland proclaimed certain counties, including County Cork, to be under martial law. By a proclamation dated Dec. 12, 1920, the Commander-in-Chief in Ireland declared the unauthorised carrying of arms to be punishable by death, & he authorised the general officer commanding in Cork to issue orders for the holding of military cts. as might be necessary. In May, 1921, applts., who were civilians, were tried by a military ct. held by order of the general under the authority of the Commander-in-Chief on a charge of improperly carrying arms, & were convicted & sentenced to death, subject to confirmation. Applts. applied in the Chancery Division for a writ of prohibition against the military ct., the Commander-in-Chief, & the general commanding in Cork to prohibit them from proceeding further with the trial of applts. or from carrying into execution any judgment against them, on the ground that the ct. was illegal & had no jurisdiction to deal with the matter. POWELL, J., refused the application, & the Ct. of Appeal in Ireland dismissed an appeal from his order as incompetent upon the ground that it was an order made in a criminal cause or matter within sect. 50 of the Supreme Ct. of Judicature Act (Ireland), 1877 :—*Held :* the order of POWELL, J., was not made in a criminal cause or matter within the Act, because the proceedings before the military ct. were in no sense criminal proceedings, & that an appeal lay from that order.—*Re* CLIFFORD & O'SULLIVAN, [1921] 2 A. C. 570; 90 L. J. P. C. 244; 126 L. T. 97; 37 T. L. R. 988; 65 Sol. Jo. 792; 27 Cox, C. C. 120.—**IR.**

PART IX. SECT. 1.

g i. —— ——.]—R. *v.* DENNY (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—**CAN.**

g ii. —— ——.]—R. *v.* WOODSTOCK, TOWN ASSESSORS, *Ex p.* BANK OF

Refd. R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2422a. —— Remedy by way of appeal—Notice of appeal given.]—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES, No. 1141a, *ante*.

2448. *Add. Annotation:*—**Folld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2449a. —— Not to quash order.]—The K. B. Div. of the High Ct. of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed. —R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.

2458. *Add. Annotations:—As to* (3) **Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2458a. Milk Marketing Board.]—On a rule *nisi* for a *certiorari* to bring up & quash a resolution of the Milk Marketing Board established under the Milk Marketing Scheme (Approval) Order, 1933, imposing a penalty on a registered retailer:—*Held:* the Milk Marketing Board was a body to which *certiorari* would lie.—R. *v.* MILK MARKETING BOARD, *Ex p.* NORTH (1934), 50 T. L. R. 559; 78 Sol. Jo. 536, D. C.

2509. *Add. Annotation:*—**Refd.** Stevens *v.* Walker, [1936] 2 K. B. 215.

2521. *Add. Annotation:*—**Refd. R.** *v.* Cory, [1927] 1 K. B. 810.

2522. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

2533a. —— —— ——.]—The prisoners were charged at Caernarvon Assizes with arson & malicious damage to govt. property & buildings at an aerodrome. Great local feeling had been aroused against the aerodrome on religious & nationalist grounds, & the prisoners, who were members of a Welsh nationalist movement, admitted that they had set fire to the buildings. While on bail, the prisoners had prepared addresses to be delivered to the jury at the trial; the addresses contained matters & appeals on religious, nationalist & conscientious grounds. One of the prisoners had given numerous sermons in various churches in North Wales & had received many ovations because of his share in the burning. A pamphlet had also been circulated by two of the prisoners giving their reasons for their share in the burning. At the trial the jury disagreed. Large groups of people had assembled outside the ct. & disturbances had occurred:—*Held:* (1) this was a proper case for the removal of the trial to the Central Criminal Ct. under the Central Criminal Ct. Act, 1856 (c. 16), s. 3; (2) as the application was made under the Act the ct. ought not to direct a trial at another circuit town.—R. *v.* LEWIS, *Ex p.* DIRECTOR OF PUBLIC PROSECUTIONS, [1936] 3 All E. R. 1008; 80 Sol. Jo. 1037.

2541. *Add. Annotation:*—**Consd.** R. *v.* Lewis, *Ex p.* Director of Public Prosecutions, R. *v.* Williams, *Ex p.* Director of Public Prosecutions, R. *v.* Valentine, *Ex p.* Director of Public Prosecutions, [1936] 3 All E. R. 1008.

2556. *Add. Citation:*—4 Jur. 151.

2566. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

2699a. ——.]—*Ex p.* KYLSANT & MORLAND (1931), 75 Sol. Jo. 489, D. C.

NOVA SCOTIA (1922), 68 D. L. R. 48.—**CAN.**

g iii. —— ——.]—R. *v.* WOOD (1924), 43 Can. Crim. Cas. 382.—**CAN.**

g iv. —— ——.]—MAHAMMAD RAZA SAHEB BELGAMI *v.* SADASIVA RAO (1925), I. L. R. 49 Mad. 49.—**IND.**

g v. —— ——.]—R. *v.* O'BRIEN, *Ex p.* THERIAULT (1917), 45 N. B. R. 275; 29 Can. Crim. Cas. 141; 41 D. L. R. 97.—**CAN.**

g vi. —— ——.]—Where a party has ample remedy by appeal *certiorari* will not be granted unless some satisfactory reason is given why the remedy by way of appeal was not taken advantage of.—R. *v.* LEBLANC, *Ex p.* MCDONALD (1926), 53 N. B. R. 37.—**CAN.**

g vii. —— ——.]—*Ex p.* GAUTREAU (N. B.), [1928] 1 D. L. R. 271; 49 Can. Crim. Cas. 182.—**CAN.**

z i. —— ——.]—R. *v.* OLSEN (1923), 32 B. C. R. 516.—**CAN.**

PART IX. SECT. 3.

sk. *County court judge in Nova Scotia—Imprisonment on civil process.*] *Re* METZLER (1930). 53 Can. C. C. 244.—**CAN.**

sl. *High Courts in India.*]—Subject to a statutory exception in respect of the Acts or orders of the Governor-General & Council & of the Governor & Council, done or made by them in their public capacity, the High Cts. in India possess the same jurisdiction to issue writs of *certiorari* as the Ct. of King's Bench in England.—VENKATARATNAM *v.* SECRETARY OF STATE FOR INDIA (1930), I. L. R. 53 Mad. 979.—**IND.**

PART IX. SECT. 4.

sm. *General rule — Persons illegally purporting to act as court.*]—Where the assumption of authority by a tribunal is illegal from the beginning, it is not subject to *certiorari*.—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

PART IX. SECT. 5, SUB-SECT. 2.—A.

2495 ii. —— ——.]—A writ of *certiorari* is not granted *ex debito justitiæ* or as a matter of legal right, but is an application to the sound discretion of the ct., & where there are disputed questions of fact which cannot be satisfactorily tried out on affidavits, but should be tried by *vivâ voce* testimony, & the questions involved are pending for decision in the Ct. of K. B., the application for *certiorari* will not be granted.—WORKMEN'S COMPENSATION BOARD *v.* BATHURST LUMBER CO., [1923] 4 D. L. R. 84.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.—A.

t i. ——.]—Where the inferior ct. has, & the ct. above has not, jurisdiction, *certiorari* cannot be had.—PINSENT *v.* BOYD & MCDOUGALL (1865), 4 Nfld. L. R. 727.—**NFLD.**

t ii. —— *One of judges prejudiced.*]—Where a legal practitioner, having no direct interest in a local ct. action, on the morning on which judgment in the action was to be delivered, discussed the action with one of the justices who heard the action, & made certain statements calculated to prejudice him against one of the parties:—*Held:* an order in the nature of a writ of *certiorari* should be granted removing the hearing of the action into the Supreme Ct.—*Re* AN ACTION IN THE LOCAL COURT OF ADELAIDE, BURKE *v.* STAEHR, [1927] S. A. S. R. 180.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 2.—A.

2711 i. —— —— *Distress warrant for liquor exportation tax.*]—Where the duty of assessing a tax rested with the A.-G. for the province, & the provincial Secretary-Treasurer had power only to determine whether the tax should be recovered by distress or by action:—*Held: certiorari* would not lie to bring into the Supreme Ct. a distress warrant signed by the Secretary-Treasurer for an amount so assessed, his act being ministerial & not judicial.—HETHERINGTON *v.* SECURITY EXPORT CO., LTD., [1924] A. C. 988; 94 L. J. P. C. 1; 132 L. T. 215. —**CAN.**

u i. —— *Decision of county court reversing dismissal of offender.*]—Where on the trial of an offence punishable by summary conviction the magistrate dismisses the charge, & on appeal to

2713. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2730. *Add. Annotations :*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193; R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

2734. *Add. Annotation :*—*As to* (2) **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2735. *Add. Annotations :*—**Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; Maclean *v.* Workers' Union, [1929] 1 Ch. 602; R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

2735a. —— **Order of County Council—Improper grant of cinematograph licence.**]—It was the practice of a certain County Council, in granting licences to use premises for cinematograph exhibitions, to impose the condition that the premises should not be so used on Sundays, Christmas Day or Good Friday; but also to entertain applications for permission to open the premises for cinematograph entertainments on those days. A co. applied for a licence to open & use premises for cinematograph entertainments, & also for permission to open the premises for such purposes on Sundays, Christmas Day & Good Friday. In compliance with this application the County Council made an order to the effect that, "subject to arrangements at the premises being completed to its satisfaction, the Council will take no action for the present in the event of the above named premises being opened for cinematograph entertainments on Sundays, Christmas Day & Good Friday as from & including Sunday, July 6, 1930, provided: (i.) that a sum of £35 be paid to charity in respect of each Sunday, Christmas Day & Good Friday on which the premises are opened for cinematograph entertainments." The permission was also subject to conditions relating to the auditing of receipts & expenses, the character & hours of the entertainments, & the employment of servants :—*Held :* a writ of *certiorari* should issue to bring up & quash the order of the County Council as having been made without jurisdiction, the council having no power to dispense with the provisions of the Sunday Observance Act, 1780 (c. 49).

I am unable to distinguish in principle between the application for a licence under Cinematograph Act, 1909 (c. 30), & an application made with regard to a licence for a public-house, which for many years . . . has been held to be a judicial act (SLESSER, L.J.).—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD., [1931] 2 K. B. 215; 100 L. J. K. B. 760; 144 L. T. 464; 95 J. P. 89; 47 T. L. R. 227; 75 Sol. Jo. 138; 29 L. G. R. 252, C. A.

2736a. —— **Certificate of Post Office medical officer—Workmen's Compensation Act, 1925** (c. 84).]—Appct., a telegraphist in the employment of the Postmaster-General, complained to the Post Office medical officer at G. that she was suffering from telegraphist's cramp. In accordance with the regulations of the Post Office medical service, the case was referred to the chief medical officer, who had special knowledge of telegraphist's cramp, & he certified that appct. was not suffering from it :—*Held :* (1) the giving of a certificate was a judicial act, in respect of which *certiorari* would lie; (2) it issued *ex debito justitiæ* at the instance of an aggrieved person; (3) an appeal to a medical referee under sect. 43 (1) (*f*) of the above Act was not equally beneficial, since he could only deal with the medical correctness of the certificate & could not inqure into its validity.—R. *v.* POSTMASTER-GENERAL *Ex p.* CARMICHAEL, [1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 43 T. L. R. 228; 21 B. W. C. C. 226, D. C.

2736b. —— **Grant of permission to build by local authority.**]—Where a draft town planning scheme has been proposed for an area, & the Minister has made an interim development order authorising the local council to grant permission for the development of the area, the decision of the council on an application for such permission (which may confer on appct. contingently a legal right to compensation if his building is found to contravene the scheme when it comes into force) is a judicial & not an administrative decision. If, therefore, one of the councillors voting in favour of the resolution to grant permission has such an interest in the matter as to disqualify him from voting on account of bias, *certiorari* will lie to quash the decision.—R. *v.* HENDON RURAL DISTRICT COUNCIL, *Ex p.* CHORLEY, [1933] 2 K. B. 696; 102 L. J. K. B. 658; 149 L. T. 535; 97 J. P. 210; 49 T. L. R. 482; 31 L. G. R. 332, D. C.

2771. *Add. Citation :*—2 B. R. A. 612.

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the county ct. he is reversed & accused convicted, redress may be sought by *certiorari*.—R. *v.* MEEHAN, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (a).

2763 i. *General rule.*]—R. *v.* BARRY, *Ex p.* LINDSAY (1922), 70 D. L. R. 193; 38 Can. Crim. Cas. 190.—**CAN.**

2763 ii. ——.]—The question whether a decision of a wreck comr. sitting as a ct. under Canada Shipping Act, R. S. C., 1906 (c. 113), Part X., was made in excess of his jurisdiction can be inquired into on *certiorari*.—*Re* BERQUIST, [1925] 2 D. L. R. 696; [1925] 1 W. W. R. 1084.—**CAN.**

2763 iii. ——.]—*Ex p.* JONES (N.B.), [1926] 1 D. L. R. 587; 45 Can. Crim. Cas. 169.—**CAN.**

2789 i. *Sufficiency of evidence in court below—Conviction under Temperance Act, R. S. C.*, 1920 (*c.* 194).]—Application for a *certiorari* to quash a conviction under the above Act on the above grounds, dismissed.—R. *v.* GRANT (Sask.), [1922] 2 W. W. R. 624; 69 D. L. R. 718; 38 Can. Crim. Cas. 234.—**CAN.**

2789 ii. ——.]—When a county ct. judge has acted entirely within his jurisdiction & has decided a question of fact upon evidence properly before him, *certiorari* does not lie to remove & quash such decision, merely upon the ground that it is not warranted by the evidence or weight of evidence.—*Ex p.* SMITH LUMBER CO., LTD. (1924), 51 N. B. R. 440.—**CAN.**

2789 iii. ——.]—*Re* HILLMAN (N. S.) (1926), 46 Can. Crim. Cas. 308.—**CAN.**

sm. *Plea of "guilty" disputed.*]—Deft. having pleaded guilty & being summarily convicted by a police magistrate, moved for a *certiorari*, denying that he had so pleaded :—*Held :* deft. had pleaded guilty, & the motion was dismissed.—R. *v.* ARMSTRONG (1922), 38 Can. Crim. Cas. 98.—**CAN.**

sn. ——.]—Where deft. had been summarily convicted by a magistrate, who had been informed by a sworn interpreter that deft. pleaded guilty :—*Held :* *certiorari* was not available, unless the presumption that the proceedings were regular was rebutted.—R. *v.* LEE WAH DAI (1923), 41 Can. Crim. Cas. 152.—**CAN.**

sp. ——.]—The ct. on *certiorari* will quash a conviction by a magistrate, made without evidence being taken but on the statement of the sworn interpreter that accused pleaded guilty,

2795. *Add. Citation :*—27 Cox, C. C. 253.

Add. Annotation :—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2797. *Add. Annotation :*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

2812. *Add. Annotation :*—**Expld. & Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2822. *Add. Annotations :*—*As to* (2) **Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2830. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

2834. *Add. Annotations :*—**Refd.** R. *v.* Adams, *Ex p.* Pope, [1923] 1 K. B. 415; Palmer *v.* Crone, [1927] 1 K. B. 804.

2846. *Add. Annotation :*—**Consd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

2862. *Add. Annotations :*—**Apld.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2869. *Add. Annotations :*—**Consd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586. **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

2923. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

2931. Add para. :—

A *certiorari* will not lie to the sessions to remove a conviction for a misdemeanour before judgment, for the fine being uncertain, the ct. cannot tell how to assess it. Otherwise where the punishment is certain.

2941. *Add. Citation :*—7 Dowl. 616.

2955. *Add. Annotation :*—**Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

3058. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3069. *Add. Annotation :*—**Refd.** R. *v.* Adams, *Ex p.* Pope (1923), 128 L. T. 597.

3075. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3099a. Before jury sworn.]—*Procedendo* denied though *certiorari* not delivered till after notice of inquiry.

The practice has been to allow a *habeas corpus* at any time before the jury is sworn (Lord MANSFIELD, C.J.).—COX *v.* HART (1759), 2 Burr. 758; 97 E. R. 550.

Annotation :—**Consd.** Godley *v.* Marsden (1830), 6 Bing. 433.

3131a. Who may apply—Not plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3131b. *S. P.* GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 129 L. T. 438; 40 R. P. C. 199.

3142a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3144. *Add. Citation :*—5 Dowl. 416.

3168a. —— Removal of cause applied for by plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3168b. —— —— No appearance by defendant in proceedings in superior court.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 129 L. T. 438; 40 R. P. C. 199.

3185a. —— —— ——.]—GUNN *v.* MACKHENRY (1750), 1 Wils. 277; 95 E. R. 617.

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where it appears to the ct. that accused did not really understand what offence he was charged with. In such a case, accused cannot be taken to have pleaded guilty & the magistrate had no jurisdiction to convict.—R. *v.* MLAKER, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

2801 i. *General rule.*]—Want of jurisdiction in a magistrate & irregularities in procedure which touch the substantial rights of appct. constitute those exceptional circumstances which justify relief by way of *certiorari*, even though appct. has a right of appeal.—OKREY *v.* SPANGLER, [1925] 1 D. L. R. 859; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256.—**CAN.**

2801 ii. ——.]—R. *v.* RYAN, [1925] 1 D. L. R. 877; 43 Can. Crim. Cas. 223; 52 N. B. R. 104.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) iii.

2826 i. *General rule.*]—Where the jurisdiction of an inferior ct. depends upon a fact collateral to the actual matter which that ct. has to try, it cannot by a wrong decision with regard to that fact give itself jurisdiction which it would not otherwise possess. The lower ct. must decide as to the collateral fact in the first instance, but the superior ct. may upon *certiorari* inquire into the correctness of that decision.—R. (GREENAWAY) *v.* ARMAGH JJ., [1924] 2 I. R. 55.—**IR.**

2826 ii. ——.]—The prosecutors were convicted at the N. petty sessions before the justices of D. for harbouring certain cattle unlawfully imported from the Irish Free State, with intent to defraud. It was admitted that no evidence had been given before the justices proving that the cattle had been unlawfully imported but reliance was placed by the justices on the description of the cattle, & the contradictory statements of the prosecutors. On behalf of the prosecutors it was submitted that they were entitled to a direction, as no evidence had been given that the cattle had been imported. The justices refused this application & convicted the prosecutors. The prosecutors obtained a conditional order for the issue of a writ of *certiorari* to remove into the K. B. D. for the purpose of being quashed the orders made by the justices :—*Held :* in making the conditional order absolute, the justices had no power to make an order convicting the prosecutors of harbouring cattle, unless it was proved that the cattle had been unlawfully imported, & that it was the duty of the justices before entering on jurisdiction to inquire if the necessary conditions existed to give them that jurisdiction, & their decision & the evidence on which it was based, could be reviewed. They could not by a wrong decision upon a fact collateral to the actual matter which they had to try give themselves jurisdiction which they would not otherwise possess.—R. (PETER MAGEE & BERNARD MAGEE) *v.* DOWN JUSTICES, [1935] N. I. 51.—**IR.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (d).

2870 i. *General rule.*]—Where a conviction was bad on its face :—*Held :* a writ of *certiorari* should issue & the conviction be quashed.—R. (EUSTACE) *v.* TIPPERARY COUNTY DISTRICT JUSTICE, [1924] 2 I. R. 69.—**IR.**

2888 i. *Convictions—Formal defect in.*]—It is the duty of the ct. on *certiorari* to see that convictions are perfectly regular in form.—R. *v.* HING HOP, [1926] 1 W. W. R. 799; 45 Can. Crim. Cas. 239; 37 B. C. R. 158.—**CAN.**

2888 ii. —— —— *Unauthorised sentence.*]—CHIN KOW *v.* MOQUIN (1927), Q. R. 44 K. B. 1.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (e).

st. *Perjury.*]—A conviction can be attacked on *certiorari* on the ground of perjury or other fraud.—R. *v.* SAFRUK, [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 2.—C. (a).

3042 i. *Right not taken away—Unless expressly stated.*]—Where a statute takes away the right of *certiorari*, it does not disentitle the Crown to *certiorari*, where the Crown is not named & there are no words necessarily implying a reference to the Crown.—R. *v.* ON SING, [1924] 2 W. W. R. 258.—**CAN.**

3185b. —— —— ——.]—On the removal of a cause from an inferior to a superior ct., if pltf. declares *de novo*, he is not bound to declare in the same form of action as that in the inferior ct.—BOWERBANK *v.* WALKER (1787), 2 Chit. 517.

3201a. Security for costs—Failure to give—Action removed from Mayor's Court.]—A cause was removed by *certiorari* from the Ct. of the Lord Mayor of London. Deft. paid a sum of money into ct., in lieu of bail, & shortly afterwards obtained a rule for security for costs on the ground that pltf. resided out of England. The security for costs was never given, & a period of nearly two years elapsed without any proceeding in the cause. The ct., under these circumstances, made absolute a rule calling on pltf. to give security for costs within a fortnight; otherwise deft. to be at liberty to take the money paid in, in lieu of bail, out of ct.—TASSIE *v.* KENNEDY (1848), 5 Dow. & L. 587; 17 L. J. Q. B. 215; 11 L. T. O. S. 156.

3209a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3350. *Add. Annotation :—Generally*, **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

3352a. *S. P. Re* KAYE (1822), 1 Dow. & Ry. K. B. 436; 1 Dow. & Ry. M. C. 114.

3420. *Add. Annotation :*—**Refd.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571.

3427. *Add. Citations :—sub nom.* R. *v.* Cartworth (Inhabitants) (1843), 5 Q. B. 201; 1 Dow. & L. 837; 13 L. J. (M. C.) 26; 8 J. P. 6; 7 Jur. 1129.

3433a. —— Cross-examination of deponent—When ordered—Only in very special circumstances.]—R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137.

3447. *Add. Citation :*—8 Ad. & El. 413.

3456a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3550. *Add. Citation :*—6 Dow. & L. 303.

3560. *Add. Citation :*—2 L. M. & P. 130.

3581. After this case add "*See, now*, Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

3581a. Writ of certiorari quashed—Issue of writ of supersedeas & procedendo.]—When a rule *nisi* for a writ of *certiorari* has been made absolute by the King's Bench Div. & an appeal to the Ct. of Appeal from the order absolute has been allowed; *Qu.*: whether it was necessary to sue out writs of *supersedeas* & *procedendo* to avoid the writ.—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, [1936] A. C. 128; 105 L. J. K. B. 37; 52 T. L. R. 44; 79 Sol. Jo. 941; 24 Ry. & Can. Tr. Cas. 1; *sub nom.* R. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, *Ex p.* GREAT WESTERN RY. CO., 154 L. T. 39, H. L.

3596. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

PART IX. SECT. 9, SUB-SECT. 2.—I.

3287 i. *No appeal lies—Criminal matter.*]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—R. *v.* MCADAM, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 2.—J. (a).

ai. *Crown Costs Act, R. S. B. C.*, 1924—*British Columbia Lower Mainland Products Board—Whether officer, servant or agent of Crown.*]—The B.C. Lower Mainland Products Board, which was a local board set up under a milk-marketing scheme under Natural Products Marketing (British Columbia) Act, 1934, is not an "officer, servant, or agent of & acting for the Crown," within sect. 2 of Crown Costs Act, R. S. B. C., 1924.—R. (MACGINNIS) *v.* HASSELL, [1937] 1 W. W. R. 726.—**CAN.**

PART IX. SECT. 9 SUB-SECT. 3.—A. (a).

3336 i. *Who may apply—"Person aggrieved."*]—A licensing inspector lodged notice of intention to object to an application for the grant of a licensed victualler's licence, &, on the hearing of the application, stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., &, after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He subsequently moved for a writ of *certiorari* to quash the grant of the licence :—*Held :* he was a person aggrieved, & competent to make the application.—R. *v.* DALBY LICENSING AUTHORITY, *Ex p.* KELLY, [1928] St. R. Qd. 151.—**AUS.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (b).

g i. —— *Application more than thirty days after conviction — Intoxicating Liquor Act*, 1927.]—*Ex p.* CROWLEY, *Ex p.* KENNETH STAPLES DRUG CO. (N. B.), [1928] 4 D. L. R. 561; 50 Can. Crim. Cas. 378.—**CAN.**

g ii. —— —— ——.]—R. *v.* BEGIN, *Ex p.* CARON (N. B.) (1928), 50 Can. Crim. Cas. 69.—**CAN.**

h i. —— *Alberta—No jurisdiction.*]—*Re* BROWN & MACHINE MOTORS, LTD., [1931] 2 W. W. R. 114.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (c).

3373 ii. —— *May be amended.*]—Leave may be given to amend a notice of motion to quash a conviction by including additional particulars intended to be relied upon.—R. (LESLIE) *v.* MARCOVICH, [1923] 2 W. W. R. 975.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

3410 i. *Absence or excess of jurisdiction—May be shown by affidavit.*]—While on *certiorari* the depositions before the magistrate cannot be considered by the ct. in determining whether his jurisdiction was established, yet appct. who seeks to quash a conviction, on the ground of want of or excess of jurisdiction, may incorporate in proper material, & thus present to the ct., any facts, whether within or outside the depositions, which would affect the jurisdiction of the magistrate.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

aw. *Affidavits tending to establish guilt of accused—Not admissible.*]—R. *v.* MLAKER, [1923] 3 W. W. R. 988.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—K.

3556 i. *General rule—Whether court will examine evidence—Summary conviction.*]—In the case of a summary conviction for an indictable offence the ct. on *certiorari* is not precluded from examining the evidence to ascertain if there was any legal evidence upon which accused could be or ought to have been convicted.—R. *v.* OAKES, [1923] 1 W. W. R. 1220; 39 Can. Crim. Cas. 329.—**CAN.**

3556 ii. —— —— ——.]—R. *v.* JACKSON, [1924] 1 W. W. R. 847; 41 Can. Crim. Cas. 416.—**CAN.**

3556 iii. —— —— ——.]—R. *v.* BRANDELINA, [1927] 1 W. W. R. 832; 47 Can. Crim. Cas. 166; 38 B. C. R. 87.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—M.

sy. *Whether appeal lies—Criminal proceedings.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the King's Bench on an application for *certiorari*, with respect to a conviction under the Criminal Code.—*Re* NAGY, NAGY *v.* GALL (Sask.), [1926] 3 W. W. R. 759; 46 Can. Crim. Cas. 333.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—N.

di. —— ——.]—*Re* HIGGINBOTHAM, [1932] 4 M. P. R. 140.—**CAN.**

Part X.—The Attorney-General.

3637. *Add. Annotations :*—**Folld.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416. **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3637a. ——.]—Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to restrain an unauthorised exercise of its powers, the ct. will not consider whether the action is one proper to be brought in the circumstances.—A.-G. *v.* WESTMINSTER CITY COUNCIL, [1924] 2 Ch. 416 ; 93 L. J. Ch. 573 ; 131 L. T. 802 ; 88 J. P. 145 ; 40 T. L. R. 711 ; 68 Sol. Jo. 736 ; 22 L. G. R. 506, C. A.

3651. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3678a. —— ——.]—In cases of *ultra vires*, delay is not a ground for refusing relief in a suit by the A.-G.—A.-G. *v.* SOUTH STAFFORDSHIRE WATERWORKS CO. (1909), 25 T. L. R. 408.

3682. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

3684. *Add. Annotations :*—**Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416 ; A.-G. *v.* Leeds Corpn., [1920] 2 Ch. 291.

3686. *Add. Annotation :*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

3688. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. Denby, [1925] Ch. 596.

3705. After this case add :—

Forfeiture of funds of alien—Construction of Treaty of Peace Order.]—*See* ALIENS, No. 49c, *ante*.

3708. *Add. Annotation :*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson, [1927] 1 K. B. 468.

3715. *Add. Annotation :*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

3718. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

3719. *Add. Annotation :*—**Apld.** Hurley *v.* Stepney B. C. (1923), 67 Sol. Jo. 767.

3720 *Add. Annotations :*—**Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566 ; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441, C. A.

3722a. Proceedings to restrain borough council from reducing wages of employees.]—In an action by three members of a borough council for a declaration that a resolution of the council reducing the wages of the council's employees was *ultra vires* & invalid, on the ground that the resolution was not passed by a two-thirds majority in accordance with the council's bye-laws :—*Held :* the A.-G. must be a party to the action.—HURLEY *v.* STEPNEY BOROUGH COUNCIL (1923), 67 Sol. Jo. 767.

PART X. SECT. 3, SUB-SECT. 1.

3674 iii. —— ——.]—The defences of laches & estoppel cannot avail against the A.-G. alleging that a corpn. is acting *ultra vires*.—A.-G. *v.* GEELING HARBOR TRUST COMRS., [1933] V. L. R. 244.—**AUS.**

sz. *Cannot sue in official name on behalf of himself personally.*]—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59 ; 49 O. L. R. 103.—**CAN.**

sa. *Right to issue summons under Customs Acts—No prosecution instituted by Minister, Department of State, or authorised person.*]—A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Acts, viz. that the complainant was the A.-G., the district justice being of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant :—*Held :* the objection was unsustainable as Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct of summary jurisdiction in all cases in which a prosecution is not instituted by a Minister, Dept. of State, or authorised person.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

sd. *Right to represent State—Action to restrain ultra vires Commonwealth Act.*] The Commonwealth Govt. established a clothing factory in Melbourne for the purpose of making naval & military uniforms for the defence forces & uniforms for postal employees. In time of peace, the operations of the factory included the supply of uniforms for other departments of the Commonwealth & also for State officers & for employees in various public utilities & institutions in the State & for some private persons. The Governor-General deemed such peace time operations of the factory necessary for the efficient defence of the Commonwealth inasmuch as the maintenance intact of the trained complement of the factory would assist it in meeting war time demands. In an action by the A.-G. for Victoria, *ex relatione*, for a declaration that such operation of the factory was *ultra vires* the Commonwealth, & for an injunction :—*Held :* the A.-G. of a State has a sufficient title to invoke a provision of the Constitution for the purpose of challenging the validity of Commonwealth legislation which extends to, & operates within, the State whose interests he represents, & that the action was properly brought in the name of the State A.-G.—A.-G. FOR VICTORIA *v.* COMMONWEALTH (1935), 52 C. L. R. 533 ; 9 A. L. J. 76 ; 41 Argus L. R. 246.—**AUS.**

PART X. SECT. 3, SUB-SECT. 2.

3681 i. *General rule.*]—The A.-G. is exclusively the legal representative of the public & the rights of the public, whether for the purpose of bringing an action to assert those rights, or of defending an action, in which the rights of the public are assailed.—MOORE *v.* A.-G., [1930] I. R. 471.—**IR.**

3683 ii. —— ——.]—*Semble :* a bill to remove a fixed bridge across a navigable river as impeding navigation, & to erect instead a drawbridge, as provided for by statute, should be by the A.-G., where the statute was passed for the general benefit of the public.—CULL *v.* GRAND TRUNK RY. CO. (1864), 10 Gr. 491.—**CAN.**

3683 iii. ——.]—The Crown, as *parens patriæ*, represents the interests of His Majesty's subjects, & the A.-G. for a province, acting as the officer of the Crown, is empowered to go before the cts. to prevent the violation of the rights of the public of that province, even if the perpetrator of the deeds complained of be a creature of the federal authority. In other words, the A.-G. of a province has not only the right, but the duty, to suppress the civil offences committed within the limits of the province.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452 ; 4 D. L. R. 317.—**CAN.**

PART X. SECT. 4.

sb. *Questions raised as to jurisdiction of Provincial Court—Or right of Provincial Attorney-General to intervene—Notice to Attorney-General before appeal heard.*]—VALOIS *v.* BOUCHERVILLE, [1928] 1 D. L. R. 343.—**CAN.**

PART X. SECT. 5.

3723 i. *Effect of fiat—On amount recoverable.*]—An award for a sum in excess of that named in the A.-G.'s fiat :—*Held :* void, even though A.-G.'s consent was afterwards obtained.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1925] 4 D. L. R. 513 ; *affd.*, [1921] 4 D. L. R. 995 ; 56 O. L. R. 35.—**CAN.**

s i. —— *To maintain set-off or counterclaim.*]—*Held :* to allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off, & that this ct. has no jurisdiction to hear the counterclaim until a fiat has been given to hear the same.—R. *v.* COSGRAVE EXPORT BREWING CO., LTD., R. *v.* JOHN LABATT, LTD., [1928] Exch. C. R. 103.—**CAN.**

s ... *... action by ratepayer Representative action.*] — LOGGIE *v.* CHATHAM MUNICIPALITY (N. B.), [1928] 2 D. L. R. 583.—**CAN.**

s iii. —— *To prosecution for falsify-*

3733. *Add. Annotations:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 96 L. J. K. B. 65.

3736. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

3736. After this case add:—

Under Legitimacy Act, 1926 (c. 60).]—*See* BASTARDY, No. 130g, *ante.*

ing pedigree—Whether applicable to pedigrees of animals.]—The offences contemplated by Criminal Code, s. 597, which require the consent of the A.-G. before certain prosecutions are commenced, are those created by s. 419 thereof, & the pedigree referred to therein is one which is of importance in determining the title to property. Such consent is not necessary to a prosecution under Live Stock Pedigree Act, R. S. C. 1927, c. 121, s. 17, with respect to a false or fraudulent statement of the pedigree of an animal.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

PART X. SECT. 6.

b i. —— *Attorney-General represented by salaried officer.*]—Where costs are awarded the A.-G. in litigation in which he was represented by a barrister who is a salaried officer of the A.-G.'s department & who has no agreement with the A.-G. that he is to have costs in addition to his salary, & there is no statute which enables him to recover on his own account, the costs which the A.-G. is entitled to tax are limited to disbursements.—BRANDON CITY *v.* MANITOBA MUNICIPAL COMR. & A.-G. FOR MANITOBA (No. 2), [1932] 1 W. W. R. 41; 1 D. L. R. 478; 40 Man. L. R. 100.—**CAN.**

CUSTOM AND USAGES.

Part I.—Custom.

48. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

65. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

74. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

75. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

77. *Add. Annotation :*—**Consd.** Busby *v.* Avgherino, [1928] A. C. 290.

164. *Add. Annotation :*—**Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

166. *Add. Annotation :*—Refd. Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

244. *Add. Annotation :*—**Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

245. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

Part II.—Usages Generally.

303. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

304. *Add. Annotations :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

338. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

359. *Add. Annotation :—As to* (7) **Apprvd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

396. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

434. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

462. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

492a. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

Add. Annotation :—**Refd.** Scriven *v.* Schmoll Fils Insce. (1924), 40 T. L. R. 677.

501. *Add. Annotation :*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

510. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

537. *Add. Annotations :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150. **Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

543. *Add. Citation :—affg.* S. C. *sub nom.* THE TURID, [1921] P. 146, C. A.

Add. Annotations :—**Folld.** Hillas *v.* Rederi Akt. Acolus (1926), 43 T. L. R. 67. **Consd.** Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521; Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** The Rensfjell, The Ornesfjell, The Uppland, The Fritioff, The Svein Jarl (1924), 131 L. T. 764; Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533; Dalgliesh Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 79 Sol. Jo. 453.

544. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

544a. ——.]—Pltfs., shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charter-party contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as

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PART I. SECT. 5, SUB-SECT. 1.—A.

50 iv. *Not essential to validity of custom.*]—The English common law rule of immemorial user is not required to establish a custom in India. It is sufficient if the ct. is satisfied of its reasonableness, certainty, & existence for a sufficiently long time to have become the customary law of the particular locality, the user being neither permissive nor fraudulent.—PRANNATH KUNDU *v.* EMPEROR (1929), I. L. R. 57 Calc. 526.—**IND.**

57 i. *Time of legal memory.*]—The legal recognition of a custom in British India depends upon its antiquity, certainty & uniformity. As to antiquity or the period of "legal memory," a British ct. need not extend its inquiries beyond its own establishment. Moreover a series of legal decisions confirming a custom is cogent evidence that such custom has the force of law.—OHAN PYU *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

PART I. SECT. 9, SUB-SECT. 1.

p i. —— *Riwaj-i-am—Unsupported by instances.*]—A *riwaj-i-am* is admissible in evidence to prove the facts entered thereon, subject to rebuttal, & that the statements therein may be accepted, even if unsupported by instances. Manuals of customary law, in accordance with *riwaj-i-am*, issued by authority for each district, stand on much the same footing as the *riwaj-i-am* itself as evidence of custom.—VARSHNO DITTI *v.* RAMESHRI (1928), L. R. 55 Ind. App. 407.—**IND.**

sb. *Question of fact.*]—The question of the existence of a custom is substantially a question of fact.—RAM SARAN DAS *v.* PEAREY LAL (1930), I. L. R. 53 All. 308.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—A.

303 vii. ——.] — The question whether a trade custom or usage exists is one of fact, & clear & convincing testimony is required to prove its existence; it must be shown that the custom or usage relied on is certain & reasonable, & so universally recognised that everyone engaged in the trade knows, or should know, of it. —YEATES *v.* BARRETT (Sask.), [1927] 3 D. L. R. 812; [1927] 3 W. W. R. 286.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

340 iv. ——.]—YEATES *v.* BARRETT, No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

350 ii. ——.]—YEATES *v.* BARRETT, No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2 — B. (a).

472 ii. ——.]—HOLMES, WILSON & CO., LTD. *v.* BATA KRISTO DE (1927), I. L. R. 54 Calc. 549.—**IND.**

customary." The steamer discharged the cargo at Hull in due course, but disputes arose between pltfs. & defts. as to the division of the cost of discharging the cargo. Pltfs. brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by defts. Defts. refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners: —*Held:* the custom relied on by defts. was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question should rest.—REDERI AKT. ACOLUS *v.* HILLAS & CO., LTD. (1926), 96 L. J. K. B. 186; 136 L. T. 385; *sub nom.* HILLAS (W. N.) & CO., LTD. *v.* REDERI AKT. ACOLUS, 43 T. L. R. 67; 32 Com. Cas. 69; 17 Asp. M. L. C. 193, H. L.

Annotations:—**Consd.** Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** Dampsselskab Svendborg *v.* London Midland & Scottish Ry. Co. (1929), 141 L. T. 521; Dalgliesh Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 79 Sol. Jo. 453.

545. *Add. Annotation:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

546. *Add. Annotation:*—**Consd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.

587. *Citations:*—For "9 App. Cas. 508," read "8 App. Cas. 508."

588. *Add. Annotations:*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

Part III.—Particular Usages.

602. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

616. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

625. *Add. Annotations:*—**Consd.** Michalinos *v.* Dreyfus (1924), 131 L. T. 177; Bunge y Born Co. *v.* Brightman, [1925] A. C. 799. **Refd.** Brightman *v.* Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. *v.* Dreyfus, [1925] A. C. 654.

635a. Lancashire—Weaving trade—Deduction for bad work in estimating value of work to be paid for.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices agreed between the employers' & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deductions, to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the

PART III. SECT. 1, SUB-SECT. 8.

8a. *Contract of grain grower with wheat pool—Failure to deliver—Remedies.*]—The refusal of a member of the Manitoba Wheat Pool to deliver his grain to the Pool constitutes a breach of his contract with the Pool. In view of the nature of the Pool & the terms of the contract, the Pool's appropriate remedy is by way of injunction & decree for specific performance.—MANITOBA WHEAT POOL *v.* TRACEY, [1931] 1 W. W. R. 745; 2 D. L. R. 805; 39 Man. L. R. 385.—**CAN.**

8b. —— —— *What amounts to.*]—In an action against a farmer for breach of the Wheat Pool contract, under which he agreed to deliver to the Pool all the wheat produced or acquired by him during a certain year, except such as he might retain for his own food, seed, etc., the Pool makes out a *primâ facie* case when it shows that he had in that year a very large quantity of wheat in his possession & that he delivered only a very small part of it to the Pool.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* LUCIUK, [1931] 2 W. W. R. 51; 2 D. L. R. 981.—**CAN.**

8c. *Grain broker—Authority to close transactions—Margin running out.*]—Pltf., who had been carrying wheat on margin with deft. brokers & had been sold out by them had on the occasion of his first transaction with them signed a printed buying order which provided that: "It is further understood & agreed that on all marginal business the right is reserved to close the transactions when margins are running out without further notice," & on subsequent occasions during the course of the transactions sale & purchase accounts & confirmations of orders, all of which contained said words, were sent to him by the brokers:—*Held:* the question whether the customer must be taken to have assented to this condition being a term of his contract with the brokers was one of fact, & under the circumstances, it should be found that he had so assented.—PATTERSON *v.* BRANSON BROWN & CO., LTD., [1930] 2 W. W. R. 236; 4 D. L. R. 222; 43 B. C. R. 26.—**CAN.**

8f. —— *Bankruptcy — Priority of customers.*]—*Re* KERN AGENCIES, LTD. (No. 4), [1932] 1 W. W. R. 660.—**CAN.**

8k. —— *Action for balance due—Speculation in futures.*]—Grain brokers who know that their client is speculating in futures cannot recover the balance due when they sell at a loss.—RICHARDSON (JAMES) & SONS, LTD. *v.* GILBERTSON (1917), 39 O. L. R. 423.—**CAN.**

8l. —— *Action by client for negligence.*]—TURNER *v.* ALBERTA PACIFIC GRAIN CO., LTD., [1936] 3 W. W. R. 260.—**CAN.**

8p. —— *Action by client for negligence.*]—TURNER *v.* ALBERTA PACIFIC GRAIN CO., LTD., [1936] 3 W. W. R. 260.—**CAN.**

8q. *Certificate of membership of grain exchange—Lien of other members.*]—A bye-law of a grain exchange providing that certificates of memberships in the exchange shall be subject to a lien with respect to the claims of other members arising out of contracts made on the exchange held valid.—NEWTON *v.* WHITE, [1930] 2 W. W. R. 1; 3 D. L. R. 930; 11 C. B. R. 348; *affd.*, [1931] 1 W. W. R. 836; 2 D. L. R. 733; 39 Man. L. R. 455; 12 C. B. R. 332.—**CAN.**

—— —— —.]—NEWTON & CO. *v.* WOLVIN, [1930] 2 W. W. R. 194; 4 D. L. R. 1028; 11 C. B. R. 414; *on appeal*, [1931] 1 W. W. R. 55; 2 D. L. R. 337; 39 Man. L. R. 285.—**CAN.**

8v. *Buying corn on margin—Rules of Chicago Board of Trade—Whether binding on buyer.*]—Where a person who had previous experience in the buying & selling of grain on the exchanges gave an order to brokers in Regina to buy on margin corn for future delivery & expected that they would buy it through their Winnipeg agents who in turn would buy it through their agents on the Chicago Board of Trade, & this course was in fact followed:—*Held:* he was bound by the rules & regulations of said exchange governing the carrying out of such contracts.—*Re* GALLOWAY & CLEARY, GIBSON *v.* CANADA PERMANENT TRUST CO., [1935] 2 W. W. R. 385.—**CAN.**

8y. *Canada Grain Act*, 1930—*Liability of surety under dealer's bond.*]—Pltf., who had an unpaid judgment against a licensed grain dealer for the price of grain bought from him, sued deft. co. on the bond executed by it. The conditions of the bond were (*inter alia*) that the dealer should account & pay over to all persons entitled thereto the full purchase price of the grain bought by it & "unreservedly comply with all the enactments & requirements of the Canada Grain Act, & any Order in Council, & any or all rules & regulations of the Board of Grain Comrs. for Canada." In dealing with pltf., the deal being one which an unlicensed person is prohibited from making, said licensed dealer used Form 8 but with some unauthorised alterations:—*Held:* non-compliance by the dealer with provisions of the Act or of the regulations of the Board, such as that contained in sect. 151, could not relieve it or its surety, nor could the surety escape liability even if the dealer's contract with pltf. was one which any unlicensed grain dealer or buyer could make.—MCLEOD *v.* CANADIAN INDEMNITY CO., [1936] 3 W. W. R. 586; 6 F. L. J. (Can.) 228.—**CAN.**

practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions :—*Held :* the established practice in defts.' mill resulted in the incorporation in the contract of employment of pltf. as of all other weavers employed at the mill of a term enabling the employers to make a deduction, not exceeding the actual or estimated loss occasioned, from the specific sum payable for each piece of cloth woven, if the workman did not exercise reasonable care & skill in weaving the cloth.

A usage in the Lancashire weaving mills allowing an employer to make at his discretion deductions from wages for bad work, not exceeding a certain defined limit, is neither unreasonable nor uncertain ; & the fact that it at present exists at about 85 per cent. only of the mills does not prevent it from being a good legal usage on the ground of want of universality (*per* CUR.).—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310 ; 100 L. J. Ch. 220 ; 144 L. T. 480 ; 95 J. P. 42 ; 47 T. L. R. 189 ; 29 L. G. R. 421, C. A.

635b. Gamble in futures—Whether gaming contract.]—Pltfs. were cotton merchants who (*inter alia*) transacted business in the cotton market on behalf of members of the public who wished to gamble in cotton futures. Only members of the Liverpool Cotton Association are permitted to buy & sell cotton futures on the Liverpool market, & by the regulations of the assocn. pltfs., who were members, when buying on behalf of a customer, were required to enter into a contract with a selling member of the assocn., binding themselves on the terms of a printed contract which they were obliged to use. Pltfs. then filled in another printed form, under which in form they sold to the customer at the same price at which they had bought with, in addition, an amount for brokerage. A duplicate of this sale note, in the form of a bought note from the customer to pltfs., was sent to the customer at the same time for signature & return. Deft. requested pltfs. to deal in cotton futures on his behalf, & pltfs. duly carried out the transactions set out above. In an action to recover sums owing in respect of certain transactions deft. contended that as there was a contract made by pltfs. directly with deft. of purchase & sale as principals & as there was an express understanding that there should be no question of deliveries on either side, but only an eventual payment of differences, the claim was one in respect of gaming & wagering contracts & was therefore unenforceable at law :—*Held :* (1) the true relationship between the parties was that of principal & broker, & there was no gaming or wagering contract between them ; (2) pltfs. were entitled to recover the sums claimed.—WOODWARD *v.* WOLFE, [1936] 3 All E. R. 529 ; 155 L. T. 619 ; 53 T. L. R. 87 ; 80 Sol. Jo. 976.

636. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

643. *Add. Annotation :*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

646. *Add. Annotations :*—**Apld.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691. **Folld.** SAGAR *v.* RIDEHALGH & SON, LTD., [1931] 1 Ch. 310.

700. *Add. Annotation :*—**Distd.** Mikkelsen *v.* Arcos (1925), 42 T. L. R. 3.

703a. Usage as to arbitration.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.* the London Oil & Tallow Trades Assocn. The umpire awarded that defts.' claim failed & that they were to pay the costs of the arbitration. The rules of the assocn. provided for an appeal to an appeal committee, defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final :—*Held :* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & Co., LTD. *v.* PILOT TRADING CO., LTD. (1929), 45 T. L. R. 214.

710. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497 ; The Varing, [1931] P. 79.

712. *Add. Annotation :*—**Refd.** Williams *v.* Manissalian Frères (1923), 29 Com. Cas. 42.

729a. Carriage of wool.]—The contract of carriage customary in the trade for the carriage of wool from import ship in London to Bradford *via* Goole is one by which the carrier undertakes to deliver the wool in a good condition as he receives it, the act of God & the King's enemies excepted.—FRANCE, FENWICK & Co. *v.* MANNHEIM INSURANCE CO. (1905), 10 Com. Cas. 242.

PART III. SECT. 1, SUB-SECT. 12.

8a. *Allowance by broker to buyer for shrinkage.*]—In an action by a shipper of Australian oranges against a commission broker for an accounting :—*Held :* the evidence established a trade custom or usage that must be taken to have been incorporated into the contract between the parties, pursuant to which the broker was entitled to charge back to the shipper any allowance made by the broker to the wholesalers, to whom the broker sold the oranges, for "shrinkage," where the oranges sold were in bad condition & the complaint was "registered" by the wholesaler immediately upon delivery or within two or three days thereafter & the exact amount of the claim was afterwards reported to the broker for adjustment within a time which was reasonable under the circumstances of each particular transaction. The contention was not agreed with that the wholesaler was not obliged under the custom to make his complaint until after the retailer was heard from.—PIERCY LUMBER CO., LTD. *v.* HEIMER BROS. & WOOD, LTD., [1933] 3 W. W. R. 300.—CAN.

PART III. SECT. 1, SUB-SECT. 33.

8d. *Rice market—Postponement of milling from day to day.*]—In an action for the sale of rice a right was claimed to postpone the milling & delivery from day to day under an usage of the Rangoon rice market :—*Held :* the evidence did not establish the alleged usage.—STEEL BROS. & Co., LTD. *v.* TOKERSEE MOOLJEE (1932), I. L. R. 10 Ran. 373.—IND.

DAIRY.

See FOOD AND DRUGS; PUBLIC HEALTH.

DAMAGES.

Part I.—Definitions, Nature and Classification.

1. *Add. Annotations :*—**Apld.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Consd.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460 ; Groom *v.* Crocker, [1937] 3 All E. R. 844.

1a. **Damages compared with statutory compensation.**]—Compensation under Cos. Act, 1908 (c. 69), s. 84, is not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28 ; 99 L. J. P. C. 1 ; 141 L. T. 641, H. L.

4. *Add. Annotation :*—**Consd.** The Arpad, [1934] P. 189.

6. *Add. Annotations :*—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

8. *Add. Annotations :*—**Consd.** The Baarn (1933), 49 T. L. R. 554. **Refd.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

9. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The Edison, [1932] P. 52 ; The West Wales, [1932] P. 165 ; Owen & Smith (Trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274 ; The London Corporation, [1935] P. 70.

12. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

14. *Add. Annotations :*—**Refd.** Performing Right Society *v.* Mitchell & Booker, [1924] 1 K. B. 762 ; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

15. *Add. Annotations :*—**Consd.** Shapiro *v.* La Morta (1923), 130 L. T. 622. **Refd.** Ormond Engineering Co. *v.* Knopf (1932), 49 R. P. C. 634.

17. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

19. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

Part II.—Rules and Principles in Awarding Damages.

20. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

22. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609 ; The Arpad (1934), 50 T. L. R. 505.

23. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

26. *Add. Annotations :*—**Consd.** The Chekiang, [1925] P. 80 ; The Susquehanna, [1925] P. 196 ; A.-G. *v.* Glen Line, Ltd., & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Refd.** The Edison (1932), 48 T. L. R. 224 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1 ; The Arpad, [1934] P. 189.

28. *Add. Annotation :*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

29. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359 ; Townend *v.* Askern Coal & Iron Co., [1934] Ch. 463.

29a. —— —— **Property destroyed by fire.**]—A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage :—*Held :* the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—MOSS *v.* CHRISTCHURCH RURAL DISTRICT COUNCIL, ROGERS *v.* SAME, [1925] 2 K. B. 750 ; 95 L. J. K. B. 81 ; 23 L. G. R. 331.

30. *Add. Annotations :*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36 ; Harold Wood Brick Co. *v.* Ferris, [1935] 1 K. B. 613.

PART I.

7 i. *Nominal*
Nominal damages does not necessarily mean small damages.—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593 ; 38 B. C. R. 156.—**CAN.**

c i. —— ——.]—LUNDY & MCLEOD *v.* POWELL (Sask.), [1922] 3 W. W. R. 991 ; 70 D. L. R. 659.—**CAN.**

PART II. SECT. 3.

27 i. *Application of rule—In tort—Property destroyed by fire.*]—Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence :—*Held :* the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value.—STEVENS *v.* ABBOTSFORD LUMBER CO., [1924] 1 D. L. R. 1163 ; 1 W. W. R. 660 ; 33 B. C. R. 299.—**CAN.**

27 ii. —— —— ——.]—Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis :—*Held :* there should be a new trial.—O'NEIL *v.* DOMINION COAL CO., [1924] 1 D. L. R. 961 ; 57 N. S. R. 126.—**CAN.**

27 iii. —— —— *Depreciation in selling value.*]—In an action for damages in respect of injury done to the land, the trial judge assessed pltf.'s damages at $4,500, estimating the actual damage which flowed from deft.'s wrong-doing at $3,500 ; but, taking into account deft.'s whole course of conduct & persistence in the wrong which he was doing, fixed the total damages at $4,500 :—*Held :* having regard to the evidence & to the fact that the measure of damages is not the sum necessary to restore the property, but the depreciation in its selling value, the finding of $3,500, for the actual damage done, could not be said to be clearly wrong.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111 ; 63 O. L. R. 171. —**CAN.**

30 v. —— ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

30 vi. —— *Where plaintiff has alternative claim—Duty to elect.*]—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result

32. *Add. Annotation :*—**Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

33. *Add. Annotation :*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

34. *Add. Annotation :*—**Apprvd.** Swift *v.* Board of Trade, [1925] A. C. 520.

43. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

44. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

49. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

53. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The West Wales, [1932] P. 165; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

54. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; The West Wales, [1932] P. 165. **Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655; The Edison, [1932] P. 52; The London Corpn., [1935] P. 70.

57. *Add. Annotation :*—**Consd.** The Chekiang, [1925] P. 80.

58. *Add. Annotations :*—**Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655; The Edison (1931), 47 T. L. R. 635; The Edison (1932), 147 L. T. 141.

59. *Add. Annotation :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

61. ***Add. Annotation :*—Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

63. *Add. Annotations :*—**Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139. **Refd.** The Kourśk, [1924] P. 140; Debenham *v.* Perkins (1925), 133 L. T. 252; Conquer *v.* Boot, [1928] 2 K. B. 336; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90; Rose *v.* Ford, [1937] 3 All E. R. 359.

64. ***Add. Annotations :*—Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116; **Conquer *v.* Boot, [1928] 2 K. B. 336.**

——.]—A firm of contractors agreed to construct a new & enlarged dock. Deft. co. gave the dock board a bond in the sum of £50,000 to guarantee the performance of the contract. The contractors defaulted, & the dock board brought an action against deft. co. upon the bond. They relied upon an engineer's certificate showing that the contractors owed them £78,000, which they had failed to pay. The action was dismissed. The dock board then started a second action, claiming for damages caused by delay, owing to the contractors not having proceeded with due diligence & expedition. Deft. co. applied to have the proceedings stayed, on the grounds that the same matters had already been finally settled in the first action :—*Held :* this was an action that was bound to fail, & it ought to be stayed, as the damages here claimed could have been claimed in the previous action.—WORKINGTON HARBOUR & DOCK BOARD *v.* TRADE INDEMNITY CO., LTD. (No. 2), [1937] 3 All E. R. 139; 81 Sol. Jo. 525, C. A.

78. *Add. Annotation :*—**Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

.]—Deft. having purchased twelve sixteenths of the East India ship *M.* commanded by pltf., & chartered by the co. for four voyages, proposed to pltf., & pltf. con-

from the same act; in such a case pltf. must elect or be deemed to have elected; &, if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.*, [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. —**CAN.**

30 vii. ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

PART II. SECT. 4.

38 xii. —— —— *Goods not of warranted description—Allowance made.*]—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them :—*Held :* the purchaser could not claim damages for the breach.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 583.—**CAN.**

38 xiii. —— ——.]—FRENCH *v.* PARIS, [1928] 3 D. L. R. 555.—**CAN.**

42 iv. —— ——.]—In an action for wrongfully obstructing the flow of a river by increasing the height of a weir, whereby pltf.'s lands, abutting on the river, were flooded, the judge declined to direct the jury that actual damage was essential to maintain the action :—*Held :* the direction was right.—v. SMITH (1888), 22 L. R. Ir. 559.—**IR.**

51 iv. —— *No reasonable expectation of pecuniary benefit—Death of young child in accident.*]—*Held :* a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental considerations.—HOGAN *v.* R., [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

51 v. —— *Accident to wife—No deprivation of services or society.*]—Pltf. having suffered physical injury through a street accident causing nervous shock :—*Held :* an award of damages to pltf.'s husband could not stand as he had not been deprived of his wife's services or society.—HOGAN *v.* R., [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

51 vi. —— *Furnishing false news to newspaper.*]—One who intentionally & fraudulently causes a newspaper to become the innocent disseminator of false news does its proprietor a wrong for which substantial damages are recoverable without proof that pecuniary harm was an actual result of the fraud.—CALGARY HERALD, LTD. *v.* BARNES CORPN., [1929] 1 D. L. R. 114; [1928] 3 W. W. R. 543.—**CAN.**

PART II. SECT. 5.

59 vii. ——.]—Pltf. cannot recover damages on the ground of the permanence of existing personal injuries unless the evidence goes the length of showing that there is no reasonable prospect of permanent recovery. The test is the same in the case of consequences non-existent at the date of action, but which may or may not supervene.—HARMSWORTH *v.* SMITH (1928), 49 N. L. R. 174.—**S. AF.**

74 i. *Cause of action independent of damage—Whether prospective damage recoverable—Repudiation of contract.*]—Defts., the owners of a cotton ginning mill, contracted in Oct. 1919, that, for a period of six months, they would put their mill at the disposal of pltf., a cotton merchant, for half its working time, at fixed rates in order to gin raw cotton which pltf. contemplated buying & which he agreed to supply to them for the purpose. In Nov. before any of pltf.'s cottou had been taken by the mill, defts. repudiated the contract. Pltf. sued defts. for damages :—*Held :* the breach being anticipatory the damages recoverable were not confined to the extra cost which pltf. had paid to the other millers for ginning such cotton as he had tendered to defts., but were the estimated loss of profit to pltf. by reason of the contract not being carried out; pltf. was not bound to buy cotton & have it ginned at other mills under his obligation to mitigate the damages.—RAMGOPAL *v.* DHANJI JADHAVJI BHATIA (1928), L. R. 55 Ind. App. 299.—**IND.**

83 i. *Damages caused the gist of the* [illegible] *recoverable.*]—A married woman having suffered from nervous shock as the result of an accident, but not so as to deprive her husband of her services or society :—*Held :* that he might be put to expense in the future was a consideration too remote to entitle him to damages.—HOGAN *v.* REGINA CITY, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

83 ii. —— —— ——.]—In an action

sented, to resign the command in favour of deft.'s nephew, upon receiving in exchange the command of another ship, *E.*, then chartered for one voyage. If the co. acceded to the exchange, it was agreed, that in case the nephew died or resigned before the expiration of the four voyages, pltf. should succeed him; as a further inducement to pltf. to resign the command of the *M.*, deft. undertook to procure a beneficial alteration in the destination of the *E.*, & the person who negotiated the affair on the part of pltf. undertook (as he asserted, without pltf.'s knowledge) to pay deft. £2,000 if pltf. should refuse to resign. The exchange was approved of by the co., & the destination of the *E.* altered. Pltf. & nephew sailed on their respective voyages. Pltf. became bkpt. on his return from his voyage in the *E.*, & the nephew died in the course of his second voyage in the *M.* Deft. having refused to appoint pltf. to succeed him was sued in *assumpsit* for breach of agreement, & the value of a voyage having been proved to vary from £4,000 to £8,000, the jury gave £7,500 damages. On motion for a new trial & in arrest of judgment:—*Held:* the jury might give damages for the loss of the two remaining voyages, though the second had not been accomplished at the time of the action.—RICHARDSON *v.* MELLISH (1824), 2 Bing. 229; 1 C. & P. 241; 9 Moore C. P. 579; Ry. & M. 66; 3 L. J. O. S. C. P. 265; 130 E. R. 294.

98. *Add. Annotations:—As to* (1) **Consd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119. **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

100. *Add. Annotation:*—**Refd.** Solanite Signs, Ltd. *v.* Wood (1933), 50 R. P. C. 315.

Part III.—Directness and Remoteness.

101. *Add. Annotations:—As to* (1) **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Distd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Apld.** The Edison, [1932] P. 52; Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283. **Consd.** The Arpad (1934), 50 T. L. R. 505; Flint *v.* Lovell, [1935] 1 K. B. 354. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209; The Edison (1931), 47 T. L. R. 635; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Haynes *v.* Harwood, [1935] 1 K. B. 146; Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204; Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936), 80 Sol. Jo. 284; Domine *v.* Grimsdall, [1937] 2 All E. R. 119. *As to* (2) **Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Apld.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154.

104. *Add. Annotation:*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

105. *Add. Annotation:*—**Consd.** The Arpad (1934). 50 T. L. R. 505.

110. *Add. Annotation:*—**Refd.** The Edison (1932), 147 L. T. 141.

113. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

114. *Add. Annotations:*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700; Place *v.* Searle (1932), 101 L. J. K. B. 465. **Refd.** Black *v.* Admiralty Comrs. (1924), 93 L. J. K. B. 341; Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609; Scammell *v.* Attlee (1928), 45 T. L. R. 75; Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863; McManus *v.* Bowes, [1937] 3 All E. R. 227.

114a. —— **Admiralty cases.**]—Damages must be the direct & natural consequence of the breach of obligation complained of. The law is the same in this respect with regard both to contract & to tort, subject to the qualification that, in the case of the former, the law does not consider too remote damage which may be reasonably supposed to have been in the contemplation of the parties when the contract was made. Speaking generally, the measure of damages is the same in Admiralty as at common law.—THE EDISON, [1932] P.

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for damages resulting, not from the construction of works, but from the operating thereof, as, *e.g.*, the putting of water into a canal, damages are assessable only for the injury done up to the trial, & prospective damages cannot be assessed, but pltf. must seek further damages from time to time as he suffers injury.—LETHBRIDGE NORTHERN IRRIGATION DISTRICT BOARD TRUSTEES *v.* MUNSELL, [1926] 4 D. L. R. 690; [1926] S. C. R. 603.—CAN.

PART II. SECT. 8.

97 i. *Ascertainment difficult — No ground for refusal to award.*]—H. passed a mtge. bond over his farm, a condition being that H. would, on demand by the mtgee., pass a collateral bond over his movable property on the farm. In breach of this condition, H. sold & delivered such movables to a third party:—*Held:* although the damages, if any, were difficult to assess, the mtgee. was entitled to some damages for a wilful invasion of his rights.—CATO *v.* ALION (1923), 44 N. L. R. 113.—S. AF.

97 ii. —— ——.]—What pltf. lost by the refusal of deft. to bore two more wells was a sporting or gambling chance that valuable oil or gas would be found when two more wells were bored. It might not be easy to compute what that chance was worth to pltf., but the difficulty in estimating the quantum was no reason for refusing to award any damages.—CARSON *v.* WILLITTS, [1930] 4 D. L. R. 977; 65 O. L. R. 456.—CAN.

PART III. SECT. 1.

101 v. —— —— ——.]—Damages must be limited to such as arise naturally from the breach of contract or such as might reasonably be supposed to have been in the contemplation of the parties.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.*, [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—CAN.

101 vi. —— —— ——.]—The ct. cannot as a matter of law presume intention from the natural consequences of the act. This is a fiction of the English law, & is inapplicable to the Indian law of trespass.—BIRD *v.* KING-EMPEROR (1934), I. L. R. 13 Pat. 268.—IND.

52; 101 L. J. P. 12; 147 L. T. 141; 48 T. L. R. 224; 37 Com. Cas. 182; 18 Asp. M. L. C. 276; *on appeal*, [1933] A. C. 449, H. L.

Annotations :—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** The Castor (1932), 147 L. T. 359; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; Buckland *v.* R. (1933), 102 L. J. K. B. 404; Rose *v.* Ford, [1937] 3 All E. R. 359.

116. *Add. Annotation :*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

118. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

122. *Add. Annotation :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

123. *Add. Annotations :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

126. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

131. *Add. Annotation :*—**Refd.** Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

131a. Breach of agreement for loan—Commission on arranging temporary loan.]—By an agreement contained in letters defts. undertook to lend pltfs. £14,000 to be secured on certain property at Edgware. The repayment was to be at the rate of £70 per quarter for the first ten years & the amount of such repayment was to be reconsidered at the end of that period. Defts. subsequently refused to proceed with the loan. Pltfs. claimed as special damage the amount of commission paid on arranging a temporary loan & a negotiating fee on arranging the final loan :—*Held :* (1) there was a complete agreement for the loan & the fact that the repayments were to be reconsidered at the end of ten years did not make it an agreement to make an agreement; (2) the negotiating fee was not recoverable as special damage in addition to the commission.—ASTOR PROPERTIES, LTD. *v.* TUNBRIDGE WELLS EQUITABLE FRIENDLY SOCIETY, [1936] 1 All E. R. 531; 80 Sol. Jo. 366.

131b. —— **Negotiating fee for final loan.**]—ASTOR PROPERTIES, LTD. *v.* TUNBRIDGE WELLS EQUITABLE FRIENDLY SOCIETY, No. 131a, *ante*.

132a. Negligent repair of car—Damage due to negligent driving.]—In an action to recover damages for breach of contract deft. cannot rely on the defence that the damage was caused or increased by the antecedent negligence of pltf., unless the alleged negligence is the breach of a duty owed by pltf. to deft. Where, therefore, the owners of a motor lorry claimed damages for breach of a contract to repair the carburettor, alleging that owing to the defective state of the carburettor the lorry had been damaged, & the repairers contended that the owners had failed to connect the engine switch of the lorry, & that if that had been done the damage could have been prevented or minimised :—*Held :* the owners of the lorry owed no duty to the repairers to connect the engine switch, & accordingly the repairers could not rely on the failure to do so as a defence to the action.—VAILE BROS. *v.* HOBSON, LTD. (1933), 149 L. T. 283.

141. *Add. Annotation :*—**Consd.** Finlay James & Co. *v.* N. V. Kwik Hoo Tong H. M., [1929] 1 K. B. 400.

141a. Agreement not to arrest ship—Arrest & disposal of ship.]—Circumstances (*see* CONFLICT OF LAWS, No. 1135a, *ante*), in which :—*Held :* pltfs. were entitled to damages, & were entitled to recover the value of the ship as at the date when pltfs. were first deprived of her use by arrest.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsg.* (1927), 44 T. L. R. 7.

146a. —— —— **As result of shock.**] — Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES BROTHERS, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

PART III. SECT. 2, SUB-SECT. 2.

115 iii. ——.]—In an action claiming damages for breach of contract the damages recoverable are such as naturally would be the result of the breach.—KEITH *v.* LINCOLN PULPWOOD CO. (1927), 59 N. S. R. 466.—**CAN.**

sa. *Sale of goods—Refusal to take delivery—Loss of time in urging acceptance.*]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for time lost in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

sb. *Contract for work & labour—Work unperformed—Cost of performance.*]—Resp. gave applt. an option to purchase a mine. On the first instalment falling due, applt. negotiated for an extension of time for payment, which was granted by resp. on condition that applt. should do certain development work not mentioned in the option. Applt. failed to pay, & subsequently relinquished possession of the mine & surrendered the option without having done the work :—*Held :* resp. entitled to recover damages amounting to the cost of the work.—CUNNINGHAM *v.* INSINGER, [1924] 2 D. L. R. 433; [1924] S. C. R. 8.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

142 i. *Injury to feeling — General rule.*]—Mental anguish is properly taken into consideration in awarding damages in an action for tort based on a wilful or wrongful act, *e.g.* an action for assault, trespass, defamation, seduction, malicious prosecution, false imprisonment.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1931] 1 D. L. R. 676; [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; *revsg.*, [1930] 4 D. L. R. 901; 3 W. W. R. 290.—**CAN.**

147 i. *Pain & suffering.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

147 ii. —— *Ejectment from tramcar—Illness from exposure to cold.*]—*Held :* not too remote a cause for damages.—TORONTO RY. CO. *v.* GRINSTED (1895), 24 S. C. R. 570.—**CAN.**

147 iii. ——.]—In an action for damages for personal injuries pltf. if

149. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

150. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

151. *Add. Annotation :*—**Apprvd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

152. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

After this case add :—

—— **Claims under Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41).**]—*See* NEGLIGENCE, Nos. 953b, 953c, *post.*

155. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

161. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

165. *Add. Annotations :*—**Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851 ; Lane, The Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379.

166. *Add. Annotations :*—**Consd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6. **Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851.

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successful is entitled to fair compensation for pain & suffering ; & a charge to the jury which tells them that they may make an allowance therefor but are not bound to do so is a misdirection which, if the jury make no such allowance, may afford ground for ordering a new trial, even though not objected to at the trial.—HEITNER *v.* GILLSTROM, [1930] 2 W. W. R. 113 ; 3 D. L. R. 860 ; 24 S. L. R. 462 ; *revsg.*, [1929] 4 D. L. R. 670 ; 3 W. W. R. 227 ; 24 S. L. R. 53.—**CAN.**

149 i. —— *Nervous shock—Actual impact.*]—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of deft.'s negligence. —HOGAN *v.* REGINA CITY, [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

149 ii. —— —— ——.]—Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—PENMAN *v.* WINNIPEG ELECTRIC RY. CO., [1925] 1 D. L. R. 497 ; [1925] 1 W. W. R. 156.—**CAN.**

149 iii. —— —— *False statement.*]—Deft. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill :—*Held :* the damage was the natural & probable cause of deft.'s act, & pltf. had a good cause of action.—BIELITSKI *v.* OBADISK, [1922] 2 W. W. R. 238 ; 65 D. L. R. 627 ; 15 Sask. L. R. 155 ; *affg.*, 61 D. L. R. 494.—**CAN.**

149 iv. —— ——.]—A man & a woman to whom he was engaged were knocked down by a motor omnibus. The man was struck by the omnibus & received considerable physical injury. The woman did not appear to have been actually struck, & she received no direct physical injury, but she suffered severely from shock. In an action of damages at her instance the judge directed the jury that, if by the fault of defts. pursuer had suffered nervous shock through apprehension for her own safety, they were entitled, in assessing damages, to include any aggravation of that shock occasioned by the fact that her companion was involved in the catastrophe. The jury found that pursuer had suffered personal injury resulting in nervous shock involving apprehension for her own safety, aggravated by anxiety for the safety of her companion, & awarded damages :—*Held :* in the circumstances the jury could not be asked to discriminate between the amount of shock suffered by pursuer due to apprehension for her own safety & the amount due to anxiety for her companion.—CURRIE *v.* WARDROP, [1927] S. C. 538.—**SCOT.**

149 v. —— —— *Assault on husband in wife's presence—Loss of consortium.*] —An action lies for mental anguish, ill health or shock sustained by reason of acts done to a third person, & not causing any apprehension of danger to pltf., & an action *quare consortium amisit* lies at the suit of a wife.—JOHNSON *v.* COMMONWEALTH (1927), 27 S. R. N. S. W. 133 ; 44 N. S. W. W. N. 54.—**AUS.**

149 vi. —— —— ——.]—As the result of an unprovoked & violent assault made by deft. on her husband in her presence the female pltf. suffered a nervous shock which caused a permanent injury to her nervous system, & she was still so ill at the time of the trial, three years after the event, that she was unable to attend :—*Held :* she had a good cause of action which entitled her to damages for said injury to her health, that the damages awarded her, $500, were not excessive, & her husband was entitled to recover the expenses to which he was put because of her illness.—PURDY *v.* WOZNESENSKY, [1937] 2 W. W. R. 116.—**CAN.**

149 vii. —— ——.]—WALKER *v.* PITLOCHRY MOTOR CO., [1930] S. C. 565.—**SCOT.**

149 viii. ——.]—Pltf. purchased some bread from deft. co. Pltf., while eating the bread, discovered that it contained broken pieces of glass. He was able to remove the glass from his mouth without sustaining more serious injury than a slight scratch upon his throat. However, he became excited, & as a result the fear of serious consequences combined with shock, produced a condition of nausea which was renewed whenever he attempted to eat bread :—*Held :* pltf. was entitled to damages.—NEGRO *v.* PIETRO'S BREAD CO., LTD., [1933] O. R. 112; 1 D. L. R. 490.—**CAN.**

149 ix. —— ——.]—In an action for damages arising out of a collision between two vehicles at an intersection :—*Held :* there being some evidence of physical injury as well as of nervous shock, pltf. was entitled to recover something therefor under his claim for general damages.—PIPER & PIPER *v.* BUSSEY & EMERSON, [1930] 2 W. W. R. 452.—**CAN.**

149 x. —— ——.]—Applt. visited a dwelling-house which was occupied by resps. & demanded possession at the same time threatening the male resp. that he would burn him out. The latter's wife was in bed unwell, but heard the words spoken, & became seriously upset as a result of the threat. She had been pregnant for about three months, & as a result of applt.'s statement suffered a miscarriage :—*Held :* applt. was liable in damages.—STEVENSON *v.* BAGHAM, [1922] N. Z. L. R. 225.—**N.Z.**

152 i. —— ——.]—An infant a few days after birth sustained, through negligence, injuries by burning in the hospital where the mother was confined. The matron informed the mother, who had not seen the accident, & as a consequence the mother suffered from shock, discomfort, & inconvenience in caring for the child both at the hospital & after :—*Held :* it was a necessary consequence of the negligence that the mother should be told of the accident, &, accordingly, a breach of the duty of the hospital authorities to avoid so far as reasonably practicable all things that might prejudice her health or comfort or increase her need for exertion or care. *Qu. :* whether mere mental or nervous shock, which did not cause any physical disturbance, would be damage in law.—BROWN *v.* MOUNT BARKER SOLDIERS' HOSPITAL INCORPORATED, [1934] S. A. S. R. 128.—**AUS.**

162 i. *Loss of or injury to property—Collision at sea—Loss of musical manuscripts.*]—In an action of damages against steamship owners, arising out of the sinking of one of their ships, pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties, publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party : —*Held :* (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant ; (2) the measure of her damages in respect of the lost music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement, or by consideration of the commission which would have to be paid to composers of music of the class to which the lost compositions belonged. —REAVIS *v.* CLAN LINE STEAMERS, LTD., [1926] S. C. 215.—**SCOT.**

sd. *Loss of earning power—Physical or mental.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; 3 W. W. R. 1152.—**CAN.**

sf. *Loss of time—Injury in motor-car collision.*]—In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence :—*Held :* damages should be given deft. for loss of time, repairs to the car & costs.—TIEMAN *v.* MCKENZIE, [1923] 1 D. L. R. 1189.—**CAN.**

sw. *Loss of wages—Injury to place of work.*]—WHEELER *v.* UNITED GAS & FUEL CO. (1935), 5 F. L. J. (Can.) 116.—**CAN.**

Add. Annotations: ——— *Clark & Co. v. London & North Eastern Railway* (1931), 100 L. J. K. B. 401. **Refd.** *Harper v.* Haden & Sons (1932), 102 L. J. Ch. 6.

172. *Add. Annotations:*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

174. *Add. Annotation:*—**Refd.** *Patrick v. Russo-British Grain Export Co., [1927] 2 K. B. 535.*

176a. —— **Withdrawal of appointment as school outfitters.**]—*The authorities at a convent school informed the parents of their scholars that the girls must wear certain clothes, that these could only be obtained from pltf., a dressmaker, & that the girls must be in possession of the clothes by Apr. 21. Pltf. was informed that these instructions had been given to the parents. No formal appointment was given to pltf. in writing & nothing was said as to the duration of the appointment. Pltf. ordered dress materials from deft. co., telling them that she had an appointment to supply these clothes at the school & that they were wanted by Apr. 21. Pltf. was not ready to supply all the parents' demands by Apr. 21, & on Apr. 28 the Mother Superior wrote to pltf., that on that ground & on the ground of defects in some of the clothes supplied, no further orders would be placed with her. Pltf. claimed damages against deft. co. (inter alia) for loss of her appointment as school outfitter, on the ground that there was a breach of contract by not keeping dress material in stock, so causing delay in delivery to pltf. by deft. co., & that this delay caused the Mother Superior to write her letter of Apr. 28:—Held:* by SCRUTTON, L.J. & SLESSER, L.J., the damages for loss of appointment were not in the contemplation of both parties to the contract, & so were too remote. On the facts, by GREER, L.J. & SLESSER, L.J., accepting the finding of the trial judge that there was a contract between pltf. & deft. co. that the latter should get & maintain a stock of certain dress materials ready for pltf., whenever she chose to give an order, although it was admitted that deft. co. did not get & maintain such a stock, the loss of pltf.'s appointment was not due to this breach, but to pltf.'s own failure to obtain in time the material elsewhere.—SIMON *v.* PAWSON & LEAFS, LTD. (1932), 148 L. T. 154; 38 Com. Cas. 151, C. A.

181. *Add. Annotations:*—**Dbtd.** Marbé *v.* George Edwardes (Daly's Theatre), [1928] 1 K. B. 269. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

181a. —— ——.]—Pltf., an actress, was engaged by defts. to play in a play for the period of rehearsal & for the run of the play, & there was a collateral agreement that defts. would advertise her in a prominent position. Defts. refused to allow pltf. to play, but they paid her the whole of her salary down to the end of the run of the play. In an action for breach of contract the jury awarded to pltf. over & above her salary already paid, damages for loss of reputation through her not being employed to play the part:—*Held:* as there was an express agreement to advertise pltf. this necessarily implied an obligation to give pltf. an opportunity of acting, & pltf. was entitled, in addition to her salary already paid, to the damages awarded by the jury for loss of reputation.—MARBÉ *v.* GEORGE EDWARDES (DALY'S THEATRE), LTD., [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

Annotation:—**Consd.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

-.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary:—*Held:* it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

Annotation:—**Folld.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

—— ——.]—Pltf., who was a variety artiste, was engaged by deft. co. to appear & perform a certain sketch at the London Palladium for three consecutive weeks, commencing July 6, 1931, at a gross salary of £300 per week, he providing the supporting actors & properties. The contract contained a clause by which pltf. agreed, should defts. so desire, to transfer the engagement to any hall owned, controlled by or associated with defts. either in London or the provinces. Pltf. had a preliminary trial week at Portsmouth, & after viewing a performance there defts. on July 2, 1931, gave pltf. notice that

PART III. SECT. 3, SUB-SECT. 2.

sk. *Depreciation in price—Machinery components purchased by vendor to perform contract.*]—*Held:* the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORRIN MACHINERY CO., [1923] 2 W. W. R. 928.—CAN.

sl. *Loss of custom—Defective goods sold but replaced.*]—Certain goods supplied under contract not complying with the warranted description:—*Held:* it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltfs. were to compensate defts. for such loss of business as defts. might incur by the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—HAMILTON GEAR & MACHINE

allow him to perform at the ... on Palladium under the agreement. ... sued defts. claiming damages for breach of contract, including loss of publicity & ... At the trial counsel for pltf. ... to the jury that pltf. had thereby ... fered damage to his reputation. The judge in summing up the case told the jury that they must put some figure upon the loss of publicity because pltf. was not allowed to perform at the Palladium. He did not refer in his summing-up to the option in the contract. The jury returned a verdict for pltf. for the salary he had lost & £1,000 for loss of publicity. On appeal by defts.: —*Held:* (1) damage to a reputation already existing by not allowing an actor to appear in accordance with his contract was not a matter which could be taken into consideration by a jury in assessing damages for breach of contract. What had to be taken into consideration was whether if the actor had been allowed to appear that appearance would have given him an enhanced reputation. That distinction had not been explained to the jury by the judge, & therefore there would have to be a new trial on the question of damages; (2) pltf. had under the contract no absolute right to appear at the Palladium; defts. had an option as to the halls at which he should appear; in assessing damages for the breach of a contract which defts. could at their option perform in alternative ways it must be assumed that defts. would perform it in the way most beneficial to themselves & not in the way that would be most beneficial to pltf.; & as there had been no direction by the judge with regard to this there must be a new trial on this ground also.—WITHERS *v.* GENERAL THEATRE CORPN., LTD., [1933] 2 K. B. 536; 102 L. J. K. B. 719; 149 L. T. 487, C. A.

181d. —— **Author.**]—Pltfs. were engaged by defts. to write a screen play based upon a novel & by a collateral agreement defts. were to give pltfs. screen credit & their names were to be thrown upon the screen with a statement that they were joint authors of the work. Defts. wrongfully refused to accept pltfs.' work & pltfs. sued them for breach of contract:—*Held:* an author, as well as an actor, is entitled to recover damages for loss of publicity. Substantial damages should be awarded, & there must be a separate assessment in respect of each pltf.—TOLNAY *v.* CRITERION PRODUCTIONS, LTD., [1936] 2 All E. R. 1625; 80 Sol. Jo. 795.

181e. —— ——.]—Defts. had purchased a song lyric from pltf., the author of the song. In a film they ascribed the authorship of the song to a third party:—*Held:* there was an implied contract that defts. would not give screen credit to anyone other than author of the song & pltf. was entitled to damages.—MILLER *v.* CECIL FILM, LTD., [1937] 2 All E. R. 461; 53 T. L. R. 544; 81 Sol. Jo. 318.

182. *Add. Annotations:*—**Consd.** The Kate, [1935] P. 100. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

189. *Add. Annotations:*—**Refd.** Dobell (G. C.) & Co., Ltd. *v.* Barber & Garratt (1930), 46 T. L. R. 420; Kubach *v.* Hollands, [1937] 3 All E. R. 907.

193. *Add. Annotations:*—**Distd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; The Arpad (1934), 50 T. L. R. 505. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

194. *Add. Annotation:*—**Refd.** Hall *v* Pim (1927), 137 L. T. 585.

214. *Add. Annotations:*—**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Apld.** Slavonski *v.* La Pelleterie de Roubaix Soc. Anon. (1927), 137 L. T. 645. **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850; Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

215. *Add. Annotations:*—**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83. **Refd.** Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850.

215a. —— —— ——.]—Pltfs. bought a coat with fur collar attached, for re-sale, from

PART III. SECT. 3, SUB-SECT. 3.

194 i. —— *Loss of profit.*]—W. entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with M., who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season M. was short of the quantity he agreed to deliver:—*Held:* W. was entitled to recover damages from M. for non-performance of his contract, & the measure of those damages was the profit W. would have made under his contract with the paper co.—MONDOR *v.* WILLETS, [1923] 2 D. L. R. 964; [1923] S. C. R. 483; 2 W. W. R. 486.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) i. —— ——.]—In an action for damages for breach of contract by refusal to take delivery of goods:—*Held:* a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

k (p. 108) i. —— —— *Medical attendance.*]—In an action for damages for personal injuries arising from negligence:—*Held:* the items which should go to make up pltf.'s damages were (*inter alia*) medical & hospital bills. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

k (p. 108) ii. —— —— —— *On wife.*]—S. & his wife brought an action against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by S. was dismissed on account of contributory negligence. The ct. awarded damages to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills:—*Held:* the bills had been contracted by the wife as her husband's agent & were his liability alone.—SCOBLE *v.* WOODWARD, [1924] 1 W. W. R. 1040.—**CAN.**

r (p. 108) i. —— *Injury to chattel—Costs of repairs—& depreciation.*]—*Held:* recoverable. — WALTER *v.* SEIBEL, [1927] 2 D. L. R. 1005; [1927] 1 W. W. R. 967 21 Sask. L. R. 452.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

209 v. ——.]—Solr. & client costs incurred by the driver of a motor car in successfully defending an action brought against him by a passenger in another car with which his car had collided cannot be recovered by him in an action for negligence brought against the driver of the other car.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* GIBSON, [1928] 3 D. L. R. 610; [1928] 2 W. W. R. 532; 23 Alta. L. R. 518.—**CAN.**

deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against pltfs., *claiming damages. Pltfs. informed deft. thereof & requested him to undertake the* defence of the action. Deft. denied liability but never suggested that pltfs. had no answer to the action, with the result that pltfs. defended the action & a jury awarded the customer damages for her suffering, & pltfs. had to pay the costs of the action :— *Held :* pltfs. were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—BENNETT (SIDNEY) LTD. *v.* KREEGER (1925), 41 T. L. R. 609.

217. *Add. Annotation :*—**Refd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

220. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

223. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

227a. —— **Several sub-sales.**]—Defts. sold skins to pltfs., who resold to a sub-vendee. That sub-vendee sold to a second sub-vendee, who sold one of the skins, which had been made into the collar of a fur coat, to a third sub-vendee. The third sub-vendee sold to a woman who wore the coat & developed dermatitis on the face in consequence of antimony contained in the skin. In each sale the vendor knew the particular purpose for which the goods were required by the purchaser, & there was an implied warranty that the goods were reasonably fit for such purpose. The ultimate purchaser brought an action for breach of contract against her supplier, the third sub-vendee. The third sub-vendee defended the action, & in so doing acted reasonably ; but in the result the ultimate purchaser recovered damages & costs against him. The third sub-vendee, who had incurred certain additional costs in connection with the action, claimed to be reimbursed by the second sub-vendee, & after some resistance, incurring further costs, the second sub-vendee paid. The second sub-vendee then claimed against the first sub-vendee, who after some dispute incurring further costs, also paid. The first sub-vendee claimed against pltfs., who, after taking advice, occasioning further costs, paid. Pltfs. sued defts. for breach of contract, claiming as damages the damages recovered by the ultimate purchaser, the costs on both sides in that action, & the costs of the intermediate actions :—*Held :* pltfs. were entitled to recover the damages which might reasonably be supposed to have been in the contemplation of the parties at the time of the contract ; the parties must have contemplated that damages would be claimed, if there were a breach of contract of the kind that had occurred, by parties separated by several contractual steps from each of the immediate parties to each of the contracts along the line ; pltfs.' damages should include (1) the damages recovered by the ultimate purchaser, (2) the costs on both sides in that action, inasmuch as it was reasonably defended, & (3) the costs of the intermediate actions, in so far as they were reasonably incurred.—

K. B. 78 ; 96 L. J. K. B. 500 ; 10
subsequent proceedings, sub nom.
v. LA PELLETERIE DE ROUBAIX SOCIETE ANONYME (1927), 137 L. T. 645.

235a. —— **Costs awarded in previous proceedings, but not recovered.**]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract & negligence, the costs of all previous litigation :—*Held :* such damage was not too remote.—BRITANNIA HYGIENIC LAUNDRY CO. *v.* THORNYCROFT & CO. (1925), 94 L. J. K. B. 858 ; 41 T. L. R. 667 ; *on appeal*, 95 L. J. K. B. 237 ; 135 L. T. 83 ; 42 T. L. R. 198.

237. *Add. Annotations :*—**Consd.** Harnett *v.* Bond [1924] 2 K. B. 517. **Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Consd.** Howard *v.* Odhams Press, Ltd., [1936] 2 All E. R. 40. **Refd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125 ; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83 ; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135 ; The Edison (1932), 147 L. T. 141 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

237a. ——.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of companies, firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers. If, however, a subscriber does disclose information supplied by the agency with the result that the agency has to pay to a third party damages for a libel on that third party contained in the information in

question, no special damage being suffered by the third party, the only damages recoverable by the agency from the subscriber in an action for breach of contract are nominal damages, the *causa causans* of the liability to pay damages being the unlawful act of the agency in publishing a libel & the disclosure by the subscriber being only the *causa sine qua non*.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL, [1933] Ch. 190; 102 L. J. Ch. 34; 148 L. T. 111; 48 T. L. R. 670.

Annotation :—**Consd.** Howard *v.* Odhams Press, Ltd., [1936] 2 All E. R. 40.

260a. *S. P.* HARRISON *v.* MCSHEEHAN, [1885] W. N. 207.

262. *Add. Annotation :*—**Consd.** The Kate, [1935] P. 100.

265. *Add. Annotations :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

268. *Add. Annotations :*—**Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358; Domine *v.* Grimsdall, [1937] 2 All E. R. 119. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106.

276. *Add. Annotation :*—**Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

279. *Add. Annotations :*—**Consd.** Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Pontardawe Rural Council *v.* Moore-Gwyn, [1929] 1 Ch. 656; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

280. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

282. *Add. Annotations :*—*As to* (1) **Distd.** Martin *v.* Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

284. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

287a. —— ——.]—On the morning of Nov. 22, 1922, the *P.*, the *S. A.*, & the *S.* were moored by their sterns to the quay in Valetta Harbour, Malta, in the order named from east to west, & the vessels had their anchors down forward. There was a strong wind blowing from E.N.E. & there was a swell in the harbour. At 8 a.m. the *P.* dragged her anchors & the fore part of the vessel fell down upon the *S. A.* & remained in contact with her. In endeavouring to get free from the *S. A.* the *P.* broke away from her moorings & fell bodily upon the *S. A.* & parted her moorings, & the *S. A.* in turn fell down upon the *S.* & cast her adrift. The *S. A.* & the *S.* then manœuvred in the harbour under their own steam to keep away from the shore & brought up heading to the wind. Twenty minutes later the *S.* got under the starboard quarter of the *S. A.*, when the revolving propeller of the *S. A.* struck the *S.*, with the result that the *S.* was sunk & the propeller was damaged. The *P.* was clear of both ships at the time. In an action by the *S. A.* against the *P.*, there being no appeal from the decision of the President that the *P.* was liable for the earlier collisions, the only questions now at issue was whether she was also liable for the final collision between the *S. A.* & the *S.* The President, acting on the advice of two of the Elder Brethren of the Trinity House, found that the final collision was directly caused by the negligence of the *P.*, but his decision was reversed on appeal. The nautical assessors in the Ct. of Appeal advised (*a*), agreeing with the Elder Brethren, that there was no fault on the part of the *S.*; & (*b*), differing from the Elder Brethren, that the master of the *S. A.* was guilty of want of reasonable care in not stopping his engines in time to avert the collision :—*Held :* the final collision was not directly caused by the negligence of the *P.*, but that the action of the *S.* constituted a *novus actus interveniens*, the *S. A.* having failed to prove that the *S.*, in acting as she did, was free from blame.

Per Lord SUMNER. The miscalculation of the master of the *S. A.* in not stopping his engines sooner also broke the chain of causation.—SINGLETON ABBEY S.S. OWNERS *v.* PALUDINA S.S. OWNERS, THE PALUDINA, [1927] A. C. 16; 95 L. J. P. 135, H. L.

Annotation :—**Refd.** Canadian Pacific Ry. Co. *v.* Kelvin Shipping Co., Ltd. (1927), 138 L. T. 369.

288. *Add. Annotations :*—**Consd.** The St. Nicolai (1925), 133 L. T. 640. **Distd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405; Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

Part IV.—Aggravation and Mitigation.

290. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A.C. 359.

298. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

301. *Add. Annotations :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

302. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

304. *Add. Annotations :*—**Refd.** Curtis Moffat, Ltd. *v.* Wheeler, [1929] 2 Ch. 224; Barnes *v.* Cadogan Developments, Ltd., [1930] 1 Ch. 479.

306. *Add. Annotation :*—**Refd.** Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

PART IV. SECT. 1, SUB-SECT. 2.

d i. —— —— *Serious injury.*]—$12,000 damages held not excessive for a comminute fracture of the skull by a bullet fired by a constable of the Royal Canadian Mounted Police.—WILSON *v.* MAINLAND, [1933] 2 D. L. R. 539; 6 M. P. R. 482; 59 C. C. C. 385.—CAN.

d ii. —— —— *Absence of provocation.*] — In an action for assault in which pltf. appealed for a larger amount for both special & general damages it was proved that deft. had assaulted pltf. twice. There was evidence of provocation for the first assault but none for the second, which was committed when pltf. was lying on the ground as the result of the first: —*Held:* the general damages should be increased from $50 to $500 & the special damages by an item of $11.35. — GUILLET *v.* CHARLEBOIS, [1935] 3 W. W. R. 438.—CAN.

d iii. —— *Trespass—Abusive conduct.*]—An appeal from a judgment whereby pltf., in an action for trespass, was awarded vindictive damages in addition to special damages:—*Held:* in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced.—SPENCER *v.* GRANT, [1928] 1 D. L. R. 820; [1928] 1 W. W. R. 190; 22 Sask. L. R. 365.—CAN.

d iv. —— —— *Violent behaviour.*]—A city corpn., constructing a sewer, expropriated an easement over pltf.'s land for that purpose. Deft. contracted with the corpn. to construct that part of the sewer which ran through pltf.'s land. In performing his contract, deft. did not confine himself to that part of the land which was subject to the easement, but unlawfully cut down trees & deposited sand & silt upon the land outside the part subject to the easement, & thereby depreciated the value of the land:—*Held:* the amount of damages in such an action as this may be indefinitely enhanced by evidence of violent & arrogant conduct on the part of deft.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—CAN.

d v. —— —— *High-handed behaviour.*]—In an action for damages for trespass founded on the wrongful seizure of a motor car which pltf. had bought from deft. under a conditional-sale agreement:—*Held:* because of the high-handed conduct of deft. which injured pltf.'s feelings, the trial judge was justified in awarding exemplary damages.—GRIFFITHS *v.* FORDYCE MOTORS, LTD., [1930] 2 W. W. R. 698; 4 D. L. R. 451; 43 B. C. R. 119.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.—B.

341 x. ——.]—CANADIAN FLEXIBLE SKATE CO., LTD. *v.* MONARCH BRASS MANUFACTURING CO., LTD., [1925] 2 D. L. R. 387; 56 O. L. R. 362.—CAN.

341 xi. ——.]—MCKENNY *v.* DRUMMOND & DVORETSKY (1926), 29 W. A. L. R. 6.—AUS.

352 i. *Sale of goods—Refusal to accept.*]—Unless a purchaser has by the contract of sale a right to repudiate, he cannot repudiate the sale. If he does so, the vendor may sue the purchaser for the price, or re-sell the article; & if by such sale he incurs a loss, then the purchaser must make it good. But the vendor must take into consideration such payments as the purchaser may have made on account.—FOSTER *v.* HEINTZMAN & CO., [1923] 4 D. L. R. 166.—CAN.

352 ii. —— ——.] — BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—CAN.

354 i. —— *Anticipatory breach.*]—Where there had been a breach of contract by defts.:—*Held:* pltfs. were entitled to nominal damages only, as when pltfs. found that defts. would not carry out the contract, they should have gone into the market & done the best they could with a similar contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.* 15 O. W. N. 339.—CAN.

sm. —— *Trouble & risk attending performance of contract.*]—In allowing damages for wrongful repudiation of a contract to accept delivery of poles not yet cut:—*Held:* there should be taken into consideration the risks of disappointment & difficulty in cutting & delivery that might arise from unexpected sources; & an allowance in reduction of damages should be made for the release from the care, trouble & risk attending a full execution of the contract.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

364 iv. —— —— *To assault.*]—On appeal from a judgment for pltf. in an action for assault the damages were reduced to $10, the assault having been merely a technical one, which apparently had been courted by pltf. with a view to an action for damages.—HODGKINSON *v.* MARTIN, [1928] 3 W. W. R. 763.—CAN.

m i. —— *Continuing contract with doctor.*]—Where a person has a contract with a doctor whereunder he is entitled to the doctor's services when they are required as a result of disease, accident or other causes, he cannot, in an action for damages for personal injuries, recover as damages the amount which such services would have cost had he not entered into such contract.—TAYLOR *v.* TURNER, [1925] 3 D. L. R. 574; [1925] 2 W. W. R. 490.—CAN.

PART IV. SECT. 3.

q i. —— *Conversion—Onus of proof.*]—Where it was found that there was no authority in deft. bank to sell shares pledged as collateral security without judicial process:—*Held:* as to damages, the burden was on the bank to show it got full value for the shares.—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—CAN.

380 xi. ——.]—In an action for damages for breach of contract, the measure of damage is the estimated loss directly & naturally resulting from the breach thereof.—HATFIELD & Co. *v.* CRONKHITE (1922), 50 N. B. R. 456.—**CAN.**

380 xii. ——.]—In an action for damages for non-acceptance of goods, the measure of damages is the estimated loss directly & naturally resulting in the ordinary course of events from the buyer's breach of contract.—RECORD FOUNDRY & MACHINE Co. *v.* GARSON, [1923] 2 D. L. R. 142; 50 N. B. R. 110.—**CAN.**

380 xiii. —— *Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract:—*Held:* plffs. were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished goods, less their value at the time of or within a reasonable time of the breach.—HAMILTON GEAR & MACHINE Co. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

380 xiv. ——.]—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident.—COPLEY *v.* FINKELSTEIN, [1928] 3 D. L. R. 671; [1928] 3 W. W. R. 89.—**CAN.**

sb. *Nominal damages.*]—Nominal damages awarded where breach of contract, but no substantial damage.—CANADIAN WOODMEN OF THE WORLD *v.* HOOPER, [1935] 2 D. L. R. 802.—**CAN.**

sn. *Consignment of wheat for sale—Failure to sell.*]—Where grain is consigned for sale & the consignee is instructed to sell it as soon as it is unloaded, if the price be then a certain figure or better, but he neglects to carry out such instructions, the consignor is entitled in damages to the difference between the price at the time of unloading & the lower price on the day when he learns that the grain has not been sold, even though he does not immediately notify the consignee that his instructions have not been carried out.—PARADIS *v.* FEDERAL GRAIN Co., LTD., [1925] 2 W. W. R. 164.—**CAN.**

sw. *Agreement to exchange & sell timber berths—Loss of profits—Substantial damages.*]—KNOX & LEWIS *v.* HALL, [1927] 2 D. L. R. 1128; [1927] 3 W. W. R. 27; 38 B. C. R. 348; *revsd sub nom.* HALL *v.* KNOX, [1928] 1 D. L. R. 193; [1928] S. C. R. 87.—**CAN.**

sb. *Agreement to pay for mineral claim & keep up assessment work—Claim allowed to lapse.*]—*Held:* the measure of damages was the value, if any, of the property lost.—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593; 38 B. C. R. 165.—**CAN.**

sd. *Wrongful eviction of lessee.*]—In regard to damages recoverable by a wrongfully evicted lessee, the case is governed by the general rule applicable to all breaches of contract, namely, that the party wronged is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed. Compensation to the lessee will not be confined to the value of the unexpired term, but will include all loss naturally resulting from the eviction.—HAACK *v.* MARTIN, [1927] 3 D. L. R. 19; [1927] S. C. R. 413.—**CAN.**

sf. *Lease of racehorse to trainer for specified period—Owner taking horse away before expiration of period—Loss of prospective winnings recoverable.*]—HOWE *v.* TEEFY (1927), 27 S. R. N. S. W. 301; 44 N. S. W. W. N. 102.—**AUS.**

sg. *Measure selected by plaintiff.*]—BURKARD & Co., LTD. *v.* WARLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sh. *Breach of contract to summerfallow.*]—A lessee under a crop-payment lease broke his covenant to summerfallow. The lessor, who had the work done at his own expense, contended that the delay in doing it would reduce the crops to be grown & claimed damages on that head:—*Held:* since it was impossible to say with any degree of certainty that the crops in the subsequent years would be less than they would have been had deft. performed his covenant, such damages could not be awarded.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26; 4 D. L. R. 1022.—**CAN.**

Pltf. gave a bond conditioned to replace 5 per cent. stock on a given day. After that day government gave the holders of that stock an option, to be paid off at par, or to commute their stock for 3 per cents. Pltf. expressed to deft. a wish to have the stock replaced, that he might be paid at par, but no wish to take 3 per cent. stock :—*Held :* he was not entitled to recover the price of so much 3 per cent. stock as he might have obtained in exchange for the 5 per cents.—M'ARTHUR *v.* SEAFORTH, LORD (1810), 2 Taunt. 257 ; 127 E. R. 1076.

Annotations :—**Consd.** Gillingham *v.* Waskett (1824), M'Cle. 198. **Distd.** Gainsford *v.* Carroll (1824), 2 B. & C. 624 ; Williams *v.* Peel River Land & Mineral Co., Ltd. (1886), 55 L. T. 689.

404d. ——.]—In assessing damages on a writ of inquiry, on a bond to replace stock, the fair rule is to take the price of the stock on the day of the trial, or the day previous.—HARRISON *v.* HARRISON (1824), 1 C. & P. 412.

404e. ——.]—The true measure of damages in an action for not re-delivering shares lent to deft. upon a contract to return them on a given day, is, not the market-price at the time of the breach, but the market-price at the time of the trial.—OWEN *v.* ROUTH & OGLE (1854), 14 C. B. 327 ; 2 C. L. R. 365 ; 23 L. J. C. P. 105 ; 22 L. T. O. S. 260 ; 18 Jur. 356 ; 2 W. R. 222 ; 139 E. R. 134.

408a. Option to purchase—Profit on resale lost by improper withdrawal.]—Pltf., having an option from deft. to purchase a freehold house for £4,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000 :—*Held :* as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488 ; 124 L. T. 145.

411a. Contract to print bank-notes—Unauthorised use of plates.]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the Bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The Bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the Bank for other notes. The Bank had an exclusive licence to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the Bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the Bank was due to their own voluntary action in paying the unauthorised notes ; (*b*) that the loss to the Bank was limited to the cost of printing & paper in regard to the new issue :—*Held :* (1) the loss arose naturally from the breach of contract ; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes, together with the cost of printing the genuine notes withdrawn.

(3) Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, & he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken (Lord MACMILLAN). — BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD., WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, [1932] A. C. 452 ; 101 L. J. K. B. 417 ; 147 L. T. 101 ; 48 T. L. R. 404 ; 76 Sol. Jo. 327, H. L.

Annotations :—*As to* (1) **Consd.** The Edison (1932), 147 L. T. 141. *As to* (3) **Refd.** Hall, Ltd. *v.* Barclay, [1937] 3 All E. R. 620.

412a. Continuation of contract depending on third party.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it :—*Held :* as the continuation of the agreement between pltfs. & defts. for more than six months depended on the volition of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltfs. were entitled only to damages in respect of a period of one month.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANÇAISE (1926), 42 T. L. R. 735.

413. *Add. Annotations :*—**Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711 ; Tolley *v.* Fry (J. S.) & Sons, Ltd., [1930] 1 K. B. 467.

418. *Add. Annotations :—As to* (1) **Apld.** Smith *v.* Schilling, [1928] 1 K. B. 429. **Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346. *As to* (2) **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotations :—Generally,* **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481 ; Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

425. *Add. Annotations :—As to* (1) **Consd.** Pearl Assurance Co. *v.* South Africa Union Government, [1934] A. C. 570. *As to* (2) **Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373 ; Pearl Assurance Co. *v.* South Africa Union Government (1934), 50 T. L. R. 563.

426. *Add. Annotations :—As to* (1) **Apld.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481. *As to* (2) **Apld.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. **Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

426a. ——.]—Deft. was a member of pltf. society, which was formed to organise the marketing of home-grown hops by their sale through pltfs., & by a written agreement deft. undertook to deliver to pltfs. all hops grown or produced by him in 1926 on certain land. The agreement also provided that if deft. failed to deliver to pltfs. the hops or disposed of them otherwise than through pltfs., he would pay to pltfs. as & for liquidated damages £100 per acre or proportionately on a less acreage :—*Held :* as a breach of the agreement might occasion serious damage which it might be difficult to value exactly or ascertain beforehand, the sum fixed by the parties as a pre-estimate of the damage, namely, £100 per acre, was not a penalty but liquidated damages.—ENGLISH HOP GROWERS *v.* DERING, [1928] 2 K. B. 174 ; 97 L. J. K. B. 569 ; 139 L. T. 76 ; 44 T. L. R. 443, C. A.

Annotation :—**Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

426b. ——.]—A contract entered into by pltfs. for the manufacture, delivery & erection of an acetone recovery plant for defts. to be used by defts. in the process of manufacturing artificial silk, provided that the plant should be delivered & erected in 18 working weeks from the receipt of final approval of the drawings. The contract stipulated by clause 10 that : "If this period of 18 working weeks is exceeded you (pltfs.) to pay by way of penalty the sum of £20 per working week you exceed the 18 weeks. . . ." There was a delay of 30 weeks by pltfs. in delivering & erecting the recovery plant ; & in an action by them claiming the agreed price defts. counterclaimed for damages for delay, the actual loss which they suffered having considerably exceeded the "penalty" of £20 for each of the 30 weeks :—*Held :* the sum of £20 a week was agreed damages & was the only sum that defts. were entitled to recover.—CELLULOSE ACETATE SILK CO., LTD. *v.* WIDNES FOUNDRY (1925), LTD., [1933] A. C. 20 ; 101 L. J. K. B. 694 ; 147 L. T. 401 ; 48 T. L. R. 595 ; 38 Com. Cas. 61, H. L. ; *affg.*, S. C. *sub nom.* WIDNES FOUNDRY (1925), LTD. *v.* CELLULOSE ACETATE SILK CO., LTD., [1931] 2 K. B. 393, C. A.

PART VI. SECT. 1, SUB-SECT. 1.

422 iii. ——.]—Acting under the provisions of the Diamond Cutting Act, 1919, the Govt. of the Union of South Africa, by the Under-Secretary for Mines & Industries, on May 28, 1928, entered into an agreement with certain diamond cutters whereby in effect the cutters undertook to set up a diamond cutting industry in the Union & within a period of six months to erect & complete a diamond cutting factory or factories, to provide the necessary machinery therefor, & to conduct all necessary operations in connection therewith. The contract was for five years, & the cutters, by clause 14, undertook to deposit with the Union, if so required, a total guarantee of £10,000, which sum, according to the agreement, was to be considered as liquidated damages & to be paid to the Union in the event of the cutters' failure to carry out the obligations imposed on them under the agreement. The agreement was ratified by Parliament & the full guarantee was called for, & the cutters arranged with applt. assurance co. to give the Union a guarantee for £10,000. The cutters, in pursuance of the agreement, proceeded to erect a factory, but on Dec. 31, 1931, they repudiated the agreement & closed down the factory. In Mar. 1932, the business of the cutters was sequestrated as insolvent by the Supreme Ct. of South Africa. On a preliminary point arising on a claim by the Union against applt. assurance co. as guarantors :—*Held :* on the construction of the Roman Dutch law, as at present developed, the sum claimed was a penalty & actual proved damage (up to the total sum guaranteed) could alone be recoverable in respect of it, & therefore it would fall to the Union to prove damage & to give before trial such particulars thereof as might be asked for & as the appropriate ct. in South Africa might see fit to allow.—PEARL ASSURANCE CO., LTD. *v.* UNION OF SOUTH AFRICA GOVERNMENT, [1934] A. C. 570 ; 103 L. J. P. C. 174 ; 152 L. T. 4 ; 50 T. L. R. 563, P. C.—**S. AF.**

PART VI. SECT. 1, SUB-SECT. 2.

424 vii. ——.]—A rate of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof :—*Held :* to be liquidated damages & not a penalty.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871 ; [1925] 1 W. W. R. 505 ; 34 B. C. R. 533.—**CAN.**

424 viii. ——.]—A contract between pltfs. & deft. provided that should deft. fail to deliver to pltfs. all the wheat covered by the contract, he would pay to pltfs. as liquidated damages 25 cents per bushel for all wheat which he should have failed to deliver :—*Held :* the 25 cents per bushel was not a penalty but liquidated damages.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* ZUROWSKI (Sask.), [1926] 3 D. L. R. 810 ; [1926] 2 W. W. R. 604.—**CAN.**

424 ix. ——.]—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH, [1927] Argus L. R. 415.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.

442 i. —— —— *Onus of disproof.*]—If the sum mentioned in a bond is expressed to be a penalty, the *onus* of showing that it was intended as liquidated damages is on the person asserting it.—R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83.—**CAN.**

448 iii. —— ——.]—Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words "liquidated damages" according to their ordinary meaning & may treat such a sum as a penalty. — SHATILLA *v.* FEINSTEIN, [1923] 3 D. L. R. 1035 ; 16 Sask. L. R. 454 : [1923] 1 W. W. R. 1474.—**CAN.**

——.]—Deft., who had been placed upon the "stop list" of pltfs., entered into a "price-maintenance" agreement with them that he would not sell their goods at prices lower than those set out in printed schedules from time to time issued by them. The agreement contained a clause that for every breach thereof by deft. he would pay to pltfs. the sum of £15 as liquidated damages in respect of each sale. Deft. committed breaches of the agreement & an action was brought for an injunction & to recover £165 as agreed & liquidated damages in respect of 11 such breaches. At the trial the learned judge held that the disparity between the price of the article sold & the sum to be paid as damages prevented such damages from being liquidated damages & were a penalty:—*Held:* the only question to be considered was whether the sum claimed as liquidated damages was a fair pre-estimate of the damage likely to flow from the breach, & not unconscionable. Neither the fact that pltfs. were a powerful & influential co. & the trader a man in a very small way of business nor the fact that there was considerable disparity between the sum claimed as liquidated damages & the price of the article sold was relevant.—IMPERIAL TOBACCO CO. (OF GREAT BRITAIN & IRELAND), LTD. *v.* PARSLAY, [1936] 2 All E. R. 515; 52 T. L. R. 585; 80 Sol. Jo. 464. C. A.

455. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

461. *Add. Annotations:*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373; Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1935), 52 T. L. R. 61. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

483. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

487. *Add. Annotation:*—**Folld.** Lock *v.* Bell, [1931] 1 Ch. 35.

487a. —— —— ——.]—By a contract dated Oct. 19, 1928, pltf. agreed to sell to deft. all her right, title, & interest in a licensed house known as T. of which she was the licensee. The contract provided that the purchase-money should be paid "on or about" Nov. 10, 1928, & that deft. should forfeit the deposit of £120 which he had paid if he should fail to fulfil his part of the contract; also that either party refusing to comply with or neglecting to perform any part of the agreement should pay to the other, on demand, the sum of £200. On Oct. 8, 1928, deft. had given to the brewers who were the freeholders of T. references which they had accepted by Oct. 10. He went to the magistrates' clerk & signed the ordinary notices on reference to a request for a temporary transfer on Nov. 10, & for full transfer on Dec. 8. At least a week before Nov. 10 deft. knew that he would be unable to complete the purchase of T. unless he could raise a loan. His brokers acting in the matter sent him a notice to attend on Nov. 10. He did so, & first saw the brewers, telling them that he could not complete, & that the notice of application for transfer would have to be withdrawn & another one given. He then arranged with pltf. that completion should take place on Dec. 8. Deft., however, did not attend to complete. On Dec. 22 deft. stated that he would complete on Jan. 30. In an action by pltf. for a declaration that the contract had been rescinded & the deposit of £120 forfeited, & for damages:—*Held:* under the terms of the contract, the sum of £200 damages was in the nature of a penalty, & therefore not recoverable.—LOCK *v.* BELL, [1931] 1 Ch. 35; 100 L. J. Ch. 22; 144 L. T. 108.

506. *Citation:*—For "*on appeal*" read "*quent proceedings.*"

Annotation:—Delete "*Generally*, **Mentd.** *Re* Hall (1864), 11 L. T. 579."

527a. Covenant to pay excess over given amount—Penalty.]—A covenant by deft. that the debts of a certain firm into which pltf. was about to be admitted as partner did not exceed a specific sum, & that if they did deft. would pay on demand of the pltf. the sum by which the debts might exceed the specific amount:—*Held:* (1) to be a covenant for an unliquidated sum; (2) it was properly left to the jury to say what loss pltf. had sustained by a breach of the covenant by deft.—WALKER *v.* BROADHURST (1853), 8 Exch. 889; 23 L. J. Ex. 71.

Annotation:—**Consd.** Johnson *v.* Diamond (1855), 11 Exch. 73.

542. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373.

543. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931], 2 K. B. 393.

544. *Add. Annotations:*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373. **Refd.** The Arpad, [1934] P. 189.

453 iv. —— ——.]—*Held:* having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.

471 ii. —— —— ——.]—The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator:—*Held:* to be a penalty & only recoverable to the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.—R. A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 88—**CAN.**

i. —— ——.]—FRIED *v.* GEORGES, [1930] 3 D. L. R. 664.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 6.

p i. —— *Agreement for share of profits under option—Failure to take up option—Liquidated damages.*]—KENNEDY *v.* HARRIS (1912), 23 O. W. R. 179; 4 O. W. N. 183; 7 D. L. R. 291.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 7.

529 iii. —— ——.]—Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Deft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to $2 per acre for each acre of the 1,000 acres unsold. Deft. failed to effect a sale:—*Held:* not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.—NORTHERN TRUSTS CO. [1924] 2 W. W. R. ——.]—OLIVER *v.* BELIK, [1931] 1 W. W. R. 24.—**CAN.**

Part VII.—Pleading, Proof and Assessment.

550. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee (1933), 103 L. J. Ch. 67.

551. *Add. Annotation :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

557. *Add. Annotation :*—**Folld.** Hinton *v.* Hinton & Spillett (1930), 46 T. L. R. 585.

557a. —— —— —— ——.]—In a divorce case, where co-resp. has not appeared, & where the jury award damages in excess of the amount claimed, the claim should not be amended until a summons for leave to amend has been served on the co-resp.—HINTON *v* HINTON & SPILLETT (1930), 46 T. L. R. 585 C. A.

574a. —— —— **Contingent damages.**]—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft.—NEWTON *v.* HARLAND (1840), 1 Man. & G. 644 ; 1 Scott, N. R. 474 ; 2 Jur 350 ; 133 E. R. 490.

576. After this case add "—— **In matrimonial causes.**]—*See* HUSBAND & WIFE, No. 4677a.'

576a. Assessment by Court of Appeal—Case tried without jury.]—REANEY *v.* CO-OPERATIVE WHOLESALE SOCIETY, LTD., [1932] W. N. 78 73 L. Jo. 292 ; 173 L. T. Jo. 262, C. A.

592a. ——.]—Where a jury has improperly awarded an annuity by way of damages instead of a lump sum the judge should redirect the jury ; he has no power to enter judgment for the capitalised amount of the annuity.—FOURNIER *v.* CANADIAN RY. CO., [1927] A. C. 167 ; 95 L. J. P. C. 177 ; 135 L. T. 609 ; 42 T. L. R. 629, P. C.

594. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

598. *Annotation :*—For "**Refd.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544," read "**Expld.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544."

Add. Annotation :—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

599. *Add. Annotation :*—**Expld.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

601. *Add. Annotation :*—**N.F.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

602. *Add. Annotations :*—**Apld.** The Baarn, [1933] P. 251. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

604. *Add. Annotations :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Mentd.** Richardson *v.* Richardson, [1927] P. 228.

608. *Add. Annotation :*—**Consd.** *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

609. *Add. Annotation :*—**Refd.** The Baarn, [1933] P. 251.

611. *Add. Annotation :*—**Folld.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

PART VII. SECT. 1.

549 xv. —— ——.] — To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452 ; 1 W. W. R. 1249 ; 18 Sask. L. R. 292. —**CAN.**

549 xvi. *S. P.* BUTT *v.* OSHAWA CORPN., WILKINSON *v.* OSHAWA CORPN., [1926] 4 D. L. R. 1138 ; 59 O. L. R. 520.—**CAN.**

549 xvii. —— ——.]—In an action for breach of covenant by delaying the completion of a railway crossing, which afforded the best road to pltf.'s saw mill :—*Held :* evidence of special damage was not admissible, none being alleged in the declaration, & pltf. not having notified defts. at the time of the fact of his suffering the loss of profit, which constituted the alleged damages. —SHAVER *v.* GREAT WESTERN RY. CO. (1857), 6 C. P. 321.—**CAN.**

PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*]—On a claim for damages for personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done ; the fact that he intends to pay a sum to his nurse is not sufficient.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452 ; 1 W. W. R. 1249 ; 18 Sask. L. R. 292. —**CAN.**

ii. ——.]—CLAUSEN *v.* CANADIAN TIMBER & LANDS, LTD. (1925), 35 B. C. R. 461.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

aa. *Default judgment—Assessment by master—No jurisdiction.*]—PIERSON & PIERSON *v.* LAY, [1931] 1 W. W. R. 398.—**CAN.**

ab. *Necessity for judgment.*]—An assessment of damages should not be ordered except under a judgment declaring the plaintiff entitled thereto. — STONE *v.* VULCAN MUNICIPAL HOSPITAL DISTRICT, [1930] 1 W. W. R. 839 ; 3 D. L. R. 210.—**CAN.**

ad. *Order for inquiry—Report of referee—Powers of judge.*]—Where under his formal judgment as entered a trial judge ordered that an inquiry be made to ascertain what, if any, damages had been caused pltf. by certain acts of defts., & no appeal was taken from said judgment or application made to vary it :—*Held :* that it was not open to the trial judge, on receiving the report of the referee, to vary the scope or operation of the order for reference by placing a construction on it other than that which it clearly bore.—BRODT *v.* WEARMOUTH & PYLE, [1937] 1 W. W. R. 777 ; 2 D. L. R. 457 ; 51 B. C. R. 344. —**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.

575 ii. —— *On same principles as jury.*]—In assessing damages against a member of the Winnipeg Grain Exchange for wrongfully closing out the account of a customer, a judge is not bound to take the highest peak as the measure thereof, but may base his assessment upon the principal adopted by juries.—NELSON *v.* BAIRD & BOTTERELL (1915), 30 W. L. R. 822 ; 8 W. W. R. 144 ; 25 Man. L. R. 244.—**CAN.**

579 vi. ——.]—When the writ in an action, under Wrongs Act, 1915, Part III., has been endorsed for trial with a jury, sect. 16 of that Act makes the jury the tribunal to assess the damages. If interlocutory judgment be entered in default of appearance, Ord. XIII., r. 5, does not, in the absence of consent of the parties, enable the prothonotary to ascertain the damages. The deft. is entitled to notice of the assessment of damages by the jury.—WALSH *v.* MCMICHAEL, [1928] V. L. R. 345 ; [1928] Argus L. R. 195.—**AUS.**

PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency —Date of judgment sued on.*]—Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment :—*Held :* the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay. —MADHAVJI VISRAM *v.* RAMNIKLAI VADILAL (1921), I. L. R. 47 Bom. 487.—**IND.**

ii. —— ——.]—*Held :* the rate for conversion of dividends payable in foreign currency was the rate ruling on the date when each dividend became due.—THE CUSTODIAN *v.* BLUCHER, [1927] 3 D. L. R. 40 ; [1927] S. C. R. 420.—**CAN.**

603 iii. —— ——.]—In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.— SHAKOOL & CO. *v.* FINLAY FLEMING & CO. (1923), I. L. R. 1 Ran. 339.— **IND.**

612. For the existing paragraph in original volume substitute the following paragraph :—

—— ——.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment. — PEYRAE *v.* WILKINSON, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T. 511.

Annotation :—**Refd.** The Baarn, [1933] P. 251.

612a. —— ——.]—Between 1903 & 1909 pltfs., Russian subjects, effected with defts., an American insurance co. then having a branch in Russia, insurances in the form of four endowment life policies & paid the premiums in Russia in roubles down to 1918. The amounts secured by two of the policies having become payable :—*Held :* judgment should be entered for pltfs. for the sterling equivalent of the amounts due in chervonetz roubles at the date when those amounts became due.—BUERGER *v.* NEW YORK LIFE ASSURANCE Co. (1927), 96 L. J. K. B. 930; 137 L. T. 431; 43 T. L. R. 601, C. A.

Annotation :—**Refd.** Perry *v.* Equitable Life Assce. Society of U. S. A. (1929), 45 T. L. R. 468.

613. *Citations :*—Add " 15 Asp. M. L. C. 570." Delete " *revsg.* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A."

Annotations :—Delete " **Mentd.** Czarnikow *v.* Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690."

614. *Add. Annotation :*—**Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

615. After this case add " *See, also,* INSURANCE, Vol. XXIX., p. 389, No. 3104."

618. *Add. Citations :*—93 L. J. Ch. 263; 130 L. T. 109.

Add. Annotations :—*As to* (1) **Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373. *Generally,* **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

625. *Add. Annotations :*—*As to* (1) **Refd.** Chapman *v.* Ellesmere (1932), 146 L. T. 538. *As to* (2) **Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108. *Generally,* **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

625a. —— ——.]—In assessing damages against joint tortfeasors one set of damages will be fixed; & they must be assessed according to the aggregate amount of the injury resulting from the common act.—CHAPMAN *v.* ELLESMERE (LORD), [1932] 2 K. B. 431; 101 L. J. K. B. 376; 146 L. T. 538; 48 T. L. R. 309; 76 Sol. Jo. 248, C. A.

626. *Add. Annotation :*—**Refd.** The Koursk, [1924] P. 140; Pirie *v.* Richardson, [1927] 1 K. B. 448.

631. *Add. Annotations :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309; Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

633. *Add. Annotation :*—**Refd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

637. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404.

638. *Add. Annotation :*—**Consd.** The Koursk, [1924] P. 140.

648. *Add. Annotations :*—**Consd.** Wing Lee *v.* Lew, [1925] A. C. 819. **Distd.** Reaney *v.* Co-operative Wholesale Society, Ltd. (1932), 173 L. T. Jo. 262. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1; Ley *v.* Hamilton (1934), 151 L. T. 360; Owen *v.* Sykes, [1936] 1 K. B. 192.

648a. ——.]—An appeal from a judge trying a case without a jury is a rehearing by the Ct. of Appeal with regard to all the questions involved in the action, including the question what damages ought to be awarded. But the Ct. of Appeal will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that the Ct. of Appeal should be convinced either that the trial judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Ct. of Appeal, an entirely erroneous estimate of the damage to which pltf. is entitled.

A doctor, in general practice, who was thirty-nine years of age & an athlete, sustained severe injuries in an accident through the negligence of deft.'s servant, the injuries having permanent results which necessitated the doctor employing an assistant to help him carry on his practice & also prevented him from following his athletic career. The doctor brought an action against deft. to recover damages for his personal injuries, which action was tried by a judge without a jury, & the judge awarded pltf. the sum of £10,000 as damages. Deft. appealed against the decision on the ground *(inter alia)* that the damages were excessive :—*Held :* by the Ct. of Appeal, although if they had tried the case in the first instance they would probably have awarded a smaller sum as damages, yet they would not review the finding of the trial judge as to the amount of damages, as they were not satisfied that the trial judge acted upon a wrong principle of law, or that the amount awarded as damages was so high as to make it an entirely erroneous

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PART VII. SECT. 3, SUB-SECT. 4.

627 ii. ——.]—GAY Co., LTD. *v.* TRICK, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—CAN.

PART VII. SECT. 3, SUB-SECT. 5.

gi. —— *Right of—Defendant not entitled to examine plaintiff with view to assessment of damages.*]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481; 62 O. L. R. 370.—CAN.

st. When assessment must be by master.]—HENNIGAR *v.* HENNIGAR (N. B.), [1926] 1 D. L. R. 891.—CAN.

PART VII. SECT. 4, SUB-SECT. 1.

sv. Trial without jury—Power of appellate court to assess.]—An appellate ct., where an action has been tried without a jury, has power, without the consent of counsel, to assess damages itself without ordering a new trial.—GENDERS *v.* SOUTH AUSTRALIAN RYS. COMR., [1928] S. A. S. R. 272.—AUS.

estimate of the damage to which pltf. was entitled.—OWEN *v.* SYKES, [1936] 1 K. B. 192; 105 L. J. K. B. 32; 154 L. T. 82; 80 Sol. Jo. 15, C. A.

673. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

721a. ——.]—The Ct. of Appeal may set aside the assessment of damages by a jury where the amount assessed is so small or so large as that twelve sensible jurors could not reasonably have given the verdict, or as to lead the ct. to the conclusion that the jury must have taken into consideration matter which they ought not to have considered, or that they have omitted to pay regard to matter which they ought to have considered.—SMITH *v.* SCHILLING, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.

734. *Add. Annotations:*—**Consd.** Roach *v.* Yates, [1937] 3 All E. R. 442. **Refd.** Owen *v.* Sykes, [1936] 1 K. B. 192; Rose *v.* Ford, [1936] 1 K. B. 90.

737. *Add. Annotations:*—**Apld.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1. **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108; Ley *v.* Hamilton (1934), 151 L. T. 360; Farmer *v.* Hyde, [1937] 1 K. B. 728.

741. *Add. Annotation:*—**Refd.** Farmer *v.* Hyde, [1937] 1 K. B. 728.

751. *Add. Annotations:*—**Refd.** Smith *v.* Schilling, [1928] 1 K. B. 429; Ley *v.* Hamilton (1934), 151 L. T. 360; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346; Owen *v.* Sykes (1935), 105 L. J. K. B. 32.

751a. —— ——.]—SMITH *v.* SCHILLING, No. 721a, *ante*.

753. *Add. Annotations:*—**Refd.** Croker *v.* Croker (1932), 48 T. L. R. 597; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

762a. —— —— ——.]—Pltf., who since 1928 had been engaged in business in this country, alleged that deft. had published letters on Aug. 15, 1932, & on Aug. 27, 1932, which libelled him in connection with a business enterprise in which pltf. & deft. were jointly interested & he claimed damages. Deft. pleaded that the words complained of, which concerned a confidential report which deft. had received from Australia, had been published on privileged occasions without malice towards pltf. & under a sense of duty in the honest belief that they were true. In the action which was tried before the Lord Chief Justice & a special jury the jury found that pltf. & deft. were not jointly interested in the business enterprise on Aug. 15, 1932, & on Aug. 27, 1932, & further that deft. was not actuated by malice on the first occasion but was actuated by malice on the second occasion & they awarded £5,000 damages. Deft. appealed on the ground that the damages were excessive of that the verdict was against the weight & evidence, & by an amendment which he

PART VII. SECT. 4, SUB-SECT. 3.—A.

661 x. —— ——.]—COGHLIN *v.* LA FONDERIE DE JOLIETTE (1903), 34 S. C. R. 153.—**CAN.**

661 xi. —— ——.]—Where damages are claimed for the depreciation in value of an article, the basis of assessment is the difference between the value of the article immediately before it was damaged & its value immediately afterwards. Where damages have been assessed on a wrong principle a new trial will be ordered.—DRYDEN *v.* ORR (1928), 28 S. R. N. S. W. 216; 45 N. S. W. W. N. 44.—**AUS.**

661 xii. —— ——.]—BRENNER *v.* CISEK, [1929] 3 D. L. R. 457; 2 W. W. R. 158; 23 S. L. R. 573.—**CAN.**

661 xiii. —— ——.]—MIDDLETON *v.* MCMILLAN (B. C.), [1929] 1 D. L. R. 977.—**CAN.**

661 xiv. —— ——.]—MACNAMARA *v.* DESBRISAY, [1930] 4 D. L. R. 73.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (a).

680 v a. —— ——.]—*Held:* although the damages were excessive, the ct. would not interfere upon that account.—MCMONAGLE *v.* ORTON (1888), 5 Man. L. R. 193.—**CAN.**

680 xi. ——.]—New trial granted on payment of costs on the ground of excessive damages.—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

689 i. —— *Misconduct of jury.*]—Where an assessment of damages is not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they ought to have taken into account.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; [1923] 3 W. W. R. 1152.—**CAN.**

692 viii a. —— —— ——.]—Where the damages were excessive:—*Held:* there should be a new trial, unless pltf. consented to reduce his verdict.—CLARKE *v.* MURRAY (1877), *temp.* Wood, 127.—**CAN.**

692 xviii. —— —— ——.]—In an action for damages for breach of contract, the jury awarded pltf. £30 for special damages, including law costs, £250 for loss of profits, & £20 for general damages. Deft. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive:—*Held:* as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to pltf. consenting to the elimination of the amount awarded as general damages.—STEWART *v.* O'BRIEN, [1925] N. Z. L. R. 400.—**N.Z.**

692 xix. —— —— ——.]—GOLDMAN *v.* KIRBY & SONS, LTD., [1927] S. R. S. 58.—**AUS.**

q i. ——.]—Damages will not be reduced on appeal unless the jury were misled or have erred badly.—PETERSON *v.* MCINTOSH, [1934] 1 D. L. R. 289.—**CAN.**

705 ii a. —— ——.]—In an action for work & labour, the second trial being before a special jury struck by defts., & the verdict being larger than before, the ct. declined to interfere for excessive damages.—STOCK *v.* GREAT WESTERN RY. CO. (1858), 9 C. P. 134.—**CAN.**

705 iii. ——.]—MASON *v.* SOUTH NORFOLK RY. CO. (1889), 19 O. R. 132.—**CAN.**

705 iv. —— *Assessment by jury in excess of claim—Statement of claim amended by trial judge.*]—In an action of trespass to a certain lot of land & expulsion of pltf. therefrom, pltf. claimed $500, the jury assessed the damages at $1,500, & the trial judge amended the statement of claim accordingly:—*Held:* the damages were excessive, & a new trial was granted.—ROBINSON *v.* HALL (1832), 1 O. R. 266.—**CAN.**

705 v. —— *Unless party agreed to reduction of damages.*]—SIBBALD *v.* GRAND TRUNK RY. CO., TREMAYNE *v.* GRAND TRUNK RY. CO. (1890), 19 O. R. 164.—**CAN.**

731 ix. —— ——.]—In an action to recover an amount due under a contract for purchase of an hotel, deft. set up a breach of warranty, but at the trial a plea of misrepresentation was substituted. The jury were directed that the proper measure of damages recoverable by deft. would be that applicable in an action on a breach of warranty:—*Held:* there should be a new trial, for the purpose of assessing damages upon the basis of the difference between the market price at the date of the contract & the contract price.—HARDMAN *v.* MCLEOD (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (b).

711 vi. ——.]—The ct. will not interfere, although the damages are greater than the ct. would have allowed.—CLARKE *v.* CANADIAN NORTHERN RY., [1931] 4 M. P. R. 164.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (c).

748 i. *Mistake—Acting upon wrong principle.*]—Where a jury assessed damages on a wrong principle:—*Held:* the ct. would set aside the verdict on the ground of excessive damage having been given.—FENERTY *v.* HALIFAX COUNTY (1858), 3 N. S. R. (2 Thom.) 412.—**CAN.**

asked for on the hearing of the appeal he contended that the Lord Chief Justice was wrong in holding that the occasion of the publication on Aug. 15 was not privileged & that he should have decided as a matter of law that it was privileged :—*Held :* (1) on the pleadings & the case made thereon at the trial the ruling of the Lord Chief Justice that the occasions were not privileged was correct & inevitable ; (2) there was no reason for inferring that the jury took into account any irrelevant consideration in fixing the amount of damages in question. In all the circumstances the amount of the damages, substantial as it was, was well within the reasonable limits of a jury's discretion in such matters.—LEY *v.* HAMILTON (1935), 153 L. T. 384 ; 79 Sol. Jo. 573, H. L.

764. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

784. Ltd., [1937] 2 All E. R. 60. **Refd.** Schilling, [1928] 1 K. B. 429 ; **Flint** *v.* [1935] 1 K. B. 354 ; **Ley** *v.* **Hamilton** (151 L. T. 360 ; **Rose** *v.* **Ford,** [1937] 3 All E. R. 359.

784a. ——.]—SMITH *v.* SCHILLING, No. 721a, *ante.*

795. *Add. Annotation :*—**Refd.** Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

820. After this case add :—

—— **Failure to assist trial judge.**]—*See* HILLAS & CO., LTD. *v.* ARCOS, LTD., SALE OF GOODS, No. 28b, *post.*

830. After this case add " *See, also,* JURIES, Vol. XXX., pp. 245, 246."

832a. ——.]—SMITH *v.* SCHILLING, No. 721a, *ante.*

PART VII. SECT. 4, SUB-SECT. 3.—C. (a).

785 ix. ——.]—PAT *v* ILLINOIS PUBLISHING & PRINTING CO., [1929] 3 D. L. R. 376 2 W. W. R. 14 ; 23 S. L. R. 564.—**CAN.**

785 x. ——.]—Where on an appeal for an increase of damages assessed by a trial judge it does not appear that the judge failed to take into consideration some element of damage which he should have considered, his award should not be disturbed.—MCCULLOUGH *v.* ROBINSON, [1931] 1 D. L. R. 620 ; [1930] 3 W. W. R. 534 ; 25 S. L. R. 158.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—C. (d).

831 vii. ——.]—A Ct. of Appeal will not increase the amount of damages awarded by a trial judge on the verdict of a jury unless it appears that the jury has failed to consider some element of damage which should have been considered.—STROUD *v.* DESBRISAY & COLGAN (1930), 42 B. C. R. 507.—**CAN.**

DANGEROUS GOODS.

See CARRIERS ; NEGLIGENCE ; SALE OF GOODS ; SHIPPING, ETC.

DATE.

BILLS OF EXCHANGE ; BILLS OF SALE ; DEEDS ; STATUTES ; TIME.

DEAD BODIES.

See BURIAL AND CREMATION ; CORONERS.

DEEDS AND OTHER INSTRUMENTS.

Part I.—Deeds.

After this case add :—

Share certificate.]—*See* SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, CORPORATIONS, No. 182a, *ante*.

28. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

57. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

61. *Add. Annotation :*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

74. *Add. Annotation :*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

108. For cross-reference before this case read " *See, now*, Law of Property Act, 1925 (c. 20), s. 73."

133. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Leighton's Conveyance, *Re* Land Registration Act, 1925, [1936] 1 All E. R. 667.

166. *Add. Annotation :* — **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

267. *Add. Annotation :*—**Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

364. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

366. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

370a. Uncertain whether one party alive—Execution by others—Subsequent refusal to concur.]—A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained. On the death of W. M. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. M. & his wife, who predeceased him, & for whom W. M. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. M. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, and it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. M. had been discovered, and he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505 ; 101 L. J. Ch. 269 ; 146 L. T. 527.

401. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

449. *Add. Annotations :*—**Consd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628. **Refd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171.

453. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

PART I. SECT. 2, SUB-SECT. 1.

17 ii. —— *Whether gift intended.*]—Where a conveyance or mtge. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended.—JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103 ; 23 S. L. R. 218 ; [1928] 3 W. W. R. 686.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—A.

aa. *Proof of execution—Deeds within county—9 Vict. c. 34, s. 7.*]—*Re* YORK COUNTY REGISTRAR (1847), 3 U. C. R. 188.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—E.

183 iii. —— *Attestation required by statute—Deed improperly attested—Execution admitted by grantor.*]—*Held :* as the mtge. deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—HIRA BIBI *v.* RAM HARI LAL (1925), L. R. 52 Ind. App. 362.—**IND.**

189 ii. ——.]—The manager of a bank, a justice of the peace, is not incapacitated from acting as attesting witness to the execution of a mtge., under the Transfer of Land Statute (No. 301) to his bank.—BANK OF VICTORIA *v.* MICHALL (1882), 8 V. L. R. 11.—**AUS.**

193 v. —— *Necessity for intention to attest.*]—The mere fact that a person sees, or receives an acknowledgment of, the execution of a document & signs it does not make him an attesting witness, unless he signs with the idea of bearing testimony to the execution & with the idea further of permitting himself to be cited as a witness to prove the execution.—LACHMAN SINGH *v.* SURENDRA BAHADUN SINGH (1932), I. L. R. 54 All. 1051.—**IND.**

sb. *Certificate of—Sufficiency of—Absence of date.*]—*Held :* the deed was properly recorded.—MCKENZIE *v.* LAMONT (1877), 11 N. S. R. (2 R. & C.) 517.—**CAN.**

sd. *Effect of.*]—The attestation of a deed proves no more than that the signature of an executing party had been made to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed, nor fix him with notice of its provisions.—FAZAL HUSSAIN *v.* JIWAN SHAH (1932), I. L. R. 14 Lah. 369.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.—C.

231 vii. —— ——.]—HUGGARD *v.* ONTARIO & SASKATCHEWAN LAND CORPN. (1908), 1 Sask. L. R. 526 ; 6 W. L. R. 645 ; 8 W. L. R. 866.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D.

d i. —— *Whether deed revocable.*]—HEBERT *v.* GALLIEN, [1931] 2 D. L. R. 150 ; 66 O. L. R. 554 ; 3 M. P. R. 67.—**CAN.**

250 i. *Deed conditioned to take effect from death of grantor—Deed reserving rent for life.*]—RIDDELL *v.* JOHNSTON, [1931] 2 D. L. R. 479.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.

ff. ——.]—MCDONALD *v.* MCDONALD, [1931] 1 D. L. R. 93.—**CAN.**

PART I. SECT. 5, SUB-SECT. 4.

h i. —— —— *Land Act, 1888, s. 26.*]—HJORTH *v.* SMITH (1897), 5 B. C. R. 369—**CAN.**

PART I. SECT. 5, SUB-SECT. 7.—A.

e i. ——.]—Some of the persons named as joining in a covenant cannot be bound, where the others who are named, & whose concurrence is necessary to the accomplishment of the object recited in the deed, have not joined.—MOORE *v.* IRWIN, [1926] 4 D. L. R. 1120 ; 59 O. L. R. 546.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

406 iv. ——.]—A deed under seal cannot bind a person who is not a party to the deed.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—**CAN.**

406 v. ——.]—FAULKNER *v.* FAULKNER (1893), 23 O. R. 252.—**CAN.**

PART I. SECT. 7.

425 v. —— ——.]—BENNETT *v.* KIDD, [1926] N. 50.—**IR.**

PART I. SECT. 8, SUB-SECT. 3.

b i. ——.]—DYNES *v.* BALES (1878), 25 Gr. 593.—**CAN.**

457. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

464. *Add. Annotation :*—**Apld.** *Re* Clout & Frewer's Contract, [1924] 2 Ch. 230.

470. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

500. *Add. Annotation :—As to* (1) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

501. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

501a. **Where deed voidable.**]—In all cases where a bond is voidable, & so remains at the time of the pleading, as in the case of infancy & duress, the obligee cannot plead *non est factum.*—WHELPDALE'S CASE (1604), 5 Co. Rep. 119a ; 77 E. R. 239.

527. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

533. For " distinction " read " destruction."

Part II.—Instruments Under Hand—Non-Testamentary.

555. *Add. Annotations :*—**Consd.** Swift *v.* Board of Trade, [1925] A. C. 520. **Refd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

Part III.—Interpretation of Deeds and Non-Testamentary Instruments.

581. *Add. Annotations :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1927), 44 R. P. C. 367 ; British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1 ; Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

582. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400.

587. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Livock *v.* Pearson (1928), 33 Com. Cas. 188 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546 ; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

592. After this case insert " *See, generally,* CONTRACT, Vol. XII., pp. 79 *et seq.*"

597. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

608. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

621. *Add. Annotations :*—**Consd.** *Re* Arden, Short *v.* Camm, [1935] Ch. 326. **Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. . Ezra, [1935] A. C. 96.

622. *Add. Annotations :*—**Apld.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Abrahams *v.* MacFisheries [1925] 2 K. B. 18 ; British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405 ; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

626. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

627. *Add. Annotation :*—**Refd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

631. *Add. Annotations :* —**Consd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440. **Refd.** Batchelor *v.* Murphy (1924), 41 T. L. R. 153.

PART I. SECT. 8, SUB-SECT. 5.

454 vi. —— ——.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. In carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting :—*Held :* the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—JACK *v.* NANOOSE WELLINGTON COLLIERIES, LTD., [1925] 3 D. L. R. 398 ; [1925] 2 W. W. R. 267 ; 35 B. C. R. 295.—**CAN.**

PART I. SECT. 8, SUB-SECT. 16.

499 ii. —— ——.]—The success of a plea of *non est factum* does not necessarily depend on the establishing of fraud. If it can properly be said that the mind of the signer of the document in question did not accompany his signature, & there is no estoppel, the plea succeeds.

M., the female deft., while the vice-president of a co., signed a document by which she personally guaranteed payment of the co.'s indebtedness to pltf. bank. On the faith of said guarantee & of a similar guarantee by her husband the bank gave up a guarantee of another person & continued to make advances to the co. M. never intended to sign, & did not know she was signing, a personal guarantee ; she did not read the document or make any inquiries about it & was not informed of its contents, but thought she was signing a co. form as an official of the co. for the co. :—*Held :* although there was no fraud or misrepresentation involved & M. did not exercise reasonable care in signing the guarantee, & although the bank had acted upon it, she was not liable thereon. The signature thereto was not in contemplation of law her signature ; she did not owe the bank the duty necessary to support an estoppel by negligence ; & on the evidence the essentials of estoppel by representation as distinct from estoppel by negligence, were not established.—IMPERIAL BANK OF CANADA *v.* MCLELLAN, [1934] 1 W. W. R. 65.—**CAN.**

PART III. SECT. 1.

sd. *Parent & child bearing same name —No addition of " senior " or " junior " —Presumption in favour of parent.*]—NEW BRUNSWICK POWER CO. *v.* PRICE HATT (1924), 52 N. B. R. 1.—**CAN.**

PART III. SECT. 2.

576 x. ——.]—INCHES *v.* FOGG & DOWLING (1870), 13 N. B. R. (2 Han.) 149.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

632 ii. —— ——.]—MANUFACTURERS LIFE INSURANCE CO. *v.* SWINNEY, [1925] 2 D. L. R. 503.—**CAN.**

659. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

662. *Add. Annotation :*—**Consd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

665. *Add. Annotations :*—**Apld.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136 ; *Re* Société Intercommunale Belge d'Electricité, Feist *v.* Société Intercommunale Belge d'Electricité, [1933] Ch. 684.

667. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

686. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

688. *Add. Annotations :*—**Apld.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715. **Consd.** Shipley Urban District Council *v.* Bradford Corpn. (1936), 154 L. T. 444.

697. *Add. Annotations :*—**Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Refd.** Samuel *v.* Dumas, [1924] A. C. 431 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

700. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

701. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

702. *Add. Annotation :*—**Consd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

743. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

750. *Add. Annotation :*—**Refd.** *Re* Hammond, Parry *v.* Hammond, [1924] 2 Ch. 276.

773. Before this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 61."

786. *Add. Annotations :*—**Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402 ; *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858. **Refd.** The Ruapehu, [1927] P. 47 ; Shaw *v.* Public Trustee (1929), 141 L. T. 465.

792. *Add. Annotation :*—**Consd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

798. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

810. *Add. Annotation :*—**Refd.** *Re* Morgan & Provincial Insurance Co., [1932] 2 K. B. 70.

812a. —— ——.]—Under an agreement dated May 6, 1912, applt. corpn. agreed to supply certain additional water to resp. council if the council required it, subject to the right which the corpn. retained of drawing water not exceeding 250,000 gallons "a day," at "a *pro rata* charge as is £540 for 450,000 gallons subject to measurement" ; the agreement also provided that certain water rights of the council under prior agreements should be preserved. Under those agreements the council were entitled to draw water from land of the corpn. during terms expiring in 1945 at annual rentals of £250 & £290. Other water rights granted under the agreement of May 6, 1912, were made payable for by the council at the same rate as was paid by the council under the prior agreements. In June, 1934, the council wished to take the benefit of the agreement for the supply of additional water, but contended that the charge for the same therein expressed should be amended so as to be read as "a *pro rata* charge as is £540 *per annum* for 450,000 gallons *per diem* subject to measurement." The council brought this action for a declaration that the clause should so be read :—*Held :* the principle of construction laid down by COLERIDGE, J. in *Shore* v. *Wilson*, 9 Cl. & F. 355, at p. 525, that where language was used in a deed which in its primary meaning was unambiguous such

PART III. SECT. 3, SUB-SECT. 3.—B.

686 vi. —— —— *Contract with Crown.*]—*Held :* (1) where the real intention of the parties can be clearly collected from the language within the four corners of a deed or instrument in writing, cts. are bound to give effect to it by supplying anything necessarily to be inferred from the terms used, & by rejecting as superfluous what is repugnant to the real intention so gathered ; (2) a contract ought to receive that construction which will best effectuate the intention of the parties to be collected from the whole agreement, greater regard being had to the clear intention of the parties than to any particular words which may have been used in the expression of their intent. The terms of the agreement are to be drawn partly from the written document & partly from all the surroundings of the written document, such as the nature of the transaction with regard to which the document is brought into life ; (3) the Crown is not bound by the error or inadvertence of its officers, nor by any deliberate intention of its officers without proper authority to alter the terms of a written agreement.—R. *v.* PEAT FUELS, LTD., [1930] Ex. C. R. 188.—**CAN.**

705 xi. —— —— ——.]—In deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.—BISKAWBAD *v.* MUKAMNAD (1923), I. L. R. 45 All. 58.—**IND.**

705 xii. —— —— ——.]—The intention of the parties to an instrument must be collected from the language of the instrument, & may be elucidated by the conduct they have pursued.—MIDNAPORE ZAMINDARI CO., LTD. *v.* MUKTAKESHI PATRANI (1926), I. L. R. 6 Pat. 51.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.

716 xxi. ——.]—When a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication is not to be drawn.—GRIEVE MCGLORY, LTD. *v.* DOME LUMBER CO., LTD. & THOMPSON, [1923] 2 D. L. R. 154 ; 1 W. W. R. 989.—**CAN.**

716 xxii. ——.]—BARTEL *v.* BEYEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

716 xxiii. ——.]—When under the terms of a Kabuliyat a rent in kind is reserved & its price is also mentioned the intention is to be gathered with reference to expressions used in other parts of the document.—JURAM MANDAL *v.* RAM MANDAL (1927), I. L. R. 55 Calc. 808.—**IND.**

716 xxiv. ——.]—The rule governing the interpretation of a deed is that the deed must be read as a whole in order to ascertain the true meaning of several clauses, & that the words of each clause should be so construed as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible. Indeed, it is competent to the ct. to disregard the literal meaning if the words are sufficiently flexible to bear that interpretation. The duty of the ct. is to find out the intention of the executant from the language used by him, but parol evidence to vary the contents of the document cannot be admitted.—YUSAF ALI *v.* ALIBHOY (1928), I. L. R. 10 Lah. 671.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—A.

773 xxx. ——.]—*Held :* the words "net proceeds" did not mean "net profits."—SCOTT *v.* MONTGOMERY, [1920] 1 W. W. R. 140 ; 50 D. L. R. 394 ; 30 Man. L. R. 90.—**CAN**

773 xxxi. ——.]—An expression having no technical meaning in an agreement between laymen should not be strictly construed.—CARLTON HOTEL CO. *v.* GARDINER, [1934] 4 D. L. R. 421.—**CAN.**

d. Read now "**815a i.**"

primary meaning must be taken conclusively to be that in which the writer used it, was qualified by that learned judge by excepting the case in which the primary meaning was excluded by the context & was not sensible with reference to the extrinsic circumstances in which the writer was placed at the time of writing. In *Neale* v. *Neale*, 79 L. T. 629, the Ct. of Appeal objected only to extrinsic evidence being introduced where the words of the document only admitted of one meaning; the primary meaning in the present case was excluded by the context, & was therefore not decisive. In proper cases, if necessary, words could be supplied to give effect to the obvious & apparent purpose of the document where the language as a whole carried with it the meaning sought to be attached to it. Therefore the words "*per annum*" & "*per diem*" must be read into the clause in question.—SHIPLEY URBAN DISTRICT COUNCIL *v.* BRADFORD CORPN., [1936] Ch. 375, 399; (1936), 105 L. J. Ch. 225, 232; 154 L. T. 444; 80 Sol. Jo. 185, C. A.

815. *Add. Annotation :*—**Consd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

815a. Recurring words—Same construction.]—There is no rule of general application that in construing a document the same meaning must be assigned to an expression throughout; it is only in cases of doubt or ambiguity that it is necessary or permissible to resort to the device.—WATSON *v.* HAGGITT, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.

824a. Donor old & deaf.]—TAYLOR *v.* TAYLOR & BARCLAYS BANK, LTD. (1933), 77 Sol. Jo. 319.

825. *Add. Annotations :*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394. **Refd.** Phipps *v.* Rogers, [1925] 1 K. B. 14.

842. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

852. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

853. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

875. *Add. Annotation :*—**Consd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

877. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

882. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

883. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

893. *Add. Annotation :*—**Consd.** *Re* Ellwood, [1927] 1 Ch. 455.

895. *Add. Annotation :*—**Refd.** Wilston S.S. Co. *v.* Weir (1925), 31 Com. Cas. 111.

900. *Add. Annotations :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; A.-G. *v.* Blackpool Corpn. (1928), 92 J. P. 50; Lazard Bros. & Co. *v.* Brooks (1932), 38 Com. Cas. 46.

969. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

970. *Add. Annotation :*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.
Add. Annotation :—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

976. After this case add :—
Age of parties to conveyance.]—*See* Law of Property Act, 1925 (c. 20), s. 205 (1) (ii).

981. *Add. Annotation :—Generally*, **Refd.** Berners *v.* Fleming, [1925] Ch. 264.

988. *Add. Annotation :—As to* (1) **Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

991. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1002. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1007. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

1015. *Add. Annotation :*—**Refd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

1028. *Add. Annotations :*—**Consd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. **Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

1032. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1062. *Add. Annotation :—As to* (1) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

1065. *Add. Annotation :*—**Consd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

1067. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

815a ii. ——— ———.]—*Held :* evidence to show that a word was used in a different sense in one sentence from that in which it was used in a preceding sentence, was rightly excluded.—MCDONALD *v.* HALIFAX CORPN. (1895), 28 N. S. R. (16 R. & G.) 84.—**CAN.**

PART III. SECT. 3, SUB-SECT. 9.

874 ii. ———.]—SHUKIN *v.* DEMOSKY (Sask.), [1927] 1 D. L. R. 649.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B. (b).

948 vi. ———.]—As soon as there is an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.—DARAPALE, ETC. *v.* NAZIR (1923), I. L. R. 50 Calc. 394.—**IND.**

949 xvi. ———.]—WILSON *v.* R., [1926] Exch. C. R. 8.—**CAN.**

PART III. SECT. 3, SUB-SECT. 14.

951 ii. ———.]—PRICE BROTHERS & CO., LTD. *v.* R., [1926] 3 D. L. R. 642.—**CAN.**

PART III. SECT. 3, SUB-SECT. 15.

1 i. ——— *Crown grants.*]—The doctrine of *omnia præsumuntur rite esse acta* should apply in its fullest extent in respect to the compliance with statutory conditions in the obtaining of Crown grants for purchase or pre-emption under the Land Act, &, though it may be shown in a proper case that irregularity, error or deception have in fact led to the issuance of such a grant, yet before it can be attacked the Crown must be, at least, a party to the proceedings & the issue will, in many cases, depend upon the attitude taken by the Crown.—NORTH PACIFIC LUMBER CO. *v.* SAYWARD, [1918] 2 W. W. R. 771; 24 B. C. R. 273.—**CAN.**

PART III. SECT. 3, SUB-SECT. 16.

1 i. ——— *Grant of easement—Reference to plan—Plan omitted.*]—*Held :* where there was no plan, parol evidence was admissible to identify the land.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 18.—A.

988 vi. ———.]—Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.—THOMPSON *v.* NORTH BATTLEFORD, [1924] 1 D. L. R. 159; 1 W. W. R. 51.—**CAN.**

988 vii. ———.]—*Re* FORD & HARDY (Ont.), [1926] 2 D. L. R. 749.—**CAN.**

988 viii. ———.]—CANADIAN STEVEDORING CO., LTD. *v.* ROBIN LINE S.S. CO., CANADIAN STEVEDORING CO., LTD. *v.* SEAS SHIPPING CO. (B. C.), [1927] 4 D. L. R. 614; [1927] 2 W. W. R. 737.—**CAN.**

Add. Annotation :—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

1076a. —— ——.]—I do not see that a guarantor stands in any better position than any other contractor, & I do not see that this contract is to be construed in any different way from any other contract. . . . It is to be construed with reasonable & proper strictness, as every other contract has to be construed (SWIFT, J.). —ESHELBY *v.* FEDERATED EUROPEAN BANK, — [1932] 1 K. B. 254 ; *on appeal*, [1932] 1 K. B. 423, C. A.

1081. *Add. Annotations :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4. **Mentd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1090. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1093. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582.

1097. *Add. Annotation :*—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

1098. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1099. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1106. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1107. *Add. Annotations :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521 ; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542 ; Diggins *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509 ; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527.

1109. *Add. Annotations :*—**Refd.** Reed *v.* Page & East (1926), 42 T. L. R. 744 ; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

1152. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1157a. ——]—ANON. (1849), 13 L. T. O. S. 325.

1162. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

1171. *Add. Citation :*—109 L. T. 820.

1172. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

1175. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1177a. ——.]—DAVIS *v.* SYMONDS (1787), 1 Cox, Eq. Cas. 402 ; 29 E. R. 1221.

1185. *Add. Annotation :*—**Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

1192. *Add. Annotation :*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

1205. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. **Refd.** Frenkel *v.* MacAndrews, [1929] A. C. 545 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48 ; The

PART III. SECT. 3, SUB-SECT. 21.

b i. —— *Award—Computation of hours worked.*]—An award made by the Commonwealth Ct. of Conciliation & Arbitration between the Seaman's Union & various resps., of whom deft. co. was one, provided in respect of deckhands that "the time taken for meals partaken while the vessel is under way shall not be included." Deft. co. in reckoning the hours worked by an employee claimed to deduct the time occupied by him at meals while the vessel was in port :—*Held :* in the absence of a custom or usage to support such a deduction, the maxim *expressio unius est exclusio alterius* applied, & the appeal was allowed.—THE FEDERATED SEAMEN'S UNION OF —— *v.* THE HUON, CHANNEL PENINSULA STEAMSHIP CO., LTD., [1925] Tas. L. R. 1.—**AUS.**

PART III. SECT. 4, SUB-SECT. 1.

1144 x. —— *Blanks in printed form not filled in.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

1144 xi. ——.]—CANADIAN COLLIERIES (DUNSMUIR), LTD. *v.* DUNSMUIR, DUNSMUIR *v.* MACKENZIE (1911), 18 B. C. R. 538.—**CAN.**

1144 xii. ——.]—LACHMAN DAS *v.* RAM PRASAD (1927), I. L. R. 49 All. 680.—**IND.**

1144 xiii. ——.]—Parol evidence to vary a written instrument rejected, although it was doubtful if it contained all the agreement between the parties. —— *v.* HOW (1862), 9 Gr. 372. —**CAN.**

—— *v.* WILLARD (1851), 2 Gr. 601.—**CAN.**

——.]—PAPINEAU *v.* GUARD (1851), 2 Gr. 512.—**CAN.**

——.]—MCGILL *v.* MCGLASHAN 6 Gr. —— the circumstances of this case, oral testimony was admissible. As both parties were admitting the existence of some contract for the transfer of shares, parol evidence could be adduced to determine whether the transfer was conditional or unconditional & whether the shares were to be returned to the resp. & his associates as having been merely loaned.—SISCOE GOLD MINES, LTD. *v.* BIJAKOWSKI, [1935] S. C. R. 193 ; 1 D. L. R. 513.—**CAN.**

1174 i. *As to nature of transaction—Absolute conveyance—Relationship of mortgagor & mortgagee.*]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge is inadmissible in evidence.—MAUNG SHWE PHOO *v.* MAUNG TUN SHIN (1927), I. L. R. 5 Ran. 644.—**IND.**

PART III. SECT. 4, SUB-SECT. 2.

1176 xxviii. ——.]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—STEINE *v.* MATHIEU, [1923] 3 W. W. R. 493.—**CAN.**

1176 xxix. ——.]—Where an ori- —— agreement has complied —— Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

1176 xxx. ——.]—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

1176 xxxi. ——.]—Defts. excepted to a declaration on the ground that pltf. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, ratification, or reformation of the deed of transfer :—*Held :* the exception should be upheld.—ADAM *v.* JHAVARY (1925), 46 N. L. R. 190.—**S. AF.**

1176 xxxii. ——.]—BARTEL *v.* BEYEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

1176 xxxiii. ——.]—TYSON *v.* ABERCROMBIE (1888), 16 O. R. 98.—**CAN.**

1176 xxxiv. ——.]—LILLY *v.* PITTMAN (1899), 8 Nfld. L. R. 170.—**NFLD.**

1176 xxxv. ——.]—Where an agreement signed by deft. was not accepted by pltf., & there was no memorandum in writing of the agreement actually entered into between the parties :—*Held :* the rule prohibiting the introduction of oral evidence to vary the terms of a writing had no application.—DOREY *v.* GRAY (1908), 42 N. S. R. 259.—**CAN.**

1176 xxxvi. ——.]—The rule of law that extrinsic evidence is not, in general, admissible to contradict, vary or explain written instruments, must be enforced in cases that fairly come within it.—FORMAN *v.* UNION TRUST CO., LTD., [1927] S. C. R. 1.—**CAN.**

1176 xxxvii. ——.]—KEEWATIN POWER CO. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO. *v.* LAKE OF THE WOODS MILLING CO., [1928] 1 D. L. R. 32 ; 61 O. L. R. 363 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667.—**CAN.**

1176 xxxviii. ——.]—LAKE OF THE WOODS MILLING CO. *v.* VINCENT, [1928] 2 D. L. R. 145.—**CAN.**

1176 xxxix. ——.]—SOURCE RESEARCH BUREAU *v.* FOSTER, [1931] 2 D. L. R. 335 ; 2 M. P. R. 537.—**CAN.**

1189 i. ——.]—*Held :* parol evidence was not admissible to contradict a statement in a document as to ownership, by showing that a wife, in signing it, was acting as agent of her husband.—KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201 ; [1924] S. C. R. 18.—**CAN.**

Torni, [1932] P. 27; The Njegos, [1936] P. 90.

1230. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1235. *Citations :*—For the existing citations substitute "GREVILLE *v.* ATTKINS (1829), as reported in 4 Man. & Ry. K. B. 372 at p. 379."

1237. *Add. Annotation :*—**Refd.** *Re* Gardner, Ellis *v.* Ellis, [1924] 2 Ch. 243.

1248. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1304. *Add. Annotation :*—**Refd.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1307. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1307a. ——.]—The ct., though in construing a document it is entitled to be put in possession of the circumstances in which it was executed, is not entitled to receive evidence for the purpose of contradicting a document which is unambiguous (RUSSELL, J.).—DAVIES *v.* POWELL DUFFRYN STEAM COAL CO., [1920] W. N. 114; *affd.* (1921), 91 L. J. Ch. 40, C. A.

1322. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

1325. *Add. Annotation :*—**Refd.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1327. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1329a. —— ——.]—Parol evidence is admissible to show that a party to a written agreement to purchase entered into it as agent to another.—MARSTON *v.* ROE d. FOX (1838), 8 Ad. & El. 14; 2 Nev. & P. K. B. 504; Will. Woll. & Dav. 712; 8 L. J. Ex. 293; 112 E. R. 742, Ex. Ch.

Annotations :—**Consd.** Israell *v.* Rodon (1839), 2 Moo. P. C. C. 51. **Refd.** Matson *v.* Magrath (1849), 1 Rob. Eccl. 680.

1338. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1364. *Add. Annotations :*—**Consd.** Boot *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118. **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503; Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1383. *Add. Annotation :*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

1386. *Add. Annotations :*—**Consd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1. **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

1401. *Add. Annotation :*—**Refd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440

1413. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1222 iv. —— ——.]—ADVANCE RUMELY THRESHER CO. *v.* MANSKE, [1920] 3 W. W. R. 78.—**CAN.**

1228 ii. —— ——.]—BLAKIE *v.* MCLENNAN (1901), 33 N. S. R. 558.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

1237 v. ——.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written. This intent must be sought in the conduct & language of the parties & the surrounding circumstances.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

1237 vi. ——.]—Extrinsic evidence to add a condition to a concluded contract :—*Held :* not admissible.—FORMAN *v.* UNION TRUST CO. (Can.), [1927] 1 D. L. R. 68.—**CAN.**

1237 vii. ——.]—BAKKER *v.* WINKLER, [1931] S. C. R. 233; [1930] 4 D. L. R. 266; *revsg.*, [1930] 1 D. L. R. 557; 24 Alta. L. R. 258; [1929] 3 W. W. R. 465; *revsg.*, [1929] 4 D. L. R. 107.—**CAN.**

1237 viii. ——.]—In a vendor's action for specific performance of an agreement for the sale of land deft. pleaded (*inter alia*) that pltf. had represented that the lands in question included a certain number of acres of irrigated land for which she held water rights, whereas the fact was that she knew that the quantity of water she was entitled to receive was sufficient for only a part of said acreage. The formal agreement for sale made no reference to any of the lands as irrigated or to any water rights with respect to the land sold. It was contended, although the point had neither been raised by the pleadings nor any amendment thereof sought, that the written agreement did not contain all of the contract, but that the correspondence preceding the agreement should be treated as part of the contract :—*Held :* there was nothing in the present case to bring it within any of the exceptions to the rule that extrinsic evidence is not admissible to add to an agreement reduced to writing.—WHITNEY *v.* MACLEAN, [1932] 1 W. W. R. 417; 26 Alta. L. R. 209.—**CAN.**

PART III. SECT. 4, SUB-SECT. 4.

e i. ——.]—LIVELY *v.* SHUBENACADIE LUMBER CO., [1931] 1 D. L. R. 985.—**CAN.**

1265 xix. ——]—A latent defect in a grant cannot be remedied by parol evidence. In order to correct an error in the descriptive part of a grant by parol evidence, the evidence must be such as to leave no doubt of the intention of the grantor.—BRENNOCK *v.* FRASER (1853), 2 N. S. R. (James), 178.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

m i. ——.]—*Held :* oral evidence was admissible to explain the surrounding circumstances.—SCHECTER *v.* SCHNIER, SCHNIER *v.* SCHECTER (Man.), [1927] 3 D. L. R. 1167; [1927] 3 W. W. R. 111.—**CAN.**

c i. ——.]—HERRON *v.* MAYLAND (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768; *affd.*, [1928] 2 D. L. R. 858; [1928] S. C. R. 225.—**CAN.**

PART III. SECT. 4, SUB-SECT. 6.—B.

1341 xiii. ——.]—LEWIS & SILLS *v.* HUGHES (1906), 13 B. C. R. 228.—**CAN.**

1341 xiv. ——.]—An agreement for the sale of land was evidenced by a receipt, which did not specify the land :—*Held :* parol evidence was admissible, in an action for specific performance of the agreement, to show what was the subject-matter.—BAXTER *v.* ROLLO (B. C.) (1912), 21 W. L. R. 892; 5 D. L. R. 764; 2 W. W. R. 786.—**CAN.**

sp. *Account.*]—*Held :* parol evidence was admissible, to show what an account referred to in an agreement was, & to indentify such account.—DES BRISAY *v.* GLENCROSS (1850), 12 N. B. R. (1 Han.) 105.—**CAN.**

PART III. SECT. 4, SUB-SECT. 7.

g i. —— "*Right of way clearing.*" *Held :* extrinsic evidence was properly admitted to show that amongst railway contractors, & in railway construction work, the above words had acquired a special & technical meaning, & applied only to land requiring to be cleared & not to the full area of the right of way.—LAINE *v.* KENNEDY (1914), 43 N. B. R. 173.—**CAN.**

g ii. —— "*Wood cutting voyage.*"]—Where an insurance policy contained an exception that the ship was not covered if lost when engaged on a wood cutting voyage, the ct. refused to allow parol evidence to be given in explanation of the word "wood."—THOMAS *v.* MARINE INSURANCE CO. (1857), 4 Nfld. L. R. 173.—**NFLD.**

g iii. —— "*Stock-in-trade.*"]—By a contract in writing applts. sold to resp. "the business . . . including the goodwill & stock-in-trade in connection therewith" :—*Held :* the word "stock-in-trade" might in certain circumstances mean something more than merchandise, & evidence was therefore admissible to explain its meaning.—KAJEE BROS. *v.* MOOSA (1930), 51 N. L. R. 273.—**S. AF.**

PART III. SECT. 4, SUB-SECT. 8.—A.

1396 x. —— —— ——.]—The doctrine of *contemporanea expositio* is applied, speaking generally, only where the contract is ambiguous.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

1396 xi. —— —— ——.]—*Re* CANADIAN NORTHERN RY. CO. & OTTAWA, [1924] 4 D. L. R. 1217; 56 O. L. R. 153.—**CAN.**

1424. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

1430. *Add. Annotation :*—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1443. *Add. Annotation :*—**Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

1451. *Add. Annotation :*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

1459. *Add. Annotations :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264; Smith *v.* Thompson (1931), 146 L. T. 14.

1469. *Add. Annotation :*—**Distd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1471. *Citations :*—For the existing citations read "MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* MILDMAY *v.* STANDISH, Cro. Eliz. 34; Moore, K. B. 144."

1485. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

1513. *Add. Annotations :*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1516. *Add. Annotation :*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

1534. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

1537. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

1562. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1576. *Add. Annotations :*—**Folld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617; Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410.

1576a. —— —— **Condition of houses on building estate.**]—A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

1582. *Add. Annotations :* — **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1583. *Add. Annotations :*—**Folld.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hodges *v.* Jones, [1935] Ch. 657.

1588a. —— **Sale of land—Agreement to construct road.**]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him :—*Held :* the oral promise did not form part of the contract to purchase, but was a separate contract, & that evidence of its terms could be given without contravening the rule that parol evidence may not be given to vary the provisions of a written agreement.—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

Annotation :—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

1591. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

PART III. SECT. 4, SUB-SECT. 11.—D.

st. *To prove illegality of consideration —Evidence inadmissible.*]—DAUPHINEE *v.* DAUPHINEE (1924), 57 N. S. R. 506.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—E. (a).

1496 iv. —— ——.]—AVERBACH *v.* BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721.—**CAN.**

1509 vi. —— ——.]—Where a party enters into a written agreement, under seal, for the sale for a certain sum of all his right, title, share & interest in a certain business, evidence is inadmissible to prove a prior verbal agreement for the sale of the goodwill of the business for a sum in addition to the amount so specified in the written agreement. In this case the prior collateral agreement was not interfered with by the subsequent written agreement. It was a parol condition on which the written agreement depended. —AUSTIN *v.* BOONE (1866), 6 N. S. R. (2 Old.) 149.—**CAN.**

1509 vii. —— ——.]—As between the actual parties to an outright conveyance a contemporaneous oral agreement to allow repurchase cannot be proved, but if the party who alleges the contemporaneous oral agreement was not actually a party to the conveyance, although the conveyance was given on his behalf, he can prove that there was such an agreement.—MA MI *v.* MAUNG AUNG DUN (1928), I. L. R. 6 Ran. 376.—**IND.**

PART III. SECT. 4, SUB-SECT. 11.—E. (b).

1529 ii. —— ——.]—*Held :* the trial judge had been in error in construing a deed in the light of antecedent correspondence between the parties, it being well settled that even a formal antecedent contract cannot be looked at to control the terms of a conveyance. —WADIA *v.* SECRETARY OF STATE FOR INDIA (1928), L. R. 56 Ind. App. 51.—**IND.**

PART III. SECT. 4, SUB-SECT. 11.—G. (a).

h i. ——.]—MCLEAN *v.* JOHNSON, [1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—**CAN.**

h ii. —— *Contemporary oral agreement acted on by parties.*]—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtge. :—*Held :* an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced. —JOHNSON INVESTMENTS, LTD. *v.* PAGRITIDE, [1923] 2 D. L. R. 985; [1923] 2 W. W. R. 736.—**CAN.**

m i. —— *Mortgage.*]— DICK *v.* SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—G. (b).

1573 i. *Evidence admissible —Proof of consideration.*]—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—KIRK *v.* GREAVES, [1924] N. Z. L. R. 260.—**N.Z.**

m i. —— —— ——.]—Where a complete agreement was contained in a written contract & it satisfied Stat. Frauds :—*Held :* an oral arrangement as to remuneration was a separate collateral agreement.—PERRY *v.* ESPLEY, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—**CAN.**

—.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

q i. —— ——.]—The rule that evidence of a collateral oral contract is admissible although the principal contract is in writing is subject at least to one definite limitation, viz., though the collateral contract must inevitably, it seems, add to the written contract it must not vary it in the sense of being inconsistent with, or contradictory of, the written contract.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 1.

f i. ——.]—Parties to a written contract are not bound by its punctuation.—WALKER *v.* BOTHWELL, [1931] App. D. 70.—**S. AF.**

1607. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge y Born Limitada Sociedad (1925), 134 L. T. 303 ; Felston Tile Co. *v.* Winget, Ltd., [1936] 3 All E. R. 473. **Refd.** Cunard S.S. Co. *v.* Buerger (1926), 135 L. T. 494 ; Frenkel *v.* McAndrews & Co., [1929] A. C. 545 ; Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399 ; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127 ; Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418 ; North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

1622a. Deed of separation.]—Articles of separation between John Wright Henniker Wilson & Mary Wright Henniker Wilson, his wife, provided that all the rents, taxes, & other outgoings in respect of certain estates, which were originally the property of the latter, should be paid by the former up to a day named, & that, after that day, they should be paid by Mary Wright Henniker Wilson, & that John Wright Henniker Wilson should be indemnified therefrom, *& from all the present debts & liabilities of the said John Wright Henniker Wilson :—Held :* as the words in italics made the clause inconsistent with & repugnant to itself, they ought to be disregarded.—WILSON *v.* WILSON (1847), 15 Sim. 487 ; 11 Jur. 340 ; 60 E. R. 708.

1628. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1652. *Add. Annotation :*—**Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

1660. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1675. *Add. Annotations :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43 ; Gurney *v.* Grimmer (1932), 38 Com. Cas. 7.

1678a. Printed words deleted.]—Words deleted in a printed form of mercantile contract are to be treated as if they had not formed part of the printed contract ; they cannot be used to construe added words.—SASSOON (M. A.) & SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711 ; 96 L. J. P. C. 153 ; 137 L. T. 501, P. C.

1735a. Incorporation of guarantee clause—Identity of clause uncertain—Clause not available.]—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts., marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising" :—*Held :* as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—ALISON (J. GORDON) & CO., LTD. *v.* WALLSEND SLIPWAY & ENGINEERING CO., LTD. (1927), 43 T. L. R. 323, C. A.

1736a. Letter from town clerk—Reference to resolution of corporation to pay costs.]—The chief clerk of a hospital conducted by deft. corpn. wrote a letter to the proper quarter in respect of the conduct of the steward of the hospital, as a result of which the steward was dismissed. The steward thereupon brought an action for libel against the chief clerk, who approached certain solrs. with a view to their acting for him. The chief clerk was not in a position to pay the costs of an action. The solrs. received a letter from the town clerk of deft. corpn. in the following terms : "As I understand that you are acting for [the chief clerk] in this action, I beg to inform you that the Town Council . . . confirmed the recommendation of the health committee . . . to assist [the chief clerk] in paying or contributing to his costs in defending the action." Shortly before the trial of the action, upon the advice of counsel, & after consulting the town clerk, a settlement was effected, the chief clerk consenting to judgment against him with costs & undertaking to withdraw his allegations :—*Held :* the terms of the letter were not too vague to be enforced & there was a contract by the corpn. to pay the whole of the solrs.' costs, or such part thereof as was not obtainable elsewhere, & the fact that the action was settled did not relieve the corpn. from its liability.—ARMSTRONG, TAYLOR & WHITTAKER *v.* OLDHAM CORPN., [1937] 2 All E. R. 577.

1737a. ——.]—Testator directed that unless a beneficiary of his residuary estate settled other property of his on the lines of the settle-

PART III. SECT. 5, SUB-SECT. 4.

r i. —— *Meaning to words given though grammatical construction faulty.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

PART III. SECT. 6.

t i. —— ——.]—The date mentioned in a deed is not conclusive, & the actual date of the execution may be shown.—DOE d. CONNEL *v.* DICKINSON (1869), 12 N. B. R. (1 Han.) 456.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.—A. (a).

t i. —— *as may from time to time be* ——. RENE *v.* CARLING EXPORT BREWING & MALTING CO., [1929] 2 D. L. R. 881 ; 63 O. L. R. 582.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

sw. "*Et cetera.*"]—The phrase "*et cetera*" does not render a contract uncertain, if its application appears from the context.—AVERBACH *v.* BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721—**CAN.**

PART III. SECT. 8, SUB-SECT. 1.—A. (a).

1737 i. *General rule.*]—If both the recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—HUSSAIN CHIN CHONG (1924), I. L. R. 3 53.—**IND.**

ment of testator's residue, such beneficiary should forfeit any interest under the will. A settlement was made by a beneficiary reciting his intention to settle his property on the same trusts as the trusts of the settled share of residue, but the operative part did not do so:—*Held:* it was not possible to imply words in the unambiguous operative part of the settlement so as to make it have the effect which, according to the recitals, was intended. The settlement was therefore void, the beneficiary had taken no interest in the residue, & estate duty which had been paid on the subsequent death of the beneficiary, in the belief that he had in fact taken an interest, was repayable by the Crown.—INLAND REVENUE COMRS. *v.* RAPHAEL, INLAND REVENUE COMRS. *v.* EZRA, [1935] A. C. 96; 51 T. L. R. 152; *sub nom. Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, 104 L. J. Ch. 24; 152 L. T. 217, H. L.

Annotation:—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1935] W. N. 111.

1740. *Add. Annotation:*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1744. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96. **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

1745. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

1787. *Add. Annotation:*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

1818. *Add. Annotation:*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

SUB-SECT. 2 (Vol. XVII., p. 372).

NOTE.—*Conveyancing Act*, 1881 (*c.* 41), *s.* 55, *is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 68.

1826. *Add. Annotation:*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1865. For cross-reference before this case, *See, now,* Law of Property Act, 1925 (c. 20), s. 62.

1869a. —— **Curtilage, garden & adjoining close.**]—ANON. (1531), Bro. N. C. 86; 73 E. R. 885.

1892. *Add. Annotations:*—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1902. After this case add:—

Reservation operates immediately.]—*See* Law of Property Act, 1925 (c. 20), s. 65 (1), (2).

1913. *Add. Annotation:*—**Apprvd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

1930. After this case add:—

—.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 63.

1944. *Add. Annotation:*—**Refd.** Cadogan (Earl) *v.* Guinness, [1936] Ch. 515.

1944a. Limitation to commence after existing lease—Lease void.]—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE *v.* CUMBERFORD (1680), 1 Freem. K. B. 527; 89 E. R. 395.

1738 vii. ——.]—A deed is effective if the operative part is clear, although the recitals are incorrect.—SKOV LUMBER CO. *v.* CLARK, [1932] 3 D. L. R. 780.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—A.

r i. —— *Registration of statutory memorial.*]—By a deed of 1917 resp. assigned leasehold premises in Hong Kong to A. & B. as joint tenants, the deed stating that the property had been sold to them for $16,000 the receipt of which was acknowledged. The deed was registered under the Hong Kong Land Registration Ordinance, 1844, with a memorial which, as required by the Ordinance, was verified on oath & gave full particulars of the deed, including the receipt. In 1929 B. mortgaged a half interest in the property to applt. as security for an advance of $25,000; the mtge. was registered under the Ordinance. Before the advance was made, applt.'s solr. inspected the registered memorial of the deed of 1917, but he did not demand production of the original. B., unknown to applt. or his solr., was a son of resp. Resp. brought an action claiming to be entitled to the property freed from the mtge. By his evidence, which the cts. in Hong Kong accepted as reliable after an objection to its admissibility, resp. stated that the name A. was an alias for himself, that there was no consideration for the deed of 1917, & that it had remained in his possession, no beneficial interest being intended to be conveyed to his son B.:—*Held:* the action failed, both because resp.'s evidence was inadmissible to contradict the plain terms of the deed, & because the registered memorial estopped resp. from alleging a trust; having regard to the full particulars contained in the statutory memorial, there was no negligence in not having required production of the deed itself.—TSANG CHUEN *v.* LI PO KWAI, [1932] A. C. 715; 101 L. J. P. C. 193; 148 L. T. 44.—**HONG KONG.**

PART III. SECT. 10, SUB-SECT. 1.—D.

t i. ——.]—DAVISON *v.* BENJAMIN (1874), 9 N. S. R. (3 G. & O.) 474.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—E.

1840 ii. —— ——.]—In case of conflict the description in the text of a grant of land when clear & unambiguous must prevail over the diagram attached to the grant.—UNION GOVT. *v.* LOVEMORE, [1930] App. D. 13.—**S. AF.**

1844 ii. —— ——.]—Pltf. held a certificate of indefeasible title to lots 1 & 2, part of the north-east quarter of a certain section of land, & the Crown grant to his predecessor in title described the land by reference to a plan annexed & numbered the north-east quarter of said section. Deft.'s title was as purchaser under the grantee from the Crown of land, also described in the grant by reference to a plan annexed & numbered the south-east quarter of the same section. Neither quarter was a full quarter section, & the plans showed that pltf.'s land had for its southerly boundary a certain creek & that said creek was the northerly boundary of deft.'s land. Pltf. claimed a small point of land in possession of deft. which extended into the creek & north of the quarter-section line:—*Held:* while the quarter sections were referred to in words in the deeds, yet on the true construction of them it was clear that the plans were to govern.—KIPP *v.* SIMPSON, [1928] 4 D. L. R. 421; [1928] 3 W. W. R. 331.—**CAN.**

1844 iii. —— —— *Grant of easement.*]—BROWN *v.* NORBURY, [1931] 2 W. W. R. 863; 4 D. L. R. 507; 25 Alta. L. R. 591.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—D.

1877 ii. ——.]—Where a contract for the sale of land rests *in fieri*, the purchaser, if the quantity be considerably less than it was stated, will be entitled to an abatement, although the agreement contains the words "more or less" or "by estimation."—MURPHY *v.* HORN, [1929] 4 D. L. R. 693; 64 O. L. R. 354.—**CAN.**

1880 ii. *Add. citation* "*affd.*, 23 O. L. R. 253."

Part IV.—Covenants and Provisoes.

2006. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2011. *Add. Annotation :*—**Refd.** Saunders-Jacobs *v.* Yates, [1933] 2 K. B. 240.

2111. *Add. Annotation :*—**Refd.** Wise *v.* Whitburn, [1924] 1 Ch. 460.

2131. *Add. Annotation :*—**Consd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

2163. *Add. Annotation :*—**Refd.** Leeming *v.* Jones (1929), 141 L. T. 472.

PART IV. SECT. 1, SUB-SECT. 2.—A.

1990 1. *General rule.*]—Cts. always construe clauses in deeds as covenants rather than conditions if they reasonably do so.—WOLFE *v.* CROFT (N. S.) (1911), 9 E. L. R. 402.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 9.—B. (b).

b. *revsd.* 10 I. L. R. 137.

PART VII. SECT. 8, SUB-SECT. 3.

sb. *Insertion of consideration.*]—The alteration, without authority from the promisors, of the sealed instrument in question herein, by the insertion of a certain statement of consideration :—*Held :* not to have been merely a case of the writing into the document of the intended consideration, but to have constituted a substitution of another contract for the original contract, &, therefore, to have nullified the deed.—NYKIFORUK & NYKIFORUK *v.* CONROY, [1931] 1 W. W. R. 522 ; 2 D. L. R. 407 ; 25 S. L. R. 265.—**CAN.**

DEPENDENCIES.

INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

Part I.—In General.

1. After this case add "*See, now*, Statute of Westminster, 1931 (c. 4), s. 11."

3. *Add. Annotation :*—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

4a. **Right of Crown to legislate for protectorate—Notwithstanding grant of territory within protectorate.**]—The legislative authority over the territory of a Crown Protectorate belongs to the Crown & is controllable only by the Imperial Parliament.

Under the Foreign Jurisdiction Act, 1890 (c. 37), the prerogative power of legislation in respect of Protectorates is exercised by Orders in Council, & these Orders have statutory effect. A grant of land in a Protectorate by the Crown is an executive & not a legislative act, & cannot by itself impose a fetter on the legislative power of the Crown. Where therefore by a subsequent Order in Council the Crown has exercised legislative powers in respect of the land previously granted, the legislative power so exercised is valid. The doctrine of derogation from grant cannot be applied in the case of a grant by the Crown so as to deprive it of its paramount right to legislate for the Protectorate in which the subject of the grant is situate. The Crown cannot renounce or fetter its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which the legislative authority exists.—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169 ; 99 L. J. Ch. 483 ; 143 L. T. 623 ; 46 T. L. R. 566.

5. *Add. Annotations :—As to* (1) **Consd.** Abeyesekera *v.* Jayatilake (1931), 146 L. T. 193. *As to* (6) **Distd.** North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

7. *Add. Annotation :*—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

10a. —— ——.]—An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Convention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were expropriated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives :—*Held :* the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—SOBHUZA II. *v.* MILLER, [1926] A. C. 518 ; 95 L. J. P. C. 137 ; 135 L. T. 215 ; 42 T. L. R. 446, P. C.

13. *Add. Annotation :* — **Refd.** Netherlands, American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

Part II.—Colonial and Dominion Government.

17a. **Order imposing liability to penalty—Power to make action void—Ceylon.**]—An Order in Council of 1923 made provision as to the Legislative Council in Ceylon, but reserved to His Majesty power to revoke, alter or amend the Order. Applt., as common informer, brought an action to recover penalties under the Order from resp., who he alleged had sat and voted after his seat had become vacant under its provisions by reason of his having a pecuniary interest in a contract with the Govt. In 1928, after the action had been brought, but before its trial, an amending Order in Council was made providing that the action should be dismissed ; it also amended the Order of 1923 so as to except the office held by the respondent from its operation :—*Held :* the Order of 1928 was valid, having regard to the power reserved by the Order of 1923, & was an effective defence to the action, although it was retrospective in its operation.—ABEYESEKERA *v.* JAYATILAKE, [1923] A. C. 260 ; 101 L. J. P. C. 40 ; 146 L. T. 193. 48 T. L. R. 71 ; 75 Sol. Jo. 884, P. C.

20a. **Power of expropriation in mandated territory.**]—By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion." In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain spring for the purpose of supplying water to Jerusalem, with certain provisions for compensation.

In an action by the owners of the springs the Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compensation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal:—*Held:* (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37); (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation.—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 299, P. C.

23. *Add. Annotation:*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

—— **Grant of proprietary right in river—Canada.**]—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, & with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held:* the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.—UNITED MANUFACTURING CO. *v.* ST. MAURICE POWER CO., [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.

25. Add the following para.:—

If a governor of a colony has the authority of the ordinary, he has no power to commit a churchwarden who refuses to account, he ought to proceed upon a citation, & must excommunicate.

31a. **Authority to promulgate Ordinance under Government of India Act, 1915, s. 72—Validity of Ordinance.**]—In proceedings under an Ordinance promulgated by the Governor-General under the Government of India Act, 1915, s. 72, which authorises him in cases of emergency to promulgate Ordinances for the peace & good government of British India, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India. Those are matters of which the Governor-General is sole judge; he is not bound to give any reasons for promulgating an Ordinance under the sect. An Ordinance so promulgated constituting a special tribunal for the trial of a criminal case is not invalid in that it deprives the accused of the right of appeal to

PART II. SECT. 1.

s**l.** *Order in Council—Revocability.*]—An Order in Council is an act of the Crown & can always be revoked.—R. *v.* OTTAWA ELECTRIC RY. CO., [1933] 1 D. L. R. 695.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

s**p.** *Duty to accept advice of Executive Council—Decision by Governor-General in Council.*]—Where a statute directs that a matter shall be decided by the Governor-General in Council, the Governor-General is bound to accept the advice of the Executive Council, there being no discretion in the Governor-General personally, & there is no legal duty upon him to peruse documents placed before him & make up his mind upon them.—SCHIERHOUT *v.* UNION GOVERNMENT, [1927] App. D. 94.—**S. AF.**

t (p. 419) **i.** —— *Proclamation fixing importation duties.*]—The Governor-General purporting to act under Act 35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets:—*Held:* the proclamations were *intra vires* the Governor-General.—CUSTOMS COMR. *v.* AIRTON D. 1.—**S. AF.**

t (p. 420) **i.** —— *No liability to ... tain.*]—There is no legal obligation upon a Lieutenant-Governor, flowing from his appointment as such, to entertain socially; & no implied contract exists between him & the Crown, by reason of his appointment & the taking of the oath of office, from which flows any obligation with respect to expenditures for social entertainments. Such expenditures are voluntary, & the failure to so entertain could not be a cause for removal or dismissal.—*Re* LIEUTENANT-GOVERNORS SALARY, [1931] Ex. C. R. 232.—**CAN.**

p. 420) **i.** —— *Government of Act, 1910, s. 72—State of "emergency."*]—The power of legislation by Ordinance, conferred by s. 72 of Government of India Act, on the Governor-General, is subject to threefold restrictions. There must be an "emergency" to justify the exercise of the power; the power can only be exercised for the peace & good government of British India or any part thereof; the Ordinance must not go beyond the power of the Indian Legislature to make laws. There being nothing in the language of sect. 72 to indicate that the Governor-General's opinion on the points referred to above is to be taken as final, the initial presumption is that a ct. of law will have jurisdiction to go into such matters if it becomes necessary to do so, in order to determine any question properly coming before it for decision.—DES RAJ *v.* R. (1930), I. L. R. 12 Lah. 26.—**IND.**

p (p. 420) **ii.** —— —— ——.]—The High Ct. has power, on application for *habeas corpus*, to inquire into the legality of sentences passed by the military authorities unless such acts were validated by a Bill of Indemnity; but held, on account of an Ordinance promulgated by the Governor-General validating the sentences, the ct. could not question their legality. Under Government of India Act, 1910, s. 72, the Governor-General is the sole judge of the existence of the emergency, & all cts. can do is to inquire whether there was evidence upon which the Governor-General might reasonably conclude that an emergency existed.—EMPEROR *v.* CHANAPPA SHANTIRAPPA (1930), I. L. R. 55 Bom. 263.—**IND.**

p (p. 420) **iii.** —— —— ——.]—In proceedings under an Ordinance promulgated by the Governor-General under Government of India Act, 1915, s. 72, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India, as those are matters of which the Governor-General is the sole judge.—BHAGAT SINGH *v.* CROWN (1931), I. L. R. 12 Lah. 280.—**IND.**

s**b.** *Invalidity of Ordinance when repugnant to Commonwealth Act.*]—*Held:* the Governor-General in Council could not confer upon the Federal Capital Commission the powers contained in the Building & Services Ordinance by recourse to sect. 12 of Seat of Government (Administration) Act, 1910, as the Ordinance was repugnant to the provisions of Seat of Government (Administration) Act, [illegible]

SION *v.* LARIST. LTD.

the High Ct. which they would otherwise have had.—BHAGAT SINGH *v.* KING EMPEROR (1931), 58 L. R. Ind. App. 169, P. C.

31b. Authority to promulgate Berar Alienated Villages 192 Tenancy Law, 1.]—Having regard to Foreign Jurisdiction Act, 1890 (c. 57), s. 1, & the authority delegated to the Governor-General in Council by the Indian (Foreign Jurisdiction) Order, 1902, the Governor-General in Council had power to promulgate the Berar Alienated Villages Tenancy Law, 1921, relating to territory of H.H. the Nizam leased in perpetuity to the British Govt. The said Law of 1921 is not void under sect. 12 of the Act of 1890 so far as it is repugnant to the Waste Land Rules, 1865 (Berar), because the Acts, Orders & Regulations referred to in that sect. are Acts, Orders & Regulations applying to British subjects & do not include the said rules of 1865, which did not purport so to apply. Further, the said rules of 1865 were merely administrative orders. The Law of 1921, so promulgated, accordingly operates as a legislative Act, & effectively interferes with rights in property held under leases granted pursuant to the rules of 1865.—DATTATRAYA KRISHNA RAO KANE *v.* SECRETARY OF STATE FOR INDIA (1930), 57 L. R. Ind. App. 318, P. C.

31c. Power to deport—Construction of Deposed Chiefs Removal Ordinance (Nigeria).]—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), No. 284a, *post*.

34. For "(1774)" read "(1775)".

Add. Annotation :—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

47. *Add. Annotations :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

52a. Legislative Council of Nova Scotia—Appointment to.] — The Lieutenant-Governor of Nova Scotia, acting by & with the advice of the Executive Council of Nova Scotia, has power to appoint in the name of the Crown so many members of the Legislative Council of Nova Scotia that the total number would (*a*) exceed twenty-one or (*b*) exceed the total number at the union mentioned in British North America Act, 1867 (c. 3), s. 88. The membership of the Council is not limited in number. The tenure of office of members of the Council appointed before May 7, 1925, is during the pleasure of His Majesty the King, represented in that behalf by the Lieutenant-Governor of Nova Scotia acting by & with the advice of the Executive Council of Nova Scotia.—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, [1928] A. C. 107; 97 L. J. P. C. 27; 138 L. T. 114; 44 T. L. R. 1; 71 Sol. Jo. 864, P. C.

52b. —— Membership of—Tenure of office.]—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, No. 52a, *ante*.

52c. Canadian Senate—Membership of—Who are qualified persons—Women.]—(1) The words "qualified persons" in British North America Act, 1867 (c. 3), s. 24, include women, & therefore women are eligible for membership of the Senate of Canada.

(2) The provisions of British North America Act, 1867 (c. 3), enacting a constitution for Canada should not be given a narrow & technical construction, but a large & liberal interpretation, so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs.—EDWARDS *v.* A.-G. FOR CANADA, [1930] A. C. 124; 99 L. J. P. C. 27; 142 L. T. 98; 46 T. L. R. 4; 73 Sol. Jo. 711, P. C.

Annotation :—As to (2) **Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500.

56a. —— Future exercise—Cannot be fettered.]—Acting within the constitution, the legislature of a self-governing Colony or State is supreme, & no act of the executive Govt. can fetter in any legal sense the future exercise of its powers, or give to any person a title other than such as could be conferred under existing legislation.

When New South Wales Constitution Act, 1855, was enacted, Garden Island, in Port Jackson, was part of the waste lands of the Crown, the entire management & control of which were vested by sect. 2 of that Act in the legislature of the Colony. By notices published in 1865 & 1866, pursuant to Crown Lands Alienation Act, 1861 (N.S.W.), the island was dedicated as a naval depot. It continued to be so used by the Imperial naval authorities until 1913, but since that date it had been occupied by the Commonwealth naval authorities for the use of the

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PART II. SECT. 2, SUB-SECT. 2.

sr. *Executive regulation—Inapplicable to pending proceedings.*]—Judgment having been postponed in an appeal against assessment to land tax pending calculation of the amount due, a new regulation was promulgated relating to calculation :—*Held :* this regulation was inapplicable.—SENDALL *v.* LAND TAX FEDERAL COMR. (1911), 12 C. L. R. 653, 664.—**AUS.**

st. ——.]—The Board of Trade (Cinematograph Films) Regulations, 1932, are *ultra vires* of the Governor-General in Council, since the words "in any other manner whatsoever" in Board of Trade Act, 1919, s. 26 (1), refer to matters *ejusdem generis* as those in the preceding paragraphs, which deal with unfair trading.—KERRIDGE *v.* GIRLING-BUTCHER, [1933] N. Z. L. R. 646.—**N.Z.**

sw. *Contract by executive—Effect of ex post facto authority.*]—An Appropriation Act of the Commonwealth Parliament appropriating money towards payment in respect of an agreement made by the Executive Government on behalf of the Commonwealth & which without Parliamentary authority would be invalid, does not validate that agreement.—COMMONWEALTH *v.* COLONIAL AMMUNITION CO. (1924), 34 C. L. R. 198.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—A.

sf. *Cannot suspend Habeas Corpus Act.*]—The Imperial Parliament alone can suspend the above Act.—*Re* BLANSHAY (Que.) (1918), 24 R. de J. 578.—**CAN.**

sl. *Disqualified member voting—Liability to penalties.*]—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered, belongs to pltf. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the same penalty, unless such prior action was collusive.—KEENE *v.* COLLEY, [1925] 4 D. L. R. 229; [1925] 3 W. W. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B.

59 iv. ——.]—When an Act of the Dominion Parliament is in part repugnant to an imperial Act, effect will be given to its enactments in so far as they agree.—*Re* THE RAREWELL (1881), 7 Q. L. R. 380.—**CAN.**

59 v. *Transfer of schools—By Education Act (Northern Ireland), 1923 (c. 21)—Whether repugnant to Government of Ireland Act, 1920 (c. 67).*]—Education Act (Northern Ireland), 1923 (c. 21), which relates to the transfer of schools, is not void under Govt. of Ireland Act, 1920, c. 67, s. 5.—LONDONDERRY COUNTY COUNCIL *v.* M'GLADE, [1929] N. I. 47.—**IR.**

naval forces which it provided & maintained. An Imperial Order in Council made in 1899 under Colonial Fortifications Act, 1877, recited an agreement by which the Government of New South Wales were to erect buildings & carry out works, partly on Garden Island, & the Imperial Government agreed that when the buildings & works were completed & the sites " conveyed, granted, or dedicated in perpetuity for the use of Her Majesty's navy in the same way as Garden Island had been," the Imperial Government would surrender certain lands which were not within 1855 Act, s. 2; the Order then, in consideration of the agreement, vested the lands in the Government of New South Wales. In 1923 the Minister administering the Crown Lands Consolidation Act, 1913 (N.S.W.), acting under sect. 25 of that Act, revoked the dedication of Garden Island :— *Held:* the recital in the Order in Council of 1899 did not preclude the Minister from revoking the dedication in the manner provided by the Act of 1913, & the revocation was effectual under sect. 25 of that Act, although the notice did not state the manner in which it was proposed to deal with the island. Judgment of the High Ct. affirmed, subject to the declaration made, that resp. State was entitled to possession of Garden Island, being varied to a declaration, in the words of Crown Lands Consolidation Act, 1913, s. 25, that by virtue of the revocation the island had become Crown lands within that Act, & liable to be dealt with in accordance therewith.—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, [1929] A. C. 431; 98 L. J. P. C. 81; 140 L. T. 567; 45 T. L. R. 216, P. C.

60. After this case add :—

-.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 2.

60a. ——.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *post.*

60b. ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post.*

66. After this case add :—

-.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

68. *Add. Annotation :—As to* (1) **Refd.** The Fagernes, [1927] P. 311.

90. *Add. Annotations :—***Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Croft *v.* Dunphy (1932), 48 T. L. R. 652. **Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500.

90a. Principle of construction of British North America Act, 1867 (c. 3).]—EDWARDS *v.* A.-G. FOR CANADA, No. 52c, *ante.*

91. *Add. Annotation :—***Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500.

91a. Enactment preventing King in Council from granting leave to appeal—Criminal case.]—Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute; exclusion of the prerogative could be accomplished only by an Imperial statute.

According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.

Applt. was convicted in Alberta of an offence under Govt. Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals :—*Held:* (1) each appeal was in a " criminal case " to which sect. 1025 applied, so far as it was valid; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal: (3) sect. 1025 did not exclude the prerogative

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60 i. *Effect of Colonial Laws Validity Act, 1865 (c. 63)—Invalidity of Navigation Act, 1912-1920 (Aus.).*]—The Navigation Act, 1912-1920, is a colonial law within the meaning & operation of sect. 2 of Colonial Laws Validity Act, 1865, & therefore any provision in the former Act or in regulations made thereunder which is repugnant to the provisions of Merchant Shipping Acts, 1894-1906, is to the extent of such repugnancy void & inoperative. —UNION STEAMSHIP CO. OF N. Z. *v.* THE COMMONWEALTH (1925), 36 C. L. R. 130.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—C.

64 vi. —— —— *Application to ship in foreign port.*]—An award made under the authority of the Industrial Conciliation & Arbitration Act, 1905, purporting to regulate the relations between the employers & employees on a New Zealand ship in a foreign port is valid & not too widely expressed.

The words of sect. 53 of the Constitution Act are wide enough to include by implication the power for the New Zealand legislature to pass laws for the control of its shipping. If the legislature had not such power the peace, order, & good government of New Zealand would be seriously impaired (STOUT, C.J.).—*Re* AWARD OF WELLINGTON COOKS & STEWARDS UNION (1906), 26 N. Z. L. R. 394.—**N.Z.**

64 vii. —— ——.]—There is a presumption that Parliament does not design its statutes to operate on its subjects beyond the territorial limits of the Union, in the absence of any contrary intention, express or implied. —WILSHIN *v.* WILSHIN (1936), N. L. R. 280.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.—A. (a).

an. *Recital in preamble to private Act —Effect of.*]—A recital in the preamble to a special private Act enacted by the Parliament of Canada is not such a declaration as that contemplated by B. N. A. Act, 1867, s. 92 (10) (c), in order to bring the subject-matter of the legislation within the jurisdiction of Parliament.—HEWSON *v.* ONTARIO POWER CO. (1905), 36 S. C. R. 596.—**CAN.**

ap. *Incidental subjects included.*]—BENNETT *v.* QUEBEC PHARMACEUTICAL ASSOCN. (1881), 1 D. C. A. 336; 2 Cart. 250.—**CAN.**

right to give leave to appeal; (4) the cases were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—NADAN *v.* R., [1926] A. C. 482; 95 L. J. P. C. 114; 134 L. T. 706; 42 T. L. R. 356; 28 Cox, C. C. 167, P. C.

Annotations :—As to (3) **Folld.** Chung Chuck *v.* R., [1930] A. C. 244. **Expld.** British Coal Corpn. *v.* R., [1935] A. C. 500. *Generally*, **Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

91b. —— ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post*.

94. *Add. Annotation :*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

96. *Add. Annotations :*—**Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

97. *Add. Annotations :*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310; **Refd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

98. For the paragraph in the original volume substitute the following paragraph :—

Bona vacantia—Right of Crown in right of province.]—*Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia*. Its meaning is not limited by its association with the words "lands, mines, minerals."—R. *v.* A.-G. OF BRITISH COLUMBIA, [1924] A. C. 213; 93 L. J. P. C. 76; 130 L. T. 231; 40 T. L. R. 13; 68 Sol. Jo. 138, P. C.

Annotation :—**Consd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

98a. —— ——.]—(1) Land in Alberta granted by the Crown either before or after Sept. 1, 1905, when Alberta Act, 1905 (c. 3 Dom.), came into force, in the absence of ..., escheats to the Crown in the right of the Dominion.

(2) Effect of Land Titles Act, 1894 (c. 28, Dom.), & Land Titles Act, 1906 (Alta.).

(3) Meaning of "royalties" in Alberta Act, s. 21.

(4) *Bona vacantia* in Alberta belong to the Crown in the right of the province. The effect of Alberta Act, s. 3, was to place the Province of Alberta in the same position in regard to property as the provinces previously constituted save so far as the Act provided otherwise, either expressly or by reasonable implication.

(5) Ultimate Heir Act, R. S. A., 1922 (c. 144), is *ultra vires* so far as it purported to affect real property.—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, [1928] A. C. 475; 97 L. J. P. C. 106; 139 L. T. 532; 44 T. L. R. 651, P. C.

Annotation :—As to (1) **Consd.** *Re* Natural Resources (Saskatchewan), [1932] A. C. 28.

99. *Add. Annotation :—As to* (2) **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.

101. *Add. Annotations :*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Gallagher *v.* Lynn, [1937] 3 All E. R. 598.

102. *Add. Annotations :*—**Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

105. *Add. Annotations :*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

106. *Add. Annotations :*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for Manitoba *v.* A.-G. for Canada, [1929]

98 i. *Bona vacantia—Right of Crown in right of Dominion—Saskatchewan.*]—In 1916, R. domiciled in the province of S. died, leaving no heirs or other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat :—*Held :* as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—**CAN.**

sr. "*Royalties*" — *British North America Act*, 1867, s. 109—*Construction.*]—"Royalties" in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1, 59 D. L. R. 597.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) i.

h i. ——.]—R. *v.* HANEL, R. *v.* YELLE Que.) (1925), 45 Can. Crim. Cas. 381.—**CAN.**

h ii. ——.]—Provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (2), is "absolutely void & inoperative," & is not appealable under sub-sect. 3 to the Governor in Council.—HIRSCH *v.* MONTREAL PROTESTANT BOARD SCHOOL COMRS., [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varying*, 31 R. de J. 440; *on appeal*, [1928] A. C. 200, P. C.—**CAN.**

h iii. ——.]—Any provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (1), is to the extent of such repugnancy absolutely void & inoperative.—TINY SEPARATE SCHOOL TRUSTEES *v.* R. (1926), 59 O. L. R. 96.—**CAN.**

h iv. ——.]—*Held :* there is a conflict between Bkpcy. Act, 1927 (c. 11), s. 64 & Fraudulent Preferences Act, R. S. B. C., 1924 (c. 97), s. 3 (2); & the Dominion enactment prevails.—CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD. *v.* HOFFAR, LTD., [1929] 2 D. L. R. 73; 1 W. W. R. 557; 40 B. C. R. 454; 10 C. B. R. 369.—**CAN.**

k. For "**k.** ——.]—" substitute "**101 ii.** —— ——.]—"

101 iii. —— ——.]—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—R. *v.* SHENDAN, [1924] 3 D. L. R. 339; 3 W. W. R. 617; 34 B. C. R. 161.—**CAN.**

106 i. —— *Power to repeal local Act.*]—RUMSEY *v.* HARE (1877), 3 R. & C. 4.—**CAN.**

st. *Creation of new province—Restriction of legislative powers.*]—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12.—**CAN.**

sv. *Legislation inconsistent with provincial rights—Powers conferred on Board of Commerce.*]—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would

A. C. 260; A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1; A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

108. *Add. Citations:*—93 L. J. P. C. 101; 130 L. T. 101.

Add. Annotations:—**Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Consd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

108a. —— —— **Question of substance, not of form.**]—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts. of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 146), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div.:—*Held:* (2) the Act of 1922 was *intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration.—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, CRAIGON *v.* R., OTTE *v.* R., 93 L. J. P.C. 137; 40 T. L. R. 273, P. C.

Annotations:—As to (1) **Folld.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. *Generally,* **Refd.** British Coal Corpn. *v.* R., [1935] A. C. 500.

110a. Legislation in performance of treaty obligations.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *post.*

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restrict the liberty of the inhabitants of a province.—A.-G. FOR ONTARIO *v.* CANADIAN WHOLESALE GROCERS ASSOCN., [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—**CAN.**

sy. *Regulations under Live Stock Act —Incapacity of Dominion or Province to enlarge jurisdiction of each other.*]—In so far as the provisions of Live Stock & Live Stock Products Act, R. S. C., 1927, & regulations thereunder purport to control & regulate sales & purchases of eggs which begin & end within a province they are *ultra vires.* Neither the Dominion nor a province can enlarge the legislative jurisdiction of the other or surrender jurisdiction.—R. *v.* ZASLAVSKY, [1935] 2 W. W. R. 34; 3 D. L. R. 788.—**CAN.**

sb. ——.]—The regulations made under Live Stock & Live Stock Products Act, R. S. C., 1927, requiring dealers in eggs to mark, label or tag the egg containers with the correct grade, etc., of the eggs, & the provisions of said Act under which said regulations purported to be made, are in so far as they relate to the sale or delivery of eggs by one person to another within the same province, *ultra vires.*—R. *v.* BRODSKY, [1936] 1 W. W. R. 177; 1 D. L. R. 578; 65 Can. C. C. 4; 43 Man. L. R. 522; 5 Can. L. Jo. 244.—**CAN.**

sc. *Dominion & Provincial Bankruptcy Acts—Conflicting rights of creditors.*]—If Dominion legislation, in its operation & within the scope of its own field, interferes with the rights of creditors of a bkpt. acquired under a provincial statute, & if it is incidental & necessary to the enforcement of the Dominion statute that the powers thereunder be exercised, without restriction, then the rights acquired under the provincial legislation must give way to the Dominion legislation, if by so doing any benefit is to accrue to the bkpt.'s estate. If, however, no such benefit is to accrue to the bkpt.'s estate, then the Dominion statute should be so construed as not to interfere with or deprive any creditor of any right which he may have acquired under provincial legislation.—CROWN COAL CO., LTD. *v.* SWANSON LUMBER CO., LTD. & CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1935] 3 W. W. R. 244; *on appeal,* [1935] 4 D. L. R. 707; 3 W. W. R. 487; 5 F. L. J. (Can.) 211.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) ii.

m (p. 431) i. ——.]—KINNEY *v.* DUDMAN (1876), 2 R. & C. 19; 2 Cart. 412.—**CAN.**

m (p. 431) ii. ——]—PEEK *v.* SHIELDS (1881), 6 A. R. 639; 3 Cart. 266.—**CAN.**

o (p. 431) i. —— *Bankruptcy Act,* 1920 (*c.* 34), *s.* 11 (1) (10)—*Intra vires.*]—On the true construction of Bkpcy. Act of Canada, sect. 11 (10), a judicial hypothec upon real assets of a debtor, resulting from registration under art. 2121 of the Civil Code of Quebec, was thereby postponed to an authorised assignment subsequently made by the debtor for the benefit of his creditors. It was within the powers of the Parliament of Canada so to enact, since the legislative power of that Parliament under sect. 91, head 21, of the British North America Act, 1867, in relation to "bankruptcy & insolvency," enables it to determine by legislation the relative priorities of creditors under a bkpcy. or authorised assignment; that power prevails over the legislative power of a Province under sect. 92, head 2, in relation to property & civil rights in the Province.—ROYAL BANK OF CANADA *v.* LARUE & A.-G. FOR CANADA, [1928] A. C. 187; 139 L. T. 562, P. C.; *affg.* S. C. *sub nom.* BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] S. C. R. 218.—**CAN.**

o (p. 431) ii. —— *Companies' Creditors Arrangement Act,* 1933—*Intra vires.*]—*Re* COMPANIES CREDITORS ARRANGEMENT ACT REFERENCE, [1934] S. C. R. 659; 4 D. L. R. 75.—**CAN.**

o (p. 431) iii. ——.]—Sects. 157, 159 of Bkpcy. Act, are *intra vires.*—*Re* COLLINGS, [1936] 4 D. L. R. 28.—**CAN.**

sw. *Building societies—In Quebec—Liquidation of—Ultra vires.*]—MCCLANAGHAN *v.* ST. ANN'S MUTUAL BUILDING SOCIETY (1880), 24 L. C. J. 162; 2 Cart. 237.—**CAN.**

sy. *Cheese factories—Act to prevent fraud against—Valid.*]—R. *v.* STONE (1892), 23 O. R. 46.—**CAN.**

sz. *Copyright.*]—SMILES *v.* BELFORD (1877), 1 A. R. 436; 1 Cart. 576.—**CAN.**

sb. *Education.*]—*Held:* Alberta Act (D., 1905, c. 3), s. 17, was within the powers of the Dominion Parliament.—*Re* ALBERTA ACT, SECTION 17, [1927] 2 D. L. R. 993; [1927] S. C. R. 364.—**CAN.**

115. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

116. *Add. Annotations :*—**Consd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235. **Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

117. *Add. Annotations :*—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

117a. —— —— ——.]—Sale of Shares Act, 1924, & Municipal & Public Utility Board Act, 1926, both of Manitoba, are *ultra vires* under British North America Act, 1867 (c. 3), s. 92, in so far as they purport to prohibit Dominion cos. from selling their own shares within the Province without the consent of a Provincial Comr. or Board, since thereby they interfere, directly & substantially, with the status & capacity conferred on the cos. by Dominion legislation *intra vires* under British North America Act, 1867 (c. 3), s. 91.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1929] A. C. 260; 98 L. J. P. C. 65; 140 L. T. 386; 45 T. L. R. 146, P. C.

Annotation :—**Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231.

119. *Add. Annotations :—As to* (1) **Refd.** Montreal Corpn *v.* Montreal Harbour Comrs., Tetreault *v.* Montreal Harbour Comrs., A.-G. for Quebec *v.* A.-G. for Canada (1925), 42 T. L. R. 98; A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715. *Generally*, **Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

119a. —— ——.]—(1) Fisheries Act, 1914, ss. 7a, 18, requiring persons who operate for commercial purposes a fish cannery, & in British Columbia a salmon cannery or salmon curing establishment, to obtain a licence from the Canadian Minister of Fisheries are *ultra vires* of the Parliament of Canada.

(2) The Special Fishery Regulations made for British Columbia under sect. 45 of the same Act do not give the Minister a discretion to refuse an application by a properly qualified person for such a fishing licence as is required by those regulations.—A.-G. FOR CANADA *v.* A.-G. FOR BRITISH COLUMBIA, [1930] A. C. 111; 99 L. J. P. C. 20; 142 L. T. 73; 46 T. L. R. 1, P. C.

Annotations :—Generally, **Consd.** Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; A.-G. for Quebec *v.* A.-G. for Canda (1932), 48 T. L. R. 238.

120. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

121. *Add. Annotation :*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121a. —— —— **Safeguarding navigation of river obstructed by bridge included.**]—British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legislatures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception :—*Held :* (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty.—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING (1925), 94 L. J. P. C. 142; 133 L. T. 436, P. C.

122. *Add. Annotation :*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

122a. —— **Expropriation of provincial Crown lands.**]—Railway Act, 1919 (c. 68), s. 189,

114 iv. —— ——.]—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—GOLD SEAL, LTD. *v.* DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg.* 58 D. L. R. 51; 34 Can. Crim. Cas. 259; 16 Alta. L. R. 113.—**CAN.**

114 v. —— ——.]—Canada Temperance Act, R. S. C., 1927, is *ultra vires*.—R. *v.* JONES, [1937] 1 D. L. R. 193; 67 Can. C. C. 228; 11 M. P. R. 240; 6 F. L. J. (Can.) 164.—**CAN.**

115 iii. —— *By 45 Vict. c. 119—Valid.*]—*Re* QUEBEC TIMBER CO. (1882), Cout. 43.—**CAN.**

a (p. 432) i. —— *Regulation of time & manner.*]—The regulation of the manner of fishing & the establishing of close seasons are within the exclusive legislative jurisdiction of the Dominion Parliament. Sect. 29 of Fisheries Act, R. S. C., 1927, is *intra vires*.—R. *v.* TOMASSON, [1932] 2 W. W. R. 176; 40 Man. L. R. 321.—**CAN.**

r (p. 432) i. —— *Regulations as to inland fisheries—Valid.*]—BAYER *v.* KAIZER (1894), 26 N. S. R. 280.—**CAN.**

r (p. 432) ii. —— ——.]—The provisions of Fisheries Act, 1914 (c. 8) (Dom.), ss. 7A, 18, for the licensing & taxing of fish canneries :—*Held : ultra vires*.—R. *v.* SOMERVILLE CANNERY CO., LTD. (B. C.), [1927] 4 D. L. R. 494; [1927] 3 W. W. R. 215; 49 Can. Crim. Cas. 65.—**CAN.**

r (p. 432) iii. —— ——.]—A regulation made by Order in Council pursuant to the power given by Dominion Fisheries Act, s. 45, & adopted from a provincial regulation, to the effect that no one shall fish by means other than by angling & trolling except under license from a duly authorised officer of the Provincial Govt. was not open to objection on the principle that Parliament has no power to divest the Dominion in favour of the Province of a legislative power conferred on it by the B. N. A. Act.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

r (p. 432) iv. —— *Customs & Fisheries Protection Act, s. 10 (c)—Intra vires.*]—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155.—**CAN.**

h (p. 432) i. —— *Guarding of crossings.*]—*Re* CANADIAN PACIFIC RY. CO. & COUNTY & TOWNSHIP OF YORK (1896), 27 O. R. 559.—**CAN.**

y i. —— *Dom... ... Insurance Act, ss. 11, 12 (1), 71, 71A, 134, 134A—Ultra vires.*]—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

sd. Interest—Amount of—R. S. C., 1886 (c. 127), *s. 7—Intra vires.*]—BRADBURN *v.* EDINBURGH LIFE ASSURANCE CO. (1903), 23 C. L. T. 199; 5 O. L. R. 657; 2 O. W. R. 253.—**CAN.**

c (p. 433). For "**c**" substitute

Annotation :—**Distd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

124. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission ; Toronto Transportation Commission *v.* Canadian National Railways, [1930] A. C. 686 ; Canadian Electrical Assocn. *v.* Canadian National Railways, [1934] A. C. 551.

125. *Add. Annotations :*—**Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54 ; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

125a. —— **Regulation of running rights.**]—Applts. owned a short railway line in Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Co. under agreements, & traffic could pass from applts.' line without interruption into such other provinces as were served by that co.'s railway. The Railway Board made an order declaring its power to grant an application by first resp. for running rights over applts.' line, with permission to construct a short track joining it :—*Held :* the Railway Board had power to grant the application, since applts.' line was part of a system of railways operated together, & connecting one province with another, & it was within the legislative authority of the Dominion under British North America Act, 1867 (c. 3), s. 92 (10) (*a*).—LUSCAR COLLIERIES *v.* MCDONALD, [1927] A. C. 925 ; 97 L. J. P. C. 21 ; 137 L. T. 779 ; 43 T. L. R. 801, P. C.

125b. —— **Powers not delegated to Board of Railway Commissioners.**]—The Parliament of Canada, for the purpose of securing effective railway administration, may encroach upon the Provincial domain in respect of property & civil rights, but Parliament does not appear to have delegated that legislative power to the Board of Railway Comrs., unless possibly by sect. 34 (3) of the Canadian Railway Act.—CANADIAN ELECTRICAL ASSOCN. *v.* CANADIAN NATIONAL RAILWAYS, [1934] A. C. 551 ; 103 L. J. P. C. 127 ; 151 L. T. 453 ; 51 T. L. R. 25, P. C.

126. *Add. Annotations :*—**Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

128a. —— **Question of substance, not of form.**]—**A.-G. FOR ONTARIO** *v.* **RECIPROCAL INSURERS, No. 108a,** *ante.*

128b. —— **Insurance Act, 1927, ss. 11, 12, 65, 66 —Validity.**]—By sect. 11 of the Insurance Act of Canada, R. S. C., 1927, c. 101, a licence was made necessary from the Minister of Canada for any Canadian co. or any alien to carry on insurance business within Canada, &, by sect. 12, a licence was also required for any British co. or subject not resident in Canada who immigrated into Canada to carry on insurance business, & sects. 65 & 66 imposed penalties for insuring without such licences. The Special War Revenue Act, R. S. C., 1927, c. 179, imposed taxation on persons who insured with insurers so prohibited. British & foreign insurers obtained licences under the Quebec Insurance Act, & the Govt. of Canada required them to take out licences under sects. 11 & 12, & attempted to recover taxes from persons who had insured with them under the Special War Revenue Act. The Lieutenant-Governor of Quebec referred to the ct. the questions : " (1) Is a foreign or British insurer who holds a licence under the Quebec Insurance Act to carry on business within the Province obliged to observe & subject to sects. 11, 12, 65, 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer ? (2) Are sects. 16, 20 & 21 of the Special War Revenue Act within the legislative competence of the Parliament of Canada ? Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial law a licence to carry on business in the Province and any other case ? " :—*Held :* the answers must be to the first part of question 1, " No " ; & to the second part, " Yes " ; to the second question in both branches, " No." The conduct of insurance had been declared to be exclusively subject to Provincial law, & the Insurance Act of Canada, 1927, was not properly framed alien legislation within sect. 91 of the British North America Act, 1867 (c. 3), & therefore was not within the legislative powers of the Dominion, neither was that Act properly framed law as to immigration within the meaning of sect. 95 of the Act of 1867. The taxation imposed by the Special War Revenue Act was void in that the tax was linked up with a Dominion licence which had already by this decision been held illegal.—*Re* INSURANCE ACT OF CANADA, [1932] A. C. 41 ; *sub nom.* A.-G. OF QUEBEC *v.* A.-G. OF CANADA, BELDING CORTICELLI, LTD., A.-G. OF CANADA *v.* A.-G. OF QUEBEC (1931), 101 L. J. P. C. 26 ; 146 L. T. 28 ; 48 T. L. R. 173 ; 76 Sol. Jo. 10, P. C.

128c. Power to impose customs duty—Alcoholic liquor imported by province.]—Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America

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128b ii. —— *Imposition of additional customs duties.*]—*Held :* 53 Vict. c. 20, s. 19, was not *ultra vires* the Dominion Parliament.—A.-G. OF CANADA *v.* FOSTER (1892), 31 N. B. R. 153.—**CAN.**

si. *Migratory Birds Protection Act,* 1917 (c. 18)—*How far intra vires.*]—R. *v.* STUART, [1925] 1 D. L. R. 12 ; [1924] 3 W. W. R. 648.—**CAN.**

sj. *Soldier Settlement Act, ss.* 33, 34 —*Intra vires.*]—R. *v.* POWERS, [1923] Exch. C. R. 131.—**CAN.**

sk. *Judges Act, R. S. C.,* 1906 (c. 138), *ss.* 33–35.]—In so far as the above sects. attempt to disqualify or prohibit a judge of the King's Bench from acting as an arbitrator in matters lying wholly within provincial control, they are *ultra vires.*—WINNIPEG CORPN. *v.* CROSS (Man.), [1926] 4 D. L. R. 318 ; [1926] 2 W. W. R. 868.—**CAN.**

sl. *Live-stock & Live-stock Products Act,* 1923, *& regulations made thereunder—How far ultra vires.*]—R. *v.* COLLINS, [1926] 4 D. L. R. 548 ; 46 Can. Crim. Cas. 282 ; 59 O. L. R. 453. —**CAN.**

Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the " property " of a province from taxation.—A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222; 130 L. T. 257; 40 T. L. R. 4; 68 Sol. Jo. 53, P. C.

128d. —— What is—Export tax.] — A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., No. 135e, *post*.

128e. Customs legislation—Extension of extra-territorial limit—Validity.]—If a matter is within the legislative authority of the Parliament of Canada under sect. 91 of B. N. A. Act, 1867, the permitted legislation is not limited by any other consideration than is applicable to the legislation of a sovereign State. The authority so conferred upon that Parliament in relation to customs duties extends to enacting anti-smuggling provisions similar in scope to the provisions, operating beyond territorial limits, which had long

A. C. 260.

-.]—*See, now*, Statute of Westminster, 1931 (c. 4), s. 3.

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129 i. *Pilotage.*]—R. *v.* PETERS (1873), N. B. Dig. 138.—**CAN.**

l (p. 434) i. ——.]—*Held:* Criminal Code, 1892, ss. 865 & 866, were *intra vires* the Dominion Parliament.—FLICK *v.* BRISBIN (1895), 26 O. R. 423.—**CAN.**

o (p. 434) i. ——.]—If an act prohibited by the Dominion Parliament is one that may be considered a criminal matter, its prohibition & the subject of evidence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—R. *v.* POULIN (Alta.), [1925] 1 D. L. R. 618; [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—**CAN.**

o (p. 434) ii. ——.]—Criminal Code, s. 734:—*Held: intra vires.*—DOWSETT *v.* EDMUNDS (Alta.), [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—**CAN.**

o (p. 434) iii. ——.]—Sect. 734 of the Canadian Criminal Code, so far as it purports to prohibit civil proceedings in respect of an assault after the discharge of the penalty imposed in a criminal prosecution under the Code, is *ultra vires* of the Parliament of Canada.—RICE *v.* MESSENGER, [1929] 2 D. L. R. 669; 51 Can. Crim. Cas. 147; 60 N. S. R. 399.—**CAN.**

o (p. 434) iv. ——*Issue of certificate releasing from all further proceedings civil or criminal.*]—*Held:* 32 & 33 Vict. c. 20, s. 45, is not *ultra vires.*—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

q (p. 434) i. —— ——.]—O'BRIEN *v.* ROYAL GEORGE CO., LTD., [1921] 1 W. W. R. 559; 57 D. L. R. 301; 16 Alta. L. R. 373; 35 Can. Crim. Cas. 22.—**CAN.**

q (p. 434) ii. —— ——.]—Legislation of a prohibitive character passed for the purpose of compelling observance of the Lord's Day falls within B. N. A. Act, s. 91 (27), which confers on the Dominion Parliament exclusive jurisdiction to legislate with respect to criminal law.—CLARKE *v.* WAWKEN RURAL MUNICIPALITY, [1930] 2 D. L. R. 596; 1 W. W. R. 319; 53 Can. C. C. 366; *sub nom. Ex p.* CLARKE, 24 S. L. R. 327.—**CAN.**

q (p. 434) iii. —— *Food & Drugs Act*, 1927.]—Food & Drugs Act, R.S.C., 1927, is *intra vires.*—R. *v.* GOLDSMID (1932), 45 B. C. R. 435.—**CAN.**

q (p. 434) iv. —— ——.]—Food & Drugs Act, R. S. C., 1927, including sects. 3, 4 & 23 thereof & the regulations made thereunder, is *intra vires*, even with respect to the prohibition by said sects. & regulations of the adulteration of food where the prohibited adulteration is not injurious to health. Such legislation is a valid exercise of the Dominion's power to legislate with respect to criminal law; its real primary object is the protection of the public health & the prevention, in the interests of the public generally, of fraud; & for centuries the adulteration of food has been contrary to the criminal law of England.—STANDARD SAUSAGE CO., LTD. *v.* LEE, [1934] 1 W. W. R. 81; [1933] 4 D. L. R. 501; 60 C. C. C. 265; 47 B. C. R. 411.—**CAN.**

s (p. 434) i. —— *Canada Grain Act*, 1919, s. 95 (7)—*Whether ancillary to or necessary for operation of Dominion law.*]—The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative fields of the provinces in respect of property or civil rights.—R. *v.* EASTERN TERMINAL ELEVATOR CO., [1925] S. C. R. 434.—**CAN.**

s (p. 434) ii. —— ——.]—The provisions of the above Act, requiring a primary grain-dealer to take out a licence thereunder, & prescribing the form of contract to be used on the purchase of grain, are *ultra vires.*—TRIMBLE *v.* CAPLING, [1927] 1 D. L. R. 717; [1927] 1 W. W. R. 188; 22 Alta. L. R. 536.—**CAN.**

s (p. 434) iii. —— *War legislation—Establishment of Canada Wheat Board.*]—*Held:* the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443; 53 O. L. R. 298.—**CAN.**

s (p. 434) iv. ——.]—The Dominion Parliament is without legislative competence to so interfere with civil rights as to preclude the making of contracts in respect of grain except in so far as they become a matter of Dominion concern. It is a matter of Dominion concern to exercise control over persons making contracts for the purchase of western grain by reference to a grade name, since such contracts relate to grain for export trade, it being a matter of Dominion-wide interest that in the markets of the world Canadian grain may measure up to known standards designated by grade names or numbers as provided for by Canada Grain Act, 1930; but it cannot be said that the making of grain contracts without reference to grade names is a matter which comes within Dominion legislative control.—MCLEOD *v.* CANADIAN INDEMNITY CO., [1937] 2 W. W. R. 266.—**CAN.**

dd i. *Courts—Power to establish—Maritime court—Jurisdiction limited to Ontario—Valid.*]—THE PICTON (1879), 4 S. C. R. 648; 1 Cart. 557.—**CAN.**

dd ii. —— *Power to extend jurisdiction—Court created by Imperial Act—Valid.*]—A.-G. OF CANADA *v.* FLINT (1884), 16 S. C. R. 707; 4 Cart. 288.—**CAN.**

dd iii. —— ——.]—*Held:* the Dominion Parliament had power to confer jurisdiction on a ct. to try offences against Inland Revenue Act, R. S. C. c. 34.—R. *v.* KENNEDY (1902), 35 N. S. R. 266.—**CAN.**

sp. *Appeal to Supreme Court of Canada—42 Vict. c. 39, s. 6—Ultra vires.*]—GRAND TRUNK RY. CO. *v.* CREDIT VALLEY RY. CO. (1875–1908), 1 Cout. Dig. 282.—**CAN.**

st. *Jury—Selection of jurors—In criminal cases.*]—R. *v.* O'ROURKE (1882), 32 C. P. 388.—**CAN.**

sw. *Opium & Narcotic Drug Act.*]—The Opium & Narcotic Drug Act, 1923, now R. S. C. 1927, c. 144, is *intra vires.*—R. *v.* GORDON, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—**CAN.**

sx. ——.]—R. *v.* WAKABAYASHI, R. *v.* LORE YIP [1928] 3 D. L. R. 226; [1928] 1 W. W. R. 487; 49 Can. Crim. Cas. 392; 39 B. C. R. 310—**CAN.**

sy. *Agriculture—Live Stock Pedigree Act.*]—"Agriculture" within B. N. A. Act, s. 95, is not restricted to the cultivation of the fields. The purpose of Live Stock Pedigree Act being to improve the quality of live stock on the farms of the Dominion, it is *intra vires* of the Dominion under said section.—R. *v.* DAVENPORT, [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

sz. *Gold & Silver Marking Act intra vires.*]—*Held:* Gold & Silver Marking Act, 7 & 8 Edw. 7, c. 30, s. 16 (*b*), is *intra vires* of the Dominion Parliament.—R. *v.* LEE (1911), 18 O. W. R. 845; 2 O. W. N. 933; 23 O. L. R. 490; 18 Can. Crim. Cas. 480.—**CAN.**

sc. *Power to prohibit harbouring goods within territorial waters.*]—The Parliament of Canada, in legislating for the effective observance o its customs law & the protection of its revenue, may prohibit the harbouring of goods within the territorial waters of

130a. "Peace, order & good government of Canada"—Whether trade disputes included.] -TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post.*

130b. Taxation—Income tax.]—(1) The Parliament of Canada had power under British North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—CARON *v.* R., [1924] A. C. 999; 94 L. J. P. C. 9; 132 L. T. 218; 40 T. L. R. 874, P. C.

Annotation :—As to (1) **Refd.** Forbes *v.* A.-G. for Manitoba, [1937] A. C. 260.

130c. —— Salary of provincial official—Whether liable.]—CARON *v.* R., No. 130b, *ante.*

130d. Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.]—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante.*

130e. Criminal Code, s. 1036 (1)—Disposal of fines—Intra vires.]—Assuming, without deciding, that the term "royalties" in British North America Act, 1867 (c. 3), s. 109, includes fines imposed for infractions of the criminal law, any right conferred by sect. 109 on the Province of Ontario to claim fines as "royalties" extends only to such fines as have not been otherwise appropriated by competent authority, & the Parliament of Canada, having by sect. 91, head 27, exclusive authority as to the criminal law, is competent to direct that fines shall be otherwise appropriated, & in what manner. Parliament therefore had power to enact the proviso to sect. 1036 (1) of the Criminal Code of Canada directing that in the Province of Ontario fines are to be paid over to a municipal or local authority bearing, in whole or in part, the expense of administering the law under which the fine was imposed.—TORONTO (CITY) CORPN. *v.* R., [1932] A. C. 98; 101 L. J. P. C. 33; 146 L. T. 74; 48 T. L. R. 69, P. C.

130f. Combines Investigation Act, 1927—Validity.]—Combines Investigation Act, R. S. Can., 1927 (c. 26), by sect. 36 makes it an indictable offence, punishable by fine or imprisonment, to be a party to the formation or operation of a "combine" as defined by sect. 2, that is, shortly stated, a combine which is to the detriment of the public & restrains or

Canada, & thus s. 217 (4) of the Customs Act, R. S. C., 1927 (c. 42), is *intra vires.*—R. *v.* BOUTILIER, [1929] 2 D. L. R. 849; 51 Can. Crim. Cas. 314; 60 N. S. R. 492.—**CAN.**

sd. *Water power—Powers relating to.*]—*Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

se. —— *Regulation—Condition as to wages—Intra vires.*]—Regulation 83A, under the Dominion Water Power Act, R. S. C., 1927 (c. 210), is *intra vires*, if interpreted as conditional, *i.e.* as imposing on the licensee an obligation (as to the payment of wages), the observance of which is a condition of the licence; & not as a general legislation governing rates of wages & conditions of employment. Under the latter interpretation it would be *ultra vires.*—OUTEN *v.* STEWART, GRANT & WINNIPEG CITY, [1932] 3 W. W. R. 193; 40 Man. L. R. 557.—**CAN.**

sk. *Sales tax.*]—Special War Revenue Act, s. 58:—*Held: intra vires.*—R. *v.* MILLER COURT & CO., [1930] 3 D. L. R. 745.—**CAN.**

so. *Federal District Commission Act.*]—The Federal District Commission Act, 1927, is within the powers of the Parliament of Canada; & the Commission's bye-law forbidding the operation upon the Commission's driveway of any vehicle for the transportation of passengers for hire, & its bye-laws providing a penalty for non-compliance, & its agreement giving the Ottawa Electric Ry. Co. the exclusive right to operate sight-seeing busses for hire on the driveway, are within the powers of the Commission.—R. *v.* RED LINE, LTD. (1930), 54 Can. C. C. 271; 66 O. L. R. 53.—**CAN.**

sq. *Customs Act, 1927—Liability of vessel hovering within twelve miles to seizure—Intra vires.*]—TRENHOLM *v.* MCCARTHY, [1930] 1 D. L. R. 674.—**CAN.**

sr. *Trade Unions Act, 1927.*]—The Trade Unions Act is a statute dealing solely with property & civil rights, & therefore *ultra vires* of the Dominion Parliament & quite ineffectual to confer any valid status on a trade union.—AMALGAMATED BUILDERS COUNCIL *v.* HERMAN, [1930] 2 D. L. R. 513; 65 O. L. R. 296.—**CAN.**

ss. *Civil servants—Exclusive powers of salaries—Who are—Not harbour commissioners.*]—*Re* HAMILTON HARBOUR COMRS., [1930] 2 D. L. R. 509; 65 O. L. R. 149.—**CAN.**

sw. *Power to authorise inter-provincial endorsement of search warrants.*]—The Dominion Parliament has power to authorise peace officers & others to act beyond the limits of the ordinary scope of their provincial duties & can, in a criminal prosecution or for the purpose thereof, under sect. 91 of the British North America Act, deal with the personal property of citizens in any Province & authorise its seizure by a constable or peace officer acting under sect. 629 of the Criminal Code.—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214; 65 O. L. R. 677.—**CAN.**

sb. *Soldier Settlement Act—Security to Board — Priorities.*]—Those provisions of the "Soldier Settlement Act," 1919, purporting to provide security to the Board without registration of said security and in priority to other *bonâ fide* creditors whose security has been registered are *intra vires* of the powers of the Parliament of Canada.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

sc. *Companies Act, 1927, s. 110.*]—Dominion Cos. Act, R. S. C., 1927, s. 110, is *ultra vires* as being repugnant to the statutory right of the Provinces to legislate in respect of property & civil rights.—MEYER MALT & GRAIN CORPN. *v.* COOMBS, [1933] 2 D. L. R. 374; O. R. 259.—**CAN.**

sd. ——.]—Sect. 110 of Dominion Cos. Act, R. S. C., 1927, as to directors' liability for declaring & paying dividend when co. is insolvent, or when payment of the dividend renders co. insolvent or impairs capital, is *intra vires* of the Parliament of Canada. The enactment is of a character that brings it within the class of topics that must be supposed to have been contemplated, in the light of existing experience, as falling within the subject of "incorporation of cos." within the meaning thereof as used in B. N. A. Act.—*Re* COMPANY'S ACT, S. 110, REFERENCE, [1934] S. C. R. 653; 4 D. L. R. 6.—**CAN.**

sg. *Companies Act, 1927, s. 113.*]—Sect. 113 of Cos. Act, R. S. C., 1927, is a limited exception from the exemption to liability as shareholders granted by sect. 180 of said Act, & is valid & binding.—SCHUMACHER *v.* MOORE, [1934] 2 W. W. R. 588; 4 D. L. R. 585; 42 Man. L. R. 385.—**CAN.**

sj. *Property & Civil Rights—Abolition of office.*]—*Held:* legislation abolishing the office of membership of the Federal Appeal Board office without compensation was not an interference with "Property & Civil Rights." Either the Act did not interfere with any civil right since the right was in itself determinable by statute, or, if it did interfere, its interference was necessarily incident to the undoubted power of the Dominion to abolish the old & create the new office.—REILLY *v.* R., [1934] 1 W. W. R. 298; 1 D. L. R. 434.—**CAN.**

sl. *Income Tax War Act, 1927, s. 19.*]—Income War Tax Act, R. S. C., 1927, s. 19, is *intra vires.*—MCLAREN *v.* MINISTER OF NATIONAL REVENUE, [1934] Ex. C. R. 13.—**CAN.**

so. *Trading stamps—Unlawful sale.*]—Criminal Code, s. 505, is *intra vires.*—R. *v.* WESTERN AUTOMOBILE CLUB, LTD., [1934] 2 W. W. R. 431; 3 D. L. R. 592; 62 C. C. C. 10.—**CAN.**

sr. *Inheritance by aliens.*]—*Qu.*: whether Dominion legislation purporting to empower aliens to hold property in Canada does not, in order to confer the right of succession to property in a particular province require to be supplemented by ancillary provincial legislation, especially in those cases where, in the absence of such right, there would be an escheat to the Crown in the right of the province.—*Re* DANILUK ESTATE, [1935] 1 W. W. R. 142.—**CAN.**

ss. *Natural Products Marketing Act, 1934.*]—Since the answer of the Privy Council to the question submitted in the Reference *Re* The Natural Products Marketing Act, 1934 (Dom.), could not be affected by the circumstances of the present action, therefore, with respect to the questions arising for decision herein the opinion expressed on said reference that the Act & its amending Act of 1935 are *ultra vires* is binding on the ct. in respect to this case.—VANCOUVER GROWERS, LTD. *v.* BRITISH COLUMBIA COAST VEGETABLE MARKETING BOARD, [1937] 1 W. W. R. 670; *on appeal*, [1937] 3 W. W. R. 119, 121.—**CAN.**

injures trade or commerce. Inquiries whether a combine exists are to be conducted by appointed officials, who are given powers to examine books, demand returns, & summon witnesses. By sects. 29 & 30, customs duties may be reduced, & licences revoked, where the duties are used to facilitate a combine, or when the holder of a patent uses it so as unduly to limit manufacture or increase the price of any article. The Criminal Code, R. S. Can., 1927 (c. 36), s. 498, makes it an indictable offence, punishable by fine or imprisonment, to conspire, combine, or agree unduly to limit transportation facilities, restrain commerce, or lessen manufacture or competition:—*Held* sect. 498 of the Code & the Act, excepting sects. 29 & 30, were *intra vires* the Parliament of Canada under British North America Act, 1867, s. 91, head 27 (criminal law), & sects. 29 & 30 could be supported under sect. 91, heads 3 & 22. The legislation being in its path & substance within enumerated heads of sect. 91, it was not material that it affected property & civil rights in the Provinces (sect. 92, head 13), or if it affected, which it did not, the administration of justice in the Provinces (sect. 92, head 14). The Dominion could employ its own executive officers to carry out legislation which was within its constitutional authority. It was unnecessary to discuss whether the legislation was *intra vires* also under sect. 91, head 2 (the regulation of trade & commerce), but the Judicial Committee did not assent to a contention that the power under that head was confined to the furtherance of a general power which the Dominion possessed independently of it. —PROPRIETARY ARTICLES TRADE ASSOCN. *v.* A.-G. FOR CANADA, [1931] A. C. 310; 100 L. J. P. C. 84; 144 L. T. 577; 47 T. L. R. 250, P. C.

Annotations:—**Consd.** O'Connor *v.* Waldron, [1935] A. C. 76. **Apld.** A.-G. for British Columbia *v.* A.-G. for Canada, [1937] A. C. 368.

130g. Aviation—Exclusive power of Dominion Legislature.]—The whole field of legislation in relation to aerial navigation in Canada belongs to the Dominion.

Having regard to (*a*) sect. 132 of the British North America Act, 1867 (c. 3), which gives to the Parliament & Govt. of Canada all powers necessary or proper for performing the obligations of Canada, or of any Province thereof, under treaties between the British Empire & foreign countries, (*b*) the fact that an international Convention of 1919, a treaty under sect. 132, covered almost every conceivable matter relating to aerial navigation, & (*c*) the further powers of the Parliament of Canada under sect. 91, heads 2 (trade & commerce), 5 (postal services) & 7 (military & naval services), substantially the whole field of legislation in regard to the subject belongs to the Dominion. Any small portion not vested in the Dominion by specific words in the Act of 1867 is not so vested in the Provinces, & necessarily belongs to the Parliament of Canada under its authority to make laws for the peace, order and good government of Canada. Further, the subject of aerial navigation, & the fulfilment of Canadian obligations under sect. 132, are matters of national interest & importance; aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion. Consequently, the Dominion powers under sect. 132 in relation to the obligations under the Convention were exclusive powers, & the Parliament of Canada had authority to enact the Aeronautics Act, R. S. C., 1927 (c. 3), s. 4, & the Air Regulations, 1920, respecting the licensing of pilots, navigators, etc., & the regulation & licensing of all aircraft, aerodromes & air stations.—*Re* AERONAUTICS IN CANADA (REGULATION & CONTROL OF), [1932] A. C. 54, P. C.; *sub nom.* A.-G. OF CANADA *v.* A.-G. OF ONTARIO, A.-G. OF QUEBEC & A.-G. OF MANITOBA, 101 L. J. P. C. 1; 146 L. T. 76; 48 T. L. R. 18; 75 Sol. Jo. 796, P. C.

Annotations:—**Apld.** *Re* Radio Communication in Canada, [1932] A. C. 304. **Consd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326. **Refd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

130h. Special War Revenue Act, 1927, ss. 16, 20, 21—Validity.]—*Re* INSURANCE ACT OF CANADA, No. 128b, *ante*.

130i. Special War Revenue Act, 1922, s. 17—Validity.]—There is only one Crown, but by legislation assented to by the Crown revenue & property vested in the Dominion are distinguished from revenue & property vested in a Province. There are two separate statutory purses; in each the ingathering & expending authority is different.

By sect. 17 of the (Dominion) Special War Revenue Act, 1915, as amended in 1922, but since repealed, liability to the Crown for the excise taxes thereby imposed was to rank for payment in priority to all other claims of whatsoever kind save administration expenses. By sect. 1357 of the R. S. Que., 1909, all sums due to the Crown in respect of Provincial taxes are to constitute a privileged debt ranking after law costs. By sect. 16 of the Interpretation Act (R. S. Can., 1906, c. 1) no provision in any Act is to affect the Crown unless it is expressly stated therein that the Crown is to be bound thereby. In a bkpcy. in the Province of Quebec the assets were insufficient to discharge both a sum due for tax under the Dominion statute above mentioned & a sum due for Provincial taxes: —*Held:* that it would have been competent to the Parliament of Canada under the British North America Act, 1867, s. 91, head 21 (bankruptcy), or head 3 (taxation), to enact the statute of 1915 so as to prejudice the rights of the Province, but having regard to sect. 16 of the Interpretation Act the statute had to be read as though it provided that the priority enacted should not operate so as to diminish any right of the Crown in any Province; the result was that the two debts would run *pari passu* as claimed by the Province.—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, [1932] A. C. 514; 101 L. J. P. C. 107; 146 L. T. 556; *sub nom.* A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, 48 T. L. R. 238.

130j. —— Effect of Interpretation Act, 1906, s. 16—On priority of Crown debt.]—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, No. 130i, *ante*.

130k. Radio communication—Exclusive power of Dominion Legislature.]—The Parliament of Canada has exclusive legislative power to regulate & control radio communication in Canada.

Great Britain, Canada, & other Dominions & Colonies, having entered separately into a

convention on the subject with foreign countries, the Parliament of Canada, under the general powers conferred upon it by sect. 91 of the British North America Act, 1867 (c. 3), to make laws for the peace, order, & good government of Canada, had in relation to the obligations under the convention power similar to that which it would have had under sect. 132 if the convention had been a treaty between the British Empire as an entity & foreign countries. The legislative power of the Dominion extended to inter-provincial radio communication on the same grounds that it extended to inter-provincial aeronautics, & because the matter was within "telegraphs" & "works & undertakings connecting the Provinces with any other, etc.," subjects which sect. 92, head 10 (*a*), excepted from the authority of the Provincial legislatures, & sect. 91, head 29, brought within the Dominion authority.—*Re* RADIO COMMUNICATION IN CANADA, A.-G. OF QUEBEC *v.* A.-G. OF CANADA, A.-G. OF ONTARIO, A.-G. OF NEW BRUNSWICK, A.-G. OF MANITOBA, A.-G. OF SASKATCHEWAN, A.-G. OF ALBERTA & CANADIAN RADIO LEAGUE, [1932] A. C. 304; 101 L. J. P. C. 94; 146 L. T. 409; 48 T. L. R. 235, P. C.

Annotation: **Consd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

130l. Natural Products Marketing Act—Ultra vires.]—Natural Products Marketing Act, 1934, of the Parliament of Canada, as amended by Natural Products Marketing Act Amendment Act, 1935, which provided (*inter alia*) for the establishment of a Dominion Marketing Board whose powers included powers to regulate the time & place at which, & the agency through which, natural products to which an approved scheme related should be marketed, & to determine the manner of distribution, & the quantity, quality, grade or class of the product that should be marketed by any person at any time, was *ultra vires* of the Dominion Parliament.

The provisions of the Act, in addition to dealing with the regulation of foreign export & inter-Provincial trade, also covered transactions in any natural product which were completed within the Province & which had no connection with inter-Provincial or export trade. The regulation of "trade & commerce" by the Dominion under head 2 of sect. 91 of the British North America Act, 1867, did not permit the regulation of individual forms of trade or commerce confined to the Province, & the legislation in question, therefore, in so far as it related to matters which were in substance local & Provincial & affected "property & civil rights," a subject-matter exclusively reserved to the Provincial Legislature under head 13 of sect. 92 of the British North America Act, was beyond the competence of the Dominion Parliament.

The whole texture of the Act was inextricably interwoven & neither sect. 9, which dealt with inter-Provincial or export trade, nor Part II., which was a genuine exercise of the Dominion legislative authority over criminal law, could be contemplated as existing independently of the main legislation & must fall with it as being in part merely ancillary to it.—A.-G. FOR BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* NATURAL PRODUCTS MARKETING ACT, [1937] A. C. 377; 106 L. J. P. C. 64; 156 L. T. 311; 53 T. L. R. 330; 81 Sol. Jo. 235, P. C.

130m. Criminal Code, sect. 498A—Intra vires.]—*Held:* the sect. was *in toto intra vires* of the Parliament of Canada under sect. 91, head 27, of British North America Act, 1867—"The Criminal Law, . . ." There was no reason for supposing that the Dominion were using the criminal law as a pretence or pretext for invading the Provincial legislative field, or that the legislation was in pith & substance only interfering with civil rights in the Province.

The only limitation on the plenary power of the Dominion to determine what should or should not be criminal was the condition that Parliament should not in the guise of enacting criminal legislation in truth & in substance encroach on any of the classes of subjects enumerated in sect. 92 of the British North America Act. It was no objection that it did in fact affect them, for if it was a genuine attempt to amend the criminal law it might obviously affect previously existing civil rights.

There was no other criterion of "wrongness" than the intention of the Legislature in the public interest to prohibit the act or omission made criminal.

There seemed to be nothing to prevent the Dominion, if it thought fit in the public interest, from applying the criminal law generally to acts & omissions which so far were only covered by Provincial enactments.—A.-G. FOR BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* CRIMINAL CODE, SECT. 498A, [1937] A. C. 368; 106 L. J. P. C. 34; 156 L. T. 308; 53 T. L. R. 340; 81 Sol. Jo. 255, P. C.

130n. Farmers' Creditors Arrangement Act—Intra vires.]—By Farmers' Creditors Arrangement Act, 1934, of the Parliament of Canada, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935, a procedure was provided whereby (*inter alia*) a farmer who was unable to meet his liabilities as they became due might make a proposal for a composition, extension of time or a scheme of arrangement to his creditors. If the proposal was not accepted by the creditors the matter was referred to a Board of Review to formulate a proposal. If the creditors or the debtor declined to approve the Board's proposal the Board might nevertheless confirm it, & it was thereupon binding on the creditors & the debtor:—*Held:* that the Act was genuine legislation relating to "bkpcy. & insolvency" & was accordingly *intra vires* of the Dominion Parliament under sect. 91, head 21, of the British North America Act, 1867.

The statutory conditions of insolvency which enabled a creditor or a debtor to invoke the aid of the bkpcy. laws, or the classes to which those laws applied, were not intended to be stereotyped under head 21 of sect. 91 of the British North America Act so as to confine the jurisdiction of the Parliament of Canada to the legislative provisions then existing as regarded those matters.

Legislative provisions as to compositions, by which bkpcy. was avoided, but which assumed insolvency, were properly within the sphere of bkpcy. legislation.—A.-G.

BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* FARMERS' CREDITORS ARRANGEMENT ACT, [1937] A. C. 391; 106 L. J. P. C. 67; 156 L. T. 313; 53 T. L. R. 334; 81 Sol. Jo. 115, P. C.

130o. Employment & Social Insurance Act—Ultra vires.]—Employment & Social Insurance Act, 1935, of the Parliament of Canada, which in substance provided for a system of compulsory unemployment insurance throughout Canada, was *ultra vires* of the Dominion Parliament. In pith & substance the Act was an insurance Act affecting the civil rights of employers & employed in each Province & was accordingly within the exclusive competence of the Provincial Legislatures under sect. 92, head 13, of the British North America Act, 1867, which provided that "In each Province the Legislature may exclusively make laws in relation to . . . (13) Property & civil rights in the Province."

The Act did not purport to deal with, & could not be supported on the ground of, any special emergency arising from the degree of unemployment in Canada at the relevant date.

The other parts of the Act were so inextricably mixed up with the insurance provisions of Part III. that it was impossible to sever them, & the whole Act was therefore *ultra vires* & invalid.—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* EMPLOYMENT & SOCIAL INSURANCE ACT, [1937] A. C. 355; 106 L. J. P. C. 37; 156 L. T. 307; 53 T. L. R. 332; 81 Sol. Jo. 215, P. C.

130p. Weekly Rest in Industrial Undertakings Act—Ultra vires.]—Weekly Rest in Industrial Undertakings Act, 1935, the Minimum Wages Act, 1935, & the Limitation of Hours of Work Act, 1935, of the Parliament of Canada, which in substance gave effect to draft conventions adopted by the International Labour Organisation of the League of Nations in accordance with the Labour Part of the Treaty of Versailles, 1919, & ratified by the Dominion of Canada, were *ultra vires* of the Parliament of Canada & invalid in that the legislation related to matters coming within the class of subject "Property & civil rights in the Province" which was assigned exclusively to the Legislatures of the Provinces by head 13 of sect. 92 of the British North America Act, 1867.

The legislation could not be justified under sect. 132 of British North America Act, which provided that the Parliament of Canada should have "all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire & such foreign countries," because the obligations under the ratified conventions were not the obligations of Canada as part of the British Empire, but of Canada by virtue of her new status as an international juristic person, & they did not therefore arise under a treaty between the British Empire & foreign countries.

Jurisdiction to legislate for the purpose of performing the obligations of a Canadian treaty does not reside exclusively in the Parliament of Canada: *In re The Regulation & Control of Aeronautics in Canada*, [1932] A. C. 54, & *In re The Regulations & Control of Radio Communication in Canada*, [1932] A. C. 304, do not afford a warrant for the contrary view.

For the purposes of the distribution of legislative powers between the Dominion & the Provinces under sects. 91 & 92 there is no such thing as treaty legislation as such. The distribution is based on classes of subjects, & as a treaty deals with a particular class of subject so would the legislative power of performing it be ascertained. No further legislative competence was obtained by the Dominion from its accession to international status & the consequent increase in the scope of its executive functions. There was no existing constitutional ground for stretching the competence of the Dominion Parliament so that it became enlarged to keep pace with enlarged functions of the Dominion executive. If the new functions affected the classes of subjects enumerated in sect. 92 legislation to support the new functions was within the competence of the Provincial Legislature only; if they did not, the competence of the Dominion Legislature was declared by sect. 91 & existed *ab origine*. The Dominion could not, merely by making promise to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.

Further, the present legislation was not concerned with matters of such general importance as to justify the overriding of the normal distinction of powers in sects. 91 & 92.

Lastly, in totality of legislative powers, Dominion & Provincial together, Canada was fully equipped to legislate in performance of treaty obligations, but the legislative powers remained distributed, & if in the exercise of her new functions derived from her new international status Canada incurred obligations, they must, so far as legislation was concerned, when they dealt with Provincial classes of subjects, be dealt with by the totality of powers—by co-operation between the Dominion & the Provinces.—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, [1937] A. C. 326; 106 L. J. P. C. 72; 156 L. T. 302; 53 T. L. R. 325; 81 Sol. Jo. 116, P. C.

130q. Minimum Wages Act—Ultra vires.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *ante*.

130r. Limitation of Hours of Work Act—Ultra vires.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *ante*.

130s. Dominion Trade & Industry Commission Act.]—Sects. 15 (2), 16, 17, & 23 to 26, inclusive, of Dominion Trade & Industry Commission Act, 1935, of the Parliament of Canada, which was passed for the purpose of giving effect to certain recommendations contained in the Report of the Royal Com-

mission on Price Spreads, were *intra vires* of the Dominion Parliament. Sects. 20, 21 & 22 of the Act, so far as they were applicable to such of the enactments, or to offences created by such of the enactments, enumerated in sect. 2 (*h*) of the Act as might be *intra vires*, were not *ultra vires*.

Sect. 18 of the Act, which provided that the words "Canada Standard" or the initials "C. S." should be a national trade mark, vested in His Majesty in right of the Dominion, & that the application of that national trade mark to any commodity warranted it to conform to the relevant Dominion commodity standard, & sect. 19, by which any producer or manufacturer or merchant was given permission to apply the national trade mark to any commodity provided it conformed to the appropriate statutory specification, were *intra vires* of the Dominion Parliament under head 2 of sect. 91 of the British North America Act, 1867, "the regulation of trade & commerce." The substance of that legislation was to define a national mark, & to give the exclusive use of it to the Dominion so as to provide a logical basis for a system of statutory licences to producers, manufacturers & merchants. The method adopted in sect. 18 was to create a civil right of a novel character, but there seemed to be no reason why the legislative competence of the Dominion Parliament should not extend to the creation of juristic rights in novel fields if they could be brought fairly within the classes of subjects confided to Parliament by the constitution.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, *Re* DOMINION TRADE & INDUSTRY COMMISSION ACT, [1937] A. C. 405; 106 L. J. P. C. 59; 156 L. T. 310; 53 T. L. R. 337; 81 Sol. Jo. 276, P. C.

131. *Add. Annotation:*—**Refd.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

132. *Add. Annotations:*—**Apld.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187. **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia, [1930] A. C. 111.

134. *Add. Annotations:*—**Consd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45.

135. *Add. Annotations:*—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

135a. —— **Direct—What is.]**—A tax is not "direct taxation" within British North America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely: (1) whether the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires*:—*Held:* the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1925] A. C. 561; 94 L. J. P. C. 146; 133 L. T. 193; 41 T. L. R. 409; 69 Sol. Jo. 445, P. C.

Annotation:—**Consd.** A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

135b. —— —— ——.]—A tax imposed by a provincial legislature, in respect of a commodity, is an indirect tax, & *ultra vires* under British North America Act, 1867 (c. 3), s. 92 (2), if from the terms of the Act there appears an expectation & intention that the person required to pay the tax will indemnify himself upon a resale of the commodity taxed, even if in the case under consideration no resales have taken place.

An Act of the legislature of British Columbia, Fuel-Oil Tax Act, R. S. B. C., 1924 (c. 251), requiring that every person who shall purchase within the province fuel-oil for the first time after its manufacture in, or importation into, the province, shall pay a tax thereon, is invalid.—A.-G. FOR BRITISH COLUMBIA *v.* CANADIAN PACIFIC RY. CO., [1927] A. C. 934; 96 L. J. P. C. 149; 137

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

w i. —— *Nova Scotia Railway Arrangement Act—Ultra vires.*]—MURDOCH *v.* WINDSOR & ANNAPOLIS RY. CO. (1877), 3 Cart. 368.—**CAN.**

w ii. —— *Nova Scotia Winding-up Act—Valid.*]—*Re* WALLACE HUESTIS GREY STONE CO. (1881), 3 Cart. 374.—**CAN.**

a (p. 435). For "**a.** *Taxation—Direct—Power to impose.*]—" substitute "**135a i.** *Taxation—Direct—What is.*]—"

b (p. 435). For "**b**" substitute

c (p. 435). For "**c**" substitute "**135a iii.**"

135a iv. —— —— ——.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE *v.* MOOSE JAW (CITY), [1923] 2 D. L. R. 216; 16 Sask. L. R. 332; [1923] 1 W. W. R. 1126.—**CAN.**

135a v. —— —— ——.]—A municipal tax sought to be imposed on a trustee on assessment under Ontario Assessment Act, R. S. O., 1914 (c. 195), s. 13 (3), as enacted by 1922 (c. 78), s. 12, in respect of income "not wholly distributed annually," is an indirect tax & *ultra vires*.—CITY OF WINDSOR CORPN. *v.* MCLEOD, [1926] 2 D. L. R. 97; [1926] S. C. R. 450; 57 O. L. R. 15.—**CAN.**

135a vi. —— —— ——.]—Deft., the body incorporated by the British Columbia Land Settlement & Development Act, took proceedings under ss. 46–55 of the Act, R. S. B. C., 1924, c. 128, with respect to lands of which pltf. was the registered owner, & penalty taxes provided for by s. 53 were imposed. Pltf. sued deft., attacking said legislation as *ultra vires*, as providing for indirect taxation, & claimed damages, an injunction, etc.:—*Held:* the taxation effected upon the land & the owner was direct & *intra vires*.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1929] 1 D. L. R. 242; S. C. R. 52; *affg.*, [1928] 3 D. L. R. 382; 2 W. W. R. 475; 39 B. C. R. 523.—**CAN.**

135a vii. —— —— ——.]—By sect. 3 of the Produce Marketing Act of British Columbia, 1926–27, a "Committee of Direction" was constituted, "with the exclusive power to control & regulate the marketing of all tree fruits & vegetables . . . being products grown or produced in that portion of the province contained within" boundaries therein specified. By sect. 10 (1), it was provided that, "for the purpose of controlling & regulating, under this Act, the marketing of any product within its authority, the Committee shall, so far as the legislative authority of the province extends, have power to determine at what time & in what quantity, & from & to what places, & at what price the product may be marketed, & to make orders & regulations in relation to such matters." By sect. 10 (*k*), the committee was also given the power "for the purpose of defraying the expenses of operation, to impose levies on any product marketed." By sub-sect. (3) of sect.

L. T. 745 ; 43 T. L. R. 750 ; 71 Sol. Jo. 761, P. C.

Annotations :—**Consd.** Erie Beach Co. *v.* A.-G. for Ontario (1926), 46 T. L. R. 33. **Refd.** Lower Mainlands Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168.

135c. —— —— ——.] — The Halifax Corpn. charter provided that the owner of property let to the Crown, or to any person exempt from taxation, should be deemed to be in occupation thereof, & should be assessed & rated to business tax if the premises were used for business purposes :—*Held :* the tax was a direct tax falling within the authority of British North America Act, 1867 (c. 3), s. 92 (2), & was within the powers of the province.—HALIFAX CORPN. *v.* FAIRBANKS' ESTATE, [1928] A. C. 117 ; 97 L. J. P. C. 11 ; 138 L. T. 162 ; 44 T. L. R. 5 ; 71 Sol. Jo. 946, P. C.

Annotations :—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Forbes *v.* A.-G. for Manitoba, [1937] A. C. 260.

Succession duty.]—*See* Nos. 140-142b, *post.*

135d. —— —— ——.]—Mine Owners Tax Act, 1923 (c. 33), of Alberta, purported to impose upon every mineowner, as therein defined, a percentage tax upon the gross revenue of his mine during each preceding month :—*Held :* the tax was not direct taxation within British North America Act, 1867 (c. 3), s. 92 (2), & the Act was *ultra vires.*—R. *v.* CALEDONIAN COLLIERIES, [1928] A. C. 358 ; 97 L. J. P. C. 94 ; 139 L. T. 525 ; 44 T. L. R. 622, P. C.

Annotation :—**Refd.** A.-G. for British Columbia *v.* McDonald Murphy Lumber Co., [1930] A. C. 357.

135e. —— —— ——.]—Forest Act, 1924, s. 58, of British Columbia, imposed a tax upon all timber cut within the Province, except that upon which a royalty was payable, but provided that in the case of timber used or manufactured in the Province there should be a rebate of nearly the whole tax. The Act prohibited under penalty the export of any timber without a certificate that the tax due in respect of it had been paid :—*Held :* (1) the tax was invalid because it was an export tax, & so fell within the category of duties of customs & excise, which the Dominion legislature had exclusive power to impose by British North America Act, 1867 (c. 3), s. 122 ; (2) also because it was indirect taxation, & therefore not within the legislative power of the Province under sect. 92, head 2, of that Act ; (3) a tax levied on a commercial commodity upon the occasion of its exportation in pursuance of trading transactions cannot be described as a tax whose incidence, by its nature, is such that it is finally borne by the first payer & is not susceptible of being passed on.—A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., [1930] A. C. 357 ; 99 L. J. P. C. 113 ; 143 L. T. 1 ; 46 T. L. R. 266, P. C.

Annotation :—*As to* (2) **Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45.

by applts., the Lower Mainland Dairy Products Sales Adjustment Committee, appointed under Dairy Products Sales Adjustment Act of British Columbia of 1929, for a mandamus commanding resps., distributors as defined by the Act, to make to applt. committee returns of all milk or manufactured products purchased or received by them from dairy farmers :—*Held :* the " adjustment levy," the share of the appointment contributed by each farmer to the committee, & the " expenses levy," the compulsory levy collected from the farmers to meet the expenses of the committee, were both taxes within B. N. A. Act, 1867 (c. 3), ss. 91, 92, & did not constitute direct taxation, & the Act of 1929 was therefore *ultra vires* & beyond the competence of the Legislature of the Province of British Columbia. —LOWER MAINLAND DAIRY PRODUCTS SALES ADJUSTMENT COMMITTEE *v.* CRYSTAL DAIRY, LTD., [1933] A. C. 168 ; 102 L. J. P. C. 17 ; 148 L. T. 300 ; 49 T. L. R. 104, P. C.

135g. —— —— ——.]—The Fuel-oil Tax Act, 1930, of British Columbia, which imposes a tax upon every consumer of fuel-oil according to the quantity which he has consumed, is valid under sect. 92, head 2, of the B. N. A. Act, 1867 ; the tax is direct taxation, because it is demanded from the very persons who it is intended or desired should pay it. As the tax does not relate to any commercial dealing with the commodity it does not fall within the category of customs & excise duties, which are within the legislative powers of the Dominions, both because they are by nature indirect taxes & having regard to sect. 122 of the Act. The Act being within the legislative power given by sect. 92, head 2, & not purporting to regulate trade & commerce, is not invalid as infringing the Dominion authority under sect. 91, head 2, to legislate for that purpose.—A.-G. FOR BRITISH COLUMBIA *v.* KINGCOME NAVIGATION CO., LTD., [1934] A. C. 45 ; 103 L. J. P. C. 1 ; 150 L. T. 81 ; 50 T. L. R. 83, P. C.

135h. —— —— ——.]—Applt., a Dominion civil servant employed as a meat inspector in the Health of Animals Branch of the Dominion Department of Agriculture, was resident

16, as enacted by Amendment Act of 1928, it was provided that " the committee may fix licence fees to be paid by shippers " :—*Held :* this legislation is *ultra vires* of the provincial legislature.—LAWSON *v.* INTERIOR TREE FRUIT & VEGETABLE COMMITTEE OF DIRECTION, [1931] S. C. R. 357 ; 2 D. L. R. 193 ; *revsg.*, [1930] 2 W. W. R. 23 ; 4 D. L. R. 1027 ; 42 B. C. R. 493. —**CAN.**

135a viii. —— —— ——.]—The taxes which under Municipal Commissioners' Act, R. S. M., 1913, he may require municipal councils to levy & collect are direct taxes on property & *intra vires.*]—BRANDON CITY *v.* MUNICIPAL COMR., [1931] 3 D. L. R. 397 ; 2 W. W. R. 65 ; *affd.*, [1931] 3 W. W. R. 225 ; 4 D. L. R. 830 ; 3 W. W. R. 225 ; 39 Man. L. R. 582.—**CAN.**

135 x. —— —— ——.]—Tax on non-resident contractors held indirect & *ultra vires.*—CHARLOTTETOWN *v.* FOUNDATIONS MARITIME, LTD., [1932] 3 D. L. R. 353 ; 3 M. P. R. 196.—**CAN.**

135 xi. —— —— ——.]—The official guardian of an infant appointed under Official Guardian Act, R. S. B. C., 1924, is entitled to a commission on moneys voluntarily paid to the infant's estate by foreign trustees. This commission, if a tax, is *intra vires* the provincial Legislature.—HADDON *v.* FILLMORE, [1933] 4 D. L. R. 582 ; 47 B. C. R. 299. —**CAN.**

135 xii. —— —— ——.]—Sects. 4, 10 & 13 (1), (4), (5), (6) of Assessment Act, R. S. O., 1927, are *intra vires.*—GOODERHAM *v.* TORONTO CORPN., [1934] S. C. R. 158 ; 2 D. L. R. 41.—**CAN.**

135 xiii. —— —— ——.] The tax on wages imposed by Special —— —— Tax Act, 1933 (Man.), is a direct tax, &, therefore, *intra vires.*—A.-G. FOR MANITOBA *v.* HARPER ; A.-G. FOR MANITOBA *v.* FORBES ; A.-G. FOR MANITOBA *v.* BROOKES, [1934] 3 W. W. R. 681 ; [1935] 1 D. L. R. 410 ; 42 Man. L. R. 569 ; *affd.*, [1936] S. C. R. 40 ; 1 D. L. R. 465.—**CAN.**

(p. 435) i.

PLUMMER WAGON CO. *v.* WILSON (1885), 3 Man. L. R. 68.—**CAN.**

all other employees in the Province.

The tax is a direct tax on employees in respect of that portion of their income which consists of wages, & the legislation is therefore valid under head 2 of sect. 92 of British North America Act, 1867, which enumerates " direct taxation within the Province in order to the raising of a revenue for Provincial purposes " as within the exclusive powers of Provincial Legislatures.

Applt. was an " employee " within the meaning of sect. 2 (1) (*b*) & (*d*) of the Act of 1933, & the Dominion Govt. was his " employer " within the meaning of sect. 7 of the Act, which provides that in the case of wages paid without deduction of the tax " by his employer " the employee shall forthwith pay the tax. That provision does not impose any duty on any employer outside the Province, & the comprehensive meaning of the term " employer " is free to operate. It is not *ultra vires* of the Provincial Legislature to provide that if a wage-earner within the Province receives his wages from an employer outside Province without deduction of tax, the wage-earner shall himself pay the tax, whether the outside employer is the Dominion Govt. or any one else.

The provisions of sects, 4, 5 & 6 of the Act, however, by which the duties of deduction, of accounting, of making returns & of keeping records are imposed upon " every employer " under penalties, do not apply to the Dominion Govt.

Lastly, there is here no conflict between the Dominion & Provincial income tax legislation. Both income taxes may co-exist & be enforced without clashing, & there is therefore no room for the application of the

136. *Add. Annotations :*—**Consd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; R. *v.* Caledonian Collieries, [1928] A. C. 358; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Caron *v.* R., [1924] A. C. 999; A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; Lower Mainland Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168; Forbes *v.* A.-G. FOR MANITOBA, [1937] A. C. 260.

138. *Add. Annotations :*—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

139. *Add. Annotation :*—**Consd.** Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710.

140. *Add. Annotations :*—**Distd.** Alberta Provincial Treasurer *v.* Kerr, [1933] W. N. 205. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

141. *Add. Annotations :*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

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141 iii. —— —— ——.]—The tax under Succession Duty Act (B. C.), as applied to " movables " outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires*.—*Re* INVERARITY ESTATE, [1924] 1 D. L. R. 1020; 1 W. W. R. 901; 33 B. C. R. 318.—**CAN.**

141 iv. —— —— ——.]—Succession Duty Act, R. S. O., 1914 (c. 24):—*Held : intra vires*.—A.-G. FOR ONTARIO *v.* BABY, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—**CAN.**

141 v. —— —— ——.]—Succession Duty Act, 1915, s. 10 (6):—*Held : intra vires*.—R. *v.* DONEGAL (MARCHIONESS) (1923), 51 N. B. R. 309; [1924] 2 D. L. R. 1191.—**CAN.**

141 vi. —— —— ——.]—*Held :* the taxation imposed under Succession Duty Act, R. S. B. C., 1924, was direct taxation, & *intra vires*.—UNTERMYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1929] 1 D. L. R. 315; S. C. R. 84; *affg.*, [1928] 3 D. L. R. 311; 2 W. W. R. 209; 39 B. C. R. 533.—**CAN.**

141 vii. —— —— ——.]—Quebec Succession Duties Act, R. S. Q., 1925, s. 5, is *ultra vires* as amounting to a tax on property not within the Province.—R. *v.* NATIONAL TRUST CO., [1933] 2 D. L. R. 474; S. C. R. 670.—**CAN.**

141 viii. —— —— ——.]—Sects. 21–24 of British Columbia Succession Duty Act is *ultra vires* & the duty imposed thereby indirect taxation.—COL *v.* A.-G. FOR BRITISH COLUMBIA, *Re* PROMIS & FRANK ESTATE, [1934] 2 W. W. R. 481; 3 D. L. R. 488; 48 B. C. R. 171.—**CAN.**

j i. —— *Exemption from.*]—*Held :* the power & authority to raise revenue for Dominion purposes was specially given to the Parliament of Canada, & any legislation passed by the Old Province of Canada, denying the right to tax or exempting any subject in Ontario to pay such tax, could not be valid after the passing of B. N. A. Act, 1867.—HOLMSTEAD *v.* MINISTER OF CUSTOMS & EXCISE, [1927] Exch. C. R. 68.—**CAN.**

l (p. 436) i. —— ——.]—Hawkers & Pedlers Act, R. S. S., 1920 (c. 147), applies to a hawker & pedler acting as such as the agent of a Dominion co., even though its letters patent give it the power to sell & make known its products through " salesmen & agents going from house to house & displaying samples," etc., the licence fee imposed by the Act not being an indirect tax, & not being made so by the fact that an employer pays it for his agents.—R. (SINCLAIR) *v.* GEBHARDT, [1926] 2 D. L. R. 950; [1926] 2 W. W. R. 235; 45 Can. Crim. Cas. 321; 20 Sask. R. L. 485.—**CAN.**

m (p. 436) i. —— —— *Land registry fees.*]—The *ad valorem* fee which Land Registry Act, R. S. B. C., 1924, requires to be paid on an application for registration of title thereunder is a fee which must be paid by the Dominion if it applies for such registration of title to land to which it has obtained title under Expropriation Act, R. S. C., 1927, since with respect at least to the title to such lands the Dominion has no need of the assistance of said provincial Act, &, therefore, the payment of the fee is not compulsory &, therefore, not " taxation " within sect. 125 of B.N.A. Act. Moreover said fee is not a tax at all.—A.-G. FOR CANADA *v.* REGISTRAR OF TITLES OF VANCOUVER LAND REGISTRATION DISTRICT, [1934] 3 W. W. R. 165; 4 D. L. R. 764; 48 B. C. R. 544.—**CAN.**

n (p. 436) i. —— *Of Dominion notes forming part of bank reserve—Valid.*]—WINDSOR *v.* COMMERCIAL BANK OF WINDSOR (1882), 3 R. & G. 420; 3 Cart. 377.—**CAN.**

q (p. 437) i. ——.]—Ontario Insurance Act, 1924, ss. 168, 180 :—*Held : intra vires*.—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

q (p. 437) ii. ——.]—*Held :* the right to empower the imposition of license fees on insurance cos. was *intra vires*.—HALIFAX CITY CORPN. *v.* WESTERN

142. *Add. Annotations :*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710. **Refd.** Brassard *v.* Smith, [1925] A. C. 431.

142a. —— —— ——.]—Certain shares in applt. co., which was registered in Ontario, were registered in the name of a person domiciled in the State of New York. By Ontario Succession Duty Act, s. 10 (2), " No property in Ontario belonging to any deceased person at the time of his death . . . whether such deceased person was at the time of his death domiciled in Ontario or elsewhere shall be transferred . . . until the duty, if any, is paid, or security given therefor, & any corporation or person allowing such property to be so transferred . . . contrary to this subsection shall be liable for such duty " :—*Held :* on the death of the shareholder, as the co.'s share register was required by law to be kept in Ontario & as the shares could therefore be effectively dealt with only in Ontario, the shares were situate in Ontario & subject to succession duty there, & that as there was no provision for reimbursement of the co. the statute did not impose indirect taxation & was not *ultra vires* of the Provincial Legislature.—Erie Beach Co., Ltd. *v.* A.-G. for Ontario, [1930] A. C. 161; 99 L. J. P. C. 38; 142 L. T. 156; 46 T. L. R. 33, P. C.

142b. —— —— ——.]—Under B. N. A. Act, 1867, sect. 92, head 2, a Province is not entitled to impose taxation payable on the death of a person therein domiciled in respect of his personal property locally situate outside the Province, but is entitled to impose taxation on persons domiciled or resident within the Province in respect of the transmission to them under the Provincial law of personal property so situate. Personal property outside the Province cannot be treated for the above purpose as within it by an application of the principle *mobilia sequuntur* that principle relates to the law governing the devolution of personal property, not to its local situation.

If a Provincial statute imposing succession duties makes the exor. personally liable for the duties the taxation is indirect & therefore invalid; that rule is not confined to the case of property within the Province.

Upon the true construction of Succession Duties Act of Alberta the exor. is made personally liable for the duties, & as to personal property outside the Province the duties are imposed upon the property itself, not upon its transmission. Consequently, as to property within the Province the taxation is invalid, because it is not direct, & as to personal property outside the Province it is invalid, both because it is not direct & because it is not within the Province.—Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710; 102 L. J. P. C. 137; 149 L. T. 563; 50 T. L. R. 6, P. C.

Annotation :—**Refd.** Public Trustee of New Zealand *v.* Lyon, [1936] A. C. 166.

144. *Add. Annotation :*—**Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5.

145. *Add. Annotations :*—**Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Caron *v.* R., [1924] A. C. 999; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

145a. —— **Construction of legislation—Limitation to provincial jurisdiction.**]—A.-G. for Ontario *v.* Reciprocal Insurers, No. 108a, *ante*.

Assurance Co. (1885), 18 N. S. R. (6 R. & G.) 387.—**CAN.**

q (p. 437) iii. ——.]—*Held :* Ordinance incorporating City of Calgary (No. 33 of 1893), s. 117 (41), was *intra vires*.—English *v.* O'Neill (1899), 4 Terr. L. R. 74.—**CAN.**

q (p. 437) iv. ——.]—*Held :* sect. 85 (1) of Insurance Act, R. S. O., 1927 (c. 222), is *ultra vires* of the Ontario Legislature.—Yorke *v.* Continental Casualty Co. of Can., [1929] 3 D. L. R. 662; 64 O. L. R. 109; *on appeal*, [1930] S. C. R. 180; 1 D. L. R. 609.—**CAN.**

146 iii a. —— ——.]—Lepine *v.* Laurent (1891), 17 Q. L. R. 226.—**CAN.**

146 xii. —— ——.]—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *intra vires*.—R. *v.* Ferguson (B.C.), [1922] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—**CAN.**

146 xiii. —— ——.]—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *intra vires* the provincial legislature.—Little *v.* A.-G. for British Columbia (B.C.), [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—**CAN.**

146 xiv. —— ——.]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *intra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament.—R. *v.* Regina Wine & Spirit, Ltd., R. *v.* Prairie Drug Co., Ltd., [1922] 1 W. W. R. 195; 65 D. L. R. 258; 36 Can. Crim. Cas. 348; 15 Sask. L. R. 100.—**CAN.**

146 xv. —— —— *Suspension of Canada Temperance Act.*]—Sheehan *v.* Shaw, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—**CAN.**

146 xvi. —— ——.]—*Held :* reading sect. 141 of Liquor Control Act (Ontario), 17 Geo. 5, c. 70, in connection with sect. 72 (1), the latter must be regarded as limited to cases over which the Ontario Legislature had jurisdiction, & not as an attempt to invade the field of Dominion Legislature.—R. *v.* Ruddick, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

146 xvii. —— ——.]—Nova Scotia Liquor Control Act, 1930, is *intra vires*.—R. *v.* Roche, [1934] 3 D. L. R. 782; 62 C. C. C. 11; 8 M. P. R. 197.—**CAN.**

146 xviii. —— ——.]—Nova Scotia Liquor Control Act, 1930, is *intra vires*.—R. *v.* Slaughenwhite (1934), 8 M. P. R. 214; 62 C. C. C. 207.—**CAN.**

146 xix. —— ——.]—Sect. 52 of Prohibition Act, 1918, P. E. I. is *ultra vires*.—R. *v.* Flood (1922), 38 Can. C. C. 403.—**CAN.**

146 xx. —— ——.]—Ontario Liquor Control Act, R. S. O., 1927, is *intra vires*, since Canada Temperance Act is now superseded & *ultra vires*.—R. *v.* Varley, [1936] 1 D. L. R. 771; 65 Can. C. C. 192.—**CAN.**

t (p. 438) i. —— —— ——.]—Keefe *v.* McLennan (1876), 2 R. & C. 5; 2 Cart. 400.—**CAN.**

o (p. 438). For " —— *Prohibition Act—Confiscatory provisions* " read " —— *Confiscatory provisions—Prohibition Act.*"

c (p. 438) i. —— —— *Act of* 1886 (c. 3). *s.* 55.]—*Held :* the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—R. *v.* Gardner (1892), 25 N. S. R. (13 R. & G.) 48.—**CAN.**

d (p. 438) i. —— *Alberta Liquor Control Act*, 1924 (c. 14).]—*Held :* sect. 113 (3) of the above Act was *ultra vires*.—R. *v.* Forhan (Alta.), [1927] 1 W. W. R. 689; 48 Can. Crim. Cas. 86.—**CAN.**

f (p. 438) i. —— *Restrictions on export.*]—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *intra vires*.—Canada Drugs, Ltd. *v.* A.-G. for Saskatchewan (Sask.), [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 506; *varying*, 66 D. L. R. 815; 37 Can. Crim. Cas. 367.—**CAN.**

k (p. 438) i. —— *Creation of crim inal offences.*]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial

148. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

149. *Add. Annotations :*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244. **Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

150. *Add. Annotations :*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244. **Refd.** Nadan *v.* R. [1926] A. C. 482.

153. *Add. Annotations :*—**Refd.** The Fagernes, [1927] P. 311 ; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

154a. —— **No power to confirm transfer of federal railway.**]—BOURGOIN *v.* COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA, ET OCCIDENTAL (1880), 5 App. Cas. 381 ; 49 L. J. P. C. 68 ; 42 L. T. 414, P. C.

158. *Add. Annotations :*—**Consd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission ; Toronto Transportation Commission *v.* Canadian National Railways (1930), 144 L. T. 37.

159. *Add. Annotations :*—**Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328 ; *Re* Insurance Act of Canada, [1932] A. C. 41.

161. *Add. Citations :*—[1924] A. C. 203 ; 93 L. J. P. C. 33 ; 130 L. T. 227.

162a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

164. *Add. Annotations :*—**Distd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384. **Refd.** Proprietary Articles Trade Association *v.* A.-G. for Canada, [1931] A. C. 310.

164a. ——.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba by 51 Vict. c. 33 (Dom.) :—*Held :* the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16 ; &, that being so, the Act was a provincial Act "now or hereafter in force" within Lord's Day Act of Canada ; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—LORD'S DAY ALLIANCE OF CANADA *v.* A.-G. FOR MANITOBA, [1925] A. C. 384 ; 94 L. J. P. C. 84 ; 132 L. T. 678 ; 41 T. L. R. 225, P. C.

legislature, in so far as it professes to set up certain acts as a criminal offence, namely, the obstruction of the "officer" mentioned in sect. 2 (7a) in the execution of his duties under the Act.—R. (WILBUR) *v.* MAGEE (Sask.), 1923] 3 W. W. R. 55.—**CAN.**

k (p. 438) ii. —— *Imposition & recovery of fines & penalties—Valid.*]—R. *v.* MCMILLAN (1873), 2 Pug. 110 ; 2 Cart. 489.—**CAN.**

k (p. 438) iii. *S. P.* R. *v.* RONAN (1891), 23 N. S. R. 421.—**CAN.**

k (p. 438) iv. —— *Amendment of Temperance Act*, 1884 (c. 18)—*Validity.*]—COOEY *v.* BROME MUNICIPALITY (1877), 2 Cart. 385.—**CAN.**

151 i. *Barristers — Provision authorising remuneration by share of proceeds of action.*]—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926 ; 3 W. W. R. 97 ; 34 B. C. R. 56.—**CAN.**

151 ii. *S. P. Re* CONSTITUTIONAL QUESTIONS DETERMINATION ACT, *Re* LEGAL PROFESSIONS ACT (B. C.), [1927] 4 D. L. R. 195 ; [1927] 2 W. W. R. 808 ; 48 Can. Crim. Cas. 278.—**CAN.**

152 i. *Fisheries — Powers of provincial legislature.*]—The Dominion Parliament has exclusive jurisdiction to legislate with respect to the time, mode & manner of fishing ; but, subject thereto, any proprietary rights, *e.g.* the leasing of fishing rights, & rights over fish as an article of commerce within the province are within provincial jurisdiction. Sect. 100 (1) if Game & Fisheries Act, 1930 (Man.), so *ultra vires*.—R. *v.* WAGNER (No. 2), [1932] 2 W. W. R. 162 ; 3 D. L. R. 679 ; 40 Man. L. R. 305 ; 58 C. C. C. 132.—**CAN.**

o (p. 439) i. —— —— ——.]—It is not competent to the legislature of the Province of Alberta to enact legislation authorising the construction & operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Re* ALBERTA RAILWAY LEGISLATION (1913), 24 W. L. R. 630 ; 4 W. W. R. 608 ; 48 S. C. R. 9 ; 12 D. L. R. 150 ; 15 Can. Ry. Cas. 213.—**CAN.**

o (p. 439) ii. —— *Nova Scotia Railway Arrangement Act—Valid.*]—*Re* WINDSOR & ANNAPOLIS RY. CO. (1885), 4 R. & G. 312 ; 3 Cart. 387.—**CAN.**

160 ii. —— ——.]—Coal Mines Regulation Act, s. 4, as amended by Coal Mines Regulation Amendment Act, 1890, s. 1, provides that "no Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the provincial Legislature as being a regulaton of Coal Mines, & is not *ultra vires* as an interference with the subject of aliens. —*Re* COAL MINES REGULATION AMENDMENT ACT, 1890 (1896), 5 B. C. R. 306 ; 1 M. M. Cas. 116.—**CAN.**

q (p. 440) i. —— *Chinese Regulation Act*, 1884, *s.* 14—*Ultra vires.*]—R. *v.* GOLD COMR. OF VICTORIA DISTRICT (1886), 1 B. C. R. pt. 2, 260.—**CAN.**

164 v. ——.]—*Held :* Lord's Day Ordinance, s. 3, was *intra vires*.—FALLIS *v.* DALTHASER (1912), 21 W. L. R. 171 ; 2 W. W. R. 132 ; 4 D. L. R. 705 ; 4 Alta. L. R. 361.—**CAN.**

165 vi. —— ——.]—KERLEY *v.* LONDON & LAKE ERIE RY. & TRANSPORTATION CO. (1913), 28 O. L. R. 606 ; 4 O. W. N. 1234.—**CAN.**

165 vii. —— *Restrictions on sale of shares.*]—Sale of Shares Act, R. S. S. (1920), s. 4, in so far as it purports to apply to the sale of its own shares by a Dominion co., is *ultra vires* the provincial legislature.—LUKEY & A.-G. FOR SASKATCHEWAN *v.* RUTHENIAN FARMERS ELEVATOR CO., LTD., [1924] 1 D. L. R. 706 ; [1924] S. C. R. 56 ; 1 W. W. R. 577.—**CAN.**

165 viii. —— ——.]—Sale of Securities Act, 1923 (N. B.), s. 4, so far as it purports to apply to sales of shares of Dominion cos., is *ultra vires* the provincial legislature.—R. *v.* HENDERSON, *Ex p.* QUEEN (1924), 51 N. B. R. 346.—**CAN.**

165 ix. —— ——.]—Sale of Shares Act, 1924 (c. 175) (Man.), & Municipal & Public Utility Board Act, 1926 (c. 33) (Man.), so far as they purport to apply to the sale of its own shares by a Dominion co. :—*Held : ultra vires.*—*Re* SALE OF SHARES ACT & MUNICIPAL & PUBLIC UTILITY BOARD ACT, [1927] 2 W. W. R. 480 ; 36 Man. L. R. 583.—**CAN.**

165 x. —— ——.]—Security Frauds Prevention Act, 1930 (Ont.), does not in any way impair the status or powers of a Dominion co. coming within its provisions, & is therefore *intra vires*.—R. *v.* HAZZARD, SECURITY FRAUDS PREVENTION BOARD *v.* CONROY, [1932] 1 D. L. R. 575 ; O. R. 139.—**CAN.**

165 xi. —— *Provincial legislation as to foreign companies.*]—(1) Since the provincial Legislature's jurisdiction with respect to Dominion cos. is limited, it cannot delegate to an official an unfettered discretion which it does not itself possess. Therefore the power given the registrar by sect. 135 of Companies Act, 1929 (Alta.), which requires certain information to be given by a foreign co. when applying for registration, cannot apply to a Dominion co.

(2) The latter part of sub-sect. (1) of sect. 145 of said Companies Act & sub-sect. (2) of sect. 145, dealing with prospectuses, are invalid with respect to Dominion cos.

(3) A provision that foreign cos. shall pay such fees for registration as may be prescribed by order in council is invalid with respect to Dominion cos., since the fees being subject to order in council, may be altered at any time & may be increased so as to make it practically impossible for foreign cos. to come into the province at all & in that way prevent a Dominion co. from carrying on its business in the province.

(4) Requirements of a provincial

Act for the payment of fees by foreign cos. & the furnishing of statements & returns are valid with respect to Dominion cos. if reasonable & uniform & if not such as to prevent such cos. from carrying on business in the province.

(5) Sect. 141 of Companies Act, 1929 (Alta.), requiring the painting, affixing & legible printing of a co.'s name, can be interpreted as intended, although not so expressed, to apply only to transactions within the province & to that extent it is valid with respect to Dominion cos.—*Re* ROYALITE OIL CO., LTD., [1931] 1 W. W. R. 484; 2 D. L. R. 418; 25 Alta. L. R. 206.—**CAN.**

—— *Provincial legislation as to Dominion companies.*]—*See* No. 165 xi, *ante*.

165 xii. —— ——.]—The basic idea underlying the Confederation scheme is that there shall be co-ordinate governments, the Dominion on the one hand & the provinces on the other, dividing between them all legislative power in Canada, the one not subordinate to the other, but each enjoying sovereign power within its own field of legislative competency as fixed & limited by the B. N. A. Act. A provincial Legislature may enact laws, province-wide, of general application in respect of any of the subjects enumerated in sect. 92, & in so doing may completely paralyse all activities of a Dominion trading co., provided that in enacting such laws it does not enter the field of co. law & in that field encroach upon the status & powers of a Dominion co. as such. An enactment of a provincial Legislature, limited in direct effect by provincial boundaries, which relates to a particular trade or business carried on within its boundaries, regardless of whether or not that trade or business is carried on by natural persons or cos., is valid; but the moment that a provincial Legislature legislates concerning cos. as such, then, if such legislation constitutes regulation or impairment or sterilisation of the powers & capacities which the Dominion has conferred, the legislation is invalid. Such last-mentioned legislation is not saved by the fact that all kinds of cos., provincial as well as Dominion, are aimed at without special discrimination against Dominion cos. The distinction between provincial enactments affecting Dominion cos. that are of general application & those that may be termed co. law is this: In the former case there is no attempt to interfere with powers validly granted to the co. by the Dominion nor with the status of the co. as such. The circumstance that because of the general laws of the province the co. may not exercise those powers does not destroy or impair the powers. In the latter case the enactment prohibits or imposes conditions upon the exercise of the powers of Dominion cos. as such. It is aimed at & affects Dominion co. powers as distinguished from being aimed at & affecting a trade or business in the province which Dominion cos. may happen to be engaged in in common with provincial cos. & natural persons. In the one case the legislation has to do with a provincial matter, Dominion cos. being only incidentally affected; in the other case the legislation is aimed either at Dominion cos. or at all cos., which includes Dominion cos., & so the province with power to legislate only as to provincial cos. must be said to have entered the Dominion field. Coal Miners' Wages Security Act, 1928 (Alta.), as amended by 1930 (c. 23), s. 2, is *intra vires*, even with respect to Dominion cos. operating coal mines in the province & shipping coal therefrom to places outside the province. It is legislation provincial in character applicable to all mine owners, whether cos. or natural persons; it does not affect the status and powers of Dominion cos. as such; & it does not encroach upon the Dominion's power to regulate "trade & commerce" as judicially defined.—R. *v.* ARCADIA COAL CO., LTD., [1932] 1 W. W. R. 771; 2 D. L. R. 475; 26 Alta. L. R. 348; 58 C. C. C. 17.—**CAN.**

f (p. 442) i. —— —— .]—*Held*: the Dominion Parliament had power under B. N. A. Act, 1871, to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93, & School Attendance Act does not violate any of the protective provisions preserved by Alberta Act, s. 17.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12; [1923] 1 W. W. R. 1.—**CAN.**

m (p. 442) i. —— ——.]—The appointment of a magistrate to deal with applications under the Deserted Wives' Maintenance Act is *intra vires*. —DIXON *v.* DIXON (1932), 46 B. C. R. 375.—**CAN.**

o (p. 442) i. —— ——.]—*Ex p.* JOHNSTON (1930), 54 Can. C. C. 99.—**CAN.**

o (p. 442) ii. —— —— *Jurisdiction of judge of Division Court to appoint deputy.*]—Sect. 19 of Division Cts. Act, authorising "the judge" to appoint a barrister to act as his deputy, is within the powers of the Ontario Legislature.—FRENCH *v.* MCKENDRICK [1931] 1 D. L. R. 696; 66 O. L. R. 306.—**CAN.**

o (p. 442) iii. —— ——.]—Workmen's Compensation Commission Act, 1928 (Que.), & sect. 36 of Workmen's Compensation Act, 1928 (Que.), are *intra vires*.—A.-G. FOR QUEBEC *v.* SLANEC, [1933] 2 D. L. R. 289; *revsg.* S. C. *sub nom.* SLANEC *v.* GRIMSTEAD, [1932] 3 D. L. R. 81.—**CAN.**

o (p. 442) iv. —— ——.]—Any judicial body, whether it be called a ct. or a commission or a board, which is exercising a jurisdiction like unto that exercised by the cts. named in sect. 96 of B.N.A. Act, at the time of Confederation, must have as its presiding officer or officers a person appointed by the Governor-General. Therefore a province cannot confer upon a magistrate the jurisdiction in alimony which Part IV. of Domestic Relations Act, 1927 (Alta.), purports to confer. Sect. 26 of Domestic Relations Act, 1927, as amended is *ultra vires*.—KAZAKEWICH *v.* KAZAKEWICH & A.-G. FOR ALBERTA, [1936] 3 W. W. R. 699; [1937] 1 D. L. R. 548; 67 Can. C. C. 346; 6 F. L. J. (Can.) 243.—**CAN.**

o (p. 442) v. —— ——.]—KRASSMAN *v.* KRASSMAN & A.-G. FOR SASKATCHEWAN, [1937] 3 W. W. R. 349.—**CAN.**

q (p. 442) i. —— ——.]—A local legislature can fix the number of grand jurors who shall compose the panel, but not the number of grand jurors necessary to find a good bill of indictment.—R. *v.* COX (1898), 31 N. S. R. 311.—**CAN.**

a (p. 442) i. —— *Remuneration of judges.*]—Having regard to B. N. A. Act, 1867, ss. 92 (14), 96-101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the exclusive authority of the provincial legislatures in so far as the judges of the provincial cts. are concerned.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—**CAN.**

a (p. 442) ii. —— *Appointment of commissioner with judicial powers.*]—MCLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. 573.—**CAN.**

a (p. 442) iii. —— *Alteration of constitution of court.*]—An amendment altering the quorum of the Ct. of Appeal, making it unnecessary for the judge ordinary to sit as a member of [illegible] —KING *v.*

a (p. 442) iv. —— *Power to restrict bringing of action.*]—A local legislature can enact that no civil action for damages shall be brought against any particular person or persons, including members of the legislature.—THOMAS *v.* HALIBURTON (1893), 26 N. S. R. 55.—**CAN.**

a (p. 442) v. —— *Payment of debt by instalments.*]—An Act authorising the making of a judge's order for such a payment:—*Held*: *intra vires*.—GOULD *v.* RYAN (1894), 26 N. S. R. 461.—**CAN.**

a (p. 442) vi. —— *Imprisonment of fraudulent judgment debtors—Valid.*]—*Ex p.* ELLIS (1878), 1 P. & B. 593; 2 Cart. 527.—**CAN.**

a (p. 442) vii. —— *Interference with pending proceedings.*]—6 Edw. 7, c. 15, as to electrical power. 7 Edw. c. 19, superseding the former, except as to contracts already entered into, 8 Edw. 7, c. 22, & 9 Edw. 7, c. 19, both providing for the validation of bye-laws & contracts made under the former Acts, are *intra vires* the Ontario legislature. Sect. 8 of 9 Edw. 7, c. 19, which provides that every action therefore brought & then pending wherein the validity of a contract or bye-law validated by the Act is attacked, shall be for ever stayed, is within the competence of the legislature.—SMITH *v.* LONDON CITY (1909), 20 O. L. R. 133.—**CAN.**

a (p. 442) viii. ——.]—A Province cannot confer upon a tribunal created & appointed by it power to determine purely judicial questions such as are normally determined by cts. of justice. —TORONTO *v.* YORK TOWNSHIP, [1937] 1 D. L. R. 175; O. R. 177.—**CAN.**

ll (p. 442) i. —— *Poor Persons' Rules.*]—Rule 9A of the Rules relating to poor persons or needy litigants, which provides that "no poor person or any solr. conducting the proceedings for him shall discontinue, settle or compromise such proceedings without the leave of the ct. or a judge," is *intra vires* of the authority given the Lieutenant-Governor in Council by sect. 38 of Judicature Act, R. S. A., 1922, to promulgate Rules governing practice & procedure, it being merely a condition attached to only a small class of litigants who ask for & obtain privileges in the conduct of their legislation.—WERLEY *v.* ROWE, [1936] 1 W. W. R. 291; 1 D. L. R. 653; 5 F. L. J. (Can.) 307.—**CAN.**

t (p. 443) i. —— ——.]—38 Vict. c. 88:—*Held*: not *ultra vires* as being an interference with trade & commerce —*Ex p.* FAIRBAIRN (1878), 18 N. B. R. (2 P. & B.) 4.—**CAN.**

t (p. 443) ii. —— ——.]—JONAS *v.* GILBERT (1881), 5 S. C. R. 356.—**CAN.**

t (p. 443) iii. *S. P.* JONAS *v.* MARSHALL (1880), 20 N. B. R. 61.—**CAN.**

a (p. 443) i. —— ——.]—FORTIER *v.* LAMBE (1895), 25 S. C. R. 422.—**CAN.**

a (p. 443) ii. —— —— *Company incorporated abroad.*]—HALIFAX CITY *v.* JONES (1896), 28 N. S. R. 452.—**CAN.**

a (p. 443) iii. —— —— *Licensing of music teachers.*]—R. *v.* BURNETT, [1930] 3 W. W. R. 347; 54 Can. C. C. 405.—**CAN.**

a (p. 443) ... MONTREAL CITY, [1931] S. C. R. 460; 4 D. L. R. 603; 56 Can. C. C. 114.—**CAN.**

a (p. 443) v. —— ——.]—BRIDGETOWN *v.* PATTERSON, [1930] 3 D. L. R. 830.—**CAN.**

m (p. 443) i. —— ——.]—Female Employment Act, R. S. S. 1920, c. 185, is supportable only as a police regulation & not under the Legislature's power of making laws with respect to licences.—YEE CLUN *v.* CITY OF REGINA, [1925] 4 D. L. R. 1015; [1925] 3 W. W. R. 714.—**CAN.**

n (p. 443) i. —— *Vancouver Island Settlers Rights Act*, 1904—*Intra vires.*] —MCGREGOR *v.* ESQUIMALT & NANAIMO RY. CO., [1907] A. C. 462.—**CAN.**

o (p. 443) i. —— —— ——.]—

168. *Add. Annotations* :—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Canon *v.* R., [1924] A. C. 999.

170a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

176a. —— **Protection of denominational schools—Meaning of Protestant.**]—The Quebec Legislature in 1903 passed an Act, 3 Edw. 7, c. 16, which provided that persons professing the Jewish religion should, for school purposes, be treated as Protestants & have the same rights & privileges; that their children should have the same right of education as Protestant children; & that school taxes paid by them should go to the support of the Protestant schools. Under statutes of Lower Canada consolidated in 1861 by 24 Vict., c. 15, there were outside the cities of Quebec & Montreal (the rural area) common schools & dissentient schools, & within those cities | Roman Catholic separate schools & Protestant separate schools. British North America Act, 1867, by s. 93, conferred on Provincial Legislatures exclusive power to make laws in relation to education, but, by proviso 1, preserved "any right or privilege with respect to denominational schools which any class of persons had by law," & by proviso 2 enacted that privileges conferred by law on separate Roman Catholic schools in Upper Canada should be extended to dissentient schools of Roman Catholics & Protestants in Quebec:—*Held:* (1) the word "Protestant" in the statutes consolidated in 1861 could not be construed as "non-Catholic," & so as including Jews; & the Protestant community, though divided for certain purposes into denominations, was itself a denomination & capable of being regarded as "a class of persons" within British North America Act, 1867 (c. 3), s. 93 (1); (2) having regard to the provisions of the Act of 1861 as to management & control, the dissentient schools in the rural area, & the separate schools in the two cities, had rights & privileges within

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CANADIAN PACIFIC RY. CO. *v.* OTTAWA FIRE INSURANCE CO. (1907), 39 S. C. R. 405.—**CAN.**

o (p. 443) **ii.** —— *Works wholly within province.*]—R. *v.* MOHR (1881), 7 Q. L. R. 183; 2 Cart. 257.—**CAN.**

o (p. 443) **iii.** —— *Conservation of natural gas.*]—Turner Valley Gas Conservation Act, 1932 (Alta.), which defines & applies to a certain area in Alberta & constitutes a Board & invests it with powers purporting to effect the conservation of natural gas, is *intra vires*. Its pith & substance is the restriction of the wastage of gas in the production of naphtha in said area; it, therefore, deals with a matter of a "merely local or private nature in the province" & does not infringe on the Dominion's powers over the "regulation of trade & commerce," & its effect on Dominion cos. engaged in said area is merely to prescribe the way in which their business shall be carried on therein.—SPOONER OILS, LTD., & SPOONER *v.* TURNER VALLEY GAS CONSERVATION BOARD & A.-G. FOR ALBERTA, [1933] 2 S. C. R. 629; 4 D. L. R. 545.—**CAN.**

cc (p. 443) **i.** —— *Penalties for fraudulent conveyances.*]—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made the commission of fraudulent acts a crime, the subject-matter is criminal law & beyond the competence of the provincial legislature. — CONNORS *v.* EGLI, [1924] 2 D. L. R. 59; 1 W. W. R. 1050 20 Alta L. R. 205.—**CAN.**

cc (p. 443) **ii.** —— *Collection of freight & wharfage & warehouse charges—Ultra vires.*]—EASTERN DEVELOPMENT CO. *v.* MCKAY (1888), 20 N. S. R. (8 R. & G.) 325.—**CAN.**

dd (p. 443) **i.** —— ——.]—A provincial Legislature has power to prohibit the carrying on of a particular business within the province as well as the power to prohibit certain persons from carrying it on within the province; & it may authorise a municipal council to pass bye-laws imposing such prohibitions within the municipality.—MICAS *v.* A.-G. FOR SASKATCHEWAN, [1928] 3 W. W. R. 523.—**CAN.**

dd (p. 443) **ii.** —— ——.]—Produce Marketing Act, 1926-27, c. 54, amended 1928, c. 39, is *intra vires* with respect to sales made within the province whether delivery thereunder is made therein or by shipping the goods beyond the province to purchasers residing outside it; even, *semble*, though the contract of sale was made outside the province.—R. *v.* CHUNG CHUCK, R. *v.* WONG KIT, R. *v.* SALES SERVICES, LTD., R. *v.* ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD., [1929] 1 D. L. R. 756; 1 W. W. R. 394; 51 Can. Crim. Cas. 260; 40 B. C. R. 512.—**CAN.**

d (p. 444) **i.** —— ——.]—MURNE *v.* MORRISON (1882), 1 B. C. R. pt. 2, 120.—**CAN.**

p (p. 444) **i.** *Power to limit jurisdiction of courts.*] — No exercise by a provincial legislature of the legislative, powers given it by the B. N. A. Act can be questioned or interfered with by the cts., no matter how arbitrary or unjust it may be. Therefore, where a provincial statute empowers a municipal council to grant, refuse, & revoke trade licences, in its discretion, a provision therein that the council's actions with respect thereto "shall not be open to question or review by any ct." is not *ultra vires*.—MICAS *v.* CITY OF MOOSE JAW & A.-G. FOR SASKATCHEWAN, [1929] 3 D. L. R. 89; 1 W. W. R. 725; 23 S. L. R. 422; *revg., sub nom.* MICAS *v.* A.-G. FOR SASKATCHEWAN, [1928] 3 W. W. R. 523; 23 S. L. R. 412.—**CAN.**

aa (p. 444) **i.** *Power to authorise erection of booms.*]—MCMILLAN *v.* SOUTHWEST BOOM CO. (1878), 17 N. B. R. (1 P. & B.) 715; 2 Cart. 542.—**CAN.**

gg (p. 444) **i.** —— *Jurisdiction—Power to define.*]—The power given to provincial Govts. to legislate regarding the constitution, maintenance, & organisation of provincial cts. includes the power to define the jurisdiction of such cts. territorially as well as in other respects, & also to define the jurisdiction of the judges who constitute such acts.—*Re* COUNTY COURTS OF BRITISH COLUMBIA (1892), 21 S. C. R. 446; 5 Cart. 490.—**CAN.**

l (p. 445) **i.** —— —— *No power to alter or amend.*]—*Held:* Revised Statutes (3rd series), c. 159, being part of the criminal law of Canada, the legislature of Nova Scotia had no power to alter or amend any of its provisions.—R. *v.* HALIFAX ELECTRIC TRAMWAY CO. (1898), 30 N. S. R. 499.—**CAN.**

m (p. 445) **i.** —— *What are—Not Act to prevent fraud against cheese factories.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

m (p. 445) **ii.** —— —— *Not Act respecting appeals on prosecutions to enforce penalties & punish offences under provincial Acts.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

m (p. 445) **iii.** —— —— *Dental Association Act, R. S. M.*, 1913, *s.* 33.]—*Held:* not *ultra vires* as relating to criminal law within sect. 91 of B. N. A. Act.—R. *v.* SIRKIS, [1930] 2 W. W. R. 93.—**CAN.**

m (p. 445) **iv.** —— —— *Regulation of traffic.*]—Sect. 52 of Vehicles & Highway Traffic Act, 1924 (Alta.), which provides that a motorist involved in an accident who fails to return to the scene thereof shall be liable to a fine, is *intra vires*; since its purpose is to effect the regulation of traffic on a highway & of motor vehicles being operated thereon, subjects which fall within the province's jurisdiction over "Property & Civil Rights in the Province."—R. (TAYLOR) *v.* CORRY, [1932] 1 W. W. R. 853; 4 D. L. R. 399; 26 Alta. L. R. 390; 58 C. C. C. 198.—**CAN.**

m (p. 445) **v.** —— —— ——.]—Since, by sect. 285 (4) of the Criminal Code, the Dominion Parliament has made it a crime to drive or be in control of a motor car while intoxicated or under the influence of narcotics, a provincial Act which deals with the same kind of conduct by prohibiting it under penalty of fine & imprisonment & suspension or cancellation of the offender's licence, is invalid, except with respect to the provision for suspending or cancelling the licence.—R. *v.* OTTENSON, [1932] 1 W. W. R. 36; 57 C. C. C. 234.—**CAN.**

m (p. 445) **vi.** —— —— *Ill-treatment of children.*]—Where the object of a provincial Act, *e.g.* Infants Act, R. S. B. C., 1924, is to implement the jurisdiction of the cts. to deal with the care, custody, control & charge of children, a sect. thereof which makes it an offence punishable by fine or imprisonment for any person having the care, custody, etc., of a child to ill-treat, neglect, etc., such child, is not *ultra vires* as an invasion of the Dominion Parliament's jurisdiction over criminal law; since the field of legislation as to offences relating to children, & especially their care, welfare & treatment, is not so "fully & clearly occupied" by the Criminal Code as to invalidate such a provision.—R. *v.* DOWDELL, [1932] 3 W. W. R. 297; [1933] 4 D. L. R. 794; 60 C. C. C. 164; 46 B. C. R. 267.—**CAN.**

sect. 93, proviso 1, but that the common schools in the rural area had not, as although each school might in fact be controlled by persons of the faith of the majority, that was not a right or privilege which "a class of persons had by law"; (3) the Act of 1861 impliedly reserved the right of attendance at dissentient schools in the rural area to children of the religion of the dissentients; in any case sect. 93, proviso 2, of the Act of 1867 had that effect; (4) the provisions as to the management & control of separate schools in the two cities gave them a denominational stamp which could not be effaced by the attendance of a certain number of children of a divergent faith; (5) 3 Edw. 7, c. 16 (Quebec), although otherwise *intra vires*, was *ultra vires* so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Comrs. in the cities of Quebec or Montreal or on any Protestant Board of Examiners, or take part with Protestants in the establishment of a dissentient school outside those cities, & except so far as it would confer the right of attendance at dissentient schools outside those cities upon persons of religious faith different from that of the dissentient minority; (6) it would be possible to frame legislation for establishing separate schools for non-Christians without infringing the rights of the two Christian communities, & that legislation so limited would be valid.—HIRSCH *v.* MONTREAL PROTESTANT SCHOOL COMRS., [1928] A. C. 200; 97 L. J. P. C. 40; 138 L. T. 650; 44 T. L. R. 287; 72 Sol. Jo. 137, P. C.

Annotation:—*Generally*, **Refd.** Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363.

177a. —— Separate schools—Roman Catholic separate schools—Courses of study & grades of education in—Right to share in legislative grants.]—The trustees of a Roman Catholic separate school in Ontario, by a petition of right, claimed that certain Acts of the legislature of Ontario, & regulations made thereunder, were *ultra vires*, in that, & so far as, they prejudicially affected rights which the suppliants asserted that Roman Catholics had by law at Confederation in respect of separate schools, & which consequently were preserved by sect. 93 (1) of the B. N. A. Act, 1867. They claimed: (*a*) the right to establish & conduct courses of study & grades of education such as are conducted in continuation schools, collegiate institutes, & high schools; (*b*) the right of supporters of Roman Catholic separate schools to exemption from rates for the support of continuation schools, collegiate institutes, & high schools not conducted by their own board of trustees; (*c*) that separate schools were entitled under the Separate Schools Act, 1863, to share on the basis therein enacted, in all legislative grants for common schools, including all grants for the support of secondary schools; they prayed for judgment for the difference between the sum which they would have received out of the legislative grant for 1922 if their contentions were right, & the amount paid to them:—*Held:* statutes passed before Confederation gave to the educational authorities full power to regulate separate schools, including power to determine the courses of study & grades of education therein; also, the fund in which separate schools were entitled to share as enacted by Separate Schools Act, 1863, s. 20, excluded moneys "otherwise appropriated by law," as expressed in the Common Schools Act, 1859, s. 106, & that it was not *ultra vires* after Confederation to make new appropriations, although they diminished what otherwise would have come to the separate schools. That consequently suppliants' claim failed in law, but that it was open to them to appeal under sect. 93 (3) of B. N. A. Act, 1867, to the Governor-General in his *quasi*-administrative capacity even if the legislation complained of was *ultra vires*, since the words "any Provincial authority" in that sub-section included the Provincial legislatures.—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES *v.* R., [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177b. —— Act affecting Protestant or Roman Catholic minority—Appeal to Governor-General in Council.]—Where the Roman Catholic minority of Manitoba appealed to the Governor-General in Council against the Manitoba Education Acts of 1890, on the ground that their rights & privileges in relation to education had been affected thereby:—*Held:* (*a*) such appeal lay under Manitoba Act, 1870, s. 22 (2), which applies to rights & privileges acquired by legislation in the province after the date thereof; (*b*) the Roman Catholics having acquired by such legislation the right to control & manage their denominational schools, to have them maintained out of the general taxation of the province, to select books for their use, & to determine the character of the religious teaching therein, were affected as regard that right by the Acts of 1890, under which State aid was withdrawn from their schools, while they themselves remained liable to local assessment in support of non-sectarian schools to which they conscientiously objected; (*c*) the Governor-General in Council has power to make remedial orders in the premises within the scope of sect. 22 (3)—*e.g.* by supplemental rather than repealing legislation.—BROPHY *v.* A.-G. OF MANITOBA, [1895] A. C. 202; 64 L. J. P. C. 70; 72 L. T. 163; 11 T. L. R. 198; 11 R. 385, P. C.

Annotations:—**Consd.** Hirsch *v.* Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363. **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

m (p. 445) **vii.** —— *Creation of offence by local legislature—Already an offence by Criminal Code—Ultra vires.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671; 51 Can. Crim. Cas. 209.—**CAN.**

a (p. 445) **i.** —— *Powers of medical council.*]—Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not *ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867, s. 96.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—**CAN.**

a (p. 445) **ii.** *Powers of Optometry Board.*]—Optometry Act, R. S. O., 1927, s. 8, giving power to the Board of Examiners in Optometry to revoke certificates for professional misconduct is *intra vires.*—*Re* HAYWARD, [1934] 2 D. L. R. 210; O. R. 133; 61 C. C. C. 239.—**CAN.**

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champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs, is an invasion of the legislative d main of the Dominion Parliament r lative to criminal law.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—**CAN.**

177c. —— —— ——.]—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES *v.* R., No. 177a, *ante*.

177d. —— **Abolition of denominational education.**]—According to the true construction of the Constitutional Act of Manitoba, 1870 (33 Vict. c. 3), having regard to the state of things which existed in Manitoba at the date thereof, the legislature of that province did not exceed its powers in passing Public Schools Act, 1890. Sect. 22 of 1870 Act authorises the provincial legislature exclusively to make laws in relation to education so as not to "prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice in the province, at the Union":—*Held:* the 1890 Act, which abolished the denominational system of public education established by law since the Union, but which did not compel the attendance of any child at a public school, or confer any advantage in respect of attendance other than that of free education, & at the same time left each denomination free to establish, maintain, & conduct its own schools, did not contravene the above proviso; & accordingly certain bye-laws of a municipal corpn. which authorised assessments under the Act were valid.—WINNIPEG CITY *v.* BARRETT, WINNIPEG CITY *v.* LOGAN, [1892] A. C. 445; 61 L. J. P. C. 58; 67 L. T. 429; 8 T. L. R. 745, P. C.

Annotations:—**Consd.** Brophy *v.* A.-G. of Manitoba, [1895] A. C. 202; Ottawa Separate Schools Trustees *v.* Mackell, [1917] A. C. 62; Hirsch *v.* Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees for Tiny *v.* R., [1928] A. C. 363.

177e. Building & public health—Application to denominational schools.]—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

178a. Property & civil rights—Ultimate Heir Act, R. S. A., 1922 (c. 144)—Ultra vires.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, No. 98a, *ante*.

178a i. *Property & civil rights—Closing disorderly house.*]—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the suppression of a nuisance & not with criminal law by aiming at the punishment of a crime.—BEDARD *v.* DAWSON & A.-G. FOR QUEBEC, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—**CAN.**

178a ii. —— *Prevention of fraudulent sale of shares.*]—A provincial statute which aims at preventing by injunction such trading in securities, or attempts to trade therein, as are founded on fraud, or fraudulent practices as defined by the Act, is *intra vires*, even in so far as it applies to the selling of, or the attempting to sell, shares in a Dominion co. Such a statute does not impair in a substantial degree the essential capacities of a Dominion co., nor does it invade the Dominion's jurisdiction over criminal law, but deals with a matter within provincial jurisdiction under the headings "property & civil rights in the province" & "matters of merely local or private nature in the province."—A.-G. FOR MANITOBA *v.* ROSENBAUM (Man.), [1930] 1 D. L. R. 152; [1929] 1 W. W. R. 148; 40 Man. L. R. 179.—**CAN.**

178a iii. —— *Claim for damages against co-respondent.*]—A claim for damages against a co-resp. is a matter of "Property & Civil Rights in the Province" & not a matter of "Marriage & Divorce" within the jurisdiction of the Dominion.—MITCHELL *v.* MITCHELL & CROOME, [1936] 1 W. W. R. 553; 2 D. L. R. 374; 44 Man. L. R. 23; 5 F. L. J. (Can.) 292.—**CAN.**

178a iv. —— *Maintenance & alimony.*]—Maintenance & alimony are matters of property & civil rights & therefore within the jurisdiction of the province.—LANGFORD *v.* LANGFORD, [1936] 1 W. W. R. 174; 50 B. C. R. 303; 5 F. L. J. (Can.) 227.—**CAN.**

sb. *Labour in industrial undertakings.*]—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*Re* TREATY OF VERSAILLES, *Re* HOURS OF LABOUR, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—**CAN.**

sk. *Marriage.*]—Marriage Act, R.S.O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 35), ss. 2 & 4, are within the powers of the provincial legislature.—STEWART *v.* STEWART, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—**CAN.**

sl. ——.]—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *intra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—DOYLE *v.* DEADY, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—**CAN.**

sm. —— *Affecting status of husband & wife.*]—*Held:* Married Women's Act, R. S. A., 1922, is *ultra vires* as affecting marital status, but, on appeal:—*Held:* the Act does not enable a married woman to sue her husband in tort, &, *semble*, so far as the Act purports to give this right, it is *intra vires*.—HILL *v.* HILL, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105.—**CAN.**

sn. —— ——.]—Married Women's Property Act, R. S. M., 1913, is *intra vires* of the Province.—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 38 Man. L. R. 301.—**CAN.**

so. —— *Consent of parents.*]—Ontario Marriage Act, 1927, s. 34 (1), makes the consent of parents a condition precedent to the marriage of an infant under eighteen years of age, & the ct. may annul a marriage celebrated without consent. It is a matter of doubt whether this provision is *intra vires* of the Province.—MARQUARDT *v.* GORR, [1929] 1 D. L. R. 206.—**CAN.**

sb. —— ——.]—KERR *v.* KERR, [1932] O. R. 289; 2 D. L. R. 349; *on appeal* [1932] O. R. 601; 4 D. L. R. 289.—**CAN.**

sc. —— ——.]—Sect. 20 of Solemnisation of Marriage Act, Alberta, 1925, requiring parental consent to marriage under a certain age, as amended in 1931, c. 16, making the consent a condition precedent to a valid marriage except in certain circumstances is *intra vires*. "Solemnisation of marriage" is not confined to the ceremony itself. It legitimately includes the various steps or preliminaries leading to it. The said statute, in its essence, deals with those steps or preliminaries in the province. The requirement, in the statute, of parental consent is one similar in quality to the other requirements therein concerning the banns or the marriage licences. It is one of the forms to be complied with for the marriage ceremony, & it does not relate to capacity. It is a requirement which a provincial legislature may competently prescribe in the exercise of its jurisdiction in relation to "the solemnisation of marriage in the province" & to which it may "attach the consequence of invalidity absolutely or conditionally."—A.-G. FOR ALBERTA & NEILSON *v.* UNDERWOOD & A.-G. OF CANADA, [1934] S. C. R. 635; 4 D. L. R. 167; *revsg.* S. C. *sub nom.* NEILSON (OTHERWISE UNDERWOOD) *v.* UNDERWOOD, [1933] 2 W. W. R. 609; 4 D. L. R. 154.—**CAN.**

sp. *Wide Tire Act*, 1889 (c. 22)—*Intra vires.*]—R. *v.* HOWE, MCNEIL *v.* HOWE (1890), 2 B. C. R. 36.—**CAN.**

sq. *Habeas corpus.*]—The provincial statute known as "An Act Respecting *Habeas Corpus*," R. S. P. Q. 1925, c. 167, is *intra vires*, & has general application to all judgments, irrespective of the cause of detention.—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; *sub nom.* MOQUIN *v.* FONG, Q. R. 44 K. B. 476.—**CAN.**

sr. *Water power—Powers relating to.*] *Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

st. *Grain Marketing Act*, 1931.]—Grain Marketing Act, 1931 (Sask.), is *ultra vires*, since in its true nature & character it is legislation enacted with the object of controlling the export of grain from Saskatchewan to other provinces & foreign countries, & it is, therefore, an interference with the Dominion Parliament's exclusive powers over the "Regulation of Trade & Commerce."

The right of a resident of a province to export therefrom & sell elsewhere grain grown therein is not a matter of "Property & Civil Rights within the Province," within clause 13 of sect. 92 of B. N. A. Act, nor is it a "matter of merely local or private nature in the Province," within clause 16 thereof.—*Re* GRAIN MARKETING ACT, 1931, [1931] 2 W. W. R. 146; 25 S. L. R. 273.—**CAN.**

178b. —— Procedure relating to expropriation—**Intra vires.**]—Having regard to sect. 129 of British North America Act, 1867 (c. 3), the president or acting-president of the commission appointed under the (Quebec) Public Service Commission Act by the Lieutenant-Governor in Council, when assessing, under art. 429 of the City of Montreal Charter, the compensation to be paid for land expropriated by the city, does not act as a judge

sv. *Soldiers' Taxation Relief Act.*]—A provincial Act, such as Soldiers' Taxation Relief Act, 1924, the object of which is to assist ex-soldiers because of their disabilities, is not an Act which falls within the Dominion Parliament's exclusive legislative authority with respect to "Militia, Military & Naval Services & Defence."—BRANDON CITY *v.* MUNICIPAL COMR., [1931] 3 D. L. R. 397; 2 W. W. R. 65; *affd.*, [1931] 3 W. W. R. 225; 4 D. L. R. 830; 3 W. W. R. 225; 39 Man. L. R. 582.—**CAN.**

sx. *Navigation.*]—The Lakes & Rivers Improvement Act does not purport to restrict or interfere with the navigation of the river & cannot be regarded as invading the rights of the Dominion in its control over navigation; it is therefore *intra vires* of the Ontario legislature.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

sy. *Domestic Relations Act*, 1927 (*Alta.*)—*Ultra vires.*]—A provincial Act which purports to invest a magistrate appointed by the province with powers theretofore exercisable only by a judge of a Superior Ct., as that term is understood in sect. 96 of the B. N. A. Act, is *ultra vires*. Therefore, sect. 26 of Domestic Relations Act, 1927 (Alta.), is *ultra vires*.—ROSKIWICH *v.* ROSKIWICH (No. 2), [1931] 3 W. W. R. 614; [1932] 1 D. L. R. 135; 26 Alta. L. R. 137; 57 C. C. C. 226; *on appeal, sub nom.* A.-G. FOR ALBERTA *v.* ROSKIWICH (1932), 58 C. C. C. 346.—**CAN.**

sz. *Deserted Wives' Maintenance Act R. S. B. C.*, 1924 (*B. C.*).]—Deserted Wives Maintenance Act, R. S. B. C., 1924 (B. C.), is *intra vires*.—GAGEN *v.* GAGEN, [1934] 4 D. L. R. 409; 3 W. W. R. 84; 48 B. C. R. 481; 62 Can. C. C. 286.—**CAN.**

sf. *Game laws.*]—Accused, who was not an Indian, was convicted under Game Act, R. S. B. C., 1924, for killing a pheasant during a close season. The act was committed on an Indian Reserve. The accused did not hold a permit from the superintendent of the reserve to hunt thereon:—*Held:* the Act was *intra vires* with respect to its application to the accused & the conviction should be sustained.—R. *v.* MORLEY, [1932] 2 W. W. R. 193; 4 D. L. R. 483; 58 C. C. C. 166.—**CAN.**

sg. *Financial administration of municipalities.*]—Quebec Municipal Commission Act, 1932 (Que.), is *intra vires*.—QUEBEC MUNICIPAL COMMISSION *v.* AYLMER TOWN, [1933] 2 D. L. R. 638.—**CAN.**

sd. *Debt Adjustment Act*, 1933.]—Sect. 11 of Debt Adjustment Act, 1933, does not enable the board, on issuing a permit for the continuance of an action already begun, to control in any way the functions of the ct. in dealing with that action. The "terms & conditions" that may be prescribed by the permit must be limited to those that may be imposed on the parties to the action, not upon the ct. *Qu.:* whether or to what extent said Act is *ultra vires?* At any rate, the Act does not, & cannot, apply to any action in which there is a *bonâ fide* dispute on any question of law or fact.—KOYL SECURITIES, LTD. *v.* YOUNG, [1933] 2 W. W. R. 452.—**CAN.**

sf. ——.]—Sect. 11 of Debt Adjustment Act, 1933 (Sask.), which provides that no legal or other proceeding of certain enumerated classes shall be taken, made or continued against a "resident" as defined by the Act while the Act remains in force, *i.e.* until Mar. 1, 1936, unless the Debt Adjustment Board issues a permit authorising the proceeding, is *intra vires*, at least in so far as it applies to the classes of proceedings involved in the present case, which was an action for debt & for the enforcement of a mechanics' lien. Sect. 11 is severable from certain other provisions of the Act not in issue in the present case & the ct. expressly stated that it was not passing on the validity of such other provisions.—MALEY *v.* CADWELL, [1934] 1 W. W. R. 51, C. A.—**CAN.**

sf. *Workmen's Compensation Act*, 1931 (*Que.*).]—Workmen's Compensation Act, 1931 (Que.) is *intra vires*.—RICARD *v.* CRETE & A.-G. FOR QUEBEC, [1933] 3 D. L. R. 660.—**CAN.**

sh. *Ontario Municipal Board—Effect of judicial powers.*]—Ontario Municipal Board is lawfully in office even though the legislature may have purported to confer judicial powers on the Board.—R. *v.* STAMFORD TOWNSHIP & MCKEOWN, [1935] 2 D. L. R. 157.—**CAN.**

sj. *Act disposing of rights sub lite.*]—A provincial Act disposing of mining rights *sub lite* held *intra vires*.—FLORENCE MINING CO., LTD. *v.* COBALT LAKE MINING CO., LTD. (1908), 18 O. L. R. 275.—**CAN.**

sl. *Slot machines.*]—The Slot Machine Act, 1935 (Man.), is *intra vires*.—R. *v.* MAGID, [1936] 1 W. W. R. 163; 1 D. L. R. 638; 65 Can. C. C. 78; 43 Man. L. R. 563; 5 F. L. J. (Can.) 243.—**CAN.**

sn. ——.]—Slot Machine Act, 1935 (Alta.), is *intra vires*.—R. *v.* STANLEY, [1935] 3 W. W. R. 517; 64 Can. C. C. 385; [1936] 1 D. L. R. 100; 5 F. L. J. (Can.) 259.—**CAN.**

sp. ——.]—The Slot Machine Act, 1935 (Sask.), is *ultra vires*.—R. *v.* KARMINOS, [1936] 1 W. W. R. 433; 2 D. L. R. 353; 65 Can. C. C. 165.—**CAN.**

sq. ——.]—New Brunswick Slot Machine Act, 1936, is *intra vires*.—R. *v.* LANE, *Ex p.* GOULD, [1937] 1 D. L. R. 212; 11 M. P. R. 232; 67 Can. C. C. 273.—**CAN.**

sr. *Imposition of fines—Failure to remit sales tax.*]—A Provincial Legislature has power to impose a fine for failure to remit sales tax.—FERLAND CORSET CO. *v.* RECORDER'S COURT, [1936] 1 D. L. R. 121; 64 Can. C. C. 347.—**CAN.**

sw. *Dairy Products Act*, 1933 (*Que.*).]—Dairy Products Act, 1933 (Que.), is *intra vires*.]—R. *v.* SIMONEAU, [1936] 1 D. L. R. 143; 65 Can. C. C. 19.—**CAN.**

sz. *Natural Products Marketing Acts*, 1934 (*B. C.*).]—Pltfs., potato growers within a district defined by Natural Products Marketing (British Columbia) Act, 1934 (B. C.), were bringing a load of potatoes to Vancouver to be delivered to a broker there, when an official of the B. C. Coast Vegetable Marketing Board appointed under said Act stopped them & demanded their authority from the Board to proceed with the potatoes. Pltfs. said that the potatoes were for export & that authority to proceed was, therefore, not required. It was evident that the potatoes were not tagged, as the regulations of the Board required them to be. The potatoes were thereupon seized & sent to the Board's warehouse to be sold. Pltfs. obtained an interim injunction restraining the Board from preventing pltfs. transporting potatoes on the highways for marketing without complying with the regulations:—*Held:* what the Board had done was within the authority given it by said Act, as amended, & that said authority was not, as applicable to the facts of this case, *ultra vires* of the province; & therefore the appeal should be allowed.—CHUNG CHUCK & MAH LAI *v.* GILMORE, [1936] 3 W. W. R. 575; [1937] 1 D. L. R. 119; 67 Can. C. C. 264; 51 B. C. R. 189.—**CAN.**

sb. ——.]—Natural Products Marketing (B. C.) Act, 1934 (B. C.), & said Act as amended are *ultra vires*. Interference with interprovincial & export trade in natural products was the substantial & not merely the ancillary or incidental effect of their operation. Moreover they purported to delegate legislative functions to the Lieutenant-Governor in Council & to give jurisdiction to the Dominion Parliament to function in the provincial field.—HAYWARD *v.* BRITISH COLUMBIA LOWER MAINLAND DAIRY PRODUCTS BOARD, [1937] 2 W. W. R. 401.—**CAN.**

sz. *Natural Products Marketing (British Columbia) Act*, 1934—*Intra vires.*]—*Re* NATURAL PRODUCTS MARKETING (BRITISH COLUMBIA) ACT REFERENCE, [1937] 3 W. W. R. 273.—**CAN.**

sc. *Criminal legislation—Towns Incorporation Act (N. S.).*]—Towns Incorporation Act, N. S., empowering municipalities to regulate closing hours of shops & enforce the regulations by fine or imprisonment is not *ultra vires* as being legislation on criminal law.—R. *v.* AWAD, [1937] 2 D. L. R. 136.—**CAN.**

sf. *Unfair Competition Act.*]—The Parliament of Canada under para. 2 of sect. 91 of the B. N. A. Act has the necessary competence to legislate in connection with trade names & sects. 3, 7 & 11 of Unfair Competition Act are *intra vires* of the Canadian Parliament.—GOOD HUMOR CORPN. OF AMERICA *v.* GOOD HUMOR FOOD PRODUCTS, LTD., & BRADLEY, [1937] Ex. C. R. 61.—**CAN.**

sg. *Power Commission Act*, 1935 (*Ont.*).]—Power Commission Act, 1935 (Ont.), s. 2, is *ultra vires*.—OTTAWA VALLEY POWER CO. *v.* A.-G. FOR ONTARIO, [1936] 4 D. L. R. 594; *sub nom.* OTTAWA VALLEY POWER CO. *v.* HYDRO-ELECTRIC POWER COMMISSION.—**CAN.**

sk. *Reduction & Settlement of Debts Act (Alta.).*]—Reduction & Settlement of Debts Act, 1936 (Alta.), is *ultra vires* because (1) it is essentially legislation on the subject of "Interest" assigned by sect. 91 (19) of B. N. A. Act to the Dominion; (2) it purports to add to the functions of the Lieutenant-Governor; (3) it is in conflict with Bkpcy. Act, R. S. C., 1927, & Farmers' Creditors Arrangement Act, 1934. An additional reason for its invalidity in respect to civil rights existing outside the province is that it purports to affect such rights.—CRÉDIT FONCIER FRANCO-CANADIEN *v.* ROSS & A.-G. FOR ALBERTA, NETHERLANDS INVESTMENT CO. OF CANADA, LTD. *v.* FIFE & A.-G. FOR ALBERTA, [1937] 2 W. W. R. 353; *affg.* S. C. *sub nom.* ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA, [1937] 1 D. L. R. 709; 6 F. L. J. (Can.) 131.—**CAN.**

sp. *Provincial Securities Interest Act*, 1936 (*Alta.*).]—The Provincial Securities Interest Act, 1936, is *ultra vires*.—INDEPENDENT ORDER OF FORESTERS *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1937] 1 W. W. R. 414; 2 D. L. R. 109.—**CAN.**

st. *Provincially Guaranteed Securities Proceedings Act*, 1937 (*Alta.*)—*Ultra vires.*]—INDEPENDENT ORDER OF FORESTERS *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT (No. 2), [1937] 3 W. W. R. 424.—**CAN.**

of a superior district or county ct., so as to make the appointment invalid under sect. 96 of the Act in that it is not by the Governor-General, & the tribunal consequently incompetent. At confederation compensation was assessed by comrs., appointed by the Superior Ct. under an Act of 1864, who did not act as judges of any ct. referred to in sect. 96; they were a legal commission or authority within sect. 129, so that the legislature of Quebec under that section, combined with sect. 92, head 13, had exclusive authority to repeal the Act of 1864 & to assign the assessment of compensation to the present commission, the alteration in the mode of appointment being a matter of procedure within the legislative competence. As by art. 429 awards made thereunder are to be final & not open to appeal, they can be questioned only for want of jurisdiction.—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL (CITY), [1932] A. C. 113; 101 L. J. P. C. 49; 146 L. T. 291; 48 T. L. R. 95, P. C.

Security Frauds Prevention Act, 1930 (Alta.).]—Security Frauds Prevention Act, 1930, of Alberta, provided that no person might trade in securities unless he was registered with the approval of the A.-G.; a corpn. could be registered, & in that case its officials did not need registration. In effect, the Act precluded a public co. from selling its shares unless it did so through a registered person or was itself registered. By sect. 9 the A.-G., or his delegate, could examine any person or co. to ascertain whether any "fraudulent act," which was very widely defined, had been, was being, or was about to be, committed. The Act imposed penalties for breaches of its provisions, & by sect. 20 made it an offence to commit any "fraudulent act" not punishable under the Criminal Code of Canada:—*Held:* the Act was within the scope of the powers of the Provincial legislature under sect. 92 of the British North America Act, 1867. It was not invalid in relation to Dominion cos., as it did not wholly preclude them from selling their shares unless they were registered, but merely subjected them to competent provisions applying to all persons trading in securities. Nor was it, as a whole, a colourable attempt to encroach upon the legislative power of the Dominion as to the criminal law; so far as sect. 20 was invalid as so encroaching it was clearly severable.—LYMBURN *v.* MAYLAND, [1932] A. C. 318; 101 L. J. P. C. 89; 146 L. T. 458; 48 T. L. R. 231, P. C.

179. *Add. Annotation:*—**Reld.** Lower Mainland Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168.

179a. Trade disputes.]—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held:* the Act was not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the national life of Canada in anticipated peril.—TORONTO ELECTRIC COMRS. *v.* SNIDER, [1925] A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

Annotation:—**Reld.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

180. *Add. Annotation:*—**Consd.** Martineau (O.) & Sons, Ltd. *v.* Montreal (City), [1932] A. C. 113.

181a. Appointment of judges.]—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2), are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

—— **Members of Quebec Public Service Commission.**]—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL CITY, No. 178b, *ante*.

PART II. SECT. 3, SUB-SECT. 4.—A. (c).

a i. —— —— ——.]—*Held:* 37 Vict. c. 32, was *ultra vires*.—SEVERN *v.* R. (1878), 2 S. C. R. 70; 1 Cart. 414.—CAN.

a i. —— *Liquor Act, 1902, s. 2.*]—*Held:* although unusual, it was well within the powers of the legislature.—R. *v.* WALSH (1903), 23 C. L. T. 186; 5 O. L. R. 527; 2 O. W. R. 222; 3 O. W. R. 31.—CAN.

b i. —— *Right to appeal to Supreme Court of Canada—Restrictions on—Ultra vires.*]—CLARKSON *v.* RYAN (1890), 17 S. C. R. 251; 4 Cart. 439.—CAN.

d i. —— *Betting Information Act, 1923 (c. 5)—Ultra vires.*]—R. *v.* LICHTMAN (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—CAN.

l i. —— *Succession Duties Act, 1914 (c. 10)—Valid.*]—BARTHE *v.* SHARPLES (1918), O. R. 55 S. C. 301.—CAN.

l ii. —— *Liquor laws relating to navigable rivers & wharves—Wharves property of Federal Government—Validity.*]—COTE *v.* QUEBEC LIQUOR COMMISSION, FORTIN *v.* QUEBEC LIQUOR COMMISSION, [1931] 4 D. L. R. 137; 56 Can. C. C. 371.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—B. (a).

o (p. 447) i. ——.]—Customs Tariff (Industries Preservation) Act, 1921-1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921-1922, s. 3, deals with duties of customs only, & does not

infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 8 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—NOTT BROTHERS & CO., LTD. *v.* BARKLEY (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—**AUS.**

o (p. 447) ii. ——.]—*Held:* neither Income Tax Assessment Act, 1922–1924, nor Income Tax Assessment Act, 1922–1925, nor either of Income Tax Acts which incorporated those Assessment Acts, was obnoxious to any of the provisions of sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* MUNRO, BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL TAXATION COMR. (1926), 38 C. L. R. 153.—**AUS.**

o (p. 447) iii. ——.]—*Held:* Wartime Profits Tax Assessment Act, 1917–1918, s. 14 (5), was not obnoxious to sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* HIPSLEYS, LTD. (1926), 38 C. L. R. 219.—**AUS.**

r (p. 447) i. —— *Discrimination between States.*]—Administration Act of Western Australia (1903, No. 13), s. 86, imposes a duty on the final balance of the real & personal estate of deceased according to fixed rates, & contains a proviso that in so far as beneficial interests pass to persons *bonâ fide* residents of & domiciled in Western Australia & occupying towards deceased a certain relationship, duty shall be calculated so as to charge only one-half of the percentage upon the property so acquired by such persons:—*Held:* the real ground of the discrimination was domicil & not residence, & consequently, the enactment was not void under sect. 117 of the Constitution, as setting up a discrimination between the residents of different States.—DAVIES & JONES *v.* WESTERN AUSTRALIA (1905), 2 C. L. R. 29.—**AUS.**

r (p. 447) ii. —— ——.]—Excise Tariff, 1906 (No. 16), is not an Act imposing duties of Excise, but is an Act to regulate the conditions of manufacture of agricultural implements, & is therefore not an exercise of the power of taxation conferred by the Constitution. If otherwise valid, it is invalid on the ground that it authorises discrimination, & therefore discriminates, between States or parts of States within sect. 51 (ii.) of the Constitution, & authorises the giving, & therefore gives, preference to one State or a part thereof over another State or a part thereof within sect. 99 of the Constitution.—R. *v.* BARGER (1908), 6 C. L. R. 41.—**AUS.**

r (p. 447) iii. —— ——.]—Under Factories Act, 1904, it was a condition of the employment of Asiatics that they should have been employed on or before Nov. 1, 1903:—*Held:* the provision was *ultra vires* as discriminating between residents of different States.—FAY *v.* VINCENT (1908), 7 C. L. R. 389.—**AUS.**

r (p. 447) iv. —— ——.]—Sect. 75 of the Constitution provides that "In all matters . . . (iv.) between States, or between residents of different States, or between a State & a resident of another State . . . the High Court shall have original jurisdiction":—*Held:* the words "residents" & "resident" in sect. 75 (iv.) refer to natural persons only & not to artificial persons or corporations. Therefore, a co. formed in Victoria under Victorian law & having its management & control there & carrying on business in each of the other States, was not entitled to bring an action in the High Ct. against a resident of a State other than Victoria.—AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD. *v.* HOWE (1922), 31 C. L. R. 290.—

r (p. 447) v. —— ——.]—*Held:* Regs. 46 & 46A & Table III. of the Income Tax Regulations, 1917, discriminate between States & parts of States, & are therefore invalid as being an infringement of sect. 51 (ii.) of the Constitution.—CAMERON *v.* DEPUTY FEDERAL COMR. OF TAXATION (1923), 32 C. L. R. 68.—**AUS.**

r (p. 447) vi. —— *Federal tax of State servants.*]—The three applts. claimed exemption from taxation under Income Tax Assessment Act, 1915–1921 (Federal), on the ground that the Commonwealth Constitution Act did not confer upon the Parliament of the Commonwealth power to impose an income tax in respect of official salaries received by officers who were (*a*) employed by the Railway Comrs. for New South Wales; or (*b*) employees in the Public Trust Office, which is administered as a branch of the Dept. of the A.-G. & Justice; or (*c*) employed by the State of New South Wales as clerks in the Public Works Department. On cases stated under the "Income Tax Assessment Act":—*Held:* the assessment of Federal Income Tax in respect of the salaries of applts. was valid, applts. were not exempt from such taxation, & the Commonwealth Parliament had power to impose income tax upon them.—DAVOREN *v.* COMMONWEALTH COMRS. OF TAXATION (1922), A. L. R. 129.—**AUS.**

c (p. 447) i. —— *Exemption of members of force from State legislation.*]—There is nothing in the Constitution that expressly or impliedly exempts members of the defence force from State motor car legislation, & sect. 6 of Motor Car Act, 1915 (Vict.), is not inconsistent with any provision of Air Force Act, 1923, or Defence Act, 1903–1918.—PIRRIE *v.* MCFARLANE (1925), 36 C. L. R. 170.—**AUS.**

d (p. 447) i. —— ——.]—The provisions of sect. 4 of Seamen's Compensation Act, 1909, in so far as they purport to regulate purely inter-State trade, are *ultra vires* sect. 51 (1) of the Constitution, sect. 98 of the Constitution does not enlarge the ambit of the trade & commerce clause in sect. 51 (1), but is merely explanatory of the trade & commerce powers. — KALIBIA (OWNERS) *v.* WILSON (1910), 11 C. L. R. 689.—**AUS.**

e (p. 447) i. —— *Commonwealth Shipping Act, 1923—Validity.*]—COMMONWEALTH & A.-G. FOR COMMONWEALTH *v.* AUSTRALIAN COMMONWEALTH SHIPPING BOARD (1927), 39 C. L. R. 1; [1927] Argus L. R. 61.—**AUS.**

g (p. 447) i. *State court exercising Federal jurisdiction—Appeal to High Court.*]—Sect. 39 of the Judiciary Act, 1903–1920 (the ct. expressing no opinion as to the provisions in subsect. (2) (*a*)) is a valid exercise of the powers conferred upon the Parliament of the Commonwealth, & therefore under it an appeal will lie to the High Ct. from a decision of a police magistrate of a State upon an information charging an offence against the provisions of the Crimes Act, 1914–1915.—LORENZO *v.* CAREY (1921), 29 C. L. R. 243.—**AUS.**

h (p. 447) i. ——.]—Judiciary Act 1903–1920, s. 39 (2) (*a*) [as interpreted in No. 605 i, *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—LIMERICK S.S. CO. *v.* COMMONWEALTH OF AUSTRALIA (1924), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—**AUS.**

h (p. 447) ii. ——.]—An action having been brought against the Commonwealth in the Supreme Ct. of Victoria & judgment having been [illegible]onwealth, on appeal that under Judiciary , s. 39 (2) (*a*), the only right of appeal was to the High Ct. The Full Ct., on the ground that sect. 39 (2) (*a*) was *ultra vires*, rejected the contention, & then heard the & dismissed it. On the hearing of an application by pltf. to the Full Ct. for leave to appeal to the Privy Council pursuant to the Imperial Order in Council of Jan. 23, 1911, the Full Ct., accepting as binding on it the decision that sect. 39 (2) (*a*) was invalid, made an order granting the leave asked. On appeal to the High Ct. from the order granting leave:—*Held:* on the hearing of the appeal to the Full Ct. a question arose as to the limits *inter se* of the constitutional powers of the Commonwealth & those of the State of Victoria, within sect. 74 of the Constitution & sects. 38A, 40A of the Judiciary Act; under sect. 40A the cause was removed to the High Ct., &, therefore, the Full Ct. had no jurisdiction to entertain the appeal or to make the order granting leave to appeal to the Privy Council. Whether the Full Ct. had or had not jurisdiction to entertain the appeal, sect. 39 (2) (*a*) of Judiciary Act is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution, & therefore the Full Ct. had no jurisdiction to make the order granting leave to appeal to the Privy Council.—THE COMMONWEALTH *v.* KREGLINGER & FERNAU, LTD. & BARDSLEY (1926), 37 C. L. R. 393; [1926] V. L. R. 331; [1926] Argus L. R. 161.—**AUS.**

o (p. 448) i. —— *Election for Senate.*]—*Held:* Commonwealth Electoral Act, 1918–1925, s. 128A (12), was a valid exercise of the power conferred by sect. 9 of the Constitution upon the Commonwealth Parliament to make laws "prescribing the method of choosing senators."—JUDD *v.* MCKEON (1926), 38 C. L. R. 380.—**AUS.**

r (p. 448) i. ——.]—Customs Act, 1901, being a valid exercise by the Commonwealth of the exclusive power to impose, collect, & control duties of Customs & Excise conferred by sects. 52 (ii.), 86, & 90 of the Constitution, applies to goods imported by the Government of a State as well as to those imported by private persons.—R. *v.* SUTTON (1908), 5 C. L. R. 789.—**AUS.**

r (p. 448) ii. ——.]—Special leave to appeal from a judgment of the High Ct. of Australia holding that goods imported by the State Governments are liable to duties of customs under the laws of the Commonwealth was refused although the case was within sect. 74 of Commonwealth of Australia Constitution Act.—A.-G. FOR NEW SOUTH WALES *v.* NEW SOUTH WALES, COLLECTOR OF CUSTOMS FOR, [1909] A. C. 345, P. C.—**AUS.**

o (p. 448) i. *Prevention of industrial disputes—What is "industrial dispute."*]—The Parliament of the Commonwealth has power, under sect. 51 (xxxv.) of the Constitution, to make laws binding on the States with respect to conciliation & arbn. for the prevention & settlement of industrial disputes extending beyond the limits of one State. A dispute between an organisation of employees & a Minister of the Crown for a State acting under a Statute of that State as an employer which, if it existed between the organisation & a private employer, would be an industrial dispute within sect. 51 (xxxv.), is such an industrial dispute.—AMALGAMATED SOCIETY OF ENGINEERS *v.* ADELAIDE S.S. CO. (1920), 28 C. L. R. 129.—**AUS.**

c (p. 448) ii. —— ——.]—*Held:* the educational activities of the States carried on under the appropriate statutes & statutory regulations of each State relating to education did not constitute an "industry" within sect. 4 of Commonwealth Conciliation & Arbn. Act, 1904–1928; the occupation of the teachers so employed was

not an "industrial" occupation, & the dispute which existed between the States & the teachers employed by them was therefore not an "industrial dispute" within sect. 51 (XXXV.) of the Constitution. — FEDERATED STATE SCHOOL TEACHERS ASSOCN. OF AUSTRALIA *v.* VICTORIA (1929), 41 C. L. R. 569.—**AUS.**

c (p. 448) **iii.** —— ——.]—*Held:* the words in the Constitution, sect. 57 (XXXV.) "extending beyond the limits of any one State" as applied to a dispute mean that the dispute is one "existing in two or more States" or, in other words, "covering Australian territory comprised within two or more States." To constitute an industrial dispute there must be disagreement between people or groups of people who stand in some industrial relation upon some matter which affects or arises out of the relationship. Such a disagreement may cause a strike, a lock-out & disturbance & dislocation of industry, but these are the consequences of the industrial dispute & not the industrial dispute itself, which lies in the disagreement. Upon this conception of an industrial dispute, it cannot extend beyond the limits of any one State unless in each of two or more States, at one time, the disagreement exists between people or groups who stand in some industrial relation. — CALEDONIAN COLLIERIES, LTD. *v.* AUSTRALASIAN COAL & SHALE EMPLOYEES' FEDERATION (1930), 42 C. L. R. 527.—**AUS.**

c (p. 448) **iv.** —— *Courts.*]—The power conferred by the Commonwealth Conciliation & Arbn. Act, 1904–1915, upon the Commonwealth Ct. of Conciliation & Arbn. to enforce awards made by it is part of "the judicial power of the Commonwealth" within sect. 71 of the Constitution, & can only be vested in the cts. mentioned in that sect.—WATERSIDE WORKERS FEDERATION *v.* ALEXANDER (1918), 25 C. L. R. 434.—**AUS.**

c (p. 448) **v.** —— *Conciliation Committees.*]—*Held:* a law which established a body of persons to settle a dispute by issuing a decree arrived at by discussion amongst themselves without any hearing or determination between the disputants as the Commonwealth Conciliation & Arbn. Act, 1904–1930, by sect. 34 (8–12), purported to do, was not a law with respect to conciliation & arbn. for the prevention & settlement of industrial disputes, & was not authorised by sect. 51 (XXXV.) of the Constitution, & therefore such sub-sects. were invalid. — AUSTRALIAN RAILWAYS UNION *v.* VICTORIAN RYS. COMRS. (1930), 44 C. L. R. 319.—**AUS.**

c (p. 448) **vi.** —— *Inconsistency between State & Commonwealth legislation.*]—The same conduct by the same persons was punishable differently under Commonwealth Conciliation & Arbn. Act, 1904–1928; & the New South Wales Masters & Servants Act, 1902:—*Held:* the State Act was invalid, *pro tanto*, by virtue of sect. 109 of the Constitution.—*Ex p.* MCLEAN (1930), 43 C. L. R. 472.—**AUS.**

c (p. 448) **vii.** —— *Prohibition by High Court.*]—Original jurisdiction has been conferred by sect. 75 (v.) of the Constitution, by the phrase "officer of the Commonwealth," upon the High Ct. to issue prohibition to the President of the Commonwealth Ct. of Conciliation & Arbn., & sect. 31 (1) of Commonwealth Conciliation & Arbn. Act, 1904–1911, so far as it purports to take away from the High Ct. the power to issue prohibition in respect of an award or order of the Commonwealth Ct. of Conciliation & Arbn., is invalid.—TRAMWAYS CASE (No. 1) (1913), 18 C. L. R. 54.—**AUS.**

c (p. 448) **viii.** —— *Extent of powers.*]—The provisions of the Commonwealth Conciliation & Arbn. Act, 1904–1910, which purport to authorise the Commonwealth Ct. of Conciliation & Arbn. to declare a common rule in any particular industry, & direct that the common rule so declared shall be binding upon the persons engaged in that industry, are *ultra vires*.—AUSTRALIAN BOOT TRADE EMPLOYEES FEDERATION *v.* WHYBROW & CO. (1910), 11 C. L. R. 311.—**AUS.**

c (p. 448) **ix.** —— ——.]—An award made by the Federal Arbitration Ct. purported to bind named employers, including appct. co., in respect of each & every person employed by them in the clothing & allied trades & industries, whether members of the union making the claim or not, & the union & the members thereof. Appct. had never employed any member of the union or of any organisation or union of employees in the clothing or allied trades or industries:—*Held:* in so far as the award of the Arbitration Ct. purported to bind appct. in respect of every person employed by it, whether a member of the union or not, it was *ultra vires*.—AMALGAMATED CLOTHING & ALLIED TRADES UNION OF AUSTRALIA *v.* ARNALL & SONS (1929), 43 C. L. R. 29.—**AUS.**

st. *Removal of proceedings to High Court.*]—Judiciary Act, 1903–1920, s. 40, is a valid exercise of the powers conferred by sects. 76 & 77 of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sv. ——.]—Judiciary Act, 1903–1920, s. 40A, is a valid exercise of the power conferred by sects. 77 (ii) & 51 (XXXIX) of the Constitution.—PIRRIE *v.* MCFARLANE (1925), 36 C. L. R. 170.—**AUS.**

sw. *Trading by Commonwealth—Through agents—War Precautions (Wool) Regulations.*]—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agreement to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held:* apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements.—COMMONWEALTH & CENTRAL WOOL COMMITTEE *v.* COLONIAL COMBING, SPINNING & WEAVING CO., LTD. (1922), 31 C. L. R. 421.—**AUS.**

sy. *Power to confer judicial powers.*]—The powers which Income Tax Assessment Act, 1922–1923, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—**AUS.**

sz. *Power to give appellate jurisdiction to High Court—Appeal from non-federal court.*]—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911–1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—**AUS.**

sa. *Discovery—Against State.*]—Judiciary Act, 1903–1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the right to obtain discovery of documents from, & to administer interrogatories to, defts., is within the legislative power of the Commonwealth Parliament.—GRIFFIN *v.* SOUTH AUSTRALIA (STATE) (1924), 35 C. L. R. 200; 31 Argus L. R. 81.—**AUS.**

sb. *Immigration.*]—Immigration Act, 1901–1925, s. 8AA, is a valid exercise of the power conferred by sect. 51 (XXVII) of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sc. ——.]—Immigration Act, 1901–1925, s. 5 (3) (3A) (3B):—*Held:* valid.—WILLIAMSON *v.* AH ON (1927), 39 C. L. R. 95; [1927] Argus L. R. 13.—**AUS.**

sd. *Power to grant financial aid to States.*]—*Held:* Federal Aid Roads Acts, 1926, was a valid exercise of the power conferred upon the Commonwealth Parliament by sect. 96 of the Constitution, to grant financial assistance to any State on such terms & conditions as the Parliament might think fit.—STATE OF VICTORIA *v.* COMMONWEALTH (1926), 38 C. L. R. 399.—**AUS.**

se. *Bankruptcy—State Acts not affected as to matters not dealt with in Commonwealth Act—Or as to pending proceedings.*]—*Re* PARSONS (1928), 28 S. R. N. S. W. 575; 45 N. S. W. W. N. 158.—**AUS.**

sf. *Interference with freedom of inter-State trade.*]—The Primary Producers' Organisation & Marketing Acts, 1926–1932, & Orders in Council made thereunder provide for a system of collective marketing:—*Held:* neither the Acts nor the Orders in Council are in conflict with sect. 92 of the Commonwealth Constitution.—MUNRO (A. C.) & SONS PTY., LTD. *v.* SHEEHY, [1934] S. R. (Q.) 251.—**AUS.**

sh. *Powers as to State Courts.*]—(1) Sect. 77 (III) of the Constitution does not enable the Parliament to make a Commonwealth officer a functionary of a State Court & authorise him to act on its behalf & administer part of its jurisdiction; (2) although sect. 51 (XXXIX) of the Constitution confers power upon the Parliament to make laws with respect to matters which attend, or arise in, the execution of any power vested by the Constitution in the Federal Judicature, as distinct from matters incidental to the subjects assigned to the Commonwealth, nevertheless it does not authorise the reconstitution of a State Court which is invested with Federal jurisdiction or of the organisation through which its powers & jurisdiction are exercised, because sect. 77 (III) contemplates the selection by the Parliament of an existing judicial organ which depends alike for its structure & its being upon State law & the grant to it of powers of adjudication upon specified subjects of Federal jurisdiction.—LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sk. *Bankruptcy.*]—*Held:* sects. 12 (5), 18 (1) (*b*), 23 & 24 of Bkpcy. Act, 1924–1928, are *ultra vires*. — LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sl. *Immigration—Extent of powers.*]—The power of Parliament to make laws with respect to immigration enables it to impose upon the ship's agent, who is authorised on its behalf to perform the duties imposed by laws in force in the port, an absolute

184a. —— Power to compel British company to deduct income tax from dividends on shares situate in England.]—Pltfs., a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held:* the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD. (1926), 42 T. L. R. 771.

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liability to a penalty upon entry of an immigrant from the vessel.—ORIENT STEAM NAVIGATION CO., LTD. *v.* GLEESON (1931), 44 C. L. R. 254; [1931] Argus L. R. 61; 4 A. L. J. 371. —**AUS.**

sn. *Forfeiture of fishing boat — Whether Admiralty jurisdiction.*]—*Held:* jurisdiction to condemn a fishing boat as forfeited was not in its nature Admiralty jurisdiction & therefore it was not necessary to reserve Fisheries Act, 1925, for Royal assent in order validly to confer such jurisdiction on a ct. of petty sessions.—CHALLENGER *v.* RAE (1931), 24 Tas. L. R. 53.—**AUS.**

so. *Prohibition of State referendum on day of federal election.*]—Sect. 14 of Commonwealth Electoral (War-time) Act, 1917, provides that "On the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no referendum or vote of the electors of any State or part of a State shall be taken under the law of a State:—*Held:* sect. 14 is a lawful exercise of the power conferred on the Parliament of the Commonwealth by sects. 10, 51 (xxxvi.), (xxxix.) of the Constitution.—R. *v.* BRISBANE LICENSING CO. (1923), 28 C. L. R. 23.—**AUS.**

sr. *Delegation of powers to make regulations under Transport Workers Act, 1928–1929—Validity of regulations.*]—Sect. 3 of Transport Workers Act, 1928–1929, purports to confer a power upon the Governor-General of making regulations not inconsistent with that Act with respect to the employment of transport workers, & in particular for regulating the engagement, service & discharge of such workers, & the licensing of persons engaged as transport workers & for the protection of transport workers:—*Held:* (1) within the legislative power of the Commonwealth Parliament to confer such power; (2) regulations made in the exercise of such power, although they restricted the loading & unloading of inter-State & overseas vessels to members of a specified industrial union & to returned sailors & soldiers, & may have been made in pursuance of the industrial policy of the executive were, nevertheless, within the trade & commerce power conferred by sect. 51 (i.) of the Constitution & did not exceed the power given by sect. 3 of the Transport Workers Act, & were therefore valid.—VICTORIAN STEVEDORING & GENERAL CONTRACTING PTY., LTD. *v.* DIGNAN (1931), 46 C. L. R. 73.—**AUS.**

st. ——.]—Sect. 3 of Transport Workers Act, 1928–1929, operates to authorise a regulation made by the Governor-General requiring that in the employment, engagement or picking up of transport workers (being waterside workers) for oversea & inter-State vessels at the port to which Part III. of the Act applies, priority shall be given to those workers available for employment, engagement or picking up at those ports who are members of the Waterside Workers' Federation, &, to that extent at least, is a valid exercise of the powers of the Commonwealth Parliament.—HUDDART PARKER, LTD. *v.* COMMONWEALTH (1931), 44 C. L. R. 492.—**AUS.**

sv. *Financial Agreements Enforcement Act, 1932.*]—The provisions of Part II. of Financial Agreements Enforcement Act, 1932, are a valid exercise of the legislative powers of the Federal Parliament.—NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 155; [1932] Argus L. R. 245; 5 A. L. J. 433; 6 A. L. J. 38.—**AUS.**

sw. ——.]—Sect. 15 of Financial Agreements Enforcement Act, 1932, is a valid exercise of the power conferred upon the Commonwealth by sect. 105A of the Constitution. In addition to ordinary revenue the State of New South Wales deposited with its bankers moneys received by it under certain statutes & orders of ct. for specific purposes & to meet particular claims, such as, for example estates administered by the Master-in-Lunacy, the Public Trustee & the Registrar of Probates respectively, & claims by suitors & litigants. The accounts were kept by the banks under various descriptive headings, moneys deposited being allocated to the relevant accounts upon the receipt, subsequent to payment in, from the State of a "distribution sheet" & by an agreement between the State & the banks the accounts were treated as one account, withdrawals being permitted from any account, whether in debit or otherwise, provided the combined account was in credit, interest being allowed by each of the banks on any amount held by it in excess of £100,000. The banks stated that they had not been informed, & were unaware, that any of the moneys deposited by the State were "trust" moneys:—*Held:* such moneys were not received by the Crown in right of the State in a fiduciary capacity so as to remain specifically the property in equity of the suitors or others concerned, but went into the general resources of the State; & accordingly the sums at credit of the bank account were attachable under sect. 15 of the Financial Agreements Enforcement Act, 1932. —NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 246; 6 A. L. J. 42.—**AUS.**

sz. —— *Whether constitutional validity question for Privy Council.*]—On an application to the High Ct. for a certificate under sect. 74 of the Constitution that questions of law as to the limits *inter se* of the constitutional powers of the Commonwealth & of the State of New South Wales involved in the case of *New South Wales* v. *The Commonwealth* (*No.* 1), were questions which ought to be determined by His Majesty in Council:—*Held:* the application must be refused.—NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 235; 6 A. L. J. 41.—**AUS.**

sb. —— *Declaration that amount "due & payable & unpaid".—No right of set-off by the State.*]—In an application by the Commonwealth for a declaration, under sect. 6 (3) of the Financial Agreements Enforcement Act, 1932, that an amount stated in a resolution passed by both Houses of the Commonwealth Parliament, or any part thereof, is "due & payable & unpaid" by a State to the Commonwealth the State is not permitted by the Act to claim a set-off.—*Re* NEW SOUTH WALES, STATE OF, *Ex p.* A.-G. FOR THE COMMONWEALTH (1932), 47 C. L. R. 58; 6 A. L. J. 44.—**AUS.**

sd. *Officer transferred to Commonwealth — Pension rights cannot be affected.*]—By the operation of sect. 84 of the Constitution the pension rights of an officer transferred from the service of a State to that of the Commonwealth cannot be affected by legislation of the Commonwealth or of the State after the transfer.—FLINT *v.* THE COMMONWEALTH, [1932] Argus L. R. 391; 6 A. L. J. 237.—**AUS.**

sf. *Agreement between Commonwealth & State—Whether member of public may challenge.*]—A member of the public as such has not a sufficient interest to entitle him to maintain an action for a declaration of the invalidity of, or for an injunction to restrain the Commonwealth from carrying out the agreement between the Commonwealth & the State of Queensland, known as the Sugar Agreement.—ANDERSON *v.* THE COMMONWEALTH, [1932] Argus L. R. 177; 5 A. L. J. 434; 47 C. L. R. 50.—**AUS.**

sk. *Bankruptcy legislation.*]—Since the relevant provisions of the Bills of Sale Act, 1898 (N.S.W.), must be regarded as a Bkpcy. Act within the meaning of sect. 6 (*a*) of the Commonwealth Bkpcy. Act, & since its provisions are not dealt with expressly or by necessary implication in the latter Act, & since the Commonwealth is now the recognised legislative authority to deal with bkpcy. in the State of N.S.W., the reference to "bkpt. estate" in sect. 5 of the former Act must be treated as a reference to an estate which is bkpt. under the laws of bkpcy. for the time being in force in N.S.W. & now includes estates bkpt. under the provisions of the Commonwealth Bkpcy. Act.—ROPE *v.* GRANT (1932), 32 S. R. N. S. W. 354; 4 A. B. C. 168.—**AUS.**

so. *Income tax.*]—Sect. 20 (2) (*b*) of the Income Tax Assessment Act, 1922–1932, is a valid exercise of the legislative power of the Commonwealth.—COLONIAL GAS ASSOCN., LTD. *v.* TAXATION COMR. (1934), 40 Argus L. R. 187; 2 A. T. D. 407; 8 A. L. J. 69.—**AUS.**

sp. *Estate duty.*]—Sect. 8 (4) (*a*) of Estate Duty Assessment Act, 1914–1928 (Cth.), is *intra vires* the Commonwealth Parliament.—TRUSTEES EXECUTORS & AGENCY CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1934), 49 C. L. R. 220.—**AUS.**

sv. *Validity of New Guinea Act.*]—*Held:* the Commonwealth Parliament had power to pass New Guinea Act, 1920–1926.—JOLLEY *v.* MAINKA (1934), 49 C. L. R. 242.—**AUS.**

sx. *Immigration.*]—Sect. 3 (*gh*) of Immigration Act, 1901–1930 is a law with respect to immigration, &, is

186a. Commonwealth Acts—Presumption in favour [illegible] **D. OF AUSTRALIA, LTD. *v.* OF TAXATION, No. 205a,**

186b. Interference with freedom of inter-State trade.]—*Sect. 92 of Commonwealth of Australia Constitution Act, 1900, which provides that trade, commence & intercourse among the States shall be "absolutely free," binds the Parliament of the Commonwealth of Australia equally with the States. The language of the sect., which is quite general & is in terms not subject to any exception or limitation, affords no countenance for the contrary view: it is the declaration of a guaranteed right. By "free" is meant freedom as at the State frontier or barrier, the crucial point in inter-State trade, or freedom in respect of goods passing into or out of the State, & in every case it is a question of fact whether there is an interference with this freedom of passage. On that interpretation of "free" in sect. 92, Dried Fruits Act, 1928–35, of the Commonwealth Parliament & Dried Fruits (Inter-State Trade) Regulations, 1934, made pursuant thereto, which either prohibit inter-State trade entirely if there is no licence, or partially prohibit it if a licence is granted in accordance with the Act & Regulations, contravene sect. 92 of the Constitution & are invalid.—JAMES *v.* COMMONWEALTH OF AUSTRALIA (No. 2), [1936] A. C. 578; [1936] 2 All E. R. 1449; 105 L. J. P. C. 115; 155 L. T. 393; 52 T. L. R. 696; 80 Sol. Jo. 688, P. C.*

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therefore within the legislative power of the Commonwealth Parliament conferred by sect. 51 (XXVII.) of the Constitution.—R. *v.* CARTER, *Ex p.* KISCH (1935), 52 C. L. R. 221; 41 Argus L. R. 125.—**AUS.**

sd. *Legislation relating to broadcasting.*]—Sect. 51 (v) of the Constitution confers on the Commonwealth Parliament power to legislate with respect to radio broadcasting.—R. *v.* BRISLAN, *Ex p.* WILLIAMS (1936), 54 C. L. R. 262; 9 A. L. J. 348; 42 Argus L. R. 45.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—B. (b).

r i. —— *Power to impose customs & excise duties.*]—*Held:* Taxation (Motor Spirit Vendors) Act, 1925 (S. A.), was invalid.—COMMONWEALTH & COMMONWEALTH OIL REFINERIES, LTD. *v.* STATE OF SOUTH AUSTRALIA, LTD. (1926), 38 C. L. R. 408, [1927] Argus L. R. 40.—**AUS.**

r ii. —— ——.]—*Held:* Finance (Newspapers Taxation) Act, 1926 (N. S. W.), & Finance (Taxation Management) Act, 1926 (N. S. W.), ss. 2, 3, 5, 6 & 7, were invalid.—FAIRFAX (JOHN) & SON, LTD. & SMITH'S NEWSPAPERS, LTD. *v.* NEW SOUTH WALES STATE (1927), 39 C. L. R. 139; [1927] Argus L. R. 87.—**AUS.**

r iii. —— *Taxation of federal loans.*]—*Held:* (1) the effect of sect. 7 (12) of Income Tax Acts, 1902–1920 (Qd.), is to make interest derived from Commonwealth stock or treasury bonds "liable to income tax" within meaning of sect. 52B of Commonwealth Inscribed Stock Act, 1911–1918, & that the subsect. is to that extent invalid; (2) an action lies by the A.-G. of the Commonwealth for a declaration that sect. 7 (12) of the Income Tax Acts, 1902–1920 (Qd.), is invalid *pro tanto*; (3) sect. 52B of the Commonwealth Inscribed Stock Act, 1911–1918, is valid under the power conferred by sect. 51 (iv.) of the Constitution to make laws with respect to "borrowing money on the public credit of the Commonwealth."—COMMONWEALTH *v.* QUEENSLAND (1920), 29 C. L. R. 1.—**AUS.**

t i. ——.]—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1.—**AUS.**

t ii. —— *Prohibition of importation of stock—Validity of Stock Act, 1901 (N. S. W.).*]—Sect. 154 of the Stock Act, 1901, does not violate the provision in sect. 92 of the Constitution that trade, commerce & intercourse among the States shall be absolutely free.—*Ex p.* NELSON (NO. 1) (1928), 42 C. L. R. 209; [1929] Argus L. R. 21.—**AUS.**

t iii. —— *Validity of Farm Produce Agents Act, 1926 (N. S. W.).*]—*Held:* the provisions of Farm Produce Agents Act, 1926 (N. S. W.), were not obnoxious to the provisions of sect. 92 of the Constitution.—ROUGHLEY *v.* THE STATE OF NEW SOUTH WALES. *Ex p.* BEAVIS (1928), 42 C. L. R. 162; 1929 A. L. R. 1.—**AUS.**

t iv. —— *Profiteering Prevention Act, 1920 (Qd.).*]—The Profiteering Prevention Act of 1920 (Qd.) provides, by sect. 12 (1), that it shall be unlawful for any trader whether as principal or agent to sell or agree to sell or offer for sale any commodity at a price higher than a price declared in the Queensland Government Gazette; &, by sect. 3, defines "trader" as including "the agent" of any person carrying on the business of selling any commodities. Pltf., a Sydney co., had its travellers in Queensland, & they sold calicoes, etc., at a price higher than the declared price for delivery in Queensland:—*Held:* so far as regards the sales by the travellers of goods stipulated to come from Sydney the Queensland Act was invalid as being in conflict with sect. 92 of the Constitution.—M'ARTHUR (W. & A.), LTD. *v.* QUEENSLAND (1920), 28 C. L. R. 530, 556.—**AUS.**

t v. —— *Milk Act.*]—*Held:* (1) neither the provisions of the Milk Act, 1931, generally, nor the provisions of sects. 23 (1), 26 (1), (3) & 28 (2) particularly, contain a scheme which involves the imposition of a duty of excise within sect. 90 of Commonwealth of Australia Constitution Act; (2) the scheme of compulsory acquisition of milk under sect. 26 of Milk Act, 1931, does not contravene the provisions of sect. 92 of Commonwealth of Australia Constitution Act as to the freedom of inter-State trade.—CROTHERS *v.* SHEIL (1934), 49 C. L. R. 399.—**AUS.**

t vi. —— *Motor Car Act, sect. 4.*]—Resp. laid an information against applt. under sect. 4 of Motor Car Act, 1928–1930 (Vict.), alleging that applt. was the driver of a motor car which was used on a public highway without being registered. Applt. was a carrier residing in New South Wales & was the owner of a motor truck registered in that State, but not registered in Victoria. At the time in question applt. was using the truck for the purpose of carrying goods from a town in New South Wales to Melbourne. There were no goods in the truck which were being carried from any place in Victoria to any other place in Victoria, & applt. had never used the truck save for the purpose of carrying goods for hire from places in New South Wales to places in Victoria or from places in Victoria to places in New South Wales:—*Held:* sect. 4 of Motor Car Act did not infringe sect. 92 of the Constitution, & applt. was rightly convicted.—WILLARD *v.* RAWSON, [1933] Argus L. R. 209; 7 A. L. J. 57; 48 C. L. R. 316.—**AUS.**

t vii. —— *State Transport (Co-ordination) Act (N.S.W.).*]—*Held:* the provisions of the State Transport (Co-ordination) Act do not contravene sect. 92 of the Constitution as interfering with the freedom of inter-State trade, commerce, & intercourse.—R. *v.* VIZZARD, *Ex p.* HILL (1934), 50 C. L. R. 30; 40 Argus L. R. 16; 7 A. L. J. 362.—**AUS.**

t viii. —— *Motor Spirit Vendors Act, 1933 (Q.).*]—Above Act contravenes sect. 92 of the Constitution.—VACUUM OIL CO. PROPRIETARY, LTD. *v.* STATE OF QUEENSLAND (1934), 51 C. L. R. 108; 40 Argus L. R. 154; 8 A. L. J. 29.—**AUS.**

sg. *Validity of Secret Commissions Prohibition Act, 1919, s. 3.*]—*Held:* the provisions of the Secret Commissions Prohibition Act, 1919 (N. S. W.), s. 3, were not invalid.—R. *v.* GATES, *Ex p.* MALING (1928), 41 C. L. R. 519; 2 A. L. J. 330.—**AUS.**

sh. *Power to alter Federal award.*]—When an award has been made by the Commonwealth Ct. of Conciliation & Arbn. pursuant to Commonwealth Conciliation & Arbn. Act, 1904–1921, the Parliament of a State cannot alter the terms of the award, or confer or impose on the parties to it rights or obligations which are inconsistent with such terms.—CLYDE ENGINEERING CO., LTD. *v.* COWBURN, METTERS, LTD. & LEVER BROTHERS, LTD. *v.* PICKARD (1926), 37 C. L. R. 466; [1926] Argus L. R. 214.—**AUS.**

sk. *Federal award inconsistent with State law.*]—The Commonwealth Ct. of Conciliation & Arbn. has no jurisdiction under sect. 51 (XXXV.) to make an award inconsistent with a State law. The determination of a Wages Board empowered by a State Statute to fix a minimum rate of wages may be such a law; it depends upon the terms of the Statute under which it is made.—AUSTRALIAN BOOT TRADE EMPLOYEES FEDERATION *v.* WHYBROW & CO. (1910), 10 C. L. R. 266.—**AUS.**

sl. *State Act repugnant to Commonwealth Act—Invalid.*]—On an information for an offence under sect. 4 of Masters & Servants Act, 1902, N.S.W., deft. was convicted & fined for neglecting to fulfil the contract made between the informant, his employer, & himself in pursuance of an award, made by the Commonwealth Ct. of Conciliation & Arbn., which bound both parties & required them to perform the contract. The very same conduct by the same persons was therefore punishable, but somewhat differently, under Commonwealth Conciliation & Arbn. Act, 1904–1928, & the New South Wales Masters & Servants Act, 1902:—*Held:* the State Act was invalid, *pro tanto*, by virtue of sect. 109 of the Constitution.—*Ex p.* MCLEAN (1930), Argus L. R. 377; 4 A. L. J. 103; 43 C. L. R. 472.—**AUS.**

sp. *Masters & Servants Act, 1902, s. 4.*]—*Held:* sect. 4 of Masters & Servants Act, 1902, was inconsistent with the provisions of Commonwealth

188a. Interference with freedom of inter-State trade.]—(1) Dried Fruits Act, 1924, s. 28, of South Australia, does not authorise the Minister of Agriculture to make orders for the compulsory acquisition of dried fruits with the object of forcing the surplus of dried fruits off the Australian market, as that object involves directly, & not merely incidentally, an interference with the freedom of inter-State trade contrary to sect. 92 of the Commonwealth Constitution, to which section the powers given by sect. 28 of the Dried Fruits Acts are expressly subject.

(2) The decision of the High Ct. of Australia as to the validity of the orders was not a decision as to the limits *inter se* of the constitutional powers of the Commonwealth & of any State or States within sect. 74 of the Commonwealth Constitution so as to render an appeal to the Privy Council incompetent in the absence of a certificate by the High Ct.; that was so whether or not sect. 92 of the Constitution bound the Commonwealth as well as individual States.—JAMES *v.* COWAN, [1932] A. C. 542; 101 L. J. P. C. 149; 147 L. T. 321; 48 T. L. R. 564, P. C.

Annotation:—As to (1) **Consd.** James *v.* Commonwealth of Australia, [1936] 2 All E. R. 1449.

191a. Reform of Legislative Council—Creation of electoral college—Validity.]—The legislature of New South Wales amended the Constitution Act, 1902 (as already amended) by Act 2 of 1933, entitled the Constitution Amendment (Legislative Council) Act, 1932, & by Act No. 5 of 1933, entitled the Constitution Further Amendment (Legislative Council Elections) Act, 1932. Act No. 2 of 1933 provided that the members of the Legislative Council, instead of being nominated by the Governor for life, should be elected for a period of twelve years by the members of the Legislative Council & the Legislative Assembly, voting at sittings of the respective houses by secret ballot; also, that there should be omitted from the Act of 1902, s. 16, which provided for the Governor being authorised by the Crown to summon the members by an instrument under the Great Seal. The Act of 1902 was further amended by inserting sect. 17A, which provided by sub-sect. (6) that the elections should be held & conducted "as may be provided by law," & by adding to sect. 7A a sub-sect. (7), which provided that where that phrase was used in the Act the law might be made as if sect. 7A (requiring a referendum) was not in force. The Bill for Act 2 of 1933 had been approved upon a referendum. Act 5 of 1933 provided for the conduct of elections held under Act 2 of 1933. The Bill, which had been passed by both houses when Act 2 of 1933 came into force, was not submitted to a referendum:—*Held:* (1) objections raised by applt. to the validity of the Acts were not sustainable as to Act 2 of 1933; (2) it was competent to the legislature to make the Legislative Council elective, & to provide a special electoral body; the members of the two houses when voting were not exercising the functions of members of their respective house; (3) the Bill had been duly submitted to the electors upon the referendum although no copy of it had been put before each elector, & although the electoral comr. had not inserted in the notification of the receipt of the writ a copy

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Conciliation & Arbn. Acts, 1904-1928, & was, to the extent of such inconsistency, invalid.—MCKECHNIE *v.* RAY (1931), 31 S. R. N. S. W. 67; 48 N. S. W. W. N. 12.—**AUS.**

sr. *Stamp duties — Receipts — For salary of federal officer.*]—Tasmanian Act (2 Edw. 7, No. 30), which prescribes *inter alia*, that from Jan. 1, 1903, there shall be levied in respect of . . . every receipt where the sum received amounts to £5 & under £50 . . . a stamp duty of 2*d.* must be construed so as not to apply to a receipt given by a federal officer in Tasmania for his salary, such receipt being required to be given by the Commonwealth law & practice regulating the dept. to which the officer belongs.—D'EMDEN *v.* PEDDER (1904), 1 C. L. R. 91.—**AUS.**

ss. —— *Reconveyance—By Commonwealth.*]—The Commonwealth as registered proprietor of land which it had acquired under Lands Acquisition Act, 1906, reconveyed the land to the persons from whom it had been acquired: —*Held:* the Commonwealth was liable to pay stamp duty under Stamp Duties Act, 1898 (N.S.W.).—COMMONWEALTH *v.* NEW SOUTH WALES (1918), 25 C. L. R. 325.—**AUS.**

sw. *Bill for abolition of Legislative Council—Voting—Validity.*]—*Held:* a Bill for abolishing the Legislative Council was submitted to the electors within the meaning of sect. 7A of Constitution Act, 1902, if a vote of the whole of the electors upon the Bill was taken by the Electoral Commissioner on a day fixed by the Legislature not earlier than two months after the passing of the Bill through both Houses; further, the Bill was approved in accordance with sect. 7A if a majority of the electors voting on that day signified their approval of the Bill.—PIDDINGTON *v.* A.-G. (1933), 33 S. R. N. S. W. 317; 50 N. S. W. W. N. 108.—**AUS.**

sz. *Companies (Death Duties) Act, 1901, s. 10.*]—Sect. 10 of Cos. (Death Duties) Act, 1901, as amended by the Stamp Duties (Amendment) Act, 1931, is valid & its provisions are within the powers of the legislature of New South Wales.—A.-G. *v.* AUSTRALIAN AGRICULTURAL CO. (1934), 51 N. S. W. W. N. 197.—**AUS.**

sc. *Income tax.*]—Income Tax Act, 1924 (Que.) after making provision that the taxable income of a foreign co. shall be the amount of the profits made by the co. in Queensland, further provides by the second paragraph of sect. 14 (4) (iv) that "if such profits cannot, in the opinion of the Comr. be otherwise satisfactorily determined, the taxable income of the co. may be assessed by the Comr. at a sum which bears the same proportion to the total profits made by the co. as the sales made in Queensland bear to the total sales made by the co., or, if there are no sales, in the same proportion as the total revenue derived from Queensland bears to the total revenue derived by the co.":—*Held:* the second para. of sect. 14 (4) (iv.) did not constitute an interference with trade & commerce among the States of the Commonwealth & did not infringe the provisions of sect. 92 of the Constitution.—AUSTRALIAN SCALE CO., LTD. *v.* COMR. OF TAXES (1935), 53 C. L. R. 534; 41 Argus L. R. 353; 3 A. T. D. 171; 9 A. L. J. 30; [1935] Q. S. R. 159.—**AUS.**

sf. *Bill not reserved—Emergency.*]—A petitioner, being the recipient of a superannuation allowance from the Crown which had been reduced by the Financial Emergency Acts, 1931, & succeeding years, claimed that such Acts had not been validly assented to as the Bills should have been reserved for the signification of His Majesty's pleasure, & that consequently the deductions from his pension were improperly made. Each Bill in question had been assented to by His Excellency the Lieutenant-Governor, after he had declared himself to be satisfied that an urgent necessity existed requiring that such Bill be brought into immediate operation, & that the Bill was not repugnant to the law of England, or inconsistent with treaty obligations:—*Held:* under the Australian States Constitution Act, 1907 (Imperial), the Bills were not required to be reserved, & had been properly assented to by the Lieutenant-Governor.—BURT *v.* THE CROWN, [1935] W. A. L. R. 68.—**AUS.**

sk, *Legislation relating to assets available in bankruptcy.*]—When State legislation invalidates in favour of his creditor a disposition by the bkpt. which, otherwise, would form part of his estate, what it in substance does is to nullify, in the event of bkpcy., a transaction which depends for its efficacy entirely upon State law. The State legislation, in other words, withdraws from the transaction the support of the law lying within the State legislative power contingently upon an adjudication of bkpcy. By doing so, it makes way for the vesting provision of the Federal law to operate upon property which, otherwise, would have been alienated by the bkpt. It thus swells the assets which it is the policy of the bkpcy. law to make available for debts. There is nothing in such an enactment *prima facie* repugnant to a general law of bkpcy.—PRICE *v.* PARSONS (1936), 54 C. L. R. 332; 8 A. B. C. 252; 42 Argus L. R. 115; 9 A. L. J. 421.—**AUS.**

of the Bill, nor any statement annexed to the *writ*; (4) the deletion of sect. 16 of the Act of 1902 did not impinge upon any prerogative, right, or duty of the Crown to summon the elected members; as to Act 5 of 1933 (5), having regard to the provisions of Act 2 of 1933, it was not required to be submitted to a referendum, although it had been passed by both houses before Act 2 of 1932 came into force.—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, [1934] A. C. 511; 103 L. J. P. C. 121; 151 L. T. 381; 50 T. L. R. 552, P. C.

191b. —— Referendum—What amounts to.]—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, No. 191a, *ante*.

191c. —— Machinery Act—Intra vires.]—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, No. 191a, *ante*.

192a. Bill relating to abolition of Legislative Council—Condition precedent to presentation.]—The Constitution Act, 1902, enacted by the legislature of New South Wales, was amended in 1929 by adding sect. 7A, which provided that no Bill for abolishing the Legislative Council should be presented to the Governor for His Majesty's assent until it had been approved by a majority of the electors voting upon a submission to them made in accordance with the section; & that the same provision was to apply to a Bill to repeal the section. In 1930 both houses of the legislature passed two Bills, one to repeal sect. 7A & the other to abolish the Legislative Council. By Colonial Laws Validity Act, 1865 (c. 63), s. 5, the legislature of the State had full power to make laws respecting the constitution, powers & prodecure of the legislature, provided that the laws should have been passed in such "manner and form" as might from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law in force in the colony:—*Held:* the whole of sect. 7A of the Constitution Act, 1902, was within the competence of the legislature of the State under Colonial Laws Validity Act, 1865 (c. 63), s. 5; the provision that Bills of the nature stated must be approved by the electors before being presented was a provision as to "manner & form" within the proviso; & accordingly the Bills could not lawfully be presented unless & until they had been approved by a majority of the electors voting.—A.-G. FOR NEW SOUTH WALES *v.* TRETHOWAN, [1932] A. C. 526; 101 L. J. P. C. 158; 147 L. T. 265; 48 T. L. R. 514; 76 Sol. Jo. 511, P. C.

Annotation:—**Refd.** Doyle *v.* A.-G. for New South Wales, [1934] A. C. 511.

PART II. SECT. 3, SUB-SECT. 4.—C.

sj. *Samoa Act*, 1921—*Valid.*]—TAGALOA *v.* INSPECTOR OF POLICE, FUATAGA *v.* INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—**N. Z.**

sn. *Divorce & Matrimonial Causes Amendment Act*, 1930, *s.* 3—*Intra vires.*]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand: —*Held:* entitled to a decree *nisi*.—WORTH *v.* WORTH, [1931] N. Z. L. R. 1109.—**N.Z.**

sp. *Power to legislate for mandated territory of Western Samoa.*]—*Held:* New Zealand had been constituted the mandatory Power of Western Samoa, & the Samoa Act, 1921, was a valid exercise of jurisdiction effectively conferred on the legislature of New Zealand by Order in Council of His Majesty the King, made in pursuance of the Foreign Jurisdiction Act, 1890, notwithstanding the limits of jurisdiction prescribed by the New Zealand Constitution Act, 1922.—TAGALOA *v.* INSPECTOR OF POLICE, FUATAGA *v.* INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—**N.Z.**

sr. *Mandated territory—Samoa Act*, 1921, *s.* 45.]—Sect. 45 of Samoa Act, 1921, is *intra vires* the New Zealand Legislature because by the mandate New Zealand has full & exclusive power of administration & legislation over Samoa, subject only to the terms of the mandate. Therefore, the Parliament of New Zealand may delegate all or any of its powers to the Governor-General in Council.—NELSON *v.* BRAISBY (No. 2), [1934] N. Z. L. R. 559; G. L. R. 433.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 4.—D.

h i. —— —— *Distribution of dividends.*]—The tax imposed upon financial cos. by Transvaal Provincial Ordinance 8 of 1923, s. 3, of one shilling for each pound of dividend distributed after a certain date, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. *v.* TRANSVAAL PROVINCIAL ADMINISTRATION, [1925] App. D. 477.—**S. AF.**

h ii. —— —— *Receipt of premiums.*]—The tax imposed by Tax Ordinance of 1923 (Transvaal) upon insurance cos., on premiums received, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—INLAND REVENUE COMR. *v.* ROYAL EXCHANGE ASSURANCE CO., [1925] App. D. 223.—**S. AF.**

h iii. —— *Control of trading licences.*]—*Held:* Transvaal Provincial Ordinance 12 of 1926 was *ultra vires* the Provincial Council.—RELOOMAL *v.* RECEIVER OF REVENUE, [1927] App. D. 401.—**S. AF.**

k i. —— *Proclamation of local areas.*]—Natal Provincial Ordinance 7 of 1923, which confers on the Administrator power to proclaim local areas & provides for the election of committees to function therein, such committees being established with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of local self-government, is *ultra vires* the Provisional Council under South Africa Act, s. 85 (6).—ISIPINGO HEALTH COMMITTEE *v.* JADWAT, [1926] App. D. 113. —**S. AF.**

k ii. —— *Municipal franchise.*]—Ord. 19. 1924, s. 13 (1):—*Held: intra vires.*—ABRAHAM *v.* DURBAN CORPN. (1926), 47 N. L. R. 356.—**S. AF.**

k iii. —— *Enrolment of burgesses.*]—*Held:* Natal Ordinance 19 of 1924, s. 13 (1), was *intra vires* the Provincial Council.—ABRAHAM *v.* DURBAN CORPN., [1927] App. D. 444.—**S. AF.**

k iv. —— *Qualification of attorneys.*]—The proviso to R. S. C., Ord. 32, r. 47, as originally framed in 1909 provided that any person admitted as an attorney by virtue of qualifications acquired by him elsewhere than in South Africa should not be entitled to practise as an advocate until he had served under articles in Natal for at least 18 months. In 1923 the words "Province of Natal," were substituted for "South Africa" by a rule framed by Judge-President & Judges of Natal Provincial Division: — *Held:* the amending rule was not *ultra vires* as being repugnant to sect. 115 of South Africa Act. — INCORPORATED LAW SOCIETY OF NATAL *v.* VAN AARDT, [1930] N. L. R. 69; *affd.*, [1930] App. D. 385.—**S. AF.**

sk. *Rhodesia—Taxaiton of non-residents carrying on business within territory.*]—Under the power conferred upon the legislature of Southern Rhodesia by the Order in Council of 1898, s. 35, it is *intra vires* for that legislature to levy a tax upon income accruing to a non-resident from a source not within the territory, where such non-resident carries on business within the territory.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—**S. AF.**

sl. *Transkeian Territories — Immigration of Asiatics.*]—*Held:* Proclamation 264 of 1904 was *ultra vires*.—R. *v.* BARMANIA, [1927] App. D. 537.—**S. AF.**

sm. *Qualifications of voters—Powers of Union Parliament.*]—The powers of the Union Parliament to prescribe the qualifications of voters are derived from sect. 35 of the South Africa Act & are strictly limited by the provisions of that sect. By that sect. the Union Parliament, as usually constituted, is vested with plenary powers of making laws dealing with that subject-matter except in the cases mentioned in the two sub-sects. These exceptions only arise where the new law would have the effect of disqualifying a person on the ground of race or colour only.—R. *v.* NDOBE, [1930] App. D. 484.—**S. AF.**

sp. *Status of Provincial Councils.*]—The status of Provincial Councils under the South Africa Act is analogous to that of the Canadian Provincial Legislatures. . . . The fact that under the South Africa Act Provincial statutes may be overriden by a Union statute

197. *Add. Annotations :*—**Rejd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652 ; James *v.* Commonwealth of Australia, [1936] 2 All E. R. 1449.

199. *Add. Annotation :*—**Rejd.** Bhagchand Dagdusa Gujrathi *v.* Secretary of State for India in Council (1927), 43 T. L. R. 617.

200a. Appointment — What constitutes.] — A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, No. 181a, *ante*.

200b. —— Rights of existing judge—On constitution of new court.]—Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—SCOTT *v.* A.-G. FOR CANADA (1923), 40 T. L. R. 6, P. C.

205a. Right to hold office for life—Members of Board of Review under Australian Income Tax Assessment Acts, 1922–25—Commonwealth of Australia Constitution Act, 1900, ss. 71, 72.]—An Act of the Commonwealth Parliament should not be held to infringe the Constitution of Australia unless it is clear beyond reasonable doubt that it does so. In that view, the Board of Review created by sect. 41 of the Federal Income Tax Assessment Act, 1922–1925, to review the decisions of the Comr. of Taxation, & whose members are to hold office for seven years, is not a ct. exercising the judicial power of the Commonwealth within sect. 71 of the Constitution of Australia, but is an administrative tribunal. Although it became unnecessary so to decide, the Judicial Committee desired to make it quite clear that, as at present advised, they were not prepared to assent to the view that it was competent, either with or without legislation of the Federal Parliament, to appoint justices of the High Ct., or of the other cts. created under sect. 71 of the Constitution, with other than a life tenure of

does not make the Provincial Councils subordinate legislatures to the Union Parliament. Within the scope of their authority their powers are as plenary as those of the Dominion Provincial legislatures.—WILLIAMS *v.* JOHANNESBURG MUNICIPALITY, [1915] T. P. D. 106.—**S. AF.**

sr. *Provincial legislation—Presumption of validity.*]—Where an Ordinance passed by a Provincial Council is not patently invalid & its invalidity is not in issue, the ct. will assume it to be valid.—JOHANNESBURG MUNICIPALITY *v.* MASEROWITZ, [1914] T. P. D. 439.—**S. AF.**

st. —— *Proof of.*]—The statutory law of one Province is a matter of fact & not of law in the cts. situated in another Province, & when material must be alleged & proved as fact. *Semble :* the production of a copy of a statute of one Province would be sufficient proof thereof in the cts. situated in another Province.—ISMAIL *v.* SKRADLING, [1911] T. P. D. 428.—**S. AF.**

sv. —— *Extent of powers.*]—The power of regulation of horse-racing & betting conferred by Act of Parliament or a Provincial Council does not empower the Council to prohibit betting in a partial but most substantial manner, *e.g.* by making betting otherwise than by a totalisator a criminal offence.—R. *v.* WILLIAMS, [1914] App. D. 460.—**S. AF.**

sw. —— ——.]—Sect. 114 of Ord. 9 of 1912, which gives power to a magistrate to state a case where a bye-law or regulation is in question, is *ultra vires* of the Transvaal Provincial Council as conferred by sect. 85 of South Africa Act, 1909.—GERMISTON MUNICIPALITY *v.* ANGEIRN & PIEL, [1913] T. P. D. 135.—**S. AF.**

sz. —— ——.]—Sects. 88, 90, 91 of Ord. 9 (Transvaal) of 1912, so far as they relate to cycle dealers, are *ultra vires* the Provincial Council of the Transvaal under sects. 85 (1), 89 of the South Africa Act, as that Act confers no power on Provincial Councils to regulate trade. A power to control local trade, commerce or industries is not a necessary or incidental function of local government.—MASEROWITZ *v.* JOHANNESBURG TOWN COUNCIL, [1914] W. L. D. 139.—**S. AF.**

sb. —— ——.]—Sub-sects. 32, 35 of sect. 38 of Ord. 9 of 1912, empower municipal councils to make bye-laws for regulating, restricting, & licensing the use of motor cars, within the municipality & for licensing & regulating private vehicles :—*Held :* (1) the sub-sects. were *ultra vires* the Provincial Council ; (2) the municipal council in making such bye-laws was entitled to charge a fee for such licence. —WILLIAMS *v.* JOHANNESBURG MUNICIPALITY, [1915] T. P. D. 362.—**S. AF.**

sd. —— ——.]—*Held :* the provisions of an Ordinance relating to the disqualification for the franchise of persons of non-European origin were *intra vire*, & the fact that the effect was to discriminate between one race & another did not affect its validity. —ABRAHAM *v.* DURBAN CORPN., [1927] App. D. 444.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.—E.

so. *Crown grants.*]—Crown Grants Act, XV. of 1895, which enacts that grants by the Crown of estates unknown to the law are not invalid, is not *ultra vires* the Indian legislature.—SECRETARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

sp. *Taxation.*]—*Held :* Income Tax Act, s. 67, was not *ultra vires*.—DR. R. N. SINGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1927), I. L. R. 5 Ran. 825.—**IND.**

sq. *Acts of local Legislatures—Extent of operation.*]—The United Provinces Ct. of Wards, like the Acts of many other local Legislatures dealing with the local Ct. of Wards, has no effect beyond the jurisdiction of its own Legislature. Civil Procedure Code (Act V. of 1908) gives a local Act local validity & special procedure validity in its own sphere. No local Legislature can prescribe procedure for any ct. beyond its territorial jurisdiction, & any Act passed by a local Legislature for its own cts. cannot be enforced beyond those territories.—CHHATTOO LAL MISSER *v.* NARAINDAS BAIJNATH PRASAD (1928), I. L. R. 56 Calc. 704.—**IND.**

sr. *Bengal Criminal Law Amendment Act, 1930—Validity.*]—The Bengal Criminal Law Amendment Act, 1930, does not contravene the Government of India Act, 1915 (c. 61).—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVERNMENT, [1932] I. L. R. 60 Calc. 364.—**IND.**

PART II. SECT. 4, SUB-SECT. 1.—A.

o i. —— *Powers of judge conferred on master by Province—Ultra vires.*]—Judges are to be appointed by the Governor-General in Council, under sect. 96 of the B. N. A., & a Provincial statute conferring upon a master the powers of a judge is therefore *ultra vires*.—COLONIAL LOAN & INVESTMENT CO. *v.* GRADY (1915), 24 D. L. R. 176 ; 8 Alta. L. R. 496.—**CAN.**

o ii. —— *Who is "judge"—Not master.*]—A master is not a judge so as to require appointment by the Governor-General in Council within sect. 96 of B. N. A. Act.—POLSON IRON WORKS *v.* MUNNS (1915), 24 D. L. R. 18.—**CAN.**

o iii. —— —— *Not judge of Surrogate Court.*]—Judges of Surrogate Cts. are not within sect. 96 of B. N. A. Act, & may therefore be appointed by the Provincial Legislatures.—RIMMER *v.* HANNON (1921), 60 D. L. R. 637.—**CAN.**

o iv. —— *Whether presumed—Commissioner with judicial powers.*]—To appoint a comr. under Mining Act (Ont.), s. 123, & then invest him with powers exercisable by a superior ct., as that term is to be understood in B. N. A. Act, is to enable the provincial authority in effect to appoint a judge of a superior ct., which is beyond its power; & it could not be presumed that the Governor-General had given the provincial appointee a patent designating him a judge of a superior ct.—*Re* MCLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10 ; 54 O. L. R. 573.—**CAN.**

o v. ——.]—COLONIAL LOAN & INVESTMENT CO. *v.* GRADY (1915), 24 D. L. R. 176 ; POLSON IRON WORKS *v.* MUNNS (1915), 24 D. L. R. 18 ; RIMMER *v.* HANNON (1921), 60 D. L. R. 637.—**CAN.**

o vi. —— *Judges of Superior Court—Board of Public Utility Commissioners.*]—The Board of Public Utility Comrs. established under Public Utilities Act, 1923, is not a ct. within sect. 96 of B. N. A. Act. It is an administrative, not a judicial, body, even though it may have *quasi*-judicial duties to perform.—BOARD OF PUBLIC UTILITY COMRS. *v.* MODEL DAIRIES, [1936] 3 W. W. R. 601 ; [1937] 1 D. L. R. 95 ; 6 F. L. J. (Can.) 228.—**CAN.**

st. *Remuneration —*
—Held : Judges Act, [illegible] s. 34, has no application to the remuneration of a judge whose appointment to perform the duty or [illegible] that sect.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604 ; 52 O. L. R. 105.—**CAN.**

ART II. SECT. 4, SUB-SECT. 2.—A.

sw. *Canada—Districtcourt.*]—Except as to matters for which particular statutory directions provide otherwise, a district ct. has jurisdiction over persons & property throughout the province & may entertain an action irrespective of where within the province the cause of action arose, the property is situated, or defts. reside.—POLAR AERATED WATER WORKS *v.* WINNIKOFF, [1921] 3 W. W. R. 370; 62 D. L. R. 403; 17 Alta. L. R. 150.—**CAN.**

sx. —— ——.]—When a district ct. action is not commenced in the ct. of that district in which deft. or one of defts., dwells or carries on business, the ct. has now no jurisdiction unless the action is one with respect to which the District Courts Act or some particular statutory direction provides otherwise, or unless deft. by his conduct has submitted to the jurisdiction.—KULYK *v.* KLEIN, [1929] 4 D. L. R. 159; 2 W. W. R. 334; 24 Alta. L. R. 200.—**CAN.**

sb. —— *Exchequer Court.*]—Exchequer Ct. Act, s. 22 (*c*), means that where the subject-matter of the action primarily, but not incidentally, concerns a patent of invention, trademark or copyright, the ct. may grant any appropriate remedy known to the common law or equity.—MCCRACKEN *v.* WATSON, [1932] Ex. C. R. 83.—**CAN.**

sc. —— ——.]—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—**CAN.**

sf. —— ——.]—Exchequer Ct. in a civil action has no jurisdiction to try the issue raised by pleading the Dominion Food & Drugs Act.—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—**CAN.**

sz. *Prince Edward Island.*]—The ct. of last resort in Prince Edward Island is the Supreme Ct. in that province.—KELLY *v.* SULLIVAN (1876), 1 S. C. R. 1.—**CAN.**

sl. *Northern Ireland — Power to make order against "neighbouring counties"—Limited to counties in Northern Ireland.*]—Under Grand Jury (Ireland) Act, 1836, s. 140, the expression "neighbouring counties" must be taken to mean "neighbouring counties" in Northern Ireland. The jurisdictions respectively set up by Govt. of Ireland Act, 1920, are mutually independent & exclusive of each other within the respective areas.—PLUMB & ORR *v.* FERMANAGH COUNTY COUNCIL, [1923] 2 I. R. 54.—**IR.**

sm. *High Court of Australia—Proceedings involving the interpretation & application of Commonwealth of Australia Constitution Act, s. 92.*]—The question of the validity of determinations made pursuant to the Dried Fruits Acts fixing the quantity of dried fruits which might be marketed within the Commonwealth raises an issue directly involving the interpretation & application of s. 92 of the Constitution, & the question of the validity of acquisitions of dried fruits pursuant to those Acts, also, raises an issue directly involving the interpretation of the Constitution, & an action raising those questions is, therefore, within the original jurisdiction of the High Ct. conferred by Judiciary Act, 1903–1926, s. 30.—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1.—**AUS.**

sn. —— *To make order refused by court of co-ordinate jurisdiction.*]—JONES *v.* JONES (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—**AUS.**

so. —— *Proceedings between residents of different States—One plaintiff & defendant resident in same State.*]—An action instituted in the High Ct. in which there is on each side of the record a resident of the same State who is a necessary party to the action is not a matter between residents of different States within the Constitution, s. 75, & the High Ct. has no jurisdiction to entertain it.—WATSON & GODFREY *v.* CAMERON (1928), 40 C. L. R. 446; [1928] Argus L. R. 44.—**AUS.**

sp. —— *Actions between States—Relating to boundaries.*]—The boundary between two States having been fixed by an Imperial Act of Parliament before federation:—*Held:* the High Ct. had jurisdiction by sect. 75 of the Constitution to entertain an action by one of these States against the other seeking a declaration that certain land adjoining that boundary & in the *de facto* occupation of the other State formed part of the territory of the former State.—SOUTH AUSTRALIA *v.* VICTORIA (1911), 12 C. L. R. 667; *on appeal*, [1914] A. C. 283, P. C.—**AUS.**

sr. —— *Tort—Action by Commonwealth against State.*]—*Held:* the High Ct. has jurisdiction to entertain an action for a tort brought by the Commonwealth against a State without the consent of that State.—COMMONWEALTH *v.* NEW SOUTH WALES (1923), 32 C. L. R. 200.—**AUS.**

st. —— *No right of appeal from Central Court of New Guinea.*]—Sect. 103B of Mining Ordinance, 1922–1926 (N.G.), as inserted by sect. 18 of Mining Ordinance (No. 2), 1926, provides that on the hearing of an appeal from the Warden's Ct. to the Central Ct. "the Central Ct. may make an order reversing or varying the decision of the Warden's Ct., or dismissing the appeal, & all such orders shall be final & conclusive on the parties":—*Held:* by the whole ct., as such orders are "final & conclusive," leave to appeal therefrom to the High Ct. cannot be granted under sect. 24 of the Judiciary Ordinance, 1921–1927 (N. G.).—EDIE CREEK PTY. *v.* SYMES (1929), 43 C. L. R. 53.—**AUS.**

sv. —— *Principles applied.*]—In an action for libel in the Supreme Ct. of New South Wales a verdict had been given for deft. which, on appeal by pltf., had as to one count been set aside & a new trial ordered. Deft. applied to the Supreme Ct., under rule 2 of the Order in Council of Apr. 2, 1909, for leave to appeal to the Privy Council, but leave was refused:—*Held:* leave to appeal to the High Ct. from the order of the Supreme Ct. directing a new trial should be refused.—SMITH'S WEEKLY PUBLISHING CO. *v.* MYERSON (1924), 34 C. L. R. 141.—**AUS.**

sw. —— ——.]—Special leave to appeal in cases involving less than the appealable amount will not be granted by the High Ct. as of course, but the conditions laid down by the Privy Council will be considered.—NORTON *v.* TAYLOR (1905), 2 C. L. R. 291.—**AUS.**

sy. —— ——.]—The High Ct. has no jurisdiction to entertain an application by way of appeal for a new trial after a verdict of a jury in an action in the Supreme Ct. of a State exercising federal jurisdiction.—COMMONWEALTH *v.* BRISBANE MILLING CO. (1916), 21 C. L. R. 559.—**AUS.**

sz. —— ——.]—The jurisdiction conferred by Lands Clauses Consolidation Act, 1881 (S. A.), ss. 5–10, is conferred, not upon the Supreme Ct., but upon a judge of the Supreme Ct. as a *persona designata* with a right of appeal to the Full Ct. of the Supreme Ct. & therefore, a decision of a judge exercising the jurisdiction so conferred is not a judgment of the Supreme Ct. within sect. 73 of the Constitution from which an appeal will lie as of right to the High Ct.—MACDONALD *v.* SOUTH AUSTRALIA RY. COMRS. (1911), 12 C. L. R. 221.—**AUS.**

sb. —— ——.]—Conviction quashed by Supreme Ct. Special leave to appeal granted, & motion to rescind special leave refused, notwithstanding that accused was no longer in custody.—A.-G. FOR NEW SOUTH WALES *v.* JACKSON (1906), 3 C. L. R. 730.—**AUS.**

sd. —— ——.]—The High Ct. has jurisdiction to entertain an appeal from the Supreme Ct. of a State in a case of *habeas corpus*.—A.-G. FOR COMMONWEALTH *v.* AH SHEUNG (1906), 4 C. L. R. 949.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—J.

228 ii. —— —— *"Suit for land."*]—HATIMBHAI HASSANALLY *v.* EDULJEE DINSHAW (1927), I. L. R. 51 Bom. 516.—**IND.**

c i. —— *At Calcutta—To direct appellant to Privy Council to provide funds to enable minor to be represented.*]—

that such an appeal (the trial not being by jury) will lie upon a matter of fact, contains no indication of any limitation or restriction on the High Ct. in the exercise of its powers as an appellate tribunal. The High Ct. has, under the Code, full power to review at large the evidence on which the order of acquittal was founded & to reach, if it think fit, the conclusion that on that evidence the order of acquittal should be reversed.—SHEO SWARUP *v.* KING-EMPEROR (1934), 51 T. L. R. 10; 78 Sol. Jo. 600, P. C.

228b. —— To increase sentence.]—CHUNBIDYA *v.* R. (1934), 78 Sol. Jo. 897.

234a. Court of civil judge of Secunderabad—Limitation of action.]—Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct. at Hyderabad, it would have been barred by Stat. Limitations, but, in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—RAI BAHADUR BANSILAL ABIRCHAND *v.* GHULAN MAHBUB KHAN (1925), 42 T. L. R. 5, P. C.

K. Other Particular Courts.

234b .Bechuanaland Protectorate — Magistrates' Court—Limited to criminal matters.]—By a proclamation issued in 1891 pursuant to Foreign Jurisdiction Act, 1890 (c. 37), Magistrates' & other cts. were established in the Bechuanaland Protectorate. By clause 8 the jurisdiction of the cts. was not to extend to any matter in which natives only were concerned, unless exercise of the jurisdiction was necessary in the interests of peace, or for the prevention or punishment of acts of violence. By clause 9 where jurisdiction was exercised the decision was to follow the laws & customs of the natives concerned, unless those laws & customs were incompatible with peace, order, & good government. Three natives were parties to an armed & murderous attack upon their tribal chief. As punishment the chief, after consulting & with the approval of his native council, caused their houses to be burnt. The action of the chief was in accordance with the custom of the tribe in the case of an armed rebellion. Two of the natives were convicted by a Magistrate of attempted murder, & sentenced to imprisonment; the sentences were reduced, as the houses of the accused had been burnt. Subsequently the three natives brought civil suits in the Magistrates' ct. against the chief for damages in respect of the house burning, & the chief counter-claimed:—*Held:* the ct. had no jurisdiction in the civil suits having regard to clause 8 of the proclamation, as the matter was one in which natives only were concerned, & there was no evidence of the probability of any further breach of the peace or acts of violence.

Semble: the custom of house burning, above referred to, was incompatible with peace, order, & good government within the meaning of clause 9.—KHAMA *v.* RATSHOSA, [1931] A. C. 784; 100 L. J. P. C. 229; 145 L. T. 657, P. C.

234c. Lagos—District Court—Jurisdiction of commissioner—Validity of order of Chief Justice.]—Applt. was charged in the District Ct. of Lagos (*a*) with forging a Govt. tender, & (*b*) with fraudulently uttering the forged tender, contrary to sects. 467 & 468 of the Criminal Code Ordinance. He was tried summarily before a police magistrate, who on Mar. 20, 1933, found him guilty on both charges & sentenced him to nine months' imprisonment with hard labour in respect of the first charge & to six months' imprisonment with hard labour in respect of the second charge, the sentences to run concurrently. Sect. 45 of the Supreme Ct. Ordinance gave every comr. in criminal matters jurisdiction for summary trial where a person was charged with an offence punishable by imprisonment not exceeding six months, & where any person was charged with an offence punishable upon summary conviction, & where any person was charged with an offence which, if proved, could be adequately punished with imprisonment for not more than six months. Sect. 46 gave power to the Chief Justice by special order to authorise an increased jurisdiction to be exercised by a comr., & to revoke such special order, but no such revocation should prejudice the issue of a new special order to the same commissioner. By an order dated Feb. 24, 1928, purporting to be made under sect. 46 the Chief Justice authorised all police magistrates & comrs. to inflict punishment of imprisonment for a term not exceeding twelve months:—*Held:* sect. 46 of the Supreme Ct. Ordinance empowered the Chief Justice to make a special order, to be exercised by a comrs., but did not empower him to make a general order in the terms of the order of

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The High Ct. is not entitled after the final admission of a Privy Council appeal to make an order directing applt. in the Privy Council case to put the guardian of the minor resp. in funds to have the case argued on behalf of the minor before the Judicial Committee.—BIR BIKRAM KISHORE MANIKYA *v.* ALI AHAMAD (1927), I. L. R. 55 Calc. 758.—**IND.**

e ii. —— *Allahabad.*]—The inherent powers of the Supreme Ct. of Calcutta were not conferred on the Allahabad High Ct. by the Indian High Courts Act, 1861.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sp. *Jurisdiction of Supreme Court of Bengal—Limitation to British subjects—Who are.*]—Sect. 14 of 13 Geo. 3, c. 63, confines the jurisdiction of the Supreme Ct. beyond the limits of Calcutta to British subjects. In the early statutes relating to India, the words "British subject" mean a subject of the King of British birth.—*Re* PHANINDRA-CHANDRA SET (1930), I. L. R. 58 Calc. 919.—**IND.**

sr. *Foreign courts—What included.*]—In the contemplation of the general law of British India there are only two kinds of cts.—British Indian Cts. & Foreign Cts.—& whatever is not a British Indian Ct. is a Foreign Ct. Therefore, *quoad* the cts. of British India, the cts. of foreign countries, British Colonies, & assigned tracts like Secunderabad stand upon an equal footing as Foreign Cts.—SECUNDERABAD OFFICIAL RECEIVER *v.* LAKSHMINAREYANA (1930), I. L. R. 54 Mad. 727.—**IND.**

sw. *Civil courts in Burma—Exclusive jurisdiction over civil rights.*]—The Civil Cts. as constituted by law in Burma alone are vested with jurisdiction to determine disputes respecting civil rights as cts. of law, & will remain so vested unless and until then jurisdiction is abrogated by a statutory enactment passed by an authority duly constituted in that behalf.—U PYINNYA THIHA *v.* U OTTAMA (1935), I. L. R. 13 Man. 648.—**IND.**

Feb. 24, 1928, increasing the criminal jurisdiction of all police magistrates indiscriminately; consequently the decision of the police magistrate to try the case summarily under the discretion given to him by the third para. of sect. 45, as purporting to be extended by the order of Feb. 24, 1928, & the sentence of nine months' imprisonment in respect of the first charge were unjustified.—AKERELE (DAVID EVARISTO) *v.* R., [1934] A. C. 523; 103 L. J. P. C. 91; 151 L. T. 530; 30 Cox, C. C. 174, P. C.

234d. *Gold Coast*—**Paramount Chief's Tribunal—Appeal—Conditions precedent.**]—Having regard to sect. 77 (2) of Native Administration Ordinance of the Gold Coast Colony, there is no jurisdiction to hear an appeal from a Paramount Chief's Tribunal unless before leave to appeal was granted the taxed costs of the hearing have been paid in money, or a sum sufficient to satisfy them has been deposited in ct.; the Appellate ct. cannot waive compliance with the above statutory requirements. Appeal dismissed.—OHENE MOORE *v.* AKESSEH TAYEE, [1935] A. C. 72; 104 L. J. P. C. 38; 152 L. T. 241, P. C.

234e. **Eastern Africa—Court of Appeal—Appeal from—Conditions precedent.**]—BRACIA CZECZOWICZKA *v.* MARKUS, [1935] W. N. 127; 80 L. Jo. 77; 180 L. T. Jo. 113, P. C.

Part III.—Laws of the Colonies.

238a. **Rule of English law as to parliamentary control of revenue—Application in New Zealand.**]—It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself; a payment made without that authority is illegal & *ultra vires*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided (*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500 was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable: —*Held:* as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—AUCKLAND HARBOUR BOARD *v.* R., [1924] A. C. 318; 93 L. J. P. C. 126; 130 L. T. 621, P. C.

Annotations:—**Refd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754; North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

241. *Add. Annotation:*—**Consd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

242. *Add Annotations:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

243. *Add. Annotation:*—**Refd.** Abeyesekera *v.* Jayatilake, [1932] A. C. 260.

250. *Add. Annotation:*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

251. *Add. Annotation:*—**Refd.** Khoo Hooi Leong *v.* Khoo Chong Yeok, [1930] A. C. 346.

252a. —— **Revenue laws.**]—When a foreign colony becomes a British colony the British laws of revenue immediately attach.—THE FRIENDSHIP (1814), 1 Dods. 373; 165 E. R. 1346.

PART III. SECT. 1, SUB-SECT. 1.

239 i. *Introduction of English law by colonial statute.*]—The custom whereby, when marine insurance was effected through a broker, the broker & not the assured was liable to the underwriter for the premium, while the underwriter was directly responsible to the assured for the loss, was not so firmly established as part of the law of England in 1792 that it was to be deemed to have been introduced into Upper Canada by 32 Geo. 3, c. 1.—O'KEEFE & LYNCH OF CANADA, LTD. *v.* TORONTO INSURANCE & VESSEL AGENCY, LTD., [1926] 4 D. L. R. 477; 59 O. L. R. 235.—**CAN.**

239 ii. ——.]—The **rule in *Shelley's Case*** is not part of the law of Alberta, since it was not "applicable" within North-West Territorities Act, 1884, to the Territories.—*Re* SIMPSON ESTATE (Alta.), [1927] 4 D. L. R. 817; [1927] 3 W. W. R. 534.—**CAN.**

239 iii. ——.]—*Held:* the English common law, as it was established on July 15, 1870, was introduced into the North-West Territories by Statute of Canada, 1886, c. 25, s. 3, & the same was neither expressly nor by implication altered or amended, in its application to riparian rights, by any subsequent Canadian legislation.—FARES *v.* R., [1929] Ex. C. R. 144; *on appeal*, [1932] S. C. R. 78; 1 D. L. R. 421.—**CAN.**

239 iv. ——.]—The provisions of Land Titles Act, R. S. S., 1930, respecting leases do not apply to premises situated in a national park subject to Saskatchewan Natural Resources Act, 1930. In the absence of any other Saskatchewan statute dealing with said leases the law applicable thereto is the law of England as introduced by North-West Territories Act.—CHERRY *v.* SMITH, [1933] 1 W. W. R. 205.—**CAN.**

sa. *Legal & equitable estates—British India.*]—There is no distinction between legal & equitable estates in British India.—SURENDRAMOHAN RAY CHANDHURI *v.* MAHENDRANATH BANERJI (1931), I. L. R. 59 Calc. 781.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

k i. —— *Inapplicability to specified community.*]—In order to show that the English law on its introduction to India in 1726 was inapplicable to a particular community, it is not enough to prove that the community had, prior to that date, been governed by a law differing from English law. What must be shown is that the English law is based on or presupposes social or political conditions peculiar to the country of its origin & it is impossible or inexpedient to apply the provisions of it to the community in question.—*In the Goods of* EZRAH (1930), I. L. R. 58 Calc. 761.—**IND.**

k ii. —— *Common law not engrafted on local statutes.*]—In India, where there are definite statutes enacted, they have to be followed. The rules of the common law of England, or the legal maxims embodying certain judicial principles, however wholesome they may be, cannot be engrafted upon the Indian Penal Code.—EMPEROR *v.* JOTI PRASAD GUPTA (1931) I. L. R. 53 All. 642.—**IND.**

263. ***Add.*** ***Annotation :*—Refd.** Berthiaume *v.* [illegible], 45 T. L. R. 607.

265a. Recognition of existing proprietary rights—Effect of proclamation.]—After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

Applts. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty :—*Held :* upon the facts, & applying the above principles, the suit failed.—VAJESINGJI JORAVARSINGJI *v.* SECRETARY OF STATE FOR INDIA (1924), L. R. 51 Ind. App. 357, P. C.

270. Add the following para. :—

There is no authority for saying that the Roman-Dutch law of Holland, which was in force in Ceylon at the date of its conquest by the British, & has not since been abrogated, empowered the subject to sue the Government. Since the conquest a very extensive practice of suing the Crown has sprung up & been recognised by the legislature :—*Held :* therefore, such suits are now incorporated into the law of the land. Further, where the Crown is pltf. & defts. sue in reconvention, the ct. is not bound to give separate judgments, but may set off the amount awarded to defts. against that awarded to the Crown, & give judgment for the balance.—HETTIHEWAGE SIMAN APPU *v.* QUEEN'S ADVOCATE (1884), 9 App. Cas. 571, P. C.

271a. —— ——.]—WIJEYEWARDENE *v.* JAYAWARDENE (1924), 94 L. J. P. C. 44 ; 132 L. T. 161 ; 69 Sol. Jo. 793.

281a. —— —— ——.]—By Art. 1384 of the *Code Civil,* the law prevailing in Mauritius, it is provided that *Les Mâitres et les Commettants* [*sont responsables*] *du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employés :—Held :* in order to make the *Commettant* responsible for damages occasioned by the negligence of the *Préposé,* it is necessary to establish that the *Préposé* was acting *sous les ordres, sous la direction et la surveillance du Commettant.*—SÉRANDAT *v.* SAÏSSE (1866), L. R. 1 P. C. 152 ; 3 Moo. P. C. C. N. S. 534 ; 34 L. J. P. C. 35 ; 12 Jur. N. S. 301 ; 14 W. R. 487 ; 16 E. R. 202, P. C.

283a. Lagos—Validity of native custom.]—If the occupier of a dwelling in one of the native compounds at Epetedo, Lagos, asserts a right therein inconsistent with the lawful rights of the chief, the chief is entitled by native law & custom to evict not only the offending occupier but also those of his relatives who have supported or sided with him against the chief. The custom, thus limited as to the relatives liable to be evicted, is not repugnant to natural justice, equity & good conscience so as to be one from which judicial sanction must be withheld. The Judicial Committee were not prepared, without further argument, to uphold the custom so far as it was stated to include a right to evict all the relatives ; that extension was not necessary for the decision of the case. A chief should not proceed to eviction without obtaining from the ct. a declaration of forfeiture ; if he does so he will be required very strictly to justify his conduct if it is called in question in subsequent proceedings.—IDEWU INASA *v.* SAKARIYAWO OSHODI, [1934] A. C. 99 ; 103 L. J. P. C. 9 ; 150 L. T. 183 ; 50 T. L. R. 168, P. C.

Annotation :—**Refd.** Sakariyawo Oshodi *v.* Brimah Balogun & Scottish Nigerian Mortgage & Trust Co., [1936] 2 All E. R. 1632.

284a. Native custom originally barbarous—Recognition by court on modification.]—(1) The Governor of Nigeria, purporting to act under the Deposed Chiefs Removal Ordinance, ordered applt. to leave a specified area, & upon his failing to comply ordered his deportation to another place in the Colony. Applt. applied to the Supreme Ct. of Nigeria for a writ of *habeas corpus,* contending (*a*) that he was not a native chief ; (*b*) that he had not been deposed ; (*c*) there was no native law or custom which required him to leave the area, & consequently the conditions did not exist entitling the Governor to make the orders :—the powers of the Governor under the Ordinance were purely executive & it was the duty of the ct. to investigate the questions raised by applt.'s contentions & to come to a judicial decision thereon.

(2) The Governor can make a deportation order under sect. 2 (2) of the Ordinance without previous proceedings before a magistrate.

(3) A native custom which originally was barbarous, & therefore one to which a ct. could not give effect, may have become recognised by the native community in a milder & acceptable form without losing its essential character of custom, but the ct. cannot itself transform a barbarous custom into a milder one.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1931] A. C. 662 ; 100 L. J. P. C. 152 ; 145 L. T. 297, P. C.

290. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

PART III. SECT. 1, SUB-SECT. 2.—C.

284 ii. —— *New Guinea.*]—The & effect of the provision in of Laws Repeal [illegible] & equity that were in force in England on 'May 9, 1921' shall be in force in the Territory" of New Guinea, discussed.—BOOTH *v.* BOOTH (1925), 52 C. L. R. 1 ; 41 Argus L. R. 183 ; 8 A. L. J. 460.—**AUS.**

284 iii. —— —— *Married women.*]—The capacity of a married woman in the Territory of New Guinea to acquire & enjoy property is not limited as at common law prior to Married Women's Property Acts.—BOOTH *v.* BOOTH (1925), 53 C. L. R. 1 ; 41 Argus L. R. 183 ; 8 A. L. J. 460.—**AUS.**

293. *Add. Annotation :*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

297. Before this case add " *See, now,* Statute of Westminster, 1931 (c. 4), s. 4."

307. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

310a. Moneylenders Act, 1927 (c. 21)—Not applicable in Straits Settlements.]—A moneylender carrying on business in the Straits Settlements sued there on a promissory note & post-dated cheque given in respect of a loan. Deft. pleaded that the suit could not be maintained, as there was no note or memorandum in writing of the contract in accordance with English Moneylenders Act, 1927 (c. 21), s. 6 ; he contended that that sect. applied by virtue of sect. 5 (1) of Ordinance No. 111 (Civil Law) of the Colony :—*Held :* the defence failed, because no question arose in the suit " with respect to mercantile law " so as to make English law apply under the terms of the Ordinance.—SHAIK SAHIED BIN ABDULLAH BAJERAI *v.* SOCKALINGHAM CHETTIAR, [1933] A. C. 342 ; 102 L. J. P. C. 111 ; 149 L. T. 26, P. C.

Annotation :—**Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

315a. —— Limitation Act, 1623 (c. 16)—Extends to India.]—EAST INDIA CO. *v.* ODITCHURN (1850), 7 Moo. P. C. C. 85 ; 5 Moo. Ind. App. 43 ; 14 Jur. 253 ; 13 E. R. 811, P. C.

Annotation :—**Folld.** Ruckmaboye *v.* Mottichund (1853), 8 Moo. P. C. C. 4.

315b. *S. P.* RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 8 Moo. P. C. C. 4 ; 5 Moo. Ind. App. 234 ; 22 L. T. O. S. 203 ; 14 E. R. 2, P. C.

316. *Add. Annotation :*—**Distd.** Shaik Sahied Bin Abdullah Bajerai *v.* Sockalingam Chettiar, [1933] A. C. 342.

324. After this case add :—

-.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

PART III. SECT. 2, SUB-SECT. 1.—A.

h i. *Mode of exclusion — Subject-matter covered by colonial legislation.*]—The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, re-enacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A. 1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 3, as to a penal action.—CONNORS *v.* EGLI, [1924] 2 D. L. R. 59 ; 1 W. W. R. 1050 ; 20 Alta. L. R. 205.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

a (p. 462) i. *Administrator—Appointment—Court of Probate Act,* 1857, *s.* 73 *—Applicable in New Zealand.*]—Ct. of Probate Act, 1857 (c. 77), s. 73, is, *mutatis mutandis,* in force in New Zealand, & is equally applicable to real estate as to personal estate.—*Re* HUNTER, HUNTER *v.* HUNTER & HUNTER, [1932] N. Z. L. R. 911.—**N.Z.**

1 (p. 463) i. —— *Examination of petitioner—Evidence Amendment Act,* 1869.]—Sect. 43 of Divorce & Matrimonial Causes Act, 1857, was, *semble,* completely superseded & covered by Evidence Amendment Act, 1869 ; &, in any event, is not in force in Alberta since it is in direct conflict with sect. 8 of Alberta Evidence Act, R. S. A., 1922, c. 87.—EMENY *v.* EMENY (Alta.), [1929] 1 D. L. R. 253 ; [1929] 3 W. W. R. 577 ; 24 Alta. L. R. 303.—**CAN.**

p (p. 463) i. *Expropriation—Land Clauses Act,* 1845—*Not applicable in Ontario.*]—*Re* MAYO *v.* TORONTO CITY, [1929] 3 D. L. R. 890 ; 64 O. L. R. 139.—**CAN.**

r (p. 463) i. —— *Not applicable to New South Wales.*]—REID *v.* FITZGERALD (1931), 48 N. S. W. W. N. 25.—**AUS.**

s (p. 463) i. —— *Applicable to British Columbia.*]—14 Geo. 3, c. 78, is, I think, in force in this Province (CLEMENT, J.).—LAIDLAW *v.* CROW'S NEST RY. (1909), 14 B. C. R. 169 ; *affd.,* 42 S. C. R. 355.—**CAN.**

w (p. 463) i. *Forfeiture Act,* 1870 (c. 23)—*Not applicable to Saskatchewan.*]—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

g (p. 463) i. —— *Applicable to New Brunswick.*]—9 Anne, c. 41, as amended by 5 & 6 Will. 4, c. 41, s. 1, is in force in New Brunswick.—LE BLANC *v.* THOMAS (1932), 5 M. P. R. 401.—**CAN.**

g (p. 463) ii. —— *Applicable in Manitoba.*]—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249 ; [1935] D. L. R. 616 ; 62 C. C. C. 247.—**CAN.**

g (p. 463) iii. *Habeas Corpus Act & Bill of Rights—Not applicable to British India.*]—Neither the Habeas Corpus Act nor the Bill of Rights forms part of the law of British India.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVT. (1932), I. L. R. 60 Cal. 364.—**IND.**

i (p. 463) i. *Insurance—Life Assurance Act,* 1774—*Not applicable in Saskatchewan.*]—*Held :* impliedly repealed by the Saskatchewan Insurance Act as enacted in 1915 & re-enacted in 1924-1925.—CROWN BAKERY, LTD. *v.* PREFERRED ACCIDENT INSCE. CO. OF NEW YORK, [1933] 2 W. W. R. 33 ; 4 D. L. R. 117.—**CAN.**

t (p. 463) i. —— *Not applicable to New South Wales.*]—HAZELWOOD *v.* WEBBER (1925), 52 C. L. R. 268 ; 35 S. R. N. S. W. 140 ; 52 N. S. W. W. N. 53 ; 41 Argus L. R. 76 ; 8 A. L. J. 345.—**AUS.**

dd (p. 463) i. —— *Apportionment Act,* 1870.]—*Held :* not in force in Saskatchewan.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26 ; 4 D. L. R. 1022. —**CAN.**

oo (p. 463) i. —— —— *Applicable to Alberta.*]—The " prohibited degrees of consanguinity or affinity " referred to in 5 & 6 Will. 4, c. 54, are those set out in Archbishop Parker's Table of 1563, which is printed in the Book of Common Prayer of the Church of England, & this Act is in force in Alberta, except in so far as said table is altered by R. S. C., 1927, c. 127.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478 ; 2 W. W. R. 645.—**CAN.**

ooo (p. 463) ii. —— —— *Applicable to Alberta.*]—5 & 6 Will. 4, c. 54, is in force in Manitoba.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

q (p. 464) i. —— *Set-off.*]—Statutes of Set-off, 1729 & 1735, are still in force in New Zealand.—BUSHILL *v.* MELVILLE, [1934] N. Z. L. R. Supp. 211 ; G. L. R. 809.—**N.Z.**

r (p. 464) i. —— *Judicature Acts—Rules under—Not applicable in Ontario.*]—The effect of rule 2 of the rules of 1913 is to make those rules a complete code of procedure, either by special provisions or by analogy, & the practice in England no longer obtains in Ontario.—KEMP *v.* BEATTIE, [1929] 1 D. L. R. 55 ; 63 O. L. R. 176.—**CAN.**

r (p. 464) ii. —— *Procedure in forma pauperis—*11 *Hen.* 7, *c.* 12*—Applicable in British Columbia.*]—BLAND *v.* AGNEW, [1932] 3 W. W. R. 222 ; 4 D. L. R. 464 ; 46 B. C. R. 230.—**CAN.**

r (p. 464) iii. —— —— —— —.]—The statute of 11 Hen. 7, c. 12, entitled " A mean to help & speed poor persons in their suits," is in force in British Columbia.—BLAND *v.* AGNEW (No. 3), [1933] 3 W. W. R. 88 ; 4 D. L. R. 756 ; 47 B. C. R. 7.—**CAN.**

t (p. 464) i. *Real Estate Charges Act,* 1867 (*c.* 69), *s.* 2—*Applicable to Saskatchewan.*]—*Re* MACDOUGALL, [1927] 3 D. L. R. 464 ; [1927] 1 W. W. R. 612 ; 21 Sask. L. R. 397.—**CAN.**

ee (p. 464) i. —— —— *Application in Canada.*]—*Held :* the question of limitation of liability was governed by Merchant Shipping Act, 1894, & not by the Canada Shipping Act, since the Colonial Laws Validity Act had not been abrogated by British North America Act & the Statute of Westminster, has no retroactive effect.—CANADA STEAMSHIP LINES, LTD. *v.* EMILE CHARLAND, LTD., [1933] Ex. C. R. 147.—**CAN.**

gg (p. 464) i. —— *Charging order.*]—Solicitors Act, 1860, s. 28, is in force in Saskatchewan & must be given full effect in matters of practice & procedure in the cts. thereof. Under its provisions, the ct. has power, in any proceedings, to make a charging order in favour of a solr., with respect to his taxed costs, against any property recovered through his instrumentality ; & the charge may be granted not only upon the interest in the preserved property of those by whom the solr. was employed but also upon the interests of others interested in the preserved property who get the benefit of its preservation, even though they were not parties to the action.—BLOOMAERT *v.* DUNLOP, [1930] 1 W. W. R. 270 ; 2 D. L. R. 30 ; 24 S. L. R. 261.—**CAN.**

mm (p. 464) i. —— *Applicable to Alberta.*]—LAMB *v.* LAMB, [1925] 4 D. L. R. 526 ; [1925] 3 W. W. R. 397. —**CAN.**

b (p. 465) i. —— —— *Applicable to India.*]—The above Act extends to India, & applies to Hindoos & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 5 Moo. Ind. App. 234.—**IND.**

s (p. 465) i. —— *Mercantile Law Amendment Act,* 1856, *s.* 14—*Applicable in Saskatchewan.*]—IMPERIAL BANK OF CANADA *v.* KUSZKS, [1932] 3 W. W. R. 186.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

hh i. —— —— *Previously in force in another Province.*]—Where a statutory provision had been in force in another province before its enactment in this province it will be presumed to have been adopted with the construction

Part IV.—Ecclesiastical Law.

325. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

327. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

337. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

After this case add :—

—— —— **Application of Colonial Bishoprics Fund, 1841.**]—*See* CHARITIES, No. 981d, *ante*.

345a. Canada—United Church of Canada—Decision not to enter union—Subsequent decision to enter in accordance with provincial legislation—Invalid.]—By an Act to come into force on June 10, 1925, the Dominion legislature incorporated the United Church of Canada so as to give effect to an agreed basis of union between the Presbyterian, Methodist, & Congregational Churches throughout Canada. The congregations of the uniting Churches were to become congregations of the United Church, & their property was to vest therein. By sect. 10, however, if any congregation voted at a meeting held within six months before June 10, 1925, not to enter the union it was not to be affected by the Act, &, by sect. 4 (*c*), it was to be deemed not to have become a member of the United Church. The legislature of Nova Scotia had passed an Act, to come into force upon the United Church being incorporated, enacting that property of uniting congregations in the Province should vest in the United Church. Sect. 8 (*a*) provided that if a congregation, at a meeting held within six months after the incorporation, voted not to enter the union its property was not to be affected, but that if the congregation decided later to enter the union the Act was to apply to it & its property. A Presbyterian congregation in Nova Scotia voted at a meeting held within six months before June 10, 1925, not to concur in the union, but at a meeting held within six months after that date voted to enter the United Church :—*Held :* as by the Dominion Act which incorporated the United Church of Canada the effect of the earlier vote was that the congregation was not a constituent member of that body, it could not by virtue of Provincial legislation become a member, nor could its property vest upon the footing that it was so ; further, that the later vote could not be treated as a decision to apply to the United Church for admission, with the effect that, if the application was acceded to, its property vested therein under s. 8 (*a*). The earlier vote, however, did not necessarily for ever debar the congregation from entering the United Church, as the Dominion Act recognised that a non-concurring congregation might become a member at a later time, though the Dominion legislature at present had not provided means whereby a later union could be effected.—ST. LUKE'S PRESBYTERIAN CONGREGATION OF SALTSPRINGS TRUSTEES *v.* CAMERON, [1930] A. C. 673 ; 99 L. J. P. C. 206 ; 143 L. T. 601, P. C.

349. For " No. 325, *ante* " read :—

It is the undoubted prerogative of the Crown to receive appeals in all Colonial causes, & by 25 Hen. 8, c. 19 (by which

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placed upon it by the cts. of that province.—*Re* WINNIPEG SADDLERY CO., LTD., [1934] 3 W. W. R. 1 ; 42 Man. L. R. 448.—**CAN.**

hh ii. —— —— ——.]—The interpretation put by the cts. of another province on a statute of that province which was afterwards introduced into Manitoba should be followed by the Cts. of Manitoba.—BROADBENT *v.* 1600 CLUB OF SOUTHERN MANITOBA, [1935] 1 W. W. R. 353 ; 2 D. L. R. 802 ; *on appeal*, [1935] 2 W. W. R. 539 ; 2 D. L. R. 227 ; 43 Man. L. R. 221.—**CAN.**

kk i. —— *Provincial statute taken from Imperial statute.*]—In interpreting a taxing provision taken by the legislature of Ontario from an Imperial statutory provision as amended, but without previous legislative history in Ontario, it is not permissible to consider the evolution of the Imperial provision or decisions based thereon.—A.-G. FOR ONTARIO *v.* PERRY, [1934] A. C. 477 ; 51 T. L. R. 1 ; 78 Sol. Jo. 488, P. C.—**CAN.**

PART IV.

s i. —— *Requisites of conversion to Hinduism.*]—In the Indian Succession Act (XXXIX. of 1925), the term " Hindu " is used in a theological, as distinguished from a national or racial sense. A person of non-Hindu origin can become a Hindu by conversion. Membership of a caste is not a necessary pre-requisite for being a Hindu. It is a question of fact in each case whether a given person is a Hindu or not. A European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer & advocate of Hinduism, & its practices ; but if he resides long in India, abdicates his religion by a clear act of renunciation, & adopts Hinduism by undergoing formal conversion, gives up, along with Christianity, his Christian name & deliberately assumes a Hindu name, marries, in accordance with Hindu religious rites, a person who is a Hindu by race & religion, & cuts himself off from his old environments, & takes to the Hindu mode of life, in such a case the Ct. may justly come to the conclusion that he is a Hindu within Indian Succession Act. A European who becomes a Hindu is governed by Hindu law, the test in such case being not domicil, but religion.—MORARJI *v.* ADMINISTRATOR-GENERAL OF MADRAS (1928), I. L. R. 52 Mad. 160.—**IND.**

s ii. ——.]—Whether a Chinese is a Buddhist or not is a question of fact.—TAN MA SHWE ZIN *v.* TAN MA NGWE ZIN (1932), I. L. R. 10 RAN. 97.—**IND.**

Canada—United Church of Canada.]—*See cases* in ECCLESIASTICAL LAW, Part VIII., Sect. 9.

sg. *South Africa—Property originally vested in Lord Bishop of Cape Town as trustee—Appointment of new trustee.*]—Petitioners, who were churchwardens & members of Trinity Church, Cape Town, applied for an order appointing trustees to administer the trusts attaching to the property upon which the church was built. The property in question was transferred on Nov. 7, 1849, to " the Lord Bishop of Cape Town & his successors in the said See as trustees in perpetuity, for ecclesiastical use in connection with the Church of England in this colony." Notice of the application had been given to the present Archbishop of Cape Town & the Registrar of the Diocese of Cape Town, who were cited as resps. on an objection *in limine* taken by resps. the ct. held that inas much as there was no natural person filling the office of Lord Bishop of Cape Town as it existed in 1849, the trusteeship was vacant. The objection *in limine* was accordingly overruled, & the matter postponed to allow resps. to place further evidence before the ct., further evidence having now been produced on affidavit :—*Held :* (1) assuming that Act No. 3 of 1873 had no application in the present case, the ct. had power under the common law on failure of original trustees to appoint trustees ; (2) the Lord Bishop of Cape Town was originally a bare trustee & no more, the congregation of Trinity Church, as the beneficial owners of the property, had sufficient interest in the property to entitle them to make the present application, & appets. being duly authorised by the congregation to make the application accordingly had *locus standi* to apply ; (3) the decision in *Merriman* v. *Williams* (Foord, 203), that the Church of the Province of S. A. was not part of the Church of England was unaffected by the fact that the former church had adopted a new canon, No. 34, providing for a final appeal in matters of faith & doctrine to a consultative body of which the Archbp. of Canterbury is president, & that therefore the ct. was bound to hold the Church of the Province of S. A. was a different

the mode of appeal to the Crown in Ecclesiastical causes is directed), it is by sect. 4 enacted, that "for lack of justice at or in any of the cts. of the Archbishops of this realm, or in any of the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty in the King's Ct. of Chancery," an enactment which gave rise to the Commission of Delegates, which was abolished by 2 & 3 Will. 4, c. 92, & for which the Judicial Committee of the Privy Council is by 3 & 4 Will. 4, c. 41, now substituted.—*Re* NATAL (BISHOP) (1864), 3 Moore, N. S. 115; 5 New Rep. 471; 12 L. T. 188; 11 Jur. N. S. 353; 13 W. R. 549; 16 E. R. 43, P. C.

Part V.—Extradition and Fugitive Offenders.

353. *Add. Annotation :*—**Refd.** R. *v.* Brixton Prison Governor, *Ex p.* Bidwell, [1937] 1 K. B. 305.

Part VIII.—Property in Land.

369. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

372a. —— —— **Vesting of lands now forming Saskatchewan.**]—The effect of the Order in Council of June 23, 1870, whereby Rupert's Land & the North-Western Territory were admitted into & became part of the Dominion of Canada, & of sect. 5 of the Rupert's Land Act, 1868, was that the lands therein which were then vested in the Crown, & now are within the boundaries of the Province of Saskatchewan, became so vested in the right of the Dominion, & the Dominion was given full control to administer them for the purposes of Canada as a whole, not merely for the inhabitants of the area. The Dominion

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religious association from the Church of England; (4) though the Crown had refused to exercise its power of appointment of bishops in self-governing colonies or dominions & had left the churches in such countries to organise themselves as voluntary assocns., nothing had been placed before the ct. to show that the Crown had delegated its power of appointment in the Cape Province to the Church of the Province of S. A., or that it had recognised the persons appointed bishops of Cape Town by that church as legal successors to the Lord Bishops of Cape Town created by the Letters Patent of 1847 or 1853; (5) in none of the cases of *Re Trinity Church* (4 S. C. 174), *Cape Divisional Council* v. *Bishop of Cape Town* (4 S. C. 485) & an order of 1886 authorising Bishop West-Jones to mtge. Trinity Church, had the ct. recognised bishops elected by the Church of the Province of S. A. as successors to the Lord Bishop of Cape Town; (6) the Legislature had not by the passing of Acts Nos. 30 (1860), 9 (1891), 11 (1891), 21 (1897), 27 (1909) recognised bishops elected by the Church of the Province of S. A. as legal successors to the Lord Bishop of Cape Town more particularly by reason of the fact that all such Acts were private bills introduced into Parliament by the parties interested; (7) no acts amounting to acquiescence or estoppels on the part of the congregation of Trinity Church so as to debar them from making the present application had been placed before the ct.; (8) as it therefore appeared that there was no living person occupying the position of trustee, it was incumbent on the ct. to appoint some fit & proper person to execute the trust under which the property was held, & in making such appointment the persons beneficially interested in the trust were the persons whose interests were mainly to be considered; (9) though the Archbp. of Cape Town was the person most nearly corresponding to the successor in title to the Lord Bishop of Cape Town, in view of certain differences between the church of which he was head, & the congregation in question, it was not desirable to appoint him trustee, but that certain trustees for the congregation in connection with other property held by it should be appointed, the appcts. to pay the costs of the application & the resps. *ex officio* the costs occasioned by their opposition.—DAR ROLL *v.* TENNANT, [1932] S. C. 406.—**S. AF.**

PART VIII. SECT. 1.

370 i. *Canada—Respective rights of Dominion & Province—Territory ceded to Indians—British North America Act*, 1867 (*c.* 3).]—PROVINCE OF QUEBEC *v.* DOMINION OF CANADA, *Re* DOMINION OF CANADA & PROVINCES OF ONTARIO & QUEBEC, *Re* INDIAN CLAIMS (1898), 30 S. C. R. 151.—**CAN.**

e i. —— *Rights of Dominion & private person—Grant of land by province before confederation.*]—Where pltf. claimed under a grant issued by the province, in 1857, prior to confederation:—*Held:* the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a weir on private property.—DELAP *v.* HAYDEN, [1924] 3 D. L. R. 11; 57 N. S. R. 346.—**CAN.**

e ii. —— —— *Public harbours—Onus of proof.*]—*Held:* the burden of proving that in 1867 the property in question, now the Port of Chicoutimi, formed part of the public works & domain of the Province of Canada, & was used by the public as a harbour, is upon resp. A public harbour, within Art. 108 of B. N. A. Act & scheds. thereto, is a harbour which at the date of Confederation formed part of the public works or domain of the province, to which the public had access, & which was in fact used as such by the public. It is not necessary that public moneys should have been spent to improve it to constitute it a "Public Harbour."—JALBERT *v.* R., & A.-G. OF QUEBEC, [1936] Ex. C. R. 127; *revsd.*, [1937] S. C. R. 51; 2 D. L. R. 291.—**CAN.**

e iii. —— *Public harbours—Ship Island.*]—The ct. found upon the evidence that it was open to serious doubt if Ship Island was in 1867 situate within the bounds of what was then known as Goderich Harbour. In any event, it did not then form part of the said harbour & was not then a harbour or river improvement:—*Held:* even assuming that Ship Island was in 1867 situate within the bounds of the harbour of Goderich, inasmuch as it was not part of the said harbour & was not at that time a harbour or river improvement, it did not pass to the Crown in right of the Dominion of Canada under sect. 108 of the B. N. A. Act.—R. *v.* A.-G. OF ONTARIO & FORREST, [1933] Ex. C. R. 44; *affd.*, [1934] 1 D. L. R. 657; S. C. R. 133.—**CAN.**

e iv. —— —— *What are.*]—"Public harbours" within B. N. A. Act, s. 108, must be used by boats in exercise of a public right, & must have been public harbours at the time of Confederation.—OWEN SOUND TRANSPORTATION CO. *v.* TACKABERRY, [1936] 3 D. L. R. 272.—**CAN.**

e v. —— *Indian Reserves—Indians not entitled to alienate by lease or sale—Right of Crown to recover possession.*]—R. *v.* MCMASTER, [1926] Exch. C. R. 68.—**CAN.**

e vi. —— —— ——.]—By a document dated Mar. 10, 1821, "the British Indian Chiefs of St. Regis," 'for themselves & on behalf of their tribe, whom they represent," purported to lease to C., his heirs & assigns, certain land, part of Crown land reserved for the Indians, & not ceded or surrendered to the Crown by the Indians, on Cornwall Island in the river St. Lawrence, for 99 years, "& at the expiration thereof for another & further like period of 99 years & so on until the full end & term of 999 years shall be fully ended & completed." The Chiefs covenanted "that they are the representatives of the said tribe of St. Regis as well as trustees of their estate & as such that they have a perfect right" to make the lease. The consideration was $100 cash & a yearly rent of $10. C. entered into possession on Mar. 10, 1821, & possession was continued in successive assignees, & it was admitted in this action that deft. was in possession as assignee of whatever rights C. had under the lease. The rent was paid yearly to Mar. 10, 1920, when the Crown refused to accept further rents. From about 1875 the rent was paid to the Department of Indian Affairs, for the benefit of the Indians. The lease

Lands Act, 1872, & sect. 21 of the Alberta & [illegible] Acts, 1905, were therefore [illegible] by the Parliament of Canada. —*Re* NATURAL RESOURCES (SASKATCHEWAN), [1932] A. C. 28, P. C.; *sub nom.* A.-G. OF [illegible]TCHEWAN & A.-G. OF ALBERTA *v.* [illegible] CANADA, 101 L. J. P. C 11; 146 L. T. 50, P. C.; 48 T. L. R. 24; 75 Sol. Jo. 780, P. C.

378a. —— Foreshore & bed of navigable river—St. Lawrence.]—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—MONTREAL CORPN. *v.* MONTREAL HARBOUR COMRS. TETREAULT *v.* MONTREAL HARBOUR COMRS. A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, [1926] A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

378b. —— Boundary between Canada & Newfoundland.]—The effect of various Orders in Council, Proclamations, & Statutes being to give the Govt. of Newfoundland, not mere rights of inspection & regulation upon a line of shore, but territory which became as much a part of the colony as the island of Newfoundland itself & was capable of being defined by metes & bounds:—*Held:* the boundary between Canada & Newfoundland in the Labrador Peninsula was along the crest of the watersheds of the rivers flowing into the sea on the shore of Labrador.—*Re* BOUNDARY BETWEEN CANADA & NEWFOUNDLAND IN LABRADOR PENINSULA (1927), 137 43 T. L. R. 289, P. C.

Annotation:—**Refd.** Jardine *v.* A.-G. for (1932), 48 T. L. R. 199.

379a. West Africa—Extent of tribal lands—Validity of award.]—In an action involving the extent of the tribal lands of two neighbouring chiefs in West Africa the appellate ct. by consent referred to the final decision of a named arbitrator the question whether a tract of land shown on the survey plan belonged to pltf. or deft. The arbitrator, after hearing evidence & inspecting the disputed area, which was about 100 square miles in extent, awarded to pltf. the land on one side of a line which he drew upon the plan, being about a quarter of the whole, & awarded the rest to the deft. From his award, which referred in detail to the evidence, it appeared that he based his award upon evidence of occupation & possession of seventeen small hamlets or places; of these three were within the part awarded to deft. although the evidence mentioned was in favour of pltf.:—*Held:* it was competent to the arbitrator to award part of the area to the pltf. & part to deft., but the award should be set aside, because the evidence upon which it was based was not evidence of title to any area larger than that possessed nor as to any boundary, & the arbitrator had misconceived his duty under the reference in that he had based his award not upon title but upon what he considered was a fair division between the parties.—KOBINA FOLI *v.* OBENG AKESSE, [1934] A. C. 340; 103 L. J. P. C. 86; 151 L. T. 3, P. C.

381. *Add. Annotations:*—**Apld.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

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was registered at the Department of Indian Affairs in 1875. There was in evidence a letter of Feb. 26, 1875, from an official of the Department to one B., an Indian, in reply to a letter from B., not produced, in terms apparently recognising rights of C. under the lease. The Crown notified deft. to give up possession at the expiration, Mar. 10, 1920, of the term of 99 years; &, deft. not complying, it took proceedings to recover possession of the land, as ungranted Crown lands reserved for the Indians:—*Held:* the Crown was entitled to possession. The lease was invalid in law; the chiefs had no power to make it, & the taking of it violated the Proclamation of 1763 respecting Indians & Indian lands, & subsequent enactments.—EASTERBROOK *v.* R., [1931] S. C. R. 210; 1 D. L. R. 628; [1929] Ex. C. R. 28.—**CAN.**

e vii. —— —— *Boundaries—Whether extended by acts of possession by Indians.*]—R. *v.* HEISLER (N. S.) (1913), 13 E. L. R. 375.—**CAN.**

e viii. —— —— *Right to sell cordwood cut on unsurrendered reserve land.*]—FEGAN *v.* MCLEAN (1869), 29 U. C. R. 202.—**CAN.**

e ix. —— —— *Sale by Indian before receipt of Crown patent—Indian Act, R. S. C.* 1906, *c.* 81, *s.* 102.]—SANDERSON *v.* HEAP (1909), 11 W. L. R. 238.—**CAN.**

e x. —— —— *Power of Crown to grant licence.*]—The legal title to lands in an Indian reserve is in the Crown, & the Crown may grant a licence of such lands for the purpose of constructing a highway.—POINT *v.* DIBBLEE CONSTRUCTION CO., [1934] 2 D. L. R. 786; O. R. 142.—**CAN.**

e xi. —— *St. Francis River.*]—St. Francis River, or the thirty-mile stretch of it above Lake St. Peter, is a navigable & floatable river within Art. 400 C. C. (Quebec), & is part of the Crown domain in the right of the Province of Quebec. The banks & bed are the property of the Province.—ST. FRANCIS HYDRO ELECTRIC CO. *v.* R., [1937] 2 D. L. R. 353.—**CAN.**

f i. —— *Compulsory acquisition of land—Rights against State—Mines & minerals.*]—All lands acquired by the Commonwealth by compulsory process, including royal metals & other minerals therein, vest in the Commonwealth freed & discharged from all reservations, rights, royalties, conditions, & obligations of any kind whatever to the State wherein they were situated, subject to payment of compensation.—COMMONWEALTH *v.* NEW SOUTH WALES (1923), 33 C. L. R. 1.—**AUS.**

379 i. *South Africa—Restriction of prospecting & mining—Whether Proclamation ultra vires.*]—R. *v.* NOLTE, [1928] App. D. 377.—**S. AF.**

sp. *India—Land held by East India Company.*]—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of pltf. with a condition restraining its alienation without the Govt.'s previous sanction:—*Held:* though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—SECRETARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926); I. L. R. 49 Mad. 349.—**IND.**

PART VIII. SECT. 2.

q i. —— —— *Whether sale of ordnance land cancelled.*]—MURPHY *v.* R. (1892), 3 Exch. C. R. 75.—**CAN.**

q ii. —— *Timber cut on Crown lands—Necessity for marking.*]—HARRISON BAY CO., LTD. *v.* GAUTHIER (1925), 35 B. C. R. 498.—**CAN.**

q iii. —— *Decision of Minister of Lands, Forests & Mines—Effect of.*]—The decision of the above Minister in favour of the issuing of a patent is merely an intimation that he will recommend such issue; it is not a final adjudication & does not bind the Crown.—FITZPATRICK *v.* R., [1926] 4 D. L. R. 239; 59 O. L. R. 331.—**CAN.**

r i. —— *Canal Reserve, Ottawa.*]—*Held:* legislation with respect to Ordnance lands vested in the Province of Canada the lands comprised in 19 Vict. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Vict. c. 11 gave power to sell any vacant land not required for military or canal purposes or for the Ordnance Dept.—OTTAWA (CITY) *v.* GRAND TRUNK RY. CO., OTTAWA (CITY) *v.* OTTAWA & NEW YORK RY. CO. (1920), 64 D. L. R. 337; 50 O. L. R. 239.—**CAN.**

t i. *S. P.* R. *v.* CUDDIHY (1831), 2 Nfld. L. R. 8.—**NFLD.**

t ii. *S. P.* R. *v.* RYAN (1831), 2 Nfld. L. R. 47.—**NFLD.**

a i. —— *Agreement to exchange—Necessity for consent of Commissioner of Crown Lands—Duty of transferor.*]—MAY *v.* DALY, [1927] S. A. S. R. 428.—**AUS.**

381a. —— —— ——.]—A.-G. FOR ALBERTA A.-G. FOR CANADA, No. 98a, *ante.*

385. After this case add:—

—.]—*See, also,* British North America Act, 1930 (c. 26).

385a. —— **Sale of—Acceptance of offer—By making Order in Council.**]—(1) Sect. 15 of the Department of Railways & Canals Act, R. S. C., 1906, which provides that no deed, contract, document or writing relating to a matter under the control or direction of the Minister shall be binding upon His Majesty unless signed in accordance with the sect., does not apply to a contract which is not embodied in an instrument or instruments in writing intended to be signed by some one on behalf of the Crown. Where, therefore, a written offer for the purchase of Crown land which has come under the control of the Minister provides that the offer, if accepted by an Order in Council, shall constitute a binding contract in the terms of the offer, there is a binding contract if the Order in Council is made, whether or not it is communicated to the purchaser, provided that the Minister has consented to the contract so as to satisfy sects. 3 (2), 7 of the above Act.

(2) Although the Crown is not named in sect. 17 (7) of Ontario Judicature Act, 1881, reproduced in sect. 14 of Mercantile Law Amendment Act (R. S. Ont., 1927), the sect. prevents the Crown from treating time as being of the essence of a contract if before the Act of 1881 it would not have been so regarded in a ct. of equity in an action between subjects. The expression "the rights of His Majesty" in sect. 10 of Interpretation Act (R. S. Ont., 1927), means the accrued rights of His Majesty, & does not cover mere possibilities such as rights which, but for the alterations made by sect. 17 (7) of 1881 Act in the general law, might have accrued thereafter under some future contract.—DOMINION BUILDING CORPN., LTD. *v.* R., [1933] A. C. 533; 102 L. J. P. C. 176; 149 L. T. 337; 49 T. L. R. 516, P. C.

385b. —— —— **Completion—Whether time of essence of contract.**]—DOMINION BUILDING CORPN., LTD. *v.* R., No. 385a, *ante.*

385c. —— **Timber—Refund of dues to entrant for homestead—Liability of Province.**]—Sect. 47 (*f*) of the Timber Regulations, made under Dominion Lands Act, R. S. C., 1927, c. 113, required the holder of an entry for a homestead to pay dues upon timber cut & sold by him to persons who were not actual settlers, but provided that the dues paid should be refunded upon the entrant obtaining a patent for the homestead. Subsequently agreements were made, & obtained statutory effect in 1930, whereby the Dominion transferred the Crown lands in Manitoba, British Columbia, Saskatchewan, & Alberta to those respective Provinces. The agreements each provided that the transfer should be subject to any trust existing, & to any interest other than that of the Crown, in respect of the lands; that any payments already received by the Dominion in respect thereof should continue to belong to the Dominion; & that the Province would carry out every contract to purchase or lease the land transferred, & "every arrangement whereby any person has become entitled to any interest therein as against the Crown": —*Held:* the obligation to refund the dues was an "arrangement" within the above cited words of the agreements, & accordingly it was binding upon the respective Provinces. —*Re* TIMBER REGULATIONS, REFUND OF DUES UNDER, [1935] A. C. 184; *sub nom.* A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, 104 L. J. P. C. 41; 152 L. T. 362; 51 T. L. R. 242, P. C.

390a. —— —— **Dedication as naval depot—Revocation of dedication.**]—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, No. 56a, *ante.*

390b. —— **Land held under Discharged Soldiers' Settlement Acts—Eviction.**]—If a person holding Crown land in South Australia under Australian Discharged Soldiers' Settlement Act, 1917, & amending Acts, fail to carry out the conditions laid down in his agreement with the Govt., he can be ejected without a judicial or quasi-judicial inquiry.—LAFFER *v.* GILLEN, [1927] A. C. 886; 96 L. J. P. C. 166; 137 L. T. 701; 43 T. L. R. 694, P. C.

391. *Add. Annotations:*—**Apld.** Sunmonu *v.* Disu Raphael, [1927] A. C. 881. **Distd.** Sakariyawo Oshodi *v.* Moriamo Dakolo, [1930] A. C. 667, P. C. **Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518; Bakare Ajakaiye *v.* Southern Provinces Lieutenant-Governor, [1929] A. C. 679; Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

391a. —— **Lands acquired under Public Lands Acquisition Ordinance—Right of chief to compensation.**]—The Govt. of Nigeria acquired under the Public Lands Acquisition Ordinance a compound in Lagos, which with other compounds was held by applt. as paramount chief for the use of his family & household, members of which occupied houses in the compound & used the land in common. The occupants had heritable rights in their holdings subject to a reversion in the chief in the event of the family of an occupant becoming extinct. A Govt. grant had been made to a headman placed in charge of the compound:—*Held:* the occupants were entitled to the compensation awarded, but subject to applt. receiving some small portion of it in respect of his reversionary right; the Govt. grant did not affect the respective rights of the chief & the occupants to the compensation.—SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO, [1930] A. C. 667; 99 L. J. P. C. 233; 144 L. T. 35; 46 T. L. R. 599, P. C.

Annotations:—**Refd.** Idewu Inasa *v.* Sakariyawo Oshodi, [1934] A. C. 99; Sakariyawo Oshodi *v.* Brimah Balogun & Scottish Nigerian Mortgage & Trust Co., [1936] 2 All E. R. 1632.

392a. **Kenya—Sale of Crown lands by auction—Restriction to Europeans.**]—Under the terms of the Crown Lands Ordinance, No. 12 of

386 l. *Australia—Right of New South Wales—To Garden Island.*]—*Held:* New South Wales was entitled as against the Commonwealth, which claimed in right of the Imperial Govt., to possession to Garden Island.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—AUS.

386 c. *India — Transfer — Necessity for deed.*]—A deed duly executed by the officers named in 22 & 23 Vict. c. 41, is necessary in order to transfer the ownership of Crown lands.—RUPAN SINGH *v.* AKHAJ SINGH (1930), I. L. R. 10 Pat. 203.—IND.

1915 of Kenya, for the lease or sale of Crown lands:—*Held:* there was power for the Comr., whether the sale was by auction or not, to restrict the user of a house to Europeans, except such Asiatics or Africans as were employed therein as domestic servants, & the sale or lease might be confined by him to bidding by Europeans only. Restricted auction could be held under the ordinance, & whether the restriction should be based on racial distinctions was not a question of law but of policy. The procedure followed of postponing the sale ordered by the Comr. for Aug. 11, 1928, on an *ex parte* application for *mandamus* by appct. who was an Indian subject of His Majesty resident in Mombasa, made by him on Aug. 8 not approved.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652; 100 L. J. P. C. 124; 145 L. T. 265, P. C.

Annotation:—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

392b. Lagos—Alienation of native land—Acquiescence by chief.]—Certain lands in Lagos were granted by the British Crown as family lands to Chief Oshodi Tappa, head of the Oshodi family, in 1862. Subsequently he divided the lands into 21 compounds & appointed a head, at that date a slave, who upon emancipation later became an arota, to each compound & in 1869 the Government issued a series of Crown grants absolute in form to the various heads of the compounds so appointed. In 1913 an arota purported of himself, & without reference to the Oshodi family to convey or transfer an absolute or fee simple interest in part of his compound, & in 1927 the purchaser in 1913 claimed to be entitled to the fee simple as the result of a subsequent acquiescence by certain members of the Oshodi family. There was in fact no chief of the Oshodi family for about twenty years of the relevant period:—*Held:* as there was no consent by the chief & his family as a whole to the transfer, an absolute fee simple title in the property did not pass, & there was no sufficient subsequent acquiescence by the family. Observations as to the application of the doctrine of laches to places where native law is in a fluid state.—SAKARIYAWO OSHODI *v.* BRIMAH BALOGUN & SCOTTISH NIGERIAN MORTGAGE & TRUST CO., LTD., [1936] 2 All E. R. 1632; 80 Sol. Jo. 753, P. C.

392c. Gold Coast—Ownership—Exclusive jurisdiction of Divisional Court.]—After notice has been given under the Public Lands Ordinance (c. 142 of the Laws of the Gold Coast Colony) by the Colonial Secretary of the Colony of the proposed acquisition of lands for the public service the Divisional Ct. of the Gold Coast is, under the Ordinance, & particularly sects. 6 & 7 thereof, the proper tribunal to determine the amount of compensation due in respect of the lands, & also any case of disputed interest in or title to the lands.

Where, therefore, an action had been begun in the Native Tribunal of Cape Coast involving a claim to land which was the subject of a notice issued by the Colonial Secretary of the Colony, & proceedings under the Lands Ordinance, in which deft. in the action before the Native Tribunal was a party, were pending in the Divisional Ct., the proceedings before the Native Tribunal were misconceived & should have been stayed.—JACKSON *v.* COOKE, [1937] A. C. 205; [1936] 3 All E. R. 680; 106 L. J. P. C. 8; 156 L. T. 225; 81 Sol. Jo. 12, P. C.

Part IX.—Judicial Committee of the Privy Council.

393a. —— Not refusal of Governor-General of Canada to grant fiat under Petition of Right Act.]—The Governor-General of Canada, in deciding under sect. 4 of Petition of Right Act of Canada whether to grant his fiat, does not act as a "judicial officer" within the meaning of Judicial Committee Act, 1833 (c. 41), s. 3, & consequently an appeal from his refusal does not lie to His Majesty in Council.—LOVIBOND *v.* CANADA, GOVERNOR-GENERAL, [1930] A. C. 717; 99 L. J. P. C. 178; 144 L. T. 47; 46 T. L. R. 618; 75 Sol. Jo. 278, P. C.

394. *Add. Annotations:*—**Follid.** Strickland (Lord) *v.* Grima, [1930] A. C. 285. **Refd.** Nadan *v.* R., [1926] A. C. 482.

394a. —— —— Special jurisdiction given by Letters Patent.]—The Malta Constitution Letters Patent, 1921, provide by art. 33 "all questions which may arise as to the right of any person to be or remain a member of the senate or the legislative assembly shall be referred to & decided by our Ct. of Appeal in Malta." The Ct. of Appeal having held that the election of the second & third applts. to the senate was null & void, & special leave to appeal to His Majesty in Council having been granted:—*Held:* the intention of the above article of the letters patent was to designate the Ct. of Appeal a special tribunal finally to determine all questions of the nature stated without annexing to the jurisdiction the ordinary incident of an appeal to the Crown under the prerogative to admit an appeal; & accordingly that the appeal should be dismissed.—STRICKLAND (LORD) *v.* GRIMA, [1930] A. C. 285; *sub nom.* PARNIS *v.* AGIUS, 99 L. J. P. C. 81; 142 L. T. 386; 46 T. L. R. 194, P. C.

398a. Supreme Court of Palestine—Sitting as court of first instance.]—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, No. 20a, *ante.*

401. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

402. *Add. Annotation:*—**Refd.** Seneviratne *v.* R., [1936] 3 All E. R. 36.

405. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

406. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

423. *Add. Annotation:*—**Consd.** AMBARD *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

426. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

430a. —— **Penalties.**]—On a preliminary objection raised by resp. as to the competency of the appeal :—*Held :* it is competent to His Majesty in Council to give leave to appeal & to entertain appeals against orders of cts. of record overseas imposing penalties for contempt of ct.—AMBARD *v.* A.-G. FOR TRINIDAD & TOBAGO, [1936] A. C. 322 ; [1936] 1 All E. R. 704 ; 105 L. J. P. C. 72 ; 154 L. T. 616 ; 52 T. L. R. 335 ; 80 Sol. Jo. 344, P. C.

439a. Not concerned with matters of procedure.]—ATTA MOHAMMAD *v.* R., No. 532a, *post.*

442a. —— ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post.*

442b. —— ——.]—RENOUF *v.* A.-G. FOR JERSEY, No. 659a, *post.*

444a. —— **Creation of special tribunal—To try election petitions.**]—STRICKLAND (LORD) *v.* GRIMA, No. 394a, *ante.*

445. *Add. Annotations :*—**Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Nadan *v.* R., [1926] A. C. 482.

446a. —— ——.]—The (Indian) Scheduled Districts Act (XIV. of 1874) gives the ct. of the collector power to try & determine suits of every description, & under the Act the ct. is to be considered as the district & principal ct. of original jurisdiction, & the Act gives a right of appeal from the ct. of the collector to the ct. of the Comr. as the highest Ct. of Appeal. However, the Act provides (r. 9) : "It shall be in the power of the Local Government to refer to the Board of Revenue any case in which the Comr., on appeal from the collector, may have reversed the decision of the lower ct., & the orders of the Board in such case shall be final." On a preliminary objection taken to the competence of the appeal :—*Held :* the effect of rule 9 was to enable the Local Government to constitute *pro hac vice* the Board of Revenue a ct. of second appeal with full appellate jurisdiction, but this could not affect His Majesty's prerogative to grant special leave to appeal.—SINGH (RAJA SARDA MAHESH PRASAD) *v.* BADRI LAL SAHU, [1936] 1 All E. R. 361 ; 80 Sol. Jo. 322, P. C.

447a. By Dominion Act—Irish Free State.]—The prerogative right of appeal to His Majesty in Council from the Supreme Ct. of the Irish Free State has been effectively abrogated by the Irish Free State Constitution (Amendment) Act, 1933. The Treaty & Constituent Act scheduled to the Irish Free State Constitution Act, 1922, being parts of an Imperial Act, form parts of the statute law of the United Kingdom. Before the passing of the Statute of Westminster it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty, because the Colonial Laws Validly Act, 1865 (c. 63), forbade a Dominion Legislature to pass a law repugnant to an Imperial Act. The effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State Legislature by reason of the Colonial Laws Validity Act. The Irish Free State Legislature can now pass Acts nant to an Imperial Act. Petition dism —MOORE *v.* A.-G. FOR IRISH FREE STATE, [1935] A. C. 484 ; 104 L. J. P. C. 50 ; 153 L. T. 266 ; 51 T. L. R. 504 ; 79 Sol. Jo. 501, P. C.

447b. —— **Canada.**]—On a preliminary objection to the competency of a petition for special leave to appeal to the King in Council from a judgment of the Ct. of King's Bench (Appeal Side) of the Province of Quebec in a criminal matter on the ground that the petition was incompetent by reason of the prohibition of appeals to His Majesty in criminal matters by the Canadian Statute 23 & 24 Geo. 5, c. 53, s. 17 :—*Held :* the petition was incompetent. Before the Statute of Westminster, the Canadian Legislature was subject to the limitations imposed by Colonial Laws Validity Act, 1865 (c. 63), by which legislation repugnant to an Act of the Imperial Parliament was declared void by sect. 129 of B. N. A. Act, 1867 (c. 3), & also by the doctrine forbidding extra-territorial legislation. These limitations were abrogated by the Statute of Westminister. The extent of the legislative competence conferred on the Canadian Legislature in regard to appeals to the King in Council in criminal matters must now be ascertained from its constituent Act, the B. N. A. Act, 1867 (c. 3). The right of appeal to the King in Council is a prerogative right, & the prerogative cannot be restricted or qualified save by express words or necessary intendment. Sect. 91 of the Act read with the rest of the Act, not by express words, but by necessary intendment, does invest the Canadian Legislature with power to regulate or prohibit appeals to the King in Council in criminal matters. Appeal to the King in Council is prohibited in precise words by sect. 17 of the Canadian Statute 23 & 24 Geo. 5, c. 53.—BRITISH COAL CORPN. *v.* R., [1935] A. C. 500 ; 104 L. J. P. C. 58 ; 153 L. T. 283 ; 51 T. L. R. 508 ; 79 Sol. Jo. 541, P. C.

Annotation :—**Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

462a. —— —— **Freedom of speech of members of legislature.**]—MAHOMED ABDUL CADER *v.* KAUFMAN, [1928] W. N. 264 ; 66 L. Jo. 425, P. C.

PART XI. SECT. 3, SUB-SECT. 5.

447a i. *By Dominion Act—New Zealand.*]—Cos. (Special Liquidations) Act, 1934-35, held not to be unconstitutional or void, but to be operative, because (1) it was within the competence of the New Zealand Legislature to make new law, the making of which had rendered a further continuance of certain legislation useless or impossible ; (2) the statute in question was not unconstitutional, as it did not purport to deprive a litigant of his right to ask the Judicial Committee of the Privy Council for leave to appeal, & was therefore, not repugnant to Judicial Committee Act, 1833, & Judicial Committee Act, 1844, of the Imperial Parliament.—TRANSPORT MUTUAL & GENERAL INSURANCE CO., LTD. (IN LIQUIDATION) *v.* WEBBER, [1936] N. Z. L. R. 11.—N. Z.

PART IX. SECT. 4, SUB-SECT. 2.—A

448 i. *General rule.*]—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—RICHES *v.* CITY OF MOOSE JAW, [1925] 4 D. L. R. 326 ; [1925] 3 W. W. R. 399.—**CAN.**

a i. ——.]—The main question for decision was whether a certain agreement between the Muhammedan & Hindu communities of a town regarding religious processions which had been brought about by the Sub-Divisional Officer a few years ago, & which had been signed by certain persons of each community was of permanent effect & binding on all members of both communities :—*Held :* the case involved a matter which was of general importance to both communities, & although the valuation was very small the case was "otherwise a fit one for appeal to His Majesty in Council."—SUBHAN' *v.* BABURAM SINGH (1929), I. L. R. 52 All. 329.—**IND.**

465. *Add. Annotation :*—**Apld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

—— —— **Patent cases.**]—As no question of general importance usually arises in a patent case, their Lordships deprecated the granting of special leave to appeal in cases of that nature in which there were concurrent judgments.—POPE APPLIANCE CORPN. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1929] A. C. 269; 98 L. J. P. C. 50; 140 L. T. 409; 46 R. P. C. 23, P. C.

.]—The case decided by the High Ct. of Australia followed a decision given fifteen years ago in Australia, where the point now decided arose incidentally, & the decision in that case was by a bare majority & had been a matter of considerable judicial doubt ever since. In this case some of the judges had expressed a strong view that it was desirable that the matter should be considered & finally set at rest by the decision of the Judicial Committee. The question decided involved matters of great public interest & difficult questions of law :—*Held :* though the Board did not desire to encourage appeals from the High Ct. of Australia, or from any one of the Dominions, or enlarge the class of cases in which such appeals were entertained, this case was eminently one in which special leave to appeal to the Judicial Committee should be granted.—JAMES *v.* COMMONWEALTH OF AUSTRALIA (No. 1) (1935), 105 L. J. P. C. 57; 154 L. T. 363; 80 Sol. Jo. 109, P. C.

482a. —— ——.]—In the Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words "the amount or value of the subject-matter of the suit in the ct. of first instance" mean the amount or value at the institution of the suit, not at the date of the decree in the ct. of first instance, & that meaning is not affected by the alternative condition which follows in the sect.—GUDIVADA MANGAMMA *v.* MADDI MAHALAKSHMAMMA (1929), 57 L. R. Ind. App. 56; 99 L. J. P. C. 78; 142 L. T. 313; 46 T. L. R. 130, P. C.

—— **Directly or indirectly involved—Successful appeal rendering possible prosecution of claim for larger sum.**]—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,900 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would "involve, directly or indirectly, some claim or question to or respecting property" of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract :—*Held :* without defining the meaning of "property" as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property

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466 i. —— *Not if important only to parties.*]—Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance & the principle when finally decided by the Privy Council will be of benefit, not only to the people who are directly involved, in the litigation, but to a considerable body of other people, that leave to appeal should be granted.—RUCHCHA SAITHWAR *v.* HANSRANI (1928), I. L. R. 50 All. 640.—**IND.**

468 v. ——.]—Where in a petition for leave to appeal to His Majesty in Council the subject-matter of the suit is more than Rs. 10,000, & the High Ct. affirmed the decision of the trial ct., &, therefore, the only question to be determined was whether there was a substantial question of law involved in the case :—*Held :* the certificate for leave to appeal could not be granted, as the question involved, whether, if the marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient for the legitimation of a son, having been definitely settled by their Lordships of the Privy Council, was not a substantial question of law within Civil Procedure Code, s. 110.—FEROZE DIN KHAN *v.* NAWAB KHAN (1928), I. L. R. 9 Lah. 582.—**IND.**

476 i. *Leave granted on terms—By what court imposed.*]—Where leave to appeal to the Privy Council is granted, the conditions attached to such leave, & the terms on which it is allowed, should be left to the Judicial Committee.—STEVENSON *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

477 i. —— *Security—By whom allowed—Privy Council Appeals Act, R. S. O.*, 1914 (c. 54), *s.* 11.]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. —— *Partnership suit.*]—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2) :—*Held :* it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149.—**IND.**

483 v. —— *"Property"—Loss of trade & goodwill.*]—Where the result of a judgment was to destroy or prevent defts. from trading by depriving them of goodwill & of trade names which they had hitherto used :—*Held :* these were "property"; & as any of the matters in controversy was worth more than $4,000, the matter was a "pecuniary amount" exceeding that sum within Privy Council Appeals Act, s. 2.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—**CAN.**

483 vi. ——.]—In a suit for an easement of light & air claimed by the owner of property A. against the owner of property B., it is the value of the easement & not the value of property A. that determines the appealable value for leave to appeal to the Privy Council under Civil Procedure Code, 1908, s. 110.—LALLUBHAI PRAGJI *v.* BHIMBAI DAJIBHAI (1929), I. L. R. 53 Bom. 552.—**IND.**

483 vii. ——.]—In Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words "the amount or value of the subject-matter of the suit in the ct. of first instance" mean the amount or value at the institution of the suit, & not at the date of the decree in the ct. of first instance; & that meaning is not affected by the alternative condition which follows in the sect.—MANGANNA *v.* MAHALAKSHMAMMA (1929), I. L. R. 53 Mad. 167.—**IND.**

483 viii. ——.]—*Semble :* if a plaint merely claims a sum of or under Rs. 10,000 as rent, the recurring nature of rent does not make the case fit for appeal to the Privy Council under sect. 110 of the Code of Civil Procedure, 1908.—JOGESH CHANDRA ROY *v.* EMDAD MEAH (1931), 59 L. R. Ind. App. 29.—**IND.**

h ii. —— ——.]—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—SESHGIRI SHAMBHULINGAM *v.* MANJAYYA (1925), I. L. R. 50 Bom. 160.—**IND.**

k i. —— —— ——.]—Plff. cannot insist upon the award of post-plaint interest as something to which he possesses a legal right. Such interest cannot therefore be included in ascertaining the "amount or value of the subject-matter in dispute on appeal to His Majesty in Council."—VENKATATHIRISAMI *v.* APPASWAMI (1933), I. L. R. 56 Mad. 886.—**IND.**

st. *Not amount of penalty imposed by fine or forfeiture under penal statute.*]—R. *v.* REGINA WINE & SPIRIT, LTD. (No. 2), [1922] 2 W. W. R. 1166; 67 D. L. R. 436.—**CAN.**

sw. *Judgment for sum less than appealable amount—Sufficient sums subsequently accruing.*]—OCEAN TRAWLERS *v.* MARITIME NATIONAL FISH, LTD. (No. 2) (1934), 8 M. P. R. 233.—**CAN.**

indirectly involved, & his petition should be dismissed.—UDOYCHAND PANNALAL *v.* GUZDAR (P. E.) & Co. (1925), L. R. 52 Ind. App. 207, P. C.

497. *Add. Annotation :*—**Refd.** Gudivada Mongamma *v.* Maddi Mahalakshmamma (1929), 99 L. J. P. C. 78.

501. *Add. Annotations :*—**Refd.** Nadan *v.* R., [1926] A. C. 482 ; British Coal Corpn. *v.* R., [1935] A. C. 500.

502. *Add. Annotation :*—**Expld. & Distd.** Davis (Lady) *v.* Shaughnessy (Lord), [1932] A. C. 106.

525. *Add. Annotations :*—**Consd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936. **Refd.** Nadan *v.* R., [1926] A. C. 482.

526a. —— **From Canadian court.**]—NADAN *v.* R., No. 91a, *ante*.

527. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

531. *Add. Annotation :*—**Consd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

531a. —— **Abrogation by Canadian Statute.**]—BRITISH COAL CORPN. *v.* R., No. 447b, *ante*.

532a. ——.]—Their Lordships do not act as a Ct. of Criminal Appeal, & are not concerned to regulate the procedure of cts. in India, or to criticise what is mere matter of procedure.—ATTA MOHAMMAD *v.* R. (1929), 57 L. R. Ind. App. 71, P. C.

534. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

534a. Whether venire de novo ordered.]—RAS BEHARI LAL *v.* KING-EMPEROR, No. 554f, *post*.

538a. Question of jurisdiction of colonial court—To issue mandamus to inferior court.]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judges criminal ct. to try, according to the procedure provided by Criminal Code of Canada, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.

Special leave to appeal to the Privy Council was granted upon a petition alleging two grounds : (1) that the Supreme Ct. had not jurisdiction to issue a mandamus in the circumstances above referred to, & (2) that under the Criminal Code the persons indicted had not the option given by sect. 827 to be tried without a jury. Special leave was granted on the first ground ; the question whether the appeal could be entertained was reserved :—*Held :* the appeal should be dismissed, since the ground upon which special leave was given failed, & the second ground was merely a question of procedure & was not one upon which an appeal would be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011 ; 94 L. J. P. C. 21 ; 132 L. T. 210 ; 40 T. L. R. 814, P. C.

Annotation :—**Refd.** Nadan *v.* R., [1926] A. C. 482.

538b. Question of precedure.]—A.-G. FOR ONTARIO *v.* DALY, No. 538a, *ante*.

540a. —— **As to construction of statute.**]—A difference of judicial opinion in the High Cts. of India in reference to a sect. of the Code of Criminal Procedure may be a ground for granting special leave to appeal in a criminal case.—NAZIR AHMAD *v.* KING-EMPEROR (1936), 154 L. T. 362 ; 80 Sol. Jo. 243 ; 30 Cox, C. C. 359, P. C.

541. *Add. Annotation :*—**Refd.** Seneviratne *v.* R., [1936] 3 All E. R. 36.

542. *Add. Annotations :*—**Distd.** Practice Note (1932), 48 T. L. R. 300. **Apld.** Lawrence *v.* R., [1933] A. C. 699. **Refd.** Umra *v.* R. (1924), 41 T. L. R. 86 ; Nadan *v.* R., [1926] A. C. 482 ; Kishan Singh *v.* R. (1928), 44 T. L. R. 690 ; Knowles *v.* R., [1930] A. C. 366 ; Mahadeo *v.* R., [1936] 2 All E. R. 813 ; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936 ; Seneviratne *v.* R., [1936] 3 All E. R. 36.

545. *Add. Annotation :*—**Refd.** Seneviratne *v.* R., [1936] 3 All E. R. 36.

549. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

549a. ——————.]—NADAN *v.* R., No. 91a, *ante*.

549b. —— —— **Misinterpretation of statute.**]—The contention that in a criminal case a ct.

PART IX. SECT. 4, SUB-SECT. 2.—B. (b).

e i. —— *Motion for injunction—Passing-off action.*]—These were motions on behalf of resps. for conditional leave to appeal to the Privy Council. Resps. brought passing-off actions against appts., to obtain an injunction against each of them to prevent them from keeping their taxicabs painted in such a manner as to be calculated to deceive the public into thinking that their cabs were those of resps. The actions came on for trial & injunctions were granted against both appts. Defts. appealed, & the Ct. of Appeal in April last allowed the appeals in both cases & dissolved the injunctions. Resps. moved for conditional leave to appeal to the Privy Council against this order :—*Held :* proposed appeal did not directly or indirectly involve a claim or question to or respecting a civil right of the value of £500, & the motion should accordingly be dismissed.—NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 610.—**N.Z.**

e ii. —— *Questions of public importance involved—Power to grant publicans' licences.*]—On a motion for conditional leave to appeal to the Privy Council from a decision of the Ct. of Appeal in which the question involved was the right of a licensing committee to grant publicans' licences in a district originally forming part of a no-license district, but which by an alteration of boundaries had become merged in a license district :—*Held :* even if the proceedings did not involve a civil right of the value of £500 or upwards, the questions involved were of such general & public importance that conditional leave to appeal should be granted without special terms.—SCALES *v.* YOUNG, [1930] N. Z. L. R. 327.—**N.Z.**

PART IX. SECT. 4, SUB-SECT. 3.—A.

532 i. *Not a court of criminal appeal.*]—The Judicial Committee will neither accept nor share the responsibility for the administration of criminal justice in India, unless there has been some violation of the principles of justice or some disregard of legal principles.—RUSTOM *v.* R., RANDIR SINGH *v.* R., TABA SINGH *v.* R., RHUDA BAKSH *v.* R. (1923), I. L. R. 48 Bom. 515.—**IND.**

532 ii. ——.]—The power of the Judicial Committee to entertain appeals from a lower ct. is not that of a ct. of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative, which is a remnant of the powers of the Crown to interfere with tribunals of justice, which do not exist in this country at all. There must be proof that there was no proper trial & that the forms of all judicial procedure were disregarded, not only according to local ordinances, but according to the unvarying character which is common to all.—HUNMANTRAO *v.* R. (1924), I. L. R. 49 Bom. 455.—**IND.**

532 iii. ——.]—The Judicial Committee does not sit as a ct. of criminal appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice.—MOHINDAR SINGH *v.* R. (1932), I. L. R. 13 Lah. 479.—**IND.**

PART IX. SECT. 4, SUB-SECT. 3.—B. (a).

538 ii. ——.]—R. *v.* SCOTT (No. 2) (1924), 57 N. S. R. 201.—**CAN.**

538 iii. —— *Evidence improperly admitted.*]—*Held :* the use made in evidence of books & documents found in the library of a suspected person presented a question of "great general & public importance."—R. *v.* MCLACHLAN, [1924] 1 D. L. R. 1109 ; 42 Can. Crim. Cas. 86 ; 56 N. S. R. 549.—**CAN.**

in India has come to a wrong conclusion upon the interpretation of an Indian statute is not necessarily tantamount to an allegation of substantial & grave injustice such as to induce the Privy Council to give special leave to appeal.—UMRA *v.* R. (1924), 41 T. L. R. 86, P. C.

549c. —— ——.]—RENOUF *v.* A.-G. FOR JERSEY, No. 659a, *post.*

551. *Add. Annotations :*—**Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936; Seneviratne *v.* R., [1936] 3 All E. R. 36.

554a. —— **As to onus of proof—No miscarriage of justice.**]—Ceylon Evidence Ordinance, No. 14 of 1895, provides by sect. 106 that: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." At the trial of two persons accused respectively of performing an illegal operation & of abetting its performance, the judge in the course of his summing-up, after stating that the person on whom the operation was alleged to have been performed was at the time unconscious under chloroform, & that what took place was a fact especially within the knowledge of the accused who were there, directed the jury that the law said that the burden of proving that no criminal operation took place was upon the accused :—*Held :* that direction did not correctly state the law. It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The facts of the case were such, however, as to point irresistibly to the guilt of the accused quite independently of that direction to the jury, & there had been no such substantial injustice, no such deprivation of the substance of fair trial, as to justify the grant of special leave to appeal to His Majesty in Council.—ATTYGALLE *v.* R., [1936] A. C. 338; [1936] 2 All E. R. 116; 105 L. J. P. C. 79; 154 L. T. 620; 52 T. L. R. 390; 80 Sol. Jo. 571; 30 Cox, C. C. 390, P. C.

Annotation :—**Consd.** Seneviratne *v.* R., [1936] 3 All E. R. 36, P. C.

554b. —— ——.]—Applt. was charged in Ceylon with having murdered his wife. The evidence of applt.'s servants, if believed, established that applt. was not in his wife's room immediately before her death, & there was no evidence that applt. was in his wife's room at any material time. There was strong evidence, both in letters written by deceased & of conversations, pointing to a tendency or inclination on the part of deceased to commit suicide. Although there had been quarrels, applt. had never been seen to threaten his wife with any form of physical violence. Evidence was given by a number of medical witnesses, which established that chloroform was the cause of death, but the medical evidence was completely ambiguous in its effect, with no preponderance of opinion among the doctors that the physical conditions of deceased apparent at the post-mortem were such as to be consistent only with the hypothesis of homicide. The doctors were divided in their opinions as to whether death was due to asphyxia or syncope, whether certain marks on the face of the deceased were such as would be caused by burns from chloroform, whether pressure on the face would be necessary to cause such burns & as to the behaviour of persons during the administration of chloroform. At the trial, the prosecution called all available eye-witnesses, even though their names appeared in the list of defence witnesses, & witnesses who gave evidence favourable to applt. were extensively cross-examined as to other & previous oral statements, such procedure being permissible with the leave of the judge under the Ordinance (Law of Evidence) 14 of 1895, ss. 154 & 155. In other cases evidence of what a witness had said was given apparently without previous cross-examination of the witness as to such statements. After the evidence of all the witnesses had been taken, the judge & jury with applt. & counsel went to applt.'s house where the servant witnesses were questioned further & certain experiments were conducted. The jurors were not all together, but were divided up for the purpose of the experiments, each being asked his impressions. The judge in the course of his summing up, discussing the medical evidence intimated that if the jury could not make up their minds from the doctors' evidence, it was still their duty to come to a conclusion on their own observations. The judge in giving his direction as to the facts generally said: "He (applt.) has got to explain. . . . In the absence of explanation, the only inference is that he is guilty" & finally the judge said: "the verdict, whether it is a conviction or an acquittal, I hope it will be unanimous, . . . but if you cannot agree please remember that I have got the full power to ask you to reconsider your verdict, but four to three means an unacceptable verdict. That means you have to go through the trial again. I hope you will not have this misfortune." The jury convicted by five to two, one of the five recommending the applt. to mercy. Applt. appealed :—*Held :* (1) there being points both for & against applt. but the greater number merely ambiguous & no medical or other circumstantial evidence justifying a conviction, no tribunal as a matter of legitimate inference could arrive at the conclusion that the applt. was guilty; (2) it is not incumbent upon the prosecution in a murder case to call every available eye-witness, & while witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, it is undesirable that the prosecution should call witnesses & at once proceed to cross-examine them; (3) in a criminal prosecution the onus of proof is upon the prosecution & there is no obligation upon the prisoner of proving facts especially within his own knowledge; (4) where a view by the jury is necessary the statutory procedure under Criminal Procedure Code, s. 238 must be strictly followed, & any serious departure therefrom tends "to divert the due & orderly administration of the law." The procedure here followed was altogether irregular; (5) references in a summing up to the necessity for a unanimous verdict in order to prevent a new trial are apt to be misconstrued by the jury & are to be avoided.—SENEVIRATNE *v.* R., [1936] 3 All E. R. 36, P. C.

554c. Non-direction of jury.]—On the appeal of an applt. who had been convicted in Nigeria of stealing & false accounting it was estab-

lished by reference to the shorthand record of the judge's summing-up at the trial that he did not give the jury any direction at all as to the onus of proof resting on the prosecution, or that the accused was entitled to have the benefit of a reasonable doubt: —*Held:* (1) such an omission was as grave an error as active misdirection on the elements of the offence, & a verdict of guilty given by a jury who had not taken that fundamental principle into account was given in a case where the essential forms of justice had been disregarded, & the conviction should be set aside; (2) the general sentence of three years' imprisonment passed on applt. was invalid, for it was applicable to each count, whereas for the offences charged in the counts for false accounting the maximum punishment was two years; (3) when the judge in chambers, in the absence of applt., varied the sentence on the record so that applt. was to receive two years' imprisonment on the counts for stealing & one year on the counts for false accounting, this was a new & different sentence passed in circumstances in which the judge had no jurisdiction to pass any sentence, & the sentence purported to have been thus passed should accordingly be set aside.—LAWRENCE *v.* R., [1933] A. C. 699; 102 L. J. P. C. 148; 149 L. T. 574; 50 T. L. R. 13, P. C.

Annotations:—As to (1) **Refd.** Attygalle *v.* R., [1936] 2 All E. R. 116; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

554d. Excessive sentence.]—LAWRENCE *v.* R., No. 554c, *ante*.

554e. Alteration of sentence in absence of prisoner.]—LAWRENCE *v.* R., No. 554c, *ante*.

554f. Juror unable to understand English.]—(1) A number of accused persons in India were convicted of murder & in some cases were sentenced to death & in others to transportation for life. It subsequently transpired that at the trial one of the jury did not understand English, the language in which some of the evidence, counsel's addresses, & the judge's charge were given:—*Held:* on appeal, the convictions & sentences must be set aside on the grounds that the effect of the incompetence of the juror was to deny to the accused persons an essential part of the protection afforded to them by law, & that the result of the trial was a miscarriage of justice.

(2) In England the ordinary order would be in such circumstances to award a *venire de novo*. Their Lordships, however, think it desirable that any discretion as to any consequential order should be exercised by the High Ct., & they content themselves, therefore, with humbly advising His Majesty that the appeal should be allowed (*per* CUR.).—RAS BEHARI LAL *v.* KING-EMPEROR (1933), 102 L. J. P. C. 144; 150 L. T. 3; 50 T. L. R. 1; 77 Sol. Jo. 571; 30 Cox, C. C. 17, P. C.

558a. Trial for murder—Failure to consider possibility of verdict of manslaughter.]—KNOWLES *v.* R., No. 564a, *post*.

559. *Add. Annotations:—As to* (1) **Consd.** Umra *v.* R. (1924), 41 T. L. R. 86; Nadan *v.* R., [1926] A. C. 482.

560. *Add. Annotations:—***Refd.** Nadan *v.* R., [1926] A. C. 482; Knowles *v.* R., [1930] A. C. 366; Attygalle *v.* R., [1936] 2 All E. R. 116; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936; Seneviratne *v.* R., [1936] 3 All E. R. 36.

561a. —— What amounts to "verbal" evidence—Ceylon Evidence Ordinance, No. 14 of 1895.]—A woman whose throat had been cut was unable to speak owing to the nature of the wound. She was fully conscious, however, & able to understand what was said to her, to make signs & to nod her head slightly. After making certain signs which, it was alleged, possibly indicated applt., she was asked the direct question whether it was the applt. who had cut her throat, & in answer to that question she nodded her head. She died shortly afterwards from asphyxia resulting from the injury to her throat:—*Held:* evidence as to signs made in answer to questions put to the deceased was admissible, but statements of witnesses as to what interpretation they put upon the signs were not admissible; further, the direct question to deceased whether it was applt. & her nod of assent constituted a verbal statement made by her within sect. 32 of Ceylon Evidence Ordinance, 1895, & as such was admissible in evidence under the section. There was proper & sufficient evidence of a verbal statement by deceased to the effect that it was applt. who had cut her throat.—CHANDRASEKERA (otherwise ALISANDIRI) *v.* R., [1937] A. C. 220; [1936] 3 All E. R. 865; 106 L. J. P. C. 30; 156 L. T. 204; 53 T. L. R. 137; 80 Sol. Jo. 1012; 30 Cox, C. C. 546, P. C.

562a. Irregular view by jury.]—SENEVIRATNE *v.* R., No. 554b, *ante*.

564a. Trial for murder by judge alone—Trial by jury impracticable or not permitted by local circumstances.]—Applt. was convicted of the murder of his wife, & sentenced to death upon a trial in Ashanti without a jury. By sect. 9 of Ashanti Administration Ordinance, 1902, "so far as it is practicable & local circumstances permit" the procedure, civil & criminal, in the Ashanti ct. was to be the same as in the Supreme Ct. of the Gold Coast Colony; in that ct. it was imperative by Ordinance that a trial for murder should be with a jury. The trial judge had not stated that a trial with a jury was not practicable or not permitted by local circumstances. It appeared on the appeal that there never had been trial by jury in Ashanti. The death of applt.'s wife resulted from a wound inflicted by a shot from a revolver while she & the applt. were together alone in a room. By a dying declaration she had stated that the revolver had been fired accidentally by herself in a manner which she described. The applt. in his evidence also attributed the wound to an accident by her. There was much circumstantial evidence:—*Held:* it should be presumed that a trial with a jury was not practicable, or was not permitted by local circumstances, & accordingly that the appeal failed so far as it was based upon want of jurisdiction; but the appeal should be allowed upon the ground that the applt. had not the substance of fair trial, & had suffered substantial & grave injustice, in that the trial judge, having come to the conclusion that the revolver had been fired by the applt., had entirely failed to consider whether the evidence justified a conviction for murder as

opposed to manslaughter, & the Board ..... clearly of opinion that it did not.—KNOWLES *v.* R., [1930] A. C. 366; 99 L. J. P. C. 108; 143 L. T. 28; 46 T. L. R. 276; 29 Cox, C. C. 199, P. C.

564b. Reduction of sentences—Failure to observe statutory requirements.]—R. *v.* DAHU RAUT (1935), 51 T. L. R. 338; 79 Sol. Jo. 231, P. C.

586a. Discretion of court below—Judicial Committee will not interfere—Though members of court below disagree.]—Under Civil Code of Quebec, art. 189, a husband or wife may demand a separation on the ground of "outrage, ill-usage, or grievous insult"; & by art. 190: "The grievous nature & sufficiency of such outrage, ill-usage & insult, are left to the discretion of the ct., which, in appreciating them, must take into consideration the rank, condition & other circumstances of the parties." In such a case the Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion, unless it appears that there has been a miscarriage of justice.—BALDWIN *v.* BALDWIN (1922), 91 L. J. P. C. 208; 128 L. T. 10, P. C.

598. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

606. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

608. *Add. Annotation:*—**Refd.** A.-G. of British Columbia *v.* A.-G. of Canada, [1924] A. C. 222.

609. *Add. Annotation:*—**Distd.** James *v.* Cowan, [1932] A. C. 542.

610a. —— —— ——.]—JAMES *v.* COWAN, No 188a, *ante*.

618. *Add. Annotation:*—**Refd.** Eurana S.S. *v.* Burrard Inlet Tunnel & Bridge Co., [1931] A. C. 300.

618a. —— **From Court of King's Bench of Quebec—In respect of what matters.**]—(1) In Art. 68 of the Code of Civil Procedure of Quebec, which provides that an appeal lies to the Privy Council from final judgments rendered in appeal by the Ct. of King's Bench in cases, among others, "concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may

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PART IX. SECT 7.

m i. —— *Plaintiff domiciled abroad.*]—On an application by pltf. for leave to appeal *per saltum* to the Judicial Committee of the Privy Council:—*Held:* the question involved in the proposed appeal was one of great general & public importance & leave to appeal should be given; but since pltf. had established his domicile abroad, he should be required to give security for the costs of the trial & of the appeal to the Ct. of Appeal, as well as the usual security on appeals to the Judicial Committee.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1930] 1 W. W. R. 764; 3 D. L. R. 413; 37 C. R. C. 1; 38 Man. L. R. 567.—**CAN.**

m ii. —— *Powers of Privy Council.*]—Rule 9 of Privy Council Rules does not empower the ct. to extend, beyond the limit fixed by Ord. 45, r. 7 of the Civil Procedure Code, the time for furnishing the security & depositing the translative, etc., charges required by that rule in connection with an appeal to the Privy Council.—BAHADUR LAL *v.* JUDGES OF ALLAHABAD HIGH COURT (1933), I. L. R. 55 All. 432.—**IND.**

PART IX. SECT. 8, SUB-SECT. 1.

o i. —— —— —— *Question relating to freedom of inter-State trade.*]—On applications to the High Ct. for certificates under sect. 74 of the Constitution that questions of law as to the limits *inter se* of the constitutional powers of the Commonwealth & of the State of New South Wales involved in the decision in *Ex p. Nelson* (No. 1), 42 C. L. R. 209, were questions which ought to be determined by His Majesty in Council:—*Held:* the applications should be refused.—*Ex p.* NELSON (No. 2) (1929), 42 C. L. R. 258; 3 A. L. J. 66; 1929 A. L. R. 177.—**AUS.**

605 i. —— —— *Operation of Australian Judiciary Act, 1903.*]—Judiciary Act, 1903–1920, s. 39 (2) (a), excludes an appeal as of right to the Privy Council from a decision of the Supreme Ct. exercising Federal jurisdiction, & gives to the High Ct. jurisdiction to entertain an appeal from such a decision.—LIMERICK S.S. CO. *v.* COMMONWEALTH OF AUSTRALIA (1924), 35 C. L. R. 69; 25 S. R. N. S. W. 293; 31 Argus L. R. 153.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 2.

sb. *Competency of appeal — From Divisional Court of Appellate Division.*]—No appeal lies, unless the case falls within Privy Council Appeals Act, R. S. O., 1914 (c. 54), or unless leave to appeal is granted by the Judicial Committee.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1926] 1 D. L. R. 420; 58 O. L. R. 225.—**CAN.**

sd. —— *From advisory opinion—"Final judgment."*]—Where questions were referred to the ct. for its consideration, & the matter was heard before a ct. composed of four judges who were equally divided in opinion:—*Held:* (1) for the purpose of appeal to the Privy Council the opinion of the ct., although advisory only, could be treated as a final judgment between parties; (2) the words "final judgment" in the Privy Council Rules mean that which is regarded as a final judgment under Canadian law.—*Re* NOVA SCOTIA LEGISLATIVE COUNCIL (No. 2) (1926), 59 N. S. R. 49.—**CAN.**

sf. —— *Order for trial by jury.*]—Leave to appeal to the Privy Council from an order refusing to set aside an order providing for a jury trial of an action for damages for personal injuries, refused.—BRADSHAW *v.* BRITISH COLUMBIA RAPID TRANSIT CO., LTD., [1927] 1 W. W. R. 425; 38 B. C. R. 111.—**CAN.**

q i. —— *Necessity for.*]—Ever since 34 Geo. 3, c. 2, s. 36, now found, substantially unchanged, in Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 2, the right of appeal in cases falling within its terms has stood unchallenged, & no leave to appeal, either to be given by the Judicial Committee or by the ct. below, has been regarded as necessary. Although the Act is absolute in prohibiting an appeal in cases which do not fall within it, this does not deprive his Majesty of the prerogative right to grant leave to appeal in any case in which he sees fit to exercise that right.—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

t i. ——.]—Applt. co., having been held liable for approximately $7,000, appealed giving security only for $500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council:—*Held:* the application as made could not be granted.—FIDELITY PHENIX FIRE INSURANCE CO. OF NEW YORK *v.* MCPHERSON, [1925] 3 D. L. R. 131; [1925] S. C. R. 104.—**CAN.**

f i. —— ——.]—An application for special leave to appeal to the Privy Council, & even the granting of such leave, do not *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by the Supreme Ct. of Canada.—STEVENSON *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

k (p. 498) **i.** ——.]—(1) Leave to appeal to the Privy Council should not be granted in a criminal case, but parties desiring to appeal should be left to their remedy by application to the Privy Council for such leave.

(2) Assuming the ct. to have power to grant leave to appeal, such leave should be refused in any case not coming within the principles laid down in *Re Dillet*, No. 542, *ante*.—R. *v.* R. (1926), 46 Can. Crim. Cas. 367; 58 N. S. R. 457.—**CAN.**

l (p. 498) **i.** —— *Reducing arbitrator's award—Expropriation of land.*]—There is a right of appeal to the Privy Council from the judgment of the Ct. of Appeal reducing the arbitrator's award in regard to lands expropriated under Dominion Ry. Act, R. S. C., 1927.—*Re* BOULTON & TORONTO TERMINALS RY. CO., LTD., [1933] 4 D. L. R. 621; O. R. 816.—**CAN.**

sk. *Appeals pending in Supreme Court & before Privy Council—Stay of proceedings in Canadian appeal.*]—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B. the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—ASHBRIDGE *v.* SHAVER & HARRISON, [1925] 4 D. L. R. 1048; [1925] S. C. R. 694.—**CAN.**

so. *Appeal without leave—Not on question of jurisdiction.*]—An appeal which raises only a question of jurisdiction & does not involve a pecuniary amount, is not a matter in controversy within Privy Council Appeal Act, R. S. O., 1927, entitling pltf. to appeal as of right to the Privy Council.—LOVIBOND *v.* GRAND TRUNK RAILWAY & CANADIAN NATIONAL RAILWAY, [1935] 1 D. L. R. 179; O. R. 729; *affd.*, [1936] 2 All E. R. 495, P. C.—**CAN.**

be affected," the "other matters" are not necessarily ejusdem generis with the matters previously mentioned.

(2) Upon an application to admit an appeal it is the duty of the ct. to decide whether there is a right of appeal under the statutory provisions applicable.—DAVIS (LADY) *v.* SHAUGHNESSY (LORD), [1932] A. C. 106; 101 L. J. P. C. 37; 146 L. T. 289.

618b. —— —— **Duty of court on application to admit appeal.**]—DAVIS (LADY) *v.* NESSY (LORD), No. 618a, *ante.*

621. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

621a. —— **From Court of Appeal of British Columbia—No power to grant leave in criminal matter — What is "criminal matter."**] — Upon the true construction of the Order in Council of Jan. 23, 1911, regulating appeals from the Ct. of Appeal of British Columbia to His Majesty in Council, the power of that ct. under r. 2 (*b*), in conjunction with the definition of "judgment" in r. 1, to grant leave so to appeal from any "decree, order, sentence, or decision" does not apply to a criminal matter. A prosecution under a statute of British Columbia, whereby a person summarily convicted of an offence thereunder is liable to a penalty & imprisonment, & consequent proceedings by way of *habeas corpus certiorari*, or case stated, raising the question whether the statute is *ultra vires*, are criminal matters for the above purpose.—CHUNG CHUCK *v.* R., [1930] A. C. 244; *sub nom.* CHUNG CHUCH *v.* R., WONG KIT *v.* R., 99 L. J. P. C. 71; 142 L. T. 266; 46 T. L. R. 134, P. C.

626. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

631a. —— **Report to High Court should be included in appeal.**]—PRACTICE NOTE, [1933] W. N. 148; 75 L. Jo.

640. *Add. Annotation :*—**Refd.** Hem Sing *v.* Mahant Basant Das, [1936] 1 All E. R. 356.

640a. —— —— **If merely advisory.**] — Applts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council :—*Held :* on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was,

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PART IX. SECT. 8. SUB-SECT. 3.

p i. —— —— ——.]—A judgment of the High Ct. on the Appellate Side, granting probate to a person, is a final decree, from which an appeal lies to His Majesty in Council.—VELLASAWMY SERVAI *v.* L. SIVARAMAN SERVAI (1926), I. L. R. 5 Ran. 119.—**IND.**

t i. —— —— —— ——.]—SYED KHAN *v.* SYED EBRAHIM (1927), I. L. R. 6 Ran. 169.—**IND.**

t ii. —— —— —— ——.]—Where competing applications under Probate & Administration Act, 1881, for probate of different alleged wills of a testator, have been heard by the district judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAINAN SERVAI (1929), I. L. R. 8 Ran. 179.—**IND.**

t iii. —— —— —— ——.]—An appeal does not lie from an order under Ord. 41, r. 23, reversing a decree which dismissed a suit upon a preliminary point, & remanding the suit for trial, as this is not a "final order" within sect. 109 of Code of Civil Procedure, 1908.—ABDUL RAHMAN *v.* D. K. CASSIM & SONS (1932), L. R. 60 Ind. App. 76, P. C.—**IND.**

t iv. —— —— —— ——.]—An order dismissing an appeal on the ground that, owing to applt.'s failure to implead the representatives of a deceased resp., it had abated *in toto*, is a final order within sects. 109, 110 of the Code of Civil Procedure.—CHUNI LAL-TULSI RAM *v.* AMIN CHAND (1933), I. L. R. 14 Lah. 609.—**IND.**

a i. —— *From interlocutory judgments.*]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—BHAGWATI DAYAL *v.* DHAN KHUNWAR (1925), I. L. R. 48 All. 329.—**IND.**

a ii. —— *Not from High Court—Sitting in criminal appeal from Court of Sessions.*]—No appeal lies to the Privy Council against a judgment of the High Ct. sitting in criminal appeal from a trial by the Ct. of Sessions.—HEMAYETUDDIN AHMED *v.* EMPEROR (1930), I. L. R. 58 Calc. 344.—**IND.**

a iii. —— *Suspension of advocate from practice.*]—Where an advocate has been suspended from practice for breach of rule 1 of Chapter 21 of the General Rules for civil cts., & he raises the question of the correct interpretation of the rule, this is a fit & proper case for granting leave to appeal to the Privy Council.—SHIVA NARAIN JAFA *v.* ALLAHABAD HIGH CT. JUDGES (1933), I. L. R. 56 All. 702.—**IND.**

639 ii. —— *From order refusing to enrol legal practitioner.*]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re* MISS (1922), I. L. R. 1 Pat. 590.—**IND.**

b i. —— ——.]—*Re* AN ADVOCATE (1929), I. L. R. 8 Ran. 40.—**IND.**

b ii. —— *Valuation of property compulsorily acquired.*]—In appeals involving the valuation of property in India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—NOWROJI RUSTOMJI WADIA *v.* BOMBAY GOVERNMENT (1925), I. L. R. 49 Bom. 700.—**IND.**

b iii. —— *Not from decree affirming court below—What amounts to.*]—Pltfs. obtained a mtge. decree in the ct. of the subordinate judge, but their claim to interest *pendente lite* was disallowed. Defts. appealed to the High Ct. while pltfs. preferred a cross-appeal in respect to interest *pendente lite*. Defts.' appeal was dismissed while pltfs.' cross-appeal was allowed, the decree of the High Ct. being in the following terms: "The decree of the Ct. below be modified to this extent that interest at the bond rate shall run on the principal up to the expiry of the period of grace." Defts. applied for leave to appeal to His Majesty in Council. The value of the subject-matter of the suit & the appeal was above ten thousand rupees: —*Held :* the decree of the High Ct. was not one "affirming the decision of the ct. immediately below" within Code of Civil Procedure, 1908, s. 110, & appots. were entitled as of right to appeal to His Majesty in Council. Further, the appeal could not be limited to the question of interest only, upon which point there was variation in the decree, but appots. were entitled to appeal from the entire decree.—THAKUR JAMUNA PRASAD SINGH *v.* JAGARNATH PRASAD SINGH (1929), I. L. R. 9 Pat. 558.—**IND.**

b iv. —— —— ——.]—Matters in dispute in a pending suit having been referred to arbn., an award was made to the effect that deft. should, within a time fixed, give possession of a certain factory to pltf., & in default should pay pltf. Rs. 13,000. Objections to the award were made by deft. which were disallowed, & the award was ordered to be filed, but as the time fixed for delivery of the factory had by then expired, the ct. considering it unnecessary to incorporate in its decree a direction relating to the delivery of the factory, granted a decree to pltf. only for the Rs. 13,000. Deft. appealed to the High Ct. & his appeal was accepted only to the extent that the decree of the trial ct. was modified to bring it into conformity with the award. Deft. then applied for leave to appeal to His Majesty in Council :—*Held :* as the High Ct. had in substance affirmed the decision of the trial ct. the alteration made by it in the decree not being of a substantial nature, leave to appeal to His Majesty in Council under Code of Civil Procedure, s. 110, could not be granted.—BANSI LAL *v.* GOPAL LAL (1928), I. L. R. 10 Lah. 688.—**IND.**

b v. —— *Order of High Court under Provincial Insolvency Act.*]—In a case where Provincial Insolvency Act, 1920, gives a right of appeal to the High Ct., an appeal from the decision of the High Ct. lies to the Privy Council under, & subject to, the Code of Civil

therefore, incompetent.—TATA IRON & STEEL Co. *v.* BOMBAY CHIEF REVENUE AUTHORITY (1923), L. R. 50 Ind. App. 212; 39 T. L. R. 288, P. C.

640b. —— Order of High Court—On appeal from application to district judge to file award.]—An appeal to the Privy Council lies under Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2) of the Code; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—RAMLAL HARGOPAL *v.* KISHANCHAND (1923), L. R. 51 Ind. App. 72, P. C.

640c. —— Probate suit.]—Where competing applications under Probate & Administration Act, 1881, for the probate of different alleged wills of a testator have been heard by the District judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

640d. —— Not on question of compensation for land compulsorily acquired.]—Act XIX. of 1921 has not the effect of giving a right of appeal to the Privy Council from a decision of the High Ct. upon an appeal from an award of the Tribunal appointed under Calcutta Improvement Act, 1911, assessing compensation in respect of land acquired under the provisions of that Act.—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSCE. SOCIETY (1931), 58 L. R. Ind. App. 259, P. C.

641a. —— Lahore High Court—Jurisdiction under special Act.]—An Act gave power to tribunal set up thereunder to decide questions which in substance concern the nature of the trusts under which the endowments of certain religious institutions were held. They also included questions of compensation for loss of office & questions as regards claims to property in respect of which the tribunal's powers were not limited by any provisions as to value. Under the Act the tribunal was given the same powers as are vested in the ordinary cts. of the country, & its proceedings were to be conducted in accordance with the ordinary rules of civil procedure of the country. The formal expression of its decision was described by the Act as a decree or order. The Act, however, provided that appeals from the tribunal were to be heard by a Div. Ct. & not by a single judge. On a preliminary objection taken to the competency of the appeal:—*Held:* the jurisdiction conferred upon the High Ct. was intended to include the new subject-matter as part of the ordinary appellate jurisdiction of the High Ct., & the case was within the general principle laid down by VISCOUNT HALDANE, L.C. in *National Telephone Co., Ltd.* v. *Postmaster-General*, [1913] A. C. 546, at p. 552, that "when a question is stated to be referred to an established ct. without more, it . . . imports that the ordinary incidents of the procedure of that ct. are to attach, & also that any general right of appeal from its decisions likewise attaches," & the objection could not be sustained.—HEM SINGH *v.* MAHANT BASANT DAS, [1936] 1 All E. R. 356; 80 Sol. Jo. 303, P. C.

641b. High Court of Bengal—Claim relating to cantonment land.]—BARRACKPORE CANTONMENT COMMITTEE SECRETARY *v.* SATISH CHANDRA SEN (1930), 47 T. L. R. 3, P. C.

Procedure.—MAUNG BA THAW *v.* MA PIN (1934), L. R. 61 Ind. App. 158.—**IND.**

b vi. —— *Order suspending pleader from practice.*]—Leave to appeal may be granted from an order of the High Ct. suspending a pleader from practising for a period of six months.—*Re* A PLEADER (1932), I. L. R. 55 All. 246.—**IND.**

f i. —— ——.]—The question of law involved need not be of general importance; it is sufficient if there is a substantial question of law between the parties.—RAGHUNATH PRASAD SINGH *v.* PARTABGASH DEPUTY COMRS. (1927), 54 L. R. Ind. App. 126.—**IND.**

f ii. —— ——.]—DELHI CLOTH & GENERAL MILLS CO., LTD. *v.* DELHI INCOME TAX COMRS. (1927), 54 L. R. Ind. App. 421.—**IND.**

f iii. —— ——.]—MATHURA, KURMI *v.* JAGDEO SINGH (1927), I. L. R. 50 All. 208.—**IND.**

Order made without jurisdiction.]—KISHAN SINGH *v.* THE KING EMPEROR (1928), L. R. 55 Ind. App. 390.—**IND.**

f v. —— *Matter of general importance.*]—*Held:* a case was a fit one for appeal to the Privy Council, where the question in dispute was of general importance, as the execution of documents with an option of re-purchase was very common & a considerable amount of litigation came before the cts. in connection therewith.—JIVANGURU CHAMELGIRI *v.* GAJANAN NARAYAN PATKAR (1926), I. L. R. 50 Bom. 753.—**IND.**

651 i. *Sum below appealable value—When appeal lies.*]—MAUNG BA. THAN. *v.* PEGU DISTRICT COUNCIL (1927), I. L. R. 6 Ran. 43.—**IND.**

sl. *Limitation of right to appeal—Letters Patent of Calcutta High Court of* 1927.]—The new clause of the Letters Patent of the Calcutta High Ct., passed 1927, takes away, in all second appeals decided by a single judge, without his giving a certificate that the case is a fit one for appeal, the right to go to the Privy Council under the ordinary law, though the right of the Judicial Committee to give special leave is not of course affected. The new Letters Patent cannot be applied to pending cases without taking away existing rights of appeal.—SADAR ALI *v.* DALIMUDDIN (1928), I. L. R. 56 Calc. 512.—**IND.**

sp. *Desirable to avoid two appeals.*]—It is desirable that in some manner recourse to two appeals to the Privy Council should be avoided where one is from a decree of the High Ct. under sect. 98 (2) of the Code of Civil Procedure & the other is from the decree in a Letters Patent Appeal varying the former decree.—JATONDRANATH CHANDHURI *v.* UDAYKUMAR DAS (1931), I. L. R. 58 Calc. 1281.—**IND.**

PART IX. SECT. 8, SUB-SECT. 4.

a (p. 502) i. —— —— —— *No power to extend.*]—The ct. has no discretion to depart from the rules regulating appeals to His Majesty in Council, & is *functus officio* as regards granting leave to appeal when the time by the rules has expired.

remedy of either the Crown or a subject who desires to appeal from a decision of the ct., but is out of time, is to apply to His Majesty in Council for special leave to appeal.—RHODES-MOORHOUSE *v.* STAMP DUTIES COMR. (No. 2), [1933] N. Z. L. R. 1413.—**N.Z.**

k (p. 503) i. —— —— —— *Judges equally divided.*]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—TREMAIN *v.* MANAWATEE DRAINAGE BOARD, [1926] N. Z. L. R. 416.—**N.Z.**

sm. *Irish Free State—Leave to appeal—When granted.*]—The general principles governing applications for leave to appeal stated.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—**IR.**

sn. —— —— ——.]—Leave to appeal refused.—O'CALLAGHAN *v.* [1926] I. R. 586.—**IR.**

——.]—*See, also,* No. 715.

so. *High Court of Western Samoa—Criminal matter—No public interest involved—Leave refused.*]—SLIPPER *v.* BRAISBY (No. 2), [1931] N. Z. L. R. 268.—**N.Z.**

sq. ——.]—The Supreme Ct. of New Zealand has no jurisdiction to grant leave to appeal to the Privy Council from a judgment of the Supreme Ct. on an appeal from the High Ct. of Western Samoa.—NELSON *v.* BRAISBY (No. 3), [1934] N. Z. L. R. 636; G. L. R. 474.—**N.Z.**

656a. **Gold Coast—Native tribunal—Attitude of Judicial Committee to decision.**]—The Native Jurisdiction Ordinance, 1883, of the Gold Coast provides by sect. 11 that the civil jurisdiction of a native tribunal shall extend to hearing & determining certain classes of suits, including all suits relating to the ownership or possession of lands held under native tenure & situated within its jurisdiction; & by sect. 17 that when it appears to any ct. that a case brought before it is one cognisable by a native tribunal the ct. shall, unless satisfactory reasons to the contrary be shown, refer the parties thereto. A suit of the class mentioned above having been tried & decided by a native tribunal, the decision was reversed upon the evidence by the Provincial Comr., & his judgment was affirmed upon a further appeal to the Supreme Ct.:—*Held:* having regard to the provisions of the Ordinance the decision of a native tribunal in a matter of the above kind, being one peculiarly within its knowledge, if arrived at after a fair hearing & on relevant evidence, should not be disturbed without very clear proof that it was wrong, & in the present case there was no such proof.—ABAKAH NTHAH *v.* ANGUAH BENNIEH, [1931] A. C. 72; 100 L. J. P. C. 47; 144 L. T. 161, P. C.

659a. —— ——.]—(1) There is no appeal as of right to His Majesty in Council from the decision of the Royal Ct. of Jersey in a criminal case. There is no trace in any legislation, or in an authoritative work, of any such right of appeal. The Ordinances of Pyne & Napper, 1591, which, in the light of present evidence, must be regarded as having been properly confirmed by Order in Council & registered, & as having become part of the law of Jersey, support the view that there is no appeal as of right in criminal matters. There is, however, no Order in Council, charter, or other instrument of authority from which it can be inferred that the Crown's prerogative right to grant special leave to appeal, & to allow an appeal, in a criminal case from Jersey has been taken away. That prerogative right still exists.

(2) The prerogative right of entertaining appeals can only be taken away by express words or the necessary intendment of a statute or other equivalent act of State.

(3) The Board treats applications for special leave to appeal in criminal cases & the hearing of criminal appeals so admitted as being on the same footing, &, in the case of misdirection, or in any other case of an alleged failure in the proper trial of a criminal case, will advise His Majesty to intervene only if there is shown to have been such a violation of the principles of justice that grave & substantial injustice has been done.—RENOUF *v.* A.-G. FOR JERSEY, [1936] A. C. 445; [1936] 1 All E. R. 936; 105 L. J. P. C. 84; 155 L. T. 1; 52 T. L. R. 455; 80 Sol. Jo. 304; 30 Cox, C. C. 397, P. C.

662. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

662a. —— **Appeal from deportation order made by Administration of Western Samoa.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

665a. —— —— **Appeal under Ordinance No. 103, sect. 80.**]—Under the terms of the charter of 1855 of the ct. then having jurisdiction, & sect. 1154 of the Civil Procedure Code of the Straits Settlements, an appeal lies to H.M. in Council from a decision of the Ct. of Appeal of the Straits Settlements upon an appeal under sect. 80 of Ordinance No. 103 (Stamps).—STRAITS SETTLEMENTS COMR. OF STAMPS *v.* OEI TJONG SWAN, [1933] A. C. 378; 102 L. J. P. C. 90; 149 L. T. 145; 49 T. L. R. 428, P. C.

Part X.—The Channel Islands.

—— **Validity of will of immoveables.**]—By art. 28 of the Law of Jersey, 1851: "Les actions touchant la validité des Testamens contenant des legs d'immeubles seront instituées à la Cour du Samedi, et aussi les actions en partage des immeubles d'une succession, lorsque ces immeubles auront été légués en tout ou en partie par Testament":—*Held:* that art. 28 of the Law of 1851, which for the first time authorised, subject to conditions, the disposition of immovables in the Island of Jersey by will, conferred jurisdiction to entertain proceedings relating to the validity of such wills upon the Cour du Samedi (which sits weekly) to the exclusion of the Cour d'Héritage (which sits only twice a year). The Cour d'Héritage, a very ancient ct., had no original jurisdiction to decide as to the validity of wills disposing of immovables in Jersey, because before the Law of 1851 such disposition by will was forbidden & unknown, & there is no ground for conferring any implied jurisdiction on the Cour d'Héritage.—GILBERT *v.* CHING, [1936] A. C. 145; 105 L. J. P. C. 27; 154 L. T. 195, P. C.

PART IX. SECT. 9.

sp. Stay of execution pending appeal—*What must be shown—Ability of plaintiff to pay in event of* GEORGIA CONSTRUCTION CO., LTD. & BANK OF TORONTO *v.* PACIFIC GREAT EASTERN RY. CO. (B. C.), [1929] 4 D. L. R. 607; 3 W. W. R. 92.—CAN.

Part XIa.—Other Islands.

712a. **Lundy Island—Whether part of Great Britain.**]—On a charge of an offence on Lundy Island against Coinage Act, 1870 (c. 10), s. 5, the justices for the Bideford Division of Devon held that they had jurisdiction & convicted the defendant, in spite of his contention that Lundy Island was not part of Great Britain:—*Held:* there was evidence before the justices to support the conclusion that Lundy Island was part of Great Britain, & their decision affirmed. *Semble:* if the justices had the contrary, the ct. would have r their finding on the ground that there evidence to support it.—HARMAN *v* (1931), 47 T. L. R. 219; 75 Sol. Jo. 99; D. C.

712b. **Ceylon—Validity of Order in Council.**]—ABEYESEKERA *v.* JAYATILAKE, No. 17a, *ante*.

Part XII.—Irish Free State.

713. *Add. Citation:*—21 L. G. R. 419, C. A.

714. For the paragraph in the original volume substitute the following paragraph:—

—— **Transference of liabilities of British Government to Irish Free State.**]—By agreements made in 1917, during the war with Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war. In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory:—*Held:* the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—A.-G. SOUTHERN & WESTERN RY. , [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 568; 41 T. L. R. 576; 69 Sol. Jo. 744, H. L.; *revsg.* S. C. *sub nom.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND *v.* R., [1924] 2 K. B. 450, C. A.

714a. —— **Effect of on Judgments Extension Act, 1868 (c. 54).**]—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto, & of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1), is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

-.]—*See, also,* No. 716.

714b. **Government of Ireland Act, 1920 (c. 67), s. 56 (6), Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act, 1922 (No. 1 of 1922), Sched. I, art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of government.**]—WIGG *v.* A.-G. OF IRISH FREE STATE, [1927] A. C. 674; 96 L. J. P. C. 88; 137 L. T. 460; 43 T. L. R. 457, P. C.

Annotations:—**Folld.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

714c. *S.P. Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re* ARTICLE X OF ARTICLES OF AGREEMENT FOR

LAND, 45 T. L. R. 57, P. C.

Annotation:—**Consd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

715. After this case add "*See, also,* cases in Part IX., Sect. 8, sub-sect. 4, *ante*."

Add. Citations:—[1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269.

Add. Annotations:—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

PART XII.

714 i. *Irish Free State Constitution Act,* 1922 (*session* 2) (c. 1)—*Transference of assets of British Government to Irish Free State.*]—*Held:* a debt due to the Land Commission, although incurred in 1922, was an "asset" that had been transferred from the former Govt. of the United Kingdom of Great Britain & Ireland to the Govt. of the Irish Free State.—*Re* MALONEY, [1926] I. R. 202.—IR.

714 ii. —— *Effect on jurisdiction of existing courts—Pending establishment of courts for Irish Free State.*]—R. *v.* WICKLOW COUNTY COURT JUDGE, [1924] 2 I. R. 139.—IR.

714 iii. —— *Public Safety Act,* 1927 (c. 31)—*Ordinary legislation.*]—A. M'BRIDE, [1928] I. R. 451.—IR.

714 iv. —— *Effect of on Fugitive Offenders Act,* 1881.]—*Held* the Fugitive Offenders Act, 1881, con to be of full force & effect in the Irish Free State by virtue of the provisions of Art. 73 of the Constitution, & it is not inconsistent with the provisions of the Constitution.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—IR.

714b i. *Government of Ireland Act,* 1920 (c. 67), *ss.* 54, 55, *Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act,* 1922 (*No.* 1 *of* 1922), *Sched. I, Art.* 78—*Right of transferred civil servants to compensation on retirement in consequence of change of Government.*]—LONSDALE *v.* A.-G., [1928] I. R. 35.—IR.

714b ii. —— —— ——.]—CASSIDY *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 65.—IR.

714b iii. —— —— ——.]—FITZGIBBON *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 49.—IR.

.]—A claim to compensation under Art. 10 of the saty by a civil servant, who, having served under the Govt. of the United Kingdom, served under the Provisional Govt., & subsequently was transferred to the service of the Free State Govt., is maintainable.—DE LACY SMYTH *v.* A.-G., [1934] I. R. 139.—IR.

716 i. *Liability to give security for costs—Resident in position of foreigner.*]—Application on behalf of defts., resident in Northern Ireland that pltfs., who resided in the Irish Free State, might be ordered to give security for costs on the ground that in the event of defts. obtaining judgment, they would be unable to have it extended in the Irish Free State, as Judgments Extensions Act, 1868, no longer applied to that country:—*Held:* pltfs. must give security for costs.—CALLAN *v.* M'KENNA, [1929] N. I. 1.—IR.

st. Irish Free State (Agreement) Act, 1922 (c. 4)—*Effect on Companies Acts.*]—On petition by a shareholder

716a. Summons relating to bequests to Irish parishes—Whether Attorney-General of Irish Free State proper defendant.] — *Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116; 73 L. Jo. 168.

716b. Treaty scheduled to Irish Free State (Constitution) Act, 1933 (session 2) (c. 1)—Part of statute law of United Kingdom.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *ante*.

716c. —— Power of Irish Free State to abrogate.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *ante*.

Part XIII.—Northern Ireland.

716d. Validity of statute—Whether tax of substantially same character as income tax.]—Sect. 3 of Finance Act (Northern Ireland), 1934, which provides that there shall be paid to the Exchequer of Northern Ireland by the council of every county & county borough an annual contribution, to be raised by means of the poor rate, towards the cost to the Exchequer of educational services, is within the legislative competence of the Parliament of Northern Ireland. Even assuming that under that sect. a tax is imposed on the ratepayers by the central authority, such tax is not "substantially the same in character" as income tax, which, by Govt. of Ireland Act, 1920 (c. 67), s. 21 (1), is expressly excepted as *ultra vires* the Parliament of Northern Ireland. It is the essential characteristic of the particular tax that is to be regarded, & the essential difference in character between income tax & rates is that the former is a tax on income generally, whereas the latter are levied in respect of the occupation of hereditaments irrespective of the ratepayer's income generally & irrespective of whether he is in fact deriving profits or gains from such occupation.—*Re* REFERENCE UNDER GOVT. OF IRELAND ACT, 1920, *Re* SECT. 3 OF FINANCE ACT (NORTHERN IRELAND), 1934, [1936] A. C. 352; [1936] 2 All E. R. 111; 105 L. J. P. C. 81; 154 L. T. 614; 52 T. L. R. 388; 80 80 Sol. Jo. 404, P. C.

716e. Government of Ireland Act, 1920 (c. 57), s. 4—Interference with trade—What amounts to.]—Milk & Milk Products Act (Northern Ireland), 1934, is not a statute "in respect of" trade within the meaning of sect. 4 (7) of Govt. of Ireland Act, 1920 (c. 57), but is an Act for the peace, order & good govt. of Northern Ireland "in respect of" precautions for the securing of the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. The Act was therefore within the competence of the Parliament of Northern Ireland to enact, though its provisions preclude a person whose premises are outside Northern Ireland from obtaining a licence for the sale of Grade A, B or C milk in Northern Ireland. If, in considering whether a statute is within the competence of a subordinate legislature to pass, it is found that the substance of the legislation is within the express powers, it is not invalidated merely because incidentally it affects matters which are outside the authorised field. The legislation must not, however, under the guise of dealing with one matter encroach upon the forbidden field.—GALLAGHER *v.* LYNN, [1937] A. C. 863; [1937] 3 All E. R. 598; 106 L. J. P. C. 161; 157 L. T. 374; 53 T. L. R. 929; 81 Sol. Jo. 609, H. L.; *affg.* S. C. *sub nom.* R. *v.* GALLAGHER, [1936] N. I. 131.

Part XIV.—Palestine.

716f. Registration of land—Jurisdiction of settlement officer.]—A settlement order was issued under Palestine Land Settlement Ordinance, s. 3, that a settlement of rights in land & registration thereof should be effected in the area included within the boundaries of, *inter alia*, the village of Hudeira in the Haifa sub-district & of the lands of Attil & Zeita in the Tulkarem sub-district. A settlement officer was duly appointed & a preliminary notice issued of the intended settlement & registration of rights in the village of Hudeira. A dispute arose with regard to certain land known as Khor al Wasa', of which applts.

for the compulsory winding up of a co. as an unregistered co.:—*Held:* notwithstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—*Re* PORTARLINGTON ELECTRIC LIGHT & POWER CO., LTD., [1922] 1 I. R. 100.—IR.

sw. *Power of Oireachtas.*]—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of untried persons.—R. (O'CONNELL) *v.* HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—IR.

sz. —— *Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.), 1924—Intra vires.*]—R. (O'CONNELL) *v.* HARE PARK CAMP GOVERNOR), [1924] 2 I. R. 104.—IR,

sb. *Duty of Attorney-General to represent the State.*]—The A.-G. alone could be heard making any claim on behalf of the State or community of citizens of the Irish Free State under Art. 11 of the constitution.—MOORE *v.* A. G., [1930] I. R. 471.—IR.

sc. *Illegal arrest & removal from jurisdiction—Right to injunction.*]—The provisions of this Art. 6 of the Constitution of the Irish Free State do not exclude jurisdiction to grant an injunction in an appropriate case, *e.g.*, if it were sought to arrest a person illegally & remove him out of the jurisdiction before he could apply for a writ of *habeas corpus*.—O'BOYLE & RODGERS *v.* A.-G. & GENERAL O'DUFFY, [1929] I. R. 558.—IR.

sf. *Succession Duty Act*, 1853 (c. 51), s. 50—*Whether repealed by Government of Ireland Act*, 1920 (c. 67).]—*Held:* there is an implied repeal of Succession Duty Act, 1853 (c. 51), s. 50, by Government of Ireland Act, 1920 (c. 67), so far as sect. 50 gives any appeal to the English cts. over Northern Ireland succession duty.—A.-G. *v.* JAFFÉ, [1935] N. I. 97.—IR.

were registered in the land registry of Haifa as absolute owners. The entry in the registry described the area as being within the village of Hudeira. The settlement officer found that the area in dispute was included within the boundaries of Zeita &/or Attil musha' lands, & he ordered that the entries in the Haifa land registry relating to the area in dispute be separated from the entries in respect of the lands of Hudeira, & that an observation be made in respect of such entries that in accordance with the judgment of the settlement officer those lands were held to be situated within the musha' lands of Zeita &/or Attil & were recorded as such in the Tulkarem land registry, & that a corresponding entry be recorded in the Tulkarem land registry. Applts. appealed. The competency of the appeal was challenged on the ground that the decision was not one " as to any right to land " within Land Settlement Ordinance, 1928, s. 56 (1). The Land Ct. upheld the competency of the appeal & dismissed the appeal. On appeal to the Supreme Ct., the appeal was held not to be competent & applts.' application was dismissed. Applts. appealed to the Privy Council :—*Held :* (1) the decision of the settlement officer was a decision as to rights to land in so far as it held that the lands of Khor al Wasa' were musha' lands ; (2) the judgment of the settlement officer was *ultra vires* in so far as it dealt with questions of rights to land outside the village of Hudeira, which was under settlement, & accordingly the finding that the area of Khor al Wasa', which he held to be outside the boundaries of Hudeira, was musha' land, along with the consequential entries in the land registries of Haifa & Tulkarem, was *ultra vires ;* (3) in defining the boundaries of the village of Hudeira, the settlement officer was entitled to find that the area of Khor al Wasa' was not in Hudeira, but his judgment ought to be varied by excluding from the findings any finding that the area was musha' land, & also the orders as to entries in the land registries. AARONSON *v.* GHADIEH, [1936] 2 All E. R. 1670 ; 80 Sol. Jo. 815, P. C.

Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

The cases referred to in the late Mr. Cameron's Note are digested in Vol. XVII., pp. 427–446, or in other relevant Titles. Cases coming under this head decided since the publication of the original volume therefore appear in their appropriate sections & not as supplementary to the Notes in Vol. XVII., p. 508.

DEPOSITARY.

See BAILMENT.

DESCENT AND DISTRIBUTION.

Note.—For the references to Law of Property Act, 1922 (c. 16), substitute references to Administration of Estates Act, 1925 45-52.

For cases decided under 1925 Act, new Part Va., *post*.

Part II.—Intestacy.

8a. Contingent partial intestacy.]—*Re* McKee, Public Trustee *v.* McKee, No. 283b, post.

Part III.—Devolution of Real and Personal Estate.

9. *Citations :*—Delete " C. A."

10. *Add. Annotation :*—**Refd.** Macleay *v.* Treadwell, [1937] A. C. 626.

After this case add "—— —— **Death after 1925.**]—*See, now,* Administration of Estates Act, 1925 (c. 23), s. 9."

Part IV.—Descent of Real Estate.

17. For cross-reference before this case read "*See* Law of Property (Amendment) Act, 1924 (c. 5), s. 9, Sched. IX. (1), by which Inheritance Act, 1833, remains in force for certain purposes."

74. *Add. Annotation :*—**Refd.** *Re* Price, [1928] Ch. 579.

102a. —— ——.]—Philpotts d. Philpotts *v.* James (1784), 3 Doug. K. B. 425; 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Expld.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

118a. Lease pur autre vie—To A. & his heirs—Heir special occupant.]—Philpotts d. Philpotts *v.* James (1784), 3 Doug. K. B. 425, 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Consd.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

132a. —— ——.]—Rawlinson *v.* Montague (Duchess) (1710), 2 Vern. 667; 3 P. Wms. 264, n.; 23 E. R. 1035.

Annotation :—**Consd.** Bearpark *v.* Hutchinson (1830), 7 Bing. 178.

133. After this case insert "—— **Liability to legacy duty.**]—*See* Estate & Other Death Duties, Vol. XXI., p. 58, No. 377."

133a. *S. P.* Lock *v.* Lock (1710), 2 Vern. 666; 23 E. R. 1035.

PART I.

a i. *Meaning of "legally represent" & "legal representatives of"—Ontario Devolution of Estates Act, s. 30.*]—*Re* MacKenzie, [1927] 4 D. L. R. 825; 61 O. L. R. 230.—CAN.

aa. *Murderer—Not entitled to share in estate of victim.*]—*Re* Medaini Estate, [1927] 4 D. L. R. 1137; [1927] 2 W. W. R. 38; 38 B. C. R. 319.—CAN.

ad. —— *Insane.*]—A man killed his wife & child, & thereafter committed suicide. The evidence showed that the man was an apparently normal individual, & was on the best of terms with his wife & child. Shortly prior to the tragedy he had been worried over business affairs & had been suffering from melancholia. Apart therefrom there was no prior evidence of insanity:—*Held :* the man had committed the crime whilst insane, &, therefore, there was no bar to his representatives succeeding on the intestacies of his wife & child.—*Re* Plaister, Perpetual Trustee Co. *v.* Crawshaw (1934), 34 S. R. N. S. W. 647; 51 N. S. W. W. N. 141.—AUS.

af. *Marriage Ordinance, 1884, of Southern Nigeria, ss. 38, 39—Construction.*]—Martins *v.* Fowler, [1926] A. C. 746; 95 L. J. P. C. 139; 135 L. T. 582.—NIGERIA.

PART II.

ag. *What constitutes an intestacy—Surplus income not vesting in anyone.*]—Surplus or accumulated income of trust fund which does not vest in anyone under the will passes as on an intestacy.—*Re* Hammond, [1935] 1 D. L. R. 263; *affd.*, [1935] S. C. R. 550; 4 D. L. R. 209.—CAN.

PART III. SECT. 1.

ah. *"Devolve"—Local Registration of Title Act, s. 84.*]—M'Donnell *v.* Stenson, [1921] 1 I. R. 80.—IR.

ai. ——.]—Collins *v.* Collins, [1924] 1 I. R. 72.—IR.

PART IV. SECT. 1.

h i. ——.]—Maclean & Graham *v.* Smith & Mackintosh, [1927] N. 109.—IR.

h ii. —— *Who are.*]—Lee *v.* Branscombe (1925), 52 N. B. R. 239.—CAN.

aj. *Effect of Dominion Land Titles Act,* 1894 (c. 28), *s.* 3.]—*Re* Jensen (Alta.), [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

ak. *Heir of half-blood—Onus of proof.*]—Where a party claims as one of the heirs of the half-blood of an intestate, & in his bill professes to set out how his interest arises, it is necessary for him to negative the fact of the intestate having obtained the land by gift or devise from his ancestor; or, if he did so obtain it, the claimant must show that he is of the blood of such ancestor.—Tryon *v.* Peer (1867), 13 Gr. 311.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

ao. *"Otherwise than by descent"—Widow acquiring land under Intestates' Estates Act.*]—Premises held under a fee farm grant, subject to a yearly rent were conveyed for value to B. The purchaser died intestate leaving his widow but no issue surviving. His real & personal estate amounted to less than £500 in value, & all passed under sect. 1 of Intestates' Estates Act, 1890, to his widow, who entered into & remained in possession until she died intestate. Thereupon her brother, deft., entered into possession as her heir at law. Pltf., who was heir at law of her husband, claimed possession, contending that title must be traced from B. as the last purchaser. He brought a civil bill for ejectment on the title of the premises:—*Held :* the widow acquired the land "otherwise than by descent," & being the last person to do so she was therefore under Inheritance Act, 1833, the purchaser from whom descent should be traced. Deft., the widow's heir at law, was therefore entitled to remain in possession of the premises.—Bradley *v.* McAtamney, [1936] N. I. 74.—IR.

PART IV. SECT. 4, SUB-SECT. 2.

h. Read now "**113a i.**"
k. Read now "**113a ii.**"
l. Read now "**113a iii.**"

134a. Construction of ancient customary — "Nepos."]—WHITLOCK *v.* WHITLOCK (1924), 40 T. L. R. 566, D. C.

144. *Add. Annotation :*—**Consd.** *Re* Smith, Bull *v.* Smith, [1933] Ch. 847.

150a. Copyholds subject to custom of gavelkind—Enfranchisement by Law of Property Acts—Destruction of custom of gavelkind.]—T. died on Jan. 28, 1926, without issue & without having confirmed or republished his will which he had made on July 20, 1925. He was, before Jan. 1, 1926, when the Law of Property Act, 1925, came into operation, tenant of one undivided ninth share in customary tail special by descent in land formerly of copyhold tenure subject to the custom of gavelkind, but at that date by virtue of sect. 128 & Sched. 12, para. 1, sub-s. (*a*), of Law of Property Act, 1922 (c. 16), & sect. 202 of the Law of Property Act, 1925 (c. 20), of freehold tenure, the entirety of the land which then became vested by virtue of Part IV. of Sched. I. para. 1, sub-para. 4 of Law of Property Act, 1925 (c. 20), in the Public Trustee, having subsequently become vested in trustees appointed in his place upon the statutory trusts mentioned in sect. 35 of Law of Property Act, 1925 (c. 20):—*Semble :* in the absence of a statutory conversion of land into personal estate, the share of T. in the land on his death descended under the Inheritance Act to the heir at common law of the body of the last purchaser & not to the heir in gavelkind of the last purchaser ; the effect of the enfranchisement having been to destroy the gavelkind custom. —*Re* PRICE, [1928] 1 Ch. 579 ; 97 L. J. Ch. 423 ; 139 L. T. 339.

Annotations :—**Refd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409 ; *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67 ; *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42 ; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208 ; *Re* Jones, Public Trustee *v.* Jones, [1934] Ch. 315.

Part V.—Distribution of Personal Estate.

161. *Citation :*—For "Skin. 212" read "Skin. 218."

165. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

165a. —— Subject to interest of posthumous child.]—Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.—EDWARDS *v.* FREEMAN (1727), 2 P. Wms. 435 ; 24 E. R. 803, L. C.

Annotations :—**Folld.** Wallis *v.* Hodson (1740), Barn. Ch. 272. **Refd.** Villar *v.* Gilbey, [1907] A. C. 139.

165b. —— ——.]—J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 29 following pltf. was born ; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.—WALLIS *v.* HODSON (1740), 2 Atk. 114 ; Barn. Ch. 272 ; 26 E. R. 472, L. C.

Annotations :—**Folld.** Burnet *v.* Mann (1748), 1 Ves. Sen. 156 ; Thellusson *v.* Woodford (1799), 4 Ves. 227. **Refd.** Thellusson *v.* Woodford (1805), 1 Bos. & P. N. R. 357 ; Villar *v.* Gilbey, [1907] A. C. 139.

165c. —— ——.]—A child *en ventre sa mère* may take under the Statute of Distribution.—THELLUSSON *v.* WOODFORD (1799), 4 Ves. 227 ; 31 E. R. 117, L. C. ; *affd.* (1805), 1 Bos. & P. N. R. 357, H. L.

Annotations :—**Refd.** Blackburn *v.* Stables (1814), 2 Ves. & B. 367 ; *Re* Burrows, Cleghorn *v.* Burrows, [1895] 2 Ch. 497 ; *Re* Wilmer's Trusts, Moore *v.* Wingfield, [1903] 1 Ch. 874 ; Villar *v.* Gilbey, [1907] A. C. 139.

See, now, Administration of Estates Act, 1925, (c. 23), ss. 47 (1), 55 (2).

170. *Add. Annotations :*—**Dbtd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **N.F.** *Re* Sigsworth, Bedford *v.* Bedford, [1925] Ch. 89.

173. *Add. Annotation :*—**Consd.** *Re* Jones, Johnson *v.* A.-G., [1925] Ch. 340.

180. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

181. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

187. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

PART V. SECT. 1.

n i. —— *As amended by* 17 *Geo.* 5, *c.* 35, *s.* 2—*Effect of.*]—*Re Shier, ante,* not overruled, & the practice adopted since that decision not altered. —*Re* ALLISON, [1927] 4 D. L. R. 729 ; 61 O. L. R. 261.—**CAN.**

sc. *When next of kin entitled to delivery in specie.*]—After payment of debts, the administrator of the estate of an intestate holds the estate in trust to convert & divide among those entitled under the statute to distribution. Where there is only one *cestui que trust,* or where the *cestuis que trust* are all of one mind & no complication arises from disability, the right to demand the delivery of the estate *in specie* is incontrovertible. But where the parties beneficially entitled are not of one mind, those of them who so desire are entitled to insist upon the normal course of administration being pursued to the end.—*Re* HARRIS (1914), 33 O. L. R. 83.—**CAN.**

PART V. SECT 2.

sf. *Divorced husband — Foreign divorce.*]—CARTER *v.* PATRICK, [1935] 1 W. W. R. 383 ; 2 D. L. R. 811 ; 49 B. C. R. 411.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

e i. —— —— *Effect of separation agreement.*]—After being married for three months a husband & wife, then domiciled & resident in Saskatchewan, made a separation agreement under which, as varied by a subsequent agreement, he paid her $2,500 & she agreed to relinquish her rights to any & all lands then or thereafter belonging to him & in particular her rights in the homestead. She also agreed not to take any proceedings against him arising out of the marriage except divorce, & in the event of her suing for divorce that she would make no claim for alimony. The husband died leaving a will in which he was described as of Calgary, Alberta. After making certain specific bequests he left the residue of his estate to his sister. The only reference in the will to his wife was a clause releasing her from any claims which the estate might have against her :—*Held :* the ct. was empowered to make such allowance as it thought proper to the widow without begin hampered by the provisions of Saskatchewan Widows' Relief Act ; the widow had not so contracted in the agreement as to deprive herself of the benefit of Widows' Relief Act even if she could so contract.—*Re* ANDERSON ESTATE, [1934] 1 W. W. R. 430 ; 2 D. L. R. 484.—**CAN.**

e ii. —— —— ——.]—Appct. sought relief under Widows Relief Act, R. S. A., 1922, from the provisions of her husband's will. She married deceased a little over eight years before his death. After living together for sixteen months they separated by agreement, but thereafter made frequent motor trips together & visits to one another, & on these trips & visits lived as man & wife. She also at regular intervals rendered household services for him without remuneration :—*Held :* appct. was entitled to relief under the Act, &, under all the circumstances, to substantial relief.—*Re* MAGI ESTATE, [1935] 2 W. W. R. 422.—**CAN.**

e iii. —— ——.]—Application for relief under Widows Relief Act, R. S. A., 1922. Nothing was left to

221. *Add. Annotation* :—**Folld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

221a. —— —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

232. *Add. Annotation* :—**N.F.** *Re* Brooks, Public Trustee *v.* White, [1928] Ch. 214.

234. In the cross-reference following this case for "p. 148, No. 374," read "p. 374, No. 148."

appct. by her husband's will but he stated therein that his reasons for not leaving her anything by the will was that he had already provided for her by transferring certain property to her. This property had at the time of the application deteriorated in value & the rentals therefrom were being collected by the mtgee. Appct. lived in a small house at the rear of the property & had been obliged to apply to the city for relief. The cost of an annuity of $50 per month for appct. would probably be as much or more than could be realised in cash for the estate :—*Held* : the estate should be charged, next after debts & encumbrances & the costs of the application, with the payment of $50 per month to appct. during her lifetime & should the revenues from the estate be insufficient to provide for this payment the exors. are empowered to encroach upon the corpus of the estate for the purpose of meeting the same.—*Re* MCDONALD ESTATE, [1937] 2 W. W. R. 22.—**CAN.**

e iv. —— ——.]—Application under Widows Relief Act, R. S. A., 1922. Appct. who had obtained a decree of judicial separation in 1920, had shortly thereafter returned to her husband at his request & in reliance on promises made by him which she alleged he did not keep. In 1923 she left him again & lived thereafter with her son or daughter until her husband's death in 1936, & had refused to see him or communicate with him when he was afflicted with paralysis. She had contributed $1,000 to the farming operations in 1907 & from 1893 to 1923 not only did her own house work but also worked in the fields. She was without any means & the will bequeathed her one dollar ; the residue of the estate was left to testator's sister & to charities :—*Held* : in view of all the evidence, that it was just & equitable that appct. should be allowed a share of the estate equal to that to which she would have been entitled had her husband died intestate.—*Re* WILSON ESTATE, [1937] 1 W. W. R. 161.—**CAN.**

e v. —— —— *Testator with foreign domicile.*]—In the case of a testator who dies domiciled out of Saskatchewan the ct.'s jurisdiction to grant his widow relief under Widows' Relief Act, R. S. S., 1930, is confined to that part of his property which is subject to the laws of Saskatchewan, *i.e.*, his immovables within Saskatchewan.—WILLIAMS *v.* MOODY BIBLE INSTITUTE OF CHICAGO, [1937] 2 W. W. R. 316.—**CAN.**

sx. *Right to share of child dying intestate.*]—Construction of sect. 9 of Devolution of Estates Act, R.S.M., 1913, as amended by 1917, c. 5, s. 7. The intestate died in 1920, leaving him surviving a widow & two children, of whom one, an infant & unmarried, died in 1933 :—*Held* : the share of the deceased child passed to the mother.—*Re* BALABUK ESTATE, [1934] 2 W. W. R. 647 ; 4 D. L. R. 539 ; 42 Man. L. R. 372.—**CAN.**

f i. *Provision made for widow—Less than amount receivable on intestacy—What relief granted.*]—The discretion conferred on the ct. in favour of the widow, who applies for relief under Married Women's Relief Act is restricted by implication to the portion of her deceased husband's estate which she would have received on an intestacy.—MCBRATNEY *v.* MCBRATNEY (1919), 59 S. C. R. 550 ; [1919] 3 W. W. R. 1000 ; 50 D. L. R. 132.—**CAN.**

sd. *Ascertainment of net value of estate—Time for.*]—For the purpose of determining who is or are entitled pursuant to the Administration Act, R.S.B.C., 1924, to share in an estate the net value of the estate is to be ascertained as of the date of the death of the deceased.—*Re* COLLINS ESTATE, [1935] 1 W. W. R. 295 ; *affd. sub nom. Re* COLLINS ESTATE, TORONTO GENERAL TRUSTS CORPN. *v.* A.-G. FOR BRITISH COLUMBIA & COLLINS, [1935] 2 W. W. R. 550 ; 50 B. C. R. 122 ; *affd. sub nom.* CORKINGS *v.* COLLINS, [1936] S. C. R. 37 ; 2 D. L. R. 193 ; 5 F. L. J. (Can.) 291.—**CAN.**

sg. *Wife living in adultery at time of husband's death.*]—Sect. 127 (1) of Administration Act, R. S. B. C., 1924, as amended, provides : "If a wife has left her husband & is living in adultery at the time of his death, she shall take no part of her husband's estate" :—*Held* : the words "living in adultery at the time of his death" mean exactly what they say, *i.e.*, they refer to a state of affairs existing at that time, & it is not sufficient to prove that the wife was living in adultery, say for two years, for a period which ended before his death, or that she had committed isolated acts of adultery a long time prior to his death.—BURNS *v.* BURNS, [1937] 2 W. W. R. 673.—**CAN.**

s. *Divorced wife.*]—*Re* GRAHAM ESTATE, NOLAN *v.* GRAHAM, [1937] 3 W. W. R. 413.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

sk. *Effect of charge.*]—*Held* : the widow is not entitled to any portion of the real estate in specie.—CUNNINGHAM *v.* CUNNINGHAM, [1920] 1 I. R. 119.—**IR.**

sl. *S. P.* DUNICAN *v.* DUNICAN, [1920] 1 I. R. 212.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

213 i. *Covenant to secure payment of sum of money—Satisfaction pro tanto.*]—F. on his marriage executed a bond, whereby, in the event of his death in the lifetime of his wife, a sum of money was to be paid to two trustees in trust for his wife. F. predeceased his wife, intestate & without issue :—*Held* : the sum secured by the bond was to be regarded, in the absence of evidence of any other intention, as satisfaction *pro tanto* of the widow's share of her husband's estate.—MATHEWS *v.* DONEGAN & COOKE, [1925] 1 I. R. 201.—**IR.**

PART V. SECT. 4, SUB-SECT. 1.

229 v. ——.]—The words "child or children of a deceased brother or sister" in Intestate Successions Act, R. S. A., 1922 (c. 143), s. 7 (2), mean issue in the first generation only, & do not include grandchildren or more remote descendants.—*Re* EMSLEY (Alta.), [1925] 1 W. W. R. 816.—**CAN.**

229 vi. ——.]—An intestate died unmarried leaving him surviving several brothers & sisters & a nephew & grandnephew. The nephew was the son of a sister who predeceased testator, & the grandnephew was the grandson of said sister. On the question did the share of the estate that would have gone to said sister, had she been alive at testator's death, pass to the nephew & grandnephew in equal shares or did it all go to the nephew :—*Held* : under sect. 12 of Devolution of Estates Act, R. S. M., 1913, the whole share went to the nephew.—*Re* BUDD ESTATE, HARMON *v.* FURBER, [1934] 2 W. W. R. 182 ; 3 D. L. R. 587 ; 42 Man. L. R. 152.—**CAN.**

229 vii. ——.]—*Re* GALL ESTATE, [1937] 3 W. W. R. 266.—**CAN.**

a i. —— ——.]—*Held* : such child not entitled in Saskatchewan to share in the estate of the father dying intestate & domiciled in Saskatchewan before the coming into force of Adoption of Children Act, 1922.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129 ; [1926] 1 W. W. R. 657 ; 20 Sask. L. R. 407.—**CAN.**

a ii. —— ——.]—The word "child" in a will made in Saskatchewan by testator domiciled therein, who died before the coming into force of Adoption of Children Act, 1922, held not to include an adopted child, even though under the law of the foreign state where the child & its adopting parents were domiciled & in which it was adopted the effect of the adoption was to entitle it to all the rights of a child of its adopting father born in lawful wedlock.—*Re* DONALD ESTATE, BALDWIN *v.* MOONEY, [1928] 4 D. L. R. 181 ; [1928] 2 W. W. R. 636 ; *affd.*, [1929] 2 D. L. R. 244 ; S. C. R. 306 ; *subsequent proceedings*, [1928] 4. D. L. R. 771.—**CAN.**

a iii. —— *Child Welfare Act—Rights of inheritance.*]—Child Welfare Act does not create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his & his wife's next-of-kin, said daughter took under the residuary bequest as his wife's niece & not as the testator's child.—*Re* SCOTT ESTATE, [1928] 1 W. W. R. 168.—**CAN.**

PART V. SECT. 6.

sj. *Not widow of only brother predeceasing intestate.*]—*Re* HENDERSON, [1926] 2 D. L. R. 536.—**CAN.**

st. *Brothers & sisters—Of infant dying after father who predeceased grandfather—Infant's share in grandfather's estate—Devolution of Estates Act, R. S. S.*, 1920 (*c.* 73), *ss.* 18, 23.]—*Re* GEORGET ESTATES (Sask.), [1928] 1 D. L. R. 230 ; [1927] 3 W. W. R. 769.—**CAN.**

sw. —— *Whether half-blood included.*]—"Brothers & sisters" within sect. 116 of Administration Act, R. S. B. C., 1924, as amended by 1925, include brothers & sisters of the half-blood. Therefore where an intestate had been predeceased by three half-brothers & sisters, each of whom left issue surviving the intestate, & he was survived also by a brother of the whole blood :—*Held* : one-quarter of the real & personal estate went to the brother & three-quarters to the nephews & nieces, *per stirpes*.—JOHNSON *v.* LINEKER, [1936] 1 W. W. R. 393 ; 4 D. L. R. 435 ; 50 B. C. R. 378 ; 6 F. L. J. (Can.) 36 ; *affd. sub nom. Re* LINEKER'S ESTATE, 50 B. C. R. 508.—**CAN.**

PART V. SECT. 7.

249 ii. —— —— ——.]—M. who was unmarried died intestate. He had one sister still living, & another sister who had predeceased him, left one son living. One brother was still living. A second brother who had predeceased him left three children still living, & a third brother (A.) who had predeceased him left nine children still living, & a tenth child (E.) who had predeceased M. left four children (grandchildren of M.) still living. On a petition for directions :—*Held* : the

239. For "**Mother, brothers & sisters—Mother takes half & brothers & sisters half—Subject to right of widow.]**" read "**Mother, brothers & sisters—Share moiety equally—Widow taking half.]**"

256. *Add. Annotation :* — **Consd.** *Re* Merrall, Greener *v.* Merrall, [1924] 1 Ch. 45.

Part Va.—Distribution under Administration of Estates Act, 1925.

See Administration of Estates Act, 1925 (c. 23), ss. 33 (4), 45–52.

283a. **Rights of surviving spouse—Interest on sum charged—Payable out of corpus of estate.]**—Under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (i), interest becoming payable on the sum of £1,000, thereby charged on the estate of an intestate in favour of a surviving wife or husband is not a charge upon the income but upon the corpus of the estate.—*Re* SAUNDERS, PUBLIC TRUSTEE *v.* SAUNDERS, [1929] 1 Ch. 674 ; 98 L. J. Ch. 303 ; 141 L. T. 27 ; 45 T. L. R. 283.

283b. —— **Contingent partial intestacy.]**—Testator devised & bequeathed his residuary estate upon trust for his widow for life, with remainder to such of his brothers & sisters as should survive her. The last of the brothers & sisters died in the widow's lifetime :—*Held :* the widow's estate would be entitled upon her death, as a result of the intestacy consequent upon the widow's survival, to a sum of £1,000, with interest at the rate of 5 per cent. per annum from the date of testator's death, under Administration of Estates Act, 1925 (c. 25), s. 46, but the widow was not entitled to have the reversion expectant on her death sold & the proceeds of sale invested, in order that she might enjoy the interest on such investments during her life as part of testator's estate devolving as upon an intestacy.—*Re* MCKEE, PUBLIC TRUSTEE *v.* MCKEE, [1931] 2 Ch. 145 ; 100 L. J. Ch. 325 ; 145 L. T. 605 ; 47 T. L. R. 424 ; 75 Sol. Jo. 442, C. A.

Annotation :—**Consd.** *Re* Thornber, Crabtree *v.* Thornber, [1936] 2 All E. R. 1594.

283c. **Descent to heir—Estate of lunatic—No committee or trustee appointed.]**—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six :—*Held :* her real estate went to her heir-at-law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption section, read with the definition section, sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199 ; 99 L. J. Ch. 161 ; 142 L. T. 327.

283d. —— —— **Proceeds of sale of land in court —Lunacy Act, 1890 (c. 5), s. 123.]**—Testatrix made a will in 1877 & was subsequently in that year found to be of unsound mind. She remained in that condition until her death in 1932. At her death all the persons who would have been interested under her will were dead, with the result that her property (which included the proceeds of sale of an undivided three-fourths share in certain freehold land) devolved as under an intestacy. Her share in the freehold land had been sold in 1923. A summons was taken out by her administrator for the determination of the question whether the proceeds of the sale of the property devolved upon her heirs at law or upon her next of kin : —*Held :* the capital devolved upon the heirs at law under Lunacy Act, 1890 (c. 5), s. 123 (1), & was not affected by the transitional provisions of Law of Property Act, 1925 (c. 20), but fell within the exceptions provided for by Administration of Estates Act, 1925 (c. 23), s. 51 (2) ; & with regard to the dividends, so much thereof as had accrued before the death of testatrix devolved upon the next of kin as personal property, & so much thereof as had accrued since her death devolved upon the persons who became entitled to the real estate.—*Re* HARDING, WESTMINSTER BANK, LTD. *v.* LAVER, [1934] Ch. 271 ; 103 L. J. Ch. 121 ; 150 L. T. 277 ; 77 Sol. Jo. 853.

283e. —— —— **Effect of Legitimacy Act, 1926 (c. 60).]**—E. M. B., who had for many years been a person of unsound mind, died on Feb. 22, 1933, intestate & a spinster, without parents or brother or sister of the whole

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one-fifth share of the estate to which the brother A. would have been entitled should be divided into ten parts, & one of the ten parts should be divided equally amongst Edward's four children.—*Re* MCKAY (1927), 39 B. C. R. 51.—**CAN.**

249 iii. —— —— ——.]—CARTER *v.* PATRICK, [1935] 1 W. W. R. 383 ; 2 D. L. R. 811.—**CAN.**

251 iii. —— —— ——.]—*Re* GRANT ESTATE, GRANT *v.* MORRISON (B. C.), [1929] 3 W. W. R. 644 ; [1930] 1 D. L. R. 365 ; 41 B. C. R. 511.—**CAN.**

PART V. SECT. 8.

h i. —— *Uncle & children of deceased uncles.*]—*Re* KROESING ESTATE, [1928] 1 D. L. R. 643 ; [1928] 1 W. W. R. 224. —**CAN.**

h ii. —— *Uncles & aunts & cousins.*]—The surviving next of kin of an intestate, who had never married, were three paternal uncles & a maternal aunt & uncle. Two aunts had predeceased the intestate leaving children : —*Held :* under sects. 117, 118, 119 of Administration Act, R. S. B. C., 1924, the estate was distributable *per capita* solely among the surviving aunts & uncles.—*Re* CROMARTY ESTATE, [1937] 2 W. W. R. 682.—**CAN.**

PART V. SECT. 9.

273 iv a. *S. P. Re* JENSEN (Alta.), [1927] 1 D. L. R. 76 ; [1926] 3 W. W. R. 737.—**CAN.**

237 vi.—— *Exception as to ancestral property.*]—*Held :* the proviso to sect. 126 of Administration Act, R. S. B. C., 1924, excludes, without qualification, those who are not of the blood of the ancestor. "Ancestor," within the meaning of the sect. is the person from whom the estate in question is derived. He need not be a progenitor of the successor or lineal ancestor so long as he really preceded in the estate, & may be brother, aunt, uncle, nephew or cousin.—*Re* PARSHALLE ESTATE, SHAW *v.* COX, [1936] 1 W. W. R. 767 ; 3 D. L. R. 438 ; 42 B. C. R. 413.—**CAN.**

blood. Her estate consisted of real & personal property. There were two claimants to her real estate, the first deft., who would be entitled apart from & before the coming into force of Legitimacy Act, 1926 (c. 60), & the second deft., who was not legitimate at the time of her birth, but by reason of the subsequent marriage of her parents was legitimated by virtue of Legitimacy Act, 1926 (c. 60), & who would have been entitled if legitimate:—*Held:* on the true construction of Administration of Estates Act, 1925 (c. 20), ss. 45 (1), 51 (2), the descent of the real estate of a person who was of unsound mind before the commencement of the Act & who died intestate while still of unsound mind remained unaltered and the real estate passed to the persons who would have taken it before the commencement of the Act, & accordingly, the first deft. was the person entitled to the real estate of the intestate.—*Re* BERREY, LEWIS *v.* BERREY, [1936] Ch. 274; 105 L. J. Ch. 38; 154 L. T. 335.

283f. —— —— **"In accordance with the general law"—Exclusion of custom of gavelkind.**]—An intestate, who was, at the date of her death, a spinster of full age had, since before Jan. 1, 1926, been a person of unsound mind. She died in 1933, possessed of land in Kent which had, before 1926, been subject to the custom of gavelkind. Administration of Estates Act, 1925 (c. 20), s. 51 (2), which applied to the case, requires that the land shall "devolve in accordance with the general law in force before" 1926:—*Held:* the requirement that the land should devolve in accordance with the general law prevented the application of the special custom of gavelkind, & the land devolved upon the heir-at-law according to the common law.—*Re* HIGHAM, HIGHAM *v.* HIGHAM, [1937] 2 All E. R. 17.

283g. —— **Estate tail—1925 Act, s. 51 (3)—Application to notional settlement on intestacy.**]—In 1925 an infant S. inherited land as eldest son & heir of an intestate, subject to his mother's right to dower. On Jan. 1, 1926, the Settled Land Act, 1925 (c. 18), came into operation, & under sect. 1 (2) S. was treated as deriving his title under the settlement deemed to have been made by the intestate, his mother's right to dower being preserved by sect. 1 (3). On Oct. 8, 1930, S. died an infant & unmarried:—*Held:* Administration of Estates Act, 1925 (c. 23), s. 51 (3), applies to the case of a notional settlement on intestacy, so that S.'s interest had become an entail & ceased on his death as an unmarried infant. Consequently the estate went to S.'s younger brother as next heir of the intestate & not to S.'s mother under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (iv.).—*Re* TAYLOR, PULLAN *v.* TAYLOR, [1931] 2 Ch. 242; 100 L. J. Ch. 374; 145 L. T. 417.

283h. **Distributive share—Right of murderer of intestate.**]—*Semble:* the rule of public policy which prevents a sane murderer from taking any benefit under his victim's will prevents him also from taking a distributive share under his victim's intestacy.

In the present case the murderer was insane, but if the point arose for decision, the views of FRY, L.J., in *Cleaver* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147, 157, 158, would probably prevail over those of JOYCE, J., in *In re Houghton*, No. 170, & the peremptory provisions of Administration of Estates Act, 1925 (c. 23), s. 46, would be read & construed subject to the public policy rule.—*Re* PITTS, COX *v.* KILSBY, [1931] 1 Ch. 546; 100 L. J. Ch. 284; 145 L. T. 116; 47 T. L. R. 293.

Annotations:—**Folld.** *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. **Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

283j. —— ——.]—A coroner's jury found a verdict against X. of wilful murder of his mother & of *felo de se*. X. was named as the sole beneficiary under his mother's will. On a summons taken out to determine the devolution of the mother's estate:—*Held:* the rule of public policy which prevented X. (or his estate) from benefiting under the mother's will also debarred his personal representative from participating as such in the intestacy arising from the death of the mother caused by the son's act.—*Re* SIGSWORTH, BEDFORD *v.* BEDFORD, [1935] Ch. 89; 104 L. J. Ch. 46; 152 L. T. 329; 51 T. L. R. 9; 78 Sol. Jo. 735.

Annotation:—**Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

Part VII.—Escheat and bona vacantia.

285. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

Add. Annotation:—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

292. *Add. Annotations:*—**Consd.** *Re* O'Hagan, O'Hagan *v.* Lloyd's Bank, Ltd., [1932] W. N. 188. **Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56; *Re* Tong, Hilton *v.* Bradbury (1930), 144 L. T. 260.

—— **Failure of devise—No heir of testator—Death of testator before Intestates Estates Act, 1884—Trustee holds for own benefit.**]—*Re* RAWLINSON, WILSON *v.* BANKS (1934), 78 Sol. Jo. 602.

301. *Add. Annotation:*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

311. *Add. Citations:*—[1924] 2 Ch. 19; 93 L. J. Ch. 483; 130 L. T. 800; 68 Sol. Jo. 419.

312. *Add. Annotations:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

315. After this case add "**Land in Alberta granted by Crown.**]—*See* DEPENDENCIES, No. 98a."

319. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

323. *Add. Annotation:*—**Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

328a. Funds appointed — Appointor illegitimate— Death of appointee in lifetime of appointor.]—Testatrix, who was illegitimate, exercised by her will a power of appointment over certain funds in favour of her husband. Her will contained the prefatory words " to the intent that this my will shall take effect whether I survive or predecease my husband." Her husband predeceased her :—*Held :* the presence in the will of the prefatory words was not sufficient, in the absence of a substitution of other legatees in the event of her husband predeceasing her, to show an intention, within the meaning of the authorities, that the husband's estate should take the benefit of the appointed funds. Consequently there was a lapse of those funds, &, as testatrix was illegitimate, & had never had issue, the funds became *bona vacantia* & went to the Crown.—*Re* LADD, HENDERSON *v.* PORTER, [1932] 2 Ch. 219 ; 101 L. J. Ch. 392 ; 147 L. T. 433.

329. *Add. Annotations :*—**Refd.** *Re* Cullum, Mercer *v.* Flood, [1924] 1 Ch. 540 ; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

329a. Proceeds of sale under Settled Land Act, 1925 (c. 18).]—*Re* RAWLINSON, WILSON *v.* BANKS (1934), 78 Sol. Jo. 602.

330. After this case add " **Property in Alberta.**]—*See* DEPENDENCIES, No. 98a."

331. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

336a. —— ——.]—A lunatic, at the date of her death in 1798, was entitled to certain funds in ct. representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratiâ* grants of the funds to certain persons & obtained an indemnity in respect of the grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties sought a determination of the following questions : (1) whether the petition was maintainable on the assumption that no part of the funds ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund ; (2) whether the petition was barred by any Statute of Limitations ; (3) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratiâ* grants had been made :—*Held :* the first question must be answered in favour of suppliants.—*Re* MASON, [1928] Ch. 385 ; 97 L. J. Ch. 321 ; 139 L. T. 477 ; 44 T. L. R. 225 ; *affd.*, [1929] 1 Ch. 1, C. A.

Annotation :—**Consd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

337a. —— ——.]—*Re* MASON, No. 336a, *ante.*

—— **Limitation of action.**—*See* LIMITATION OF ACTIONS, Nos. 1761a, 1761b, *post.*

PART VII. SECT. 2, SUB-SECT. 5.

80. *Descent to University of Alberta under Ultimate Heir Act*, 1931—*Action by heirs to recover estate—Defence.*]—Where an estate of an intestate has been transferred to the University of Alberta in accordance with Ultimate Heir Act, 1931, & then afterwards persons who allege that they are the heirs or next-of-kin of the intestate, but that the University has refused to recognise their claim, bring an action for a declaration of their right to the estate & for its transfer to them under sect. 6 of the said Act, it is not a good defence to the action that their claim was not substantiated before the action. —MACKLEY *v.* ALBERTA UNIVERSITY (GOVERNORS), [1933] 2 W. W. R. 330 ; 3 D. L. R. 726.—**CAN.**

DISCOVERY, INSPECTION, AND INTERROGATORIES.

Part I.—In General.

17. *Add. Annotation :*—**Refd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions Aéronautiques Internationales, [1934] 2 K. B. 356.

Part II.—Discovery of Documents.

60. *Add. Annotation :*—*As to* (2) **Refd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

77a. —— **Inquiry as to damages.**]—There is no different principle applicable to an application for discovery of documents on an inquiry as to damages from that which prevails on an application for discovery where any other issue has to be tried between opposing parties.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* LAMBERT HOWARTH & SONS, LTD. (1929), 46 R. P. C. 315.

Annotation :—**Refd.** Draper *v.* Hubert H. P. Trist & Trist-bestos Brake Linings, Ltd. (1935), 53 R. P. C. 66.

86. *Add. Annotation :*—**N.F.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

87a. —— ——.]—WAKEFIELD & CO., LTD. *v.* BOARD (TRADING AS J. P. BOARD & CO.) (1928), 45 R. P. C. 261.

99. *Add. Annotations :*—*As to* (2) **Apld.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134. **Distd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

126. *Add. Annotation :*—**Folld.** Seddon *v.* Commercial Salt Co. (1924), 69 Sol. Jo. 159.

127. *Add. Annotation :*—**Overd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

127a. —— ——.]—By an underlease lands & works were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Powis (Earl)* v. *Negus*, No. 127, made the order asked for :—*Held :* there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his right of re-entry, & that being so, the well-established rule that the ct. would not assist a forfeiture by ordering discovery of documents applied, & the order made against the second defts. must be discharged. *Powis (Earl)* v. *Negus*, No. 127, *overd.*—SEDDON *v.* COMMERCIAL SALT CO., LTD., [1925] Ch. 187 ; 94 L. J. Ch. 225 ; 132 L. T. 437 ; 69 Sol. Jo. 159, C. A.

135. *Add. Annotation :*—**Folld.** Gale *v.* Denman Picture Houses, Ltd., [1930] 1 K. B. 588.

PART I. SECT. 1.

sa. *Whether experiments ordered—Not necessary for proper determination of issues.*]—NICHOLS *v.* T. T. C., [1928] 2 D. L. R. 364 ; 34 Can. Ry. Cas. 252 ; 62 O. L. R. 124.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

130 iv. ——.]—BAILIE *v.* INGLIS & CO., LTD. & JAMISON, [1926] N. 53.—**IR.**

130 v. ——.]—Deft. co. sought production of a diary which had been kept by one of pltfs.' solrs., & which, it was alleged, recorded an interview between such solr. & a person other than pltfs. in the action, at which interview the preparation of a debenture was discussed :—*Held :* the diary was the solrs.' property, & as they were not parties to the action, there was no power in the present proceedings to order production & inspection of their diary.—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

k 1. —— ——.]—In an action by an injured workman against three defts. claiming damages for injuries suffered through the breaking of the gear used in lifting a heavy weight, where discovery had been ordered in favour of one deft. against another deft. on a motion to review the order so made :—*Held :* as in the event of the ct. holding that the accident was due to the gear used being defective there was still an issue between defts. in question, namely, as to which was responsible for the use of the gear, the stevedore or the shipowner, on the implied warranty that the gear supplied was effective there were consequently rights to be adjusted between defts., & the order for discovery was properly made.—CLARKE *v.* ELLERMAN, BUCKNALL & CO., LTD., [1930] N. Z. L. R. 722.—**N.Z.**

sb. *Miners' union—Defence filed raising question whether defendants legal entity.*]—A miners' union entered an appearance in an action, & by statement of defence raised the objection that it was not shown that deft. [illegible] must be deemed, before the trial of the action, to be a corpn. for the purpose of the litigation, & so compellable to make discovery.—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

sd. *Common informer.*]—Although the cts. will not readily assist a common informer by their procedure, yet, as against the Crown when it has made a contract with a person to procure information for its own purposes, that principle is inapplicable, & such a person is entitled to discovery in any proceedings instituted upon the contract.—HEIMANN *v.* COMMONWEALTH (1935), 41 Argus L. R. 501.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.

161 ii. —— ——.]—An individual who brings an action at law against the Commonwealth in the Supreme Ct. of New South Wales *may*, by invoking the auxiliary jurisdiction of that ct. in equity, obtain an order for the discovery of documents against deft.—HEIMANN *v.*

162. *Add. Annotation :—Generally,* **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

171. *Add. Annotations :—As to* (2) **Consd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

214a. ——.]—The ct. will not, save in very exceptional circumstances, order a deft. to produce documents in his possession before pltf. has delivered his statement of claim.—GALE *v.* DENMAN PICTURE HOUSES, LTD., [1930] 1 K. B. 588 ; 99 L. J. K. B. 351 ; 143 L. T. 31 ; 46 T. L. R. 282 ; 74 Sol. Jo. 187, C. A.

238. *Add. Annotations :*—**Refd.** Tecalemit *v* Ex.-A-Gun (1926), 44 R. P. C. 62 ; Gerrard Industries, Ltd. *v.* Box Wiring Co. (1933), 50 R. P. C. 125.

241. *Annotation :*—**Consd.** Draper *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. (1935), 53 R. P. C. 66.

242. *Add. Annotation :*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

254a. Liberty to apply reserved.]—POISSON & WOODS *v.* ROBERTSON & TURVEY (1902), 86 L. T. 302 ; 50 W. R. 260 ; 46 Sol. Jo. 196, C. A.

254b. Pursuant to undertaking on injunction.]—FARROW *v.* SMITH (1915), Yearly Supreme Court Practice.

259. *Add. Annotation :*—**Consd.** Berry & Stewart *v.* Tottenham Hotspur Football & Athletic Co., [1935] Ch. 718.

SECT. 7.—GROUNDS FOR RESISTING.

(Vol. XVIII., p. 71).

For " Sect. 3, sub-sect. 2, *ante*," read " Part III., sect. 9, *post*."

279. *Citations :*—For " BITT. PRAC. CAS. 1 " read " BITT. PRAC. CAS. 13."

324. *Add. Annotation :*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

COMMONWEALTH (1936), 54 C. L. R. 126 ; 9 A. L. J. 384.—**AUS.**

a. *Citation :*—For " [1908] S. C. 335 " read " [1909] S. C. 335."

a i. —— —— *Statutory right to sue Crown.*]—When a statute gives the right to sue an officer or representative of the Crown according to the ordinary practice & procedure of the ct., it must be taken to subject the officer or representative to the compulsory process of the ct. in relation to ordinary incidents of practice & procedure, subject to any special saving or exemption.

The South Australian Harbours Board is an incorporated agent of the Crown under the Harbours Act, 1913, & is empowered to sue & be sued, & by sect. 75 (2), if default is made in the performance of any duty authorised, such actions or suits may be brought as might be brought if the contract had been made between private persons. In an action in respect of such an authorised contract pltf. applied for discovery against deft. Harbours Board :—*Held :* the general tenor of the Harbours Board Act, 1913, is more consistent than otherwise with the intention to subject deft. Board to the ordinary jurisdiction of the ct. with regard to discovery, & accordingly deft. was compellable to make discovery.—GONINAN (A.) & Co., LTD. *v.* SOUTH AUSTRALIAN HARBOURS BOARD, [1931] S. A. S. R. 128.—**AUS.**

a ii. —— —— *Common informer.*]—An individual who for reward contracts with the Crown to furnish information leading to the conviction of persons for evasion of customs duty & to the recovery of duty evaded & the penalties provided by law cannot be regarded, for the purpose of an action brought by him against the Crown on the contract, as a " common informer," & is not disentitled to an order for discovery of documents.—HEIMANN *v.* COMMONWEALTH (1936), 54 C. L. R. 126 ; 9 A. L. J. 384.—**AUS.**

PART II. SECT. 4, SUB-SECT. 3.

d i. —— *Discovery against infant.*]—SAGAN *v.* PATAN, [1931] 3 W. W. R. 772.—**CAN.**

sk. *Action of damages for negligence.*]—An infant pltf. in an action for damages for injuries sustained in an automobile accident *held* examinable for discovery.—RUTHERFORD *v.* CONSOLIDATED PLATE GLASS CO., LTD., [1936] 1 W. W. R. 377 ; 43 Man. L. R. 589.—**CAN.**

PART II. SECT. 4, SUB-SECT. 4.—A.

182 i. *Whether next friend may make affidavit.*]—The ct. will not order a party to an action who is of unsound mind, or his next friend or the Public Trustee administering such person's estate under Mental Defectives Act, 1911, s. 100 (*h*), to make an affidavit of documents in compliance with an order for discovery under Rule 161A ; & Rule 167A does not apply to persons of unsound mind.—TASKER *v.* ALGAR, [1928] N. Z. L. R. 529.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

se. *Not till issues defined.*]—When it is necessary, before an order for discovery can be made, that certain questions in the suit should first be decided, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary to be determined before the question of inspection or discovery can be decided.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

PART II. SECT. 5, SUB-SECT. 3.

218 i. *Not till after defence delivered—Interlocutory judgment signed.*]—After pltf. had signed interlocutory judgment against deft. in an action of tort, deft. sought to examine the pltf. for discovery, the action being about to come on at the assizes for assessment of damages. R. 489 states that the examination of pltf. by deft. may take place at any time after such deft. has delivered his statement of defence :—*Held :* deft. could not examine pltf.—ASHLEY *v.* BRENTON (1889), 13 P. R. 98.—**CAN.**

218 ii. —— ——.]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481 ; 62 O. L. R. 370.—**CAN.**

PART II. SECT. 5, SUBSECT. 4.

p i. —— ——.]—BRITISH COLUMBIA LIQUORS CO., LTD. *v.* CONSOLIDATED EXPORTERS CORPN., LTD., [1930] 2 W. W. R. 379 ; [1931] 1 D. L. R. 195 ; 42 B. C. R. 481.—**CAN.**

240 ii. —— —— ——.]—In a case wherein it appears that deft. knows the facts & pltf. does not, deft. should give discovery before pltf. delivers particulars. In such a case where the order for particulars provided that they should be given by pltf. after examination of deft. for discovery, the order also extended the time for delivery of the defence until after the delivery of the particulars.—ALBERTA WHEAT POOL *v.* NAHAJOWICZ, 1 W. W. R. 483 ; 2 D. L. R. Alta. L. R. 400 ; *affg.*, [1930] 1 D. L. R. 344 ; [1929] 3 W. W. R. 673.—**CAN.**

sf. *Discretion of judge.*]—BLYGH *v.* SOLLOWAY MILLS & Co., LTD., [1930] 2 W. W. R. 208 ; 4 D. L. R. 582 ; 42 B. C. R. 531.—**CAN.**

PART II. SECT. 6.

255 iii. —— ——.]—Resp., a member of the Permanent Defence force of the Union & discharged therefrom as medically unfit, applied for an order on applt. to furnish him with a true copy of the medical certificate issued under Act 27 of 1923, s. 54. He alleged he had sustained injuries in the discharge of & specially attributable to his duties, that he was entitled to receive compensation in manner provided under the sect., that he was desirous of bringing an action to obtain compensation & that it was imperative that a copy of the prescribed medical certificate referred to in sect. 54 should be disclosed to him before any legal steps were taken to enable him to determine the form of relief to which he was entitled. A Provincial Div. having granted the application :—*Held :* as the real dispute between the parties was whether resp.'s ill-health was occasioned in the discharge of his official duties or not &, as it was only when the cause of his ill-health had been established in his favour as a fact, that the necessity for the inspection of the certificate might arise, the application was premature & should have been refused.—UNION GOVERNMENT MINISTER OF DEFENCE *v.* VAN ZYL, [1929] App. D. 131.—**S. AF.**

256 i. —— —— *Alleged partnership.*]—HARNAM SINGH *v.* KAPOOR SINGH (1927), 39 B. C. R. 485.—**CAN.**

PART II. SECT. 9, SUB-SECT. 4.

p i. —— *" Pleadings & proceedings " in specified action.*]—ISITT & ISITT *v.* HAMMOND & NATIONAL RESOURCES SEC. CO. (1924), 34 B. C. R. 133.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.

369 v. —— ——.]—REID *v.* VANCOUVER TUG BOAT CO., LTD., [1928] 2 D. L. R. 244 ; [1928] 1 W. W. R. 800 ; 39 B. C. R. 479.—**CAN.**

370 iii. ——.]—When in an affidavit of discovery privilege is claimed in respect of any document or documents, such document or documents must be specified individually in the schedule attached to the affidavit of discovery, & not referred to as being included

372. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

373. *Add. Annotation :*—**Reld.** Minter *v.* Priest, [1930] A. C. 558.

373a. —— ——.]—THE CITY OF BARODA, No. 874a, *post.*

377. *Add. Annotation :*—**Reld.** Minter *v.* Priest, [1930] A. C. 558.

380. *Add. Annotation :—As to* (1) **Consd.** Redda- & Co., Ltd. *v.* Hartley (1930), 48 R. P. C. 10.

382. *Add. Annotation :*—**Apld.** Reddaway *v.* Hartley (1928), 72 Sol. Jo. 502.

389. *Add. Annotation :—As to* (1) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

394. *Add. Annotations :—As to* (2) **Folld.** The Hopper No. 13, [1925] P. 52. **Apld.** The City of Baroda (1926), 134 L. T. 576 ; Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542. **Reld.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

437a. **Effect of rule.**]—REDDAWAY (F.) & Co. *v.* — (1928), 72 Sol. Jo. 502 ; 45 R. P. C. 432.

437b. ——.]—Before the hearing of the action, an application by pltfs. that deft. be ordered to make a further & better affidavit of documents, or in the alternative, that an order be made, under R. S. C., Ord. 31, r. 19A (3), was refused by the master, on the ground that such an order would be contrary to practice. Pltfs. appealed. It appeared from certain letters that had been disclosed that there were certain letters relative to the issues in the action, as well as other documents, which had not been disclosed ; but it was contended on behalf of deft. that, since the coming into operation of the rule, it was no longer open to a pltf. in such a case to ask for a general further & better affidavit, but that he was confined to the remedy given to him by the rule. It was held by ROMER, J., that the rule did give to persons objecting to an affidavit of documents certain rights which did not exist before the rule was framed ; but that it should not be read as interfering with the rights which were possessed before it came into force ; & that it was apparent, from sources which might be — to, that the deft. had in his possession other documents not disclosed in his affidavit. Deft. was ordered to file a further affidavit. Deft. appealed to the Ct. of Appeal, where the appeal was dismissed on the ground that the service of the notice was out of due time. Deft. filed a further affidavit, whereupon pltfs. applied for a further & better affidavit before MAUGHAM, J., who made an order under R. S. C., Ord. 31, r. 19A (3), ordering deft. to state by affidavit whether the particular documents referred to by the judge, including any documents relating to distribution by deft. of samples of belting & including other specific documents, had at any time been in deft.'s possession, & if not then in his possession, when he parted with them & what had become thereof. Pltfs. appealed, by leave, to the Ct. of Appeal :—*Held :* the appeal should be allowed with costs in any event ; R. S. C., Ord. 31, r. 19A (3), did not cut down the powers of the ct. as expressed in the case of *Jones* v. *Monte Video Gas Co.*, L. R. 5 Q. B. D. 556 ; the order of ROMER, J., must be complied with ; it was an order which was intended to be based upon *Jones* v. *Monte Video Gas Co.*, & there were materials which showed that a further affidavit was necessary ; & a further affidavit must be made by deft.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1930), 48 R. P. C. 10, C. A.

440a. ——.] — ASTRA - NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

442. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

447. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

449. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

450. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451. *Add. Annotation :*—**Folld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451a. —— —— ——.]—By a policy in the form of a Lloyd's policy of marine insurance underwriters insured certain goods & merchandise upon the steamship *L*, or other steamers or conveyances at & from Cairo to Jaffa. The risks insured against included damage by fire, & the policy contained a warehouse to warehouse clause. The adventure consisted of a journey by land from Cairo to Alexandria & thence by sea on the steamship *L.* to Jaffa. In an action upon the policy the assured alleged that the goods had been damaged by fire in the course of transit by lorry from Cairo to Alexandria :—*Held :* upon a summons for directions an order was properly made that pltfs. should make an affidavit of ship's papers, the policy being substantially one of marine insurance.—LEON *v.* CASEY, [1932] 2 K. B. 576 ; 101 L. J. K. B. 578 ; 147 L. T. 165 ; 48 T. L. R. 452 ; 37 Com. Cas. 330 ; 18 Asp. M. L. C. 300, C. A.

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among others contained in a bundle.—RUSHBROOKE *v.* O'SULLIVAN & HIBERNIAN FIRE INSURANCE CO., LTD., [1926] I. R. 500 ; 59 I. L. T. 161.—IR.

370 iv. ——.]—Where privilege is claimed with respect to documents deponent is not required to describe the documents in such a manner as would disclose the nature or particulars of such documents. "A bundle of documents marked 'A' & numbering 1 to 160, all of which documents were initialled by this deponent," is a sufficient identification of the documents.—CAMPBELL *v.* WOODS, IRMIE & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805 ; [1926] 2 W. W. R. 99.—CAN.

PART II. SECT. 10.

385 iv. —— ——.]—Where deft. obtained an order for discovery, & in the affidavit of discovery it was sworn on behalf of pltf. that a document in his possession related solely to pltf.'s case & did not support deft.'s case, & the Supreme Ct. had refused an application by deft. for inspection of the document : —*Held :* on the evidence there was no substantial ground upon which to base a conclusion that the statement in the affidavit was made erroneously or under a misconception of the character of the document, & the application was properly refused.—SMITH, ETC. *v.* SUNDAY TIMES (1923), 31 C. L. R. 552.—AUS.

388 i. —— *Claim of privilege.*]—Where an affidavit sets out positively & definitely that privilege is claimed for certain documents, on the ground that they arose out of negotiations carried on "without prejudice," that statement cannot be contradicted by affidavits or material from the other side ; but it can be attacked or impugned only by some admission or qualification coming from that side.—BLACK *v.* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985 ; [1926] 1 W. W. R. 883.—CAN.

PART II. SECT. 11, SUB-SECT. 2.

h i. ——.]—HUTCHINSON & DOWDING *v.* BANK OF TORONTO (No. 2), [1934] 1 W. W. R. 446 ; 48 B. C. R. 315.—CAN.

452. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

453. *Add. Annotation :*—**Expld. & Distd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

454. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

455. *Add. Annotation :*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

456. *Add. Citations :*—93 L. J. K. B. 169 ; 130 L. T. 139 ; 16 Asp. M. L. C. 236.

Add. Annotation :—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

457. *Add. Annotation :*—**Expld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

461. *Add. Annotation :*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

462a. —— —— **Effect of.**]—Where in an action on a marine policy the usual order is made for the filing of an affidavit of ship's papers & for a stay of proceedings meanwhile, this stay does not operate to paralyse the activities of either party & prevent him preparing his case ; & on a taxation of costs it is for the taxing master to determine, having regard to the stay & all other material factors, whether the costs were reasonably or prematurely incurred.—PÊCHERIES OSTENDAISES (SOC. ANON.) *v.* MERCHANTS' MARINE INSURANCE Co., [1928] 1 K. B. 750 ; 97 L. J. K. B. 445 ; 138 L. T. 532 ; 44 T. L. R. 270 ; 72 Sol. Jo. 102 ; 17 Asp. M. L. C. 404, C. A.

Annotation :—**Refd.** The Channel Queen, [1928] P. 157.

468. After this case add " For form of order for production of ship's papers, *see* R. S. C (No. 1), 1915, r. 11."

Part III.—Production and Inspection.

494. After this case add "**Receiver & manager appointed by debenture-holders—Liability to produce.**]—*See* COMPANIES, No. 5067a, *ante*."

528a. —— **Action on bill of exchange—Deed giving time to principal debtor.**]—Where an action on bills of exchange was brought against deft., who pleaded that he was liable, if at all, as a surety only :—*Held :* he was not entitled to the inspection of a deed in pltf.'s possession, by which it was suggested time had been given to the principal debtor, but to which deed the surety was no party.—SMITH *v.* WINTER (1838), 3 M. & W. 309 ; 6 Dowl. 386 ; 1 Horn & H. 45 ; 7 L. J. Ex. 79 ; 150 E. R. 1162.

532a. —— **Action to avoid policy for non-disclosure—Documents relating to other policies containing disclosures.**]—Pltf. co. brought an action & asked for a declaration that it was entitled to avoid an insurance policy, on the ground that it had been obtained by non-disclosure of material facts. The assured had failed to disclose that he had been convicted of two motoring offences. Defts. denied that this non-disclosure was material, & applied for discovery of documents relating to policies where disclosure of similar convictions had been made :—*Held :* the discovery sought was not material to the issue raised. A prudent insurer, who might accept a policy where a conviction had been disclosed, might nevertheless refuse to accept one where he subsequently discovered that the conviction had been concealed.—MERCHANTS' & MANUFACTURERS' INSURANCE Co.,

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PART III. SECT. 3.

sa. *County court.*]—The county ct. has power to make an order for the production of documents apart from an examination for discovery.—MCDONALD *v.* HOWIE, [1931] 3 W. W. R. 773 ; 40 Man. L. R. 302.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

sb. *Right to examine officers & employees in any order.*]—In the absence at least of special circumstances, the right of pltf. to examine for discovery the officer & employees of a deft. co. in whatever order he wishes will not be interfered with.—COTE *v.* CANADIAN NATIONAL RY. Co., [1930] 1 W. W. R. 591 ; 2 D. L. R. 999.—**CAN.**

sd. *Right to examine several officers.*]—HARRISON MILLS, LTD. *v.* ABBOTSFORD LUMBER Co., LTD., [1935] 1 W. W. R. 480 ; 49 B. C. R. 301.—**CAN.**

sg. *Solicitor acting as servant of company.*]—Where duties which can be, & usually are, performed by an official, servant or agent of a co. are performed by a solr., the fact that he is a solr. does not render him immune from examination for discovery with respect to the transactions so performed.—CANARY *v.* VESTED ESTATES, LTD., [1930] 1 W. W. R. 996 ; 3 D. L. R. 989 ; 43 B. C. R. 1.—**CAN.**

sd. *Officer — Who is — Architect.*]—HYSLOP *v.* NEW WESTMINSTER BOARD OF SCHOOL TRUSTEES, [1930] 3 W. W. R. 227 ; 4 D. L. R. 1030.—**CAN.**

sm. —— —— *Insurance adjuster.*]—The adjuster who had been engaged by the fire insurance cos. to make the adjustment of pltf. lumber co.'s loss held not to have been under the circumstances of this case, an " officer " of the insurance cos. within rule 370c (1) providing for the examination for discovery of one who has been an officer of a corpn.—KAPOOR LUMBER Co., LTD. *v.* CANADIAN NORTHERN PACIFIC RY. Co., [1932] 2 W. W. R. 417 ; 3 D. L. R. 487 ; 45 B. C. R. 213.—**CAN.**

PART III. SECT. 4, SUB-SECT. 7.

se. *Deponent on application for security for costs—Production of documents referred to in affidavit.*]—COLLEGE BRAND CLOTHES Co., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sf. *Employee — Who is — Agent — Burden of proof.*]—Where an order for the examination for discovery of an employee is sought under rule 234 & there is a dispute as to whether the persons sought to be examined are in fact employees, the burden of proving the employment rests on the party asking for the examination. An agent is not an employee within the meaning of said rule.—HOSKINS *v.* MINNEAPOLIS THRESHING MACHINE Co., [1930] 1 W. W. R. 369 ; 2 D. L. R. 696 ; 24 Alta. L. R. 437.—**CAN.**

sf. *Executor.*]—On an examination for discovery, the principle relating to officers & agents of a co. which requires that they shall obtain information when they do not have it of their own personal knowledge, does not apply in the case of an exor. ; & he will not be compelled to answer questions concerning matters of which he has no personal knowledge.—BRIESE *v.* DUGARD, [1935] 3 W. W. R. 68 ; 43 Man. L. R. 339.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.

525 ii. ——.]—HAMILTON *v.* STREET (1850), 1 Gr. 327.—**CAN.**

525 iii. —— *Documents supporting case—Or repelling defendant's case.*]—As a general rule pltf. in equity is entitled to a discovery, not only of that which constitutes his own title, but also of whatever is material to repel the case set up by deft. ; &, as a part of that discovery, to the production of such documents as are material for the same purpose.—LAWLOR *v.* MURCHISON (1852), 3 Gr. 553.—**CAN.**

r i. —— ——.]—In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid & which had been recovered against them in an action in which the insurance co. had conducted the defence :—*Held :* pltfs. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS *v.* LONDON GUARANTEE & ACCIDENT Co., LTD., [1925] 1 W. W. R. 1023.—**CAN.**

LTD. *v.* DAVIES, [1937] 2 All E. R. 767 ; 106 L. J. K. B. 433 ; 156 L. T. 524 ; 53 T. L. R. 717 ; 81 Sol. Jo. 457, C. A.

539. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

539a. —— **Action for slander.**]—DAY *v.* TUCKETT (1846), 7 L. T. O. S. 234.

544. *Add. Annotation :—As to* (2) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

551a. Document relating to compromise with third party.]—A party to a suit cannot be required to produce documents relating to the compromise of a dispute between himself & a person not a party to the suit.—WARRICK *v.* QUEEN'S COLLEGE, OXFORD (No. 2) (1867), L. R. 4 Eq. 254.

555a. ——.]—In an action of slander imputing to pltf. that he was the writer of a scandalous letter reflecting upon deft., the latter in one of his pleas set forth the letter & justified the words spoken :—*Held :* pltf. should inspect the letter with witnesses, in order that he might be prepared at the trial to show that it was not in his handwriting.—CURTIS *v.* CURTIS (1833), 3 Moo. & S. 819.

575a. Applies to answers to interrogatories.]—I am of opinion that the word "affidavits" in r. 15 is wide enough to include an answer to interrogatories, & I cannot see why the meaning should be narrowed so as to exclude it (DENMAN, J.).—MOORE *v.* PEACHEY, [1891] 2 Q. B. 707 ; 65 L. T. 750 ; 39 W. R. 592 ; 7 T. L. R. 748, D. C.

588. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

594. For existing para. substitute :—

In a suit by a contractor against a ry. co., in respect of works done for them, a motion was by defts., that pltf. should produce all written communications which had passed between certain persons, naming them, & all account books, documents, papers & writings relating to the contracts in the bill mentioned. Defts.' solr. made an affidavit in support of the motion, that he believed that pltf. had documents as stated in the notice of motion ; & pltf., by an affidavit in answer, admitted that he had in his possession a great mass of documents relating to the works in question, but stated that to ascertain which of them came within the terms of the motion would be productive of great expense & inconvenience to him. The ct. made the order according to the terms of the motion.—M'INTOSH *v.* GREAT RY. CO. (1852), 1 Sm. & G. 4.

597a. ——.]—Where one party has a document in his possession in which both parties have a common interest, as, for instance, a document containing the terms of the contract sued upon, & the other party seeks inspection of such document, he is entitled to discovery at common law & independently of the . . . rules (MATHEW, J.).—BROWN *v.* LIELL (1885), 16 Q. B. D. 229 ; 55 L. J. Q. B. 73 ; 2 T. L. R. 4.

599a. —— —— —— **Co-defendant not party to application.**]—Upon motion on behalf of a deft. in a suit, for production by pltf. of a document of which pltf. had obtained production by an order against his co-deft., the ct. refused to make an order in the absence of the latter.—REYNOLDS *v.* GODLEE (1858), 4 K. & J. 88 ; 32 L. T. O. S. 35 ; 70 E. R. 37.

614. After this case add :—

In possession of director after appointment as receiver for debenture-holders.]—*See* COMPANIES, No. 5067a, *ante*.

640a. Broker's book.]—BROWNING *v.* AYLWIN (1827), 7 B. & C. 204 ; 9 Dow. & Ry. K. B. 801 ; 5 L. J. O. S. K. B. 320 ; 108 E. R. 699.

Annotations :—**Distd.** Smith *v.* Winter (1838), 3 M. & W. 309 ; Day *v.* Tuckett (1846), 10 J. P. Jo 358. **Refd.** Mutter *v.* Eastern & Midland Ry. (1888), 38 Ch. D. 92.

650a. —— ——.]—ROSS *v.* LAUGHTON (1813), 1 Ves. & B. 349 ; 35 E. R. 136.

Annotations :—**Consd.** Griffiths *v.* Griffiths (1843), 12 L. J. Ch. 397 ; Simmonds *v.* G. E. Ry. (1868), 3 Ch. App. 797 ; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1 ; *Re* Rapid Road Transit Co., [1909] 1 Ch. 96. **Refd.** Bozon *v.* Bolland, Husband *v.* Bolland (1839), 4 My. & Cr. 354.

651a. —— ——.]—BAKER *v.* HENDERSON (1830), 4 Sim. 27 ; 58 E. R. 11.

Annotations :—**Distd.** Warburton *v.* Edge (1839), 9 Sim. 508. **Refd.** *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

653. *Add. Annotations :*—**Apld.** *Re* Cameron's Coalbrook, etc., Ry. (1859), 25 Beav. 1. **Refd.** Lockett *v.* Cary (1864), 3 New Rep. 405 ; Fowler *v.* Fowler (1881), 29 W. R. 800 ; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

PART III. SECT. 5, SUB-SECT. 3.

577 iii. ——.]—BRADBURY *v.* MOFFATT & CARMAN (1884), 1 Man. L. R. 92.—**CAN.**

583 i. *Possession of agent—Agency must be established—Pay-in slips in hands of banker.*]—A bank, retaining pay-in slips which have accompanied payments into a customer's account, does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262 ; [1928] Argus L. R. 169. —**AUS.**

sg. *Documents not produced at first hearing—Official records needed to assist court—Leave granted to admit at later stage.*]—Where a party has not produced at the first hearing, as required by Ord. 13, r. 1, the documents in his possession or power on which he relies the leave of the ct. under r. 2, admitting them at a later stage, should not ordinarily be refused if the documents are official records of undoubted authenticity which may assist the ct. to decide rightly the issues before it. —GOPIKA RAMAN ROY *v.* ATAL SINGH (1929), L. R. 56 Ind. App. 119.—**IND.**

sh. *Documents voluntarily delivered to agent of Attorney-General.*]—It appearing from the affidavits filed on an application by pltfs. for an order that defts. file a further & better affidavit of documents, that the books & documents in question had been voluntarily turned over to the duly authorised representative of the Attorney-General of British Columbia & that the documents were now in the sole possession & power of the representative, the application was refused. —MACKEE *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 W. W. R. 624 ; 2 D. L. R. 822 ; 44 B. C. R. 42.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—F.

sj. *General rule.*]—In the case of public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be disclosed.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

sk. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (*c.* 66).]—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

PART III. SECT. 6.

o i. —— *May be dispensed with.*]—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. *v.* CANADIAN PACIFIC

714. *Add. Annotations :—As to* (1) **Distd.** The City of Baroda (1926), 134 L. T. 576. **Folld.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527, C. A. *As to* (2) **Expld.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90. **Consd.** Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542.

736. *Add. Annotation :—***Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

740. *Add. Annotation :—***Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

743. *Add. Annotation :—***Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

747. Add para. :—
"Such privilege being the privilege of the client & not of the attorney."

754. *Add. Annotation :—As to* (2) **Refd.** Minter *v.* Priest, [1930] A. C. 558.

757. *Add. Annotation :—***Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

759. *Add. Annotation :—***Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

763. *Add. Annotation :—***Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

805a. ——.] — Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltfs.—VIGNERON-DAHL (BRITISH & COLONIAL), LTD. *v.* PETTIT (1925), 69 Sol. Jo. 693 ; 42 R. P. C. 431.

821. *Add. Annotation :—***Refd.** Minter *v.* Priest, [1930] A. C. 558.

823. *Add. Annotations :—As to* (1) **Apld.** The City of Baroda (1926), 134 L. T. 576. **Consd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527 ; Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542.

843a. —— ——.]—ANKIN *v.* LONDON & EASTERN RY. CO., No. 1209a, *post.*

874a. —— ——.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery :—*Held :* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576 ; 70 Sol. Jo. 1044 ; 17 Asp. M. L. C. 27.

Annotation :—Generally, **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

890. *Add. Annotation :—***Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

891a. ——.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report

RY. CO., [1925] 4 D. L. R. 772 ; [1925] 3 W. W. R. 571.—**CAN.**

PART III. SECT. 9, SUB-SECT.

r i. —— *Letter dictated by solicitor—& reply thereto.*]—*Held :* privileged.—MERCHANTS BANK *v.* MOFFATT (1876), 6 P. R. 348.—**CAN.**

r ii. —— *Notes of evidence taken during arbitration.*]—*Held :* not privileged from discovery & inspection in a subsequent action between the same parties.—EAST TAMARI CO-OPERATIVE DAIRY CO. *v.* NORNEN, [1928] N. Z. L. R. 395.—**N.Z.**

r iii. —— *Confined to legal advisers—Patent agent—Communications in respect of pending application for patent —Not privileged.*] — MCKERCHER *v.* VANCOUVER-IOWA SHINGLE CO., LTD. (B. C.), [1929] 4 D. L. R. 231 ; 2 W. W. R. 287.—**CAN.**

r iv. —— *Solicitor acting employee of party.*]—DE LA GIRODAY *v.* MCCAFFERY, [1930] 2 W. W. R. 576.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—B.

718 i. *General rule.*]—Communications between solr. & client which are privileged from production do not cease to be so privileged in a subsequent action merely because of the fact that pltf. therein was deft. in the former action.—NORTH-WESTERN UTILITIES, LTD. *v.* CENTURY INDEMNITY CO., [1934] 3 W. W. R. 139.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—C. (a).

s i. —— —— ——.]—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—C. (b).

807 ii. —— *Letter included in—Not privileged.*]—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—D.

823 i. *General rule.*]—BELL *v.* TORONTO TRANSPORTATION COMMISSION (1936), 5 F. L. J. (Can.) 246.—**CAN.**

PART III. SECT. 9, SUB-SECT. F. (a).

856 i. *No privilege—Litigation not contemplated.*]—SMITH *v.* C. N. RY. (Alta.), [1926] 2 D. L. R. 372.—**CAN.**

g i. —— —— *Report of local manager —To head office of insurance company.*] —*Held :* privileged.—GRAIN CLAIMS BUREAU, LTD. *v.* CANADIAN SURETY CO. (Man.), [1927] 4 D. L. R. 297 ; [1927] 2 W. W. R. 407.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—F. (b) ii.

e i. *S. P.* STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

.]—Where following a railway accident in which personal injury or property damage is incurred the railway co. obtains reports thereof from its employees for the use of its solr. as material on which he may give it his professional advice & conduct its defence with respect to an action or actions which it anticipates will, in default of settlement be brought against it as a result of the accident, said reports are privileged from production even though made before such an action has been actually brought or threatened, & although obtained, not solely for such use by the solr., but also for the use of other officials of the co. in determining, *e.g.*, what, if any, discipline should be given the employees in the accident.—MAYGARD *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1929] 2 D. L. R. 953 ; 2 W. W. R. 27 ; 35 C. R. C. 288.—**CAN.**

e iii. —— *Reports of claims agent.*]—STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

f i. —— *Report of investigator for insurance co.*]—In an action by an insurance co. to recover from a person whose fidelity it had insured the amount paid by it under the bond :—*Held :* reports made to it by an investigator whom it had instructed to investigate after the insured had given notice of the loss were privileged from production, since there was nothing to suggest any lack of good faith in the setting up of the claim & the affidavit in support thereof satisfied the requirements for such a claim in that it showed that the reports were obtained for the co.'s solr. as material on which his advice should be taken with respect to an anticipated action.—GILLESPIE GRAIN CO., LTD. & GRAIN INSURANCE & GUARANTEE CO. *v.* WACOWICH, [1932] 1 W. W. R. 916 ; 3 D. L. R. 255 ; 26 Alta. L. R. 263.—**CAN.**

886 ii. ——.]—LAURENSON *v.* WELLINGTON CITY CORPN., [1927] N. Z. L. R. 510.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—F. (c).

a. *Citation :*—For "[1908] S. 335" read "[1909] S. C."

was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended that the report must be produced:—*Held:* there having been a collision it was to be anticipated that there would be litigation, & although the report went through various hands, it was made for the purpose of being put before the solrs.; the report therefore complied with the tests laid down by BUCKLEY, L.J., in *Birmingham & Midland Motor Omnibus Co.* v. *London & North Western Ry. Co.*, No. 394, *ante*, & was privileged from production.—THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotations:—**Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1903] 1 K. B. 527.

893. *Add. Annotation:*—**Distd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

904. *Add. Annotations:*—**Dbtd.** Ogdon *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

905. *Add. Annotation:*—**Refd.** The Hopper No. 13, [1925] P. 52.

906a. ——.]—Reports by servants of a railway co. of an accident, made for the information of the railway co.'s solrs. & in anticipation of litigation, are privileged from inspection.—OGDEN *v.* LONDON ELECTRIC RY. CO. (1933), 149 L. T. 476; 49 T. L. R. 542, C. A.

926. *Add. Annotation:*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

933. *Add. Annotation:*—**Consd.** Minter *v.* Priest, [1930] A. C. 558.

941. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

1039a. —— ——.]—GREENWOOD *v.* ROTHWELL (1844), 7 Beav. 291; 13 L. J. Ch. 226; 2 L. T. O. S. 496; 49 E. R. 1077.

1087a. —— ——.]—Notwithstanding a statement in deft.'s answer that a deed of conveyance, the production of which is sought by pltf. for his inspection, is his title deed, & does not in any manner evidence pltf.'s title, the deed will be ordered by the ct. to be produced if it appear on the face of the answer that its contents may prove material to pltf.'s case.

A partition was made, prior to the reign of King Henry VIII., of an ancient manor, by dividing it into two reputed manors, to which divers tenements were respectively allotted in severalty, but a considerable portion of waste lands of the original ancient manor continued undivided, the property of the two lords of the reputed manors, as tenants in common. The information stated that part of deft.'s ancient freehold tenements, situate within one of the reputed manors, consisted of uninclosed lands, & that some portion thereof was waste land held of the ancient manor, & that of such the informant was tenant in common with the deft.; deft. admitted, by his answer, that there were such waste lands, but stated that the same were allotted, & formed part of deft.'s ancient freehold tenements, & that deft., in the year 1829, obtained from the lord of the reputed manor in which his ancient tenements were situate, a conveyance of the manorial & other rights, fine rents, etc., belonging to the lord over those tenements, except the right to tin-stuff & sporting. The information insisted that the uninclosed lands, except the ancient tenements, were held by the two lords as tenants in common, & were subject to tin-bounds, & that waste & unallotted lands only were subject to tin-bounds. Deft. stated that there was a difference of opinion, as to whether lands subject to tin-bounds were always waste lands, & insisted that the deed of conveyance of 1829 was the title deed of deft., & in no manner evidenced the informant's title. The deed & the map delineated thereon, were, notwithstanding, ordered to be produced for the informant's inspection.—A.-G. OF PRINCE OF WALES *v.* LAMBE (1848), 11 Beav. 213; 17 L. J. Ch. 154; 10 L. T. O. S. 498; 12 Jur. 386; 50 E. R. 798.

1087b. —— **Deed pleaded.**]—PENARTH HARBOUR, DOCK & RY. CO. *v.* CARDIFF WATERWORKS CO. (1860), 7 C. B. N. S. 816; 29 L. J. C. P. 230; 1 L. T. 551; 6 Jur. N. S. 942; 8 W. R. 215; 141 E. R. 1036.

Annotation:—**Consd.** Price *v.* Harrison (1860), 8 C. B. N. S. 617.

PART III. SECT. 9, SUB-SECT. 1.—H.

924 i. *Privileged — Communication with view to compromise—Copy not retained by solicitor.*]—*Held:* although the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

924 ii. —— —— *Stipulation in event of failure to agree.*]—Negotiations carried on "without prejudice," & with a view to the settlement of an action, & all letters & communications arising out of such negotiations, are privileged from production.—BLACK *v* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—**CAN.**

PART III. SECT. 9, SUB-SECT. 2.—A.

b i. —— *Adjuster's report to fire insurance company.*]—In an action on a fire-insurance policy held that a confidential report made by an adjuster to deft. was protected from inspection by pltf., where it was objected in deft.'s affidavit on production, that the report related solely to the case of deft. & not to that of pltf. & did not tend to support the latter.—LITWIN INSURANCE CO., [illegible]; 4 [illegible]
40 Man. L. R. 461.—**CAN.**

PART III. SECT. 9, SUB-SECT. 4.

1116 ii. ——.]—SYDNEY CHEESE & BUTTER FACTORY ASSOCN. *v.* BROWER (1900), 19 P. R. 152.—**CAN.**

sh. *Servant.*]—A servant cannot be compelled to produce the documents of his master where the suit or proceeding is one to which the master is not a party & it is not shown that he has given authority for their production, even though the master is outside the jurisdiction of the ct.—CHAPMAN & SONS *v.* STODDART & CO., [1930] 3 W. W. R. 171; 4 D. L. R. 1013.—**CAN.**

PART III. SECT. 9, SUB-SECT. 5.

1132 i. *Objection attaches to production not discovery.*]—MILLS *v.* MERCER CO., LTD. (1893), 15 P. R. 276.—**CAN.**

1136 i. *Discovery tending to incriminate—Not enforced.*]—Where a person who has been required to make an affidavit of documents refuses to produce certain documents on the ground that they are privileged because they may criminate him or, where he makes the affidavit as an officer of a co., may criminate the co., & after inspection thereof the judge finds that the documents may be criminating to him or the co., their production cannot be compelled, where such ground of privilege is not taken away by statute or by a rule having the force of a statute. There is no such statute or rule in force in Alberta.—WEBSTER & KIRKNESS *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 D. L. R. 831; [1930] 3 W. W. R. 445; 25 Alta. L. R. 8; *affg.*, [1930] 3 W. W. R. 381.—**CAN.**

1136 ii. —— ——.]—The fact that the party against whom the inspection is sought has already been prosecuted & there is no probability of any further prosecution does not deprive him of the privilege, where, at any rate, the judge is not prepared to say that there is really no possibility of any prosecution by any one & that, therefore, the docu-

1144. *Add. Citation :*—1 Leach, 300, n.
Add. Annotation :—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

1150a. —— ——.]—To a bill stating deft.'s marriage with a particular woman, plea, that she is his sister, protects him from discovery of any fact forming a link in the chain.—CLARIDGE *v.* HOARE (1807), 14 Ves. 59 ; 33 E. R. 443.

1197. *Add. Annotation :*—**Refd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

1198. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1202. *Add. Annotations :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704 ; Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

1207. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

1208. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1208a. —— —— **Objection to class of documents—Statements to police in running-down cases—Not privileged.**]—Pltf. in an action for damages for negligence called as a witness a sergeant of police, who gave evidence of an oral statement made by deft. when he (the police sergeant) arrived on the scene of the accident. He went on to say that three days later he took a further statement from deft., after duly cautioning him, that that statement was reduced to writing & that a prosecution of deft. was in contemplation. An objection to the production of that document was taken on behalf of the Comr. of Police on instructions from the Secretary of State for Home Affairs on the ground that it belonged to a class of documents which it would be contrary to the public interest to produce in a ct. of justice :—*Held :* the objection had not been taken in the manner in which the law requires an objection of this kind to be taken, in order to render it effective ; the objection, therefore, failed & the documents must be produced.—SPIGELMAN *v.* HOCKEN, GOLDBLATT *v.* HOCKEN (1933), 150 L. T. 256 ; 50 T. L. R. 87 ; 77 Sol. Jo. 852.

1209a. —— ——.]—(1) In an action to recover damages for personal injury incurred in an accident on defts.' railway, an order having been made for discovery of documents, defts. in an affidavit stated that they had in their possession a copy of a report made by them to the Ministry of Transport under Regulation of Railways Act, 1871 (c. 78), s. 6. They objected to produce this document on the ground that it was a copy of a confidential document made in discharge of their duty to the Crown & that it was privileged inasmuch as it could not be disclosed without injury to the public interest. The deponent also produced & verified a copy of a letter written by him to the Minister of Transport, & the reply thereto of the Minister to the effect that reports made in pursuance of sect. 6 of the Act aforesaid were furnished for his own information & guidance & that it was his practice in the public interest to decline any request to inspect these reports or to obtain copies of them :—*Held :* it was the practice of the ct. to accept the statement of a Minister of the Crown upon the question whether production of a document would be contrary to the public interest ; & consequently the document in question was privileged from production.

(2) Privilege was also claimed for other documents on the ground that they were " confidential communications at the instance & request & for the use of defts.' solr. between the officials of the deft. co. & between those officials & third persons after this action was threatened or anticipated for the purpose of obtaining for & furnishing to the defts.' solr. evidence & information as to the evidence which will be obtained & otherwise for the use of the said solr. to enable him to defend this action & to advise defts." :—*Held :* these documents were also privileged.—

ments have lost the criminating tendency which they otherwise would have.—LOCKETT *v.* SOLLOWAY MILLS & Co., LTD. (No. 2), [1931] 3 W. W. R. 389 ; 46 B. C. R. 211.—**CAN.**

b i. —— *Not taken away by Alberta Evidence Act, R. S. A.*, 1922 (*c.* 87), *ss.* 3, 7.]—CAMPBELL *v.* WOODS, IRMIE, & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805 ; [1926] 2 W. W. R. 99.—**CAN.**

aj. *Waiver of objection—Propriety of production cannot be raised on appeal.*]—On the trial of an action for conversion deft. co. refused at first to produce its books, its ground being that their production might tend to criminate the co. The trial judge ruled that unless they were produced he would strike out the statement of defence. Thereupon deft.'s counsel produced them & evidence founded on them was taken, & judgment given for pltf. :—*Held :* by so electing the objection was in effect withdrawn & the question whether the co. had been improperly compelled to produce the books could not be raised on an appeal from the judgment.—LOCKETT *v.* SOLLOWAY MILLS & Co., LTD., [1932] 1 W. W. R. 886 ; 3 D. L. R. 600 ; 45 B. C. R. 375 ; *affg.*, [1931] 3 W. W. R. 302.—**CAN.**

al. *Statements made to detective.*]—In an action to recover back the prize money in a lottery which it was alleged had been won by fraud pltf. issued a subpœna to a detective to whom sundry people had made statements in writing relating to the adjudicator. These were made with a view to criminal proceedings :—*Held :* the documents were privileged from production.—CALL & MIRROR NEWSPAPERS, LTD. *v.* HUMBLE, [1933 W. A. L. R. 54.—**AUS.**

PART III. SECT. 9, SUB-SECT. 8.

f i. —— ——.]—HELLET *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 65.—**S. AF.**

h i. —— ——.]—In an action for damages for personal injuries sustained in 1928 in a motor car collision, defender averred that certain knee injuries which pursuer ascribed to the collision were due to gunshot wounds received by pursuer during war service, & he craved a diligence for recovery of the medical history sheets & other military records applicable to pursuer. The War Dept. objected to produce these documents :—*Held :* while the ct. has power to order production of documents in the custody of a public dept., even though the dept. pleaded public interest as a ground for refusing to produce them, the documents here in question did not appear to be of such material value to the case as to warrant an order for their production. —CAFFREY *v.* INVERCLYDE (LORD), [1930] S. C. 762.—**SCOT.**

h ii. —— ——.]—In every civil case whether the Crown is a party or not, & whether, if the Crown is a party, it is a party in a trading or in an administrative capacity, where privilege is claimed for a document on the ground that its disclosure would be contrary to the interests of the public, the ct. has always in reserve the power of examining the document for which protection is sought, in order to ascertain whether the public interest would be prejudiced by its production, & to require some indication of the injury which would result from such production.—GISBORNE FIRE BOARD *v.* LUNKEN, [1936] N. Z. L. R. 894 ; *sub nom.* RODDA *v.* LUNKEN, [1936] G. L. R. 604 ; 12 N. Z. L. J. 291.—**N.Z.**

o. *Citation :*—For " [1908] S. C 335 " read " [1909] S. C. 335."

q. *Add. Citation :*—60 J. P. 152.

ak. *Publication against public policy —Objection by Attorney-General.*]—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production for inspection would be prejudicial to the public interests, is conclusive & an answer to an application for an order for inspection.—GRIFFIN *v.* STATE OF SOUTH AUSTRALIA (1925), 36 C. L. R. 378.—**AUS.**

ANKIN *v.* LONDON & NORTH EASTERN RY. Co., [1930] 1 K. B. 527; 99 L. J. K. B. 293; 142 L. T. 368; 46 T. L. R. 172; 74 Sol. Jo. 26, C. A.

Annotations:—As to (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1210. *Add. Annotations:*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1212. *Add. Annotation:*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1213. *Add. Annotation:*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1218. *Add. Annotations:*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391; Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1223. *Add. Annotations:—As to* (2) **Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737; Errington *v.* Minister of Health, [1935] 1 K. B. 249; Frost *v.* Minister of Health, [1935] 1 K. B. 286; Cooper *v.* Wilson, [1937] 2 K. B. 309.

1223a. Report of railway company to Ministry of Transport—Under Regulation of Railways Act, 1871 (c. 78), s. 6.]—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., No. 1209a, *ante*.

1266a. ——.]—An application before decree to have documents produced for inspection to intended witnesses is a special application, & only to be made on special grounds.

Where defts. did not by their answer deny the genuineness of a deed, but merely stated that they did not know whether they had executed it, & after an ordinary inspection applied for an order allowing inspection of it by witnesses, which application was not supported by any affidavit as to the deed being forged, but only by an affidavit of defts.' solr. to the effect that he was advised & believed that it was necessary to his clients' case that the deed should be so inspected by witnesses:—*Held:* an order for inspection by witnesses ought not to be made. —BOYD *v.* PETRIE (1868), 3 Ch. App. 818.

Annotation:—**Refd.** A.-G. *v.* Whitwood Local Board, A.-G *v.* Castleford Local Board (1871), 40 L. J. Ch. 592.

1283a. ——.]—AKT. FÜR AUTOGENE ALUMINIUM SCHWEISSUNG *v.* LONDON ALUMINIUM CO., LTD. (No. 2) (1921), 38 R. P. C. 361.

1309. *Add. Annotation:*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1311a. ——.]—An affidavit in support of a claim to seal up certain passages in a book not being sufficiently explicit, the ct. inspected the disputed passages in order to determine their right to protection.—LAFONE *v.* FALKLANDS ISLANDS CO. (1857), 27 L. J. (Ch.) 25.

—.]—The ct. will examine documents claimed to be privileged to see whether they establish a case of privilege.—VETTER *v.* SCHREIBER (1888), 53 J. P. 39.

PART III. SECT. 12.

o 1. ——.]—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—BLOOMFIELD *v.* MONARCH, ETC., CO. (No. 1), [1927] 1 W. W. R. 140; *affd.*, [1927] 3 D. L. R. 335; [1927] 2 W. W. R. 196; 36 Man. L. R. 603.—**CAN.**

sa. *Purpose — Criminal trial in progress—Making copies available for civil trial.*]—When the criminal trial of defts. now in progress is completed, it is at present entirely uncertain what will become of the books & documents in question. They may be handed over to defts. if they are acquitted, & thereupon removed out of the jurisdiction, or, if retained by the Crown, it may become necessary to remove them out of Ontario in connection with criminal prosecutions in other Provinces of Canada. It is therefore proper that an order should be made under rule 350, not for discovery, but so that certified copies of these documents & papers may be available as evidence at the trial of this action.—WALKER *v.* SOLLOWAY MILLS & CO., [1931] 4 D. L. R. 296; O. R. 650.—**CAN.**

PART III. SECT. 15.

1311 ii a. ——.]—Ord. 31, r. 14, sub-r. (2), of the South Australian Rules of Court—which, like R. S. C., Ord. 31, r. 19A, sub-r. (2), of the English rules, provides that where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the ct. or a judge to inspect it for the purpose of deciding as to the validity of the claim, applies where privilege is claimed for an official document on the ground that its disclosure would be contrary to the interests of the public, even though the claim is supported by a statement to that effect by the Minister responsible. The ct. has always had in reserve the power to inquire into the nature of the document for which protection is so sought, & to require some indication of the injury which would result from its production. When a State, being a party to litigation & bound to give discovery, claims privilege for documents upon the ground above stated, the claim should be made under oath by a responsible Minister whose mind has been directed to the material question. A claim to protection in the case of documents relating to the trading, commercial or contractual activities of a State can rarely be sustained, especially in time of peace. That documents would prejudice the case of the State in the litigation, or assist the other party, is a compelling reason for their production only to be overborne by the gravest reasons of State policy or security. Applt. brought an action in the Supreme Ct. of South Australia against resp. State claiming damages for alleged negligence in the care of wheat placed in the control of the State under Wheat Harvest Acts, 1915-17. Upon an order for discovery the respondent State, by an affidavit made by a civil servant, claimed privilege in respect of 1,892 documents tied in three bundles, & stated to be State documents, comprising communications between officers administering the department concerned; there was exhibited to the affidavit a minute by the responsible Minister stating (*inter alia*) that disclosure of the documents would be contrary to the interests of the State & of the public:—*Held:* the minute was inadequate to support the claim of privilege, as it was too vague in the circumstances of the case, & was not a statement on oath showing that the Minister had himself considered each of the documents, or indicating the nature of the suggested injury to the interests of the public; & the Supreme Court should exercise its power under Ord. 31, r. 14, sub-r. (2), to inspect the documents, that course being less likely to cause delay than an order for a further and better affidavit of documents.—ROBINSON *v.* SOUTH AUSTRALIA STATE (No. 2), [1931] A. C. 704; 100 L. J. P. C. 183; 145 L. T. 408; 47 T. L. R. 454; 75 Sol. Jo. 458, P. C.—**AUS.**

1311 v. ——.]—Where a claim of privilege is made in an affidavit on production of documents, it is not necessary that it should first be made to appear that the claim of privilege is improper before the judge can direct the production for his inspection under rule 372 (2) of the documents for which privilege is claimed.—WEBSTER *v.* SOLLOWAY MILLS & CO., LTD., [1931] 1 D. L. R. 749; [1930] 2 W. W. R. 514; 24 Alta. L. R. 632.—**CAN.**

Part IV.—Interrogatories.

1314. *Add. Annotation :—As to* (1) **Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1316a. By whom settled.]—On application being made by motion in an action in regard to reserved costs of interrogatories delivered, the question arose as to the persons to settle them :—*Held :* it was no part of the business of the judge in chambers nor the master. They had to see that they were neither oppressive nor irrelevant. The duty of settling was on the party who drew them.—" PRACTICE NOTE " (1930), 169 L. T. Jo. 123 ; [1930] W. N. 24.

1374a. ——.]—As regards the person from whom the information is to be obtained, *primâ facie* the secretary is the best person ; but I quite admit that they were entitled to have information from such persons as can best give it with respect to the matters which are the proper subject for the interrogatories, though I am not prepared at present to decide who should answer them ; except that, as at present advised, I do not think the traffic manager would be the proper person for the purpose (NORTH, J.).—A.-G. *v.* NORTH METROPOLITAN TRAMWAYS CO., [1892] 3 Ch. 70 ; 61 L. J. Ch. 693 ; 67 L. T. 283 ; 36 Sol. Jo. 665 ; *affd.* (1895), 72 L. T. 340, C. A.

PART IV. SECT. 1.

1314 vii. ——.]—With respect to the scope of an examination for discovery, the practice is now settled in favour of a full examination " touching the matters in question in the action," & is not confined to matters respecting which discovery might have been sought under the old Chancery practice in England.—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1928] 1 D. L. R. 696 ; [1928] 1 W. W. R. 187 ; 22 Sask. L. R. 361.—**CAN.**

r i. —— ——.]—Under r. 328 a foreign pltf. has not a *primâ facie* right to be examined for discovery at his place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is " just & convenient."—SWEENY *v.* MANUFACTURERS HOLDING CORPN., [1924] 2 D. L. R. 296 ; 54 O. L. R. 250.—**CAN.**

r ii. —— —— *Temporary absence—Rules* 270, 272, 275.]—ABRAMSON *v.* UNITED STATES FIRE INSURANCE CO., [1927] 1 D. L. R. 834 ; [1927] 1 W. W. R. 252 ; 21 Sask. L. R. 372.—**CAN.**

si. *Oral examination—Restriction by Order* 31*a of New Brunswick Rules.*]—DUNN *v.* MCLEAN (N. B.), [1929] 1 D. L. R. 106.—**CAN.**

sp. *Grounds for—Saving of costs & expenses.*]—ROCHE *v.* GRANT, [1935] 1 D. L. R. 78.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

si. *Probate of will.*]—Probate Rules, 1916, r. 32, makes provision for discovery of documents but not for discovery by interrogatories.—IN THE WILL OF DENIS, [1928] V. L. R. 266 ; [1928] Argus L. R. 136.—**AUS.**

PART IV. SECT. 3.

f (p. 184) i. ——.]—Rule 267 (Sask.) provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined, the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—JOHNSON *v.* HAWKES, [1924] 3 D. L. R. 524 ; [1924] 2 W. W. R. 965.—**CAN.**

f (p. 184) ii. ——.]—In order to obtain an order for the examination for discovery of a person who is not a party to the action, appct. must show that pltf. in whose name the action was brought is not really pltf., but that the person whose examination is asked for is the real pltf. & that the action is being prosecuted for his benefit.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MORTON, [1925] 1 W. W. R. 772.—**CAN.**

f (p. 184) iii. ——.]—An order is necessary for the examination for discovery under rule 267 of a person for whose immediate benefit an action is prosecuted or defended.—IMPERIAL LUMBER YARDS, LTD. *v.* MCMANUS, [1928] 2 D. L. R. 150 ; [1928] 1 W. W. R. 409 ; 22 Sask. L. R. 278.—**CAN.**

f (p. 184) iv. ——.]—One of two defts. in an action of ejectment who allows judgment to go by default is liable to be examined.—BACON *v.* CAMPBELL (1875), 6 P. R. 275.—**CAN.**

sm. *Person for whose immediate benefit action defended—Beneficiary under will —Action against trustees.*]—In an action against trustees under a will to rescind a contract for the sale of property of the estate :—*Held :* a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not " a party for whose immediate benefit the action was defended," & was not examinable for discovery.—WOOLWORTH CO. *v.* POOLEY, [1925] 2 W. W. R. 481.—**CAN.**

g (p. 185) i. —— *Co-defendant not actively defending.*]—Where pltfs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the pltfs. to procure G. to enter into the agreement of purchase :—*Held :* G. was not a person " adverse in interest " to C. so as to make C. examinable for discovery by G. under r. 234.—HEGLER *v.* MACNAB, [1924] 3 D. L. R. 501 ; [1924] 2 W. W. R. 649. —**CAN.**

k (p. 185) i. —— *Different issues against two sets of defendants.*]—Under the British Columbia Rules governing discovery the examination is restricted to the issues between appct. & the party examined. Therefore, where the claim against one set of defts. was that they had wrongfully conspired to induce another set of defts. to break the latter's contract with pltf., & the claim against the second set of defts. was for breach of that contract, they not being charged as parties to the conspiracy :—*Held :* this second set could not be examined on discovery by pltf. as to any knowledge they might have with respect to matters tending to establish the alleged conspiracy.—WHIELDON *v.* MORRISON, [1934] 3 W. W. R. 126 ; 4 D. L. R. 366 ; 48 B. C. R. 492.—**CAN.**

k (p. 185) ii. —— *One of two co-defendants.*]—If issues between co. defts. are material to pltf. he may examine a deft. upon them, although there is no issue between that deft. & himself.—ALEXANDER *v.* DIAMOND (1882), 9 P. R. 274.—**CAN.**

m (p. 185) i. *Counterclaim for balance of account—Assignment from assignee of insolvent stockbroker.*]—*Held :* the stockbroker was examinable, at the instance of pltf., under r. 285, O. J. Act.—CARNEGIE *v.* COX (1886), 11 P. R. 311.—**CAN.**

r (p. 186) i. *Defendant out of jurisdiction.*] — SHANDLY *v.* HERNDON (Alta.), [1929] 4 D. L. R. 1086 ; 1 W. W. R. 240.—**CAN.**

s (p. 186) i. *Employee.*]—In order to be examinable for discovery under r. 234 an employee of a party must have been directly connected with the transaction in issue, not merely as a witness, but because of the character of his employment.—WEISS *v.* SCHIESCEL (Alta.), [1926] 1 W. W. R. 154.—**CAN.**

s (p. 186) ii. —— *Does not include minister of Crown.*]—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69 ; [1927] 1 W. W. R. 474 ; 22 Alta. L. R. 544.—**CAN.**

c (p. 186) i. ——.]—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—LANCASTER *v.* VAUGHAN (1924), 33 B. C. R. 159.—**CAN.**

c (p. 186) ii. ——.]—An infant pltf., who is competent to testify at the trial, is subject to examination for discovery.—WATSON *v.* MOTOR LIVERY CO. (Alta.), [1926] 1 W. W. R. 652.—**CAN.**

l (p. 186) i. —— ——.]—Deft., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584 ; 54 O. L. R. 290.—**CAN.**

l (p. 186) ii. —— ——.]—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—KAFT *v.* STAR PUBLISHING CO., [1925] 1 W. W. R. 774.—**CAN.**

e (p. 187) i. —— —— ——.]—*Held :* an officer of the railway co.—GORDANIER *v.* C. N. R. (1904), 15 Man. L. R. 1.—**CAN.**

m (p. 187) i. —— —— *Street foreman.*]—*Held :* not an officer examinable for discovery.—WEBSTER *v.* TORONTO CORPN. (1892), 15 P. R. 21.—**CAN.**

n (p. 187) i. —— —— *Fire warden.*] —*Held :* an officer examinable for discovery.—KING LUMBER MILLS *v.*

1379a. Executor.]—R. sold some Indian miniatures to K. by auction. R. died & his exors. brought this action for the balance of the purchase price. K. alleged that the miniatures were not genuine & that R. was guilty of fraud. K. obtained leave to administer interrogatories asking the circumstances in which R. had obtained the miniatures; whether he believed that their description in the auction catalogue was accurate & that they corresponded with it; & whether the goods were spurious &, if so, whether R. or the auctioneers knew it. The exors. appealed:—*Held:* (1) the interrogatory asking where R. had obtained the miniatures, though it might be an admissible question in cross-examination, was a fishing interrogatory; (2) exors. ought not to be asked to swear to the belief of deceased; (3) a party should not be interrogated on a question which he can only answer by consulting an expert & repeating the expert's opinion.—ROFE *v.* KEVORKIAN, [1936] 2 All E. R. 1334; 80 Sol. Jo. 719, C. A.

1422. *Add. Annotation:*—**Refd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

1442a. ——.]—Deft., a shipowner, was sued by the cargo owners & charterers for non-delivery of the cargo. Deft. alleged that the non-delivery was caused by perils of the sea excepted in the charterparty & bill of lading:—*Held:* interrogatories asking pltfs. whether the cargo was insured, & if so, with whom, by whom, & to what amount, were irrelevant & inadmissible.—BOLCKOW, VAUGHAN & Co. *v.* YOUNG (1880), 42 L. T. 690; 4 Asp. M. L. C. 301.

1444. *Add. Annotation:*—**Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1462a. —— —— ——.]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were

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CANADIAN PACIFIC RY. Co. (1912), 19 W. L. R. 950; 17 B. C. R. 26; 2 D. L. R. 345.—**CAN.**

s (p. 188) i. —— —— *Whether limited to officers employed when cause of action arises.*]—The pltf. having examined for discovery, under rule 266 an officer of each of the two deft. cos., applied for leave to examine, as servants, two other men who at the time of the accident in question were employed by one deft., a contracting co., & at the time of the application were employed by the other deft., a railway co.:—*Held:* the leave should be given, but, in view of the facts disclosed in the material filed, pltf. should be allowed by this order to examine only one of said servants, she to elect which one. Rule 266 did not limit the examination to officers & servants who were employed by the corpn. when the cause of action arose.—HARVIE *v.* CANADIAN PACIFIC RY. Co. & HURST ENGINEERING & CONSTRUCTION Co., LTD., [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—**CAN.**

s (p. 188) ii. —— —— *Chief trader.*]—A man employed by a co. as "chief trader" for its Vancouver office, having complete charge of the order department, his duties including the handling or filing of buy & sell orders for clients & for the co., is an "officer" & subject to examination for discovery.—JOHNSON *v.* SOLLOWAY MILLS & Co., LTD. (1931), 45 B. C. R. 35.—**CAN.**

s (p. 188) i. —— ——.]—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—CAVEN *v.* CANADIAN PACIFIC RY. Co., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

t (p. 188) i. ——.]—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—HARVEY *v.* SYLVIA COURT, LTD., [1924] 3 W. W. R. 849.—**CAN.**

sp. *Minister of Crown.*]—*Held:* not an officer within r. 250.—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—**CAN.**

PART IV. SECT. 4.

m i. ——.]—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances.—MILLER *v.* GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD Co. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

sr. *After amendment of pleadings.*]—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—MILLER *v.* GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD Co. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 6.

1416 v. ——.]—A party cannot be required to state what course he proposes to adopt at the trial, or to disclose the names of his informants or witnesses.—NEMEROVSKY *v.* MCBRIDE (No. 2) (Man.), [1927] 1 D. L. R. 148; [1926] 3 W. W. R. 436.—**CAN.**

1428 iv. ——.]—Pltf. having marked judgment by default in an action brought to recover damages for trespass to & flooding pltf.'s lands, defts. applied to set aside the judgment. In support of this application an affidavit was filed on behalf of defts. by their solrs., setting out their defence to the action, & in that affidavit documents were made exhibits for the purpose of substantiating the defence alleged. The interlocutory judgment was set aside on July 11, 1890, after which no further steps were taken in the action, owing to proposals for a compromise being made. On Jan. 21, 1891, pltf. applied to defts. for inspection of the documents made exhibits in the affidavit:—*Held:* pltf. was entitled to inspection.—HUNTER *v.* DUBLIN, ETC. RY. Co. (1891), 28 L. R. Ir. 489.—**IR.**

PART IV. SECT. 5, SUB-SECT. 7.

1432 iii. ——.]—If the answers to an interrogatory can disclose anything which can be fairly said to be material to enable pltf. either to maintain his own case, or to destroy that of his adversary, the interrogatory ought to be answered, but if the answers cannot be material for either of these purposes deft. ought not to be ordered to answer.—HEIDNER & Co. *v.* THE HANNA NIELSEN, [1926] 2 D. L. R. 1059; [1926] 2 W. W. R. 397; 37 B. C. R. 207.—**CAN.**

1434 iv. ——.]—Under r. 423, imported into county ct. procedure, interrogatories must be directly relevant to the matters in issue.—DUNLOP DRUG DEPOT *v.* HART BOOT & SHOE Co. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1446 x. ——.]—In an action claiming damages for alleged shortages in weight of grain at the point of delivery:—*Held:* questions upon the examination for discovery as to the loading of cars other than the ones in dispute were irrelevant & properly excluded.—GRAIN CLAIMS BUREAU, LTD. *v.* CANADIAN PACIFIC RY. Co., [1934] 2 W. W. R. 277; 4 D. L. R. 707; 42 Man. L. R. 282.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 8.

1454 ii. —— *Admission of breach of contract—Questions as to reasons for breach.*]—WHIELDON *v.* FRASER VALLEY MILK PRODUCERS ASSOCN. (No. 2), [1934] 1 W. W. R. 751; 48 B. C. R. 317.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 9.

1457 i. *How far admissible.*]—In a suit to set aside an agreement on the ground of fraudulent misrepresentations:—*Held:* deft. was entitled to ask for the substance of the conversations.—WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1457 ii. ——.]—WEDIN *v.* ROBERTSON (1907), 7 W. L. R. 72.—**CAN.**

instructed to present the claim of the owners of the *S.* :—*Held :* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1464. *Add. Annotation :*—**Refd.** Perlak Petroleum Maatschappij *v.* Deen (1923), 93 L. J. K. B. 158.

1465. *Add. Citations :*—93 L. J. K. B. 158 ; 130 L. T. 234.

Add. Annotation :—**Refd.** La Radiotechnique *v.* Weinbaum, [1928] Ch. 1.

1469. *Add. Annotation :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1470a. ——.]—ROFE *v.* KEVORKIAN, No. 1379a, *ante.*

1514. *Add. Annotation :*—**Consd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions Aéronautiques Internationales, [1934] 2 K. B. 356.

1514a. ——.]—The right of a pltf. who alleges that he has been libelled in a newspaper to obtain discovery " of the name of any person concerned as printer, publisher, or proprietor " of the newspaper, " or of any matters relative to the printing or publishing " thereof, provided by 6 & 7 Will. 4, c. 76, s. 19, still exists &, since the Judicature Acts, is enforceable by the administration of interrogatories, the procedure by bill of discovery specified in sect. 19 of the statute having fallen into disuse.—HILLMAN'S AIRWAYS, LTD. *v.* SOCIÉTÉ ANONYME D'ÉDITIONS AÉRONAUTIQUES INTERNATIONALES, [1934] 2 K. B. 356 ; 103 L. J. K. B. 670 ; 151 L. T. 451 ; 50 T. L. R. 569.

1515. *Add. Annotation :*—*As to* (2) **Consd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions Aéronautiques Internationales, [1934] 2 K. B. 356.

1516a. ——.]—HILLMAN'S AIRWAYS, LTD. ANONYME D'ÉDITIONS QUES INTERNATIONALES, No. 1514a, *ante.*

1523. *Add. Annotation :*—**Refd.** Franklin *v.* Daily Mirror Newspapers, Ltd. (1933), 149 L. T. 433.

1523a. ——.]—FRANKLIN *v.* DAILY MIRROR NEWSPAPERS, LTD. (1933), 149 L. T. 433, C. A.

1526. *Add. Annotation :*—*As to* (3) **Refd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1528. *Add. Annotation :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1531. *Add. Annotation :*—**Consd. Isaacs** *v.* Cook, [1925] 2 K. B. 391.

1532. *Add. Annotations :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133. **Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1534. *Add. Annotation :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1536. *Add. Annotation :*—*As to* (1) **Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1542. *Add. Annotation :*—**Consd.** Franklin *v.* Daily Mirror Newspapers, Ltd. (1933), 149 L. T. 433.

1549. *Add. Annotation :* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

1555. *Add. Annotation :*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1556. *Add. Annotations :*—*As to* (1) **Consd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

PART IV. SECT. 5, SUB-SECT. 12.

1476 i. —— *Material in part.*]—On an application to set aside interrogatories, on the ground that they were prolix, oppressive, & unnecessary :—*Held :* they should be set aside as a whole, even though some of them, taken by themselves, might be unobjectionable.—LYTE *v.* CURREY, [1927] V. L. R. 472 ; 49 A. L. T. 47 ; [1927] Argus L. R. 353.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 15.—E (a).

f i. ——.]—In an action for libel said to be contained in a letter written by deft. to the husband of pltf. deft. on being examined for discovery, admitted the authorship of the letter but refused to answer questions directed to finding out who the person referred to in the letter as " lady friend " was, pltf. not being named in the letter. Deft. in his statement of defence denied all the allegations of the statement of claim, & said that, if the words were written & published of & concerning pltf., as alleged, it was without malice & upon a privileged occasion :—*Held :* deft. should answer the questions ; the alleged libel having made a reference that could only be understood having regard to extraneous circumstances, the questions were relevant to show that pltf. was the person who would be understood by her associates or persons acquainted with the circumstances, to have been referred to, & the questions were also relevant upon the issue as to malice raised by the defence of privilege.—MORLEY *v.* PATRICK (1910), 21 O. L. R. 240.—**CAN.**

1535 i. *Persons to whom libel published.*]—In an action against a mercantile agency for libel pltf. in his statement of claim & particulars gave the names of certain cos. to whom the alleged defamatory reports were published & added " & other individuals, organisations & cos. at present unknown to pltf." Deft.'s affidavit on production of documents, after referring to a certain document, denied that there was in its possession or power any other document relating to the matter in question. The deponent was examined on the affidavit &, he, in answer to certain questions, stated that he did not know & he refused to answer other questions. Pltf. obtained an order from the master that the deponent submit to another examination & answer the questions set out in the order. Deft. appealed, contending that pltf. had no right to the disclosure of any matter relating to reports to persons other than those named by pltf. :—*Held :* since the admitted document containing the libel bore intrinsic evidence of having emanated from deft. & there was also evidence that similar reports had been received by other persons, it could not be said that the claim was " a sham or bogus claim " or that the application was mere " fishing," &, therefore, the master was right.—CHERTKOW *v.* RETAIL CREDIT CO., [1932] 1 W. W. R. 905 ; 3 D. L. R. 390 ; 26 Alta. L. R. 291.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15—E. (c).

p i. ——.]—In an action for libel brought against newspaper publishers wherein they pleaded absence of actual malice & of gross negligence, & that they had published an apology & made a payment into ct. in full satisfaction of damages, they contended that, since they had thereby assumed the onus of disproving actual malice & gross negligence, their information on these matters was strictly private & need not be disclosed on examination for discovery :—*Held :* the contention was unsound ; malice & negligence were relevant & important matters at issue since they had a direct bearing on the quantum of damages, & whether the onus was on pltf. to prove them or on defts. to disprove them the result was the same in respect to defts.' obligation to answer the questions ; the facts were in issue, &, therefore, the questions concerning them must be answered.—POPOVICH *v.* LOBAY, [1937] 2 W. W. R. 64.—**CAN.**

1564a. State of mind of author—Action against printer.]—A party interrogated is not bound to procure information from persons who are not his servants or agents, or who have not been acting as such.

Pltf. sued defts., the printers & publishers of a book, written by one P., which contained statements which pltf. alleged were defamatory of him. To that action P. was not made a deft. Defts. pleaded fair comment made in good faith & without malice. Pltf., who pleaded in reply that the words were written falsely & maliciously, sought to administer an interrogatory to defts. asking (*inter alia*), " What information had P. when he wrote the words complained of . . . which induced you &/or the said P. & which of you to believe that the expressions of opinion or any & which of them in the said words contained & which you allege . . . are fair comment made in good faith & without malice, were true " :—*Held :* the interrogatory in this form was inadmissible, as defts. could not be asked as to the information which P., who was not their servant or agent, had on the subject at the time of the publication of the book. Defts. could only be asked what information, if any, they themselves had as to the knowledge of P. when they respectively printed & published the book.—CROZIER *v.* WISHART BOOKS, LTD., [1936] 1 K. B. 471 ; 105 L. J. K. B. 257 ; 154 L. T. 363 ; 52 T. L. R. 255 ; 80 Sol. Jo. 144 ; *sub nom.* CROZIER *v.* WISHART & CO., LTD. & WESTERN PRINTING SERVICES, LTD., [1936] 1 All E. R. 1, C. A.

1571. *Add. Annotation :*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1571a. Proceedings against contributor—Identity of informants.]—Where, to an action for libel in respect of a letter published in a newspaper there are pleas that the letter is fair comment made in good faith & without malice on a matter of public interest, an issue being thus raised as to the attitude of mind of deft. at the time when the letter was published, the special rule of practice which in such a case exempts a deft. who is the proprietor or the publisher of the newspaper from disclosing the name of a person who supplied information contained in the letter, notwithstanding that such information is otherwise relevant to that issue, does not extend to protect a deft. who is the writer or contributor of the letter from disclosing the names of his informants.—SOUTH SUBURBAN CO-OPERATIVE SOCIETY, LTD. *v.* ORUM, [1937] 2 K. B. 690 ; [1937] 3 All E. R. 133 ; 106 L. J. K. B. 555 ; 157 L. T. 93 ; 53 T. L. R. 803 ; 81 Sol. Jo. 497, C. A.

1625a. —— ——.]—In an action for infringement of a patent, defts. alleged prior user by V., & prior publication by J. :—*Held :* (1) defts. alleging that the prior user was by machine, they ought to state whether any such machine existed, &, if so, whether any such machine was in their possession, custody, or power, & the present address of V. ; (2) defts. alleging that the prior publication was by document, they ought so to state & sufficiently identify the document & the present address of J.—GENERAL ELECTRIC CO. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR CO. (1903), 21 R. P. C. 109.

1626a. Prior publication.]—GENERAL ELECTRIC CO. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR CO., No. 1625a, *ante*.

1631a. Chemical composition of infringing substance.]—This is a summons by pltfs. in the action asking for liberty to interrogate defts. The few interrogatories which it is desired to make have been amended in certain respects by the master. Pltfs. are not satisfied entirely with these amendments, & in order to make the matter clearer pltfs. themselves have before now suggested an amendment to the proposed interrogatory No. 1 in lieu of the amendment proposed by the master . . . of course, it is perfectly plain that interrogatories may be delivered in a case of this kind as to the chemical composition & constitution of the alleged infringing substances (ASTBURY, J.).—SHARPE & DOHME, INCORPORATED *v.* BOOTS PURE DRUG CO., LTD. (1927), 44 R. P. C. 69.

1631b. General question as to process used in manufacturing infringing article.]—*Held :* inadmissible.—OSRAM LAMP WORKS *v.* POPE'S ELECTRIC LAMP CO., LTD. (1914), 31 R. P. C. 313, C. A.

1677a. —— **Ownership—Alleged fraudulent representations by seller.**]—In an action against an auctioneer for the price of a horse sold by him for pltf., deft., who pleaded fraud, was not allowed to ask whether the horse was pltf.'s & if so how did it become his.—SIVIER *v.* HARRIS (1876), Bitt. Prac. Cas. 98 ; 2 Char. Cham. Cas. 54.

PART IV. SECT. 5, SUB-SECT. 15.—F.

1590 i. *Document in hands of third party.*]—On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072 ; [1925] 1 W. W. R. 649 ; 21 Alta. L. R. 373.—**CAN.**

sm. *Telegram—Meaning of word.*]—An officer of a co. examined on discovery cannot be compelled to answer a question as to the meaning of a word in a telegram sent to another officer, it not being shown that this would help pltf. in establishing his case.—LEVI *v.* BRITISH COLUMBIA DISTILLERY CO., [1936] 4 D. L. R. 205 ; 50 B. C. R. 192 ; [1926] 2 W. W. R. 276 ; 20 Sask. L. R. 507.— **CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—G.

1596 ii. ——.]—HILLMAN *v.* IMPERIAL BANK OF CANADA, [1926] 3 D. L. R.

PART IV. SECT. 5, SUB-SECT. 15.—H.

1601 i. *Circumstances in which injury occurred.*]—In an action for negligence arising out of a collision deft. was interrogated about his speed & the position of the colliding vehicles. In his answers he stated that he was unable to answer these interrogatories except as to his opinion upon the matters involved, & did not answer what the speed & position were :—*Held :* these answers were insufficient.—MAY *v.* BOWERING, [1928] S. A. S. R. 226.—**AUS.**

sd. *Escape of gas.*]—In an action against a gas co. for damages from a fire alleged to have been caused by an escape of gas from deft.'s mains & pipes :—*Held :* deft.'s officer, who was questioned on examination for discovery as to systems of inspection alleged to have been adopted after the fire, was not obliged to answer said questions in so far as they referred to measures taken with respect to matters or objects away from the locus of the fire. However, questions as to leaks & explosions alleged to have occurred after the accident should be answered, because they came within the Rule as " touching the matter in question." The manager of pltf.'s hotel, the property which was burned, who had been examined under Rule 234 as an employee, was held obliged to answer as to what statements or reports about the fire were made to him by two employees who were on duty at the time of the fire.—LONDON GUARANTEE & ACCIDENT CO. *v.* NORTH-WESTERN UTILITIES, LTD., [1933] 1 W. W. R. 744.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—I.

1614 i. *Partnership accounts.*]—MACDONALD *v.* MCARTHUR (1887), 4 Man. L. R. 56.—**CAN.**

1690a. As to ingredients of infringing articles.]—COCA COLA CO. *v.* DUCKWORTH & CO. (1928), 45 R. P. C. 225.

1702a. Enticement of husband—Questions not directed to adultery.]—Pltf. brought an action against deft., a married woman, for wrongfully enticing away pltf.'s husband. She alleged that deft. solicited the affections of her husband by providing him with large sums of money, & that on Jan. 10, 1928, pltf.'s husband in consequence of deft.'s enticement deserted pltf., & that since then deft. & pltf.'s husband had lived together as man & wife. Pltf. also alleged that in consideration of her abandoning her claim to maintenance under a maintenance order, her husband agreed to hand over to her a certain house which he had purchased, that she took possession of the house & had been forcibly evicted therefrom by deft.'s servants. Deft. in her affidavit of documents admitted that she had made certain loans & gifts of money to pltf.'s husband & had in her possession certain documents relating thereto, but she objected to produce them on the ground "that they may tend to expose me to ecclesiastical censure & punishment." Deft. successfully resisted an application for the production of the documents. Pltf. then applied for liberty to administer to deft. certain interrogatories relating, mainly, to the gifts of money & to the purchase & mtge. of the house. The Master of the Judge in Chambers refused to allow pltf. to administer the interrogatories to deft. On appeal:—*Held:* inasmuch as the cause of action was not based on adultery & the object of the action was not to prove adultery, & the interrogatories which it was sought to administer were not addressed directly or indirectly to the sole proof of adultery but were intended to show the means by which the desertion of pltf. by her husband was procured, & to prove the trespass to a house in which pltf. was living by permission of her husband, therefore the interrogatories were admissible & deft. was bound to answer them.—ELLIOTT *v.* ALBERT, [1934] 1 K. B. 650; 103 L. J. K. B. 305; 151 L. T. 13; 78 Sol. Jo. 206, C. A.

1705a. Shares—Refusal of company to register transfer—Grounds for refusal.]—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper discretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bonâ fide.* Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed:—*Held:* all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what reasons influenced them in exercising their discretion upon that ground.—SUTHERLAND (DUKE) *v.* BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD., [1926] Ch. 746; 59 L. J. Ch. 542; 135 L. T. 732.

Annotation:—**Distd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1935] Ch. 718.

1705b. —— —— ——.]—Art. 16 of the co.'s articles of association provided: "The directors may decline to register any transfer of shares made by a member who is indebted to the co. or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them objectionable, or the transfer shall be considered as having been made for purposes not conducive to the interests of the co. & the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article. . . ."

The co. refused to register the transfer by pltf. B. to pltf. S. of a share in the co.'s capital of which B. was the registered holder. By this action pltfs. claimed (*inter alia*) a declaration that the co. was not entitled to decline to register the transfer, & an order that the register of members of the co. should be rectified by the deletion of B.'s name as holder of the share & by the insertion in lieu thereof of S.'s name. Pltfs. sought to administer to the co. the following among other interrogatories: (2) Did the directors refuse to register the said transfer as one made by a member indebted to the co.? (3) Did the directors in fact disapprove of

pltf. S. as a transferee of the said share? (4) Did the directors in fact consider pltf. S. objectionable as a transferee of the said share? (5) Did the directors in fact consider the transfer of the said share as having been made for purposes not conducive to the interests of the co.? The master refused leave to administer these interrogatories. On this summons by pltfs. claiming to be entitled to administer them, it was contended for pltfs. that the word "grounds" in the clause "& shall not be bound to specify the grounds" in Art. 16 had the same meaning as the word "reason" in the phrase "without assigning any reason" in an article which was considered by the ct. in *Sutherland (Duke)* v. *British Dominions Land Settlement Corpn., Ltd.*, No. 1705a, in which the interrogatories which it was sought to administer were allowed as being directed to eliciting under which branch of the power given by the article the directors had acted. For the co. it was contended that the two words had not the same meaning:—*Held:* on the true construction of Art. 16 "specifying grounds" was not the same thing as "assigning reasons," & the interrogatories were not proper to be allowed.—BERRY & STEWART *v.* TOTTENHAM HOTSPUR FOOTBALL & ATHLETIC CO., LTD., [1935] Ch. 718; 104 L. J. Ch. 342; 154 L. T. 10; 79 Sol. Jo. 642.

1710. *Add. Citations:*—93 L. J. K. B. 158; 130 L. T. 234.

Add. Annotation:—**Refd.** La Radiotechnique *v.* Weinbaum (1927), 137 L. T. 638.

1740. *Add. Annotation:*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

1742. *Add. Citation:—previous proceedings, sub nom.* STUART *v.* BUTE (LORD) (1841), 11 Sim. 442.

1752. *Add. Annotation:—As to* (1) **Consd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

1757. *Add. Annotation:*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

1709 i. *Wrongful dismissal—Acts justifying dismissal.*]—Pltf., a doctor, sued defts. for wrongful dismissal. He had been dismissed on the ground that he had recommended, as a suitable person to be a nurse in defts.' hospital, a woman with whom he had lived in adultery. Upon an application to compel pltf. to answer questions as to his relations with the woman:—*Held:* he was bound to answer such as referred to his alleged adultery.—INES *v.* CALGARY GENERAL HOSPITAL (1899), 4 Terr. L. R. 58.—**CAN.**

sa. *Action for alienation of affections.*]—On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

sd. *Action by trustee in bankruptcy—Against auditor—Trustee auditor.*]—In an action by a trustee in bkpcy. of a co. against a firm of auditors:—*Held:* the trustee, who was himself an auditor, should not be required to answer on examination for discovery a question as to his own practice in conducting an audit.—BLUE BAND NAVIGATION CO., LTD. (TRUSTEE) *v.* PRICE, WATERHOUSE & CO. (NO. 1), [1933] 3 W. W. R. 49; 4 D. L. R. 447; 47 B. C. R. 258.—**CAN.**

sf. *Foreclosure action.*]—LONDON & CANADIAN INVESTMENT CO., LTD. *v.* BRITISH COLUMBIA REALTY DEVELOPMENT CORPN., LTD. & GRIFFITHS, [1934] 3 W. W. R. 319.—**CAN.**

sk. *Specific performance—Sale of shares.*]—In an action for specific performance of an agreement to sell shares in a co. made by deft. S. the issues were (*inter alia*) whether after the agreement was made S. transferred the shares to the two other defts. R., & whether before acceptance of the transfer defts. R. knew of the agreement between pltf. & S., & that the transfer was in breach of the agreement. Pltf. interrogated defts. as to the dispatch of a cablegram by S., stating that he could not sell his shares to pltf. for family reasons; as to the belief of defts. that he had agreed to sell his shares to pltf.; as to why he was unable to sell; as to the family reasons; & as to references to the family reasons between defts.:—*Held:* the interrogatories as to the cablegram were permissible, & the other questions were *prima facie* relevant, some to the issue as to the making of the alleged agreement, & others on the issues of notice to defts. R.—JORDAN *v.* SANDERS, [1934] S. A. S. R. 424.—**AUS.**

PART IV. SECT. 6, SUB-SECT. 1.

t i. —— *Whether interfered with by Court of Appeal.*]—The discretion of the local ct. judge or a special magistrate in allowing some interrogatories & not allowing others should not be reviewed unless the need for the interference of the Supreme Ct. is clearly made out, & only on very strong grounds.—BLUSTON *v.* DALLY, [1930] S. A. S. R. 89.—**AUS.**

sk. *Under Marginal Rules, rr.* 344 (2), 348.]—ESQUIMALT & NANAIMO RY. CO. *v.* GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. (B. C.), [1926] 3 W. W. R. 240.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.

1 i. —— *Service on solicitor of company—Insufficient.*]—EASTMAN *v.* PACIFIC FORWARDING CO., [1934] 1 W. W. R. 539.—**CAN.**

PART IV. SECT. 7.

c i. —— ——.]—FLETCHER, TURNEY & HANBURY, LTD. *v.* COLQUHOUN, DEWOLF & CO., LTD., [1934] 1 W. W. R. 752; 48 B. C. R. 322.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 1.

1732 xiv. ——.] — The person examined must make full disclosure of information which he has secured from others that has a bearing on the issue; & he must give his belief, if any, with reference to the matters in issue; this belief may be founded on information which he has secured from others, but he must state what it is; & he may also give his reasons therefor.—KIRKPATRICK *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1926] 3 D. L. R. 542; [1926] 2 W. W. R. 861.—**CAN.**

1748 ix. —— ——.]—Where a party is interrogated as to matters in issue done by his agents or servants, or done or omitted in their presence in the course of their employment, he is bound to obtain the information they have, & does not sufficiently answer by saying that he does not know & has no information on the subject.—DUNLOP DRUG DEPOT *v.* HARTT BOOT & SHOE CO. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1748 x. —— ——.]—A witness on his examination for discovery as an officer of a co. must not only answer as to his individual knowledge, but must also inquire & get such information as he can from the other officers & servants of the co. who have personal knowledge of the facts.—GOODBUN *v.* MITCHELL, [1928] 3 D. L. R. 709; [1928] 2 W. W. R. 594; 37 Man. L. R. 451.—**CAN.**

1748 xi. —— ——.]—A party under examination for discovery is bound to impart any information touching the matters in question which at the time discovery is sought he has either of his own knowledge or has actually received from third persons.—CULVER & CULVER *v.* LLOYDMINSTER TOWN, [1928] 2 D. L. R. 93; [1928] 1 W. W. R. 406; 22 Sask. L. R. 314.—**CAN.**

1748 xii. —— ——.]—ROGERS *v.* BELEY, [1928] 3 W. W. R. 584.—**CAN.**

1748 xiii. —— *By officer of company.*]—JURSZSZYN *v.* WEIDMAN BROS., LTD., [1934] 2 W. W. R. 153.—**CAN.**

1752 i. —— —— *Agent having left employment.*]—An officer of a corpn. who is being examined for discovery is not excused from the duty of informing himself of the facts by inquiry of an employee who knows them merely because the employee who has the desired information gained in the course of his employment has ceased to be employed by the corpn.; provided such employee is available & is willing to give the information.—ABEL *v.* COOKE, [1937] 1 W. W. R. 705.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*]—*Held:* the fact that the chancellor of pltf. corpn. was a member of the firm acting for the corpn. was not a reason for refusing to allow him to be examined: if he had as solr. information which pltf corpn. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put as to something which he had learned in his professional capacity.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

1806 i. *Officer's information acquired in course of employment—Whether answers amount to admissions by company.*]—*Qu.:* whether, when an officer of a co. has been examined for discovery under rule 266 (3), answers of

1806a. Answer by one officer—No inquiry as to information available to other officers.]—In an action by indorsees of a number of bills of exchange alleged to have been drawn by a German co., accepted by defts., an English co., indorsed to the pltfs. & dishonoured, defts. among other pleas denied the drawing & indorsement of the bills. Pltfs. administered to defts. the following, among other, interrogatories: (1) "Were not all or some or one & which of the said bills drawn by" the German co. "or their agent or agents duly authorised in that behalf?" (2) "Were not all or some or one & which of the said bills indorsed by" the German co. "or their agent or agents duly authorised in that behalf to the order of" certain named indorsees? (3) "Was not" the German co. "at all material times a corpn. duly incorporated under the laws of the German Republic?" Appended to the interrogatories was a direction that defts. should answer them by their secretary to the best of his knowledge, information & belief. To each of them the secretary answered simply: "I say that I do not know":—*Held:* the answer was insufficient, inasmuch as other officers of defts. might in the course of their duties have acquired the requisite information; if they had, this would have been the information of the co., & it did not appear from the answer whether the secretary had made any inquiries to ascertain whether such information was available.—BANK OF RUSSIAN TRADE, LTD. *v.* BRITISH SCREEN PRODUCTIONS, LTD., [1930] 2 K. B. 90; 99 L. J. K. B. 562; 143 L. T. 305; 74 Sol. Jo. 337, C. A.

1817. *Add. Annotation:*—**Refd.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134.

1855. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Minter *v.* Priest, [1929] 1 K. B. 655.

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his which are qualified as being based on information acquired by him from the co.'s servants & other officers can be read against the co. as an admission.—ANWEILER *v.* G. T. P. R. Co., [1928] 3 D. L. R. 626; [1928] 2 W. W. R. 514.—**CAN.**

o i. —— *Action against municipality.*]—A police officer is an officer or servant of the municipality for the purpose of discovery.—HOWES *v.* VANCOUVER CITY, [1934] 1 W. W. R. 800; 48 B. C. R. 195.—**CAN.**

q i. —— *Equivalent to examination of corporation.*]—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corpn. parties, & the examination of a corpn.'s officer, selected in accordance with r. 250, is the examination of the corpn.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

sw. *Action against trustee in bankruptcy of company.*]—In an action against the trustee in bkpcy. of a co. there is no right to examine an officer of the co.—MAY *v.* ROBERTS (No. 2), [1934] 1 W. W. R. 798; 48 B. C. R. 411.—**CAN.**

sz. *Application to examine former officer after examination of another officer.*]—HARRISON MILLS, LTD. *v.* ABBOTSFORD LUMBER CO., LTD., [1935] 1 W. W. R. 32, 480; 49 B. C. R. 301.—**CAN.**

sa. ——.]—On an application under Ord. 31, r. 1, for leave to examine for discovery, a past officer of a co., an officer of the co. having been examined previously, the leave was given.—DES BRISAY *v.* CANADIAN GOVERNMENT MERCHANT MARINE, LTD., [1936] 3 W. W. R. 383; 51 B. C. R. 57.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. ——.]—The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to answer a question tending to criminate does apply; & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revsg.*, [1925] 2 D. L. R. 1111; [1925] 2 W. W. R. 276.—**CAN.**

1813 xiii. ——.]—Under the English practice relating to interrogatories, deft. is excused from answering questions that may tend to criminate him. Sect. 5 of British Columbia Evidence Act provides that no witness shall be excused from answering any question upon the ground that the answer to the question may tend to criminate him. On an application to compel deft. to answer interrogatories:—*Held:* a party being examined on interrogatories is not treated as a witness & is in the same position as a party being examined on interrogatories in England & is protected.—BLUMBERGER *v.* SOLLOWAY MILLS & CO., LTD., [1931] 2 W. W. R. 56; [1931] 2 D. L. R. 204; 44 B. C. R. 41.—**CAN.**

1813 xiv. ——.]—In an action for damages for negligence in driving a motor-car whereby a person was injured & died, interrogatories were administered to deft., the alleged driver of the car. The first interrogatory asked whether deft. was the driver, & the remaining interrogatories related to acts of deft. or of deceased. Deft. objected to answer on the ground that the answers might tend to incriminate her. The accident took place on Dec. 17, 1930, & resulted in the death of deceased on Dec. 29, 1930. It was admitted that no inquest had been held, & deceased's employers had paid his widow workman's compensation. It was also admitted that no criminal proceedings had been taken up to Oct. 20, 1931:—*Held:* a ct. could not be clearly satisfied that all danger of criminal proceedings had passed, & the claim of privilege should be sustained; also, it was immaterial that the answers, being obtained under compulsion of an order of ct., could not be used in evidence against deft. in criminal proceedings.—SHERRING (J. H.) & CO. *v.* HINTON, [1932] S. A. S. R. 233.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 4.—C.

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*]—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—**CAN.**

t i. ——.]—While members of the Executive Council of the Irish Free State, sued as corpn. sole, are liable to the ordinary orders for discovery by way of interrogatories & discovery of documents, & to orders for better discovery on filing inadequate answers to interrogatories, a claim to privilege made by them on grounds of public interest is conclusive, & must be recognised as paramount, on the same principle as that underlying the recognition of a similar claim by a British Minister under the royal prerogative.—LEEN *v.* PRESIDENT OF THE EXECUTIVE COUNCIL, ETC., [1926] I. R. 456.—**IR.**

PART IV. SECT. 8, SUB-SECT. 4.—D.

st. *Disclosure of name of person on whose behalf privilege claimed.*]—Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—**CAN.**

PART IV. SECT. 9.

1877 iv. ——.]—Where the only question which appct. for an order for a re-examination for discovery wished to put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381.—**CAN.**

1877 v. ——.]—SHANNON *v.* KING (No. 2), [1932] 1 W. W. R. 156; 1 D. L. R. 700; 45 B. C. R. 7.—**CAN.**

PART IV. SECT. 10.

m i. —— *Effect of consent to use inadmissible evidence.*]—The parties to an action cannot by consent make something evidence which is not evidence; although in a proper case they may be estopped from taking the objection. Therefore they cannot by consent provide that the examination for discovery of employees may be used at the trial as evidence against their respective employers, where there is no rule making their examinations available as evidence.—DENCH *v.* ALBERTAN PUBLISHING CO., [1931] 2 W. W. R. 116; 3 D. L. R. 260; 25 Alta. L. R. 326.—**CAN.**

p i. —— ——.]—A trial judge should not use as evidence a portion of the examination for discovery not put in at the trial.—GWIN *v.* STARRS (Sask.), [1929] 3 W. W. R. 704; [1930] 2 D. L. R. 54; 24 S. L. R. 221.—**CAN.**

p ii. —— ——.]—Where on the trial of an action or issue pltf. had put in certain parts of the examination of

1856a. Communications between solicitors of opposite parties.]—*See* EVIDENCE, Vol. XXII., p. 415, No. 4252.

the opposite party, it is the duty of the judge, either *ex mero motu* or at the request of counsel to "look at the whole of the examination," to see if he could form the "opinion that any other part of it is so connected with the part to be used that the last-mentioned part ought not to be used without such other part," & in so doing the object sought to be accomplished by putting in the original part must be taken into consideration as one of the elements in the forming of that opinion.—CANARY *v.* VESTED ESTATES, LTD., [1931] 1 D. L. R. 997; 43 B. C. R. 365.—**CAN.**

1895. *Add. Annotation:*—Refd. British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

sp. *Discovery of one defendant—Use against co-defendant.*]—Testimony given on an examination for discovery of one deft. cannot, as a general rule, be used on the trial as evidence against a co-deft.—SYGNATOWICZ *v.* SYGNATOWICZ, [1933] 1 W. W. R. 132; 1 D. L. R. 758; 41 Man. L. R. 42.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

1898 i. *Contempt of court—Answer to interrogatories.*] — HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734; 64 O. L. R. 392; *revsd.*, [1930] 2 D. L. R. 199; 64 O. L. R. 658.—**CAN.**

PART V. SECT. 3.

a l. —— *Service of copy of appointment on examinee's solicitor.*]—STAFFORD *v.* MACKENZIE (Alta.), [1929] 1 D. L. R. 605; 1 W. W. R. 271.—**CAN.**

sw. *Conditions precedent to order—Decision that questions properly put & refusal to answer questions on further examination.*]—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

sz. *Effect of concluding examination without adjournment.*]—SOBKOW *v.* ANDRUCHOW, [1930] 2 W. W. R. 272, 368. —**CAN.**

DISTRESS.

Part I.—In General.

2. *Add. Annotation :*—**Distd.** Bevir *v.* British Wagon Co. (1935), 80 L. Jo. 162.

Part II.—Distress for Rent.

43. For the paragraph " Defts. were partners in business . . . for his quiet tenantship " substitute :—" Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf. :—*Held :* it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."

Add. Annotations : — **Refd.** The Koursk, [1924] P. 140 ; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

46. *Add. Annotation :—As to* (2) **Refd.** Cohen *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 343.

63. *Add. Annotations :—As to* (1) **Distd.** Borman *v.* Griffith, [1930] 1 Ch. 493. **Refd.** Carrington Manufacturing Co. *v.* Saldin (1925), 133 L. T. 432 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

71a. —— **No exclusive user.**]—Pltfs. had an agreement with certain manufacturers to have the goods purchased from them, stored at the manufacturers' premises until such time as they might take delivery. The goods were not stored continuously in the same room, but the room was changed from time to time to suit the convenience of defts Invoices were sent in respect of this storage from time to time & the word " rent " was used. The second-named deft. was landlord of these premises & authorised deft. co. to enter the premises & levy a distress upon all the goods thereon, including the goods belonging to pltfs. Pltfs. then served upon defts. the usual notice under Law of Distress Amendment Act, 1908 (c. 53), but defts. proceeded with the distress. Pltfs. then took out a summons under Law of Distress Amendment Act, 1908 (c. 53) s. 2, & defts. were ordered by the magistrate to return the goods to pltfs., which, under certain conditions pending the hearing of a case stated, they did. Pltfs. then brought this action for trespass & illegal distress claiming substantial damages :—*Held :* (1) upon the facts pltfs. had no exclusive use of any part of deft. co.'s premises & were not tenants or undertenants thereof ; (2) the distress was illegal ; (3) though no actual damage was proved pltfs. were entitled to substantial damages.—INTEROVEN STOVE CO., LTD. *v.* HIBBARD & PAINTER & SHEPHERD, [1936] 1 All E. R. 263.

128. *Add. Annotation :*—**Refd.** Prout *v.* Hunter, [1924] 2 K. B. 736.

PART II. SECT. 3, SUB-SECT. 2.—A.

44 viii. —— ——.]—When a new lease is substituted for an existing one, the right of distress for rent due under the prior lease is at an end.—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85 ; [1927] 2 W. W. R. 35.—**CAN.**

d i. —— —— *Alleged lessors unable to enter into lease—Unincorporated body.*]—CANADA MORNING NEWS, LTD. *v.* THOMPSON, [1930] S. C. R. 338 ; 3 D. L. R. 833 ; *revsg.*, [1929] 2 D. L. R. 144 ; 1 W. W. R. 548 ; 41 B. C. R. 24 ; *revsg.*, [1928] 4 D. L. R. 628 ; [1928] 3 W. W. R. 35.—**CAN.**

e i. —— *Demise substituted—Strict proof necessary.*]—Where a distress is justified on the ground that the distrainor substituted a demise for a former agreement of sale, this must be clearly proved.—KILLAM *v.* MCLEOD, [1935] 3 D. L. R. 414 ; 9 M. P. R. 465. —**CAN.**

PART II. SECT. 3, SUB-SECT. 5.

m i. —— *Based on price of gasoline.*]—Pltf. leased an automobile service station from deft. oil co. at a rental of $200 per month payable in advance. A few days later it was agreed that the rent should be paid by the addition of a charge of two & a half cents per gallon, payable on delivery, to the price of the gasoline to be bought by the lessee from deft. The lease provided that it should be at the pleasure of the lessor & determinable forthwith on the delivery of a written notice to the lessee. The original lease provided that the first payment of rent should be on July 1, but pltf. went into occupation on June 16 & agreed to pay one-half of the previous tenant's rent for that month. On Aug. 1, seizure was made under a warrant of distress stated to be for one & a part month's rent due on July 1, & pltf. being unable to pay the amount demanded, agreed to deft.'s demand that he take a certain amount for his goods from a suggested new tenant who was then present. Out of this amount the alleged rent was paid & pltf. drove away. The written notice provided for in the lease had not been given to pltf. In an action for illegal distress & eviction :—*Held :* even if the sum mentioned in the warrant was due for rent on Aug. 1, the distress was wrongful. The distress was expressed to be for rent due on July 1, but under the arrangement varying the lease no fixed rent fell due & payable on any day & no sum was in fact due & payable on July 1, & since the rent for the part of June had been all paid at the time of the seizure it was wrongful to include it in the distress.—DENYER *v.* BRITISH AMERICAN OIL CO. (Man.), [1929] 4 D. L. R. 1063 ; 2 W. W. R. 677.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.

sp. *Debt Adjustment Acts—Seizure of grain without permit.*]—Accused was convicted on a charge that he " did make a seizure from E., a resident farmer, & dispose of 334 bushels of wheat without having a permit from Debt Adjustment Board, contrary to sect. 27 of Debt Adjustment Act, 1936 " :—*Held :* the conviction was bad because, (*a*) wilfulness, which is of the essence of the offence, was not charged ; (*b*) the charge was one for two offences, since both from the language of the sects. involved & from the nature of the acts themselves a seizure & disposition are two offences.—R. *v.* BALL, [1937] 1 W. W. R. 482.—**CAN.**

PART II. SECT. 4, SUB-SECT. 7.—B. (a) i.

160 vii. ——.]—A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor. or his assigns, & the word " assigns " does not include a purchaser from the mtgor. under an executory contract of sale of land, even though such purchaser be actually in possession.—KLENMAN *v.* ISMAN, [1924] 2 D. L. R. 146 ; 1 W. W. R. 883 ; 18 Sask. L. R. 171.—**CAN.**

160 viii. —— *Distress Act, R. S. A.*, 1922 (c. 97), *s.* 6—*Effect.*]—BANK OF MONTREAL *v.* LYON (Alta.), [1927] 4 D. L. R. 1012 ; [1927] 3 W. W. R. 520.—**CAN.**

175. *Add. Annotation :—As to* (1) **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

229. *Add. Annotation :*—**Refd.** Smith *v.* Tsakyris

HUDSON *v.* SNELLGAR, 2 Roll. Rep. 212.

319. *Add. Annotation :—Generally,* **Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

356. *Add. Annotation :—As to* (1) **Refd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulchay, *[1934] 1 K. B. 608.*

369. For existing citations read "*(1836),* 1 M. & W. 633; Tyr. & Gr. 1086; 2 Gale, 158; 6 L. J. Ex. 34; 150 E. R. 588."

400. For "No. 369, *ante*," read "No. 251, *ante*."

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160 ix. ——.]—Default having been made in irrigation rates levied against land in the L. N. Irrigation District, proceedings were taken which resulted in the land becoming vested in the board of trustees for the district. The land was subject to a mtge., containing an attornment clause, the mtge. having been given prior to the formation of the district. The board rented the land on the crop-payment plan, & its tenant, having disposed of his share of the crop, the mtgee. caused the share reserved to the board to be seized for arrears of interest under its mtge. :—*Held :* the mtgee. was not entitled to distrain for interest on the goods of the board, &, therefore, the board was entitled to said share of the crop.—INCORPORATED SYNOD OF HURON DIOCESE *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT TRUSTEES, [1930] 2 W. W. R. 503; 4 D. L. R. 1035.—**CAN.**

sa. *Effect of judgment on covenant for payment.*]—The right to distrain for rent due under an attornment clause in a mtge. is not merged in a judgment on the covenant for payment in the mtge. even though the judgment is for the whole of the principal & all the interest then due.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

q (p. 303) i. —— *Goods in which tenant has beneficial interest.*]—Under Distress for Rent Act, 1888, a landlord, who has distrained for rent on goods, the property of another, in which his tenant has a beneficial interest under agreement to purchase at the time of distress, is entitled to exercise his remedies against such goods, notwithstanding that at the time of making the declaration referred to in sect. 10 such other person may have rightfully determined the tenant's beneficial interest.—STALLEY *v.* HAIGH, [1928] S. A. S. R. 239.—**AUS.**

sb. *Goods sold after seizure for taxes & left in charge of city chamberlain.*]—*Held :* liable to seizure for rent due to the original landlord.—LANGTON *v.* BACON (1859), 17 U. C. R. 559.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.

261 ii. ——.]—The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord.—A.-G. FOR CANADA *v.* GORDON, [1925] 1 D. L. R. 654; 56 O. L. R. 48.—**CAN.**

262 ii. —— ——.]—Under a writ in the King's name, issued out of the Superior Ct. of the province of Quebec, goods which are the property of His Majesty & in the possession of His Majesty's officers cannot be seized & sold to satisfy a pecuniary claim of a subject. Under the English law, the rule is absolute that no proceeding having for its purpose the issue of any process against His Majesty himself or against any of His Majesty's property is competent in any of His Majesty's cts.; & there is nothing in the Quebec Act of 1774, in the two ordinances of 1777 establishing the cts. of Quebec & regulating the proceedings in those cts. or in the Civil Code or the Code of Civil Procedure, justifying an inference that there was any intention of in any way impairing such immunity of the sovereign from processual coercion in his own cts.—R. *v.* CENTRAL RAILWAY SIGNAL CO., INCORP. & CANADIAN NATIONAL CHEMICAL WORKS, [1933] S. C. R. 555; 4 D. L. R. 737.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—B.

b i. —— *Dealer in second-hand goods.*]—A dealer in second-hand goods is not carrying on a public trade within the meaning of the rule under which things delivered to a person exercising a public trade to be carried, wrought, worked up or managed in the way of his trade or employment are exempt from distress for rent owing by him. The fact that in the present instance the goods in question were consigned to the tenant for sale on a commission basis was held not to render them exempt.—LAWRENCE *v.* TURNER, [1934] 3 W. W. R. 353; 49 B. C. R. 99.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—C.

285 ii. —— ——.]—L. was the tenant of deft., & carried on a public trade of salesman of motor supplies, & he also acted as agent of pltf. co., receiving goods manufactured by pltf. for sale or return, subject to certain conditions. These goods were delivered under a memorandum, which on its face was a delivery note, to L. as agent. A consignment account was kept showing the goods sold & in stock. This was signed by L. as consignment agent, & given from time to time to pltf. L. fell into arrears with his rent, & secretly left the premises. Deft. distrained on L.'s property on the premises, including goods which had been delivered by pltf. to L. on sale or return :—*Held :* under the memorandum the goods delivered to L. by pltf., & unsold, remained the property of pltf.; at the time of distress L. was tenant of deft. & had custody of pltf.'s goods upon the premises; the goods were exempt from liability to distress, & deft. was ordered to deliver them to pltf.—PERDRIAU RUBBER CO., LTD. *v.* SADEK, [1928] S. R. Q. 144.—**AUS.**

PART II. SECT. 5, SUB-SECT. 4.—D.

sd. *Market—Goods in.*]—Where pltf. was not using premises as a market, but simply as a shop in which to offer, in the ordinary way, goods purchased to be sold for a profit :—*Held :* a claim for exemption, on the ground that the goods seized were in a public market for sale, failed.—BENT *v.* MCDOUGALL (1881), 2 R. & G. 468; 2 C. L. T. 262.—**CAN.**

PART II. SECT. 5, SUB-SECT. 7.

se. *Application of English law.*]—There is nothing in the conditions of life in, or climate of, Alberta which justifies the ct. in holding that the common law as interpreted in England in 1870, as to what goods of a tenant or members of his family are exempt from distress for rent, is not "applicable," within sect. 16 of Alberta Act, 1905 (Dom.). Therefore, the ct. cannot enlarge such exemptions so as to cover household goods & wearing apparel which is in use from time to time but not "in actual use," *i.e.*, not on the tenant's back.—STOTT *v.* RABY, [1934] 3 W. W. R. 625.—**CAN.**

PART II. SECT. 5, SUB-SECT. 10.

sf. *Not grain removed & sold under execution before claim for rent made.*]—DOUGLAS *v.* CARRINGTON (1914), 29 W. L. R. 90; 7 W. W. R. 59; 7 Sask. L. R. 80; 20 D. L. R. 919.—**CAN.**

PART II. SECT. 5, SUB-SECT. 11.

393 i. *Not privileged.*]—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD.; PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

393 ii. ——.]—Goods otherwise subject to distress under an attornment clause are not rendered exempt from distraint by the fact that they belong to a stranger to the agreement.—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD., PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

h i. —— ——.]—BLOEMFONTEIN MUNICIPALITY *v.* JACKSONS, LTD., [1929] App. D. 266.—**S. AF.**

q i. —— *Goods assigned.*]—FARR *v.* ANNABLE, [1926] 2 D. L. R. 127; 58 O. L. R. 387.—**CAN.**

q ii. —— —— *Liability of goods assigned while assignor tenant of distrainor.*]—One R., some years prior to becoming the tenant of applts., had given resp. a chattel mtge. on her household goods & furniture. During the tenancy, applts. made a distress for overdue rent & seized the goods found on the premises. Resp. claimed the goods under the chattel mtge. & asserted that they were exempt from applts.' distress for rent. An interpleader issue between the parties was directed to be tried :—*Held :* the goods & chattels covered by the mtge. were subject to applts.' distress for rent.—STOTT *v.* HENINGER, [1935] S. C. R. 408; 3 D. L. R. 700; 5 F. L. J. (Can.) 115.—**CAN.**

r i. —— —— ——.]—The goods of a stranger not a party nor a privy to the estoppel created by an attornment of tenancy to a person having no reversion are not liable to distress although found upon the premises the subject of the attornment.—PARTRIDGE *v.* MCINTOSH & SONS, LTD. (1934), 49 C. L. R. 453.—**AUS.**

PART II. SECT. 5, SUB-SECT. 12.—A.

405 i. *General rule — Goods not privileged.*]—When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee.—*Re* CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD., [1924] 4 D. L. R. 298.—**CAN.**

PART II. SECT. 5, SUB-SECT. 12.—B. (a) ii.

414 ii. —— ——.]—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD.; PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

414 iii. —— ——.]—In order to be entitled to the protection afforded by Distress Act, R. S. B. C., 1924, to boarders & lodgers the person alleging that he is a boarder or lodger must prove an arrangement between him & the tenant which is definite as to the amount payable by him & as to the time & manner of payment.—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD., PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

421a. —— —— **Agreement with one of two joint tenants.**]—Premises were demised to two persons jointly: one of them hired from applts. a piano under a hire-purchase agreement:—*Held:* the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement.—GAMAGE (A. W.), LTD. *v.* PAYNE (1925), 134 L. T. 222; 90 J. P. 14; 42 T. L. R. 138, D. C.

423. *Add. Annotations:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303. **Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12. **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

424. *Add. Annotations:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303. **Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12.

424a. —— ——.]—The tenant of a dwelling-house hired goods from pltfs. under a hire-purchase agreement, by which he agreed to pay punctually the instalments & also the rent of the premises on which the goods might be. By a clause of the agreement, in case of any breach, the owners might, by written notice, forthwith determine the agreement, & thereupon neither party thereafter should have any rights under it. The instalments being in arrear, pltf. served on the hirer a notice terminating the agreement, & claiming a return of the goods. A distress was subsequently levied on behalf of the landlord, & the goods the subject of the hire-purchase agreement were seized. In an action by the owners for illegal distress, the county ct. judge gave judgment for pltfs.:—*Held:* as soon as the notice terminating the agreement was given the right of the hirer to possession of the goods was at an end, & neither party to the agreement had any rights under it. When the distress was levied there was therefore no hire-purchase agreement in force relating to the goods, & they were not at that time "comprised in any hire-purchase agreement" within Law of Distress Amendment Act, 1908 (c. 53), s. 4, & the distress was illegal.—SMART BROS., LTD. *v.* HOLT, [1929] 2 K. B. 303; 98 L. J. K. B. 532; 141 L. T. 268; 45 T. L. R. 504; 35 Com. Cas. 53.

Annotations:—**Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12. **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

424b. —— **When notice operative—From time of posting.**]—A hire-purchase agreement contained a clause entitling the owners of the goods hired to terminate the agreement in certain events, which had happened "by written notice sent by post (or otherwise) to, or left at, the hirer's last known address" & providing that "thereupon the hirer shall no longer be in possession of the goods with the owners' consent":—*Held:* a notice sent by post pursuant to that clause operated to terminate the agreement from the moment when it was put in the post for delivery to the addressee, & therefore from that moment the goods were no longer comprised in a hire-purchase agreement within Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), & could not be distrained on landlord for arrears of rent.—DRAGES, *v.* OWEN (1935), 154 L. T. 12; 52 T. L. R. 108; 80 Sol. Jo. 55.

428. *Add. Annotation:*—*As to* (3) **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

428a. ——.]—By Law of Distress Amendment Act, 1908 (c. 53), s. 1 (c), if a superior landlord levies a distress on the goods of any person not being a tenant of the premises & not having any beneficial interest in any tenancy of the premises, such person may serve the superior landlord with a declaration in writing setting forth that the immediate tenant "has no right of property or beneficial interest in the . . . . goods . . . so distrained . . . upon, & that such . . . goods . . . are the property or in the lawful possession of such . . . person aforesaid, & are not goods . . . to which this Act is expressed not to apply":—*Held:* omission to state that the goods were not goods to which the Act was expressed not to apply is a fatal defect in a declaration.—DRUCE & CO., LTD. *v.* BEAUMONT PROPERTY TRUST, LTD., [1935] 2 K. B. 257; 104 L. J. K. B. 455; 153 L. T. 183; 51 T. L. R. 444; 79 Sol. Jo. 435.

430. *Add. Annotation:*—**Consd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

451. *Add. Annotation:*—**Consd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

460. *Add. Annotation:*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

PART II. SECT. 5, SUB-SECT. 13.

sj. *Conditional Sales Act—Interest of seller under conditional sale.*]—A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—BELL & SCHIESEL *v.* JACOBSON & WEITZER, [1925] 2 D. L. R. 393; [1925] 1 W. W. R. 913.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

440 iv. ——.]—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—**CAN.**

440 v. ——.]—The attornment clause in question herein, which was contained in an agreement for the sale of land, held not to be affected by the acceleration clause in said agreement; &, therefore, since there was no rent due under the attornment clause at the time the distress, with respect to which this action was brought, was made, the distress was bad & the purchaser entitled to damages therefor.—BURRELL *v.* WATT & HARDINGE, [1928] 3. D. L. R. 505; [1928] 2 W. W. R. 482.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.

sk. *Covenant to summer-fallow—Forfeiture clause on execution.*]—A lease of farm lands on the crop-payment plan also provided by a clause following the *habendum* that the lessee should pay yearly a certain sum per acre for each acre of the portion agreed to be summer-fallowed which should not be summer-fallowed, & a further sum per acre at the expiration of the term for every acre not left ploughed as agreed. A forfeiture clause provided that in the event (*inter alia*) of the goods of the lessee being taken in execution or a writ of execution being issued against them, the then current year's rent should immediately become due & payable & the term should immediately become forfeited & void. On a motion, in an action for wrongful distress, to continue an injunction until trial:—*Held:* assuming but without deciding that the clause following the *habendum* was part thereof, the forfeiture clause could not be applied so as to render immediately payable the amount agreed on as payable for failure to summer-fallow; such amount did not fall due until the day after the latest day the lessee had to do the work, &, since that period had not expired when the lessor distrained with respect to said amount, the distress was *semble* illegal.—GARROW *v.* BAIRD, [1931] 1 W. W. R. 129; 39 Man. L. R. 367.—**CAN.**

PART II. SECT. 6, SUB-SECT. 5.

456 iii. —— ——.]—A distress for rent, when made at night, is invalid even as against a third party, when the tenant has not waived the objection.—ROACH *v.* LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—**CAN.**

461 i. *Waiver of irregularity by tenant—Whether distress valid as against third*

D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—**CAN.**

475. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

482. *Add. Annotation :*—**Refd.** Cohen *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 592.

509. *Add. Annotation :—As to* (3) **Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

517. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

523. *Add. Annotation :* — **Consd.** Drughorn *v.* Moore, [1924] A. C. 53.

524. *Add. Annotation :*—**Refd.** Tredegar Viscount *v.* Harwood, [1929] A. C. 72.

531. *Add. Annotation :*—**Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

532. *Add. Annotation :—As to* (2) **Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

538. *Add. Annotation :—As to* (2) **Refd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

581. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

583. *Add. Annotation :—As to* (1) **Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

599. *Add. Annotation :*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

600. *Add. Annotation :—Generally,* **Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

601. *Add. Annotation :*—**Consd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

623. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

654a. —— —— —— **Distress by landlord in person.**]—There is nothing in the above Act to prevent an uncertificated landlord from distraining in person.—JACKSON *v.* BENNAN (1893), 37 Sol. Jo. 282.

686. *Add. Annotation :* — **Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

714a. Removal of goods at tenant's request—Estoppel.]—Upon a distraint being made upon such a sewing machine, & a man being put in possession, a letter was written to the landlord: "I hereby request you to remove the sewing machine & other goods you have distrained on my premises":—*Held :* this did not estop resp. from raising the question whether the machine could be distrained upon at all.—MASTERS *v.* FRASER (1901), 85 L. T. 611; 66 J. P. 100; 18 T. L. R. 31.

723. *Add. Annotation :*—**Expld.** Davies *v.* Property & Reversionary Investments Corpn., Ltd., [1929] 2 K. B. 222.

731. *Add. Citation :*—after "Ex. Ch." add "*revsg.* S. C. *sub nom.* LEYLAND *v.* TANCRED (1850), 16 Q. B. 664."

732. *Add. Annotation :—As to* (1) **Folld.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

737a. —— ——.]—(1) A notice of distress which specifically sets out each article that has been distrained, or which, while not specifically setting them out, is to be interpreted as meaning that all the goods on the premises have been distrained, is good.

(2) A notice which, after setting out certain specified articles, continued "& all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress":—*Held :* bad.—DAVIES *v.* PROPERTY & REVERSIONARY INVESTMENTS CORPN., [1929] 2 K. B. 222; 98 L. J. K. B. 515; 141 L. T. 256; 93 J. P. 167; 45 T. L. R. 434; 73 Sol. Jo. 252; 27 L. G. R. 500, D. C.

738. *Add. Annotation :—As to* (2) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

739. *Add. Annotation :—As to* (3) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

743. *Add. Annotation :*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

755. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

772. *Add. Annotation :—As to* (2) **Refd.** Bushell *v.* Timson, [1934] 2 K. B. 79.

796. *Add. Annotation :—Generally,* **Refd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

802a. Relationship of landlord & tenant must exist.]—By an agreement made in 1934 & expressed to be between the S. Ry. Co. & "T.C.B. & M.G. trading as E.A.P., Ltd." thereinafter called "the tenants," certain premises were let to "the tenants," & it was provided (*inter alia*), that "the tenants hereby jointly & severally agree to pay the rent," etc. In the *testimonium* clause "the

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PART II. SECT. 6, SUB-SECT. 6.—B.

482 ii. ——.]—8 Anne, s. 7, which continues the right to distrain for six months after the expiration of the term if the landlord's title & the possession of the tenant continue, is inapplicable where the term has been put an end to by a forfeiture. The question whether a tenant's term has been ended does not depend upon the fact of possession but upon the continued existence of his right to possession. The taking by a vendor of an order for specific performance of the agreement for sale & for a writ of possession is inconsistent with the continuance of the relationship of landlord & tenant created by the agreement between him & the purchaser; & a distress made after the issue of the writ of possession is wrongfully made. — SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382; 3 D. L. R. 959.—**CAN.**

PART II. SECT. 7.

496 i. *General rule—Land out of which rent issues.*]—The distress was void *ab initio* on the ground that it was not made on the premises in respect to which the rent was claimed.—BURRELL *v.* WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

g i. *Not limited to one year's rent.*]—The contention that a distress cannot be made for more than one year's rent cannot be upheld.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART II. SECT. 9, SUB-SECT. 3.

566 iii. ——.]—Where there was a crop payment lease, & prior to the lease there was a mtge. over the property & the mtgees. had exercised their right to take possession:—*Held :* the lessor had no right to distrain.—R. *v.* SULLIVAN, [1924] 2 D. L. R. 429; 42 Can. Crim. Cas. 44.—**CAN.**

PART II. SECT. 9, SUB-SECT. 6.—A.

584 i. *Necessity for tender—Condition precedent to replevin.*]—Where a distress for rent is legally justified the tenant in order to render the continuance of the distress wrongful & to have the right to replevin must tender the proper amount due the landlord before he replevies.—STANLOFF *v.* LARSON, [1936] 2 W. W. R. 177; 6 F. L. J. (Can.) 38.—**CAN.**

PART II. SECT. 9, SUB-SECT. 7.

a i. —— *Chattel mortgage given to landlord.*]—ESAW *v.* VANDIADES, [1937] 3 W. W. R. 353.—**CAN.**

PART II. SECT. 11, SUB-SECT. 1.—B. (b).

752 i. *Expulsion from premises—Not permissible.*]—A landlord distraining is not entitled to lock up the whole of the demised premises so as to exclude the tenant therefrom.—BLACK *v.* STERNICKI, [1930] 4 D. L. R. 715; 2 W. W. R. 656; 39 Man. L. R. 123; *revsg.*, [1930] 2 D. L. R. 675; 1 W. W. R. 437.—**CAN.**

PART II. SECT. 12, SUB-SECT. 8.—A.

779 iv. ——.]—MACDONALD *v.* CUMMINGS (1892), 8 Man. L. R. 406.—**CAN.**

tenants respectively set their hands, etc." In 1936 judgment was obtained against E.A.P., Ltd., a writ of *fieri facias* issued against certain goods of E.A.P., Ltd., at the above-mentioned premises, & the sheriff's officer took possession of the goods. The sheriff received notice from the S. Ry. Co. that a certain sum was due to them for rent of the premises. The execution creditors sent a cheque for that amount to the sheriff. E.A.P., Ltd., then went into voluntary liquidation & on the same day the S. Ry. Co. applied to T.C.B. & M.G. for the rent due. The liquidators of E.A.P., Ltd., wrote to the sheriff, undertaking to reimburse the sheriff in respect of the rent if he should be found entitled to it, & the sheriff thereupon delivered to the liquidators the goods which had been taken in execution. The execution creditors took out a summons, asking for an order that the liquidators should repay to the execution creditors or to the sheriff on their behalf the sum paid by the execution creditors to the sheriff for the rent due to the S. Ry. Co. The execution creditors based their claim on the Landlord & Tenant Act, 1709 (c. 18), s. 1. The liquidators contended that the relationship of landlord & tenant did not exist between the S. Ry. Co. & E.A.P., Ltd., & that in the absence of such relationship, the Act of 1709 did not apply:—*Held:* (1) the relationship of landlord & tenant must exist between the person claiming the rent & the execution debtor to make the Landlord & Tenant Act, 1709 (c. 18), applicable. Upon a proper construction of the lease of 1934, the tenants were T.C.B. & M.G. & not E.A.P., Ltd. The Act of 1709 did not therefore apply, & the execution creditors were not entitled to the order asked for.—*Re* EASTCHEAP ALIMENTARY PRODUCTS, LTD., [1936] 3 All E. R. 276; 155 L. T. 521; 80 Sol. Jo. 932.

808. *Add. Annotation:*—**Consd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

851. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

897. *Add. Annotation:*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

923. *Add. Annotations:*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1923] 2 K. B. 251.

932. *Add. Annotation:*—*As to* (1) **Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

944. *Add. Annotation:*—**Consd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

951. *Add. Annotation:*—**Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

952. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

953. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

955. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

956. *Add. Annotations:*—*As to* (1) **Consd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608. *As to* (2) **Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412. *Generally*, **Refd.** Queen Anne's Bounty *v.* Thorne, [1934] 2 K. B. 175.

964. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

PART II. SECT. 12, SUB-SECT. 3.—C. (e).

833 i. *Effect of—Property seized under Absconding Debtors Act.*]—Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees. —STANTON *v.* JOHNSTON (1858), 4 All. 54.—**CAN.**

PART II. SECT. 13, SUB-SECT. 1.

sv. *Orderly Payment of Debts Act, 1932—Whether applicable to landlord holding under distress.*]—A right of distress is not a security within the Act. —BERMACK *v.* BLANK, [1932] 3 W. W. R. 507; [1933] 1 D. L. R. 187; 40 Man. L. R. 601.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent—Goods insufficient to satisfy rent.*]—The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress be sufficient or not to satisfy the amount for which the levy is made.—FAWELL *v.* ANDREW, [1917] 2 W. W. R. 400; 34 D. L. R. 12; 10 Sask. L. R. 162.—**CAN.**

PART II. SECT. 13, SUB-SECT. 7.

k i. ——.]—In the absence of an agreement with all parties interested, a landlord cannot be the purchaser at a sale under a distress for rent.—HART *v.* YARWOOD, [1932] 2 W. W. R. 74; 4 D. L. R. 169; 45 B. C. R. 331.—**CAN.**

k ii. ——.]—The landlord levying distress cannot, at the auction sale of the chattels distrained upon for rent, buy in so as to acquire a good title, &, consequently, the chattels remain the property of the tenant & liable to seizure by the execution creditor of the tenant.—HONE *v.* THORPE & EDILSON, [1932] N. Z. L. R. 1101.—**N.Z.**

PART II. SECT. 13, SUB-SECT. 10.

sl. *On goods sold under conditional sale by wife to husband—Bailiff's sale a mere pretence.*]—BARLOW *v.* BREEZE (B. C.), [1917] 1 W. W. R. 270.—**CAN.**

PART II. SECT. 13, SUB-SECT. 11.

sn. *Taxes unpaid—Sale valid as between landlord & tenant.*]—MATHESON *v.* CALKIN (1931), 3 M. P. R. 9.—**CAN.**

PART II. SECT. 14.

b i. —— *Costs of Distress Act, R. S. O., 1927—Agreement between finance company & bailiff—No offence by bailiff.*]—R. *v.* ANDERSON (1931), 55 Can. C. C. 190.—**CAN.**

PART II. SECT. 17, SUB-SECT. 1.—C.

t i. —— *Removal must be during tenancy.*]—*Held:* the rights of the landlord, under Distress for Rent Act, 1737 (c. 19), s. 1, to follow goods removed by the tenant, applies only to goods removed during the tenancy. —*Re* MCKAY & ADAMS, *Ex p.* VEST (1929), 47 N. S. W. W. N. 88.—**AUS.**

a i. ——.]—To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

e i. —— *Necessity for.*]—A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecta et illata*, prevented the tenant from doing so by force without any application to the ct. for an attachment or interdict:—*Held:* the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecta et illata*.—REDDY *v.* JOHNSON (1923), 44 N. L. R. 190.—**S. AF.**

PART II. SECT. 17, SUB-SECT. 1.—F.

1000 iv. ——.]—A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be a sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder &

1065. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1069. *Add. Annotation :*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1069a. —— Distrainor allowing use of goods distrained.]—Permission to use vehicles which have been seized under a distress does not justify a pound-breach.—BEVIR *v.* BRITISH WAGON CO., LTD. (1935), 80 L. Jo. 162.

1069b. Who may be liable—Pound breach by tenant—Subsequent removal of goods by contractor.]—Goods of a tenant which are distrained on for rent & are impounded on the tenant's premises are impounded not merely against the tenant but against any stranger, because they are in the custody of the law. If, however, the tenant breaks the pound by the removal of the goods on to a landing outside the pound & afterwards, on the instructions of the tenant, they are taken away by removal contractors acting in the ordinary course of their business, such contractors are not guilty of pound-breach.—LAVELL & CO., LTD. *v.* O'LEARY, [1933] 2 K. B. 200; 102 L. J. K. B. 449; 149 L. T. 227; 49 T. L. R. 388, C. A.

1069c. —— Stranger.]—LAVELL & Co. *v.* [illegible] (A. & E.), No. 1069b, *ante*.

1081. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1090. *Add. Annotation :*—**Refd.** Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274.

1131. In *Citation*, for "(1847), 1 Car. & Kir. 626" read "(1848), 2 Car. & Kir. 626."

1253. *Add. Annotation :*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

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official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained :—*Held :* this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear.—CRYSTAL, LTD. *v.* WILLARD KITCHEN, LTD., [1924] 2 D. L. R. 1051; 2 W. W. R. 344.—**CAN.**

PART II. SECT. 18, SUB-SECT. 2.

1064 i. *What constitutes—Goods not in actual possession of distrainor.*]—Where goods distrained for rent have been impounded on the premises, it is not essential that the landlord or any one on his behalf should remain on the premises in possession of the goods; & where such goods are afterwards removed by a person claiming them as the true owner thereof under a bill of sale, the landlord, in the absence of proof of abandonment of such distress, may maintain an action for pound breach for treble the value of the goods so removed.—CLEAVE *v.* COMMERCIAL LOAN & FINANCE CO., LTD., [1930] N. Z. L. R. 925.—**N.Z.**

g i. —— *Distress on goods subject of hire-purchase agreement—Repossession by owner without knowledge of distress.*]—FORREST *v.* WASHING, [1929] W. A. L. R. 49.—**AUS.**

PART II. SECT. 18, SUB-SECT. 3.

1071 i. *Reception — Upon fresh pursuit—Loss of right.*]—In the case of pound breach or rescue of goods distrained, the right of recaption on fresh pursuit, which is explained to mean without delay, is not defeated by mere lapse of time, but by some want of diligence on the part of the party seeking to exercise the right.—MAY *v.* MORRIS (1929), 30 S. R. N. S. W. 355; 47 N. S. W. W. N. 152.—**AUS.**

PART II. SECT. 19, SUB-SECT. 3.

m i. —— ——.]—A distress is excessive when the value of the goods seized was unreasonably greater than the amount of rent due, &, in such a case, nominal damages will be presumed.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 343.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—C. (a).

1127 i. *Taking of goods privileged from distress—Failure to claim exemption.*]—A tenant whose goods had been distrained & advertised for sale was written to by the bailiffs, the letter drawing his attention to his failure to select his exemptions, & notifying him that if they were not claimed before the time of sale the sale would be proceeded with. No reply was made or other notice thereof taken by the tenant; instead, he brought a replevin action, alleging that the goods were unlawfully distrained. The sale had not taken place :—*Held :* the distress was lawful & the action for replevin premature & unnecessary.—LONG *v.* SIMMONS, [1935] 1 W. W. R. 577; 2 D. L. R. 410; 43 Man. L. R. 86.—**CAN.**

t i. ——.] — DICKS *v.* BARBOUR (P. E. I.), [1927] 4 D. L. R. 478.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (b).

g i. ——.]—*Held :* a replevin bond with one surety was sufficient.—TAYLOR *v.* BURPEE (1861), 10 N. B. R. (5 All.) 191.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

s i. —— ——.]—P. brought a replevin action, & the goods were delivered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged :—*Held :* as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond.—PETRIE *v.* RIDEOUT, [1925] 1 D. L. R. 1078; [1925] S. C. R. 347.—**CAN.**

s ii. —— ——.]—TRAVIS *v.* SMITH, [1930] 3 D. L. R. 231; 1 M. P. R. 57.—**CAN.**

s i. —— *Goods liable to seizure.*]—MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (a).

p (p. 380) **i.** —— *Breach of covenant forfeiting rent claimed—Admissible.*]—In an action of replevin by a sub-lessee against the lessor, pltf. is entitled to prove, on cross-examination of the lessor, that there had been a breach of a covenant in the lease which forfeited the rent claimed, the sub-lessee being entitled to the benefit of such covenant, though there has been no assignment of the lease in writing.—RIGNUETTE *v.* HEBERT (1905), 37 N. B. R. 68.—**CAN.**

st. *Stay of proceedings—When ordered.*]—DEWHURST *v.* MCCOPPIN (1870), 17 Gr. 572.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (d).

l i. —— *Warehouseman—Joinder of parties.*]—In a replevin action against a warehouseman :—*Held :* a co. in whose name the warehouse receipts were taken was entitled to be added as a party deft.—NORTHERN FISH CO. *v.* WINNIPEG COLD STORAGE, LTD., [1932] 2 W. W. R. 231; 3 D. L. R. 427; 40 Man. L. R. 340.—**CAN.**

ll, —— *Constables' Protection Act, R. S. N. S.*, 1923.]—In an action of replevin for wrongful distress, Constables' Protection Act, R. S. N. S., 1923, does not apply.—HILL *v.* WARNER, [1933] 3 D. L. R. 771; 7 M. P. R. 37; 60 C. C. C. 360.—**CAN.**

sv. *By what persons—"Owner" of goods.*]—Pltf. offered for sale at public auction certain cattle, for which deft. bid & was declared the purchaser. The terms of the sale were that for any cattle sold the purchaser was either to pay cash or deliver an endorsed promissory note to be approved of by pltf. Deft. having a money claim against pltf. & desiring to make a settlement with him, openly took the stock to his farm without paying cash or giving an approved note :—*Held :* pltf. was not, when he commenced this action for replevin, the "owner" of the cattle & there was not a wrongful taking within Replevin Act, R. S. O., 1927, s. 2.—MCKEE *v.* FISHER, [1930] 2 D. L. R. 14; 64 O. L. R. 634.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (e).

a i. —— *Effect of.*]—ALEXANDER *v.* COWIE (1880), 19 N. B. R. (3 P. & B.) 599.—**CAN.**

sa. *Statement of claim—Necessity for.*]—In a replevin action in the county ct., there must be a statement of claim whether damages are claimed or not.—BROWN *v.* MORGAN NICHOLSON, LTD., [1936] 1 W. W. R. 267; 1 D. L. R. 522.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (f).

sd. *Plaintiff ordered to return goods.*]—Pltf. obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action :—*Held :* the ct. had power to order the return of the goods.—PASSARINI *v.* MARTIN, [1925] 2 D. L. R. 914; 58 N. S. R. 121.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—A. (a).

1259 i. *Against landlord—Pleading.*]—SCOTT *v.* MCCABE (1871), 31 U. C. R. 220.—**CAN.**

so. *Whether proof of value of goods necessary—Value admitted by defendant accepted.*]—MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

sp. *Against bailiff & auctioneer—Right of defendants to protection of Magistrates Courts Act*, 1908.]—Where a bailiff acting in good faith seizes goods belonging to A., under a distress warrant directed against B., & where an auctioneer at the request of the bailiff & in good faith sells such goods, both the bailiff & the auctioneer are entitled to the protection afforded by above Act.—KEWENE *v.* BUCHLAND & SONS, [1928] N. Z. L. R. 818.—**N.Z.**

1266a. —— **Evidence—Terms of tenancy.**]—If a tenant suing his landlord for a wrongful distress does not put in the agreement of tenancy, the jury, as against him, may infer its terms from his own admission or his own evidence in the case.—COWNE *v.* CORDERY (1862), 10 W. R. 347.

1271. *Add. Annotation :*—**Refd.** Elliott *v.* Boynton, [1924] 1 Ch. 236.

1283a. Substantial damages—Although no actual damage.]—INTEROVEN STOVE CO., LTD. *v.* HIBBARD & PAINTER & SHEPHERD, No. 71a, *ante*.

1328. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

1337. *Add. Annotation :*—**Refd.** Interoven Stove Co. *v.* Hibbard & Painter & Shepherd, [1936] 1 All E. R. 263.

Part III.—Distress for Rates.

1376. After this case add :-

——.]—*See, now*, Rating & Valuation Act, 1925 (c. 90), s. 62.

1384. *Add. Annotation :*—**Consd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

1396. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1409. *Add. Citation :*—2 B. R. A. 949.

1412. *Add. Citation :*—1 B. R. A. 450.

Add. Annotation :—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413. *Add. Annotation :*—**Folld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413a. —— ——.]—Where a rate, duly made & confirmed, has been levied in respect of a vacant building, occupied by a caretaker only, not being held in readiness for use, & not being fitted for any use, & a distress warrant has been issued by justices in enforcement of payment of such rate, an action of replevin will not lie ; the jurisdiction of the justices depends simply on occupation within the parish, & not on beneficial occupation.—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, [1928] 2 K. B. 588 ; 97 L. J. K. B. 694 ; 139 L. T. 407 ; 92 J. P. 138 ; 44 T. L. R. 592 ; 26 L. G. R. 366 ; (1926-31), 1 B. R. A. 249.

Annotation :—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

1414. *Add. Citation :*—2 B. R. A. 919.

Add. Annotations :—**Refd.** Kingston Mill, Stockport *v.* Owen (1928), 92 J. P. Jo. 782 ; L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1419a. —— ——.]—The poor rate payable in respect of a dwelling-house of which pltf. was weekly tenant was £5 10*s.* a year. A demand note for a half-year's rate, namely £2 15*s.*, was served on pltf., but he failed to pay the money & a summons was issued against him. Pltf. did not appear before the justices, who refused to hear his landlord's daughter on his behalf. Evidence having been given on the part of the overseers, the justices issued a distress warrant against pltf.'s goods, although, before they signed the warrant, the landlord's daughter had addressed them again & intimated that pltf. was a weekly tenant, a fact of which one of the justices was aware :—*Held :* although, if the full facts had been proved, it would have been apparent to the justices that they had no jurisdiction to issue the warrant, they ought to consider only facts known to them in their judicial capacity from materials properly before them, & they had acted correctly in point of law on the evidence which had been so proved.—PALMER *v.* CRONE, [1927] 1 K. B. 804 ; 96 L. J. K. B. 604 ; 137 L. T. 88 ; 91 J. P. 67 ; 43 T. L. R. 265 ; 25 L. G. R. 161.

PART II. SECT. 19, SUB-SECT. 5.—A. (b).

1275 i. *Illegal entry—Entry at night—Prevention of removal of goods—Actual damage.*]—BALDRY *v.* DIXON, [1931] 2 D. L. R. 437 ; 1 W. W. R. 21 ; 39 Man. L. R. 273.—**CAN.**

d i. ——— —.]—Where a landlord follows & distrains & sells goods for rent subsequently falling due, & the distress & sale are illegal :—*Held :* the *quantum* of damages is the full value of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326 ; 3 W. W. R. 49.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—C. (a).

a i. —— ——.]—While it seems that an action for distraining for more rent than is due cannot be maintained without a tender of the sum that is actually due, this principle does not apply to an action for an excessive distress.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744 ; [1928] 2 W. W. R. 343.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

p i. —— —— ——.]—Where a tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844 ; 2 W. W. R. 1081 ; 34 Man. L. R. 312 ; 5 C. B. R. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sg. *Goods held as purchaser under conditional sale agreement.*]—Under the Medicine Hat Charter goods in the possession of the person taxed may be seized & sold for such taxes as are made a lien on land, even though his interest therein is only that of a vendee under a conditional sale agreement ; where, however, the taxes with respect to which the distress is made are not a lien on land, it is only the interest of the taxpayer in goods held by him under a conditional sale agreement that may be sold.—CANADIAN HOFFMAN MACHINERY CO., LTD. *v.* MEDICINE HAT CITY, [1931] 2 W. W. R. 121 ; 3 D. L. R. 196.—**CAN.**

sk. *Animals subject of chattel mortgage—In possession of tenant.*]—Deft. municipality seized & sold certain goods & chattels, including animals, for arrears of taxes on several quarter sections of land, the owner of which had given to pltf. a chattel mtge. covering the seized property. At the time of the seizure the animals were on one of such quarter sections & in the possession of a tenant thereof :—*Held :* the mtge. passed the property included therein to the pltf. ; the definition of "occupant" in sect. 2 (18) of Rural Municipality Act, 1935, includes a tenant ; & since the animals seized were the property of a person other than the defaulter or occupant or any relative of either they came within the third proviso to sect. 352 (*c*) of said Act & could not, therefore, be the subject of a distress & sale for taxes due by the defaulter.—ROYAL BANK OF CANADA *v.* DUFFERIN RURAL MUNICIPALITY, [1936] 3 W. W. R. 684.—**CAN.**

1420. *Add. Annotation :*—**Refd.** Gateshead Assessment Committee *v.* Redheugh Colliery, [1925] A. C. 309.

1422. *Add. Annotations :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804; Lowery *v.* Kingston-upon-Hull Corpn., [1930] 1 K. B. 368.

1423. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1424. *Add. Annotation :*—**Refd.** Pigg *v.* Weardale Union Tow Law Overseers (1923), 22 L. G. R. 17.

1431. *Add. Annotation :—As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1438. *Add. Annotation :—As to* (1) **Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1446. *Add. Annotation :—As to* (2) **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

1459. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

1462. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1471. *Add. Annotation :—As to* (1) **Consd.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1472. *Add. Annotation :*—**Folld.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1484. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1487. *Add. Annotation :*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

1489. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1491. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1506. *Add. Annotation :—As to* (1) **Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1532. *Add. Citation :—sub nom.* BLETCHINGDON SURVEYOR *v.* DAND, 3 New Sess. Cas. 640.

1542. *Add. Citation :*—1 B. R. A. 570.

Add. Annotation :—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

1548. *Add. Annotation :*—**Refd.** L. C. C. *v.* B. C., [1928] 2 K. B. 588.

1555. Add the following para. :—

(3) The contract was a contract of indemnity, & not merely to pay a sum of money, & the tenant was entitled to damages for the imprisonment.—ATKINS *v.* HUTTON (1909), 103 L. T. 514 ; 74 J. P. 329 ; 8 L. G. R. 513, C. A.

1576. Before this case add " *See, now,* Land Drainage Act, 1930 (c. 44), s. 31."

1582. *Add. Citation :—sub nom.* NEABE *v.* 7 J. P. 143.

1584a. What may be distrained— Goods outside area of Drainage Board—Land of person liable partly within area.]—Pltf. owned land part of which was outside the area administered by defts. The amount claimed from him in respect of drainage rates on his land, which was situate within the area of defts., having remained unpaid, defts. claimed to be entitled to levy distress upon the goods outside their area :—*Held :* the distress warrant, being properly issued against a person liable to the rate, might be executed upon the goods of pltf., even though not within the limits of the area administered by defts.—MORSE *v.* THE OUSE DRAINAGE BOARD, [1931] 1 K. B. 109 ; 100 L. J. K. B. 238 ; 144 L. T. 182 ; 49 J. P. 127 ; 28 L. G. R. 196.

1588. *Add. Annotations :*—**Apld.** R. *v.* Clements Judge, *Ex p.* Ferridge (1932), 76 Sol. Jo. 414. **Consd.** R. *v.* Kent County Court Judge, *Ex p.* Ferridge (1932), 101 L. J. K. B. 603. **Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

1588a. Costs of distress—Power to levy.]—The power given to Comrs. of Sewers by Sewers Act, 1833 (c. 22), s. 55, to levy the costs of a distress is limited in the cases of distress for sums under £20 by Distress (Costs) Acts, 1817 (c. 93) & 1827 (c. 17).—R. *v.* NORFOLK JJ., *Ex p.* PORTER (1926), 96 L. J. K. B. 158; 136 L. T. 327; 91 J. P. 14; 43 T. L. R. 53 ; 70 Sol. Jo. 1198 ; 25 L. G. R. 44, D. C.; *sub nom.* R. *v.* SMITH, *Ex p.* PORTER, [1927] 1 K. B 478.

1604. *Add. Citation :—sub nom.* R. *v.* LINDSEY, Parts of, Lincolnshire, JJ., *Ex p.* Bower, 107 L. T. 170.

PART III. SECT. 1, SUB-SECT. 4.—A.

1427 i. *By whom made—Collector.*]—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844 ; 2 W. W. R. 1081 ; 34 Man. L. R. 312 ; 5 C. B. R. 41.—**CAN.**

1427 ii. —— *Under Village Act, R. S. S.*, 1920 (c. 88).]—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260 ; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.—A. (b).

sk. *Measure of damages.*] — The seizure of goods, worth over $5,000 to satisfy a debt of $178 is an excessive seizure, & a village corpn. having made or ratified such an unauthorised seizure, was found liable in damages ; & the measure of damages was the difference between the full value of the goods seized & the value of the goods necessary to be sold to realise the amount of the taxes & the incidental costs.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260 ; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 8.

sm. *Rates of public utility company —Construction of statute—Right as in case of distress for rent.*]— Where a statutory power of distress is given which is " to be made & levied in the same manner, so far as may be, as a distress by law upon a tenant for rent," the power is subject to the law as it then existed or has been subsequently enacted with respect to a distress by a landlord for rent.—I *v.* WINNIPEG ELECTRIC CO., [1933] 2 W. W. R. 266.—**CAN.**

Part IV.—Distress for Assessed Taxes.

1607. *Add. Annotations :*—**Refd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250. **Mentd.** Ingle *v.* Farrand, [1927] A. C. 417.

1609. *Add. Annotations :—As to* (1) **Refd.** Glamorgan County Council *v* Glassbrook, [1924] 1 K. B. 879. *Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1636. *Add. Annotation :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T 500.

Part VI.—Distress under Summary Jurisdiction Acts.

1668. *Add. Annotation :*—**Refd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

Part VII.—Distress Damage Feasant.

1732a. —— —— ——.]—HARRINGTON *v.* BUSH (1709), 11 Mod. Rep. 219 ; Fortes. Rep. 255 ; Holt, K. B. 23 ; 88 E. R. 1000.

1732b. —— —— ——.]—OSWAY *v.* BRISTOW (1711), 10 Mod. Rep. 37 ; 88 E. R. 615.

1765. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

1780. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

PART IV. SECT. 1.

g i. —— ——.]—Where several quarter sections are separately assessed, a seizure for taxes of goods belonging to a person other than the person taxed or owner of the land in possession thereof can be made only for the taxes owing with respect to the particular quarter section on which the goods are found.—SPRINGBANK MUNICIPALITY *v.* WALKER, [1925] 1 D. L. R. 925 ; [1925] 1 W. W. R. 697 ; 21 Alta. L. R. 344.—**CAN.**

g ii. —— ——.]—Under Municipal District Act, R. S. A., 1922 (c. 110), the right to seize chattels lying on the land taxed, but not belonging to the person taxed, is limited to the case in which the person assessed is in actual occupation of the land.—SCOTT *v.* MUNICIPAL DISTRICT OF WOODFORD (Alta.), [1925] 4 D. L. R. 783 ; [1925] 3 W. W. R. 727 ; *affg.*, [1925] 2 W. W. R. 578.—**CAN.**

q i. —— *On second distress—First distress obstructed.*]—When the levying of a distress is obstructed by the party whose goods are being distrained & the distrainer is thereby prevented from realising the fruits of the distress, he is entitled to levy again ; & on the second distress he is not confined to seizing the goods previously distrained.—GISLASON *v.* RURAL MUNICIPALITY OF FOAM LAKE & WARD, [1929] 2 D. L. R. 386 ; 1 W. W. R. 233 ; 23 S. L. R. 359.—**CAN.**

q ii. —— *Goods subject of security under Bank Act, s. 88.*]—*Held :* the bank was in actual & exclusive possession of the premises & business at the time when the city corpn. seized the goods for taxes upon the realty & for business tax ; the seizure was therefore invalid.—BRANTFORD CITY *v.* IMPERIAL BANK, [1930] 4 D. L. R. 658 ; 65 O. L. R. 625 ; 12 C. B. R. 39 ; *affg.*, [1930] 2 D. L. R. 669 ; 64 O. L. R. 671 ; 11 C. B. R. 319.—**CAN.**

sm. *Right of sheriff to sell land—Insufficient distress.*]—DOE d. BEEL *v.* REAUMORE (1834), 3 O. S. 243.—**CAN.**

sn. —— ——.]—FOLEY *v.* MOODIE (1858), 16 U. C. R. 254.—**CAN.**

so. —— ——.]—FRAZER *v.* MATTICE (1860), 19 U. C. R. 150.—**CAN.**

st. *Sale of mortgaged land—Purchase by mortgagee—Right of mortgagee—To surplus.*]—*Re* GRANT (1891), 7 Man. L. R. 468.—**CAN.**

sv. —— —— —— *To whole security.*]—FARROW *v.* MASSEY-HARRIS CO., LTD., [1927] 3 D. L. R. 997 ; [1927] 2 W. W. R. 539 ; 21 Sask. L. R. 610.—**CAN.**

sw. —— *Validity—Failure to give notice to "persons interested."*]—STANDARD TRUSTS CO. *v.* HIRAM MUNICIPALITY, [1927] 1 D. L. R. 1063 ; [1927] S. C. R. 50.—**CAN.**

sx. —— —— *Notice to mortgagee of application for title sent to wrong address.*]—HOWE *v.* KIPP, [1927] 3 D. L. R. 1048 ; [1927] 2 W. W. R. 522 ; 21 Sask. L R. 637.—**CAN.**

sz. *Debt Adjustment Act,* 1933—*Whether permit necessary—Distress by secretary-treasurer.*]—Seizures Act, 1933, being a general Act, sect. 18 thereof, which provides that no seizure shall be made except by the sheriff or sheriff's bailiff, does not overrule sect. 357 of Municipal District Act, 1926, c. 41, which specifically declares that where taxes remain unpaid the secretary-treasurer of the district may levy the same with costs by distress. A permit from the board established under Debt Adjustment Act, 1933, is not necessary in the case of the levy of a distress by a secretary-treasurer under the provisions of Municipal District Act.—MILLER *v.* ST. LINA MUNICIPAL DISTRICT, [1934] 1 W. W. R. 1.—**CAN.**

PART IV. SECT. 3.

sg. *Suspension of poinding—Grounds for.*]—Complainer, who resided in Scotland, was assessed to Income Tax, Sched. E., for the year 1928–29, by a body of General Comrs. in England in respect of director's fees received from an English co. He duly appealed against this assessment & it was averred by the resp. that a notice was sent to complainer summoning him to a meeting of the Comrs. for the hearing of his appeal. Complainer denied that such a notice was sent to, or received by him. He did not attend the appeal meeting & the assessment was confirmed by the Comrs. Subsequently, the Comrs. issued a certificate that complainer had been duly assessed & charged with the tax, which was unpaid, &, upon application by the collector of taxes for the Galashiels district of Selkirk, the sheriff-substitute for the county issued a warrant for recovery. Goods belonging to complainer having been poinded by the sheriff officer, complainer presented a note of suspension in the Bill Chamber in terms of sect. 21 of Exchequer Court, (Scotland) Act, 1856. The note having been duly passed, it was thereafter enrolled as an exchequer cause. In the note complainer craved the ct. to suspend the notice of poinding on the following grounds : (*a*) that complainer had duly appealed against the assessment under which the tax was charged, & that since, as he alleged, no notice of the hearing of the appeal had been sent to or received by him, the appeal had not been determined according to law, & the tax charged was not recoverable ; (*b*) that the sched. of poinding served by the sheriff officer upon complainer was defective in that it stated that the goods poinded would be sold in default of payment of the tax within four days instead of five days, as prescribed by Income Tax Act, 1918 (c. 40), s. 166 (3) :—*Held :* the note of suspension fell to be refused on the ground that the decision of the General Comrs. confirming the assessment upon complainer could only be set aside by an order of an English ct. & the poinding was not invalid by reason of the inaccurate statement in the sched. of poinding.—RUTHERFORD *v.* LORD ADVOCATE (1931), 16 Tax Cas. 145.—**SCOT.**

PART VI. SECT. 3, SUB-SECT. 1.

t i. —— *Masters & Servants Act,* 1920.]—Under Masters & Servants Act, R. S. S., 1920 (c. 205), as it stood prior to its amendment by 1930, a justice of the peace had no power in making an order against a master to impose imprisonment in default of

1807. *Add. Annotation :*—**Reld.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

1816. *Add. Annotation :*—**Folld.** Bevir *v.* British Wagon Co. (1935), 80 L. Jo. 162.

distress. *Qu. :* whether since said amendment, which eliminates from the Act the power to enforce payment against a master by distraining on his goods, the provisions of sect. 739 of the Criminal Code now apply.—BURBANK *v.* ZIMMERMAN, [1930] 2 W. W. R. 744 ; 3 D. L. R. 816 ; 54 Can. C. C. 238.—**CAN.**

aa. *Imposition of hard labour—Validity—Criminal Code, s.* 739 (2).]—R. *v.* RILEY (N. S.) (1905), 14 Can. Crim. Cas. 346.—**CAN.**

PART VII. SECT. 5.

1782 i. *Failure to maintain fences—Cattle straying on to land.*]—BOLTON *v.* MACDONALD (1894), 3 Terr. L. R. 269. —**CAN.**

ab. *Cattle wandering on public road—Right of adjoining occupier to impound.*] —Where cattle are wandering on a public road in the circumstances specified in Pounds Act, 1915, s. 17, they may lawfully be impounded under that section by the occupier of land adjoining the road, notwithstanding that the council of the municipality in which the road is situated has consented to their being on the road, & has thereby waived the right to impound them given by Local Government Act, 1915, ss. 497, 498.—MOLONEY *v.* WILSON, [1929] V. L. R. 265 ; Argus L. R. 223.—**AUS.**

PART VII. SECT. 8, SUB-SECT. 1.—A.

e (p. 445) **i.** —— *Notice — Under Stray Animals Act.*]—On an appeal from a summary conviction under the above Act for illegal impounding :—*Held :* the conviction should be quashed as the record did not show that the notice required by s. 34 was given to the poundkeeper.—STAHN *v.* PEUTERT (1922), 70 D. L. R. 285 ; [1922] 2 W. W. R. 835.—**CAN.**

e (p. 445) **ii.** —— —— ——.]—R. *v.* JOLLY, [1935] 1 W. W. R. 351.—**CAN.**

e (p. 445) **iii.** —— *To detain animals as security for expenses.*]—When animals wrongfully taken under colour of *damage feasant* are impounded in a municipal pound & the pound-keeper receives them in ignorance of the wrongfulness of the taking & without participating in the wrong, he has a right to detain them as security for his expenses in feeding them & for his fees under the bye-law.—MCCAW *v.* RYCZOKOSKI, [1931] 1 W. W. R. 86 ; 1 D. L. R. 849 ; 39 Man. L. R. 339.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 1.—B.

1818 i. *Must be a fit & proper pound.*] —Under Stray Animals Act, 1920, animals impounded must be placed in the pound provided by the municipal council under s. 9 ; & where a poundkeeper placed & kept horses upon a fenced quarter section owned by him & separated by a road allowance from the pound provided by the municipality & the fence being broken down, the horses escaped or were driven off :—*Held :* the municipality was liable under s. 9, as it must be taken to have assumed the risk of placing & keeping the horses in a place other than an authorised pound.—SINWICK *v.* ELFROS [1924] 2 W. W. R. 755.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 1.—E.

k i. ——.]—Where under Stray Animals Act, 1915, s. 27 (1), the posting of notices of sale of impounded animals were not complied with :—*Held :* the sale amounted to a conversion & the pound-keeper, & the municipality employing him, were liable in damages, as (1) the posting of two notices within the municipality & one outside it was not a compliance with the Act ; (2) where animals are branded, the pound-keeper is guilty of negligence in failing to mention the brands in the notices.—LEACH *v.* MANTARIO RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132 ; 56 D. L. R. 735 ; 14 Sask. L. R. 25.—**CAN.**

k ii. —— ——.]—Where there is nothing indicating the presence of a brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper :—*Held :* defective because notices of the impounding & of the sale had not been properly posted, & both the pound-keeper & the municipality which employed him were liable in conversion for the value of the horse at the time of sale.—BROWN *v.* RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & BRELAND (Man.), [1925] 1 W. W. R. 42.—**CAN.**

l i. —— —— ——.]—Where the posted & published notices of the impounding of an animal under Stray Animals Act, R. S. S., 1920, c. 124, the owner of the animal was unknown, did not describe the brand correctly & the description of the animal was insufficient to satisfy the requirements of sect. 26 (1) of the Act, it was held that the sale was invalid, & that the municipality & the poundkeeper were liable for the value of the animal, which was placed at the amount for which it was sold at said sale.—MILLER AND MUTCH *v.* LOREBURN AND KELLY RURAL MUNICIPALITY, [1928] 4 D. L. R. 251 ; [1928] 2 W. W. R. 66 ; 22 Sask. L. R. 486.—**CAN.**

sd. *Payment of residue to owner—Domestic Animals Act,* 1921 (*c.* 50)—*Municipal District Act,* 1911 (*c.* 3).]—The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—GOLLAN *v.* STERLING, [1924] 3 W. W. R. 209.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 2.—A.

1838 ii. —— —— *Payment by uncertified cheque.*]—The delivery of an uncertified cheque to the poundkeeper is not a " deposit of the amount claimed for damages " within Stray Animals Act, R. S. S., 1920, c. 124, s. 34 (1), even though the poundkeeper treats the cheque as cash. What the Act contemplates is the payment of money. The deposit of the money is a condition precedent to the right of the owner of the impounded animal, which is released under the sect., to institute proceedings against the person impounding it.—WILEY *v.* BOOKER, [1928] 2 W. W. R. 329.—**CAN.**

PART VII. SECT. 9.

sf. *Conviction — Under Stray Animals Act,* 1920 (*c.* 124).]—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt :—*Held :* (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under Criminal Code, s. 949 ; (2) s. 49 (d) of the above Act did not apply to the portion of the province within which the offence was charged to have been committed.—R. *v.* GURSKI (1922), 69 D. L. R. 191 ; 38 Can. Crim. Cas. 139 ; [1922] 3 W. W. R. 540.—**CAN.**

PART VII. SECT. 12.

g i. —— —— *Measure of damages.*] —Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in he community.—SINWICK *v.* ELFROS, [1924] 2 W. W. R. 755.—**CAN.**

g ii. —— —— *Allowance for poundkeeper's fees & expenses.*]—In an action for damages for the conversion of animals illegally sold at a pound-sale, defts. have no right to an allowance for the pound-keeper's fees or expenses. —LEACH *v.* MANTARIO RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132 ; 56 D. L. R. 735 ; 14 Sask. L. R. 25.—**CAN.**

g iii. —— *Complaint under Stray Animals Act, R.S.S.,* 1930, *s.* 41.]—An owner of impounded animals who gives a notice under sect. 41 of Stray Animals Act, R.S.S., 1930, that he intends to complain against the person impounding the animals has two courses open to him : (*a*) he may make a deposit & get immediate possession of the animals ; or (*b*) he may not make any deposit & let the animals remain with the poundkeeper until the adjudication &, if it is adjudged that the animals are illegally impounded, the justice shall order that they be returned to the owner. A cheque, if accepted by the poundkeeper as a deposit, is a good deposit under the Act.—CADRAIN *v.* NASH, [1935] 1 W. W. R. 622 ; *affd.*, [1935] 2 W. W. R. 383.—**CAN.**

k i. —— —— ——.]—Pltf. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that pltf. was not entitled to damages. Pltf. sued the poundkeeper & the municipality for the damages :—*Held :* pltf. was entitled as against both defts. to the damages claimed.—JOHNSON *v.* MUNICIPAL DISTRICT OF BEAVER DAM, [1925] 1 D. L. R. 299 ; [1925] 3 W. W. R. 369.—**CAN.**

Part VIII.—Distress for other Purposes.

1870. *Add. Citations:—sub nom.* R. *v.* FORDHAM, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

PART VIII. SECT. 5.

sg. *Effect of Distress Act, R. S. S.*, 1930, *s.* 8.]—The right conferred by sect. 8 of Distress Act, R. S. S., 1930 (which confers upon mtgees. & vendors of land a certain extraordinary right against third parties with whom they have not entered into any contract, but who occupy, by lease from the mtgor. or vendor, or otherwise, the land which constitutes their security) is the right to receive from the occupant of the land its rent or its rentable value, & may be exercised against the occupant whether or not the mtgor. or vendee has attorned tenant to the mtgee. or vendor. It has nothing to do with the rights & remedies of parties who are by contract in the position, in respect of each other, of landlord & tenant.—BAILEY *v.* MILLER & BROATCH, [1932] 3 W. W. R. 260.—CAN.

sl. *Distress for relief advances—Application of Debt Adjustment Act.*]—The distraining by a municipality of the goods of a "resident" for the purpose of satisfying claims for relief advances or hospital aid is a proceeding to which Debt Adjustment Act, 1933, applies.—BANQUE CANADIENNE NATIONALE *v.* WOOD RIVER RURAL MUNICIPALITY, [1935] 3 W. W. R. 9.—CAN.

sq. *Distress by mortgagee—Validity.*]—Seizure by distress for arrears of interest under a short form mtge. containing no attornment clause is illegal if made at night.—SHAW *v.* GOODBERRY, [1936] 4 D. L. R. 198: O. R. 497.—CAN.

EASEMENTS AND PROFITS À PRENDRE.

Part I.—Nature and Characteristics of Easements.

4. *Add. Annotation :—As to* (1) **Refd.** Sack *v.* Jones, [1925] Ch. 235.

8. *Add. Annotation :—As to* (1) **Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

20. *Add. Annotation :—As to* (1) **Consd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

25. For "**Distinguished from running powers over railway.**] " read " ——.]"

27. *Add. Annotations :*—**Refd.** Simpson *v.* Weber (1925), 133 L. T. 46 ; Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138 ; Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

35. *Add. Annotation :—As to* (1) **Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

48. *Add. Annotations :*—**Refd.** Back *v* Daniels (1924), 69 Sol. Jo. 160 ; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 31 L. T. 136 ; Bertram *v.* Wightman, [1936] 2 All E. R. 487.

56. *Add. Annotations :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241 ; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

60. For words at commencement of para. (2) " There is no distinction " read " There is a distinction."

Add. Annotations :—As to (2) **Consd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319. **Refd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

68. *Add. Annotations :—As to* (1) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Greg *v.* Planque, [1936] 1 K. B. 669.

69. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

73. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

Part III.—Creation of Easements.

89. *Add. Annotation :*—**Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. [1926] A. C. 108.

97. *Add. Annotations :*—**Expld.** & **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

98. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

103. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

121. *Add. Annotation :*—**Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

124. *Annotations :*—For " **Mentd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875," read " **Consd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875."

139. *Add. Annotations :—As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *Generally*, **Refd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

145. *Add. Annotation :*—**Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

147a. According to intention of parties — Common approach—Not effective until approach cleared.]—SWAN *v.* SINCLAIR, No. 515, *post.*

153. To first para. of headnote add :-

Or : whether such intention can be collected from anything *dehors* the deed, as, from a plan of the premises marked on particulars of sale referred to in the deed. *Semble :* not.—BARLOW *v.* RHODES (1833), 1 Cr. & M. 439.

PART I. SECT. 2, SUB-SECT. 2.

20 v. ——.]—GAPES *v.* FISH, [1927] V. L. R. 88 ; 48 A. L. T. 161 ; [1927] Argus L. R. 111.—**AUS.**

PART II.

76 i. *Distinguished from profits à prendre.*]—BRATT *v.* TOWNSHIP OF MALDEN, [1927] 1 D. L. R. 1116 ; 60 O. L. R. 102.—**CAN.**

80 i. *Distinguished from licence.*]—WHIPP *v.* MACKEY, [1927] I. R. 372.—**IR.**

PART III. SECT. 1, SUB-SECT. 1.

sa. *Public right.*]—Though the public cannot acquire ownership of a land, it can acquire over it an easement by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires.*]—A corpn. having agreed to grant an easement to lay pipes over certain land :—*Held :* the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

98 ii. —— *Quebec Public Utility Commission.*]—*Held :* the above commission had no power to create a servitude, or any other right, in property of a "public utility."—MONTREAL TRAMWAYS CO. *v.* MONTRÉAL-NORD VILLE, [1924] A. C. 994.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.

107 i. *Easement cannot be reserved or excepted.*]—An easement cannot strictly be made the subject either of exception or reservation in a deed of conveyance of land.—OTTAWA ELECTRIC RY. CO. *v.* FEDERAL DISTRICT COMMISSION, [1931] 1 D. L. R. 437 ; 66 O. L. R. 154.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.

sb. *Devise of adjoining plots to two devisees—Condition for maintenance of right of way.*]—VANSICKLE *v.* KELLY (1877), 42 U. C. R. 274.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.—A.

n. For " **n** " substitute " **147a i.**"
o. For " **o** " substitute " **147a ii.**"
p. For " " substitute " **147a iii.**"

156. *Add. Annotation :*—**Apld.** Borman *v.* Griffith, [1930] 1 Ch. 493.

161. *Add. Annotation :*—**Consd.** Greg *v.* Planque, [1936] 1 K. B. 669.

166. *Add. Annotations :*—*As to* (1) **Expld.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *As to* (2) **Dbtd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

173. *Add. Annotations :*—**Refd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582 ; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

178. *Add. Annotation :*—*As to* (2) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

C. (Vol. XIX., p. 35).

Conveyancing Act, 1881 (c. 41), s. 6, is now replaced by Law of Property Act, 1925 (c. 20), s. 62.

181a. —— —— —— **Whether preventing acquisition by prescription.**—Land was conveyed to pltf.'s predecessor in title by a conveyance dated Dec. 30, 1907, at which time no house had been erected on the land conveyed. The conveyance was expressed not to include "any easements or implied easements of light & air over any other land now or formerly part of the A. estate." A house was subsequently erected on the land conveyed, & this was conveyed to pltf. by a deed dated Jan. 17, 1934, "together with such rights, easements & appurtenances & subject to such reservations as are set out" in the conveyance of Dec. 30, 1907. Defts., who had acquired land which was part of the A. estate, erected a wall near a window of pltf.'s house, which substantially interfered with the light coming thereto. Pltf. claimed damages on the ground that she had, under Prescription Act, 1832 (c. 71), s. 3, acquired an easement of light, with which defts. had interfered :—*Held :* pltf. was entitled to damages, as under the above sect. she had acquired a prescriptive right to the light in question, which the terms of the two above-mentioned conveyances did not operate to exclude.—HAPGOOD *v.* MARTIN & SON, LTD. (1934), 152 L. T. 72 ; 51 T. L. R. 82.

181b. —— —— **Right of way struck out of draft conveyance.**]—CLARK *v.* BARNES, No. 196a, *post.*

182. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

183. *Add. Annotations :*—**Consd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

185. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

186a. —— ——.]—In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was "to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed." Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance :—*Held :* that the right claimed passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal "contrary intention" expressed in the deed within sect. 6 (4), sufficient to negative the passing of such right.—GREGG *v.* RICHARDS, [1926] Ch. 521 ; 95 L. J. Ch. 209 ; 135 L. T. 75 ; 70 Sol. Jo. 443, C. A.

Annotation :—**Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

189. *Add. Annotation :*—*As to* (1) **Refd.** Barlett *v.* Tottenham, [1932] 1 Ch. 114.

190. *Add. Annotation :*—*As to* (1) **Refd.** Gregg *v* Richards (1926), 95 L. J. Ch. 209.

195. *Add. Annotations :*—*As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *As to* (3) **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

196a. —— **Right reputed to be enjoyed with land.**]—Pltf. at the date of the action was the owner in fee simple of certain plots of land in the village of C. in the county of Sussex, numbered on the Ordnance Survey Map 634, a portion of 635 & 636 ; also of a strip of land coloured brown on the plan on the conveyance to pltf., leading from the plot 634 & part of 635 to the high road running from C. to a common. Deft. became in Oct. 1926, the owner of other plots, numbered 652, 653, 654 & 618 in the same parish. Pltf. had previously purchased the strip coloured brown in 1925, the parcels being as follows : "All that strip of land leading from W. Fields"—which were the plots 652 & 653—"to the high road running from the village of C. to . . . C. common in the parish of P. . . ."; the *habendum* being to pltf. in fee simple "to the use that the vendor his heirs & successors in title owner or owners . . . of the hereditaments coloured red"—which were the plots 634, 653 & 652—". . . shall have full right & liberty . . . to pass & repass . . . over & along the piece of land coloured brown on the said plan . . ." Pltf. subsequently, in June, 1925, purchased at an auction sale the plots referred to above, 634, part of 635, 652 & 653 ; deft. also bought the plots numbers 618 & 654. The plots purchased by pltf., being Lot 24 in the sale, were described as including a right of way for all purposes over the brown strip. By that purchase pltf., having become the legal owner of the dominant & servient tenements, the right of way became merged. Pltf. subsequently contracted to sell plots 653 & 652 to deft. In the draft conveyance submitted to pltf.'s solrs. by deft.'s solrs., a right of way was inserted in favour of the purchaser (deft.) over pltf.'s land to the brown strip. This was struck out by the solrs. for the vendor (pltf.) ; & no grant was shown in the conveyance ultimately executed by the parties in Oct. 1926, of any right of way. Pltf. found later that deft. was passing over a track in plot 634 in order to make use of the brown strip for the purpose of taking farm carts from his own land over pltf.'s property to the high road ; & he claimed a right of way. Pltf. sought a declaration that deft. was not entitled to any such right of way as he claimed, & further that the conveyance to deft. of plots 652 & 653 might be rectified by the express exclusion therefrom of any implied right of way which might arise under Law of Property Act, 1925 (c. 20),

s. 62 :—*Held :* though the right to use the track was one reputed to be enjoyed with the land, that was plots 653 & 652, & to that extent deft. was entitled to succeed, yet pltf. was entitled to have the conveyance rectified. The evidence showed that neither pltf. nor deft. intended that any such right should pass on the conveyance of plots 653 & 652. The conveyance therefore would be rectified by the insertion therein of proper words limiting the implication of any right of way which might arise under the Law of Property Act, 1925 (c. 20), s. 62.—CLARK *v.* BARNES, [1929] 2 Ch. 368; 99 L. J. Ch. 20; 142 L. T. 88.

Annotation :—**Refd.** Borman *v.* Griffith, [1930] 1 Ch. 493.

196b. What amounts to "assurance of property or of an interest therein"—Agreement for lease exceeding three years.]—By an agreement in writing dated Oct. 10, 1923, J. agreed to demise to pltf. The Gardens, "with the paddock, orchard, & adjoining gardens," for seven years from Sept. 29, 1923. These premises were situate in a large park called Wood Green Park, & were not approached by any public road. The agreement did not expressly reserve any right of way to pltf. In 1926, J. executed a lease to deft. of The Hall, & the remainder of the park, for fourteen years from Mar. 25, 1926. The Hall had previously been let to H., who had surrendered his lease. A carriage drive ran from a public highway called Silver Street, through Wood Green Park, by the side of the front door of The Gardens, & on to The Hall. At the date of the agreement of Oct. 1923, J. was constructing, & afterwards completed, an unmetalled way from Silver Street to the back of The Gardens : but after that date pltf. constantly used the drive. Deft. obstructed pltf. in his use of the drive. In an action by pltf., claiming to be entitled to a right of way over the drive :—*Held :* (1) an agreement for a lease exceeding a term of three years is not an "assurance of property or of an interest therein," within Law of Property Act, 1925 (c. 20), s. 205 (1) (ii), & therefore cannot be deemed to include the general words of sect. 62 of that Act; (2) the tenant was in the same position as if the ct. had granted specific performance of the agreement, *i.e.*, in regard to rights of way, as if, before the coming into force of the Conveyancing Act, 1881, the property had been demised with no mention of rights of way; &, in the circumstances, a demise to pltf. of a right to use the drive upon terms must be implied.—BORMAN *v.* GRIFFITH, [1930] 1 Ch. 493; 99 L. J. Ch. 295; 142 L. T. 645.

Annotation :—*As to* (2) **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

204a. —— Intention of parties—No evidence of intention to determine status quo.]—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses :—*Held :* both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement; the implied reservation of an easement in a grant of property depends on the common intention of the parties; here there was no evidence that it was not the intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—SIMPSON *v.* WEBER (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

210a. —— —— ——.]—A grantor cannot ordinarily reserve an easement otherwise than by express words for the benefit of land which he retains.

The common owner of two adjoining houses, A. & B., at the back of which ran a paved path, sold A. without reserving any right to use the path except for one specific purpose, & afterwards sold B. :—*Held :* in the absence of any evidence of a claim of user as of right admitted or acquiesced in, the purchaser of B. was not entitled to use the path at the back of A. for all purposes, but was limited to the use which was specifically reserved.—LIDDIARD *v.* WALDRON, [1934] 1 K. B. 435; 103 L. J. K. B. 172; 150 L. T. 323; 50 T. L. R. 172, C. A.

210b. —— —— Matter of convenience & not necessity.]—Where real property is severed by the grant of a part of it, there can be no implied reservation, in favour of the property retained, of an easement of convenience; but only of an easement of necessity.

Two adjoining messuages in a terrace, Nos. 28 & 30, in common ownership, were leased on a ninety-nine years' lease, which, in 1896, was assigned to G., who in 1901 assigned the lease of No. 30 to pltf.'s predecessors in title, without reserving expressly in favour of No. 28, the property retained, any right of way across the garden of No. 30. In 1904 G. assigned the lease of No. 28 to deft.'s predecessor in title. Pltf. claimed in the county ct. an injunction restraining deft. from crossing on a path across the garden of No. 30 from a gate in the fence between the two properties, to a gate opposite, which led into a passage-way giving access to the road in front of the terrace. Deft. claimed a right of footway across this path by reason of her occupation of No. 28. The county ct.

judge found that both at the time when there was unity of possession of Nos. 28 & 30, & from the time when the lease of No. 30 had been assigned, the path had always been used for the limited purpose of removing dust & refuse & for bringing in coal, & for no other purpose. But he did not find whether this user was by pltf.'s leave & courtesy, or whether there was an apparent & continuous easement from some certain time. Confusing the dates & thinking that the lease of the alleged dominant tenement, No. 28, was first assigned, when in fact the lease of No. 30 was first assigned, he held that although deft. had no unrestricted right of way across the path, yet, in 1901, there was an implied grant of an apparent quasi-easement enuring to deft. for the limited purpose of removing refuse & bringing in coal, & he made a declaration to that effect:—*Held:* there was no evidence that on the grant in 1901 to the pltf.'s predecessor in title where was an implied reservation of a right of way in favour of deft. across the garden of pltf. for the removal of dust & refuse & the delivery of coal.—ALDRIDGE *v.* WRIGHT, [1929] 2 K. B. 117; 98 L. J. K. B. 582; 141 L. T. 352, C. A.

Annotation:—**Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

215. *Add. Annotation:*—*As to* (1) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

216. *Add. Annotation:*—*As to* (1) **Refd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

223. *Add. Annotations:*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

226. *Add. Annotations:*—*As to* (1) **Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435. *As to* (4) **Consd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

229. *Add. Annotations:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235. **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

238a. —— **Way.**]—BORMAN *v.* GRIFFITH, No. 196b, *ante*.

250. *Add. Annotations:*—*As to* (1) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (3) **Refd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 285; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

252a. —— —— ——.]—Pltf. was the owner of a cottage & farm land (the pink land) under two conveyances made to his predecessors in title in 1919, & deft. was the owner of adjoining land (the blue land) conveyed to her in 1929 by the same common owners. More than forty years ago the common owners constructed a collecting tank for water, mainly on the pink land, which fed a tank (Tank Z) on the edge of the blue land. Tank Z was used as a drinking trough for cattle & horses, & it had no outlet, but was tipped towards the south so that it overflowed on to the pink land through a wall between the pink & the blue land. The overflow was then conducted by a stone drain to an open watercourse along which the water flowed to the southern boundary of the pink land. The watercourse then turned & flowed along inside the southern boundary, being joined at the bend by a natural stream. At least from the bend the watercourse was a natural stream, & at two points along it were dipping points, one used for watering pltf.'s cattle & the other used by cottagers & other persons, including the occupants of the cottage on the pink land & of two other cottages near by which also belonged to pltf. In Feb. 1920, deft. substituted for Tank Z a covered brick tank connected by an underground pipe laid along the southern boundary of the blue land to a ram which pumped water to deft.'s house. There was also an overflow outlet to the new tank by which the overflow still passed through the boundary wall on to the pink land, but the flow was substantially diminished. In laying the pipe along the southern boundary of the blue land in a trench, springs were tapped & damage was said to have resulted from the escape of this water on to the surface of the pink land:—*Held:* (1) as Tank Z had been constructed simply for supplying water to cattle & horses grazing on the blue land & not for the benefit of the pink land, there could be no expectation that the overflow from it would be other than temporary, & the right to the continuance of the overflow did not pass under the general words implied in the conveyances of the pink land in 1919 by Conveyancing Act, 1881 (c. 41), s. 6, now Law of Property Act, 1925 (c. 20), s. 62; (2) pltf. had no prescriptive right to have the water naturally flowing in the stream along the southern boundary of the pink land augmented by the overflow from Tank Z along an artificial watercourse which had been constructed for a temporary

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PART III. SECT. 2, SUB-SECT. 1.—B.

223 i. *Whether reservation will be implied—Easement of necessity—Support—Subsequent sale by grantor.*]—NATIONAL TRUST CO. *v.* WESTERN TRUST CO. (1912), 21 W. L. R. 571; 2 W. W. R. 667; 4 D. L. R. 455.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

g i. —— —— —— *Land bounded by private road.*]—Pltf., a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that he & prior occupiers of the leased house had the use of it, &, as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it:—*Held:* the lessee was not entitled to the right-of-way.—BREADY *v.* MCLENNAN (No. 2), [1924] 3 W. W. R. 924; 33 B. C. R. 460.—**CAN.**

g ii. —— —— —— *Land bounded by lane.*]—A conveyance or lease of land described as abutting on, or bounded by, a lane or right of way, or a conveyance by reference to a plan indicating that the land in fact abuts on, or is bounded by, a lane or right of way, is equivalent to a grant to the conveyee or lessee of access to & fro over that lane or right of way, if the ownership of the same is vested in the conveyor or lessor.—COWLISHAW *v.* PONSFORD (1928), 28 S. R. N. S. W. 331; 45 N. S. W. W. N. 94.—**AUS.**

g iii. —— —— ——.]—The decisions in England prior to 1881 were not uniform on the question whether a right of way was a continuous easement or not; but the Indian Easements Act adopted the view that it was not. Hence on a partition of two tenements, a right of way even over a well-formed & metalled road does not pass to the grantee as a continuous easement. It is this view, as enacted in the Act, that must govern wherever the Act is in force, in preference to the now well-established view in England. The way may, however, pass to the grantee if it is an easement of necessity; but an easement of way cannot be termed "necessary" though the way was used as a way before the partition or even though it may be the most convenient or reasonable means of access, if in fact there is another way.—NARAYONA GAJAPATIRAJU *v.* RATNAYAMMAJI (1929), I. L. R. 53 Mad. 449.—**IND.**

purpose only.—BARTLETT *v.* TOTTENHAM, [1932] 1 Ch. 114; 101 L. J. Ch. 160; 145 L. T. 686.

253. *Add. Annotations :—As to* (1) **Apld.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435. **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46; Greg *v.* Planque, [1936] 1 K. B. 669. *As to* (2) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Borman *v.* Griffith, [1930] 1 Ch. 493; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

261. *Add. Annotations :—As to* (1) **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (6) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

264. *Add. Annotation :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

267. *Add. Annotations :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

267a. —— **Intention to use property for working mill.**]—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., No. 273a, *ante*.

271. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

273a. —— **Right to take water from artificial channel—Limited to capacity of channel at time of grant.**]—In 1894 the Crown, by an Ontario patent, granted to applts. the banks & bed of a natural outflow from a very large lake, & the adjoining water power. The grant provided that it was not to be construed as conferring exclusive rights elsewhere upon the lake or upon other streams, nor as authority to restrict any powers or privileges therebefore enjoyed by the Crown. Applts. used water power from the outflow to work an electrical power plant. In 1892 1891 the Crown had similarly granted to resps.' predecessors in title land the boundaries of which, in each case, included a mill & an artificial channel from a bay of the lake. The mills had been erected & the channels made by the grantees with the approval of the Crown; the grants mentioned the mill races, but did not expressly include water power. Resps. used water power from the channels to work their mills. Water passing through the channels & the mill sluices, when open, flowed into the river formed by the outflow at a point below applts.' works. Applts. brought actions to restrain resps. from diverting water from the lake :—*Held :* having regard to the circumstances in which the grants of 1892 & 1891 were made they each conferred an easement upon the respective resps. to use water from the channel for the purpose of working a mill, & the grant to applts. was subject to that easement. The easement was limited only by the capacity of the respective channels when granted, not by the size or character of the mill then existing thereon; although the water could be used only for working a mill, it could be used to develop electrical power to work or light a mill.—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1930] A. C. 640; 100 L. J. P. C. 1; 143 L. T. 633, P. C.

274. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

278. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

282. *Add. Annotations :—As to* (2) **Apprvd** Gregg *v.* Richards, [1926] Ch. 521. **Refd.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72. *As to* (3) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

291. *Add. Annotations :—As to* (1) **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46. *As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

299. In the last line of the first paragraph add the word "not" after the word "ought."

Add. Annotations :—**Consd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841. **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R 254; Layzell *v.* Thompson (1926), 43 T. L. R. 58; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

309. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

320. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

PART III. SECT. 2, SUB-SECT. 1.—D.

k i. —— *Right of way reserved to some grantees only.*]—MAUGHAN *v.* CASCI (1884), 5 O. R. 518.—**CAN.**

284 i. *Conveyances not simultaneous —Right of way.*]—PHILLIPS *v.* ROSS, [1926] 1 D. L. R. 605; 58 N. S. R. 326.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

sm. *The public.*]—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

sp. *Mortgagor against mortgagee.*]—Where the owner of the servient tenement is mtgee. of the dominant tenement for the whole of the prescriptive period, the mtgor. in possession of the dominant tenement cannot claim an easement against the mtgee. by prescription.—WALKER *v.* HENNIGAR, [1935] 1 D. L. R. 285.—**CAN.**

o i. —— *In land of lessor.*] — Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 3.

s i. ——.]—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

—— *Not right to use railway.*]—MEAGHER *v.* CANADIAN PACIFIC RY. Co. (1912), 42 N. B. R. 46.—**CAN.**

sz. *Right to trap.*]—RICI LAKE FUR CO., LTD. *v.* MCALLISTER, [1925] 2 D. L. R. 506; 56 O. L. R. 440.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A.

326 x. ——.]—Pltf. claimed that he & his predecessors in title for 20 years preceding the commencement of the action had enjoyed as of right a way for themselves & their servants on foot & with horses, carriages, vehicles, cattle, sheep & other farming stock from the public highway over deft.'s land to pltf.'s land & from pltf.'s land to such public highway & that deft. had wrongfully obstructed him in the enjoyment of such right of way. Deft. pleaded that there had been no such user or enjoyment of the way claimed by pltf. as supported a prescriptive right or claim thereto, & alleged (*inter alia*) that deft.'s predecessor in title had no knowledge of the alleged claim, & further, that pltf. during the said period of 20 years had himself claimed the ownership of part of the land over which the way was claimed to have been enjoyed :—*Held :* deft.'s predecessor in title in any event had had a reasonable opportunity of becoming aware of the enjoyment by pltf. of a right over his land & for that reason the enjoyment of the right of way, [illegible] to be secret.—HOUGH *v.* TAYLOR, [1927] W. A. L. R. 97.—**AUS.**

329. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

346. *Add. Annotations :—Generally*, **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons. [1930] A. C. 549.

347. *Add. Annotations :*—**Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367 ; Hue *v.* Whiteley, [1929] 1 Ch. 440.

349. *Add. Annotation :*—**Folld.** Willoughby *v.* Eckstein, [1936] 1 All E. R. 650.

358. *Add. Annotations :—As to* (2) **Refd.** Wirral Estates, Ltd. *v.* Shaw (1932), 48 T. L. R. 281. *Generally*, **Refd.** Wheeler *v.* Wirral Estates, Ltd., [1935] 1 K. B. 294.

359. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

360. *Add. Annotation :—As to* (1) **Consd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

361. *Add. Annotations :—As to* (5) & (6) **Folld.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206. *Generally*, **Refd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

361a. ——.]—A person cannot set up a right either by prescription or under the doctrine of lost grant to cause sewage or trade refuse to fall or flow into a stream or watercourse, & thereby to pollute it, where the right claimed would be in contravention of a statutory prohibition such as is contained in Rivers Pollution Prevention Act, 1876 (c. 75).—GREEN *v.* MATTHEWS & Co. (1930), 46 T. L. R. 206.

Annotation :—**Refd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

363. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

381. *Add. Annotation :—Generally*, **Refd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

389. *Add. Annotation :—As to* (3) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

399. *Add. Annotation :*—**Consd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

435. *Add. Annotations :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926). 95 L. J. Ch. 312 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

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326 xi. ——.]—*Held :* where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or an usage that has become a customary law of the place in respect of the persons or things in which it is concerned.—DAWSON *v.* ROUHAE ZAMANI BEGUM (PRINCESS) (1928), I. L. R. 6 Ran. 456.—**IND.**

sa. *User as one of public.*]—To constitute a legal possession of land, not only must there be a corporeal detention, or that quasi-detention which, according to the nature of the right, is equivalent thereto, but, also, the intention to act as owner of the land : no legal possession is acquired by the exercise of a supposed right as one of the public. The rear portions of pltf.'s & deft.'s lands abutted on a public lane, a strip of land between the fence erected on deft.'s land & the boundary of the lane being unenclosed. Pltf., for over 20 years, believing this strip to be a part of the lane, had been accustomed to drive over it to get to his stable, doing so in the exercise of a supposed right as one of the public, & not as an easement to his land :—*Held :* he had not acquired any right to use the strip.—ADAMS *v.* FAIRWEATHER (1906), 7 O. W. R. 785 ; 8 O. W. R. 886 ; 13 O. L. R. 490.—**CAN.**

sb. *Dominant & servient tenement in same occupation—Occupation of servient tenement wrongful.*]—The time for acquisition of an easement by prescription does not run while the dominant & servient tenements are in the occupation of the same person, even though the occupation of the servient tenement be wrongful & without the privity of the true owner.—INNES *v.* FERGUSON (1894), 21 A. R. 323 ; *affd.* (1895), 24 S. C. R. 703.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B.

339 iv. —— ——.]—Pltfs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly thirty-two or thirty-five years without interruption, every monsoon through the land of the third person, by cutting the ridge (ail) of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the ail :—*Held :* defts. had acquired a prescription right to take water by cutting the ail.—BIPIN BEHARI GHATAK *v.* RAMNATH GHATAK (1929), I. L. R. 56 Calc. 161.—**IND.**

sc. *Continuous user—Right exercised from year to year.*]—*Held :* where deft., in an action for trespass to land, claimed a right of way by prescription over the land, it was necessary for him to show continuous user of a definite way & exercise of the right from year to year. —PETIPAS *v.* MYETTE (1913), 12 E. L. R. 537.—**CAN.**

sd. —— *Whether as of right or by permission.*]—Pltf. & deft. were the owners & occupiers of adjoining farms, & deft. claimed to have acquired, by prescription, a right of way over a road or track on pltf.'s property. The way over pltf.'s property had been used by deft. whenever he wished to visit his brother or whenever he wished to go past his brother's house into the main road. Deft. used the way for all the purposes for which he required to use it in connection with his farm. This user commenced at a time when pltf.'s farm was owned by deft.'s brother & continued through subsequent changes of occupancy until & since pltf. became the owner & occupier of the farm. Pltf. alleged & deft. denied that permission had been given to deft. to use the road, & that the use of the road by deft. was not as a right : —*Held :* deft.'s right of way over the road had been established.—AUSTIN *v.* WRIGHT, [1927] W. A. L. R. 55.—**AUS.**

PART III. SECT. 3, SUB-SECT. 5.—A.

345 i. *Origin of doctrine.*]—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 5.—E.

se. *Proof of commencement of tenancy — User immemorial.*] — Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial user. —TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) i.

t i. *S. P.* SUBBA RAO *v.* LAKSHMANA RAO (1925), I. L. R. 49 Mad. 820.—**IND.**

t ii. ——.]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) ii.

413 i. *Evidence that user not of right —Parol licence granted during statutory period.*]—Parol licence is of no moment unless it is applied for & granted within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) iii.

e i. ——*Way.*]—FERGUSON *v.* INNES (1895), 24 S. C. R. 703.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (c) i.

sf. *Forty years — Whether conclusive.*] — Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—BOWES *v.* REID, [1924] 2 D. L. R. 399 ; 54 O. L. R. 253.—**CAN.**

433 i. *Against whom time computed—Reversioner.*]— EISENHAUER *v.* WHYNACHT (1902), 35 N. S. R. 295.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (c) iii.

448 i. *Must be adverse obstruction—With knowledge & assent of servient owner.*]—Acts done by the tenant of a servient tenement which interfere with the possession of the dominant owner do not constitute interruption of user

452. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

466. *Add. Annotation :*—*As to* (3) **Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

467. *Add. Annotation :*—**Distd.** Wade (Gabriel) & English, Ltd. *v.* Dixon & Cardus, Ltd., [1937] 3 All E. R. 900.

467a. —— ——.]—Where a party is relying upon the legal fiction of a lost grant, the ct. will not make an order for particulars thereof.—WADE & ENGLISH, LTD. *v.* DIXON & CARDUS, LTD., [1937] 3 All E. R. 900 ; 81 Sol. Jo. 703.

475. *Add. Annotation :*—*Generally,* **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

Part V.—Preservation and Repair of Easements.

482. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

483. *Add. Annotation :*—**Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

Part VI.—Extinguishment of Easements.

487. *Add. Annotation :*—*Generally,* **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

493. *Add. Annotations :*—*As to* (1) **Apld.** Swan *v.* Sinclair, [1924] 1 Ch. 254. **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

494. *Add. Annotation :*—*As to* (2) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

502. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

505. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

511. *Add. Annotation :*—*As to* (1) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

515. For the paragraph in the original volume substitute the following paragraph :—

—— **Acquiescence in obstruction of way.**]—In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 pltf. took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3, with the benefit & subject to the right of way. Deft. was the present owner of lot 1. For fifty years from the date of the original sale no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. unless the acts are done with the knowledge & assent of the servient owner as an assertion of adverse right.

Circumstances in which held that temporary obstructions placed periodically across an access right of way by the tenant of the servient tenement, without the knowledge or assent of the owner of the servient tenement & merely for the protection of the tenants own crops, had not been placed there as an assertion of adverse right ; &, accordingly, interruption of user had not been established.—STEVENSON *v.* DONALDSON, [1935] S. C. 551.—**SCOT.**

PART III. SECT. 5, SUB-SECT. 2.

sg. *Plea of user—Road within well-defined limits—Slight variation of via trita—Sufficient.*]—BOWES *v.* REID, [1924] 2 D. L. R. 399 : 54 O. L. R. 253.—**CAN.**

PART IV. SECT. 1.

sh. *Whether assignable.*]—In July, 1916, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable :—*Held :* the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

PART IV. SECT. 4.

si. *Right of creditor to take ore—Under security agreement.*]—A right to mine ore held by a creditor under a collateral security agreement is a *profit à prendre,* & exists as a right of property unconnected with any other estate the owner may have in the land.—*Re* SUDBURY RAND MINES & GORDON, [1936] 4 D. L. R. 783.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment—Abandonment question of fact.*]—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the ct. has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where pltf. & his predecessors in title had failed to exercise a right of way, had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances :—*Held :* an abandonment was established.—CHRISTOPHER *v.* COHEN (1924), I. L. R. 2 Ran. 534.—**IND.**

508 v. ——.]—Non-user is not of itself evidence of abandonment.—NANTAIS *v.* PAZNER, [1928] 4 D. L. R. 258 ; 59 O. L. R. 318.—**CAN.**

508 vi. —— *Onus of proof.*]—LISCOMBE *v.* MAUGHAN, [1928] 3 D. L. R. 397 ; 62 O. L. R. 328.—**CAN.**

g i. ——.]—A mutual right of way was established in 1907 & 1908 by grants conveying adjoining parcels of land respectively to the predecessors in title of pltf. & deft. covering 5 feet in width of one parcel & 2 feet in width of the other, extending from the westerly limit of a street westerly for 75 feet. There was a dispute as to the westerly 15 feet, as to which deft. alleged that pltf.'s right of way had been abandoned :—*Held :* the evidence did not justify the inference that the right of way had been abandoned, although it was first used by deft. or her predecessor only.—BAKER *v.* HARRIS, [1930] 1 D. L. R. 354 ; 64 O. L. R. 513.—**CAN.**

Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables in his back garden raised the surface of the strip of land at the end of his lot to the level of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1919 pltf., in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease deft. blocked up the gates & obstructed the way. In an action by pltf. as owner of lots 2 & 3 to enforce his right of way against the deft.:—*Held:* (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—SWAN *v.* SINCLAIR, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

558. Alternative headnote in 15 R. R. 508, n.:—

"Unity of seisin of the land to which a right of way is appurtenant, with the land over which the way lies, extinguishes the right of way. But if there is a subsequent severance, the continued use of the way may be given in evidence of its necessity, although the owner claiming such way of necessity has acquired other land through which it would be physically possible to make a way; no such way having been in fact made or used."

Part VII.—Rights of Way.

571. *Add. Annotation:—Generally,* **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

571a. Contiguity between dominant tenement & way unnecessary.]—(1) A right of way can validly be made appurtenant to land with which the way has no physical contiguity, but it must be beneficial in respect of the occupation of that land.

Pltf. was the owner of a house in St. Ives, Cornwall, & of a private roadway to the south of the house leading from a highway to the west to garages at the eastern end, which also belonged to pltf. Property which included the roadway & garages had been conveyed to his predecessor in title by N. by a conveyance dated Oct. 15, 1921, which contained a reservation to N. & his successors of a perpetual right of way along the roadway with power to extend it some yards to land further east belonging to N., which was shown on a plan attached to the conveyance & coloured blue. Subsequently N. bought some land north of the blue land, & by a deed dated Mar. 22, 1926, a right to extend the roadway to this land was substituted for the right to extend it directly on to the blue land. The result of this was that when the roadway was so extended it could substantially only obtain access to the blue land over an intervening strip of the land to the north of it. Deft. co. having purchased the blue land & the land to the north of it built a garage for motor omnibuses on the blue land & proceeded to extend the roadway to the intervening strip & carry it over the strip to the blue land. As the part of the blue land where the garage stood was much higher than the roadway deft. co., in order to obtain a gradual slope, continued the roadway on pltf.'s land by means of a concrete ramp, which by the time it reached the five foot wall between pltf.'s land & the intervening strip was almost the height of the wall. Pltf. objected strongly to the making of this ramp, which made access to his garages more difficult, & brought an action claiming (*a*) that defts. had no right of way over the roadway for the reason that the right alleged to have been given pertained only to the blue land to which there was no direct access from the roadway; or alternatively (*b*) that there had been excessive user of the right (i.) by reason of the building of the ramp, and (ii.) by reason of the user of the roadway for motor buses:—*Held:* it was sufficient that a right of way should be beneficial in respect of the ownership of the land to which it purported to be made appurtenant, & there need be no physical contiguity between the way & the dominant tenement; but (2) there had

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PART VI. SECT. 3, SUB-SECT. 1.

1 i. ——.]—The unity of the dormant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

1 ii. —— *Easement of support.*]—BACKUS *v.* SMITH (1880), 5 A. R. 341.—**CAN.**

549 i. *Unity of possession without unity of seisin—Suspension of easement—Water.*]—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

n i. —— ——.]—An easement may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous & essential to the enjoyment of the dominant tenement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART VI. SECT. 4.

sk. *Sale of servient tenement for taxes under statutory power.*]—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—HUTCHINGS *v.* CAMPBELL, WILSON & HORNE, LTD., [1924] 2 D. L. R. 299; 1 W. W. R. 1070; 20 Alta. L. R. 275.—**CAN.**

PART VII. SECT. 1.

566 ii. —— *Agreement between co-owners.*]—Deft. & B., each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width:—*Held:* the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

r. For "BADHANATH" read "RADHANATH."

been excessive user in regard both to the building of the ramp & to the user of the roadway for motor omnibuses.—TODRICK *v.* WESTERN NATIONAL OMNIBUS CO., LTD., [1934] Ch. 561; 103 L. J. Ch. 224; 151 L. T. 163; 78 Sol. Jo. 318, C. A.

580. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

581. In the cross-references following this case for "**Church ways.**]—*See* HIGHWAYS," substitute "**Church ways.**]—*See* ECCLESIASTICAL LAW, p. 307, *post.*"

598. *Add. Annotation :*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

607. *Add. Annotations :*—**Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Apld.** Borman *v.* Griffith, [1930 1 Ch. 493. **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

641. *Add. Annotation :*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

652. *Add. Annotation :*—**Refd.** Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

658. *Add. Annotation :—Generally,* **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

664. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

683. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

684. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211; Todrick *v.* Western National Omnibus Co., [1934] Ch. 190.

687. *Add. Citations :*—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.

Add. Annotation :—As to (2) **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

687a. ——.]—In 1923 pltf. conveyed a freehold farm to defts.' predecessor in title by a deed which contained the following words: "& together also with a right of way 14 feet wide as shown on the said plan marked A in & over the portion of the field numbered 171 belonging to the vendor for the purpose of access to & from the point marked X on the said plan to the field numbered 169." The property consisted of seventy acres, forming part of a property of 102 acres originally conveyed to pltf., of which pltf. retained the manor house & park :—*Held :* the dominant tenement in this grant was the whole of the lands assured by the deed, that the right of way was appurtenant to those lands, & was not limited to the right to use the way for purposes connected with field 169 only.—CALLARD *v.* BEENEY, [1930] 1 K. B. 353; 99 L. J. K. B. 133; 142 L. T. 45.

Annotation :—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

687b. ——.]—Pltf.'s predecessor conveyed to deft. a certain field of which deft. was tenant, & granted to him as a means of access to the field a right of way "as at present enjoyed" over a drive which passed through the vendor's property. The field had been used mainly for agricultural purposes & to a small extent as a camping ground. After the conveyance, the number of people using the field for camping & consequently passing over the drive increased considerably. In an action for a declaration that deft. was not entitled to use the drive so as substantially to increase the burden of the easement over the drive by altering its character, nature or extent :—*Held :* the words "as at present enjoyed" had no reference to the purposes for which deft. was using the field nor to the quantity of the user, but referred to the quality of the user, *i.e.*, on foot, with horses & with vehicles, by deft. at the time of the conveyance.—HURT *v.* BOWMER, [1937] 1 All E. R. 797; 53 T. L. R. 325; 81 Sol. Jo. 118.

688a. Excessive user—What amounts to.]—TODRICK *v.* WESTERN NATIONAL OMNIBUS CO., LTD., No. 571a, *ante.*

PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way—Grant subject to existing obstruction.*]—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 3, SUB-SECT. 2.—B.

620 vi. ——.]—A side door in the wall of the back garden of pltf.'s premises opened into an avenue leading to deft.'s house. Pltf. claimed a right of way from this door, along the avenue, to the avenue gates. Pltf.'s premises were the end house of a terrace of six similar houses, which formed the base of a triangle in the apex of which stood deft.'s house. The avenue from the latter house ran alongside the garden wall of pltf.'s house, & its gates opened on the same street as the front entrance of the terrace of houses. All seven houses had been built by the same person, & continued for some years in the ownership of members of his family. But, by the will of his daughter, who died in 1919, a severance of ownership as between pltf.'s house & deft.'s house was created; &, subsequently, pltf. purchased the fee simple of his house. He gave evidence that he had entered the premises in 1917 under an agreement for a twelve-months' letting, & continued as tenant until he acquired the fee simple interest; & that he had used the door in the garden wall for the purpose of bringing in coal & manure, & of bringing bicycles in & out. Evidence was also given by the tenant of the premises from 1899 to 1907 that he received the key for the door or found it hanging in the premises, that he used the door for the purpose of getting in coal & for porters delivering goods, that his original landlord, who died in 1905, used to get a little path connecting the door with the avenue cindered, & that he gave up the key on the expiration of his tenancy; & evidence was given by the tenant from 1911 to 1916 that he used the door for bringing goods in & out & for getting in coal & manure. Pltf.'s tenancy agreement was not proved, nor was there evidence of any agreement as to a right of way or easement. Only one other house in the terrace of six houses had a back entrance, & this back entrance, which also opened into deft.'s premises, had become disused before action brought. There was no evidence as to its previous user, nor was there any evidence as to the origin of either back entrance :—*Held :* pltf. had failed to establish his claim. M'DONAGH *v.* MULHOLLAND, [1924] I. R. 110.—**IR.**

PART VII. SECT. 3, SUB-SECT. 2.—D.

g i. ——.]—FIELDER *v.* BANNISTER (1860), 8 Gr. 257.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

683 v. ——.]—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

si. —— ——.]—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one :—*Held :* when the grant was made the parties must have intended to create a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered. —PATERSON & BARR, LTD. *v.* OTAGO [illegible]Y, [1925] N. Z. L. R. 191.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 i. *Limited by user proved—Only when terminus ad quem of special nature.*]—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

700a. —— ——.]—ROBERTSON *v.* ADAMS (1930), 69 L. Jo. 301; *sub nom.* ROBERTSON *v.* ABRAHAMS, 169 L. T. Jo. 305; [1930] W. N. 79.

702. *Add. Annotation :—As to* (2) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

706. *Add. Annotation :—***Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

710. *Add. Annotations :—As to* (1) **Consd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224. **Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

713. *Add. Annotation :—***Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

721a. Includes motor cars.]—A.-G. *v.* HODGSON, [1922] 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425.

738. *Add. Annotations :—***Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211; Todrick *v.* Western National Omnibus Co., [1934] Ch. 190.

740. *Add. Annotation :—***Refd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

743. *Add. Annotation :—***Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

754. *Add. Annotations :—***Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284; Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

783. *Add. Annotation :—As to* (2) **Refd.** Robertson *v.* Adams (1930), 69 L. Jo. 301.

787. *Add. Annotations :—As to* (3) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353; Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

795. *Add. Annotation :—As to* (1) **Apld.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

PART VII. SECT. 6, SUB-SECT. 3.—B. (o).

701 i. *Whether over whole width—Via trita.*]—The right of pltf. to a way over a fenced driveway or lane, 49 feet in width, part of a parcel of land owned by deft., was held to have been established by prescription, but the right was limited to the *via trita* or the part of the lane actually used by pltf. & his predecessors in passing over it with horses & vehicles.—PICKARD *v.* KERNICK, [1929] 1 D. L. R. 493; 63 O. L. R. 225.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (f).

716 i. *Whether way for general purposes.*]—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands :—*Held :* during a period defenders had acquired a servitude right of access for cart traffic; & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

716 ii. ——.]—Where a dominant owner, who has acquired a right of way over the servient heritage for the agricultural uses of his land, seeks to use that right of way for non-agricultural purposes, he has a right to do so, provided that additional burden is not thereby imposed on the servient heritage.—MANCHERSHA SORABJI *v.* VIRJIVALLABHDAS JEKISONDAS (1926), I. L. R. 50 Bom. 635.—**IND.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (g).

sk. *Includes right to excavate ground—Grading to street level necessary.*]—The grant of a right of way, impliedly for use as a passage for an automobile, carries with it the right to excavate the ground in order to grade it to street level.—SMITH *v.* MORRIS, [1935] O. R. 260.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754 i. —— *Method of—Whether reasonable.*]—Deft. leased to pltf. an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to deft., & the lease provided that pltf. should have a right of way across it, nothing being said as to the mode of exercising the right. Pltf. having built a trestle bridge from the island to the main land :—*Held :* pltf.'s mode of user was reasonable, & deft. was not justified in interfering with the bridge.—BUTCHART *v.* DOYLE (1897), 24 A. R. 615.—**CAN.**

sl. *Removal of existing obstruction—Way granted free of obstruction.*]—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

sp. *Alteration—Carriageway into motorway.*]—An easement intended as a driveway may be excavated & used for a motor if this can be done without causing injury to other lands.—SMITH *v.* MORRIS, [1935] 2 D. L. R. 780.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 i. *General rule.*]—Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

760 ii. ——.]—Pltf. claimed to be entitled to a right of way from his land over adjoining grazing or agricultural land of deft. to a public highway, & that he was entitled to enter on deft.'s and to effect reasonably necessary repairs to the way. Deft. admitted that pltf. & his predecessors in title had, since the year 1861, at all times of the year passed & repassed over a defined portion of deft.'s land between pltf.'s land & the highway :—*Held :* pltf. was entitled to a right of way & was entitled to enter on the land of deft. to effect reasonably necessary repairs to the way.—BYRNE *v.* STEELE, [1932] V. L. R. 143.—**AUS.**

PART VII. SECT. 8.

p i. —— —— ——.]—Deft. having, by grant, a right of way over a strip of land, the property of pltf. :—*Held :* pltf. was entitled to erect a fence upon the boundary between the strip & deft.'s land, allowing deft. reasonable access by a gate or gates to the way.—LEWIS *v.* WAKELING (1923), 54 O. L. R. 647.—**CAN.**

s i. —— —— *Whether duty on dominant owner to close.*]—A landowner over whose holding an adjoining owner had a general right of way erected a gate across the passage over which the right existed. There was no intention on the part of the servient owner to derogate from the rights of the dominant owner, but the latter, objecting to the obstruction, left the gate open after he had used the way. The servient owner, suing by civil bill, claimed damages for the failure & refusal by the dominant owner to close the gate. No actual damage was caused :—*Held :* the gate having been erected by the servient owner in the reasonable & proper exercise of his rights in his own property, that an obligation was cast upon the dominant owner to shut it.—GEOGHEGAN *v.* HENRY, [1922] 2 I. R. 1.—**IR.**

s ii. —— —— ——.]—When a gate is erected across a private road there is no absolute obligation on the owner of the dominant tenement to close such gate after passing or repassing on the private road.—HENDER *v.* GOHL, [1928] S. A. S. R. 325.—**AUS.**

s iii. —— —— ——.]—Where, in respect of land held in fee simple under Real Property Act, 1886, there was a grant to an adjoining owner of "fee & unrestricted right of way," which words, by sect. 89 of the Act, imply "full & free right & liberty to pass & repass," the erection of a gate was not in the circumstances disclosed in evidence an obstruction or interference with that right. There is a duty on the owner of the dominant tenement & others using & enjoying the right of way through him in normal circumstances to shut the gate after opening & passing through it if leaving it open occasions damage to the owner of the servient tenement or others claiming through him.—GOHL *v.* HENDER, [1930] S. A. S. R. 158.—**AUS.**

Part VIII.—Light.

829. *Add. Annotations :*—**Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402. **Refd.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

830. *Add. Annotations :*—*As to* (1) **Folld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Consd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515 ; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. *As to* (3) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. *As to* (6) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46. *As to* (10) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

833. *Add. Annotation :*—*As to* (1) **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

834. *Add. Annotation :*—*As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

841. *Add. Annotation :*—*As to* (3) **Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

842. *Add. Annotations :*—*As to* (2) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

850. In passage commencing "*Held :* (3) in order to satisfy Prescription Act, 1832 (c. 71), s. 2," for "s. 2" read "s. 3."

858. *Add. Annotations :*—**Consd.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. **Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72. **Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

860. *Add. Annotation :*—**Refd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

864. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

878. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

896. *Add. Annotation :*—*As to* (1) **Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

898. *Add. Annotations :*—*As to* (1) **Folld.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. **Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167. *As to* (2) **Consd.** Spillers, Ltd. *v.* Cardiff Assessment Committee, [1931] 2 K. B. 21.

898a. —— —— ——.]—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—FOSTER *v.* LYONS & Co., [1927] 1 Ch. 219; 96 L. J. Ch. 79; 136 L. T. 372; 70 Jo. 1182.

Add. Annotation :—**Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

—.]—Pltf. & deft. were lessees of adjoining premises under leases granted by a common landlord. Deft. having, as pltf. alleged, so rebuilt & altered his premises as to constitute a nuisance or illegal obstruction to certain of pltf.'s windows, pltf. commenced an action for an order (*inter alia*) directing deft. to pull down so much of the buildings erected by him as caused the nuisance or illegal obstruction complained of. Subsequently a question was raised as a point of law in the defence & brought before the ct. upon an agreed statement of facts whether the access of light to the windows of pltf.'s premises was enjoyed by consent or agreement expressly given for that purpose by deed or writing within Prescription Act, 1832 (c. 71), s. 3. In the lease under which pltf. acquired the premises rights of light or other easements over other premises were expressly excluded, & the lease was subject to all rights & easements belonging to adjacent property & to the adjacent buildings or any of them being at any time rebuilt or altered according to plans as to height, elevation, extent or otherwise as might be approved by the ground landlord :—*Held :* the exception from the lease to pltf. of any right to light coupled with the right expressly reserved for the adjacent buildings to be rebuilt constituted a grant by the lessee to the lessor of the right to build during the term of the lease on the adjacent land (including deft.'s premises), notwithstanding the effect of such rebuilding on the light to pltf.'s premises, & constituted an agreement by pltf. that any enjoyment of light to her premises was throughout her lease permissive only. There was therefore a sufficient agreement or consent in writing relating to the enjoyment of light to the pltf.'s premises to satisfy the proviso to sect. 3 of Prescription Act, 1832 (c. 71), & to prevent pltf. acquiring any statutory right to light under the sect.—WILLOUGHBY *v.* ECKSTEIN (No. 2), [1937] Ch. 167; [1937] 1 All E. R. 257; 106 L. J. Ch. 86; 156 L. T. 187 ; 53 T. L. R. 251 ; 81 Sol. Jo. 98.

905. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

910. *Add. Annotation :*—**Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

911. *Add. Annotations :*—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

PART VIII. SECT. 4, SUB-SECT.

911 viii. ——.]—*Held :* interpreting the term "ordinary light" in a common-sense manner, a pltf. is not claiming more than ordinary light because he claims a reasonable amount of direct light where he may expect to find it in a room laterally lighted, & the deprivation of such direct light must be taken into account in considering the effect of a deprivation of light by an obstruction on the servient tenement. If so much latitude be not given to the expression "ordinary light" the flexibility of the legal principle stressed in *Colls* v. *Home & Colonial Stores* is lost & a rigid standard set up by experts is introduced.

Pltfs. were the owners in fee of certain premises in which they had for many years carried on the manufacture & repair of cotton & jute bags & the colour printing of same. The said premises had been re-built by them in or about the year 1903. In May, 1934, defts. demolished a theatre, their property, & constructed a new theatre of a much greater height upon the The light which pltfs.' premises had enjoyed was diminished as a result, & pltfs. alleged that their business suffered in consequence. Pltfs. brought an action claiming an injunction to restrain defts. from permitting to remain any portion of the said theatre which had caused or would cause a nuisance or illegal obstruction to the access of light to the windows of pltfs.' premises.—SMYTH & SMYTH *v.* DUBLIN THEATRE CO., LTD., [1936] I. R. 692.—IR.

Refd. Smith *v.* Evangelization Society (Incorporated) Trust (1933), 102 L. J. Ch. 275.

912. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

914. *Add. Annotation :—As to* (1) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

918. *Add. Annotation :—As to* (2) **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

920. *Add. Annotation :—Generally,* **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

923. *Add. Annotation :—As to* (1) **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust (1933), 102 L. J. Ch. 275.

932. *Add. Annotations :*—**Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

934. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 79 Sol. Jo. 434.

934a. ——.]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an obstruction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town.—HORTON'S ESTATE, LTD. *v.* BEATTIE, LTD., [1927] 1 Ch. 75; 96 L. J. Ch. 15; 136 L. T. 218; 42 T. L. R. 701; 70 Sol. Jo. 917.

Annotation :—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

934b. ——.]—A right of light by prescription to a room in a residential house is not to be measured by the use to which the room has been put in the past.

Pltf. owned a freehold house built in & occupied since 1907, & continuously having adequate light to the windows & openings, including kitchen & scullery windows, on its north side, on which it was bounded by deft.'s house. Up to Jan. 1929, the two houses were separated by narrow passages on either side of a dwarf boundary wall belonging to deft., which was also the boundary wall between the back gardens. At the beginning of Jan. 1929, without intimation to pltf., building operations were begun on deft.'s premises, the boundary wall being raised to form a side wall of the new building. On Jan. 28 pltf.'s solrs. wrote to deft., her builders & her architect, asking that the work should cease at once. Two days later the building was still proceeding, & on Feb. 4 the wall was 15 feet high. On the next day pltf. issued a writ, & on Feb. 15 a motion came before the ct. By that date the wall had been raised to its full height of 23 feet, & an undertaking by deft. not to raise it further was useless. In an action by pltf. for a mandatory injunction & damages: —*Held :* (1) pltf.'s right of light to the scullery windows was not limited by the use to which the scullery had been put in the past; (2) in the circumstances, the case was not one for a mandatory injunction.—PRICE *v.* HILDITCH, [1930] 1 Ch. 500; 99 L. J. Ch. 299; 143 L. T. 33.

Annotation :—As to (1) **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

934c. ——.]—The burden on a servient tenement cannot be increased by any merely voluntary action of the owner of the dominant tenement.

In an action to restrain interference with light to a window in a room lighted also, at the beginning of the period of twenty years before action brought, by skylights which during that period were blocked up but which though not ancient lights could not have been obstructed except by the action of the owner of the dominant tenement himself, the ct. in deciding the issue as to nuisance must treat the skylights as reinstated & will not disregard the vertical light which the skylights would afford, even if it is established that for some purposes of user that vertical light would be unsatisfactory. —SMITH *v.* EVANGELIZATION SOCIETY (INCORPORATED) TRUST, [1933] Ch. 515; 102 L. J. Ch. 275; 149 L. T. 6; 49 T. L. R. 262, C. A.

934d. Light received through windows on different sides of building—Extent of right to each window.]—When a room in a building receives light through windows on different sides which are ancient lights, the owner of land on either side as a general rule can build only to such a height as, if a building of like height were erected on the other side, would not deprive the room of so much light as to cause a nuisance.—SHEFFIELD MASONIC HALL CO., LTD. *v.* SHEFFIELD CORPN., [1932] 2 Ch. 17; 101 L. J. Ch. 328; 147 L. T. 474; 48 T. L. R. 336.

Annotations :—**Refd.** Smith *v.* Evangelization Society (Incorporated Trust (1933), 149 L. T. 6; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

938. *Add. Annotation :*—**Refd.** Fishenden *v.* Higg & Hill, Ltd. (1935), 153 L. T. 128.

940. *Add. Annotation :—As to* (6) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

942. *Add. Annotation :—As to* (1) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

953. *Add. Annotations :—As to* (4) **Consd.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Refd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

956. *Add. Annotations :*—**Consd.** Slack *v.* Leeds Industrial Co-op. Society, [1924] 2 Ch. 475. **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

982. *Add. Annotations :—As to* (1) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

983. *Add. Annotations :—As to* (2) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402. **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

985. *Add. Annotations :*—**Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402; Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

987a. —— **Increase of burden on servient tenement.**]—An owner of ancient light cannot so diminish his ancient-light area as to increase the burden on the servient tenement.

The observations of LORD LINDLEY in *Colls* v. *Home & Colonial Stores*, No. 830, to the effect that in considering whether a proposed obstruction would amount to a nuisance, non-ancient light from other quarters of which the dominant owner might be deprived at any time ought not to be taken into account were not intended to interfere

with this paramount principle. If, therefore, the dominant tenement is rebuilt in such a way that the area of coincidence between an old & new window is much smaller than the old window, so that the ancient-light area is greatly diminished, the dominant owner cannot ask the ct. to measure the nuisance, if any, by treating the rest of the new window, rendered obstructible by his own act, as blocked up.—NEWS OF THE WORLD, LTD. *v.* FAIRHEAD (ALLEN) & SONS, LTD., [1931] 2 Ch. 402 ; 100 L. J. Ch. 394 ; 146 L. T. 11.

Annotation :—**Refd.** Smith *v.* Evangelization Society (Incorporated) Trust (1933), 149 L. T. 6.

Part IX.—Water.

997a. —— —— **Water from pond.**]—A right to take water from the pond of another is a mere easement, & not a *profit à prendre.*—MANNING *v.* WASDALE (1836), 5 Ad. & El. 758 ; 2 Har. & W. 431 ; 1 Nev. & P. K. B. 172 ; 6 L. J. K. B. 59 ; 111 E. R. 1353.

Annotations :—**Apld.** Franks *v.* Quinsee (1839), 2 Will. Woll. & H. 58 ; Race *v.* Ward (1855), 4 E. & B. 702.

1012. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1016. *Add. Annotation :*—**Apld.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1046. *Add. Annotation :*—**Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1054. *Add. Annotation :*—*As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055a. —— ——.]—BARTLETT *v.* TOTTENHAM, No. 252a, *ante.*

1070. *Add. Annotation :*—*As to* (1) **Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A.C. 640.

1092a. —— ——.]—GREEN *v.* MATTHEWS & Co., No. 361a, *ante.*

1117. *Add. Annotations :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671. **Refd.** Noble *v.* Harrison, [1926] 2 K. B 332.

Part X.—Support.

1140. *Add. Annotation :*—*As to* (1) **Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

1150. *Add. Annotation :*—*As to* (1) **Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

1152. *Add. Annotation :*—**Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1155. *Add. Annotations :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931),

PART IX. SECT. 2, SUB-SECT. 2.—A.

1000 i. *Subterraneous water.*]—The principles of English law regarding underground streams (defined or undefined) do not apply to irrigation channels taking sub-surface water in India.—BASAVANA GOWD *v.* NARAYANA REDDI (1930), I. L. R. 54 Mad. 793.—**IND.**

PART IX. SECT. 2, SUB-SECT. 2.—B.

sl. *By natural right.*]—Applt. & resp. were the owners of adjoining agricultural farms, the natural fall of which was from that of resp. to that of applt. In the farming of his property resp. kept open certain surface drains constructed many years before, the effect of which was to convey the surface water from his farm to that of applt. On a claim by applt. for an injunction to restrain resp.'s action :—*Held :* when two contiguous fields, one of which stands upon higher ground than the other, belong to different proprietors, nature itself may be said to constitute a servitude on the inferior tenement by which it is obliged to receive the water which falls from the superior ; & if the water which would otherwise fall from the higher ground without hurting the inferior tenement should be collected in one body by the owner of the superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any servitude, bound to receive that body of water on his property. Injunction refused.—BAILEY *v.* VILE, [1930] N. Z. L. R.

PART IX. SECT. 2, SUB-SECT. 2.—C.

1035 iii. ——.]—CARTER *v.* SUDDABY (Ont.), [1927] 1 D. L. R. 812.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 3.—D. (c).

o i. —— ——.]—*Held :* pltf. corpn. had obtained by prescription an easement to cast upon the land of defts. surface waters to the same extent as at a date 20 years before the commencement of the action, but it had no right to increase the volume & force of the current beyond that which existed 20 years ago, to the extent to which the volume & force of the current at times of flood was now greater than it was 20 years ago, pltf. corpn. was a trespasser.—WEST FLAMBOROUGH *v.* PRETUSKI, [1931] 1 D. L. R. 520 ; 66 O. L. R. 210.—**CAN.**

PART IX. SECT. 3.

1133 iii. ——.]—FORTIN *v.* CARON (Can.), [1927] 4 D. L. R. 936.—**CAN.**

sm. *Irrigation from tank—Prescription by lessee.*]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART IX. SECT. 4.

sn. *Unity of seisin for different estates—Enjoyment of irrigation rights continued by tenant.*]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced :—*Held :* in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—TINKOWRI, ETC., *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

sp. *Right to water for mill—Limited to existence of dam.*]—RIVERIN & BELANGER *v.* PRICE BROS., LTD., [1932] 3 D. L. R. 730.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a).

1139 iii. —— ——.]—Every owner of land in its natural state has a right to lateral support of his land by the adjacent land of another landowner. Such a right is not an easement, but is a right of property. The ct. will interfere by injunction to prevent irreparable damage to land when anything is done by the owner of the adjacent land in his own land so as to let the former land slip or go down or subside even if no actual damages are sustained by the former land.—TAMLUK TRADING & MANUFACTURING CO., LTD. *v.* NABADWIPCHANDRA NANDI (1932), I. L. R. 59 Calc. 363.—**IND.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. *General rule — Support in natural state.*]—A person must not excavate on his land so as to destroy the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942 ; 2 W. W. R. 981.—**CAN.**

101 L. J. Ch. 33; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1156. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

1157. *Add. Annotations :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488; Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

1165. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1174. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1193. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

1197. *Add. Annotations :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

1198. *Add. Annotation :*—**Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1206. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1223. *Add. Annotation :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

1226a. **Whether party-wall entitled to support—From adjacent building.**]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held :* pltf.'s allegations had not been substantiated by the evidence. *Semble :* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

1231. *Add. Annotations :*—*As to* (1) **Refd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191. *As to* (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

Part XI.—Miscellaneous Easements.

1247a. —— ——.]—Pltf.'s statement of claim contained a claim for infringement of pltf.'s right to light from ancient windows & a further claim for nuisance alleging that the carrying up of deft.'s building to a greater height had interfered with the proper escape of smoke & fumes from pltf.'s chimneys & such interference had caused a nuisance to the pltf. :—*Held :* having regard to *Bryant* v. *Lefever*, No. 349, the claim for nuisance disclosed no cause of action & should be struck out. The ct. is entitled to deal with the law as it think it stands.—WILLOUGHBY *v.* ECKSTEIN, [1936] 1 All E. R. 650, C. A.

1270. *Add. Annotations :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138; Chesham (Lord) *v.* Chesham Urban District Council (1935), 79 Sol. Jo. 453.

1282. *Add. Annotations :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. **Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 131 L. T. 136.

1322a. **To attach creeper to wall.**]—SIMPSON *v.* WEBER, No. 204a, *ante*.

1322b. **To attach post to wall.**]—SIMPSON *v.* WEBER, No. 204a, *ante*.

Part XII.—Disturbance of Easements.

1330a. —— ——.]—PENWARDEN *v.* CHING (1829), Mood. & M. 400; 173 E. R. 1203, N. P.

Annotations :—**Consd.** Bryant *v.* Foot (1867), L. R. 2 Q. B. 161; Dalton *v.* Angus (1881), 6 App. Cas. 740.

1352. *Add. Annotation :*—*As to* (2) **Consd.** Freeborn *v.* Leeming, [1926] 1 K. B. 160.

1356. *Add. Annotations :*—*As to* (1) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159. *As to* (2) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Apld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. **Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

1395. *Add. Annotation :*—*As to* (1) **Refd.** Medcalf *v.* Strawbridge, Ltd., [1937] 2 K. B. 102.

1396. *Add. Annotation :*—**Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

PART X. SECT. 1, SUB-SECT. 1.—B. (b).

i. *Weight of building contributing to subsidence.*]—Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

PART X. SECT. 1, SUB-SECT. 1.—C.

sq. *No right of support—Demolition of adjoining building—Whether negligence.*]—Where no right of su exists, the mere demolition of a bu resulting in the removal of su previously enjoyed by an adjoining building does not constitute negligence provided that due warning of the demolition is given.—UNITED BUILDING SOCIETY *v.* LENNON, LTD., [1934] App. D. 149.—S. AF.

PART XI. SECT. 11.

sr. *Burial.*]—A right to bury dead bodies is not a right of easement.—SHEO RAJ CHAMAR *v.* MUDEER (1934), I. L. R. 57 All. 166.—IN

PART XII. SECT. 2, SUB-SECT. 2.—B. (a).

st. *Mortgagee—Though not in possession.*]—A mtgee. of land, though not in possession, has a right to have his security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent of any that the owner of the mortgaged

Co. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.

1399. For the paragraph in the original volume substitute the following paragraph :—

——.] — Chancery Amendment Act, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by Statute Law Revision & Civil Procedure Act, 1883 (c. 49), the combined effect of Jud. Act, 1873 (c. 66), s. 16, & Statute Law Revision Act, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by Chancery Amendment Act, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place :—*Held :* the ct. had jurisdiction to award damages in lieu of an injunction.—LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. *v.* SLACK, [1924] A. C. 851 ; 93 L. J. Ch. 436 ; 131 L. T. 710 ; 40 T. L. R. 745 ; 68 Sol. Jo. 715, H. L. ; *revsg.* S. C. *sub nom.* SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1923] 1 Ch. 431, C. A. ; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

Annotations :—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1399a. ——.]—In an action brought by pltf. against deft. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place, & he expressed the opinion that the interference with pltf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus* v. *Peruvian Guana Co.* (1889), 43 Ch. D. 316, that there was no jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in lieu of an injunction. The House of Lords, by a majority, reversed this decision. & remitted the case to the Ct. of Appeal to deal with it on its merits :—*Held :* the findings of the judge brought the case within the "good working rule" suggested by A. L. SMITH, L.J., in *Shelfer* v. *City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction ; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls* v. *Home & Colonial Stores*, No. 830, *ante* ; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages. —SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1924] 2 Ch. 475 ; 94 L. J. Ch. 46, C. A.

Annotation :—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1406a. —— **Erection of building interfered with acquiesced in by defendant.**]—Where pltf. & deft. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deft., had erected a manufactory, an injunction was granted to restrain deft. so building as to obstruct the lights of pltf.'s manufactory pending trial.—CROOK *v.* WILSON (1855), 2 W. R. 378.

1408. *Add. Annotations :—As to* (1) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46. **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1419. *Add. Citation :*—11 Jur. N. S. 576.

1433a. —— —— ——.]—PRICE *v.* HILDITCH, No. 934b, *ante*.

1442a. —— **Against lessee—Freeholder not party to action—Light.**]—BARNES *v.* ALLEN (1927), 64 L. Jo. 92 ; 164 L. T. Jo. 83.

1444a. ——.]—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., No. 1399a, *ante*.

1444b. ——.]—FISHENDEN *v.* HIGGS & HILL, LTD. (1935), 153 L. T. 128 ; 79 Sol. Jo. 434, C. A.

1468. *Add. Annotation :*—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1471. *Add. Annotations :*—**Folld.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. **Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

Part XIII.—Profits à Prendre.

1490. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

1494. After this case add :—

—— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

1496. *Add. Annotation :*—**Refd.** *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

1497. *Add. Annotations :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo.

PART XII. SECT. 2, SUB-SECT. 2.—D. (b) 1.

1451 iii. —— ——.]—Under Specific Relief Act, 1877, the question of an injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English cts. ; & the ct. has a discretion, & may issue an injunction where the injury is such that pecuniary compensation would not afford adequate relief.—MAHOMED AUZAM ISMAIL *v.* JAGANATH JAMNADAS (1925), I. L. R. 3 Ran. 230.—**IND.**

252; Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

1499. *Add. Annotations :—As to* (1) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1501. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1503. *Add. Annotation :—Generally*, **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1511. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

1528. *Add. Annotation :*—**Refd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

1570. *Add. Annotation :— As to* (2) **Refd.** The Fagernes, [1926] P. 185.

1589. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

1590. *Add. Annotation :—As to* (1) **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

PART XIII. SECT. 4, SUB-SECT. 1.—A. sw. *Who may acquire — Public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART XIII. SECT. 4, SUB-SECT. 2.—B.

1536 l. *The public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by prescription.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

ECCLESIASTICAL LAW.

Part I.—In General.

1a. Church Assembly—Legislative Committee.]—Neither the Legislative Committee of the Church Assembly, nor the Church Assembly itself, is a body to which a writ of *certiorari* or of prohibition will issue, as neither of them is a body which is under a duty to act in a judicial capacity.—R. *v.* CHURCH ASSEMBLY LEGISLATIVE COMMITTEE, *Ex p.* HAYNES SMITH, [1928] 1 K. B. 411; 97 L. J. K. B. 222; 138 L. T. 399; 44 T. L. R. 68; 71 Sol. Jo. 947, D. C.

2a. Compulsory acquisition of freehold in premises used for "public religious worship"—Part of public only admitted.]—Two tenements known respectively as "the Salvation Army Hall" or "the Citadel of the Salvation Army, Weston-super-Mare" & "the Young People's Hall" & comprised in one lease were held under a trust deed executed after the lease upon trust to be used as a place of worship. The Salvation Army Hall was in fact used for religious worship: the rooms in the upper part of the Young People's Hall were used for teaching. The two buildings were separated by a yard. The lessees, in pursuance of the powers given by Places of Worship (Enfranchisement) Act, 1920 (c. 56), gave to the lessors notice in writing requiring the lessors to treat contract & agree with the lessees for the sale to the lessees of all the lessors' estate & interest in the premises, subject to the provisions of the Act, & to give particulars of the lessors' estate & interest in the premises & of their claims in respect thereof & of their claim for compensation. The lessors contended that under the trust deed the premises demised by the lease were not held on trust for the purposes of a place of worship, either at the date of the notice or at the date of the Act. In an action by the lessors claiming a declaration that the lessees were not entitled, under the Act or otherwise, to acquire the freehold reversion in all or any part of the premises, & an injunction to restrain them from proceeding under the notice:—*Held:* (1) "public religious worship" may include worship to which, on any or all occasions, only certain sections of the public are admitted; (2) a trust for the use of premises for the purposes of public religious worship is carried out although minor parts of the premises are not so used.—STRADLING *v.* HIGGINS, [1932] 1 Ch. 143; 101 L. J. Ch. 119; 146 L. T. 383.

2b. —— Minor parts of premises not so used.]—STRADLING *v.* HIGGINS, No. 2a, *ante*.

Part III.—Constitution of the Church of England.

16. *Add. Annotations:—As to* (4) **Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

19. *Add. Annotations:*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678.

41. *Add. Annotation:—As to* (2) **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

70. *Add. Annotation:—As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

90a. Right of public to attend.]—Under letters patent from the Crown & statutes pursuant thereto Westminster Abbey is made a Royal Peculiar the govt. of which belongs to the dean. Applt. was a professional guide for sightseers, &, after a special permit to him to act as a guide to the Abbey had elapsed, the dean made an order that he was to be excluded therefrom. On a subsequent day, which was neither a Sunday nor a holy day, applt. was in the Abbey during divine service wearing his ordinary guide's badge, when resp., a police constable, after having requested him to leave, ejected him without unnecessary violence. Applt. laid an information in the police ct. against resp. for having unlawfully assaulted him. Applt. made no claim to be a parishioner of the Abbey, & could produce no evidence of permission having been given to him to be there, but it was found that there had been no misconduct by him on the day of his ejection. The magistrate dismissed the information. On a case stated which set out these facts:—*Held:* the dean had authority to make the order excluding applt.; on applt.'s refusal to leave when requested resp. was justified in ejecting him; &, therefore, the magistrate had rightly dismissed the information.

Semble: a person who is not a parishioner has no legal right to attend a parish church even on Sundays or holy days, but if he is prevented from attending his own parish church on such days, he may present himself for admission to some other church where service is usually held.—COLE *v.* POLICE CONSTABLE 413A, [1937] 1 K. B. 316; [1936] 3 All E. R. 107; 106 L. J. K. B. 171; 155 L. T. 498; 53 T. L. R. 40; 80 Sol. Jo. 855; 34 L. G. R. 561, D. C.

PART I.

1 i. *Church—Religious community—Schism—Whether provided for by constitution.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

What amounts to.]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iii. —— —— —— *rights of—Members adhering to original constitution entitled to use of church*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iv. *S. P.* HENNIG *v.* TRAUTMAN (Alta.), [1926] 2 D. L. R. 280; [1926] 1 W. W. R. 912.—**CAN.**

135. *Annotations :*—For "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1923] 2 Ch. 504," read "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53."

185. *Add. Annotation :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

185a. —— **Former Royal chapel—Grant by Crown for use as parish church.**]—The ct. held that the rector & the parish church of St. Mary, Stafford, in the diocese of Lichfield, were subject to the ordinary episcopal jurisdiction, including the right of visitation.—LICHFIELD (BISHOP) *v.* LAMBERT (1929), 46 T. L. R. 24.

199. *Add. Annotation :—As to* (3) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

204. *Add. Annotation :*—**Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

270. *Add. Annotation :*—**Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68.

276. *Add. Annotation :—As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

292. *Add. Citations :—sub nom.* AYER *v.* ORME, 2 Dyer 221b; Ben. 129; *sub nom.* ANON, Dal. 53; 1 And. 9.

Add. Annotations :—**Refd.** Cromwel's Case (1601) 2 Co. Rep. 69b; Lyn *v.* Wyn (1665), O. Bridg. 122.

346. After this case add :—

—— ——.]—*See, now,* Cathedrals Measure 1931 (No. 7), s. 24.

388. Before this case add "*See* Parochial Registers and Records Measure, 1929 (No. 1).

401. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

415. *Add. Annotations :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107. **Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

418. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

420. *Add. Annotation :—As to* (4) **Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472. *Add. Annotations :*—**Apld.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240. **Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472a. —— **Liability of lay-impropriation to sequestration.**]—WALWYN *v.* AWBERRY, No. 2599a, *post.*

472b. —— **Personal liability.**]—The impropriator of an impropriate rectory in the receipt of the profits thereof is personally liable for the repair of the chancel of the parish church, although at the time of the conveyance to him of the lands forming part of the rectory he had no notice of the liability.—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, [1929] P. 240.

Annotation :—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472c. —— —— **Right to contribution from other tithe owners.**]—The liability of a lay impropriator of a tithe rentcharge to pay the costs of the repair of the chancel of a parish church is personal & several & not joint & is not limited to the amount of the tithe rent received by him.

In an action by pltf. council against deft. under Chancel Repairs Act, 1932 (c. 20), calling upon her to pay £123 12*s.* 6*d.*, the reasonable estimated cost of repairing the chancel of the parish church, on the ground that she was the owner of an impropriate rentcharge of the value of £39 11*s.* 9*d.*, deft. contended that but for sect. 2 (3) of Chancel Repairs Act, 1932 (c. 20), she could only have been held liable if she was a person who would have been liable to be admonished by the appropriate Ecclesiastical Cts., & that she could not in fact have been so admonished, since the amount she had received from the tithe rentcharge was less than the cost of the repairs. The county ct. judge accepted this view & dismissed the action. On appeal :—*Held :* (1) the liability of deft. being personal & several & not joint, she would have been liable to be admonished by the appropriate Ecclesiastical Cts. to repair the chancel, & was therefore liable to do so notwithstanding that the sum received by her in respect of the rentcharge was less than the estimated cost of the repairs; (2) deft. on payment of the cost of the repairs would be entitled to obtain contribution from the other tithe owners.—WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, [1935] 2 K. B. 417; 104 L. J. K. B. 635; 153 L. T. 187; 79 Sol. Jo. 418, C. A.; *sub nom. Re* CHANCEL REPAIRS ACT, 1932, WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, 51 T. L. R. 424, C. A.

472d. —— **No notice of liability—At time of conveyance of lands.**]—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, No. 472b, *ante.*

472e. —— **Although tithe insufficient for costs of repair—Chancel Repairs Act, 1932 (c. 20).**]—WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, No. 472c, *ante.*

473. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

474. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

475. *Add. Annotations :*—**Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. **Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

482a. —— —— ——.]—A tenant of premises rated at £125, who sublet the greater part & retained for his personal occupation a portion which was over £40 in ratable value, but not separately assessed :—*Held :* qualified as a vestryman under Metropolis Management Acts, 1855 (c. 120), & 1856 (c. 112).—GORDON *v.* WILLIAMSON, [1892] 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 57 J. P. 166; 40 W. R. 692; 8 T. L. R. 705, C. A.

Annotation :—**Refd.** London & India Docks Co. *v.* Woolwich Borough (1902), 71 L. J. K. B. 394.

569. *Add. Annotation :—As to* (3) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60

627. After this case add :—

Right of presentation where patronage vested in parishioners.]—*See* No. 1981a, *post.*

627a. **Removal of name from roll—Order for restoration by lay electoral commission—Whether court will interfere.**]—A parishioner whose name was removed by the parochial church council from the electoral roll of a

parish appealed to the lay electoral commission, the appellate tribunal constituted under rule 18 of Sched. to Representation of the Laity Measure, 1929. The commission, after obtaining from the council their reasons in writing for the removal of the name, directed that the name should be restored to the roll. The council failed to comply with this direction, & the parishioner whose name had been removed commenced an action in which he sought an order directing the council to restore his name to the roll & an injunction restraining the council from preventing him from attending & voting at church parochial meetings:—*Held:* the commission had duly come to a decision & in doing so had acted in no way contrary to natural justice. The name of pltf. must therefore be restored to the roll & he was entitled to the injunction asked for.—STUART *v.* HAUGHLEY PAROCHIAL CHURCH COUNCIL, [1936] Ch. 32; 104 L. J. Ch. 314; 153 L. T. 311; 51 T. L. R. 538; 79 Sol. Jo. 559, C. A.

627b. Condition precedent—Electoral roll.]—By sect. 1 of Benefices (Exercise of Rights of Presentation) Measure, 1931, a vacancy or impending vacancy in a benefice shall be notified by the Bishop to the parochial church council:—*Held:* the giving of this notification was a condition precedent to the power of the Bishop to institute an incumbent to the vacant benefice, even though there was no parochial church council in existence.—KING *v.* TRURO, BISHOP, [1937] P. 36; 106 L. J. Ch. 257; *sub nom.* R. *v.* TRURO, BISHOP, 53 T. L. R. 4.

758. *Add. Annotation:*—**Consd.** A.-G. *v.* **Mallock** (1931), 48 T. L. R. 107.

988. *Add. Annotation:*—**Refd.** Edwards *v.* **A.-G.** for Canada (1929), 46 T. L. R. 4.

1016. *Add. Annotation:*—*As to* (2) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1017. *Add. Annotation:*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

1049a. —— ——.]—COLE *v.* POLICE CONSTABLE 443A, No. 90a, *ante*.

1063. *Add. Annotation:*—*As to* (1) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1065. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Ecclesiastical Courts.

1069. *Add. Annotation:*—*As to* (1) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1115. *Add. Annotations:*—*As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1145. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. *As to* (8) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *Generally*, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1146. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. *As to* (7) **Consd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Apld.** *Re* St. Saviour's, Hampstead, [1932] P. 134.

1148. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491.

1149. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

1150. *Add. Annotation:*—*As to* (1) **Refd.** Huntley *v.* Norwich (Bp.), [1931] P. 210.

1280a. —— **Alternative remedy.**]—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council.—R. *v.* NORTH, *Ex p.* OAKEY, [1927] 1 K. B. 491; 96 L. J. K. B. 77; 136 L. T. 387; 43 T. L. R. 60; 70 Sol. Jo. 1181 C. A.

1349. *Add. Annotation:*—**Refd.** R. *v.* North, *Ex p* Oakey (1926), 43 T. L. R. 60.

1372. *Add. Annotation:*—*As to* (1) **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

1392. *Add. Annotation:*—*Generally*, **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch 148.

1400. *Add. Annotation:*—**Refd.** Capel St. Mary Suffolk *v.* Packard, [1927] P. 289.

1585. *Add. Annotations:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

1596. *Add. Annotation:*—*As to* (3) **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1605. *Add. Annotation:*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289

1721. *Add. Annotations:*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459; *Re* Carroll, [1931] 1 K. B. 317.

1755. *Add. Annotation:*—**Refd.** Vincent *v.* St Magnus the Martyr, etc., [1925] P. 1.

1756. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1768a. —— —— ——.] —*Held:* a faculty ought to issue for the removal of (1) a tabernacle, (2) a sacring gong, (3) four out of six candlesticks on the retable, (4) two candlesticks on

PART IV. SECT. 6, SUB-SECT. 2.—D.

1217 i. ***Interpretation of statutes—Concerning spiritual matters.***]—In an action involving the construction of United Church of Canada Act, 1924 (c. 100):—*Held:* the ecclesiastical cts. only had jurisdiction.—STOVER *v.* DRYSDALE, [1925] 4 D. L. R. 994.—CAN.

the credence which had been used ceremonially, (5) a censer which had been used ceremonially, (6) the Stations of the Cross, (7) a second Holy Table introduced after a faculty for it had been refused, (8) an image of the Blessed Virgin Mary with candles & vases, (9) a holy water stoup, (10) two brass candelabra used in a service of adoration of the Sacrament, & a hanging lamp in the chancel used to denote the presence of the reserved Sacrament; a faculty ought not to issue for the removal of (11) books & pamphlets displayed on tables in the church, (12) notices as to times when confessions could be heard, (13) notices asking for prayers for deceased persons, (14) a kneeling stool used by persons making their confessions, & (15) the rector's books of devotion on the Holy Table, but these articles were not proper subjects for a confirmatory faculty; a faculty ought not to issue for the removal of (16) a crucifix on the wall above the kneeling stool, used to assist the devotions of those making their confessions, & a confirmatory faculty till further order ought to issue in respect of it; a faculty ought not to issue for the removal of (17) a crucifix behind the Holy Table which had been proved to have been the object of veneration, the rector having undertaken not to genuflect to it or cense it, & not to allow any other officiating clergymen to do so, & a confirmatory faculty till further order ought to issue in respect of it.

(18) Memorials purporting to be signed by parishioners, as to which no evidence is given in proof of the signatures or of the representations made to those who sign them, are inadmissible in a faculty suit.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1927] P. 289; *subsequent proceedings*, [1928] P. 69.

Annotation :—As to (3) **Consd.** *Re* St. Saviour's, Hampstead, [1932] P. 134.

1775a. —— —— **"Till further order."**]—(1) Where a cause of faculty has been remitted by the Ct. of Arches to a consistory ct. to decree a faculty as directed by the Ct. of Arches, a party to the suit who is aggrieved by a condition proposed to be inserted in the faculty may appeal to the Ct. of Arches by way of the assertion of a grievance, & the Ct. of Arches may hear & determine the appeal without retaining the cause.

(2) A condition in a confirmatory faculty "that if any of the articles included in the faculty are treated with superstitious reverence we reserve to ourselves the right to order their removal at any time hereafter upon being satisfied hereon" is an improper condition, & such a condition is not substantially similar to, but wholly different from, a condition that the faculty is granted "till further order."

(3) Observations upon the object & effect of granting a faculty till further order, the proceedings required by the practice of the cts. before such further order can be made, the distinction between the order of the ct. in a faculty suit & the faculty, & the matters which are proper to be included in each.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1928] P. 69.

1784. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1789a. Cause remitted to decree faculty—Objection to condition proposed to be inserted in faculty—Right of aggrieved party to appeal.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1775a, *ante*.

Part V.—Clergy.

1806. *Add. Annotation :*—**Consd.** Clergy Orphan Corpn. *v.* Christopher, [1933] Ch. 267.

1808. *Add. Annotation :*—**Refd.** *Re* Little Gaddesden Churchyard, *Ex p.* Cuthbertson, [1933] P. 150.

1821. For **"Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member"** read **"Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader."**

1846. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1851. *Add. Annotation :*—**Apld.** *Re* Clerical Disabilities Act, 1870, *Ex p.* Cowan (1927), 71 Sol. Jo. 272.

1851a. *S. P. Re* CLERICAL DISABILITIES ACT, 1870, *Ex p.* COWAN (1927), 137 L. T. 515; 71 Sol. Jo. 272.

SECT. 4.—**PATRONAGE OF BENEFICES** (p. 370).

To cross ref. add "*See, also*, Benefices (Diocesan Boards of Patronage) Measure, 1932 (No. 1).

1971. *Add. Annotation :*—*Generally*, **Refd.** Notley *v.* Birmingham (Bp.) (1930), 99 L. J. Ch. 305.

1981. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1981a. Patronage vested in parishioners—Transfer to parochial church council—Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1).]—*Re* LICHFIELD CATHEDRAL GRANT, CHAPEL-EN-LE-FRITH PAROCHIAL CHURCH COUNCIL *v.* BAGSHAW (1929), 45 T. L. R. 583.

SUB-SECT. 2.—TRANSFER AND TRANSMISSION OF PATRONAGE (p. 379).

To cross-reference add "*See, also*, Benefices (Transfer of Rights of Patronage) Measure, 1930 (No. 8)."

2104a. Whether vendor bound to make marketable title—Whether stamp necessary.]—WILMOT *v.* WILKINSON (1827), 6 B. & C. 506; 9 Dow. & Ry. K. B. 620; 5 L. J. O. S. K. B. 196; 108 E. R. 538.

Annotation :—**Refd.** Doogood *v.* Rose (1850), 9 C. B. 132.

2105a. —— **Non-completion of purchase—Default of vendor.**]—WEDDALL *v.* NIXON (1853), 17 Beav. 160; 22 L. J. Ch. 930; 21 L. T. O. S. 147; 17 Jur. 642; 51 E. R. 994.

2198. After this case add :-

——.]—*See* Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 5.

2272. *Add. Annotation :—Generally,* **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

After this case add :—

.]—*See, now,* Benefices Act, 1898 (Amendment) Measure, 1923 (No. 1), s. 3.

2320. Before this case add " *See, now,* Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 1.

2355a. Jurisdiction of court of equity to order admission—No lawful excuse for refusal shown.]—A ct. of equity can make an order on a bishop to admit & licence to a perpetual curacy a duly qualified nominee who has been duly presented by the patron, unless lawful excuse for refusal by the bishop to admit & licence be shown.—NOTLEY *v.* BIRMINGHAM, BISHOP (1930), 99 L. J. Ch. 305 ; 46 T. L. R. 347.

2355b. —— Refusal to obey order—Discharge of order.]—A bishop refused to admit & licence X., a clerk in holy orders, to the perpetual curacy of Z. on the presentation of the patrons. The patrons then commenced an action in the Ch. Div., claiming that the bishop was bound to admit & licence X. to the benefice. The bishop not having entered an appearance the action came before the ct. on Apr. 2, 1930, as a short cause, upon a motion for judgment in default of appearance, & an order was made that the bishop should admit & licence X. to the benefice in due form according to law. The bishop refused or neglected to admit & licence X. to the benefice, & to comply with the order. The patrons then moved the ct. that a writ should issue to the Archbishop of Canterbury, commanding him to admit & licence X. to the benefice at the nomination or presentation of the patrons :—*Held :* so much of the order of Apr. 2, 1930, as ordered the bishop to admit & licence X. to the benefice might be discharged, & in lieu thereof & in substitution thereof it might be ordered that a writ should issue directed to the Archbishop of Canterbury commanding him to admit a fit person to the benefice at the nomination or presentation or other legal requisition of pltfs. as patrons thereof.—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), [1931] 1 Ch. 529 ; 100 L. J. Ch. 303 ; 145 L. T. 251 ; 47 T. L. R. 257.

2355c. —— —— Issue of writ to Archbishop.]—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), No. 2355b, *ante.*

2437. *Add. Citation :*—2 B. R. A. 932.

2440. *Add. Citation :*—2 B. R. A. 831.

2443a. Grounds for approval or disapproval of scheme.]—Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part of the inhabitants.—*Re* GUSSAGE ALL SAINTS & GUSSAGE ST. MICHAEL, DORSET, PARISHES (1925), 69 Sol. Jo. 493, P. C.

Annotations :—**Folld.** Great Massingham & Little Massingham (Benefices), [1931] A. C. 328. **Apld.** *Re* Thelnetham & Hinderclay Benefices, [1934] A. C. 119.

2443b. ——.]—Having regard to Union of Benefices Measure, 1923, s. 2 (6), which sub-sect. contains the only statement in the Measure as to the principles governing the union of benefices thereunder, it is not enough, in order to justify a union, to show that one incumbent could serve the parishes affected, & that the union would save man power and might also produce surplus income available for other benefices. The circumstances & interests of the parishes themselves must be regarded.—*Re* GREAT MASSINGHAM & LITTLE MASSINGHAM, BENEFICES OF, [1931] A. C. 328 ; 100 L. J. P. C. 93 ; 144 L. T. 654 ; 47 T. L. R. 294, P. C.

Annotations :—**Apld.** *Re* Thelnetham & Hinderclay Benefices, [1934] A. C. 119. **Refd.** *Re* Bolton-Le-Moors Benefices, [1933] A. C. 556.

2443c. ——.]—Where a scheme under the Union of Benefices Measure, 1923, includes a recommendation by the Ecclesiastical Comrs. under sect. 15 that surplus revenue of the united benefice shall be applied to the spiritual needs of another benefice in the diocese, it is not fatal to the validity of the scheme that the comrs. of inquiry while reporting in its favour have stated that apart from the proposed diversion of surplus revenue, a matter beyond their cognisance, they would have found it difficult to justify. The report of the comrs. can be regarded as a recognition & fulfilment of the duty imposed upon them by sect. 2 (6) of the Measure to have regard to the interests of religion in England generally. —*Re* BOLTON-LE-MOORS, ST. PAUL, CHRIST CHURCH, & EMMANUEL, LANCASHIRE, UNION OF BENEFICES, [1933] A. C. 556 ; 102 L. J. P. C. 165 ; 149 L. T. 370 ; 77 Sol. Jo. 446, P. C.

2443d. ——.]—*Re* THELNETHAM & HINDERCLAY BENEFICES, No. 2443e, *post.*

2443e. Charge on endowments of united benefice—In favour of other benefices—Validity.]—The power conferred by sect. 15 of the Union of Benefices Measure, 1923, is a power to dispose of surplus revenue after competent provision has been made for the united benefices. The sect. therefore does not authorise the creation of a charge on the endowments in favour of other benefices, because upon a diminution of the endowments a competent provision might not remain. The power under sect. 16 to create a rent-charge cannot be utilised to alter the character of the operation authorised by sect. 15. Scheme set aside.—*Re* THELNETHAM & HINDERCLAY BENEFICES, [1934] A. C. 119 ; 103 L. J. P. C. 32 ; 150 L. T. 202 ; 50 T. L. R. 119 ; 77 Sol. Jo. 852, P. C.

2443f. Approval of bishop—What amounts to.]—The report of a commission of inquiry constituted under the Union of Benefices Measure, 1923, recommended the union of two benefices, & stated that the united endowments were not too much. The bishop of the diocese endorsed on the report his approval, with the reservation that the income of the united benefices should be limited to £500 net, & the surplus allocated to other benefices. The Ecclesiastical Comrs. prepared a scheme for union which provided that a substantial part of the endowments should be alienated :—*Held :* (1) there had been no approval of the report by the bishop as required by sect. 4 (1) of the Measure, & that there was no jurisdiction to prepare the scheme ; (2) the chairman of the commission on inquiry nominated by the Ecclesiastical

Comrs. under sect. 3 (*d*) of the Measure should not be in any way officially connected with the Comrs., nor one so frequently nominated as chairman as to afford any ground for the suggestion that he is present to represent their views. Scheme set aside.—*Re* EDBURTON & POYNINGS BENEFICES, [1934] A. C. 115; 103 L. J. P. C. 22; 150 L. T. 201; 50 T. L. R. 105; 77 Sol. Jo. 852, P. C.

2443g. Chairman of Inquiry Commission—Who may be appointed.]—*Re* EDBURTON & POYNINGS, BENEFICES, No. 2443f, *ante*.

2443h. Application by interested party—Settlement of locus standi at preliminary hearing—Form of Order in Council.]—Under a scheme, put forward by the Ecclesiastical Comrs., two benefices in the city of London were to be united. It was further proposed that the parish church of the second benefice should be closed & taken down, & the site sold. The scheme was opposed by the corpn. of the city of London, by certain learned societies, & by a gentleman who had at one time been a parishioner. It was contended, on behalf of the Ecclesiastical Comrs., while admitting the right of the city of London to appear, that the various learned societies had no such right, on the ground that they had no *locus standi*, although the Order in Council provided that their petition & objection should be considered by the Judicial Committee of the Privy Council when the appeal was being heard:—*Held:* the Judicial Committee were themselves bound by the terms of the Order in Council to hear the petition & objection as well as the appeal of the city of London. Their Lordships were further of the opinion that, in future, in cases of a like nature, the Order in Council "should make provision to enable a resp. to take a preliminary point, should he so desire, & an opportunity should be afforded to the parties to have that preliminary point disposed of before the hearing of the main appeal," & so obviate a party being put to the expense of preparing his case for the main appeal, only to find, perhaps, that, on a preliminary objection, he was not entitled to be heard because he was not an interested party.—*Re* ALL HALLOWS, LOMBARD STREET, [1937] 2 All E. R. 64; 53 T. L. R. 386; 81 Sol. Jo. 355, P. C.

2488. *Add. Annotation:—As to* (2) **Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

2491. *Add. Annotation:*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

2496. *Add. Citation:—sub nom.* CURLEWS *v.* BUTTS, 9 L. J. O. S. K. B. 69.

2539. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2595. *Add. Annotation:—As to* (2) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2599a. ——Failure to repair chancel.]—(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—WALWYN *v.* AWBERRY (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. B. 230; 86 E. R. 866; *sub nom.* 2 Vent. 35; 3 Keb. 829.

...tations:—As to (2) **Consd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240; Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

2607. *Add. Annotation:—As to* (1) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2676. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

2715. Before this case add "*See* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8).

2717a. Appointment of commission under Benefices (Ecclesiastical Duties) Measure, 1926, s. 3 (1)—Necessity for notice to incumbent—In respect of what duties.]—By Benefices (Ecclesiastical) Duties) Measure, 1926, s. 3 (1), where the bishop has reason to think that the ecclesiastical duties of a benefice are inadequately performed he may appoint a commission to inquire into the facts, & on their report that the inadequate performance of the duties is due to the negligence of the incumbent, has power under sect. 5 (1) to inhibit him. By sect. 2 (*a*) "ecclesiastical duties" include the observance of ordination promises, & also (iii) "an obligation binding the incumbent to manifest in his acts, conduct & course of life, due respect for his sacred office, & a due solicitude for the moral & spiritual welfare of his parishioners." A commission reported to the bishop that the ecclesiastical duties of a benefice were inadequately performed owing to the negligence of the incumbent, & also found certain charges proved which were a violation both of the ordination promises of the incumbent & of the provisions of sect. 2 (*a*) (iii). By sect. 2 (*b*): "No incumbent shall be deemed to have been negligent in the observance or performance of any of his ordination promises . . . unless such observance or performance has been required of him in writing by the bishop, who shall give him opportunity of replying, before issuing any commission under the provisions of section three of this Measure." No such requirement was made:—*Held:* the commission had jurisdiction to hold the inquiry, although the above notice had not been given, because the inadequate performance of ecclesiastical duties charged was that of ecclesiastical duties not expressly set out in sect. 2 (*b*), it being in respect of the inadequate performance of the latter only that such notice is required. The requirement in sect. 2 (*b*) applies only where the neglect charged is that of ordination promises, as such, or of duties imposed by the Rules for the Representation of the Laity, as such, & the charges against applt. were not charges of this character.—HUNTLEY *v.* NORWICH (BISHOP), [1931] P. 210.

2719a. Conduct.]—RICE *v.* OXFORD (BP.), No. 1150, *ante*.

——.]—*See, now,* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8), s. 2 (*a*) (iii.).

2719b. ——.]—HUNTLEY *v.* NORWICH (BISHOP), No. 2717a, *ante*.

2744. *Add. Annotation :*—**Refd.** Matthews *v.* King, [1934] 1 K. B. 505.

2751. *Add. Annotation : — Generally*, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2762. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2764a. —— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2768. *Add. Annotations :—As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (8) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (9) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally*, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2786. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2797. *Add. Annotation :—As to* (3) **Refd.** St. Margaret's, Toxteth Park (1924), 40 T. L. R. 687.

2801a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2809a. —— ——.]—CAPEL *v.* ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2812. *Add. Annotation :—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2816a. —— —— —— **Must be limited to two.**]—(1) The old English use in parish churches being to place not more than two & at least one light on the Holy Table in service time, this was retained at the Reformation. Consequently the use of six lights on the Holy Table or a retable is unlawful. The vicar of a parish having introduced without a faculty six candlesticks placed on a retable behind the Holy Table, the Chancellor granted a confirmatory faculty for two of them. Upon an undertaking being given by the vicar that the remaining four should not be used on or in connection with the Holy Table, their removal from the church was not insisted on.

(2) In the absence of evidence of superstitious reverence or use the placing of a crucifix so as to be visible to the penitent during confession is not unlawful.—*Re* ST. SAVIOUR'S, HAMPSTEAD, [1932] P. 134.

2818a. —— —— **On credence table.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2824a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2825. For the paragraph in the original volume substitute the following paragraph :—

—— **As of course.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2831. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Approval of decorations & fittings.**]—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things : (1) a second Holy Table ; (2) an image of Virgin & Holy Child placed behind the second Holy Table ; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2) :—*Held :* (1) the law was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se*, it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry :—*Held :* (2) there was a danger of the proposed image of the Virgin & Holy Child being so used ; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer ; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is the second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the exceptional character of the ceremonial & services of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full plans & particulars of the decorations & fittings of & surrounding the second Holy Table, & these fittings ought to be subject to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1 ; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

Annotation :—Generally, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2842. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2844. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2859. *Add. Annotation :—As to* (3) **Dbtd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2861. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2862. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2871. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2872. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2873. For the paragraph in the original volume substitute the following paragraph :—

—— —— —— **Ordinary rules as to images apply.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2874. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2875. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2876. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2882. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2883. *Add. Annotations :*—**Apld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2888. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2889. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2892. *Add. Annotation :—Generally,* **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893a. —— —— **When visible to penitent during confession.**]—*Re* ST. SAVIOUR'S, HAMPSTEAD, No. 2816a, *ante.*

2896. For the paragraph in the original volume substitute the following paragraph :-

-.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2899a. —— **Above confessional stool—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2899b. —— **Behind Holy Table—Whether permissible.**] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2900. *Add. Annotations :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2903. *Add. Annotations :—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (5) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (6) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2904a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2906. For the paragraph in the original volume substitute the following paragraph :

-.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2913. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2915a. —— **With candles & vases—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2916. For the paragraph in the original volume substitute the following paragraph :—

The Virgin & Child—Probability of veneration.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2924a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

(*n*) *Lights* (Vol. XIX., p. 449).

Add the following cross-references :—

Used in service of adoration of Sacrament.]—*See* No. 1768a, *ante.*

To denote presence of reserved Sacrament.]—*See* No. 1768a, *ante.*

2947a. Books & pamphlets displayed in church.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947b. Notices—Times for hearing of confessions.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947c. —— **Asking for prayers for dead.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947d. Confessional stool.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2948. *Add. Annotation :—As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2965a. Books of devotion—On Holy Table.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2972a. —— ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2975. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2985. After this case, for

"**Registration of baptism.**]—*See* REGISTRATION OF BIRTHS, MARRIAGES & DEATHS," read "**Registration of baptism.**]—*See* Canon 70 of 1603; Parochial Registers Act, 1812 (c. 146).

—— **Admissibility in evidence.**]—*See* EVIDENCE, Vol. XXII., pp. 336, 337, Nos. 3358–3378."

3006. *Add. Annotation :—Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

3015a. Sounding sacring gong—Whether permissible.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

PART VI. SECT. 4.

st. *Registration of right to marry.*]—The governing body mentioned in sect. 3 of Marriage Act, 1930, is not the governing body by which the minister or clergyman in question has been ordained but means the governing body of a religious body as defined by sect. 2 thereof, viz., any church or any religious denomination, sect, congregation, or society having jurisdiction in the province. It is not necessary that the person for whom application is made for registration "as authorised to solemnise marriage" should be ordained. Therefore, if there is a religious body as defined by the Act, with a governing authority having jurisdiction in the province, such governing body may apply under said Act for such authority on behalf of a minister or clergyman, as defined by the Act, belonging to it.—*Re* VICTORIA CITY TEMPLE'S APPLICATION, [1934] 3 W. W. R. 761 ; *sub nom. Re* THOMPSON, 59 B. C. R. 278.—CAN.

Part VII.—Property of the Church of England.

3049. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

(*b*) *Neglect to Repair* (p. 460).

Jurisdiction of county court—Repair of chancel.]—*See* Chancel Repairs Act, 1932 (c. 20).

3081a. —— **Demolition of private chapel.**]—A metropolitan borough council contracted to purchase the site of a charitable institution on the removal of the institution to other premises in the suburbs. The institution included a private chapel for the benefit of the inmates, with some seats for members of the public on payment of pew rents. The purchasers & vendors presented a petition for a faculty for the demolition of the chapel. The Chancellor of the diocese ordered the issue of a faculty on condition that the Holy Table & all other furniture & fittings be removed for incorporation & use in the chapel to be provided on the new premises; that, subject to any expression of opinion by relatives of those commemorated, the memorial windows, if not capable of being used in the new chapel, were to be preserved & used, if possible, in a new church or chapel to be built in the London diocese; that the chapel site was to be preserved for ever unbuilt on, & to secure that object the instrument of transfer was to contain a restrictive covenant to that effect by the purchasers with the vicar of the parish; that the title to the site was to be registered in the Land Registry; & that the site was to be marked & a tablet with an inscription stating that the site was consecrated ground, not to be built on, was to be let into the surface of the ground.—*Ex p.* St. Pancras Metropolitan Borough Council & Journeymen Tailors' Benevolent Institution (1937), 53 T. L. R. 456.

3112. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

3113a. Whether faculty absolute—Erection of image.]—Vincent *v.* St. Magnus the Martyr, etc. (Rector & Churchwardens), No. 2831, *ante*.

3391a. —— —— **Tithable where landed.**]—By custom, fish taken in the sea is tithable where landed.—Anon (1632), Cro. Car. 264; 79 E. R. 830.

3406. *Add. Annotation :*—*As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3449. *Add. Citation :*—West. Tithe Cas. 44.

Add. Annotation :—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3451. *Add. Annotation :*—*As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3454a. —— **Whether premises exempted from prescribed rate—Onus of proof.**]—By the above Act & a decree made pursuant to it & having the force of a statute, the lessees of houses & all other hereditaments, with certain immaterial exceptions, situated in the City of London, are liable to pay a tithe of 2*s.* 9*d.* for every rent of 20*s.* by the year, "& so above the rent of 20*s.* by the year by the rate aforesaid." The decree contained a proviso that in the case of premises in respect of which less sums had been accustomed to be paid for tithes before 1545, the date of the above Act, the premises should be exempted from the prescribed rate. In an action by the owners of tithes against the occupiers of premises in the City for tithe at the rate prescribed by the Act:—*Held :* (1) the *onus* was on defts. to prove that the tithe paid before 1545 in respect of the premises was less than the sum prescribed by the Act; (2) defts. had not discharged the *onus*.—Busby *v.* Avgherino, [1928] A. C. 290; 97 L. J. Ch. 291; 139 L. T. 170; 92 J. P. 129; 44 T. L. R. 551; 26 L. G. R. 401, H. L.

3455a. —— **Whether payable on reserved or improved rent.**]—A lease of premises was granted at the yearly rent of £102 10*s.* in consideration of the lessee expending £2,000 in building thereon. The improved annual value was £250:—*Held :* tithes were payable upon the annual value, & not on the rent reserved.—Vivian *v.* Cochrane (1855), 4 De G. M. & G. 818; 25 L. J. Ch. 553; 26 L. T. O. S. 17; 19 J. P. 131; 1 Jur. N. S. 809; 3 W. R. 254; 43 E. R. 728, L. C.

3455b. —— **Whether non-payment a defence.**]—Mere non-payment of tithes under the Act is not an answer.—St. Paul's Warden, etc. *v.* Kettle (1813), 2 Ves. & B. 1; 35 E. R. 218, L. C.

Annotations :—**Refd.** Payne *v.* Esdaile (1888), 13 App. Cas. 613; Busby *v.* Avgherino, [1928] A. C. 290.

3455c. —— ——.]—Payne *v.* Esdaile, No. 3451, *ante*.

3456. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3465. *Add. Annotations :*—*As to* (4) **Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297. *Generally*, **Refd.** Queen Anne's Bounty *v.* Blacklocks' Executors, [1934] 1 K. B. 599.

3465a. —— **What words operate to pass.**]—A tithe rentcharge will not, upon a conveyance of land without more, pass to the purchaser by virtue of Conveyancing Act, 1881 (c. 41), s. 63. Tithe rentcharge is, like tithe, a hereditament separate from the land, & express words are necessary to pass it.—Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516; 96 L. J. K. B. 188; 136 L. T. 468; 43 T. L. R. 163; 71 Sol. Jo. 19, C. A.

3466. After this case add "**Transfer to Queen Anne's Bounty.**]—*See* Tithe Act, 1925 (c. 87), s. 3."

3466a. —— **Meaning of "rectory with cure of souls"—Sinecure.**]—Plff. having been instituted & inducted to a rectory by the Bishop in 1917, read himself in & presented himself to the vicarage. He was the only person in the parish with cure of souls, & since his institution he had been in receipt of the tithes in respect of the vicarage &

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sg. *Control of court.*]—*Held :* the jurisdiction of the ct. to intervene in the internal affairs of the Church of England was based on property rights, & as the action was a direct claim to the right to the possession of property the ct. had jurisdiction.—Cherrington *v.* Bell (1934), 29 M. C. R. 105.—**N.Z.**

also of the rectory, & had resided throughout in the parish. Since 1849 the rectory & vicarage had been held by the same person, & for many years the rectory had been what is commonly called a sinecure. If the rectory was a benefice with cure of souls the tithe rentcharge attached to the rectory would vest in Queen Anne's Bounty & be paid to pltf. free of rates; if not, pltf. would be liable for certain rates. In an action by pltf. against Queen Anne's Bounty for a declaration that by the Tithe Act, 1925, the rectorial tithe rent which was attached to the benefice was transferred to & became vested in defts. for all the interest therein & for the purposes of the Act:—*Held:* though pltf. was the vicar with cure of souls, yet, since the expression "rectory with cure of souls" in Tithe Rentcharge (Rates) Act, 1899 (c. 17) meant a real cure of souls *actualiter* & did not include a rectory which was a sinecure, & since a sinecure could not be turned by residence into a rectory with cure of souls, pltf. was not a rector with cure of souls within the definition of "benefice" in Tithe Rentcharge (Rates) Act, 1899 (c. 17), & the action failed.—GREENING *v.* QUEEN ANNE'S BOUNTY, [1932] 1 Ch. 348; 101 L. J. Ch. 260; 146 L. T. 447; 48 T. L. R. 155; 76 Sol. Jo. 10; 30 L. G. R. 181.

3466b. —— **Meaning of "benefice."**]—GREENING *v.* QUEEN ANNE'S BOUNTY, No. 3466a, *ante*.

3468. *Add. Annotations:—As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally*, **Refd.** Queen Anne's Bounty *v.* Blacklock's Executors, [1934] 1 K. B. 599.

3470. *Add. Annotations:*—**Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. **Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

3475a. —— ——.]—UNIVERSITY COLLEGE, OXFORD (MASTER & FELLOWS) *v.* GARTON (1847), 10 Q. B. 760; 16 L. J. Q. B. 381; 9 L. T. O. S. 245; 11 Jur. 907; 116 E. R. 289.

Annotation:—**Refd.** R. *v.* England & Wales Tithe Comrs. (1852), 21 L. J. Q. B. 208.

3487. After this case add:

—— ——.]—*See, now*, Extraordinary Tithe Act, 1897 (c. 23), s. 1 (1).

3488. For "*Held:* the ct. had jurisdiction to deal with the costs, & they would have to be paid by W., the landlord seeking compulsory redemption" read "*Held:* (1) the ct. had jurisdiction to deal with the costs; (2) they must be paid by W., the landowner seeking compulsory redemption."

Add. Annotations:—As to (1) **Apprvd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123. *As to* (2) **Overd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

3490a. —— **What may be taken—All goods upon land.**]—The right given by the Tithe Act, 1836 (c. 71), s. 81, to a person entitled to tithe rentcharge to distrain for arrears thereof upon the land liable thereto extends to all the goods & chattels upon the land, which are not specially protected from distress by law, & is not limited to things which were tithe-able before the passing of the Act.—QUEEN ANNE'S BOUNTY *v.* THORNE, [1934] 1 K. B. 297; 150 L. T. 135; 50 T. L. R. 20; 77 Sol. Jo. 764, D. C., *revsd. on other grounds*, [1934] 2 K. B. 175, C. A.

Annotation:—**Consd.** Swaffer *v.* Mulcahy, [1934] 1 K. B. 608.

3490b. —— —— **Beasts which gain the land.**]—The owners of certain tithe rentcharge applied to the county ct. under Tithe Act, 1891 (c. 8), s. 2, for the recovery of arrears due from F., J. & W. The county ct. made orders accordingly & appointed X., an officer of the ct., to distrain. X. gave to F., J. & W. respectively ten days' notice in writing of his intention to distrain, as required by Tithe Act, 1836 (c. 71), s. 81. He took no further steps, & eight months later the county ct., on the application of the tithe owners, appointed M., an officer of the ct., to distrain in place of X. M. served no further notices but seized in the case of F. 10 ewes, 19 lambs & 5 tegs; in the case of J., 5 cows & 1 horse, which was at the time of the seizure in use drawing a cart; in the case of W., 43 sheep, 1 cow, 1 heifer & 1 cart horse (in actual use), of which W. was a bailee, but not the owner.

Actions of replevin by F., J. & W., respectively against M. were removed by *certiorari* into the High Ct. Pltfs. contended that the distress was illegal (*a*) because M. had not served ten days' notice of his intention to distrain; (*b*) because, by the statute 51 Hen. 3, stat. 4, known as Les Estatuz del Eschekere, "beasts which gain the land & sheep" are privileged from distress if other distress is available, which they asserted was the case on the facts; (3) because, in the case of J. & W., the horses seized were in actual use. (This point was conceded by deft., subject, in the case of W., to the question whether a bailee was entitled to maintain an action of replevin.)

Deft. relied on the notices given by X., & contended that no further notices were necessary. He did not admit the existence of the statute cited as 51 Hen. 3, stat. 4, or as Les Estatuz del Eschekere, & said that its true construction (if it existed) was not that contended for by pltfs., & that it had no application to the cases before the ct.:—*Held:* (1) the purpose of the ten days' notice of intention to distrain being merely to give the tithe-payer an opportunity to pay & avoid the inconvenience of a distress, that purpose had been fulfilled by X.'s notice, & no further notice by M. was necessary; (2) whether or not the so-called statute 51 Hen. 3, stat. 4, known as Les Estatuz del Eschekere, was a statute properly so called or not, it had for centuries been treated as a declaration of the common law binding on the cts.; (3) the true meaning of "bestes ke gaignent sa terre" was "beasts of the plough" which, with sheep, were privileged from distress, in those cases to which the statute applied, if other distress was available; (4) the applicability of the statute depended on whether the right of distress for tithe rentcharge was in the nature of execution like a distress for poor rates, or was subject to the same limitations as a landlord's distress for rent. On the true construction of Tithe Act, 1836 (c. 71), s. 81, the words "otherwise to act & demean himself in relation thereto as any landlord may" refer only to the last of the three branches "to distrain," "to dispose of the distress," & "& otherwise to act & demean himself" & do not limit the distress itself, which is analogous to an execution. The ancient statute therefore does not apply to a distress for tithe

rentcharge; (5) in the case of W., a bailee may maintain replevin.—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, [1934] 1 K. B. 608; 103 L. J. K. B. 347; 150 L. T. 240; 50 T. L. R. 179; 77 Sol. Jo. 899.

3490c. —— Necessity for notice.]—Where, under Tithe Act, 1836 (c. 71), s. 81, & Tithe Act, 1891 (c. 8), s. 2, the bailiff of a county ct. levies a distress for unpaid tithe, he must give the tenant ten days' previous notice.—NEW COLLEGE, OXFORD, WARDEN & SCHOLARS *v.* DAVISON (1933), 49 T. L. R. 579; 77 Sol. Jo. 589.

Annotations:—**Overd.** Queen Anne's Bounty *v.* Thorne, [1934] 2 K. B. 175. **Refd.** Swaffer *v.* Mulcahy, Hooker *v.* Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

3490d. —— ——.]—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, No. 3490b, *ante*.

3490e. —— ——.]—An officer appointed by the county ct. under Tithe Act, 1891 (c. 8), s. 2, to distrain on land occupied by the owner thereof for the sum ordered to be paid in respect of arrears of tithe rentcharge together with costs has conferred on him by sect. 2 (2), "the like powers of distraint for the recovery of the sum ordered to be paid as are conferred by the Tithe Acts on the owner of a tithe rentcharge for the recovery of arrears of tithe rentcharge":—*Held:* the obligation to give ten days' notice of intention to distrain imposed by Tithe Act, 1836 (c. 71), s. 81, is not imported into Tithe Act, 1891 (c. 8), s. 2 (2), as part of the power to levy a distress created by sect. 81 so as to require the officer appointed to distrain to give that notice before levying a distress.—QUEEN ANNE'S BOUNTY *v.* THORNE, [1934] 2 K. B. 175; 103 L. J. K. B. 473; 151 L. T. 101; 50 T. L. R. 294; 78 Sol. Jo. 206, C. A.

Annotation:—**Follid.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

3491. *Add. Annotation:*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

3491a. —— —— By bailee.]—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, No. 3490b, *ante*.

3492a. —— Abortive sale by auction—Second distress & sale by auction—Jurisdiction to order.]—Upon the application of the tithe owners a county ct. judge made an order for the recovery of tithe rentcharge issuing out of certain lands, & he directed that an officer of the ct. should distrain upon those lands for the sum. The officer of the ct. distrained & offered the goods seized for sale by auction. A number of persons attended the sale & by their conduct prevented it from being successful, not bidding themselves & preventing others from bidding. The tithe owners thereupon applied to the county ct. for a further order for the recovery of the same tithe rentcharge, together with the costs & expenses of the abortive sale. The county ct. judge accordingly made an order that a second distress be levied for the recovery of the same tithe rentcharge, together with the costs, & directed that the goods seized should be sold by tender. A rule *nisi* for *certiorari* was obtained to remove the second order of the county ct. judge into the High Ct. upon the ground that he had no jurisdiction to entertain or adjudicate upon the application or to make the order:—*Held:* (1) the county ct. judge had not exceeded his jurisdiction in ordering a second distress, in view of the fact that there was a combination of persons to prevent the sale on the first distress from being effective, or in ordering that the goods seized should be sold by tender; (2) the application for the second distress was properly made by the tithe owners, & it was not necessary that it should be made by the officer of the ct.—R. *v.* CLEMENTS (JUDGE), *Ex p.* FERRIDGE, [1932] 2 K. B. 535; 76 Sol. Jo. 414; *sub nom.* R. *v.* KENT COUNTY COURT JUDGE, *Ex p.* FERRIDGE, 101 L. J. K. B. 603; 147 L. T. 353.

Annotations:—*As to* (1) **Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412. *Generally,*

prevent the first distress from being effective; & the case should be remitted to the county ct. judge, who in the exercise of his judicial discretion should make such an order &, if necessary, give such further directions, as were in accordance with the principles of law which the ct. had laid down.

(3) Under sect. 10 (2) of the Tithe Act, 1891 (c. 8), s. 10 (2), the proceedings which are required to be commenced before the expiration of two years from the date at which the sum on account of tithe rentcharge became payable are the original proceedings for the recovery of that sum & not proceedings subsequently initiated by direction of the county ct. under sect. 2 (2) of the Act.

Qu.: whether the rules by which the cts. have limited the powers of distress in ordinary cases apply to a case of distress for tithe rentcharge under the Tithe Acts where the conduct of the distress is not left to the judgment or initiative of the tithe-owner, but has to be exercised at every stage under the directions of the county ct.—RAWLENCE & SQUAREY *v.* SPICER, WITHERS & CO. *v.* SPICER, [1935] 1 K. B. 412; *sub nom.* WITHERS *v.* SPICER, RAWLENCE & SQUAREY *v.* SPICER, 104 L. J. K. B. 89; 152 L. T. 81; 51 T. L. R. 89; 78 Sol. Jo. 802, C. A.

3492c. —— —— Who may apply for second distress — Tithe owner.]—R. *v.* CLEMENTS [illegible], *Ex p.* FERRIDGE, No. 3492a,

3492d. —— Mistake as to value—Jurisdiction to order second distress.] — RAWLENCE & SQUAREY *v.* SPICER, WITHERS & Co. *v.* SPICER, No. 3492b, *ante*.

3492e. —— Limitation of time for.]—The owner of tithe rentcharge obtained from the county ct. judge in May, 1932, an order for the payment of a sum on account of arrears for three consecutive half-years ending Oct. 1, 1931. In Nov. 1933, application was made to the county ct. judge to direct the officer of the ct. to distrain for that sum under Tithe Act, 1891 (c. 8), s. 2 (2). He refused, on the ground that by the proviso to Tithe Act, 1836 (c. 71), s. 81, " not more than two years' arrears shall at any time be recoverable by distress " & that the arrears claimed went back more than two years before the date of the proposed distraint:—*Held:* there is nothing in sect. 81 of 1836 Act which limits the two years' arrears to the period immediately antecedent to the date of the distress, but the sect. deals with *quantum* only. The time limit is found in sect. 10 (2) of 1891 Act, which enacts that tithe rentcharge shall not be recoverable unless proceedings for its recovery have been commenced before the expiration of two years from the date at which it became due. The present proceedings having been so commenced the owner of the tithe rentcharge was entitled to have a distress levied by the officer of the county ct., & the judge should have directed him accordingly.—QUEEN ANNE'S BOUNTY *v.* BLACKLOCKS' EXORS., [1934] 1 K. B. 599; 103 L. J. K. B. 183; 150 L. T. 479; 50 T. L. R. 223; 78 Sol. Jo. 135, D. C.

3492f. —— Form of order.]—An order for distress for arrears of tithe rent is not invalid by reason of its referring to lands in two or more parishes.—QUEEN ANNE'S BOUNTY *v.* COOKE (1934), 151 L. T. 172; 50 T. L. R. 339; 78 Sol. Jo. 337, D. C.

3492g. Commencement of proceedings—What proceedings must be commenced within two years.]—RAWLENCE & SQUAREY *v.* SPICER, WITHERS & Co. *v.* SPICER, No. 3492b, *ante*.

3494a. Tithe Rentcharge Recovery Rules, 1891–1933, rr. 5, 8—Validity.]—(1) Applications had been made to the county ct. for the appointment of a receiver for the recovery of certain tithe rentcharge. The landowner gave no notice of opposition to the applications, but he attended the ct. & claimed a right to be heard under Tithe Act, 1891 (c. 8), s. 2 (1). The county ct. judge offered an adjournment to enable the landowner to file his notice of opposition, but this was refused, the landowner maintaining his claim to be heard then & there & saying that Tithe Rentcharge Recovery Rules, 1891–1933, r. 8, & the other rules which purported to extend the power of the county ct. under sect. 2 (1) of the Act of 1891, were *ultra vires* the rule committee. The judge withdrew the offer of an adjournment & made an order for the appointment of a receiver. The landowner applied to the High Ct. for a writ of prohibition to issue to the county ct. judge, to the receiver & to the titheowner to prohibit them from proceeding further in the matter of the applications. The judge in chambers dismissed the summons & the landowner appealed:—*Held:* the rule committee had power to make the rules & regulations which they had made with regard to the recovery of rentcharge, & the landlord did not have an unregulated right of audience under the Tithe Act, 1891 (c. 8), s. 2 (1).

(2) A landowner, who is dissatisfied with the order of a county ct. judge directing him to pay a sum on account of tithe rentcharge & desires to have it set aside, ought only to be granted a writ of prohibition to the judge for that purpose in a clear case of want of jurisdiction or excess of jurisdiction on the part of the judge; & in any other case he should proceed by appeal, more especially as a right of appeal is expressly given by Tithe Act, 1891 (c. 8), s. 7.—QUEEN ANNE'S BOUNTY, GOVERNORS OF *v.* PITT-RIVERS, [1936] 2 K. B. 416; 2 All E. R. 161; 105 L. J. K. B. 608; 154 L. T. 627; 80 Sol. Jo. 487; *sub nom.* PITT-RIVERS *v.* QUEEN ANNE'S BOUNTY, 52 T. L. R. 449, D. C.

3494b. Appeal against order for payment—Whether prohibition lies.]—QUEEN ANNE'S BOUNTY, GOVERNORS OF *v.* PITT-RIVERS, No. 3494a, *ante*.

3494c. Tithe Act, 1936—" Arrears," meaning of.]—Pltfs. were owners within Tithe Act, 1936 (c. 43), s. 20 (3), of a tithe rentcharge charged upon certain lands of which R. was the owner & occupier. In Sept. 1934, & in Sept. 1936, pltfs. applied to the county ct. for an order for the recovery of sums due in respect of the tithe rentcharge. On each occasion an order was made for the recovery by distress of the sum due together with a sum for costs. On Apr. 17, 1937, pltfs. gave notices to R. & to the Tithe Redemption Commission in accordance with Tithe Act, 1936 (c. 43), s. 20 (3). The Tithe Redemption Commission contended that the sums in respect of which orders had been made by the county ct. were not " arrears " within sect. 20, & that the commission had no power to recover & to give a discharge for such sums:—*Held:* (1) " arrears " in sect. 20 referred to the sums which became due on account of tithe rentcharge before the appointed day (Oct. 2, 1936), but not to any right or liability in respect of sums which may have accrued or become due before the appointed day. The two sums in respect of costs in the county ct., were, therefore, not " arrears "; (2) " arrears " included the sums due for tithe rentcharge in respect of which an order for recovery by distress had been made as well as sums in respect of which no such order had been made.—QUEEN ANNE'S BOUNTY *v.* TITHE REDEMPTION COMMISSION, [1937] 3 All E. R. 515; 157 L. T. 334; 53 T. L. R. 969; 81 Sol. Jo. 588.

3501. *Add. Annotation:*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

3506. *Add. Annotation:*—**Reld.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3513a. Mode of payment of compensation—At election of limited owner—Whether election revocable.]—*Re* WARTLING TITHE REDEMPTION, No. 3513b, *post*.

3518b. Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.]—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain life interests which had determined, to the use of H. for life with remainders over. The settlement contained a proviso appointing the trustees of the settlement trustees for the purposes of the Settled Land Acts, & providing that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10*s.* 8*d.* & 5*s.* respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt. directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life:—*Held:* (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the ct. entirely unfettered by any such general principle; the ct. below ought to have exercised its discretion by holding that (2) *Semble:* there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re* WARTLING TITHE REDEMPTION, [1924] 2 Ch. 123; 93 L. J. Ch. 562; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

Compare original volume, p. 492, **No. 3488.**

3543. *Add. Citations:*—[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33; 68 Sol. Jo. 541.

3579a. —— **What amounts to incumbrance affecting land.**]—WRENCH *v.* LORD (1837), 3 Bing. N. C. 672; 4 Scott, 381; 6 L. J. C. P. 193; 132 E. R. 569.

3614. *Add. Citations:*—1 And. 47; 3 Dyer, 338 b; *sub nom.* BELFORD *v.* FOORD (1595), Cro. Eliz. 447; *sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a.

Add. Annotation:—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3615. *Add. Citations:*—*sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a; *sub nom.* ANON. (1574), 1 And. 47; 3 Dyer, 338 b; Ben. 238. *Add. Annotation:*—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3648. To cross-reference before this case add "*See* Ecclesiastical Dilapidations (Amendment) Measure, 1929 (No. 3)."

3665. *Add. Annotation:*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

3787. After this case add:—

"**Extinguishment or redemption of first fruits & tenths.**]—*See* First Fruits & Tenths Measure, 1926 (No. 5)."

3827. *Add. Annotation:*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3900. The order of the cross-references following this case should be inverted.

3907. *Add. Annotations:*—**Apld.** Patton (W. R.) *v.* Toronto General Trusts Corpn., [1930, A. C. 629. **Consd.** *Re* May, Eggar *v.* May] [1932] 1 Ch. 99.

PART VII. SECT. 5, SUB-SECT. 4.—I.

sd. *Necessity for consent of Ministry of Finance.*]—The estate of G., which vested in the Land Purchase Commission by Northern Ireland Land Act, 1925, was subject to two ecclesiastical tithe rentcharges. The vendor served notice of motion to redeem these charges, & the redemption price was fixed by the Judicial Comr. at nineteen years' purchase in each case, the Ministry of Finance objected:—*Held:* ecclesiastical tithe rentcharges cannot be redeemed under Land Purchase Acts without the consent of the Ministry of Finance as representing the Treasury, —*In the Estate of* GUNNING, [1929] N. I. 61.—IR.

PART VII. SECT. 6, SUB-SECT. 3.

3536 i. *Proceeds of sale—Application —Church of Scotland (Property & Endowments) Act,* 1925 (c. 33), *s.* 30.]—MILLIGAN, PETITIONER, [1927] S. C. 692.—SCOT.

d i. —— —— *Action for trespass.*]—Where land is granted to a church corpn. as a glebe, & a rector has been duly inducted, he has the possession, & an action of trespass for entering on the land & cutting down trees must be brought in his name, & not in the name of the corpn.—ST. STEPHEN RECTOR *v.* TORTELOT (1842), 1 Kerr, 537.—CAN.

PART VII. SECT. 7, SUB-SECT. 2.—A.

sk. *Ontario Act of* 1889 *simplifying sales of property held in trust for Church of England—Effect of.*]—*Re* ST. JOHNS' CHURCH, [1927] 3 D. L. R. 535; 60 O. L. R. 191.—CAN.

PART VII. SECT. 16, SUB-SECT. 1.

sa. *Spiritual corporation aggregate —Power to borrow.*]—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation.—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262. —CAN.

Part VIII.—Religious Bodies other than the Church of England.

3967. After this case add :—

.]—*See, now,* Minister of Religion (Removal of Disqualifications) Act, 1925 (c. 54).

3987. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

4017a. Premises of Salvation Army—Whether used for public religious worship—Places of Worship (Enfranchisement) Act, 1920 (c. 56).]—STRADLING *v.* HIGGINS, No. 2a, *ante.*

4027. *Add. Citation :*—3 Macq. 827.

4033a. —— ——.]—DOE d. KIRK *v.* ROE (1838), 2 Jur. 945.

Add. Citation :—sub nom. 3 Jur. 460.

4034a. —— ——.]—Special service in ejectment where possession of a chapel is sought to be recovered.—DOE d. SOMERS (EARL) *v.* ROE (1840), 8 Dowl. 292.

4034b. —— ——.]—Special service in an action of ejectment for the recovery of a chapel & free school.—DOE d. SMITH *v.* ROE (1840), 8 Dowl. 509 ; *sub nom.* DOE d. SMYTHE *v.* ROE, 4 Jur. 338.

4047a. Who are.]—The word " Jew " in English law has almost always been confined to persons practising the Jewish religion ; the disabilities of Jews have not attached to persons of Jewish race who have become baptised (SLESSER, L.J.).—KEREN KAYEMETH LE JISROEL, LTD. *v.* INLAND REVENUE COMRS., [1931] 2 K. B. 465 ; 100 L. J. K. B. 596 ; 145 L. T. 320 ; 47 T. L. R. 461, C. A. ; *on appeal,* [1932] A. C. 650, H. L.

PART VIII. SECT. 2, SUB-SECT. 1.

t i. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved accordingly.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

a i. —— *Power to remove parish priest.*]—Applt., a parish priest, was removed from his parish by a decree of removal issued by the bishop of the diocese in which the parish was situated. Applt. claimed a declaration that the decree was illegal & void on the grounds that (1) there was no power under the canon law to issue such a decree unless a " citation " had been first served on him, & he had an opportunity to meet the charges made against him ; (2) alternatively, if the canon law did not require the service of a " citation " or the granting of a personal hearing, yet the making of the decree without notice to him was contrary to natural justice :—*Held :* the decree was not illegal on either ground.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

sb. *Corporation — Parish — Borrowing for church building.*]—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601 ; 66 D. L. R. 304 ; 17 Alta. L. R. 262.—**CAN.**

sd. *Relation to civil law — Archbishop of Edmonton—As to parishes in Calgary diocese.*]—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601 ; 66 D. L. R. 304 ; 17 Alta. L. R. 262.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—A.

q i. —— ——.]—Land was conveyed to certain persons in trust for a religious body called the United Brethren in Christ, & a congregation was organised & a church built. Subsequently a division took place in the religious body, & it was held that the party to which the congregation in question adhered were seceders. This congregation continued to use the church, &, some of the original trustees having died, appointed new trustees to act with the survivors, & these trustees refused to give up possession to the representative of what had been declared to be the true body :—*Held :* the trustees must be treated as being trustees for the true body, who were entitled to enforce the trust & to have possession of the church, & it was not necessary to organise another congregation & appoint new trustees for that congregation under Religious Institutions Act.—BREWSTER *v.* HENDERSHOT (1900), 27 A. R. 232.—**CAN.**

sg. *Transfer by trustees to church corporation—Representing denomination of original congregation.*]—Pltfs. claimed certain land & a church edifice thereon, the title to which was in defts. until they transferred it to the congregation incorporated under the name of " The Evangelical Lutheran Trinity Church of the Synod of Missouri, Ohio, & other States at Neudorf, Saskatchewan " ; & the question in dispute was, whether pltfs. or defts. represented the congregation for which the land was bought & the edifice erected :—*Held :* all the original members of the congregation belonged to the Missouri Synod of the Evangelical Lutheran Church in the United States & Canada, & the church was built & dedicated as a mission church of the Missouri Synod, & not as an independent church, & the question in litigation should be decided in favour of defts., & it should be declared that it was no breach of trust on their part to transfer the property to the above-mentioned church corpn. —STEIN *v.* HAUSER (1913), 26 W. L. R. 452 ; 5 W. W. R. 971 ; 15 D. L. R. 223 ; 6 Sask. L. R. 383.—**CAN.**

sh. *Church books—Right to retain—Clerk of sessions of Presbyterian church.*]—GRIFFITHS *v.* FRASER, [1928] 2 D. L. R. 540 : 60 N. S. R. 71.—**CAN.**

sj. *Church records, correspondence, etc.—Right to inspect—Church member—Whether court will interfere.*]—The principle that the ct. will not interfere with the decision of the members of a voluntary assocn., professing to act under their rules, where it is not shown that there was *mala fides* in arriving at the decision, or that the rules were contrary to natural justice, or that anything was done which was contrary to the rules themselves, was applied herein to the decision of the board of directors of a local church, ratified by the congregation, refusing to allow a member thereof to inspect all the records, correspondence & files of said local church.—WETMON *v.* BAYNE, [1928] 1 D. L. R. 848 ; [1928] 1 W. W. R. 519 ; 23 Alta. L. R. 446.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—C.

4026 ii. —— ——.]—Pltfs. & those associated with them, being a minority of the members of a Regular Baptist Church, refused to sign an acceptance of certain " articles of faith " proposed to them by defts. representing the majority, & were, in consequence of their refusal, if certain resolutions passed at meetings of the congregation, pltfs. dissenting, were to govern, excluded from membership :—*Held :* there was no inherent or other power in defts. to change the statement of doctrines, & the trustees had no authority to hold the property on any other trusts than those declared by the deed.—WODELL *v.* POTTER, [1929] 3 D. L. R. 525 ; 64 O. L. R. 27 ; *varied,* 1 D. L. R. 726 ; *on appeal,* 2 D. L. R. 449.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—E.

sk. *Power to sell—With consent of governing body—Contract to sell by representative of congregation—Invalid.*] —IRVING *v.* MCLACHLAN (1856), 5 Gr. 625.—**CAN.**

sq. " *Waisenamt* " *of Mennonite Church—Power to sue.*]—Pltfs. who were elected orphan-administrators by the Reinland Mennonite congregation held to constitute the " Waisenamt," a special department of the congregation organised for the purpose of managing the estates of deceased members, & to be entitled to sue in their own names to recover moneys loaned by them out of the funds thereof.—NEUFELD & NEUFELD *v.* FEHR, [1929] 4 D. L. R. 1070 ; 1 W. W. R. 908 ; 38 Man. L. R. 194.—**CAN.**

PART VIII. SECT. 4.

sl. *Authority of the yearly meeting—Right to hold property—Members refusing to accept book of discipline.*]—The supreme or governing body of the Society of Friends, or Quakers, in Canada, as well in respect to matters of discipline as to the general govt. of the society, is the Canada yearly meeting. The Canada yearly meeting having adopted a book of discipline which certain members of the society refused to accept, these dissentient members, therefore, could not hold, nor exercise any right over, [illegible] granted to a subordinate branch of the society to which they had formerly belonged.—JONES *v.* DORLAND (1886), 14 S. C. R. 39.—**CAN.**

PART VIII. SECT. 7.

b i. —— *Irregular marriage in presence of minister followed by prayer—Minister not guilty of offence under Marriage Notice (Scotland) Act,* 1878 (*c.* 43), s. 12.]—STRATHERN *v.* STUART, [1926] S. C. (J.) 114.—**SCOT.**

. After this case add the following new sections :—

SECT. 9.—PRESBYTERIANS.

See cases *infra*.

SECT. 10.—GREEK CHURCH.

See cases *infra*.

SECT. 11.—WELSH CHURCH.

4055a. Jurisdiction of Commissioners—Welsh Church Act, 1914 (c. 91), s. 11.]—Sect. 11 of Welsh Church Act, 1914 (c. 91), confers upon the Welsh Comrs. exclusive jurisdiction over those matters with which they are given power to deal under sects. 8 & 9 of that statute. The provisions of sect. 11 have not excluded from the jurisdiction of the ct. consideration of matters of dispute between the Welsh Comrs. on the one side & the King's subjects on the other, & it is only when property is vested in the Welsh Comrs. that the purposes of the Act over which they have exclusive jurisdiction arise.—WINGROVE *v.* MORGAN, [1934] Ch. 423 ; 103 L. J. Ch. 52 ; 150 L. T. 471 ; 50 T. L. R. 100 ; 77 Sol. Jo. 867 ; *on appeal*, 103 L. J. Ch. 209, C. A.

4055b. Holder of office—Bequest of annuity—Effect of appointment to new office with special stipend.]—Pltf. was at the date of the coming into force of the Welsh Church Act, 1914, rector of the parish of C. in the county of Glamorgan. The emoluments of his office included tithe rentcharge & an annual sum derived from the redemption of tithe rentcharge amounting to the total annual sum of £528 13*s.* 6*d.* In 1933 pltf. resigned the rectory of C. on being instituted as vicar of another parish, namely, P., the incumbent of which was entitled under the trusts of the will of one N., who died in 1917, to the perpetual annual income derived from the investment of a legacy thereby bequeathed to the vicar for the time being. This annual income amounted to the sum of £121 13*s.* 6*d.*

By his statement of claim pltf. claimed a declaration that, so long as he held the office of vicar of P. or any other ecclesiastical office in the Church in Wales, he was entitled to the full annual sum of £528 13*s.* 6*d.*, & that defts. were not entitled—so long as he held the office of vicar of P.—to deduct from the said annuity the amount of the

sl. *Minister's stipend—Obligation to provide.*]—GREENOCK (PROVOST) *v.* PETERS, [1893] A. C. 258.—**SCOT.**

PART VIII. SECT. 9.

sm. *Plan of co-operation adopted by Presbyterian & Methodist congregations—Whether unit for voting on church union.*] — *Re* CONN PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 385.—**CAN.**

sn. *Right of minister to invoke authority of civil courts.*]—Action by a Presbyterian minister against the General Assembly for a declaration that a sentence of dismissal was illegal & void & for a *mandamus* to restore him to office :—*Held :* not a violation of pltf.'s vow of submission to the cts. of the Church.—MACQUEEN *v.* FRACKLETON (1908), 8 C. L. R. 673.—**AUS.**

so. *Members—Who are—Name on roll.*]—RODNEY CASE (Ont.), [1926] 2 D. L. R. 516.—**CAN.**

sp. —— —— —— *Name also on roll of another church.*]—*Re* MAPLE VALLEY PRESBYTERIAN CHURCH (Ont.), 1926] 4 D. L. R. 378.—**CAN.**

sq. —— —— —— *Old roll.*]—*Re* BURLINGTON PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 380.—**CAN.**

sr. *S. P. Re* DALHOUSIE MILLS PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 383.—**CAN.**

st. —— —— —— *Reserve or appendix roll.*]—WICK CASE (Ont.), [1926] 1 D. L. R. 829.—**CAN.**

sv. —— —— —— ——.]—*Re* RICHMOND HILL PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 365.—**CAN.**

sw. *Meetings—Calling—How regulated—Meeting relating to entry into Church Union.*] — CAMERON *v.* ST. LUKE'S SALT SPRINGS (TRUSTEES), [1927] 2 D. L. R. 760 ; 59 N. S. R. 272 ; *affd. sub nom.* ST. LUKE'S SALT SPRINGS (TRUSTEES) *v.* CAMERON, [1929] 3 D. L. R. 497 ; S. C. R. 452 ; *affd.*, [1930] A. C. 673.—**CAN.**

sy. *Property—Statutory disposal of.*] —*Re* UNITED CHURCH (P. E. I.), [1927] 2 D. L. R. 1169.—**CAN.**

sz. ——.]—MCLEAN *v.* BALLANTYNE, [1928] 4 D. L. R. 37 ; 62 O. L. R. 443.—**CAN.**

sa. —— ——.]—A majority of the congregation of a Presbyterian Church at G. in Jan. 1925, voted in favour of union with two other denominations. Pltf., who had voted against union, brought this action, on behalf of himself & other members of the congregation who had voted against union, for an injunction restraining the trustees of the property of the church at G. from using or disposing of it otherwise than by transferring it to pltf. or trustees for pltf. & other members of the Presbyterian Church in Canada at G. ; & for other relief :—*Held :* the congregaton of the Church at G. after entering the union, was entitled to consent, & did effectually consent to the application of United Church of Canada Act, 1925, s. 4, to the property in question ; & the Act having vested in the United Church the power of determining how the trusts upon which the property was held were to be performed, & having provided that what was done in pursuance of the Act should not be deemed a breach of the trusts, but a compliance therewith, the ct. had no jurisdiction to grant the relief asked.—AIRD *v.* JOHNSON, [1929] 4 D. L. R. 664 ; 64 O. L. R. 233.—**CAN.**

sb. —— ——.]—Pltfs., as representing all communicants, pewholders & adherents of St. James Presbyterian Church, Newcastle, N.B., not concurring in church union, claimed the church property, or a share therein, attacking the legality of the congregational votes, one taken under the provincial Act & the other under the Dominion Act, aforesaid, in favour of union, & contending that, in any case, the property fell within sect. 6 of 14 Geo. 5, N.B., & therefore, there having been no "consent" under that sect., the property had not vested in the United Church but belonged to the continuing Presbyterians of the congregation :—*Held :* the congregation not having passed a vote of non-concurrence, it became, by statutory operation, a congregation of the United Church, &, even if the property fell within sect. 6 of 14 Geo. 5, N.B., yet, after the Union, it was held for the benefit of the congregation as a congregation of the United Church ; the absence of consent under sect. 6 merely leaving the property unaffected by the trusts, & not subject to the terms & conditions, set out in the Model Deed: —FERGUSON *v.* MACLEAN, [1930] S. C. R. 630 ; [1931] 1 D. L. R. 61. *affg.*, 2 M. P. R. 61.—**CAN.**

PART VIII. SECT. 10.

sc. *Selection of priests—Right of majority of members.*]—Where emigrants to Canada who before coming here were adherents of the Greek Catholic Church have organised a church & erected a church building with the intention that the services conducted therein should be of the Greek Orthodox faith & that the officiating priests should be of that faith, but the congregation has never expressed a wish to belong to, or submitted itself to, the jurisdiction of any particular branch of that church, it is the right of the majority of the members to select through their trustees such priest as they see fit, regardless of the particular "mission" to which he belongs, provided only that he must be a priest in good standing in the Greek Orthodox faith. *Qu. :* whether by allying himself with the Ukrainian movement in said Greek Church a priest has done something uncanonical is not a matter for the church cts., & not for a ct. of law, to decide.—DWERNICHUK *v.* ZAICHUK (Sask.), [1926] 3 W. W. R. 508.—**CAN.**

sd. *Congregation—Whether liable for debts.*]—There is no legal relation between a member of a religious congregation & a creditor of the congregation unless it is created by contract between them.

Under Religious Societies Land Act, R. S. S., 1930, a religious congregation, although not otherwise incorporated or registered, is a body corporate which can be sued under the name of the congregation for debts incurred by the trustees on its behalf.—KICUL (OTHERWISE KITZIEL OR KITZUL) *v.* BULYCZ & SPILCHUK, [1933] 1 W. W. R. 45. **CAN.**

se. *Bishop of Canada—Who is—Declaratory judgment.*]—Declaration granted as to who is the lawful Bishop of Canada of the "Russian Greek Catholic Orthodox Church."—SCHERBANUK *v.* SKORODOUMOV, [1935] O. R. 342.—**CAN.**

income to which he, as incumbent of the parish of P., was entitled under the trusts of N.'s will. Defts. claimed that pltf. was only entitled to the annual sum of £528 13*s.* 6*d.*, & that he must bring into account the amount of the said income payable to him as incumbent of P. in respect of the legacy under N.'s will :—*Held :* under the commutation scheme contained in sect. 18 of Welsh Church Act, 1914 (c. 91), pltf. was entitled to the annual sum of £528 13*s.* 6*d.* without any deduction so long as he held an ecclesiastical office in the Church in Wales, but that this right was subject to any arrangement come to between pltf. & defts. under sect. 18, sub-cl. (*e*), & also to any constitutions or regulations made by the defts. affecting the pltf.'s rights. His Lordship found as a fact that no such arrangement was come to between pltf. & defts. nor had any constitutions or regulations been made by defts. which affected pltf.'s right & held that pltf. was therefore not liable to bring into account the income payable to him as incumbent of P. in respect of the legacy under N.'s will.—PRICE *v.* REPRESENTATIVE BODY OF THE CHURCH IN WALES, [1937] Ch. 250 ; [1937] 1 All E. R. 387 ; 106 L. J. Ch. 65 ; 156 L. T. 288 ; 53 T. L. R. 294 ; 81 Sol. Jo. 117.

SECT. 12.—IRISH CHURCH.

See case *infra*.

PART VIII. SECT. 12.

8k. *General Synod—Whether prohibition lies.*]—*Held :* prohibition will only issue to a ct. or tribunal or body of persons, other than the Superior Cts., having, under statute or common law, authority to impose liabilities or to determine questions affecting the rights of, individuals, & having the duty to act judicially. The ct. of the General Synod of the Church of Ireland derives its authority solely from the consent or agreement of the members of that Church & is, therefore, not a tribunal to which an order of prohibition will lie, though the legality of its decisions may be otherwise questioned & determined in the High Ct. of Justice.—THE STATE (COLQUHOUN) *v.* D'ARCY. [1936] I. R. 641.—**IH.**

EDUCATION.

Part I.—In General.

5. *Add. Annotation* :—**Refd.** B. *v.* B., [1924] P. 176.

Part II.—Central and Local Education Authorities.

13. *Add. Annotation* :—*As to* (2) **Folld.** Richardson *v.* Abertillery U. D. C., Thomas *v.* Same (1928), 44 T. L. R. 333.

14a. —— ——.]—Pltfs., assistant teachers in the employ of deft. council, claimed injunctions to restrain the council from acting on resolutions to dismiss them from their employment & notices sent to them in pursuance thereof. The council were in financial difficulties, & had approached the Minister of Health with a view to obtaining a further loan. This had been refused, unless the finances were placed on a sound footing & expenses reduced. With a view to achieving this result they appointed a sub-committee with full powers to scrutinise expenditure & effect reductions & savings. This committee recommended that pltfs., who were remunerated on the Burnham scale, should have their engagements determined by notice. Acting in pursuance thereof the committee passed the resolutions complained of, & notices were sent out determining the contracts signed by

PART I.

sa. *Right of child—To receive instruction.*]—The governing principle of School Act, R. S. S. 1920, c. 110, is that children between the ages referred to in sect. 202 (2) (as amended by 1928, c. 48, s. 18) have the right to attend school & receive instruction. The right is the right of the child itself; & it is not a matter left to the discretion of its parents or the school board.—WILKINSON *v.* THOMAS (Sask.), [1928] 2 W. W. R. 700.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

sd. *Officers—Who are.*]—The Superintendent of Maintenance to the Toronto Board of Education, & its Chief Clerk of Works in the Architect's Dept., are "officers" entitled by statute to old age pensions.—*Re* TORONTO BOARD OF EDUCATION & DOUGHTY, [1935] 1 D. L. R. 290; O. R. 85.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sh. *School board—Election—Method of voting.*]—*Re* EDMONTON SCHOOL BOARD ELECTION (Alta.), [1927] 1 D. L. R. 411.—**CAN.**

sd. —— *Nature of.*]—A School Board is a creation of Primary Education Act, 1923, & has a separate & independent existence apart from the District Local Board. It is a corporate body & liable to be sued as such.—BIJAPUR DISTRICT SCHOOL BOARD *v.* BHAGWAN VASUDER (1932), I. L. R. 57 Bom. 60.—**IND.**

sg. *Educatim Board—Distinct entity from Crown—Right of sub-contractor—Charge on money due from board to contractor.*]—The effect of Education Act, 1924, s. 24, is to constitute an Education Board an entity separate & distinct from the Crown, & in consequence a claim of charge can be validly established by a sub-contractor upon moneys due to a contractor by an Education Board in respect of work done for the Board by such contractor.—MCCALLUM *v.* OFFICIAL ASSIGNEE OF SAGAR & LUSTY, [1928] N. Z. L. R. 292.—**N.Z.**

sl. —— *Inability to act as landlord—& tenant of same school.*]—Where a demand was made upon a municipal council for $25,000 to be spent in repairing, improving & enlarging one public school building in the town in order that it might serve as the sole public school for the town, another building erected & paid for by public school supporters being used for high school purposes only, & the intention being to charge the high school an adequate rental:—*Held:* this purpose of the board was not authorised by clause (*s*) or clause (*v*) of sect. 88 of Public Schools Act, R. S. O., 1927, & was *ultra vires* of the board.—*Re* ALMONTE BOARD OF EDUCATION & ALMONTE, [1930] 1 D. L. R. 568; 64 O. L. R. 505.—**CAN.**

sr. *Duty of trustees—To summon meeting—Requisition by majority of ratepayers—Powers of inspector on refusal.*]—If a requisition is made to the trustees of schools, by a majority of the ratepayers of a district, to call a special meeting for a purpose authorised by Common School Act, 1871, it is their duty to call the meeting under sect. 28 of the Act; & if they refuse, the inspector is authorised to appoint new trustees, under sect. 37 of the Act.—*Ex p.* GILBERT (1873), 14 N. B. R. (1 Pug.) 231.—**CAN.**

ss. —— *To take legal advice—In important matters of law.*]—School trustees should not act with respect to important matters of law, such as the legal right of a child to receive instruction in the school, without consulting their solr. & counsel; &, if they do so, it must be at the risk of having to pay costs if they are wrong.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

sv. —— *Meeting not formally summoned—All trustees present—Necessity to record waiver of proper notice.*]—Where all the members of a board of school trustees are present at a meeting thereof & tacitly waive the written notice called for by School Act, R. S. S. 1920, c. 110, s. 104 (1), the fact that their consent to the waiver is not recorded in the minutes & subscribed by each member of the board is a mere informality.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16.—**CAN.**

sx. —— *Contract—Formalities necessary.*]—The contention that a contract in the form prescribed by School Act, R. S. A. 1922, c. 51, s. 194, between a school teacher & a school district was not binding on the latter because not entered into pursuant to a resolution of the board of trustees or adopted at a meeting of the board was held not applicable to an executed contract, &, in any event, was completely met by School Act, R. S. A. 1922, c. 51, s. 195, which provides that "The contract shall be deemed valid & binding if signed by the teacher & by the chairman on behalf of the board."—SOMERS *v.* LIBERTY SCH. DIST., [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—**CAN.**

sz. —— —— —— *Tenders not called for.*]—The fact that before awarding a contract for the erection of a schoolhouse the board of trustees did not advertise for or obtain formal written tenders held to have been a mere informality in the internal management of the board which did not affect the rights of the contractor to whom the contract was awarded.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 592; 23 S. L. R. 338.—**CAN.**

sd. —— —— —— *Benefits of contract accepted.*]—School Act, R. S. S. 1920, c. 110, s. 105, is imperative; & where it has not been complied with in respect to a contract the contract is absolutely void; & the fact that the work has been done & the benefits thereof accepted by the board does not entitle the contractor to recover from the board an amount due thereunder.—WATERMAN-WATERBURY MFG. CO., LTD. *v.* SOUTH ARCOLA SCHOOL DIST., [1929] 2 D. L. R. 214; 23 S. L. R. 227; [1928] 3 W. W. R. 690.—**CAN.**

sf. —— —— —— *Hiring of teacher.*]—MCDONALD *v.* ELDON SCHOOL DISTRICT No. 3 (1929), 1 M. P. R. 253.—**CAN.**

sh. —— —— —— ——.]—Where a statute provides that no act or proceeding of certain corpns., in this instance a school corpn., "which is not adopted at a regular or special meeting of the trustees, shall be valid or binding on any person affected thereby," a proposed contract is not binding on the corpn., unless a formal vote on the question of its approval was put to the trustees, even though the contract has been signed with the chairman & secretary were warranted in inferring that the majority assented to a motion which was made, but not put to the meeting, for the adoption of the proposed contract, is not sufficient.—WARDROP *v.* WHITEMOUTH SCHOOL DISTRICT, [1931] 3 W. W. R. 499; 4 D. L. R. 861; 40 Man. L. R. 1.—**CAN.**

their clerk :—*Held :* (1) it was clear that it had become necessary to practise strict economy, & judicial notice could be taken of the fact that at the time pltfs. were remunerated on the highest scale of the Burnham award. The council in considering these questions were acting in pursuance of their statutory obligations, & no objection could be entertained as to the validity of the notices on the ground of motive. (2) There was power to delegate under 1921 Act, s. 4 (2), & the committee had vested in them the duty of ascertaining how best savings could be brought about. On their report the notices of dismissal had been prepared & sent to pltfs., signed by the clerk of the council. That was a sufficient ratification of what the committee had done, & pltfs.' claim failed.—RICHARDSON *v.* ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS *v.* SAME (1928), 138 L. T. 688; 92 J. P. 59; 44 T. L. R. 333; 72 Sol. Jo. 226.

19. *Add. Annotation :*—**Consd.** Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

sl. *Removal of trustees—By Board of Commissioners—Under 4th R. S., c. 32.*]—*Held :* where no vacancy had occurred & no proof was produced of any refusal or neglect by & on the part of the trustees to act or perform their duties as such, their dismissal by the Board of Comrs. was *ultra vires*—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—**CAN.**

sm. —— *Improper dealings with trust funds—Action—Whether Attorney-General necessary party.*]—In an action by an incorporated educational institute for the removal of one of the trustees, who also acted as secretary, for alleged improper dealing with the corporate funds, judgment was given, but without any finding of wilful misconduct, directing such trustee's removal, on the ground that so much doubt was cast upon his dealings with the trust funds that it would not be proper to allow him to remain a member of the board. Such an action is maintainable without making the A.-G. a party.—WILBERFORCE EDUCATIONAL INSTITUTE *v.* HOLDEN (1887), 17 O. R. 439.—**CAN.**

so. —— *Neglect of duty—Proceedings for removal informal—One applicant not ratepayer.*]—Although on an appeal by school trustees from a judgment removing them from office the Ct. of Appeal agreed with the judge appealed from that applts. had been guilty of a neglect of duty in disregarding School Act, R. S. S. 1920, c. 110, with respect to procuring a new site for a school house, it was held, nevertheless, that the appeal must be allowed on the ground, raised apparently for the first time in the notice of the appeal, that one of the five persons by whom the proceedings for removal were commenced was not at the time they were commenced on the last revised assessment roll for the district, &, therefore, was not a "ratepayer" within the meaning of sect. 124 of the Act.—R. *v.* RIWNY & PESECHNICK, [1929] 2 D. L. R. 347; 23 S. L. R. 281; [1928] 3 W. W. R. 728.—**CAN.**

sp. —— *Improper election.*]—*Re* BLADES & GREAT BEND CONSOLIDATED SCHOOL DISTRICT, [1937] 3 W. W. R. 466.—**CAN.**

sq. *Appointment of trustee—Whether valid—Made at annual meeting of ratepayers—No notice of special business.*]—The election of a trustee at the annual meeting of ratepayers in question herein to fill a vacancy on the board caused by resignation was held invalid, since by School Act, R. S. S. 1920, c. 110, s. 125, such a vacancy must be filled at a special meeting; &, since sect. 92 (2) requires the notice of a special meeting to set forth its purpose, & the notice of said annual meeting made no mention of the election of a trustee to fill the vacancy, it could not be said that the annual meeting was such a special meeting.—LACOURSE *v.* MCLELLAN & DEGRAW, [1929] 3 D. L. R. 73; 23 S. L. R. 159; [1928] 3 W. W. R. 680.—**CAN.**

sr. —— —— *Reports not read as directed in School Act.*]—An election of trustees under School Act, R. S. S. 1920, c. 110, is not rendered invalid by the fact that the reports referred to in sect. 70 were not read before they were elected.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73 23 S. L. R. 159; [1928] 3 W. W. R. 680.—**CAN.**

ss. *Qualification of trustees—"Able to read & write"—Whether "in the English language" implied.*]—The words "able to read & write" in Public Schools Act, R. S. M. 1913, c. 165, s. 24 (2) (C. A. 1924, c. 165, s. 8), which prescribes the qualifications of school trustees, are not to be read as if modified by the addition of the words "in the English language."—*Re* MACZEWSKI, [1928] 2 W. W. R. 24.—**CAN.**

sw. *Effect of trustee teaching in public school—Office vacated.*]—*Re* EAST YORK PUBLIC SCHOOL BOARD & MACKENZIE, [1931] 2 D. L. R. 558.—**CAN.**

sx. *School district—Annual meeting—Commenced after time fixed by School Act—Whether valid.*]—The fact that the annual meeting of a school district was not commenced until after two o'clock in the afternoon, the hour appointed by School Act, R. S. S. 1920, c. 110, s. 64, does not render the proceedings at such meeting invalid.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73; 23 S. L. R. 159; [1928] 3 W. W. R. 680.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

k i. —— ——.]—Sect. 48 (1) of Public Schools Act, 1934, which requires the trustees of a district created under sect. 47 thereof to provide "conveyance to & from school once a day" of all pupils "who would have farther than one mile to walk to reach the school," should not be construed strictly or literally, & does not require the trustees to provide transportation beyond what is reasonably adequate, reasonable adequacy being a question of fact varying with the circumstances.—R. (KOWALSKI) *v.* OAK BLUFF SCHOOL DISTRICT, [1937] 2 W. W. R. 634; affd. [1937] 3 W. W. R. 352.—**CAN.**

k ii. —— *Meaning of "residence" in Schools Act, R. S. N. B., 1927—Residence of child.*]—*Ex p.* LAMBERT (1930), 1 M. P. R. 12.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

17 i. *Negligence of education authority—Defective state of playground.*]—Applts. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye :—*Held :* applts. had been negligent in not taking steps to obviate the danger, & were liable in damages.—TRANSVAAL PROVINCIAL ADMINISTRATION *v.* COLEY, [1925] App. D. 24.—**S. AF.**

17 ii. —— *Defective playground equipment.*]—A school board which provides a piece of playground equipment, *e.g.* a "teeter-totter," for the use of its pupils is, apart from its statutory duty of keeping the school property in repair, under the duty of seeing that the thing provided is so constructed & kept in repair as to be reasonably fit for the purpose for which it is intended; & is liable in damages where injuries sustained by a pupil were caused by its negligence with respect to such duty.—SCHULTZ *v.* GRASSWOLD SCHOOL DISTRICT TRUSTEES, [1930] 1 W. W. R. 579; 3 D. L. R. 600.—**CAN.**

17 iii. —— *Defective playroom equipment.*]—The infant pltf., a pupil in defts.' school, while swinging on a horizontal ladder attached to the ceiling of the basement of the school, fell to the cement floor & broke her arm. She was under a legal compulsion to attend the school & defts. were under a statutory duty to provide such material & appliances for school sports & games as might be deemed necessary & to repair & keep in order all school property :—*Held :* having provided play rooms & equipped them with horizontal ladders for the use of the pupils, it was defts.' duty to keep the premises & equipment reasonably safe for such use; but, since, apart from the question whether the omission to put mats or similar protections under the ladders was a breach of that duty, the evidence was not sufficiently certain to justify the conclusion that their absence caused the injury, it appearing just as probable on the evidence that it would have occurred even had mats been there, the action must fail.—BOIVIN & BOIVIN *v.* GLENAVON SCHOOL DISTRICT, [1937] 2 W. W. R. 170.—**CAN.**

o i. —— *Supervision of rifle-shooting competition.*]—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—WALTON *v.* VANCOUVER BOARD OF SCHOOL TRUSTEES, [1924] 2 D. L. R. 387; 2 W. W. R. 49; 34 B. C. R. 38.—**CAN.**

o ii. —— *Pupil injured on dangerous ground near school premises.*]—A school board is not liable for injuries caused a pupil while on a highway close to but outside the school grounds by the falling of a dead tree which stood on the property of a third person.—PATTERSON *v.* BOARD OF SCHOOL TRUSTEES OF NORTH VANCOUVER, PATTERSON *v.* CANADIAN ROBERT DOLLAR CO., [1929] 3 D. L. R. 33; 2 W. W. R. 181; 41 B. C. R. 123.—**CAN.**

o iii. —— *Pupil left with unguarded chemicals.*]—An action by a pupil against a board of school trustees for damages for personal injuries resulting from the alleged negligence of a master in leaving chemicals, furnished to him

21a. —— **Cookery class—No guard on gas-cooker.**]—Pltf., a child aged 11, attended a school maintained by deft. authority. Whilst she was being instructed in cooking, her apron caught fire from a gas-cooker, & she received injuries. There was no guard round the cooker:—*Held:* the danger was one which ought reasonably to have been anticipated, & one which a local authority ought to have taken precautions to prevent by the provision of a guard round the stove or otherwise.—FRYER *v.* SALFORD CORPN., [1937] 1 All E. R. 617; 101 J. P. 263; 81 Sol. Jo. 177; 35 L. G. R. 257, C. A.

23. *Add. Annotations:*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 96 J. P. 236; Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

23a. —— —— **Order to play alleged dangerous game.**]—The infant pltf., who was 17 years of age & was an unemployed person undergoing a compulsory course of instruction at a county council instruction centre, was ordered by the council's instructor, a man of experience, to take part in an organised game called "riders & horses," in which one boy mounted the back of another & endeavoured to bring to the ground the foot of the boy who was acting as "rider" in an opposing pair. During the game the infant pltf., who was taking the part of a "horse," fell on the wooden floor & seriously injured his arm. In an action against the council for negligence, on the ground that the game was so dangerous in itself that to order a boy to play it amounted to negligence, the evidence of the instructor was that for 20 years he had seen the game played without serious accident:—*Held:* there was no evidence of negligence, & therefore the action failed.—JONES *v.* LONDON COUNTY COUNCIL (1932), 96 J. P. 371; 48 T. L. R. 577; 30 L. G. R. 455, C. A.

23b. —— —— **Accident at gymnastics.**]—In the course of gymnastic training a schoolboy was required to vault over a horse. For some reason the boy landed "in a stumble" & was injured. The master in charge did nothing to assist the boy in landing:—*Held:* the master had not taken reasonable care & the Education Authority were liable in damages to the injured boy.—GIBBS *v.* BARKING CORPN., [1936] 1 All E. R. 115, C. A.

23c. —— ——.]—Pltf., a boy of 12 years of age attending a school owned & conducted by deft. council, was "trotting" from one classroom to another, when at a blind corner he collided with another boy, B., carrying an oil can. The spout of the oil can, about 6 ins. long, struck pltf. in the eye & severely injured him. The boy B., who was carrying the can in a perfectly proper way, had been told to take it from one room to another by a master. Pltf. sued the council as the employer of the master, alleging that the latter was negligent in not taking special precautions when entrusting a boy with a dangerous article:—*Held:* the oil can was not an inherently dangerous thing, nor was it a dangerous thing in the special circumstances of a school for young children, & the master was under no duty in such a case to take special precautions.—WRAY *v.* ESSEX COUNTY COUNCIL, [1936] 3 All E. R. 97; 155 L. T. 494; 80 Sol. Jo. 894, C. A.

23d. —— ——.]—CAHILL *v.* WEST HAM CORPN. (1937), 81 Sol. Jo. 630.

Part III.—Schemes as to Powers and Duties.

24a. For organisation of education—What amounts to "scheme."]—In determining whether proposals put forward by a local education authority for the development & organisation of education in its area & submitted to the Board of Education for approval constitute a "scheme" within Education Act, 1921 (c. 51), s. 11, so as to render necessary to its validity the performance by the authority of the conditions precedent to the submission of a scheme specified in sect. 14 (2) of the Act, the test to be applied is whether both the education authority & the Board of Education intend that which is put forward to be a "scheme" within sect. 11 so as to make the education authority bound, under sect. 15 (1), to give effect to it. The magnitude & quality of the proposals are not material considerations.—R. *v.* EAST HAM BOROUGH COUNCIL, *Ex p.* HUNT, [1930] 2 K. B. 64; 99 L. J. K. B. 497; 143 L. T. 709; 94 J. P. 135; 46 T. L. R. 334; 28 L. G. R. 646, D. C.

by the board, unguarded in a schoolroom, must be brought within the time limited by Public Schools Act, R. S. B. C., 1924 (c. 226), s. 81.—DUNCAN *v.* LADYSMITH, BOARD SCHOOL TRUSTEES, [1930] 3 W. W. R. 175; 1 D. L. R. 176; 43 B. C. R. 154.—CAN.

c iv. —— *Necessity for notice of action.*]—Action for negligence against a school board dismissed, because of the lack of the notice required by sect. 32 of Public Schools Act Amendment Act, 1929.—RITCHIE *v.* GALE & VANCOUVER BOARD OF SCHOOL TRUSTEES, [1934] 3 W. W. R. 703; [1935] 1 D. L. R. 362; 49 B. C. R. 251.—CAN.

i. *Negligence of teacher—Injury to* [illegible]*.*]—At the conclusion of a [illegible]tting class in a day school the children left the classroom on their way home, carrying, along with their knitting, knitting needles with exposed ends. While crossing the playground a child, ten years of age, was accidentally injured in the eye by a knitting needle carried by a schoolmate of the same age:—*Held:* while teachers had a duty to take reasonable care to protect children under their charge from danger, the pursuer had not averred either (*a*) that the children did not appreciate the danger, or (*b*) that it was usual for teachers to ensure that such needles were made safe when not in use; action dismissed as irrelevant; further, a teacher has no duty to warn a normal child, ten years of age, of such an obvious danger as the exposed ends of knitting needles.—MACDONALD'S TUTOR *v.* INVERNESS COUNTY COUNCIL, [1937] S. C. 69.—SCOT.

st. *Negligence of driver of school van.*]—Under sect. 140 (3) of Public Schools Act, 1930, the duty imposed upon a union school district to provide for the conveyance of certain pupils to & from school is imperative; &, therefore, the fact that the district has employed an independent contractor to transport the pupils does not free it from liability for injuries resulting to a pupil because of his negligence.—COCHRANE *v.* ELGIN CONSOLIDATED SCHOOL DISTRICT, [1934] 2 W. W. R. 409; 42 Man. L. R. 257.—CAN.

sy. ——.]—In an action for injuries sustained by a pupil through the overturning of a horse-drawn van in which he was being driven to school:—*Held:* the accident was due to the negligence of the driver in using unreliable harness & deft. school board which employed him was liable, he being its servant & would be liable even if he were an independent contractor.—TYLER & TYLER *v.* ARDATH SCHOOL DISTRICT, [1935] 1 W. W. R. 337; 2 D. L. R. 814.—CAN.

Part IV.—Elementary Schools.

30. *Add. Annotation :*—**Consd.** Northern Theatres Co. *v.* Shillito, [1925] 2 K. B. 100.

32a. —— **Provision of concrete paving in playground.**]—A local education authority paid for the concrete paving & flagging of the playgrounds of two non-provided schools. The expenses so incurred were disallowed by the district auditor on the ground that the local education authority had no statutory authority to expend money on alterations or improvements of a schoolhouse not provided by them. On a case stated by the Minister of Health under Audit (Local Authorities) Act, 1927 (c. 31), s. 2 :—*Held :* the concrete paving or flagging of the playgrounds was not an alteration or improvement in the buildings, & that therefore the obligation to pay for such work was not thrown upon the managers of the schools by Education Act, 1921 (c. 51), s. 29 (2) (*d*), but the local education authority were bound to pay for such work under their obligation to maintain & keep efficient all public elementary schools within their area which are necessary.—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 1), [1929] 1 K. B. 587; 98 L. J. K. B. 353; 140 L. T. 554; 93 J. P. 38; 45 T. L. R. 170; 73 Sol. Jo. 13; 27 L. G. R. 96, D. C.; *subsequent proceedings*, [1929] 1 K. B. 604, D. C.

15a. Variation of order as to foundation managers —Powers of Board of Education.]—The Board of Education has power under Education Act, 1902 (c. 42), s. 11 (8), to make an order varying any order previously made, & this power, subject to due observance of the conditions of the sect., is practically unfettered. Therefore, when under a trust deed of 1860 the vicar & wardens of a parish were made managers of a non-provided school, & by an order of the Board made in 1903 it was provided that there should be four foundation managers of the school, one of which should be the vicar as *ex officio* manager, it was not *ultra vires* the Board to make in 1922 a varying order under Education Act, 1902 (c. 42), s. 11 (8), excluding the vicar & appointing as managers one warden & three nominees of the Archdeacon of Suffolk. The provisions of sect. 11 (1), (2), did not make the order of 1903 part of the trust deed in such a way that it was impossible to vary that order without showing that all the provisions of the trust deed as to managers were insufficient, inapplicable, or inconsistent with the Act.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232; 146 L. T. 461; 30 L. G. R. 187.

47. *Add. Annotation :*—**Refd.** Sadder *v.* Sheffield Corpn., Dyson *v.* Sheffield Corpn., [1924] 1 Ch. 483.

PART IV. SECT. 2, SUB-SECT. 1.

q i. ——.]—THURGOOD *v.* VIGNEAU (N. S.), [1929] 4 D. L. R. 857.—**CAN.**

q ii. —— *Who may sue.*]—An orphanage consisted of a number of detached houses in each of which a certain number of children lived under the charge of a lady or a married couple, who were known as the "fathers" & "mothers" of the children. These "fathers" & "mothers" were appointed by the founder & general manager of the orphanage, who had the power to dismiss them at any time. They had the same authority over the children for ordinary domestic purposes as if they were their own, but the ultimate disposal of the children by emigration or otherwise rested with the founder, to whose disposal they were committed at entry. In an action at the instance of these "fathers" & "mothers" against a school board for declaration that defenders were bound to provide school accommodation for the children in the orphanage :—*Held :* the pursuers were not the "parents" of the children within the Education Act, & had no title to sue.—M'FADZEAN *v.* KILMALCOLM SCHOOL BOARD (1903), 40 Sc. L. R. 440.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.

26 i. *Duty to "maintain & keep efficient"—School transferred to local authority.*]—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees :—*Held :* under Education (Scotland) Act, 1918, s. 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1924] S. C. 590.—**SCOT.**

26 ii. —— *Performance of duty disputed—Jurisdiction of court.*]—*Held :* while questions as to due fulfilment or observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, s. 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the ct. had not been excluded.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1923] S. C. 881.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 3.

sc. *Teachers—Employment of sisters of Order of Roman Catholic Church—Whether sectarian education.*]—ROGERS *v.* BATHURST SCHOOL DISTRICT NO. 2 (TRUSTEES) (1896), 1 N. B. Eq. Rep. 266.—**CAN.**

sd. —— *Contracts with—Duty of trustees to confirm.*]—DES ROSIERS *v.* BALMORAL & DALHOUSIE SCHOOL DISTRICTS NO. 1 (N. B.), [1927] 3 D. L. R. 505.—**CAN.**

se. *Admission to separate school—Powers of trustees.*]—The obligation of the trustees of a separate school to admit children only extends to those who appear on the annual enumeration with an indication that the parents are separate school supporters.—RENAUD *v.* BOARD TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOL (TILBURY NORTH), [1933] 3 D. L. R. 172; O. R. 565.—**CAN.**

PART IV. SECT. 5.

sg. *Contribution by one education to another—Parents not residing in area in which school situate*]—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran. The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority :—*Held :* pursuers were entitled to recover the cost of the children's education from defenders. Education (Scotland) Act, 1918 (c. 48), s. 10, discussed.—AYRSHIRE EDUCATION AUTHORITY *v.* BUTESHIRE EDUCATION AUTHORITY, [1926] S. C. 169.—**SCOT.**

PART IV. SECT. 6.

sl. *Alteration of school section boundaries—Sufficiency of notice.*]—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid :—*Held :* Public Schools Act, 1920, s. 15 (1) (*b*), should be construed as leaving the notice to be given entirely to the discretion of the township council.—*Re* HOYLAND & YORK (1923), 55 O. L. R. 185.—**CAN.**

sj. *Alteration of school districts—By whom sanctioned—7 Vict. c. 29,*

Part V.—School Attendance.

62. *Add. Annotation :*—**Apld.** Woodward *v.* Oldfield (1927), 96 L. J. K. B. 796.

72. *Add. Annotation :—As to* (3) **Consd.** Thomas *v.* Hughes (1928), 139 L. T. 613.

78. *Add. Annotation :*—**N.F.** Rednall *v.* Beamish (1926), 135 L. T. 155.

78a. —— ——.]—Where an education authority has refused an application for exemption from school attendance on the ground of employment, the fact of such employment can be neither a "reasonable excuse" for non-attendance, nor an extenuating circumstance entitling the justices under Probation of Offenders Act, 1907 (c. 17), to dismiss a summons against the parent.—THOMAS *v.* HUGHES, [1929] 1 K. B. 226; 98 L. J. K. B. 42; 139 L. T. 613; 92 J. P. 169; 44 T. L. R. 818; 28 Cox, C. C. 542; 26 L. G. R. 545, D. C.

79a. —— ——.]—Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5*s.* 6*d.* a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, &, on an information against resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information :—*Held :* the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—REDNALL *v.* BEAMISH (1926), 135 L. T. 155; 90 J. P. 153; 42 24 L. G. R. 391; 28 Cox, C. C. 245,

82. *Add. Annotation :*—**Distd. L. C. C.** *v.* [1929] 2 K. B. 97.

88a. —— ——.]—The words "under instruction in some other manner" that the child is receiving the whole of instruction in some other manner, & do entitle a parent to withdraw a child for one hour a week for the purpose of attending private lessons in a subject not approved by the Board of Education for elementary schools.—OSBORNE *v.* MARTIN (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532, 28 Cox, C. C. 465, D. C.

96a. ——.]—1921 Act (c. 51), s. 49, provides that any of the three reasons therein set out, which may be summarised as follows : (*a*) sickness ; (*b*) no school open within three miles ; (*c*) efficient instruction in some other manner, shall be a reasonable excuse for not causing a child to attend school :—*Held :* those three reasons were not an exhaustive enumeration of what would be a reasonable excuse, but that if facts were established showing an excuse within one of the categories (*a*), (*b*) & (*c*), the tribunal must accept the excuse as being a reasonable excuse. If, however, parents sought to find a reasonable excuse outside the named categories (*a*), (*b*) & (*c*), the tribunal were not bound to accept it; the tribunal must decide whether the facts, in their opinion, showed a reasonable excuse. —LONDON COUNTY COUNCIL *v.* MAHER, [1929] 2 K. B. 97; 98 L. J. K. B. 492; 142 L. T. 69; 93 J. P. 178; 45 T. L. R. 534; 73 Sol. Jo. 269; 29 Cox, C. C. 1; 27 L. G. R. 444, D. C.

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ss. 14, 24.]—MCFEE *v.* DUNDAR (1860), 10 C. P. 94.—**CAN.**

sk. —— *Award under Public Schools Act,* 1896 (*c.* 70) (*Ont.*)—*Validity.*]—*Re* CHESTERVILLE PUBLIC SCHOOL BOARD (1898), 29 O. R. 321.—**CAN.**

sm. *Union of sections*—40 *Vict. c.* 16 (*Ont.*)—*Effect of.*]—*Re* MINISTER OF EDUCATION PETITION (1877), 28 C. P. 325.—**CAN.**

so. *Refusal of some trustees to join in transfer—Right of majority of trustees to require execution by minority.*]—The managers & a majority of the trustees of B. public elementary schools decided that the schools should be transferred to the County Council of L. under Education Act (Northern Ireland), 1923. Four trustees refused to join in the necessary deed of conveyance :—*Held :* the majority of the trustees could require the minority to join in the deed for the purpose of transferring the schools under the Act. —LONDONDERRY C. C. *v.* M'GLADE, [1929] N. I. 47.—**IR.**

sq. *Under Education (Scotland) Act,* 1918 (*c.* 48), *s.* 18 (7)—*Necessity for consent of Education Authority.*]—The trustees of a Roman Catholic school, established after the passing of Education (Scotland) Act, 1918, obtained in 1926 the consent of the Department to the transfer of the school to the Education Authority, & thereafter they intimated to the Authority their intention to transfer the school. The Authority refused to accept the proposed transfer, &, in an action of declaration brought by the trustees, maintained that its consent was a condition precedent to a valid transfer :—*Held :* the consent of the Authority was not a condition precedent to a valid transfer, &, as the Education Department had given its consent, the authority was bound to accept the transfer.—BONNYBRIDGE ROMAN CATHOLIC SCHOOL *v.* STIRLINGSHIRE EDUCATION AUTHORITY, [1930] S. C. 27 ; *sub nom.* SMITH *v.* STIRLINGSHIRE EDUCATION AUTHORITY, 46 T. L. R. 137.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 2.

st. *By whom taken.*]—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of "the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them : —*Held :* the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by *s.* 3 (2) ; & the education authority, or the person appointed by them, could competently prosecute.—HIDDLESTON *v.* WILSON, [1924] S. C (J.) 62.—**SCOT**

su. *Under Education (Scotland) Act,* 1872 (*c.* 62), *s.* 70.]—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), *s.* 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble :* proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties. —CALDER *v.* ALEXANDER, [1926] S. C. (J.) 51.—**SCOT.**

PART V. SECT. 2.

sd. *To regulate age of admission o pupils to grade I—Power of town district trustees.*]—The power which School Act, R. S. S. 1920, c. 110, s. 110 (27), gives the trustees in town districts to determine in the case of graded schools at what time pupils may be admitted to grade 1. is not conferred on the trustees of districts which are not town districts.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

PART V. SECT. 3.

89 i. —— *No school within three miles—Parent's refusal of offer of travelling facilities.*]—A father was charged with failure to provide efficient education for his son aged twelve years, contrary to Education (Scotland) Act, 1908 (c. 63), s. 7 (1). The boy had passed out of the primary school, & there was no secondary school within three miles of his place of residence. The education authority offered to pay an allowance towards the cost of conveying the boy to a secondary school. The father refused the offer :—*Held :* the father had a "reasonable excuse" for failure to provide education within Education (Scotland) Act, 1883 (c. 56), *s.* 11.—MACKENZIE *v.* SMITH, [1927] S. C. (J.) 47.—**SCOT.**

Part VI.—Blind, Deaf, Defective and Epileptic Children.

99a. —— —— **Who is "parent."**]—The parent, whose consent is required to be given or unreasonably withheld before a defective child can be ordered, under 1921 Act, s. 54 (1), to be sent to a special school which is not within reach of the child's residence or to a boarding school, is the parent who has *de facto* custody of the child; & where the father of a defective child was a convict serving a term of penal servitude, & the child resided with its mother:—*Held:* the mother was the parent for the purposes of the sect.—WOODWARD *v.* OLDFIELD, [1928] 1 K. B. 204; 96 L. J. K. B. 796; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363, D. C.

Part VIII.—Health and Well-Being of Scholars.

104a. —— **Responsibility of "parent"—Whether mother liable to fine.**]—For the purposes of Education Act, 1921 (c. 51), s. 87 (1), in a case where a father, mother & child are living together, "parent" refers only to the father, & does not include the mother.—LONDON COUNTY COUNCIL *v.* STANSELL (1935), 154 L. T. 241; 100 J. P. 54; 80 Sol. Jo. 92; 34 L. G. R. 52; 30 Cox, C. C. 335, D. C.

Part X.—Acquisition, Appropriation, and Alienation of Land.

120a. —— **Whether consent to sale within School Grants Act, 1855 (c. 131).**]—In 1872 a piece of land was conveyed to a vicar & churchwardens upon educational trusts, &, in accordance with the provisions of School Grants Act, 1855 (c. 131), the conveyance was subject to a condition that no sale should be valid unless either the consent of the Home Secretary were given or the grant (a grant of £736 towards the purchase money had been made out of public funds) were repaid to the Treasury. In 1929 the Liverpool Corpn., after confirmation of the order by the Board of Education, acquired the land compulsorily, & an arbitrator assessed the compensation. The corpn. paid to the vicar & churchwardens the compensation money less £736, the amount of the grant, which it paid into ct. Upon an application by the A.-G. for that sum to be paid out to the Treasury, it was contended that (*a*) the confirmation of the order by the Board of Education amounted to the consent to the sale required by the Act of 1855, (*b*) if there was no such consent, the sale was invalid:—*Held:* (1) the confirmation by the Board

PART VII. SECT. 1.

se. *Duty of education authority—Whether bound to provide free secondary education.*]—An education authority, with the approval of the Education Department, provided free post-primary education in certain schools in their area. They also provided a bursary scheme, under which children who passed a qualifying examination, & whose parents required financial assistance, might receive free secondary education at certain additional schools. The fathers of two children, one of whom had failed to pass the authority's bursary examination, while the other had passed the examination, but its father had failed to satisfy the authority that he required financial assistance, brought actions against the authority concluding, *inter alia*, for declarator that the defenders were bound to provide free secondary education for their respective children:—*Held:* (1) Education (Scotland) Act, 1918 (c. 48), s. 6 (1) (*a*), does not impose upon an education authority any obligations to provide free secondary education for all children within its area, but merely imposes an obligation to submit a scheme dealing with free secondary education, & (2) it was for the Education Department, & not for the ct., to determine whether the scheme submitted was or was not adequate; & actions accordingly dismissed.—QUINN *v.* DUNDEE EDUCATION AUTHORITY, HAY *v.* DUNDEE EDUCATION AUTHORITY, [1930] S. C. 77.—SCOT.

PART VII. SECT. 2.

sg. *Appointment of teacher—Necessity for deed.*]—A contract as a teacher in a continuation school must be under seal, being governed by Public Schools Act, R. S. O., 1927, s. 103 (1).—PARKER *v.* LION'S HEAD PUBLIC SCHOOL BOARD, [1934] O. R. 14; 1 D. L. R. 430.—CAN.

sl. *Ontario Training Schools Act, 1931—Meaning of "resident."*]—The term "resident" in Ontario Training Schools Act, 1931 (Ont.), must be construed strictly as meaning sleeping & eating within the municipality.—*Re* RIX, [1935] 2 D. L. R. 815.—CAN.

PART VIII.

105 i. *Conveyance of children to school—Duty of school trustees—Under School Act, R. S. S.*, 1920 (*c.* 110), *ss.* 188, 207 (1).]—RIDINGS *v.* ELMHURST SCHOOL DISTRICT NO. 3665 BOARD OF TRUSTEES (NO. 2), [1927] 3 D. L. R. 173; [1927] 2 W. W. 159; 21 S. C. R. 471.—CAN.

sm. *Lease by school trustees—Validity.*]—NIAGARA PUBLIC SCHOOL BOARD *v.* QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—CAN.

PART X.

m i. —— —— *Penalty for non-compliance with School Act—Whether applicable where schoolhouse rebuilt on same site.*]—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 598; 23 S. L. R. 338.—CAN.

m ii. —— —— *Trustees of separate school—Originally rural school.*]—A board of trustees of a separate school which originally was a rural school, but which, because of the incorporation of a town covering the territory under the jurisdiction of the board became *de facto* an urban school, may pass a bye-law for the selection of a site for a school house without the consent of a majority of the supporters of the school as required in the case of boards of rural schools by Separate Schools Act, R. S. O., 1927, s. 33 (1).—*Re* FORTIN & HEARST ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES, [1933] O. R. 52; 1 D. L. R. 331.—CAN.

o i. —— *Who is "owner."*]—There can be no "owner" within sect. 70 (2) of School Act, R. S. A., 1922, until the land in question has been patented & a certificate of title issued to some one. The sect. was never intended to apply to a case where the ownership of the land was still in the Crown.—*Re* BALLAS & MINISTER OF EDUCATION, [1931] 1 W. W. N. 290; 25 Alta. L. R. 359.—CAN.

o ii. ——"*Adjoining*" *land—Meaning of.*]—The word "adjoining" as applied to parcels of land does not necessarily imply that the parcels are in physical contact with each other. Therefore under sect. 135 of Public Schools Act, 1930, land may be "adjoining" an existing school site although separated therefrom by a

of Education was not a consent to the sale, but a mere approval of the exercise of the power of compulsory purchase; (2) the sale was not invalid. The strict course would have been to pay the whole purchase money into ct., but all that was essential was that the grant should be repaid, & that could be secured by an order for the payment out of the money in ct. to the Treasury.—*Re* MILL LANE LAND, EVERTON, *Re* LIVERPOOL EDUCATION (EMMANUEL SCHOOL PURCHASE) ORDER, 1929, *Ex p.* LIVERPOOL CORPN., [1937] 4 All E. R. 197; 81 Sol. Jo. 921.

121a. Provision of education by county council—Payment of rent to borough council—Assessment.]—By Education Act, 1902 (c. 42), the duty of supplying higher education in a borough was transferred from the borough council to the county council. In pursuance of its duties as the authority for higher education in the borough, the county council occupied a technical school owned by the borough council. The school in question was built by the borough council when it was the local authority for higher education. Part of the cost of building the technical school was borne by the borough council, while the county council made a series of annual grants towards the cost. The borough council undertook that the school premises should be used exclusively for higher education. But since its powers in regard to higher education had been transferred to the county council, the borough council could no longer use the school for that purpose. Education Act, 1902 (c. 42), contained no provisions dealing with the financial adjustments which became necessary in consequence of the transfer of powers from one local authority to another:—*Held:* (1) there was nothing in the Education Acts to prohibit the county council from paying, or the Gravesend council from receiving, an economic rent in respect of the occupation of the school by the county council for higher education; (2) the county council had no interest in the premises, except an equitable interest, which resulted from the grants which it had made towards the cost of the premises. In assessing the rent to be paid, allowance must be made for that equitable interest. The rent payable on that basis would be arrived at by arbn. in the absence of agreement, & the arbitrator would proceed in the manner recognised as proper in valuing public buildings.—GRAVESEND CORPN. *v.* KENT COUNTY COUNCIL, A.-G. *v.* GRAVESEND CORPN., [1935] 1 K. B. 339; 104 L. J. K. B. 169; 152 L. T. 116; 99 J. P. 57; 51 T. L. R. 109; 32 L. G. R. 524.

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public highway.—MCKENZIE *v.* MINIOTA MUNICIPAL SCHOOL DISTRICT, [1931] 2 W. W. R. 105; 2 D. L. R. 695.—**CAN.**

o iii. —— *Appropriate tribunal for assessing compensation.*]—By sect. 20 of School Sites Act, 1928, the Official Arbitrator is the sole tribunal for fixing the price of school sites in a municipality for which an arbitrator has been appointed. Such an arbitrator having been appointed, proceedings before a county ct. judge were declared *coram non judice*, & his award was set aside.—*Re* NORTH YORK PUBLIC SCHOOL BOARD & DUFF, [1931] 1 D. L. R. 198; 66 O. L. R. 1.—**CAN.**

p i. —— *Power of trustees—Sale of old site.*]—Under School Act, R.S.A., 1922, a board of trustees has power to purchase a new site for a school & remove the school building to it, &, with the Minister's approval, to sell the old site.—OLSTEAD *v.* COAL VALLEY SCHOOL DISTRICT NO. 1053, [1924] 1 W. W. R. 211.—**CAN.**

l (p. 574) i. —— *Validity of bye-law prohibiting.*]—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658.—**CAN.**

PART XI.

sk. *Powers of education authority—Assistance by way of loan.*]—Education (Scotland) Act, 1918 (c. 48), s. 4 (1), does not empower an education authority to grant assistance by way of loan.—BANFFSHIRE COUNTY COUNCIL *v.* SCOTTISH EDUCATION DEPT., [1934] S. C. 353.—**SCOT.**

d.i. —— —— *Submission condition precedent to payment by municipal council.*]—Where a school board had failed to submit an estimate to the municipal council, as required by Public Schools Act, R. S. O., 1927, s. 88 (p), a motion for a *mandamus* to compel the council to pay over to the school board certain sums requisitioned by the school board was dismissed.—*Re* BEAVERTON PUBLIC SCHOOL BOARD OF TRUSTEES & THORAH TOWNSHIP, [1932] 4 D. L. R. 458; O. R. 663.—**CAN.**

g. Add citation:—19 Alta. L. R. 623.

g i. —— *Annexation by urban municipality—Effect of.*]—WINDSOR *v.* TURNER, [1925] 2 D. L. R. 684; [1925] S. C. R. 413; *revsg.* 26 O. W. N. 221.—**CAN.**

g ii. —— *Assessment by—Whether property temporarily in district liable.*]—*Re* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & MCLELLAN SCHOOL DISTRICT, *Re* MANNIX & WALGREN & MCLELLAN SCHOOL DISTRICT, [1928] 2 W. W. R. 684.—**CAN.**

k i. —— —— *For county pupils attending urban collegiate institute.*]—*Re* GRIMSBY & LINCOLN COUNTY, [1928] 4 D. L. R. 589; 62 O. L. R. 470.—**CAN.**

o (p. 576) i. —— —— ——.]—By sect. 9 of the award dated Sept. 3, 1870, made in pursuance of British North America Act, 1867 (c. 3), s. 142, it was directed that all moneys received by the Province of Ontario since June 30, 1867, from the school lands set apart by Canadian statutes & called the common school fund should be paid to the Dominion, & that the income derived therefrom should be paid to the Provinces of Ontario & Quebec in the proportions specified in sect. 5 of that statute.

On Apr. 10, 1893, the three Govts. of the Dominion, Ontario, & Quebec entered under statutory authority into an agreement of submission as to matters in difference in the settlement of accounts between them under the award of 1870, & for the ascertainment & distribution of the said school fund. Thereunder Quebec claimed that certain moneys, which it was admitted had not been actually received by Ontario, had been constructively received, since they were deductions which Ontario was not authorised to make except at her own expense, & should be the subject of distribution between them:—*Held:* the Supreme Ct. was right in affirming an award to the effect that the arbitrators had no jurisdiction. Moneys actually received by Ontario were alone the subject of the submission, the terms of which could not be extended so as to force a contribution from a large constructive receipt.—A.-G. FOR QUEBEC *v.* A.-G. FOR ONTARIO, [1910] A. C. 627, P. C.—**CAN.**

p (p. 576) i. —— *Demand upon for money collected for erection of school—Resolution of trustees insufficient—Subsequent bye-law invalid.*]—*Re* SANDWICH TOWN SCHOOL TRUSTEES & SANDWICH TOWN (1864), 23 U. C. R. 639.—**CAN.**

p (p. 576) ii. —— *Demand upon for expenses of conducting high school—Alleged irregularity in description of applicants, etc.*]—*Re* PORT ROWAN HIGH SCHOOL TRUSTEES & WALSINGHAM TOWNSHIP CORPN. (1873), 23 C. P. 11.—**CAN.**

p (p. 576) iii. —— *Money raised by sale of debentures—For erection of school building—Right to unexpended balance.*]—It is the duty of a municipal council to pay over to a school board or boards, from time to time, upon request, moneys raised by the sale of municipal debentures for the erection of a school building. The unexpended balance of such moneys is not the property of the municipality in its own right, at most it is a trustee or custodian of the moneys for the boards.—CLARKSON *v.* ALLISTON CORPN., [1928] 2 D. L. R. 715; 62 O. L. R. 149.—**CAN.**

p (p. 576) iv. —— *Agreement exempting taxpayer from taxes—Whether school taxes included.*]—*Ex p.* BATHURST CO., [1928] 4 D. L. R. 65.—**CAN.**

p (p. 576) v. —— *Appeal against equalised assessment—Duty of equaliser.*]—On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, *i.e.* made his equalisation on the basis of the equalisation made by Manitoba Tax Commission.—*Re* BEAUSEJOUR SCHOOL DISTRICT (Man.), [1928] 3 W. W. R. 310.—**CAN.**

p (p. 576) vi. —— *Correction of errors in school assessment.*]—Sect. 70 of School Assessment Act, R. S. S., 1930, as amended, which provides for

Part XII.—Reformatory and Industrial Schools.

See, now, Children & Young Persons Act, 1932 (c. 46), Part II., Sched. I.

135. *Add. Annotation :*—**Refd.** L. C. C. *v.* Wiltshire County Council (1927), 137 L. T. 526.

137a. —— —— ——.]—A youthful offender committed an offence while on a temporary visit to the place in W. where it was committed. Until about three weeks previously he had resided in L., but at the date of the offence had neither home nor employment in L. to which he could have returned. He was ordered to be sent to a reformatory school, & his place of residence was specified to be L. :—*Held :* as there was no proof of his actual residence in L. at the date of the offence, his place of residence should have been specified as W., not because of his actual residence there, which was admittedly only temporary, but because the presumed residence in the place where the offence was committed provided for by the above sect. had not been successfully displaced.—LONDON COUNTY COUNCIL *v.* WILTSHIRE COUNTY COUNCIL (1927), 137 L. T. 526 ; 91 J. P. 122 ; 43 T. L. R. 563 ; 25 L. G. R. 384 ; 28 Cox, C. C. 416, D. C.

138. *Add. Citations :*—[1924] 1 K. B. 248 ; 93 L. J. K. B. 65 ; 130 L. T. 414 ; 27 Cox, C. C. 581.

Part XIII.—Powers and Duties of Poor Law Authorities.

See, now, Poor Law Act, 1930 (c. 17), ss. 53–58.

Part XIV.—Universities and Public Schools.

176. *Add. Annotation :*—*As to* (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

178. *Add. Annotation :*—**Expld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

the making or correction, by order of the Minister, of the assessment or tax levy of any school district " which has not been made in any year as provided by law or has been incorrectly or improperly made," is retrospective ; &, therefore, applies to errors made in years prior to that in which the amendment became law.—EPP SCHOOL DISTRICT *v.* PARK RURAL MUNICIPALITY, [1936] 2 W. W. R. 331.—**CAN.**

sn. *City board—School in adjoining rural section—Equalisation of assessment.*]—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation :—*Held :* assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school ; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—YORK PUBLIC SCHOOL BOARD *v.* TORONTO BOARD OF EDUCATION (1923), 54 O. L. R. 216.—**CAN.**

so. *School board—Liability for cost of vocational training—Refused by school board—Granted by vocational board.*]—FREDERICTON SCHOOL TRUSTEES *v.* KINGSCLEAR SCHOOL TRUSTEES, [1928] 4 D. L. R. 13.—**CAN.**

sd. —— *Payment to member—Whether breach of School Act, R. S. S., 1930, s. 239.*]—Deft. & his brother were two of the three members of the board of trustees of a school district. The board awarded a contract to one R. for repairs to the school house & provided that the excavation of the basement should be done by the ratepayers by day labour. Some of this work was done by deft. & his brother who were paid for it by cheque of the board issued by them as chairman & secretary of the board. Pltfs. sued on behalf of all other ratepayers of the district to recover the amount so paid deft. on the ground that its payment was a violation of sect. 239, School Act, R. S. S., 1930, as amended by sect. 21, c. 52, 1931, & also of sect. 130 of said Act :—*Held :* neither sect. could be relied upon in support of the action. —MCNABB & JARNAGIN *v.* FINDLAY, [1932] 3 W. W. R. 255.—**CAN.**

sp. *Joint board of grammar & common school trustees—Claim against district municipality—Joint board illegal.*]—*Re* TRENTON SCHOOL TRUSTEES & TRENTON VILLAGE CORPN. (1867), 26 U. C. R. 353.—**CAN.**

sq. —— *Remittance to bank of county treasurer for grammar school trustees—Failure of bank—Liability of county treasurer.*]—CALEDONIA GRAMMAR & COMMON SCHOOL TRUSTEES *v.* FARRELL (1868), 27 U. C. R. 321.—**CAN.**

sr. *Collection of school rates by de facto trustees—Validity.*]—School trustees are *de facto* officers, although they have failed to make declaration of office, if they have actually acted, & an assessment for school rates & execution by them is valid as against the taxpayer.—GUNTER *v.* PRINCE WILLIAM SCHOOL DISTRICT NO. 3 TRUSTEES, [1934] 3 D. L. R. 439 ; 8 M. P. R. 113. —**CAN.**

ss. *School rates on lands of Protestant husband & Roman Catholic wife —Not applicable to separate school.*]—School rates on lands held by a Protestant husband & a Roman Catholic wife jointly, are applicable to public school purposes only & are not applicable as to any part to separate school purposes.—HOLMES *v.* STIVER, [1934] 4 D. L. R. 358 ; *sub nom. Re* HOLMES & STIVER, [1934] O. R. 645.—**CAN.**

sx. *Assessment of corporations to school rates—Roman Catholic shareholders.*]—Consideration of questions arising from assessment of corpns. to school rates where some shareholders may be Roman Catholics.—DILLON *v.* CATELLI FOOD PRODUCTS, [1937] 1 D. L. R. 353 ; *sub nom. Re* DILLON, [1937] O. R. 114.—**CAN.**

sz. *Failure to raise rates—Mandamus.*]—If a county fails to perform its statutory duty in raising school rates, the proper remedy is by *mandamus.*—PORT PERRY BOARD OF EDUCATION *v.* ONTARIO COUNTY, [1936] 4 D. L. R. 394 ; O. R. 540.—**CAN.**

PART XII. SECT. 1.

bi. —— ——.]—*Re* R. *v.* ST. PETERS (1927), 47 Can. Crim. Cas. 204 ; 59 N. S. R. 198.—**CAN.**

PART XIV. SECT. 1.

st. *Taranaki scholarships—Meaning of " worthy."*]—The University Senate, in exercise of the powers conferred by New Zealand University Amendment Act, 1914, s. 18, enabling it to make regulations for the carrying out of the objects of sect. 17 of that Act, which established Taranaki Scholarships that were to be awarded on the conditions set out therein, made a regulation containing the words that " no scholarship shall be awarded to a candidate unless he obtains credit in the examination & is deemed worthy by the Council." Pltf. qualified for a scholarship within sect. 17 by obtaining credit in an examination, but the Senate refused to award him one. On a claim by him for a declaration that he

180. *Add. Annotation :*—**Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182. *Add. Annotation :*—**Apld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182a. —— ——.]—The Girls' Public Day School Trust was incorporated as a co., but its memorandum & articles were framed with the object of establishing schools that would give a good education at the lowest possible cost. The Trust School was open to the general public, a large proportion of its pupils were scholars from the public elementary schools, & a great proportion of its governing body were nominated by the local education authority, &, further, the school was largely maintained by public moneys, & in the view of the Board of Education the school satisfied the regulation which prohibited any Parliamentary grant to a school conducted for private profit. In accordance with the Board's wishes it was provided that the co should be converted into an educational trust at the end of a period & exceeding fifty years from 1905, & that in the event of a winding up before the end of that period the surplus assets of the co. should be subject to an educational trust & should not be distributed among the shareholders; that during the period above-mentioned the dividend paid on share capital should not exceed a sum equal to 4 per cent. a year. The Comrs. found on the facts the Trust School was a public school, & as such entitled to the benefit of the exemption from income tax :—*Held :* there was ample evidence on which the Comrs. could find that this school was a public school. & the possibility of profit arising to an individual in the course of carrying on a school did not of necessity prevent the school having the character of a public school.

The existence of a perpetual foundation is not by itself conclusive but only one of the factors to be considered. There is no distinction between money used for a public school raised by debentures at interest, & money raised by preference shares with limited interest. The judgments in *Blake* v. *London Corpn.*, No. 178, were not intended to lay down a rule that no school from the conduct of which any person could derive pecuniary benefit could in any circumstances be a public school.—GIRLS' PUBLIC DAY SCHOOL TRUST *v.* EREAUT (INSPECTOR OF TAXES), [1931] A. C. 12 ; 99 L. J. K. B. 643 ; 95 J. P. 3 ; 46 T. L. R. 638 ; 74 Sol. Jo. 612 ; *sub nom.* EREAUT *v.* GIRLS' PUBLIC DAY SCHOOL TRUST, LTD., 143 L. T. 715 ; 28 L. G. R. 603 ; 15 Tax Cas. 529, H. L.

Part XVI.—Grant of Land for Educational Purposes.

259a. —— ——.]—By deed poll dated Dec. 30, 1876, & enrolled in the High Ct. of Justice, Ch. Div., a piece of land was, by express reference to the power conferred by Schools Sites Act, 1841 (c. 38), s. 2, & to no other, granted to trustees for the purposes of a school within that Act. On Mar. 22, 1932, the school was closed & the land so granted ceased to be used for the purposes of the Act. In spite thereof, the trustees, in the purported exercise of their powers for that purpose under sect. 14 of the Act, proceeded to sell the land, & in the course of the negotiations for the sale objections were raised against their title on the ground that the land had, in the circumstances, reverted in pursuance of the proviso in sect. 2 of the Act :—*Held :* upon Mar. 22, 1932, the date when the land ceased to be used for the purposes of the Act, the grant of the land had no operation otherwise than by virtue of & subject to the provisions contained in sect. 2 of the Act, with the result that the question raised by the summons must be answered in the affirmative & a declaration to that effect made accordingly.—DENNIS *v.* MALCOLM, [1934] Ch. 244 ; 103 L. J. Ch. 140 ; 50 T. L. R. 170 ; *sub nom. Re* CHEAM COMMON SCHOOL, DENNIS *v.* MALCOLM, 150 L. T. 394.

was entitled to a scholarship, the funds available being sufficient for the purpose, it was contended for deft. that the word "worthy" in the regulation meant worthy from the scholastic point of view :—*Held :* granting the declaration as prayed, the word "worthy," if so interpreted, would make the regulation invalid, as being inconsistent with the provisions of sect. 17, & must be construed in its primary sense as meaning worthy from the point of view of character, &, the Senate having misiuterpreted its regulations, pltf. was entitled to the relief sought.—SYME *v.* NEW ZEALAND UNIVERSITY, [1931] N. Z. L. R. 952. —**N.Z.**

s. *Injury to student—Liability of University.*]—POWLETT & POWLETT *v.* ALBERTA UNIVERSITY, [1934] 2 W. W. R. 209.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 4.

n i. —— ——.]—When pltf. was appointed to a professorship in 1916, no definite term was fixed :—*Held :* the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side would apply, unless the particular nature of the contract or the circumstances in which it was made overrode the rule ; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual. & could be binding neither on the university nor on the professor.—CRAIG *v.* UNIVERSITY OF TORONTO (GOVERNORS) (1923), 53 O. L. R. 312.—**CAN.**

PART XV. SECT. 8, SUB-SECT. 2.—A.

192 i. *Modification of scheme—Powers under Educational Endowments (Scotland) Act,* 1882 (c. 56).]—Where a scheme approved by the Education Department is submitted which is reasonable & consistent with the Act, it is not the function of the ct to remodel or alter it.—*Re* CAMPBELL ENDOWMENT TRUST. ARGYLL EDUCATION AUTHORITY *v.* CAMPBELTOWN CORPN., [1928] S. C. 171.—**SCOT.**

Part XVII.—Schoolmasters and Teachers.

268a. —— ——.]—Wrongful expulsion of a pupil from a school does not of itself, without more, constitute an actionable tort.—HUNT *v.* DAMON (1930), 46 T. L. R. 579.

273. *Add. Annotation:*—**Consd.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

275. *Add. Annotation:*—**Apld.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright (1929), 98 L. J. K. B. 555.

275a. —— ——.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term, whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law:—*Held:* the decision of the justices was right, that no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JUSTICES, *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

285. *Add. Annotation:*—*As to* (I) **Refd.** Maloney *v.* St. Helens Industrial Co-operative Society, Ltd., [1933] 1 K. B. 293.

—— **Right to withhold "carry-over"—Unsatisfactory service.**]—Pltf. was appointed head teacher of a non-provided school in

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PART XVII. SECT. 4, SUB-SECT. 1.

st. *Duty of teacher to obey order of school board to suspend pupil.*]—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

sv. *Duty of master—Pupil guilty of "wilful opposition to authority."*]—A pupil who remains away from school because he finds certain school work uninteresting, or because he does not like the teacher's manner of teaching, is guilty of "wilful opposition to authority" within School Act, R. S. A., 1922 (c. 51), s. 202, & it is not only the teacher's right, but his duty, to suspend him.—FINLAYSON *v.* POWELL, TUCKER *v.* POWELL, [1926] 2 D. L. R. 383; [1926] 1 W. W. R. 939; 22 Alta. L. R. 171.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 2.

1 i. ——.]—A teacher has a right to use reasonable force to enforce discipline.—R. *v.* CORKUM, [1937] 1 D. L. R. 79; 67 Can. C. C. 114.—**CAN.**

sw. *General rule.*]—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—R. *v.* MAUNG BA THAUNG (1925), I. L. R. 3 Ran. 659.—**IND.**

1 i. —— *Moderate & reasonable.*]—A schoolteacher has the right to inflict corporal punishment on a pupil for violating the rules of the school, provided the punishment is not excessive, the instrument with which it is inflicted is a proper one for the purpose & there is no malice or ill will on the part of the teacher.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XVII. SECT. 5.

q i. —— *Night school teacher—Liability of school board.*]—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q ii. —— *Computation of teaching period—Teacher prevented from teaching.*]—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four months or more required to entitle him to the benefits of School Act, R. S. S., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q iii. —— —— *School arbitrarily closed.*]—Where a school is closed arbitrarily by a school board, & a teacher, who is ready, willing & able to teach, is thereby prevented from teaching for the full two hundred & ten days on which, under School Act, R. S. A., 1922 (c. 51), s. 199 (1), his salary is based, he is entitled in a claim for salary to have the days during which the school was so closed credited to him as "actual teaching days."—STEPHENS *v.* GEM CONSOLIDATED SCHOOL DISTRICT, NO. 60, TRUSTEES, [1925] 1 W. W. R. 745.—**CAN.**

q iv. —— —— —— *Whether teacher entitled to full year's salary.*]—School Act, R. S. A. 1922, c. 51, does not guarantee to a teacher a full year's salary in any event; but bearing in mind the whole scheme of the Act, & more particularly the plan adopted for the calculation of salary, the statutory obligation of the school board to provide teaching during every day which is not excepted, & the basis of a yearly period of hiring, there is a legal obligation upon the board to place at the disposal of the teacher every available teaching day without deduction, except as provided by statute & the contract, & the teacher is entitled to be paid for every available teaching day so long as there was no default on his part.—PETERSON *v.* YOUNGSTOWN SCHOOL DISTRICT TRUSTEES, [1928] 1 D. L. R. 344; [1928] 1. W. W. R. 128.—**CAN.**

q v. —— *Scale—Head teacher in secondary school.*]—As regards head teachers of secondary schools, the Craik scale is prescribed until a defined & fixed scale of salaries is introduced.—SMART *v.* PERTHSHIRE EDUCATION AUTHORITY, [1927] S. C. (H. L.) 22.—**SCOT.**

q vi. —— *School Ordinance, s. 155.*]—PORTER *v.* FLEMING SCHOOL DISTRICT (1906), 3 W. L. R. 186; 6 Terr. L. R. 348.—**CAN.**

q vii. —— *Receipt for "final payment"—Effect of.*]—A receipt given by a school teacher to a school district for a payment of salary, which was expressed to be the "final payment" for the term then ending, held not to be an answer to the teacher's claim for the amount remaining due under her contract with the district, the document not being a release & there being nothing in the evidence to indicate that the payment was expressly accepted in satisfaction of the whole amount or that any new agreement was entered into at the time.—SOMERS *v.* LIBERTY SCHOOL DISTRICT, [1928] 2 D. L. R. 384; [1928] 1 W. W. R. 884.—**CAN.**

q viii. —— *School burned down.*]—Under a written contract for one year from July 2 between pltf. & deft. school board pltf. taught school until Dec. 15, when owing to the burning down of the school building she was prevented from teaching longer. The contract provided that pltf.'s salary was not to be paid for any days that the school should be closed for building purposes. Pltf. wrote deft. that she was ready to teach, but would be willing to take leave of absence without pay during Jan. & Feb. No specific reply was made to this offer & no attempt was made until June to cancel her contract although she was notified (apparently without authority) by deft.'s secretary

1904, & in 1921 the Burnham Report was adopted by the local education authority. The effect of the adoption of the report was that pltf. became entitled to an increase of salary, & it was agreed that the payment of the "carry-over," *i.e.* the difference between the salary which pltf. would have received at the date of the adoption of the report by the local education authority, if throughout pltf.'s service the Burnham scale had been in operation, & the salary which at that date pltf. was in fact receiving, should be spread over three years. The education committee refused to pay the instalment for the year ending Mar. 31, 1924, on the ground that in 1923 pltf.'s service had been unsatisfactory: —*Held:* the local education authority had no power, under the terms of the report, to withhold from a teacher any part of the "carry-over" by reason of unsatisfactory service after the date of the adoption of the report.—WITTS *v.* MACKAY (1927), 43 T. L. R. 535; 71 Sol. Jo. 666, D. C.

290. *Add. Annotation:—As to* (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

SECT. 6.—PENSION SCHEMES.

(Vol. XIX., p. 602.)

See, now, Teachers (Superannuation) Act, 1925 (c. 59).

293a. Death gratuity granted to legal personal representative of deceased teacher—Devolution on death of grantee.]—A death gratuity granted by the Board of Education under the power conferred by School Teachers Superannuation Act, 1918 (c. 55), s. 3, to the legal personal representative of a deceased teacher, who died intestate & insolvent, leaving a widow & an infant daughter, will be treated as forming part of the estate of the intestate, & be primarily applicable in payment of the intestate's debts, & ought not to be held upon trust for his next of kin.—*Re* HAWKINS, HAWKINS *v.* DEW & SONS [1926] Ch. 428; 95 L. J. Ch. 402; 135 L. T. 89; 42 T. L. R. 286.

293b. —— Liability to estate duty.]—The death gratuity which under Teachers (Superannuation) Act, 1925 (c. 59), s. 5, is payable to the legal personal representatives of a teacher in the circumstances there specified is property passing on the death of the teacher within Finance Act, 1894 (c. 30), & is therefore aggregable with the remainder of the teacher's estate & chargeable with estate duty.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652; 141 L. T. 288; 93 J. P. 227; 45 T. L. R. 455; 27 L. G. R. 693, C. A.

Annotation:—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485.

297. *Add. Annotations:—As to* (1) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

299. *Add. Citations:*—131 L. T. 55; 68 Sol. Jo. 403; 22 L. G. R. 138.

Add. Annotations:—As to (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

302. *Add. Annotation:—As to* (4) **Consd.** Short *v.* Poole Corpn., [1926] Ch. 66.

302a. —— —— Bonâ fide exercise of discretion.]—A local education authority has power to dismiss a married woman teacher in a public elementary school on the ground that, in the *bonâ fide* exercise of their discretion, they have come to the conclusion that it is impossible for her to look after her domestic concerns & effectively & satisfactorily to act as a teacher at the same time.—SHORT *v.* POOLE CORPN., [1926] Ch. 66; 95 L. J. Ch. 110; 134 L. T. 110; 90 J. P. 25; 42 T. L. R. 107; 70 Sol. Jo. 245; 24 L. G. R. 14, C. A.

Annotations:—**Apld.** Fennell *v.* East Ham County Borough Corpn. (1925), 89 J. P. Jo. 721. **Consd.** Richardson *v.* Abertillery U. D. C., Thomas *v.* Same (1928), 138 L. T. 688. **Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737; Leeds Corpn. *v.* Jenkinson, [1935] 1 K. B. 168.

302b. —— —— —— Onus of proof.]—The council of deft. borough, as the local education authority, in pursuance of a recommendation of their education committee, made after exhaustive inquiries & discussion, resolved that the engagements of all married women

that she could look for another school if she would. The new school building was not built until the end of the term of the contract & the school was not further operated before then, although apparently, there were buildings which might have been made available temporarily for school purposes. Pltf., who had been paid in full up to the time of the fire but no more, sued for her salary for the remainder of the contract, less her salary for the months of Jan. & Feb.:—*Held:* pltf. was entitled to recover.—ROWBOTTOM *v.* BELLIS SCHOOL DISTRICT TRUSTEES, [1934] 2 W. W. R. 102; 3 D. L. R. 43.—**CAN.**

q ix. —— *School Act*, 1937, *s.* 6—*Whether retrospective.*]—The amendment to School Act, enacted by 1937, c. 53, which was assented to three days before the argument of the appeal, is retrospective.—HILKEWICH *v.* LANIWOI SCHOOL DISTRICT, [1937] 2 W. W. R. 386.—**CAN.**

sz. *Decrease of salary—Revision of scale—From what date operative.*]—A revised scheme does not become operative until it has received the Education Department's approval. The Department has no power to sanction a revised scheme retrospectively so as to affect a teacher's contractual right to his salary.—COULL *v.* FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

sd. *Invalidity of resolution authorising payment.*]—*Held:* since the meeting at which the resolution to engage the teacher was passed & that at which authority was given for the signing of the contract with her could not be said to have been regular or special meetings under the terms of School Act, R. S. S., 1930, s. 109, the resolutions passed at those meetings & the contract executed with the teacher were invalid, & no action could be founded upon contract; &, therefore, her employment commenced on the day on which she actually began her work & pltfs. were entitled to recover the amount paid her for the fifteen days during which she was ill.—EVANS & BAIRD *v.* O'CONNOR & THEAKER, [1934] 2 W. W. R. 452.—**CAN.**

290 i. *Differentiation of salaries—Graduate & non-graduate teachers—Effect of admitting non-graduate to graduate scale.*]—The admission of a non-graduate master to the graduate scale of salary does not preclude an education authority from treating him as a non-graduate teacher on a revision of the scales of salaries.—COULL *v.* FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

PART XVII. SECT. 6.

sa. *Right of members of teaching staff of Education Department of Western Australia to superannuation allowances.*]—Members of the teaching staff of the Education Department of Western Australia, qualified under Superannuation Act, 1871 (W. A.), to receive superannuation allowances are not deprived of the privilege by sect. 83 of Public Services Act, 1904 (W. A.). Under sects. 1, 12 of the Act of 1871, however, the privilege is dependent upon the discretion & bounty of the Crown, exercised by the governer in executive council, & that is still so notwithstanding the provisions of Public Service Act, 1904 (W. A.), & Public Service Appeal Board Act, 1920 (W. A.). When the Appeal Board reports to the governor on any such point as is specified in sect. 6 (4) of 1920 Act, as to qualification of length of service, the decision so reported is binding upon the Crown under sect. 10, but there are no words in the Act which take away the discretion of the Crown under the Act of 1871 to grant or withhold the privilege.—WALSH *v.* R., [1927] A. C. 337; J. P. C. 50; 136 L. T. 641—**AUS.**

teachers falling under certain specified categories should be terminated ; &, accordingly, notice was given to each of pltfs. to terminate her engagement. Pltfs., three married women, had for several years been engaged under contracts terminable by a month's notice on either side, as assistant certificated teachers in some of defts.' schools, & were admittedly efficient teachers. It was proved that the object of the council in reducing the number of the married women teachers was to create vacancies for unemployed single women teachers whom the council trained for the teaching profession & for whom it was important in the interest of educational efficiency that teaching posts should be provided. In carrying out that policy, the council, with the view of minimising cases of hardship in the selection of married women teachers for dismissal, took into consideration the domestic circumstances & duties of the married women teachers & the earning capacity of their husbands. Pltfs. sought declarations that the notices of dismissal were invalid on the ground that the council in giving them did not act *bonâ fide* with the intention of discharging their statutory duties of maintaining educational efficiency, but acted with the illegitimate object of providing employment for unmarried women without reference to educational efficiency, of obliging married women teachers to confine themselves to home duties & of preventing those whose husbands were in regular employment from increasing the income of the joint home :— *Held :* (1) pltfs. failed to discharge the *onus* which lay upon them of showing that the policy adopted by the council of reducing the number of the married women teachers for the purpose of creating vacancies for unemployed single women teachers, & the steps taken to carry it out, were in excess of their statutory powers or were adopted or taken in pursuance of some illegitimate object ; (2) the matters taken into consideration by the council were not irrelevant from an educational standpoint, but were material factors in determining, not only whether the policy ought to be adopted, but the best method of applying it ; (3) as defts. had acted *bonâ fide* & within their statutory powers, the action ought to be dismissed.—FENNELL *v.* EAST HAM CORPN., [1926] Ch. 641 ; 95 L. J. Ch. 119 ; 134 L. T. 276 ; 90 J. P. 36 ; 70 Sol. Jo. 324 ; 24 L. G. R. 76.

302c. —— —— ——.]—RICHARDSON *v.* ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS SAME, *v.* No. 14a, *ante*.

315. *Add. Annotations :*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 96 J. P. 236 ; Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

PART XVII. SECT. 7.

313 i. *Resignation—Retiring allowance.*]—Education (Scotland) Act, 1872, s. 61, empowers education authorities to permit a teacher to resign upon the condition of receiving a retiring allowance, & to pay such retiring allowance as they shall think fit.

A teacher was appointed at a certain salary " & thereafter in terms of the enclosed scheme of emoluments." The scheme, which did not provide for a retiring allowance, contained a proviso that the authority issuing it made no bargain with any teacher beyond what was contained in her letter of appointment. Subsequent regulations, which were issued to the teacher during her service, while containing the same proviso regarding the absence of any bargain, stated that retiring allowances " shall not be less than fifty per cent. of the salary " at the date of retirement :—*Held :* (1) in view of the disclaimer by the authority of any bargain beyond what was contained in the letter of appointment, the reference in the regs. to a minimum retiring allowance did not import an obligation to pay such an allowance ; (2) if the regs. had imported a general obligation to pay retiring allowances in all cases without consideration or discrimination, they would have been *ultra vires*. —TANNAHILL *v.* GLASGOW CORPN., [1935] S. C. (H. L.) 15.—**SCOT.**

k i. —— —— ——.]—TREFFIAC *v.* WILLOW RANGE SCHOOL DISTRICT, [1931] 2 W. W. R. 769.—**CAN.**

t i. —— *Non-compliance with provisions as to termination—Teacher entitled to damages.*]—HUNT *v.* BRANT SCHOOL DISTRICT TRUSTEES (Alta.), [1926] 3 D. L. R. 288 ; [1926] 2 W. W. R. 431.—**CAN.**

t ii. —— *Form of contract prescribed by Minister of Education under School Act, R. S. A.*, 1922 (c. 51)—*How far provisions for dete*

..]—THORESON SCHOOL DISTRICT TRUSTEES, [1927] 1 D. L. R. 1178 ; [1927] 1 W. W. R. 449 ; 22 Alta. L. R. 415.—**CAN.**

t iii. —— *School Act*, 1931, *s.* 157—*Application to existing contracts.*]—Sect. 157 of School Act, 1931, governing the termination of a contract of employment made between a board of school trustees & a teacher, applies to contracts made before as well as to those made after the coming into force of the Act.—STEELE-SMITH *v.* ACME VILLAGE SCHOOL DISTRICT, [1932] 1 W. W. R. 849 ; 3 D. L. R. 262 ; 26 Alta. L. R. 577 ; *affd.*, [1933] S. C. R. 47 ; 1 D. L. R. 545.—**CAN.**

b i. —— *Right to damages—Condition precedent—Appeal to Minister.*] —MURRAY *v.* BOARD OF TRUSTEES OF PONOKA SCHOOL DISTRICT, [1929] 4 D. L. R. 425 ; 2 W. W. R. 439 ; 24 Alta. L. R. 205.—**CAN.**

b ii. —— —— —— ——.]—Deft. board of school trustees employed pltf. as teacher. Under the agreement of employment, either party might terminate it by giving 30 days' written notice, " provided that no such notice shall be given by the board until the teacher has been given the privilege of attending a meeting of the board, of which five clear days' notice in writing shall be given to the teacher, to hear & to discuss its reasons for proposing to terminate the agreement." In terminating pltf.'s employment, said proviso was not observed, nor, as found by this ct. on the evidence, was there any effective waiver by pltf. of his privilege thereunder. Pltf. sued for damages for wrongful termination :— *Held :* sect. 196 of School Act, R. S. A., 1922, as amended 1923, c. 35, s. 6, which provided for an appeal to the Minister by " any teacher who has been suspended or dismissed by the board," had no application to deprive pltf. of his right of action. Sect. 196 should be read as relating to a suspension or dismissal under sect. 137 (1) (*a*), & not to a decision to terminate an agreement under sect. 199 (2).— RICHARDS *v.* ATHABASCA SCHOOL DISTRICT TRUSTEES, [1931] S. C. R. 161 ; [1931] 1 D. L. R. 443.—**CAN.**

b iii. ——*Measure of damages.*]— Where notice of termination is given by a school board between terms the contract is kept alive for at least one teaching month in the following term, & if the teacher obtains another school her damages for lack of proper notice is the salary she would have earned had she been allowed to teach during the first month of the second term, less whatever she was paid for that month in her new position.—MCCARTHY *v.* DEE VALLEY SCHOOL DISTRICT (NO. 2), [1933] W. W. R. 442.—**CAN.**

b iv. —— ——.]—The provisions of School Act, 1931, not having been complied with in giving a teacher notice of the termination of his contract :— *Held :* he had been wrongfully dismissed, & since a 30 days' notice could not have been given later at any time without the approval of an inspector, & this had not been obtained, the ordinary rule as to the measure of damages under which he would have been entitled to only 30 days' pay as damages did not apply, & he was given judgment for the amount claimed which was one year's salary less the amount which he had earned in mitigation of damages.—APPLEBY *v.* HAZEL BLUFF SCHOOL DISTRICT, [1936] 3 W. W. R. 677 ; 4 D. L. R. 795.—**CAN.**

b v. —— *Insufficient notice.*]— ALBRECHT *v.* MILK RIVER CONSOLIDATED SCHOOL DISTRICT, [1937] 3 W. W. R. 34.—**CAN.**

e i. —— *One month—Or one month's wages.*]—A teacher engaged by the month is, in the absence of a special agreement, only entitled to one month's notice for the termination of his contract. In lieu of notice, he is only entitled to one month's wages, & not to six months' salary.—MAUNG THEIN PE *v.* DESOUZA (1929), I. L. R. 7 Ran. 303.—**IND.**

sd. *Appointment for term certain—What amounts to.*]—FEDORUK *v.* BLACK POPLAR SCHOOL DISTRICT BOARD OF TRUSTEES, [1934] 2 W. W. R. 557.—**CAN.**

PART XVII. SECT. 8.

315 i. *Injury to pupil—Allowed access to dangerous substance.*]—A national school contained two class-rooms, one for the junior & one for the senior class During the luncheon hour the junior class were sent out-of-doors to the play-

315a. —— Struck by golf ball in playground.]—Pltf., a schoolboy, whilst passing along a corridor in the school buildings from which an open doorway led to an asphalt playground, was hit in the eye by a golf ball flying through this doorway, which had been struck with a stick by a fellow pupil in the playground. In an action against the headmaster claiming damages for negligence, on the ground of lack of supervision, pltf., in his evidence, said that he had never known a golf ball to be struck in the playground before. There was no express evidence given as to the amount & character of supervision in the playground, if any:—*Held:* this was not a case of *res ipsa loquitur*. There was no evidence of lack of supervision on the part of the headmaster & there was no evidence that, assuming there was such supervision, it would have prevented the accident.—LANGHAM *v.* WELLINGBOROUGH SCHOOL GOVERNORS & FRYER (1932), 101 L. J. K. B. 513; 147 L. T. 91; 96 J. P. 236; 30 L. G. R. 276, C. A.

Annotation:—**Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

315b. —— Accident in playground—No supervision.]—A tip-up lorry in the charge of a single driver had delivered coke in a school playground, & was driving away when a number of boys jumped on to the rear of the lorry causing the tipping part to tip up. Another boy, pltf., had jumped on to the lorry immediately behind the driver's cab, & when the tipping part of the lorry was suddenly released it came down on pltf. & crushed his leg. The headmaster of the school had left the boys to play in the playground & had returned into the school premises before the arrival of the lorry. He did not know of the arrival of the lorry. In an action for damages against the managers of the school, the headmaster & the owners of the lorry:—*Held:* (1) the headmaster was not negligent in leaving the boys in the playground without supervision, nor ought he to have taken steps to stop the lorry from coming during playtime. The headmaster & the managers were accordingly not liable; (2) the owners of the lorry had sent the lorry in the charge of a reasonable adult, & ought not reasonably to have anticipated interference; (3) the driver was not negligent in not looking to see if the boys had jumped on to the lorry, & he could not have anticipated sufficient weight to tip the lorry. The owners of the lorry were, therefore, not liable; (4) a lorry as such is not an allurement to children.—RAWSTHORNE *v.* OTTLEY, [1937] 3 All E. R. 902.

335a. —— Improper appointment by trustees—Liability of trustees for costs.]—(1) Where a school on a charitable foundation had been the subject of an information, & a scheme had been settled for its government, the ct., at the instance of the vicar of the parish, who according to the foundation & scheme was to be preferred for the office of schoolmaster, displaced a schoolmaster appointed by the trustees not in conformity with the scheme or foundation, &, after a contest as to the fitness of the petitioner, at once declared the latter entitled to the office.

(2) Where a scheme directed an appointment to be made by a general meeting of trustees:—*Held:* an appointment, which could not have been made on the day on which a general meeting was held, could not be legally made on a day to which that meeting was adjourned.

(3) The trustees, having acted with precipitancy in making the undue appointment so as to exclude the petitioner, & having in the proceedings unsuccessfully impugned his character, were ordered to pay the costs.—A.-G. *v.* CARRINGTON (LORD) (1850), 4 De G. & Sm. 140; 64 E. R. 770.

336. *Add. Annotation:*—*As to* (3) **Consd.** Short *v.* Poole Corpn., (1925) 42 T. L. R. 107.

342a. —— Jurisdiction of court on petition—To make declaration as to dismissal.]—Where a petition is presented under Charities Procedure Act, 1812 (c. 101), & in the matter of Grammar Schools Act, 1840 (c. 77), the ct. has jurisdiction to make a declaration as to the dismissal of a master of a Grammar School, although the A.-G.'s certificate is not obtained, the ct. having previously made orders for the management of the school under Charities Procedure Act, 1812 (c. 101).—*Re* GODMANCHESTER FREE GRAMMAR SCHOOL (1850), 17 L. T. O. S. 36; 15 Jur. 833.

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ground, & deft., who was the teacher of the senior class, used to allow the junior class to come into his class-room & warm themselves at the fire. He was under no obligation to allow the junior class into his room; he merely did it out of kindness to the children, & so that they would not have to remain outside in the severe weather. On one occasion he temporarily removed the fire screen which usually guarded the fire in his room, &, the junior class coming into his room as usual, & going to the fire, the clothes of one of them, a child of six years of age, caught fire, & she was severely burned:—*Held:* deft. was liable.—BOHANE *v.* DRISCOLL, [1929] I. R. 428.—IR.

PART XVIII.

n i. —— —— ——.]—Where the secretary of a school board, acting under its instructions, notifies in writing each of two or more appcts. for a teacher's position that her application has been accepted, but the board enters into the formal contract prescribed by statute with only one of them & notifies the others that their services will not be required, each of the latter has a right of action against the board as a corpn. for damages, but not against the members thereof individually or against the secretary.—MORRISON *v.* CASSELL HILL SCHOOL DISTRICT TRUSTEES, [1925] 1 W. W. R. 526.—CAN.

n ii. —— —— *Signature of county superintendent—Whether party to the contract.*]—A county superintendent of common schools, signing together with trustees, a contract with a teacher, will be considered to have signed the same only as approving of the appointment, & in pursuance of the direction of the statute, & not as a party contracting with the teacher.—CAMPBELL *v.* ELLIOTT, BLACK, MOORE & SOUTHWICK (1847), 3 U. C. R. 241.—CAN.

sf. *Conviction for using words tending to impair discipline—Form of conviction.*]—R. *v.* THORNE, [1926] 2 D. L. R. 587; 45 Can. Crim. Cas. 360; 58 N. S. R. 449.—CAN.

sk. *Under Schools Act,* 1922 (*c.* 5) (*N. B.*).]—KELLY *v.* GRIMMER S. D. 25 (N.B.), [1927] 3 D. L. R. 704.—CAN.

ELECTIONS.

Part II.—Male Franchise.

SECT. 1.—**PARLIAMENTARY**

(Vol. XX., p. 8).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

24. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

SUB-SECT. 2.—RESIDENCE QUALIFICATION

(Vol. XX., p. 11).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SUB-SECT. 3.—BUSINESS PREMISES QUALIFICATION

(Vol. XX., p. 16).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

92. *Add. Citation :*—13 L. T. 762.

96a. —— **Exclusive occupation of room by director —At yearly rent.**]—By an agreement in writing a limited co. gave one of its directors the exclusive possession of a room in its premises at a yearly rent of £20. The director occupied the room solely for the purpose of carrying out his duties as director :—*Held :* (1) the room constituted "premises" within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (3); (2) it was occupied by the director for the purpose of his business within the meaning of the same subsection, & he thereby had the requisite business premises qualification within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (1) (2), which entitled him to be on the register of voters.—FROST *v.* CASLON, FROST *v.* WILKINS, [1929] 2 K. B. 138; 98 L. J. K. B. 523; 141 L. T. 281; 45 T. L. R. 417; 93 J. P. 192; 73 Sol. Jo. 333; 27 L. G. R. 480, C. A.

Annotation :—Generally **Refd.** Union Cold Storage Co. *v.* Adamson (1931), 16 Tax Cas. 293.

SUB-SECT. 4.—UNIVERSITY QUALIFICATION

(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SECT. 2.—**LOCAL GOVERNMENT FRANCHISE**

(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

123a. —— —— ——.]—Applt., an assistant to a wine merchant at weekly wages, resided on his employer's premises, occupying a room at a rent of 5*s.* a week, & having the sole use of it for the qualifying period :—*Held :* he was duly qualified as a lodger voter.—BENNETT *v.* EVANS (1892), 68 L. T. 765; 9 T. L. R. 57.

PART I.

a i. —— *Voters in township added to city.*]—R. *v.* WILSON (1888), 12 P. R. 546.—**CAN.**

a ii. —— *Persons omitted from verified copy of collector's roll—Persons omitted from collector's roll.*]—R. *v.* STEPHENSON (1851), 1 C. L. Ch. 270.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A. (d) ii.

84 v. —— ——.]—A person, who resided ordinarily in Glasgow & was on the electoral roll there, was tenant at a rent of £4 *per annum* of a plot of ground in the County of Stirling, on which he had erected a wooden hut which he used as a summer residence. To qualify for the electoral franchise it was necessary for him, under the Representation of the People Acts, to have "resided" in the hut for three months prior to & including June 15, 1935. In 1935 he had occupied the hut from Friday night to Monday morning every week-end in April, May & June. It also appeared that he had occupied it for the whole months of July & August, & for week-ends in September :—*Held :* his use of the hut during the qualifying period was merely incidental to his residence in Glasgow, & did not satisfy the statutory residential requirements for franchise purposes.—[illegible] *v.* WALLIS, [1936] S. C. 561.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 1.—B. (n).

sx. *Local agent of corporation—No office maintained—Not permanently employed—Whether "chief resident officer."*]—A local agent for a corpn. in a town where it does not maintain an office of its own & who is not permanently employed thereby or in receipt of a salary therefrom is not a "chief resident officer" of the corpn. who under Town Act, 1927 (Sask.), c. 24, s. 284, is entitled to vote on its behalf where a vote is taken on a by-law.—R. *v.* HOLZ, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

sy. *No right to vote—Municipal District Act,* 1926.]—Under Municipal District Act, 1926 (c. 41), neither tenants nor their wives are eligible as voters at an election for councillors; except in the case where a tenant votes for a non-resident landlord as provided by sect. 195 (3). A tenant is not a "purchaser" within the meaning of said Act.—R. *v.* CAWTHORNE, [1930] 3 W. W. R. 273; [1931] 1 D. L. R. 317; 25 Alta. L. R. 19; *affs.,* [1930] 1 W. W. R. 991; 4 D. L. R. 154.—**CAN.**

sz. —— *Village Act,* 1927.]—(1) Under Village Act, 1927 (c. 54), tenants as such are not qualified to vote at an election of councillors held prior to the completion of the first voters' list. At such an election unless a voter votes for the number of candidates to be elected his ballot should not be counted. (2) The words "liable to a business tax therein" in sect. 171 of said Act mean "subject to be assessed" or "assessable" for the business tax within the municipal district, provided they are persons so assessed or assessable with respect to a business carried on in that part of the district which is within the area of the village.—R. *v.* FOWLER, [1930] 3 W. W. R. 327.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

sb. *Ownership—Proof of—Registration.*]—In order to qualify as a voter at municipal elections under Municipal Elections Act, s. 6, as enacted by Municipal Elections Act Amendment Act, 1902, s. 2, with respect to real estate, it is necessary that appel. should be the registered owner of such real estate under Land Registry Act, 1906, c. 23, s. 74.—*Re* KASLO MUNICIPAL VOTERS' LIST (1907), 12 B. C. R. 362.—**CAN.**

sc. —— *Of corporation as trustee.*]—*Semble :* a corpn. acting as a trustee, exor. or administrator of an estate has not the right under Town Act, 1927 (Sask.), c. 24, to have its name placed on the voters' list with respect to the property of an estate which it represents.—R. *v.* Ho[illegible] 50 [illegible] 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

sd. *Gaoler—Living in county gaol rent free—Not a householder within 14 & 15 Vict. c.* 109, *Sched. A., No.* 12.] —*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

Part III.—Female Franchise.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12).

Part IV.—Naval or Military Voters.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

Part V.—Registration.

146a. —— Sufficiency of—Christian name in full not necessary.]—R. *v.* HARTLEPOOL CORPN. (1851), 2 L. M. & P. 666; 21 L. J. Q. B. 71; 15 J. P. 835; 15 Jur. 1158; *sub nom.* R. *v.* HARTLEPOOL CORPN., *Ex p.* DOBING, 18 L. T. O. S. 111.

Annotations :—**Apld.** R. *v.* Avery (1852), 18 Q. B. 576. **Refd.** R. *v.* Bradley (1861), 30 L. J. Q. B. 180; R. *v.* Plenty (1869), 38 L. J. Q. B. 205.

245. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

263a. Who may appeal—Claimant for vote.]—An appeal to the county ct. judge under Representation of the People Act, 1918 (c. 64), s. 14, was brought by an election agent in his own name instead of in the name of the claimant, & the agent was cited throughout the proceedings as the applt. :—*Held :* the county ct. judge had no jurisdiction to deal with the matter & an order made by him thereon must be set aside.—HAMPSHIRE PARLIAMENTARY COUNTY REGISTRATION OFFICER *v.* AINSLIE (1933), 148 L. T. 496; 97 J. P. 121; 49 T. L. R. 233; 31 L. G. R. 165, C. A.

263b. Order for alteration of register—Whether necessary.]—No order for altering the register, pursuant to the decision of the ct. need be drawn up.—WHITMORE *v.* BEDFORD (1843), 5 Man. & G. 9; 134 E. R. 460.

Part VI.—Parliamentary Election.

306a. ——.]—(1) The words "conduct & management of the election" contemplate an election which is reasonably imminent, but many circumstances may be included in the "commencement of the election," *e.g.* a vote adverse to the ministry. The uncertainty of the date does not affect this point.

(2) In order to invalidate an election because an agent has performed duties additional to those for which he was expressly engaged, it would be necessary, at least, that we should have a case very clearly proved . . . so far as I can see, there is no restriction on the right of a paid agent or officer to render services to the candidate such as he may think fitting, except that he cannot be employed in the payment of election expenses unless he is the sub-agent (LORD M'LAREN).—ELGIN & NAIRN CASE (1895), 5 O'M. & H. 1.

329a. —— Candidate's wife.]—A candidate's wife, if she interfere in the election, is *ipso facto* his agent.—HASTINGS CASE (1869), Leigh & Le Marchant, 4th ed., 1885, p. 81.

329b. —— Extent of duties.]—ELGIN & NAIRN CASE, No. 306a, *ante.*

361a. Act involving persuasion of voters.]—The expression "to get votes" must be taken with some limitation, because in one sense

PART V. SECT. 1, SUB-SECT. 3.—A. (a).

sg. *No claim after final revision.*]—A voter whose name is not registered after final revision of the lists has no redress.—FERGUSON *v.* MACDONALD, [1936] 3 D. L. R. 580; 11 M. P. R. 49.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

249 vii. For "1 D. L. R. 84" read "1 D. L. R. 265," & for "22 Man. L. R. 597" read "22 Man. L. R. 16."

249 xiii. —— ——.]—MARION *v.* HEBERT, [1937] 2 W. W. R. 507.—**CAN.**

† i. —— *Non-compliance with statutory qualifications—Election Laws Amendment Act,* 1920, *s.* 6 (1), (2).]—Votes cast by persons whose names were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling :—*Held :* illegal.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

† ii. —— *Register wrongful —Right of court to investiga*—is in every ct. having jurisdiction in such matters an inherent power to hold a scrutiny for the purpose of investigating the legality of the votes cast at an election.

On a motion under Controverted Municipal Elections Act, R. S. S. 1920, c. 91, s. 19, to set aside an election, the ct. is not limited to ascertaining whether any violation of the Act has taken place in the actual conduct of an election, &, therefore, if there has been an extraneous illegality which is shown to have a direct bearing on the result of the election, that is a fit subject for inquiry. The provisions of Village Act, R. S. S. 1920, c. 88, do not prevent such an inquiry being made.—R. *v.* ——, [1928] 2 D. L. R. 913; 1928] 2 W. W. R. 315.—**CAN.**

sf. *Only when so declared by statute.*]

A voters' list is final & conclusive only if made so by statute either expressly or by implication.—R. *v.* JOHANSICK, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—**CAN.**

PART VI. SECT. 5.

323 i. *Who is a candidate.*]—Where pltf. was selected as a candidate, & statements were published concerning him, & a writ in an action for libel was issued before the issue of the writ for the election, but after the vacancy had occurred :—*Held :* pltf. was a candidate for a Parliamentary constituency when the libel was published. —— *v.* STANLEY, [1926] I. R. 3.—**IR.**

sg. *Deposit payable—Return Successful candidate entitled to return notwithstanding refusal to take prescribed oath.*]—O'DONOGHUE *v.* REDMOND ROCHE (1), [1927] I. R. 152.—**IR.**

all work whatsoever which is done for a candidate at an election is done to get votes, & I think in this connection the words mean something in the nature of canvassing, soliciting & persuading individual voters, though, of course, not necessarily one by one separately, to vote for a candidate (TALBOT, J.).—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

390. *Add. Annotation :—As to* (3) **Consd.** Plymouth Borough Case (1929), 7 O'M. & H. 101.

.]—NORTH NORFOLK CASE, No. 626a, *post.*

442a. —— ——.]—There is, first of all, the strictest of all principles, that which is applicable to a criminal charge, & there a man is responsible for nothing at all except his own individual guilt. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, & in which it is proved that the wrong was done by the defender's agent—*i.e.*, a person employed by the defender while he was doing the thing which he was employed to do; but then there comes in the principle that he was employed to do the particular work, & that he was not employed to do the wrong. Then there is the third class of cases, with which we are at present engaged, where in these election petitions, it being proved that a candidate is having his election carried on by a committee or by certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election; & it is held that he is responsible for it in the sense of making the validity of the election depend on it (LORD BARCAPLE).—GREENOCK CASE (1869), 1 O'M. & H. 247.

478a. —— ——.]—NORTH NORFOLK CASE, No. 626a, *post.*

482a. —— ——.]—(1) If it could be proved that those things [intimidation & violence] had been in any way done or sanctioned by the sitting member or his election agent, we should have had no difficulty whatever in declaring the election void (FIELD, J.).

(2) We do not feel justified in unseating resp.; we think there was such a reasonable case for inquiry that we do not think resp. ought to have his costs in reference to that matter (FIELD, J.).—THORNBURY CASE (1886), 4 O'M. & H. 65; *on appeal*, 16 Q. B. D. 739.

595a. Gift on one occasion.]—Shortly before the election a sovereign was given by the resp. to a clergyman to be passed on to a distressed voter :—*Held :* the gift under such circumstances was a matter of degree; if it were a habit on the part of a candidate to make gifts of a like kind, *e.g.* upon the event of a birth or death in the family of a voter, it would be hard to come to any other conclusion than that it was done for the purpose of obtaining votes, but it is a different question where the gift is single & isolated.—WINDSOR CASE (1869), 1 O'M. & H. 1; 19 L. T. 613.

624a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

626a. Meaning of "corruptly."]—(1) "Corruptly" . . . means, with the object & intention of doing that thing which the statute intended to forbid (BLACKBURN, J.).

(2) The agency at the election which was solely from the canvassing before the election expires with the election (BLACKBURN, J.).

(3) When a man . . . says "I will look after a particular set of voters, my own tenants," & he does, in fact, canvass them & nobody else does, I think he is an agent for the purpose of canvassing his tenants (BLACKBURN, J.).—NORTH NORFOLK CASE (1869), 1 O'M. & H. 236.

626b. Benefit of corrupt agreement adopted by new candidate.]—Where a corrupt agreement to return A. is alleged, but in the event B. becomes a candidate in the place of A., evidence of such agreement can be given before the candidature of B. commenced.—DOVER CASE (1860), Wolf. & B. 121.

697. *Add. Annotation :*—**Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

771a. —— Impersonation procured by agent—Voter innocent.]—Agents may be guilty of aiding & abetting personation by corruptly inducing a person to vote, although the voter himself is not guilty of personation since he did not know he was entitled to vote.—HEXHAM CASE (1892), Day, 68.

F. Incurring of Expenses by Person Other than Election Agent (Vol. XX., p. 98).

Add the following case :—

774a. What amounts to.]—During an election at which there were three candidates, Conservative, Liberal & Labour respectively, applt., who was a Conservative in politics but disapproved of the existing Conservative

PART VI. SECT. 7.

480 i. *Refusal of nomination by returning officer—Jurisdiction of court—To compel returning officer to accept nomination & grant poll.*]—*Re* ADDINGTON ELECTION, [1927] 1 D. L. R. 188; 59 O. L. R. 570.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A. (a) i.

sh. *To candidate—To induce withdrawal of candidature—What amounts to.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM (1927), 61 O. L. R. 392; 33 O. W. N. 135; *varied* [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

NORTH

PART VI. SECT. 9, SUB-SECT. 1.—B. (a).

681 iv. —— —— —— *Speech at picnic instead of hiring hall.*]—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

r (p. 91) i. —— ——.]—The act of an agent in treating an elector to a drink, without the knowledge or consent of the candidate, & at the emphatic request of the elector :—*Held :* not to have been a corrupt practice.—ADAMS *v.* HUCK (No. 2), [1926] 1 W. W. R. 313; 20 Sask. L. R. 433.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (b).

695 xix. For "23 D. L. R. 573" read "26 D. L. R. 573."

695 xxv. —— *Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.*]—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech :—*Held :* those payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—D.

sg. *Arrest—Whether warrant necessary.*]—A person arrested for personation under Election Act, R. S. Q., 1925, must be taken *in flagrante delicto* or be taken upon warrant.—R. *v.* LAPLANTE (1936), 66 Can. C. C. 124.—**CAN.**

Govt. on special grounds, incurred expenses on account of issuing posters, circulars & publications which were antagonistic to the Conservative candidate & advised the constituents not to vote for him, but did not in express terms advise them to vote for the other candidates or either of them :—*Held :* applt. had acted in contravention of Representation Act, 1918, s. 34 (1).—R. *v.* HAILWOOD, R. *v.* HAILWOOD & ACKROYD, LTD., [1928] 2 K. B. 277 ; 97 L. J. K. B. 394 ; 138 L. T. 495 ; 44 T. L. R. 343 ; 28 Cox, C. C. 489 ; 20 Cr. App. Rep. 177, C. C. A.

802. Add the following para. :—

(4) The person who obtains relief always has himself to bear the costs of obtaining it. If, therefore, resp. delays until the last moment to ask for it, so that the whole case has to be fought out, he has only himself to thank for not taking an earlier opportunity of giving notice of what it is he intends to do, & thereby giving petitioners an opportunity of reconsidering their position (CAVE, J.).

817a. Payment for damage by banner.]—(1) Illegal payments excused on ground of inadvertence.

I do not say that if I found a precisely similar course taken on any future occasion I might not feel constrained to hold otherwise, but I cannot but give some weight to the consideration that the Act had never before come before any judicial tribunal ; that it is an Act by no means easy to master ; & that the blot which has been hit upon after full investigation is one which was so far from obvious that neither resp.'s counsel nor the counsel for the Director of Public Prosecutions relied upon it until the ct. pointed out its bearing upon the recriminatory charge (DENMAN, J.).

(2) Payment for damage done by rope for banner not illegal.

(3) Until a vote is declared invalid, an election ct. is prohibited by rule 41 in the Sched., to the Ballot Act from discovering how such vote has been given (DENMAN, J.). —STEPNEY CASE (1886), 17 Q. B. D. 54 ; 55 L. J. Q. B. 331 ; 54 L. T. 684 ; 34 W. R. 547 ; 2 T. L. R. 559 ; 4 O'M. & H. 34.

851. *Add. Annotation :*—**Distd.** Everett *v.* Ryder (1926), 135 L. T. 302.

859. *Add. Citation :—sub nom.* JONES *v.* PICKERING, 29 L. T. 210.

865a.——.]—By the common law the principle seems to be firmly established that where a candidate is in point of fact disqualified at the time of an election, all votes given for him with knowledge of the fact upon which such qualification is founded must be considered as thrown away. This knowledge may be established either by distinct notice or by notoriety, & it will in all cases be inferred that where the voter is aware of the facts he is aware of the legal deduction from those facts, however intricate & doubtful such deduction may be.—CLITHEROE BOROUGH (2ND CASE) (1853), 2 Pow. R. & D. 276.

878. Before this case add :—

Blind Voters.]—*See* Blind Voters Act, 1933 (c. 27).

PART VI. SECT. 9, SUB-SECT. 3.

b i. *Band & entertainment at picnic.*] —MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 10, SUB-SECT. 7.

n i. —— *Presumption that duties properly carried out.*]—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

n ii. —— *Breach of duties—Effect of.*] —Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 2.

881 i. *Name wrongly inserted on register—Voter under age—Voter exercising right innocently.*]—A.-G. *v.* CUNNINGHAM, [1929] I. R. 187.—**IR.**

s i. *Ballot paper borrowed by candidate —Corrupt practice.*]—At the request of a candidate at a municipal election a deputy returning officer gave him an uninitialled blank ballot which he said he wanted as a sample. There was no evidence of the use actually made of the ballot. Apparently it was returned to the deputy at the close of the poll in the same condition as it was in when received by the candidate. Said candidate was declared elected, & the defeated candidate moved to set aside the election :—*Held :* both the deputy returning officer & the candidate were guilty of a corrupt practice.—GARNETT *v.* LANGFORD & OSWALD, [1937] 1 W. W. R. 497.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 3.—A.

d (p. 109) i. *Counterfoil not wholly detached.*]—Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

f i. —— —— *On counterfoil.*]—Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed :—*Held :* this irregularity did not affect the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

a (p. 110) i. —— *Signed voting paper.*] —MAPLE VALLEY CASE (Ont.), [1926] 1 D. L. R. 808.—**CAN.**

c (p. 110) i. —— ——.]—At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken :—*Held :* in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

e (p. 110) ii. —— —— *Non-compliance by presiding officer.*]—Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 (3), his official mark across the line where the envelope is closed, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 3.—B.

890 v. —— *Alberta Election Act,* 1924 (c. 34), s. 82.]—The above sect. is mandatory & must be substantially complied with, & the use of the words, one, two, three, etc., instead of the figures, 1, 2, 3, etc., renders a ballot void ; but if it is clear that a figure can reasonably be said to have been honestly intended for the figure 1, it is sufficient, even though it is not precisely the same form of the figure as that printed in the Act.—*Re* ALBERTA ELECTION ACT, *Re* BOW VALLEY ELECTION (Alta.), [1926] 4 D. L. R. 117 ; [1926] 3 W. W. R. 1.—**CAN.**

sk. *Preferential voting—Method of marking ballot papers.*]—Six candidates nominated for election for the State of Victoria to the Senate of the Federal Parliament. Three of the candidates had to be elected ; but one of them died before the polling day, & his name was as far as possible withdrawn from the ballot-papers. A number of ballot papers were rejected as informal where the electors had marked their ballot papers with the numbers 1, 2, 3, 4, 6, opposite the names of the candidates standing for election at the date of the poll :—*Held :* by the terms of Commonwealth Electoral Act, 1918-1928, it was imperative that voters should indicate their preferences by numbers in numerical succession, & that the ballot-papers marked as above stated were rightly rejected as informal. —BLAKEY *v.* ELLIOTT, FINDLEY *v.* ELLIOTT (1929), 41 C. L. R. 502 ; 2 A. L. J. 406 ; [1929] Argus L. R. 86.—**AUS.**

892. *Add. Annotation :—As to* (1) **Apld.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

967. *Add. Annotation :—***Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

Part VII.—Municipal and Other Elections.

1012. *Add. Annotation :—***Distd.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1021. *Add. Annotation :—***Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1025a. —— —— —— **Description as commonly understood.**]—A nomination paper at an election of town councillors was subscribed with the full & correct name of " Charles

PART VI. SECT. 12.

915 x. —— *Unqualified persons allowed to vote—Illegal votes exceeding majority.*]—Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote :—*Held :* the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

915 xi. —— *Ballot papers issued & accepted in excess of voters on register.*]—Where in a polling sub-division 137 ballots were found in the box & only 134 names appeared in the poll-book : —*Held :* an irregularity, which did not affect the result of the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 13.

m. For " —— *Power of Supreme Court to compel* " substitute " *Recount —Power of Supreme Court to compel.*"

m i. —— *Under Manitoba Election Act—Not applicable to election under proportional representation system.*]—*Re* MANITOBA ELECTION ACT, *Re* WINNIPEG ELECTORAL DISTRICT, [1927] 3 W. W. R. 92 ; 37 Man. L. R. 87.—**CAN.**

PART VI. SECT. 15, SUB-SECT. 2.—B.

964 i. *Error in return—Liability of candidate to penalties—Not for accidental omission of one small item.*]—MCINNES *v.* BIRD, [1926] N. Z. L. R. 638.—**N.Z.**

PART VII. SECT. 1.

si. *Place of election—Outside ward—Election void.*]—R. *v.* PRESTON (1851), 2 C. L. Ch. 178.—**CAN.**

sm. *When election completed—Effect of declaration of returning officer.*]—The election of candidates takes place, not as a result of the declaration of the returning officer, but by virtue of the methods prescribed by Village Act, 1927; the declaration is merely a formal indication that the persons named have been elected under that Act.—R. *v.* LOUNT, [1928] 3 D. L. R. 61 : [1928] 2 W. W. R. 15.—**CAN.**

sx. *Edmonton Charter—Construction of.*]—R. *ex rel.* SHEPPARD *v.* COLLISSON (Alta.), [1929] 1 D. L. R. 555.—**CAN.**

sy. *Disclaimer.*]—The term " complained of " in sect. 37 of Controverted Municipal Elections Act providing for a disclaimer by the person elected before his election is complained of refers to the launching of the legal proceedings under sect. 19 of said Act.

(2) Although a candidate duly nominated was ineligible for nomination, yet, if he receives the highest number of votes as the result of a poll, he shall be declared elected & treated as a person elected until such time as the ct. in the manner provided by the Act otherwise determines, unless he disclaims meanwhile in accordance with Controverted Municipal Elections Act, or unless he has exercised his right to resign under sect. 51 of Rural Municipality Act or his seat has been forfeited under sects. 52 or 81 thereof.

(3) Where a vacancy has been created by disclaimer under said Controverted Municipal Elections Act a new election must be held.

(4) It is only when the person elected has not disclaimed, in the manner provided by the Act, & the seat has been declared vacant by the ct., that the ct. has discretion to fill such a vacancy by declaring the minority candidate elected. Even in such cases, with few exceptions, the cts. have refused to fill the vacancy in this way, & have considered it to be in the public interest to order a new election. This is more particularly true where the electors were not aware of any objection to the nomination of the candidate on the ground of qualifications, until after the time for receiving nominations had expired.—R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242 ; 2 D. L. R. 589.—**CAN.**

sc. *Right of voter to entry on assessment roll.*]—Once a person's name is entered on the Voters' List he must be entered on the Assessment Roll of the corpn. as a voter.—*Re* STEPHENSON, [1936] 1 D. L. R. 304.—**CAN.**

PART VII. SECT. 3.

d i. ——.]—On a motion in the nature of a *quo warranto* to set aside the election of resp., who had been declared elected as a councillor for a municipal district by a majority of one vote :—*Held :* although the evidence showed that in some respects the formalities of Municipal District Act, 1926, as to the conduct of the election had not been complied with, yet since there was no reason to think that the result of the election had been affected thereby, & since the secrecy of the ballot had not been jeopardised & a fair & free opportunity had been afforded the voters to express their will, the motion should be dismissed.—R. (CHRISTENSEN) *v.* WHEATLEY, [1937] 1 W. W. R. 756.—**CAN.**

f (p. 121) **i.** —— ——.]—R. *v.* JACKSON, [1927] 2 D. L. R. 977 ; 60 O. L. R. 264.—**CAN.**

h i. —— ——.]—A candidate for the office of deputy reeve of a township, who was declared duly elected, was found to be disqualified by reason of the fact that he had not before or on the day of his nomination paid the taxes chargeable against him.—R. *v.* BODDY, [1931] 2 D. L. R. 661 ; O. R. 20.—**CAN.**

a (p. 122) **i.** *S. P.* SMILEY *v.* EVANS, [1927] 4 D. L. R. 629 ; 38 B. C. R. 468.—**CAN.**

sg. *Appeal.*]—No appeal lies from orders of district ct. judges in proceedings in the nature of *quo warranto* taken under Controverted Municipal Elections Act, R.S.S., 1930.—R. (ISMAN) *v.* TRAN, [1935] 1 W. W. R. 81.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C.

n i. —— —— *Casting vote given by lot.*]—On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate :—*Held :* the election was void & a new election ordered.—*Re* MUNICIPAL ELECTIONS ACT & TOMSETT, [1924] 1 D. L. R. 921 ; 33 B. C. R. 377.—**CAN.**

n ii. —— —— *Striking out vote wrongly entered.*]—New election ordered.—R. *v.* RANKIN (1861), 2 C. L. Ch. 161.—**CAN.**

n iii. —— —— *Improperly closing poll.*]—New election ordered.—R. *v.* MARCHANT (1851), 2 C. L. Ch. 189.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—D.

t i. —— —— *Onus of proving irregularity not material.*]—The onus of showing that in an election under Rural Municipality Act, R. S. S. 1920, c. 89, the failure to comply with the requirements of the Act as to posting notices of the poll " did not affect the result of the election " is on the person upholding the election.

Under said Act the notice of poll is required to be posted in at least two widely separated conspicuous places in each division of the municipality. In the present case no notice at all was posted in one of the divisions, a number of voters in that division did not vote, & resp. was declared elected by one vote :—*Held :* it could not be said that the omission to post the notice did not affect the result, & the election was declared invalid & resp. unseated. —R. *v.* REID, [1928] 3 D. L. R. 747 ; [1928] 2 W. W. R. 436 ; 22 Sask. L. R. 595.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (a).

sn. *Withdrawal of nomination—Declaration of intention—Not made formally.*]—A candidate cannot withdraw under the Ontario Election Act by making a declaration of his intention to do so to a few persons.—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104 ; 61 O. L. R. 392.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (b).

1013 i. *Delivery of—Time for—Paper returned for amendment—Power of returning officer to extend time.*]—Where a nomination paper when delivered to the returning officer is so incomplete as not to constitute a valid nomination & it is subsequently amended, it is " received " by the returning officer when it is handed back to him in its amended state, & if then the time limited by statute for the receipt of nominations has expired the nomination is bad. It is not within the discretion of a returning officer at an election under Village Act, 1927, c. 54, to receive a nomination paper after the time fixed by the statute nor has he power to say that a nomination paper delivered to him after that time constitutes a good nomination.—R. *v.*

Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only: —*Held:* the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 241, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing the nomination paper & the burgess roll."—MOORHOUSE *v.* LINNEY, THORPE *v.* LINNEY (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 704; 1 T. L. R. 500, D. C.

Annotations:—**Distd.** Bowden *v.* Besley (1888), 21 Q. B. D. 309; Gledhill *v.* Crowther (1889), 23 Q. B. D. 136.

1038a. —— From election address.]—An election address not exhibited for general display, but only circularised in envelopes by post or by hand:—*Held:* not a "bill, poster or placard" within Municipal Corrupt Practices Act, 1884 (c. 70).—*Re* ELECTION OF COMMON COUNCILMEN FOR THE WARD OF F. WITHOUT IN THE CITY OF LONDON (1925), 161 L. T. Jo. 26, D. C.

1038b. False statements—Allegation that candidate is communist.]—Pltfs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that pltfs. were communists:—*Held:* the statements complained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70). —BURNS *v.* ASSOCIATED NEWSPAPERS, LTD. (1925), 89 J. P. 205; 42 T. L. R. 37.

1038c. —— Misleading circular—Injunction.]—MILLS *v.* DRUMMOND (1934), 78 Sol. Jo. 192.

1042. *Add. Annotation:—As to* (2) **Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1052a. Recount—General recount unnecessary.]—At an election for a school board under Municipal Elections Act, 1884 (c. 70), s. 36, applying Municipal Corpns. Act, 1882 (c. 50), Part IV., there were eight candidates for five seats. The five highest on the poll, of whom resp. was fifth, were declared by the returning officer to be elected. A petition was presented by the candidate who was sixth on the poll against the election of resp., on the ground that certain votes given for petitioner had been wrongly counted for resp. or for some other candidate, & petitioner claimed the seat. A recount having been had of the votes given for the resp. & petitioner, it appeared that petitioner had a majority over the resp. The votes of the other candidates were not recounted:—*Held:* petitioner was entitled to the seat, for it was enough for him to establish that he had more votes than resp., & that it was unnecessary for him to recount the votes given for the first four candidates.—MONKSWELL *v.* THOMPSON, [1898] 1 Q. B. 479; 67 L. J. Q. B. 378; 78 L. T. 116; 62 J. P. 212; 14 T. L. R. 224; 42 Sol. Jo. 291; 46 W. R.

1057. *Add. Annotation:—As to* (1) **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

1075. *Add. Citation:—sub nom. Re* SAFFRON WALDEN ELECTION, *Ex p.* ROBSON, 51 J. P. 199.

LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

1013 ii. —— ——.]—Where nomination papers are to be in the hands of the presiding officer on a certain day it is sufficient if they are handed to him on the previous day.—MCLEOD *v.* MCKENZIE, [1933] 1 D. L. R. 374; 6 M. P. R. 22.—**CAN.**

t i. —— —— *Remedy for wrongful rejection.*]—A writ of prohibition or *mandamus* does not lie for the purpose of determining whether a returning officer has wrongly & illegally rejected the nomination paper of a candidate for a municipal election. Such a case is provided for by Municipal Corpns. Act, 1882, s. 87, & the proper mode of determining the question is by an election petition.—R. *v.* DUBLIN TOWN CLERK (1909), 43 I. L. T. 169.—**IR.**

t ii. —— —— *Although receipt given.*]—The intention of Provincial Elections Act, R.S.B.C., 1924, is that the receipt of the Returning Officer required by sect. 53 (2) must be given at the time the nomination paper is handed to the Returning Officer, & sect. 54 shows that, notwithstanding the giving of the receipt, the Returning Officer has the right after the nominations have been closed & before declaring the names of the candidates to reconsider the validity of the nomination papers received by him. In satisfying himself of their validity he must do so from an examination of the nomination papers themselves.—*Re* HARTLEY, [1934] 1 W. W. R. 108.—**CAN.**

k i. —— ——.]—In the election in question herein there was only one member to be elected. After the expiration of the time for nominations, the returning officer continued & completed the checking of the nomination-papers, & considered an objection, made before the close of nominations, to H.'s paper, viz., that four of the assentors on it were also on S.'s paper. He held that these four voters could not be assentors to both papers, & that as S.'s paper had been received first & no objection made thereto the voters assenting to it must be taken to have exercised their rights & could not be considered as assentors to H.'s paper, & that, as without these four names H.'s paper was not signed by the required number, it must be rejected. He, therefore, declared it invalid & that the three other persons who filed nomination-papers were nominated:—*Held:* the decision of the returning officer was right.—*Re* HARTLEY, [1934] 1 W. W. R. 108.—**CAN.**

so. *Rejection of—Declaration of election by acclamation—Time for nomination expired.*]—The rejection of nomination papers & a declaration of election by acclamation may properly be made by the returning officer after the time limited for the nomination of candidates.—R. *v.* LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

sp. *Conclusiveness.*]—If a nomination paper filed with the deputy returning officer under Rural Municipality Act, 1929, is legal on its face, it is not his duty to go behind it & inquire into the qualifications of the candidate. —R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242; 2 D. L. R. 589.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sq. *Must be strictly proved.*]—R. (GLOVER) *v.* LITTLE & ARMSTRONG, [1926] 2 D. L. R. 1056; 59 O. L. R. 28.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—G. (a).

sr. *Copy of collector's roll not furnished to returning officer.*]—*Held:* an irregularity, for which the election might be avoided.—*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

q i. —— *Ballot papers not initialled—Result of election affected.*]—Under Rural Municipality Act, R. S. S. 1920, c. 89, as amended, a ballot cast at an election thereunder, which has not been marked on the back thereof with the initials of the deputy returning officer, must be rejected by him, & by the returning officer & by a judge conducting a recount. Where, however, the result of the rejection of ballots on the above ground was that a candidate was elected who would not have been elected had it been possible to count the ballots not properly initialled, the ct. should declare the election invalid & the seat vacated.—R. *v.* SLUGGETT, [1928] 3 D. L. R. 702; [1928] 2 W. W. R. 431; 22 Sask. L. R. 551.—**CAN.**

c i. —— *No right to vote—Except to give casting vote.*]—*Ex p.* TUTTLE (1860), 4 All. 615.—**CAN.**

st. *Recount—Ballot not initialled by deputy returning officer must be counted—Although required to be rejected on count by returning officer.*]—*Re* RURAL MUNICIPALITY ACT, *Re* CARROT RIVER, RURAL MUNICIPALITY, MINAKER *v.* SANDERSON (Sask.), [1927] 1 W. W. R. 439.—**CAN.**

sw. —— *When granted.*]—A county ct. judge may grant a recount upon the strength of an affidavit by a scrutineer at the polls.—*Re* WICKS, [1936] 4 D. L. R. 722.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—A

k i. —— *Failure to comply with—Nomination.*]—*Held:* Town Act, 1927, c. 55, s. 224, requires a candidate to do what had not been required of him before, it must be read strictly; & where two candidates' acceptances of their nominations omitted all but one of the statements included in said form the acceptances & nominations

1089. *Add. Citation :—sub nom.* R. *v.* (MAYOR), 3 J. P. 49.

1090. For the existing paragraph substitute the following paragraph :—

S.P.—R. *v.* GLOUCESTER (MAYOR) (1838), 2 J. P. 777.

1103. After this case add "*See, now,* Municipal Corporations Act, 1882 (c. 50), s. 34 (1)."

1104a. Chairman at first election—Persons named in charter all candidates.]—*Re* BARNES CORPN., *Ex p.* HUTTER, No. 1109a, *post.*

1109a. —— Voting papers not "openly produced & read."]—At the first meeting of the council of a borough for the election of aldermen, the chairman, acting in pursuance of an arrangement to that effect previously made by the councillors, read aloud from the voting papers to the meeting only the surnames of the persons voted for, & did not read therefrom the other matters therein contained in accordance with Municipal Corporations Act, 1882 (c. 50), s. 60 (4), namely, the Christian names, places of abode & descriptions of these persons, & the names of the persons by whom the voting papers were signed, & as the result of the voting certain councillors were declared to have been elected aldermen & acted as such :—*Held :* (1) the chairman did not "openly . . . read" the voting papers within sub-sect. 5 of that sect. &, instead of the open election provided for by the Act, there had been a ballot or secret election which was not in accordance with the law ; (2) as there had been no lawful election & the offices of aldermen were unfilled, the proper remedy was not a *quo warranto,* or an election petition under sect. 87 of the Act, but a *mandamus* under sect. 225 to hold an election of aldermen, & the writ should be peremptory, notwithstanding any inconvenience that might be caused by the displacement of persons who were then acting as aldermen.

(3) The charter of incorporation of a municipal borough, which was granted in accordance with the Municipal Corporations Act, 1882 (c. 50), provided that a named person, or in case of his death, inability, refusal or default a second named person, or in case of his death, inability, refusal or default a third named person, should perform the duties of chairman of the first meeting of the borough council for the election of aldermen. The first named of these persons having already been elected mayor, & he & the second named of them being candidates for the office of aldermen, & the third named of them not being present, a councillor who was not one of these three persons was elected chairman of that meeting & acted as such without protest at the time by any of the three named persons :—*Held :* in the circumstances, the councillor who had been elected chairman was entitled to act as such although he was not one of the three named persons.—*Re* BARNES CORPN., *Ex p.* HUTTER, [1933] 1 K. B. 668 ; 102 L. J. K. B. 641 ; 148 L. T. 328 ; 97 J. P. 76 ; 49 T. L. R. 152 ; 31 L. G. R. 110, D. C.

1140. Before this case add "*See, now,* Urban District Councillors Election Rules, 1931."

1145. Before this case add "*See, now,* Rural District Councillors Election Rules, 1931."

1145a. —— —— Omission of parish for which nominee qualified.]—The nomination papers of four persons nominated for election as rural district councillors merely stated in column 5, under the heading "how qualified," that the persons nominated were "local government electors," & did not state the name of the parish for which they were qualified as local government electors, as required by Rural District Councillors Election Order, 1898, r. 4. The deputy returning officer rejected the nomination papers as being invalid, because the parish within the poor law union for which qualification was claimed was not stated. Upon an election petition :—*Held :* (1) the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was a non-compliance with Rural District Councillors Election Order, 1898, r. 4 ; (2) that defect was not cured by Ballot Act, 1872 (c. 33), s. 13, because that sect. only applied to a case where there had been a wrongful admission of a nomination paper, & did not apply to a case where a nomination paper had been rejected ; (3) neither was the omission an "inaccurate description" of the person nominated within r. 33 of the 1898 Order, but was a non-compliance with the requirements of r. 4 of that Order, & therefore was not cured by r. 33.—BALDWIN *v.* ELLIS, [1929] 1 K. B. 273 ; 98 L. J. K. B. 71 ; 140 L. T. 278 ; 93 J. P. 86 ; 27 L. G. R. 72, D. C.

1146a. —— Rejection—Whether Ballot Act, 1872 (c. 33), s. 13, applies.]—BALDWIN *v.* ELLIS, No. 1145a, *ante.*

1146b. —— Inaccurate description of nominee—What amounts to.]—BALDWIN *v.* ELLIS, No. 1145a, *ante.*

1148. Before this case add "*See, now,* Parish Councillors Election Rules, 1931."

were invalid & their election must be set aside.—R. *v.* PHILLIPS, [1928] 2 W. W. R. 51.—CAN.

sl. *Acceptance of nomination—Failure to sign form.*]—Under the St. Boniface Charter failure by a candidate for the office of mayor to sign the form of acceptance of nomination does not invalidate the nomination if it is otherwise correct & the prescribed declaration is signed.—R. (WARMAN) *v.* POULAIN (1934), 48 Man. L. R. 20.—CAN.

PART VII. SECT. 5, SUB-SECT.

sw. *Secrecy of ballot — N..... for.*]—Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored :—*Held :* the non-compliance with the provisions of the Act had effected the result of the election, & a new election ordered.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—CAN.

PART VII. SECT. 5, SUB-SECT. 3.—C.

sx. *Secrecy of ballot — Necessity for.*]—Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored :—*Held :* the election was invalid.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—CAN.

sy. *Mandamus for recount—Costs—Liability of successful candidate.*]—*Re* WINNIPEG CHARTER, 1918, [1933] 2 W. W. R. 68.—CAN.

PART VII. SECT. 5. SUB-SECT. 5.—G (a)

sz. *Invalid return—After recount—Certiorari.*]—*Certiorari* will lie to quash an invalid return after a recount at a municipal election.—R. *v.* BEAN, *Ex p.* SCHOFIELD ; R. *v.* QUINN, *Ex p.* SCHOFIELD, [1934] 2 D. L. R. 705.—CAN.

1154a. ——.]—R. *v.* ST. MARY NEWINGTON (GOVERNORS) (1848), 6 Dow. & L. 162; Cripps Church Cas. 117; 2 Saund. & C. 303; 17 L. J. Q. B. 220; 11 L. T. O. S. 205; 12 Jur. 918.

1163. After this case add:—

Abolition of guardians.]—*See* Local Government Act, 1929 (c. 17), Part I.

Part VIII.—Authorised Excuses and Exceptions.

1172a. —— ——.]—STEPNEY CASE. No. 817a, *ante*.

1191a. —— —— **Illness.**]—*Re* LLOYD GEORGE (RIGHT HON. DAVID), APPLICATION OF (1932), 76 Sol. Jo. 166.

Part IX.—Petitions.

1290a. —— **Reservation of ballot papers—Right to take copies.**]—Where ballot papers are reserved for the consideration of the judges, the parties may be allowed to take copies.—FINSBURY CASE (1892), Day, 19.

1290b. —— —— ——.]—CIRENCESTER CASE (1893), Day, 19.

1290c. —— **Recount by judge.**]—STEPNEY CASE, No. 817a, *ante*.

1410a. For whom vote cast.]—STEPNEY CASE, No. 817a, *ante*.

—— ——.]—Statement of resps.' agent after the election is not admissible as evidence against resp.—CHELTENHAM BOROUGH ELECTION CASE (1880), 3 O'M. & H. 86.

1539a. —— ——.]—THORNBURY CASE, No. 482a, *ante*.

1581. *Add. Annotation:—As to* (2) **Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138.

1593. *Add. Annotation:—As to* (2) **Consd.** Cambridge County Council Petn., Fordham *v.* Webber, [1925] 2 K. B. 740.

1593a. —— **"Candidate"—Necessity for declaration or nomination.**]—An election for the office of county aldermen took place at a meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a

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PART IX. SECT. 1, SUB-SECT. 1.

h i. ——.]—*Held:* it was not the duty of the ct. to pronounce upon the constitutional right of the executive to direct the issue of a new writ.—*Re* NIPISSING DOMINION ELECTION, KLOCK *v.* VARIN, 21 C. L. T. 258.—**CAN.**

h ii. —— *To make preliminary order.*]—*Re* NORTH HURON ELECTION, [1926] 1 D. L. R. 590: 58 O. L. R. 197.—**CAN.**

sf. *County court judge—Sufficiency of affidavit—Application for recount.*]—On an application for a recount under Manitoba Election Act, 1931, the sufficiency of the affidavit required by sect. 117 of the Act is a matter for the county ct. judge; & he is not subject to prohibition if he acts on a *bonâ fide* affidavit which in his opinion is sufficient.—*Re* BIRTLE ELECTION RECOUNT, [1936] 3 W. W. R. 261; 44 Man. L. R. 261.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—E.

p i. —— ——.]—*Held:* Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (c), had been complied with by a petition which alleged that resp. "was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S., 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto."—ADAMS *v.* HUCK, [1925] 3 W. W. R. 546.—**CAN.**

sx. *Proof of identity of petitioners & execution of petition.*]—The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re* MUNICIPAL ACT, HEATHER *v.* MADDOCK, [1925] 2 W. W. R. 464.—**CAN.**

sy. *What may be claimed.*]—In an election petition, a claim to the seat on behalf of a candidate defeated according to the return & a claim for the voiding of the election are not so incompatible as to render the petition illegal & void.—BOUCHER *v.* VEILLEUX, [1933] S. C. R. 65; 1 D. L. R. 505.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—B.

m i. —— *From dismissal before trial of petition for irregularity.*]—*Held:* the Supreme Ct. of Canada had no jurisdiction to entertain such an appeal.—VALIANTES *v.* BELL, [1927] 3 D. L. R. 796; [1927] S. C. R. 341.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—D. (a).

sz. *Time for application.*]—LAMB *v.* MCLEOD (NO. 2), [1931] 2 W. W. R. 847; 25 S. L. R. 321.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—B.

sm. *Who may appoint—Judge of Court of Appeal.*]—LAMB *v.* MCLEOD (NO. 4), [1932] 1 W. W. R. 686.—**CAN.**

sn. *During session—Jurisdiction to order.*]—LAMB *v.* MCLEOD (NO. 3), [1932] 1 W. W. R. 412.—**CAN.**

sp. *Jurisdiction of Court.*]—When acting in cases of provincial election petitions, the ct. is not exercising its ordinary civil or criminal jurisdiction. The Legislative Assembly is the guardian of its own prerogatives & privileges; & the ct. has nothing to do with questions affecting membership in the Assembly except in so far as it has been specially designated by law to act in such matters. Therefore, the ct., being unwilling to interfere without undoubted authority, will always approach questions concerning its jurisdiction over election contests with great caution. In the present case:—*Held:* whatever doubt there may be as to the ct.'s jurisdiction had been set at rest by the Legislative Assembly itself when in directing the amendment of the returning officer's return it ordered that the amendment was to be made "without prejudice to the rights of any person with respect to the said election under Controverted Elections Act."—LAMB *v.* MCLEOD (NO. 1), [1932] 1 W. W. R. 206.—**CAN.**

sq. ——.]—LAMB *v.* MCLEOD (NO. 5), [1932] 3 W. W. R. 106; *affd.*, [1932] 3 W. W. R. 596.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—E.

k i. —— *Failure to establish—Effect.*]—BUCKMASTER *v.* KNICKLE, [1926] 2 D. L. R. 798; 58 N. S. R. 492.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

p i. —— *United Provinces Municipalities Act*, 1916.]—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND.**

sa. *Jurisdiction of judge to fix time & place of trial—Notwithstanding absence of rules.*]—*Re* SLOCAN MUNICIPAL ELECTION (1902), 9 B. C. R. 113.—**CAN.**

sb. *Whether civil action lies.*]—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that pltf. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND.**

PART IX. SECT. 2, SUB-SECT. 2.

sd. *Joinder of parties.*]—Consolidated Municipal Act, 1922, s. 172 (1) (*a*), does not give power to join a city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

county alderman. Neither petitioner nor . had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman & petitioner was not elected. Petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held:* petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, FORDHAM *v.* WEBBER, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. C.

1598a. Time for—Last day falling on holiday.]—BUCKINGHAM *v.* COUNTER (1937), 54 T. L. R. 129; 81 Sol. Jo. 944.

1626. *Add. Citation:—sub nom. Re* HEREFORD MUNICIPAL ELECTION PETITION, *Ex p.* GARROLD, 5 T. L. R. 411.

1627a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

Part X.—Criminal Law, Penal Actions, and Injunctions.

1693. *Add. Annotation:*—**Consd.** Thomas *v.* Bolton (1928), 139 L. T. 397.

PART IX. SECT. 2, SUB-SECT. 3.

sf. *Absence of—Effect.*]—DAVIES *v.* MILLS, [1930] 1 W. W. R. 672; 42 B. C. R. 506.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 8.

s i. —— *"As nearly as may be" county court scale.*]—*Re* MCBRIDE & STEWART, [1932] 1 D. L. R. 624; O. R. 176.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

sg. *Against candidate—For corrupt practice—Proof required.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

sh. *Against voter—Casting more votes than lawful—Mens rea.*]—The doctrine of *mens rea* applies to the case where a person is charged under Town Act, 1927 (Sask.), c. 24, s. 136, with having voted oftener than he was entitled to do at a municipal election.—R. *v.* HOLZ, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—**CAN.**

sm. *Who may sue.*]—In an action to recover a penalty for voting at an election of a member of the Legislative Assembly, contrary to sect. 4 of Election Act:—*Held:* though forfeiture & penalties belong to the Crown unless otherwise disposed of, the sum forfeited under sect. 4 is a penalty within sect. 182 (1) for which an action may be maintained by any person who will sue.—SHRIGLEY *v.* TAYLOR (1884), 4 O. R. 396.—**CAN.**

ELECTRIC LIGHTING AND POWER.

Part I.—Powers of Board of Trade and Electricity Commissioners.

4. *Add. Annotations:*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513. **Consd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397; Shell Co. of Australia, Ltd. *v.* Federal Commissioner of Taxation (1930), 47 T. L. R. 115; Minister of Health *v.* R., [1931] A. C. 494; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226; R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559.

3a. —— **Amendment or revocation of special order.**]—The power conferred by Electricity (Supply) Act, 1919 (c. 100), s. 26, to amend or revoke by special order any provisional order made under Electric Lighting Acts & confirmed by Parliament, does not include a power to amend or revoke a special order by another special order.—R. *v.* TRANSPORT MINISTER, *Ex p.* LEICESTERSHIRE & WARWICKSHIRE ELECTRIC POWER CO. (1928), 139 L. T. 660; 92 J. P. 171; 44 T. L. R. 823; 26 L. G. R. 572, D. C.

3b. **Alteration from direct to alternating current —Consent of Commissioners—Assessment of compensation.**]—The Electricity Comrs. gave their consent to the supply of electricity by a corpn. being changed from direct to alternating current, subject to the following clause: "Unless otherwise agreed the undertakers shall at their own expense carry out the necessary alterations to consumers' existing apparatus to suit the altered system & pressure of the supply or pay to each consumer injuriously affected by the alteration of system & pressure such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator to be appointed on the application of either party by the Minister of Transport as the reasonable cost of & incidental to the change of system & pressure, including compensation for any loss or damage incurred in consequence of the alteration." The claimant, who was an engineer, had in his business used for charging batteries an apparatus which was rendered useless by the change to alternating current:—*Held:* the claimant was entitled to receive from the corpn. as compensation, (*a*) the cost of supplying converting apparatus which would enable him to continue charging batteries after the system had been changed, & (*b*) damages for interference with his business during the process of change.—LAKEMAN *v.* CHESTER CO. (1933), 148 L. T. 564; 97 J. P. 141; 49 T. L. R. 288; 77 Sol. Jo. 198; 31 L. G. R. 196.

Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations:*—*As to* (1) **Folld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (2) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (3). **Apld.** A.-G. *v.* Gravesend Corpn., [1936] Ch. 550. **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *Generally*, **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

6a. —— **Meaning of terms—"Supply."**]—For the purposes of the Electricity (Supply) Acts, "consumer's terminals" are the ends of the lines of supply on the consumer's premises; & "supply" means supply at the consumer's terminals.—A.-G. *v.* GRAVESEND CORPN., [1936] Ch. 550; 105 L. J. Ch. 202; 155 L. T. 409; 52 T. L. R. 205; 80 Sol. Jo. 74; 34 L. G. R. 412.

6b. —— —— **"Consumer's terminals."**]—A.-G. *v.* GRAVESEND CORPN., No. 6a, *ante*.

6c. **Abstraction of water—"Other source."**]—The King George Reservoir, belonging to the Metropolitan Water Board, is a "river,

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PART I. SECT. 2.

sa. *Whether under jurisdiction of Public Utilities Board of Commissioners—Not St. John Power Commissioners.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1926] 1 D. L. R. 483.—CAN.

sb. —— *Andover & Perth Electric Light Commissioners.*]—*Ex p.* ANDOVER & PERTH ELECTRIC LIGHT COMRS. (N. B.), [1926] 1 D. L. R. 569.—CAN.

sd. *Commissioner of Toronto Hydro-Electric Commission—Reappointment—Validity.*]—Comr. of the Toronto Hydro-Electric Commission is not a municipal officer & may be reappointed to his office.—REID *v.* CHRISTIE, [1935] 2 D. L. R. 185; *sub nom.* R. *v.* CHRISTIE, [1935] O. R. 212.

PART II. SECT. 1.

sg. *Indian Electricity Act—Scope of Act.*]—The Indian Electricity Act is not a complete code making the holders of licences issued thereunder free from the control of any other law or authority in respect of their operations, building, machinery & apparatus.—MADRAS CORPN. *v.* MADRAS ELECTRIC TRAMWAYS, LTD. (1930), I. L. R. 54 Mad. 364.—IND.

sm. *Contract with local authority of adjoining district for supply—Meaning of "adjoining district."*]—Sect. 282 of Municipal Corpns. Act, 1920, provides that a council having established electric light works for the use of the borough & its inhabitants may "contract with the local authority of any adjoining district to supply electricity to such local authority . . .":—*Held:* the word "adjoining" in the sub-sect. must be construed in its primary meaning of "lying next to" or "in actual contact with," & therefore, deft. borough, which had established such electric light works, was not entitled to contract to supply electricity to two boroughs situate respectively six & eight miles from deft. borough.—NEW PLYMOUTH BOROUGH COUNCIL *v.* TARANAKI ELECTRIC POWER BOARD, [1933] A. C. 680; 102 L. J. P. C. 212; 149 L. T. 594.—N.Z.

stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—METROPOLITAN WATER BOARD *v.* TRANSPORT MINISTER (1925), 90 J. P. 52; 42 T. L. R. 165; 24 L. G. R. 289.

6d. **Statutory authority incorporated by Electricity Commissioners—Power to promote bill for purposes of scheme—Extent of power.**]—Defts. were a statutory body incorporated on July 29, 1925, by the Electricity Comrs. under Electricity (Supply) Act, 1919 (c. 100), & a scheme made thereunder. This scheme strictly defined their district & gave them only some of the powers available under the Electricity (Supply) Acts; but clause 10 authorised them to promote "any" bill "for the purposes of this scheme":—*Held:* defts., as a purely statutory body, were strictly bound by their scheme, & were neither expressly nor impliedly authorised by their scheme or the Acts to expend their funds in promoting a Bill for the improvement of their scheme by enlarging their district, or by obtaining additional powers omitted from their scheme, though adumbrated in the Acts.—A.-G. *v.* LONDON & HOME COUNTIES JOINT ELECTRICITY AUTHORITY, [1929] 1 Ch. 513; 98 L. J. Ch. 162; 140 L. T. 578; 93 J. P. 115; 45 T. L. R. 235; 27 L. G. R. 337.

10. *Add. Annotation:*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

11. *Add. Annotation:*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

After this case add:—

-.]—*See, now,* Electricity (Supply) Act, 1926 (c. 51), s. 48.

12. *Add. Annotation:*—*As to* (1) **Consd.** Caerphilly U. D. C. *v.* Griffin (1927), 44 T. L. R. 132.

13. *Add. Annotation:*—**Refd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

SECT. 9.—EXECUTION OF WORKS.

SUB-SECT. 1.—IN GENERAL.

17a. **Right of undertakers to support—Pylons.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *post.*

25. *Add. Annotations:*—*As to* (1) **Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102. **Refd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

30. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

30a. **Wires carried over land—Sanction of Minister of Transport—"Terms, conditions & stipulations."**]—(1) In the absence of consent by the landowner, it is for the Minister of Transport to consider whether a proposal to place electric lines across any land, under Electricity (Supply) Act, 1919 (c. 100), s. 22, should be sanctioned, &, if he decides to sanction the proposal, what "terms, conditions & stipulations" should be attached to his sanction. Such "terms, conditions & stipulations" do not mean or include pecuniary terms, conditions or stipulations. (2) The Minister has no power to assess compensation payable to the landowner for a wayleave taken under Electricity (Supply) Act, 1919 (c. 100), s. 22 (1). The claim of the landowner for compensation is to be

PART II. SECT. 9, SUB-SECT. 2.

g i. —— —— *Erection of poles.*]—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corpn. controlling a highway, to place poles & wires upon the highway.—HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO *v.* GREY COUNTY (1924), 55 O. L. R. 339. —CAN.

PART II. SECT. 9, SUB-SECT. 5.

sd. *Removal of poles by county council —Liability for cost.*]—Where an electric-power Board in pursuance of the provisions of the Electric-power Boards Act, 1925, has erected electric-light poles on a road which is subject to the control & management of a county council, & subsequently the county council effects improvements on such road, thereby necessitating the removal of the poles to new positions on the road, the county council is liable for the cost of such removal.—WAITEMATA COUNTY COUNCIL *v.* WAITEMATA ELECTRIC-POWER BOARD, [1932] N. Z. L. R. 94.—N.Z.

See, also, case in Sect. 13, sub-sect. 2, *post.*

PART II. SECT. 11, SUB-SECT. 2.

1 i. —— —— *Failure by default of undertaker.*]—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all requirements of pltfs., & that they did not give them the power owing to the requirements of other customers:—*Held:* defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs.' demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. *v.* NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205; 54 O. L. R. 508.—CAN.

1 ii. —— —— *Whether agreement terminable by notice.*]—If a power to terminate a contract on reasonable notice is to be implied it must be available to either party. Where, however, the power to terminate a contract, *e.g.* one for the supply of electric energy, is expressly given only to the party purchasing the energy, & there is a provision for a continuous payment by the purchaser, whether he avails himself of the counter consideration or not, it is impossible to extend the power to terminate to the other party, the vendor, by implication of law.—CONIAGAS REDUCTION CO., LTD. *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1933] 3 W. W. R. 134; [1932] 2 D. L. R. 811; [1933] 3 D. L. R. 337, P. C.—CAN.

1 iii. —— *Under agreement with municipality—Construction of agreement.*]—MAPLE RIDGE CORPN. *v.* WESTERN POWER CO. OF CANADA, [1926] 2 D. L. R. 525; 37 B. C. R. 252.—CAN.

m i. —— *While arrears of charges unpaid—Liability for injury in darkness.*]—HUMPHRIES *v.* PICTOU COUNTY POWER BOARD, [1931] 2 D. L. R. 571; 3 M. P. R. 25.—CAN.

m ii. —— *Installation by tenant—Refusal of consent by landlord.*]—The Electric Lighting Orders Confirmation (No. 14) Act, 1890, enacts by the Schedule (Glasgow Corpn. Electric Lighting Order, 1890), s. 21, that the undertakers "shall," upon the request of an owner or occupier of any premises situated within a certain distance from a distributing main, "give & continue to give a supply of [electrical] energy" for such premises in accordance with the provisions of the Order.

The tenant of a dwelling-house, which formed part of a tenement, & was within the requisite distance from one of the undertakers' distributing mains, employed, with his landlord's knowledge, his own contractor to make an installation of electricity in the dwelling-house. The landlord owned the whole tenement, including a main electric cable connecting the tenant's dwelling-house with the undertakers' distributing main in the street. On the completion of the work, the undertakers, having been requested by the tenant to supply electrical energy to the dwelling-house, refused to do so until the landlord's consent had been obtained. The landlord, however, refused to consent to the supply & to the use of the main cable on the ground that the cable used in the tenant's installa- was not of the type which it was his practice to require for his properties. The tenant having, with concurrence of the procurator-fiscal, charged the undertakers, by way of complaint, with breach of their statutory obligation to supply electrical energy in terms of sect. 21 of the Order:—*Held:* (1) without the landlord's consent to the supply & to the use of the main cable, the tenant was not, legally or in fact, in a position to receive a supply of electrical energy in terms of sect. 21 of the Order; (2) in these circumstances, the undertakers were not bound to supply such energy.—BRAND *v.* GLASGOW CORPN., [1935] S. C. (J.) 83.—SCOT.

determined by an arbitrator under the provisions of the Electric Lighting Act, 1882 (c. 56), & Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), but not under Lands Clauses Consolidation Act, 1845 (c. 18). The enactments with respect to the purchase & taking of lands otherwise than by agreement in Lands Clauses Consolidation Act, 1845 (c. 18), are expressly excepted from incorporation in Electric Lighting Act, 1882 (c. 56), which is to be read with Electricity (Supply) Act, 1919 (c. 100), as one Act, & therefore cannot be incorporated in these Acts by implication.

(3) A contiguous owner may have to give support to the land in which the pylon is erected (LORD HANWORTH, M.R.).—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, [1932] 2 K. B. 1; 101 L. J. K. B. 401; 147 L. T. 122; 96 J. P. 159; 48 T. L. R. 332; 30 L. G. R. 219, C. A.

Annotation :—As to (1) **Reld.** Canadian Electrical Association *v.* Canadian National Railways, [1934] A. C. 551.

33a. —— **To "person" requiring supply—Who is—Receiver.**]—A colliery co., at the time of the appointment of a receiver in a debenture holders' action, owed a sum of money to an electrical distribution co. for electricity supplied to them. The distribution co. threatened to cut off the supply of electricity from the colliery co. unless payment of the arrears was guaranteed by the receiver. The receiver commenced an action to restrain the distribution co. from cutting off the supply. By South Wales Electrical Power Distribution Company Act, 1900, s. 40, it is provided that: "the co. shall give a supply of energy to any person who requires a supply which may be given by this Act other than a supply in bulk upon that person entering into a binding agreement to take the energy upon such terms as failing agreement shall be fixed by a single arbitrator appointed by the Board of Trade":—*Held:* the receiver was a "person" within the sect. & was therefore entitled to require a supply of electricity upon the terms set out in the sect.; & the distribution co. must be restrained from withholding or threatening to withhold from him a supply of electricity.—GRANGER *v.* SOUTH WALES ELECTRICAL POWER DISTRIBUTION CO., [1931] 1 Ch. 551; 100 L. J. Ch. 191; 145 L. T. 93; 29 L. G. R. 209.

38a. —— —— **General strike—Refusal to employ naval ratings—Agreement with union workers to abandon supply of power.**]—Pltfs., who carried on business in S., were entitled, by statute & by contract, to receive from the S. borough council a supply of electrical power, but were deprived of this supply on certain days in May, 1926, when the general strike was in operation. In respect of this deprivation of supply pltfs. sued defts., who were the members of the Electricity Supply Committee of the S. borough council, to whom the council had lawfully delegated the management of the electricity supply, alleging that defts. had wrongfully & maliciously conspired & combined among themselves & with the London District Committee of the Electrical Trades Union to procure & induce the borough council, its servants & agents, to discontinue the supply of electrical power to pltfs. The writ in the action was issued on Jan. 13, 1927. Defts. denied pltfs.' allegations, & pleaded Public Authorities Protection Act, 1893 (c. 61). At the trial it was proved that at the end of Apr. 1926, when the general strike was threatened, the Govt. made preparations for the maintenance of essential services & offered to provide naval ratings to take the place of workers who might go on strike. The Govt. also issued an Emergency Order relieving the S. borough council from its obligation to supply the whole of the previous requirements of consumers of power by 50 per cent. Defts. did not accept the Govt.'s offer of naval ratings to work the electricity plant, considering it unwise to do so in view of the likelihood of disorder in the borough; but they discussed the position with the Trades Union Council & eventually resolved that if the union workers would continue the supply of light they would abandon the supply of power. The result of this was that the supply of power to pltfs., as to all other occupiers of premises in the borough, was discontinued, whereby pltfs. suffered damage. The jury found that defts. in making the agreement whereby power was not supplied to pltfs. were not acting in good faith & in the honest belief that they were carrying out their statutory duties, & that they were actuated by an indirect motive to injure pltfs. & to further the interests of those taking part in the strike. Upon these findings judgment was entered for pltfs. Defts. appealed:—*Held:* there was no evidence to support the jury's findings.—SCAMMELL G. & NEPHEW, LTD. *v.* HURLEY, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53, C. A.

Annotation :—**Reld.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

39a. —— **Injunction to restrain supply by another person.**]—Pltfs., a local authority empowered to supply electricity within a certain area, sought an injunction under Electric Lighting Act, 1909 (c. 34), s. 23, to restrain deft. from supplying electricity to certain consumers in the area:—*Held:* as the supply of electrical energy was not deft.'s primary business, the action failed.—CAERPHILLY URBAN DISTRICT COUNCIL *v.* GRIFFIN, [1928] Ch. 171; 97 L. J. Ch. 139; 138 L. T. 516; 92 J. P. 5; 44 T. L. R. 132; 26 L. G. R. 38.

39b. Negligence in supply—Whether action lies.]—Where a statutory duty is imposed on undertakers to supply electricity & default is made in ensuring a proper & sufficient supply which causes loss to a consumer who has received his supply by virtue of the statutory right & not under a special contract, no action lies at common law for damages for negligence against the undertakers. The only remedy is to enforce against the undertakers the penalty provided by statute.—STEVENS *v.* ALDERSHOT GAS, WATER & DISTRICT LIGHTING CO. (NOW MID-SOUTHERN DISTRICT UTILITY CO.) (1932), 102 L. J. K. B. 12; 31 L. G. R. 48.

42a. —— **Supply to premises partly outside area—Point of supply within area.**]—Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order

prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area :—*Held :* the point of supply was the consumers' terminals, & as the firm's terminals were within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—A.-G. *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., [1926] Ch. 542 ; 95 L. J. Ch. 357 ; 135 L. T. 601 ; 42 T. L. R. 328 ; 70 Sol. Jo. 486.

:—**Apld.** A.-G. *v.* Gravesend Corpn. (1935), 52 T. L. R. 205.

43a. Supply to railway company by order of Minister — Amalgamation of railways.]—Resp. railway co., an amalgamated railway co., was the owner of a railway undertaking situated partly within & partly without the area of supply for electricity purposes of resp. corpn., which railway undertaking included an undertaking which was, before absorption, the undertaking of the W. railway co. No part of the W. railway passed through or was situated within the area of supply of resp. corpn. Resp. co. had adapted part of the W. railway to electric traction & the consent was obtained of the Minister of Transport under Electricity (Supply) Act, 1926, s. 47, to the supply by resp. corpn. of electricity for the purposes of the W. railway. Resp. corpn. at present supplied resp. co. with electricity, part of which was used for operating certain capstans, wagon hoists & traversers. It was contended that resp. corpn. was not competent to give, nor resp. co. competent to take, a supply of electricity for the purpose contemplated, on the grounds (1) that the W. railway did not, for the purpose of sect. 47 of the Act of 1926, form part of a railway undertaking of which resp. co. was owner & that resp. co.'s power to take a supply of electricity for the W. railway remained that conferred by the W. railway's own Act, (2) that the words "may supply" in sect. 47 referred back exclusively to Electric Lighting Act, 1909 (c. 34), s. 5 (1), & resp. corpn. did not bring itself within that sect., & (3) that the words "for haulage & traction" in sect. 47 referred to a special supply for that purpose only, that there was no such supply by resp. corpn. to resp. co., & that it could not, therefore, be said that resp. corpn. was supplying electricity to resp. co. within sect. 47 :—*Held :* (1) sect. 47 of the Act of 1926 referred to the whole undertaking of resp. co., including the W. railway, & resp. co. was competent to take a supply of electricity for the purpose contemplated ; (2) the words "may supply" did not refer back exclusively to Electric Lighting Act, 1909 (c. 34), s. 5 (1), & resp. corpn. came within those words ; (3) the words "for haulage & traction" did not refer to a special supply for that purpose only, &, as resp. corpn. was supplying electricity for the general purposes of the co., including all the haulage & traction involved in operating capstans, hoists & traversers, the corpn. was brought within sect. 47 & was competent to supply electricity to resp. co. for the purpose contemplated.—A.-G. CORPN. & LONDON, MIDLAND & SCOTTISH RY. Co., [1937] 3 All E. R. 691 ; 106 L. J. Ch. 296 ; 157 L. T. 214 ; 101 J. P. 519 ; 53 T. L. R. 989 ; 81 Sol. Jo. 628 ; 35 L. G. R. 520 ; 26 Ry. & Can. Tr. Cas. 40, C. A.

47. *Add. Annotations :—As to* (1) **Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447. *As to* (2) **Refd.** Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

50. *Add. Annotation :*—**Refd.** Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

52. For the paragraph in the original volume substitute the following paragraph :—

—— **Not incompatible with performance of statutory duties.**]—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a

PART II. SECT. 11, SUB-SECT. 5.—A.

p 1. —— *At fixed rate for definite period—Whether valid.*]—In the absence of an express or necessarily implied grant of power to pltf. town to contract to supply electric energy from its municipal plant for a definite period at a fixed rate, held that such a contract was *ultra vires*, since it wiped out during its currency the statutory power of the town to fix from time to time such rates as it may deem necessary in the proper management of the utility, of which the council are in a sense trustees for the public.—BROADVIEW TOWN *v.* SASKATCHEWAN CO-OPERATIVE CREAMERIES, LTD., [1928] 1 D. L. R. 1119 ; [1928] 1 W. W. R. 324 ; 22 Sask. L. R. 356.—**CAN.**

sc. *Powers of municipality as undertaker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

se. *Prohibition against discrimination in grant to company—Construction of grant.*]—By a contract made in 1913, resp. municipal corpn. granted to applt. co. the right & privilege to sell electric energy for lighting, heating, power, industrial & other purposes incidental thereto, within the municipality for a period of forty years. By clause 11 the co. agreed not to make any charge for supplying the corpn. or any of the inhabitants of the municipality greater than that paid for similar services by any municipality or the inhabitants thereof, & that it would not discriminate against the corpn. or residents of the municipality :—*Held :* (1) the prohibition against making higher charges was not limited to charges made by applt. co. itself, but extended to charges made by any supplier in the Province ; (2) the words "similar services" did not refer to the character of the areas supplied according as it rendered the service more or less costly, but to the purpose or user of the electric energy supplied according to classifications in schedules of rates.—WESTERN POWER CO. OF CANADA, LTD. *v.* MATSQUI CORPN., [1934] A. C. 322 ; 103 L. J. P. C. 67 ; 150 L. T. 441, P. C.—**CAN.**

sg. *Reduction—Grounds for order.*]—Decrease in costs of energy is not alone sufficient ground for the Public Utility Commission to order a reduction of rates to the consumer.—R. *v.* PUBLIC UTILITIES COMMISSIONERS, [1935] 1 D. L. R. 456 ; 9 M. P. I

transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltfs., the S. Corpn., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltfs., pltfs. brought an action to restrain their breach of agreement. Defts. contended that their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 56), s. 11, which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings :—*Held :* the agreement was a business transaction into which defts. might reasonably enter ; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires.*—SOUTHPORT CORPN. *v.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO., [1925] Ch. 794 ; 94 L. J. Ch. 371 ; 133 L. T. 354 ; 89 J. P. 149 ; 69 Sol. Jo. 523 ; 23 L. G. R. 490, C. A. ; *affd. sub nom.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO. *v.* SOUTHPORT CORPN., [1926] A. C. 355 ; 95 L. J. Ch. 587 ; 134 L. T. 673 ; 90 J. P. 77 ; 42 T. L. R. 303 ; 24 L. G. R. 157, H. L.

Annotation :—**Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737.

54a. —— ——.]—A local authority were the undertakers for the supply of electricity in their district, but no electric inspector had been appointed for that district, & consequently the meters which the local authority supplied to their consumers, although standard meters, were not duly certified as required by Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., s. 49. A consumer of electricity objected to the demand made upon him for electricity alleged to have been consumed by him during a summer quarter. He alleged that either the meter had incorrectly registered the amount consumed or that the meter had been incorrectly read. After a long correspondence the local authority cut off the consumer's supply of electricity, alleging that they had the right to do so under Electric Lighting Act, 1882 (c. 56), s. 21. In an action in a county ct. by the consumer for an injunction to restrain the local authority from cutting off his supply of electricity the county ct. judge held there was a *bonâ fide* dispute between the consumer & the local authority as to the amount due & that therefore the local authority were not entitled to cut off the customer's supply of electricity by reason of sect. 18 of the Electric Lighting Act, 1909. On an appeal by the local authority :—*Held :* (1) having regard to the finding of fact by the county ct. judge that there was a *bonâ fide* dispute between the parties the local authority were not entitled to cut off the consumer's supply of electricity by reason of Electric Lighting Act, 1909 (c. 34), s. 18, as the cutting off of a supply of electricity was a most effective & practical refusal of supply ; (2) inasmuch as the meter furnished by the local authority to the consumer was not a duly certified meter as required by Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., s. 49, the register of that meter was not conclusive evidence of the value of the supply. JOSEPH *v.* EAST HAM CORPN., [1936] 1 K. B. 367 ; 105 L. J. K. B. 410 ; 153 L. T. 444 ; 99 J. P. 431 ; 51 T. L. R. 579 ; 79 Sol. Jo. 625 ; 33 L. G. R. 431, C. A.

56a. Refusal of supply—Bonâ fide dispute pending.]—JOSEPH *v.* EAST HAM CORPN., No. 54.

—— **Overhead wires—What statutes applicable.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *ante.*

64. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1927), 138 L. T. 465.

PART II. SECT. 11, SUB-SECT. 5.—B.

q i. —— *Inaccurate accounts submitted.*]—Applts., a private co. which generated & supplied electrical power in the City of Fredericton, New Brunswick, were, however, a "public utility" co. within Public Utilities Act, R. S., 1927, of New Brunswick, & were accordingly under a statutory duty to furnish reasonably adequate service & facilities, & were strictly limited, in accordance with filed scheds. open to public inspection, as to the rates, tolls & charges which they could make & exact. Resps., who carried on a dairy business in Fredericton, bought from applts. electric energy which they used in the manufacture of butter, ice-cream & other milk products. To arrive at the correct amount of electric energy supplied it was necessary to multiply the meter dial reading by ten, but owing to a mistake on the part of the applts. that was not done over a period of twenty-eight months, with the result that during that time the resps. were charged with only one-tenth of the electric energy supplied to them. On a claim by applts. to recover the balance of nine-tenths :—*Held :* applts. were not estopped from recovering the sum claimed. The duty imposed by the Public Utilities Act on applts. to charge, & on resps. to pay, at scheduled rates, for all the electric current supplied by the one & used by the other could not be defeated or avoided by a mere mistake in the computation of accounts. The relevant sects. of the Act were enacted for the benefit of a section of the public, & in such a case where the statute imposed a duty of a positive kind it was not open to resps. to set up an estoppel to prevent it. An estoppel is only a rule of evidence, & could not avail to release applts. from an obligation to obey the statute, nor could it enable resps. to escape from the statutory obligation to pay at the scheduled rates. The duty of each party was to obey the law.—MARITIME ELECTRIC CO., LTD. *v.* GENERAL DAIRIES, LTD., [1937] A. C. 610 ; [1937] 1 All E. R. 748 ; 106 L. J. P. C. 81 ; 156 L. T. 444 ; 53 T. L. R. 391 ; 81 Sol. Jo. 156, P. C.

sk. *Whether entitled to lien—Under Public Utilities Act, R. S. O.,* 1914 (*c.* 204), *s.* 27.]—WELLAND CITY *v.* ELECTRIC STEEL & METALS CO., LTD., [1927] 2 D. L. R. 168 ; 60 O. L. R. 127.—CAN.

sl. —— —— *Supply to tenants—Tenants evicted.*]—*Held :* the only right of the undertakers was to recover damages for the refusal of the consumers to carry out their contract.—*Re* MCKITTRICK PROPERTIES, LTD., [1927] 2 D. L. R. 93 ; 60 O. L. R. 132.—CAN.

PART II. SECT. 13, SUB-SECT. 1.

sp. *Injury to workman—Limitation of action—Electric-Power Boards Act,* 1925, *s.* 127.]—Applt., who was employed by resps., a body corporate constituted under the provisions of Electric-Power Boards Act, 1925, alleged that on June 6, 1930, while working on a transformer connected with high powered lines he met with an accident & sustained injuries. He issued a writ against the résps. on Apr. 1, 1932, claiming general & special damages. On July 5, 1932, he delivered an amended statement of claim, basing his claim alternatively on (*a*) a breach of an implied term of his contract of employment, or (*b*) a breach of duty owed by the resps. to him as a workman in their employ :—*Held :* the claim was out of time under sect. 127 of the Act. The statutory words were characterised by the utmost amplitude, & the action was one against resps. for something done or omitted to be done in the execution or intended execution of the Act within sect. 127. It mattered not whether applt.'s claim was regarded as based on implied contract or tort.—VINCENT *v.* TAURANGA ELECTRIC-POWER BOARD, [1937] A. C. 196 ; [1936] 3 All E. R. 884 ; 106 L. J. P. C. 11 ; 156 L. T. 151 ; 80 Sol. Jo. 1034, P. C.—N.Z.

64a. Notice by highway authority of intention to reinstate road—Liability of undertaker for injury to public.]—The receipt of a notice under Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., para. 16, does not relieve the undertakers from their duty to protect the public from injuries sustained owing to the roadway not having been reinstated after an excavation has been made by them, if the highway authority fails to comply with their requisition.

a notice under para. 16 to the undertakers need not be a written notice & can be inferred from a course of conduct.—PEARCE *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., LTD. (1935), 34 L. G. R. 349.

64b. —— Whether writing necessary.]—PEARCE *v.* COUNTY OF LONDON SUPPLY CO., LTD., No. 64a, *ante*.

65a. Liability for—Under Electric Lighting (Clauses) Act, 1899 (c. 19).]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by the pltf. In an action for a nuisance :—*Held :* (1) above Act did not expressly make defts. liable for a nuisance, but (2) as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171 ; 99 L. J. K. B. 83 ; 46 T. L. R. 85 ; 73 Sol. Jo. 818 ; 94 J. P. 62 ; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145 ; 27 L. G. R. 709, H. L.

Annotation :—Generally **Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

67. *Add. Annotations :*—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533 ; Price *v.* Hilditch, [1930] 1 Ch. 500 ; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

70a. Fumes—Injunction.]—MANCHESTER CORPN. *v.* FARNWORTH, No. 65a, *ante*.

72. *Add Annotations :*—**Consd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114 ; Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215 ; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671 ; Booth *v.* Thomas (1926), 95 L. J. Ch. 160 ; Smith *v.* G. W. Ry. (1926), 135 L. T. 112 ; Glanville *v.* Sutton (1927), 44 T. L. R. 98 ; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57 ; Pontardawe, R. D. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656 ; Sycamore *v.* Ley (1932), 147 L. T. 342 ; Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257 ; Knott *v.* London County Council, [1934] 1 K. B. 126.

73. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

76. *Add. Annotation :*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

84a. Fire caused by faulty circuit—Damage by water.]—(1) In premises adjoining those of pltf. a fire originated, owing to some unknown defect in the electrical wiring. Pltf.'s premises were damaged by the water used for extinguishing the fire :—*Held :* in the absence of any proof of negligence by defts. in the installation or the maintenance of the electrical wiring, they were not liable in

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PART II. SECT. 13, SUB-SECT. 2.

st. *Falling wires—Compensation.*]—Damage to land or stock from falling wires, arising apart from unauthorised or negligent acts on the part of a power board for which claimants would have a remedy by action at law :—*Held :* improbable & too speculative to form a subject of compensation.—WOOD *v.* TARANAKI ELECTRIC-POWER BOARD, [1927] N. Z. L. R. 392.—**N.Z.**

PART II. SECT. 13, SUB-SECT. 3.

73 ii. —— ——.]—The use of electric energy for lighting or other domestic purposes is so reasonable & prevalent that to bring electricity upon land or premises for such purposes is to use the land or premises in a natural & not an unnatural way. A person who keeps on his premises electric energy for domestic purposes is bound to exercise reasonable care to prevent damage therefrom accruing, but he is not responsible for damage not due to his own default.—DHANAL SOORMA *v.* RANGOON INDIAN TELEGRAPH ASSOCN., LTD. (1935), I. L. R. 13 Ran. 369.—**IND.**

1 (p. 213) **i.** —— *Fuse during storm—Contributory negligence.*]—A fuse between high tension wires & a transformer was ignited during a storm & a person killed :—*Held :* the co. was not liable, as the deceased had approached too near the live wire without excuse.—POTVIN *v.* GATINEAU ELECTRIC LIGHT CO., [1935] 4 D. L. R. 1 ; 5 F. L. J. (Can.) 99.—**CAN.**

o i. —— —— *Injury to licensee with notice of danger.*]—An action for damages for personal injuries sustained by pltf. as the result of his fishing-rod coming into contact with an electrical transmission wire which deft. co. maintained under an easement therefor granted by the owner of the land over which the wire was carried. The land was in the possession of a tenant & the pltf. had, apparently, the implied assent of the tenant to go on the land. The jury found deft. negligent in maintaining the wire too near the ground, but also found that pltf. had been contributorily negligent, & apportioned the damages. The judge dismissed the action, on the ground that the cause of action as set up in the pleadings was confined to alleged breaches of the regulations for such wires under Electrical Energy Inspection Act, R. S. B. C., 1924 (c. 77) :—*Held :* the appeal should be dismissed, on the ground that pltf. was aware of the danger but took no care to avoid it, & deft. owed no duty to him to have its wire strung higher.—SALE *v.* EAST KOOTENAY POWER CO., LTD. (No. 2), [1931] 3 W. W. R. 117 ; 4 D. L. R. 221 ; 44 B. C. R. 141 ; *affd.*, [1931] 4 D. L. R. 593 ; S. C. R. 712.—**CAN.**

o ii. —— —— *On standard.*]—Pltf., a boy of ten years, claimed damages for personal injuries occasioned by the negligence of defts. His injuries were sustained by coming in contact with wires carrying an electric current at the top of a standard & of falling from the standard :—*Held :* defts. not liable.—KENNY *v.* ELECTRICITY SUPPLY BOARD, [1932] I. R. 73.—**IR.**

o iii. —— *Power line in tree—Short circuit during storm.*]—CREPIN *v.* OTTAWA ELECTRIC CO., [1931] 1 D. L. R. 792 ; *affd.*, [1931] S. C. R. 407 ; 3 D. L. R. 113.—**CAN.**

o iv. —— *Improper supply of high tension current.*]—One of pltfs., a boy lying in bed in the house of his mother, the other pltf., was burned by a current of electricity from the town supply :—*Held :* (1) the town corpn. was liable for the acts of the Boards of Comrs. appointed under a bye-law ; (2) the system was defective, since it consisted of a high tension current ; (3) there was no contributory negligence, although the iron bedstead was in contract with a radiator in contact electrically with the earth, for this was usual & common.—YOUNG *v.* GRAVENHURST (1910), 22 O. L. R. 291 ; *affd.* (1911), 24 O. L. R. 467.—**CAN.**

78 i. —— *Limitation of—Statutory authority.*]—The principle of *Rylands v. Fletcher*, No. 72, does not apply to persons properly exercising their statutory powers.—HANCOCK *v.* MIDLAND JUNCTION MUNICIPALITY CORPN. (1926), 28 W. A. L. R. 91.—**AUS.**

sk. *Liability of licensee for leakage—Although supply line constructed by consumer.*]—Where a supply line is constructed by the consumer the licensee remains liable for leakage of the current through the supply line.—RANGOON ELECTRIC TRAMWAY & SUPPLY CO., LTD. *v.* KING-EMPEROR (1933), I. L. R. 11 Ran. 162.—**IND.**

sg. *Standard of care required.*]—Cos. supplying electricity for lighting & power are engaged in an operation of a dangerous nature & are bound to exercise over their systems a supervision & diligence proportionate to the peculiar & dangerous character of the commodity in which they deal.—BLUMSEN *v.* NATIONAL LIGHT & POWER CO., LTD., [1934] 1 W. W. R. 257.—**CAN.**

damages to pltf. under the doctrine of *Rylands* v. *Fletcher*.

(2) For the purpose of reinstating both premises a hoarding was erected just outside pltf.'s premises, interfering with access to them. Pltf.'s trade in fact increased during that period:—*Held:* it was impossible to say that there was no interference with pltf.'s trade by reason of the erection of the hoarding & damages were assessed under this head at £15, if upon appeal they should be held to be recoverable.—COLLINGWOOD *v.* HOME & COLONIAL STORES, LTD., [1936] 1 All E. R. 74; 80 Sol. Jo. 167; *affd.*, [1936] 3 All E. R. 200, C. A.

84b. —— **Measure of damages—Erection of hoarding during rebuilding—Interference with access.**]—COLLINGWOOD *v.* HOME & COLONIAL STORES, LTD., No. 84a, *ante*.

88a. **Basis of assessment—Deduction of sinking fund payments.**]—An electricity undertaking carrying on business under statutory powers was required by statute to set aside out of revenue certain sinking fund payments to provide for the value of its physical assets when the undertaking would be transferred to a joint electricity authority in 1971:—*Held:* in arriving at the rateable value of the undertaking, on the "profits" basis, the sinking fund payments were not to be deducted from the profits.—ST. JAMES' & PALL MALL ELECTRIC LIGHT CO., LTD. *v.* WESTMINSTER ASSESSMENT COMMITTEE, [1934] A. C. 33; 103 L. J. K. B. 9; 150 L. T. 123; 98 J. P. 20; 50 T. L. R. 75; 77 Sol. Jo. 815; 32 L. G. R. 1, H. L.

Annotation:—**Refd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299.

103a. —— **What amounts to employment by "authorised undertaking" — Employment when claim arises.**]—The claimant N. had been employed as an electrical engineer by a co. supplying electricity at P. The co. entered into an agreement with an authorised undertaking at N. to take electricity in bulk from that undertaking, & ceased itself to supply electricity from the date of the agreement. The co. then dismissed the claimant, having no further need for his services. He claimed to be entitled to compensation under Electricity (Supply) Act, 1919 (c. 100), s. 16, on the ground that he had suffered loss of employment in consequence of an agreement between authorised undertakers within that sect.; & he based the amount of his claim on the fact that he had been in receipt of an annual salary. The referee held, subject to the opinion of the ct. on a special case, that the claim of the claimant was correct, & that the amount of compensation to which he was entitled was £1,160:—*Held:* on argument of the special case, (1) although at the time when the agreement was made between the P. co. & the N. undertaking the co. was not an authorised undertaker, it had since become an authorised undertaker & was one at the time when this claim arose, & it was therefore covered by the reference in sect. 16 to authorised undertakers; & (2) on the facts, the claimant was employed at a weekly & not an annual salary, & the compensation due to him must be calculated accordingly.—NAYLOR *v.* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD. (1931), 47 T. L. R. 535.

103b. —— **Employment at "annual salary"—What amounts to.**]—NAYLOR *v.* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD., No. 103a, *ante*.

103c. —— **Meaning of "scheme."**]—Electricity (Supply) Act, 1919 (c. 100), s. 16, provided that "if . . . within five years from the date when under this Act . . . a scheme for the improvement of the supply of electricity in any district has come into operation," any servant who has been regularly employed in any authorised undertaking proves that in consequence of the scheme he has suffered loss of employment or diminution of wages he shall be entitled to compensation. The Electricity Comrs., in order to provide for the improvement of the existing organisa-

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PART II. SECT. 16.

so. *Assessment of franchise — Validity.*]—Applt. had a special franchise for supply of electric light & power to resp. town. It had only a distribution system within the town, its generating plant being elsewhere. The town assessed the pole line & distribution system at $3,000 & the franchise at $7,000. Applt. contended that, as it had no property in the town except that assessed at $3,000 as aforesaid, the $7,000 assessment on the franchise was illegal:—*Held:* the assessment did not violate sect. 413 (6) of Town Act, Sask, 1927. Assessment must be made of the land &, "in addition," of the special franchise according to the method of determination laid down. Any argument that might otherwise be based on "double assessment" was met by the express statutory provision.—CANADIAN UTILITIES, LTD. *v.* STRASBOURG TOWN, [1931] S. C. R. 72; 2 D. L. R. 43.—**CAN.**

sr. *Offices of Power Commission.*]—Nova Scotia Power Commission is expressly exempted from taxes for offices occupied under a lease, by Power Commission Act, 1930.—*Re* NOVA SCOTIA POWER COMMISSION & BANK OF NOVA SCOTIA, [1935] 3 D. L. R. 495; 9 M. P. R. 475.—**CAN.**

st. *Plant of Power Board.*]—The exemption of "machinery, whether fixed to the soil or not," from the definition of "rateable property" in Rating Act, 1925, s. 2, includes the whole of the plant of an electric-power board for the generation of electricity by water-power, & is not applicable only to the moving parts of such plant—namely, the turbines which drive the generator together with the generator itself.—GREY COUNTY *v.* GREY ELECTRIC-POWER BOARD, [1936] N. Z. L. R. 247.—**N.Z.**

PART II. SECT. 24.

sq. *What must be shown.*]—To establish the offence, under sect. 47 (1) of the Electric Light & Power Act, 1928, of fraudulently using electricity of any undertakers, it must clearly appear that the person charged used the electricity with intent to defraud the undertakers by depriving them of their electricity without due payment therefor.—FOSTER *v.* DAMYON, [1932] Argus L. R. 477.—**AUS.**

PART II. SECT. 25.

sa. *Property in apparatus on premises—Transformers, switches & bulbs.*]—*Held:* the words "dynamos, poles & wires" in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as contrasted with equipment necessary to supply any individual ratepayer. The expression "all other machinery" construed *ejusdem generis* with the words "dynamos, poles & wires" does not include transformers, switches or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p.* LEWIS, [1923] 1 D. L. R. 146; 50 N. B. R. 446.—**CAN.**

PART II. SECT. 27

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*]—An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906 confirming it & declaring it binding upon the parties:—*Held:* the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—RED DEER (CITY) *v.* WESTERN GENERAL ELECTRIC CO., [1924] 2 D. L. R. 317; 1 W. W. R. 1092; 20 Alta. L. R. 372.—**CAN.**

sd. *Authority of counsel to refer dispute to arbitration—Validity of consequent award—Power Commission Act, R. S. O.*, 1914 (*c.* 39), *s.* 16.]—BEACH *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1927] 1 D. L. R. 277; [1927] S. C. R. 251.—**CAN.**

tion for the supply of electricity in a district, made an Order under sect. 7 of the Act of 1919, constituting an electricity district & establishing an Electricity Advisory Board for that district. The Order, which provided that the Scheme set out in the Sched. to the Order should operate & have effect, came into operation on June 4, 1924, having been previously confirmed by the Board of Trade & approved by resolutions passed by both Houses of Parliament. Under the Scheme set out in the Sched. the Advisory Board could only make recommendations to the constituent bodies composing it & to the Electricity Comrs. Para. 11 of the Scheme provided as follows: " (1) The main outlines of the Technical Scheme for the improvement of the supply of electricity in the district, to which the general approval of the Comrs. is hereby given, are set forth in the Second Annex hereto, which Annex shall be deemed to form part of this Scheme & shall have effect accordingly. (2) The Board shall take all steps within their power to secure the carrying into effect of the Technical Scheme, which may be modified or varied with the approval of the Comrs." The main outlines of the Technical Scheme in the Second Annex provided that certain generating stations, including a new one belonging to the Leicester Corpn., should be utilised under the Scheme & extended as might hereafter be determined, & that certain generating stations, including two belonging to the Leicester Corpn., should be utilised until the load could be transferred to the new stations. Those two stations were closed down in Aug. & Sept. 1930, & a number of workmen employed therein in consequence lost their employment or suffered a diminution of wages, & on Nov. 5, 1930, they claimed compensation from the Leicester Corpn. under Electricity (Supply) Act, 1919 (c. 100), s. 16. It was contended on their behalf that the word " scheme " in that section referred not to the Scheme in the Sched. to the Order, under which the Advisory Board was established, but to the Technical Scheme set out in the Annex, which provided for the closing of the two generating stations & under which they were closed:—*Held:* the word " scheme " in sect. 16 meant the Scheme for the improvement of the existing organisation for the supply of electricity in any district which the Electricity Comrs. had to approve or formulate under sect. 5 of the Act of 1919, & the Order giving effect to which in the present case came into operation under sect. 7 of that Act, as soon as it was confirmed by the Board of Trade & approved by resolutions of both Houses of Parliament, the last of which in the present case was June 4, 1924, & consequently the claims for compensation were out of time. Further, even if the word " scheme " in sect. 16 meant Technical Scheme, inasmuch as para. 11 of the Sched. provided that the Second Annex, in which the main outlines of the Technical Scheme were set out, should be deemed to form part of the Scheme & should have effect accordingly, therefore it came into operation on the same date as the Scheme.—BETTS *v.* LEICESTER CORPN., [1932] 1 K. B. 579; 101 L. J. K. B. 263; 146 L. T. 466; 96 J. P. 114; 48 T. L. R. 223; 76 Sol. Jo. 129; 30 L. G. R. 163.

106a. Time for ascertaining value of property.]—Under an Electric Lighting Confirmation Order Act, it was directed that a co. should sell, & a local authority might, & should purchase that part of the undertaking & business of the co., which was situate in the area of the local authority. After a notice to treat had been given the co. incurred a considerable amount of further capital expenditure in respect of the undertaking. The purchase-price having been left to arbitration & the arbitrators referring it to an umpire, the umpire in fixing the purchase price considered that the adjustment of the rights of the parties in respect of such capital expenditure, did not come within the award, & fixed the price without considering it. On an action brought by the co. for specific performance, it was submitted by the local authority that the co. could not show a good title to certain property comprised in the purchase. At the time of the hearing of the action the local authority were endeavouring to obtain leave to borrow the purchase money on the security of their rates:—*Held:* (1) the High Ct. in this action was the proper party to adjust the rights of the parties as to the additional capital expenditure, that an inquiry must be directed on the matter of the additional expenditure, the local authority being entitled to the undertaking of the co., as it was at the date of purchase subject to necessary fluctuations before completion, & that it could not have thrust on it an unduly enlarged undertaking; (2) there must be an inquiry as to the title of the co. to the property sold, for the purpose of seeing if the local authority were entitled to any compensation; (3) a decree for specific performance would be made in favour of the co., & a date fixed for completion; with liberty to apply to extend the date. —METROPOLITAN ELECTRIC SUPPLY CO., LTD. *v.* MARYLEBONE CORPN. (1903), 67 J. P. 382; 1 L. G. R. 673.

Annotation:—As to (1) **Apld.** Oxford Corpn. *v.* Oxford Electric Co., Ltd. (1930), 143 L. T. 577.

106b. ——.]—By the Oxford Electric Lighting Order, 1890, which was a provisional order granted by the Board of Trade under the Electric Lighting Acts, 1882 (c. 56), & 1888 (c. 12), power was given to the predecessors of applt. electric co. to supply electricity in O. In 1892 applt. co. became the successors of the undertakers named in the order of 1890. Under sect. 63 of the order the local authority, resp. corpn., could within forty-two years give notice requiring the undertakers to sell, subject to all subsisting rights & contracts, at a price to be ascertained by either of two methods, the one selected in this case being by capitalising the net profits of the undertaking at 5 per cent. *per annum* upon the capital of the co. shown by the books of the co. to have been properly expended on the undertaking at the date of the notice requiring the undertakers to sell. Sect. 4 provided that if the undertaking was purchased in accordance with the provisions of the order the local authority should from the date of such purchase be the undertakers. By sect. 8, the undertakers were required to keep accounts of the capital employed for the purpose of the business distinct from any other accounts. In accordance with sect. 63

notice was given by the corporation on Dec. 3, 1928, to the co. to sell. An action was brought by the corpn. to determine what was the proper method for ascertaining the purchase price to be paid by the corpn., & what was the date as from which the sale was effected & the corpn. became entitled to take the profits of the going concern. The corpn. claimed that the price should be arrived at by capitalising upon a basis which the order did not fix, a sum of 5 per cent. upon the capital of the co. shown by their books to have been properly expended upon the undertaking, upon the footing that that sum represented the annual net profits of the co.'s undertaking, & that they were entitled to the profits as from the date notice was given, namely, Dec. 3, 1928. The co. asserted that the price ought to be fixed by capitalising the annual net profits of their undertaking upon a 5 per cent. basis, in other words, to first ascertain what the annual net profits were & then the capital sum which, if invested at 5 per cent., would produce those profits, & that they were entitled to retain the profits down to the date when the purchase money had been ascertained, & the obligation of the corpn. to pay it had arisen. The judge accepted the view of the corpn. on both points, holding that the date from which the purchase was to take effect was not dependent on the fixing thereof by the Electricity Commissioners under Electric Lighting Act, 1888 (c. 12), s. 2, but was to be ascertained by reference to the provisional Order of 1890 alone:—*Held:* there would be difficult calculations necessitated by the co.'s method of arriving at the purchase price, & sect. 8 might be used as indicating that the method suggested by the corpn. was right & would simplify the calculation. Where there was no special indication of the date when property was to change hands the date of the transfer would be that of taking possession after a good title was shown, but here there were certain indications. The co. relied on sect. 4 of the order as showing that the date must be when the local authority acquired their rights & responsibilities upon payment of the purchase-money, but sect. 4 dealt with a different matter to sect. 63, & did not elucidate the interpretation of sect. 63, sub-clause 1, the clause elected as the basis for arriving at the price. The words "at the date of such notice" in that sect. showed that to be the crucial date.—OXFORD CORPN. *v.* OXFORD ELECTRIC CO., LTD. (1930), 143 L. T. 577; 94 J. P. 229; 29 L. G. R. 1, C. A.

106c. Purchase of part of undertaking—Price—Construction of provisional order.]—Applts. were statutory undertakers for the supply of electricity in the Sale Urban District & in parts of the Bucklow Rural District under Ashton-on-Mersey Electric Lighting Order, 1896, confirmed by the Electric Lighting Orders Confirmation (No. 6) Act, 1896. The question involved in the appeal was whether on the true construction of sect. 58 of the Ashton-on-Mersey Electric Lighting Order, 1896, the price to be paid by the Sale Urban District Council (resps.) on the purchase of the part of the undertaking authorised by the said order, which was situate within the district of resps., was a sum equal to the total expenditure on the whole undertaking or only a sum equal to the expenditure on a part of that undertaking. By sect. 58 of Ashton-on-Mersey Electric Lighting Order, 1896: "(4) The price payable by the local authority shall be ascertained as follows: If the accumulated profits of the undertaking shall at the expiration of the notice amount to or exceed a return of seven & a half per cent. per annum on the total expenditure of the undertakers upon the undertaking including the cost of additions & alterations the purchase money shall be a sum equal to such total expenditure. If the accumulated profits of the undertaking shall at the said time not amount to such a return as aforesaid the purchase money shall be a sum equal to the total expenditure as aforesaid together with such further sum as will with the accumulated profits if any made by the undertakers amount to a return of seven & a half per cent. *per annum* as aforesaid":—*Held:* in sect. 58 (4) of the 1896 Order, "total expenditure of the undertakers upon the undertaking" meant the total expenditure on the whole undertaking authorised by that order.—ALTRINCHAM ELECTRIC SUPPLY, LTD. *v.* SALE URBAN DISTRICT COUNCIL (1936), 154 L. T. 379; 100 J. P. 243; 80 Sol. Jo. 204; 34 L. G. R. 215, H. L.

Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation:*—Consd. Southport Corpn. *v.* Birkdale District Electric Supply Co., [1925] Ch. 794.

111a. Act authorising application by another party for power to supply energy within area of supply—Consent of undertakers unnecessary.]—R. *v.* ELECTRICITY COMRS., *Exp.* YORKSHIRE ELECTRIC POWER CO. (1927), 138 L. T. 230; 91 J. P. 191; 44 T. L. R. 26; 25 L. G. R. 524, D. C.

PART IV.
st. Power Commission Act, R. S. O., 1927—*Submission of question to electors Who— are "electors of the municipality."*]—ELDRIDGE *v.* [1929] 3 D. L. R. 629; 63 O. L. R. 645.—CAN.

EQUITY.

Part II.—Equitable Maxims.

30. *Add. Annotation :*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

31. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

41. *Add. Annotation :*—**Consd.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

44. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157 ; Solloway *v.* Johnson, [1934] A. C. 193.

59. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

63. *Add. Annotations :*—**Folld.** *Re* Arden, Short *v.* Camm, [1935] Ch. 326. **Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

.]—When strict conveyancing phraseology is not employed in the limitation of an equitable estate in freehold hereditaments, the grant thereof will carry the fee simple, if the instrument upon its proper construction discloses a clear intention to pass it.—*Re* ARDEN, SHORT *v.* CAMM, [1935] Ch. 326 ; 104 L. J. Ch. 141 ; 152 L. T. 453 ; 79 Sol. Jo. 68.

76. *Add. Citation :*—132 L. T. 21.

86. *Add. Annotation :*—*As to* (1) **Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

101. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

108. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

133. *Add. Annotations :*—*Generally*, **Refd.** Maine & New Brunswick Electrical Power Co., Ltd. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

140a. *S. P.* RICH *v.* SYDENHAM (1671), 1 Cas. in Ch. 202 ; 3 Rep. Ch. 74 ; 21 E. R. 733.

149. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

159. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Wait, [1927] 1 Ch. 606. **Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510. *As to* (2) **Consd.** *Re* Wait, [1927] 1 Ch. 606. *Generally*, **Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

173. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

177. *Add. Annotation :*—**Consd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

186. *Add. Annotation :*—**Refd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

PART I.

1 vi. ——.]—Even if an English equitable doctrine should be applied in any case so as to modify the effect of an Indian Act, which may well be doubted, the English doctrine of part performance affecting the provisions of an English statute as to the right to sue upon a contract, cannot be applied so as to create without writing an interest which Transfer of Property Act, s. 107, enacts can be created only by a registered instrument.—ARIFF *v.* JADUNATH MAJUMDAR (1931), 58 L. R. Ind. App. 91, P. C.—**IND.**

1 vii. ——.]—The law in India recognises no distinction between legal & equitable estates.—CHHATRA KUMARI DEVI *v.* MOHAN BIKRAM SHAH (1931), 58 L. R. Ind. App. 279, P. C.—**IND.**

1 viii. ——.]—The principles of equity as applied to the practice of the cts. in England should be observed in the cts. of British India in cases in which there is no law extant, which lays down a different procedure.—NABAKUMAR SINGH DUDHURIA *v.* FATEH SINGH NAHAR (1934), I. L. R. 61 Calc. 986.—**IND.**

22 i. *No interference with operation of statute.*]—It is not open to the cts. in India to introduce & enforce equities modifying the statute law.—BASLINGAWA *v.* CHINNAVA (1931), I. L. R. 56 Bom. 556.—**IND.**

22 ii. ——.]—The ct. cannot dispense with the express terms of a statute by construing them as subordinate to the considerations of equity.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

97 i. *Imposition of equitable terms—As condition of relief.*]—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*Re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

8a. *Applicable to school corporation.*]—NIAGARA PUBLIC SCHOOL BOARD *v.* QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13 ; 59 O. L. R. 213.—**CAN.**

PART II. SECT. 6.

130 vi. —— ——.]—MCGUIRE *v.* PROSSER, [1925] 3 D. L. R. 866.—**CAN.**

PART II. SECT. 7.

157 i. *Application of maxim—Confined to persons entitled to enforce obligation.*]—When the obligation to do what ought to be done is not an absolute duty but only an obligation arising from contract, the maxim "equity looks at that as done which ought to have been done" is applicable only in favour of some person entitled to enforce the contract as against the person liable to perform it.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

c i. —— *Executory agreement for lease of ownership—Ejectment.*]—. JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

c ii. —— *Assignment of future property.*]—In the absence of any statutory enactment, the principle of *Collyer* v. *Isaacs*, No. 173, *supra*, should be adopted in British India.—CO-OPERATIVE HINDUSTHAN BANK, LTD. *v.* SURENDRANATH DE (1931), I. L. R. 59 Calc. 667.—**IND.**

PART II. SECT. 11, SUB-SECT. 1.

192 iv. —— ——.]—In April, 1923, pltf. co. entered into an agreement in writing with B. for a lease to the co for five years of certain land. B. died in Feb. 1924. This action was brought on May 20, 1924, against the exors. of B. & against G., to whom the exors. had, in May, 1924, agreed to sell the same land ; & the M. co., to which the land was (by direction of G.) conveyed by the exors. of B. on July 13, 1924, was added as a deft. Pltf. co. claimed specific performance of its agreement with B., a declaration that its rights were paramount to the rights of defts., in the land, & in the alternative damages for delay in carrying out the agreement & for breach thereof. A certificate of *lis pendens* was registered on May 21, 1924. On May 20, 1924, which was after the making of the second agreement, but before its registration on that day, defts. received notice of the claim made by pltf. co. Defts. G. & the M. co. contended that they were purchasers in good faith without notice of pltf. co.'s claim & were entitled to the benefit of the Registry Act, R. S. O. 1914, c. 124, ss. 71, 72, 73 & 75 :—*Held :* sect. 71 was applicable to the facts of the case ; at the time of the purchase these defts. had no actual notice of pltf. co.'s claim or agreement, & their agreement was registered before pltf. co.'s—in fact the latter was never registered at all—& the provisions of the Act afforded them a complete defence, but, leaving aside the provisions of the Registry Act, defts. had the better equity.—PARAMOUNT THEATRES, LTD. *v.* BRANDENBERGER, [1928] 4 D. L. R. 573 ; 62 O. L. R. 579.—**CAN.**

8b. *Defence of purchase for value without notice—Not pleaded—Right to raise on appeal.*]—The plea of *bonâ fide* purchase for value is one which ought to be specifically alleged & proved by those who rely on it. Where, therefore, defts. did not plead that they were *bonâ fide* purchasers for value without notice & no issue was raised on this point, which was for the first time taken in argument in the appellate ct. :—*Held :* the defence was not available to defts. at the appellate stage.—MURAT SINGH *v.* PHEKO SINGH (1928), I. L. R. 7 Pat. 584.—**IND.**

193a. —— —— **Purchase pendente lite.**]—A purchase *pendente lite*, though without actual notice, & for a valuable consideration, shall be set aside.—SORRELL *v.* CARPENTER (1728), 2 P. Wms. 482 ; 24 E. R. 825, L. C.

Annotations :—**Consd.** Bellamy *v.* Sabine (1857), 1 De G. & J. 566 ; Wigram *v.* Buckley, [1894] 3 Ch. 483. **Refd.** Metcalfe *v.* Pulvertoft (1813), 2 Ves. & B. 200.

219. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

233a. —— ——.]—Pltf. filed a bill to have a conveyance set aside. Deft. had conveyed the estate to mtgees. :—*Held :* they, as purchasers for valuable consideration without notice, could not be interfered with.—BULLEY *v.* BULLEY (1874), 9 Ch. App. 739; 44 L. J. Ch. 79 ; 30 L. T. 848 ; 22 W. R. 779, L. JJ.

239a. —— ——.]—HARRISON *v.* FORTH (1695), Prec. Ch. 51 ; 1 Eq. Cas. Abr. 331 ; 24 E. R. 26.

252. *Annotations :*—For " **Refd.** Stickney *v.* Keeble [1915] A. C. 386 " read " **Consd.** Stickney *v.* Keeble, [1915] A. C. 386."

Add Annotations :—**Apld.** Bernard *v.* Williams (1928), 139 L. T. 22. **Refd.** Lock *v.* Bell [1931] 1 Ch. 35.

253. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277 ; Lock *v.* Bell, [1931] 1 Ch. 35. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22; Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198 ; Pincott *v.* Moorstons, Ltd. (1936), 80 Sol. Jo. 207.

255. *Add. Annotation :*—*As to* (1) **Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

Part III.—Equitable Jurisdiction or Equitable Relief.

258a. *S. P.* DREWRY *v.* BARNES (1826), 3 Russ. 94 ; 5 L. J. O. S. Ch. 47 ; 38 E. R. 511.

290a. ——.]—An agent cannot file a bill against a principal, or a principal against an agent, for an account, except in the case of complicated accounts, where there is an insufficient remedy at law.

Pltf. filed a bill against persons who claimed various interests in a fund then in his hands, praying for an account, & that the rights of such persons might be ascertained, & for an injunction to restrain an action which had been brought against him by one of such persons for the recovery of the fund, to which action the pltf. had pleaded equitable pleas. Pltf. admitted by his bill that he held the fund as agent or trustee, & himself claimed an interest. Upon demurrer by the different defts. to the bill for want of equity : —*Held :* pltf. was entitled to maintain his bill, being in the nature of a bill of interpleader, to ascertain his rights as well as those of third parties. The demurrers were, therefore. overruled.—BLYTH *v.* WHIFFIN (1872), 27 L. T. 330.

292a. —— —— **Pleading.**]—STURTON *v.* RICHARDSON (1844), 13 M. & W. 17 ; 2 Dow. & L. 182 ; 13 L. J. Ex. 281 ; 8 Jur. 476 ; 153 E. R. 7 ; *sub nom.* RICHARDSON *v.* STURTON, 3 L. T. O. S. 164.

Annotations :—**Refd.** Eason *v.* Henderson (1848), 12 Q. B. 986 ; Henderson *v.* Eason (1851), 17 Q. B. 701.

293a. —— **One tenant in common locking gate & taking away grass.**]—*Held :* the circumstances did not amount to an ouster, nor to a destruction of the common property, & the only remedy was a proceeding for an account.—JACOBS *v* SEWARD (1872), L. R. 5 H. L. 464 ; 41 L. J. C. P. 221 ; 27 L. T. 185 ; 36 J. P. 771, H. L.

Annotation :—**Refd.** Birkin *v.* Smith, [1909] 2 K. B. 112.

303. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

329. *Add. Annotation :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

347. *Add. Annotation :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

358. *Add. Annotation :*—**Refd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550.

412. *Add. Annotation :*—**Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551.

PART III. SECT. 3, SUB-SECT. 1.

sc. *Right to maintain action—Disputed allegations raised by pleadings—Whether preliminary points raised.*]—Pltf. having brought an action against deft. for an account of moneys received by deft., an order was made in chambers for an account under the Rules of the Supreme Ct., 1909, Ord. 15, r. 1. Prior to the order being made pleadings had been delivered, & in his defence deft. made certain allegations which were disputed by pltf. :—*Held :* these allegations did not raise preliminary points to be decided before the taking of the accounts, but points which would arise upon the taking of the accounts. —LE MESURIER *v.* CONNOR, [1927] W. A. L. R. 66.—**AUS.**

PART III. SECT. 3, SUB-SECT. 8.—B. (a).

sd. *Materiality of error — Parties in fiduciary relationship.*]—The cts. will grant permission to reopen an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—B. (b).

318 iv. ——.]—Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—C.

362 ii. —— *For what mistakes.*]—Where an error of importance has been proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

362 iii. —— —— *Parties in fiduciary relationship.*]—The cts. will grant permission to surcharge & falsify an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

366 i. *Overcharge—Acquiesced in.*]—Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been settled.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 7.

439 i. *General rule.*]—FORT FRANCES PULP & PAPER CO. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1931] 2 D. L. R. 97.—**CAN.**

Part IV.—Exercise of Equitable Jurisdiction by the High Court.

494. *Add. Annotations :*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495. *Add. Annotations :*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495a. —— ——.]—In an action for an account where the plea of limitation is raised, a reply that there has been a fraudulent concealment of the true facts is a good answer to the plea, & the doctrine of equity will apply & time only begin to run from the time the truth became known.—LEGH *v.* LEGH (1930), 143 L. T. 151.

Annotation :—**Folld.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

495b. —— ——.]—Since the Jud. Acts the equitable principle that active & fraudulent concealment on the part of deft. constitutes a good reply to the Stat. Limitations is applicable even to pure common law causes of action ; & even without the element of active concealment the Statute is no answer to a claim based on fraud.

In 1921 deft. sold pltf. plum trees warranted as "Purple Pershore." Pltf. some years afterwards, finding that the trees were not "Purple Pershore," brought an action in 1928 claiming damages for breach of warranty. Deft. denied the breach & pleaded the Stat. Limitations. In his reply pltf. alleged fraudulent representation by deft. & also fraudulent concealment of the breach :—*Held :* either of these pleas was relevant in answer to the Stat. Limitations. However, pltf. upon the evidence had failed to establish the charge of fraud.—LYNN *v.* BAMBER, [1930] 2 K. B. 72 ; 99 L. J. K. B. 504 ; 143 L. T. 231 ; 46 T. L. R. 367 ; 74 Sol. Jo. 298.

497a. —— **Variation of specialty by parol agreement.**]—Since by Jud. Act, 1873 (c. 66), s. 25 (11), as re-enacted by Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 44, in the case of a conflict between the rules of law & the rules of equity the rules of equity are to prevail, a contract under seal may be varied by a subsequent parol agreement.—BERRY *v.* BERRY, [1929] 2 K. B. 316 ; 98 L. J. K. B. 748 ; 141 L. T. 461 ; 45 T. L. R. 524, D. C.

501. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

504. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

506. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part VI.—Priority.

509a. ——.]—ANON. (1675), 2 Cas. in Ch. 208 ; 22 E. R. 913.

511. *Add. Annotations :*—**Apld.** Commonwealth Trust *v.* Akotey, [1926] A. C. 72. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

591. *Add. Annotation :*—*As to* (2) **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

595. *Add. Annotation :*—*Generally*, **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

Part VII.—Notice.

643. *Add. Annotations :*—*As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475. *Generally*, **Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

647. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

SECT. 3.—**CONSTRUCTIVE NOTICE.**

(Vol. XX., p. 316.)

Conveyancing Act, 1882 (c. 39), s. 3, is now replaced by Law of Property Act, 1925 (c. 20), s. 199.

PART IV. SECT. 2.

s1. *In Ontario—Deprivation of right to present claim to Department of Crown Lands.*]—JOHNSTON *v.* STEACY, [1926] 4 D. L. R. 902 ; 59 O. L. R. 475.—**CAN.**

PART IV. SECT 4.

s2. *Judgment in Supreme Court of Province.*]—A judgment recovered in the Supreme Ct. may be attacked in the Ct. of Ch.—DAN SMALLMAN *v.* WOODSIDE & BRYAN, [1932] 4 M. P. R. 1.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.—A.

513 ii. —— ——.]—Where two claimants to a fund have equal rights in equity to that fund, and one of the claimants has the legal title to it, the latter's claim will prevail over that of the other.

H., a dealer in motor cars, agreed to buy a car from the owner thereof for cash provided pltf. co. would finance the purchase. Accordingly, under an arrangement made with pltf. co. he had a lien contract executed by the owner as vendor & himself as purchaser. This contract, which was assigned by the owner to the co., was discounted by it. H. then sold & delivered the car to one K. under a lien contract which deft. co., having no notice of pltf. co.'s rights, discounted on H.'s assignment & delivery of the contract to it. H. absconded & the present action between the two cos. was brought to determine which of them was entitled to the unpaid portion of the purchase-price due from K. :—*Held :* K. was entitled to enforce his contract of purchase even as against pltf. co., & as between the two cos. deft., having the possession & the right to retain the possession of H.'s contract with K., had the superior right to receive the payments thereunder.—IMPERIAL FINANCE CORPN., LTD. *v.* FIDELITY TRUST CO., [1930] 2 W. W. R. 769 ; 4 D. L. R. 827 ; *affd.*, [1931] 2 W. W. R. 720 ; 3 D. L. R. 801 ; 39 Man. L. R. 573.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

614 i. *Time alone insufficient to give priority.*]—A widow & administratrix had carried on the business of deceased, & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that the securities were assets of deceased, & were held by the bank in trust for them :—*Held :* the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—SCOTT *v.* SCOTT (1924), 58 I. L. T. 137.—**IR.**

.]—The doctrine of constructive notice operates adversely to a person who neglects to inquire; it does not entitle such a person to claim for his own advantage to be treated as having knowledge of the facts which inquiry would have disclosed.—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd.*, [1928] A. C. 1, H. L.

Annotations:—**Apld.** Evans *v.* Employers' Mutual Insurance Association, Ltd. (1935), 152 L. T. 333. **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., Ltd., [1929] 2 K. B. 356.

659. *Add. Annotations:*—**Apld.** Greer *v.* Downs Supply Co., *[1927] 2 K. B. 28.* **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356; The Njegos, [1936] P. 90.

661a. —— ——.]—As a general rule the equitable doctrines of constructive notice are not to be extended to purely commercial transactions. —GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

671. *Add. Annotation:*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

676. *Add. Annotation:*—**Distd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

685. After this case add:—

Statutory restriction on inquiry—Exclusion of constructive notice.]—*See* Law of Property Act, 1925 (c. 20), s. 44 (2)—(5).

686. *Add. Annotation:—Generally,* **Refd.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

687. *Add. Annotation:—As to* (1) **Refd.** Kreditbank Cassel G.m.b. H. *v.* Schenkers, [1926] 2 K. B. 450.

688a. —— **Purchase of property from company—Property charged with annuity—Sale to company by executors as "beneficial owners."**]—Testator, who died in 1914, bequeathed his business & other assets & devised freehold property to his two sons, charged with an annuity in favour of his widow of £300 *per annum.* In 1923, the sons, who were also the exors. of the will, formed a co., & "as beneficial owners" conveyed the property to the co. In 1925 the co. sold the property to J. The conveyance recited that the co. were seised in fee simple in possession, free from incumbrances, & it purported to convey a like estate to J. The co. afterwards became insolvent. The annuitant claimed that the co. were liable to pay the annuity, & also that J. held the property subject to the charge, by reason of the fact that the circumstances attending the conveyance to him should have put him upon inquiry as to its existence:—*Held:* (1) the co. had notice of the charge & were liable, & debenture holders of the co. could not take the co.'s assets free from the liability, but (2) J. had not been put upon inquiry either (*a*) because the sons had purported to convey not as executors but as "beneficial owners"; or (*b*) by the fact that the assignment to the co. was one not only of testator's freeholds & leaseholds, but also of leaseholds acquired since his death; or (*c*) because in the deed assigning to the co. there was a recital which showed that a leasehold had been deposited with a bank to secure an overdraft; or (*d*) because in the deed of 1923, the seal of the co. as purchasers, was fixed in the presence of two directors, one of whom was one of the sons. These facts did not amount to constructive notice to J. that the sons were not selling as exors., & he was therefore entitled to hold the property freed from the annuity.—PARKER *v.* JUDKIN, [1931] 1 Ch. 475; 100 L. J. Ch. 159; 144 L. T. 662, C. A.

688b. —— —— —— **Assignment to company of leaseholds acquired since testator's death.**]—PARKER *v.* JUDKIN, No. 688a, *ante.*

688c. —— —— —— **Recital in assignment to company.**]— PARKER *v.* JUDKIN, No. 688a, *ante.*

688d. —— —— —— **Assignment to company in presence of two directors—One director executor.**]—PARKER *v.* JUDKIN, No. 688a, *ante.*

699. *Add. Annotations:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225; White *v.* Bijou Mansions, Ltd., [1937] 3 All E. R. 269.

719a. —— ——.]—HALL *v.* SMITH (1808), 14 Ves. 426; 33 E. R. 584.

Annotations:—**Consd.** Pope *v.* Garland (1841), 4 Y. & C. Ex. 394; Drysdale *v.* Mace (1854), 2 Sm. & G. 225; Grosvenor *v.* Green (1858), 28 L. J. Ch. 173; Phillips *v.* Muller (1875), L. R. 10 C. P. 420. **Refd.** Adams *v.* Lambert (1838), 2 Jur. 1078; Carroll *v.* Keays, Keays *v.* Carroll (1873), 22 W. R. 243.

727. *Add. Annotations:*—**Apld.** Melzak *v.* Lilienfeld, [1926] Ch. 480; Flexman *v.* Corbett, [1930] 1 Ch. 672.

729. *Add. Annotation:*—**Apld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

746. *Add. Annotation:*—**Refd.** *Re* Des Reaux & Setchfield's Contract, [1926] Ch. 178.

755a. **Stock standing in joint names—Whether notice of trust.**]—The fact that stock or shares are standing in the names of joint owners is not notice to persons buying, or lending money on the stock or shares that the owners are trustees, nor does it put on such persons the duty of inquiring whether the property is held in trust.—KAEMENA *v.* CENTRAL BANK OF LONDON, LTD. (1888), 4 T. L. R. 657.

759. For "(1836)" read "(1839)."

760a. **Notice of mortgage—After payment of purchase-money countermanded—Countermand withdrawn.**]—An owner of a house mortgaged to first, second & third mtgees. He then sold it, subject to the first two incumbrances only, to a purchaser who paid for it & took the assignment, but owing to misgivings he countermanded payment of the cheque, & then for the first time received notice of the existence of the third mtge. Being, however, threatened with a summons in bkpcy., he withdrew his countermand, & the cheque was

PART VII. SECT. 3, SUB-SECT. 1.

648 i. *Nature of doctrine.*]—HENDERSON *v.* GRAVES (1856), 2 E. & A. 9.—CAN.

PART VII. SECT. 3, SUB-SECT. 2.

659 i. *Commercial transactions—Doctrine not applicable.*]—Attention drawn to *Greer* v. *Downs Supply Co.*, No. 661a, *supra.*—R. *v.* MCPHERSON & QUIGLEY & UNION BANK OF CANADA (Alta.), [1927] 4 D. L. R. 937; 3 W. W. R. 416.—CAN.

PART VII. SECT. 3, SUB-SECT. 6.

730 iv. ——.]—Possession is in itself notice of the title under which such possession is retained which any one dealing with the property cannot, without risk, ignore.—NATIONAL BANK OF AUSTRALASIA, LTD. *v.* JOSEPH, [1921] 1 W. W. R.

paid:—*Held:* he was not a purchaser for value without notice.—TILDESLEY *v.* LODGE (1857), 3 Sm. & G. 543; 30 L. T. O. S. 29; 3 Jur. N. S. 1000; 65 E. R. 772.

760b. **Notice of second mortgage—After first mortgage discharged & purchase-money paid but before assignment of term.**]—MEYNELL *v.* GARRAWAY (1662), Nels. 63; 21 E. R. 790.

Part VIII.—Equitable Assignments.

770. *Add. Annotations:*—**Distd.** Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298. **Consd.** *Re* Wait, [1927] 1 Ch. 606; Cotton *v.* Heyl, [1930] 1 Ch. 510. **Refd.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

Part IX.—Conversion and Reconversion.

775a. —— ——.]—Money was to be laid out in land, to be settled to the husband for life; remainder to raise portions for young children; the money was afterwards invested, by direction of the husband, in S.S. annuities; afterwards by will he devised generally all his manors, etc. to certain uses; the money in the funds must be laid out in land.—HICKMAN *v.* BACON (1793), 4 Bro. C. C. 333; 29 E. R. 920, L. C.

793. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

803. *Add. Annotation:*—**Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

807. *Add. Annotations:*—**Folld.** *Re* Carrington, Ralphs *v.* Swithenback, [1932] 1 Ch. 1. **Refd.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

815a. —— **Fines & Recoveries Act, 1833 (c. 74), 71.**]—Testator, who died in 1875, specifically devised an undivided share in freeholds to his son P. for life with remainders which never took effect & devised the residue of his real estate upon limitations which in 1878 were held by the ct. to give testator's son W. an estate tail therein. In 1877 the freeholds, the undivided share in which was devised to P. for life, were sold under Leases & Sales of Settled Estates Act, 1856 (c. 120), & the proceeds of sale representing such share were paid into ct. After the sale W., who had previously executed a disentailing deed dealing in general terms with the lands devised to him by testator's will, executed another disentailing deed dealing in terms with the undivided share & the money in ct. resulting from the sale thereof. Neither of these deeds was executed with the consent of P. as the protector of the settlement. W. died in the lifetime of P. having by his will devised his residuary real estate to applt. & bequeathed his personal estate to resps. At the death of P. in 1920 applt. petitioned for payment out of ct. of the money, claiming that it had passed to him as residuary devisee of W.:—*Held:* the money retained the character of real estate inasmuch as Fines & Recoveries Act, 1833, s. 71, did not convert disentailed money into personal estate for all purposes, but merely directed that it should be treated as personal estate for the purpose of the form of a disentailing deed.—*Re* DICKSON'S SETTLED ESTATES, [1921] 2 Ch. 108; 90 L. J. Ch. 453; 125 L. T. 528; 65 Sol. Jo. 532, C. A.

817a. —— **Law of Property Act, 1925 (c. 20), Sched. I., Part IV.—General devise.**]—A testator, who died in 1928, devised to applt. all his freehold & copyhold property & gave all his leasehold property & personalty to trustees on certain trusts. Testator was absolutely entitled to two equal ninth parts of the residuary real estate of his father & to one-fourth part of certain mines & minerals:—*Held:* as a result of Law of Property Act, 1925 (c. 20), Sched. I., Part IV., & sect. 35, the real property became subject to a trust for sale, with the result that testator's interest became, on the passing of the Act, personal property by reason of the conversion so effected, &, therefore, passed under the gift of personal estate & not to the devisee.—*Re* KEMPTHORNE, CHARLES *v.* KEMPTHORNE, [1930] 1 Ch. 268; 99 L. J. Ch. 177; 142 L. T. 111; 46 T. L. R. 15, C. A.

Annotations:—**Apld.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208; *Re* Worthington, Nichols *v.* Hart, [1933] Ch. 771. **Refd.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79; *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206; *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202.

817b. —— —— **Specific devise.**]—In 1922 testator & his brother J. were seised of B. as tenants in common in fee simple in equal undivided moieties. By his will dated May 15, 1922, testator specifically devised "all my moiety or equal half part or share & all other my share in" B. to J.

On Jan. 1, 1926, the Law of Property Act, 1925 (c. 20), s. 35, & Sched. I., Part IV., para. 1 (2), came into operation, & B. thenceforth vested in testator & J. as joint tenants on the statutory trusts for sale. On Jan. 29, 1929, testator died without altering or confirming his will:—*Held:* the specific devise was adeemed by the imposition of the statutory trusts, & J. took nothing thereunder.—*Re* NEWMAN, SLATER *v.* NEWMAN, [1930] 2 Ch. 409; 99 L. J. Ch. 427; 143 L. T. 676.

Annotation:—**Distd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

817c. —— —— —— **Codicil made after 1926.**]—Where a will made before 1926 & devising an undivided share in land is confirmed by a codicil made after 1926 not mentioning the land, the devise is effective, as the devisee takes the proceeds of sale of the land.

Testatrix by her will made in 1923 devised her undivided share in certain lands to her son absolutely. By a codicil made in 1927

she made certain alterations in the will, subject to which she confirmed it. The codicil did not affect the devise. Testatrix died in 1930. By the operation of Law of Property Act, 1925 (c. 20), Sched. I., Part IV., para. 1, the land had been since Jan. 1, 1926, held upon the statutory trusts declared by sect. 35 of Law of Property Act, 1925 (c. 20). On a summons to determine whether the devise was adeemed by the joint operation of that paragraph & that section :—*Held :* it was not adeemed, & the interest of testatrix in the proceeds of sale went absolutely to the devisee.—*Re* WARREN, WARREN *v.* WARREN, [1932] 1 Ch. 42 ; 101 L. J. Ch. 85 ; 146 L. T. 224.

819. *Add. Annotation :*—**Refd.** *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

820a. ——.]—Conversion out & out of real into personal estate, in a will, only arises where a testator, by a will duly executed to pass real estate, directs that the produce of the real estate shall be treated at his death as if it had in all respects the quality of personal estate.—WHYTALL *v.* KAY (1833), 2 My. & K. 765 ; 3 L. J. Ch. 94 ; 39 E. R. 1136.

859. *Add. Annotations :*—**Refd.** *Re* Conquest, Royal Exchange Assce. *v.* Conquest, [1929] 2 Ch. 353 ; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

871. *Add. Annotation :*—**Consd.** *Re* White, Pitman *v.* White (1929), 46 T. L. R. 30

878. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

914a. —— ——.]—COLLINGWOOD *v.* WALLIS (1727), 1 Eq. Cas. Abr. 395 ; 21 E. R. 1128, L. C.

915. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

937a. —— **Specific devise of land subject to contract for sale.**]—Testator in 1925 devised all his freehold property situate at D. to trustees upon trust to hold same or the proceeds of sale thereof for his two sons named as joint tenants, & gave & bequeathed his residuary real & personal estate to other persons. Testator possessed at the date of his will an undivided moiety in some thirty-seven acres of freehold land at D., ten & a half acres of which he had, in 1921, contracted to sell. He died in 1925, before the purchase had been completed, & owing to difficulties of title completion did not take place until Dec. 1925 :—*Held :* the will having been made after the date of the contract for sale, & with full knowledge of that contract, indicated an intention, as shown by the reference to proceeds of sale, to pass whatever estate testator had in the property, though it was only part of his freehold land at D., to the specific devisees.—*Re* CALOW, CALOW *v.* CALOW, [1928] Ch. 710 ; 97 L. J. Ch. 253 ; 139 L. T. 235 ; 72 Sol. Jo. 437.

942. *Add. Annotation :*—**Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

953. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

956. *Add. Annotations :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710. **Folld.** *Re* Carrington, Ralphs *v.* Swithenback, [1932] 1 Ch. 1.

956a. —— —— ——.]—By will made in 1911 testator specifically bequeathed his C. shares to certain relatives. In 1927, by agreement in writing, he granted to H. an option to purchase all his C. shares within one month of his death. He died in 1930, & H. exercised the option :—*Held :* the case was governed by the decisions in *Lawes* v. *Bennett*, No. 807, & *Weeding* v. *Weeding*, No. 956 ; the specifically bequeathed shares had therefore been adeemed, & the proceeds of their sale formed part of the residuary estate.—*Re* CARRINGTON, RALPHS *v.* SWITHENBANK, [1932] 1 Ch. 1 ; 100 L. J. Ch. 299 ; 145 L. T. 284, C. A.

957. *Add. Annotation :*—**Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

962. *Add. Annotation :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

963. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

964. *Add. Annotation :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

970. *Add. Citation :*—1 Coll. 80, n.

992. *Add. Annotation :*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1006. *Add. Annotation :*—**Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1007a. —— —— —— ——.]—In 1924, by an order of the Ch. Div. funds in ct. belonging to S., a person of unsound mind not so found, were invested in a freehold house as a residence for S. The order did not say whether the house was to be regarded as real or personal estate. The house was sold, pursuant to an order of the master in lunacy, in 1927, & the proceeds of sale were invested in 3½ per cent. Conversion Stock. S. died in 1928 a widower & without issue :—*Held :* the freehold house became the real estate of S., & that the proceeds of sale retained the character of real estate, & passed to the heir at law.—*Re* SILVA, SILVA *v.* SILVA, [1929] 2 Ch. 198 ; 98 L. J. Ch. 459 ; 141 L. T. 452.

1008. *Add. Annotation :*—**Folld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1034. *Add. Annotation :*—**Apld.** *Re* Price, [1928] Ch. 579.

1037. *Add. Annotation :*—**Consd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

1040a. —— ——.]—A husband by his will, directed the remainder of the produce of his real & personal estate to be placed out at interest, & the dividends & produce thereof to be paid to his wife during her life :—*Held :*

PART IX. SECT. 2, SUB-SECT. 3.—A.

925 iii. —— ——.]—M. having specifically devised certain land, entered into an agreement with the tenant of portion of the land that, in the event of the Irish Land Commission advancing £500 Guaranteed Land Stock to the tenant, the tenant would purchase, & he would sell, for that sum, & the agreement provided that the parties would execute the formal Land Commission agreement for sale on the terms of the agreement. M. died, & his exors. entered into a formal agreement with the tenant for sale at £500. & the sale was carried out :—*Held :* the land stock passed under the residuary clause in the will as personalty as & from the date on which the Land Commission agreed to advance the purchase money. —MILEY *v.* CARTY & MILEY, [1927] I. R. 641.—**IR.**

925 iv. —— ——.]—A testatrix who left a holograph will made abroad which was valid in Saskatchewan as to personal property owned real estate in Saskatchewan which she had agreed to sell, the agreement for sale being in full force & effect at her death :—*Held :* the interest of her estate in the agreement for sale must be regarded as personal property.—*Re* CASEY ESTATE, [1936] 1 W. W. R. 30.—**CAN.**

she was entitled to have all the property of testator, including the reversionary interest in the annuity, treated as converted at the time of testator's death.—JOHNSON *v.* ROUTH (1857), 27 L. J. Ch. 305; 6 W. R. 6.

Annotation :—**Refd.** Harrington (Countess) *v.* Atherton (1864), 4 New Rep. 206.

1049a. —— ——.]—Testator devised his real & personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years; but if they should sell part, to apply the proceeds to pay off his mortgage debts, & to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children, A., B. & C. in certain shares. The trustees declined to accept the trust. All the *cestuis que trust* then executed a deed of trust, by which they agreed to divide the property into two classes. Class 1 was to be sold immediately, to pay testator's debts. Class 2 was to be held by the trustees named, in trust for the purposes of the will, so far as not inconsistent with the trust deed, to pay the rents accruing to the parties as entitled under the will, & with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, & the proceeds divided as the will directed. B. died before the end of the nineteen years: —*Held :* (1) under the trust deed there was a conversion out & out of class 1 from the date of that deed; but that there was a conversion of class 2 only at the end of the nineteen years, or, if sold before that period, then at the time of such sale; & the intermediate rents of the part remaining unsold went to those entitled to the real estate; (2) *semble :* under the will taken by itself, there was no conversion till the end of the nineteen years of that part of the real property which was then unsold, any conversion possible before that period being only for a certain limited purpose, that is, to pay debts of testator.—FERRIE *v.* ATHERTON (1852), 20 L. T. O. S. 170, H. L.

1061a. —— **Discretion to sell immediately for limited purpose.**]—FERRIE *v.* ATHERTON, No. 1049a, *ante*.

1065. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1068a. ——.]—When property is given by will on trusts for conversion & investment, & to hold the investments on trust for a tenant for life & remaindermen, with a discretionary power to the trustees to postpone the conversion, & a provision that the income until conversion is to go to the tenant for life, that provision extends to property, such as a reversionary interest, which is not producing income as well as to property of a wasting character.

In adjusting the rights as between tenant for life & remaindermen in respect of a reversionary interest which ought to have been but has not been converted by trustees interest should be calculated at the rate of 3 per cent.—ROWLLS WALTERS *v.* TREASURY SOLICITOR, [1909] 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562; 44 Sol. Jo. 448, C. A.

Annotations :—**Consd.** *Re* Woods, Gabellini *v.* Woods, [1904] 2 Ch. 4; *Re* Baker, Baker *v.* Public Trustee, [1924] 2 Ch. **Refd.** *Re* Hargreaves, Hargreaves *v.* Hargreaves (1903), 86 L. T. 43; *Re* Whiteford, Inglis *v.* Whiteford, [1903] 1 Ch. 889; *Re* Beech, Saint *v.* Beech, [1920] 1 Ch. 40.

1079. *Add. Annotations :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

1180. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

1184. *Add. Annotation :*—**Follo.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

1187a. —— **Income & accumulation from land—Heir-at-law entitled.**]—By a codicil to her will, a testatrix left three-fourths of her residuary estate, subject to certain payments, upon trust to apply the income for the benefit, maintenance & support of her daughter, who was of unsound mind, & during the lifetime of her daughter to accumulate all the residue not applied under the discretionary trust by way of compound interest by investing the surplus income & the resulting income thereof in certain investments & for certain purposes mentioned in the codicil. Testatrix died in 1901, & in 1922, twenty-one years after her death, the trusts for accumulations determined, & as from that date they were held to be undisposed of. The question then arose whether: (*a*) the undisposed income & accumulations derived from the income of the residuary real estate; & (*b*) the income & accumulations derived from the income of accumulations of income of the real estate were divisible among the next-of-kin of the testatrix, or whether they went to the representative of her heir-at-law, who died in 1931 :—*Held :* the personal representative of the heir-at-law of the testatrix was entitled to (*a*) & (*b*).—*Re* WALPOLE, PUBLIC TRUSTEE *v.* CANTERBURY, [1933] Ch. 431; 102 L. J. Ch. 209; 148 L. T. 526.

1232. *Add. Annotation :*—**Consd.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

1268. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

1283a. Reconversion by foreclosure—Effect of Conveyancing Act, 1911 (c 37), s. 9—Intention to accept reconversion.]—Testator, who died in 1861, devised his real estate in strict settlement & empowered the trustees, with the consent of the tenant for life, to sell the same or any part thereof, & directed them with such consent to invest the proceeds of sale in the purchase of freehold land or in the public funds or on real securities to be respectively settled & held to & upon such uses & trusts corresponding as nearly as might be with the uses & trusts therein declared concerning the land sold, with power for the trustees from time to time with the like consent to vary such investments

PART IX. SECT. 3, SUB-SECT. 2.

1062 i. *Interest payable to tenant for life.*]—*Re* RUTHERFORD, [1933] 4 D. L. R. 222; O. R. 707.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 3.—Essa. *Settled Land Act*, 1882 (*c.* 38), *s.* 22 (*5*)—*Construction.*]—*Held :* this sub-sect. by its terms applies in favour of persons for, & to whom, the land, if not disposed of, would have been held & gone under the settlement. Once the beneficial interest has become absolutely vested in possession in a remainderman, the settlement has come to an end, & any subsequent devolution from such remainderman cannot be said to be under the settlement.—BENNETT *v.* LUCAS, [1929] I. R. 606.—**IR.**

In the events which happened the material limitations of the will resulted as follows To the use of E., T. & J. successively for life in the order named, with remainder to the use of E., T. & J. as tenants in common in tail general, with cross-remainders between them in tail general, with remainders over. In 1867 part of the land was sold & the proceeds invested in mtge. of freehold land. In 1871 E. died leaving an only daughter. In 1881 T. died a bachelor. In 1898 the surviving trustee foreclosed, & in 1899, by a deed appointing a new trustee to which J. was party, the foreclosed land was conveyed to the uses & upon the trusts of the will as if the same had been thereby specifically devised. On the death of J. in 1916 without issue, his executrix, who was also executrix of T., claimed that the foreclosed land in fact represented personalty & was subject to a trust for sale by Conveyancing Act, 1911 (c. 37), s. 9, & that she was entitled to two-thirds of the proceeds. The only daughter of E. claimed the foreclosed land as tenant in tail under the limitations of the will, E., T. & J. never having disentailed :—*Held :* (1) owing to the power to vary investments, the crucial time for determining the character of each investment was the death of J., the surviving tenant for life, & that the mtges. having been then foreclosed the mere foreclosure operated as a reconversion of the property into realty, & that there was no equity on the part of any *cestui que trust* under the will to have the personal character of the investment restored to it ; (2) by the deed of 1899, to which all the parties able to control the character of the investment of the trust fund were parties, the foreclosed land was duly adopted as real estate & settled to the uses of the will ; (3) although Conveyancing Act, 1911 (c. 37), s. 9 (5), may apply to land foreclosed before the commencement of the Act & remaining at the passing of the Act in the condition determined by the foreclosure, it would be unreasonable to extend the retrospective operation of the section to a case like the present where previously to the commencement of the Act the foreclosed land had been definitely accepted & settled as land & rights acquired thereby ; (4) even if, by virtue of sub-sect. 5, Conveyancing Act, 1911 (c. 37), s. 9, was to be deemed to apply to foreclosed lands as from the date of foreclosure, the terms of both sub-sects. 3 & 4 had in the present case been complied with sufficiently to prevent the reconversion of the land into money under sub-sects 1 & 2 ; (5) the foreclosed land had become legally vested in the daughter of E. in tail as the heir in tail of E.—*Re* BOGG, ALLISON *v.* PAICE, [1917] 2 Ch. 239 ; 86 L. J. Ch. 536 ; 116 L. T. 714.

Annotation :—Generally, **Refd.** *Re* Twopeny, Monro *v.* Twopeny (1924), 130 L. T. 816.

1290. Add. citation :—
affg. S. C. *sub nom.* COOKSON *v.* REAY (1842), 5 Beav. 22.

1296. *Add.- Annotation :*—**Refd.** *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

1316a. Contingent reversionary interest—In personalty.]—Testator, who was entitled in reversion expectant upon the determination of his wife's interest &, contingently upon no issue of the marriage living to attain a vested interest, to the proceeds of sale of certain real estate conveyed by him, upon his marriage in 1880, to trustees upon trust for sale, died in 1886 in his wife's lifetime, having devised the real estate, which had remained unsold, to the use of his wife for life with remainders over by way of legal limitations in strict settlement. There was no issue of the marriage. The real estate was not sold in the lifetime of the wife, who accepted the benefits under her husband's will & died in 1921 :—*Held :* inasmuch as at his death testator's interest was a contingent reversionary interest in personalty, contingent upon the event of no posthumous child being born who might attain a vested interest, & reversionary because it was expectant upon his wife's life interest, testator was not competent to effect a reconversion by his will, because he never became entitled to an absolute interest in the property before his death, & the property passed under his will as personalty.—*Re* STURT, DE BUNSEN *v.* HARDINGE, [1922] 1 Ch. 416 ; 91 L. J. Ch. 289 ; 126 L. T. 460 ; 66 Sol. Jo. 236.

1410. *Add. Annotation :*—**Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

Part X.—Election.

1419. *Add. Annotation :—As to* (2) **Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1424a. —— Legacy to heir-at-law—Will inoperative to pass real estate.]—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law :—*Held :* supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—FARQUHARSON *v.* COLVILLE (LORD) (1772), Rom. 129, L. C.

PART IX. SECT. 9, SUB-SECT. 2.—A.

1284 i. *Election by person absolutely entitled.*]—Although there may be a trust for conversion, the beneficiaries may, if absolutely entitled, elect to take the property in its actual state.—CRAWFORD *v.* LUNDY (1876), 23 Gr. 244.—CAN.

PART IX. SECT. 9, SUB-SECT. 2.—E. (c).

1349 i. *Election on behalf of infant—By court.*]—Where circumstances make it highly advantageous for an infant devisee, an order will be made on his behalf granting election, to take property in its actual state before its conversion *de facto* where the will directs conversion.—*Re* CANN (1916), 34 W. L. R. 296 ; 10 W. W. R. 447 ; 26 Man. L. R. 285.—CAN.

1428a. —— ——.]—GAINER *v.* CUNYNGHAM (1750), 1 Bli. 27, n.; 4 E. R. 10, L. C.

Annotation :—**Consd.** Ker *v.* Wauchope (1819), 1 Bli. 1.

1438a. —— ——.]—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held :* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.

1462. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings (Parochial Church Council), [1933] Ch. 244.

1516a. Two claims under marriage settlement—One claim statute-barred but satisfied by legacy in will—Other claim ignored by will.]—A testator by a settlement made on his first marriage in 1884 covenanted (*a*) that he would take out a policy of insurance of £2,000 payable on his death to the trustees of the settlement, & (*b*) that he would by his will bequeath to the same trustees all his interest in every copyright to which he was entitled. Testator never took out a policy of insurance, but by his will he bequeathed to the trustees of the settlement £2,000 in full satisfaction of all obligations arising out of the covenant to effect such a policy, & he left the residue of his property, which included the copyrights, by way of a general bequest to his widow, who was a second wife & not a party to the marriage settlement. Testator died in 1935, & a summons was taken out to determine whether the trustees of the settlement could claim both the £2,000 under the will & an assignment to them of the copyrights or damages in lieu thereof, or whether they were put to their election between the two claims :—*Held :* (1) the covenant applied to all copyrights to which testator was entitled at the date of his death; (2) if the trustees claimed the benefit under the will, they ought on the general principles of election to give effect to the whole will, including testator's plain intention that the copyrights should not go to them, although any remedy upon the covenants in the marriage settlement was statute-barred.—*Re* FLETCHER'S SETTLEMENT TRUSTS, MEDLEY *v.* FLETCHER, [1936] 2 All E. R. 236; 80 Sol. Jo. 486.

1552a. Provision for forfeiture in case of dispute—Election.]—*Re* WHITWELL, SENIOR *v.* WILSON, [1890] W. N. 171.

Annotation :—**Refd.** Haynes *v.* Foster, [1901] 1 Ch. 361.

1578a. ——.]—Where successive irrevocable appointments are made in favour of the same person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.—ENGLAND *v.* LAVERS (1866), L. R. 3 Eq. 63; 15 W. R. 51.

Annotations :—**Expld.** *Re* Tancred's Settlmt., Somerville *v.* Tancred, *Re* Selby, Church *v.* Tancred, [1903] 1 Ch. 715. **Refd.** *Re* Eardley's Will, Simeon *v.* Freemantle, [1920] 1 Ch. 397.

1580a. Appointment to object within extent of power—No object in fact in existence—No election.]—BULWER *v.* HOARE (1825), 3 L. J. O. S. Ch. 227.

1581a. Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.]—*Re* STEVENS (1912), 134 L. T. Jo. 83.

1619a. —— **Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.**]—CROKER *v.* MARTIN (1827), 1 Bli. N. S. 573; 1 Dow. & Cl. 15; 4 E. R. 987, H. L.

Annotation :—**Consd.** Anstey *v.* Newman (1870), 39 L. J. Ch. 769.

1637a. —— —— ——.]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands :—*Held :* the heir was not bound to elect.—BACK *v.* KETT (1822), Jac. 534; 37 E. R. 952.

Annotations :—**Consd.** Churchman *v.* Ireland (1831), 1 Russ. & M. 250. **Refd.** Schroder *v.* Schroder (1854), 3 Eq. Rep. 97; Hance *v.* Truwhitt (1862), 2 John. & H. 216.

1643a. Bequest of debt to mortgagor—Devise of reversion in property mortgaged.]—Testator having a debt secured on lands, gives the mtge. money to the mtgor., & desires that he will give a reversionary interest therein to a third person. The mtgor. selling the estate shall bring the mtge. money into ct., for the use of the devisee, subject to the life estate.—LEWIS *v.* KING (1789), 2 Bro. C. C. 600, 29 E. R. 330, L. C.

Annotation :—**Consd.** Whittaker *v.* Whittaker (1792), 4 Bro C. C. 31.

1724. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

PART X. SECT. 2, SUB-SECT. 1.—B. (e).

so. *Income of estate left to widow by will for life—Widow's property left after her death to son by codicil—Income received by widow till will & codicil proved—Liability of widow on election against will.*]—Testator by his will left the income of his estate to his wife for life, & directed that after her death it should be disposed of as set out in a codicil, not to be opened until after her death. By the codicil he disposed of all his estate among his children, giving to two of them, after the death of his wife, a certain property, which in reality belonged to her. His widow, without proving the will, received all the income of the estate for five years after the lapse of which the will & codicil were proved. She then elected against the will :—*Held :* her election related back to, & she was liable to account from, the date of testator's death; but, as she was not called upon to elect until this action was brought, she should not be charged with interest in the meantime.—DAVIS *v.* DAVIS (1896), 27 O. R. 532.—CAN.

PART X. SECT. 3, SUB-SECT. 9.

sp. *Widow taking different interests under will.*]—Under S.'s will his widow took absolutely thirty-four acres devised to her worth $1,000; she also took for life his house & lot garden worth about $1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land, worth about $3,500, & at the widow's death took "the house & lot & garden" also :—*Held :* the widow was not put to her election.—*Re* SEXSMITH (1925), 57 O. L. R. 283.—CAN.

sq. *Gift of legacy & maintenance to son—Gift of mortgage debt to mortgagor—Mortgage debt previously assigned to son.*]—ROSBOROUGH *v.* ST. ANDREW'S CHURCH, THE TRUSTEES OF (1917), 55 S. C. R. 360, 38 D. L. R. 119.—CAN.

sr. *Preferred beneficiary under policy—Election between policy & will.*]—A wife who is a preferred beneficiary under Insurance Act, R. S. O., 1927, cannot be compelled to elect between the policy & her husband's will.—*Re* MULLISS, [1933] 3 D. L. R. 573; O. R. 638.—CAN.

PART X. SECT. 7, SUB-SECT. 2.

1691 ii. —— ——.]—P. in Feb. 19 .1, conveyed certain lands to a trust co., & by a declaration of trust of even date,

Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation :*—**Folld.** *Re* Ware, Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1769. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1772a. ——.]—WALPOLE *v.* CONWAY (LORD) (1740), Barn. Ch. 153 ; 27 E. R. 593, L. C.

Annotations :—**Distd.** Tolson *v.* Collins (1799), 4 Ves. 483. **Apld.** Douglas *v.* Willes (1849), 7 Hare, 318. **Refd.** Kirkham *v.* Smith (1749), 1 Ves. Sen. 258.

1840. *Add. Annotation :*—**Distd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1873. *Add. Annotation :*—**Apld.** *Re* Ware, Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873a. —— ——.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father ; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement ; in such a case the intention to advance is a question of evidence.—BENNET *v.* BENNET (1879), 10 Ch. D. 474 ; 40 L. T. 378 ; 27 W. R. 573.

Annotation :—**Refd.** *Re* Orme, Evans *v.* Maxwell (1883), 50 L. T. 51.

1873b. —— ——.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will :—*Held :* the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—*Re* WARE, *Re* ROUSE, WARE *v.* ROUSE (1926), 70 Sol. Jo. 691.

1878. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1894a. ——**Funds transferred by trustees—In pursuance of appointment & surrender of life interest.**]—Funds transferred by the trustees of a marriage settlement to a son in pursuance of an appointment in his favour made by his father in exercise of a special power of appointment amongst his children & of a surrender of the father's life interest, are not money or property by way of advancement paid to the son by the father within Administration of Estates Act, 1925 (c. 23), s. 47 (1) (iii), & are not liable to be brought into account in or towards satisfaction of that son's share in the estate of the father upon the father's death intestate. Even assuming the life interest of the intestate in the appointed share of the settlement funds surrendered by him to the appointee to be money or property paid by way of advancement within clause (iii) aforesaid, in view of the fact that the value of that life interest to be brought into account under that clause has to be reckoned as at the date of the death of the intestate & therefore could be of no value, the surrender could have no effect upon the proposition first above stated.—*Re* REEVE, REEVE *v.* REEVE, [1935] Ch. 110 ; 104 L. J. Ch. 101 ; 152 L. T. 254.

1895a. ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

1912. After this case add :—

——.]—*See, now,* Administration of Estates Act, 1925 (c. 23), s. 49 (a).

1918a. ——.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—BRIDGES *v.* HALES (1729), Mos. 108 ; 25 E. R. 298, L. C.

1920a. ——.]—BRIDGES *v.* HALES, No. 1918a, *ante*.

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accepted by the trust co., declared certain trusts upon which the lands were to be held. P.'s wife was to have a life interest in three of the parcels conveyed, & certain other benefits, & at her death the property was to be distributed among P.'s children ; this life interest was to be in lieu of dower in all P.'s lands. On Feb. 21, 1921, P., by letter, requested the trust co. to sign a declaration of trust to the effect that it held one of the parcels of land conveyed to it, in which the wife was given a life interest, in trust, for payment to an investment society of $7,500 " which pays off the loan on stock for that amount held by my wife," & this the trust co. did. By P.'s will, made on the date of the execution of the conveyance & declaration, he appointed the trust co. his exor. & trustee. The wife took nothing under the will. P. died in July, 1921. In Jan. 1923, the trust co. made a mtge. in favour of an assurance co. upon three of the properties in which the widow claimed a life estate, to secure repayment of a large sum of money which was advanced to the trust co. & which the trust co. applied in paying off loans made to P. In an action by the widow against the assurance co. for a declaration as to her rights under the trust deed & declaration & for other relief :—*Held :* pltf. having taken & continued in possession of the properties in which she claimed to have a life interest, had elected to take the benefits given to her by the trust deed & declaration, & was, therefore, tenant for life of the three properties referred to.—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679 : 63 O. L. R. 12 ; *affd. sub nom.* FIDELITY TRUST CO. OF ONTARIO *v.* PURDOM & NORTHERN LIFE ASSCE. CO. OF CANADA, [1930] S. C. R. 119 ; 1 D. L. R. 1003.—**CAN.**

PART XI. SECT. 1.

1743 l. *Satisfaction defined.*]—Satisfaction is the donation of a thing, with the intention, either expressed or implied, that it is to be taken, either wholly or in part, in extinguishment of some prior claim of the donee. The doctrine has no application to cases where the prior portion has actually been transferred or paid.

One whose life was insured assigned to his son a portion of the insurance moneys $1,000, in consideration of an undertaking by the son to advance from time to time moneys necessary to pay parts of the premiums. Subsequently the insured made his will by which he gave to his son $1,000 " out of the money payable at my death out of my life insurance policy " :—*Held :* the $1,000 given by the will could not be regarded as a satisfaction of the $1,000 assigned to the son.—*Re* MARKS (1921), 64 D. L. R. 516 ; 60 O. L. R. 473.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—A. (a).

sr. *By payments to legatee—In testator's lifetime.*]—*Held :* a sum of money paid by testator to persons to whom he had bequeathed one-half of his effects, was an anticipated payment of their provision, & not a donation.—BUCHANAN *v.* CRAWFORD (MOLLISON) (1824), 2 Sh. Sc. App. 445. —**SCOT.**

PART XI. SECT. 3, SUB-SECT. 3.—C.

1902 l. *In respect of realty.*]—DOE d. SHORE *v.* SAUNDERS (1842), 2 Kerr, 18. —**CAN.**

2006a. ——.]—The principle deducible from the dictum of the Ct. of Appeal expressed in *Re Scott, Langton* v. *Scott*, No. 1840, namely that, in the distribution of a testator's estate amongst his children & the children of deceased children, children claiming to take by substitution the share of their deceased parent must bring into account an advancement made by testator, in his lifetime to their parent, is not applicable to the case of a parent's indebtedness to testator; so that, where a testator gave his residuary estate in trust for his children living at the period of distribution & the children of any child then dead, grandchildren are not liable, upon claiming their deceased parents' share, to bring into account a debt owing by the parent to testator's estate.—*Re* BINNS, PUBLIC TRUSTEE *v.* INGLE, [1929] 1 Ch. 677; 98 L. J. Ch. 307; 141 L. T. 91.

2009. *Add. Annotation :*—**Consd.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2012. *Add. Annotation :*—**Mentd.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 345.

2046a. —— **Although interest unpaid at date of death.**]—A person, who borrowed £100 carrying interest at 5 per cent. *per annum*, by his will left a legacy of £100 free of duty to his creditor. The will did not contain any direction to pay debts. At the date of the debtor's death there was interest due & unpaid in respect of the debt. The exors. of the deceased paid the creditor the amount of the legacy & interest on the debt, up to the date of payment. The creditor then sued for the amount of the debt :—*Held :* the rule, that a legacy to a creditor of an amount equal to or greater than the debt owed by the testator to the creditor operated as a satisfaction of the debt, applied notwithstanding that there was interest due & unpaid in respect of the debt at the date of testator's death.—FITZGERALD *v.* NATIONAL BANK, LTD., [1929] 1 K. B. 394; 98 L. J. K. B. 382; 140 L. T. 406.

2047a. —— **Bequest antecedent to debt.**]—ROBERTS *v.* BENNET (1690), 2 Vern. 136; 23 E. R. 695.

Annotation :—**Refd.** Northcote *v.* Northcote (1702), Colles 287, H. L.

2057a. —— **Although interest unpaid at date of death.**]—FITZGERALD *v.* NATIONAL BANK, LTD., No. 2046a, *ante*.

2075a. ——.]—*Re* SHAFTO, FAWCETT *v.* SHAFTO (1903), 48 Sol. Jo. 68, C. A.

2102a. ——.]—HOBBS *v.* TAITE (1738), West *temp.* Hard. 582; 25 E. R. 1096, L. C.

Annotation :—**Consd.** Wallace *v.* Pomfret (1805), 11 Ves. 542.

2138. *Add. Citation :*—3 Bro. C. C. 242.

2188a. —— ——.]—KEMP (LADY) *v.* KEMP (1671), 2 Rep. Ch. 63; 21 E. R. 617.

2224. *Add. Annotation :*—*Generally*, **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

Part XII.—Performance.

2280a. —— —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

2291. *Add. Annotation :*—**Folld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2294a. Covenant by tenant for life—To pay money to trustees—Expenditure on improvement of trust property.]—The tenant for life under a settlement voluntarily expended monies in erecting necessary buildings on the trust property. He also paid the expenses of the investment of the trust funds in land: *Held :* his exors. could not set off this outlay as a satisfaction *pro tanto* of a covenant, on his part, to pay £3,000 to the trustee of the settlement.—HORLOCK *v.* SMITH (1853), 17 Beav. 572; 23 L. J. Ch. 962; 22 L. T. O. S. 232; 2 W. R. 117; 51 E. R. 1157.

PART XI. SECT. 4, SUB-SECT. 2.—A.

2037 ii. —— ——.]—A testator by his will, after directing the payment of all his just debts, appointed F. to be one of his three exors. & trustees, & went on to declare that F. should "be paid out of my estate the debt or sum of money owing by me to him the amount of which the said F. will disclose to my other trustees." F. renounced probate & lodged with the exors. a statement of the amount of his claim :—*Held :* the words of the will did not create a legacy, but the testator's purpose was to acknowledge that he was indebted to F. in an uncertain amount & that F. was entitled to payment of the sum which he named as owing, without further investigation or inquiry on the part of the exors.]—FITZPATRICK *v.* GILBERT, GILBERT *v.* FITZPATRICK, 22 Tas. L. R. 29.—**AUS.**

PART XI. SECT. 4, SUB-SECT. 3.—B.

2069 i. *Addition to annuity.*]—COLE *v.* COLE (1838), 5 O. S. 744.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 3.—G.

2102 i. *Presumption of satisfaction rebutted.*]—A legacy to a creditor equal to or greater than the debt owing him by the testator is presumed to be a satisfaction of the debt, but this presumption will be rebutted by slight circumstances, either appearing in the will or incident to the nature of the debt & of the legacy. A simple direction to pay debts is sufficient to rebut the presumption, *a fortiori* a direction, as in this instance, to pay debts & "thereafter" legacies.—SPARROW *v.* ROYAL TRUST CO., [1932] 1 W. W. R. 379; 40 Man. L. R. 211.—**CAN.**

PART XI. SECT. 5.

sj. *Separation agreement providing for support of infant son—Provision in will for support.*]—By a separation agreement the husband agreed to pay the wife a certain sum *per annum* for "support & otherwise" of their child until it should become self-supporting or attain majority or leave the custody of the wife; & she agreed to accept said sum in full settlement of all claims which she then had or might thereafter have for the support & otherwise of the child. By his will executed four years later, which disposed of all his property, the husband directed his trustees to pay the income of the residue of his estate "towards the maintenance & education of" said child "during his minority" :—*Held :* said provision in the will was in substitution for, & not in addition to, that in the agreement; & the wife had an election between them, but was not entitled to both.—Ross *v.* Ross, [1930] 1 W. W. R. 375; 2 D. L. R. 42; *sub nom.* Ross *v.* FOSSUM & TORONTO GENERAL TRUSTS CO., 42 B. C. R. 272.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 2.

sk. *Failure to pay contributions—Joint venture—Whether abandonment.*]—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286 22 Sask. L. R. 253.—**CAN.**

PART XIII. SECT. 3.

sv. *General rule.*]—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—ROYAL BANK OF CANADA *v.* IZEN, [1921] 2 W. W. R. 929.—**CAN.**

Part XIV.—Merger of Estates and Charges.

2345. *Add. Annotation :*—**Apld.** Symons Southern Ry. Co. (1935), 153 L. T. 98.

2348. *Add. Annotation :*—**Apld.** Symons Southern Ry. Co. (1935), 153 L. T. 98.

2367a. —— ——.]—NORFOLK *v.* GIFFORD (1690) 2 Vern. 208 ; 23 E. R. 735.

2373a. —— ——.]—Where under a marriage settlement the trusts of the wife's property were for the wife for her life & after her death for the husband for his life, with a common form protected life interest proviso in respect of the husband's interest, & the usual trusts for the issue of the marriage, with a gift over in default of issue, which event happened, as the wife should by deed or will appoint with an ultimate trust for next of kin, & the wife died & her will operated as an exercise of the power of appointment in the husband's favour, on an application by the husband to have the trust transferred to him on the ground of merger of his interests :—*Held :* there had been no merger of the husband's life estate in the reversion, because the two estates were not coterminous, & an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.—*Re* CHANCE'S SETTLEMENT TRUSTS, CHANCE *v.* BILLING (1918), 62 Sol. Jo. 349.

2379. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

2395. *Add. Annotation :—As to* (2) **Distd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

2397. *Add. Annotations :—As to* (2) **Consd.** *Re* Chesters, Whittingham *v.* Chesters, [1934] W. N. 174. **Foll.** *Re* Chesters, Whittingham *v.* Chesters, [1935] Ch. 77.

2399a. ——.]—When a tenant for life in remainder pays off a mtge. on the property the mtge. is, in the absence of evidence of a contrary intention, kept alive for his benefit.—*Re* CHESTERS, WHITTINGHAM *v.* CHESTERS, [1935] Ch. 77 ; 104 L. J. Ch. 65 ; 152 L. T. 210 ; 78 Sol. Jo. 634.

Part XV.—Subrogation.

2424. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

Part XVII.—Equitable Relief in Cases of Fiduciary Relationships.

SECT. 1.—**THE FIDUCIARY CHARACTER.**

(p. 521.)

2478a. Agreement to form club—One party to engage other as secretary.]—MITCHELL *v.* ALEXANDER (1935), 79 Sol. Jo. 381. C. A.

PART XV.

2424 l. *Definition.*]—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by way of getting in a security, or the like. —COURSOLLES *v.* FOOKES (1889), 16 O. R. 691.—**CAN.**

ax. *Whether doctrine applicable to volunteer paying debt.*]—Subrogation is never applied in aid of a mere volunteer who pays the debt of another.—CAMPBELL AUTO FINANCE CO., LTD. *v.* WARREN, [1933] O. R. 774 ; 4 D. L. R. 509.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—A.

2428 l. *What is a penalty—Goods delivered under hire-purchase agreement —Right to seize goods on failure to pay instalment.*]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due, but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract :—*Held :* the clause of the agreement which enabled the owner to seize the truck, & keep it without making any payment to the hirer even though the value of the truck may be very greatly in excess of the amount due under the agreement, was a stipulation by way of penalty which the ct. can relieve against under Contract Act, s. 74.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

PART XVI. SECT. 1, SUB-SECT. 2.—C.

sw. *Discount for prompt payment.*]—*Held :* a penalty, & relief granted.—COLGROVE *v.* GUNDY (1914), 28 W. L. R. 731 ; 17 D. L. R. 45.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—D.

1i. —— ——.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—*Re* STANLEY & BUNTING, [1924] 3 D. L. R. 599 ; 5 C. B. R. 18.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sz. *Penalty being reservation only of existing legal right—Relief not granted.*] —BOLAND *v.* MCCARROLL (1876), 38 U. C. R. 487.—**CAN.**

Part XVIII.—Equitable Defences.

2483. *Add. Annotation :*—**Apld.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

2489a. ——.]—WHALLEY *v.* WHALLEY (1860), 2 De G. F. & J. 310 ; 45 E. R. 641, L. JJ.

2490. *Citations :*—For " 3 Bro. C. C. 646 " read " 3 Bro. C. C. 639, n."

Add. Annotation :—As to (2) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation :—As to* (1) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations :—As to* (4) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2513. *Citations :*—For " L. R. 5 C. P. 221 " read " L. R. 5 P. C. 221."

Add. Annotations :—As to (2) **Apld.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2520. *Add. Annotation :*—**Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2521. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2525. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2527. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; Queen Anne's Bounty *v.* Blacklocks' Executors, [1934] 1 K. B. 599.

2552. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

2554. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

Part XIX.—Ne exeat regno.

2637a. —— ——.]—A.-G. *v.* MUCKLOW (1815), 1 Price, 289 ; 145 E. R. 1405.

2667a. Not residuary legatee.]—A residuary legatee cannot have a writ of *ne exeat regno* against a debtor of testator, on the ground that he colludes with the exor.—GRAVES *v.* GRIFFITH (1820), 1 Jac. & W. 646 ; 37 E. R. 514, L. C.

Part XX.—Quia Timet Actions.

2702a. Nature of action.]—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290 ; 97 L. J. Ch. 111 , 138 L. T. 354, C. A.

2703. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

2705. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

2705a. Threatened injury to property by waterworks.]—It is open to the owners of property threatened with injury by authorised waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600 ; 71 Sol. Jo. 681 ; *affd.* on another point, [1928] Ch. 235, C. A. ; [1929] A. C. 344, H. L.

2710. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2712. *Add. Annotations :*—**Consd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2713. *Add. Annotations :*—**Refd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793.

2713a. Threatened disclosure of confidential information.]—The manager of deft. cos. endeavoured by dishonest means to procure for his cos. information to which they had no right whatever. He had attempted to secure this information from employees of pltf. co., but the attempts were unsuccessful. These employees were under stringent service agreements, prohibiting them from disclosing confidential matters. Pltfs. & defts. were interested in television, & pltfs. were a research co., going through the preparatory stages in order to perfect & render commercial a method of television which had not yet reached a commercial stage. The disclosure of the information to defts. would have caused pltfs. irreparable damage. Pltfs. prepared a draft letter complaining of these matters, which was shown to defts., & the latter promised that the attempts should cease ; but whatever was done proved quite ineffective to stop such attempts. Pltfs. then issued the writ in this action asking for an injunction to restrain defts. & their

servants & agents from making such attempts:—*Held:* (1) it being proved that defts. through their manager were wrongfully endeavouring to persuade employees of pltfs. to disclose information, & that such disclosure would cause irreparable damage to pltfs., the latter were entitled to the injunction asked for, although such attempts had been wholly unsuccessful; (2) pltfs. were not under any duty to take any further steps before issuing the writ in this action; (3) it was no answer to the claim for an injunction that the manager who made the attempts was now employed by defts. in a different capacity. The important fact was that he was still in their employment.—SCOPHONY, ... *v.* TRAUB, [1937] 4 All E. R. 279; 81 Sol. Jo. 981, C. A.

ESTATE AND OTHER DEATH DUTIES.

Part I.—In General.

1. *Add. Annotations :—As to* (1) **Refd.** Straits Settlements Comr. of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378. *As to* (2) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

Part II.—Estate Duty.

19. *Add. Annotation :—Generally,* **Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

22a. —— ——.] — Testator bequeathed "B. House & contents" & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed "the rent, outgoings, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate." C. having died, was succeeded as tenant for life by L. :—*Held :* (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1 ; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs. ; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House. —*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, [1927] 2 Ch. 275 ; 96 L. J. Ch. 483 ; 137 L. T. 785 ; 43 T. L. R. 743 ; 71 Sol. Jo. 804.

Annotations :—As to (1) **Consd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327 ; Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. *As to* (2) **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

26. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** De Trafford *v.* A.-G., [1935] A. C 280 ; Scott *v.* I. R. Comrs., [1937] A. C. 174. *As to* (3) **Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. *Generally,* **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

27. *Add. Annotations :—As to* (1) **Apld.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275. **Folld.** De Trafford *v.* A.-G., [1935] A. C. 280. **Appld.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393. **Refd.** Parr *v.* A.-G., [1926] A. C. 239 ; Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286. *As to* (5) **Consd.** Parr *v.* A.-G., [1926] A. C. 239 ; Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129 ; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268 ; Scott *v.* I. R. Comrs., [1935] Ch. 246 ; A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. *Generally,* **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

27a. **Interest passing free from liability to pay annual sum.**]—At the date of the order of the Chancery Div. hereinafter mentioned an estate of great value consisting of real property, invested funds, & policies of insurance was by a deed of resettlement &

PART II. SECT. 3, SUB-SECT. 1.—A.

d i. ——.]—A testator directed his trustees to divide the balance of the annual income of his estate into ten equal shares, & (*inter alia*) to pay one such share to each of his four daughters during their respective lives, & further, on the death of any daughter leaving issue, to apply her share for her issue. Testator further directed that, after the death of his widow, the amount payable in respect of each of these shares was not to exceed £600 *per annum*. One of the four daughters, who survived testator, predeceased his widow leaving issue. At the time of the daughter's death her one-tenth share of income amounted to £2,800 *per annum*. The trustees having been assessed to estate duty upon one-tenth of the trust estate, they & the daughter's exors. petitioned for recall of the assessment. Petitioners maintained that, on the daughter's death, a passing of property, within Finance Act, 1894, s. 1, had taken place, & that, the daughter's interest in income being restrictable upon the widow's death to £600, the principal value of the property passing on her death fell to be estimated, under sect. 7 (5) of the Act, upon an actuarial basis :—*Held :* the case was one in which property passed on the death of the daughter within sect. 1, & the property which passed was the property which produced the one-tenth share of the income which she enjoyed immediately before her death, & which immediately thereafter became applicable for the benefit of her issue, no account falling to be taken of the circumstance that the beneficiaries' interest in the property was restrictable on the death of testator's widow.—DUNDERDALE'S TRUSTEES *v.* INLAND REVENUE, [1936] S. C. (H. L.) 20.—SCOT.

ss. *Licence—& interest in licensed premises.*]—The interest of a deceased person in the business carried on in licensed premises leased from him & in the license thereof is "property" within Death Duties Act, 1909, s. 5, [illegible]

N. Z. L. R. 61.— [illegible]

sb. *Provincial bonds exempt from succession duty.*]—Alberta provincial bonds, exempt from succession duty, must be included in the net value of an estate in order to arrive at the pe[illegible] benenciary, but such [illegible] make the amount of the bonds [illegible]

two private Acts of Parliament vested in trustees for the life of Sir H. F. de T., the late baronet, to uses for raising £250,000 for portions for the late baronet's younger children & subject thereto to the use of Sir H. E. de T., the present baronet, for life with remainder to his first & other sons in tail male; & it was provided that the annual income of the estate should during the life of the late baronet be held & applied by the trustees in making certain payments & among them a payment of an annual sum of £8,000 to the present baronet during the joint lives of the late baronet & the present baronet; furthermore, the present baronet was authorised to charge the estate with sums amounting to £50,000, not to be raised or paid during the life of the late baronet. The late baronet exercised to its full extent his power of appointing portions for his younger children by various deeds poll charging the estate with various sums to be raised & paid after his death. The present baronet borrowed from the trustees sums amounting to £50,000 &, in pursuance of the authority above mentioned, charged the estate with payment thereof after the death of the late baronet. By an order of the Chancery Div. dated July 28, 1928, & referred to above, the trustees were empowered to raise & pay in the lifetime of the late baronet the two sums of £250,000 & £50,000. At some time after Aug. 15, 1928, the £250,000 was accordingly raised & paid as portions to the younger children of the late baronet, & the £50,000 was treated as repaid to the trustees. On Jan. 10, 1929, the late baronet died. On an information by the A.-G. claiming estate duty at the appropriate rate under Finance Act, 1894 (c. 30), s. 1, in respect of the principal value of the estate as property passing on the death of the late baronet, including the sums of £250,000 & £50,000 as property deemed to have passed thereon under Finance Act, 1900 (c. 7), s. 11, as amended by Finance (1909-10) Act, 1910 (c. 8), s. 59 (1), the trustees contended that they were entitled to deduct from the estate alleged to pass: (1) a principal sum sufficient to produce a yearly sum of £8,000, being the yearly sum payable to the present baronet immediately before the death of the late baronet; (2) the two sums of £250,000 & £50,000 mentioned above:—*Held:* (1) the property passing on the death of the late baronet included the principal sum sufficient to produce the yearly £8,000 inasmuch as the yearly sum ceased to be payable on the death of the late baronet; (2) the sums of £250,000 & £50,000 fell within the words of the 1900 Act, s. 11, as amended by 1910 Act, s. 59 (1), being sums in which the trustees had an interest limited to cease on the death of the late baronet, which had been surrendered within three years before the death for the benefit of persons entitled to an interest in reversion, & which therefore were deemed to pass on the death of the late baronet.—DE TRAFFORD *v.* A.-G., [1935] A. C. 280; 104 L. J. K. B. 396; 153 L. T. 17; 51 T. L. R. 298; 79 Sol. Jo. 194, H. L.

Annotation:—As to (1) **Refd.** Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286.

27b. Restricted estate under protective trust—Lands passing to tenant in tail.]—By a deed of settlement made in July, 1889, the Fifth Earl of C. & his eldest son settled the C. Estates to the use of the eldest son as tenant for life with remainder to the use of his sons successively in tail male & in default of such issue to the use of the second son of the said Fifth Earl for life with remainder to the use of his sons successively in tail male with remainders over. In 1893 the Fifth Earl bought the life estate of his said second son, & this interest was conveyed to trustees their heirs & assigns for the life of the said second son upon discretionary trusts in favour of the said second son, his wife & his children or remoter issue &, subject to this trust, upon trust to accumulate the surplus of the rents & profits, invest it, & apply the proceeds in discharging debts or incumbrances upon the estates, with a proviso limiting the duration of this trust. In 1908 the eldest son of the Fifth Earl died. In 1910 the only son of that son died. In 1915 the Fifth Earl died & was succeeded by his said second son as Sixth Earl & the life estate of the Sixth Earl became an estate in possession. In 1933 the Sixth Earl died & was succeeded by his only son as Seventh Earl & tenant in tail male in possession of the estates:—*Held:* estate duty became payable on the death of the Sixth Earl when the property passed to the Seventh Earl & his estate became an estate in possession instead of an estate in remainder; he then became entitled to receive the whole income of the property which was formerly applicable for the benefit of the objects of the discretionary trust, & it mattered not that he was himself one of the objects of that trust.—SCOTT & COUTTS & CO. *v.* INLAND REVENUE COMRS., [1937] A. C. 174; [1936] 3 All E. R. 752; 106 L. J. Ch. 36; 156 L. T. 33; 53 T. L. R. 130; 81 Sol. Jo. 12, H. L.

Annotation:—**Refd.** Burrell & Kinnaird *v.* A.-G. [1937] A. C. 286.

27c. Discretionary trust for payment to class—Death of member of class—Trust for payment to new class.]—A testator devised all his real property to trustees in fee simple upon trust in their absolute discretion to pay a yearly allowance of such amount as the trustees should think fit to his son H. for life or to pay or apply the same for the benefit of H. or his wife or children or other specified persons & after the death of H. in trust for the first & other sons of H. successively in tail male; & in default of such issue to pay to his son R. during his life a similar yearly allowance & after the death of R. in trust for the first & other sons of R. successively in tail male; & in default of such issue as therein directed. The will contained a proviso that if any equitable tenant in tail should be born in testator's lifetime the interest of such person should be excised from the will, & the trustees should hold the property in trust to pay him a yearly allowance of such amount from time to time as they should in their uncontrollable discretion think fit, & after his death in trust for his first & other sons in tail male. After certain other dispositions the will devised the property in ultimate remainder to testator's right heirs. Each beneficiary who should be entitled to an allowance was given power to appoint a jointure to his wife & to charge

the property with portions for his children. During the life of H. the persons who were beneficially interested in the discretionary trusts were H. himself, his wife, his sons W. & M. & his daughter G. After the death of H. the persons beneficially interested in the trust were W., his wife & his brother M. :—*Held :* on the death of H. the title to the beneficial interest in the property passed under Finance Act, 1894 (c. 30), s. 1, from the first named group of persons to the secondly named group, notwithstanding that certain persons were members of both groups. —BURRELL & KINNAIRD *v.* A.-G., [1937] A. C. 286 ; [1936] 3 All E. R. 758 ; 106 L. J. K. B. 134 ; 156 L. T. 36 ; 81 Sol. Jo. 96, H. L.

33a. Death gratuity payable to representatives of teacher.]—Estate duty is payable on a death gratuity granted under Teachers (Superannuation) Act, 1925 (c. 59), s. 5 (1), by the Board of Education to the personal representatives of a deceased intestate teacher as property passing on the death of the teacher, such gratuity being property of which the deceased was at the time of her death competent to dispose within Finance Act, 1894 (c. 30), ss. 2 (1) (*a*), 22 (2) (*a*) as deceased had an authority enabling her to appoint or dispose of the gratuity as she thought fit, whether exercised by instrument, *inter vivos*, or by will, or by both.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652 ; 141 L. T. 288 ; 93 J. P. 227 ; 45 T. L. R. 455 ; 27 L. G. R. 693, C. A.

Annotation :—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485.

35. *Add. Annotation :—Generally,* **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

36. *Add. Annotation :*—**Consd.** A.-G. *v.* Adamson (1932), 146 L. T. 358.

37. *Add. Annotations :*—**Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24 ; Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

39. *Add. Citation :*—132 L. T. 704.
After this case add :—
-.]—*See, now,* Finance Act, 1930 (c. 28), s. 39.

40a. —— Liability to reduction in lifetime of annuitant.]—Testator by a trust disposition & settlement & codicils thereto, after providing for his debts & other expenses & making other dispositions, directed his trustees to divide the balance of the annual income of the trust into ten equal shares & to pay five of these to his wife & one to each of his four daughters & his sister-in-law during their respective lives. Should any of his daughters die leaving issue, the share of income which would have been payable to her was to be applied for the maintenance & education of her issue until the youngest of them should have attained the age of twenty years & thereafter should be paid in equal portions during their lives to such of them only as were daughters. After certain other declarations he further provided that after the death of his wife no beneficiary should receive more than £600 *per annum* from the income of the trust & that the balance should be otherwise disposed of as directed. Testator was survived by his wife, his four daughters & his sister-in-law, & for a time the income of the trust fund belonged, & was paid, as to one moiety to the widow, as to one-tenth to the sister-in-law, & as to one-tenth to each of the four daughters. One-tenth of the income of the fund amounted annually to £2,800. Mrs. N., one of the four daughters, died leaving three children her surviving. At the date of her death her mother was still living :—*Held :* as Mrs. N. was immediately before her death entitled to the income of one-tenth of the residuary estate property which produced that income passed on her death under sect. 1 of 1894 Act.—CHRISTIE *v.* LORD ADVOCATE, [1936] A. C. 569 ; [1936] 1 All E. R. 443 ; 105 L. J. P. C. 65 ; 154 L. T. 441 ; 80 Sol. Jo. 384, H. L.

Annotation :—**Refd.** Inland Revenue Comrs. *v.* Crossman Inland Revenue Comrs. *v.* Mann, [1936] 1 All E. R. 762.

42. *Add. Annotations :*—**Consd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605 ; A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24.

42a. ——.]—DE TRAFFORD *v.* A.-G., No. 27a, *ante.*

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

45 ii. —— *By deed incompletely executed.*]—**FEDERAL COMR. OF TAXATION *v.* TAYLOR (1929), 42 C. L. R. 80 ; 3 A. L. J. 65 ; [1929] Argus L. R. 169. —AUS.**

sc. *Gift made within three years before death—Money spent on improving house —Whether gift to wife.*]—A husband & wife, with their children, lived together in a house which belonged to the wife ; each enjoyed a separate income. The husband paid to a builder with whom he had made contracts about £3,000 for improvements & repairs to the house. A few months later he died at the age of fifty-three. It was found that the transaction was not entered into with intent to diminish the value of the husband's estate, but that the object was simply to improve the family home in accordance with their means & station in life : & that there was no reason to believe that the husband would not enjoy the normal span of life, or that he would necessarily predecease his wife :—*Held :* the payments did not constitute a gift to the wife of the deceased within Death Duties Act, 1921, of New Zealand, ss. 38, 39, so as to be deemed to be part of the husband's estate for the purposes of that Act.—FINCH *v.* STAMP DUTIES COMR., [1929] A. C. 427.—**N.Z.**

sd. —— *Shares in company issued to children of deceased—Payment by company's cheque debited to deceased's personal account—Subsequent transfer of debits to children's accounts—Retransfer of debits to deceased's account within three years of death.*]—**PERPETUAL TRUSTEE CO *v.* COMR. OF STAMP DUTIES (1929), 29 S. R. 153 ; 46 W. N. 58 ;** *revsd.,* **43 C. L. R. 247 ; 30 S. R. N. S. W. 215 ; 47 N. S. W. W. N. 108 ; (1930), Argus L. R. 33.—AUS.**

sf. —— *Settlement—Trust property not transferred to trustees.*]—In 1918 a resident in New Zealand held mtges. & debentures securing £57,200, the deeds & certificates being in the custody of his agents, who managed his private affairs under a general power of attorney, & kept accounts relating thereto. He wrote to them giving particulars of a settlement of £30,000 which he proposed to make on his children, & instructing them to take that sum from his capital for the trusts. Thereupon they debited his capital account with £30,000, & credited it to a special trust account. By the deed of settlement, which was executed by all the necessary parties, the trustees acknowledged the receipt of the £30,000, & the trusts were declared. No money, however, was paid, nor any securities transferred, to the trustees. Further sums were settled in 1919, 1920, & 1924, similar entries being made in the agents' books. Interest at a flat rate was paid to the beneficiaries on the sums settled on them respectively, the payments being made out of the income received by the settlor from the securities in his agents' custody. Those securities varied from time to time, but the amount always exceeded that settled. Upon the settlor's death in 1928, his estate was assessed to duty under Death Duties Act, 1921 (N.Z.), as including the settled sums, less capital which more than three years before the settlor's death had been paid out to two of the beneficiaries under power in the settlements, & subject to an allowance for gift duty paid when the sums were settled :—*Held :* having regard to sect. 5 (1) of the Act the assessment had been rightly made, as the settlements could not be treated as gifts perfected either by transfer of property or declaration of trust ;

47. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

48. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

54. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

55. *Add. Annotation :—Generally*, **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

59. *Add. Annotation :—As to* (2) **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

61. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. *(1924), 12 Tax Cas. 785.*

63. *Add. Annotation :*—**Folld.** A.-G. *v. Farrell* (1930), 99 L. J. K. B. 605.

63a. —— —— —— **Disentailing deed & resettlement.**]—By a disentailing deed & a deed of resettlement, A. & his mother appointed property to trustees upon trust for the mother for life, & then upon certain trusts for management. There followed a discretionary trust in favour of A., his wife or children, with remainder in trust for A.'s sons, & with ultimate remainder to E. The mother died in 1925, & estate duty was paid on the value of the settled property. The trustees, under their discretion, then paid £50 a month to A. & the balance of income to E. In 1926 A. died, unmarried, & estate duty was claimed :—*Held :* A., in executing the disentailing deed & resettlement, had acted as a person "competent to dispose of property" within 1894 Act, s. 22 (2) (*a*), & the discretionary trust in his favour was a reservation by him of an "interest" in the property within Customs & Inland Revenue Act, 1881 (c. 12), s. 38 (2) (*c*). Therefore, by that sub-sect. read with 1894 Act, s. 2 (1) (*c*), the property was deemed to have passed on A.'s death & estate duty was payable.—A.-G. *v.* FARRELL, [1931] 1 K. B. 81 ; 99 L. J. K. B. 605 ; 143 L. T. 639 ; 46 T. L. R. 587, C. A.

Annotation :—**Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393.

67a. —— **Contingent succession—Accumulations.**] By a deed, dated Mar. 1924, appointing trustees of a large sum of money, the settlor, who died in Mar. 1928, provided that during his life the income of the whole was to be paid or applied by the trustees for the benefit of all or any of his children in such manner as he should direct, & so far as any direction should not extend the income was to be held as an accretion to the capital of the settled funds. After his death the capital & income of the funds not already distributed were to be held in trust for his children living at his death in such manner as he should by deed or will appoint, & in default of appointment in trust as to two-fifths for his son, & the remaining three-fifths for equal division among his three daughters as tenants in common. The settlor made no direction by deed or will, & on his death the Crown claimed that the property the subject of the trust "passed" within Finance Act, 1894 (c. 30), s. 1, or that the children's interests which arose on his death were interests provided by the settlor within sect. 2 (1) (*d*), & that in either case estate duty was payable on the whole of the funds & accretions :—*Held :* the funds & accretions did not pass on the settlor's death & estate duty was not payable in respect thereof under sect. 1, but that on the true construction of sect. 2 (1), the beneficial interest of each child of the settlor in the settled funds & accumulations

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though a charge probably was created upon the settlor's capital it was not a debt for which, by the terms of sect. 9 (2), an allowance could be made. —GOULD *v.* STAMP DUTIES COMR., [1934] A. C. 69 ; 103 L. J. P. C. 25 ; 150 L. T. 162.—N.Z.

sg. —— *Land transferred to children subject to partnership agreement.*]—In 1909 M., the owner of 35,000 acres of land in New South Wales on which he carried on the business of a grazier, verbally agreed with his six children that thereafter the business should be carried on by him & them as partners under a partnership at will, the business to be managed solely by M., & each partner to receive a specified share of the profits. In 1913, by six registered transfers in the form prescribed by the Real Property Act, 1900, M. transferred by way of gift all his right title & interest in portions of his land to each of his four sons & to trustees for each of his two daughters & their childen. The evidence showed that the transfers were taken subject to the partnership agreement, & on the understanding that any partner could withdraw & work his land separately. In 1919 M. & his children entered into a formal partnership agreement, which provided that during the lifetime of M. no partner should withdraw from the partnership. On the death of M. in 1929 the land transferred in 1913 was included in assessing his estate to death duties under Stamp Duties Act, 1920–1931 (N. S. W.), on the ground that they were gifts dutiable under sect. 102 (2) (*a*), of that Act :—*Held :* (1) the property comprised in the transfers was the land separated from the rights therein belonging to the partnership, & was excluded by the terms of sect. 102 (2) (*a*) from being dutiable, because the donees had assumed & retained possession thereof, & any benefit remaining in the donor was referable to the partnership agreement of 1909, not to the gifts ; (2) the transfers did not mention the rights of the partnership, & therefore under sect. 42 of Real Property Act, 1900 (N. S. W.), might in law give a title free from those rights, was not material, because the substance of the transaction had to be ascertained, as liability to taxation ought not to be based upon refinements but on clear words.—MUNRO *v.* STAMP DUTIES COMR., [1934] A. C. 61 ; 103 L. J. P. C. 18 ; 150 L. T. 145.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—E.

p l. —— ——.]—By an indenture T., who was entitled in fee simple to certain lands subject to certain leases then current, conveyed the lands to A., his daughter, for life, or until the happening of certain events, with remainder to her children, in consideration of covenants by her to make annual payments to him & his wife during their lives, & to indemnify him in respect of covenants contained in the unexpired leases. T. & his wife predeceased the daughter, & she died leaving children. Her life estate had not determined in her lifetime :—*Held :* the lands comprised in the indenture did not form part of the dutiable estate of A. by virtue of sect. 102 (2) (*k*) of "Stamp Duties Act, 1920–24." The dominant words of that provision are "under or by virtue of any agreement made by the deceased," & they mean that the passing of the property shall proceed from the volition of deceased.—ANGUS *v.* COMR. OF STAMP DUTIES (1930), Argus L. R. 337 ; 4 A. L. J. 163.—AUS.

se. *Reservation of life interest to settlor —On surviving wife.*]—By a marriage settlement made in 1876, £30,000 was settled upon trust to pay the income to the settlor's wife for life, after her death to the settlor for life, & after the death of the survivor upon trust for the children or remoter issue as they should by deed jointly appoint, or in the absence of a joint appointment as the survivor should by will or deed appoint, & in default of appointment for the children as therein provided. The settlor died in 1925, without having exercised the joint power of appointment, leaving his wife & children him surviving. For the purpose of death duty under the Stamp Duties Act, 1920–1924, of N. S. W. :—*Held :* as the settlement contained a trust to take effect "after the death" of the deceased settlor & in reference thereto, his property was to be "deemed to include" the property subject to the trust, without deducting the value of his widow's life interest therein.—RABETT *v.* STAMP DUTIES COMR., [1929] A. C. 444.—AUS.

sf. —— *Jointly with wife.*]—In 1896 a husband settled property in N. S. W., directing that the income therefrom should be paid to his wife during their joint lives, & upon the death of either of them to their daughters equally for their respective lives. The settlor died in 1914, & was survived by his wife :—*Held :* the settlement contained a trust "to take effect after his" (the settlor's) "death" within Stamp Duties Act, 1898, of New South Wales, s. 58, & accordingly upon the death of the settlor duty under that sect. became payable.—THOMSON *v.* STAMP DUTIES COMR., [1929] A. C. 450.—AUS.

to the extent to which the principal value of such beneficial interest upon the death of the settlor exceeded the actual value, if any, of the expectant beneficial interest of each child before such death was an interest accruing or arising on his death, & was, therefore, to be deemed to be property passing on the death of the settlor, & that estate duty on the principal value of such excess was leviable & payable accordingly.—ADAMSON *v.* A.-G., [1933] A. C. 257; 102 L. J. K. B. 129; 49 T. L. R. 169; *sub nom.* A.-G. *v.* ADAMSON, 148 L. T. 365, H. L.

nnotations :—**Consd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24. **Apld.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268. **Expld. & Folld.** A.-G. *v.* Lloyds Bank, Ltd., [1935] A. C. 382. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393; Scott *v.* I. R. Comrs., [1937] A. C. 174.

67b. ——————.]—By a deed of settlement the settlor caused to be issued to or transferred into the names of trustees certain shares in a co. in trust for all such one or more of her children or remoter issue, or the husbands or wives of the children or remoter issue, as she, the settlor, should by deed revocable or irrevocable or by will appoint, & until & in default of appointment upon trust to divide the trust fund into three equal shares & appropriate one share to each of her three named children, but so that the three shares should be retained by the trustees upon the trusts therein declared.

By a deed of appointment the settlor directed the trustees of the settlement to hold the trust fund in trust during her life to accumulate the income & after her death to stand possessed of the trust fund & accumulations in trust for her three named children in equal shares, but so that the share which after her death was to be held for each of the said three children should not vest absolutely, but should be retained by the trustees upon trust during the life of each child to pay to him or her the income of his or her share & after the death of such child to hold that child's share in trust for the children or remoter issue of that child as he or she should appoint, & in default of such appointment in trust for all or any of the children of that child who being sons or a son should attain the age of twenty-one years or being daughters or a daughter should attain that age or marry if more than one in equal shares. There followed a hotchpot clause, & an accruer clause in case the trusts declared concerning the share of any child should fail. Finally, the deed reserved to the settlor a power of revocation by deed or will. The settlor died without having revoked the appointment. She left her surviving the three children unmarried :—*Held :* the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, applied to the settlement; under it the three children took absolute & immediate interests in the trust fund (though liable to defeasance) & nothing passed to them under it on the death of the settlor within Finance Act, 1894 (c. 30), s. 1; also, the life interest of each child was deemed to be property passing on the death of the settlor within sect. 2 (1) (*d*) of the Act, & the duty thereunder was leviable on the excess, if any, of the value of the expectant life interest of each child after the death of the settlor over its previous value.—A.-G. *v.* LLOYDS BANK, LTD., [1935] A. C. 382; 104 L. J. K. B. 523; 152 L. T. 577, H. L.

Annotations :—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485; Scott *v.* I. R. Comrs., [1937] A. C. 174.

72. *Add. Annotation :—As to* (2) **Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

75. *Add. Citations :*—94 L. J. K. B. 139; 132 L. T. 717.
Add. Annotation :—Generally. **Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R.

76. *Add. Annotation :*—**Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

90a. —— —— **Trust established in England.**]—By his will, made in English form, testator,

PART II. SECT. 3, SUB-SECT. 2.—J.

82 i. *Benefit retained by disponer.*]—By deed of Apr. 11, 1927, a farm, together with the farmhouse & its contents, the live stock thereon & the chattels & effects, were assigned absolutely to deft., A. O'D., in consideration of natural love & affection by his cousin J. O'D. "subject however to the right of the said J. O'D. to the exclusive use of a room in the dwelling-house upon the said lands with the use in common with the said A. O'D. of the kitchen & passages of the said house & to the right of his support therein which is to include all necessary fuel at the expense of the said A. O'D. & to the use of a donkey & trap when required." Deft. also covenanted with the said J. O'D. to permit him to enjoy the said rights & to provide personal attendance on him. On the death of J. O'D., deft. was assessed to estate duty upon all the property comprised in the said deed. Upon a motion for attachment for failure to pass an estate duty account: —*Held :* the property transferred by J. O'D. to deft. was not possessed or enjoyed by the latter to the entire exclusion of the donor or of any benefit to him by contract or otherwise &, accordingly, estate duty was payable thereon under sect. 2 (1) (*c*) of Finance Act, 1894.—REVENUE COMRS. *v.* O'DONOHOE, [1936] 1. R. R. 342.—**IR.**

sh. ***Property situate abroad—Shares.***] Deceased, not a British subject, was at the date of his death domiciled in the Colony of the Straits Settlements. The Comr. of Stamps for the Colony in determining the value of deceased's estate for the purposes of estate duty included the value of his movable property outside the Colony, which consisted chiefly of shares valued at over $27,000,000 :—*Held :* such movable assets outside the Colony fell within the words "all property which passes on the death" in sect. 68 (1) of Ordinance No. 103 (Stamps) of the Colony & were accordingly assessable to estate duty.—STRAITS SETTLEMENTS COMR. OF STAMPS *v.* OEI TJONG SWAN, [1933] A. C. 378; 102 L. J. P. C. 90; 149 L. T. 145; 49 T. L. R. 428, P. C.—**STRAITS SETTLEMENTS.**

PART II. SECT. 3, SUB-SECT. 3.

si. ***Shares in company domiciled in Irish Free State—Testator & life tenant domiciled in Northern Ireland—Death of life tenant.***]—Testatrix, B., died domiciled in Northern Ireland. By her will she gave all her property to trustees to allow same to remain in the state of investment in which it might be at the time of her death or to change said investments as the trustees in their absolute discretion might think fit & to pay the income [illegible] daughter N. ughter, pointed W. & her daughter, N., exors. of her will. The assets included shares in a co. situate in the Irish Free State. N., the life tenant, died on Apr. 23, 1928, within two months of the death of B., & before representation to the estate of B. had issued. A claim for estate duty arose on the death of N. in respect of the residuary estate of B., passing on the death of N. under the will. It was contended on behalf of the Crown that the residuary estate of B. as at the death of N., constituted a Northern Ireland chose in action, as B. died domiciled in Northern Ireland & the forum of administration of her estate was the Northern Ireland Cts. The exor. of the estate of B., however, contended that the estate of B. passed in specie on the death of N. :—*Held :* after the death of B., N. has a proprietary interest in her mother's estate & estate duty was payable in the Irish Free State & not in Northern Ireland, the residuary estate having passed on the death of N., & having consisted of shares in a co. situate in the Irish Free State.—A.-G. *v.* WALKER, [1934] N. I. 179.—**IR.**

so. *Situs of shares.*]—The *situs* of shares is at the place where the register of shareholders is kept, & duty is payable there in accordance with the law of the locality, & this is so even though the name of a deceased owner was not actually on the register at the time of death.—*Re* FERGUSON, [1935] I. R. 21. —**IR.**

who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct. by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad:—*Held:* the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2). —A.-G. *v.* BELILIOS, [1928] 1 K. B. 798; 97 L. J. K. B. 139; 138 L. T. 294; 44 T. L. R. 214; 72 Sol. Jo. 49, C. A.

Add. Annotation:—**Apld.** A.-G. *v.* Howe (1925), 94 L. J. K. B. 540.

—— —— **Shares.**]—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof:—*Held:* (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, [1927] 1 Ch. 313; 96 L. J. Ch. 205.

9. *Add. Annotation:*—*As to* (4) **Refd.** *Re* Bateman, [1925] 2 K. B. 429.

02a. —— **Release of life interest—In exchange for remainder.**]—Deceased, under a settlement, was entitled to certain lands & capital moneys for life with remainder to deft. By a deed of exchange made between deceased & deft., deft. conveyed to deceased his remainder in the above lands, & in return the deceased conveyed to deft. his life interest in the capital moneys to the intent that the life interest should merge in deft.'s estate in remainder. Deceased died within three years. The Crown claimed estate duty on these moneys:—*Held:* the property, the life interest, did not pass by reason of the purchase, because that interest ceased on death, & consequently 1894 Act, s. 3 (1), did not apply, &, deceased having died within three years of the making of the deed, Finance Act, 1900 (c. 7), s. 11, as amended, applied, & the property was deemed to pass notwithstanding its disposition by the above deed.—A.-G. *v.* LLEWELYN, [1935] 1 K. B. 94; 103 L. J. K. B. 497; 152 L. T. 345.

06. *Add. Annotation:*—*As to* (2) **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

07a. —— —— ——.]—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements:—*Held:* (1)

PART II. SECT. 4, SUB-SECT. 1.

s i. *S. P.* HOLMES *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 753.—**N.Z.**

s ii. —— *Discharge by son of legit* —A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000:—*Held:* the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—LORD ADVOCATE *v.* WARRENDER'S TRUSTEES (1906), 8 F. (Ct. of Sess.) 371.—**SCOT.**

the transaction was a *bonâ fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re* BATEMAN (BARONESS). [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re* BATEMAN (BARONESS). A.-G. *v.* WREFORD-BROWN, 134 L. T. 153.

117a. —— —— **Who is person "competent to dispose"—Donee of power.**]—The donee of a power who can freely appoint the whole of the fund to himself & so acquire the right to dispose of the fund in accordance with his own volition is "competent to dispose" of that fund within Finance Act, 1894 (c. 30), s. 5 (2). The word "power" in the phrase "power . . . to appoint or dispose of property as he thinks fit" in Finance Act, 1894 (c. 30), s. 22 (2) (*a*), is not used in the strict sense attaching to it when used with reference to a power of appointment, but in the sense of capacity.—*Re* PENROSE, PENROSE *v.* PENROSE, [1933] Ch. 793; 102 L. J. Ch. 321; 149 L. T. 325; 49 T. L. R. 285.

120. *Add. Annotation:—As to* (4) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4.

121. *Add. Annotations:—As to* (2) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

121a. —— —— —— **Enures for benefit of residuary legatees—Where annuities free of duty given out of residue.**]—Testator who died in 1910 directed the payment of an annuity to his son E., & on the latter's death "to his present wife," free of duty. Settlement estate duty was paid on so much of testator's residuary estate as was required to provide for the annuities payable under the will. E. died in 1930 & his widow, A., became entitled to the annuity. Estate duty was payable, but an allowance of interest was claimed under Finance Act, 1914 (c. 10), s. 14 (*b*), as a set-off in respect of the settlement estate duty already paid on testator's death:—*Held:* the annuities having been paid in full, the persons entitled to the allowance were the persons entitled to the residuary estate.—*Re* GRINLINTON, PUBLIC TRUSTEE *v.* GRINLINTON, [1933] Ch. 344; 102 L. J. Ch. 4; 148 L. T. 191.

PART II. SECT. 4, SUB-SECT. 2.

c i. —— *Annuity paid out of general income—No property settled.*]—Sect. 4 of Estate Duty Ordinance, 1932, of Hong Kong, provides that estate duty shall be paid on the principal value of "all property passing on the death" of a deceased person, which, by sect. 5 (1), "shall be deemed to include . . . (*b*) property in which deceased or any other person had an interest ceasing on the death of deceased, to the extent to which a benefit accrues or arises by the cesser of such interest, . . ." By sect. 25 (1) of the Ordinance: "If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property. (2) For the purposes of this section, the term settlement means any . . . will, . . . under or by virtue of which instrument . . . any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, & the term settled property means the property comprised in a settlement."

A testator by his will bequeathed to his wife an annuity of £10,000 during her life. No specific fund was set aside by the trustees of the will to meet the annuity, which was in fact paid out of the general income of the estate. The whole of that income was not applied in meeting the annual payments. The annuitant was not at any time competent to dispose of the property out of the income of which her annuity was payable. Estate duty had been paid in Hong Kong on the whole of the testator's estate when probate was granted. On a claim by the Estate Duty Comr. that upon the death of the annuitant estate duty became payable under sect. 5 (1) of Estate Duty Ordinance, 1932, to the extent to which a benefit accrued by the cesser of the annuity:—*Held:* (1) there was property of testator in which the annuitant had an interest ceasing at her death within the meaning of sect. 5 (1) (*b*) of the Ordinance, & therefore to the extent to which a benefit accrued by the cesser of the annuity that property was deemed to be included in property passing on the death of the annuitant; (2) there was not a "settlement" within the meaning of sect. 25 (2) of the Ordinance, under or by virtue of which any property, or any estate or interest in property, stood during the lifetime of the annuitant limited to or in trust for any person by way of succession, & therefore the exemption conferred by sect. 25 (1) did not operate, & estate duty was accordingly payable. The phrase "any property, or any estate or interest in any property" in sect. 25 (2) of the Ordinance, coupled with the words "stands limited," referred to definite property or an estate or interest in it which actually existed & could be precisely defined. There was no such definite property allocated in the present case, & a hypothetical slice of the property passing by the will could not properly be treated as an interest in that property within the meaning of sect. 25 (2).—ARMSTRONG *v.* ESTATE DUTY COMR., [1937] A. C. 885; [1937] 3 All E. R. 484; 106 L. J. P. C. 133; 157 L. T. 376; 81 Sol. Jo. 587, P. C.—**HONG KONG.**

ss. "*Interest in business*"—*What is*—1914 *Act*, s. 15.]—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held:* the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credit* of the loan.—GLEN *v.* INLAND REVENUE, [1926] S. C. 44.—**SCOT.**

ss. —— —— ——.]—The proprietor of a wine & spirit business, by his trust-disposition & settlement, directed his trustees to convey the residue of his estate to his only daughter on her attaining twenty-five years of age, with a destination over in the event of her predeceasing the period of conveyance, & to pay her the income of the residue until that date. He directed his trustees to sell the business. The daughter died eight days after testator, under the age of twenty-five, & before the direction to sell had been implemented. The trustees having claimed a reduction, under Finance Act, 1914, s. 15, of the estate duty payable on the daughter's death, in so far as assessable on the value of the business, the Comrs. of Inland Revenue refused the claim:—*Held:* sect. 15 applied, in respect that the beneficial possession & enjoyment of the residue, including the business, had passed to the daughter on testator's death, & had again passed on her death: & the trustees were, accordingly, entitled to the relief claimed.—WARREN'S TRUSTEES *v.* INLAND REVENUE, [1928] S. C. 806.—**SCOT.**

127a. Property in which deceased never had an interest—Accumulations of income of voluntary settlement.]—Deceased transferred certain stocks & shares to trustees on trust to accumulate the income thereof at compound interest during a certain period by way of accretion to the settled fund, & after that period to deal with that fund on certain trusts for the benefit of others. The income was so accumulated for several years. On the death of the deceased the Comrs. contended that for determining the rate of estate duty the said accumulations should under Finance Act, 1894 (c. 30), s. 4, be aggregated with the rest of the settled property passing on the death, & that they were not property in which deceased " never had an interest " within the meaning of the proviso to that sect. :—*Held :* the contention of the Comrs. was correct.—A.-G. *v.* DICKINSON & BARON, [1937] 2 K. B. 574 ; [1937] 2 All E. R. 485 ; 106 L. J. K. B. 615 ; 157 L. T. 550 ; 53 T. L. R. 568 ; 81 Sol. Jo. 339.

128. *Add. Annotations :*—**Refd.** *Re* Exmouth's Annuity, [1925] Ch. 280 ; *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

128a. —— " Land & chattels " — What are " chattels."]—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (*a*) upon the capital of the sum of Consols, or (*b*) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (*a*) to be aggregated with the other property, or (*b*) to be treated as an estate by itself :—*Held :* " chattels " in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personalty generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not " chattels " within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re* EXMOUTH'S ANNUITY, [1925] Ch. 280 ; 94 L. J. Ch. 208 ; 133 L. T. 39 ; 69 Sol. Jo. 411.

129a. —— Where duty commuted—Not aggregated with unsettled property.] — Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the commutation has been made is not property on which " estate duty is leviable " within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—A.-G. *v.* HOWE (EARL) (1925), 94 L. J. K. B. 540 ; 133 L. T. 801 ; 41 T. L. R. 610 ; 69 Sol. Jo. 791, C. A.

131. *Add. Citations :—affd. sub nom.* PARR *v.* A.-G., [1926] A. C. 239 ; 95 L. J. K. B. 417 ; 134 L. T. 321 ; 42 T. L. R. 217, H. L.

After cross-reference following this case add :—

Death after July 29, 1927.]—*See, now,* Finance Act, 1927 (c. 10), s. 51.

PART II. SECT. 4, SUB-SECT. 4.

d. For " *Charitable purposes—In Australia & abroad,*" read " *Charitable purposes—In Australia—& abroad.*"

d i. —— ——.]—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed " for religious, scientific, charitable or public educational purposes " :—*Held :* as no contrary intention appeared, the word " charitable " was to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128 ; 95 L. J. P. C. 39 ; 134 L. T. 360 ; 42 T. L. R. 121.—**AUS.**

d ii. —— " *Public benevolent institution "—What is.*]—*Held :* the expression " public benevolent institution " in sect. 8 (5) of Estate Duty Assessment Act, 1914–1928, does not include organisations which do not promote the relief of poverty, suffering, distress or misfortune. The " Royal Naval House " is, therefore, not a " public benevolent institution " within the sect. — PERPETUAL TRUSTEE CO., LTD. *v.* TAXATION COMR., [1931] Argus L. R. 240 ; 5 A. L. J. 109.—**AUS.**

PART II. SECT. 6.

132 i. *Aggregated property—Whether property aggregated more than once on same death.*]—Testator, who had two sons, H. & J., by his will devised certain real property to his son, H., in trust for H. for his life, with remainder to H.'s children as H. should appoint, &, if there should be no son of H. who should attain the age of 21 years, then in trust for his, testator's, other son, J. Testator died in 1893, & H. entered into possession of the lands under the trusts of the will. J. died intestate & unmarried in 1897, leaving his brother, the said H., his heir-at-law. By an order of the ct. made in 1908 it was declared that on the death of J., H. took an estate for life, with a vested absolute interest in remainder, subject to being divested if he left issue, in the freehold lands devised by his father's will, &, accordingly, that H. could make a valid testamentary disposition or otherwise dispose of his estate or interest in the lands. On the death of J., H. took out a grant of administration, & paid duty in respect of the personal property which passed on the death of J., but he did not pay any estate duty in respect of the contingent interest in the lands which had been devised to J. by his father's will, & which passed to him, H., as his brother's heir-at-law. H. died without issue in 1920, & estate duty was paid by his exor. on the value of the property which passed on his death, including the lands in question :—*Held :* the Revenue Comrs. were entitled to claim estate duty on the death of J. in respect of his contingent estate in the lands which passed on his death to H., & the rate of estate duty was to be calculated according to the value of that interest when it fell into possession on the death of H., together with the value of the rest of the estate of J.—*Re* O'CONNOR'S ESTATE, HENDRICK *v.* REVENUE COMRS., [1931] I. R. 98.—**IR.**

sd. *Degree of relationship—Calculation of—Beyond third degree.*]—The words " not beyond the third degree " occurring in Deceased Persons' Estates Duties Act, 1921, Sched. (2), Part II., para. 2, refer to the method of calculation according to the civil law, in which the degrees were calculated up to the common ancestor, & then down to the beneficiary in question : —*Held :* a son of a first cousin of testatrix was beyond the third degree of relationship to testatrix, & the Comr. of Taxes had rightly assessed the duty payable in respect of the benefit he took under her will, in accordance with Sched. (2), Part II., para. 3, of the said Act.—*Re* COOK (1925), 21 Tas. L. R. 11.—**AUS.**

se. —— *Selected class of relatives.*]—The benefit of Estate Duty Assessment Act, 1914–1922, s. 8 (6), extends to all property which by force of the will, or by the law as to the distribution of the estates of intestates, passes directly from testator or intestate to a member of the selected class, provided in the case of a will that on the death of testator it can be shown, from the terms of the will & by reference to the state of his family, that the property must go directly from him to persons within the class & that in no conceivable event can it pass from the testator to any person who is outside the class. —SMITH *v.* THE FEDERAL COMR. OF TAXATION (1928), 40 C. L. R. 467 ; [1928] Argus L. R. 189.—**AUS.**

PART II. SECT. 7, SUB-SECT. 1.

m i. —— ——.]—Testator was, at the time of his death, chairman & managing director of a co. carrying on business as tea & wine merchants. The business had been established by testator's grandfather many years ago, & had been carried on by his family ever since. The business had been turned into a limited co. in 1898, with a share capital of £30,000, divided into 30,000 shares of £1 each, of which 23,007 had been issued, & it was turned into a private co. in 1908. At the date of his death the testator held 18,501 shares, & his son, the assistant managing director, held 4,251. The shares were transferable, subject to the right of the directors to refuse to register any transfer of shares upon which the co. had a lien, or a transfer to a transferee of whom the directors did not approve. The co. was a solvent one ;

136a. —— Shares.]—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, No. 96a, *ante*.

136b. —— —— Subject to restriction on transfer.]—A testator at the time of his death was entitled to a number of ordinary shares of £100 each in a co. the articles of assocn. of which imposed rigid restrictions upon the alienation & transfer of the shares in the co.: —*Held:* the value of the shares for the purpose of estate duty was to be estimated at the price which they would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered & to be regarded as the holder of the shares, & should take & hold them subject to the provisions of the articles of assocn., including those relating to the alienation & transfer of shares in the co.

There was evidence that the value of the shares in the open market would be enhanced if Trust Cos. were to be included among possible competitors in the open market:—*Held:* the value of the shares should not be appreciated by reason of the special value of the shares to such cos.—INLAND REVENUE COMRS. *v.* CROSSMAN, INLAND REVENUE COMRS. *v.* MANN, [1937] A. C. 26; [1936] 1 All E. R. 762; 52 T. L. R. 415; 80 Sol. Jo. 485, H. L.; *revsg.* S. C. *sub nom. Re* PAULIN, *Re* CROSSMAN, [1935] 1 K. B. 26, C. A.

136c. —— How ascertained—Special facts to be considered.]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante*.

137. *Add. Annotation:*—**Consd.** A.-G. *v.* Burrell

137a. Bequests of shares of residue—Accruer clause—Calculation of value of interest of deceased beneficiary.]—Viscount N. by his will & three codicils thereto disposed by clause 6 of his will of 74¼ hundredths of the income of his residuary estate. By sub-clause 28 he provided that on the death of any of the legatees, his or her share should accrue to the survivors. By sub-clause 29 he provided for the application of the remaining income in payment of other legacies, & these being paid the remainder was to be applied in the same manner as the 74¼ hundredths. By clause 10 it was directed that the capital should go in moieties to charities. By an order made on July 28, 1924, the income was divided into one hundred & thirds. Two of the income beneficiaries had now died. On a summons taken out in these circumstances asking whether the estate duty payable by reason of the death of any person entitled to any share of the income was to be paid upon the value of the share in the capital equal to that of the income previously enjoyed by such person or upon the like proportion of the actuarial capital value of the income during the respective lives of the several persons entitled thereto or other the period during which the trusts in respect of such income should be subsisting or how otherwise the same ought to be calculated & out of what fund the same was payable:—*Held:* (1) the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, & that estate duty must be paid on the value of such share; (2) the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, & must be borne by the corpus of such estate.—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, [1929] 1 Ch. 327; 98 L. J. Ch. 65; 140 L. T. 300.

Annotation:—As to (1) **Refd.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443.

146. To cross-references before this case add "*See, also*, Law of Property Act, 1925 (c. 20), s. 17 (3)."

147a. Payment by instalments—Real property—Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *post*.

147b. —— —— —— ——.]—A.-G. *v.* PUBLIC TRUSTEE & TUCK, No. 209e, *post*.

155. *Add. Annotations:—As to* (1) **Expld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559; *Re* Lomer, Public Trustee *v.* Victoria Hospital for Children, [1929] 1 Ch. 731. **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

161. *Add. Annotations:*—**Folld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

the last balance sheet, prior to the date of the death of the testator, showed a surplus of assets over liabilities of £36,399, the principal asset consisting of the stock-in-trade, valued in the last balance sheet at £23,329. The shares, which were all held by members of testator's family, had never been dealt with on the Stock Exchange, & therefore they had no market quotation. As the co. was a private co., in which practically no one was interested except the directors, the profits could be divided up either as salaries or dividends as the directors chose, & they decided to give the profits as salaries. At the time of his death the salary of testator was £2,000 & that of his son £1,000 *per annum*. For the six years previous to testator's death the actual dividend paid averaged 5–3 per cent. on the issued capital of £23,007. Both testator & his son had special knowledge of the business, to which they gave constant daily attention. Testator's exors. when making their return for the purpose of estate duty, valued testator's shares at 15*s.* each, basing their estimate of value on the average dividend for the preceding period of six years & the market price of similar shares, a valuation which they subsequently offered to increase to 17*s.* 6*d.*, but the Revenue Comrs. declined to accept these values:—*Held:* the co. could be fairly regarded as capable of earning on a commercial basis 10 per cent. on its capital, but, taking this as the principal test of value, it must be subject to the consideration, on the one hand, of the restriction upon the transfer of the shares, &, on the other, to the added value by reason of the security of the co.'s position. Also, the Comrs.' contention that testator's shares would be most likely sold *en bloc* to a single purchaser, & that their value should be fixed accordingly, was unsustainable as the possibility of the shares being divided up among several purchasers, either members of testator's family or of the public, must be considered, for Finance Act, 1894 (c. 30), s. 7 (5), does not contemplate in the term "open market" not only a market which is hypothetical, but also only hypothetical purchasers wanting a block of shares.—SMYTH *v.* REVENUE COMRS., [1931] I. R. 643.—IR.

m ii. —— *At date of death—Property transferred by gift within three years of death.*]—A mother transferred certain securities in gift to each of her children, the total value of the securities at the date of transfer being £406,662. She died within three years of the date of the gifts. The value of the securities at the date of her death was £453,212:—*Held:* the value of the securities for the purpose of estate duty was the value at the date of the donor's death, & not that at the date of the gifts—STRATHCONA, LORD *v.* INLAND REVENUE COMRS., [1929] S. C. 800.—SCOT.

PART II. SECT. 7, SUB-SECT. 2.

b i. —— *Secured on home & foreign assets—Foreign assets alone sufficient security.*]—The estate of a deceased person consisted of property in N. S. W. & of property outside the State. Amongst other debts there was one of £32,279 which was secured by mtge. or charge over a part of his home assets &, also, over certain of his foreign assets which were valued at £33,427:—*Held:* the case fell within Stamp Duties Act, 1920, s. 109 (3), & in assessing death duty on the estate no allowance should be made for the debt or any part thereof.—SOLLAS *v.* STAMP DUTIES COMR. (1928), 28 S. R. N. S. W. 207; 45 N. S. W. W. N. 52.—AUS.

161a. —— ——.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued :—*Held :* the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act ; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment ; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re* PORTMAN (VISCOUNT) (No. 2), [1925] Ch. 294 ; 94 L. J. Ch. 329 ; 133 L. T. 389.

166a. Effect of hotchpot clause—Whether advances made over three years before death brought into charge.]—*Re* TOLLEMACHE, FORBES *v.* PUBLIC TRUSTEE (1930), 69 L. Jo. 423 ; 169 L. T. Jo. 519 ; [1930] W. N. 138.

170a. ——.]—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, No. 137a, *ante*.

173a. —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

176. *Add. Annotation :—As to* (1) **Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

186. *Add. Annotations :—As to* (1) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347 ; *Re* Bullock-Webster, Royal Exchange Assurance *v.* Royal Trust Co. of Canada, [1936] Ch. 1.

203. *Add. Annotation :*—**Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

209a. Effect of Law of Property Act, 1925 (c. 20), s. 16 (5).]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations :—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77 ; *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209b. ——.]—The above sub-sect. preserves the liability of real estate to pay its own duties.—*Re* MORRIS, SKINNER *v.* SANDERS (1927), 71 Sol. Jo. 472.

209c. —— **Incorporation of Form 8 of Statutory Will Forms, 1925.**]—Testator by his will, after making specific & pecuniary bequests, gave to his wife absolutely any freehold or leasehold house belonging to him & in which he should be residing at his death. He declared that all legacies thereby given should be free of all death duties & devised & bequeathed all his residuary real & personal estate to his trustees, & declared that (*inter alia*) Form 8 of the Statutory Will Forms, 1925, should be incorporated in his will so far as it was applicable to his residuary estate. The only real estate testator possessed at the time of his death was a freehold house in which he was then residing. Questions arose : (*a*) whether having regard to Form 8, clause 4 (*c*), of the Statutory Will Forms, 1925, the estate duty payable in respect of testator's freehold house on his death should be borne by the testator's widow or by the residuary estate, & (*b*) whether upon the true construction of the will, the estate & succession duties payable by reason of the testator's death in respect of the freehold house were payable out of the residuary estate :—*Held :* (1) although the exor. was by reason of the provisions of Law of Property Act, 1925 (c. 20), s. 16, now accountable for estate duty on realty, the incidence of the duty remained unchanged & was still charged by virtue of the Finance Act, 1894 (c. 30), s. 9 (1), on the realty in respect of which it was paid. Form 8, clause 4 (*c*), therefore, had no application, & apart from the question of construction the estate duty on the freehold house must be borne by the widow ; (2) on the true construction of the will testator had used the word "legacies" not in its strict sense, but as including the gift of the house in which he was residing at his death, although that house was of freehold tenure.

PART II. SECT. 9, SUB-SECT. 1.—B. a i. ——.]—By his will testator directed that all his debts & funeral & testamentary expenses should be paid as conveniently as might be after his decease, & thereafter proceeded by his will to devise & bequeath all his real & personal property not otherwise dis- of :—*Held :* (1) estate duty was under the direction payable actually out of the residuary estate ; (2) in the event of the residuary estate being insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—CALDWELL, ETC. *v.* FLEMING, [1927] N. Z. L. R. 145.—N.Z.

The estate & succession duties payable by reason of testator's death in respect of the freehold house in question were therefore ...ble out of the residuary estate. STURGES *v.* PREVITÉ, [1931] 1 Ch. 447; 100 L. J. Ch. 286; 145 L. T. 40.

209d. Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—Where an undivided share in land disposed of by will has become subject to a statutory trust, the incidence of estate duty remains unchanged & where the exors. in such a case have, as exors., paid the estate duty on the share as a testamentary expense, the amount so paid is repayable to them by the devisee of the share, & the repayment may, at his option, be by instalments.—*Re* WHEELER, JAMESON *v.* COTTER, [1929] 2 K. B. 81, n.; 141 L. T. 322.

Annotations:—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209e. —— ——.]—Notwithstanding the provisions of Law of Property Act, 1925 (c. 20), which abolish tenancies in common of land & direct such land to be held by certain persons as trustees for sale upon statutory trusts, the death duty to be paid on freehold land which just before the commencement of Law of Property Act, 1925 (c. 20), was held in undivided shares, & in respect of which there have been no dealings since the commencement of that Act, is, even where the duty only became payable after the commencement of that Act, deemed to be "duty due upon an account of real property" within Finance Act, 1894 (c. 30), s. 6 (8), & under that sub-sect. as amended by Finance Act, 1896 (c. 28), s. 18, & Finance Act, 1919 (c. 32), s. 30, the duty may be paid by instalments extending over a period of eight years with interest at 4 per cent. *per annum* as therein provided.—A.-G. *v.* PUBLIC TRUSTEE & TUCK, [1929] 2 K. B. 77; 98 L. J. K. B. 462; 141 L. T. 398; 73 Sol. Jo. 299.

220. *Add. Annotation:*—*Generally*, **Consd.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275.

226. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392; *Re* Trimble, Wilson *v.* Turton, [1931] 1 Ch. 369. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31. *As to* (2) **Refd.** *Re* Hicks, Bach *v.* Cockburn, [1933] Ch. 335.

227a. —— ——.]—By his will a testator who died on Nov. 3, 1915, directed that all legacies & annuities thereby given should be paid & enjoyed free of death duties, & the question arose whether the exemption from duties was limited to duties payable on the death of testator or extended to those payable in future in respect of settled legacies:—*Held:* the duties, other than the legacy duties from which the legatees were relieved, were those payable on the death of testator & not those accruing in the future.—*Re* LAIDLAW, WILKINSON *v.* LYDE, [1930] 2 Ch. 392; 99 L. J. Ch. 463; 143 L. T. 761.

227b. —— ——.]—Testator by his will dated Feb. 24, 1930, after giving several pecuniary & specific legacies, directed by clause 6 that all the pecuniary legacies & specific bequests & devises given by his will "shall be free from all death duties which (whether presently or presumptively or prospectively payable) shall be paid out of any general personal estate."

He then directed his exors. to invest a sum of £5,000 upon trust to pay the income to his daughter L. during her life with provision for forfeiture in certain events & after her death or forfeiture to hold the investments in trust for her daughter A. absolutely. He devised & bequeathed his residuary real & personal estate to his exors. upon trust for sale & conversion & out of the proceeds (*inter alia*) to pay his testamentary expenses (including all estate duty leviable at his death in respect of his residuary estates). Testator died on Dec. 6, 1931. Questions arose whether under the terms of the will the estate duty which would become payable on the death of the daughter & the legacy duty which might become payable in the event of the forfeiture of her life interest would be payable out of the residuary estate or out of the settled legacy:—*Held:* as the words used in clause 6 were found in precedent books published prior to the passing of Finance Act, 1914, they could not be held to apply exclusively to the future estate duties imposed by that Act, the words of the will showed that the mind of testator was directed to the duties payable at his death, & did not provide a context which would justify a more extended construction being imposed upon clause 6, & the estate duties which would become payable on the death of the tenant for life upon the settled legacy would not be payable out of the residuary estate, but the legacy duty would be so payable.—*Re* HICKS, BACH *v.* COCKBURN, [1933] Ch. 335; 102 L. J. Ch. 177; 148 L. T. 466.

229. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

232. *Add. Annotation:*—**Distd.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392.

233. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234. *Add. Annotation:*—**Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234a. Bequest to pay duties—Duties payable at death of testator.]—Testator who died in 1912

PART II. SECT. 9, SUB-SECT. 3.

af. *Aggregation of settled funds—Whole estate subject to duty at higher rate.*]—Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6¼ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference:—*Held:* the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—BROWN *v.* BROWN, [1924] N. Z. L. R. 427.—**N.Z.**

PART II. SECT. 9, SUB-SECT. 4.

216 l. *Gift inter vivos—Gift within three years of settlor's death.*]—Testator, after devising & bequeathing all his real & personal estate upon certain trusts, declared that "all probate & estate duties shall be paid by each beneficiary in proportion to the value of the share or interest taken by him o her under this my will." Within three years prior to his death testator disposed of a certain su by way of gift to his wife, & after his death that sum had been assessed for State death duty:—*Held:* the death duty payable in respect of the gift *inter vivos* fell within the words "all probate & estate duties" in the declaration in the will.—ASHBY *v.* HAYDEN (1931), 31 S. R. N. S. W. 324; 48 N. S. W. W. N. 61.—**AUS.**

gave, by clause 7 of his will, certain shares to his exor. "upon trust to sell so many of such shares as shall be sufficient to pay all my debts & funeral & testamentary expenses . . . & all duties of every description, including settlement estate duty where payable, to which my estates, both real & personal, or any part thereof, shall be liable, &, subject to such payments, in trust for my son G. absolutely": & he devised & bequeathed his residuary real & personal estate to his trustee free of all duties upon trust to pay the income thereof to his wife during her life, & after her death in trust for his two daughters for their lives, with remainders over. The question having been raised whether the duties payable on the deaths of testator's daughters under Finance Act, 1914 (c. 10), s. 14, were charged under or by virtue of clause 7 of the will on the shares bequeathed by that clause:—*Held:* what testator contemplated by clause 7 was an immediate process under which the shares were to be sold & applied in paying duties which were presently payable, & under which, after those duties had been paid, the residue of the shares or the proceeds were to be handed over to G.—*Re* FENWICK, LLOYD'S BANK, LTD. *v.* FENWICK, [1922] 2 Ch. 775; 92 L. J. Ch. 97; 128 L. T. 191; 66 Sol. Jo. 631.

Annotations:—**Apld.** *Re* Trimble, Wilson *v.* Turton [1931] 1 Ch. 369. **Refd.** *Re* Sutherland (Duke), Chaplin *v.* Leveson Gower, [1922] 2 Ch. 782.

238. *Add. Annotations:*—**Apld.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

238a. —— ——.]—*Re* JONES, LAMBERT *v.* COLBOURN, [1928] W. N. 227.

239. *Add. Citations:*—94 L. J. Ch. 155; 132 L. T. 339.

243a. Gift of all legacies "free from all death duties"—Legacy construed to include devise of realty.]—*Re* PREVITÉ, STURGES *v.* PREVITÉ, No. 209c, *ante*.

244a. —— ——.]—An assignee for value of a sum of £10,000 to be paid "absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land:—*Held:* in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 14 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements.—*Re* DRAKE, DRAKE *v.* WILSON, [1926] Ch. 559; 95 L. J. Ch. 386; 134 L. T. 362, C. A.

246. *Add. Annotation:*—**Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

249. *Add. Citation:*—132 L. T. 440.

253. *Add. Annotation:*—**Apld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

254a. Beneficiary & residue—Equitable terms.]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante*.

261. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Abergavenny S. E., Abergavenny *v.* Nevill, [1926] Ch. 465.

262. *Add. Annotation:*—**Consd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

264. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559; *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

265a. Bequests to several charities successively—Intention to exonerate earlier charities.]—By his will dated 1911 a testator devised & bequeathed his residuary real & personal estate to his exors., the Public Trustee & another, upon trust for sale & conversion &, after payment of his debts & funeral & testamentary expenses, he desired the balance (called his residuary trust fund) to be placed with the Public Trustee & the income paid to his wife for life. Testator then directed that after his wife's death four capital sums amounting to £10,000, free of estate duty & settlement estate duty but not free of legacy duty, should be set apart & the respective income paid to certain life tenants respectively. By clause 9 testator directed that on the cesser of the respective life tenancies the respective capital sums should be paid to thirteen charities thereinafter named "in the order of priority in which the names appear in this my will as far as the money will go, no. 1 being first paid; no. 2 next & so on, that is to say:" Testator then enumerated thirteen consecutive charities, giving nos. 1 to 10 £500 apiece; no. 11, £1,000; & nos. 12 & 13 £2,000 apiece, thereby exhausting the £10,000. The residue, after providing for the settled £10,000 was given to a daughter. Testator died on June 11, 1914, before Finance Act, 1914 (c. 10), s. 14, abolishing settlement estate duty & the relief thereby conferred, was passed. The estate was cleared & the residuary trust fund paid to the Public Trustee, who paid the income to the wife till her death on July 1, 1928, & then set apart the £10,000 settled legacies. One of these was immediately distributable, without further payment of estate duty, owing to the life tenant having predeceased the wife; but on the cesser of subsequent life tenancies estate duty would be payable, & the Public Trustee therefore issued a summons to determine how it was to be borne, as between the successive charities:—*Held:* clause 9 conferred an absolute priority as between the successive charities, & was sufficient as between the earlier & the later charities to exempt the former from their *primâ facie* statutory liability to contribute to the estate duty under Finance Act, 1894 (c. 30), s. 8 (4).—*Re* LOMER, PUBLIC TRUSTEE *v.* VICTORIA HOSPITAL FOR CHILDREN, [1929] 1 Ch. 731; 98 L. J. Ch. 201; 140 L. T. 687.

265b. Devise with option to sell to specified person—Purchaser to pay annuities & road charges—No reference to death duties.]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty-years of

testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of the testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property :—*Held :* that the Governors having acquired the land, not under any disposition by testator, but by the voluntary act of P. in selling instead of retaining the property, took no benefit under testator's will, & they acquired the land expressly subject to annuities & road-making charges, but impliedly free from any charge for death duties.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131 ; 98 L. J. Ch. 281 ; 141 L. T. 198.

271a. —— **By devisee—Estate duty on undivided moiety of land paid out of residuary estate.**]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927) cited in [1929] 2 K. B. at p. 82, n.

Annotations :—**Folld.** *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Refd.** A.-G. *v.* Tuck, Public Trustee, [1929] 2 K. B. 77 ; *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren [1932] 1 Ch. 42.

271b. —— —— ——.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *ante.*

272a. —— **By Dominion executors—Duty paid on Dominion property—Out of English assets.**]—The right conferred by sect. 9 (4) of 189 Act on exors. who have paid estate dut on property not passing to them as such t be repaid by the trustees or owners of th property the rateable part of the estate dut on the estate, in proportion to the value o the property not passing to them as such applies to personal property in British possessions to which sect. 20 of the Act applies notwithstanding the special relief given by sect. 20 in respect of the estate duty on any such property. The charge in respect of th rateable part enacted by sect. 9 (1) is mad inapplicable to property in such a British possession by sect. 20 (2), but there is nothing in sect. 20 to take away the right conferred by sect. 9 (4).—*Re* BULLOCK-WEBSTER, ROYAL EXCHANGE ASSURANCE *v.* ROYAL TRUST OF CANADA, [1936]Ch. 1 ; 105 L. J. Ch. 291 ; 153 L. T. 448, C. A.

272b. **To trustees—Duty paid in respect of forfeited interest.**]—On the death of a settlor in 1924 estate duty had been paid by testator's trustees in the belief that testator's residuary estate passed on that event, & the rate of duty was computed on the same footing :—*Held :* the trustees were entitled to recover the amount of the estate duty paid, the settlor having forfeited his interest in the estate before his death.—INLAND REVENUE COMRS. *v.* RAPHAEL, INLAND REVENUE COMRS. *v.* EZRA, [1935] A. C. 96 ; 51 T. L. R. 152, *sub nom. Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, 104 L. J. Ch. 24 ; 152 L. T. 217, H. L.

272c. **Surrender of Victory Bonds—Amount repayable—Whether assessed duty or market value.**]—*Re* TICEHURST'S SETTLEMENT, WYATT *v.* TICEHURST (1930), 170 L. T. Jo. 9 ; [1930] W. N. 166.

274a. **Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.**]—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re* ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) *v.* NEVILL, [1926] Ch. 465 ; 95 L. J. Ch. 289 ; 134 L. T. 662 ; 70 Sol. Jo. 634.

277a. —— **Deduction of income tax.**] — In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax :—*Held :* for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—INVERCLYDE'S (LORD) TRUSTEES *v.* MILLAR, [1924] A. C. 580 ; 9 Tax Cas. 14 ; *sub nom.* INVERCLYDE'S (LORD) TRUSTEES *v.* INLAND REVENUE COMRS., 93 L. J. P. C. 266 ; 131 L. T. 739, H. L.

PART II. SECT. 11.

c. Add the following para. :—

A. disponed an estate to himself in liferent, & after his death to B. in liferent & to C. in fee. On A.'s death B. paid estate duty & presented a petition for an order on C. to grant a bond & disposition in security over the estate in her (B.'s) favour for the amount of the duty :—*Held :* (1) the subject chargeable with the duty was the fee of the estate & not merely the liferent, & B. was entitled to have the duty charged on the estate by way of bond & disposition in security, & was not bound to charge it by way of terminable charge ; (2) B. was entitled to an order on C. to grant the bond notwithstanding an averment by C. that B. had in her hands the proceeds of sales of timber, the fee of which belonged to him.—TURNBULL *v.* TURBULL (1910), 47 Sc. L. R. 688.—SCOT.

Part III.—Settlement Estate Duty.

287. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

288. *Add. Annotations :*—**Refd.** *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62; Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

290. *Add. Annotation :*—*As to* (1) **Consd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

292. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253. **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

293. *Add. Annotation :*—*Generally*, **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

296. *Add. Annotations :*—**Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. **Refd.** Scott *v.* I. R. Comrs., [1935] Ch. 246

Part IV.—Legacy Duty.

337. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

345. *Add. Annotations :*—**Consd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485. **Refd.** Jones *v.* Wright (1927), 44 T. L. R. 128.

349. *Add. Annotation :*—**Refd.** Jones *v.* Wright [1928] A. C. 143.

359. *Add. Annotation :*—*As to* (1) **Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

384a. **Gift of equitable life interest in personalty—Absolute interest on payment of debts in lifetime of life tenant—Beneficiary legatee.**]—Testator by his will conveyed to trustees all his personalty in Scotland, & after providing for the payment of his debts, directed the trustees to make an inventory of the collection of "marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, & the library," in his house, which were to remain vested in the trustees as part of the trust estate, the life-rent use thereof being given to his son D., whom failing to the heir of entail entitled to succeed to the estate. He further provided that, if all his debts were paid in the lifetime of D., the trustees should convey the whole of the personalty by deed to D. The debts were paid in the lifetime of D., but the art collection was never conveyed by the trustees to him, but was held by them during his life :—*Held :* the collection had vested in D. as beneficial owner, & that his estate was liable to pay duty thereon.—HAMILTON (DUKE) *v.* LORD ADVOCATE (1892), 68 L. T. 94 ; 1 R. 70. H. L.

385. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

386. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

405. *Add. Annotations :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

413. *Add. Annotation :*—**Apld.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

414. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

430. *Add. Annotations :*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588 ; Ross *v.* Ross, [1930] A. C. 1 ; Peal *v.* Peal (1930), 143 L. T. 768 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9 ; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

448. *Add. Annotation :*—**Apld.** A.-G. *v.* Rudge, [1928] 2 K. B. 515.

459. *Add. Citation :*—L. R. 4 Ex. 327.

462a. **Settled articles not yielding income.**]—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—A.-G. *v.* RUDGE, [1928] 2 K. B 515 ; 97 L. J. K. B. 710 ; 140 L. T. 536 ; 44 T. L. R. 708; 72 Sol. Jo. 487.

PART IV. SECT. 2, SUB-SECT. 2.

334 ii. —— *Subject to condition.*]—A will contained the following provision : "I desire that J. S. shall assist my wife in the working & management of my property during her life, or as long as she retains any interest therein, & in recognition of such services I direct that my said wife shall pay to J. S. an annuity of fifty pounds, the first payment to be made at the expiration of twelve months from my decease, but such annuity shall only be payable so long as the said J. S. shall act as aforesaid" : —*Held :* this constituted a legacy to J. S., in respect of which he was bound to furnish an account to the Revenue Comrs., & to pay such duty as might be assessed thereon.—REVENUE COMRS. *v.* SHIRLEY & BROWN, [1930] I. R. 45.—IR.

348 i. *Legacy to executor—Secret verbal trust.*]—Testator by his will bequeathed (*inter alia*) £850 to his exors. "to be disposed of by them as I shall verbally direct them." The verbal direction given to the exors. by the testator was to pay the said sum to testator's widow, & this was communicated to the exors. by testator contemporaneously with the making of the will. The exors. paid the said sum to the window. The Revenue Comrs. claimed legacy duty from the exors. in respect of this sum, which claim the exors. declined to pay, contending that the money was given to them upon a secret trust, viz. for testator's widow, who was the actual beneficiary, & that it had been paid to her :—*Held :* the gift was a legacy to the exors. & liable to legacy duty notwithstanding that a secret trust appeared on the face of the will ; the benefit to the *cestui que trust* under the secret trust was a benefit derived *dehors* the will & not by virtue of the will.—REVENUE COMRS. *v.* STAPLETON & O'BRIEN, [1937] I. R. 225.—IR.

PART IV. SECT. 3.

6 i. —— *Not restricted to purposes in Province.*]—Application by exors. for determination of certain questions arising under a will whereby testatrix bequeathed "unto the society called the British Union for the abolition of vivisection $75,000 free of legacy duty" :—*Held :* 9 Edw. 7, c. 12, s. 6 (2), absolving from succession duties "property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario," only applied to objects which must of necessity be carried out in Ontario, not to those which might be carried out in Ontario without occasioning a breach of trust.—*Re* GWYNNE (1912), 22 O. W. R. 405 ; 3 O. W. N. 1428 ; 5 D. L. R. 713.—CAN.

531a. —— ——.]—*Re* HICKS, BACH *v.* COCKBURN, No. 227b, *ante.*

576a. —— **Direction to pay legacies free of duty.**]—*Re* TANQUERAY, SEWELL *v.* WOODFIELD, [1924] W. N. 142; 59 L. Jo. 252; 157 L. T. Jo. 324.

577. *Add. Annotation :*—**Distd.** *Re* Tanqueray, Sewell *v.* Woodfield, [1924] W. N. 142.

Part V.—Succession Duty.

591. *Add. Annotation :*—*As to* (3) **Refd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460.

602. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798; A.-G. *v.* De Trafford, [1934] 1 K. B. 1.

622. *Add. Annotations :*—*Generally*, **Refd.** Parr *v.* A.-G., [1926] A. C. 239; *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286.

627. *Add. Annotation :*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

632. *Add. Annotations :*—*As to* (1) **Distd.** A.-G. *v.* Adamson, [1932] 2 K. B. 159. *As to* (2) **Refd.** Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

640. *Add. Annotation :*—**Apld.** A.-G. *v.* Adamson, [1932] 2 K. B. 159.

PART IV. SECT. 7, SUB-SECT. 2.—B.

m i. —— *"Free of probate, legacy succession duties."*]—The will in question herein held not to direct that all probate, legacy & succession duties be paid out of the corpus of the estate, but only such duties with respect to three legacies.—*Re* BLOWEY ESTATE, [1935] 3 W. W. R. 95; 50 B. C. R. 222.—**CAN.**

PART V. SECT. 1.

sg. *Distinct from estate & probate duty—Application of doctrine of mobilia sequuntur personam.*]—Ontario Succession Duty Act is a succession duty Act, & not an estate & probate duty Act; the duty is imposed on the succession, & the doctrine of *mobilia sequuntur personam* applies.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1928] 1 D. L. R. 739; 61 O. L. R. 507; *revsd.*, 40 T. L. R. 33, P. C.; *affg.*, [1929] 2 D. L. R. 754; 63 O. L. R. 469. —**CAN.**

sj. *Jurisdiction of court to determine validity of Act.*]—The ct. has not jurisdiction on proceedings taken under sect. 35 of Succession Duties Act, 1932 (Alta.), to determine whether that Act is *ultra vires.*—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (NO. 1), [1934] 1 W. W. R. 824.—**CAN.**

sk. *Determination of liability.*]—(1) The exors. of an estate are entitled as a matter of right under sect. 35 of Succession Duties Act, 1932 (Alta.), to have the amount of the duty for which the estate is legally liable determined in the manner provided by that sect. regardless of the state of the payments between them & the Minister. This right is not affected by the fact, if it be a fact, that there is no way of obtaining, without the consent of the Crown, repayment of any sums overpaid.

(2) Whatever liability by the Crown, if any, may arise as a result of overpayment of succession duties, it is not a "liability under this Act," within the meaning of said sect. 35. Said words refer only to the liability of the subject to the Crown. Therefore, exors. are not entitled in proceedings under said sect. to a declaration that the Crown is liable to repay any moneys paid it.—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (NO. 2), [1934] 1 W. W. R. 831.—**CAN.**

sl. *Bond by executors to secure payment—Succession Duty Act declared ultra vires—No further liability for duty.*]—GODSON *v.* A.-G. FOR BRITISH COLUMBIA, [1934] 3 W. W. R. 475; [1935] 1 D. L. R. 92; 49 B. C. R. 131.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

599 i. *"Property"—Transfer of stock, etc., to wife—Dividends paid to husband.*]—*Held :* deceased retained an interest in the gift to his wife to the extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—FOWKES *v.* MINISTER OF FINANCE, [1927] 2 D. L. R. 717; 38 B. C. R. 395.—**CAN.**

d i. —— —— ——.]—*Held :* taxes imposed on movable property by the Quebec Succession Duty Act, 1892, & the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; & have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.—LAMBE *v.* MANUEL, [1903] A. C. 68, P. C.—**CAN.**

sp. *Includes life insurance moneys.*]—Life insurance was held chargeable with succession duty, although it was payable to a preferred beneficiary, & the estate was insolvent even after including the life insurance.—*Re* A.'s ESTATE (1933), 43 Man. L. R. 89.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A.

e i. —— *Property appointed.*]—*Re* NORMAN'S TRUSTS, [1926] 3 M. P. R. 571.—**CAN.**

g i. ——.]—*Re* LITTRIDGE (B. C.), [1927] 3 D. L. R. 250.—**CAN.**

g ii. —— *Marriage settlement.*]—A transfer of property by a husband to trustees for the benefit of his wife & the issue of their marriage, pursuant to a covenant in an ante-nuptial settlement, is not a "gift" so as to be chargeable upon his death with succession duty under Ontario Succession Duty Act, 1914, s. 7 (2) (*b*), as amended in 1914.

The words at the end of the above enactment, beginning "of which property actual & *bond fide* possession & enjoyment shall not have been assumed by the donee . . .," apply only to the third description of "property taken" there mentioned.—A.-G. FOR ONTARIO *v.* PERRY, [1934] A. C. 477; 153 L. J. P. C. 145; 151 L. T. 405; 10 T. L. R. 1; 78 Sol. Jo. 488, P. C.—**CAN.**

sh. *Insurance policy.*]—A policy of life-insurance on the life of the manager of a co. was taken out at the instance of the co. Assured, the manager, signed the application. The co. was named as sole beneficiary. Two years later the co. transferred for a cash consideration its beneficial interest in the policy to the assured; & on his application his wife was substituted as beneficiary. Thereafter the premiums were paid by or on behalf of assured. Later the assured created a trust fund comprising (*inter alia*) said policy, & at the request of himself & wife the trustee was substituted as beneficiary, &, at the time of assured's death, the trustee held the policy pursuant to the terms of said trust :—*Held :* the policy was dutiable under sect. 7 (2) (*c*) of Succession Duty Act, 1930, as an "interest purchased or provided by the deceased . . . to the extent of the beneficial interest accruing . . . on the death of the deceased."—*Re* THACKER ESTATE, [1931] 1 W. W. R. 97; 1 D. L. R. 1015; 39 Man. L. R. 375.—**CAN.**

—.]—*Re* BYRNE ESTATE, [1931] 1 W. W. R. 228; 43 B. C. R. 396.—**CAN.**

sm. ——.]—Deceased was one of three holders of a policy of assurance & was the first of them to die. The policy provided that in consideration of an annual premium the insurers should, on the death of the first to die of the three policy-holders, pay the survivors a certain sum. The annual premium was paid by the policy-holders in equal proportions. On the death of deceased in Apr. 1931, the assurance moneys were paid to the two survivors. Succession duty was assessed on one-third of the proceeds of the policy, on the ground that there was a disposition within sect. 4 of Succession & Probate Duties Acts, 1892 to 1931 :—*Held :* there was no disposition of property; further, the covenant by the insurers to pay moneys was not a disposition of property, but a mere contract.—*Re* ISLES, [1933] S. R. (Q.) 338.—**AUS.**

PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. *When succession accrues.*]—STAMP DUTIES COMR. (QUEENSLAND) *v.* DONALDSON (1927), 39 C. L. R. 539. —**AUS.**

642 i. *Death as cause or occasion of succession.*]—EASTERN TRUST CO. *v.* PLUMMER, [1932] 3 D. L. R. 158.—**CAN.**

642 ii. ——.]—A. executed a deed under which securities were delivered to pltf., dividends from them being payable to A.'s son until a certain date when the securities were to be transferred to the son or his nominees, if the son die before that date, to his personal representatives to be held by them on the same trusts as they held the estate of the son as a gift from

660. *Add. Annotations :—As to* (2) **Apld.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *As to* (5) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798

662. *Add. Annotations :—***Overd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

666. *Add. Citation :—*132 L. T. 699.

*Add. Annotation :—***Overd.** A.-G. *v.* De Trafford, *[1934]* 1 K. B. 1.

666a. —— ***Effect of disentailing deed.]***—A tenant in tail in remainder of settled estates barred the entail & by a re-settlement dated May 8, 1914, granted the settled estates (subject to his father's life estate) to the use that trustees should raise a sum of £160,000 as portion for the younger children of the tenant for life & their issue as the tenant for life should appoint with remainders over. By various appointments the tenant for life appointed the sum of £160,000 between his two younger sons & the issue of one of them. The tenant for life died in 1929 & the question arose whether succession duty was payable on his death in respect of this sum at the rate of 5 per cent. as on a succession from the tenant in tail or at the rate of 1 per cent. as on a succession from the tenant for life :—*Held :* the tenant in tail's succession had to the extent of this sum of £160,000 become vested during the lifetime of the tenant for life by " alienation " within Succession Duty Act, 1853 (c. 51), s. 15 ; & succession duty was therefore payable by virtue of that sect. at the same rate as if there had been no alienation, with the result that duty was payable at the rate of 1 per cent. only as on a succession from the tenant for life.—A.-G. *v.* DE TRAFFORD, [1934] 1 K. B. 1 ; 103 L. J. K. B. 401 ; 150 L. T. 24 ; 49 T. L. R. 577, C. A. ; *affd. on another point, sub nom.* DE TRAFFORD *v.* A.-G., [1935] A. C. 280, H. L.

694. *Add. Annotations :—As to* (1) **Refd.** *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286. *As to* (8) **Refd.** Parr *v.* A.-G., [1926] A. C. 239 ; A.-G. *v.* De Trafford (1933), 150 L. T. 24.

694a. Resettlement by party with defeasible estate & party with contingent interest subject thereto.]—By the combined effect of a settlement & a will, E. T. T. D. in 1915 became entitled to certain real property absolutely, should he survive the Great War, &, if he failed so to survive, such property went to G. P. T. D. absolutely, subject only to an annuity of £1,200 to the widow of E. T. T. D. In 1917, E. T. T. D., being in want of money, agreed with G. P. T. D. that certain of these hereditaments should be settled, subject to certain prior charges, upon E. T. T. D. for life, after his death to secure an annuity of £1,200 to the surviving wife of E. T. T. D., subject thereto to secure portions for the younger children of E. T. T D., subject thereto for the first & other sons of E. T. T. D. successively in tail male with remainder to G. P. T. D. for life & then to his sons successively in tail male. In consideration of the settlement, G. P. T. D. was to release his contingent interest in other hereditaments subject to the will. A settlement in pursuance of the agreement of 1917 was executed in 1921, the grantors being both E. T. T. D. & G. P. T. D., & upon the death of E. T. T. D. in 1933, without sons, the property passed to T. T. D., the eldest son of G. P. T. D., under the last limitation, subject to the annuity for the widow & portions for the daughter of E. T. T. D. The question then arose whether, for the purposes of the payment of succession duty, E. T. T. D. was the sole predecessor of the beneficiaries or whether E. T. T. D. & G. P. T. D. were joint predecessors :—*Held :* for the purposes of this case the settlement of 1921 must be treated as coming into operation in 1917. As T. T. D. then became entitled to a vested estate in tail male in remainder, & as that interest could be created only by E. T. T. D. & G. P. T. D. acting together, E. T. T. D. & G. P. T. D. were joint predecessors.—*Re* DRAKE'S SETTLEMENT TRUSTS, WILSON *v.* DRAKE, [1937] 4 All E. R. 171 ; 157 L. T. 559 ; 54 T. L. R. 98 ; 81 Sol. Jo. 921, C. A.

697. *Add. Annotation :—***Refd.** *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1937] 1 All E. R. 286.

699. *Add. Annotations :—As to* (1) **Apld. A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605. Refd. A.-G. *v.* De Trafford, [1934] 1 K. B. 1.**

the grantor to the beneficiaries of the estate who are members of his family. The son died before the date fixed for the transfer of the securities :—*Held :* they were liable to succession duty as property passing or deemed to pass.—*Re* PLUMMER'S ESTATE (1932), 5 M. P. R. 161.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

h i. —— *Person entitled after death of successor before property paid over.*]—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator :—*Held :* the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re* LUNN ESTATE (B. C.), [1925] 2 W. W. R. 608.—**CAN.**

ii. —— *Residuary gift in trust for Presbyterian Church of New ——— For purpose of assisting foreign missionary work.*]—*Held :* the Presbyterian church was a " successor " under Death Duties Act, 1921, s. 16.—PERPETUAL TRUSTEES, ESTATE & AGENCY CO., LTD., OF NEW ZEALAND *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 714.—**N. Z.**

sd. " *Competent to dispose* "—*Heir of entail—Consent necessary to disentail.*]—The right to charge succession duty on an entailed estate depends on the provisions (as amended) of Finance Act, 1894, s. 18 (1), &, accordingly, an heir of entail who is not entitled to disentail the estate without consents is not entitled to charge succession duty on the estate.—BLYTHSWOOD'S (LORD) JUDICIAL FACTOR *v.* DOUGLAS, [1935] S. C. 511.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 5.—A.

670 iv. —— *Donor of trust fund—Succession Duties Act, R. S. A.*, 1922 (*c.* 28), *s.* 6.]—A.-G. OF ALBERTA *v.* COWAN, [1926] 1 D. L. R. 29 ; [1926] S. C. R. 142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—B. (b).

sf. *Succession Duty Act*, 1915 (*c.* 27) (*N. B.*)—*Absolute power of appointment.*]—PROVINCIAL SECRETARY-SURER *v.* SCHOFIELD (N. B.), [1923] 2 D. L. R. 1144.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—A.

p i. —— *Bonds issued by Dominion Government to testator resident in province.*]—Certain bonds were issued to a testator resident in Alberta by the Govt. of Canada under statutory authority, & on his death his exors. raised the question whether succession duties with respect to the bonds were assessable by the Province of Alberta under Succession Duties Act of Alberta, s. 27, which provided that " all property of the owner thereof situate within the Province & passing on the death shall be subject to succession duties." The bonds passed on the death of testator. The register of bondholders was at Ottawa in Ontario : —*Held :* as the bonds constituted a statutory obligation they were debts by specialty & therefore in point of liability to taxation had their local situation at the testator's place of residence in Alberta & were subject to the duties in question.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA [1930] A. C. 144 ; 46 T. L. R. 25.—**CAN.**

714. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

718. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

719. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

724. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Realty outside province—Devised under trust for sale—Testator domiciled in province.*]—Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

q i. —— —— *Agreement for sale.*]—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement :—*Held :* V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—VAUGHN *v.* A.-G. FOR ALBERTA, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—**CAN.**

sk. *Mortgages on land outside province—Owner domiciled within province.*]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* PARKER, [1926] 1 D. L. R. 783; [1926] 1 W. W. R. 1105; 60 B. C. R.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—C.

b i. —— *Shares held in company incorporated in province.*]—Shares in a co. incorporated in Ontario, which were recorded in the name of a foreigner domiciled in the State of Michigan, who died there, were held liable to succession duty in Ontario.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161, P. C.—**CAN.**

b ii. —— *Shares held in company with head office in province.*]—The Province has no power to levy succession duty on the shares of a co. merely because the co. has a head office within the province.—*Re* MACFARLANE, [1933] 1 D. L. R. 345; O. R. 44.—**CAN.**

b iii. —— *Simple contract debt.*]—For the purpose of succession duty a simple contract debt owed by a co. with its head office & place of business outside the Province is property outside the Province.—A.-G. FOR ONTARIO *v.* FASKEN, [1935] 1 D. L. R. 718; *affd.*, [1935] 3 D. L. R. 100; O. R. 288.—**CAN.**

k i. —— ——.]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA *v.* WILSON (B. C.), [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 265.—**CAN.**

k ii. —— ——.]—Testator, whose domicil was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan :—*Held :* the securities were subject to duty under Succession Duty Act, R. S. O., 1914 (c. 24).—A.-G. FOR ONTARIO *v.* BABY, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—**CAN.**

k iii. —— ——.]—Debenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick :—*Held :* not liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n i. —— *Specialty debt.*]—A mtge. debt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—ROYAL TRUST CO. *v.* PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK, [1925] 2 D. L. R. 49; [1925] S. C. R. 94; *revsg.*, 52 N. B. R. 21.—**CAN.**

n ii. —— ——.]—Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death :—*Held :* liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n iii. —— ——.]—The Crown, in the right of the province of Quebec, by its action claimed the sum of $15,775.95, as representing succession duties alleged to be due by resp., as sole trustee & exor. of the estate of the late S. who died in New York in 1929 & was at the time of his death domiciled in the province of Ontario. Amongst the assets of his estate were certain bonds or debentures of the Grand Trunk Pacific Railway Co. & the Canadian National Railway Co., respectively, guaranteed by the Govt. of Canada. These bonds or debentures, registered in Montreal, were at the time of S.'s death in the possession of the latter in Toronto. Succession duties were paid to the Govt. of the province of Ontario; but the Govt. of the province of Quebec also claimed succession duties on the ground that these bonds or debentures were to be considered for succession duty purposes as property situate in the province of Quebec according to the definition of the word "property" in sect. 5 of Succession Duties Act, because the two cos. debtors had their head offices at Montreal & the bonds & debentures were registered & transferable on the cos.' registers in that city :—*Held :* those bonds or debentures had not, in the relevant sense, a local situation within the province of Quebec, &, therefore, were not subject to the payment of succession duties in that province. Debentures authorised by the Parliament of Canada & charged by statute upon the Consolidated Revenue Fund have the character of specialties. The Grand Trunk Pacific Railway Co. has statutory powers to create bonds having the character of specialties. The bonds in this case must, as respects the obligation of the railway co., be considered specialties, although the head office of the co. is fixed by statute in Quebec; &, in view of the statute law applicable to the case, it must be held such a specialty has its *situs* in Ontario. Neither, for the reasons fully stated in the judgment, have the bonds of the Canadian National Railway Co. in question in this case a *situs* in Quebec. —R. *v.* NATIONAL TRUST CO., [1933] S. C. R. 670; 4 D. L. R. 465.—**CAN.**

n iv. —— ——.]—The vendor under an agreement for the sale of land in Sask. died domiciled in Alta. At his death there was a large amount still payable under the agreement. The agreement was made in Sask. & described the parties as both resident at S. in that province; & the purchaser continued to live there. It also provided that the money payments as well as the deliveries of grain thereunder were to be made in Sask. & that it should for all purposes be construed according to the laws of Sask. All the beneficiaries of the estate were domiciled elsewhere than in Alta. The agreement was executed in duplicate under seal. Upon the vendor's death his copy was found in his safety deposit box in Edmonton & was there reduced into the possession of the administrator of his estate; the purchaser's copy was then & had at all material times been in the possession of the purchaser within Sask. The province of Alta. contended that the debt due under the agreement was subject to succession duties under Succession Duty Act, 1934 (Alta.) :—*Held :* the rule that the *situs* of a specialty debt is the place where it is found in the creditor's possession at his death was not affected by the fact that the purchaser's copy of the duplicate agreement was in the latter's possession in Sask. Therefore, Alta. had the right to impose the tax. All the cases dealing with the *situs* of specialty debts in which the test put is where is the specialty "found," or where is it "conspicuous," or where does it happen "to be," relate as a matter of course to the specialty as the property of the creditor in his possession or in some place where he has placed it.—SCHMIDT *v.* ALBERTA PROVINCIAL TREASURER & A.-G. FOR ALBERTA, [1935] 3 W. W. R. 498; 4 D. L. R. 752; 5 F. L. J. (Can.) 211.—**CAN.**

n v. —— ——.]—B., who died domiciled & residing in Minnesota, had deposited $50,000 in the Winnipeg branch of a Canadian bank & received a receipt by which the bank undertook to repay the money to him or order, on 15 days' notice, with interest at 2½ per cent. "until further notice," & which stated : "This receipt is negotiable." The receipt was found among B.'s possessions in Minneapolis upon his death there. His exors. & beneficiaries all live in the United States. Manitoba contended that duties under Succession Duties Act, 1934, were payable on said deposit & interest. Montague, J., allowed the claim, & the exors. appealed :—*Held :* the appeal should be allowed.—*Re* BENNETT ESTATE, MANITOBA PROVINCIAL TREASURER *v.* BENNETT, [1936] 1 W. W. R. 691; 2 D. L. R. 291; 44 Man. L. R. 63; *on appeal*, [1937] S. C. R. 138; 2 D. L. R. 1.—**CAN.**

o i. —— —— *Registered outside province.*]—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province" :—*Held :* as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained. —BRASSARD *v.* SMITH, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—**CAN.**

o ii. —— —— ——.]—The words "or elsewhere" in sect. 42 (5) of Bank

725. *Add. Annotation:*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

726. *Add. Annotation:*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798

732. *Add. Annotation:*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

755a. ——.]—*Re* BATEMAN (BARONESS), No. 107a, *ante*.

765. *Add. Annotation:* — **Consd.** *Re* Bateman, [1925] 2 K. B. 429.

777a. —— **Devise for life "free of all duties"—Liability for succession duty on death of tenant for life.**]—Testator devised "free of all duties" certain premises to his trustees upon trust to permit S. to have the use & occupation of the same during her life, & after her death he directed his trustees to stand possessed thereof in trust for M. absolutely in fee simple. He also devised & bequeathed the residue of his real & personal estate to his trustees upon trust, after payment of his debts, funeral & testamentary & trust expenses & legacy, succession & other duties, to divide the same into thirty-four equal parts, & to stand possessed of one of such equal parts in trust for each of thirty-four residuary legatees named therein. A question arose whether the succession duty payable on the death of S. would be payable out of the residuary estate or out of the property so devised & by the person or persons entitled thereto upon her death:—*Held:* upon the true construction of the will the words "free of all duties" applied only to the succession duty presently payable on the death of testator, & did not extend to the succession duty payable on the death of S.—*Re* TRIMBLE, WILSON *v.* TURTON, [1931] 1 Ch. 369; 100 L. J. Ch. 73; 144 L. T. 612.

780. *Add. Annotations:*—*As to* (1) **Consd.** A.-G. *v.* De Trafford (1933), 49 T. L. R. 577. *As to* (2) **Consd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *Generally*, **Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

796. *Add. Annotations:*—**Consd.** A.-G. *v.* Bedford, [1926] 2 K. B. 184. **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

796a. —— —— **Finance Act, 1925 (c. 36), s. 24.**]—Circumstances (*see* No. 90a, *ante*) in which:—*Held:* succession duty was not payable, since the above sect. was not retrospective.—A.-G. *v.* BELILIOS [1927] 2 K. B. 439; 43 T. L. R. 669; *revsd.* without affecting this point, [1928] 1 K. B. 798, C. A.

Act, both under their ordinary meaning & in the light of prior legislation, are adequate to provide for the establishment of places for registration & transfer of shares outside the Canadian territory, in respect of shares owned by persons not resident in Canada.—R. *v.* CUTTING, [1932] S. C. R. 410; 3 D. L. R. 273.—**CAN.**

p. For the paragraph in the original volume substitute the following paragraph:—

—— *Owner not domiciled within province—Recognition of status of "wives."*]—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sl. *Declaration of trust several years before death.*]—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died:—*Held:* the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—COWAN *v.* A.-G., [1925] 2 D. L. R. 647; [1925] 1 W. W. R. 993; 21 Alta. L. R. 241; *revsd.*, [1926] 1 D. L. R. 29.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

sm. *When exemption applicable.*]—The exemption from the payment of the 1 per cent. succession duty payable under Succession Duty Act, 1853 (c. 51), s. 10, & the additional ten shillings per cent. payable under Customs & Inland Revenue Act, 1888 (c. 8), only arises where estate duty is payable under Finance Act, 1894 (c. 30), & the principal value of the estate does not exceed £15,000.—A.-G. *v.* JAFFÉ, [1935] N. I. 97.—**IR.**

PART V. SECT. 3, SUB-SECT. 7.

cl. —— *Validity.*]—There is nothing in Succession Duty Act, 1923 (c. 13), or other statutes of Saskatchewan to prevent a testator from directing that legacies be paid free from succession duty.—*Re* ANDERSON ESTATE, CANADA PERMANENT TRUST CO. *v.* MCADAM, [1928] 4 D. L. R. 51; [1928] 2 W. W. R. 365; 22 Sask. L. R. 610.—**CAN.**

c ii. —— *Bequest of residue not exonerated.*]—Testator made bequests out of residue, *inter alia*, to two educational institutions in Ontario & to two Minnesota charities. By the will, all legacies, funds & stocks transferred to trustees were declared to be "free of succession duty" & certain other legacies were to be "free of all succession duty":—*Held:* the gifts of residue to the four charities not being in any sense free of succession duties, each must bear its share of the duties imposed in respect of its share of the residue.—*Re* WHITNEY (1930), 66 O. L. R. 339.—**CAN.**

sq. *Legacy subject to payment of all succession duty payable on estate—Whole legacy included in estate in determining rate of duty—Portion of legacy applied in payment of duty exempt from duty.*]—STAMP DUTIES COMR. *v.* LANSDOWNE (1927), 40 C. L. R. 115.—**AUS.**

PART V. SECT. 4.

so. *Provincial duty — Assets in province forming part of larger estate—Deceased domiciled outside province.*]—Deceased, domiciled outside British Columbia, left personal property of $1,000,000 of which $10,000 was in British Columbia:—*Held:* under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first $100,000, 2½ per cent. on the second $100,000 & 5 per cent. on the balance; of the sum thus ascertained the $10,000 within the province was charged with its proportion which was taken by the province.—*Re* SUCCESSION DUTY ACT, *Re* HECHT, [1924] 1 W. W. R. 1153; 33 B. C. R. 154.—**CAN.**

sd. *Construction of Succession Duty Act*, 1930 (*Man.*), *s.* 8 (1).]—*Re* TILT ESTATE, [1933] 1 W. W. R. 694.—**CAN.**

se. *Deceased domiciled outside Province—Property within Province.*]—Under Succession Duty Act, R. S. B. C., 1924, in the case of an estate subject to sect. 7 thereof, all the property subject to duty is taxed, not under a graduated scale, but at the rate opposite the highest group in Sched. "D" in which the estate is arranged when classified for the purposes of said schedule according to its net value, even though only part of the estate is property situate within the Province.—*Re* UNTERMEYER ESTATE, [1933] 1 W. W. R. 705; 46 B. C. R. 547.—**CAN.**

sf. *Surtax under* 1932 *Act—Not applicable where death before Act in force.*]—*Re* MCINTYRE ESTATE, [1933] 2 W. W. R. 257.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

d i. —— —— *Shares.*]—*Held:* with respect to a very large block of shares in a mining co., the "fair market value" could not be said to be the price which probably would have been obtained had the whole block of shares been put on the market at once, in view of the number of shares & the limited market, that course would undoubtedly have depressed the market price, & the exors. were not bound to offer the shares for sale at one time or at all; nor should said value be fixed at the price which would probably have been obtained from underwriters had a sale *en bloc* been made to them at the time of the death.—UNTERMEYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1928] 3 D. L. R. 311; [1928] 2 W. W. R. 209; 39 B. C. R. 533; *affd.*, [1929] 1 D. L. R. 315; S. C. R. 84.—**CAN.**

d ii. —— ——.]—"The fair market value" in sect. 3 of Succession Duty Act, 1934, is the price which could probably have been obtained in the open market at said date.—*Re* LEISER, FORMAN & FOWKES *v.* MINISTER OF

799a. ——.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—A.-G. *v.* BEDFORD (DUKE), [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

824. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

853. *Add. Annotation:*—**Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

861. For citation read "No. 268, *ante*."

SUB-SECT. 2.—POWER TO RAISE THE DUTY (p. 114).

861a. Provision for payment by court—Extent of powers.]—The power of the ct. under sect. 53 of the Succession Duty Act, 1853 (c. 51), s. 53, to direct payment out of any fund under the control of the ct. in an administration action, of legacy or succession duty, does not

FINANCE, [1937] 2 D. L. R. 341; 2 W. W. R. 428; 51 B. C. R. 368.—**CAN.**

h i. —— ——.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty &, being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—BLACKMAN *v.* R., [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—**CAN.**

h ii. —— ——.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed $5,000 & no duty was payable:—*Held:* the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—R. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Alta.), [1926] 4 D. L. R. 874; [1926] 3 W. W. R. 461.—**CAN.**

h iii. —— ——.]—The essential precedent to the jurisdiction of the ct. under Succession Duties Act, 1922, c. 28, s. 38, is that there is property the liability of which to duty is in question & has to be determined by the judge. Therefore, when an exor. on applying for probate placed a valuation on the estate for the purpose of succession duty & this valuation was accepted by the Crown, the ct. cannot grant relief under said section.—*Re* SPENCE ESTATE, [1928] 1 D. L. R. 644; [1928] 1 W. W. R. 71; 23 Alta. L. R. 109.—**CAN.**

sp. *Aggregate value—Succession Duty Act, C. S.*, 1903 (c. 17).]—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

sq. *Legacy to beneficiary — Share of residue to same beneficiary.*]—Testator gave a pecuniary legacy to A., & the residue of his estate upon trust to pay the income to the mother of A. for life, & after her death to divide the capital among her children, of whom A. was one. Succession duty was assessed as if A. were the sole survivor entitled to the residue, & to this amount was added the legacy. Duty was then assessed at the rate appropriate to this total:—*Held:* duty was not to be assessed on the legacy as though the whole of residue had been given to A. subject only to the life interest.—*Re* SHORT, SHORT *v.* REGISTRAR OF PROBATES, [1928] S. A. S. R. 220.—**AUS.**

sr. *Gift inter vivos—Value at time of death.*]—Succession Duty Act of Ontario by sect. 8 charges to duty all property situate in Ontario passing on the death of any person, & provides that property so passing is to be deemed to include (*inter alia*) any property taken under a disposition operating as an immediate gift *inter vivos* made since July 1, 1892. It is provided by sect. 4 that the dutiable value of property is to be its fair market value at the date of the death of the deceased. A resident of Ontario died in 1929, having in 1925 transferred to his wife as a gift shares in a co. registered & having its office in Ontario. The value of the shares at the date of the gift was $50,240, & at the date of the death of the deceased $264,183.50. It was not disputed that the shares were dutiable under the Act:—*Held:* the duty was payable upon the value at the date of the death of deceased.—A.-G. FOR ONTARIO *v.* NATIONAL TRUST CO., LTD., [1931] A. C. 818; 100 L. J. P. C. 15; 145 L. T. 673; 47 T. L. R. 625, P. C.—**CAN.**

st. —— ——.]—Under Succession Duty Act, R. S. A., 1922, the value of property which was the subject of a gift *inter vivos* is to be taken for the purpose of calculating the duty as of the date of the death of the donor.—A.-G. FOR ALBERTA *v.* PEARCE, [1931] 3 W. W. R. 400; [1932] 1 D. L. R. 587; 25 Alta. L. R. 553.—**CAN.**

sv. —— *Sale at undervalue.*]—R. & A.-G. FOR SASKATCHEWAN *v.* MEILICKE, [1937] 3 W. W. R. 433.—**CAN.**

sw. *Agreement between parties as to value.*] — *Re* RYALL ESTATE, *Re* MCMENEMY ESTATE, [1934] 2 W. W. R. 288.—**CAN.**

sz. *Determination of present value of income.*]—*Held:* sect. 30, Succession Duty Act, 1934, does not authorise the finding of an annual income by a calculation of 5 per cent. on the net value of an estate; its sole purpose is to fix the present value of a known fixed annual income.—*Re* HAMILTON ESTATE, [1935] 1 W. W. R. 549; 5 F. L. J. (Can.) 51.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sv. *"Net value"—Mode of calculation—Aggregate value including life insurance money.*]—R. *v.* MEIBACH, [1927] 2 D. L. R. 1020; [1927] 1 W. W. R. 981; 22 Alta. L. R. 482.—**CAN.**

sx. *Debts, encumbrances & expenses.*] —*Held:* under Succession Duty Act, R. S. N. B., 1927, the debts, encumbrances & expenses should be deducted from the value of all the property passing on the death of testator within the meaning of the Act, including both the assets liable for the payment of debts, encumbrances & expenses & the property not so liable.—FRASER *v.* PROVINCIAL SECRETARY-TREASURER, [1935] S. C. R. 133.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

sw. *Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C.*, 1911 (c. 217).]—MINISTER OF FINANCE *v.* CALEDONIAN INSURANCE CO., *Re* LAND REGISTRY ACT & HIGGINSON, [1923] 4 D. L. R. 439; [1923] 3 W. W. R. 925.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.

sa. *Postponement — Disputed claim against estate.*]—Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor.—*Re* SUCCESSION DUTY ACT & SPROULE, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—**CAN.**

sg. *Before interest vested in possession.*]—The word "passes" in Succession Duty Act, 1934, s. 38 (1), is not restricted to property finally vesting in the beneficiary upon distribution of the estate.—*Re* DRUMMOND ESTATE, MINISTER OF FINANCE *v.* DRUMMOND, [1936] 2 W. W. R. 635; 4 D. L. R. 164; 50 B. C. R. 485.—**CAN.**

PART V. SECT. 6, SUB-SECT. 3.—A.

sb. *"Sister" of deceased—Succession Duty Act Amendment Act*, 1899, s. 2 (4) *—Includes half-sister.*]—*Re* OLIVER (1901), 8 B. C. R. 91.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.

sd. *From what date payable—Succession Duty Act, R. S. B. C.*, 1924 (*c.* 244).]—*Re* OLDFIELD ESTATE, *Re* SUCCESSION DUTY ACT (B. C.), [1927] 4 D. L. R. 711; [1927] 3 W. W. R. 361.—**CAN**

se. —— ——.]—Where under Succession Duty Act, R. S. B. C. 1924, c. 244, the exors. elect to pay the duty on a contingent estate within two years from the death of the deceased, & a time is fixed by the Lieutenant-Governor in Council for the payment thereof, no interest on said duty is chargeable except from the date so fixed. — WILSON *v.* MINISTER OF FINANCE, [1928] 3 D. L. R. 253; [1928] 2 W. W. R. 585.—**CAN.**

sf. —— *Succession Duty Act*, 1924, *declared ultra vires—Interest under new Succession Duty Act*, 1931.]—Testator died on Aug. 16, 1933, when the then Succession Duty Act, R.S.B.C., 1924, purported to be in force. By a judgment delivered on Nov. 29, 1933, & affirmed by the Ct. of Appeal on Feb. 20, 1934, said Act was declared to be *ultra vires*. On Mar. 29, 1934, the new Succession Duty Act, 1934, came into force: & sect. 50 of that Act provided that it should be retroactive & should apply in respect of persons who had died since Apr. 11, 1894, & further provided that that Act should be deemed to be & to declare the law relating to the matter of succession duty payable upon the death of any person dying before the commencement of the Act, whether or not the

enable the duty payable in respect of a bequest, etc., to one person to be deducted from the assets comprised in a bequest, etc., to another person. It only enables duty owing by a legatee to be paid out of any other property to which he is entitled & which is under the control of the ct.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524; 104 L. J. Ch. 254; 153 L. T. 295; 51 T. L. R. 404.

Part VI.—Probate Duty.

894. *Add. Annotation:*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

902. *Add. Annotation:*—*As to* (1) **Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

914. *Add. Annotations:*—**Apprvd.** Brassard *v.* Smith, [1925] A. C. 371. **Apld.** Baelz *v.* Public Trustee, [1926] Ch. 863; Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771. **Consd.** Erie Beach Co., Ltd. *v.* A.-G. for Ontario, [1929] 46 T. L. R. 33. **Refd.** A.-G. *v.* Sudeley, [1896] 1 Q. B. 354; A.-G. *v.* New York Breweries Co., [1898] 1 Q. B. 205; *Re* Aschrott, Clifton *v.* Strauss, [1927] 1 Ch. 313; London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

917. *Add. Annotations:*—*As to* (1) **Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58. *Generally*, **Refd.** Inland Revenue Comrs. *v.* Smith, [1930] 1 K. B. 713.

919. *Add. Citation:*—*Subsequent proceedings* (1833), 5 B. & Ad. 78.

949. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

Part VIII.—Foreign Duties.

958. *Add. Annotation:*—**Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

959. *Add. Annotation:*—*Generally*, **Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

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matter was pending or has been adjudicated on by any ct., etc.:—*Held:* since an *ultra vires* Act is one which never had any legal being the present application must be dealt with as if there had been no succession duty Act prior to the present one, & since the present Act was not passed until more than six months after the death of testator, appct. had brought himself within said sect. 38 (1); &, therefore, interest should be chargeable from May 31, 1934.—*Re* MERCER ESTATE, [1934] 3 W. W. R. 382; 49 B. C. R. 294.—**CAN.**

sg. *Extension of date from which interest runs—Application for—Time for making.*]—*Held:* such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—*Re* FARMER, [1926] 1 D. L. R. 894; [1926] 1 W. W. R. 366; 36 B. C. R. 334.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.

sj. *Hearing of summons under Succession Duty Act, R. S. B. C.* 1924 (c. 244), s. 34—*Must be before judge who issued summons.*] — *Re* CLAPHAM, MINISTER OF FINANCE *v.* BURKE-ROCHE (B. C.), [1925] 4 D. L. R. 325; *on appeal sub nom.* R. *v.* BURKE-ROCHE (1926), 37 B. C. R. 313.—**CAN.**

PART V. SECT. 9.

sl. *When repayment carries interest.*]—Succession Duties Act, 1893, s. 34 (2), relating to the payment of interest on succession duty repaid applies only to the repayments of succession duty assessed under sect. 34 (1).—*Re* KNOX (1927), S. A. S. R. 264.—**AUS.**

PART VI. SECT. 1.

so. *Payment to registrar.*]—Probate duty is assessed & collected by the registrar, who is an "officer of the ct. generally." On payment he must issue probate.—*Re* SAYWARD (1934), 49 B. C. R. 307.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—B.

886 i. *Not liable to duty—Under Probate Duty Act, R. S. B. C.*, 1924 (c. 202).]—BOWMAN *v.* A.-G. (B. C.) [1926] 4 D. L. R. 834.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

900 iv. ——.]—S. at the time of his death was beneficially entitled to a certain share in his deceased father's estate. That estate was vested in a certain co. & one W. E. S. as trustee. The co. carried on business & had its head office in Victoria &, although registered in N.S.W., had no independent office of its own there but carried on its business in the office of another co. W. E. S. resided in N.S.W. All the administrative work in the estate had always been done in Melbourne, where all meetings of the trustees were held, all income received, & all investments made. Duty on the assets in question had been paid in Victoria:—*Held:* S.'s interest in his deceased father's estate was not subject to probate duty in N.S.W.—PERPETUAL TRUSTEE CO., LTD. *v.* STAMP DUTIES COMR. (SARGOOD'S CASE), (1936), S. R. N. S. W. 160; 53 N. S. W. W. N. 28.—**AUS.**

PART VI. SECT. 3.

a i. —— —— *Deed of gift.*]—STAMPS COMR. *v.* SKINNER (1926), 29 W. A. L. R. 58.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 1.

d i. ——.]—The value on an open market is the best guide to the value of stocks for valuation purposes.—*Re* COLLINS, TORONTO GENERAL TRUSTS *v.* A.-G. FOR BRITISH COLUMBIA, [1935] 3 D. L. R. 603.—**CAN.**

ESTOPPEL.

Part I.—Nature and Classification.

5. *Add. Annotation :—As to* (3) **Refd.** H. *v.* H., [1928] P. 206.

7. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

8. *Add. Annotations :* — **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Russell (Countess) *v.* Russell (Earl), [1935] P. 39; Knott *v.* Knott, [1935] P. 158.

9. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

10. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

10a. ——.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

11. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

28. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557; Bartlam *v.* Evans, [1936] 1 K. B. 202.

Part II.—Estoppel by Matter of Record.

52. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

63. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

96. *Add. Annotations :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Refd.** L. *v.* L. (1934), 50 T. L. R. 441; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

103a. ——.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—COHEN *v.* JONESCO, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *revsd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.

104a. —— ——.]—An order by consent is binding unless & until it has been set aside in proceedings constituted for that purpose. Pltf. in an action based upon charges which he has withdrawn by a consent order in a previous action between the parties is estopped by

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PART II. SECT. 1.

sa. *Prior action must be identical.*]—Upon appeal from the order of a judge summarily dismissing an action upon the ground that the issues therein had been determined by a ct. of concurrent jurisdiction in an earlier action between the same parties :—*Held :* the identity of the issues in the two actions was not clear upon the material before the ct., & therefore the order should be set aside & the action allowed to proceed to trial, the question of *res judicata* being left open.—ANDERSON *v.* AMELIASBURG, [1931] 2 D. L. R. 359; 66 O. L. R. 583.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) i.

sx. *Issue withdrawn from jury.*]—In a petition for restitution the husband alleged cruelty in his cross-petition. After evidence had been given counsel abandoned the claim on the cross-petition & the jury were thereupon discharged from finding upon this issue. In a subsequent suit where cruelty was again alleged :—*Held :* these facts did not amount to an estoppel.—CARNEGIE *v.* CARNEGIE (1886), 17 L. R. Ir. 430.—**IR.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) ii.

sb. *Irregularities in procedure.*]—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re* DOTY & MARKS, [1925] 4 D. L. R. 740.—**CAN.**

sc. *Action on immoral contract.*]—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that "this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs" :—*Held :* the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—GUILBAULT *v.* BROTHIER (1904), 24 C. L. T. 342; 10 B. C. R. 449.—**CAN.**

sf. *Dismissal of motion for mandamus.*]—Dismissal of a motion for *mandamus* to levy a tax for school purposes is *res judicata* barring renewal of such motion.—*Re* OTTAWA COLLEGIATE INSTITUTE, [1937] 2 D. L. R. 230.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iii.

p i. —— ——.]—While a judgment dismissing an action on default of appearance by pltf. at the trial has the same effect as a judgment for deft. upon the merits it does not follow necessarily that from such a judgment an estoppel by *res judicata* arises. On that question being raised in a subsequent action it is the duty of the ct. to look into the proceedings in the previous action & ascertain definitely what matters were in fact decided by the judgment therein. & if that judgment was founded on proceedings which do not disclose a vital defect which existed in a contract set up therein, such as the defect of illegality or invalidity, it cannot be said to have made that contract valid & enforceable notwithstanding the defect.—ELIAS *v.* DUERKSEN & DUERKSEN, [1930] 2 W. W. R. 481; 4 D. L. R. 677; 24 S. L. R. 562.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iv.

104 i. —— *Consent order.*]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct. :—*Held :* the consent order operated as an estoppel.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

104 ii. —— ——.]—*Re* DRUMMOND, BENN *v.* HAWTHORNE, [1931] 4 D. L. R. 188; [1932] S. C. R. 73.—**CAN.**

t i. ——.]—Action for foreclosure of a mtge. Pltf. & deft. P. had been parties to a prior action in which the main issue was the ownership of the land covered by the mtge. & in which a consent judgment was given dismissing the action as against the present pltf. & declaring that the title to the land was subject to the mtge. now sought to be foreclosed & vesting the land in P. subject to said mtge. P. now raised the defence of adverse possession, a point which had not been brought forward by her in the former action :—*Held :* on the principle of *res judicata* or, at least, on the principle

the order, & cannot effectively plead in reply that his consent was induced by fraudulent concealment.—KINCH *v.* WALCOTT, [1929] A. C. 482 ; 98 L. J. P. C. 129 ; 141 L. T. 102, P. C.

114. *Add. Annotation :*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

122. *Add. Annotation :*—**Refd.** King *v.* Sunday Pictorial Newspapers (1920), Ltd. (1924), 133 L. T. 397.

140. *Add. Annotation :—As to* (2) **Refd.** Lindsay *v.* Lindsay, [1934] P. 162.

148. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

151. After this case add "**Decree for restitution of conjugal rights.**]—*See* HUSBAND & WIFE, No. 4767a."

153a. Re-registration of birth of illegitimate child.] —The re-registration, as provided for in the schedule to Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In authorising the re-registration the Registrar-General does not act in a judicial capacity & the re-registration of the birth does not create a *res judicata.* —JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192.

163. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

183. *Citation :*—For "*subsequent proceedings*" read "*affd.*"

190. After this case add "—— ——.]—*See, also,* INSURANCE, Vol. XXIX., pp. 122, 182–184, Nos. 752, 1404–6, 1408, 1409, 1420, 1422."

204a. —— **For deduction of costs—Not res judicata.**] —Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay the balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final :—*Held :* the master's order allowing the deduction of costs was not *res judicata,* but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—ALLNUTT *v.* MILLS (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "**In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20).**]—*See* MINES, Vol. XXXIV., pp. 635, 636, No. 325."

213. *Add. Annotations :—As to* (1) **Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241; Freshwater *v.* Bulmer Rayon Co., Ltd., [1933] 1 Ch. 162 ; Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408 ; Lindsay *v.* Lindsay, [1934] P. 162 ; Rentit, Ltd. *v.* Duffield, [1937] 3 All E. R. 117. *As to* (4) **Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

214a. ——.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—EASTWOOD & HOLT *v.* STUDER (1926), 31 Com. Cas. 251.

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that a judgment is conclusive proof between the parties of the matters actually decided, said defence was not open to P.—CANADA PERMANENT CORPN. *v.* CHRISTENSEN (B. C.), [1929] 3 D. L. R. 864 ; 2 W. W. R. 198.—**CAN.**

h l. ——.]—AIKINS *v.* BLAIN (1865), 11 Gr. 212.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) viii.

r l. —— *Code of Civil Procedure, s.* 207.]—Applt., who had brought an action in his unregistered business name against resp. to recover the balance of moneys alleged to be due on a running account, obtained a decree of the District Ct. in his favour subject to his complying with the terms of the Ceylon Business Names Registration Ordinance within a limited period. Against that decree resp. appealed to the Supreme Ct. of Ceylon, & the present applt., faced with the possibility that if resp.'s appeal succeeded any further proceedings might be barred by limitation, instituted a second suit against resp. in respect of the same subject-matter. This second action was dismissed in the District Ct. on the ground of *res judicata,* & against that decision the present applt. appealed. The Supreme Ct. of Ceylon allowed resp.'s appeal in the first action, & dismissed the present applt.'s appeal in the second action. On an appeal to the Privy Council in the second action :—*Held :* under sect. 207 of the Civil Procedure Code no decree from which an appeal lies & has in fact been taken, but not yet determined, is final between the parties so as to form *res judicata,* & therefore the second action would be remitted to the District Ct. to proceed as accords.—ANNAMALAY CHETTY *v.* THORNHILL, [1931] A. C. 697 ; 145 L. T. 415 ; 47 T. L. R. 459 ; 75 Sol. Jo. 393, P. C. ; *sub nom.* CHETTY *v.* THORNHILL, 100 L. J. P. C. 174.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.—B. (c).

201 i. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator.*]—D.'s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non.* Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father's directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form :—*Held :* being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—DOOLEY *v.* DOOLEY, [1927] I. R. 190.—**IR.**

204 i. ——.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—DIAMOND *v.* WESTERN REALTY CO., [1924] 2 D. L. R. 922 ; [1924] S. C. R. 308.—**CAN.**

sf. *Order striking out guardian ad litem's name from record.*]—*Held :* not to operate as *res judicata.*—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND.**

sk. *Order giving leave to renew application for security for costs.*]—SEDZIAK *v.* POLISH WORKERS ASSOCIATION (NO. 2), [1937] 3 W. W. R. 527.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

213 x. ——.]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044 ; 61 O. L. R. 327.—**CAN.**

215. *Add. Annotations:—As to* (2) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251. *As to* (4) **Refd.** Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408.

222a. ——.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921–22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held:* the Special Comrs. were not bound by the decision of the recorder regarding the 1920–21 appeal to discharge the 1921–22 assessment. — EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotation:—**Refd.** I. R. Comrs. *v.* "Old Bushmills" Distillery Co., Ltd. (1927), 12 Tax Cas. 1148.

224a. Finding of adultery.]—A finding of adultery as a fact on which a decree *nisi* has proceeded is not *res judicata*, so that it cannot subsequently be questioned in the Divorce Div. in any event, nor is resort to the Ct. of Appeal the only means of reviewing it.—CHALMERS *v.* CHALMERS, [1930] P. 154; 99 L. J. P. 60; 142 L. T. 654; 46 T. L. R. 269; 74 Sol. Jo. 216.

229a. Judgment in action on bond—Subsequent action on another bond of same series.]—Defts. issued on Aug. 1, 1884, 6,000 First Mtge. Gold Bonds of like amount, tenor & date. The bonds were secured by a mtge. trust deed & all became due on Aug. 1, 1934. The bonds stated that on that date defts. for value received promised "to pay to the bearer or registered holder thereof £100 sterling gold coin of Great Britain of the present standard of weight & fineness at its agency in London, England, with interest thereon" at 5 per cent. *per annum* payable in London or at the holder's option at deft.'s office in New Brunswick. The interest coupon stated that the co. would pay the bearer £2 10*s.* sterling at its agency in London, England, or at its office in New Brunswick on Aug. 1, 1934. Pltfs., a holder of 992 such bonds, claimed in respect of each bond the sum in sterling calculated on Aug. 1, 1934, then representing the gold value of £100 on Aug. 1, 1884:—*Held:* pltfs. were not entitled to be paid on such gold basis, but only £100 sterling; because upon the true construction of the bond, & the question was purely one of construction, the contract was not one for a payment of gold *in specie*, but one for the repayment of £100 sterling. The interest was similarly payable in sterling.

In an action between the same parties upon one of the said bonds pltfs. obtained judgment on Nov. 7, 1934, upon the gold basis now claimed, the present defts. not having put in any defence to that action. The statement of claim in that action did not allege that all the bonds were identical in their terms:—*Held:* there was no estoppel by record, because each bond was a distinct contract &, further, the record of the previous action did not show that all the bonds were in the same terms.—BRITISH & FRENCH TRUST CORPN. *v.* NEW BRUNSWICK RY. CO., [1936] 1 All E. R. 13; 154 L. T. 191; 80 Sol. Jo. 148; *revsd.*, [1937] 4 All E. R. 516, C. A.

PART II. SECT. 3, SUB-SECT. 1.—B.

sk. *Agency.*]—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—PLUMB *v.* MACDONALD (W. C.) REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD., [1926] 1 D. L. R. 899; 58 O. L. R. 322.—**CAN.**

sl. *Decided by jury in ejectment action.*]—The judgment in an action of ejectment is only an estoppel between the parties as to the statutory issue whether the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169; 45 N. S. W. W. N. 23; *affd.*, 41 C. L. R. 540.—**AUS.**

sm. *In action of ejectment.*]—The judgment in an action of ejectment is only an estoppel between the parties on the statutory issue as to whether or not the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1928), 29 S. R. N. S. W. 51; 46 N. S. W. W. N. 22.—**AUS.**

PART II. SECT. 3, SUB-SECT. 1.—B. (c).

225 i. *General rule.*]—Where the cause of action is different from what it was in the first action, the matter is not *res judicata*.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 1.—B. (d).

230 xvii. ——.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922–23;—*Held:* the recorder's decision on the assessment for 1921–22 was binding, & the question was *res judicata*.—ALYMER *v.* MAHAFFEY, [1925] N. 167 10 Tax Cas. 594.—**IR.**

230 xviii. ——.]—WILSON *v.* CAMERON (1842), 1 Kerr, 542.—**CAN.**

230 xix. ——.]—CHAMBERS *v.* DOLLAR & STEVENSON (1870) 29 U. C. R. 599.—**CAN.**

230 xx. ——.]—JONES *v.* CITY OF ST. JOHN (1901), 31 S. C. R. 320.—**CAN.**

230 xxi. ——.]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—**CAN.**

r i. —— ——.]—A vendor of land sued for cancellation of the agreement for sale, & for possession, alleging the purchaser's default in payment of interest & taxes; & [illegible] ment for possession & a declaration that the agreement had become null & void. The purchaser counterclaimed for repayment of all amounts paid by him &, by the judgment, recovered all amounts in excess of the first payment. The vendor subsequently brought the present action, claiming damages for loss on a re-sale of the land, & sums expended by him in repairs & for taxes:—*Held:* while, in the first action, the claims now made were not all claimed directly as specific relief to which the vendor would be entitled upon cancellation of the agreement, yet they were all urged as separate reasons why the amount recovered by the purchaser should not be returned to him. The claims now made were thus all before the ct. in the first action; & therefore could not be made the subject of another action.—KRAUSE *v.* YORK, [1932] S. C. R. 548; 2 D. L. R. 701; *affg.*, [1932] 1 D. L. R. 270; O. R. 29. —**CAN.**

sh. *Action to set aside fraudulent conveyance — Finding that plaintiff secured creditor.*]—In an action by a judgment creditor against a husband & wife to set aside as in fraud of the husband's creditors a transfer made by him to his wife:—*Held:* a finding, in a prior action by the same creditor against the husband, that pltf. was an amply secured creditor at the time of the transaction, estopped pltf. as against the husband, who had pleaded *res judicata*, from again raising the issue as to the sufficiency of the pl f.'s security.—BAXTER *v.* DERKASZ & DERKASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

232. *Add. Annotations :*—**Apld.** Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay, [1934] P. 162.

253. *Add. Annotation :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

253a. **Judgment relating to right of set-off—Claim to set off contingent liability under guarantee—Subsequent application as to disposition of dividend—After payment under guarantee.**]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof

Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidation of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported *Re Fenton*, [1931] 1 Ch. 85, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof :—*Held :* the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings. —*Re* FENTON (NO. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (NO. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

256a. ——.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period :—*Held :* the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—BROKEN HILL PROPRIETARY CO. *v.* BROKEN HILL MUNICIPAL COUNCIL, [1926] A. C. 94; 95 L. J. P. C. 33; 134 L. T. 335, P. C.

Annotation :—**Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

257. *Add. Annotation :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

259a. **Order for maintenance out of fund—Subsequent order negativing title to fund.**]—*Semble :* the existence of an order for the maintenance of an infant out of the income of a fund does not prevent the ct., in a subsequent proceeding in which the title to the principal comes directly in question, from making an order negativing the infant's title to the fund.—SAUNDERS *v.* VAUTIER (1841), Cr. & Ph. 240; 10 L. J. Ch. 354; 41 E. R. 482, L. C.

265a. **Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.**]—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counterclaimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims :—*Held :* the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the

PART. II SECT. 3, SUB-SECT. 1.—B. (e).

254 xi. ——.]—CHAMBERS *v.* UNGER (1875), 25 C. P. 180.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (f).

274 ix. ——.]—*Re* GLOBE WINE CO. (Sask.), [1926] 1 D. L. R. 213.—**CAN.**

274 x. ——.]—CASSIDY *v.* INGOLDSBY (1875), 36 U. C. R. 339.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

276 ii. ——.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares :—*Held :* deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. —FRASER RIVER MINING CO. *v.* (1896), 5 D. C. R. 82.—**CAN.**

276 iii. ——.]—FORSYTH *v.* BURY (1887-8), 15 S. C. R. 543.—**CAN.**

276 iv. ——.]—If the *res*, the thing actually & directly in dispute, has been adjudicated upon by a competent ct. it cannot be litigated again. Pltf. having raised in a former action a dispute as to the precise facts & questions involved in the second action must admit that which has been judicially declared to be the truth with respect to that dispute. The plea of *res judicata* applies, except in special cases, not only to points upon which the ct. was actually required by the parties to form an opinion & pronounce a judgment, but to every point which properly belonged to the of litigation, & which the exercising reasonable diligence, might have brought forward at the time. CAMERON *v.* ROUNSEFELL, W. W. R. 121; 47 B. C. R. 40.

previous action.—HIGGINSON & ARUNDEL *v.* PYMAN, SAME *v.* SAME (1926), 43 R. P. C. 291, C. A.

276. *Add. Annotations:—As to* (3) **Apprvd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213; West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; Mould *v.* Mould (1933), 49 T. L. R. 242.

285. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

291. *Add. Annotation:—Generally,* **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

293. *Add. Annotation:*—**Refd.** Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

294. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

296a. —— Action for arrears of maintenance—Agreement to release—Judgment by consent—No evidence that consent based on agreement.]—Pltf. & deft. were divorced in 1925, & an interim order for maintenance was made on Dec. 21, 1925, for payment to pltf. of £3 10*s.* a week. In Feb. 1927, an agreement was entered into whereby deft. was to continue to pay £182 *per annum* but the payments were to be quarterly. The agreement also provided *inter alia*, that each party should give to the other full discharge of all sums claimed & that all actions, claims, demands at law & otherwise were withdrawn by consent. Payment fell into arrears & pltf. brought an action in the Mayor's Ct. for the amount then owing. The defence was withdrawn & judgment consented to. Payments again fell into arrears & the present action was brought in respect of them. Deft. contended that, as the agreement provided for the payment of a sum which deft. was already liable to pay, it was void for want of consideration. Pltf. replied that deft. was estopped from relying on this defence by th proceedings in the Mayor's Ct. which arose out of a breach of the same agreement:—*Held:* (1) there was no estoppel inasmuch as there was no evidence that judgment in the Mayor's Ct. was based on the agreement. It might have been consented on because the money was in any event due under the maintenance order; (2) the settlement of all accounts & claims was good consideration for the agreement & pltf. was entitled to succeed.—MANN *v.* MANN, [1936] 1 All E. R. 952; 80 Sol. Jo. 324.

296b. Admission.]—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment; (2) six. Upon the assessment for 1919–1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:—*Held:* the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—HOYSTEAD *v.* TAXATION COMR., [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

Annotations:—**Consd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241. **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

315a. —— Fraud—Fraud alleged in letter to registrar in previous proceedings.]—Resp. co. took proceedings to recover certain instalments, amounting to about £6, due under a hire-purchase agreement. In the ordinary course, & under County Cts. (Amendment) Act, 1934 (c. 17), s. 19, the case came before the registrar. Resp. co. was represented & was admittedly a consenting party; applt. was not represented, but he wrote to the registrar alleging that the contract had been obtained by fraud. The registrar gave judgment for resp. co. Subsequently resp. co. started a second action to recover further amounts due under the same contract. Applt. counterclaimed for cancellation of the contract on the ground that it had been obtained by fraud. The county ct. judge found that the contract had been obtained by fraud, but he held that applt. was estopped from raising this defence, as the registrar had already decided this point against him. On appeal applt. contended that the registrar had had no jurisdiction to hear the case, as applt. had not applied to the registrar to hear the case:—*Held:* applt.'s letter to the registrar amounted to an application to the registrar to hear the case, & applt. could not therefore raise the question of fraud which was *res judicata*.—RENTIT, LTD. *v.* DUFFIELD, [1937] 3 All E. R. 117, C. A.

PART II. SECT. 3, SUB-SECT. 1.—B. (i).

303 i. *General rule.*]—CARPENTER *v.* COMMERCIAL BANK OF CANADA (1862), 2 E. & A. 111.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a) i.

329 xxvii. —— *Co-defendants.*]—If the relief given to pltf. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree pltf. obtains.—MA PAN NYUN *v.* MAUNG SIT PHAUNG (1928), I. L. R. 6 Ran. 575.—**IND.**

329 xxviii. —— ——.]—The Judicial Committee have approved of the *dictum* acted upon by the cts. in India that to apply the doctrine of *res judicata* as between co-defts. three conditions are requisite, *viz.* (1) there must be a conflict of interest between the defts. concerned; (2) it must be necessary to decide this conflict in order to give pltf. the relief he claims; (3) the question between defts. must have been finally decided.—LALMOHAN DHUPI *v.* RAMLAKSHMI DASEE (1931), I. L. R. 59 Calc. 636.—**IND.**

329 xxix. ——.]—A judgment was obtained against A. & two others without service of process on A. or his having any knowledge of the suit; an attorney retained by the other defts. having appeared for A. also. He was afterwards arrested on a *ca. sa.* issued on the judgment, & was discharged by a judge's order on an affidavit denying knowledge of the suit & of any authority to the attorney to appear for him.

334. *Add. Annotation :*—**Reld.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

339a. Between co-defendants.]—A decision operates as *res judicata* between co-defts. provided that (*a*) there was a conflict of interest between them ; (*b*) it was necessary to decide that conflict in order to give pltf. the relief which he claimed ; (*c*) the question between co-defts. was finally decided.—MUNNI BIBI *v.* TIRLOKI NATH (1931), 58 L. R. Ind. App. 158, P. C.

366. *Add. Annotation :*—**Reld.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

382a. ——.]—KNIGHT *v.* LEGH (1828), 4 Bing. 589 ; 1 Moo. & P. 528 ; 6 L. J. O. S. C. P. 128 ; 130 E. R. 895.

385a. ——.]—Pltfs.' steamer stranded in the Black Sea, & deft. L. agreed to try to salve her on the terms (*inter alia*) that security for payment of his remuneration should be arranged in London & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, the deft. L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct., awarded L. £23,890. L. then disposed of the ship, & pltfs. brought this action, (*a*) for damages for breach of contract, (*b*) for a declaration that the Turkish judgment was invalid, & (*c*) for an injunction to prevent the Turkish judgment from being enforced :—*Held :* as pltfs. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—ELLERMAN LINES, LTD. *v.* READ (1927), 44 T. L. R. 7 ; *on appeal*, [1928] 2 K. B. 144, C. A.

398. *Add. Annotations :*—*As to* (2) **Reld.** *Re* Davy, [1935] P. 1. *Generally*, **Reld.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

404a. Decision as to property passing on death—Crown not a party—Not binding on Crown.]—The Crown is not bound by a decision as to construction in proceedings to which it is not a party, where that decision implicitly determines whether or not property passed on the death of a person who is already dead.—*Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, [1933] Ch. 858 ; 102 L. J. Ch. 374 ; 149 L. T. 217 ; 49 T. L. R. 407, C. A. ; *affd.*, [1935] A. C. 96.

405. *Add. Annotation :*—**Reld.** Wilson *v.* Maple Mill (1925), 95 L. J. K. B. 666.

422. *Add. Annotations :*—**Reld.** Ingenohl *v* Wing On (Shanghai) (1927), 44 R. P. C. 343 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

432. *Add. Annotation :*—**Reld.** A.-G. *v.* Denby, [1925] Ch. 596.

443. *Add. Annotation :*—*As to* (2) **Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

447a. ——.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—CONQUER *v.* BOOT, [1928] 2 K. B. 336 ; 97 L. J. K. B. 452 ; 139 L. T. 18 ; 44 T. L. R. 486, D. C.

Annotation :—**Folld.** Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90.

447b. ——.]—Pltfs., a limited co., were the successors in business of a firm A. R. & Sons. They had taken over the firm's business as a going concern & had (*inter alia*) acquired all the firm's stock-in-trade & the benefit of all the firm's pending contracts. In the course of the business it was necessary to use

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In an action for false imprisonment against pltf. in that suit :—*Held :* A. was not estopped by the judgment from denying his liability.—SULIS *v.* FERGUSON (1861), 10 N. B. R. (5 All.) 110.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

346 ii. —— *Exception to—Action on covenant of indemnity.*]—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—LONDON GUARANTEE & ACCIDENT CO. *v.* DAVIDSON, [1926] 1 D. L. R. 66 ; [1926] 1 W. W. R. 148 ; 36 B. C. R. 301.—**CAN.**

g i. —— *One plaintiff president of company defendant in other proceedings.*]—LONDON LOAN & SAVINGS CO. *v.* OSBORN, [1928] 3 D. L. R. 258 ; [1928] S. C. R. 451.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (c).

sm. *Action by reversioner—How far binding on other reversioners.*]—*Held :* it is well settled that a suit for a declaration by a reversioner to contest an alienation made by a widow in possession, is a representative suit on behalf of all the reversioners, & a decree fairly & properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand, & the alienee or his representatives on the other.—THAKARSINGH *v.* UTTAMKAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

sp. *Action by ratepayer against municipality.*]—A judgment rendered upon an action brought by a ratepayer of a municipality in which it was alleged that a resolution adopted by a municipal council was illegal, constitutes *res judicata* as to all other ratepayers of that municipality ; & such judgment can be invoked as such in a subsequent action where the legality of the same resolution is challenged. Municipal corpns. represent before the cts. all the ratepayers, & a judgment rendered in favour of the corpn. or against it in an action brought by a ratepayer can be opposed to any other ratepayer.—DE DESCHÊNES CORPN. *v.* LOVEYS & BETCHERMAN, [1936] S. C. R. 351.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (d).

374 ii. ——.]—SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR (1927), I. L. R. 51 Mad. 128.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (g).

so. *Ejectment—Fictitious lessee party to first action—Second action against lessor.*]—At the trial of an ejectment, under 14 & 15 Vict. c. 114, recovery was proved in favour of John Doe, on the demise of the now deft. against the now pltf. : & it appeared that the question there decided, being one of boundary, was precisely the same as that again brought up in this case :—*Held :* clearly no estoppel, for that judgment was between different parties, & under the old practice.—CLUBINE *v.* MCMULLEN (1854), 11 U. C. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—E.

sg. *Libel.*]—Liability in an action for damages for libel is not *res judicata* in criminal proceedings for libel, nor *vice versa*.—MENARD *v.* R., [1934] 1 D. L. R. 155 ; 60 C. C. C. 334.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

a i. —— ——.]—Where an application for a writ of possession was dismissed because no notice of determination of the lease had been given :—*Held :* the landlord was not thereby barred from making another application after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498 ; [1928] 2 W. W. R. 628.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) 1.

g i. —— ——.]—JONES *v.* RYDER, [1928] 3 D. L. R. 301 ; [1928] 2 W. W. R. 302 ; 39 B. C. R. 547.—**CAN.**

caustic soda, & before the assignment of the business to pltfs. the firm had bought from defts., who knew the purpose for which it was required, a supply of caustic soda sufficient to last for three years. This caustic soda turned out to be of inferior quality, & in consequence the firm, using it without knowledge of its defects, suffered a loss in their business before the date of the assignment to pltfs. After the assignment pltfs., not knowing that the loss had been caused by the fact that the caustic soda was defective, continued to use it in the business, & suffered further loss in consequence. Ultimately, when the loss had been traced to the caustic soda, pltfs. brought an action against defts. for damages in respect of the loss suffered by the firm before the assignment, & in that action obtained judgment for a sum of £292 10*s.* 3*d.* Subsequently they brought this action to recover damages from defts. in respect of the loss which they had themselves suffered by using the remainder of the caustic soda after they had taken over the business. Defts. pleaded *res judicata* & contended that the action was not maintainable, & an order was made for the trial of a preliminary issue, whether pltfs. had a cause of action:—*Held:* where the same breach of contract has caused the same kind of damage a pltf. cannot bring two actions for different parts of the same kind of damage; he can recover in one action for all damage actual or prospective, & if he does not ask for both in that action he cannot afterwards bring another action for damages for which he omitted to ask in the first action.—ROWNTREE (ALFRED) & SONS, LTD. *v.* ALLEN (FREDERICK) & SONS (POPLAR), LTD. (1935), 41 Com. Cas. 90.

454a. ——.]—Deft., in an action in a county ct., gave notice of set-off, but failed in proving it, through the improper rejection of evidence, & the judge adjudicated against it:—*Held:* the adjudication was a bar to an action for the same claim.—DANKS *v.* FARLEY (1853), 1 C. L. R. 95; 1 W. R. 291.

457. *Add. Annotation:*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

463. *Add. Annotations:*—**Refd.** *Re* Wilson, Wilson *v.* Bland, [1937] 3 All E. R. 297; *Re* Wilson, *Ex p.* Wilson *v.* Trustee, [1937] Ch. 675.

464. *Add. Annotation:*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

473. *Add. Annotations:*—**Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

480. *Add. Annotations:*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90; Rose *v.* Ford, [1937] 3 All E. R. 359; Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

482. *Add. Annotation:*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

483. *Add. Annotation:*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

489. *Add. Annotation:*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

492. *Add. Annotation:*—*As to* (1) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

494. *Add. Annotation:*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

498a. ——.]—*Held:* a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (SCRUTTON, L.J.).—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

505. *Add. Annotation:*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. *Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.*]—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction:—*Held:* resp. was not debarred from relying on the conviction by reason of the fact that in the first of re-entry which it gave him.—COHEN *v.* LAPIN (1924), 35 C. L. R. 247; 25 S. R. N. S. W. 291; 42 N. S. W. W. N. 7.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) iii.

474 i. *Fraud — Action for fraudulent conversion of partnership assets.*]—EASTERN TRUST CO. *v.* BUSCH, [1930] 1 D. L. R. 723; 1 M. P. R. 140.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

496 iii. ——.]—WILLIAMS & SEARS *v.* RICHARDS (1918), 25 B. C. R. 19.—CAN.

496 iv. ——.]—**The chief test of *res judicata* is identity of issue.** The issue raised in the present motion for an extension of time for serving the statement of claim held not to be identical with any issue that had been adjudicated in the earlier proceedings in this matter.—GOODBUN *v.* MITCHELL, [1928] 2 W. W. R. 12.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

507 vi. ——.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL *v.* NUGENT, [1924] 3 D. L. R. 679; [1924] 2 W. W. R. 1138; 18 Sask. L. R. 592; *revsg.*, [1924] 2 D. L. R. 97; [1924] 1 W. W. R. 939.—CAN.

507 vii. ——.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground of attack in the former suit, pltfs. were not bound to do so.—ABID-UD-DIN *v.* BISHARAT, ALI, ETC., RAOOF-UN-DIN, ETC. (1927), I. L. R. 8 Lah. 308.—IND.

507 viii. ——.]—SOKOLOSKI *v.* WINISKI, [1927] 2 D. L. R. 1029; [1927] 1 W. W. R. 972; 21 Sask. L. R. 455.—CAN.

507 ix. ——.]—WINTER *v.* DEWAR & CO., [1929] 4 D. L. R. 389; 2 W. W. R. 518.—CAN.

508a. ——.] — MACKENZIE-KENNEDY *v.* AIR COUNCIL, No. 498a, *ante*.

510. *Add. Annotations :*—**Consd.** West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

511. *Add. Annotation :—As to* (2) **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

520. *Add. Annotation :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

521a. **Proceedings in respect of registered trade mark—Former proceedings before registration.**]—Pltfs. commenced an action for infringement of their registered trade marks & passing off, & delivered their statement of claim alleging acts of infringement & passing off by defts. Defts. moved to strike out the statement of claim, on the ground that the alleged acts of infringement & passing off had been already adjudicated upon or were subsequent to the issue of the writ in the present action. The judge held that there was a total absence of any evidence that the alleged acts had ever been adjudicated upon. Defts. appealed :—*Held :* the reasons for the decision of the judge were right.—JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

529a. **Judgment against separate estate of married woman—Action to obtain payment into court.**]—Where the ct. in giving judgment against a married woman who is a defaulting trustee orders that the judgment be satisfied out of her separate estate & execution proves useless it is not open to pltf. in a new action to obtain against her judgment in a different form for payment of the moneys into ct. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft. a married woman judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless pltf. now brought this action alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for pltf., & that the second deft. received the money as constructive trustee :—*Held :* in regard to the first deft. the matter was *res judicata*, as pltf. had already obtained judgment against her separate estate & therefore could not now on the same facts obtain against her another form of judgment for payment of the moneys into ct.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213 ; 98 L. J. Ch. 369 ; 142 L. T. 216 ; 45 T. L. R. 494.

538. *Add. Annotations :—As to* (1) **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300. **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780. *Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

540. *Add. Annotations :*—**Apld.** Pirie *v* Richardson, [1927] 1 K. B. 448. **Refd.** *Re* Pennington & Owen, [1925] Ch. 825 ; Bennett *v.* Whitehead (1926), 96 L. J. K. B. 268 ; Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773 ; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

546. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

550. In the last line for " case of the law " read " case out of the law."

Add. Annotations :—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448; Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

After this case add " *Compare* Contract, No. 163a."

555. Before this case add :—

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

Add. Annotation :—**Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

555a. ——.]—BARKER *v.* MARTIN (1647), Sty. 20 ; 82 E. R. 498.

556. *Add. Annotations :—As to* (1) **Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 101 L. J. Ch. 401. **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Apld.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489. *Generally*, **Refd.** Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

557. *Add. Annotation :—As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

559. *Add. Annotations :—As to* (1) **Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252 ; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90 ; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

c i. —— *Action for judicial separation—Subsequent action for separation & restitution of conjugal rights.*]—HOPKINSON *v.* HOPKINSON, [1931] 3 W. W. R. 62 ; *affd.*, [1932] 1 W. W. R. 623.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held :* the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (g).

ss. *Action for rent—Eviction pleaded by tenant—Reduction of rent granted—Right to bring action for trespass.*]—If a tenant defends an action for rent, & a reduction is made on the amount claimed on the ground that he has been evicted by the landlord from part of the premises, he cannot afterwards maintain trespass against the landlord for the same action which he relied on as an eviction in the former action.—ROURKE *v.* MCCULLOUGH (1859), 9 N. B. R. (4 All.) 361.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (b) i.

546 i. —— —— *Application to set aside judgment & add new party.*]—HUDSON'S BAY CO. *v.* SCOTT (B. C.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 232.—**CAN.**

566. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Sons, Ltd., [1932] 2 Ch. 81. **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

567. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Unchumatan *v.* Bulmer Rayon Co.,

568. *Add. Annotation :*—*As to* (1) & (2) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

569a. ——.]—Where two are bound, jointly & severally, & the obligee has judgment against one, he may sue the other.—HIGGENS' CASE (1605), 6 Co. Rep. 46a; 77 E. R. 322.

573. *Add. Annotation :*—*As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

—— —— **Power to set aside judgment.**] —A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., [1926] A. C. 761; 135 L. T. 645; *sub nom.* FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY *v.* M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197; 42 T. L. R. 686, P. C.

Annotation :—**Folld.** Kinch *v.* Walcott, [1929] A. C. 482.

577. *Add. Annotations :*—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380. **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557; De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

577a. —— **Action against partner—Subsequent action against firm.**]—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., No. 575a, *ante*.

579. *Add. Annotations :*—*As to* (2) **Consd.** Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation :* — **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

581a. —— —— —— **Judgment for debt incurred after separation.**]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. *v.* PERKINS (1925), 133 L. T. 252, D. C.

582. Before this case add :—
See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

585. *Add. Annotations :*—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

585a. Nuisance—Unsatisfied judgment against one tortfeasor—Action against another tortfeasor.] —In 1931, the owners & occupiers of a farm on the banks of a river brought an action against a limited co. (hereinafter called the selling co.), manufacturers of artificial silk, for polluting the stream & causing damage & injury to the farm & to their business as farmers from 1925 to May, 1928. The selling co. in their defence pleaded that in Mar. 1928, they sold the goodwill of their business & all their property to a purchasing co. as from Feb. 1, 1928, & that it was agreed between them & the purchasing co. that the latter should satisfy & discharge all liabilities & obligations of the selling co. & indemnify them against all actions & claims in respect thereof; that in Sept. 1928, the same pltfs. had brought an action against the purchasing co. in respect of the same damage & injury from May, 1928, & that it was then agreed between pltfs. & the purchasing co. that, for the purpose of calculating the amount of damages suffered by pltfs., the damages caused by the selling co. should be added to those caused by the purchasing co.; that in Oct. 1929, pltfs. recovered judgment whereby an inquiry was directed what damages pltfs. had sustained through the pollution of the river by the purchasing co. or their predecessors in title, the selling co. that these damages were assessed at £265, & that the judgment remained in force. Sub sequently an order was made for the compulsory winding-up of the purchasing co. & the judgment was wholly unsatisfied :— *Held :* the facts pleaded in the defence

PART II. SECT. 3, SUB-SECT. 2.—C. (c)

572 i. *Unsatisfied judgment.*]—The fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN *v.* BROADY NORMAN & CO., [1928] S. C. 351.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) i.

n i. ——.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment :—*Held :* a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS *v.* RODGERS, [1927] 2 W. W. R. 185; 56 D. L. R. 691; 60 S. C. R. 664.—**CAN.**

o i. —— *Judgment by default against husband.*]—Where two persons are sued jointly & judgment by default is entered against one of them pltf. then cannot turn round & say that that deft. was an agent of the other & recover judgment against the latter as the principal.—CARROLL *v.* KENNERLEY (Sask.), [1929] 4 D. L. R. 1062; 2 W. W. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) ii.

sa. *Libel.*]—A judgment for libel against a wholesale news agency with respect to its distribution of defamatory matter to its several retail selling agents is not a bar to actions against the retail agents based on the sale of the same matter to the public. The wholesale agency & the retail vendor are not joint tortfeasors.—LAMBERT & LAMBERT *v.* ROBERTS DRUG STORES, LTD., [1933 2 W. W. R. 508; 4 D. L. R. 193.—**CAN.**

afforded no answer to the action against the selling co., inasmuch as they suggested neither a release of the selling co. from the causes of action complained of, nor *semble* an accord & satisfaction thereof or any merger of them in the judgment.—BULMER RAYON CO., LTD. *v.* FRESHWATER, [1933] A. C. 661 ; 102 L. J. Ch. 318 ; *sub nom.* FRESHWATER *v.* BULMER RAYON CO., LTD., 149 L. T. 409, H. L.

586. *Add. Annotation :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

589. *Add. Annotations :—As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

590. *Add. Annotation :*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

593. *Add. Annotations :*—**Apld.** Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

597a. —— —— —— **Meaning of "forthwith".**]—" Forthwith " means, forthwith upon demand by the person entitled to the certificate, & not forthwith upon the dismissal of the complaint. A certificate was applied for by the person entitled, five days after the complaint had been dismissed, & granted two days after the application, but dated as of the day upon which the complaint was made :—*Held :* to have been made out " forthwith " within Offences Against the Person Act, 1828 (c. 31), s. 27, & to be a good defence, under sect. 28, to a subsequent action for the same assault.—COSTAR *v.* HETHERINGTON (1859), 1 E. & E. 802 ; 8 Cox, C. C. 175 ; 28 L. J. M. C. 198 ; 33 L. T. O. S. 105 ; 23 J. P. 663 ; 5 Jur. N. S. 985 ; 7 W. R. 413 ; 120 E. R. 1111.

599a. —— —— —— **What amounts to conviction.**]—To an action for an assault deft. pleaded that, before action brought, pltf. caused deft. to be summoned before a magistrate to answer a complaint in respect of the assault, & that the magistrate " adjudged & determined the said complaint & charge, & then ordered deft. then to pay, & then convicted him, deft., in the costs as well of the said complaint & charge as of the hearing thereof, but did not further order or convict deft." The magistrate had decided only that deft. should enter into recognisances to keep the peace & pay the costs thereof, & such costs only had been paid. No record of a conviction was produced, but the magistrate's clerk stated that it was not the practice to draw up a formal conviction in such cases :—*Held :* the plea was no bar to the action within Offences Against the Person Act, 1861 (c. 100), s. 45, & taking it as it stood it was not proved.—HARTLEY *v.* HINDMARSH (1866), L. R. 1 C. P. 553 ; Har. & Ruth. 607 ; 35 L. J. M. C. 255 ; 14 L. T. 795 ; 12 Jur. N. S. 502 ; 14 W. R. 862.

Annotations :—**Expld.** R. *v.* Miles (1890), 24 Q. B. D. 423. **Refd.** Police Comr. for the Metropolis *v.* Donovan (1903), 52 W. R. 14.

600a. —— **Defendant bound over—Subsequent action for same assault.**]—JONES *v.* LAMOND (1935), 79 Sol. Jo. 859, C. A.

623. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

631. *Add. Annotation :—As to* (1) **Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

647. *Add. Annotation :—As to* (1) **Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

659. *Add. Annotation :—As to* (2) **Apld.** The Point Breeze, [1928] P. 135.

After this case add " *See, also,* ADMIRALTY, No. 706b."

PART II. SECT. 3, SUB-SECT. 2.—C. (e).

586 iv. ——.]—ABDUR RAHIM *v.* MAHOMED BARKAT ALI (1927), 55 L. R. Ind. App. 96.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—E.

594 i. *Summons for assault—Dismissal—Subsequent action for same assault.*]—In an action for assault & battery, deft. pleaded that an information had been made against him by pltf. before a magistrate in respect to the trespass declared on, under Dominion Act, 32 & 33 Vict. c. 20, s. 43, & that the magistrate, after hearing, dismissed the information & gave deft. a certificate of dismissal, whereby & by force of the statute he was released from the action :—*Held :* the plea was insufficient in not stating that the complainant had prayed the magistrate to proceed summarily.—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

sc. *Acquittal on charge of murder—Subsequent charge of assault occasioning actual bodily harm.*]—After being acquitted on a trial for murder the accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *res judicata :—Held :* since the fact of the assault in question was involved in the alleged murder, *i.e.* if there was a murder it could only be because there was the assault, &, therefore, it must have been considered & directly adjudicated on by the jury, the acquittal on the charge of murder rendered the matter of the assault *res judicata* as between the Crown & the accused, & was a bar to the second charge.—R. *v.* GOSSELIN, [1928] 1 W. W. R. 134 ; 50 Can. Crim. Cas. 287. —**CAN.**

598 iii. —— —— —— *Necessity for certificate of conviction.*]—JUDE *v.* ARCHER & GOODMAN, [1924] 1 D. L. R. 448 ; [1924] 1 W. W. R. 279 ; 41 Can. Crim. Cas. 289 ; 18 Sask. L. R. 32.—**CAN.**

g i. —— *Subsequent conviction for same offence—Whether appeal in action constituted "further proceedings."*]—Pltf. sued deft. by civil bill for £20 damages for assault. The Recorder held in pltf.'s favour, & gave a decree for £14 5*s.* Deft. appealed from the decree, & entered into a recognisance as provided by 45 & 46 Vict. c. 29, s. 6. After the case had been at hearing before the judge of Assize for a short time, deft. admitted the assault & the reasonableness of the damages awarded, & raised a new defence which had not been available to him in the county ct. Deft. relied upon Offences Against the Person Act, 1861, c. 100, s. 43, & it was contended on his behalf that deft.'s conviction coupled with the payment of the penalty operated as a release from " all further or other proceedings," including the re-hearing of the civil bill on appeal :—*Held :* the appeal did not constitute " further or other proceedings " within Offences Against the Person Act, 1861, s. 45.—MAGEE *v.* STOREY, [1929] N. I. 134.—**IR.**

g ii. —— *Conviction for same offence—Whether bar to action.*]—A conviction of a servant for having refused & neglected to obey the lawful commands of his master :—*Held :* to render the servant's claim herein for damages for wrongful dismissal *res judicata.*—SCHILL *v.* BALFOUR, [1937] 2 W. W. R. 249.—**CAN.**

sf. *Order for maintenance of infant—Subsequent criminal proceedings—No bar.*]—*Re* BROOKS (1930), 54 Can. C. C. 334.—**CAN.**

PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

638 x. ——.]—JOURNEAY *v.* RAILWAY PASSENGERS ASSURANCE CO., [1924] 1 D. L. R. 308 ; 50 N. B. R. 501.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARKE (B. C.), [1926] 4 D. L. R. 971 ; [1926] 3 W. W. R. 459.—**CAN.**

sa. *Should not be pleaded in counterclaim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARKE (B. C.), [1926] 4 D. L. R. [1926] 3 W. W. R. 459.—**CAN.**

Part III.—Estoppel Quasi of Record.

672. *Add. Annotation :*—**Reld.** Hyman *v.* Hyman, [1929] A. C. 601.

686. *Add. Annotations :*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284. **Reld.** *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

687. *Add. Annotation :*—**Reld.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

Part V.—Estoppel by Deed.

734. *Add. Annotation :*—**Reld.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

736. *Add. Annotation :*—**Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

771. *Add. Annotation :—As to* (2) **Consd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

776. *Add. Annotation :—As to* (1) **Reld.** Parr *v.* A.-G., [1926] A. C. 239.

786a. ——.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—GILLETT *v.* ABBOTT (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & H. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

Annotation :—**Reld.** Fishmongers Mystery Wardens & Commonalty *v.* Robertson & Staines (1848), 18 L. J. C. P. 55.

813a. Existence of shares.]—By a deed of arantee for the repayment of a loan of £250,000 & interest, which recited that the lenders had at the request of the guarantors advanced to the borrowers £250,000 upon security of a charge on certain shares, the guarantors covenanted, in the event of the borrowers failing to make the repayments provided for, forthwith to repay to the lenders the said sum of £250,000 with interest at the rate of 8 per cent. *per annum*. The deed further provided that whatever the position between the lenders & the borrowers, the guarantors should be liable for all moneys due as principal debtors & they were not to be released from liability by reason of time being given by the lenders or by their taking no steps to protect their securities. The shares above mentioned were at no time secured & had not in fact been issued. Upon default in repayment of part of the loan the liquidator of the guarantors rejected the proof by the liquidators of the lenders, contending that the security of the charge on the shares was a condition precedent to the guarantee :—*Held :* (1) upon a proper construction of the deed of guarantee, the contention of the liquidator of the guarantors was correct, & the guarantors were not bound by the guarantee. The existence of the shares was the basis of the contract of guarantee & this was not affected by the clause making the guarantors liable as principal debtors ; (2) the guarantors were not bound by the recital in the deed & were not estopped from setting up the facts relating to the shares.—*Re* PARENT TRUST & FINANCE CO., LTD., [1936] 3 All E. R. 432; 155 L. T. 562; 80 Sol. Jo. 992, C. A. **affd.** [1937] 4 All E. R. 396 H. L.

828. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Reld.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

828a. ——.]—In order to keep the trusts of a settlement off the title, the settlor conveyed the property to certain grantees by deed of gift in consideration of his love & affection for them. The grantees at the same time executed a deed poll declaring trusts in favour of the settlor & other beneficiaries. The conveyance & the title deeds were handed

PART III. SECT. 1, SUB-SECT. 5.

5b. *Dismissal of first petition based on alleged fraudulent preference.*]—The doctrine of *res judicata* is applicable to proceedings in insolvency. Therefore, the dismissal of a petition in respect of a sale by the insolvent on the ground that the sale did not amount to a fraudulent preference :—*Held :* a bar to a subsequent petition by a creditor in respect of the same sale.—RANGAPPA *v.* RANGAPPA (1933), I. L. R. 56; Mad. 395.—**IND.**

PART V. SECT. 1.

5c. *Inapplicable in India.*]—The doctrine of "estoppel by deed" in its technical sense cannot be said to exist in India.—JOHNSTON *v.* GOPAL SINGH (1931), I. L. R. 12 Lah. 546.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

5f. *Lease null & void—Lessor under disability.*]—Where the Nawab of M. executed a lease of certain immovable property for a term of 21 years in consideration of the sum of rupees 5 lacs as advance of the total rent payable for & during the said term of 21 years, on a suit being brought by the Nawab for recovery of possession :—*Held :* as the lease contravened condition (1) of the Murshidabad Act it was null & void & the Nawab was entitled to recover possession of the demised property. The Nawab was not estopped from denying the validity of the lease by reason of the Act as he was a person under disability.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*]—T., to whom a patent of land issued, by deed poll made prior thereto, sold the land to L. : —*Held :* in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—ROBERTSON *v.* DALEY (1886), 11 O. R. 352.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

5c. *By nominee of Crown to convey land—Subsequent grant to stranger.*]—Where the nominee of the Crown gave a bond for a deed of the land to be made when the patent should issue, & in the same bond conveyed & covenanted to guarantee the title :—*Held :* on ejectment by a grantee of the nominee under a deed executed after the patent issued, this bond gave to the obligee no title by estoppel.—DOE d. MCGILL *v.* SHEA (1846), 2 U. C. R. 483.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—C.

5x. *Release of mortgage.*]—Deft., a mtgor., wishing to pay off the mtge. & substitute another, arranged with one M. that money in the hands of M.'s solr. should be appropriated for that purpose. A mtge. was executed by deft. in favour of M. & a release of the existing mtge. duly executed by pltfs. was received by the solr. & exhibited to both deft. & M. It was not registered, however, & the solr. absconded without paying over the money to the mtgees. or being requested by the mtgees. to do so, although over a year had elapsed before the solr. left. Pltf., who had particular charge of the transaction, said that he had forgotten the matter. Deft. twice paid interest to M. on his mtge., they both thinking that it was in effect & that pltfs.' mtge. had been satisfied :—*Held :* pltfs. were not entitled to enforce their mtge., since they had put in the power of the wrongdoer to commit the wrong, & because they were estopped by the release & by their conduct from asserting that their mortgage had not been paid.—THOM & LAMONT *v.* WALKER, [1930] 3 W. W. R. 33; 3 D. L. R. 915; 43 B. C. R. 142.—**CAN.**

to the grantees, the deed poll being retained by the settlor's solr. The grantees purporting to be absolute owners created equitable incumbrances on the property in favour of certain incumbrancers for value without notice of the trusts:—*Held:* as the settlor's conveyance contained a direct misrepresentation necessarily implying that the grantees were absolute owners, the settlor & the other beneficiaries claiming under him were estopped from denying this statement against the equitable incumbrancers, & their prior equity was therefore postponed.—*Re* KING'S SETTLEMENT, KING *v.* KING, [1931] 2 Ch. 294; 100 L. J. Ch. 359; 145 L. T. 517.

Annotations:—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

831. *Add. Annotation:*—**Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

847. *Add. Annotation:*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

851. *Add. Annotation:*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

916. *Add. Citation:*—94 L. J. Ch. 159.

965. *Add. Annotation:*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

993a. *S. P.* SEABOURNE *v.* POWEL (1686), 2 Vern. 11; 23 E. R. 619.

Annotation:—**Refd.** Smith *v.* Osborne (1857), 6 H. L. Cas. 375.

993b. ——.]—CLAYTON *v.* NEWCASTLE (DUKE) (1682), 2 Cas. in Ch. 112; 22 E. R. 871, L. C.

Annotation:—**Refd.** Morse *v.* Faulkner (1792), 3 Swan. 429, n.

1018. *Add. Annotation:*—**Consd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

Part VI.—Estoppel in Pais.

1019. *Add. Annotations:*—*As to* (1) **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. *As to* (2) **Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1020. *Add. Annotations:*—*As to* (1) **Refd.** Ropner S.S. Co. *v.* Morgan, Miller *v.* Morgan, [1935] 1 K. B. 1. *As to* (4) **Consd.** Rodenhurst Estates, Ltd. *v.* Barnes, Ltd., [1936] 2 All E. R. 3. *Generally,* **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1021. *Add. Annotations:*—*As to* (1) **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally,* **Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

1022. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch.

PART V. SECT. 4, SUB-SECT. 6.

848 vii. ——.]—Applt. & resp. entered into a contract for the sale & purchase of certain leasehold land & property of applt. at a price payable by instalments. The agreement contemplated a transfer of the lease before payment of the whole purchase, & after transfer applt. had the right either to require resp. to give a mtge. or himself to enter a caveat against dealings. Applt. lodged a caveat. The transfer contained statements acknowledging receipt of the purchase price & that the price was the same as that referred to in the agreement:—*Held:* the statements in the transfer did not work an estoppel by deed, & there was no need to obtain rectification of the transfer.—GOWER *v.* WAPLES, [1930] S. A. S. R. 120.—**AUS.**

853 i. *Operation of rule—Money paid to solicitor producing executed deed—No intention that money should be paid over to party to deed.*]—A solr. obtained from pltf., his client, a cheque for $1,100, representing that he would invest it upon the security of a mtge. upon land which had been mortgaged to his sister, whose mtge. would be paid off by the $1,100. In the receipt given to pltf. by the solr. it was stated that the cheque was given to him "*re* mtge. 10 R. St.", which was a brief description of land upon which defts. had made a mtge. to the solr.'s father's exors. The solr. notified defts. that the exors. desired payment of this mtge., & that he had a client who would advance the money necessary to pay it off. A mtge. by defts. to pltf. upon this land was thereupon prepared by the solr. & executed by defts. in Mar. 1923. They made payments from time to time upon the mtge. by cheque to the solr., who paid off the mtge. held by the exors., & consequently did not obtain a discharge of it. The $1,100 was misappropriated by the solr., who absconded in 1926. It was intended that the mtge. moneys should be paid to the exors. & not to the mtgors., & this pltf. understood. This action was brought to enforce the mtge., & pltf. in her evidence at the trial stated that the solr. showed her the mtge. in Mar. 1923:—*Held:* the facts that the mtgor. delivered the mtge. to the solr. & that he showed it to pltf. did not amount to a representation that the moneys advanced by pltf. had been paid to the holders of the first mtge., & that it had been discharged, & it could not be said that the mtgors. were estopped from disputing the fact that the moneys had been advanced to them.—MURRAY *v.* CROSSLAND, [1929] 4 D. L. R. 721; 64 O. L. R. 403.—**CAN.**

PART V. SECT. 5.

8d. *Transfer under Real Property Act—Without special covenants—Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in the Real Property Act, made by the registered owner & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequenty acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

8e. *Deed of adoption—Accompanied by all necessary ceremonies.*]—Where an adoption had taken place with great publicity & with due performance of all the necessary ceremonies, & a formal deed of adoption had been executed & registered & the adopted son had been received into the family of his adoptive father, & where, further, the adoption was not challenged for several years:—*Held:* an estoppel was created whereby the adoptive mother was precluded from afterward disputing the adoption.—DHARAM PRAKASH *v.* KALAWATI DERI (1928), I. L. R. 50 All. 885.—**IND.**

PART V. SECT. 8, SUB-SECT. 3.—C.

993 vii. ——.]—DOE d. TIFFANY *v.* MCEWAN (1837), 5 O. S. 598.—**CAN.**

PART V. SECT. 9.

See cases in Part II., Sect. 5, subsect. 2, *ante.*

PART VI. SECT. 1.

1019 i. *General rule.*]—The reason for precluding a party from relying upon an actual state of affairs as the foundation of his rights lies in the injustice of permitting him to depart from some contrary assumption if another party has based his conduct upon it. The injustice of allowing him to disregard the assumption must arise from the circumstances attending its adoption by the other party. There are well recognised grounds for compelling adherence to such an assumption. One such ground is that the assumption has been made because a belief in its correctness has been induced by the representation or the conduct of the party seeking to depart from it. But what makes it unjust to permit the departure from an assumption so induced is that, were it permitted, the party so induced would through making the assumption find himself in a position occasioning material detriment to himself. Without this element there is no estoppel. It must appear that upon the faith of his belief by act or omission he has placed himself in a position which, if his belief proved incorrect, would be productive of loss.—NEWBON *v.* CITY MUTUAL LIFE ASSURANCE SOCIETY, LTD. (1935), 52 C. L. R. 723; 9 A. L. J. 78.—**AUS.**

316; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

1032. *Add. Annotations :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371; Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1036. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1036a. ——.]—If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—BEATTIE *v.* EBURY (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.; *affg.* (1872), 7 Ch. App. 777, L. JJ.

1038. *Add. Citation :*—132 L. T. 22.

1039. *Add. Annotation :*—*As to* (1) **Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1040. *Add. Annotations :*—**Apld.** Huddersfield Ice & Worsteds *v.* Todd (1925), 134 L. T. 82. **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1041. *Add. Annotations :*—*As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Bartlam *v.* Evans, [1936] 1 K. B. 202; Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1043. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

1054a. Construction of agreement.]—If a person authorises or permits another to make a representation intended to be acted upon & it is acted upon, that person cannot afterwards be heard to say that the representation is not true. This applies when the representation is as to the legal effect of a document if there is no qualification in the representation suggesting that the document & not its effect as represented is to govern the relations of the parties. In a prospectus issued by deft. co. there was a clause referring to an agreement with that co. & purporting to set out its effect. The statements in this clause were made with the knowledge & acquiescence of the other party to the agreement, & were also known to & acquiesced in by the duly authorised agent of that party :—*Held :* the contracting party & his agent were thereby estopped from setting up any other construction of the agreement than that stated in the clause in the prospectus.—DE TCHIHATCHEF *v.* SALERNI COUPLING, LTD., [1932] 1 Ch. 330; 101 L. J. Ch. 209; 146 L. T. 505.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

1057. *Add. Annotation :*—*As to* (1) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1.

1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."

1066. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Distd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Houghton *v* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1068. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. [illegible]

1081a. ——.]—A man petitioning for a decree of nullity of an English marriage on the ground of the survivorship of a former husband of the woman to whom, as petitioner alleged, she had been married previously in Scotland was met by a plea of estoppel *in pais*. Particulars

PART VI. SECT. 3, SUB-SECT. 1.—A.

1032 i. *How estoppel arises.*]—Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re* MONTGOMERY *v.* DIAMOND, DIAMOND *v.* MONTGOMERY, [1925] 4 D. L. R. 736.—**CAN.**

1040 i. *Where all parties know the truth—No representation.*]—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice :—*Held :* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—JACKS & Co. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

1041 xiv. ——.]—In 1894 applt. granted a lease of land "from year to year" to resps. In 1903 resps. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps. :—*Held :* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—FORBES *v.* RALLI (1925), L. R. 52 Ind. App. 178.—**IND.**

1041 xv. ——.]—The principal question in this case being whether the purchasers of some of the plots abutting on the land in question, which was described in their conveyance as "land kept for the proposed 100 feet drainage road of the Calcutta Improvement Trust," or as "the proposed drainage road of the Trust," had a right of way over the land by reason of any rule of estoppel :—*Held :* in order that a representation may operate as an estoppel, it must be a representation of an existing fact & not of a mere intention or future promises. It was a statement of what the Improvement Trust was going to do with regard to the land, which was described to be on the boundary of the plots sold, & did not confer any title on the purchasers of the plots sold, either by express grant or by implication. Hence no right of easement was created.—HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, LTD. *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 56 Calc. 989.—**IND.**

1044 i. —— ——.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—RAZANSOFF *v.* BROUNSTEIN, [1924] 2 D. L. R. 1170; 2 W. W. R. 500.—**CAN.**

1044 ii. *S. P.* ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

sg. *Construction of contract.*] — A party who represents to another that he places a particular construction upon a clause in a written contract thereby inducing the other to enter into the contract is not entitled in an attempt to enforce the contract to set up a different construction though the latter construction may be correct in law.—SAMPSON *v.* UNION & RHODESIA WHOLESALE, LTD., [1929] A. D. 468.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (f).

1072 x. ——.]—WIETING & RICHTER, LTD. *v.* BRAID TUCK & Co., LTD., [1936] 3 W. W. R. 286; 51 B. C. R. 135.—**CAN.**

of the alleged estoppel were that in an earlier suit in this ct. by the former husband of the woman for divorce from her on the ground of her adultery with the present petitioner, petitioner as co-resp. in that suit had expressly adopted a plea of the woman denying the validity of the Scotch marriage, & further that in certain proceedings then taken by the woman in the Scotch ct. seeking a declaration that she & petitioner were husband & wife & praying that the former husband of the woman should be " put to silence in respect of false & calumnious allegations by him that he was married " to the woman, the petitioner had not only been a party to those proceedings as " curator & administrator " of the woman & " for his own interest in the premises " but had also been a party to the settlement of them, resulting in the former husband of the woman admitting that there had been no legal marriage in Scotland between him & the woman & withdrawing his suit & subsequently marrying another woman in England :—*Held :* none of the requirements for an estoppel had been fulfilled. Although petitioner had adopted the plea by the woman denying the validity of the Scotch marriage he had not done so with intention to mislead the woman, whose knowledge of the facts was greater than his own. Both parties were simultaneously making the same statement for a common purpose, & neither could be estopped as against the other by the making of it. Finally, in the proceedings taken by her in the Scotch ct. the woman relied upon her own knowledge of the facts as to the alleged Scotch marriage in which the petitioner had no part, & if she had acted to her own detriment she did not do so on the faith of any statement by the petitioner.

Qu. : whether the decision of an issue as to the validity of a marriage which involves status & is of public interest can be governed by an estoppel *inter partes*.—SQUARE *v.* SQUARE (OTHERWISE BEWICKE), COWAN (OTHERWISE YOUELL) *v.* COWAN, [1935] P. 120 ; 104 L. J. P. 46 ; 153 L. T. 79 ; 79 Sol. Jo. 403.

1108. *Add. Annotations :*—**Apld.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136 ; United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266 ; The Skarp, [1935] P. 134 ; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120.

1111. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92 ; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1130. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1132a. —— —— **Quantity of estate.**]—Vendor, representing & contracting to sell the estate as his own, cannot object, that he has only a partial interest.—MORTLOCK *v.* BULLER (1804), 10 Ves. 316 ; 32 E. R. 857.

1147. *Add. Annotation :*—**Refd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

1148a. ——.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to pltfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in

PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

1096 xviii. ——.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—ST. JOHN COUNTY HOSPITAL *v.* PECK, [1924] 2 D. L. R. 163 ; 51 N. B. R. 324.—**CAN.**

1096 xix. ——.]—A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice :—*Held :* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—JACKS & CO. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

1096 xx. ——.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation, as true not knowing it to be untrue, thereby altering his position to his prejudice.—HUFFMAN *v.* ROSS (1925), 57 O. L. R. 329.—**CAN.**

1096 xxi. ——.]—Where a person, in reliance on the statement of a third person, pays over money which he has a legal right to get back, it is not true, as a general proposition, that in order to establish prejudice sufficient to support an estoppel against such third person he must show that the payee is insolvent.—BOYES *v.* BORLEY, [1928] 4 D. L. R. 302 ; [1928] 3 W. W. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—F.

sk. *Representation as to value.*]—Where D., the owner of a house, represented to M., who afterwards purchased it, that any person building a house adjoining would have to pay the owner of the existing house £150 for the use of the flank wall thereof :—*Held :* D. was not thereby estopped from showing that the value of such user was less than £150.—MARTIN *v.* DOUGLAS (1867), 16 W. R. 268.—**IR.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

1144 xi. ——.]—Pltf. was induced to buy certain lots of land at R. by the representations of the vendor's agent that a near-by block of land was a public park to the free user of which, as a bathing beach & recreation ground. pltf. & his family would be entitled. The vendor, who owned said block, afterwards fenced it off & demanded a fee from pltf. & others for admission to it :—*Held :* on the ground of estoppel, pltf. was entitled to a declaration that he & all persons claiming through or under him were entitled to free passage to & free use of said block at all times as though it were a public park, & to an injunction restraining vendor from doing anything to prevent such passage & use.—HUGG *v.* Low, [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

1144 xii. ——.]—Pltf. municipality having become the tax-sale purchaser of a quarter section of land leased it, before obtaining title thereto, to the deft. on the crop-payment plan. After deft. had put in his crop the registered owner interfered with deft.'s possession & he invoked the assistance of pltf.'s officials to protect the crop from the registered owner. They decided that pltf. would seize the crop for arrears of taxes due by the registered owner. Pltf.'s secretary made out the seizure & handed a notice of seizure to & deft. accepted it & treated it as a seizure of a quarter of the crop for the arrears of taxes. Later deft. removed & disposed of all the crop, & pltf. sued for the value thereof :—*Held :* even if the arrangement did not amount to a valid seizure deft. could not, under the circumstances, be heard to say that it did not.—HEART'S HILL, RURAL MUNICIPALITY *v.* HELMER, [1930] 2 W. W. R. 535 ; 3 D. L. R. 1004 ; 24 S. L. R. 513.—**CAN.**

sd. *As to fault for* fact that pltf., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car :—*Held :* not to raise any estoppel.—HUNT *v.* MORGAN (Alta.), [1926] 3 W. W. R. 804 ; [1927] 1 D. L. R. 267.—**CAN.**

common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to pltfs., although no appropriation of the 200 quarters had taken place:—*Held:* (1) pltfs. had no claim to the maize; (2) defts. & A. were not estopped from denying that pltfs. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, [1925] 2 K. B. 383; 94 L. J. K. B. 928; 30 Com. Cas. 280; *affd.*, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotation:—As to (1) **Apld.** *Re* Walt, [1927] 1 Ch. 606.

1164. *Add. Annotation:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

1213. *Add. Annotation:—As to* (2) **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Citation:*—1 B. R. A. 210.
Add. Annotation:—As to (1) **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

1223. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

1224a. ——.]—If, whatever a man's real intention may be, he so conducts himself in making a contract that a reasonable man would believe that he was assenting to the terms proposed by the other party, & if that other party upon that belief enters into the contract with him, the man so conducting himself is equally bound as if he had intended to agree to the other party's terms.—SULLIVAN *v.* CONSTABLE (1932), 48 T. L. R. 369, C. A.

1227. *Add. Annotations:*—**Consd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

1228a. As to performance of statutory duty or exercise of statutory discretion.] — Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

Annotation:—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1232. *Add. Annotation:—As to* (1) **Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

1238. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** May *v.* May (1929), 98 L. J. K. B. 770; Bartlam *v.* Evans, [1936] 1 K. B. 202.

1247. *Add. Citations:*—94 L. J. P. C. 93; 132 L. T. 511.

1257. *Add. Annotation:*—**Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

PART VI. SECT. 3, SUB-SECT. 2.—B. (a).

q i. —— —— —— —— ——.]—*Held:* the sellers were not estopped from proving their ownership of the safe.—WALKER *v.* HYMAN (1877), 1 A. R. 345.—**CAN.**

q ii. —— —— —— —— ——.]—*Held:* there was evidence of an estoppel.—WEST *v.* O'LEARY (1894), 32 N. B. R. 286.—**CAN.**

sk. *Statements relating to statutory duty.*]—Estoppel cannot be invoked against a public body in its performance of its statutory duty. A board of assessors cannot bargain in taxation matters so as to give rise to such an estoppel.—TURNBULL REAL ESTATE CO. *v.* SEWELL, [1937] 2 D. L. R. 218.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (c).

1173 iv. —— —— *Allegation of previous judgment—Made by attorney ad litem.*]—Acquiescence in a judgment cannot be presumed & must be unequivocal; it must be made by the party himself or by his attorney specially authorised & it is not binding upon the principal if made by an attorney *ad litem* acting under his general mandate.—DUBUC *v.* CORPN. DE MARSTON, [1928] 1 D. L. R. 225; [1927] S. C. R. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (e).

sf. *Document evidencing loan.*]—Where deft. executed a document evidencing a loan received by him from applt. & constituting an order, for the amount of the advance upon a co. about to be formed for the purpose of acquiring & conducting resp.'s business:—*Held:* the document constituted an estoppel which precluded resp. from giving evidence to contradict or vary the terms thereof, & the money advanced, not having been paid by the co. to applt., resp. was personally liable on the contract.—HEMPENSTALL BROS., LTD. *v.* POULSON (1928), 22 Q. J. P. R. 156.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—A.

1221 i. *General rule.*]—DEMINGS *v.* BEDELL, [1925] 3 D. L. R. 1063.—**CAN.**

1221 ii. ——.]—PATTERSON *v.* SMITH (1877), 42 U. C. R. 1.—**CAN.**

1221 iii. ——.]—Where pltf. induced the ct. to grant him a judgment recognising deft.'s right to timber:—*Held:* he was estopped from afterwards contending that deft. had no right to dispose of timber.—MANLEY *v.* O'BRIEN, *Re* MACKINTOSH (1901), 22 C. L. T. 74; 8 B. C. R. 280.—**CAN.**

1221 iv. ——.]—BAKER *v.* BAKER (1904), 40 N. S. R. 470.—**CAN.**

1225 i. *As to position of party estopped.*]—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—PRESS *v.* MATHERS, [1927] V. L. R. 326; 48 A. L. T. 183; [1927] Argus L. R. 197.—**AUS.**

sk. *Transfer of business.*]—Pltf. sued deft. for the price of goods sold & delivered. For several years pltf. had sold to deft. tailoring materials. Deft. carried on a tailoring business, trading as T. S. & Son. Deft. by deed in 1925 assigned the premises in which he was carrying on his business to E. S. & G. S., who continued to trade as tailors under the name of T. S. & Son. No assignment in writing was made of the business or of the debts due to deft., & no notice of the assignment of the premises or of any change in the ownership of the business was given to pltf. Deft. came to the place of business after the transfer & appeared to act in relation to the business in the same way as before the transfer.—*Held:* deft. was estopped from denying that at the time the goods whose price was sued for were sold & delivered, he was the owner of the business, & pltf. was entitled to judgment.—DUNN *v.* SHANKS, [1932] N. I. 66.—**IR.**

sm. *Payment of mortgagee—Assignment of mortgage as collateral—Payment by mortgagor to assignee.*]—Where a mtgor., knowing that mtgee. has been fully paid, permits mtgee. to assign the mtge. to a bank as collateral, & continues to make payments of interest & principal to the bank, he will be estopped from pleading that the mtge. has been fully discharged.—ROYAL BANK OF CANADA *v.* GREEN, [1935] 2 D. L. R. 724; 9 M. P. R. 387.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 ii. ——.]—The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

1241 i. —— *Property afterwards claimed under another title.*]—CONNORS *v.* MYATT (1915), 49 N. S. R. 139.—**CAN.**

1243 i. —— *Title subsequently acquired by possession.*]—SMITH *v.* SMITH (1884), 5 O. R. 690.—**CAN.**

q i. —— *Sale of reversionary interest.*]—FLEMING *v.* WEST (1881), 14 N. S. R. (& R. & G.) 294; 1 C. L. T. 709.—**CAN.**

a i. *Acceptance of credit from unauthorised agent.*]—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. *v.* CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—**CAN.**

1259. *Add. Citation :*—132 L. T. 99.

Add. Annotation :—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

1265. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

1285a. Acquiescence by trustees—In proceedings for administration of trust.]—DOYLE *v.* DOYLE (1850), 12 Beav. 471 ; 19 L. J. Ch. 246 ; 15 L. T. O. S. 498 ; 50 E. R. 1141.

1294. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

1297a. Preparation of deed by solicitor.]—A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game :—*Held :* the solr. who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—LORD *v.* WARDLE (1837), 3 Bing. N. C. 680 ; 4 Scott, 402 ; 1 Jur. 382 ; 132 E. R. 572.

1311. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

1318a. —— **Payment of rent not due.**]—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to do so under a licence from pltfs. :—*Held :* (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased ; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—BATTEN POOLL *v.* KENNEDY, [1907] 1 Ch. 256 ; 76 L. J. Ch. 162.

1319a. Objections to account stated not pressed.]—BURROUGH'S ADDING MACHINE, LTD. *v.* ASPINALL (1925), 41 T. L. R. 276, C. A.

1326. *Add. Annotations :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1328. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1330. *Add. Annotations :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1331. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1345. *Add. Annotation :*—**Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

PART VI. SECT. 3, SUB-SECT. 3.—C. (a).

1260 iv. ——.]—Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

1260 v. ——.]—In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief ; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.—JAI NARAIN *v.* JAFAR BEG (1926), I. L. R. 48 All. 353.—**IND.**

1260 vi. ——.]—CROCKER *v.* HUTCHINSON (1861), 10 N. B. R. (5 All.) 139.—**CAN.**

1260 vii. ——.]—NAUGLER *v.* JENKINS (1899), 32 N. S. R. 333.—**CAN.**

1262 i. *Who bound—Crown—Entry on Crown lands.*]—R. *v.* CANADIAN PACIFIC RAILWAY (Can. Ex.), [1929] 2 D. L. R. 641 ; 35 Can. Ry. Cas. 248.—**CAN.**

1268 ii. —— *Or ultra vires.*]—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 53 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (b) i.

1270 vi. ——.]—Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times :—*Held :* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (c).

sg. *Assent to sale of goods—Acquiescence in condition of goods.*]—In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request :—*Held :* pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—PEPPARD *v.* WOOD, PEPPARD *v.* CAMERON (1924), 57 N. S. R. 222.—**CAN.**

sh. *In registration of motor car in name of another.*]—CAIRNS *v.* WORTHY (P. E. I.), [1929] 3 D. L. R. 123.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (a).

m i. ——.]—MILLER *v.* R., [1927] Exch. C. R. 52; *affd.*, [1928] S. C. R. 318 —**CAN.**

sn. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.*]—A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—*Held :* it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA *v.* NIXON, [1924] 3 D. L. R. 1073.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (b) ii.

so. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., [1925] 2 D. L. R. 889 ; 5 C. B. R. 629 —**CAN.**

sp. *Delay by vendor in giving notice that goods not paid for by agent—Agent's drafts on principal duly met.*]—In an action by pltf. co. against deft. co. for the price of goods :—*Held :* the latter had accepted the London agency's drafts for the goods in the belief that the amounts due in respect thereof had been paid to pltf. co. & pltf. co. had by its conduct induced deft. co. to believe that such was the case, & was not entitled to recover.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (a).

s i. —— *Adoption of one of two alternative remedies.*]—HUTCHISON *v.* PAXTON, [1928] 4 D. L. R. 704 ; 63 O. L. R. 74.—**CAN.**

1380. *Add. Annotation :*—**Reld.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

1395. *Add. Annotation :—As to* (2) **Reld.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

1402. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater [1929] A. C. 176. **Reld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

1418. *Add. Annotations :*—**Reld.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294; Abigail *v.* Lapin, [1934] A. C. 491.

1419. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Reld.** Abigail *v.* Lapin, [1934] A. C. 491.

1435a. ——.]—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, No. 1148a, *ante*.

1439. *Add. Annotation :*—**Reld.** *Re* Wait, [1927] 1 Ch. 606.

1441a. ——.]—*Held :* in order to exclude an equity in respect of acquiescence it was not necessary that the notice of his claim, given by the claimant to the party in possession, should disclose any particulars relating to his title; nor, if the claim which he made exceeded what he was entitled to, was the party in possession justified in disregarding it, or supposing it to be unfounded.—CLARE HALL *v.* HARDING (1848), 6 Hare, 273; 17 L. J. Ch. 301; 10 L. T. O. S. 439; 12 Jur. 511; 67 E. R. 1169.

1449. *Add. Annotations :*—**Distd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414. **Reld.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1450. *Add. Annotation :*—**Apld.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1456a. —— ——.]—A colliery proprietor constructed a railway from his colliery across the lands of several other persons by agreement, & his solrs. wrote a letter to deft., across whose lands he desired to carry the railway, referring to the powers of a local Act of Parliament, supposed to enable him to take lands within a certain area for roadways, & offering, on the part of the pltf., to pay him for the land at a fair valuation. Deft. did not reply to the letter, & the railway was made across his land without further communication with him. A year or two afterwards pltf. & deft. had an interview, but did not agree as to the price to be paid for the land, & three or four years after the railway was made deft. brought his ejectment, whereupon pltf. filed his bill for an injunction, charging acquiescence. The ct., on motion, restrained the action, upon pltf. giving judgment in the ejectment, & paying a sum into ct. not less than the amount of the utmost valuation of the land.—POWELL *v.* THOMAS (1848), 6 Hare, 300; 67 E. R. 1180.

PART VI. SECT. 3, SUB-SECT. 3.—F. (b).

sq. *Special contract denied—Not available to defeat claims.*]—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (c).

h i. ——.]—*Re* KEARNEY'S ESTATE, WHITEHURST, APPELLANT (1927), 27 S. R. N. S. W. 386; 44 N. S. W. W. N. 117.—**AUS.**

h ii. ——.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order *nisi* for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—STANDARD TRUST CO. *v.* LITTLE (1915), 31 W. L. R. 769.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (a).

q i. —— *Manager of hotel—Whether agent of executors of deceased proprietor.*]—In an action to recover for services rendered & coal supplied for the carrying on of an hotel, defts., who were exors. of the former owner of the hotel, were held liable on the ground that they were estopped from denying that one M., who was operating the hotel & had ordered the coal & services, was their manager or agent for that purpose. An alternative claim for judgment against M. was dismissed. The exors. appealed :—*Held :* the evidence did not support the finding of estoppel, & since it had been properly found that there was no actual contract between the exors. & M. authorising him to act as their agent or manager of the hotel, the appeal must be allowed; & since there was no appeal or cross-appeal against the dismissal of the action as against M. the ct. could make no order respecting it.—WILSON *v.* WILLOUGHBY, [1934] 3 W. W. R. 539.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (b).

sr. *Nationality of party.*]—Where pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—*Held :* in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (c).

1425 i. *Goods transferred to third party—Through third party's fraud.*]—Whenever one of two innocent persons must suffer by the act of a third person, he who has enabled such third person to occasion the loss must sustain it.—DOMINION PAPER CO. *v.* N. RATTENBURY, LTD. (1933), 6 M. P. R. 411.—**CAN.**

h i. ——.]—WELLBAND *v.* WALKER (Man.) (1911), 16 W. L. R. 408.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (a.)

1438 i. *A form of acquiescence.*]—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

o i. ——.]—Departure from an assumption upon which another person has acted to his detriment is not permitted to a party who, knowing or believing the other labours under a mistake in adopting it, has refrained from correcting him when it was his duty to do so Applt. opened an account with resp. bank for the purposes of a business conducted for him by his son, & authorised it to pay cheques drawn on the account by his son & countersigned by his wife. After some months the son arranged with a teller employed by the bank to honour cheques on his signature alone. Some time later this arrangement came to the notice of the applt., but he took no step to stop the practice & made no communication to the bank & in one instance indorsed negotiable instruments so drawn. The practice continued. Later applt. brought an action against the bank to recover moneys paid by it on cheques bearing only the signature of his son :—*Held :* applt. was precluded by his conduct from denying the regularity of the drawings so made from his account & was not entitled to recover the moneys claimed.—WEST *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1936), 55 C. L. R. 315.—**AUS.**

t i. —— ——.]—HUTCHINSON BROTHERS & CO., LTD. *v.* PERKINS (B. C.) (1908), 8 W. L. R. 16.—**CAN.**

st. *Claim to distinctive colour design—Objection not raised in previous proceedings.*]—Pltf. co., which had adopted a certain design of contrasting black & white colours for the painting of its cabs, dissimilar to any previously in use in the city in which it conducted its operations, sought by injunction to restrain defts. from using cabs painted a similar design of contrasting blue & white, on the ground that, although the respective cabs might readily be distinguished in daylight, those of defts. were so got up as to be calculated, at night, to deceive people into believing them pltfs.' cabs. No instance of actual deception on defts.' part was proved, nor was any fraudulent intention of their part to mislead the public established :—*Held :* pltf. having, in previous proceedings, concurred in the painting of defts.' cabs in a particular design & colour now had no ground for complaint.—BLACK & WHITE CABS, LTD. *v.* NICHOLSON, NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 273.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (b).

u .]—The equitable principle prohibiting a party from lying by reaping the benefit of the expenditure of another's money on his property, applied.—PUBLIC PROPERTY TRUSTEES *v.* GILLIS (1881), 14 N. S. R. (2 R. & G.) 262.—**CAN.**

1472. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1472a. ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926 pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J & M. purported to sell the cut timber to the present defts.

Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930 :—*Held :* no special circumstances existed sufficient to constitute any confirmation by pltf. of any title to the timber in J. & M., nor did pltf. by accepting judgment in the form he did against J. & M. confer any title on them or deft. co. by estoppel.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81; 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

1477a. Money paid on forged cheque—Failure to inform bank of forgery.]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51; 101 L. J. K. B. 623; 147 L. T. 441; 48 T. L. R. 601; 76 Sol. Jo. 544; 38 Com. Cas. 54, H. L.

Annotations :—**Apld.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612. **Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1537. *Add. Annotation :*—**Refd.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

1549. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1550. *Add. Annotation :*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52

1556. *Add. Annotation :*—**Refd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

1557. *Add. Annotations :*—**Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Locker & Woolf *v.* Western Australian Insurance Co. (1936), 154 L. T. 667.

1465 i. *Works executed by local authority.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

1465 ii. ——.]—A municipal council prepared plans, specifications & estimates for the construction of a street formed or set out on private property. Before the notice to property owners provided for by the Local Govt. Act, 1915, had been sent out a contract for the work had been entered into by the council & the work commenced. In an action by one of the property owners for a declaration that the municipality was not entitled to a charge on his land for the proportion of the cost of making the said street alleged to be due by him :—*Held :* pltf. had not by conduct waived compliance with the statutory provisions nor was he by conduct estopped from asserting his rights.—DUNN *v.* SHIRE OF BRAYBROOK, [1928] V. L. R. 454; [1928] Agus L. R. 286.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (c).

sk. *Registration of car in name of another.*]—BAZAR *v.* GRANT & GRANT (Man.), [1929] 4 D. L. R. 1075; 1 W. W. R. 281.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (e).

s i. —— *Failure of surety to inform creditor of matter leading to discharge of guarantee.*]—A surety is under no legal duty to the guaranteed party to warn him that something he is doing or some misapprehension he is under may have the legal effect of discharging the suretyship. In an action by an employer on an employee's fidelity bond the fact that deft. co. which had received a letter from pltf.'s solr. allowed him to rest under a misapprehension, disclosed by his letter, as to when the theft was discovered was held not to estop the co. from relying on a term in the contract that an action thereunder must be brought within a specified period after the discovery of the theft.—BIRCH LAKE, MUNICIPAL DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1931] 1 D. L. R. 600; [1930] 3 W. W. R. 634.—**CAN.**

t i. —— *Claim by silent partner.*]—PEARSON *v.* DRAKE, [1937] 1 W. W. R. 12; 1 D. L. R. 417.—**CAN.**

sw. *Acquiescence of agent—Holding goods as agent for sale—Goods seized in execution.*]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* pltf. was not estopped by his agent's silence or conduct from asserting that he was the owner of the lorry.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—I (a) ii.

s i. —— *On policy.*]—DORSHT *v.* TRANS-CANADA INSCE. CO., [1933] O. R. 98.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) ii.

m (p. 387) *Citation :*—For "AGRICULTURAL INSURANCE CO. OF WATERTOWN *v.* ANSLEY" read "ANSLEY *v.* WATERTOWN INSURANCE CO."

1561. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1584. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1593. *Add. Annotation :*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

1594. *Add. Annotation :*—**Refd.** Smith *v.* Kinsey, [1936] 3 All E. R. 73.

1601. *Add. Annotation :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

1602. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

1603. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1604. *Add. Annotations :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

1605. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1928] 97 L. J. K. B. 609; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1610a. ——.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltfs. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltfs., who were under the belief that the delivery orders related to distinct consignments of wheat. B. having afterwards become insolvent :—*Held :* defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltfs. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltfs. for the loss sustained by them through the advances to B.—COVENTRY *v.* GREAT EASTERN RY. Co. (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 694; 49 L. T. 641, C. A.

Annotation :—**Apld.** Seton *v.* Lafone (1887), 19 Q. B. D. 68.

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) iii.

1 i. —— *To nature of goods delivered.*]—*Held :* the purchasers were estopped from alleging that the goods were not as contracted for.—J. I. CASE THRESHING MACHINE CO. *v.* MITTEN (Sask.), [1919] 3 W. W. R. 601; 49 D. L. R. 30.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—J.

s1. *Negotiations with committee of municipal council—Party not estopped from setting up lack of jurisdiction.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75; 2 M. P. R. 470.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—A.

1596 x. ——.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it :—*Held :* the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—COOIL *v.* CLARKSON, [1925] 2 D. L. R. 493; [1925] 1 W. W. R. 1094; 35 B. C. R. 308.—**CAN.**

1596 xi. ——.]—As a general rule the owner of property is not estopped from asserting his title thereto merely because his carelessness in the custody of it, or of his documents of title, has enabled some one to fraudulently sell the property to another.—ANACONDA OIL CO., LTD. *v.* ALADDIN OILS, LTD., [1930] 1 W. W. R. 943; 3 D. L. R. 776.—**CAN.**

1605 vi. ——.]—Where taxes were paid to a municipal employee who had no authority to receive them :—*Held :* the *fact* that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES *v.* CITY OF MOOSE JAW, [1925] 3 D. L. R. 1176; [1925] 3 W. W. R. 127.—**CAN.**

PART VI. SECT. 5.

1619 xii. ——.]—The facts relied upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—HUGHES *v.* J. H. WATKINS & CO., [1927] 3 D. L. R. 302; 60 O. L. R. 448; *affd.*, [1928] 2 D. L. R. 1176; 61 O. L. R. 587—**CAN.**

EXECUTION.

Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

SUB-SECT. 11.—FOREIGN SOVEREIGNS AND AMBASSADORS.

Ambassadors & other diplomatic persons.]—*See* CONSTITUTIONAL LAW, Vol. XI., pp. 536–542, Nos. 390–467.

60. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243 ; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

61. *Add. Annotation :*—**Refd.** Kayley *v.* Hothersall, [1925] 1 K. B. 607.

63. *Add. Citation :*—[1925] 1 K. B. 607.

80a. Procedure by judgment summons.]—In an action by pltf. against an unincorporated body & seventeen named persons, described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy.; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons :—*Held :* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order :—*Held :* (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCIATION (1930), 143 L. T. 334 ; 46 T. L. R. 422.

PART II. SECT. 1. SUB-SECT. 1.

oi. —— *In criminal proceedings.*]—A criminal proceeding is not an "action" within the meaning of sect. 2 of Execution Act, R. S. B. C., 1924, &, therefore, a judgment recovered in a criminal proceeding cannot be enforced under sect. 38 thereof.—R. *v.* BERU, [1936] 2 W. W. R. 574 ; 4 D. L. R. 805 ; 66 Can. C. C. 295 ; 50 B. C. R. 444.—**CAN.**

PART II. SECT. 3.

17 iii. —— ——.]—CULLEN *v.* CULLEN (1866), 2 Ch. Ch. 94.—**CAN.**

17 iv. —— ——.]—*Re* MCLELAN (B. C.), [1926] 1 W. W. R. 198.—**CAN.**

sm. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*]—COTTON *v.* DEMPSTER (Alta.), [1925] 1 W. W. R. 954.—**CAN.**

so. *Before action commenced—Meaning of "writ."*]—Under Attachment of Debts Act a garnishee order may issue before action is commenced. In this connection "has issued a writ" includes a "summons" in the county ct.—FLEISHMAN *v.* ALLAN (T. A.) & SONS (1932), 45 B. C. R. 553.—**CAN.**

PART II. SECT. 4.

sp. *Extension of time for filing renewal—Right of master in chambers to grant.*]—*Re* RENEWAL OF A CERTAIN EXECUTION, [1917] 1 W. W. R. 113.—**CAN.**

sr. ——.]—There is no authority for an extension of the time for renewal of an execution either before the execution has lapsed for want of renewal or after that date. There is no doubt an inherent power in the ct. in exceptional cases to make an order *nunc pro tunc*, *e.g.*, where an officer of the ct. has frustrated an application to renew. An execution, by statutory provision carried into the Rules, has force for a fixed period. At the end of that period, unless previously renewed, it is not in force, & however meritorious it may appear to overlook a slip or omission of pltf. in renewing within the time, there is no provision warranting that procedure.—JOHNSTON *v.* DIMOND, [1934] 3 W. W. R. 340.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

ss. *Solicitor purporting to act for one defendant—Authority to act for second only—Validity of execution against first defendant.*]—OVERN *v.* STRAND, [1931] S. C. R. 720 ; [1932] 1 D. L. R. 490.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.

sg. *One tortfeasor assignee of judgment—May not issue execution against joint tortfeasor.*]—A judgment in tort was assigned by the pltf. to one of the joint defts. :—*Held :* the assignee could not issue execution against the other deft., since he had no right of contribution against him.—REID *v.* ACORN & MCDONALD, [1932] 3 D. L. R. 239 ; 4 M. P. R. 341.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—B.

sk. *Amount recoverable — Judgment debt & six years' interest.*]—KAULBACH *v.* LAVENDER (N. S.), [1929] 1 D. L. R. 238.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—C. (o).

o i. ——.]—The assignee of a judgment debt can enforce execution only after obtaining leave under K. B. Rule 451, even though the assignment expressly purports to assign the execution issued by the judgment creditor.—CONDON *v.* GASSALL & DRINKLE, [1928] 3 W. W. R. 719.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—H.

sm. *Debt Adjustment Acts,—Application to pending actions.*]—In a foreclosure action begun before Debt Adjustment Act, 1932, came into force, an application for a final order of foreclosure can be entertained although the provisions of sect. 6 of said Act have not been complied with. Sect. 5 of said Act applies to the bringing or continuing of the actions therein referred to & the effect of the words "or continued" is that the sect. applies to the continuing of actions or proceedings begun when the Act came into force ; sect. 6, however, which does not contain the words "or continued" applies only to the bringing of the actions or proceedings therein referred to.—EDDY *v.* STEWART, [1932] 3 W. W. R. 71 ; *revsg.*, [1932] 2 W. W. R. 699.—**CAN.**

sn. —— *Whether applicable to execution on judgment for tort.*]—Under Debt Adjustment Act, 1933, a permit from the Debt Adjustment Board is not a prerequisite to the issue of an execution on a judgment recovered in an action founded on tort.—HILL *v.* BAADE (NO. 2), [1934] 2 W. W. R. 16.—**CAN.**

sp. —— *Right to initiate proceedings by way of garnishment.*]—HUTCHISON *v.* CONN, ANDERSON *v.* CONN, [1933] 2 W. W. R. 505.—**CAN.**

sr. —— ——.]—Sub-sect. (5) of sect. 7 of Debt Adjustment Act, 1934, applies only to garnishee proceedings which are incidental to the classes of actions enumerated in sub-sect. (1) (*a*) of said sect. Therefore, garnishee proceedings in an action under the small debt procedure are not subject to the restrictions of sub-sect. (5), even where wages or salary are sought to be attached. In view of the language of said sub-sect. (5) the words "actions or suits" in sub-sect. (1) (*a*) include garnishee proceedings.—FILER *v.* MEYERS & CANADIAN NATIONAL RYS., [1937] 1 W. W. R. 554.—**CAN.**

st. —— *Powers of sheriff.*]—Debt Adjustment Act, 1934, does not prevent the placing of an execution in the sheriff's hands for the purpose of investigating whether anything can be realised thereon, or prevent the sheriff from making inquiry in pursuance thereof & reporting to the execution creditor.—GEORGIA INVESTMENT CO., LTD. *v.* LONDON BUILDING & INVESTMENT CO., LTD., [1936] 1 W. W. R. 3.—**CAN.**

sz. *Orderly Payment of Debts Act, 1932—To what judgments applicable.*]—*Held :* the amount referred to in Orderly Payment of Debts Act, 1932, s. 2 (1) is

87. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

88a. **Against co-surety—Judgment debt paid by surety.**]—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—KAYLEY *v.* HOTHERSALL, [1925] 1 K. B. 607 ; 94 L. J. K. B. 348 ; 132 L. T. 468 ; 69 Sol. Jo. 310, C. A.

146a. **——— Omission to claim costs.**]—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—SMITH *v.* DICKINSON (1844), 5 Q. B. 602 ; Dav. & Mer. 468 ; 13 L. J. Q. B. 151 ; 2 L. T. O. S. 368 ; 8 Jur. 123 ; 114 E. R. 1376.

260. *Add. Annotation :*—**Refd.** *Re* A Debtor, No. 549 of 1928, [1929] 1 Ch. 170.

262. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

263. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

313. *Add. Annotation :*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

318. *Add. Annotation :*—**Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

366a. **Payment of irrevocable sum—Title of plaintiff not proved—Should not be ordered.**]—Pltf. was the widow of a man employed by deft. co. as a derricker. The deceased had left the barge on which he was employed & volunteered to act temporarily as tipper on a second barge in order to relieve a fellow-workman. The fellow-workman was in fact a director of the co., but at the time he was acting merely as a foreman over the job, & was not there as representing the board of directors. While engaged as a tipper in these circumstances he stumbled & fell into the hold, sustaining minor injuries. He was removed to hospital & given an anæsthetic under which he collapsed & died. The post-mortem examination showed that he had a diseased heart, but neither the history of the man's activities nor the use of a stethoscope did or would have disclosed the man's condition. At the trial it was held that the death was due to the negligence of defts., who were ordered to pay to pltf. £785, of which sum £300 was not to be recoverable in any event. On appeal :—*Held :* (1) on the facts there was no negligence on the part of the defts. ; (2) the fact that the fellow-worker was a member of the board of directors did not in a case where he was in fact acting as a foreman bar the defence of common employment ; (3) on the work upon which the deceased was engaged at the time he was merely a volunteer & the defence of *volenti non fit injuria* applied ; (4) the administration of the anæsthetic was not a wrongful act intervening between the accident & the death, & could not be relied on as a case of *novus actus intervenions* ; (5) where there is an appealable matter, the ct. should not, as a condition of granting a stay of execution, order to be paid to pltf. & to be irrecoverable in any event any sum to which it is possible that it may ultimately be decided that pltf. has no title.—BLOOR *v.* LIVERPOOL DERRICKING & CARRYING CO., LTD., [1936] 3 All E. R. 399, C. A.

380. *Add. Citation :—sub nom.* **WALTER *v.* DAVIES, *Ex p.* GLAMORGAN (FORMER SHERIFF), 31 L. T. O. S. 169.**

392a. **——.**]—If a pltf. or his attorney has received the debt & costs, in a case where the debtor had been taken in execution, it is the duty of pltf. or his attorney to discharge him ; & so, if he tenders the amount, it is the duty of pltf. or his attorney to discharge him, & the omission to do so is *primâ facie* evidence of the amount of the original judgment & the application of the clause is not affected by the fact that that amount has been increased by interest, costs of execution or costs of an appeal so as to bring it over $800.—DOMINIK *v.* STRYK, [1935] 2 W. W. R. 555 ; 4 D. L. R. 269 ; 43 Man. L. R. 262.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.

89 i. *Affidavit in support—Attachment of property of absconding debtor—Contents.*]—*Re* LONG, *Ex p.* MOORE (1883), 23 N. B. R. 229.—**CAN.**

89 ii. *—— Sufficiency of—Action by two plaintiffs.*]—In an action by two pltfs. an attachment order under K. B. r. 814, should not be made where the affidavit in support of the application for the order states that "defts. are justly & truly indebted to pltfs. or one of them or are legally liable to pltfs. or one of them," since this is not that positive & definite statement of indebtedness or liability which the rule requires.—FIELDS *v.* NORTHLAND CO., [1933] 1 W. W. R. 734 ; 2 D. L. R. 366 ; 29 Man. L. R. 200.—**CAN.**

PART II. SECT. 11.

sl. Prior proceedings under Absconding Debtors Act.]—*Held :* a subsequent execution was defeated.—KERR *v.* SCOVIL (1870), 13 N. B. R. (2 Han.) 16. —**CAN.**

PART II. SECT. 15, SUB-SECT. 1.

254 i. *Appeal from judgment.*]—The broad principle in India as regards execution matters is that time is not computed from the date when the right to apply accrues, but is postponed in cases where there is an appeal. —NAGENDRANATH BANERJI *v.* AMBIKACHARAN CHAKRAVARTI (1929), I. L. R. 57 Calc. 549.—**IND.**

PART II. SECT. 15, SUB-SECT. 4.—B. (a) i.

315 iii. —— ——.]—In the absence of special circumstances, & where it was unlikely that leave to appeal would be granted by the Privy Council, the Appellate Div. refused to stay execution of a judgment for £2,801 ——— & £1,414 costs pending an application to the Privy Council for special leave to appeal & refused also to order that security *de restituendo* should be given by the party levying execution.—FISMER *v.* THORNTON, [1929] App. D. 17.—**S. AF.**

PART II. SECT. 15, SUB-SECT. 4.—B. (a) ii.

permitted only as suit pending.]—SCUILLI *v.* PLANTA (1928), 39 B. C. R. 450.—**CAN.**

PART II. SECT. 15, SUB-SECT. 5.

sj. Protection of successful party's interests.]—Upon motion by defts. for stay pending appeal :—*Held :* the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltfs. would be adequately protected.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

sl. Necessity for actual seizure.]—Before there is any right to act upon a replevin bond there must be a replevin, & this involves the actual seizure of the goods & putting them in the hands of pltf.—SCOTT *v.* SMITH (1932), 6 M. P. R. 85.—**CAN.**

PART II. SECT. 20, SUB-SECT. 1.—A. (a).

386 ii. ——.] — MCDONALD *v.* MITCHELL (1878), 12 N. S. R. (3 R. & C.) 274.—**CAN.**

malice (PARKE, B.).—TEBBUTT *v.* HOLT (1844), 1 Car. & Kir. 280; 174 E. R. 811.

:—**Refd.** Clissold *v.* Cratchley, [1910] 2 K. B. 244.

417a. Service of writ—On clerk in court.]—*Held:* not good.—ELLISON *v.* PICKERING (1803), 8 Ves. 319; 32 E. R. 377.

Annotation:—**Refd.** Ward *v.* Arch (1839), 8 L. J. Ch. 255.

417b. Sheriff's officer remaining in house—Until money paid.]—MOORE *v.* BEAMONT (1795), 6 Term Rep. 137; 101 E. R. 476.

Part III.—Particular Forms of Execution.

512. *Add. Annotations:*—*As to* (3) **Refd.** The Beldis, [1936] P. 51. *Generally*, **Refd.** The Point Breeze, [1928] P. 135.

556a. ——.]—HODGES *v.* MARKS (1618), Cro. Jac. 485; 79 E. R. 414.

563a. —— ——.]—A sheriff's officer, having a *fi. fa.* against A., called at his house when he was from home, waited till be returned, & then informed him of his business:—*Held:* sufficient evidence to warrant the jury in finding that the writ was executed at the time of the officer's entry.—BIRD *v.* BASS (1843), 6 Man. & G. 143; 5 Scott, N. R. 928; 1 L. T. O. S. 231; 134 E. R. 841.

574a. —— ——.]—ANON. (1704), 6 Mod. Rep. 105; 87 E. R. 864.

574b. —— ——.]—BURDETT *v.* ABBOT (1811), 14 East, 1; 104 E. R. 501; *affd. sub nom.* BURDETT *v.* ABBOT, BURDETT *v.* COLMAN (1817), 5 Dow. 165, H. L.

Annotation:—**Consd.** Harvey *v.* Harvey (1884), 26 Ch. D. 644.

582a. —— Original entry unjustifiable.]—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62; 80 E. R. 211.

Annotations:—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1; Sandon *v.* Jervis (1859), E. B. & E. 942.

614. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

615. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

PART II. SECT. 20, SUB-SECT. 4.—A. (a).

459 i. —— *In action by third party.*]—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *primâ facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—KIRCHHOFFER *v.* CLEMENT (1897), 11 Man. L. R. 460.—**CAN**

PART II. SECT. 20, SUB-SECT. 4.—A. (b).

sa. *Judgment irregular.*]—A seizure of chattels under an execution issued on a judgment which is afterwards set aside as irregular gives rise to a cause of action for damages for the trespass in taking the chattels out of their owner's possession.—DEMERS *v.* DESROSIER (No. 2) (Alta.), [1929] 3 D. L. R. 401; 2 W. W. R. 241.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—B. (a).

q i. —— —— *Onus of proof on sheriff—To justify seizure.*]—JOHNSON *v.* BUCHANAN (1896), 29 N. S. R. (17 R. & G.) 27.—**CAN.**

PART II. SECT. 21.

494 i. *When ordered.*]—HART *v.* RUTTAN (1874), 23 C. P. 613.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*]—WORTH *v.* DAVIE, [1917] 1 W. W. R. 615; 11 Alta. L. R. 461.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—B. (b).

532 iii a. *S. P.* HOWARD *v.* HIGH RIVER TRADING CO. (1899), 4 Terr. L. R. 109.—**CAN.**

532 v. —— ——.]—SNARR *v.* WADDELL (1864), 24 U. C. R. 165.—**CAN.**

532 vi. —— —— *Earlier writ not renewed within year.*]—BANK OF MONTREAL *v.* TAYLOR (1864), 15 C. P. 107.—**CAN.**

g i. —— ——.]—HAMILTON PROVIDENT & LOAN SOCIETY *v.* CAMPBELL (1884), 12 A. R. 250.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (b).

f i. *S. P.* HINCKS *v.* SOWERBY (1879), 4 A. R. 113.—**CAN.**

f i. —— *Goods listed.*]—NOSEWORTHY *v.* CAMPBELL, [1929] 1 D. L. R. 964; 60 N. S. R. 377.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) ii.

si. *Not last cow.*]—MCLEAN *v.* WATSON (1858), 2 Thom. 406.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iii.

sn. *Seisin in fee.*]—*Held:* not saleable under an execution against goods.—DOE d. KEOGH *v.* CALHOUN (1843), 1 U. C. R. 157.—**CAN.**

sp. *Interest of assignee of leasehold property in lease.*]—*Held:* not saleable under an execution against goods.—DOE d. SIMPSON *v.* PRIVAT (1848), 5 U. C. R. 215.—**CAN.**

st. *Interest in land charged for maintenance.*]—*Held:* saleable under execution.—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iv.

607 i. *General rule.*]—DOE d. AUSMAN *v.* MINTHORNE (1846), 3 U. C. R. 423.—**CAN.**

608 iii. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

sv. *Purchaser's interest in land under agreement to buy.*]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. *v.* BULLOCK FARMS, LTD., [1925] 2 W. W. R. 559.—**CAN.**

sx. *When bound by execution.*]—A *chose in action* is not bound by execution put in the sheriff's hands, but only by seizure thereunder.—RENNIE *v.* QUEBEC BANK (1900), 1 O. L. R. 303.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) v.

o i. —— —— *On homestead transferred to wife.*]—Where a husband transfers his homestead to his wife who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—STANDARD TRUSTS CO. *v.* BRIGGS, [1926] 2 D. L. R. 379; [1926] 1 W. W. R. 832; 22 Alta. L. R. 113.—**CAN.**

o ii. —— —— *On wife's farm worked by debtor.*]—*Held:* in the circumstances the crop belonged to the husband & could be seized in execution.—PARENTEAU *v.* HARRIS (1884), 3 Man. L. R. 329.—**CAN.**

o iii. *S. P.* SLINGERLAND *v.* MASSEY MANUFACTURING CO. (1894), 10 Man. L. R. 21.—**CAN.**

p i. —— *Undivided crop—Debtor servant of owner of land.*]—Crop Payments Act, R. S. S., 1920, c. 126, as amended by 1924, c. 28, which allows a sheriff to seize & sell the interest of an execution debtor in an undivided crop, does not apply to a case where the debtor's interest does not arise under a lease, agreement for sale or mtge., but only under an arrangement under which he was to act as manager or servant of the owner of the land on which the crop was grown.—DONOVAN *v.* BELIVEAU (Sask.), [1929] 4 D. L. R. 900; 3 W. W. R. 107.—**CAN.**

p ii. —— —— *What amounts to division.*]—DONOVAN *v.* BELIVEAU, [1931] 1 W. W. R. 158; 1 D. L. R. 992.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) vii.

e i. —— *Interest in shares.*]—SAYRE *v.* GILFOY, [1925] 1 W. W. R. 992.—**CAN.**

e ii. —— ——.]—The ct. has no jurisdiction to appoint a receiver by way of equitable execution for the sale of the equity in shares of a co.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1929] 3 W. W. R. 622; [1930] 1 D. L. R. 580; 38 Man. L. R. 395; *revsg.*, 38 Man. L. R. 298; [1929] 2 W. W. R. 90.—**CAN.**

e iii. —— *Interest of vendor of land.*]—A vendor who has retained the legal

645. *Add. Annotation :*—Reld. Spyer *v.* Phillipson, [1931] 2 Ch. 183.

680. *Add. Citation :—sub nom.* Dickinson *v.* Kitchen, 8 E. & B. 789 ; 120 E. R. 293.

Add. Annotations :—Reld. The Feronia (1868), L. R. 2 A. & E. 65 ; Keith *v.* Burrows (1876), 1 C. P. D. 722.

title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—Weidman *v.* McClary, [1917] 2 W. W. R. 210; 33 D. L. R. 672.—CAN.

e iv. ——.]—The provisions of Land Titles Act (Alta.) are such, that a legal execution against land cannot bind an equitable interest in lands registered in the name of a person other than an execution debtor, some form of equitable execution is necessary for the purpose.—Seay *v.* The Sommerville Hardware Co., Ltd., [1917] 1 W. W. R. 1497 ; 33 D. L. R. 508.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) viii.

sa. *Article claimed as fixture by third party—Interpleader issue directed—Effect of.*]—Where an article seized under a writ of execution against goods is claimed by a third person as a fixture the directing of an interpleader issue with respect to it in no way decides that it is a chattel.—Findlay *v.* Menzies, [1928] 1 W. W. R. 457.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) x.

u i. —— *Paid to debtor's solicitor—For payment of costs of action.*]—*Held :* not liable to attachment.—*Re* Fort Frances Pulp & Paper Co. *v.* Telegram Printing Co., Phillipps & Scarth *v.* London Guarantee & Accident Co., Ltd., [1925] 4 D. L. R. 204.—CAN.

f i. —— —— *In name of wife & son.*]—Robert Dollar Co. *v.* Walker (1926), 36 B. C. R. 405.—CAN.

l (p. 488) i. —— *Shares—Company outside province.*]—Shares in a co. which has no place within Manitoba where service of process may be legally made upon it are not subject under sect. 14 of Executions Act, R. S. M., 1913, c. 66, to legal execution.—Goodbun *v.* Mitchell (No. 5) (Man.), [1930] 1 D. L. R. 580 ; 38 Man. L. R. 395 ; [1929] 3 W. W. R. 622 ; *revg.*, 38 Man. L. R. 298 ; [1929] 2 W. W. R. 90.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xiii.

f i. ——.]—Kassop *v.* Evans (1900), 8 Nfld. L. R. 396.—NFLD.

f ii. —— *Not ship sold under Admiralty judgment.*]—VanEvery *v.* Grant (1862), 21 U. C. R. 542.—CAN.

sl. *Property of wife under bill of sale—Execution creditor of husband.*]—The execution creditor of husband cannot seize a ship owned by the wife under an unregistered bill of sale.—Dicks *v.* Keays, [1936] 2 D. L. R. 58 ; 6 F. L. J. (Can.) 69.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xv.

q i. ——.]—In order to be entitled to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—McLeod *v.* Girvin Central Telephone Assocn. (Sask.), [1926] 1 D. L. R. 216; [1926] 1 W. W. R. 38. —CAN.

s i. *Automobile—Used for business.*]—The judgment debtor, the salaried manager of a building co., claimed exemption for an automobile which he used exclusively & continuously in superintending the erection of houses by his co. in different parts of the city. The contract between him & the co. did not require him to supply an automobile, & did not define his duties or the method to be followed in performing them :—*Held :* the automobile was not exempt under Exemptions Act, R. S. M. 1913, c. 66, s. 29 (*f*), as amended by 1925 Act, c. 20.—Goldsmith *v.* Harris, [1928] 3 D. L. R. 478 ; [1928] 2 W. W. R. 401 ; 37 Man. L. R. 389.—CAN.

s ii. —— *Used for agriculture.*]—An automobile is not exempt under Exemptions Act Amendment Act, 1935, unless *inter alia* it is one used for agricultural purposes.—Western Grocers, Ltd. *v.* Kay, [1935] 3 W. W. R. 320 ; *affd.*, [1936] 1 W. W. R. 381.—CAN.

s iii. ——.]—A motor car used by its owner, whose sole occupation was that of a fisherman, to haul fish from the lake where they were caught to market :—*Held :* a "necessary" within Executions Act, R.S.M., 1913, s. 29 (*f*), as amended, & therefore exempt from seizure.—Zelenisky *v.* Isfield, [1935] 2 W. W. R. 45 ; 43 Man. L. R. 100.—CAN.

sw. *Agricultural implements.*]—Under sect. 29 (*f*) of Executions Act, R.S.M., 1913, which exempts *inter alia* "agricultural implements" to the value of $800, the exemption is not restricted to one set of implements.—Banque Canadienne Nationale *v.* Houde, [1935] 1 W. W. R. 421 ; 2 D. L. R. 808 ; 43 Man. L. R. 27.—CAN.

sz. *Building materials.*]—Materials acquired by a debtor for the purpose of building a house on his homestead to replace one thereon which has been destroyed by fire are not made by Executions Act, R. S. M., 1913, or otherwise, exempt from seizure under executions. The words "or other person" following "mechanic, artisan, machinist, builder, contractor," in sect. 39 of said Act must be construed as *ejusdem generis*.—Rosmus *v.* Bazay, [1936] 2 W. W. R. 175 ; 2 D. L. R. 736 ; 44 Man. L. R. 192.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xvi.

c (p. 493) **i.** —— —— *Part of proceeds consisting of mortgage.*]—*Held :* not exempt. — Massey-Harris Co. *v.* Schram (1902), 5 Terr. L. R. 338.—CAN.

c (p. 493) **ii.** —— —— *Whether proceeds exempt.*]—Purdy *v.* Colton (1908), 1 Sask. L. R. 288 : 7 W. L. R. 820.—CAN.

c. (p. 493) **iii.** —— —— *Effect of Exemptions Act, R. S. M.*, 1913, *s.* 40.]—Property exempt from seizure under a writ of execution, disposed of by the judgment debtor to a third person, cannot be reached by the judgment creditor, whether on grounds of fraud or otherwise. The contention that the claim for exemption must be made by the debtor is met by the prohibition in Exemptions Act, R. S. M., 1913 (c. 66), s. 40.—Sprues *v.* Gregoryk & Boycum, [1930] 1 W. W. R. 378 ; 1 D. L. R. 896 ; 38 Man. L. R. 477.—CAN.

d (p. 493) **i.** ——.]—Massey *v.* McClelland, Baker *v.* McClelland (1895), 2 Terr. L. R. 179.—CAN.

d (p. 493) **ii.** *S. P.* Bocz *v.* Spiller (1905), 6 Terr. L. R. 225 ; 1 W. L. R. 366 ; 2 W. L. R. 280.—CAN.

h (p. 493) **i.** —— ——.]—A motion for final judgment for the sale of land under a registered certificate of judgment will not be granted unless pltf. has pleaded in his statement of claim or shown by affidavit that the land is not exempt as the homestead of the debtor. Where a transfer of a homestead is colourable only & the title is held upon a secret trust for the transferor, it does not deprive him of his right of exemption.—Dayholos *v.* Kuniec, [1928] 1 W. W. R. 691.—CAN.

k (p. 493) **i.** ——.]—Pltf. brought this action for a declaration that executions registered by deft. in the execution register in a land titles office, against the lands of pltf., were not a charge or lien on certain land described, which pltf. claimed as his homestead, & for the removal of the executions from the register :—*Held :* if pltf. had established that the land described was his "homestead," within Exemptions Ordinance, it was so only for the time that it was occupied by the debtor & his family ; there might be a change ; & any declaration would apply only at the particular moment when made.—Gilmore *v.* Callies (1911), 10 W. L. R. 545.—CAN.

k (p. 493) **ii.** ——.]—Pltf. applied to have taken off the register of the title of land transferred to her by her husband, a certain execution obtained against her husband, on the ground that at the time of such transfer the land was her husband's homestead & as such exempt under Exemptions Ordinance. On the facts :—*Held :* the land was, at the time of the transfer to pltf., her husband's homestead, &, therefore, exempt from seizure.—Hart *v.* Rye (1914), 27 W. L. R. 9.—CAN.

k (p. 493) **iii.** ——.]—A homestead under Homesteads Act (Sask.) means the home of the debtor, the actual residence of himself & his family, & includes the lot upon which the dwelling-house is situate, according to the registered plan of the same :—*Held :* Exemptions Act, s. 2 (10), applied.—Overton *v.* Gerrity (1916), 34 W. L. R. 875.—CAN.

k (p. 493) **iv.** —— *Whether exemption extends to members of family.*]—Meunier *v.* Doray (1905), 6 Terr. L. R. 194.—CAN.

k (p. 493) **v.** —— *Whether exemption extends to proceeds of voluntary sale.*]—There is nothing in Exemptions Act, R. S. A., 1922 (c. 95), which carries the exemptions accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor.—John Deere Plow Co., Ltd. *v.* McEachran, [1930] 1 W. W. R. 622 ; 2 D. L. R. 796 ; *affg.*, [1930] 1 W. W. R. 561.—CAN.

k (p. 493) **vi.** —— *Building used for business.*]—Under Exemptions Act, R. S. A. 1922 (c. 95), a debtor's right to the homestead exemption is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes ; nor is it affected by the nature of his title to the land, *e.g.* by the fact that he is a tenant in common. —*Re* Cherniak Estate, [1930] 1 W. W. R. 676 ; 11 C. B. R. 323 ; *affd.*, [1930] 2 W. W. R. 336 ; 3 D. L. R. 994 ; 11 C. B. R. 444.—CAN.

k (p. 493) **vii.** —— ——.]—Under Exemptions Act, R. S. A., 1922, a debtor's right to exemption with respect to his home is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes.—Canadian Credit Men's Trust Assocn. *v.* Umbel & Gillespie Grain Co., Ltd., [1931] 3 W. W. R. 145.—CAN.

k (p. 493) **viii.** —— *Crop grown on*

by public auction— possession—Execution creditor present at sale.]—*Held:* the goods could not be taken in execution by such execution creditor.—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

Annotations:—**Refd.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299; Hickman *v.* Cox (1857), 30 L. T. O. S. 279; Barker *v.* Furlong, [1891] 2 Ch. 172.

730. *Add. Annotation:*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

750. *Add. Citation:*—*previous proceedings*, 3 O. & P. 524. N. P.

homestead.]—Exemptions Act, R. S. S., 1920 (c. 51), does not exempt the crop grown on a homestead.—LUCIUK *v.* KRAUS, [1930] 1 W. W. R. 17; 1 D. L. R. 927; 24 S. L. R. 350.—**CAN.**

k (p. 493) ix. —— *Debtor tenant in common.*]—The fact that the interest of a debtor in the property occupied by him as a home is that of a tenant in common does not disentitle him to the benefits of sect. 2 (*f*) of Exemptions Act, R. S. A., 1922 (c. 95).—NEVE, RANAGHAN & COPE, LTD. *v.* MOTLEY & MOTLEY, [1930] 3 W. W. R. 109; 4 D. L. R. 69.—**CAN.**

k (p. 493) x. ——.]—The homestead exemption which is allowed by Judgments Act, R. S. M., 1913, is more than a mere personal right in the male head of the family. Therefore, where an insolvent husband made a voluntary transfer to his wife of the house, valued at $3,500, in which they & their family were residing & on which they continued after the transfer to reside, & a creditor of the husband who recovered judgment against the husband shortly after the transfer sought an order for the sale of the property without regard to the transfer:—*Held:* the right of exemption continued, & while the judgment creditor could proceed to a sale because it appeared that the property was of a value in excess of $1,500, yet that such proceedings, if taken, must be in accord with the provisions of the statute, which in particular require that $1,500 be provided for by the judgment creditor in advance of the completion of the sale. Deft. wife would in such event be the party to whom such amount should be paid.—DOMINION BANK *v.* LITSTER, [1933] 2 W. W. R. 359; 41 Man. L. R. 404.—**CAN.**

k (p. 493) xi. —— *Personal property of Indian—Motor boat.*]—A gasoline boat of which deft., an unenfranchised Indian, was a part owner:—*Held:* under the circumstances not to be property of an Indian on a reserve & not property which sects. 102 & 105 of Indian Act, R. S. C., 1927, prevented from being seized under execution.—POPE *v.* PAUL, [1937] 2 W. W. R. 449.—**CAN.**

p (p. 493) i. —— —— *Personal residence not necessary.*]—A homestead can be "in the use & enjoyment of the widow & children or widow or children," within sect. 6 of Exemptions Act, R. S. S., 1930, without personal residence by the widow or children thereon. The right to use & enjoy includes the right to let & to the rents & profits therefrom. Therefore where provision must be made for the maintenance & support of a deceased's dependants, & it is not feasible nor in their interests to continue in actual personal residence of the homeplace or homestead, they may claim the rents & profits therefrom for maintenance & support.—*Re* MCEACHEN ESTATE, [1933] 2 W. W. R. 177.—**CAN.**

l i. ——.]—When debtor is in actual residence on certain property belonging to him, such property is *primâ facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—SALTER & ARNOLD, LTD. *v.* DILLMAN, [1924] 2 W. W. R. 1225.—**CAN.**

l ii. ——.]—Under Exemptions Act, R. S. S., 1920, the home of a debtor is free from seizure under execution so long as he uses it as his home, even though its value is in excess of $3,000. There is no power given to the sheriff to sell the home & earmark $3,000 of the proceeds for the benefit of the debtor. The intention of sect. 23 of Bkpcy. Act is that the exemptions Act of each province should stand unimpaired & be effective notwithstanding the federal legislation.—*Re* HAYES, [1931] 1 W. W. R. 301; 25 S. L. R. 257; 42 C. B. R. 225.—**CAN**

m (p. 493) i. —— —— ——.]—BAKER *v.* GILLUM (1908), 1 Sask. L. R. 498; 9 W. L. R. 436.—**CAN.**

q i. —— —— ——.]—MCLATCHIE *v.* MCLEOD (1890), 6 Man. L. R. 452.—**CAN.**

q ii. —— *Exemptions Act, Alta.—Not applicable against Crown.*]—R. *v.* O'BRIEN, [1924] 1 D. L. R. 222; [1924] 1 W. W. R. 104.—**CAN.**

q iii. —— *Rents & profits of.*]—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.—WILKINS *v.* MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.**

q iv. —— *Proceeds of sale of.*]—There is nothing in Exemptions Act, R. S. A., 1922, which carries the exemption accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor, even though he is still in the actual occupation of it.—REGAL DISTRIBUTORS, LTD. *v.* FREELE, [1931] 1 W. W. R. 299; 1 D. L. R. 943; 25 Alta. L. R. 279.—**CAN.**

q v. —— *Crops.*]—The unexpired portion of a lease of land is not exempt under Exemptions Act, R.S.A., 1922.—*Re* SCOTT ESTATE, [1935] 1 W. W. R. 325; 5 F. L. J. (Can.) 3.—**CAN.**

s (p. 493) i. *Goods of business—Carried on in name of wife—Managed entirely by husband.*]—MEAKIN *v.* SAMSON (1878), 28 C. P. 355.—**CAN.**

s (p. 494) i. *Income of trust fund.*]—Deft.'s father devised his estate to trustees upon the trust, among others, "to pay my son A. [deft.] the interest of the sum of $800 annually during the term of his natural life." An order was made by the master in chambers, directing the trustees to pay over the interest, from time to time accruing, to plff., who was a judgment creditor of the son.—LLOYD *v.* WALLACE (1882), 9 P. R. 335.—**CAN.**

s (p. 494) ii. *Goods of third party subject to landlord's lien.*]—Where goods belonging to a third party are subject to a landlord's lien such goods are liable to execution in respect of a magistrate's ct. judgment for arrear rent, without a separate action against the owner of such goods.—COLUMBIA FURNISHING CO. *v.* GOLDBLATT, [1929] App. D. 27.—**S. AF.**

k (p. 494) i. ——.]—RYERS *v.* MURPHY (1893), 3 Terr. L. R. 169.—**CAN.**

sk. *Truck of truckman—Exempt.*]—*Re* LYONS, [1934] 1 D. L. R. 432.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.

710 iii. ——.]—*Re* BANK OF MONTREAL *v.* TANNAS, TANNAS *v.* BANK OF MONTREAL, [1925] 3 D. L. R. 1079.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) ii.

p i. —— *Sale—No change of possession.*]—Judgment in favour of the execution creditor affirmed.—PETTIGREW *v.* THOMAS (1885), 12 A. R. 577.—**CAN.**

p ii. —— —— *Of land.*]—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.—*Re* CANADIAN PACIFIC RY. CO., CROWN LUMBER CO. *v.* MCKENZIE (1916), 10 W. W. R. 1370.—**CAN.**

a i. ——.]—JEANETTE DRESS CO. *v.* HENISH, [1932] 2 D. L. R. 811; 5 M. P. R. 1.—**CAN.**

sm. *Restraint of sale — Interest necessary.*]—In order for a third party claiming an interest in goods seized under execution to be able to prevent the sale of such interest, whether in whole or in part, he must have an exclusive right in such interest.—SEITZ *v.* BANK OF MONTREAL, [1933] 2 W. W. R. 70.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) iii.

b i. ——.]—The fact that goods exempt from seizure under execution are included in a chattel mtge. made by the debtor does not deprive the debtor of his right of exemption.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

c i. —— *Not in possession of debtor—Onus of proof.*]—On an interpleader issue between an execution creditor & a claimant of goods which, at the time of their seizure under the execution, were not in the possession of the execution debtor, the onus is on the execution creditor of showing that the execution debtor was the owner of the goods or had an interest therein capable of being seized under the execution; & he must make out a *primâ facie* case before the claimant can be put to proof of his case.—STEWART *v.* CURRIE, CANADIAN PACIFIC RY. CO. *v.* STEWART, [1928] 1 D. L. R. 842; [1928] 1 W. W. R. 206; 22 Sask. L. R. 351.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) x.

g i. *S. P.* KILBRIDE *v.* CAMERON (1867), 17 C. P. 373.—**CAN.**

g ii. *S. P.* MASSEY-HARRIS *v.* MOORE (1905), 6 Terr. L. R. 75.—**CAN.**

k i. *Transfer of property to trustee—In fraud of creditors—Attachment sustained.*]—THOMPSON *v.* ELLIS (1883), 16 N. S. R. (4 R. & G.) 307.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xi.

d (p. 500) i. —— —— ——.]—SEALE *v.* GRAY, [1932] 3 D. L. R. 567.—**CAN.**

sd. *Property of husband—Standing in name of wife.*]—In an action against

v. STURMEY (1859), 32 L. T. O. S. 259; 23 J. P. 88; 5 Jur. N. S. 45; 7 W. R. 162.

804. *Add. Annotation:*—**Refd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211.

805. *Citations:*—Omit "C. A."

817a. ——.]—TOCOCK *v.* HONYMAN (1602), Yelv. 6; 80 E. R. 5.

Annotations:—**Refd.** Meriton *v.* Stevens (1741), Willes 271; Gilles *v.* Grover (1832), 9 Bing. 128.

835. For "—— —— & finally" read "—— —— **Not finally.**"

880. *Add. Annotation:*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

881a. May be compelled to sell.]—ANON. (1702), 7 Mod. Rep. 118; 87 E. R. 1135.

883a. ——.]—BOTTOMLEY *v.* HEYWARD (1862), 7 H. & N. 562; 31 L. J. Ex. 500; 7 L. T. 44; 158 E. R. 595; *sub nom.* BOTHAMLEY HEYWARD, 8 Jur. N. S. 1156.

954. *Add. Annotation:*—*As to* (3) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

961. *Add. Annotation:*—**Refd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

1002a. —— —— **Who is purchaser for valuable consideration—Creditor-trustee under deed of assignment.**]—Sect. 26 (1) of the Sale of Goods Act, 1893, provides that a writ of *fi. fa.* shall bind the debtor's goods from the time when the writ is delivered to the sheriff, provided that no such writ shall prejudice the title to goods acquired by any person in good faith & for valuable consideration without notice of the writ.

A judgment creditor issued a writ of *fi. fa.* on June 23 & posted it on the same day to a man & his wife, brought by an execution creditor of the man, for a declaration that certain property standing in the name of the wife was exigible under the execution against the husband:—*Held:* the facts & circumstances adduced in evidence did not warrant the inference that the husband intended to defraud creditors. Fraudulent intent should not be found except upon substantial grounds & upon clear evidence.—ROBERTSON *v.* ROBINSON, [1928] 2 D. L. R. 343; 62 O. L. R. 12; *affd.*, [1929] 4 D. L. R. 1072; S. C. R. 175.—**CAN.**

sf. *Business carried on by husband & wife—Determination of ownership of goods.*]—MAYLAND *v.* DICKS, [1930] 3 D. L. R. 393.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xii.

sx. *Execution against hirer—Equitable interest of third party in goods.*]—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.—BLACK *v.* DROUILLARD (1877), 28 C. P. 107.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xiv.

m i. —— —— *Fixtures affixed to mortgaged freehold.*]—CARSON *v.* SIMPSON (1894), 25 O. R. 385.—**CAN.**

n i. ——.]—FERRIE *v.* CLEGHORN (1860), 19 U. C. R. 241.—**CAN.**

n ii. —— *C. S. U. C. c. 45, s. 3—Effect of.*]—ROSS *v.* SIMPSON (1876), 23 Gr. 552.—**CAN.**

n iii. ——.]—SMITH, LTD. *v.* VANCOUVER CREMATION SOCIETY (1914), 29 W. L. R. 150; 20 D. L. R. 214.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xv.

p i. ——.]—GURNEY *v.* JAMES (1860), 10 U. C. R. 156.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.

s i. —— *Assets in futuro.*]—An execution on a judgment of assets *in futuro* is invalid if issued without leave after application made under r. 451.—*Re* SMITH'S ESTATE, CANADIAN GUARANTEE TRUST CO. *v.* DELISLE, [1924] 4 D. L. R. 1288; [1924] 3 W. W. R. 815.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (g) ii.

817 i. *Property still remains in debtor.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—**CAN.**

sy. *Attachment under Absconding Debtors Act.*]—STARR *v.* MUNCEY (1845), 3 N. S. R. (2 Thom.) 244.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—F. (a).

t i. —— —— ——.]—RAPELJE (SHERIFF) *v.* FINCH (1856). 14 U. C. R. 249.—**CAN.**

y i. *Right to place husband or wife of debtor in possession.*]—Though Act 32 of 1917, Ord. 25, r. 5, does not expressly forbid the appointment of the husband or wife of a debtor as a person in whose charge property attached may be left by the messenger, a husband who is a man of no standing & worth nothing is not a suitable person to place in charge of property attached in respect of a debt of his wife.—KOTZE *v.* JOHNSON, [1928] App. D. 313.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.—F. (c).

e i. —— ——.]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re* MURPHY (1927), 27 S. R. N. S. W. 503; 44 N. S. W. W. N. 189.—**AUS.**

PART III. SECT. 1, SUB-SECT. 4.—H. (a).

sz. *Place of sale.*]—A sheriff cannot lawfully sell goods on deft.'s premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—MCMASTER *v.* MCPHERSON (1839), 6 O. S. 16.—**CAN.**

sa. *Payment—What amounts to.*]—CARRALL *v.* MONTREAL BANK (1861), 21 U. C. R. 18.—**CAN.**

sb. *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—AGHA HUSAIN *v.* QASIM ALI (1925), I. L. R. 48 All. 94.—**IND.**

PART III. SECT. 1, SUB-SECT. 4.—H. (b).

sd. *Notwithstanding notice of alleged defect in execution.*]—MCPHAIL *v.* MCKINNON (1868), 7 N. S. R. 168.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (i) ii.

915 vii. —— ——.]—An execution creditor can take only the precise interest, & no more, which the debtor possesses in the property seized.—. MCLEAN, [1928] 4 D. L. R. 917; [1928] 3 W. W. R. 328; 37 Man. L. R. 525.—**CAN.**

sf. *Purchaser estopped from claiming goods as his own.*]—RUTTAN *v.* WELLER (1855), 14 U. C. R. 44.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (j).

940 iv. —— ——.]—MACFIE *v.* HUNTER (1882), 9 P. R. 149.—**CAN.**

sg. *Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—LAMBERT *v.* CLEMENT (1897), 11 Man. L. R. 519.—**CAN.**

sj. *Payment of preference claim for wages—When wage-earner entitled to preference.*]—CAMPBELL *v.* CLEUGH (1920), 28 B. C. R. 359.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.—A.

o i. —— ——.]—STREET *v.* GLASS (1840), 3 N. B. R. (1 Kerr) 165.—**CAN.**

965 ii. —— ——.]—HART *v.* REYNOLDS (1863), 13 C. P. 501.—**CAN.**

967 i. *In respect of what goods—Not ty seized under Absconding 's Act.*]—STANTON *v.* JOHNSTON (1858), 9 N. B. R. (4 All.) 54.—**CAN.**

967 ii. —— *Not goods of third party.*]—ROBINSON *v.* MCINTOSH (1899). 4 Terr. L. R. 102.—**CAN.**

a i. —— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—NOWLIN *v.* ANDERSON 1849), 6 N. B. R. (1 All.) 497.—**CAN.**

sk. *In respect of what goods—Goods held under conditional sale agreement.*]—Where goods in the possession of a tenant under a conditional sale agreement are seized under an execution against the tenant the landlord is entitled to the protection of 8 Anne, c. 14, only to the extent to which his claim for rent exceeds the conditional vendor's lien, even though the agreement was not registered as required by Conditional Sales Act, & was, therefore, invalid as against the execution creditor.—OGILVIE FLOUR MILLS CO., LTD. *v.* BECKER & WOOD & SNIHUR, [1931] 1 W. W. R. 273; 2 D. L. R. 445; 25 Alta. L. R. 257.—**CAN.**

the sheriff's officer, who received it at 9 a.m. on June 24. At 5 p.m. on June 24 the debtors executed a deed of assignment to the claimant as trustee for their creditors. On June 25 the sheriff took possession of the debtors' goods. The trustee was himself one of the creditors, but no other creditor had assented to the deed before the seizure: —*Held:* as the trustee was a creditor he had given consideration by executing the deed of assignment & thereby releasing the debtors from their debt to him & he was therefore within the proviso to Sale of Goods Act, 1893 (c. 71), s. 26 (1).—BEEBEE & Co. *v.* TURNER'S SUCCESSORS (1931), 48 T. L. R. 61.

1043. *Add. Annotation:*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

1069. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1224a. Failure to remove goods—Liability to execution creditor—Measure of damages.]—Pltf. recovered judgment against C. for a certain sum, the order providing for payment by instalments & providing that, in the case of default in payment of any instalment, execution might issue for the whole debt & costs remaining unpaid. C. defaulted in the payment of one instalment & pltf. immediately caused an execution to be levied upon C.'s business premises. The bailiff, by an assistant, went into possession & seized certain furniture. C. paid the amount of an instalment into ct. & the amount then owing, together with certain fees, was £41 19*s.* 8*d.* C. urged the assistant bailiff not to remove the furniture, some of which C. had agreed to sell. L., a friend of C., said there was an application being made to the ct. to stay the execution & that he was ready to pay the money into ct. as a deposit pending the application. The assistant bailiff accepted this arrangement & gave a receipt for the £41 19*s.* 8*d.*, stated to be "received of C. on account of the debt, etc.," with a note at the foot "paid by L. as deposit pending application." Upon the application being made it was ordered that, upon C. undertaking to discharge the balance of the debt & costs by regular instalments & paying the costs of the execution, the warrant of execution should be set aside & the £41 19*s.* 8*d.* returned to L., but in default of the payment by C. of the costs of the execution the £41 19*s.* 8*d.* was to remain in ct. to attend the further order of the ct. Pltf. appealed to the Ct. of Appeal. The appeal was allowed & a new trial ordered to determine whether L. paid the money as agent for C. or otherwise. The county ct. judge's order was held to be irregular, for, if L. paid as such agent, the debt was discharged & the execution was at an end, & no further order could be made with regard to it, & if he was not an agent no order could be made in respect of the sum paid as a deposit, as L. was not a party to the action. Further, the county ct. judge had jurisdiction only to stay the execution & not to set it aside. L. was then joined as a party & at the new trial the judge held that the payment by L. gave pltf. no right to the money, & being satisfied that C. was unable to discharge the instalments due under the judgment he ordered the execution to be suspended upon the terms of a new order for payment by instalments. Pltf. was ordered to pay L.'s costs of that application, & C.'s costs of both applications, such costs to be set off against the costs payable by C. to pltf. under the order of the Ct. of Appeal. C. failed to make any payment under the new order for instalments & pltf. thereupon claimed from the bailiff, as damages suffered by reason of the assistant bailiff's breach of his duty to remove the furniture seized under the execution, the amount of his judgment debt, L.'s costs, C.'s costs, his own costs &

PART III. SECT. 1, SUB-SECT. 7.

q i. —— ——.]—MAHON *v.* CROWE 1896), 28 N. S. R. (16 R. & G.) 250.—**CAN.**

q ii. —— —— *Sale bonâ fide.*]—On an interpleader issue between a buyer of goods from an execution debtor & an execution creditor whose execution was in the hands of the sheriff prior to the sale:—*Held:* the sale was *bonâ fide*, it was followed by "an actual & continued change of possession" sufficient to satisfy Executions Act, R. S. S. 1920, c. 52, s. 2, &, the buyer's absence of knowledge of the execution having been established, the buyer was entitled to the goods under the proviso in said sect.—WILSON *v.* MATTHEWSON BROS. & MAGERNIN, [1928] 3 D. L. R. 276; [1928] 2 W. W. R. 136; 22 Sask. L. R. 543.—**CAN.**

q iii. —— —— *Necessity for continued change of possession.*]—The fact that a purchase of goods from a person against whom the sheriff held writs of execution was made in the utmost good faith does not, under Executions Act, R. S. S., 1930, entitle the buyer to hold the goods against the execution creditor unless he can also establish both that he did not know of the existence of the execution, & that the sale was followed by an actual change of possession of the goods from the debtor to himself which was continued. —MORROW *v.* WESTERN EMPIRE LIFE ASSURANCE CO., LTD., [1933] 2 W. W. R. 393.—**CAN.**

s i. *Assignee—Assignment not filed.*]—*Held:* the execution prevailed.—CARSCALLEN *v.* MOODIE (1856), 15 U. C. R. 92.—**CAN.**

s m. —— *Want of notice of writ—Onus of proof.*]—ROSS *v.* CREIGHTON (1890), 40 N. S. R. 131.—**CAN.**

PART III. SECT. 1, SUB-SECT. 9.

s p. *On application of Creditors' Relief Act*, 1922.]—TERMINAL GRAIN CO. *v.* SODERBERG, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—**CAN.**

s q. —— .]—A seizure of goods having been made under execution an order was obtained for their removal & sale. Before the day set for the sale, the debtor paid the whole amount of the execution to the sheriff:—*Held:* the money so paid was money "levied" within Creditors' Relief Act, 1922, it having been paid by the compulsion of the seizure & the means taken to realise.—BADIUK *v.* MOORE (Alta.), [1930] 1 D. L. R. 47; [1929] 3 W. W. R. 115.—**CAN.**

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—SHUTER *v.* GRAHAM (1848), 2 U. C. R. 164.—**CAN.**

l i. —— *Prisoner not deprived of supersedeas.*]—The issuing of a *fi. fa.*, which is not returned, will not deprive a prisoner of a supersedeas.—JACKSON *v.* BLACK, BAINBRIDGE *v.* BLACK, CARVILL *v.* BLACK (1858), 9 N. B. R. (4 All.) 79.—**CAN.**

ar. *Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

PART III. SECT. 1, SUB-SECT. 11.

d i. —— *Conflicting claims.*]—The ct. will not grant a rule *nisi* to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—SCOTT *v.* ANGUS (1854), 2 N. S. R. (James) 183.—**CAN.**

e i —— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fi. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fi. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—ROSS *v.* FISET, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—**CAN.**

e ii. —— *Time for bringing—Public Officers Protection Act*, 1923 (*c.* 19).] —HOLDEN *v.* MILBURN (Sask.), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—**CAN.**

the costs of the appeal :—*Held :* (1) in view of the prospective sale of some of the furniture by C., there was a chance that in order to prevent the removal of the furniture C. might have made a payment on account of the debt. Pltf. had lost this chance of payment by the bailiff's action, & this chance ought in the circumstances to be valued at £15 ; (2) the bailiff was liable for the amount of the costs of the second hearing. The costs of the ineffective first hearing & of the appeal, for which the bailiff was not responsible, were too remote.—DOMINE *v.* GRIMSDALL, [1937] 2 All E. R. 119 ; 106 L. J. K. B. 386 ; 156 L. T. 456 ; 53 T. L. R. 498 ; 81 Sol. Jo. 295.

1231a. —— —— **What amounts to.**] — Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded :—*Held :* not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—CRONSHAW *v.* CHAPMAN (1862), 7 H. & N. 911 ; 31 L. J. Ex. 277 ; 6 L. T. 54 ; 10 W. R. 323 ; 158 E. R. 738.

1243. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1244. *Add. Annotation :*—**Refd.** Williams *v.* Williams & Nathan, [1937] 2 All E. R. 559.

1244a. —— —— ——.]—Where, on a claim being made to goods seized by a bailiff, the execution creditor does not direct the bailiff to give up the goods to the claimant, but appears & contests his title in interpleader proceedings :—*Held :* no evidence of a ratification by the execution creditor of the bailiff's detention.—TOPPIN *v.* BUCKERFIELD & CROSS (1883), Cab. & El. 157.

1250. *Add. Citations :*—1 New Pract. Cas. 476 ; *sub nom.* ROLLS *v.* SENIOR, 7 L. T. O. S. 60.

1257. *Add. Annotation :*—**Consd.** Swaffer *v.* Mulcahy, Hooker *v.* Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

1281a. Sale without order of court—Sale not confirmed.]—R. *v.* BLUNT (1828), 2 Y. & J. 120 ; 148 E. R. 857.

1293. *Add. Citation :*—8 Dowl. 97.

1334a. —— **Appeal from—Lies to Court of Appeal.**] —SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo 92, C. A.

1370a. —— **Subject to mortgage by sub-demise.**]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1380a. —— ——.]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1381. In para. for " case " read " estate."

PART III. SECT. 1, SUB-SECT. 12.—C.

r i. ——.]—MAY *v.* HOWLAND, FITCH & WEBB (1859), 19 U. C. R. 66.—**CAN.**

1230 v. —— ——.]—A., after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party :—*Held :* A. was answerable for the consequence of what the constable did in obeying his instructions.—GRAVES *v.* SPRAGUE (N. B.) (1920), 53 D. L. R. 337.—**CAN.**

1230 vi. —— ——.]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises ; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* deft. had so intermeddled in the distress as to be liable for conversion.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

1243 i. *Ratification by creditor—Whether giving rise to liability—Wrongful seizure.*]—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—BALLANTYNE *v.* MCCULLOCH & Co. & SIMS (B. C.), [1927] 4 D. L. R. 525 ; [1927] 3 W. W. R. 148.—**CAN.**

PART III. SECT. 1, SUB-SECT. 13.—A.

o i. —— *After receipt of attachment.*] —*Held :* the sale could not be upheld, & the attachment must prevail.—RILEY *v.* NIAGARA DISTRICT BANK (1866), 26 U. C. R. 21.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

st. *Not after debt treated by creditor as satisfied.*]—BANK OF UPPER CANADA *v.* MURPHY (1850), 7 U. C. R. 328.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

sv. *Delivery of writ—Land bound from time of delivery.*]—DOE d. NESMITH *v.* WILLISTON (1844), 4 N. B. R. (2 Kerr) 459.—**CAN.**

sw. —— *Proof of.*]—The sheriff's deed is *primâ facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—MITCHELL *v.* GREENWOOD (1854), 3 C. P. 465.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—C.

1340 i. *False return.*]—YOUNG *v.* BABY (SHERIFF) (1855), 4 C. P. 537.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—A.

f i. —— *Land of patentee of free grant.*] —An execution against the lands of a patentee under the Free Grants & Homesteads Act, R. S. O. 1887, c. 25, on a judgment obtained for a debt incurred before location of the lands, does not operate as a charge against the lands when sold by his devisee, even after the expiry of twenty years from the date of the location.—*Re* BEATTY & FINLAYSON (1896), 27 O. R. 642.—**CAN.**

1356 i. *Land held under joint tenancy.*] —Lands were conveyed to a man & his wife as joint tenants & not as tenants in common :—*Held :* estates by entireties having been abolished, the joint estate was severable, & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142 ; 63 O. L. R. 192.—**CAN.**

sx. *Land held by tenant in common—Claim by other tenants in common for rent received in excess.*]—MCPHERSON *v.* MCPHERSON (1883), 10 P. R. 140.—**CAN.**

sy. ——.]—Under a judgment obtained against a person in a district ct. the registrar of the ct., in executing such judgment, may seize & take under a writ of execution the interests of such person in lands as a tenant in common & upon the writ being forwarded to the Registrar-General, it is his duty to note it on the *folium* of the register which certifies the title of the registered proprietor as a tenant in common.—*In re* GUSS (1927), 28 S. R. N. S. W. 226 ; 45 N. S. W. W. N. 32.—**AUS.**

sz. *Land held by debtor at time of death—On judgment against representative.*]—Lands & tenements held in fee simple by a debtor at the time of his decease, may be legally taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Estate in hands of executor—Judgment against debtor.*]—*In the Estate of* CARTER, ASCOT TIMBER CO. PTY., LTD. *v.* CARTER, [1928] V. L. R. 290 ; [1928] Argus L. R. 199.—**AUS.**

g i. ——.]—RUSSELL *v.* RUSSELL (1881), 28 Gr. 419.—**CAN.**

g ii. —— ——.]—PARKE *v.* RILEY, 3 E. & A. 215.—**CAN.**

g iii. —— *By heir or devisee—Before execution issued.*]—*Held : a bonâ fide* purchaser for value would have a good title as against creditors.—REID *v.* MILLER (1865), 24 U. C. R. 610.—**CAN.**

sc. *Land registered in name of debtor—Ownership vested in third party.*]—*Held :* not executable.—UNION GOVERNMENT (MINISTER OF JUSTICE) *v.* BOLAM, [1927] App. D. 467.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 5.—C.

g i. —— —— ——.]—After a mtge. in fee has become forfeited by nonpayment of the mtge. money, the mtgee.'s interest in the premises cannot be sold under an execution against land.—DOE d. CAMPBELL *v.* THOMPSON (1843), 2 Ont. Dig. 2640.—**CAN.**

g ii. —— *Right of dower in equity of redemption.*]—CANADIAN BANK OF COMMERCE *v.* ROLSTON (1902), 22 C. L. T. 232 ; 4 O. L. R. 106 ; 1 O. W. R. 351.—**CAN.**

k i. *Interest of unpaid vendor.*]—The interest of an unpaid vendor of

1423. To cross-references before this case add "*See, now,* Land Charges Act, 1925 (c. 22)."

1500. *Add. Annotation :—As to* (3) **Refd.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; [1924] 2 W. W. R. 529.—**CAN.**

k ii. *Assignee of purchaser under contract of sale.*]—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—WARD *v.* ARCHER (1894), 24 O. R. 650.—**CAN.**

k iii. ——.]—Pltf. sold certain land to deft. S. under agreement for sale, whereby he became entitled to a transfer upon payment of the agreed purchase price & compliance with stated conditions. Subsequently the A. Co. recovered a judgment against S., & registered execution in usual form against his land. S., after such registration, assigned his whole equitable interest in such land to deft. T. The legal title during this time remained in pltf. In an action by pltf. under the contract, the A. Co. claimed a right to intervene as having an interest in the land under their writ of execution :—*Held :* having regard to the provisions of the Land Titles Act, it was evidently the intention of the Legislature that writs of execution should bind only the interests of registered owners of land, & the execution did not bind the equitable interest of deft. S.; (2) no lien is created by an execution against land, only such rights being acquired as are given by the Land Titles Act, & which are not available as against equitable interests.—CANADIAN PACIFIC RAILWAY *v.* SILZER, 3 S. L. R. 162.—**CAN.**

sd. *Debtor interested in land held by wife—Interest sufficient to discharge debt.*]—MACDONALD & CO. *v.* TEASDALE (1913), 24 O. W. R. 534.—**CAN.**

se. *What interests may be seized—Under amendment to Land Titles Act, s.* 125.]—FOSS *v.* STERLING LOAN (1915), 8 W. W. R. 569; 23 D. L. R. 540; 8 Sask. L. R. 289.—**CAN.**

sf. *Equitable interest held as trustee.*]—C., who had an interest in certain land, as purchaser from W., the full price not having been paid, assigned his interest to pltf. upon trust that the latter should support C. & his wife for the remainder of their lives, & on their death pay all their debts & funeral expenses, whereupon the trust should cease, & pltf. should be entitled to all the interest of C. in the property free from any trust; & pltf. agreed to pay to W. the balance of the purchase price :—*Held :* C.'s equitable interest as a purchaser, if transferred to pltf., gave the latter no estate in the land, save to the extent to which a ct. of equity would give C. specific performance of his agreement with W., & that interest would be taken by pltf. as a trust estate, & would not be saleable under a writ of *fi. fa.* against pltf.'s lands.—KIMNIAK *v.* ANDERSON [1929] 2 D. L. R. 904; 63 O. L. R. 428.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—G.

sg. *Timber.*]—Where the owner of land sells the timber after a writ against his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—BROWN *v.* SAGE (1865), 11 Gr. 239.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

u i. —— —— *Where prior assignment for benefit of creditors.*]—B. made an assignment to C. for benefit of his creditors. Various executions were issued against B.'s lands & notice thereof filed with the Registrar of Titles. C. applied for a certificate of title to B.'s lands :—*Held :* registrar must issue the certificate without endorsing thereon the executions of which he has received notice.—*Re* BROOKS (1900), 12 W. L. R. 303.—**CAN.**

a i. —— *Effect as against assignment for benefit of creditors.*]—MCINTYRE *v.* SHAW (1866), 12 Gr. 295.—**CAN.**

a ii. —— *Effect as against unrecorded deed.*]—GRINDLEY *v.* BLAKIE (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—**CAN.**

c i. —— *Effect on judgment mortgage.*]—*Held :* a judgment mtge. did not obtain priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—REID *v.* MILLER, [1928] N. I. 151.—**IR.**

e i. —— *Judgment for alimony.*]—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—BRIGGS *v.* CARSON, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—**CAN**

e ii. —— *How far binding—Defendant mere conduit pipe to convey title from vendor to third party.*]—OWEN *v.* LYNCH (1877), 11 N. S. R. (2 R. & C.) 406.—**CAN.**

e iii. —— —— 5 *R. S. c.* 84, *s.* 21—*Effect of.*]—LOISBURG LAND CO. *v.* TUTTY (1884), 16 N. S. R. (4 R. & G.) 401.—**CAN.**

p (p. 570) i. —— —— *Priority.*]—An unregistered assignment of a mtge. takes priority over the claim of an execution creditor under an execution registered at a date later than the assignment; & if the unregistered assignment was of the entire mtge. there is no interest in the assignor which can be seized & sold under the writ of execution.—MARKLE *v.* SULLAND & LUDGATE, [1934] 2 W. W. R. 123.—**CAN.**

sh. *Duty of registrar—With notice of writ of execution—Patent not issued for lands entered as homestead.*]—*Re* CLAXTON (1890), 1 Terr. L. R. 282.—**CAN.**

sj. *Judgment not registered—Priority of mortgage.*]—MINERAL PRODUCTS CO. *v.* CONTINENTAL TRUST CO. (1906), 37 S. C. R. 517.—**CAN.**

s (p. 571) i. ——.]—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions :—*Held :* the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

1459 i. *Right to possession—As against third parties in possession—Not asserting title through debtor.*]—EDWARDS *v.* BENNETT (1869), 5 P. R. 161.—**CAN.**

1459 ii. —— —— *Possession taken forcibly.*]—DOE d. PECK *v.* ROE (1845), 2 U. C. R. 27.—**CAN.**

sm. *Duty of sheriff to retain.*]—DOE d. CREW *v.* CLARKE (1841), 1 Ont. Dig. 233.—**CAN.**

PART III. SECT. 2, SUB-SECT. 10.—A.

a (p. 576) i. —— —— *Mortgage not registered.*]—MOFFAT *v.* GROVER (1855), 4 C. P. 402.—**CAN.**

a (p. 576) ii. —— —— *In hands of receiver.*]—A judgment creditor can sell properties in the hands of a receiver of the ct. in execution of a mtge. decree, although the receiver, who was appointed subsequently to the institution of the mtge. suit, was not made a party to the suit.—TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

h (p. 576) i. ——.]—JONES *v.* JONES (1868), 15 Gr. 40.—**CAN.**

bb (p. 576) i. —— *Proof of—In ejectment on sheriff's deed.*]—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

bb (p. 576) ii. —— —— ——.]—DELISLE *v.* DEWITT (1859), 18 U. C. R. 155.—**CAN.**

bb (p. 576) iii. —— —— ——.]—LOW *v.* HICKS (1870), 21 C. P. 113.—**CAN.**

bb (p. 576) iv. —— *Relation back.*]—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—DOE d. PEABODY *v.* MCKNIGHT (1838), 2 N. B. R. (Ber.) 567.—**CAN.**

bb (p. 576) v. —— —— *To day of sale.*]—Although a sheriff's deed relatee back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—GAVILLER *v.* BEATON (1862), 12 C. P. 519.—**CAN.**

cc (p. 576) i. —— —— *Into debtor's title.*]—A purchaser of lands on an execution, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title, or that he was in possession of the premises.—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

cc (p. 576) ii. —— *To growing crops on land sold.*]—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—ANDERSON *v.* STASIUK [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

cc (p. 576) iii. —— *Right to claim partition.*]—An order made on the appln. of purchaser at a sheriff's sale of the interest of a husband, holding as joint tenant, for partition or sale was affirmed.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

t (p. 577) i. —— —— *No issue for two weeks.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 Terr. L. R. 302; 6 W. L. R. 272.—**CAN.**

g (p. 577) i. —— *Land held adversely by third party.*]—A sheriff selling under execution is not within the class of

1506. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

1536a. —— —— **Effect of Law of Property Act, 1925 (c. 20), s. 195 (3).**]—A judgment creditor obtained a judgment for payment of £1,250. A writ of *elegit* was issued & the sheriff took possession of certain freehold land of the debtor. The writ was registered in the [illegible] creditor made an application for an order for the sale of the debtor's interest in the land within one year after the date of the judgment :—*Held :* sect. 4 of the Judgments Act, 1864 (c. 112), s. 4, was not impliedly repealed by Law of Property Act, 1925 (c. 20), & a writ of *elegit* having been issued & registered in the Land Registry, the judgment creditor was entitled to the order he asked for.—*Re* CHANCE, [1936] Ch. 266 ; 105 L. J. Ch. 67 ; 154 L. T. 493.

1552a. —— **Equitable interest—Amendment—Costs.**]—KIDD *v.* TALLENTIRE, [1877] W. N. 21.

1564a. Issue into county palatine—Indorsement for less than £50.]—BROWN *v.* M'MILLAN (1840), 7 M. & W. 196 ; 10 L. J. Ex. 147 ; 151 E. R. 736 ; *sub nom.* BROWN *v.* MACMILLAN, SAME *v.* MACPHERSON, 8 Dowl. 852 ; H. & W. 46 ; 4 Jur. 1090.

1569. *Add*—ANON. (1774), Lofft, 390.

1576a. When completed.]—OWEN *v.* OWEN (1831), 2 B. & Ad. 805 ; 109 E. R. 1341.

1577a. —— **Whether defendant discharged.**]—HODGSON *v.* TOWNING (1837), Will. Woll. & Dav. 53 ; *sub nom.* ANON., 1 Jur. 84.

[illegible]aga Kurboolie Mahomed *v.* R. (1843).

1578a. Right to break outer doors.]—MALEVERER *v.* SPINKE (1537), 1 Dyer, 35 b ; 73 E. R. 79.

1578b. —— **After escape of prisoner.**] —ANON. (1774), Lofft, 390 ; 98 E. R. 709.

1578c. ——.]—HOPKINS *v.* NIGHTINGALE (1794), 1 Esp. 99 ; 170 E. R. 292, N. P.

1579a. —— **Opening of door obtained by trick.**]—*Held :* an unlawful entry.—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62 ; 80 E. R. 211.

Annotations :—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1 ; Sandon *v.* Jervis (1859), E. B. & E. 942.

1579b. ——.]—ANON. (1695), 12 Mod. Rep. 73 ; 88 E. R. 1172.

1580a. —— **What is outer door—Whether hole in wall.**]—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory :—*Held :* if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY *v.* WILLIAMSON (1836), 7 C. & P. 294 ; 173 E. R. 130.

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cases which apply to a person selling land held adversely by another.—DOULL *v.* KEEFE (1901), 34 N. S. R. 15.—**CAN.**

h (p. 577) i. —— —— *Error in judgment.*]—*Held :* the sheriff's deed could give no title.—VAREY *v.* MUIRHEAD (1831), Dra. 486.—**CAN.**

h (p. 577) ii. —— —— *Too much sold.*]—*Held :* no ground for invalidating the sale.—DOE d. HAGERMAN *v.* STRONG (1848), 4 U. C. R. 510.—**CAN.**

h (p. 577) iii. —— —— *Sale in separate lots.*]—*Held :* permissible.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) iv. —— —— *Part only sold—Duty of sheriff to designate portion offered for sale.*]—KNAGGS *v* LEDYARD (1866), 12 Gr. 320.—**CAN.**

h (p. 577) v. —— —— *Sale of undivided interest in township lots.*]—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

h (p. 577) vi. —— —— *Time of sale.*] —*Held :* the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) vii. —— —— *Sheriff disregarding judgment creditor's instructions—Bidding at once full amount instead of bidding gradually.*]—*Held :* the judgment creditor had no ground of action against the sheriff.—MARKLE *v.* THOMAS (SHERIFF) (1856), 13 U. C. R. 321.—**CAN.**

h (p. 577) viii. —— —— *Proof of.*]—ROE *v.* MCNEIL (1863), 13 C. P. 189.—**CAN.**

h (p. 577) ix. —— —— ——.]—FIELDS *v.* LIVINGSTON & WIGHTMAN (1866), 17 C. P. 15.—**CAN.**

h (p. 577) x. —— —— *Purchaser estopped from disputing validity.*]—FERGUSON *v.* FERGUSON (1869), 16 Gr. 309.—**CAN.**

h. (p. 577) xi. —— *Effect of—Sale of equity of redemption—Purchase by assignee from execution creditor—Subsequent conveyance to debtor.*]—CHITTICK *v.* LOWERY (1903), 24 C. L. T. 15 ; 6 O. L. R. 547 ; 2 O. W. R. 957.—**CAN.**

h (p. 577) xii. —— —— *Covenants.*] —The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—ANDERSON *v.* STASIUK (No. 3), [1927] 1 D. L. R. 529 ; [1927] 1 W. W. R. 49 ; 21 Sask. L. R. 276.—**CAN.**

h (p. 577) xiii. —— *Right to proceeds —Two writs lodged with registrar.*]—*Re* THE MASSEY MANUFACTURING CO. *v.* HUNT, THE MCCORMICK HARVESTING MACHINE CO. *v.* HUNT (1895), 2 Terr. L. R. 84.—**CAN.**

h (p. 577) xiv. —— *Under writ of execution lodged prior to agreement for sale to third party—Priorities—Affidavits in support of confirmation of sale irregular.*]—*Re* PRICE (1912), 21 W. L. R. 299.—**CAN.**

dd (p. 577) i. *Lands sold subject to "incumbrances"—Whether subject to subsequent executions.*] — GRIESE *v.* WALKER (1913), 23 W. L. R. 709 ; 4 W. W. R. 77.—**CAN.**

ss. *Confirmation of sale—Right of appeal.*]—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 67, & the only appeal is to the Ct. of Appeal.—ETHIER *v.* NOLLE, [1924] 1 W. W. R. 493.—**CAN.**

sb. *Distribution of proceeds of sale.*]—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL *v.* GEORGE, [1925] 2 D. L. R. 229 ; [1925] 1 W. W. R. 579 ; 35 B. C. R. 134.—**CAN.**

sc. *Right to sell—To realise judgment of county court.*]—Queen's Bench Act, 1895, rr. 804 to 806, do not authorise proceedings to be taken in a summary way under them for the purpose of realising a registered judgment of a county ct. by sale of land, such rules being applicable only to judgments in the Q. B.—PROCTOR *v.* PARKER (1897), 11 Man. L. R. 485.—**CAN.**

sd. *Affidavit of execution of transfer—Sworn before unauthorised person.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272 ; 6 Terr. L. R. 302.—**CAN.**

se. *Proceedings to confirm sale—How intituled.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272 ; 6 Terr. L. R. 302.—**CAN.**

sk. *Interest acquired by purchaser.*]—A purchaser at a sheriff's sale only acquires the interest of the judgment debtor in the land bound by the judgment.—PERRO *v.* ANTIGONISH, [1936] 2 D. L. R. 119 ; 10 M. P. R. 315.—**CAN.**

PART III. SECT 2. SUB-SECT. 11.

1557 i. *Order of court—When court will set aside sale—On equitable grounds.*]—WOOD *v.* LEEMING (1827), Tay. 463.—**CAN.**

1557 ii. —— —— ——.]—CAMPBELL *v.* SMITH (1863), 10 Gr. 206.—**CAN.**

1557 iii. —— —— *Notice of motion not given to purchaser.*]—*Held :* the ct. would not interfere.—MCGILLIS *v.* MCDONALD (1839), 2 Ont. Dig. 2662.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.— A.

sg. *Proceedings after surrender—Set aside.*]—WARD *v.* STOCKING (1825), Tay. 216.—**CAN.**

1581a. ——.]—RING *v.* HYDE (1850), 14 L. T. O. S. 377.

1584a. —— ——.]—*Held:* valid.—ANON. (1702) 7 Mod. Rep. 8; 87 E. R. 1060.

Annotation:—**Apld.** Sandon *v.* Jervis (1858), E. B. & E. 935.

1584b. —— **Window broken to take into custody.**]—*Held:* valid.—LLOYD *v.* SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 F. R. 379.

1614. *Add. Annotations:*—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

1615. *Add. Annotations:*—**Distd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

1617. *Add. Annotation:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81.

1618. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

1658a. —— **More than amount of rent due—Redelivery of surplus**]—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON *v.* WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.

Annotation:—**Refd.** Kelly *v.* Webber (1860), 3 L. T. 124.

1667a. Irregular execution—Part of premises within Rent Acts—Failure to warn sheriff—Liability of landlord.]—The first deft. had obtained a writ of possession in respect of a house; the second deft., who was a sheriff's officer, proceeding under this writ, evicted pltf., who alleged that the portion of the house that he occupied was controlled under the Rent Restrictions Acts. Pltf. brought an action against the landlord & the sheriff's officer for damages for trespass. The landlord was present at the time of the eviction but did not tell the officer that part of the house was controlled:—*Held:* (1) the landlord, although present at the eviction, had not taken any part in it, or given the sheriff's officer any such directions as would make him his agent. He was therefore not liable; (2) the sheriff's officer was, in the course of his duty, executing a judgment of the ct., & so was not liable in an action for damages, however wrong the judgment might have been.—WILLIAMS *v.* WILLIAMS & NATHAN, [1937] 2 All E. R. 559; 81 Sol. Jo. 435, C. A.

1667b. —— —— —— **Liability of sheriff's officer.**]—WILLIAMS *v.* WILLIAMS & NATHAN, No. 1667a, *ante*.

1677. *Add. Citation:*—*sub nom.* WILSON *v.* CHANTON (1862), 6 L. T. 255.

1704. *Add. Annotations:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

1706a. —— —— **Payment of rent—How rent calculated.**]—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT *v.* ROE (1813), 4 Taunt. 883; 128 E. R. 579.

1720. *Add. Annotations:*—**Apld.** Burrowes. *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

1745. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1753. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754a. ——.]—*Semble:* arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON *v.* CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

1758. *Add. Annotation:*—**Refd.** *Re* Nelson, Norris *v.* Nelson, [1928] Ch. 920, n.

1769. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

1847. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1855. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1882a. *S. P. Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.

1912. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1944. *Add. Citations:*—*sub nom.* KIRLEW *v.* BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318.

Add. Annotations:—**Apld.** Britten *v.* Wait (1832), 3 B. & Ad. 915. **Refd.** Newland *v.* Watkin (1832), 2 Moo. & S. 174; Colebrooke *v.* Layton (1833), 1 Nev. & M. K. B. 374.

1955. *Add. Annotation:* — **Refd.** *Re* Woods (Bristol), Ltd. (1931), 47 T. L. R. 464.

PART III. SECT 3, SUB-SECT. 5.—A.

a i. —— *By mistake—Second writ refused.*]—BRADBURY *v.* LONEY (1842), 6 O. S. 291.—**CAN.**

to leave province—Ownership of property sufficient to satisfy debt.]—TOOLE HENNEBERRY, [1928] 3 D. L. R. 38.—**CAN.**

ak. *Not granted—Debtor having interest in land not subject to execution.*]—*Re* GELDERT *v.* HOAR. *Ex p.* GELDERT (1899), 34 N. B. R. 612.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

r i. —— *By whom signed & issued—By clerk of court & not by* ALLENACH *v.* DESBRISAY (1866), N. B. Dig. 493.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.

2020 ii. —— —— *Burden of proof of reasonableness of charges.*]—MCGREG *v.* KLOTZ, [1929] 4 D. L. R. 792; 3 W. W. R. 183.—**CAN.**

Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2058. *Add. Annotations :*—**Apld.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394. **Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2059a. Judgment by default—Against dissolved foreign corporation.]—Before the Bolshevik Revolution of Oct. 1917, in Russia the M. Bank in London owed a Russian Bank a large sum of money. At the same time the Russian Bank was largely indebted to L. Brothers, also bankers in London. Between Oct. 1917, & Aug. 3, 1921, numerous decrees of the Govt. of Russia & orders of various Departments thereof were made & published purporting to nationalise or liquidate all banking corpns. in Russia, including the Russian Bank above mentioned. In Oct. 1930, L. Brothers, having filed an affidavit stating that the Russian Bank was a co. registered & domiciled in Russia, obtained leave under R. S. C., Ord. 9, r. 2, to issue a writ against the Russian Bank & to serve notice of the writ by sending it by registered post to the former address of the Bank in Moscow. Having then signed judgment in default of appearance against the Russian Bank, L. Brothers obtained a garnishee order *nisi* against the M. Bank attaching all debts due from the M. Bank to the Russian Bank, & an issue was subsequently directed to be tried, whether the M. Bank was indebted to the Russian Bank to any & what extent. On the evidence of Russian lawyers who had practised in Russia since the Revolution :—*Held :* the Russian Bank had ceased to exist in & before Oct. 1930, & consequently the writ, the judgment & the garnishee proceedings, were null & void & must be set aside.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289 ; 102 L. J. K. B. 191 ; 148 L. T. 242 ; 49 T. L. R. 94 ; 76 Sol. Jo. 888, H. L. ; *affg.* S. C. *sub nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations :—*As to* (1) **Refd.** BURT *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

2084a. Person out of jurisdiction.]—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches :—*Held :* the foreign balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—RICHARDSON *v.* RICHARDSON, [1927] P. 228 ; 96 L. J. P. 125 ; 137 L. T. 492 ; 43 T. L. R. 631 ; 71 Sol. Jo. 695.

PART V. SECT. 1, SUB-SECT. 2.—A.

sl. *Magistrate's order for maintenance of deserted wife—Affirmed by county court.*]—*Held :* a judgment enforceable by the attachment of a debt due to the husband.—BROWN *v.* BROWN, [1927] 4 D. L. R. 314 ; [1927] 3 W. W. R. 172 ; 38 B. C. R 473.—**CAN.**

sm. *Judgment by consent—Not to be entered till subsequent date.*]—Where a consent judgment provides that it shall not be entered until a subsequent date the party for whom the judgment is given cannot in the meantime truthfully make the affidavit required by King's Bench Act, s. 759, for the obtaining of a garnishee order.—HODGKINS *v.* HARRIS INVESTORS, LTD., [1929] 1 D. L. R. 189 ; [1928] 3 W. W. R. 540.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

n i. —— *Making assignment in bankruptcy.*]—Where after recovering a judgment the judgment creditor makes an assignment in bkpcy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—LANIN *v.* ZAWISLAK & DEMOSKY (Sask.), [1927] 2 W. W. R. 71.— **CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

2077 ii. —— ——.]—An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appct., will not be entertained.—THOMPSON *v.* FRASER (Sask.), [1926] 3 W. W. R. 251.—**CAN.**

k. Read now "**2084a i.** *Person out of jurisdiction.*"

l. Read now "**2084a ii.**"

m. Read now "**2084a iii.**"

n. Read now "**2084a iv.**"

o. Read now "**2084a v.**"

2084a vi. —— *Debt payable within province.*]—While ordinarily Attachment of Debts Act, R. S. S., 1930, does not apply to persons resident outside Saskatchewan, yet it does apply when such persons submit themselves to the jurisdiction of the Saskatchewan cts. & are temporarily within the province & the debt garnished is payable within the province.—MCILRATH LUMBER CO., LTD. *v.* SHORE & SHORE & DENNISSON, [1931] 2 W. W. R. 785 ; 4 D. L. R. 894. —**CAN.**

2084a vii. —— *Licensed to do business in Canada.*]—Applt., in May, 1928, issued in the United States an insurance policy to F., an American subject, by which it agreed to indemnify F. against loss by reason of her legal liability to pay damages to others arising out of the ownership, operation or use of her automobile within the United States or Canada. Resp. adduced evidence that on Mar. 23, 1929, applt. was licensed to carry on the business of automobile & other insurance in Ontario, & showing its head office for the province, & its assets in Ontario (moneys in bank) & its assets deposited with the Receiver-General of Canada for the protection of Canadian policy holders, as shown by its annual statement filed as required by law :—*Held :* applt. was a "person within Ontario" & was "indebted to the judgment debtor," within r. 590 of the Ontario Rules of Ct.—CENTURY INDEMNITY CO. *v.* ROGERS & FITZGERALD, [1932] S. C. R. 529 ; 2 D. L. R. 582 ; *affg.*, [1931] 3 D. L. R. 225 ; O. R. 342.—**CAN.**

so. *Debtor out of jurisdiction—Writ obtained ex parte—Leave to execute.*]—JONES *v.* JONES, [1928] V. L. R. 24.—**AUS.**

sq. *Company in liquidation.*]—When a co. is in liquidation its funds are not subject to garnishment.—RUDDELL GRAIN GROWERS ASS'N., LTD. *v.* CLEATOR & SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., [1928] 1 W. W. R. 222.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

r (p. 621) i. —— ——.]—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—ROYAL BANK OF CANADA *v.* VAN BUREN & MCKAY (Alta.), [1927] 1 W. W. R. 268.—**CAN.**

r (p. 621) ii. —— ——.]—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 84), is not subject to arrestment.—WILLIAM BAIRD & CO. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

r (p. 621) iii. —— *Money deposited with returning officer.*]—*Held :* not attachable.—CREAGH *v.* SUTHERLAND & READE (1895), 3 Terr. L. R. 303.— **CAN.**

k (p. 622) i. —— ——.]—HIME *v.* COULTHARD (1910), 15 W. L. R. 288 ; 20 Man. L. R. 164.—**CAN.**

k (p. 622) ii. —— —— *For destruction of exempt property.*]—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—ROSS *v.* ROGERS & CANADIAN NATIONAL RYS. (Sask.), [1927] 3 W. W. R. 169.—**CAN.**

k (p. 622) iii. —— —— *Interest as.*]—A claim for interest as damages is not one for a debt or liquidated demand within Attachment of Debts Act, R. S. S., 1930.—BUCKOLZ *v.* P. W. GRAHAM & SONS, LTD., [1931] 2

2086a. ——.]—FASSNIDGE *v.* FLINT & SON (1892), 8 T. L. R. 213.

2087a. —— **Third party insurance.**]—An insurance co. agreed to indemnify the owner of a motor car against liability for accidental injury to third persons caused by the use of the car. The policy contained conditions relating to the giving of notice of any accident & the obtaining of an award of an arbitrator, & gave the co. power to control or settle any proceedings which might be brought against the assured by an injured third party. Judgment having been recovered by such a person against the assured:—*Held:* the liability of the co. under the policy was not a debt which could be attached by the judgment creditor in garnishee proceedings under R. S. C., Ord. 45, r. 1.—ISRAELSON *v.* DAWSON, [1933] 1 K. B. 301; 102 L. J. K. B. 387; 148 L. T. 420, C. A.

2088. *Add. Citation:*—*sub nom.* MACDONALD *v.* HOLLISTER (1855), 3 W. R. 522.

2099. *Add. Annotation:*—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2107. *Add. Annotation:*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2108. *Add. Annotation:*—**Expld.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

2120. *Add. Annotation:*—**Refd.** Israelson *v.* Dawson (1932), 102 L. J. K. B. 387.

2121. *Add. Annotations:*—**Apld.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Richardson *v.* Richardson, [1927] P. 228; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

W. W. R. 90; *on appeal*, [1931] 2 W. W. R. 737; 4 D. L. R. 854.—**CAN.**

k (p. 622) iv. —— —— *Against stockbroker.*]—MACKEE *v.* SOLLOWAY MILLS & CO., LTD., [1930] 1 W. W. R. 563; 3 D. L. R. 145; 42 B. C. R. 438.—**CAN.**

l (p. 622) i. —— *Conditional annuity.*]—Testator bequeathed his estate to trustees upon trust (*inter alia*) to pay out of the income to his widow an annuity of £200 "subject to the obligation of maintaining & educating thereout such of my children as shall for the time being be minors & shall not be married. On a motion to make absolute a charging-order *nisi* affecting to attach the widow's interest in the annuity:—*Held:* the annuity, being a debt subject to a condition, could not be attached, & the motion should be dismissed.—PUBLIC TRUSTEE *v.* POLSON, [1931] N. Z. L. R. 321.—**N.Z.**

l (p. 624) i. —— *Deposit paid under agreement to purchase.*]—Judgment debtor by memorandum in writing agreed to purchase from appts. (garnishees) land on which a house was to be erected. He agreed to pay & paid to appts. £100 deposit & "balance" purchase-money when house is completed. No price was specified. It was not clear on the evidence whether the price had been subsequently agreed or not, but, on an account being rendered to debtor for £1,150, he said he would consider the matter, & continued to negotiate either as to the price or arrangements for payment until he was served with the garnishee order *nisi*, when he agreed to take the land for £1,150:—*Held:* the amount of the deposit was neither a debt owing or accruing from the garnishees to judgment debtor, the deposit was intended to remain with appts. until it was certain that negotiations for the contract had failed, & was not subject to attachment.—MAYWALD *v.* RIEDEL, [1927] S. A. S. R. 345.—**AUS.**

m (p. 624). *Revsd.*, [1924] 1 D. L. R. 1154; [1924] 1 W. W. R. 707; 18 Sask. L. R. 158.

m (p. 624) i. —— ——.]—The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—REED *v.* RENTON & PETTINGER, [1924] 2 W. W. R. 223.—**CAN.**

m (p. 624) ii. —— ——.]—MOORE *v.* NYLAND, MCPHERSON, [1930] 1 W. W. R. 627; 3 D. L. R. 203; 42 B. C. R. 444.—**CAN.**

m (p. 624) iii. —— *Balance of payment to mortgagee under policy taken out by mortgagor.*]—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct.:—*Held:* the money in ct. should be paid to the garnishing creditor.—ROYAL BANK OF CANADA *v.* KENWARD, [1925] 4 D. L. R. 905; [1925] 3 W. W. R. 549.—**CAN.**

m (p. 624) iv. —— *Purchase-money deposited in escrow.*]—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance:—*Held:* garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—HANKEY & CO., LTD. *v.* VERNON, [1926] 1 D. L. R. 684; [1926] 1 W. W. R. 375; 36 B. C. R. 401.—**CAN.**

r (p. 624) i. —— *Money due on mortgage.*]—Moneys due on a mtge. of land are subject to garnishment, even though, as in Alberta, Judicature Act requires that, unless the ct. otherwise order, the land be sold before the mtgee. issues execution.—ROYAL BANK OF CANADA *v.* LEE & W. B. MOFFATT & CO. (Alta.), [1929] 4 D. L. R. 975; 3 W. W. R. 260.—**CAN.**

r (p. 624) ii. —— *Money in hands of garnishee as proceeds of sale by debtor—Sale set aside.*]—At the time of the service of the garnishee order herein the garnishees were holding a sum of money under the following circumstances: The garnishee had bought cattle from the judgment debtors; the sale had been set aside as void against creditors; but the garnishees received the money in question from the government as compensation for some of the cattle which the government had ordered to be destroyed. After the service of the garnishee order the garnishees agreed with the judgment debtors that the bill of sale for the cattle should be regarded as *non est* & that the moneys in question should be treated as the property of the judgment debtors:—*Held:* the moneys were attachable.—MARSHMAN *v.* BREADIN, CHRISTIE, SCOTT & PEDEN, [1933] 1 W. W. R. 668; 3 D. L. R. 312. 46 B. C. R. 537.—**CAN.**

2102 i. *Cheque given to satisfy debt.*]—On an issue as to whether a garnishee owed his creditor an amount in excess of that paid by him into ct. it was found that a cheque given by the garnishee to his creditor was delivered before the garnishee summons was served & that it was taken as payment. The fact that the garnishee had an opportunity to stop payment of the cheque after service of the garnishee summons but did not do so did not assist the garnishor.—MCCALLUM *v.* MUNTON, [1936] 3 W. W. R. 32.—**CAN.**

PART V. SECT. 1, SUB-SECT 3.—B.

2113 i. —— *At date of service of order—Necessity for—Salary payable at end of month in which order served.*[—STUMP *v.* BATZOLD & ZION UNITED CHURCH, [1931] 2 W. W. R. 784; 44 B. C. R. 282.—**CAN.**

2115 iii. —— ——.]—Where at the time of the issuance of the garnishee order the obligation to pay the money is dependent upon conditions which may or may not be fulfilled there is no debt due or accruing due. An accruing debt is one which, although not yet payable, is yet an existing obligation.—VATER *v.* STYLES & METROPOLITAN LIFE INSURANCE CO., [1930] 2 W. W. R. 241; 3 D. L. R. 509; 42 B. C. R. 463.—**CAN.**

d (p. 626) i. —— *Payment of purchase-money conditional on clearing off encumbrances.*]—Where payment of purchase-money on a sale of land is conditional on the clearing off of encumbrances, it is not garnishable at a time when a transfer showing a clear title in the purchaser has not yet been registered.—FAAS *v.* MCMANUS (Alta.), [1930] 1 D. L. R. 302; 24 Alta. L. R. 317; [1929] 3 W. W. R. 598.—**CAN.**

sj. *Must be at time of issue of summons.*]—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R.

sk. *Claim by dismissed servant.*]—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:

2124a. Must be recoverable within jurisdiction.]—RICHARDSON *v.* RICHARDSON, No. 2084a, *ante*.

2131. *Add. Annotation :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2135. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2140. *Add. Annotation :—As to* (2) **Dbtd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2140a. —— ——.]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed ; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served ; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVENNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK FOR RUSSIAN TRADE, LTD., [1933] 1 K. B. 47 ; 102 L. J. K. B. 16 ; 147 L. T. 231 ; 48 T. L. R. 578 ; 76 Sol. Jo. 494, C. A.

—Held : there was no debt due or accruing due from the garnishee to deft.—MASON *v.* MCLEOD & FOSTER, [1925] 1 D. L. R. 752 ; [1925] 1 W. W. R. 165 ; 19 Sask. L. R. 221.—**CAN.**

sm. *Debt payable on performance of acts by other party.*]—When a contractor has completed his part of a contract, there is an accruing obligation which can be garnished, notwithstanding that payment is not to be due until after the performance of other acts by the other party.—RAYNER *v.* NEUKAUTER (1932), 45 B. C. R. 353.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—E.

2124 ii. ——.]—PARKER *v.* MCILWAIN (1896), 17 P. R. 84.—**CAN.**

2124 iii. ——.]—To enable a judgment creditor to obtain an order compelling a garnishee to pay to him a debt which he would otherwise have to pay to the judgment debtor, the debtor must be in a position to maintain an action for it against the garnishee.—KIRKHAM *v.* KIRKHAM (1936), 50 B. C. R. 321.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—F.

2131 ii. —— ——.]—Garnishee orders take effect only as against that which debtor can properly, & without violation of any other rights of any one else, grant.—CAMPBELL *v.* GEMMELL (1890), 6 Man. L. R. 355.—**CAN.**

t i. *Debt due to judgment debtor in hands of co-defendant.*]—*Held :* not attachable.—GILCHRIST *v.* WILEY (1881), 28 Gr. 425.—**CAN.**

si. *Debt due from one partnership to debtor of another partnership—One partner common to both firms.*]—MCCORMICK *v.* PARK (1859), 9 C. P. 330.—**CAN.**

so. *Money lodged by candidate for election—Before election held.*]—Moneys lodged by a candidate for election under Local Government Act, 1915, s. 127, are not, before the election has taken place, attachable as a debt due by the returning officer to the candidate.—HUNT *v.* BALFOUR, [1928] V. L. R. 488 ; [1928] A. L. R. 313.—**AUS.**

PART V. SECT. 1, SUB-SECT. 3.—H.

o i. —— *Effect of defect.*]—Pursuant to a garnishee order issued by a judgment creditor in a county ct. action the garnishee, having been notified by a bank that the bank held an assignment from deft. co. of all book debts due to said co., paid the amount into ct. The assignment had been executed by deft. co. under seal by its president & its secretary-treasurer. The president was the garnishor. The assignment stated that it was made "for valuable consideration," & the accompanying affidavit by an agent of the bank stated that the assignment was "for good or valuable consideration, as set forth in said conveyance or assignment" :—*Held :* although the assignment was defective because it did not comply with sect. 3 of Bills of Sale & Chattel Mtge. Act, C.A., 1924, which governed the assignment in question, in that the assignment did not set out the full & true consideration for which it was given, nevertheless said defect was of no avail to the garnishor since the right to garnish depends upon the debt belonging to deft. when the order is taken out, & if the debtor has already parted with the debt under an assignment good as between him & his assignee the defect is immaterial.—MCKAY *v.* BANK OF MONTREAL, [1932] 1 W. W. R. 897 ; 3 D. L. R. 226 ; 40 Mar. L. R. 391.—**CAN.**

p i. *Assignment of earnings of farm implement.*]—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—TURNER *v.* WATERLOO MANUFACTURING CO., [1926] 2 D. L. R. 706 ; [1926] 1 W. W. R. 949 ; 35 Man. L. R. 472.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—I.

2142 iv. ——.]—The word "debts," as used in Code of Civil Procedure, s. 60, applies only to debts actually due ; it cannot include debts, *e.g.* rent, which may become due in the future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim.—LACHMAN *v.* JARBANDHAN (1927), I. L. R. 50 All. 507.—**IND.**

PART V. SECT. 1, SUB-SECT. 3.—J.

o (p. 633) **i.** —— *Amount of exemption —Not affected by payments made on account.*]—CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. *v.* HOBODYSKE & CANMORE COAL CO., LTD. (Alta.), [1927] 1 W. W. R. 401.—**CAN.**

d (p. 633) **i.** —— *Deputy sheriff & gaoler.*]—*Ex p.* BOWES (1896), 34 N. B. R. 76.—**CAN.**

d (p. 633) **ii.** —— *Workman—Duration of employment.*]—DOMINION LUMBER & FUEL CO. *v.* KNAPP, [1928] 2 W. W. R. 257 ; 37 Man. L. R. 353.—**CAN.**

d (p. 633) **iii.** —— *Wages Act, s.* 1.]—Pltfs., having an unsatisfied judgment against deft. attached a sum of money said to be due to him, in the hands of the W. Co., which paid it into ct. Deft. was in the employment of the co. ; he was obliged by his contract with it to give his whole time & attention to its service ; the sum attached was remuneration for the services he rendered to the co. as its manager, being a share of the profits agreed to be paid in addition to salary ; in his employment he agreed to act under the policies prescribed by the directors of the co. ; & the sum attached was not payable to him in any capacity other than that of an employee of the co. :—*Held :* the sum attached was "wages" within Wages Act, s. 1, & should be dealt with in accordance with s. 7.—CRAVEN *v.* LALONDE, [1929] 4 D. L. R. 674 ; 64 O. L. R. 135.—**CAN.**

d (p. 633) **iv.** ——.]—The word "attachment" in rule 661 includes any process by which the wage-earner would be deprived of his wages.—COLEMAN *v.* EIGHT MILE CONSOLIDATED SCHOOL DISTRICT, [1936] 1 W. W. R. 557.—**CAN.**

2146 i. *Superannuation allowance—Civil servant.*]—Money lying to the credit of a retired Govt. servant in the General Provident Fund is not liable to attachment in execution of a decree against him.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HAR CHARAN DAS (1929), I. L. R. 51 All. 845.—**IND.**

e (p. 633) **i.** —— ——.]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore is not subject to attachment by garnishee proceedings. —MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE, [1928] V. L. R. 390 ; [1928] Argus L. R. 234.—**AUS.**

r (p. 634) **i.** —— ——.]—The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.—MCLVENNA *v.* THE ADMIRALTY, [1926] S. C. 842.—**SCOT.**

d (p. 634) **i.** —— ——.]—HAYDON *v.* HAYDON & CANADIAN NATIONAL RAILWAYS, [1937] 3 W. W. R. 537.—**CAN.**

t (p. 634) **i.** —— ——.]—Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641 ; [1927] 2 W. W. R. 439.—**CAN.**

f (p. 634) **i.** —— —— *Assistant surgeon.*]—The pay of a European Military Assistant Surgeon, second-

2156. *Add. Annotation :—As to* (1) **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2169. *Add. Annotations :—* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Richardson *v.* Richardson, [1927] P. 228.

2170. *Add. Annotations :—***Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

2170a. —— —— ——.]—Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register :—*Held :* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK, COLLINS & CO., [1927] A. C. 95; *sub nom.* SEDGWICK, COLLINS & CO., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T 72, H. L.

*Annotations :—***Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

2188. *Add. Annotations :—***Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** Richardson *v.* Richardson, [1927] P. 228; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

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class, of the Indian Medical Dept., who is a warrant officer & not a commissioned officer, is not liable to attachment in execution of an order for alimony & maintenance passed by a civil ct.—NUGENT *v.* NUGENT, I. L. R. [1937] All. 350.—**IND.**

f (p. 634) **ii.** —— *Army surgeon.*]—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—BROWNE *v.* PEARCE (1925), I. L. R. 48 All. 73.—**IND.**

f (p. 634) **iii.** —— *Soldier.*]—The salary of a soldier to whom Army Act, 44 & 45 Vict. c. 58, applies, is attachable in execution of a decree in accordance with the provisions of Civil Procedure Code, s. 60 (1).—HUSAIN BAKESH *v.* BRIGGEN SHAW (1933), I. L. R. 55 All.—**IND.**

h (p. 634) **i.** —— *Police court interpreter.*]—The wages or salary of the official Italian police court interpreter of Vancouver paid by the city is exempt from attachment under Attachment of Debts Act, R. S. B. C. 1924, s. 3.—TODD *v.* DE PAOLA (1932), 46 B. C. R. 278.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

sn. *To what court—Court of division where garnishee resides.*]—*Re* SAVORD *v.* DESJARDINS, [1927] 1 D. L. R. 541; 59 O. L. R. 645.—**CAN.**

s. *Revsd.*, 17 Alta. L. R. 109.

cc. For "the affidavit was not sufficient" read "not insufficient."

d (p. 637) **i.** —— ——.]—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—FROST *v.* ROCHON & VERHELST, [1924] 3 W. W. R. 422.—**CAN.**

d (p. 637) **ii.** —— ——.]—An affidavit in support of a garnishee summons with respect to a judgment debt. need not state the original amount of the judgment, but only the amount still due thereon.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—**CAN.**

d (p. 637) **iii.** —— ——.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—TILLICUM ATHLETIC CLUB *v* BURICK, [1925] 3 W. W. R. 368.—**CAN.**

d (p. 637) **iv.** —— ——.]—Where the affidavit in support of a garnishing order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.—VAN WASSENAER *v.* ADAMS, [1927] 3 D. L. R. 180; [1927] 2 W. W. R. 287; 38 B. C. R. 275.—**CAN.**

d (p. 637) **v.** —— ——.]—An affidavit for garnishing order before judgment must state shortly & concisely the cause of action in common & plain language, & a garnishing order issued where the affidavit filed is defective in this respect will be set aside.—HUHN *v.* BOGACH, [1928] 3 W. W. R. 422.—**CAN.**

d (p. 637) **vi.** —— ——.]—Although in an affidavit in support of a garnishee summons the fact of deft.'s indebtedness to pltf. must be sworn to positively & not on mere information & belief, this does not mean that pltf.'s knowledge thereof must necessarily be absolute & complete.—POMFRET *v.* MORIE & IMPERIAL BANK OF CANADA, [1931] 2 W. W. R. 477; 3 D. L. R. 557; 25 Alta. L. R. 481.—**CAN.**

d (p. 637) **vii.** —— ——.]—WILSON *v.* DOUGLAS, [1931] 2 D. L. R. 413; 3 M. P. R. 84.—**CAN.**

d (p. 637) **viii.** —— ——.]—CURLEY *v.* SINSER, [1931] 3 W. W. R. 763; 45 B. C. R. 20.—**CAN.**

d (p. 637) **ix.** —— ——.]—BANQUE CANADIENNE NATIONALE *v.* LABINE & COURTEMANCHE, [1933] 1 W. W. R. 385; 2 D. L. R. 432.—**CAN.**

d (p. 637) **x.** —— ——.]—SOKOL *v.* PACIFIC FORWARDING CO., LTD., REIFEL & ROYAL BANK OF CANADA, [1933] 3 W. W. R. 352.—**CAN.**

d (p. 637) **xi.** —— ——.]—Garnishing proceedings before judgment are extraordinary remedies & the statutory requirements must be strictly complied with.

Sect. 263 of County Courts Act, R. S. M., 1913, provides that a garnishing order & summons may be issued pending action when there is filed an affidavit "in one of the forms appropriate to the purpose in the schedule of forms." In the present instance the appropriate form was No. 27, which says: "The said primary debtor is justly & truly indebted . . . to the primary creditor in the sum of . . ." The affidavit which was filed said: "The deft. is indebted to pltf. in the sum of $100":—*Held :* the omission from the affidavit of the words "justly & truly" was a substantial variation from the statutory form; &, therefore, the filing of said affidavit did not give the clerk of the county ct. jurisdiction to issue the garnishee summons.—HAUG *v.* BROWN & B. & B. TRANSFER, [1934] 1 W. W. R. 183; 2 D. L. R. 302.—**CAN.**

d (p. 637) **xii.** —— ——.]—Where the affidavit in support of a garnishee summons does not set out sufficiently the nature of pltf.'s claim the summons will be set aside as issued without jurisdiction. Such non-compliance with rule 648 is a fatal defect & cannot be cured under rule 273.—JONCAS *v.* PLOTKINS & LION REFINING CO. & IMPERIAL BANK OF CANADA, [1934] 2 W. W. R. 142; 3 D. L. R. 799.—**CAN.**

h (p. 637) **i.** —— *Time for swearing*]—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued. is ground for setting the garnishee summons aside.—MCPARLAND *v.* SEYMOUR, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsd.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—**CAN.**

h (p. 637) **ii.** —— —— *Made before action begun—Invalid.*]—NEON PRODUCTS OF WESTERN CANADA, LTD. *v.* BANCROFT, [1935] 2 W. W. R. 337; 50 B. C. R. 81.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.—B.

q i. ——.]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERGANT *v.* CAPITAL JOBBERS, LTD., [1925] 3 W. W. R. 719.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (a).

2206 i. *Claim by third party—Duty of court—Rights of third party.*]—*Held :* when it is suggested by the garnishee

2210a. —— Not necessary to make judgment debtor a party.]—LEVENE *v.* MATON (1907), 51 Sol. Jo. 532.

2220a. Irregular service of notice of writ.]—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 2059a, *ante*.

2236. *Add. Annotation :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2236a. —— Of army agent.]—Attachment of the produce of the sale of a commission in the army, in the hands of the army agents, held ineffectual as against the lien & right of set-off of such agents & as against a prior equitable assignment.—WEBSTER *v.* WEBSTER (1862), 31 Beav. 393 ; 31 L. J. Ch. 655 ; 8 Jur. N. S. 1047 ; 10 W. R. 503 ; 54 E. R. 1191.

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on the return of an order *nisi* for the attachment of a debt that there is a claim by a third person in respect of that debt the justices should, in accordance with Justices Act, 1915, s. 131, direct such third person to appear & state the nature & particulars of his claim ; & where such third person appears, & his claim is disregarded by the justices, he has a right to be heard & is entitled to review an order of the justices as a "person who feels aggrieved" within sect. 150 of the same Act.—HUNT *v.* BALFOUR, [1928] V. L. R. 488 ; [1928] Argus L. R. 313.—**AUS.**

h i. —— *Affidavit of denial—Cross-examination on—What questions must be answered.*]—WILSON *v.* FLEMING (1900), 19 P. R. 203.—**CAN.**

h ii. —— *Attachment of Debts Act.*]—There is strong authority for holding that a garnishee has not the right to have a garnishee summons set aside on an application based merely on the ground that there is no debt due from the garnishee to deft., since Attachment of Debts Act, s. 8, makes provision for determining such an issue.—SIMONSON *v.* SIMONSON, [1928] 3 D. L. R. 31 ; [1928] 1 W. W. R. 863 ; 22 Sask. L. R. 481.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (b).

s i. —— —— *Form of issue.*]—An issue directed in garnishee proceedings should be so framed as to dispose of the claims of all the claimants.—DOMINION BANK *v.* R. P. CLARK & CO. (VANCOUVER), LTD.'S TRUSTEE (1933), 46 B. C. R. 486.—**CAN.**

sp. *Onus of proof.*]—ADOLPH *v.* HILTON & STEPHENS (1907), 7 Terr. L. R. 407 ; 6 W. L. R. 119.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (b).

t i. —— *Jurisdiction of district court judge to set aside.*]—RABINOVITCH *v.* FEIST, [1927] 3 D. L. R. 892 ; [1927] 2 W. W. R. 673 ; 21 Sask. L. R. 582.—**CAN.**

st. *Debt not liable to be garnisheed—Indian Act, R. S. C.*, 1906, *ss.* 99, 102.]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sv. *Error in form.*]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sw. *Who may apply.*]—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than pltf., deft. or garnishee, who claims some interest in the money attached by the garnishee summons.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513 ; [1925] 2 W. W. R. 293 ; 19 Sask. L. R. 497.—**CAN.**

sy. ——.]—BOYD & ELGIE *v.* KERSEY (B. C.), [1927] 2 D. L. R. 679 ; [1927] 1 W. W. R. 665 ; 38 B. C. R. 342.—**CAN.**

sz. *Application to set aside—Necessity for appearance.*]—Where a deft. has not entered an appearance in the action he is not entitled to move to have an attaching order obtained by pltf. set aside. If deft. has so moved without having appeared the objection to his right to do so cannot be cured by a subsequent entry of appearance.—MCDONALD *v.* COCOS ISLAND TREASURES, LTD., [1933] 1 W. W. R. 189 ; 46 B. C. R. 360.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (c).

sc. *Money paid into court—Garnishee summons set aside—Second summons—Payment out.*]—SECURITY LUMBER CO., LTD. *v.* ROLICK & ROLICK PLAXIN, [1937] 2 W. W. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 7.

s i. —— *Against execution by sheriff.*]—The service of an attaching summons, although not a transfer of the debt, creates a charge on it in favour of the attaching creditor which is not taken away by the subsequent receipt of writs of execution by the sheriff.—R. B. ANDERSON & SON *v.* DAWBER, 22 B. C. R. 218.—**CAN.**

t i. *Against prior assignment—Validity of assignment—Trial of issue to determine—Power to order.*]—PAQUET CO., LTD. *v.* WIESE & KRANT (Alta.), [1927] 1 W. W. R. 685.—**CAN.**

t ii. —— *Creditors Relief Act, R. S. B. C.*, 1924 (*c.* 59).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

b i. ——.]—Sect. 2A of Builders' & Workmen's Act, R. S. M., 1913, added thereto by 1932 (c. 21), s. 1, does not apply to moneys merely owing to & not yet "received" by the contractor.—CASTELEIN *v.* BOUX, [1934] 1 W. W. R. 772 ; 3 D. L. R. 351 ; 42 Man. L. R. 97.—**CAN.**

sm. *Joint & several debt—Rights of creditor of individual debtor.*]—Where money is levied under an execution with respect to a joint & several debt a creditor to whom one of said debtors is individually indebted is not entitled to share in its distribution under Creditors' Relief Act, R. S. A., 1922, except as to the surplus, if any, which remains after the money has been applied in satisfaction of said debt.—DONAGHUE *v.* CANADIAN BANK OF COMMERCE (Alta.), [1929] 4 D. L. R. 540 ; 3 W. W. R. 109.—**CAN.**

sa. *Of garnishing creditors—Amendment of summons—Power of court.*]—K., an administrator, had in his hands moneys of the estate, a distributive share of which M. as one of the next of kin was entitled to receive. J., a creditor of M., served on K. a garnishee summons, in which K. was described simply as "K." T., another creditor, then served a similar summons on K., in which K. was described as "administrator of the estate." The judge amended J.'s summons by adding "administrator of the estate" :—*Held :* the judge had no power to give retroactive effect to the amendment, & thus give J. priority of T. on the basis of his earlier service.—TURVILLE *v.* MALLOY, [1929] 3 D. L. R. 25 ; 63 O. L. R. 612.—**CAN.**

sb. *Against wage-earners—Effect of Creditors' Relief Act, R. S. A., 1922.*]—Creditors' Relief Act, R. S. A., 1922, s. 5 (14), which gives priority to persons who "at the time of the seizure by the sheriff," or within one month prior thereto, were employed by the execution debtor, does not entitle them to priority with respect to moneys which the sheriff received by virtue of garnishee proceedings.—LINTON *v.* FLANNIGAN, [1929] 3 D. L. R. 911 ; 1 W. W. R. 921 ; 24 Alta. L. R. 27 ; *revg.*, [1929] 1 W. W. R. 495.—**CAN.**

sc. *Priority of equitable assignee—Over subsequent garnishor.*]—M. made an arrangement with an auctioneer to sell her chattels on Nov. 27, 1929. Before that date she gave to a creditor a letter addressed to the auctioneer asking him to pay to the creditor a specified sum of money out of the proceeds of the sale to be held on Nov. 27. By the same document M. purported to assign to the creditor the specified sum out of the proceeds of the sale. She gave similar documents to other creditors & all were delivered to the auctioneer before the day of the sale : —*Held :* these documents were valid equitable assignments ; the subject-matter of the assignments was assignable in that way ; & the claims of the assignees were paramount to the claims of pltfs. in four Division Ct. actions, who sought to garnish the proceeds of the sale in the hands of the auctioneer garnishee.—UXBRIDGE HARDWARE CO. *v.* MUSSELMAN, [1931] 1 D. L. R. 857 ; 66 O. L. R. 435.—**CAN.**

sm. *Against assignee of book debts.*]—A customer made a general assignment of book debts to his bank, the customer continuing to get in & deal with debts until default or notice by the bank. A judgment creditor then garnished one book debt :—*Held :* the bank could not get priority by giving notice of the assignment, since this was in the nature of a floating charge.—GREAT LAKES PETROLEUM CO. *v.* BORDER CITIES OIL, LTD., [1934] 2 D. L. R. 743 ; O. R. 244.—**CAN.**

PART V. SECT. 1, SUB-SECT. 8.

2242 ii. —— ——.]—BRETHOUR *v.* TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—**CAN.**

2242 iii. —— —— *After notice of assignment of reversion.*]—FOULDS *v.* CHAMBERS (1896), 11 Man. L. R. 300.—**CAN.**

sd. —— *By judgment debtor—To sheriff.*]—*Held :* payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—KOLEGA *v.* GENSER (Man.) (1912), 22 W. L. R. 197 ; 6 D. L. R. 188.—**CAN.**

f i. —— *Distribution—Under Creditors Relief Act.*]—WARD (ROBERT & CO., LTD. *v.* WILSON (1907), 7 W. L. R. 37 ; 13 B. C. R. 273.—**CAN.**

f ii. —— *Deduction of solicitor's fee.*]—There is no authority for the deduction of a solr.'s fee when a garnishee in a county ct. action pays the garnished money into ct.—SEGUIN *v.* RANDALL & DOMINION BANK, [1933] 3 W. W. R. 675.—**CAN.**

sl. *Discontinuance of action.*]—Upon discontinuance of an action the garnishment proceedings therein automatically terminate.—INTERNATIONAL PETROLEUM & LAND TRADING CO., LTD. *v.* ROSS & ROYAL BANK OF CANADA, ALDOUS *v.* ROSS & ROYAL BANK OF CANADA, WILLIAMS, MANSON, BROWN & HARVEY, [1933] 3 W. W. R. 648.—**CAN.**

2278. After this case add :—

See, generally, INFANTS, Vol. XXVIII., pp.

2279. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2280. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2295a. —— **Private company.**]—FENTON *v.* EAST (1910), Y. S. C. P.

2311a. Stock held in trust for debtor—Debtor having discretionary trust as to part of fund.]—A testator by his will directed that certain stock should stand in the names of his exors., & the dividends should be paid to G., during his life, & on his death to E., his widow, " she to lay it out for the good of his children," & that when the youngest child should come of age, the fund should be sold out & divided amongst the children. In an action in which E., after the death of G., was a deft. :—*Held :* an order might be made under Judgments Act, 1838 (c. 110), ss. 14, 15, for charging " so much of the dividends as were payable to E. for her own use & benefit."—FOWLER *v.* CHURCHILL (1843), 11 M. & W. 57 ; 2 Dowl. N. S. 562 ; 12 L. J. Ex. 230 ; 7 Jur. 156 ; 152 E. R. 714.

Annotation :—**Consd.** South Western Loan & Discount Co. *v.* Robertson (1881), 8 Q. B. D. 17.

2335. *Add. Citation :*—" *sub nom. Re* HUTCHINSON, *Ex p.* HUTCHINSON (1885), 16 Q. B. D. 215.

2350. After the word " *Held* " add " (ERLE, J., *diss.*) "

Annotations :—For the annotations in the original volume substitute as follows :—

Annotations :—**Dbtd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). **N.F.** Kinderley *v.* Jervis (1856), 22 Beav. 1 ; Scott *v.* Hastings (1858), 4 K. & J. 633. **Consd.** Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480. **N.F.** Benham *v.* Keane (1861), 1 John. & H. 685. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235 ; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). **N.F.** Gill tinental Union Gas Co. (1872), L. R. 7 Exch. 332. Punchard *v.* Tomkins (1882), 31 W. R. 286. The case of *Watts* v. *Porter* is itself unsound law, but ERLE, J.'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). **N.F.** *Re* General Horticultural Co., *Ex p.* Whitehouse (1886), 32 Ch. D. 512 ; *Re* Leavesley, [1891] 2 Ch. 1 ; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757 ; Croft *v.* Lumley (1858), 6 H. L. Cas. 672 ; Baker *v.* Tynte (1860), 2 E. & E. 897. **Mentd.** Whistler *v.* Forster (1863), 14 C. B. N. S. 248.

2430a. —— —— ——.]—5 Vict. c. 5, s. 4, conferred on the ct. no new summary jurisdiction with respect to granting injunctions ; but the remedy provided thereby was intended only for limited & interim purposes, viz. to protect stock until the party having a claim to it can have time to assert that claim by bill. H. obtained a restraining order under the above statute on May 30, but he neglected to file a bill. Upon motion made June 30 to discharge the order :—*Held :* the order could not stand without a bill filed ; & although the ct. had power to continue the order until a bill should be filed, yet that this was not, by reason of H.'s delay in filing a bill, a proper case for the exercise of such power.—*Re* SUISSE (1842), 6 Jur. 597, 654.

2436. *Add. Citation :*—" Madd. & G. 1."

2438a. —— —— **Beneficial owner.**]—A *cestui que trust* or equitable mtgee. of shares who is entitled to restrain a transfer can apply to the High Ct. under Ct. of Chancery Act, 1841 (c. 5), s. 4, & R. S. C., Ord. 46, for an order restraining the co. from allowing a transfer to be made, & this appears to me to be his only remedy where he is not himself a transferee, & as such entitled to be registered as a shareholder (LINDLEY, L.J.).—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO., LTD. (1884), 14 Q. B. D. 424 ; 54 L. J. Q. B. 177 ; 52 L. T. 912 C. A. ; *affd. on other grounds, sub nom.* SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20, H. L.

PART V. SECT. 2, SUB-SECT. 5.—A.

2289 i. *Fund in court—Paid under garnishee proceedings.*]—PRAT *v.* HITCHCOCK, JONAH *v.* HITCHCOCK, [1925] 3 D. L. R. 1142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.—A.

se. *Costs of obtaining orders—On winding-up of company—By whom payable.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., DAVIDSON *v.* SWANSON (S.), [1928] 2 W. W. R. 256.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—D.

2393 i. *Right of assignor to fund.*]—*Re* DAVIDSON & SMITH, *Ex p.* LONDON GUARANTEE & ACCIDENT CO., [1925] 2 D. L. R. 433.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.

i. —— *Compensation for dependants of deceased workman.*]—Money paid into ct. as compensation due to the dependants of a deceased workman under the Workmen's Compensation Act, 1925, is not subject to arrestment.—WILLIAM BAIRD & CO., LTD. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 6.

si. *Order obtained without notice of prior assignment—Notice of assignment entered in accountant's office.*]—COTTINGHAM *v.* COTTINGHAM (1886), 11 O. R. 294.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

2448 i. *Not execution but equitable relief.*]—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course ; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG *v.* BEAL, [1923] 3 D. L. R. 1141 ; 52 O. L. R. 208.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sg. *Of master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—**IR.**

sh. *Effect of County Courts Act, R. S. M.*, 1913, *s.* 57.]—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—MCFARLANE. *v.* FRANKLIN, [1924] 3 D. L. R. 605 ; 2 W. W. R. 1036 ; 34 Man. L. R. 293.—**CAN.**

sj. *Action commenced in one judicial district—Appointment of in another* —— Co., LTD. *v.* KIRK, [1928] 1 W. W. R. 303 ; 22 Sask. L. R. 485.—**CAN.**

sk. *Property outside jurisdiction.*]—The Calcutta High Ct. on its original side can, in a proper case, appoint a receiver of property outside its territorial jurisdiction in execution of a money decree.—PRAMATHANATH MALIA *v.* LOW & CO. (1929), I. L. R. 57 Calc. 964.—**IND.**

PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. ——.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF *v.* SQUIRRELL, [1924] 2 D. L. R. 930 ; [1924] 1 W. W. R. 1265 ; 18 Sask. L. R. 250.—**CAN.**

2453 vi. ——.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST CO. *v.* KRITZWISER, [1924] 3 D. L. R. 596 ; [1924] 2 W. W. R. 760.—**CAN.**

2453 vii. ——.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct. ; but the creditor cannot by this process

2454. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2463. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2465. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2502. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2526. *Add. Annotation:*—**Refd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

Part VI.—Discovery in Aid of Execution.

2547a. —— On foreign debtor—Temporarily within jurisdiction—Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

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reach a kind of asset not exigible under legal execution.—EATON *v.* BRANT (1924), 55 O. L. R. 346.—**CAN.**

2453 viii. ——.]—THOMSON *v.* CUSHING (1889), 30 O. R. 123.—**CAN.**

2453 ix. ——.]—NOVA SCOTIA MINING CO. *v.* GREENER (1898), 31 N. S. R. (19 R. & G.) 189.—**CAN.**

2453 x. ——.]—A receiver will not be appointed by way of equitable execution with respect to property which is capable of being reached by way of ordinary legal process, unless the ct. is satisfied that there are special circumstances which would justly entitle applt. to such relief.—MENNONITE MUTUAL FIRE INSURANCE CO. *v.* HEINRICHS & HEINRICHS, [1932] 1 W. W. R. 218.—**CAN.**

sl. *Whether granted as of right.*]—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A. (b).

sm. *Property exempt from seizure—Homestead.*]—A judgment creditor cannot have equitable execution with respect to property which could not be taken under execution at law if the debtor had the legal, instead of only an equitable interest therein. Therefore equitable execution cannot be obtained against a judgment debtor's equitable interest in land which is his homestead, where homesteads are made exempt from seizure under a writ of execution.—STOEHR & MCPHERSON *v.* MORGAN (Sask.), [1929] 4 D. L. R. 301; 2 W. W. R. 577.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—C.

2490 ii. ——.]—The ct. has no jurisdiction to enforce payment of a judgment debt by appointing a receiver of the future earnings of the judgment debtor.—SIMPSON *v.* SIMPSON (1934), 49 B. C. R. 288.—**CAN.**

n i. *Legal estate in remainder.*]—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

q i. ——.]—BARNES *v.* SHARPE, [1924] 2 D. L. R. 1119 2 W. W R. 462.—**CAN.**

sp. *License.*]—An ordinary hotel lease containing all the usual terms in favour of the lessor with respect to the license shows a *prima facie* interest of the lessor in the license, which a Ct. of Equity will in a proper case protect by the interlocutory appointment of a receiver.—METROPOLITAN THEATRES, LTD. *v.* HARRIS (1935), 35 S. R. N. S. W. 228; 52 N. S. W. W. N. 68.—**AUS.**

sr. *Profits of hotel.*]—Pltfs. claimed to be entitled to possession of the land on which a hotel was erected & also to the furniture in the hotel:—*Held:* an order appointing a receiver of the profits of the business should be set aside, as under no circumstances could pltfs. be entitled to the profits arising from the business carried on by deft.—CLYDESDALE *v.* MCMANUS, [1934] W. A. L. R. 89.—**AUS.**

PART VI.

h i. —— ——.]—Where an order under Rule 478 (1) for the examination of a judgment debtor orders his attendance for examination, it is not necessary to serve him with a *subpœna* under Rule 480; the service of the order & appointment on him with payment of conduct money is sufficient. But if such order provides only that he be orally examined & does not order him to attend for examination or to produce his books or documents, it is then necessary to serve a *subpœna* to compel his attendance or to produce such books & documents as may be required.—GREAT WEST LIFE ASSCE. CO. *v.* WRIGHT, [1928] 4 D. L. R. 144; [1928] 2 W. W. R. 94; 22 Sask. L. R. 409.—**CAN.**

s i. —— —— *Mortgagor—Although execution stayed.*]—FRANCO-BELGIUM INVESTMENT CO. *v.* MCNAMARA (Alta.), [1918] 2 W. W. R. 929.—**CAN.**

s i. —— ——.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

s ii. —— *Mother-in-law of judgment debtor.*]—Order made for examination, where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

b i. —— *Transferee of land in another Province.*]—CRUCIBLE STEEL CO. *v.* FFOLKES (1912), 21 O. W. R. 302; 3 O. W. N. 750; 1 D. L. R. 381.—**CAN.**

2552 i. *Nature of examination.*]—The questions should be limited to the scope of the order for examination.—FLANAGAN *v.* ENGLAND, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—**CAN.**

2552 ii. —— *Judgment on contract readjusting earlier contracts.*]—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—STANDARD TRUST CO. *v.* WALTER, [1926] 1 D. L. R. 86; [1926] 1 W. W. R. 16; 22 Alta. L. R. 176.—**CAN.**

st. *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—SASKATOON HARDWARE CO. *v.* MCMANUS, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

sz. —— *Non-attendance on previous day waived.*]—Where non-attendance on the day fixed by an order for deft.'s attendance for examination as a judgment debtor is waived by pltf., deft. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—HYATT *v.* OWENS, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—**CAN.**

sa. *Scope of examination—Evidence admissible as proof of ability to pay.*]—On an application under King's Bench Act, s. 51 (*a*), the ct. has no jurisdiction to adjudicate upon the question of a fraudulent conveyance, yet the circumstances under which the debtor has transferred his property may be considered for the purpose of assisting the ct. in concluding whether the debtor's failure to pay his debts was due to inability or unwillingness to pay.—BELL *v.* LONG, [1928] 3 W. W. R. 208.—**CAN.**

sb. *What must be shown.*]—Under Alberta, rule 634, it is not necessary for a judgment creditor applying to the clerk of the ct. for an appointment for the examination of the judgment debtor to show that the judgment is still unsatisfied or that an execution has been returned by the sheriff *nulla bona*; nor is he required to obtain a judge's order for the appointment.—CONWAY'S, LTD. *v.* RYAN, [1929] 3 D. L. R. 292; 2 W. W. R. 80; 24 Alta. L. R. 124.—**CAN.**

sd. *Disobedience to order—Contempt of court.*]—STANDARD BANK OF CANADA & CANADIAN BANK OF COMMERCE *v.* RABY (Alta.), [1929] 3 W. W. R. 746.—**CAN.**

EVIDENCE.

Part I.—General Principles.

4. *Add. Annotation :*—**Refd.** Butcher Wetherly & Co. *v.* Norman, [1934] 1 K. B. 475.

31a. **Interview—Dictaphone record.**]—The dictaphone record of an interview may be accepted in evidence.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

37. *Add. Annotations :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

55. *Add. Annotations :*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; Place *v.* Searle, [1932] 2 K. B. 497.

55a. ——.]—At the close of pltf.'s case, deft. applied for a nonsuit, on the ground that there was no evidence given of such negligence as to render deft. liable. The judge refused to stop the case, but reserved leave to move for a nonsuit. The jury having found for pltf. :—*Held :* (1) when at the close of pltf.'s case there was no evidence upon which the jury could reasonably & properly find a verdict, the judge ought to have directed a nonsuit ; (2) in every case before evidence is left to the jury there is a preliminary question for the judge, not whether there is literally any evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.—GIBLIN *v.* MCMULLEN (1869), L. R. 2 P. C. 317 ; 5 Moo. P. C. C. N. S. 434 ; 38 L. J. P. C. 25 ; 21 L. T. 214 ; 17 W. R. 445 ; 16 E. R. 578, P. C.

55b. ——.]—Where pltf. has closed his evidence, & the judge who tries the case is of opinion that there is no case to go to the jury, he ought to direct accordingly.—DANIEL *v.* METROPOLITAN RY. CO. (1871), L. R. 5 H. L. 45 ; 40 L. J. C. P. 121 ; 24 L. T. 815 ; 35 J. P. 708 ; 20 W. R. 37, H. L.

Annotation :—**Refd.** Williams *v.* G. W. Ry. (1874), L. R. 9 Exch. 157.

55c. —— **Power of judge to change ruling.**]—In an action for personal injuries the judge refused to nonsuit on the ground of there being no evidence of negligence, & the jury, having heard the whole case, disagreed :—*Held :* the judge was entitled to enter judgment for deft.—PETERS *v.* PERRY & CO. (1894), 10 T. L. R. 366.

Annotation :—**Consd.** Skeate *v.* Slaters, [1914] 2 K. B. 429.

55d. —— ——.]—SHEARS *v.* MENDELOFF (1914), 30 T. L. R. 342.

55e. —— ——.]—In an action tried with a jury the judge was asked at the conclusion of pltf.'s case to withdraw the case from the jury on the ground that pltf. had failed to make any case against defts. The judge refused to do so. Witnesses were then called for the defence. The jury disagreed. Subsequently an application was made to the judge to enter judgment for defts. upon the above ground & also upon the ground that upon all the evidence in the case the jury could not reasonably have found a verdict for pltf. The judge having refused to enter judgment for defts. :—*Held :* (1) a judge at the trial had power to enter judgment for deft. if upon the case as a whole the evidence of pltf. was so weak that a verdict in his favour would have been set aside as unreasonable.

(2) A judge who at the conclusion of pltf.'s case has ruled that there is some evidence for the jury, is entitled at the conclusion of the whole case to reconsider his ruling & to enter judgment for deft., if he is then of opinion that pltf.'s evidence fails to disclose any cause of action against deft.—SKEATE *v.* SLATERS, LTD., [1914] 2 K. B. 429 ; 83 L. J. K. B. 676 ; 110 L. T. 604 ; 30 T. L. R. 290, C. A.

Annotations :—*As to* (1) **Consd.** Winterbotham, Gurney *v.* Sibthorp & Cox, [1918] 1 K. B. 625. **Refd.** Everett *v.* Griffiths, [1921] 1 A. C. 631. *As to* (2) **Refd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888 ; Place *v.* Searle, [1932] 2 K. B. 497. *Generally*, **Refd.** Gascoigne *v.* Gascoigne (1917), 87 L. J. K. B. 333 ; Croker *v.* Croker (1932), 48 T. L. R. 597.

57. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59a. —— ——.]—GIBLIN *v.* MCMULLEN, No. 55a, *ante*.

77. The names of the parties should be reversed in each court.

80. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

101. *Add. Annotation :*—**Folld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

116. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

117. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

PART I. SECT. 1.

1 i. *Civil & criminal trials distinguished.*]—Where the question to be determined in a civil action is whether or not a criminal offence has been committed, but this question does not arise directly upon the pleadings, the ct., in deciding whether or not an offence has been committed, should apply the ordinary civil rule as to the sufficiency of proof, & not the rule which prevails in a ct. of criminal jurisdiction that the ct. must be satisfied beyond reasonable doubt that the crime alleged has been committed.—MOTCHALL *v.* MASSOUD, [1926] V. L. R. 273 ; [1926] Argus L. R. 271.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.

5 iv. ——.]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1926] 4 D. L. R. 74 ; 59 O. L. R. 205.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

55 ix. ——.]—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514 ; [1927] 2 W. W. R. 499 ; 21 Sask. L. R. 658.—**CAN.**

n i. ——.]—DOE d. PETIT *v.* RENARD (1850), 6 U. C. R. 501.—**CAN.**

n ii. ——.]—MONTREAL TRUST CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 4 D. L. R. 373 ; 61 O. L. R. 137.—**CAN.**

155. *Add. Annotations :*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** The Kite, [1933] P. 154. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

198a. —— **Replevin.**]—In replevin, if there be any affirmative issue on pltf., he is entitled to begin.—CURTIS *v.* WHEELER (1830), Mood. & M. 493; 4 C. & P. 196; 172 E. R. 668, N. P.

198b. —— ——.]—In replevin there was a cognisance for rent in arrear. To this there were two pleas, the one stating that a certain agreement had been entered into between the landlord & tenant, & that the tenant was subsequently induced by the landlord to enter into another agreement, which second agreement was the demise in the cognisance mentioned; & that this latter agreement had been abandoned by mutual consent before any rent became due. The other plea was similar, except, that it averred that the tenant was induced to enter into the second agreement by fraud. Replication to the one, denying the abandonment; & to the other, denying the fraud :—*Held :* on these pleadings, pltf. had the right to begin.—WILLIAMS *v.* THOMAS (1830), 4 C. & P. 234; 172 E. R. 684, N. P.

198c. —— ——.]—In replevin any issue in which the affirmative is on pltf. gives him the right to begin.—JAMES *v.* SALTER (1835), 1 Mood. & R. 501, N. P.

220a. One counsel on each side to be heard.]—Only one counsel on each side is to be heard on the claim of right to begin, & the counsel for deft. has the right to reply.—RAWLINS *v.* DESBOROUGH (1837), 2 Mood. & R. 70.

288. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

Part II.—Admissibility of Evidence.

301a. Effect of letter written by plaintiff's solicitor.]—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—SHORT *v.* EDWARDS (1795), 1 Esp. 373; 170 E. R. 390, N. P.

311a. —— **Murder of employer—Books with false entries on which commission payable to employee found by body.**]—Applt. was indicted for the murder of his employer, whose dead body was found in the latter's locked garage. Evidence was given (*inter alia*) that on the seat of a car in the garage at the time of the discovery of the body there were found books which had contained entries or impressions of fictitious orders showing that applt. had been paid commission thereon. These entries or impressions had apparently been made by applt.'s employer, & the leaves had been torn out. Evidence was also given that in the garage there was found a letter written to applt. by his employer & making an appointment. This letter was found open & crumpled, but it was not

PART I. SECT. 6, SUB-SECT. 1.—A.

119 xxv. —— *Payment.*]—BRONDSON *v.* NORTHGRAVES (Sask.), [1925] 3 W. W. R. 456.—**CAN.**

119 xxvi. —— *Loan not repaid.*]—To establish a claim for money lent pltf. must allege & prove non-payment. On the hearing of a complaint in a ct. of petty sessions for money lent, evidence was given by deft. that he had repaid the money, & by the complainant denying the repayment. The justices, being unable to decide whether or not repayment of the loan had been made, dismissed the complaint :—*Held :* as the complainant had not established his case, the justices were right in dismissing the complaint.—NELSON *v.* CAMPBELL, [1928] V. L. R. 364; [1928] Argus L. R. 221.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

q i. —— ——.]—Where practically all the correspondence between the parties save one letter, had been placed in evidence :—*Held :* the way had been opened, & the entire correspondence was properly admissible.—EAGLES *v.* CANADIAN BANK OF COMMERCE (1920), 47 N. B. R. 480.—**CAN.**

266 ii. ——.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement :—*Held :* the judge was not bound to admit the whole statement.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART I. SECT. 8.

sf. *Evidence tendered after hearing & before entry of formal judgment.*]—While after a trial has been closed & oral judgment rendered the trial judge has jurisdiction to grant either party leave to adduce further evidence before the entry of formal judgment, yet this leave should never be given unless it seems imperative in the interests of justice that the case should be re-opened.—SALES *v.* CALGARY STOCK EXCHANGE, [1931] 3 W. W. R. 392.—**CAN.**

PART II. SECT. 1.

h (p. 54) i. —— *Evidence of absence of previous accident.*]—In an action for damages for injuries resulting from a fall sustained by the female pltf. when entering deft.'s hotel on a visit to one of the sample rooms, evidence of the hotel manager that during the ten years he had been manager he had never heard of any accident at or complaint of the entrance in question was held admissible.—WAY *v.* LELAND HOTEL CO., LTD., [1928] 2 D. L. R. 235; [1927] 3 W. W. R. 224.—**CAN.**

sg. *In action for breach of contract—Correspondence irrelevant to issue—Affecting conduct of parties before & at trial.*]—BURKARD & CO., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sj. *By consent—Evidence otherwise inadmissible.*]—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—RADHA KISHAN *v.* KEDAR NATH (1924), I. L. R. 46 All. 815.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—A.

306 i. —— *Circumstances of case.*]—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection :—*Held :* evidence of the conversation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

Telephone conversation—Proof of authority of agent.]—*Held :* a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re* DREYFUS (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

sl. *Telegrams—Between Civil Commissioner & Mines Dept.—On request for cancellation of certificate.*]—Where a request for the cancellation of a certificate granted to the discoverer of diamonds is made by the holder, who knows that the consent of the Mines Dept. is necessary, telegrams which pass between the Civil Comr. to whom the request is made & the Mines Dept. are admissible against the holder in subsequent legal proceedings in which the cancellation is in issue as part of the *res gestæ*.—CAPE COAST EXPLORATION, LTD. *v.* SCHOLTZ, [1932] App. D. 56.—**S. AF.**

proved that it had reached applt. The theory of the prosecution was that, the fictitious character of the orders having been discovered by the employer, an altercation had arisen & the applt. had murdered him. Applt. was convicted:—*Held:* evidence above described was admissible as part of the circumstances of the case, & the conviction must be affirmed.—R. *v.* PODMORE (1930), 46 T. L. R. 365; 22 Cr. App. Rep. 36, C. C. A.

311b. Charge by deposit of title-deeds—Memorandum relating to charge.]—In an action in which pltfs., exors. of M., claimed that they were entitled as part of their share in the estate of T., the father of M., to a charge for £300 on a farm called "W.," they sought to prove in support of their claim a certain memorandum which was signed by H. the exor. & trustee of the will of T. & with whom the title deeds of "W." had been deposited to secure the sum of £300 with interest, & was also signed by M. & her sister E., which memorandum related the facts upon which pltfs. relied to prove their claim & in which memorandum M. accepted the £300 charge as partial satisfaction of her share in the estate of T.:—*Held:* the memorandum was admissible in evidence because (1) it ought to be treated as part of the *res gestæ*, as it was sufficiently contemporaneous with the allocation of the charge; it might be described as an incident of the event under consideration; & (2) the statement in the memorandum whereby M. accepted the £300 in partial satisfaction of her share was a declaration against her proprietary interest & therefore was excepted from the rule against hearsay evidence.—HOMES *v.* NEWMAN, [1931] 2 Ch. 112; 100 L. J. Ch. 281; 145 L. T. 140.

312. For "**Letters from agent—Forming part of contract**" substitute "**—— Letters from agent—Forming part of contract.**"

In the cross-reference following this case, for "**—— After contract complete**" substitute "**After contract complete.**"

343. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

348a. Public capacity.]—Evidence of T.'s acting as the deputy of the sheriff:—*Held:* sufficient *primâ facie* of his appointment.—FAULKNER *v.* JOHNSON (1843), 11 M. & W. 581; 1 Dow. & L. 346; 12 L. J. Ex. 433; 7 Jur. 584; 152 E. R. 937.

370. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

395. *Add. Annotation:*—**Apld.** Thompson *v.* London, Midland & Scottish Ry. (1929), 98 L. J. K. B. 615.

397. *Add. Annotations:*—*As to* (1) **Refd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692. *As to* (2) **Refd.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

417. *Add. Citation:*—132 L. T. 229.

421a. ——.]—SMITH *v.* WILKINS (1833), 6 C. & P. 180; 172 E. R. 1198, N. P.

425. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

440. *Add. Annotation:*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

447. *Add. Annotation:*—**Refd.** *Re* Davy, [1935] P. 1.

448. *Add. Annotation:*—**Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

PART II. SECT. 3, SUB-SECT. 2.—D. (a).

332 i. *Accident—Statement made after accident.*]—A statement explaining the circumstances of an accident, made by deft.'s employee half an hour afterwards, is not part of the *res gestæ*, nor, in making the statement, is the employee acting within the scope of his employment so as to render his statement admissible against his employer.—WISHART *v.* MASON, [1931] N. C. R. 530.—**S. AF.**

l i. —— *Statement made by driver.*]—An explanation made by the driver of a vehicle as to the circumstances in which injury has been caused by that vehicle to another party is admissible in evidence in an action arising out of the injury if made at, or very near, the time of the injury.—HITCHINS *v.* UMFOLOSI CO-OPERATIVE SUGAR PLANTERS ASSOCN. (1929), 50 N. L. R. 117.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

sn. *Report by agent to principal.*]—*Held:* a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 4.—A.

s i. ——.]—Resp. had sued applt. in the ct. below for the return of certain sheep or their value. The evidence was that resp. had been losing sheep & that seeing sheep at a place near applt.'s kraal he collected a flock in the possession of deft. & undertook certain experiments with them, in which the sheep behaved as though they belonged to resp.:—*Held:* the evidence of the behaviour of the sheep was not hearsay evidence in relation to their identity & was admissible.—POSWA *v.* CHRISTIE, [1934] N. L. R. 178.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 5.—C.

r i. —— *Of defendant.*]—In an action under Customs Act to recover unpaid customs duties & penalties:—*Held:* evidence of a conversation between deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—R. *v.* ZIZU NATANSON (No. 1), [1927] 3 D. L. R. 591; [1927] 2 W. W. R. 139; 48 Can. Crim. Cas. 194; 21 Sask. L. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.—A.

h i. —— *Indecent assault.*]—In an action for damages for indecent assault evidence of the general reputation for unchastity of pltf. is admissible, but evidence of specific acts of impropriety is not.—GROSS *v.* BRODRECHT (1897), 24 A. R. 687.—**CAN.**

n i. ——.]—EDWARDS *v.* OTTAWA RIVER NAVIGATION CO. (1876), 39 U. C. R. 264.—**CAN.**

so. *Sparks from engine causing fire—Previous fires caused by engine.*]—*Held:* admissible.—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.—A

447 vii. ——.]—Before a statement based on information can amount to an admission of the truth of that information there must be an expression by declarant affirming his own acceptance of its truth.—BLACK *v.* HARDWELL & GLOECKLER, [1935] 2 W. W. R. 172.—**CAN.**

447 viii. ——.]—The girl the subject of a charge for ill-treatment of a State child gave evidence under cross-examination that she had made a statement to the police, but was not cross-examined by counsel for the defence as to such statement, nor was its production called for at that stage. Later a constable stated under cross-examination that he had taken the statement which was then called for, but the police magistrate ruled that it was privileged from production. On appeal on the ground of the wrongful rejection of evidence:—*Held:* even if the document were not privileged, it could not have been put in evidence, both because counsel for the defence had not laid the basis, by the cross-examination of the girl, for its admission as an inconsistent statement, & also because the girl not being the complainant, her statement was not admissible as between the parties, & that, therefore, there had been no wrongful rejection of evidence.—MCCLINTOCK *v.* NOFFKE, *Ex p.* NOFFKE, [1937] Q. S. R. 73; 30 Q. J. P. R. 45.—**AUS.**

456 lx. ——.]—IVEY *v.* SMITH (1929), 40 B. C. R. 475.—**CAN.**

496a. Admission relating to cause of accident.]—Evidence of admissions made by a deceased man as to the cause of an accident which resulted in his death is admissible against his widow in an action by her under Fatal Accidents Act, 1846 (c. 93).—MARKS *v.* PORTSMOUTH CORPN. (1937), 157 L. T. 261.

535a. Admissions "without prejudice."]—At the trial of an action, pltfs. proposed to put in evidence the examination, taken on commission, of a representative of pltfs. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice," & that the examination was inadmissible:—*Held:* the examination was inadmissible.—SCOTT PAPER CO. *v.* DRAYTON PAPER WORKS, LTD. (1927), 44 R. P. C. 151; *on appeal*, 44 R. P. C. 529, C. A.

537. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. Admission by author—As to copyright.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *post.*

595. *Add. Annotations:*—**Consd.** Bevis *v.* Bevis, [1935] P. 86. **Refd.** Warren *v.* Warren, [1925] P. 107.

624a. Agent of predecessor in title—Licensee of copyright.]—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (*a*) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result; & (*b*) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] 1 K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

653. *Add. Annotation:*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

688. *Add. Annotation:*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

700. *Add. Annotation:*—**Consd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

PART II. SECT. 4, SUB-SECT. 1.—C.

n i. ——.]—DEVEBER *v.* ROOP (1876), 16 N. B. R. (3 Pug.) 295.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

485 ii. ——.]—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

485 iii. ——.]—Words or conduct amount to an admission receivable in evidence against a party if they disclose an intention to affirm or acknowledge the existence of a fact whatever be the party's source of information or belief. Although the meaning of his words or conduct may depend upon the state of his knowledge, once that meaning appears & an intention is disclosed to assert or acknowledge the state of facts, its admissibility in evidence as an admission is independent of the party's actual knowledge of the true facts. When admitted in evidence, however, its probative force must be determined by reference to the circumstances in which it is made & may depend altogether upon the party's source of knowledge.—LUSTRE HOSIERY, LTD. *v.* YORK. (1936), 54 C. L. R. 134.—**AUS.**

496 ii. ——.]—LARGE *v.* PERKINS (1823), Tay. 62.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—G. (c) ii.

578 i. *Admission by cestui que trust—As against trustee.*]—On a suit by the exor. of A. against the exor. of A.'s wife for a declaration that at the time of her death the wife held certain land in trust for herself & A. as tenants in common, evidence of a statement by the wife that she had executed a declaration of trust to that effect, but had done so under duress, was rejected.—ROBINSON *v.* TRUSTEES EXECUTORS & AGENCY CO., LTD., [1931] V. L. R. 369.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) i.

a i. —— —— *Admission at inquest at which employer not represented.*]—MUIR *v.* SARNIA BRIDGE CO., [1931] 1 D. L. R. 742; 66 O. L. R. 365.—**CAN.**

c i. —— *Admission in former proceeding.*]—By English law, which is by statute the law of evidence in Southern Rhodesia, statements made in evidence by an agent called by his principal in a suit to which the latter is a party will not in general bind the principal in a subsequent action by a stranger & are not admissible in evidence against the principal in such later action.—RHODESIAN CORPN., LTD. *v.* GLOBE & PHŒNIX GOLD MINING CO., LTD., [1934] A. D. 293.—**S. AF.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) ii.

627 ii. ——.]—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

634 i. *As corroborative evidence.*]—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—HOWITH *v.* MCFARLANE, [1925] 2 D. L. R. 395; 56 O. L. R. 375.—**CAN.**

sp. *Must be statement of fact.*]—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped accused would not get into any trouble with the police over it as it was not his fault:—*Held:* inadmissible, as the words only amounted to an expression of hope & opinion.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

sq. *Declaration as to religion.*]—Where the religion of a deceased person is a fact in issue, his own solemn declaration about his religion, made in a formal document, *e.g.*, in his will, is admissible in evidence & is entitled to great weight. Such declaration would be admissible under Evidence Act, ss. 11 (2), 14, & 21 (2).—LEONG HONE WAING *v.* LEON AH FOON (1929), I. L. R. 7 Ran. 720.—**IND.**

st. *Declaration of testator—To prove invalidity of will.*]—Declarations of a testator are not admissible in evidence to show that a will executed by him was invalid.—*Re* ROSENBLAT ESTATE, [1932] 2 W. W. R. 433; 4 D. L. R. 518; 40 Man. L. R. 380.—**CAN.**

sv. *Statement constituting motive for crime—How proved.*]—Where a statement by a deceased person is said to constitute a motive for another to commit a crime, it cannot be proved by one who heard the deceased make the statement.—*Re* VENKATASUBBA REDDI (1931), I. L. R. 54 Mad. 931.—**IND.**

725. *Add. Annotation :—Generally,* **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

730a. ——.]—E. G. by her will gave to R. B., her sole exor., all her residuary real & personal estate for the purpose of creating a fund known as the "E. G. Charity," the income of which was "to be expended by him as I have directed." E. G. died in Nov. 1934, & her will was duly proved by the exor., R. B. Before he died in Apr. 1935, R. B. made a statement in writing as to the purpose or purposes for which E. G. told him to hold her residuary estate :—*Held :* (1) the statement in writing made by R. B., not being against his immediate pecuniary or proprietary interest, was not admissible in evidence ; (2) E. G. had by her will disclosed a general charitable intention, & the fund must be disposed of in accordance with a scheme to be settled by the ct.—*Re* GARDNER'S WILL TRUSTS, BOUCHER *v.* HORN, [1936] 3 All E. R. 938 ; 81 Sol. Jo. 34.

739. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

745. *Add. Annotations :*—**Folld.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436. **Consd.** Homes *v.* Newman, [1931] 2 Ch. 112.

754. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

775. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

811a. Memorandum accepting charge in partial satisfaction of share in estate.]—HOMES *v.* NEWMAN, No. 311a, *ante.*

816. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

819. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

859. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

864. *Add. Annotation :*—**Consd.** Simon *v.* Simon, [1936] P. 17.

864a. Certificate & memoranda of case.]—A husband petitioning for divorce was counter-charged by his wife with adultery with a named woman, who had at a material date been examined by a surgeon as to her sexual condition. The surgeon gave a certificate & in addition made memoranda of the case. He died before the trial of the present counter-charge. On these documents being tendered in evidence :—*Held :* the circumstances founded no exception to the general rule that evidence must be given in open ct. & subject to cross-examination. The exception is limited to cases where it was the duty of deceased to perform a particular act & record having done so. In the present case the surgeon had no duty to perform which brought him within the exception, & the documents were therefore inadmissible.—SIMON *v.* SIMON, HOGARTH, PRESTON & SHAW, [1936] P. 17 ; 105 L. J. P. 14 ; 154 L. T. 63 ; 52 T. L. R. 91 ; 79 Sol. Jo. 861.

871. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

927. *Add. Annotation :*—**Consd.** *Re* Davy, [1935] P. 1.

935. *Add. Annotation :*—**Refd.** *Re* Davy, [1935] P. 1.

959. *Add. Annotation :—As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

968. *Add. Annotations :—As to* (2) **Refd.** *Re* Davy, [1935] P. 1. *As to* (4) **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266. *Generally,* **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation :*—**Refd.** R. *v.* Copestake *Ex p.* Wilkinson (1926), 90 J. P. 191.

979a. —— ——.]—The date of *lis mota* for the purpose of making a dividing line between declarations made before or after is not at the commencement of the actual litigation or the moment when a lawful cause of action arises, but it is when a controversy originates in a family sufficient to create a bias in the minds of members of the family at the moment of their declarations.—*Re* DAVY,

PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ——.]—In so far as words used by deceased were statements of facts :—*Held :* they were inadmissible, as there was nothing to show that deceased knew them to be contrary to his pecuniary or proprietary interests when he made them ; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iii.

858 i. *In diary—As to preparation of deed.*]—Notes made by a deceased solr. for the primary purpose of having a record of what transpired at interviews in regard to negotiations for a deed of family settlement (the negotiations extending over a considerable time) & which it was advisable for the solr. to keep in order properly to discharge his ultimate duty of approving or not approving of the settlement, were held admissible in evidence.—HARRIS *v.* LAMBERT, [1932] I. R. 504. —**IR.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iv.

sk. *Letters, records & statements.*]—Letters, records & statements of a deceased physician made in the course of professional duty held admissible.—PALTER CAP CO. *v.* GREAT WEST LIFE ASSCNE. CO., [1936] 2 D. L. R. 304 ; O. R. 341.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—A

908 iii. ——.]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—B.

936 vi. —— ——.]—CROFT *v.* WAMBOLT, [1930] 2 D. L. R. 996 ; 1 M. P. R. 415.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—E.

965 v. ——.]—Under sect. 32 (6) of the Indian Evidence Act, 1872, as by the long established rule in England, in questions of pedigree the statements of deceased members of the family, made before the question in dispute was raised, are evidence to prove pedigree.—ABDUL GHAFUR *v.* HUSSAIN BIBI (1931), I. L. R. 12 Lah. 336.—**IND.**

965 vi. ——.]—The matter in controversy in resp.'s action involved the title to & ownership of 200 acres of wilderness or woodland. Resp. claimed title to the property through a conveyance dated May 3, 1920, from John & James F., the sons & heirs of one David F., deceased, who, in turn, was alleged to have been the only child of one Elizabeth F., the original grantee from the Crown. Applt. co. claimed a documentary title to the property through a series of five conveyances from the first deed in 1897 to the last in 1909, & also claimed a title by continuous, exclusive & adverse possession in itself & its predecessors in possession for a period of over twenty years. The trial judge, after having admitted as evidence, subject to objection by applt.'s counsel, the declarations made to witnesses by the two brothers, John & James F., concerning their own pedigree, excluded them in his judgment & dismissed resp.'s action, finding that applt. co. had established its title to the property. The Appeal Div. reversed the judgment :—*Held :* the trial judge was justified in excluding the declarations of the deceased grantors in the deed to resp., John & James F., as evidence that they were grandsons of Elizabeth F., the original grantee from the Crown & that he was also justified in re the conclusion that resp. had to establish his title.—PEJ PAPER CO. *v.* FARREN, [1933] S. C. R. 388 ; 4 D. L. R. 92.—**CAN.**

[1935] P. 1; *sub nom.* DAVY *v.* A.-G., 103 L. J. P. 115; 151 L. T. 562; 50 T. L. R. 588; 78 Sol. Jo. 618.

1004. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Trafford *v.* Trafford (1929), 45 T. L. R. 502; A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

1026. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1033. *Add. Annotation :*—**Refd.** Davis *v.* McNamara & Co. (1921), Ltd. (1932), 25 B. W. C. C. 550.

1040. *Add. Annotation :*—**Consd.** Tolley *v.* Fry, J. S. & Sons (1929), 46 T. L. R. 108.

1057. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation :*—*As to* (1) **Refd.** Muscroft *v.* Stewarts & Lloyds (1928), 140 L. T. 64.

1200a. —— ——.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—CROMWELL'S (LORD) CASE (1578), 4 Co. Rep. 12, b; 76 E. R. 877.

1260. *Add. Annotation :*—**Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

1264a. —— ——.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R., [1931] 1 Ch. 169.

1267. *Add. Annotations :*—*As to* (1) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. **Apld.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8. *As to* (2) **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242.

1268. *Add. Annotation :*—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8.

1269. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

1270. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

1273a. Constitution of foreign state.]—An English ct. cannot take judicial cognisance of the internal constitution & economy of a foreign state. These matters must be proved by evidence.—A/S RENDAL *v.* ARCOS, LTD., [1936] 1 All E. R. 623, C. A.; *revsd. on other grounds*, [1937] 3 All E. R. 577, H. L.

PART II. SECT. 7, SUB-SECT. 1.

ad. *Number of witnesses.*]—Evidence Act, R. S. O., 1927, s. 9, which requires leave in order to call more than three witnesses to give opinion evidence, refers to expert evidence.—MCLACHLIN *v.* DUNWICH MUTUAL FIRE INSCE. CO., [1935] 3 D. L. R. 194.—**CAN.**

PART II. SECT. 10, SUB-SECT. 1.

1048 ii. ——.]—The first proviso to sect. 33 of Indian Evidence Act, 1872, which prescribes the circumstances in which the evidence of a witness in a judicial proceeding, who has since died, is admissible in a subsequent proceeding, requires, upon its true construction, that the party to the first proceeding should have represented in interest the party to the second proceeding in relation to the question in issue in the first proceeding to which the facts which the evidence states were relevant. The proviso does not reproduce English law on the subject.—KRISHNAYYA RAO *v.* PITTAPUR (RAJA) (1933), 60 L. R. Ind. App. 336.—**IND.**

m i. ——.]—COURT *v.* HOLLAND, *Ex p.* HOLLAND & WALSH (1879), 8 P. R. 219.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

g i. —— *Contract based on terms of another contract.*]—The fact that the parties to a contract have expressly based the contract on the terms of a contract between other parties does not give the former parties the right to have evidence given of the latter contract in order that their contractual rights may be ascertained.—*Re* MACKLIN, TRIBUNE NEWSPAPER CO. *v.* FORT FRANCES PULP & PAPER CO., LTD., [1932] 2 W. W. R. 443; 4 D. L. R. 179; 40 Man. L. R. 401.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—B.

1182 i. *Records of the court.*]—LEVI *v.* COWAN, [1933] 2 W. W. R. 140.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—C.

s i. ——.]—The means by which a judicial officer may become acquainted officially with the law are not limited to those provided by sect. 10 of Manitoba Evidence Act, R. S. M., 1913, for the proof of proclamations, orders, etc.; judges & magistrates are entitled to act on their own knowledge that a certain Act is in force without having before them the proclamation bringing it into force.—R. *v.* WAGNER, [1931] 2 W. W. R. 650; 4 D. L. R. 761; 56 Can. C. C. 213; 39 Man. L. R. 532.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—D.

1217 i. *Duty of court to take notice of—Contract contrary to Lord's Day Act.*]—Although the Lord's Day Act is not pleaded, it is the duty of the ct. to take cognisance of the statute & to raise the point *ex mero motu* even if not pleaded or raised by counsel.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105; 55 Can. C. C. 197; 43 B. C. R. 468.—**CAN.**

1217 ii. —— *Contract against public policy.*]—The ct. will take notice of its own motion of any ground of public policy on which a contract before the ct. is illegal.—BEATTIE *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, LINDAL *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, [1933] 1 W. W. R. 334; *revsd. on other grounds*, [1934] S. C. R. 33; 1 D. L. R. 497.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—E.

st. *Native law, customs & usages.*]—NGCOBO *v.* NGCOBO, [1929] App. D. 233.—**S. AF.**

sv. *Right of privacy.*]—It is well established & recognised that a customary right of privacy exists generally in these Provinces, & it is open to a ct. to take judicial notice under sect. 57 of Evidence Act of the general prevalence of such a custom having the force of law. It is, therefore, not necessary that such a custom should be alleged & proved by evidence produced in each case to establish it.—NIHAL CHAND *v.* BHAGWAN DEI (1935), I. L. R. 58 All. 370.—**IND.**

PART III. SECT. 5, SUB-SECT. 4.

sy. *Time of darkness.*]—A ct. in Manitoba can take judicial notice of the fact that on a fine evening in Aug. in that province it is not dark a few minutes after eight o'clock.—BELL *v.* HUTCHINGS & HUTCHINGS, [1932] 1 W. W. R. 49; 1 D. L. R. 468.—**CAN.**

1301. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 94 L. J. K. B. 48.

1304. *Add. Annotation :—As to* (1) **Refd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125.

1305. *Add. Annotation :*—**Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

1306. *Add. Annotations :—As to* (1) **Refd.** Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358 ; Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184 ; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125. *As to* (2) **Refd.** Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

1319. *Add. Annotations :*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; Sparey *v.* Bath Rural District Council (1930), 23 B. W. C. C. 263. **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758 ; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519 ; Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320 ; Brooker *v.* Thomas Borthwick & Sons (Australasia), Ltd. & Connected Appeals (1933), 77 Sol. Jo. 556 ; Martin *v.* Finch, [1937] 2 All E. R. 631.

1338. *Add. Citations :*—[1925] 1 K. B. 399 ; 94 L. J. K. B. 497 ; 132 L. T. 267 ; 17 B. W. C. C. 221.

Add. Annotations :—**Apprvd.** Keane *v.* Mount Vernon Colliery Co., [1933] A. C. 309. **Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834 ; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

After this case add :—

Compare MASTER & SERVANT, Vol. XXXIV., p. 391, Nos. 3180-3184.

1338a. Production of plan from photograph.]—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, No. 3935a, *post.*

1377. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

1379. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1382a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation :—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1402. *Add. Annotation :*—**Expld.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

PART III. SECT. 5, SUB-SECT. 5.—C.

sb. *What is foreign State within Civil Procedure Code, s.* 84—*Gadwal State.*]—*Held :* Gadwal State is neither a sovereign State nor a foreign State within sect. 84 of the Civil Procedure Code.—VENKATARAMI *v.* RAJA OF GADWAL (1930), I. L. R. 53 Mad. 968.—**IND.**

PART III. SECT. 5, SUB-SECT. 5.—D.

f. For " (1886) " read " (1866)."

PART III. SECT. 5, SUB-SECT. 6.—A.

sd. " *Unorganised territory.*"]—On an appeal by the Crown from the dismissal of a charge under Govt. Liquor Act, it was objected that the notice of intention to appeal was not filed until the 20th day after the conviction, & that there was no proof before the ct. that the place where the cause of the information or complaint arose was situate in unorganised territory :—*Held :* in view of sect. 103 of Summary Convictions Act, & of the definition of " unorganised territory " in the Interpretation Act, the ct. must take judicial notice of the fact that said place was in unorganised territory.—R. *ex rel.* NELSON *v.* CASSANDRA (B. C.), [1929] 1 W. W. R. 866 ; 52 Can. Crim. Cas. 326.—**CAN.**

PART III. SECT. 5, SUB-SECT. 6.—B.

r i. ——.]—The ct. refused to take judicial notice that a place where an offence was alleged to have been committed was within the jurisdiction of the stipendiary magistrate.—R. *v.* MACMILLAN (1932), 4 M. P. R. 499 ; 58 C. C. C. 200.—**CAN.**

e i. ——.]—Judicial notice cannot be taken of the fact that a particular place is within a certain judicial district or of the distance of one place from another or of the identity of a place referred to in one document with that of a place referred to in another document, even though the names be the same.—HYNES *v.* ALTON, [1928] 3 W. W. R. 261.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—A.

sf. *Vicious habits of bees.*]—The ct. will not take judicial notice of the vicious habits of bees.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 7.—B.

1301 i. *Period of gestation.*]—In a case in which a particular period of pregnancy is a material fact to be established a judge is not at liberty to base his finding upon his own scientific knowledge or the testimony of experts given before him in other similar cases, or on the presumption of fact as to the average period of pregnancy. The period in question must be proved, like any other fact, by such evidence, given in that particular case, as may serve to bring conviction to the mind of the judge trying that case. The ct. is entitled to take judicial notice of the course of nature only in so far as it is a notorious fact that nature follows a certain course. It will take judicial notice of the fact that the average period of human gestation is nine calendar months ; it will also, however, take judicial notice that the exact limits of this period are both legally & scientifically unsettled & that it varies in different cases.—FLETCHER *v.* KONDRATIUK, [1933] 2 W. W. R. 225 ; 3 D. L. R. 532 ; 60 C. C. C. 119.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—D.

h i. *Bar-room—Place where liquor kept.*]—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—FRANCE *v.* HUMPHREYS, [1926] S. A. S. R. 214.—**AUS.**

sg. *Financial depression.*]—EDDY *v.* STEWART, [1932] 2 W. W. R. 699.—**CAN.**

sk. ——.]—Judicial notice should be taken of the financial depression throughout the province of Saskatchewan, & especially in the southern portion thereof, during the last three years.—MILLS *v.* ANGUS, [1933] 2 W. W. R. 218.—**CAN.**

sl. *World unemployment.*]—Judicial notice will be taken of the present world-wide unemployment situation & the distress resulting or likely to result therefrom.—*Re* CALGARY CITY CHARTER, [1933] 3 W. W. R. 385.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—G.

q i. *S. P.*—R. *v.* MCPHERSON (1915), 33 W. L. R. 21 ; 9 W. W. R. 613 ; 8 Sask. L. R. 412.—**CAN.**

q ii. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—R. *v.* MARSHALL, [1925] 1 D. L. R. 1132 ; 43 Can. Crim. Cas. 253 ; [1924] 3 W. W. R. 865.—**CAN.**

s i. *Mode of conducting traffic—Stopping-places for trams.*]—*Held :* the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.—*Re* BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, *Ex p.* HILL, [1926] S. A. S. R. 326.—**AUS.**

PART III. SECT. 6, SUB-SECT. 6.—A.

st. *Evidence of—Whether Public Administrator requires same as court of law.*]—*Re* TJERSTROM (1905), 1 W. L. R. 385.—**CAN.**

sv. *Question of fact.*]—Death is a question of fact which must be established by the preponderance of evidence ; either by direct evidence of death or by the proof of such circumstances as may reasonably lead the ct. to conclude, that there can be no other satisfactory accounting for the disappearance or absence of the person whose death is sought to be established. The evidence submitted in the present case was held insufficient to warrant that conclusion.—*Re* BAILLIE ESTATE, MONTREAL TRUST CO. *v.* BAILLIE, [1930] 3 W. W. R. 92 ; 4 D. L. [illegible] —**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—B.

sw. *General rules.*]—There are two grounds upon which the ct. will make an order presuming death : (*a*) when the time elapsing between disappearance & the application is so long as to raise the inference that the person is dead ; (*b*) when the person disappeared

1413a. —— —— ——.]—Ejectment, in 1849, by reversioner for premises demised, in 1801, for three lives, & twenty-one years. Two of the *cestui que vies* had died before 1828. No witness was called who had ever known the third; &, except the mention of him in the lease (which described him as aged ten years), there was no proof that he had ever existed. No evidence of search for him was given:—*Held:* to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person; & that the mere fact that no witness called had heard of him was not sufficient.—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

1418a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

1421a. —— ——.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR (1925), 42 T. L. R. 159, P. C.

1437a. ——.]—A husband appealed from a maintenance order of 2*s.* 6*d.* a week made by justices on the ground that the wife was previously married in 1919, that she had admitted her previous husband was alive in 1922, & she had not proved his death so as to validate her marriage to applt. on Feb. 28, 1930:—*Held:* the justices were wrong in ruling that the onus was upon applt. to prove that the previous husband was alive. The justices ought to have concluded from the wife's evidence that the marriage in Feb. 1930, was void. Fresh evidence, now admitted, showed that the wife & the previous husband were still living together as a married couple in 1925. The appeal was allowed & the order discharged.—IVETT *v.* IVETT (1930), 143 L. T. 680; 94 J. P. 237; 28 L. G. R. 479; 29 Cox, C. C. 172.

Annotation:—**Consd.** Hogton *v.* Hogton (1933), 103 L. J. P. 17.

1437b. ——.]—After twenty-two years of married life a man left his wife & she summoned him for desertion. He claimed that she was not really his wife as she had been previously married & it had not been established that the former husband, who was last heard of alive some six years before the second marriage, was dead at the time of that ceremony, which took place in 1910. The magistrates accepted evidence that fruitless inquiries had been made as to the former husband's whereabouts up to the second marriage, & made an order for maintenance on the basis that husband appealed on the grounds that there was no evidence admissible that the first marriage was not subsisting, & that the magistrates were wrong in law in holding that the burden of proof was on the applt. to prove that that marriage was subsisting:—*Held:* the issue before the magistrates was whether the wife was free to marry in 1910, & whether it could be inferred from the evidence that the former husband was then dead. The magistrates had ample material for their decision, & the appeal failed.—HOGTON *v.* HOGTON (1933), 103 L. J. P. 17; 150 L. T. 80; 97 J. P. 303; 50 T. L. R. 18; 77 Sol. Jo. 780; 31 L. G. R. 391; 30 Cox, C. C. 23 D. C.

in circumstances which lead to the inference that he died at a particular time.—*Re* WIDDICOMBE (1929), 50 N. L. R. 311.—**S. AF.**

1410 xviii. —— —— ——.]—*Re* JELFS, [1925] 1 W. W. R. 735.—**CAN.**

1410 xix. —— —— ——.]—*Re* DE MILLE (Alta.), [1926] 3 D. L. R. 140; [1926] 2 W. W. R. 148.—**CAN.**

1410 xx. —— —— ——.]—*Re* HICKEY, DWYER *v.* HICKEY, [1925] V. L. R. 270; 31 Argus L. R. 261.—**AUS.**

1410 xxi. —— —— ——.]—H. married M. in 1899, who deserted her in 1900. Casual inquiries as to his whereabouts were made, but he was not afterwards heard of. B. made his will on May 14, 1915, & went through a form of marriage with H. on June 24, 1915:—*Held:* the death of M. should be presumed so as to qualify H. to remarry B. in 1915, & therefore B.'s will was revoked by his marriage.—*In the Estate of* BARNETT, 22 Tas. L. R. 83.—**AUS.**

1410 xxii. —— —— ——.]—The ct. has jurisdiction to declare that a person who has not been heard of for more than seven years shall be presumed to be dead, even though the sole object of appct. in obtaining the declaration is to clear the way for his or her remarriage.—*Re* DELOLI, [1929] 3 D. L. R. 763; 2 W. W. R. 327; 38 Man. L. R. 279.—**CAN.**

1410 xxiii. —— —— *Order of court obtained by fraud—Setting aside.*]—Petitioner herein sought the rescission of an order which had been obtained by his present wife allowing her to swear that her former husband was dead prior to a date which was over seven years prior to the making of the order. The order was obtained solely to assist her, appct. therefor, in obtaining a government pension. The present petitioner alleged that the order had been obtained by deceiving the ct. & that she had used it so as to lead him to believe that she was free to marry him:—*Held:* since it had not been shown that the present petitioner has now, or had at the time the order was made, any interest therein or in the effect which might result therefrom, he had no status sufficient to support his petition to have the order set aside.—*Re* HOLL, *Re* COWPER, [1933] 1 W. W. R. 17; 46 B. C. R. 297.—**CAN.**

1410 xxiv. —— ——.]—An order will not be made declaring that a person who has not been heard of for a long time is dead, except as incidental to the exercise of some jurisdiction, *e.g.* the jurisdiction to admit a will to probate.—*Re* SELL (1924), 56 O. L. R. 32.—**CAN.**

1413 v. —— —— ——.]—*Re* TOMES (Man.), [1927] 2 D. L. R. 864; [1927] 1 W. W. R. 429.—**CAN.**

1413 vi. —— —— —— *Strong incentive to disappear—Death not presumed.*]—O'DONNELL *v.* NORTH AMERICAN LIFE ASSURANCE CO., [1927] 3 D. L. R. 412; 60 O. L. R. 502.—**CAN.**

o i. —— *Disappearance at sea.*]—*Re* HONEYMAN, [1930] 1 W. W. R. 999.—**CAN.**

o ii. —— *Disappearance of aged & infirm person.*]—Testator, who was aged seventy-seven, & failing in health & mental vigour, disappeared in 1925 from his home, which was situated in very rough country, & twelve miles from the nearest railway station. A careful search in the surrounding country was made by two constables, assisted by black trackers & about 150 other persons, for a week after his disappearance, but he was not seen or heard of again:—*Held:* was sufficient evidence on which the ct. might presume that he was dead, & he had died on or about the date of his disappearance.—*Re* HORN (1930), Argus L. R. 280.—**AUS.**

sx. *Death of writer of old letters.*]—Where papers about 45 years old are produced before a ct. it may presume, in the absence of evidence to the contrary, that the writer was dead at the time they were produced.—JABBAR ALI SARDAR *v.* MONMOHAM PANDEY (1928), I. L. R. 55 Calc. 1216.—**IND.**

PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ——.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—LAL CHAND MARWARI *v.* RAMRUP GIR (1925), 53 L. R. Ind. App. 24.—**IND.**

1423 iii. ——.]—Although there is a presumption of death after absence for seven years, there is no presumption that death took place at any particular time within the seven years.—HICKEY *v.* GREAT WEST LIFE ASSURANCE CO. (1933), 7 M. P. R. 104.—**CAN.**

1445a. On party to whose title fact essential.]—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR, No. 1421a, *ante*.

1453a. —— ——.]—In July, 1852, H. quitted England for America, & wrote home announcing his safe arrival at New York. There was evidence that he was in declining health when he quitted England, & that, from his character, education, & previous life, he would, if living, have communicated with his friends in England. Advertisements requesting information concerning him had been inserted in the principal American newspapers, but he was never heard of again. The father of H. died in Sept. 1853, intestate. Pltf., who was one of the next of kin of the father, supposing the son to have predeceased him, filed his bill for the administration of the father's estate:—*Held:* there was *primâ facie* evidence of the death of H. in his father's lifetime to entitle pltf. to have the personal estate secured in ct.—DANBY *v.* DANBY (1859), 5 Jur. N. S. 54.

1454. *Add. Annotation:*—**Consd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1459a. —— ——.]—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

Annotations:—**Consd.** Prudential Assce. *v.* Edmonds (1877), 2 App. Cas. 487; Lyell *v.* Kennedy (1887), 56 L. T. 647; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

1472. For cross-reference before this case "*See, now*, Law of Property Act, 1925 (c. 20), s. 184."

1489a. ——.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re* NIGHTINGALE, HARGREAVES *v.* SHUTTLEWORTH (1927), 71 Sol. Jo. 542.

1499a. ——.]—DOE d. BANNING *v.* GRIFFIN, No. 164, *ante*.

1505. *Add. Annotations:*—**Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56; I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

1526a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation:—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1531. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

1550. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

1567. *Add. Annotation:*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1580. *Add. Annotation:*—**Refd.** Saunders *v.* Automotive Spares, Ltd. Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450.

1586. *Add. Annotation:*—**Apld.** *Re* Davis's Trade Marks, Davis *v.* Sussex Rubber Co., [1927] 2 Ch. 345.

1602a. —— —— **Outweighs several negative witnesses.**]—The rule of law is, that one affirmative witness outweighs several negative witnesses (Sir JOHN NICHOLL).—TOCKER *v.* AYRE (1821), 3 Phillim. 539; 161 E. R. 1408.

PART III. SECT. 6, SUB-SECT. 6.—D.

t i. ——.]—*Re* FORSYTH (N. S.). [1927] 2 D. L. R. 72.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—E.

1493 i. *Onus of proof—Rests on party asserting affirmative.*]—CAMPBELL *v.* COX & MITCHELL, [1930] 1 D. L. R. 649; 42 B. C. R. 120.—**CAN.**

b i. ——.]—There is no presumption of survivorship from age or death in case of common death.—*Re* WARWICKER, MCLEOD *v.* TORONTO GENERAL HOSPITAL, [1936] 3 D. L. R. 368; O. R. 379.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—F.

1497 i. *Whether presumption exists.*]—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re* SAUNDERS, PARK *v.* AUSTIN, [1928] N. Z. L. R. 391.—**N.Z.**

PART III. SECT. 6, SUB-SECT. 7.

f i. ——.]—MACRAE *v.* WALSH (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—**AUS.**

PART III. SECT. 6, SUB-SECT. 8.

1526 ii. ——.]—R. *v.* O'HARA (N. B.) (1927), 48 Can. Crim. Cas. 231.—**CAN.**

f (p. 178) **i.** *As to delivery of package by common carrier to consignee.*]—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by

r (p. 179) **i.** *As to party being administrator.*]—SMITH *v.* MCLEAN (1868), 7 N. S. R. (1 G. & O.) 310.—**CAN.**

PART III. SECT. 6, SUB-SECT. 10.

1556 i. *Receipt of letter—Whether presumed from posting.*]—The presumption that a letter shown to have been mailed in the usual course of business to a proper address was received is rebuttable by the addressee's denial of its receipt, where there is nothing to throw doubt on his credibility.—SHUCKETT *v.* LOCKHART & KYLE, [1932] 2 W. W. R. 330; 3 D. L. R. 466; 40 Man. L. R. 344.—**CAN.**

sa. *Identity of persons — From identity of names.*]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

sb. *Accuracy of scientific instrument.*]—The working accuracy of a scientific instrument will not be presumed unless it appears to the ct., either by judicial notice, assisted, if necessary, by consulting standard works of reference, or by appropriate evidence, that the instrument in question is a scientific instrument.—CRAWLEY *v.* LAIDLAW (1930), Argus L. R. 311; V. L. R. 370.—**AUS.**

PART III. SECT. 7, SUB-SECT. 1.

t i. —— ——.]—REILY *v.* LONDON CORP'N. 1891), 14 P. R. 171.—**CAN.**

t ii. —— ——.]—CLOUSE *v.* COLEMAN (1895), 16 P. R. 541.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

i. —— —— *Accretion.*]—A view by the ct. of the place of the alleged accretion is not merely for the purpose of appreciating the other evidence but also for the purpose of assisting the ct. in reaching a proper conclusion.—CLARKE *v.* EDMONTON (Can.), [1928] 4 D. L. R. 1010; *revg.* [1928] 2 D. L. R. 154; 1 W. W. R. 553; 23 Alta. L. R. 233.—**CAN.**

PART III. SECT. 8.

1593 x. —— ——.]—In the estimation of the value of evidence in ordinary cases, the testimony of credible witnesses who swear positively to a fact should receive credit in preference to witnesses who testify to a negative.—HALLETT *v.* BANK OF MONTREAL (1918), 46 N. B. R. 62.—**CAN.**

1593 xi. ——*Nature & application of rule.*]—The principle that the evidence of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. *v.* PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—**CAN.**

1596 i. —— *Telephone conversation overheard by bystander.*]—*Held:* the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & CO. *v.* FORST & CO. (1912), 23 O. W. R. 311; 46 S. C. R. 642.—**CAN.**

n i. ——*Evidence of perjured witness.*]—The evidence of a witness proved to have committed perjury is of no value whatsoever & cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.—EMPEROR *v.* UJA-

Part IV.—Documentary Evidence.

1624a. Document to be put in—Notice should be given.]—It is desirable that notice be given in advance to the other side of the document intended to be put in, so that they may be ready with any other admissible document directed to the same issue.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1633a. Entry in marriage register.]—WYATT *v.* ROCHFORT (1837), 1 Jur. 592, N. P.

1664a. ——.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

1726a. —— —— **Will.**]—Where a person had been dead a great number of years, whose handwriting was required to be proved, it was done by showing the similarity of the handwriting in question to the handwriting of his will, & no objection was taken to it, either at the bar or by the ct.—MOREWOOD *v.* WOOD (1791), 14 East, 327; 4 Term Rep. 157; 104 E. R. 626.

1766. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

1829a. —— —— ——.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON *v.* STARK (1802), 4 Esp. 163; 170 E. R. 677, N. P.

Annotation:—**Refd.** R. *v.* Wrangle (1835), 1 Har. & W. 41.

1867. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

1877. Add para.:—

Parol evidence of inscriptions & devices on banners & flags displayed at a meeting is admissible, without producing the originals. —R. *v.* HUNT (1820), 3 B. & Ald. 566.

1900. *Add. Citation:*—R. *v.* DOUGLAS (1846), 16 L. J. Q. B. 417.

1933a. ——.]—Where pltfs. called defts.' solr.:—*Held:* he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL *v.* HAWS (1863), 3 F. & F. 784, N. P.

1955a. ——.]—A deed may be pleaded as lost by time & accident without *profert*.—READ *v.* BROOKMAN (1789), 3 Term Rep. 151; 100 E. R. 504.

1998a. —— —— **Answers to inquiries.**]—In accounting for the absence of an attesting witness, or loss of a written instrument, general answers to inquiries that nothing is known concerning them, are admissible in evidence; but not declarations as to particular facts, if the party making them is capable of being called.—DOE d. JOHNSON *v.* JOHNSON (1818), 2 Chit. 196.

Annotation:—**Refd.** Pytt *v.* Griffith (1822), 6 Moore, C. P. 538.

PART IV. SECT. 2, SUB-SECT. 10.

1762 ii. ——.]—FOULDS *v.* BOWLER (1908), 8 W. L. R. 189.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B.

s i. —— *Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—DOE d. GILMOUR *v.* WHITNEY (1838), 2 N. S. R. (Ber.) 514.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ——.]—SMITH *v.* NEVILLES (1859), 18 U. C. R. 473.—**CAN.**

b ii. ——.]—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY (Sask.), [1927] 3 D. L. R. 474.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft.:—*Held:* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

o i. —— ——.]—GOUGH *v.* MCBRIDE (1860), 10 C. P. 106.—**CAN.**

q i. —— —— *Reconstructed cash book.*]—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence:—*Held:* said book was not admissible against deft.; its contents were not obtained in the manner contemplated by Rural Municipality Act &, therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done; he had not so recognised or acted upon it as to make its contents evidence against him; it was not secondary evidence of the destroyed cash book; &, the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY, [1928] 3 D. L. R. 306; [1928] 2 W. W. R. 184, 288; 22 Sask. L. R. 559.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

sr. *Affidavit of petitioner—Absence of particulars of search made.*]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

2058 iv. ——.]—MARVIN *v.* CURTIS (1857), 6 C. P. 212.—**CAN.**

2058 v. —— —— *Evidence of subscribing witness.*]—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved:—*Held:* the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH *v.* GREWER (1874), 23 C. P. 533.—**CAN.**

2063 i. *Written declaration by testator —Lost will.*]—A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—*Re* PIKE'S WILL (1882), 6 Nfld. L. R. 445.—**NFLD.**

st. *Lost deed—Memorandum made by predecessor in title.*]—In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

sv. —— *Copy produced from body of successors of grantee—With indorsement signed by three predecessors in title.*]—SEETHAYYA *v.* SUBRAMANYA SOMAYAJULU (1929), L. R. 56 Ind. App. 146.—**IND.**

2088. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

2118. *Citation :*—For "1 Esp. 125" read "1 Esp. 127."

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752 ; 94 L. J. K. B. 672 ; 133 L. T. 94 ; 89 J. P. 135 ; 28 Cox, C. C. 1 ; 18 Cr. App. Rep. 180, C. C. A.

2282. Add para. :—

Where the witness swearing to the words spoken by way of oath by the prisoner when he administered the same, said, that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words ; yet held that parol evidence of what he in fact said was sufficient, without giving him notice to produce such paper.—R. *v.* MOORS (1801), 6 East, 419, n.

2285. *Add. Annotation :*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

2285a. Policy of third party insurance—Prosecution under Road Traffic Act, 1930 (c. 43), Part II.]—Resp. was charged with using a motor vehicle without there being in force in respect of such user a policy of insurance satisfying the requirements of Road Traffic Act, 1930 (c. 43). A police officer sought to give evidence of the contents of a certificate of insurance produced by resp., but it was objected on behalf of resp. that, no notice to produce the policy having been given, secondary evidence of its contents was not admissible. The justices upheld the objection, &, in the absence of other evidence, dismissed the information :—*Held :* the evidence ought to have been received.

Per TALBOT, J. *Semble :* the onus of proving the possession of a policy was on resp., & it was not necessary for the prosecution to tender evidence on the matter at all.—WILLIAMS *v.* RUSSELL (1933), 149 L. T. 190 ; 97 J. P. 128 ; 49 T. L. R. 315 ; 77 Sol. Jo. 198 ; 31 L. G. R. 182 ; 29 Cox, C. C. 640, D. C.

2345a. —— ——.]—DORRETT *v.* MEUX (1854), 15 C. B. 142 ; 2 C. L. R. 807 ; 23 L. J. C. P. 221 : 23 L. T. O. S. 144 ; 2 W. R. 480 ; 139 E. R. 374.

2475a. —— ——.]—DOE d. ST. JOHN *v.* HORE (1799), 2 Esp. 724 ; 170 E. R. 510, N. P.

2476a. —— ——.]—WALLISS *v.* BROADBENT (1836), 4 Ad. & El. 877 ; 2 Har. & W. 40 ; 6 L. J. K. B. 269 ; 111 E. R. 1014.

2477a. —— ——.]—CHEVELEY *v.* FULLER (1853), 13 C. B. 122 ; 1 W. R. 152 ; 138 E. R. 1143 ; *sub nom.* FULLER *v.* CHEVELEY, Saund. & M. 101 ; 20 L. T. O. S. 278 ; 17 J. P. 105 ; 17 Jur. 736.

2480a. —— ——.]—HARRIS *v.* CHAPMAN (1868), 17 L. T. 517, N. P.

2486a. —— **Though receipt for penalty erased.**]—APOTHECARIES' CO. *v.* FERNYHOUGH (1826), 2 C. & P. 438 ; 172 E. R. 199, N. P.

Annotation :—**Refd.** R. *v.* Preston (1834), 3 Nev. & M. K. B. 31.

2513a. To prove amount originally claimed.]—WICKES *v.* TANNER (1848), 10 L. T. O. S. 504, N. P.

2544a. —— —— ——.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred :—*Held :* sufficient to legalise the evidence of such contract.—POWELL *v.* EDMUNDS (1810), 12 East, 6 ; 104 E. R. 3.

Annotations :—**Refd.** Ogilvie *v.* Foljambe (1817), 3 Mer. 53 ; Bradshaw *v.* Bennett (1831), 5 C. & P. 48 ; Shelton *v.* Livius (1832), 2 Cr. & J. 411 ; Bartlett *v.* Pernell (1836), 2 Har. & W. 16 ; Evans *v.* Pratt (1842), 3 Man. & G. 759 ; Eden *v.* Blake (1845), 13 M. & W. 614 ; Brett *v.* Clowser (1880), 5 C. P. D. 376.

2570. *Add. Annotations :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168 ; *Re* National Benefit Assce. (1927), 71 Sol. Jo. 880.

2583a. —— **Objection doubtful.**]—An objection that a document requires a stamp will not be given effect to if the point is doubtful.—WESTLAKE *v.* ADAMS (1858), 1 F. & F. 183, N. P.

2587. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2603. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2639. *Add. Annotation :*—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

PART IV. SECT. 9, SUB-SECT. 3.—A.

sw. *Of power of attorney—Proof of contents of original only.*]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence :—*Held :* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made. —O'KANE *v.* MULLAN, [1925] N. I. 1. —**IR.**

PART IV. SECT. 9, SUB-SECT. 4.—B.

g i. —— —— *Books of Government Liquor Control Commission.*]—Government Liquor Control Commission is a "Department of the Government of Manitoba" within sect. 17 of Manitoba Evidence Act, R. S. M., 1913, &, therefore, copies of entries in its books are receivable in evidence by virtue of said section.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68 ; 2 D. L. R. 339 ; 40 Man. L. R. 117.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. *Revsd.* on other grounds, 18 A. R. 135.

PART IV. SECT. 9, SUB-SECT. 5.—B.

g i. ——.]—The copy of a will bearing the certificate of the Registrar of Deeds that it was registered, but certified by the Registrar of Probate, was held admissible, by the combined effect of sects. 34, 57 of the Registry Act.—MCMILLAN *v.* COLFORD (1932), 5 M. P. R. 127.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 4.—B.

sx. *To what documents rule applicable —Notice of appeal.*]—As a notice of appeal is not an instrument tendered in evidence, but merely a step in the procedure of appeal, the failure to stamp it cannot be rectified under the proviso to sect. 22 (1) of Act 30, 1911.—ANNAMA *v.* EXPRESS COLLECTION AGENCY (1929), 50 N. L. R. 77.—**S. AF.**

PART IV. SECT. 10, SUB-SECT. 8.

2608 i. *Finality of judge's ruling.*]—Once the trial judge, with the question of the want of proper stamp present in his mind, has actually admitted a document in evidence, Stamp Act, s. 36, prevents such admission being called in question, except as provided in s. 61, at any stage of the same suit or proceeding, & hence in appeal, on the ground that the instrument has not been properly stamped.—GURDAS MAHAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

PART IV. SECT. 11, SUB-SECT. 2.

2634 ii. —— —— ——.]—Where, in an action for wages & overtime, based on the award of the Commonwealth Ct. of Conciliation & Arbn., the only e[illegible] of the award was a printed document purporting to be a copy of the award bearing the imprint "By authority : H. J. Green, Govt. Printer, Melbourne" :—*Held :* the award was not proved.—MID-NORTH ELECTRICITY CO., LTD. *v.* RUTHERFORD, [1927] S. A. S. R. 273.—**AUS.**

2642a. —— **Solicitor not bound to produce.**]—The solr. under a commission of bkpcy. is not bound to produce the proceedings under it, though called upon by *subpœna duces tecum*.—BATESON *v.* HARTSINK (1801), 4 Esp. 43, N. P.

Annotation :—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

2707a. ——.]—DAVIES *v.* LOWNDES (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.

2709. *Add. Annotation :*—**Folld.** Little *v.* Little, [1927] P. 224.

After this case add, "*See, also*, HUSBAND & WIFE, No. 2763a."

2722. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson [1925] P. 34.

2723. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2757a. —— ——.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required. —VERNEY *v.* VERNEY (1920), 36 T. L. R. 203.

2880. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

2960a. —— **Inadmissible.**]—Parol evidence of the oaths required by the Toleration Act having been taken, is not admissible.—R. *v.* HUBE (1792), Peake, 180, N. P.; (1794), 5 Term Rep. 542; 101 E. R. 305.

3036. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

3115. *Add. Annotation :*—**Refd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

3122a. —— ——.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

Annotation :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

3122b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 1264a, *ante*.

3122c. —— ——.]—During the course of the argument a question arose as to the nature of the relationship of the Crown to the territory of which the North Charterland Concession formed part, & in order to settle this question I submitted to His Majesty's Secretary of State for the Colonies for his decision under the Foreign Jurisdiction Act, 1890 (c. 37), s. 4, two questions: "Was the territory now known as Northern Rhodesia on Mar. 22, 1928, under the protection of His Majesty?" or "Was it at that date part of His Majesty's Dominions?" The decision of His Majesty's Secretary of State for the Colonies, which by the provisions of the Act is conclusive, is that on Mar. 22, 1928, Northern Rhodesia was a territory under His Majesty's protection. It did not then & does not now form part of His Majesty's Dominions (LUXMOORE, J.).—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169; 99 L. J. Ch. 483; 143 L. T. 623; 46 T. L. R. 566.

3125. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

3157. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation :*—**Overd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3165a. —— **Marriage of parents.**]—In an action brought by pltfs., who claimed to be two of

PART IV. SECT. 11, SUB-SECT. 4.—A.

2667 i. —— *Res inter alios acta—Conviction for murder.*]—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of crime—Presumptive evidence.*]—*Re* NOBLE, No. 2667 i, *ante*.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*]—*Held :* the evidence was inadmissible.—JOHNSON *v.* R. (Ont.) (1911), 13 Exch. C. R. 389.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 12.

3004 i. *How proved—Production of copy printed in Stationery Office.*]—The District Ct. Rules are rules made by a minister within Documentary Evidence Act, 1925, s. 4, & the production of a copy of the rules, printed in the Stationery Office, is *prima facie* evidence that the rules have been validly made.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

PART IV. SECT. 11, SUB-SECT. 15.—A.

sx. *Proof—Writ of execution.*]—STUART *v.* ANDREWS (1827), N. B. Dig. 332.—**CAN.**

sy. —— ——.]—DOE *d.* STOCKING *v.* WATTS (1842), 2 Ont. Dig. 2665.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (b).

sa. *British consul abroad—Certificate on point of law.*]—A British consul may prove by his certificate a point of foreign law which he is competent to prove by affidavit.—*Re* BERGMAN ESTATE, [1928] 1 W. W. R. 601.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (d).

sb. *Certificate of professor of anatomy.*]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—R. *v.* AHILYA (1922), I. L. R. 47 Bom. 74.—**IND.**

PART IV. SECT. 12, SUB-SECT. 10.—B. (b) i.

3157 i. *Admissibility.*]—In an action in which the alleged infancy of pltf. was in issue :—*Held :* (1) his testimony that he had seen his birth certificate, which was not produced, & that he was not of age was not sufficient to prove his minority since it amounted to no more than hearsay evidence; (2) a certificate of registry of birth purporting to be issued under the Births & Deaths Registration Act, 1874 (Imp.), would not be admissible in England as evidence of pltf.'s age, since it did not comply with the requirements of sect. 38 of Births & Deaths Registration Act, 1836, & sect. 38 of 1874 Act, & should not be admissible here. Moreover, since the certificate did not contain or purport to contain a copy of or extract from the original register of births & did not identify or furnish information sufficient to identify pltf. as the person referred to in the certificate, it was not sufficient to establish his minority. —ANTHONY *v.* CHARTER, [1933] 1 W. W. R. 310; 1 D. L. R. 684.—**CAN.**

the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pltfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *primâ facie* or any evidence of the lawful marriage of the parents:—*Held:* the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, overd.—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, [1926] Ch. 284; 95 L. J. Ch. 259; 134 L. T. 430; 90 J. P. 90; 42 T. L. R. 253; 70 Sol. Jo. 385; 24 L. G. R. 173, C. A.

3177a. —— **Marriage of parents of deceased.**]—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, No. 3165a, *ante*.

3179. *Add. Annotation:*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3287. *Add. Annotations:*—**Apprvd.** Hendon Paper Works Co. *v.* Sunderland Assmt. Com., [1915] 1 K. B. 763. **Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3288. *Add. Citation:*—1 B. R. A. 210.

Add. Annotations:—**Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309. **Refd.** Davis *v.* Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C (1916), 85 L. J. K. B. 1545.

3289. *Add. Citation:*—2 B. R. A. 592.

Add. Annotation:—**Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3309. *Add. Annotation:*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296.

3349. *Add. Annotation:*—**Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3371. *Add. Annotation:*—**Refd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3377. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3388. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3389. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3414a. —— **Primâ facie of validity.**]—A petition for nullity of marriage, on the ground that at the time of the marriage, which was a marriage by declaration in Scotland, & which had been registered, neither petitioner nor resp. had lived in Scotland for twenty-one days next preceding the marriage, was dismissed on the ground that petitioner had failed to satisfy the ct. of the untruth of the statement in the register that resp. had lived in Scotland for twenty-one days preceding the marriage.—WINTERBOTTOM *v.* WINTERBOTTOM (OTHERWISE APPLETON) (1922), 38 T. L. R. 813.

3419a. *S. P.* MONEY *v.* MONEY & TURNER (1927), 71 Sol. Jo. 666.

3422a. —— —— ——.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—PRITCHARD *v.* PRITCHARD (1920), 37 T. L. R. 104.

3428a. —— —— ——.]—A marriage performed by a Church of England clergyman in an Anglican Church in British India may be proved either (1) by production of the India Office certificate, or (2) under Evidence (Colonial Statutes) Act, 1907 (c. 16), by production of the marriage certificate issued from the Church & signed by the clergyman,

PART IV. SECT. 12, SUB-SECT. 14.

sc. *Regulation of Minister of Crown—In possession of prosecuting counsel—Whether amounts to production.*]—The fact that counsel for the prosecution has a copy of a regulation made by a Minister of the Crown in his possession at the trial & available for the perusal of the justice hearing the case, does not amount to its "production" within Canada Evidence Act, s. 21, at least when no opportunity is given the accused's counsel to peruse it or object to it.—R. *v.* YEE CLUN & YEE LOW (Sask.), [1929] 1 D. L. R. 194; 50 Can. Crim. Cas. 440; [1928] 3 W. W. R. 558.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 15.—A. (a).

1 i. —— *Value as evidence.*]—HEATH *v.* PORTAGE LA PRAIRIE CORPN. (1909), 18 Man. L. R. 693.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (d) iii.

ss. *Certificate of* ——— *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

sg. *of marriage—Authenticated certificate—India.*]—H. proved desertion by W. & asked for an order for restitution of conjugal rights, failing which a divorce. The marriage had been solemnised in India & was sworn to by H. The marriage certificate was not authenticated:—*Held:* an order for restitution would be granted, but no further proceedings must be taken in the matter until a duly authenticated certificate of the marriage was produced.—DWYER *v.* DWYER, [1933] N. L. R. 598.—**S. AF.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (e).

sc. *Evidence of marriage—Certified extract from register.*]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established:—*Held:* (1) the strict rule of the common law of England relating to the proof of foreign marriages applies in New Zealand despite the greater difficulty in the Dominion of proof & in obtaining evidence; (2) the priest, who, on being recalled, stated that the parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia; (3) the copy of the register was admissible in evidence.—R. *v.* ILLICH, [1935] N. Z. L. R. 90.—**N.Z.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (f).

3406 i. *Admissibility.*]—An extract from a marriage register kept in a Scottish parish & duly authenticated & signed by the registrar is admissible in a Canadian ct. to prove the marriage of accused charged with bigamy, by virtue of 1854 Act (Imp.).—R. *v.* INNES, [1933] 2 D. L. R. 110; O. R. 169; 59 C. C. C. 339.—**CAN.**

together with the relevant Indian Act.—PAWSON *v.* PAWSON (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3428b. —— —— **Of entry in ecclesiastical register—With relevant Indian Act.**]—PAWSON *v.* PAWSON, No. 3428a, *ante*.

3435a. —— —— ——.]—A marriage in the Anglican Cathedral at Shanghai, China, may be proved by the production of the marriage certificate, duly signed by the clergyman, as a common law marriage.—MATTHEWS *v.* MATTHEWS (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3436a. —— —— —— **South Africa.**]—WATERFIELD *v.* WATERFIELD & PRETORIUS (1929), 73 Sol. Jo. 300.

3437a. —— —— —— ——.]—L. (OTHERWISE B.) *v.* L. (1919). 36 T. L. R. 148; 64 Sol. Jo. 225.

3437b. —— —— **British North Borneo.**]—WINMILL *v.* WINMILL (1934), 78 Sol. Jo. 536.

(*e*) *Foreign Countries* (p. 342).

See Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).

3451a. —— —— **Belgium—Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).**]—For the first time in divorce proceedings the solemnisation of a marriage abroad was proved by means of the procedure permitted by above Act, & the Evidence (Belgium) Order, 1933, made thereunder. The duly authenticated Belgian certificate of marriage was accepted as proof of the marriage.—NORTH *v.* NORTH & OGDEN (1936), 105 L. J. P. 56; 154 L. T. 498; 52 T. L. R. 380; 80 Sol. Jo. 208.

3466. *Add. Annotation:*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

3483a. —— ——.]—*Held:* the production of the register from the custom house was conclusive evidence of ownership.—MARSH *v.* ROBINSON (1802), 4 Esp. 98; 170 E. R. 655, N. P.

3513a. Stationers' Hall register—Of first performances of dramatic productions.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *ante*.

3526. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3543. *Add. Annotations:*—*As to* (2) **Consd.** Falcon *v.* Famous Players Film Co. (1926), 135 L. T. 650. **Apld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3547. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

3572. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3580. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3584. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

3589. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3686. *Add. Annotation:*—*As to* (2) **Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3757. *Add. Annotation:*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3784. *Add. Citation:*—2 B. R. A. 582.

3802a. ——.]—HAYNES *v.* HAYTON (1828), 6 L. J. O. S. K. B. 231.

Annotations:—**Consd.** Bessey *v.* Windham (1844), 6 Q. B. 166; White *v.* Morris (1852), 11 C. B. 1015.

PART IV. SECT. 12, SUB-SECT. 19.—G.

sf. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] I. R. 42.—**IR.**

sg. *Proprietor's Registry Book.*]—FULTON *v.* CREELMAN, [1930] 4 D. L. R. 43; *on appeal*, [1931] S. C. R. 221; 1 D. L. R. 733.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 20.

sh. *Weight of evidence.*]—The importance as evidence of revenue records, admissible under Indian Evidence Act, s. 35, varies with the circumstances.—GANGABAI *v.* FAKIRGOWDA (1929), I. L. R. 54 Bom. 336.—**IND.**

PART IV. SECT. 12, SUB-SECT. 21.

si. —— *How proved.*]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—NORTHERN TRUSTS CO. *v.* MCLEAN, [1926] 3 D. L. R. 93; 58 O. L. R. 683.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 22.

sj. *Records of secretary of province—Entry as to delivery of patent—In secretary's handwriting—Whether proof of possession of patent.*]—*Qu.:* whether the evidence of the secretary of the province, that it appears by an entry in his own handwriting, in a book kept for such entries, that a patent was delivered to A., & that he therefore felt sure that it was delivered to A. or his servant, but has no recollection of it, is sufficient to charge A. in trover with the possession of such patent.—HAMPSON *v.* BOULTON (1836), 5 O. S. 23.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—A.

3679 v. ——.]—Account books are admissible in evidence, under Evidence Act, 1872, s. 34, without any formal proof that they were regularly kept in the course of business. The Legislature, in sect. 34, has dispensed with the necessity of such formal proof, which was required by the former Act II. of 1855. In order that account books may be deemed regularly kept in the course of business, it is not necessary to show that they had been entered up as & when the transactions took place.—EMPEROR *v.* NARBADA PRASAD (1929), I. L. R. 51 All. 864.—**IND.**

sl. *Corporation or partnership books.*]—Defts., stockbrokers, were indicted & tried (*a*) for conspiracy by fraudulent means to defraud customers; (*b*) for conspiracy by fraudulent means to affect the public market price of stocks publicly sold; (*c*) for that with intent to make gain or profit by the rise or fall of stocks they made agreements for the sale or purchase of stocks in respect of which no delivery was ever made or intended to be made:—*Held:* books of account, records, & other documents of defts. were properly admitted at the trial.—R. *v.* SMART & YOUNG; R. *v.* PATERSON & CAMPBELL; R. *v.* STOBIE & FORLONG, [1931] 2 D. L. R. 207; O. R. 176; 55 Can. C. C. 310.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B.

sb. *To prove to whom credit given.*]—WHITE *v.* MILLER (1888), 27 N. B. R. 143.—**CAN.**

sd. *To prove sale of goods—Entry in ledger.*]—In an action for the price of goods sold & delivered entries in the pltf.'s ledger are not proof of the sales.—LISCHINSKY *v.* AULD, [1932] 3 W. W. R. 691.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 4.

sf. *Books of railway companies—Repair book.*]—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 5.

di. —— ——.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling:—*Held:* admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—ANANDI *v.* NAND LAL (1924), I. L. R. 46 All. 665.—**IND.**

PART IV. SECT. 13, SUB-SECT. 6.—A.

li. —— *In pursuance of common object.*]—*Held:* letters, written by the mother of a petitioner in a suit for restitution of conjugal rights, which, if written by petitioner would have been evidence of her lack of sincerity, were admissible against her on it being proved that they were written in pursuance of an object common to petitioner & her mother.—THOMAS *v.*

3850a. —— **Following letters.**]—Letters following a letter written " without prejudice " should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters are open.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. *v.* CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

3860. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3889. *Add. Annotation :—As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

3902. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

3907. *Add. Annotation :—As to* (3) **Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

3911. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Trafford *v.* Thrower (1929), 45 T. L. R. 502. **Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

3914. After this case add " *See, also*, HIGHWAYS, Nos. 355a, 355b."

3919a. —— **To prove state of premises.**]—DOE d. FENTON *v.* BUTCHER (1847), 9 L. T. O. S. 82.

3921. After this case add :—

-.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (4).

3932. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3933. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3934. *Add. Annotation :*—**Consd.** United States, Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3935a. —— **Dimensions & relative proportions of subject-matter.**]—(1) Clearly a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, & cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established.

(2) The extent to which & the processes by which an accurate topographic plan can be produced from a pictorial delineation of a scene are matters of common knowledge could hardly be said, though such questions have long occupied the attention of men of science (LORD MERRIVALE, P.).—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632 ; 100 L. J. P. C. 73 ; 144 L. T. 601 ; 47 T. L. R. 245 ; 18 Asp. M. L. C. 196, P. C.

3959. *Add. Citation :*—130 L. T. 445.

THOMAS (1931), 31 S. R. N. S. W. 159 ; 48 N. S. W. W. N. 21.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 7.—B.

3843 ii. *S P.* MERRY *v.* MACHIN (1926), 47 N. L. R. 236.—**S. AF.**

l i. —— *Subsequent correspondence on same subject.*]—In order to render letters written " without prejudice " inadmissible as evidence it must appear that there was a dispute or negotiations pending between the parties & that the letters were written *bonâ fide* with a view to its settlement. Letters written " without prejudice " protect subsequent correspondence on the same subject-matter.—MCLEOD *v.* PEARSON, [1931] 3 W. W. R. 4 ; 4 D. L. R. 673.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 11.

3870 i. *Admissibility.*]—*Held :* a telegram received by pltf. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—ADAMSON *v.* VACHON (Sask.) (1912), 22 W. L. R. 494.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 12.

q i. —— ——.]—Will proved before a notary public, & recorded during the lifetime of testator, properly admitted in evidence.—MURRAY *v.* DUFF (1895), 33 N. B. R. 351.—**CAN.**

sd. *Necessity for production of.*]—Where pltf.'s counsel in opening his case stated it as a question of legitimacy, & that deft. claimed under a will, & the defence was conducted without the production of the will, as if the statement of the counsel had rendered that unnecessary :—*Held :* it ought to have been produced.—DOE d. BREAKEY *v.* BREAKEY (1846), 2 U. C. R. 349.—**CAN.**

PART IV. SECT. 15.

a i. —— ——.]—The maps & surveys made in India for revenue purposes are official documents prepared by competent persons & with such publicity & notice to persons interested as to be admissible as valuable evidence of the state of things at the time they were made.—RAI BAHADUR RADHA KISHUN *v.* SHYAM DAS (1934), I. L. R. 13 Pat. 51.—**IND.**

sa. *Necessity for evidence of nature of plan.*]—A plan will not be admitted where no evidence is called to show what it really was, or that it was a certified copy of a plan deposited in the Crown Land Office.—CORMIER *v.* LEBLANC, [1935] 2 D. L. R. 803 ; 9 M. P. R. 164.—**CAN.**

PART IV. SECT. 17.

sb. *Reconstruction of crime.*]—In the course of a culpable homicide trial arising out of the shooting by the accused, a warder, of one of a gang of convicts in his charge, the Crown tendered in evidence, through the photographer, photographs of the scene of the shooting taken two days afterwards & showing a partial reconstruction of the incident. The evidence was objected to :—*Held :* the photographs were not admissible.—R. *v.* PRETORIUS (1930), 51 N. L. R. 352. —**S. AF.**

sd. *Photograph of body of murdered person.*]—Photographs of the body are admissible against one accused of murder.—R. *v.* O'DONNELL, [1936] 2 D. L. R. 517 ; 65 Can. C. C. 299.—**CAN.**

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held :* not admissible to prove the extent of the lands he was employed to survey.—R. *v.* PRICE BROTHERS & CO., [1925] 3 D. L. R. 595 ; *revsg.*, [1924] 3 D. L. R. 817.—**CAN.**

PART IV. SECT. 20.

3962 i. *Accounts—Carbon copies—Whether books within County Courts Act*, 1913, *s.* 138.]—*Qu. :* whether carbon copies of slips showing an account for goods alleged to have been sold & delivered are " books " within sect. 138 of County Courts Act, R. S. M., 1913, c. 44.—FARGEY *v.* HOLYK, [1929] 3 D. L. R. 682 ; 2 W. W. R. 204 ; 38 Man. L. R. 220.—**CAN.**

q i. —— ——.]—*Held :* a certificate of guardianship was not a public or other official book, register or record within sect. 35 of Evidence Act, & an entry therein relating to the age of a minor was not in itself admissible in evidence to prove the age.—SAID-UN-NISSA BIBI *v.* RUQAIYA BIBI (1930), I. L. R. 53 All. 428.—**IND.**

se. *Certificate of weighmaster.*]—*Held : primâ facie* evidence only of weight at the time of weighing.—TENOLD & TANNAS *v.* CANADIAN PACIFIC RY. CO., [1927] 3 D. L. R. 695 ; [1927] 2 W. W. R. 491 ; 33 Can. Ry. Cas. 86 ; 21 Sask. L. R. 665.—**CAN.**

sg. *Resolution of Bar Association.*]—In order to enable a ct. to admit in evidence a resolution of a Bar Association it is necessary to establish that it was passed at a meeting specially & properly convened for the purpose, which implies that the meeting should have been convened after reasonable notice in the manner prescribed by the regulations of the Association, &, in the absence of any regulations on the subject, personal notice to all the available members of the Association, so that they may have proper opportunity to attend the meeting & to express their views thereat.—CHATUR BHUJ *v.* CROWN (1930), I. L. R. 12 Lah. 385.—**IND.**

Part V.—Witnesses.

3975a. ——.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. *v.* MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

3980a. —— —— **Examination by judge in private—Illegal.**]—The examination of a child witness by the judge in private in order to ascertain whether the witness was capable of understanding the nature of an oath is illegal & is sufficient to invalidate a conviction.—R. *v.* DUNNE (1929), 99 L. J. K. B. 117; 143 L. T. 120; 21 Cr. App. Rep. 176; 29 Cox, C. C. 149, C. C. A.

4013. *Add. Annotations :—As to* (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; Rowell *v.* Pratt, [1936] 2 K. B. 226.

4014. *Add. Annotation :—As to* (1) **Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4015. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4019. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4027. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4028. *Add. Annotations :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76.

4029. *Add. Annotation :*—**Apld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4030. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4077. *Add. Annotations :*—**Apprvd. & Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

4085a. Return to Potato Marketing Board—Agricultural Marketing Act, 1931 (c. 42), s. 17 (2).]—Applt. brought an action against resp. to recover the price of certain potatoes sold & delivered to resp. Resp. counter-claimed damages, on the ground that applt. had agreed to grow 9½ acres of royal kidney potatoes, & to deliver the whole crop to resp. at a fixed price, but that, in breach of his contract, applt. had not delivered to resp. the whole product of the 9½ acres, but had wrongfully sold part thereof to other buyers, at a price higher than that at which he had contracted to sell to resp. For the purpose of proving that applt. had planted only 9½ acres with royal kidney potatoes, resp. subpœnaed the secretary of the Potato Marketing Board to produce the return made by applt. showing the total acreage of potatoes planted on his land. The county ct. judge refused to make an order for the production of the return, on the ground that it was a privileged document, which need not be produced, &, after hearing evidence, he gave judgment for applt. On appeal, his judgment was set aside by the Ct. of Appeal (by a majority), & a new trial ordered, for the reason that Agricultural Marketing Act, 1931 (c. 42), s. 17, did not expressly alter the common law whereby material evidence of this kind could not properly be excluded :—*Held :* (1) on a true construction of the whole of sect. 17 of the Act of 1931, the return in

PART V. SECT. 1, SUB-SECT. 1.—A. (a).

3974 iii. ——.]—New trial ordered in an action for negligence, on the ground that the trial judge had not expressly directed the jury that the law required that the case should not be decided on the testimony of the infant pltf., seven years old, who was not sworn, unless it was corroborated by some other material evidence; although he had warned the jury to consider her testimony very carefully.—ROBINSON *v.* BURNS & CO., LTD. & CHURCH, [1928] 1 D. L. R. 610; [1928] 1 W. W. R. 76; 23 Alta. L. R. 170.—**CAN.**

3974 iv. ——.]—" Other material evidence " within the requirement of Alberta Evidence Act, s. 19, that the unsworn testimony of a child of tender years must be corroborated, means evidence material to the issue which must be sustained by the party on whose behalf the child's evidence is adduced; therefore, where that issue is negligence, it means evidence relating to the alleged negligence. The evidence relied on as corroborative in the present case did not go so far as to touch the question of negligence.—CUTHBERTSON *v.* LETHBRIDGE, [1928] 2 D. L. R. 562; [1928] 1 W. W. R. 815; *revsd.*, [1929] 4 D. L. R. 1052; S. C. R. 176.—**CAN.**

3976 ii. ——.]—A child of ten said, " I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol ":—*Held :* this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—SPOONER *v.* TAYLOR, [1926] S. A. S. R. 396.—**AUS.**

3979 iv. —— —— *Canada Evidence Act, s.* 16.]—SANKEY *v.* R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—**CAN.**

3979 v. —— ——.]—R. *v.* FITZPATRICK, [1929] 1 D. L. R. 806; 1 W. W. R. 393; 51 Can. Crim. Cas. 146; 40 B. C. R. 478.—**CAN.**

3979 vi. —— ——.]—A witness, although only five years & about nine months old, found competent to take the oath :—*Held :* therefore, it was the clear duty of the ct. to administer the oath.—STRACHAN *v.* MCGINN, [1936] 1 W. W. R. 412; 50 B. C. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

g (p. 390) i. —— *Agent conducting case.*]—An agent conducting a case in the Burgh police ct. is a competent witness in the cause.—CAMPBELL *v.* COCHRANE, [1928] S. C. (J.) 25.—**SCOT.**

p (p. 391) i. ——.]—A prosecutor who has conducted a preparatory examination in a magistrate's ct. is a competent witness for the Crown at the trial.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sg. *Juryman in first action—On hearing of new trial.*]—At the hearing of a new trial, a juryman in the first action was called to give evidence as to what he saw whilst on a view with his fellow jurymen. His evidence was rejected on the ground that having been a juryman in the first action he was not competent to give evidence at the new trial :—*Held :* the witness was competent to give evidence of what he actually saw & observed provided the evidence was otherwise admissible.—MACKAY *v.* ELIAS (1928), 28 S. R. N. S. W. 340; 45 N. S. W. W. N. 86.—**AUS.**

4001 i. —— *Solicitor.*]—A solr. is a competent witness for his client, &, when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

1 i. —— ——.]—ANDREWS *v.* HOPKINS, [1932] 3 D. L. R. 459; 5 M. P. R. 7.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ——.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—R. *v.* HALPIN (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ——.]—The refusal " to answer any question touching the case " in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re* ASKWITH (1899), 31 O. R. 150.—**CAN.**

question was a privileged document, & need not be produced; (2) on the assumption that the county ct. judge was wrong in refusing to order production of the return, this was not a case for granting a new trial, as there was no evidence of any substantial wrong or miscarriage of justice.

Per Lord MAUGHAM: There are doubtless cases where leave to appeal should be granted only on the terms that applt. agrees to pay the costs of resp. in any event, but it may well be doubted whether that is right in a case where the Ct. of Appeal by a majority is reversing the decision of the trial judge.—ROWEALL *v.* PRATT, [1937] 3 All E. R. 660; 106 L. J. K. B. 790; 157 L. T. 369; 53 T. L. R. 982; 81 Sol. Jo. 765, H. L.

4130. *Add. Annotation:*—**Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

4148. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4161a. —— **Acting for partner.**]—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him:—*Held:* the relation of solr. & client existed between them, & the communications were privileged.—BEAMISH *v.* OWENS (1846), 7 L. T. O. S. 66.

4190. *Add. Annotation:*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4192. *Add. Annotation:*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4199. *Add. Annotation:*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

4201. *Add. Annotation:*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4213a. —— —— ——.]—(1) Communications passing between a solr. & a prospective client with a view to the client retaining the solr. on professional business are privileged from disclosure, even if the solr. does not accept the retainer.

(2) Conversations between a solr. & client relating to the business of obtaining a loan for the deposit on the purchase of real estate are privileged from disclosure, as the business is professional business within the ordinary scope of a solr.'s employment.

(3) Where the relation of solr. & client is established, any conversation passing between them, to be protected from disclosure, must be fairly referable to that relation; it must be for the purpose of giving or receiving professional advice.—MINTER *v.* PRIEST, [1930] A. C. 558; 99 L. J. K. B. 391; 143 L. T. 57; 46 T. L. R. 301; 74 Sol. Jo. 200, H. L.

Annotation:—*Generally*, **Consd.** Harris *v.* Harris (1930), 47 T. L. R. 15.

4217. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4218a. —— ——.]—MINTER *v.* PRIEST, No. *ante.*

4228a. —— —— ——.]—Pltf., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel pltf.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—HARRIS *v.* HOLLER (1849), 19 L. J. Q. B. 62.

Annotation:—**Refd.** Cox *v.* Bockett (1865), 18 C. B. N. S. 239.

4237a. —— ——.]—Communications made by one of the spouses pending the possible institution of proceedings for divorce to a solr. who has hitherto acted as their common adviser are within the scope of professional privilege. In subsequent matrimonial proceedings in a ct. of summary jurisdiction between the spouses, the solr. is not an admissible witness to prove a statement made by one of them involving an admission of adultery.—HARRIS *v.* HARRIS, [1931] P. 10; 99 L. J. P. 149; 144 L. T. 159; 95 J. P. 1; 47 T. L. R. 15; 74 Sol. Jo. 755; 28 L. G. R. 641; 29 Cox, C. C. 189.

4259. *Add. Annotation:*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4269a. Admission of adultery.]—HARRIS *v.* HARRIS, No. 4237a, *ante.*

4275. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4286. The first line of the text of the paragraph should read "Where at law the party calls."

4305. *Add. Annotation:*—**Consd.** Watt *v.* Longsdon, [1930] 1 K. B. 130.

4409. *Add. Annotation:*—**Refd.** Rowell *v.* Pratt, [1937] 3 All E. R. 660.

4420. *Add. Annotation:*—*As to* (1) **Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

4428a. —— **Application to set aside—Whether "in" action.**]—*Held:* an application by a person, who had been served by one of the parties to an action with a *subpœna duces tecum*, to set the subpœna aside was an application "in" the action within R. S. C., Ord. 52, r. 2, although appct. was not a party to the action, & the application could not be heard.—R. *v.* INVESTORS' REVIEW, LTD., *Ex p.* WHEELER, [1928] 2 K. B. 644; 97 L. J. K. B. 802; 140 L. T. 43; 44 T. L. R. 724; 72 Sol. Jo. 570, D. C.

4461a. ——.]—The possession of a solr. is, for the purpose of a *subpœna duces tecum*, the possession of the client.—JORDAN *v.* ROBERT (1862), 7 L. T. 68.

PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*]—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—R. *v.* MCINTYRE (1909), 7 E. L. R. 50.

PART V. SECT. 2, SUB-SECT.

sh. *Privilege taken away by provincial statute—Right to claim special privilege under Canada Evidence Act, s. 5—Witness must have objected to giving evidence.*]—R. *v.* HARCOURT, [1930] 3 D. L. R. 59; 53 Can. C. C. 156.—**CAN.**

PART V. SECT. 2, SUB-SECT. 9.

c i. ——.]—There is no protection afforded by the Evidence Act to a doctor as such. When a doctor is called to give evidence he is in the same position as any other person not exempted by the Act. It is his duty to assist the ct. in every way possible & to disclose to the ct. all the information in his possession relevant to the matter in issue. He cannot claim privilege, on the allegation that the relationship of doctor & patient is confidential.—HARDLESS *v.* HARDLESS (1932), I. L. R. 55 All. 134.—**IND.**

PART V. SECT. 2, SUB-SECT. 0.

sk. *Whether Act of* **1696**, *c.* **25**, *applies in questions between.*]—GALLOWAY *v.* GALLOWAY, [1929] S. C. 160.—**SCOT.**

4472a. —— Court not entitled to impound.]—*Re* TILL, *Ex p.* PARSONS (1871), 19 W. R. 325.

4477. *Add. Annotations :*—**Refd.** *Re* Cameron's Coalbrook, etc. Ry. (1859), 25 Beav. 1; Lockett *v.* Cary (1864), 3 New Rep. 405; Fowler *v.* Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

4481. *Add. Annotation :*—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4521a. —— Put in witness-box but not examined.]—*Held :* his costs of travelling & attending the trial ought to be allowed.—FLOWER *v.* GARDNER (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.

4586. *Add. Annotation :*—**Refd.** The Massilia, [1926] P. 180.

4594a. —— Witness not called.]—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary :—*Held :* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

4649. For " (*circa* 1660) " read " (*circa* 1670)."

4722. *Add. Annotation :*—**Refd.** R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

4729. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4729a. Whether obligations of oath understood—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

4734. *Add. Annotation :*—**Consd.** Lala Indar Prasad *v.* Lala Jagmohan Das (1927), 43 T. L. R. 536.

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

sa. *Notes made by police officer.*]—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—HINSHELWOOD *v.* AULD, [1926] S. C. (J.) 4.—**SCOT.**

sb. *When amounting to contempt of court.*]—B., the Acting Secretary of the Dried Fruits Board of South Australia, was served with a *subpœna duces tecum* to produce certain minute books of the Board at the hearing of an action against the Minister for Agriculture for the State of South Australia & others. Acting on the direction of the Minister, B. refused to bring the books into ct., but produced a certificate by the Minister that the disclosure of the books would be contrary to public policy & prejudicial to the public interest :—*Held :* the order to bring the books into ct. as directed by the *subpœna* being made by a competent ct., the refusal to obey that order was a contempt of ct.—JAMES *v.* COWAN, *Re* BOTTEN (1929), 42 C. L. R. 305.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. —— *Expert witness.*]—*Held:* a medical witness could not refuse to give evidence because his fees had not been paid.—R. *v.* HUBLEY (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—D. (a).

4548 v. —— ——.]—Where there was sufficient evidence before the trial judge to warrant him in finding that deft. came from Cuba to St. John, not merely because he was a necessary witness & wished to testify at a trial on his own behalf, but that he would have come as he did had there been no trial of the cause expected :—*Held :* deft. was not entitled to be paid travelling expenses under such conditions.—PURITY ICE CREAM CO. *v.* O'CONNELL (1924), 52 N. B. R. 422.—**CAN.**

4548 vi. —— ——.]—A witness, who resides abroad, is entitled to the expenses of being brought before the ct. to give evidence & also to the subsistence money due during the period of detention. The same principle applies to the case of a party whose evidence is reasonably necessary & material for the purpose of his case & on his behalf.—LANGLEY *v.* D'ARCY (1929), I. L. R. 54 Bom. 62.—**IND.**

1 i. —— *Whether applicable to Royal Commission.*]—The right of a witness in a civil proceeding to prepayment of conduct money & expenses to & from where he is ordered to be in attendance is well settled, & the same principle which applies to a civil proceeding in one of H.M. Superior cts. of record must *a fortiori* apply to a Royal Commission in the absence of express statutory power.—R. *v.* MCADAM (1927), 50 Can. Crim. Cas. 31; 39 B. C. R. 101.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—F.

b i. —— *Award silent as to fees of witnesses—Power to grant fees vested in arbitrator.*]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary.—*Re* GALT BROS. & BURNABY (1928), 39 B. C. R. 470; [1928] 1 W. W. R. 798.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (a).

sg. *Quebec—Application of common law.*]—The law applicable in Quebec to the privilege from arrest of witnesses is the English Common Law of the date of the Royal Proclamation of 1763.—QUEBEC LIQUOR COMMISSION *v.* BASTIEN, [1933] 1 D. L. R. 514; 59 C. C. C. 39.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (d).

sz. *Defendant without notice of privilege.*]—An action for false arrest does not lie for the arrest, under a *capias*, of a person who was a witness in another suit.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989; 60 N. S. R. 329.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. *General rule—Clear case must be made out.*]—DESROCHERS *v.* QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—**CAN.**

4649 iv. ——.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence :—*Held :* such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—EBRAHIM MAMOOJEE PAREKH *v.* R. (1926), I. L. R. 4 Ran. 257.—**IND.**

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

e i. ——.]—The fact that a deponent, who on being sworn raised his right hand, did not kiss or touch the Bible held not a ground for holding that the affidavit was not validly sworn.—BOURGOUIN *v.* ROCAN (Man.), [1929] 4 D. L. R. 1006; 3 W. W. R. 399.—**CAN.**

sm. *Oath in English—Subsequent use of interpreter.*]—The fact that during the examination of a Crown witness whose native tongue was a foreign language it was found advisable to make use of an interpreter :—*Held :* not to lead necessarily to the conclusion that he had not understood the nature of the oath which had been administered to him in the English language.—R. *v.* DEFILLIPI, [1932] 1 W. W. R. 545; 26 Alta. L. R. 134; 57 C. C. C. 401.—**CAN.**

sp. *Oath in India—Unsatisfactory.*]—The oath administered in Indian cts. to Indian witnesses is of an unsatisfactory nature.—EMPEROR *v.* UJAGAR (1933), 1. L. R. 55 All. 639.—**IND.**

PART V. SECT. 5, SUB-SECT. 2.

4759 ii. —— —— *Two plaintiffs witnesses.*]—*Semble :* when there are two pltfs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE *v.* MCINTYRE, [1925] 2 W. W. R. 581.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.—A.

sb. *Evidence of foreign witness—When interpreter allowed.*]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF *v.* PONOMOROFF, [1925] 3 W. W. R. 673.—**CAN.**

—— —— *In criminal trials.*]—See CRIMINAL LAW, Vol. XIV., p. 264.

—— ——.]—In an action for revocation of probate the party propounding the will, being obliged to call as a witness one of the attesting witnesses whose evidence was adverse to the plea of due execution, was held to be entitled to cross-examine the witness as a witness of the ct.—OAKES *v.* UZZELL, [1932] P. 19; 100 L. J. P. 99; 146 L. T. 95; 47 T. L. R. 573; 75 Sol. Jo. 543.

4815b. —— **Witness called to produce document.**]—A petitioning creditor called for the mere purpose of producing such a document cannot, although he has been sworn, be cross-examined by deft.—REED *v.* JAMES (1815), 1 Stark. 132, N. P.

4816. *Add. Annotations:—As to* (2) **Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Expld.** Minter *v.* Priest, [1929] 1 K. B. 655. **Consd.** Minter *v.* Priest, [1930] A. C. 558.

4816a. —— **Intention to discredit witness.**]—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

4831a. —— ——.]—There being two claimants as the eldest surviving son of testator's cousin J. referred to in testator's will, one being pltf. in the action & the other a co-deft. with X., on the trial of the issue which of them occupied that position:—*Held:* cross-examination on behalf of X. of witnesses called by her co-deft. could not be allowed.—*Re* WAGSTAFF, WAGSTAFF *v.* JALLAND, [1907] 2 Ch. 35; 76 L. J. Ch. 369; 96 L. T. 605; 23 T. L. R. 426; *on appeal*, [1908] 1 Ch. 162, C. A.

4831b. —— ——.]—Deft. S. performed a minor operation on pltf. in deft. council's hospital. After she had left the hospital pltf. complained of pains, & upon examination by her doctor she was found to be suffering from pyelitis, & a wad of surgical gauze was found in & removed from her body. Pltf. brought an action against S. for breach of duty & neglect to remove the plugging after the operation, & against deft. council for breach of duty & negligence arising out of a failure to nurse her properly. The negligence alleged against the council was that the nurses in their hospital had failed to remove the plugging, had failed to observe or report to the doctor in charge certain symptoms in pltf.'s condition, & had failed to take her temperature on the morning on which she had left the hospital. At the hearing counsel for S. put leading questions to witnesses for deft. council:—*Held:* the causes of action against the two defts. were quite distinct & arose to a substantial extent out of different facts, & counsel for the one deft. was entitled to cross-examine a witness for the other.—DRYDEN *v.* SURREY COUNTY COUNCIL & STEWART, [1936] 2 All E. R. 535; 80 Sol. Jo. 656.

4834a. —— ——.]—OAKES *v.* UZZELL, No. *ante*.

4859. *Add. Annotations:*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249. **Refd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

4859a. As to previous accidents—Running down case.]—Where a deft. in a running-down action is charged with negligence in a particular case it is not competent to ask him a question to obtain an answer which would show that he has been negligent on some other occasion or occasions. Much less is it competent to ask him a question which merely shows that he has been involved in some other accident for which it is not suggested that he was to blame. On the other hand, a question properly directed so as to test his credibility as a witness, or his skill or competence as a driver, if these matters are in issue, is not to be excluded merely because it shows that he has previously been involved in one or more other accidents.—JAMES *v.* AUDIGIER (1932), 48 T. L. R. 600; 76 Sol. Jo. 528, D. C.; *affd.*, 49 T. L. R. 36.

4859b. —— —— **Time for objection.**]—The Ct. of Appeal dismissed this appeal by deft. from the decision of a Div. Ct. as to the permissibility of certain questions, put to deft. in a running-down case, as to another accident which he had had. The ground of the dismissal was that no formal objection to the questions had been taken at the time.—JAMES *v.* AUDIGIER (1932), 49 T. L. R. 36, C. A.

4869a. —— —— ——.]—If a witness called for pltf. be asked, on the part of deft., whether pltf. had any conversation with him on a particular subject, & the witness state anything that pltf. said on that subject, pltf.'s counsel may examine as to every part of the same conversation; but, if the witness state that pltf. had no such conversation with him, this does not let in pltf.'s counsel to examine as to anything else that pltf. said.—DICAS *v.* BROUGHAM (LORD) (1833), 6 C. & P. 249, Ex. Ch.; 1 Mood. & R. 309; 3 State Tr. N. S. 569; 172 E. R. 1228, N. P.

4875. *Add. Annotation:*—**Distd.** R. *v.* Harris, [1927] 2 K. B. 587.

4884a. —— —— **Book written by witness.**]—A book written by a witness cannot be put in as part of his examination-in-chief, but the witness may be cross-examined on its contents.—R. *v.* ALLAWAY (1922), 17 Cr. App. Rep. 15, C. C. A.

4886a. —— ——.]—During a trial, counsel for the prosecution cross-examined the accused on the contents of an alleged document. The document was not produced, but counsel

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PART V. SECT. 6. SUB-SECT. 2.—B.

4830 i. —— *Other defendant & his witnesses.*]—On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—MILLAR *v.* B. C. RAPID TRANSIT CO., LTD., [1926] 1 D. L. R. 1171; [1926] 1 W. W. R. 543; 36 B. C. R. 345.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—D.

4839 vi. ——.]—The testimony of a witness may not be contradicted in respect of a matter relevant only as affecting his credibility. Evidence Act, ss. 45, 46, requires that the statement to be contradicted shall be relative to the subject-matter of the cause, &, therefore, in an action where a wife claims ownership of certain property, evidence of statements made by the husband to a third party indicating that he owned the property are not admissible to contradict the husband's testimony, & should not be acted upon in determining the question of ownership.—ZWICKER *v.* YOUNG, [1929] 1 D. L. R. 602; 60 N. S. R. 233.—**CAN.**

4839 vii. ——.]—In an action for libel a pltf. may not be cross-examined, in mitigation of damages, about violent & abusive language used by him on occasions & about people, having no connection with the libel sued on.—JUDD *v.* SUN NEWSPAPER, LTD. (1929), 30 S. R. N. S. W. 294; 47 N. S. W. W. N. 96.—**AUS.**

PART V. SECT. 6, SUB-SECT. 4

4874 iii. ——.]—*Re* HAYES WILLIAMS (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—**AUS.**

for the prosecution, believing that the original would be in his hands before the end of the trial, suggested to the jury that the original was in existence:—*Held:* such cross-examination, where the original document was in fact incapable of being produced, was irregular & invalidated the conviction.—R. *v.* ANDERSON, (1929), 142 L. T. 580; 21 Cr. App. Rep. 178; 29 Cox, C. C. 102, C. C. A.

4902. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4997. *Add. Annotation:*—**Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

5022. *Add. Annotation:*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5023. *Add. Annotation:*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

5027. *Add. Annotation:*—**Consd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5050. For existing citations substitute "[1916] W. N. 47."

5099. *Add. Annotation:*—**Refd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

5107. The second line of this paragraph should read "out to be unfavourable to the party calling him is not."

5112. *Add. Annotation:*—**Refd.** R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

5140. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5182. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5197. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5199. *Add. Annotation:*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

PART V. SECT. 6, SUB-SECT. 6.—C.

4899 i. *Production of document—Necessity for—Document written by witness.*]—Counsel for defts., in cross-examining pltf., asked him if certain things happened as set out in a letter of his & the reply thereto. At the close of pltf.'s case, counsel for deft. stated that he did not intend to call evidence, & thereupon counsel for pltf. asked that deft. be compelled to put the letters in evidence. The request was refused:—*Held:* the judge was right in not compelling deft. to put the letters in evidence.—WALTON *v.* DEATON (1931), 31 S. R. N. S. W. 393; 48 N. S. W. W. N. 152.—**AUS.**

PART V. SECT. 6, SUB-SECT. 7.—D.

4955 iii. —— *Although inadmissible—Because produced too late.*]—JEWAN LAL DAGA *v.* NILMANI CHAUDHURI (1927), L. R. 55 Ind. App. 107.—**IND.**

sk. *Statement by deceased—Not read over or signed.*]—A statement by a deceasod person of the circumstances leading to his death recorded by a witness but not read over to or signed by such deceased person is admissible in evidence as a record of what deceased said at the time from which the witness could refresh his memory.—*Re* KRISHNAMA NAICKEN (1930), I. L. R. 54 Mad. 678.—**IND.**

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. ——.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. *v.* ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—G.

5012 i. —— *By jury.*]—O'BRIEN *v.* O'BRIEN (1888), Cout. Dig. 554, 992; Cam. Cas. 282.—**CAN.**

sc. *Whether document admissible as evidence.*]—The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—YOUNG *v.* DENTON, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—**CAN.**

PART V. SECT. 6, SUB-SECT. 8.

e i. —— *Resulting presumption.*]—When a deft. refuses to give evidence upon matters at issue, & particularly within his knowledge, the presumption is raised that such facts do not exist.—SHANKLIN *v.* SMITH (1932), 5 M. P. R. 204; *affd.*, [1933] S. C. R. 340; 4 D. L. R. 815.—**CAN.**

5020 i. *Refusal to answer questions—Penalties—Punishment for contempt—Power of magistrate.*]—*Re* AYOTTE (1905), 15 Man. L. R. 156.—**CAN.**

5020 ii. ——.]—Deft. was committed for contempt of ct., for not answering a question asked by the magistrate:—*Held:* the magistrate had power to commit deft.—R. *v.* ENDLER (1909), 7 E. L. R. 150, 151, 152.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

5021 vi. ——.]—BRETT *v.* BRETT (No. 1), [1937] 2 W. W. R. 689.—**CAN.**

5027 i. *Grounds for refusing.*]—In an arbn. under Workmen's Compensation Acts where evidence is known to be available & is not called on the arbn., leave will not be granted by an appeal to ct. to take further evidence.—GATES *v.* WILLIAMS, [1928] S. A. S. R. 252.—**AUS.**

PART V. SECT. 7, SUB-SECT. 2.

n i. —— *Recall by jury.*]—The jury in a criminal case is entitled after it has retired to consider its verdict, to return to ct., & have a witness recalled & questioned.—A.-G. *v.* MCDERMOTT, [1933] I. R. 513.—**IR.**

PART V. SECT. 7, SUB-SECT. 3.—A.

5054 ii. —— ——.]—STERLING TRUSTS CORPN. *v.* MELNECHUK (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—**CAN.**

5059 i. *Whether party entitled to split evidence into two parts—As part of his case—& partly as evidence in reply.*]—Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—HARVEY *v.* CANADIAN PACIFIC RY. CO. (1885), 3 Man. L. R. 266.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A.

5082 ii. —— ——.]—The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—C. (b)

sd. *Statement made on examination for discovery.*]—*Held:* a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—B.

k i. —— *Questions tending to show bad character—Directed to prove issue in case.*]—Evidence Amendment Act, 1925, s. 12 (*c*), provides that a person charged & called as a witness in pursuance of this Act shall not be asked, & if asked, shall not be required to answer, any question tending to show that he is of bad character:—*Held:* questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of issues, are not inadmissible, because they may also tend to show his bad character.—R. *v.* BAXTER, [1927] S. A. S. R. 321.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (a).

n i. —— *To shake evidence given by witness.*]—Evidence of a previous statement inconsistent with the testimony of a witness is not admissible as evidence on the issues to be decided in the action, but can only be looked to to neutralise or cut down the evidence given by the witness.—HAMMER *v.* S. HOFFNUNG & CO., LTD. (1928), 28 S. R. N. S. W. 280; 45 N. S. W. W. N. 71.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (b).

5168 i. *Letter written by witness.*]—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction:—*Held:* not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5309a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

5318. *Add. Annotation:*—Apld. Palin *v.* Ponting, [1930] P. 185.

5320. *Add. Annotation:*—Apld. Palin *v.* Ponting, [1930] P. 185.

5388a. —— ——.]—OAKES *v.* UZZELL, No. 4815a, *ante.*

Part VI.—Expert Evidence.

5403a. Limitation of volume of evidence.]—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; *on appeal*, [1928] Ch. 235, C. A.; [1929] A. C. 344, H. L.

5403b. *S. P.* A.-G. *v.* RINGWOOD RURAL DISTRICT COUNCIL (1928), 92 J. P. 65; 26 L. G. R. 174.

5403c. Limitation of number of expert witnesses.]—In cases involving expert evidence only two experts are to be heard on each side, unless the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN. (1926), 71 Sol. Jo. 142; *subsequent proceedings*, [1928] Ch. 31.

PART V. SECT. 9, SUB-SECT. 1.

5209 i. *Whether necessary.*]—MCNAB *v.* COWARD, [1925] 4 D. L. R. 712; *affg.*, [1925] 1 D. L. R. 741.—**CAN.**

5211 i. *What constitutes corroboration—Whether letter written by witness—About time of event in question.*]—*Held:* a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5211 ii. —— *Evidence of fact essential to success of party.*]—The corroboration required by Evidence Act, R. S. O. 1914, c. 76, s. 12, must be of something essential to be shown before pltf. can, upon his own evidence, obtain a decision in his favour upon the cause of action he is setting up. Evidence which is consistent with two views corroborates neither. The corroborating evidence must be of some fact essential to the success of pltf., though it is not required that all such facts be corroborated.—ELGIN *v.* STUBBS, [1928] 2 D. L. R. 838; 62 O. L. R. 128.—**CAN.**

s i. *Of telephone conversation.*]—A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

PART V. SECT. 9, SUB-SECT. 2.

5213 iv. ——.]—The corroborative evidence required by Evidence Act, R. S. N. S., 1923, s. 37, need not establish pltf.'s whole case, but it must prove more than a suggestion of the genuineness of his claim.—ROCKOLA *v.* NOVA SCOTIA TRUST CO. (1937), 11 M. P. R. 298.—**CAN.**

PART V. SECT. 9, SUB-SECT. 4.

c (p. 494) i. ——.]—The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of pltf., is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon pltf., & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative of the deceased person.—TAMARA TE ANGIANGI *v.* TREADWELL, [1926] N. Z. L. R. 693.—**N.Z.**

c (p. 494) ii. ——.]—PIEPER *v.* ZINKANN (1927), 60 O. L. R. 443.—**CAN.**

c (p. 494) iii. ——.]—B. made a claim against the estate of C., deceased, for services rendered, which was allowed by the surrogate judge of probate:—*Held:* setting aside the decision with costs, under R. S. c. 107, the evidence of B. was inadmissible in support of his claim.—*Re* CONDON ESTATE (1896), 28 N. S. R. (16 R. & G.) 208.—**CAN.**

c (p. 494) iv. ——.]—*In re* MALLOWS, FLETCHER *v.* INTESTATE ESTATES CURATOR (1926), 29 W. A. L. R. 62.—**AUS.**

c (p. 494) v. ——.]—Although a trial judge ought not to disallow a claim against the estate of a deceased merely because the claimant's evidence is not corroborated, nevertheless he should examine such evidence with care, & even suspicion, & should not allow the claim unless completely satisfied of its truth.—JOHNSON *v.* BERRY, [1928] 4 D. L. R. 286; [1928] 2 W. W. R. 410; 22 Sask. L. R. 402.—**CAN.**

c (p. 494) vi. ——.]—*Re* LUTZ, [1928] 1 D. L. R. 72.—**CAN.**

c (p. 494) vii. ——.]—Where an agent accepted commission from both parties, & in consideration thereof his principal since deceased signed an agreement to pay the agent a reduced commission:—*Held:* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

c (p. 494) viii. ——.]—A son filed a claim against the estate of his deceased father for money alleged to have been advanced for a trip to England. Claimant alleged that he drew the money out of the bank & purchased an English draft out of the proceeds:—*Held:* corroboration necessary under Evidence Act, s. 37.—*Re* COOK, *Ex p.* COOK, [1932] 2 D. L. R. 805; 4 M. P. R. 492.—**CAN.**

c (p. 494) ix. ——.]—PAUL *v.* MYLES (1930), 2 M. P. R. 20.—**CAN.**

c (p. 494) x. ——.]—Evidence in corroboration of a claim against the estate of a deceased person required.—COSENS *v.* MCEWAN, [1933] 3 D. L. R. 794; *affd.*, [1934] 4 D. L. R. 802, P. C.—**CAN.**

c (p. 494) xi. ——.]—Under sect. 11 of Evidence Act, R. S. B. C., 1924, a party seeking to establish a claim against an estate is only required in order to succeed on his own evidence to adduce corroboration of something essential to the case to be proved by him; the sect. does not apply when the onus of proof which determines the issue rests upon the representative of deceased.—SHEPPARD *v.* TORONTO GENERAL TRUSTS CORPN., [1937] 2 W. W. R. 9.—**CAN.**

f (p. 495) i. —— *Claim made up of separate items.*]—GERARD *v.* HUDSON, [1928] 1 D. L. R. 839.—**CAN.**

PART V. SECT. 10, SUB-SECT. 2.—C. (a) iv.

f i. ——.]—CUVILLIER *v.* THIBODO (1849), 5 U. C. R. 328.—**CAN.**

PART VI. SECT. 1.

5402 iii. —— *Foreign law as to title.*]—On the question of ability to make title to foreign land, the foreign law is to be proved to the ct., & on that law, as proved, the ct. has to draw the proper conclusion. All that the expert called to prove the foreign law can do is to state the law which affects the documents of title in question; his opinion as to whether they have the legal effect of constituting title is not evidence.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE (No. 2), [1933] 3 W. W. R. 677; *affd.*, [1935] 1 W. W. R. 452.—**CAN.**

m. Read now "**5403c i.**"

n. Read now "**5403c ii.**"

o Read now "**5403c iii.**"

5403c iv. —— *Construction of Ontario Evidence Act, s. 10.*]—BUTTRUM *v.* UDELL, [1925] 3 D. L. R. 45; 57 O. L. R. 97.—**CAN.**

5403c v. —— *Waiver.*]—Sect. 10 of Alberta Evidence Act, R. S. A., 1922, which limits the number of witnesses entitled to give opinion evidence who may be called, deals with practice & procedure in a civil matter & so may be waived by the fact that a party takes no objection to the violation of its provisions at trial.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 3 W. W. R. 232; 4 D. L. R. 618.—**CAN.**

s. For "*Conflict of opinion as to value*" read "*Conflict of opinion—Duty of court—Conflict of opinion as to value.*"

s i. —— ——.]—HAY *v.* BAIN, [1925] 2 D. L. R. 948.—**CAN.**

s ii. —— ——.]—Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, "I doubt & cannot resolve

5407a. —— **Only medical witnesses—Not research student in toxicology.**]— NIGHTINGALE *v.* BIFFEN, HEWITT *v.* BIFFEN (1925), 18 B. W. C. C. 358, C. A.

5433. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

5452. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

5468. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 6.

5478. After this case add :—

——.]—*See, now,* R. S. C., Ord. XXXVIIa.

5479. *Add. Annotations :* — **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

Part VII.—Evidence by Affidavit.

5493. *Add. Citations :*—94 L. J. Ch. 73 ; 132 L. T. 540.

5523a. —— **Proceedings on which affidavit made no longer pending.**]—CATHOLIC PUBLISHING & BOOKSELLING CO., LTD. *v.* WYMAN (1863), 1 New Rep. 468 ; 7 L. T. 849 ; 11 W. R. 399.

5547a. —— ——.]—WARNER *v.* MOSSES, No. 6254, *post.*

5568. After this case add " *See, also,* PRACTICE, p. 306, Nos. 338, 339."

5570. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571a. ——.]—On the trial of a probate action in which a will was propounded in solemn form neither of the attesting witnesses could be called. An affidavit by one of them sworn for the purpose of obtaining probate in common form before the commencement of litigation was admitted as evidence of execution & the state of the will when executed.—PALIN *v.* PONTING, [1930] P. 185 ; 99 L. J. P. 121 ; 143 L. T. 23 ; 46 T. L. R. 310 ; 74 Sol. Jo. 234.

5626. *Add. Annotation :*—**Distd.** Earles Utilities, Ltd. *v.* Jacobs (1934), 51 T. L. R. 43.

5627a. —— **Witness not called.**]—Where a pltf. has filed affidavits & they were read to the ct. at the hearing of a motion for interlocutory relief, deft., when the action comes on for trial, is entitled, if the persons who made the affidavits are not called by pltf., to give evidence, to refer to their affidavits for the purpose of commenting on their testimony & calling attention to what he suggests are discrepancies in the evidence given by witnesses who were called for pltf. & that given in the affidavits of those who were not called.—EARLES UTILITIES, LTD. *v.* JACOBS (1934), 51 T. L. R. 43 ; 52 R. P. C. 72 ; *sub nom.* Practice Note [1934], W. N. 198.

5639a. —— **Affidavit of agent used by principal.**]—An affidavit of an agent cannot be used to prove a fact against his principal where he can himself be called ; but where the principal has used an affidavit of the agent in an

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the doubt because an expert also doubts."—BENNETT *v.* PEATTIE (1925), 57 O. L. R. 233.—**CAN.**

sg. *Weight of evidence.*]—WILLIAM HAMILTON MANUFACTURING CO. *v.* VICTORIA LUMBERING & MANUFACTURING CO. (1896), 26 S. C. R. 96.—**CAN.**

sh. ——.]—GUELPH WORSTED SPINNING CO. *v.* GUELPH CORPN., GUELPH CARPET MILLS CO. *v.* GUELPH CORPN. (1914), 30 O. L. R. 466 ; 18 D. L. R. 73 ; 5 O. W. N. 761.—**CAN.**

sj. ——.]—The law makes no distinction between the evidence given by experts & that given by ordinary witnesses : the testimony of experts must be appreciated & weighed by the cts. in the same manner as that of any other witness. A judgment would therefore be wrong, if based upon the sole fact that the successful party had a greater number of experts testifying on his behalf.—SHAWINIGAN ENGINEERING CO. *v.* NAUD, [1929] 4 D. L. R. 57 ; S. C. R. 341.—**CAN.**

sm. *Must speak from personal knowledge.*]—The evidence of a witness who does not speak from any special knowledge but from information derived from an entry in a confidential record not produced before the ct., is not admissible as expert evidence. —JAFFARUL HOSSAIN *v.* EMPEROR (1931), I. L. R. 59 Cal. 1046.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.

5406 i. *What witnesses may be heard —Nurse.*]—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings :—*Held :* admissible as an expert up to a certain point.—HEPENSTAL *v.* MERRITT (1895), 33 N. B. R. 91.—**CAN.**

a i. —— *Distance at which gun held.*] —R. *v.* PREEPER (1890), 22 N. S. R. 174.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.

e i. —— *Fingerprints.*]—Evidence of an expert as to identification by fingerprints is not conclusive evidence of a fact but is opinion to which the ordinary rules governing such evidence apply. With respect to fingerprints there is no statutory provision, similar to sect. 8 of Canada Evidence Act, R.S.C., 1927, respecting handwriting, which permits fingerprints to be used for the purpose of evidence *per se.*—R. *v.* DE'GEORGIO & SERVELLO, [1934] 3 W. W. R. 374, B. C.—**CAN.**

e ii. —— ——.]—In convicting an accused person on the evidence of a fingerprint expert, the ct. need not insist upon corroboration of the evidence, but the ct. must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence.—FAKIR MAHOMED *v.* EMPEROR (1935), I. L. R. 60 Bom. 187.—**IND.**

PART VII. SECT. 1.

sk. *As proof of settlement of action.*]—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—PULKRABEK *v.* PULKRABEK (Alta.), [1927] 4 D. L. R. 635 ; [1927] 3 W. W. R. 239.—**CAN.**

PART VII. SECT. 4, SUB-SECT 1.

r i. —— *County Courts Act, R. S. M.*, 1913 (*c.* 44), *s.* 138—*Effect of.*]—R. *v.* GUYOT, [1927] 1 D. L. R. 191 ; 36 Man. L. R. 178 ; [1926] 3 W. W. R. 584.—**CAN.**

PART VII. SECT. 6.

sl. *Affidavit on application for security for costs—Right to require production of documents—Relating to defence.*]—On a cross-examination on an affidavit in support of an application for security for costs, the deponent can be required, without an order by a judge to do so, to produce documents relating to the defence alleged in the affidavit, even though such cross-examination is held before the statement of defence is filed.—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sm. *Discretion of judge to order.*] ELSTON *v.* PURDY (1930), 2 M. P. R. 14. —**CAN.**

PART VII. SECT. 11, SUB-SECT. 2.—A.

sp. *Affidavit filed on rule nisi — Intituled differently from rule — Right to amend.*]—Where the heading of an affidavit, on which a rule *nisi* was obtained, differed from the heading of the rule *nisi*, the ct. gave leave for the affidavit to be amended so as to agree with the rule *nisi.*—*Ex p.* HIGGS, *Re* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 85.—**AUS.**

application to the ct., in which a particular fact is stated, the affidavit of the agent may be used as evidence of that fact.—JOHNSON *v.* WARD (1806), 6 Esp. 47; 170 E. R. 826.

5676a. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

5873a. —— ——.]—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return having expired.—*Re* TIERNEY (1855), 15 C. B. 761; 24 L. T. O. S. 260; 139 E. R. 625.

5880a. —— ——.]—*Re* TIERNEY, No. 5873a, *ante*.

5951a. —— **In material part of affidavit—Proof of time of erasure.**]—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re* BINGLE (1854), 15 C. B. 449; 2 C. L. R. 1793; 23 L. T. O. S. 177; 139 E. R. 500.

6052a. ——.]—ANON. (1839), No. 6108a, *post*.

6053a. —— **No commissioner available.**]—*Re* GROOM, No. 6066a, *post*.

6056. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6056a. —— ——.]—*Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re* GROOM (1869), 17 W. R. 589.

6081a. ——.]—*Re* STREET (1845), 2 C. B. 364; 135 E. R. 987.

.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

6083. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

UNITED ASSURANCE Jo. 353.

6092a —— ——.]—*Re* CRAWFORD (1847), 4 C. B. 626; 136 E. R. 653.

6096a. Italy—British minister.]—The ct. refused to direct the proper officer under Fines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re* DUNSANY (1849), 7 C. B. 119; 137 E. R. 49.

6108a. —— —— ——.]—The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

PART VII. SECT. 11, SUB-SECT. 5.—F.

5832 v. ——.]—In the absence of a statute or rule requiring a comr. for oaths or other officer entitled to take an affidavit to state in the *jurat* the official capacity in which he signed it, an affidavit is not rendered invalid because of the fact that the officer before whom it was taken did not add to his signature any designation of such capacity.—CAMERON-HUTT, LTD. *v.* MACMILLEN, [1933] 3 W. W. R. 241. —**CAN.**

PART VII. SECT. 11, SUB-SECT. 7.—B.

5904 i. *What is an interlocutory proceeding—Not an application for prohibition.*]—An application for prohibition is not an interlocutory motion; hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON, [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

ii. —— —— *Where source a corporation.*]—An affidavit which states that deponent has been informed by a certain incorporated co. is objectionable, because a corpn. being a purely legal entity is incapable of itself apprehending facts or giving information, & it can do so only by one or more of its officers, & such officer or officers should be mentioned.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 2 D. L. R. 777; 1 W. W. R. 198; 24 S. L. R. 290; 11 C. B. R. 227.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 1.—B.

6022 iii. —— ——.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—WILDE *v.* CROW (1861), 10 C. P. 406.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—A.

p i. —— *Proof of appointment of notary.*]—The proper method of proving the appointment of a notary public is that provided for by Saskatchewan Evidence Act, s. 7, but where no objection is raised at the trial to the method of proof used thereon leave to file the necessary proof was given.—ADVANCE-RUMELY THRESHER CO. *v.* ZOMAR (Sask.), [1929] 4 D. L. R. 65; 2 W. W. R. 544.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—B. (c).

6075 i. *Justice of the peace—New South Wales.*]—An affidavit taken before a justice of the peace in New South Wales, but without any certificate annexed that the person before whom it was sworn was duly authorised to administer oaths in New South Wales, may be used in evidence in the cts. of the Irish Free State.—APPLEBE *v.* APPLEBE, [1931] I. R. 286.—**IR.**

6080 i. *Commissioner—New Guinea.*]—Upon the hearing of a suit for dissolution of marriage the ct. accepted an affidavit purporting to have been sworn in the mandated territory of New Guinea before a comr. of the central ct. of the territory for taking affidavits & bearing a certificate under the seal of that ct. that there was no comr. of the supreme ct. of Victoria or notary public resident in the territory.—CUNNINGHAM *v.* CUNNINGHAM, [1929 V. L. R. 232; [1929] Argus L. R. 211.—**AUS.**

sk. *No deputy authorised—Affidavit sworn before deputy inadmissible.*]—Where a statute, *e.g.*, sect. 42 (*d*) of Alberta Evidence Act, R. S. A., 1922, requires affidavits sworn in another province to be sworn before a certain designated official & there is no general statute of Alberta authorising a deputy to act in his place, an affidavit sworn before the deputy is not sworn before the proper officer & should not be received.—GROSE *v.* GROSE, [1936] 2 W. W. R. 210.—**CAN.**

Part VIII.—Evidence out of Court.

6201. *Add. Annotation :*—**Consd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

6269a. —— **To issue pleaded.**]—Pltfs. in an action for passing off, in which they complained of the get-up of defts.' goods as calculated to deceive, asked for a commission to take certain evidence in Australia showing actual deception. It was alleged that defts.' goods were sold in Great Britain, & also were exported to Australia for sale by retail. There was no allegation of actual deception in the statement of claim. Two affidavits were filed by pltfs. in support of the application :—*Held :* upon the pleadings it would not be open to pltfs. to give evidence of actual deception, &, on the present state of the pleadings, & on the materials before the ct., pltfs. had not given any sufficient reason for issuing a commission.—WHITE, TOMKINS & COURAGE, LTD. *v.* UNITED CONFECTIONERY CO., LTD. (1914), 31 R. P. C. 286.

6362a. ——.]—MACAULAY *v.* GLASS (1902), 47 Sol. Jo. 71.

PART VIII. SECT. 1, SUB-SECT. 1

6170 vi. ——.]—NATIONAL TRUST CO. *v.* PORTERFIELD, [1931] 2 W. W. R. 456.—**CAN.**

6176 x. ——.]—KOURI *v.* NEMEROVSKY, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—**CAN.**

6176 xi. ——.]—Although no order has been taken out on a master's fiat or decision an appeal lies therefrom under K.B. Rule 592.—DAVIS *v.* RALLS, [1937] 2 W. W. R. 206.—**CAN.**

8n. *Application on motion to add defendant—No grounds shown for addition.*]—RENE *v.* CARLING EXPORT BREW. & MALT CO., [1928] 1 D. L. R. 634; 61 O. L. R. 495.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

8o. *Extradition proceedings.*]—Commission to take evidence outside Canada cannot be issued in extradition proceedings.—*Re* INSULL, [1934] 2 D. L. R. 696; 61 C. C. C. 336.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A.

f i. ——.]—On appeal from an order granting leave to take evidence on commission :—*Held :* the materials submitted to the judge were so meagre that they did not afford a reasonable ground for the exercise of his discretion in granting the order, &, therefore the appeal should be allowed.—ROMANO *v.* MAGGIORA (No. 2), [1936] 1 W. W. R. 423; 2 D. L. R. 329; 50 B. C. R. 273.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—B.

6258 vii. ——.]—In order to justify the issue of a commission to take evidence abroad, it must be shown that the evidence is directly material to the issue raised.

Applt.'s statement of claim alleged that for the use of "trichlorethylene" for dry-cleaning applt. had installed special machinery & had been trading in New Zealand under the fancy name of "Tri-cleaning" & that resp. co. had been formed under its name "Tri-cleaning" Co. with a view to causing confusion to the public & so obtaining a portion of the goodwill that had been built up by applts., or, alternatively, that the name of resp. co. was calculated to deceive the public into believing that that co. was the applt. co. or a subsidiary thereof. Resps.' defence was a bare denial of the allegations in the statement of claim, from which it might possibly be inferred that the issue raised was whether "Tri-cleaning" was a fancy name. The evidence sought to be taken in Australia was sworn to be material because it was from persons familiar with the trade of dry-cleaning by trichlorethylene & the manner in which the same is described or referred to. These witnesses could only speak as to conditions in Australia, but not as to those as to its use in New Zealand :—*Held :* such evidence could not be material in the action.—NEW ZEALAND TOWEL SUPPLY & LAUNDRY, LTD. *v.* N. Z. TRI-CLEANING CO., LTD., [1935] N. Z. L. R. 204.—**N.Z.**

PART VIII. SECT. 1, SUB-SECT. 5.—D.

6282 i. *As to foreign law.*]—Where in an action to recover the purchase-money alleged to be due under an agreement for the sale of land situated in a foreign state deft. pleaded that under the law of that state pltf. was unable to make title :—*Held :* pltf. was entitled to ascertain through the testimony of witnesses in that state the truth of the allegation, & entitled to a commission to take evidence in that state in support of his allegation that he was ready, willing & able to make title; he was not obliged to allege in his statement of claim what the law of that state is & plead such law as a statement of fact.—CAMPBELL *v.* FUNK, [1935] 3 W. W. R. 561.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—E.

6296 iii. ——.]—Where there is nothing to show that deft. administrator is not lawfully & properly, according to his ordinary course of life, entitled to be away from Saskatchewan, he may obtain an order for his own examination *de bene esse* in the foreign jurisdiction wherein he resides.—JACQUES *v.* JACQUES, [1928] 1 W. W. R. 447.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—F.

m i. ——.]—WILLIAMS & WILLIAMS *v.* FRASER (1925), 35 B. C. R. 481.—**CAN.**

m ii. ——.]—Applt., exor. of the will of a Chinaman killed by a motor lorry owned & driven by resp., sued as such exor. & also on behalf of deceased's widow & her two infant children who had never lived in New Zealand, claiming damages from resp. for alleged negligence. Applt. asked for a commission to examine the widow & others before the Registrar of the Supreme Ct. at Hong Kong to prove that the widow had been married to deceased in a form that the cts. in New Zealand would recognise as valid, that she remained his wife to the date of his death, & that deceased was the father of her children :—*Held :* as the cost of bringing the witnesses to New Zealand made such a course practically impossible & as the commission asked for was to an official of a Supreme Ct. in a British colony equipped with a Judiciary & a Bar trained in English law & procedure, fully competent to elicit the truth from Chinese witnesses & better qualified than the legal profession in New Zealand to investigate the validity of the marriage, resp. would not be unduly prejudiced by the issue of the commission, which should be granted on terms as to applt. finding security for the costs thereof.—WONG DOO *v.* KANA BHANA, [1933] N. Z. L. R. 1455.—**N.Z.**

s i. ——.]—*Re* WEINGARDEN, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—G.

e i. ——.]—BURROUGHS *v.* INTER-COLONIAL GOLD MIN. CORPN. (N. S.), [1927] 3 D. L. R. 371.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—H.

6338 iv. —— —— *Party.*]—PHANINDA KRISHNA DOTT *v.* PRAMATHA NATH MALIA (1927), I. L. R. 55 Calc. 748.—**IND.**

l i. —— *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), pltf. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY *v.* KELLY, [1925] 1 W. W. R. 332.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—I.

6361 vi. ——.]—SHORT *v.* GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY, [1930] 2 W. W. R. 21; 2 D. L. R. 986; 24 S. L. R. 422.—**CAN.**

6362 iii. —— ——.]—Where the inconvenience & expense of compelling a pltf. & his witnesses to appear at the trial would have been equivalent to a denial of justice to him, & deft. would not suffer an injustice through not seeing the witnesses face to face, a foreign commission for the examination of pltf. & his witnesses was granted, on terms as to costs.—CHASE *v.* NORTHERN TRUSTS CO. (No. 2), [1932] 2 W. W. R. 476; 4 D. L. R. 143; 40 Man. L. R. 458.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).

r i. ——.]—The *onus* of establishing that an examination on commission of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—STAPLES *v.* MILOFF (Man.) [1927] 2 D. L. R. 847; [1927] 1 W. W. R. 435.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (c).

6408 i. *Of necessity of examination—Belief of deponent.*]—Evidence based on information & belief, if the grounds thereof are sufficiently stated, is admissible on an application for a commission to examine witnesses out of the jurisdiction of the ct.—SYDNEY FERRIES, LTD. *v.* S.S. TAHITI (1928), 28 S. R. N. S. W. 307; 45 N. S. W. W. N. 74.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 1.—C.

6523 i. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) CO. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

6561a. ——.]—*Re* TIERNEY, No. 5873a, *ante*.

6683a. ——— **Witness out of the jurisdiction.**]—Appointment of an examiner to take orally the evidence of a witness residing out of the jurisdiction of the ct.—CROFTS *v.* MIDDLETON (1852), 9 Hare (App. 1) XVIII.; 22 L. J. Ch. 706; 20 L. T. O. S. 189; 1 W. R. 74; 68 E. R. 765.

6649a. Application by Attorney-General—Affidavit unnecessary.]—Where an information has been filed at the suit of the Crown by Her Majesty's Attorney-General, acting in virtue of his office, a rule for a mandamus may issue to Colonial judges, commanding them to examine witnesses in respect of such information, upon reading the roll containing the information, without the production of any affidavit whatever.—R. *v.* DOUGLAS (1842), 7 Jur. 305.

6743a. —— **Application after judgment entered.**]—COBBOLD *v.* GARRETT, [1929] W. N. 16.

6749. *Add. Annotation :*—**Consd.** *Re* Potts, *Ex p.* Epstein *v.* Trustee & Bankrupt, [1935] Ch. 334.

Part IX.—Action for Perpetuation of Testimony.

6823. *Add. Citation :*—*affd.* (1918), Times, July 24, H. L.

6831a. Depositions in action to perpetuate testimony.]—ANSON *v.* TOOTH & A.-G., [1917] W. N. 234; 143 L. T. Jo. 177.

Part XI.—Colonial and Foreign Law.

6851. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6852a. —— —— ——.]—No doubt in the cts. below the law of Scotland is a matter of fact & must be vouched there by evidence or admission. But in your Lordship's House the law of Scotland is a matter not of fact but of law, for this House is the *commune forum* of both England & Scotland, & your lordships have judicial knowledge of the laws of both countries (LORD MACMILLAN).—ELLIOT *v.* JOICEY, [1935] A. C. 209; 104 L. J. Ch. 111; 51 T. L. R. 261; 79 Sol. Jo. 144; *sub nom.* *Re* JOICEY, JOICEY *v.* ELLIOT, 152 L. T. 398, H. L.

6861. To cross-reference following this case add "now replaced, as to High Ct., by S. C. J. (Consolidation) Act, 1925 (c. 49), s. 102."

6861a. —— ——.]—A question of foreign law is matter of fact to be decided by a judge, not by a jury, upon the evidence given at the trial in each case. Former decisions upon similar questions, but upon other evidence, are not binding.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289; 102 L. J. K. B. 191; 148 L. T. 242; 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.; *affg.*, S. C. *sub. nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

6864. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6865. *Add. Annotations :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4. **Expld. & Distd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52.

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 i. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

a i. —— ——.]—A clerk of the peace should not open a package of documents taken on commission without a judge's order.—SPEYER *v.* R. (1931), 55 Can. C. C. 399.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

6681 vi. ——.]—*Held :* whereas in the present case evidence had been taken on commission & no objection had been raised, & the matter to be proved was purely formal, the ct. was entitled to accept the evidence as *primâ facie* sufficient.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

so. *May be put in by other side.*]—GAINERS *v.* CANADIAN NORTHERN RY. Co., [1925] 3 D. L. R. 369.—**CAN.**

PART VIII. SECT. 4.

m i. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—**SCOT.**

PART VIII. SECT. 5.

6739 i. *Whether allowed to successful party—When order obtained by consent.*]—A commission to examine a witness was granted of consent of parties in a case in which proof had been allowed by the sheriff-substitute. The allowance of proof was subsequently recalled by the sheriff, whose decision was affirmed on appeal. While the appeal against the sheriff's interlocutor was pending, the commission was executed :—*Held :* in this particular case, the expenses of obtaining & executing the commission fell to be allowed, in respect that it had been granted of consent.—GILCHRIST *v.* NATIONAL CASH REGISTER CO., [1929] S. C. 272.—**SCOT.**

PART IX. SECT. 2.

sp. *To prove testamentary capacity—Will made before testator found insane.*]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—RANKEN *v.* PEARCE (1927), 27 S. R. N. S. W. 410; 44 N. S. W. W. N. 123.—**AUS.**

PART XI. SECT. 1.

sq. *Jurisdiction to order.*]—*Held :* even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—HIGGINS *v.* EWING'S TRUSTEES, [1925] S. C. 440.—**SCOT.**

sr. *Decree passed by foreign Government before recognition.*]—Observations upon the powers & duties of the ct. to examine & construe for itself foreign written law : (1) where the expert evidence adduced to prove the law was conflicting, & (2) where the law under consideration was a decree abolishing inheritance, which had been passed by the Soviet Govt. of Russia before its recognition by the British Govt.—KOLBIN & SONS *v.* KINNEAR & CO., [1930] S. C. 724; *affd.*, [1931] S. C. 128.—**SCOT.**

PART XI. SECT. 2.

n i. —— ——.]—The Supreme Ct. of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—CANADIAN PACIFIC RY. Co. *v.* PARENT (1917), 86 L. J. P. C. 123.—**CAN.**

q i. ——.]—The cts. of one country do not take judicial notice of the laws of another country : they must be proved like any other fact.—WALKERVILLE BREW. CO. *v.* MAYRAND, [1928] 2 D. L. R. 945; 63 O. L. R. 573; *revsg.*, [1928] 4 D. L. R. 500; 63 O. L. R. 5.—**CAN.**

6866. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6867. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

6869. *Add. Annotation :*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

6872. *Add. Annotations :* — **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6874. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930 ; De Beéche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148.

6876a. —— ——.]—Pltf. divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life :—*Held :* (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point ; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—DENNISTOUN *v.* DENNISTOUN (1925), 69 Sol. Jo. 476.

6880a. —— ——.]—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 6861a, *ante*.

6894a. —— ——.]—In the absence of evidence to the contrary one must assume that the foreign law is the same as the English (SLESSER, L.J.).—THE TORNI, [1932] P. 78, 90 ; 101 L. J. P. 44 ; 147 L. T. 208 ; 48 T. L. R. 471 ; 18 Asp. M. L. C. 315, C. A.

6898. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6900. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6901. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

6904a. —— **Legal adviser to Governor—Marriage in Malta.**]—GOSSAGE *v.* GOSSAGE & HEATON (1934), 78 Sol. Jo. 551.

6906. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6907. *Add. Annotation :*—**Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6916. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242.

6917. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6917a. —— —— **As to law of Russia.**]—PERRY *v.* EQUITABLE LIFE ASSCE. SOCIETY OF UNITED STATES OF AMERICA (1929), 45 T. L. R. 468.

6918. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183. *As to* (2) **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

6923. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6928. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6937a. ——.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable : "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first-class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined inter-

PART XI. SECT. 3.

6869 vi. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

PART XI. SECT. 4, SUB-SECT. 2.

6890 xv. —— ——.]—The genera[l] foreign law is presumed to be the same as our own ; & the *onus* of proving that it is different is on those who contend that it is.—KEY *v.* KEY, [1930] 3 D. L. R. 327 ; 65 O. L. R. 232.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 2.

a i. —— ——.]—The opinion of a lawyer alone does not prove the law—he must be in a position to testify that such is in fact the law.—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643 ; 64 O. L. R. 358.—**CAN.**

a i. —— —— ——.]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established :—*Held :* the priest, who, on being recalled, stated that the parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the Cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia.—R. *v.* ILICH, [1935] N. Z. L. R. 90.—**N.Z.**

b i. —— ——.]—Foreign law, being a question of fact, must be proved as any other fact by a competent & qualified witness. Any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification being a matter for the appreciation of the ct.—HANSON *v.* COLLETTE (1931), 5 M. P. R. 363.—**CAN.**

b ii. —— *Holder of position requiring knowledge of law.*]—In order to prove the law of a foreign country it is not necessary that the witness should be a lawyer actually practising his profession in that country ; but, inasmuch as foreign law is a question of fact which must be proved as any other fact by a competent & qualified witness, any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification of such witness being a matter for the appreciation of the ct.—GOLD *v.* REINBLATT, [1929] 1 D. L. R. 959 ; S. C. R. 74 ; *affg.*, 45 Que. K. B. 136 ; *revsg.*, Que. S. C. 17.—**CAN.**

national exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & document of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first-class bills on London. The evidence accepted was that "payable in Chile in first-class bills on London" had a special mercantile meaning in Chile, namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation:—*Held:* (1) the conditions precedent to the admissibility of evidence as to the meaning in Chile of first-class bills on London had been fulfilled, namely, the evidence did not conflict with a statutory definition, was of a usage common to the place in question & expoinded without contradicting the terms of the contract; (2) though witnesses could be called to prove foreign law, the ct. was at liberty to look at a translation of the passages in question & to consider what was their proper meaning, but the ct. would have regard not only to its own view of the foreign law but to the interpretation put upon it by a competent foreign authority.—DE BEÉCHE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., & CHILIAN STORES (GATH & CHAVES), LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

6957a. Document under seal of U.S.A.—Photostatic copy—Certificate of naturalisation.]—At the trial of applt., who was a British subject by birth, for an offence against art. 6, para. 1 (*a*) of Aliens Order, 1920, & for making an untrue statement for the purpose of procuring a passport, the prosecution endeavoured to prove by means of a photostatic copy of a certificate of naturalisation authenticated by the seal of the United States of America that applt. had lost his British nationality. Applt. was convicted on both charges, & on appeal it was conceded by the Crown that the document ought not to have been admitted in evidence, inasmuch as the mode of authenticating the document did not fulfil the requirements of Evidence Act, 1851 (c. 99), s. 7:—*Held:* though the prosecution might have proceeded at the trial on the basis that under Aliens Restriction Act, 1914 (c. 12), s. 1 (4), the burden of proving that he was not an alien lay on applt., they had not taken this course, but had themselves accepted the burden of proof & endeavoured to discharge it by putting in evidence an inadmissible document, & accordingly the conviction must be quashed.—R. *v.* BEADON (1933), 24 Cr. App. Rep. 59, C. C. A.

6957b. Secondary evidence—When admissible.]—FINSKA ANGFARTYGS A/B *v.* BARING BROS. & CO., LTD. (1937), 157 L. T. 585; 54 T. L. R. 147; 81 Sol. Jo. 1022.

PART XI. SECT. 8, SUB-SECT. 1.

6939 xi. ——.]—TILTON *v.* MCKAY (1874), 24 C. P. 94.—**CAN.**

PART XI. SECT. 10.

s v. *Who may refer—Lord Ordinary.*] —*Held:* while it was to a "superior" ct. of another part of the Dominions that a remit in terms of British Law Ascertainment Act, 1859, s. 1, fell to be made, nevertheless the interlocutor making the remit, in view of the expression "any ct." in sect. 1, might competently be pronounced by a Lord Ordinary without the intervention of the Inner House.—MACOMISH'S EXORS. *v.* JONES, [1932] S. C. 108.—**SCOT.**

EXECUTORS AND ADMINISTRATORS.

Part I.—The Office of Executor or Administrator.

4a. Limitation of number—Appointment of four general executors—Limited appointment of fifth—Invalid.]—A testator by his will appointed four persons as exors. & trustees of his will, & after certain bequests appointed a fifth person literary exor. in respect of certain papers. The usual exors.' oath was sworn by the four general exors. for the purpose of a grant to them of the estate save & except the papers in respect of which the fifth person was appointed literary exor. The oath was refused by the Registry on the ground that by reason of Jud. Act, 1925 (c. 49), s. 160, one of the five exors. must renounce. The exors. applied to the ct. asking that the oath tendered by them might be received :—*Held :* as the oath asked in effect for grants to five exors. it contravened Jud. Act, 1925 (c. 49), s. 160, & ought not to be received.—*In the Estate of* HOLLAND, [1936] 3 All E. R. 13 ; 105 L. J. P. 113 ; 155 L. T. 417 ; 53 T. L. R. 3 ; 80 Sol. Jo. 838.

10. *Citations :*—For "3 Phillim." read "8 Phillim."

16. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

17a. ——.]—*In the Goods of* EVANS (1923), 128 L. T. 669.

17b. Appointment written in margin.]—An appointment of exors., written vertically in the margin of a will, excluded from the probate, there being no signature at the bottom of the clause in the margin.—*In the Goods of* TOOKEY (1847), 5 Notes of Cases, 386.

54a. *S. P. In the Goods of* COLES (1871), L. R. 2 P. & D. 362 ; 41 L. J. P. & M. 21 ; 25 L. T. 852 ; 36 J. P. 120 ; 20 W. R. 214.

Annotation :—**Refd.** Foundling Hospital *v.* Crane (1911), 105 L. T. 187.

63a. —— —— ——.]—*In the Goods of* WAY, [1901] P. 345 ; 71 L. J. P. 13 ; 85 L. T. 643 ; 17 T. L. R. 758.

133. *Add. Annotation :*—**Follid.** *Re* Hack (A.) (1930), 169 L. T. Jo. 284.

138a. —— Effect of death of husband in wife's lifetime.]—*Re* HACK (A.) (1930), 169 L. T. Jo. 284.

134a. Grant to trustees of settlement as special executors—Incapacity of one—Fresh grant to continuing special executor—Jointly with ordinary executor.]—Probate of the will of deceased was granted to A. B. his exor. save & except settled land vested in deceased settled previously to his death & not by his will. Deceased appointed no special exor. At his death the trustees of the settlement of the land were C. D. & E. F., & a grant of probate was made to them as special exors. limited to the settled land. Before the administration of the estate was complete, C. D. became incapable of acting in the trusts & A. B. was appointed in his place for the purposes of the Settled Land Act, 1925. On motion to revoke the grant of probate to the special exors. & for a fresh grant limited to the settled land to E. F. along with A. B. :—*Ordered* that the grant of probate limited to the settled land be revoked & fresh probate granted to E. F., power being reserved to C. D. to apply for probate on his recovering capacity, & it was further *ordered* under Administration of Estates Act, 1925 (c. 23), s. 23 (2), that A. B. be appointed as a special personal representative in respect of the settled land jointly with E. F. & that the grant to E. F. after it had passed the seal be noted accordingly, the security, if any, to be given by A. B. to be settled by the registrar.—*In the Estate of* CLIFTON, [1931] P. 222 ; 100 L. J. P. 121 ; 146 L. T. 14 ; 47 T. L. R. 618.

134b. —— —— —— Reservation of power to apply on recovery of capacity.]—*In the Estate of* CLIFTON, No. 134a, *ante*.

134c. —— —— —— Application to Chancery Division for leave to apply to Probate Division.]—*Re* CLIFTON, DUCKWORTH *v.* FAIR, [1931] W. N. 202.

150. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART I. SECT. 1.

sx. *Nature of office.*]—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—SMART *v.* SMART, [1926] S. C. 392.—SCOT.

PART I. SECT. 2, SUB-SECT. 1.

sy. *Public Trustee.*]—Testator, domiciled in the Irish Free State, appointed the Public Trustee to be his exor. & trustee :—*Held :* neither the Irish Public Trustee nor the English Public Trustee could accept the appointment. —*In the Goods of* LEESON, [1928] I. R. 168.—IR.

PART I. SECT. 3, SUB-SECT.

sz. *Right of testator to delegate.*]—The power of appointing exors. may lawfully be delegated, & the time during which they are to act may be limited either as to beginning or end.—*Re* CLEGHORN, [1931] 2 D. L. R. 865 ; O. R. 31.—CAN.

PART I. SECT. 3, SUB-SECT. 2.—A. (a).

42 v. —— ——.]—Testator bequeathed two farms of land to F. & T. in trust for his wife & family ; he directed that the farms should be sold & that the proceeds should be divided by his exors. The will contained no appointment of exors. :—*Held :* that F. & T. were entitled to probate as exors. according to the tenor.—*In the Goods of* DRUMM, [1931] N. I. 12.—IR.

47 i. *S. P. Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18.—CAN.

PART I. SECT. 3, SUB-SECT. 2.—A. (b).

so. *Universal legatee—Trust to divide between legatee & others.*]—A will reading, "I bequeath all my estate to Mrs. S. to be divided equally among Mrs. S. & her brothers & sister" :—*Held :* not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re* MCMILLAN, [1925] 3 W. W. R. 584.—CAN.

PART I. SECT. 4, SUB-SECT. 1.—A.

sd. *Appointment of executors for New Zealand property & executors for English property—Probate granted to New Zealand executors.*]—Where testator dies domiciled in England, leaving property in New Zealand & in England, & having by his will appointed separate exors. to deal with his New Zealand & his English property, a ct. in New Zealand may grant probate to the New Zealand exors. in respect of the property within the jurisdiction, reserving leave to the English exors. to apply in England for probate in respect of the remainder of the property. For the purpose of facilitating the latter appln. the New Zealand ct. may permit the removal from its file of the original will upon condition that an exact copy of such will, certified by the Registrar, be left upon the file of the local ct.—*Re* WRIGHTON, [1929] N. Z. L. R. 96.—

151. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

152. *Add. Annotations :*—**Apld.** *Re* Comberbach. Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

153. *Add. Annotation :—Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

154a. —— **Appointment of one of several makers of promissory note.**]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof : —*Held :* the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was (1) at common law that the debt was discharged by release at the date of the death of testator, & (2) in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action was brought.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501 ; 97 L. J. K. B. 400 ; 139 L. T. 119 ; 44 T. L. R. 483 ; 72 Sol. Jo. 319, D. C.

165a. —— **Appointment of wife of debtor.**] —*Re* PRICE, PRICE *v.* PRICE (1879), 11 Ch. D. 163 ; 48 L. J. Ch. 478 ; 40 L. T. 668 ; 27 W. R. 698, C. A.

165b. ——.]—JENKINS *v.* JENKINS, No. 154a, *ante.*

181a. —— —— **After intermeddling.**]—An individual & a bank having been appointed exors. & trustees under a will, the individual exor. intermeddled technically with the estate, & both of them subsequently refused to act as exor. or prove the will. By a codicil testator directed that in the event of a "vacancy" occurring "in the office of the individual exor. & trustee whether from death, resignation, refusal to serve, inability to act, or otherwise," one of two named persons, in the order named, should fill the vacancy. The first named person renounced :—*Held :* the ct. was entitled to appoint one of the substituted exors. & probate was granted to the second named person on his application.—*In the Estate of* FREEMAN (1931), 146 L. T. 143 ; 48 T. L. R. 1 ; 75 Sol. Jo. 764.

209a. *S. P.* ANON. (1806), 12 Ves. 4 ; 33 E. R. 2. *Annotation :*—**Refd.** Browell *v.* Reid (1842), 11 L. J. Ch. 272.

238. *Add. Annotation :*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

258. *Add. Annotation :—As to* (1) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

296. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

425a. Exercise of option to purchase by surviving partner—Notice to executor before probate—Validity.]—Under a partnership deed the surviving partner had an option of acquiring the deceased partner's interest at a valuation on his giving to the "personal representatives" of the deceased partner notice within three months from the death of such partner. The notice was given within the time, but before the exors. had obtained probate :—*Held :* the notice was properly given, & the option had been duly exercised.—KELSEY *v.* KELSEY (1922), 91 L. J. Ch. 382 ; 127 L. T. 86.

427. *Add Citations :*—Moore, K. B. 146 ; *sub nom.* RUSSEL *v.* PRAT, 1 And. 177 ; *on appeal* (1589), 1 Leon. 193, Ex. Ch.

492. *Add. Annotation :—As to* (2) **Refd.** Macleay *v.* Treadwell, [1937] A. C. 626.

493. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

677. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

PART I. SECT. 9.

202 i. *Jurisdiction to release—Surrogate court.*]—A surrogate ct. judge has no power to make an order releasing exors. "from their exorship."—*Re* DENTON ESTATE (Sask.), [1926] 3 W. W. R. 186.—**CAN.**

o i. ——.]—Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.—SMALL *v.* PACKARD, [1925] 1 W. W. R. 897.—**CAN.**

l (p. 46) **i.** —— *Executor—Desiring to be released—Co-executor necessary party.*]—When some of several co-exors. apply to be released from the trust, the ct. will require the other co-exors. to be brought before the ct. before they will refer it to a master to report on suitableness of persons to be substituted.—*Re* TOBIN'S ESTATE (1858), 3 N. S. R. (2 Thom.) 338.—**CAN.**

l (p. 46) **ll.** —— —— *Conduct of co-executor prejudicial to trust property.*]—On the appln. of an exor. held that an order should go for the removal of his co-exor. on the ground that the latter's conduct had been such as to endanger the trust property, although nothing in the nature of fraud or dishonesty was imputed against him.—*Re* SOMERSET ESTATE, [1928] 2 W. W. R. 697 ; 40 Man. L. R. 566.—**CAN.**

se. *Contested motion—Costs of.*]—The costs of a contested motion, for the removal of an administrator & the appointment of another in his place, should not be taxed as between solr. & client.—*Re* GAMMON ESTATE, PAYNE *v.* GAMMON, [1927] 2 D. L. R. 605 ; [1927] 1 W. W. R. 506 ; 38 B. C. R. 153.—**CAN.**

sf. *Order for made upon originating notice—Direction to pass accounts—& replace trust fund.*]—An order under Trustee Act, R. S. O. 1927, c. 150, s. 36, for the removal of an exor., may now be made summarily upon originating notice. An order removing an exor. & trustee directed him to pass his accounts. It was not denied that he was liable for the loss or jeopardy of a considerable sum of money. He made a claim for the statutory compensation for his services which was not admitted ; & he was required, pending the taking of the accounts, to replace the trust fund for which he was not able to show any security in hand.—*Re* PATTERSON, [1928] 3 D. L. R. 197 ; 62 O. L. R. 255.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.—C.

274 ia. *S. P.* PUBLIC TRUSTEE *v.* REGISTRAR-GENERAL OF LAND, [1927] N. Z. L. R. 839.—**N.Z.**

PART I. SECT. 12, SUB-SECT. 1.

sg. *What amounts to renunciation—Right reserved to infant to come in & prove.*]—Probate was granted to adult exors., reserving to infant exor. a right to be admitted to executorship upon attaining majority :—*Held :* as the infant exor. had not declined to prove the will, & his right to prove was reserved to him by the letters probate, his minority did not prevent his taking.—*Re* GRACEY (1928), 63 O. L. R. 218.—**CAN.**

PART I. SECT. 12, SUB-SECT. 5.—A.

d i. ——.]—The ct. in a proper case will allow an exor. who has renounced probate to retract his renunciation.—*Re* FOSTER, [1930] N. Z. L. R. 60.—**N.Z.**

PART I. SECT. 13, SUB-SECT. 2.

n i. —— ——.]—The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated.—MEGHRAJ *v.* KRISHNA CHANDRA BHATTACHARJI (1923), I. L. R. 46 All. 286.—**IND.**

r i. ——.]—*Re* CROFT ESTATE, [1937] 1 W. W. R. 463 ; 51 B. C. R. 359.—**CAN.**

PART I. SECT. 13, SUB-SECT. 8.—B.

471 i. *General rule.*]—Although an exor., who elects to act, may be sued before probate, the ct. has no jurisdiction over a person as exor., who has obtained a grant of probate in a foreign country, unless there were assets of testator within the jurisdiction at the time of his death, in respect of which the ct. may reasonably assume that the exor. will clothe himself in due course with the necessary representative character by an application for probate or the resealing of the foreign probate.—NAGEL *v.* HOUGH (1927), 27 S. R. N. S. W. 418 ; 44 N. S. W. W. N. 121.—**AUS.**

PART I. SECT. 14, SUB-SECT. 3.—A.

b i. ——.]—Letters of administration relate back to the death of the intestate so as to enable the administrator to

Part II.—Probate and Letters of Administration.

701. Before this case add :—

Grant of probate or administration where no estate.]—*See* Administration of Justice Act, 1925 (c. 55), s. 2 (1).

718a. —— —— ——.]—CHAMBERLAIN *v.* AGAR (1813), 2 Ves. & B. 259 ; 35 E. R. 317.

Annotation :—**Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm 525.

734a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669 ; 36 J. P. 696 ; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

771a. —— **Letters referred to must be produced or accounted for.**]—On an application for leave to depose as to the death of a person who had disappeared, the affidavit of appct. referred to letters from that person which were not produced or accounted for, & did not explain the delay which had occurred in making the application, & there was no corroborative statement of belief of the death :—*Held :* the hearing must be adjourned for a further & better statement.—*In the Goods of* CLARKE, [1896] P. 287 ; 66 L. J. P. 9.

774a. *S. P. In the Goods of* BARBER (1886), 11 P. D. 78 ; 56 L. T. 894 ; 35 W. R. 80.

784. *Add. Annotation :*—**Refd.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

858. *Citation :*—For " 34 Ch. D. 177 " read " 24 Ch. D. 177."

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bring action in respect of matters done between the death & his appointment. —DOE d. MCKINLAY *v.* ELLIOTT (1851), 3 Nfld. L. R. 180.—**NFLD.**

PART I. SECT. 14, SUB-SECT. 3.—B. (b).

sh. *Liability on agreement—Entered into before grant.*]—LARRY *v.* BAKER (1902), 7 Terr. L. R. 145.—**CAN.**

sk. *Action on life assurance policy.*]—Pltf., the only child of J., who on Sept. 30, 1926, as the result of an accident, died, intestate & a widower, commenced this action on Nov. 26, 1926, upon an accident insurance policy issued by defts. upon the life of J. Pltf. was not named as beneficiary in the policy. On May 9, 1927, while the action was pending, pltf. obtained from a Surrogate Ct. letters of administration to the estate of J., &, when the action came on for trial, in 1928, applied for leave to amend the proceedings by describing himself as the administrator of the estate of J. :—*Held :* the amendment should be allowed & pltf. awarded judgment for the amount of the policy. The letters of administration related back so as to validate the action already commenced by pltf.—JOHNSON *v.* GENERAL ACC. ASS'CE CO., [1929] 1 D. L. R. 597 ; 63 O. L. R. 296.—**CAN.**

PART I. SECT. 15, SUB-SECT. 2.

g i. ——.]—*Held :* the sale of the reversion in a term of years, under a *fi. fa.* on a judgment against an exor. *de son tort*, was a valid sale as against the rightful administrator.—BAIN *v.* MCINTYRE (1867), 17 C. P. 500.—**CAN.**

603 i. *When binding—When lawful.*]—An exor. *de son tort* is not necessarily a wrong-doer & his possession cannot always be regarded as wrongful at its inception. His intentions in respect of the acts attributed to him must be taken into account, to determine when the conversion took place & as on what date liability is to be fastened on him.—SHIVAPRASAD SINGH *v.* PRAYAGKUMARI DEBEE (1933), I. L. R. 61 Calc. 711.—**IND.**

613 i. *Rights of buyer from executor de son tort.*]—TRUSTS & GUARANTEE CO. *v.* NELSON, [1930] 3 W. W. R. 241 ; 4 D. L. R. 1032 ; *revsg.*, [1930] 3 D. L. R. 985.—**CAN.**

sl. *On whom binding—Third party—Estoppel.*]—Where a buyer of goods under a conditional sale agreement induces a buyer of the same goods from him under a similar agreement to deliver up the goods to the exor. *de son tort* of the original seller in settlement of his, the first buyer's claim, he will not be allowed, in an action against such second buyer, to deny the authority of the exor. *de son tort* to take over the goods.—LARSON *v.* COATES (Sask.), [1926] 4 D. L. R. 561 ; [1926] 3 W. W. R. 397.—**CAN.**

sm. —— *Administrator of estate—Onus on administrator.*]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by the deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels :—*Held :* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1928] 3 W. W. R. 723.—**CAN.**

PART I. SECT. 15, SUB-SECT. 4.—B. (a).

m i. ——.]—In an action by a creditor of a deceased against an exor. *de son tort* it is proper to sue deft. as executor as well as personally, & if pltf. establishes his claim the judgment should be that the amount thereof be paid out of the assets of deceased, if deft. have so much, &, if not, then out of deft.'s personal assets.—BURNS P. & CO. *v.* CZERNIJ, [1928] 4 D. L. R. 854 ; [1928] 3 W. W. R. 294.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.—A. (a).

697 i. *Construction of documents—Only for purposes of admission to probate.*]—NANDKISHORE LAL *v.* PASUPATI NATH SAHU (1928), I. L. R. 7 Pat. 396. —**IND.**

sd. *Will already administered—Not matter of construction.*]—Testator had, by his will, bequeathed his farm to his son J. on condition that he should reside on the farm & assist in the management thereof until he attained twenty years, with a gift over to testator's son W. in the event of this condition not being fulfilled. In 1928 J. attained twenty-one years, whereupon the surviving trustee of the will gave him possession of the farm. On the death of J. in 1930, W. brought a summons for the construction of the will. It was contended that J. was not entitled to the farm by reason of the fact that he had failed to comply with the conditions of the bequest. Pltf. submitted that the ct. had jurisdiction to determine the matter either under R. S. C., Ord. 54A, r. 4 or Ord. 55, r. 4 :—*Held :* the trustee having administered & allowed J. into possession the question at issue was not a proper one to be determined on an originating summons either as a matter arising in the administration or upon the construction of the will.—WIGHTMAN *v.* COUSINS, [1931] N. I. 138 ; *affd.*, [1932] N. I. 61.—**IR.**

PART II. SECT. 1, SUB-SECT. 1.—A. (b).

703 i. *For letters of administration—Grant required to assist prosecution of claims abroad.*]—It is not the duty of the ct., by determining the abstract question who is the deceased's proper representative, to assist such representative to prosecute claims to titles & property abroad.—*In the Goods of* CAMPBELL WILSON, [1929] S. R. (Q.) 59.—**AUS.**

PART II. SECT. 1, SUB-SECT. 1.—D.

c i. ——.]—The judge of a Surrogate Ct. cannot adjudicate on a claim to moneys of a deceased person under an allegd *donatio mortis causâ.*—*Re* GRAHAM (1911), 25 O. L. R. 5.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

sg. *Will mutilated—By accident.*]—Testator made a will, which was discovered, a year after his death, mutilated by the destruction of parts thereof containing certain words of the will. The state of the will when discovered was due to the way in which it had been kept by testator. Testator had also made a draft will, as well as a pretended will, but no copy of his last will, & no oral evidences as to the precise form of the last will as it stood before becoming mutilated was forthcoming. The ct. made an order for probate of the will, in so far as the same was legible, & so far as the same was illegible, in the words & figures contained in a copy of the will which, as regards the missing portions, had been reconstructed from the context of the will, from the draft will & from the pretended will.—*In the Goods of* WRIGHT (1908), 44 I. L. T. 137.—**IR.**

sk. —— *Intentionally.*]—Testator made a will. Subsequently he stated to witnesses that he had cut a certain beneficiary out of his will. To one of these witnesses, after having stated what he had done, he showed a strip of paper, which he informed the witness was the piece of his will which he had cut out, & which he thereupon threw into the fire, where the witness saw it burning. After his death, on the will being opened, it was found to have a piece cut out of it. Probate

884. For "—— —— **Will proved in France.**]" read "—— —— —— **Will proved in France.**]"

885. For "—— —— ——.]" read "—— ——

902. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

911a. —— **Who is—Holder of office appointed executor.**]—Where the holder of an office has been appointed exor., the person entitled to probate is the holder of that office, not at the time when the will was executed, but at the date of testator's death.—*In the Estate of* JONES (1927), 43 T. L. R. 324.

912. *Add. Annotation :*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

919a. —— **Power to act as executor given by Act of Irish Free State.**]—By Public Trustee Act, 1906 (c. 55), & Public Trustee (Custodian Trustee) Rules, 1926, r. 30, made thereunder, a corpn. constituted under the law of the United Kingdom or any part thereof & having a place of business there & empowered by its constitution to undertake trust business within the meaning of Public Trustee Act & the rules in question is expressly empowered to act as trustee & exor. & administrator, & power to grant representation to a trust corpn. is conferred by Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 161. By an Act of the Irish Free State passed in 1929, after the separation from Great Britain, the Bank of Ireland was for the first time authorised to act as exor. or administrator. The Bank of Ireland has places of business in Northern Ireland, therefore in the United Kingdom. A testator domiciled in the Irish Free State, by his will dated in 1931, appointed the governor & co. of the Bank of Ireland his exor. Amongst the assets was personal estate domiciled in England. As a preliminary to the issue of a grant of probate in England to the English estate the Bank moved for leave to swear by its representative that it fulfilled the definition of a " corpn." in the Acts & Rules : —*Held :* the Bank having been empowered to undertake the business in question only since the establishment of the Irish Free State, had that power within the Free State only & was not for the purpose of the motion a " corpn. constituted under the law of the United Kingdom or any part thereof," & the motion accordingly failed.—*Re* BARLOW (H. T.), [1933] P. 184 ; 102 L. J. P. 84 ; 149 L. T. 456 ; 49 T. L. R. 544 ; 77 Sol. Jo. 524.

924a. ——.]—Ct. of Probate Act, 1857 (c. 77), s. 73, confers wide powers on the ct. Under it an exor., not willing or competent to take probate, may be replaced by an administrator to be appointed by the ct., if it shall appear to be necessary or convenient by reason of special circumstances. Misfeasance on the part of an exor. with regard to the estate of his testator is a ground for proceeding under the sect., even after the exor. has intermeddled.

Exors. had intermeddled & neglected to prove the will, & had made an agreement with the universal legatee that the will should not be proved. In passing them over the ct. ordered that a grant of administration should be made to a third person to be agreed upon by the exors. & the legatee, or in default to be appointed by the ct.—*In the Estate of* POTTICARY, [1927] P. 202 ; 96 L. J. P. 94 ; 137 L. T. 256.

931. *Add. Citation :*—*sub nom. In the Goods of* HETT, 6 Jur. 350.

931a. —— —— **Failure to prove will.**]—*In the Estate of* POTTICARY, No. 924a, *ante*.

931b. —— ——.]—Where property was left to an exor. in trust for a minor the ct. passed over the exor. without citation, on proof that his interest was adverse, that he had delayed obtaining probate & that he was unfit, although he resided in England & apparently was competent & not unwilling to act.—*In the Goods of* RAY (1926), 96 L. J. P. 37 ; 136 L. T. 640.

Annotations :—**Refd.** *In the Estate of* Potticary, [1927] P. 202 ; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

938a. ——.]—(1) No rule of the common law as to evidence is contravened by the admission of secondary evidence as to the contents of a lost document, & when the due execution of a no longer existing testamentary paper is established, & its contents are shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of such execution.

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decreed of the will in its mutilated condition.—*In the Goods of* BENTLEY, [1930] I. R. 455.—**IR.**

PART II. SECT. 5, SUB-SECT. 5.

r i. —— —— *Photostat copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England, & was deposited in the Principal Probate Registry of the High Ct., London. The ct. admitted a photostat copy of the will to probate, it having been sealed & certified. Such a document, if consisting of several pages, should be sealed on every page & certified on the last.—*In the Goods of* TRACEY, LENNON *v.* GRAY, [1931] I. R. 374.—**IR.**

r ii. —— —— *Will proved in Sweden.*]—When a will has been probated, or recognised as a valid will, in a jurisdiction other than a British country or a State of the United States of America, probate may be granted by a Surrogate Ct. in Saskatchewan upon production of a copy of the will & of the decree of probate or other act of recognition thereof, & without requiring further evidence of its validity. The extract in question herein, from the records of a District Ct. in Sweden, & the sworn translation thereof, quoted in the judgment, held admissible in evidence on an appln. for letters of administration with the will annexed of the estate of a husband who with his wife had executed a joint will in Sweden.—*Re* BERGMAN, [1928] 1 W. W. R. 601.—**CAN.**

r iii. —— —— *Will proved in Scotland.*]—*Re* CLAEY, [1928] 2 D. L. R. 971 ; [1928] 1 W. W. R. 974.—**CAN.**

PART II. SECT. 5, SUB-SECT. 11.

sn. *Where suspicion arises only as to particular provisions.*]—In all cases in which a will is prepared under circumstances which raise the suspicion of the ct. that it does not express the mind of testator, it is for those who propound the will to remove that suspicion, & it is only when that has been done that the onus is thrown on those who oppose the will to prove fraud or undue influence. Where the suspicion arises only as to one particular provision which is severable, & that suspicion is not removed the ct. can admit the rest of the document to probate.—SARAT KUMARI DEBI *v.* SAKHI CHAND (1928), L. R. 56 Ind. App. 62, P. C.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—A.

n i. —— ——.]—Probate may be granted to an extrix., even though at the date of testator's death & of the application she was resident out of the jurisdiction of the ct.—*Re* WALLEN, [1926] N. Z. L. R. 729.—**N.Z.**

n ii. —— *Declaratory judgment.*]—The High Ct. of Ontario has no jurisdiction to pronounce a declaratory judgment that an exor. is entitled to probate.—MUTRIE *v.* ALEXANDER (1911), 23 O. L. R. 396.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—C.

r i. —— *Allegation of undue influence.*]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment.—SMITH *v.* BIRD (1924), 45 N. L. R. 381.—**S. AF.**

(2) Declarations of testator made after execution of the will are not admissible as to the fact of execution itself, as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed, & no longer in existence.—BARKWELL *v.* BARKWELL, [1928] P. 91; 44 T. L. R. 207; 72 Sol. Jo. 69; *sub nom. In the Estate of* BARKWELL, BARKWELL *v.* BARKWELL, 97 L. J. P. 53; 138 L. T. 526.

956a. ——.]—OAKES *v.* UZZELL, No. 968a, *post.*

962. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

968a. —— ——.]—One of the attesting witnesses of the execution of a will must always be called by the party propounding the document. The attesting witness is then the witness of the ct., & the party by whom he is called may cross-examine to disprove a statement made, or evidence given by him, which appears to be hostile to due execution. —OAKES *v.* UZZELL, [1932] P. 19; 100 L. J. P. 99; 146 L. T. 95; 47 T. L. R. 573; 75 Sol. Jo. 543.

970. *Add. Annotation :*—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

979. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

986. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

991. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

992. *Add. Annotation :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

993a. —— ——.]—Where there is a defect in the attestation clause, the evidence of one witness is required. But where an affidavit is necessary to account for alterations, & where two witnesses are required to make an affidavit, & these join in one affidavit, both shall depose to the execution (SIR H. JENNER FUST).—*In the Goods of* BATTEN (1849), 2 Rob. Eccl. 124; 7 Notes of Cases, 288; 163 E. R. 1264.

1011a. —— ——.]—*In the Goods of* BRINING (1870), 22 L. T. 630; 34 J. P. 694.

1016. *Add. Annotation :*—**Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1017. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1018. *Add. Annotation :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1019. *Add. Annotations :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91. *Generally,* **Refd.** *In the Estate of* Jessop (1924), 132 L. T. 31.

1019a. —— ——.]—Circumstances in which the ct. will grant probate of the contents of a lost will.—*Re* SPAIN (1915), 31 T. L. R. 435.

1022a. —— ——.]—BARKWELL *v.* BARKWELL, No. 938a, *ante.*

1031a. —— **Will gnawed by rats.**]—A will torn in pieces with rats, if a stranger by laying the pieces together could make the devise appear, good; if gnawed before the death, against the will.—ETHERINGHAM *v.* ETHERINGHAM (1646), Aleyn. 2; 82 E. R. 883.

1031b. —— **Belief that will useless.**]—*In the Goods of* LEGG (1848), 6 Notes of Cases, 528.

Annotation :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301.

1031c. —— **Accidental destruction.**]—The ct. will not admit the draft of a will, which has been inadvertently destroyed. to probate on motion.—*In the Goods of* BODY (1865), 4 Sw. & Tr. 9; 34 L. J. P. M. & A. 55; 164 E. R. 1418.

Annotation :—**Apld.** *Re* Sainsbury (1896), 12 T. L. R. 428.

1031d. —— **Destruction by third party—After testator's death.**]—A. devises lands to several persons, & after his death, one who was a friend to the heir at law, snatches the will out of the exor.'s hands & tears it in pieces. The pieces being gathered up, & stitched together, a bill was brought to establish the will, & decreed the devisees to hold & enjoy, & the heir to convey to them.—HAINES *v.* HAINES (1702), 2 Vern. 441; 23 E. R. 883; *sub nom.* HAYNE *v.* HAYNE, Dick. 18.

Annotations :—**Consd.** Davies *v.* Evans (1851), 4 De G. & Sm. 440. **Refd.** Cowgill *v.* Rhodes (1863), 33 Beav. 310.

1031e. —— —— ——.]—A will destroyed after death of testator, who had consented to its destruction before his death. A copy admitted to probate.—*In the Goods of* CARTER (1843), 2 Notes of Cases, 105.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** *In the Goods of* Legg (1848), 6 Notes of Cases, 528.

1031f. —— —— **Without testator's knowledge.**]—A will destroyed in the lifetime of testator, but without his knowledge; substantiated & admitted to proof.—TREVELYAN *v.* TREVELYAN (1810), 1 Phillim. 149; 161 E. R. 944.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** Lister *v.* Smith (1863), 3 Sw. & Tr. 282.

PART II. SECT. 6, SUB-SECT. 3.—B.

949 iii. —— *Attestation clause not read by witnesses.*]—A will was prepared for a testator by his brother, who was sole beneficiary. The will was witnessed in an hotel lounge by two waiters, who gave evidence at the trial to the effect that the execution was informal. The brother & his wife, who were present at the time of the execution, gave evidence to the effect that the will had been duly executed. The evidence of the attesting witnesses was found to be unreliable:—*Held:* notwithstanding the attestation clause was not read by the attesting witnesses, the presumption in favour of due execution applied. Also, no ground of suspicion being suggested, except that the will was prepared by & executed in the presence of the sole beneficiary, & there being no evidence to show that this beneficiary exerted any influence, the presumption was not displaced.—*Re* SPICER, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* MORRIS, [1929] S. A. S. R. 28.—**AUS.**

PART II. SECT. 6, SUB-SECT. 3.—G.

1002 i. *Testator deaf & dumb.*]—Circumstances in which probate of an alleged will of a deaf & dumb person was refused.—*Re* EWEN (DECEASED), [1927] N. Z. L. R. 881.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 5.—A.

k i. —— *At death of testator.*]—On proof of a lost will by a carbon copy produced by the solr. who prepared the original it is not necessary to prove that the original will was in existence at the date of testator's death.—*Re* BARKER'S ESTATE (1933), 6 M. P. R. 327.—**CAN.**

PART II. SECT. 6, SUB-SECT. 5.—B.

1035 i. *Proof of contents—Need of stringent proof.*]—*Re* PERRY [illegible] D. L. R. 930; 56 O. L. R. [illegible].

D. Other Cases.

See case, *infra.*

1042. *Add. Annotation :—As to* (1) **Consd.** *In the Estate of* Birkby (1929), 73 Sol. Jo. 556.

1044. *Add. Annotations :—As to* (1) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *As to* (2) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *Generally*, **Refd.** Smith *v.* Thompson (1931), 146 L. T. 14 ; *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n.

1164. *Add. Annotation :—***Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

1191. *Add. Annotation :—Generally*, **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1247a. —— ——.]—LAMKIN *v.* BABB (1752), 1 Lee, 1 ; 161 E. R. 1.

1271. *Add. Annotation :—***Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1294. *Add. Annotations :—***Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264 ; Robins *v.* National Trust Co., [1927] A. C. 515.

1301a. —— ——.]—Testatrix having directed the person whom she made her residuary legatee to prepare her will, he did so, but by mistake the name of one of the legatees was omitted. Subsequently she directed that three additional bequests should be inserted in the will, which the residuary legatee promised but neglected to do. The will was afterwards read over to testatrix by the residuary legatee, & having declared herself satisfied, she executed it :—*Held :* although the residuary legatee was aware at the time of the execution of the will by testatrix, that her further instructions were not complied with, & that testatrix was ignorant of that fact, still in the absence of fraud on his part the will was entitled to probate.—MITCHELL *v.* GARD (1863). 3 Sw. & Tr. 75 ; 32 L. J. P. M. & A. 129 ; 8 L. T. 438 ; 27 J. P. 487 ; 9 Jur. N. S. 673 ; 11 W. R. 773 ; 164 E. R. 1280.

*Annotation :—***Refd.** Guardhouse *v.* Blackburn (1866), 35 :—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1310. *Add. Annotation :—***Refd.** *Re* Belliss, Polson *v.* Parratt (1929), 141 L. T. 245.

1313a. —— —— ——.]—*In the Estate of* AUSTIN (1929), 73 Sol. Jo. 545.

1317. *Add. Annotation :—As to* (3) **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1318. *Add. Annotation :—***Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1320a. —— ——.]—Where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation & in procuring its execution, probate should not be granted unless the evidence removes suspicion & clearly proves that testator approved the will.—VELLASAWMY SERVAI *v* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

PART II. SECT. 6, SUB-SECT. 5.—D.

sn. *Will in custody of English Probate Court—Sealed & certified photographic copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England & was deposited in the Principal Probate Registry of the High Court, London. The English Probate ct., having been requested to allow the will to be produced at the trial of the action in the Irish Free State, refused, on the ground of absence of jurisdiction : — *Held :* secondary evidence of the will could be given, & a sealed & certified photographic copy was admitted.—LYONS & BLENNERHASSETT *v.* CHALMERS, [1919] I. R. 674.—**IR.**

PART II. SECT. 6, SUB-SECT. 8.—A.

so. *Nature of proof required.*]—The proof necessary to establish a will is not an absolute or conclusive one, but such proof as would satisfy a prudent man.— SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**IND.**

PART II. SECT. 6, SUB-SECT. 8.—B.

1048 ii. ——.]—Where a will is impeached on the ground that testator was not at the time of its execution a person of testamentary capacity, the onus is on those propounding the will to show that it was the will of the testator & that he was a person of testamentary capacity.—PAINTER *v.* HODGKIN (No. 2), [1935] 1 W. W. R. 410.—**CAN.**

1053 i. —— *Wherever ground for suspicion.*]—HOWIE *v.* CHATTERTON, [1926] N. Z. L. R. 595.—**N.Z.**

1053 ii. —— ——.]—The burden of proof as to the execution & the testamentary capacity of testator at the time of the execution of a will lies upon its propounder who has to explain away the suspicious circumstances appearing in the case.—SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**CAN.**

1065 iii. ——.]—If a party propounding a will for probate has satisfied the ct. that testator executed it with due formalities, & that when he did so he was of sound & disposing mind & memory, had full knowledge & appreciation of its contents, & actually comprehended what he was doing, the party propounding has fulfilled the onus upon him ; he does not have to go farther & disprove or negative the alleged exercise of undue influence or fraud ; it is for the party impugning the will to satisfy the ct. of the exercise of undue influence or fraud.—RIACH *v.* FERRIS, [1934] S. C. R. 725 ; [1935] 1 D. L. R. 118.—**CAN.**

sp. *Verbal will.*]—The onus of establishing a verbal will is always a very heavy one ; it must be proved with the utmost precision & with every circumstance of time & place.—VENKAT RAO *v.* NAMDEO (1931), 58 L. R. Ind. App. 362.—**IND.**

PART II. SECT. 6, SUB-SECT. 9.—A.

st. *Non-compliance with Wills Act, R. S., 1923 (c. 146), s. 15.*]—Application refused.—*Re* COX, [1927] 1 D. L. R. 441 ; 59 N. S. R. 103.—**CAN.**

PART II. SECT. 6, SUB-SECT. 9.—D. (g).

1196 i. *Evidence—Witness not available—Attesting witness to will—Affidavit made on proof in common form inadmissible.*]—The affidavit of an attesting witness in statutory form upon probate in common form, is inadmissible after the death of the witness upon proof in solemn form.—*Re* ROBERSON, [1936] 1 D. L. R. 53 ; 5 F. L. J. (Can.) 85.—**CAN.**

PART II. SECT. 6, SUB-SECT. 9.—E.

t i. —— *Plea of forgery.*]—Deft. in a probate action pleaded that the will which pltf. sought to establish was not signed by testatrix or by any other person in her presence & by her direction :—*Held :* as this amounted to a plea of forgery, deft. must disclose the name of the person by whom, & the time when it was alleged the document was signed.—GALLAGHER *v.* KENNEDY, [1931] N. I. 207.—**IR.**

PART II. SECT. 8.

1238 i. *Double grants—Discouraged.*]—When a will appoints one exor. for general purposes & another one for limited purposes, only one grant should be made, & the respective powers of the two exors. should be distinguished therein. The ct. should discourage double grants, & upon the application for probate made by either exor., the other one should be cited.—*Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18. —**CAN.**

PART II. SECT. 9, SUB-SECT. 4.

1241 i. *When knowledge & approval presumed.*]—LIDSTONE *v.* MCWILLIAMS, [1931] 3 D. L. R. 455 ; S. C. R. 695 ; *affg.*, 1 M. P. R. 350.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—A.

1244 i. *Exercise of influence must be proved.*]—MURRAY *v.* HAYLOW, [1927] 3 D. L. R. 1036 ; 60 O. L. R. 629.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—C.

1271 i. *Onus of proof—On party alleging undue influence.*]—*Re* MCWILLIAMS (1930), 1 M. P. R. 350.—**CAN.**

PART II. SECT. 10, SUB-SECT. 3.

b i. ——.]—Where the draftsman of a will empowered by testator to use his own judgment makes a mistake of law or error in drafting, testator is bound by the mistake, but where the draftsman in doing the merely ministerial act of copying what he thinks the testator

1344. *Add. Annotation*:—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1348a. —— **Misdescription of relationship.**]—Where in a will the residue had been left to the grandchildren of a person named & described as "my uncle," whereas he was in fact the cousin of testatrix, the ct. ordered that the words "my uncle" be excluded from probate, which had been granted but not published.—*Re* CLARK (1932), 101 L. J. P. 147 L. T. 240; 48 T. L. R. 544; 76 Sol. Jo. 461.

1351. *Add. Annotation*:—**Folld.** Kitcat *v.* King, [1930] P. 266.

1351a. —— ——.]—A testamentary paper headed "Codicil to be attached to my will," & proceeding "This is the last will & testament of A. B." did not expressly or by implication revoke an earlier will although it effected a substantial difference in the destination of a large portion of the property passing. The same paper bore, in addition to the signature of the testator, the signatures of four persons, two of whom were beneficiaries under it; all four signatures had been placed on the paper at the time of attestation, & there was evidence that the two beneficiaries signed otherwise than as attesting:—*Held*: the words "last will & testament" did not preclude the admission to probate of both papers, & probate of the codicil might go without including the names of the two beneficiaries as attesting witnesses.—KITCAT *v.* KING, [1930] P. 266; 99 L. J. P. 126; 143 L. T. 408; 46 T. L. R. 617; 74 Sol. Jo. 488.

1367. *Add. Annotation*:—**Distd.** *In the Estate of* Caie, *In the Estate of* Davis (1927), 71 Sol. Jo. 898.

1369a. —— —— ——.]—The ct. directed that certain non-testamentary words of an offensive nature should be omitted from the probate of a will, but declined to order their expungement from the will itself.—*Re* MAXWELL (1929), 140 L. T. 471; 45 T. L. R. 215; *sub nom. In the Estate of* MAXWELL, 73 Sol. Jo. 159.

1369b. —— —— ——.]—*In the Estate of* RAWLINGS (1934), 78 Sol. Jo. 338.

1369c. —— —— **Repugnant to testator's family.**]—The ct. will permit words of a will which are not dispositive to be omitted from the probate, though they make no personal allusion to any individual, if they are otherwise offensive & objectionable & repugnant to the members of the family of the testator.—*In the Goods of* BOWKER, [1932] P. 93; 101 L. J. P. 30; 146 L. T. 572; 48 L. R. 332; 76 Sol. Jo. 344.

1371a. —— ——.]—*In the Estate of* CAIE (1927), 43 T. L. R. 697; *sub nom. In the Estate of* CAIE, *In the Estate of* DAVIS, 71 Sol. Jo. 898.

1375a. Settlement—Identical bequests.]—Where a will contained bequests identical with the trusts of a marriage settlement the ct. did not require the whole of the marriage settlement to be set out in the probate, but only such extracts as were necessary to explain the bequests.—*In the Goods of* GARBET (1869), 33 J. P. 792; 21 L. T. 366.

1383. *Add. Annotation*:—**Consd.** *In the Estate of* Todd, [1926] P. 173.

1388a. —— ——.]—*In the Estate of* TODD, No. 1398a, *post*.

1398a. —— **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.

Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expressly directed that the American will should be "probated" in America:—*Held*: (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America.—*In the Estate of* TODD, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.

1410a. ——.]—*In the Estate of* TODD, No. 1398a, *ante*.

1431a. Where minority interest.]—*Re* HERBERT, No. 1883a, *post*.

1431b. ——.]—Under Jud. (Consolidation Act), 1925 (c. 49), ss. 160 (1) & 162 (1), the ct. cannot make a grant of administration to less than two individuals, when it is aware that there is a minority interest.—*Re* WHITE, [1928] P. 75; 96 L. J. P. 157; 138 L. T. 68; 43 T. L. R. 729; 71 Sol. Jo. 603, C. A.

1431c. —— **Administrator pendente lite.**]—*Re* PRICE (1931), 75 Sol. Jo. 295.

has written in his instructions inserts a word in error & the mistake is not brought to the notice of testator the word so inserted must be omitted from probate.—PERPETUAL TRUSTEE CO. *v.* WILLIAMSON (1929), 29 S. R. N. S. W. 487; 46 N. S. W. W. N. 151.—AUS.

PART II. SECT. 10. SUB-SECT. 4.—B.

1369 i. *Objectionable matter—Unconnected with testamentary dispositions—Scandalous or defamatory matter.*]—The Supreme Ct. has jurisdiction, to be exercised with great care, to order that words in a will, which are scandalous or defamatory & in no way germane to the dispositions of the will, be omitted from the probate.

Testator stated: "I make no provision for my wife on account of her intemperate habits & other misconduct." The ct. refused to order those words be omitted from the probate.—*Re* O'REILLY'S WILL, [1927] V. L. R. 533; [1927] Argus L. R. 396.—AUS.

PART II. SECT. 11, SUB-SECT. 1.

sn. *Appeal from refusal to grant.*]—*Re* MACDONALD, R. *v.* SURROGATE COURT JUDGE (No. 2), [1930] 2 D. L. R. 995; 1 W. W. R. 261; 38 Man. L. R. 471.—CAN.

sp. ——.]—Appeal from refusal to grant administration under Surrogate Ct. Act only lies where the grant is contested.—DICKSON *v.* MONTEITH (1887), 14 O. R. 719.—CAN.

PART II. SECT. 11, SUB-SECT. 4.—A

1423 iii. ——.]—The rule that in granting letters of administration the grant will follow the majority of interests is a stronger rule than that under which the preference is usually given to a man over a woman. The fact that one of appcts. has a large claim against the estate is a circumstance to be considered.—BELL *v.* SPELLISCY, [1932] 1 W. W. R. 174.—CAN.

PART II. SECT. 11, SUB-SECT. 4.—B.

sp. *To attorney of executors.*]—*Re* BULLEN (DECEASED) (1926), 37 B. C. R. 240.—CAN.

1463a. —— **" Special circumstances."**]—This was an application by two nominees for a grant of letters of administration of the estate of an intestate, whose next of kin were unable to agree on any one or more of them administering the estate. Being all *sui juris*, they signed an act of renunciation in which they consented to the appcts. taking the grant subject to the approval of the ct. It was submitted that though normally the ct. would make a grant only to kindred of an intestate, in " special circumstances " it would make a grant to a stranger. The ct. exercised that power under sect. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 162, as amended by Administration of Justice Act, 1928 (c. 26), s. 9 :—*Held :* in the " special circumstances " the order would be made as prayed.—*Re* MORGANS (W. A.) (1931), 145 L. T. 392 ; 47 T. L. R. 452.

1464a. Nominee of plaintiff—Action against estate under Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41).]—In the absence of a personal representative of a deceased intestate, against whose estate a cause of action survived by virtue of Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, the ct. appointed as administrator of deceased the nominee of a party intending to prosecute the cause of action in order that proper parties to the action should be constituted. The machinery of Administration of Justice Act, 1928 (c. 26), s. 9, proviso (*b*), applied.—*In the Estate of* SIMPSON, *In the Estate of* GUNNING, [1936] P. 40 ; 105 L. J. P. 7 ; 154 L. T. 136 ; 52 T. L. R. 117 ; 79 Sol. Jo. 861.

1464b. —— ——.]—*Re* CUMMING (1935), 79 Sol. Jo. 861 ; *sub nom. In the Estate of Gunning* [1935] W. N. 206 ; 80 L. Jo. 399 ; 180 L. T. Jo. 388.

1474. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

1485. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

1508. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1509. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1510. For " —— **Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary** " read " —— **Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary.**"

1566. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1650a. ——.]—Testatrix commenced a will with the words : " This is my last will, the former one being cancelled," having substituted for the German word " *ungültig* " its English equivalent " cancelled." This will made dispositions quite different from those in an earlier will, without however disposing of the residue :—*Held :* the later will revoked the earlier, &, testatrix being illegitimate, the ct. granted letters of administration to the Treasury Solicitor with the will annexed.—JONES *v.* TREASURY SOLICITOR (1932), 147 L. T. 340 ; 48 T. L. R. 615 ; 76 Sol. Jo. 690 ; *affd.* 49 T. L. R. 75.

1651. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

1653. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1656. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines, [1927] A. C. 185.

1675a. —— **Death of foreigner domiciled abroad—Estate insolvent—No proof by executor.**]—Deceased, a Peruvian, died in Peru on Feb. 6, 1932, leaving a will of which his son was the surviving exor. The estate was insolvent & consisted in part of English assets which formed the subject of pending proceedings in Chancery. The exor. had not been cited & had not renounced probate. There was evidence that the exor., who had been in this country since the death of deceased, had taken no steps to obtain probate & had withdrawn a retainer given to English solrs., intending to leave the country without taking probate. The ct., in the exercise of its general jurisdiction, passed over the exor., & made a grant of administration with the will annexed to English creditors of deceased.—*In the Estate of* LEGUIA, *Ex p.* ASHWORTH, *Ex p.* MEINERTZHAGEN, [1934] P. 80 ; 103 L. J. P. 34 ; 150 L. T. 339 ; 50 T. L. R. 177 ; 78 Sol. Jo. 136.

PART II. SECT. 11, SUB-SECT. 4.—C.

1447 ii. —— ——.]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—STONEY *v.* STONEY (1923), I. L. R. 2 Pat. 508.—**IND.**

PART II. SECT. 11, SUB-SECT. 4.—F. (c).

sr. *Widow separated from husband for eighteen years.*]—A widow having had good reason for discontinuing to live with her husband :—*Held :* the fact that she had not lived with him for 18 years prior to his death & they had had nothing to do with one another during that long period was not a sufficient reason, there having been no misconduct on her part, for refusing her a grant of administration directly or through her attorney.—*Re* HOLMES ESTATE, [1931] 3 W. W. R. 665.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—G. (a).

1596 ii. —— *Application by former nominee for widow—English Noncontentious Business Rules, r.* 28.]—After the refusal of a grant to the nominee of the widow the widow renounced her right to administer, & the nominee made another application based on the fact that he was one of the next of kin :—*Held :* appct. being *prior petens* & there being nothing in the circumstances requiring a strict application of English Noncontentious Business Rules, r. 28, the letters of administration should be granted to him. The English Noncontentious Business Rules 28, 33, 34, are in force in Saskatchewan.—*Re* KRAUSE ESTATE (Sask.), [1929] 4 D. L. R. 1082 ; 1 W. W. R. 896.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—G. (d) i.

1 i. —— *Those with majority of interests preferred.*]—Between next of kin of the same degree, the ct. will appoint as administrators those with the majority of interests.—*Re* MCCARTHY, [1936] 1 D. L. R. 735 ; 5 F. L. J. (Can.) 199.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—H.

st. *Preferred to official administrator—Though resident out of jurisdiction—Agent managing estate.*]—*Re* LELAIRE (1903), 9 B. C. R. 429.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—K. (a).

sv. *Creditor with judgment against debtor—Right to file bill against real representative—Before suing out execution.*]—DUFFY *v.* GRAHAM (1869), 15 Gr. 547.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—M.

sm. *Ex-convict.*]—A person who has been convicted of felony, & has served his sentence, is in the same position as if pardoned, & can be appointed administrator.—*In the Goods of* COLEMAN. [1926] I. R. 327.—**IR.**

sp. *Adopted child.*]—*Re* WLADYSLAW DZURMAN ESTATE (1936), 44 Man. L. R. 151.—**CAN.**

1701. After this case add :—

Compare No. 1773a, *post.*

1772a. Remainderman—Settlement determined on death of life tenant.]—Where a woman died intestate without known next of kin & was, at the time of her death, the life tenant of an estate previously settled upon her by will, the settlement was determined on her death, & the legal estate vested in the personal representative of the life tenant. The ct. made a general grant of administration to the remainderman under the settlement, following the non-appearance of persons interested in the life tenant's estate who had been cited. —*In the Estate of* BORDASS, [1929] P. 107 ; 98 L. J. P. 65 ; 140 L. T. 120 ; 45 T. L. R. 52 ; 72 Sol. Jo. 826.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1772b. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164 ; 98 L. J. P. 66 ; 141 L. T. 32 ; 73 Sol. Jo. 221.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1773a. Poor law guardians—Administration of estate of orphan's deceased parent.]—By Poor Law Act, 1927 (c. 14), a board of guardians may act in certain circumstances as *in loco parentis* in respect of an orphan child, & in that capacity is entitled to take out letters of administration of the estate of the child's deceased parent for the benefit of the child.—*Re* PETERS (1929), 142 L. T. 328 ; 46 T. L. R. 119 ; 74 Sol. Jo. 13.

1774. *Add. Annotation :*—**Refd.** *Re* White, [1928] P. 75.

1780. *Add. Annotation :*—**Refd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

1785. *Add. Annotation :*—**Refd.** *In the Estate of* Potticary, [1927] P. 202.

1873a. Doubt as to capacity in which person entitled—Refusal to take grant in either capacity.]—An intestate was presumed to have died in or since 1905. Owing to the uncertainty of the date of his death it was not known whether he was survived by his father, who in that event would have been entitled to a grant of administration. The father died in 1909 leaving a will, & a brother of the presumed deceased was now entitled to a grant of administration of his estate whether as his next of kin or as the exor. of his father. The brother of the presumed deceased refused either to renounce his derivative right as exor. of his father or to take the grant in his original right as next of kin of his brother, & he had become bkpt. The ct. granted administration under Ct. of Probate Act, 1857 (c. 77), s. 73, to the Public Trustee.—*In the Estate of* PARNALL, [1936] P. 47 ; 105 L. J. P. 20 ; 154 L. T. 374 ; 52 T. L. R. 160 ; 80 Sol. Jo. 94.

E. To whom Grant may be made.

(Vol. XXIX., p. 170.)

See, also, Administration of Justice Act, 1928 (c. 26), s. 9.

1883a. —— **During minority.**]—Jud. (Consolidation) Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested ; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857 (c. 77), s. 73.—*Re* HERBERT, [1926] P. 109 ; *sub nom. In the Goods of* HERBERT, 95 L. J. P. 53 ; 135 L. T. 123 ; 42 T. L. R. 469.

Annotations :—**Consd.** *Re* White (1927), 43 T. L. R. 729. **Dbtd.** *Re* White, [1928] P. 75. **Consd.** *Re* Price (1931), 75 Sol. Jo. 295.

2056a. ——.]—Testator made his will leaving all his money to A. There was no appointment of an exor. A. moved for administration with the will annexed. The parties interested in intestacy resisted the application :—*Held :* in the circumstances the application failed, the persons entitled in intestacy taking the grant in priority to a legatee or devisee under Non-contentious Rules, r. 119, operating since Jan. 1, 1926, in the case of an estate not wholly disposed of.—*In the Goods of* GATES, [1928] P. 128 ; 97 L. J. P. 76 ; 138 L. T. 714 ; 44 T. L. R. 353 ; 72 Sol. Jo. 172 ; *varied*, [1928] P. 178, C. A.

2314a. —— ——.]—An administrator with a will annexed being also universal legatee & devisee under the will was declared bkpt. & a trustee of his estate was appointed. At the expiration of twelve months from the death of testator the administrator had absconded from the country & had not since been heard of. A grant of special administration was made to the trustee in bkpcy. as a person interested in the estate within Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 164 (1).—*In the Goods of* ROSSE, [1934] P. 29 ; 103 L. J. P. 32 ; 150 L. T. 220 ; 50 T. L. R. 72 ; 78 Sol. Jo. 30.

PART II. SECT. 11, SUB-SECT. 5.—D. (c).

1834 i. *Conviction for killing intestate.*]—A husband, who has been convicted of killing his wife, who died intestate, has no claim to her estate, & neither he nor his attorney is entitled to administer it.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART II. SECT. 11, SUB-SECT. 5.—E. (c).

sw. *Right of next of kin to be appointed guardian.*]—*Re* BELL ESTATE (Sask.), [1929] 3 W. W. R. 68.—**CAN.**

PART II. SECT. 12, SUB-SECT. 1.—B. (a).

sy. *Dependent on value of interest.*]—The priority of right to the grant of administration with will annexed is regulated by the value of the interest under the will, the widow (as such) having no such priority of right as she would have in the case of the grant of general letters of administration without a will.—*Re* CAMPBELL, [1933] N. Z. L. R. 817.—**N.Z.**

PART II. SECT. 12, SUB-SECT. 1.—B. (h).

2155 i. *Where estate insolvent—Assets assigned before death to executrix—Executrix neither proving nor renouncing.*]—*Held :* letters of administration with a copy of the will annexed should be granted to a duly appointed syndic of the creditor, who might be one of its officers.—*Re* RANDALL, [1927] V. L. R. 535 ; 49 A. L. T. 89 ; [1927] Argus L. R. 395.—**AUS.**

PART II. SECT. 12, SUB-SECT. 1.—B. (j).

sg. *Nominee of renouncing executor.*]—Where a sole executrix who was also the sole beneficiary, an Assyrian by birth & illiterate, renounced probate, the ct. allowed a grant of administration with the will annexed to her nominee who was the son of herself & testator.—*Re* MOSES (1931), 48 N. S. W. W. N. 104.—**AUS.**

2321a. —— **" Person interested in the estate "—Trustee in bankruptcy of administrator.**]—*In the Goods of* ROSSE, No. 2314a, *ante*.

2327a. —— —— **Fresh attorney appointed by surviving executor—Whether entitled to grant.**]—Several exors. out of the jurisdiction gave a power to an attorney to take administration with a will & codicils annexed without reference to survivorship amongst the exors. The attorney took a grant of administration & partly administered the estate. The surviving exor. appointed fresh attorneys. The ct. revoked the grant to the original attorney & made a fresh grant to the fresh attorneys.—*In the Goods of* DINSHAW, [1930] P. 180; 99 L. J. P. 118; 142 L. T. 652; 46 T. L. R. 308; 74 Sol. Jo. 264.

2398a. Where minority interest.]—*Re* PRICE (1931), 75 Sol. Jo. 295.

2436. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2440. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2441a. ——.]—Where administration is taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator, & the foreign principal is not by the law of the domicil an exor., but by virtue of his interest under the foreign will is charged by the law of the domicil with the duties which under English law are imposed on an exor., the ct. will authorise such administrator, after satisfying all English liabilities & all foreign liabilities of which he has notice, to hand over the surplus in his hands to the foreign principal, whose receipt will be a good & sufficient discharge. In such a case the administrator need not issue any foreign advertisements or take any active steps abroad to ascertain the position with regard to debts, as the foreign principal, who by the law of the domicil is in the position of an exor., is in such a case directly responsible for the payment of foreign debts. —*Re* ACHILLOPOULOS, JOHNSON *v.* MAVROMICHALI, [1928] Ch. 433; 97 L. J. Ch. 246; 139 L. T. 62.

2459a. Existence of Spanish civil war.]—PRACTICE NOTE, [1937] W. N. 298.

2485. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2495. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2511a. —— ——.]—COLLISS *v.* HECTOR (1875), L. R. 19 Eq. 338; 44 L. J. Ch. 267; 23 W. R. 485.

2516. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2516a. —— —— **Official Solicitor.**]—In the first case defts. in an action for personal injuries attributed the blame to a third person, who had since died. He left no estate, but he had been insured against such claims for negligence by an insurance co. Pltf. applied under R. S. C., Ord. 16, r. 46, for an order that the Official Solicitor should represent deceased's estate & be added to the record as a deft. The order asked was made without the consent of the Official Solicitor. In the second case, the facts were similar, except that deceased was one of defts. in the action, & that the order was made without the knowledge of the Official Solicitor. The Official Solicitor appealed in both cases:—*Held:* there is no power under R. S. C., Ord. 16, r. 46, to appoint a person against his will to represent the estate of a deceased person.—PRATT *v.* LONDON PASSENGER TRANSPORT BOARD, GREEN *v.* VANDEKAR, [1937] 1 All E. R. 473; 156 L. T. 265; 53 T. L. R. 355; 81 Sol. Jo. 79, C. A.

2518a. —— **Solicitor of deceased defendant.**]—On the death of a deft., the Ct. of Appeal directed his legal personal representative to be added as deft. & discharged an order which had been made appointing deceased's solr. to represent his estate.—HARDY *v.* HOLMES & SPRINZ (1913), H. No. 1314 (unreported), Y. S. C. P.

2523. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, [1937] 1 All E. R. 473.

2555a. Notice of appointment—Change of title of proceedings.]—Where an order has been made under R. S. C., Ord. 16, r. 46, appointing a person to represent an estate, the order should be left at the Central Office for entry, & the person appointed should file a notice of his appointment & the name & address of his solr., & thenceforward the title of the proceedings should contain the name of the person appointed, described as " A. B., appointed by order dated, etc., to represent the estate of C. D. deceased." The person appointed will then be entitled to be represented in ct. at the hearing as a party (CLAUSON, J.).—*Re* PROSSER, PROSSER *v.* GRIFFITH, [1929] W. N. 85.

2585a. Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).]—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held:* B. was entitled under Jud. (Consolidation) Act, 1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate. —*Re* DALLEY (1926), 136 L. T. 223; 70 Sol. Jo. 839.

2585b. Property subject to life tenancy—Settled Land Act, 1925 (c. 18), s. 20 (1)—Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 6 (c).]—*In the Estate of* JAMES (1926), 162 L. T. Jo. 498.

2585c. Settled land.]—Grants of probate to special exors. are not to be confined to those persons whose qualifications fall within Settled Land Act, 1925 (c. 18), s. 30 (1), & the effect of that Act is not to limit the operation of Administration of Estates Act, 1925 (c. 23), ss. 1, 13 & 22.—*In the Estates of* GIBBINGS, [1928] P. 28; 97 L. J. P. 4; 138 L. T. 272; 44 T. L. R. 230; 71 Sol. Jo. 911.

2585d. —— **Death of settlor fifty years earlier—Personal representatives not traced.**]—G. died in 1882 & the chain of representation to his estate was not known & could not be ascertained without considerable expense. E., testator, died on Mar. 27, 1930, & the present appcts., who were his exors., had taken probate of his will in due course save

& except land vested in testator which was settled previously to his death & not by his will & remained settled land notwithstanding his death. Testator was interested in land settled by the will of G. as follows: (*a*) he was tenant for life for the purposes of Settled Land Act, 1925 (c. 18), of a portion of the N. estate subject to a compound settlement consisting of the will of G. together with an indenture of resettlement of the N. estate dated Sept. 25, 1909; (*b*) he was absolute owner of certain portions of the N. estate, which by reason of a rentcharge upon them continued to be settled land after his death. These portions were included in a settlement created by the will of G. but were not subject to the compound settlement or the resettlement. They were therefore the subject of a separate settlement; (*c*) certain portions of the N. estate of which testator was absolute owner were subject to the same conditions as to title as (*b*) but testator had exonerated these latter from the incidence of the rentcharge as between the various portions of the estate, but he could only do so in so far as the income from both (*b*) & (*c*) was adequate to meet the rentcharge. As regards the burden of the rentcharge as a whole both (*b*) & (*c*) remained subject to it in favour of the chargee. Of these interests in settled land of testator all three remained subject to the rentcharge, the object of which was to provide an annuity to the still surviving widow of G., & apart from the operation of Settled Land Act, 1925 (c. 18), s. 30 (3), for the purposes of that Act, there were originally no trustees of any of these interests of testator under the settlement created by the will of G. On July 22, 1931, S. & W. had already as trustees of the compound settlement & resettlement obtained a grant of special probate to testator as his special exors. limited to settled land, vested in him as tenant for life under the compound settlement & resettlement. Probate of testator's will having excluded settled land there was no representation in respect of the settled land of which he was absolute owner which remained settled land because of the existence of the rentcharge. On the application of the general exors. of the will of testator the ct. revoked the earlier probate & granted general probate to them save & except settled land, of which special exors. had already been appointed by the grant dated July 22, 1931, under the authority of Judicature (Consolidation) Act, 1925 (c. 49), s. 155, without citing the personal representatives (if any) of the settlor, G.—*In the Estate of* POWELL, [1935] P. 114; 104 L. J. P. 33; 152 L. T. 515; 51 T. L. R. 413 79 Sol. Jo. 321.

2603a. —— ——.]—A will duly executed was on the death of testator in the custody of the sole exor., & universal legatee named in it. It was never proved, there not being at that time any property which could pass under it, & was subsequently lost or mislaid. No draft or copy of it was forthcoming. The ct. granted administration of the effects of deceased, limited until the will, or an authentic copy of it, shall be brought into the probate registry.—*In the Goods of* JOHNSON (1865), 11 Jur. N. S. 184.

2617. *Add. Annotation:*—**Consd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2618. *Add. Annotations:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2619. *Add. Annotations:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

2744a. Threatened breach—Surety entitled to apply to court—For relief by way of indemnity against liability under bond.]—Sureties who have entered into the usual bond for the proper administration by the administrator of an intestator's estate are entitled to apply to the ct. for relief *quia timet*, & will be granted the same by way of indemnity against their liability thereunder in a case where they have reasonable ground for anticipating jeopardy owing to a threat by the administrator, persisted in up to the issue of the writ, to distribute the estate without providing for contingent liabilities in contravention of the bond.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.

2754a. Right to allege several breaches.]—A party had obtained from a prerogative ct. a general order to put an administration bond in suit against the surety, on the sole ground that the principal had not paid over the residue. On *non est factum* being pleaded, the pltf. suggested breaches, not only for not paying over the residue, but on several other distinct parts of the condition; the Exchequer Ct. refused to compel him to strike out the breaches on the other parts of the condition, or to allow deft. to let judgment go by default, & pay nominal damages on those breaches. —CANTERBURY (ARCHBP.) *v.* ROBERTSON (1832), 1 Cr. & M. 181; 149 E. R. 365.

2777a. —— ——.]—THOMPSON *v.* JUDGE (1854), 2 Drew. 414; 61 E. R. 780; *sub nom.* TOMSON *v.* JUDGE, 2 Eq. Rep. 1141; 23 L. J. Ch. 929; 23 L. T. O. S. 217; 2 W. R. 574.

PART II. SECT. 13, SUB-SECT. 6.—B.

so. *Payment to surety—When allowed to administrator.*]—Where a person who is entitled to a grant of administration, but is otherwise unable to give justifying security, procures a surety bond from an insurance co. & pays a premium thereon, it is within the discretion of the ct. to allow the amount of such premium out of the general personal estate, where the circumstances of the case show that reliable security could not otherwise be obtained, & that the course adopted was reasonable & proper, & for the interest of all parties entitled to the assets.—*Re* LUCAS, PARR *v.* BLAIR, [1900] 1 I. R. 292.—**IR.**

PART II. SECT. 13, SUB-SECT. 7.—B. (b).

oi. —— *Insolvency of administrator.*]—*Re* ELLIOTT SMITH'S ESTATE, [1931] 3 M. P. R. 485.—**CAN.**

sx. *Right of sureties—Anticipated waste by administrator—Injunction & receiver.*]—*In the Estate of* HUNTER (1928), 45 N. S. W. W. N. 170.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—A.

sy. *Foreign will—Incorrect translation annexed.*]—Where letters of administration, *cum testamento annexo*, have been granted with an incorrect translation of a foreign will annexed thereto, the ct. will, upon evidence to its satisfaction, order the substitution of a correct translation in lieu of the incorrect one.—*Re* KLEINSANG (No. 2) (1928), 28 S. R. N. S. W. 559; 45 N. S. W. W. N. 150.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—B. (c).

n i. ——.]—Probate is conclusive proof of the due execution of the will by testator.—CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAP NARAIN SINGH (1926), I. L. R. 5 Pat. 777.—**IND.**

2877. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

2911. *Add. Annotations :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155 ; Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336.

2979a. —— Twenty years after death of testator.]—Administration revoked.—*In the Estate of* MUSGROVE, DAVIS *v.* MAYHEW, [1927] P. 264 ; 96 L. J. P. 140 ; 137 L. T. 612 ; 43 T. L. R. 648 ; 71 Sol. Jo. 542, C. A.

2993. *Add. Annotation :*—**Refd.** Burr *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405.

3011. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

3022a. Absence of necessary party—Non-disclosure of material facts.]—On an *ex parte* motion in this matter in Dec. 1933, a grant of administration with the will annexed was made to creditors of deceased, & the ct., in dispensing with the citation of the exor., expressed it as an exceptional course which should not be regarded as justifying in ordinary cases any relaxation of the usual practice of giving an exor., by a formal notice, the opportunity of appearing before the ct. In July, 1935, the exor. applied for the revocation of the grant, & after fresh evidence the President revoked the grant which he had made, on the ground that on the original motion material facts had not been disclosed which, had they been disclosed, would have caused him to require the citation of the exor. In the order embodying the grant the administrators were not described as creditors, & it was directed that in all future grants of administration to a creditor he should be so described in the order. The administrators appealed against the revocation of the grant :—*Held :* the decision of the President must be affirmed, owing to non-disclosure of material facts. The President had jurisdiction to revoke his own grant, because it had been made in the absence of a necessary party.—*In the Estate of* LEGUIA (A. B.) (1936), 105 L. J. P. 72 ; 155 L. T. 270, C. A.

3074. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

3111. *Add. Annotation :*—**Apld.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

3111a. —— —— Sale of English real estate.]—Scottish exors. with a confirmation resealed under Jud. (Consolidation) Act, 1925 (c. 49), s. 168, can make a good title to English real estate without the necessity of any separate grant in respect thereof.—*Re* HOWDEN & HYSLOP'S CONTRACT, [1928] Ch. 479 ; 97 L. J. Ch. 313 ; 139 L. T. 309 ; 72 Sol. Jo. 400.

PART II. SECT. 15, SUB-SECT. 2.—B. (e).

p. *Revsd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 15, SUB-SECT. 4.—C.

st. *As to title to land.*]—*Held :* probate was not sufficient.—SUTHERLAND *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

PART II. SECT. 15, SUB-SECT. 6.

h i. —— ——.]—Pltfs., who were the exors. of the will of one McA., had obtained from a competent ct. in British Columbia a grant of probate of his will. McA. & deft. had made an agreement under seal by which McA. agreed to sell & deft. agreed to purchase certain land in Alberta, & under which part of the purchase-price was to be met by the assumption of a mtge. The mtge. was foreclosed & title to the land obtained by the mtgee. The agreement for sale was in the possession of McA. in British Columbia at the time of his death & came into the possession of pltfs. there. Pltfs., who were unable to give title to the land to deft., brought an action in Alberta on the personal covenant in the agreement, without having obtained any grant of letters probate, ancillary or otherwise, or any grant of letters of administration with will annexed from any ct. in Alberta :—*Held :* the action was maintainable.—MCALLISTER & MCALLISTER *v.* BEDARD, [1932] 2 W. W. R. 577.—**CAN.**

h ii. —— ——.]—SUTTON *v.* SOUDAK & SOUDAK (GEORGE) FUR CO., [1932] 2 W. W. R. 82; 41 Man. L. R. 38.—**CAN.**

PART II. SECT. 16, SUB-SECT. 1.—B.

n i. ——.]—The High Ct. of Ontario has no power to revoke letters of administration granted by a Surrogate Ct.—BELANGER *v.* BELANGER (1911), 24 O. L. R. 439.—**CAN.**

n ii. ——.]—The judge of the Surrogate Ct. on receiving information that his ct. had issued letters of administration on a false statement of facts has an inherent right to cancel them ; & a further right to appoint a trust co. to act as administrator for the protection of any persons whose interests may have been affected by the mistaken action of the ct.—*Re* PAYNE ESTATE, [1934] 3 W. W. R. 631 ; [1935] 1 D. L. R. 474.—**CAN.**

PART II. SECT. 16, SUB-SECT. 2.—C.

sb. *As to person entitled—Advocate consenting without instructions.*]—Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters : —*Held :* if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261. —**IND.**

PART II. SECT. 16, SUB-SECT. 2.—E.

2988 i. *Administration granted on false affidavit—As to person entitled.*]—Where a grant of administration is made to a man on his fraudulent representation that he was the intestate's lawful widower, but his alleged marriage to the intestate was illegal, he having a wife then living, the grant is void, & neither he nor his exors. can claim any right to or interest in the estate.—IRELAND *v.* PAYNE, [1933] 3 W. W. R. 363 ; *on appeal*, [1934] 2 W. W. R. 188.—**CAN.**

PART II. SECT. 16, SUB-SECT. 2.—J.

sc. *Validity of will not proved.*]—ODYNAK *v.* FESCHUK (Alta.), [1927] 3 D. L. R. 842 ; [1927] 3 W. W. R. 64 ; *revsd.* [1928] 1 D. L. R. 423 ; [1928] 1 W. W. R. 113 ; 23 Alta. L. R. 263. —**CAN.**

PART II. SECT. 16, SUB-SECT. 3.—H.

3055 iii. —— ——.]—On an application to revoke a grant of probate on the grounds that persons who ought to have been cited were not cited, & that the will was a forgery, if the first ground is established the *onus* is upon the opposite party to prove that the will is genuine.—RAMAUANDI KUER *v.* KALAWATI KUER (1927), 55 L. R. Ind. App. 18.—**IND.**

PART II. SECT. 16, SUB-SECT. 4.—A. (b) i.

3063 i. *On acts of administration.*]—Letters of administration were granted to the brother of a man who was erroneously presumed to have died intestate. The administrator, as personal representative of deceased, sold & conveyed to a purchaser a portion of the land belonging to deceased. Upon the subsequent discovery of a will, pltf. obtained a grant of probate :—*Held :* the grant of administration was not void *ab initio* & purchaser had acquired a good title.—MCPARLAND *v.* COULSON, [1930] N. I. 138.—**IR.**

PART II. SECT. 18, SUB-SECT. 1.

3097 ii. —— *Irish Free State—Resealing in Victoria.*]—Letters of administration c.t.a. having been granted in the Irish Free State, & application to have them sealed in Victoria under sect. 81 of Administration & Probate Act, 1928, was made by the attorney under power appointed by the administratrix for that purpose :—*Held :* the letters had not been granted "in the United Kingdom" & consequently could not be sealed under the sect.—*Re* STOKES, [1934] V. L. R. 352. —**AUS.**

PART II. SECT. 18, SUB-SECT. 3.

sd. *Grounds for granting or refusing application for resealing.*]—The ct. has the right, on an application under Alberta Rules, r. 945 (24), for resealing, to inquire as to the original appointment of the administrator, & should refuse the application, where the exors. have the right & duty to apply in Alberta for probate.—*Re* BLAGBURN ESTATE, [1927] 1 W. W. R. 716 ; *affd.*, [1927] 2 W. W. R. 206.—**CAN.**

PART II. SECT. 19.

e i. ——.]—An extrix., to whom probate of a will had been granted in England, appointed appct. as attorney under power in Victoria to procure the resealing of the probate in Victoria :—*Held :* appct. was authorised to produce the probate & obtain the sealing thereof under

3125. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3126. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3127. *Add. Annotations :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139. **Refd.** Thomas *v.* Jones, [1928] P. 162.

3127a. ——.]—The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably propound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of* PLANT, WILD *v.* PLANT, [1926] P. 139 ; *sub nom. Re* PLANT, WILD *v.* PLANT, 95 L. J. P. 87 ; 135 L. T. 238 ; 42 T. L. R. 443 ; 70 Sol. Jo. 605, C. A.

Annotation :—**Refd.** Thomas *v.* Jones, [1928] P. 162.

3127b. ——.]—The principle of the decision in *In the Estate of Plant, Wild* v. *Plant*, No. 3127a, *ante*, that exors. who have established the validity of their will are entitled to their whole costs of the litigation, although they fail in establishing a codicil, does not extend in all cases to costs incurred by them by reason of their insisting upon probate not only of clauses in a will expressing the testamentary mind of their testator, but also of a clause which is found not to be his testamentary act. If a residuary gift is excluded from probate on the ground of want of capacity the question still arises whether the costs so incurred by the exors. are due to their "violation or culpable neglect of duty." If the ct. finds on this issue that an exor. is a wrongdoer, his *primâ facie* right to receive out of the estate costs not otherwise provided for is displaced.—THOMAS *v.* JONES, [1928] P. 162 ; 139 L. T. 214 ; 44 T. L. R. 467 ; 72 Sol. Jo. 255 ; *sub nom. In the Estate of* JONES, THOMAS *v.* JONES, 97 L. J. P. 81.

3130a. —— **In interest suit.**]—In interest suits the unsuccessful party is, as a general rule, condemned in costs. But where the only issue raised was as to the fact of the marriage of deft., who gave to pltf.'s attorney false information as to the place of her marriage, & whose own attorney, although in possession of the certificate of the marriage, returned no answer to two letters he received from the pltf.'s attorney asking for the production of the certificate to save further expense, & only produced it to him on the day of the trial, the ct. refused to condemn the pltf., the unsuccessful party, in costs.—WISEMAN *v.* WISEMAN (1866), L. R. 1 P. & D. 351 ; 35 L. J. P. & M. 22 ; 15 L. T. 415 ; 31 J. P. 40.

3163. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3164. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3171a. —— ——.]—There is no authority for allowing costs out of the estate in a probate action to an unsuccessful party who merely seeks to prove, in the case of a will executed by testator of sound disposing mind, that testator had a domicil under the law of which that party would take a large part of testator's estate in opposition to his wishes. The costs should follow the event in such a case.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669 ; 44 T. L. R. 315.

3175. *Add. Annotation :*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3181. *Add. Annotation :*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

3184. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3186. *Add. Annotation :*—*As to* (1) **Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

3303. *Add. Annotation :*—**Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3312. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

Administration & Probate Act, 1915, s. 51, that being the proper procedure for him to adopt in order to procure himself to be constituted the legal representative of testator in Victoria.—*Re* FAIRER'S WILL, [1927] V. L. R. 580 ; [1927] Argus L. R. 462.—**AUS.**

se. *Revocation.*]—When a foreign probate which has been sealed in Victoria is subsequently revoked by the foreign ct., the Supreme Ct. has power to revoke the sealing.—*Re* HALL (1930), V. L. R. 309 ; Argus L. R. 264. —**AUS.**

sf. *Duty of registrar—Supreme Court of New Zealand.*]—Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseal letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re* WILLCOX, [1925] N. Z. L. R. 525.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 3.—A. (b).

3187 iv. ——.]—Testator 87 years old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will :—*Held :* the caveators should be relieved of the Public Trustee's costs, but should not be granted costs out of the estate.—*Re* PATERSON (DECEASED), [1924] N. Z. L. R. 441.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 4.—B.

sg. *Taxation.*]—*Re* MOREN, [1927] 1 D. L. R. 648 ; 59 N. S. R. 58.—**CAN.**

PART II. SECT. 20, SUB-SECT. 6.

n i. —— *Determined by substantial position of parties.*]—While an exor. who has taken proof in common form may be required by a party whose interest is adversely affected by the will to bring in the probate & be put upon proof of the will in solemn form, the circumstances may make it proper that appct. should bear the *onus* of attacking the will, thus of taking over the role of pltf. In the Probate Ct. the question whether or not security for costs should be given must be decided by the substantial & not by the nominal positions of deft. & pltf. in the proceedings.—*Re* WILLIAMS ESTATE, WILLIAMS *v.* ROBINSON, [1934] 1 W. W. R. 632 ; 2 D. L. R. 32 ; 42 Man. L. R. 124.—**CAN.**

3315. *Add. Annotation :—* **Distd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3380. *Add. Annotations :—***Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717 ; Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

3431a. Application to presume death—Application for special grant of administration—Combination in one motion.]—An application for leave to swear that a person has died on or since a certain date & an application for a grant of letters of administration of that person's estate may be combined in a single motion.—*In the Estate of* LEVER (1935), 105 L. J. P. 9 ; 154 L. T. 270 ; 52 T. L. R. 97 ; 79 Sol. Jo. 861.

3478a. —— For purpose of lawsuit out of the jurisdiction.]—There is no power in the Probate Ct. to allow a will admitted to probate in England to go out of the jurisdiction, even in the custody of an official, for the purposes of a lawsuit in a British Dominion or elsewhere abroad.—*Re* GREER (1929), 45 T. L. R. 362 ; 73 Sol. Jo. 349.

*Annotation :—***Folld.** *In the Estate of* Guinee (1929), 73 Sol. Jo. 569.

3478b. —— ——.]—*In the Estate of* GUINEE (1929), 73 Sol. Jo. 569.

3487. *Add. Annotation :—***Refd.** Capron *v.* Capron, [1927] P. 243.

Part III.—Interest of Representative in Deceased's Property.

3509. *Add. Annotation :—***Refd.** Toates *v.* Toates, [1926] 2 K. B. 30.

3517a. Right of selection under will.]—Testator bequeathed to his wife such articles as she should within two months select from the articles in certain rooms in a house. Five days after his death his wife died without having made any selection :—*Held :* the right of selection did not pass to the wife's exors.—*Re* MADGE, PRIDIE *v.* BELLAMY (1928), 44 T. L. R. 372 ; *sub nom. Re* MADGE, PUDEE *v.* BELLAMY, 72 Sol. Jo. 284.

3518a. Loan posted to but not received by deceased.]—On the receipt of a signed promissory note a money-lender forwarded an agreed sum to the borrower through the post. The borrower, the secretary to a co., died between the times of the posting & delivery of the letter. The joint acting secretary of the co. having notice of the secretary's death, opened the money-lender's letter & retained possession of the enclosed money until such time as he could hand it over to the personal representatives of the borrower. In an action by the money-lender to recover the sum lent from the joint acting secretary :—*Held :* deft. received the money on behalf of deceased's estate, & the proper course for the money-lender was to litigate with the borrower's representatives.—MICHAELSON *v.* CRISP (1927), 71 Sol. Jo. 982.

3521. *Add. Annotation :—***Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

3524. *Add. Annotation :—As to* (1) **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

3543. *Add. Annotation :—As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

I. Choses in Action Accruing in Lifetime of Deceased (p. 288).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

3553. *Add. Annotation :—***Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

3554. *Add. Annotation :—***Refd.** Graves *v.* Cohen, (1929), 46 T. L. R. 121. [Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co.*, (*per* WRIGHT, J.)]

3569. *Add. Annotation :—As to* (3) **Distd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

3572a. —— ——.]—NOBLE *v.* CASS (1828), 2 Sim. 343 ; 57 E. R. 817.

*Annotations :—***Refd.** Richards *v.* A.-G. of Jamaica (1848), 6 Moo. P. C. C. 381 ; *Re* Francis, Barrett *v.* Fisher (1905), 74 L. J. Ch. 198 ; *Re* Lacon's Settlmt., Lacon *v.* Lacon, [1911] 2 Ch. 17.

3575. *Add. Annotation :—***Apprvd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

3594. *Add. Annotation :—***Consd.** *Re* Walker, Walker *v.* Patterson (1934), 177 L. T. Jo. 325.

3605. *Add. Annotation :—***Refd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

PART II. SECT. 21, SUB-SECT. 2.

q i. —— *Duty to make inquiries.*]—Although no hard & fast rules can be laid down, a caveat should not be filed against the granting of probate of a will without substantial grounds, &, before filing, the intending caveator should make full inquiry. Where a caveat was filed without substantial grounds & without proper inquiry, a caveatrix, who was unable to carry the matter further was ordered to pay costs.—*In the Will of* ELIZABETH O'DRISCOLL (1929), 29 S. R. N. S. W. 558 ; 46 N. S. W. W. N. 176.—**AUS.**

sh. *Caveator setting up different will.*]—If on a petition for probate, the caveator sets up another will of testator, it is obligatory on him to file a separate petition to propound the will set up by him. The result in such a case is, that there are two separate suits which may either be heard together or be consolidated.—VENIDAS NEMCHAND *v.* BAI CHAMPATAVI (1928), I. L. R. 53 Bom. 829.—**IND.**

PART II. SECT. 21, SUB-SECT. 10.

sk. *Jurisdiction of court—To alter previous order.*]—In addition to its powers under Succession Act, s. 234, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

sl. *Duty to sell—& pay beneficiary share of proceeds.*]—*Re* MONTGOMERY, LUMBERS *v.* MONTGOMERY (1912), 22 W. L. R. 634 ; 22 Man. L. R. 735.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (a) v.

p i. —— ——.]—An option to purchase contained in a will is *primâ facie* not purely personal, but is assignable by the optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222 ; 45 N. S. W. W. N. 30 ; *revsd. sub nom.* ABBOTT *v.* UNION TRUSTEE CO. (1928), 41 C. L. R. 375.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) i.

q i. ——.]—The common law maxim *actio personalis moritur cum persona* in India has been very largely abrogated

.]—ANON. (1457), Y. B. 36 Hen. 6, fo. 7, pl. 4; 7 Jur. 494, n.

Annotations :—**Apld.** Tharpe *v.* Stallwood (1843), 5 Man. & G. 760. **Refd.** Wangford *v.* Wangford (1704), 11 Mod. Rep. 38.

3611b. —— ——.]—EAST *v.* NEWMAN (1601), Gouldsb. 152; 75 E. R. 1059; *sub nom.* EASON *v.* NEWMAN, Cro. Eliz. 495.

3611c. —— ——.]—BEAR *v.* SOPER (1759), 2 Keny. 441; 96 E. R. 1238.

3617. *Add. Citations :—sub nom.* MASON & DAVY *v.* DIXON, Latch 167; Noy 87.

Add. Annotations :—**Refd.** Saunders *v.* Plummer (1662), O. Bridg. 223; Finlay *v.* Chirney (1888), 57 L. J. Q. B. 247.

3624a. —— —— **Injury must have been committed within six months of death.**]—BUSH *v.* LONDON COUNTY COUNCIL (1933), 77 Sol. Jo., 388, D. C.

iv. *Personal Injury* (p. 297).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, & NEGLIGENCE, Nos. 953b-953f, *post.*

3631. *Add. Annotation :*—**Consd.** *Re* Dickens. Dickens *v.* Hawksley, [1935] Ch. 267.

3638. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3646. *Add. Annotation :*—**Refd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

3655. *Add. Annotation :*—**Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

3658. *Add. Annotations :*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611. **Refd.** Price *v.* Corpn. d'Energie de Montmagny, [1927] A. C. 363.

3671. *Add. Annotation :—As to* (1) **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

3687a. ——.]—APPLETON *v.* DOILY (1609), Yelv, 135; 80 E. R. 91.

Annotations :—**Refd.** Shuttleworth *v.* Garnett (1688), Carth. 90; Hudson *v.* Jones (1706), 1 Salk. 90.

3691. *Add. Annotations :*—**Distd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

3692. *Add. Annotations :—As to* (1) **Apprvd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117; Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687.

3692a. —— —— ——.]—In my view *Collis* v. *Flower*, No. 3691, was wrong, for the reasons that I have been stating. The common law tenancy was terminated. The exor. had a common law tenancy, & it was terminated by notice to quit. He did not remain in occupation of the house, &, in my view, the original tenant having no right, as we have now decided, to dispose of the property by will, had no right to give any statutory right to the exor., & the exor., who had not lived in the house, could not claim to be a statutory tenant. In my view, therefore, *Collis* v. *Flower*, No. 3691, is no longer an authority.

The administrator case stands on a different footing, because one has to look in all these cases to see what the facts were. The administrator case is the case of *Mellows* v. *Low*, No. 3692. There the facts were different. The original tenant was a weekly tenant. It was a common law tenancy, & during her tenancy she died intestate. Consequently, whatever rights she had in

by statutory provisions contained in Succession Act. s. 306.—DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO. *v.* HANSRAJ (1935), I. L. R. 58 All. 342.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) ii.

3617 i. *Application of rule—Detinue.*]—The administrator of the estate of a deceased person cannot recover damages, in respect of a chattel belonging to the deceased, for its detention or seizure during his lifetime, or prior to the issue of the letters of administration, unless there is evidence to show that the chattel was damaged, or that the estate of the deceased was depreciated by the seizure or detention in that period. The administrator, however, is entitled to recover for the estate damages for being deprived of the use & possession of the chattel after the issue of the letters of administration.—DAY *v.* HORTON (1913), 26 W. L. R. 72; 5 W. W. R. 751; 14 D. L. R. 763; 23 Man. L. R. 623.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iii.

sn. *Whether right continues in personal representative.*]—Under the provisions of R. S. c. 113, s. 1, the right to maintain or to institute an action for an injury to land, committed within six months of the death of the owner, survives to his personal representative. The clear & reasonable meaning of the statute is that the exor. or administrator may commence an action or carry on an action instituted by testator or intestate.—MILLER *v.* CORKUM (1899), 32 N. S. R. 358.—**CAN.**

so. ——.]—In an action for trespass to land brought in 1895, the statement of claim included a claim for erecting & maintaining fences & depasturing cattle. Pltf. died in 1897, & his extrix. was made a party in 1898 :—*Held :* R. S. c. 113, s. 21, in relation to a continuing cause of action, applied.—GRANT *v.* WOLFE (1899), 32 N. S. R. 444.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iv.

sp. *Whether right continues in representative.*]—In case of tort, for alleged negligence resulting in the death of the person injured, the right to maintain an action dies with the person.—HAWLEY *v.* WRIGHT (1904), 37 N. S. R. 77.—**CAN.**

sq. ——.]—An action for injury to the person now survives to the exor. of pltf., who can, in case of his death, *pendente lite* on entering a suggestion of the death & obtaining an order of revivor, continue the action.—MASON *v.* PETERBOROUGH TOWN (1893), 20 A. R. 683.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—J. (a) ii.

3660 i. *Right to receive dividends.*]—Dividends paid out of the profits of industrial cos. in Quebec, Canada, declared periodically so far as circumstances permit, are generally speaking to be treated as "civil fruits" within art. 449 of the Civil Code of Quebec, & must, pursuant to art. 451, be considered as having been acquired day by day & belonging to the usufructuary in proportion to the duration of his usufruct.

E., who was entitled under the will & a deed of gift of his father to certain dividends payable by a co. of which his father had been the founder & sole shareholder, died three days before the declaration of dividends on its preferred & common stocks out of profits admittedly earned during E.'s lifetime. On a claim by applt., the widow & executrix & universal legatee of E., to the proportionate share of the dividends so declared which she alleged was due to her husband at the date of his death under the will & deed of gift :—*Held :* (1) although E. was not a usufructuary under the deed of gift, having only a right as beneficiary to share in certain "fruits & revenues" (the dividends) distributed from time to time by the trustees under the deed of gift, he was, by virtue of the provisions of art. 981 (*a*) to (*p*) of the Civil Code of Quebec, a beneficiary under the deed of gift & the will with personal rights against the fiduciary donees & the fiduciary legatee respectively; (2) art. 451 of the Civil Code was applicable by analogy to the rights of a beneficiary under the will & deed of gift in respect of the dividends declared by the co. The dividends in question, therefore, were civil fruits subject to the principle contained in art. 451 that they should be considered to have been acquired day by day, & E.'s widow was accordingly entitled to her husband's proportionate share of the dividends which were in fact declared three days after his death.—LAVERDURE *v.* DU TREMBLAY, [1937] A. C. 666; 106 L. J. P. C. 107, P. C.—**CAN.**

her common law tenancy remained to her representatives in an intestacy. No notice to quit was ever given. Consequently the common law tenancy remained. Then the landlord claimed that on the death of the tenant intestate, with no member of her family residing in the house, the tenancy lapsed. It was held that the administratrix was a person who derived title under the original tenant, &, consequently, that the residence could not be interfered with. The point of that case which renders it a right decision is that no notice to quit the common law tenancy had ever been given. The common law tenancy, therefore, remained, & it remained in the person who at common law was entitled to it, & her tenancy had never been terminated. Consequently, *Mellows* v. *Low*, No. 3692, on the facts, is right, but if notice to terminate the common law tenancy had been given the ct. could not, in my opinion, have said, unless the matter could be brought within the very curious clause about intestacy to which I have referred, that such an administratrix not being in possession is entitled to be protected by the Act (SCRUTTON, L.J.).—SKINNER *v.* GEARY, [1931] 2 K. B. 546; 100 L. J. K. B. 718; 145 L. T. 675; 95 J. P. 194; 47 T. L. R. 597; 29 L. G. R. 599, C. A.

3699. *Add. Annotation:*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3702. *Add. Annotation:*—**Folld.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3710. *Add. Annotations:*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39; *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372; Morris *v.* Baines & Co., [1933] 1 K. B. 540.

3711. *Add. Annotation:*—**Consd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

3732a. ——.]—BATHO *v.* FULTON (1824), 2 L. J. O. S. Ch. 196.

3766a. —— ——.]—CURLING *v.* AUSTIN (1862), 2 Drew. & Sm. 129; 10 W. R. 682; 62 E. R. 570.

Annotation:—**Refd.** Lawrie *v.* Lees (1881), 7 App. Cas. 19.

3795. *Add. Annotations:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321; Parker *v.* Judkin, [1931] 1 Ch. 475.

3796. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3800. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3818a. ——.]—The effect of Land Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an "express trust" within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—TOATES *v.* TOATES, [1926] 2 K. B. 30; 95 L. J. K. B. 526; 135 L. T. 25; 90 J. P. 103, D. C.

SUB-SECT. 4.—IN CASE OF PERSONS DYING SINCE 1925 (Vol. XXIII., p. 317).

3819a. Settled land—Termination of settlement on death of tenant for life.]—Administration of Estates Act, 1925 (c. 23), s. 22 (1), does not apply where the settlement comes to an end on the death of the tenant for life, & his exor. when constituted can sell, & he is not deemed to have appointed the sole surviving trustee of the settlement as his special exor. pursuant to such sect.—*Re* BRIDGETT & HAYES' CONTRACT, [1928] Ch. 163; 97 L. J. Ch. 33; 138 L. T. 106; 44 T. L. R. 222; 71 Sol. Jo. 910.

Annotation:—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

3819b. —— ——.]—*In the Estate of* BORDASS, No. 1772a, *ante*.

3819c. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164; 98 L. J. P. 66; 141 L. T. 32; 73 Sol. Jo. 221.

Annotation:—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

3819d. —— Grant of probate to tenant for life as special executor.]—Land was devised by H. on trusts providing for limited ownerships & in default of issue for the right heirs of H. C. who was the right heir of H., by his will appointed the applicant T. exor. & trustee & devised his lands to the use of the applicant for life with remainders over. On Jan. 1, 1926, the commencement of Settled Land Act, 1925 (c. 18), the lands passing under the wills of H. & C. remained subject to the settlement created by the will of H., &, in the event of the termination of the limited ownership under the will, also subject to the settlement created by the will of C. On the same date J. was tenant for life under the will of H. By a vesting deed dated Apr. 16, 1926, the lands were declared to be vested in J. in fee upon the trusts operating from time to time under the will of H. or otherwise. J. died Apr. 27, 1928. General probate of his will including the settled land was granted to his exors. in the first place. Later the grant was amended limiting it "save & except the settled land vested in testator settled previously to his death & remaining settled notwithstanding his death." J. having died without issue appct. T. then became tenant for life in possession under the settlement created by the will of C. as well as the trustee of that settlement. On appeal from the registrar a grant of probate of the will of J. limited to the settled land was directed to issue to the appct. as special exor. of J.—*In the Estate of* TAYLOR, [1929] P. 260; 98 L. J. P. 145; 141 L. T. 200; 45 T. L. R. 481; 73 Sol. Jo. 385.

Part IV.—Duties of Representative.

3888. *Add. Annotation :—As to* (2) **Consd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

3899. *Add. Annotation :—As to* (2) **Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3934. *Add. Annotation :—***Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

3959a. —— —— ——.]—Exor. charged with interest on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481 ; 148 E. R. 1269.

3966a. —— **Application to court—Order for inquiry as to sufficiency.**]—*Re* LETHERBROW, HOPP *v.* DEAN, [1935] W. N. 34 ; 179 L. T. Jo. 161.

*Annotation :—***Refd.** *Re* Holden, Isaacson *v.* Holden (1935), 179 L. T. Jo. 235.

3973a. ——.]—*Re* HOLDEN, ISAACSON *v.* HOLDEN, [1935] W. N. 52 ; 179 L. T. Jo. 235.

3999a. —— ——.]—HUDSON *v.* MARTIN (1726), 2 Eq. Cas. Abr. 461 ; 22 E. R. 393.

4013. *Add. Annotation :—***Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

4021. *Add. Annotation :—As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

4040a. Income accruing after death—Administration of Estates Act, 1925 (c. 23), s. 32 (1).]—*Re* TONG, HILTON *v.* BRADBURY, No. 5917b, *post.*

4086a. Devise in trust to pay debts—Until son attain twenty-one—Death under twenty-one—Debts unpaid.]—Devise of the rents & profits of lands till his son attain twenty-one, towards payment of debts ; & if my son die before twenty-one, my debts being paid, then to A., & the son dies before twenty-one ; yet the rents & profits not only till he would have attained twenty-one, but also beyond, till the debts be paid, shall be applied for that purpose.—MARTIN *v.* WOODGATE (1691), Prec. Ch. 34 ; 24 E. R. 18.

4089a. Foreign estate—Produce in transit at time of death.]—CLIFFE *v.* GIBBONS (1714), 2 Ld. Raym. 1324 ; 92 E. R. 364, L. C.

*Annotation :—***Refd.** Goodtitle d. Hart *v.* Knot (1774), 1 Cowp. 43.

PART IV. SECT. 1, SUB-SECT. 1.

3823 iii. —— —— ——.]—Payments made by exors. for a concrete curbing & foot marker at the grave of testator approved since apart from the provisions, if any, therefor in a will the law contemplates reasonable outlays for such purposes.—*Re* ROGERS ESTATE, [1937] 1 W. W. R. 455 ; 2 D. L. R. 79.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—A.

3891 i. *Duty to get in debts—Liability for neglect.*]—*Re* JOHNSTON, JOHNSTON *v.* HOGG (1877), 25 Gr. 261.—**CAN.**

ar. *Executor debtor to testator.*]—Where an exor. was indebted to his testator at the latter's death the debt is considered in equity to have been paid by the debtor to himself as executor, & he is chargeable in the accounts with the amount thereof at the time of probate with legal interest thereafter during default in payment. —*Re* GIBSON ESTATE, [1930] 2 W. W. R. 400 ; [1931] D. L. R. 159 ; 39 Man. L. R. 564.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (a) iii.

3927 i. *Power to retain—What are investments—Not right to receive payment on quantum meruit.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

3927 ii. —— —— *Not right to appointment as architect.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (e).

n i. ——.]—Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—*Re* WALTERS, [1925] 2 W. W. R. 557.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.

p i. —— *Deceased with foreign domicil.*]—In the case of the estate of a deceased who died domiciled outside of Saskatchewan the exor.'s advertisement for claims against the estate was published at the last place of residence of deceased in said foreign domicile :—*Held :* there had been a sufficient compliance with rule 43 of the Surrogate Ct. Rules, & an order under rule 45 (2) dispensing with the passing of accounts was granted.—*Re* JACOBSON, BROWN & ATCHESON ESTATES, [1935] 3 W. W. R. 513.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

st. *Claim disputed—Effect of service of notice of appointment for passing accounts on claimant.*]—The act of an administrator in serving claimants against the estate with orders & appointments for passing accounts both with, & subsequent to, the service upon them of notice of dispute, held to have estopped him from setting up said notice as a bar to such claims.—*Re* KURYLO ESTATE, [1922] 2 W. W. R. 815 ; 68 D. L. R. 784 ; 15 Sask. L. R. 463.—**CAN.**

sw. *Payment of doubtful claim to legatee.*]—Exors. cannot pay claims of doubtful validity, conditional upon their being deducted from legacies to the claimant in the event of validity not being established.—*Re* GILLIS, [1936] 2 D. L. R. 658.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

sv. *Undisposed of realty & personalty —Before personal estate charged with payment.*]—In the administration of the estate of testator, who has died testate as to some assets & intestate as to others, the primary fund for payment of his debts, funeral & testamentary expenses, in the absence of a contrary intention expressed in the will, is that constituted by both the real & personal estate of which testator has died intestate & is in priority to personal estate, charged with their payment.—PUBLIC TRUSTEE *v.* LEITCH (1928), 28 S. R. N. S. W. 313 ; 45 N. S. W. W. N. 85.—**AUS.**

sw. *Property exempt under Executions Act.*]—In construing Devolution of Estates Act, R. S. M., 1913, s. 3, which provides that an intestate's real or personal estate or both, "except in so far as either or both may be excepted by any law or enactment," shall be chargeable with his debts, property exempt under Executions Act, R. S. M., 1913, is to be considered one of the "exceptions."

A farmer died intestate leaving four dependent infant children. The administrator of his estate sold certain chattels which were during the lifetime of the deceased "exemptions" under Executions Act, s. 29. On an application by the administrator for directions as to the disposition of the moneys realised from the sale, the creditors of the deceased, none of whom had recovered judgment, contended that the right of exemption terminated on the deceased's death ; that all the assets of the deceased, including the exemptions, were liable for his debts ; & that even if the chattels continued to be exempt, the proceeds of their sale was not exempt : —*Held :* the administrator, who had also been appointed guardian, held the money received from the sale of the exemptions for the benefit of the children.—*Re* MCKENZIE ESTATE (Man.), [1930] 1 D. L. R. 49 ; [1929] 3 W. W. R. 358 39 Man. L. R. 155.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

3985 i. *General rule.*]—By her will a testatrix having bequeathed all her personal property to her sister-in-law, *inter alia*, directed that certain land should be sold & "from the proceeds of the sale, & after payment of all outstanding debts," gave certain pecuniary legacies. On an originating summons to decide whether the general personalty had been exonerated from the payment of debts :—*Held :* as there was no express or implied provision in the will to indicate that testatrix wished to override the statutory order of application of assets, the statutory order applied & the general personalty was liable for the payment of debts.—FULLER *v.* FULLER (1936), 36 S. R. N. S. W. 600 ; 53 N. S. W. W. N. 222.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b) i.

sn. *Under 5 Geo. 2, c. 7.*]—*Held :* land was assets in the hands of exors. for the payment of unliquidated damages in an action of covenan .—SICKLES *v.* ASSELSTINE (1853), 10 U. C. R. 203.—**CAN.**

4101a. Liability to contribute rateably—Under Administration of Estates Act, 1925 (c. 23), ss. 32, 33, 34—Notwithstanding devolution of beneficial interest to heir-at-law of lunatic.]—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six :—*Held :* her real estate went to her heir at law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption sect. read with the definition sect., sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver. However, the exemption in sect. 51 (2) only extends to the devolution of the beneficial interest, & the real estate must bear its rateable share of the funeral, testamentary & administration expenses, debts, & liabilities, under sects. 32, 33, 34, & Sched. I.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199 ; 99 L. J. Ch. 161 ; 142 L. T. 327.

4101b. —— "According to value"—Meaning of "value."]—In Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., para. 6, "Property specifically devised or bequeathed, rateably according to value," the word "value" means the value to testator. Where, therefore, property is devised subject to a mtge. created by testator, & other property is devised burdened with the payment of specified legacies, & the personal estate of testator is insufficient to pay pecuniary legacies & debts, in order to ascertain the proportion payable the word "value" means the value of the property to testator & not the value of the property to the devisees. The "value" in the case of the property burdened with the mtge. is the value of the property less the amount of the mtge., whereas in the case of the property burdened with the payment of legacies the amount of the legacies is not to be deducted to ascertain the "value" of the property.—*Re* JOHN, JONES *v.* JOHN, [1933] Ch. 370 ; 102 L. J. Ch. 72 ; 148 L. T. 450.

4134. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

4154a. Solicitor entitled to payment of testamentary charges not paid by deceased executor.]—TANNER *v.* CARTER (1856), 25 L. J. Ch. 664 ; 27 L. T. O. S. 195 ; 2 Jur. N. S. 413 ; 4 W. R. 533.

4158. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4163a. Income tax—For any year ending before testator's death.]—*Held :* the Crown's preferential claim for income tax could be made for tax assessed for any one year ending before testator's death.—*Re* COCKELL, JACKSON *v.* A.-G. (No. 2) (1932), 76 Sol. Jo. 495 ; 16 Tax Cas. 681, 721.

4193. *Add. Annotation :*—**Refd.** Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68.

4210a. —— —— ——.]—A judgment was signed in 1854, but was not registered till after the death of the judgment debtor in 1862 :—*Held :* the judgment had no preference over simple contract debts against the estate of the judgment debtor.—KEMP *v.* WADDINGHAM (1866), L. R. 1 Q. B. 355 ; 7 B. & S. 301 ; 35 L. J. Q. B. 114 ; 13 L. T. 709 ; 14 W. R. 390.

4221. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4225. Delete the cross-reference immediately preceding this case.

4351. *Add. Annotations :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389 ; *In the Estate of* Leguia (1936), 105 L. J. P. 72.

4853a. How exerciseable—Equitable assignment of future assets.]—A personal representative's right to prefer creditors, preserved by Administration of Estates Act, 1925 (c. 23), s. 34 (2),

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PART IV. SECT. 2, SUB-SECT. 3.—A.

p i. —— *Preferred to mortgagee of property devised beneficially to executor.*]—*Re* SCULTHORPE (Ont.), [1926] 2 D. L. R. 739 ; 7 C. B. R. 505.—**CAN.**

so. *Widow's right to money payable under marriage contract.*]—O'REILLY *v.* O'REILLY (1910), 16 O. W. R. 75 ; 21 O. L. R. 201.—**CAN.**

sp. *Claim for breach of trust.*]—The fact that a claim against the estate of a deceased person arose in consequence or by means of a breach of duty as a trustee, affords no ground for giving such claim a preference over other creditors of the estate ; as, under Property & Trusts Act, R. S. O. 1877, c. 107, s. 30, the claimant can only rank *pari passu* with other creditors.—BROCK *v.* CAMERON (1878), 25 Gr. 369.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B.

4162 i. *Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.*]—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—*Re* MCMAHON, LAWSON *v.* INTESTATE ESTATES CURATOR, [1921] V. L. R. 549.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

4167 i. *Priority over specialty & simple contract debts.*]—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—FRONTENAC LOAN CO. *v.* MORICE (1886), 3 Man. L. R. 462.—**CAN.**

4178 i. *Degrees of priority—Between judgment creditors — Judgment for balance of legacy charged on realty—Judgment by creditor secured by mortgage.*]—CAMERON *v.* HARPER (1892), 21 S. C. R. 273.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

4206 i. *Against deceased.*]—FRONTENAC LOAN CO. *v.* MORICE, No. 4167 i., *ante*.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

4245 iii. ——.]—An administrator may pay a statute-barred debt without incurring personal liability.—*Re* GREEN, [1932] 3 D. L. R. 48 ; 4 M. P. R. 482.—**CAN.**

sq. *Right of widow to pay husband's debt.*]—The payment of a husband's debt, though barred, has been held to be a pious duty on the part of the widow, & it is not necessary that there should be any danger to the estate, in order to entitle the widow to incur debts, or to alienate the property of her husband in order to pay off barred debts. The Hindu law does not take cognisance of any bar of limitation.—ASHUTOSH SIKDAR *v.* CHIDAM MANDAL (1929), I. L. R. 57 Calc. 904.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (c) i.

d i. *S. P.* WATKINS *v.* WASHBURN (1846), 2 U. C. R. 291.—**CAN.**

4272 i. *By representative—Inclusion of debt in probate affidavit.*]—The setting out of a debt in an affidavit for estate duty is not a sufficient acknowledgement to take it out of the Statute of Limitations.—PRENDERGAST *v.* O'GORMAN, [1933] I. R. 460.—**IR.**

sr. *By executor de son tort.*]—An exor. *de son tort* cannot give a new starting point to Stat. Limitations as against the rightful administrator, or the parties beneficially interested in the estate.—GRANT *v.* MCDONALD (1860), 8 Gr. 468.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

st. *Claim for wages by manager of intestate's farm—Claim by execution creditor.*]—GILMOUR *v.* GILMOUR (1894), 3 B. C. R. 397.—**CAN.**

can be exercised not only by payment in cash, or by a legal charge equivalent thereto, but also by an equitable assignment of future assets that materialise before an administration decree. — *Re* WILLIAMS, RICHARDS *v.* WILLIAMS, [1930] 2 Ch. 378; 99 L. J. Ch. 476; 143 L. T. 630.

4368. For existing citation substitute the following paragraph & citations :—

If, after a decree, an exor. thinks fit to pay a creditor, he does so at his own risk, & he is only entitled to stand in the place of his creditor against the estate.—IRBY *v.* IRBY (1857), 24 Beav. 525; 3 Jur. N. S. 1314; 53 E. R. 460.

4392. *Add. Annotation :—As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4418. *Add. Annotation :—As to* (3) **Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4423. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4428a. Against Crown—Administration of Estates Act, 1925 (c. 23), s. 34 (2).] — A.-G. *v.* JACKSON, No. 4538a, *post.*

4429. *Add. Annotation :—***Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4432. *Add. Annotation :—***Refd.** *In the Estate of* Leguia (1936), 105 L. J. P. 72.

4433. *Add. Annotation :—***Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4484. *Add. Annotations :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **Refd.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4485. *Add. Annotations :—***Overd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **N.F.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4485a. —— —— Bankruptcy Act, 1914 (c. 59), s. 36 (2)—Administration of Estates Act, 1925 (c. 23), s. 34, Sched. I., Part I.]—S. P., the debtor, died in Oct. 1934, intestate & insolvent. His widow, who had taken out letters of administration, having in her husband's lifetime advanced him certain moneys for the purpose of his business, & having after his death received certain sums which formed part of his estate & which equalled the amount so advanced by her, on Feb. 1, 1935, paid them as his administratrix into her own private account. On Feb. 8 an order was made for the administration of her deceased husband's estate in bkpcy., the sums then still remaining in her hands. These sums paid into her own private account having been claimed by the official receiver as trustee of the husband's estate, who alleged that by virtue of Bkpcy. Act, 1914 (c. 59), s. 36 (2) (replacing Married Women's Property Act, 1882 (c. 75), s. 3) & Administration of Estates Act, 1925 (c. 23), the widow had no right of retainer as against other creditors, a special case was at the request of both parties sent by the county ct. judge, before whom the matter first came, for the opinion & determination of the High Ct. :—*Held :* on Feb. 8, the widow had in her hands the sums in question forming part of her husband's estate & she had not made these sums her own by paying them in to her private account on Feb. 1, for she had no right of retainer as against the other debts due from the estate, which were all of higher degree than the debt owing to her, & the sums must accordingly be handed over to the official receiver.—*Re* S. P., *Ex p.* OFFICIAL RECEIVER, [1936] Ch. 735; 105 L. J. Ch. 371; 156 L. T. 31; [1936-7] B. & C. R. 8; *sub nom. Re* PATTEN, OFFICIAL RECEIVER *v.* PATTEN, [1936] 2 All E. R. 1119; 80 Sol. Jo. 673.

4511. *Add. Annotation :—As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4527. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson, [1932] A. C. 365.

4533. *Add. Annotation :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4535. *Add. Annotations :—***Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261. **Refd.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119.

4538a. —— Administration of Estates Act, 1925 (c. 23), s. 34 (1).]—Under sect. 34 (1), & the rules set out in Part I. of Sched. I., to Administration of Estates Act, 1925 (c. 23), in the administration of insolvent estates an exor. has no right of retainer of a simple contract debt against the Crown so far as the Crown has priority under the bkpcy. rules affecting debt priorities; consequently the Crown has priority for a claim for taxes, not exceeding in the whole one year's assessment.

In my opinion there are now only two, or possibly three, degrees of priority of debts, being, first, those which are by the Bkpcy. Act expressly given priority; secondly, those which are expressly directed to be paid *pari passu*; & possibly, thirdly, those mentioned in Bkpcy. Act. 1914 (c. 59), s. 36, & in sect. 3 of the Partnership Act, 1890 (c. 39), the effect of the latter section being expressly retained in the Bkpcy. Act, 1914 (c. 59), s. 33. It follows that the balance of any Crown debt in excess of that portion which is given priority is now of the same degree as the debt of the executrix in the present case, & that she can retain against such balance (LORD ATKIN).

The right still remains as before, the right to retain against debts of equal degree. Some debts have been put in a higher degree than they were before; but the exor.'s right always has been subject to changes of that description. What has been affected is not the right, but the classes in respect of which the right is exercised (LORD ATKIN).—A.-G. *v.* JACKSON, [1932] A. C. 365; 48 T. L. R. 261; 76 Sol. Jo. 146; *sub nom. Re* COCKELL, A.-G. *v.*

PART IV. SECT. 3, SUB-SECT. 1.

sv. *Future liability contingent — Rights of executor to distribute residue.]* —The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death :—*Held :* as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim. — EDINBURGH PARISH COUNCIL *v.* COUPER, [1924] S. C. 139.—**SCOT.**

PART IV. SECT. 4, SUB-SECT. 1.

sp. *Necessity for valid debt.]* —The right of the exor. of a creditor of a legatee to retain out of the legacy an amount sufficient to satisfy the debt due to testator depends upon the existence of a valid debt.—PARKES PROPERTY & STOCK CO., LTD. *v.* PERPETUAL TRUSTEE CO., LTD. (19.6), 36 S. R. N. S. W. 457; 53 N. S. W. W. N. 185.—**AUS.**

JACKSON, 101 L. J. Ch. 186; [1931] B. & C. R. 167; *sub nom. Re* COCKELL, JACKSON *v.* A.-G., 146 L. T. 450; 16 Tax Cas. 681, H. L.

Annotations :—**Followed.** *Re* Patten, Official Receiver *v.* Patten, [1936] 2 All E. R. 1119. **Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

4584. In line 6 of the paragraph, before the words "secured by bond," add the word "not."

4587a. —— —— ——.]—By his will a testator bequeathed to his son "the sum of £3,000 to be paid to him out of the share of my capital & loans in the business of W. & B., & I direct that provided [the son] shall within 6 months of my death be accepted by the remaining partners in the said business as a partner as from the date of my death upon terms mutually acceptable to [the son] & the remaining partners of the said business the said legacy of £3,000 or any part thereof shall not be withdrawn by [the son] until after the expiration of 12 months from the date of my death, & in the meantime shall bear interest at the rate of £5 per cent. *per annum*" :—*Held :* the bequest was a demonstrative legacy & not a specific one.—*Re* WEBSTER, GOSS *v.* WEBSTER, [1937] 1 All E. R. 602; 156 L. T. 128, C. A.

4591. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

4607. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Consd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4613a. —— —— **Devisee requiring conveyance—Liability of estate for costs.**]—*Re* STRINGER, HILL *v.* STRINGER (1899), Y. S. C. P.

4630. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4651. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

4653. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* Inland Revenue Comrs., Duff-Dumbar *v.* Inland Revenue Comrs. (1928), 14 Tax. Cas. 58.

4661. For "(1844)" read "(1842)."

4664a. Incomplete gift inter vivos—Completion by appointment as executor—No necessity for assent.]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

4685. *Add. Annotation :*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

4687a. —— **Advances by co-legatees barred by Statute of Limitations—Not interest on such advances.**]—POOLE *v.* POOLE (1871), 7 Ch. App. 17; 25 L. T. 771; 20 W. R. 133, L. JJ.

Annotations :—**Consd.** *Re* Rees, Rees *v.* George (1881), 17 Ch. D. 701. **Refd.** *Re* Milnes, Milnes *v.* Sherwin (1885), 53 L. T. 534.

4699. *Add. Annotations :*—**Refd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626; *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

4712a. —— ——.]—FRYER *v.* BUTTAR (1837), 8 Sim. 442; 59 E. R. 175.

Annotations :—**Consd.** *Re* Parry, Scott. *v.* Leak (1889), 42 Ch. D. 570. **Refd.** Harbin *v.* Masterman [1896] 1 Ch. 351.

4714. *Add. Annotation :*—**Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

4727. *Add. Annotation :*—**Refd.** Brown *v.* Brown, [1937] P. 7.

4738a. —— ——.]—HORNER *v.* SAYNER (1838), Coop. Pr. Cas. 168; 47 E. R. 450, L. C.

4753. After this case add "**Sale of legacy to executor—In return for annuity—Validity of transaction.**]—*See* FRAUDULENT & VOIDABLE CONVEYANCES, No. 895a, *post.*"

4763a. —— ——.]—*Re* LYMAN'S TRUST & TRUSTEE RELIEF AMENDMENT ACT, 1860 (1860), 2 L. T. 662.

4764a. Payment on account—No appropriation between principal & interest—Right of legatee to appropriate.]—Where there are insufficient funds to pay legacies when due, & interest thereon becomes payable, the legatees are entitled, when payments are made on account at a later date & there is no appropriation between principal & interest, to appropriate such payments *pro tanto* as payments of interest due to them at the time of payment

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PART IV. SECT. 5, SUB-SECT. 1.—B.

4548 i. *What are—Bequest of stock—Testator possessing no such stock at death.*]—*Re* MILLAR, [1927] 3 D. L. R. 270; 60 O. L. R. 434.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

n i. —— *No power to impose terms as condition precedent to immediate payment.*]—BEDDY *v.* SMITH (1845), 1 L. T. O. S. 390.—**IR.**

sw. *Discretion given by will.*]—A will contained a bequest (para. 5) to pltf. of $300 per annum during his lifetime, "to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that "it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. "at any time to withhold any payment of legacy or bequest until such time as they may consider it advisable to make same" :—*Held :* nothing in paras. 5 & 7 authorised deft. to withhold payment of pltf.'s legacy; & the discretion given by para. 12 did not put deft. in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—SEYMOUR *v.* PRATT (1925), 57 O. L. R. 278.—**CAN.**

sx. *Before letters of administration—Legacy very small.*]—ROSS *v.* ROSS (1872), 4 Ch. Ch. 27.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*]—Testator by his will directed his exors. "to pay to the legatees mentioned in the will of my late wife amounting in all to $20,000 which sum is represented by bonds in a "certain bank" in a parcel separate from my own securities" :—*Held :* the legacies were to be treated as legacies from testator, payable out of that portion of his estate earmarked in the way indicated.—*Re* LASHAM (1924), 56 O. L. R. 137.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (a).

4703 i. *Direction for postponement or accumulation—When legatee may require payment.*]—Where testator gives a legatee an absolute vested interest in a defined fund, the ct. will order payment on his attaining twenty-one, notwithstanding that by the terms of the will payment is postponed to a subsequent period.—GOFF *v.* STROHM (1897), 28 O. R. 553.—**CAN.**

4703 ii. —— ——.]—Where a testator gives a legatee an absolute vested interest in a certain defined fund, so that, according to the ordinary rule, he would be entitled to receive it on attaining the age of 21 years, but by the terms of the will payment is postponed until a subsequent period, *e.g.* till the legatee attains the age of 25 years, the ct. will nevertheless order payment on his attaining 21 years.—*Re* TANNER ESTATE, GOULD *v.* TANNER & TANNER, [1931] 2 W. W. R. 794.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (b).

r i. —— —— ——.]—*Re* MCSWEENEY, EASTERN TRUST CO. *v.* MCSWEENEY (1931), 2 M. P. R. 583.—**CAN.**

sy. *Annuity charged on land—Duty of representative on transferring land to devisees—Land Titles Act.*]—*Re* CREST ESTATE (1914), 7 W. W. R. 614; 19 D. L. R. 190.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (d).

sz. *Duty of executors to buy bonds to satisfy specific legacies.*]—*Re* BANNERMAN'S ESTATE, [1936] 3 W. W. R. 520.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

sb. *Question for court.*]—*Re* ARMOUR (1926), 23 S. L. R. 525.—**CAN.**

on account of such legacies.—*Re* PRINCE, HARDMAN *v.* WILLIS (1935), 51 T. L. R. 526.

Annotation :—**Refd.** *Re* Morley's Estate, Hollenden *v.* Morley, [1937] Ch. 491.

4764b. Settled legacy—Payment by instalments—Apportionment between principal & interest.]—Where owing to the nature of a testator's estate it has been impossible to realise it so as to pay legacies in full until after a lapse of some years from the date of the death, but payments on account of the principal & interest of legacies have been made at intervals under orders of the ct., the rule of administration is that each such payment must be appropriated first to interest at 4 per cent. *per annum*, & after satisfying all interest due, to the principal, & this rule must be applied, unless there is any direction in the will or in any order, previously made by the ct. in the matter, to the contrary.—*Re* MORLEY'S ESTATE, HOLLENDEN *v.* MORLEY, [1937] Ch. 491 ; [1937] 3 All E. R. 240 ; 157 L. T. 547 ; 53 T. L. R. 768 ; 81 Sol. Jo. 458.

4770. *Add. Annotation :—As to* (2) **Refd.** Dewar *v.* I. R. Comrs., [1935] 2 K. B. 351.

4812. *Add. Annotation :*—**Consd.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

4849. *Add. Annotation :—As to* (3) **Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

4869a. —— ——.]—The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—*Re* BRINTON, BRINTON *v.* PREEN (1923), 67 Sol. Jo. 704.

4877a. Capitalisation of reserve fund.]—A testator bequeathed to his son & grandson on the death of his wife the shares belonging to him at his death in a certain co. Between the death of testator & the subsequent death of his wife each of the 460 shares of the value of £35 each which belonged to him at the date of his death became, as the result of the capitalisation of a portion of the reserve fund of the co., consolidated with a new share of the value of £15 into a share of the value of £50. Testator's estate, as the result of the capitalisation, also became entitled, in consequence of his holding of 460 ordinary shares, to 920 preferred ordinary shares of £10 each :—*Held :* (1) following *Smell* v. *Dee* (1707), 2 Salk. 415, the gifts were contingent. & (2) the original 460 shares together with the accretions became, on the death of testator's wife, the property of the specific legatees.—*Re* BUXTON, BUXTON *v.* BUXTON, [1930] 1 Ch. 648 ; 99 L. J. Ch. 334 ; 143 L. T. 37.

4895a. —— —— —— ——.]—Testatrix gave legacies of £100 to each of her exors. & trustees & then bequeathed all her plate, jewellery, ornaments, china, & other household effects to two specific legatees absolutely. The whole of her residuary property of every kind she devised, bequeathed & appointed to her trustees upon trust to sell & out of the proceeds, first, to pay her funeral & testamentary expenses, debts, & the legacy duty ; secondly, to appropriate & set apart two sums of £4,000 & £2,000 to be held upon certain trusts for life & then over ; & thirdly, to pay a number of pecuniary legacies, including one of £600. Testatrix declared that should her residuary personal estate be insufficient to pay all the legacies then the legacy of £600 should be reduced to £500 ; & every legacy

PART IV. SECT. 5, SUB-SECT. 5.—B. (a).

4765 vii. —— ——.]—*Re* DALY, [1926] 1 D. L. R. 822 ; 58 O. L. R. 301.—**CAN.**

4765 viii. —— ——.]—Testator died in 1888, & legacies became payable in 1890. His estate was heavily insolvent, & the last of the debts was not finally discharged until 1919. From that date the trustees accumulated funds until 1924, when they brought an action of multiplepoinding & exoneration for distribution of the estate :—*Held :* (1) while as a general rule interest was allowed upon legacies from the death of testator or from the prescribed date of payment, there was no absolute rule compelling the ct. in all cases to allow such interest, the general rule being displaced if circumstances showed it to be inapplicable ; (2) the general legatees were not entitled to interest on their legacies from 1890 to 1919, in respect that, owing to the insolvency of the estate during that period, there was no asset realisable to meet the legacies nor any interest-bearing subject ; (3) there was no absolute rule to the effect that the rate of legal interest should be 5 per cent., the rate of interest being in every case for the discretion of the ct. in the particular circumstances.—WADDELL'S TRUSTEES *v.* CRAWFORD, [1926] S. C. 654.—**SCOT.**

sf. *On termination of preceding life interest.*]—A will directed that the estate should be sold & exors. should hold proceeds in trust to pay an annuity & then pay residue of income to testator's widow for life & on her death divide the corpus, paying to two grandchildren $1,000 each & dividing the rest among testator's children. The will declared that the two legacies to the grandchildren were subject to the widow's life interest & directed that they should be paid when the grandchildren should attain twenty-one. but in case the estate should be divided before they attained that age, interest should be paid on their legacies. If the grandchildren died before attaining twenty-one, the legacies were to fall into the estate. Both the grandchildren attained twenty-one before the death of the widow :—*Held :* interest on the legacies was payable by the estate only from the death of the widow.—*Re* SCADDING (1902), 4 O. L. R. 632.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—B. (d).

4827 iii. —— ——.]—In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors.' year" as the exors. had in hand realised assets which could rightfully be applied to the payment of such legacies.—MORPETH *v.* WILLIAMSON, [1926] N. Z. L. R. 39.—**N.Z.**

sd. *Legacy payable "when & how he likes."*]—A will provided that : "the exor. has the power given him to pay these three bequests when & how he likes—the estate is not to be sacrificed in any way to pay them." The exor., acting prudently, disposed of the estate many years after the death of testator :—*Held :* the legacies did not carry interest from the end of the year of testator's death.—PLANTA *v.* GREENSHIELDS (No. 2), [1932] 2 W. W. R. 60 ; 3 D. L. R. 423 ; 45 B. C. R. 228.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—C.

4868 i. *When more than 4 per cent. allowed — Special circumstances.*]—WADDELL'S TRUSTEES *v.* CRAWFORD, No. 4765 viii. *ante*.—**SCOT.**

PART IV. SECT. 5, SUB-SECT. 6.—A.

4883 iv. —— —— ——.]—A. by his will directed that certain pecuniary legacies, amounting in all to the sum of £710, should be paid "with & out of the proceeds" of the sale of his investments comprising stocks & shares. The investments realised the sum of £487 0*s.* 4*d.* At the date when the will was made they were worth approximately the sum of £481 12*s.* 6*d.* There was a further direction that the legacies were to be paid free of all Crown duties. Testator further dealt with the residue of his property item by item. On a summons raising the question whether the balance of the legacies was payable out of the general residue of the estate :—*Held :* the balance was not payable & as the fund specified by testator for their payment was insufficient to pay them in full, they must abate rateably *inter se*.—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14.—**IR.**

& annuity was bequeathed free of legacy duty. There was a deficiency in the estate; —*Held:* (1) there were sufficient indications in the will that the testatrix intended the distribution of her estate to be in accordance with the priorities mentioned, & the settled legacies must be paid in full before all the other pecuniary legacies; (2) the legacy of £600 must be reduced to £500 & this reduced legacy, plus the duty, must abate *pro rata* with the other postponed legacies, including those to the exors.; (3) the costs of packing & delivering specific legacies must be borne by the specific legatees.—*Re* LEACH, MILNE *v.* DAUBENY, [1923] 1 Ch. 161; 92 L. J. Ch. 225; 128 L. T. 525; 67 Sol. Jo. 198.

4903. *Add. Annotation:*—**Consd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

4910. *Add. Annotation:*—**Refd.** Jones *v.* Wright (1927), 139 L. T. 43.

4914. *Add. Annotation:*—*As to* (1) **Folld.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4917. *Add. Annotation:*—**Distd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183.

4918. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183. *Generally*, **Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4924. *Add. Annotation:*—**Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

4936. *Add. Annotation:*—**Refd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

4953. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

4972a. Legacy to creditor after composition.]—One by will gives several legacies, & *inter alia* to such of his creditors with whom he had formerly compounded their debts; this but a legacy & not to be preferred to other legacies.—COPPIN *v.* COPPIN (1725), 2 P. Wms. 291; Cas. *temp.* King, 28; 24 E. R. 735.

5002a. ——.]—Executrix having, in mistake, made payments to A. in respect of his annuity for two years before he attained twenty-one, was entitled to retain them out of the future payments of the annuity.—LIVESEY *v.* (1827), 3 Russ. 287; 6 L. T. O. S. Ch. 13; 38 E. R. 583.

5022. *Add. Annotation:*—**Consd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

5057a. —— ——.]—A testatrix guaranteed her son's loan account at a bank. She then made a will appointing him one of her exors. & giving him a legacy of £100 & a protected life interest in the income of her residuary estate. She then guaranteed the son's overdraft on his current account. On each occasion the son charged his estate & interest in a public-house to secure such sum as the testatrix might be called upon to pay. The estate of testatrix was about to be called upon to pay a sum of over £5,000. The son after the death of testatrix executed a deed of assignment for the benefit of his creditors:—*Held:* (1) the fact that testatrix required security for the repayment of the debt after the execution of her will showed an intention not to release the debt, & the son was liable to the estate in the amount which would have to be paid to the bank; (2) notwithstanding that the debt or some part might remain unpaid, the trustees of the will were entitled to pay in their discretion such part of the income as they might think necessary for the son's maintenance & support.—*Re* EISER'S WILL TRUSTS, FOGG *v.* EASTWOOD, [1937] 1 All E. R. 244.

5065. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins,

5072. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

5075. *Add. Annotation:*—**Refd.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

5079. *Add. Annotation:*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825.

5085. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

5110a. ——.]—LLOYD *v.* STODDART (1752), Amb. 152; 27 E. R. 100, L. C.

5160a. —— ——.]—WILSON *v.* LESLIE (1857), 5 W. R. 815.

Annotation:—**Dbtd.** *Re* Dacre, Whitaker *v.* Dacre (1916), 85 L. J. Ch. 274.

PART IV. SECT. 5, SUB-SECT. 6.—D.

4961 ii. —— ——.]—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14. —**IR.**

PART IV. SECT. 5, SUB-SECT. 8.

sa *Judgment for balance of legacy—Priority over creditors.*]—HARPER *v.* HARPER (1890), 2 B. C. R. 15.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 12.—A.

5056 i. *Release of debts.*]—A. by his will gave to a nephew the amount owing by him to A. under a mtge. & bill of sale, & in addition gave him a pecuniary legacy of £1,000, & a motor car. To five other nephews & nieces he gave legacies of £2,000 each, & to another nephew £1,000. He directed his trustees to invest the surplus of his residuary estate, to accumulate & invest the income, & at the end of five years to convert those investments into money & hold the proceeds for such of the seven nephews & nieces who were pecuniary legatees as should then be living "in the same proportions as the legacies herein bequeathed to them bear to one another absolutely": —*Held:* the gift of the amount of the debt to the debtor was a legacy, & the amount of applt.'s indebtedness as well as the gift of £1,000 to him should be taken into account in calculating the share in the residuary estate to which applt. was entitled.—DAWES *v.* EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. (1935), 52 C. L. R. 291; [1935] A. L. J. 470.—**AUS.**

5057 i. —— *What amounts to release.*]—A bequest of "all moneys owing" by the legatee shows an intention to forgive all debts owed by the legatee to the testator.—*Re* HICKS, [1935] 4 D. L. R. 781; O. R. 538; 5 F. L. J. (Can.) 164.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 13.—A. (a).

5111 v. —— *Appointment by codicil of new executors—Provision in codicil for remuneration of executors.*]—*Held:* the exors. were entitled only to the commission mentioned in the codicil, notwithstanding a provision in the codicil that the will should be construed as if the names of the exors. were inserted throughout in place of those —*Re* BOSSI (1897),

5111 vi. ——.]—Where testator gives a legacy to an executor or trustee, stating that it is given for his services in that capacity, & particularly where testator declares it to be in lieu of commission or remuneration, such exor. or trustee, if he accepts the trust, is not entitled to anything more than he is given by the will, unless under exceptional circumstances, such as the gift being so small as to be illusory; & the mere inadequacy of the remuneration given by the will is not of itself a sufficient reason for departing from that practice.—*Re* MURPHY (1928), S. R. Q. 1.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—C.

5189 i. —— *Parent.*]—An exor. cannot discharge himself by paying a legacy given to an infant to the father or mother, as guardian, unless the ct. allows it in special circumstances.—*Re* NAKAUCHI ESTATE, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673—**CAN.**

sb. *Payment into court—Estate in Australia—Infant legatee & guardian domiciled in England.*]—By his will

5202. *Add. Annotation :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5206. After this case add "*See, also,* CONFLICT OF LAWS, No. 548a, *ante.*"

5240a. —— ——.]—Testator bequeathed sums of stock to his grandchildren, to be paid to them on attaining twenty-one, with benefit of survivorship to those attaining that age, but in case they should all die under twenty-one, then he willed the interest arising from such sums to their father for life, with remainder over :—*Held :* the grandchildren were entitled during their minority to have the interest arising from their legacies applied towards their maintenance.—BODDY *v.* DAWES (1836), 1 Keen, 362 ; 6 L. J. Ch. 145 ; 48 E. R. 346.

Annotations :—**Refd.** Festing *v.* Allen (1844), 5 Hare, 573 ; Dundas *v.* Wolfe Murray (1863), 1 Hem. & M. 425 ; *Re* Judkin's Trusts (1884), 50 L. T. 200.

5245. *Add. Annotations :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Refd.** *Re* Senior, Senior *v.* Wood, [1936] 3 All E. R. 196.

5246. *Add. Annotations :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5249. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71. *As to* (2) **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642. **Refd.** Stern *v.* I. R. Comrs. (1930), 15 Tax Cas. 148. *As to* (4) **Refd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5250. *Add. Annotation :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5251a. —— —— ——.]—A contingent or future pecuniary legacy payable to an infant upon attaining twenty-one does not carry intermediate income under Law of Property Act, 1925 (c. 20), s. 175, & there is no power under Trustee Act, 1925 (c. 19), s. 31, to apply the interest, or intermediate income thereof, when invested, for the infant's maintenance, unless testator is the parent of or *in loco parentis* to the infant, or has indicated an intention by his will that the infant should be maintained out of the income, or has directed the legacy to be appropriated & invested for the benefit of the infant.—*Re* RAINE, TYERMAN *v.* STANSFIELD, [1929] 1 Ch. 716 ; 98 L. J. Ch. 244 ; 141 L. T. 25.

Annotation :—**Refd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5251b. —— —— ——.]—Testatrix, who died after the commencement of Trustee Act, 1925 (c. 19), by her will directed the trustees thereof to set apart a specific sum, to accumulate & capitalise the income thereof, until A. should attain the age of twenty-one years ; &, if A. should attain that age, then to pay to her the income of that sum during her life, & after her death to hold the capital sum in trust for her children :—*Held :* as the trust for A., for a contingent interest for her life, did not carry the intermediate income, the trustees had, upon the proper construction, Trustee Act, 1925 (c. 19), s. 31, no power to apply that income towards A.'s maintenance. — *Re* READE-REVELL, CRELLIN *v.* MELLING, [1930] 1 Ch. 52 ; 99 L. J. Ch. 136 ; 142 L. T. 177.

5251c. —— ——.]—Where a testator, being the parent, or *in loco parentis*, of an infant, gives a legacy to that infant, contingently on his attaining an age other than full age, & makes no provision for maintenance, it is within the discretion of the ct. to order the interest on the legacy to be applied in maintaining the legatee until the legacy vests.—*Re* JONES, MEACOCK *v.* JONES, [1932] 1 Ch. 642 ; 101 L. J. Ch. 307 ; 147 L. T. 137.

5251d. ——.]—Testatrix by her will directed a fund to be accumulated. She expressly directed that no payment from the fund should be made to the beneficiary during a certain period. If the beneficiary died during that period the fund was to fall into residue. The gift was one which would carry the intermediate income :—*Held :* the terms of Trustee Act, 1925 (c. 19), s. 31 (1) (ii) imposed a statutory duty on the trustees to pay the income of the fund to the beneficiary upon the beneficiary attaining 21 during the period & the provision in the will to the contrary would then become ineffective & the statutory duty would prevail.—*Re* RICARDE-SEAVER'S WILL TRUSTS, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* SANDBROOK, [1936] 1 All E. R. 580 ; 154 L. T. 599 ; 52 T. L. R. 508 ; 80 Sol. Jo. 385.

Annotation :—**Consd.** *Re* Turner's Will Trusts, District Bank, Ltd. *v.* Turner, [1936] 2 All E. R. 1435.

5256. *Add. Annotation :*—**Expld. & Distd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5273. *Add. Annotations :*—**Folld.** *Re* Stokes, Bowen *v.* Davidson, [1928] Ch. 716. **Expld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5273a. ——.]—Where a legacy given to an infant is clearly indicated by the will to be intended for the support of the infant, interest on such legacy will run from the death of testator, as the support of the infant must begin immediately upon such death ; & where such legacy is one of two or more legacies all in the same category & all given in the same group to the trustees of the will, no distinction being made between any of the legacies, the other legacy or legacies will likewise carry interest from the date of

testator, domiciled in California, bequeathed money on deposit in banks in Australia, amounting to about £12,000, to the infant daughters of E., & appointed E. as guardian of the estate of his daughters, & appointed two residents of Brisbane as exors. of the testator's estate in Australia. E. & his two daughters were domiciled in England :—*Held :* in the circumstances the exors. should pay the legacies into ct., leaving E. to make appropriate application for payment out to him.—*Re* TUDOR, [1928] S. R. Q. 299.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—D. (b) i.

u i. —— ——.]—The ct. may allow maintenance to an infant (1) out of property to which the infant is contingently entitled under a disposition made by its father or a person standing *in loco parentis* to it if the infant is unprovided for, or (2) out of the income earned by a contingent legacy bequeathed to an infant which is directed to be set apart for the infant so that if & when the contingency happens, the legacy will become payable to the infant, or

infant's share in the income of property subject of a gift to a class, all or some of whose members must take where the chance of taking is equal as to all of them, or a gift to such a class or an individual & the doucee over in default of the class consent. But the ct. will apply money for an infant's maintenance in disregard of the trust only when the result of not doing so will leave the infant in such adverse circumstances that it must be assumed that if they had been foreseen by testator he would have provided for the case.—*Re* [illegible] L. R. 35.—**AUS.**

testator's death.—*Re* STOKES, BOWEN *v.* DAVIDSON, [1928] Ch. 716; 97 L. J. Ch. 273; 139 L. T. 331; 72 Sol. Jo. 384.

Annotations:—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Refd.** Dewar *v.* I. R. Comrs., [1935] 2 K. B. 351.

5273b. Whether infant entitled to whole of income.]—Testator, standing *in loco parentis*, gave to trustees a legacy of £4,000, on trust to pay it to A., on his attaining twenty-one. He authorised them to raise it by mtge. of his real estates, & out of the money thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance:—*Held:* the legatee, during minority, was entitled to maintenance only, & not to the whole amount of interest on the legacy.—RUDGE *v.* WINNALL (1849), 12 Beav. 357; 18 L. J. Ch. 469; 14 L. T. O. S. 325; 13 Jur. 737; 50 E. R. 1098.

Annotations:—**Refd.** *Re* Rouse's Estate (1852), 9 Hare, 649. **Mentd.** *Re* Roose, Evans *v.* Williamson (1880), 17 Ch. D. 696.

5276. *Add. Annotation:*—**Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5287. *Add. Annotation:*—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5293. *Add. Annotation:*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5301. *Add. Annotation:*—**Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5320. *Add. Annotation:*—**Refd.** *Re* King, Public Trustee *v.* Aldridge, [1928] Ch. 330.

5322. *Add. Annotation:*—**Apld.** *Re* Maber, Ward *v.* Maber, [1928] Ch. 88.

5331. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5334. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5335. *Add. Annotation:*—**Apld.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

5337. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5340a. ——.]—Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C.'s children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & " to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares ":—*Held:* the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was an intestacy as to the undivided aliquot shares of persons who predeceased testator.—*Re* WHITROD, BURROWS *v.* BASE, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.

5341. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5353a. —— ——.]—*Re* COPE'S TRUSTS (1877), 36 L. T. 437.

5354. *Add. Annotations:*—**Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58.

5358. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345. **Distd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096. **Refd.** *Re* Oldham, Oldham *v.* Myles (1927), 71 Sol. Jo. 491.

5360a. —— —— ——.]—The interim interest from a fund set apart to meet future vested legacies, which do not carry interest in the meantime, is capital & not income of residue, & must, therefore, be invested, & the income only of such investment paid to the tenant for life of the residuary estate. The rule adopted in *Allhusen* v. *Whittell*, No. 5358, *ante*, in reference to contingent legacies, has no application to vested legacies.—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

Annotation:—**Distd.** *Re* Hawkins, White *v.* White, [1916] 2 Ch. 570.

5363a. —— —— —— **Contingent legacies.**]—Contingent legacies are excluded from the rule in *Allhusen* v. *Whittell*, No. 5358, *ante*, & the whole of the legacy duty payable on contingent legacies given free of duty is a charge on the corpus of the estate.—*Re* FENWICK'S WILL TRUSTS, FENWICK *v.* STEWART, [1936] Ch. 720; [1936] 2 All E. R. 1096; 105 L. J. Ch. 351; 155 L. T. 199; 80 Sol. Jo. 553.

5363b. —— —— **Gross or net amount.**]—In applying the rule in *Allhusen* v. *Whittell*, No. 5358, *ante*, the income of the estate should be calculated, not on the basis of the gross amount received, but at the net amount after deduction of tax.—*Re* OLDHAM, OLDHAM *v.* MYLES (1927), 71 Sol. Jo. 491.

5369. *Add. Annotation:*—**Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

5371. *Add. Annotations:*—**Apld.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345. **Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

5373. *Add. Annotations:*—**Consd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550; *Re* Corelli (1925), 69 Sol. Jo. 525; *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Apld.** *Re* Trollope's Will Trusts, Public Trustee *v.* Trollope, [1927]

PART IV. SECT. 6, SUB-SECT. 1.—A.

sk. *Law-agent's business books.*]—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—*Held:* pursuer was entitled to delivery.—ROBERTSON *v.* ROBERTSON'S EXECUTORS, [1925] S. C. 606.—**SCOT.**

PART IV. SECT. 6, SUB-SECT. 1.—B.

5351 1. *Right to have residue ascertained & paid over.*]—When the personal estate of a testator has been fully administered by his exors. & the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred & paid to him; but until that time he has no property in any specific investment forming part of the estate or in the income from any such investment, & both corpus & income are the property of the exors. & are applicable by them as a mixed fund for the purposes of administration.—NG AUN THYE *v.* EWE KEOK NEOH, [1933] 3 W. W. R. 129, P. C.—**STRAITS SETTLEMENTS.**

sm. *Mistake as to value of assets—New distribution ordered.*]—CLARKE *v.* HAWKE (1865), 11 Gr. 527.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 3.

sn. *Duty of administrator—To distribute under Devolution of Estates Act.*]—*Re* BOWER (1905), 5 O. W. R. 383; 9 O. L. R. 199.—**CAN.**

1 Ch. 596. **N.F.** *Re* Brooker, Brooker *v.* Brooker (1926), 70 Sol. Jo. 526. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

For the cross-reference following this case substitute "———— ————.]—*See, further*, SETTLEMENTS, Vol. XL., pp. 672–674; WILLS."

5375. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

5387. *Add. Annotation :*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

5407. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

(*c*) *After* 1925 (*p.* 472).

5408a. General rule.]—A will made on a printed form contained an appointment of testator's wife as executrix & a direction to pay debts & funeral & testamentary expenses, but no gift or disposition of property to any person : —*Held :* the executrix took testator's estate as trustee for the persons entitled to the property of an intestate, including herself, as set out in sect. 46 of the Administration of Estates Act, 1925 (c. 23). The repeal by that Act of Exors. Act, 1830 (c. 40), has not restored the law in force before the latter Act was passed under which an exor. took property which was undisposed of beneficially.—*Re* SKEATS, THAIN *v.* GIBBS, [1936] Ch. 683; [1936] 2 All E. R. 298; 105 L. J. Ch. 262; 155 L. T. 451; 52 T. L. R. 558; 80 Sol. Jo. 406.

5408b. ——.]—*Re* CARVILLE, SHONE *v.* WALTHAMSTOW BOROUGH COUNCIL, [1937] 4 All E. R. 464.

5411. *Add. Annotation :*—**Refd.** *Re* Jones, Johnson *v.* A.-G. (1925), 133 L. T. 601.

5412. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R 617.

5416. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5417. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5423a. ——.]—By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin :—*Held :* there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re* JONES, JOHNSON *v.* A.-G., [1925] Ch. 340; 94 L. J. Ch. 341; 133 L. T. 601; 69 Sol. Jo. 460.

5440. *Add. Annotation :*—**Refd.** *Re* Rooke. Jeans *v.* Gatehouse, [1933] Ch. 970.

5442a. ———— ————.]—Testatrix by her will, dated June 2, 1913, after making numerous specific bequests, bequeathed to her trustees all her horses & all her carriages not thereby otherwise disposed of wherever the same might be at her death . . . upon trust to sell & stand possessed of the proceeds for G. & C. in equal shares as tenants in common. In 1918 testatrix, having become through senility unable to manage her affairs, a receiver of her estate was appointed by the Master in Lunacy, who authorised the sale of her motor-car. A part of the purchase-money was applied for her maintenance. She died in 1920, having no horses or carriages, but the receiver still held the balance of the purchase-money. The estate proved insufficient to pay all the legacies in full. On an originating summons taken out by the trustees, asking, among other things, whether the above-named legatees were entitled to the

PART IV. SECT. 6, SUB-SECT. 4.—A. (b).

5378 i. *General rule.*]—Testator by his will gave certain legacies & devised certain land to his widow for life or widowhood; upon her death or marriage this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors. :—*Held :* the change made in the law by the Imperial Act of 1830, adopted in this province & now found in Trustee Act, R. S. O., 1927, s. 53, does not apply in cases in which testator himself has given the property to his exors.; the Act applies only where there is a bare appointment of exors. so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*. In this case, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260; 63 O. L. R. 218.—**CAN.**

5382 i. *Whether intention for executor to take beneficially apparent by will—Construction of will.*]—Testator by his will gave certain legacies & devised certain land to his widow for life, or widowhood, & upon her death, or marriage, this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors. One of these was at the date of the will an infant of tender years, & was only 13 years old at the time of testator's death. Probate was granted to the adult exors. reserving to the infant a right to be admitted to exorship upon attaining majority :—*Held :* the change made in the law of the Imperial Act of 1830, known as Sugden's Act, adopted in this Province, & now found in Trustee Act. R. S. O. 1927, c. 150, s. 53, does not apply to cases in which testator himself has given the property to his exors., the Act applies only to cases where there is a bare appointment of exors., so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*; &, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260; 63 O. L. R. 218. —**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (a).

5425 v. ———— ————.]—P. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid :—*Held :* testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved insufficient.—*Re* PATTON, CAUGHEY *v.* COPELAND, [1925] N. 206.—**IR.**

o i. ———— ———— ————.]—Testator directed payment of debts, expenses & taxes & made certain specific bequests & then gave the residue of his estate including the proceeds of all policies on his life in trust for his wife, daughter, & grandchildren :—*Held :* the proceeds were part of his estate.—*Re* HOARE, [1933] 2 D. L. R. 780; O. R. 474.—**CAN.**

sc. *Payment of death duties—Exemption by statute—Full effect to be given.*]—*Re* AIKINS, [1928] 2 D. L. R. 415; 62 O. L. R. 33.—**CAN.**

balance of the purchase-money & whether specific legatees were to bear the cost of packing & dispatching the articles specifically bequeathed to them :—*Held :* (1) the above-mentioned gift included the motor-car & the legatees were entitled to such of the proceeds of the sale thereof as had not been applied by the receiver ; (2) the specific legatees must bear the cost of packing & dispatching the several articles bequeathed to them.—*Re* SIVEWRIGHT, LAW *v.* FENWICK (1922), 128 L. T. 416 ; 67 Sol. Jo. 168.

Annotation :—**Folld.** *Re* Leach, Milne *v.* Daubeny, [1923] 1 Ch. 161.

5442b. —— ——.]—*Re* LEACH, MILNE *v.* BENY, No. 4895a, *ante*.

5447. *Add. Annotation :*—Folld. *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

5447a. —— ——.]—The costs of the preservation & upkeep of property specifically devised & bequeathed between the date of testator's death & the date of exors.' assent are payable by the specific devisees & legatees.—*Re* ROOKE, JEANS *v.* GATEHOUSE, [1933] Ch. 970 ; 102 L. J. Ch. 371 ; 149 L. T. 445.

5448a. ——.]—*Held :* the direction for payment of the "testamentary expenses" of testator's widow extended to the costs & expenses in obtaining letters of administration, & in connection with the administration of the estate of the widow ; & the costs of an action in the probate division.—*Re* CLEMOW, YEO *v.* CLEMOW, [1900] 2 Ch. 182 ; 69 L. J. Ch. 522 ; 82 L. T. 550 ; 48 W. R. 541 ; 44 Sol. Jo. 428.

Annotations :—**Refd.** *Re* Treasure, Wild *v.* Stanham, [1900] 2 Ch. 648 ; *Re* Sharman, Wright *v.* Sharman, [1901] 2 Ch. 280 ; *Re* Fearnsides, Baines *v.* Chadwick, [1903] 1 Ch. 250 ; *Re* King, Travers *v.* Kelly, [1904] 1 Ch. 363 ; *Re* Spencer Cooper, Poë *v.* Spencer Cooper, [1908] 1 Ch. 130 ; Porte *v.* Williams, [1911] 1 Ch. 188 ; O'Grady *v.* Wilmot, [1916] 2 A. C. 231 ; *Re* Massey, Ram *v.* Massey (1920), 90 L. J. Ch. 40.

5449a. Costs of probate action.]—*Re* CLEMOW, YEO *v.* CLEMOW, No. 5448a, *ante*.

5451a. —— ——.]—Land which had been delivered in execution, under a writ of *elegit*, to judgment creditors of a testator, was specifically devised by the subsequent will of testator :—*Held :* Locke King's Acts applied, & the devisee was not entitled to have the land exonerated by the personal estate.—*Re* ANTHONY, ANTHONY *v.* ANTHONY, [1892] 1 Ch. 450 ; 61 L. J. Ch. 434 ; 66 L. T. 181 ; 40 W. R. 316 ; 36 Sol. Jo. 255.

5452. *Add. Citation :*—*previous proceedings*, [1892] 1 Ch. 450.

5466. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538.

5483a. —— ——.]—DIXON *v.* DUTFIELD, No. 6014b, *post*.

5540. Add MELLERSH *v.* BRIDGER, SMITH *v.* (1853), 17 Jur. 908.

5556. *Add. Annotation :*—**Apld.** *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

5560a. Collateral security.]—A sum of £400 borrowed by an intestate on his promissory note, but secured also by a memorandum & deposit of even date of title deeds of real estate in terms as collateral security :—*Held :* within Locke King's Act.—COLEBY *v.* COLEBY (1866), L. R. 2 Eq. 803.

5565a. ——.]—(1) Prior to his death, testator entered in a contract to purchase certain freehold property & paid a deposit. He then became ill & was quite unable to attend business matters, & there was no one with authority to sign cheques upon his banking account. In these circumstances the bank opened a special account in the name of testator's solrs., advanced a sufficient sum to that account to meet the payment, & the solrs. received & held the title deeds of the property. By his will testator devised this property to his wife :—*Held :* the result of the above transactions was that the property became charged in favour of the solrs. with the amount of the balance of the purchase-money ; the testator's wife took the property, subject to that charge.

(2) Certain repairs of the property were, with the approval of testator, carried out, but not paid for during his life-time :—*Held :* the cost of these repairs was a debt of testator & should be discharged by the

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PART IV. SECT. 7, SUB-SECT. 1.—A. (b).

5462 i. *Specific legacy—Of incumbered chattel.*]—As between a specific legatee of an incumbered chattel & other specific legatees & devisees, the former must bear the burden of the incumbrance, & a general direction that debts shall be paid will not alter this.—*Re* SIMPSON, [1927] 2 D. L. R. 1043 ; 60 O. L. R. 310.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (e) ii.

5511 i. *Whether mixed fund primarily liable.*]—Where testator has devised his real & personal estates to his exors., to sell or convert same into money & out of the proceeds to pay his debts & legacies, he has created a mixed fund for the purpose.—GRAYSON *v.* WALSH, [1926] 1 D. L. R. 206 ; [1926] 1 W. W. R. 125 ; 20 Sask. L. R. 288.—**CAN.**

5511 ii. ——.]—Testatrix devised & bequeathed one-half of her estate to G., & after all her debts had been paid certain legacies to others, & the balance to G. The assets consisted mainly of realty, & were sufficient to discharge the debts & the funeral & testamentary expenses without recourse to the share given to G. :—*Held :* the second half of the estate was charged with the payment of debts in exoneration of G.'s share, &, the ordinary rules as to the abatement of different parts of the estate for the payment of debts being applicable to the payment of funeral & testamentary expenses, G.'s shares was exempt also from the payment of those expenses.—*Re* HOWE, GRASS *v.* MCCLELLAND, [1929] V. L. R. 290 ; [1929] Argus L. R. 211.—**AUS.**

5513 i. *Whether mixed fund primarily liable—Necessity for direction in will for payment out of mixed fund.*]—Since the Wills Act a residuary devise must for the purposes of administration be regarded as a specific devise, & in the order of assets for the payment of debts ranks with specific devises & specific bequests. A residuary devise does not lose its right to contribution from specifically bequeathed personalty for the payment of debts so far as the general personal estate is insufficient, merely by reason of the facts that it is given together with the general personal estate on trust for conversion & the proceeds of conversion are made a mixed fund for the purposes of disposition, & that the whole estate is subject to a general constructive charge for the payment of debts. To entitle specifically bequeathed personalty to be exonerated from such liability by the residuary realty further evidence of testator's intention to that effect is necessary ; such as a direction that the debts are to be paid out of the mixed fund, or that the proceeds of conversion are to be regarded as personal estate.—*Re* FORSYTH, WYATT *v.* FORSYTH (1929), 29 S. R. N. S. W. 411 ; 46 N. S. W. W. N. 127.—**AUS.**

PART IV. SECT. 7, SUB-SECT. 1.—C. (a).

5540 vi. ——.]—RICKER *v.* RICKER (1868), 14 Gr. 264.—**CAN.**

5540 vii. ——.]—SCOTT *v.* SUPPLE (1893), 23 O. R. 393.—**CAN.**

5546 i. *Personal estate insufficient.*]—LAPP *v.* LAPP (1869), 16 Gr. 159.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—C. (b) iii.

5561 ii. ——.]—Where land is devised which testator held as a purchaser subject to a vendor's lien, unless a contrary intention appears, it is primarily liable for the unpaid purchase-money.—*Re* MACDOUGALL, [1927] 3 D. L. R. 464 ; [1927] 1 W. W. R. 612 ; 21 Sask. L. R. 397.—**CAN.**

5561 iii. ——.]—*Re* NAGEL, [1928] 3 D. L. R. 36.—**CAN.**

exors. out of the estate.—*Re* RIDDELL, PUBLIC TRUSTEE *v.* RIDDELL, [1936] Ch. 747; [1936] 2 All E. R. 1600; 105 L. J. Ch. 378; 155 L. T. 247; 52 T. L. R. 675; 80 Sol. Jo. 595.

Annotation :—Generally, **Reld.** *Re* Robert's Will Trusts, Younger *v.* Lewins, [1937] Ch. 274.

5594. *Add. Annotation :*—**Apld.** *Re* **Fegan, Fegan** *v.* **Fegan, [1928] Ch. 45.**

5594a. Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct. 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate :—*Held :* (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re* BEIRNSTEIN, BARNETT *v.* BEIRNSTEIN, [1925] Ch. 12; 94 L. J. Ch. 62; 132 L. T. 251; *sub nom. Re* BERNSTEIN, BARNETT *v.* BERNSTEIN, 69 Sol. Jo. 88.

(*c*) *After* 1925 (Vol. XXIII., p. 495).

5620a. Special fund for payment of debts—"Contrary or other intention"—Administration of Estates Act, 1925 (c. 23), s. 35.]—The provision by testator in his will of a special fund, not being any of the funds mentioned in sect. 35 (2) of the above Act, for payment of his debts operates as the expression of a "contrary or other intention" within the sect., so as to exonerate, as between the different persons claiming through testator, a personalty fund which at testator's death was subject to a mtge. from the primary liability to discharge it; but the fund is only exonerated to the extent that the special fund is available for discharging the mtge. debt, &, in so far as it is inadequate, the mortgaged property remains primarily liable.—*Re* FEGAN, FEGAN *v.* FEGAN, [1928] 1 Ch. 45; 97 L. J. Ch. 36; 138 L. T. 265; 71 Sol. Jo. 866.

5640. *Add. Annotation :—As to* (4) **Consd.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79.

5641a. ——.]—MARCH (LADY) *v.* FOWKE (1679), Cas. *temp.* Finch, 414; 23 E. R. 226, L. C.

5654a. —— —— **To revert to residue on death of legatee.**]—By his will, testator bequeathed a legacy of £16,000 to trustees for his daughter A. during her life & after her death directed that the legacy should revert to & be added to his general residuary personal estate & go as the same was bequeathed by his will. Testator then gave his general residuary personal estate to B. Testator devised his estates in certain places to other trustees as a fund for the discharge of his debts, funeral & testamentary expenses & his pecuniary legacies in aid of his personal estate, with power to his trustees, if they thought it expedient or necessary either before or after his residuary personal estate should be exhausted to raise money for those purposes by sale or mortgage & subject thereto upon trust for B., in fee. The personal estate of testator was insufficient for the payment of his debts & legacies, & B. supplied such deficiency, including the annual payments to A. in respect of her legacy. A. survived both testator & B. On the death of B., the question arose whether, as testator's personalty was insufficient for the payments before mentioned, testator intended that the corpus of the legacy should be raised out of the real estate devised to B. for the benefit of B.,

who was testator's residuary legatee :—*Held :* the words " revert to & be added to my general residuary estate " in the will, showed that the testator meant the legacy to be restored to the funds from which it was taken ; & it was not to be taken from the real estate merely for the purpose of augmenting the personal estate.—*Re* SOMERSET (DUKE), THYNNE *v.* ST. MAUR (1886), 55 L. T. 753.

5697a. ——.]—EYLES *v.* CARY (1687), 1 Vern. 457 ; 23 E. R. 583.

Annotation :—**Dbtd.** Mallison *v.* Middleton (1739), 1 Eq. Cas. Abr. 198, n.

5697b. ——.]—BOWDLER *v.* SMITH (1706), Prec. Ch. 264 ; 2 Eq. Ca. Abr. 371 ; 24 E. R. 128.

5697c. ——.]—PARKER *v.* WILCOX (1723), 2 Eq. Cas. Abr. 371 ; 22 E. R. 316.

5697d. ——.]—WILLAN *v.* LANCASTER (1826), 3 Russ. 108 ; 38 E. R. 516.

5723a. —— ——.]—Testatrix, who had power, under her brother's will, to appoint real & personal estate, gave the real estate to trustees to raise £1,000, & pay the amount as legacies to various persons & subject thereto for P. & his heirs. She then gave several legacies, payable out of her own personal estate, & other legacies payable out of an unappointed moiety of her brother's personal estate, after the decease of his widow, & she directed the duty on all the foregoing legacies to be paid out of her personal estate, & if deficient for full payment either of duty or legacies, such deficiency was to be made good out of the real estate, on which she charged same. By two codicils, testatrix left other legacies, & directed that the sums bequeathed out of her brother's estate should be paid, with the other legacies, immediately after her decease :—*Held :* the legacies given by the codicils were charged on the real estate.—WILLIAMS *v.* HUGHES (1857), 24 Beav. 474 ; 27 L. J. Ch. 218 ; 30 L. T. O. S. 215 ; 4 Jur. N. S. 42 ; 6 W. R. 94 ; 53 E. R. 441.

5734. *Add. Citations :—sub nom.* NYSSEN *v.* GRETTON, 2 Y. & C. Ex. 222 ; 160 E. R. 378.

5737a. ——.]—Testator directed his debts & funeral & testamentary expenses to be paid out of his personal estate. He then devised his freeholds to trustees to be sold, & the proceeds, after deducting costs, to be deemed part of the residue of his personal estate, & to be subject to the dispositions thereinafter made of the same. Testator then gave a legacy of £1,000 upon certain trusts, & finally directed all the rest & residue of his personal estate to go to his wife for life, remainder over. The pure personal estate being insufficient to pay all the debts & legacies :—*Held :* the legacy of £1,000 ought to be paid out of the moneys arising from the sale of the real estate.—*Re* WOOLLARD'S TRUST (1854), 18 Jur. 1012.

Add. Annotation :—**Consd.** *Re* Thompson, Public Trustee *v.* Husband, [1936] 2 All E. R. 141.

5762a. ——.]—A testator bequeathed an annuity & certain legacies & devised & bequeathed all his real & personal estate not otherwise devised or bequeathed to certain persons. He left personal estate & real estate of considerably greater value. Questions arose in connection with the incidence of certain death duties, whether an annuity & legacies were for that purpose to be treated as payable primarily out of the residuary personalty or out of the realty & personalty in proportion to their values :—*Held :* the law in force before Administration of Estates Act, 1925 (c. 23), as regards the primary fund for payment of legacies as between the personal & real estate has not been altered by sect. 34 (3) of clauses 2 & 8 (*b*) of Part II. of Sched. I., to that Act, & the personal estate must be treated as primarily liable, & recourse will not be made to the real estate until the personal estate has been exhausted. In any case for the purpose of determining the incidence of death duties this result is effected by clause 8 (*b*) of Part II. of the Sched.—*Re* THOMPSON, PUBLIC TRUSTEE *v.* HUSBAND, [1936] Ch. 676 ; [1936] 2 All E. R. 141 ; 105 L. J. Ch. 289 ; 155 L. T. 474 ; 80 Sol. Jo. 466.

5839a. ——.]—A general charge of debts & legacies upon all the real estates of testator not annulled by a subsequent power to sell a particular estate only & apply the produce to the same purpose : but that estate was first applied.—COXE *v.* BASSET (1796), 3 Ves. 155 ; 30 E. R. 945.

Annotation :—**Consd.** Wrigley *v.* Sykes (1856), 21 Beav. 337.

5864. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

5864a. ——.]—WATERHOUSE *v.* CLOUT, *Ex p.* BOOKER (1871), 41 L. J. Ch. 223 ; 20 W. R. 277.

5908a. Charge of debts, legacies & expenses on specific bequest—Variation of statutory order of administration.]—By a will, testatrix gave & bequeathed " All my farm stock, implements & tenant-right but charged with payment of all my just debts, & funeral & testamentary expenses, & also with the payment thereout of the legacies mentioned in the will of my late husband W., & an additional legacy of £50 which I bequeath to my step-daughter E. unto & equally between my step-son G. & my son F." :—*Held :* Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., in the case of wills, *a fortiori* in the case of those executed before 1926, indicating with reasonable clarity the intention of deceased, is to take effect subject to variations necessary to give effect to the intention, & therefore the farm stock, implements, & tenant-right were primarily applicable for

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) i.

b i. ——.]—WRIGHT *v.* WRIGHT, [1928] N. Z. L. R. 331.—**N.Z.**

r i. —— *Balance of proceeds of sale of land sold by mortgagee treated as land.*]—ARMSON *v.* THOMPSON (1877), 25 Gr. 138.—**CAN.**

r ii. ——.]—Testator devised to his daughter a lot of land charged with a legacy. The daughter predeceased testator, leaving two children, to whom the lot descended. On an appln. by the exors. at the instance of the official guardian :—*Held :* it was the duty of the exors. to sell the land & pay the legacy.—*Re* EDDIE (1892), 22 O. R. 556.—**CAN.**

r iii. ——.]—*Re* SISKIN ESTATE. SISKIN *v.* BOGOCH & HOCHMAN, [1929] 4 D. L. R. 1086 ; 1 W. W. R. 820 ; 23 S. L. R. 626.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) ii.

c i. ——.]—If under a will there are general gifts of legacies & then of the rest & the residue, real & personal, blending the whole in one mass, the legacies are a charge on the realty.—*Re* CONNER, [1930] 1 W. W. R. 442 ; 2 D. L. R. 348.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 4.

5874 i. *Before specific legacies.*]—*Re* HUNT, [1924] 3 W. W. R. 241.—**CAN.**

payment of the funeral & testamentary expenses & debts.—*Re* LITTLEWOOD, CLARK *v.* LITTLEWOOD, [1931] 1 Ch. 443; 100 L. J. Ch. 243; 144 L. T. 718; 47 T. L. R. 79.

5917a. —— —— —— —— **Administration of Estates Act, 1925 (c. 23), Sched. I., Part II.**]—A share of residuary estate which lapses owing to the person who would have been entitled to it under the will of a testator predeceasing testator is "property undisposed of by will" within clause 1 of above Part, & therefore under sect. 34 (3) of the Act primarily liable, subject to any direction to the contrary in the will, to the discharge thereout of funeral & testamentary expenses, debts & legacies.—*Re* LAMB, VIPOND *v.* LAMB, [1929] 1 Ch. 722; 98 L. J. Ch. 305; 141 L. T. 60; 45 T. L. R. 190; 73 Sol. Jo. 77.

Annotations:—**Distd.** *Re* Petty, Holliday *v.* Petty, [1929] 1 Ch. 726. **Foll'd.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch 47. **Dbtd. & Distd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268, C. A. **N.F.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Apprvd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202.

5917b. —— —— —— —— ——.]—A testator by his will, after directing his executors to pay all legacies free of estate duty & to pay out of his estate any duty which might become payable on any gift made before his decease & after bequeathing certain legacies & annuities & the use & benefit of two freehold cottages, directed them to collect the income from the remainder of his estate & to pay 75 per cent. thereof to E. H. during her life & on her death the income of the whole of the estate to be invested for the benefit of the children of M. & A. on their attaining the age of twenty-one years, & if there should be no children then the whole of the accumulated funds was to be divided between two named charities. Testator died on Mar. 12, 1929. It having been held upon the originating summons that, in consequence of the will having been attested by the husband of E. H., the 75 per cent. share of the income of the residuary estate was undisposed of by the will, until the death of E. H. or the birth of a child to either M. or A., the question then arose whether testator's funeral, testamentary & administration expenses, debts & liabilities other than the estate duty in the will mentioned ought to be paid primarily out of such undisposed of income or out of the corpus of his estate:—*Held:* (1) the "real & personal" estate of a deceased person made assets for the payment of his debts by Administration of Estates Act, 1925 (c. 23), s. 32 (1), include the share of income of testator's residuary estate accruing after his death as to which he died intestate; (2) that property "undisposed of by will," made by sect. 34 (3), Sched. I., Part II., para. 1, of that Act the primary fund for payment of the expenses, debts, & liabilities mentioned in that subsect. includes a share of future income of residuary estate which lapses by reason of the statutory inability of the legatee to take under the will; (3) upon the proper construction of the will & the sub-sect. there was no provision for payment of the funeral, testamentary, & administration expenses, debts, & liabilities, with the result that those expenses & the debts & liabilities, except the estate duty in the will mentioned, must be paid primarily out of the share of income which lapsed & any other property undisposed of by the will.—*Re* TONG, HILTON *v.* BRADBURY, [1931] 1 Ch. 202; 100 L. J. Ch. 132; 144 L. T. 260, C. A.

Annotation:—*As to* (3) **Foll'd.** *Re* Worthington, Nichols *v.* Hart, [1933] Ch. 771.

5917c. —— —— —— —— ——.]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

5917d. —— —— —— —— ——.]—Testatrix by her will after appointing a sole exor. thereof & bequeathing a number of pecuniary legacies gave devised & bequeathed all the residue of her estate both real & personal to E. S. & L. M. H. in equal shares absolutely. E. S. died in the lifetime of testatrix, & her moiety lapsed & passed as on an intestacy:—*Held:* the order of the application prescribed by Administration of Estates Act, 1925 (c. 23), s. 33 (2), & Sched. I., Part II., being under sect. 33 (7), sect. 34 (3), & Sched. I., Part II., expressly subject to variation by the provisions of the will, & there being in this case no such provisions, the statutory order must be followed, & both the debts, funeral & testamentary expenses & the legacies were payable primarily out of the lapsed share of the residue.—*Re* WORTHINGTON, NICHOLS *v.* HART, [1933] Ch. 771; 102 L. J. Ch. 273; 149 L. T. 296; 49 T. L. R. 444; 77 Sol. Jo. 371, C. A.

5917e. —— —— —— —— —— **Contrary intention of testator.**]—Testator devised & bequeathed his residuary real & personal estate upon trust for sale & conversion, & after directing payment of his debts, etc., out of that mixed fund gave the residue thereof thereinafter referred to as the residuary trust fund, as to one-half to his wife & as to the other half to two daughters in settled shares. Testator died in 1928. His wife having predeceased him, her moiety lapsed & passed as on an intestacy:—*Held:* the order of application of assets prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., being under sects. 33 (7), 34 (3), & Sched. I., Part II., para. 8 (*a*), expressly subject to variation by the provisions of the will, which in this case clearly threw the debts, etc., rateably on the mixed fund, those debts, etc., were payable out of that mixed fund rateably, & not primarily out of the lapsed moiety.—*Re* PETTY, HOLLIDAY *v.* PETTY, [1929] 1 Ch. 726; 98 L. J. Ch. 207; 141 L. T. 31.

Annotations:—**Distd.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch. 47. **Apprvd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268.

5917f. —— —— —— —— —— ——.]—By his will dated Dec. 2, 1911, a testator devised to his brother C. "all my freehold & copyhold property," & gave all his leasehold property & personal estate & effects, subject to payment of his funeral & testamentary expenses, debts, & legacies upon trust for division amongst his brothers & sisters as therein mentioned. Testator died on Aug. 15, 1928, & was at his death entitled, subject to the effect of the provisions of the Law of Property Act, 1925 (c. 20), to two equal ninth shares of certain freehold property comprised in his father's residuary estate, & to one equal fourth part of certain freehold minerals purchased by him. He also owned the entirety of certain other freehold property. The residuary gift of personalty lapsed as regards three equal seventh parts

owing to the death of two legatees in the testator's lifetime: — *Held:* testator by directing that his debts should first be paid out of the residue before division amongst the residuary legatees had shown an intention that in regard to the lapsed shares of residue the order of administration prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., should not apply, inasmuch as the net amount of the residue available for distribution could not be ascertained until after the debts had been paid. The debts were therefore not payable out of the lapsed shares in exoneration of the other shares. — *Re* KEMPTHORNE, CHARLES *v.* KEMPTHORNE, [1930] 1 Ch. 268; 99 L. J. Ch. 107; 142 L. T. 111; 46 T. L. R. 15, C. A.

Annotations:—**Apld.** *Re* Littlewood Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Distd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42. **Distd.** *Re* Worthington, Nichols *v.* Hart, [1933] Ch. 771. **Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

5919a. —— As property undisposed of by will—Contrary intention of testator.] — In the administration of the solvent estate of a testator who died after the commencement of Administration of Estates Act, 1925 (c. 23), a direction in his will to the trustees to pay his funeral & testamentary expenses & debts out of the proceeds of the sale & conversion of his personal estate is a provision within the meaning of sect. 34 (3) of that Act. Its effect is to make the personal estate applicable towards the discharge of testator's funeral, testamentary, & administration expenses, debts, & liabilities payable out of his estate, except death duties imposed on real estate, in priority to testator's real estate which, owing to the death of the devisee thereof in testator's lifetime, was property undisposed of by his will & which, but for the provision in his will, would be primarily liable according to the order of application of assets specified in Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., cl. 1.—*Re* ATKINSON, WEBSTER *v.* WALTER, [1930] 1 Ch. 47; 99 L. J. Ch. 35; 142 L. T. 129.

Annotations:—**Consd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268. **Apld.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Tong, Hilton *v.* Bradbury, [1930] 2 Ch. 400.

Part V.—Powers and Rights of Representative.

5973. *Add. Annotation:*—**Refd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

5977a. One executor carrying on business in competition with testator's business—Breach of trust.]—By his will testator who, at the date thereof, was carrying on the business of a yacht broker, appointed pltfs., namely, his daughter B. & one W. & deft. exors. & trustees thereof, & directed them to carry on his business after his death; & in the event of a sale thereof by the exors. the whole of the proceeds were bequeathed to B. Testator died on Aug. 1, 1928, & his exors., in pursuance of the directions contained in the will, carried on his business, until Feb. 1, 1929, when, testator's tenancy of the business premises being about to expire, they removed the business to other premises, a lease of which was shortly afterwards granted to deft. alone, of which lease to deft. pltfs. did not become aware until a few weeks after the grant thereof, when deft. claimed the right to hold the lease of the new premises for his own benefit, to exclude pltfs. from the new premises & to set up & carry on his own account a business similar to & in competition with testator's business. Deft. having, since the issue of the writ in the action, assigned the lease of the new premises to B. & the goodwill of the business also having been assigned to her, it became no longer necessary to grant any of the relief claimed & necessary to determine only whether deft. was entitled at the date of the issue of the writ to the right which he then claimed, for the purpose of deciding how the costs of the action ought to be borne:—*Held:* (1) in face of the claim made by deft. to the benefit of the lease, pltfs. were justified in bringing the action; (2) having regard to the special nature of the business of a yacht broker which necessarily involved competition between every individual broker with all the others, it would have been a breach by deft. of his fiduciary duty towards the beneficiaries under the will, if he had at the date of the issue of the writ set up on his own account an independent business of a yacht broker in competition with pltfs., carrying on their testator's business; with the result that deft. must pay all the costs of the action.—*Re* THOMSON, THOMSON *v.* ALLEN, [1930] 1 Ch. 203; 99 L. J. Ch. 156; 142 L. T. 253.

PART IV. SECT. 7, SUB-SECT. 9.—A.

t i. —— ——.]—Testator, whose estate was subsequently sequestrated on the petition of his exors., & who had effected several whole life policies of assurance upon his own life with the Australian Mutual Provident Society, in respect of which the total amount payable at his death was £4,628 18*s.* 3*d.*, & which were protected under Australian Mutual Provident Society's Act, 1857, s. 14, to the extent of either £1,500 or £1,780 1*s.* 9*d.*, had during his lifetime assigned the policies in question to the Society by way of mtge. as collateral security for the repayment of certain advances totalling £3,500, in respect of which advances the amount of £3,560 12*s.* 3*d.* was due at the date of his death:—*Held:* the equitable doctrine of marshalling applied, & the mtgee. must resort primarily to the protected fund to satisfy the mtge. debt, so as to leave the unprotected portion of the policy moneys available for the unsecured creditors, with the result that the protection afforded by the Act was entirely destroyed.—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369; 45 N. S. W. W. N. 88.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.—A.

5972 iii. —— ——.]—MCCALLUM *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 1 D. L. R. 271; 43 B. C. R. 31; *revsd.*, [1931] 4 D. L. R. 926; 43 B. C. R. 342.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

b i. —— —— *No power to give guarantee.*]—By the will of her husband, under which deft. was made an extrix., his business "now being carried on by me in the City of Vancouver" was devised to her & two other trustees in trust to continue to carry it on until

6014a. —— ——.]—Testator devised & bequeathed to trustees estate A. & also all & singular his freehold & leasehold estates & effects in H. & W. together with the steam engines & machinery, money in hand, etc., together with all & singular other his real & personal estates & effects, upon trust, that his trustees, etc., should carry on his cotton manufactory in the best & most proper manner they possibly could & he empowered them to retain as much ready money, as a capital in the business, as by them might be considered necessary, with full power to carry on the same, & to keep the whole in good repair, & to renew the machinery: & directed that at the end of every twelve months next after his decease, provided his daughters L. & E. were living, the profits, if any, & the surplus income from his H. & W. estates, after paying certain annuities, after retaining a sufficient capital to carry on the manufactory, should be equally divided between his two daughters, share & share alike; but if his trustees were not inclined to carry on the cotton manufactory, he empowered them to let the same, when he directed the reserved capital to be immediately divided between his two daughters L. & E. share & share alike: & he further directed that the surplus rents of his H. & W. estates, after paying the annuities, were to be equally divided every twelve months after his decease between such two daughters, share & share alike. He directed his trustees to allow his daughter E. to receive all the rents, etc., of his estate A. for her life & declared that at her death her issue were to be entitled to such estates, but if she left no issue then such estates were to go to his daughter L. & if she should then be dead, having left issue, such issue were to take; he then gave to L. an annuity of £600 during her life, & charged the same on all his real & personal estates in H. & W. & bequeathed the same at her death to her issue equally: &, if she should die without leaving lawful issue, his daughter E. if she should be living, was to take the annuity of £600 & the whole of the surplus rents, etc., of his H. & W. estates, both real & personal: & if neither of his daughters left issue, the whole of his estates, both real & personal, were to go to R. H. for life, with remainder to his issue, remainder to his heir at law. L. & E. survived testator: E. & L. both died without issue:—*Held:* (1) the representatives of L. & E. were absolutely entitled, in equal shares, to all such personal estate as was situate in H. & W. & which was not retained by the trustees as capital for carrying on the manufactory; (2) on the death of the survivor of E. & L. without leaving issue, the whole of testator's personal estate described in his will as situate in H. & W. consisting of his leasehold estate & the manufactory, & the capital retained by the trustees for carrying on the business, subject to the trusts declared in favour of R. H.; (3) R. H. was entitled for his life to the whole of the income of the freehold estates at A., H. & W. & to the income of the capital retained & employed by the trustees in carrying on the business.—HORSEFIELD *v.* ASHTON (1856), 26 L. T. O. S. 300; 2 Jur. N. S. 193, L. C. & L. JJ.; *affirmed, sub nom.* ASHTON *v.* HORSFIELD, HORSFIELD *v.* SIDEBOTHAM (1860), 2 L. T. 1; 6 Jur. N. S. 355, H. L.

Annotations:—Generally, **Refd.** Tyrone Earl *v.* Waterford Marquis (1860), 1 De G. F. & J. 613; Guthrie *v.* Walrond (1883), 22 Ch. D. 573.

6014b. —— ——.]—Testator directed that his business should be carried on for the benefit of his widow or until her second marriage, with very full powers to the trustees to carry on the same, & "to increase or abridge his said business, & his capital, stock & implements therein," & generally to act "as most advantageous & mostly for the benefit of the persons claiming under his will." He also directed that all his debts, funeral & testamentary expenses, & the "costs, charges & expenses of carrying into effect the trusts of his said will," should be paid out of the capital of said business:—*Held:* (1) the widow was entitled for life or until her second marriage, to the whole of the profits made by such business after testator's death; the cash at the banker's & the trade debts being assets or part of the capital of such business; (2) the debts, funeral & testamentary expenses, & the costs of suit, etc., should be borne out of the capital of such business; testator having exonerated his residuary estate from any such or similar charges.—DIXON *v.* DUTFIELD (1862), 5 L. T. 741.

6016. *Add. Annotation:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6016a. —— **No right to priority—Assent to carrying on business.**]—*Re* MURPHY (ELIJAH) ESTATE, MORTON *v.* MARCHANTON (1930), 74 Sol. Jo. 321.

6020a. —— **Right to interest.**]—Where exors. have carried on a business belonging to testator after his death, under a power in his will, &, in an action for administration of testator's estate, the debts incurred in so carrying on the business have been certified, those debts will be paid with interest as from the date of the certificate, before distribution to beneficiaries; but R. S. C., Ord. LV., rr. 62, 63, under which interest is allowed to creditors of a deceased upon their debts as from the date of the order for administration, does not extend to creditors of his exors.—*Re* BRACEY, HULL *v.* JOHNS, [1936] Ch. 690; [1936] 2 All E. R. 767; 105 L. J. Ch. 270; 155 L. T. 473; 80 Sol. Jo. 511.

6025. *Add. Annotation:*—**Refd.** *Re* Bracey, Hull *v.* Johns, [1936] 2 All E. R. 767.

his son should become of a certain age. Testator was interested in, & doubtless a shareholder in, a certain coal mining co., & had given pltf. bank a guarantee of its debt to the bank. After his death a further guarantee for a later debt of the co. to the bank was executed by the three trustees, of which deft. is the survivor. Deft. was sued as extrix. on this guarantee:—*Held:* deft. had no authority to bind the estate by a guarantee of the debt of another business entity, &, therefore, the appeal from the judgment for pltf. must be allowed.—BANK OF MONTREAL *v.* MORROW, [1936] 2 W. W. R. 566; 4 D. L. R. 331; 50 B. C. R. 510.—**CAN.**

b ii. —— *Manner of carrying on—Admissibility of evidence.*]—Where testator directs his business to be carried on "as heretofore," extrinsic evidence may be admitted as to the manner in which it was carried on.—*Re* SAINT-[illegible] [1933] 1 D. L. R. 386; *on appeal,* [illegible] —**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

so. *Before death duties paid—Where security for payment given.*]—R. *v.* CALEDONIAN INSURANCE CO., [1924] 2 D. L. R. 649; [1924] S. C. R. 207.—**CAN.**

6053a. Effect of Administration of Estates Act, 1925 (c. 23), s. 39.]—The expression " personal representatives " in the Administration of Estates Act, 1925 (c. 23), s. 39, does not include trustees in the ordinary sense, even when the personal representatives themselves become trustees upon an assent. The introductory words of sect. 39, conferring powers on personal representatives " during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives," are explained by the fact that under the new law of intestate succession the existence of an infant beneficiary or of a beneficiary, such as a widow, entitled to a life interest only may postpone distribution, & that in these cases sect. 33 places the personal representatives substantially in the position of trustees. The provision in sect. 39 (1) (ii), conferring on personal representatives " all the powers, discretions & duties conferred or imposed by law on trustees holding land upon an effectual trust for sale " does not operate referentially to make Law of Property Act, 1925 (c. 20), s. 28 (2), applicable to pure personalty. Accordingly, where under the will of a testator unauthorised investments are retained under a power to postpone conversion, the rule laid down in *Howe* v. *Lord Dartmouth* (1802), 7 Ves. 137a, still remains applicable in regard to the income payable to a tenant for life.—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

6062. *Add. Annotation :*—**Apld.** Johnson *v.* Clarke, [1928] Ch. 847.

6074a. —— To pay specialty debt—Mortgage valid as against bond—Executor without notice of bond.]—WATERLOO INSURANCE CO. *v.* HIND (1862), 1 New Rep. 64.

6082. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713.

6085. *Add. Annotation :*—**Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378.

6117. *Add. Annotation :—As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6138a. Effect of Administration of Estates Act, 1926 (c. 23), s. 39.]—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, No. 6053a, *ante*.

6147. *Add. Annotation :—As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6161. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1031] 1 Ch. 475.

PART V. SECT. 2, SUB-SECT. 2.—B. (a) i.

6046 ii. —— ——.]—A trustee has implied power to sell the residuary estate for the purpose of distribution when it is vested in him to pay expenses & debts.—*Re* WALKER'S ESTATE, MACRAE *v.* DRUMMIE (1932), 4 M. P. R. 358.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (a) i.

r (p. 577) i. —— ——.]—Where testator charged his debts on his land : —*Held :* the mere failure of testator to enumerate all his land did not detract from the conclusion that all the land was so charged, & the direction that his debts should be paid by his exors. conferred an implied power of sale upon them for the purpose of paying the debts out of the proceeds.—YOST *v.* ADAMS (1886), 13 A. R. 129.—**CAN.**

t (p. 577) i. —— —— *Where executor's power coupled with interest.*]—WESSELS *v.* CARSCALLEN (1860), 10 C. P. 215.—**CAN.**

bb (p. 577) i. —— *Legal estate in executors.*]—A devise of land to exors., in trust for the purpose of selling the lands, passes the legal estate & the beneficiaries take an equitable interest. —TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

t (p. 578) i. —— ——.]—Where testator directed his trustees to hold property for twenty-one years, & then sell it :—*Held :* there was no power to sell contrary to the express provisions of the will, except perhaps in a case of emergency.—DOBBEL *v.* LOUDOUN, [1920] N. Z. L. R. 131.—**N.Z.**

b (p. 578) i. —— —— *Under Devolution of Estates Act.*]—*Re* LOGAN, [1927] 4 D. L. R. 1074; 61 O. L. R. 323.—**CAN.**

h (p. 578) i. —— *Interference by court—Whether court will restrain executor from selling.*]—SAMUELSON *v.* SCHWANDT, [1927] 3 D. L. R. 565; [1927] 1 W. W. R. 620; 21 Sask. L. R. 341.—**CAN.**

h (p. 578) ii. —— *Sale not necessary for administration purposes—Title of bond fide purchaser.*]—An exor. or administrator has no absolute power to dispose of the property of deceased if it is not necessary for the purpose of administration of the estate, but a *bonâ fide* purchaser may be protected in certain cases where a transfer is not for that purpose.—TARAKESWAR DAS GUPTA *v.* AMBICA CHARAN BHATTACHARJEE (1927), I. L. R. 55 Calc. 892.—**IND.**

h (p. 578) iii. —— *Option to purchase given—Whether valid.*—Testator devised all her property to her exors. upon certain trusts, to carry out which they were empowered (*inter alia*) " to sell & dispose of my real estate . . . in such manner & at such times as they may deem advisable." Being unable to effect a sale of a certain dwelling-house property which upon its conversion into money would form part of the residuary estate, the exors. leased it for 16 months, reserving to themselves the right to determine the lease if they should wish to sell. A few weeks later they & the tenant entered into an agreement, called an " option to purchase," under which he made a cash payment & agreed to make monthly payments thereafter in addition to rent, & which also provided that on $1,000 being thus paid, or at any sooner time, he would be entitled to a conveyance, the amounts so paid as well as the rent to be credited on the purchase price, & the balance to be secured by mtge. payable in monthly payments. The " option " was stated to be irrevocable within the time for " acceptance " thereof, but was to remain in force only so long as the purchaser remained tenant of the property, & payment of $1,000 at any time during the continuance of the agreement, was to constitute the " acceptance " of the option :—*Held :* a sale within the power given by the will.—CLOSE *v.* MCMEANS, [1931] 3 W. W. R. 550; [1932] 1 D. L. R. 210; 40 Man. L. R. 31.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (a) ii.

l i. *S. P.* MCCURDY *v.* MCDANIEL (1868), 7 N. S. R. (1 G. & O.) 267.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (b).

p i. —— ——.]—Testator gave his real & personal property to trustees upon certain trusts. He charged his estate with the payment of his debts & succession duties. The personal property was not sufficient to satisfy them, & it was not in the interests of the estate, owing to market conditions, to sell the real estate. The will gave the trustees no express power to mtge. :—*Held :* the trustees had power to mtge. the real estate for the purpose of paying the debts & succession duties, & they could borrow by way of mtge. from one of themselves.—*Re* HIGGINS, HIGGINS *v.* HIGGINS (1932), 4 M. P. R. 365.—**CAN.**

6145 ii. —— ——.]—*Held :* although there was no express devise of realty to the exors., a devise was implied by the terms of the will, &, there being a general charge of debts, the exors. had full power to give a mtge.—BANQUE PROVINCIALE DU CANADA *v.* CAPITAL TRUST CORPN., [1927] 3 D. L. R. 199; 60 O. L. R. 452.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (c).

sp. *Power to reserve benefit to one beneficiary—Out of lands devised to another beneficiary.*]—MCKENZIE *v.* GRANT (1856), 13 U. C. R. 180.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—C. (a).

h i. *Sale under licence of Probate Court—Whether licence conclusive—Licence obtained improperly.*]—DOE *v.* THOMPSON (1860), 9 N. B. R. (4 All.) 483.—**CAN.**

h ii. —— —— *Sufficient personal property for payment of debts.*]—DOE d. SULLIVAN *v.* CURREY (1872), 14 N. B. R. (1 Pug.) 175.—**CAN.**

st. *Conveyance inoperative.*]—TEAHON *v.* LEAMEY (1861), 21 U. C. R. 216.—**CAN.**

sw. *Effect of sale after three years—Devolution of Estates Act*, 1927 *s.* 12.] —C., the owner of land, died on Dec. 20, 1925, intestate. Letters of administration were granted to his daughter A., who was his sole heiress-at-law & next of kin. On Feb. 17, 1926, she, as administratrix, conveyed in fee to R., who, on the same day, conveyed in fee to A. & her husband, as joint tenants. No caution having been registered by A. as administratrix & no

6177. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6178. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321 ; Parker *v.* Judkin, [1931] 1 Ch. 475.

6271. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

6281a. ——.]—Testator, who died on May 17, 1916, by his will appointed appcts. exors. & trustees. & bequeathed a number of absolute & settled pecuniary legacies. Testator gave all his estate whatsoever unto appcts. upon trust for sale & conversion at such time & manner as they should think fit, with power & discretion to postpone sale & conversion & charged the moneys to arise with the legacies bequeathed by his will. Testator's will contained a residuary bequest, investment clause in wide terms, & a power to appcts. to appropriate any part of the estate in its actual condition in satisfaction of any legacy. The principal asset of testator's estate was a sum of nearly a quarter of a million pounds Irish Three per cent. Guaranteed Stock, & the estate was insufficient for payment in full of all the legacies. The Irish stock could not be sold even at a reduced market value of £151,411 & in the interests of the estate it was inexpedient to realise it at once. Appcts. having caused to be prepared a scheme of apportionment, appropriation & abatement among & between the legacies, applied by an originating summons issued on June 27, 1917, to the ct. for its sanction :—*Held :* appcts. could exercise the discretionary power of appropriation notwithstanding the fact that some of the legacies were settled by testator's will.—*Re* DANIELS, LONDON CITY & MIDLAND EXECUTOR TRUSTEE CO., LTD. *v.* DANIELS (1918), 87 L. J. Ch. 661 ; 118 L. T. 435.

6326a. Grant to trust corporation.]—Where letters of administration are granted to a trust corpn., the ct. may give the corpn. power to charge on the authorised scale.—*In the Estates of* YOUNG (1934), 103 L. J. P. 75 ; 151 L. T. 221 ; 50 T. L. R. 424 ; 78 Sol. Jo. 431.

6330. *Add. Annotations :*—**Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6331. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6334. *Add. Annotations :*—**Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913 ; *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623.

6341. *Add. Annotation :*—**Consd.** Jones *v.* Wright (1927), 139 L. T. 43.

6341a. —— —— **Charges for work in execution of statutory trusts.**]—By his will testator directed that his trustees should stand possessed of certain hereditaments upon certain trusts, & declared that any exor. or trustee of his will, who was a solr. or a person engaged in any profession or business, might individually, or through his firm, act in the course of his profession or business on behalf of the exors. & trustees, & charge for so doing :—*Held :* as the land was vested in the trustees upon the statutory trusts, any exor. or trustee of the will, who was a solr. or a person engaged in a profession or business, was entitled, under the will, to charge for work or business done in the execution of the statutory trusts, because such work or business would be done on behalf of the exors. & trustees.—*Re* PEDLEY, WALLACE *v.* WALLACE, [1927] 2 Ch. 168 ;

certificate of *lis pendens* having been registered by any creditor :—*Held :* after Dec. 20, 1928, the three-year period during which the estate was vested in A. as administratrix having elapsed, she & her husband were entitled, by Devolution of Estates Act, s. 12, to convey, to a purchaser in good faith & for valuable consideration, who has no notice of the existence of any claims of creditors, a title free from any liability for the debts of C.—*Re* DOWN & STINBERG, [1929] 3 D. L. R. 70 ; 63 O. L. R. 541.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—C. (b).

o i. ——.]—*Held :* testator having charged a legacy on his estate, having devised his estate to his exor. gave his exor. a power of sale apart from the residuary clause which might be exercised without the purchaser being put on inquiry to ascertain if it was duly exercised.—KENNEDY *v.* SUYDAM (1916), 36 O. L. R. 512.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sa. *Power to reduce debt—& execute quit-claim deed.*]—Where testator had agreed to sell land to K., & the exors. reduced the purchase price in order to keep K. on the land, & later gave T., from whom testator had bought the land, a quit-claim deed of all their interest in the land :—*Held :* (1) the action of the exors. in reducing the price payable by K. was reasonable & proper ; (2) they should not have executed the quit-claim deed without applying, under Trustee Act, R. S. S., 1920 (c. 75), s. 64, to a judge of the King's Bench for advice, but, since they had acted honestly & in what they considered to be the best interests of the estate, their failure to do so should be excused under sect. 44.—LEMCKE *v.* NEWLOVE (Sask.), [1926] 4 D. L. R. 293 ; [1926] 2 W. W. R. 830 ; *varied* [1927] 2 D. L. R. 1049 ; S. C. R. 389.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

a (p. 597) i. —— ——.]—*Re* VINNICOMBE ESTATE, [1934] 1 W. W. R. 780.—**CAN.**

dd i. —— ——.]—Where by a will part of the corpus of the estate was set aside & a life interest in the income thereof given to the widow :—*Held :* (1) all the costs of administering the trusts relating to the devised property must be borne by the subject-matter of the gift, which comprised the income as well as the corpus ; & the percentage allowed to the exors. for collecting the rents must be charged against the income ; (2) expense incurred for repairs to a building upon the land devised was properly charged against the corpus ; (3) interest on money borrowed to meet the expenditure made in order to preserve the property was chargeable to income.—AIR (1923), 54 O. L. R. 497.—**CAN.**

l (p. 601) i. —— *Under Trustee Act, R. S. B. C.*, 1924 (c. 262), s. 80—*Amount limited to 5 per cent. of gross value of estate.*]—*Re* BECKMAN'S ESTATE (1925), 37 B. C. R. 41.—**CAN.**

n (p. 601) i. ——.]—A fee amounting to 5 per cent. of the total value of the estate in question held to be an exorbitant fee, under the circumstances, to allow executors for their services ; & a fee of 1 per cent. of the total value was held ample. The exors. were also allowed their disbursements actually made or actually incurred.—*Re* BEYER ESTATE, [1932] 3 W. W. R. 587.—**CAN.**

n (p. 601) ii. ——.]—Compensation to be allowed an exor. or trustee is a matter of wide discretion.—*Re* MORTIMER, [1936] 3 D. L. R. 380 ; O. R. 438.—**CAN.**

t (p. 601) i. —— ——.]—*Re* BUSCH, [1927] 2 D. L. R. 344 ; 59 N. S. R. 254.—**CAN.**

g (p. 602) i. —— *Not after estate properly administered & accounts passed.*]—*Re* OXENHAM, [1925] 2 D. L. R. 662.—**CAN.**

sb. *Liability for—Beneficiary entitled to specific bequest benefited by work of executor.*]—There is no jurisdiction in the ct. to order that the remuneration of an exor. be paid out of a specific bequest on account of its benefiting by the work of the exor.—*In the Estate of* RATHBONE, [1929] N. Z. L. R. 123. **N.Z.**

sd. *Management fee.*]—Sect. 80 of Trustee Act, R.S.B.C., 1924, does not confer any power on the ct. to allow management fee to [illegible] McINNES [illegible] (1924) 255 ; 49 B. C. R. 297.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

n i. ——.]—STORY *v.* DUNLOP (1867), 13 Gr. 375.—**CAN.**

n ii. ——.]—*Re* WILLIAMS (1895), 22 A. R. 196.—**CAN.**

96 L. J. Ch. 438; 137 L. T. 636; 71 Sol. Jo. 583.

6348. *Add. Annotations :*—**Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

6350. *Add. Annotation :*—**Distd.** *Re* Gertzenstein, Ltd., [1936] 3 All E. R. 341.

6370. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

6388a. —— ——.]—Leasehold property belonging to testator, who was original lessee, having been directed to be sold & the proceeds divided :—*Held :* the exors. were entitled to be indemnified out of the proceeds.—SMITH *v.* SMITH (1854), 2 Eq. Rep. 727.

6405. *Add. Annotation :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6409. *Add. Annotation :*—*As to* (2) **Distd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

Part VI.—Liability of Representative.

6446a. —— —— **Sale of goodwill of business—Solicitation of customers.**] — The rule in *Trego* v. *Hunt*, [1896] A. C. 7, extends to a vendor's exor. completing a contract for the sale of the goodwill of a business, & the exor. will be restrained at the suit of the purchaser from soliciting customers of the business.—BOORNE *v.* WICKER, [1927] 1 Ch. 667; 96 L. J. Ch. 361; 137 L. T. 409; *sub nom.* BORNE *v.* WICKER, 71 Sol. Jo. 310.

Annotations :—**Distd.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. **Refd.** Farey *v.* Cooper, [1927] 2 K. B. 384.

6467. *Add. Annotation :*—**Refd.** London & North-Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 145 L. T. 269.

6526. *Add. Annotation :*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

6595. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6596. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6597. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6598. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont, [1933] P. 39.

6600. *Add. Annotations :*—**Folld.** Firman *v.* Royal, [1925] 1 K. B. 681. **N.F.** *Re* Hedderwick, Morton *v.* Brinsley, [1933] Ch. 669.

6602. *Add. Annotation :*—*As to* (1) **Refd.** A.-G. *v.* Midland Bank Executor & Trustee Co. (1934), 19 Tax Cas. 136.

6610. *Add. Annotation :*—*Generally*, **Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

PART V. SECT. 7, SUB-SECT. 2.—A.

r i. —— —— *In respect of guarantee—Distribution of estate in ignorance of guarantee.*] — SAUDRY *v.* HAMPTON, [1927] N. Z. L. R. 673.—**N.Z.**

r ii. —— —— *In respect of debt contracted for estate—Right of creditor to benefit of representative's right to indemnification.*]—Where an exor. contracts a debt on behalf of the estate the creditor is in equity entitled to the benefit of the exor.'s right to be indemnified out of the assets of the estate in the hands of the beneficiaries.—NETHERLANDS INVESTMENT CO. *v.* DESBRISAY, [1928] 1 D. L. R. 581; [1928] 1 W. W. R. 461; 23 Alta. L. R. 291.—**CAN.**

PART V. SECT. 7, SUB-SECT. 3.

s. *Representative not authorised by will—Beneficiaries claiming profits of business—Right of representative to be indemnified.*]—M'GINLEY *v.* GALLAGHER, [1929] I. R. 307.—**IR.**

PART V. SECT. 8.

sh. *To receive payment of lump sum for which pension commuted by deceased.*]—R. *v.* MCCORRISTON, [1926] 4 D. L. R. 1086.—**CAN.**

sl. *To bring action—To set aside tax sale of land belonging to estate.*]—RODGER *v.* MORAN (1896), 28 O. R. 275.—**CAN.**

PART V. SECT. 9.

6426 i. — —*Power of executor to bind — Co-executor.*] — *Held :* a settlement made by an exor. precluded the co. exor. & *cestuis que trust* from opening up the estate so settled.—*Re* BATH'S ESTATE (1879), 12 N. S. R. (3 R. & C.) 604.—**CAN.**

PART V. SECT. 10.

6438 iii. —— ——.]—*Re* HEWETT *v.* JERMYN (1898), 29 O. R. 383.—**CAN.**

PART VI. SECT. 1.

sl. *For failure to prove—Who may sue for penalty.*]—Next of kin, although taking no interest under the will, is a "person having an interest in the estate" within Probate Act, R. S. N. S., 1923, s. 137 (1), & so may sue for the statutory penalty against an exor. who fails to prove the will.—DUNN *v.* MACGREGOR, [1934] 3 D. L. R. 463.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

6501 i. *Covenant to pay debt—Under mortgage.*]—In a will, the only provision for the payment of debts, was the usual one, that all testator's first debts should be paid by his exors. At the time of his death, a parcel of land was held in joint tenancy by testator & his wife, subject to a mtge.: —*Held :* the wife on death of testator, became owner subject to the mtge., & as between her & testator's estate, she was not entitled to call upon the estate to pay the mtge.; but if mtgee. could recover from testator's estate upon a covenant by testator for payment, dissolution of testator's interest could not deprive mtgee. of that right.—*Re* GRACEY (1925), 63 O. L. R. 218.—**CAN.**

sg. *Covenant in mortgage.*]—A claim for money due under mtge. is not a "claim or demand" against the estate within Ontario Surrogate Cts. Act, R. S. O., 1927.—LONDON & WESTERN TRUST CO. *v.* SALE, [1936] 2 D. L. R. 297; O. R. 244.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.

6521 ii. ——.]—WHYATT *v.* MARSH (1848), 4 U. C. R. 485.—**CAN.**

g. *Add. Citation :*—*revsd. sub nom.* M'GUGAN *v.* SMITH 1892), 21 S. C. R. 263.—**CAN.**

g i. —— ——.]—MURDOCH *v.* WEST (1895), 24 S. C. R. 305.—**CAN.**

g ii. —— ——.]—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

g iii. —— ——.]—JEFFERSON *v.* MUISE, [1930] 4 D. L. R. 208.—**CAN.**

k i. ——.]—*Re* STRETTON ESTATE, CAY & HILL *v.* MARCOTTE, [1930] 1 W. W. R. 824; 2 D. L. R. 700; 24 S. L. R. 481.—**CAN.**

sk. *Necessity for consideration.*]—The mother of pltf. made a will by which she devised certain land with a house on it to pltf., who was at that time living in it with her husband. Before the will was made, according to pltf.'s story, her husband wished to live elsewhere, & her mother said: "Do not leave; stay on here & fix this house up & I will leave it to my daughter (pltf.) at my death." The husband & wife stayed on & made improvements, relying on the promise, & the mother made the will leaving the property to pltf. Subsequently the mother made a new will leaving the property to another daughter. In an action for specific performance of the alleged agreement :—*Held :* there was no corroboration of pltf.'s evidence & no consideration passing to deceased for the binding contract alleged.—HOLLIDAY *v.* TURNER, [1930] 3 D. L. R. 205; 65 O. L. R. 206.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. —— *Matrimonial causes—Order for costs against husband.*]—A wife, whose husband had died after a decree *nisi* for divorce & before the date when it could have been made absolute :—*Held :* not entitled, there being no funds in ct., to costs against his estate.—JARVIS *v.* JARVIS, [1925] 3 D. L. R. 415; [1925] 1 W. W. R. 247.—**CAN.**

6611. *Add. Annotation :*—**Refd.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

6667a. —— Non-repair by representative.]—In debt for rent against an administrator, as of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet, for an unexpired term, to a tenant who had become insolvent & unable to pay rent ; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall ; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them ; & that he had fully administered, etc. Replication ; that the premises were of more value than the sum mentioned in the plea, viz. of the value of the rent ; & that deft. did not offer to surrender, etc. Issue thereon :—*Held :* (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself committed a breach of a covenant to repair in the original lease ; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent.—HORNIDGE *v.* WILSON (1840), 11 Ad. & El. 645 ; 3 Per. & Dav. 641 ; 9 L. J. Q. B. 72 ; 113 E. R. 559.

:—*As to* (1) **Consd.** *Re* Bowes, Strathmore *v.* Vane, Norcliffe's Claim (1887), 37 Ch. D. 128. **Refd.** Rendall *v.* Andreæ (1892), 61 L. J. Q. B. 630.

B. Effect of Death (p. 644).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

6711. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

6712. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713. *Add. Annotation :*—*As to* (1) **Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713a. —— —— ——.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & m[illegible] the contemplation of the parties at the alleged promise was made.—RILEY *v.* BROWN (1929), 98 L. J. K. B. 739 ; 142 L. T. 42 ; 45 T. L. R. 613 ; 73 Sol. Jo. 499.

6723. *Add. Annotation :*—**Consd.** Firman *v.* [1925] 1 K. B. 681.

SECT. 3.—**FOR TORTS OF DECEASED** (p. 646).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

6730. *Add. Annotation :*—**Refd.** A.-G. *v.* Midland Bank Executor & Trustee Co. (1934), 19 Tax Cas. 136.

6762. *Add. Annotation :*—**Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

6770a. Negligence.]—A co. was formed for the purpose of buying the business of a firm of bill brokers, & by the memorandum of assocn. the directors were empowered to buy it upon such terms & under such stipulation as to guarantee or otherwise as might be agreed upon. The prospectus referred to the memorandum of assocn. & to a certain deed of covenant. By that deed the business was assigned to the co., & all accounts, except such as the directors should require to be reserved & excepted, were to be carried on by the co., & the partners in the business guaranteed that all debts due to the firm & taken over by the co. were good. By a second deed of the same date, not mentioned or disclosed to the shareholders, assets of the firm to the nominal value of £4,213,896 were reserved & excepted, & provisions were made for guaranteeing payment by the partners of the balance which, after a certain period & under certain arrangements, should not be got in on this account. The co. carried on business for some time, & then stopped payment. A bill was filed by the co. against the living directors & the exors. of a deceased director stating these facts, & that the co. had lost £1,500,000 by taking the liabilities of the business, & by the insufficiency of the guarantee, & charged that the directors had been guilty of a breach of duty in buying the business without obtaining the sanction of a general meeting, & in not taking mtges. on the property of the partners in order to secure the guarantee, but no fraud was charged

PART VI. SECT. 2, SUB-SECT. 12.—B. (b) i.

6678 i. *Personal liability — As* [illegible].]—In Mar. 1921, pltf. executed a lease of land & buildings to H., & M. covenanting to allow the lessees to erect a partition on the ground floor of the chief building, & himself to contribute $1,000 towards the cost. The partition was built, pltf. contributed the $1,000 & the lessees went into possession. H. died in Jan. 1923, & his wife, deft. A. & deft. co., the executors named in the will, obtained probate thereof. In Oct. 1923, M. made an assignment in bkpcy. & deft. co. was appointed custodian of the bkpt. estate. Pltf.'s claim in this action was to recover a large sum made up of rent, taxes, cost of repairs & interest. He alleged that defts. entered into, & from Jan. 1923, continued in possession & receipt of the rents & profits & claimed payment from them personally :—*Held :* co. entered upon the premises not merely in its representative capacity as exor., but personally as assignee of the term, & as such was personally chargeable with the amount of rents & profits which it received, & with such further sums as it might have received if it had used due diligence, but not exceeding in the aggregate the full amount of the actual rental value of the premises.—RYCKMAN *v.* TRUSTS & GUAR. CO., [1929] 1 D. L. R. 545 ; 63 O. L. R. 285 ; 10 C. B. R. 414.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

6726 i. *General rule—Representatives not liable.*]—CONNOLLY *v.* SHIVES (1879), 18 N. B. R. 606.—**CAN.**

6726 ii. —— ——
CALVIN (1885), 9 O. R. 267.—

of ship.]—CAMERON *v.* MILLOY [illegible]. $31.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

k i. ——.]—An action of tort for damages for the destruction of personal property because of the negligence of deceased in driving a motor-car in which pltf. was a passenger falls within Administration Act, R. S. B. C., 1924, s. 71 ; but claims for personal injuries & a claim by a father for the death of a child fall within the rule *actio moritur cum persona.*—

PART VI. SECT. 3, SUB-SECT. 4.

s i. *Negligence & fraud.*]—An action by a bank against one of its directors for negligence & fraud is not one to which the maxim *actio personalis moritur cum persona* applies, being an action for breach of quasi-contract. —PEOPLES BANK OF NORTHERN [illegible] *v.* HARGOPAL (1735), I. L. R. 17 262.—**IND.**

against the directors :—*Held :* on demurrer by the exors. of the deceased director, that as regarded any loss beyond the money placed in the directors' hands, the remedy, if any, was at law, by an action of negligence, which would not survive against exors.—OVEREND, GURNEY & Co. *v.* GURNEY (1869), 4 Ch. App. 701 ; 21 L. T. 73 ; 39 L. J. Ch. 45, L. C. ; *affd. on other grounds, sub nom.* OVEREND, GURNEY & Co. *v.* GIBB (1872), L. R. 5 H. L. 480, H. L.

6835. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

6840. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

6850. *Add. Annotation :*—**Consd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

6850a. Disturbance of easement.]—D. sold to pltf. a house, No. 10, together with a right of way over a strip of land 10 ft. broad to the garden of the house. D. died, & at the time of his death was under contract with the purchaser of the adjoining house, No. 11, to erect a garden fence for him & to give him a similar right of way to his garden. Pltf. entered No. 10 shortly after the death of D. & a few days later H., a sub-contractor, on the orders of W., the builder of the houses, erected the fence at the back of No. 11 so as to constrict the right of way granted by D. to pltf. Pltf. sued defts., the exors. of D. as exors., & by his amended statement of claim founded his action (*a*) in breach of covenant, & (*b*) in nuisance, but it was argued solely as an action of tort. These facts being proved by pltf., defts. called no evidence, & there was no evidence of the contract of D. with W., the builder. The trial judge found that the fence was erected by W. on the instructions of the exors. of D., defts., & gave judgment for pltf. :—*Held :* the appeal must be dismissed.—FLOWER *v.* PRECHTEL (1934), 150 L. T. 491, C. A.

6861a. —— ——.]—BEAUMONT *v.* GROVER (1701), 1 Eq. Cas. Abr. 8 ; 21 E. R. 833.

6861b. —— ——.]—KEMISH *v.* BETSON (1732), Kel. W. 74 ; 25 E. R. 497.

6911. *Add. Annotation :*—**Apld.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

6915a. —— —— **Liability of executor for "wilful default"—What amounts to.**]—Pltfs. were the two sons of testatrix, entitled in equal shares to her estate undisposed of by her will, including £214 14*s.* 5*d.* in the Post Office Savings Bank & £62 4*s.* in Savings Certificates. Deft., as sole exor. of testatrix, employed to wind up her estate a solr. who, unknown to him, had at one time been suspended from practice, & who obtained from the first pltf. the Post Office Savings Bank deposit book & the Savings Certificates. Deft. heard for the first time of the solr.'s suspension three months later, when the first pltf. told him of it. Under deft.'s written authority, a warrant valued at £62 4*s.* had been issued in favour of the solr.'s firm, & the first pltf. wrote to deft. objecting to his having taken that course. Later, the first pltf. asked deft. to employ another solr., but deft. did not do so, as the solr. was then promising to settle the matter. Ultimately the solr. absconded, & the sums of £14 14*s.* 5*d.* & £62 4*s.* were not recovered. In an action by pltfs. for a declaration that deft. was guilty of a breach of trust in permitting the sums to be retained by the solr., & for payment of them, deft. in his defence relying upon Trustee Act, 1925 (c. 19), s. 23 :—*Held :* Trustee Act, 1925 (c. 19), s. 23 (1), authorised deft. in signing the authorities to the solr.'s firm to collect the sums ; (2) by virtue of sect. 30 (1) of the Act, trustees are not liable for losses due to the default of "any banker, broker, or other person with whom any trust money or other securities may be deposited" unless the losses are caused by the trustees' own wilful default ; (3) an exor. employing an agent to receive moneys belonging to the estate & relying on sect. 23 (1), will not be liable if the money is lost through the agent's misconduct, unless the exor. has himself been

PART VI. SECT. 4, SUB-SECT. 1.

sd. *Release by co-executor—Whether binding on beneficiary.*]—A release of an exor. from liability for breach of trust by a deceased co-exor. will not be set aside when it has been adopted by the beneficiary with knowledge of his right to take proceedings.—BELLIVEAU *v.* TAIT, [1935] 1 D. L. R. 726 ; 8 M. P. R. 567.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

c i. ——.]—A contract made by an exor. or administrator on behalf of the estate, but not relating to an obligation incurred by testator or intestate, renders him personally liable, even though it is expressed to be made "as exor," or "as administrator."—WALCH *v.* NORDQUIST, [1926] 4 D. L. R. 126 ; [1926] 2 W. W. R. 854 ; 36 Man. L. R. 46.—**CAN.**

d i. —— *Administrator guilty of fraud.*]—DOE d. DOBIE *v.* VANDERLIP (1836), 5 O. S. 85.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 3.

6849 i. *Executor primarily liable—Right to indemnity—From testator's estate—If acting in interests of estate.*]—An exor. is personally liable for tort committed by him & should be sued personally. He is entitled to an indemnity from the estate if the tort was committed while acting reasonably in the interests of the estate.—GROUNDWATER *v.* GROUNDWATER (1935), 10 M. P. R. 56.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (a).

6851 i. *Sale of testator's estate—Below proper value.*]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, pltfs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Pltfs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of pltfs. for the recovery of damages :—*Held :* the evidence established no negligence on the part of defts., & no breach of trust.—DAVIES *v.* NELSON, [1928] 1 D. L. R. 254 : 61 O. L. R. 457.—**CAN.**

6863 ii. ——.]—Where exors. are held liable to the estate for what it has lost by their disposition of an agreement for the sale of land entered into by testator under the crop-payment plan, the main consideration in determining the value of the asset lost to the estate is the value of the purchaser's covenant to pay.—LEMCKE & CRAIK *v.* NEWLOVE & NEWLOVE (Sask.), [1929] 2 D. L. R. 516 ; 1 W. W. R. 761.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (c).

6906 i. *Insurance of property.*]—In Ontario exors. are bound to insure, against fire, buildings forming part of the estate in their hands, & are liable on a *devastavit* if they fail to insure.—*Re* GAMBLE, [1925] 4 D. L. R. 768 ; 57 O. L. R. 504.—**CAN.**

s i. —— ——.]—AULD *v.* DAVIS, [1937] 3 W. W. R. 368.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (d).

6913 i. *Misappropriation—By agent—Agent previously employed by deceased.*]—Exors., relying in good faith on the statement of their testator's solr. that he had in his hands securities sufficient to answer a fund they were directed by the will to invest for an annuitant, distributed the estate. Subsequently it was found that before testator's death the solr. had misappropriated the money given to him by testator to invest, & had, in fact, at the time of the representation, no securities or money in his hands :—*Held :* the exors. were protected by Trustee Limitation Act, R. S. O. 1897, c. 129, s. 32.—CLARKE *v.* BELLAMY (1900), 27 A. R. 435.—**CAN.**

guilty of wilful default; (4) deft. was guilty only of an error of judgment which, where losses are due to a solr.'s dishonesty, does not amount to "wilful default" on the part of an exor.—*Re* VICKERY, VICKERY *v.* STEPHENS, [1931] 1 Ch. 572; 100 L. J. Ch. 138; 144 L. T. 562; 47 T. L. R. 242.

6922. *Add. Annotations:*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

7059. *Add. Annotation:*—**Refd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

7163. *Add. Annotation:*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

7169a. ——.]—FLOCKTON *v.* BUNNING (1868), 8 Ch. App. 323, n.

7190a. ——.]—Exors. must be allowed a reasonable time for breaking up testator's domestic establishment & discharging his servants. Two months:—*Held:* not to be an unreasonable delay, having regard to the circumstances.—FIELD *v.* PECKETT (No. 3) (1861), 29 Beav. 576; 9 W. R. 525; 54 E. R. 751.

7190b. ——.]—BROWNE *v.* COLLINS, No. 6308, *ante*.

7214. *Add. Annotation:*—**Refd.** *Re* Bracey, Hull *v.* Johns, [1936] 2 All E. R. 767.

7219. *Add Annotation:*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

7225a. Assets improperly obtained.]—Where two exors. obtained part of the assets improperly, by signing joint receipts in favour of each other, while they had large balances in their hands respectively, the ct. gave interest on those sums at five per cent. against both exors.—BICK *v.* MOTLEY (1835), 2 My. & K. 312; 39 E. R. 962; *sub nom.* BECK *v.* MOTLEY 4 L. J. Ch. 63.

7250a. ——.]—Where there is a direction in the will to accumulate a residue, with which the exor. does not comply, he must pay interest from the expiration of one year after testator's decease up to the date of filing the answer.—AMISS *v.* HALL (1857), 3 Jur. N. S. 584.

Annotation:—**Dbtd.** *Re* Emmet's Estate, Emmet *v.* Emmet (1881), 17 Ch. D. 142.

7256a. —— ——.]—Exor. charged with interest on divdends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481; 148 E. R. 1269, Ex. Ch.

7273a. —— ——.]—GILROY *v.* STEPHENS, No. 7268, *ante*.

7276a. —— **To authorise maintenance.**]—CHARLTON *v.* SADEN (1836), Donnelly, 36; 47 E. R. 210.

6913 ii. —— ——.]—An administrator acting for infants who pays funds to his solr. to be paid to the official guardian of the infants, which funds are never received, is guilty of gross negligence & breach of trust.—BENJAMIN *v.* HASKELL, [1936] 4 D. L. R. 465.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—C. (a).

6979 i. *Bar to enforcement of remedy—Conduct of party injured—Delay.*]—MEACHAM *v.* DRAPER (1851), 2 Gr. 316.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

f i. —— *Liability of executor for solicitor's costs.*]—An exor. who fails to keep proper records may be personally liable to a solr. for extra work in preparing accounts due to the exor.'s default.—*Re* A SOLICITOR, [1934] 2 D. L. R. 761; O. R. 241.—**CAN.**

sd. *Jurisdiction of court—To call upon executors to account.*]—The Surrogate Ct. has jurisdiction to call upon an exor. to account even before the expiration of the two years provided for in his letters probate.—*Re* NORDTOMME ESTATE, [1928] 3 W. W. R. 290.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.—B. (b).

sm. *Not where administration granted on application of party interested adversely to executor.*]—HARRISON *v.* MCGLASHAN (1859), 7 Gr. 531.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—B.

sn. *Counsel's fee—For general work & advice—Not allowed.*]—*Re* DODGE ESTATE, [1925] 1 D. L. R. 1140; [1925] 1 W. W. R. 776.—**CAN.**

so. —— —— —— *Unless estate difficult to manage or solicitor required to render services by way of business management.*]—*Re* ROEMER (Sask.), [1927] 3 W. W. R. 603; *varied sub nom. Re* ROEMER ESTATE, *Re* MOTT *v.* ROEMER, [1928] 3 D. L. R. 860; [1928] 2 W. W. R. 566.—**CAN.**

sr. *Upkeep of family vault.*]—An exor. is entitled to a reasonable allowance for the perpetual upkeep & care of the family vault.—*Re* MURRAY, [1936] 1 D. L. R. 463.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—C. (a).

7200 i. *Under special circumstances.*]—Where the circumstances of the case render it reasonable that they should do so exors. are entitled to employ the services of such agents as may be necessary.—*Re* LEVEL ESTATE, [1927] 1 D. L. R. 900; [1927] 1 W. W. R. 1000; 38 B. C. R. 211.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—D. (a).

sp. *Increased fee to counsel—Necessity of notice to parties interested.*]—In a proper case, an increased counsel fee should be allowed the solr. of the exor. as between solr. & client. It is impossible to lay down any fixed rule governing such amounts. The increased fee should not be applied for or granted without notice to the parties interested; but in the present case, since the parties were all before the ct. & had argued the point, an increased counsel fee on the passing of accounts was allowed to save further expense, although notice that it would be applied for had not been given.—*Re* MACDONALD, ESTATE, [1928] 2 D. L. R. 338; [1928] 1 W. W. R. 652; 22 Sask. L. R. 288.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 6.—C. (a).

sx. *Payment to wrong beneficiary—Delay in application to court for interpretation of will.*]—Acting upon what they considered sufficient evidence that the conditions entitling X. to an annuity had not been satisfied, & upon their own interpretation of the will, the exors. for several years ignored the possibility of X. ever establishing a claim to the annuity, & paid over to C., who herself was one of the exors. & under the will was entitled to the residuary income, the moneys which, if X. were entitled, ought to have been paid to him. The Privy Council decided in his favour as to the annuity & on a claim to be paid interest by the exors.:—*Held:* C.'s right was so doubtful that the exors. had been guilty of negligence & were liable to pay interest upon the annuity at 5 per cent. *per annum* without rests.—*Re* PATTON, [1931] 3 D. L. R. 544; O. R. 348.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 7.—A.

sq. *Jurisdiction of registrar—Should not pass upon his own accounts.*]—*Re* BENT, [1927] 1 D. L. R. 592; 59 N. S. R. 107.—**CAN.**

sv. ——.]—Registrar of Probate Ct. has no jurisdiction, on petition of creditors, to cite an administratrix to account for funds in her hands & to require her to deposit them in a chartered bank.—*Re* MOSELEY, [1936] 4 D. L. R. 503.—**CAN.**

sr. *Jurisdiction of Surrogate Court.*]—*Re* MACINTYRE (1906), 11 O. L. R. 136.—**CAN.**

st. ——.]—Upon an audit of the accounts of the exors. of B. deceased, the judge of a Surrogate ct. took evidence with a view to determining a question as to ownership of certain mtges., each of which had been taken jointly in the names of deceased & another person. These mtges., according to the contention of resps., should be regarded as assets of the estate & accountable for by the exors. While the surviving mtgee. in each case contended that he was entitled as survivor to the security & the fund represented by it:—*Held:* the judge had jurisdiction to make the proposed inquiry.—*Re* BAECHLER, [1931] 2 D. L. R. 997; 66 O. L. R. 483.—**CAN.**

7296 i. *Passing accounts—Costs—Form of order.*]—*Re* HASLETT, MCKENNA *v.* HASLETT, [1927] W. L. R. 21; 48 A. L. R. 125; [1927] Argus L. R. 12.—**AUS.**

7296 ii. —— *Application of King's Bench rules to Surrogate court.*]—The Surrogate ct. in Saskatchewan is governed with respect to the passing of accounts by K. B. rules 301-319 so as they are applicable.—*Re* KRAUSS ESTATE (Sask.), [1929] 3 W. W. R. 205.—**CAN.**

sg. *Grounds for ordering accounts.*]—*Re* BARRICK ESTATE, [1934] 2 W. W. R. 337.—**CAN.**

7311a. Who may re-open.]—A., entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the exors. upon himself & afterwards on C., a volunteer:—*Held:* C. could not, against the will of A., open the settlement of accounts with the exors.—PARKER *v.* BLOXAM (1855), 20 Beav. 295; 52 E. R. 616.

Part VII.—Actions by and against Representative.

7489a. In whose name—Deceased's property assigned to assignees before death.]—The property of an intestate was assigned to assignees previous to his death; pltf. administered, & applied to deft. for payment for goods sold him by the intestate, in the name of the assignees, & afterwards brought an action in his character of administrator:—*Held:* such action was well brought.—BRANDT *v.* HEATIG (1818), 2 Moore, C. P. 184.

7475. *Add. Annotation:*—Refd. Flower *v.* Prechtel (1934), 150 L. T. 491.

7492a. Suit for account of testator's estate.]—Lapse of time will not of itself bar an exor. of an exor. of his right to have an account of his exor.'s testator's estate taken, with a view to ascertain such exor.'s liabilities as an accounting party.—SMITH *v.* O'GRADY (1870), L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 106; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

7531. *Add. Annotation:*—Consd. *Re* Richardson, Richardson *v.* Nicholson, [1933] W. N. 90.

7531a. —— In respect of matters relating to estate—Action by representative in own right.]—*Re* RICHARDSON, RICHARDSON *v.* NICHOLSON, [1933] W. N. 90; 175 L. T. Jo. 269, C. A.

7584. *Add. Annotation:*—Refd. *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

7617a. May be joined to plea of ne unques executor.]—A deft. sued as exor., on an affidavit that he was advised that he would be put to great difficulty if he were not permitted to do so, was allowed to plead *ne unques executor*, & also *plene administravit*.—TYSON *v.* KENDALL (1850), 19 L. J. Q. B. 434; 14 Jur. 1044.

PART VI. SECT. 6, SUB-SECT. 9.

sj. *Although order passed by Court of Appeal.]*—An action to set aside exor.'s accounts will lie although the order passing the accounts has been sustained by the Ct. of Appeal.—MCFARLANE *v.* FLEMING, [1935] 2 D. L. R. 814.—CAN.

PART VII. SECT. 1, SUB-SECT. 7.

h i. —— *Will.]*—In an action by exors. to recover money paid by deceased, his will is not admissible as evidence to prove that a loan & not a gift was intended.—MCDONALD *v.* YOUNG, [1934] 4 D. L. R. 172.—CAN.

l i. —— —— *Evidence of opposite or interested party.]*—TAYLOR *v.* REGIS (1895), 26 O. R. 483.—CAN.

PART VII. SECT. 1, SUB-SECT. 9.—A.

sv. *General rule.]*—In litigating with third persons, exors. are, with respect to costs, in the same position as parties who litigate in their own right.—GREAT WESTERN RY. CO. *v.* JONES (1867), 13 Gr. 355.—CAN.

sw. *Liability on failure of appeal—Appeal without merit or substance.]*—The costs of an appeal without merit or substance taken by a personal representative:—*Held:* to be payable by such representative in his individual capacity.—STRELIOFF *v.* FIRST NATIONAL BANK OF JOLIET, [1925] 2 W. W. R. 501.—CAN.

PART VII. SECT. 1, SUB-SECT. 9.—B.

7545 iv. —— ——.] — BILLETT *v.* BILLETT, [1929] 2 D. L. R. 944; 1 W. W. R. 778; 23 S. L. R. 630.—CAN.

PART VII. SECT. 2, SUB-SECT. 3.

sx. *Application to presume death of executor.]*—Pltf. in an action against exors. alleged to be surviving exors. may, under rule 928 (h), apply by originating notice for an order declaring that the other exor. named in the will is deemed or presumed to be dead, even though the allegation in the statement of claim of his death is formally denied in the statement of defence.—*Re* BRICKER ESTATE (Man.), [1929] 3 W. W. R. 697; [1930] 2 D. L. R.

sz. *Action against widow & heirs.]*—In an action of debt against a widow as representing all persons interested in the estate:—*Held:* the action was not maintainable in that form since any judgment against the widow & heirs must be against the separate property of defts. & not against the estate.—MAPLE LEAF FRUIT CO., LTD. *v.* MACUMBER 1933), 7 M. P. R. 158.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (a).

sm. *Appointment by foreign court.]*—An exor. or administrator cannot, as a general rule, be sued as such in the cts. of any State or country other than that in which he received his appointment.—GOODBUN *v.* MITCHELL, [1926] 2 D. L. R. 540; [1926] 2 W. W. R. 67; 35 Man. L. R. 569.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (c) ii.

so. *To action by widow—Under Widow's Relief Act—Six months after death of husband.]*—KROGMAN *v.* DICKSON, [1928] 2 D. L. R. 948.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.—B. (g) i.

s. *Action commenced within one year from death—Necessity for leave of court—Probate Act (N. S.), s. 43 (7).]*—WALSH *v.* EASTERN TRUST CO., [1932] 3 D. L. R. 525.—CAN.

PART VII. SECT. 2, SUB-SECT. 6.—A.

p i. —— *Claim for deceased's board during lifetime.]*—*Re* THOMPSON (1926), 58 N. S. R. 489.—CAN.

PART VII. SECT. 2, SUB-SECT. 8.—A.

s i. —— —— ——.]—The proper form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors; upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re* HEATALL ESTATE, [1921] 1 W. W. R. 118; 56 D. L. R. 710.—CAN.

PART VII. SECT. 2, SUB-SECT. 8.—C.

d i. —— *Judgment against defendant administrator of estate.]*—A certificate of a county ct. judgment against "A. B., administrator of the estate of X.," charges A. B. personally & not the estate.—*Re* JOYCE & SCARRY (1889), 6 Man. L. R. 281.—CAN.

f i. —— *Contribution from devisees.]*—EMERSON *v.* CANNIFF (1878), 26 Gr.

PART VII. SECT. 2, SUB-SECT. 8.—D

7731 v. ——.]—Where following the recovery of a judgment against an administrator as such the judgment creditor garnishes money owing to the estate & then moves for payment out of ct. of the moneys paid in by the garnishee, the administrator, notwithstanding that he had allowed the judgment to go against him by default, has a right to appear on the motion to show that the estate is insolvent & to oppose the motion in so far as its allowance may tend to operate against a *pari passu* distribution of the assets of the estate as between its creditors.—WINNIPEG TRUSTEE CO. *v.* WOLFMAN, [1933] 1 W. W. R. 381; 47 Man. L. R. 27.—CAN.

PART VII. SECT. 2, SUB-SECT. 9.—A.

s i. —— *Widow's costs of application for relief under Devolution of Estates Act, R. S. S.*, 1920 (c. 73), s. 24.]—*Re* MOWCHENKO, [1926] 1 D. L. R. 265; [1926] 1 W. W. R. 139; 20 Sask. L. R. 279.—CAN.

s ii. —— *Litigation caused by legatee.]*—O'SULLIVAN *v.* HARTY (1885), 11 S. C. R. 322.—CAN.

sk. *Payment out of fund in court.]*—*Re* MORRIS ESTATE, [1933] 2 W. W. R. 80; 47 B. C. R. 239.—CAN.

PART VII. SECT. 2, SUB-SECT. 10.—A.

7763 i. *Garnishee proceedings—Decree in administration suit—Damages recovered by administratrix under Fatal Accidents Act—Garnishee summons set aside.]*—MCEWAN *v.* SPECKT (N. W. T.) (1906), 4 W. L. R. 325.—CAN.

7763 ii. —— *Against debt due to estate—For contract with executor.]*—HALL *v.* MACINTYRE & SARTORIO, [1934] 2 W. W. R. 145; 3 D. L. R. 559, 48 B. C. R. 306.—CAN.

Part VIII.—Administration by Court.

7812a. Public trustee—Appearing as plaintiff & defendant—Improper.]—The same person may not be both pltf. & deft. &, where the Public Trustee appeared in both capacities, the ct. amended the summons by striking out the Public Trustee as deft. & substituting a person beneficially interested.—PHILLIPS, *Re*, PUBLIC TRUSTEE *v.* MEYER (1931), 101 L. J. Ch. 338; 76 Sol. Jo. 101.
Compare No. 8757a, *post.*

7867. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

7990. *Add. Annotation :*—**Refd.** *Re* Robertson's Application (1929), 46 T. L. R. 17.

7993. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

8014. *Add. Annotations :—As to* (1) **Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or 69 L. Jo. 61.

8018. *Add. Annotations :*—**Refd.** Hunter *v.* [illegible]ische Hochseefischerei Gesselschaft, [1925] 2 K. B. 493; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

8166a. —— Unpaid debts—Death of testator over six years before judgment.]—PRACTICE DIRECTION, [1937] W. N. 416.

8259. *Add. Annotation :—As to* (2) **Consd.** *Re* Morley's Estate, Hollenden *v.* Morley, [1937] Ch. 491.

8270a. —— Separate sets of trustees of settled shares.]—*Re* SCOTT, SCOTT *v.* SCOTT (1926), 17 Sol. Jo. 430.

PART VII. SECT. 2, SUB-SECT. 10.—B. (a).

sz. *Priority of execution—Over purchaser from executor.*]—HENRY *v.* SHARP (1871), 18 Gr. 16.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 10.—B. (b).

1i. ——.]—*Held :* land & tenements, held in fee simple by debtor at the time of his decease, might be taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Judgment by default—Notwithstanding insufficient personal assets.*]—*Held :* the exor. was not entitled to an injunction against proceedings on the judgment.—DONER *v.* ROSS (1872), 19 Gr. 229.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

b i. —— *Cannot entertain claim for balance on mortgage by executors to pay debts & legacies.*]—*Re* RICHARDSON'S ESTATE (1890), 22 N. S. R. 416.—**CAN.**

g i. —— *Application for directions—Previous decree to deliver property in sub-court.*]—Where a decree was obtained by a legatee against the exor. for delivery of the property in a suit in a sub-court, & subsequently the exor. filed a petition in the High Ct. under Indian Succession Act, XXXIX of 1925, s. 302, for directions as to the fund relating to a charity mentioned in the will but not dealt with by the decree of the lower ct., the High Ct. had jurisdiction to give directions, as the matter was not adjudicated in the suit, but would not give directions where the matter had been definitely settled in a properly constituted suit.—AKKAYYA *v.* VANAMA LAKSHAMMA (1927), I. L. R. 51 Mad. 849.—**IND.**

g ii. —— *To determine who are beneficiaries.*]—The ct. has jurisdiction to make an order determining who are the beneficiaries entitled under a given will, & in such a case it may direct the registrar to conduct an inquiry for the purpose of obtaining the information upon which such jurisdiction could properly be exercised.—*Re* FLANAGHAN, [1929] N. Z. L. R. 746.—**N.Z.**

sm. *Surrogate Court — Accounts.*]—An order directing an inquiry upon the footing of wilful default into the accounts of an exor. or administrator is beyond the jurisdiction of a Surrogate Ct. in Saskatchewan; it being one which can be made only by the Ct. of King's Bench. The jurisdiction conferred on the Surrogate Cts. in Saskatchewan is confined to "matters & causes testamentary," *i.e.*, matters & causes relating to the grant & revocation of the probate of wills & of administration & incidental matters.—*Re* MCELHINNEY ESTATE, STANDARD TRUSTS CO. *v.* MCELHINNEY (Sask.), [1929] 3 W. W. R. 664; [1930] 2 D. L. R. 290; 24 S. L. R. 160; *revsg.*, [1929] 4 D. L. R. 783; 3 W. W. R. 105.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

ss. *Share of next of kin—Mortgagee of.*]—*Held :* entitled to bring proceedings.—SWEENEY *v.* GALLAGHER (1888), 22 I. L. T. 82.—**IR.**

sb. —— *Assignee of.*]—*Held :* entitled to bring proceedings.—TEVLIN *v.* GILSENAN (1901), 36 I. L. T. 35.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

sc. *All creditors.*]—An exor. cannot maintain an action for administration against one creditor as sole deft., even where, from the exor. being the universal devisee & legatee, no next of kin or *cestui que trust* could become pltf. or be named deft.—MANDEVILLE *v.* MANDEVILLE (1888), 23 I. L. R. 339.—**IR.**

sd. ——.]—An action for administration cannot be maintained against one creditor as sole deft.—*Re* ROE, ROE *v.* SQUIRE (1911), 45 I. L. T. 144.—**IR.**

PART VIII. SECT. 3, SUB-SECT. 2.—B.

7987 ii. ——.]—SORBY *v.* PARKER (1920), 52 D. L. R. 692.—**CAN.**

7989 i. *Questions between parties claiming under will—& adverse claimant.*]—On an originating summons to determine whether certain property belonged to the estate of deceased :—*Held :* although without a special inquiry there appeared to be no jurisdiction to determine the question on such an application, yet there was jurisdiction upon the application to direct a special inquiry &, if the person against whom the inquiry is directed submits to it as if an action had been brought against him, the question may be proceeded with.—*Re* ROYAL TRUST CO. & RATTENBURY, [1937] 1 W. W. R. 451; 51 B. C. R. 334.—**CAN.**

sm. *Not question whether property part of estate.*]—*Re* COLLINS, [1927] 4 D. L. R. 770; 61 O. L. R 225.—**CAN.**

so. *Question whether executors might act without consent of named person.*]—*Re* ROGERS, [1929] 1 D. L. R. 116; 63 O. L. R. 180.—**CAN.**

sq. *Questions arising out of negotiations for purchase by widow of heirs' interests.*]—*Re* DELAERE ESTATE & ROYAL TRUST CO., [1933] 2 W. W. R. 258; [1934] 1 D. L. R. 70.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

sr. *Failure of claimant to appear—Effect on right to appeal.*]—A claimant against the estate who has not appeared personally or by a representative at the passing of accounts cannot appeal from the decree passing the accounts & ordering distribution.—*Re* PECK'S ESTATE (1933), 6 M. P. R. 349.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.

n i. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—G

8199 ii. —— —— *Where personal estate sufficient if properly administered—Limit of time for application for sale.*]—PEOPLE'S BANK *v.* MARROW (1825-1897), N. B. Dig. 312.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (b).

h i. —— *Balance on bond—After foreclosure & sale by mortgagee.*]—*Re* CHANDLER'S ESTATE (1884), 5 R. & G. 78.—**CAN.**

h ii. —— *Not debt arising out of illegal transaction.*]—*Re* GHEE, *Ex p.* LOWE KING, PUBLIC TRUSTEE *v.* LOWE KING, [1928] N. Z. L. R. 266.—**N.Z.**

8228 i. —— *Mortgage debt—Purchase of land by deceased—Payment of mortgage as part of purchase price.*]—*Held :* the mtgee. was entitled to prove for the balance of the mtge. debt against the general estate of the purchaser.—*Re* COZIER, PARKER *v.* GLOVER (1877), 24 Gr. 537.—**CAN.**

sr. *Valuation of securities—To what securities applicable.*]—*Held :* a mtge. security held by a bank, as collateral to deceased's general indebtedness to it, is not a security on the estate of deceased or on the estate of a third person for whom the estate of deceased was only indirectly or secondarily liable. The bank, therefore, was not obliged to value its security by Trustee Act, R. S. O., 1927, s. 56.—ST. LOUIS *v.* CANADIAN BANK OF COMMERCE, [1934] O. R. 50; 1 D. L. R. 472.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (d).

sl. *Parol evidence.*]—*Held :* the master had properly received parol evidence to establish the widow's claim in question.—ROSS *v.* MASON (1862), 9 Gr. 568.—**CAN.**

8280a. Power of court to order—Ancillary to order relating to management of property—R. S. C. Ord. 55, r. 2 (13).]—When, in an administration action upon a summons connected with the management of the property, under above sub-rule, a judge of the Ch. Div. sitting in chambers makes an order sanctioning the expenditure of a certain sum out of capital for the purposes authorised, he has ancillary jurisdiction under that sub-rule, by the same order, to give full practical effect thereto by further directing payment of the sum so authorised out of a fund of whatever amount standing in ct. to the general credit of the action.—*Re* TERRY, TERRY *v.* TERRY, [1929] 2 Ch. 412; 98 L. J. Ch. 436; 141 L. T. 536; 45 T. L. R. 539.

8310. For " Ord. 45 " read " Ord. 15."

8337. *Add. Annotation:* — **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8342a. Action against representative—Payment into court—Subsequent action by creditors—Whether creditors entitled to fund in court.]—A bill was filed by a *cestui que trust* against a surviving trustee & the representative of B., a defaulting trustee, to obtain a proper investment of the trust fund. B.'s representative did not admit assets, but admitted that he had in his hands part of B.'s estate, which he paid into court under the order of the ct. A decree was obtained, by which B.'s estate was declared liable to make good the trust fund, & accounts were ordered to be taken of B.'s estate. A creditors' suit was instituted for the administration of B.'s estate, & the common decree obtained:—*Held:* the decree in the first suit did not entitle pltfs. therein to the whole fund paid into ct. in that suit, but only to a proportional part of it with the other creditors of B.—SMITH *v.* BIRCH (1840), 3 Beav. 10; 9 L. J. Ch. 349; 4 Jur. 670; 49 E. R. 5.

Annotation:—**Refd.** Tomlin *v.* Tomlin (1841), 1 Hare, 236.

8349. *Add. Annotation:*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

8351a. Estate found insolvent in beneficiary's action—Form of order.]—*Re* VAN OPPEN, ROBERTS *v.* GRAY, [1935] W. N. 51; 179 L. T. Jo. 255.

8371. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

8484. *Add. Annotation:—As to* (1) **Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8484a. —— Valuation of annuity payable under payment included.]—In order to qualify an annuitant, to whom a person who died in 1922 was liable under a judgment by consent to pay the annuity, to prove for the value thereof in the administration by the ct. of the deceased person's estate, it is sufficient for the annuitant to prove, as a fact, that if the annuity continues for the period normally to be expected, the estate will not suffice to meet the debts & the annuity in full.—*Re* PINK, ELVIN *v.* NIGHTINGALE, [1927] 1 Ch. 237; 96 L. J. Ch. 202; 136 L. T. 399; 70 Sol. Jo. 1090.

8487. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8492a. Counsel's fees—Estate of deceased solicitor.]—Counsel has no right to prove for his fees in the administration of the insolvent estate of a deceased solr. in a case where the client reimbursed the solr. the amount of the fees upon the faith of the solr.'s false representation that he had in fact paid them to counsel. Further, as the exor. of a deceased solr. is not, as a trustee of a bkpt.'s property is, an officer of the ct., the rule followed by the Ct. of Bkpcy. that the ct. ought to be as honest as other people will not be so extended as to give the ct. jurisdiction to order the exor. to refund fees to counsel. The rules laid down in Administration of Estates Act, 1925 (c. 23), Sched. I., Part I., do not authorise the application of the rule followed by the Ct. of Bkpcy. to such a case.—*Re* SANDIFORD (No. 2), ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1935] Ch. 681; 104 L. J. Ch. 335; 154 L. T. 7.

8505. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8507. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8509. *Add. Annotations:*—**Apld.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930], 2 Ch. 202. **Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

8512. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART VIII. SECT. 5, SUB-SECT. 4.—C.

n 1. —— *Disposal of assets.*]—Where a creditor or one of the next of kin institutes an administration suit against an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless pltf. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—LEE LIM MA HOCK *v.* SAW MA HONE (1923), I. L. R. 2 Ran. 4.—**IND.**

PART VIII. SECT.6, SUB-SECT. 2.

sp. *Executor buying in property for himself.*]—A case for an administration action is shown by evidence that an exor. bid in property to himself at a low price in foreclosure of a m under a power of attorney of testator, immediately prior to administration.—MARSHALL *v.* MARSHALL, [1937] 2 D. L. R. 227.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 2.—B. (b).

sy. *Insurance policy—Protected for payment of debts—Under Life Insurance Act,* 1908, *s.* 65.]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof; funeral & the other testamentary expenses are borne by the protected policy moneys & the remainder of the estate in proportion to their value.—MAITLAND *v.* PUBLIC TRUSTEE, [1924] N. Z. L. R. 840.—**N.Z.**

PART VIII. SECT. 7, SUB-SECT. 2.—B. (c).

sz. *Overpayment— Liability of executor.*]—TAYLOR *v.* BRODIE (1874), 21 Gr. 607.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 3.—B. (c).

sb. *Insolvency of deceased administrator—Priority of original estate—Over claim by surety company on administrator's bond.*]—NOVA SCOTIA TRUST CO. *v.* UNITED STATES FIDELITY & GUARANTEE CO., [1931] 3 D. L. R. 279.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 1.—A.

8559 ii. —— —— *Costs of mortgagee's action to realise security & for administration.*]—LEONARD *v.* KELLETT (1891), 27 L. R. Ir. 418.—**IR.**

PART VIII. SECT. 8, SUB-SECT. 2.—A.

ii. —— *Establishing claim as such.*]—Next of kin who are successful in establishing their claims as such before the chief clerk are entitled to be paid their costs incurred in so doing out of the estate of the intestate.—*Re* GRAZEBROOK, CHASE *v.* LAYTON (No. 2), [1928] V. L. R. 212.—**AUS.**

8516a. ——— **In creditor's action—Beneficiary's action followed by creditor's action.**]—*Re* SAGAR, RUSSIAN COMMERCIAL & INDUSTRIAL TRADE *v.* KOGAN, KOGAN *v.* KOGAN (1930), 70 L. Jo. 10; 169 L. T. Jo. 557; [1930] W. N. 149.

8517. *Add. Annotation:*—**Consd.** *Re* Prince, Hardman *v.* Willis (1935), 51 T. L. R. 526.

8520a. Rate of interest.]—Where an intestate dies insolvent proof can be made in respect of interest claimed by a creditor at the rate of 7 per cent. *per annum* calculated down to the date of payment, & Bkpcy. Act, 1914 (c. 59), s. 66, does not apply to such a case.—*Re* WELLS, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323; [1929] B. & C. R. 119.

Annotations:—**N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202. **Folld.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

8520b. ——.]—In the administration of the estates of deceased insolvents by the Chancery Div., Bkpcy. Act, 1914 (c. 59), s. 66 (1), applies, & creditors are entitled to be paid interest only at a rate not exceeding 5 per cent. until all the debts proved in the estate have been paid in full.—*Re* BUSH, LIPTON (B.), LTD. *v.* MACKINTOSH, [1930] 2 Ch. 202; 99 L. J. Ch. 503; 143 L. T. 700; [1929] B. & C. R. 216.

Annotations:—**N.F.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

8520c. ——.]—*Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8558. After cross-reference following this case add:—

(*n*) *Set-Off.*

8558a. Effect of agreement to exclude.] — *Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8757a. Costs of Public Trustee—As plaintiff in one capacity—Defendant in another capacity.]—*Re* ABERCROMBIE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* ABERCROMBIE, [1931] W. N. 109; 171 L. T. Jo. 416.

Annotation:—**Expld.** *Re* Phillips, Public Trustee *v.* Mayer (1932), 76 Sol. Jo. 10.

Compare No. 7812a, *ante.*

8758a. Claims against legatee exceeding legacy.]—By the decree sums due from a legatee were ordered to be set-off against her share of testator's estate, & her costs were ordered to be paid to her solr. It being found that the claims against her exceeded her portion of the estate, & the legatee being insolvent, an application was made by motion, that the costs ordered to be paid to her solr. might be carried to the credit of her account. The ct. stayed the payment of the costs for a month, in order that the matter might be set right.—NICHOLSON *v.* NORTON (1844), 7 Beav. 67; 13 L. J. Ch. 140; 2 L. T. O. S. 345; 49 E. R. 988.

8768a. Costs of proving debt before master.]—Costs of proving a debt before the master under the usual decree upon a creditor's bill not allowed.—ABELL *v.* SCREECH (1804), 10 Ves. 355; 32 E. R. 882.

Annotation:—**Consd.** Watkins *v.* Maule (1821), Jac. 105.

8790a. ——.]—A bill was filed for the administration of the real & personal estate. A part of the real estate was specifically devised, & gave rise to questions of construction; other part was devised to charities, which devise was void under the Statute of Mortmain. The residuary real estate descended on the heir, & the residuary personal estate was undisposed of, & went to the next of kin:—*Held:* the costs of suit attributable to the administration of the trusts of the real estate were payable out of the descended estates, & that those relating to the execution of the trusts of the personal estate out of the residuary personal estate.—SANDERS *v.* MILLER (1858), 25 Beav. 154; 53 E. R. 595; *sub nom.* SAUNDERS *v.* MILLER, 6 W. R. 454.

Annotations:—**Consd.** *Re* Middleton, Thompson *v.* Harris (1882), 19 Ch. D. 552. **Refd.** Randfield *v.* Randfield (1863), 32 L. J. Ch. 668; Patching *v.* Barnett (1881), 51 L. J. Ch. 74.

8802. *Add. Annotation:*—*As to* (2) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

8815. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

8819a. ——— ——— ———.]—"Testamentary expenses" directed to be paid out of a particular part of testatrix's property include the costs of unsuccessful claimants to a legacy made defts. to a summons by trustees for obtaining the direction of the ct. as to whom the legacy should be paid. The costs of unsuccessful claimants to a legacy who are made defts. to a summons by the trustees of the will for obtaining the direction of the ct. as to who is entitled to the legacy will be ordered to be paid out of the estate, notwithstanding the objection of the residuary legatee or other person entitled to that part of the estate out of which such costs will become payable; & such costs will be ordered to be paid as between solr. & client, notwithstanding the objection of the same person.—*Re* CLARKE, CLARKE *v.* ST. MARY'S CONVALESCENT HOME (1907), 97 L. T. 707.

Annotation:—**Consd.** *Re* Hall-Dare, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272.

8829. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

8841a. ——— ——— ———.]—*Re* POTTS, HOOLEY *v.* FOUNTAIN, [1884] W. N. 106.

8866. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

8891. *Add. Annotation:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

9014. *Add. Annotation:*—*As to* (4) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

PART VIII. SECT. 8, SUB-SECT. 2.—C.

8771 i. *Legatee & assignee—Whether legatee's costs only allowed.*]—Orders for costs, in administration suits, should be made in such a form that a person who has not encumbered his share will be relieved as far as possible in the matter of costs created by the fact that another co-sharer has assigned or encumbered his share.—NATIONAL INSURANCE CO., LTD. *v.* NISSIM ABRAHAM GUBBAY (1928), I. L. R. 56 Calc. 447.—**IND.**

PART VIII. SECT. 8, SUB-SECT. 3.—E.

b i. ——— ——— *Inquiry as to next of kin.*]—Where a testator devises his residuary estate in trust to sell & out of the proceeds *inter alia* to pay testamentary expenses, & to divide the ultimate residue into aliquot parts & to hand the same respectively to named persons, the costs of ascertaining who are entitled to a lapsed share of residue are testamentary expenses which should be paid out of the whole residuary estate, & not out of the lapsed share only.—*Re* STONE, READ *v.* DUBUA (1936), 36 S. R. N. S. W. 508; 53 N. S. W. W. N. 214.—**AUS.**

EXTRADITION AND FUGITIVE OFFENDERS.

Part I.—Extradition to Foreign Countries.

B. Particular Offences (p. 872).

Add See Extradition Act, 1932 (c. 39).

32. *Add. Annotation:—Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

37. *Add. Annotation:—As to* (1) **Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

66. *Add. Annotation:*—**Distd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

74a. —— ——.]—Applts. were brought before a magistrate in Trinidad under sect. 5 of the French Guiana Extradition Ordinance of Trinidad charged with being fugitive criminals from French Guiana, where there is a penal settlement. At the hearing it was proved that they had each been convicted in France of a specified crime, & had each received a sentence of imprisonment which was unexpired. The magistrate made an entry in his magistrate's book against their names "extradition ordered." He did not, however, make, as he should have done, an order under Extradition Act, 1870 (c. 52), s. 10 (made applicable by sect. 5 of the Ordinance), for committal to await the Governor's warrant for surrender. Instead another magistrate, who had not heard the case, made a detention order under sect. 3 of the Ordinance, which section applies to suspected fugitives. Upon *habeas corpus* proceedings:—*Held:* the appellants should be released: (1) because under the terms of the extradition treaty with France they could be extradited only if the crimes of which they had been convicted were committed in French territory, & there was no evidence that that was so, nor was it necessarily involved in the convictions; (2) because sects. 11 & 12 of the local Summary Conviction Offences (Procedure) Ordinance did not make the entry in the magistrate's book equivalent to an order under Extradition Act, 1870 (c. 52), s. 10, & the irregularities with regard to the order signed prevented the detention of applts. from being warranted.—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, [1932] A. C. 78; 101 L. J. P. C. 17; 146 L. T. 101; 29 Cox, C. C. 394; 48 T. L. R. 27; 75 Sol. Jo. 741, P. C.

PART I. SECT. 1, SUB-SECT. 1.

e i. —— ——.]—The East Indian Dependencies of France, having been expressly excluded from the Extradition Treaty of 1876, & not being States or parts of a State to which the Extradition Acts of 1870 & 1873 apply, are not "Foreign States" within Indian Extradition Act of 1903. Extradition in the East Indian possessions of Great Britain & France is governed by Art. IX. of the Treaty of Mar. 7, 1815; & that article contemplating summary delivery at the request of any authority of either High Contracting Party & not providing any special procedure for the purpose of extradition, the British Indian Govt. may, on the statement of the Govt. of Pondicherry that a British Indian subject has committed the offence of theft within its territory & on its demand, deliver him up to the Govt. of Pondicherry, without holding an inquiry to satisfy itself that there is a *primâ facie* case against the person whose extradition is sought.—*Re* MUTHU REDDI (1930), I. L. R. 53 Mad. 1023.—**IND.**

sg. *Obligation to surrender.*]—Technicalities of the surrendering State will not be allowed to prevent the discharge of an obligation imposed by an extradition treaty.—*Re* LOW, [1932] O. R. 681; 4 D. L. R. 542; 59 C. C. C. 97; *revsd.*, [1933] 2 D. L. R. 608; O. R. 393; 59 C. C. C. 346.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A

r i. —— ——.]—Forgery must be an offence by the law of Canada, & of the demanding country.—*Re* MURPHY (1895), 2 C. C. C. 578.—**CAN.**

r ii. —— *By law of State where committed.*]—*Semble:* in order for an offence to be extraditable under the extradition treaties with the United States of America it is not necessary to show that it is a crime in every part of both Canada & the United States; it is sufficient if it is a crime in Canada & in the state wherein it is alleged to have been committed, & that it is made extraditable by the treaties.—UTAH STATE *v.* PETERS, [1936] 2 W. W. R. 9; 4 D. L. R. 509; 66 Can. C. C. 75.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

g (p. 873) i. ——.]—A charge of larceny & embezzlement in Illinois is an extradition crime, for theft in the Canadian Criminal Code includes larceny & other fraudulent conversions of property.—*Re* INSULL, [1934] 2 D. L. R. 696; 61 C. C. C. 336.—**CAN.**

sa. *Obtaining by false pretences—Extraditable offence.*]—*Re* MARTIN (No. 2) (1897), 2 Terr. L. R. 304.—**CAN.**

sb. —— *Not extraditable.*]—Goods are not "other property" within the meaning of the words, "obtaining money, valuable security or other property by false pretences," which is clause 7 of the sched. to the Extradition Treaty with the United States of America. Therefore, the offence of obtaining goods by false pretences is not extraditable under said treaty.—*Re* ROSEN, [1931] 2 W. W. R. 799; 56 Can. C. C. 162; 44 B. C. R. 203.—**CAN.**

sc. *Procuring abortion.*]—The procuring abortion held extraditable on the demand of the State of Alabama.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

sd. *Revenue offences — Breach of Harrison Anti-narcotic Law.*]—The government of the United States of America is entitled to apply for extradition for alleged breaches of the "Harrison Anti-Narcotic Law" with respect to the "having in possession" or "buying" or "selling," etc., drugs. Although the Supreme Ct. of the United States has declared said Act to be within the powers of Congress because the incorporation therein of provisions for a tax or licence fee rendered it a revenue measure, yet on an application for extradition for such offences, the Act having been declared constitutional, both the judgment, which recognises the dual aspect of the legislation, & the Act itself must be taken as a whole; &, therefore, the contention that said offences are breaches of a revenue law & therefore not extraditable was not sustained.—*Re* GIFFORD (No. 2) (Man.), [1929] 3 W. W. R. 496; [1930] 1 D. L. R. 752; 52 Can. Crim. Cas. 293.—**CAN.**

se. —— ——.]—In view of the decisions of the Supreme Ct. of the United States holding that the "Harrison Anti-Narcotic Law" is a revenue measure & that the provisions thereof for the suppression of narcotics are constitutional only because they are regarded as in aid of the collection of the taxes imposed by the Act, offences against said provisions are breaches of a revenue law & therefore not extraditable.—*Re* SIEMAN, [1930] 1 W. W. R. 970.—**CAN.**

sf. —— ——.]—*Re* SIEMAN (No. 2), [1930] 2 W. W. R. 111.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

39 iv. —— *Application by French Republic—Extradition to Saar Basin of Germany.*]—*Re* INCAMPE, [1928] 3 D. L. R. 240; 49 Can. Crim. Cas. 386.—**CAN.**

t i. ——.]—Extradition proceedings need not originate in the foreign country.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (a) i.

68 i. *Identity of accused.*]—Evidence which under Canadian law may be inadmissible on a trial because the prisoner had not been properly warned of the possible consequences of the making of a statement or giving answers to a policeman's question is at least admissible on extradition proceedings to prove the identity of the person arrested with the person charged.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

Necessity for signature by magistrate hearing case.]—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, No. 74a, *ante*.

126. *Add. Annotation:*—*As to* (1) **Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

127. *Add. Annotation:*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

136. *Add. Annotation:*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

Part II.—Extradition from Foreign States.

146a. Onus of proof of surrender under treaty.]—Applt. was brought before a tribunal in France on a claim for his extradition on a charge of false pretences. He waived all the formalities of extradition & was handed over to the English police. He was convicted in England on a charge of fraudulent conversion based upon the facts contained in the information upon which the claim for extradition was made:—*Held:* (1) the onus of showing that he had been surrendered in accordance with the extradition treaty between this country & France lay on applt., & he had failed to discharge that onus; (2) Extradition Act, 1870 (c. 52), s. 19, which, in effect, enacts that a person extradited may be tried for any offence which can be proved by the facts upon which the surrender was grounded, was not abrogated by the provisions of Art. IV. of a treaty of extradition made between this country & France, applied to the Act of 1870 by & embodied in an Order in Council, which prohibited the trial of such person for any offence other than that upon which he had been surrendered, &, consequently, the ct. had jurisdiction to try applt. for fraudulent conversion.—R. *v.* CORRIGAN, [1931] 1 K. B. 527; 100 L. J. K. B. 55; 144 L. T. 187; 47 T. L. R. 27; 29 Cox, C. C. 198; 22 Cr. App. Rep. 106, C. C. A.

146b. For what offences triable—Extradition Act, 1870 (c. 52), s. 19—Effect of Treaty with France, 1878.]—R. *v.* CORRIGAN, No. 146a, *ante*.

Part III.—Surrender between British Dominions inter se and the United Kingdom.

153. *Add. Annotation:*—*As to* (1) **Apprvd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

153. *Add. Annotation:*—**Consd.** R. *v.* Brixton Prison Governor, *Ex p.* Bidwell, [1937] 1 K. B. 305.

PART I. SECT. 3, SUB-SECT. 3.—C. (a) ii.

83 iv. ——.]—While the imputed offence must be shown to be a crime under the law of the demanding State, yet, in determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, & extradition is permitted if there exists the elements of the imputed offence according to Canadian law.—WASHINGTON STATE *v.* FLETCHER, [1926] 3 D. L. R. 426; [1926] 2 W. W. R. 508; 46 Can. Crim. Cas. 226; 20 Sask. L. R. 575.—**CAN.**

c i. —— *Whether admissible as proof of law of demanding State.*]—*Re* WAGNER, [1928] 4 D. L. R. 615; 50 Can. Crim. Cas. 254.—**CAN.**

f i. ——.]—*Re* CLARK (P. E. I.), [1929] 3 D. L. R. 737; 51 Can. Crim. Cas. 302.—**CAN.**

f ii. ——.]—Where on an application before an extradition comr. for an order for the surrender of the accused the evidence adduced shows a *primâ facie* case of a crime known to the common law, the burden rests on the accused to show that the alleged facts do not constitute a crime under the law of the demanding state.—*Re* SULLIVAN & STATE OF CALIFORNIA, [1932] 3 W. W. R. 167.—**CAN.**

f iii. ——.]—A *primâ facie* case in proceedings before an Extradition Comr. is sufficient to justify a warrant of commitment.—LOOSBERG *v.* SEGUIN, [1934] 2 D. L. R. 218; 61 C. C. C. 77.—**CAN.**

sl. *Foreign law—Mode of proof.*]—UTAH STATE *v.* JONES (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

98 i. After this case add:—

—— —— ——.]—*See, now,* Chinese Extradition Amendment Ordinance, 1915, s. 18, as amended by Chinese Extradition Amendment Ordinance, 1927.

sm. *Only evidence admissible under lex fori—Not hearsay.*]—*Re* GRABOWSKY (1930), 53 Can. C. C. 75.—**CAN.**

sn. *Evidence of customs inspector—Proof of foreign law.*]—In proceedings in which extradition was sought of one alleged to have bribed a United States Customs Inspector in the State of New York:—*Held:* the criminal law of the United States on this point could be proved by a United States Customs Inspector.—*Re* LOW, [1932] O. R. 681; 4 D. L. R. 542; 59 C. C. C. 97; *revsd.*, [1933] 2 D. L. R. 608.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—D.

so. *Power of judge or commissioner to grant.*]—An extradition judge or comr. has the power in his direction to grant bail, but before it will be granted especially strong grounds should be shown in support of the application therefor.—UNITED STATES GOVERNMENT *v.* GIFFORD (Man.), [1929] 1 W. W. R. 879; [1930] 1 D. L. R. 800; 52 Can. C. C. 355.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

b i. ——.]—*Re* MARTIN (No. 2) 1897), 2 Terr. L. R. 304.—**CAN.**

PART II.

l i. —— ——.]—Where a person who has been accused of an extraditable offence & arrested in the United States under instructions from the Canadian authorities waives extradition proceedings, he may be tried here for any other offence committed before he was brought back, even though such other offence is not an extraditable one, & it was not until he was taken before an extradition comr. & charged before him that he agreed to return without extradition.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748; [1930] 1 D. L. R. 892; 24 Alta. L. R. 325; 52 Can. Crim. Cas. 370.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

n i. —— ——.]—The Commonwealth of Australia having, by passing the Commonwealth Extradition Act, 1903, acted as a central legislature under the Extradition Act, 1870 (Imperial), may be assumed to have power to deal under the external affairs power of the Constitution with the rendition of fugitive offenders. If this is so, the effect of the Commonwealth Constitution Act upon the definition of "legislature" in **Fugitive Offenders Act, 1881 (c. 69), s. 39, is to create an**

159. *Add. Annotations :*—**Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

159a. —— **Indorsement of warrant—Whether indorsement by Secretary of State as well as magistrate necessary.**]—Fugitive Offenders Act, 1881 (c. 69), s. 3, provides that : " Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part . . . in or on the way to which the fugitive is or is suspected to be : that is to say (1) a judge of a superior ct. in such part ; & (2) in the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police ct. in Bow Street ; & (3) in a British possession the governor of that possession, . . . may indorse such warrant . . . " :—*Held :* that in category (2) of the authorities who may indorse the warrant the word " and " is used disjunctively, & that a warrant issued in a part of the Sovereign's dominions for the apprehension of a suspected fugitive from that part may be indorsed in the United Kingdom by a magistrate of the said police ct. alone, & need not be indorsed both by a magistrate & a Secretary of State.

Fugitive Offenders Act, 1881 (c. 69), s. 5, provides : " A fugitive when apprehended shall be brought before a magistrate. . . . If . . . such evidence is produced as . . . raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant . . . the magistrate shall commit the fugitive to prison to await his return " :—*Held :* in requiring, as a condition of committing an alleged fugitive, such evidence as raises " a strong or probable presumption " that he committed the offence, the sect. means such evidence as, if it remained uncontradicted at the trial, would entitle a reasonable jury to convict the alleged fugitive upon it.

Where, in proceedings under this sect., a magistrate has found that the evidence produced before him raises a strong or probable presumption that the alleged fugitive is guilty of the offence & has committed him, & the alleged exception to the definition so that it must now be read as meaning that the expression " legislatures," where there are local legislatures as well as a central legislature, means the central legislature only ; but, in respect of the Commonwealth of Australia, means the Parliament of the Commonwealth only when it has exercised its powers to deal with the surrender of fugitive offenders between the Commonwealth & other parts of His Majesty's dominions. The Commonwealth Service & Execution of Process Act, 1901, was not an exercise by the Commonwealth of any overriding powers which the Commonwealth possesses in respect of the subject-matter of the Fugitive Offenders Act, 1881 (c. 69).—*Re* MUNRO, [1935] N. Z. L. R. 271.—**N.Z.**

n ii. —— *Jurisdiction of States.*]—For the purposes of the Fugitive Offenders Act, 1881, Australia is one British possession. But within the several States, State judicial officers have authority under the law of the " possession " & so are competent to act under the provisions of that statute. A New Zealand warrant was brought to Australia & indorsed by a police magistrate for New South Wales under sect. 13 of Fugitive Offenders Act, 1881. Deft. was arrested under the warrant & was brought before a stipendiary magistrate at Sydney, who made an order reciting that he was satisfied, as required by sect. 14 of Fugitive Offenders Act, that the warrant was issued by a person having lawful authority to issue it & directing that the deft. be returned to New Zealand :—*Held :* the New South Wales magistrate had jurisdiction to order the return of deft. under sect. 14 of Fugitive Offenders Act, 1881.—MCARTHUR *v.* WILLIAMS (1936), 55 C. L. R. 324 ; 42 Argus L. R. 239 ; 10 A. L. J. 40.—**AUS.**

PART III. SECT. 1, SUB-SECT. 3.

sk. *Not absconding from jail.*]—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

f (p. 891) i. ——.]—Objection was taken to the form of a warrant, as failing to show jurisdiction, since it did not show that M. was a fugitive offender & that he was charged with an offence to which the Act applied :—*Held :* this objection was unsustainable in view of the facts alleged in the warrant, & also because the Act did not require the warrant to state that the offence charged was an offence within the Act ; moreover, the warrant was merely one to apprehend, & had been endorsed in the manner provided by the Act.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—**IR.**

b (p. 893) i. —— *Whether counsel entitled to cross-examine.*]—On the taking of depositions for the purposes of the Fugitive Offenders Act, 1881 (Imp.), the counsel of accused has no right to cross-examine the witnesses.—*Re* CAMPBELL, [1935] N. Z. L. R. 352.—**N.Z.**

st. *Cancellation of warrant—Jurisdiction of High Court.*]—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

sb. *Authentication of warrant & depositions.*]—In proceedings before a magistrate under Fugitive Offenders' Act, 1881, the endorsed warrant for the apprehension of the fugitive bore the signature of a person who signed as a magistrate ; the signature was certified by the Acting British Resident of the locality. A witness before the magistrate gave evidence identifying the signature of the magistrate & of the Resident, & stated that the magistrate was *de facto* exercising jurisdiction. Depositions put before the magistrate bearing the endorsement " True Copy " were similarly signed, certified, & identified :—*Held :* both the warrant & the copy of the depositions were duly authenticated as required by Fugitive Offenders Act, 1881, ss. 5, 29. —*Re* POUNDALL, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 228.—**AUS.**

sd. *Application of Order in Council—How proved.*]—Promulgation of an Order in Council may be proved by the production of a copy of the Government Gazette containing the notice of proclamation of the Order in Council. The application of Fugitive Offenders' Acts, 1881 & 1915, to a Protected State by Order in Council, which is proclaimed in the London Gazette, may be proved as an Act of State by tendering a copy of such Gazette. An Order in Council of the State of Perak made the penal code of the Straits Settlements applicable in Perak " upon the publication thereof in the Gazette." A book containing such Order was in evidence before a magistrate & contained a note that the Order was published in the Perak Government Gazette of a certain date :—*Held :* this notification afforded *prima facie* evidence of the due publication of the penal code in the State of Perak since it fell within the terms of N.S.W. Evidence Act, 1898, No. 11, s. 19 (1).—*Re* SEERY, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 221.—**AUS.**

sf. *Application must be made in good faith.*]—An application for the return of a prisoner is not made " in good faith in the interests of justice . . . " within Fugitive Offenders Act, 1881 (c. 69), s. 19, where the whole purpose & object of the laying of the information & the issuing of the warrant is to secure the return to a country of a person so that he might be there when certain civil proceedings, then pending, are heard & so that the pltfs. in those proceedings might be in a more advantageous position to obtain civil redress.—*Re* COOK, *Ex p.* MCELWAIN (1932), 49 N. S. W. W. N. 153.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.

k i. —— ——.]—*Held :* the President of the High Ct. is " a Judge of a Superior Ct." within sect. 3 of Fugitive Offenders Act, 1881, & a District Justice of Dublin Metropolis is " a magistrate " who may exercise the powers conferred by sect. 5 of the Act.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—**IR.**

sg. *Warrant for offence punishable by State of Commonwealth.*]—Where the warrant is for an offence punishable by a law of the State of the Commonwealth, & the evidence in support of the application for the warrant of remand to the Commonwealth is that the offence charged is an offence under the law of that State, & there is no evidence that it is an offence under the law of the Commonwealth, a warrant of remand for the return of the prisoner is invalid, & he is entitled to a writ of *habeas corpus.*—*Re* MUNRO & CAMPBELL, [1935] N. Z. L. R. 159.—**N.Z.**

fugitive has obtained an order *nisi* for a *habeas corpus*: *Qu.:* whether on the argument of the order *nisi* it is open to the High Ct. to consider whether the evidence produced before the magistrate is sufficient to raise a strong or probable presumption of the guilt of the alleged fugitive.—R. *v.* BRIXTON PRISON GOVERNOR, *Ex p.* BIDWELL, [1937] 1 K. B. 305; [1936] 3 All E. R. 1; 106 L. J. K. B. 599; 155 L. T. 453; 100 J. P. 458; 53 T. L. R. 1; 80 Sol. Jo. 876; 34 L. G. R. 461; 30 Cox, C. C. 462, D. C.

160. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

FACTORIES AND SHOPS.

Part I.—Classification and Definitions.

1. *Add. Annotation :—As to* (1) **Refd.** Kearns *v.* Gee, Walker & Slater, Ltd., [1936] 3 All E. R. 151.

8. *Add. Annotation :—As to* (1) **Consd.** Mumby *v.* Volp (1929), 141 L. T. 663.

13. After cross-reference following this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

17. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 653.

18. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 653.

22. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

28. *Citation :*—For "2 B. & S. 153" read "3 B. & S. 153."

29. *Add. Annotations :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

36a. —— **Need not be by owner of building.]**—MUMBY *v.* VOLP, No. 98a, *post.*

38. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

39. *Add. Annotation :—***Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

40. *Add. Annotations :—***Dbtd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

41. After this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

44a. **"Occupier" of factory.]**—Resp. co. was charged, as occupier of a factory, which was subject to certain regulations made in pursuance of the Factory & Workshop Act, 1901 (c. 22), s. 79, for the generation, transformation & distribution & use of electrical energy, with having neglected to observe a certain provision of the regulations, in that, certain work having to be done on a switchboard for high pressure situated in the power-station, the co. failed to make dead the switchboard, contrary to the requirements of the regulations, & that, in consequence of such neglect, a workman was killed. The work on the switchboard was being carried out by another co., & at the time of the accident the work had not yet been completed nor had the switchboard been handed over in working order to resp. co. The justices dismissed the charge, on the ground that in the circumstances resp. co. was not the occupier within the meaning of the Act at the time of the accident :—*Held :* (1) as the object of the switchboard was to control the distribution of extremely powerful electrical energy which came from resp. co.'s power-house, resp. co. was the occupier, within the meaning of the Act, & was therefore guilty of the offence with which it was charged ; (2) as the switchboard in question was not a "machine or implement moved by steam, water or other mechanical power," within sect. 142 of the Act of 1901, that sect. was of no avail to the resp. co.—TURNER *v.* COURTAULDS, LTD., [1937] 1 All E. R. 467 ; 81 Sol. Jo. 239, D. C.

Part II.—Health and Sanitation.

57. *Add. Annotation :—***Consd.** Yates *v.* Burnley Rating Authority (1933), 97 J. P. 226.

Part III.—Accidents.

62. *Add. Annotations :—***Consd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

PART I. SECT. 1, SUB-SECT. 1.

sa. *Flour mill.]—Held :* a "factory" within Factories Act, 1894.—SELBY *v.* BANNIGAN (1901), 3 S. A. L. R. 21.—AUS.

k i. —— ——.]—R. *v.* WONG SAM (B. C.), (1929) 52 Can. Crim. Cas. 357.—CAN.

m i. ——.]—*Held :* a drying yard, situate about five or six yards from a factory, was part of the factory.—RAMANATHAM *v.* R. (1926), I. L. R. 50 Mad. 834.—IND.

63. *Add. Annotations :*—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. *Generally,* **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

68. *Add. Annotation :*—**Consd.** Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

68a. —— ——.] — Resps., the occupiers of a factory, provided adequate guards for securely fencing the mill-gearing, & exhibited a notice prohibiting workmen from removing any guard without special instructions. The workmen removed nine guards for the purpose of setting the rollers, &, having replaced only eight of the guards, started the rollers. Owing to their neglect, one workman, who slipped & fell, was dragged into the coupling gear & was killed. An information against resps. under 1901 Act, s. 136, for neglecting to observe the provision of sect. 10 (1) (*c*) that the mill-gearing must be securely fenced, was dismissed, on the grounds that resps. had taken all adequate precautions by providing the necessary guards, & that it was the fault of the workmen that caused the accident :—*Held :* under sect. 10 it was the duty of resps. not merely to provide guards, but to fence the machinery securely, & as they had not performed this duty, the justices ought to have convicted them.—THOMAS *v.* BOLTON (THOMAS) & SON, LTD. (1928), 139 L. T. 397 ; 92 J. P. 147 ; 44 T. L. R. 640 ; 26 L. G. R. 459 ; 28 Cox, C. C. 529, D. C.

68b. —— ——.]—Resps. were charged with having failed to have certain mill gearing in their factory securely fenced, or in such position or of such construction as to be equally safe to every person employed or working in their factory, in consequence of which one of their workmen was injured. The mill gearing consisted of a countershaft 12½ ft. from the ground to which a belt was attached, & the workman was injured in replacing the belt. The justices dismissed the charge, holding that the said mill gearing need not be fenced, as it was as safe as it would be if fenced :—*Held :* as the essential purpose of Factory & Workshop Act, 1901 (c. 22), s. 10 (1) (*c*), is to provide absolute safety, so far as fencing can provide it, it was clear that the sect. had been contravened, & the offence charged was, therefore, proved. —FINDLAY *v.* NEWMAN, HENDER & CO., LTD., [1937] 4 All E. R. 58 ; 81 Sol. Jo. 901, D. C.

71. *Add. Annotations :*—**Consd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113 ; Peacock *v.* Gyproc Products, Ltd. (1935), 79 Sol. Jo. 904 ; Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85 ; Walker *v.* Bletchley Flettons, Ltd., [1937] 1 All E. R. 170. **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

71a. —— —— ——.]—PEACOCK *v.* GYPROC PRODUCTS, LTD. (1935), 79 Sol. Jo. 904, D. C.

71b. —— —— ——.]—Resps. were charged with having failed to have the pinion-wheels of parts of their machinery securely fenced so as to be safe to every person employed or working in their factory, in consequence of which one of their workmen was injured while engaged in greasing the machinery while it was in motion. Resps. had put up a notice in the factory as follows : " Do not put your hands in the machinery while it is in motion. Persons disregard this notice at their own risk." The pinion-wheels, although usually stopped, were occasionally allowed to remain in motion, for the purpose of greasing. The magistrate dismissed the charge, holding that the pinion-wheels were not dangerous parts of the machine unless in motion, when it was not usual for greasing to be done :—*Held :* as the wheels were dangerous parts of the machinery, they ought to have been securely fenced, despite the fact that greasing was not usually done while the machinery was in motion, as it cannot be assumed that every person will always exercise the necessary care. The offence charged was therefore proved.—CHASTENEY *v.* NAIRN (MICHAEL) & CO., LTD., [1937] 1 All E. R. 376 ; 81 Sol. Jo. 238 ; 35 L. G. R. 195, D. C.

72. *Add. Annotation :*—**Refd.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

72a. —— ——.] — An infant workgirl lost the ring finger of her right hand by accident arising out of & in the course of her employment. She received compensation under the Workmen's Compensation Act for a time, & then accepted £20 in purported settlement on the promise by the employer to re-employ her. No memorandum of this agreement was recorded. She worked at this employment for five years, when, by reason of trade conditions, she was discharged. She then commenced an action against the employer for damages for personal injuries resultant from the employer's alleged breach of statutory duty to fence the machine. The action was tried by a judge alone, who found that the injury had been caused by the employer's breach of statutory duty to fence, & that there was no contributory negligence on the part of pltf. He, however, also found, having regard to the fact that the infant had received employment for five years after her accident under the agreement, that the agreement to accept compensation, though not registered, was for her benefit & therefore binding, with the result that the action was barred by Workmen's Compensation Act, 1925 (c. 84), s. 29, of the Act. The infant appealed :—*Held :* (1) without deciding whether the agreement was for the infant's benefit or whether further proceedings might be taken under the Workmen's Compensation Act, the action for breach of statutory duty

PART III. SECT. 1, SUB-SECT. 1.—A.

70 iii. —— —— ——.]—A co. was charged under 1901 Act, s. 10 (1) (*c*), with failing to keep its factory in conformity with that Act, in respect that a dangerous part of the machinery, the cutter of a horizontal milling machine, was not either securely fenced, or in such a position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it had been securely fenced :—*Held :* (1) the question whether a part of the machinery was " dangerous " within the Act was one of degree, & the risk involved in the use of the cutter did not reach a degree sufficient to justify that part being classified as " dangerous " ; (2) in any event, to secure a conviction, facts must be established to support the second branch of the complaint, &, on the facts, the charge was not proven.—LAUDER *v.* BARR & STROUD, [1927] S. C. (J.) 21.—SCOT.

failed because, on the evidence, the machine was not a dangerous machine within Factory & Workshop Act, 1901 (c. 22), s. 10, & therefore there was no duty on the employer to fence it; (2) on the evidence, the accident was caused by the negligence of pltf., which was a complete defence to the action even if such negligence had only been of a contributory character.—HIGGINS *v.* HARRISON (1932), 25 B. W. C. C. 113, C. A.

Annotations:—As to (1) **Consd.** Rudd *v.* Elder Dempster & Co. (1932), 49 T. L. R. 202; Walker *v.* Bletchley Flettons, Ltd., [1937] 1 All E. R. 170. *Generally*, **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

72b. ——— **What amounts to "dangerous."**]—Pltf. was employed by defts., a firm of brickmakers, & was being taught to drive a mechanical excavator. When going, as he was entitled to do, to the tool-box, he slipped & his leg was caught & severely injured by a wheel of the machine which was not cased or fenced. No negligence on the part of anyone was alleged. Pltf. claimed that the absence of fencing made the machine a dangerous machine, & claimed damages for breach of statutory duty:—*Held:* in considering whether machinery is dangerous, it must not be assumed that everybody will always be careful. A part of a machine is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur. In the circumstances the part of the machine complained of was a dangerous one within Factory & Workshop Act, 1901 (c. 22), s. 10.—WALKER *v.* BLETCHLEY FLETTONS, LTD., [1937] 1 All E. R. 170.

76a. ——— ———.]—A workman in a factory injured his hand in a machine so constructed that it could only be operated by the workman actuating a safety device with one hand & the operating lever with the other. On the hearing of an information against the occupiers of the factory charging them with an offence against sect. 10 of 1901 Act, the justices held that the machine was "equally safe to every person employed or working in the factory as it would be if it were securely fenced" within sub-sect. (1) (*c*) of that sect., & they therefore dismissed the information:—*Held:* the word "safe" in the sub-sect. meant actually safe, not merely reasonably or practically safe, & the justices ought to have convicted resps.—SOWTER *v.* STEEL BARREL CO., LTD. (1935), 154 L. T. 85; 99 J. P. 379; 33 L. G. R. 376, D. C.

Annotation:—**Refd.** Chasteney *v.* Nairn (Michael) & Co., [1937] 1 All E. R. 376.

Machinery equally safe fenced or unfenced—Overhead shaft.]—Resps. were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of resps. attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to resps.' instructions. Resps. were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case:—*Held:* the finding of the justices was not equivalent to a finding that the shaft was "in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced," which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding.—ATKINSON *v.* LONDON & NORTH EASTERN RY. CO., [1926] 1 K. B. 313; 95 L. J. K. B. 266; 134 L. T. 217; 90 J. P. 17; 42 T. L. R. 79; 23 L. G. R. 702: 28 Cox, C. C. 112, D. C.

Annotation:—**Consd.** Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

76c. **Statutory duty to use guard.**]—An infant employee in a woodworking factory was injured while operating a spindle machine. The machine had been supplied with a guard, but in view of the waste of time caused by the use of the guard, the employee was instructed by his employers to operate the machine without the guard, & was doing so at the time of the accident. Having accepted compensation under Workmen's Compensation Act, the infant employee brought an action alleging a breach by his employers of Factory & Workshop Act, 1901 (c. 22), s. 10, & argued that the compensation he had accepted had been paid under a contract that was not for his benefit & one that, being an infant, he was entitled to repudiate. The employers contended that the obligation to use a guard imposed upon a workman by the Woodworking Machinery Regulations, 1922, reg. 23, is absolute, & cannot be waived or abrogated by an order of his employers, & that the accident was due to the breach of the employee's statutory duty:—*Held:* (1) the employers, by ordering their employee not to use the guard, had failed to provide a guard within the meaning of the regulations. There was therefore no guard provided within reg. 23, & there had been no breach by the employee of that regulation; (2) (*per* GREER, L.J.) the employers were not entitled to take advantage of their own wrong in ordering the guard not to be used; (3) the infant employee's election to accept compensation under the Workmen's Compensation Acts was not for his benefit & was therefore not binding upon him.—MURRAY *v.* SCHWACHMAN, LTD., [1937] 2 All E. R. 68; 106 L. J. K. B. 354; 156 L. T. 407; 53 T. L. R. 458; 81 Sol. Jo. 294, C. A.

76a 1. ——— ———.]—Defts. were the occupiers of a factory. A workman in their employment, following his daily duties, climbed up a ladder to the shafting in the dye-house to fix a belt on a pulley, & was caught in the shafting, whirled round & killed. No one actually saw the occurrence, but, as portions of deceased's clothing were on the shaft, they probably got caught in it. An information against defts. charged that, contrary to Factory & Workshop Act, 1901, s. 10 (1) (*c*), a part of the mill gearing, namely, a line of shafting, was neither securely fenced nor in such a position nor of such construction as to be equally as safe to every person employed or working in the factory as if it had been securely fenced. The justices dismissed the information, but stated a case for the opinion of the K. B. D.:—*Held:* defts., in failing to fence the line of shafting, had contravened Factory & Workshop Act, 1901, s. 10 (1) (*c*), & should be convicted.—MINISTRY OF LABOUR FOR NORTHERN IRELAND *v.* COWDY & SONS, [1929] N. I. 110.—IR.

79. *Add. Annotations :—As to* (1) **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1. *As to* (2) **Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206.

80. *Add. Annotations :—As to* (1) **Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628. **Apld.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113. **Distd.** Rudd *v.* Elder Dempster & Co. (1932), 49 T. L. R. 202. *As to* (2) **Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669. **Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206; Kearns *v.* Gee, Walker & Slater, Ltd., [1936] 3 All E. R. 151; Murray *v.* Schwachman, Ltd., [1937] 2 All E. R. 68. *Generally*, **Refd.** Craze *v.* Meyer-Dumore Bottlers' Equipment Co., [1936] 2 All E. R. 1150.

81a. —— —— ——.]—HIGGINS *v.* HARRISON No. 72a, *ante*.

——.]—Defts. installed in their factory a circular saw, which in breach of a statutory duty was improperly fenced. A workman was injured while testing the machinery of the saw in a manner which was held to be the direct cause of the accident. In an action for damages for personal injuries it was argued on behalf of the workman that, in order to prevent him from obtaining compensation based upon a breach of a statutory duty, there must be contributory negligence on the part of the workman limited to acts done in breach of some order or done outside the ambit of his employment :—*Held :* the negligence of a workman which would prevent him from obtaining compensation based upon a breach of a statutory duty was negligence of the ordinary kind, & as the workman had been negligent in the present case he could not recover.—CRAZE *v.* MEYER-DUMORE BOTTLERS' EQUIPMENT CO., LTD., [1936] 2 All E. R. 1150; 80 Sol. Jo. 552, C. A.

91. *Add. Annotation :—As to* (2) **Consd. & Expld.** Mumby *v.* Volp (1929), 141 L. T. 663.

92. For " 69 L. T. 622 " read " 79 L. T. 622."

98a. Duty to keep in repair & free from obstruction —Part of factory in occupation of lessee.]—[supply of mechanical power referred to in Factory & Workshop Act, 1901 (c. 22), s. 149 (1), is not limited to the case of supply by the owner of the building, & there is no reason to read into the sub-sect. after the word " supplied " the words " by the owner."

X. owned a building which was a factory where more than forty persons were employed, & carried on business as a shirt manufacturer in the basement & on the ground & first floors. The second floor was unoccupied. The third & fourth floors were let to Y., who carried on business there as a blouse manufacturer, employing more than forty persons. The factory of X. & that of Y. were respectively worked by separate & distinct electric motors, driven by electricity generated & supplied by the electricity undertaking of a municipal corpn. & each factory had a separate meter. Without this supply of electricity the electric motors could not be driven :—*Held :* mechanical power, namely, electrical current, was supplied to different parts of the same building within sect. 149 (1). Accordingly, as the building was a tenement factory, etc., the owner, was responsible under sect. 14 (6), (7) of the Act that the means of escape in case of fire provided throughout the factory, including the two floors occupied by Y., should be maintained in good condition & free from obstruction.—MUMBY *v.* VOLP, [1930] 1 K. B. 460; 99 L. J. K. B. 213; 141 L. T. 663; 93 J. P. 197; 27 L. G. R. 594, D. C.

Part IV.—Dangerous and Unhealthy Industries.

118. *Add. Annotations :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547. **Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472. **Refd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmins *v.* Same (1926), 96 L. J. K. B. 295; Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Bevan *v.* Nixon's Navigation Co., [1929] A. C. 44.

136. *Add. Annotations :*— **Refd.** Russell *v.* Criterion Film Productions, Ltd., [1936] 3 All E. R. 627; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

137. *Add. Annotation :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138. *Add. Annotations :*—**Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472. **Refd.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138a. —— Docks Regulations, 1925.] Reg. 34 provided : " (*a*) Where there is more than one hatchway, if any hatch of a hold exceeding five feet in depth measured from the level of the deck in which the hatch is situated to the bottom of the hold, is not in use for the passage of goods, coal, or other

81 iii. —— —— ——.]—In an action by the widow of a deceased employee against his employer pltf. alleged that deft. in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for deft. :—*Held :* in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted.—COFIELD *v.* WATERLOO CASE CO., LTD. (1924), 34 C. L. R. 363.—AUS.

81 iv. —— —— ——.]—Contributory negligence is not a defence to an action to recover damages for personal injury, caused by a breach of an absolute statutory duty imposed for the benefit of a class which pltf. is a member. ... BUTTERFIELD & LEWIS, LTD. (1927), 38 C. L. R. 354; 27 S. R. N. S. W. 339; [1927] Argus L. R. 3.—AUS.

PART IV. SECT. 2, SUB-SECT. 1.—D.

135 ii. —— *Interpretation of regulations—Question for court.*]—BISSETT *v.* HEITON & CO., LTD., [1930] I. R. 17.—IR.

material, or for trimming, & the coamings are less than two feet six inches in height, such hatch shall either be fenced to a height of three feet or be securely covered . . .":—*Held:* (1) the duty of fencing or covering a hatch, in compliance with reg. 34, which was not in use but which had been used during the process of unloading a ship lay upon the person who by himself, his agents, or workmen carried on the process of unloading, & not upon the owner, master, or officer in charge of the ship; (2) for the purposes of the 1901 Act, the covering of a hatch which had been used for the purpose of unloading the ship was ancillary to the main work of unloading, & the work of unloading was not completed till the hatch was covered.—MANCHESTER SHIP CANAL CO. *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1930] 1 K. B. 547; 99 L. J. K. B. 230; 143 L. T. 113; 46 T. L. R. 163; 18 Asp. M. L. C. 140, D. C.

Annotation:—As to (2) **Consd.** Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472.

138b. —— ——.]—A workman in a ship in dock fell through a hatchway of which the fencing had become loose & was injured. He was employed in replacing the insulation on refrigerator pipes, & his employers were in no way connected with either of defts. He sued the stevedores working on the hatch, & the owners, for negligence & breach of their statutory duty to light the ship efficiently & to fence the hatchway while it remained open. The Factory & Workshop, Dangerous & Unhealthy Industries Regulations, 1934, reg. 12, provides that decks where work is being done must be efficiently lighted when "processes," which include unloading, are being carried on. Defts. contended that the "process" was finished when the hatchways had been fenced in accordance with the regulations; & also that pltf., who was not engaged in any of the processes, was not within the benefit of reg. 37, which provides for the fencing of hatchways:—*Held:* (1) the process of unloading continues until all the hatch covers have been replaced; (2) on the authority of *Manchester Ship Canal Co.* v. *Director of Public Prosecutions*, No. 138a, the effect of Docks Regulations, 1925, was to protect any workman employed in the ship even if not employed on any of the processes & the 1934 Regulations did not withdraw this protection.—HAWKINS *v.* THAMES STEVEDORE CO., LTD. & UNION COLD STORAGE CO., LTD., [1936] 2 All E. R. 472; 80 Sol. Jo. 387.

-.]—Pltf., employed as a labourer, was assisting in the unloading of timber from defts.' ship. Having finished unloading one kind of timber, a different skid was required to unload the next kind. It was suggested to pltf. that a suitable skid was to be found in the after part of the ship & he proceeded there in search of one. In a badly lighted part of the deck space he fell down an open hatch & was injured. It was contended for defts. that there was no invitation to pltf. to go to the part of the ship where the accident happened. Pltf. relied upon a breach of the regulations made under the Factory & Workshops Act, 1901 (c. 22), s. 79, namely, that in breach of reg. 12 (*c*) the deck space was insufficiently lighted & in breach of reg. 37 (*a*) the hatch was insufficiently fenced. The only fence in the present case was some distance from the hatch & in any event of an insufficient height:—*Held:* (1) pltf. was an invitee & was entitled to recover; (2) in the above reg. 12 (*c*) "required to proceed" does not necessarily mean ordered to proceed; but includes any place where a workman might properly go for ropes, slings, skids, etc.; (3) in the above reg. 37 (*a*) "accessible" means accessible without reasonable let or hindrance & the "fence" is a fence situated in close proximity to a single hatch.—HENAGHAN *v.* REDERIET FORANGIRENE, [1936] 2 All E. R. 1426.

138d. Hatch covering not strengthened—Docks Regulations, 1934.]—Five stevedores were loading a ship, &, following instructions given to them by the hatch foreman, a servant of deft. co., placed 49 tons of iron upon a between-deck hatch covering. The hatch covering collapsed & pltfs. fell into the hold & were injured. The claim in negligence was barred by the doctrine of common employment, & reliance was placed upon a breach of statutory duty imposed by Docks Regulations, 1934, regs. 36, 38, made under Factory & Workshop Act, 1901 (c. 22). Reg. 36 requires a deck-stage or cargo-stage to be substantially constructed, & reg. 38 provides that no cargo shall be loaded or unloaded by a fall or sling at any intermediate deck unless either the hatch at that deck is securely fastened or a secure landing platform has been placed across it:—*Held:* (1) the ct. was bound by the dictum of SCRUTTON, L.J., in *Hillen & Pettigrew* v. *I.C.I. (Alkali), Ltd.*, to hold that the hatch of a ship is not a deck-stage or cargo-stage within the meaning of that word in reg. 36; (2) the placing of the weight of iron upon the hatch coverings when they were not so strengthened & reinforced as to be capable of bearing the weight imposed upon them was a breach of reg. 38; (3) reg. 38 imposes a duty upon the shipowner & does not impose a duty upon the persons employed in the process of loading or unloading. It could not, therefore, be said that pltfs. were guilty of any breach of statutory duty.—HANLON *v.* PORT OF LIVERPOOL STEVEDORING CO., LTD., [1937] 4 All E. R. 39.

153. *Add. Annotation:*—**Refd.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

153a. —— **"Temporarily used"—Machinery not in actual use.**]—By Factory & Workshop Act, 1901 (c. 22), s. 79, the Secretary of State may make regulations in respect of dangerous

PART IV. SECT. 2, SUB-SECT. 4.

q 1. —— *Defective hoist—Liability of scaffolding firm.*]—A scaffolding firm were employed by builders to erect a hoisting machine for use in the construction of a building which the builders were erecting. The scaffolding firm erected the machine & handed it over to the builders. It was not used until after it was handed over; when it collapsed, owing to defects in its construction, causing injuries to certain workmen:—*Held:* the scaffolding firm were guilty of an offence under para. 4 (*a*) of the Building (Amendment) Regs., 1931, in respect that a duty of compliance with the Regs. was imposed upon them as well as upon the builders; & the fact that the Regs. applied only to premises in which machinery was "temporarily used" did not preclude the commission of an offence under para. 4 (*a*) before the date on which the machine was brought into actual use.—SCAFFOLDING (GREAT BRITAIN), LTD. *v.* STHERN, [1936] S. C. (J.) 9.—**SCOT.**

machinery. By sect. 105 the provisions of the Acts with respect (*inter alia*) to fines in respect of death or injury are applicable as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," & as if the person who by himself, his agents or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of a factory. The Secretary of State, in pursuance of s. 79, made certain regulations casting upon employers of workmen the duty of fencing floor-openings with a suitable guard rail & toe board or other efficient means:—*Held:* (1) the words "temporarily used" are not confined to the actual moment when the machinery is in use, but extend to the whole period during which the machinery is available for use in the constructional work, & therefore that persons who had brought such machinery upon the premises were liable to conviction as the occupiers of a factory in respect of the death of a workman who fell through an unfenced shaft at a time when the mechanical hoist for which the shaft was made was not in use; (2) the words "employers of workmen" imposed upon sub-contractors, engaged in laying floors in a building in course of erection, liability in respect of the death of one of their workmen who fell through an unguarded well hole which the sub-contractors had left for a staircase in the construction of which the sub-contractors were not concerned.—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD. (1928), 140 L. T. 138; 93 J. P. 59; 45 T. L. R. 141; 27 L. G. R. 27; 28 Cox, C. C. 558, D. C.

153b. —— **Electric crane.**]—By para. 31 of the Building Regulations, 1926, made under Factory & Workshop Act, 1901 (c. 22), which apply to all premises on which machinery worked by steam, water or other mechanical power is temporarily used for the purpose of the construction of a building: "Any part of the premises in which any person is habitually employed shall be covered in such a manner as to protect any person who is working in that part from being struck by any falling material or article."

Pltf., a bricklayer, having been struck while at work on a building under reconstruction by bricks falling from a higher floor & thereby injured, claimed damages for negligence, as having been due to the breach of a statutory regulation—namely, para. 31 set out above. The county ct. judge dismissed the action on the ground that the scaffolding where the accident happened having only been in position for a day & a half, neither pltf. nor any other person was habitually employed there. On appeal:—*Held:* (1) "mechanical power" includes an electric crane; (2) the regulation assumed that workmen would have to move about from one part of the premises to another & imposed a duty upon the employers to afford protective cover against falling material in all parts of the building where it might be required, for the benefit of any person who might be working there. Pltf. was therefore entitled to recover damages for his injury.—KEARNS *v.* GEE, WALKER & SLATER, LTD., [1937] 1 K. B. 187; [1936] 3 All E. R. 151; 106 L. J. K. B. 16; 155 L. T. 519; 52 T. L. R. 38; 80 Sol. Jo. 854, C. A.

180a. —— **Regulations binding on "employer of workman"—Liability of sub-contractor.**]—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD., No. 153a, *ante*.

180b. —— **Extensive building site—House on site completed.**]—Injuries were sustained by two workmen in the employ of resps., who were contractors engaged in the erection of a number of houses on a large area of unenclosed land. At one point on the building site was a mortar mill driven by a petrol engine, & there was also on the site a concrete mixer on wheels, which was moved about the site as occasion required. In the first case the workman injured himself while working on the roof of a house which had almost been completed. The mortar mill was 100 yds. distant from the house, & was not within its curtilage or precincts. In the second case the accident occurred in a completed house from which the mortar mill was 25 yds. & the concrete mixer about 400 yds. distant; neither of these machines had any connection with the accident. In both cases the workmen were disabled for more than three days, but resps. did not send written notice to the inspector of the district. Informations for failing to give notice were preferred against resps. under the Notice of Accidents Act, 1906 (c. 53), as amended by Workmen's Compensation Act, 1923 (c. 42). The justices dismissed both informations:—*Held:* (without deciding whether an extensive building site may be a "factory" within Factory & Workshop Act, 1901 (c. 22), s. 105 (1)), the question of the extent of "premises on which machinery . . . is temporarily used for the purpose of the construction of a building" was one of degree & therefore of fact; & the justices had not misdirected themselves in holding that a house on such a site, when completed, or nearly completed, became a separate set of premises, which could not be deemed to be a "factory" within the Act.—PEASE *v.* SIMMS (W. J.), SONS & COOKE, LTD., [1932] 1 K. B. 723; 101 L. J. K. B. 805; 146 L. T. 366; 96 J. P. 66; 48 T. L. R. 176; 30 L. G. R. 87, D. C.

180c. "**Habitually employed.**"]—KEARNS *v.* GEE, WALKER & SLATER, LTD., No. 153b, *ante*.

Part V.—Conditions as to Employment and Wages.

186. *Add. Annotation :*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428.

190. After this case add :—
——.]—*See* Hairdressers' & Barbers' Shops (Sunday Closing) Act, 1930 (c. 35), s. 3.

192. *Add. Annotation :—As to* (1) **Consd.** Rutherford *v.* Trust Houses, [1926] 1 K. B. 321.

193. *Add. Annotation :—As to* (2) **Distd.** Rutherford *v.* Trust Houses (1925), 89 J. P. Jo. 682.

206a. —— —— **Shops Act, 1913 (c. 24), s. 1.**—Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under sect. 1 (1) of the above Act that instead of the provisions of Shops Act, 1912 (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.—RUTHERFORD *v.* TRUST HOUSES, LTD., [1926] 1 K. B. 321 ; 95 L. J. K. B. 371 ; 134 L. T. 630 ; 90 J. P. 62 ; 42 T. L. R. 148 ; 24 L. G. R. 245 ; 28 COX, C. C. 161, D. C.

208. Before this case add "*See, now,* Shops (Hours of Closing) Act, 1928 (c. 33)."

211. *Add. Annotation :*—**Distd.** Moore *v.* Tweedale, [1935] 2 K. B. 163.

211a. —— **Failure to complete work in time Permanent hair-waving.**]—On a day on which, by Shops Act, 1912 (c. 3), s. 4, & an Order made thereunder, a shop in the occupation of a hairdresser was required to be closed at 1 p.m., two customers attended at the shop by previous appointment for a hairdressing operation which would necessarily last for four hours more or less for the production of what was known as a "permanent wave." One of these customers arrived at the shop at 10.45 a.m., & in her case the operation began at that hour & continued until 2 p.m. The other customer arrived at the shop at 11 a.m., & in her case the operation began at that hour & continued until almost 4 p.m. : —*Held :* though the customers were served for the periods of time indicated after the hour at which the shop was required to be closed under above sect., yet, inasmuch as they were in the shop & being served before that hour, the cases came within the proviso to sub-sect. 7 of the sect., & the occupier

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PART V. SECT. 3, SUB-SECT. 1.

q i. —— *Automatic vending machine.*]—An automatic vending machine attached to a telegraph pole in a public street is not a "shop" within Shops & Offices Act, 1921-22. *Qu. :* the case of an automatic machine which is part of a shop but which can be operated from outside the shop.—LIGHTFOOT *v.* HUGH & G. K. NEILL, LTD., [1929] N. Z. L. R. 848.—**N.Z.**

sk. *Meal-times—Interval for meals—Whether part of hours of employment—Shops Act, 1912 (c. 3), s. 1 (3) & Sched. I.*]—Two employees in a shop began work at 7 a.m. & stopped work at 6.45 p.m. One of them was allowed away for dinner from 10.45 a.m. until 11.45 a.m., the other from 2 p.m. to 3 p.m. approximately :—*Held :* although each of the employees was away during part of the period 11.30 to 2.30, their hours of employment included those hours, & their employer had contravened the above Act by not allowing them an interval of three-quarters of an hour between those hours.—HUTCHISON *v.* CUMMING, [1926] S. C. (J.) 110.—**SCOT.**

sl. *Failure to give annual holidays—Right of action for wages in lieu.*]—Under Shops Act, 1912, s. 21 (6), Sched. V., on failure to comply with the provisions of that Sched. the occupier of the shop is guilty of an offence against the Act & is liable to the penalty therein prescribed. The Sched. provides for an annual holiday for shop assistants without deduction from wages or salary. Pltf. brought a civil bill claiming the sum of £9 0*s.* 0*d.*, being the amount due by deft. for four weeks wages in lieu of the holidays which he had not received :—*Held :* pltf. had a right of action for deft.'s breach of statutory duty to give him a fortnight's holiday with full pay in each year & this right was available in addition to the remedy for recovery of a penalty.—REILLY *v.* MOORE, [1935] N. I. 196.—**IR.**

PART V. SECT. 3, SUB-SECT. 2.—A.

e i. —— ——.]—It is unlawful for the keeper of a shop in which goods of different classes, including fruit & vegetables, are kept for sale, to keep his shop open for the purpose of selling groceries during hours in which the sale of groceries is prohibited, although the same shop is used for the conduct of a "furtive tea-room," & for the sale of fruit & vegetables.—HUNN *v.* REYNOLDS, 22 Tas. L. R. 64.—**AUS.**

e ii. —— ——.]—It is lawful for the keeper of a shop, in which goods of different classes are kept for sale, to keep such shop open for the *bonâ fide* conduct of a tea room during hours in which the sale of goods which are not exempted by Shops Act, 1925, is prohibited.—WEYMOUTH *v.* SHACKCLOTH, 22 Tas. L. R. 7.—**AUS.**

f i. —— *Meaning of "open."*]—A shop is open for trading when it is made accessible to customers for that purpose.—DEVONISH *v.* PORTER, [1928] S. A. S. R. 296.—**AUS.**

o i. ——.]—Where a municipal bye-law, *e.g.*, one requiring shops to be closed on certain afternoons, is in strict accordance with the powers conferred by the Act under which it was passed, it cannot be held to be invalid or unenforceable on the ground that its provisions are unreasonable, uncertain or oppressive.—WINNIPEG MERCHANDISERS, LTD. *v.* WINNIPEG CITY, [1936] 3 W. W. R. 530.—**CAN.**

211 i. *Customer in shop before closing hour—Failure to complete purchase in time—Shops (Early Closing) Act, 1920 (c. 58), Sched. I, Art. 2 (1).*]—An auctioneer, who had closed his premises to the public at the appointed hour, but continued after that hour to conduct retail sales by auction to persons who were already collected within the premises, was held rightly convicted, in respect that, while an auctioneer might complete any transaction which was in progress at the time of closing for the benefit of those then present, he was not entitled thereafter to put up further articles to auction.—GORDON *v.* SOMERVILLE, [1928] S. C. (J.) 45.—**SCOT.**

sf. *Exemption—Sale of "medical & surgical appliances"—Contraceptives.*]—A shopkeeper sold a rubber contraceptive to a customer after the closing hour. Such contraceptives are used to prevent conception & the communication of disease, & their use is sometimes advised by medical men. On the occasion of the sale the door of the shop was not locked, & entrance could be obtained by any one. A notice was exhibited stating that the shop was closed except for the sale of medical & surgical appliances. An assistant was in attendance to serve customers. The shopkeeper having been convicted of a contravention of Shops (Hours of Closing) Act, 1928 (c. 33), s. 1 :—*Held :* the contraceptive was a medical or surgical appliance within Sched. I. of the Shops Act ; &, in order to comply with the provisions of the Act, it was not necessary for the shop to be closed in the physical sense, an intimation that it was open only for the sale of permitted articles being sufficient. Conviction quashed. —WADE *v.* ADAIR, [1933] S. C. (J.) 28.—**SCOT.**

sg. *Application for bye-law—Time for making.*]—The provision that a municipal council shall pass a bye-law within one month of application for early closing of shops, contained in Factory, Shop & Office Building Act, 1932, s. 85 (5), is directory only.—*Re* GREIG & TORONTO, [1934] 4 D. L. R. 248 ; O. R. 514.—**CAN.**

was not guilty of an offence against the Act.—MOORE *v.* TWEEDALE, [1935] 2 K. B. 163; 104 L. J. K. B. 594; 153 L. T. 96; 99 J. P. 221; 51 T. L. R. 437; 79 Sol. Jo. 288; 33 L. G. R. 216; 30 Cox, C. C. 229, D. C.

211b. Right of local authority to make closing order "not being earlier than 8 o'clock"—Order requiring closing at 7 o'clock—Effect of Shop (Hours of Closing) Act, 1928 (c. 33), s. 4.]—*Held:* a closing order under Shops Act, 1912 (c. 3), requiring sweet shops to close at 7 p.m. was not saved by Shops (Hours of Closing) Act, 1928 (c. 33), s. 4, since the provision fixing the closing hour at 7 p.m. was inconsistent with the special provision of the 1928 Act that a closing order in respect of such shops might fix an hour "not being earlier than 8 o'clock in the evening."—KENYON v. STREET, [1931] 1 K. B. 305; 100 L. J. K. B. 214; 144 L. T. 403; 95 J. P. 36; 47 T. L. R. 107; 29 L. G. R. 100; 29 Cox, C. C. 227, D. C.

229a. Silk weavers—Price variable with speed.]—It is no objection to a ticket delivered to a silk weaver under 8 & 9 Vict. c. 128, ss. 1, 2, that, by a condition annexed thereto, the price is made to vary according to the quickness with which the work is done & returned to the master.—SEDDON *v.* COCKER (1861), 25 J. P. 196.

233. *Add. Citation:—previous proceedings, sub nom.* SHARMAN *v.* UNION IRON WORKS CO. (1852), 3 Car. & Kir. 298, N. P.

236. *Add. Annotation:*—**Refd.** Pritchard *v.* James Clay (Wellington) (1925), 42 T. L. R. 139.

261. *Add. Annotations:*—**Consd.** Kenyon *v.* Darwen Cotton Manufacturing Co., [1936] 1 All E. R. 310. **Distd.** Penman *v.* Fife Coal Co., [1936] A. C. 45. **Refd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

263. *Add. Annotations:*—**Apld.** Jones *v.* Harris (1926), 43 T. L. R. 1. **Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Expld. & Distd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310. **Consd.** Kenyon *v.* Darwen Cotton Manufacturing Co., [1936] 1 All E. R. 310; Penman *v.* Fife Coal Co., [1936] A. C. 45.

264a. ——.]—Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5¾*d.* for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, *e.g.*, 5½*d.* for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act:—*Held:* the agreement was a clear attempt to evade the above Act. The workman was employed to make pipes of full length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer."—PRITCHARD *v.* JAMES CLAY (WELLINGTON), LTD., [1926] 1 K. B. 238; 95 L. J. K. B. 107; 134 L. T. 244; 90 J. P. 15; 42 T. L. R. 139; 70 Sol. Jo. 266; 28 Cox, C. C. 122, D. C.

Annotation:—**Distd.** Riversdale Mill Co. *v.* Hart, [1927] 1 K. B. 624.

264b. ——.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by applts., was negligent in performing certain work &, in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the "standard list" rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages:—*Held:* this deduction was not illegal as being in contravention of the Truck Acts.—HART *v.* RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *affg.* S. C. *sub nom.* RIVERSDALE MILL CO. *v.* HART, [1927] 1 K. B. 624, D. C.

Annotation:—**Apld.** Sagar *v.* Ridehalgh, H. & Son, Ltd. [1931] 1 Ch. 310.

264c. ——.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices agreed between the employer's & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deduction to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions:—*Held:* this practice was not rendered illegal by the Truck Act, 1831 (c. 37), s. 3, as it did not involve a deduction for bad work from ascertained wages, but a deduction for bad work made in calculating the wages.—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310; 100 L. J. Ch. 220; 144 L. T. 480; 95 J. P. 42; 47 T. L. R. 189; 29 L. G. R. 421, C. A.

PART. V. SECT. 3, SUB.-SECT. 2.—B.

g i. —— *Trade of tobacconist carried on—No exemption if other trades carried on.*]—In sect. 222 of City Act, 1934, which authorises bye-laws for Wednesday afternoon closing of shops, the definition of "shop," in sub-sect. (11), excludes therefrom any place "where the only trade or business carried on is that of a tobacconist":—*Held:* the exception applies only to those shops in which the trade of a tobacconist is the only trade, it does not apply to shops in which in addition to tobacco articles not connected with the trade in tobacco are sold—R. [illegible], [1936] 3 W. R. 332.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.—B. (b).

n i. —— *Debt owed to third party.*]—Pltf., who was employed by deft. indebted to the W. co. Deft., wit consent of pltf., paid the am owing to the W. co. out of pltf.'s wages. Pltf. subsequently sued to recover this amount on the ground that the pay ment to the W. co. was a contravention of the Truck Act:—*Held:* payment in such circumstance was not a contravention of Truck Act. PILBARRA COPPER FIELDS, LTD. *v.* NEILSEN (1930), W. A. L. R. 34.—**AUS.**

275a. Deduction of rent payable by father of employee.]—Applt. was an oncost workman in resps.' colliery. His father had been in resps.' employment & was tenant of a house owned by them. The father ceased to be employed by resps., but remained tenant of the house, in which he lived with his family including applt. The father failed to pay the rent for the house, & resps. deducted the rent from applt.'s wages, applt. signing a written consent to the deduction in order to save the family from eviction. Applt. brought an action to recover sums amounting to £37 15*s.* 4*d.*, which he alleged were illegally deducted :—*Held :* he was entitled to recover the sum claimed as the deductions were illegal, null & void under Truck Act, 1831 (c. 37), ss. 2, 3.—PENMAN *v.* FIFE COAL CO., LTD., [1936] A. C. 45 ; 104 L. J. P. C. 74 ; 153 L. T. 261 ; 51 T. L. R. 494 ; 79 Sol. Jo. 478, H. L.

Annotation :—**Consd.** Kenyon *v.* Derwen Cotton Manufacturing Co., Ltd., [1936] 1 All E. R. 310.

275b. Scheme for re-opening factory—Employee's shares—Payment by deduction from wages.]—Shortly after entering the employment of defts., pltf. signed two documents. One was an application to defts. to allot to her a number of shares in deft. co. The other contained (*inter alia*) a request that " you [the co.] should deduct from my wages each week & allocate towards payment for my shares the following amounts. . . . Similar applications & requests were later made in respect of further shares. For some weeks pltf. received her net wages in coin & an envelope containing the share subscription in coin, which was immediately handed back to defts. Thereafter pltf. was handed only the net amount & a receipt for the deductions made. Pltf. sued to recover the amount of her wages which had been applied in payment of shares. Defts. counterclaimed the amount due in respect of unpaid instalments of shares :—*Held :* (1) the agreement that deductions should be made from pltf.'s wages was illegal under Truck Acts, & pltf. was entitled to recover the sum claimed, there being no distinction between the two methods employed for the deductions ; (2) the agreement to take & pay for shares was not severable from the illegal agreement relative to deductions, & the counterclaim failed.—KENYON *v.* DARWEN COTTON MANUFACTURING CO., LTD., [1936] 2 K. B. 193 ; [1936] 1 All E. R. 310 ; 105 L. J. K. B. 342 ; 154 L. T. 553 ; 52 T. L. R. 294 ; 80 Sol. Jo. 147, C. A.

276. *Add. Annotations :*—**Apld.** Hart *v.* Riversdale Mill Co., [1928], 1 K. B. 176 ; Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

277. *Add. Annotations :*—**Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

279. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

Part VI.—Administration and Penalties.

299. *Add. Annotations :*—**Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132 ; Sowter *v.* Steel Barrel Co. (1935), 154 L. T. 85.

PART VI. SECT. 3.

296 ii. ——.]—Resp. was charged with selling certain non-exempted goods after prohibited hours. A complaint purporting to be for a similar offence was laid against an employee ; this complaint was bad in law ; both complaints inferentially referred to the same transaction. The employee pleaded guilty ; & thereupon the special magistrate dismissed the complaint against the employer, the two complaints, by consent, being heard together. There was no evidence of a statutory defence provided by sect. 83 of Early Closing Act that the employer had used due diligence to enforce the provisions of the Act or that the offence had been committed without the employer's knowledge, consent or connivance. There was, however, in the complaint against the employee an allegation that he had committed the act charged without the employer's knowledge, consent or connivance :—*Held :* the dismissal of the complaint against the employer was wrong.—ELLIS *v.* NORTHCOTE, LTD., [1929] S. A. S. R. 40.—**AUS.**

xi. *Prosecution by Chief Inspector of Factories—Liability as to costs.*]—The Chief Inspector of Factories for Tasmania may quite properly prosecute offences under Shops Act, 1925, in his official capacity, & so long as he acts *bonâ fide*, he will not be ordered to pay deft.'s costs of an unsuccessful prosecution.—REYNOLDS *v.* GEMMELL, 22 Tas. L. R. 57.—**AUS.**

FAMILY ARRANGEMENTS.

Part I.—Meaning and Formation.

38. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39a. ——.]—A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained.

On the death of W. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. & his wife, who predeceased him, & for whom W. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, & it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. had been discovered, & he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505 ; 101 L. J. Ch. 269 ; 146 L. T. 527.

Part II.—Validity and Effect.

87. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

131. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

164. *Add. Annotation :*—**Refd.** Parr *v.* A.-G., [1926] A. C. 239.

165. *Add. Annotation :*—**Consd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E., [1927] 1 Ch. 138.

PART I. SECT. 3.

32 ii. ——.]—In the usual type of family arrangement, unless any item of property which is admitted by all the parties to belong to one of them is allotted to another there is no "exchange" or other transfer of ownership.

A binding family arrangement of this type can be made orally, & if made orally, no question of registration arises. If such arrangement is followed by a writing containing reference to it, then the question is whether thereby the terms of the arrangement have been "reduced to the form of a document," *i.e.* formally recorded in a document with the purpose that they should be evidenced by that document, & that is a question of fact in each case to be determined upon a consideration of the nature & phraseology of the writing & the circumstances in which & the purpose with which it is written. —RAM GOPAL *v.* TULSHI RAM (1928), I. L. R. 51 All. 79.—**IND.**

PART II. SECT. 1.

n i. ——.]—SIDH GOPAL *v.* BIHARI LAL (1927), I. L. R. 50 All. 284.—**IND.**

t i. ——.]—Where it is proposed to substitute the trusts of a deed of family arrangement for those contained in a will of which probate has been granted to certain named exors. it is proper to provide in such deed for the release of the said exors. from their obligations under the will & for the vesting of the property in the exors., or in such person or persons as are to hold it, upon the trusts comprised in the deed ; & when the approval of the ct. is sought for such a deed, & when there are infant beneficiaries, there should be evidence before the ct. from which it could properly be inferred that the deed is beneficial to such infants.—*Re* SNELLING, SNELLING *v.* HANNA, [1930] N. Z. L. R. 426.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 1.

65 i. *What is sufficient consideration.*] —*Held :* a promise by a married man to abandon the intention which he & his wife had formed of starting life elsewhere & to remain in the homestead & build a house is sufficient consideration for the promise of his uncles, aunt, & grandmother to give him 100 acres of the homestead lands.—ROBERTSON *v.* ROBERTSON (1933), 6 M. P. R. 370.—**CAN.**

PART II. SECT. 7.

136 ii. —— ——.]—HAWKINS *v.* AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

8a. *Compromise between husband & wife—Respecting wife's property—Concealment of fact by husband.*]—Specific performance decreed of an agreement in the English form made between husband & wife, Armenian Christians, in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement :—*Held :* under the circumstances, that fact even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity.—GREGORY *v.* COCHRANE (1860), 8 Moo. Ind. App. 275.—**IND.**

FEDERAL CONSTITUTIONS.

See DEPENDENCIES AND DOMINIONS.

FERRIES.

Part I.—Definition and Nature of Ferries.

6. *Add. Annotation :—Generally,* **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

8. For the paragraph in the original volume substitute the following paragraph :—

——.]—Defts., under a statute of 1791, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held :* as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—YORKSHIRE, EAST RIDING, COUNTY COUNCIL *v.* SELBY BRIDGE CO. OF PROPRIETORS, [1925] Ch. 841 ; 95 L J. Ch. 86; 133 L. T. 628 ; 41 T. L. R. 602 ; 69 Sol. Jo. 775 ; 23 L. G. R. 547.

13a. —— —— —— **Persons able to cross on foot at low water.**]—Pltfs. were the owners of a ferry connecting the highway at South Benfleet with the highway at Canvey Island over a tidal creek which at low water could be traversed on foot & they sought to establish their right to an ancient ferry. They proved that as long as living memory went there had always been at this place a ferry with a uniform rate of charge during the day, though at night a different charge had been made, & at times during the night there had been refusal to carry passengers :—*Held :* there was evidence from which a presumption ought to be made of a grant in times gone by of a franchise ferry of which pltfs. were not in possession, & though there was evidence of acts which were not permissible by the owner of the ferry, & which were wrongful as between him & the public, such acts were due to ignorance of his rights, & were not sufficient to rebut the evidence of a franchise ferry.—LAYZELL *v.* THOMPSON (1926), 91 J. P. 89 ; 43 T. L. R. 58 ; *affd.* (1927), 96 L. J. Ch. 332, C. A.

31a. —— ——.]—The landing stage constructed in Poole Harbour at South Haven Point by the Bournemouth-Swanage Motor Road & Ferry Co. under their private Act of 1923 is the private property of the co., & they are entitled to prevent any one from using it except in connection with their ferry & on payment of the appropriate tolls.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS (1930), 144 L. T. 132 ; 95 J. P. 9; 47 T. L. R. 16 ; 29 L. G. R. 22, C. A.

Part II.—Creation and Transfer of Ferries.

34. *Add. Annotations :—As to* (3) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58. *As to* (5) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

35. *Add. Annotations :*—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

35a. ——.] — LAYZELL *v.* THOMPSON, No. 13a, *ante.*

51. *Add. Annotation :—As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

55a. Extent of right—Whether exclusive right of ferry—Construction of Act.]—By a private Act pltfs. were empowered to make & maintain a motor road from South Haven Point in the parish of Studland in the county of Dorset to a public road leading from Studland to Swanage. By sect. 56 of the Act they were empowered to establish, maintain, work & use a ferry service for passengers, animals, vehicles & goods between the Sandbanks & South Haven Point within Poole Harbour. By sect. 62, passed for the protection of the Poole Harbour Comrs., pltfs. were required to establish or acquire & thereafter continuously work the ferry by means of a vessel propelled by steam on a chain cable system, & by sects. 62, 97, passed for the benefit of certain landowners, they were required to provide from seven o'clock in the forenoon when summer time should be in force & from eight o'clock in the forenoon at all other times of the year until one hour after sunset on every day a minimum hourly service of vessels from each shore. The two sects. contained provisions

PART I. SECT. 1.

9 i. *A franchise—Under licence from Crown.*]—A ferry is a franchise, that no one can erect without a licence from the Crown. It is *publici juris,* & when a ferry is erected, another cannot be erected without a licence ; the Crown has a remedy *a quo warranto,* & the former grantee has a remedy by action.—SIRAJGANJ LOCAL BOARD (CHAIRMAN) *v.* BUDHISWAR PATNI (1930), I. L. R. 57 Calc. 1261.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.—A.

sc. *Extinguishment of right of owner of termini.*]—The general right of the owner of land on either bank of a river to establish a ferry for profit must give way if it comes in competition with the grantee of the Government who has previously enjoyed a monopoly under his grant.—DHANPAT PANDEY *v.* PASPUT PRATAP SINGH (1931), I. L. R. 53 All. 764.—**IND.**

enabling Poole Harbour Comrs. & the landowners respectively to exercise certain powers & rights in case pltfs. should cease working the ferry or fail to work it continuously & efficiently. They established a ferry service in accordance with these provisions :—*Held :* the Act did not confer on pltfs. an exclusive right of ferry, & that they were not entitled to an injunction restraining defts., who for many years before the Act had in fact carried passengers between the Sandbanks & South Haven Point without claiming any franchise entitling them to do so, from carrying passengers bicycles & goods across the mouth of Poole Harbour within or near the limits of pltfs.' said ferry.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS, [1930] A. C. 549 ; 99 L. J. Ch. 337 ; 143 L. T. 313 ; 46 T. L. R. 439 ; 28 L. G. R. 351, H. L.

Part III.—Rights, Duties and Liabilities of Ferry Owner.

63. *Add. Annotation :—As to* (1) **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

65. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

66. *Add. Annotations :—As to* (1) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. *Generally*, **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254 ; Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

71a. Exemption from tolls—Crown.]—By a local Act of Parliament private landowners were authorised to establish & maintain a ferry service at Torpoint, Cornwall, across the river Tamar, & to charge tolls for its use. Avoidance of the tolls by the running of any boat service for hire in competition with the ferry was penalised by the Act, but officers & other servants of His Majesty were exempted from this provision, & their vessels were allowed free passage between the points served by the ferry. By another sect. of the Act, the ferry owners & their successors were exempted from the payment of rates & taxes in respect of the ferry. By Ferries (Acquisition by Local Authorities) Act, 1919 (c. 75), deft. council became the owners of the Torpoint ferry. Upon a summons to determine what, if any, officers, men, or other persons in His Majesty's service were entitled to be borne free of charge or toll, by the Torpoint ferry : —*Held :* the Crown's general prerogative of exemption from the payment of tolls cannot be deemed to have been abandoned by implication, in respect of tolls created by any Act of Parliament, either (*a*) by reason merely of the specific exemption in such Act of any class of His Majesty's servants from the payment of tolls, nor (*b*) from the fact that the Crown has foregone or curtailed its rights in any other direction (*e.g.* that of imposing taxation) elsewhere in such Act.—A.-G. *v.* CORNWALL COUNTY COUNCIL (1933), 97 J. P. 281 ; 31 L. G. R. 364.

87. *Add. Annotation :—As to* (2) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

Part IV.—Disturbance of Ferries and Remedies Therefor.

109. *Add. Annotation :—Generally*, **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

150. *Add. Annotations :—As to* (1) **Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758. *As to* (3) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686, *Generally*, **Refd.** Layzell *v.* Thompson (1926). 43 T. L. R. 58.

151a. —— ——.]—LAYZELL *v.* THOMPSON, No. 13a, *ante*.

PART IV. SECT. 2, SUB-SECT. 3.—B.

sb. *Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held :* conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers, in the absence of any rival title in favour of defender, a *primâ facie* title to sue, without the necessity of averring on what their author's titles were founded.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 4.

sd. *Right of ferry exercised by others.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held :* a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* M'DONALD, [1924] S. C. 835.—**SCOT.**

Part VI.—Taxation and Rating of Ferries.

167. *Add. Annotation* :—**Consd.** Cadbury Bros., Ltd. *v.* Sinclair (1933), 103 L. J. K. B. 29.

FIDELITY INSURANCE.

See INSURANCE.

FISHERIES.

Part I.—In General.

2. *Add. Annotations :—As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (3) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

3. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Add. Annotations :—**Expld. & Folld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

Part II.—Public Fisheries.

29. *Add. Annotation :—As to* (2) **Refd.** The Fagernes, [1926] P. 185.

48. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

50. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

57. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. **Refd.** South Staffordshire Mines Drainage Comrs. *v.* Elwell (1927), 91 J. P. 153.

Part III.—Private Fisheries.

111. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

173. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

176. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac-Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

176a. Fishing rights—Whether part of " premises " within Landlord & Tenant Act, 1927 (c. 36),

PART II. SECT. 1, SUB-SECT. 1.—A.

9 iii. —— —— *Whether right to interfere with obstruction.*]—Though every subject has a common right of fishery in the sea, a person in possession of a weir built below low water mark may maintain trespass against a wrong-doer who interferes with his possession, though, as against the Crown, the weir was wrongfully there.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

20 i. —— *Between high & low water mark—Effect of grant of soil.*]—The fact that the soil between high & low water marks has been granted does not interfere with the public right of fishery.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.—B.

40 i. *Exclusion of public right—By private fishery—Grant by Crown.*]—An exclusive right of fishery in public, tidal & navigable rivers may be granted by the Crown to private individuals.—ARJUN KAIBARTA *v.* MANORANJAN DE BHOUMIK (1933), I. L. R. 61 Cal. 45.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.—B.

109 ii. —— —— *Whether prescriptive right of fishing from old banks exercisable from new banks.*]—Where the right of salmon-fishing had been exercised from banks on the bed of a river for more than forty years, but, from changes in the river, new banks had been formed, one of which had existed for less than that period :—*Held :* the possession of the fishings from this new bank was only an exercise of the right of fishing previously exercised from the former banks, the substantial right of fishing being the matter to be regarded & not the particular stations from which the right was exercised.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469 ; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 1, SUB-SECT. 5.

130 i. *Inland non-tidal lake—Land vested in Crown—Rights of owner or lessee of land extending to lake.*]—MCDONALD *v.* LINTON (N. B.), [1926] 3 D. L. R. 779.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A.

k i. ——.]—By the charter of the City of St. John, all the lands & waters within certain defined limits, bounded by low water mark, were granted by the Crown to the city, with all the rights & privileges appurtenant thereto, including fishing ; & to the freemen & inhabitants of the city was granted the sole & exclusive privilege of fishing, & erecting weirs between high & low water marks :—*Held :* the exclusive right of fishing granted by the charter did not extend to any part of the sea shore beyond the bounds of the city, though it was within the harbour of St. John.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

154 xi. —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

the validity of the documentary title relied on, & further contended that, by the provisions of Magna Carta, the Crown was prohibited from granting a several or sole & exclusive fishery in the *locus in quo* in case such was not existing in or before the year 1189, & any grant by the Crown contrary to the provisions aforesaid was null & void ; that a several or sole & exclusive fishery in the *locus in quo* in or before the year 1189 did not in fact exist, & was not historically possible ; & that the said documents of title & the historical evidence given showed that the claim to a several or sole & exclusive fishery in the *locus in quo* was modern in origin, & dated at the earliest from the times of Queen Elizabeth & King James I. :—*Held :* there was nothing in the terms of Magna Carta, c. 16, or the writings of ancient lawyers, or the judgments in modern cases to support the proposition that, whether the several fishery was actually in the hands of the Crown at the time of the death of Henry II., or in the hands of an assignee or feudatory of the Crown, or even of an intruder, the original act of appropriation must have been effected by the Crown itself.—MOORE *v.* A.-G., [1929] I. R. 191 ; *revsd.*, [1934] I. R. 44.—**IR.**

PART III. SECT. 3, SUB-SECT. 2.

sb. *Right of lessee to cut bushes along bank necessary for fishing.*]—Pltf. by indenture under seal, leased to deft. for a term of years, with the right to renew, pltf.'s land on the E. River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by pltf. were for cutting bushes along the bank of the river :—*Held :* the burden of proof was upon pltf., & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—MCKEEN *v.* PATTILLO (1927), 59 N. S. R. 452.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

sf. *Under Fisheries Act—Effect.*]—*Held :* the licences granted to pltf. under Fisheries Act gave him no several right of fishery, & he could not therefore succeed in an action for interference with the fishery by pollution.—FILLION *v.* NEW BRUNSWICK INTERNATIONAL PAPER CO., [1934] 3 D. L. R. 22 ; 8 M. P. R. 89.—**CAN.**

s. 5.]—Where an incorporeal right, such as a right of fishing, is demised along with corporeal hereditaments by the same lease, & the lessee uses both for the purpose of his trade or business, the incorporeal right is part of the " premises " within above sect. Therefore, on the expiration of such a lease, the lessee, if he can show that the compensation for goodwill to which under the Act he would be entitled would not compensate him for the loss of goodwill if he removed to & carried on his trade or business in other premises, may require a new lease of the premises which shall include the incorporeal right demised by the original lease.—WHITLEY *v.* STUMBLES, [1930] A. C. 544; 99 L. J. K. B. 518; 143 L. T. 441; 46 T. L. R. 555; 74 Sol. Jo. 488, H. L.; *affg.* S. C. *sub nom.* STUMBLES *v.* WHITLEY, [1930] 1 K. B. 393, C. A.

278. *Add Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

289. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

312a. —— **& arrest of angler—Outside limits of fishery—Reasonable belief that angling within limits.**]—Defts., servants of P., apprehended pltf. while fishing in the night-time near the mouth of the river O., in Carnarvonshire, in which river P. had a several fishery. In an action of trespass for this arrest, defts. gave much evidence to show that P.'s fishery included the place where the pltf. was apprehended. The jury, however, defined the limits of the fishery so as to exclude that place by a few yards; but they also found that P. & defts. believed that it included that place:—*Held :* defts. were entitled to the protection of the 7 & 8 Geo. 4, c. 29, ss. 35 & 63.—HUGHES *v.* BUCKLAND (1846), 15 M. & W. 346; 3 Dow. & L. 702; 15 L. J. Ex. 233; 7 L. T. O. S. 91; 10 J. P. 725; 10 Jur. 884; 153 E. R. 883.

318. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

343a. —— —— **No pecuniary damage.**]—Pltf. was the owner of two several & exclusive fisheries in the River Ouse below Ely. Defts. carried on the business of beet sugar manufacturers at a factory abutting on the Ouse some miles above pltf.'s fisheries. Pltf. alleged that in the course of defts.' manufacturing operations, & in particular from Sept. 1933, to Jan. 1934, following the beet harvest, large quantities of refuse & effluent were discharged from the factory into the river, & by reason of that he had suffered damage & his fisheries had been prejudicially affected. He claimed an injunction accordingly & damages. At the hearing evidence was also given as to injury to the fisheries between Sept. 1934, & Jan. 1935:—*Held :* disturbance of a several fishery is an invasion of a legal right, & in such a case it is not necessary to prove pecuniary loss, but the injury to the legal right carries with it the right to damages; but pltf. had failed to show that the injury to his fisheries had been caused by the acts of defts.—NICHOLLS *v.* ELY BEET SUGAR FACTORY, LTD., [1936] Ch. 343; 105 L. J. Ch. 279; 154 L. T. 531; 80 Sol. Jo. 127, C. A.

353a. —— ——.]—In May & Oct. 1922, some dead fish were observed in a river, at a spot below that from which a drain-pipe leading from certain gasworks entered the river. Samples of the effluent from this pipe were taken on each occasion, which, on analysis, were found to contain matter highly poisonous to fish. The owner of the fishing rights over that part of the river affected commenced an action for an injunction & damages against the owners of the gasworks:—*Held :* it was satisfactorily proved that the effluent from the gasworks was, on each occasion, the cause of the death of the fish, & pltf. was entitled to an injunction & damages.—GRANBY (MARQUIS) *v.* BAKEWELL URBAN DISTRICT COUNCIL (1923) 87 J. P. 105; 21 L. G. R. 329.

354. *Add. Annotation :*—**Expld. & Distd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

Part IV.—Fisheries in relation to Navigation.

356. *Add. Annotation :*—*As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

366. *Add. Annotation :*—**Refd.** The Carlgarth, The Otarama, [1927] P. 93.

368. *Add. Annotation :*—*As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

PART III. SECT. 3, SUB-SECT. 4.

d i. —— *Extent of rights acquired.*]—*Held :* the right which may be acquired by possession of forty years on a grant of salmon-fishings pertaining to lands situated on one side of a river (*a*) is not limited to the fishings in that part of the river which is *ex adverso* of the lands; & (*b*) may extend to fishings beyond the *medium filum* of the river.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 2.

sh. *Ownership of land abutting on river—Tenant at will.*]—A person in possession of land bordering on a non-tidal river, as a tenant at will of the owner, is entitled to be treated as a riparian owner, so far as regards the right of fishing.—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.—A.

m i. —— —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

PART III. SECT. 5, SUB-SECT. 2.—C.

c i. —— *Centuries.*]—MOORE *v.* A.-G., [1929] I. R. 191.—**IR.**

PART III. SECT. 7.

286 i. *Right of way—& right to repair embankments.*]—Where right of fishery had been granted in respect of two pieces of land, surrounded on all sides by embankment, & described in the lease as " *bheri jami jalkar* ":—*Held :* the expression " rights over fisheries " to be found in Bengal Tenancy Act, s. 193, includes, also, the user of land for the purpose of fishing or for the purpose of repairing embankments in the interest of fishing.—NANI LAL MANDAL *v.* PRIYA NATH RAY (1929), I. L. R. 56 Calc. 1170.—**IND.**

Part V.—Statutory Enactments relating to Salmon and Freshwater Fisheries.

387. *Add. Annotation :*—**Refd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

Part VI.—Statutory Enactments relating to Salt Water Fisheries and Sea Fishing.

485. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

497a. —— **Jurisdiction of superintendent—When arising.**]—Pltfs., who were the owners of a

PART V. SECT. 1, SUB-SECT. 2.

c i. —— *Power to restrict fishing for salmon—Riparian owners on non-tidal river.*]—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

c ii. —— —— *Riparian owners on estuary—Titles acquired prior to July, 1867.*]—DELANEY *v.* MCDONALD (1883), 23 N. B. R. 139.—**CAN.**

PART V. SECT. 3.

g i. —— *To seize nets.*]—Ontario Game & Fisheries Act, s. 6 (5), makes it the duty of every overseer to seize all nets used contrary to the regulations, & sect. 80 of the Dominion Act makes a similar provision; by s. 5 of the Dominion Act the Governor in council is empowered to appoint fishery officers, & by order in council the Provincial officers are in substance made Dominion officers.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.—D. (a).

sk. *Within two hundred yards of weir—Weir used for supplying water to mills, factories, or for navigation—Fisheries (Ir.) Act*, 1850 (*c.* 88), *s.* 37.]—IRELAND *v.* QUIRKE, [1928] I. R. 231.—**IR.**

sl. *Keeping purse-seine open.*]—R. *v.* MCPHERSON (B. C.), [1929] 2 W. W. R. 141; 51 Can. Crim. Cas. 419.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

n i. —— ——.]—The owners of a bag-net fishery duly removed the leaders of their bag-nets during the weekly close time. In spite of this, they caught 165 salmon during eleven successive weekly close times :—*Held :* the owners were guilty of a contravention of Salmon Fisheries (Scotland) Act, 1868 (c. 123), s. 15 (2), in respect that compliance with bye-laws did not avoid the duty of observing the statutory prohibition against fishing for or taking salmon during the weekly close time.—ABERDEEN HARBOUR COMRS. *v.* STOTT, [1927] S. C. (J.) 35.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 1.

sp. *Election of conservators—Validity of proxy.*]—A proxy to vote "at the next election" does not sufficiently "specify" the day of the meeting at which such proxy is to be available within Stamp Act, 1870 (c. 97), s. 102 (1).—R. *v.* M'INERNEY (1891), 30 L. R. Ir. 49.—**IR.**

PART V. SECT. 6, SUB-SECT. 1.

sr. *Duty to erect grating in tail race of mill—Although banks of adjoining owner affected.*]—Deft. was fined at petty sessions for failing to erect a grating or lattice across the tail race of his mill at a point where the tail race re-enters the river "F." The river "F." is a river in which there are salmon. For a certain distance before & at the point where the tail race re-enters this river it is bounded on both sides by lands that belong to an adjoining owner, & not to the deft., the owner of the mill. There was no grating or lattice on the tail race where it diverged from or re-entered the river; to construct the grating or lattice, it would be necessary to erect piers that would project into the banks, on the side of the tail race, the property of the adjoining owner. Deft. had started the necessary work of erecting the grating, but had abandoned it in consequence of the objection of the adjoining owner to any trespass on his lands. Deft. had the use of the tail race from the moment it left his own lands until it reached the river :—*Held :* deft. was under a statutory obligation by 5 & 6 Vict. c. 106, s. 76, to erect the grating even though it entailed an interference with the banks of the adjoining owner.—R. (STEWART) *v.* RECORDER & JJ. FOR LONDONDERRY, [1930] N. I. 104.—**IR.**

PART V. SECT. 9.

sw. *Action against Crown servants—Jurisdiction of Exchequer Court.*]—At Livingstone's Cove, Nova Scotia, is a breakwater owned by the resp., to provide a shelter for boats of shallow draught. In this cove suppliant had set a salmon trap net under licence from the Department of Marine & Fisheries. Dredging operations were being carried on in the vicinity of the breakwater by the Department of Public Works under the supervision & direction of one of its officers. The tug *A.*, hired by resp., whilst moving a loaded scow to the dumping grounds came into contact with suppliant's net, seriously damaging the same. The action was to recover the value, or cost of repairing the net & the loss of the use thereof for about one month :—*Held :* the master & crew of the tug *A.*, the crew of the scow, & the master & crew of the dredge were servants of the Crown employed upon a public work within sect. 19c of Exchequer Ct. Act, & the ct. had jurisdiction to hear & entertain the action. On the evidence, the net in question was not an interference to navigation within sect. 33 of Fisheries Act, 1927, & the master of the tug *A.*, was negligent in moving the scow as & when he did; suppliant was entitled to damages for the injury caused to his net & damages for the loss of the use of his net.—MASON *v.* R., [1933] Ex. C. R. 1; *affd.*, [1933] S. C. R. 332; 4 D. L. R. 309.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 4.

sz. *Order to proceed to nearest port—Onus of proof as to port.*]—The master of a trawler, who had refused to comply with a direction to proceed to Stornoway given by a British sea fishery officer, was charged with contravening Sea Fisheries Act, 1883 (c. 22), s. 14 (2). Stornoway was not the nearest port to the place where the direction was given, & the prosecutor made no attempt to prove that it was the most convenient port :—*Held :* the fact that a sea fishery officer directed accused to go to Stornoway raised a strong presumption that Stornoway was the most convenient port within Sea Fisheries Act, 1883, s. 12 (8); it was open to accused to rebut that presumption; &, as accused had not been allowed to cross-examine the prosecution witnesses on the question of convenience, it was impossible to hold that he ought to have been convicted.—MACKENZIE *v.* JINKS, [1934] S. C. (J.) 48.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

r i. —— *Grant of licence—Validity of regulations.*]—Sect. 69A of the Fisheries Act provided, among other things: that, under licence from the Minister a vessel registered as a British ship in Canada & owned by "a Canadian or a Canadian co. with its principal place of business in Canada," is allowed to use an "otter" or other similar trawl. Moreover under this Statute, rules & regulations might be made by Order in Council, & the same were made providing that such licence could be granted only to "Canadian built" vessels, & that after Apr. 1932, none but such would be eligible for licence, & further providing that after Apr. 1, 1930, a licence fee of one cent a pound on the fish caught should be payable. This fee in the case of deft. would amount to between $130,000 to $150,000 a year :—*Held :* as the regulations ignore the statutory limitation to British ships registered in Canada or owned by a Canadian, etc., & fix as the condition upon which the licence would issue that such ships be Canadian built, & such condition being obviously beyond the scope of the Act, & the delegated powers, such regulations are *ultra vires*, unenforceable, null & void.—R. *v.* NATIONAL FISH CO., LTD., [1931] Ex. C. R. 75.—**CAN.**

sm. *Prohibition against use of nets—Accused charged as "master or person in charge"—No evidence that accused on board.*]—*Held :* as there was no statutory provision making the master of a vessel liable, as such, for a contravention of the bye-law, &, as the bye-law might be contravened by "any person," the prosecutor was bound to prove that the accused was on board the vessel at the time.—SHIACH *v.* FARQUHAR, [1929] S. C. (J.) 88.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 1.—C.

so. *Prohibition against use of crayfish pots—Condemnation of boat & appurtenances—Failure to summon joint*

steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within Merchant Shipping Act, 1894 (c. 60), s. 387, which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages: —*Held:* (1) the county ct. had jurisdiction to entertain the action notwithstanding the section, inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the section did not either expressly or by implication exclude that jurisdiction; (2) the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677; 99 L. J. K. B. 197; 142 L. T. 484; 46 T. L. R. 236; 18 Asp. M. L. C. 97.

497b. —— **Jurisdiction of county court.** *v.* POWELL, No. 497a, *ante*.

Part VII.—Whale and Seal Fisheries.

507. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

508. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

owners.]—FISHERIES COMRS. *v.* BUTTON, (1925), 21 Tas. L. R. 8.—**AUS.**

PART VI. SECT. 4, SUB-SECT. 4.

sp. *Bounty—Time of service on ship—Regulations of December* 10, 1897.]—SNOW *v.* R. (1907), 11 Exch. C. R. 164. —**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

h i. —— ——.]—(1) To justify an entry by a foreign fishing vessel into Canadian territorial waters on the ground of "stress of weather," the weather must be such as to produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. In each case the questions whether the master fairly & honestly on reasonable ground believed it necessary to take shelter, & whether he exercised reasonable skill, competence & courage in the circumstances, are questions of fact for the tribunal whose duty it is to find the facts.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, did not apply to the Pacific waters so far as fisheries were concerned, & therefore could not be available as justification for the entry in question.—THE MAY *v.* R., [1931] S. C. R. 374; 3 D. L. R. 15.—**CAN.**

h ii. —— ——.]—(1) To justify, as against incurrence of penalty under the Customs & Fisheries Protection Act, R. S. C., 1927, s. 10, a foreign fishing vessel entering Canadian territorial waters on the ground of "stress of weather," there must be such a condition of atmosphere & sea as would produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. A want of *bona fides* would abrogate any right or privilege to shelter given by the statute. Further, weaknesses in a vessel may be such, as instanced in certain respects in the present case, as, *e.g.*, glass of inadequate thickness in pilot house windows a small height from the sea, constituting a special danger from waves, that any distress arising from them should be deemed a distress created by the owner or master himself.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, has no application to Canadian territorial waters on the Pacific Coast, so far as fisheries are concerned. Even if it had, deft. vessels could claim no privilege under it, as the only permission to take shelter in Canadian waters given by the proviso to art. 1 thereof is permission to enter "bays or harbours," & the place where they were seized was not shown to be a bay or harbour.—THE QUEEN CITY *v.* R., THE TILLIE M. *v.* R.; THE SUNRISE *v.* R., [1931] S. C. R. 387; [1931] 3 D. L. R. 147; *affg.*, 43 B. C. R. 494.—**CAN.**

h iii. —— ——.]—The *N. S.* entered the port of North Sydney, from the fishing grounds off Ingonish, N. S., for the alleged purpose of effecting repairs to her engines. On the same day, after effecting certain repairs & after clearing outwards, her master purchased 5¼ tons of ice from a local dealer, without licence or permit. The *N. S.* was shortly afterwards seized for an infraction of sect. 10 (*c*) of Customs & Fisheries Protection Act: —*Held:* though an American vessel may, under Fisheries Treaty, 1818, enter a Canadian port for the purpose of making repairs therein, this did not render lawful the act of her master in purchasing ice as aforesaid, contrary to the provision of Customs & Fisheries Act, & the vessel was lawfully seized & forfeited.—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155.—**CAN.**

PART VII. SECT. 2.

b i. —— *Division of proceeds—Ship-wrecked sailors on board sealer.*]—CONNELL *v.* RORKE (1859), 4 Nfld. L. R. 394.—**NFLD.**

PART VIII. SECT. 1.

a i. —— ——.]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held:* the omission invalidated the conviction.—TANGNEY *v.* KERRY COUNTY DISTRICT JUSTICE, [1928] I. R. 358.—**IR.**

a ii. —— ——.]—O'S. was also convicted at the same time on another summons for unlawfully using a net for the purpose of taking salmon or trout in the said tidal waters without being duly licensed, contrary to 13 & 14 Vict. c. 88, s. 12. That section provides for such offence a pecuniary penalty, & also the forfeiture of the net used. The district justice's conviction on this summons did not order the forfeiture of the net. It was the same net the forfeiture of which was ordered by the justice in the other conviction:—*Held:* the conviction was bad for not ordering the forfeiture of the net, notwithstanding the fact that its forfeiture was ordered by the other conviction. — THE STATE (O'SULLIVAN) *v.* CIRCUIT COURT JUDGE OF CORK, [1931] I. R. 733.—**IR.**

sg. *Fishing quahangs without licence.*] —Fine for fishing quahangs without a licence reduced because of mitigating circumstances.—GILLIS *v.* R., [1936] 1 D. L. R. 769; 65 Can. C. C. 127.—**CAN.**

PART VIII. SECT. 5.

526 i. *General rule — Jurisdiction ousted.*]—R. (MOORE) *v.* O'HANRAHAN, [1927] I. R. 406.—**IR.**

m i. ——.]—R. *v.* HARRAN (1912), 21 O. W. R. 951; 3 O. W. N. 1107; 3 D. L. R. 753.—**CAN.**

FOOD AND DRUGS.

Part II.—Adulteration and Impoverishment.

of Food & Drugs Acts, 1875-1927, *are consolidated by Food & Drugs (Adulteration) Act*, 1928 (c. 31).

76. *Add. Annotation :*—**Follld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78. *Add. Annotation :—As to* (2) **Apld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78a. —— ——.]—(1) Where a person is charged with selling to the prejudice of a purchaser an article of food which is not of the nature, substance & quality demanded, & the article is one for which there is no recognised standard of quality, it is the duty of the ct. to fix a standard, in the sense of having regard to a minimum below which the article must be regarded as deficient.

(2) Where an analyst expresses in a certificate an opinion as to the quality or genuineness of an article, the ct. must accept it, if uncontradicted.

(3) A wholesale merchant cannot be convicted of aiding & abetting a retailer, if the wholesaler was not present when the retail sale complained of took place, nor if there is no evidence that he knew the composition of the article.—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., [1928] 1 K. B. 217; 96 L. J. K. B. 750; 137 L. T. 347; 91 J. P. 118, 43 T. L. R. 516; 25 L. G. R. 306; 28 Cox, C. C. 397, D. C.

Annotation :—As to (3) **Refd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

98a. Liability of wholesaler—Sale by retailer.]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

101. *Add. Annotation :—As to* (1) **Refd.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

135. *Add. Citations :*—23 L. G. R. 15; 27 Cox, C. C. 672.

140. *Add. Citations :*—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.

Add. Annotation :—As to (2) **Refd.** Preston *v.* Grant (1924), 94 L. J. K. B. 125.

147. *Add. Annotation :—As to* (1) **Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

148. *Add. Annotation :*—**Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150. *Add. Annotation :—As to* (1) **Consd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150a. —— **Absence of recognised standard.**]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

169a. Vinegar.]—PRESTON *v.* JACKSON (1928), 73 Sol. Jo. 712.

174. *Add. Annotation :*—**Follld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

187. After this case insert "**Addition of colouring matter to milk.**]—*See* No. 218a, *post*."

198. *Add. Annotation :*—**Refd.** Woolworth & Co. *v.* Pottier (1935), 33 L. G. R. 527.

217a. Warranty on order form—Order form retained by seller.]—By Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 29 (1), it is a defence on a prosecution for selling drugs not of the nature, substance or quality demanded by the purchaser for deft. to prove that he purchased the drugs as being of the nature, substance & quality so demanded & with a written warranty to that effect & that he had no reason to believe at the time he sold the drugs that they were otherwise, & that he sold them in the same state as when he bought them. Applts. gave an order for drugs on an order form specifying that the goods were ordered on the condition that the suppliers warranted them to be of the nature, substance & quality described in the order. The suppliers placed their initials on the order form & in due course delivered the goods, retaining the order form in their own possession :—*Held :* the initialled order form was a written warranty within sect. 29 (1), notwithstanding that it did not come into the possession of applts. until after the prosecution had been instituted.—WOOLWORTH (F. W.) & CO., LTD. *v.* POTTIER (1935), 80 Sol. Jo. 111; 33 L. G. R. 527, D. C.

218a. —— **Milk adulterated with colouring matter.**]—The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a

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PART II. SECT. 2, SUB-SECT. 4.—B. (c).

r i. ——.]—Under the Sale of Food & Drugs Acts the certificate of a public analyst is *primâ facie* but not conclusive evidence.—TODD *v.* COCHRANE (1901), 38 Sc. L. R. 801.—SCOT.

PART II. SECT. 3, SUB-SECT. 3.—B. (b).

101 ii. —— —— *Sale by servant or agent.*]—To prove a limited co. guilty of the offence of selling an article which does not conform with the regulations made under Food & Drugs Act, 1903, it must be shown that the sale was made on its behalf by a servant or agent who had authority to sell. Where a sale was made by a servant who had no authority to sell anything, it was held that the sale did not constitute an offence by the co.—MITTON *v.* R. G. LOCK & CO., LTD., [1928] S. A. S. R. 444.—AUS.

PART II. SECT. 3, SUB-SECT. 3.—C. (a).

110 iii. —— *Whether property passed —Food & Drugs Act*, 1903, *ss.* 5, 22.]—WALTERS *v.* MITTON, [1926] S. A. S. R. 261.—AUS.

PART II. SECT. 3, SUB-SECT. 3.—C. (b) iv.

142 i. —— *Notice not seen by purchaser—Onus of proof.*]—Where an article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness :—*Held :* the seller must prove that the contents of the label were brought to the notice of the purchaser.—PATTERSON *v.* FINDLAY, [1925] S. C. (J.) 53.—SCOT.

PART II. SECT. 3, SUB-SECT. 3.—D. (b).

sd. *Coffee.*]—K. having asked accused for coffee, received a mixture containing at least 67 per cent. of chicory. When he asked for coffee K. expected to get an addition of chicory according to commercial usage :—*Held :* what K. got was substantially chicory containing an addition of some coffee, & the commodity was not of the nature, substance & quality demanded.—MOODLEY *v.* R. (1927), 48 N. L. R. 395.—S. AF.

defence nor contains any provision that it is to be read with any Act containing such a defence.—REEMAN *v.* KNAPP (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.

243a. What amounts to.]—Applts., who manufactured an article called "R.'s rum & butter toffee," supplied it to a confectioner with a warranty, & on analysis it was found to contain rum & butter, & coconut fat. On a summons against applts. for giving a false warranty there was evidence that toffee made partly with coconut fat had been sold for years as "rum & butter toffee." The justices convicted applts.:—*Held:* the description "butter toffee" implied that no fat, except butter, was used in the manufacture, & the conviction must be affirmed.—RILEY BROTHERS (HALIFAX), LTD. *v.* HALLIMOND (1927), 44 T. L. R. 238, D. C.

261a. —— Proceedings against previous seller—Previous analysis before proceedings against retailer.]—An inspector appointed under the Sale of Food & Drugs Acts bought a sample of ground ginger from a retail shop. He complied with the provisions of Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 18, with regard to the division of the sample into three parts, delivering one part to the seller & having an analysis made. Upon analysis the ground ginger was found to contain an added preservative, contrary to the provisions of the Public Health (Preservatives, etc., in Food) Regulations, 1925. The retailer was convicted upon an information charging him with the sale of the ground ginger to the prejudice of the purchaser under Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 2. Subsequently, proceedings were commenced against the previous seller of the ground ginger for wilfully neglecting to obey the Public Health (Preservatives, etc., in Food) Regulations, 1925, by selling the ground ginger to the retailer. No further sample was taken of the ground ginger & no further analysis made. No part of the sample that was taken in the first instance was sent to the previous seller of the ground ginger. The magistrate refused to convict on the ground that the provisions of sect. 18 of 1928 Act had not been complied with:—*Held:* the magistrate was wrong in holding that compliance with the formalities prescribed by sect. 18 of 1928 Act was a condition precedent to the institution of proceedings against the previous seller for a sale to which art. 7 of the Regulations of 1925 applied. When the formalities prescribed by sect. 18 of 1928 Act with regard to taking of sample, division & analysis had been complied with in proceedings as between the purchaser & the retailer, there was no necessity for those formalities to be repeated when proceedings were subsequently taken against the previous seller under art. 7 of the Regulations of 1925.—TWYNHAM *v.* BADCOCK, [1932] 2 K. B. 549; 101 L. J. K. B. 755; 147 L. T. 35; 96 J. P. 219; 48 T. L. R. 389; 30 L. G. R. 239; 29 Cox, C. C. 448.

283. *Add. Annotation:—As to* (3) **Reld.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part III.—Sale of Unwholesome Food.

358. *Add. Annotation:*—**Reld.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

Part V.—Particular Articles of Food.

414a. Exposure for sale—What amounts to.]—A baker was delivering bread from an open car; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency:—*Held:* there was both an offering & an exposure for sale of the bread left in the car,

PART II. SECT. 5, SUB-SECT. 1.—A

c 1. —— —— ——.]—Where, under Food & Drugs Act, 1899 (c. 51), s. 2, the Local Govt. Board, or Board of Agriculture, through their officer, procure samples of an article of food (*e.g.* margarine) for analysis, & communicate the certified result of the analysis, when made, to the secretary of the local authority, the secretary of the local authority may, without any special resolution, transmit such certificate to the inspector appointed under Food & Drugs Act, 1875 (c. 13); & he without antecedent authorisation may proceed in his own name to prosecute for any penalties to which the vendor may be liable.—CONNOR *v.* BUTLIN, [1902] 2 I. R. 569.—**IR.**

PART II. SECT. 5, SUB-SECT. 4.—A.

sl. *When returnable—Under Health Act, 1919, s. 262 (d).*]—The provision in above section, that where any prosecution or proceeding under Part XII. of the Act relates to any food, drug or substance, the summons "shall not be made returnable in less than fourteen days from the day on which it is served," means that such summons is to be "returnable in not less than fourteen clear days" from such date.—DOWNES *v.* FRKSHNEY, [1928] V. L. R. 64; [1928] Argus L. R. 6.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—D.

1i. —— *Supply of milk to boarders by boarding-house keeper.*]—The supplying of milk by a boarding-house keeper to boarders for use with meals does not constitute a sale within the meaning of the Pure Food Act, 1908.—PATTON *v.* MOULD (1931), 48 N. S. W. W. N. 158.—**AUS.**

sg. *Article sold—Mens rea—Whether knowledge of disease necessary.*]—*Held:* there was no evidence on which the magistrate could find that deft. sold meat affected by tuberculosis, knowing at the time that it was so affected, & the conviction should be quashed.—DIXON *v.* SEILER, *Ex p.* SEILER, [1928] S. R. Q. 93.—**AUS.**

PART V. SECT. 2, SUB-SECT. 6.

sl. *Exposure of several loaves—Whether separate offences.*]—Sale of Food (Weights & Measures) Act, 1926, s. 3, enacts that "a person shall not . . . in exposing or offering any article of food for sale, make any misrepresentation . . . or commit any other act calculated to mislead the purchaser or prospective purchaser, as to the weight or measure of the article." Sect. 11 (3) renders a person contravening sect. 3 liable to a fine "not exceeding in the case of a first offence five pounds":—*Held:* in the case of a first offence, a shopkeeper, who had exposed for sale at the same place & time twenty-five loaves deficient in weight, had committed not one, but twenty-five offences, for each of which he could be penalised, &, accordingly, a penalty of £25 imposed by the magistrate was within his powers. *Semble:* in the circumstances, each of the offences would fall to be regarded as a first offence.—MONTROSE CO-OPERATIVE SOCIETY *v.* MARR, [1935] S. C. (J.) 69.—**SCOT.**

since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—KEATING *v.* HORWOOD (1926), 135 L. T. 29; 90 J. P. 141; 42 T. L. R. 472; 24 L. G. R. 362; 28 Cox, C. C. 198, D. C.

439a. Protection of employer under Sale of Food (Weights & Measures) Act, 1926 (c. 63)—When applicable.]—(1) *Held:* the language of Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 12 (2), has no relation & does not apply to a case where a defect of deft.'s machinery or a default of an employee under deft.'s control is the cause of the deficiency. This sub-sect. deals with the case where the deficiency is due to a *bonâ fide* mistake or accident or other causes beyond deft.'s control, that is to say, not with negligence or other conduct of deft.'s servants or other persons under his control. In such a case deft. may avail himself of the provisions of sect. 12 (5) if he satisfies the provisions of that sub-sect., by having any other person, including an employee, whom he charges as the actual offender, brought before the ct.

(2) On the question whether proceedings against defts. for contravening this sub-sect. were " proceedings under this Act in respect of an alleged deficiency of weight " within sect. 12 (2), whilst LORD HEWART, C.J., did not express a decided opinion, one way or the other, AVORY, J., expressed the view that proceedings under sect. 6 (2) of the Act were in respect of an alleged deficiency of weight, & TALBOT, J., expressed an opinion to the contrary.

(3) On proceedings against bakers under sect. 6 (2) of the Act defts. duly laid an information against one of their employees under sect. 12 (5); having him brought before the ct. as the actual offender & tendering evidence in order to prove that they had used due diligence to enforce the execution of the Act, & that their employee had committed the offence without their consent, connivance, or wilful default. At petty sessions, the information against the employee was dismissed, but defts. were convicted. Defts. appealed to Quarter Sessions:—*Held:* the Ct. of Quarter Sessions had no power to exempt defts. from any penalty under sect. 12 (5) on the ground (*per* LORD HEWART, C.J., & TALBOT, J.) that having regard to the fact that the employee had been acquitted at petty sessions, it was not open to defts. to contend at Quarter Sessions that the employee was wrongly acquitted, & on the ground (*per* AVORY, J.) that in any case on the facts the employee charged was not the actual offender within the sub-sect.—WALKLING, LTD. *v.* ROBINSON (1930), 99 L. J. K. B. 171; 143 L. T. 105, 106; 94 J. P. 73; 46 T. L. R. 151; 28 L. G. R. 88; (1929), 29 Cox, C. C. 131.

Annotations:—As to (2) **Distd.** Wolfenden *v.* Oliver (1932), 96 J. P. 202. **Consd.** Cave *v.* Dudley Co-operative Society, Ltd. (1934), 98 J. P. 265. *As to* (3) **Consd.** Hammett (R. C.), Ltd. *v.* Crabb, Hammett (R. C.), Ltd. *v.* Beldam (1931), 47 T. L. R. 623.

439b. —— —— Exercise of due diligence by employer—Question of fact.]—(1) Where an employer who is charged with an offence against the Sale of Food (Weights & Measures) Act, 1926 (c. 63), brings another person before the ct. under sect. 12 (5), as being the actual offender, the question whether the employer has used due diligence to enforce the execution of the Act is one of fact & not of law. (2) The result of compliance with sect. 12 (5) is that both the employer & the other person are convicted, but that the latter alone is liable to any penalty. (3) *Qu.:* whether in a case where the justices have convicted the employer & have refused to convict the actual offender, the employer may not appeal to quarter sessions. *Walkling, Ltd.* v. *Robinson*, No. 439a, is no authority to the contrary, since in that case the employee was found as a fact not to be the actual offender, & an appeal would have involved the allegation that he was wrongly acquitted.—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM (1931), 145 L. T. 638; 95 J. P. 180; 47 T. L. R. 623; 29 L. G. R. 515; 29 Cox, C. C. 364, D. C.

Annotation:—As to (1) **Consd.** R. C. Hammett, Ltd. *v.* London County Council (1933), 49 T. L. R. 209.

439c. —— —— Failure of branch manager to exercise due diligence.]—Applts., a co. owning a large number of butchers' shops, were charged with an offence at one of their shops under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 5 (2). They brought before the ct. as the actual offender one P., a salesman employed at the shop. Applts. were convicted, & the summons against P. was dismissed. On appeal quarter sessions found that B.. the manager of the branch, had not exercised due diligence to enforce the execution of the Act, but that in all other respects applts. had exercised due diligence. They held that the manager's failure was the failure of applts., & dismissed the appeal:—*Held:* quarter sessions were entitled so to hold.

Qu.: whether an appeal lay to quarter sessions.—HAMMETT (R. C.), LTD. *v.* LONDON COUNTY COUNCIL (1933), 97 J. P. 105; 49 T. L. R. 209; 31 L. G. R. 155, D. C.

439d. —— Effect of compliance with sect. 12.]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

439e. —— What are " proceedings in respect of an alleged deficiency of weight "—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2).]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

—— —— ——.]—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2), against a person for having in his possession for sale loaves of bread the net weight of which is not one pound or an integral number of pounds may be proceedings " in respect of an alleged deficiency of weight " within sect. 12 (2), of the Act, so as to entitle deft. to rely on the defences provided by that sub-section.—WOLFINDEN *v.* OLIVER (1932), 147 L. T. 80; 96 J. P. 202; 48 T. L. R. 394; 30 L. G. R. 263; 29 Cox, C. C. 471, D. C.

439g. —— Acquittal of employee—Power of Quarter Sessions to exempt employer from penalty.]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

439h. —— —— Conviction of employer—Right of appeal to quarter sessions.]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

439i. —— —— —— ——.]—HAMMETT (R. C.), | LTD. *v.* LONDON COUNTY COUNCIL, No.

439j. Comparison with other loaves—Reasonable number to be weighed.]—Two informations under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2), were preferred against defts. (i.) for having in their possession for sale thirty-seven loaves of bread, the net weight of each loaf not being one pound or an integral number of pounds; (ii.) for selling a loaf of bread the net weight of which was not one pound or an integral number of pounds. Under the supervision of an inspector of weights & measures fifty-six loaves, purporting to be 2-lb. loaves, were taken from a considerably larger number in a cart from which defts.' vanman was delivering bread, & weighed. Nineteen proved to be either of correct weight or of a weight in excess of 2 lb., but thirty-seven were deficient in weight, & in the case of one loaf the deficiency amounted to 2 ozs. 4 drams. That loaf was purchased by the inspector. The justices dismissed both informations, on the ground that defts. were in each case protected by sect. 12 (1):—*Held:* on the first charge, with respect to each of the thirty-seven loaves, the justices were entitled to look at the average weight of a number of other loaves offered for the sale on the same occasion, but it was not possible for them to hold that thirty-six was not a reasonable number; but on the second charge, the variation from the proper weight in the case of the single article being clearly considerable, they ought not to have had regard to the average weight of other loaves sold, as that inquiry arose only where the variation was inconsiderable.—CAVE *v.* DUDLEY CO-OPERATIVE SOCIETY (1934), 103 L. J. K. B. 569; 151 L. T. 448; 98 J. P. 265; 30 Cox, C. C. 151; 32 L. G. R. 515, D. C.

445a. Deficiency in weight—Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 4—Pre-packed butter—Material time of making up.]—Resps. had in their possession for sale pre-packed packages of butter purporting to be in the quantities prescribed by Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 4 (2) (*a*), namely, in multiples of a quarter of a pound, which, however, when weighed by applts.' food inspector, were deficient in weight. It was contended that as the packages were correct in weight at the time of making up, four days earlier, they were "made up for sale" in the prescribed quantities, & that the offence of having in their possession for sale pre-packed articles of food not being made up in the quantities prescribed by the above sub-sect., had not been committed:—*Held:* "made up for sale" does not refer to the moment of making up only but to the moment of having in possession for sale, & resps. were guilty of the offence charged.—LONDON COUNTY COUNCIL *v.* ROYAL ARSENAL CO-OPERATIVE SOCIETY, LTD., [1936] 1 K. B. 154; 105 L. J. K. B. 58; 154 L. T. 214; 100 J. P. 25; 52 T. L. R. 98; 80 Sol. Jo. 77; 34 L. G. R. 42; 30 Cox, C. C. 318, D. C.

447. *Add. Annotation:*—**Refd.** Preston *v.* Grant, [1925] 1 K. B. 177.

465. *Add. Citation:*—27 Cox, C. C. 637.

475. *Add. Annotation:*—**Distd.** Burrows *v.* Rapson (1927), 25 L. G. R. 397.

475a. —— —— **Grocer occasionally selling bottled milk.**] — Applt. carried on business as a general grocer. He purchased for resale sterilised milk in sealed bottles, & resold about three dozen bottles a week in the condition in which the milk was received from the factory. He was not registered as a dairyman or purveyor of milk:—*Held:* there was evidence to support a conviction of applt. for carrying on the trade of a dairyman or purveyor of milk without being registered.—BURROWS *v.* RAPSON (1927), 25 L. G. R. 397, D. C.

476. *Add. Annotation:*—**Refd.** Easington Rural District Council *v.* Gilson (1929), 46 T. L. R. 107.

476a. —— **Necessity for registration in every district where business carried on.**]—A person carrying on business as purveyor of milk must be registered under art. 6 of the Milk & Dairies Order, 1926, with the sanitary authority of each district in which he carries on business. It is not sufficient that he is registered with the sanitary authority of the district where his cowsheds & dairy are situated if he also carries on business in other districts where he has a regular milk round.—EASINGTON RURAL DISTRICT COUNCIL *v.* GILSON (1929), 142 L. T. 429; 94 J. P. 56; 46 T. L. R. 107; 28 L. G. R. 49; 29 Cox, C. C. 86.

—— **Change of tenancy—Removal of predecessor from register—Whether new tenant "person aggrieved."**]—On May 1, 1930, applt. succeeded a predecessor as annual tenant of premises used as a dairy. On May 12, 1930, resps., who were the local authority, having in the meantime given a similar notice to his predecessor, gave to applt. a notice purporting to be given under Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 2 (1), calling upon him to show cause why they should not remove his pre-

PART V. SECT. 3, SUB-SECT. 4.—B.

s i. —— —— *Words descriptive of article sold.*]—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held:* the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction quashed.—SOMERVILLE & BARR, LTD. *v.* CHALMERS, [1925] S. C. (J.) 70.—**SCOT.**

PART V. SECT. 4, SUB-SECT. 1.

m i. —— *Relating to property in milk vessels.*]—A dairyman, charged with contravening art. 12 of Milk & Dairies (Scotland) Order, 1925, maintained that the article was *ultra vires* of the Board, in respect that the Board was empowered to make Orders only for the purpose of ensuring the purity of milk, whereas the purpose of art. 12 was, not to ensure purity of milk, but to preserve the rights of property in milk vessels. It was stated for the complainer that the Board regarded the article as in the interests of public health, since it assisted the tracing of sources of infection:—*Held:* although art. 12 *primâ facie* appeared to be *ultra vires* as being directed solely to preserving rights of property in milk vessels, yet, since it was possible that further information might show that it did tend to ensure the purity of milk, the ct. could not decide, in these proceedings & on the information before it, that the article was *ultra*

[1932] S. C. (J.) 55.—**SCOT.**

decessor from the register of purveyors of milk in respect of the premises on the ground that they were satisfied that by default of the latter the premises were not in a fit condition for the purposes of a dairy. On May 13, 1930, resps., after hearing applt., decided to remove his predecessor from the register on that ground, & thereupon gave applt. notice that they had so decided. An appeal by applt. under the above sub-sect. against the decision of resps. was dismissed by the magistrate on the ground that applt. was not a "person aggrieved" by the decision within the sub-sect. On an appeal from the magistrate by case stated :—*Held :* applt. was a "person aggrieved" within the sub-sect., & the case should be remitted to the magistrate to be heard by him on the merits.—PROSSER *v.* MOUNTAIN ASH URBAN DISTRICT COUNCIL, [1931] 2 K. B. 132 ; 100 L. J. K. B. 266 ; 144 L. T. 549 ; 95 J. P. 84 ; 29 L. G. R. 218 ; 29 Cox, C. C. 265, D. C.

476c. Artificial Cream Act, 1929 (c. 32)—Application.]—Applts. were convicted on informations preferred against them under Artificial Cream Act, 1929 (c. 32), in respect of the sale by them of certain confectionery, described as "cream filled Swiss rolls" & "vanilla cream sandwich," containing a cream-like paste or substance, which was not cream as defined in Artificial Cream Act, 1929 (c. 32) : —*Held :* the Act applies only to the sale of cream or artificial cream as a separate article of food, & has no application to confectionery or to a composite substance in connection with confectionery. It applies only to a substance purporting to be cream & not to a substance purporting to contain cream.—LYONS (J.) & CO., LTD. *v.* KEATING, [1931] 2 K. B. 535 ; 100 L. J. K. B. 513 ; 145 L. T. 263 ; 95 J. P. 150 ; 47 T. L. R. 442 ; 75 Sol. Jo. 489 ; 29 L. G. R. 407 ; 29 Cox, C. C. 323, D. C.

476d. Breach of Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 3 (1) (b)—Offence by licence holders.]—Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 3 (1) (*b*), which prohibits the use, except under licence from the Minister of Health or with his authority, in connection with the sale of milk, of certain prescribed designations, is not limited in its application to acts committed by persons who do not hold licences.

On a charge of an offence under this sect. the question of sale to the prejudice of the purchaser does not arise.—PYATT *v.* LLOYD (1932), 148 L. T. 137 ; 96 J. P. 479 ; 49 T. L. R. 14 ; 30 L. G. R. 505 ; 29 Cox, C. C. 569, D. C.

476e. Sale of pasteurised milk at several shops in area—Necessity for licence for each shop.]—Milk (Special Designations) Order, 1923, made by the Minister of Health under Milk & Dairies (Amendment) Act, 1922 (c. 54), which provides for the grant of licences to sell milk under special designations, including pasteurised milk, in Sched. IV., sets out the following table of fees payable for licences : "Licence in respect of the establishment in which the process of pasteurising is carried on, & of any shop or other premises in the area of the same licensing authority from which the milk is sold—£1 1*s*." "Licence in respect of any other shop or other premises at or from which the milk is sold—5*s*." Pltfs., who carried on the sale of pasteurised milk at fourteen establishments in the area of the same licensing authority, claimed against the licensing authority a declaration that on the true construction of the above Order they were entitled to receive from the authority, on payment of the sum of 5*s*., a licence for the sale of pasteurised milk within the area :—*Held :* on the construction of the Order, a dealer's licence at a fee of 5*s*. must be obtained for each shop or premises at which the pasteurised milk is to be sold. The local authority is not authorised by the Order to grant a dealer in return for payment of one sum of 5*s*. a licence to sell at & from as many places as he may choose within the area.

Semble : if a preliminary objection had been taken *in limine* to the action on the grounds that a person aggrieved by the Order is confined, as regards his remedy, to an appeal to the Minister of Health under clause 9 (2) of the Order, & that the Minister of Health was not a party to the action, that objection would have succeeded, & the action would not have been maintainable.—UNITED DAIRIES (LONDON), LTD. *v.* HACKNEY BOROUGH COUNCIL (1934), 151 L. T. 56 ; 98 J. P. 236 ; 50 T. L. R. 307 ; 78 Sol. Jo. 278 ; 32 L. G. R. 158.

476f. Refusal of licence for sale—Whether action lies.]—UNITED DAIRIES (LONDON), LTD. *v.* HACKNEY BOROUGH COUNCIL (1934), No. 476e, *ante*.

476g. Milk Marketing Board—Imposition of fine—Excess of jurisdiction—Certiorari.]—R. *v.* [illegible] *p.* (1934), 50 T. L. R. 559 ; 78 Sol. Jo. 536.

476h. —— Imposition of penalty—Registration disputed—Prohibition.]—*Ex parte* WENHAM (1934), 78 Sol. Jo. 414, D. C.

476i. —— —— Registered producer having not more than four milch cows.]—The Milk Marketing Scheme, which has statutory force

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476g i. *Milk Marketing Board—Right to accounts.*]—A distributor of milk entered into contracts for the supply of milk by registered producers, under which he agreed to make payments direct to the producers for the milk supplied. In an action against him by the Board, established by the Scottish Milk Marketing Scheme, 1931, made under Agricultural Marketing Act, 1931 (c. 44), concluding for an accounting of the milk purchased by him & the payment of the sum due by him as the balance of his intromissions, he maintained that, as a distributor, he was under no obligation to count & reckon with the Board :—*Held :* the Board, in virtue of their statutory monopoly right to market milk, were entitled to an accounting from a distributor in respect of milk purchased by him from registered producers.—SCOTTISH MILK MARKETING BOARD *v.* FERGUSON, [1935] S. C. 252.—**SCOT.**

476g ii. —— *Power to restrain sale to unapproved customers.*]—An interim interdict will be granted to restrain a producer from selling to unapproved customers, although he claims to do so in virtue of a wholesaler's licence, if the administration of the Board's scheme is interfered with.—SCOTTISH MILK MARKETING BOARD *v.* PARIS, [1935] S. C. 287.—**SCOT.**

st. *Milk Control Board—Validity of regulation.*]—A regulation of the Milk Control Board requiring licensees to be solvent is *ultra vires*.—*Re* KENDRICK & MILK CONTROL BOARD, [1935] 3 D. L. R. 198 ; O. R. 308 ; 63 Can. C. C. 385.—**CAN.**

sv. —— *Charge of levy by agent association—Validity.*]—BROOKE *v.* INDEPENDENT MILK PRODUCERS CO-OPERATIVE ASSOCN., [1937] 3 W. W. R. 401.—**CAN.**

sw. *Milk Board—Liability to garnishee proceedings.*]—The Milk Board by reason of the provisions of Milk Act, 1934, s. 12, may be made liable to garnishee proceedings under Small Debts Recovery Act, 1912-1933.—*Re* FARMERS' FERTILIZERS CORPN. LTD., *Ex p.* MILK BOARD (1935), 52 N. S. W. W. N. 200.—**AUS.**

sz. *Sale without licence—Onus of proof.*]—Where on a charge of selling

under the Milk Marketing Scheme (Approval) Order, 1933, empowers the Milk Marketing Board to impose fines on registered producers who sell milk under contracts not in the form prescribed in the Scheme. The Scheme further provides by para. 38 that the Board shall keep a register of producers, & by para. 40 (*a*) that producers who have in their possession not more than four milch cows, & who do not sell by retail shall be exempt from registration. By para. 41, the Board, on being satisfied that a person who is registered has ceased to be a producer or is exempt from registration, shall remove his name from the register, provided that the name of a person shall not, by reason only that he is exempt from registration, be removed from the register without his consent.

Deft., a farmer, was registered as a producer in 1933, at which time he possessed six milch cows. Later in that year he disposed of two of them, & thereafter never had in his possession more than four milch cows. In 1934 he entered into a contract for the sale of milk, not by retail, which contract was not in the prescribed form :—*Held :* the Board had power to impose a fine on deft., notwithstanding that at the date of the alleged offence he possessed not more than four milch cows, since he remained a registered producer until his name was removed from the register with his consent.—MILK MARKETING BOARD *v.* WILLIAMS (1935), 153 L. T. 115 ; 79 Sol. Jo. 363, C. A.

476j. —— **Right to recover costs of operating scheme—What amounts to.**]—Applt. was liable as a registered producer & retailer of milk to contribute to the costs of operating the scheme contained in the Scottish Milk Marketing Scheme (Approval) Order, 1933, made under & in terms of Agricultural Marketing Act, 1931 (c. 42), s. 1 (8), & administered by resps. Under the scheme, which came into operation on Dec. 1, 1933, resps. fixed a price for the sale of milk & realised the unmarketable surplus of milk by selling it in a cheaper market. In computing the costs of operating the scheme resps. included as a cost of operation the difference between the lower price received by them for the surplus milk & the price in the liquid market, upon which basis resps. sought to recover rateably from all registered members of the scheme, including applt., a charge or levy calculated at so much per gallon of milk disposed of by each member. Applt., when called upon to pay this charge or levy for each of the months of Dec. 1933, to July, 1934, inclusive, declined to do so, &, without disputing the arithmetical correctness of the sum claimed, contended that resps. had wrongly & illegally included in their computation of costs the amount of the alleged loss relating to the said sale of surplus milk, & that, as their method of computation & disposal of contributions provided a benefit to ordinary producers to the detriment of producers & retailers, they had acted *ultra vires* & contrary to the provisions of the scheme. Resps.' basis of computation was in accordance with a previous decision of the Second Division of the Ct. of Session in a recent special case to which applt. was not a party :—*Held :* the difference between the lower price received by resps. & the price in the liquid market was not a " cost " of operating the scheme ; & the contributions claimed from applt. being unauthorised by the scheme, resps. had acted *ultra vires* in respect that the disposal of the said contributions conferred a benefit upon the class of ordinary producers at the expense of the class of producers & retailers including applt. —FERRIER *v.* SCOTTISH MILK MARKETING BOARD, [1937] A. C. 126 ; [1936] 2 All E. R. 1131 ; 105 L. J. P. C. 135 ; 155 L. T. 425 ; 80 Sol. Jo. 718, H. L.

476k. —— **Construction of order.**]—DRIED MILK PRODUCTS, LTD. *v.* MILK MARKETING BOARD, [1937] 4 All E. R. 669 ; 54 T. L. R. 112 ; 81 Sol. Jo. 924.

476l. —— **Explanatory leaflet—Whether warranty.**] —The Milk Marketing Board was established under the Agricultural Marketing Act, 1931 (c. 42), s. 6, & regulated by a scheme which was one of the Statutory Rules & Orders. The Board also issued an explanatory leaflet which contained (*inter alia*) the following : " In various parts of the country at the present time the producer-retailer is feeling the pinch of severe undercutting, & the stabilisation of the industry which will result from the operation of the scheme will end all his anxiety under this head since undercutting will be impossible." In an action to enforce certain levies under the scheme deft. set up that the above passage was a representation that undercutting would be stopped by the operation of the scheme & that the Board had failed to stop undercutting. He set this up as a defence upon the footing that the above statement was a warranty or agreement, & also as the basis of a counterclaim claiming damages for breach of duty :— *Held :* (1) if the passage amounted to a representation at all, it applied wholly to the future, & there was no representation as to any present fact that could be relied upon in law ; (2) there was no duty upon the Board to stop undercutting ; (3) upon the facts the Board had taken all reasonable steps to prevent undercutting.—MILK MARKETING BOARD *v.* WARMAN & SONS, [1937] 3 All E. R. 541 ; 81 Sol. Jo. 651.

476m. Milk Act, 1934 (c. 51), s. 4—Calculation of price.]—An agreement to fix prices for a marketing scheme by reference to market quotations included the phrases " exceptional quotations being disregarded " & " the average of the mean prices for the two kinds of cheese " :—*Held :* (1) " exceptional quotations " did not mean quotations for goods which were in fact exceptional owing to their quality or character but to quotations so described in the market report ; (2) the " mean " is the figure mid-way between two extremes whereas the " average " is ascertained by adding all the items together & dividing by the number of items.—UNITED DAIRIES (WHOLESALE), LTD. *v.* LEMON, [1937] 2 All E. R. 618, C. A.

milk without a licence it has been proved *primâ facie* that a sale of milk has taken place, the onus is on deft. to establish that he was duly licensed to sell milk.—KIRKPATRICK *v.* BARTLETT, [1936] S. A. S. R. 10.—**AUS.**

sc. *Whether " beverage " within Criminal Code.*]—Milk is not a beverage within the provision of the Criminal Code requiring a duly registered trade mark on any bottle of beverage for sale.—R. *v.* ROUSE, [1936] 4 D. L. R. 797 ; 66 Can. C. C. 225.—**CAN.**

495. *Add. Annotation :*—**Refd.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

508. *Add. Citation :*—28 Cox, C. C. 7.

515a. Meat—Sale of Food (Weights & Measures) Act, 1926 (c. 63)—Butchers' Meat—Whether stuffed meat included.]—A sale of a piece of stuffed butchers' meat, so labelled & asked for as such by the purchaser & weighed together with the stuffing, is not a sale of butchers' meat otherwise than by net weight within the prohibition in Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 5 (1), the meat not being sold as butchers' meat but as a composition called stuffed meat.—DEWHURST, LTD. *v.* EDDINS, [1935] 2 K. B. 105; 104 L. J. K. B. 274; 153 L. T. 16; 99 J. P. 219; 51 T. L. R. 341; 79 Sol. Jo. 287; 33 L. G. R. 207; 30 Cox, C. C. 222, D. C.

Protection of employer.]—*See* Nos. 439b, 439c, *ante.*

Part VI.—Control in Wartime.

519. *Add. Annotations :*—**Folld.** Brocklebank *v.* R., [1925] 1 K. B. 52. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

555. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. ——— ——— ———.]—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B, requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F. requisitioned all bacon landed after such date : —*Held :* in assessing the compensation to be paid for the bacon requisitioned under reg. 2F. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B. —SWIFT & CO. *v.* BOARD OF TRADE, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.; *previous proceedings*, [1925] A. C. 520, H. L.

570. *Add. Annotation :*—**Refd.** R. *v.* Kent J.J. *Ex p.* Metropolitan Police Comr., [1936] 1 K. B. 547.

572. *Add. Annotation :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

PART V. SECT. 4, SUB-SECT. 3.

508 iii. —— —— —— ——.]—A dairyman was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established, but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise : —*Held :* accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—M'CALLUM *v.* BROOKS, [1926] S. C. (J.) 39.—**SCOT.**

k i. —— *Price of milk varying with quality supplied—Genuine milk to be supplied.*]—Deft. was a shareholder in a certain co-operative dairy society, & she & the other suppliers of milk to the creamery of the said society delivered daily to the creamery quantities of milk. The quantity of milk delivered by each supplier was recorded by weight in pounds, dependent on the number of gallons, & the manager or other official of the creamery took a sample of each delivery, tested it, & ascertained its contents of butter-fats. In return for the said milk delivered by her, deft. received from the creamery : (*a*) at the end of every month a cash payment per pound of milk delivered, calculated on the average percentage of butter-fats contained in the milk delivered during the month—the greater the content of the butter-fats, the higher the price paid; & (*b*) each day a quantity of separated milk, which was determined in accordance with the rules of the society & was proportionate to the quantity of milk delivered by deft. to the creamery, or, instead, a cash payment. A sample of deft.'s milk taken by an Inspector of Food & Drugs when the milk was in the course of delivery to the creamery was found on analysis to be inferior to the standard prescribed by regs. 1 & 2 of Sale of Milk (Ir.) Regulations, 1901, & deft. was charged for selling to the creamery, to the prejudice of the purchaser, *i.e.* the said creamery, within Sale of Food & Drugs Act, 1875 (c. 63), as amended by Sale of Food & Drugs Act Amendment Act, 1879 (c. 30), s. 3, an article of food, to wit, milk, which was not of the nature, substance, & quality demanded by the purchaser. No evidence was given by deft. to rebut the presumption of abstraction or adulteration which applied to the said sample by reason of the said regulations. The district justice dismissed the summons :—*Held :* the district justice was wrong in law in dismissing the summons, as although the price paid by the creamery varied with the quality of the milk supplied, the contract contemplated the supply of genuine milk, & the milk of which the sample was taken was not genuine milk as defined by Sale of Milk (Ir.) Regulations, 1901. —MURPHY *v.* NICHOLSON, [1931] I. R. 582.—**IR.**

PART V. SECT. 4, SUB-SECT. 4.

sp. *Sale by driver of cart—Name of defendant on cart—Whether evidence of sale by defendant.*]—On the hearing of an information against resp. co. for selling adulterated milk the evidence showed that an inspector saw in the street a milk-cart bearing the same name & address as those of the co., & purchased from the driver of the cart milk which was adulterated :—*Held :* the evidence was insufficient to establish, even *primâ facie*, that the milk-cart was the cart of the co. or used in its business, or that there was any relationship between the driver of the cart & the co.—HOUSTON *v.* WITTNER'S PTY., LTD., [1928] V. L. R. 539; [1928] Argus L. R. 356.—**AUS.**

PART V. SECT. 6.

st. *Flour—Sale in unmarked barrels—Seller not liable—Manufacturer or packer liable.*]—R. *v.* BEEKMAN (1844), 2 U. C. R. 57.—**CAN.**

sw. *Meat—Validity of bye-law.*]—City Act, R. S. S., 1930, sect. 216, paras. 64 (*f*) & (*g*), do not allow a choice between two systems of inspection, but are intended to dispense with the necessity of further inspection only in the case of meat marked "approved" by the Dominion inspector being offered for sale in the city, & therefore a city bye-law, which without providing for inspection by an inspector appointed by the city prohibits the selling of the meat of an animal which was not inspected by an inspector appointed under Meat & Canned Foods Act, R. S. C., 1927, & marked "approved" by him, is *ultra vires.*—R. (ORME) *v.* STONEHOUSE, [1934] 2 W. W. R. 131.—**CAN.**

sz. *Eggs—Regulations under Live Stock & Live Stock Products Act—Not applicable to consumers.*]—R. *v.* MALIAN, [1934] 3 W. W. R. 545; [1935] 1 D. L. R. 249; 62 C. C. C. 330.—**CAN.**

sa. ——— ———.]—R. *v.* THORSBY TRADERS, LTD., [1935] 3 W. W. R. 475; [1936] 1 D. L. R. 592; 65 Can. C. C. 109; 5 F. L. J. (Can.) 197.—**CAN.**

sc. —— —— ——.]—Reg. 11 (2) of the regulations under Live Stock & Live Stock Products Act, R. S. C., 1927, held to be an authorised regulation.—R. *v.* GREENBERG, [1936] 1 W. W. R. 599; 2 D. L. R. 802; 65 Can. C. C. 190; 44 Man. L. R. 104.—**CAN.**

sb. —— —— *Validity.*]—R. *v.* ZASLAVSKY, [1935] 2 W. W. R. 34; 3 D. L. R. 788.—**CAN.**

FRAUDULENT AND VOIDABLE CONVEYANCES.

Part I.—Conveyances Impeachable by Creditors under Statute.

45. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

123. *Add. Annotation :*—*As to* (1) **Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

126. *Add. Annotation :*—**Apld.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

133. *Add. Annotation :*—*As to* (4) **Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

220a. ——.]—A voluntary settlement may be declared void, as against the settlor's trustee in bkpcy., without proof of actual intention to defeat or delay creditors, if the circumstances of the particular case be such that

PART I. SECT. 1.

sa. *Homestead.*]—MEUNIER *v.* DORAY (1905), 6 Terr. L. R. 194.—**CAN.**

sb. —— *Transfer prior to Land Titles Act*, 1917.]—13 Eliz. c. 5, which is practically re-enacted by R. S. S. 1920, c. 204, s. 1, does not apply to property which at the time of the alleged fraudulent conveyance was not subject to the payment of the grantor's debts or liable to be taken in execution. So where a transfer of a homestead was completed before Land Titles Act, 1917, which altered the law with regard to executions against land, came into force, & was, because of the above rule, unimpeachable at the time of the transaction, it cannot be affected retrospectively by said change in the law.—PACHAL *v.* MARKHAM, [1922] 1 W. W. R. 818; 63 D. L. R. 97; 15 Sask. L. R. 308.—**CAN.**

sd. *Exempt property.*]—A transaction which would otherwise be voidable because in fraud of creditors cannot be successfully attacked or set aside if the goods involved are the exemptions of the person who made the conveyance.—POPOFF *v.* DOOTOFF, [1937] 2 W. W. R. 186.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

a i. ——.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204): —*Held :* deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity the property should be available for his creditors.—COLONIAL INVESTMENT & LOAN CO. *v.* HUSH, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157.—**CAN.**

d i. —— ——.]—KEENLEYSIDE *v.* PARTRIDGE, [1925] 3 D. L. R. 961.—**CAN.**

d ii. —— ——.]—Where a voluntary conveyance has the effect of rendering the grantor insolvent it is void as against his creditors no matter what his intent in making it was.—BAXTER *v.* DERASZ & DERASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

n i. —— *Saskatchewan.*]—13 Eliz. c. 5, is in force in Saskatchewan.—BANK OF MONTREAL *v.* REIS, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423.—**CAN.**

sc. *Transfer by administrator to estate.*]—In an action to have a transfer of land from deft. E. as registered owner to herself as administratrix of her husband's estate declared void as against her creditors & alternatively, void as a preference in favour of the estate :—*Held :* on the evidence, E.'s position up to, at, & subsequent to, her husband's death was that of a trustee of the land for her husband, &, alternatively, if he was not the equitable owner of the land, but it belonged in whole or part to her absolutely, then she must be held to have elected by her conduct to take under & not in opposition to his will under which his whole estate real & personal was divided between her & the testator's children, &, therefore, in transferring the land to the estate she did only what she could have been compelled to do.—SKOGMAN *v.* ELLERGODT & WISEMAN (Alta.), [1929] 4 D. L. R. 710; 3 W. W. R. 235.—**CAN.**

sd. *Mortgage—Summary procedure to set aside conveyance.*]—The word "conveyance" in rule 462, which provides a summary procedure under which a judgment creditor may have a fraudulent "conveyance" of land set aside, does not include a mtge.—NERLAND *v.* CROSSFIELD SCHOOL DISTRICT, [1929] 4 D. L. R. 216; 2 W. W. R. 330; 24 Alta. L. R. 214.—**CAN.**

sm. *Agreement between co-operative association & pool.*]—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SOUTHERN ALBERTA CO-OPERATIVE ASSOCN., LTD., [1934] 3 W. W. R. 76.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

se. *Assignment to cover money taken from trust account.*]—*Held :* it could not be attacked by a creditor of the assignor.—BANK OF HAMILTON *v.* BLACK (1918), 37 D. L. R. 801; 24 B. C. R. 394.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—B. (b).

sf. *Bonâ fide sale in course of trade—In consideration of debt due to buyer & other creditors.*]—The sale of wheat in question herein, the consideration for which was an indebtedness of the seller to the buyer & the payment by the buyer of certain other creditors of the seller, held to be protected as against attack under Fraudulent Preferences Act, s. 4, by sect. 7 thereof, which provides that the prior provisions of the Act shall not apply to a *bonâ fide* sale made in the ordinary course of trade or calling to innocent purchasers or parties. The proceeds of the wheat amounted to more than the amount of the consideration expressed in the bill of sale, but this could not be foreseen at the time of the transaction, & it was held that the excess was not large enough to be regarded as an element of fraud.—DESJARDINE *v.* CALLISON, [1928] 3 D. L. R. 147; [1928] 2 W. W. R. 250. —**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—C.

185 ii. —— ——.]—Circumstances in which the purchaser was estopped from setting up consideration.—MCCARTY *v.* MCMURRAY (1871), 18 Gr. 604.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

157 ii. —— —— ——.]—MULHOLLAND *v.* WILLIAMSON (1868), 14 Gr. 291.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

177 i. *Exceptions to general rule—Settlement supported by other consideration—Agreement to separate—Followed by immediate separation.*]—HILL *v.* HILL (Man.), [1926] 4 D. L. R. 588.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

204 ii. —— *Partition by father on remarriage—Allegation by settlor that conveyance in fraud of creditors—Onus of proof.*]—In 1904 a Burman executed on his remarriage a deed of partition by which he purported to convey to his daughter, the only child of his first marriage & then eight years of age, immovable property as her one-quarter share of the joint property of that marriage, & he appointed his own mother to take care of it. He remained in possession, but contributed to the support of his daughter, who resided with her maternal grandmother. At the time of the conveyance the father was considerably indebted, & his creditors, finding that they could not attach the property, settled with him upon easy terms. In 1915 the father promised his daughter & her maternal uncle that the property would be restored to her. In 1925 the daughter sued for possession. The father pleaded that the conveyance was in fraud of his creditors, & that the suit was barred by limitation :—*Held :* upon the whole facts the father had failed to discharge the burden, which was heavily upon him of proving that the conveyance was in fraud of his creditors, & not a genuine conveyance of his daughter's share, possibly liberally calculated; & consequently his possession was not adverse to his daughter, but on her behalf.—MA NGWE NAING *v.* MAUNG THA MAUNG (1928), I. L. R. 7 Ran. 4.—**IND.**

PART I. SECT. 4, SUB-SECT. 1.

209 xix. ——.]—HALIFAX BANKING CO. *v.* MATTHEW (1888), 16 S. C. R. 721.—**CAN.**

k i. —— *Suspicious circumstances insufficient.*]—Mere suspicious circumstances are not sufficient to support a finding of fraud even in a case wherein a husband & wife are alleged to have been mixed up in it.—KOSTZSHYN *v.* SZCZURKO & KOSTZSHYN (Sask.), [1929] 3 D. L. R. 474; 2 W. W. R. 289.—**CAN.**

sg. *Plan to bring property into existence—Valid.*]—KEARL *v.* WONNACOTT (Alta.), [1927] 4 D. L. R. 1051 [1927] 3 W. W. R. 693.—**CAN.**

the settlement must necessarily have that effect.—CARRUTHERS *v.* PEAKE (1911), 55 Sol. Jo. 291.

227. *Add. Annotation :*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

250. *Add. Annotations :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22. **Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

252. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

293. *Add. Annotation :*—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

339a. —— —— Subsequent sale to third party—Purchaser from sheriff entitled to recover.]—KIDD *v.* RAWLINSON (1800), 2 Bos. & P. 59 ; 126 E. R. 1155.

Annotations :—**Consd.** Arundell *v.* Phipps & Taunton (1804), 10 Ves. 139. **Apld.** Watkins *v.* Birch (1813), 4 Taunt. 823 ; Latimer *v.* Batson (1825), 7 Dow. & Ry. K. B. 106. **Consd.** Cook *v.* Walker (1855), 25 L. T. O. S. 51. **Refd.** Jezeph *v.* Ingram (1817), 1 Moore, C. P. 189 ; Cromack *v.* Heathcote (1820), 4 Moore, C. P. 357 ; Steward *v.* Lombe (1820), 1 Brod. & Bing. 506.

368. *Add. Annotation :*—**Refd.** Fleetwood Hesketh *v.* I. R. Comrs. (1935), 180 L. T. Jo. 99.

377. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

395. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

396. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

408a. —— With consent of trustees or Chancery court.]—On Mar. 19, 1932, the settlor executed a voluntary deed of settlement by which he assigned all his interests under two wills to trustees upon certain trusts. By clause 5 he gave himself power at any time to raise the sum of £150, without the consent of the trustees. At the date of the settlement his debts did not exceed £100. On Feb. 22, 1935, he was adjudicated bkpt. Clause 7 of the deed gave the settlor power to revoke the whole of the trusts in the settlement with the consent either of the trustees or of a judge of the Chancery Division :—*Held :* the deed was not void under Law of Property Act, 1925 (c. 20), s. 172 (1), against the trustee in bkptcy.—*Re* BAKER, [1936] Ch. 61 ; 105 L. J. Ch. 33 ; 154 L. T. 101 ; *sub nom. Re* BAKER, *Ex p.* TRUSTEE *v.* BAKER & ARNOLD, [1934–5] B. & C. R. 214.

PART I. SECT. 4, SUB-SECT. 2.—A.

224 ii. —— ——.]—DOE d. STEEL *v.* MCGILL (1842), 2 Ont. Dig. 2918.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—B.

229 v. ——.]—A conveyance by a husband to a wife in consideration of natural love & affection will be set aside at the instance of a secured creditor holding a mtge. on the property at the time of conveyance.—DIXON *v.* WALSH, [1937] 1 D. L. R. 585.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—C.

q i. —— ——.]—SCHUBERT *v.* KOCH, [1928] 3 W. W. R. 623.—**CAN.**

t i. —— ——.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom :—*Held :* fraudulent.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474 ; [1925] 1 W. W. R. 87 ; 19 Sask. L. R. 207 ; 5 C. B. R. 448.—**CAN.**

t ii. —— ——.]—The transfer by a husband to his wife of his homestead, which is exempt from seizure under execution, cannot be set aside for the benefit of the husband's creditors.—RUSSIAN MERCANTILE CO., LTD. *v.* SLOBODA & SLOBODA (Alta.), [1927] 4 D. L. R. 931 ; [1927] 3 W. W. R. 451.—**CAN.**

a i. — — *Husband trustee for wife of property conveyed.*]—GRAY *v.* FORD, [1925] 1 W. W. R. 943 ; 34 B. C. R. 517.—**CAN.**

— — *Goods purchased with wife's money—& goods of husband exempt from seizure for debt.*]—REVELSTOKE SAWMILL CO., LTD. *v.* STRATFORD, [1928] 4 D. L. R. 772 ; [1928] 3 W. W. R. 260.—**CAN.**

sm. *To child—To defraud secured creditor.*]—A voluntary conveyance to a daughter in order to put the property out of reach of a secured creditor is a fraudulent conveyance within the Statute of Elizabeth.—SMITH *v.* ROBERTSON, [1936] 1 D. L. R. 505 ; O. R. 134.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—D.

sh. *Conveyance by husband to wife—Proof of validity against creditors—*

is claimed by or on behalf of a under a conveyance to her during coverture, an explanation of the transaction should be given on oath to show that it was *bonâ fide*, & good as against the husband's creditors ; the affidavits for this purpose should be by the petitioners, & should be satisfactorily corroborated by disinterested persons of known credibility.—*Ex p.* LYONS (1869), 2 Ch. Ch. 357.—**CAN.**

sk. *Reconveyance by wife to husband—Land held by wife on trust for husband.*]—WINDSOR AUTO SALES AGENCY *v.* MARTIN (1915), 7 O. W. N. 471 ; 8 O. W. N. 130, 252 ; 25 D. L. R. 549 ; 33 O. L. R. 354.—**CAN.**

sl. *Voluntary conveyance—To person of same name as owner—Necessity for explanation.*]—*Ex p.* WRIGHT (1869), 2 Ch. Ch. 355.—**CAN.**

sm. *Family arrangement—Without consideration.*]—HAWKINS *v.* AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

n i. —— *Payment of charges & incumbrances.*]— The promise of a transferee to pay the charges & incumbrances against the property transferred is not a sufficient consideration to support the transaction as against the creditors of the transferor. The question whether a transfer was a voluntary one or not for good consideration is only important as against creditors where it was made *bonâ fide*.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170 ; [1928] 2 W. W. R. 150 ; 22 Sask. L. R. 533.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. —— ——.]—GALIBERT *v.* SOCIETE D'ADMINISTRATION GENERALE & BANQUE NATIONALE & CIE. GENERAL D'ENTREPRISES PUBLIQUES, [1925] 3 D. L. R. 1206 ; [1925] S. C. R. 683.—**CAN.**

264 iv. —— ——.]—CUMMINGS & ELLIS *v.* O'FLYNN (1924), 34 B. C. R. 275.—**CAN.**

264 v. —— ——.]—A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference :—*Held :* void.—HUNTER *v.* LAWRIE, [1925] 1 D. L. R. 658 ; [1925] 1 W. W. R. 411 ; 35 Man. L. R. 126.—**CAN.**

264 vi. —— ——.]—ENFIELD REALTY CO. *v.* PETERSON (Sask.), [1926] 2 D. L. R. 1005.—**CAN.**

264 vii. —— ——.]—CANADIAN OIL CO., LTD. *v.* JAMIESON (Sask.), [1926] 2 D. L. R. 1046.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sd. *Under guarantee—Voluntary conveyance set aside.*]—ONTARIO WIND ENGINE & PUMP CO. *v.* BOBO (Alta.), [1926] 1 D. L. R. 57 ; [1926] 1 W. W. R. 45.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.—A.

se. *Under sale by parol.*]—*Held :* the sale was void as against subsequent creditors.—WILLIAMS *v.* RAPELJE (1880), 8 C. P. 186.—**CAN.**

PART I. SECT. 4, SUB-SECT. 7.

sf. *Conveyance to wife—Onus of proof—Discharge of onus.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693 ; 1 W. W. R. 389 ; 20 Alta. L. R. 286.—**CAN.**

sg. *Grantee instrument of benefit to grantor.*]—A deed which contains a sweeping assignment of personal property without any valuation, & which makes the grantee the instrument of subsequent benefit to the grantor, will be set aside as fraudulent.—PRINCE EDWARD ISLAND MUTUAL FIRE INSCE. CO. *v.* BEST (1933), 7 M. P. R. 107.—**CAN.**

PART I. SECT. 4, SUB-SECT. 11.

418 i a. ——.]—The assignment of a lease by the lessee to a trustee, for a *bonâ fide* creditor of the assignor, with the intention of thereby evading the creditors of the lessee, is not a fraudulent assignment.—DOE d. BIGGARD *v.* —— (1839), 1 Ont. Dig. 480.—**CAN.**

418 xiii. ——.]—SHAVER *v.* GOLDHAR, [1925] 2 D. L. R. 1216.—**CAN.**

418 xiv. ——.]—*Re* RICE, [1928] 2 D. L. R. 96.—**CAN.**

a i. —— ——.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void : but the existence of the intent may be

422a. ——.]—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., No. 428a, *post.*

428. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428a. —— **Issue of debentures to one creditor—Issue postponed for benefit of company.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (ROMER, J.).—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

446. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

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negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. —GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—**CAN.**

aj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage void.*]—MILLER *v.* OSIER, [1925] 4 D. L. R. 692.—**CAN.**

ak. *What constitutes preference—Security given to creditor—Debtor insolvent.*]—W., secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtge., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential :—*Held :* under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

al. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

t i. —— *On crops raised by vendee.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations. —JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—**CAN.**

t ii. —— ——.]—The fact that a sale of land is found to be fraudulent & voidable as against execution creditors of the vendor, does not entitle them to seize crops grown thereon by the vendee, although the rule is otherwise if the transaction is shown to be a mere sham.—BANQUE CANADIENNE NATIONALE *v.* TENCHA, [1927] 4 D. L. R. 665.—**CAN.**

sg. *Purchase of Government annuity.*]—Where the result of the purchase of a Dominion government annuity was to put beyond reach of an existing creditor of the annuitant all of his property, except a house, & it could be rendered exempt or partially so by his occupying it as a home :—*Held :* he had brought himself, although perhaps involuntarily, within the scope of sect. 11 (2) of Government Annuities Act, R. S. C., 1927, which provides that if an annuity is applied & paid for "with intent to delay, hinder or defraud creditors" they shall be entitled to the remedy therein provided. The creditor who was held herein to be so entitled was the annuitant's wife with whom before the purchase of the annuity he had entered into a separation agreement under which he was under a definite continuing liability subject to termination or to variation of the amount payable only upon the happening of the events, or one of them, mentioned therein.—LANE *v.* LANE (No. 2), [1937] 2 W. W. R. 49; *subsequent proceedings,* LANE *v.* LANE (No. 3), [1937] 3 W. W. R. 612.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—A.

sn. *Not receiver of company—Alleged fraudulent preference made before receiver appointed.*]—FOX *v.* NIPISSING RY. CO., GOODERHAM *v.* NIPISSING RY. CO. (1881), 29 Gr. 11.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—C.

e i. —— *Personal representative.*]—Pltf., a daughter of R., deceased, purchased judgments which had been obtained against R. in his lifetime. She later became administratrix of his estate. She then, as administratrix & in her personal capacity, sued her brother, deft., attacking transfers made by R. to deft. as having been made to defraud creditors :—*Held :* pltf.'s position as administratrix did not entitle her to attack the fraudulent transfers. A debtor who fraudulently transfers his property cannot himself attack his fraudulent transaction, & his administrator has no greater right. —RYAN *v.* CHARLESWORTH, [1930] S. C. R. 427; 3 D. L. R. 431.—**CAN.**

sl. *Broker negotiating conveyance.*]—A broker who negotiates the conveyance of land to a purchaser's wife cannot attack the conveyance as being in fraud of creditors, since he is a consenting party.—ROSCOE *v.* BOZYK, [1933] 4 D. L. R. 585; 41 Man. L. R. 505.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (a).

m i. —— —— ——.]—In the absence of evidence to the contrary, it is presumed that a mtgee.'s security is sufficient to satisfy his claim; & unless it is shown that the mtge. security at the time of the loan was less than the amount of the mtge. the mtge. debt is not within 13 Eliz. c. 5. —CLARK *v.* SMITH, [1933] 3 W. W. R. 116; 41 Man. L. R. 438.—**CAN.**

sp. *Secured creditor.*]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

sq. *S. P.* MCLEAN *v.* RATEKIN (Sask.), [1926] 4 D. L. R. 174; [1926] 2 W. W. R. 671.—**CAN.**

st. *Not creditor advising conveyance.*]—BLACKLEY *v.* KENNY (1889), 16 A. R. 522.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (c).

m i. ——.]—Pltf. suing for a tort, such as slander or malicious prosecution, is not a creditor of deft. until he has recovered judgment in the action, & has no status to impeach a conveyance as fraudulent against him, even though it was made because of the threatened action.—FISHER *v.* KOWSLOWSKI (1913), 25 W. L. R. 417; 5 W. W. R. 91; 13 D. L. R. 785; 23 Man. L. R. 769.—**CAN.**

m ii. ——.]—A judgment creditor may in his own name maintain an action to set aside a conveyance as fraudulent & void, without having a lien by virtue of an execution in the hands of the sheriff.—BROWN *v.* WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—**CAN.**

sw. *Judgment for alimony.*]—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105) :—*Held :* even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 "creditors & others" were protected.—SHEPHARD *v.* SHEPHARD, [1925] 2 D. L. R. 897; 56 O. L. R. 555; *affg.*, [1924] 3 D. L. R. 566.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

sx. *Whether proceeds may be followed.*]—The fact that a conveyance is set aside as fraudulent against the transferor's creditors does not render available to them the proceeds of a policy of insurance which, after said transfer, was effected by the transferee in his own favour & paid for by him.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* CHOW LUN, [1931] 1 W. W. R. 211; 1 D. L. R. 1000.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

k (p. 219) **i.** —— ——.]—The rule that in an action by a judgment creditor to set aside a transfer by his debtor as fraudulent against creditors the debtor is not a necessary or proper party when he has no interest in the land transferred & no relief is asked against him does not apply where it is alleged that he still has an interest in said land & a sale of the land is stayed for to satisfy the judgment.—RUSSELL (DUKE OF BEDFORD) *v.* MURPHY & CARON (Sask.), [1929] 3 D. L. R. 787; 2 W. W. R. 324.—**CAN.**

l (p. 219) **i.** —— *No benefit retained by grantor.*]—The grantor is not a proper party to an action to set aside a deed in fraud of creditors, unless he has retained some benefit for himself.—RITCHIE *v.* RAYNER (1932), 7 M. P. R. 419.—**CAN.**

d (p. 220) **i.** —— *Unless execution*

525a. —— —— **Refusal of fair offer.**]—After bill filed on behalf of creditors to set aside as fraudulent & void a voluntary settlement by A., their debtor, & a composition signed by the creditors in ignorance of such prior voluntary settlement, the debtor was adjudicated bankrupt, & an order was made by the Ct. of Bkpcy. setting aside the voluntary settlement. Pltfs., whose claim to prove under the bkpcy. had been admitted notwithstanding the opposition of the trustees of the settlement, wrote to them proposing to dismiss the bill without costs as against them, & that pltfs.' costs should come out of the estate. The trustees declined this proposal, but offered to consent to an order staying all proceedings in the suit without costs, or dismissing the bill without costs :—*Held :* the trustees of the settlement, who, by their refusal of pltfs.' offer, had compelled them to bring the suit to a hearing, must pay all pltfs.' costs incurred since the date of that offer.—TANQUERAY *v.* BOWLES (1872), L. R. 14 Eq. 151.

525b. —— —— **Negligent solicitor-trustee.**]—A decree being made for setting aside a voluntary settlement, on the ground of the omission of a power of revocation :—*Held :* the solr. who prepared the deed, & who was one of the trustees named in it, must pay his own costs as a penalty for not having called the settlor's attention to the absence of the power.—HENSHALL *v.* FEREDAY (1873), 27 L. T. 743 ; 21 W. R. 240 ; *on appeal*, 29 L. T. 46, L.JJ.

Part II.—Conveyances Impeachable by Subsequent Purchasers under Statute.

594. *Add. Annotation :—As to* (1) **Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

604a. Settlement with uses in remainder.] —*Held :* fraudulent against a purchaser.—ANON. (1606), Lane, 22 ; 145 E. R. 267.

619a. ——.]—HEISIER *v.* CLARKE (1709), 2 Eq. Cas. Abr. 46 ; 22 E. R. 41, L. C.

Part III.—Conveyances Impeachable from Position of Parties.

807a. ——.]—A conveyance by a weak man for a small consideration set aside.—CLARKSON *v.* HANWAY (1723), 2 P. Wms. 203 ; 24 E. R. 700, L. C.

Annotations :—**Consd.** Cray *v.* Mansfield (1750), 1 Ves. Sen. 379. **Refd.** Hawes *v.* Wyatt (1790), 2 Cox, Eq. Cas. 263 ; Blachford *v.* Christian (1829), 1 Knapp, 73.

811. *Add. Annotation :*—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

831a. Deed not fully explained to donor.]—PHILLIPSON *v.* KERRY (1863), 32 Beav. 628 ; 9 L. T. 40 ; 11 W. R. 1034 ; 55 E. R. 247.

Annotation :—**Apld.** Ellis *v.* Ellis (1909), 26 T. L. R. 166.

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creditor.]—An execution creditor, who sues to set aside a transfer by his debtor on the ground that it is fraudulent against creditors, is not obliged to sue on behalf of all other creditors of debtor as well as himself. Origin of the distinction in this respect between execution creditors & simple contract creditors reviewed.—ST. GREGOR MERCANTILE CO. *v.* HALBACH & BANK OF MONTREAL, [1927] 1 D. L. R. 761 ; [1927] 1 W. W. R. 247 ; 21 Sask. L. R. 315.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—D.

h i. —— ——.]—*Semble :* in an action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204), the *onus* is always on pltf. of proving debtor's insolvency.—MCLEAN *v.* RATEKIN (Sask.), [1927] 4 D. L. R. 739 ; [1927] 3 W. W. R. 444 ; *affd.*, [1928] 4 D. L. R. 18 ; [1928] 2 W. W. R. 421 ; 22 S. L. R. 633 ; 10 C. B. R. 156.—**CAN.**

o (p. 223) i. —— ——.]—In an action to set aside as fraudulent against creditors a transfer between sisters :—*Held :* the corroborative evidence necessary to meet the *prima facie* case which pltf. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—LUNDQUIST *v.* PUIS, [1925] 3 D. L. R. 84 ; [1925] 1 W. W. R. 834.—**CAN.**

o (p. 223) ii. —— ——.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697 ; [1927] 3 W. W. R. 328.—**CAN.**

s (p. 223) i. —— ——.]—KNOX *v.* SHAW, [1927] 3 D. L. R. 1185 ; [1927] 2 W. W. R. 494 ; 31 Sask. L. R. 593.—**CAN.**

s (p. 223) ii. —— ——.]—BROWN *v.* WEIL, [1927] 4 D. L. R. 218 ; 61 O. L. R. 55.—**CAN.**

s (p. 223) iii. —— ——.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697 ; [1927] 3 W. W. R. 328.—**CAN.**

c (p. 223) i. —— *Of bona fides.*]—MCNEILL *v.* CAIRNS (1931), 3 M. P. R. 195.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a).

572 i. *Necessity for valuable consideration.*]—DOE PROUDFOOT *v.* MCCRAE (1842), 6 O. S. 502.—**CAN.**

PART III. SECT. 1.

k i. ——.]—B., a person of full age & understanding, who at the time was suffering under emotional distress & loss of interest in life, executed a voluntary transfer of her property in favour of A. with whom she was then living. In a suit by B. to set aside the transfer :—*Held :* the facts did not show want of capacity, nor did the circumstances constitute a fiduciary relationship, & in the absence of fraud or overreaching the ct. could not entertain the suit.—BOYD *v.* ALEXANDER (1931), 31 S. R. N. S. W. 645 ; 48 N. S. W. W. N. 202.—**AUS.**

l i. —— —— *Grantor without business experience.*]—*Held :* the instruments were void in equity.—EDINBURGH LIFE ASSURANCE CO. *v.* ALLEN (1871), 18 Gr. 425.—**CAN.**

p i. —— ——.]—The social relationship between donor & donee, the former a man of 83 years whose mental powers were greatly weakened, added to the facts that he had made the donee his financial agent with respect to a certain transaction, & reposed much confidence in him, was held to raise the presumption of undue influence.—*Re* MCPHERSON, TRUSTS & GUARANTEE CO., LTD. *v.* BRADFORD, [1930] 3 W. W. R. 368 ; 4 D. L. R. 915 ; *affg.*, [1930] 3 D. L. R. 378.—**CAN.**

p ii. —— ——.]—Pltf., an aged, ignorant, & worn man, transferred his land to his son, deft., the only consideration to pltf. being a lease for 30 years, in consideration of one dollar, of a small house & garden, part of the land conveyed, and an agreement to supply pltf. periodically with certain provisions :—*Held :* the transaction should be set aside on the ground that it was an improvident transaction made practically without consideration & without advice, in favour of a person who had a duty at least to see that the transaction went no further than was actually necessary.—HRYNYK *v.* HRYNYK, [1932] 1 W. W. R. 82 ; 1 D. L. R. 672 ; 40 Man. L. R. 175.—**CAN.**

p iii. —— *Grant in consideration of maintenance for life.*]—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence :—*Held :* the transaction was properly set aside. —WATKINS *v.* COOMBES (1922), 30 C. L. R. 180.—**AUS.**

p iv. —— *& illiterate.*]—Conveyances set aside on grounds of improvidence, & want of proper professional advice.—

presumption that the donee [illegible] gift unless the donee establishes was the spontaneous act of the donor acting in circumstances which enabled him to exercise an independent will, & which justified the ct. in holding that it was the result of a free exercise of the donor's will. If the evidence establishes the fact above stated it should not be disregarded merely because the donor did not receive independent legal advise. On the other hand, the receipt of independent legal advice may rebut the presumption although it is not acted upon. But to have that effect it must be given with a knowledge of all the relevant circumstances, & be such as a competent & honest adviser would give if acting solely in the interest of the donor.

A Malay woman, who was a great age & wholly illiterate, executed a deed of gift of landed property in Singapore in favour of her nephew, who had the management of all her affairs. Before executing the deed the donor had independent advice from a lawyer who acted in good faith. He was unaware, however, that the gift constituted practically the whole of the donor's property, & did not bring home to her mind that she could more prudently, & equally effectively, benefit the donee by bestowing the property upon him by will:—*Held:* the gift should be set aside, as the presumption which arose was not rebutted.—INCHE NORIAH *v.* SHAIK ALLIE BIN OMAR, [1929] A. C. 127; 98 L. J. P. C. 1; 140 L. T. 121; 45 T. L. R. 1, P. C.

Annotation:—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

835. *Add. Annotation:*—**Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

844. *Add. Annotation:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

844a. ——.]—GREENLAW *v.* KING (1841), 10 L. J. Ch. 129; 5 Jur. 18, L. C.

Annotations:—**Refd.** Llewellyn *v.* Baaeley (1842), 1 Hare, 527; Walsingham *v.* Goodricke (1843), 3 Hare, 122; Beaden *v.* King (1852), 9 Hare, 499; Boyd *v.* Barker (1859), 28 L. J. Ch. 445; Guest *v.* Smythe (1870), 5 Ch. App. 553, n.; Fenner *v.* L. & S. E. Ry. (1872), L. R. 7 Q. B. 767.

845. *Add. Annotations:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

889a. —— **Independent adviser unaware of extent of property.**]—Applt., a medical practitioner & an intimate friend of resp., an elderly widow, attended her professionally during two illnesses in the years 1928 & 1930. He made no charge for his professional services or for the medicines supplied, & had stated that he did not regard her as a paying patient. After her recovery from the second illness, resp. in 1931 executed a deed by which she purported to convey to applt. certain freehold land, together with the building thereon, for the sum of £1,500, but it was not in dispute that no consideration money was paid. Subsequently resp. instituted proceedings to have the conveyance set aside & a reconveyance of the property made to her, alleging that the deed was executed by her under the influence of applt., her medical attendant, & without independent advice. The deed was explained to the patient by her solr., but he was unaware of the proportion the property conveyed bore to her whole estate. Both parties were alive at the date of the trial, & gave evidence:—*Held:* (1) the relationship of doctor & patient existed between the parties; (2) a person giving independent advice must be aware of the total amount of the donor's property & the proportion the part given bears to the whole; (3) the onus, which lay upon applt., to prove that the gift was the result of the free exercise of resp.'s independent will having been discharged to the trial judge's satisfaction, the ct. in the circumstances of this case could reverse such finding only if there was no evidence at all to support it.—WILLIAMS *v.* JOHNSON, [1937] 4 All E. R. 34; 81 Sol. Jo. 784; *sub nom.* WILLIAMS *v.* WILLIAMS, [1937] W. N. 321, P. C.

895a. ——.]—If a legatee agrees to sell to the exor. of the will his legacy for an annuity, the burden will lie on the exor. to show that there was no unfairness in the transaction.—*Re* BIEL'S ESTATE, GRAY *v.* WARNER (1873),

SHANAGAN *v.* SHANAGAN (1884), 7 O. R. 209.—**CAN.**

r i. —— *Deaf & illiterate—Onus of proof.*]—Action to set aside a conveyance obtained from an old woman who was deaf & unable to write, & who had no relatives or friends, by the reeve of the township in which she lived, & who was well known as a justice of the peace, & an active, shrewd business man, engaged in many enterprises:—*Held:* the onus was not on deft., & pltf. must prove her case.—MCEWAN *v.* MILNE (1884), 5 O. R. 100. —**CAN.**

Onus of proof.]—The fact that deft., who had set up the defence of fraud to an action on a guarantee, proved that he could not read or write the English language, that in which the guarantee was written, was held not to be sufficient of itself in the present case to raise such a *primâ facie* presumption of fraud as to justify the trial judge in placing on pltf. the burden of proving affirmatively that that portion of the document, which deft. attacked, was in fact read over to him & that he understood the same. —LASBY *v.* JOHNSON, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

832 ii. ——.]—KRYS *v.* KRYS, [1929] 1 D. L. R. 289; 8 C. R. 153.—**CAN.**

832 *iii.* ——.]—Where suspicious circumstances coupled with relationship are proved there is a *primâ facie* case for setting aside a conveyance.—SYRJA *v.* SYRJA (1931), 45 B. C. 321.—**CAN.**

e (p. 259) i. ——.]—PLAETZER *v.* RAYMOND (Ont.), [1927] 2 D. L. R. 389; 8 C. B. R. 181.—**CAN.**

s (p. 259) ii —— ——.]—BARRY *v.* MCGUIRE (1932), 4 M. P. R. 573.—**CAN.**

sp. *Evidence in rebuttal.*]—BRETT *v.* BRETT (No. 2), [1937] 2 W. W. R. 693. —**CAN.**

PART III. SECT. 2, SUB-SECT. 2. —A

sw. *Fiduciary relationship—Where no independent advice.*]—GOULET *v.* TARDIF (Man.), [1929] 4 D. L. R. 128.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

sx. *Onus of proof—On party alleging fairness of transaction—Sale by parent to son.*]—In an action by a father against his son to set aside a transfer on the ground of fraud, where admittedly no pecuniary consideration passed at the time, the father could not speak English, the solr. who drew the transfer spoke only English, & the document was in English, & the father was entirely dependent on the son for information as to what was said & done, the burden of proof was held to be upon the son that his father knew well the nature & effect of the instrument.—IWANCHUK *v.* IWANCHUK (Alta.), [1919] 3 W. W. R. 363; 48 D. L. R. 381.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—C.

sz. *Aunt & niece.*]—A presumption of undue influence was held to arise as between a lady of eighty-seven, nearly blind, & her niece & niece's husband.—DONNELLY *v.* JESSEAU, DONNELLY *v.* MORRISSEY (1936), 11 M. P. R. 1.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—F

sy. *When presumed—Husband in impaired physical & mental condition—Wife with business ability.*]—MCCAFFREY *v.* MCCAFFREY (1891), 18 A. R. 599.—**CAN.**

L. R. 16 Eq. 577; 42 L. J. Ch. 556; 28 L. T. 835; 21 W. R. 808.

Annotation :—**Refd.** Harloe *v.* Harloe (1875), 44 L. J. Ch. 512.

909a. ——.]—DEANE *v.* RASTRON (1792), 1 Anst. 64; 145 E. R. 801.

940. *Add. Annotation :*—**Refd.** Permanent Trustee Co. of New South Wales, Ltd. *v.* Bridgewater, [1936] 3 All E. R. 501.

961. *Add. Annotation :*—**Refd.** Permanent Trustee Co. of New South Wales, Ltd. *v.* Bridgewater, [1936] 3 All E. R. 501.

962a. —— ——.]—Resp. was entitled to certain contingent & reversionary interests under his grandfather's & father's wills, the exact nature & extent of which interests were the subject of some doubt, & several counsel had advised upon them & their opinions differed. One M., a moneylender whose exors. were applts., had advanced various sums to the resp. between the end of 1927 & Sept., 1928, amounting in all to £2,203 17*s.* 7*d.* In Sept., 1928, M. refused to make any further advance, but offered to purchase the whole interest under the grandfather's will & the interest under the father's will to the extent of £1,450 to £125. Resp. saw an independent solr. with whom, however, he only had one short interview, & who seemed to have acquiesced in the transaction resp. said he was determined to sell. the time of the earlier advances, had on policies for £2,500 on the life of be taken out & assigned to him, & they assigned to him absolutely. It seemed able that resp. paid the first premium & in the surrender of one of them resp. & M. acted jointly & both signed all documents :—*Held :* (1) the sale had been made at a substantial undervalue, & resp. had had no proper separate advice; (2) the position of the parties was such that it was incumbent on the exors. of M. to prove affirmatively that the transaction was just & equitable, & this they had failed to do; (3) the judge of first instance having decided that the policies had become the absolute property of M. there was nothing in the facts which rendered this view wrong in law.—PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD. *v.* BRIDGEWATER, BRIDGEWATER *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1936] 3 All E. R. 501; 80 Sol. Jo. 973, P. C.

964a. Purchase by devisee—Representation that defective will duly executed.]—BRODERICK *v.* BRODERICK (1713), 1 P. Wms. 239; 24 E. R. 369, L. C.

Annotation :—**Refd.** Baugh *v.* Price (1752), 1 Wils. 320.

PART III. SECT. 2, SUB-SECT. 2.—M.

82. *Fiancée & fiancé's father.*]—Where shortly after the death of assured the beneficiary, his fiancée, assigned to his father, without consideration, all her interest in the policy & the benefits thereof :—*Held :* in the circumstances she should be declared entitled to the insurance money.—REDMOND *v.* BOUEY (Man.), [1927] 1 D. L. R. 1057; [1927] 1 W. W. R. 386; *affd.*, [1928] 4 D. L. R. 806; [1928] 3 W. W. R. 345; 37 Man. L. R. 458.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

r i. ——.]—Pltf. purchased land from deft. Subsequently pltf.'s husband having been convicted of a crime & sentenced to imprisonment, deft. induced pltf. to retransfer the land to him :—*Held :* pltf. having been imposed on, & having conveyed the land for less than the real value thereof & without independent advice, the transfer should be set aside.—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

928 iii. ——.]—MCEACHERN *v.* SOMERVILLE, MCEACHERN *v.* WHITE (1876), 37 U. C. R. 609.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

935 i. *Principles of relief—Presumption of incapacity.*]—Expectant heirs & reversioners need to be protected against the consequences of their own improvidence in dealing with designing men.—MOREY *v.* TOTTEN (1857), 6 Gr. 176.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

c i. —— ——.]—Pltf., a person of little or no business ability, who was possessed of a life interest in a capital sum of considerable amount, had been adjudicated bkpt., & under threat of his creditors to realise the life interest, had approached deft., a money-lender, for assistance. Notwithstanding the business ignorance of pltf. & the financial straits in which he was placed, of which deft., by reason of previous transactions with him, must have been well aware, & without pltf. being independently advised, a sale of the life interest to deft. was arranged at a figure considerably under its real value. In an action brought some eleven years later to have the transaction set aside :—*Held :* although inadequacy of consideration for a transaction is not of itself sufficient to give rise to a presumption of undue influence, the surrounding circumstances in the present case were sufficient to show that pltf. was in the hands of deft. & the subsequent delay in bringing action, & the conduct by pltf., in effecting further insurance in pursuance of the transaction having taken place, while pltf. yet remained in ignorance of its impeachable nature, did not amount to a confirmation & same should be set aside.—HARRIS *v.* RICHARDSON, [1929] N. Z. L. R. 668.—**N.Z.**

PART V. SECT. 6.

1077 i. *Onus of proof that purchaser with notice.*]—In India the onus lies on a third party, who takes the benefit of a transaction with notice or knowledge of circumstances raising a presumption or probability of undue influence by the other party to the contract on the party complaining of undue influence, of proving that he, the third party, derived no unfair advantage or that the party complaining of undue influence acted as a free agent.—RAMA PATTER *v.* LINGAPPA GOUNDER (1934), I. L. R. 58 Mad. 454.—**IND.**

FRIENDLY SOCIETIES.

Part III.—Unregistered Societies.

17. *Add. Annotation :—As to* (3) **Reid.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

Part IV.—Collecting Societies.

85. *Add. Annotation :*—**Apld.** Bell *v.* Harker (1927), 91 J. P. 189.

85a. ——.]—Where a person allows a policy with a collecting society or industrial assurance company to lapse & takes out instead of it a similar policy in another society, a transfer takes place within the contemplation of Industrial Assurance Act, 1923 (c. 8), s. 26 (1), notwithstanding that before the date of the policy with the second society the person already held other policies with that society, or that after that date he continues to hold other policies in the first society, or that before the lapse of the earlier policy the two policies for a time co-exist.—BELL *v.* HARKER, [1928] 1 K. B. 368 ; 97 L. J. K. B. 155 ; 138 L. T. 226 ; 91 J. P. 189 ; 44 T. L. R. 33 ; 25 L. G. R. 505 ; 28 Cox, C. C. 451, D. C.

Part VIII.—Privileges of Registered Societies.

51a. **" Demand in writing "—What amounts to.**]—Friendly Societies Act (c. 63) requires the assignees, etc., of the officers of such societies " upon demand in writing " to pay the debts due from such officers in priority of his other creditors :—*Held :* a bill filed to recover the amount is a sufficient " demand in writing." —ABSOLOM *v.* GETHING (1863), 32 Beav. 322 ; 32 L. J. Ch. 786 ; 8 L. T. 132 ; 9 Jur. N. S. 1263 ; 11 W. R. 332 ; 55 E. R. 126.

Part XI.—Rules.

73a. **What majority required—Levy on prosperous branches—In aid of non-prosperous.**]—The ct. held that the Ancient Order of Foresters were entitled to alter the general laws of the Order without a nine-tenths' majority so as to compel branches or cts. of the society which were in a good financial position to contribute 7½ per cent. of any surplus on valuation for the support of branches which were not prospering.—BUNDEY *v.* SEABROOK (1932), 48 T. L. R. 361 ; 76 Sol. Jo. 289.

Part XII.—Officers.

109a. **Agent—Termination of employment—Under amended rules.**]—Pltf. was appointed an agent of defts., a friendly society, whose rules, though subject to alteration, provided at that time for the retention of agents in office so long as their conduct was satisfactory. After pltf. reached the age of sixty-five defts. altered their rules, by providing that agents should be compulsorily retired at the age of sixty-five, & defts. terminated pltf.'s employment :—*Held :* as the rules, on the face of them, were alterable, pltf. was not entitled to a declaration that defts. were not entitled to terminate his employment.—PAGE *v.* LIVERPOOL VICTORIA FRIENDLY SOCIETY (1927), 43 T. L. R. 712, C. A.

Part XIII.—Membership.

133. *Add. Annotation :*—**Apld.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

145a. **Illegal policy—Liability of company—" False representation " by proposer.**]—PEARL ASSURANCE CO., LTD. *v.* BROMLEY, No. 174a, *post.*

PART I.

s. *Charitable Associations Act, R. S. M.*, 1913.]—SASS *v.* ST. NICHOLAS MUTUAL BENEFIT ASSOCIATION OF WINNIPEG, [1937] S. C. R. 415.—**CAN.**

PART XI. SECT. 5.

s 1. —— *Rules affecting rights given by Ontario Insurance Act, 1927, s. 153.*]—The rules of a mutual benefit society cannot affect the right to surrender, assign or dispose of the contract between society & beneficiary given by the Ontario Insurance Act, R.S.O., 1927, s. 153.—*Re* MCKINNON, [1935] 1 D. L. R. 428 ; O. R. 33.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—A.

ss. *Conditions precedent—Delivery of*

155a. —— **What must be disclosed to directors.**]—On the construction of Geo. 3, c. lxxiii., by which the Customs' Annuity & Benevolent Fund was established, & of the rules made under the authority of that Act:—*Held:* (1) in appointing a "nominee" of a subscriber's interest in the fund the directors ought to be informed for what purpose the nominee is appointed & to whom money is to be paid. This may be done by the instrument appointing the nominee or by some other instrument signed by the subscriber, or by his will; (2) *Semble:* a "nominee" may be a person who is intended to take as a trustee for others.—URQUHART *v.* BUTTERFIELD (1887), 37 Ch. D. 357; 57 L. J. Ch. 521; 57 L. T. 780; 36 W. R. 376; 4 T. L. R. 161, C. A.

155b. —— **Who may be nominee—Trustee.**]—URQUHART *v.* BUTTERFIELD, No. 155a, *ante.*

174a. **Industrial Assurance Act, 1923 (c. 8), s. 3—"Grandparent"—Step-grandparent.**]—(1) By Industrial Assurance Act, 1923 (c. 8), s. 3, "Amongst the purposes for which . . . industrial assurance cos. may issue policies of assurance there shall be included insuring money to be paid for the funeral expenses of a parent, child, grandparent, grandchild, brother, or sister. . . .":—*Held:* "grandparent" does not include a step-grandparent.

(2) By sect. 5 of the same Act "Any . . . industrial assurance co. which issues policies of industrial assurance which are illegal . . . shall, without prejudice to any other penalty, be liable to pay to the owner of the policy a sum equal to the surrender value of the policy . . . or, if the policy was issued after the commencement of this Act, a sum equal to the amount of the premiums paid, unless it is proved that owing to any false representation on the part of the proposer, the . . . co. did not know that the policy was illegal . . .":—*Held:* the "false representation" here referred to includes any untrue statement, whether made innocently or fraudulently.—PEARL ASSURANCE CO., LTD. *v.* BROMLEY (1933), 49 T. L. R. 446; 77 Sol. Jo. 404.

175a. **Insurance of child for more than statutory amount.**]—Resps., an industrial assurance co., issued three policies of insurance in respect of the life of a child, for sums which aggregated more than the statutory maximum, though each was for a sum less than that maximum. Each policy contained a provision that no payment would be made which either alone or in conjunction with other such payments exceeded the statutory maximum. On a charge of having committed an offence within Industrial Assurance Act, 1923 (c. 8), s. 39 (2):—*Held:* (1) the words in sect. 4 (1) "relating to payments on the death of children" were merely descriptive of the group of sects in the 1896 Act headed "Payments on death of children," & did not limit those sects. in their application to industrial assurance cos. to payment only, but included the provisions as to insurance; (2) the above provision in each policy had no legal effect at all, & it could not be contended that in fact the co. did not insure for more than the statutory amount; (3) the proceedings were in time because, for this purpose, the insurance co. did not insure from the time only when the policies were taken out, but (LORD HEWART, C.J.) either insured on every occasion when a premium was paid, or (AVORY, J.) continued to insure during the time that the assured was not in default & the policies were in force.—HARKER *v.* BRITANNIC ASSURANCE CO., LTD., [1928] 1 K. B. 766; 97 L. J. K. B. 359; 138 L. T. 395; 91 J. P. 51; 44 T. L. R. 243; 72 Sol. Jo. 121; 26 L. G. R. 136; 28 Cox, C. C. 475, D. C.

Annotations:—As to (2) **Distd.** Hirst *v.* Liverpool Victoria Friendly Society, Clark *v.* London & Manchester Assce Co., [1930] 2 K. B. 209; *Re* Smith & Britannic Assurance Co., Ltd.'s Arbn., [1933] 1 K. B. 109.

175b. —— **Proviso in policy limiting sum assured.**—In 1920 H. took out a policy of industrial insurance on the life of his daughter, then aged three months, at a premium of twopence per week, & in 1925 he effected a similar policy on the life of his son, then aged one month, in each case assuring the amount respectively set out in a Table contained in the policy. The Table in the policy of 1920 was made out on the basis of a premium of one penny per week & insured sums payable

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policy & payment of premium.]—In an action wherein plts. sought to recover benefits from a fraternal society as the beneficiaries of a deceased who was alleged to have become a member thereof:—*Held:* applying sects. 81 (3) & 86 (1) of Insurance Act, 1925, deceased's application for membership & the acceptance thereof did not effect a contract binding on the society because no policy, or certificate of membership, was delivered & payment of the first premium or at least all of it had not been made, which, under said sects., were conditions precedent to a binding contract.—PEDERSON *v.* EMPIRE HOME BENEFIT ASSOCN., [1931] 2 W. W. R. 858.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.

142 1. *Necessity for insurable interest.*]—A woman, C., on the suggestion of the agent of a friendly society, agreed to take out a policy of industrial assurance on the life of her stepmother, T., & she left it to the agent to take the necessary steps to effect the insurance. She signed no proposal for a policy in favour of T., nor was such a proposal signed by T., who was unaware of the transaction, & there was no evidence to show by whom the proposal, which bore to be signed by T., was in fact signed; but a policy in favour of T. was issued by the society & handed to C., who retained it, & paid premiums on it. C. had no insurable interest in the life of T., & she had no intention of benefiting T., C. having claimed repayment from the society of the premiums paid by her:—*Held:* C. was entitled to repayment, as, owing to the absence of *consensus ad idem*, no concluded contract was disclosed either between C. & the society, or between T. & the society.

Opinions, that, on the assumption that a policy on the life of T. for the benefit of C. had been entered into, it was an illegal policy within Life Assurance Act, 1774 (c. 48), & C. was, on that ground also, entitled to repayment of the premiums under Life Assurance Act, 1774 (c. 48), s. 5.—CAME *v.* CITY OF GLASGOW FRIENDLY SOCIETY, [1933] S. C. 69.—**SCOT.**

1 1. ——.]—Deft. club, which was incorporated under Charitable Assocns. Act, R.S.M., 1913, held to be a corpn. carrying on the business of insurance & a "friendly society" within Manitoba Insurance Act, 1932. Sect. 118 (5) of Manitoba Insurance Act, as to the effect of the understating of the age of the insured in the application or contract, held to apply to the contract of insurance in question herein.—BROADBENT *v.* 1600 CLUB OF SOUTHERN MANITOBA, [1935] 1 W. W. R. 353; 2 D. L. R. 802; *on appeal*, [1935] 2 W. W. R. 539, 4 D. L. R. 224, 43 Man. L. R. 221.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 2.—C.

ss. *Benevolent association incorporated under Charitable Associations Act, R. S. M., 1913 (c. 27)—Validity of by-law as to nomination.*]—THEOBALD *v.* WINNIPEG MUSICIANS ASSOCN., [1927] 1 D. L. R. 57; 36 Man. L. R. 163; [1926] 3 W. W. R. 337.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 3.—B.

1 i. —— *Sum payable by rules to "widow or heirs or representatives"—"Or" not read as "and."*]—APPLEBY *v.* SEARLE (1930), 2 M. P. R. 319.—**CAN.**

on the death of the life assured varying in amount according to age & the time the policy had been in force; it also contained the following statement: "Twopence per week will assure double the above sums provided that in any case where the amount secured by the larger premium would exceed the limits of assurance prescribed by Friendly Societies Act, 1896 (c. 25), viz., £6 for children under five years of age, & £10 for children under ten years of age, the sum assured shall be limited to £6 or £10 as the case may require." In the policy of 1925 was a statement that the amount payable under it was subject to the limitations of Friendly Societies Act, 1924 (c. 11):—*Held:* in view of the statements in the two policies limiting the amount insured in each case to the statutory maximum, neither policy contravened the provisions of the Friendly Societies Acts, 1896 & 1924, & was valid.

In 1925 C. signed a proposal for a whole life assurance on the life of her son, then aged one year next birthday, at a weekly premium of one penny for a sum to be assured increasing as per scale up to £15. On the same day she signed a proposal for an endowment assurance on the same life at a weekly premium of threepence for a "sum to be assured £7 14*s.* payable on attainment of age fifteen or in the event of previous death as per scale." Two policies were issued on the basis of these proposals. On the whole-life policy there was this memorandum: "This life is also assured under [the endowment] policy. Accordingly, the full sum assured printed in the schedule will not come into operation until the attainment of the age of ten. The combined amount payable in the event of earlier death shall not exceed £6 on death under age three, £10 under age six, & £15 under age ten":—*Held:* as the above quoted memorandum cut down the sums payable under the combined policies to the statutory limit, the policies did not contravene the Friendly Societies Act, 1924 (c. 11), & were valid.—*Re* HIRST & LIVERPOOL VICTORIA FRIENDLY SOCIETY, *Re* CLARK & LONDON & MANCHESTER ASSURANCE CO., [1930] 2 K. B. 209; 99 L. J. K. B. 138; 142 L. T. 291; 94 J. P. 81; 73 Sol. Jo. 832; 28 L. G. R. 53, C. A.

Annotation:—**Apld.** Smith *v.* Britannic Assurance Co. (1932), 174 L. T. Jo. 44.

175c. —— ——.]—Applt. insured her child, who was born on May 2, 1927, a month after its birth, the premium to be 2*d.* a week. Friendly Societies Act, 1924 (c. 11), s. 2 (1), stated that Friendly Societies Act, 1896 (c. 25), s. 62, should have effect "as if for that section the following section were substituted," & provided that a society should not insure or pay on the death of a child under three years of age any sum of money which exceeded or which, when added to any amount payable on the death of that child by any other society or branch or by any trade union, exceeded £6. By Industrial Assurance Act, 1923 (c. 8), s. 21, it was required that any such policy of insurance should set out in distinctive type a statement of the effect of sect. 62. Applt. claimed from resp. co. the return of her premiums on the grounds that (*a*) under sect. 62 as amended by sect. 2 (1) of the Act of 1924 the sum insured exceeded the amount allowed, & (*b*) under sect. 21 of the Act of 1923 the policy did not set out a statement of the effect of sect. 62 as amended. Sect. 62 of the Act of 1896 was left unamended & unrepealed by the Act of 1924, but under the latter Act was to be read as provided by the Act of 1924. The policy was issued for a penny premium, & that was altered to twopence premium, & it was then stated that the amount payable on death was ascertainable from Sched. B., but that, the premium in this case being twopence, the amounts stated in Sched. B were increased in proportion. That would bring the amounts over what was allowed by sect. 62 as amended, but to the above statement was added "subject to the conditions of the Friendly Societies Act." In a second proviso on the face of the policy it was stated that the policy was issued "subject to the provisions of sect. 62 of Friendly Societies Act, 1896 (c. 25), as amended by the Industrial Assurance Act, 1923 (c. 8)—the provisions of which would, it was argued, make it illegal." Then followed the effect of sect. 62 without the express language introduced by the Act of 1924:—*Held:* the child had not been insured for sums in excess of the amounts permitted by sect. 62 of the Act of 1896 as amended by sect. 2 (1) of the Act of 1924, having regard to the effect of the statements in the policy, & particularly the proviso, & to the fact that sect. 62 of the Act of 1896 still existed, not having been repealed, though the amendment of it in the Act of 1923 had been repealed, & though sect. 62 had now to be read as if it had the effect set out in sect. 2 (1) of the Act of 1924. The co. had not committed an offence against sect. 21 of the Act of 1923, as it used the very language in its policy which had been used by the Legislature from 1896 to 1924, & did introduce the effect of sect. 62, & it was immaterial that the Act of 1924 was not specifically mentioned.—*Re* SMITH & BRITANNIC ASSURANCE CO.'S ARBITRATION, [1933] 1 K. B. 109; 102 L. J. K. B. 51; *sub nom.* SMITH *v.* BRITANNIC ASSURANCE CO., LTD., 147 L. T. 367, C. A.

175d. Who is "child" within Industrial Assurance Act, 1923 (c. 8), s. 3—Illegitimate child.]—Above sect. provides that: "Amongst the purposes for which industrial assurance cos. may issue policies of assurance, there shall be included insuring money to be paid for the funeral expenses of a parent, child, grandparent, grandchild, brother or sister, & the issuing of such policies shall be treated as part of the industrial assurance business of the society or co.":—*Held:* the word "child" in the above sect. includes an

PART XIII. SECT. 5.

sd. *For funds improperly divided—Unauthorised distribution.*] — *Held:* under the rules of the Ancient Order of Foresters & under Friendly Societies Act, 1896 (c. 25), s. 78 (1) (*c*), a dissolution of a ct. required the consent of the central body, & as this had not been obtained, the members of the ct. which had dissolved were personally liable for the money they had divided.—KELLY *v.* PEACOCK (1917), 55 Sc. L. R. 65.—**SCOT.**

PART XIII. SECT. 6, SUB-SECT. 2.—A.

sg. *Construction of rule—Membership to cease when deposit two months in arrear.*]—Rule 17 of a Chinese benevolent assocn. at Penang provided that

illegitimate child, & policies taken out by a mother for the purpose of insuring money to be paid for the funeral expenses on the death of her illegitimate children were valid. —MORRIS *v.* BRITANNIC ——— LTD., [1931] 2 K. B. 125; 100 L. J. K. 263; 145 L. T. 45; 47 T. L. R. 318; Sol. Jo. 206.

Part XVII.—Accounts and Inspection of Affairs.

223a. Power of commissioner or inspector to hold public inquiry—Industrial Assurance Act, 1923 (c. 8), s. 17.]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co., is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsection & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392; 101 L. J. Ch. 177; 147 L. T. 41; 48 T. L. R. 296; 76 Sol. Jo. 217, H. L.

Annotation:—**Consd.** O'Connor *v.* Waldron, [1935] A. C. 76.

Part XVIII.—Disputes.

224a. ———.]—TIMMS *v.* WILLIAMS (1842), 3 Q. B. 413; 2 Gal. & Dav. 621; 11 L. J. Q. B. 210; 6 J. P. 685; 6 Jur. 1012; 114 E. R. 565.

250. *Add. Annotation:*—**Refd.** Paul, Ltd. Wheat Commission (1935), 152 L. T. 352.

251. *Add. Annotation:*—**Refd.** Paul, Ltd. Wheat Commission (1935), 152 L. T. 352.

Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation:*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

329a. ——— **False return.**]—An information for making a false return under the Friendly Societies Act, 1896 (c. 25), s. 84 (*c*), is good if laid within six months from the date when the return is sent to the registrar.—WINDRIDGE *v.* ANCIENT ORDER OF FORESTERS' FRIENDLY SOCIETY, [1933] 1 K. B. 42; 102 L. J. K. B. 62; 148 L. T. 285; 96 J. P. 483; 49 T. L. R. 16; 30 L. G. R. 510, D. C.

363a. Parent society—Improper dealings with funds of branch.]—It was alleged that a local branch of a friendly society had improperly purchased certain freehold property, & the parent society sued for a declaration that the purchase was an improper one, in breach of the rules, & a breach of trust, & that defts. the monthly deposit to be made under rule 16 should be payable by each member in advance on the 15th day of the month, & that "if his monthly deposit shall be two months in arrear" he was to be notified, & failing payment within twenty-one days was *ipso facto* to cease to be a member & forfeit all privileges:—*Held:* upon the true construction of rule 17 a member could be notified of default only if payment of a monthly deposit was two months in arrear; it was not sufficient that at the date of the notification two monthly deposits were in arrear. Appeal dismissed.—CHEE WOR LOK *v.* YEOH SAW GEOK, [1935] A. C. 69; 104 L. J. P. C. 25; 152 L. T. 193, P. C.—**STRAITS SETTLEMENTS.**

PART XV. SECT. 1.

sd. *Subscriptions—Whether capital or income.*]—Subscriptions paid by the members of a benefit society or association to the society or association to enable it to carry on its business are its "income" & not "capital."—VIZAGAPATAM MUNICIPAL COUNCIL *v.* TEA DISTRICTS LABOUR ASSOCN. (1932), I. L. R. 55 Mad. 282.—**IND.**

PART XV. SECT. 3.

sf. *Unauthorised investments—Liability of auditors.*]—Failure of auditors to report irregularity in investment of funds amounts to misconduct, & the auditors are responsible for any resulting loss.—CANADIAN WOODMEN OF THE WORLD *v.* HOOPER, [1933] 1 D. L. R. 168.—**CAN.**

PART XVII.

sk. *Order for investigation by Attorney-General — Validity.*] — The Workers' Benevolent Society of Canada, incorporated in 1923 under Charitable Associations Act, R. S. M., 1923 (now superseded by Part VIII. of Cos. Act, 1932), appealed from the dismissal of its motion for an order prohibiting the making of an investigation of the books, accounts & securities of the society & into the general conduct of its business, pursuant to an order of the A.-G. made under sect. 414 of Cos. Act, 1932, & amendments thereto:—*Held:* the appeal should be allowed & the issue of the order of prohibition be directed.—*Re* WORKERS BENEVOLENT SOCIETY OF CANADA & HARRISON, [1933] 3 W. W. R. 498; [1934] 1 D. L. R. 257; 41 Man. L. R. 519.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 1.—A. (a).

sb. *Action for libel—Whether proof of special damage necessary.*]—*Held:* pltfs. were entitled to maintain an action to recover damages for defamation of the society as such; it was unnecessary, in the case of a trading corpn., society or partnership, to allege & prove special damages where defamatory words were spoken or written of the corpn., society or partnership, in relation to its trade or business; & damages limited to the injury done to the joint adventure might be awarded without proof of special damage.—IRISH PEOPLES ASSCE. CO. *v.* DUBLIN CITY ASSCE. CO., [1929] I. R. 25.—**IR.**

were to make good to the lodge the money spent upon the purchase :—*Held :* the parent society had a vested interest in the fund of the local lodge, although the amount of such interest could be ascertained only upon a proper valuation in accordance with the rules, & was entitled to maintain the action under Friendly Societies Act, 1896 (c. 25), s. 94.—TOMLEY *v.* SHREEVE, [1937] 3 All E. R. 75 ; 81 Sol. Jo. 498.

Part XXII.—Dissolution.

430. *Add. Annotations :—As to* (1) **Reld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103; *as to* (2) **Reld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART XX. SECT. 3.

sc. *Right to secede.*]—In the absence of statutory provisions there is no power in a branch lodge of a friendly society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble :* even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose. —INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sd. *Effect of secession—On property & funds.*]—A mere right to secede does not confer a power in the seceding lodge to take away the funds constituted under the rules of the order A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires.*—INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sf. *Secession by Scottish branch of English society—Refusal to grant certificate of secession—Jurisdiction of Scottish courts.*]—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate :—*Held :* the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—SONS OF TEMPERANCE FRIENDLY SOCIETY, [1926] S. C. 418.—**SCOT.**

GAME.

Part IV.—Persons having Rights over Game.

44. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

53. *Add. Annotations :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

55. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

64. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

69. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

71. After this case add :—

——— ———.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

76. *Add. Annotations :*—**Refd.** Swayne *v.* Howells (1926), 43 T. L. R. 14 ; Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

87. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

90. *Add. Annotations :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

91. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92a. Sale of part of land for erection of racing stables—Breach of covenant for quiet enjoyment.]—A landowner who has granted a lease of sporting rights over land to a tenant together with a covenant for quiet enjoyment & afterwards during the currency of the tenancy sells part of that land to a third party so that it is or may be used for the erection of racing stables, is thereby derogating from his grant so as to become liable in damages to his tenant.—PEECH *v.* BEST, [1931] 1 K. B. 1 ; 99 L. J. K. B. 537 ; 143 L. T. 266 ; 46 T. L. R. 467 ; 74 Sol. Jo. 520, C. A.

Annotation :—**Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

98. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

100a. ——— ——— Grant of licence to gliding association.]—The user of land for gliding flights may be an actionable interference with sporting rights granted over the land.—WENNER *v.* MORRIS (1935), 79 Sol. Jo. 252.

Part VI.—Remedies for Infringement of Rights.

127. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

129. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

142. *Add. Annotation :*—**Refd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

145. *Citation :*—substitute " 57 J. P. 423."

247a. Summing up—Necessary contents.]—There must be a careful direction to the jury on the nature of common enterprise in the case of

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PART II. SECT. 1.

sx. " *Taking or killing* " *game under one year of age—What amounts to.*]—Sect. 4 of Game Act, R. S. S., 1930, provides that " no person shall hunt, trap, take, shoot at, wound or kill . . . the young under one year of age of any of the animals mentioned in the sect." :—*Held :* (1) the application of the word " take " therein is limited to the act of capturing an animal &, in order to constitute an offence, the capture would have to be of a living animal, notwithstanding that sect. 2 (5) provides that " game " means such animals dead or alive ; (2) although the killing of such an animal is done when the animal is found lying wounded by some other person, & in order to end its suffering, the killing nevertheless comes within the terms of the section & is, therefore, an offence.—R. *v.* ZIMMER & ZIMMER, [1931] 2 W. W. R. 562.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

sy. *Provincial game Act—Killing of game by white man on Indian reserve.*]—The fact that the Dominion Parliament has exclusive legislative authority over " Indians & lands reserved for Indians " does not prevent a provincial game protection Act which prohibits the killing of game out of season from being applied to the killing of game on an Indian reserve where the offender is a white man.—R. *v.* MCLEOD, [1930] 2 W. W. R. 37 ; 54 Can. C. C. 107.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sa. *Right to shoot game—Under Game Act Amendment Act,* 1925.]—Game Act Amendment Act, 1925, does not give a farmer an absolute right to shoot game birds found doing damage to his crop, provided he does not shoot across a public highway ; it means merely that so far as the penalties imposed by said Act are concerned they shall not be enforceable against a farmer shooting under the circumstances therein described. The right of a municipality to protect its citizens by prohibiting the discharge of firearms within its limits is not interfered with.—R. *ex rel.* RANKIN *v.* PENDRAY, [1929] 1 W. W. R. 30 ; 51 Can. Crim. Cas. 27 ; 40 B. C. R. 410.—**CAN.**

PART IV. SECT. 4.

f i. ———.]—R. *v.* SYLIBOY, [1929] 1 D. L. R. 307 ; 50 Can. Crim. Cas. 389.—**CAN.**

f ii. ———.]—Indians in Alberta entitled to the benefits of the articles of treaty made between the Queen & the Blackfeet, Stony, & other Indians on Sept. 12, 1877, may, regardless of the provisions of a provincial Game Act, when hunting for food kill all kinds of wild animals regardless of age or size wherever they may be found on unoccupied Crown lands or other lands to which such Indians have a right of access, at all seasons of the year, & may hunt such animals with dogs or otherwise as they see fit, & they need no licence beyond the language of Alberta Natural Resources Act, 1930, s. 12, to entitle them to do so.—R. *v.* WESLEY, [1932] 2 W. W. R. 337 ; 4 D. L. R. 774 ; 58 C. C. C. 269 ; 26 Alta. L. R. 433.—**CAN.**

f iii. ———.]—A treaty Indian is bound by the provisions of Game Act, R.S.S., 1930, & prohibited thereby from shooting, hunting, trapping or carrying fire-arms within certain areas of Crown lands which are declared to be game preserves & which are particularly described in Sched. B. of Game Act.—R. *v.* SMITH, [1935] 2 W. W. R. 433 ; 3 D. L. R. 703.—**CAN.**

f iv. ———.]—Indians have no right of access to a game reserve beyond that of other persons under the Game Act, R. S. S., 1930.—R. *v.* SMITH (1935), 64 Can. C. C. 131.—**CAN.**

poachers charged with violence.—R. v. [illegible] (1929), 21 Cr. App. Rep. 79, C. C. A.

265a. More than one offence in same count.]—Applt. was convicted on a count of an indictment which charged an offence against Night Poaching Act, 1828 (c. 69), s. 1, in the following terms: "A. D. on the 13th day of December in the year 1932 in the county of L. by night unlawfully took or destroyed game or rabbits in [certain land] or was in the said land by night with a gun, net or other instrument for the purpose of unlawfully taking or destroying game or rabbits": —*Held:* the count charged two offences in the alternative & was, therefore, bad in law, & the conviction must be quashed.—R. v. DISNEY, [1933] 2 K. B. 138; 102 L. J. K. B. 381; 149 L. T. 72; 97 J. P. 103; 49 T. L. R. 284; 77 Sol. Jo. 178; 24 Cr. App. Rep. 49; 31 L. G. R. 176; 29 Cox, C. C. 635, C. C. A.

Annotation:—**Consd.** R. v. Wilmot (1933), 149 L. T. 407.

299. *Add. Annotation:*—**Consd.** Farey v. Welch, [1929] 1 K. B. 388.

Part VII.—Gamekeepers.

354. *Add. Annotations:*—**Consd.** Cotterill v. Penn, [1936] 1 K. B. 53. **Refd.** Barnard v. Evans, [1925] 2 K. B. 794.

Part VIII.—Licences.

375a. —— Coursing—What amounts to.]—Resp. was charged with having killed a hare when he had no licence to kill game, as required by sect. 4 of Game Licences Act, 1860 (c. 90). Resp. owned three greyhounds, which he kept for coursing & sport. On the day of the alleged offence he was riding his horse in a field, with the permission of the owner, & had with him two of his greyhounds. There were no other persons or dogs present. The two greyhounds chased a hare, overtook & killed it. Thereupon resp. galloped across the field to where the greyhounds were, picked up the hare, put it in a bag, & placed the bag in the bottom of a hedge:—*Held:* these facts constituted the killing of a hare by coursing with greyhounds within the meaning of the third exception in Game Licences Act, 1860 (c. 90), s. 5, which excepted from the duties & provisions of that Act: "(3) the pursuing & killing of hares . . . by coursing with greyhounds, . . ."; therefore, the justices were right in acquitting resp. The exception is not restricted to any organized sport of coursing hares.—DOLBY v. HALMSHAW, [1937] 1 K. B. 196; [1936] 3 All E. R. 229; 106 L. J. K. B. 169; 155 L. T. 533; 100 J. P. 486; 53 T. L. R. 48; 80 Sol. Jo. 877; 34 L. G. R. 553; 30 Cox, C. C. 484.

387. *Add. Annotation:*—**Refd.** Clark v. Westaway, [1927] 2 K. B. 597.

PART VIII. SECT. 1, SUB-SECT. 4.

393 1. *Defences—Coursing hare.*]—Deft. was prosecuted for pursuing a hare with a greyhound without having a game certificate, contrary to Game Certificates (Ireland) Act, 1842, ss. 2, 5. Deft. had coursed a hare with a single greyhound on certain lands, but produced a written permission from the owner of the lands to do so. The resident magistrate held that failure to take out a licence under Game Licences Act, 1860, formed the basis of the charge, & deft. was exempted on sect. 5, exception 3, of that Act, in respect of coursing a hare with his greyhound, & dismissed the summons. On a case stated:—*Held:* the resident magistrate was wrong in deciding that deft. came within Game Licences Act, 1860, s. 5, exception 3.—R. (NEVIN) v. CLARKE, [1930] N. I. 174.—**IR.**

PART IX. SECT. 2.

sz. *Possessing the "green hide of a moose" during close season—Possession of small piece—No offence.*]—R. v. MASON, [1931] 2 D. L. R. 288; 55 Can. C. C. 25; 2 M. P. R. 457.—**CAN.**

GAMING AND WAGERING.

Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation :*—69 Sol. Jo. 824.

2. *Add. Annotations :*—**Apld.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321. **Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

5. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

7. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

13. *Add. Annotations :*—**Folld.** Barnett *v.* Sanker (1925), 41 T. L. R. 660. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 497; Ellesmere *v.* Wallace, [1929] 2 Ch. 1. **Refd.** Cooper *v.* Stubbs, [1925] 2 K. B. 753; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321; Townsend *v.* Grundy (1933), 18 Tax Cas. 140.

15. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

15a. **Limited to two parties.**]—ELLESMERE (EARL) *v.* WALLACE, No. 15c, *post.*

15b. **Agreement to refer betting disputes to arbitration.**]—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—JOE LEE, LTD. *v.* DALMENY (LORD), SAME *v.* TATTERSALL'S COMMITTEE, [1927] 1 Ch. 300; 96 L. J. Ch. 174; 136 L. T. 375; 43 T. L. R. 119; 71 Sol. Jo. 20.

15c. **Contract between Jockey Club & racehorse owner.**]—(1) At the invitation of the Jockey Club, which was issued subject to the Club's Rules of Racing, deft. nominated a horse for two races, namely, (*a*) the Peel Handicap, & (2) a long course Selling Plate of 200 sovereigns. The horse did not run in either race. In an action by E. on behalf of himself & the other members of the Club, the trustees of the Club & W. & Sons as stakeholders, to enforce payment by the deft. of the entrance fees or the part of them agreed to be forfeited :—*Held :* the contracts for the two races, which were between the Club & deft. & not between the various entrants *inter se*, were in neither case by way of gaming or wagering within Gaming Act, 1845 (c. 109), s. 18, & the Club were entitled to recover from deft. the amount of the fees agreed to be forfeited in the two races.

(2) There cannot be more than two parties or two sides to a bet (RUSSELL, L.J.).—ELLESMERE (EARL) *v.* WALLACE, [1929] 2 Ch. 1; 98 L. J. Ch. 177; 140 L. T. 628; 45 T. L. R. 238; 73 Sol. Jo. 143. C. A.

15d. **Transactions in foreign currencies.** — IRONMONGER & CO. *v.* DYNE (1928), 44 T. L. R. 497, C. A.

Annotations :—**Consd.** Weddle, Beck *v.* Hackett (1928), 45 T. L. R. 67. **Refd.** Woodward *v.* Wolfe, [1936] 3 All E. R. 529.

24. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

26. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

47. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

51. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

52. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

53. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

55. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407. **Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

PART I. SECT. 1.

1 i. *Distinguished from speculative transactions.*]—The mere fact that a transaction is speculative does not make it a wagering one.—KANWAR BHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

1 ii. ——.]—Every forward contract is to some extent speculative, but is not necessarily a wagering contract. The recognised test to be applied is whether at the time of entering into the contract there was a definite agreement or understanding between the parties that the performance of the contract by delivery of goods was not to be demanded, but that differences in price only should become payable.—RAMDIN HAZARI LAL *v.* MANSARAM MURLIDHAR (1929), I. L. R. 51 All. 1027.—**IND.**

10 i. *Severable contract.*]—Pltf. & deft. entered into an agreement whereby pltf. was to train deft.'s horses for trotting, & deft. was to pay £2 per week for each horse, give pltf. one-fourth of stakes won, & further, when a horse was in a race & had a reasonable chance of winning, deft. was to put £5 on the totalisator & pay to pltf. any dividend received :—*Held :* (1) an agreement by an owner to pay to his trainer one-fourth of the stakes won was valid & enforceable; (2) the term of the contract whereby investment was to be made on the totalisator by deft. in pltf.'s interest was unlawful; (3) the whole contract was not rendered unlawful thereby, the promises being independent, & the lawful promises being capable of enforcement.—WILSON *v.* HOGARTH, [1927] N. Z. L. R. 332.—**N.Z.**

d i. ——.]—WILSON *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

sa. *Agreement for payment of differences—Arising out of wagering contract.*]—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—JIVANCHAND GAMBHIRMAL, ETC. *v.* LAXMINARAYAN GANESHRAM (1925), I. L. R. 49 Bom. 689.—**IND.**

sb. *Agreement by racehorse owner to pay trainer share of stakes won.*]—— *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

sc. *Contract to buy & sell on margin—Onus ondefendant to prove illegal.*]—Defts., Toronto merchants, engaged pltfs., Chicago brokers, to buy & sell grain in Chicago on margin, which the latter did, advancing them money for which they sued. Defts. having refused to settle for losses sustained :—*Held :* assuming the State law to be that if the contract was to deal in such a way that only the differences in prices should be settled according to the rise & fall of the market, & no grain be either delivered or accepted, the contract would be a gambling contract & illegal, it lay upon defts. to establish clearly that such was the character of the dealing.—RICE *v.* GUNN (1881), 4 O. R. 579.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—C.

55 i. —— *Forbearance to post as defaulter.*]—A wagering contract under Indian Contract Act is void to the extent that no ct. will enforce such a contract, but it is not illegal. A collateral agreement, therefore, based upon a transaction which was originally a wagering transaction, is not on that account illegal.

A cheque arising out of a betting transaction, but given in consideration of a person's promise to refrain from posting the drawer of the cheque before the Turf Club, & having him declared a defaulter, is valid, & for good consideration. — BANVARD *v.* MOOLLA (1928), I. L. R. 7 Ran. 263.—**IND.**

o i. —— *Forbearance to post as defaulter—Authority of agent.*]—**In Apr. 1931, deft. became heavily indebted to**

58. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; **Eldridge & Morris** *v.* Taylor, [1931] 1 K. B. 416. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; Evans *v.* Bartlam, [1937] A. C. 473 ; Latter *v.* Colwill, [1937] 1 All E. R. 442.

-.]—An agreement by debtor to pay a debt resulting from a betting transaction : *Held :* to be enforceable, although obtained under the threat that, notwithstanding ct. proceedings were pending, he would be reported to Tattersall's.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

63. *Add. Annotation :*—**Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

64. *Add. Annotation :*—**Distd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

64a. —— ——.]—Pltf. backed a horse with deft. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that deft. had agreed to abide by the decision of the Committee :—*Held :* as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by deft. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—HYDE *v.* TYLER (1926), 42 T. L. R. 652 ; 70 Sol. Jo. 856, C. A.

70. *Add. Annotation :*—**Apld.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

70a. —— **Agreement to compromise action.**]—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—BURRELL & SON *v.* LEVEN (1926), 42 T. L. R. 407.

76. *Add. Annotation :*—*As to* (1) **Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

83. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

94. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

98. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

107. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

108. *Add. Annotation :*—*As to* (1) **Apld.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

148. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

152. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

164. *Add. Annotation :*—*As to* (1) **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

171. *Add. Annotation :*—**Refd.** Ramdutt Ramkissen Dass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58.

173. *Add. Annotation :*—**Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

181. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

182. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

185. For " Gaming Act, 1838 " read " Gaming Act, 1738."

Add. Annotation :—*As to* (1) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

188a. —— **Loan to bookmaker for general purposes of business.**]—A loan to a firm of bookmakers for the general purposes of the business & charged by deed on the assets of the partnership in the absence of proof that the money was required for the purpose of making bets, is not illegal as being " for the reimbursing or repaying any money knowingly lent or advanced for betting " within Gaming Acts, 1710 & 1835.—HUMPHERY *v.* WILSON (1929), 141 L. T. 469 ; 45 T. L. R. 535, C. A.

188b. ——.]—Money lent in England on a security with a view to its being used by the borrower in playing here a game of cards for money cannot be recovered in an English Ct.—CARLTON HALL CLUB *v.* LAURENCE, [1929] 2 K. B. 153 ; 98 L. J. K. B. 305 ; 140 L. T. 534 ; 45 T. L. R. 195 ; 73 Sol. Jo. 127, D. C.

189. *Add. Annotations :*—**Refd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

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a number of bookmakers. On settling day, being unable to pay, he consulted a solr., whose managing clerk, W., happened to be a member of the Committee of Tattersall's Club. After a general discussion of the position W. was sent to Tattersall's Club to inform some, or all, of the bookmakers concerned, including pltf., that deft. could not pay at that time, but would pay them when he could. It was alleged that W., as deft.'s agent, entered into an agreement with pltf. to the effect that if pltf. did not " post " deft. as a defaulter at Tattersall's Club, he would pay what he owed in full within a reasonable time, & that thereby a legal obligation to pay the debt was created :—*Held :* W. had no authority from deft. to enter into any such contract on his behalf.—O'MALLEY *v.* GORMAN, [1935] W. A. L. R. 39.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.—D.

se. *Gaming Act*, 1835, *s.* 2—*Cheque in name of company—Personal transaction of president.*]—In the present action, one by a co. to recover the amount of various cheques given deft., a bookmaker, in payment of bets on horse races which bets were lost :—*Held :* on the evidence, although the cheques were drawn in the co.'s name, the bets had been the personal transactions of its president, &, therefore, it had no status to maintain the action.—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249 ; [1935] 1 D. L. R. 616 ; 62 C. C. C. 247.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

h i. ——.]—Where deft. sold for pltf. horses won by pltf. at a raffle, & received the purchase money :—*Held :* he could not refuse to pay it over, on the ground that pltf. had obtained the horses by gambling.—JAMIESON *v.* SHERWOOD (1856), 14 U. C. R. 282.—**CAN.**

PART I. SECT. 5.

165 i. *Action between partners—Defences.*]—GIBBS *v.* CANN, [1932] 1 D. L. R. 282 ; 56 Can. C. C. 346.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

181 iii. ——.]—Where during a game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—GOGGINS *v.* MORRISON, [1925] 2 D. L. R. 1203 ; [1925] 2 W. W. R. 75.—**CAN.**

m i. —— *Gambling on grain exchange.*]—Money advanced or lent to enable the borrower to carry out an illegal purpose as, *e.g.*, gambling transaction on a grain exchange, cannot be recovered where, at least, the purpose has been carried out wholly or to a substantial extent.—THOMAS *v.* PARLEY (Sask.), [1929] 3 D. L. R. 755 ; 2 W. W. R. 317.—**CAN.**

191. *Add. Annotation :*—**Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469.

192. *Add. Annotations :*—*As to* (2) **Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469. **Consd.** Woolf *v.* Freeman, [1937] 1 All E. R. 178.

.]—Gibson *v.* Roberts (1936), 80 Sol. Jo. 596.

192b. ——.]—Pltf. was the proprietor of a club where card games were played for money, chips or counters being used for money in the actual play. Deft. purchased from the club chips to the value of £30 for which he gave the cheque of a third party, which was subsequently dishonoured. There was a practice in the club whereby, in the event of the loser having insufficient chips to pay his losses, both winner & loser proceeded to the office of the club & the office paid the sum agreed as won direct to the winner. The office had so paid £18 19*s.* on behalf of deft. In an action for £30, the price of the counters, or, alternatively, for the same sum as money lent, & for the sum of £18 19*s.*, money lent :—*Held :* (1) the giving of the counters on credit was a transaction in the nature of a promise void & unenforceable under Gaming Act, 1892 (c. 9), s. 1, as it was a promise to pay money paid under contracts void under Gaming Act, 1845 (c. 109), s. 18 ; (2) the sum of £18 19*s.*, being paid direct to the person who had already won the money upon wagers, was money lent to deft. for the purpose of gaming or wagering & therefore irrecoverable under the Gaming Acts ; (3) bridge is not an unlawful game, but *qu. :* whether poker is an unlawful game.—Woolf *v.* Freeman, [1937] 1 All E. R. 178 ; 156 L. T. 219 ; 80 Sol. Jo. 995.

192c. ——.]—*Re* Brice's Estate, Brice *v.* Frere (1937), 81 Sol. Jo. 238.

203. *Add. Annotations :*—*As to* (1) **Consd.** Ellesmere, Earl *v.* Wallace, [1929] 2 Ch. 1. *As to* (2) **Apld.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153. **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

205a. —— ——.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque :—*Held :* a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed. Richardson *v.* Moncrieffe (1926), 43 T. L.

213. *Add. Annotation :*—**Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

224. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Wilson, *Ex p.* Salaman *v.* Keith, Prowse (1925), 133 L. T. 814.

226. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

227. *Add. Annotation :*—**Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

229. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L.R. 91.

239. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

240. *Add. Annotations :*—**Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789 ; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

243. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

245. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

245a. —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—Société Anonyme des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789 ; 136 L. T. 799 ; 43 T. L. R. 278.

Annotation :—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

PART I. SECT. 7, SUB-SECT. 1.—A.

sp. *Cheque cashed during game.*]—During a game of poker one player cashed a cheque for another :—*Held :* the giving of the cheque was founded upon, arose out of, & was connected with, the game of poker, which was a gambling transaction, & it was therefore void.—Le Blanc *v.* Thomas 1932), 5 M. P. R. 401.—**CAN.**

PART I. SECT. 7, SUB-SECT. 2.

o i. —— —— *Containing words "value received."*]—Deft. gave D., a fellow player in a game of dice to whom he had lost $400, a promissory note for $1,200 to cover said $400 & $800 in cash which D. then lent to deft. On maturity of the note, deft. paid $700 & gave D. a new note for $500, which note D. endorsed before maturity & for value to pltf. who had no notice of the consideration for which that note or the original note had been given. The $500 note bore the words "value received." In an action in the county ct. on the $500 note the defence was set up that it had been given in whole or in part for a gambling debt ; &, therefore, because of sect. 56 (*a*) & (*c*) of County Cts. Act, R. S. M., 1913, the county ct. had no jurisdiction. Judgment for pltf.—Hammer *v.* Finkelstein, [1931] 1 W. W. R. 769 ; 2 D. L. R. 738 ; 39 Man. L. R. 447.—**CAN.**

PART I. SECT. 7, SUB-SECT. 3.

s i. —— *Contract to buy & sell on margin.*]—Pearson *v.* Carpenter & Son (1904), 35 S. C. R. 380.—**CAN.**

s ii. —— *Contract not speculative transaction on part of plaintiff.*]—Woodward & Co., Ltd. *v.* Koeford (1921), 62 D. L. R. 431 ; 37 Can. Crim. Cas. 329 ; 31 Man. L. R. 286 ; [1921] 3 W. W. R. 232.—**CAN.**

Part II.—Games, Gaming and Gaming Houses.

247. *Add. Annotation :* — **Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

251. *Add. Annotations :*—**Apld.** Ankers *v.* Bartlett, [1936] 1 K. B. 147. **Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

252. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

253. *Add. Annotations :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1 ; Joel *v.* Barclay, [1937] 1 All E. R. 309.

254. *Add. Annotations :—As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12 ; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570. **Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

255. *Add. Annotation :*—**Refd.** Davis *v.* Parker, [1931] 2 K. B. 210.

255a. —— —— ——.]—The questions whether a house is used for unlawful gaming within sect. 4 of the above Act, & whether a game is unlawful within Betting Act, 1853 (c. 119), s. 3, are for the judge, & not the jury.—R. *v.* KIRBY, PARKER & PATRICK (1927), 20 Cr. App. Rep. 12, C. C. A.

260. *Add. Annotations :—As to* (4) **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. *As to* (6) **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. *Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38 ; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570 ; Daniels *v.* Pinks, [1931] 1 K. B. 374.

261. *Add. Annotation :*—**Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

267a. ——.]—Progressive whist, where the partners are shuffled as well as the cards, is not a game of skill, &, if played for money prizes, is an unlawful game.—R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570 ; 73 Sol. Jo. 451 ; 21 Cr. App. Rep. 119, C. C. A.

275. *Add. Annotation :*—**Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510.

276. *Add. Annotation :*—**Consd.** Davis *v.* Parker, [1931] 2 K. B. 210.

PART II. SECT. 1, SUB-SECT. 1.

252 i. —— *Prizes provided out of admission money.*]—A person hired a hall for one night, & another hall for two nights, & advertised that whist drives, open to the public on payment of one shilling for admission, would be held in the halls on those nights. A large number of people attended, & prizes were awarded to the successful players. The purchase of the prizes was defrayed out of the admission money, any balance over being retained by the promoter :—*Held :* (1) the playing of progressive whist was gaming, in view of the facts that the element of chance predominated in the game, & that the prizes were derived from the admission money, & it was immaterial whether the proceedings were or were not detrimental to the morals of the community ; (2) accused had managed, conducted, or carried on gaming in the premises, although his operations had been restricted to three isolated occasions.—BUNTON *v.* MILLER, [1926] S. C. (J.) 120.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 2.—C. (a).

o i. ——.]—M. was the manager of a Sports Club. On a prosecution under sect. 3 of Gaming & Betting Act, 1912, charging M. with being the keeper of a common gaming house the police gave evidence that they saw people playing poker with both money & counters, & heard expressions used which indicated that gambling was in progress. It was proved that the club was open every day of the week to a very late hour, & that it was competent for any member of the public to join the club upon paying 2*s.* entrance fee & having his name approved. M. was convicted :—*Held :* poker is not an unlawful game ; however, there was evidence upon which the magistrate could find that the club tended to cause a public mischief & was, accordingly, a common gaming house & the rule *nisi*, therefore, should be discharged with costs.—*Re* LISLE, *Ex p.* MCCROHON (1936), 53 N. S. W. W. N. 132.—**AUS.**

sv. *Whiffle board.*]—The owner of a restaurant having therein a machine called whiffle board, which is a game of chance, is guilty of keeping a common gaming house.—R. *v.* DUMONT, [1936] 3 D. L. R. 257 ; 65 Can. C. C. 365.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—D.

270 ii. —— *Game played by problem checker boards.*]—D'ORIO *v.* LEIGH & CUTHBERTSON, LTD., [1929] 2 W. W. R. 171 ; 41 B. C. R. 153 ; *affg.*, [1929] 1 W. W. R. 122.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—E.

b i. ——.]—R. *v.* ARNOLD, [1927] 4 D. L. R. 206 ; 48 Can. Crim. Cas. 101 ; 60 O. L. R. 582.—**CAN.**

b ii. ——.]—An automatic vending machine which answers the description in sect. 986 (4) of the Criminal Code, as amended by 1930 (c. 11), s. 27, is a " means of contrivance for playing a game of chance," within subsect. (2) of sect. 986, regardless of whether there is any real or material value in what the operator, *i.e.* the player, of the machine receives at times, as the result of operating it.—R. *v.* FREEDMAN, [1931] 1 W. W. R. 775 ; 55 Can. C. C. 288 ; 39 Man. L. R. 407.—**CAN.**

b iii. ——.] —R. *v.* WILKES, R. *v.* HISCOCK, R. *v.* ROBERTSON [1931], 1 D. L. R. 995 ; 66 O. L. R. 319 ; 56 Can. C. C. 1.—**CAN.**

b iv. ——.]—Accused had on his premises an automatic vending machine in which customers placed a five cent coin, pulled a lever, & received from the machine a package of candy, with or without " slugs," varying in number, which had no commercial or exchangeable value but might be used to operate the machine to show printed legends for amusement only, no candy being emitted. The candy package emitted for the coin deposited was such as that sold over the counter for five cents, & on the sale of the candy emitted the accused made a profit :—*Held :* accused was not guilty, under the Criminal Code, of keeping a common gaming house.—ROBERTS *v.* R., [1931] S. C. R. 417 ; 3 D. L. R. 225 ; 56 Can. C. C. 144.—**CAN.**

b v. ——.]—R. *v.* ATHONAS (1931), 56 Can. C. C. 146.—**CAN.**

b vi. ——.]—In view of the manner in which the automatic vending machine in question herein was operated by accused, its lessee, in exchanging for merchandise the slugs which the players received in varying numbers from the machine :—*Held :* it was a " means or contrivance for playing a game of chance," within sect. 986 (2), (4) of the Criminal Code.—R. *v.* RICHARDS, [1932] 1 W. W. R. 148 ; 2 D. L. R. 361 ; 44 B. C. R. 430 ; 57 C. C. C. 208.—**CAN.**

b vii. ——.]—R. *v.* RICHARDS (No. 2), [1932] 1 W. W. R. 177.—**CAN.**

b viii. ——.]—R. *v.* HEIT (1931), 57 C. C. C. 107.—**CAN.**

b ix. ——.]—R. *v.* GLENFIELD, R. *v.* STEIN, R. *v.* AMBREY, R. *v.* HUGHES, R. *v.* WONG CHEW, [1934] 3 W. W. R. 465 ; [1935] 1 D. L. R. 37 ; 62 C. C. C. 334.—**CAN.**

f i. —— ——.]—*Held :* a machine known as the " Caille Victory Vendor " was one to which the prohibition in Gaming Machines (Scotland) Act, 1917 (c. 23), s. 1 (1), applied.—ULIVI *v.* MILLER, [1927] S. C. (J.) 87.—**SCOT.**

276 i. *Whether dominant element of skill.*]—Deft. kept for use by the public on his premises a number of machines, known by the name of " Diddler." Any one wishing to use one of these machines purchased from deft. discs at the price of seven for 6*d.* He inserted one disc in a slot & pulled a handle, which caused three rollers to revolve. On each roller was printed a number of devices, such as cherries, roses, etc. If certain combinations of these devices stopped opposite a pointer on the face of the machine, the player won a certain number of discs. With these he could purchase on the premises certain goods. The winning combinations & the odds for each were printed on the front of the machine in view of the player. If none of these combinations stopped opposite the pointer, the player lost his disc. The machine was fitted with a control, by which the player could stop the rollers, one at a time, & so endeavour to obtain a winning combination. There were 15 machines on the premises. Deft. was prosecuted under Gaming Houses Act, 1854, s. 4, that he, being the occupier of the premises, did use them for the purpose of unlawful gaming. The justice was satisfied on the evidence that the majority of the persons who used the machine would be players of less than average skill, &, therefore, held that the game was one in which the chances were not favourable alike to all players, including the owner of the machine, & accordingly convicted the deft. :—*Held :* the conviction was right.—

278. *Add. Annotations:—As to* (1) **Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510. *As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12.

278a. ——.]—R. *v.* PERRY, R. *v.* DRANSFIELD, (1936), 80 Sol. Jo. 896, C. C. A.

278b. Certainty of winning something.]—(1) A machine may be used for the purposes of "gaming" & "betting" even though, if the directions affixed to it are obeyed, it is certain that the user will win something.

(2) In a conflict of evidence it is for the jury to decide for what purposes persons "resort" to the premises in question.—R. *v.* BRENNAND (1930), 47 T. L. R. 22; 74 Sol. Jo. 788; 22 Cr. App. Rep. 95, C. C. A.

278c. Order for destruction of machines—Proceedings under Gaming Houses Act, 1854 (c. 38).]—Applt. was convicted before petty sessions of unlawfully gaming with automatic machines, & a number of machines in his possession were ordered by the justices to be destroyed:—*Held:* the proceedings being taken under Gaming Houses Act, 1854 (c. 38), the justices had no jurisdiction to order the destruction of the machines, such jurisdiction being conferred only by Gaming Act, 1845 (c. 109), s. 8, & in cases brought before them by a warrant issued under that Act.—EYRE *v.* BRUMFIELD, [1936] 2 All E. R. 1; 154 L. T. 696; 100 J. P. 209; 52 T. L. R. 454; 80 Sol. Jo. 368; 34 L. G. R. 249; 30

284a. House used for game where chances not alike favourable to all players.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming:—*Held:* in order that a house should be a common gaming house within s. 2 of the Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favour- club members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120; 29 Cox, C. C. 221, D. C.

284b. Game must be unlawful.]—Applts., proprietors of a place known as "Fun Fair," invited the public to resort thereto, & the

GORDON *v.* DUNLEVY, [1928] I. R. 595. —**IR.**

276 ii. ——.]—R. *v.* LIPTROT, [1928] 3 W. W. R. 60; 50 Can. Crim. Cas.

276 iii. ——.]—The operation of the slot machine in question herein, when, at least, it is exposed for use with the object of gain to the proprietor, & operated by his customers, held to be a "mixed game of chance & skill" within Criminal Code, s. 226 (*a*).—R. *v.* CANADA MINT CO., [1928] 4 D. L. R. 539; [1928] 3 W. W. R. 195; 50 Can. Crim. Cas. 384.—**CAN.**

276 iv. ——.]—R. *v.* WOLFE, [1928] 4 D. L. R. 941; [1928] 2 W. W. R. 689; 50 Can. Crim. Cas. 189.—**CAN.**

sa. *Confiscation—Necessity for search warrant.*]—R. *v.* ROCCO, [1931] 2 W. W. R. 55; 55 Can. C. C. 323; 39 Man. L. R. 453.—**CAN.**

sd. *Licensed machines operated for gambling.*]—The fact that slot machines are licensed in Quebec does not make them legal if operated for gaming.—R. *v.* BERNIER (1916), 27 Can. C. C. 225.—**CAN.**

sf. *Liability of person supplying.*]—A person furnishing a restaurant with a slot machine to be operated for his benefit is liable for "assisting" in keeping a disorderly house.—R. *v.* BELAND, [1936] 1 D. L. R. 44; 64 Can. C. C. 354.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sd. *General rule.*]—Where a game as played on premises encourages an indulgence in all classes of the community of the propensity to gamble, & is injurious to public morals & a common law nuisance, the premises are a common gaming house.—DAWSON *v.* SINCLAIR, [1926] N. Z. L. R. 721.—**N.Z.**

284 i. *Proprietary club—Need not be open to public.*]—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re* CHINNIAH (1923), I. L. R. 47 Mad. 426.—**IND.**

284 ii. —— *In which poker played.*]—An incorporated co., the proprietor of a "club" in which membership was secured by payment of a periodical fee, & where stud poker was played, the players being required to buy cards from the "club" & gum, fruit, candy or soft drinks being supplied on each sale of cards:—*Held:* to have been properly convicted for keeping a common gaming house.—R. *v.* TRAINMEN'S CLUB (1926), 45 Can. Crim. Cas. 231; 20 Sask. L. R. 461; [1926] 1 W. W. R. 830.—**CAN.**

c i. *Place or office kept for making contracts for sale of stocks & goods on differences.*]—R. *v.* HARKNESS (1905), 6 O. W. R. 219; 10 O. L. R. 555.—**CAN.**

—— ——.]—On a prosecution for keeping a common gaming house:—*Held:* premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were "provided with any means or contrivance for unlawful betting or gaming" within Criminal Code, s. 986.—R. *v.* COY, [1925] 3 W. W. R. 538; 44 Can. Crim. Cas. 119.—**CAN.**

——.]—The keeping of a "multiseller" for gain:—*Held:* to render the place in which it was kept & where it was "played" by persons

public did so resort, for the purpose of playing for money at a game with an automatic machine called the "Circle of Skill," which the justices found was a game of skill:—*Held:* applts. could not be convicted of permitting the above place to be opened for the purpose of unlawful gaming.—DAVIS *v.* PARKER, [1931] 2 K. B. 210; 100 L. J. K. B. 590; 95 J. P. 146; 47 T. L. R. 418; 29 L. G. R. 387; *sub nom.* PARKER *v.* DAVIS, 145 L. T. 188; 75 Sol. Jo. 312; 29 Cox, C. C. 297, D. C.

Add. Annotation:—**Refd.** Ankers *v.* Bartlett, [1936] 1 K. B. 147.

286. *Add. Annotation:*—**Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

288a. —— —— Members of committee of members' club.]—DANIELS *v.* PINKS, No. 284a, *ante*.

295. *Add. Annotation:*—**Apld.** Ankers *v.* Bartlett, [1936] 1 K. B. 147.

295a. Gaming in refreshment house—What amounts to—Metropolitan Police Act, 1839 (c. 47), s. 44.]—In Metropolitan Police Act, 1839 (c. 47), s. 44, the word "gaming" includes the playing of any game played for money or money's worth, whether the game be lawful or unlawful & whether it involves or does not involve skill.—ANKERS *v.* BARTLETT, [1936] 1 K. B. 147; 105 L. J. K. B. 161; 154 L. T. 260; 100 J. P. 65; 79 Sol. Jo. 988; 34 L. G. R. 31; 30 Cox, C. C. 338, D. C.

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resorting thereto, a common gaming house.—R. *v.* ELASZ (1926), 45 Can. Crim. Cas. 257; 20 Sask. L. R. 605; [1926] 2 W. W. R. 368.—**CAN.**

e iii. —— ——.]—R. *v.* DONALD, [1931] 44 B. C. R. 514.—**CAN.**

sf. *Under Gaming Act*, 1908, s. 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

sk. *What evidence admissible.*]—The question being whether a place was a common gaming house, the things which persons brought to the place & the words they uttered there in relation to those things were all parts of the *res gestæ* & admissible as such.—LENTHALL *v.* MITCHELL, [1933] S. A. S. R. 231.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.

h i. —— —— *Acting as "banker" but not residing in common gaming house.*]—*Held:* not to justify a conviction as keeper of the house.—R. *v.* MARK (1924), 43 Can. Crim. Cas. 368.—**CAN.**

h ii. —— —— *Under Gaming Act*, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

h iii. —— —— *Trading in sale & purchase of cotton—On payment of differences.*]—EMPEROR *v.* THAVARMAL RUPCHAND (1928), 1. L. R. 53 Bom. 367.—**IND.**

h iv. —— —— *Acting as dealer.*]—A person who acts as "dealer" in a game of chance but is not a player & not interested in any way in the profits made from the carrying on of the game is not "assisting in the care, government, or management" of the place in which the game is played, within sect. 229 (2) of Criminal Code, &, therefore, cannot be deemed a "keeper" thereof.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; [1930] 1 D. L. R. 625; 38 Man. L. R. 365; 52 Can. Crim. Cas. 305.—**CAN.**

h v. —— —— *Assisting caterer other than club controlling premises.*]—A person who has nothing whatever to do with the care, management, or government of a common gaming house can be liable as the keeper thereof only if his acts were in aid of the keeper. In the present case what the accused did was held to have been, not in aid of the club which controlled & managed the premises, but in aid of a caterer other than the club, although both the co. & the club were managed by one & the same person.—R. *v.* NELSON, [1929] 2 D. L. R. 317; 1 W. W. R. 665; 51 Can. Crim. Cas. 213; 24 Alta. L. R. 59.—**CAN.**

h vi. —— —— *Persons in minor positions.*]—Parliament did not intend that clerks & others in minor positions not charged or appearing to be charged with the care, government or management of a disorderly house should be deemed to be keepers.—R. *v.* SELOCK, [1931] 2 W. W. R. 745; 56 Can. C. C. 243; 25 Alta. L. R. 504.—**CAN.**

n i. —— ——.]—The mere fact that the room in which a game of chance is played is in the same premises as & communicating with a shop under the same management as the room does not justify the finding that there was in the game an element of "gain" within the meaning of sect. 226 (*a*) of Criminal Code, if there is no evidence that any purchase was made from the shop by any of the players at any time.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; 52 Can. Crim. Cas. 305.—**CAN.**

n ii. —— ——.]—The fact that the accused, who was charged with keeping a common gaming house, sold beer, on the occasion in question, to the players on his premises held not sufficient in itself to justify the inference that "gain," within the meaning of sect. 226 of the Code, resulted to him, where there was no evidence that he was carrying on the business of selling beer.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

n iii. —— ——.]—R. *v.* RADINSKY (B. C.), [1929] 3 W. W. R. 212; 52 Can. Crim. Cas. 131.—**CAN.**

n iv. —— ——.]—R. *v.* FORDER (1930), 54 Can. C. C. 388.—**CAN.**

r i. —— —— ——.]—R. *v.* CHARLIE SAM, [1929] 1 D. L. R. 166; 50 Can. Crim. Cas. 364; [1928] 3 W. W. R. 424.—**CAN.**

r ii. —— —— ——.]—Before the presumption arising under sect. 985 of Criminal Code from the finding of cards, dice, etc., can be held to have been established all the conditions of its existence which are provided for in the section must be strictly proved; therefore where the search warrant under which the place in which they were found is alleged to have been entered is not properly proved the presumption does not exist.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

r iii. —— —— ——.]—On an appeal from a conviction for unlawfully keeping a common betting house:—*Held:* certain perforated pasteboard cards marked in duplicate, & similar to those used for checking hats at a hotel, constituted, under all the circumstances & in the absence of any explanation of their presence, a "means or contrivance for betting" within sect. 986 (2) of the Criminal Code, &, therefore, the finding of them on the accused premises raised a *primâ facie* case against him under said sub-sect. In order to raise a *primâ facie* case under sect. 986 (2) it is not necessary that the search on which the means or contrivances for betting were found should have been made under a valid search warrant.—R. *v.* MILLER, [1931] 1 W. W. R. 537; 3 D. L. R. 213; *affd.*, [1931] S. C. R. 483; 3 D. L. R. 795; 56 Can. C. C. 272.—**CAN.**

e i. —— *Keeping bank—Proof of—When necessary.*]—Accused was charged originally with keeping a disorderly house, to wit, a common gaming house, contrary to sect. 229 of Criminal Code. On the trial before the magistrate the charge was amended to read that the accused kept a disorderly house, to wit, a common gaming house, "as defined in sub-sect. (b), part (1), of sect. 226 of the Criminal Code," contrary to sect. 229 of the Criminal Code. The accused was convicted. On appeal:—*Held:* because of the amendment, the accused was not charged merely with keeping a common gaming house but with keeping a place used for playing therein at any game of chance or any mixed game of chance & skill in which a bank was kept by one or more of the players exclusively of the others, &, therefore, the Crown was bound to prove that in the place in question a bank was so kept, &, as proof of this was not to be found within the appeal book, the conviction must be set aside.—R. *v.* ROBERTS, [1936] 2 W. W. R. 387; 4 D. L. R. 492; 66 Can. C. C. 298; 6 F. L. J. (Can.) 131.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

301 i. *What amounts to suffering gaming—Actual knowledge not necessary—But some proof necessary.*]—Where betting lasting for an hour & a half with a considerable number of men went on in a room in a hotel near the bar where the licensee was serving:—*Held:* on the evidence, notwithstanding the denial of the licensee that he did not know betting was taking place, he was properly convicted of an offence under Licensing Act, 1917, s. 139.—NORVAL *v.* NOBLETT, [1928] S. A. A. R. 38.—**AUS.**

g i. ——.]—Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.—R. *v.* WHELAN (1908), 9 W. L. R. 424.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

q i. —— —— *Whether charge to be laid as soon as possible.*]—The limitation of time ("as soon as possible") in sect. 641 (2) of Criminal Code does not apply to a charge under sect. 229 of the Code, of keeping a common gaming house.—R. *v.* LEE HAI, [1935] 2 W. W. R. 177; 3 D. L. R. 448; 64 Can. C. C. 49; 43 Man. L. R. 134.—**CAN.**

s i —— —— *Effect of inaccuracy.*]—*Held:* as the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality & attempt to find the place intended to be raided with the help

304. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

305. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

Part III.—Betting and Betting Houses.

310. After this case add "**Agreement to collect betting debts—Contrary to public policy.**]—*See* ACTION, No. 599a, *ante.*"

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41).

318. *Add. Annotation :*—**Apld.** Richards *v.* Price, [1931] 2 K. B. 204.

319a. "**Loitering for purpose of bookmaking**"—**Distribution in street of entry forms of football pool.**]—Resps., on behalf of N., distributed forms in the street containing an invitation to participate in football pools, together with an entry form & particulars of the terms of participation therein. The recipients who accepted the invitation sent to N. forecasts

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of the warrant, it did not amount to more than a misdescription & was not of a nature to vitiate the warrant.—EMPEROR *v.* THAVARMAL RUPCHAND (1928), I. L. R. 53 Bom. 367.—**IND.**

a i. —— *Invalid—Effect.*]—A conviction for keeping a common gaming house may be sustained, even though the search warrant, under which entry was made, was defective.—R. *v.* PIDGEON (1926), 45 Can. Crim. Cas. 233; 37 B. C. R. 309; [1926] 3 W. W. R. 765.—**CAN.**

d i. —— *Sufficiency.*]—A charge of keeping a common gaming house is sufficient, although it gives no particulars of the kind of gaming house.—R. *v.* WONG GAI, [1936] 4 D. L. R. 453; 50 B. C. R. 475; 66 Can. C. C. 265.—**CAN.**

p (p. 432) **ii.** —— —— ——.]—A charge under sect. 229 of Criminal Code, R. S. C., 1927, that the accused between certain dates, at a certain place, did unlawfully keep a disorderly house, to wit, a common gaming house, is well laid. It is not necessary that the particular kind of gaming house alleged to have been conducted should be specified as defined by sect. 226 (*a*) (*b*) of the Code.—R. *v.* WONG GAI, [1936] 2 W. W. R. 645.—**CAN.**

p (p. 432) **i.** —— —— ——.]—Two separate & distinct offences are defined by sect. 226 of Criminal Code, R. S. C., 1927, which defines a common gaming house. A conviction for that the accused at a certain time & place did unlawfully keep a disorderly house, to wit "a common gaming house," is, therefore, bad, either as disclosing no offence or as leaving it uncertain as for which one of several separate & distinct offences he was convicted.—R. *v.* SOO KIT SANG, [1936] 1 W. W. R. 382; 2 D. L. R. 608; 65 Can. C. C. 220; 50 B. C. R. 386.—**CAN.**

p (p. 432) **ii.** —— —— ——.]—R. *v.* WONG GAI, [1936] 2 W. W. R. 645.—**CAN.**

sm. —— ——.]—On summary conviction for keeping a common gaming house, a magistrate has power to order the destruction of a slot machine used.—R. *v.* MILES (1936), 65 Can. C. C. 88.—**CAN.**

sp. —— *Whether appeal lies.*]—R. *v.* MILES (1935), 5 F. L. J. (Can.) 212.—**CAN.**

sg. *Witness—Required to be examined—Right to certificate of freedom.*]—R. *v.* SCOTT, *Ex p.* SCOTT, [1927] S. A. S. R. 492.—**AUS.**

sk. *Confiscation of gaming machines—Validity.*]—Accused who had pleaded guilty to a charge of keeping a common gaming house & had been fined appealed from the order confiscating the gambling machines :—*Held :* since in certain cases gaming instruments may be seized without a search warrant, & there was nothing before the Ct. of Appeal by way of affidavit or otherwise as to the manner in which the search warrant was executed or as to whether one was necessary, it must be assumed that the process was regular in all respects.—R. *v.* GREEN, [1935] 1 W. W. R. 526; 43 Man. L. R. 105.—**CAN.**

PART III. SECT. 1.

t i. —— *Cards on premises—No facilities for innocent use.*]—MILLER *v.* R., [1931] 3 D. L. R. 795; S. C. R. 483; 56 Can. C. C. 272.—**CAN.**

310 i. *Betting or betting business—Not illegal ipso facto.*]—Neither in India nor in England has the legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that in both countries the legislature regards it as undesirable in the public interest that any assistance should be afforded by cts. of law to enforce obligations which have been created in connection with betting or wagering transactions.—MITCHELL *v.* TENNENT (1925), I. L. R. 52 Calc. 677.—**IND.**

310 ii. —— ——.]—It is not a crime to make a bet with a bookmaker. Sect. 235 of the Criminal Code applies only to the bookmaker & his aiders & assistants in the forbidden acts.—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249; [1935] 1 D. L. R. 616; 62 C. C. C. 247.—**CAN.**

sg. *Provision of "facilities" for carrying on bookmaker's business.*]—A greyhound racing co. received from each of certain bookmakers not only the maximum authorised charge for a bookmaker's admission but also a payment of 7*s.* 6*d.* In consideration of this payment the co. supplied to the bookmaker such material as he required for carrying on his business on the track, including betting lists, easels, boards & stools, & provided him with special lighting, the services of an attendant & a hut for storing his gear. It was not made a condition of a bookmaker's being allowed to carry on his business that he should use the materials, etc., provided, or that he should pay the 7*s.* 6*d.* or any part thereof :—*Held :* the materials supplied & the services rendered by the co. to the bookmakers in question were "facilities" for the carrying on of their business, within Betting & Lotteries Act, 1934, s. 13 (2), & the co. was properly convicted under that section.—IRVINE GREYHOUND RACING CO. *v.* MACMILLAN, [1936] S. C. (J.) 96.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 1.

b i. —— *Verandah.*]—*Held :* in the definition of "street" in Gaming & Betting Act, 1912, s. 5, the word "land" means all enclosed or unenclosed land, other than land upon which or above which a house is built or stands, & the word "house" must be taken to include any adjoining structure such as a verandah roof, which is attached to the fabric of the building in such a way as to form part thereof.—WOODS *v.* TONKIN (1933), 50 N. S. W. W. N. 5.—**AUS.**

b ii. —— ——.]—Applt. was charged with being in a public place for the purpose of betting except by a totalisator. The evidence showed that applt. was on a verandah in front of his hotel & made several bets with one man. There was no evidence of bets with any one else or that applt. carried on business as a bookmaker. Applt. stated that his purpose for sitting out on the verandah was to be in a cool place :—*Held :* the evidence did not raise a preponderance of probability, nor was it a reasonable inference, that applt. was on the verandah for the purpose of betting.—LANE *v.* GILES, [1934] S. A. S. R. 311.—**AUS.**

b iii. —— *Hotel area.*]—On a charge of street betting, under sect. 104 of Police Offences Act, 1928, the place in which the offence was alleged to have been committed was a tiled area in front of an hotel & abutting on the public footpath. The area, which was open, uncovered, & raised three or four inches above the level of the footpath, formed part of the allotment on which the hotel was built :—*Held :* the area was not a "street."—WEAVING *v.* MAHNKEN, [1933] V. L. R. 90; Argus L. R. 153.—**AUS.**

b iv. —— *Hotel yard.*]—The enclosed yard of an hotel which forms no part of the land upon which the actual hotel building itself stands, is a street within Gaming & Betting Act, 1912.—*Re* O'DONNELL, *Ex p.* COURTNEY (1933), 50 N. S. W. W. N. 217.—**AUS.**

314 i. *Enclosed grounds — Cricket ground.*]—A grass field occupied by a cricket club, was bounded on all four sides by a wire fence in good condition. The fence along its western side ran at the foot of a railway embankment, which was admittedly not a public place within Street Betting Act, 1906, s. 1 (4). Between the northern end of this fence & the fence bounding the northern side of the ground was a gateway, 3 feet wide, giving access to the ground. The gateposts were in position, but the gate had been missing for some time. The portion of the field adjoining the gateway was not used for cricket, & the public had unrestricted access to that portion & gathered there in numbers every day. In a prosecution for loitering for the purpose of betting :—*Held :* the cricket ground was not a "public place" within sect. 1 (4) in respect that it could not be described as "unenclosed."—FOGGO *v.* HILL, [1932] S. C. (J.) 6.—**SCOT.**

sk. *Pathway—Sole access to three houses.*]—A pathway leading from public land to three separate dwelling-houses, to which it provided the only means of access, was entered from the lane through a gate which was never locked :—*Held :* the pathway was a "public passage," & a "street" within Street Betting Act, 1906 (c. 43), s. 1.—MACKIE *v.* CROMBIE, [1926] S. C. (J.) 29.—**SCOT.**

of the results of football matches specified in the forms, together with a statement of the amount they were prepared to stake thereon. This was not payable until after the matches had been played. The aggregate of these amounts was divided among those sending correct forecasts, less a commission retained by N. :—*Held :* resps. were guilty of loitering on behalf of N. for the purpose of bookmaking—*i.e.* the negotiating by N. of bets made between the participants in the pool *inter se.*—RICHARDS *v.* PRICE, [1931] 2 K. B. 204 ; 100 L. J. K. B. 526 ; 145 L. T. 189 ; 95 J. P. 151 ; 47 T. L. R. 411 ; 75 Sol. Jo. 345 ; 29 L. G. R. 396 ; 29 Cox, C. C. 301, D. C.

321a. —— **Rolled down slide into squares.**]—EVANS *v.* EXWORTH (1936), 81 Sol. Jo. 59, D. C.

322. *Add. Annotation :*—**N.F.** Everett *v.* Shand (1931), 145 L. T. 216.

322a. Totalisator—Not included.]—*Held :* persons betting by means of the contrivance known as a totalisator on a dog-race do not act in contravention of Vagrant Act (Amendment) Act, 1873 (c. 38), s. 3, inasmuch as a dog-race is not in itself a " game or pretended game of chance " within the sect. ; &, consequently, where a dog-racing track & a totalisator thereat belonged to a co., the contrivance being worked by its clerks, that charges against the secretary & managing director of the co. & some of the clerks, of aiding & assisting persons betting at the track by means of the contrivance on dog-races in contravention of the section, were not maintainable & should be dismissed.—EVERETT *v.* SHAND, [1931] 2 K. B. 522 ; 100 L. J. K. B. 612 ; 145 L. T. 216 ; 95 J. P. 147 ; 47 T. L. R. 415 ; 75 Sol. Jo. 393 ; 29 L. G. R. 390 ; 29 Cox, C. C. 309.

323. *Add. Annotation :*—**Consd.** Everett *v.* Shand (1931), 145 L. T. 216.

325a. —— ——.]—EVERETT *v.* SHAND, No. 322a, *ante.*

326. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

330. *Add. Annotation :*—**Consd.** Everton *v.* Walker (1927), 137 L. T. 594.

339. *Add. Annotation :*—*As to* (4) **Refd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

358. *Add. Annotations :*—*As to* (2) **Consd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69. *As to* (4) **Expld. & Distd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400. **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *As to* (5) **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *Generally,* **Refd.** Schneiders *v.* Abrahams, [1925] 1 K. B. 301.

358a. Totalisator—Greyhound racing track.]—The words " such owner, occupier, keeper, or person as aforesaid " in the latter part of Betting Act, 1853 (c. 119), s. 1, are not to be read as limited to the class of persons who come within the ambit of the earlier part of the sect.—namely, persons who themselves are parties to bets or to transactions of the nature of bets. A person, therefore, such as the proprietor of a totalisator on a greyhound racecourse, who merely provides facilities for other persons to bet, & is not himself a party to any bet, may be guilty of an offence under the latter part of the sect.

Resp. Assocn. were the occupiers of a totalisator within the inclosure of their greyhound racecourse. The totalisator was a

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PART III. SECT. 2, SUB-SECT. 3.

f i. —— *Investment received elsewhere than at totalisator itself.*]— During the progress of a trotting club's meeting, totalisator tickets having been sold at the members' & stewards' stands from boxes not situated in the totalisator building, applt., a servant of the club, was convicted of the offence of permitting an investment on the totalisator to be received elsewhere than at the totalisator itself :—*Held :* an investment received in an entirely separate building with no connection & no attempt at synchronising with the main totalisator is a payment made elsewhere than at the totalisator itself, & applt. was rightly convicted under Gaming Act, 1908, s. 30 (3).—GOGGIN *v.* YOUNG, [1928] N. Z. L. R. 753.—**N.Z.**

p i. ——.]—A pak-a-pu ticket is an instrument of gaming within Gaming & Betting Act, 1912, s. 37.—JENNINGS *v.* YET CHING (1931), 48 N. S. W. W. N. 248.—**AUS.**

r i. *Paraphernalia for conducting betting house.*]—R. *v.* BRENNAN & NEWLANDS (1928), 49 Can. Crim. Cas. 54.3—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—A.

m (p. 438) i. —— ——.]—A person standing stationary in a public street for a considerable period is not thereby guilty of the offence of loitering under Lottery & Gaming Act, 1917, s. 40, although he has been requested by a police constable to cease from loitering.—MATTIN *v.* CURRIE, [1927] S. A. S. R. 459.—**AUS.**

m (p. 438) ii. —— *" Frequenting."*]—In a trial on a charge of having, *inter alia,* frequented certain streets for the purpose of receiving bets, contrary to Street Betting Act, 1906, s. 1, it was established that, on five occasions on one day & on two occasions on another, accused had driven along the streets in question in a motor car ; that, at certain street corners he had slowed down, & a man standing at each corner had thrown a packet into the car ; that, on the last occasion, accused had stopped in one of the streets & taken up two men as passengers ; that the police had thereafter followed accused's car, &, after overtaking it, had apprehended accused & his companions ; & that, on searching the men, they had discovered envelopes containing betting slips & other similar papers on their persons :—*Held :* accused was guilty of " frequenting " the streets in question for the purpose of receiving bets, within sect. 1 of 1906 Act.—CASSIDY *v.* LANGMUIR, [1935] S. C. (J.) 65.—**SCOT.**

m (p. 438) iii. —— ——.]—A person who is sitting in a stationary motor car in a street may be said to loiter within Lottery & Gaming Act, 1917, s. 40. The natural sense of the word " loiter " in this section is that of staying in the street or place without any sufficient & lawful reason for being there.—JOHNS *v.* BERRY & DALTON, [1934] S. A. S. R. 111.—**AUS.**

k (p. 439) i. *S. P.* MUHAMMAD KHAN *v.* R. (1927), I. L. R. 9 Lah. 255.—**IND.**

t (p. 440) i. —— —— ——.]—Where certain persons rented an enclosure, part of a larger enclosure abutting on a public road, & invited others to come there & make bets :—*Held :* any person found betting there was rightly convicted of gambling in a public place.—R. *v.* TULSHI DAS (1924), I. L. R. 46 All. 787.—**IND.**

si. *Shed—Used by workmen for meals.*]—At the trial of a workman, who was charged with using a place for the purpose of betting it was proved that on five dates libelled, between the hours of 12 noon & 1 p.m., he had engaged in ready-money betting with fellow-workmen in a shed in the employers' premises. The workmen were allowed to use the shed for the purpose of taking their meals, but the accused's betting transactions were carried on without the permission or knowledge of his employers :—*Held :* the shed was a " place " used by the accused for the purpose of betting.—YOUNG *v.* DARRAH, [1929] S. C. (J.) 17.—**SCOT.**

so. *Part of premises.*]—Conviction for keeping a disorderly house upheld on evidence that the use of part of the premises for betting was not a single or casual occasion.—R. *v.* EDWARDS (1936), 66 Can. C. C. 117.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—B.

g i. ——.]—Deft. assocn. was incorporated as a co. by letters patent, which were amended by adding certain objects & purposes, viz., to encourage horse-racing, to construct, maintain, & operate race-courses, & other like objects & purposes. The co. established a race-course & held race-meetings, at which betting on the races was permitted, & was convicted under Criminal Code, ss. 228, 235, of the offences of keeping a common betting house, & recording & registering bets, etc. :—*Held :* the co. was not protected by sect. 235 (2).—R. *v.* LONG BRANCH RACING ASSOCN., [1925] 2 D. L. R. 46 ; 43 Can. Crim. Cas. 283 ; 56 O. L. R. 303.—**CAN.**

one-storey wooden building equipped with windows for paying & receiving money, & an indicator forming a separate part, both within the racecourse. Access to both, dependent on access being obtained by payment to the racecourse, was by payment & receipt of a ticket. In the totalisator were windows at which 10*s*. tickets & 2*s*. tickets were sold, & three or four paying-out windows. Tickets were bought at the respec tive windows with a number indicating the number on the race-card of a dog running in the race, the purchaser of the ticket stating the number of the dog selected before purchasing his ticket. After the race the stakes received, after certain deductions, were divided in certain proportions among the persons who held tickets bearing the numbers of the winning & second & third dogs:—*Held:* resp. Assocn. had been guilty of an offence under Betting Act, 1853 (c. 119), s. 1.—SHUTTLEWORTH *v.* LEEDS GREYHOUND ASSOCN., LTD., [1933] 1 K. B. 400; 102 L. J. K. B. 264; 148 L. T. 424; 97 J. P. 37; 49 T. L. R. 143; 77 Sol. Jo. 48; 31 L. G. R. 100; 29 Cox, C. C. 583, D. C.

Annotations:—**Consd.** Streatham Cinema, Ltd. *v.* John McLauchlan, Ltd., [1933] 2 K. B. 331. **Apld.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

362. *Add. Annotation:*—**Consd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

362a. —— **Not person on premises for innocent purpose.**]—Police officers raided a public-house where betting was being carried on. Among other persons, they arrested a builder who was on the premises solely for the purpose of doing repair work, & charged him under Betting Act, 1853 (c. 119), with unlawfully resorting to a house for the purpose of betting on horse-racing. Later this charge was dropped & replaced by a charge under Unlawful Games Act, 1541 (c. 9), s. 9, of unlawfully resorting to a common gaming-house. Justices, although they found that deft. was on the premises for a wholly innocent purpose & knew nothing about the betting, convicted him & bound him over not to resort to gaming houses, ordering him to pay 4*s*. costs:—*Held:* there could be no conviction or binding over of deft. after a finding that he was on the premises for a proper & innocent purpose. The conviction must, therefore, be quashed.—RODEN *v.* BRETT, [1936] 2 All E. R. 136; 155 L. T. 28; 100 J. P. 296; 52 T. L. R. 471; 80 Sol. Jo. 596; 34 L. G. R. 286; 30 Cox, C. C. 425, D. C.

395. *Add. Annotation:*—**Refd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

399. *Add. Annotation:*—**Consd.** Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

399a. Question for jury.]—R. *v.* BRENNAND, No. 278b, *ante*.

399b. —— **Social club communicating by telephone with bookmaker's office.**]—Pltf. let premises to defts. on condition that they should not be used for any illegal purpose. Defts. per-

PART III. SECT. 4, SUB-SECT. 2.—A.

o i. —— *Sale of totalisator vouchers.*]—A co. occupying a greyhound racecourse on which a totalisator was erected, & the manager of the totalisator, were charged with contravening Betting Act, 1853, s. 1. It was proved that persons betting through the totalisator purchased vouchers costing 2*s*. each, which were marked with the name of the dog on which the purchaser desired to bet. These vouchers represented the stakes, & after the race the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent. to cover expenses:—*Held:* the purchasers of vouchers entered into the betting transactions with each other, & not with the co. or the manager; & the fact that a charge was made for the use of the totalisator & for the service of operating it did not involve the co. or the manager in a contravention of the sects. libelled.—STRATHERN *v.* SCOTTISH GREYHOUND RACING CO., [1930] S. C. (J.) 24.—**SCOT.**

o ii. —— ——.]—The tenant of certain premises in which a totalisator was installed, & his assistants, were charged with a contravention of sect. 407 of Burgh Police (Scotland) Act, 1892. It was proved that members of the public resorted to the premises in large numbers for the purpose of betting through the totalisator on the results of dog races. Those betting purchased vouchers costing 1*s*. each, which were marked with the number of the dog selected for backing. The money thus paid represented the stakes, &, after each race, the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent. which was retained by the tenant of the premises for himself & his assistants:—*Held:* sect. 407 of Burgh Police Act, applied only to the same class of premises as that to which Betting Act, 1853 (c. 119), s. 1, applied, namely, premises where the betting carried on took place between the management & persons resorting thereto, &, as the premises were not of this description, the conviction fell to be quashed.—GIBSON *v.* LAIRD, [1933] S. C. (J.) 6.—**SCOT.**

o iii. —— ——.]—A co. occupying a greyhound racecourse on which a totalisator was erected were charged with a contravention of Betting Act, 1853, s. 1. It was admitted that members of the public betting through the totalisator purchased vouchers costing 1*s*. each, which were marked with the number of the dog on which the purchaser desired to bet. The money paid for these vouchers represented the stakes, & after the race the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent., which was retained by the co.

Persons concerned in the management of premises in which totalisators were erected were charged with a contravention of sect. 15 of Glasgow Police (Further Powers) Act, 1892, which imposes a penalty on the owner or manager of a gaming or betting house. It was proved that the public were admitted to the premises which were designated as a club, on payment of a nominal membership fee. Betting on the result of horse races & dog races run elsewhere was carried on through the totalisators in the same way as in the case of the co. referred to above:—*Held:* the accused in each case were guilty of a contravention of the sections.—STRATHERN *v.* ALBION GREYHOUNDS (GLASGOW), LTD.; STRATHERN *v.* RUSSELL, [1933] S. C. (J.) 91.—**SCOT.**

o iv. —— *Keeping means of betting.*]Appeal from a conviction for keeping a common betting house at a certain hotel. Accused, who was a roomer at the hotel, was found in the rotunda looking at a copy of "The Morning Digest," a turf publication, which was spread out on a desk, & writing on a small pad of paper. One or two men were with him, also looking at the publication. A copy of another turf publication was also on the desk, but behind a glass case. Certain letters & figures on the pad were written by the accused in the sight of a constable, unnoticed by the accused. The sheet contained 15 other entries of the same class & in the same handwriting. Figures in pencil were written after the name of each of the horses listed in the publications, & a witness, who was a bookmaker, testified that the figures were such as would be put there by one intending to take bets. He also gave the opinion that the entries on the pad, except the last two items, showed bets on horses. The last item was that which the constable saw the accused write. With respect to those two items the witness said that they might be entries of a bet but that if he had been making the entries he would have made them in another way:—*Held:* the evidence was not sufficient to sustain the conviction.—R. *v.* MCCANN, [1936] 3 W. W. R. 497; 4 D. L. R. 788; 67 Can. C. C. 121; 6 F. L. J. (Can.) 164.—**CAN.**

363 i. *What persons liable to penalties —Persons "keeping"—Servant in sole charge.*]—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the premises of the owner.—DAVIS *v.* NUTTALL, [1924] N. Z. L. R. 65.—**N.Z.**

363 ii. —— *Licensee of hotel—Permitting others to use premises for betting purposes.*]— DEELEY *v.* DICK, [1928] V. L. R. 121, [1928] A. L. R. 62.—**AUS.**

mitted a social club to occupy the premises for carrying out its objects as such. That club made an arrangement with a bookmaker to act for its members & open an account with them. Telephones were installed connecting the club premises with the bookmaker's office, & the members of the club thereby communicated their proposed bets to the bookmaker for his acceptance. The bookmaker supplied to the club premises information as to races which was published there. A commission was paid by the bookmaker to the club on all bets made with its members through him. Pltf. brought an action against defts. for breach of the contract of letting in permitting the premises to be used for a purpose which was illegal under Betting Act, 1853 (c. 119), & claiming a declaration to that effect, an injunction, & damages :—*Held :* defts. were permitting the premises to be " used " for the purpose of a person (the bookmaker) " procured " by the occupier (the club) betting with persons resorting thereto within & contrary to sect. 1 of the Act, & pltf. was entitled to the relief which he claimed.—SAMUEL *v.* ADELAIDE CLUB, LTD., [1934] 2 K. B. 69 ; 103 L. J. K. B. 561 ; 151 L. T. 116 ; 98 J. P. 257 ; 50 T. L. R. 341 ; 78 Sol. Jo. 318 ; 32 L. G. R. 129.

401. *Add. Annotation :*—**Distd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

401a. Holding whist drive.]—Whist drives, where an entrance fee is charged & prizes offered, are illegal under Betting Act, 1853 (c. 119), s. 1.—BENNETT *v.* EWENS, [1928] 2 K. B. 510 ; 97 L. J. K. B. 801 ; 139 L. T. 335 ; 92 J. P. 120 ; 44 T. L. R. 545 ; 72 Sol. Jo. 354 ; 28 Cox, C. C. 522 ; 26 L. G. R. 396, D. C.

406. *Add. Annotation :—As to* (2) **Consd.** Joel *v.* Barclay, [1937] 1 All E. R. 309.

408a. Receipt of whole stake—Whether " deposit."]—The charge against applt. was that being the occupier of a place used for a betting game he unlawfully did receive money as a deposit on certain bets, contrary to the Betting Act, 1853 (c. 119), s. 4. The date in the information was " between May 30, 1936, & June 1, 1936." Persons taking part in the game paid 1*d.* It was found as a fact that on May 30, 1936, pennies were laid on the table by the players & taken by applt. or his assistants before the game was decided. On May 31 & June 1, 1936, the pennies paid by the players were paid after the game was decided. Applt. contended (i) that the information was bad for duplicity, & (ii) that what was paid by the players could not properly be called a deposit on any bet :—*Held :* (1) the information charged only one offence, & the fact that three days were comprised in the period named in the information did not make it bad ; (2) although the players paid the whole stake payable in respect of the game this was none the less a " deposit " within Betting Act, 1853 (c. 119), s. 4.—JOEL *v.* BARCLAY, [1937] 1 All E. R. 309, D. C.

415a. —— ——.]—Applts. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6*d.* a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a " Free Football Competition " with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Applts. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that applts. had circulated coupons of a ready-money football betting business, & they convicted applts. :—*Held :* the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—SUTTLE *v.* CRESSWELL, [1926] 1 K. B. 264 ; 95 L. J. K. B. 367 ; 134 L. T. 144 ; 90 J. P. 3 ; 42 T. L. R. 75 ; 23 L. G. R. 695 ; 28 Cox, C. C. 94, D. C.

Annotations :—**Apld.** Turf Publishers *v.* Davies, [1927] W. N. 190. **Expld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366. **Consd.** Baker *v.* Sillitoe (1931), 47 T. L. R. 632.

415b. —— ——.]—TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D. C.

Annotation :—**Apld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366.

—— ——.]—Where a daily newspaper contained as one among its various features coupons in which the names of football teams were set out, & the public were invited to forecast the winners of matches in which the teams were shortly to be engaged, the person who most nearly got the correct results receiving a prize :—*Held:* the proprietors & publishers of the newspaper were guilty of an offence under sect. 1 of the above Act,

PART III. SECT. 4, SUB-SECT. 4.

sd. *Receipt from agent.*]—No bets were made at accused's office, but he engaged & paid bookmakers to make bets on the streets & elsewhere. He supplied these bookmakers with betting slips & football coupons, from which, when returned to his office, he made up an account of the gains & losses of each bookmaker. He received at his office daily from each bookmaker any balance of gains on the bets made on the preceding day, & he transmitted to the bookmakers any sum required to make good a deficiency on the day's transactions :—Held : accused had contravened the section libelled, in respect that he used the office for the receipt of money accruing from ready-money bets, although the money was paid over elsewhere by the persons betting.—REID *v.* HILL, [1931] S. C. (J.) 19.—**SCOT.**

PART III. SECT. 6.

415 i. *" Printing or knowingly circulating coupons "—Construction of Football Betting Act,* 1920 (c. 52), *ss.* 1, 2.]— Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business :—*Held :* the paper was a circular or coupon of the business of applts., & conviction sustained.—JAMESON *v.* SINCLAIR, [1925] S. C. (J.) 1.—**SCOT.**

sn. *" Ready-money football betting business "—Newsagents settling with publishers monthly.*]— Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts weekly ; the wholesale newsagent ran monthly accounts with the commission agents, who paid the prizewinners. The prize money was paid, although the monthly accounts had not been settled :—*Held :* there was evidence on which the magistrates might hold that applts.' business was a ready-money football betting business.—SINCLAIR, [1925] S. C. (J.)

although the evidence only showed that some, & not the majority, of the purchasers of the newspaper bought it, wholly or partly, for the sake of the coupon, & although no competitor was allowed to send in more than one coupon from one & the same issue of the newspaper.—SIR W. C. LENG & CO. [illegible]FIELD TELEGRAPH), LTD. *v.* SILLITOE, 1 K. B. 366; 98 L. J. K. B. 262; 140 L. T. 500; 93 J. P. 26; 45 T. L. R. 94; 72 Sol. Jo. 810; 28 Cox, C. C. 593, D. C.

415d. —— ——.]—Resp. employed about 10,000 collectors in different parts of the United Kingdom for the purpose of conducting & carrying on football pool betting businesses. He issued printed instructions to every collector not to accept or collect money invested by clients until after the matches had been played, as it was illegal to accept it at the time the investment was made. One collector sometimes accepted money at the time of investment without resp.'s knowledge, but did not send the money to resp. until after the results of the matches were known. The words "credit only" were printed on every coupon in bold type. In consequence of the said collector's conduct, resp. was charged with publishing coupons of two ready money football betting businesses, contrary to the Ready Money Football Betting Act, 1920 (c. 52), s. 1:—*Held:* as resp. published coupons of a credit business & gave most careful instructions to his collectors not to take money at the time of investment, he was innocent of the offences with which he was charged.—WILSON *v.* MURPHY, [1937] 1 All E. R. 315; 53 T. L. R. 308; 81 Sol. Jo. 139, D. C.

415e. —— **Prizes of indeterminate amount.**]—Applts. were the promoters of a scheme by which working men were invited to forecast the results of football matches & pay an entrance fee of one penny with each forecast. Prizes of an amount at the discretion of the promoters were awarded to the senders of the most correct forecasts:—*Held:* the fact that the amount of the prizes was indeterminate was immaterial, & applts. were rightly convicted of circulating coupons of a ready money football betting business, contrary to the Ready Money Football Betting Act, 1920 (c. 52).—BAKER *v.* SILLITOE (1931), 145 L. T. 635; 95 J. P. 182; 47 T. L. R. 632; 29 L. G. R. 521; 29 Cox, C. C. 356, D. C.

416. *Add. Annotation:*—**Consd.** Joel *v.* Barclay [1937] 1 All E. R. 309.

416a. —— ——.]—JOEL *v.* BARCLAY. No. 408a, *ante*.

420. *Add. Annotations:*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

421. *Add. Annotation:*—**Consd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

422. *Add. Annotation:*—*As to* (1) **Apld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

423. *Add. Annotation:*—*As to* (1) **Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

424a. —— **Information under Licensing Consolidation Act, 1910 (c. 24)—Form of conviction.**]—An information was preferred against applt. under sect. 79 (1) (*b*) of the above Act for that he, being the holder of a justices' licence, suffered his premises to be used in contravention of Betting Act, 1853 (c. 119). Applt. was convicted, & appealed to quarter sessions, who allowed the appeal, on the ground that the conviction was bad on the face of it because it did not specify what contravention of Betting Act, 1853 (c. 119), was alleged:—*Held:* applt. was entitled to the precise information to which he would have been entitled if he had been prosecuted under Betting Act, 1853 (c. 119), & the decision of quarter sessions was right.—POINTON *v.* COX (1926), 136 L. T. 506; 91 J. P. 33; 43 T. L. R. 175; 25 L. G. R. 101; 28 Cox, C. C. 308, D. C.

PART III. SECT. 7.

q i. ——.]—An information for keeping a common betting house need not specify which of the special heads of the definition in sect. 227 were contravened.—R. *v.* GRISS, [1937] 1 D. L. R. 279; [1936] O. R. 604; 67 Can. C. C. 184.—**CAN.**

b i. —— *Lottery & Gaming Act Amendment Act, 1921, s. 14.*]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

b ii. —— ——.]—LAMPARD *v.* WEST, [1926] S. A. S. R. 293.—**AUS.**

b iii. —— *Similar transactions on other days—Admissible.*]—PINCHBECK *v.* GLEESON, [1926] S. A. S. R. 379.—**AUS.**

c i. —— —— ——.]—PATERSON *v.* MACPHERSON, [1924] S. C. (J.) 38.—**SCOT.**

c ii. —— —— —— *Right to open closed envelopes.*]—*Held:* the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed envelopes, for the purpose of ascertaining whether they contained documents relating to betting.—STRATHERN *v.* BENSON, [1925] S. C. (J.) 40.—**SCOT.**

421 i. *Power of arrest.*]—Police, having obtained a warrant to enter a stable (number 4), watched the stable for a period of twenty minutes, during which it was visited by about twenty men, six of whom carried what appeared to be betting slips in their hands. On the police approaching the stable, accused, who had been in the stable all the time, ran into a neighbouring stable (number 3), one of them carrying a bundle of betting lines. The police took them back into stable number 4, where they were searched & taken into custody, & the money found on them was seized. The accused were convicted & sentenced:—*Held:* the escape of the accused with their papers from the premises to which the warrant applied & the fact that they were thereafter taken back by the police to these premises did not render the subsequent arrest & seizure illegal under the warrant.—MORRIS *v.* LANGMUIR, [1929] S. C. (J.) 103.—**SCOT.**

h i. —— *Joint complaint—One defendant calling no evidence, but wishing to give evidence for co-defendant—Mode of trial.*]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

h ii. —— *Whether summons or information condition precedent.*]—Deft. was arrested on a warrant issued under Betting Act, 1853 (c. 119), s. 11. He was brought before the petty sessions ct. on the charge, that he being the user of a certain house situate in the city of B., did use the same for the purpose of betting with persons resorting thereto. On the charge being proceeded with before the magistrates a preliminary objection was raised to the hearing of the charge on the ground (*inter alia*) that no summons had been served on deft. charging him with the offence alleged, a summons being, it was submitted, a condition precedent to any proceedings under the Act charging an offence. The magistrates dismissed the case without prejudice, but stated a case for the opinion of the K. B. D.:—*Held:* the magistrates were wrong in point of law in dismissing the charge on the ground that the information or summons was a condition precedent to the exercise of their jurisdiction & it should be remitted to them to proceed according to law.—R. (LOCKHART) *v.* MCKENNA, [1933] N. I. 21.—**IR.**

sp. *Appeal—Principles on which court acts.*]—R. *v.* SMITH (1926), 37 B. C. R. 248.—**CAN.**

Part IV.—Lotteries.

See, now, Betting & Lotteries Act, 1934 (c. 58), ss. 21–28.

433a. —— **Provision for commission without control over sales.**]—A co., having bought a quantity of note cases at a price of less than 1*s.* 6*d.* each, devised a scheme for selling them at a profit, & issued to the public a leaflet in accordance with the terms of which the scheme was conducted. The leaflet informed a person desirous of participating in the scheme that on filling up & sending in an attached order form together with £1 there would be sent to him a note case & a supply of the leaflets, the order forms of which would be marked with a number allotted to him; that he should get other persons to give orders for note cases, using these forms; that he would be entitled to no benefit from the first three of these orders, but would be paid a commission of 10*s.* on every other order received on his forms & on sales made as a result of these orders; that whenever an order was received on one of his forms, after the first three, a supply of forms also marked with his number would be sent to the buyer, & that the participant would be paid a commission of 10*s.* on each of the first three sales made by every one to whom one of the forms so numbered was sent; & that there was no time limit to the scheme, but that the maximum commission payable to a participant was £20,000:—*Held:* inasmuch as, with the exception of commissions resulting from orders directly obtained by the participant himself, all the commissions which he received would result from orders given by persons over whom he had no control & would depend so far as he was concerned not upon his skill or work but upon pure chance, the scheme was a "lottery" within Lotteries Act, 1823 (c. 60), s. 41.—PUBLIC PROSECUTIONS DIRECTOR *v.* PHILLIPS, [1935] 1 K. B. 391; 104 L. J. K. B. 73; 152 L. T. 190; 98 J. P. 461; 51 T. L. R. 54; 78 Sol. Jo. 735; 32 L. G. R. 464; 30 Cox, C. C. 195, D. C.

433b. —— **Crossword puzzle.**]—A newspaper published an advertisement of a crossword puzzle competition with a money prize, for which a competitor entered by posting his solution along with a specified fee to the office of the newspaper. The puzzle was so constructed that in a number of instances a clue could be satisfied by only one word having no alternative, while in other instances the clue suggested two or more alternative words which might not all be equally appropriate. The competition editor had prepared beforehand a test solution of the puzzle, & the prize was to be awarded to

PART IV. SECT. 1.

d i. —— ——.]—POWER *v.* CANNIFF (1859), 18 U. C. R. 403.—**CAN.**

d ii. —— ——.]—LLOYD *v.* CLARK (1862), 12 C. P. 320.—**CAN.**

—— ——.]—The accused, who was the agent of a cigarette co. at Belfast, published a pamphlet advertising a prize of Rs.5 which could be automatically obtained by purchasers of Park Drive cigarettes. Accused sent ten currency notes of Rs.5 each to the manufacturers of Park Drive cigarettes at Belfast, who put each note in a packet of cigarettes, mixed those packets with other packets which contained no notes, & sent them out to accused in India. On a prosecution of accused under second part of Indian Penal Code, s. 294A:—*Held:* the scheme published by accused for distribution of prizes by lot or chance amounted to a lottery.—EMPEROR *v.* VAZIRALLY (1928), I. L. R. 53 Bom. 57. —**IND.**

430 ii. —— ——.]—Accused invited the public to subscribe a large sum for an assocn. whose object was said to be the relief of people in debt or distress. There was no provision for the return of the capital sum, but one-sixth of the interest derived therefrom was to be used for the objects of the assocn., whilst the remainder became divisible every three months among the subscribers as cash bonuses. These bonuses were distributed by lot:—*Held:* a lottery.—A. D. RAJ *v.* KING-EMPEROR (1932), I. L. R. 10 Ran. 232. —**IND.**

n i. —— *Bonds in series—Payment not dependent on knowledge or skill.*]—In a prosecution for a contravention of Lotteries Act, 1823, it was established that the promoters had formed & put into execution a scheme for the sale of bonds, each of which entitled the holder on certain conditions to £150. To qualify for this sum a participant had first to obtain a bond at the cost of 1*s.* either from the promoters or from a friend. This was the parent of a family of bonds which was brought into existence by a process of sub-sales. The holder of the parent bond had to buy from the promoters four bonds for 3*s.* & to sell them to four friends for 1*s.* each. These four bonds were the first generation, & each of the four holders of them had to repeat the same process, thus bringing the second generation of sixteen bonds into existence. The process had to be repeated until the sixth generation of 4096 bonds had come into existence, making, for the complete series, 5461 bonds. On the occurrence of this event the holder of the parent bond became entitled to £150. Not only was each individual bond a member of a family of bonds, but it could itself become the parent of a new family, & the holder of it was entitled to £150 as soon as its sixth generation was completed:—*Held:* the scheme was a lottery, in respect that the occurrence of the event upon which payment fell to be made could neither be approximately predicted nor materially influenced by the exercise of any knowledge, experience, art, or skill on the part of the holder of the parent bond.—BARNES *v.* STRATHERN, [1929] S. C. (J.) 41. —**SCOT.**

p i. —— —— *Not dependent on skill alone.*]—The chance, which the prohibition in Criminal Code against lotteries & other species of gambling, has in contemplation is the chance or risk which the competitor is taking. Therefore, in a case where he is required to estimate a number, the prohibition applies unless the correct number can be ascertained by skill alone without any element of chance, even though the number to be estimated is an actually existing number at the time the estimate is made.—R. *v.* IRWIN, R. *v.* LONG, [1928] 4 D. L. R. 625; [1928] 2 W. W. R. 597; 50 Can. Crim. Cas. 159; 23 Alta. L. R. 506.—**CAN.**

b (p. 454) i. —— *Conducting "suit clubs."*]—*Held:* a violation of Criminal Code, s. 236 (c) (d).—R. *v.* A. D. MURRAY TAILORING, LTD., [1925] 3 W. W. R. 483; 44 Can. Crim. Cas. 346. —**CAN.**

b (p. 454) ii. —— *Club distributing "chances" for prizes with membership cards.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* GRATTON (Ont.) (1926), 46 Can. Crim. Cas. 41.—**CAN.**

b (p. 454) iii. —— *Giving purchasers of goods tickets for club—Club distributing prizes.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* RODERICK (Ont.) (1926), 45 Can. Crim. Cas. 110.—**CAN.**

b (p. 454) iv. —— —— ——.]—A firm of tailors gave each of its customers on the weekly payment plan the privilege of being a member of a "club," each member of which had the chance week by week while the payments under his contract were uncompleted of having his name arbitrarily chosen by the management as the member to receive a receipt for the unpaid balance which entitled him to a suit at once, without further payment:—*Held:* the scheme was a lottery & the conducting of it a violation of sect. 236 (1) (c) of the Criminal Code.—R. *v.* HARRISON, [1931] 1 W. W. R. 621; 55 Can. C. C. 238.—**CAN.**

b (p. 454) v. ——.]—R. *v.* UNITED PROFIT SHARING SYSTEM, LTD. (Ont.), [1927] 4 D. L. R. 619; 48 Can. Crim. Cas. 154.—**CAN.**

b (p. 454) vi. —— *Free distribution of option certificates.*]—A free distribution of option certificates drawn by lot is not a lottery.—R. *v.* ROBINSON (1917), 29 Can. C. C. 153.—**CAN.**

b (p. 454) vii. —— *Contest of signatures.*]—A contest of signatures is a contest of skill, taste & judgment, &, therefore, not a lottery.—BROWN *v.* BONNYCASTLE, [1935] 3 W. W. R. 536; [1936] 1 D. L. R. 295.—**CAN.**

b (p. 454) viii. ——.]—Appct. in pursuance of a scheme for advertising its wares obtained customers to purchase certain cabinets of cutlery upon terms which provided that customers would be formed into groups

the competitor whose solution happened to correspond most closely to that of the competition editor, although, if all the solutions sent in were examined & compared on their merits, the solution of that competitor might not be found to be intrinsically the best :—*Held :* the proprietors & the printer of the newspaper were guilty of the offence of printing & publishing an advertisement of a " lottery " under Betting & Lotteries Act, 1934 (c. 58), s. 22 (1) (*c*) (i).—COLES *v.* ODHAMS PRESS, LTD., [1936] 1 K. B. 416 ; 105 L. J. K. B. 208 ; 154 L. T. 218 ; 100 J. P. 85 ; 52 T. L. R. 119 ; 79 Sol. Jo. 860 ; 34 L. G. R. 34 ; 30 Cox, C. C. 329, D. C.

Annotation :—**Distd.** Witty *v.* World Service, Ltd., [1936] Ch. 303.

433c. ——— ———.]—STEVENSON *v.* WILLIAMS (1936), 80 Sol. Jo. 933, C. A.

433d. —— **Betting scheme.**]—A limited co. employed agents to distribute tickets bearing the names of races, horses & jockeys, & also the name of the co., & an offer to exchange the tickets for goods on demand. A member of the public receiving a ticket was entitled to bet on the combinations named on the ticket, in which case if he won he received the amount of his bet ; if he lost he was entitled to exchange the ticket for goods worth sixpence, through the firm's agents. By conditions on the ticket he paid no money to the agents, but undertook to pay 6*d.* if he lost. The co. & its directors were convicted at petty sessions under Betting Lotteries Act, 1934 (c. 58), & appealed :—*Held :* (1) the scheme was a lottery ; (2) the appearance of the name of the co. on the tickets, together with evidence that the same agent had distributed similar tickets which had been exchanged by the co. for goods, was evidence connecting the agent with the co.—GORDON, MACKAY & CO., LTD. *v.* WATSON, [1936] 2 All E. R. 33, D. C.

434. *Add. Annotation :*—**Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

443. *Add. Annotations :*—**Apld.** Howgate *v.* Ralph (1929), 141 L. T. 512. **Consd.** Public Prosecutions Director *v.* Phillips, [1935] 1 K. B. 391. **Refd.** Kerslake *v.* Knight (1925), 133 L. T. 606.

449. *Add. Citations :*—94 L. J. K. B. 919 ; 133 L. T. 606 ; 89 J. P. 142 ; 23 L. G. R. 574 ; 28 Cox, C. C. 27.

451a. Lotteries authorised by Act of Parliament—Must be Parliament of United Kingdom.]—The exception in Lotteries Act, 1823 (c. 60), s. 41, which prohibits the sale of tickets in any lottery, " except such as are or shall be authorised by this or some other Act of Parliament," does not include a lottery authorised by any body other than the Parliament of the United Kingdom.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197 ; 100 L. J. K. B. 638 ; 145 L. T. 522 ; 95 J. P. 137 ; 47 T. L. R. 383 ; 29 L. G. R. 452, C. A.

should pay certain weekly sums towards the purchase price of the cutlery & that at monthly intervals, up to a total of three selections, appct. would select one of its customers from the group. The customer would be selected after careful consideration & not capriciously & each person so selected would receive the cutlery without further payments :—*Held :* the scheme was a lottery, & the offence proved was an offence within sect. 3 of Lotteries & Art Unions Act, 1901.—*Re* WILLARD, *Ex p.* BRITISH PRODUCTS PROPRIETARY, LTD. (1935), 35 S. R. N. S. W. 152 ; 52 N. S. W. W. N. 39.—**AUS.**

b (p. 454) ix. —— *Picture competition.*]—A. was the manager of a certain co. which conducted & advertised the holding of certain competitions known as the " Bran Tub Competition." The scheme of the competition was to take a sentence from an Australian newspaper & reproduce it in puzzle form. The competitors were invited to interpret in words the pictorial rendering of the sentence. The prize was awarded to the person who reproduced the precise words of the sentence chosen or who got nearest to that particular collection of words :—*Held :* the competition was a matter of chance &, therefore, a lottery within sect. 3 (6) of Lotteries & Art Unions Act, 1901-1929.—*Re* CHRISTENSEN, *Ex p.* ATMORE (1936), 53 N. S. W. W. N. 66.—**AUS.**

b (p. 454) x. ———.]—A. published an advertisement in a newspaper setting out the terms of a " competition " of which he was the promoter & controller. The nature of the competition was as follows :—A " frame " was set out in the advertisement consisting of a number of vertical rows of squares, each row containing a different number of squares. In each row one of the squares contained a letter of the alphabet. To each row was allotted a " clue " & to each letter a number. The competitor was asked to fill in the blank squares with letters so as to make each row contain a word of as many letters as there were squares in the row, the word filled in being " suitable to the clue " allotted to the particular row. Each letter in the word was then given its numerical value & the competitor who supplied words the total numerical value of which was the highest won the competition. The advertisement stated that the " missing words " were " ordinary everyday words " & that they must be " recognised words suitable to the clues " & must be found in Chambers's dictionary. In the conduct of the competition unusual & obsolete words used were accepted :—*Held :* the magistrate was entitled to find that the conduct of the competition was such as to preclude the fair consideration of the answers & the competition was a lottery within Lotteries & Art Unions Act, 1901-1929.—*Re* CHRISTENSEN, *Ex p.* ATMORE (1936), 53 N. S. W. W. N. 217.—**AUS.**

sq. *Conducting lottery—Sufficiency of evidence—Finding of tickets & paraphernalia.*]—Where a charge is laid under Criminal Code, s. 236, evidence that tickets & other paraphernalia suitable for lottery purposes were found on the premises of the accused does not amount to a *prima facie* case.—R. *v.* WONG SIM, [1929] 1 D. L. R. 240 ; 50 Can. Crim. Cas. 231 ; [1928] 3 W. W. R. 492.—**CAN.**

sr. *Distribution of cash commissions dependent on chance.*]—The system under a scheme known as the Multiplication Bureau operated as follows : " A." enrolled as a member at a fee of £1 & when he got four new members he was entitled to a commission of 15*s.* on the enrolment of the fourth member ; when this fourth member got three new members " A." was entitled to 12*s.* 6*d.* commission on each, & when these three each got three new members " A." was entitled to 12*s.* 6*d.* commission on the resulting nine enrolments, & the process continued until the commissions accruing to " A." totalled £1,500 :—*Held :* the scheme is to be regarded, in substance, as one in which the main source of the cash commissions is the indirect enrolments & the receipt of commissions arising from such enrolments, or any of them, depends purely on chance so far as the receiving member is concerned ; & the scheme is accordingly a lottery.—MCLEAN *v.* MURCH, [1934] N. Z. L. R. Supp. 7 ; G. L. R. 61.—**N.Z.**

sv. " *Drawing* " — *Meaning of.*]—The word " drawing " used in sect. 294A of the Indian Penal Code, in relation to lotteries, must be given its usual physical interpretation, & its meaning relative to a lottery therefore is that lots should be drawn by some mechanical or human agency involving their chance extraction.—GURBAKHSH SINGH *v.* R. (1934), I. L. R. 16 Lah. 51. —**IND.**

PART IV. SECT. 3.

st. *Art unions—Whether exempt under Criminal Code, s.* 236.]—R. *v.* LEBLANC (Ont.) (1926), 46 Can. Crim. Cas. 38.—**CAN.**

sw. *State lottery—Liability for re sale of tickets.*]—Sect. 5 of State Lotteries Act, 1930, provides that " Any subscriber or contributor to a state Lottery . . . shall be freed & discharged from all penalties, suits, prosecutions & liabilities to which by law he would be liable but for this Act as being concerned in an illegal lottery, littlegoe, or unlawful game. . . ." N. subscribed to a State Lottery & purchased a number of tickets. Shares in each of the tickets so obtained were sold to other persons. N. was charged with knowingly allowing a room to be used for the sale of shares in chances for the disposal of money by chance in contravention of the Gaming & Betting Act, 1912 :—*Held :* (1) appct. was guilty of an offence within sects. 4 & 17 of Gaming & Betting Act, 1912 ; (2) sect. 5 of State Lotteries Act did not afford him protection, as that sect. is limited to the acquisition of tickets in State Lotteries & does not confer an unfettered transferable right on the holder of a ticket.—RUSSELL *v.* NAYLOR (1932), 32 S. R. N. S. W 168 ; 49 N. S. W. W. N. 63.—**AUS.**

462. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

—— —— —— **Liability of individual directors.**]—(1) Liability under above sect. attaches, if there has been publication of a proposal or scheme for a lottery, although the matter has not actually proceeded to a lottery.

(2) A limited co. is not liable to the penalties prescribed by above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox, C. C. 68. *As to* (2) **Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

464. *Add. Annotation :*—**Apld.** Ranson *v.* Burgess (1927), 137 L. T. 530.

464a. —— ——.]—A printer printed and sold to a purchaser a set of tickets adapted for use in a lottery, but no lottery was then in existence. The purpose was that the purchaser should institute & carry on a lottery by means of the tickets, by reselling them singly & providing out of the proceeds a prize for the holder of the winning ticket. The printer took no further interest, financial or otherwise, in the matter, beyond the original purchase price for the sale of the tickets as a set:—*Held :* the printer was properly convicted of publishing a proposal or scheme for the sale of tickets or chances in a lottery contrary to the above sect.—RANSON *v.* BURGESS (1927), 137 L. T. 530; 91 J. P. 133; 43 T. L. R. 561; 25 L. G. R. 378; 28 Cox, C. C. 425, D. C.

Annotations :—**Folld.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

464b. —— —— **Distribution of circulars advertising lottery.**]—**Resp.** employed canvassers to call from house to house, inviting persons to undertake to buy tea from her regularly. Each week the canvassers carried with them handbills which declared that: "To advertise our famous tea we will distribute among our customers cash gifts of £3 and £6," as the purchaser bought one or two packets of tea per week. The circular continued: "Each customer's name is entered in rotation in our ledger and cash gifts are paid out accordingly." The names & addresses of new customers were entered in the ledger in the exact order in which they had been obtained, the list of one canvasser's customers on his return to the office being completely entered before that of the next was begun. Resp. awarded her bonus each week to the next customer whose name was on the list after that of the customer last to receive a bonus, provided that the customer was still regularly buying the tea. The names of customers who ceased to buy the tea weekly were struck out of the list, thus advancing the names of customers below them. It was stated in one of the circulars that during the twenty-four weeks ending in June, 1928, resp. had paid out £1,920 by way of bonus gifts. Applt., a superintendent of police, preferred an information against resp., charging her with publishing a proposal or scheme for the sale of chances in a lottery not authorised by Act of Parliament, contrary to above Act. The stipendiary magistrate dismissed the information holding that resp. had not published a proposal or scheme for the sale of chances in a lottery:—*Held :* there were no materials to justify the magistrate in so holding. The case must be remitted to him with the direction to convict.—HOWGATE *v.* RALPH (1929), 141 L. T. 512; 93 J. P. 127; 45 T. L. R. 426; 73 Sol. Jo. 253; 27 L. G. R. 432; 28 Cox, C. C. 633, D. C.

Annotation :—**Refd.** Public Prosecutions Director *v.* Phillips, [1935] 1 K. B. 391.

466a. **"Shall be deemed to be a rogue & vagabond —What must be proved—Lotteries Act, 1823 (c. 60), s. 41.**]—When a person is charged under Lotteries Act, 1823 (c. 60), s. 41, with selling tickets in a lottery it is not necessary to show that he has the "status" or "mode of life" of a rogue & vagabond. The effect of the section is that any person selling such tickets is to be punished as if he were a rogue & vagabond.—PROTHERO *v.* WATSON (1931), 145 L. T. 643; 95 J. P. 184; 47 T. L. R. 627; 75 Sol. Jo. 629; 29 L. G. R. 528; 29 Cox, C. C. 370, D. C.

466b. **Selling "tickets in any lottery"—Lotteries Act, 1823 (c. 60), s. 41—Proposed lottery.**]—The expression "tickets in any lottery" in Lotteries Act, 1823 (c. 60), s. 41, means tickets in a proposed lottery.—BARKER *v.* WOOD (1932), 48 T. L. R. 402; 76 Sol. Jo. 307, D. C.

PART IV. SECT. 5, SUB-SECT. 1.

q 1. ——.]—Defts. conducted in public a series of games known as "diggers' bagatelle." Bystanders were invited to take part in each game on payment of threepence to defts. The winner of a game received from defts. the sum of ninepence, & became entitled to join in the next game without charge:—*Held :* defts. did not thereby "dispose" of any "property" within Police Offences Act, 1915, s. 88 (*b*).—DEELEY *v.* MCEVOY, [1928] V. L. R. 117; [1928] Argus L. R. 47.—**AUS.**

b (p. 459) 1. —— *"Property" includes money.*]—"Property" in sect. 236 (*c*) of Criminal Code includes money, & the fact that there may be a period during which the amount to be given away under the scheme in question is unascertained is immaterial.—R. *v.* BREWERTON, [1936] 3 W. W. R. 433; 4 D. L. R. 702; 6 Can. C. C. 60; 6 F. L. J. (Can.) 211.—**CAN.**

sw. *Sale of gambling device.*]—A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the devise in question, *e.g.*, a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—R. *v.* HEISE, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—**CAN.**

sy. *Knowingly conveying articles for use in lottery.*]—Accused, the driver of a motor truck who had a contract with a mercantile co. to transport its goods, was under its instructions bringing 30 cases of goods to its premises from the customs warehouse when he was stopped under a search warrant & 10 of the cases were found to contain the paper slips in question. These papers when seized were in a state in which they could be adapted to either a lawful or unlawful use:—*Held :* the conviction must be quashed, since, assuming that the finding that the co. had imported the papers with the intention of illegal use was justified, there was no evidence to support the finding that applt. had knowledge of that intention.—R. *v.* LOUIE HOW, [1936] 2 W. W. R. 638.—**CAN.**

sz. *Exemptions—Lessee of fair grounds association.*]—A lessee of a fair grounds assocn. is within the exemptions proviso relating to lotteries in Criminal Code, s. 236 (*e*).—R. *v.* BEASLEY, [1936] 2 D. L. R. 377; O. R. 299; 65 Can. C. C. 337.—**CAN.**

sd. *Conveying tickets—Necessity for mens rea.*]—A truckman conveying lottery tickets without knowledge of their character commits no offence.—R. *v.* How, [1936] 4 D. L. R. 389; 66 Can. C. C. 250; 50 B. C. R. 554.—**CAN.**

of lottery—Refusal of Home Secretary to exercise jurisdiction—Whether bona vacantia.]—MAY *v.* THOMAS (1934), 78 Sol. Jo. 413.

466d. Possession of ticket for sale or distribution—Possession as custodian for syndicate.]—Applt., received from the purchaser a block of forty-eight tickets in a lottery on behalf of a syndicate comprising twenty-one persons, including applt. He collected from each member 2*s.* a week & himself set aside a similar amount weekly, & subsequently paid over the money collected by him to the purchaser of the tickets. The whole of the forty-eight tickets were held by the syndicate on behalf of all the members, each member holding a twenty-first part in the whole of the tickets. No individual member w entitled to any ticket or tickets, & any prize won by means of any of the tickets have been divided equally between members of the syndicate. Applt. was convicted under Betting & Lotteries Act, 1934 (c. 58), s. 22 (1) (*b*) of having the tickets in his possession for the purpose of sale or distribution:—*Held:* there was no evidence that any ticket was in applt.'s possession for either purpose, as the intention was that all the tickets should be held by him as custodian on behalf of all the members & no sub-sale of tickets between members was ever in contemplation, & the conviction must, accordingly, be quashed.—CORFIELD *v.* DOLBY (1935), 154 L. T. 266; 100 J. P. 75; 52 T. L. R. 139; 80 Sol. Jo. 128; 34 L. G. R. 97; 30 Cox, C. C. 341, D. C.

Part V.—Races and Racecourses.

472. *Add. Annotation:*—**Refd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

479. *Add. Annotation:*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

SECT. 2.—RACECOURSES.

(Vol. XXV., p. 460.)

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41); Betting & Lotteries Act, 1934 (c. 58), ss. 1–20.

480a. —— Powers of Control Board—Payment of commission for placing bets on totalisators of Board.]—The Racecourse Betting Control Board was established as a statutory body with powers to set up & operate totalisators on approved racecourses for the purposes of betting, subject to the conditions required by the Act being observed. In the years 1929 to 1933 inclusive the Board had entered into a series of agreements with two cos., in order to procure the collection of bets from persons not on the racecourse on race days, & the placing of such bets on the totalisator on the course. The Board agreed to pay commission at certain rates dependent on the amount of money placed by means of such bets, & also the expenses of its agents in collecting & telephoning the bets to the course, such commission & expenses being paid by the Board out of the totalisator fund. The Board also agreed with one of the cos. to provide at its own expense all reasonable facilities required by the co. for the purpose of its business on the authorised racecourses & to make contributions towards the initial expenses of that co. In an action brought at the relation of the secretary of a bookmakers' organisation, asking for a declaration that such agreements & payments were invalid & *ultra vires* the Board:—*Held:* (1) the action of the Board in agreeing to pay the commission & the expenses of providing facilities on the authorised racecourses was reasonably incidental to the power conferred on the Board by Racecourse Betting Act, 1928 (c. 41), & was therefore not *ultra vires*. In so doing the Board was only taking steps to increase the bets placed on the totalisators on the courses; (2) in contributing towards the preliminary expenses of one of the cos. the Board was acting *ultra vires*, as it was thereby assisting in the general business of the co. which as between itself & its customers was carrying on "off-the-course" betting.—A.-G. *v.* RACECOURSE BETTING CONTROL BOARD, [1935] Ch. 34; 104 L. J. Ch. 13; 152 L. T. 146; 51 T. L. R. 36; 78 Sol. Jo. 783, C. A.

480b. —— —— Contribution to expenses of company collecting bets.]—A.-G. *v.* RACECOURSE BETTING CONTROL BOARD, No. 480a, *ante*.

PART IV. SECT. 5, SUB-SECT. 2.

82. *Action by wife against husband.*]—In an action by a common informer under sect. 236 (3) of the Criminal Code, pltf. being wife of deft.:—*Held:* judgment should not be granted since there was a suspicion of collusion & also that there was no proof that by the law of Canada a wife can sue her husband.—DINNING *v.* DINNING, [1932] O. R. 208; 2 D. L. R. 205; 57 C. C. C. 393.—**CAN.**

83. *Proceedings for penalty—Security for costs—Whether ordered.*]—Pltf. brought an action to have it declared that a contest in connection with an automobile show in which deft. won an automobile was contrary to sect. 236 (3) of the Criminal Code, & that said automobile be forfeited to him. Upon an application by deft., the referee, pursuant to K. B. R. 987, ordered pltf. to secure deft.'s costs. Pltf. appealed:—*Held:* sect. 236 (3) of the Criminal Code confers a right of action which in no way can be diminished or impaired by K. B. R. 987; nor is it required that said rule shall apply, in order that due enforcement of the rule shall be upheld.—BROWN *v.* KEELE, [1934] 2 W. W. R. 570; 4 D. L. R. 508; 42 Man. L. R. 329; 62 C. C. C. 84.—**CAN.**

84. *Forfeiture of property won.*]—There is no discretionary power not to adjudge a forfeiture of property won in a lottery.—SAUNDERS *v.* MOLLISON (4931), 62 Can. C. C. 274.—**CAN.**

85. *Destruction of "documents"—What are.*]—A bookmaker was convicted, under Betting & Lotteries Act, 1934, s. 22, of having conducted an illegal lottery. The sheriff-substitute ordered forfeiture of one ten-shilling note, & the destruction of all coupons produced in the case, but refused to order destruction of postal orders, money orders & cheques, which represented payments to the accused by persons taking part in the lottery in respect of their tickets therein:—*Held:* the postal orders, etc., in question, since they represented the price of tickets in the lottery, were "documents" relating to the conduct of the lottery within 1934 Act, s. 30 (3), &, accordingly, they fell to be destroyed.—STRANG *v.* ADAIR, [1936] S. C. (J.) 56.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 3

86. *Coursing—Use of mechanical hare—Whether within Gaming & Betting Act, 1912, s. 7.*]—Resp. attended a

483. *Add. Annotations :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1 ; Cipriani *v.* Burnett, [illegible]

483a. —— ——.]—A contract may make the award of a specified tribunal a condition precedent to an action at law without doing so in terms.

The tickets sold for a sweepstake in connection with a race meeting in Trinidad stated : " This ticket is sold subject to the condition that in the event of any dispute arising with respect to any matters connected with the drawing of the sweepstake, or the awarding of the prizes, the decision of the stewards of the Trinidad Turf Club thereon shall be accepted as final " :—*Held :* the terms of the ticket, having regard to the circumstances belonging to it, made a decision by the stewards a condition precedent to any action to recover the stakes.—CIPRIANI *v.* BURNETT, [1933] A. C. 83 ; 102 L. J. P. C. 118 ; 148 L. T. 148, P. C.

484. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

490. *Add. Annotation :*—**Refd.** Cipriani *v.* Burnett, [1933] A. C. 83.

Part VI.—Competitions.

496. *Add. Annotations :*—**Distd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

497. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

498. *Add. Annotations :*—**Apld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75. **Consd.** Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400.

501. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

501a. Betting & Lotteries Act, 1934 (c. 58), s. 26—Betting pool business—What amounts to.]—A co. whose only trade or business was that of a bookmaker as defined in Part I. of the Betting & Lotteries Act, 1934 (c. 58), advertised a " football pool " in a weekly newspaper. Readers were thereby invited to fill in coupons relating to any one or more of a series of football matches to be played on the following Saturday, with their respective forecasts of the results, including the score, & to stake a named sum thereon. Under the rules of the pool entrants were required on the day before the matches were played to remit the coupons they had filled up to the co. with a promise in writing, duly signed, to pay the amount they were staking in case they lost, on the Tuesday following. The total amount received from entrants, less 10 per cent., was distributed by the co. among those whose forecasts turned out to be correct, or most nearly correct. On a motion by pltf., a director of deft. co., for an injunction to restrain them from so conducting the pool :—*Held :* the pool was not a " competition in which prizes are offered for forecasts of the result . . . of a future event " within the prohibition contained in Betting & Lotteries Act, 1934 (c. 58), s. 26, but a pari-mutuel or pool betting operation conducted by a bookmaker, & therefore lawful within sect. 3 & the proviso to sect. 26 of the Act.—ELDERTON *v.* UNITED KINGDOM TOTALISATOR CO., LTD., [1935] Ch. 373 ; 104 L. J. Ch. 105 ; 152 L. T. 549 ; 99 J. P. 179 ; 51 T. L. R. 237 ; 79 Sol. Jo. 126 ; 33 L. G. R. 176.

502. *Add. Annotations :*—*As to* (1) **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

licensed racecourse on which a sport consisting of the pursuit of a mechanical hare by dogs was held, & made bets on several of the dogs. He was charged before a magistrate with an offence under above sect., & the magistrate held, as a matter of law, on the evidence before him, that the pursuit of a mechanical hare by dogs was " coursing " within above sect., & dismissed the information :—*Held :* the pursuit of a mechanical hare by dogs was not " coursing " within above sect., & the determination of the magistrate was erroneous in point of law.—KELSO *v.* MCLACHLAN (1928), 28 S. R. N. S. W. 510 ; 45 N. S. W. W. N. 143.—**AUS.**

PART V. SECT. 2.

sc. *Refusal of admission—Validity of bye-law.*]—NAYLOR *v.* STEPHEN, [1937] 2 W. W. R. 601.—**AUS.**

PART V. SECT. 3.

484 i. *Finality of decision—Absence of final decision.*]—Where a challenge cup, to be won in a bicycle race between competing clubs, was held by trustees under an instrument of trust, by which all arrangements pertaining to the course, race, protests & matters " connected with the welfare of the cup " were to be decided by the trustees according to certain rules, the ct., upon the mere allegation of fraud, & before any decision of the trustees, refused to exercise jurisdiction restraining the trustees from parting with the cup to an alleged winner under protest, upon the ground that one of the winning riders did not go round the course, that being a matter of fact for the decision of the trustees.—ROSS *v.* ORR (1894), 25 O. R. 595.—**CAN.**

484 ii. —— *Appeal to committee of Turf Club—Powers of committee.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

PART VI. SECT. 1.

d i. —— —— *Receipt of money with coupons—Whether offence under Street Betting Act.*]—In a complaint under Street Betting Act, 1906, it was proved that accused received in the street from various persons a large number of slips accompanied by sums of money. The slips were odd pieces of paper, upon each of which were written the names of at least one group of eight football teams, to which was added a name, number or other symbol, for identifying the sender of the slip. Accused did not submit lists of football teams for the purpose of selection, the names of such teams being selected by the senders of the slips from lists of teams advertised or reported in the public press to play on the Saturday following the date on which the slips were received by accused. The teams selected were those which the senders of the slips predicted would be winning teams on that Saturday. Along with each slip was sent 1*s.*, the understanding being that, after the results of the matches were published, accused would examine the forecasts made, & thereafter would deduct from the money received a sum in name of commission, & hand over the balance to the person sending in the correct forecast if only one forecast was correct, or, if more than one forecast was correct, an equal share of such balance to each of the senders of correct forecasts. If no correct selection was sent in there was no distribution, & the whole contributions were carried forward to the next week ; which procedure was repeated until a correct forecast was made, or until the end of the football season arrived, when if there had been no correct selection received, the money in hand, less a commission to the accused, was distributed among those who had sent it :—*Held :* accused was engaged in betting transactions & was guilty of an offence under Street Betting Act, 1906.—YEUDALL *v.* [illegible], [1928] S. C. (J.) 54.—**SCOT.**

PART VI. SECT. 2.

n i. —— *Estimate of future temperatures.*]—The publication of the scheme in question herein by which deft. offered prizes for the nearest estimates

As to (3) **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

503. *Add. Annotation :*—**Refd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

504a. —— **Determination of order of popularity of specified articles.**]—The proprietors of a number of commodities organised, for advertisement purposes, a competition in which customers were asked to place thirteen named articles in the order of their popularity as shown by the actual voting of the entrants themselves. A number of money & other prizes were offered to those whose lists most nearly agreed with that shown by the voting as a whole. No entrance fee was charged, but each entrance form had to be accompanied by part of a bag or wrapper from one of the named articles :—*Held :* since the competitors were not asked to judge the real merits of the articles but to guess how other people would guess at their popularity, there was material on which a magistrate was justified in finding that the result depended entirely on chance & in convicting the advertising manager of the promoters of an offence under Lotteries Act, 1823 (c. 60), s. 41, —HOBBS *v.* WARD (1929), 93 J. P. 163 ; 45 T. L. R. 373 ; 27 L. G. R. 410, D. C.

Annotations :—**Folld.** Challis *v.* Warrender (1930), 144 L. T. 437. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

504b. —— **Determination of order of popularity of theatrical rôles.**]—Resps. sent to members of the theatrical profession & to persons whose names appeared in " Who's Who " books of 10*s.* tickets in a " Grand National Mutual Subscription Fund in aid of the Ellen Terry Memorial Museum " with a request to sell the tickets among their friends & return the counterfoils & money by a certain date. An accompanying circular explained that 25 per cent. of the money subscribed would be devoted to the museum & that the remaining 75 per cent. would be distributed " in such manner as the organisers in their absolute discretion shall think fit," but that £20,000 would be distributed in prizes. It was apparently originally contemplated that the money should be used for a sweepstake on the Grand National horse race, but owing to a communication from the police there was substituted a scheme whereby subscribers were invited to place in order of popularity, as shown by the general votes of the competitors, ten rôles played by the late Dame Ellen Terry :—*Held :* the scheme was a lottery. The fact that the original books of tickets were sent only to members of the theatrical profession & persons in " Who's Who " did not so limit the class of competitors as to render it possible by any element of skill to arrive at a reasonable forecast of how they would vote ; especially as they might be expected to sell many tickets to persons outside those two categories, so that the competition was in effect open to the public.—CHALLIS *v.* WARRENDER (1930), 144 L. T. 437 ; 95 J. P. 39 ; 47 T. L. R. 123 ; 29 L. G. R. 109 ; 29 Cox, C. C. 251.

505. *Add. Annotations :*—**Apld.** Hobbs *v.* Ward (1929), 93 J. P. 163. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

506. *Add. Annotations :*—**Distd.** Hobbs *v.* Ward (1929), 93 J. P. 163. **Consd.** Coles *v.* Odhams Press, Ltd., [1936] 1 K. B. 416.

506a. —— **Picture puzzle competition.**]—A competition was advertised in a newspaper in which a money prize was offered to the reader sending in the best solution of a picture puzzle illustrated in the same issue. The puzzle consisted of a set of nine small sketches each intended to depict the name, as spelt or pronounced, of some place in the United Kingdom. A list of names providing clues was given. Competitors were required to fill in blank forms with their solutions & send them in to the editor with entrance fees. The artist who drew the sketches was instructed to make some of them capable of representing one or other of two or three different places. In an action brought to test the legality of the competition :—*Held :* (1) success in the competition depended on the exercise of a substantial degree of skill, there being no predetermined solution of the puzzle, & therefore it did not come within the prohibition contained in Betting & Lotteries Act, 1934 (c. 58), s. 26 (1) (*b*) ; (2) the competition was not a " game " within the prohibition of Betting Act, 1853 (c. 119), s. 1.—WITTY *v.* WORLD SERVICE, LTD., [1936] Ch. 303 ; 105 L. J. Ch. 63 ; 154 L. T. 491 ; 100 J. P. 68 ; 52 T. L. R. 235 ; 79 Sol. Jo. 966 ; 34 L. G. R. 150 ; 30 Cox, C. C. 375.

of the average temperatures of seven named cities on a future date & the attendance at the Regina Fair on certain future days, & under which those invited to compete were supplied with statistical information to assist them in making their estimates, was held not to be a violation of s. 326 (*a*) of the Criminal Code.—R *v.* REGINA AGRICULTURAL & INDUSTRIAL EXHIBITION ASSOCN., LTD., [1932] 2 W. W. R. 131.—**CAN.**

GARAGE.

See NUISANCE.

GAS.

Part II.—Lands and Works.

10. *Add. Citations :*—94 L. J. Ch. 382 ; 133 L. T. 565 ; 89 J. P. 177 ; 23 L. G. R. 525.

—— —— **Country road.**]—The word "street," as used in Gasworks Clauses Act, 1847 (c. 15), s. 6, is not necessarily confined to what is ordinarily known as a street, & over which there is a public right of way. A country lane with certain residences abutting upon it may be a street, although it has not been dedicated to the public & no public right of way exists.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884 ; 97 L. J. Ch. 479 ; 139 L. T. 636 ; 92 J. P. 153 ; 26 L. G. R. 530.

27. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

Part III.—Supply of Gas.

31. *Add. Annotations :*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

37. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191.

40. *Add. Annotation :*—**Distd.** Granger *v.* South Wales Electric Power Distribution Co., [1931] 1 Ch. 551.

51a. Duration of agreement to supply—Power to terminate.]—In 1906 a co. was incorporated by statute to supply gas in a certain area in the place of a limited co., & by sect. 7 the statutory co. took the benefit of all contracts & engagements of the limited co. which had been supplying gas to the defts., an urban council, for public lighting. In 1909 the co. entered into an agreement under seal with the council in which it was recited that before the passing of the Act "it was agreed by & between the predecessors of the gas co. & the council that the agreement then in force for public lighting should continue to remain in force & be binding on both parties until the council should determine the same," & that "it has been deemed desirable by the said parties hereto that the terms of the said agreement for the public lighting shall be set out as hereinafter mentioned." By the operative part of the agreement the co. agreed to light all the public lamps within the district "from & after the first day in Sept. in every year up to the following first day of May inclusive" on certain terms ; & provisions were made for increasing the number of lamps. There was no provision as to the period for which the agreement was to run or giving either party a right to determine it. By a supplemental agreement dated June 30, 1921, the times of lighting & the charges were varied, & clause 1 (*c*) provided that new lanterns supplied by the co. should become the property of the council without payment after fifteen years if the agreements continued for so long, "& if the said agreements be determined before the expiration of such period" the council were to pay for them. On Apr. 30, 1927, the council gave notice to determine the agreement on Aug. 31, 1927 :—*Held :* having regard to the recitals in the original agreement & clause 1 (*c*) of the supplementary agreement & to the nature of the contracts they were determinable by notice.—CREDITON GAS CO. *v.* CREDITON URBAN DISTRICT COUNCIL, [1928] Ch. 447 ; 97 L. J. Ch. 184 ; 138 L. T. 723 ; 92 J. P. 76 ; 44 T. L. R. 369 ; 72 Sol. Jo. 225 ; 26 L. G. R. 325, C. A.

PART I. SECT. 3.

sd. *Franchise granted to company—Option of town to purchase.*]—It cannot be said that clauses 37 & 39 of sect. 162 of Town Act, R. S. A., 1922, as it stood at the time the agreement in question herein was entered into, relate to different kinds of agreements & that clause 39 does not apply to an agreement by which a special franchise is granted by a town. Whether or not clause 39 (*b*) applies to agreements granting special franchises, clause 11 of the agreement herein is binding as a term of the contract so far as it is not *ultra vires*.—*Re* WAINWRIGHT TOWN & WAINWRIGHT GAS CO., LTD., [1930] 3 W. W. R. 49.—**CAN.**

PART III. SECT. 1.

sx. *Power to run pipes under highway through municipality—No power to supply municipality—Right of municipality to sue for illegal supply.*]—NELSON *v.* DOMINION NATURAL GAS CO., LTD., [1931] 2 D. L. R. 229 ; 66 O. L. R. 271.—**CAN.**

sg. *Grant of right to supply gas in district—District added to municipality—Municipality not entitled to interfere with right to supply.*]—The effect of a bye-law passed by the council of a township in Ontario under Consolidated Municipal Act, 1903 (Ont.), s. 566 (3), authorising a co., incorporated with suitable powers, to lay mains under the streets of the township & to supply its inhabitants with gas, together with an agreement by the co. accepting the bye-laws & its conditions, is to confer upon the co. (the conditions being fulfilled or waived) a valid & perpetual franchise, not subject to repeal, applying to the geographical territory which at the date of the bye-law was comprised in the township. Upon parts of that territory being annexed to an adjacent city, under provisions of the above Act as amended & Municipal Act, 1913 (Ont.), the franchise remains effective in & applicable to the annexed areas. In those areas the municipality of the city after the annexation takes the place *mutatis mutandis* of the municipality of the township to all intents & purposes as regards the rights & obligations created by the bye-law & relative agreement.—UNITED GAS & FUEL CO. OF HAMILTON, LTD. *v.* DOMINION NATURAL GAS CO., LTD., [1934] A. C. 435 ; 103 L. J. P. C. 94 ; 151 L. T. 385, P. C.

PART III. SECT. 2, SUB-SECT. 5.

sa. *Powers of municipality as undertaker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 6.

sb. *Refusal to pay increased rates—Right to cut off gas.*]—*Held :* Natural Gas Conservation Acts, 1921 (c. 17), & 1922 (c. 23), were valid.—SANDWICH *v.* UNION NATURAL GAS CO. (Ont.), [1925] 4 D. L. R. 795 ; *affg.*, [1925] 2 D. L. R. 707 ; 56 O. L. R. 399.—**CAN.**

Part IV.—Protection of Property of Undertakers.

62. ***Add. Annotations :—As to*** (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

Part V.—Negligence and Nuisance.—Liability of Undertakers.

74. ***Add. Annotations :—*** **Refd.** Stein *v.* Gates (1935), 79 Sol. Jo. 252; Burnham *v.* Boyer & Brown, [1936] 2 All E. R. 1165.

80a. Excavation by local authority—Failure of gas company to inspect operations.]—A hotel belonging to & insured by resps. respectively was destroyed by fire caused by the escape & ignition of natural gas which percolated through the soil & penetrated into the hotel basement from a fractured welded joint in a 12-in. intermediate pressure main, 3 ft. 6 ins. below the street level, belonging to applts., a public utility co. who supplied natural gas to consumers in the City of Edmonton, Alberta. The cause of the break in the welded joint through which the gas leaked was found to be the operations of the City of Edmonton in constructing a storm sewer, involving underground work immediately beneath applts.' main. On a claim for damages by resps. against applts. :—*Held :* that the words "locate & construct" in Alberta Water, Gas, Electric & Telephone Cos. Act, 1922, s. 13, refer only to the initial location or construction of the works, & do not include "maintain," & applts. were not subject to the rule of strict or absolute liability, but were entitled to the protection accorded to persons acting under statutory authority; but as applts. were carrying gas at high pressure which was very dangerous, if it should escape, they owed a duty to the owners of the hotel, to exercise reasonable care & skill that the owners should not be damaged. The degree of care which that duty involved must be proportioned to the degree of risk involved. The City might at any time be conducting operations in connection with their sewers in the vicinity of applts.' mains, & it was the duty of applts. to watch such operations. The operations in question were, from their public nature & conspicuous character & from the time during which they went on, such that a failure by applts. to know of them was plainly not consistent with due care on their part in the interests of members of the public likely to be

PART IV. SECT. 2, SUB-SECT. 1.

62 i. *Gas main—Damage by subsidence.*]—A gas co. opened a street in a city & laid down a gas main. The city corpn. constructed an underground drain, &, by reason of a subsidence of the drain, the gas main was broken. The co. opened the street & repaired the gas main & the corpn. reinstated the drain & roadway. In an action by which the corpn. sought to recover from the co. the cost of such reinstatement, the co. by counterclaim sought to recover from the corpn. the cost of repairing the gas main :—*Held :* the liability of the corpn. for the damage to the gas main depended upon negligence in the exercise of its statutory powers causing unnecessary damage to the co., & the *onus* of proving such negligence had not been discharged by the co.—METROPOLITAN GAS CO. *v.* MELBOURNE CORPN., [1925] V. L. R. 132; 35 C. L. R. 186; 31 Argus L. R. 25.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.—B.

o i. —— ——.]—EMPIRE MARBLE & TILE CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1933] 3 W. W. R. 225.—**CAN.**

—— an action for —— from an explosion of gas alleged to have been caused by the negligent installation of a pipeline serving pltf.'s premises :—*Held :* deft. co. was not protected from liability by virtue of a certain clause of its rules & regulations, incorporated in the contract between pltf. & deft., & which read : "The property line shall be the place of delivery of all gas in this contract & all expenses, risks & liability in utilising & using the gas after its delivery at the property line shall be borne exclusively by the consumer" : it being held that the escape of gas from a fracture in a pipe caused by the negligence of deft.'s servants was not a "utilising" or "using" of the gas, &, moreover, that the clause meant a utilisation or use by the consumer.—EMPIRE MARBLE & TILE CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1933] 3 W. W. R. 225.—**CAN.**

q. For "*Escape of gas from gas main*" read "*Escape of gas—From gas main.*"

q i. —— *During installation of gas connections—Destruction of buildings by fire following explosion.*]—*Held :* the gas co. were liable.—CONSUMERS' GAS CO. *v.* R., [1927] 1 D. L. R. 564; [1926] S. C. R. 709.—**CAN.**

q ii. —— *Necessity for proof of negligence.*]—In an action for damages for injuries to pltfs. caused by the escape of gas from deft. gas co.'s main :—*Held :* since the co. had laid & was operating its system under statutory power, & there was nothing in its incorporating Act providing that nothing therein should exonerate the co. from liability for nuisance, the co.'s liability depended upon proof that it had been negligent & that its negligence caused pltfs.' sufferings.—SCHEER *v.* WINNIPEG ELECTRIC CO., [1936] 2 W. W. R. 369; 3 D. L. R. 494; 44 Man. L. R. 179.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

q i. —— *Liability of city.*]—A provision in a city charter imposing on the city the duty of constructing all public works & apparatus appertaining thereto so as not to endanger the public health or safety includes the duty to keep said works & apparatus in such repair as will effect the same object. In the present case :—*Held :* deft. city had not met the obligation of this provision with respect to a service pipe connecting a natural gas main with pltf.'s premises; the gradual development & enlargement of a leak in the stopcock in said service pipe was not a "breaking" of the pipe or attachments within a section of the charter giving the city immunity for damages caused by "breaking."—REID *v.* MEDICINE HAT CITY, [1933] 1 W. W. R. 65.—**CAN.**

sp. *Escape of gas—Act of stranger.*]—An action for damages for an injury to pltf.'s health caused by an escape of gas owing to the breaking of deft.'s service pipe in premises in which pltf. resided. Pltf. lived with her mother, who was the householder & who apparently, had contracted for the supply of gas. No contractual relation between pltf. & deft. was established, & no negligence was proven against deft. The pipes had been properly laid & were in sound condition when the break occurred. The cause of the break was the action of an occupant of the front part of the lot in so altering his premises that additional weight was thrown laterally against the sunken pipe until it broke at a joint, permitting gas to escape & pass under ground to the basement, whence it reached pltf.'s bedroom. Deft.'s charter required it "so to construct & locate their works & all apparatus & appurtenances thereto appertaining or therewith connected & wheresoever situated as in no wise to endanger the public health, convenience, or safety." The sect. then goes on to provide for inspection at all reasonable times by the municipal authorities of the co.'s works, apparatus & appurtenances, & the obeying by the co. of all reasonable orders & directions following such inspection with penalties for disobedience of the same :—*Held :* deft. was not liable.—DARBEY *v.* WINNI-

affected. Although under the exception to the rule in *Rylands* v. *Fletcher*, applts. would not be liable for damages caused, without default on their part, by the independent, conscious act of a third party, they were negligent in failing to foresee & guard against the consequences to their works of the City's operations.—NORTHWESTERN UTILITIES, LTD. *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1936] A. C. 108; 105 L. J. P. C. 18; 154 L. T. 89; 52 T. L. R. 93; 79 Sol. Jo. 902, P. C.

Annotation :—**Refd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

84. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

85. *Add. Annotation :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

99. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

Part VIII.—Gas Supply in the Metropolis.

114. *Add. Annotation :*—**Consd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

117. *Add. Annotations :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566; Pearce *v.* London County Electric Supply Co. (1935), 34 L. G. R. 349.

125. *Add. Annotation :*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

PEG ELECTRIC CO., [1933] 1 W. W. R. 566; 4 D. L. R. 252; 41 Man. L. R. 123.—**CAN.**

sr. ——.]—Deft. gas co. held not liable for an explosion in pltf.'s house, there being no evidence as to how the gas escaped into pltf.'s house, & no evidence that deft. co. was in any way responsible.—SNYDER *v.* MONCTON ELECTRICITY & GAS CO., LTD., [1936] 2 D. L. R. 31; 10 M. P. R. 138.—**CAN.**

sw. *Meter placed in inaccessible position.*]—In an action of damages for personal injuries which was brought against Glasgow Corpn., the pursuer, an elderly woman, averred that her house was originally supplied by defenders, under their statutory powers, with gas for cooking & lighting purposes through a meter of ordinary type which was placed above a cupboard 7 feet 9 inches in height; that this meter was subsequently removed & a slot meter, operated by a lever after the insertion of a coin, was installed in exactly the same position by defenders' servants, notwithstanding a request by the pursuer that it could be placed in a more accessible position within the cupboard; that, while standing on a stepladder which she had to use when proceeding to obtain a fresh supply of gas from the meter, she overbalanced, fell to the floor, & was injured; that it was the duty of defenders, if they chose to instal a slot meter, to place it in a position reasonably accessible to persons using it; & that they had negligently failed in that duty. She further explained that, prior to the accident, she had continued to use the meter because of the repeated assurances of defenders' servants that it would be placed in a more accessible position :—*Held :* the averments of pursuer relevantly set forth a case for inquiry.—POLLOCK *v.* GLASGOW CORPN., [1936] S. C. 428.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

r i. —— —— *Natural use of property.*]—The laying of gas pipes by a landlord for the supply of gas to dwelling-houses owned by him is a natural use of his property, & accordingly, ownership of an ordinary service pipe for the conveyance of gas to a tenant's house is insufficient *per se*, & without negligence to render the landlord liable for injury resulting to the occupants of the house through an escape of gas from the pipe.—MILLER *v.* ROBERT ADDIE & SONS' COLLIERIES, [1934] S. C. 150.—**SCOT.**

GIFTS.

Part I.—In General.

9. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

10. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

Part II.—Capacity to Give and to Receive Gifts.

17. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

19. *Add. Annotation :*—**Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

—— ——.]—It is within the powers conferred upon the Wimbledon & Putney Commons conservators (a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871) to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190; 100 L. J. Ch. 77; 144 L. T. 310; 47 T. L. R. 17; 74 Sol. Jo. 819; 29 L. G. R. 78.

20. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

Part III.—Gifts inter vivos.

26a. Gift for public purposes—Whether formalities for compulsory acquisition apply.] — The formalities required for the exercise of the compulsory powers given by statute for taking land for public improvements have no application to the case of a voluntary gift of land.—MICHAUD *v.* MONTREAL (CITY) (1923), 92 L. J. P. C. 161; 129 L. T. 417, P. C.

54a. ——.]—Declarations by an intestate, that he meant that a person with whom he resided should have his furniture & effects for what he owed her :—*Held :* sufficient to entitle such person to take, & retain possession of the property.—ROYSTON *v.* HANKEY (1833), 3 Moo. & S. 381.

69. *Add. Citations :*—*sub nom.* BINION *v.* STONE, Freem. Ch. 169; Nels. 68.

PART I.

2 i. *Essentials of gift—Transfer of property—Intention alone insufficient.*]—JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

b i. ——.]—MCMURCHY *v.* STEWART (Alta.), [1926] 3 D. L. R. 448; [1926] 2 W. W. R. 463.—**CAN.**

sb. *Purchase by father for pupil daughters—Disposition & registration in daughters' names.*]—*Held :* the father had made a complete & effective donation.—LINTON *v.* INLAND REVENUE COMRS., [1928] S. C. 209; 13 TAX CAS. 448.—**SCOT.**

sc. *Gift by Mahomedan resident in Ceylon.*]—A Mahomedan resident in Ceylon executed in 1904 a deed purporting to give immovable property to his son, subject to conditions & restrictions inconsistent with an intention to make a gift as recognised by Mahomedan law but creating a valid *fidei commissum* according to Roman-Dutch law :—*Held :* the deed was not invalid on the ground that there had been no delivery of possession to the donee as required by Mahomedan law for the validity of a gift.—WEERASEKERA *v.* PEIRIS, [1933] A. C. 190; 102 L. J. P. C. 28; 148 L. T. 389, P. C.—**CEYLON.**

PART III. SECT. 1, SUB-SECT. 2.—B. (a).

f i. ——.]—DICKSON *v.* CHAMBERLAND, [1927] 2 D. L. R. 429; [1927] 1 W. W. R. 794; 22 Alta. L. R. 393.—**CAN.**

sd. *What amounts to — Conduct recognising right of donee.*]—GRIFFITHS *v.* CARLETON (1927), 30 W. A. L. R. 1.—**AUS.**

sk. *Delivery to agent of donor.*]—A gift of a debt covered by a promissory note given by an invalid codicil, is not good as a gift *inter vivos* where the promissory note is given to the husband of the intended donee in testator's lifetime, but only as exor. or agent for testator.—ALLEN *v.* GRAHAM, [1934] 3 D. L. R. 797.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (b).

36 vi. ——.]—In an action of trover brought to recover the value of eight hundred seals alleged to have been wrongfully taken at the seal-fishery, it appeared that pltf. had found a quantity of seals panned & flagged by one W., who had abandoned them himself, but had sent a message to deft. that he might take the seals so left on the ice. Deft. proceeded to the locality where the seals were & found that pltf. had taken some of them on board his vessel, had counted others of the patch, & was in the act of taking on board his vessel the remainder, his crew being then in charge. Deft. then took charge of the remainder of the seals & had them conveyed on board his own vessel, & refused to permit pltf. to participate in the same. In an action by pltf. for the seals so taken the jury found for pltf.; on a rule *nisi* to set aside the verdict :—*Held :* there was a valid gift from W. to deft. such as would cause a legal transfer of property; &, further, it was in the power of W. to transfer property floating on the sea which he had himself the power to secure.—DOYLE *v.* BARTLETT (1872), 5 Nfld. L. R. 445.—**NFLD.**

36 vii. ——.]—LANGER *v.* MCTAVISH BROS., LTD., [1932] 4 D. L. R. 90; 45 B. C. R. 494.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (c).

51 i. *Whether immediate gift intended.*]—GARLAND *v.* O'REILLY (1911), 11 S. C. R. 197.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (e).

n i. —— *To bank manager.*]—The payee of a promissory note payable on demand left it with his bank for the purpose of having the interest on it collected. Subsequently he indorsed the note to his nephew & left it with the bank manager, telling him that he wished to collect the interest on it while he lived & to have the note delivered to his nephew on his death, & the manager put the note into a large envelope in the bank which held documents belonging to the nephew :—*Held :* there had been a complete gift *inter vivos* of the note.—DICKSON *v.* CHAMBERLAND, [1926] 3 D. L. R. 765; [1926] 2 W. W. R. 570; 22 Alta. L. R. 270.—**CAN.**

73a. —— ——.]—ANON. (1667), Freem. Ch. 128; 22 E. R. 1104.

73b. —— ——.]—SHALES *v.* SHALES (1701), Freem. Ch. 252; 1 Eq. Cas. Abr. 382; 22 E. R. 1191.

77. *Add. Annotation:*—**Refd.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

83a. —— ——.]—When a father purchases property with his own money, & takes a conveyance in the name of his son, the law presumes it to be an advancement for the son, & not a trust for the father. Those who allege that it is a trust are bound to prove it, & the evidence for that purpose consists mainly, if not exclusively, of contemporaneous circumstances. Testator has transferred property into the names of his sons:—*Held:* they were advancements, but there being doubts as to his solvency at the time, inquiries were directed on the point.—CHRISTY *v.* COURTENAY (1849), 13 Beav. 96; 51 E. R. 38.

Annotation:—**Consd.** Batstone *v.* Salter (1874), L. R. 19 Eq. 250.

88a. **Business in son's name—Receipt of profits by father—Presumption of advancement.**]—LEWIS & BARDER *v.* PICZENICK (1930), 74 Sol. Jo. 107.

103a. —— ——.]—*Re* COLLINSON, COLLINSON *v.* COLLINSON (1853), 3 De G. M. & G. 409; 21 L. T. O. S. 234; 43 E. R. 160, L. C.

Annotation:—**Consd.** Bennet *v.* Bennet (1879), 10 Ch. D. 474.

108. *Add. Annotation:*—**Refd.** Gopeekrist Gosain *v.* Gungapersaud Gosain (1854), 6 Moo. Ind. App. 53.

119. *Add. Annotation:*—**Refd.** Lewis & Barder *v.* Piczenick (1930), 74 Sol. Jo. 107.

PART III. SECT. 2.

sx. ——.]—Before it can be said that influence which a donee is found to have had with his donor was such as to justify the ct. in setting aside the gift, under the doctrine of presumed undue influence, it must appear that the relations between the donor & donee were such that the latter was under some duty to advise or manage for, or look after the interest of, the donor.—BRADLEY, LANG & SCRAGG *v.* CRITTENDEN, [1932] S. C. R. 552; 3 D. L. R. 193; *affg.*, [1931] 2 W. W. R. 669; 4 D. L. R. 384; 25 Alta. L. R. 562; *revsg.*, [1931] 2 D. L. R. 961.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

q i. —— ——.]—The question whether a purchase of property by a parent in the name of his wife or child was a gift by way of advancement must be determined by what took place at the time the property was purchased. A gift to a parent from a child under age & under the parental dominion stands on the same footing as any other gift once the presumption of parental influence is rebutted.—ROYAL TRUST CO. *v.* JONES, [1935] 1 W. W. R. 46.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

89 i. *Whether presumption arises.*]—The facts that a daughter (her mother standing *in loco parentis* to her) was not informed of the deposit by her mother of a sum of money in her name, & that the mother died before the daughter assented to or accepted such intended gift, do not prevent the gift, if intended, being complete subject to the donee's right to disclaim, the acceptance of a gift by a donee being presumed until his dissent is signified, even though the donee is not aware of the gift:—*Held:* on the evidence, the presumption of a gift to the daughter had not been rebutted.—IRVIN *v.* BROOKES, [1937] N. Z. L. R. 73; 13 N. Z. L. J. 20.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 2.—D.

sg. *Grandfather & grandchild.*]—The relationship of grandfather & grandson, when the grandfather is not *in loco parentis* & the father is living, raises no presumption of a gift.—MACDONALD *v.* YOUNG (1934), 7 M. P. R. 602.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

113 i. *Contrary intention of donor—Investments as trustee for daughters.*]—*Held:* the circumstances did not rebut the presumption that the money was intended as an advancement to the children.—JONES *v.* KINNEAR (1882), N. S. R. (4 R. & G.) 1.—**CAN.**

sv. —— .]—A father purchased land, the transfer of which was taken in the name of his daughter. The price paid was £700, of which the daughter contributed £286 10*s.*, the father providing the balance. The title, when issued, was held by the father. Rents & outgoings were shared equally by the father & daughter during the father's life. At the request of the father the daughter signed an acknowledgment that the father owned "one equal half part of 'the house' in her name," being the property purchased. The father died leaving his widow a life interest in his residuary estate & until her death she received one-half of the nett rents of the property. There were statements by the father contemporaneous with the gift showing that he might give his daughter the whole of the property, but he had never done so:—*Held:* on these facts, any presumption of advancement of the whole property to the deft. was rebutted.—MILLARD *v.* LUCAS, [1936] S. A. S. R. 166.—**AUS.**

sw. —— .]—In 1920 deft. S. had an account with a savings bank the amount of which exceeded the amount permitted to bear interest. Acting on a suggestion made either by his own banker or an employee of the savings bank, & desiring to keep his money at call & earning interest, S. opened at various times three trust accounts, signing on each occasion the declaration of trust required by the bank whereby he constituted himself trustee for each of his three infant daughters of all moneys standing at any time to his credit in each of the three accounts. By these declarations he declared that the moneys should be the exclusive property of the respective daughters & that he would not own or be interested (otherwise than as trustee) in any of the moneys. It was clear on the evidence of deft. that he always regarded & treated the moneys as his own, & thought of the declarations as formalities designed to overcome a technical obstacle, & that he never had any intention of disposing of the beneficial interest in any of the moneys deposited:—*Held:* deft. had not constituted himself a trustee of any of the moneys, & was entitled thereto as beneficial owner.—STARR *v.* STARR, [1935] S. A. S. R. 263.—**AUS.**

PART III. SECT. 4.

124 viii. —— ——.]—A., having large sums on deposit, gave the manager of his bank a number of deposit receipts in the joint names of A. & P., payable to them or either of them. He frequently took out sums & redeposited in the same terms. In an action by P. against A.'s exors. claiming that the sums in the joint names of A. & P. did not form part of A.'s estate:—*Held:* pltf. had failed to rebut the implication of a resulting trust which arose in favour of A. & his representatives, pltf. having failed to prove any intention on the part of A. to part with his property in the deposited money during his life, & a disposition to take effect only upon his death, if he should not previously have disposed of the money, could only be effected by a declaration of trust, which was admitted not to have been made by him.—OWENS *v.* GREEN, [1932] I. R. 225.—**IR.**

124 ix. —— ——.]—Where money was put on deposit receipt in the joint names of the owner of the money & that of a stranger, & where the latter, at the request of the original owner, refused to sign the joint deposit receipt, & upon the death of the owner refused to sign the receipt to enable his personal representative to receive the money:—*Held:* in the absence of proof of intention on the part of the original owner to benefit the stranger or proof of a relationship from which a presumption of advancement might be drawn, the proceeds must go to the personal representative of the deceased original owner of the money.—DOYLE *v.* BYRNE (1922), 56 I. L. T. 125.—**IR.**

124 x. —— ——.]—Money was deposited in a bank by X. in the joint names of X. & an infant X. kept possession of the bank-book:—*Held:* on X.'s death the remainder of the account did not pass to the infant, since the gift was testamentary & void.—MCKNIGHT *v.* TITUS (1933), 6 M. P. R. 282.—**CAN.**

124 xi. —— ——.]—An elderly lady & her nephew opened a joint account in the Commonwealth Savings Bank by the transfer of a large sum from an account in the lady's name. The nephew, who assisted his aunt in all her matters of business, did not contribute to the account, which was kept in funds by payments from the aunt's investments. The account was used solely for the purpose of supplying the aunt's needs. Moneys for this purpose were withdrawn by the nephew as required, the withdrawal slips being signed by both the aunt & the nephew. When the account was opened the aunt told the nephew & others that any balance remaining in the account at her death would belong to the nephew. Upon his aunt's death the nephew claimed the balance of the account:—*Held:* (1) the presumption of a resulting trust in favour of the aunt & her estate was rebutted by the evidence of her intention to benefit the nephew; consequently, his legal right to the balance by survivorship prevailed; (2) the gift thus conferred upon the nephew was not a testamentary disposition.—RUSSELL *v.* SCOTT (1936), 55 C. L. R. 440; 36 S. R. N. S. W. 454; 53 N. S. W. W. N. 178; 42 Argus L. R. 375; 10 A. L. J. 211.—**AUS.**

127a. —— ——.]—J. M., being in failing health & expecting death in a short time, deposited a sum of £10,000 with the B. Bank & received from the Bank a deposit receipt in this form: "£10,000 . . . Received from J. M. & J. D. M. (a minor)," the son of J. M., . . . "the sum of ten thousand pounds sterling for credit in deposit account. Not transferable. . . . Payable to either or the survivor. . . . This receipt must be produced when payment of either principal or interest is desired." By his will, after giving certain legacies, J. M. directed his exors. to hold the rest of his property in trust for J. D. M. until he should attain the age of twenty-five years, &, on his attaining that age, for him absolutely. Until J. D. M. attained that age the business of testator was to be carried on by the exors. There were other dispositions in case J. D. M. died under that age, an event which did not happen. On the death of J. M. the exors. withdrew & redeposited the sum of £10,000 & obtained a new deposit receipt for that sum in their own names. The business of testator was carried on at a loss. The business account kept by the exors. with the B. Bank was continually overdrawn. The exors. repeatedly paid the overdrafts out of the £10,000 & in so doing finally exhausted the whole sum. Both before & after he came of age J. D. M. took part in the management of the business. Soon after attaining the age of twenty-five J. D. M. claimed that he was entitled to the £10,000 deposited by J. M., & brought an action against the B. Bank to recover that sum as having been wrongfully & without his authority paid by the Bank to the exors.:—*Held:* by LORD WARRINGTON & LORD MACMILLAN, the exors. were entitled to receive the money & to apply it in due course of administration as directed by the will of J. M.; LORD THANKERTON agreeing on the ground that on the evidence as a whole J. M. did not purport to act as agent for J. D. M. in making the contract with the Bank, so as to make J. D. M. a contracting party, but that he alone contracted with the Bank, though for the benefit of J. D. M. as a third party; by LORD ATKIN, the contract was made by J. M. on behalf of himself & J. D. M., & if J. D. M. had ratified the act done on his behalf he would have made himself a party to the contract; but by his conduct he had represented to the Bank that he did not intend to ratify the act done on his behalf, having so acted he could not afterwards ratify it, & consequently he had never become a party to the contract.—MCEVOY *v.* BELFAST BANKING CO., LTD., [1935] A. C. 24; 103 L. J. P. C. 137; 151 L. T. 501; 40 Com. Cas. 1, H. L.

133. *Add. Annotation:*—*As to* (1) **Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

135. *Add. Annotation:*—**Refd.** Beebee & Co. . . . Turner's Successors (1931), 48 T. L. R. 61.

169a. —— —— ——.]—BERKLEY *v.* RYDER (1752), 2 Ves. Sen. 533; 28 E. R. 340, L. C.

171. *Add. Annotation:*—**Consd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

172. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

173. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

174. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175a. —— —— ——.]—(1) If a man who has promised to marry a woman, & has given to her an engagement ring in contemplation of marriage, refuses without legal justification to carry out his promise, he cannot demand the return of the engagement ring.

(2) *Semble:* if a woman who has received an engagement ring in contemplation of marriage refuses to fulfil the conditions of the gift & to carry out her promise, she must return the ring.

(3) *Semble:* if an engagement to marry be dissolved by mutual consent, then in the absence of an agreement to the contrary the engagement ring & like gifts must be returned by each party to the other.—COHEN *v.* SELLAR, [1926] 1 K. B. 536; 95 L. J. K. B. 629; 135 L. T. 21; 42 T. L. R. 409; 70 Sol. Jo. 505.

191. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

192. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

194. *Add. Annotation:*—**Consd.** *Re* Mainwaring, Mainwaring *v.* Verden, [1936] 3 All E. R. 540.

PART III. SECT. 7, SUB-SECT. 1.

sg. *Gift subject to condition—Whether absolute gift & condition void—Or gift of life estate.*]—AMJAD KHAN *v.* ASHRAF KHAN (1929), 56 L. R. Ind. App. 213.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

172 v. —— —— ——.]—A present made by an engaged man to his fiancée, in view of marriage, & intended for the use of both of them during their courtship & after their marriage, is recoverable by his personal representative where he dies before the marriage & during the continuance of the engagement.—SHEPPARD *v.* ROBINSON [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461.—**CAN.**

172 vi. —— —— ——.]—Gifts which are given by the bridegroom, at the time of the betrothal of a girl, to the girl's parents on her behalf according to Burmese Buddhist custom must be returned by the parents if the betrothal is broken off.—MAUNG LAW PHYU *v.* MA BAW (1933), I. L. R. 11 Ran. 143.—**IND.**

PART III. SECT. 8.

185 iv. —— ——.]—In absence of statute, there is no hard-and-fast rule that where a gift is alleged to have been made by a donor, since deceased, the evidence of the alleged donee as to the making of the gift must be disbelieved unless corroborated. It must be examined with care, even with suspicion, but if it brings conviction to the tribunal trying the case, that conviction will be acted upon.—NATIONAL TRUST CO., LTD. *v.* AYTON, [1934] 1 W. W. R. 285; 2 D. L. R. 404.—**CAN.**

187 i. *Onus of proof on purporting to be for con*
Where a conveyance or ... expressed to be for valuable consideration, but the fact is that none was paid nothing but the clearest evidence can avail to show that a gift was intended. Where there is nothing but the instrument itself before the ct. from which to draw conclusions, it must be held to be the exclusive & conclusive evidence of the contract between the parties.—JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103; 23 S. L. R. 218; [1928] 3 W. W. R. 686.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.

gn. *Gift of land subject to mortgage.*]—Where a father makes a gift of land to his son, the presumption is that it is made subject to mtges. which then actually exist against the land, including a mtge. which had not been registered at the date of the gift.—ORENCZUK *v.* DOLINSKY (Alta.), [1927] 3 W. W. R. 596.—**CAN.**

Part IV.—Incomplete Gifts.

206. *Add. Annotations :*—**Distd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

227. *Add. Annotation :*—**Overd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

228. For the paragraph in original volume substitute the following paragraph :—

Non-payment due to suspicious signature —Subsequent death of donor.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] 1 Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Annotation :—**Consd.** Timpson's Executors *v.* Yerbury (1935), 79 Sol. Jo. 523.

Compare original volume, p. 542, No. 292.

259. *Add. Annotations :*—**Distd.** Royal Exchange Assc. *v.* Hope, [1928] Ch. 179. **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

268. *Add. Annotations :*—**Apld.** *Re* Comberbach, Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403. **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

269. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

276a. —— **Incomplete gift of real estate.**]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

SUB-SECT. 4.—APPOINTMENT OF DONEE AS ADMINISTRATOR.

280a. Intention expressed in donor's lifetime—Continuing intention.]—The legal estate acquired by an administrator is no less effectual than that of an exor. appointed by will to perfect an imperfect gift made by deceased owner of the estate to the administrator.

On the death of his father, J. handed over the furniture & title deeds of a certain house & premises, forming part of his father's estate, to S. & allowed her to occupy the house rent free. J. died intestate, & S. was appointed an administratrix :—*Held :* there was a continuing intention on the part of the donor up to the time of his death to give the property to the donee, & by her appointment as an administratrix she had acquired the legal estate.—*Re* JAMES, JAMES *v.* JAMES, [1935] Ch. 449; 104 L. J. Ch. 247; 153 L. T. 277.

Part V.—Gifts mortis causâ.

286. *Add. Annotation :*—*As to* (2) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

292. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

294a. —— —— ——.]—*Semble :* when testator, in his lifetime, hands over to a person a sum of money, & directs him, out of it, to pay the expenses consequent on his sickness, & in case of death, his funeral expenses, such money

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PART IV. SECT. 1, SUB-SECT. 1.

h i. ——.]—MORTON *v.* BRIGHOUSE, [1927] 1 D. L. R. 1009; [1927] S. C. R. 118.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

245 ii. ——.]—Equity will not perfect an incomplete gift.—JACQUES *v.* HOPKINS & HOPKINS, [1931] 2 W. W. R. 277; 3 D. L. R. 410; 25 Alta. L. R. 372.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

r i. —— *Document not completed—Nor proved to be document made by donor.*]—REILLY *v.* WOODWORTH (1924), 51 N. B. R. 153.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

s i. —— ——.]—X. put his son Y. & his wife in possession of land & told them they could have it as long as they wished. He assisted Y. to build a fence & Y. then built a house :—*Held :* this amounted in equity to a gift of the land.—CAMPBELL *v.* CAMPBELL, [1932] 3 D. L. R. 501; 4 M. P. R. 502.—**CAN.**

t i. —— —— ——.]—HOVEY *v.* FERGUSON (1871), 18 Gr. 498.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

c i. ——.]—*Re* JENKINS & BRASH *v.* VULCAN IRON WORKS, BRAY *v.* VULCAN IRON WORKS (B.C.), [1927] 1 D. L. R. 1099.—**CAN.**

c ii. ——.]—W., a member of a stockbroking partnership, credited his son's account in the client's ledger with £5,000 & debited his own account in the partners' ledger with the same sum. This was balanced on the other side of the account with shares to the face value of £13,000, which stood in the name of a certain bank as collateral for the loan account of W. The investments were sold from time to time & others substituted, & at the time of the death of W. were represented by securities to the face value of £9,000 which were in the name & custody of the bank. W. never informed the bank that he had made the shares over to his son, but requested them to accept release orders signed by his son & all dividends on the original & substituted securities were credited to the account of the son in the books of the firm. By a letter handed to his son W. informed the exors. of his will that the shares were the property of his son & did not form part of his assets & so informed one of the exors. verbally. W. did nothing further to perfect the gift of the securities but appointed his son as one of the exors. of the will :—*Held :* the securities did not form part of the estate of W. but were the property of his son, subject to the limitation that the excess, if any, of the value of the securities, when realised, over the sum of £5,000 belonged to the exors. as assets of the testator.—*Re* WILSON, GROVE-WHITE *v.* WILSON, [1933] I. R. 729.—**IR.**

PART IV. SECT. 3.

sp. *Donor repossessing himself of transfer & certificate of title—Before transfer registered.*]—Registered owner of land, with intention of making a gift of it to S., delivered to the father of S. a transfer of the land to S. & the duplicate certificate of title. He subsequently repossessed himself of the transfer & certificate before S. had an opportunity to register the transfer which he destroyed :—*Held :* the inchoate gift to S. was effectually revoked & S. was not entitled to be recorded as owner of the land.—SMITH *v.* SMITH (1915), 21 D. L. R. 861; 31 W. L. R. 607; 8 W. W. R. 1077.—**CAN.**

PART V. SECT. 1.

sr. *Grounds for setting aside—Undue influence—Gift by parishioner to parish priest.*]—BOHAN *v.* WALKER, [1928] 4 D. L. R. 630.—**CAN.**

does not pass under the will.—*In the Goods of* TOOMY (1864), 3 Sw. & Tr. 562; 34 L. J. P. M. & A. 3; 28 J. P. 824; 13 W. R. 106; 164 E. R. 1393.

303. *Add. Annotation:*—*As to* (1) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

307. *Add. Annotation:*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

327. *Add. Annotation:*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

330a. —— ——.]—*Re* WHILE, WILFORD *v.* WHILE [1928] W. N. 182.

331. *Add. Annotation:*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

337a. ——.]—Where testator, in his last illness, said he wanted to leave something to C., & then directed her father to get mtge. deeds out of a box in his room, & said he should give the deeds for C., & handed them over to her father:—*Held:* the gift was a good *donatio mortis causâ*, & the donee was entitled to the money secured by the deeds.—*Re* PATTERSON, MITCHELL *v.* SMITH (1864), 10 L. T. 520; 10 Jur. N. S. 578; *on appeal*, 4 De G. J. & Sm. 422.

347. *Add. Citations:*—95 L. J. Ch. 204; 133 L. T. 405.

351. *Add. Annotation:*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

356a. Gift made in contemplation of death from incurable disease—Death from different illness—Gift valid.]—A *donatio mortis causâ* is not generally conditioned upon the donor dying from the same disorder as that from which he is suffering, & contemplates the probability of death, at the time it is made.

By a mtge. made in 1922 the widow of J., who was tenant for life under his will, mortgaged a farm to W., a brother of J., to secure £1,000 & interest at 5 per cent. The widow died in 1923, having appointed her two daughters, E. & X., exors. of her will. The mtge. contained no personal covenant for payment of the principal, & the mtgee. accepted interest at 3½ per cent., reduced in 1924 to 3 per cent. In 1924 W., who was on very friendly terms with his brother's family, gave the deeds relating to the farm, other than the mtge. deed, to E. & X., to retain in their custody. On Dec. 11, 1927, W., who had since 1922 been suffering from an incurable disease & knew that he could not possibly live long, called upon his nieces, who were aware of his state of health, & gave them an envelope indorsed in his own handwriting: "Deeds relating to X. farm to be given up at death. W.," saying: "I have brought this down for you; put it away." After he had left the house the envelope was opened, & was found to contain the mtge., which the nieces placed in their safe. On Jan. 23, 1928, W. died of pneumonia following a chill. In an action by his exors. for a declaration that the mtge. was a subsisting security & to enforce it:—*Held:* there was a valid *donatio mortis causâ* by W., & a release of the mtge. to the two daughters of J. for the benefit of his estate.—WILKES *v.* ALLINGTON, [1931] 2 Ch. 104; 100 L. J. Ch. 262; 144 L. T. 745; 47 T. L. R. 307; 75 Sol. Jo. 221.

369a. —— ——.]—*Re* HARRISON, PUBLIC TRUS- *v.* BEST (1934), 78 Sol. Jo. 135.

372. *Add. Annotation:*—**Refd.** *Re* Swinburne Sutton *v.* Featherley, [1926] Ch. 38.

379. *Add. Annotation:*—**Consd.** *Re* Craven's Estate, Lloyds Bank, Ltd. *v.* Cockburn, [1937] Ch. 423.

386a. Instructions to use power of attorney.]—A testatrix had given her son a power of attorney in very wide terms over certain shares & money standing in her name at a bank abroad. When about to undergo an operation she told the son to get such shares & money transferred into his own name, as she wanted him to have them if anything should happen to her. The son accordingly, acting

PART V. SECT. 2, SUB-SECT. 2.—A.

st. *Receipts issued to transferee of stock by Banks of England & Ireland.*]—Neither the receipt issued by the Bank of England to a transferee of India 5½ per cent. stock, 1932, which contained particulars of the consideration paid for the "interest or share in the stock transferred," nor the receipt issued by the Bank of Ireland to a transferee of 3 per cent. local loans stock, can be the subject of a *donatio mortis causâ*.—*Re* M'WEY. RYAN *v.* CASHIN & COSTELLO, [1928] I. R. 486.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—B. (b).

311 xxiii. —— ——.]—A *donatio mortis causâ* may be made by the donor placing money upon deposit receipt in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—FAYNE *v.* MARTIN (1924), 59 I. L. T. 14.—**IR.**

311 xxiv. —— ——.]—A woman, engaged in domestic service & without a home of her own, placed her savings in deposit-receipt in 1900 in name of herself & her sister to be drawn by either of them or the survivor. The receipt was then handed to the sister, who kept it at her home, but periodically the deposit was uplifted by the depositor & redeposited with interest & further savings added to it. The depositor had a niece & nephew, her sister's children, &, on the sister's death in 1921, the name of the niece was substituted as the second name in the receipt, the receipt being thereupon handed by her to him. The depositor regarded her sister's family as her only relatives & their home as her own, &, on several occasions, she had stated to third persons that the sum on deposit was to go to the survivor of the persons named in the receipt. The depositor having died in 1930, survived by the nephew:—*Held:* the terms of the deposit-receipt, taken in conjunction with the depositor's expressions of intention, were sufficient to instruct a donation *mortis causâ* of the sum on deposit in favour of the nephew.—MACPHERSON'S EXECUTRIX *v.* MACKAY, [1932] S. C. 505.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 2.—B. (c) ii.

326 i. *Cheque—Cashed before death.*]—The gift of a cheque three days before death, & cashed the day before death:—*Held:* not testamentary, & either a valid completed gift *inter vivos*, or a *donatio mortis causâ*.—CAMPBELL *v.* FENWICK, [1934] 4 D. L. R. 787; O. R. 692.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B. (f).

341 i. *Life insurance policy—Document delivered to third party for donee.*]—*Held:* all the essential conditions of a valid & effectual *donatio mortis causâ* had been established.—NELSON *v.* PRUDENTIAL ASSURANCE CO., [1929] N. I. 113.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

357 v. *affd.* (1920), 48 O. L. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B.

374 v. —— ——.]—The delivery by a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours":—*Held:* to operate as a *donatio mortis causâ* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—**CAN.**

sl. *Delivery of paper expressing gift.*]—A valid *donatio mortis causa* is constituted by the giving of a paper expressing a gift of furniture, etc. a year & a half prior to the death.—*Re* ROSEMERGEY (1934), 49 B. C. R. 93.—**CAN.**

as her agent under the power of attorney, instructed the bank to transfer the shares & money into his name. Testatrix died a few days later. The question arose as to whether there had been a good *donatio mortis causâ* of the shares & money or whether they formed part of the estate of testatrix. By her will testatrix gave her trustees a power of advancement in favour of the son, *inter alia*, for " the purchase of a business or a share in a business " :—*Held:* (1) the mere giving of the power of attorney was not in itself a sufficient parting by testatrix with her dominion over the shares & money to make it a *donatio mortis causâ*, but when testatrix instructed her son to transfer the shares & money into his own name, she parted with her dominion over the property, & there was a good *donatio mortis causâ;* (2) the question was one which arose in the administration of the estate, &, as the estate was being administered in England according to English law, it was a question which ought to be determined according to the law of England, subject to the condition that, the property being situated abroad, that which was said to constitute the parting with dominion ought to be something which would be an effective parting with dominion in the place abroad where the property was situated; (3) the power of advancement did not extend to an advance of a sum to be applied & invested with the trustees of Lloyd's as a fund which would be available to meet the son's liabilities, so as to enable him to become an underwriter at Lloyd's; (4) as such an advance would not be expedient for the trust as a whole, the ct. could not sanction it under Trustee Act, 1925 (c. 19), s. 57 (1).—*Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* COCKBURN (No. 1), [1937] Ch. 423; [1937] 3 All E. R. 33; 106 L. J. Ch. 308; 157 L. T. 283; 53 T. L. R. 694; *sub nom. Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN, 81 Sol. Jo. 398.

399a. Donee with access to keys — Presumption of fraud.]—SIMMS *v.* COX (1824), 3 L. J. O. S. K. B. 44.

PART V. SECT. 3, SUB-SECT. 3.—C.

387 iv. ——.]—Shortly before her death deceased handed to her servant a locked box with the key & told her to keep it for A. D. until the latter returned from England, & then give it to her. The servant was instructed to tell A. D. that what was in the box was for her. The box was not delivered until after the death of deceased, &, on being opened, it was found to contain a post office savings bank-book, which showed a certain sum standing to the credit of deceased. It was not disputed that there was an intention to make a *donatio mortis causâ*:—*Held:* the intended *donatio mortis causâ* failed, as there was no delivery, actual or constructive, to A. D., since the mere instructions by deceased to her servant, & the obedience to these instructions, were not sufficient to make the servant an agent of the intended donee.—*Re* THOMPSON'S ESTATE, [1928] I. R. 606.—IR.

GRAIN.

See AGRICULTURE.

GUARANTEE AND INDEMNITY.

Part II.—Requisites of Guarantee.

41. *Add. Annotations :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

45. *Add. Annotations :—As to* (2) **Refd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38. *Generally*, **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

54. *Add. Annotations :*—**Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536 ; Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

83. *Add. Annotation :*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

121. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

134. *Add. Annotations :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330. **Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759 ; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co., Ltd. (1931), 24 B. W. C. C. 71 ; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

156. *Add. Annotation :*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

Part III.—Proof of Guarantee.

257. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

285. *Add. Annotation :*—**Refd.** Stanley (Montagu) & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

PART I.

b i. —— —— *Original distinguished from collateral contract.*]—*Re* THOMSON, [1927] 2 D. L. R. 254 ; 60 O. L. R. 165. —**CAN.**

13 i. ——.]—The mere fact that a particular agreement may terminate in a liability for the debt of another does not make it a guarantee instead of an indemnity where the former is not its immediate or main object.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45 ; 37 Man. L. R. 508.—**CAN.**

sa. *Distinguished from direction to furnish goods on credit of principal.*]—GRASETT *v.* HUTCHINSON (1860), 10 C. P. 265.—**CAN.**

sb. *Distinguished from novation of contract.*]—NATIONAL POLE & TREATING CO. *v.* BLUE RIVER POLE & TIE CO. (B. C.), [1929] 3 D. L. R. 638 ; *revsd. on facts*, [1930] 3 D. L. R. 996 ; 43 B. C. R. 98.—**CAN.**

PART II. SECT. 1.

sc. *Fidelity guarantee — Primary obligation of principal.*]—R. *v.* BLACK (Ont.) (1899), 8 Exch. C. R. 236.—**CAN.**

se. *Necessity for mutuality.*]—GANONG *v.* GAULT, [1934] 2 D. L. R. 353.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

23 i. *What constitutes offer.*]—Goods were supplied by a manufacturer to a buyer upon the faith of a document addressed to the manufacturer, & signed by a third person, containing these words—" I am prepared to back him, the buyer, for 1 month credit to £30 " :—*Held :* the document amounted to a guarantee.—DAVISON (A. A.) PTY., LTD. *v.* SEABROOK, [1931] Argus L. R. 156.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

44 ii. —— —— *For benefit of third party.*]—Where a married woman signs an instrument at the request of her husband, not for his benefit, but for the accommodation of a friend or relative of his, the evidence necessary to prove that undue influence was exercised by the husband must be much stronger than would be necessary had the signature been obtained for the husband's benefit.—WATKINS (J. R.) Co. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526 ; [1926] 1 W. W. R. 156. —**CAN.**

—— —— *For benefit of husband.*]—*See* HUSBAND & WIFE, Nos. 1370 i, 1370 ii, *post.*

PART II. SECT. 3, SUB-SECT. 5.

1 i. ——.]—Pltf. entered into a contract with an incorporated building co. for the installation of heating equipment. Deft., as president of the co., wrote a letter to pltf. in which he said, " I shall personally see to it that you get your payments regularly as per contract " & signed it :—*Held :* the document was not a guarantee by the co. of its own account & the signature was sufficient to charge deft. personally. —MILES *v.* ZUCKERMAN, [1931] 1 D. L. R. 448 ; *affd.*, [1931] 4 D. L. R. 370 ; O. R. 368.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

55 vi. ——.]—CAMPBELL *v.* MCISAAC (1873), 9 N. S. R. (3 G. & O.) 287.—**CAN.**

55 vii. ——.]—R. had a contract with deft., the owner of a building, to do some work thereon. Pltfs. supplied R. on credit, with material for the work ; &, alleging a promise by deft. to pay for the material if R. did not, sued deft. as upon a guarantee. R. having failed to pay :—*Held :* there being nothing in the evidence to suggest that there was any bargain with deft. that pltfs. would not register a mechanic's lien on deft.'s property, there was no consideration for the alleged promise of deft.—ERSKINE-SMITH CO. *v.* BORDELEAU, [1929] 2 D. L. R. 877 ; 63 O. L. R. 621.—**CAN.**

PART II. SECT. 4, SUB-SECT. 3.—A.

sd. *Agreement by bailee to deliver goods to purchaser—Promise by vendor to indemnify bailee against loss if goods not according to contract.*]—*Held :* the agreement to deliver, & not the delivery itself, formed the consideration for the promise to indemnify.—CUNNARD *v.* PLUMMER (1844), 4 N. B. R. (2 Kerr) 418.—**CAN.**

PART II. SECT. 4, SUB-SECT. 5.—A.

157 i. *Insufficiency of past consideration.*]—Pltf. sued deft. for moneys due under an agreement in writing whereby he undertook that if a co. in which pltf. had at his request taken shares, failed to pay a ten per cent. dividend in certain years, he would pay pltf. within seven days the amount of such ten per cent. dividends. The agreement was executed some months after pltf. had taken up shares. Pltf. alleged that the agreement was made in pursuance of an agreement made antecedent to his purchase of the shares. Deft. denied the antecedent agreement & claimed that the guarantee having been given for a past consideration, was not enforceable :—*Held :* on the facts, although the question of a guarantee had been raised between the parties prior to pltf.'s taking up the shares, there had been no *animus contrahendi* on the part of deft. to give the guarantee before the shares were acquired & the guarantee being therefore given for a past consideration was a *nudum pactum* & unenforceable.—POWER *v.* AHERN (1935), 29 Q. J. P. R. 85 ; [1935] Q. W. N. 22.—**AUS.**

PART III. SECT. 1, SUB-SECT. 1. A.

se. *Verbal agreement of guarantee or suretyship.*]—*Held :* unenforceable because of Stat. Frauds.—DOYLE *v.* MCKINNON, [1925] 3 D. L. R. 334 ; 57 O. L. R. 104.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1. - B.

sf. *Promise to guarantee dividend & stock.*]—*Held :* not a guarantee to which Stat. Frauds, R. S. O., 1914 (c. 102), s. 6, applied.—QUANCE *v.* BROWN, [1926] 2 D. L. R. 824 ; 58 O. L. R. 578.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

190 i. *Representations within Statute of Frauds Amendment Act*, 1828 (c. 14), *s. 6—Representation by partner as to credit of firm.*]—A representation made by one of two or more partners as to

295. *Add. Annotation :*—**Apld.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

307. *Add. Annotation :*—**N.F. McCall Bros., Ltd.** *v.* Hargreaves (1932), 48 T. L. R. 450.

308. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

309. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

310. *Add. Annotations :*—**Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

310a. —— ——.]—Pltfs., who were creditors of the W. co., agreed with the W. co. & with deft. that they would take bills in respect of the past & future indebtedness of the W. co. if deft. would indorse the bills. Bills payable to pltfs.' order were then drawn by pltfs. & accepted by the W. co., &, before pltfs. had indorsed them, deft. wrote his name on the back. Subsequently pltfs. indorsed the bills by writing their name beneath, instead of above, that of deft. In an action on the bills deft. contended that as they had never been negotiated he did not incur the liabilities of an indorser & that his agreement, if any, was a guarantee & was not in writing, & he pleaded the Statute of Frauds :—*Held :* in the above circumstances pltfs. had authority under Bills of Exchange Act, 1882 (c. 61), s. 20, to complete the bills by adding their indorsement, & that even if deft.'s agreement was a contract of guarantee the Statute of Frauds was no answer to a claim on the bills, & therefore the action succeeded.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423 ; 101 L. J. K. B. 733 ; 147 L. T. 257 ; 48 T. L. R. 450 ; 76 Sol. Jo. 433.

312. *Add. Annotations :*—**Followed.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

312a. Signature of drawer below that of third party—Intention of parties considered.]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completing them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser :—*Held :* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.* BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188 ; 100 L. J. K. B. 386 ; 145 L. T. 48 ; 47 T. L. R. 380 ; 36 Com. Cas. 270.

Annotation :—**Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

323. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

345. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

Part IV.—Interpretation.

377. *Add. Annotation :*—*As to* (2) **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

421. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 95 L. J. P. C. 17.

433. *Add. Annotation :*—**Consd.** Mann, Taylor & Co., Ltd. *v.* Royal Bank of Canada (1935), 40 Com. Cas. 267.

the credit of his firm is a representation as to the credit " of any other person " within sect. 6 of Lord Tenterden's Act, but a firm is not liable for such a representation made by one of its partners, even though the other partners knew & approved of it ; the only person who can be charged being the partner who actually signed the representation. In an action against partners founded upon fraudulent misrepresentations as to the credit of the firm, one of the defts. pleaded non-compliance with sect. 6 of Lord Tenterden's Act :—*Held :* sects. 8, 12 & 13 of Partnership Act had not the effect of impliedly repealing sect. 6 in so far as it related to false representations by a partner, & the plea was a good defence to the cause of action except in so far as the representations were in writing signed by deft.—TURNBULL & CO. *v.* MACKAY, [1932] N. Z. L. R. 1300 ; G. L. R. 444.—**N.Z.**

196 iii. ——.]—TUPPER *v.* CROWE (1862), 15 N. S. R. (3 R. & G.) 261.—**CAN.**

196 iv. ——.]—CARR *v.* BANK OF MONTREAL, [1929] 3 D. L. R. 54 ; 63 O. L. R. 544.—**CAN.**

sq. *Representations within C. S. U. C., c. 46, s. 10—As to solvency of trader—Necessity for writing.*]—MCLEAN *v.* DUN (1877), 1 A. R. 153.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B. (a).

232 i. *Whether credit given to surety alone.*]—A promise " you haul the wood & I'll see you paid " creates a primary liability & not a contract of suretyship.—WAMBOLT *v.* ARENBURG, [1936] 4 D. L. R. 399.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

263 i. *Promise to stranger—Surety, guarantor or bail.*]—A promise to indemnify one who is a surety, guarantor or bail for a third person is not within Stat. Frauds.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45 ; 37 Man. L. R. 508.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

st. *Lapse of signed offer—Resuscitation.*]—Where a signed offer of guarantee has lapsed, it may be resuscitated either by the signatory's re-opening the offer to the other party, or by the other party offering to accept it as a binding agreement, & upon an agreement resulting the document containing the signed offer is sufficient to satisfy Stat. of Frauds.—O'YOUNG & LUM *v.* REID & CO., LTD., [1932] Argus L. R. 278 ; 6 A. L. J. 76.—**AUS.**

PART IV. SECT. 1.

369 ii. —— ——.]—A contract of guarantee must be strictly construed ; but it must be read as a whole & given an intelligible construction.—BANK OF NOVA SCOTIA *v.* ZINK (1934), 7 M. P. R. 476.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—No collateral agreement will be admitted to affect a guarantee complete upon its face.—

Part V.—Liability of the Surety.

479. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

516. *Add. Annotations :—As to* (1) **Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

517. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

525. *Add. Annotation :—Generally,* **Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

546. *Add. Annotation :* — **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1932), 146 L. T. 336.

557. *Add. Annotation :—As to* (1) **Refd.** *Re* Parent Trust & Finance Co. (1936), 155 L. T. 159.

559a. Guarantee of payments to contractor—Subject to due execution of work.]—A limited co. employed a building contractor to execute certain repairs & decorations to a building by an agreement under seal made between the co., one T. therein called the guarantor, & a bank, & the contractor. The agreement provided that the contractor should do the work for the sum of £1,500, to be paid in four equal instalments on named dates "subject to the said works being duly executed in accordance with this agreement." By clause 11 of the agreement the guarantor agreed with the contractor & with the bank, & undertook, that the co. should, subject to the said works being duly executed in accordance with the agreement duly & punctually make to the contractor the payments mentioned above, & that upon any default for three days on the part of the co. (written notice of which should be given by the contractor to the bank within six days of the default) in making any payment on the prescribed date, the guarantor would himself immediately make the payment so in default to the contractor. By clause 12 the bank agreed with the contractor & undertook, that upon any default for three days or more (written notice of which should be given to the bank by the contractor within three days of the default) on the part of the guarantor in making any payment under clause 11 the bank would immediately make the payment so in default to the contractor. The co. did not pay the first instalment. The contractor gave no notice either to the guarantor or to the bank. The contractor then issued a specially indorsed writ against the bank claiming the first instalment. The case was heard by an Official Referee, who found that at the date of the writ it was necessary to spend £80 in order to complete the work in accordance with the agreement. He deducted this sum from the amount claimed, & gave judgment for pltf. for the balance :—*Held :* the defts. were not liable.

By SCRUTTON & SLESSER, L.JJ., because it was a condition precedent to their liability that the works should be duly executed in accordance with the agreement, & the works were not so executed. By GREER & SLESSER, L.JJ., because the liability of defts. depended upon that of T., & he was never liable, because it was a condition precedent to his liability that pltf. should have given him notice of the co.'s default, & this notice had never been given.—ESHELBY *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 1 K. B. 423 ; 101 L. J. K. B. 245 ; 146 L. T. 336, C. A.

BANK OF NOVA SCOTIA *v.* WIGMORE (1933), 7 M. P. R. 115.—**CAN.**

sh. *To supply name of principal debtor — Not admissible.*]—IMPERIAL BANK OF CANADA *v.* NIXON, [1926] 4 D. L. R. 1052 ; 59 O. L. R. 538.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

p i. —— *For definite engagement.*]—Where a guarantee has been given for the performance of a definite engagement, which has already come into existence & is not contingent, & the consideration for which is not variable as the result of future dealings between the parties, the guarantee is not a continuing guarantee.—HASAN ALI *v.* WALI ULLAH (1930), I. L. R. 52 All. 997.—**IND.**

sl. *No notice of cancellation.*]—CANADIAN BANK OF COMMERCE *v.* MOTHERSILL, [1937] S. C. R. 169 ; 2 D. L. R. 81 ; 6 F. L. J. (Can.) 291.—**CAN.**

PART V. SECT. 1.

449 i. *Disposition by surety of property—To evade liability—Void.*]—A guarantor is not more justified in placing the whole of his property out of the reach of liability to pay the debt than is the principal debtor.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170 ; [1928] 2 W. W. R. 150 ; 22 Sask. L. R. 533.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—B.

k i. —— *Given for due performance of duties by inspector—Inspector liable for default of his deputy—Deputy also covered by guarantee.*]—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B.

f i. —— ——.]—By an agreement in writing pltf. let a house & shop to a tenant to hold the same as a monthly tenant at a certain monthly rent, the said rent to be paid regularly on the first of each month. There was a proviso that either party should have the right at any time to determine the tenancy by giving to the other one month's notice in writing of his intention so to do, the said notice to determine on any gale day. The following guarantee for the payment of the rent was endorsed on the agreement & signed by deft. : "I hereby guarantee the full & punctual payment of the rent reserved by the within agreement." Eight months' rent being in arrear pltf. sued deft. on his guarantee to recover the amount. Deft. admitted liability for the first month's rent but denied liability in respect of the seven other months, contending that he offered to guarantee payment of the rent on the implied condition that he should receive notice of any default by the tenant in making full & punctual payment, & that no notice was given to him, & accordingly he was unable to exercise his right to revoke his offer :—*Held :* deft.'s contention was unsustainable & pltf. was entitled to judgment for the amount claimed.—O'CONNOR *v.* SORAHAN, [1933] I. R. 591.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—C.

498 i. *General rule—Not necessary.*]—A Scottish co., by a contract which was declared to be deemed an English contract, contracted to supply certain engineering plant to a colonial municipal council. A bond, in English form, guaranteeing the fulfilment of the contract, was granted by an individual. The municipal council brought an action of damages for breach or non-fulfilment against the co. & also against the guarantor, & used arrestments on the dependence against the latter :—*Held :* the action as against the guarantor was not premature, & the arrestments should not be recalled.—JOHANNESBURG MUNICIPAL COUNCIL *v.* STEWART (D.) & CO. (1902), LTD. (1909), 47 Sc. L. R. 20, H. L.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 2. — D. (b).

sd. *Refusal by one creditor.*]—A condition precedent to the liability of a guarantor being the acceptance of 100 per cent. of the creditors of a compromise, his liability does not arise on refusal by one creditor to accept.—JAEGER CO. *v.* CONNORS, [1935] 3 D. L. R. 573 ; 5 F. L. J. (Can.) 36.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—F.

sj. *Failure of consideration—Surety discharged.*]—The rule of law is firmly established that the total failure of the consideration for a surety's promise of guarantee has the effect of discharging him.—GURDAS MALRAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

561a. Guarantee of secured loan—Whether security for loan condition precedent.]—By a deed of guarantee for the repayment of a loan of £250,000 & interest, which recited that the lenders had at the request of the guarantors advanced to the borrowers £250,000 upon security of a charge on certain shares, the guarantors covenanted, in the event of the borrowers failing to make the repayments provided for, forthwith to repay to the lenders the said sum of £250,000 with interest at the rate of 8 per cent. *per annum*. The deed further provided that whatever the position between the lenders & the borrowers, the guarantors should be liable for all moneys due as principal debtors & they were not to be released from liability by reason of time being given by the lenders or by their taking no steps to protect their securities. The shares above mentioned were at no time secured & had not in fact been issued. Upon default in repayment of part of the loan the liquidator of the guarantors rejected the proof by the liquidators of the lenders, contending that the security of the charge on the shares was a condition precedent to the guarantee :—*Held :* (1) upon a proper construction of the deed of guarantee, the contention of the liquidator of the guarantors was correct, & the guarantors were not bound by the guarantee. The existence of the shares was the basis of the contract of guarantee & this was not affected by the clause making the guarantors liable as principal debtors ; (2) the guarantors were not bound by the recital in the deed & were not estopped from setting up the facts relating to the shares.—*Re* PARENT TRUST & FINANCE CO., LTD., [1936] 3 All E. R. 432; 155 L. T. 562; 80 Sol. Jo. 992, C. A. ; *affd. sub nom.* Greer *v.* Kettle, *Re* PARENT TRUST & FINANCE CO., LTD., [1937] 4 All E. R. 396, H. L.

571. *Add. Annotations :—As to* (2) **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70. *As to* (3) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *Generally,* **Refd.** Liverpool Corn Trade Assocn., Ltd. *v.* Hurst, [1936] 2 All E. R. 309.

574. *Add. Citation :*—11 Exch. 623.

587. After this case add " —— **Sufficiency of consideration.**]—*See* LANDLORD & TENANT, No. 4142a."

608. *Add. Annotations :*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422. **Consd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

608a. —— Claim for repayment of income tax—Whether maintainable.]—Where the payment of a sum advanced by a bank to a customer together with interest due or to become due thereon is guaranteed, & subsequently the whole sum due is paid by the guarantor, that is not a payment of interest by the guarantor but is a payment by him of a debt under the guarantee, not of a debt in respect of an advance made to him. He cannot, therefore, claim repayment of tax on " interest " on an advance from a bank under the provision of Income Tax Act, 1918 (c. 40), s. 36 (1). The question whether, where the interest on such an advance is added to capital each half-year in accordance with the custom of bankers & that is acquiesced in by the customer, the payment of the whole sum by the guarantor was only a payment of capital, was not necessary to be decided.—HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624 ; 101 L. J. K. B. 306 ; 48 T. L. R. 365 ; 76 Sol. Jo. 307 ; *sub nom.* INLAND REVENUF COMRS. *v.* HOLDER, 147 L. T. 68 ; 16 Tax Cas. 540, H. L.

628. *Add. Annotations :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

631. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

638a. —— —— ——.]—B., being indebted to the firm of W. & P., gave them a memorandum of charge on certain leasehold premises, subject to a prior mtge. The memorandum charged the premises " with the payment of the sum of £100 for goods delivered, or to be delivered, to me by you to that amount." The prior mtge. was afterwards transferred to defts. Between the date of the memorandum of charge & the transfer of the prior mtge., W. & P. had delivered goods to B., & received cash from him on account to the sum of £120 ; but on the balance of account, just before the transfer, a sum of £81 4*s.* 4*d.* was due to W. & P. :—*Held :* the security given by the memorandum of charge of £100 & payment thereon did not expire upon the delivery of goods to the amount, but was a continuing security.—WESTON *v.* EMPIRE ASSURANCE CORPN., LTD. (1868), L. R. 6 Eq. 23 ; 19 L. T. 305.

657a. —— —— ——.]—Where a warrant of attorney was given with a defeasance, stating it to be given " as a security for £4,000 & lawful interest thereon " :—*Held :* it was to be construed as a continuing security, & not merely as a security for money then due.—WOOLLEY *v.* JENNINGS (1826), 5 B. & C. 165 ; 7 Dow. & Ry. K. B. 824 ; 108 E. R. 61.

PART V. SECT. 3, SUB-SECT. 1.

566 iv. ——.]—S. lent G. a large sum of money on a mtge. by G., & a guarantee by applts. for the " debt that shall ultimately be due to S. from G." with a maximum liability of Rs. 18 lakhs :—*Held :* the guarantee was to the effect that the debt that shall remain due after realising the securities was to be borne by the guarantors limited to the maximum mentioned ; & the suit was consequently premature.—PHILLIPS *v.* MITCHELL (1929), I. L. R. 57 Calc. 764. —**IND.**

sk. *Under guarantee for payment of compensation for land compulsorily acquired.*]—MURRAY *v.* THOMPSON, 3 Ont. Dig. 5953-4.—**CAN.**

sl. *Under guarantee for price of goods.*] —— *v.* MCLEOD (1862), 11 C. P. 348.—**CAN.**

sm. ——.]—HENEY CO., LTD. *v.* BIRMINGHAM (1909), 7 E. L. R. 163.—**CAN.**

sn. *Under guarantee for delivery of goods.*]—GEORGE *v.* BRAYLEY (1873), N. B. Dig. 397-8.—**CAN.**

so. ——.]—HIGBY *v.* CUMMINGS (1853), 10 U. C. R. 222.—**CAN.**

sp. *Under guarantee for payment of demurrage.*]—WARREN *v.* NAT'L SURETY CO., [1927] 1 D. L. R. 554.—**CAN.**

sq. *Notice by surety to creditor—Asking for limitation of liability to fixed sum—Not acted upon by creditor—Effect of.*]—WATKINS J. R. CO. *v.* ROBERTSON, [1928] 1 D. L. R. 979.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A.

sr. *Money received by* SUMMERS *v.* HAMILTON (1840), 6 O. S. 113.—**CAN.**

Money received by de facto sheriff colore officii.]—KENT *v.* MERCER (1862), 12 C. P. 30.—**CAN.**

PART V. SECT. 4, SUB-SECT.

sv. *Admissibility of parol evidence—To show liability limited to specific transactions.*]— The guarantee bonds in question herein which were given to pltf. bank held to be on the face of them continuing guarantees, &, therefore, parol evidence was not admissible to show that the liability thereunder was intended to be limited to certain specific transactions.—CANADIAN BANK OF COMMERCE *v.* KOFFMAN & CHERRY, [1928] 4 D. L. R. 87 ; [1928] 2 W. W. R. 662.—**CAN.**

665a. —— Right of creditor to retain securities of surety.]—Pltfs., M.T., an English co. carrying on business in London, opened a branch in New York, M.L., & requested defts. to instruct their New York branch to give financial accommodation to M.L. Defts. agreed to do so up to a specified amount if pltfs. would sign a guarantee protecting defts. against loss through M.L. failing to meet their liabilities. In the events which happened M.L. received advances from the New York branch of defts. which they were unable to repay. Defts. had in their custody cash & securities belonging to pltfs. & refused to deliver them to pltfs. on demand, on the ground that the indebtedness of M.L. exceeded the value of the cash & securities. Pltfs. brought this action to recover possession of the cash & securities, together with interest, & defts. counterclaimed for, *inter alia*, a declaration that they were entitled to retain the cash & realise the securities & retain the proceeds in part satisfaction of the indebtedness of M.L. :—*Held :* the indebtedness of M.L. to the New York branch of defts. was covered by the guarantee given to defts. by M.T., & the total amount of that indebtedness exceeded the value of the cash & securities of pltfs. which were in the possession of defts. ; & defts, were therefore entitled to retain the cash & securities in part satisfaction of their claim under the guarantee.—MANN, TAYLOR & Co., LTD. *v.* ROYAL BANK OF CANADA (1935), 40 Com. Cas. 267.

679. *Add. Annotations :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12.

697. *Add. Annotation :*—**Consd.** Hay *v.* Carter, [1935] Ch. 397.

698. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

705. *Add. Annotation :*—**Consd.** McCall Bros. Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

Part VI.—Surety's Rights against Creditor.

750. *Add. Annotation :*—**Refd.** De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

759. *Add. Annotation :* — **Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

782a. —— — —.]—BECKETT *v.* BOOTH (1708), 2 Eq. Cas. Abr. 595 ; 22 E. R. 500, L. C.

788. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

792a. Rights of co-sureties inter se—Agreement that one should be primarily liable.]—Deft. & her husband guaranteed an overdraft upon a co.'s account at a bank, deft. depositing as security certain stock, & her husband the title deeds of certain property. As between themselves it was agreed that the husband should be primarily liable, but the bank did not recognise any such primary liability. The husband was adjudicated bkpt. & his property was sold by the trustee in bkpcy., with the bank's consent, the purchase price of the property charged to the bank being duly paid over to the bank. The bank also realised the stocks deposited by deft. Deft. claimed that the agreement between herself & her husband that the husband was to be primarily liable on the guarantee had the effect of creating an equitable charge in her favour on the husband's property & she alleged that the trustee in bkpcy. wrongfully sold the property charged to the bank by her husband for less than he could have obtained for it, & she claimed from the trustee in bkpcy. the difference between the purchase price obtained & the price which she alleged ought to have been obtained :—*Held :* the agreement between deft. & her husband did not have the effect of creating an equitable charge upon the husband's property, & deft. had no cause of action against the trustee in bkpcy.—PRATT'S TRUSTEE *v.* PRATT, [1936] 3 All E. R. 901 ; 81 Sol. Jo. 34.

PART V. SECT. 4, SUB-SECT. 2.

sw. *Inspector—Default of deputy inspector.*]—*Held :* the surety was liable, & the fact of there being a remedy also on the deputy inspector's bond was no answer.—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

sx. *After judgment by default—Whether amendment allowed.*]—SCOTT *v.* M'DONALD (1841), 6 O. S. 238.—**CAN.**

PART V. SECT. 7, SUB-SECT. 6.

728 ii. —— —— ——.]—*Re* THOMSON, [1926] 4 D. L. R. 755 ; 59 O. L. R. 449.—**CAN.**

sz. *Whether specialty or simple contract—Guarantee in writing—Confirmation by deed.*]—C. & others, by writing not under seal, agreed to payment of advances by a bank to a co. Later, by writing under seal, all the sureties but one consented to discharge the latter from liability under the guarantee, the document providing that the parties did in every respect "ratify & confirm the said guarantee & consent to be bound thereby as if the said O. C. had never been a party thereto" :—*Held :* the last-mentioned instrument did not convert the original guarantee into a specialty, & C. having died an action thereon by the bank against his exors. instituted more than six years after his death was barred by Stat. Limitations.—UNION BANK OF CANADA *v.* CLARK (1910), 43 S. C. R. 299.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.

775 ii. —— ——.]—REVILLON WHOLESALE, LTD. *v.* NEMIRSKY, [1926] 2 D. L. R. 374 ; [1926] 2 W. W. R. 166 ; 7 C. B. R. 583.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

782 iv. —— —— *Against assignee of interest in security.*]—GARRETT *v.* JOHNSTONE (1867), 13 Gr. 36.—**CAN.**

782 v. —— —— *Rights of mortgagee of surety.*]—QUAY *v.* SCULTHORPE (1869), 16 Gr. 449.—**CAN.**

782 vi. —— —— *Further advance by creditor to debtor.*]—*Re* HAMILTON TRUSTS (1895), 10 Man. L. R. 573.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (b).

793 viii. —— *Payment as surety.*]—The vendor of a motor car, sold under a conditional sale agreement, sold his interest in the car & in the balance of the purchase-price to a finance co., the transaction being carried out by the assignment to said co. of a new lien agreement & lien note made by the purchaser. The new agreement & note were signed by the purchaser & also by a co. of which he was the president & practically the sole owner. The charter of this co. gave no power to guarantee the debts of another. The first two subsequent instalments due the vendor were paid by the purchaser

809. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

815. *Add. Annotation :—As to* (2) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

824. *Add. Annotation :—As to* (2) **Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

849. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205

851. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

Part VII.—Surety's Rights against Principal Debtor.

879. *Add. Annotation :*—**Refd.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

898. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

902. *Add. Annotations :—As to* (1) **Refd.** *Re* Fenton *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *Generally*, **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

907. *Add. Annotation :—As to* (1) **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

908. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

913. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

915. *Add. Annotations :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

931a. Guarantor of preference dividends.]—The only right which a guarantor of dividends on preference shares has in respect of sums paid under the guarantee is a right to be subrogated to the preference shareholders. He has no right to proceed as a creditor against the co. in respect of those sums.—*Re* WALTERS' DEED OF GUARANTEE, WALTERS' "PALM" TOFFEE, LTD. *v.* WALTERS, [1933] Ch. 321 ; 102 L. J. Ch. 149 ; 148 L. T. 473 ; 49 T. L. R. 192 ; 77 Sol. Jo. 83.

937. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

939. *Add. Annotation :*—**Refd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

947. *Add. Annotations :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443 ; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

948. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1010. *Add. Annotation :*—**Refd.** Ridley *v.* Lee, [1935] Ch. 591.

1021. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

& later instalments were paid by cheques of his co. written by him & signed by him as president & also by the manager. In replevin proceedings issued in an action brought by the finance co. against the purchaser & his co., his wife claimed the car as her property under a gift from her husband & on the question whether there had been a gift of the car to her the ct. found in her favour. Her husband's co. set up the right of subrogation because of the payments made by it :—*Held :* to be entitled to stand in the creditor's shoes & take over by subrogation the lien on the car, said co. was required to establish beyond question that the payments made by it were made in its character as surety ; & the car not having been transferred to the co. it must be assumed in the absence of evidence to the contrary that the cheques of the co. were advances to him. The claim of the co. was dismissed.—ASHWIN *v.* ASHWIN & FORT ROUGE COAL CO., LTD., [1933] 1 W. W. R. 141 ; 1 D. L. R. 577; 41 Man. L. R. 34.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (c) ii.

822 i. *Assignment of judgment.*]—____ *v.* BURN (1880), 30 C. P. 630.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—E. (a).

sm. *Right of subrogation—Money paid to avoid tax-sale.*]—The guarantor of a mtge. who pays money to avoid the sale of the land for taxes is entitled to be subrogated to the rights of the mtgees. against the mtgor.—HARRIS *v.* CARNEGIE, [1933] 4 D. L. R. 760 ; O. R. 844.—**CAN.**

PART VII. SECT. 1.

sz. *Where land transferred as security.*]—SCHULTZ *v.* CAN. SURETY CO. (Alta.), [1927] 2 D. L. R. 580.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

872 ii. ——.]—A surety who enters into an agreement to procure the discontinuance of an action against his principal, & pays the amount of his guarantee, is entitled to be reimbursed.—GOUGH *v.* GOODWIN, [1931] 1 D. L. R. 701 ; 3 M. P. R. 435.—**CAN.**

872 iii. ——.]—E., an administrator, whose sureties under the administration bond were a bonding co. & himself in his personal capacity, employed a solr. to act as solr. for him as administrator. E. covenanted with the co. that the moneys of the estate should be deposited in a certain bank & should be drawn upon only by cheques countersigned by the same solr. as its agent ; & he also covenanted to indemnify the co. against all loss which it might incur under its bond. Moneys of the estate were stolen by the solr. through the use of blank cheques which E. had left with him after E. had signed them. In an action by a beneficiary of the estate judgment was given against E. as administrator & against the co. as surety. By third party notice the co. claimed to be entitled to be indemnified by E. This claim was dismissed & the co. appealed :—*Held :* the co. by requiring the estate moneys to be so deposited & by requiring the cheques to be countersigned by the solr. as its agent did not clothe him with such authority to intermeddle in the administration of the estate that it must now be said that in stealing the moneys the solr. was acting as agent for the co. ; the extent of his authority as agent for the co. was to countersign cheques, & the loss to the estate was not caused by the countersigning but by the use of the cheques, over which the administrator had full control, after they had been so signed ; & in handling the cheques so signed & the proceeds thereof the solr. was acting as solr. for the administrator & not as agent for the co. The appeal was, therefore, allowed.—RAMSDELL *v.* ELLIOTT & UNITED STATES FIDELITY & GUARANTY CO., [1937] 1 W. W. R. 37 ; 1 D. L. R. 269 ; 6 L. Jo. 259.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

g i. ——.]—SUTTON *v.* HINCH (1910), 19 Man. L. R. 705.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B.

m i. —— —— *Or partner of debtor.*]—Where a surety has taken a cession of action from the creditor against payment of the debt, he is entitled not only to sue the debtor, but also the debtor's partner where such partner is under the circumstances liable to the creditor for the debt.—AFRICAN GUARANTEE & INDEMNITY CO., LTD. *v.* THORPE, [1933] App. D. 330.—**S. AF.**

PART VII. SECT. 4, SUB-SECT. 3.

937 iv. —— ——.]—READ *v.* MCLEAN, [1925] 3 D. L. R. 716.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.

964 i. *Rights after debtor discharged—Debt due before discharge—Payment by surety after.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay :—*Held :* the order of discharge was a ban to the suit.—GANGADHAR *v.* KANHAI (1928), 1. L. R. 50 All. 606.—**IND.**

PART VII. SECT. 4, SUB-SECT. 6.

sa. *On debtor's property—Agreed to be deposited in bank to meet surety's promissory notes—Property garnished by creditor.*]—A surety having been called upon to pay the principal's

Part VIII.—Rights and Liabilities of Co-Sureties inter se.

1050. *Add. Annotation :*—**Apld.** Hay *v.* Carter, [1935] Ch. 397.

1062a. Joint & several guarantee by three—Payment by two—No contribution.]—Three persons bind themselves jointly & severally in a bond of indemnity & two of them pay the whole money, they cannot join in an action for contribution against the third.—KELBY & VERNON *v.* STEEL (1805), 5 Esp. 194 ; 170 E. R. 783, N. P.

1069. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1070. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1074. *Add. Annotation :—Generally,* **Refd.** Hay *v.* Carter, [1935] Ch. 397.

1080. *Add. Annotation :* —**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1099. *Add. Annotations :—As to* (1) **Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* Chetwynd's Estate, Dunn Trust, Ltd. *v.* Brown, [1936] 3 All E. R. 254.

1111. *Add. Annotation :*—**Consd.** Hay *v.* Carter, [1935] Ch. 397.

1112a. —— ——.]—When a surety sues his co-sureties for contribution he must make the principal debtor a party to the action unless the principal debtor's insolvency is proved or can be reasonably inferred by the ct. from the facts of the case.—HAY *v.* CARTER, [1935] Ch. 397 ; 104 L. J. Ch. 220 ; 152 L. T. 445, C. A.

1115a. Form of order.] — KENT *v.* ABRAHAMS, [1928] W. N. 266 ; 66 L. Jo. 323.

Part IX.—Determination of the Guarantee.

1149. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1165a. —— ——.]—Bankers made an advance to a customer, on the security of a joint promissory note of himself & a surety. The customer afterwards paid into the bank, generally, sums exceeding the amount of the advance, but also drew out a still larger amount, & became bkpt. :—*Held :* the surety was not entitled to have the payments appropriated in discharge of the sum secured by the note.—*Re* MAYOR, *Ex p.* WHITWORTH (1841), 2 Mont. D. & De G. 164.

1177. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

1186. *Add. Annotation :—As to* (3) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1198a. Agreement that variation should not discharge surety—What amounts to variation.] —One L. entered into two agreements with pltfs. for the hire-purchase of two vehicles, & deft. guaranteed L.'s payments thereunder, debt, paid the creditor part of it in cash & gave him his promissory notes for the balance. The principal, who was selling his house, repaid the surety out of the proceeds the cash previously paid by him & promised to deposit the balance of the proceeds in a bank to the joint credit of the surety & himself. Instead of doing so, he deposited it in his own name & it was garnished by pltf. when the notes given by the surety were not yet due & were still unpaid. On an interpleader issue between the garnishor & the surety who contended that there had been an equitable assignment of the money so deposited : —*Held :* said promise was nothing more than a voluntary one, never carried to completion, &, therefore, unenforceable as against the claims of the principal's other creditors.—HENSCHEL *v.* HOFFMAN & BANK OF MONTREAL & HENSCHEL, [1928] 2 D. L. R. 543 ; [1928] 1 W. W. R. 763.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

1054 i. *Sureties for different portions of debt.*]—Two persons independently guaranteed the current account of a customer of a bank, each guarantee being for a limited sum only. The indebtedness of the customer exceeded that limited sum :—*Held :* the guarantors were not sureties for independent debts, but for the whole for the floating balance of the customer. Each of the guarantors agreed with the bank that his guarantee was independent of any other guarantee or security held by the bank, & that he would not claim the benefit of any such guarantee or security :—*Held :* this agreement had not the effect of destroying the right to contribution of the sureties *inter se*, & therefore one of the guarantors who had paid more than his due proportion in liquidation of the amount due by the customer to the bank, was entitled to recover the excess from his co-surety.—CORNFOOT *v.* HOLDENSON, [1931] Argus L. R. 376.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).

1058 iv. —— ——.]—The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.—STEWART *v.* BRAUN, [1925] 2 D. L. R. 423 ; [1925] 1 W. W. R. 871.—**CAN.**

1058 v. —— ——.]—MCNEILL *v.* SHORT (Alta.), [1926] 4 D. L. R. 951.—**CAN.**

1058 vi. —— ——.]—CADWELL *v.* CAMPEAU (1912), 21 O. W. R. 263 ; 3 O. W. N. 616 ; 3 D. L. R. 555.—**CAN.**

1058 vii. —— ——.]—TUCKER *v.* BENNETT, [1927] 2 D. L. R. 42 ; 60 O. L. R. 118.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1068 i. *Revsd.*, 35 C. L. R. 48.

PART VIII. SECT. 2, SUB-SECT. 4.—B.

1116 i. *Application of Mercantile Laws Amendment Act,* 1856 (*c.* 97), *s.* 5—*Assignment of judgment—Necessity for leave to issue execution.*]—Where a creditor takes judgment against two or more sureties & issues execution against each, & one of them pays the judgment, the surety so paying is entitled to stand in the place of the creditor & carry on, in his own name, any proceedings already taken to enforce the judgment against the other surety until he receives the amount of the other's contributive share, & he is not required to obtain leave to issue execution in his own name.—FAST *v.* ZARCHEKOFF, [1926] 4 D. L. R. 355 ; [1926] 2 W. W. R. 577 ; 20 Sask. L. R. 596.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

1179 vii. —— ——.]—NASH-SIMINGTON CO., LTD. *v.* THOMAS (Sask.), [1926] 2 D. L. R. 462.—**CAN.**

1179 viii. —— ——.]—TOOKE BROS. *v.* WALTERS, LTD., [1935] 1 D. L. R. 295 ; 49 B. C. R. 195.—**CAN.**

1179 ix. —— ——.]—A guarantor will be discharged if the creditor changes the terms of liability by accepting notes & selling a mtge. held as collateral.—DE BLOIS BROS. *v.* CHISHOLM, [1936] 1 D. L. R. 514 ; 10 M. P. R. 47 ; 5 F. L. J. (Can.) 212.—**CAN.**

a i. —— ——.]—*Held :* the surety was not released from his guarantee.—DUNN *v.* THICKETT (Man.), [1925] 3 W. W. R. 736.—**CAN.**

a ii. —— ——.]—WINSLOW *v.* VERNER (1890), 30 N. B. R. 150.—**CAN.**

the guarantee in each case providing that it should not be avoided by any "variation in the terms" of the agreement. L. fell into arrears, & pltfs. made a new agreement with him whereby the two old agreements were consolidated & both vehicles were to be regarded as hired together & L. could not acquire the property in either unless he had paid all instalments in respect of both. L. having again fallen into arrears, pltfs. sued the guarantor:—*Held:* the new agreement was only a variation of the old agreements & not such a new agreement as would release the guarantor, & therefore the action succeeded. —BRITISH MOTOR TRUST CO., LTD. *v.* HYAMS (1934), 50 T. L. R. 230.

1200. *Add. Annotation:*—**Distd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1200a. —— —— —— **Hire-purchase agreement.**] —Pltfs. were the assignees of the rights of the R. Co. under a hire-purchase agreement dated July 6, 1927, whereby the co., "the owners," agreed to let to one T., "the principal," a motor car on the terms that he should be at liberty to purchase the car at a fixed price, paying as a first payment £22 0*s.* 8*d.*, & thereafter monthly payments of £14 3*s.* 4*d.*, until the whole was paid. The payments by the principal under this agreement were guaranteed by deft. as surety under a document signed by her on July 6, 1927. The principal afterwards fell in arrears in payment of the monthly instalments, & on Feb. 3, 1928, he wrote to the owners offering a cheque for £20 drawn by a friend in part payment. On Feb. 4 the owners wrote accepting this cheque & stipulating that the rest of the arrears should be paid within one month. The cheque was sent to the owners, but the arrears, which amounted to £79, were not paid within one month, & the owners then took back the car, acting upon their powers under the hire-purchase agreement. On Sept. 18, 1928, the owners assigned their rights under that agreement to pltfs., who claimed £122 in all from deft. as surety:—*Held:* (1) there was a binding contract by the owners to give time to the principal debtor; (2) the liability for payments under the hire-purchase agreement was one & indivisible, & deft. was entirely discharged from her suretyship.—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, [1929] 2 K. B. 256; 98 L. J. K. B. 490; 141 L. T. 230; 45 T. L. R. 499, C. A.

1216. *Add. Annotations:*—*As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250. *As to* (2) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487; Johnson Bros. (Dyers), Ltd. *v.* Davison (1935), 79 Sol. Jo. 306.

1216a. —— **Assignment—Lease contemplating assignment.**]—JOHNSON BROS. (DYERS), LTD. *v.* DAVISON (1935), 79 Sol. Jo. 306.

1217. *Citations:*—Delete 9 Bing. 746; 3 Moo. & S. 191; 131 E. R. 794.

1222. *Add. Annotations:*—**Apld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487; Smith *v.* Wood (1928), 139 L. T. 250. **Refd.** Sassoon *v.* International Banking Corpn, [1927] A. C. 711; Midland Motor Showrooms, Ltd. *v.* Newman, [1929] 2 K. B. 256.

1223. *Add. Annotation:*—*As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

1223a. Charge by several persons of properties—Release of deeds deposited by one.]—By a joint & several memorandum of charge twelve persons, including six resps., deposited deeds with applt. as security to relieve applt. from the entire burden of a guarantee given by him to a bank for the overdraft of S. & Co., & they thereby respectively charged the hereditaments to which the deeds related with repayment of all money to become due

PART IX. SECT. 2, SUB-SECT. 1.—C. (b).

st. *Renewal of loan.*]—The condition of a bond securing repayment of a mtge. loan is to be strictly construed as against the obligee, & therefore, where its language with reference to an extension or renewal of the loan is singular & not plural it cannot be construed as providing for an advance consent by the obligors to more than one renewal or extension.—HOLLAND-CANADA MORTGAGE CO., LTD. *v.* HUTCHINGS (No. 2), [1935] 1 W. W. R. 133; 2 D. L. R. 800; *affd.*, [1935] 2 W. W. R. 338; 3 D. L. R. 527; 5 F. L. J. (Can.) 83; *affd.*, [1936] S. C. R. 165; 2 D. L. R. 481; 5 F. L. J. (Can.) 307.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C (c).

sb. *Wrongful withdrawals.*]—Failure by a bank to inform a guarantor of wrongful withdrawals by a debtor whose account is guaranteed does not discharge the guarantor. — ROYAL BANK OF CANADA *v.* FLEMING, [1933] 3 D. L. R. 353; O. R. 601.—**CAN.**

sw. *Promissory notes exchanged for new note.*]—Sums were borrowed by a committee from a bank against promissory notes. A guarantee was given to the bank guaranteeing the payment of any sums due or which might become due. A new note was signed by one of the committee & endorsed by one of the guarantors, & given to the bank in exchange for the other notes:—*Held:* the other signatories to the guarantee were not discharged.—TREMBLAY *v.* BANQUE CANADIENNE NATIONALE, [1934] 4 D. L. R. 673.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (g).

sd. *Change of system of audit.*]—The fact that a municipality, which had taken out a fidelity bond based on an application in which it stated that the bonded employee's books would be audited quarterly, thereafter changed said auditing system to a system of "continuous audit," held not to be a breach of the contract of such a nature as to avoid the contract.—PENTICTON DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1932] 1 W. W. R. 812; 45 B. C. R. 464; *revsd.*, [1933] 1 W. W. R. 712; 3 D. L. R. 216; 46 B. C. R. 515.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (h).

sf. *Surrender of some chattels bought under lien note—No detriment to value of chattels.*]—*Held:* the surety who signed the note was not released.—TOOVEY *v.* BROCK & BROCK (1916), 34 W. L. R. 973.—**CAN.**

sk. *Sale of goods exceeding stipulated amount.*]—*Held:* the sureties were not liable.—TEXAS CO. (S. A.), LTD. *v.* WEBB & TOMLINSON (1927), 48 N. L. R. 24.—**S. AF.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (i).

sm. *Making principal debtor bankrupt.*]—Where a surety contended that, by making debtor bkpt., the creditor had so prejudiced the surety as to discharge him from liability:—*Held:* no duty was owed by a creditor to a surety either to put debtor into bkpcy. or to refrain from doing so.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 86; 59 O. L. R. 1.—**CAN.**

sn. *Retaking possession of chattels under conditional sale agreement.*]—*Held:* the contract constituted a relationship of mtgor. & mtgee. between vendor & purchaser, & the surety continued to be liable under the guarantee.—STEPHEN *v.* BLACK (1902), Cout. 217.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 2.—A.

so. *Surety not prejudiced—Onus of proving prejudice on surety.*]—CLOSE *v.* STEWART, [1928] 2 D. L. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A. (a).

e 1. ——.]—*Held:* it was not necessary to show that the surety was prejudiced by the giving time.—DARLING *v.* MCLEON (1861), 20 U. C. R. 372.—**CAN.**

sw. *Agreement may be implied.*]—An agreement to give time to the principal debtor may be implied & need not be express.—JOHNSTON & WARD *v.* MCCARTNEY, [1934] 2 D. L. R. 800; S. C. R. 494.—**CAN.**

from S. & Co. Applt., at the request of C., one of the twelve persons, allowed her to take the deeds deposited by her away for the purpose of raising a loan. S. & Co. having gone into liquidation, the bank called upon applt. to make good his guarantee. Thereupon resps. brought an action claiming that they were entitled to have all the deeds deposited by them under the terms of the charge discharged from the debt to which they were made liable to contribute under the charge, on the ground that, by applt. allowing C. to withdraw the deeds deposited by her, their risk had been increased :—*Held :* (1) there had been an alteration made in the position of those whose properties remained deposited as securities under the charge by reason of applt. allowing the withdrawal by C. of the deeds deposited by her, & they not having consented to the alteration, their properties, the deeds of which they had deposited, were discharged from all claims under the charge ; their right of marshalling had been affected by the withdrawal of the deeds of one of the parties, & the materiality of the alteration was a question to be decided by them ; (2) the same reasoning was applicable, whether what was contributed were securities or personal liability.—SMITH *v.* WOOD [1929], 1 Ch. 14 ; 98 L. J. Ch. 59 ; 139 L. T. 250 ; 72 Sol. Jo. 517, C. A.

1224a. Guarantee of call on shares—Forfeiture of shares—Discharge of surety.]—On Dec. 29, 1920, D. & P., who afterwards became bkpt., joined with others in entering into an agreement with a co., whereby they guaranteed to them the payment of all the instalments then owing upon the shares in the co. specified in the schedule to the agreement, the amount of D. & P.'s liability being limited to the sum therein mentioned. The shareholders having been served with notice calling upon them to pay the instalments due on their respective shares on pain of forfeiture, & D. & P. also having been required to pay the same on or before Feb. 17, 1925, in case of non-compliance by the shareholders with the notice, & default in payment having been made by both the shareholders & by D. & P., the co. forfeited the bulk of the shares in pursuance of the power conferred upon them by their arts. of assocn. Art. 31 was as follows : "Any member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the co. all calls or other moneys, interest & expenses, whether presently payable or not, owing in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of 10 per cent. *per annum* or such less rate as may be fixed by the Board." On Sept. 9, 1925, a receiving order in bkpcy. was made against D. & P., & on Apr. 10 the co. lodged their proof for the amount claimed to be due on the guarantee. Upon a motion by the co. for the reversal of the decision of the trustee in rejecting their proof :—*Held :* (1) the right created by art. 31 was a new right which arose upon the forfeiture of the shares & one which placed a more onerous obligation upon the shareholders than if the shares had not been forfeited. The forfeiture, therefore, was an interference with the rights of the sureties as against the principal debtor ; (2) the co. had by exercising their option to forfeit the shares deprived the sureties of their lien on the shares which they would have been entitled to, had the co., in lieu of forfeiture, compelled them to pay the calls ; with the result that, upon the principles stated in *Polak* v. *Everett*, No. 1222, *ante*, D. & P. were discharged from their liability as sureties under the guarantee & the decision of the trustee in their bkpcy. in rejecting the proof of the co. was right.—*Re* DARWEN & PEARCE, [1927] 1 Ch. 176 ; 95 L. J. Ch. 487 ; 136 L. T. 124 ; 70 Sol. Jo. 965 ; [1926] B. & C. R. 65.

1329. *Add. Annotation :—As to* (1) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1342. *Add. Annotations :—***Refd.** *Re* Darwen & Pearce, [1927] 1 Ch. 176; Smith *v.* Wood (1928), 139 L. T. 250.

1343. *Add. Annotation :—***Consd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1345a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1357. *Add. Annotation :—***Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1372. *Add. Annotation :—***Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1379a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1397. *Add. Annotation :—Generally.* Refd. Berry *v.* Berry, [1929] 2 K. B. 316.

PART IX. SECT. 2, SUB-SECT. 4.—A. (o).

1322 iii. ——.]—CORRIGAL *v.* BOULTON (1898), 17 U. C. R. 131.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (a).

1340 i. *Consent to judgment—Debt & costs payable by instalments.*]—When on an application for attachment before judgment, a surety executes a bond in form 6 in App. F to Civil Procedure Code, 1908, he is discharged from his obligations if a compromise decree is passed between pltf. & deft. allowing deft. to pay the decretal amount by instalments, unless it is proved that the compromise which was subsequently embodied in the decree was in the contemplation of pltf. & the surety when the latter executed the bond.—MAHOMEDALLI IBRAHIMJI *v.* ——— (1929), I. L. R. 54 Bom. 118.—**IND.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (d).

sp. *Alteration in number of instalments.*]—*Held :* not made on a basis of extension of time, so as to release the surety from liability.—MALKIN (W. H.) Co., LTD. *v.* SHERMAN (1925), 35 B. C. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—C. (a).

1364 xv. ——.]—BURNARD *v.* LYSNOR, [1927] N. Z. L. R. 757.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 7.—C.

1448 iii. ——.]—There must be some positive act done by the employer to the surety's prejudice, or such degree of negligence as to imply connivance & amount to fraud.—LONDON GUARANTEE & ACCIDENT Co., LTD. *v.* CITY OF HALIFAX, [1927] 1 D. L. R. 1120 ; [1927] S. C. R. 165.—**CAN.**

1451 i. *Fraud of employee—Neglect of employer to supervise conduct—Neglect must be gross.*]—Circumstances in which :—*Held :* gross negligence in checking accounts discharged the surety. — FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

1455 i. ——— *Checking accounts.*]—FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

sq. *Failure to observe statutory requirement.*]—The observations of LORD BROUGHAM in *Mactaggart* v. *Watson*, 3 Cl. & F. 525, & the decision in *Madden* v. *McMullen*, 13 I. C. L. R. 305, establish that failure to observe statutory requirements does not necessarily relieve a surety (MURNAGHAN, J.). —WICKLOW COUNTY COUNCIL *v.* HIBERNIAN FIRE & GENERAL INSCE. Co., [illegible] 581.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—A.

sr. *General rule.*]—If it is an express or implied condition of, or collateral to, the arrangement for a guarantee,

1478. *Add. Annotations :*—**Distd.** Smith *v.* Wood, [1929] 1 Ch. 14. **Refd.** West Bromwich Building Society *v.* Bullock, [1936] 1 All E. R. 887.

1522. *Add. Annotations :*—**Folld.** Morris & Sons, Ltd. *v.* Jeffreys (1932), 148 L. T. 56. **Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

1522a. —— —— —— ——.]—Disclaimer of a lease by a trustee in bkpcy. operates as a discharge of a surety for payment of the rent, notwithstanding that part of the demised premises have been sublet before the bkpcy.

The lessee of certain premises was adjudicated a bkpt., & his trustee, acting in pursuance of the powers conferred on him by 1914 Act, s. 54, disclaimed the lease. Prior to the bkpcy., the lessee had sublet a portion of the premises. Deft. had guaranteed the payment of the rent, & the lessors obtained from him sums equal to the rent which would have accrued if the lease had still been in existence :—*Held :* the disclaimer discharged the surety, on the ground that if the surety were called on to pay he would have a right of proof against the bkpt.'s estate, whereas the intention of sect. 54 was that the bkpt. & his property should be released from all liability.—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 148 L. T. 56 ; 49 T. L. R. 76.

1523. *Add. Annotations :*—**Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

1561. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1570. *Add. Annotations :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Refd.** Firm of R. M. K. R. J. *v.* Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780 ; Jenkins *v.* Jenkins, [1928] 2 K. B. 501 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

1571. *Add. Annotations :*—**Refd.** Freshwater *v.* Bulmer Raynon Co., [1933] Ch. 162 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

1574a. —— **Creditor member of trade association.**]—The Liverpool Corn Trade Assocn., Ltd., is an organisation for promoting & protecting the interests of those engaged in the corn trade. Membership is confined to individuals, but cos., either public or private, engaged in the trade can have the advantages of membership by nominating, in the case of a private co., one representative, on condition that a guarantee by the directors is given to the assocn. that the co. will duly discharge its liabilities to members, & for the conduct of its representative. Deft. in 1931 had joined with S. & two other directors of S. & Co., Ltd., a private co., in a joint & several guarantee to the assocn., given in accordance with this provision. This action was brought by pltfs. claiming a declaration that they were entitled as trustees for ten firms & cos. who were creditors of S. & Co., Ltd., to enforce the guarantee in question. S. & Co., Ltd., got into financial difficulties & in 1935 S. executed a deed of assignment for the benefit of his creditors under which he was released from all " debts, claims, & demands whatsoever " which the other parties to the deed might have against him with the usual reservation of rights against sureties. Pltfs. & the ten firms & cos. whose debts made up the sum claimed were parties amongst others, to the deed of assignment :—*Held :* (1) the release in the deed of assignment operated to release all the joint guarantors & the position was in no way affected by the reservation of rights against sureties ; (2) " members of the assocn." meant members of the assocn. or any incorporated co. whose nominee or nominees is or are members of the assocn. ; (3) the assocn. was entitled to sue for the benefit of the members entitled & as trustee for them ; (4) " liabilities " in the guarantee meant all liabilities to individual members or to cos. whose nominees were members.—LIVERPOOL CORN TRADE ASSOCN., LTD. *v.* HURST, [1936] 2 All E. R. 309 ; 80 Sol. Jo. 673.

1576. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

that an existing security, whether inchoate or complete, should be made or kept effective by the creditor for the benefit of the parties as a counter-security, failure to observe that condition discharges the surety absolutely, inasmuch as he has not got the contract he bargained for.

If there is, in fact, in the possession of the creditor such a counter-security, it is the duty of the creditor, whether its existence is known to the surety or not, to exercise reasonable care in maintaining it for the benefit of the surety, so as to be available, unimpaired by reason of any negligence, on the discharge of the debt. If he fails in this duty, the surety is entitled to credit against his liability for the damages suffered by such breach of duty by the creditor.—NORTHERN BANKING CO., LTD. *v.* NEWMAN & CALTON, [1927] I. R. 520.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—B.

1477 i. *Sale of security—Failure to get best price.*]—MACDONALD *v.* HIRSCH, [1932] 4 D. L. R. 121 ; 5 M. P. R. 469.—**CAN.**

1477 ii. ——.]—The mere fact of a sale by a creditor of property comprised in a bill of sale, given to the creditor by the principal debtor as security for a loan, does not operate to discharge from liability the guarantor of such loan.—TOOTH & CO., LTD. *v.* LAPIN (1936), 53 N. S. W. W. N. 224.—**AUS.**

1480 i. *Release of mortgage debt.*]—*Held :* the surety was not liable under the guarantee.—ORCHISTON *v.* [1924] N. Z. L. R. 1170.—**N.Z.**

st. *Failure to renew chattel mortgage.*]—LEACROFT *v.* MCCANNELL, [1930] 2 W. W. R. 105 ; 3 D. L. R. 988.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

1496 i. *When surety discharged—Release obtained by fraud—Of debtor.*]—When the release of the principal debtor by the creditor is accomplished by means of fraud, on the part of the former, the surety is not discharged, even if he is not a party to the fraud by which the release was secured.—R. *v.* THE CANADIAN SURETY CO., [1929] Ex. C. R. 216 ; *affd. with variations,* [1930] S. C. R. 434 ; 3 D. L. R. 321.—**CAN.**

1499 i. *When surety discharged—Release of debtor.*]—MILNE *v.* YORKSHIRE GUARANTEE & SECURITIES CORPN. (1906), 37 S. C. R. 331.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (a).

sv. *Sale of debtor's equity of redemption.*]—*Held :* not a release of debtor, nor of his surety.—STEWART *v.* CLARK (1863), 13 C. P. 203.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (c).

sw. *Release of co-lessee—Surety discharged.*]—ISMAN *v.* WIDEN (Sask.), [1926] 1 D. L. R. 247.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—C. (b).

1561 iv. —— ——.]—HOLLIDAY *v.* HOGAN (1893), 20 A. R. 298.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 11.—B.

sy. *Whether revocable by notice—Fidelity guarantee.*]—Resp. executed a bond guaranteeing the fidelity of a servant of applt.'s. Subsequently he purported to withdraw the guarantee by a written notice :—*Held :* (1) the guarantee, in the nature of a security for the servant's fidelity, is not a

1577. *Add. Annotation :*—**Refd. Jenkins *v.* Jenkins,** [1928] 2 K. B. 501.

1581. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

1582. *Add. Annotation :*—*As to* (2) **Consd. Smith *v.*** Wood (1928), 139 L. T. 250.

1608. *Add. Annotation :*—**Refd.** *Re* **Darwen &** Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

Part X.—Avoidance of the Guarantee.

1656a. —— Power to contract out of duty to disclose.]—A Harbour & Dock Board, having resolved to enlarge their dock, invited tenders for the work from numerous contractors, informing them where the contract for the work might be inspected & instructing them that they must make local & independent inquiries as to the nature of the surface, strata, soil & sub-soil or ground to be excavated, & the nature & height of the tides, & generally must obtain their own information on all matters affecting the construction, completion & maintenance of the works, & as to all matters which might influence them in making their tender & fixing the rates & prices therein, & that the Board would not be responsible for any information the contractors might obtain except such as was given in reply to a written inquiry addressed to the clerk or manager of the Board. Of several tenders received that of a co., K. & R., Ltd., was by far the lowest. The Board informed K. & R., Ltd., that they were not prepared to accept that tender unless K. & R., Ltd., procured a guarantee to the amount of £50,000 for the due performance of the contract. In compliance with this demand K. & R., Ltd., procured a joint & several bond from an insurance co. whereby that co. & K. & R., Ltd., jointly & severally bound themselves to the Board for the due performance of the contract by K. & R., Ltd. The Board accepted this guarantee, & K. & R., Ltd., entered upon the work in pursuance of the contract, which made the final certificate of the Board's engineers final & binding between the parties. In the course of the work the contractors encountered an unexpected quantity of water in the soil, & the expense of pumping was such that they could not continue the work without further funds. Thereupon the Board advanced them two sums of £20,000 & £25,000 to be repaid upon certain terms; but, notwithstanding these loans, the contractors failed to complete the contract & went into liquidation, & the Board's engineers made a final certificate showing over £78,000 due from the contractors to the Board. This sum included so much of the £45,000 lent to the contractors as remained unpaid at the date of their default. The Board sued the insurance co. on the joint bond :—*Held :* (1) the bond was a contract of guarantee & not a contract of insurance; (2) there was no such misrepresentation or non-disclosure of material facts by the Board as to invalidate the bond; (3) the loans of £20,000 & £25,000 being outside & independent of the contract, the amount due thereon ought not to have been included in the engineers' final certificate; inasmuch as the amount due & unpaid on the loans was unascertained, the amount due on the bond being equally undefined, the Board could not recover upon it.—TRADE INDEMNITY CO., LTD. *v.* WORKINGTON HARBOUR & DOCK BOARD, [1937] A. C. 1; [1936] 1 All E. R. 454; 105 L. J. K. B. 183; 154 L. T. 507; 41 Com. Cas. 186, H. L.

1658. *Add. Annotation :*—**Refd.** *Re* **Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze,** [1931] 1 Ch. 289.

continuing guarantee which may be revoked by the guarantor at will; (2) a guarantor for the fidelity of a servant is allowed as a measure of equitable relief, to recall his guarantee from such time as the servant is proved guilty of misconduct or from such time as the position of the parties has completely changed.—MYINGYAN MUNICIPALITY *v.* MAUNG PO NYUN (1930), I. L. R. 8 Ran. 320.—**IND.**

PART X. SECT. 2.

d i. ——.]—There is no universal obligation on a creditor entering into a contract of suretyship to make disclosure to the surety of all the facts relative to the dealings between the creditor & the principal. There must, however, be no undue concealment, which consists not merely in the omission to disclose such facts as need be mentioned in answer to the surety's questions, but also in the non-disclosure of those facts which the creditor must spontaneously disclose to him. The omission by the creditor to reveal to the surety every fact which under the circumstances the surety would expect not to exist amounts to an implied representation that it does not exist: & it depends upon the nature of the transaction in each case whether the fact not disclosed is so impliedly represented. Where a guarantee was given for the payment of "all moneys which are now or at any time hereafter may be due or owing to the co. from . . . on the general balance of his account with the co." there could not be at the time of its making any implied representation by the co. arising from the co.'s non-communication to the surety of the state of the account that there was no indebtedness to which the guarantee could apply.—NATIONAL MORTGAGE & AGENCY CO. OF NEW ZEALAND, LTD. *v.* STALKER, [1933] N. Z. L. R. 1182.—**N. Z.**

PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*]—An offer, by an employer, who has knowledge of dishonesty on the party of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that, so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—EBY-BLAIN, LTD. *v.* MATTHEWS, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—**CAN.**

1685 ii. ——.]—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of appct., such non-disclosure releases the surety.—RURAL MUNICIPALITY OF CHURCHBRIDGE NO. 211 *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—**CAN.**

1685 iii. *S. P.* MAYFIELD RURAL MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

g i. —— *Statement made in ignorance & without fraud.*]—For the purpose of a renewal of a fidelity policy, pltfs. certified to defts. that the employee "is not at present in arrears or default." The employee was in fact in arrears & default at the time, but the certificate was made without knowledge of this & without fraud :—*Held :* pltfs. could not recover under the policy.—DOMINION OF CANADA GUARANTEE & ACCIDENT CO., LTD *v.* HOUSING COMMISSION OF CITY OF HALIFAX, [1927] 4 D. L. R. 161; [1927] S. C. R. 492.—**CAN.**

1686. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

1691. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

1704a. —— —— ——.]—A contract of guarantee, like any other contract, is liable to be avoided if induced by material misrepresentation, even if made innocently.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 151 L. T. 486; 78 Sol. Jo. 471, P. C.

1721. *Add. Annotation :*—*As to* (1) **Refd.** With *v.* O'Flanagan, [1936] Ch. 575.

1725. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1726. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1737. *Add. Annotation :*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

1741. *Add. Annotations :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

Part XII.—Indemnity.

1745. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

1745a. **Distinguished from del credere agency.**]—Defts. agreed in writing with pltfs., stockbrokers on the Stock Exchange, that in consideration of 50 per cent. of the commissions received by pltfs. in respect of business introduced to them by defts. the latter would be liable for 50 per cent. of "any loss sustained" by pltfs. on such business. X., who had been introduced by defts., became indebted to pltfs. in respect of such business. When X. executed an assignment for the benefit of creditors, pltfs. thereupon claimed that a "loss" had been sustained within the meaning of the above letter at the time when the assignment was executed :—*Held :* (1) the agreement was one of indemnity & not in the nature of a *del credere* agency; (2) in the absence of evidence of actual loss sustained after taking into consideration the value of pltfs.' rights under the assignment, there must be judgment for defts.—STANLEY (MONTAGU) & CO. *v.* SOLOMON (J. S.), LTD., [1932] 1 K. B. 611; 76 Sol. Jo. 272; *affd.*, [1932] 2 K. B. 287.

1747. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1750. *Add. Annotation :*—**Refd.** Strathlorne S.S. Co., Ltd. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1751. *Add. Annotation :*—**Apld.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1756. *Add. Annotations :*—**Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433. **Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1760. *Add. Annotation :*—*As to* (1) **Refd.** Strathlorne S.S. Co., Ltd. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1762. *Add. Annotation :* —**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

1762a. —— —— ——.]—Pltfs., a private inquiry agency, carried on the business of providing to approved subscribers confidential reports on companies, firms & persons engaged in trade. The terms upon which the reports were issued were (*inter alia*) that all statements were strictly confidential, & that every subscriber should indemnify pltfs. against any loss or damage they might suffer from the breach by the subscriber of any of the conditions of the contract. Deft. co., an approved subscriber, through its managing director, requested pltfs. to furnish information regarding the X. Co. for whom they were agents. The report, being of an unfavourable nature, was communicated by deft. co. to their own solrs. Deft. M., a director of deft. co., with the approval of its managing director, applied for & was furnished with similar information regarding the X. Co., & on the same terms & conditions. M. at once informed the managing director of deft. co. of its contents. The matter having been brought to pltfs.' notice

PART X. SECT. 4, SUB-SECT. 3.

1702 x. —— —— ——.]—JOHN DEERE PLOW CO. *v.* MAGUSS, [1929] 2 D. L. R. 262; 1 W. W. R. 669; 24 Alta. L. R. 65.—**CAN.**

h 1. —— *Separate obligations—Only one explained—Sureties illiterate.*]—WATKINS J. R. CO. *v.* MINKE, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

1713 i. *As to nature of transaction.*]—It is a good defence to an action on a guarantee that it was executed by the surety in the belief, induced by the fraudulent misrepresentations of debtor, that it is a document of another nature.—WATKINS (J. R.) CO. *v.* HANNAH (Sask.), [1926] 4 D. L. R. 93; [1926] 2 W. W. R. 800.—**CAN.**

PART X. SECT. 5, SUB-SECT. 2.

1730 ii. —— ——.]—*Held :* the influence exerted by the husband was not undue influence, & the wife executed the guarantee as the result of her own considered judgment of the consequences thereof.—CANADIAN BANK OF COMMERCE *v.* FOREMAN, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.—**CAN.**

1730 iii. ——————.]—When a married woman disputes her liability to a creditor of her husband upon a guaranty signed by her at her husband's request, the *onus* is on her to prove that the husband had executed an overpowering influence upon her to induce her to sign it, & that the giving of the guaranty was an immoderate & irrational act on her part.—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 32 Man. L. R. 301.—**CAN.**

PART XII. SECT. 1.

1744 iii. —— *Person indemnified insolvent.*]—Where a person entitled to be indemnified is insolvent:—*Semble :* the contract to indemnify him has the same effect as if it were a guarantee to the principal creditor of payment of the debt.—*Re* WINDING-UP ACT & FRANCO-CANADIAN [illegible] CO., LTD., *Re* BANK OF [illegible] (Alta.), [1927] 1 W. W. R. 403; 8 C. B. R. 176.—**CAN.**

xz. *Does not extend to doing unlawful acts.*]—*Held :* the fact of a municipal council having undertaken to indemnify an officer for lawful acts done in his official capacity, does not entitle him to look to them for indemnity against the consequences of unlawful acts.—IRWIN *v.* MARIPOSA CORPN. (1872), 22 C. P. 367.—**CAN.**

by the co. reported on, both defts. at the request of pltfs. returned the unfavourable reports.

Pltfs., an action for libel having been brought against them in the K. B. Div., commenced proceedings against both defts. for an injunction to restrain disclosure of the unfavourable reports which had been furnished, & a declaration that they were liable to indemnify pltfs., against any loss or damage arising from this disclosure. They also claimed damages:—*Held:* (1) deft. co. did not disclose the report to any person other than its own solrs. & that this did not constitute a breach of contract with pltfs. within the meaning of the agreements; (2) deft. M. became a subscriber to pltfs.' confidential reports for the purpose of obtaining a report on the X. Co. & communicating the result to the managing director of deft. co.; (3) neither M. nor the managing director of deft. co. was acting as the agent of deft. co. & no breach of contract committed by M. was induced by deft. co. The action against deft. co. therefore failed; (4) the agreement entered into by M. not to disclose the confidential information furnished to him & to indemnify pltfs. for any loss or damage which they might suffer from a breach by a subscriber of the conditions upon which reports were furnished, was not void as being against public policy; (5) the disclosure by deft. M., although a breach of this contract, did not create the liability of pltfs. to be sued for libel; this liability did not arise directly or indirectly out of any act of the deft. M. & was not therefore within the scope of the express indemnity contained in pltfs.' agreement with M. The only liability for damages, therefore, resulted from M.'s own breach of contract, & in the circumstances such damages were merely nominal.—BRADSTREETS BRITISH, LTD. *v.* HAROLD MITCHELL & CARAPANAYOTI & CO., LTD., [1933] Ch. 190; 102 L. J. Ch. 34; 148 L. T. 111; 48 T. L. R. 670.

1782. *Add. Annotation:*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1787. *Add. Annotation:*—**Reld.** Pontypridd Grdns. *v.* Drew, [1926] 1 K. B. 567.

1789. *Add. Annotation:*—**Reld.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790. *Add. Annotation:*—**Overd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790a. —— —— ——.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians* v. *Brookes*, No. 1790, overd.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

1800. *Add. Annotation:*—**Consd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1826a. Limited to claims by third parties.]—Pltfs. took a lease of premises from deft. railway co., &, by an agreement supplemental to the lease, defts. gave pltfs. permission to use a portable gangway, which could be moved over certain of defts.' railway lines. One of the terms was that pltfs. "agree & undertake to indemnify the co. against all claims & demands or liability whatsoever, whether in respect of damage to person or property, arising out of or in connection with the existence or user of the gangway." When pltfs. were using the gangway some trucks were shunted down the line, & the gangway was destroyed. In an action for damages for negligence &/or breach of duty defts. denied liability & pleaded the above term of the supplemental agreement:—*Held:* the undertaking was only one to hold defts. harmless against claims by third parties.—GREAT WESTERN RY. CO. *v.* DURNFORD (JAMES) & SONS, LTD. (1928), 139 L. T. 145; 44 T. L. R. 415; 33 Com. Cas. 251, H. L.; *affg.*, S. C. *sub nom.* DURNFORD (JAMES) & SONS, LTD. *v.* GREAT WESTERN RY. CO. (1927), 138 L. T. 137, C. A.

Annotations:—**Distd.** Furness Shipbuilding Co. *v.* London & North Eastern Ry. Co. (1934), 103 L. J. K. B. 180. **Consd.** London Passenger Transport Board *v.* T. Walton (London), Ltd. (1934), 78 Sol. Jo. 224. **Reld.** The Carlton (1931), 47 T. L. R. 517.

1826b. Claims arising "in connection with the works."]—By a contract made in 1929, applts. were employed by the resps. to reconstruct a bridge of the railway near West Ham Station; & clause 34 (*a*) provided that: "The contractor shall be responsible for & provide against all risks & contingencies whatever that may arise in respect of the works, & shall be liable to make good & pay

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PART XII. SECT. 5. SUB-SECT. 1.

1805 ii. ——.]—Pltfs. took a son of testator, represented by deft., into their employ upon testator's oral promise that he would indemnify them against any loss sustained by them through embezzlement by the son. The ct. found that the substance of the conversation, when the contract was made, was that testator said to pltfs. "If you take my son into your employ, & he makes default by embezzlement, you look to me":—*Held:* testator's promise was a direct, unconditional & original promise of indemnity, to which sect. 4 of "The Statute of Frauds" did not apply.—CONNOR *v.* TASMANIAN PERMANENT EXORS. & TRUSTEES ASSOCN., LTD. (1935), 28 Tas. L. R. 93.—**AUS.**

PART XII. SECT. 6, SUB-SECT. 1.—A.

1825 ii. ——.]—RUTHERFORD *v.* STOVEL (1861), 12 C. P. 9.—**CAN.**

1825 iii. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* VICTORIA-VANCOUVER STEVEDORING CO. (1919), 13 D. L. R. 231.—**CAN.**

ag. Supply of information—Indemnity against loss.]—Resp. carried on a business of financing motor car dealers. Applt. carried on a business of obtaining & giving information as to credit, character, etc., & including the checking of cars in dealers' hands & reporting thereon. Applt. made an agreement to supply its service to resp. Resp. signed an "indemnity agreement," agreeing to treat in confidence the information furnished, to hold applt. harmless on account of any damages arising from publication or dissemination of information or careless handling of reports, & agreeing, "in consideration of receiving this service, & as a condition of its rendition," that neither applt. nor its employees should be responsible "for any loss that may occur to resp. through the use of the information furnished." Through careless car-checking reports, made without personally checking over the cars, in respect of a dealer, made by a local inspection agent of applt. & passed on to resp., resp. was misled, to its loss, & sued applt. for damages. Applt. claimed that it had not bound itself for more than reasonable care in the selection of its inspection agents, &, further, that, in any case, it was relieved from liability by the concluding clause of the indemnity agreement:—*Held:* resp. should recover. The concluding clause of the indemnity agreement did not, on proper construction of that agreement, relate to car-checking reports.—RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & MERCHANT'S CASUALTY INSURANCE CO., RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & WESTERN ASSURANCE CO., [1932] S. C. R. 33.—**CAN.**

for any interruption, accident, damage, loss or injury of, or to any person, property or rights, whether public or private, & any loss of life caused in connection with the works." On Dec. 20, 1929, a train was dispatched by resps.' servants from London, & as it approached the bridge one of the carriage doors, which had swung open, struck two of applts.' workmen, killing one & seriously injuring the other. Resps. were adjudged to pay the representatives of deceased workman & the injured workman £3,614 1*s*. Resps. claimed indemnity in respect of that liability from applts. The trial judge found that the railway carriage door swung open by reason of its having been insecurely fastened at Fenchurch Street Station, owing to the negligence of resps.' servants, but held that under clause 34 (*a*) applts. were liable to indemnify resps. The Ct. of Appeal affirmed that decision :—*Held :* the accident arose in connection with the bridge where the men were working, & the contractors, therefore, under clause 34 (*a*), must indemnify resps. in respect of the accident.—FURNESS SHIPBUILDING CO. *v.* LONDON & NORTH EASTERN RY. (1934), 103 L. J. K. B. 180 ; 50 T. L. R. 257 ; 39 Com. Cas. 182 ; *sub nom.* LONDON & NORTH-EASTERN RY. CO. *v.* FURNESS SHIPBUILDING CO., LTD., 150 L. T. 382, H. L.

1826c. Property of defendant "direct or contributing cause of the accident."]—LONDON PASSENGER TRANSPORT BOARD *v.* T. WALTON (LONDON), LTD. (1934), 78 Sol. Jo. 224.

1830. *Add. Annotation :—As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

1867. *Add. Annotations :—***Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58 ; Hoods' Trustees *v.* Southern Union General Insce. of Australasia, [1928] Ch. 793.

1877. *Add. Annotation :—***Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1881. *Add. Annotation :—***Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1882. *Add. Annotation :—***Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Des Olivaes (Visconde), [1929] 1 Ch. 221.

1889. *Add. Annotations :—As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65. *As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] A. C. 601. *Generally,* **Refd.** May & May, [1929] 98 L. J. K. B. 770.

1895a. —— Against "loss sustained"—Actual loss necessary—Effect of deed of assignment by debtor.]—STANLEY (MONTAGU) & CO. *v.* SOLOMON (J. C.), LTD., No. 1745a, *ante.*

1908a. —— —— Indemnity against loss on debentures—Sale of debentures by party indemnified.]—Deft. was the chairman of the S. Co., which at the end of 1921 was seeking to issue £15,000 First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount ; & deft., having interested pltf. in the matter, sent him a letter of indemnity, dated Feb. 17, 1922, in these terms : "Regarding the issue of £15,000 First Lien Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80, which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf., having repurchased the debentures from his son, brought these proceedings to recover his loss :—*Held :* in selling the debentures pltf. had committed a breach of an implied term of the contract, & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169 ; 99 L. J. Ch. 520 ; 143 L. T. 247, C. A.

PART XII. SECT. 7, SUB-SECT. 1.

b 1. —— ***Claim by liquidator of indemnified party—Before payment of liability.***]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability :—*Held :* he could recover the amount even though the agents having gone into liquidation had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—**IND.**

HIGHWAYS, STREETS AND BRIDGES.

Part I.—Definitions and Characteristics.

4. *Add. Annotation :*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

5. *Add. Annotations :—As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (4) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1930), 144 L. T. 132.

Add. Annotation :—Generally, **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

9a. —— **Land flooded at spring tides.**]—In 1928 pltf. purchased a large strip of foreshore & let part of it for caravans & bungalows. She erected a fence round the land side, with gates at three places at which persons other than local inhabitants were charged 1*d.* toll. Deft., the proprietor of a tea shop at the Western end of pltf.'s land, claimed that the fence obstructed five public or customary rights of way. Four of the alleged public ways were over land flooded at spring tides. For the purpose of asserting these rights, deft. pulled down some of pltf.'s fence, & did not absolve himself from association with a mob which also pulled down another part of the fence. Deft., without joining the A.-G., counterclaimed for a declaration that the five ways were public, alleging that his tea shop gave him an interest in their remaining open which was not possessed by the general public & that therefore the fiat of the A.-G. was not necessary :—*Held :* (1) there was a public right of way over three of the ways claimed ; (2) the damage done by deft. was excessive ; (3) the fiat of the A.-G. was necessary.—SEATON *v.* SLAMA (1932), 77 Sol. Jo. 11 ; 31 L. G. R. 41.

18. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 24 J. P. 10.

20. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

29a. ——.]—A.-G. *v.* TASKER, No. 263a, *post.*

52a. Road leading to the sea.]—Pltf. claimed damages against several defts. for trespassing over his land, & asked for an injunction. Defts. alleged that they were lawfully exercising public rights of way. Evidence was given of public user by five different classes of persons, extending over the whole period of living memory, of two defined ways over pltf.'s land from a public high road to the sea at high-water mark. It was also proved that pltf.'s land was in strict settlement from 1856 to 1908, & that during that period there was never an owner capable of dedication. The county ct. judge held that there being no owner capable of dedication during the period of proved public user, he was not entitled to infer dedication from such user. He held also that the ways claimed by defts. had no sufficient *terminus ad quem.* On appeal :—*Held :* (1) although the public have only limited rights over the foreshore, the sea may be a sufficient *terminus ad quem* for a public way, which may now be proved, even though it does not lead to a public place ; (2) where there is evidence of public user of a way throughout the period of living memory, but there has been no owner of the land capable of dedication during that period, the tribunal of fact which has to decide the issue of dedication or no dedication may infer a dedication at some date anterior to the earliest proved user by an owner capable of dedication ; (3) there is no *præsumptio juris* to compel the tribunal to draw such an inference even from unrebutted evidence of long-continued & uninterrupted user.—WILLIAMS-ELLIS *v.* COBB, [1935] 1 K. B. 310 ; 104 L. J. K. B. 109 ; 152 L. T. 133 ; 99 J. P. 93 ; 51 T. L. R. 131 ; 79 Sol. Jo. 11 ; 33 L. G. R. 39, C. A.

65. To the existing paragraph add as follows :—

(3) The words " annual payment towards the cost of the maintenance & repair " in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.

Annotations :—As to (1) **Consd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763. **Apld.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

66. *Add. Annotations :—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. *As to* (4) **Consd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

79. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

91a. Not confined to public highway.]—*Held :* the word " street " even in London does not necessarily mean a public highway.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479 ; 99 L. J. Ch. 274 ; 142 L. T. 626.

97. *Add. Annotation :*—**Refd.** Postmaster-General *v.* Birmingham Corpn., [1936] 1 K. B. 66.

137. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

PART I. SECT 1, SUB-SECT. 1.

10 i. *Once a highway always a highway.*]—A highway once laid out & recorded, the public acquire permanent rights in it, which are unaffected by non-user.—LEBLANC *v.* SAULNIER, [1934] 4 D. L. R. 109 8 M. P. R. 20.—**CAN.**

PART I. SECT. 1, SUB-SECT. 3.

45 i. *Cul-de-sac.*]—Scavenging may not be sufficient evidence that a *cul-de-sac* is a public highway.—JATINDRANATH BARAT *v.* CALCUTTA CORPN. (1930), I. L. R. 58 Calc. 1124.—**IND.**

PART I. SECT. 1, SUB-SECT. 4.

sk. *Religious procession.*]—There is a right in every community to take a religious procession, with its appropriate observances, along a highway. This is an inherent right & does not depend on the proof of any custom or long-established practice.—MUHAMMAD JALIL KHAN *v.* RAM NATH KHAN (1930), I. L. R. 43 All.—**IND.**

137a. —— ——.] — A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL, No. 951a, *post.*

146. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

164a. Whether public highway—Claim of dedication.]—Pltfs. claimed a declaration that a way over deft.'s land was a public highway for vehicular traffic up to a certain point & for foot traffic from that point to Cockington Church on the ground that dedication should be presumed from evidence of uninterrupted use by the public throughout living memory & from evidence of reputation. The church was surrounded by deft.'s grounds, &, apart from a private path from his grounds, there was no access to the church except by the way in question. Deft. admitted that there was a church way for parishioners along the way, but he denied that there was any public right of way. Since 1774 the title to the property had been such that the owners could, if so minded, have dedicated the way to the public. The freehold of the church was in the incumbent & it had fulfilled all the functions of a parish church, but no person had a right to enter it without the permission of the vicar & churchwardens when it was not open for Divine service. The ct. found that apart from parishioners comparatively few persons had visited the church until about 1890, but since the War large numbers of persons had done so by the way in question & no one had ever been turned back. Owing to the increased use of the way notices were put up that visitors must keep to the path & not pick the flowers & that there would be no admission through the gate after 6 p.m. There was also a notice "No thoroughfare except to the church." In 1923 annoyance from visitors began & the gate was ordered to be locked after dusk, but no complaint was ever made, though some persons were actually prevented from going along the way to the church :—*Held :* on the evidence, the use of the way could properly be explained as having taken place by permission, & there was no reason why the ct. should presume from that use dedication to the public, & therefore the action failed.—A.-G. *v.* MALLOCK (1931), 146 L. T. 344 ; 48 T. L. R. 107 : 30 L. G. R. 141.

Part II.—Highway Statutes, Areas and Authorities.

SECT. 2.—**HIGHWAY AREAS AND AUTHORITIES** (p. 279).

See, now, Local Government Act, 1929 (c. 17), ss. 29–45.

Part III.—Origin and Proof of Highways.

177. *Add. Annotations :*—*As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

178. *Add. Annotations :*—*As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

181. *Add. Annotation :*—*As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

187. *Add. Annotations :*—**Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

189. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Tasker (1928), 92 J. P. 157 ; A.-G. *v.* Manchester Corpn. (1930), 46 T. L. R. 629. **Folld.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Consd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

194. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254. *As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107 ; Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

196. *Add. Annotation :*—*As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

201a. No legal presumption from long user.]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante.*

212. After this case add :—

Erection of notices.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (3).

216. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

PART I. SECT. 5, SUB-SECT. 1.

s1. *Street declared residential—Effect.*]—Once a street has been declared residential by the municipality under Ontario Municipal Act the owner of a building thereon may not conduct an undertaking business on the premises. —ST. CATHARINES *v.* HULSE, [1935] 4 D. L. R. 732 ; *revsd.*, [1936] 2 D. L. R. 453.—CAN.

PART I. SECT. 6, SUB-SECT. 2.

s8. *By Government survey—Prevails against previous possession.*]—MOUNTJOY *v.* R. (1861), 1 E. & A. 429.—CAN

PART III. SECT. 1.

r 1. —— ——.]—POINT ABINO ASS'N. *v.* BERTIE TOWNSHIP, [1927] 4 D. L. R. 503 ; 61 O. L. R. 120 ; *affd.*, 1928] 2 D. L. R. 31 ; 61 O. L. R. 610. —CAN.

PART III. SECT. 2, SUB-SECT. 2.

206 vi. —— *Crown patents issued in accordance with plan showing highway.*]—EDMONTON TOWN *v.* BROWN & CURRY (1893), 1 Terr. L. R. 454.—CAN.

206 vii. ——.]—*Re* PETERS, [1931] 3 D. L. R. 89.—CAN.

PART III. SECT. 2, SUB-SECT.

218 ii. —— ——.]—*Held :* no presumption of dedication from user by the public could be made against an owner who was in fact out of possession or control ; to justify such presumption it must be shown that there was some period during which the owner could

219. *Add. Annotations :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

236. *Add. Annotation :—As to* (1) **Consd.** Symes & Jaywick Assocn. Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551.

247a. —— **Land in settlement during living memory.**]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante*.

251. *Citations :*—For "L. R. 3 Exch. 316" read "L. R. 2 Exch. 316."

Add. Annotations :—As to (1) **Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159 ; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. *Generally*, **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

256. *Add. Annotation :—As to* (2) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

263a. ——.]—Where nothing is known about a way except that it is used, the origin of the way is to be found in the user ; & in such a case the user raises a legal presumption of dedication.

Upon proof that a path had been used by the public on foot & on horseback as of right during the period of living memory & that such right was reputed to exist theretofore back to the early part of last century : —*Held :* the path was dedicated to the public as a bridleway at or about the commencement of, or prior to the commencement of, last century.—A.-G. *v.* TASKER (1928), 92 J. P. 157.

266. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

270. *Add. Annotation :*—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

270a. Motive of user immaterial.] — HUE *v.* WHITELEY, No. 298a, *post*.

274a. —— **Reputed to exist for over one hundred years.**]—A.-G. *v.* TASKER, No. 263a, *ante*.

278. After this case add :—

Statutory periods.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (1), (2).

278a. —— **"Actual enjoyment."**]—The public had for forty years used a roadway at C. &, though there was some evidence of people being stopped or turned away, it was clear that in the majority of cases it had been used as a public highway without challenge. The owner had acquiesced in its inclusion in a town planning scheme as a public highway. No notice had been placed upon the way or served upon the local authority. No fence or gate had been erected to prevent its use before the end of 1934, & it was the removal of a fence or gateway then erected that was complained of in this case as an act of trespass :—*Held :* (1) upon the evidence, the roadway had been dedicated & used as a public highway ; (2) "actually enjoyed by the public as of right" in Rights of Way Act, 1932 (c. 45), s. 1 (1), means actually enjoyed by the public as of right, & the exercise of such right has been actually suffered by the owner for the period of 20 years ; (3) "as of right" in the same sub-sect. means in the exercise of a right vested in the public & not by permission of the owner from time to time given ; (4) "without interruption" in the same sub-sect. means without actual & physical stopping of the enjoyment of the right ; (5) defts. were entitled under Public Authorities Protection Act, 1893 (c. 61), s. 1 (*b*), to costs to be taxed between solr. & client.—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, [1937] 2 K. B. 77 ; [1936] 2 All E. R. 422 ; 106 L. J. K. B. 603 ; 100 J. P. 381 ; 52 T. L. R. 516 ; 80 Sol. Jo. 615 ; 34 L. G. R. 356.

278b. —— **"As of right."**]—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, No. 278a, *ante*.

278c. —— **"Without interruption."**]—MERSTHAM MANOR, LTD. *v.* COULSDON & PURLEY URBAN DISTRICT COUNCIL, No. 278a, *ante*.

285. *Add. Annotations :—As to* (1) **Distd.** Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; A.-G. *v.* Mallock (1931), 48 T. L. R. 107 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *As to* (2) **Consd.** Trafford *v.* Thrower (1929), 45 T. L. R. 502.

298. *Add. Annotations :—As to* (2) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. *Generally*, **Refd.** Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98.

have taken action to exclude the public. —A.-G. *v.* DUNEDIN, [1929] N. Z. L. R. 261.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 4.—B. (a).

257 xi. ——.]—In an action of trespass, deft. alleged a public right of way across plffs.' land :—*Held :* the evidence as to uninterrupted public user of the alleged road for a period coextensive with the memory of witnesses, along with other circumstances in evidence, justified a finding of dedication.—FULTON *v.* CREELMAN, [1931] S. C. R. 221 ; 1 D. L. R. 733 ; *affg.*, [1930] 4 D. L. R. 43.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—B. (c).

sd. ***Lane less than prescribed minimum width of private streets—No dedication inferred.***]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

sf. ***Track leading to foreshore.***]—A proprietor, who owned the foreshore *ex adverso* of his lands, brought an action of declarator that there existed no right of way over a track about a quarter of a mile in length leading from a public road to the foreshore. The track was held to have been part of a road extending to the foreshore which became a public road in 1819, but which ceased to be maintained at public expense in 1836. It was proved that from 1865 to 1934, when the proprietor first attempted to close the track, it had been used by the public as an access to the foreshore for the bathing & recreation. The

been at one time a public road, the foreshore at its terminus had acquired the character of a public place which it had never lost ; & further that, even if it was not established that the track had ever been part of a public road, the resort by the public to the foreshore for recreation had made the foreshore a public place prior to 1894, when the prescriptive period began ; (2) the extent of the public use of the track throughout the prescriptive period was consistent, not with tolerance by the proprietor, but with the assertion of a right by the public.

Opinion, *per* Lord MONCRIEFF, that a public road could not lose its character as such merely by failure on the part of the road authority to maintain it & without resort by them to the statutory procedure for closing ....—BUTE (MARQUIS) *v.* M'KIRDY & M'MILLAN, [1937] S. C. 93.—**SCOT.**

298a. —— —— —— Paths joining existing highways.]—Evidence of long public user, as of right, of a pathway or roadway for the purpose of passing from one public place to another, is not the less ground for inferring dedication because recreation may have been the sole motive of such user.

H. & W. were neighbouring freeholders, & the sites of their properties originally formed part of the D. estate. The property of H. was originally let on a long lease in 1878 to one G., together with a right of way over a rough road, of the nature of a timber road, leading up from the London Road towards the property & past the property to Box Hill. In 1916 H. acquired the freehold of the property, & took a conveyance of the roadway in 1924. W., without the consent of H., opened a small gate for pedestrians in the boundary fence. In the action H. claimed a declaration that he was the freeholder of the said roadway & an injunction to restrain W. from trespassing thereon. Evidence was given of public user between Box Hill & the London Road for purposes of pleasure:—*Held:* the evidence of public user led to a presumption that the land had been dedicated, & that the motive of such user was irrelevant.—HUE *v.* WHITELEY, [1929] 1 Ch. 440; 98 L. J. Ch. 227; 140 L. T. 531.

310a. ——.]—A local authority acquired, in 1875, an area of land under its Act, in accordance with which it laid out streets & made improvements in the area. But a plot of land included in the area was practically neglected for sixteen years, & was then handed over to the local authority's Parks Committee for use as an open space & was drained & gravelled. Later, a fountain & certain structures were erected on the plot, & the public used the plot freely & continuously. In or about 1928 the local authority wished to build a tuberculosis dispensary & offices on the plot, & the Minister of Health approved its appropriation for that purpose. In an action by the Attorney-General on relation for an injunction to restrain the local authority from building so as to interfere with the right of user & enjoyment of the plot by the public:—*Held:* the public had not acquired by user a public right of way over the plot; the public rights over the plot were general & to some extent precarious, & could be destroyed under Public Health Acts (Amendment) Act, 1907 (c. 53), s. 95.—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112; 46 T. L. R. 629; 28 L. G. R. 634.

Annotation:—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

311a. Footpath along sea cliff.]—Where there was evidence of the user by the public of a footpath along a sea cliff for some distance when its direction continued on a line slanting inland, & during the course of some twenty years, owing to erosion by the sea, the footpath so used had receded about twenty or thirty feet inland, though the ct. was always slow to infer the dedication of a public right of way along a sea cliff, such a dedication could be here inferred, having regard to the fact that part of the footpath did not run along the sea cliff, & no objection to its user had been made by the owner of the land over which the footpath continued after leaving the sea cliff. Pltfs. having claimed that there was no public right of way over a strip of land under a portion of a fence removed by defts.:—*Held:* the public had wandered from the original right of way over the land of pltfs. when it was in the hands of their predecessor in title & was derelict, but the user of the new way by the public had never been acquiesced in, & there had never been a dedication of it to the public use, & pltfs. were entitled to a declaration that there was no such public right of way.—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL (1928), 92 J. P. 98.

313a. Road leading to seashore.]—WILLIAMS-ELLIS *v.* COBB, No. 52a, *ante*.

322a. —— User by sufferance.]—Deft. council claimed that there was a public footpath over pltf.'s park. On a plan attached to an inclosure award of 1816 no such public footpath was set out, & since that time down to 1901 the park had been in settlement with no one capable of dedicating a right of way to the public. The alleged footpath led from the public road over part of the carriage drive to the hall, & then turned off through the park, leading to only three farms & three or four cottages, & by its use a distance of about sixty-four yards was saved. There was no evidence of dedication, & the evidence of user was by the occupants of the farms & cottages & their friends:—*Held:* the proof of uninterrupted user was no more than evidence from which the ct. could infer that at some time the owner of the soil had dedicated the path to the public of which there was no evidence, & the evidence of user was user by sufferance only since 1816, before which no such public footpath was shown to exist.—FENWICK *v.* HUNTINGDON RURAL DISTRICT COUNCIL (1928), 92 J. P. 41.

329a. —— ——.]—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL, No. 311a, *ante*.

333. *Add. Annotation:*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

355a. —— ——.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of

PART III. SECT. 2, SUB-SECT. 4.—B. (d).

317 ii. ——.]—Where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or usage that has become a customary law of the place in respect of the persons or things in which it is concerned. But the establishment of such right only does not include the right to erect substantial structures over & round the tomb which would be an infringement of the possessory rights of its owner.—DAWSON ROUHAE ZAMANI BEGUM (PRINCE (1928), I. L. R. 6 Ran. 456.—**IND.**

PART III. SECT. 2, SUB-SECT. 4.—B. (e).

ss. *Right to obstruct—Locus in quo conveyed with adjoining property.*]—LEARY *v.* ARMSTRONG (1850), 12 N. B. R. (1 Han.) 22.—**CAN.**

the last purchase for value by those through whom the vendor claimed. Pltf. produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked :—*Held :* the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other than as regards tithe ; they were not, therefore, *primâ facie* evidence enabling pltf. to contend that the dedication was at a subsequent date, so as to shift upon deft. the *onus* of proving that the dedication was prior to 1782.—STONEY *v.* EASTBOURNE RURAL COUNCIL, [1927] 1 Ch. 367 ; 95 L. J. Ch. 312 ; 135 L. T. 281 ; 90 J. P. 173 ; 70 Sol. Jo. 690 ; 24 L. G. R. 333, C. A

Annotation :—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

355b. —— ——.]—A tithe map & award produced from the proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after Mar. 20, 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory as evidence, (1) that there was at the date of the award a carriage-way along the line shown on the map, & (2) of reputation that the way so shown had by the date of the award been dedicated to the public.—A.-G. (FEVERSHAM'S (EARL) TRUSTEES) *v.* STOKESLEY RURAL DISTRICT COUNCIL (1928), 26 L. G. R. 440.

356. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106

357. After this case add :—

Deposited with council.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (4).

361. *Add. Annotation :*—*As to* (1) **Distd.** Great Western Ry. *v.* Monmouthshire County Council (1929), 94 J. P. 6.

390a. —— **Persons going to church.**]—A.-G. *v.* MALLOCK, No. 164a, *ante*.

407. *Add. Annotations :*—**Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339. **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

Part IV.—Width of Highways.

443a. —— ——.]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post*.

454. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

476. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

Part V.—Rights in Connection with Highways.

486. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

491. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

492. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

494. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

496. *Add. Annotation :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

546. *Add. Annotation :*—**Expld.** Spillers, Ltd. *v.* Cardiff Assessment Committee & Cardiff Revenue Officer, [1931] 2 K. B. 21.

587. *Add. Annotations :*—**Distd.** Curtis *v.* Geeves (1930), 143 L. T. 48. **Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339.

588. *Add. Annotation :*—*As to* (2) **Consd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

597. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

601. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

605a. —— ——.]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post*.

607. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

608. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

616. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Apld.** Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433.

PART III. SECT. 2, SUB-SECT. 7.

404 i. *Non-user by public.*]—BRITISH COLUMBIA HOP CO., LTD. *v.* DISTRICT OF KENT, [1925] 3 D. L. R. 171 ; [1925] 2 W. W. R. 31.—**CAN.**

PART III. SECT. 3.

434 i. *Compliance with statutory requirements—Failure of commissioners to file return of laying out—Laying out not invalidated.*]—BROWN *v.* MCKEEL (1841), 1 Kerr, 311.—**CAN.**

—R. *v.* ROY, *Ex p.* DUGUENNE, [1931] 4 D. L. R. 748 ; 3 M. P. R. 104.—**CAN.**

sw. *Reservation in Crown grants.*]—In all grants under Public Lands Act, R. S. O., 1927, there is reserved to the Crown 5 per cent. of the lands for purposes of roads.—CRANE LUMBER CO. *v.* BRISSON, [1936] 3 D. L. R. 744 ; O. R. 457.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

481 i. *Right to walk in carriage-way—Extent of liability of highway*

foot

render the way safe for vehicles.—BELLING *v.* HAMILTON CITY (1902), 3 O. L. R. 318.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

si. —— —— ——.]—HASAN *v.* ZAMAN (1924), 41 T. L. R. 88.—**IND.**

616a. —— **Trees.**]—As owner of a house at C., which was bounded on the west & north by public highways known as Mill Lane & St. Andrew's Road respectively, pltf. claimed the property in certain polled lime trees, proved to be about 110 years old, standing along the edge of the footpaths on the eastern & southern sides of those two highways. Pltf. having refused to comply with defts.' notice to remove the trees on the ground that they were dangerous & obstructions to traffic & defts. having, in consequence of her refusal, themselves removed three of the trees in St. Andrew's Road, pltf. brought this action, by which she claimed an injunction to restrain defts. from removing the remaining trees & for certain other relief. She claimed that the trees had been planted before the dedication of the roads as public highways, & that there had been excepted from such dedication the portions of the roads in which the trees were planted. There was no evidence of such restricted dedication as pltf. asserted, but, on the contrary, evidence that the trees in both roads were planted in areas over which, as ancient highways, the public had rights of passage. It was proved that some of the trees were, through disease & decay, so unstable as to be an immediate danger to the public & a nuisance to the highway, that others threatened to become a similar danger at short notice, & that the rest, including the three trees which defts. had removed, were a danger to traffic & a nuisance. On Aug. 16, 1920, the boundary of the borough of New Windsor was altered so as to include the parish of C. (Without), & it was admitted that the two roads were highways repairable by the inhabitants at large :—*Held :* (1) the roads were ancient highways upon which, after dedication to the public use, the trees were planted ; (2) even assuming pltf. had property in the trees, defts. as to those trees which had been proved to be a nuisance to the highway, had not merely a right but a duty to remove them, & as to the remaining trees, they were entitled to remove them as being obstructions to the rights of the public over the entire width of the roads, which were not limited to the use of the carriageways ; (3) the trees, as being parts of the " streets " or as produce of the soil thereof, vested under Public Health Act, 1875, in & came under the control of defts. as the highway authority, with the result that pltf. was not in a position to complain, & her action failed.—STILLWELL *v.* NEW WINDSOR CORPN., [1932] 2 Ch. 155 ; 101 L. J. Ch. 342 ; 147 L. T. 306 ; 76 Sol. Jo. 433 ; 30 L. G. R. 477.

618. *Add. Annotations :*—**Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

626a. Road built upon open arches.]—The vesting of a highway in a local authority as highway authority includes, in addition to the surface of the road, the " area of user," *i.e.*, so much of the soil & sub-structure as is necessary to enable the authority to perform its statutory duties of repair & maintenance of the highway. In a case where a public carriage road was built upon a raised viaduct resting upon open arches & descending to the ground level upon embankments :—*Held :* (1) vesting of the road included (*a*) the whole masonry & structure of the viaduct, together with such soil as it actually occupied, (*b*) the soil of the embankments ; but not (*c*) the soil lying beneath & between the arches of the viaduct. The local authority, however, was entitled to a right of access to the latter at all times for the purpose of inspection & maintenance ; (2) such right of access was not forfeited by laches or acquiescence on the part of the local authority where it was necessary to enable such authority to perform its statutory duties.—HERTFORDSHIRE COUNTY COUNCIL *v.* LEA SAND, LTD. (1933), 98 J. P. 109 ; 32 L. G. R. 279.

627. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

634. *Add. Annotations :*—**Consd.** Marshall *v.* Blackpool Corpn. (1932), 102 L. J. K. B. 91. **Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

637. *Add. Annotation :*—**Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

641a. —— ——.]—Applt. was convicted of driving a motor car across the pavement in Thread-

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PART V. SECT. 2, SUB-SECT. 3.

616 iv. ——.]—In the United Provinces all public streets are vested in the municipality by statute. The Municipal Board sanctioned the erection of a portico resting upon pillars standing on the footpath. Pltf., who was, subject to the statutory rights of the municipality, the owner of the soil of the highway, claimed a mandatory injunction ordering its demolition & damages, basing his action upon a trespass to his property in the land :—*Held :* although the municipality under the statute took only a restricted interest in the street sufficient to safeguard its use as a highway, they had power to sanction the erection of the portico, & pltf. had no right of action in trespass. The ct. expressed no opinion as to pltf.'s right to complain of the portico as a nuisance in a properly constituted action.—SEWAI JAIPUR *v.* ARJUN LAL, [1937] 4 All E. R. 5 ; 81 Sol. Jo. 763, P. C.—**IND.**

n i. *Under Town Planning & Development Act, 1920.*]—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked " private roads to be vested in " the owner :—*Held :* the fee-simple of these roads did not vest by virtue of Town Planning & Development Act, 1920, in the district council.—LOXTON DISTRICT COUNCIL *v.* BRUCE, [1927] S. A. S. R. 463.—**AUS.**

PART V. SECT. 3, SUB-SECT. 1.

636 i. —— *From any part of land.*]—Where land is described in a grant as abutting on a road the grantee may come upon the road from any part of the premises & the grantor is estopped from denying the existence of the road.—DALHOUSIE LAND CO., LTD. *v.* BEARCE (1933), 6 M. P. R. 399.—**CAN.**

sd. *Interference with right — Passengers waiting for cars—Nuisance.*]—BUTLER *v.* NOVA SCOTIA L. & P. Co., [1930] 2 D. L. R. 680 ; 1 M. P. R. 407. —**CAN.**

se. *Effect of Municipal Act, R.S.O 1927.*]—At common law an owner of land was entitled to access to an adjoining public highway at any point at which his land actually touched such highway, for any kind of traffic which was necessary for the reasonable enjoyment of his premises & which would not, as he proposed to conduct it, cause a substantial nuisance. A municipal authority, in the absence of an express right to the contrary, was not entitled to deprive him of the full enjoyment of such right. But in Ontario Municipal Act, R. S. O., 1927, & Local Improvement Act, R. S. O., 1927, have created an interference with such common law rights.—TORONTO TRANSPORTATION COMMISSION *v.* SWANSEA VILLAGE CORPN., [1935] S. C. R. 455 ; 3 D. L. R. 619.—**CAN.**

sf. *Extent of right.*]—An adjoining landowner cannot compel a municipality to permit a change in the level of the sidewalk in front of his land to make it suitable for the purpose for which he proposes to use his land.—T. T. C. *v.* SWANSEA, [1935] 3 D. L. R. 619.—**CAN.**

needle Street, contrary to City Police Act, 1839 (c. xciv.), s. 35 (7), which provides that, "Every person who shall . . . draw or drive any cart or carriage . . . so that it can stand across or upon any footway," shall be guilty of an offence. He drove across the pavement into a courtyard forming part of the premises of the National Provincial Bank, there being no evidence of any other means of access to the courtyard from the highway. The footway was not constructed to allow of vehicular traffic crossing it, & there was a kerb six inches high. There were no pedestrians on the footway at the time, & the right of passage by the public was not interfered with. Applt. was an employee of the bank authorised to drive the car into the courtyard. There was no evidence either as to the ownership of the footway or of any prior user of the courtyard for vehicular traffic:—*Held:* since access to the courtyard by vehicles was not shown to be essential to any user of the premises, the magistrate was entitled to convict.—CURTIS *v.* GEEVES (1930), 143 L. T. 48; 94 J. P. 71; 46 T. L. R. 187; 28 L. G. R. 103; 29 Cox, C. C. 126, D. C.

Annotation:—**Consd.** Marshall *v.* Blackpool Corpn., [1933] 2 K. B. 339.

642a. —— **Construction of communication for vehicles—Effect of local Act.**]—By sect. 62 of the Blackpool Improvement Act, 1879: "Every person desirous of forming a communication for horses or vehicles across any footpath so as to afford access to any premises from a street shall first submit to the corpn. a plan of the proposed communication, showing where it will cut the footpath, & what provision (if any) is made for kerbing & for a paved crossing, & the dimensions & gradients of the necessary works, & after having obtained the sanction of the corpn. may execute the works at his own expense under the supervision & to the satisfaction of the surveyor, & not otherwise, & if any person drives or permits or causes to be driven any horse or vehicle across any footway unless & until such a communcation as aforesaid has been so made he shall be liable to a penalty not exceeding five pounds."

Applts., proprietors of motor coaches, were owners of land bounded by a wall & abutting upon a street which was partly a footpath & partly a carriage-way. The footpath ran along the wall, & the carriage-way ran along the footpath. Applts., being minded to open a passage for vehicles from their land across the footpath & so into the carriageway, submitted to resps. a plan of the proposed works in accordance with the above enactment, & applied to them to sanction the works. Resps. found no fault with the proposed works as works, but they refused to sanction them, having regard to the safety of the public & the convenience of pedestrians & vehicular traffic which might use the highway:—*Held:* resps. were not authorised by the above sect. to take these matters into consideration in deciding whether to give their sanction to the proposed works; for the owner of land adjoining a highway has at common law a right of access to any part of the highway unless some statute has deprived him of the right, which sect. 62 of the Blackpool Improvement Act, 1879, did not purport to do.—MARSHALL *v.* BLACKPOOL CORPN., [1935] A. C. 16; 103 L. J. K. B. 566; 151 L. T. 286; 98 J. P. 376; 50 T. L. R. 483; 78 Sol. Jo. 488; 32 L. G. R. 329, H. L.

645a. **Restriction on development—Compensation.**]—MELKSHAM URBAN DISTRICT COUNCIL *v.* WILTSHIRE COUNTY COUNCIL, [1937] 4 All E. R. 142, D. C.

648. *Add. Annotation:*—**Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

651. *Add. Annotation:*—*As to* (1) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

657. *Add. Annotation:*—*As to* (2) **Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

661. *Add. Annotation:*—**Dbtd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

664. *Add. Annotation:*—*As to* (2) **Refd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

665. *Add. Annotation:*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

676. After this case add "—— **Grant void for uncertainty.**]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 564, No. 637."

756. *Add. Annotation:*—**Apld.** Powell Lane Manufacturing Co. *v.* Putnam (1928), [1931] 2 K. B. 305, n.

757. *Add. Annotation:*—**Consd.** Race *v.* Postmaster-General (1932), 146 L. T. 489.

779a. —— **Use of competing bridge.**]—A statutory co., formed for the purpose of building a bridge across the river Derwent, were empowered by their Act of Parliament to exact tolls from persons using the bridge, & the Act further provided that it should not be lawful for any person for hire or recompense to convey any other person, carriage, article or thing across the Derwent within one mile of the said bridge, with intent to evade payment of tolls. Another bridge was built by a local authority within one mile of the co.'s bridge, & a co. owning motor omnibuses made use of the new bridge for the purpose of conveying passengers & goods across the river in motor omnibuses:—*Held:* the motor omnibus co. had not substituted as a means of taking persons & articles across the river some means of conveyance other than the co.'s bridge & had not, therefore, contravened the provisions of the statute, & accordingly the proprietors of the old bridge were not entitled to an injunction restraining the motor omnibus co. from conveying passengers & goods across the new bridge.—LOFTSOME BRIDGE CO. OF PROPRIETORS *v.* EAST YORKSHIRE MOTOR SERVICES, LTD. (1933), 97 J. P. 268; 31 L. G. R. 317.

PART V. SECT. 4.

r 1. —— —— ——.]—LODGE *v.* MONCTON, [1936] 4 D. L. R. 66; 10 M. P. R. 435; 6 F. L. J. (Can.) 37.—**CAN.**

e 1. —— —— —— *Grade of street lowered causing subsidence.*]—NEW WESTMINSTER CITY CORPN. *v.* BRIGHOUSE (1892), 20 S. C. R. 520.—**CAN.**

e ii. —— *Street closed by agreement between municipality & railway company.*]—The closing of a street under a joint agreement between a railway co. & a municipality will entitle an adjoining owner to damages.—HOLEPROOF HOSIERY CO. *v.* LONDON, [1936] 4 D. L. R. 302.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

sf. *Power of International Bridge Company—To regulate charges.*]—CANADA SOUTHERN RY. CO. *v.* INTERNATIONAL BRIDGE CO. (1883), 8 App. Cas. 723.—**CAN.**

Part VI.—Repair of Highways.

786a. —— —— **Increased burden of traffic.**]—*A road was constructed by pltf. corpn. under powers conferred by a private Act of 1875, which enacted that the road should be constructed according to a certain specification & that it should thereafter be maintained at* pltfs.' expense. The road was completed in 1878 as a waterbound macadamised road in accordance with the statutory requirements & was fully maintained by them for many years, but ultimately it deteriorated owing to the increase of traffic of a kind unknown in 1878, & unless resort was had to tar-spraying, or to some similar modern expedient, the existing traffic would rapidly destroy the road:—*Held:* (1) pltfs. were liable to maintain the road in the condition in which it was completed in 1878, & that liability still continued, notwithstanding the change of circumstances brought about by the increase of traffic; (2) the obligation to maintain the road rested on pltfs. alone.—MANCHESTER CORPN. *v.* AUDENSHAW URBAN COUNCIL & DENTON URBAN COUNCIL, [1928] Ch. 763; 97 L. J. Ch. 276; 139 L. T. 509; 92 J. P. 163; 44 T. L. R. 628; 72 Sol. Jo. 452; 26 L. G. R. 343, C. A.

795a. Returning wall—Repair sufficient to support highway.]—A.-G. & TAYLOR & SON, LTD. *v.* TODMORDEN BOROUGH COUNCIL, [1937] 4 All E. R. 588.

797. *Add. Annotation:—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

819. *Add. Annotation:—As to* (1) **Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

834. *Add. Annotation:—As to* (1) **Refd.** Skilton *v.* Epsom and Ewell Urban District Council, [1937] 1 K. B. 112.

876. *Add. Annotation:—Generally,* **Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

882. *Add. Annotation:*—**Consd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

892. *Add. Annotations:—As to* (1) **Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Refd.** Reigate Corpn. *v.* Surrey County Council [1928] Ch. 359.

945. *Add. Annotation:*—**Consd.** Garnett *v.* Pratt, [1926] Ch. 897.

951. *Add. Annotation:*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

951a. —— ——.]—Relators were trustees of two wills, & as such owned lands abutting upon a certain road in the Metropolitan Borough of W. By notices dated Feb. 14, 1928, the trustees were required to pay to defts. two sums amounting to £1,473 11*s.* 2*d.*, being the estimated expenses of making up as a new street certain portions of the road upon which their lands respectively abutted. The A.-G. claimed a declaration that those portions of the road were highways repairable by the inhabitants at large, & relators as co-pltfs. claimed a declaration that those portions of the road were not "new streets" within Metropolis Management Acts, 1855 & 1862. Defts. contended that the road in question had not been dedicated to the public before Mar. 20, 1836, & was therefore not repairable by them. Further, they said that each of the portions of the road was in fact & in law a "new street" within Metropolis Management Acts, & that neither they nor their predecessors had at any time taken into charge or assumed the maintenance of the paving or roadway of the street of which the said portions of the road formed part:—*Held:* (1) on the evidence there was nothing to show that the road in question was anything else than a public highway repairable by the inhabitants at large. The fact that repairs had been done by private owners for their own benefit was no evidence of any liability on their part to repair *ratione tenuræ;* (2) neither of the portions of road in respect of which the claim arose constituted a "new street" within Metropolis Management Acts.—A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL (1929), 93 J. P. 173; 27 L. G. R. 700.

997. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92

1002a. Walls & roof of tunnel.]—In 1823 a road was constructed as a private road by S., on.

PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 ii. —— —— *Every portion of road.*]—A municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523; [1925] 2 W. W. R. 657; 35 Man. L. R. 190.—**CAN.**

789 iii. —— —— ——.]—Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.—BLACKIE *v.* MUNICIPALITY OF MINIOTA, [1925] 4 D. L. R. 1054; [1925] 3 W. W. R. 561.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

sg. *Liability of village—Village Act, R. S. A.* 1922 (c. 109), *s.* 88.]—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—GREENAWAY *v.* CANADIAN PACIFIC RY. CO., [1925] 1 D. L. R. 992; [1925] 1 W. W. R. 667; 21 Alta. L. R. 331; *varying*, [1924] 4 D. L. R. 977; [1924] 3 W. W. R. 498.—**CAN.**

sd. *Improved road—Under control of Minister—Liability of adjoining owners.*]—When a municipal corpn. has passed a resolution placing under the control of the Minister of Roads the maintenance & repairs of an improved road, the costs incurred by the corpn. are levied only on the properties whose owners are bound to maintain the road, if there is a byelaw then in force to that effect, notwithstanding the facts that the resolution of the corpn. was adopted years after the enactment of the byelaw & that the cost of improvements made under the authority of the Minister was higher than anticipated by the ratepayers, when they petitioned for an improved road, & by the byelaw describing the work & imposing the expense on certain interested landowners.—LANCTOT *v.* ST. CONSTANT CORPN., [1931] S. C. R. 614.—**CAN.**

se. *Unincorporated police village.*]—The trustees of an unincorporated police village are under no duty to keep the sidewalks & highways in repair, & they are not therefore liable in damages to any one who is injured as a result of the non-repair of such sidewalks or highways.—BROOKS *v.* WHYTE, [1934] O. R. 55; 1 D. L. R. 463.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.

sf. *Covenant to "repair"—Reconstruction not included.*]—*Held:* as a covenant to repair is not a covenant to make a new thing, & inasmuch as to do what the suppliant now required of resp. would practically amount to reconstruction of the whole of said wall, such work did not come within the meaning of "repairs" called for by the covenant in the contract.—ST. JOHN CITY *v.* R., [1932] S. C. R. 537; 2 D. L. R. 803; *affd.*, [1931] Ex. C. R. 188.—**CAN.**

through, & under his own land. In order to make the road S. tunnelled under an existing footpath. In 1923 the road became a main road, pltfs., S.'s successors in title to the soil through which the tunnel was driven, being the road authority. In 1924 it became necessary to repair the walls & roof of the tunnel:—*Held:* (1) the walls & roof of the tunnel either formed part of the highway or were necessary for its maintenance, & the costs of their repair were costs within Local Govt. Act, 1888 (c. 41), s. 11 (2), towards which defts. were bound to make an annual payment; (2) even if S., having in tunnelled under an existing highway, became liable *ratione nocumenti* to repair the part of the tunnelled road under the highway, that liability did not descend to pltfs. under Local Govt. Act, 1888, s. 97, because pltfs. were not only S.'s successors in title but also a highway authority.—REIGATE CORPN. *v.* SURREY COUNTY COUNCIL, [1928] Ch. 359; 97 L. J. Ch. 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278.

Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

1082. *Citations:*—For "2 Saund." read "2 Wm. Saund." For "185 E. R." read "85 E. R."

Part VIII.—Powers, Duties and Liabilities of Highway Authorities.

1146a. Removal of footway.]—A municipal corpn., in exercise of its powers as highway authority under Public Health Act, 1875 (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to defts. to restore the footway to a width of 1 ft. less than before:—*Held:* the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of defts. in removing the footway was unreasonable & arbitrary, & it was not sufficient for the action to be *bonâ fide;* & the order was properly made.—HOWARD-FLANDERS *v.* MALDON CORPN. (1926), 135 L. T. 6; 90 J. P. 97; 70 Sol. Jo. 544; 24 L. G. R. 224, C. A.

Annotation:—**Refd.** Symes & Jaywick Association Properties, Ltd., *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551.

1164a. Duty to inspect trees—On private ground adjoining highway—Patent danger.]—MACKIE *v.* DUMBARTONSHIRE COUNTY COUNCIL, WESTERN DISTRICT COMMITTEE (1927), 71 Sol. Jo. 710; 91 J. P. Jo. 634, H. L.

PART VII. SECT. 1.

1006 ii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sk. *Not suspended by provision of statutory remedy.*]—R. *v.* TOWN OF PARIS (1862), 12 C. P. 445.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.—B.

1107 i. *Neglect to repair after conviction—Writ de nocumento amovendo.*]—R. *v.* PORTAGE LA PRAIRIE RURAL MUNICIPALITY (1905), 2 W. L. R. 141; 10 Can. Crim. Cas. 125.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

b i. ——.]—STRONG *v.* ARRAN (1913), 28 O. L. R. 106: 4 O. W. N. 765: 12 D. L. R. 44.—**CAN.**

sm. *No power to alienate part of old road.*]—CHAPPUS *v.* LA SALLE, [1927] 3 D. L. R. 764; 60 O. L. R. 564; *affd.*, [1928] 2 D. L. R. 386; 62 O. L. R. 139.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

f i. —— —— 18 *Vict. c.* 100.]—QUEBEC NORTH SHORE TURNPIKE ROAD TRUSTEES *v.* VEZINA (1884), Cass. Dig. (2nd ed.) 758.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

1164a i. *Duty to inspect trees.*]—A tree planted in a city highway fell upon a motor car. The tree had long been in a decaying condition:—*Held:* the city corpn., having by bye-law assumed the duty of caring for the trees planted upon the highway, were liable for discharging that duty negligently.—HUESTIS *v.* CITY OF TORONTO, [1926] 3 D. L. R. 142; 58 O. L. R. 648.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.

c i. *S. P.* PHEASEY *v.* EDMONTON (Alta.), [1927] 2 W. W. R. 445.—**CAN.**

r (p. 389) **i.** ——.]—Pltf. slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous condition. Pltf.'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger:—*Held:* the city corpn. were guilty of gross negligence within Consolidated Municipal Act, 1922, 460 (3), & were liable.—COKERS *v.* [1925] 2 D. L. R. 230; 56 O. L. R. 451; *revsg.*, [1924] 2 D. L. R. 333.—**CAN.**

r (p. 389) **ii.** —— *Dangerous condition known to pedestrian.*]—Where a person, who knows that a sidewalk is in a dangerous condition because of a pile of slippery snow thereon, deliberately makes use of it, instead of walking on the road as he has previously done, & thereby sustains injuries, the maxim *volenti non fit injuria* is applicable.—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—**CAN.**

r (p. 389) **iii.** —— *Depression caused by permitting children to use sidewalk as slide—Gross negligence.*]—MAITLAND *v.* PEMBROKE, [1929] 1 D. L. R. 191.—**CAN.**

r (p. 389) **iv.** —— *Exemption from liability except for gross negligence.*]—MCKEE *v.* WINNIPEG CITY, [1929] 1 D. L. R. 65; [1928] 3 W. W. R. 561.—**CAN.**

r (p. 389) **v.** —— *Used by children as slide.*]—MAITLAND *v.* PEMBROKE (Ont.), [1929] 1 D. L. R. 191.—**CAN.**

so. *Method adopted temporarily dangerous—Whether gross negligence.*]—Where ice or icy snow covered the surface of a sidewalk in a city & the method of removing it used by men

1191a. —— Obstruction during construction of new road.]—A corpn., in making a new road connecting two existing roads in the same straight line with a bridge across a ravine dividing them, pulled down an old wall which closed a *cul de sac* in which one of the roads terminated, partly constructed the new road & erected a wooden fence at the end, beyond which was the ravine. Pltf. drove his car after dark down a public road leading straight into the new road under construction, & not seeing the fence in time, which had no red lamp or other warning of danger upon it, & was not watched, drove through it & fell with his car into the ravine, sustaining serious personal injury & damage to the car:—*Held:* the corpn. being in occupation of the land under construction as a new road, pltf. was not a trespasser upon private property, but an invitee, to whom they owed a duty to warn of any hidden danger; the unlighted fence was in the circumstances a concealed trap, &, pltf. not being guilty of contributory negligence, defts. were liable to him in damages for negligence.—OLDHAM *v.* SHEFFIELD CORPN. (1927), 136 L. T. 681; 91 J. P. 69; 43 T. L. R. 222; 25 L. G. R. 94, C. A.

Annotation:—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

1191b. —— Trench dug in unfinished road.]—Defts. in execution of a housing scheme were laying out a new road running eastwards from a certain highway & closed at its eastern end by a quickset hedge. Footpaths had already been laid out & edged with kerbstones; houses were being built on the northern side & heaps of earth & building materials made the footpath on this side impassable; the footpath on the south side was still unfinished, but was traversable; it was bounded by a fence of wooden posts & bars; the middle of the road was levelled but not metalled; across it, for laying an electric cable, defts. had cut a trench which they left unfenced & by night unlighted. They did not prevent persons, whether intending occupiers of houses or others, from walking down the new road. Pltf. on a Sept. evening, while there was still daylight, walked with a companion down the highway & into the new road along the southern footpath. Through a gap in the fence they went across other land occupied by defts. to a golf course. They returned somewhat hurriedly when it was growing dark, & pltf fell into the trench & was injured:—*Held:* the trench being apparent to all, there was nothing in the nature of a concealed danger or trap, & defts were not liable to pltf., who was a mere licensee.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

1197. *Add. Annotation:*—**Reld.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1216. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 127.

1219. *Add. Annotation:*—**Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

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employed by the city corpn. was such as to make the sidewalk temporarily dangerous to pedestrians who chose to walk on it while the work of removal was in progress, & an accident happened to a passer-by:—*Held:* the adoption of this method was not in itself evidence of "gross negligence."—LYONS *v.* OTTAWA CITY, [1928] 1 D. L. R. 171; 61 O. L. R. 405.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 7.

o i. —— ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietors of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road:—*Held:* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1929] S. C. 1.—**SCOT.**

o ii. —— ——.]—Defts. constructed a bridge across a navigable stream, having in it a draw or swing to enable vessels to ply on the river. There was not any gate or other protection to guard the approaches to the bridge when swung. A horse belonging to pltf. broke away from the person in charge of him, escaped out upon the public road, & ran a distance of about two miles to the bridge, reaching it while the draw was open to allow a vessel to pass, & rushing into the gap was drowned:—*Held:* deft. municipality could not be made answerable for the loss of the horse.—STEINHOFF *v.* KENT CORPN. (1887), 14 A. R. 12.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 8.

sq. *Restriction during repairs—What is sufficient warning of danger.*]—The duty of those making repairs upon a travelled road, is to take such reasonable care, by notice, lighting, guarding or otherwise, as may be reasonably necessary to prevent damages as the result of the temporary condition of the road. When this is done, & the condition of non-repair & of temporary danger is brought home to a person using the highway, he is called upon to use reasonable care on his part for his own safety.—WISE *v.* TORONTO TRANSPORTATION COMMISSION, [1928] 2 D. L. R. 557; 62 O. L. R. 120.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 9.

sd. *Street railway track adjacent to highway.*]—Pltfs. in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltfs. were injured & the car damaged:—*Held:* the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—JAMES *v.* TORONTO (1925), 57 O. L. R. 322; *affg.* 27 O. W. N. 233.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 11.—A.

1190 i. *Liability for failure to light—Statutory duty to light.*]—A motor car driven at night came into collision with a tramway island, & was damaged. In an action against defenders, as the local authority charged, under Edinburgh Municipal & Police Act, 1879, with the lighting of the streets, it was proved that a red lamp situated on the island was not lit at the time of the accident. It was also established that defenders had not failed in their duty with respect either to the construction & condition of the lamp, or to the precautions taken to ensure that it should remain alight during the hours of darkness:—*Held:* the standard of performance could not be absolute, but must be relative to the best available means of achieving exact performance, &, in the absence of evidence of any failure on the part of defenders to take every reasonable means of carrying out their statutory obligations, they fell to be assoilzied.—KEOGH *v.* EDINBURGH MAGISTRATES, [1926] S. C. 814.—**SCOT.**

r i. ——.]—A corpn. planted trees along one of its streets, & resp. sustained injuries through his motor car colliding with one of the trees on a dark night. There was a street-lamp in the vicinity, but it had gone out:—*Held:* the corpn. having caused a dangerous obstruction on the street, it was its duty to light & keep lighted the obstruction, so as to make it visible to persons using the street.—OAMARU (MAYOR) *v.* CLARKE, [1927] N. Z. L. R. 464.—**N.Z.**

PART VIII. SECT. 1, SUB-SECT. 11.—D.

1210 i. *Liability of driver—Accidental injury.*]—*Held:* the driver of a horse van, which was capsized against a lamp-post by a gust of wind, was not liable in damages under General Police & Improvement (Scotland) Act, 1862 (c. 101), s. 128, in respect that the breaking of the lamp was not his act.—HOGG *v.* MACPHERSON, [1928] S. C. (J.) 15.—**SCOT.**

1228a. Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).] —SANDGATE URBAN DISTRICT COUNCIL v. KENT COUNTY COUNCIL, No. 65, *ante*.

1236. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1237. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1239. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

1242. *Add. Annotation :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1251. *Add. Annotations :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1252. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1253. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1254. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1255. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1264. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

PART VIII. SECT. 2, SUB-SECT. 2.

sa. *Right to rebate—Basis of calculation.*]—Resp. village, an urban municipality within applt. county, was subject by statute to an annual general levy by the council of the county for county road purposes. Under a provision of an Ontario statute of 1926, repealed & re-enacted as sect. 28 (5) of Highway Improvement Act, R. S. Ont., 1927, the village first became entitled to a rebate in each year of 75 per cent. of the general annual rate raised in the village in the previous year. The annual general rate imposed in the years 1926, 1927 & 1928 included sums required by the council of the county to meet the interest & sinking fund charges upon debentures issued by it before 1926 in order to raise money for constructing & improving roads forming part of the county road system :—*Held :* in fixing the sum upon which resp. village was entitled to the 75 per cent. rebate the applt. county was bound to include the amount raised by it in the village towards the interest & sinking fund charges upon the debentures.—LINCOLN COUNTY CORPN. *v.* PORT DALHOUSIE VILLAGE CORPN., [1931] A. C. 808; 100 L. J. P. C. 219; 145 L. T. 653; 47 T. L. R. 613, P. C.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—A.

1240 xiv. —— ——.]—Sect. 730 of the Winnipeg Charter, which gives the city a right of indemnity "of & from all costs, claims, & damages" caused by any obstruction, encroaching or nuisance placed on any public road by any person, firm, or corpn. whether pursuant to permit or agreement with the city or not, does not apply to claims for damages arising out of encroachment or nuisances created by the joint act of the city & the third party.—SCHALER *v.* WINNIPEG (Man.), [1929] 4 D. L. R. 683; 2 W. W. R. 358.—**CAN.**

1252 vii. —— —— ——.]—In the absence of a statute imposing the duty to keep a sidewalk in repair :—*Held :* deft. municipality was not liable for injuries sustained by a pedestrian as the result of its decay, where its construction was authorised by statute & there was no evidence of original faulty construction; the fact that no bye-law authorising its construction could be found, was held immaterial since no statutory provision made a bye-law necessary for the laying of sidewalks in streets the possession of which was already vested in the municipality.—GILROY *v.* BURNABY CORPN., [1931] 3 W. W. R. 1; 4 D. L. R. 411; 44 B. C. R. 171.—**CAN.**

1260 xxii. —— ——.]—GREER *v.* MULMUR TOWNSHIP, [1926] 4 D. L. R. 132; 59 O. L. R. 259.—**CAN.**

1260 xxiii. —— ——.]—LINGRELL *v.* STOCKS No. 363 MUNICIPAL DISTRICT (Alta.), [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 313.—**CAN.**

1260 xxiv. —— ——.]—JESSON *v.* RURAL MUNICIPALITY OF LIVINGSTONE (Sask.), [1929] 2 D. L. R. 474; 1 W. W. R. 474.—**CAN.**

1260 xxv. —— ——.]—A break in a water main of deft. city having occurred about Jan. 22, the city made a cut in the granolithic sidewalk at that point & excavated the earth to the water pipe. The excavated earth & some gravel were thrown back into the hole, &, beginning about the following Apr. 10, the excavated surface was kept under observation for subsidence, but it was not until about the following July 5 that the city's department in charge of resurfacing sidewalks was requested to act, & from Apr. 10 to July 9 there was a subsidence of about 24 inches & on nine occasions refilling was found necessary. On the intervening June 5 pltf. wife tripped, in a hole in the excavation area where a subsidence of four or five inches had taken place, & was injured. She had passed over the place in question many times, the latest, earlier on the evening of the accident. The trial judge found that the delay in repairing the sidewalk was intentional & due to the awaiting of such a rainfall or rainfalls as would in the opinion of some official cause a final settlement. The expert testimony was that now the curing & placing of cement may be done in winter months at a cost but little greater than at other seasons :—*Held :* said testimony had not been reasonably met & could not be ignored as merely theoretical; &, aside from it, the city should be held negligent in delaying the repair work beyond Apr. or May.—BRENNAN *v.* WINNIPEG CITY, [1936] 2 W. W. R. 38; 6 F. L. J. (Can.) 3.—**CAN.**

t (p. 402) i. —— —— ——.]—THORESON *v.* COULEE, [1930] 1 D. L. R. 916.—**CAN.**

g (p. 403) i. —— —— ——.]—The law does not impose an unvarying obligation on a traveller using a city or country road of remembering all the pitfalls & dangers therein which he may have seen on previous journeys. The most that can be expected of a traveller who has knowledge of dangerous conditions is that the degree of care which he exercises should be reasonably commensurate with his knowledge. Where a municipality digs, for its own purposes, a pit extending into the road allowance it is bound to make the adjoining road safe for travellers.

Although country roads cannot be expected to be perfectly safe the public have a right to be protected against excavations or obstructions on or near the travelled way which render the road unsafe for travellers using it.—KELSO *v.* ROBLIN RURAL MUNICIPALITY, [1930] 3 W. W. R. 291; 4 D. L. R. 471.—**CAN.**

g (p. 403) ii. —— —— ——.]—Pltf. sued for damages to his separator caused by its overturning when a rear wheel dropped into a hole in a road. The road was a graded main market highway. The hole was near the centre of the grade & had been there during the whole of the summer, to the knowledge of the councillor of the division, &, at the time of the accident, Nov. 10, was frozen over & in the nature of a trap :—*Held :* the municipality was liable.—SHUPE *v.* PLEASANTDALE RURAL MUNICIPALITY, [1932] 1 W. W. R. 627.—**CAN.**

g (p. 403) iii. —— —— ——. *Contributory negligence.*]—R. *v.* GILBERT, [1933] 1 D. L. R. 795.—**CAN.**

g (p. 403) iv. —— —— ——.]—REYNOLDS *v.* VANCOUVER (CITY), [1937] 3 W. W. R. 46.—**CAN.**

g (p. 403) v. —— —— —— *Ditch without guards or railings.*]—WALTON *v.* YORK COUNTY CORPN. (1881), 6 A. R. 181.—**CAN.**

g (p. 403) vi.—— —— *Defective street in railway subway.*]—Where a city which is under a statutory duty to keep its streets in repair is charged in an action for damages with non-repair, the fact that the particular piece of pavement from the non-repair of which pltf.'s injury is alleged to have resulted happens to be under a subway constructed at the instance of, or for the benefit of, the city under a contract, approved by the Board of Railway Comrs. for Canada, between the city & a railway co. & under which the city agreed to maintain & repair said pavement, does not change the character or origin of the liability, if any, of the city to pltf.—SCHALER *v.* CITY OF WINNIPEG (No. 2) (Man.), [1930] 1 D. L. R. 499; [1929] 3 W. W. R. 433; 36 C. R. C. 224; *affd.*, [1931] 2 W. W. R. 709; 4 D. L. R. 198.—**CAN.**

g (p. 403) vii. —— *Failure to make proper provision at level crossing.*]—Where a city, under a statutory duty to keep its streets & sidewalks in repair, builds sidewalks up to the rails at a railway crossing, thus inviting pedestrians to use them & so cross the railway, it should see to it that suitable provision for such crossing is made & it is liable to a person who is injured because of its failure to do so.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392; [1931] 1 D. L. R. 87; 25 Alta. L. R. 104; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

g (p. 403) viii. —— *Sewers frozen over.*]—Municipality held not liable for damage caused by sewers becoming frozen over, since this was nonfeasance.—MCLEOD *v.* SYDNEY, [1935] 2 D. L. R. 807.—**CAN.**

g (p. 403) ix. —— *Culvert overgrown with weeds.*]—Pltf. while being driven on a summer afternoon in a motor car

1266. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1266a. —— **Non-repair of traffic stud.**]—Pltf. whilst cycling along a road in defts.' area reached a line of traffic studs at the same time as a motor-car. As the car passed her one of the studs which had become loose shot out & struck her bicycle with such force as to overturn it, & pltf. was thrown to the ground & injured. The studs were inserted in the road by defts. as the highway authority under the powers conferred on them by Road Traffic Act, 1930 (c. 43), s. 48, for the purpose of regulating the traffic, & there was evidence that the particular stud had been defective for some time. In an action brought by pltf. for damages for personal injury defts. contended that the stud formed part of the highway, & that pltf. had not proved misfeasance, for which alone a highway authority could be held liable :—*Held :* assuming, but without deciding, that the stud was physically part of the highway, the placing therein of the stud in such a manner that it became defective amounted to the placing of a nuisance on the highway, & defts. could not take advantage of the cases which dealt with maintenance of the highway, because the stud was not brought on to the highway as part of the maintenance of the highway under the Highway Act, 1835 (c. 50), but for the purposes of traffic direction under the powers conferred on defts. by Road Traffic Act, 1930 (c. 43).—SKILTON *v.* EPSOM & EWELL URBAN DISTRICT COUNCIL, [1937] 1 K. B. 112 ; [1936] 2 All E. R. 50 ; 106 L. J. K. B. 41 ; 154 L. T. 700 ; 100 J. P. 231 ; 52 T. L. R. 494 ; 80 Sol. Jo. 345 ; 34 L. G. R. 389, C. A.

1268. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1270. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1274. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

1278. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1280. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

owned by the driver was injured by the car running into a ditch dug by the deft. village across a street at an intersection. Over the ditch was a culvert 24 feet long, which was covered in by road material, except for a space of about two feet at each end. Deft. was under a statutory duty to keep its roads, culverts, etc., " in a reasonable state of repair, having regard to the character of the road, culvert . . . & the locality in which the same is situated," & the statute made it liable for damages sustained by reason of default in carrying out that duty. Pltf. alleged that his injuries were caused by deft.'s negligence in allowing the ditch to become filled with growing weeds & grasses which obscured it, & in not erecting signals or barriers around the ditch :—*Held :* the village was not negligent in constructing the ditch & maintaining it in the condition in which it was at the time of the accident.—BARTOK *v.* TANTALLON VILLAGE, [1937] 2 W. W. R. 81.—**CAN.**

h (p. 404) **i.** —— *Rocks near highway.*]—Owing to the failure of the driver of pltf.'s car to follow a diversion of the highway the car, after travelling over a grass plot, hit rocks imbedded in the earth by nature :—*Held :* the fact that the municipality had not erected a sign or signal indicating the diversion or placed a guard rail at said point was not negligence & the presence of the rocks in question near the highway did not render it liable.—PARKINS *v.* COULEE, [1930] 3 W. W. R. 609.—**CAN.**

h (p. 404) **ii.** —— *Stone slightly projecting.*]—Accident on highway, through striking a stone which projected less than 6 inches above the lowest depression in the roadway & was partly situate on the shoulder of the road, off the *via trita :*—*Held :* the highway was not in a state of non-repair.—WEIR *v.* TURNBERRY & HALLIDAY TOWNSHIP, [1932] O. R. 692 ; [1933] 1 D. L. R. 23.—**CAN.**

k (p. 404) **i.** —— *Failure of traveller to see.*]—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—KING *v.* RILEY, [1925] 2 D. L. R. 218.—**CAN.**

k (p. 404) **ii.** —— *Imbedded wire.*]—Pltf. was injured by tripping over a wire imbedded in a street :—*Held :* defts. had not discharged the *onus* of removing the presumption that they had failed in their duty.—WOODCOCK *v.* VANCOUVER (B. C.), [1927] 3 W. W. R. 759.—**CAN.**

k (p. 404) **iii.** —— *Projecting iron covering of excavation.*]—Pltf., while walking on a sidewalk, stumbled & fell as a result of the projection over the cement part of the sidewalk of the iron covering of an excavation which the city had allowed the abutting owner to make :—*Held :* the accident happened because of want of proper repair of the sidewalk, & the city had not shown that it had done all that could reasonably be done to prevent the want of repair.—MORAN *v.* VANCOUVER CITY, [1929] 1 D. L. R. 461 ; 40 B. C. R. 450 ; [1928] 3 W. W. R. 660.—**CAN.**

k (p. 404) **iv.** —— *Projecting slab of concrete.*]—*Held :* the defect was one which, in such a location, should have been remedied : it would have been negligence to have there constructed the sidewalk with such a rise, & deliberately to allow it to remain was not less a fault.—HENNESSY *v.* TORONTO CITY, [1928] 4 D. L. R. 378 ; 62 O. L. R. 541.—**CAN.**

k (p. 404) **v.** —— *Causing obstruction of view.*]—The failure of a municipality to cut down scrub & bush so growing at the side of a road-allowance near an intersection that it prevents persons travelling on the road from having a clear view of vehicles approaching on the intersecting road does not constitute a breach of the municipality's duty to repair under Rural Municipality Act, s. 196.—PARTRIDGE *v.* RURAL MUNICIPALITY OF LANGENBURG (Sask.), [1929] 3 W. W. R. 555 ; [1930] 1 D. L. R. 939 ; 24 S. L. R. 153.—**CAN.**

k (p. 404) **vi.** —— *Failure to erect substantial barricade during repairs.*]—When work of excavation on a highway was begun, the contractor put up two signs on the right-hand side of the road : " Drive slowly, men at work," & " closed to traffic." These signs were at some distance from the excavation. The road-superintendent put up a barricade with a red lantern & a detour sign at a place where the roads fork. This consisted of a board extending about half-way across the travelled portion of the highway, supported at one end by a telegraph pole & at the other by an iron rod set into the road :—*Held :* not a " substantial barricade " within Highway Improvement Act.—RUTTAN *v.* R., [1931] 1 D. L. R. 301 ; 66 O. L. R. 133.—**CAN.**

k (p. 404) **vii.** —— *Safety platform.*]—Pltf. while driving a motor car at night was injured by colliding with a safety island or platform which, under authority given deft. city by its charter, had been placed by it on the street for the use of persons using tram cars. The judge held that the platform was a " trap," because of the fact that it differed very little in colour, if at all, from the rest of the highway ; & he awarded pltf. damages. Deft. appealed :—*Held :* the appeal should be allowed, since the platform was properly placed, & there was no evidence that deft.'s failure to furnish more light at or near the platform than it did supply or to paint the platform amounted to misfeasance which left the highway in disrepair.—KNIGHT *v.* WINNIPEG, [1930] 1 W. W. R. 234 ; 1 D. L. R. 874 ; 38 Man. L. R. 430.—**CAN.**

cc i. ——.]—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523 ; [1925] W. W. R. 657 ; 35 Man. L. R. 190.—**CAN.**

cc ii. ——.]—In an action against a town for damages for injuries resulting from falling on a slippery sidewalk :—*Held :* the town which had received oral notice of the accident within 24 hours thereof had not been prejudiced by the failure to give written notice of the accident within the time stipulated by sect. 627 (3) of Municipal Act, & there was reasonable excuse within the meaning of sect. 628 of said Act for the delay in giving the written notice.—O'BRIEN *v.* DAUPHIN TOWN, [1930] 1 W. W. R. 907 ; 3 D. L. R. 330.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

1274 ii. —— ——.]—JACOBSON *v.* MUNICIPAL DISTRICT CROWN, [1930] 1 D. L. R. 847.—**CAN.**

1290a. —— **Road raised—Dangerous drop on to adjoining land.**]—Where a danger has been created on a highway by something done on the highway & not by anything done on the adjoining land, the owner of the adjoining land is not bound to make any alteration on or to his land to do away with that danger. Thus, where, in consequence of a highway having been made up by a highway authority, the level of the adjoining land, which is unfenced, has been lowered so as to cause a dangerous drop from the edge or kerb of the reconstructed highway, & a pedestrian slips down from the highway on to the adjoining land & is thereby injured, the owner of the adjoining land is not liable, but the highway authority is.—NICHOLSON *v.* SOUTHERN RY. CO. & SUTTON & CHEAM URBAN DISTRICT COUNCIL, [1935] 1 K. B. 558; 104 L. J. K. B. 265; 152 L. T. 349; 99 J. P. 141; 51 T. L. R. 216; 79 Sol. Jo. 87; 33 L. G. R. 140.

1316. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1322. *Add. Annotation :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

1327. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

Part IX.—Nuisances and Remedies.

1330a. —— —— **Enclosing highway.**]—R. *v.* OGDEN (1702), Fortes. Rep. 251; 7 Mod. Rep. 45; 92 E. R. 839.

1346. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

1363. *Add. Annotation :*—*As to* (1) **Consd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

1364. *Add. Annotation :*—**Consd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

1282 ii. —— —— —— *Injury to unlicensed driver.*]—The fact that a taxi driver has not obtained the chauffour's permit from the chief of police, & has not procured the driver's licence required by deft. city's byelaw, does not affect the liability of the city for injuries caused him by its negligence in allowing an obstruction, *e.g.*, a barrier around repairs, to remain on a highway without guarding it sufficiently with warning signs or lights.—BURCHILL *v.* VANCOUVER CITY, [1932] 1 W. W. R. 641; 3 D. L. R. 287; *affd.*, [1932] S. C. R. 620; 4 D. L. R. 200.—**CAN.**

1289 i. —— *Damage to adjoining owners—Construction of road causing flood.*]—Municipality :—*Held :* liable.—MEIER *v.* FRANKLIN, LIMPRECHT *v.* FRANKLIN, STREICH *v.* FRANKLIN (Man.), [1926] 3 D. L. R. 433; [1926] 2 W. W. R. 330.—**CAN.**

1289 ii. —— —— *Negligent construction of ditches causing flood.*]—STADNICK *v.* BIFROST MUNICIPALITY, [1927] 4 D. L. R. 61; [1927] 3 W. W. R. 40; 37 Man. L. R. 26.—**CAN.**

1289 iii. —— —— *Road materials carried into raceway by violent storm.*]—*Held :* defts. were not liable.—SNOOK *v.* BRANTFORD TOWN COUNCIL, (1856), 14 U. C. R. 255.—**CAN.**

q (p. 408) **i.** —— ——.]—Deft. municipality when in pursuance of its statutory powers it was constructing a sewer along the side of a highway erected a barricade of planks against which the earth taken from the excavation was piled up. The barricade & the pile of earth occupied so much of the sidewalk that a path only 18 inches wide was left behind the barricade for the use of pedestrians. Owing to ordinary rainfall & the moist character of the earth so piled up, there was a seepage of water carrying slimy particles of clay through the spaces between the planks resulting in the surface of the pathway becoming dangerously muddy & slippery. Pltf. while walking along the pathway slipped on said surface & was seriously injured :—*Held :* deft. had created & continued a nuisance which was the proximate & sole cause of pltf.'s injuries.—WATTS *v.* DISTRICT OF BURNABY (B. C.), [1929] 4 D. L. R. 142; 2 W. W. R. 612.—**CAN.**

r (p. 408) **i.** —— *Highway repaired with inflammable material.*]—While pltf. was driving a motor car along a side road, which although a legal highway was not often used, the rear wheels of the car suddenly sank down & the car became immovable. It then caught fire & was totally destroyed. The loam underneath the surface of the road was found to be on fire, although the surface appeared to be intact & there was nothing to indicate that the sub-surface was in the condition in which it actually was :—*Held :* taking into consideration all of the circumstances, including the locality, general nature of the soil & materials at hand, & the extent of the use of the road, the fact that deft. municipality used loam or swamp earth of an inflammable nature in constructing the road did not constitute negligence on its part.—CONROY *v.* SPRUCE GROVE, MUNICIPAL DISTRICT OF, [1931] 1 D. L. R. 555; [1930] 3 W. W. R. 605; 25 Alta. L. R. 193.—**CAN.**

r (p. 408) **ii.** —— *Upheaval of road—Construction according to expert opinion.*]—*Held :* no misfeasance.—TRUEMAN *v.* R., DEWAN *v.* R., [1932] O. R. 703; 4 D. L. R. 676.—**CAN.**

r (p. 408) **iii.** —— *Omission to take precautions during repair.*]—Omission to take precautions while repairing a highway is misfeasance & not nonfeasance.—CRAWFORD *v.* FRANKLIN MUNICIPALITY, [1924] 3 D. L. R. 964.—**CAN.**

r (p. 408) **iv.** —— *Street level raised—Adjacent property damaged.*]—Injury to property resulting from raising the street level under statutory authority is not actionable by virtue of Halifax City Charter, s. 528.—STONEMAN *v.* HALIFAX, [1936] 2 D. L. R. 504; 10 M. P. R. 466; 6 F. L. J. (Can.) 53.—**CAN.**

sk. *Road under repair by Minister of Highways.*]—*Held :* as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—HORSFIELD *v.* CANA RURAL MUNICIPALITY NO. 214, [1925] 2 D. L. R. 874; [1925] 1 W. W. R. 1067; 19 Sask. L. R. 378.—**CAN.**

so. *Who may sue—Accident to car—Guest of driver—Condition of road unknown to driver.*]—A passenger accept a ride in another's car, for the gross purpose of testing it on a rough road, cannot recover for an injury incurred by reason of the condition of the highway unknown to the driver.—KARBERG *v.* GRANTHAM TOWNSHIP, [1936] 1 D. L. R. 221.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (o).

1300 ix. ——.]—A municipal corpn. is not liable for injury caused by failure to make minor repairs to a street, but is liable if the damage occurs through negligence or fault in the original construction, & if it can be shown that the construction in the first place by those who were responsible for it was of a negligent, improper, or faulty description, they will be liable if damages result.—STEWART *v.* MONCTON (1925), 53 N. B. R. 427.—**CAN.**

sl. *Acts of inhabitants.*]—A municipality cannot be held liable on the ground of misfeasance because of the acts of its inhabitants where there is no evidence that in doing the acts complained of they were acting on behalf of the municipality & not merely for their own convenience.—DANBERG & DANBERG *v.* CANWOOD VILLAGE, [1932] 2 W. W. R. 320.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—A.

k i. —— *Obstruction on part not used by public.*]—R. *v.* BENNETT (1825), N. B. Dig. 400.—**CAN.**

sm. *Obstruction permitted—Duty of person causing obstruction to provide lights at night.*]—HERVEY *v.* FRENCH (1839), 4 Ont. Dig. 7433.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—D.

sn. *Areas forming part of sidewalk—Left uncovered.*]—On a dark night one of pltfs., wife of her co-pltf., stepped into an area, one of several, in the sidewalk of a street in a town & was injured. The areas were constructed as part of a building adjacent to the sidewalk & were for the benefit of the owners or tenants of the building. No authorisation by the town corpn. for the construction of the areas was shown, but it appeared that, since the year 1900, the corpn had looked after the coverings of the areas, treating them as part of the sidewalk. Before the accident, the area into which pltf. stepped had been

1366. *Add. Annotation :*—**Refd.** Wilchick *v.* Marks & Silverstone, *[1934] 2 K. B. 56.*

1369a. Fireplug — Projection above pavement—Liability of water company.]—A fireplug had been lawfully fixed in a footpath by defts. Originally the top of the fireplug had been level with the pavement, but in consequence of the ordinary wearing away of the footpath the fireplug projected half an inch above the level of the pavement. The fireplug itself was in perfect repair. Pltf., whilst passing along the footpath, fell over the fireplug & was hurt :—*Held :* as the fireplug was in good repair, & had been lawfully fixed in the footpath, no action by pltf. would lie against defts.—MOORE *v.* LAMBETH WATERWORKS CO. (1886), 17 Q. B. D. 462 ; 55 L. J. Q. B. 304 ; 55 L. T. 309 ; 50 J. P. 756 ; 34 W. R. 559 ; 2 T. L. R. 587, C. A.

Annotations :—**Apld.** Thompson *v.* Brighton Corpn., Oliver *v.* Horsham L. B., [1894] 1 Q. B. 332. **Consd.** Hartley *v.* Rochdale Corpn., [1908] 2 K. B. 594. **Apld.** G. C. Ry. *v.* Hewlett, [1916] 2 A. C. 511. **Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108. **Refd.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602 ; Steel *v.* Dartford L. B. (1891), 60 L. J. Q. B. 256 ; Dawson *v.* Bingley U. D. C. (1910), 75 J. P. 17 ; Papworth *v.* Battersea B. C. (1914), 79 J. P. 105.

1372a. —— —— Liability of water company.]—A water co., at the request & expense of the owner of a house, laid down a service pipe leading from their main under the street into the house, in which they placed a stop cock for the purpose of regulating the supply of water. This stop-cock was protected by a cover or guard-box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement, & pltf. while passing along the street tripped over it & sustained injury. The apparatus could not be repaired without being removed, or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repair of the hinge :—*Held :* the co., who alone had power to break up the street for the purpose of repairing the guard-box, were responsible for its repair, & liable in respect of the injuries sustained by pltf.—CHAPMAN *v.* FYLDE WATERWORKS CO., *[1894] 2 Q. B. 599 ; 64 L. J. Q. B. 15 ; 71 L. T. 539 ; 59 J. P. 5 ; 43 W. R. 1 ; 10 T. L. R. 580 ; 38 Sol. Jo. 629 ; 9 R. 582, C. A.*

Annotations :—**Consd.** Colne Valley Water Co. *v.* Hall (1907), 96 L. T. 395. **Distd.** Stacey *v.* Gas Light & Coke Co., Metropolitan Water Board & West End Tailoring Co. (1910), 9 L. G. R. 174. **Consd.** Batt *v.* Metropolitan Water Board, [1911] 2 K. B. 965. **Refd.** Grand Junction Waterworks Co. *v.* Rodocanachi, [1904] 2 K. B. 230.

1378a. —— In contravention of City Police Act, 1839, c. xciv, s. 35 (7)—Claim of right.]—CURTIS *v.* GEEVES, No. 641a, *ante.*

1380a. Overcrowded inn yard—Vehicles left in highway.]—An innkeeper had for some years, when his yard was full, placed the vehicles of his guests on a triangular piece of ground at the corner of two streets. This piece of ground having been ascertained to be part of the highway :—*Held :* deft. was rightly convicted of an obstruction under Highway Act, 1835 (c. 50), s. 72.—GORING *v.* BARFIELD (1864), 4 New Rep. 284.

1381a. ——.]—A person placing a dangerous obstruction in a highway, or in a private road over which persons have a right of way, is bound to take all necessary precautions to protect persons exercising their right of way ; & if he neglects to do so, is liable for the consequences.—CLARK *v.* CHAMBERS (1878), 3 Q. B. D. 327 ; 47 L. J. Q. B. 427 ; 38 L. T. 454 ; 42 J. P. 438 ; 26 W. R. 613.

Annotations :—**Consd.** Bull *v.* Shoreditch Corpn. (1902), 67 J. P. 37 ; Ruoff *v.* Long, [1916] 1 K. B. 148. **Apld.** Glasgow City Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** A.-G. *v.* Tod-Heatly & Brownrigg (1879), 76 L. T. 174 ; Tolhausen *v.* Davies (1888), 59 L. T. 436 ; McDowall *v.* G. W. Ry., [1902] 1 K. B. 618 ; Latham *v.* Johnson & Nephew, [1913] 1 K. B. 398.

1391. *Add. Annotations :*—**Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339 ; Templeton *v.* Parkin & Co. (1929), 140 L. T. 519.

1399. *Add. Annotation :*—**Distd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1405. *Add. Annotation :*—**Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

1408a. Subsidence of filled-in trench.]—NEWSOME *v.* DARTON URBAN DISTRICT COUNCIL (1937), 81 Sol. Jo. 1012.

1414. *Add. Annotation :*—**Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

covered with a plank, but on the night of the accident it was uncovered :—*Held :* the town corpn., having knowledge of the condition, & having taken no steps to close the areas, or to see that they were adequately protected, were liable to pltfs.—MCMICHAEL *v.* GODERICH TOWN, [1928] 4 D. L. R. 536 ; 62 O. L. R. 547.—**CAN**

so. *Lift forming part of pavement—Well of lift inadequately fenced.*]—HAYMAN *v.* CITY PROPERTY INVESTMENT TRUST CORPN., LTD., [1929] S. C. (H. L.) 65.—**SCOT.**

sp. *Petrol pump.*]—BRITISH AMERICAN OIL CO. *v.* SHURR (Ont.), [1929] 3 D. L. R. 119.—**CAN.**

st. *Truck on footpath.*]—MCVEIGH *v.* SMITH TRANSPORT, LTD. (1935), 5 F. L. J. (Can.) 4.—**CAN.**

sv. *Guard wire round park strip.*]—Guard wire round a park strip of the sidewalk, to prevent it being trampled on, is not necessarily a nuisance so as to make the municipality liable if the pedestrian stumbles over it.—ROSEN *v.* KITCHENER, [1935] 4 D. L. R. 644 ; O. R. 522.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—I.

st. *Use of street as golf course.*]—Part of the golf course used by deft. club was land which was shown on a registered plan of subdivision as a street. Under the governing legislation, the dedication of said land as a public street was effective forthwith on registration of the plan. The street was never graded or used as a street, & there were golf tees, greens, etc., thereon. After the street had been so used for a number of years, pltf. bought a tract of land bounded by the street & erected a small house thereon in which he lived. Pltf. complained that many golf balls were driven on to his property & that players trespassed thereon in search of the balls & that he was obstructed by said use by the club of said land in his right to use it as a public street. Pltf. asked for damages & an order for the removal of the tees, etc., as against both the golf club & the municipality & for an injunction restraining the club's members from playing on the street ;—*Held :* the club should be enjoined against using the street as part of its golf course & ordered to restore it to its normal state.—CHISWELL *v.* CHARLESWOOD & ALCREST GOLF CLUB, LTD., RURAL MUNICIPALITY (No. 2), [1937] 1 W. W. R. 177 ; 1 D. L. R. 776 ; 44 Man. L. R. 469 ; 6 F. L. J. (Can.) 244.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—K. (c) i.

sv. *Street traders—Licence—"Article or thing"—What included.*]—*Held :* a live pig was an "article or thing" within Street Trading (Regulation) Act (Northern Ireland), 1929, s. 1 (1).—R. (U. D. C. OF PORTADOWN) *v.* ARMAGH CHAIRMAN & JUSTICES, [1931] N. I. 211.—**IR.**

of bye-law.]—A street trader, who held no permit from the chief constable, hawked fruit & vegetables from a cart in various streets in E. which he visited usually twice a week. On arrival at each street he cried his wares, & when customers came he stopped his cart. The cart remained standing, sometimes for a period of over half an hour, until the last of the customers was served, & the trader then moved on. In a prosecution for infringing a bye-law :—*Held :* accused did not carry on business on a stance, within the bye-law, in respect that he did not occupy a permanent position where he waited for customers.—GRIEVE *v.* MACPHERSON, [1933] S. C. (J.) 65.—**SCOT.**

1435a. Street traders—Licence—Application to renew—Duties of borough council.]—(1) The remedy by appeal to petty sessions given by London County Council (General Powers) Act, 1927 (c. xxii.), s. 35 (2), to a street trader who is aggrieved by the refusal of the renewal of his licence as a street trader is equally beneficial, convenient & effectual as *mandamus* would be. *Mandamus* will therefore not lie to a Metropolitan borough council to compel them to hear & determine a street trader's application for renewal of a licence.

(2) In deciding such applications, the council is an administrative body, not a judicial one; it may therefore properly take into account a report of a committee, & its decision will not be invalidated merely by the fact that some members taking part in it were not present at an earlier meeting when the applicant was heard.

(3) *Semble:* the Act does not contemplate the calling of evidence before the council on such applications; but the justices at petty sessions who hear an appeal can conveniently hear such evidence as may be necessary.—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON (1929), 93 J. P. 171; 73 Sol. Jo. 318; 27 L. G. R. 416, D. C.

1435b. —— —— Refusal to renew—Appeal to petty sessions—Evidence.]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435c. —— —— —— Mandamus.]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435d. —— —— Liability for trading without—Notwithstanding legal impossibility of grant.]—(1) The fact that a borough council is precluded by the existence of Sunday Observance Act, 1677 (c. 7), from granting a licence for street trading on Sunday does not render impossible the conviction for trading without a licence of a trader who in fact trades on Sunday without a licence.

(2) An information for so trading may be laid by a person duly authorised on behalf of the council, such as a solr.'s managing clerk, instructed by the Town Clerk, though not himself an officer of the council.—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH COUNCIL (1931), 145 L. T. 260; 95 J. P. 153; 47 T. L. R. 436; 75 Sol. Jo. 511; 29 L. G. R. 400; 29 Cox, C. C. 315.

1435e. —— —— —— Information—By whom laid.]—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH COUNCIL, No. 1435d, *ante*.

1435f. —— —— Refusal to grant—Appeal—Discretion of magistrate.]—An appeal was brought to a ct. of summary jurisdiction under sect. 35 (2) of the London County Council (General Powers) Act, 1927, from a refusal of a Metropolitan Borough Council to grant a street trading licence on the ground that the streets named in the application were not streets ordinarily prescribed by them in street trading licences:—*Held:* the jurisdiction of the ct. was not confined to considering whether the streets were or were not in fact ordinarily prescribed, but it was entitled to consider the question whether, notwithstanding that the streets were not ordinarily prescribed, a licence ought nevertheless to be granted on the merits of the particular case.—FULHAM METROPOLITAN BOROUGH COUNCIL *v.* SANTILLI, [1933] 2 K. B. 357; 102 L. J. K. B. 728; 149 L. T. 452; 97 J. P. 174; 49 T. L. R. 480; 31 L. G. R. 257; 29 Cox, C. C. 608, D. C.

1435g. —— —— One day licence.]—Resp. sold apples from a barrow in a street within the Metropolitan Borough of P. It was the custom of the P. Borough Council to issue one-day licences to street traders, but though resp. had been issued with several of these licences in the past, he was not in possession of one on the day in question. He was summoned for selling goods from a barrow without a licence contrary to L.C.C. (General Powers) Act, 1927, s. 39. The magistrate dismissed the summons on the ground that the borough council having granted a licence, they could dispute its validity; & also upon the ground that the prosecution was instituted to test the system of one-day licences & was not *bona fide*:—*Held:* licences could only be granted in accordance with the provisions of the Act, & any licence issued otherwise was invalid. Resp. had not therefore a valid licence & ought to have been convicted.—DENNIS *v.* WILLMORE, [1936] 2 All E. R. 407, D. C.

1435h. —— Removal of refuse—Liability for charges.]—The "other services" mentioned in London County Council (General Powers) Act, 1927 (c. xxii.), s. 37, are services *ejusdem generis* as the removal of refuse.

Applts., a borough council, claimed payment of their charges in respect of "other services" rendered by them to resp., a licensed street trader, being charges in respect of the general administration of Part VI. of the Act dealing with the regulation of street trading:—*Held:* in the absence of evidence of the removal of refuse or of services *ejusdem generis* as the removal of refuse, applts. were not entitled to recover.—WESTMINSTER CORPN. *v.* ARMSTRONG, [1929] 2 K. B. 451; 142 L. T. 263; 98 L. J. K. B. 707; 45 T. L. R. 634; 94 J. P. 18; 27 L. G. R. 671; 29 Cox, C. C. 49, D. C.

1441. *Add. Annotations:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Consd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

1442. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1443. *Add. Annotations:*—**Consd.** Vanderpant Mayfair Hotel Co. (1929), 27 L. G. R. 752 **Refd.** Harper *v.* Haden & Sons, Ltd. 102 L. J. Ch. 6.

1447. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1456. *Add. Annotations:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

PART IX. SECT. 1, SUB-SECT. 1.—L.

r i. —— *Parked car—Liability of municipality.*]—A motor car parked on a street may constitute a nuisance; but in order to render the municipality liable for damages caused by such nuisance it must have had actual knowledge thereof, or the nuisance must have existed for a time sufficient to entitle the ct. to hold that the municipality ought to have had knowledge thereof & that a further reasonable period had elapsed before the accident within which the cipality could have proceeded to remove the nuisance.—BERTRAND *v.* NEILSON & VANCOUVER CITY, [1934] 3 W. W. R. 433; 49 B. C. R. 150.—CAN.

1457a. —— **Causing horse to shy.**]—In an action for a nuisance it appeared that pltf. was driving at night in a cart drawn by a horse along a public highway, when the horse shied at a heap of earth & refuse placed by defts. on their land adjoining the highway, & the cart was upset & pltf. injured. Evidence was tendered by pltf. to prove that other horses had shied at the heap on the same day:—*Held:* if the heap was of such a nature as to be dangerous by causing horses passing on the highway to shy, it was a public nuisance.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 60 L. T. 266; 53 J. P. 342; 5 T. L. R. 242, D. C.; *on appeal*, 22 Q. B. D., at p. 393, C. A.

Annotation:—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

1464a. —— **Dangerous condition—Duty of local authority to remove.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante*.

1465. After this case add "*See, also*, AGRICULTURE, Nos. 970a, 970b."

1473. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1475. *Add. Annotation:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1481a. Noise from loudspeaker—Advertisement of entertainment — Information.] — ADAMS *v.* BALDWIN (1935), 79 Sol. Jo. 922, D. C.

1486. *Add. Annotation:*—**Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

1500. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1509. *Add. Citation:*—95 L. J. K. B. 81.

1511. *Add. Annotation:* County Borough *v.* Fuller & Sons 93 J. P. 29.

1512. *Add. Annotation:*—**Distd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357 n.

1513a. ——— ——.]—When any one places a motor omnibus or other vehicle which is likely to skid upon the highway, such person may be liable for placing a nuisance upon the road, & for negligent use of the highway.—WALTON (ISAAC) & CO., LTD. *v.* VANGUARD MOTOR BUS CO., GIBBONS *v.* VANGUARD MOTOR BUS CO. (1908), 72 J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82; 7 L. G. R. 349, D. C.

nnotations:—**Overd.** Parker *v.* L. G. O. Co. (1909), 101 L. T. 623. **Refd.** Barnes U. D. C. *v.* L. G. O. Co. (1908), 7 L. G. R. 359; Wing *v.* L. G. O. Co., [1909] 2 K. B. 652.

1514. *Add. Annotation:*—*Generally*, **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

1519. *Add. Annotations:*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. **Refd.** Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

1540. *Add. Annotation:*—**Refd.** Manchester Corpn. Farnworth, [1930] A. C. 171.

1546. *Add. Annotation:*—**Refd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125.

1546a. Heap of refuse—Horse frightened.]—Pltf.'s horse shied at a heap of road-scrapings placed by defts. by the side of a public highway on land belonging to them, & personal injuries were, in consequence sustained by pltf.'s wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap, on the

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PART IX. SECT. 1, SUB-SECT. 1.—N.

sq. *Prickly bush protruding through fence.*]—Where deft. permitted a gorse bush growing on his land to project over a street, & pltf. was injured by a thorn of the bush penetrating one of his eyes:—*Held:* deft. was liable.—CULL *v.* GREEN (1924), 27 W. A. L. R. 62.—**AUS.**

sr. *Suffering trees to grow—Causing obstruction—Madras Local Boards Act.*]—The allowing of prickly-pear to spread on to a road used by the public is a public nuisance within Indian Penal Code, s. 268.—*Re* MOLAIPPA GOUNDAN (1928), I. L. R. 52 Mad. 79.—**IND.**

PART IX. SECT. 1, SUB-SECT. 1.—P.

sp. *Crowds collected by speaking into microphone in shop.*]—In order to constitute the offence of obstructing a footpath, within sect. 5 (14) of Police Offences Act, 1928, the act complained of must in itself be obstructive. Speaking into a microphone inside a shop, with the result that persons gather outside the shop so as to obstruct the footpath, does not constitute an offence under the sub-sect.—CAMPBELL *v.* HANNAFORD, [1934] V. L. R. 246; 40 Argus L. R. 312.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 4.

1501 iii. —— *Obstruction of access.*]—Whether it is or is not unlawful to use a locomotive engine in a public street depends on the manner & extent of the user. In an action for nuisance by obstructing access to pltf.'s garage by the unreasonable user of a locomotive engine & trucks for the purpose of delivering to & loading goods from the deft.'s factory:—*Held:* a nuisance had been proved, & an injunction against unreasonable user & damages should be awarded.—MCCARRON *v.* NOSKE BROS. PROPRIETARY, LTD. (1929), S. A. S. R. 433.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 6.

1517 i. *Danger to persons on highway—Unguarded gap in area railings.*]—In an action brought by a father against (*a*) a road authority, (*b*) the proprietrix of a sunk area, and (*c*) a police constable, to recover damages in respect of injuries to his pupil son, aged 6, pursuer averred that, about 4 p.m. on an Oct. afternoon, a motor car collided with, & made a large gap in the railing guarding the area, & that the child, when playing the street about 7.30 p.m. after it was dark, fell through the gap while it was unguarded, & was injured:—*Held:* pursuer had relevantly averred fault against the constable, who had left his post where he had been stationed to guard the gap; both the road authority & the proprietrix had a duty to guard the gap; pursuer had relevantly averred failure by both in that duty as the cause of the accident, in respect that a jury might find that the posting of the constable did not discharge the road authority of their responsibility, & the proprietrix's duty to guard revived when she knew that the constable had left his post, & further, it did not appear so clearly that the proximate cause of the accident was the negligence of the constable that the action must be dismissed as against the other two defenders, & also, *per* Lord Anderson, in respect that both the road authority & the proprietrix must be held to have delegated their duties to the constable & therefore to be responsible for his negligence. It was for the jury to decide whether the child had been guilty of contributory negligence.—STEVENSON *v.* EDINBURGH MAGISTRATES, [1934] S. C. 226.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 11.

st. *Encroachment on private street—Authorised by Dean of Guild.*]—The proprietors of a building adjoining a private street in G., who were, also, the owners of the *solum* of the street, applied to the Dean of Guild for authority to extend their building over part of the foot pavement of the street. The master of works lodged objections in the public interest, on the ground that, under Glasgow Police Acts, 1866 to 1924, the Dean of Guild had no jurisdiction to sanction an encroachment on a private street:—*Held:* nothing in these Acts deprived the Dean of Guild of jurisdiction to grant a lining for the erection of a building on a private street within the burgh.—SAXONE SHOE CO., LTD. *v.* SOMERS, [1929] S. C. 232.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 14.

k i. *Broken-down motor car—Not left on highway for unreasonable time—Owner not liable.*]—PEDERSON *v.* PATERSON (1916), 31 D. L. R. 368.—**CAN.**

sv. *House left in street at night—Street blocked—Person moving house liable.*]—SCOTT *v.* CALGARY & RIDDOCK, [1927] 2 D. L. R. 263; [1927] 1 W. W. R. 524; 22 Alta L. R. 467.—**CAN.**

same day, was rejected :—*Held :* such evidence was admissible, for if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, & whatever showed it to be likely to cause horses to shy was evidence for pltfs.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391 ; 58 L. J. Q. B. 212 ; 5 T. L. R. 284, C. A.

Annotation :—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

1576a. Obstruction unreasonable.]—Where a highway is obstructed for building operations, & the obstructor has obtained the appropriate licence from the local authority, a person suffering inconvenience or loss from the inconvenience can only recover damages in a case where the obstruction is unreasonable, either as to *quantum* or duration.

Per LAWRENCE, L.J. : When the owner of a house abutting on a public street desires to undertake building operations, & has obtained the appropriate licence from the local authority under Metropolis Management Act, 1855 (c. 120), or similar statutes relating to other places, it cannot be contended that the necessary scaffolding & hoardings are illegal & a public nuisance unless they were erected in a manner or place not authorised by the licence, or maintained for a longer period than by the licence authorised.—HARPER *v.* HADEN (G. N.) & SONS, [1933] Ch. 298 ; 102 L. J. Ch. 6 ; 148 L. T. 303 ; 96 J. P. 525 ; 76 Sol. Jo. 849 ; 31 L. G. R. 18, C. A.

1590. *Add. Annotation :—As to* (2) **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

1592. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1926), 91 J. P. 89 ; London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

1616. *Add. Annotation :*—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1623. *Add. Annotation :* — **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1634. *Add. Annotations :* — **Consd.** Swadling *v.* Copper (1930), 46 T. L. R. 597. **Apld.** Tart *v.* Chitty & Co., [1933] 2 K. B. 453. **Consd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. **Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59 ; Tidy *v.* Battman, [1934] 1 K. B. 319.

1637. *Add. Annotations :* — **Consd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59 ; Swadling *v.* Cooper (1930), 46 T. L. R. 597 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. **Refd.** The Vectis, [1929] P. 204 ; The Chatwood, [1930] P. 272 ; M'Lean *v.* Bell (1932), 48 T. L. R. 467.

1639. *Add. Annotation :*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1649. *Add. Annotation :*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1652. *Add. Annotation :—Generally,* **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

PART IX. SECT. 1, SUB-SECT. 16.

q i. —— *Contributory negligence—Failure to wear adequate footwear.*]—In an action for damages for injuries sustained by slipping on an icy sidewalk, held that deft. city had not negligently permitted snow or ice to remain on the sidewalk ; &, moreover, pltf. was guilty of negligence which occasioned or contributed to the accident in that the kind of footwear which she was wearing was not ordinarily adequate to the circumstances.—KNIGHT *v.* SASKATOON, CITY OF, [1930] 3 W. W. R. 101 ; 4 D. L. R. 1010.—**CAN.**

q ii. —— —— ——.]—In an action for injuries sustained through slipping on an icy sidewalk :—*Held :* deft. municipality was not grossly negligent within sect. 469 (3) of Municipal Act, R. S. O., 1927, & pltf. did not exercise reasonable care in going out in the dark wearing Oxford shoes with rubber heels, but without rubbers or overshoes & without the aid of a cane. —BURGESS *v.* SOUTHAMPTON TOWN, [1933] O. R. 279 ; 2 D. L. R. 582.—**CAN.**

q iii. —— *Municipality liable only for gross negligence.*]—The effect of the term " gross negligence " in a statute which imposes on a municipality the duty of keeping its streets in repair, but provides that it shall not be liable for injuries resulting from snow or ice upon a sidewalk " except in cases of gross negligence," is that its duty in cases within the proviso is substantially lower than its duty to keep its streets free from other defects & dangers not so specified.—JOHNSON *v.* ST. JAMES RURAL MUNICIPALITY, [1930] 3 W. W. R. 85 ; 4 D. L. R. 120.—**CAN.**

q iv. —— ——.]—In an action for damages for personal injuries sustained by falling on a patch of ice which had formed on a sidewalk the night before the accident :—*Held :* the fact that deft. city, which under its charter is not liable for injuries so caused except in cases of gross negligence had not placed sand or cinders on the particular patch of ice before the time of the accident, nine in the morning, did not under all the circumstances constitute gross negligence.—STINSON *v.* EDMONTON CITY, [1932] 1 W. W. R. 839 ; *affd.*, [1933] 3 W. W. R. 224.—**CAN.**

q v. —— ——.]—In an action for injuries sustained by a pedestrian through a fall due to a slippery street : —*Held :* deft. city had been grossly negligent in not taking more care to prevent such injuries.—WOLFE & WOLFE *v.* EDMONTON CITY, [1932] 1 W. W. R. 129 ; *affd.*, [1932] 1 W. W. R. 855 ; 3 D. L. R. 370 ; 26 Alta. L. R. 310.—**CAN.**

q vi. —— ——.]—In an action against a rural municipality for injuries sustained by falling on a sidewalk in a village therein of a few hundred people, the sidewalk having been made slippery by snow :—*Held :* although the municipality did not have any system of inspecting such streets during the winter & did not remove the snow therefrom or sprinkle cinders or sand thereon, it was not guilty of " gross negligence " within sect. 626 of Municipal Act, R.S.M., 1913. It cannot be " gross negligence " not to do what it is the custom not to do.—CHRISTIANSON *v.* CLANWILLIAM RURAL MUNICIPALITY, [1933] 3 W. W. R. 415.—**CAN.**

q vii. —— ——.]—On appeal from the dismissal of an action against a city for damages for personal injuries caused by falling on an icy sidewalk :—*Held :* there was no evidence of gross negligence on the part of deft. ; &, therefore, since its charter provided that the city should not be such accidents unless in cases negligence, the action failed.—WALLER *v.* ST. BONIFACE CITY, [1935] 2 W. W. R. 378 ; 4 D. L. R. 135.—**CAN.**

q viii. —— ——.]—HOLLAND *v.* TORONTO CITY (1925), 59 O. L. R. 628. —**CAN.**

q ix. —— ——.]—HOLLAND *v.* TORONTO CITY, [1927] S. C. R. 242.—**CAN.**

q x. —— ——.]—MURPHY *v.* OTTAWA CITY (1928), 63 O. L. R. 248.—**CAN.**

q xi. —— *Liability for acts of contractor.*]—City corpn. held liable for negligence of contractors in course of relaying pavement, whereby rainwater was obstructed & flooded premises in the street.—KITCHENER CITY *v.* ROBE & CLOTHING CO., [1925] S. C. R. 106.—**CAN.**

q xii. —— *From snow plough—Municipality not liable.*]—A municipality is not liable to a pedestrian for injuries due to ice & snow formed on the sidewalk by the snow plough.—POTTER *v.* SYDNEY MINES, [1936] 1 D. L. R. 764.—**CAN.**

sa. *Flow of water—Meaning of.*]—Water which soaks or seeps through a bank on land on to a road does not flow on to such road.—JARRAD *v.* LOADER, [1928] S. A. S. R. 35.—**AUS.**

sd. *Ice & snow from driveway.*]—Action for damages for injuries sustained through slipping on a sidewalk, owing to ice & snow from defts.' cement driveway :—*Held :* defts. were liable for nuisance.—TAYLOR *v.* ROBINSON, [1933] 3 D. L. R. 73 ; O. R. 535. —**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.

m i. —— *Not mandamus—Nuisance by municipality.*]—No mandamus lies to a municipal corpn. to compel it to remove a gasoline pump from the street. If it amounts to a public nuisance the A.-G. is the proper person to intervene. —*Re* METRO OIL, LTD. & TORONTO, [1935] 3 D. L. R. 303.—**CAN.**

1657a. —— **Trees.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante.*

1668. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

1672. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1674. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1675. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1677. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway *(1931), 100 L. J. K. B. 401.*

1680a. — — ——.]—Deft. co. built a large hotel, *including a kitchen, close to pltf.'s private residence & with windows overlooking pltf.'s premises ; & a hitherto quiet highway, with very little traffic passing over it, became a* busy street with vehicles constantly coming & going in connection with deft.'s hotel business. These vehicles made use of a very small yard adjoining pltf.'s house, opening into the street, & the roadway there became congested at times. In consequence, pltf. complained of nuisance : (*a*) by obstruction of access to his residence ; (*b*) by depriving him of reasonable use of the public highway :—*Held :* on the result of the authorities, a private individual who seeks to restrain the obstruction of a public highway must, in order to maintain his suit, prove that he has sustained particular & substantial & direct damage beyond the general inconvenience & injury to the public.—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., [1930] 1 Ch. 138 ; 99 L. J. Ch. 84 ; 142 L. T. 198 ; 94 J. P. 23.

Annotation :—**Refd.** Medcalf *v.* Strawbridge, Ltd., [1937] 2 K. B. 102.

1683a. —— —— —— ——.]—SEATON *v.* SLAMA No. 9a, *ante.*

1684. *Add. Annotations :*—*As to* (1) **Apprvd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1686. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1687. *Add. Annotation :*—*As to* (1) **Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

1688. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1689. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1690. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1691. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1694. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., *[1931] 2 K. B. 334.*

1700. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway *(1931), 100 L. J. K. B. 401.*

707a. Claim by frontagers—Damage to unadopted road by skid-pan.]—Frontagers on a road not repairable by the inhabitants at large have such an interest, over & beyond that of the general public, in preventing damage to the road as to entitle them to sue for an injunction against any one causing unnecessary damage to the road, & the A.-G. need not be a party to the action.—MEDCALF *v.* STRAWBRIDGE (R.), LTD., [1937] 2 K. B. 102 ; [1937] 2 All E. R. 393 ; 106 L. J. K. B. 630 ; 157 L. T. 137 ; 53 T. L. R. 638 ; 81 Sol. Jo. 438.

709. *Add. Annotation :*—*As to* (2) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1710. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

1711. *Add. Annotation :*—**Distd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1717a. Remedy trespass not ejectment.]—DOE d. ST. JULIAN SHREWSBURY (PARISH) *v.* COWLEY (1823), 1 C. & P. 123 ; 171 E. R. 1129, N. P.

1718. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

1747. After this case add " *Compare* MAGISTRATES, Nos. 503a, 503b."

1760. *Add. Annotation :*—**Refd.** R. *v.* Newport Salop Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

PART IX. SECT. 3, SUB-SECT. 3.—A.

1670 v. —— ——.]—In an action for a mandatory injunction requiring deft. to remove a verandah & steps attached to her house, which encroached upon a street in a village, & caused inconvenience to pltf. & other persons using the street :—*Held :* the inconvenience was such only as was common to all persons using the street, & pltf., whose house was so situated that persons coming from it, in order to gain access to the principal street of the village, had to make a detour by reason of the verandah & steps, suffered no special damage or injury by reason of the nuisance, & was not entitled to the relief claimed.—WHALEY *v.* KELSEY, [1928] 2 D. L. R. 268 ; 61 O. L. R. 679.—**CAN.**

1670 vi. —— ——.]—ARDESAR JIVANJI *v.* AJMAI KUVARJI (1928), I. L. R. 53 Bom. 187.—**IND.**

1670 vii. —— *Rule not applicable to India.*]—Any individual member of the public has the right to maintain a suit for removal of obstruction of a public highway, if his right of passage through it is obstructed, without proving special damage. The principle of English law which requires proof of special damage in such cases is not applicable to India.—MANDAKINEE DEBEE *v.* BASANTAKUMAREE DEBEE (1933), I. L. R. 60 Cal. 1003.—**IND.**

q i. ——.]—The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.—SAMPSON *v.* ROBERTSON, [1925] 1 D. L. R. 624 ; 57 N. S. R. 498.—**CAN.**

q ii. —— *Notice of claim.*]—The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 542, to be given the municipality is a bar to an action for damages for injuries caused by snow or ice on a sidewalk.—HICKMAN *v.* MOOSE JAW CITY, [1925] 1 D. L. R. 115 ; [1924] 3 W. W. R. 839.—**CAN.**

q iii. —— —— *Sufficiency of.*]—MCGREGOR *v.* R. (Ont.), [1929] 1 D. L. R. 181.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 5.

sw. *Cost of fencing bank—Whether within Burgh Police (Scotland) Act,* 1892, *s.* 190.]—The magistrates of a burgh, founding upon the section, brought an action against the owners of a steep natural bank, which sloped down from the side of a street to the sea shore, in order to recover the cost of fencing the bank :—*Held :* the sect. was inapplicable, in respect that, in view of their ambiguity, the words " any other place " fell to be construed in the light of the context & of the heading of the group of sects. in which they occurred, &, so construed, the places to which the section referred

Part X.—Interference with Highways under Statutory Powers.

1761a. Duty of local authority—On request to exercise statutory powers.] — A local authority, requested to carry out in a "street laid out but not dedicated" constructive works under its statutory powers, need not necessarily inquire into the title of those making the request. But it must, in considering whether compliance with the request will be a lawful exercise of the powers, have regard primarily to the physical conditions obtaining in the area of the proposed operations; & those physical conditions will be one of the principal factors in determining whether relevant statutory definitions are complied with. This applies to powers conferred by either public general or private local statutes.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884; 97 L. J. Ch. 479; 139 L. T. 636; 92 J. P. 153; 26 L. G. R. 530.

Part XI.—Excessive Weight and Extraordinary Traffic.

1765. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29

1771. *Add. Annotation:*—**Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1772. *Add. Annotation:—As to* (1) **Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J P. 29.

1775a. ——.]—Defts., who owned & used traction engines for the purposes of their business, drove two of these engines on a very hot day in July over a highway belonging to pltfs., who were the highway authority for the district. The highway, which had been constructed as a first class main road for the purpose of bearing traffic of all sorts, had a mexphalte surface. In passing along the most exposed part of the highway, the driving wheels of these engines sank into the road at a point where the surface was very soft, with the result that the road was damaged. Pltfs. thereupon brought an action against defts. to recover extraordinary expenses, pursuant to Highways & Locomotives (Amendment) Act, 1878 (c. 77), s. 23, as amended by Locomotives Act, 1898 (c. 29), s. 12. They also claimed damages for wrongful abuse of the highway by defts. & for nuisance & negligence:—*Held:* as agricultural traffic, including heavy traction engines, was admittedly part of the ordinary traffic, & the weights in the present case were normal, no claim for excessive weight or for extraordinary traffic could arise under the Act of 1878; there was no excess whatever by defts. of the lawful use of the highway & no wrongful abuse of their rights of passing & repassing: the injury to the highway was due to a peculiar & unique conjunction of heat & of atmospheric & other conditions; defts.' vehicles did not constitute a nuisance, & there was no negligence on the part of defts.—EASTBOURNE COUNTY BOROUGH *v.* FULLER & SONS (1928), 93 J. P. 29; 72 Sol. Jo. 762.

1810. *Add. Annotation:*— **Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1841. After this case add "*See, also,* No. 1852, *post.*"

1844. To the existing paragraph add as follows:—

The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships:—*Held:* the first certificate was good, &, with regard to expenses incurred before it was made, the period of six months limited by Summary Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add "*See, also,* No. 1841, *ante.*"

1852a. —— **Where more than one certificate given.**]—WIRRAL HIGHWAY BOARD *v.* NEWELL, No. 1844, *ante.*

1858a. —— **Where several contracts.**]—EPSOM URBAN COUNCIL *v.* LONDON COUNTY COUNCIL, No. 1818, *ante.*

1872. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1876. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

were limited to places rendered dangerous by some artificial construction connected with buildings or streets.—BUCKIE MAGISTRATES *v.* SEAFIELD'S (DOWAGER COUNTESS) TRUSTEES, [1928] S. C. 525.—**SCOT.**

PART IX. SECT. 3, SUB-SECT. 6.

d i. —— ——.]—R. *v.* FITZGERALD (1876), 39 U. C. R. 297.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 1.

t. Add *affd.*, [1913] 2 I. R. 250, C. A.

PART XI. SECT. 4, SUB-SECT. 5.

1872 i. *General rule.*]—It is not the total sum actually spent on repair that is recoverable by the road authority, whether that repair involves reconstruction or not. Regard must be had to all the circumstances of the case; the state of the roads when the extraordinary traffic commenced, its general character & suitability for the traffic reasonably to be expected thereon, the amount of ordinary traffic whether of defts. or other persons, & the extent & nature of the repairs reasonably required. Deductions should also be made if roads when repaired are in a better condition than before extraordinary traffic commenced.—DOWN COUNTY COUNCIL *v.* T, [1927] N. 49.—**IR.**

1881 i. *Deductions & allowances—Improvement of road due to repair.*]—DOWN COUNTY COUNCIL *v.* STEWART, No. 1872 i, *ante.*—**IR.**

Part XII.—Stopping-up or Diversion of Highways.

1887. *Add. Annotation :*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

1894a. —— **Consent of owners of land abutting on highway—Condition precedent.**]—By sect. 59 of a local Act "the corpn. may from time to time by order stop up wholly or partially any highway which in their opinion is unnecessary on such terms as to the vesting of the soil & other matters as may be agreed on between the corpn. & the owners & lessees of buildings & lands abutting on the highway & on any highway being so stopped up all public & other rights of way & other rights in, over or upon the same shall be absolutely extinguished." By sect. 117 : "Any person deeming himself aggrieved by any order or determination of the corpn. or by any conviction or order made by a ct. of summary jurisdiction under any provision of this Act may appeal . . . to the next practicable ct. of quarter sessions under & according to Public Health Act, 1875 (c. 55), s. 269" :—*Held :* (1) it was a condition of the making of an order under sect. 59 that there should be an agreement between the corpn. & the owners & lessees of buildings & lands abutting on the highway ; (2) the "highway" must mean the whole highway & not any part thereof ; & the applt. was therefore a person aggrieved although his land did not abut on the part of the highway stopped up.—LINTON *v.* NEWCASTLE-UPON-TYNE CORPN. (1929), 142 L. T. 49 ; 94 J. P. 20 ; 27 L. G. R. 607, H. L.

1894b. —— —— —— **Meaning of highway—Not confined to part of highway stopped up.**]—LINTON *v.* NEWCASTLE-UPON-TYNE CORPN., No. 1894a, *ante*.

1897. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1922. *Add. Annotation :*—**Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

1958. *Add. Annotation :*—**Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

1979a. —— **Not costs of preparing for appeal—Order abandoned.**]—R. *v.* WING (1825), 4 B. & C. 184 ; 6 Dow. & Ry. K. B. 323 ; 3 Dow. & Ry. M. C. 184 ; 3 L. J. O. S. K. B. 201 ; 107 E. R. 1028.

1984. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1985a. ——.]—A ry. co. were empowered by Act of Parliament to stop up a certain street for the purpose of providing additional warehouses. The co. stopped up & enclosed part of such street & formed a cul-de-sac. They constructed a warehouse abutting upon the pavement in such cul-de-sac. The warehouse had flaps which opened across the pavement, & for forty years the co. loaded & unloaded goods from such flaps across the pavement into & from vans standing in the cul-de-sac from 6 a.m. to 7 p.m. daily. The London County Council by a private Act, which incorporated the Lands Clauses Acts, were empowered to make a new street, & they gave notice to treat for certain premises in the possession of the ry. co. The new street included the pavement above referred to. The co. claimed compensation (*inter alia*) for injurious affection of the above-mentioned warehouse by reason of the works of the council preventing them from delivering goods from the warehouse across the pavement to vans in the way they had therefore done :—*Held :* the use which the ry co. had made of the pavement an stopping up of such pavement under their statutory powers above referred to, although such pavement had not been enclosed the council were bound to acquire an easement over such pavement for the purpose of making the new street, & the co. were entitled to compensation for injurious affection of the warehouse.—*Re* GREAT EASTERN RY. CO. & LONDON COUNTY COUNCIL (1907), 98 L. T. 116 ; 72 J. P. 1, C. A.

1986. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1988. *Add. Annotation :*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1988a. **On liability to repair.**]—A part of an old footpath, repairable by the inhabitants at large, was diverted & the substituted highway was a road 60 feet wide. All the usual steps were taken under Highways Act, 1835 (c. 50), in respect of the diversion, except that at no time did the justices view the new highway in accordance with sect. 91 of the Act. From 1911 the old highway had been built over and the new highway continuously used. Two frontagers claimed a declaration that the new highway was repairable by the inhabitants at large :—*Held :* (1) the proper proceedings to test this question were proceedings in a ct. of summary jurisdiction under the Private Streets Works Act, 1892 (c. 57) ; (2) this was not a proper case for the ct. in the exercise of its discretion to make a declaration ; (3) the Attorney-General was not a necessary party to the action ; (4) the substituted highway would not be repairable by the inhabitants at large until Highways Act, 1835 (c. 50), s. 91, had been complied with ; (5) it could not be assumed in a recent case that all formalities had been complied

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PART XII. SECT. 2, SUB-SECT. 1.

sx. *Necessity for compliance with statutory formalities.*]—*Held :* a public highway cannot be closed without complying with the statutory formalities.—LARCHER *v.* SUDBURY TOWN (1913), 24 O. W. R. 659 ; 4 O. W. N. 1289 ; 11 D. L. R. 111.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A.

1898 ii. —— ——.]—By Municipal Act, R. S. O., 1927, s. 483 (1) (c), a municipality may pass a bye-law stopping up a highway. The obligation of the municipality to supply "another convenient road or way of access" is not satisfied by the municipality conveying the freehold in the closed highway to a grantee & exacting from such grantee a covenant to keep the roadway open & in repair for highway purposes for the benefit of the person whose means of ingress & egress is affected.—HODSON *v.* GLENHODSON COUNTY CLUB & WHITBY TOWNSHIP, [1933] O. R. 271 ; 2 D. L. R. 277.—**CAN.**

h i. —— *Under Highway Act, R. S. N. B., 1927—Duty of jury under sect. 30 to consider whether highway necessary.*]—R. *v.* BELLIVEAU, *Ex p.* LE BLANC (1930), 1 M. P. R. 28.—**CAN.**

h ii. —— —— *Duty of supervisor to view lands—Amounts to judicial act.*]—R. *v.* BELLIVEAU, *Ex p.* LE BLANC (1930), 1 M. P. R. 28.—**CAN.**

with & the local authority was not estopped from asserting such non-compliance.—STOCKWELL *v.* SOUTHGATE CORPN., [1936] 2 All E. R. 1343; [1937] 3 All E. R. 627; 155 L. T. 437; 34 L. G. R. 527.

1990. *Add. Annotation:*—**Refd.** Stockwell v. Southgate Corpn., [1936] 2 All E. R. 1343.

1991. *Add. Annotation:*—**Consd.** Stockwell v. Southgate Corpn., [1936] 2 All E. R. [illegible]

Part XIII.—Streets.

SECT. 1.—METROPOLITAN.

For references to London Building Act, 1894 (c. ccxiii.), *see, now*, London Building Act, 1930 (c. clviii.), which replaces the 1894 Act.

1997. *Add. Annotation:*—**Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

2032. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2039. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2044. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2075. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2076. *Add. Annotation:*—**Apprvd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2087a. —— **Boundary wall.**]—In defining a general line of buildings under London Building Act, 1930 (c. clviii.), s. 22, a boundary wall cannot be taken into consideration either by the superintending architect or by the Tribunal of Appeal on an appeal from his certificate. —MOLINS MACHINE CO., LTD. *v.* LONDON COUNTY COUNCIL, [1932] 1 K. B. 764; 101 L. J. K. B. 259; 147 L. T. 457; 95 J. P. 202; 29 L. G. R. 627.

2093. *Add. Annotation:*—**Consd.** Black *v.* George Parker & Sons, Ltd. (1929), 142 L. T. 130.

2100. *Add. Annotations:*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120. **Refd.** Molino Machine Co. *v.* L. C. C. (1931), 95 J. P. 202.

2102. *Add. Annotation:*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120.

2120. *Add. Citation.*—68 J. P. 490.

2170a. **Consent to lay out—Whether deed necessary.**]—B. was the owner of a house which had its front & only entrance in F. street, & behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, of which the dead wall at the end of B.'s garden was part of the line of street. This new street was a mews which the metropolitan board allowed to be made of 20 feet width:—*Held:* the consent of the metropolitan board to the mews being of 20 feet did not require to be given under the seal of the board.—PADDINGTON VESTRY *v.* BRAMWELL (1880), 44 J. P. 815.

2173. *Add. Annotation:*—**Refd.** Smith *v.* Benabo, [1937] 1 K. B. 518.

2178a. **Proceedings for removal—Whether restrained by injunction.**]—Pltf., having purchased certain premises in the metropolis, erected buttresses for the purpose of improving the wall abutting on the highway. The local authority took out a summons before a magistrate against pltf. under Metropolis Management Act, 1855 (c. 120), s. 119, to compel pltf. to remove the buttresses, on the ground that they were an encroachment on the highway. Pltf., alleging that the site of the buttresses was not part of the highway, then brought an action against the local authority & moved for an injunction to restrain them from interfering with the buttresses & from going on with the proceedings before the magistrate to determine any questions to be determined in the action:—*Held:* though the ct. had jurisdiction to restrain proceedings before a magistrate if it was satisfied that he had no jurisdiction or that owing to the special circumstances the proceedings before the magistrate ought not to be allowed, yet in the present case, as the magistrate had jurisdiction, & as there were no special circumstances, the motion must be dismissed.—WILLIAMS *v.* DEPTFORD URBAN DISTRICT COUNCIL (1924), 41 T. L. R. 47.

2195a. —— **Dead shores.**]—Sect. 75 of Metropolis Paving Act, 1817 (c. xxix) (Michael Angelo Taylor's Act), is impliedly repealed by sects. 122 & 123 of Metropolis Management Act, 1855 (c. 120). Therefore a charge, framed under sect. 75 of the Act of 1817, of setting up dead shores in a public street without a licence, failed, the same offence, with different penalties & procedure, being dealt with in sects. 122 & 123 of the later Act.

Semble: the dead shores could properly be described as hoards or scaffolding.—SMITH *v.* BENABO, [1937] 1 K. B. 518; [1937] 1 All E. R. 523; 106 L. J. K. B. 367; 156 L. T. 194; 101 J. P. 141; 53 T. L. R. 353; 81 Sol. Jo. 200; 30 Cox, C. C. 540; 35 L. G. R. 130.

2196a. **Metropolis Paving Act, 1817 (c. xxix.), s. 75—Whether repealed by Metropolis Management Act, 1855 (c. 120), ss. 122, 123, 247.**] —SMITH *v.* BENABO, No. 2195a, *ante*.

2202. *Add. Annotation:*—**Refd.** Fredman *v.* Minister of Health (1935), 154 L. T. 240.

2203. *Add. Annotations:*—**Apld.** Ashby-de-la-Zouch Grdns. *v.* Summers, [1928] 2 K. B. 397. **Consd.** West Ham Corpn. *v.* Benabo (Charles) & Son, [1934] 2 K. B. 253.

2204a. —— **Recovery of expenses of repairing dangerous structure—London Building Act, 1894, s. 116—Summary Jurisdiction Act, 1848 (c. 43), s. 11.**]—A building in the metropolis having been certified to be dangerous, the county council did the work necessary to make it safe, & on Sept. 15, 1924, demanded from the owner the amount of the expenses. The amount not having been paid, the council on Jan. 1, 1926, applied to a magistrate under sect. 116 (1) of the above Act of 1894 to fix the amount of the expenses &

to make an order that no part of the structure should be let for occupation until after payment thereof. The magistrate dismissed the complaint on the ground that more than the period of six months limited by sect. 11 of the above Act of 1848 had elapsed between the time when the matter of the complaint arose & the date when the complaint was made :—*Held :* the six months' limitation of time applied to proceedings under sect. 116 (1) of the Act of 1894, & the time ran from the date of the demand, & the magistrate's decision must be affirmed.—LONDON COUNTY COUNCIL *v.* OWNER OF 14, LEE-STREET STEPNEY (1926), 135 L. T. 182 ; 90 J. P. 145 ; 42 T. L. R. 543 ; 24 L. G. R. 386, D. C.

2229a. Part of premises fronting another street.]—Deft. in 1903 purchased a house which fronted on G. road. In 1907 she bought a strip of land which she used to form a carriage drive to the house. In 1904 her husband became the tenant of a field to the south of & adjoining the house & land. The field fronted on E. road. In 1907 deft. purchased the field, but entered into a tenancy agreement letting it to her husband, & from that time the field & the house & land had been separately assessed by the local authority though in fact the tenancy agreement between deft. & her husband ceased to exist about 1918. In 1920 E. road was made up, the usual course being followed under Public Health Act, 1875 (c. 55), ss. 150 & 257, with the result that pltfs. claimed a charge, for the admitted proportion due from deft. of the expenses incurred in making up E. road, on the whole of deft.'s property, including her house & grounds as well as the field, as fronting, adjoining or abutting on E. road :—*Held :* the house & grounds & the field must be considered as being one close, & as such the whole was liable to a charge for making up E. road as fronting, adjoining or abutting thereon. — ALTRINCHAM URBAN DISTRICT COUNCIL *v.* O'BRIEN (1927), 91 J. P. 149 ; 25 L. G. R. 369.

2244a. —— ——.]—(1) A notice given to a frontager to make up the portion of the street opposite to his premises under Public Health Act, 1875 (c. 55), s. 150, is not rendered inoperative because all the frontagers on the street are not served, but he will be liable only for his proportion of the sum expended in making up those portions of the street which abut on the premises of such of the frontagers as are served with the notice, no change of ownership occurring during the course of the proceedings.

(2) The words " the same " contained in the form of notice given in the above Act refer to that portion only of the street abutting on the premises of the owner on whom such notice is served, & not to the whole street.

(3) Two winter months given as the time within which to execute works under a notice given under the above sect. is sufficient.—SUNDERLAND CORPN. *v.* GRAY, [1928] Ch. 756 ; 97 L. J. Ch. 411 ; 136 L. T. 405 ; 91 J. P. 52 ; 25 L. G. R. 139.

2252a. —— **" The same."**]—SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2253. *Add. Annotation :*—**Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254. *Add. Annotation :—As to* (3) **Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254a. —— ——.] — SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2268. *Add. Annotation :—As to* (2) **N.F.** Sunderland Corpn. *v.* Gray (1926), 136 L. T. 405.

2276. *Add. Annotation :*—**Consd.** Finney *v.* Birkenhead Corpn., [1936] 2 All E. R. 590.

2277. *Add. Annotation :*—**Consd.** Finney *v.* Birkenhead Corpn., [1936] 2 All E. R. 590.

2279a. —— **Asphalt in place of flags.**]—The predecessors of resp. corpn. by notice adopted H. Road under Public Health Act, 1875 (c. 55), s. 152. In accordance with the provisions of Public Health Act, 1925 (c. 71), resps. prepared a list of roads repairable by the inhabitants at large. H. Road was therein stated to be repairable by the local authority as to the carriageway, but not as to the footway. There was some evidence that the road had never been made up. Resps. were empowered by a local Act to serve notice upon the frontagers to make, curb, flag, & complete the footway, & if through the frontagers' default, they executed the work themselves, to apportion the whole cost on the frontagers in the case of a road not repairable by the inhabitants at large, & half the cost in the case of a road repairable by the inhabitants at large. Such notice was served in respect of H. Road &, resps. having done the work, apportioned the whole cost on the frontagers. The notices required the frontagers to make, flag & complete, but in fact the resps. did not flag the road, but asphalted it :—*Held :* (1) H. Road was a road repairable by the inhabitants at large &, in any event, resps. could only recover half the cost ; (2) the work specified in the notice must be carried out & the use of asphalt in place of flags was not a proper compliance with the notice, & resps. could not recover the cost of the work done.—FINNEY *v.* BIRKENHEAD CORPN., [1936] 2 All E. R. 590 ; 80 Sol. Jo. 655.

PART XIII. SECT. 2, SUB-SECT. 2.

sa. *Purchase for widening & improvement—What is due compensation.*]—*Re* MACDONALD & TORONTO CORPN. (1912), 27 O. L. R. 179 ; 4 O. W. N. 54 ; 8 D. L. R. 303.—**CAN.**

sb. —— *Power to acquire land beyond quantity actually required.*]—*Held :* under Municipal Corpns. Act, 1920, s. 192, a municipal corpn. is empowered when widening a street, to acquire not only what land is required for that purpose, but also to acquire, if the corpn. deems it expedient, land additional thereto on either or both sides of the street in question, provided land is required for the purpose of widening the street & that the land proposed to be taken, is on either or both sides of the street & whether or not the land is owned in part by one owner & in part by another.—WELLINGTON CORPN. *v.* DEALY, [1929] N. Z. L. R. 352.—**N.Z.**

PART XIII. SECT. 2, SUB-SECT. 3

o i. ——.]—SOUTH GRIMSBY TOWNSHIP *v.* COUNTY OF LINCOLN & NORTH GRIMSBY TOWNSHIP, COUNTY OF LINCOLN *v.* SOUTH GRIMSBY TOWNSHIP (1921), 19 O. W. N. 576 ; 58 D. L. R. 599.—**CAN.**

sd. *Meaning of " forming " & " making " street.*]—To " form " a street is to alter its natural surface so as to provide the desired shape or contour. To " make " a street involves adding where necessary an artificial surface to the natural or formed surface of the street.—ROWE *v.* DISTRICT COUNCIL OF PROSPECT (1929), S. A. S. R. 462.—**AUS.**

2280. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2282a. —— **Two streets repaired at same time.**]—A local authority which has executed repairs to streets under Public Health Acts Amendment Act, 1907 (c. 53), s. 19, is not entitled to include two streets in the same account & apportion the combined expenses among the frontagers of both streets. Nor have the justices, before whom the local authority seek to recover such expenses, any jurisdiction to investigate the accounts & separate the expenses of the two streets for the purpose of making a proper apportionment.—NASH *v.* GILES (1926), 96 L. J. K. B. 216 ; 136 L. T. 352 ; 91 J. P. 19 ; 43 T. L. R. 121 ; 25 L. G. R. 66, D. C.

2285a. Effect of agreement between frontagers—Frontager not to be liable for maintenance of road until taken to by local authority—Frontager not entitled to repayment of apportioned share of cost of making up road.]—MOORE *v.* TODD (1903), 68 J. P. 43 ; 19 T. L. R. 642 ; 2 L. G. R. 376, C. A.

2316. *Add. Annotations :*—**Consd.** West Ham Son, [1934] 2 K. B. 253. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2318. *Add. Annotations :*—**Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602. **Refd.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397 ; London County Council *v.* Harling Street Owners, [1935] 2 K. B. 322.

2319. *Add. Annotation :*—**Consd.** Croydon Corpn. Oldaker, [1937] 1 K. B. 337.

2322. *Add. Annotation :*—**Refd.** Croydon Corpn. *v.* Oldaker, [1937] 1 K. B. 337.

2322a. —— **Under local Act.**]—By the C. Corpn. Act, 1884, s. 39, it is provided that whenever the corpn. put in force the provisions of the Public Health Act, 1875 (c. 55), s. 150, "they may before themselves executing any works as therein provided recover in a summary manner the amount of the estimated cost thereof from the owners in default." On June 27, 1935, the local authority served a notice, under Public Health Act, 1875 (c. 55), s. 150, upon resp., the owner of premises fronting on a certain road, requiring him to do certain street works. On June 28, 1935, resp. conveyed the premises to a third person. On Oct. 4, 1935, the local authority served a notice upon resp., under C. Corpn. Act, 1884, s. 39, demanding payment of certain sums in respect of the estimated cost of the works, which works had not then been executed. Resp. refused to pay any part of the amount claimed & the local authority thereupon on Dec. 20, 1935, lodged a complaint claiming payment. The magistrates were of opinion that there could be no default until the expiration of the time given in the notice to repair, & that as at the expiration of that time resp. was no longer the owner of the premises, resp. was not the "owner in default" within C. Corpn. Act, 1884, s. 39, & they held that he was not liable to pay the amount claimed. The local authority appealed :—*Held :* "owner" in the C. Corpn. Act, 1884, s. 39, referred to the owner at the time of the service of the notice to execute the street works, & if such owner failed to execute the works, he became & remained for the purposes of that sect. the "owner in default," notwithstanding a conveyance of the property to a third person. Resp. was therefore liable to pay the amount claimed by the local authority.—CROYDON CORPN. *v.* OLDAKER, [1937] 1 K. B. 337 ; [1936] 3 All E. R. 360 ; 106 L. J. K. B. 190 ; 155 L. T. 557 ; 100 J. P. 519 ; 53 T. L. R. 79 ; 80 Sol. Jo. 954 ; 34 L. G. R. 574.

2326. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2340. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch.

2344. *Add. Annotation :*—**Expld.** Allen *v.* Waters & Co., [1935] 1 K. B. 200.

2351. After this case add the following new subsection :—

vi. *Other Cases.*

2351a. Action to recover expenses—Form of writ—Names & addresses of owners not known.]—Pltfs., being entitled under Public Health Acts to recover the expenses of making up a road from the owners of the lands abutting on the roadway & being unable to discover who some of those owners were, issued a writ against A., a known owner of some of the land, "& the owners of certain lands adjoining" the road "more particularly described in the indorsement" on the writ, "whose names & addresses are not known to pltfs." Upon the summons for directions pltfs. desired to amend the writ by adding after the word "owners" the words "at the time of the completion of the works referred to in the indorsement hereon," & they also asked for leave to effect substituted service on defts. so described by affixing copies of the writ on the respective premises : —*Held :* the writ, in not giving the names & addresses of defts. other than A., did not comply with the form of writ which had the

PART XIII. SECT. 2, SUB-SECT. 4.—A. (l) iii.

2314 i. *Finality of award.*]—Where certain works in a private street had been carried out by an urban district council & the total expenses as certified to by the surveyor had been apportioned according to their respective linear frontages on the owners of premises fronting both sides of the street. Resp. objected to the apportionment on the ground that the works included a footpath on one side only of the street & opposite to resp.'s premises. The arbitrator in his award varied the surveyor's apportionment by abating the amount payable by resp. by the sum attributable to his contribution to the cost of the footpath :—*Held :* the umpire had no authority to go behind the certificate of the amount expended or to inquire into the reasonableness of the amount apportioned or to apportion it on the basis of the proportionate benefit derived from the works by each owner. Equitable relief might, however, have been obtained by petition in due form to the Local Government Board.—BANGOR U. D. C. *v.* MCKEE (1914), 48 I. L. T. 92.—**IR.**

PART XIII. SECT. 2, SUB-SECT. 4.—A. (m) ii.

sc. *Owner at time of ... of action.*]—A municipal certain pacing, kerbing, & guttering work in a public road. At that time defts. were the joint owners of land on the same side of the road & adjacent to the work done. Before any steps were taken to recover any part of the cost defts. parted with the ownership of the land. ... brought an action against them recover half the cost of the work : *Held :* the words "the owner for the time being" in Local Government Act, 1919, s. 243, meant the owner at the time of the commencement of the action, & therefore that defts. were not liable.—ULMARRA MUNICIPAL COUNCIL *v.* NOTARAS (1929), 29 S. R. N. S. W. 501 ; 46 N. S. W. W. N. 179 ; 9 L. G. R. 80.—**AUS.**

basis of statutory authority & was prescribed by R. S. C., Ord. 2, r. 3; & Appendix A, Part 1; the writ, whether as originally issued or as proposed to be amended, was bad as against the persons so sought to be made defts., & the words following A.'s name must be struck out.—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, [1927] 2 Ch. 25; 96 L. J. Ch. 145; 136 L. T. 649; 91 J. P. 60; 25 L. G. R. 75, C. A.

2353. *Add. Annotations:*—*As to* (1) **Refd.** Sunderland Corpn. *v.* Priestman, [1927] 2 Ch. 107. *As to* (2) **Consd.** Payne *v.* Cardiff R. D. C. (1931), 47 T. L. R. 532.

2357. *Add. Annotations:*—**Apld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622. **Refd.** Paddington B. C. *v.* Finucane, [1928] Ch. 567.

2360. *Add. Annotation:*—**Distd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2364. *Add. Annotations:*—**Apld.** Paddington B. C. *v.* Finucane, [1928] Ch. 567. **Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

2366. *Add. Annotation:*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

2367a. —— —— **Form of writ.**]—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, No. 2351a, *ante*.

2367b. —— **Before expiry of time for summary proceedings.**]—The two remedies conferred by Public Health Act, 1875 (c. 55), s. 257, are concurrent, & a local authority need not wait till the six months, during which the summary remedy is available, have expired before commencing proceedings to enforce the charge created by the sect.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

2367c. —— **Form of order.**]—BROMLEY RURAL DISTRICT COUNCIL *v.* BROOKER, ORPINGTON URBAN DISTRICT COUNCIL *v.* BROOKER, [1934] W. N. 237.

2386a. —— **Outside area of authority—Validity of order.**]—Deft. co. made an application to the local authority under Private Street Works Act, 1892 (c. 57), stating that it had made up a street to the satisfaction of the surveyor & asking that this street should be taken over by the authority as a street repairable by the inhabitants at large. The local authority thereupon made the order asked. The street was described both in the application & in the order as: 1–15 inclusive, Front Newbottle Row. It was proved in evidence that the street in question so far as Nos. 1–5 abutted upon it was not within the area of the local authority:—*Held:* as part of the street was outside the area of the local authority & the order referred to the whole street, the order was *ultra vires* & invalid. It was impossible to sever the application & the order & treat the order as valid so far as the street was within the area of the local authority.—NEWTON *v.* LAMBTON HETTON & JOICEY COLLIERIES, LTD., [1937] 2 All E. R. 150, C. A.

2401a. —— **Used for deposit of ashes.**]—By Carlisle Corpn. Act, 1887, s. 192, it was provided that "No ry. co. shall be deemed to be an owner or occupier in respect of any land of such co. upon which any street shall wholly or partially front or abut & which shall be used by such co. solely as part of their line of railway or sidings & shall have communication with such street & the expenses incurred by the corpn. under the powers of the Public Health Acts . . . shall be paid by the other owners having frontages abutting on such street . . .":—*Held:* land used by a ry. co. for the purpose of depositing ashes thereon did not fall within the exemption contained in that sect.

I am of opinion Mr. Macmorran's argument cannot prevail. Indeed, had it been addressed to me upon sect. 22 of the Private Street Works Act, 1892, I should have doubted much whether this land had been used by the ry. co. solely for the purposes of their line of railway, sidings, station or works (PHILLIMORE, J.).—*Re* CARLISLE CORPN. & SAUL'S EXORS. (1907), 71 J. P. 502; 5 L. G. R. 1128; *sub nom.* CARLISLE CORPN. *v.* SAUL (S. G.) EXORS., 97 L. T. 514.

2405a. **Burial ground "attached" to place of worship.**]—The exemption from liability for the expenses of private street works given by Private Street Works Act, 1892 (c. 57), s. 16, to a burial ground "attached" to a "place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor," extends only to a burial ground in physical attachment or contiguity to the building, & does not include a burial ground at a distance, "attached" to the place of worship in the functional sense that it is owned & maintained by the congregation of the place of worship for their members.—HOLY LAW SOUTH BROUGHTON BURIAL BOARD *v.* FAILSWORTH URBAN DISTRICT COUNCIL, [1928] 1 K. B. 231; 96 L. J. K. B. 713; 137 L. T. 483; 91 J. P. 104; 43 T. L. R. 519; 25 L. G. R. 324, D. C.

2405b. **Vacant land adjoining chapel.**]—An objection was made by the trustees of a chapel to the inclusion in a provisional apportionment under Private Street Works Act, 1892 (c. 57), of certain vacant land adjoining the chapel, on the ground that the land was exempt from expenses under sect. 16 of that Act & Poor Rate Exemption Act, 1833 (c. 30), s. 1. The trustees were owners of the land, & at the time of the provisional apportionment it was their intention to erect a Sunday school thereon communicating by a corridor with the chapel:—*Held:* the land was not exempt from expenses as a "place" or "premises" exclusively appropriated to religious worship within the above Acts, as the words "place" & "premises" refer to buildings only, & cannot include a piece of vacant land; & there was no evidence on which it could be held that the land was within the curtilage of or formed part of the site of the chapel.—ILFORD CORPN. *v.* MALLINSON (1932), 147 L. T. 37; 96 J. P. 185; 48 T. L. R. 358; 30 L. G. R. 201.

2409. *Add. Annotation:*—**Refd.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2419. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2423a. ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430a. —— ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430b. —— **After completion of works.**]—When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57),

s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices have no jurisdiction to determine an objection under sect. 7.—FAULKNER *v.* HYTHE CORPN., [1927] 1 K. B. 532; 96 L. J. K. B. 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60, D. C.

Annotation :—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2432. *Add. Annotation :*—**Reld.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2433. *Add. Annotation :*—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2436. *Add. Annotation :*—**Reld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2439a. —— **Sale by owner—Necessity for demand on purchaser—Limitation of action.**]—Defts. being a local authority having duly made a final apportionment under Private Street Works Act, 1892 (c. 57), s. 12, of the expenses of certain private street works, demanded in 1910 the amount thus apportioned from an owner of land abutting on the street thus made up. In 1927 the latter sold the land in question to pltf. without having satisfied defts.' demand, & pltf. then proceeded to erect houses on the land in respect of which he became entitled to a subsidy. Defts. thereupon claimed to set off against the subsidy the amount of their claim against the owners for the time being of the land in respect of the apportioned expenses, together with interest thereon :—*Held :* (1) although defts. might have lost their right to sue the original owner for the expenses they were not prevented from suing pltf. as a subsequent owner for the time being. A demand on such owner was necessary to complete the cause of action for such expenses & Stat. Limitations did not begin to run until such demand had been made; (2) on the footing that Real Property Limitation Act, 1874 (c. 57), s. 8, was applicable, that sect. did not apply to defeat a claim against pltf., the owner for the time being, because defts. had no present right to receive the sum set off from pltf. until he became owner & twelve years from that date had not elapsed.—DENNERLEY *v.* PRESTWICH URBAN DISTRICT COUNCIL, [1930] 1 K. B. 334; 99 L. J. K. B. 25; 141 L. T. 602; 94 J. P. 34; 45 T. L. R. 659; 73 Sol. Jo. 530; 27 L. G. R. 618, C. A.

2440a. —— **On default of instalment.**]—A local authority had carried out certain street improvements, & premises had, under Private Street Works Act, 1892 (c. 57), s. 13 (1), become charged with the sum apportioned to them in respect of the improvements, that sum being ordered to be paid by instalments:—*Held :* the local authority, under the powers conferred by Private Street Works Act, 1892 (c. 57), s. 13 (1), & Law of Property Act, 1925 (c. 20), s. 101, had power to sell the premises, not merely when the whole of the apportioned sum was due, but also when an instalment was in default.—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, [1932] 1 K. B. 241; 100 L. J. K. B. 626; 145 L. T. 575; 95 J. P. 173; 47 T. L. R. 532; 29 L. G. R. 507.

2443. *Add. Annotation :*—**Reld.** Faulkner *v.* Hythe Corpn. (1926), 48 T. L. R. 55.

2446. *Add. Annotation :*—**Reld.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

2447. *Add. Annotation :*—**Folld.** Chatham Corpn. *v.* Wright (1929), 142 L. T. 431.

2447a. —— ——.]—An urban sanitary authority, acting under the Private Street Works Act, 1892 (c. 57), resolved to execute certain private street works in a street in their district, & to contribute a certain portion of the expenses thereof, & that in settling the apportionment of the balance of the expenses thereof, regard should be had to the greater or less degree of benefit to be derived from the works, by the premises of the frontagers, & they approved provisional apportionments on the frontagers which were duly served & deposited in accordance with the provisions of the Act. Two of the frontagers objected to the provisional apportionments on their premises, before justices, who expressed the opinion that the proposed works were not unnecessary; that the estimated expenses were not excessive; that the premises of the objectors should not be excluded from the apportionment; but they stated that they considered the proposed works were unreasonable in that it was not reasonable that the objectors should bear the whole of the amounts shown in their provisional apportionments. Accordingly they approved the plans, sections, specifications, & estimates of the urban sanitary authority, but quashed in part the apportionments on the objectors' premises, by reducing each of these two apportionments by £100. They confirmed the apportionments on the other frontagers: —*Held :* the justices had sought to compel the urban sanitary authority to increase their contribution at the risk alternatively of sacrificing the scheme as a whole. It was not within the province of the justices, directly or indirectly, to compel the urban sanitary authority to make a larger contribution than that which they had already agreed to grant.

Upon the further consideration of the case, the justices must adopt one of three courses: increase the apportionments on the other frontagers to satisfy the balance of £200; quash the whole of the apportionment; or adjourn the matter, giving the urban sanitary authority the opportunity of considering whether they would pass a new resolution increasing their contribution by the £200 (*per* CUR.).—CHATHAM CORPN. *v.* WRIGHT (1929), 142 L. T. 431; 94 J. P. 43; 28 L. G. R. 4, D. C.

2449a. Time fixed by order—Reasonable time—What must be considered.]—Under sects. 33, 34 of Cardiff Corpn. Act, 1884, the corpn. made an order that a street, not being a highway repairable by the inhabitants at large, should be paved, kerbed, etc., within two months. The estimate & plan deposited in accordance with sect. 33 of the Act showed that under part of the street a sewer was to be laid by the corpn. while the work was being done, & the order showed that some of the frontagers were required to connect the works which they were required to do with the new sewer. Certain frontagers did not comply with the order, & the work was done by the corpn., &, after service of notice of apportionment of the expense of the demand for payment, the corpn. applied to the ct. by originating summons, for a

declaration that the proper proportion of the costs of the work, with interest to date of payment, was a charge upon the premises of those frontagers, in accordance with sect. 54 of the Act:—*Held:* the time fixed by the order was not, in the circumstances, unreasonable; nor was there any evidence to establish that if the frontagers had done the work themselves the corpn. would have hampered them by laying the sewer simultaneously with their work. The frontagers were entitled to comply with the order & to restrain any interference with them in doing so, but not having so complied, they were liable for the expense of the work being done for them & the corpn. were entitled to the relief claimed.—CARDIFF CORPN. *v.* CARDIFF PURE ICE & COLD STORAGE CO., LTD. (1930), 95 J. P. 11; 29 L. G. R. 29, C. A.

2452. *Add. Annotation:—As to* (2) **Refd.** Allen *v.* Waters & Co., [1935] 1 K. B. 200.

2466a. —— **Powers of magistrate.**]—B. Corpn. proposed to execute certain private street works under Birmingham Corpn. (Consolidation) Act, 1883, ss. 46-50, which were substantially identical with Private Street Works Act, 1892 (c. 57). The corpn. duly complied with the formalities required & made a provisional apportionment on resps., the frontagers on the street, according to their respective frontages. Resps. objected that the works were unnecessary. On the hearing of this objection resps. called no evidence. The stipendiary magistrate held that some works were necessary, but was of opinion that the estimated expenses were too heavy. He reduced the estimate & ordered that one resp. should pay one-half & each other resp. two-thirds of the respective sums named in the provisional apportionment:—*Held:* inasmuch as the corpn. had not resolved that the apportionment should be on any basis other than frontage, the stipendiary magistrate could not direct an apportionment on any other basis. Subject to that limitation, he must consider & determine, upon evidence, whether the proposed works were in any, & what, respect unnecessary, & must have regard to any alternative proposals, if resps. made any & supported them by evidence, & to the cost thereof.—BIRMINGHAM CORPN. *v.* MOTHER-GENERAL OF CONVENT OF SISTERS OF CHARITY OF ST. PAUL (1927), 91 J. P. 186; 44 T. L. R. 31; 25 L. G. R. 517, D. C.

2470a. —— **Not mortgagee of pews & vaults in & under church.**]—CHORLTON UPON MEDLOCK (CONSTABLES & BURGESSES) *v.* WALKER (1842), 10 M. & W. 742; 12 L. J. Ex. 88; 7 J. P. 162; 152 E. R. 671.

2471a. —— **Insufficient particulars.**]—By the Birkenhead Improvement Act, 1884, Sched. II, it is provided that, when certain works for the improvement of private streets are undertaken by the corpn., the estimated expenses of executing the works shall be provisionally apportioned among the premises fronting or adjoining or abutting on such street, & that the provisional apportionment "shall also state whether the apportionment is made according to the frontage of the respective premises, or not, & the measurements of the frontages & the other considerations (if any) on which the apportionment is based." The corpn. proposed to carry out certain works, & made a general provisional apportionment which purported to be "principally according to the frontage of the respective premises & having regard to all the circumstances of the case & the amount & value of the work already executed by or on behalf of certain frontagers," but which did not specify the particular "circumstances of the case" or particulars of the "value of the work already executed," with the result that it was not possible for the correctness of the amount of the apportionment to be checked by each individual frontager, including applt., who took the preliminary objection that the requirements of the statute

PART XIII. SECT. 2, SUB-SECT. 4.—C. (a) ii.

2451 i. *Validity of notice—Works specified in excess of those provided for in bye-law.*]—SKREMILKA *v.* WINNIPEG CITY, [1935] 2 W. W. R. 455; 43 Man. L. R. 154.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—A.

sd. *Single scheme for several streets communicating with one another—Right of authority to recover cost from owners.*]—A municipal council in proceeding under Local Govt. Act, 1925, ss. 526, 527, may properly adopt a specification, estimate & scheme of distribution of the cost of forming, levelling, etc., several streets communicating with one another & enforce payment of a proportionate part of the cost of the whole scheme against the owner of premises adjoining or abutting on one or more only of such streets.—MACGOWAN *v.* ST. KILDA CITY, [1928] V. L. R. 462; [1928] Argus L. R. 254.—**AUS.**

se. *"Opening or establishing new street" — What amounts to.*] — *Re* TORONTO & SAUNDERS, [1931] 2 D. L. R. 840; O. R. 116.—**CAN.**

sf. *Notice to property owners—Defective notice—For less than prescribed period.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

sg. —— *Necessity for—Before works entered upon.*]—DUNN *v.* BRAYBROOK SHIRE, [1928] V. L. R. 454; [1928] Argus L. R. 286.—**AUS.**

sx. *Statutory liability of City—Non-fulfilment—Validity of subsequent statute imposing liability on frontagers.*]—By a Quebec statute of 1910 the City of Montreal within six months was to macadamise certain streets, including S. Street, in a township thereby annexed to the City, but later statutes postponed until May, 1925, the date for completing the work. In 1910 the City had no power to charge the cost of paving streets against the frontagers, but statutes of 1911 & 1914 gave the City that power in the case of permanent paving. In July, 1925, the City passed a resolution that S. Street, which had not been macadamised, should be permanently paved & that the frontagers thereon should be taxed in respect of the cost. Accordingly, S. Street was permanently paved with asphalt. In 1928 resps., as frontagers, were assessed to tax under a statute of that year, which provided that the cost of all pavings laid since Jan. 1, 1919, should be charged to the frontagers at a specified rate. All the statutes above mentioned were enacted as amendments of the City's statutory charter of 1899:—*Held:* having regard to the specific terms of the statute of 1928 it applied to S. Street, notwithstanding the unfulfilled obligations of the City under the statute of 1910, & accordingly the assessment was valid.—MONTREAL (CITY) *v.* MONTREAL INDUSTRIAL LAND CO., LTD., [1932] A. C. 700; 101 L. J. P. C. 172; 147 L. T. 517, P. C.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—B.

sh. *Bye-law authorising opening of street—Before land acquired.*]—A bye-law passed by the council of a town authorising the opening & improving of a street shown upon a registered plan, as a local improvement under Local Improvement Act, R. S. O. 1927, c. 235, was held not to be invalid or illegal because the land for the street had not been acquired by the corpn. before the bye-law was passed.—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sk. *Bye-law providing for construction of sidewalks—Street not opened—Ultra vires.*]—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sl. *Width of entrance to new street—Existing entrance a narrow road—Over land of third party.*]—ROSE *v.* SYDENHAM LOCAL ADMINISTRATION & HEALTH BOARD (1928), 49 N. L. R. 203.—**S. AF.**

sm. *Bye-law closing part of road allowance—No alternative way of access to private land—Invalid.*]—GILMORE *v.* WESTMINSTER, [1929] 4 D. L. R. 1; 64 O. L. R. 344.—**CAN.**

not been complied with. The justices decided that the apportionment sufficiently complied with the statute, "having regard to the difficulties in showing all the details of any such proposed works in a document such as the provisional apportionment." Thereupon this appeal was brought:—*Held:* the provisional apportionment was too general, & did not comply with the requirements of the statute, as it did not contain sufficient particulars to enable each individual owner to ascertain & check the basis of computation.—SMITH *v.* BIRKENHEAD CORPN., [1937] 3 All E. R. 75; 54 T. L. R. 24; 81 Sol. Jo. 863; L. G. R. 575.

2508a. —— ——.]—One of the bye-laws of deft. Board provided that 15 square feet air space should be left open in the rear of any new building. It was held that where a person built in contravention of that bye-law within the 15 square feet the Board might pull down the offending building consistently with safety in any way they pleased, but not in a dangerous way; so that where there had been excess in pulling down the building they were not liable unless the damage done was appreciable.—JAGGER *v.* DONCASTER UNION RURAL SANITARY AUTHORITY (1890), 54 J. P. 438.

2508b. —— ——,]—Applt. was the owner of certain old premises from which he removed the roof & commenced to erect on the walls thereof, & on the ground surrounding it, a new building without giving any notice to the local surveyor or delivering plans. The building was completed in Apr. 1901, & in Nov. 1901, applt. was summoned to show cause why the said building should not be pulled down, & on Nov. 4, 1901, resps. made an order requiring him to pull down the building:—*Held:* the order was rightly made though, no plans having been deposited, there had been no disapproval by the local authority, & though six months had elapsed from its completion.—FAIRBRASS *v.* CANTERBURY CORPN. (1902), 67 J. P. 181; 1 L. G. R. 181.

2523. *Add. Annotations:*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566. *As to* (2) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *Generally*, **Refd.** A.-G. *v.* Premier Line, Ltd., [1932] 1 Ch. 303.

2584. *Add. Annotations:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

2572. *Add. Annotation:*—**Refd.** A.-G. *v.* Sharp (1930), 143 L. T. 367.

2575. *Add. Annotation:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

2580. *Add. Annotation:*—**Consd.** A.-G. *v.* Prices' Tailors (1928), Ltd., [1930] 2 Ch. 316.

2580a. —— **Conversion of two shops into** Defts., who had purchased two houses with the shops on the ground floors projecting towards the street on which the premises fronted a few feet beyond the exterior walls of the two upper floors, submitted to the local authority plans of some proposed alterations. These consisted in the main in the conversion of the two shops into one continuous shop with a single entrance from the street in a new position. The local authority took the view that the proposed alterations amounted to taking down the front of the premises for the purpose of rebuilding, so as to entitle them to prescribe a new building line under the Public Health Act, 1875 (c. 55), s. 155. They therefore refused to approve the plans & called on defts. to set the ground floor front back to the existing exterior walls of the floors above. Defts. having refused to comply, this action was brought on the relation of the local authority & pltf. moved for a declaration that defts. were not entitled to build beyond the prescribed line & for an order on them to remove so much of the new front of the shop as projected beyond that line:—*Held:* the local authority had no power to prescribe a new building line under sect. 155, because (1) on the true construction of the sect. "the front" included the exterior walls of the two upper floors as well as the exterior wall of the ground floor, & (2) in any case the alterations made to the premises did not amount to taking down the front of the ground floor.—A.-G. *v.* PRICES' TAILORS (1928), LTD., [1930] 2 Ch. 316; 99 L. J. Ch. 511; 143 L. T. 416; 94 J. P. 226; 29 L. G. R. 15, C. A.

2580b. —— **"Front" of the premises—What included.**]—A.-G. *v.* PRICES' TAILORS (1928), LTD., No. 2580a, *ante*.

2584. *Add. Annotation:*—**Refd.** Fredman *v.* Minister of Health (1935), 154 L. T. 240.

2591a. Meaning of "new building"—Reconstructed building not included.]—BALLARD *v.* HORTON'S ESTATE, LTD. (1926), 24 L. G. R. 499, D. C.

2592a. Meaning of "erections" & "obstructions" — Includes petrol pumps.] — Clause 36 (*a*) of a town planning scheme, provided that "where a building line is shown upon the map (prepared for the scheme) in respect of any existing street or proposed new street no building or erection other than boundary walls & fences shall be erected or set up nearer to the street than such building line." Clause 40 (*b*) of the scheme provided that "no post, rail, fence, or other obstruction shall be erected in front of any shop or business premises in advance of the building lines fixed by clause 36, clause 37, clause 39 or this clause." Clause 70 of the scheme provides penalties for breach of these clauses. Applt., who was the proprietor of a motor garage, which was situated in an existing street for which a building line was shown on the map referred to in the scheme,

PART XIII. SECT. 2, SUB-SECT. 6.—D.

b 1. —— *Lots bordering on navigable river.*]—Land Registry Act, c. 23 of 1906, s. 68, dealing with the subdivision of land into town or other lots, provides, *inter alia*, that, in case a lot borders on the shores of any navigable water, streets leading to & continuing to such water must be shown at a not greater distance apart than 600 feet:—*Held:* the object of the section was to require land abutting on navigable waters to be subdivided so as to provide straight & continuous access to the water at intervals of no less than 600 feet.—*Re* LONSDALE ESTATE (1907), 12 B. C. R. 366.—**CAN.**

erected two petrol pumps in a forecourt in front of his premises, which was nearer to the highway & abutted thereon & was in advance of the building line shown upon the map & between that building line & the front boundary of the premises:—*Held:* the pumps were " erections " within clause 36 (*a*) of the scheme & also " obstructions " within *clause 40 (b), & applt. had been rightly convicted of offences under those clauses.*—MACKENZIE *v.* ABBOTT (1926), 24 L. G. R. 444 D. C.

2592b. Building already erected when building line prescribed—Right to compensation—In respect of restriction on future extensions.]—SURREY COUNTY COUNCIL *v.* CATERHAM ENTERTAINMENTS, LTD. (1930), 94 J. P. Jo. 189, D. C.

SUB-SECT. 8.—IMPROVEMENT LINE IN STREETS.

For "Public Health Act, 1875," read " Public Health Act, 1925."

2592c. " New erection "—What amounts to.]—*Held:* the object of Public Health Act, 1925 (c. 71), s. 33, is to facilitate the widening of streets by enabling local authorities to prescribe an improvement line to which buildings will eventually be set back, & it is contemplated that the authorities will for that pose then exercise the power conferred them by Public Health Act, 1875 (c. 55), s. 1 of purchasing premises. In order not to increase the burden of compensation which the exercise of that power involves, Public Health Act, 1925 (c. 71), s. 33 (5), enacts that no new erection can be placed on the street side of the improvement line. Resps.' shop had in 1908 been moved back, leaving a paved forecourt in front of the shop so moved back upon which they used to expose their goods. After an improvement line had been prescribed in 1927, resps. again enclosed the forecourt into the shop, bringing the shop front back to its old level, which was beyond and on the street side of the improvement line:—*Held:* this was a " new . . . erection " within sect. 33 (5).—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., [1931] 1 K. B. 539; 100 L. J. K. B. 109; 144 L. T. 241; 95 J. P. 18; 47 T. L. R. 120; 29 L. G. R. 83, D. C.

2592d. —— Increase of burden on local authority.]—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., No. 2592c, *ante*.

2596. *Add. Annotation:—Generally,* **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

Part XIV.—Footpaths.

2609. *Add. Annotation:—As to* (2) **Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

2619. *Add. Annotation:*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2622. *Add. Annotation:*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

Part XV.—Bridges and Approaches thereto.

2630. *Add. Citation:*—95 L. J. Ch. 86.

2630a. Covenant to erect & maintain.]—A strip of land running the length of the vendor's property was conveyed to purchasers for use in connection with a reservoir, with the result that the vendor's property was severed from the highway by a conduit. The purchasers accordingly convenanted in the conveyance that they would at their own expense erect & maintain across the conduit a bridge of not less than 30 ft. in width to connect the severed portion of the vendor's land with the highway. There was no means of access to the vendor's land except by means of this bridge. The vendor's successor in title, desiring to develop the land as a building estate, claimed to be entitled to use the bridge for the laying of pipes & cables for the supply of water, gas & electricity & other services:—*Held:* upon the true construction of the conveyance the vendor's successor in title was not entitled to place & maintain upon the bridge anything of a permanent nature which must necessarily be maintained, & he was not entitled to lay pipes or cables on the bridge for any purpose.—METROPOLITAN WATER BOARD *v.* WATKINS, [1937] 1 All E. R. 489; 81 Sol. Jo. 158.

2644a. Agreement to maintain bridge over canal—Extent of duty—Tow-path raised to avoid flooding—Whether council bound to raise bridge.]—The construction of a canal involved the interception of a certain public road; & the canal co., in accordance with its statutory

PART XV. SECT. 2, SUB-SECT. 1.—A. (a)

d l. —— ——.]—Upon an application to a county ct. judge for an order declaring a bridge about to be built across a stream to replace a bridge that had been carried away by a storm, to be a county bridge, the sole question was whether the bridge was or would be " of a greater length than 300 feet " within sect. 458 of the Municipal Act. Before the approaches on the west side of the bridge were constructed, the waters sometimes crossed the highway considerably west of a point 300 feet west of the eastern bank, & an embankment that far west was rendered necessary on account of the waters overflowing the highway & being then constructed, became part of the highway:—*Held:* the embankment was rendered necessary within the meaning of the Act & the bridge was therefore of greater length than 300 feet.—*Re* PICKERING & ONTARIO, [1930] 1 D. L. R. 820; 64 O. L. R. 611.—**CAN.**

.]—*Re* SANDUSK CREEK BRIDGE (Ont.), [1926] 3 D. L. R. —— **CAN.**

obligations, carried the road over the canal by means of a bridge. The canal subsequently became vested in a railway co., who were required under sect. 17 of the Regulation of Railways Act, 1873 (c. 48), to keep the canal open & navigable. At a later date the railway co. entered into an agreement with the county council having jurisdiction in the locality under which the council agreed to remove the bridge & to construct a new bridge in substitution therefor; & the council covenanted that they would "from time to time & at all times thereafter well & sufficiently maintain & repair the new bridge & the roadway & footpaths upon the same & the approaches thereto." The agreement provided for a headway of six feet between the arch of the new bridge & the towing-path passing under it. The bridge & the neighbouring part of the canal for considerable distances on both sides of the bridge were in a mining area which had been subsiding for a long time prior to the agreement; & within sixteen years thereafter, owing to further subsidences, there was a general sinking of the bridge & the towing path. As, however, the water level remained the same, the railway co. found it necessary, in order to avoid flooding, to raise the towing path, the resulting effect being that the headway between the bridge & the towing path was reduced to four feet six inches, which was insufficient for the convenient working of the canal:—*Held:* the covenant on the part of defts. to "maintain" the bridge did not impose upon them an obligation to raise the bridge so as to obtain the six feet of clearance for the use of the water way, even although pltfs. had found it necessary to raise the towing path.—GREAT WESTERN RY. *v.* MONMOUTHSHIRE COUNTY COUNCIL (1929), 94 J. P. 6; 27 L. G. R. 569, C. A.

2650. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2661. *Add. Annotation:—As to* (2) **Distd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

2705. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2708a. Dock swing bridge—Liability for maintenance.]—Pltf. was injured by tripping over a nail projecting from the footway of a swing bridge which defts., the Port of London Authority, were under a statutory duty to maintain in repair, & which the public had a right to use only when it was not required to be swung open for dock traffic. The cause of the accident was the failure of defts. to maintain the footway in good condition. In an action for damages:—*Held:* the swing bridge was not a highway & were not in the position of a surveyor of highways, & therefore defts. could not avoid liability on the ground of nonfeasance or on the ground that a surveyor of highways is not liable to pay damages to persons injured by his neglect of duty, & pltf. was entitled to recover.—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, [1932] 1 K. B. 336; 101 L. J. K. B. 91; 146 L. T. 91; 95 J. P. 217; 48 T. L. R. 55; 75 Sol. Jo. 763; 29 L. G. R. 659.

2712. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2716. *Add. Annotations:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763. **Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2717. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2719. *Add. Annotation:*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2719a. —— Damage by locomotive passing over bridge—Locomotive Act, 1861 (c. 70), s. 7.]—In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that damage.—SOUTHERN RY. CO. *v.* GOSPORT CORPN., [1926] 2 K. B. 89; 95 L. J. K. B. 545; 90 J. P. 161; 70 Sol. Jo. 651; *varied*, [1927] 1 K. B. 331, C. A.

2766a. Liability of borough council—Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.]—In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges:—*Held:* having regard to the fact that the word "street," as defined by the above sect., includes, if this is not inconsistent with the context, any bridge, not being a county bridge, pltf. was entitled to the declaration.—A.-G. *v.* HORNSEY BOROUGH COUNCIL, [1927] 1 Ch. 331; 96 L. J. Ch. 164; 136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260.

PART XV. SECT. 2, SUB-SECT. 1.—A. (b).

p i. —— —— ——.]—*Re* CALEDONIA & HALDIMAND (1912), 22 O. W. R. 961; 3 O. W. N. 1654; 6 D. L. R. 267.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 1.—C.

t i. —— *Too dilapidated to repair.*]—Ontario Municipal Act, R. S. O., 1927, s. 469, does not impose any duty, enforceable at the suit of an affected landowner, on a municipality to reconstruct a bridge which has deteriorated to such an extent that the cost of repair would be more than the subject-matter of repair is reasonably worth & which it is no longer economically feasible to repair.—BRYANT *v.* TORONTO, [1932] 3 D. L. R. 590; O. R. 538; *affd.*, [1933] 1 D. L. R. 535; O. R. 105.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 2.—B. (c).

o i. —— *Transfer of area to municipality.*]—A railway co. constructed & maintained a bridge & approaches a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side of the road:—*Held:* assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or extended these obligations.—MAGISTRATES OF LEVEN *v.* LONDON & NORTH EASTERN RY. CO., [1926] S. C. 528.—**SCOT.**

2776. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2777. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

2778. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, *[1936] 1 All E. R. 692.*

2778a. —— Road over bridge & approaches.]—The Act of Parliament incorporating the predecessors of applts. provided *(inter alia)* : "In all cases in which the railway shall cross any . . . public highway . . . such public highway shall be carried over the said railway . . . at the expense of the said co., by means of a bridge." It was admitted that applts. were liable for the repair & maintenance of the bridge in question in this case, but they contended that they were not liable to repair the road over it :—*Held :* the word "bridge" included the highway over it applts. were therefore liable to repair as much of the road as ran over the bridge & the approaches thereto.—LONDON & NORTH EASTERN RY. CO. *v.* NORTH RIDING OF YORKSHIRE COUNTY COUNCIL, [1936] A. C. 365 ; [1936] 1 All E. R. 692 ; 105 L. J. Ch. 133 ; 154 L. T. 409 ; 52 T. L. R. 260 ; 80 Sol. Jo. 423, H. L.

2780. *Add. Annotations :*—**Consd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112. **Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

2782. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1937] 1 K. B. 112.

2782a. —— Against Port of London Authority—Dock swing bridge.]—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, No. 2708a, *ante.*

2787. *Add. Annotation :*—*As to* (3) **Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

PART XV. SECT. 3.

k i. —— *Apportionment of cost—Bridge across railway.*]—PUBLIC HIGHWAYS DEPT., ONTARIO *v.* CANADIAN PACIFIC RY. CO. (CLAPPISON BRIDGE CASE) (1924), 30 Can. Ry. Cas. 5.—CAN.

k ii. —— —— *Bridge over boundary river.*]—In order to give jurisdiction to the Municipal Comr. to apportion the costs of building a bridge over a river or stream forming the boundary between two municipalities, the latter must previously have agreed to construct the bridge.

The power of a municipality to contract with another municipality to build by joint action such a bridge must be exercised by bye-law.—RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE *v.* RURAL MUNICIPALITY OF CARTIER, [1925] 4 D. L. R. 1035 ; [1925] S. C. R. 691 ; *affg.*, [1924] 4 D. L. R. 601 ; [1924] 3 W. W. R. 244 ; 34 Man. L. R. 405 ; *revsg.*, [1924] 1 D. L. R. 775 ; [1924] 1 W. W. R. 225.—CAN.

HUSBAND AND WIFE.

Part I.—Contracts to Marry.

14. *Add. Annotations :—As to* (1) **Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

15. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

20. *Add. Annotation :*—**Refd.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

24. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1935] 2 K. B. 334.

25. *Add. Annotation :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

26. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

30. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

36. *Add. Annotation :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

* *C. Survival of Right* (p. 27).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1 (1), (2) (*b*).

38. *Add. Annotation :*—**Refd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

39. *Add. Annotations :—As to* (2) **Apld.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. *Generally,* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

40. *Add. Annotation :—As to* (1) **Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

40a. —— ——.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & must relate to matters within the contemplation of the parties at the time the alleged promise was made.—RILEY *v.* BROWN (1929), 98 L. J. K. B. 739 ; 142 L. T. 42 ; 45 T. L. R. 613 ; 73 Sol. Jo. 499.

81. *Add. Annotation :—As to* (3) **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

87. *Add. Annotations :*—**Refd.** Cohen *v.* Sellar, [1926] 1. K. B. 536 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739.

114. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

Part II.—Marriage.

123. *Add. Annotations :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

127. *Add. Annotations :—As to* (1) **Refd.** Nachimson *v.* Nachimson, [1930] P. 217. *As to* (2) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Inverclyde *v.* Inverclyde, [1931] P. 29. *Generally,* **Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

PART I. SECT. 5, SUB-SECT. 1.

sr. *Effect of Jewish betrothal.*]—Among Jews the betrothal ceremony "Kaseph Kiddushim," if it is a valid ceremony, is something more than a betrothal between Christians. It is not a mere contract which the parties can set aside at will, but confers some of the rights & obligations of the married state. If the betrothal is upon certain conditions & the conditions are not fulfilled, the betrothal becomes void. It is then not necessary to execute a "Get" or a bill of divorcement to nullify the effect of the "Kaseph Kiddushim" ceremony.—EZEKIEL *v.* REUBEN (1931), I. L. R. 55 Bom. 803.—**IND.**

PART I. SECT. 6, SUB-SECT. 1.—A.

30 ii. ——.]—MUNN *v.* HAAHTI (1926), 37 B. C. R. 71.—**CAN.**

m i. —— *Agreement to marry after obtaining divorce.*]—L. alleged that in Apr. 1928, she & D. verbally agreed to marry one another as soon as she could obtain a divorce & that D. also agreed to pay the costs of obtaining it. She was then a married woman who had been deserted by her husband for upwards of twenty years. She obtained her decree absolute, but D. then refused to marry her or to pay the costs of the divorce. She brought an action against him for damages for alleged breach of promise, & for special damages to the amount of the costs of the divorce proceedings. The following questions of law were argued before trial : (*a*) whether the alleged promise to marry as soon as pltf. could obtain a divorce was actionable in view of the fact that pltf. was a married woman at the time of the alleged promise ; & (*b*) whether the alleged promise to pay the costs of obtaining the divorce was a valid promise in view of the above facts. It was contended for pltf. that, as in New Zealand the law recognises as a ground for divorce a mere agreement for separation subsisting for three years, the fact that pltf. had been deserted by her husband for upwards of twenty years at the time of the alleged promise was sufficient to relax the rigidity of the rule of public policy :—*Held :* (1) it would be contrary to public policy to allow an action to be maintained on a promise such as was alleged by pltf., as, in principle, there is no distinction between a promise to marry after the wife's death & one to marry after a divorce is obtained, & it is immaterial that no harm resulted or that the possibility of harm is remote ; (2) although in New Zealand the law recognises an agreement for separation subsisting for three years as a ground for divorce, the argument that there should on that ground be a relaxation of the rule of public policy disregards the principle that it is the tendency, not the actual result, of the recognition of contracts such as sued on in this case that affords the ground for the rigidity of the rule ; & on that test pltf. must fail ; (3) the agreement as to the costs of the divorce is covered by the principle applicable to the promise to marry.—LAMBERT *v.* DILLON, [1933] N. Z. L. R. 1059.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 5.

r i. —— ——.]—In an action for breach of promise of marriage, corroboration may be found in circumstances which according to ordinary experience would be accepted as showing that the relationship of engaged persons existed between the parties, but evidence of the most affectionate relations between a man & his mistress is no evidence at all from which the ct. might draw the conclusion that the relationship of engaged persons existed.—SAWDON *v.* DALE (1929), 29 S. R. N. S. W. 573 ; 46 N. S. W. W. N. 196.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

st. *Not facts discovered subsequent to breach.*]—SWYRIPA *v.* VACULCHIK (Alta.), [1926] 3 W. W. R. 795.—**CAN.**

sw. *Immoral consideration.*] Where a promise of marriage was given on the condition that pltf. enter, as she did, into an immoral relationship :—*Held* the breach of the promise did not give rise to a cause of action.—*B. v. B.*, [1936] 3 W. W. R. 76 ; *revsd.* [1937] 1 W. W. R. 363 ; 41 *Man. L. R.* 191 ; *sub nom.* BAKER *v.* BALDERSTON, [1937] 1 D. L. R. 736.—**CAN.**

PART I. SECT. 7, SUB-SECT. 5.

89 ii. —— *Necessity to plead & prove.*]—The fact that in an action for breach of promise of marriage the trial judge found that both parties had repented of their bargain held not to support the plea that the agreement had been rescinded by mutual consent before any breach thereof, there being no suggestion in such finding that they had translated their feelings into the performance of any act or acts which

134. *Add. Annotation :*—**Refd.** De Pret-Roose *v.* De Pret-Roose (1934), 78 Sol. Jo. 914.

140a. ——.]—Where a Jewess went through a form of marriage with a Jew at a Register Office under the mistaken belief that it was merely a ceremony of betrothal, & where conjugal relations had never taken place, the ct. granted her a decree of nullity.—KELLY (OTHERWISE HYAMS) *v.* KELLY (1932), 148 L. T. 143; 49 T. L. R. 99; 76 Sol. Jo. 832.

Add. Annotation :—As to (1) **Refd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

175. After this case add

:e of Marriage Act, 1929 (c. 36).

175a. —— ——.]—CARR (otherwise FOWLER) CARR (1936), 80 Sol. Jo. 57.

193. *After this case add :—*

——.]—*See, now,* Marriage (Prohibited Degrees of Relationship) *Act,* 1931 (c. 31), s. 1 (1).

199. After this case add :—

——.]—*See, now,* Marriage (Prohibited Degrees of Relationship) Act, 1931 (c. 31), s. 1 (

217a. **Husband of mother's deceased sister.**]—RESTALL OTHERWISE LOVE ... TALL (1929), 45 T. L. R. 513; 73 Sol. Jo. 38

219. After this case add :—

——.]—*See, now,* Marriage Act, 1835 (c. 54), s.

SUB-SECT. 4.—REMARRIAGE OF DIVORCED PERSONS.

(Vol. XXVII., p. 43.)

To cross-reference add "*See, also,* Marriage (Prohibited Degrees of Relationship) Act 1931 (c. 31), s. 2."

235. After this case add :-

Usual place of worship of either party.]—Marriage Measure, 1930 (No. 3).

would terminate the contract whether by mutual consent or otherwise. Where in such an action deft. wishes to contend that pltf. was not ready & willing to marry him, he should in his defence plead that specifically as a condition precedent & allege its non-performance; otherwise its due performance is presumed.—LAFAYETTE *v.* VIGNON, [1928] 3 D. L. R. 613; [1928] 2 W. W. R. 506.—**CAN.**

PART I. SECT. 8, SUB-SECT. 2.—A.

1 i. ——.]—In cases of breach of promise of marriage the elements usually considered in estimating the amount of damages are the monetary loss which pltf. has sustained, the financial position of deft., the social position of the parties, & the extent to which the feelings of pltf. have been wounded.—MCCALMAN *v.* THORNE, [1934] N. L. R. 86.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 1.

131 i. *Necessity for voluntary consent.*]—SOBUSH *v.* SOBUSH, [1931] 2 W. W. R. 900.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

142 i. *General rule.*]—KAWALUK *v.* KAWALUK (Sask.), [1927] 3 D. L. R. 493.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

sa. *Marriage between Protestant & Roman Catholic in Quebec.*]—A marriage between a Protestant & a Roman Catholic, by a Protestant minister in Quebec, is, civilly valid.—CARMICHAEL *v.* KENT, [1935] 4 D. L. R. 620.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

166 i. *General rule.*]—For a Christian marriage in India in 1926 the age of consent is twelve for the girl, that being the then state of the law in England.—GOODAL *v.* GOODAL (1932), I. L. R. 55 All. 243.—**IND.**

167 i. *Effect of want of age.*]—Application for decree of nullity where pre-marital intercourse had taken place refused because (1) the jurisdiction of the Supreme Ct. of Ontario to declare marriages null by Marriage Act, R. S. O., 1927, s. 34, is limited to cases where the action is brought "by the person who was at the time of the ceremony under the age of eighteen years"; & (2) a false statement as to age in an application for a marriage licence was not a ground for nullity according to the law of England in 1870, within the meaning of Divorce Act, 1930, declaring the same to be in force in Ontario.—KERR *v.* KERR, [1932] O. R. 601; 4 D. L. R. 289; *affd.,* [1934] 2 D. L. R. 369; S. C. R. 72.—**CAN.**

sd. *Child Marriage Restraint Act, 1929—Restriction to British India.*]—The Child Marriage Restraint Act, 1929, is limited in its operation to British India, & only strikes at marriages contracted in British India.—NARAYAN MUDLAGIN *v.* EMPEROR (1935), I. L. R. 59 Bom. 745.—**IND.**

PART II. SECT. 4, SUB-SECT. 5.

177 i. *Effect of—Marriage void.*]—Where in an action for a decree of nullity of marriage it is proved that at the time of the marriage a person to whom deft. had been legally married was still alive & there is nothing to show that this prior marriage had ever been dissolved, the decree will be granted.—ENGLISH *v.* ENGLISH, [1928] 1 D. L. R. 419; [1928] 1 W. W. R. 14.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.—A.

1 i. ——.]—A marriage between an uncle & his niece cannot be lawfully solemnised in Alberta whether the parties are domiciled in the province or elsewhere.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—**CAN.**

sv. *Aunt by marriage.*]—A marriage between a man & his aunt by marriage is within the prohibited degrees of affinity & is therefore invalid.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.

21[9] iii. ——.]—Where the parties to a marriage are within the prohibited degrees of consanguinity & both parties are aware of the fact prior to the marriage the ct. has jurisdiction to grant a decree of nullity.—C. *v.* C., [1932] N. Z. L. R. 1425.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 1.

sb. *Failure to comply with requirements—Effect of.*]—Although a marriage licence, the publication of banns, or the consent of parents is made by statute a prerequisite to the solemnisation of marriage, the non-fulfilment of said requirement does not render a marriage void or voidable, unless the statute expressly or by clear necessary intendment so provides; & even the fact that the statute prohibits under a penalty other than nullity solemnisation without observance of the requirement does not imply nullity. The fact that a marriage was solemnised without the licence or publication of banns required by sect. 3 of Marriage Act, 1924, does not make the marriage void or voidable.—WYLIE (OTHERWISE PATTON) *v.* PATTON, [1930] 1 W. W. R. 216; 1 D. L. R. 747; 24 S. L. R. 285.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.

t i. —— ——.]—In Dec. 1928, a woman brought an action of declaratory of marriage against the representatives of a man who had died in Sept. of that year, averring that a marriage had been entered into between them by declaration *de praesenti* in Dec. 1922. It was proved that the parties had for many years prior to that date been on terms of intimate friendship, & that deceased had more than once proposed marriage to the pursuer. On Dec. 28, 1922, at an hotel at which the parties were staying, they stated in the presence of three witnesses that they accepted one another as husband & wife. A document attesting the marriage was signed by the parties & by the witnesses. The pursuer & the three witnesses to the document deponed that the interchange of consent was serious, & was intended to constitute marriage, & that no other person was present at the ceremony. On the other hand, a witness B. deponed that she was present during part of the ceremony, & that the proceedings were of the nature of a joke. At the date of this ceremony the deceased was seventy-six & the pursuer was about forty. The pursuer & one witness deponed that the parties occupied the same bedroom after the ceremony. The witness B. gave evidence to the contrary effect.

The parties did not take up residence together. The pursuer continued to carry on her profession as a teacher under her maiden name. Several witnesses deponed that deceased had subsequently introduced the pursuer to them as his wife. Other witnesses gave evidence that deceased had denied that he was married to the pursuer. Deceased died on Sept. 2, 1928, leaving about £20,000. In his will, made two days before his death, he left the pursuer a legacy of £200 under her maiden name :—*Held :* the exchange of serious matrimonial consent had been clearly established by the document & the evidence of the pursuer & the three witnesses thereto, & the subsequent conduct of the parties did not displace this conclusion.—DUNN *v.* DUNN'S TRUSTEES, [1930] S. C. 131.—**SCOT.**

t ii. —— *Subsequent belief by one party that marriage invalid.*]—Mere consent makes marriage, & the validity of the contract is not affected by the fact that one of the parties subsequently forms an erroneous view that it was invalid for lack of some formality.

335. *Add. Annotation:*—Reld. Nachimson *v.* Nachimson, [1930] P. 217.

341. *Add. Annotation:*—Follod. R. *v.* Lamb (1934), 150 L. T. 519.

342. *Add. Annotation:*—*As to* (1) Follod. R. *v.* Lamb (1934), 150 L. T. 519.

342a. —— —— ——.]—On a prosecution for bigamy it was proved that prisoner's first marriage had taken place in a register office by certificate after notice & that prisoner, with the knowledge & consent of the woman, gave the notice in a false name; & that subsequently the prisoner went through a form of marriage with another woman:—*Held:* the giving of the notice in a false name, with the knowledge & consent of the other party, did not prevent the notice from being "due notice" within Marriage Act, 1836 (c. 85), s. 4. The first marriage was therefore valid, & the prisoner could properly be convicted of bigamy.—R. *v.* LAMB (1934), 150 L. T. 519; 50 T. L. R. 310; 78 Sol. Jo. 279; 24 Cr. App. Rep. 145; 30 Cox, C. C. 91, C. C. A.

347. *Add. Annotation:*—*As to* (1) Consd. Lamb (1934), 150 L. T. 519.

446. *Add. Annotation:*—Reld. Nachimson Nachimson, [1930] P. 217.

453a. —— ——.]—The detail & strictness of proof of a marriage required in a criminal prosecution for bigamy is of a totally different standard from that required before a magistrate who is dealing with the question of the maintenance of a wife alleged to have been deserted. In civil cases, where there is evidence of the fact of a ceremony of marriage, followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary, even though it may be necessary to presume the grant of a special licence. The burden of impeaching the factum of a marriage & the presumption of law *semper præsumitur pro matrimonio*, lies upon the impeaching party.

Statement in Halsbury's "The Laws of England," Vol. 16, Husband & Wife, Part II.,

—COURTIN *v.* ELDER, [1930] S. C. 68.—SCOT.

PART II. SECT. 7, SUB-SECT. 1.—E. (b) ii.

sd. *Rule in India.*]—The English law that non-publication of banns makes the marriage void only if lack of publication is within the knowledge of both parties is no guide to the Indian cts., for in the Indian Christian Marriage Act there is nothing equivalent to the wording in sect. 22 of the English Marriage Act.—JONES *v.* TITLI (1932), I. L. R. 55 All. 185.—IND.

PART II. SECT. 7, SUB-SECT. 3.—C. (a).

sf. *To widow—Presumption of death of first husband—Form of declaration.*]—*Re* SHOOK, [1935] 3 W. W. R. 115.—CAN.

PART II. SECT. 7, SUB-SECT. 3.—C. (b).

c i. —— *Parties within prohibited degrees.*]—Where it is disclosed to an issuer of marriage licences that there is a legal impediment to the proposed marriage by reason of the relationship of the appcts. by consanguinity he acts properly in refusing to issue the licence.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—CAN.

PART II. SECT. 7, SUB-SECT. 5.—G. (a).

g i. —— *Formal consent filed after marriage—Verbal consent given before.*]—LE ARROWSMITH *v.* LE ARROWSMITH, [1931] 2 D. L. R. 608; 1 W. W. R. 616.—CAN.

sk. *When marriage invalidated by.*]—Sect. 52*a* of Marriage Act, 1933, which empowers the ct. to declare that a form of marriage gone through by a minor without the consent required by the Act & which has not been consummated was not a valid marriage, does not apply to a marriage solemnised before the passing of the amendment. *Qu.:* whether if said amendment is to be construed so as to make it possible for persons of marriageable age who deliberately went through such a form of marriage, having obtained the licence on false statutory declarations as to age, to have it declared a nullity on their own testimony that the marriage was not consummated, does not the amendment invade the Federal field of jurisdiction.—GRAHAM (OTHERWISE BRUCE) *v.* GRAHAM, [1937] 2 W. W. R. 444.—CAN.

PART II. SECT. 8, SUB-SECT. 1.—A.

so. *Person other than contracting parties.*]—Marriage Act, R. S. M., 1913, contemplates that the official or person solemnising a marriage must be a person distinct from either of the contracting parties. Sect. 30 of said Act was never intended to validate a ceremony performed by one of the contracting parties. *Semble:* the words "other person" as used in said sect. refer to those persons other than ministers & clergymen who are named in sect. 2 of said Act but who are not qualified within the language used in the various sub-sects. thereof.

Deft. after obtaining from an issuer of marriage licences a licence for the marriage of himself & pltf. handed it to her, saying, "You married woman, I your husband, you my wife," & informed her (a foreigner, who had recently come to Canada) that it was not necessary in Manitoba to have a marriage solemnised by a minister or "the church." The parties regarded themselves as legally married, & lived together as husband & wife for fifteen years. Pltf. filed a petition praying for a decree that she & deft. had been legally married & a declaration that she was his lawful wife. Resp. (deft. herein) filed an "answer" & the matter was treated as a matrimonial cause:—*Held:* Divorce & Matrimonial Causes Act, 1857, & the amending Acts in force in Manitoba, did not give the ct. jurisdiction to grant the relief asked, but an order was made on the hearing, counsel for resp. agreeing thereto, converting the proceedings into an ordinary action in the ct. & the same was then heard, whereupon it was held that the parties were not legally married.—STOCKHOLDER *v.* STOCKHOLDER, [1934] 1 W. W. R. 365; 42 Man. L. R. 85.—CAN.

PART II. SECT. 8, SUB-SECT. 2.—A.

sa. *Marriage of Doukhobortsi.*]—CHERNENKOFF *v.* CHERNENKOFF, [1930] 2 W. W. R. 165; 3 D. L. R. 1001.—CAN.

PART II. SECT. 8, SUB-SECT. 4.

sb. *Under Indian Christian Marriage Act, 1872—Between Roman Catholics.*]—A civil marriage contracted before a registrar in accordance with the provisions of Indian Christian Marriage Act, 1872, by persons professing the Roman Catholic faith is valid & legal. That Act deals with the forms of solemnisation of marriages of all Christians in India, including Roman Catholics.—SALDANHA *v.* SALDANHA 1929), I. L. R. 54 Bom. 288.—IND.

PART II. SECT. 9.

sc. *Marriage in foreign State—Celebration by person with power to do so.*]—MELLEN *v.* DOBENKO, [1927] 4 D. L. R. 1128; 61 O. L. R. 340.—CAN.

PART II. SECT. 10.

b i. —— —— *Marriage Act, R. S. A.*, 1922 (*c.* 213), *s.* 20.]—The above sect. cannot apply to an alleged marriage of which there was no solemnisation whatever, other than the purchase of two wedding rings from an issuer of marriage licences & the placing of one of them on a finger of each of the parties, who did not belong to any sect or nationality which recognises this proceeding as a valid marriage ceremony.—PETSCHL *v.* BUCHI (Alta.), [1926] 4 D. L. R. 1185; [1926] 3 W. W. R. 598.—CAN.

PART II. SECT. 11, SUB-SECT. 1.

e i. —— ——.]—The doctrine, that a person who goes through a form of marriage must be presumed to have acted innocently & legally & that, until this presumption is rebutted, it must prevail over the presumption that a first husband or wife whose death was not proved, but who had not been heard of for over seven years before the second marriage, was alive at the time thereof, can have no application where it is found that the person relying on such doctrine did not act in innocent good faith in going through the form of a second marriage.—IRWIN *v.* IRWIN (Man.), [1926] 2 D. L. R. 794; [1926] 1 W. W. R. 849.—CAN.

e ii. —— *Compliance with Marriage Act, s.* 21 (*b*).]—MCGINN *v.* ELLERTON, ELLERTON *v.* ELLERTON, [1925] 2 D. L. R. 1136; [1925] 1 W. W. R. 962.—CAN.

e iii. ——.]—A marriage *primâ facie* valid affords a strong presumption that there was no legal impediment thereto, & the presumption is not to be broken in upon by a mere balance of probability; the evidence for the purpose of repelling it must be strong, distinct & satisfactory. In an action attacking the validity of K.'s second marriage & seeking a declaration that the six children born thereof should be excluded from participating in an estate bequeathed to their father & lawful children, upon the ground that at the time of the said marriage K.'s first wife was living:—*Held:* the only

Marriage, para. 604 [2nd Ed., para. 932] *approved.*—SPIVACK *v.* SPIVACK (1930), 99 L. J. P. 52; 142 L. T. 492; 94 J. P. 91; 46 T. L. R. 243; 74 Sol. Jo. 155; 28 L. G. R. 188; 29 Cox, C. C. 91.

508a. —— ——.]—Evidence by a witness of reputation of marriage is admissible so long as it appears to be of a general reputation; so soon as it appears, however, upon cross-examination or otherwise, that the witness is speaking from information given to him by some individual, even of the existence of a general reputation, such evidence is merely hearsay, &, as such, inadmissible.—SHEDDEN *v.* A.-G. (1860), 2 Sw. & Tr. 170; 30 L. J. P. M. & A. 217; 3 L. T. 592; 6 Jur. N. S. 1163; 9 W. R. 285; *affd., sub nom.* SHEDDEN *v.* PATRICK & A.-G. (1869), L. R. 1 Sc. & Div. 470, H. L.

510. *Add. Annotation:*—**Refd.** Skipp *v.* Kelly *(1926), 42 T. L. R. 258.*

536. *Add. Annotation:*—**Apld.** *Spivack v. Spivack (1930), 99 L. J. P. 52.*

. ——.]—*T. B. lived in Rockhampton from 1860–1870 with a certain lady; they held themselves out to be husband & wife, & they & their children were received in local society, which would not have been the case had there been any suggestion of irregularity. T. B. at his death was one of the most prominent solrs. in Rockhampton. The certificates of the children recorded marriage of the parents as having place at Ballan, Victoria, on Jan. 10, but no such marriage was registered although registration had there been pulsory for some years. In 1873, T father, who lived in England, execu deed covenanting to make certain pay to the children or their mother & this contained these words: "the foll reputed children of his deceased son," " which children are now in England their mother E. M., otherwise E. B Held:* (1) the absence of any entry i register of marriages was not sufficie rebut the presumption of marriage of T (2) the words in the deed of 1873 insufficient to rebut the presumption; (presumption of marriage can be rebutted by evidence of the most cogent kind, & children in question ought to be declar be the lawful children of T. B. & his wife E. B.—*Re* TAPLIN, WATSON *v.* TATE, [1937] 3 All E. R. 105; 81 Sol. Jo. 526.

568a. ——.]—SPIVACK *v.* SPIVACK, No. 453a, *ante.*

580a. ——.]—RALSTON *v.* RALSTON, No. 2293a, *post.*

583. *Add. Annotation:*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

Part III.—Personal Rights and Obligations arising from Marriage.

595a. —— **Bankruptcy of husband.**]—The bkpcy. of a husband who has entered into a separation deed is an answer to any claim for the payment of agreed sums under the deed, but does not convert his wife's agreement to live apart with an allowance into an agreement to live apart without maintenance. Her right to that maintenance is

possible inference from the proved facts was that the first wife was dead when the disputed marriage was contracted & therefore the children thereof were legitimate & entitled to participate in the said estate. Also, as the result of the action had settled the question of the legitimacy of K.'s children by his second marriage, thus enabling the Public Trustee to distribute a fund that had been held by him pending such settlement, pltf. should be awarded costs.—KEMPTON *v.* PUBLIC TRUSTEE, [1932] N. Z. L. R. 1380; G. L. R. 647.—**N.Z.**

e iv. —— *Compliance with necessary ceremonies.*]—In an action under Families' Compensation Act, R.S.B.C., 1924, for the benefit of the alleged wife & children of the deceased, a Chinese, deceased & the alleged wife were alleged to have been married in China where, apparently, they were both domiciled at the time. There was no proof of the marriage by record or by anyone present thereat, but evidence was given as to the intention of the two to marry & of a betrothal contract, & there was sufficient to show that they cohabited together in China after the alleged marriage & were there regarded by their friends, neighbours & relatives as man & wife:—*Held:* in the absence of proof, as a fact, as to what, if any, presumption would be drawn under Chinese law from such cohabitation, the ct. could not presume from said evidence that a valid marriage took place.—LEONG SOW NOM *v.* CHIN YEE YOU, [1934] 3 W. W. R. 686; 49 B. C. R. 244.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—B. (a).

478 i. *Many years.*]—P., a Natal native, from about 1897 until just before her death in 1916 cohabited continuously with A., a half-caste woman. When the cohabitation began A. had a husband, who was still living. There was evidence to show that P. & A. had both said before 1902 that they were not married, & there was no evidence of any registration of a marriage between P. & A. There was some evidence that P. & A. were reputed to be man & wife since the birth of their five children, all of whom had been brought up & educated by P.'s brother C., who had treated them as his nephews & nieces:—*Held:* the evidence adduced was not strong enough to rebut the presumption of marriage arising from the lengthy cohabitation of P. & A.—NYOKANA *v.* NYOKANA (1925), 46 N. L. R. 227.—**S. AF.**

PART II. SECT. 11, SUB-SECT. 2.—B. (c).

521 iv. —— —— ——.]—R. *v.* PROUD, [1926] 3 D. L. R. 664; [1926] S. C. R. 599.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—E.

553 ii. ——.]—DAHLBERG *v.* SWANSON, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—**CAN.**

PART II. SECT. 13.

580 i. *General rule.*]—The ct. in an ordinary action can make a declaration as to the validity of a marriage.—STOCKHOLDER *v.* STOCKHOLDER, [1934] 1 W. W. R. 365; 42 Man. L. R. 85.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

k (p. 76) i. —— —— —— —— *Effect of repeal of Judicature Act, 1922, pendente lite.*]—An alimony action begun before the coming into force of Domestic Relations Act, 1927, c. 5, s. 75, is governed as to pltf.'s rights & deft.'s liability by Jud. Act, R. S. A. 1922, c. 72, s. 21, notwithstanding its repeal by said sect. 75.—CLARKE *v.* CLARKE, [1928] 1 D. L. R. 249; [1927] 3 W. W. R. 728.—**CAN.**

s (p. 76) i. —— —— —— —— *Provoked by wife's misconduct.*]—WEITZEL *v.* WEITZEL, [1928] 3 D. L. R. 261.—**CAN.**

m (p. 77) i. —— —— —— *Invalidity of marriage.*]—*Held:* pltf. was not entitled to succeed on an alternative claim for a *quantum meruit* for her services as deft.'s housekeeper.—HOLMES *v.* HOLMES (Alta.), [1927] 2 D. L. R. 979; [1927] 2 W. W. R. 253.—**CAN.**

ff i. —— —— *Liability for interim disbursements.*]—The Supreme Ct. of Alberta has the power in an alimony action to grant the wife an order for payment of interim disbursements.—DREWRY *v.* DREWRY, [1928] 3 W. W. R. 460.—**CAN.**

hh i. —— —— —— *Husband purposely denuding himself of his property.*]—LIGHTHEART *v.* LIGHTHEART, [1927]

not in contract but is an incident of matrimonial status at common law. An agreement under a separation deed to receive an allowance merely suspends, but does not annul, that right, which revives as soon as the agreement is terminated by bkpcy., notwithstanding the receipt of a dividend. The dividend is not a transaction between husband & wife, but an incident in the bkpcy., & its receipt does not operate as a new bargain with the husband compounding the common law right of the wife The separation agreement thus put an end to does not debar the wife from alleging the wilful neglect of the husband to provide reasonable maintenance for her within Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925.—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, [1928] P. 113; 97 L. J. P. 65; 138 L. T. 552; 92 J. P. 32; 44 T. L. R. 274; 72 Sol. Jo. 69; 26 L. G. R. 191.

Annotation :—**Refd.** Markovitch *v.* Markovitch (1934), 151 L. T. 139.

601. *Add. Annotations :*—**Refd.** Grubb *v.* Grubb (1934), 150 L. T. 420; Markovitch *v.* Markovitch (1934), 151 L. T. 139.

611. *Add. Annotations :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

640. *Add. Annotation :*—*As to* (1) **Folld.** Place *v.* Searle, [1932] 2 K. B. 497.

641. *Add. Annotation :*—**Consd.** Place *v.* Searle, [1932] 2 K. B. 497.

642. *Add. Annotation :*—**Consd.** Place *v.* Searle, B. 497.

643. *Add. Annotation :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428.

643a. —— Whether necessary to prove wife's will overborne by defendant.]—For pltf. to succeed he must show that his wife did not elect to leave him, but was overborne by a stronger will (DARLING, J.).—SANDERSON *v.* HUDSON (1923), *Times*, Jan. 29, 1923.

Annotation :—**Overd.** Place *v.* Searle (1932), 101 L. J. K. B. 465.

643b. —— ——.]—A wife owes the duty to her husband to reside & consort with him, & any one who, without justification, procures, entices or persuades her to violate this duty commits a wrong towards the husband for which he is entitled to recover damages. In order to succeed in such an action the husband need not prove that the will of the wife was overborne by the stronger will of the deft.—PLACE *v.* SEARLE, [1932] 2 K. B. 497; 101 L. J. K. B. 465; 147 L. T. 188; 48 T. L. R. 428, C. A.

Annotations :—**Consd.** Newton *v.* Hardy (1933), 149 L. T. 165; **Refd.** Menon *v.* Menon & Warth, [1936] 1 All E. R. 900.

643c. Postponement of hearing—Until after hearing of divorce proceedings.]—PACHECO DE CESPEDES *v.* MCCANDLISH (1935), 79 Sol. Jo. 964, C. A.

644. *Add. Annotation :*—*As to* (1) **Consd.** Newton *v.* Hardy (1933), 149 L. T. 165.

645. *Add. Annotations :*—**Consd.** Place *v.* Searle, [illegible]

645a. —— ——.]—(1) A married woman has a legal right to the *consortium* of her husband & can recover damages from any one who violates that right. In order to recover such damages she must prove that her husband has been enticed, procured, or persuaded by

1 D. L. R. 386; [1927] 1 W. W. R. 393.—**CAN.**

hh ii. —— —— —— *Alimony provided for in prior separation agreement—Power of court to increase.*]—KAWIN *v.* KAWIN, [1927] 3 D. L. R. 383; [1927] 1 W. W. R. 690; 21 Sask. L. R. 415.—**CAN.**

rr i. —— —— *Necessity for written demand for cohabitation & restitution of conjugal rights.*]—*Held :* pltf. not entitled to decree for alimony, because she had not before action made a written demand for cohabitation & restitution of conjugal rights.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

rr ii. —— —— ——.]—FREEMAN *v.* FREEMAN, [1935] 1 W. W. R. 477; 2 D. L. R. 809; 49 B. C. R. 554.—**CAN.**

rr iii. —— —— *Variation—Jurisdiction of Supreme Court of Nova Scotia.*]—MCLEOD *v.* MCLEOD, [1931] 2 D. L. R. 364; 2 M. P. R. 559; *revsg.*, [1930] 3 D. L. R. 157.—**CAN.**

rr iv. —— —— *Effect of decree as res judicata—Subsequent action for annulment.*]—THOMPSON *v.* CRAWFORD, [1932] 2 D. L. R. 466; O. R. 281; *affd.*, [1932] 4 D. L. R. 206.—**CAN.**

s (p. 78) **i.** —— ——.]—*Semble :* there is no common law rule that a husband is bound to maintain his wife while she is incarcerated in a lunatic asylum without his consent.—A.-G. *v.* RAND (1931), S. R. N. S. W. 568; 48 N. S. W. W. N. 154.—**AUS.**

PART III. SECT. 1, SUB-SECT. 4.

d i. ——.]—The duty of a husband to support his wife is not limited to the providing of such "necessaries" as food & clothing but includes also the duty to provide shelter; & although the wife is living in a house which is the family home & although it is owned by her, she may, nevertheless, be in necessitous circumstances within the meaning of sect. 242 (3) of Criminal Code.—R. *v.* HARENSLAK, [1937] 1 W. W. R. 1; 1 D. L. R. 337; 67 C. C. C. 277; 6 L. Jo. 259.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A.

sm. *Court cannot order wife to live apart from husband.*]—A judge awarded a wife alimony & also expressed the opinion that it would be better for the parties to live apart for a time. The formal judgment contained a clause adjudging that pltf. vacate the premises :—*Held :* the ct. had no power to order the wife to leave her husband's roof; &, even if the jurisdiction existed, it would not be exercised at the instance of the wife against the protest of the husband.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—A. (b).

a i. —— ——.]—In an action by a husband against his wife's parents for unlawfully harbouring & detaining her against his wishes :—*Held :* where the harbouring & enticing could only be proved against the father, the mother could not be held liable.—MCBAY *v.* MERRITT, [1936] 4 D. L. R. 319; 11 M. P. R. 20.—**CAN.**

k i. ——.]—The enticing away of a wife by a third person is an infringement of the absolute right of the husband to the benefit of the society & services of the wife, & the husband can maintain a suit for damages for such actionable wrong. It is immaterial that at that time the husband may have been away at another town; it is not the mere depriving of a husband for a day or two of the society of wife which gives rise to the action, but the fact that deft. has acted in a way towards the wife of pltf. which is an infringement of pltf.'s right under the contract of marriage. The case of a wife, therefore, stands on a different footing from that of seduction of a daughter or a servant.—SOBHA RAM *v.* TIKA RAM (1936), I. L. R. 58; All. 903.—**IND.**

PART III. SECT. 2, SUB-SECT. 3.—B.

645 ii. —— ——.]—The statement of claim in an action by a wife alleged that deft. had induced pltf.'s husband to depart & remain absent from the home, whereby pltf. had been deprived of the society comfort & protection of her husband & partially of his support : —*Held :* the statement of claim was bad in law & disclosed no cause of action.—WRIGHT *v.* CEDZICH, [1929] V. L. R. 117; [1929] Argus L. R. 102; *affd.*, 43 C. L. R. 493; (1930), V. L. R. 141; 3 A. L. J. 437; (1930), Argus L. R. 105.—**AUS.**

l i. ——.]—In an action by a wife against her husband's father for alienating the affections of her husband, she alleged that she was prevented from the companionship of her husband & infant daughter by deft.'s conduct in keeping her husband away from her, so that she was compelled to support herself as best she could. There was no allegation of making defamatory statements by deft., & there was no allegation of malice : —*Held :* no reasonable cause of action was shown. [illegible] [1928] 3

l ii. ——.]—In Ontario an action by a married woman to recover damages against a third person for alienation of her husband's affections does not lie. —BARKS *v.* DONE, [1934] 1 D. L. R. 789.—**CAN.**

the deft. to cease from cohabiting & consorting with her. Where, therefore, a pltf. proved that deft. had committed adultery with her husband, but failed to prove that deft. had induced him to cease from cohabiting & consorting with her, the action failed.

(2) *Qu.:* whether the deft.'s husband can be made liable in such an action as being in law responsible for his wife's torts.—NEWTON *v.* HARDY (1933), 149 L. T. 165; 49 T. L. R. 522; 77 Sol. Jo. 523.

647. *Add. Annotation:*—**Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

Part IV.—Effect of Marriage with Regard to Wife's Property.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), ss. 1, 2.

656. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

Part V.—Effect of Divorce or Separation with Regard to Wife's Property.

753. *Add. Annotation:*—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

755a. Effect of remarriage.]—In 1916 a post-nuptial settlement by P. was executed with his trustees whereby it was agreed among other things that they should hold two-thirds of the settled fund upon trust to pay the income to the wife for her life. If she survived P. & married again she was to have the income of one-fifth for her life of the two-thirds during the subsequent coverture. Power to appoint the two-thirds was given to her by deed or will for the benefit of her children by the settlor, such power to cease

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PART IV. SECT. 1.

n 1. —— *Acquired & disposed of through husband—Belong to husband.*]—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband:—*Held:* they did not belong to the wife as against the husband's creditors.—JOHN DEERE PLOW CO. *v.* BOWEN, [1925] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—**CAN.**

sb. *Legacy to wife—Death before reduction into possession—Right of husband as representative of wife.*]—If a legacy is bequeathed to a married woman, who dies before any act done by husband to reduce it into possession, he can only maintain an action for it as the representative of his wife, though he may be beneficially entitled to it.—COLLINS *v.* CAHIR (1850), 7 N. B. R. (2 All.) 103.—**CAN.**

sc. *Husband not constituted agent of wife by marriage.*]—A husband is not *primâ facie* an agent for his wife by reason of their relationship. The *onus* is on the person alleging such agency to prove that he is her agent.—MILLARD *v.* BEVAN LUMBER & SHINGLE CO., LTD., [1928] 2 D. L. R. 367; 39 B. C. R. 430.—**CAN.**

sd. *Division of property of husband & wife—Married Women's Property Act, R. S. B. C.,* 1924.]—WARD *v.* WARD, [1932] 3 D. L. R. 774; 45 B. C. R. 248.—**CAN.**

PART IV. SECT. 2.

sf. *Reversionary interest.*]—STANDARD BANK *v.* BOULTON (1878), 3 A. R. 93.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.

sg. *Not business carried on in partnership with husband.*]—COHN *v.* CANARY (B. C.), [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *revsg.,* [1925] 3 D. L. R. 223; [1925] 2 W. W. R. 563.—**CAN.**

sh. *Crops grown by wife—On husband's land—Strict proof necessary.*]—ANDERSON *v.* JOHN DEERE PLOW CO., LTD. (Sask.), [1926] 4 D. L. R. 255; [1926] 2 W. W. R. 667.— **CAN.**

sj. —— *On wife's land—Burden of proof.*]—BANQUE CANADIENNE NATIONALE *v.* TENCHA (Can.), [1927] 4 D. L. R. 665.—**CAN.**

sk. —— ——.]—In determining as between an execution creditor & the wife of the debtor whether the crops grown on certain land were the property of the debtor or his wife, held that the effect of the judgment in *Banque Canadienne Nationale* v. *Tencha,* is that the issue must be decided on the answer to the question, whose land was it that produced the crops, & not on the answer to the question, whose business was the farming operations which produced them.—MAYER (F.) BOOT & SHOE CO. *v.* MOELLENDORF, [1930] 3 W. W. R. 58; 4 D. L. R. 506; [1931] 1 D. L. R. 360; [1930] 3 W. W. R. 311; *revsd.,* 25 Alta. L. R. 76.—**CAN.**

sl. —— ——.]—The crop of grain in question herein grown on a farm leased by an execution debtor's wife & on which the farm work was done by the wife & the debtor with the assistance of grown-up children:—*Held:* to have been raised by the wife in carrying on the business of farming separately from her husband, &, therefore, to be her property. The fact that the lease had previously been taken by the husband & that he & the wife & the children agreed that, in order to protect themselves, it should thereafter be taken in the name of the wife & that he should work for her, their real intention being to run the farm for the wife & through her for the family, & there being no attempt to conceal or dispose of any assets of the husband to evade their seizure, was not to constitute an illegal arrangement in fraud of his creditors, even though its effect, & possibly one of its purposes, was to defeat them.—UNIVERSAL MOTORS, LTD. *v.* WURCH, [1933] 1 W. W. R. 696; 3 D. L. R. 329; 41 Man. L. R. 188.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

so. *Conveyance to husband & wife—Creates tenancy in common.*]—At common law, under a conveyance of land to husband & wife, they took an estate by entireties; but the effect of Married Women's Property Act is to enable the wife to take as though she were a *feme sole* & so the effect of the marital relationship is ended so far as real property is concerned. Under Conveyancing & Law of Property Act, R. S. O., 1927, c. 137, s. 12, they now take as tenants in common.—SPRING *v.* KINNEE, [1928] 4 D. L. R. 723; 62 O. L. R. 562.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 3.—A.

730 i. *General rule.*]—Moneys received by a married woman, while living with her husband, out of the proceeds of his business or saved by her out of an allowance given her by him for housekeeping expenses, dress or the like, belong to the husband though they may be invested in her own name, unless it appears that he intended that any such savings should belong to her as her separate property as a gift from him.—ASHTON *v.* ASHTON, [1934] 3 W. W. R. 63.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

s. *Right of wife to jus relictæ—How calculated—Whether husband's life-rent included.*]—Resp. obtained a Scottish divorce from her husband, appt., who at the date of the divorce was entitled, under his father's trust disposition & settlement, among other movable estate, to a life-rent interest in a share of the trust estate. In an action by resp. against appt. to establish her right to her legal provision of *jus relictæ,* which, under Scots law, the dissolution of the marriage conferred on her:—*Held:* appt.'s life-rent interest ought to be taken into account in determining the amount of the *jus relictæ.*—SELSDON *v.* SELSDON (1934), 50 T. L. R. 469; 78 Sol. Jo. 471, H. L.—**SCOT.**

on remarriage except as to the one-fifth, to the income of which she would still be entitled & without prejudice to any appointment she might previously have made otherwise than by precluding her from exercising on remarriage any power of revocation reserved to her so far as regarded that part of the two-thirds in which her interest then ceased. If she survived & remarried, the power to appoint new trustees conferred on her by the deed was to cease. There were four children of the marriage, all born before the execution of the deed. In 1919 the marriage was dissolved, & by a deed poll in 1922 the wife appointed the two-thirds to the four children of the marriage, reserving a power of revocation & new appointment. Shortly after she remarried. On a summons taken out by the trustees asking whether as from the remarriage they should pay her the income of the two-thirds or of one-fifth thereof, whether she was entitled to exercise the power of revocation & new appointment reserved by the deed poll, & whether she still retained the power to appoint new trustees: —*Held:* except in so far as the wife's power of appointment in future was concerned, her position under the deed was wholly unaffected by the remarriage she had contracted. —*Re* PILKINGTON'S SETTLEMENT, PILKINGTON *v.* WRIGHT (1923), 129 L. T. 629; 67 Sol. Jo. 679.

Annotation:—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

755b. —— Trust for wife after husband's death "until she shall marry again"—Not applicable to remarriage during first husband's lifetime.]—By a marriage settlement property therein called "the husband's fund" was assigned to the trustees on trusts which provided that from & after the husband's death the trustees should pay the income of the husband's fund to the wife, if she should survive the husband, "during her life or until she shall marry again. . . ." The settlement provided also that from & after the husband's death & the wife's death or re-marriage the trustees should stand possessed of the husband's fund & the income of it in trust for the issue of the marriage as the husband & wife should by deed jointly appoint, or in default of & subject to any such appointment as the survivor of them should by deed or will appoint, & in default of & subject to any such appointment by the survivor in trust for the child or children of the marriage as therein mentioned. The marriage was dissolved in 1916 upon the wife's petition. The wife married again in 1930. In 1932 the husband died:—*Held:* the words "until she shall marry again" must be construed to mean a marriage entered into by the wife after the husband's death, & the wife was therefore entitled to the income of the husband's fund (until she should marry again) & could still exercise the power of appointment over the husband's fund given to her as survivor of the husband & herself.—*Re* MONRO'S SETTLEMENT, MONRO *v.* HILL, [1933] Ch. 82; 102 L. J. Ch. 89; 148 L. T. 279.

757a. Husband entitled to income of trust fund during separation.]—DUNCAN *v.* CAMPBELL (1842), 12 Sim. 616; 6 Jur. 677; 59 E. R. 1269.

Annotation:—**Apld.** *Re* Barnard, Barnard *v.* White (1887), 56 L. T. 9.

774. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

786. *Add. Annotation:*—**Refd.** A.-G. for Alberta A. C. 444.

787. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

Part VI.—Disposition of Property.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), ss. 1, 2.

799. *Add. Annotation:*—**Refd.** *Re* Horne's Settlement, Coutts & Co. *v.* Duchessa Dusmet de Smours, [1932] 2 Ch. 180.

807a. Accrued arrears of annuity—Payment of dividend in bankruptcy.]—A marriage having been dissolved by a decree absolute in 1925, the wife remarried shortly afterwards. Immediately before the remarriage the former husband executed a settlement on his former wife in consideration of her release of any claim to alimony or maintenance from him. By the settlement the husband covenanted with his former wife & as a separate covenant with the trustees to pay her, during their joint lives, an annuity of such an amount as after deduction of income tax would yield the clear sum of £3,000 a year for her separate use without power of anticipation whilst under coverture. In 1929 the former husband was adjudicated bkpt. Pltfs., as trustees of the settlement, & deft., the former wife, jointly proved in the bkpcy. for a large sum made up of several items, of which £41,723 represented the capital value of the annuity of £3,000. The proof was admitted, & in Dec. 1931, a dividend of 6*d.* in the pound was paid to pltfs. This amounted to £2,322, of which £1,043 1*s.* 6*d.* was the proportion attributable to the annuity. On a summons taken out by pltfs. to determine the question whether they ought to pay to deft. the dividend so far as it was attributable to the annuity, notwithstanding the restraint upon anticipation, or whether they ought to invest the same, as being capital, in purchasing an annuity for the life of deft.:—*Held:* the trustees could properly pay the whole dividend to deft.—*Re* HORNE'S SETTLEMENT, COUTTS & CO. *v.* DUSMET DE SMOURS (DUCHESSA), [1932] 2 Ch. 180; 101 L. J. Ch. 359; 147 L. T. 492.

809. *Add. Annotation:*—**Refd.** Sutherland *v.* German Property Administrator (1933), 149 L. T. 47.

815. *Add. Annotation:*—**Apld.** *Re* Horne's Settlement, Coutts & Co. *v.* Duchessa Dusmet de Smours, [1932] 2 Ch. 180.

827. *Add. Annotation:*—**Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

906. *Add. Citations:*—*revsd. sub nom.* PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92

L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.

965. *Add. Annotation :*—**Apld.** Townshend *v.* Child *(1932), 48 T. L. R. 575.*

973. *Add. Annotation :*—**Refd.** MacCarthy *v.* Agard, *[1933] 2 K. B. 417.*

986. *Add. Annotation :—Generally,* **Refd.** Capron *v.* Capron, [1927] P. 243.

1007. *Add. Annotation :*—**Refd.** Bosworthick *v.* Bosworthick, [1926] P. 159.

1036. *Add. Annotation :*—**Refd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253.

1053a. —— **Cause of action arising before marriage —Liability for costs arising after marriage.**]—A widow commenced an action against a professional man, from whom she claimed damages for alleged negligence. Before the trial of the action she remarried. At the trial judgment was given for deft. with costs :—*Held :* (1) the liability to pay costs was one wholly arising at a date when pltf. was a married woman, & was therefore payable out of her separate estate & not otherwise; (2) there was jurisdiction under Married Women's Property Act, 1893 (c. 63), s. 2, to order & enforce the payment of costs out of that separate estate whether subject to a restraint on anticipation or not; (3) such an order ought to be made having regard to the circumstances in which the action had been commenced & prosecuted.—TOWNSHEND *v.* CHILD, [1933] 1 K. B. 181; 102 L. J. K. B. 685; 147 L. T. 278; 48 T. L. R. 575.

1054. *Add. Annotation :—As to* (1) **Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1057. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1063. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1066. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1067. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1079. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1097. *Add. Annotation :*— **Refd.** R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

1106. *Add. Annotation :*—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283.

1162. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

PART VI. SECT. 1, SUB-SECT. 5.—B. (a) i.

911 i. *Assignment inoperative—Transfer to pay husband's debts.*]—RODRIGUE *v.* DOSTIE & VACHON, [1927] 4 D. L. R. 1139; [1927] S. C. R. 563.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—C. (a).

951 v. —— ——.]—UNION BANK *v.* BENEDICT, [1925] 4 D. L. R. 1057.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

d i. —— —— *Not on conveyance of equitable estate.*]—ADAMS *v.* LOOMIS (1875), 22 Gr. 99.—**CAN.**

e i. —— ——.]—HARTLEY *v.* MAYCOCK (1897), 28 O. R. 508.—**CAN.**

k i. ——.]—ELLIOTT *v.* BROWN (1884), 11 A. R. 228.—**CAN.**

k ii. —— *Sale as spinster—Conveyance not impeachable on ground of non-compliance with statutory formalities.*]—GRAHAM *v.* MENCILLY (1869), 16 Gr. 561.—**CAN.**

so. *Pledge of wife's shares as security for husband—Absence of independent advice—Onus of proof of duress.*]—In an action by a married woman against a bank to set aside, on the ground of the undue influence of her husband & of misrepresentation, a guarantee (with pledge of securities) given by her for the indebtedness of a co. in which her husband was the principal shareholder, there is not an onus upon the bank to prove that she had independent advice; in the absence of substantive proof of the undue influence (particulars of which should be pleaded) the action fails so far as it is based upon that ground.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 78 Sol. Jo. 471, P. C.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

1190 i. *Purchase out of wife's income —Land conveyed in own name—Resulting trust.*]—A resulting trust held to have arisen in favour of a wife whose money, it was found, had been used in the purchase of land the title to which was taken in the name of her husband.—MORRIS *v.* MORRIS & FRENCH, [1931] 3 W. W. R. 427.—**CAN.**

o i. *Conveyance by husband alone—Effect.*]—WALLIS *v.* BURTON (1855), 5 Gr. 352.—**CAN.**

o ii. —— ——.]—*Held :* an effectual transfer of his marital rights in the land conveyed.—ALLAN *v.* LEVESCONTE, (1857), 15 U. C. R. 9.—**CAN.**

o iii. —— ——.]—*Held :* a deed of gift executed by a Burmese Buddhist husband without his wife's consent of part of the joint property of the marriage is wholly void & conveys no title to the donee in respect of the property which it purports to convey.—U. PO. U. *v.* MATOK GYI (1929), I. L. R. 7 Ran. 374.—**IND.**

si. *Property used & maintained by husband—No presumption of gift by wife.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808; [1927] 3 W. W. R. 429.—**CAN.**

l i. —— ——.]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

l ii. —— —— *Wife not examined—Certificate of examination fraudulently signed.*]—Title set aside, subject to the rights of an innocent purchaser from the transferee to obtain the land on the terms of his agreement with the transferee.—FROSTAD *v.* LIBEK, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—**CAN.**

l iii. —— ——.]—The fact that the husband makes his home on certain land, in which he & another have each a one-half interest, brings it within Homesteads Act, 1915 (c. 29).—MCDOUGALL *v.* MCDOUGALL, [1919] 2 W. W. R. 637; 12 Sask. L. R. 289.—**CAN.**

l iv. —— ——.]—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—DOUGLAS *v.* ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37; *affd.*, [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 403.—**CAN.**

l v. —— *Order dispensing with consent of wife to disposition—When granted under Dower Act.*]—Where a husband had refused, without lawful reason therefor, to live with his wife or support her & his treatment of her was found to have conduced to her adultery, it was held that it would not be "fair & reasonable under the circumstances," to grant an order under Dower Act, R. S. A. 1922, c. 135, s. 8, dispensing with her consent to his disposition of his homestead within said Act. Under Dower Act, s. 3, as it now stands a disposition of the homestead by the husband without the wife's consent, when there is no order dispensing with it, is absolutely null & void, & not so merely as it affects the wife's interest therein.—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

l vi. —— *Action by wife to set aside agreement for sale by husband.*]—BAKER *v.* BAKER, [1932] 3 W. W. R. 375; 40 Man. L. R. 631.—**CAN.**

l vii. —— *No consent by wife—Conveyance of joint property—Void.*]—SCHMIDT *v.* MILLER, [1934] 2 W. W. R. 593; 4 D. L. R. 98; 42 Man. L. R. 340.—**CAN.**

l viii. —— *Acknowledgment — Who may take.*]—*Held :* that where the wife's acknowledgment to a document to which sect. 3 (1) of Homesteads Act, R. S. S., 1930, applies is taken by the person who prepared the document the effect is the same as if no acknowledgment were taken at all & as if the wife were not a party to the transaction; & it follows, under sect. 11 of said Act, that she is entitled to have it set aside & cancelled. The husband is not a necessary party to the action brought by her for said purpose.—WILGUZKI & WILGUZKI *v.* MIAZGA, [1936] 1 W. W. R. 21.—**CAN.**

n i. —— —— *Residence condition precedent.*]—PENDLETON *v.* PENDLETON, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—**CAN.**

o i. —— *Signature of wife—When dispensed with.*]—ASKIN *v.* ASKIN, [1929] 4 D. L. R. 1068; 1 W. W. R. 663; 23 S. L. R. 631.—**CAN.**

o ii. —— —— ——.]—Where a wife is living apart from her husband, pursuant to the terms of a separation agreement, which does not provide that she shall be disentitled to alimony, & in which there is nothing in the nature of a release or an agreement for the release of dower, it cannot be said that she is so living "under such circumstances as disentitle her to alimony"; & an order dispensing with her signature, for the purpose of

1203. *Add. Citation :*—8 W. R. 333.

1211. *Add. Annotation :*—*As to* (1) **Consd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1220. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

1223a. —— **Necessity for survivorship of wife.**]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured " for the benefit of his wife " in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors. administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899 :—*Held :* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble : Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37 ; 143 L. T. 329 ; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXORS., 99 L. J. Ch. 241 ; [1929] B. & C. R. 173.

Annotation :—**Dbtd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1224. *Add. Annotation :*—**Consd.** *Re* Gladitz, Guaranty Executor & Trustee Co. *v.* [1937] 3 All E. R. 173.

1225. *Add. Annotation :*—**Apld.** *Re* Fleetwood's Policy, [1926] Ch. 48.

1226. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126 ; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89 ; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

1226a. —— —— **If living at his death—Cash value of policy sought to be taken by insured during life.**]—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £288 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimatelypaid it into ct. : —*Held :* (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events ; (2) insured must be taken to have exercised the option for the benefit of the trust ; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re* FLEETWOOD'S POLICY, [1926] Ch. 48 ; 95 L. J. Ch. 195 ; 135 L. T. 374.

Annotations :—**Consd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126 ; *Re* Gladitz, Guaranty Executor & Trustee Co. *v.* Gladitz, [1937] 3 All E. R. 173.

barring her dower, to a deed of conveyance of land of the husband will not be made under sect. 13 of Dower Act. R. S. O., 1927.—*Re* DAVIDSON, [1930] 2 D. L. R. 84 ; 65 O. L. R. 19. —**CAN.**

o iii. —— —— *Renewal of lease of homestead.*]—Under the Homesteads Act, R.S.S., 1930, which provides that " homestead " shall also " include any property which has been such a homestead at any time," & that every transfer, etc., of an interest in a homestead shall be signed by the owner's wife, if any, the signature of the wife is required to a renewal of a lease of a homestead although they had not resided on the homestead since the making of the original lease.—AUDOORN *v.* AUDOORN & PELSMA, [1935] 1 W. W. R. 717 ; *on appeal*, [1935] 2 W. W. R. 362 ; 5 F. L. J. (Can.), 37.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—A.

e i. —— *Separate estate.*]—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—GRAHAM *v.* CANADA LIFE ASSURANCE CO., PROCTOR *v.* GRAHAM (1894), 24 O. R. 607.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—B.

n i. —— —— *Bankruptcy of husband.*]—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S.'s estates were afterwards sequestrated : —*Held :* the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—STEWART *v.* HODGE (1901), 8 S. L. T. 436.—**SCOT.**

n ii. —— ——.]—Money due under a policy of insurance payable to the wife of the insured after his death forms part of the estate of the insured. No trust is created in favour of the wife by a life policy expressed to be for the benefit of the wife of the assured.—KRISHNA LAL SADHU *v.* PRAMILA BALA DASI (1928), I. L. R. 55 Calc. 1315.—**IND.**

n iii. —— ——.]—A husband insured his life for £2,000 payable on his death. The policy stated : " This policy is for the benefit of M.T.R., the wife of the assured " :—*Held :* the trust so created in favour of the wife in virtue of Married Women's Property Act, 1915, s. 14 (2), was one which immediately & unconditionally conferred on her the entire beneficial interest in the policy. Therefore, on the death of the husband the policy moneys were not dutiable under Administration & [illegible] as property

taining trusts & dispositions to take effect after his death.—*Re* REYNOLDS, REYNOLDS *v.* VICTORIA COMR. OF TAXES, [1931] V. L. R. 254 ; Argus L. R. 231.—**AUS.**

n iv. —— *Whether assignable.*]—A policy of assurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignation which bore to have been executed with the consent & concurrence of the wife :—*Held :* the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—SCOTTISH LIFE CO. *v.* DONALD (1901), 9 S. L. T. 200.—**SCOT.**

o i. —— *What amounts to.*]—A life insurance policy, in the column headed " to whom payable " contained the following words, viz. " the assured or his wife if he predeceases her " :—*Held :* the said words express on the face of the policy that the same is for the benefit of his wife, & as such it enures & is deemed to be a trust for the benefit of the wife within sect. 6 of Married Women's Property(Act II of 1874).—ABHIRAMAVALLI *v.* MADRAS OFFICIAL TRUSTEES (1932), I. L. R. 55 Mad. 171—**IND.**

1226b. —— —— **Death of wife in husband's lifetime.**]—Where a husband has insured his life under the provisions of the Married Women's Property Act, 1882 (c. 75), for the benefit of his wife, & she dies in his lifetime, the policy & the surrender value become the property of the wife's legal personal representatives, & the husband has no claim to them.—COUSINS *v.* SUN LIFE ASSURANCE SOCIETY, [1933] Ch. 126; 102 L. J. Ch. 114; 148 L. T. 101; 49 T. L. R. 12, C. A.

Annotation :—**Refd.** *Re* Smith, Bilham *v.* Smith, [1937] 3 All E. R. 472.

1226c. —— —— **Lien of husband for premiums paid.**]—A husband took out a policy of life assurance for £1,000 payable after ten years or upon his earlier death & expressed to be for the benefit of his wife, therein named, under Married Women's Property Act, 1882 (c. 75). Two years later, & before the policy possessed any surrender value, the wife died. The husband kept the policy on foot, paying the premiums, until it matured, when the insurance co. paid the policy moneys into a deposit account in the joint names of the husband & another as personal representatives of the deceased wife. The husband having died, his widow, as his administratrix, claimed a lien on the policy moneys for the amount of the premiums paid after his first wife's death :—*Held :* while the policy moneys belonged to the first wife's estate, in accordance with the decision in *Cousins* v. *Sun Life Assurance Society*, [1933] Ch. 126, the estate of the husband was entitled to a lien thereon for the amount of the premiums paid by him since his first wife's death, as being money expended by him as a trustee to preserve property of a *cestui que trust*.—*Re* SMITH'S ESTATE, BILHAM *v.* SMITH, [1937] Ch. 636; [1937] 3 All E. R. 472; 106 L. J. Ch. 377; 157 L. T. 511; 53 T. L. R. 910; 81 Sol. Jo. 611.

1227. *Add. Annotations :*—**Apld.** *Re* Collier, [1930] 2 Ch. 37. **Refd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

1227a. —— —— **Adopted child.**]—A policy effected by the assured under & by virtue of the Married Women's Property Act, 1882 (c. 75), s. 11, was stated to be for the benefit of the wife of the assured, & if she were dead at the time the policy moneys became payable then for his daughter, naming her, & if both of them were then dead for the exors., administrators or assigns of the assured. The daughter was an adopted child, & there had been no legal adoption under Adoption of Children Act, 1926 (c. 29) :—*Held :* (1) there was no effective trust for the adopted child by virtue of Married Women's Property Act, 1882 (c. 75), s. 11, & the infant was outside the scope of that sect.; (2) the adopted child had no legal right to claim the policy moneys from the insurance co. The only persons who had such a right were the assured & his wife, who could surrender the policy or otherwise deal with it without reference to the infant.—*Re* CLAY'S POLICY OF ASSURANCE, CLAY *v.* EARNSHAW, [1937] 2 All E. R. 548.

1228. *Add. Citation :*—95 L. J. Ch. 24.

1228a. —— —— **Accident policy.**]—A policy of insurance provided for the payment of certain specified sums by the underwriters on death on disablement of the assured caused by accident. It contained a memorandum stating that it was understood & agreed that all claims thereunder should be payable to his wife, "if she is living at the happening of the event upon which the claim becomes payable, or if she is dead, then to the exors., administrators & assigns of the assured." The assured died as the result of an accident within the policy, his wife surviving him :—*Held :* (1) the policy was one effected by the assured on his own life within Married Women's Property Act, 1882 (c. 75); (2) it was expressed to be for the benefit of his wife within the same sect.; (3) accordingly, his wife was solely & beneficially entitled to the moneys payable thereunder.—*Re* GLADITZ, GUARANTY EXECUTOR & TRUSTEE CO., LTD. *v.* GLADITZ, [1937] Ch. 588; [1937] 3 All E. R. 173; 106 L. J. Ch. 254; 157 L. T. 163; 53 T. L. R. 857; 81 Sol. Jo. 527.

1233a. Number of trustees—Fund to be retained for infants—Single trustee not appointed.]—*Re* HOWSON'S POLICY TRUSTS, [1885] W. N. 213.

1234. *Add. Annotations :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Smith *v.* Wood (1928), 139 L. T. 250; *Re* Smith, Bilham *v.* Smith, [1937] 3 All E. R. 472.

1302. In second paragraph for "on which" read "or child."

PART VI. SECT. 8, SUB-SECT. 4.

sp. *Pledge by wife to secure advances for joint support—Account.*]—Securities pledged by a wife as collateral for advances to the husband for their joint support will not entitled her to an accounting by the creditor.—PIPER *v.* UNVERZAGT, [1937] 2 D. L. R. 319; 51 B. C. R. 379.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

t i. —— ——.]—WHITEHEAD *v.* (1887), 14 O. R. 621.—**CAN.**

t ii. —— ——.]—BELL *v.* BELL, [1928] 2 D. L. R. 311.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (a).

1302 v. —— ——.]—Plff., deft.'s husband, became entitled to a conveyance of certain land vested in a solr. By plff.'s direction the solr. conveyed the land to deft. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deft had been told nothing about it :—*Held :* though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of plff. having ultimately made up his mind that his wife should have the property.—HARRINGTON *v.* HARRINGTON, [1925] 2 D. L. R. 849; 56 O. L. R. 568.—**CAN.**

1302 vi. —— ——.]—DE BURY *v.* DE BURY (1903), 36 N. B. R. 37; 22 C. L. T. 184.—**CAN.**

1302 vii. —— ——.]—CHALLONER *v.* CHALLONER, [1930] 4 D. L. R. 18.—**CAN.**

1302 viii. —— ——.]—Expenditures made by a husband in purchasing property in the name of his wife, or in improving her property, must *primâ facie* be considered as gifts to the wife, but this presumption may be rebutted by evidence; & this evidence may consist of the surrounding & accompanying circumstances, & of parol testimony. Or she may create a trust in his favour after the property has become hers.—BEEMER *v.* BROWNRIDGE, [1934] 1 W. W. R. 545.—**CAN.**

1302 ix. —— ——.]—A presumption of advancement arises on conveyance of land to a wife by a husband.—HYMAN *v.* HYMAN, [1934] 4 D. L. R. 532.—**CAN.**

—— *Subsequent deed of gift by* —Plff., who was the former wife of deft. & the registered owner of a property known as the G. Hotel, sued to have a *caveat* registered by him discharged, on the ground that he had no interest in the property. The *caveat* was based upon the following document : "I hereby agree to give D. half of the property known as the G. Hotel, & to give him half the rent of the same from the present date, & he agrees to pay half of all debts against the above property up to date for the said half interest." The land had been purchased in 1902 by deft. in the name of plff., his then wife. Upon that purchase & the erection & equipment of the hotel building he applied the proceeds of the sale of two quarter sections, one of which was in his name

1306. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1311a. ——.]—A husband opened a banking account in his wife's name, all payments into the account being made by the husband. The account was used for domestic & other purposes. The wife always asked her husband's consent before she drew on the account & she had given the bank a mandate to allow her husband to draw on the account. Judgment creditors of the wife sought to garnishee the account :—*Held :* on the facts there was a resulting trust in favour of the husband & as the moneys were therefore the property of the husband, the wife's creditors could not garnishee the account, although it was in her name.—HARRODS, LTD. *v.* TESTER, [1937] 2 All E. R. 236 ; 157 L. T. 7 ; 81 Sol. Jo. 376, C. A.

1318. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1336. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

1339. *Add. Annotation :*—*As to* (2) **Refd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

& the other in hers. They ran the hotel business together, until 1905, he acting as manager, she as cook & housekeeper. Having agreed to separate, they sold the furniture, & leased the hotel, & borrowed money on mtge. to help pay off the floating liabilities. The husband signed the mtge. as a joint covenantor, & the lease as a consenting party. Before leaving her he asked her to sign the memorandum above set out which she did without demur :—*Held :* an express trust existed in favour of deft. for one half of the estate in question.—REYNOLDS *v.* BETSON, [1931] 1 W. W. R. 793 ; 2 D. L. R. 760 ; 39 Man. L. R. 411.—**CAN.**

1306 i. —— —— *As between husband & wife—Notwithstanding intention to defraud creditors.*]—In Mar. 1931, applt., who was registered as the owner of an " E." motor car, signed an application under Motor Vehicles Act requesting cancellation of his registration as he had disposed of the car to resp. his wife ; the wife signed a form stating she had acquired the car from applt. In Aug. 1931, the " E." car, by arrangements to which applt. was a party, was traded in for a " N." car, applt. paying a deposit & also the balance of the price, after allowing for the value of the " E." The prescribed documents showing that the " N." car had been disposed of to & acquired by the wife, were signed by the vendor & the wife. The car was kept in a garage at the matrimonial home, to which both husband & wife had keys, but the wife, although able to drive, did not drive the " N." car. There was evidence to show that applt. put the car into the wife's name to avoid financial liabilities in case of accident, & as a safeguard against creditors. It is an offence under Motor Vehicles Act to make a false statement in an application & by that Act a certificate relating to the ownership of a car is *primâ facie* evidence of the truth of its contents. In proceedings by applt. to establish his ownership & right to possession :—*Held :* the evidence disclosed a purchase by applt. in the name of resp. ; the presumption was that of a gift by applt. to resp. ; &, therefore, the covinous arrangement alleged by applt. could not be permitted to rebut the presumption of ownership, which arose from the acts of the parties as well as under the Statute.—MUSMAN *v.* MUSMAN, [1933] S. A. S. R. 327.—**AUS.**

1309 ii. ——.]—A gift is presumed where moneys of the husband are deposited by the wife, with his knowledge, in her sole name.—*Re* NORTHAGE, [1936] 2 D. L. R. 78 ; 10 M. P. R. 248 ; 5 F. L. J. (Can.) 245.—**CAN.**

sm. *Grain & stock on land conveyed to wife.*]—A husband conveyed to his wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before : —*Held :* the husband was the owner of grain grown on, & animals situate on, the quarter section.—NATIONAL TRUST CO. *v.* HOLOWAYCHUK, [1925] 3 W. W. R. 382.—**CAN.**

sn. *Purchase in husband's name—Subsequent transfer to wife—Failure of consideration.*]—Husband & wife purchased a house in Oct. 1920. The house was in plff.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out :—*Held :* plff. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action would be either for specific performance or damages.—BODY *v.* BODY (1924), 34 B. C. R. 315.—**CAN.**

so. *Conveyance by husband without consideration — Husband solvent— Certificate of title issued to wife.*]—Where land was transferred, as a gift, to a married woman by her husband, during the time that Married Woman's Act, R. S. M. 1892, c. 95, was in force, the husband being then solvent, & a certificate of title therefor issued in her name under Manitoba Real Property Act :—*Held :* the beneficial, as well as the legal, interest in the land vested in her for her separate use, & neither the land nor its proceeds could be taken in execution for debts of the husband subsequently incurred, notwithstanding Married Woman's Act, s. 2, respecting property received by a married woman from her husband during coverture.—FRASER *v.* DOUGLAS (1908), 40 S. C. R. 384.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (b).

1337 iii. —— ——.]—The deposit by a Hindu of his own money in a bank in the joint names of himself & wife, & on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife there being in India no presumption of an intended advancement in favour of a wife.—GURAN DITTA *v.* RAM DITTA (1928), 55 L. R. Ind. App. 235.—**IND.**

m i. ——.]—*Held :* to raise a presumption of joint tenancy.—MATHEWS *v.* NATIONAL TRUST CO. (Ont.), [1925] 4 D. L. R. 774.—**CAN.**

m ii. ——.]—D. deposited a sum of money in a bank to the joint credit of himself & his wife, & they both signed a document authorising the bank to pay all moneys at the credit of the account to either of them, & in the case of the death of either to pay the same to the survivor. After D.'s death, his widow became insane & was confined in a public hospital. Money was paid by the bank to the Public Trustee. Having been restored to sanity the widow redeposited in the bank what was left of the money to the joint credit of herself & two relatives :—*Held* the money originally deposited belonged to D. & was placed to the credit of himself & wife as a means of conveniently managing the affairs of himself & his family ; &, therefore, the presumption in favour of the right of his wife to what remained of the fund on his death was rebutted. —STADDER *v.* CANADIAN BANK COMMERCE, [1929] 3 D. L. R. 651 ; 64 O. L. R. 69.—**CAN.**

m iii. ——.]—The rule of English law that where a deposit is made in the joint names of husband & wife, a gift is to be presumed in favour of the wife, the gift being defeasible on the death of the wife in the lifetime of the husband, does not apply to India. In India the case is governed by sect. 123 of Transfer of Property Act, under which a gift of movable property must be effected either by a registered instrument or by delivery.—PAUL *v.* NATHANIEL GOPAL NATH (1931), I. L. R. 53 All. 633.—**IND.**

m iv. ——.]—Money in a bank deposit account which had been opened in the joint names of deceased & his wife under an agreement with the bank signed by both of them, which provided that the death of either should not affect the right of the survivor to withdraw moneys deposited therein, held to belong to the wife by virtue of her survivorship.—ROBERTSON *v.* BATCHELOR (No. 2), [1935] 3 W. W. R. 292.—**CAN.**

sp. *Banking account in joint names.*]—A wife & husband opened a joint account in a bank, & both signed a direction to the bank : " All money which may be deposited by us or either of us to the account is our joint property, but such money may be withdrawn by either one of us, or the survivor of us." The money was all the husband's, & was deposited to pay the expenses of the wife & her child, during the husband's absence, & to make payments in connection with his property :—*Held :* the wife was not entitled to half the money to the credit of the account.—SOUTHBY *v.* SOUTHBY (1917), 40 O. L. R. 429 ; 38 D. L. R. 700.—**CAN.**

—— *Right of wife as survivor.*]—*See* Nos. 1335-1338.

sr. *Rebuttal of presumption.*]—The presumption of gift arising from deposit by a husband in the joint names of his wife & himself may be rebutted by showing that it was a matter of convenience.—MCLEAN *v.* VESSEY, [1935] 4 D. L. R. 170 ; *sub nom. Re* VESSEY, MCLEAN *v.* VESSEY, 10 M. P. R. 16 ; *sub nom.* VESSEY *v.* VESSEY, 5 F. L. J. (Can.) 116.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (d).

sw. *Money sent to wife to be saved.*]—Money sent by a husband to his wife to be saved for their old age, belongs to them equally.—CARROLL *v.* CARROLL, [1937] 2 D. L. R. 314.—**CAN.**

1368. *Add. Annotations :—As to* (1) **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380. *As to* (3) **Consd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 83.

1365. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1369. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1373. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1378. *Add. Annotation :—***Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1394. *Add. Annotation :—***Consd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

*Add. Annotation :—***Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

Part VII.—Liability for Ante-Nuptial Obligations of Wife.

SECT. 1.—**LIABILITY OF HUSBAND** (p. 175.)

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 3.

Part VIII.—Contracts of Wife during Coverture.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1.

1469. *Add. Annotations :—***Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213. **Apld.** Townshend *v.* Child (1932), 48 T. L. R. 575. **Consd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

1479. *Add. Annotation :—***Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

1489a. —— Settlement of insurance policies on life of husband.]—By a post-nuptial settlement made in pursuance of ante-nuptial articles, certain policies of insurance on the life of the husband were assigned to trustees upon trust to receive the money & pay the income to the wife during her life for her separate use, independently of any future husband whom she might marry. There was no restraint on anticipation. During the life of her first husband the wife made promissory notes in favour of pltf., & pltf., the first husband being still alive, brought an action claiming a charge on the policies :—*Held :* the trust for separate use did not arise till after the death of the husband, & as the contracts of a married woman can only be enforced against property which formed part of her separate estate at the date of the contract, the action could not be maintained. —KING *v.* LUCAS (1883), 23 Ch. D. 712, 713; 53 L. J. Ch. 64; 49 L. T. 216; 31 W. R. 904, C. A.

PART VI. SECT. 9, SUB-SECT. 3.—A. (a).

1363 i. —— —— *Understanding transaction.*]—Where a wife signed a quit-claim deed before a lawyer, transferring her half interest in the home to her husband, but she alleged that she thought they went to the lawyer solely to obtain a divorce, the deed was upheld in an action for cancellation, there being no evidence that she did not know what she was doing, or of undue influence.—HEATHORN *v.* HEATHORN (1932), 46 B. C. R. 413.—**CAN.**

1370 i. *Wife not independently advised—Guarantee for husband.*]—Want of independent advice standing alone is insufficient to justify relief, but where there has been undue influence by the husband & knowledge of its exercise or facts from which such knowledge should be inferred, & the transaction is contrary to the wife's interests, a sufficient case has been made out for the granting of relief.—CANADIAN BANK OF COMMERCE *v.* FOREMAN (Alta.), [1926] 4 D. L. R. 844; [1926] 3 W. W. R. 486; *revsd.* on the facts, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.——**CAN.**

1370 ii. ——. ——.]—BRADLEY *v.* IMPERIAL BANK OF CANADA, [1926 3 D. L. R. 38; 58 O. L. R. 650.—**CAN.**

1370 iii. —— *Promissory note.*]—FRYERS & Co., LTD. *v.* STEEVES (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

1382 iv. —— ——.]—On an interpleader issue between an execution creditor & the wife of the debtor as to the ownership of a motor car, the wife & her husband testified that the car had been bought with her money, which had come to her from the keeping of boarders & from the sale of her property. These moneys were all collected by the husband & left by the wife in his hands to use as he saw fit, & he placed them in his own account & used them indifferently with his own. He had never rendered her an account of them, nor had she ever called on him to do so. They had lived together in amity since their marriage & he had maintained her. The wife testified that she had an arrangement with the husband under which said moneys were to remain her property, but the circumstances under which it was entered into were not disclosed, & its terms were indefinite :—*Held :* the moneys in question had become the husband's by way of gift from his wife. —PEAREN *v.* BLACK & ARMSTRONG, [1928] 3 D. L. R. 471; [1928] 2 W. W. R. 98; 22 Sask. L. R. 502.—**CAN.**

sq. *Presumption of undue influence—Guarantee for husband—Promissory note—Transaction not explained.*]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 1 D. L. R. 1003.—**CAN.**

sr. —— —— —— ——.]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 4 D. L. R. 605.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.—A. (b).

st. *Funds of wife managed by husband.*]—Where a husband is entrusted by his wife with the management of her funds out of which he is to pay their expenses & make such investments as they from time to time agree upon, the decision of the question whether the law implies a gift to the husband depends on the particular facts of the case.—WALKER & ROBERTS *v.* SILK, [1930] 2 W. W. R. 407; 4 D. L. R. 201; 43 B. C. R. 43.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.—B. (b) ii.

1422 i. *Joint earnings—Investment in realty in husband's name.*]—KROPIELNICKI *v.* KROPIELNICKI, [1935] 1 W. W. R. 249; 2 D. L. R. 100.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

d i. —— *Property purchased with man's money—Woman realising property & appropriating proceeds ordered to account.*]—ST. ELOI *v.* ENO (1925), 36 B. C. R. 153.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

sv. *Married Women's Property Act R. S. O., 1927—Effect.*]—The repeal, by Married Women's Property Act, R. S. O., 1927, of sect. 18 of the Act as found in R. S. O., 1914, had not the effect of reviving the husband's common law liability for the debts of his wife contracted before the marriage. —PENNY *v.* HUNT, [1929] 2 D. L. R. 473; 63 O. L. R. 510.—**CAN.**

1491a. ——.]—A woman, married since the passing of Married Women's Property Act, 1870 (c. 93), joined her husband in signing a joint & several promissory note for money lent to him. The husband became bkpt.:—*Held:* her separate estate was liable for the amount due on the note, & it was not necessary to make any trustees for the wife parties to the action.—DAVIES *v.* JENKINS (1877), 6 Ch. D. 728; 26 W. R. 260.

Annotations:—**Refd.** Flower *v.* Buller (1880), 15 Ch. D. 665; Pike *v.* Fitzgibbon (1880), 14 Ch. D. 837.

1498. *Add. Annotation:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1576a. ——.]—STONE *v.* WALTER (1649), O. Bridg. 618; 124 E. R. 778.

1656. *Add. Annotation:*—**Refd.** Dewe *v.* Snowdon *v.* Snowdon, [1928] P. 113.

1664. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

1665. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1669. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1680. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1717. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1732. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

PART VIII. SECT. 1, SUB-SECT. 6.

1 i. —— ——.]—*Held:* a married woman, having separate real property, was not entitled to contract debts for its improvement so as to make herself liable individually, or jointly with her husband.—WRIGHT *v.* GARDEN (1869), 28 U. C. R. 609.—**CAN.**

1 i.—— ——.]—Deft., a married woman, married to her present husband in 1877 or 1878, & carrying on business separate from him by farming one of her former husband's farms, in 1883 & 1884 contracted the debt sued on. She was entitled to dower in the lands of her first husband, who died in 1875, which were sold, realising a large sum, & also to her share in his personal estate, neither of which she had received:—*Held:* the Act of 1884, 47 Vict. c. 19 (O.), had not the effect of repealing the prior Acts, & it was not necessary to show that deft. had married or had acquired separate estate since the Act of 1884 came into force; it was sufficiently shown that she was possessed of separate estate, & that she intended it should be bound.—ROBERTSON *v.* LAROCQUE (1889), 18 O. R. 469.—**CAN.**

sa. *Wife carrying on separate business—Signatures by wife at request of husband—Liability of wife.*]—Where a married woman, in carrying on a business with the assistance of her husband, signs everything that he asks her to sign & asks no questions, she should be held responsible for her signature, in the absence of clear proof of undue influence, whether it turns out to be in her interest or otherwise.—WATKINS (J. R.) Co. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—**CAN.**

sb. *Lease taken by wife—Liability of wife—For breach of lease.*]—*Held:* the husband was not liable, although he lived in the premises for about two months prior to the time he & his family vacated it & twice paid the rent during that period.]—NATIONAL SECURITIES, LTD. *v.* DARLING (Alta.), [1927] 1 W. W. R. 413.—**CAN.**

sc. *Entered into in married name—No reference to husband.*]—The effect of Married Women's Act, R. S. A., 1922, c. 214, is that a married woman has as full & complete freedom to bind herself by her own contracts as a man has. A married woman who contracted for the purchase of goods in her own name, *i.e.* as Mrs. McDonald, without informing the seller or without his knowing that she was in fact acting as agent for her husband or that she had a husband, held personally liable.—REID-WELCH FURNITURE CO. *v.* MACDONALD, [1928] 2 D. L. R. 608; [1928] 1 W. W. R. 789; 23 Alta. L. R. 317.—**CAN.**

sd. *Contract to work by husband & wife—Liability to employer for children's keep—Joint.*]—Deft. engaged pltf. & her husband to work for him for wages & their board, & it was a term of the bargain that deft. would be entitled to charge a certain rate per day for the board of the couple's three children, although no specific promise to pay said amounts was made by either pltf. or her husband:—*Held:* considering the circumstances under which the bargain was made & the dealings between the parties as disclosed by the evidence, the liability to pay deft. for the board of the children was a joint one on the part of pltf. & her husband, &, therefore, each of them was liable for the whole cost of the keep of the children.—FORSBERG *v.* UGLUM, [1931] 3 W. W. R. 612.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

1499 ii. ——.]—A. HOBRECKER, LTD. *v.* WILSON (1932), 4 M. P. R. 469.—**CAN.**

1500 i. —— *Supply of goods not necessaries.*]—Authority may be given by implication that the husband intends the wife to take means to supply herself with necessaries, the implication being for the benefit of the wife & not of those who supply her. It is only for what is reasonably necessary that the implied agency is, not for what the wife may see fit to order.—ROBERT SIMPSON CO., LTD. *v.* RUGGLES, [1930] 3 D. L. R. 174; 65 O. L. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.

1514 i. *Wife acting under express authority not disclosed—Liability of husband.*]—FOULDS *v.* CURTELETT (1871), 21 C. P. 368.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.

1515 i. *Credit given to wife—Husband not liable.*]—Where an article was sold by pltfs. to a married woman & not to her husband, & credit was given to her alone:—*Held:* the husband was not liable for the price.—BEATTY BROS., LTD. *v.* MURPHY, [1930] 3 D. L. R. 448; 65 O. L. R. 293.—**CAN.**

sx. *Credit given to wife—Goods purchased for wife's business—Managed by husband—Whether husband's creditors can take in execution.*]—DOMINION SAVINGS & INVESTMENT SOCIETY *v.* KILROY (1888), 15 A. R. 487.—**CAN.**

PART VIII. SECT. 2. SUB-SECT. 6.

q i. —— —— *Several liability.*]—TOBIN & Co. *v.* SMITH, [1930] 3 D. L. R. 350.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 12.—D.

sz. *What amounts to.*]—The fact that a husband instructed a shop to close his account, to which his wife was allowed to charge purchases, because it "ran too high," does not amount to a termination of the wife's authority.—SIMPSON (ROBERT) & Co. *v.* GODSON, [1937] 1 D. L. R. 454.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 13.—A.

t i. —— ——.]—On appeal from the dismissal as against the husband of an action against him & his wife for the balance of the purchase-price of a player-piano, purchased by the wife:—*Held:* although the wife's prior authority to act as agent for her husband with respect to the purchase was not proven, the facts showed a definite ratification by him with full knowledge of all the circumstances. Appeal allowed.—WINNIPEG PIANO CO., LTD. *v.* WAWRYSHYN, [1935] 2 W. W. R. 220; 3 D. L. R. 181.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—A. (a).

1576 iv. —— ——.]—ARSENAULT *v.* BISHOP, [1931] 2 D. L. R. 325; 3 M. P. R. 334; [1932] 2 D. L. R. 814.—**CAN.**

1576 v. —— ——.]—A wife is presumed to have her husband's authority to pledge his credit for necessaries while they are living together.—MOORE, MCLEOD & CO., LTD. *v.* JARDINE (1932), 5 M. P. R. 327.—**CAN.**

1601 iii. ——.]—In an action against a husband for medical services rendered to a wife it is a defence that as to services rendered during cohabitation there was an express prohibition against pledging credit; & as to services rendered while they were living apart the wife had such means as precluded agency of necessity.—LINEHAM *v.* HOLDEN, [1933] 4 D. L. R. 187.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1642 i. *Jewellery.*]—A ring supplied to a working miner's wife:—*Held:* not a necessary.—PIANTA *v.* MACROW & SONS PTY., LTD. (1925), 27 W. A. L. R. 99.—**AUS.**

sy. *Fur coat.*]—The question whether a fur coat is a necessary is one of fact depending on the circumstances of each case.—GEBBIE & FORREST *v.* KERSHAW, [1927] 3 D. L. R. 156; [1927] 2 W. W. R. 166; 21 Sask. L. R. 489.—**CAN.**

sz. *Surgical operation.*]—Even if a wife has money of her own, she is armed to have authority to pledge husband's credit for necessaries. rgical operations.—SELDON

[illegible]
205.—**CAN.**

sa. *Employment of detective—To obtain evidence for divorce proceedings.*]—BARNETT *v.* MILNER (1927), 49 N. L. R. 1.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

1691 ii. *Revsd.*, 9 O. R. 198.

1735. *Add. Annotations :*—**Refd.** Grubb *v.* Grubb (1934), 150 L. T. 420; Markovitch *v.* Markovitch (1934), 151 L. T. 139.

1739. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1741. *Add. Citation :*—2 C. & P. 25, n.

1748. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1750. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753a. —— **Inadmissible.**]—Statements by an alleged adulterous wife that she had committed adulterty cannot be evidence against persons who are without knowledge & without means of knowledge of the truth of those statements & to whom they have not been communicated.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE (1930), 46 T. L. R. 239; *affd. on other grounds*, [1930] 2 K. B. 8, C. A.

1755. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1760. *Add. Annotation :*—**Consd.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

1800. *Add. Annotations :*—**Folld. & Extd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8. **Refd.** Welton *v.* Welton, [1927] P. 162; Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584.

1800a. —— —— —— **Proceedings instituted against wife.**]—A husband took divorce proceedings against his wife on the ground of her adultery. She consulted a solr., who upon her instructions put in a defence denying the charge & briefed counsel to appear for her. At the hearing the wife failed to appear, & a decree was made against her dissolving the marriage on the grounds alleged in the petition. The wife's counsel applied for costs, but as no security for her costs had been obtained, no costs were granted. The wife's solr. brought an action in the K. B. Div. to recover the costs from the husband, on the ground of his wife's agency of necessity at common law. The judge found as a fact that the solr. had acted without negligence, honestly believing that the wife was innocent & that she would be successful in her defence : —*Held :* in those circumstances the wife had no authority to bind her husband, so as to make him liable for the costs of her defence to his petition for divorce.—ARNOLD & WEAVER *v.* AMARI, [1928] 1 K. B. 584; 97 L. J. K. B. 238; 138 L. T. 591; 44 T. L. R. 221; 72 Sol. Jo. 138.

Annotation :—**Consd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8.

1800b. —— —— —— ——.]—The rule that a solr. acting for a wife, who is living apart from her husband, cannot, in a common law action, recover his costs from the husband, if when those costs were incurred the wife, although the fact was unknown to the solr., had been guilty of a matrimonial offence, applies not only where the wife has been living in adultery but also where she has committed an isolated act of adultery. The rule applies alike whether in the particular matter the wife was proceeding against the husband, or was defending a suit brought against her by the husband.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, [1930] 2 K. B. 8; 99 L. J. K. B. 444; 143 L. T. 452; 46 T. L. R. 402; 74 Sol. Jo. 319, C. A.

1800c. —— —— —— **Single act of adultery.**]—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, No. 1800b, *ante*.

1803a. ——.] — WITHERS, BENSONS, CURRIE, WILLIAMS & Co. *v.* CAWSTON (1928), 72 Sol. Jo. 191.

1826. *Add. Annotation :*—**Refd.** Gottliffe *v.* ston, [1930] 2 K. B. 378.

1833. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

PART VIII. SECT. 3, SUB-SECT. 2.—D. (d) i.

1749 i. *Subsequent condonation by husband.*]—Condonation by a husband of his wife's adultery does not render him liable for necessaries supplied to her subsequently to the adultery & prior to the condonation.—WINGROVE *v.* FRASER, [1936] V. L. R. 132; 42 Argus L. R. 233.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 2.—G.

1774 i. For "A husband is liable" read "A husband is not liable."

sb. *Purchase of husband's property by wife—Improvements made by husband after sale.*]—A purchase by a wife from her husband, the consideration being paid out of her separate estate, was held to be maintainable against creditors of whose debts she had no notice. The husband, after the purchase, expended money in improving the property. In a suit by a judgment creditor of the husband to obtain the benefit of such expenditure :—*Held :* the wife was entitled to show that the debt for which the judgment was recovered had been satisfied before action brought.—HILL *v.* THOMPSON (1870), 17 Gr. 445.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—H.

sd. *Medical expenses—Birth of husband's child.*]—A husband, whose wife has left him without any reasonable ground & against his wish, cannot avail himself of that fact against a claim for reasonable & proper charges for medical services rendered to her in the delivery, either alive or dead, of the husband's child; more particularly when the wife's condition is such that the medical services were necessary to save her life.—GOBEY *v.* MOORE, [1935] N. Z. L. R. 739.—**N.Z.**

sh. *Hotel expenses—During convalescence.*]—A husband living apart from his wife is liable for her hotel expenses during convalescence after an operation.—MCDONALD *v.* JARDINE, [1936] 1 D. L. R. 250; 10 M. P. R. 43; 5 F. L. J. (Can.) 228.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

f i. —— *Summary application for delivery up of title deeds.*]—*Re* MELLOR B. C.) (1905), 2 W. L. R. 17.—**CAN.**

n i. —— ——.]—A wife does not fall within the class of "protected" persons in respect of whom in certain relationships there is a presumption of undue influence.—MACKENZIE *v.* ROYAL BANK OF CANADA, [1934] A. C. 468; 103 L. J. P. C. 81; 78 Sol. Jo. 471, P. C.—**CAN.**

sb. *Work done by husband for wife before marriage—Effect of marriage on mechanic's lien.*]—HAUGEN *v.* HAUGEN (Alta.), [1929] 3 D. L. R. 16.—**CAN.**

sc. *Marriage invalid—Annulment—Action by "wife" for rent & wages—No implied contract.*]—Pltf. & deft. had lived together for a number of years as man & wife under the belief that they were legally married. Deft. then secured an annulment of the alleged marriage. Pltf. then brought the present action claiming general damages for fraud, on the ground that deft. had falsely represented to pltf. that pltf. was free to marry him. Under an alternative claim, not based on fraud, pltf. alleged that she had married deft. in reliance on his assurance that she was at liberty to marry. She claimed also rent for the time deft. lived in her house, wages as housekeeper on a *quantum meruit* basis, a sum alleged to have been paid by her for household expenses, & an amount due on a promissory note :—*Held :* the claims based on fraud & on said assurance had not been substantiated; there had been no express or implied agreement by deft. to pay rent or wages; there was proof of deft.'s promise to repay the amounts advanced by her for household expenses prior to 1919, but Stat. Limitations barred recovery thereof, & there had been no express or implied authority from deft. to incur said expenses thereafter; & the claim on the note had been released for good consideration.—MARSHALL *v.* MARSHALL, [1931] 3 W. W. R. 369.—**CAN.**

Part X.—Wrongs of Wife during Coverture.

2.—TORTS (p. 213).

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 3.

1851. *Add. Annotations :*—**Refd.** **Gottliffe** *v.* **Edelston**, [1930] 2 K. B. 378; **Greenwood** *v.* **Martins Bank, Ltd.**, [1933] A. C. 51.

1852a. Enticing husband of another woman—Whether husband of defendant liable.]—NEWTON *v.* HARDY, No. 645a, *ante*.

1852b. Law Reform (Married Women & Tortfeasors' Act, 1935 (c. 30), s. 3—Whether retrospective.]—By a writ dated Aug. 16, 1935 (after the coming into operation on Aug. 2, 1935, of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30)), pltf., a married woman, sued defts., husband & wife, claiming damages in respect of slanders alleged to have been uttered by the female deft. on divers dates in 1931 & in the early months of 1935, the claim as against the male deft. being that he authorised or caused the female deft. to utter the words complained of. Defts. denied the publication, & the male deft. denied that he authorised or caused the female deft. to utter the alleged defamatory words. At the trial the judge left the case against both defts. to the jury without directing them that if they found for pltf. they should return a separate verdict with separate damages in respect of each publication. No objection was taken to this direction at the time. The jury found a single verdict against both defts. & judgment was entered against them accordingly. On appeal :—*Held :* (1) there was evidence entitling the jury to find that the female deft. uttered the slanders complained of & therefore that the verdict & judgment against her must stand; (2) there was no evidence that the male deft. authorised or caused the female deft. to utter the words complained of; (3) Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), has a retrospective operation, & by virtue of its provisions the male deft. was not liable for his wife's tort; (4) as no objection was taken at the trial to the jury being asked to consider the different publications as a whole instead of separately, or not being asked to assess separate damages in respect of each publication, the female deft. could not be heard to say that the verdict was a nullity.

Per SCOTT, L.J. There is nothing in the Judicature Acts or in the Rules of the Supreme Ct. that separate verdicts & judgments are invariably necessary in respect of separate causes of action contained in the same writ. The question whether one or more causes of action can be included in one verdict or judgment depends upon the exercise of the trial judge's judicial discretion upon all the circumstances of the case.

Per SCOTT, L.J. The canon against giving a retrospective interpretation to a statute, in the absence of specific provision, expresses no rigid or absolute rule. It does not apply to a statute dealing with procedure, nor, *semble*, does it apply to a statute abolishing old legal fictions.—BARBER *v.* PIGDEN, [1937] 1 K. B. 664; [1937] 1 All E. R. 115; 106 L. J. K. B. 858; 156 L. T. 245; 53 T. L. R. 246; 81 Sol. Jo. 78, C. A

1860a. Liability of husband—Goods delivered to husband & wife.]—ANON. (1364), Y. B. 38 Edw. 3, fol. 1A.

Annotation :—**Consd.** Isaack v. Clark (1615), 2 Bulst. 306.

1875. *Add. Annotation :*—**Refd.** **Greenwood** *v.* **Martins Bank, Ltd.** (1931), 47 T. L. R. 607.

1880. *Add. Annotation :*—*As to* (1) **Refd.** Green-

PART X. SECT. 2, SUB-SECT. 1.

r i. —— ——.]—A husband may be made jointly liable with his wife for her torts, notwithstanding Married Women's Property Act, R. S. M., 1913 (c. 123).—DENOVICH *v.* HUCAL (Man.), [1927] 1 D. L. R. 879; [1927] 1 W. W. R. 179.—**CAN.**

r ii. ——.]—In Saskatchewan a husband is liable for his wife's post-nuptial torts.—DAVIDNER *v.* SCHUSTER, RIESENBERG *v.* SCHUSTER & MRAZEK, [1936] 1 W. W. R. 45; 1 D. L. R. 560; 5 F. L. J. (Can.) 199.—**CAN.**

t i. —— ——.]—A husband is not liable for his wife's post-nuptial torts.—HALL *v.* WILKINS (1933), 33 S. R. N. S. W. 220; 50 N. S. W. W. N. 44.—**AUS.**

sd. *False representation by wife—As to authority of husband to order goods—Whether coverture good defence.*]—Deft. pleaded coverture :—*Held :* plea good: Administration of Justice Act could not assist pltf., & Married Woman's Act, R. S. O., 1877, c. 125, ss. 6, 20, did not create any new liability against a married woman for her torts or *quasi* torts, but merely allowed her to be sued alone, where formerly she could have been sued with her husband, & the authorities showed that if so sued the action would have failed.—STONE *v.* KNAPP (1879), 29 C. P. 605.—**CAN.**

—— —— —— *Joint liability of husband—Confined to actual personal negligence of wife.*]—An innocent husband is liable to be sued at common law jointly with his wife for the actual personal negligence of his wife while driving a vehicle, her own or another's; but he is not liable to be so sued for the actual personal negligence of a third party when the wife's liability for the negligence of that party arises out of her sole ownership of a chattel & the power of control resulting therefrom.—BLACK *v.* MACFARLANE, [1931] N. Z. L. R. 112.—**N.Z.**

sf. —— *Liability of husband when wife husband's agent.*]—Whether or not a husband is liable under Married Women's Property Act, N. S. W. B., 1927, s. 15, for his wife's torts is immaterial when the husband is being made liable for her negligent acts as his agent in driving his car.—WHITE *v.* JACKSON, [1936] 2 D. L. R. 707.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.

sm. *Joint conversion by husband & wife—Liability of wife's separate estate.*]—Where pltf. proved a joint wrongful occupation & conversion of the rents & profits of his land by a husband & wife :—*Held :* the husband & wife were jointly liable to pltf., & pltf. was entitled to recover against the separate property of the wife, for it could not be inferred that the latter was acting under the direction or coercion of her husband so as to exempt her from liability.—BARKER *v.* WESTOVER (1882), 5 O. R. 116.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.

1861 iv. —— ——.]—Married Women's Property Act, R. S. O., 1927, s. 3, does not take away the right of a person injured to sue a husband & wife jointly for the wife's naked tort committed during coverture. In an action for slander uttered by the wife, without the husband's suggestion or approval, judgment was directed to be entered against both jointly for the damages assessed, the wife being still alive when judgment was reached.—HERCZEG *v.* BARSEY, [1930] 1 D. L. R. 758; 64 O. L. R. 529.—**CAN.**

d i. —— *Saskatchewan.*]—In Saskatchewan a husband is not liable for damages awarded against his wife in an action on the statutory cause of action given to a woman for slander of her chastity.—PALIUK *v.* MASORUK & MASORUK, [1931] 3 W. W. R. 380.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

sg. *Joint trespass by husband & wife—Damage to adjoining property—Due to acts of husband—Liability of wife.*]—In an action of trespass against husband & wife for placing logs against pltf.'s building & causing damage, & for placing a spout, by which the water from the roof of deft.'s house ran against & injured pltf.'s building, the evidence showed that the property was owned by the wife, but that she did not interfere with the management of it, or participate in the acts complained of :—*Held :* the wife was not liable.—MCDONALD *v.* LESTER (1890), 30 N. B. R. 137.—**CAN.**

wood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1883. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1885. *Add. Annotation :*—**Dbtd.** Greenwood *v.* Martin's Bank, Ltd., [1933] A. C. 51.

1897a. —— ——.]—LANHAM *v.* PIRIE (1857), 29 L. T. O. S. 171 ; 3 Jur. N. S. 704 ; 5 W. R. 540, L. C. & L. JJ.

Part XI.—Contracts for Separation.

1920. *Add. Annotation :—Generally,* **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1930. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1932. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1934. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1935. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1936a. ——.]—Deft., in consideration of pltf. persuading her husband to go to New Zealand &/or consenting to forgo the consortium of her husband, promised to pay to pltf. an allowance of £4 per week until either deft. should pay pltf.'s fare to join her husband or her husband's fare back to England. The statement of claim averred that pltf. was & always had been ready & willing to join her husband. The husband sailed for New Zealand, & weekly payments were made for a period of about one year, &, upon deft. then ceasing to make them, pltf. sought to enforce the agreement. Deft. pleaded that the agreement was against public policy, & this question was argued as a preliminary point of law :—*Held :* the contract was not void as against public policy. The issue had to be tried upon the facts set out in the statement of claim, &, as it did not appear therefrom that there was anything immoral in the contract, it was not illegal as against public policy ; but it might be otherwise when all the facts were before the ct.—DAVIES *v.* ELMSLIE, [1937] 4 All E. R. 68 ; 157 L. T. 502 ; 54 T. L. R. 15 ; 81 Sol. Jo. 865 ; *affd.*, [1937] 4 All E. R. 471.

1937. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1939. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender . Mildmay, [1937], 3 All E. R. 402.

1941. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1943. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender *v.* Mildmay, [1936] 1 K. B. 111.

1944. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1936] 1 K. B. 111.

1948. *Add. Annotations :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47 ; British Homophone, Ltd. *v.* Kunz• & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

1954. *Add. Annotation :—As to* (1) **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

1965. *Add. Annotations :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113. Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1969. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1989. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; May *v.* May (1929), 98 L. J. K. B. 770.

1995. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews (1932), 48 T. L. R. 511.

1996. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

1999a. —— **Threat to remove children from jurisdiction.**]—DE PRET-ROOSE *v.* DE PRET-ROOSE (1934), 78 Sol. Jo. 914.

2014a. Covenant to pay one quarter of gross income—Right to deduct outgoings.]—*Re* HISCOTT'S INDENTURE, HISCOTT *v.* HISCOTT (1937), 54 T. L. R. 147 ; 81 Sol. Jo. 963.

2019. *Add. Annotations :—As to* (1) **Refd** Hyman, *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. *As to* (7) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2037. *Add. Annotation :*—**Consd.** Kirk *v.* Eustace., [1937] 1 K. B. 278.

2037a. —— —— ——.]—By a deed made in 1922 providing for a separation between husband & wife, & containing mutual covenants to live separate & apart, the husband covenanted with his wife to pay her the weekly sum of £2 during her life for her maintenance & support, but determinable upon reconciliation. In 1936 the husband died. The widow claimed that his estate was liable to continue paying the maintenance during the rest of her life, but the exors. contended that the liability had come to an end by the husband's death :—*Held :* as the deed provided that the weekly payment to the wife should continue during her life & as there was nothing in the language used to show an intention that the husband's obligation should continue only during his life, his estate remained liable to pay the weekly sum to the widow.—KIRK *v.* EUSTACE, [1937] A. C. 491 ; [1937] 2 All E. R. 715 ; 106 L. J. K. B. 617 ; 157 L. T. 171 ; 53 T. L. R. 748 ; 81 Sol. Jo. 376, H. L.

PART XI. SECT. 1, SUB-SECT. 3.—A.

1928 ii. *S. P.* WOODS *v.* WOODS, [1927] 3 D. L. R. 321 ; 60 O. L. R. 438.—**CAN.**

1941 i. *What amounts to—Agreement contemplating reconciliation.*]—Although the separation agreement between husband & wife in question herein " prospectively looked " to the parties living together again, it was held not to provide for a future separation thereafter, &, therefore, was not void as against public policy.—MORGAN *v.* MORGAN, [1931] 3 W. W. R. 292 ; 44 B. C. R. 482.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.

n i. ——.]—Where a wife understood the agreement, had independent advice, & was not misled or influenced by her husband in regard to her legal rights or the meaning & effect of the document :—*Held :* it could not be set aside for fraudulent misrepresentation & duress.—THOMSON *v.* THOMSON, [1927] 1 D. L. R. 653 ; 59 O. L. R. 661.—**CAN.**

2038. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. **Apld.** May *v.* May, [1929] 2 K. B. 386.

2039. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Apld.** May *v.* May, [1929] 2 K. B. 386. **Consd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2039a. —— —— ——.]—By a deed of separation reciting that differences had arisen between a husband & a wife, it was agreed that the wife should during the life of the husband live separate & apart from him & free from his marital control & authority as if she were unmarried, & that the wife should retain as her separate property certain articles which, if she should die in the lifetime of the husband without having disposed of them, should devolve as if she had died possessed thereof intestate & a widow. The husband covenanted that he would during the life of the wife pay to her an annual sum of £600. The wife was also to be entitled to certain furniture & effects for the use of herself during her life. Throughout the deed the parties were referred to as "the husband" & "the wife" respectively. It was provided that if the husband & the wife should be reconciled to each other & return to cohabitation the deed should become void. The husband subsequently committed adultery & the wife obtained a decree dissolving the marriage. He then made default in paying the full annual sum provided for by the deed, & she brought an action to recover the arrears:—*Held:* the deed was not subject to any implied term that it should only operate so long as the marriage relation continued to exist between the parties, & pltf. was entitled to recover.—MAY *v.* MAY, [1929] 2 K. B. 386; 98 L. J. K. B. 770; 141 L. T. 629, C. A.

Annotations:—**Refd.** Mann *v.* Mann, [1936] 1 All E. R. 952; Kirk *v.* Eustace, [1937] 1 K. B. 278.

2040a. —— **Bankruptcy of husband.**]—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, No. 595a, *ante*.

2049. *Add. Annotation:*—**Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177.

2061a. —— —— **Refusal of nominee to undertake custody—Effect on deed.**]—Where the parties to a matrimonial suit had agreed to settle it, & a deed of separation had been approved to give effect to such settlement:—*Held:* the refusal of the husband's brother to undertake the custody of one of the children, as nominee of the husband, which custody had been agreed on between the husband & wife as one of the terms of the deed, was not a failure of such a vital term as to prevent the settlement from being carried into effect.—WILLIS *v.* WILLIS, [1928] P. 10; 96 L. J. P. 177; 137 L. T. 621; 43 T. L. R. 657, C. A.

2067. *Add. Annotation:*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2080. *Add. Annotation:*—**Consd.** Lindsay *v.* Lindsay, [1934] P. 162.

2083. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2084. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2085. *Add. Annotations:*—**Overd.** Hyman *v.* Hyman, [1929] A. C. 601; Lambert *v.* Lambert, [1936] 3 All E. R. 20.

2085a. —— ——.]—A woman who, in a deed of separation, covenants in consideration of certain benefits not to claim from her husband in the future maintenance or alimony, & is afterwards granted a decree absolute of divorce, is not debarred from petitioning for maintenance after the dissolution of marriage, notwithstanding that the deed contained no provision for its termination on the marriage being dissolved.—HYMAN *v.* HYMAN, [1929] A. C. 601; 98 L. J. P. 81; 141 L. T. 329; 93 J. P. 209; 45 T. L. R. 444; 73 Sol. Jo. 317; 27 L. G. R. 379, H. L.

Annotations:—**Expld.** May *v.* May, [1929] 2 K. B. 386. **Consd.** L. *v.* L., [1931] P. 63; Lambert *v.* Lambert, [1936] 3 All E. R. 20. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44; Russell (Countess) *v.* Russell (Earl), [1935] P. 39; Mann *v.* Mann, [1936] 1 All E. R. 952.

2090. *Add. Annotations:*—*Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601; Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

PART XI. SECT. 6, SUB-SECT. 7.

1 i. —— ——.]—Where a separation agreement was not invalid on the ground that the father had therein waived his rights to the control & guardianship of the children:—*Held:* before the wife could ask for maintenance for them, she must show that she had failed to perform those duties to them amounting to guardianship which she had assumed under the agreement.—HOLOWACHUK *v.* HOLOWACHUK (Man.), [1927] 2 W. W. R. 470.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 11.

2073 ii. —— —— ——.]—A separation agreement, which provided for the payment of a specific sum by instalments to be secured by a mtge., & which did not contain a *dum casta* clause:—*Held:* enforceable by the wife, although there had been subsequent adultery by her & she had been divorced & had married again.—RUST *v.* RUST, [1927] 2 D. L. R. 248; [1927] 1 W. W. R. 491; 22 Alta. L. R. 430.—**CAN.**

2073 iii. —— —— —— ——.]—A husband is liable on a separation deed, notwithstanding the wife's subsequent adultery, unless there is a *dum casta* clause.—JASPER *v.* JASPER, [1935] 3 D. L. R. 64; O. R. 269; *affd.*, [1936] 1 D. L. R. 193; O. R. 57.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 12.

2086 i. *Covenant by wife not to claim further maintenance—Subsequent judicial separation.*]—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held:* the petition must be dismissed.—K. *v.* K., [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641.—**CAN.**

si. *Covenant by wife not to claim alimony—Subsequent adultery of husband—Whether covenant still binding—Right of court to award maintenance for children.*]—HOLTEN *v.* HOLTEN, [1928] 1 D. L. R. 546.—**CAN.**

si. —— —— ——.]—An agreement between a husband & wife before a decree *nisi* of divorce, in which, in consideration of the payment of a certain weekly sum for her maintenance, she covenanted to take no proceedings for alimony, does not prevent the ct. under Divorce & Matrimonial Causes Act, 1857, from entertaining an application for alimony.—X. *v.* X., [1933] 2 W. W. R. 413; 41 Man. L. R. 209.—**CAN.**

PART XI. SECT. 7, SUB-SECT. 2.—B.

sx. *Jurisdiction of court—King's Bench Act, s. 22.*]—DAVIS *v.* DAVIS, [1926] 1 W. W. R. 942; 20 Sask. L. R. 543.—**CAN.**

2102 ii. —— ——.]—*Held:* a covenant by the wife that she would not "molest, disturb or annoy" her husband was not broken by her taking the children to England without her husband's knowledge or consent, thereby depriving him of his right of access given by the deed of separation, since such removal had been effected in order to protect the wife & children from the importunity & probable violence of the husband. If there had been a breach, such breach was no defence to an action by the wife for arrears of maintenance of the children, the husband's remedy being a counter-claim for damages.—WILLIAMS *v.* WILLIAMS, [1933] N. Z. L. R. 94; G. L. R. 592.—N.Z.

2102 iii. ——*Breach of condition—As to access to child—Reply alleging husband's bad character.*]—A separation agreement provided that the wife should be given the custody of the son, but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—*Held:* a reply alleging the husband's

2106. *Add. Annotations :—As to* (1) **Refd.** Hyman *v.* Hyman, [1929] A. C. 601. *Generally,* **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2111. *Add. Annotation :—***Refd.** H. *v.* H., [1928] P. 206.

2144. *Add. Annotations :—***Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2151. *Add. Annotations :—***Refd.** Hyman *v.* Hyman, [1929] A. C. 601 ; Kirk *v.* Eustace, [1937] 1 K. B. 278.

2158. *Add. Annotation :—***Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2164. *Add. Annotation :—***Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

2174. *Add. Annotations :—***Consd.** Melvill *v.* Melvill & Woodward, [1930] P. 159. **Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64 ; Hyman *v.* Hyman, [1929] A. C. 601 ; Brown *v.* Brown, [1936] 2 All E. R. 1616.

2176. *Add. Annotations :—***Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64 ; Hyman *v.* Hughes *v.* Hughes (1928), 139 L. T. 416.

2177. *Add. Annotations :—***Consd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211. **Apld.** May *v.* May, [1929] 2 K. B. 386. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416 ; Cooper *v.* Cooper & Ford (1932), 48 T. L. R. 275.

2178a. —— —— —— ——.]—On a husband's petition for the cancellation of a post-nuptial settlement, after decree absolute of divorce granted on the ground of her adultery subsequent to the date of the settlement, the registrar's order extinguishing resp.'s interest in the settlement was varied by the amount payable thereunder being reduced & by a limitation *dum sola et casta.*—COOPER *v.* COOPER & FORD, [1932] P. 75 ; 101 L. J. P. 28 ; 147 L. T. 16 ; 48 T. L. R. 275 ; 76 Sol. Jo. 249.

2179. *Add. Annotation :—***Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

Part XII.—Legal Proceedings.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1.

2184. *Add. Annotation :—***Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2189a. —— ——.] — PRACTICE NOTE, [1926] W. N. 8.

2199. *Add. Annotation :—***Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

2210. *Add. Annotation :—***Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2212. *Add. Annotation :—***Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2213. *Add. Annotation :—***Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2223a. —— —— **Power to amend—Woman in fact widow.**]—Deft. was sued, & judgment was obtained against her, as Mrs. A., a married woman, the judgment being in the form settled in *Scott* v. *Morley.* In fact, deft. was not Mrs. A. or a married woman, but was Mrs. W., a widow, she having kept back from, & actively misrepresented to, the ct. her real name & status. On the real facts being ascertained pltf. applied by summons

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bad character was no excuse for a breach of the condition.—MCLENNAN *v.* MCLENNAN, [1925] 3 D. L. R. 281 ; [1925] S. C. R. 279 ; *affg.,* [1925] 1 D. L. R. 277 ; 57 N. S. R. 480.—**CAN.**

2103 i. *For arrears of annuity.*]—BARLOW *v.* BARLOW (1927), 30 W. A. L. R. 8.—**AUS.**

sy. *For agreed sum for maintenance—Covenant not to sue.*]—By a separation agreement it was provided, *inter alia,* that the husband would pay the wife £150 for her maintenance & support ; that the wife would keep the husband indemnified against her debts ; that the wife would not commence proceedings for maintenance against the husband, & that she would not molest him. Custody of, & the duty of maintaining, two children of the marriage were conferred on the wife. The husband did not pay the £150 mentioned ; the wife sued for this sum :—*Held :* the wife was entitled to recover.—MEZZINE *v.* MEZZINE, [1927] S. A. S. R. 167.—**AUS.**

sz. —— ——.]—BAKEWELL *v.* BAKEWELL (1927), 38 S. R. N. S. W. 94 ; 45 N. S. W. W. N. 45.—**AUS.**

PART XI. SECT. 7, SUB-SECT. 2.—C.

sa. *Claim for—Whether claim for alimony can be joined.*]—A claim for specific performance of a separation agreement is inconsistent with a claim for alimony & so long as the former claim stands it is a bar to the obtaining alimony *pendente lite* or interim costs.—HENKE *v.* HENKE, [1928] 1 D. L. R. 1090 ; [1928] 1 W. W. R. 337 ; 22 Sask. L. R. 267.—**CAN.**

PART XI. SECT. 8.

2165 iii. —— —— ——.]—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—NATIONAL TRUST CO., LTD. *v.* BELL, [1925] 4 D. L. R. 1029 ; [1925] 3 W. W. R. 712.—**CAN.**

sb. *Agreement for—Failure of consideration.*]—WAKARUK *v.* WAKARUK (Alta.), [1926] 1 D. L. R. 493.—**CAN.**

sf. *Power of court to set aside deed.*]—H. & W. had entered into a private deed of separation. H. now sued for an order setting it aside. He desired to resume matrimonial relations with W. & could provide her with a home. There were no grounds for a judicial separation & there were no longer any grounds for a private separation. W. was in breach of the deed, & was in default in the action :—*Held :* it was competent for the ct. to set aside a private deed of separation, & by granting the relief sought the ct. would be encouraging the parties to resume their married life.—ORAM *v.* ORAM (1936), N. L. R. 287.—**S. AF.**

PART XI. SECT. 9.

p i. —— *Good reason for variation—Onus of proof.*]—A husband & wife having entered into a separation agreement under which the custody of their two eldest children were given to the father & that of the youngest child to the mother, & provision was made for access of both parents to all the children, the mother subsequently launched a petition to obtain the custody & control of the eldest boy, the second child had been accidentally drowned in the meantime :—*Held :* the mother had failed to show any good reason why the ct. should interfere with the arrangement made by the separation agreement.—BRUIN *v.* BRUIN (B. C.), [1929] 4 D. L. R. 802 ; 2 W. W. R. 218.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—A.

e (p. 249) i. —— ——.]—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as deft. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—SAMPSON *v.* THOMAS, [1925] 1 W. W. R. 1018.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—F. (a).

2221 ii. ——.]—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman.—BISHOP *v.* BLACK, [1925] 3 W. W. R. 679.—**CAN.**

c i. ——.]—Defts. who were husband & wife, signed a promissory note payable to pltf. on demand. Upon default being made in payment, pltf. obtained judgment against defts. in the county court of Victoria. The judgment against Mrs. R. was against her personally :—*Held :* a nullity.—MAYER FINANCE CO. *v.* ROSS, [1929] N. Z. L. R. 748.—**N.Z.**

c ii. ——.]—SILLIKER *v.* FRASER, [1931] 4 D. L. R. 326.—**CAN.**

to the master asking that the judgment should be altered to a personal judgment against deft. as Mrs. W., a widow :—*Held :* there was no jurisdiction to amend the judgment either under the slip rule or under the inherent jurisdiction of the ct. inasmuch as the judgment had been intentionally given in the form it was.—MACCARTHY *v.* AGARD, [1933] 2 K. B. 417; 102 L. J. K. B. 753; 149 L. T. 595, C. A.

2225. *Add. Annotations :*—**Consd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417. **Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2238. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2245. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2249. *Add. Annotation :—As to* (2) **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

2282. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2286. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2287a. Action for libel by wife against husband—Wife in business.]—RALSTON *v.* RALSTON, No. 2293a, *post.*

2290. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2291a. Claim by husband against wife—Interpleader proceedings.]—A wife deposited certain furniture & other goods with warehousemen for safe storage. Her husband claimed that the furniture & other goods were his property, & issued a writ in detinue against the warehousemen claiming the delivery up of the goods. The wife also claimed the goods as being her property. The warehousemen disclaimed any interest in the goods except for storage charges, & took out an interpleader summons in the action, making the wife the claimant. An order was made by a master directing the trial of an issue in the King's Bench Division to determine whether the goods were the property of the husband or the wife, & directing that in that issue the husband was to be pltf. & the wife was to be deft. The judge in chambers affirmed the order. Upon an appeal by the wife on the ground that such an order could not be made as between a husband & a wife :—*Held :* the interpleader issue which was directed was not an action by the husband against the wife but a proceeding in the action by the husband against the warehousemen, & the order for interpleader was necessary in order to give relief to the warehousemen, who had two claimants making claims against them in respect of the property, & there was jurisdiction under R. S. C., Ord. LVII, r. 7, to make the order directing an interpleader issue to be tried, & the husband was properly directed to be in the position of pltf. in the issue, & the wife in the position of deft., because the deposit of the property with the warehousemen had been made by the wife, & the husband had to make out his case.—DE LA RUE *v.* HERNU, PERON & STOCKWELL, LTD., [1936] 2 K. B. 164; [1936] 2 All E. R. 411; 105 L. J. K. B. 430; 154 L. T. 713; 52 T. L. R. 499, C. A.

2292. *Add. Annotation :*—**Consd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

PART XII. SECT. 1, SUB-SECT. 1.—I.

sc. *Liability of husband—Participating in litigation.*]—In an action by a married woman against a third party : —*Held :* notwithstanding Married Women's Property (Scotland) Act, 1920 (c. 64), s. 3 (1), pursuer's husband, in respect that he had actively participated in the litigation, fell to be made jointly & severally liable in expenses along with his wife.—M'MILLAN *v.* MACKINLAY, [1926] S. C. 673.—**SCOT.**

PART XII. SECT. 1, SUB-SECT. 2.—A.

e i. —— *Interference with business carried on by wife.*]—Pltf., a married woman, carried on business as an hotelkeeper, & owned the chattels in the hotel. Deft., her husband, interfered with pltf. in her business by taking the receipts, giving orders to servants, & maltreating pltf. An injunction was granted restraining deft. from interfering in the business or with the servants or agents, or removing any of pltf.'s chattels.—DONNELLY *v.* DONNELLY (1885), 9 O. R. 673.—**CAN.**

e ii. ——.]—The effect of sects. 10 & 11 of Married Women's Property Act, R. S. M., 1913, is that, other than an action for tort, all civil remedies are open to a husband against his wife. [illegible] deft. had [illegible]lly broken open a trunk & taken [illegible]m a sum of currency belonging to him, & that she had deposited a certain amount thereof to her credit under an assumed name in the [illegible] office savings bank at Winnipeg, where the money remained, & that she had refused on demand to transfer or return it to him. He prayed that the money be declared his property, for an injunction restraining her from withdrawing it, & for an order that the money be paid to him or that she [illegible] therefor to his order :—*Held :* pltf. was not suing for a tort but to have it declared that the money was his & for enforcement of his title thereto. The appeal was allowed, the injunction was made permanent, & pltf. was declared to be entitled to the money.—SEREDOWICZ *v.* SEREDOWICZ, [1934] 1 W. W. R. 665; 3 D. L. R. 47; 42 Man. L. R. 35.—**CAN.**

sd. *Action for breach of trust.*]—*Held :* under the Married Women's Property Act, 1890, a husband can maintain an action against his wife for breach of trust, & in cases where another person is sued with the wife, & that person sets up a claim to portion of the property, the right of action given by sect. 21 of that Act is not an exclusive remedy.—ANHAEUSSER *v.* ANHAEUSSER & ROTH (1930), S. R. (Q.) 55.—**AUS.**

sf. *Proceedings for possession order—Husband's house in possession of wife.*] —A husband cannot obtain a possession order against his wife for his house in which she continues to reside after separation unless he provides another home for her.—MCLEOD *v.* MCLEOD, [1935] 2 D. L. R. 648; *revsd. sub nom.* M. *v.* M., [1935] 3 D. L. R. 551; O. R. 329.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—B.

2292 i. *Action by wife against husband —For negligence.*]—Pltf., a married woman, brought this action against her husband & another for negligence in the operation of a motor vehicle driven by her husband, in which she was a passenger, whereby she was injured, & she claimed damages for her injury. The statement of claim contained no allegation of any express or implied contract :—*Held :* the action was for a tort within Married Women's Property Act, 1926, s. 8, & was not maintainable against pltf.'s husband.—GOLDMAN *v.* GOLDMAN, [1928] 2 D. L. R. 152; 61 O. L. R. 657.—**CAN.**

2292 ii. —— ——.]—A wife, who was being driven by her husband in his motor car, was injured in a collision between the motor car & a motor lorry. She brought an action of damages against the owner of the lorry & against her husband :—*Held :* the action against the husband was incompetent, in respect that (*a*) at common law the relationship existing between husband & wife is of so intimate a character that it is against public policy that the one should have a right of action against the other in consequence of a wrong done, & (*b*) Married Women's Property (Scotland) Act, 1920, has not altered the law in this respect.—HARPER *v.* HARPER, [1929] S. C. (Ct. of Sess.) 220.—**SCOT.**

2292 iii. —— ——.]—COUPLAND *v.* MARR. [1931] O. R. 707.—**CAN.**

2292 iv. —— *Married Women's Act, R.S.A.* 1922, *s.* 2.]—Married Women's Act, R. S. A. 1922, c. 214, s. 2, which provides, *inter alia*, that a married woman shall be capable of suing & being sued in any form of action as if she were an unmarried woman cannot be relied on to support an action in tort by a wife against her husband.

Semble : the Act, if, and so far as, it purports to enable a wife to sue her husband in tort, is *intra vires* the Province as being legislation in relation to a "civil right."—HILL *v.* HILL, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 1, 873; *affd.*, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105. —**CAN.**

sp. *Action by wife against husband—To set aside fraudulent conveyance.*]—Pltf., who had obtained a judgment for alimony & costs, sued on behalf of herself & all other creditors of her husband to set aside, as fraudulent & void under the Fraudulent Conveyances Act, R. S. B. C., 1924, a prior conveyance made by him to his daughter :

2293a. —— ——.]—(1) Pltf. married deft. in 1893. In 1899 the parties separated under a deed of separation & thenceforward lived apart. By the deed of separation deft. covenanted to pay an annuity to pltf., & the deed also contained a covenant for further assurance. After the separation pltf. set up in business as a garage proprietor, & she subsequently converted this business into a private limited co. in which she held the majority of the shares & also was the chairman & managing director. In 1929 she saw in a churchyard near her husband's residence a tombstone on which was the following inscription: "In loving memory of Jennie the dearly beloved wife of W. R. Crawshay Ralston of the Bungalow, Valley. Died 20th May, 1916." Deft. was the W. R. Crawshay Ralston mentioned in the inscription & he had caused the inscription to be made. Pltf. brought an action against her husband for libel & also for a declaration that she was the lawful wife of deft.:—*Held:* though the inscription was capable of a defamatory meaning, pltf., by reason of Married Women's Property Act, 1882 (c. 75), s. 12, could not sue her husband on it, the action being for a tort & not for the protection & security of her separate property.

(2) If there were any doubt as to the validity of the marriage, in my opinion, an action at law in the K. B. Div. of the High Ct. is not the proper proceeding in which to have that matter determined. I think it would be necessary, if there were any doubt as to the validity of the marriage, to take proceedings under the Legitimacy Declaration Act, 1858 (c. 93) (MACNAUGHTEN, J.).—RALSTON *v.* RALSTON, [1930] 2 K. B. 238; 99 L. J. K. B. 266; 142 L. T. 487.

2294. *Add. Annotation:*—**Consd.** RALSTON *v.* RALSTON, [1930] 2 K. B. 238.

2294a. —— **For negligence—Injury sustained before marriage.**]—Although by Married Women's Property Act, 1882 (c. 75), s. 12, a married woman has the same civil remedies for the protection & security of her own separate property as if it belonged to her as a feme sole, & by sect. 24 "property" includes a thing in action, nevertheless a right of action for a pure tort which accrued before the marriage of the parties is not a thing in action within sect. 24, & consequently such right is not part of the wife's separate property.

An unmarried woman sustained injuries through a man's negligent driving, & issued a writ against him claiming damages in respect thereof. Before the trial of the action she married him:—*Held:* her right of action was not such a thing in action as would become her separate property within the meaning of the Act, but was barred by the general disability of husband & wife to sue each other for a tort.—GOTTLIFFE *v.* EDELSTON, [1930] 2 K. B. 378; 99 L. J. K. B. 547; 143 L. T. 595; 46 T. L. R. 544; 74 Sol. Jo. 567.

2310. *Add. Annotations:*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

Part XIII.—Matrimonial Causes.

2317. *Add. Annotations:*—*As to* (2) **Apld.** Cavendish *v.* Cavendish, [1926] P. 10. **Distd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

2318. *Add. Annotation:*—**Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2321. *Add. Annotations:*—**Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Raeburn *v.* Raeburn (1928), 138 L. T. 672.

—*Held:* pltf.'s action was one upon the statute & not one of tort within Married Women's Property Act, R. S. B. C., 1924.—FUHR *v.* FUHR, [1936] 2 W. W. R. 237; 50 B. C. R. 438.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—D.

sd. *Jurisdiction to decide on originating notice—Right to direct an issue.*]—FOSTER *v.* FOSTER, [1928] 3 W. W. R. 573.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.

m i. —— —— ——.]—A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85).—CLAMAN *v.* CLAMAN (1925), 35 B. C. R. 137.—**CAN.**

m ii. —— —— ——.]—The Supreme Ct. of British Columbia has jurisdiction to entertain a petition for divorce between persons domiciled in that Colony & in respect of matrimonial offences alleged to have been committed therein.—WATTS & A.-G. FOR BRITISH COLUMBIA *v.* WATTS, [1908] A. C. 573, P. C.—**CAN.**

q i. —— —— ——.]—The parties went through a form of marriage in Nova Scotia. In an action for declaration of nullity based on absence of consent & fraud:—*Held:* the Supreme Ct. of Ontario had no jurisdiction to entertain the action, & would have had none even if the marriage had been an Ontario marriage. The jurisdiction of the Ecclesiastical Cts. in England has not been conferred upon the Supreme Ct. of Ontario.—VAMVAKIDIS *v.* KIRKOFF, [1930] 2 D. L. R. 877; 64 O. L. R. 585.—**CAN.**

q ii. —— —— —— *Adultery before Divorce Act, 1930, in force.*]—Divorce Act, 1930, is retroactive & confers on the Supreme Ct. of Ontario jurisdiction to dissolve a marriage if pltf. can establish an act of adultery on the part of deft. at any time after the celebration of the marriage even though the act of adultery occurred before the Divorce Act came into force.—UPPER *v.* UPPER, [1933] O. R. 1; 1 D. L. R. 244.—**CAN.**

a i. —— *High Court—Bombay—To hear matrimonial suits between Jews.*]—The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require."—BENJAMIN *v.* BENJAMIN (1925), I. L. R. 50 Bom. 369.—**IND.**

a ii. —— *Proceedings for nullity—Under Christian Marriage Act, 1872.*]—A suit for a declaration that a marriage is null & void under Christian Marriage Act, 1872, s. 4, because it was not solemnised in accordance with the rules, rites & ceremonies of the Church must be instituted in the appropriate subordinate civil ct. & cannot be entertained by the High Ct. direct.—TITLI *alias* TEREZA *v.* JONES (1933), I. L. R. 56 All. 428.—**IND.**

ai. —— *Court of Appeal—British Columbia.*]—The Ct. of Appeal has no jurisdiction to entertain appeals in divorce & matrimonial causes.—TYTLER *v.* JAMIESON, [1935] 3 W. W. R. 510; 4 D. L. R. 705; 50 B. C. R. 263.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 3.

2320 i. *Practice of Ecclesiastical Courts followed—Proceedings in formâ pauperis in Manitoba.*]—COLERIDGE *v.* COLERIDGE (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

ss. *Rule inconsistent with Divorce & Matrimonial Causes Act, 1857—Validity.*]—The fact that K. B. Rule 598 differs from sect. 28 of Divorce & Matrimonial Causes Act, 1857, does not render the rule invalid. Said sect. 28 deals wholly with rules of practice & procedure, & even if they were ever effective in Saskatchewan they, as the result of sect. 12 of King's Bench Act, 1920, have been superseded by K. B. Rule 598.—MAY *v.* MAY & MCKINLAY, [1934] 3 W. W. R. 471.—**CAN.**

2327. *Add. Annotation :*—**Reld.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2328a. No. 6069a, *post*.

2328b. Distinguished from other grounds for annulling marriage.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a [illegible] which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 29 L. G. R. 353.

Annotation :—**Reld.** White (otherwise Bennett) *v.* White, [1937] P. 111.

2331. *Add. Annotation :*—**Reld.** Inverclyde *v.* Inverclyde, [1931] P. 29.

2334. *Add. Annotations :*—**Reld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29; Newbould *v.* A.-G., [1931] P. 75; Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2340. *Add. Annotations :*—**Reld.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190; Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2342a. —— **Repudiation of marriage by other party.**]—In a suit for nullity of marriage on the ground of incapacity to consummate it the ct. granted a decree to a petitioner who was the incapable spouse, finding as a fact that the other spouse had repudiated the marriage contract, but expressly refrained from deciding that there is jurisdiction to entertain such a suit at the instance of an incapable petitioner in the absence of repudiation of the contract by the other spouse.—DAVIES (OTHERWISE MASON) *v.* DAVIES, [1935] P. 58; 104 L. J. P. 9; 152 L. T. 264; 51 T. L. R. 151; 78 Sol. Jo. 878.

2345. *Add. Annotation :*—**Folld.** H. *v.* H. (otherwise N.) (1929), 45 T. L. R. 618.

2345a. —— ——.]—Where the ct. finds in a for nullity of marriage that both the [illegible] to the ceremony of marriage are impotent, each being incapable as regards the other, a decree *nisi* may be granted to each of the parties & either may apply in due course for a decree absolute.—H. *v.* H. (OTHERWISE N.) (1929), 98 L. J. P. 155; 45 T. L. R. 618.

2350. *Add. Annotation :*—**Apld.** Snowman *v.* Snowman, [1934] P. 186.

2351a. —— —— **Miscarriage resulting from fecundation ab extra.**]—Where in a woman's suit for nullity of marriage on the ground of the man's incapacity it was established that there had only been imperfect intercourse, as a result of which fecundation *ab extra* took place on two occasions & miscarriages followed, & the woman still remained *virgo intacta*, the ct. pronounced a decree *nisi* of nullity.—SNOWMAN (OTHERWISE BENSINGER) *v.* SNOWMAN, [1934] P. 186; 103 L. J. P. 87; 151 L. T. 180; 50 T. L. R. 445.

2369. For "DICKINSON *v.* DICKINSON" read "DICKINSON *v.* DICKINSON (OTHERWISE PHILLIPS)."

2370. *Add. Annotation :*—**Reld.** Newbould *v.* A.-G., [1931] P. 75.

2377. For "B. *v.* B." read "B. (OTHERWISE H.) *v.* B."

2381. *Add. Annotations :*—**Reld.** Inverclyde *v.* Inverclyde, [1931] P. 29; Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

2382. *Add. Annotation :*—*As to* (1) **Reld.** Dodworth *v.* Dale, [1936] 2 All E. R. 440.

2383. *Add. Annotation :*—**Consd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

2384a. ——.]—During three years' cohabitation following a ceremony of marriage the man made no attempt to consummate the marriage, & in fact it was never consummated. The ct. granted the woman on her petition a decree *nisi* of nullity, acting on the presumption of law that resp. was incapable.—KAY (OTHERWISE GUNSON) *v.* KAY (1934), 152 L. T. 264; 51 T. L. R. 152; 78 Sol. Jo. 899.

2405. *Add. Annotation :*—**Consd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

PART XIII. SECT. 3, SUB-SECT. 1.

p i. ——.]—The fact that, at the time of her marriage, a wife has living a child born as a consequence of illicit intercourse with another man, of which intercourse her husband had no knowledge, does not entitle the latter to have the marriage set aside.—STANDER *v.* STANDER, [1929] App. D. 349.—**S. AF.**

PART XIII. SECT. 3, SUB-SECT. 2.—A.

2329 v. ——.]—The law of Ontario as to annulment of marriage is the law of England as of July 15, 1870, unless modified by provincial law. Relief for persistent refusal of intercourse can only be given where an inference of impotence can be drawn.—BETHELL *v.* BETHELL, [1932] O. R. 300; 2 D. L. R. 663.—**CAN.**

2329 vi. ——.]—DAWSON *v.* DAWSON, [1937] 3 W. W. R. 8.—**CAN**

PART XIII. SECT. 3, SUB-SECT. 2.—B.

s i. ——.]—A decree for nullity of marriage cannot according to the principles of the ecclesiastical law as administered in the Matrimonial Ct. be granted to petitioner on the ground merely of petitioner's own impotence; but, if a petitioner can in addition to his own impotence satisfy the ct. that there has been & is conduct on the part of resp. which has destroyed the *verum matrimonium*, as, by a genuine & deliberate repudiation of the marriage contract & its obligations, the ct. may *ex justa causa* grant the relief.—McM. *v.* McM., McK. *v.* McK., [1936] I. R. 177.—**IR.**

PART XIII. SECT. 3, SUB-SECT. 2.—C.

2346 iii. —— ——.]—Where the husband was potent & there was no structural incapacity on the part of the wife, but the marriage had never been consummated owing to the opposition of the wife without any legitimate reason, the ct. granted a decree of nullity of the marriage on the ground that there was an invincible repugnance on the part of the wife to the act of consummation resulting in paralysis of the will, which was consistent only with incapacity.—S. *v.* S. (1926), 29 W. A. L. R. 52.—**AUS.**

2356 i. *Not mere incapacity of conception—Where intercourse possible.*]—Persistent & wilful refusal to consummate by a wife is not of itself a ground for annulment, except so far as it is evidence of abnormal physical condition. If there is capacity to consummate, incapacity of conception is no ground for annulment.—TICE *v.* TICE, [1937] 1 D. L. R. 660; O. R. 233.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—D. (b).

2366 i. —— *Wilful & persistent refusal—Refusal to be medically examined.*]—Wilful & persistent refusal by a wife to consummate, & refusal to submit to a medical examination, raise an inference of impotence entitling the husband to have the marriage annulled.—SZREJHER *v.* SZREJHER, [1936] 2 D. L. R. 413; O. R. 250.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—D. (e).

sk. *Whether age a defence.*]—The advanced age of the parties is not in itself a bar to the annulment of a marriage on the ground of impotency.—MARTIN *v.* MARTIN, [1937] 1 W. W. R. 95; 1 D. L. R. 417; 6 L. Jo. 229; 44 Man. K. B. 436.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—E.

2397 i. *Sufficiency of.*]—HATE *v.* HATE, [1927] 3 D. L. R. 481; [1927] 2 W. W. R. 366; 22 Alta. L. R. 565.—**CAN.**

2412a. Right to begin.]—In a suit of jactitation of marriage, resp. begins; but, *semble*, petitioner's counsel has a right of reply.—GOLDSTONE *v.* GOLDSTONE (1922), 127 L. T. 32; *sub nom.* GOLDSTONE *v.* SMITH (OTHERWISE GOLDSTONE, 38 T. L. R. 403.

2452a. ——.]—MANN *v.* MANN, No. 2496, *post.*

2453a. ——.]—In this suit two questions arose: (*a*) whether a memorandum of agreement permitting the wife to live separate & apart was a deed of separation; (*b*) whether her proposal, after having herself separated from her husband & signed the agreement, that they should set up house together in the interests of the children, constituted a sincere desire for resumption of cohabitation. For petitioner it was submitted that the memorandum of agreement relied upon was not a deed of separation, but merely an agreement for maintenance for a limited period. Even if it were a deed of separation, the wife was entitled to change her mind, & she had in fact shown a sincere desire to live together again with her husband, though her motive might have been the welfare of the children: —*Held:* the memorandum of agreement was a valid & binding & subsisting agreement to live separate & apart. The wife's proposal, not being made to restore the connubial relationship *simpliciter*, but merely so that she & her husband & the children should set up house together, was not a sincere desire that they should live together. Petition dismissed.—LACEY *v.* LACEY (1931), 146 L. T. 48: 95 J. P. 179; 47 T. L. R. 577; 75 Sol. Jo. 572; 29 L. G. R. 566.

2477a. ——.]—LYNCH *v.* LYNCH (1933), 78 Sol. Jo. 30.

2479a. Extravagance of wife.]—(1) Extravagance of living on the part of a wife affecting the financial position & prospects of her husband may be a matter "so grave & weighty" within *Yeatman* v. *Yeatman*, No. 3001, as to render it contrary to the real truth of the case to treat the husband as guilty of desertion without reasonable cause, & therefore may afford a defence to a petition for restitution of conjugal rights.

(2) A husband is not to be taken as having deserted his wife without reasonable cause because his work in life compels him to live away from her.—G. *v.* G., [1930] P. 72; 142 L. T. 311; 94 J. P. 79; 46 T. L. R. 69; *sub nom.* G.-M. *v.* G.-A. D., 99 L. J. P. 14; 74 Sol. Jo. 59; *subsequent proceedings, sub nom.* GORDON *v.* GORDON (1931), 75 Sol. Jo. 139.

2479b. Husband's work requiring him to live apart from wife.]—G. *v.* G., No. 2479a, *ante.*

2484a. —— Together with aversion from husband's work & interests.]—RUSSELL (MARCHIONESS OF TAVISTOCK) *v.* RUSSELL (MARQUIS OF TAVISTOCK) (1935), 80 Sol. Jo. 16.

2487a. —— ——.]—LACEY *v.* LACEY, No. 2453a, *ante.*

2490. *Add. Annotations:*—*As to* (2) **Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1. *Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601; Russell (Countess) *v.* Russell (Earl), [1935] P. 39.

2492. *Add. Annotation:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

2494. *Add. Annotation:*—*As to* (1) **Refd.** Lacey *v.* Lacey (1931), 47 T. L. R. 577.

2498. *Add. Annotations:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Fender *v.* Mildmay, [1937] 2 All E. R. 402.

2501. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2511. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

PART XIII. SECT. 3, SUB-SECT. 4.

st. *What must be proved.*]—Before a decree of dissolution of marriage can be made on the ground set out in sect. 10 (f) of Divorce & Matrimonial Causes Act, 1928, which is as follows: "That resp. is a person of unsound mind & is unlikely to recover, & has been confined as such in New Zealand in an institution within Mental Defectives Act, 1911, or in a like institution in any other country of the British dominions, for a period or periods not less in the aggregate than seven years within the period of ten years immediately preceding the filing of the petition." Petitioner has to establish not merely that resp. is a person of unsound mind & is unlikely to recover, but also that resp. has been confined as such in an institution for the required period—*i.e.*, confined as a person afflicted with unsoundness of mind to a degree that warrants the making of a committal order. Consequently, it is not permissible under the above-quoted para. (f) to count any period of detention as a voluntary boarder in a mental institution which resulted in relief & temporary cure & discharge merely because the person ultimately became a person of so unsound a mind as to warrant & result in committal, or to treat a voluntary boarder as having been actually confined as a person of unsound mind merely because it is established by evidence that such resp. could have been lawfully confined as a person of unsound mind.—G. *v.* G., [1936] N. Z. L. R. 752; G. L. R. 555; 12 N. Z. L. J. 248.—**N. Z.**

PART XIII. SECT. 5, SUB-SECT. 1.—D.

2435 ii. ——.]—A prior request in writing for restitution of conjugal rights is not a prerequisite to the bringing of an action in Saskatchewan for restitution of conjugal rights.—POLOVNIKOFF *v.* POLOVNIKOFF, [1930] 2 W. R. R. 177.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—E.

2452 ii. ——.]—On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse.—WOODLANDS *v.* WOODLANDS (1924), 35 C. L. R. 446.—**AUS.**

2452 iii. ——.]—After a husband & wife had separated & had been living apart, each of them being content to do so, the wife sincerely but unsuccessfully endeavoured to induce him to resume cohabitation. She then petitioned for restitution of conjugal rights. There was no suggestion of any matrimonial offence by either party which would bar the restitution:—*Held:* she was entitled to the decree.—WALTON *v.* WALTON, [1934] 3 W. W. R. 588; [1935] 1 D. L. R. 79; 42 Man. R. 538.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1. F. (a).

sd. *Petitioner guilty of*

A suit for restitution of conjugal rights lies under Burmese Buddhist law; but a husband will not obtain such restitution on account of his misconduct.—MATHEIN NWE *v.* MAUNG KHA (1929), I. L. R. 7 Ran. 451.—**IND.**

se. *Defendant in prison.*]—The ct. has no power to dispense with the preliminary order of restitution in an action for restitution of conjugal rights failing which a divorce on the ground of malicious desertion. In such an action the mere fact that deft. is in prison is no bar to the granting of a restitution order.—ALDRED *v.* ALDRED, [1929] App. D. 356.—**S. AF.**

sg. *Agreement to settle differences—Not acted upon.*]—A memorandum of agreement of settlement of matrimonial differences signed after the close of the pleadings in proceedings for judicial separation, but not acted upon, has no effect, & will not bar petitioner from obtaining her remedy in proceedings for restitution.—COLDICUTT *v.* COLDICUTT (1932), 46 B. C. R. 354.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—F. (b).

sk. *Petitioner suffering from venereal disease.*]—The fact that a husband is suffering from venereal disease is no bar to an action by him against his wife for restitution of conjugal rights failing which a divorce.—AINSBURY *v.* AINSBURY, [1929] App. D. 109.—**S. AF.**

2518a. ——.]—A husband & wife intermarried in Feb. 1922, & continued to cohabit until July, 1927, when the wife left the husband. On Nov. 2, 1927, the wife petitioned for a divorce founded upon an act of sodomy alleged to have been committed on her by the husband in Mar. 1922, & alleged acts of cruelty consisting of (*a*) acts of shameless uncleanness & invitations to repeat them, & (*b*) ordinary acts of cruelty, such as acts of ill-temper & abuse.

At the trial the judge in summing up to the jury did not warn the jury against finding that the sodomy alleged had been committed on the uncorroborated evidence of the wife, who was an accomplice; nor did he clearly point out that before it could be held that there was cruelty as regards the sexual malpractices it must be shown that they caused danger to life, limb or health, bodily or mental, or a reasonable expectation of it. The jury's verdict was that sodomy had been committed as alleged; that the husband had been guilty of cruelty of the class (*a*), & that he had not been guilty of cruelty of class (*b*). The judge then made a decree *nisi* for dissolution of the marriage. On appeal:—*Held:* (1) the judge ought to have warned the jury that cogent evidence was required to overcome the presumption of innocence of sodomy, & that they should not convict on the wife's uncorroborated evidence; (2) the ct. must take notice of the fact that there had been condonation of the offence, even though the husband did not plead it; (3) the judge had misdirected the jury by saying that the sexual malpractices were cruelty in themselves, as there could not be legal cruelty without danger to life, limb, or health, physical or mental, or reasonable apprehension of it; & (4) instead of directing a new trial the ct. should dismiss the wife's petition.

(5) The wife having on the evidence been a consenting party to the act of sodomy alleged to have been committed it would be impossible for her to obtain a decree of divorce based solely on that act.

(6) The rules with regard to condonation & connivance as a bar to a decree for divorce were well established in the practice of the Ecclesiastical Cts. before the Act of 1857. In my judgment these rules apply to cases in which the ground alleged for divorce is sodomy (GREER, L.J.).—STATHAM *v.* STATHAM, [1929] P. 131; 98 L. J. P. 113; 140 L. T. 292; 45 T. L. R. 127; 72 Sol. Jo. 847, C. A.

Annotation:—As to (1) **Consd.** D. B. *v.* W. B., [1935] P. 80

2554. *Add. Annotation:—Generally,* **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

2602. Add the following para.:—

Though there was no suggestion that the children had been cruelly or improperly treated by the husband, the ct. directed the children to remain in the custody of the mother so long as she maintained & properly educated them without expense to her husband, he to have proper access to them, till they should respectively attain fourteen years of age.

2648a. Unnatural offences.]—STATHAM *v.* STATHAM, No. 2518a, *ante.*

2661. *Add. Annotations:*—**Apld.** Statham *v.* Statham, [1929] P. 131. **Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2671. *Add. Annotation:*—**Refd.** W——, M. J. *v.* W——, H. R. W., [1936] 2 All E. R. 1112.

2704a. —— ——.]—Where the ct. was satisfied that a wife had been raped by a man unknown, with the result that she gave birth to a child, it held that there was no adultery & dismissed the husband's petition for divorce. —CLARKSON *v.* CLARKSON (1930), 143 L. T. 775; 46 T. L. R. 623.

PART XIII. SECT. 5, SUB-SECT. 2.—B. (a).

2521 i. *Question of fact & degree.*]—Cruelty is a matter of degree.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

2521 ii. ——.]—The question whether pltf. herein was actually afraid of her husband or not held not to affect the question whether his conduct amounted to legal cruelty as defined in *Russell v. Russell,* No. 2661.—DESABRAIS *v.* DESABRAIS, [1928] 3 D. L. R. 549; [1928] 2 W. W. R. 394; 22 Sask. L. R. 417.—**CAN.**

2534 i. *Cumulative effect of acts not cruelty per se.*]—The acts constituting cruelty may be treated as cumulative. —A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (c).

2560 ix. ——.]—A course of conduct calculated to break the spirit of the sufferer & continued until health breaks down, or is likely to break down, under the strain, is cruelty.—KAUFIELD *v.* KAUFIELD (Sask.), [1926] 1 W. W. R. 159.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (h).

sg. *Spending earnings on mistress—Telling wife of preference for mistress.*]—Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife's mind that, to his knowledge, it undermines her health, it constitutes cruelty. —JONES *v.* JONES, [1925] 2 D. L. R. 1144; [1925] 1 W. W. R. 449; 19 Sask. L. R. 262; 44 Man. L. R. 233.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (l).

sh. *Husband describing himself on enlistment as widower—Deserting wife during pregnancy.*]—A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife:—*Held:* the husband's conduct amounted to cruelty.—STUART *v.* STUART (1926), I. L. R. 53 Calc. 436.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 2.—E.

2683 iii. ——.]—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued knowing that it provoked deft.—CONNOLLEY *v.* CONNOLLEY, [1925] 2 W. W. R. 426.—**CAN.**

sl. *Refusal of marital intercourse.*]—A wife's refusal of marital intercourse is not a justification of legal cruelty. Legal cruelty is sufficient ground for judicial separation; desertion is not a necessary element when such cruelty is proved.—GUSTAFSON *v.* GUSTAFSON, [1935] 2 W. W. R. 286.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—A.

c i. —— *Evidence of marriage.*]—On an indictment for adultery under R.S.N.B., 1854, evidence of marriage is subject to the same rules as on an indictment for bigamy.—R. *v.* FOSTER, [1935] 1 D. L. R. 252; 62 C. C. C. 263; 8 M. P. R. 10.—**CAN.**

e i. ——.]—Attempted intercourse does not in law constitute adultery unless actual penetration has been proved or must be inferred, but complete penetration is not essential.—ANTHONY *v.* ANTHONY & CORDATO (1932), 49 N. S. W. W. N. 103.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (a).

2712 i. *Single act—For purpose of supplying evidence.*]—An act of adultery committed solely for the purpose of supplying evidence on which the spouse of the party so committing it may base an action for divorce will not entitle pltf. to a decree. Although under ordinary circumstances the evidence herein would support the inference that adultery had in fact been committed, yet, since it appeared plain that said evidence was "staged" by deft. for the purpose of enabling pltf. to bring the action, it was held that the inference was at

the past, & therefore execution was properly leviable as to the future weekly payments.—ALLEN *v.* DIGBY COLLIERY CO., LTD. 145 L. T. 501; 24 B. W. C. C. 214, C. A.

3668d. —— —— **Appeal lies to Court of Appeal.**]—An appeal from a decision of a county ct. judge on an application for leave to issue execution in respect of compensation due to an injured workman does not lie to the Div. Ct., but to the Ct. of Appeal.—FOWKES *v.* LEICESTERSHIRE COLLIERY & PIPE CO., LTD., [1931] 2 K. B. 570; 100 L. J. K. B. 593; 145 L. T. 421; 24 B. W. C. C. 205.

3668e. —— —— **After commencement of proceedings to terminate payment under 1925 Act, sect. 12.**]—In Aug. 1929, a workman met with an accident, & was paid full compensation by his employers. In Apr. 1930, an agreement was recorded under which he was paid compensation at an agreed rate. In July the employers obtained a certificate from their doctor that the workman had practically recovered from the accident in 1929, & served upon the workman a notice of their intention to terminate the compensation under 1925 Act, s. 12. The workman did not follow the procedure prescribed by that sect., but applied under r. 82 of Workmen's Compensation Rules, 1926, for leave to issue execution under the recorded agreement. The county ct. judge refused the application:—*Held:* (1) under the recorded agreement a workman was in the position of a judgment creditor, & was entitled under r. 82 to apply for leave to issue execution, notwithstanding the fact that the employers had already commenced proceedings under sect. 12 to terminate or reduce the weekly payments under the recorded agreement; (2) the employers could always apply under r. 82, sub-r. (5), for an adjournment of the application to enable them to proceed under sect. 11 of the Act by way of review; (3) leave to issue execution ought to be allowed, but execution ought to be suspended for one month to enable the employers to apply for a review; (4) the decision of the question whether sect. 12 extended to anything but payments made under agreements that are not recorded was reserved.—HAYTER *v.* SOUTHERN RY. CO., [1931] 2 K. B. 274; 100 L. J. K. B. 378; 144 L. T. 539; 23 B. W. C. C. 389, C. A.

Annotations:—**Folld.** Winfield *v.* London, Midland & Scottish Railway (1931), 24 B. W. C. C. 158. **Apld.** Francis *v.* London Public Omnibus Co. (1933), 26 B. W. C. C. 539. **Refd.** Allen *v.* Digby Colliery Co. (1931), 145 L. T. 501.

3668f. —— —— ——.]—In 1928 a workman having met with an an accident his employers paid him full compensation of 30*s.* a week on the basis of total incapacity. In Aug. 1930, an agreement was recorded under which the payments of 30*s.* a week were to be continued by the employers. In Jan. 1931, the employers, following the procedure prescribed by sect. 12, served upon the workman a notice, in accordance with a certificate of a medical practitioner which stated that the workman had partially recovered, that they would from & after the expiration of ten days therefrom reduce the weekly payment of 30*s.* under the recorded agreement to 11*s.* 1*d.* The workman did not follow the procedure open to him under the proviso to sect. 12 (3), but applied to the registrar under r. 82 of Workmen's Compensation Rules, 1926, for leave to issue execution under the recorded agreement. The matter was referred by the registrar to the judge, who held that the workman was entitled to leave to issue execution unless the employers applied for a review. On appeal by the employers:—*Held:* leave to issue execution ought to be granted, as the certificate of the employers' doctor, on which they relied as a ground for ending the compensation, was not final & conclusive, & did not establish partial incapacity, & therefore they were in default in making weekly payments under the recorded agreement within the meaning of r. 82, sub-r. (1); but the execution must be suspended in order to give the employers an opportunity to apply for a review under sect. 11 of the Act.—WINFIELD *v.* LONDON, MIDLAND & SCOTTISH RAILWAY, [1931] 2 K. B. 284; 100 L. J. K. B. 453; 145 L. T. 242; 24 B. W. C. C. 158, C. A.

Annotation:—Cotton *v.* Lutton (1931), 24 B. W. C. C. 179.

—— —— ——.]—An employer, after serving notice under 1925 Act, s. 12, stopped the weekly payments of compensation paid to an injured workman under a recorded memorandum of agreement. The workman obtained leave under r. 82 to issue execution against the goods of the employer. The employer appealed to the Div. Ct.:—*Held:* the appeal could not succeed in view of the decision of the Ct. of Appeal in *Winfield* v. *London, Midland & Scottish Railway Co.*, No. 3668f.

Qu.: whether an appeal did not properly lay to the Ct. of Appeal instead of to the Div. Ct.—COTTON *v.* LUTTON (1931), 24 B. W. C. C. 179.

3668h. —— —— ——.]—A workman in receipt of compensation for total incapacity entered into an agreement with his employer whereby the employer agreed to continue to make a weekly payment until the same should be ended, diminished, increased or redeemed in accordance with the provisions of the Act. A memorandum of this agreement was recorded in the county ct. Six months later the employers having purported to carry out the provisions of sect. 12 stopped the

PART XIV. SECT. 17, SUB-SECT. 3.—A.

sm. *When liability accrues.*]—In arbn. proceedings under 1925 Act, brought by a stone mason against a firm of builders, the arbitrator, on May 1, 1931, found that the workman had been permanently disabled by silicosis, an industrial disease, as at Dec. 8, 1930, & he awarded compensation for total incapacity. On the same day, Dec. 8, 1930, the employers had granted a trust deed for creditors. In an action brought against the employers' trustee in bkpcy. by the workman's widow *qua* executrix, for a declarator that she was entitled to a ranking for a lump sum payment in the sequestration in priority to all other creditors, in which it was admitted that the granting of the trust deed fell to be regarded as a receiving order in the sense of the 1925 Act:—*Held:* (1) under sect. 7 (3) of 1925 Act, liability for compensation had "accrued" at the date of the trust deed, notwithstanding that the precise amount of that liability might not be ascertainable until a later date; (2) "before" the date of the receiving order in sect. 7 (3) fell to be read as equivalent to "not after" that date; (3) under sects. 7 & 13 of 1925 Act, the fact that the weekly payments had not been continued for a period of six months prior to bkpcy. was not sufficient to deprive pursuer of a preferential ranking to a lump sum payment.—THORNTON'S EXECUTRIX *v.* ANGUS & SONS' TRUSTEE, [1934] S. C. 279; 27 B. W. C. C. Supp. 1.—**SCOT.**

payments. The workman applied by original application for arbn. to have restored. The employers objected that the procedure was out of order, but the county ct. [illegible] as a fact that the workman was still totally incapacitated, made an award in the workman's favour. The employers appealed :—*Held :* the procedure laid down in sect. 12 (3) applies only to weekly payments made where there is no award or recorded memorandum of agreement. When a memorandum of agreement to make weekly payments has been recorded, & an employer purports to end or diminish the weekly payment under sect. 12 (3), the proper course for the workman to adopt is to apply for leave to issue execution under rule 82 of the Workmen's Compensation Rules, 1926.—FRANCIS *v.* LONDON PUBLIC OMNIBUS CO., LTD. 26 B. W. C. C. 539, C. A.

Necessity for.]—Compliance with rule 82 of Workmen's Compensation Rules, 1926, is a condition precedent to execution to enforce an award, & in default of such an application a sale of goods seized in execution for the purpose of satisfying the award is void, & the purchaser has no title thereto.

County Cts. Act, 1888 (c. 43), s. 52, which protects officers of the ct. who may carry out an execution affected with irregularity, does not avail to cure non-compliance with rule 82.—BUSHELL *v.* TIMSON, [1934] 2 K. B. 79 ; 103 L. J. K. B. 405 ; 150 L. T. 512 ; 50 T. L. R. 259 ; 78 Sol. Jo. 154 ; 27 B. W. C. C. 15.

3668k. —— Suspension—Pending application for review.]—HAYTER *v.* SOUTHERN RY. CO. No. 3668e, *ante*.

3668l. —— —— ——.]—WINFIELD *v.* LONDON MIDLAND & SCOTTISH RY., No. 3668f, *ante*.

3668m. —— For arrears of weekly wages—Execution refused—Common law action.]—A memorandum of agreement to pay a lump sum of £475 to a workman in settlement of his claim, & also to provide light work at minimum weekly wage of 17*s.* 6*d.*, was recorded under sect. 23 by the county ct. judge, who attached great importance to the condition of providing employment when approving the adequacy of the lump sum. It was subsequently alleged that the employers had broken their agreement to provide employment & were indebted to the workman to the extent of over £22 in wages. The workman applied under rule 82 for leave to issue execution for this sum. The county ct. judge refused the application on the ground that rule 82 only allowed execution to issue for compensation or costs, & arrears of weekly wages were neither of these. The workman therefore brought an action at common law for damages for breach of the agreement & the county ct. judge gave judgment for pltf. for the amount claimed. The employers appealed & contended that such an action was not maintainable as an agreement registered under Workmen's Compensation Act could only be enforced under that Act. At the same time they alleged that as rule 82 did not provide for execution in regard to arrears of wages, the particular term of the memorandum with regard to the provision of light work at a minimum weekly wage was not so enforceable :—*Held :* the two contentions were mutually destructive, & these being the only grounds of appeal, the appeal must be dismissed.—STUBBS *v.* & QUEEN LAUNDRIES, LTD., 149 L. T. 426 ; 49 T. L. R. 445 ; 77 Sol. Jo. 421 ; 26 B. W. C. C. 307, D. C.

3669. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

3671. *Citations :*—Add *sub nom.* THOMPSON & CO. *v.* FERRARO, 6 B. W. C. C. 461.

3672. Delete this case.

3676. *Add. Annotations :—As to* (1) **Follid.** Suffling *v.* Malcolm & Co. (1933), 26 B. W. C. C. 537. *As to* (2) **Consd.** Vickers *v.* Miners Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3676a. —— —— ——.]—A county ct. judge has no discretion under rule 53 of Workmen's Compensation Rules, 1926, to refuse the application of a workman of full age for payment out to him of a lump sum paid into ct. for his benefit during his infancy in redemption of his claim for compensation.—SUFFLING *v.* MALCOLM (J.) & CO. (1933), 26 B. W. C. C. 537, C. A.

3690. *Add. Annotation :*—**Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

3692. *Add. Citations :*—96 L. J. P. C. 143 ; 136 L. T. 609 ; 20 B. W. C. C. 1.

Add. Annotations :—**Apld.** Macauley *v.* Baird (1927), 20 B. W. C. C. 802 ; Catton *v.* Ashwell & Nesbit, [1928] Ch. 484. **Consd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297. **Refd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

3694a. —— Whether applicable when agreement recorded.]—HAYTER *v.* SOUTHERN RAILWAY, No. 3668e, *ante*.

3694b. —— ——.]—WINFIELD *v.* LONDON, MIDLAND & SCOTTISH RY., No. 3668f, *ante*.

3694c. —— ——.]—FRANCIS *v.* LONDON PUBLIC OMNIBUS CO., LTD. (1933), 26 B. W. C. C. 539, C. A.

3695. *Add. Annotation :—As to* (1) **Refd.** Yates *v.* Hemsworth Rural District Council (1929), 22 B. W. C. C. 649.

3697. *Add. Citations :*—[1927] 1 K. B. 152 ; 96 L. J. K. B. 127 ; 136 L. T. 134.

Add. Annotations :—**Consd.** Tempus Shipping Co. *v.* Trott (1929), 141 L. T. 19. **Refd.** Robinson *v.* Vickers-Armstrong (1929), 22 B. W. C. C. 171.

PART XIV. SECT. 18, SUB-SECT. 1.

3673 i. *Effect of payment in—Money not subject to arrestment.*]—WILLIAM [illegible]RD & CO. *v.* CAMPBELL, [1928] S. C. [illegible]4.—SCOT.

PART XIV. SECT. 18, SUB-SECT. 3.—A.

1. *Limit of preferential payment —Under Workmen's Compensation Act, 1906, s. 5 (3)—Not where liability accrued prior to liquidation.*]—*Held :* the workman was entitled to the whole of the amount due to him for compensation as a preferential debt, without any limitation to £100 as mentioned in s. 5, sub-s. 3, Workmen's Compensation Act, 1906, the liability for such compensation having accrued before the receivers were appointed or took over possession of the assets of the co., & whether or not the accident occurred before Jan. 1, 1924 (*i.e.* the date on which the Workmen's Compensation Act (N. I.) came into operation).—GRAHAM *v.* MASKELL & SMYLIE, [1928] N. I. 187.—IR.

3698a. —— **Notice of intention to end payments—Validity.**]—A workman was injured by accident arising out of & in the course of his employment. Resps.' doctor gave his certificate that the man had partially recovered, & resps. served notice on the workman in pursuance of Workmen's Compensation Act, 1923 (c. 42), s. 14, that they would cease payment of compensation within ten days. No counter-certificate by the workman's doctor was served in pursuance of the sect., but the workman filed a request for arbn. The county ct. judge awarded 8*s.* a week on the basis of partial incapacity from the date of the hearing in the county ct., & not from the date of termination of the weekly payment, on the ground that the workman had not complied with sect. 14 & was not entitled to compensation from that date:—*Held:* the notice was bad, in that it purported to end compensation when the workman was certified to be partially recovered only, & the compensation of 8*s.* a week for partial incapacity was payable from the date the employers ceased payment of compensation.—HOWARTH *v.* SINGLETON (J. E.) & SONS (1926), 20 B. W. C. C. 136, C. A.

3698b. —— —— ——.]—In pursuance of Workmen's Compensation Act, 1925 (c. 84), s. 12 (3), resps. served a workman with notice that they would end the weekly payments, or alternatively would take him back to work, & they ceased to pay him compensation on a date which was two days short of the ten clear days required. The workman filed a request for arbn. claiming (*inter alia*) a declaration of liability, alleging that he was still incapacitated. Resps. offered to accept an award of a declaration of liability, & before the hearing offered the sum by which the weekly payments fell short of the proper amount that was due in respect of the two days. The county ct. judge was satisfied the workman had recovered & was able to do his work, & held, payment for the two days having been offered, there was no further liability on resps., & made the declaration of liability offered:—*Held:* the notice was good, & was not invalidated because the payments were not made for the full period of ten days from the date thereof.—COOPER *v.* COLLINS ELECTRICAL, LTD. (1926), 20 B. W. C. C. 152, C. A.

3698c. —— **Jurisdiction of registrar—Limited to matters relating to sums paid into court.**]—Where proceedings for ending or diminishing weekly payments have been commenced under sect. 12 & prosecuted as far as to obtain a certificate of a medical referee, but no money is paid into ct. by the employers under sect. 12 (ii), any questions arising on the certificate are not for the registrar but for the judge, either on review under sect. 11 or on original arbitration under sect. 21, the jurisdiction conferred on the registrar by sect. 12 (ii) being limited to determine the destination of sums paid into ct. under sect. 12 (ii).—TEMPUS SHIPPING CO., LTD. *v.* TROTT (1929), 141 L. T. 19; 45 T. L. R. 201; 22 B. W. C. C. 181, C. A.

3700. *Add. Citations:*—[1927] 1 K. B. 435; 96 L. J. K. B. 261; 136 L. T. 88.

3701. For the existing paragraph substitute the following paragraph:—

Power to terminate payments—Incapacity ceased.]—On Oct. 17, 1923, a workman contracted miners' nystagmus in the course of his employment, & by voluntary agreement the employers paid him a weekly sum by way of compensation until Sept. 3, 1925, when they stopped the weekly payments, on the ground that the man had completely recovered. After the employers had commenced proceedings for a review, the workman admitted that the incapacity had ceased on Sept. 3, but claimed compensation up to the date of the award:—*Held:* the county ct. judge had no jurisdiction under Workmen's Compensation Act, 1923 (c. 42), s. 14, to award any payment after the incapacity had ceased, & he ought to make a retrospective award terminating the weekly payments as from the date of recovery.—OCEAN COAL CO. *v.* DAVIES, [1927] A. C. 271; 96 L. J. K. B. 364; 136 L. T. 449; 43 T. L. R. 108; 70 Sol. Jo. 1219; 19 B. W. C. C. 429, H. L.; *revsg.* (1926), 96 L. J. K. B. 255, C. A.

Annotations:—**Consd.** Macaulay *v.* Baird (1927), 20 B. W. C. C. 802; Niddrie & Benhar Coal Co. *v.* Dee, [1927] A. C. 299; Thorpe *v.* Sadler, Sadler *v.* Thorpe (1927), 20 B. W. C. C. 488. **Apld.** Lowe *v.* Essex County Council (1927), 20 B. W. C. C. 452; Pullen *v.* Enthoven (1927), 20 B. W. C. C. 248. **Consd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484; Dodd *v.* Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Mockbill *v.* Homer City S.S. Owners (1929), 22 B. W. C. C. 260. **Apld.** Lewis *v.* Dobson Steam Fishing Co. (1929), 73 Sol. Jo. 483; Bevan *v.* Grovesend Steel & Tinplate Co., Ltd. (1929), 22 B. W. C. C. 572. **Foll.** Fairfield Shipbuilding Co. *v.* Harris (1931), 24 B. W. C. C. 110. **Refd.** Akers *v.* L. & N. E. Ry. (1926), 20 B. W. C. C. 195; Howarth *v.* Singleton (1926), 20 B. W. C. C. 136; Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3701a. —— ——.]—PULLEN *v.* ENTHOVEN & SON, No. 3056a, *ante*.

—— ——.]—A workman was injured by an accident & was paid compensation by his employers for total incapacity. On receipt of their doctor's report that the workman

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PART XIV. SECT. 19.

3700 i. *Failure by employer to adopt procedure—Omission to serve report of medical practitioner—Report of workman's medical practitioner served on employer.*]—An injured workman, who was in receipt of weekly payments of compensation, was examined by the employers doctor, who certified that he had partially recovered. A copy of this certificate was sent to the workman, together with notice of the intention of the employers at the expiry of ten days to diminish the weekly payments, but the copy was not received by the workman until after the expiry of the six days allowed for sending it under para. 15 of Sched. I. to 1906 Act. The workman was then examined by his own doctor who reported that he was not fit for any work, & a copy of this report was sent to the employers within six days of the examination. The employers then applied for a medical reference under Sched. I. para. 15 & they consigned a portion of the weekly payments in terms of sect. 14, proviso (ii) of 1923 Act:—*Held:* the report of the workman's doctor disagreeing with the employer's medical certificate, even though it was sent merely for the purpose of preventing the diminishing of the weekly payments under sect. 14 of the 1923 Act, was a report within Sched. I., para. 15 of 1906 Act &, as it had been received by the employers within six days of the examination they were entitled, under para. 15 as amended by sect. 11 (1) of 1923 Act, to apply for a medical reference, although the certificate of their own doctor had not been received by the workman within the six days required by that paragraph & accordingly, as the application for a medical reference had been duly made, they were entitled to consign the amount of the weekly payments in dispute as from the date of that application.—WHITE *v.* BAIRD (WILLIAM) & CO., LTD., [1932] S. C. 160; 24 B. W. C. C. Supp. 141.—SCOT.

3701c. —— ——.]—BEVAN *v.* GROVESEND STEEL & TINPLATE CO., LTD., No. 3954c, *post.*

3701d. —— ——.]—A boiler-maker's riveter whose compensation for the loss of his right finger had been stopped under 1925 Act, s. 12, filed a request for arbn. The employers in their answer offered to submit to an award on the basis of partial incapacity, but at the same time gave notice that they denied liability. An award was consequently made for an agreed amount until the same should be ended or diminished. Eleven months later the employers applied to review with a view to termination of the weekly payment on the ground that the workman had completely recovered. The county ct. judge found as facts that the workman could do his pre-accident work, but that his physical condition was the same in all material respects as at the time of the previous award & refused to terminate the weekly payments. The employers appealed:—*Held:* the two findings of fact were wholly inconsistent with each other, but once the county ct. judge had found that the workman could do his pre-accident work, all right to compensation ceased.—FAIRFIELD SHIPBUILDING CO., LTD. *v.* HARRIS (1931), 24 B. W. C. C. 110, C. A.

3701e. —— **Workman malingering.**]—A workman, in Jan. 1932, suffered a fracture of his arm by accident arising out of & in the course of his employment. Liability was admitted & compensation paid. In May, 1932, his employer offered him work which he said he was unable to do. In Sept. 1932, the weekly payments were reduced by an award of the county ct. judge. In Oct. 1932, the employer again offered work which was refused. In Sept. 1933, the employer applied for termination of the weekly payments. The county ct. judge repeatedly adjourned the arbn. to enable the workman to try suitable work. The workman was on some occasions medically examined before & after the trials of work, & on one occasion the county ct. judge inspected the work himself. Finally the county ct. judge found as a fact that the workman was malingering & he terminated the weekly payments. The workman appealed:—*Held:* there was evidence to support the finding & no misdirection.—MALLANDAIN *v.* HILL (1934), 27 B. W. C. C. 177, C. A.

3701f. Failure by workman to adopt procedure—Application for review—Right to amend.]—Employers, using the machinery provided by Workmen's Compensation Act, 1925 (c. 84), s. 12, stopped weekly payments to

Held: the county ct. judge should have allowed the amendment, so that the case could have been considered on its merits.—ROBINSON *v.* VICKERS-ARMSTRONG, LTD. (1929), 22 B. W. C. C. 171, C. A.

Annotations:—**Expld.** Francis *v.* London Public Omnibus Co. (1933), 26 B. W. C. C. 539. **Refd.** Harding *v.* Waters, Ltd., [1936] 3 All E. R. 891.

3701g. —— —— **No amendment—Right of judge to treat proceedings as arbitration.**]—A workman was voluntarily paid compensation at the rate of 25*s.* a week in respect of an injury by accident. The employers served a notice on the workman under Workmen's Compensation Act, 1925, s. 12 (3), & in due course reduced the weekly payments to 17*s.* 6*d.* No counter-notice was served & for 6 months the workman accepted the weekly payments of 17*s.* 6*d.* During those 6 months correspondence passed between the solrs. acting for the parties & there were negotiations for a lump sum settlement, but no complaint was made as to the reduction in the weekly payments. The workman then applied for a review & for a restoration of the weekly payments of 25*s.* The county ct. judge declined to infer an agreement between the parties that the workman should receive compensation at the reduced rate, & he held that the workman's condition was the same as at the date of service of the employers' notice under sect. 12 (3). He found the measure of the workman's incapacity at that date to be £1 a week, &, treating the proceedings as an original application for arbn., he awarded compensation at the rate of £1 a week. No formal amendment of the proceedings was, however, made. The employers appealed:—*Held:* (1) the county ct. judge was entitled to allow the application for review to be treated as an application for arbn.; (2) the fact that the workman did not serve a counter-notice on the employers did not preclude him from bringing arbn. proceedings in opposition to the diminution of the compensation paid; (3) the county ct. judge was entitled to decline to infer an agreement that the workman should receive compensation at the reduced rate.

Per SLESSER, L.J.: where a county ct. judge thinks fit to give leave to amend the proceedings particularised, either in whole or in part, the amendment ought to be made then & there, so that if any question subsequently arises, the Ct. of Appeal can see exactly what case was made before the county ct. judge.—HARDING *v.* WATERS (H. & E.), LTD., [1936] 3 All E. R. 891; 156 L. T. 29; 80 Sol. Jo. 914; 29 B. W. C. C. 335, C. A.

3702a. —— ——.] —A workman met with an accident, which he alleged caused an inguinal swelling. He was paid full compensation until Sept. 20, 1926, when the payments were reduced. The workman filed an application claiming compensation at the old rate, & the employers filed a counter-application for termination of compensation. The county ct. judge found that the workman had entirely recovered on Sept. 20, 1926, & that the swelling from which he suffered at the date of the trial was not a result of the accident, & made an award for the employers on both applications :—*Held :* the employers, by paying compensation, were not estopped from saying that the injury was not caused by the accident, & there was evidence to support the judge's findings, & no misdirection.—THORPE *v.* SADLER (A. L.) & SON, SADLER (A. L.) & SON *v.* THORPE (1927), 20 B. W. C. C. 488, C. A.

Annotation :—**Refd.** Watts, Watts & Co., Ltd. *v.* Hole (1930), 23 B. W. C. C. 119.

3702b. —— ——.]—On May 15, 1927, a trimmer met with an accident on board a liner causing hernia. He received compensation until Nov. 12. On receipt of a medical report that he was fit to resume work, his employers gave notice on Nov. 2, that the weekly payments would be terminated. The workman did not obtain a counter-certificate, but, on Nov. 24, his solrs. wrote suggesting that he had not been examined for hernia, that an operation would be necessary, & that the notice of Nov. 2 should be cancelled. The employers thereupon requested the workman to present himself for further examinations, & as a result of these examinations again repudiated liability to pay compensation. The county ct. judge found that there was no incapacity on Jan. 7, 1928, but he made an award of compensation for eight weeks from Nov. 12, 1927, on the ground that compensation was not properly terminated on that date, in that the employers by subjecting the workman to further examinations had shown that they did not rely on their first medical report. He estimated the period during which the employers were satisfying themselves after Nov. 12 as to the workman's condition at eight weeks :—*Held :* the workman had not discharged the *onus* of proving incapacity after Nov. 12, 1927. The judge, in awarding compensation to the workman, in fact, for the trouble he had been put to by the employers after notice of termination had been given, had misdirected himself.—DODD *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1928), 21 B. W. C. C. 118, C. A.

3702c. Action for declaration—Of breach of statutory duty by employer—Whether maintainable.]—Pltf., a workman in the employment of defts., was injured by an accident, & defts. admitted liability & made a weekly payment of compensation. Ultimately a doctor reported that pltf. had recovered, & defts. stopped the payments & applied for a review thereof, & paid into ct., with a denial of liability, the amount of the weekly payments up to that date. While the county ct. proceedings were still pending, pltf. brought an action, alleging that he had not recovered from his injury, & claiming (1) a declaration that under Workmen's Compensation Act, 1925 (c. 84), s. 12, defts. had committed a breach of their duty by stopping the payments otherwise than in pursuance of an agreement or arbn., & (2) an injunction restraining a continuance of the breach :—*Held :* under sect. 21 the only tribunal to determine the question of incapacity was the county ct., &, as that question had not yet been determined by that tribunal, pltf. could not show that his incapacity was continuing since the date when defts. stopped the weekly payments, & the action failed.—CATTON *v.* ASHWELL & NESBIT, LTD., [1928] Ch. 484 ; 97 L. J. Ch. 199 ; 139 L. T. 34 ; 44 T. L. R. 422 ; 72 Sol. Jo. 317 ; 21 B. W. C. C. 97, C. A.

Annotations :—**Consd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297. **Refd.** Robinson *v.* Vickers-Armstrong (1929), 22 B. W. C. C. 171 ; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

3702d. Power to make interim award—Payment into court.]—A workman suffered injuries through an accident arising out of & in the course of his employment, & his employers paid him weekly compensation until a certain date. They then terminated the payment, on the ground that his incapacity had ceased, but there was no award or recorded agreement. The workman had not returned to work, & his employers had not served on him a notice under Workmen's Compensation Act, 1925 (c. 84), s. 12 (3). On the termination of the payments the workman, on the ground that his incapacity was still continu-

3702d 1. *Power to make interim award—Withdrawal by employers of application for medical reference.*]—*Held :* an *interim* award fell to be refused, in respect that the employers, having applied for a medical reference, were entitled to the protection of consignation until the settlement of the dispute.—MACAULAY *v.* WILLIAM BAIRD & Co., [1927] S. C. 788 ; 20 B. W. C. C. 802.—**SCOT.**

o 1. —— *On return to work.*]—The employers of a workman, who had been injured by accident, paid compensation, as for total incapacity, without any award having been made or any memorandum of agreement having been recorded. After a time the workman started work again with the same employers, not at his former work as a machine moulder, but as a labourer. The employers ceased payment of compensation as from the date of the workman's re-employment, without having served any certificate or notice under sect. 12 (3). The workman brought an application for an award of compensation as for partial incapacity from the date of the cessation of payments, & moved the arbitrator to make an interim award of compensation. The arbitrator refused the motion :—*Held :* an interim award was incompetent, in respect that, as the workman had "actually returned to work," the employers were entitled, under sect. 12 (1), to end all payments of compensation.—M'DOUGAL *v.* SINGER MANUFACTURING CO., [1931] S. C. 47 ; 23 B. W. C. C. 616.—**SCOT.**

ss. "*Weekly payment*"—*What is.*]—In order to make a payment a "weekly payment under the principal Act" within Workmen's Compensation Act, 1923 (c. 42), s. 14, it must be shown (*a*) that there was an admission, express or implied, of liability under the Act, & (*b*) that the payment was made in respect of that admission.

Where employers paid a sum of money to a workman, who signed a receipt bearing that the payment was made without an admission of liability on their part :—*Held :* as it did not appear that the payment complied with the above requirements, sect. 14 did not apply.—LAFFERTY *v.* DARNGAVIL COAL CO., LTD., [1927] S. C. 60 ; 20 B. W. C. C. 671.—**SCOT.**

sd. *Service of certificate of recovery—Time for—Service more than 6 days after examination.*]—A medical practitioner, instructed by an employer to examine a workman in receipt of weekly payments, reported to the employer on Jan. 16, 1930, that he had examined the workman on Dec. 30, 1929, when he had found him to have wholly recovered, & that, to confirm his diagnosis, he had subsequently had the workman X-rayed & a surgeon's opinion taken. On Jan. 18, two days after receiving the medical certificate, the employer served it upon the workman, along with notice that his weekly payments would be ended. In arbn. proceedings the

ing, applied for an award of weekly compensation & for an interim award of weekly compensation until the question of the liability of his employers should be decided. The arbitrator made an interim award of a weekly payment, & authorised the employers to pay the money into ct. instead of paying it to the workman :—*Held :* under sect. 12 the workman was entitled to an interim award, & the arbitrator had no power to authorise the employers to pay the money due thereunder into ct. instead of paying it to the workman. —ANCHOR DONALDSON, LTD. *v.* CROSSLAND, [1929] A. C. 297 ; 98 L. J. P. C. 7 ; 140 L. T. 282 ; 45 T. L. R. 97 ; 21 B. W. C. C. 448, H. L.

Annotations :—**Distd.** Mockbill *v.* Homer City S.S. Owners (1929), 22 B. W. C. C. 260. **Folld.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676. **Consd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572 ; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3702e. ——.]—Where employers, on receiving a certificate of the workman's doctor that he is fit for work, stop the payment of the weekly sums to him for compensation for an accident arising out of & in the course of his employment, but are informed that the certificate was no admission of recovery having regard to the fact that it was made on a National Health Insurance form, which did not admit of stating a man is fit for light work only, & subsequently the workman's doctor reports that he is only fit for light work, on an application by the workman for an interim award that the employers should continue to pay the compensation until the hearing of the arbitration, the county ct. judge, sitting as an arbitrator, has a power inherent in him under Workmen's Compensation Act, 1925 (c. 84), s. 12, to make such an interim award in order that the provisions in the section shall be made effective.—WOODROW *v.* TRAWLERS (WHITE SEA) & GRIMSBY, LTD., [1930] 1 K. B. 176 ; 99 L. J. K. B. 7 ; 141 L. T. 676 ; 22 B. W. C. C. 456, C. A.

Annotations :—**Consd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572 ; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3702f. —— **Time for making application.**]—An application for an interim award being an interlocutory application can only be made pending arbn. & cannot be made for the first time at the arbn. itself.—EVANS *v.* EL URUGUAYO S.S. OWNERS, BARLOW *v.* PACIFIC STEAM NAVIGATION CO., LTD. (1930), 23 B. W. C. C. 383, C. A.

3704a. Under recorded agreement—Effect of supplemental unrecorded agreement.]—HITCHENS & CO., LTD. *v.* HART, No. 3559a, *ante*.

3704b. Application to review subsequent to application to redeem—Ineffective.]—ELLIOTT, LTD. *v.* HOBBS, No. 3769a, *post*.

3706a. ——.]—BOWLER & MACK *v.* TURNER (1933), 26 B. W. C. C. 1, C. A.

3708. *Add. Annotations :*—**Consd.** Willis *v.* Howie (1931), 24 B. W. C. C. 352 ; Vickers-Armstrongs, Ltd. *v.* Regan (1932), 147 L. T. 298. **Refd.** Curran *v.* Kays, [1928] 2 K. B. 469. Curtis *v.* Rickett, Cockerell & Co. (1933), 26 B. W. C. C. 16.

3708a. —— **Payment of money.**]—A workman, a minor, was injured by an accident in the course of his employment, & was paid compensation. Subsequently, having obtained other work, he agreed to the compensation being terminated, with the making in his favour of a declaration of liability. On Dec. 3, 1931, his solrs. wrote to the employers' solrs. informing them that the workman had attained his majority on July 6, 1931, & adding : "I shall be glad to know whether your clients are prepared to pay my client compensation on the basis of partial incapacity." The workman subsequently, on Jan. 18, 1932, gave notice of his intention to apply to the ct. under sect. 11 (2) of 1925 Act to award him increased weekly payments of compensation, in view of his having attained full age. The employers contended : (*a*) that whereas by sect. 1 of 1926 Act, the claim under sect. 11 (2) of 1925 Act should have been made by "application for the review . . . before or within six months after the workman attains the age of twenty-one years," it had not been made until Jan. 18, 1932, twelve days after the prescribed period ; & (*b*) that sect. 11 (2) being for the review of "any weekly payment" it was not applicable to a case where no weekly payments were being made :—*Held :* (1) the words "application for the review" in sect. 1 of 1926 Act were not restricted to a formal application to the ct. An application within the section could be made informally to the employer, & this had been done by the solrs.' letter of Dec. 3, 1931 ; (2) the declaration of liability which had been made, being in lieu of the old order for payment of 1*d.* a week, was a declaration intended to keep open the rights of the parties, & took effect as if there were a weekly payment which was at the moment in abeyance.—VICKERS-ARMSTRONG, LTD. *v.* REGAN, [1933] 1 K. B. 232 ; 101 L. J. K. B. 657 ; 147 L. T. 298 ; 25 B. W. C. C. 211, C. A.

Annotations :—*As to* (1) **Folld.** Darby *v.* Allen (1932), 25 B. W. C. C. 326. **Consd.** Curtis *v.* Rickett, Cockerell & Co. (1933), 26 B. W. C. C. 16. **Refd.** Pepperell *v.* Kemball Bishop & Co. (1932), 25 B. W. C. C. 611.

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workman maintained that the employer was not entitled under sect. 12 (3) to end his weekly payments, because he had failed to serve the certificate within six days after the medical examination, & he contended that the six days' time-limit contained in sect. 19 (2) must be read into the provisions of sect. 12 (3) :—*Held :* the employer had ended the workman's weekly payments in compliance with sect. 12 (3). —M'GEE *v.* M'BRAYNE, [1931] S. C. 69 ; 23 B. W. C. C. 627.—**SCOT.**

8f. *Power to diminish payments—From what date.*]—A dock labourer, who, in consequence of injuries to both ankles, had been found by an arbitrator to be in a permanent state of partial incapacity, was paid compensation up till June 7, 1930, at a weekly rate of 25*s.* On May 23 his employers served upon him a medical certificate to the effect that he was fit for light work, & intimated their intention to diminish his weekly payments to 7*s.* 6*d.* per week. The workman served a counter certificate to the effect that he would never be fit for any but sedentary work. On June 2 his employers offered him light cleaning-up work. Thereafter they applied for, & obtained a medical reference ; &, on Aug. 9, the referee reported that the workman was fit for light cleaning-up work on a level surface. Subsequently the workman accepted the light work offered. The employers having thereafter applied to the arbitrator to diminish the weekly payments to 7*s.* 6*d.* per week as from June 7, the workman contended that, as the referee had made no finding upon his condition before Aug. 9, there was no evidence to justify the arbitrator in diminishing the payments prior to that date. The arbitrator having diminished the weekly payments as from June 7 :—*Held :* as no change in the workman's condition between June 7 & Aug. 9 had been alleged to the referee or to the arbitrator, the arbitrator was, in the circumstances, entitled to treat the referee's report as conclusive of the workman's condition as from June 7, & to diminish the compensation payable to him as from that date.—DOCHERTY *v.* ROSS & MARSHALL, LTD., [1931] S. C. 603 ; 24 B. W. C. C. Supp. 57.—**SCOT.**

3708b. —— **Reasonable steps to obtain employment.**]—A woman who by reason of injury by accident arising out of her employment had suffered the amputation of three fingers of her right hand was paid full compensation until 1934, when the employers were advised that she was then only partially incapacitated. She applied for an award, & the county ct. judge awarded compensation for partial incapacity treated as being total, under the above sub-sect., finding that she had taken all reasonable steps to obtain work, but had failed. In May, 1936, the employers applied to review & diminish the payment, alleging that, though the condition of the hand remained static, she was able to do certain work & had made little or no effort to obtain any work. The county ct. judge held that the employers had failed to show any change of circumstances, that he could not take into consideration the question whether the woman had or had not endeavoured to find work upon an application to review the payments, & dismissed it:—*Held:* as the workwoman had admitted that she had given up making any attempt to obtain suitable employment, this fact was a change of circumstances since the previous hearing which the county ct. judge was entitled to take into consideration on the application for a review for the purpose of deciding whether the conditions mentioned in sect. 9 (4) of Workmen's Compensation Act still obtained, & the case must be remitted to him to be reheard.—UNITED DAIRIES (LONDON), LTD. *v.* STIRLING, [1937] 1 K. B. 402; [1936] 3 All E. R. 272; 106 L. J. K. B. 468; 80 Sol. Jo. 1014; 29 B. W. C. C. 317, C. A.

3708c. Award for fixed period under 1925 Act, s. 9 (4)—Partial incapacity continuing beyond fixed period.]—A workman was injured in June, 1928, & received full compensation until June, 1929. In July, 1929, he applied for the restoration of compensation on the ground of continuing incapacity. The county ct. judge heard the application in Oct. 1929, & ordered that the workman's partial incapacity should be treated as total incapacity under sect. 9 (4). Under this order he awarded full compensation until Jan. 7, 1930. On Jan. 7, 1930, the employers ceased payment. In Apr. 1930 the workman applied for review but subsequently altered his application to one to restore the proceedings begun in July, 1929, to deal with the amount of compensation payable for his partial incapacity after Jan. 7, 1930. The county ct. judge in Nov. 1930 refused to assent to this application. In consequence the workman once more filed an application for review. On this application the county ct. judge held that he was by virtue of sect. 9 (4) entitled to review the matter, although no liberty to apply was expressly given under the award made in Oct. 1929, & made an award of £1 a week for partial incapacity from Jan. 7, 1930. The employer appealed on the ground that there could be no right of review of a weekly payment that did not exist. The workman cross-appealed on the ground that the judge was wrong in refusing to restore the original proceedings:—*Held:* as the award made in Oct. 1929, dealt solely with matters referable to sect. 9 (4), there still remained the issue of partial incapacity considered apart from sect. 9 (4) &, although the award appealed from was made in review proceedings, it should properly be treated as an award made in the proceedings initiated in July, 1929, which the workman was entitled to have restored, the court having had seisin of the matter throughout. Appeal dismissed. Cross-appeal allowed.—WILLIS *v.* HOWIE (1931), 24 B. W. C. C. 352, C. A.

Annotations:—**Refd.** Marsh *v.* Robert Parker, Ltd. (1932), 25 B. W. C. C. 197; Darracq Motor Engineering Co. *v.* Seaward (1935), 28 B. W. C. C. 64.

3710a. ——.]—A miner was certified on Nov. 22, 1919, as suffering from nystagmus & received compensation. After some years the employers requested a review, on which the county ct. judge terminated the weekly payments as from Aug. 21, 1925, the date of his award, on the ground that the workman had recovered from his disablement & was able to do his ordinary work as a miner. There was no appeal by the workman from this award. Three years later, on June 12, 1928, the workman obtained from a certifying surgeon a certificate to the effect that he was suffering from nystagmus, & thereby disabled from earning full wages at his old employment. The date of the commencement of disablement not appearing on this certificate, the workman went to the medical referee, who issued a certificate confirming the certificate of the certifying surgeon, & fixing Nov. 22, 1919, as the date of the commencement of disablement. The medical referee also certified that the workman was only fit for surface work. On that the workman commenced arbn. proceedings, claiming compensation for partial incapacity as from 1925 & a declaration of liability. The employers contended that the matter was *res judicata*, & this contention was accepted by the county ct. judge. The workman appealed:—*Held:* the award of Aug. 21, 1925, was final between the parties & could not be affected by the certificate of the medical referee.—WILLIAMS *v.* CRAWSHAY BROS. (CYFARTHFA), LTD. (1929), 22 B. W. C. C. 223, C. A.

3711. *Add. Annotation:*—**Refd.** Ramsay *v.* Gramophone Co., [1936] 2 All E. R. 752.

3712. *Add. Annotation:*—**Refd.** Ramsay *v.* Gramophone Co., [1936] 2 All E. R. 752.

3716. *Add. Annotation:*—**Refd.** Ramsay *v.* Gramophone Co., [1936] 2 All E. R. 752.

3716a. —— —— ——.]—SMITH *v.* UNION CASTLE STEAMSHIP CO., LTD., No. 3076a, *ante*.

3716b. —— —— ——.]—A workman was injured in Mar. 1933, & underwent an operation for the removal of cartilage from his knee. He was paid compensation as for total incapacity until Nov. 1933, when he returned to light work & was paid compensation as for partial incapacity. In Mar. 1934, payments were stopped, & the workman applied for an arbn. At the hearing in Jan. 1935, the workman's doctor said that the workman was not fit for his old work, the employers' doctor saying that he was fit for such work. The latter in his evidence referred to the probability that there was "some loose body which occasionally gets nipped between the bones of the joint," but he said there was no X-ray evidence of such loose body. The county ct. judge awarded compensation as for partial incapacity up to the date of the hearing

& granted a declaration of liability. The workman applied to his foreman for his old work, but this was refused in the absence of a certificate of fitness from the workman's doctor. The doctor refused such a certificate & the workman continued at light work. In June, 1935, trouble developed, due to the nipping of a piece of cartilage which had not been removed. In Aug. 1935, the workman applied for a review. The county ct. judge came to the conclusion that the workman was more disabled than he had thought in Jan. 1935, "due to change of circumstances," & made an award for compensation on the basis of partial incapacity. The employers appealed:—*Held:* the finding that there was a change of circumstances was founded upon additional positive evidence of fact not before him at the first hearing & the matter was not *res judicata*.

Per SCOTT, L.J.: the evidence given at the first hearing is not admissible on the second hearing as if it had been taken on commission. If it is necessary to prove the facts at the time of the first hearing the witnesses must be called & examined *de novo*.—RAMSAY *v.* GRAMOPHONE CO., LTD., [1936] 2 All E. R. 752; 155 L. T. 56; 29 B. W. C. C. 137, C. A.

Annotation:—**Refd.** London Power Co. *v.* Lamb, [1936] 3 All E. R. 392.

3718. *Add. Annotations:*—**Distd.** Thorpe *v.* Sadler, Sadler *v.* Thorpe (1927), 20 B. W. C. C. 488. **Consd.** Curran *v.* Kays, [1928] 2 K. B. 496. **Refd.** North's Navigation Co. (1889), Ltd. *v.* Batten (1933), 150 L. T. 186; Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (1935), 28 B. W. C. C. 358.

3718a. —— ——.]—A riveter lost his right eye as the result of an accident arising out of & in the course of his employment. He was paid full compensation for a year & then went back to his old work. He left work after two days, alleging that he was unable to do the work, & made a claim for compensation based on total incapacity. The county ct. judge found that the injury had left no incapacity & made his award in favour of the employers & refused to grant a declaration of liability. The workman gave notice of appeal from that award but did not proceed any further. Seven months later the workman applied for a review alleging that though he had recovered & was capable of work he had found that he was unable to obtain employment owing to the disfigurement caused by the loss of his eye. The employers took the preliminary points that the matter was *res judicata* & also that there could be no review as there were no weekly payments & no declaration of liability to review. These second proceedings came before another county ct. judge, who refused to allow leave to amend the proceedings & held that the decision of the first county ct. judge was binding on him & final against the workman. He therefore dismissed the application. The workman appealed:—*Held:* the first county ct. judge having made an award in favour of the employers, finally terminating all liability, & there having been no appeal from that award, the second county ct. judge had rightly held in the second case, which raised exactly the same issues, that the matter was *res judicata*. The result must have been the same whether the second proceedings had been by way of original application or review.—SMITH *v.* CUTLER (SAMUEL) & SONS, LTD. (1932), 25 B. W. C. C. 408, C. A.

3721. *Add. Annotations:*—**Consd.** Charlton *v.* Union Castle Line, Ltd. (1930), 143 L. T. 66; Ebbw Vale Steel Iron & Coal Co. *v.* Williams (1935), 28 B. W. C. C. 267; Ramsay *v.* Gramophone Co., [1936] 2 All E. R. 752. **Refd.** Teilo Tinplate Co. *v.* Griffiths (1936), 28 B. W. C. C. 127.

3725. *Add. Annotation:*—**Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3726. *Add. Citation:*—136 L. T. 129.

3726a. ——.]—A baker's assistant, aged eighteen years, lost his right index finger. The employers consented to an award for a weekly payment & then applied for a review asking for termination. Their application was granted, but the workman obtained a declaration of liability. The workman then applied for a review, asking for an increase, & produced evidence that he had tried other work but was unable to do it. The county ct. judge refused the workman's application on the ground that the workman had failed to satisfy him that he was unable to do his pre-accident work. The workman appealed:—*Held:* there was evidence to support the finding & no misdirection. Appeal dismissed.—ALLVEY *v.* WILSON (1930), 23 B. W. C. C. 525, C. A.

3726b. ——.]—A painter fell from a ladder & injured his foot. Compensation was paid to him for some months under an award. His employer applied for a review of the weekly payments on the ground that he was fit for work. The county ct. judge found on the evidence taken as a whole that the workman was no longer suffering from any diminution of wage-earning capacity, & made an award terminating the weekly payments. The workman appealed:—*Held:* there was evidence to justify the award, & no misdirection. Appeal dismissed.—WRIGHT (R.) & SON *v.* BURDON (1932), 25 B. W. C. C. 594, C. A.

3726c. ——.]—A workman suffered an injury by accident to his back & was thereby incapacitated. A memorandum of agreement was filed. On an application for review of the weekly payments payable under the agreement, the employers sought to prove by calling four medical men that the workman was now suffering from locomotor ataxy & not from any result of the accident. The county ct. judge found that the workman was not suffering from any constitutional disease, but was still incapacitated by the accident & dismissed the application. The

'ART XIV. SECT. 20, SUB-SECT. 3. —C.

3719 1. *Whether applicable—To uestion of calculation of compensation.*] *-Held:* in view of the arbitrator's express finding that there had been no agreement between the parties as to the average weekly amount of the workman's pre-accident earnings, the arbitrator was entitled to determine that amount *de novo* upon the whole evidence before him.—FOTHERINGHAM *v.* ALLOA COAL CO., LTD., [1931] S. C. 611, 612; 24 B. W. C. C. Supp. 44.—SCOT.

employers appealed :—*Held :* the matter was a question of fact for the county ct. judge. —SMEATON & SONS, LTD. *v.* TAYLOR (1933), *26 B. W. C. C. 369, C. A.*

3726d. ——.]—Employers paid a workman who had sustained a fractured skull in July, 1928, full compensation until Nov. 1929, when they reduced the weekly payments in accordance with the provisions of sect. 12 to 11*s.* 9*d.* on the basis that he could earn 30*s.* a week at light work. In Jan. 1933, the workman bought a grocery business with a beer off-licence, & the employers applied for a review by termination or diminution of the 11*s.* 9*d.* a week on the ground that he was able to earn in some suitable employment as much or more than his average weekly earnings before the accident, or alternatively that he had such earning capacity as entitled them to relief. The only evidence called at the arbn. was to the effect that the workman's condition had improved, but that he had to lie down with headaches for a few hours. The county ct. judge said that he formed the conclusion that there was no material change in the workman's working capacity since Nov. 1929. He then went on to find that the workman & his wife shared the profits of the grocery business, & that the share of the profits would be about 30*s.* a week, so that the existing compensation of 11*s.* 9*d.* a week would be correct. The employers appealed on the ground that there was no evidence for the various findings :—*Held :* there being evidence on which the county ct. judge could find that the employers had failed to prove any change of circumstances, that alone was sufficient to justify him in dismissing the application to review, & the other matters did not therefore arise.—STEEL PEECH & TOZER, LTD. *v.* LAMBERT (1933), 26 B. W. C. C. 579, C. A.

3726e. ——.]—A workman suffered injury by accident in Dec. 1932, & was under treatment until Aug. 1933, when he underwent an operation. Compensation was paid on the basis of total incapacity from Dec. 1932 until Apr. 1934, when payments were discontinued. An application for compensation was then made. The employers denied liability on the ground that since the date of the application the workman had not been incapacitated for work by reason of the jury, but they submitted to a declaration of liability. The judge found in favour of the workman & made an award on the basis of total incapacity. In Feb. 1936, the employers applied for a review. Evidence was given that the workman would have had to undergo the operation even if there had been no accident & the employers contended that at the time of the review it could no longer be shown that the incapacity was due to the accident. The judge allowed the application & terminated the employers' liability. The workman appealed :—*Held :* as the employers, by submitting to a declaration of liability, had made an unqualified admission that the incapacity was due to the accident, it was not open to the judge, without a change of circumstances, to hear new evidence on a matter which had already been decided.—LONDON POWER CO., LTD. *v.* LAMB, [1936] 3 All E. R. 392 ; 29 B. W. C. C. 281, C. A.

3731. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), *96 L. J. K. B. 664 ;* Charlton *v.* Union Castle Line, Ltd. *(1930),* 143 L. T. 66 ; Williams *v.* Penmaenmawr & Welsh Granite Co. *(1933),* 148 L. T. 485. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454 ; Smith *v.* Union Castle S.S. Co. (1932), 25 B. W. C. C. 176.

3733. *Add. Annotations :—As to* (1) **Refd.** Ramsay *v.* Gramophone Co., [1936] 2 All E. R. 752. *As to* (2) **Consd.** Williams *v.* Penmaenmawr & Welsh Granite Co. (1933), 148 L. T. 485. **Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664 ; Smith *v.* Union Castle S.S. Co. (1932), 25 B. W. C. C. 176.

3733a. ——.]—A workman was certified to be disabled by an industrial disease contracted whilst employed as a mule spinner, & in 1926 was awarded compensation of £1 a week on the basis that he was fit for any work not in the spinning trade & should be able to earn £1 19*s.* 7*d.* a week, his pre-accident average weekly earnings being £3 19*s.* 7*d.* After being unemployed for some two years he obtained work at a wage of £1 18*s.* a week for a year, when he was again unemployed for nearly two & a half years until Apr. 1932. In Apr. 1932, he obtained employment as a clerk to a commission agent, being employed for each afternoon while racing was proceeding at £1 5*s.* a week. The work was seasonal from Apr. to Nov. in each year. Whilst so employed, in Oct. 1933, he applied for a review of the weekly payment of £1. The county ct. judge held that there had been no change of circumstances since the award of 1926 which would justify a review of that award, & that he could not regard the £1 5*s.* earned for part-time work as any criterion. The Ct. of Appeal set aside the award of 1926 & substituted the actual wage of £1 5*s.* for the estimate of £1 19*s.* 7*d.* & made an award for £1 7*s.* 3½*d.* a week :—*Held :* the words " he is earning or is able to earn " in sect. 9 (3) (i), were strictly alternative, & the first alternative was not qualified by the words " in some suitable employment or business." Assuming that the £1 5*s.* a week was derived otherwise than from " a suitable employment or business " it still was an average weekly amount which the workman was earning after the accident within the meaning of the first alternative, & as there was no evidence that that amount was not really what he might earn if he took proper steps to get the most remunerative employment he could find, he must be charged with the 25*s.* & no more.—DELTA MILL (1919), LTD. *v.* BLAKEMORE (1935), 104 L. J. K. B. 459 ; *sub nom.* BLAKEMORE *v.* DELTA MILL (1919), LTD., 28 B. W. C. C. 193, H. L.

3734a. Workman generally more fit for work.]—A colliery repairer had a series of hernia & operations for hernia commencing in 1922. In 1927, on the workman's appln. for compensation, the county ct. judge found as a fact that he was not fit to do the work of repairer, & awarded compensation. In 1928, the employers applied to terminate the weekly payment, & the matter was referred by the judge to the medical referee, who reported

that the workman was fit for his former work [illegible] on this [illegible] the employers had rejected at the former hearing & made an award terminating the weekly payments. The workman appealed on the ground that the judge had merely reversed his first decision without any change of circumstances. In view of this argument, the judge was written to & asked what change of circumstances he found which justified him in coming to his decision in 1928. In reply the judge said he had found that the workman was generally more fit for work:—*Held:* there was evidence that the man was fitter generally, & there had been, therefore, such a change of circumstances as justified the later award.—PARTRIDGE, JONES & PATON JOHN, LTD. *v.* SULWAY (1928), 21 B. W. C. C. 423, C. A.

3734b. Injury to right eye—Subsequent blindness in left eye unconnected with accident—Inability to work.]—A first helper at a blast furnace was in Aug. 1929, injured by reason of a piece of molten metal entering his right eye which was in consequence removed. He returned to work & though he could not do it properly by reason of his injury, he was able to carry on for three years with help & was paid his full former wages. In Nov. 1933, he had to cease work on account of a cataract unconnected with his injury having developed in his left eye, & subsequently resumed work at reduced wages. In Apr. 1935, he applied for review of a declaration of liability which had previously been recorded. The county ct. judge held that, in spite of some physical disability resulting from the accident, the workman would have been earning his pre-accident rate of wages at the date of the arbn. but for an event not connected with the accident & that he had not proved a change of circumstances since the date of filing the declaration of liability. He therefore made his award for the employers. The workman appealed:—*Held:* the cessation of work in 1933, although due to a reason unconnected with the accident, was a change of circumstances entitling the workman to ask for a review. The workman was entitled to have compensation for his partial incapacity assessed. Appeal allowed. Case remitted for assessment of compensation.—DRURY *v.* APPLEBY IRON CO., LTD. (1935), 28 B. W. C. C. 483, C. A.

3737. *Add. Annotations:*—**Consd.** Lewis *v.* Guest Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Barber, Walker & Co. *v.* Flint (1928), 98 L. J. K. B. 83.

—— —— ——.]—The principles laid down in *Bevan* v. *Energlyn Colliery Co.*, No. 3366, *ante*, for computing the weekly payment in cases of partial incapacity, where there has been a fluctuation of wages since the accident, have been incorporated in Workmen's Compensation Act, 1925 (c. 84), to a limited extent by sect. 11 (3). Apart from that sect. the principle does not apply to cases under the Act, the provisions of Workmen's Compensation Act, 1906 (c. 58), [illegible] having been repealed pensation Act, 1923

3737b. —— General fall in wages.]—A collier being partially incapacitated by an accident arising out of & in the course of his employment, entered into an agreement with his employers by which, after reciting that the workman's average weekly earnings for twelve months before the accident were £3 19*s.* 4*d.*, it was agreed that the employers should find him suitable employment & pay him the wages which he could earn therein &, in addition to those wages in each week, half the difference between his said average weekly earnings & the wages he could earn at the said employment by working while the pit was at work, but not in any case exceeding £1. After weekly payments under the agreement had been made for some years, the rate of wages having fallen, the employers applied to have the payments reviewed under Workmen's Compensation Act, 1906 (c. 58), Sched. I., s. 16:—*Held:* a change in the rate of wages, being one of the events contemplated & provided for by the agreement, was not such a change in the circumstances as entitled either party to have the weekly payments reviewed.—BARBER, WALKER & CO. *v.* FLINT, [1929] 1 K. B. 256; 98 L. J. K. B. 83; 140 L. T. 154; 21 B. W. C. C. 428, C. A.

3745a. ——.]—A workman, who was paid compensation for the loss of three fingers, & who had returned to light work, was discharged owing to the closing down of his employers' works. He registered with the Labour Exchange & for some months received unemployment benefit, together with a proportionate amount of compensation from his late employers. When the unemployment benefit ceased he claimed full compensation, proving that he had made genuine attempts to obtain work but had failed owing to his injury. The county ct. judge awarded a sum, less than the full compensation, to date from the application for review & not from the cessation of the unemployment benefit:—*Held:* the workman was entitled to compensation on the basis of total incapacity as from the date when the unemployment benefit ceased.—KING *v.* BRITISH STEEL CORPN., LTD. (1928), 21 B. W. C. C. 37, C. A.

Annotation:—**Refd.** Hughes *v.* Pwll-Heli Granite Co. (1929), 22 B. W. C. C. 637.

3748a. ——.]—A workman was injured by accident on July 4, 1926, & was paid compensation for total incapacity until Jan. 1929, when the weekly payments were reduced to 25*s.* In Mar. 1929, the workman applied for an increase by way of review. The county ct. judge held that there had been no change of circumstances & refused the application. The workman later renewed his application, alleging that a change of circumstances had been created by the combined effect of the state of the labour market & his own injury, & claimed to come within sect. 9 (4). The county ct. judge found that the workman had not really tried to obtain employment, & again held that there had been no change of circumstances that would justify a review. The workman appealed:—

Held: there was evidence to support the finding, & no misdirection.—CHARLTON *v.* UNION CASTLE LINE, LTD. (1930), 143 L. T. 66; 23 B. W. C. C. 65, C. A.

3748b. No genuine effort to keep work.]—A builder's labourer lost his right eye as a result of an accident arising out of & in the course of his employment. He was paid full compensation for some two years when he was offered light work which he refused. The employer then applied to terminate the weekly payments but submitted to a declaration of liability. The county ct. judge terminated the weekly payments & a declaration of liability was recorded. The workman within three months applied for a review on the ground that he was entitled to the benefit of the 1931 Act. The county ct. judge found that the workman had in fact obtained two jobs from which he had been dismissed for wilful clumsiness, although he could have done the work. He therefore held that there had been no change of circumstances since the award terminating the weekly payments, & that he had not brought himself within the 1931 Act:—*Held:* there was evidence to support the findings & no misdirection.—FEW *v.* GOODCHILD (ARTHUR G.) & SONS, LTD. (1932), 25 B. W. C. C. 418, C. A.

3749. *Add. Annotations:—As to* (1) **Apld.** Gladstone Spinning Co. *v.* Nangle (1928), 98 L. J. K. B. 161. **Refd.** Keane *v.* Mount Vernon Colliery Co., [1933] A. C. 309; Gregson *v.* Swift (1936), 29 B. W. C. C. 166.

3750a. ——.]—A miner was injured in 1922. His average weekly earnings were 42*s.* 8*d.* He was paid 20*s.* a week as compensation with 15*s.* as war addition. He developed nervous weakness of the heart & neurasthenia. In 1927 an award for 35*s.* a week was made & filed. In Apr. 1932, an application by the employer to diminish the weekly payment was refused, but the medical witnesses agreed that the workman was fit to do suitable light work. The employer thereupon offered the workman a job as a watchman at a weekly wage of 30*s.* in a colliery which was in the process of being dismantled, & the offer was accepted. The workman then received 30*s.* a week as wages & 6*s.* 4*d.* as compensation. In July, 1932, the employer again applied to diminish the weekly payment. The workman contended that there had been no change of circumstances since Apr. 1932, entitling the employer to review, the watchman's job being a job specially created by the employer for the purpose of the review. The county ct. judge held that there was no evidence of any change for the better in the workman's physical capacity, & refused the application. The employer appealed:—*Held:* there was misdirection, the offer & acceptance of work at 30*s.* a week being in itself a change of circumstances entitling the employer to review. Appeal allowed. Case remitted for county ct. judge to assess the weekly payment in accordance with Sched. I. (3) of the 1906 Act.—ENGLEFIELD COLLIERIES, LTD. *v.* ROBERTS (1932), 25 B. W. C. C. 558, C. A.

3753a. —— Effect of Workmen's Compensation Act, 1926 (c. 42).]—A workman, being a minor, who met with an accident arising out of & in the course of his employment before the above Act came into force, is, if he was still under twenty-one years of age when the Act came into force, entitled to obtain a review during the extended period permitted by the amending Act.—EDWARD CURRAN & CO. *v.* KAYS, [1928] 2 K. B. 469; 97 L. J. K. B. 806; 139 L. T. 294; 21 B. W. C. C. 203, C. A.

Annotation:—**Consd.** Vickers-Armstrongs, Ltd. *v.* Regan (1932), 147 L. T. 298.

3753b. —— Time for making claim.]—An infant sustained an accident on Jan. 14, 1930, & received compensation at the rate of £1 a week. On June 24, 1930, he was given light work, & in addition to his pay for this work received 8*s.* 3*d.* a week as compensation. He was discharged on Dec. 3, 1930. He became twenty-one on June 30, 1931. In Nov. 1931 certain correspondence passed between the employers' insurers & the workman's solrs. whereby it was agreed that the sum of 8*s.* 3*d.* a week should be paid to the workman as compensation. This letter said, "We think it will be necessary to record an agreement to show the review by consent of the post-infancy basis of compensation. Before doing so, however, we shall be glad to know whether you are prepared to settle this case." The workman never signed this agreement nor was it recorded. He received 8*s.* 3*d.* a week for three weeks only, when he was taken back to work at £2 4*s.* a week. On Jan. 4, 1932, an application was filed by the workman for arbn. by way of review on

PART XIV. SECT. 20, SUB-SECT. 4.—B. (d).

sg. *Limitation to light work not due to accident medical report going beyond reference.*]—The employers of a workman, who had been receiving compensation for an injury to his back alleged that he was now "fit for ordinary work" & craved that the matter should be referred to a medical referee under sect. 19. The medical referee certified that the workman was fit for light work only, but added that his unfitness was not due to the accident, the effects of which had completely passed off, but to rheumatic fibrosis. The arbitrator having refused a motion by the employers to end the compensation:—*Held:* the arbitrator had acted rightly in refusing to end the compensation, in respect that the only matter referred to the medical referee was the question under sect. 19 (2) & the referee has decided that question in the workman's favour. —QUINN *v.* MOUNT VERNON COLLIERY CO., [1932] S. C. 23; 24 B. W. C. C. Supp. 113.—SCOT.

PART XIV. SECT. 20, SUB-SECT. 5.

sa. *Recovery of workman—No jurisdiction to increase payments.*]—A farm labourer under twenty-one years of age, who had lost an eye by accident arising out of his employment, & had been awarded compensation, brought proceedings for review; & in the course thereof a medical reference was obtained, as a result of which the referee certified that the workman had again become fit for his ordinary work. At a proof subsequently taken in the review proceedings it was established that, if the workman had remained uninjured, he would probably have been earning more during the whole period under review than he had been earning at the time of the accident. The employer thereafter moved the arbitrator to end compensation at the date of the referee's certificate, but the arbitrator refused to do so, on the ground that the workman was, in virtue of 1925 Act, s. 11 (2), entitled to compensation in respect of his earning capacity being as a result of the accident less than it would have been had he not been injured; & he awarded a weekly payment as for partial incapacity until further order of the ct.:—*Held:* the workman having fully recovered capacity, the arbitrator was bound to end compensation as from the date of the referee's certificate, subject to the workman's right to have the award made suspensory; & the arbitrator was not entitled to award further weekly payments in virtue of sect. 11 (2) of 1925 Act, in respect that sect. 11 (2) only warranted the increase of weekly payments to which a workman in minority was already entitled, & had no application in cases where the right to compensation had terminated.—M'ILWRAITH *v.* PATON, [1932] S. C. 690; 25 B. W. C. C. Supp. 44.—SCOT.

the ground that, but for the accident, he would have been earning £3 0*s.* 6*d.* a week. The county ct. judge held that no agreement capable of being recorded was contained in the letters, & that the application for review was out of time. The workman appealed, & also instituted proceedings to record a memorandum of agreement:—*Held:* without deciding whether any agreement was in fact contained in the letters, & without prejudice to the proceedings to record a memorandum of agreement, the application for review was out of time. Appeal dismissed.—JOHNSON *v.* SHARP BROS. & KNIGHT, LTD. (1932), 25 B. W. C. C. 86, C. A.

Ltd. v. Regan

3753c. —— Informal notice to employer within six months after attaining majority.]—VICKERS-ARMSTRONGS, LTD. *v.* REGAN, No. 3708a.

3753d. —— ——.]—An infant suffered an injury by accident arising out of & in the course of his employment on Dec. 16, 1926. Liability was admitted & compensation of £1 a week paid by the employer until May 17, 1927, when a declaration of liability was filed. The workman was given light work which he was able to do, but after six weeks he left of his own accord. The workman came of age on June 12, 1931, & on Aug. 17, 1931, a letter was written by his solr. to the employer, discussing the amount of compensation payable now that the workman had attained the age of twenty-one & requesting payment of an increased amount. A request for arbn. was filed on Mar. 10, 1932, & at the hearing the county ct. judge upheld a preliminary objection of the employer that the application for review was out of time having regard to sect. 11 (2), as amended by sect. 1 of the 1926 Act:—*Held:* the point was already decided in *Vickers-Armstrongs, Ltd.* v. *Regan*, No. 3753c, *ante*, that an informal application for review if within time is sufficient to comply with the sect. Appeal allowed.—DARBY *v.* ALLEN (1932), 25 B. W. C. C. 326, C. A.

3754. *Add. Annotations:*—**Consd.** Miller *v.* Taylor & Son (1931), 100 L. J. K. B. 641. **Refd.** Webb *v.* Southern Ry. Co. (1932), 25 B. W. C. C. 521.

3754a. —— —— ——.]—An infant workman at fifteen years of age commenced work at 8*s.* a week. At sixteen years of age when he met with an accident he was receiving 12*s.* a week, & received compensation based on that figure. When he was twenty years old he applied for a review of the weekly payment, his evidence being that three years earlier he had been offered a post on a liner. The county ct. judge found that the workman was not suitable for a post at sea, &, apparently without considering whether the man might have obtained work elsewhere at an increased wage, he further found that at the date of the hearing the workman would probably have been earning, if uninjured, no more than the amount which he was earning when he met with the accident. The workman appealed:—*Held:* the reasons given by the county ct. judge for his award were unsatisfactory & the case must be remitted for further consideration. Appeal allowed. Case remitted.—MILLER *v.* TAYLOR & SON (1931), 100 L. J. K. B. 641; 145 L. T. 539; 24 B. W. C. C. 237, C. A.

3754b. —— **Question of fact.**]—An infant workman met with an accident while employed as a motor-lorry driver's mate & received compensation. On attaining twenty-one the workman asked for a review of the weekly payment, alleging that but for the accident he would now have been able to earn wages as a motor-lorry driver. At the hearing of the arbn. the workman called evidence to show that he had learned to drive a motor lorry, but the county ct. judge disbelieved this evidence & made an award in accordance with an offer submitted to by the employers. The workman appealed:—*Held:* the question was purely one of fact & there was no misdirection. Appeal dismissed.—RUSTON *v.* RYBURN (1931), 24 B. W. C. C. 101, C. A.

3755. *Add. Annotation:*—*As to* (2) **Consd.** Miller *v.* Taylor & Son (1931), 100 L. J. K. B. 641.

3756a. —— **Effect of criminal conviction.**]—An infant, aged nineteen & a half, while employed as a railway porter lost his left arm in May, 1913, by an accident arising out of & in the course of his employment. Liability was admitted under the 1906 Act, & a weekly payment of 10*s.* was made from May to Dec. 1913. In Dec. 1913, he was employed as a signalman at 23*s.* a week, & was promoted from time to time so that in 1930 he was being paid at the rate of 65*s.* a week. On Sept. 8, 1930, he committed a criminal offence totally unconnected with his employment, & served a term of imprisonment from Sept. 30, 1930, to July 26, 1931. It being a rule of railway cos. that persons who have been convicted & imprisoned shall not be employed by them the workman was unable to obtain his former employment. In Jan. 1932, he applied for a review of the original payment of 10*s.* a week. The county ct. judge assessed his earning capacity in the open labour market at 20*s.* a week, & held that, had he been uninjured, he would probably have been earning not less than 65*s.* a week at the date of the review. He therefore made an award under Sched. I. (16) of the 1906 Act increasing the compensation to 20*s.* a week, but ordered that such increase should not commence to operate on Sept. 8, 1930, but be suspended until July 26, 1931. The employers appealed:—*Held:* there was evidence on which the county ct. judge could exercise the discretion given to him by Sched. I. (16) of the 1906 Act, & he had exercised his discretion judicially. Appeal dismissed.—WEBB *v.* SOUTHERN RY. CO. (1932), 25 B. W. C. C. 521, C. A.

3762a. What court has jurisdiction.]—Where an arbn. is heard in a county ct. in the district of which both workman & employer reside, & an award is made capable of being reviewed, it is competent for either party to apply for a review in another county ct. in the district of which the accident happened, & the judge of the second county ct. has jurisdiction to hear & determine the case, & is under no obligation to transfer the proceedings to the first county ct. Application to stay proceedings pending appeal.—THOMAS ALLEN, LTD. *v.* HAGGER (No. 1) (1931), 24 B. W. C. C. 373, C. A.

3762b. ——.]—A claim for compensation was heard by the county ct. judge of the district in which both employer & workman resided. An award was given in favour of the workman & recorded in that ct. The employer then applied for a review, in the county ct. of the district in which the accident happended, having first obtained a certified copy of the award & filed it in the second ct. The county ct. judge of the second ct. refused to transfer the proceedings to the first ct. & found that the workman had recovered & made an award ending the weekly payments. The workman appealed, alleged that the second judge had no jurisdiction to hear the review:—*Held:* the word "shall" in 1925 Act, s. 27, is not mandatory but is qualified by the words "subject to rules of ct." & by rule 89 of Workmen's Compensation Rules, 1926, the county ct. judge had jurisdiction to hear the review. He also had jurisdiction by virtue of County Ct. Act, 1919 (c. 73), s. 10 (1). Appeal dismissed.—THOMAS ALLEN, LTD. *v.* HAGGER (No. 3) (1931), 24 B. W. C. C. 513, C. A.

3763a. ——.]—HARDING *v.* WATERS (H. & E.), LTD., No. 3701g, *ante*.

3766a. Particulars—Contents of.] — Upon an application by an employer to review a weekly payment & diminish it, or terminate or diminish it, the appropriate form is Form 5, under which certain particulars are to be given. These do not include particulars of the extent to which diminution is asked for, but the county ct. judge has a discretion to order or to refuse such further particulars under r. 29 (2). His decision on the point is not a decision on a question of law, & there is no appeal therefrom. *Semble:* such particulars ought to be sparingly ordered, & not with the object of compelling the county ct. judge to give costs to one side or the other, & there is much greater reason for asking for particulars of the extent of diminution of a weekly payment where termination is not asked for, than where the employer is asking for termination or diminution.—VICKERS, LTD. *v.* MINERS, THAMES STEAM TUG & LIGHTERAGE CO. *v.* INGRAM (1927), 96 L. J. K. B. 490; 137 L. T. 226; 71 Sol. Jo. 350; 20 B. W. C. C. 269, C. A.

3769. *Add. Annotation:*—**Apld.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3769a. —— —— ——.]—A workman suffered an accident to his right eye in Apr. 1923. Liability was admitted & compensation paid. In Dec. 1927, the weekly payments were reviewed & the county ct. judge made an award in respect of partial incapacity at the rate of 17*s.* 6*d.* a week, such rate to date from Feb. 1927. Compensation continued to be paid at this rate without any suggestion on the part of the workman that the rate should be altered. In June, 1929, the employers filed an application for redemption of the 17*s.* 6*d.* per week under sect. 13 on the basis of permanent partial incapacity. The workman's solrs. wrote to the employers that the workman objected to the application to redeem, but that they could not object to it as they themselves felt that his medical condition was & would continue to be the same as it had been for the past two years, At the hearing of the application on July 1, medical evidence was called to the effect that the workman's condition was stabilised & that there was unlikely to be any change in either eye. The county ct. judge, however, dismissed the application to redeem, stating that he was doing so in the exercise of the discretion which, in his opinion, the legislature had given to him. The employers gave notice of appeal, & later the workman filed an application for review on the ground that his incapacity had increased:—*Held:* (1) the employers have an absolute right to redeem, & the judge has no discretion to refuse such application; (2) the application of the workman to review not being in existence at the date of the hearing of the employers' application to redeem & the right of the employers to redeem having become crystalised by that date, the subsequent application to review could have no effect.—ELLIOTT, LTD. *v.* HOBBS (1929), 22 B. W. C. C. 509, C. A.

3771a. —— ——.]—An injured workman was paid full compensation at 22*s.* 10*d.* per week until Mar. 23, 1933. On Oct. 31, 1933, an agreement was entered into between the parties, whereby the employer agreed to employ the workman on light work at 2*s.* 6*d.* per day for eight months during the year & to pay compensation at 14*s.* 7*d.* per week. On Jan. 7, 1936, the employer applied to redeem the weekly payments on the basis of a weekly payment of 14*s.* 7*d.* per week, & the workman applied for a review of the award on the ground of a change of circumstances:—*Held* (1) the agreement to provide light work & pay compensation must be regarded as a whole & the employers could not redeem on the basis of a weekly payment of 14*s.* 7*d.*; (2) the employers should have asked for a review of the weekly payment & redemption, & the county ct. judge was not bound on an application for redemption on the footing of a weekly payment of 14*s.* 7*d.* to proceed to a review of the weekly sum; (3) the counter-applica- of the workman for a review did not oblige the county ct. judge to review the payment for the purposes of the employer's application to redeem.—PICK *v.* PALING, [1936] 2 All E. R. 1291; 155 L. T. 196; 80 Sol. Jo. 704; 29 B. W. C. C. 203, C. A.

3775. *Add. Annotations:*—*As to* (1) **Consd.** Curran *v.* Kays, [1928] 2 K. B. 469; Pick *v.* Paling, [1936] 2 All E. R. 1291.

3777. *Add. Annotation:*—**Apld.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3781. *Add. Annotations:*—*As to* (2) **Refd.** Curran *v.* Kays, [1928] 2 K. B. 469. *Generally*, **Refd.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3799. *Add. Annotations:*—*As to* (1) **Apld.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20

PART XIV. SECT. 20, SUB-SECT. 6.

3763 i. *Whether original arbitration or review appropriate—Payment of compensation under unrecorded agreement.*]—HARRIS *v.* MANOR POWIS COAL CO., LTD., [1926] S. C. 972.—**SCOT.**

PART XIV. SECT. 22, SUB-SECT. 1.

sc. *Various Industries (Silicosis) Scheme, 1928—Duty to furnish information as to previous employment—Time for furnishing.*]—Various Industries (Silicosis) Scheme, 1928, para. 13, enacts that a claimant for compensation under the Scheme must furnish the employer from whom compensation is claimed with true information as to his previous employment, & that, if the claimant withholds information,

B. W. C. C. 637. **Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30; Ormond *v.* Holmes & Co., [1937] 2 All E. R. 795. **Reld.** Smith & Son *v.* Eagle Star & British Dominions Insurance Co. (1934), 27 B. W. C. C. 1; Leary *v.* Deptford S.S. Owners (1935), 28 B. W. C. C. 235.

3801a. —— Scheme inapplicable where employment occasional—What is occasional work.]—By Metal Grinding Industries (Silicosis) Scheme, clause 2, the scheme is made to apply to all workmen employed in the grinding of metal by mechanical power or in glazing, when such glazing is carried on in the same room as the grinding, but by proviso (*a*) thereof the scheme is not to apply, if such employment is occasional only, & for not more than eight hours in any week. A workman, employed by knife-blade manufacturers, superintended the girls in the glazing shop, & also worked on the processes of glazing known as rebuffing & whittening. In the course of his work he used an abrasive wheel in the whittening shop, whittening involving the raising of silica dust. He became totally disabled from silicosis & was certified accordingly. The county ct. judge found that the work done by the workman in rebuffing & whittening was "occasional only & for not more than eight hours in any week," & was, therefore, within the above proviso, & that he was thereby precluded from the benefit of the scheme. The workman appealed:—*Held:* for the employment to fall within the proviso it must be both "occasional only" & "for not more than eight hours in any week." In this case the workman was called on, under his ordinary employment, to do the work, &, therefore, such work was not "occasional only."—MAKIN *v.* NEEDHAM, VEALL & TYZACK, LTD. (1929), 22 B. W. C. C. 76, C. A.

3801b. —— Disablement before Scheme in operation.]—By Various Industries (Silicosis) Scheme, dated Dec. 11, 1928, workmen engaged in certain processes are brought within the operation of the 1925 Act. By para. 2 the scheme came into operation on Feb. 1, 1929, & is made to apply to all workmen employed at any time on or after Jan. 1, 1929, in the processes therein specified. By para. 11 1925 Act, s. 14, requiring the claim to be made within six months of the happening of the accident, is made to apply, the disablement being treated as the date of the accident. A street mason employed on Jan. 1, 1929, on a process within the scheme was taken ill on Jan. 8, & later went to hospital suffering from silicosis. He did not know until Apr. that he was entitled to compensation. On Apr. 28 he wrote to the certifying surgeon who, however, was away. He took no further steps to get certified until at the end of June he was discharged from hospital in order to see the certifying surgeon, who examined him & certified him on July 2, 1929, to be disabled by silicosis as from Jan. 10, 1929. On July 12 he first gave notice to his employer of the accident & made a claim. The county ct. judge held that the accident having occurred between Jan. 1 and Feb. 1, 1929, was not one to which the scheme applied, & that there was no reasonable cause why the workman should have delayed making his claim until two days after the six months had expired. The workman appealed:—*Held:* although the Scheme did not become operative until Feb. 1, 1929, it nevertheless applied to all workmen employed on or after Jan. 1, 1929, & therefore applied to a workman employed on Jan. 1, 1929, who was certified after that date as being disabled. On the second point the award was upheld on the ground that there was here no reasonable cause for the delay in making a claim. Appeal dismissed. —HOLT *v.* HOBSON (ANDREW) & SONS (1930), 23 B. W. C. C. 242, C. A.

3801c. Order extending Workmen's Compensation Act, 1906 (c. 58), s. 8, to Ironworkers' cataract — Construction of Order.] — *Held:* the proviso to Workmen's Compensation (Ironworkers' Cataract) Order, 1925, was not governed by the operative words in par. 2 which contained the absolute limit of six months in all, & where the incapacity was continuing, compensation could be allowed for the continuing incapacity. *Semble:* the absence of a bed in a ward or a vacancy in a place for an operation would be a good medical reason for the non-performance of an operation within the four months.—DAVIES

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he shall forfeit any right to compensation under the Scheme. A workman, who had been certified by the certifying surgeon to be totally disabled by silicosis, claimed compensation from his employer. His claim having been refused, he brought arbn. proceedings, & in the initial writ furnished for the first time the particulars as to his previous employment required by para. 13 of the Scheme:—*Held*; there being in para. 13 no time limit within which the information must be furnished, the workman, having furnished it in the initial writ, was not in breach of para. 13; &, accordingly, he had not forfeited his right to compensation.—HENRY *v.* GLADSTONE, [1931] S. C. 228; 24 B. W. C. C. Supp. 1.—SCOT.

sf. *Disease result of "long exposure" —Two certificates.*]—Industrial Diseases Order, 1929, para. 2, limits the right of a workman, who is disabled for certain forms of employment by the industrial disease of dermatitis produced by dust or liquids, to recover compensation to cases where the arbitrator is satisfied that the disease is the result of "long exposure" to dust & liquids.

A workman employed by rubber manufacturers as a tyre builder, an employment which exposed him to the fumes of benzene, was certified disabled by dermatitis, due to the nature of his employment, in Sept. 1934, & he received compensation as for total incapacity until Nov. 1935, when he obtained a National Health Insurance certificate of fitness for work, & his employers ceased payment. On Jan. 4, 1936, he was given work by the employers as a labourer to their electricians who were doing general repairs while the works were closed for the holidays & no tyre building was being carried on. Within three days, however, he again developed dermatitis, & was certified to be disabled as from Jan. 7, 1936. In arbn. proceedings the employers maintained that the second certificate of disablement could alone be regarded, &, as that disablement was not the result of "long exposure," the limitation in the Order applied. In awarding compensation as for partial incapacity, the arbitrator found that the workman had never wholly recovered from the original disablement in 1934, which was the result of "long exposure"; that his subsequent condition was one of increased susceptibility to another disabling attack; & that his disablement on Jan. 7, 1936, was due to that susceptibility in addition to the conditions under which he worked between Jan. 4 & Jan. 7.

In a question as to whether, in determining liability for compensation, the effects of the original disablement might be treated as a cause of the injury notwithstanding the second certified disablement: *Held:* while the second certificate established that, as from Jan. 7, 1936, the workman was disabled from earning full wages through dermatitis, it could not be read as importing that he had recovered from the disease previously certified, & was consistent with the view that the later disablement was simply due to a recrudescence of the original disease, &, accordingly, the arbitrator was entitled to make his award on the basis of an original injury by accident in Sept. 1934.—MACNAMARA *v.* INDIA TYRE & RUBBER CO., [1937] S. C. 186,—SCOT.

v. BALDWINS, LTD. (1926), 136 L. T. 462 20 B. W. C. C. 116, C. A.

Annotation :—**Consd.** Leonard *v.* Redbrook Tinplate Co., [1930] 1 K. B. 643.

3801d. Right to compensation not limited to skilled workers.]—Applt. was employed by resps., who were varnish manufacturers, as a general labourer. He was twenty-two years of age & his wages were £2 a week. His work was to help with the loading & unloading of vehicles, & clean & fill old varnish drums In the course of his work he came into contact with rosin, turps, wood-oil, gum, etc., & he had to use turpentine for cleaning his hands as soap would not remove the dirt. In Dec. 1929, the certifying surgeon certified that he was suffering from dermatitis produced by dust & liquids & was thereby disabled for work. On a claim for compensation under the Act the county ct. judge awarded him a weekly sum for compensation from Dec. 7, 1929, until Feb. 1, 1930, when it was to be terminated. He held that applt. was not then disabled from earning full wages at the work at which he was employed ; that he was employed as a labourer simply & that he had full capacity to perform all kinds of general labouring work ; & that the wording of sect. 43 (1) (i) precluded applt., who was a labourer, from recovering compensation as a worker in the varnish-making industry or otherwise than as a general labourer :— *Held :* the view taken by the county ct. judge that the workman did not come within sect. 43 was erroneous. There was nothing in the words of that sect. which limited its application to skilled workers in a process. It applied to any ordinary unskilled labourer who suffered from any industrial disease due to the nature of his employment, & who was thereby disabled from earning full wages at the work at which he was employed.—GILMORE *v.* FREDERICK BOEHM, LTD. (1930), 99 L. J. K. B. 640 ; 143 L. T. 307 ; 46 T. L. R. 484 ; 74 Sol. Jo. 402 ; 23 B. W. C. C. 198, C. A.

3801e. Extension of section to other diseases by Order in Council—Subject to modification—What amounts to modification.]—1925 Act, s. 43 (3), gives the Secretary of State power to " make Orders for extending the provisions of this section to other diseases & other processes, & to injuries due to the nature of any employment specified in the Order not being injuries by accident, either without modification or subject to such modifications as may be contained in the Order." Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, para. 1, extends the provisions of sect. 43 " subject to the modifications hereinafter specified," to (*inter alia*) cataract caused by exposure to rays from molten or red-hot metal. Para. 3 provides that " a person suffering from cataract shall not be entitled to compensation under the provisions of the said sect. on account of that disease for more than six months in all," subject to a power of extension at the discretion of the arbitrator acting on the advice of the medical referee :— *Held :* para. 3 was a " modification " within sect. 43 (3), & was therefore not *ultra vires.*—LEONARD *v.* REDBROOK TINPLATE CO., LTD., [1931] A. C. 205 ; 100 L. J. K. B. 225 ; 144 L. T. 346 ; 47 T. L. R. 187 ; 23 B. W. C. C. 375, H. L.

3801f. Metal Grinding Industries (Silicosis) Scheme —Necessity for employment on process when Scheme brought into force.]—By para. 2 of Metal Grinding Industries (Silicosis) Scheme, which came into force on July 1, 1927, the Scheme is made to apply to any workman employed on or after that date in certain processes connected with the grinding of metals. By para. 7 the certifying surgeon is to certify the date of disablement, & by para. 4 the workman, to qualify for compensation, must have been employed in the specified processes within the three years previous to the certified date. By para. 5, where the workman has been employed in the processes for not less than five years, the onus is on the employer to prove that the disease is not due to employment in the processes instead of on the workman to prove that the disease is so due. A workman had been employed as a nail & tack maker for thirty-five years & as such had for many years to use a sandstone grindstone. On Feb. 7, 1930, the workman ceased work, & on Aug. 19, 1930, he was certified by the certifying surgeon to be suffering from silicosis, the date of disablement being fixed as Feb. 7, 1930. On a claim for compensation the county ct. judge found that, although the workman had not been employed in any process mentioned in para. 2 of the Scheme since the Scheme came into force, yet as he had been employed previously in such a process for not less than five years, he held that the employers had failed to discharge the onus put upon them by para. 5 of the Scheme, & therefore held that the disease must be deemed to be due to the employment. He accordingly made an award in favour of the workman. The employer appealed :— *Held :* by the finding of fact that the workman had not been employed in any process mentioned in the Scheme on or after the date when the Scheme came into force, the workman was not within the Scheme at all, & therefore para. 5 could not be made to apply to him. Appeal allowed.—HUGHES *v.* HARRISON & COOK (1931), 24 B. W. C. C. 104, C. A.

3801g. Date of disablement—No date in certificate —Date of accident.]—Various Industries (Silicosis) Amendment Scheme, 1930, which came into force on Feb. 1, 1931, held applicable to a workman who ceased work by reason of silicosis on Dec. 27, 1930, for the reason that no date of commencement of the disease was stated in the surgeon's certificate which was given on May 7, 1931.—BRIDGES *v.* NEW ROCK COLLIERIES CO. (1932), 101 L. J. K. B. 557 ; 25 B. W. C. C. 155, C. A.

3801h. —— No wages earned within twelve months of date—Calculation of compensation.]—Where a workman is certified to be totally disabled from silicosis & the date of disablement is more than two years after the date when he was last employed in a process coming within Metal Grinding Industries (Silicosis) Scheme, 1927, he can, in view of the proviso to para. 4, sub-para. 1, of the Scheme that " no compensation shall be payable if the workman has not been employed at any time in the processes within the three years previous to the date of total disablement," recover compensation from that last employer, notwithstanding that by

10 of the Scheme sects. 8 to 13 of Workmen's Compensation Act, 1925, are made applicable for the purpose of fixing the amount of compensation but with the exception that the amount of compensation is to be calculated with reference to the earnings of the workman under the employer from whom compensation able under the Scheme.

The provision in sect. 9 (2) of 1925 Act that the weekly payment of compensation shall be fixed by s average weekly twelve months" for the purpose of the Scheme be as to apply to the altered circumstances, by treating it as referring to the previous twelve months during which the workman was employed in a process coming within the Scheme.—BACON *v.* WILLS (A. W.) & SONS, LTD., [1933] 2 K. B. 493; 102 L. J. K. B. 611; 149 L. T. 385; 49 T. L. R. 511; 26 B. W. C. C. 374, C. A.

Annotation :—**Apld.** Cole *v.* Amalgamated Anthracite Collieries, Ltd. (1933), 26 B. W. C. C. 560.

3801j. —— —— ——.]—By para. 4 of Various Industries (Silicosis) Scheme, 1928, where a workman is certified as totally disabled from silicosis, & the disease is due to the employment in the processes whether under one or more employers, compensation shall be payable during such disablement as if the disease were a personal injury by accident arising out of & in the course of that employment. By para. 11 of the same Scheme the total disablement is to be treated as the happening of the accident. A collier working in a process to which this scheme applied, whose average weekly earnings were 56*s.* 8*d.* gave up work in Nov. 1929, owing to illness which ultimately proved to be silicosis. From June, 1930, to March, 1931, he was re-employed by the same employers as a whitewasher, work not within the scheme, at an average weekly wage of 45*s.* 4*d.* He was unemployed from Mar. 1931, to Nov. 1931, when he returned to work with them as a whitewasher. He ceased work owing to illness on Dec. 11, 1931. In May, 1932, a Medical Board certified him as totally disabled from silicosis, & fixed the date of disablement as Jan. 1, 1932. The workman claimed to be paid compensation based on his average weekly earnings as a collier, but the county ct. judge held that compensation previous to the certified date of disablement, viz. on the lower rate paid to a whitewasher. The workman appealed :—*Held :* the combined effect of paras. 4 & 11 of the Scheme was to provide that compensation should be based on the average weekly earnings earned in the process which gave rise to the disease, & the words "previous twelve months" in sect. 9 (2) must be construed accordingly. The workman must therefore be paid compensation based on the higher rate of a collier. —COLE *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1933), 26 B. W. C. C. 560, C. A.

3802. *Add. Annotation :*—**Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3805. *Add. Annotation :*—**Consd.** O'Neil *v.* Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

3807. *Add. Annotations :*—**Consd.** Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401. **Refd.** O'Neil *v.* Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

Citations :—[1927] A. C. 461; 96 L. J. K. B. 608; 137 L. T. 257; 71 Sol. Jo. 429; 20 B. W. C. C. 391.

Add Annotations :—**Consd.** Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401; Bridges *v.* New Rock Collieries Co. (1932), 101 L. J. K. B. 557. **Apld.** Kilbride *v.* William Harrison, Ltd. (1933), 26 B. W. C. C. 197. **Refd.** M'Dougall *v.* Summerlee Iron Co. (1927), 20 B. W. C. C. 419; Smith (R.) & Son *v.* Eagle Star & British Dominions Insurance Co. (1933), 150 L. T. 194.

3811. *Add. Annotation :*—**Refd.** McNicholas *v.* West Leigh Colliery Co. (1933), 26 B. W. C. C. 29.

PART XIV. SECT. 22, SUB-SECT. 2.

3811a i. *Silicosis — Construction of Various Industries (Silicosis) Scheme.*]—A workman was employed as a "hewer" up to Dec. 1931, in a private quarry, his work within the curtilage of the quarry being to dress, for use as building material, sandstone which had been won from the quarry. The quarrymaster was a member of the Sandstone Industry Compensation Fund, Ltd., & had paid, since 1929, levies in respect of his employees, including the workman in question. In Jan. 1933, the workman was certified as suffering from disablement due to a process specified in para. 2 of Various Industries (Silicosis) Scheme, 1931, & he obtained an award of compensation against a firm of builders, his last employers in these processes. In a question whether the quarrymaster, as a previous employer of the workman, was liable to make contribution to the builders under para. 8 of the Various Industries (Silicosis) Scheme :—*Held :* (1) "manipulation" in the sense of para. 2 of Sandstone Industry (Silicosis) Scheme, was not restricted to any particular process of preparing sandstone, but included fine as well as rough dressing; (2) the work on which the workman had been engaged at the quarry, being that of fine dressing, was a process included in the Sandstone Scheme; (3) as the provisions of Various Industries (Silicosis) Scheme, were, in these circumstances, excluded by the proviso to para. 2 of that Scheme, the quarrymaster was not liable as a contributor. Appeal allowed.—ALEXANDER MILNE & SON *v.* MACLEAN & SON (1935), 28 B. W. C. C. Suppt. 44.—**SCOT.**

sf. *Pulmonary fibrosis — Whether caused by silica dust—Onus of proof.*]—Sect. 7 (1) of New South Wales Workers' Compensation Act, 1926–29, provides for the payment of compensation by his employer to a workman who has received an injury, & by sect. 6 (1). "injury" means "personal injury arising out of & in the course of the employment & includes a disease so arising whether of sudden onset or of such a nature as to be contracted by gradual process other than a disease caused by silica dust." Workmen's Compensation (Silicosis) Act, 1920, as amended, provides for the payment of compensation by the employers of workmen in specified industries & processes involving exposure to silica dust who suffer death or total or partial disablement from diseases of the pulmonary or respiratory organs caused by exposure to silica dust. "Coal-mining" is not included in the industries or processes so specified.

Resp., who was employed by applts. as a miner in one of their coal-mines, became partially incapacitated for work owing to pulmonary fibrosis resulting from the inhalation of dust in the coal-mine. The Workers' Compensation Commission before whom his claim for compensation came, & who were not satisfied that the partial incapacity for work resulted from a disease caused by silica dust, awarded him compensation as for partial incapacity. On a case stated at the request of applts. :—*Held :* resp. was entitled to compensation. The intention of Workers' Compensation Act was, as appears from sect. 6 (1) to provide for compensation in every case of injury, including disease, arising out of & in the course of a workman's employment, & to give effect to the Act the words "other than a disease caused by silica dust." must be read as inserted not to limit the Act, but to prevent it being appealed to in particular circumstances where the relief would overlap that provided by a special & narrower

3811a. Silicosis—Construction of Various Industries (Silicosis) Scheme, 1928.]—By clause 2 (vii of Various Industries (Silicosis) Scheme, the scheme is made to apply to all workmen employed in the potteries in certain specified processes only. One of such specified processes is " any process in or incidental to the manufacture of china or earthenware, including sanitary earthenware, electrical earthenware, & ware tiles." A workman was employed to put spouts & handles on teapots made of Jet & Rockingham ware, & was certified as being totally disabled from silicosis. Evidence was given before the county ct. judge that Jet & Rockingham ware was a special branch of the pottery trade & did not come within the meaning of the trade term " earthenware "—*Held:* the words used in describing the processes specified in the scheme are to be interpreted in the technical sense in which they would be understood by those engaged in the trades concerned & not in the wide sense in which they might be understood by the general public.—DONCASTER *v.* SUDLOW (R.) & SONS (1929), 22 B. W. C. C. 564, C. A.

3811b. —— ——.]—A coal miner was employed for eleven years, during which time he worked in rock known as " clift." He was then certified as being totally disabled from silicosis & claimed compensation under Various Industries (Silicosis) Scheme, 1928, as amended by Silicosis Amendment Scheme, 1930. The 1928 scheme excluded from the definition of silica rock in clause 2 (i.) of the scheme " any rock containing less than 50 per cent. free silica." These words were deleted by the Amendment Scheme, 1930. At the hearing of the arbn. the employers called a geologist who gave evidence that " clift " did not contain 50 per cent. free silica & was not silica rock. The county ct. judge accepted this evidence, & found that the workman had not been employed in work in silica rock, & therefore had not worked in any process covered by the scheme. The workman appealed :—*Held:* there was no evidence that " clift " was silica rock. The question was one of fact for the county ct. judge.—DAVIES *v.* OAKDALE NAVIGATION COLLIERIES, LTD. (1932), 25 B. W. C. C. 374, C. A.

Annotation:—**Refd.** Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 2) (1934), 27 B. W. C. C. 313.

3811c. —— ——.]—A miner worked in his employer's collieries from 1910 to Apr. 26, 1929, when he had to cease work. In Dec. 1931, he was certified to be suffering from silicosis, & to have been disabled in Aug. 1931. His employer admitted that the disease was due to employment in the processes of drilling & blasting in silica rock, but alleged that his employment in such processes had ceased before Jan. 1, 1929. The Silicosis Scheme of 1928 only applied to workmen employed in such processes after Jan. 1, 1929. The county ct. judge, after seeing samples of the materials in which the workman had been working between Jan. 1, 1929, & Apr. 26, 1929, found as a fact that the workman had been engaged in drilling & blasting in silica rock after Jan. 1, 1929, & held that he was therefore entitled to the benefit of the Scheme. The employer appealed :—*Held:* there was evidence to support the finding & no misdirection. Whether the *quantum* of silica rock, in regard to which the workman was employed, is sufficient to bring him within the scheme, is a question of fact for the judge. Appeal dismissed.—PRICE *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1932), 25 B. W. C. C. 615, C. A.

Annotations:—**Refd.** Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (1933), 26 B. W. C. C. 573; Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 2) (1934), 27 B. W. C. C. 313.

3811d. —— ——.]—A miner was employed after Jan. 1, 1929, until June 12, 1929, when he became disabled for work by silicosis as a rider on the trams in which silica rock was conveyed. A great deal of dust was created while the trams were moving. He would often have to handle the silica rock when the trams overturned. The county ct. judge found that the workman was employed in the process of handling or moving silica rock in or incidental to the processes specified in the scheme, & made his award for the workman. The employer appealed :—*Held:* there was evidence to support the finding & no misdirection. Appeal dismissed.—WILLIAMS *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1932), 25 B. W. C. C. 634, C. A.

3811e. —— ——.]—BURGESS *v.* TREDEGAR IRON & COAL CO., LTD. (1932), 25 B. W. C. C. 377.

3811f. —— ——.]—By para. 2 (vii.) of Various Industries (Silicosis) Scheme, 1928, the scheme applies to all workmen employed on or after Jan. 1, 1929, in " any process in or incidental to the manufacture of china . . . up to & including the preparation for glazing." A workman was employed in the pottery trade as a glost oddman & wad-squeezer. He made wads of clay which were used to close the saggars in which the ware was placed, after having been dipped in the liquid glaze, for heating & hardening in the glost ovens. The workman was disabled by silicosis & applied for compensation.

scheme. Till such overlapping appears its operation is unaffected. To hold otherwise would have the result that where the medical evidence showed that the disease was due to dust but could not specify the kind of dust, the workman would be left without any compensation at all though undoubtedly suffering from a disease arising out of & in the course of his employment. Coal-mining not being an industry brought within the operation of the Act dealing with silicosis, if disease in a coal-miner was affirmatively proved to be due to silica dust the workman was left unprotected, for in such case he would not come within either Workers' Act or Workmen's Compensation (Silicosis) Act.—METROPOLITAN COAL CO., LTD. *v.* PYE, [1936] A. C. 343; [1936] 1 All E. R. 919; 105 L. J. P. C. 69; 154 L. T. 698; 80 Sol. Jo. 445.—**AUS.**

sh. *Dupuytren's Contraction.*]—A worker who had been employed in the hat-making industry for periods aggregating eighteen years, became incapacitated for work by Dupuytren's Contraction, a disease of gradual progress, & claimed compensation from his last employer in that industry, who denied liability. The Comrs. held that Dupuytren's Contraction is not in the same category as an industrial disease, for instance, lead poisoning, for the reason that the cause of lead poisoning may arise out of the employment, whereas the cause of Dupuytren's Contraction remains unknown; that the real question at issue was one of fact as to whether appct.'s employment in the felt hat industry was such as would aggravate the disease after its onset, accelerate its progress, & be a contributing cause to his incapacity for work. The Commission found that as the evidence did not establish any connection between appct.'s employment & his incapacity for work, his claim for compensation must be disallowed.—HAMILTON *v.* R. C. HENDERSON & CO. LTD., [1934] W. C. R. 200.—**AUS.**

county ct. judge found that the operation of glazing included the process of placing the ware in saggars & then placing the saggars in the glost ovens, but held that as the wads were actually made before this was done, the workman was employed in a process in or incidental to the manufacture of china up to & including the preparation for glazing. He therefore made his award for the workman. The employer appealed:—*Held:* on the facts found by the county ct. judge as to what processes constituted the operation of glazing, the making of the wads was a process which belonged to the operation of glazing itself & did not come within the words "any process . . . up to & including the preparation for glazing."—ELLIS *v.* [illegible]

3811g. —— **"Process involving exposure to silica dust"—Question of fact.**]—A miner was employed first as a ripper & later as a stall man in a coal mine from 1913 to 1930. As a stallman he was only occasionally employed in drilling & blasting. He ceased work in Nov. 1930; a medical board certified that he was suffering from silicosis accompanied by tuberculosis, & that total disablement commenced in Oct. 1931. The county ct. judge found as a fact that the workman had been employed since Jan. 1, 1929 (the date from which the Silicosis Scheme, 1928, applied), in the process of drilling & blasting within the meaning of the scheme, & that the stone in which he worked was silica rock within the meaning of the scheme as amended in 1930. He therefore awarded compensation. The employer appealed:—*Held:* there was evidence to support the findings & no misdirection. It is a question of fact for the judge whether the workman is sufficiently engaged in the operation under consideration to bring him within the scheme as being employed in a process specified therein.—KILBRIDE *v.* WILLIAM HARRISON, LTD. (1933), 26 B. W. C. C. 197, C. A.

3811h. —— —— ——.]—If a workman's employment is such that he is from time to time employed in a process specified in the Various Industries (Silicosis) Scheme, 1931, & by reason of that employment of which the process forms a part he contracts the disease he is entitled to compensation.

Both Morgan & Hutchings did work breaking down shale which, though not silica rock in itself, contained small lenticles of quartz which became broken in the course of work. The county ct. judge found that the men were not employed in any process referred to in the Scheme. This award was affirmed by the Ct. of Appeal. The workmen appealed to the House of Lords:—*Held:* as the lenticles themselves were silica rock & were broken in the course of work, the workmen were within process (v) of Clause 2 referring to the breaking of silica rock. Appeal allowed.—MORGAN *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD., HUTCHINGS *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1935), 28 B. W. C. C. 358, H. L.

Annotations:—**Apld.** Williams *v.* Oakdale Navigation Collieries, Ltd. (1937), 30 B. W. C. C. 158. **Refd.** Wragg *v.* Fox (Samuel) & Co., [1937] A. C. 442.

3811j. —— —— ——.]—For twenty-two years a miner was employed in blasting & drilling stone. In Sept. 1928, he was employed by fresh employers as a stone ripper breaking friable shale. On July 7, 1933, he was certified to be suffering from silicosis. On a claim by him for compensation under Workmen's Compensation Act, 1925, & the Various Industries (Silicosis) Scheme, 1931, the employers denied that the disease was due to the nature of his employment by them. The workman alleged that he was employed in breaking a dry admixture containing a dry deposit or dry residue of silica, & was therefore brought within the scheme. The county ct. judge, after hearing the evidence of expert analysts accepted the evidence of the employers' expert, who stated that the shale was not a dry admixture containing a dry deposit or dry residue of silica, & held that the workman was not employed in any process within the scheme. The workman appealed:—*Held:* the question was one of fact, & there was evidence to support the finding & no misdirection.—GLEDHALL *v.* DALTON MAIN COLLIERIES, LTD. (1934), 27 B. W. C. C. 181, C.

3811k. —— ——.]—Certain miners were certified by a medical board to be disabled by silicosis, but their employers refused to pay compensation on the ground that they had not been employed in any of the processes mentioned in Various Industries (Silicosis) Scheme, 1931. The contention of the employers was upheld by the county ct. judge who made his award in favour of the employers. The workmen appealed:—*Held:* the county ct. judge had not sufficiently considered whether the work in which the workmen were engaged might not come within those general "sweeping-up" clauses of the scheme which followed the clauses which specified more particularly the processes in which workmen must be engaged in order to obtain the benefit of the scheme & the cases must be remitted for him to do so.—MORGAN *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD., HUTCHINGS *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (No. 1) (1933), 26 B. W. C. C. 573, C. A.

Annotations:—**Consd.** Wragg *v.* Fox & Co., [1936] 1 K. B. 440. **Refd.** Gledhall *v.* Dalton Main Collieries, Ltd. (1934), 27 B. W. C. C. 181.

3811l. —— ——.]—The Various Industries (Silicosis) Scheme, 1931, specified in eight sub-paras. to para. 2 the processes with regard to which the Scheme should apply to all workmen employed in such processes.

The Various Industries (Silicosis) Amendment Scheme, 1934, directed that the Scheme of 1931 should be amended & take effect as if the processes specified in para. 2 of the said Scheme as the processes to employment in which the Scheme should apply, included: "Any operation underground in any coal mine":—*Held:* the amendment must take the form of an additional sub-para. to para. 2 of the Scheme of 1931 & could not be inserted after any particular sub-para. of para. 2; consequently the amendment made in 1934 was not subject to the proviso to sub-para. (iii.) of para. 2, under which the employer was freed from liability where he proved that the workman had not been exposed to the dust of silica rock.—WRAGG *v* FOX (SAMUEL) & CO., LTD., CHARLESWORTH

v. FOX (SAMUEL) & Co., LTD., [1937] A. C. 442; [1937] 2 All E. R. 157; 106 L. J. K. B. 273; 157 L. T. 74; 53 T. L. R. 503; 81 Sol. Jo. 375; 30 B. W. C. C. 51, H. L.

3811m. —— ——.]—A workman who had been employed in operating a power-driven machine used for drilling, cutting, ripping, or breaking stone in a coal mine, a process specified in the Various Industries (Silicosis) Scheme, 1928, as amended in 1930, was certified to be totally disabled by silicosis & claimed compensation. Under the provisions of the Scheme an employer could escape liability in respect of this process if he could prove that the workman had not, during the employment to which the disease was alleged to be due, been exposed to the dust of silica rock. Silica rock was stated to mean, *inter alia*, quartz. Evidence was given at the arbn. that there were particles of quartz in the stone in which the workman had been working. The county ct. judge found that the workman had been employed in a process within the Scheme & that the employers had failed to prove that the workman had not been exposed to the dust of silica rock & made his award for the workman. The employers appealed:—*Held:* there was evidence to support the findings of the county ct. judge & no misdirection on his part, although he had failed to find in terms that the silicosis was due to employment in the relevant process. Appeal dismissed.—WILLIAMS *v.* OAKDALE NAVIGATION COLLIERIES, LTD. (1937), 30 B. W. C. C. 158, C. A.

3811n. —— **Employment under different schemes —Right of election.**]—By para. 5 of Various Industries (Silicosis) Scheme, 1931, it is provided that if the workman had been employed in the processes specified in that scheme for a period amounting to not less than five years, the disease shall be deemed to be due to employment in the processes unless the employer proves the contrary. By para. 4 (*a*) of Sandstone Industry (Silicosis) Scheme, 1931, it is provided that no compensation shall be payable if the medical board certifies that the silicosis could not have been contracted in the industry owing to the shortness of the time during which the workman has been employed therein.

A stonemason was certified under Various Industries Scheme to be totally disabled by silicosis from June 27, 1932. From July, 1924, to Jan. 1931, he had been employed by G., & then for three years by S. From Apr. to June, 1931, he was employed by P. From July to Aug. 1931, he was again employed by G., & lastly, from Sept. 1931, to Mar. 1932, he was again employed by S. G. & P. were engaged in business to which Various Industries (Silicosis) Scheme applied, & S. was engaged in business to which Sandstone Industry (Silicosis) Scheme applied, but the work done by the workman for all the employers was of the same class & exposed him in all cases to silica dust. The county ct. judge dismissed a claim for compensation made against G. on the ground that the workman should have proceeded against the employers who last employed him working in silica dust. The workman appealed:—*Held:* the workman was entitled to elect to proceed under any scheme applicable provided he proceeded against the last employer who employed him in a process under that scheme. Therefore he was entitled to proceed against respts. who had employed him for 6½ years under Various Industries (Silicosis) Scheme, rather than against his last employer who had only employed him for short periods under Sandstone Industry (Silicosis) Scheme, & he was particularly justified in doing so in view of para. 5 of Various Industries Scheme, & para. 4 (*a*) of Sandstone Industry Scheme. —VALE *v.* GODWIN (THOMAS) & SONS (1933), 26 B. W. C. C. 90, C. A.

3811o. —— **Construction of Metal Grinding Industries (Silicosis) Scheme.**]—By para. 2 of the Metal Grinding Industries (Silicosis) Scheme, 1931, the Scheme applies to the processes of (i.) grinding metals, (ii.) work incidental to grinding metals, & (iii.) racing grindstones for the purpose of grinding metals, provided that the Scheme does not apply to processes (i.) & (ii.) in the case of machine file grinding where the grindstone is enclosed & the metal immersed in water.

A machine file grinder died after being certified by a medical board as being disabled by silicosis. His duty was to grind files by means of an enclosed power-driven grindstone. Each grindstone lasted about a week. Before a fresh grindstone could be used it had to be freely revolved by him to see whether it was perfectly true. During this process the surface was smoothed, if necessary, by means of hacker saws. During the subsequent operation of grinding files the grindstone would require to have fresh inequalities removed from time to time by the same hacker saws. The widow claimed compensation on behalf of herself & her infant child as dependants. At the arbn. evidence was called that the process of revolving the grindstone before work on the files commenced was termed "racing" by the men engaged in the work. The employers' manager said that any use of the hacker saws was "hacking." The county ct. judge found that the preliminary use of the hacker saws was both "hacking" & "racing," & held that the process in which the workman was engaged was not exempted from the scheme. He therefore made his award for the widow. The employers appealed:—*Held:* the county ct. judge having found as a fact on sufficient evidence that the preliminary use of the hacker saws was "racing" within the meaning of the scheme, it was a process to which the scheme applied & was not within the exemption stated in the proviso to para. 2.—ROBERTS *v.* ENGLISH STEEL CORPN., LTD. (1932), 25 B. W. C. C. 387, C. A.

3811p. —— **Time for making claim.**]—By sect. 14 of 1925 Act, claims for compensation must be made within six months from the occurrence of the accident giving rise to the claim, unless the workman is prevented from making a claim within that time by (*inter alia*) a reasonable cause. By the Various Industries (Silicosis) Scheme, 1928, the date certified as the date of total disablement is to be treated as being the date of the occurrence of the accident. A miner contracted silicosis in 1930 & was certified as being partially disabled by that disease in 1931. His condition became worse, & he was unable to

, but, acting on the advice of his doctor, [illegible] sustained from applying for a certificate of total disablement until Apr. 1935. In that month a medical board certified that he had disabled through [illegible]

gave notice to his employers of a [illegible] *Held:* the facts justified the county ct. judge in holding that there was reasonable cause for the workman's failure to give notice of his claim within the prescribed period.—GWILYM *v.* ABERBEEG COLLIERIES, LTD. (1936), 155 L. T. 598; 80 Sol. Jo. 873; 29 B. W. C. C. 273, C. A.

3811q. **Dermatitis.**]—A dock labourer had been [illegible] when he was employed by fresh employers. In Oct., Nov. & Dec. 1930, he was employed in discharging & handling Russian turpentine. On Dec. 24 a certifying surgeon certified that he was suffering from dermatitis, & that the disease commenced on Dec. 8, 1930. He was paid full compensation, which was terminated on Nov. 7, 1931. He applied for a continuance of compensation. The county ct. judge found that he had contracted the disease through the long continued exposure involved in handling oils during the forty years ending in 1929, & therefore held that under para. 2 of Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, he was entitled to compensation although he was disabled only from handling oils, & made an award for the workman for 10*s.* a week. The employers appealed:—*Held:* the interpretation of the words "long continued exposure" was a question of fact & degree for the county ct. judge, & he had in no way misdirected himself. Appeal dismissed.—HAGAN *v.* LONDON OIL STORAGE CO., LTD. (1932), 25 B. W. C. C. 278, C. A.

3811r. ——.]—A steel chipper had been employed for seventeen years without having suffered from any skin disease. On Aug. 18, 1933, he had to give up his work owing to skin trouble, & on Oct. 17, 1933, he was certified to be suffering from dermatitis produced by dust or liquids as from Aug. 27, 1933. In Aug. neither he nor his panel doctor connected his disease with his employment. He gave notice to his employers of the disease in Oct. 1933, but did not make a claim for compensation until Mar. 1934. In his evidence the panel doctor said he thought the skin trouble was due to the employment & added that he saw no other cause. The certifying surgeon was called by the employers & stated that the disease was not due to industrial infection but was a seborrhœic infection not due to occupation. The county ct. judge said that after carefully considering the evidence he was not satisfied that the dermatitis was caused by the employment, & he thought that the dermatitis was caused by some agency not connected with the employment. He accordingly made his award for the employers. The workman appealed:—*Held:* there was no misdirection on the part of the county ct. judge, & evidence to support his finding.—HOLFORD *v.* STEEL, PEECH & TOZER, LTD. (1934), 27 B. W. C. C. 260, C. A.

3811s. ——.]—In May, 1933, a workman work in dye works as mate to a dyer. In October, 1933, eruptions having appeared on his hands, he was certified by a certifying surgeon to be suffering from [illegible] ficate was never served on the employers. At about the same time he was examined by a dermatologist, who formed the opinion that the workman was suffering from seborrhœic eczema, an idiopathic type of dermatitis, & not from dermatitis due to dust or liquids. In Jan. 1934, the workman went back to work, but the eruptions reappeared, & in Feb. 1934, the certifying surgeon again [illegible] van boy. In Mar. 1935, slight touches of rash appeared on the neck & chin, & he was re-examined by the dermatologist, who was of opinion that "he was suffering again from seborrhœic eczema." The certifying surgeon refused to give him another certificate, [illegible] May, 1935, the workman got employment with other employers in a canteen. In Dec. 1935, a rash having reappeared on his arms & neck, the workman filed a request for arbn. On the hearing of the arbn. the certifying surgeon & another doctor who were called by the workman, stated that in their opinion the workman was at that time suffering from dermatitis produced by dust or liquids. The dermatologist who was called by the employers gave it as his opinion that the workman had suffered both in Oct. 1933, & in Mar. 1935, & was still suffering, from seborrhœic eczema & nothing else. His evidence was corroborated by another dermatologist. The county ct. judge found that the workman had fully recovered from the dermatitis produced by dust or liquids which had been certified in Feb. 1934, & that since Mar. 1935, he had only suffered from seborrhœic eczema & made his award for the employers. The workman appealed:—*Held:* there was evidence to support the findings, & no misdirection. Appeal dismissed.—STANFORD *v.* FLINN & SON, LTD. (1936), 29 B. W. C. C. 126, C. A.

3813. *Add. Annotation:*—**Consd.** Edwards *v.* Penrhiceiber Navigation Colliery Co. (1931), 24 B. W. C. C. 117.

3814. *Add. Citations:*—[1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 21 B. W. C. C. 226.

3815a. —— —— ——.]—A certificate of disablement granted to a workman under 1925 Act, s. 43, certified as the date of disablement a date more than six months before the date of the certificate. Consequently a claim by the workman for compensation founded upon the certificate was not made within the period prescribed by 1925 Act, s. 14 (1), namely, six months from the occurrence of the accident, the disablement being treated by sect. 43 as the happening of the accident. If the certificate had been granted immediately after the examination of the workman by the certifying surgeon the claim for compensation could have been made in time:—*Held:* on the facts, the

failure to make the claim within the prescribed period was due to the delay of the certifying surgeon &, so far as the workman was concerned, was occasioned by reasonable cause, within proviso (*b*) to sect. 14 (1), & the workman was entitled to compensation. —KITCHEN *v.* KOCH (C.) & CO., LTD., [1931] A. C. 753; 100 L. J. K. B. 459; 145 L. T. 618; 47 T. L. R. 558; 75 Sol. Jo. 571; 24 B. W. C. C. 294, H. L.

3815b. Omission of date of disablement.] — WILLIAMS *v.* NEW BRITISH RHONDDA COLLIERY CO., LTD., No. 3038b, *ante*.

3816. *Add. Annotations:—As to* (2) **Consd.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42. **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3816a. Certificate of death—Various Industries (Silicosis) Scheme, 1928—Whether presence of medical referee at post-mortem essential.]—By clause 14 (1) of Various Industries (Silicosis) Scheme, 1928, it is provided that where an application is made on behalf of dependants of a deceased workman to a medical referee for a certificate that death has been due to silicosis or silicosis & tuberculosis, the medical referee must, after a post-mortem examination, give a certificate in accordance with the facts & such certificate shall be conclusive. It is further provided by the same paragraph that the post-mortem examination shall, if possible, be made by or under the personal supervision of the medical referee. The last provision is directory & not imperative. Therefore, where, on the death of a workman, a coroner ordered a post-mortem examination, which the medical referee was not invited to attend, & subsequently, after an examination of portions of the lungs, the medical referee gave a certificate that death was due to silicosis & tuberculosis:—*Held:* (1) the provisions of clause 14 (1) of the Scheme were complied with & the certificate was conclusive; (2) *further*, the correct procedure to quash a certificate would be to obtain a rule *nisi* for a writ of *certiorari*.—HINDMARSH *v.* JOHNS (EDWARD) & CO., LTD. (1930), 23 B. W. C. C. 537, C. A.

3816b. Application for certificate—Notice to employer—Necessity for.]—A workman employed in the process of cotton-spinning by means of self-acting mules noticed a black pimple on his scrotum. His panel doctor who happened also to be the certifying surgeon for the district, suspected epitheliomatous cancer (being item 13 (*a*) in the Extension of Sched. III) & sent him to the infirmary where the diagnosis was confirmed. The workman obtained a certificate of disablement by such disease & notice thereof was given to the employer. The employer appealed to the medical referee. The workman then had the pimple removed & sent for microscopic examination, & the report of the examination was sent to the medical referee. As a result the medical referee reported that the workman was not suffering from epitheliomatous cancer but from a keratotic condition. By the Workmen's Compensation (Industrial Diseases) Order, S. R. & O., 1932, No. 314, this condition was placed within Sched. III as an industrial disease, but it was also provided in the Order that compensation should not be payable under the Act for that disease unless at least one week's notice of intention to apply for a certifying surgeon's certificate had been given to the employer. No such notice had been given, & on that ground the employer refused to pay compensation. On the workman's application for compensation the county ct. judge held that the notice was a condition precedent to claiming compensation & made his award for the employers. The workman appealed:—*Held:* under the special provisions of the Order, the requirement as to notice was a condition precedent to the payment of compensation & could not be excused. The workman must be deemed to know that his application to the certifying surgeon might result in his obtaining a certificate of disablement by this disease. Appeal dismissed. Leave to appeal to the House of Lords refused.—HASLAM *v.* SELBY MILL, LTD. (1935), 28 B. W. C. C. 82, C. A.

3818a. ——— ———.]—A french polisher had suffered intermittently from dermatitis since 1925, while working for different employers. The medical referee issued a certificate on Jan. 30, 1928, in which he certified that on Jan. 30, 1928, appct. was no longer disabled by dermatitis. On Mar. 10, 1928, appct. was examined by the certifying surgeon, who on that date certified that she was suffering from dermatitis & had been disabled thereby since Sept. 29, 1927. On a claim by the workman for compensation based on the certifying surgeon's certificate of Mar. 10, 1928, the county ct. judge held the two certificates, being inconsistent, the certificate of the medical referee must prevail to the effect that the workman was not disabled after Jan. 30, 1928:—*Held:* there was no vital inconsistency between the two certificates, bearing in mind the intermittent character of dermatitis, & the certificate of Mar. 10 was consistent with dermatitis having broken out again.—MACY *v.* CORK MANUFACTURING CO., LTD. (1928), 21 B. W. C. C. 306, C. A.

Annotation:—**Consd.** Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223.

3819a. Certificate incomplete—Death of certifying surgeon—Subsequent certificate by successor—Validity.]—On July 12, 1926, eighteen months after the workman had left his employment, Dr. S., the certifying surgeon of the district, certified that the workman was suffering from lead poisoning. The certificate did not comply with the regulations as no date of disablement was filled in, nor were the words "I certify that the disablement commenced on the day of " struck out. Before the workman could see Dr. S. to have the omission put right the doctor died. After Dr. F. had been appointed in his place the workman, on Aug. 12, 1926, obtained a certificate from him in which the date of disablement was filled in as Nov. 23, 1924. In answer to the workmen's request for arbn., based on Dr. F.'s certificate, the employers denied liability to pay compensation on the ground that, as

Dr. S.'s certificate did not specify the date of disablement, such date was deemed to be the date of the certificate, & was final & conclusive, & Dr. F.'s certificate was accordingly invalid, & as the workman had not been in their employment for more than twelve months prior to that date of disablement, he could not recover compensation. The county ct. judge upheld that contention:—*Held:* the first certificate was incomplete in that it had not dealt with the date of disablement in either manner provided by the regulations & was invalid, & the workman, not being able by reason of the death of Dr. S. to have the matter put in order, was entitled to rely on the second certificate.—POWELL *v.* CAULDON POTTERIES, LTD. (1926), 96 L. J. K. B. 245; 136 L. T. 532; 20 B. W. C. C. 16, C. A.

Annotation:—**Folld.** Hands *v.* Great Western Colliery Co. (1930), 23 B. W. C. C. 477.

3819b. Certificate ineffective—Issue of second certificate.]—A miner was certified by the certifying surgeon as being disabled from Mar. 31, 1924, by miner's nystagmus. From Oct. 1924, to Mar. 1929, he worked on the surface as a partially incapacitated workman. On Mar. 8, 1929, he was served under 1925 Act, s. 12 (3) with a doctor's certificate alleging complete recovery, & the question was ultimately referred to a medical referee, who, in Apr. 1929, certified that the workman was not then suffering from miner's nystagmus & was fit to resume work underground. On Dec. 12, 1929, the workman obtained from the same certifying surgeon a certificate that he was disabled by miner's nystagmus, but the certificate did not certify a date from which disablement commenced, nor were the words "& I certify that the disablement commenced on the day of " struck out in accordance with the instructions contained in Form 3 in the schedule to the regulations as to certifying surgeons, which states "[if the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given]." On obtaining this certificate the workman made a claim for compensation on his employers, who appealed to a medical referee. The medical referee on Jan. 4, 1930, dismissed the employer's appeal. The certifying surgeon then issued a second certificate which he ante-dated Dec. 12, 1929, & in which he certified that the workman's disablement commenced on Mar. 31, 1924. In Mar. 1930, the workman filed an application for arbn. based on an allegation of recurrence of the industrial disease which originally manifested itself in 1924. The county ct. judge made an award in favour of the employers on the ground that the date of disablement must be taken to be Dec. 12, 1929, & that the certifying surgeon had no power to displace the certificate given on Dec. 12, 1929, by the certificate given in Jan. The workman appealed:—*Held:* the certificate of Dec. 12, 1929, was ineffective, as no date of disablement could be inferred from it, & the certifying surgeon was entitled to issue an effective certificate giving the date of disablement as Mar. 31, 1924. Case remitted for compensation to be awarded.—HANDS *v.* GREAT WESTERN COLLIERY CO., LTD. (1930), 23 B. W. C. C. 477, C. A.

3820. *Add. Annotations:*—**Apld.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42. **Consd.** Davies *v.* Baldwins (1926), 136 L. T. 462. **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294. **Consd.** Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361; Stanford *v.* Flinn & Son, Ltd. (1936), 29 B. W. C. C. 126.

3821a. —— ——.]—A certificate was given by the certifying surgeon that a workman was suffering from lead poisoning. A leading symptom of the disease was stated on the form to be dupuytrens contraction. Full compensation was paid until an application by the employers to review the weekly payments. The workman was still incapacitated by dupuytrens contraction. The county ct. judge refused to treat the certificate as conclusive as to dupuytrens contraction being a symptom of lead poisoning, &, on contradictory medical evidence given at the hearing, & also on knowledge he had acquired some years before while sitting on a commission to consider industrial diseases, including dupuytrens contraction, held the symptoms, though still the same as those set out in the certificate, were not due to the certified disease, & reduced the compensation to 1*d.* a week. The case involved a point of law, &, early in the hearing, counsel called attention to that fact, but the judge omitted to take any notes of the proceedings:—*Held:* (1) the certificate that the symptoms were due to the certified disease was conclusive, & evidence to the contrary was inadmissible, & there was no evidence of any new factor or new disease to support an award in reduction of compensation. (2) Observations on the judge's duty to take a note.—CAULDON POTTERIES, LTD. *v.* JOHNSON (1926), 20 B. W. C. C. 42, C. A.

Annotations:—*As to* (1) **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294. **Consd.** Dunn *v.* Dorman, Long & Co. (1933), 26 B. W. C. C. 593.

3821b. As to cause of death or incapacity.]—A workman, employed as a painter, was from July to Sept. 1927, laid up with an ulcer on his ankle & with heart trouble. From Oct. 19 onwards he became unfit for further work with loss of power in his left arm & leg, he became mentally incapable, his memory failed, & his heart got worse On Nov. 15 he was admitted to hospital, where the medical superintendent found that he had long-standing disease of the heart caused by kidney trouble. On Nov. 23, the certifying surgeon visited the hospital, & on Nov. 28 certified that the workman was

PART XIV. SECT. 22, SUB-SECT. 3.—C.

s1. *As to date of commencement of disease.*]—A miner, who had previously suffered from miner's nystagmus, obtained work from new employers. Shortly after entering this employment he obtained from a certifying surgeon a certificate that he was disabled owing to miner's nystagmus, & that disablement had commenced on a date since he entered his new employment. An appeal by the employers against the certificate was dismissed by the medical referee. In an arbn. the arbitrator, after a proof, held that the disablement had commenced on a date earlier than that certified by the certifying surgeon, & more than twelve months before the workman entered his new employment & refused compensation:—*Held:* the date of disablement stated in the certificate of the certifying surgeon was conclusive.—TENNENT *v.* MOORE (A.-G.) & Co., LTD., [1929] S. C. (Ct. of Sess.) 7.—**SCOT.**

suffering from lead poisoning or its sequelæ, & had been disabled as from Oct. 19. The medical superintendent was ignorant both of the visit & of the certificate of the certifying surgeon &, when the workman died on Dec. 23, certified that the cause of death was cerebral hæmorrhage caused by valvular disease of the heart. The county ct. judge held he was not bound to find that death was due to the disease certified by the certifying surgeon, & refused to make an award in favour of the dependants, on the ground that they had not discharged the *onus* of proving that lead poisoning either caused, contributed to, or accelerated death :—*Held :* there was evidence to support the finding, & no misdirection.—YOUNG *v.* KEEBLE, LTD. (1928), 21 B. W. C. C. 294, C. A.

Annotations :—**Refd.** Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361 ; Britton *v.* Leverson's Wallsend Collieries (1934), 27 B. W. C. C. 45.

3821c. ——.]—An odd job man in spinning mills was certified as suffering from epitheliomatous ulceration of the skin due to mineral oil. He died five months later. The county ct. judge held the certificate of the certifying surgeon was conclusive & debarred him from hearing any evidence on behalf of the employers, which tended to show that he had not contracted the disease in their employment & that death did not result from the disease :—*Held :* the judge was not entitled to refuse to hear the evidence, & the case must be remitted for rehearing.—NEEDHAM *v.* ACE MILL, LTD. (1928), 21 B. W. C. C. 189, C. A.

Annotation :—**Refd.** Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361.

3821d. As to date of disablement.] — The certificate which a workman must obtain from the certifying surgeon under 1925 Act, s. 43, as a condition precedent to a claim for compensation on the ground of disablement by an industrial disease is conclusive as to the date of disablement, & it is therefore not competent for the arbitrator to determine that the disablement commenced at an earlier date.—WILSONS & CLYDE COAL CO., LTD. *v.* FLYNN, [1930] A. C. 516 ; 99 L. J. P. C. 139 ; 143 L. T. 362 ; 46 T. L. R. 441 ; 74 Sol. Jo. 437 ; 23 B. W. C. C. 159, H. L.

Annotations :—**Consd.** Penrikyber Navigation Colliery Co. *v.* Edwards, [1933] A. C. 28 ; Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361 ; Richards *v.* Goskar, [1937] A. C. 304.

3821e. ——.]—Pltfs., who were a colliery co., had in their employment early in 1929 two piecework miners who, for reasons not here material, were not actually working & received no wages, though their names appeared in the pay sheets, for a period including Mar. 8 to Mar. 19. On Mar. 8 deft. insurance co. issued to pltfs. a cover note which insured pltfs. from Mar. 8 to Mar. 19 against claims for non-fatal accidents. During the currency of the cover note the certifying surgeon certified that the two workmen were suffering from miners' nystagmus & fixed the date of the beginning of the diablement as Mar. 11 in one case & Mar. 12 in the other case. The county ct. judge awarded both workmen compensation, but defts. refused to indemnify pltfs. on the grounds that the workmen suffered no injury between Mar. 8 & Mar. 19 & were not engaged in work for pltfs. between those dates. In an action for an indemnity :—*Held :* the policy, though not actually issued, was intended to cover pltfs.' liability for the results of industrial disease, & as an "accident," namely, disablement by industrial disease, had happened within the period of cover, & as the Act created the statutory fiction that a workman, at the date of the certified disablement, was employed by the last relevant employer before that date, defts. were liable to indemnify pltfs.—ELLERBECK COLLIERIES, LTD. *v.* CORNHILL INSURANCE CO., LTD., [1932] 1 K. B. 401 ; 101 L. J. K. B. 117 ; 146 L. T. 153 ; 48 T. L. R. 78 ; 24 B. W. C. C. 376, C. A.

Annotation :—**Consd.** Bridges *v.* New Rock Collieries Co. (1932), 101 L. J. K. B. 557.

3821f. —— **Failure to give notice of disablement.**] —A workman was employed by resp. as a labourer at breaking up concrete floors & relaying them. After varying periods of employment he ultimately stopped work on July 22, 1929, & on July 30 obtained a certificate from the certifying surgeon that he was disabled from dermatitis contracted during his employment by resp., & fixing the date of disablement as Mar. 14, 1929. Resp. paid the workman compensation till Nov. 19, 1929, when resp.'s doctor reported that the workman had practically recovered & was fit for any work except on cement. Resp. then employed the workman at other work till Dec. 24, 1929, when he was dismissed for want of work. After a period of unemployment the workman obtained work in Apr. 1930, with new employers in unloading lorries containing old iron, rags & bones. By May 2 the dermatitis had become so bad that he had to cease work. On Aug. 28, 1930, he obtained a second certificate from the certifying surgeon that he was suffering from dermatitis, but fixing the date of disablement at the date of the original disablement, Mar. 14, 1929. On this occasion no notice of disablement was given to resp., & he remained unaware of the certificate till the workman commenced the present proceedings against him for compensation on Sept. 19, 1930. The county ct. judge declined in the circumstances to treat the second certificate as conclusive of the date of disablement in accordance with 1925 Act, s. 43 (2), & on the evidence that the workman had recovered from the disablement of Mar. 14, 1929, by Nov. of that year, dismissed the application. On appeal : —*Held :* (1) as no notice of disablement had been given after the second certificate as required by 1925 Act, s. 14 & r. 41, subr. 2, of Workmen's Compensation Rules, 1926, so that resp. was never given the opportunity of appealing to the medical referee as provided by reg. 8 of the Regulations as to Certifying Surgeons, the certificate was not conclusive of the date of disablement ; (2) as there was evidence to support the county ct. judge's finding that the workman had recovered from the old disablement, the appeal must be dismissed.—MASON *v.* FOSTER, [1931] 2 K. B. 172 ; 100 L. J. K. B. 395 ; 145 L. T. 88 ; 24 B. W. C. C. 88, C. A.

Annotation :—*As to* (1) **Refd.** Britton *v.* Leverson's Wallsend Collieries (1934), 27 B. W. C. C. 45.

3821g. ——.]—A glass-blower had been employed by S. for thirty years & had become a highly skilled worker. His employment terminated

in Apr. 1931, & he was out of work. On Aug. 16, 1932, he was taken on as a glass-blower on trial by W. & C. with a view to being permanently employed if his work should prove satisfactory. The proportion of his spoiled work was so high that he was dismissed on Aug. 17, 1932. In Oct. 1932, he obtained a certificate from a certifying surgeon which stated that he had been disabled by "cataract in glass-workers" since Aug. 12, 1932, & gave the name of his last employer as S. A claim made by him against S. failed for the reason that more than twelve months had elapsed between the end of his employment with S. & the date of his disablement. He then obtained a fresh certificate in Jan. 1933, in which the certifying surgeon altered the date of disablement to Aug. 17, 1932, & the name of his last employer to W. & C. The workman now made a claim against W. & C. for compensation for partial incapacity. The county ct. judge held that there was no loss of earning capacity because he was already suffering from cataract when he entered into employment with W. & C., & the high proportion of rejected work showed him to have become reduced in skill to the level of a glass-blower's labourer. He therefore only awarded him a declaration of liability. The workman appealed:—*Held:* the county ct. judge was wrong in admitting evidence to show that the man was disabled from the disease before the date of disablement which appeared in the second certificate which was conclusive on this point. The matter must be remitted to estimate the compensation to which the man was entitled on this basis.—KIRKHAM *v.* WEBB & CORBETT, LTD. (1933), 26 B. W. C. C. 425, C. A.

-.]—From June, 1935, applt. was working for H. K. & F., Ltd. In Mar. 1936, he developed a rash, but continued in that employment at full wages until May 2, when he began to work for the resp. He worked for resp. until May 9, when he felt too ill to continue. On June 4 he obtained a certificate from the certifying surgeon who certified that he was suffering from dermatitis & gave May 9 as the date of the beginning of the disablement. Resp. appealed to the medical referee who decided that applt. was, when examined by the certifying surgeon, suffering from dermatitis, but fixed Apr. 6, 1936, as the date on which the disease began. At that date applt. was, as stated, working for H. K. & F., Ltd., & receiving full wages. Applt. sought to recover compensation from resp.:—*Held:* the medical referee's certificate was final & conclusive as to the date of the beginning of the disease & applt. was not entitled to endeavour to displace that certificate by showing that on a certified matter it was not in accordance with the facts.—SAVAGE *v.* NIGHTINGALE, [1937] 3 All E. R. 30; 30 B. W. C. C. 299, C. A.

3821j. As to extent of disability.]—A miner was certified to be suffering from miner's nystagmus & for a short time received full compensation. On a reduction being made in the weekly payment the workman commenced proceedings claiming restoration of full compensation. The employer then applied for a reference to the medical referee who reported that the workman had partially recovered & was fit for surface work. The hearing of the claim had meanwhile been postponed, but when it came on for hearing medical evidence was given on behalf of the workman to the effect that the workman was totally disabled by the disease. Objection was taken by the employer to this evidence on the ground that the medical referee's certificate was conclusive. The county ct. judge held that miner's nystagmus being a nervous disease & variable in its symptoms, he was entitled to find that there had been a change for the worse since the medical referee had made his report, & he accordingly made his award for the workman on the basis of total incapacity. The employer appealed:—*Held:* there was evidence to support the finding of fact & no misdirection. Appeal dismissed.—ROBERTS *v.* DENABY & CADEBY MAIN COLLIERIES, LTD. (1935), 28 B. W. C. C. 112, C. A.

3822a. Where possibility of recurrence.]—PENRIKYBER NAVIGATION COLLIERY CO., LTD. *v.* EDWARDS, No. 3832b, *post.*

3822b. Where disease gradual.]—In the case of an industrial disease which is of such a nature as to be contracted by a gradual process, a certifying surgeon's certificate is only conclusive as to the fact that at the certified date of disablement the workman was disabled by the disease as specified therein, & a former employer cannot be held liable to contribute towards the compensation payable by the later employer until it is at least proved by the later employer that the disease was due to the nature of the employment under the former employer.—LEWIS & TOWERS, LTD. *v.* SEMBLIZ (1934), 27 B. W. C. C. 125, C. A.

3822c. Various Industries (Silicosis) Scheme, 1931—Examination & certification by Medical Board—When certificate conclusive—Re-examination not made "in pursuance of any Compensation Scheme."]—A pottery worker to whom Various Industries (Silicosis) Scheme, 1928, applied ceased work on Sept. 25, 1930. On Sept. 30 the certifying surgeon certified that he was totally disabled from silicosis & that the disablement commenced on Sept. 25. An appeal by the employer to the medical referee having been dismissed, compensation on the basis of total incapacity was paid to the workman. On June 1, 1931, there came into force Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, which instituted a medical board to deal with Silicosis, & Various Industries (Silicosis) Scheme, 1931. By the preamble to Various Industries (Silicosis) Scheme, 1931, the 1928 Scheme was made to continue to apply in the case of workmen who were within that scheme with the exception that the provisions of the new scheme as to the examination & certification by the medical board were substituted for the provisions of the former scheme as to the examination & certification by the certifying surgeon & medical referee. This preamble further stated that the medical board shall have the same powers & duties in cases under the old scheme as under the new scheme. By para. 12 of Various Industries (Silicosis) Scheme, 1928, & para. 11 of Various Indus. tries (Silicosis) Scheme, 1931, the provisions

of the 1925 Act relating to submission to medical examination continued to apply to workmen within the respective schemes. By a proviso to para. 11 of the 1931 Scheme any reference to be made to a medical referee under the provisions of the 1925 Act was to be made to the medical board. By para. 9 of Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, where, " in pursuance of any compensation scheme " an employer applied to a medical board for re-examination of a workman under that scheme or any compensation scheme, the board should re-examine & give a fresh certificate in the appropriate form. On Sept. 9, 1931, the employer applied to the medical board for re-examination of the workman. The workman having submitted under protest to such re-examination, the medical board, on Oct. 21, certified that he was no longer totally incapacitated. The employer thereupon refused to pay further compensation, & on Oct. 26, 1931, the workman filed a request for arbitration claiming a continuance of the weekly payments. The county ct. judge held that the certificate of the medical board was valid & conclusive against the workman & that therefore he had no jurisdiction to hear the case. The workman appealed :— *Held :* (1) the application to the medical board for re-examination had not been made " in pursuance of any compensation scheme " as there was no scheme applicable which gave such power. The certificate of the medical board was therefore not given in accordance with the provisions of Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, & was not conclusive evidence within para. 5 of such scheme ; (2) the substitution by Various Industries (Silicosis) Scheme, 1931, of a medical board for certifying surgeon & medical referee, as stated in the preamble, related only to the functions performed in conjunction by the certifying surgeon & medical referee in originally bringing a workman within the 1928 Scheme. Appeal allowed. Case remitted to hear arbitration on all points.—WHITE *v.* WINTERTON POTTERY (LONGTON), LTD., [1932] 2 K. B. 265 ; 101 L. J. K. B. 546 ; 147 L. T. 177 ; 25 B. W. C. C. 129, C. A.

Annotation :—As to (1) **Consd.** Garnett *v.* Enoch Rhodes & Son (1935), 28 B. W. C. C. 345.

3822d. —— —— When applicable.]—WHITE *v.* WINTERTON POTTERY (LONGTON), LTD., No. 3822c, *ante*.

3822e. Second certificate of disablement—Whether conclusive against former employer.]—A hewer was certified in Nov. 1925, as totally incapacitated by miner's nystagmus & received compensation on that basis until June, 1928, when he was given work on the surface & was treated as partially incapacitated. In May, 1932, the employers alleged that he had completely recovered, & in June, 1932, the medical referee certified : " I find the man not suffering from nystagmus & fit for work at the face as a hewer." In Sept. 1932, the workman having signed a declaration that he had not previously suffered from nystagmus, obtained work in another colliery but was discharged sick after eleven days. In Nov. 1932, he was certified by a certifying surgeon as suffering from nystagmus, the —— of disablement being given as Oct. 25, 1932. No notice of this certificate was given to the first employer. The workman could not succeed in a claim against the second employer by reason of sect. 43 (1) (*b*), nor could he claim against the first employer under the certificate of Nov. 1932, because he had not been employed by them within twelve months from the date of disablement stated in such certificate. He therefore brought a claim against his first employers on the basis of the certificate given in 1925. The county ct. judge held that he was bound by the certificate given in Nov. 1932, to find in favour of the workman. The employers appealed :— *Held :* the certificate obtained by the workman in Nov. 1932, not having been served on them, was not conclusive against the first employers in proceedings based on the certificate of Nov. 1925. The matter must be referred to the medical referee for information whether in June, 1932, the workman was still susceptible to nystagmus &, if so, whether such susceptibility was due to the first disablement or was constitutional. If there were susceptibility due to the first disablement, then the question whether the second disablement resulted therefrom was a matter of evidence.—BRITTON *v.* LEVERSON'S WALLSEND COLLIERIES, LTD. (1934), 27 B. W. C. C. 45, C. A.

3822f. ——.]—A hewer was certified as disabled by miner's nystagmus in 1925. In 1926 he had recovered & was able to resume work underground. In 1930 he was again certified as being disabled by nystagmus & was paid compensation until 1932, when his employers served a notice & certificate in accordance with sect. 12. A counter-certificate having been served the matter was referred to the medical referee, who gave the following certificate : " He has recovered from this attack of coal-miner's nystagmus & is able to return to his old work of a hewer. There will, however, be an increased susceptibility to the disease as a result of this attack." The workman then filed an application for arbn. After hearing certain evidence in the arbn. the county ct. judge wrote to the medical referee as follows : " In this case you certify that the workman was liable to an increased susceptibility to a fresh attack, see footnote (*b*) [to Form C. in the Sched. to Rules dated Nov. 9, 1932]. Is the judge entitled to consider that you do not think there was a reasonable probability of the man again becoming incapacitated through the effects of the accident, or through a recrudescence of the attack of the disease (footnote (*a*)) ? " The medical referee replied as follows : " I do not think there was a reasonable probability of the man again becoming incapacitated through the effects of the accident, or through a recrudescence of the attack of miner's nystagmus." Having received this reply the county ct. judge held that the certificate of the medical referee was one of complete recovery & made his award for the employers. The workman appealed :— *Held :* the certificate of the medical referee was unambiguous & showed that the workman had not completely recovered from the attack of the disease. It was not therefore necessary to consider the effect of the reply given to the county ct. judge's inquiry.—

MONAGHAN *v.* ELSWICK COAL CO. (1933), 26 B. W. C. C. 432, C. A.

Notations:—**Consd.** United National Collieries, Ltd., Treorchy *v.* Jones (1934), 27 B. W. C. C. 94; Lloyd *v.* Conduit Collieries, Ltd. (1937), 30 B. W. C. C. 293.

22g. ——.]—In review proceedings brought by the employers to terminate compensation on the grounds of alleged recovery from miner's nystagmus a medical referee reported to the county ct. judge as follows: "I find that [the workman] has now recovered from miner's nystagmus, but as a result there is increased susceptibility to a recrudescence of an attack of the disease & therefore it is not advisable for him to work underground, as if he did work below he would probably be only able to keep working for a short time, & would then have to give up again." On receipt of this report, the county ct. judge asked further questions of the medical referee, who replied as follows: "[The previous answer] means that this man has recovered from miner's nystagmus (*i.e.* the disease is not now present). The original susceptibility of the workman to nystagmus is still present, but owing to the workman having actually had an attack of nystagmus, & to the original susceptibility, if the man is put underground he is more likely to develop another attack more easily & more quickly; there is no new susceptibility, it has always been there. I consider any future attack of nystagmus a fresh attack. There is no disability caused by the original attack still existing—it is only a question of the inadvisability of his going underground again because of the danger of another attack." On receipt of this further answer the county ct. judge terminated the weekly payments on the ground that the case was covered by *Edwards* v. *Penrhiceiber Navigation Colliery Co.* The workman appealed:—*Held:* the two answers of the medical referee must be read together. The second must not be taken to contradict the first, & on a proper interpretation of these answers there continued an increased susceptibility to nystagmus over & above any idiopathic susceptibility & therefore there was no evidence to support the application for review.—UNITED NATIONAL COLLIERIES, LTD., TREORCHY *v.* JONES (1934), 27 B. W. C. C. 94, C. A.

3822h. —— **Evidence of change of condition—Admissibility.**]—A stone-mason was examined by the medical board set up under Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, on Jan. 31, 1935, & on Mar. 2 1935, they issued a certificate under para. 4 (3) of the Various Industries (Silicosis) Scheme 1931, that he was, though not totally disabled, suffering from silicosis to such a degree as to make it dangerous for him to continue work in the process in which he was employed & that he was suspended from Jan. 11, 1935. On Apr. 12, 1935, the workman filed a request for arbn., claiming that he was totally incapacitated. At the arbn. on May 10, 1935 the workman tendered evidence to show that he was totally incapacitated, but the county ct. judge held that as the certificate of the medical board was conclusive he was bound to refuse to hear evidence showing a change in the workman's condition, & made an award for partial incapacity only. The workman appealed:—*Held:* (1) the certificate of the medical board was conclusive as to the matters certified at the date when certified. No evidence was therefore admissible in regard to this, but if the judge required more information as to the effect & contents of the certificate, it was his duty to communicate with the medical board; (2) the county ct. judge was wrong in refusing to receive evidence of a change in the workman's physical condition since the date of certification; (3) in view of the decision of *White* v. *Winterton Pottery (Longton), Ltd.*, No. 3822c, there was no other means of showing that the condition of a workman certified by a medical board to be disabled by silicosis had improved or worsened than by calling such evidence. Appeal allowed. New trial ordered.—GARNETT *v.* ENOCH RHODES & (1935), 28 B. W. C. C. 345, C. A.

3824. *Add. Annotation*:—**Refd.** Mason *v.* Foster, [1931] 2 K. B. 172.

3825. *Add. Annotations*:—**Consd.** Rees *v.* Imperial Navigation Coal Co. (1926), 20 B. W. C. C. 287; Wemyss Coal Co. *v.* Haig (1933), 49 T. L. R. 547. **Refd.** Powell *v.* Cauldon Potteries (1926), 96 L. J. K. B. 245; Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223.

3828. *Add. Annotations*:—**Consd.** Lowe *v.* Wilsons & Clyde Coal Co. (1929), 23 B. W. C. C. 558; Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401.

3828a. —— ——.]—Where under sect. 43 (1) of 1925 Act, the certifying surgeon certifies that a workman is suffering from a scheduled industrial disease & is thereby disabled from earning full wages at the work at which he was employed, the medical referee has under the sect. power to alter the date specified by the certifying surgeon as the date on which the disablement commenced. The power to review conferred upon the medical referee is not confined to the questions whether the certifying surgeon should or whether he should not give a certificate of disablement under sub-sect. 1 (i.), but covers the whole range of the action of the certifying surgeon in giving or refusing to give a certificate under that sub-sect.—WEMYSS COAL CO., LTD. *v.* HAIG, [1933] A. C. 643; 102 L. J. P. C. 153; 149 L. T. 458; 49 T. L. R. 547; 77 Sol. Jo. 484; 26 B. W. C. C. 444, H. L.

3828b. —— —— **Subsequent alteration without notice to employer.**]—A cement worker contracted dermatitis in Nov. 1931. He was discharged from hospital as fit for work in Dec. 1931, but the disease continued to recur. He went in June, 1932, to a certifying surgeon, who refused to give him a certificate. The workman appealed to the medical referee, who gave him a certificate dated July 7, 1932, & fixed the date of disablement as Nov. 16, 1931. No claim was made by the workman

on his employer until July 25, 1932, more than six months after the certified date of disablement. The workman then approached the medical referee, who on Sept. 7, 1932, altered the date of disablement to Jan. 4, 1932, without giving notice of his intentions to the employer. Proceedings were begun in Nov. 1932, on the basis of the altered certificate. The county ct. judge held that he must treat the altered certificate as revoking the one dated July 7, 1932, & as being an entirely new certificate dated Sept. 7, 1932. He also held that as the workman had made his claim under the certificate dated July 7, & had never made a claim under the certificate dated Sept. 7, the workman must fail. He accordingly made his award for the employers. The workman appealed:—*Held:* the date of disablement being a material part of the certificate, the medical referee could not alter it without due notice to the employers. The purported alteration was a nullity & the date of disablement remained Nov. 16, 1931. Appeal allowed. Order for new trial to allow the workman opportunity to show reasonable cause for delay in making a claim more than six months after Nov. 16, 1931. *The question as to whether a medical referee has power, even on notice to both parties, to alter his certificate except to correct a slip or clerical error was left undecided.*—LAURIE *v.* UNIT CONSTRUCTION CO., LTD. (1933), 26 B. W. C. C. 328, C. A.

Annotations:—**Folld.** Powell Dyffryn Steam Coal Co. *v.* Griffiths (1934), 27 B. W. C. C. 408. **Reld.** Davies *v.* Howe Bridge Spinning Co. (1934), 27 B. W. C. C. 207; Weeks *v.* Powell Dyffryn Steam Coal Co. (1935), 28 B. W. C. C. 396.

3828c. —— —— ——.]—A coal miner who had been engaged in a process coming within Various Industries (Silicosis) Scheme, 1931, ceased work on Apr. 2, 1930. On Nov. 17, 1932, as a result of an X-ray examination at hospital, he was given a form of certificate to the effect that he was suffering from silicosis. On Apr. 10, 1933, he was examined by the medical board appointed in pursuance of the Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, & on Apr. 19, 1933, the board certified him as totally disabled, but gave in the certificate the date of commencement of the total disablement as Apr. 10, 1933. Compensation having been claimed by the workman as from Apr. 10, 1933, the employer disputed the claim on the ground that the workman was, in virtue of proviso (*b*) to para. 4 of the Various Industries (Silicosis) Scheme, 1931, disentitled to compensation on the ground that he had not been employed in any process under the Scheme within the three years previous to the certified date of disablement. As a result of representations made on behalf of the workman the medical board reconsidered the matter & altered the date of commencement of total disablement in the certificate from Apr. 10, 1933, to Nov. 16, 1932, the date of the X-ray examination in hospital. On this altered certificate the county ct. judge awarded compensation to the workman. The employer appealed:—*Held:* the medical board having once heard the matter was *functus officio*. The date was vital to both parties & could not in the circumstances be altered under the "slip rule" as being a mere clerical mistake or error due to an accidental slip or omission.—POWELL DYFFRYN STEAM COAL CO. *v.* GRIFFITHS (1934), 27 B. W. C. C. 408, C. A.

Annotation:—**Reld.** Weeks *v.* Co. (1935), 28 B. W. C. C. 39

3828d. —— —— **Failure to fix when appeal dismissed—Subsequent decision fixing date.**]—On Feb. 6, 1932, a miner was certified by a certifying surgeon to be suffering from miner's nystagmus & thereby disabled from earning full wages at the work at which he was employed & that his disablement therefrom commenced on Feb. 6, 1932. Compensation was accordingly paid by his employers. On Oct. 16, 1933, a medical referee certified that he was not then suffering from miner's nystagmus & was fit to resume work underground, but that his condition was such that if he worked underground there was reasonable probability of his becoming again incapacitated by reason of a recrudescence of the attack of the disease. He did not return to work with his old employers, but in Jan. 1934, he obtained work with fresh employers after making a declaration that he had not previously suffered from the disease. He only worked with them for nine shifts, when he was compelled to cease work on account of nystagmus. On Feb. 7, 1934, the certifying surgeon certified that he was suffering from miner's nystagmus & that his disablement therefrom commenced on Feb. 6, 1932. On an appeal by the first employers from that certificate the medical referee on Mar. 5, 1934, dismissed the appeal. The registrar then wrote to the medical referee that the employers had called attention to the fact that no date of disablement was given in the decision dismissing the appeal. Thereupon the medical referee issued a second document dated back to Mar. 5, 1934, & to the following effect: The workman "is suffering from miner's nystagmus & so is disabled from earning full wages at the work at which he was employed. He is fit for work on the surface. The date of the disablement is from Jan. 1934, after he had been working underground for three weeks." The medical referee issued the second document without giving any notice to the workman. The workman claimed compensation against the first employers, relying on the certificate of Feb. 7, 1934, which gave the date of disablement as Feb. 6, 1932. The employers relied on the statement in the medical referee's second decision that there had been a fresh disablement in Jan. 1934. The county ct. judge held that the medical referee was not *functus officio* when he issued the first document dated Mar. 5, 1934, & could properly complete an otherwise unfinished document by adding the date of disablement. He therefore made his award for the employers. The workman appealed:—*Held:* (1) the effect of the first decision of the medical referee in Mar. 1934, dimissing the appeal from the certifying surgeon was to fix the date of disablement as Feb. 6, 1932, & after dismissing the appeal the medical referee was *functus officio* & could not by a second decision alter that date; in any case he had not given the workman an opportunity of appearing before him before he made this second decision; (2) *Timmins* v. *Brodsworth Main Colliery Co., Ltd.*, No. 3846a, & *Richards* v. *Goskar*, No. 3846c, did not decide that in the

previous employer after a period of unemployment, that representation had been made on "entering the employment" within the sub-sect., &, accordingly, he was barred from recovering compensation on the recurrence of the disease.—SCOTT *v.* SUMMERLEE IRON CO., LTD., CONNELLY *v.* A. G. MOORE & CO., LTD., GILLULEY *v.* A. G. MOORE & CO., LTD., [1929] S. C. 830; *affd.*, [1931] A. C. 37, H. L. —**SCOT.**

sk. —— ——.]—A workman entered the employment of a colliery co. in Jan. 1927. The employees of this co. were engaged by persons described as contractors, who were, however, admitted, for the purposes of the case, to be merely the co.'s agents. The particular contractor by whom the workman had been engaged received notice from the co. that he & his squad would not be required after Nov. 7, 1927. Before that date the workman arranged with another contractor for a new job in the colliery, to begin on Nov. 8; &, on starting work on Nov. 8, he signed a declaration in which he falsely represented that he had not previously suffered from miner's nystagmus. After being employed under this contract for more than twelve months, he was certified as disabled by miner's nystagmus as from Dec. 22, 1928:—*Held:* the false declaration made on Nov. 8, 1927, was not made by the workman at the "time of entering the employment," within sect. 43 (1) (*b*), &, accordingly, he was not deprived of his right to compensation.—MOORE *v.* MANOR POWIS COAL CO., [1931] S. C. 1; 23 B. W. C. C. 593.—**SCOT.**

so. —— ——.]—A workman entered the employment of a colliery co. on June 19, 1928, on which occasion he signed a declaration that he had not previously suffered from miner's nystagmus. This declaration was false & wilfully made. He worked until Sept. 12, 1928, when he was discharged, & he thereafter received unemployment benefit until Oct. 26, 1928. On the latter date he was again employed by the co., & he remained continuously in their employment until Jan. 16, 1931, when he was certified to be suffering from miner's nystagmus. He had not signed any declaration subsequent to that dated June 19, 1928:—*Held:* the workman was not deprived of his right to compensation, in respect that the false declaration signed on June 19, 1928, was not made at the time of entering the employment in which he was engaged at any time within twelve months of his disablement, the entry into that employment having taken place on Oct. 26, 1928.—M'GUIGAN *v.* MOORE (A. G.) & CO., [1932] S. C. 12; 24 B. W. C. C. Supp. 97.—**SCOT.**

sr. —— *Employers' officials' knowledge of falsity.*]—A miner, who had been disabled by nystagmus, received compensation from his employers until Dec. 1929. In Jan. 1930, he re-entered the employment of the same employers at a different colliery, & on so doing he knowingly signed a false statement that he had not previously suffered from nystagmus. He did not, however, intend to deceive, & did not in fact deceive, the employers' officials who were responsible for re-engaging him, as these officials were, in his knowledge, aware that the statement was false & they acquiesced in his making it. A statement of previous immunity from nystagmus was required by the employers from all appcts. for employment underground. The workman having again become incapacitated by nystagmus:—*Held:* the arbitrator was entitled to make an award of compensation.—M'KEAN *v.* BAIRD (WILLIAM) & CO., [1932] S. C. 258; 24 B. W. C. C. Supp. 187.—**SCOT.**

st. —— *Whether absolute disqualification.*]—A workman suffered from miner's nystagmus in 1923 under employer A. In July, 1930, he entered the employment of employer B. After a period of absence from work owing to beat elbow from May to August, 1931, he presented himself as again fit for work. There was then put before him a printed declaration, with blanks to be filled in, to the effect that he had not previously suffered from the industrial disease of miner's nystagmus. He filled in his name, address, & age; the manager filled in the date, & the workman signed the declaration before two witnesses, who also signed. The declaration was not read over to the workman, nor did he read it or give any attention to its contents, although he had every opportunity to do so; nor was he asked if he had suffered from miner's nystagmus. The miner restarted work & continued at work with employer B until May, 1932, when he left that employment & entered the employment of employer C, the present applts. On entering this new employment he signed no document relating to miner's nystagmus. In Aug. 1932, the manager of these employers showed the workman a form relating to miner's nystagmus & asked him if he had ever suffered from it. The workman replied that he had suffered from the disease about ten years previously, & in view of that answer the manager did not ask the workman to sign the form. The employers had not known until then that the workman had ever suffered from miner's nystagmus. In Sept. 1932, the workman was again disabled by miner's nystagmus, & claimed compensation. After negotiation the employers agreed to pay compensation, but in Dec. 1932, stopped payment at their own hand on discovering for the first time that the workman had signed the declaration of Aug. 1931, as above narrated. On these facts the arbitrator found that the workman had not wilfully or falsely represented himself as not having previously suffered from miner's nystagmus within sect. 43 (1) (*b*), & in respect of the agreement to pay compensation above mentioned awarded a continuation of compensation. The employers appealed:—*Held:* (1) (allowing the appeal on this point), the declaration of Aug. 1931, was a wilful representation on the part of the workman; (2) sect. 43 (1) (*b*) does not enact an absolute disqualification from receiving compensation, but merely provides a ground of defence against the claim; accordingly, the employers were not entitled to discontinue payment of compensation, on the ground (*per* LORD PRESIDENT & LORD FLEMING) that the defence should have been proponed before the workman's claim was settled by agreement, & on the ground (*per* LORD MORISON) that the defence was not open to employers who had employed the workman in the knowledge that he had suffered from the disease. Appeal dismissed.—JAMIESON *v.* ST. FLANAN COAL CO., LTD., [1935] S. C. 138; 27 B. W. C. C. Supp. 187.—**SCOT.**

3843. *Add. Annotation :*—**Consd.** Mason *v.* Foster, [1931] 2 K. B. 172.

3843a. —— **New accident.**]—MASON *v.* FOSTER, No. 3821f, *ante*.

3843b. ——.]—EATON *v.* WIMPEY & CO., LTD., [1937] 4 All E. R. 583; 54 T. L. R. 185; C. A.

3843c. Recurrence after settlement & return to work.]—M'DOUGALL *v.* SUMMERLEE IRON CO., LTD. (1927), 20 B. W. C. C. 419, H. L.

Annotations :—**Expld.** Wilsons & Clyde Coal Co. *v.* Flynn, [1930] A. C. 516. **Consd.** Connor *v.* Cadzow Coal Co., [1932] A. C. 1; Penrikyber Navigation Colliery Co. *v.* Edwards, [1933] A. C. 28; Hamilton *v.* Kinneil Cannel & Coking Coal Co. (1932), 25 B. W. C. C. Supp. 81; Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361. **Expld.** Richards *v.* Goskar, [1937] A. C. 304. **Refd.** Mason *v.* Foster, [1931] 2 K. B. 172; Durrant *v.* British Fibrocement Works, Ltd. (1934), 104 L. J. K. B. 222.

3846. *Add. Annotations :*—**Consd.** Britton *v.* Leverson's Wallsend Collieries (1934), 27 B. W. C. C. 45; Durrant *v.* British Fibrocement Works, Ltd. (1934), 104 L. J. K. B. 222; Timmins *v.* Brodsworth Main Colliery Co., [1934] 2 K. B. 361.

3846a. —— —— ——.]—A miner, after obtaining in 1928 the certificate of a certifying surgeon that he was suffering from miner's nystagmus & was thereby disabled, was in 1932 able to return to his old work for nearly a year, but thereafter obtained a second certificate that he was suffering from the same industrial disease & was thereby disabled. Neither certificate expressly fixed a date for the commencement of disablement, so that under sect. 43 (2), the disablement was in each case treated as commencing on the date of the certificate. After he had obtained the second certificate the workman commenced proceedings for compensation on the basis of the first certificate, his claim being that he was suffering from a recrudescence of the old trouble. The county ct. judge held on the evidence that this was so. On appeal :—*Held :* as under sect. 43 the certificate of a certifying surgeon was conclusive of the date of disablement, & the disablement was to be treated as the happening of an accident, the county ct. judge was debarred after the workman had obtained the second certificate from holding on evidence that the disablement was caused by a recrudescence of the old trouble. —TIMMINS *v.* BRODSWORTH MAIN COLLIERY CO., LTD., [1934] 2 K. B. 361; 103 L. J. K. B. 707; 151 L. T. 231; 50 T. L. R. 458; 78 Sol. Jo. 471; 27 B. W. C. C. 283, C. A.

Annotations :—**Distd.** Durrant *v.* British Fibrocement Works, Ltd. (1934), 104 L. J. K. B. 222. **Consd.** McGrath *v.* Day & Emery, Ltd. (1935), 28 B. W. C. C. 474. Weeks *v.* Powell Dyffryn Steam Coal Co. (1935), 28 B. W. C. C. 396; Richards *v.* Goskar, [1937] A. C. 304. **Refd.** Stanford *v.* Flinn & Son, Ltd. (1936), 29 B. W. C. C. 126.

3846b. —— —— ——.]—A workman who had been certified as disabled by dermatitis within Sched. B. to the Workmen's Compensation Act, 1925, returned to his original work, but again became disabled in the same manner & therefore obtained a fresh certificate referring to a date while he was engaged in that work. Subsequently he obtained work of a different kind, & while doing that he was again disabled in the same manner & obtained two fresh certificates dated after he had left the original work :—*Held :* as to the four certificates, (1) the disablement to which the first certificate referred came to an end when the workman returned to his old work with the same employers; (2) the second certificate was conclusive that at the date of the beginning of this disablement there was a fresh notional accident; (3) there being no evidence that this disablement under the second certificate had ceased, it was not open to a certifying surgeon to certify that the disablement was due to an accident at a later date : the third & fourth certificates were nullities.—DURRANT *v.* BRITISH FIBROCEMENT WORKS, LTD. (1935), 104 L. J. K. B. 222; 152 L. T. 205; 27 B. W. C. C. 460, C. A.

Annotation :—**Consd.** Richards *v.* Goskar, [1937] A. C. 304.

3846c. —— **Mistaken certificate of recovery.**]—An employee of manufacturing chemists was on Sept. 6, 1934, certified by a certifying surgeon to be suffering from dermatitis produced by dust or liquids & disabled from earning full wages at the work at which he had been employed, the date of disablement being Sept. 1, 1934. Compensation was paid by the employers until Feb. 8, 1935, when the workman's panel doctor issued a certificate in the following terms : " This is to certify that Mr. Robert McGrath is recovered from dermatitis & is fit as from to-day to seek employment." The workman then registered at the labour exchange & received unemployment benefit. By Unemployment Insurance Act, 1920 (c. 30), s. 7 (1), it was made a statutory condition for the receipt of unemployment benefit (*inter alia*), that the insured contributor should be capable of & available for work. He received unemployment benefit until May 16, 1935, when he was seen by his panel doctor who was of opinion that he was suffering from a relapse. He applied to the certifying surgeon for a fresh certificate of disablement which was refused. He then filed an application for resumption of compensation. At the arbn. the panel doctor stated that he had made a mistake on Feb. 8, 1935, & that the workman was then fit only for special work & had not fully recovered. The employers called no evidence. The county ct. judge accepted the evidence of the panel doctor & found that the workman had not on Feb. 8, 1935, completely recovered from the disease. He also, however, found that the workman had nevertheless recovered from the disablement & made an award in favour of the employers. The workman appealed :—*Held :* the county ct. judge having accepted the evidence of the panel doctor that he had made a mistake in certifying recovery on Feb. 8, 1935, there was no evidence on which he could find that disablement had ceased. The fact that the workman might have satisfied the statutory condition for obtaining unemployment benefit was in no way inconsistent with his being disabled from earning full wages at an employment involving working in dust or liquids. Appeal allowed. Case remitted.—McGRATH *v.* DAY & EMERY, LTD. (1935), 28 B. W. C. C. 474, C. A.

3846d. Return to work—Recurrence—Necessity for application must be made to the certifying surgeon.—BROWN *v.* WILLIAM DIXON, LTD., [1929] S. C. (Ct. of Sess.) 206.—SCOT.

PART XIV. SECT. 22, SUB-SECT. 5.

3848a i. *Recurrence after settlement & return to work.*]—*Held :* when a workman who had suffered from nystagmus was certified as being no longer disabled by the disease, compensation must be ended, & that, on any recurrence of the disease, a fresh

new certificate.]—The disease itself, & not the certificate of disablement, is the equivalent of a personal injury by accident within 1925 Act, s. 43 (1). Therefore a miner who has been certified as suffering from miner's nystagmus, & as being thereby disabled from earning full wages at the work at which he was employed, & who returns to his employment at his former wages although he has not in fact recovered from the disease, & again becomes disabled thereby, can rely upon the original certificate & need not obtain a fresh certificate in order to obtain compensation.—RICHARDS *v.* GOSKAR, [1937] A. C. 304; [1936] 3 All E. R. 839; 106 L. J. K. B. 85; 156 L. T. 52; 53 T. L. R. 149; 80 Sol. Jo. 991; 29 B. W. C. C. 357, H. L.

Annotations :—**Consd.** McGrath *v.* Day & Emery, Ltd. (1935), 28 B. W. C. C. 474; Weeks *v.* Powell Dyffryn Steam Coal Co., Ltd. (1935), 28 B. W. C. C. 396. **Distd.** Wheatley [illegible] Hetton & Joicey Collieries, Ltd., [1937] 2 K. B. 426.

3847. *Add. Annotation :*—**Apprvd.** Blatchford *v.* Staddon & Founds, [1927] A. C. 461.

3849a. Determination of contributions by arbitration—Liability in dispute—Whether amount of compensation "in dispute."]—The workman had been employed for thirty-one weeks by resps., & then on July 13, 1932, was taken on by applts. but was not examined as the custom was by applts.' doctor, who was then away on holiday. He worked for one week only & then he was certified to be suffering from miner's nystagmus, an industrial disease brought within the ambit of 1925 Act, for which compensation under the Act became payable. The workman claimed 30*s.* a week as compensation for total incapacity, but an agreement was arrived at under which he accepted 23*s.* 9*d.* a week. Under sect. 43 (1) (*c*) (iii.) applts. brought proceedings by way of arbn. under the Act against resps. claiming contribution by them to the payment of the 23*s.* 9*d.* a week. On the hearing in the county ct. the question arose as to when the compensation was in dispute, & the county ct. judge thought it was in dispute under the sub-clause set out if any of the persons who were to contribute had not agreed the amount. Resps. claimed that they should have been entitled to co-operate in fixing the amount payable to the workman. The county ct. judge, taking that view, held that applts. ought to have refused compensation & compelled the workman to make a claim against them under the Act, in which case under r. 41 (5) of Workmen's Compensation Rules, 1926, resps. could have been added as third parties to the workman's arbn. :—*Held :* the county ct. judge had wrongly interpreted that part of sub-clause (*c*) (iii.) "if the amount of compensation is not in dispute," as when the applts. & the workman reached an agreement as to the amount of it, it was not in dispute. That being so, the proper course was adopted of an arbn. under the Act between the employers alone, in which any question as to resps.' disagreement with the amount applts. had agreed to pay the workman could be considered, & the case must be sent back to the county ct. judge for him to determine the issues open to resps. to raise in the proceedings in which it was sought to fix them with liability to pay contributions.—BOLSOVER COLLIERY CO., LTD. *v.* OXCROFT COLLIERY CO., LTD., [1933] 2 K. B. 429; 102 L. J. K. B. 617; 149 L. T. 391; 26 B. W. C. C. 340, C. A.

Annotation :—**Reid.** Lewis & Towers, Ltd. *v.* Sembliz (1934), 27 B. W. C. C. 125.

3849b. Various Industries (Silicosis) Scheme, 1928, clause 9—Failure to comply with order for payments—Bankruptcy of employer—No right to contribution.]—By clause 9 of Various Industries (Silicosis) Scheme, 1928, "the compensation shall be claimed & recoverable from the employer who last employed the workman in the processes; but any other employers who employed the workman in the processes . . . shall . . . be liable to make to the employer from whom compensation is recoverable, such contributions as, in default of agreement, may be determined by arbitration under this Scheme" :—*Held :* where an award of compensation has been made against the last employer, & where, having subsequently become bkpt., he has paid nothing under the award & no payment under it has been made out of his estate, his trustee in bkpcy. is not in a position to make under the Scheme any claim to contribution from the workman's previous employers, but if any payment is thereafter made out of the bkpt.'s estate the trustee's right to claim such contribution will then arise.—M'GILLIVRAY *v.* HOPE, [1935] A. C. 1; 104 L. J. P. C. 11; 151 L. T. 482; 50 T. L. R. 475; 78 Sol. Jo. 503; 27 B. W. C. C. 348, H. L.;

PART XIV. SECT. 22, SUB-SECT. 6.

sg. *Failure to obtain declaration of immunity—Whether bar to claim for contribution.*]—A miner, who was employed by a colliery co. from Sept. 4 to Dec. 5, 1929, at the time of entering the employment signed a true declaration that he had not previously suffered from miner's nystagmus. On Dec. 7 he became disabled by miner's nystagmus, & the co. after paying him weekly compensation finally discharged his claim for a lump sum in Apr. 1930. On May 12, 1930, the workman entered the employment of another colliery co. who, however, took from him no declaration as to previous immunity from nystagmus. He left their employment after two days & was certified as having again become disabled by nystagmus on May 16. His last employers, having duly paid him compensation, claimed a contribution from his previous employers. The latter maintained that pursuers' claim was barred by their having failed to take from the workman a declaration of his previous immunity from disease :—*Held :* pursuers' claim, under sect. 43, to a contribution was not so barred.—UNITED COLLIERIES *v.* ROBERT ADDIE & SONS' COLLIERIES, [1932] S. C. 45; 24 B. W. C. C. Supp. 125.—**SCOT.**

sk. *Workman employed under Various Industries Scheme—Formerly employed under Sandstone Industry Scheme.*]—On May 3, 1932, a quarryman died of silicosis accompanied by tuberculosis, according to a certificate by the Medical Board appointed under the Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931. The workman's last employers were builders & contractors, with whom he worked as a labourer & stone cutter from June to Oct. 1931. As the employers who last employed the workman in one of the processes mentioned in para. 2 of Various Industries (Silicosis) Scheme, 1931, they were liable to pay, & did pay, compensation to the workman's dependants amounting to £542 8*s.* Thereafter they sought relief against the workman's former employers, with whom he had worked from Sept. 1919, till Jan. 1931. These employers were quarrymasters & engaged in the Sandstone Industry as defined in para. 2 of Sandstone Industry (Silicosis) Scheme, 1931. The Various Industries (Silicosis) Scheme, 1931, provides (para. 8 (2)) for contributions by former employers in relief of compensation paid by the last employer, but it also provides (para. 2) that "nothing in this Scheme shall apply to the employment of a workman included in . . . the Sandstone Industry (Silicosis) Scheme, 1931." The arbitrator having found the former employers liable to contribute these employees appealed :—*Held :* the former employers were not liable to contribute to the compensation paid to the workman's dependants. Appeal allowed.—ROBERTSON & DAVIDSON *v.* CORNOCKLE QUARRIES, [1933] S. C. 659; 26 B. W. C. C. Supp. 91.—**SCOT.**

affg., S. C. *sub nom.* HENRY *v.* [1933] S. C. 283; 26 B. W. C. C. Supp. 1.

3852a. —— —— Application for leave to issue execution.]—FOWKES *v.* LEICESTERSHIRE COLLIERY & PIPE Co., No. 3668d, *ante*.

3855a. —— Order giving leave to issue execution.]—COTTON *v.* LUTTON, No. 3668g, *ante*.

3858. *Add. Annotations :—As to* (1) **Consd.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490. *As to* (2) **Refd.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 49.

3860a. Effect of agreement for compensation—Facts as to agreement not presented in county court.]—On an application for review & redemption of weekly payments a workman alleged that he had negotiated with persons representing a new co. which had taken over the business of his employers, & the new co. had agreed to pay him £650 in full settlement of his claims. The county ct. judge had previously decided in a similar case that the workman could not rely upon such an agreement with the new co., as such agreement was only with a third party, & not with his employers. The parties treated the case as governed by that decision, & the question of the agreement was not gone into at the hearing. The application was then proceeded with as an application for review & the judge held the workman had recovered, & by his award stopped further weekly payments. The workman appealed, on the ground that the judge could not terminate the payments in view of the agreement :—*Held :* (1) the ct. could not entertain an appeal as to the effect of the agreement, as the facts as to that agreement had not been presented in the county ct., & there were no materials before the ct. on which they could come to a decision; (2) the question whether the workman had recovered was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—EAST KENT COLLIERY Co. *v.* HEATH (1926), 20 B. W. C. C. 97, C. A.

3872a. —— ——.]—A dock labourer seriously injured his left arm in an accident & was totally incapacitated for fourteen months, during which period he received compensation. His employers then terminated the weekly payments, using the provisions of sect. 12, & relying on a medical certificate to the effect that although the workman had lost his power of gripping with the left hand a return to work would restore that power. The workman applied for an arbn. & the judge on the grounds stated in the certificate found that the workman had completely recovered from the accident & made his award for the employers. On appeal by the workman the Ct. of Ap applying *Buck* v. *Denning*, No. 3227a, held that there was no evidence of complete recovery, & ordered the case to be remitted to the county ct. judge for compensation to

The county ct. judge in conformity with the order of the Ct. of Appeal accordingly made an award of a weekly sum of 10*s.* as compensation, the employers being present & consenting to the amount proposed. Payment of compensation had been made under this award for four months when the employers petitioned for appeal to the House of Lords from the decision of the Ct. of Appeal :—*Held :* (1) there was some evidence upon which the county ct. judge could find that incapacity from every relevant point of view had ceased, & it was of the first importance that the finality of an arbitrator's findings of fact in cases under the Workmen's Compensation Act should be jealously maintained; (2) the employers were not, by consenting to the amount of the award, & making payments thereunder, deprived of their then statutory right of appeal. Appeal allowed. Original award restored.—CUNARD S.S. Co., LTD. *v.* MOORE (1935), 104 L. J. K. B. 467; *sub nom.* MOORE *v.* CUNARD S.S. Co., 153 L. T. 51; 28 B. W. C. C. 162, H. L.

notation :—**Consd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3873a. ——.]—HOBBS *v.* ROYAL ARSENAL CO-OPERATIVE SOCIETY (1930), 170 L. T. Jo. 159, C. A.

3877a. ——.]—A chef suffered an accident to his eyes from the bursting of a cooker. As a result he suffered from an occasional overflow of tears. On a claim for compensation the county ct. judge found that the accident had not interfered with the workman's capacity for work & dismissed the claim. No declaration of liability was granted. The workman appealed :—*Held :* it was a question of fact for the county ct. judge & there was no misdirection. Appeal dismissed.—RIVOLI *v.* DUDLEY, EARL (No. 2) (1937), 30 B. W. C. C. 73.

3880a. ——.]—HEWORTH COAL Co. *v.* (1930), 23 B. W. C. C. 46, C. A.

3880b. ——.]—A girl of eighteen, employed as a screw polisher, lost the sight of an eye on account of the file with which she was working slipping & striking it. The employers stopped paying compensation a year after the accident. The county ct. judge found that the workman was fit to resume her

PART XIV. SECT. 23, SUB-SECT. 2. —A.

a1. *Sufficiency of.*, [1931] 3 M. P. R.

PART XIV. SECT. ..., B. (a).

3865 iv. ... before the Workers' Compensation Commission of a claim by a workman for compensation it was submitted that there was no evidence to support the claim, but the commission overruled the submission & an award was made in favour of the claimant. Thereafter, at the request of resp., the chairman stated a case asking the opinion of the Supreme Ct. whether there was evidence to justify the finding of the commission :—*Held :* after the making of the award the question could not be submitted to the ct. unless the commission had decided to reconsider the matter; the mere fact that the chairman had stated a case did not establish that it had so decided, & therefore it was not competent for the ct. to entertain the matter.—ROBERTS *v.* JONES (1928), 28 S. R. N. S. W. 543; 45 N. S. W. W. N. 156.—AUS.

3865 v. —— ——.]—BATHURST *v.* ORMMEN'S COMPENSATION BOARD, [1928] 1 D. L. R. 114.—CAN.

3865 vi. —— ——.]—An award of compensation having been made in favour of the widow of a deceased workman, the employer obtained a stated case. Thereafter the employer presented a note craving an order for transmission of the process, in order that the notes of evidence might be available to satisfy the ct. that there was no evidence before the arbitrator upon which he could reasonably arrive at certain of his findings in fact :—*Held :* the ct. could not, by a review of the evidence, interfere with the arbitrator's findings in fact, & motion refused.—SCOTT *v.* MITCHELL, [1930] S. C.

pre-accident work & that such work was suitable. He awarded her a declaration of liability only. The workman appealed :—*Held :* the question was one of fact & there was no misdirection.—HILLIER *v.* TUNGSTEN MANUFACTURING CO., LTD. (1933), 26 B. W. C. C. 551, C. A.

3881a. ——.]—Employers applied to review weekly payments being made on the basis of total incapacity. They called a doctor who said he thought the man might do watchman's work or wash motor cars. Two doctors called on behalf of the workman said he was unfit for anything but the lightest form of work sitting down without bending. The judge found the man was only partially incapacitated, & consequently reduced the compensation :—*Held :* it was purely a question of fact, & there was evidence to support the finding.—MEARS BROS. *v.* DAVIES (1929), 22 B. W. C. C. 292, C. A.

3885a. ——.]—DAVISON *v.* HOLMSIDE & SOUTH MOOR COLLIERIES, LTD., NAPPER *v.* LAMBTON, HETTON & JOICEY COLLIERIES, LTD., No. 2512a, *ante.*

3885b. ——.]—HANNABY *v.* LLAY MAIN COLLIERIES, LTD., No. 2512b, *ante.*

3885c. ——.]—A workman was struck in the jaw by a revolving belt &, after being in receipt of compensation for nearly a year, returned to work. Shortly afterwards he ceased work. Two & a half years later he claimed compensation on the ground that he was totally incapacitated as a result of the accident. The county ct. judge found that his incapacity was due to causes unconnected with the accident. The workman appealed :—*Held :* it was a pure question of fact, & there was no misdirection.—BERRYMAN *v.* BOAKE, ROBERTS & CO. (1934), 27 B. W. C. C. 459, C. A.

3885d. ——.]—A workman employed in a factory alleged that he received an injury on Oct. 23, 1934, by being struck in the back. He continued at work until Oct. 28, when he sent a doctor's certificate that he was suffering from myalgia. Three causes of injury were entered in the accident book : (*a*) caught cold in the back ; (*b*) some one threw something & hit him in the back ; (*c*) he fell on a pipe & hurt his back. The workman's doctor saw appct. on Nov. 1, 1934, & stated in cross-examination that what he found was absolutely negative. The county ct. judge held at the end of appct.'s case that there was not sufficient evidence for him to find that there had been personal injury by accident arising out of & in the course of the employment. The workman appealed :—*Held :* it was a question of fact for the county ct. judge & there was no misdirection.—Appeal dismissed.—BALDERSTON *v.* CENTRAL SUGAR CO. LTD. (1936), 29 B. W. C. C. 84, C. A.

3885e. ——.]—A cook employed on a steam-trawler was found lying in the bunk spitting blood. He stated that he had fallen down a ladder. He died seven days later of septic pneumonia. On a claim for compensation by his widow the county ct. judge found that the fall neither caused the death nor had any connection with it & dismissed the claim. The widow appealed :—*Held :* the question was entirely one of fact for the county ct. judge & there was no misdirection. Appeal dismissed.—PARKER *v.* NEW DOCKS STEAM TRAWLING CO. (FLEETWOOD), LTD. (1936), 29 B. W. C. C. 250, C. A.

3887a. ——.]—The father & sister of a deceased workman claimed compensation. The father was unemployed, but the sister was in receipt of a small weekly wage not sufficient to keep herself. It was alleged in the particulars contained in the application for arbn. that the average weekly earnings of the deceased were £1 19*s.* 6*d.* On proof of total dependency on the part of one or other of the dependants, the lump sum payable on these earnings, if calculated in accordance with the rules contained in sect. 8 (2), amounted to £300. The employer filed no answer. At the arbn. no evidence was given as to the average weekly earnings, but the father gave evidence that he was totally dependent. The county ct. judge made an award for £275 only, on the ground that there was no evidence as to the average weekly earnings. The father appealed on the question of amount & the employer cross-appealed on the question of dependency :—*Held :* on the appeal, the employer having failed to file an answer, the amount of the average weekly earnings must be taken to be admitted under rule 18 (3). There must therefore be an award for £300. On the cross-appeal, the question of dependency was purely one of fact for the county ct. judge. Appeal allowed. Cross-appeal dismissed.—PICKERVANCE *v.* EVANS (RICHARD) & CO., LTD. (1935), 28 B. W. C. C. 492, C. A.

3887b. Duration of exposure—Resulting in dermatitis.]—A woman worked as a washer in a laundry during July & Aug. 1928. She left without any signs of dermatitis. On Sept. 6, 1928, she was employed in a similar capacity by another laundry, & left work on Sept. 19 with symptoms of dermatitis. On Sept. 26, she obtained a certificate from the certifying surgeon under sect. 43. Her second employers admitted liability & paid compensation, but discontinued the payments in Dec. on their doctor's certificate that she had recovered. He further stated that she suffered from a condition of the skin which rendered her particularly susceptible to dermatitis, & that but for this she would not have developed the disease after so short a period of exposure. On a claim for continuance of the compensation, the county ct.

PART XIV. SECT. 23, SUB-SECT. 2.—B. (b).

3884 ii. ——.]—NAGY *v.* WORKMAN'S COMPENSATION BOARD, [1931] 3 M. P. R. 516.—**CAN.**

3887 iv. ——.] — The question whether a survivor of a workman is a "dependant" within the Workmen's Compensation Act, R.S.S., 1930, as well as the question whether deceased was a "workman" within the meaning of the Act, is a mixed question of law & fact, at least in cases such as the present one, &, therefore, the Ct. of Appeal must determine, not only whether there is any evidence to sustain a finding of dependence, but also whether the district ct. judge drew proper inferences from the facts & arrived at a proper conclusion in holding, as he did in this case, that pltf. was a "dependant."—WOLFE *v.* CANADIAN NATIONAL RAILWAYS, [1934] 3 W. W. R. 497.—**CAN.**

sn. *Added peril.*]—The question of added peril is one of fact, upon which the determination of the arbitrator was conclusive.—WALKINGSHAW *v.* WOODHALL COAL CO., LTD., [1931] S. C. 506; 24 B. W. C. C. Supp. 32.—**SCOT.**

sp. *Failure of company to file payroll.*]—WORKMAN'S COMPENSATION BOARD *v.* ST. JOHN TUGBOAT CO., [1931] 4 M. P. R. 9.—**CAN.**

judge made an award in favour of the employers. He found that the exposure of the workman to dust or liquids was of short duration & only resulted in dermatitis owing to an unusual proclivity to such disease on her part. The workman appealed. On appeal it was argued that the employers were estopped from denying that the disease had been contracted through long-continued within Statutory Rules & Orders, 1929, No. 2, by reason of their admission of liability & payment of compensation :—*Held :* the point as to estoppel not having been taken in the county ct. could not be raised on appeal, & on the evidence the county ct. judge was bound to find that exposure was not of long-continued duration. The question was one of fact.—Appeal dismissed.—LANE *v.* "PUREWITE" LAUNDRY SERVICE CO., LTD. (1929), 22 B. W. C. C. 396, C. A.

3887c. Computation of remuneration.]—A workman had been at work for only four weeks when he met with an injury by accident arising out of & in the course of his employment. While admitting liability, the employers contended that by reason of the shortness of the time it was impracticable at the date of the accident to compute the workman's rate of remuneration, & that regard must be had to the wages earned by other workmen. The county ct. judge refused to do so & calculated the compensation on the basis of the exact average of the wages earned by the workman during the four weeks. The employers appealed :—*Held :* it was a question of fact for the county ct. judge to decide whether or not it was impracticable at the date of the accident to compute the rate of remuneration on only four weeks of employment, & there was no misdirection. Appeal dismissed.—TANSEY *v.* WILCOCK & CO. (1936), 29 B. W. C. C. 214, C. A.

3891a. ——.]—MALCOLM *v.* BARBER, WALKER & CO., LTD., No. 3359d, *ante*.

3892a. Quantum in excess of evidence.]—An electric lift erector's mate was being tried out as an erector & paid accordingly when he injured his left thumb by an accident arising out of & in the course of his employment. The top of the thumb was amputated but not to such an extent as to prevent the thumb-nail from growing. He returned to work at the wage of a mate & was again tried as an erector but on simpler jobs. After about two months he was dismissed as incompetent. He filed an application for arbn. & then entered into an agreement with his employer that he should receive £30 in final settlement of all claims. A memorandum of agreement was drawn up together with a statement of facts, both of which were signed by the workman. From the statement it appeared that the workman's average pre-accident earnings were £3 0*s.* 2*d.*, & his average post-accident earnings were £3 4*s.* 3*d.*, & that his employment ceased for reasons unconnected with his injury. The registrar &, on appeal, the county ct. judge refused to record the memorandum on the ground of inadequacy. The parties proceeded to arbn. At the hearing the workman admitted the facts contained in the statement accompanying the memorandum. The medical men called on each side disagreed as to whether the disability caused by the injury amounted to 5 per cent. or 20 per cent. The county ct. judge in his award assessed the loss of earning capacity at 16*s.* a week & ordered payment of compensation at the rate of 8*s.* a week. The employer appealed :—*Held :* the county ct. judge in awarding to the workman a sum based on an incapacity equivalent to 25 per cent. of his earnings had gone beyond the evidence called before him. Appeal allowed. New trial ordered before another county ct. judge. Observations on sending cases back to the same county ct. judge for rehearing.—BYRNE *v.* EVANS LIFTS, LTD. (1932), 25 B. W. C. C. 41, C. A.

3893a. Consent order as to quantum—On remission from Court of Appeal—Right of Appeal to House of Lords.]—CUNARD S.S. CO. *v.* MOORE, No. 3872a, *ante*.

3896a. Hearing unsatisfactory—Rehearing ordered.]—HUCKNALL *v.* MANCHESTER CORPN. (1928), 21 B. W. C. C. 8, C. A.

3896b. New trial—When granted.]—HANCOX *v.* BALFOUR, BEATTIE & CO., LTD., No. 3283g, *ante*.

3896c. Approbation of award—What amounts to.]—CUNARD S.S. CO., LTD. *v.* MOORE, No. 3872a, *ante*.

3897. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

3901a. —— ——.]—A workman, who had suffered an injury to his knee, was paid compensation by his employers for a time. He underwent a successful operation & his compensation was stopped. He later suffered another injury to the same knee, & brought proceedings for further compensation. After hearing evidence, the county ct. judge came to the conclusion that he was not satisfied as to any further injury after the cessation of compensation. The county ct. judge then considered the question of a declaration of liability &, while doing so, asked a medical man, who happened to be present in ct., whether there was any probability of further injury to the workman. The opinion of the medical man was not given as evidence on oath nor was he called by consent of the parties. The county ct. judge then made an award to the effect that the workman had recovered from his injury on the date when compensation was stopped, but granted a declaration of liability by consent. The workman appealed :—*Held :* although the procedure followed with regard to the doctor was undesirable & irregular, it had not been detrimental to the workman, because the county ct. judge had already made up his mind on the main question before him. There was ample evidence to support his finding on the question.—RANSOM *v.* FULHAM FOOTBALL & ATHLETIC CO., LTD. (1928), 21 B. W. C. C. 375, C. A.

3904a. —— ——.]—A workman, whose compensation had been stopped, claimed a continuance of compensation on the basis of total incapacity, & it was argued on his behalf that he was entitled to be paid on this basis under Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The county ct. judge found as a fact that the workman was partially incapacitated as a result of the accident but had, since the payment ceased,

been doing work which he did before the accident. He held that sect. 9 (4) did not apply, but gave no reasons for so holding beyond stating that the workman refused work offered him on the ground that he could not do it when in fact he could have done it. He, therefore, refused to find total incapacity but gave a declaration of liability. On the appeal by the workman it was argued that, the county ct. judge having found partial incapacity, the case should be remitted to him to assess the amount of such incapacity:—*Held:* although the finding of the county ct. judge on the point was not too clear, the case had been argued & dealt with under sect. 9 (4) alone. The issue as to partial incapacity, not having been raised on the claim, in the ct. below, or in the notice of appeal, could not be taken in the Ct. of Appeal.—PLUMB *v.* RALEIGH CYCLE CO. (1928), 21 B. W. C. C. 378, C. A.

3915a. Estoppel.] — LANE *v.* "PUREWITE" LAUNDRY SERVICE CO., LTD., No. 3887b, *ante*.

3922a. —— ——.]—A miner, who was a healthy man of forty-seven, was engaged for an hour in pulling down coal with an iron bar. His mate then asked for the bar, & worked with it. The miner appeared to be quite well when he handed over the bar to his mate. but within a few minutes he was lying on the ground dead. An autopsy was made by a surgeon. At the hearing of a claim for compensation by the widow the surgeon was not called but his report was by agreement read to the county ct. judge. He therein stated that the cause of death was syncope following double pneumonia of one or two days' duration, & that in his opinion death was accelerated by the strain put upon an overburdened heart by his work. That was the only medical evidence before the ct., & it was accepted as correct by the judge, who made an award in favour of the employers on the ground that there was "no real evidence within the meaning of the decided cases that any particular piece of work caused death." The widow appealed:—*Held:* it being doubtful from the use in the award of the words "particular piece of work" whether the county ct. judge had not misdirected himself by thinking that he had to find as a fact that some particular or special strain had to be proved in order to connect the death with the work, the case must be remitted to him for reconsideration. Appeal allowed. Order for new trial.—WALKER *v.* BROWN (JOHN) & CO., LTD. (1932), 25 B. W. C. C. 166, C. A.

3922b. —— ——.]—A county ct. judge found that a miner who had injured his left foot was suffering from partial incapacity, but awarded him compensation on the basis of total incapacity for a period during which he was suffering from appendicitis. The employers appealed. The Ct. of Appeal sent the award back for amendment & reconsideration. The county ct. judge confirmed his award. The employers again appealed:—*Held:* the whole matter was unsatisfactory & must be sent to another county ct. judge for a new trial.—SCOTT *v.* PEARSON & DORMAN, LONG & CO., . (1933), 26 B. W. C. C. 350, C. A.

.. —— .]—A haulage hand sustained an injury by accident to his right leg with the result that it was bowed outward & backward, & caused him to walk with a limp & with the right foot somewhat inverted. He could walk quite briskly but felt pain in the right foot after walking continuously for several miles. He had not obtained any work since the accident nor had he looked for it. After paying compensation for total incapacity for seven months, the employers applied to review the weekly payments. The county ct. judge found that the workman was capable of ordinary light work of an unskilled nature such as gardening work of not too arduous a nature, & of doing such work continuously, &, having stated that he was constrained by the authorities to ignore the remoteness of the prospect of obtaining regular light work, he found that a man who obtains a job of unskilled light work on the footing that he suffers from some physical disability which disqualifies him from competing in the labour market on equal terms with men not so disabled might expect to receive about two-thirds of the ordinary wages of an unskilled labourer, & made an award diminishing the weekly payments accordingly. The workman appealed:—*Held:* it being impossible to decide on the judgment whether the county ct. judge had or had not found that the workman was capable of becoming an ordinary workman of average capacity in any well-known branch of the labour market, in other words, whether his labour was or was not an "odd lot" within the definition of FLETCHER MOULTON, L.J., in *Cardiff Corporation* v. *Hall*, the case must be sent back for him to make the necessary finding. Appeal allowed. Case remitted.—ACKTON HALL COLLIERY CO., LTD. *v.* BARKER (1937), 30 B. W. C. C. 89, C. A.

3926a. ——.]—A glazier living in Liverpool fell 24 feet from a ladder & received very severe injuries to his spine & sacrum. A year later his doctor made a report to his employers at their request. It was a detailed report & contained the following conclusions: The movements of the spine were much freer, but not much improvement could be expected: the workman's capacity for walking had considerably deteriorated: his mental condition had changed for the worse but elimination of the compensation negotiations might improve the mental condition: he was at that time only fit for sedentary work or semi-sedentary light work. This report was sent on to the employers' insurers who wrote a letter to the workman's solr. saying that the doctor's report showed that the workman had made considerable recovery & that it was advisable that he should be given light work as it would give him occupation & tend to make him fit. The employers then offered the workman employment in their stores near Birmingham consisting of "a certain amount of clerical work & also sorting out small parts & handing them out when he desired" at £2 a week together with the appropriate compensation & travelling expenses. This offer was refused. The employers applied for a review of the weekly payment on the ground that the workman was able to earn £2 a week. The county ct. judge found that the workman had no earning capacity in the open labour market, but that

the offer of work was suitable & should have been accepted. He therefore made his award in favour of the employers. The workman appealed :—*Held :* there was misdirection as the county ct. judge had failed to put to himself & answer two separate questions, viz., first, whether the offer of employment was in the circumstances under which it was made a genuine offer, & secondly whether, bearing in mind the distance from the workman's home of the employment offered, it was suitable employment. Appeal allowed. Matter sent to another county ct. judge for new trial.—HILLS PATENT GLAZING CO., LTD. *v.* DOUGLAS (1937), 30 B. W. C. C. 145, C. A.

3927a. Date of termination of incapacity.]—A fireman had to have his right thumb amputated as the result of an accident in the stokehold of a ship. On Nov. 5, 1928, his employers obtained a certificate to the effect that he was fit to return to his work, & thereupon gave notice to terminate the weekly payments on Nov. 15. The weekly payments were stopped on that day although a certificate had been furnished by the workman which stated that he was not fit to resume his old occupation, but also stated that there was plenty of other work he could do. The workman applied for an arbn. The arbn. took place on Jan. 29, & Feb. 5, 1929. On Mar. 1, the county ct. judge made his award in which he found as a fact that the workman was able to earn his pre-accident wages, & that up to the date of the hearing there was a dispute whether he had recovered. He did not give a finding as to the date on which the workman had become able to earn his pre-accident wages, but ordered the employers to continue to pay the full amount of weekly payments as from Nov. 15, 1928, to Feb. 5, 1929. The employers appealed :—*Held :* the judge should have found in fact the date when incapacity ceased. If by fixing Feb. 5, 1929, as the date down to which compensation must be paid, he intended to hold that incapacity continued to that date, there was no evidence to support such a finding.—MOCKBILL *v.* HOMER CITY S.S. OWNERS (1929), 22 B. W. C. C. 260, C. A.

Annotations :—**Consd.** Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383. **Reld.** Bevan *v.* Grovesend Steel & Tinplate Co. 1929), 22 B. W. C. C. 572.

3927b. Whether workman within Workmen's Compensation Act, 1925 (c. 84), s. 9 (4).]—An employer having reduced a workman's compensation to 12*s.* 3*d.* a week, the workman applied for an arbn. on the ground that, although he was only partially incapacitated, he was unable to earn anything. At the hearing the workman said that it was impossible to say what he could earn if he could get light work. On that evidence it was submitted on his behalf that he was brought within sect. 9 (4). The county ct. judge made an award in favour of the employer that the workman was only entitled to 12*s.* 3*d.* a week as from the date of reduction. An appln. was subsequently made to the county ct. judge on behalf of the workman for an amendment of his note, or for a new trial, on the ground that sect. 9 (4) had not been properly considered at the hearing. The county ct. judge refused to grant a new trial, but said that he had not considered sect. 9 (4) until the end of the case. The workman appealed from the award & from the refusal to grant a new trial : —*Held :* the appln. was clearly made under sect. 9 (4), & the county ct. judge must be taken to have realised that fact in making the award which he did.—STORER *v.* MORRIS (1929), 22 B. W. C. C. 177, C. A.

3927c. Contract of service.]—A miner in receipt of unemployment benefit died from the effects of fire-damp while working at an outcrop of coal on a farm. The widow filed an application for compensation on behalf of herself & other dependants. No evidence was given at the arbn. to show by whom or on what terms the deceased man was employed to get the coal. The county ct. judge made his award for the widow. Resps. appealed :—*Held :* the hearing was unsatisfactory as the county ct. judge had not found the facts which were necessary to enable him to come to a decision. Appeal allowed. New trial ordered before a different judge.—MEAKIN *v.* LOMAS (1932), 25 B. W. C. C. 73, C. A.

3927d. Whether accident arising in course of employment.]—A workman after a few minutes' interval from the time he was working as a dipper in a galvanising department suddenly fell dead. Death was diagnosed as being due to *angina pectoris*. There was some medical evidence pointing to a connection between the arduous nature of the work & the death. The county ct. judge in making his award for the employer said that he was unable to find as a fact that the workman suffered any strain or that the work contributed in any way to his death. The widow appealed :—*Held :* in view of the medical evidence, it was not clear that the judge had rightly directed himself in law & there should be a new trial. Appeal allowed. New trial ordered.—JAMES *v.* PARTRIDGE JONES & JOHN PATON, LTD. (1932), 25 B. W. C. C. 92, C. A.

Annotations :—**Apld.** Lochgelly Iron & Coal Co. *v.* Walkenshaw (1935), 28 B. W. C. C. 230. **Consd.** Walker *v.* Bairds & Dalmellington, Ltd. (1935), 153 L. T. 322. **Apld.** Whittle *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] 2 All E. R. 1221.

3927e. Whether fresh accident — Unsatisfactory pleadings.]—A wagon-tippler suffered an inguinal hernia in 1923 while at work. After a few weeks' absence, for which he received compensation, he returned to light work which he continued to perform until 1930 In June, 1930, he had further intestinal trouble & was away from work for two weeks for which he received compensation. After some difficulty with regard to wearing a truss he applied in Nov. 1930, for further compensation, alleging the 1923 accident as the cause of incapacity. It was then discovered that he was suffering from a femoral hernia. The workman then by leave amended his application by adding the femoral hernia, but still alleged that his incapacity was caused by the inguinal hernia. The county ct. judge held that the incapacity was due to the femoral hernia & not to the inguinal hernia, & dismissed the application. The workman appealed :—*Held :* the hearing was unsatisfactory, largely owing to the condition of the pleadings which did not make the issues clear. Appeal allowed. New trial ordered. —HARDSTAFF *v.* SHERWOOD COLLIERY CO. (1931), 24 B. W. C. C. 349, C. A.

3927f. Whether employment continuous.]—A miner was certified in 1924 to be suffering from miner's nystagmus & thereby disabled from earning full wages. After a short period he returned to work on the surface. In 1926 there was a general strike & stoppage of work in all the coalfields which continued till Dec. of that year. Work was re-started in Wales under a general agreement between masters & men which contained a clause that each workman should receive a fortnight's notice of termination of his employment. The workman was re-employed in Dec. with others but when signing on falsely declared in writing that he had not suffered from miner's nystagmus. Certain subsequent agreements had been made between the parties. With the exception of three months' unemployment in 1929 & two weeks in 1933, when he received unemployment pay, he continued at work until Aug. 1933, when he was dismissed on a fortnight's notice. He than obtained a certifying surgeon's certificate that he was suffering from miner's nystagmus & made a claim for compensation accordingly. The employer denied liability on the ground that the workman had made a wilful & false declaration in writing within the meaning of sect. 43 (1) (*b*) at the time of entering his employment in 1926 & that that employment had continued up to the date of his dismissal in 1933. The county ct. judge without finding whether the agreement which commenced in Dec. 1926, had been put an end to, held that the contentions of the employer were correct & dismissed the workman's application. The workman appealed:—*Held:* the county ct. judge had both misdirected himself in not considering the effect of *Scott* v. *Summerlee Iron Co., Ltd.*, No. 3837a, & had also failed to determine the essential question of the continuity of employment from 1926 to 1933. There must be a new trial for him to find the essential facts as to this & to apply the law in the light of those facts. For the workman to be deprived of compensation by reason of the false declaration, such declaration must have been made on entering a contract of employment in which he was in fact engaged at some time during the period of twelve months previous to the date of disablement on which his claim is based. Appeal allowed.—WILLIAMS *v.* TREDEGAR IRON & COAL CO., LTD. (1935), 28 B. W. C. C. 291, C. A.

3927g. Whether agreement between parties as to quantum.]—A workman having been injured in Oct. 1930, his employer admitted liability & paid him a weekly sum of 30*s.* as compensation. The employer was at that time under the impression that the average weekly earnings of the workman before the accident were £6 1*s.* 6*d.* In June, 1933, the employer learned for the first time that the workman was earning £3 a week in a fresh employment & suggested that the weekly payment of compensation should be adjusted accordingly. The workman refused an adjustment & 30*s.* continued to be paid weekly. In Dec. 1934, the employer applied for a review & raised the question of the amount of the pre-accident average weekly earnings. For the workman it was argued that there having been an agreement to pay 30*s.* a week, the employer must be taken also impliedly to have agreed the amount of the pre-accident average weekly earnings. The county ct. judge made no finding as to the existence of any agreement express or implied, but found that the pre-accident average weekly earnings were £5 7*s.* 6*d.* & made an award reducing the weekly payment to 23*s.* 9*d.*, being half the difference between £3 & £5 7*s.* 6*d.* The workman appealed:—*Held:* the county ct. judge should have found whether there was any agreement between the parties &, if so, what were its terms express or implied, & the matter must go back for him to do so.

Per ROMER, L.J. If it were proved that the parties were labouring under a mutual mistake of fact as to the amount of the pre-accident average weekly earnings, the county ct. judge would be entitled on these figures to diminish the weekly payment under sect. 21, even if there were no change of circumstances. Appeal allowed.—TEILO TINPLATE CO., LTD. *v.* GRIFFITHS (1935), 28 B. W. C. C. 127, C. A.

3932a. Reliance on medical assessor—On question of fact.]—An engine-driver while coaling felt sudden pain in his stomach. He continued to drive his engine, but the pain increased & he went home. The next morning his doctor stated that he had a strangulated hernia. The workman claimed compensation. At the hearing the judge sat with a medical assessor. He held that the workman had not discharged the onus of proving that there had been an accident in the sense of an abnormal strain, & stated in his judgment that the medical assessor had advised him that the man never had a strangulated hernia. He made an award in favour of the employers. The workman appealed, asking for a new trial:—*Held:* the hearing was unsatisfactory, the judge having misdirected himself on the points at issue, & having accepted the opinion of the assessor as to what his findings of fact should be. Appeal allowed. New trial ordered in another county ct. with directions to apply the principles laid down in *Clover, Clayton & Co., Ltd.* v. *Hughes*, No. 2316.—DAVIS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1930), 23 B. W. C. C. 368, C. A.

3932b. No details in award.]—A domestic servant alleged that while carrying a bottle of her own nail polish she slipped on a mat & the bottle broke in her hand, cutting it. On a claim for compensation the county ct. judge made a short award stating that the workman had not discharged the *onus* that was on her to satisfy him that the accident arose out of & in the course of her employment. The workman appealed on the ground that the county ct. judge had not stated the facts on which he based his decision & asked for a new trial:—*Held:* it not being a case in which a detailed finding was required, the shortness of the award was no ground for a new trial. Appeal dismissed.—GILBERT *v.* COLES (No. 2) (1931), 24 B. W. C. C. 481, C. A.

3932c. Contradictory judgment.]—A miner who had suffered from periodical attacks of miner's nystagmus & was in receipt of weekly payments was examined by a medical referee who certified that the man "is not now suffering from miner's nystagmus, but from nervous debility." On his report the em-

ployer stopped the weekly payments. Six months later the workman applied for further compensation. The county ct. judge found as a fact that the workman was not suffering from nystagmus, & looked the picture of health, but said that he thought it possible, & even likely, that he might have a recurrence though he was not satisfied that such would be the case. His award was in the form that the employers were to be liable to pay the workman further compensation if at any time he became incapacitated for work from nystagmus. The workman appealed :—*Held :* as the award made by the county ct. judge was not consistent with his judgment, & the judgment was contradictory in itself, there must be a new trial. Appeal allowed. Order for new trial.—HILLIER *v.* EBBW VALE STEEL, IRON & COAL CO., LTD. (1932), 25 B. W. C. C. 238, C. A.

3932d. Excessive award.]—A workman claimed compensation on the basis of partial incapacity. On the matter coming before him, the county ct. judge referred it to a medical referee, who reported as follows : " S. has good general health, but is not fit for his ordinary work." The judge, without considering the effect of sect. 9 (4), made an award of 30*s.* a week on a finding of total incapacity. The employers appealed :—*Held :* the hearing was unsatisfactory, the judge having made an award in excess of what the workman was claiming & not justified by the evidence. Appeal allowed. New trial ordered.—SINGLETON *v.* DRAKE (D.) & SONS (1931), 24 B. W. C. C. 369, C. A.

3932e. Confusion at hearing as to relationship of principal & contractor.]—A workman was injured while screening coal supplied by a colliery co. to be put on board ship. The coal shippers & the colliery co. were under the same control. The workman framed an application for compensation against the colliery co. as his immediate employers, but the colliery co. denied that he had ever been employed by them. At the arbn. the case was opened & argued on the basis that the shippers were contractors within sect. 6, & that the colliery co. were principals. The county ct. judge made an award in favour of the workman against the colliery co. The colliery co. appealed :—*Held :* there having been confusion as to the basis on which the claim was being made against the colliery co. the case must be sent back for re-hearing. —JENKINS *v.* OCEAN COAL CO., LTD. (1934), 27 B. W. C. C. 111, C. A.

3932f. Insufficient evidence as to whether reasonable cause for delay in giving notice.]—On Nov. 14, 1933, a labourer struck his knee while at work. On returning home he showed his wife a black bruise. The bruise was attended to by his wife, & he continued working for a month suffering occasionally from cramp. On Dec. 12, 1933, he suddenly felt severe pain & was sent to the infirmary. On Dec. 14 he underwent two operations but died on Dec. 16. On Dec. 15 his wife gave notice to the employer. The county ct. judge, on a claim by the widow for compensation, found that death resulted from the injury, but held that that being so the deceased workman must have suffered sufficient discomfort to make it obligatory for him to give notice of the accident. He held that there was no reasonable cause for failure to give notice before Dec. 15, & that the employer was prejudiced by the delay. He therefore made his award for the employer. The widow appealed :—*Held :* there was not sufficient evidence as to whether in fact the injury was such as to call for notice being given before Dec. 15, & there must be a new trial to see whether such evidence was forthcoming.—REDMAN *v.* SUNDERLAND CORPN. (1934), 27 B. W. C. C. 376, C. A.

3932g. Decision unsupported by evidence.]—An employer applied for a review & diminution to 8*s.* 6*d.* of a weekly payment then being paid to an injured workman under a recorded memorandum of agreement, the grounds of the application being that the workman had received a genuine offer of employment at £2 a week. The county ct. judge held that the workman had an earning capacity of a higher amount than £2 a week & reduced the weekly payment to 5*s.* The workman appealed :—*Held :* there being no evidence on the point before him the county ct. judge was wrong in taking it upon himself to find that the workman's earning capacity was greater than that alleged by the employers, & there must be an award for 8*s.* 6*d.* Appeal allowed.—WIMBUSH *v.* GARNER (1936), 28 B. W. C. C. 135, C. A.

3932h. Misdirection.]—On Feb. 21, 1936, a cold day, a lorry driver strained himself by having to crank up his lorry at frequent intervals. On returning to his home he complained of pain to his wife. On Feb. 23, he was found to be suffering from influenza. He returned to work on Mar. 16, having recovered from the influenza. He died on Apr. 27. Evidence showed that the strain on Feb. 21 was much more than the ordinary strain of work, & that the lorry driver was continuously ill from the day of the strain to the day of his death. The lorry driver had been suffering from heart disease of long standing & he might have died from the effects of any sudden strain. One doctor said that death was due to the strain, another that excessive strain would have shortened his life, & the lorry driver's own doctor stated that he had " apparently well recovered, but heart irregular—heaving impulse." The county ct. judge was not satisfied on the medical evidence that death had been caused by the strain & he dismissed an application for compensation by the lorry driver's widow :—*Held :* the county ct. judge had misunderstood the evidence of the lorry driver's own doctor, when he thought that it meant that the lorry driver had recovered from the strain. The evidence meant that he had recovered from the influenza but not from the strain, & there was no evidence of the effect of the influenza on his heart. The judge had misdirected himself & the appeal was allowed & an award made in favour of the widow.—HILTON *v.* BILLINGTON & NEWTON, LTD., [1936] 3 All E. R. 292 ; 155 L. T. 530 ; 80 Sol. Jo. 952 ; 29 B. W. C. C. 299, C. A.

3932j. Decision based upon proper reasoning—Addition of unsound reason.]—A workman stayed away from work & was considered by his doctor to be suffering from influenza & gastric trouble. On the next day the

doctor discovered an injury to the scrotum which appeared to be of a few days' standing. On the next two days the workman was visited by a mate & by his foreman to each of whom he gave an account of an accident a week earlier when he fell from a ladder while at work & injured his scrotum. An entry of this was made in the accident book. A few days later the workman died of septicæmia. On a claim for compensation brought by the widow the county ct. judge held that the probabilities were that the injury which caused the death was sustained during work, but went on to say that, apart from that, the information given by the workman when notifying the accident could not be ignored, & made his award in favour of the widow. The employer appealed :—*Held :* there was evidence on which the county ct. judge could find that the injury occurred while at work. As the county ct. judge had come to his decision by proper reasoning, the fact that he might have added another reason which was unsound in law would not be a ground for upsetting that decision.—CHURCHWARD *v.* LANCASTER'S STEAM COAL COLLIERS, LTD. (1935), 28 B. W. C. C. 306, C. A.

Annotation :—**Refd.** Ellison *v.* Calvert & Heald (1935), 28 B. W. C. C. 371.

3932k. Lump sum award—Incorrect finding of dependency.]—A family consisted of father, mother & three sons. One son died as the result of an injury arising out of & in the course of his employment. The father & all three sons contributed varying sums to the family purse. At the time of the death, one son was in no way dependent on deceased & the other son was in ill-health & out of work. The father earned £4 17*s.* 3*d.* a week, of which he contributed £3 to the family purse & kept a savings bank account of his own. The father & mother claimed compensation on behalf of themselves & the brother in ill-health, as being partially dependent on deceased's earnings. The county ct. judge held that they were all partial dependants & awarded them a lump sum of £150, but reserved the question of apportionment. The employer appealed :—*Held :* there was no evidence on which the county ct. judge could find that the father was a partial dependant within the meaning of sect. 4 (2), & as in view of the nature of the award of an undivided lump sum to all three appts., it was impossible to say what portion of it the county ct. judge had appropriated to the father, there must be a new trial to consider the amounts to which the mother & brother were entitled.—JACKSON *v.* CANHAM (1935), 28 B. W. C. C. 30, C. A.

3932l. Award based on ambiguous medical certificate.]—A miner had worked underground for some years but on Oct. 12, 1934, the mine in which he was working closed down. On Oct. 17, 1934, he obtained work in a quarry, but gave up that work on Feb. 9, 1935, on account of miner's nystagmus. On Feb. 11, 1935, he was certified to be suffering from miner's nystagmus & the date of disablement was fixed by the certifying surgeon as Oct. 12, 1934. The mine owners appealed from that certificate to the medical referee who, on Mar. 12, 1935, found that the workman "was at the time of his examination by the certifying surgeon suffering from miner's nystagmus but was not thereby disabled from earning full wages at the work at which he was employed," & certified that his condition at the date of examination by the medical referee was that "he is suffering from miner's nystagmus with well marked oscillation of the eyes but slight subjective discomfort, so that his earning capacity is not decreased. He is quite fit to do the work in a quarry at which he is at present employed." The county ct. judge held that the certificate of the medical referee was unambiguous, & meant that the workman was fit for his full work as a miner. He therefore made his award for the employer. The workman appealed on the ground that the certificate should have been sent back to the medical referee for explanation as it was not clear whether it intended to certify that the man was fit for his full work as a miner or only for work as a quarryman :—*Held :* the certificate of the medical referee was ambiguous, for if he had meant to say that the workman's earning capacity was not decreased for the purpose of earning full wages at the work of mining, there was no necessity also to state that he was quite fit to do work in a quarry. The certificate must therefore be remitted to the medical referee for further explanation. Appeal adjourned. Certificate remitted to medical referee.—EVANS *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1935), 28 B. W. C. C. 413, C. A.

3932m. Formal award inconsistent with written judgment.]—A miner was certified to be disabled by miner's nystagmus. Though fit for light work, he received compensation for total incapacity under sect. 9 (4) for a time & was then given notice to terminate his contract of service. The employer then brought proceedings to review & diminish the weekly payment. The workman contended, & at the arbn. called evidence to show, that he was entitled to the benefit of an order under sect. 9 (4) as amended, both on the ground, under clause (i), that he was in consequence of the injury unable to obtain the same class of work & also, under clause (ii), that his failure to obtain employment was a consequence wholly or mainly of his injury. The county ct. judge gave a written judgment in which he said that the case was indistinguishable from that of *Ingham's Thornhill Collieries, Ltd.* v. *Barstow*, No. 3291d, & held that, after considering the state of the labour market & the evidence called at the arbn., it was not probable that the workman would in consequence of the injury be able to obtain the same class of work as before. He therefore reduced compensation. On the same day the county ct. judge signed a printed award (Form 24B) in which the words in square brackets dealing with clause (ii) were not deleted. The printed award diminished the weekly payment. The result of this was to make the award appear as if the judge had refused to make an order under sect. 9 (4) because he was not satisfied that the provisions of either clause (i) or (ii) had been fulfilled. The workman appealed :—*Held :* it was clear from his judgment that the county ct. judge had not intended to deal with clause (ii) & the fact that he had not deleted that part of

his printed award which referred to it did not mean that he had necessarily considered it. There must be a new trial to consider the evidence under both clause (i) & clause (ii) of sect. 9 (4) as amended. Appeal allowed.—EBBW VALE STEEL, IRON & COAL CO., LTD. *v.* WILLIAMS (1935), 28 B. W. C. C. 267, C. A.

3932n. ——.]—VRANCH *v.* TREDEGAR (SOUTHERN COLLIERS, LTD. (1935), 28 B. W. C. C. 277 C.

3932o. Fresh evidence—Available at original hearing.]—A workman injured his arm in Dec. 1931. In June, 1933, the county ct. judge found that he had completely recovered & made an award for the employers. In 1935 the workman was examined by specialists & X-ray photographs were taken, with the result that it was then discovered that he had been more seriously injured than had been apparent two years previously, five fresh fractures being disclosed. As the workman was still incapacitated, he applied to the county ct. judge for a new trial. The county ct. judge refused the application on the ground that with reasonable diligence the fresh evidence could have been available at the original hearing & the responsibility for any inadequacy in the presentation of his case then rested on the workman & his advisers. The workman appealed:—*Held:* the county ct. judge had rightly exercised his discretion in refusing to grant a new trial. Appeal dismissed.—MOORE *v.* CUNARD S.S. CO. (No. 2) (1935), 28 B. W. C. C. 469, C. A.

3932p. Refusal to grant new trial.]—An appeal from a refusal of the county ct. judge to grant a new trial:—*Held:* the judge had acted within his discretion & there were no grounds for ordering a new trial. Appeal dismissed.—COCHRANE & SONS, LTD. *v.* HUTCHENS (1936), 29 B. W. C. C. 219, C. A.

3932q. Admission of accident—Incapacity not considered.]—A chef on board a yacht suffered an accident. The accident was admitted but incapacity was denied. On a claim for compensation the county ct. judge found as a fact that there had never been an accident & dismissed the claim. The workman appealed:—*Held:* as the accident had been admitted there must be a new trial to consider the issue of incapacity. Appeal allowed. New trial ordered.—RIVOLI *v.* DUDLEY, EARL (1936), 29 B. W. C. C. 249, C. A.

3940a. —— —— ——.]—A steel erector lost his left little finger by accident & was paid compensation. Compensation was stopped under the provisions of sect. 12 & the workman returned to work on the ground level for a few days. He complained of tenderness in his hand & was discharged. He claimed compensation for total incapacity or alternatively for partial incapacity to be treated as total under sect. 9 (4) as amended. The county ct. judge found that he was not entitled to be treated as totally incapacitated under sect. 9 (4) as he had not taken all reasonable steps to obtain employment & made an award for 5*s.* a week. The workman appealed on the ground that the judge had, according to the recollection of counsel, given reasons which were unsound & could not support the award. There was no note of such reasons having been given but they were set out in the notice of appeal. The Ct. of Appeal ordered that the case should be remitted for the judge to reconsider the whole matter on the evidence already given. On the second hearing the county ct. judge said that he had no recollection of giving any of the reasons alleged. He thereupon reconsidered the whole evidence & came to the same conclusion as before & consequently made the same award:—*Held:* the matter had now been made clear & there was abundant evidence to support the finding. Appeal dismissed.—KEOHANE *v.* DORMAN LONG & CO. (No. 2) (1935), 28 B. W. C. C. 146, C. A.

3945a. —— **Not to be supplemented by note taken by articled clerk—Note apparently complete.**]—A miner, after helping to put a tram on the rails, died within a few minutes. At the *post-mortem* examination it was found that death was due to effusion in the pericardium. At the arbn., on the claim by his dependant for compensation, the employer's doctor gave evidence to the effect that there was no connection between the exertion & the sudden collapse. In making his award for the employer, the county ct. judge said that he preferred the evidence given for the employer to that given for the dependant, & held that death was not caused by accident arising out of & in the course of the employment. The dependant appealed, & on the hearing of the appeal counsel for the dependant asked for permission to read, in addition to the judge's note, a note taken at the hearing in the ct. below by an articled clerk. Permission was refused:—*Held:* there was evidence to support the finding, which was purely a question of fact for the county ct. judge, & no misdirection. Appeal dismissed.—JONES *v.* BLAENAVON CO., LTD. (1931), 24 B. W. C. C. 148, C. A.

3947. *Add. Annotation:*—**Apld.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3948. *Add. Annotation:*—**Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3949. *Add. Annotation:*—**Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3950. *Add. Annotation:*—**Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3951. *Add. Annotation:*—**Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

—— ——.]—A workman obtained, on Feb. 19, 1937, an award for weekly compensation at the rate of 4*s.* 6*d.* from June 9, 1936, up to the date of hearing & to continue. The arrears of compensation amounted to £8 9*s.* 6*d.* The formal award was drawn up & signed on Apr. 2, 1937. On Apr. 22, 1937, the workman's solr. gave notice of appeal as to quantum only. Resps. did not know of the intention to appeal until after service of the notice of appeal. A week after the award resps. had sent to the workman a cheque for £8 9*s.* 6*d.* for arrears & thereafter continued to send cheques for 4*s.* 6*d.* each week. These cheques were endorsed & cashed by the workman. The workman was in need of the money & stated that he treated the payments as merely made on account of the sum to which he considered he was entitled. The workman's solr. was throughout in ignorance of these payments. On the preliminary objection that no appeal lay on

the ground that the workman was both approbating & reprobating the award :—*Held* : the rule was well established that any acceptance by a workman of money payable under an award was an approbation of that award & he could not now be heard to appeal from it.—EVANS *v.* MONMOUTHSHIRE & SOUTH WALES EMPLOYERS' MUTUAL INDEMNITY SOCIETY, LTD. (1937), 30 B. W. C. C. 196, C. A.

3953. *Add. Annotations:*—**Distd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572. **Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3954. *Add. Annotations* :—**Folld.** Evans *v.* Monmouthshire & South Wales Employers' Mutual Indemnity Society, Ltd. (1937), 30 B. W. C. C. 196. **Refd.** Jones *v.* Smith, [1936] 1 All E. R. 661.

3954a. Acceptance of money paid into court—Appeal as to costs.]—On the hearing of a claim for compensation applt. agreed to accept £10 paid into ct. on Jan. 7, 1927, the date of the answer filed by resps., in full satisfaction of the claim. Under the award, the £10 was to be paid to applt. with a declaration of liability, but resps. were given costs after the date of filing of their answer. Applt. appealed from so much of the order as directed costs to be so paid :—*Held* : applt. could not take the benefit of the award & appeal from a part of it to which she objected, & there was no right of appeal.—WALDEN *v.* GRAMOPHONE CO., LTD. (1927), 20 B. W. C. C. 346, C. A.

3954b. —— By widow—Appeal as to amount of children's allowance.]—MALCOLM *v.* BARBER, WALKER & CO., LTD., No. 3359d, *ante*.

3954c. Appeal against date of termination of compensation—Application for review.]—An infant workman was in receipt of compensation from the date of his injury to Aug. 10, 1928. On that date the employers, without following the procedure indicated in sect. 12, stopped the compensation on the ground that the workman had fully recovered. The county ct. judge heard the workman's claim for a continuance of the weekly payments on Jan. 8, 1929, when he found as a fact that the workman had fully recovered on Aug. 10, 1928, but granted a declaration of liability. The workman claimed that on this finding he was entitled to a continuance of the weekly payments to Jan. 8, 1929, in accordance with sect. 12. The county ct. judge adjourned the case for further argument on this point, & on Aug. 14, 1929, gave a considered judgment in which he held that, on his previous finding as to the date of recovery, the liability of the employers to make weekly payments ceased on Aug. 10, 1928. In May, 1929, the infant workman had come of age. In Sept. 1929, he entered an appeal against the decision of Aug. 14, 1929, by which the judge had ended payments as from Aug. 10, 1928, & in Oct. 1929, he filed an application in the county ct. for a review of the declaration of liability. On the hearing of the appeal the employers took the preliminary objection that by starting proceedings both by way of appeal & by way of review, the workman was both approbating & reprobating the award :—*Held* : (1) on the preliminary objection, the two sets of proceedings were in respect of independent matters & did not amount to approbation & reprobation ; (2) on the merits, the county ct. judge having fixed the date of recovery of the workman, the employers could not then be ordered to continue the weekly payments after that date.—BEVAN *v.* GROVESEND STEEL & TINPLATE CO., LTD. (1929), 22 B. W. C. C. 572, C. A.

3954d. Acceptance of costs—Appeal as to quantum.]—An injured workman was awarded a weekly payment by way of compensation, & costs. The costs were duly taxed & paid. The workman then sought to appeal against the *quantum* of the award : —*Held* : the award was indivisible &, having approbated it by accepting costs, the workman could not then reprobate it by appealing against the *quantum*.

Per GREENE, L.J. : The workman approbated the award as soon as he proceeded to taxation.—JONES *v.* SMITH, [1936] 1 All E. R. 661 ; 80 Sol. Jo. 287 ; 29 B. W. C. C. 75, C. A.

3961a. —— ——.]—*Ex parte* application on behalf of the workman for extension of time within which to serve notice of appeal granted on the ground that the county ct. judge had not furnished appct. with a copy of his notes within the time given for appealing, though requested to do so.—GILBERT *v.* COLES (No. 1) (1931), 24 B. W. C. C. 372, C. A.

3963a. —— Mistake.]—An application for leave to extend the time for service of notice of appeal on the ground of mistake under the rules dismissed.—BROWN *v.* BIRCH BROS., LTD. (1929), 22 B. W. C. C. 404, C. A.

3963b. —— Receipt of ex gratia payment.]—An application for leave to extend the time for appealing against an order made in 1924 ending the weekly payments dismissed, the workman having in the meantime received from the employer a sum expressed to be paid *ex gratia*.—HOLDEN *v.* MASSEY (1929), 22 B. W. C. C. 507, C. A.

3967. *Add. Citations* :—96 L. J. K. B. 254 ; 20 B. W. C. C. 198.

3968a. Application to Court of Appeal for leave—Applicant not previously suing as poor person.]—PRACTICE NOTE (1934), 27 B. W. C. C. 418.

3969a. ——.]—An infant workman having obtained an award, the employer appealed. Pending the appeal the employer agreed to withdraw the appeal, provided a lump sum was accepted by those acting on behalf of the infant :—*Held* : the proper order was to remit the case to the county ct. judge to consider the sufficiency of the amount offered in view of the chances of appeal being successful, & on the approval of the judge being given, the appeal should stand dismissed with liberty to apply.—MARSHALL *v.* KIDDLE (1927), 20 B. W. C. C. 614, C. A.

3969b. ——.]—In a proper case pending the hearing of an appeal the Ct. of Appeal will approve the terms of a lump sum settlement of a question as to the extent of an employer's liability to an infant workman.—SEAMAN *v.* INGRAM (J. G.) & SON, LTD. (1929), 22 B. W. C. C. 393, C. A.

3969c. Remission of compromise to registrar for registration.]—KNIGHT *v.* SKINNER (1928), 21 B. W. C. C. 368.

3976a. ——.]—DAVIS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 3932a, *ante.*

3976b. ——.]—BYRNE *v.* EVANS LIFTS, LTD., No. 3892a, *ante.*

3976c. ——.]—MEAKIN *v.* LOMAS, No. 3927c, *ante.*

I. Other Cases.

3977a. Death of applicant before appeal heard—Judgment given in ignorance of death.]—A widow of a deceased workman was refused compensation by the county ct. judge. She appealed, but died five days before the hearing of the appeal. The appeal was however heard, the ct. being unaware of her death, & on Oct. 25, 1934, the appeal was allowed. The case was sent back to the county ct. judge to assess the amount of compensation payable to her & her four children. On a motion by the employers to set aside or strike out the judgment of the Ct. of Appeal:—*Held:* the judgment of the Ct. of Appeal was a nullity & the award of the county ct. judge must stand, & the parties must take such proceedings as they might be advised.—PATTENDEN *v.* MCINTOSH (No. 2) (1934), 27 B. W. C. C. 494, C. A.

3978a. Remission to medical referee—To explain certificate.]—A workman had been certified by the medical referee as not suffering from miner's nystagmus, but upon a subsequent recurrence of the disease was certified to be so suffering by a certifying surgeon at a date after the medical referee's report. The House of Lords remitted the case to the medical referee as to the meaning of his report as it was doubtful whether he had considered the possibility of a recrudescence as a result of the original attack.—PENRIKYBER NAVIGATION COLLIERY CO., LTD. *v.* EDWARDS, [1932] W. N. 76; 173 L. T. Jo. 261; 73 L. Jo. 273, H. L.; *subsequent proceedings*, [1933] A. C. 28, H. L.

3981. *Add. Annotations:*—**Reld.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207; Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3981a. —— ——.]—Employers applied by way of review that a weekly payment payable to a workman might be ended or diminished. The county ct. judge made an award diminishing the weekly payment but ordering the employers to pay the costs. The employers appealed from so much of the award as related to costs:—*Held:* the judge has an unfettered discretion in the matter of costs, & there was no evidence in this case that the discretion had not been exercised judicially.—CO-OPERATIVE WHOLESALE SOCIETY, LTD. *v.* LALLY (1930), 23 B. W. C. C. 513, C. A.

Annotation:—**Distd.** Williams *v.* Dorothea Slate Quarry Co. (1936), 29 B. W. C. C. 174.

3983. *Add. Annotation:*—**Reld.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207.

3988a. —— ——.]—RUDDY *v.* LONDON, MIDLAND & SCOTTISH RY., No. 2823a, *ante.*

3990. *Add. Annotation:*—*As to* (1) **Reld.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3993a. —— —— **Denial of liability.**]—A workman having been injured by accident, his employers applied for a reference to a medical referee under Workmen's Compensation Act, 1925 (*c.* 84), s. 19, on the ground that there was a dispute as to whether he was fit for his employment & as to whether any incapacity from which he might be suffering was due to the accident. Four days later the workman filed an objection to the reference on the ground that, as the employers were refusing to admit that the accident arose out of & in the course of the employment, the matter should be dealt with by arbn. & not by reference. On the same day he filed his appln. for arbn. The sheriff-clerk allowed the reference to the medical referee & his decision was not appealed from. The employers filed an answer to the workman's appln. for arbn., in which they objected to the arbn. proceedings on the ground that the matter had already been referred to a medical referee, & further alleged that the workman was not entitled to any compensation because the accident had not arisen out of & in the course of the employment. The medical referee reported that the workman was partially incapacitated, & two days later the parties arrived at an agreement for settlement. On argument as to the costs the sheriff-substitute held that the workman's appln. for arbn. was premature, unwarranted & unnecessary, & while awarding no costs on the reference to the medical referee, gave the costs of the alleged abortive arbn. proceedings to the employers. On appeal it was held by the Second Division of the Ct. of Session that the sheriff-substitute was wrong in depriving the workman of the costs of the arbn. proceedings on the ground stated by him, & remitted the question of costs to him for further argument. The employers appealed:—*Held:* the medical referee having no power to decide whether the accident arose out of or in the course of the employment, it was perfectly proper for the workman to take the earliest opportunity of getting that point determined by arbn., & was entitled to act as he had done.—BARR & HIGGINS, LTD. *v.* GREEN (1928), 98 L. J. P. C. 17; 140 L. T. 441; 21 B. W. C. C. 439, H. L.

3995a. ——.]—A workman alleged that on Jan. 19, 1933, he was injured by accident arising out of & in the course of his employment. He was away from work from Mar. 2 to June 19, 1933. From June 19, 1933, to Dec. 1, 1934, he continued at his old work. He alleged that he had to cease work on Dec. 1, 1934, on account of the injury sustained on Jan. 19, 1933, & claimed compensation from Dec. 1, 1934, only. It was agreed between the parties at the arbn. that the three issues to be tried by the county ct. judge were: (1) Was there an accident? (2) Did it cause an injury at the time? (3) Was the workman's condition at the date of the arbn. due to that accident? The judge found for the workman on the first two issues & for the employer on the third issue, but awarded compensation to the workman for the period from Mar. 2 to June 19, 1933, & ordered each side to pay their own costs. The employers

appealed:—*Held:* in so far as the award was given in favour of the workman, it was given on a matter that had never been submitted to arbn. by him & was bad, & the employers having therefore been wholly successful in the arbn., there was no ground for depriving them of their costs. Appeal allowed.—WILLIAMS *v.* DOROTHEA SLATE QUARRY CO., LTD. (1936), 29 B. W. C. C. 174, C. A.

4009. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4012a. —— **Employer ordered to pay costs.**]—SIDNEY LEE (EXETER), LTD. *v.* JAMES, No. 3545a, *ante*.

4013. *Add. Annotation:*—**Refd.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207.

4014a. ——.]—On an application to review weekly payments the employers received a letter from the workman's solrs., asking what was the exact amount of diminution they claimed, & replied that they intended to ask for a reduction of the 15*s.* a week to 2*s.* 6*d.* a week or to such other sum as the ct. should hold proper. The county ct. judge reduced the weekly payment to 10*s.*, & ordered the employers to pay the costs:—*Held:* on the correct reading of the letter stating the diminution claimed the employers were successful on the award given, & the order as to costs should be set aside, &, by consent of the employers, each party was ordered to pay their own costs.—MIDDLETON ESTATE & COLLIERY CO., LTD. *v.* FINAN (1926), 20 B. W. C. C. 207, C. A.

4014b. ——.]—It is not a judicial exercise of discretion for the county ct. judge to order the employers to pay the costs of proceedings for review in which they have been successful in obtaining a reduction of the weekly payments. On appeal the Ct. of Appeal ordered that the costs of the arbn. should be paid by the workman.—GREAVES (J. W.) & SONS, LTD. *v.* ROBERTS (1929), 22 B. W. C. C. 401, C. A.

4014c. —— **Ambiguous answer by workman—Workman to pay costs.**]—Employers asked for termination or diminution of a weekly payment to a workman on the ground that he was fit to resume work. The workman put in an answer in which he admitted that he was fit for light work, but alleged that the employers had neglected to provide any light work. He also said that he was prepared to accept such reduced compensation as might be found to be half the difference between his average pre-accident earnings & the average weekly amount he could earn at such light work as might be available for him. The county ct. judge made an award diminishing the weekly payment, & giving the costs to the employers on the ground that they had succeeded on the main issue, the answer being ambiguous, & leaving it open to the workman to argue at the hearing that his labour was an "odd lot" & that he was, therefore, entitled to resist any reduction. The workman appealed on the ground that the county ct. judge had failed to exercise judicially his discretion as to costs:—*Held:* the county ct. judge had not violated any principle of law in exercising his discretion as to costs. Appeal dismissed.—MIDLAND EMPLOYERS' MUTUAL ASSURANCE, LTD. *v.* LEWIS (1930), 23 B. W. C. C. 192, C. A.

4019. *Add. Annotation:*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

4032a. Workman's expenses in getting to medical referee's house.]—The ct. has no power to make an order that a workman, who is ordered to attend before a medical referee to determine whether he is entitled to continue in the receipt of a weekly payment for compensation, shall be paid a sum for his expenses in getting to the medical referee's house.—RICHARDS *v.* UNITED NATIONAL COLLIERIES, LTD. (1927), 96 L. J. K. B. 716; 137 L. T. 467; 71 Sol. Jo. 490; 20 B. W. C. C, 465, C. A.

4034a. Taxing fee—Liability of workman to refund to employers.]—Notwithstanding Workmen's Compensation Act, 1925 (c. 84), Sched. I. (12), where a workman has brought unsuccessful proceedings against his employers, & has been ordered to pay their costs, he may also be made to refund to them the taxing fee which they have paid for having those costs taxed.—ELWELL *v.* CRANE FOUNDRY CO. [1929] 1 K. B. 88; 97 L. J. K. B. 641; 139 L. T. 300, C. A.

4035a. Decision of registrar as to quantum—Appeal to judge—No jurisdiction to review.]—In the taxation of costs the County Ct. Rules & the Workmen's Compensation Rules give a discretion to the registrar of the county ct. which cannot be interfered with by the county ct. judge on a question of amount when the discretion is otherwise properly exercised. A bill of costs in a case under the Workmen's Compensation Act included fees paid to three medical witnesses, two for £8 8*s.* each & one for £10 10*s.* On taxation the registrar reduced the fee to be allowed to each of those witnesses to £3 3*s.*, stating that he did so in the exercise of his discretion & after careful consideration of the relevant circumstances. On the hearing of an application to review, the county ct. judge increased the allowance for each of the three witnesses to £7 7*s.* On appeal:—*Held:* the county ct. judge had no jurisdiction to interfere with the discretion of the registrar in fixing the quantum of allowance for the medical witnesses.—WHITE *v.* ALTRINCHAM URBAN DISTRICT COUNCIL, [1936] 2 K. B. 138; [1936] 1 All E. R. 923; 105 L. J. K. B. 366; 154 L. T. 656; 52 T. L. R. 441; 80 Sol. Jo. 365; 29 B. W. C. C. 105, C. A.

PART XIV. SECT. 24, SUB-SECT. 1.—J.

sk. *Remit to medical referee—Fee of referee—By whom payable.*]—The person liable for payment of the fee under Workmen's Compensation Act, 1923 (c. 42), s. 25 (1), is the person applying for registration at the time when the to the medical referee is made.—N *v.* NIDDRIE & BENHAR COAL

652.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—K.

sl. *Set-off—Costs of separate decrees.*]—*Held:* as both decrees were steps in the statutory adjustment of liability for compensation in respect of the same accident, & therefore *partes negotii*, the employers should not be deprived of their right to set off the one decree for expenses against the other.—BYRNE *v.* BAIRD & CO., [1929] S. C. (Ct. of Sess.) 624.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—P.

sm. *Remission to arbitrator on appeal—Power of arbitrator as to costs.*]—An arbitrator, after a proof, decided

4042a. ——.]—KNIGHT *v.* SKINNER (1928), 21 B. W. C. C. 344, C. A.; *subsequent proceedings*, 21 B. W. C. C. 368, C. A.

4042b. ——.]—EVANS *v.* URIGUAYO S.S. OWNERS (1930), 23 B. W. C. C. 227, C. A.

4042c. ——.]—EMSLEY *v.* HAGGAS (J.) & Co., LTD. (1931), 24 B. W. C. C. 243, C. A.

4042d. ——.]—BARLOW *v.* PACIFIC STEAM NAVIGATION CO. (1930), 23 B. W. C. C. 228, C. A.

4043a. Stay of order pending application to Poor Persons Committee.]—THOMAS ALLEN, LTD. *v.* HAGGER (No. 2) (1931), 24 B. W. C. C. 375, C. A.

4045a. ——.]—DAWSON *v.* AGWI PETROLEUM CORPN., LTD. (1934), 27 B. W. C. C. 375, C. A.

4055a. —— **Owing to subsequent decision of appellate court.**]—Where a county ct. judge's award was according to the law as interpreted at the date of the hearing, but such interpretation, owing to a subsequent decision of the House of Lords, was proved since to have been wrong:—*Held:* his order giving costs to the successful workman must be set aside, & applts, the employers, must have their costs both in the county ct. & in the Ct. of Appeal.—AKERS *v.* LONDON & NORTH EASTERN RY. CO. (1926), 20 B. W. C. C. 195, C. A.

4063a. —— ——.]—Pltf., a farm bailiff, was injured in a collision between his employer's van, which he was driving, & a motor lorry owned by deft. Deft. admitted the negligence of his driver, but relied upon 1925 Act, s. 30, alleging that pltf. had received compensation under that Act, & was debarred from recovering damages. Pltf. was, in fact, paid full wages all the time he was off work, & made no claim for compensation. Some time after his return to work, however, he signed the usual form of receipt in respect of each week he was off work, the receipt stating that he had received compensation at the rate of 30*s.* per week. The employer in fact never received from the insurance co. any sum in respect of the compensation, & pltf. received only his full wages as stated above:—*Held:* pltf. had received wages only, & not compensation, & no question arose under sect. 30. Pltf. was entitled to recover in this action.—LIND *v.* JOHNSON, [1937] 4 All E. R. 201; 54 T. L. R. 95; 81 Sol. Jo. 1023.

4067. *Add. Annotations:*—**Consd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575; Avery *v.* London & North Eastern Ry. Co., [1937] 2 All E. R. 777; Taylor *v.* Arrol & Co., Ltd., [1937] 1 All E. R. 658.

4068. *Add. Citation:*—96 L. J. K. B. 268.
Add. Annotation:—**Consd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1913] A. C. 575. **Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

4068a. —— —— **Adjournment of compensation proceedings—Pending action by widow under Fatal Accidents Act.**]—A workman met with a fatal accident. A claim under 1925 Act was made by two infant dependants. The widow, acting under advice, stated that she proposed to take proceedings in another ct. to recover damages in respect of her husband's death, but declined to make or give up any claim to compensation under the Act. The county ct. judge, acting under Workmen's Compensation Rules, 1926, r. 4 (2), then made an order joining the widow as resp. to the arbn. proceedings, stating that the order was made without prejudice to her right to proceed under Fatal Accidents Act or to claim compensation under the Act. The employers contended that by reason of the above matters the widow was barred from bringing an action under Fatal Accidents Act, she having elected to proceed under the Workmen's Compensation Act:—*Held:* (1) the widow had not in law or in fact exercised an option to claim compensation under Workmen's Compensation Act; (2) it was open to the widow to bring proceedings under Fatal Accidents Act, & for the children at the same time to proceed under Workmen's Compensation Act; (3) the provisions of 1925 Act, s. 8 (3) (ii), do not make such proceedings impossible, in that, in such a case, it would be impossible to make a proper award of compensation in respect of the children under the sect.—TAYLOR *v.* ARROL (SIR WILLIAM) & Co., LTD., [1937] 1 All E. R.

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against the workman, & found the employers entitled to expenses. In a stated case the question of law was whether the arbitrator was entitled, on the facts found proved, to decide against the workman. The ct. answered the question of law in the negative, & remitted the case to the arbitrator. The arbitrator refused a motion by the workman for the expenses of the proof, on the ground that he had already awarded them to the employers & could not recall his own award:—*Held:* the effect of the answer to the question of law was to recall the interlocutor of the arbitrator on the merits, that the award of expenses being merely ancillary fell with it, &, accordingly, it was now open to the arbitrator to reconsider the question of the expenses of the proof.—MORTON *v* DAVID COLVILLE & SONS, [1931] S. C. 234; 24 B. W. C. C. Supp. 10.—SCOT.

sn. *Fee of court for recording memorandum—Payable by employer only—Validity of Act of Sederunt.*]—The fee of 10*s.* prescribed by the Act of Sederunt of July 16, 1929, for examining & recording a memorandum of agreement is a "fee of ct." within the meaning of sect. 40 of Sheriff Cts. (Scotland) Act, 1907, & the further provision in the Act of Sederunt that the fee is payable by the employer whether the memorandum is presented by him or by the workman does not make it *ultra vires*.—CARRON CO. *v.* THOM (1931), 24 B. W. C. C. 245, H. L. —SCOT.

PART XIV. SECT. 24, SUB-SECT. 2.—B.

4062 1. *Jurisdiction to vary order as to costs—Judgment specifically dealing with costs.*]—An award was made by an arbitrator under Workmen's Compensation Act, 1916, in favour of a workman who was allowed a certain weekly payment & the costs of the arbitration. From this award the workman appealed, & that appeal was dismissed with costs. Subsequently an application was made on behalf of resp. employer for an order that the costs incurred by him in the appeal should be made costs in the arbitration:—*Held:* although the order asked for might have been made on the hearing of the appeal, the Ct. had now no jurisdiction to make it.—LAUER *v.* BRIGGS (1928), 28 S. R. N. S. W. 389; 45 N. S. W. W. N. 110.—AUS.

PART XIV. SECT. 25, SUB-SECT. 1.—A.

f 1. —— ——.]—The fact that pltf., who was suing in Admlty. for damages resulting from a collision which caused the death of her husband, had accepted benefits under Workmen's Compensation Act:—*Held:* not to bar her, under the principle of election, from proceeding against the ship.—DAGSLAND *v.* S.S. CATALA, [1927] 4 D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440; *revsd. sub nom.* THE CATALA *v.* DAGSLAND, [1928] 3 D. L. R. 334; Ex. C. R. 83.—CAN.

r 1. —— ——.]—A workman who has suffered injury owing to the negligence of his employer is not debarred by Workers' Compensation Act, 1926, s. 63, from bringing an action at common law against his employer to recover damages for the injury so sustained unless he has made a claim under the Act & obtained a decision thereon.—CONNELL *v.* UNION STEAMSHIP CO. (1928), 28 S. R. N. S. W. 242; 45 N. S. W. W. N. 62.—AUS.

4068b. —— Claim for compensation by stepson—Right to widow to common law remedy.]—After an action of damages under the common law of Scotland had been brought against a colliery co. by the widow of a miner who had been killed in the pit, on behalf of herself & children, a stepson of deceased, who had no claim at common law, presented an application for compensation under 1925 Act. In that process the co. paid into ct. the maximum amount payable under the Act, & the arbitrator awarded the stepson compensation. In their defences to the common law action the co. pleaded that the defenders having paid into ct. the maximum compensation payable under 1925 Act, & not being liable to proceedings independently of said Act, the present action was incompetent:—*Held:* the option of the widow either to claim compensation under the Act or to take proceedings independently of it could not be defeated by the arbn. proceedings taken by the stepson, & the action was competent.—KINNEIL CANNEL & COKING COAL CO., LTD. *v.* SNEDDON (OR WADDELL), [1931] A. C. 575; 100 L. J. P. C. 113; 145 L. T. 289; 47 T. L. R. 386; 75 Sol. Jo. 295; 24 B. W. C. C. 181, H. L.; *affg.*, S. C. *sub nom.* WADDELL *v.* KINNEIL CANNEL & COKING COAL CO., LTD. (1930), 23 B. W. C. C. 567.

Annotations:—**Consd.** Avery *v.* London & North Eastern Ry. Co., [1937] 2 All E. R. 777; Taylor *v.* Arrol & Co., [1937] 1 All E. R. 658.

4070. *Add. Annotations:*—**Consd.** Murray *v.* Schwachman, Ltd., [1937] 2 All E. R. 68. **Refd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

4071. *Add. Annotations:*—**Dbtd. & Distd.** M'Cafferty *v.* MacAndrews & Co., [1930] A. C. 599. **Consd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566. **Refd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

4071a. Action for breach of statutory duty.]—An infant workgirl lost the ring finger of her right hand by accident arising out of & in the course of her employment. She received compensation under the Workmen's Compensation Act for a time, & then accepted £20 in purported settlement on the promise by the employer to re-employ her. No memorandum of this agreement was recorded. She worked at this employment for five years when, by reason of trade conditions, she was discharged. She then commenced an action against the employer for damages for personal injuries resultant from the employer's alleged breach of statutory duty to fence the machine. The action was tried by a judge alone who found that the injury had been caused by the employer's breach of statutory duty to fence, & that there was no contributory negligence on the part of pltf. He, however, also found, having regard to the fact that the infant had received employment for five years after her accident under the agreement, that the agreement to accept compensation, though not registered, was for her benefit & therefore binding, with the result that the action was barred by sect. 29 of the Act The infant appealed:—*Held:* without deciding whether the agreement was for the infant's benefit or whether further proceedings might be taken under Workmen's Compensation Act, the action for breach of statutory duty failed because, on the evidence, the machine was not a dangerous machine within Factory & Workshop Act, 1901 (c. 22), s. 10, & therefore there was no duty on the employer to fence it. Further, on the evidence, the accident was caused by the negligence of pltf. which was a complete defence to the action even if such negligence had only been of a contributory character.—HIGGINS *v.* HARRISON (1932), 25 B. W. C. C. 113, C. A.

Annotations:—**Consd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Walker *v.* Bletchley Flettons, Ltd., [1937] 1 All E. R. 170. **Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

4071b. —— Negligence or wilful act of employer or person for whom employer responsible—Whether necessary.]—In the absence of any personal negligence or wilful act of the employer or of some one for whose act or default the employer is responsible, Workmen's Compensation Act, 1925 (c. 84), s. 29, relieves the employer from liability in an action at common law for injury sustained by a workman in his employment, as the result of an accident arising out of & in the course of the employment through breach of a statutory obligation imposed on the employer for the workman's benefit.—RUDD *v.* ELDER DEMPSTER & CO., LTD., [1933] 1 K. B. 566; 102 L. J. K. B. 275; 148 L. T. 337; 49 T. L. R. 202; 25 B. W. C. C. 482, C. A.; *on appeal*, [1934] A. C. 244, H. L.

Annotations:—**Overd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1. **Consd.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669. **Refd.** Flower *v.* Ebbw Vale Steel Iron & Coal Co., [1934] 2 K. B. 132; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

4071c. —— —— ——.]—Sect. 29 (1) of 1925 Act does not preclude an action at common law against employers for breach of a statutory duty on their part or on the part of some person for whose act or default they are responsible.—LOCHGELLY IRON & COAL CO., LTD. *v.* M'MULLAN, [1934] A. C. 1; 102 L. J. P. C. 123; 149 L. T. 526; 49 T. L. R. 566; 77 Sol. Jo. 539; 26 B. W. C. C. 463, H. L.

Annotations:—**Consd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206. **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669; Hannaford *v.* May, [1935] 2 K. B. 385; Bailey *v.* Geddes, [1937] 3 All E. R. 671; Marshall *v.* London Passenger Transport Board, [1936] 3 All E. R. 83; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

4071d. —— —— What amounts to.]—Defts. installed in their factory as part of the plant with the intention that it should be used by their employees a dangerous machine which was not fenced or guarded as required by Factory & Workshop Act, 1901 (c. 22). Owing to the condition of the machine pltf., a workman in the employment of defts., was injured by it in the course of his work. It was found that it was not by the negligence of defts. but of their foreman that the machine had been allowed to be used in the condition in which it was at the time of the accident:—*Held:* the defence of *volenti non fit injuria* had no validity against an action based on breach of statutory duty; & further, pltf.'s injury was caused by the "wilful act" of defts. within sect. 29 (1) of 1925 Act, & defts. were therefore not protected by that sect. from liability to pltf. independent of the Act.

Defts. appealed, & contended that the maxim *volenti non fit injuria* was a defence to the action:—*Held:* the defence of *volenti non fit injuria* was no answer to a claim made by a workman against his employer for injury caused through a breach by the employer of a duty imposed upon him by statute.—WHEELER *v.* NEW MERTON BOARD MILLS, LTD., [1933] 2 K. B. 669; 103 L. J. K. B. 17; 149 L. T. 587; 49 T. L. R. 574; 26 B. W. C. C. 230, C. A.

Annotation:—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

4072a. —— **Appeal from order on question of law.**]—*Held:* (1) an appeal lies (in Scotland by means of a reclaiming note) from an order of the ct. in the action assessing compensation under 1925 Act, s. 29 (2), but on the same principle as if the proceedings had been by arbn., namely, that the determination is final as to fact, but is open to review as to law; (2) upon the construction of 1925 Act, s. 29 (2), in conjunction with 1925 Act, s. 14 (1), the expression "within the time hereinbefore limited for taking proceedings under this Act" does not mean that the action must be brought within six months from the occurrence of the accident, but means that the claim must be made within the six months as a condition of taking proceedings for the recovery of compensation; if the conditions of sect. 14 (1) are complied with the Act imposes no limit of time within which the action must be brought.—M'CAFFERTY *v.* MACANDREWS & CO., LTD., [1930] A. C. 599; 99 L. J. P. C. 145; 143 L. T. 682; 46 T. L. R. 559; [23 B. W. C. C. 286, H. L.

4076. *Add. Annotations:*—*As to* (1) **Distd.** Adair *v.* Colville (1926), 20 B. W. C. C. 702. **Refd.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

4081a. —— ——.]—M'CAFFERTY *v.* MACANDREWS & CO., LTD., No. 4072a, *ante*.

4096. *Add. Annotations:*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1. K. B. 566; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

4096a. ——.]—Resps. were engaged in work upon a vessel in appcts.' yard. As the work was urgent, they borrowed three of appcts.' workmen. One of the latter dropped a hammer & injured an employee of appcts. Appcts. paid the injured man compensation & sought to be indemnified by resps. The latter contended that, by reason of the definition of "employer" in sect. 5 of 1925 Act (whereby, upon the loan of services of a workman, the person with whom he has entered into a contract of service is to be deemed to be, & to continue to be, his employer) appct. co. was the employer within the meaning of sect. 30 of the Act & that therefore the injury was not caused in circumstances creating a legal liability in some person other than the employer as required by that sect.:—*Held:* (1) the "legal liability in some person other than the employer" referred to in sect. 30 was a liability outside the Act, & it was not legitimate to refer to the definition in sect. 5 of the Act in the way contended; (2) the construction of the sect. was the same whether the right to an indemnity was sought to be enforced by an arbn. under the Act or by action.—DOXFORD & SONS, LTD. *v.* FURNESS SHIPBUILDING CO., LTD., [1937] 4 All E. R. 334; 157 L. T. 572; 81 Sol. Jo. 1001, C. A.

4113. *Add. Annotation:*—**Consd.** Davis *v.* Lisle, [1936] 2 All E. R. 213.

PART XIV. SECT. 25, SUB-SECT. 1.—B.

4075 iv. —— —— *Whether award open to review.*]—M'CAFFERTY *v.* MACANDREWS & CO., [1929] S. C. (Ct. of Sess.) 529.—**SCOT.**

4077 i. —— *Deduction of costs of unsuccessful action.*]—ADAIR *v.* COLVILLE & SONS, LTD., [1927] S. C. 116; 20 B. W. C. C. 702.—**SCOT.**

4081 i. —— *Unsuccessful proceedings brought more than six months after accident.*] — M'CAFFERTY *v.* MACANDREWS & CO., LTD. (1929), 22 B. W. C. C. 807.—**SCOT.**

h i. —— —— ——.]—ADAIR *v.* COLVILLE & SONS, LTD., [1927] S. C. 116; 20 B. W. C. C. 702.—**SCOT.**

k i. —— —— ——.]—A workman, who has brought an action against his employer, founded solely upon the employer's liability at common law, & who has obtained a judgment in his favour, is not entitled, if that judgment be subsequently set aside upon appeal, to have compensation assessed in the action under Workmen's Compensation Act, 1906 (c. 58).—WARD *v.* DEVLIN, [1927] I. R. 299.—**IR.**

PART XIV. SECT. 25, SUB-SECT. 2.—A.

4083 iii. ——.]—On Jan. 22, 1926, a workman sustained injury by accident arising out of & in the course of his employment. On Feb. 4 his wife received from his employers £3 as compensation for two weeks, & on Feb. 15 she received 30*s.* as compensation for a further week. She had no authority from the workman to for or obtain compensation, &, he knew that she had received the payment of £3, he did not know that it had been paid as compensation. He knew, however, that the payment of 30*s.* made to his wife on Feb. 15 was a payment of compensation, & he allowed her to retain & use the money. The workman having subsequently brought an action against a third party to recover damages in respect of his injuries:—*Held:* he was barred from suing for damages, in respect that he had already recovered compensation within sect. 30 (1) of the 1925 Act.—REID *v.* STEVENSON, [1928] S. C. (Ct. of Sess.) 799.—**SCOT.**

4085 i. —— *Payment of compensation —No claim under Act.*]—In an action claiming damages for personal injuries caused by deft.'s negligence, deft. specially pleaded in bar that pltf. was precluded from recovering damages from him by Workmen's Compensation Act, s. 38, in that the accident was one in respect of which compensation was payable under the Act by pltf.'s employer, from whom pltf. had in fact claimed & recovered such compensation. It was admitted that, for a period of 6 months from the date of the accident, pltf.'s employer had paid him weekly, upon the day of each week upon which his weekly salary was paid before the accident, an amount equal to half the amount of his previous salary. The ct. found as a fact that pltf. accepted the payments with the knowledge that they were made to him as being due under the Act:—*Held:* pltf. notwithstanding he had made no claim under the Act, had recovered compensation & so was barred under sect. 38.—DIXON *v.* SHAVE (1929), 50 N. L. R. 245.—**S. AF.**

n i. —— —— *From contractor.*]—GEDDES *v.* DUNFERMLINE DISTRICT COMMITTEE, [1927] S. C. 797; 20 B. W. C. C. 815.—**SCOT.**

sm. "*Recover*" *damages — What amounts to.*]—The phrase "to recover" damages in Workmen's Compensation Act, 1925 (c. 84), s. 30 (1), means "to receive payment of" damages, & where a workman has been unable to obtain payment under a common law [illegible]ment in his favour against a third [illegible]y, he is entitled to claim compensation from his employers.—CUMBERLAND *v.* LANARKSHIRE TRAMWAYS CO., [1927] S. C. 407; 20 B. W. C. C. 780.—**SCOT.**

PART XIV. SECT. 25, SUB-SECT. 2.—B. (a).

4096 i. *From whom recoverable—Agent of employer.*]—A workman employed by the County Council of the County of Galway obtained an award of compensation under Workmen's Compensation Act, 1906, against the County Council in respect of injuries sustained by being knocked down by a motor ambulance to the County Galway Board of Health & Public Assistance. The County Council sued the Board of Health for indemnity under sect. 6 of that Act:—*Held:* that the Board of Health was merely the statutory agent of the County Council, & that the indemnity given by sect. 6 was not intended to enable an employer to seek an indemnity his own agent.—GALWAY CO. *v.* GALWAY BOARD OF HEALTH, [1931] I. R. 658; 24 B. W. C. C. Supp. 215; *affg.*, [1931] I. R. 547.—**IR.**

SECT. 27.—REPAYMENT OF POOR RELIEF.

See Workmen's Compensation Act, 1925 (c. 84), s. 41.

4137a. When right arises—Payment by guardians pending settlement of claim—By arbitration or agreement.]—In an action brought by debenture holders against a co. to realise their security receivers were appointed of the assets comprised in the debentures. At the date of their appointment there were a number of workmen in receipt of weekly payments from the co. as compensation for accidents suffered by them causing total or partial incapacity. These payments having ceased on the appointment of the receivers, the workmen were paid outdoor relief by the guardians. On an application by the guardians under Workmen's Compensation Act, 1925 (c. 84), s. 41, for repayment of the money so expended by them :—*Held :* the words "pending the settlement of his claim" in sect. 41 did not refer to the settlement of the workman's claim by the payment of a lump sum, but to the settlement of compensation by an award or by agreement between the workman & the employer; therefore, as the claims of the workmen in the present case had long since been settled by the co. by the weekly sums, the guardians were not entitled to the repayment they claimed.—*Re* LEWIS MERTHYR CONSOLIDATED COLLIERIES, LLOYDS BANK *v.* THE CO. (No. 2), [1929] 1 Ch. 589; 98 L. J. Ch. 77; 140 L. T. 356; 93 J. P. 105; 45 T. L. R. 159; 73 Sol. Jo. 92; 27 L. G. R. 184; 22 B. W. C. C. 31; [1928] B. & C. R. 149, C. A.

Part XV.—Apprenticeship.

4183. *Add. Annotation :*—**Refd.** Mercantile Union Guarantee Corpn., Ltd. *v.* Ball, [1937] 3 All E. R. 1.

4197. *Add. Annotations :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181; Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

4200. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4201. *Add. Annotation :*—**Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

4230a. Exemption in case of apprenticeship by public charity—What amounts to "public charity."]—It is not necessary that a public charity should be a permanent charity (LORD MANSFIELD, C.J.).—R. *v.* ST. MATTHEW'S, BETHNAL GREEN (1767), Burr. S. C. 574.

4230b. —— ——.]—R. *v.* CLIFTON-UPON-DUNSMORE (INHABITANTS) (1772), Burr. S. C. 697.

4230c. —— ——.]—R. *v.* FAKENHAM (INHABITANTS), No. 4429, *post.*

—— ——.]—*See, also,* REVENUE, Vol. XXXIX., p. 265, No. 485.

4415. At end of paragraph add :—

", the indenture was invalid, & a service by the apprentice under it conferred on him no settlement."

4421a. Omission of consideration.]—The premium given by the parish officers upon the binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by 8 Anne, c. 5, s. 40, & the insertion of the premium being required for no other purpose but to ascertain the amount of the duty.—R. *v.* OADBY (INHABITANTS) (1818), 1 B. & Ald. 477; 106 E. R. 175.

Annotation :—**Refd.** R. *v.* Baildon (Inhabitants) (1832), 3 B. & Ad. 427.

PART XV. SECT. 1, SUB-SECT. 13. —J.

sd. *Apprenticeship to company—Voluntary liquidation.*]—Indentures of apprenticeship to a co. are not as a matter of course terminated by the passing of a resolution for the voluntary winding up of the co. or by the subsequent liquidation of the co. pursuant to such resolution. In the absence of any express provision in such an indenture the question whether the indenture has been terminated by such voluntary liquidation must depend upon the particular circumstances of the case.—*Re* YURONG STREET MOTORS, LTD., *Ex p.* NEAL & FOUGH (1932), 32 S. R. N. S. W. 296; 49 N. S. W. W. N. 89.—**AUS.**

MAYOR'S AND CITY OF LONDON COURT.

Part I.—The Court.

Officers.]—*See, also,* COUNTY COURTS, Vol. XIII., p. 450, No. 18.

Part II.—Jurisdiction.

21a. Specific performance.]—This [specific performance] being an equitable right appearing incidentally in the course of the cause, the recorder was bound to give effect to it (*per* CUR.).—WILLIAMS *v.* SNOWDEN, [1880] W. N. 124.

31. *Add. Annotation :*—**Distd.** Lake *v.* Cronin, Hunt *v.* Cronin, [1929] 1 K. B. 31.

Part III.—Practice and Procedure.

58. *Add. Annotation :*—**Refd.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.

Part IV.—Appeals.

85. *Add. Annotation :*—**Consd.** Bowater & Sons, Ltd. *v.* Davidson's Paper Sales, Ltd., [1936] 1 All E. R. 110.

91. *Add. Annotation :*—**Consd.** Bowater & Sons, Ltd. *v.* Davidson's Paper Sales, Ltd., [1936] 1 All E. R. 110.

93a. —— —— Proceedings within county court jurisdiction.]—(1) An appeal from proceedings in the Mayor's & City of London Ct. within the county Ct. jurisdiction, lies to the Ct. of Appeal ; (2) *Semble :* where the proceedings are not within the county ct. jurisdiction appeal lies to the Ct. of Appeal if the old Ct. of Exchequer Chamber would have had jurisdiction in error, otherwise appeal lies to the Div. Ct. with a further appeal with leave to the Ct. of Appeal.—BOWATER & SONS, LTD. *v.* DAVIDSON'S PAPER SALES, LTD., [1936] 1 K. B. 465 ; [1936] 1 All E. R. 110 ; 105 L. J. K. B. 233 ; 154 L. T. 395 ; 80 Sol. Jo. 186, C. A.

94. *Add. Annotation :*—**Consd.** Bowater & Sons, Ltd. *v.* Davidson's Paper Sales, Ltd., [1936] 1 All E. R. 110.

Part V.—Removal of Actions—Certiorari.

99. *Add. Annotation :*—*As to* (2) **Refd.** Stevens *v.* Walker, [1936] 2 K. B. 215.

MEDICINE AND PHARMACY.

Part I.—Physicians and Surgeons.

15. *Add. Annotation :*—**Distd.** Way *v.* Bishop, [1928] Ch. 647.

16. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

Part II.—The General Medical Council and Similar Bodies in the Dominions.

21a. Removal from register—On application—Discretion of Council.]—A medical practitioner whose name was on the medical register applied to have his name removed at his own request under chapter 13 of the Standing Orders. After the application was received by the Council & before it was heard & determined the Council received information that the practitioner had been guilty of conduct *primâ facie* constituting infamous conduct in a professional respect. An inquiry was then held & the Council adjudged that the practitioner was guilty of infamous conduct in a professional respect & by their direction his name was erased from the register :—*Held :* the practitioner was not entitled to have his name removed from the medical register on his mere application for that purpose ; until the Council ordered his name to be removed he was still a registered medical practitioner, & in ordering his name to be erased for infamous conduct in a professional respect the Council had acted within the powers conferred upon them by the Act & by their Standing Orders validly made thereunder.—R. *v.* GENERAL MEDICAL COUNCIL, [1930] 1 K. B. 562 ; 99 L. J. K. B. 217 ; *sub nom.* R. *v.* GENERAL MEDICAL COUNCIL, *Ex p.* KYNASTON, 142 L. T. 390 ; 94 J. P. 94 ; 46 T. L. R. 197 ; 28 L. G. R. 159, C. A.

24. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562. *As to* (2) **Consd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

28. *Add. Annotations :*—*As to* (2) **Consd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309. *Generally*, **Refd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

30. *Add. Annotations :*—*As to* (2) **Apld.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602. **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562. *As to* (3) **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562.

Part III.—Medical Practitioners.

43. *Add. Annotation :*—**Refd.** Jutson *v.* Barrow, [1936] 1 K. B. 236.

47. *Add. Annotation :*—**Consd.** Andrews *v.* Director of Public Prosecutions, [1937] A. C. 576.

69a. —— Needle broken in patient—Duty to inform patient.]—GERBER *v.* PINES (1934), 79 Sol. Jo. 13.

69b. —— DRYDEN *v.* SURREY COUNTY COUNCIL & STEWART, No. 87c, *post*.

72. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

PART II. SECT. 2.

o i. —— —— *Must be specified in report of discipline committee.*]—CHURCH *v.* COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 957 ; [1927] 2 W. W. R. 9 ; 47 Can. Crim. Cas. 297 ; 22 Alta. L. R. 560 ; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

a i. —— *Jurisdiction of discipline committee.*]—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 953 ; [1927] 2 W. W. R. 4 ; 47 Can. Crim. Cas. 290 ; 22 Alta. L. R. 553.—**CAN.**

b i. —— —— ——.]—LATIMER *v.* COLLEGE OF PHYSICIANS & SURGEONS OF BRITISH COLUMBIA, [1931] 3 D. L. R. 304 ; 55 Can. C. C. 132.—**CAN.**

b ii. —— —— *Power of appellate court — To set aside order of council made without jurisdiction.*]—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 953 ; [1927] 2 W. W. R. 4 ; 47 Can. Crim. Cas. 290 ; 22 Alta. L. R. 553.—**CAN.**

b iii. —— —— —— *To refer matter back to discipline committee for reconsideration.*]—CHURCH *v.* COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 957 ; [1927] 2 W. W. R. 9 ; 47 Can. Crim. Cas. 297 ; 22 Alta. L. R. 560 ; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

b iv. —— —— —— —— *To mitigate punishment.*]—Where applt.'s conduct was such as to bring him within the disciplinary powers of the council & it was right in punishing him therefor, but in all the circumstances of the case the punishment imposed was too severe :—*Held :* his name should be restored to the register on Dec. 31, 1927.—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS (Alta.), [1927] 3 D. L. R. 225 ; [1927] 2 W. W. R. 388 ; 48 Can. Crim. Cas. 148.—**CAN.**

aa i. —— ——.]—CRAWFORD *v.* COLLEGE OF PHYSICIANS & SURGEONS (Alta.), [1929] 3 D. L. R. 62.—**CAN.**

aa ii. —— —— *No right to adopt findings of committee.*]—The Medical Act, R. S. B. C., 1924 (c. 157), does not authorise the executive committee of the Council of the College of Physicians & Surgeons to do more than find the facts & report same to the Council. It cannot adjudicate on the facts found by it. The fact that the membership of the executive committee was identical with that of the Council when a certain case was before them does not entitle the Council to merely adopt the adjudication made by the committee in that case. Where on an appeal from the Council the ct. holds that it has not adjudicated on the matter before it, the matter should be remitted to the Council for rehearing & adjudication.—*Re* MURPHY, [1930] 3 W. W. R. 234 ; 4 D. L. R. 1008.—**CAN.**

aa iii. —— —— *Right of member to counsel.*]—A member of the College whose conduct is the subject of inquiry is entitled to be represented by counsel not only before the committee but also before the Council.—*Re* MURPHY, [1930] 3 W. W. R. 234 ; 4 D. L. R. 1008.—**CAN.**

aa iv. —— *Liability of member to pay costs of proceedings.*]—*Re* MURPHY (1931), 55 Can. C. C. 113.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

ss. *Practice—Whether time spent in study of profession.*]—Time put in in the study of a science or profession cannot be considered as time spent in the "practice" of it as that term is commonly understood.—INNIS *v.* SATCHWELL, [1928] 3 D. L. R. 624 ; [1928] 2 W. W. R. 638 ; 23 Alta. L. R. 495.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.

sd. *German qualification—Recognition in South Australia.*]—Where, on an application for an order directing the Medical Board of South Australia to register a medical practitioner qualified in Germany as a medical practi-

85a. Res ipsa loquitur—Whether doctrine applicable.]—MORRIS *v.* WINSBURY-WHITE, [1937] 4 All E. R. 494.

86. *Add. Annotations :*—**Consd.** Lindsey County Council *v.* Marshall, [1937] A. C. 97. **Refd.** Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535; *Re* Frost, [1936] 2 All E. R. 182.

tioner in the State of South Australia, it was shown that a medical practitioner duly qualified according to the law of South Australia cannot practise in Germany, with very limited exceptions, under a style denoting that he is a medical practitioner approved by the German Govt., & if he does so is subject to fine or imprisonment :—*Held :* it could not be affirmed that a person registered as a medical practitioner under the South Australian Act would be granted rights & advantages equal to those granted in Germany to the holders of the same qualifications. Accordingly, registration was rightly refused by the Medical Board.—*Re* BECKER, [1934] S. A. S. R. 137.—**AUS.**

PART III. SECT. 3, SUB-SECT. 1.—A.

55 i. *Want of proper skill in assistant —Liability of surgeon—Nurse.*]—F., a surgeon, on being consulted by I., advised that she should undergo at the same time two distinct operations, the second of which involved an abdominal incision; he suggested that she should enter a named private hospital for such purpose, & she & her husband made the necessary arrangements with that hospital to do so. In due course she was suitably prepared for the operation before being taken into the operating theatre, where F., his assistant surgeon, & the anæsthetist were present, as well as the theatre sister, & one, & at times two, assistant theatre sisters, all members of the nursing staff of the hospital & engaged, paid, & provided by the hospital in the ordinary course. Each was qualified & had sufficient experience properly to undertake the work which fell to her duty to discharge in the theatre. In the course of the first operation iodised phenol (iodine containing carbolic acid) was used for cauterising purposes by F., & after such use it became the duty of one of the assistant sisters to remove the beaker containing it outside the theatre or to a safe place. Instead she returned it to a tray which held a similar beaker containing tincture of iodine & to the spot where the stock iodine was kept. The first operation continued for about forty minutes after the iodised phenol was used. After the first operation, F. & his assistant surgeon proceeded to scrub up & regown, this taking about fifteen minutes. While they were so engaged, the two assistant sisters placed the patient in the position required for the second operation, &, upon an indication from the anæsthetist, the assistant sister who had previously handled the iodised phenol proceeded to paint the abdomen of the patient. Instead of painting the patient with plain tincture of iodine, the sister actually used the iodised phenol, with the result that the patient was badly burned. The sister's error was discovered by F. very soon after it had occurred, & prompt measures were taken by him. I. claimed damages against F. After evidence had been given, the case was removed into the Ct. of Appeal for argument. It was explicitly admitted that F. was not personally negligent, & it was taken as a fact that I., through the sister's negligence, was painted with iodised phenol instead of with tincture of iodine. The question for the Ct. of Appeal was whether F. was vicariously liable for the sister's negligence :—*Held :* in the circumstances, the sister, in discharging the duty of painting, was neither the servant of the operating surgeon, nor was she in a position analogous to that of a servant doing work as his servant or agent, & accordingly he was not vicariously liable for her negligence.—INGRAM *v.* FITZGERALD, [1936] N. Z. L. R. 905; G. L. R. 652; 12 N. Z. L. J. 307.—**N. Z.**

PART III. SECT. 3, SUB-SECT. 1.—B.

57 iv. —— *Use of apparatus.*]—The test of the efficient use by a physician of an apparatus for ascertaining a diseased condition, *e.g.* an X-ray machine, is the ordinary standard of skill maintained by its competent manipulators.—ANTONIUK *v.* SMITH, [1930] 2 W. W. R. 721; 4 D. L. R. 215; 24 Alta. L. R. 585; *revsg.*, [1930] 3 D. L. R. 500.—**CAN.**

64 i. *Less degree than might have been shown by others.*]—Against M., the medical superintendent in charge of the hospital, damages were sought for his alleged negligent treatment. The evidence showed that M. failed to diagnose the ear-trouble from which pltf. suffered as mastoiditis, & although M. was not able to ascertain what the exact trouble was, he did not send for nor advise sending for an ear-specialist :—*Held :* all a medical practitioner is required to bring to the performance of his duty is reasonable care & average skill; & he is not responsible merely because some other practitioner of greater skill & greater knowledge might have prescribed a different treatment. If a physician in charge of a case is unable to diagnose the trouble he is under no legal obligation so to inform the patient & to advise the calling in of a specialist.—JARVIS *v.* INTERNATIONAL NICKEL CO., [1929] 2 D. L. R. 842; 63 O. L. R. 564.—**CAN.**

sa. *Insurance against malpractice, error or mistake—Neglect to adjust table for examination.*]—The reasonable care & skill which a physician must exercise in his treatment of a patient includes such care & skill with respect to everything he requires the patient to do in order to determine what else should be done. When a physician requires a patient to get upon a table in order that he may continue his diagnosis, he is bound to exercise reasonable care to see that the table is safe & properly adjusted so that the patient will not be injured as a result of getting upon it. The physician's neglect to so adjust the table is " malpractice, error or mistake in the practice of his profession," within the meaning of those words in an insurance policy under which the insurer agreed to indemnify him against liability for damages in consequence thereof.—BALTZAN *v.* FIDELITY INSURANCE CO. OF CANADA, [1932] 3 W. W. R. 140; *affd.*, [1933] 3 W. W. R. 203.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—C.

67 vi. ——.]—When a surgeon minimises the danger of the treatment to induce the patient to proceed, & refrains from explaining the advantages of an alternative course well known to him, he brings himself within the field of liability. If the surgeon assures the patient of results of which he cannot speak with certainty, he must be taken to have spoken recklessly, & is liable. If the patient, in this case had received the advice which it was the duty of the surgeon to impart, she would not have had the operation at all, & for this failure of duty resulting in damage to her hand, she was entitled to recover damages.—KINNEY *v.* LOCKWOOD CLINIC, LTD., [1931] 4 D. L. R. 906; O. R. 438.—**CAN.**

67 vii. ——.]—In a case where a joint has been injured & dislocation is suspected the fact that the surgeon who is consulted, & who applies the recognised tests & gives the usual instructions, does not advise the taking of an X-ray examination does not necessarily constitute negligence on his part; even though it is subsequently disclosed as a result of such an examination that his diagnosis was erroneous.—MOORE & MOORE *v.* LARGE, [1932] 2 W. W. R. 568; 4 D. L. R. 793; 46 B. C. R. 179.—**CAN.**

67 viii. ——.]—ARMSTRONG *v.* DAWSON, [1933] 1 W. W. R. 187.—**CAN.**

sc. *Mode of trial.*]—*Held :* an action against a doctor for damages for negligence in the use of X-ray apparatus should be tried without jury since it involved expert evidence & scientific investigation.—ALEXANDER *v.* KIRKLAND, [1934] 2 D. L. R. 525.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

a i. —— ——.]—DAVY *v.* MORRISON, [1931] 4 D. L. R. 619; [1932] O. R. 1.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—G.

84 ii. —— *Removal of organ or limb.*]—A surgeon is justified in removing an organ during an operation if he considers it necessary for the patient's life or health, notwithstanding that he has not the patient's consent to such removal.—MARSHALL *v.* CURRY, [1933] 3 D. L. R. 260; 6 M. P. R. 267; 60 C. C. C. 136.—**CAN.**

84 iii. —— ——.]—Pltf., a surgeon, was called to a hospital because of an injury to deft.'s hand in a motor-car accident. Deft., a Chinaman, who was unacquainted with pltf., asked him to fix up the hand but not to cut it off as he wished to have it looked after in his home city. Again, when in the operating room, deft. stated that he did not want the hand cut off. Pltf. replied that he would be governed by the conditions found after the anæsthetic had been administered. Deft. said nothing. On examination under the anæsthetic pltf. decided that an immediate operation was necessary to prevent blood poisoning with no possibility of saving the hand & it was amputated. This view was supported by two other attending physicians. Pltf. sued for professional fees & deft. counterclaimed for damages for the cost of an artificial hand, loss of wages, & general damages :—*Held :* the operation was necessary, & it was performed in a highly satisfactory manner. The judge dismissed the action & awarded deft. $50 damages for trespass to the person. Damages for loss of wages & the cost of the artificial hand were not allowed since they were the results of the accident & not of the unauthorised operation.—MULLOY *v.* HOP SANG, [1935] 1 W. W. R. 714.—**CAN.**

sd. *Tube left in patient.*]—THOMPSON *v.* BARRY, [1932] 1 D. L. R. 805; *revsd.*, 2 D. L. R. 814.—**CAN.**

sf. *Duty as to advice—Extent of duty.*]—The duty of a surgeon is to be honest in fact; he need not disclose fully the nature & possible effects of an operation.—KENNY *v.* LOCKWOOD, [1932] 1 D. L. R. 507; O. R. 141.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—H.

86 iv. —— ——.]—**Hospital liable for the negligence of nurses after an operation.**—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

86 v. —— ——.]—**Pltf. entered defts. hospital for the purpose of undergoing an operation, &, owing to the fact that the regular nursing staff was not**

87. *Add. Annotations :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364. **Folld.** Marshall *v.* Lindsey County Council, [1935] 1 K. B. 516. **Consd.** Strangeways-Lesmere *v.* Clayton, [1936] 1 All E. R. 484; Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535. **Distd.** Lindsey County Council *v.* Marshall, [1936] 2 All E. R. 1076.

87a. —— **Maternity home maintained by county council—Patient contracting puerperal fever from previous patient.**]—Applts. admitted resp. as a patient to their maternity home at Cleethorpes for the purpose of her confinement, without informing her that there had been a recent case of puerperal fever in the home. While in the home resp. contracted

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sufficient to give her the care considered necessary by her physician, a special nurse was employed & added temporarily to the regular staff but charged to pltf. :—*Held :* the special nurse so engaged was the employee of the hospital, & not the mere assistant of pltf.'s physician, & the hospital was responsible in damages for negligence on her part resulting in severe injury to pltf.—LOGAN *v.* COLCHESTER COUNTY HOSPITAL, [1928] 1 D. L. R. 1129; 60 N. S. R. 62.—**CAN.**

86 vi. —— *Insufficient staff.*]—Defts., the O. Board of Health, maintained a County Hospital, to which pltf. was admitted, & where she underwent an operation. Pltf. was admitted to the hospital upon the terms that her father would pay defts. 4*s.* per day for the treatment therein. After the operation pltf. was burnt by a hot-water jar, which, she alleged, had been placed in her bed by another patient, & she sued the defts for damages. The jury found that defts. contracted to care & maintain pltf.; that defts. were guilty of negligence or breach of duty in the care & maintenance of pltf.; &, in answer to the question whether the negligence was that of some of defts.' employees, answered : "Through insufficient staff" :—*Held :* once defts. went outside the statutes relating to the relief of the poor, & proceeded to contract with paying patients, they were bound by the ordinary law of contract.—MULRENNAN *v.* OFFALY BOARD OF HEALTH, [1930] I. R. 345.—**IR.**

86 vii. —— *Negligent operation of apparatus.*]—A boy of three years, a patient in deft. corpn.'s hospital, was scalded & burnt by steam escaping from an apparatus designed for his treatment by steam inhalation for pneumonia. The nurse in charge was absent from the room at the time, & was recalled by the boy's screams. She found the apparatus in order & was not able to account for the condition of the patient. In an action by the patient & his father to recover damages arising from the former's injuries, it was not shown how the accident happened, but there was evidence to show that the apparatus was safe if proper care was taken :—*Held :* the obligation of deft. corpn. being not merely to supply properly qualified nurses, but to nurse the patient, the only inference to be drawn from what happened was that there was an absence of proper care on the part of the hospital attendants, & deft. corpn. was liable for the negligence of its servants. HARKIES *v.* LORD DUFFERIN HOSPITAL, [1931] 2 D. L. R. 440; 66 O. L. R. 572. —**CAN.**

86 viii. —— ——.]—In an action against an infirmary for damages for personal injuries, pursuer averred that she attended the infirmary for ultra-violet ray treatment; that the nurse in charge, who was in the employment of defenders, allowed her to be exposed to the rays for too long a period; that she thereby sustained injury; & that the injury was due solely to the negligence of the nurse, for whom defenders were responsible. She further averred that she had relied on the knowledge & skill of the nurse in applying the treatment. She did not aver that defenders had acted negligently in the selection of their medical or nursing staffs, or of the apparatus employed. Defenders averred, & pursuer did not deny, that their electrical department was in charge of, & was superintended by, a doctor, & that the treatment received by pursuer was administered by the nurse upon his instructions. The Second Division having dismissed the action as irrelevant the pursuer appealed to the House of Lords. The House, with the assent of the parties, reversed that decision & ordered a proof before answer.—ANDERSON OR LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1931] S. C. 34.—**SCOT.**

86 ix. —— ——.]—Applt. collapsed under an operation performed in the Waitaki Hospital, & had to be moved out of the theatre into a ward. The operating surgeon gave instructions to the house surgeon to apply the usual restorative measures, including the application of heat. The house surgeon decided that applt., who was unconscious, should be placed under an electrical radiant-heat cradle, a common device to keep up the heat of the body, & left general instructions noted in the ward-book as "Hot bath on; watch carefully, & see that patient does not get too hot," &, later, "Bed temperature to be kept between 90 & 100 degrees; watch the heater very carefully." No one was told off to watch or sit by the patient continuously, & during the night applt. was left for intervals of twenty minutes to half an hour without observation. A burn on the knee resulted, necessitating amputation of applt.'s leg. In an action by applt. against the hospital board :—*Held :* the burn was due to the negligence of the nurse in the care & treatment of the patient while his temperature was being so kept up by means of the heat-cradle, although the evidence did not disclose the precise way in which the burn was caused. The judge assessed the damages at £1,350, but came to the conclusion that the negligence in question was not in a matter of mere ministerial ward duty or in a matter of routine, but was negligence in the discharge of a professional duty for which resp. was not liable. On appeal :—*Held :* the evidence justified a finding of negligence on the part of a nurse.—LOGAN *v.* WAITAKI HOSPITAL BOARD, [1935] N. Z. L. R. 385; G. L. R. 1, 421.—**N.Z.**

86 x. —— ——.]—A hospital is liable for the negligence of a nurse burning a patient by improper administration of diathermic treatment as part of her routine duty, & not under the control or direction of a doctor.—FLEMING *v.* SISTERS OF ST. JOSEPH, [1937] 2 D. L. R. 121.—**CAN.**

86 xi. ——.]—An infirmary was governed by managers, none of whom took any control over the treatment of the patients. The nurses were engaged, & might be suspended, by the matron, whose duty it was to see that they were attentive to their duties. The electrical department of the infirmary was under the control of a director, who was a qualified medical practitioner, & its staff included several qualified nurses. The director prescribed for a patient treatment by ultra-violet rays. He did not specify the time for which the patient was to be exposed, but the regular period for a first exposure was ten minutes. The first exposure was supervised by a nurse, no doctor being present at the time. The patient was burned by the rays, & she alleged that her injuries were due to the negligence of the nurse in allowing her to be exposed for forty-five minutes. In an action against the infirmary for damages :—*Held :* no negligence on the part of the nurse had been established.—LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1932] S. C. 245.—**SCOT.**

86 xii. ——.]—A patient brought an action for damages against the governing body of a public hospital. He averred that the doctors in attendance failed to examine him properly, & ordered him to leave the hospital when he was unfit to do so; & that the nurses failed to administer medicine as prescribed by the doctors, & also failed to administer laxatives when required. He made further general averments that the nurses had failed to carry out their duties in regard to attendance & the supply of food :—*Held :* defenders were not responsible for the negligent discharge of their professional duties by competent doctors & nurses engaged by them.—REIDFORD *v.* ABERDEEN MAGISTRATES, [1933] S. C. 276.—**SCOT.**

86 xiii. ——.]—Hospital found not liable for the negligent burning of a patient by a hot-water bottle properly left in the bed by a nurse, the burning being due to replacement of the bottle by one of the doctors who brought the patient back from the operating room. —DAVIS *v.* COLCHESTER COUNTY HOSPITAL, [1933] 4 D. L. R. 68; 7 M. P. R. 66.—**CAN.**

86 xiv. ——.]—When a hospital, even though the hospital in question is a charitable institution, is sued by a patient for damages caused by the negligence of its employees it is in exactly the same position as other employers & the question whether pltf. can succeed depends upon the facts of the particular case. In the present case it was found that the nurses had been negligent. The hospital contended, with respect to the negligence of one of them in adjusting a tube without informing the patient's doctor, as the patient requested, of the latter's condition, that when she attempted to adjust it she was acting under the orders of the interne, who should be deemed to have been acting temporarily as a substitute for the pltf.'s surgeon &, therefore, pltf.'s agent for giving instructions to the nurse :—*Held :* what the interne said to the nurse should not be regarded as instructions but merely advice from one whose advice she was not obliged to accept, &, in any event, he was, under the circumstances, the agent of deft. hospital by whom he was employed & the main negligence was that of the nurses in not disclosing the actual facts to him.—BEATTY *v.* SISTERS OF MISERICORDE OF ALBERTA, [1935] 1 W. W. R. 651; 2 D. L. R. 804.—**CAN.**

86 xv. ——.]—A hospital held not liable for the negligence of nurses in applying excessive heat to a patient by air electric cradle, the treatment having been prescribed by the surgeon. —VUCHAR *v.* TORONTO GENERAL HOSPITAL TRUSTEES, [1937] 1 D. L. R. 298; O. R. 71.—**CAN.**

puerperal fever & was for some time seriously ill. In an action by resp. to recover damages from applts. for injury caused by the negligence of their professional staff:—*Held:* applts. or their staff knew or ought to have known that in admitting resp. to the home they were exposing her to the danger of infection, & applts. were consequently negligent in not duly warning her of the existence of that risk.

Per LORD WRIGHT, M.R.: To apply *Hillyer's Case*, No. 87, to facts like these would involve a great extension of the rule which the Ct. of Appeal there laid down, & indeed would contravene the limitations which KENNEDY, L.J., placed upon it.—LINDSEY COUNTY COUNCIL *v.* MARSHALL, [1937] A. C. 97; [1936] 2 All E. R. 1076; 105 L. J. K. B. 614; 52 T. L. R. 661; 80 Sol. Jo. 702; *sub nom.* MARSHALL *v.* LINDSEY COUNTY COUNCIL, 155 L. T. 297; 100 J. P. 411; 34 L. G. R. 469, H. L.

Annotations:—Generally **Consd.** Strangeways-Lesmere *v.* Clayton, [1936] 1 All E. R. 484. **Refd.** Dryden *v.* Surrey County Council & Stewart, [1936]) 2 All E. R. 535.

87b. —— ——.]—Pltf.'s wife, who had been admitted to the W. hospital to undergo an operation, lost her life owing to an overdose of a dangerous drug administered to her just before the operation by two nurses at the hospital. The overdose was due to a mistake on the part of the nurses in reading the amount ordered by the doctor to be administered. Pltf. brought an action for damages under Fatal Accidents Acts, & Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), against (*a*) the nurses, & (*b*) the hospital authority:—*Held:* the nurses were guilty of negligence & were liable, but the hospital authority was not liable as principals for the nurses' negligence, the only duty resting on the hospital being to see that the nurses who were engaged were duly qualified.—STRANGWAYS-LESMERE *v.* CLAYTON, [1936] 2 K. B. 11; [1936] 1 All E. R. 484; 105 L. J. K. B. 385; 154 L. T. 463; 52 T. L. R. 374; 80 Sol. Jo. 306.

Annotation:—**Consd.** Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535.

87c. —— ——.]—Deft. S. performed a minor operation on pltf. in deft. council's hospital. After she had left the hospital pltf. complained of pains, & upon examination by her doctor she was found to be suffering from pyelitis, & a wad of surgical gauze was found in & removed from her body. Pltf. brought an action against S. for breach of duty & neglect to remove the plugging after the operation, & against deft. council for breach of duty & negligence arising out of a failure to nurse her properly. The negligence alleged against the council was that the nurses in their hospital had failed to remove the plugging, had failed to observe or report to the doctor in charge certain symptoms in pltf.'s condition, & had failed to take her temperature on the morning on which she had left the hospital. At the hearing counsel for S. put leading questions to witnesses for deft. council:—*Held:* (1) upon the evidence S. had negligently left the gauze in pltf.'s body & was liable in damages; the negligence alleged against the nurses was negligence in carrying out their skilled duties as nurses, for which deft. council were not liable; upon the evidence the nurses had no reason to know that the gauze had been left in, & inasmuch as pltf. had not complained of pain there was no duty upon the nurses to discover the presence of the gauze; inasmuch as the temperature had pursued a perfectly normal course & gave no indication that there was anything wrong, the nurses were not negligent in not taking pltf.'s temperature on the morning on which she left the hospital; the causes of action against the two defts. were quite distinct & arose to a substantial extent out of different facts, & counsel for the one deft. was entitled to cross-examine a witness for the other; there ought not to be an order that pltf. should recover the costs payable by her to deft. S., as the acts of negligence alleged against two defts. were different.—DRYDEN *v.* SURREY COUNTY COUNCIL & STEWART, [1936] 2 All E. R. 535; 80 Sol. Jo. 656.

Annotation:—**Refd.** Russell *v.* Criterion Film Productions, Ltd., [1936] 3 All E. R. 627.

87d. Liability of hospital—Diphtheria patient contracting smallpox.]—Resp., an infant patient in applt. hospital, who had suffered from diphtheria, was discharged as cured. Nine days afterwards she developed smallpox. The facts were that smallpox patients had been placed in rooms on the same floor as resp., & that the latter had been attended by the nurses who attended to the smallpox patients. In an action brought by resp., as pltf., against the hospital, as defts., for negligence, defts. pleaded (1) that the technique of which complaint was made by resp. was adopted by applts., on competent medical advice, & (2) that it was in accord with approved modern practice:—*Held:* having regard to the favourable opinion expressed by all applts.' medical witnesses regarding the technique followed in the hospital & to the accepted practice in regard to that technique appearing from the same evidence, the charge of negligence brought by resps. against applts. in this case was not established.—VANCOUVER GENERAL HOSPITAL *v.* MCDANIEL (1934), 152 L. T. 56, P. C.

Annotation:—**Consd.** Marshall *v.* Lindsey County Council, [1935] 1 K. B. 516.

PART III. SECT. 4, SUB-SECT. 2.—A.

m i. —— *Unnecessary visits to dying patient.*]—Although the ct. will not interfere with the discretion of a physician in the number of visits made to a dying patient, it will not permit charges to run up an account against the estate.—LIVINGSTONE *v.* ROBINSON, [1936] 2 D. L. R. 15; O. R. 168.—**CAN.**

r i. —— *General rule.*]—The law does not raise an implied promise on the part of a person who calls a physician to perform services for another to pay for such services, unless the relation of such person to the person who is ill is such as to put him under obligation to provide medical attention for the patient, or unless the circumstances are such as to show an intention on his part to pay for the services rendered. Such obligation does not arise from the relationship of brother & sister.—ALLEN *v.* FROH, [1932] 1 W. W. R. 593.—**CAN.**

sg. *Services rendered in emergency.*]—Pltf., a surgeon, sued to recover from an extrix. his fees for operating on testator. The latter had been found in his home in a very serious condition as the result of a wound from a shot-gun which had, apparently, been discharged by his own hand. Deft. was not there, but two friends, who were in the house, called in a doctor immediately after making the discovery. The doctor, considering the case to be a surgical one, brought in pltf. The wounded man said something to pltf., but the ct. found that he was in such a condition that no words of his could be construed as a request for pltf.'s services or as an acquiescence in their being rendered on a contractual basis:—*Held:* pltf. was entitled to recover.—MATHESON *v.* SMILEY, [1932] 1 W. W. R. 758; 2 D. L. R. 787; 40 Man. L. R. 247.—**CAN.**

103a. —— **Work performed before operative date of Medical Act.**]—The Medical Act, 1858 (c. 90), has not a retrospective effect, so as to prevent a person who is not registered under it from maintaining an action for medical or surgical advice given, or medicine supplied, before the Act came into operation.—WRIGHT *v.* GREENROYD (1861), 1 B. & S. 758; 31 L. J. Q. B. 4; 5 L. T. 347; 26 J. P. 118; 8 Jur. N. S. 98; 121 E. R. 896.

105. *Add. Annotation:*—**Folld.** Macnaghten *v.* Douglas, [1927] 2 K. B. 292.

106. Add the following para. & citations:—

—— ——.]—Medical Act, 1858 (c. 90), s. 32, does not apply to an osteopath, so as to prevent him from recovering at law fees charged for treatment as distinct from diagnosis or advice.—MACNAGHTEN *v.* DOUGLAS, [1927] 2 K. B. 292; 96 L. J. K. B. 738; 137 L. T. 518; 91 J. P. 143; 43 T. L. R. 525; 71 Sol. Jo. 409, D. C.

109a. Failure to effect cure—Whether breach of warranty.]—Pltf., who had been treated for cancer by deft., an unqualified medical practitioner, brought an action against him for (1) fraudulent representations; (2) negligence; & (3) breach of a warranty that he could cure pltf. in three months. The jury could not agree as to the alleged fraudulent representations or as to the alleged negligence, but they found that deft. did not warrant a cure in three months:—*Held:* deft. was entitled to judgment on the cause of action for alleged breach of warranty, although there must be a new trial of the claims on which the jury had disagreed.—BURRELL *v.* EVANS (1930), 46 T. L. R. 578, C. A.

113. *Add. Annotations:*—**Expld.** Jutson *v.* Barrow, [1936] 1 K. B. 236. **Refd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157.

122. *Add. Annotation:*—**Consd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157.

PART III. SECT. 4, SUB-SECT. 3.

sd. *Treatment discontinued by patient—Whether fees recoverable from practitioner.*]—Pltf. sued for the return of fees paid a chiropractor & for travelling expenses incidental to the treatments. Chiropractors are not entitled to be registered in Manitoba & in giving the treatments referred to herein, for hire, gain or reward, deft. was acting illegally. Pltf. knew that deft. was a chiropractor & not a regular medical practitioner. She paid in advance for two months' treatment, accepted treatments for two weeks, & then refused to permit their continuance:—*Held:* there being no fraud, misrepresentation or mistake of fact, pltf. could not recover.—HASIUK *v.* OSHANEK, [1935] 3 W. W. R. 385; [1936] 1 D. L. R. 232; 43 Man. L. R. 470.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

sk. *Right to sue for libel.*]—Pltf. in an action for libel was an unregistered medical practitioner. He had attained professional qualifications in Germany & was entitled to practise in that country. These qualifications were not recognised in South Australia & accordingly he was unable to obtain registration. He, however, practised his profession & described himself as "Dr. Becker" & added the letters M.D., M.S., after his name in the belief that his German degrees were equivalent to those degrees in South Australia. By this & other acts he committed breaches of Medical Practitioners Act, 1919:—*Held:* that statute does not render unlawful the act itself of practising medicine or surgery, but merely subject an unregistered practitioner to certain disabilities & a person who is unregistered has the right to bring an action for defamation in respect of medical or surgical qualifications which he in fact possesses.—SMITH'S NEWSPAPERS, LTD. *v.* BECKER (1932), 6 A. L. J. 195; 47 C. L. R. 279; [1933] Argus L. R. 196.—**AUS.**

sm. *Degree of care required.*]—An unqualified practitioner, whose patient is aware of the lack of qualification, is liable only for the lack of diligence & skill belonging to an ordinary unprofessional person of common-sense.—MILLER *v.* MILLWARD [1935] N. Z. L. R. Supp. 12.—**N.Z.**

PART III. SECT. 7, SUB-SECT. 2.—A.

bb i. —— —— ——.]—Appeal from the dismissal of a charge that the accused being a person who had not been registered under Chiropractic Act, 1934, did unlawfully practise chiropractic upon one C. for remuneration:—*Held:* if the testimony of C., a paid investigator, as to the treatment given her by the accused was true, he had been "practising" chiropractic; but, since the accused denied that he gave C. any such treatment & his testimony was not shaken on cross-examination & there was no corroboration of C.'s testimony the appeal should be dismissed.—R. *v.* HOLTUM, [1937] 1 W. W. R. 199.—**CAN.**

e (p. 554) **i.** —— *Treating—What amounts to.*]—R. *v.* OSHANEK, [1935] 2 W. W. R. 531; 4 D. L. R. 632; 64 C. C. C. 219; 43 Man. L. R. 234.—**CAN.**

h (p. 554) **i.** —— —— ——.]—R. *v.* MCLEOD, [1934] 3 W. W. R. 426; 46 B. C. R. 96.—**CAN.**

q i. —— *Treating—What amounts to—Chiropractor.*]—The administering of chiropractic service to another person for the purpose of removing the cause of a disease is to "treat" a disease within sect. 78 of Medical Act, R. S. M., 1913, & where such treatment is given by a person not registered under said Act & for gain or hope of reward, liability to the penalty provided by said sect. is incurred.—MCDIARMID *v.* ELLIOTT (No. 1), [1934] 1 W. W. R. 504; 41 Man. L. R. 660.—**CAN.**

q ii. —— —— —— ——.]—Where a chiropractor confirms the presence of a physical ailment, this is a "consultation" & adjustments & manipulations are a "treatment" within Quebec Medical Act, 1925.—COLLEGE OF PHYSICIANS & SURGEONS *v.* HEBERT, [1936] 2 D. L. R. 729; 65 Can. C. C. 285.—**CAN.**

sv. *Drugless practitioner — Practising without licence—What must be proved.*]—R. *v.* LAUDIE (1930), 53 Can. C. C. 189.—**CAN.**

sx. *"Holding out" as medical practitioner—What amounts to.*]—On a charge that a person not being registered under Medical Practitioners Act, 1919, held himself out as a medical practitioner, it was proved that deft. had handed "a diagnosing chart" to a constable who had come to consult him containing representations as to his methods of diagnosis & treatment of disease & invited persons to secure his opinion. The representations in this "chart" set out that the diagnosis & treatment were not according to the ordinary method of medical practitioners:—*Held:* by means of the "chart" applt. had held himself out as a medical practitioner. The fact that he had represented the diagnosis & treatment as different from the ordinary methods was immaterial.—KUGELMAN *v.* LENTHALL, [1932] S. A. S. R. 167.—**AUS.**

PART III. SECT. 7, SUB-SECT. 2.—B. (c).

t i. ——.]—HORSEMAN *v.* NAIRN, [1926] S. A. S. R. 1.—**AUS.**

t ii. ——.]—O'CONNELL *v.* CULLEY, [1927] V. L. R. 502; 49 A. L. T. 92; [1927] Argus L. R. 423.—**AUS.**

t iii. ——.]—*Held:* deft., an osteopath, holding the degree of Doctor of Osteopathy, used the word "Doctor" in advertisements, in conjunction with "osteopath," as an occupational designation relating to the treatment of human ailments, & was therefore guilty of an infraction of Ontario Medical Act, s. 49 (1925). The addition of the word "osteopath" after the words "Doctor Pocock" in his advertisements, simply indicated the method which he, professing to be a doctor, in the sense in which that word is ordinarily understood, used in the treatment of human ailments.—R. *v.* POCOCK, [1928] 2 D. L. R. 937; 50 Can. Crim. Cas. 75; 62 O. L. R. 113.—**CAN.**

t iv. ——.]—Chiropractor held liable under Medical Act, R. S. M., 1913, s. 80, for assuming the title of doctor.—MCDIARMID *v.* ELLIOTT (No. 2), [1934] 1 W. W. R. 722.—**CAN.**

t v. ——.]—A person who calls himself "Doctor of Chiropractice, Graduate of Palmer," commits an offence against Quebec Medical Act, R. S. Q., 1925.—LESAGE *v.* COLLEGE OF PHYSICIANS & SURGEONS, [1936] 3 D. L. R. 71; 65 Can. C. C. 392.—**CAN.**

t vi. ——.]—Deft., who was qualified as a medical practitioner in Germany, but unregistered in South Australia, was found to have systematically practised as a general medical practitioner, described himself as an unregistered practitioner, permitted himself to be addressed as "doctor," & did certain other acts susceptible of the inference that he practised as a medical practitioner. He did not exhibit on any sign or use any written or printed matter which suggested that he was a medical practitioner. The evidence showed that the applt. had on 1,500 occasions & over a period of 145 days treated patients:—*Held:* deft., being unregistered, had been guilty of the offence of holding himself out as a medical practitioner.—BECKER *v.* MILLER, [1936] S. A. S. R. 125.—**AUS.**

130. *Add. Annotations :*—**Consd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157 ; Jutson *v.* Barrow, [1936] 1 K. B. 236.

132a. **By osteopath.**]—An osteopath, who was not registered under the Medical Act, 1858 (c. 90), & who was not a legally qualified medical practitioner, affixed outside his house a plate bearing his name & following on his name the words " Bonesetter, Osteopathic Physician & Surgeon " :—*Held :* in using the words " physician & surgeon " he had committed an offence under Medical Act, 1858 (c. 90), s. 40.—WHITWELL *v.* SHAKESBY (1932), 147 L. T. 157 ; 96 J. P. 307 ; 48 T. L. R. 489 ; 76 Sol. Jo. 360 ; 30 L. G. R. 327 ; 29 Cox, C. C. 487.

Annotation :—**Apld.** Jutson *v.* Barrow, [1936] 1 K. B. 236.

132b. **By unqualified manipulative surgeon.**]—The use, by a person who is not registered under Medical Act, 1858 (c. 90), nor a legally qualified medical practitioner within the meaning of the Act, of the title " manipulative surgeon " on a plate bearing his name affixed outside his house, is an offence under sect. 40 of that Act.—JUTSON *v.* BARROW, [1936] 1 K. B. 236 ; 105 L. J. K. B. 106 ; 154 L. T. 185 ; 100 J. P. 4 ; 52 T. L. R. 49 ; 79 Sol. Jo. 965 ; 33 L. G. R. 503 ; 30 Cox, C. C. 305, D. C.

Part VI.—Dentists.

SECT. 1.—IN GENERAL.

201a. **Constitution of Dental Board — Member ceasing to be member of General Medical Council & Branch Council—Vacation of office.**]—Under Dentists Act, 1921 (c. 21), a Dental Board is constituted for the regulation & registration of members of the dental profession, & by Shed. I. the Board is to be composed of seven appointed members & six elected members. Of the appointed members three are to be appointed by the General Medical Council, of whom one shall be a member of the Branch Council for England. By para. 6 of the Sched. provision is made in the event of the place of a member of the Board becoming vacant before the expiration of his term of office by death, resignation or otherwise, for the filling of the vacancy :—*Held :* a member of the Board who had been appointed thereon by the Branch Council for England as being a member of that Branch Council, but who had ceased to be a member of the General Medical Council & of the Branch Council, was no longer qualified to be a member of the Dental Board, & that his office was vacant.—GENERAL MEDICAL COUNCIL *v.* WARING, [1932] 2 Ch. 115 ; 101 L. J. Ch. 389 ; 147 L. T. 497.

201b. **Disciplinary powers of General Medical Council—Delegation to executive committee.**]—Dentists Act, 1921 (c. 21), s. 16 (4), which lays down that for the purpose of the exercise of their functions under the Act & Dentists Act, 1878 (c. 33), the General Medical Council

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PART V. SECT. 4.

sz. *Pretending to be chemist—Corporation.*]—By Pharmacy Act, 1897, s. 17, it is an offence if " any person . . . not being then a registered pharmacist, pretends to be . . . a chemist . . . " : —*Held :* a corpn. could be convicted of that offence.—*Re* JOSSELYN, *Ex p.* MICK SIMMONS, LTD. (1935), 35 S. R. N. S. W. 239 ; 52 N. S. W. W. N. 66.—**AUS.**

PART VI. SECT. 1.

a i. —— —— ——.]—The rule as to the skill required of a dentist is the same as that with regard to the skill of a member of any other branch of the therapeutic art. Where he is registered & injury results from his treatment, the presumption is that he is competent & that the treatment was correct, until the contrary is shown. —MCTAGGART *v.* POWERS, [1927] 1 D. L. R. 28 ; 36 Man. L. R. 73 ; [1926] 3 W. W. R. 518.—**CAN.**

a ii. ——.]—The doctrine that the question whether treatment by a physician was negligent is to be tested by the principles of the physician's school is not applicable to the mechanical manipulative labour of a dentist involved in the pulling of teeth ; such work is governed by the rule applicable to all skilled labourers, *i.e.* that if the work undertaken by them implies skill it must be used, & when injury is sustained that could not have arisen unless there had been an absence of reasonable skill, or negligence, then there is liability.—DRINNEN *v.* DOUGLAS, [1931] 1 W. W. R. 160 ; 2 D. L. R. 606 ; 43 B. C. R. 362.—**CAN.**

a iii. —— *Excessive extraction.*]—Pltf. went to deft., a dentist, to have a tooth extracted. Deft. by an honest misunderstanding of pltf.'s instructions extracted, after he had put pltf. under an anæsthetic, twelve teeth, & pltf. brought this action for trespass, assault & battery upon his person :—*Held :* (1) deft. was negligent in that he failed to make sure what he had to do before rendering pltf. unconscious ; (2) as the action was not begun within six months from the day of the operation, it was barred by sect. 28 of Dentistry Act, R. S. O., 1927.—BOASE *v.* PAUL, [1931] 1 D. L. R. 562 ; 66 O. L. R. 237 ; *affd.*, [1931] 4 D. L. R. 435 ; O. L. R. 625.—**CAN.**

a iv. —— *Injury to patient from hot-water bottle.*]—Each pltf. claimed from defts. (a dentist who extracted pltf.'s teeth & the doctor who administered the anæsthetic) damages for injuries, the result of being burnt by a hot-water bag, which, it was alleged, had been improperly or carelessly allowed to come in contact with the patent. On the facts :—*Held :* the dentist was negligent in placing an insufficiently covered hot-water bag against the patient's feet, & was liable for the damage sustained, but as the use of the hot-water bag was not part of the preparation of the patient on behalf of the anæsthetist, the doctor was not liable.—ARCHER & PALMER *v.* COLVIN (1934), 29 M. C. R. 54.—**N.Z.**

PART VI. SECT. 2.

202 ii. —— *Conditions precedent.*]—Medical (Dentists) Act, 1927 (Vict.), s. 14 (1) (*b*), requires that an appct. shall have " entered on a definite course of training " :—*Held :* the words were satisfied by appt. entering upon a defined & continuous course of practical instruction in dental surgery & dentistry.—DENTAL BOARD OF VICTORIA *v.* DENISON (1928), 41 C. L. R. 102.—**AUS.**

202 iii. —— *Principal means of livelihood derived from dentistry.*]—The fact that during part of the five years mentioned in sect. 36 (1) (*a*) (ii) of Act 13, 1928, an appct. was under apprenticeship as a dental mechanic does not make it impossible for his sole or principal means of livelihood during that period to have been derived from dental work outside his work as an apprenticed dental mechanic.—HIRST *v.* SOUTH AFRICAN MEDICAL COUNCIL (1929), 50 N. L. R. 170.—**S. AF.**

202 iv. —— *Operative dental assistant.*]—The construction of teeth or other dental articles is not a class of work which can be claimed by a dental assistant as entitling him to registration as a dentist under sect. 32 of Dentists Act, 1931. A person who has earned the main part of his maintenance or sustenance as a dentist's assistant by doing merely construction work is not thereby qualified to be registered as a dentist.—MCCARTHY *v.* SOUTH AUSTRALIA DENTAL BOARD, [1933] S. A. S. R. 424.—**AUS.**

202 v. —— ——.]—The essence of dentistry according to the definition contained in sect. 4 of Dentists Act, 1931, is operating in the mouths of patients, & to be an " operative dental assistant " one must be a person practising (as an assistant) dentistry in the form of so operating. To practice as an employed artisan manufacturing dentures & devices is not to practice dentistry.—SEAMAN *v.* SOUTH AUSTRALIA DENTAL BOARD, [1933] S. A. S. R. 421.—**AUS.**

can act by an executive committee of the Council, including at least one additional member, does not enable them to delegate to any such committee the disciplinary powers over dental practitioners conferred on the General Medical Council by Dentists Act, 1878 (c. 33), s. 13, as amended by Dentists Act, 1921 (c. 21), s. 8.

The sub-sect. in question confers power on the General Medical Council to act by an executive committee only in respect of those matters in which the General Medical Council is not required to act itself.—GENERAL MEDICAL COUNCIL *v.* UNITED KINGDOM DENTAL BOARD, [1936] Ch. 41; 105 L. J. Ch. 59; 154 L. T. 340.

205a. —— —— **Non-payment of annual retention fee.**]—Dentists Act, 1921 (c. 21), s. 7 (1), impliedly authorises the Dental Board to provide for non-retention on, or removal from, the register in default of payment of the annual retention fee.—TATTERSALL *v.* SLADEN, [1928] Ch. 318; 97 L. J. Ch. 145; 138 L. T. 577; 44 T. L. R. 237; 26 L. G. R. 217.

205b. —— —— **Conviction for misdemeanour.**]—The word "misdemeanour" in Dentists Act, 1878 (c. 33), s. 13, is not confined to indictable misdemeanours.—PICKUP *v.* UNITED KINGDOM DENTAL BOARD, [1928] 2 K. B. 459; 97 L. J. K. B. 604; 139 L. T. 607; 92 J. P. 147; 44 T. L. R. 544; 72 Sol. Jo. 369; 28 Cox, C. C. 536; 26 L. G. R. 393, D. C.

213. *Add. Annotation:*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

217. *Add. Annotation:*—**Consd.** A.-G. *v.* Weeks, [1932] 1 Ch. 211.

218a. —— **"Dental surgeon"—Registration after practising without qualification.**]—By Dentists Act, 1921 (c. 21), s. 4, "A person registered under the principal Act—(*a*) shall, by virtue of being so registered, be entitled to take & use the description of dentist or dental practitioner; (*b*) shall not take or use, or affix to or use in connection with his premises, any title or description reasonably calculated to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses & which is indicated by particulars entered in the register in respect of him":—*Held:* a person who has no qualification, but who has been registered under the provisions of the above Act on the ground of his previous practice of dentistry, is not entitled to describe himself as a "dental surgeon"—A.-G. *v.* Weeks, [1932] 1 Ch. 211; 101 L. J. Ch. 26; 146 L. T. 59.

223. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

224. *Add. Annotations:*—**Consd.** Robinson *v.* Graves, [1935] 1 K. B. 579. **Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

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207 iv. —— —— ——.]—*Ex p.* KEENE (1926), 26 S. R. N. S. W. 463; 43 N. S. W. W. N. 136.—**AUS.**

207 v. —— —— ——.]—ALBERTA DENTAL ASSOCN. *v.* SHARP, [1930] 2 W. W. R. 45; 3 D. L. R. 652; 24 Alta. L. R. 580.—**CAN.**

c i. —— *Finding of—Appeal.*]—Under Dentistry Act, R.S.B.C., 1924, as amended a finding by the Council of infamous or unprofessional conduct in respect of the practice of dentistry is subject to review, on appeal, by the ct.—COLLEGE OF DENTAL SURGEONS OF BRITISH COLUMBIA *v.* COULTAS, [1935] 1 W. W. R. 471; 2 D. L. R. 609; 63 C. C. C. 162; 49 B. C. R. 459.—**CAN.**

sc. *Application for registration—"Entered on a definite course of training"—What amounts to.*]—From 1905 to Mar. 1910, appct. pursued a course of practical instruction in the various branches of a dentist's work under the direction of a qualified & practising dentist. From Mar. 1910, onwards, until the Medical (Dentists) Act, 1927, came into operation, he acted as assistant to different qualified & practising dentists, performing the mechanical & surgical work in the practice of dentistry:—*Held:* the words "entered on a definite course of training," in s. 14 (1) (*b*) of the Act were satisfied by the applicant entering on a defined & continuous course of practical instruction in dental surgery & dentistry.—DENTAL BOARD OF VICTORIA *v.* DENISON, [1928] V. L. R. 371; [1928] Argus L. R. 253.—**AUS.**

sd. *Registration—Graduate—Meaning of.*]—The word "graduate" in Dentistry Act, R. S. B. C. 1924, c. 66, s. 22 (*b*), does not import that appct. must have gone through a course of training prior to graduation.—*Re* NEFF & COLLEGE OF DENTAL SURGEONS [1928] 4 D. L. R. 839; [1928] 3 W. W. R. 299.—**CAN.**

sf. *Grant of licence as operative dental assistant—Conditions precedent.*]—On an application for a licence to practise as an operative dental assistant, appct. must show that the work done by appct. as an operative dental assistant was principally of that character. Appct. must show that there is some continuity of work done, sufficient to establish that the appct. is a person practising dentistry as an assistant to a dentist. Before a dental assistant can be said to practise dentistry as an assistant, he must have had a sufficient experience in dentistry to come within the words frequently, customarily, or habitually.—GEORGE *v.* DENTAL BOARD OF SOUTH AUSTRALIA, [1932] S. A. S. R. 343.—**AUS.**

PART VI. SECT. 3.

q i. —— ——.]—Applt. a registered dentist had agreed to manage for resp., who was not a dentist, a dental practice which had been carried on by resp.'s former husband. In answer to an action by resp. to restrain applt. from practising in a certain specified locality in terms of a covenant to such effect contained in the agreement, applt. pleaded the illegality of the agreement:—*Held:* a person carries on a business who employs a servant to work for him though he may take no practical part in it; & the agreement in the present case was illegal, as constituting the carrying on of the "practice of dentistry" by a person who was not a registered dentist in contravention of Dentists Amendment Act, 1921-22, ss. 2, 3.—SCOTT *v.* WATKINS, [1928] N. Z. L. R. 628.—**N.Z.**

q ii. —— ——.]—A person who for gain takes impressions of patients' mouths & subsequently fits the plates into their mouths, performs functions specially belonging to the calling of a dentist, within sect. 5 of Act 21, 1899 (Natal).—R. *v.* ROBERTSON, [1929] App. D. 10.—**S. AF.**

q iii. —— ——.]—A single act, in this instance the taking of an impression for the purpose of making a plate for false teeth:—*Held:* to constitute, under the circumstances, the practice of dentistry within Dentistry Act, R. S. B. C., 1924.—R. *v.* SUTCLIFFE, [1932] 3 W. W. R. 377; 4 D. L. R. 652; 59 C. C. C. 108.—**CAN.**

q iv. —— ——.]—The methods followed by defts. who were not registered under said Act, in the obtaining of "impressions" & "bites" for the purpose of making artificial teeth, & in guiding patients in fitting themselves with trial & permanent plates, without the direction & control of a person registered under said Act:—*Held:* to constitute the practice of the profession of dentistry.—A.-G. FOR ALBERTA *v.* LEES & COURTNEY, [1932] 3 W. W. R. 533.—**CAN.**

q v. —— —— *Assisting corporation—Meaning of "assist."*]—R. *v.* SIMMONS, [1934] 2 W. W. R. 641; 48 B. C. R. 398; 62 C. C. C. 161.—**CAN.**

q vi. —— *Liability of company.*]—Applt., a co. incorporated by the province, appealed from a conviction for unlawfully practising dentistry in that it took impressions of the gums or jaws of persons & did fit thereto artificial dentures for gain, contrary to sect. 71 of Dentistry Act, R.S.B.C., 1924. It was proved that applt. had published an advertisement offering low-priced plates made by experts, also offering to repair, burnish & sterilise plates & concluding, "we make & repair plates only"; also its business was conducted in premises connected by a door with the office of a registered dentist who had organised the co., & was for a time one of its directors; & when a customer decided to buy a plate & had selected it he was directed by the co. to that office for the taking of the impression & the fitting:—*Held:* the appeal should be allowed.—R. *v.* MECHANICAL DENTISTRY SCHOOL, [1935] 2 W. W. R. 311; 3 D. L. R. 264; 63 C. C. C. 320; 50 B. C. R. 40.—**CAN.**

sk. *Information—What must be shown.*]—An information under Dental Act, 1929, N. B., must show that informant is one of the persons authorised to lay the charge, & must specify the acts constituting the alleged unlawful practice.—R. (DESMARAIS) *v.* DOWEN, [1937] 1 D. L. R. 232; 67 Can. C. C. 256.—**CAN.**

Part VII.—Midwives.

226. To cross-refs. before this case add " *See, also,* Midwives & Maternity Homes Act, 1926 (c. 32)."

234a. **Duty of midwife to call in doctor—Right of doctor to fees—Validity of Ministry of Health Regulations.**]—When under Midwives Act, 1918 (c. 43), s. 14 (1), a registered medical practitioner has been called in by a midwife in a case of emergency it is the duty of the local supervising authority under that subsect. to pay to the medical practitioner " a sufficient fee . . . according to a scale to be fixed by the Local Govt. Board " (now the Ministry of Health). A Circular issued by the Ministry of Health contained a scale of fees, & clause 8 of the Circular provided (*inter alia*), that no fee should be payable where the doctor had agreed to attend the patient under arrangement made by or on behalf of the patient or by the club, medical institute, or other assocn. of which the patient or her husband was a member :—*Held :* (1) clause 8 of the Circular formed no necessary part of the establishment of a scale of fees ; it determined matters which did not belong, & ought not to be appended, to such a scale & was therefore (*ultra vires*) the Ministry of Health, which had no power under the Act of 1918 except to fix a scale of fees ; (2) " sufficient fee " in sect. 14 (1) of Midwives Act, 1918 (c. 43), was only intended to lay down that the doctors should be properly remunerated for their services, & that it had no relation to another source (the club, medical institute, or other assocn.) from which a payment might be made. The local supervising authority had no power to determine the question of sufficiency, which was finally fixed by the scale of fees prescribed by the Ministry.—BROWN *v.* MONMOUTHSHIRE COUNTY COUNCIL, THOM *v.* MONMOUTHSHIRE COUNTY COUNCIL, PARTRIDGE *v.* MONMOUTHSHIRE COUNTY COUNCIL, BUCKLEY *v.* MONMOUTHSHIRE COUNTY COUNCIL (1935), 153 L. T. 9 ; 99 J. P. 227 ; 51 T. L. R. 348 ; 79 Sol. Jo. 215 ; 33 L. G. R. 231, C. A.

234b. —— —— **What is " sufficient " fee.**]—BROWN *v.* MONMOUTHSHIRE COUNTY COUNCIL, THOM *v.* MONMOUTHSHIRE COUNTY COUNCIL, PARTRIDGE *v.* MONMOUTHSHIRE COUNTY COUNCIL, BUCKLEY *v.* MONMOUTHSHIRE COUNTY COUNCIL, No. 234a, *ante.*

Part IX.—Drugs.

242. *Add. Citation :*—28 Cox, C. C. 303, D. C.

242a. —— **Prosecution under Dangerous Drugs Act, 1925 (c. 74)—Act not in operation.**]—Conviction quashed.—R. *v.* KYNASTON (1926), 19 Cr. App. Rep. 180, C. C. A.

242b. —— **" Person authorized " to supply drugs—Manager of shop owned by company.**]—Whether or no the qualified manager of a chemist's shop owned by a limited co. carrying on business in pursuance of Poisons & Pharmacy Act, 1908 (c. 55), is himself " keeping open shop " as well as the co. which employs him, he is at all events a " person authorized " to supply the drugs to which the Dangerous Drugs (Consolidation) Regulations, 1928, apply, & is bound to keep the register prescribed by reg. 11 (1) " at all times available for inspection." Some limitation must be put on the words " at all times," but they must be taken at least to mean " at all times when the premises are open for business," & therefore when the manager on going out to lunch left the register, for safety's sake, locked up in the poison cupboard, so that his assistant was unable to produce it to a police officer who called :—*Held :* the manager was rightly convicted of an offence against the regulations.—DAVIES *v.* WINSTANLEY (1930), 144 L. T. 433 ; 95 J. P. 21 ; 47 T. L. R. 104 ; 29 L. G. R. 94 ; 29 Cox, C. C. 242.

242c. —— **Register to be " at all times available for inspection "—Meaning of " at all times."**]—DAVIES *v.* WINSTANLEY, No. 242b, *ante.*

PART VIII.

a i. —— ——.]—Deft. was convicted of having pretended to be a veterinary surgeon contrary to sect. 23 of Veterinary Surgeons Act, 1928, on evidence which showed that he had called on the owner of a horse, stated that the horse was sick, & offered to give it treatment. He did not say he was a veterinary surgeon. He treated the horse on two occasions & received payment therefor :—*Held :* the evidence was not sufficient to support the conviction.—JOHNSTON *v.* COLLINS, [1932] V. L. R. 66 ; Argus L. R. 15.—AUS.

b i. ——.]—Pltf., whose membership of the Tailwaggers Club entitled him to advice only from W., the Club's " Veterinary Adviser," brought action against W. in respect of an injury to his dog, upon the ground that W. had failed to diagnose & treat such injury & that such failure was due to a lack of that degree of care & skill, which in the circumstances, the law demanded of him ; & against the Club upon the ground that W. was its servant or agent, or alternatively, that it had failed to exercise due care in the selection of its " Veterinary Adviser " :—*Held :* (1) pltf. was entitled to a verdict against W. ; (2) the Club was not, on the ground of employment or agency, liable for lack of care or skill on his part, nor had it been shown that the Club had failed to use due care in selecting its " Veterinary Adviser."—LEIGHTON *v.* TAILWAGGERS CLUB OF NEW ZEALAND (INC.) (1934), 29 M. C. R. 71.—N.Z.

PART IX. SECT. 1.

242 i. *Dangerous drugs—Procuring drugs for unlicensed or unauthorised person—Doctor supplying wife with orders on chemist.*]—A complaint, which charged a medical practitioner with procuring dangerous drugs for his wife, in contravention of Dangerous Drugs Act, 1920 (c. 46), s. 7, & Dangerous Drugs Regulations, 1921, reg. 4, libelled that accused had delivered to his wife five order forms of different dates, signed by him, in which he pretended that the drugs specified in the orders were required by him for professional use only, " while you well knew that the order forms were granted by you for the purpose of enabling your wife to obtain the drugs for her own use, she not being a person licensed or otherwise authorised to be in possession of the drugs," & that his wife presented the order forms to certain chemists & thereby obtained the drugs :—*Held :* the complaint relevantly charged an offence against the Act & regulation libelled, in respect that (1) the order forms, inasmuch as they bore to be " for professional use only," were not prescriptions ; (2) the procedure alleged to have been followed negatived the view that accused was dispensing his own medicine ; (3) the wife was not a messenger on behalf of her husband, but a person obtaining drugs on her own behalf &

252. *Add. Annotation :*—**Consd.** A.-G. *v.* Lewis & Burrows, Ltd. (1931), 146 L. T. 165.

252a. —— **Article made up by manufacturer at request of retailer.**]—A.-G. *v.* Lewis & Burrows, Ltd., No. 253a, *post.*

253a. Exemption—Article of which properties "known admitted & approved of"—What amounts to.]—A retail chemist ordered a remedy for chest complaints to be made up by manufacturers in accordance with a formula which was contained in a well-known book of pharmaceutical formulas under the name "Chest Vapour Rub." He then put it into cartons, & sold it to the public with a label which described it as "Vapour Rub" & bore his trade mark. There was evidence that the words "Vapour Rub" alone described a class of medicines & not any individual one. In an action brought upon information by the A.-G. for non-payment of medicine stamp duty :—*Held :* "Vapour Rub," as described above, was not a remedy whose properties were "known, admitted & approved" within the exemption contained in the Sched. to Medicines Stamp Act, 1812 (c. 150).

The "denomination, properties, qualities, virtues & efficacies" of a mixture cannot be "known, admitted & approved" unless the vendor clearly identifies them either by description or by reference to a known & accessible formula.—A.-G. *v.* Lewis & Burrows, Ltd., [1932] 1 K. B. 538 ; 101 L. J. K. B. 327 ; 146 L. T. 165 ; 96 J. P. 25 ; 48 T. L. R. 77 ; 75 Sol. Jo. 885 ; 30 L. G. R. 13 ; 29 Cox, C. C. 418.

Part X.—Poisons.

See Pharmacy & Poisons Act, 1933 (c. 25).

257. *Add. Annotations :*—**Consd.** Davies *v.* Winstanley (1930), 47 T. L. R. 104. **Apld.** Orpen *v.* Haymarket Capital, Ltd. (1931), 145 L. T. 614. **Consd.** Law Society *v.* United Services Bureau, Ltd. (1933), 103 L. J. K. B. 81. **Refd.** R. *v.* Cory, [1927] 1 K. B. 810 ; A.-G. *v.*

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for her own use.—Strathern *v.* Ross, [1927] S. C. (J.) 70.—**SCOT.**

sf. *"Distribution" of drugs—What amounts to.*]—Marino & Yipp *v.* R., [1931] S. C. R. 482 ; 4 D. L. R. 530 ; 56 Can. C. C. 136.—**CAN.**

sg. *Selling drugs—Imposition of maximum penalty—Not varied by Court of Appeal.*]—R. *v.* Nip Gar (1930), 53 Can. C. C. 321 ; 42 B. C. R. 327.—**CAN.**

sk. —— *Mail order—Vendor not within jurisdiction.*]—Quebec Pharmaceutical Assocn. *v.* T. Eaton Co. (1931), 56 Can. C. C. 172.—**CAN.**

sl. *Possession of drugs—Liability for—Bailment from trafficker in drugs.*]—Lamontagne *v.* R. (1929), 54 Can. C. C. 338 ; 48 Que. K. B. 474.—**CAN.**

so. —— *Demand for trial by jury by Attorney-General—No right to summary trial.*]—Astroff *v.* R. (1931), 56 Can. C. C. 263.—**CAN.**

sr. *What are drugs—Hydrogen peroxide.*]—Hydrogen peroxide is not a drug within Quebec Pharmacy Act 1925.—Quebec Pharmaceutical Association *v.* Woolworth Co., [1936] 1 D. L. R. 173 ; 64 Can. C. C. 281.—**CAN.**

PART IX. SECT. 2.

246 i. *"Held out or recommended to public"—Necessity for notice or advertisement to be affixed—Tonic food.*]—Manufacturers & vendors of a preparation known as "Zomogen," on which the duty had not been paid, were charged with a contravention of the Acts. It was proved that no skill in chemistry was needed or used in the process of manufacture of the preparation. It was composed mainly of ox blood & marrow. Its predominant constituent as a health preserving & restoring commodity was hæmoglobin, an article which was frequently recommended by medical men to supply deficiencies of red blood corpuscles in their patients, & was used especially in cases of anæmia. It was advertised & sold to the public as a tonic food, & the labels on the bottles stated that medical men from every part of the world described it as a marvellous success in the immediate restoration of health : —*Held :* the method in which the preparation was manufactured, used, & sold rendered it liable to duty under the Act.—Adam *v.* Zomogen Food Products, Ltd. [1929] S. C. (J.) 22.—**SCOT.**

PART X. SECT. 1.

h i. —— ——.]—R. *v.* Smith, [1924] 4 D. L. R. 427 ; 55 O. L. R. 549.—**CAN.**

h ii. —— —— *Duty to convict.*]—*Held :* if a charge of having possession of opium contrary to sect. 4 (*d*) of Opium & Narcotic Drug Act, R. S. C., 1927, be proved, the ct. should convict under that sect. & not reduce or substitute an offence under other sects. of the Act.—R. *v.* Wong Sack Joe (1929), 41 B. C. R. 254.—**CAN.**

h iii. —— ——.]—R. *v.* Lee Kim, [1930] 2 W. W. R. 441 ; *sub nom.* R. *v.* Mah Poy, R. *v.* Henry Chan, R. *v.* Charlie Sam, 53 Can. C. C. 252 ; 42 B. C. R. 360.—**CAN.**

h iv. —— ——.]—Opium was found by the police in the house of accused, but he was absent at the time, & testified before a police magistrate that the opium found was not there with his authority, knowledge, or consent :—*Held :* accused had discharged the onus cast on him by Opium & Narcotic Drug Act, R. S. C., 1927, s. 15.—R. *v.* Gun Ying, [1930] 3 D. L. R. 925 ; 53 Can. C. C. 378 ; 65 O. L. R. 369.—**CAN.**

h v. —— —— *Sentence.*]—R. *v.* Henry Chow, [1930] 2 W. W. R. 389 ; 53 Can. C. C. 247 ; 42 B. C. R. 365.—**CAN.**

h vi. —— —— —— *Whether Court of Appeal may revise.*]—R. *v.* Chow Duck Yuet (1929), 43 B. C. R. 152.—**CAN.**

h vii. —— ——.]—Accused was found in an opium den lying on a couch beside another man. Between them on the couch was a pipe. The accused had a packet of opium in his hands & was in the act of opening it up. He was convicted under sect. 4 (*d*) of Opium & Narcotic Drug Act, 1929, of having opium in his possession.—R. *v.* Lee Po, [1932] 2 W. W. R. 313 ; 4 D. L. R. 712 ; 45 B. C. R. 503 ; 58 C. C. C. 315.—**CAN.**

h viii. —— —— *Distinguished from offence of smoking.*]—R. *v.* Lee Wah Yuen, [1932] 3 D. L. R. 234 ; 57 C. C. C. 372.—**CAN.**

h ix. —— —— ——.]—R. *v.* Wong Yip Lan & Lee Lung, [1936] 1 W. W. R. 478 ; 2 D. L. R. 403 ; 65 Can. C. C. 229 ; 50 B. C. R. 350.—**CAN.**

h x. —— —— *Proof of innocence.*]—*Held :* on an appeal by accused from a conviction for unlawfully having opium in her possession, while said sect. throws a heavy onus on the accused of "proving" his innocence, yet it does not exclude the doctrine that he must be given the benefit of a reasonable doubt raised by the evidence as to his guilt : & since, in the present case, the accused had advanced the "proof" of her defence to such a stage that she created such a doubt, she was entitled to the benefit of that doubt & to be declared not guilty.—R. *v.* Lee Fong Shee, [1933] 3 W. W. R. 204 ; 60 C. C. C. 73 ; 47 B. C. R. 205.—**CAN.**

h xi. —— ——.]—Under sect. 4 (1) of Opium & Narcotic Drug Act, 1929, physical possession is sufficient to warrant a conviction, while sect. 17 contemplates constructive possession. —Morelli *v.* R. (1932), 58 C. C. C. 120 ; *affg.* (1932), 57 C. C. C. 398.—**CAN.**

h xii. —— *Conviction under amended Act—Amendment not in operation.*]—*Held :* the conviction was bad.—R. *v.* Soo Gong, [1927] 2 D. L. R. 269 ; [1927] 1 W. W. R. 669 ; 47 Can. Crim. Cas. 275 ; 38 B. C. R. 321.—**CAN.**

h xiii. —— ——.]—Deft. was convicted in 1928 for "unlawfully having in his possession a drug, to wit, opium, contrary to sect. 4 of the Opium & Narcotic Drug Act, 1923." Said Act had been amended in 1925 by severing sub-sect. (*d*) of said sect. 4 into two sub-sects., but no change was made in the nature of the offences, which remained identical in their legal effect ; & said Act as amended was repealed & re-enacted in the same words by R. S. C., 1927, the short title of which was The Opium & Narcotic Drug Act : —*Held :* in view of the above & of sect. 8 of the Act Respecting the Revised Statutes of Canada, 1924, there had been no period of time since the Act of 1923 in which the transaction upon which deft. was convicted did not constitute an identical offence against all of the statutes in question ; &, therefore, the clerical error made in

Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

257a. —— ——.]—DAVIES *v.* WINSTANLEY, No. 242b, *ante*.

258. *Add. Annotation :*—**Refd.** Pharmaceutical Society Council of Great Britain *v.* Fuller (1932), 96 J. P. 422.

259a. —— **Qualified manager of company.**]—DAVIES *v.* WINSTANLEY, No. 242b, *ante*.

260a. **"Conducted by himself"—Sale of poison from automatic machine.**]—By sect. 3, subsect. (1), of the Poisons and Pharmacy Act, 1908: "Any person who, being a duly registered pharmaceutical chemist or chemist & druggist, carries on the business of pharmaceutical chemist or chemist & druggist shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist or chemist & druggist, as the case may be, . . . be guilty of an offence under sect. 15 of the Pharmacy Act, 1868."

Deft., a duly registered chemist & druggist, sold & offered for sale (*inter alia*) lysol, a poison, from an automatic machine which he had placed just outside the door of his shop :—*Held :* the sale of the lysol by means of the automatic machine was not an offence under Pharmacy Act, 1868 (c. 121), s. 15, & Poisons & Pharmacy Act, 1908 (c. 55), s. 3. The business carried on by means of the automatic machine was *bonâ fide* conducted

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the conviction by adding the date "1923" to the then existing Act was a mere matter of surplusage which could be disregarded.—R. *v.* QUONG WONG, [1930] 1 W. W. R. 299; 2 D. L. R. 422; 53 Can. C. C. 60; 42 B. C. R. 241.—**CAN.**

h xiv. —— *Trial before police magistrate—No appeal.*]—R. *v.* LEE SAM (1931), 55 Can. C. C. 74.—**CAN.**

h xv. —— *Opium & Narcotic Drug Act*, 1929, *ss.* 4 (*d*), 17—*Whether construed together.*]—TOM YOUCK *v.* R., [1932] 1 D. L. R. 201; 56 Can. C. C. 286.—**CAN.**

h xvi. —— —— ——.]—R. *v.* MORELLI, [1932] 3 D. L. R. 611; 58 Can. C. C. 120.—**CAN.**

h xvii. —— *Sale of—Amendment of conviction.*]—Accused was convicted of selling opium & sentenced to imprisonment for one year & a day & fined $200. On appeal by the Crown that the sentence be amended in order to comply with sect. 14 of Opium & Narcotic Drug Act, the Ct. of Appeal added to the sentence that in default of payment of the fine he be imprisoned until the fine be paid, or for a period of three months, to commence to run at the end of the term awarded : —*Held :* the Ct. of Appeal did not make a new conviction but only added to it sufficient to bring the sentence within the requirements of the Act.—*Re* CHOW DUCK YUET (1931), 55 Can. C. C. 344; 43 B. C. R. 556.—**CAN.**

h xviii. —— —— *Right of Crown to proceed by indictment.*]—In a prosecution under Opium & Narcotic Drug Act, 1929, the Crown has an option to proceed by summary conviction or by indictment.—R. *v.* LAPORTE (1931), 57 C. C. C. 280.—**CAN.**

h xix. —— —— *Right of Crown to trial by jury.*]—The A.-G. may require trial by jury, notwithstanding election for speedy trial, in the case of offences under Opium & Narcotic Drug Act, 1929 (Can.).—R. *v.* VALADE (1932), 58 C. C. C. 156.—**CAN.**

h xx. —— —— *Defence that accused agent of purchaser.*]—On a prosecution for illegally selling opium the defence was that a stool pigeon having obtained the confidence of the accused introduced a mounted police officer to him & the accused, first at the request of the stool pigeon & afterwards at the request of the officer, sought for & got into touch with a Chinaman named by the stool pigeon as a man from whom opium could be bought, & that the accused merely accepted money from the officer, turned it over to the real vendor &, in effect, acted as an agent for the officer in the purchase of the drug. The accused was convicted & appealed :—*Held :* the conviction should be sustained.—R. *v.* MAH QUN MON, [1934] 1 W. W. R. 78; 47 B. C. R. 464.—**CAN.**

h xxi. —— *What is—"Dross."*]—"Dross," which is the refuse or residue of opium after it has been smoked, is opium within Opium & Narcotic Drug Act, 1929.—R. *v.* CHAN SAM, [1933] 1 W. W. R. 296; 59 C. C. C. 325; 46 B. C. R. 341.—**CAN.**

h xxii. —— *Principles of punishment.*]—R. *v.* DAVIS (1933), 61 C. C. C. 90.—**CAN.**

h xxiii. —— *For non-medicinal purposes—Acquittal—Whether bar to charge of selling without permit.*]—Acquittal on a charge of selling a narcotic drug for other than medicinal purposes, being a physician, is not a bar to a subsequent charge of selling the drug without a permit, in his personal capacity.—R. *v.* LAPORTE, [1934] 1 D. L. R. 637; 60 C. C. C. 372.—**CAN.**

h xxiv. —— *Ignorance of nature—Whether defence.*]—Ignorance of the nature of a substance found on accused is no defence to proceedings under Opium & Narcotic Drug Act, 1929, s. 4 (*d*).—R. *v.* ARANOVITCH (1933), 60 C. C. C. 22.—**CAN.**

h xxv. —— *Validity of conviction.*]—The record of a conviction on a charge under the Opium & Narcotic Drug Act, 1929, held bad on its face on two grounds : (*a*) it did not show, with respect to accused's election for trial that he did anything more than consent to be tried before ELLIS, C.C.J.; therefore, so far as the record was concerned LENNOX, C.C.J., was without jurisdiction & the proceeding before him & the conviction were null & void; (*b*) it did not appear therefrom that LENNOX, C.C.J., is a judge, &, if the record alone was to be looked at, the accused would be entitled to his discharge upon that ground. Moreover the record did not show in what county the city of Vancouver, where the record stated the accused was arraigned, is.—R. *v.* YONG JONG, [1936] 2 W. W. R. 147; 3 D. L. R. 60; 66 Can. C. C. 62; 50 B. C. R. 433.—**CAN.**

h xxvi. —— *When doctor may claim privilege.*]—A doctor cannot claim privileges under Opium & Narcotic Drug Act, 1929, s. 7, if he is liable to suspension for not having paid his annual fees to the College of Physicians & Surgeons.—L. *v.* R. (1934), 62 Can. C. C. 308.—**CAN.**

h xxvii. —— ——.]—A physician who has not paid his annual contribution to the College of Physicians is not "in good standing" & cannot invoke the benefit of Opium & Narcotic Drug Act, ss. 6 & 7.—LAVALLEE *v.* R., [1936] 3 D. L. R. 570; 66 Can. C. C. 101.—**CAN.**

sg. *Morphine—What amounts to—Question of fact.*]—R. *v.* BERU, [1934] 3 W. W. R. 47; 62 C. C. C. 158.—**CAN.**

PART X. SECT. 2.

257 i. "*Person*"—*Corporation.*]—*Held :* (1) a limited co. is a "person" within sect. 17 of Pharmacy Act (Ir.), 1875, Amendment Act, 1890; (2) a sale of arsenic contained in a sheep dip is a sale of a poison mentioned in Sched. A., Part I. of Sale of Poisons (Ir.) Act, 1870, although it may also be a poison contained in a compound & prepared or sold for the destruction of vermin within Sched. A., Part II.; (3) only one offence can be committed under sect. 2 of Sale of Poisons (Ir.) Act, 1870, in respect of one sale.—WEDICK *v.* OSMOND & SON, [1935] I. R. 820.—**IR.**

258 iii. —— ——.]—*Held :* a complaint, which set forth that a duly registered chemist on a specified date did keep an open shop for retailing poisons, contrary to Pharmacy Act, 1868 (c. 121), ss. 1, 15, as amended by Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), & stated that accused, "not being personally present & *bonâ fide* conducting the sale," did sell to a person named, by the hand of an assistant who was not a duly registered chemist, certain poisons, did not relevantly charge a contravention of the statutes libelled, in respect that the alleged transaction, being merely an isolated sale when the registered chemist did not happen to be present, was not an offence under the statutes, & particularly was not an offence under 1908 Act, s. 3 (1).—LINSTEAD *v.* SIMPSON, [1927] S. C. (J.) 101.—**SCOT.**

sm. *Opium & Narcotic Drugs Act—Jurisdiction of magistrate under.*]—VIAU *v.* OTIS (1927), 44 Que. K. B. 406.—**CAN.**

sn. *Opium—Furnished by physician to addict—Onus of proof on physician.*]—While under Opium & Narcotic Drug Act, 1923, a physician may furnish a "drug" for self-administration to an addict or habitual user who is suffering from a diseased condition caused otherwise than by the excessive use of any "drug," yet, even in such a case, an accused physician must nevertheless bring himself within the requirements of sect. 6 of the Act by showing that the "drug" was required for medicinal purposes or was prescribed for the medical treatment of a person under professional treatment by such physician. Where a diseased condition is proved, or the medical evidence is such that the physician should be given the benefit of the doubt on the point, the question whether one of the other two conditions which permit of the furnishing of the "drug" existed is not to be decided by accepting the physician's own judgment & evidence as conclusive, but the ct. must determine each case on its own facts as disclosed by all the evidence.—R. *v.* GORDON, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—**CAN.**

by deft. himself within Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1).—PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* WATKINSON, [1931] 2 K. B. 323; 100 L. J. K. B. 577; 145 L. T. 257; 95 J. P. 139; 47 T. L. R. 399; 75 Sol. Jo. 312; 29 L. G. R. 457, D. C.

Annotation:—**Distd.** Pharmaceutical Society Council of Great Britain *v.* Fuller (1932), 96 J. P. 422.

260b. —— **Exercise of control sufficient.**]—*Held:* the words "*bona fide* conducted" in Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), were wider than the words "carries on the business." They meant that the business might be conducted by a person who did not himself perform every act which formed part of the business; it was enough that he controlled & regulated it & had the power, which he exercised, of giving orders as to how it should be carried on. Accordingly, it was not sufficient to make it an offence under the section that one sale was not conducted by the chemist himself or by some other duly registered pharmaceutical chemist. How many sales must be proved was a question of degree & therefore of fact.—PHARMACEUTICAL SOCIETY COUNCIL OF GREAT BRITAIN *v.* FULLER (1932), 96 J. P. 422; 48 T. L. R. 643; 30 L. G. R. 468, C. A.

272a. —— —— **Use need not be confined to agriculture or horticulture.**]—*Held:* that in order to bring a preparation within the exception in Poisons & Pharmacy Act, 1908 (c. 55), Sched., Part II., it is not necessary to show that the article has been exclusively prepared for some purpose in connection with agriculture or horticulture or that it cannot be used for any other purpose.—PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* BROWN (1932), 48 T. L. R. 427.

Part XI.—Optometry and Chiropody.

See cases *infra.*

PART XI.

so. *Board of Examiners — Disciplinary powers.*]—Sect. 8 of the Optometry Act does not give the Board of Examiners authority to conduct a trial in the first instance to ascertain whether a person is guilty of illegal practices, etc., & the words "where the board is satisfied that any person has been found guilty" in s. 8 (1) point to a finding that has already been made by some tribunal other than the Board, & that it is only after a person has "been found guilty," & the Board has become "satisfied of that fact," that notice is to be given under said sect. & the person concerned offered an opportunity of being heard.—WITHROW *v.* NOVA SCOTIA BOARD OF OPTOMETRY, [1929] 1 D. L. R. 766; 60 N. S. R. 318.—**CAN.**

sq. *Breach of Medical Act, R. S. O.*, 1927.]—Optometry is a method of treating a human ailment & therefore an optometrist who uses the title "Doctor" or "Dr." in connection with his occupation as optometrist, uses it as an occupational designation contrary to Medical Act, R. S. O., 1927. —R. *v.* LOWRIE, [1932] O. R. 107; 4 D. L. R. 806.—**CAN.**

sr. *Breach of Optometry Act.*]—Conviction for supplying mechanical instrument for self-measurement & subsequent supply of eye-glasses. Offence under Optometry Act, R. S. O., 1927, proved.—R. *v.* BROWN (1933), 60 C. C. C. 241.—**CAN.**

ss. ——.]—Under Optometry Act, R. S. O., 1927, s. 12 (*a*), a place of business must have a registered optometrist on the premises, & a co. cannot evade this by employing a duly qualified medical practitioner.—R. *v.* RITHOLZ OPTICAL CO., LTD., [1935] 1 D. L. R. 681; 63 Can. C. C. 212; 5 F. L. J. (Can.) 5.—**CAN.**

sv. ——.]—There is an offence of supplying glasses under the Optometry Act when a person who has solicited orders at the door delivers the gla— to the post office to be mailed to the purchaser.—R. *v.* PENCHARD, [1936] 1 D. L. R. 546; 10 M. P. R. 231; 65 Can. C. C. 113.—**CAN.**

sy. *Optometry Board—Whether exercising judicial functions.*]—The Optometry Board established under Optometry Act, R. S. O., 1927 exercises, judicial & not administrative functions, & is therefore liable in a proper case to prohibition. The power to establish such a body lies in the Province, since it does not exercise a judicial power of the quality contemplated in B. N. A., Act, s. 96.—*Re* ASHBY, [1934] O. R. 421; 3 D. L. R. 565; 62 C. C. C. 132.—**CAN.**

sz. *Breach of Chiropody Act.*]—The carrying on by a person not registered under Chiropody Act, 1929, & amendments, of the business of massaging feet is not a breach of that Act.—R. (JONES) *v.* FRASER, [1937] 2 W. W. R. 684.—**CAN.**

METROPOLIS.

Part II.—Metropolitan Areas and Authorities.

6a. **London Passenger Transport Board—What property passes to Board—Property acquired after commencement of Act.**]—Under London Passenger Transport Act, 1933 (c. 14), s. 5, no property, acquired after the date of the passing of the Act by an undertaking which is transferred by the Act to the London Passenger Transport Board on the appointed day, passes to the Board unless the acquirement is justified for the maintenance of the undertaking until the appointed day, as previously, in the ordinary course of business in as efficient a condition as usual.—CHOCOLATE EXPRESS OMNIBUS CO., LTD. *v.* LONDON PASSENGER TRANSPORT BOARD (1934), 152 L. T. 63; 50 T. L. R. 490; 78 Sol. Jo. 518, C. A.

Part III.—The London County Council.

8. *Add. Annotations:*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378; Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370; O'Connor *v.* Waldron, [1935] A. C. 76.

Part VII.—Officers of Metropolitan Authorities.

29a. —— **"Emoluments"—Annual allowances in respect of superannuation.**]—KIDDIE *v.* PORT OF LONDON AUTHORITY, DURRANT *v.* SAME (1929), 45 T. L. R. 430; 93 J. P. 203; 27 L. G. R. 398.

29b. —— —— **Fees of town clerk acting as registration officer.**]—*Held:* the fees received by the town clerk of a metropolitan borough in respect of his duties as registration officer are "emoluments of his office" as town clerk & properly included in calculating the superannuation allowance payable to him under Superannuation (Metropolis) Act, 1866 (c. 3), s. 4.—STOKE NEWINGTON BOROUGH COUNCIL *v.* RICHARDS, [1930] 1 K. B. 222; 99 L. J. K. B. 1; 142 L. T. 257; 45 T. L. R. 650; 27 L. G. R. 660; 94 J. P. 27, D. C.

29c. **Transfer of existing officer to borough council—Right to remuneration for additional duties—London Government Act, 1899 (c. 14), ss. 8 (3), 30 (1).**]—GRAY *v.* HACKNEY BOROUGH COUNCIL (1904), 2 L. G. R. 429.

Part XI.—Metropolitan Building Legislation.

NOTE.—The London Building Acts as amended to 1928 were consolidated & re-enacted by London Building Act, 1930 (c. clviii.).

42a. —— **Special buildings—General provisions of London Building Act applicable.**]—London Building Act, 1930 (c. clviii), s. 227, provides that where a local authority or a co. has statutory powers for the supply of electricity in London, the buildings of that authority or co. "used as a generating station or for works shall be deemed to be special buildings to which the general provisions of Parts V., VI. & VII. of this Act & the First & Second Scheds. thereof do not apply." A generating station, coming within sect. 227, having been erected according to plans approved by the London County Council, the building being a steelframed building clothed with brickwork & reinforced concrete, to which sects. 58 & 59 in Part VI. of the Act were applicable, the district surveyor claimed from the builders the fees prescribed for a survey under Parts III. & IV. of the Fifth Sched. to the Act:—*Held:* the expression "general provisions" in sect. 227 limited the parts of the Act which were excluded by that sect. to those which applied to all buildings, & sects. 58 & 59, under which the building was erected, were not general provisions relating to all buildings but were special provisions relating to buildings constructed as therein mentioned, & were therefore not "general provisions of Parts V., VI. & VII." within sect. 227 which were deemed not to apply to the generating station, & therefore the district surveyor was entitled under sect. 173 (2) to the fees he claimed.—LANE *v.* MOWLEM & CO., LTD., [1935] 1 K. B. 369; 104 L. J. K. B. 207; 152 L. T. 269; 99 J. P. 117; 51 T. L. R. 209; 79 Sol. Jo. 31; *sub nom.* MOWLEM (JOHN) & CO., LTD. *v.* LANE, 33 L. G. R. 85, C. A.

44. *Add. Annotation:*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

46a. —— **Building used for purposes of railway—Space enclosed under arch.**]—A ry. co., incorporated by & acting under the provisions of statute, constructed their railway by a viaduct formed of arches of brickwork, & used the viaduct & arches for the purposes of the railway. Afterwards, a space was en-

closed under an archway by building walls with gates at each end, & constructing two stories in the enclosed space. The space so enclosed was used by a lessee of the co. as a stable, & not for the purposes of the railway. After the passing of Metropolitan Building Act, 1855 (c. 122), alterations were made in the enclosing walls. The district surveyor having claimed fees in respect of such alterations, under sect. 49 :—*Held :* the fees were not claimable, & the structure not liable to the operation of Part I. of the Act, but exempt, under sect. 6, as a building belonging to a ry. co., used for the purposes of such railway, under the provisions of an Act of Parliament ; since the archway itself was so used, & the addition did not, of itself, constitute a building : & this was not the case of an alteration of or addition to an old building, within sect. 9, that sect. applying only where the old building is itself within the operation of the Act.—*Re* BADGER (1858), 8 E. & B. 728 ; 120 E. R. 271.

81. In lieu of the paragraph following the catchwords substitute as follows :—

The comrs. under Metropolitan Building Act, 1855 (c. 122), having incurred expense under sect. 73 of the Act, demanded payment of the owner of the structure, who refused to pay :—*Held :* the six months, within which a complaint was to be made, were to be reckoned from the demand & refusal, not from the incurring of the expense.

Add. Annotation :—**Apld.** Ashby-de-la-Zouch Grdns. *v.* Summers, [1928] 2 K. B. 397.

87. *Add. Annotation :*—**Folld.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

87a. —— ——.]—M. Co. were the occupiers of a building on which was a bridge certified to be a dangerous structure under the London Building Act, 1894, holding it under a subdemise for twenty-one years from H., who held it on a ninety-nine years' lease from the owners in fee simple. Neither owner nor occupier having complied with a notice under sect. 5 of 1898 Act to take the bridge down or otherwise secure it, or with an order to the same effect made by a metropolitan police magistrate under sect. 107 of 1894 Act, the London County Council acting under their statutory powers took down the bridge themselves & then forthwith brought a complaint to recover the expenses thereof from the owners in fee simple :—*Held :* the complaint was rightly dismissed, as by sect. 173 (1) of 1894 Act, proceedings to recover their expenses must proceed in the first instance against the owner immediately entitled in possession to the premises or the occupier.—LONDON COUNTY COUNCIL *v.* STILGOE, [1932] 1 K. B. 303 ; 100 L. J. K. B. 563 ; 145 L. T. 287 ; 95 J. P. 149 ; 47 T. L. R. 435 ; 29 L. G. R. 470.

92. For " 8 L. T. 369 " read " 89 L. T. 369."

98a. Height of wall for purpose of determining thickness—Bressummers between each storey—Whether one wall or series of walls.]—A building in London was constructed as follows : The front & rear exterior walls of the basement storey, & the rear exterior wall of the ground storey were on a different vertical plane from the front & rear exterior walls on the first, second, & third storeys. There was no front exterior wall on the ground storey, but in lieu thereof a shop front. The front & rear exterior walls were, respectively, in one vertical plane throughout the height of the first, second, & third storeys. Between each storey there was a metal girder or bressummer. These metal girders or bressummers were supported by metal pillars, those at the front standing at the ground floor level on brick pillars, those at the rear going down into foundation under the basement floor level. The wall or piece of wall between the first & second floors stood on one of those metal girders or bressummers. If this wall or piece of wall were taken away, the wall or piece of wall between the second floor & the roof would remain in position. The same facts applied *mutatis mutandis* to the walls or piece of wall between the second & third floors & the third floor & roof. The walls on each floor depended for their strength & support upon the girders or bressummers upon which they were built. The walls from outside appeared to be each one solid wall. The height of the building from the first floor to the top of the topmost storey was 38 feet. The height of the first storey was 14 feet, of the second 13 feet, & of the third 11 feet. On a complaint by the district surveyor for contravening the London Building Act, 1894, the builders contended that for the purpose of determining the thickness of the walls, the exterior wall of each storey at the front & at the back was a separate wall, that of the first storey 14 feet, that of the second 13 feet, & that of the third 11 feet, respectively. The metropolitan magistrate upheld this contention :—*Held :* without considering the question whether the walls began at the ground level, the front & rear walls were each one wall from the first floor to the top of the topmost storey, & consequently their height for the purpose of determining the thickness of the walls was 38 feet.—BLACK *v.* PARKER (GEORGE) & SONS, LTD. (1929), 142 L. T. 130.

100. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons, [1933] Ch. 298.

116a. —— —— ——.]—LONDON COUNTY COUNCIL *v.* STILGOE, No. 87a, *ante*.

119a. Compliance with dangerous structure notice by lessor—Right of entry—Duty to give notice to lessee.]—Defts. granted to first pltf. a lease of the second & third floors of certain premises in London with a covenant for quiet enjoyment, & the first pltf. sub-let the third floor to the second pltf. During the currency of the lease the London County Council served on defts. a dangerous structure notice in respect of the whole building, & defts. entered on both the demised floors to carry out the work necessitated by the notice. In an action in which first pltf. claimed damages for breach of the covenant for quiet enjoyment, & in which second pltf. claimed damages for trespass, defts. pleaded that they were under no liability, as they were bound to do the work. Defts. had not served on pltfs., as occupiers, a notice, under 1894 Act, s. 192, of the intention to enter the premises & do the work required :—*Held :* defts. had no right of entry without complying with sect. 192, & both pltfs. were entitled to damages.—TROTTER *v.* LOUTH (1931), 47 T. L. R. 335 ; 75 Sol. Jo. 259.

MINES, MINERALS AND QUARRIES.

Part I.—In General.

12. *Add. Annotations :—As to* (1) **Consd.** South Staffordshire Mines Drainage Comrs. *v.* Elwell (1927), 91 J. P. 113. **Apld.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. **Refd.** R. & W. Paul, Ltd. *v.* Wheat Commission, [1936] 2 All E. R. 1243.

26. *Add. Annotations :—As to* (1) **Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. *As to* (2) **Refd.** *Re* Jenkins, Jenkins *v.* Davies, [1931] 2 Ch. 218.

36. *Add. Annotation :*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

39a. **Substances exceptional in use, value, & character.**]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., No. 651a, *post.*

41. *Add. Annotations :*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. **Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488; R. & W. Paul, Ltd. *v.* Wheat Commission, [1936] 2 All E. R. 1243.

43. *Add. Annotation :*—**Apld.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

43a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

50. *Add. Annotation :—As to* (1) **Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

55a. —— ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

59a. **Question of fact.**]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

59b. **"Minerals" & "mineral substances"—Equivalent terms.**]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

60. *Add. Annotation :—As to* (2) **Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

62. *Add. Annotations :*—**Refd.** Shingler *v.* Williams & Sons (1933), 148 L. T. 474; Golden Horse Shoe (New), Ltd. *v.* Thurgood, [1933] 1 K. B. 548.

73. *Add. Annotation :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

74a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

77a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

79. *Add. Annotation :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

85. *Add. Annotation :*—**Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

86. *Add. Annotations :*—**Consd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172. **Refd.** Hargreaves, Ltd., Executors of *v.* Burnley Corpn., [1936] 3 All E. R. 959.

92. *Add. Annotation :*—**Refd.** Hatherton *v.* I. R. Comrs., [1936] 1 All E. R. 608.

Part II.—Property in Mines.

Add. Annotation :—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

SECT. 2A.—**PETROLEUM.**

See Petroleum (Production) Act, 1934 (c. 36).

140. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

142. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

150. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

173a. —— —— ——.]—As a general rule, where title is founded on adverse possession the [illegible] of which [illegible] But the extent of possession enjoyed may be an inference of fact, & in applying the rule to the case of a mineral field regard is to be had to the nature of the subject & the possession to which it is susceptible.—NAGESHWAR BUX ROY *v.* BENGAL COAL CO. (1931), 58 L. R. Ind. App. 29, P. C.

Part III.—Amalgamation and Absorption Schemes.

180a. —— ——.]—Observations on the meaning of the expression "national interest" in sect. 7 (2) (*a*) of the above Act.—*Re* AMALGAMATED ANTHRACITE COLLIERIES, LTD.'S APPLICATION (1927), 43 T. L. R. 672.

PART I. SECT. 4, SUB-SECT. 2.

4a. *Upper basalt.*]—*Re* WOODSIDE'S ESTATE, [1929] N. I. 75.—IR.

PART I. SECT. 5.

5c. *Reef—Two reefs in close vicinity.*]—Two ore deposits which *ex facie* constitute two independent reefs cannot be considered as one reef merely because they are imtimately associated or because at times they approach so closely that the one cannot be worked without the other.—RHODESIAN CORPN., LTD. *v.* GLOBE & PHŒNIX GOLD MINING CO., LTD., [1934] A. D. 313.—S. AF.

Part IV.—Right to work Mines and Quarries.

263. *Add. Annotation:*—**Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

277a. —— **Damages for unworkable coal & payments for unworked coal.**]—*Re* CANNER, BURY *v.* CANNER (1923), 155 L. T. Jo. 211.

315. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

325a. —— —— ——.]—In considering whether it is in the national interest to grant ancillary rights to facilitate the proper & efficient working of minerals under Mines (Working Facilities & Support) Act, 1923 (c. 20), the Railway & Canal Commission is entitled to take into account not only difficulties which physically obstruct the getting & carrying away of minerals, but also economic difficulties which militate against their effective marketing.

The expressions "carrying away" in sect. 1 (2), & "conveyance of minerals" in sect. 3 (2) (*b*), of the Act are to be construed not in a technical sense, but broadly as entitling the person to whom ancillary rights are granted under the Act to transport the minerals from the land where they have been won for sale elsewhere.

The Railway & Canal Commission made an order granting to a colliery co. the ancillary right under the Act to construct an aerial ropeway over the land of other persons from their colliery to Dover, a distance of seven miles, which would enable them to transport their minerals more cheaply & more conveniently than by other means:—*Held:* the

PART IV. SECT. 1.

c (p. 620) i. ——— ———.]—Substantial compliance as nearly as circumstances will reasonably permit with the requirements of the Mining Act of Ontario as to staking out of mining claims is sufficient. Every reasonable intendment ought to be made to uphold the validity of a claim where there has been actual discovery & an honest attempt to comply with the directions of the Legislature in staking & describing the location of the discovery.—*Re* DUPONT & COLE, [1931] 1 D. L. R. 320; 65 O. L. R. 526.—**CAN.**

mmm (p. 620) i. —— *Sufficiency of evidence.*]—BERG *v.* BOSENCE, [1931] 2 W. W. R. 469; 3 D. L. R. 611; 44 B. C. R. 71.—**CAN.**

sccc (p. 620) i. ——— ——— ——— *Not misleading record of claim.*]—If the description of a mining claim as recorded is so erroneous as to mislead parties locating other claims in the vicinity, the error is not cured by a certificate of work done by the first locator on land not included in such description & covered by the subsequent claims.—COLPEN *v.* CALLAHAN (1899), 30 S. C. R. 555.—**CAN.**

e (p. 621) i. ——— ——— *Effect of.*]—A "free miner's" certificate having expired, he did not immediately take out a new one as authorised by sect. 6 of Mineral Act, R. S. B. C., 1924, but continued to be without one for two weeks, when he then took out a new one & thereafter continued to "possess" the required certificates; but he had not availed himself of the ...vilege of remedying his default by ...ing out a special certificate under sect. 8 of said Act. In an adverse action, in which he was pltf.:—*Held:* under sect. 13 of the Act, he had absolutely forfeited all his rights & interest in any mining property then held or claimed by him.—TURNER *v.* VIDETTE GOLD MINES, LTD., [1935] 3 W. W. R. 259; 4 D. L. R. 217; 50 B. C. R. 202.—**CAN.**

n (p. 621) i. —— *Power to cancel claim.*]—*Re* COLE & KNOWLES, [1927] 3 D. L. R. 950; 60 O. L. R. 638.—**CAN.**

r (p. 621) i. —— *Who may attack recorded claim.*]—The title of the holder of a recorded mineral claim, whose interest under Reg. 48 of the "Regulations for the Disposal of Quartz Mining Claims" is equivalent to a lease of the minerals in or under the land, cannot be attacked by any private individual who did not have at the time it was granted any adverse right upon the ground covered ...ry.—MACPHEE & POINTER *v.* ... [1935] 3 W. W. R. 326; *affd.*, ... 2 W. W. R. 129; 3 D. L. R. 286; *affd.*, [1937] S. C. R. 385.—**CAN.**

bb (p. 621) i. —— *Variance between located ground & plan—Position of location posts binding.*]—MCCALLUM *v.* CENTRAL MANITOBA MINES, LTD. (Man.), [1928] 1 D. L. R. 119; [1927] 3 W. W. R. 556.—**CAN.**

tt (p. 621) i. —— *Forfeiture—Necessity for declaration.*]—Sects. 110 & 114 of Placer-mining Act, R. S. B. C., 1924, are not irreconcilable & there is no conflict between them. Each one of these sects. has its respective application according to the circumstances of each case. Sect. 110 imparts a statutory declaration of forfeiture in certain well-defined cases of breach therein specified; while sect. 114 covers all cases of non-performance or non-observance. In cases of forfeiture specifically mentioned in sect. 110, the lease is *ipso facto* void: the necessity of a declaration by the Gold Comr. approved by the Minister of Mines is excluded, as absolute forfeiture operates automatically.—MORRISON *v.* EAST KOOTENAY RUBY CO., LTD., [1934] S. C. R. 5; 1 D. L. R. 468.—**CAN.**

tt (p. 621) ii. —— *Lay—Whether interest in land.*]—The interests of the grantees under the lay in question herein *held* to be assignable: & the lay conferred an interest in land.—BEATON *v.* SCHULZ, [1934] 3 W. W. R. 179; 4 D. L. R. 488; 49 B. C. R. 1.—**CAN.**

sd. *Claims recorded through fraud & inadvertence.*]—Set aside.—WEKUSKO MINES, LTD. *v.* MAY, [1927] 1 W. W. R. 383; 36 Man. L. R. 351.—**CAN.**

se. *Adverse claim—Extension of time for action on—Minerals Act.*]—*Re* "GOOD FRIDAY," ETC., MINERAL CLAIMS (1896), 4 B. C. R. 496.—**CAN.**

sf. *Prospecting & mining"—Right to exclude lands from by proclamation.*]—R. *v.* NOLTE, [1928] App. D. 377.—**S. AF.**

sk. *Sale of ore, mineral, & gold—Onus of proof of ownership.*]—Accused was charged with selling ore, mineral, & gold, contrary to Criminal Code, s. 424 (*b*):—*Held:* the onus was upon him to prove he was the owner or agent for the owner of a mining claim.—R. *v.* FRESCO, [1933] 2 D. L. R. 643; O. R. 424; 59 C. C. C. 391.—**CAN.**

sl. *Rights of tributer—Meaning of "premium on gold."*]—The Mining Act of Western Australia required the owner of a gold treatment plant to account for & pay to the tributer (*i.e.* the worker of a mine under an agreement with the owner on a percentage basis) not less than 50 per cent. of "any premium received by such owner on the sale of the gold obtained from the ore treated." Applts. contended that gold could not be said accurately to have been at a premium during the period in question herein since its price or value was not then in excess of par, *i.e.* the London price in sterling, English currency being then on the gold standard:—*Held:* since in Western Australia gold was during the period in question purchased at a price in terms of Australian currency which was more than its world price at par, *i.e.* in the then terms of sterling, it was appropriately described in the vernacular of commerce as being at a premium in the Australian market, although the increased payment was due to the depreciation of Australian currency rather than to the appreciation of gold in the world market; also it was the conditions of the Australian market that were contemplated by the statute in question, &, therefore, said increased payments were premiums within the statute.—SCRIVEN *v.* GREAT BOULDER PROPRIETARY GOLD MINES, LTD., [1931] W. A. L. R. 123; [1923] 1 W. W. R. 429.—**AUS.**

sm. —— ——.]—*Qu.:* whether the abandonment of the gold standard for English currency did not leave unaffected the basis for estimating the premium for the purposes of Mining Act, s. 152, as including the amount by which the Australian currency obtainable for standard gold exceeds the equivalent in sovereigns of the standard gold content.—COMINELLI *v.* LAKE VIEW & STAR, LTD. (1934), 40 Argus L. R. 390; 8 A. L. J. 237.—**AUS.**

sp. *When claim extinguished.*]—Notwithstanding the existence of a free miner's licence & a record of assessment work, a mineral claim ceases to be a valid claim if the co. owing it forfeit its charter, since a mineral claim cannot exist *in vacuo*.—ANDERSEN *v.* OMINECA SILVER KING MINES, LTD. (1935), 49 B. C. R. 341.—**CAN.**

sr. *Unlawful possession of ore—Who may prefer charge.*]—A charge of unlawful possession of partly melted gold or gold ore cannot be preferred by the secretary of a mines protective assocn. —R. *v.* HERMAN, [1936] 3 D. L. R. 79; O. R. 338; 66 Can. C. C. 129.—**CAN.**

sw. *Fractional mining claims—Title to.*]—No title to fractional mining claims is shown when no "rock in place" is found.—CARIBOO GOLD QUARTZ MINING CO. *v.* ISLAND MOUNTAIN MINING CO., [1937] 2 D. L. R. 207.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

sh. *Partnership as distinguished from co-owners.*]—DAVIES *v.* SCHUILLI, [1928] 4 D. L. R. 132; [1928] 3 W. W. R. 158.—**CAN.**

Railway & Canal Commission had jurisdiction to make this order.—*Re* TILMANSTONE (KENT) COLLIERIES, LTD., [1928] 1 K. B. 599; 97 L. J. K. B. 169; 138 L. T. 452; 44 T. L. R. 167; 19 Ry. & Can. Tr. Cas. 26, C. A.

Annotations:—**Refd.** *Re* Hamsterley Ganister Co., Application (1931), 75 Sol. Jo. 602; Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91; Consett Iron Co. *v.* Clavering, [1935] 2 K. B. 42.

325b. —— —— —— **Reasonable rent.**]—*Re* HAMSTERLEY GANISTER CO., LTD., APPLICATION (1931), 75 Sol. Jo. 602.

325c. —— **Quarry.**]—A co. quarrying granite wished to acquire adjoining fields ultimately for the purpose of quarrying the granite under them & immediately partly for the reason that there was a danger of fine stones from blasting operations doing damage on those fields. The co. upon approaching the apparent owners, were told the real owner was a Mrs. M., to whom they made an offer to purchase the property at £2,650. The offer was refused, Mrs. M. naming a purchase price of £6,750. Subsequently, they discovered that she was a mere nominee for certain persons who had been servants or officers of the co., & these persons were joined as resps. It was stated by resps. that they were about to develop these fields by the building of bungalows. The co. applied under Mines (Working Facilities & Support) Act, 1923 (c. 20), for a compulsory purchase order in respect of these fields, but as this was beyond the provisions of the Act, the application was amended to ask for a right to work the minerals & such subsidiary rights as might be necessary:—*Held:* (1) the application to the owners to purchase the land was, in the circumstances of a quarry, a sufficient compliance with the statutory requirement that application must be made to the owner for the right to work the minerals, as the working of the quarry would so destroy the surface that it would be useless for any other purpose; (2) the offer had been unreasonably refused; (3) there was a danger of the minerals being left permanently unworked, because, (*a*) the co. were the only people likely to work them, & (*b*) the owners were minded to build bungalows on the fields; (4) the employment by the co. of a considerable number of men made the working of these minerals a matter of national interest; (5) although the minerals under the fields would not be worked in the immediate future, it was reasonable for the quarry owners to look some years ahead & acquire mineral rights in adjoining fields.—*Re* WEST OF ENGLAND ROAD METAL CO., LTD., [1936] 2 All E. R. 1607; 155 L. T. 478; 80 Sol. Jo. 817.

326a. Damage to railway by subsidence—Liability of mineowner—Construction of Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 85B (2).]—In 1893, 1895 & 1897 a ry. co. acquired the surface of three areas. In 1889, 1873 & 1889 a mining co. was granted leases of the same three areas with a right to let down the surface. In 1916 & 1920 the co. surrendered their leases for the purpose of & as part of the consideration for the granting of new leases on the same terms. The owners of the land were the same in all cases. The mining co. worked certain minerals under an area protected by Railways Clauses Consolidation Act, 1845 (c. 20), s. 79A (1), contained in Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 15, & as the result of such working the ry. co. suffered damage:—*Held:* the mining co.'s right to let down the surface was not derived from a title antecedent to the acquisition by the ry. co. of their interest in the surface, within Railways Clauses Consolidation Act, 1845 (c. 20), s. 85B (2), contained in Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 15, & they were not protected by that sect., &, therefore, they were liable to contribute, under sect. 79A (1), towards the expenses incurred in making good the damage caused by such working.—LONDON & NORTH EASTERN RY. CO. *v.* HARDWICK COLLIERY CO., [1935] Ch. 203; 104 L. J. Ch. 81; 152 L. T. 387; 51 T. L. R. 33; 78 Sol. Jo. 767.

327. For existing para. & citation substitute "*Re* TILMANSTONE (KENT) COLLIERIES, LTD., No. 325a, *ante*."

327a. —— —— ——.]—*Re* HAMSTERLEY GANISTER CO., LTD., APPLICATION (1931), 75 Sol. Jo. 602.

327b. Jurisdiction of Railway & Canal Commission—Ancillary right—Diversion of highway.]—The Railway & Canal Commission has no jurisdiction to make an order extinguishing or diverting a footpath as an ancillary right under Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 3. The procedure to be followed in extinguishing or diverting public footpaths is laid down in Highway Act, 1935 (c. 50), ss. 84, 85, & there is no concurrent or alternative procedure under the Act of 1923.—HODDESDON URBAN DISTRICT COUNCIL *v.* BROXBOURNE SAND & BALLAST PITS, LTD., HERTFORDSHIRE COUNTY COUNCIL *v.* BROXBOURNE SAND & BALLAST PITS, LTD., [1936] 2 K. B. 19; [1936] 1 All E. R. 798; 105 L. J. K. B. 524; 154 L. T. 568; 100 J. P. 204; 52 T. L. R. 384; 80 Sol. Jo. 366; 34 L. G. R. 240.

327c. —— —— **Repair of highway.**]—Appct. co. was extending the works in connection with a limestone quarry & had agreed with neighbouring owners to construct a road leading to a public road. The latter road had recently been greatly improved by another quarry co. at its own expense, & the liability of repairs to the road had never been settled. Upon this further addition to the traffic on the road being suggested, the county council asked appct. co. to come to some arrangement with it as to the repair of the road. Upon an application for the grant of certain ancillary rights, appct. co. also asked for a declaration that the public road in question was a carriage road repairable by the inhabitants at large, &, in the events which had happened, by the Derbyshire County Council:—*Held:* the Railway & Canal Commission Ct. had no jurisdiction to make the declaration asked.—*Re* SOMERVILLE (T. RYAN) & CO.'S APPLICATION, [1937] 1 All E. R. 507.

SECT. 9.—**COAL MINES.**

327d. Mining Industry Act, 1926 (c. 28), s. 13—What must be shown—National interest in

it is not necessary for an [illegible], in order to support his application under Mining Industry Act, 1926 (c. 28), s. 13, to assert that, in the words of Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 1, there is a danger of the minerals being left permanently unworked, but it is sufficient to establish that it is in the national interest that the application should be granted.—*Re* HENRY LOWSON, LTD., APPLICATION OF (1930), 144 L. T. 128; 46 T. L. R. 595.

327e. —— **Unreasonable refusal to grant lease—Question of law.**]—Appcts., who were colliery proprietors owning mines which adjoined those of resps., were desirous of acquiring rights to work resp.'s mines, which were then unworked. Appcts. were willing to pay certain rents & royalties & a dead rent, but refused to give a covenant to work the mines diligently. Resp. declined to grant a mining lease not containing a covenant to work diligently. Appcts. thereupon applied to the Railway & Canal Comrs. for the grant of a right to work the minerals in accordance with the provisions of 1923 Act & sect. 13 of 1926 Act, & for the grant of certain ancillary rights in accordance with sect. 13 of 1926 Act. In their application they alleged (*inter alia*) that resp., being the person with power to grant the right to work, had unreasonably refused to grant it & had demanded terms which having regard to the circumstances were unreasonable. The Comrs. found that the conduct of resp. had been unreasonable & in substance made the order asked for. On appeal:—*Held:* (1) it was a condition precedent to the exercise by the Comrs. of their jurisdiction under the Acts that they should first find on the facts that resp. was unreasonable in his refusal or unreasonable in his demands; (2) the question of unreasonableness was a question of law for the decision of the Comrs.; (3) an appeal from their decision therefore lay to the Ct. of Appeal, notwithstanding Railway & Canal Traffic Act, 1888 (c. 25), s. 17, which provided that "no appeal shall lie from the Comrs. upon a question of fact"; (4) resp. was not unreasonable in requiring as a condition of granting a lease that appcts. should enter into a covenant to work the minerals diligently.—GLASSBROOK BROS., LTD. *v.* LEYSON, [1933] 2 K. B. 91; 102 L. J. K. B. 598; 148 L. T. 439, C. A.

Annotation:—As to (4) **Refd.** Consett Iron Co. *v.* Clavering, [1935] 2 K. B. 42.

327f. —— —— **Appeal from Commissioners.**]—GLASSBROOK BROS., LTD. *v.* LEYSON, No. 327e, *ante*.

327g. —— —— **What amounts to.**]—GLASSBROOK BROS., LTD. *v.* LEYSON, No. 327e, *ante*.

327h. —— **Meaning of "impeded"—Obligation to pay wayleave rent.**]—The word "impeded" in Mining Industry Act, 1926 (c. 28), s. 13 (2), relates exclusively to something which impedes or obstructs the actual winning or carrying away of coal, & does not apply to financial obligations imposed by his lease upon the lessee of the coal. The words "terms" & "conditions" are similarly restricted in meaning. The Railway & Canal Commission has, therefore, no jurisdiction to relieve the lessee from an obligation to pay a wayleave rent imposed by his lease in connection with the transport of his coal.—CONSETT IRON CO., LTD. *v.* CLAVERING TRUSTEES, [1935] 2 K. B. 42; 104 L. J. K. B. *489*; *153 L. T. 199*; 51 T. L. R. 379; 79 Sol. Jo. 251, C. A.

327j. —— **Amalgamation—Validity of**

A scheme for the partial amalgamation of coal mines, submitted for confirmation to the Railway & Canal Commission Ct., provided for the election by the colliery proprietors concerned of a committee which should have power to make & carry into effect plans for the closing of coal mines or undertakings, the purchase of mines or undertakings, the distribution of quota tonnage, the central purchasing of stores & the co-ordination of marketing. From the decision of the committee on any of these matters an appeal lay to arbitrators. The scheme did not provide for the fusion of two or more undertakings:—*Held:* the scheme ought not to be confirmed because (1) the scheme did not comply with the requirements of Part I. of Mining Industry Act, 1926 (c. 28), since it did not provide for the amalgamation into one unit of two or more existing units; (2) it did not comply with the requirements of Part II. of Coal Mines Act, 1930 (c. 34), since the ct. was not satisfied (*a*) that the scheme was in the national interest, (*b*) that it would result in lowering the cost of production or disposal of coal, (*c*) that it would not be financially injurious to undertakings to be amalgamated in respect of which there was no provision for compulsory purchase, or (*d*) that the terms of the scheme were fair & equitable to all persons affected thereby.—*Re* WEST YORKSHIRE PARTIAL AMALGAMATION (COAL MINES) SCHEME (1935), 153 L. T. 167; 51 T. L. R. 462; 79 Sol. Jo. 435, D. C.

327k. **Coal Mines Act, 1930 (c. 34)—Quota exceeded—Standard tonnage wrongly assessed.**]—A district scheme made in pursuance of Coal Mines Act, 1930 (c. 34), provided for the payment of penalties by the owners of coal mines who produced from their mines in any month a quantity of coal in excess of the standard tonnage allotted to them. The scheme further provided that the standard tonnage was to be ascertained by taking the average annual output for all the mines in the district for the years 1923, 1924, 1925, & 1927, & by subdividing that output amongst the several mines in the district by reference to the output of each mine in the year 1928. The year 1928 had been selected for this purpose in order to comply with the reference in sect. 3 (2) (*c*), of the Act to "some recent period during which no arrangements made by a voluntary assocn. or otherwise were in force regulating the output of any substantial number of coal mines in the district." In the district in question the year 1928 was the last year in which no such arrangements were in force. Pltfs. were a statutory body

PART IV. SECT. 9.

sd. [illegible]

The agreement which under reg. 13 of Coal Mining Industry Act, 1935, is a condition precedent to the obtaining of an operator's licence remains in force only during the period that the licence in respect of which it is entered into remains in force; & a breach thereof after the licence has expired is not a ground for injunction.—R. (MINISTER OF NATURAL RESOURCES) *v.* PARKINSON, [1937] 2 W. W. R. 30.—**CAN.**

appointed to carry into effect in their district the provisions of the Act, & in this action they claimed penalties from defts., who were owners of a coal mine in the district, for having raised from their mine in the month of Mar. 1931, a quantity of coal in excess of the standard tonnage allotted to them. It was proved that the tonnage allotted to defts. had been calculated by reference to the output of the mines in the district during the year 1929, in which year a voluntary restriction was in force in the district:—*Held:* inasmuch as pltfs. had acted *ultra vires* their statutory powers, the ct. was entitled to question their decision so arrived at, because it had not been made in accordance with the scheme. The claim for penalties therefore failed & the appeal must allowed.—MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, EXECUTIVE BOARD *v.* SHIPLEY COLLIERIES, LTD. (1933), 149 L. T. 290, C. A.

3271. —— —— **"Solely occasioned by the performance of contracts."**]—Applts., who were colliery owners, made in 1928 a contract with a coal distillation co. to supply them with 750 tons of small coal a day for fifteen years. The contract contained a *force majeure* clause that applts. should be under no liability if they failed to deliver the agreed quantity by reason *(inter alia)* of the operation of any scheme for the restriction of output. During one period of three days applts. withheld delivery at the request of the distillation co & sold to other customers the small coal 1,890 tons, produced during that period. The quarterly allowance of coal which, during the material period, applts. were allowed to produce under a scheme made under Coal Mines Act, 1930 (c. 34), was 92,787 tons. They produced an excess of 11,608 tons, in respect of which the Executive Board imposed a penalty. The matter went before an arbitrator sitting in pursuance of the Act & he held that no part of the excess output of 11,608 tons was solely occasioned by or reasonably necessary for the performance of the contract. A motion by applts. to set aside his award was also dismissed. On appeal:—*Held:* the arbitrator came to a correct determination in law on the construction of Coal Mines Act, 1930 (c. 34), s. 4 (2); as to 4,108 tons, the total output representing the 1,890 tons of small coal, the arbitrator found facts which made it impossible for applts. to resist the penalty; as applts. were excused in law by the *force majeure* clause from delivery of the balance of the excess, such delivery was not, under sect. 4 (2) (*b*), reasonably necessary for the performance of the contract; & the penalty was rightly imposed in respect of the full excess produced.—BEDWAS NAVIGATION COLLIERY CO. (1921), LTD. *v.* SOUTH WALES COAL MINES SCHEME EXECUTIVE BOARD (1935), 153 L. T. 386; 51 T. L. R. 566, H. L.

Discretion of Quota Committee as to procedure.]—LOCKWOOD & ELLIOTT *v.* MIDLAND (COAL MINES) QUOTA COMMITTEE (1934), 50 T. L. R. 337.

327n. —— —— **Whether monthly proportions & output fixed.**]—LOCKWOOD & ELLIOTT MIDLAND (COAL MINES) QUOTA (1934), 50 T. L. R. 337.

327o. —— —— **Whether permissible—If export & inland supply quotas not exceeded.**]—Under Coal Mines Act, 1930 (c. 34), & the South Wales District (Coal Mines) Scheme, 1930, the collieries in South Wales were assigned certain quotas in respect of coal production. Defts. were assigned separate quotas for export supply, inland supply & the supply of coal for consumption in the working of the colliery or the supply of the workmen. The whole was called the output quota. One particular colliery was not limited to its own quota, if it could acquire the whole or part of the quota of another colliery. The contention of defts. was that it could exceed its output quota so long as it did not exceed its export & inland supply quotas, they having, in fact, exceeded their output quota by some 4,000 tons by reason of the fact that they had been able to acquire from other collieries more additional export & inland quotas than output quotas:—*Held:* there had been a breach of the scheme by defts., & they were liable to penalties under sect. 50 thereof in respect of the excess of output.—WILLIAMS, EVANS & LLEWELLYN *v.* CRUMLIN VALLEY COLLIERIES, LTD., [1936] 3 All E. R. 387; 80 Sol. Jo. 1035.

327p. —— **Increase in sectional tonnage—Right to increase in standard tonnage.**]—The average annual sectional standard tonnage of the Derbyshire & Nottinghamshire Section of the Midland (Amalgamated) District (Coal Mines) Scheme, 1930, a scheme formulated in accordance with the provisions of the Coal Mines Act, 1930, was increased by the Standard Tonnage Committee of the section by a net addition of 1,232,507 tons, which was made up of three items of 335,007 tons, 697,500 tons, & 200,000 tons. The 335,007 tons had been added to provide for increases of annual standard tonnage to non-associated non-special mines, that was, to non-special mines which had not been members of the C. C. C. A. Scheme, the voluntary scheme which had preceded the Statutory Scheme:—*Held:* (1) on the construction of the material clause of the Midland Amalgamated scheme, that increase of 335,007 tons was to be divided so that associated non-special coal mines were entitled to a share thereof; (2) the Standard Tonnage Committee of the section was not entitled to subject the annual standard tonnage of an associated non-special coal mine to a general reduction of annual standard tonnage without having any regard to the special circumstances of that coal mine, or any other non-special coal mine in the section; (3) an award of an arbitrator, fixing the annual standard tonnage of a coal mine as being a certain percentage of the aggregate annual sectional standard tonnage, is final & binding in the sense that it is a finding that until circumstances change or warrant a change the mine is to have the standard tonnage on the aw
HUCKNALL COLLIERY CO., LTD. *v.*
TONNAGE COMMITTEE & EXECUTIVE BOARD OF MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930 (1933), 148 L. T. 565; 49 T. L. R. 463.

—As to (2) **Consd.** Dorman, Long & Co. *v.* District (Coal Mines) Scheme Executive Board
ally, **Refd.** Oakes (James) Co. (Riddings Collieries), Ltd. *v.* Executive Board & Standard Tonnage Committee of Midland (Amalgamated) Scheme, 1930 (1935), 153 L. T. 47.

327q. —— **Decrease of standard tonnage—What must be considered.**]—NEW HUCKNALL COLLIERY CO., LTD. *v.* STANDARD TONNAGE COMMITTEE & EXECUTIVE BOARD OF MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, No. 327p, *ante*.

327r. —— **Award fixing standard tonnage—Effect.**]—NEW HUCKNALL COLLIERY CO., LTD. *v.* STANDARD TONNAGE COMMITTEE & EXECUTIVE BOARD OF MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, No. 327p, *ante*.

327s. —— —— —— **On power of Executive Board to recast scheme.**]—R. *v.* MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930 (TRUSTEES OF EXECUTIVE BOARD), *Ex p.* MANVERS MAIN COLLIERIES, LTD. (1935), 79 Sol. Jo. 162; *affd.*, 79 Sol. Jo. 251, C. A.

327t. —— **Increase of standard tonnage—Grounds for.**]—*Re* WOLSTANTON, LTD. (1934), 50 T. L. R. 413.

327u. —— ——.]—By the Forest of Dean District (Coal Mines) Scheme, 1930, the annual basic tonnage of a mine was to be the mean of the tonnages of coal supplied during 1934 & 1935 from that mine, provided that in any case where the board considered that the basic tonnage so calculated did not fairly represent the trade of the mine they might make such special addition or deduction as is fair & equitable:—*Held:* the words in the proviso "fairly represent the trade of the mine" referred to the trade in the years 1934 & 1935 & not to the trade of the mine at the time of the determination of the annual basic tonnage.—*Re* FOREST OF DEAN DISTRICT (COAL MINES) SCHEME, 1930, CANNOP COLLIERY CO., LTD. *v.* EXECUTIVE BOARD, [1937] 1 All E. R. 82; 53 T. L. R. 219; 81 Sol. Jo. 58.

327v. —— —— **Powers of arbitrator.**]—An arbitrator appointed under clause 15 (11) of the Midland (Amalgamated) District (Coal Mines) Scheme, 1930, as amended by the Order of the Board of Trade of Nov. 6, 1934, has jurisdiction to award an increase in the annual output standard tonnage of any non-special mine in a sect. coming under the Scheme without considering the special circumstances of any other non-special mines in that sect. & without awarding a corresponding decrease in the annual output standard tonnage of any one or more of them. It is the duty of the Executive Board & Standard Tonnage Committee constituted under the Scheme to make that corresponding decrease so soon as the arbitrator has awarded the increase.—OAKES (JAMES) & CO. (RIDDINGS COLLIERIES), LTD. *v.* EXECUTIVE BOARD & STANDARD TONNAGE COMMITTEE OF MIDLAND (AMALGAMATED) SCHEME, 1930 (1935), 153 L. T. 47; 51 T. L. R. 296; *sub nom. Re* MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, OAKES (JAMES) & CO. (RIDDINGS COLLIERY), LTD. *v.* EXECUTIVE BOARD, 79 Sol. Jo. 215.

327w. —— **Ascertainment of standard tonnage.**]—Consideration of the proper method of ascertaining the annual standard tonnage of a coal mine or undertaking under the Durham District (Coal Mines) Scheme, 1930.—DORMAN, LONG & CO., LTD. *v.* DURHAM DISTRICT (COAL MINES) SCHEME EXECUTIVE BOARD (1934), 50 T. L. R. 340.

327x. —— **"Coal mine."**]—In arbn. proceedings arising out of a fixation by the Executive Board under the scheme of a colliery co.'s annual standard tonnage, the arbitrator found (*inter alia*) that the co. proposed to work the S. Seam in one of its collieries from a shaft in an adjacent colliery, that the S. Seam was to be approached by the deepening of that shaft & also by a shaft in the P. Seam, & that both shafts were to be used for ventilation & working. He found also that the coal from the S. Seam could be sold by the co. at a higher average price in the competitive market & could be worked at a lower working cost than the coal from the other seams worked at the two collieries:—*Held:* (1) the definitions of a coal mine in Coal Mines Act, 1930 (c. 34), s. 18 (1), clause 2 (*d*) of the scheme are not restricted & the words "coal mine" as used in clause 15 of the scheme (dealing with the Standard Tonnage Committee under the scheme) ought not to be narrowly construed; (2) the S. Seam, under the conditions & circumstances of its proposed development, was a "coal mine" within the scheme.—*Re* MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, MITCHELL MAIN COLLIERY CO., LTD. *v.* EXECUTIVE BOARD, [1934] Ch. 712; 103 L. J. Ch. 314; 151 L. T. 394; 78 Sol. Jo. 803.

327y. —— **"Output."**]—In arbn. proceedings under the Midland (Amalgamated) District (Coal Mines) Scheme, 1930, between the owners of a coal mine in the Midland (Amalgamated) District & the Executive Board constituted under the scheme the arbitrator stated his award in the form of a special case for the opinion of the ct. The question raised was whether, according to the true construction of "output" in Coal Mines Act, 1930 (c. 34), s. 18 (1), the expression "tonnage in coal" means tonnage in coal before it is picked, screened & washed, or whether it means tonnage in coal excluding the dirt picked, screened, washed or otherwise taken out of the coal:—*Held:* according to the true construction of the definition of "output" in sect. 18 (1) the expression "tonnage in coal" means tonnage in coal as it comes out of the pit in the tubs before any dirt is picked, screened, washed or otherwise taken out of the coal.—*Re* MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, HOLLIDAY (ROBERT) & SONS, LTD. *v.* EXECUTIVE BOARD (1934), 152 L. T. 212; *sub nom.* HOLLIDAY (ROBERT) & SONS, LTD. *v.* MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME EXECUTIVE BOARD, 51 T. L. R. 81.

Amalgamation—Validity of scheme.—*Re* WEST YORKSHIRE PARTIAL AMALGAMATION (COAL MINES) SCHEME, No. 327j, *ante*.

Part V.—Powers Incidental to Ownership.

335a. ——.]—*Re* MERCHANTS' TRUST & NEW BRITISH IRON CO. (1894), 38 Sol. Jo. 253.

335b. ——.]—*Re* THOMAS'S TRUSTS (1895), 40 Sol. Jo. 98.

335c. ——.]—*Re* STAMFORD & WARRINGTON EARL TRUSTS (1896), 40 Sol. Jo. 771.

373. *Add. Annotation :*—**Refd.** Hatherton *v.* I. R. Comrs., [1936] 1 All E. R. 608.

396a. —— **Power to vary lease.**]—The tenant for life under a resettlement executed in 1884 granted two mining leases, in 1924 & 1928, respectively, each for the period of 60 years. On a summons asking for the determination of the question, among others, whether he had power, under Settled Land Act, 1925 (c. 18), s. 59, or otherwise, to vary the leases by substituting in each of them a term of 100 years in lieu of the term of 60 years :—*Held :* he had power to vary by deed the terms of the leases, provided that their length after variation should not be more than 100 years from the respective dates of execution.—*Re* SAVILE SETTLED ESTATES, SAVILE *v.* SAVILE, [1931] 2 Ch. 210 ; 100 L. J. Ch. 274 ; 145 L. T. 17.

Annotation :—**Consd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316.

417a. Effect of surrender & regrant after commencement of Settled Land Act, 1925 (c. 18).]—A deed executed on Mar. 25, 1931, purported, under the provisions of Settled Land Act, 1925 (c. 18), s. 59, to vary a mining lease, the term of which was forty years, expiring on Mar. 25, 1947, by extending the term of forty years to one of ninety-nine years, expiring on Mar. 25, 2006 :—*Held :* (1) as the 1931 deed merely varied the lease, & did not put an end to it, the provisions of Settled Land Act, 1925 (c. 18), s. 47, applied to the lease as varied, & not to a new lease ; but in accordance with the expressed intention of the settlement the whole of the rents or royalties should go to the tenant for life throughout the whole of the original term ; (2) as there was no contrary intention expressed in the settlement with reference to the extended portion of the term, & as the tenant for life was unimpeachable for waste, there would be capitalisation of one-fourth of the rents from the beginning of the extended portion of the term in 1947 ; (3) although it might be that, as between all persons interested in the settlement on the one hand, & the lessees on the other, the principle of estoppel would prevent any allegation that the deed of 1931 operated otherwise than as a surrender of the old lease, with the result that a new lease would have been deemed to have been created from 1931, there was no authority for extending such principle of estoppel as between the tenant for life & remaindermen so as to nullify the effect of sect. 59, which expressly gives power to vary leases without destroying them.—*Re* BRUCE, BRUDENELL *v.* BRUDENELL, [1932] 1 Ch. 316 ; 101 L. J. Ch. 204 ; 146 L. T. 363.

Part VI.—Rights Incidental to Ownership.

540a. Cost of erecting barrier—Although damage not yet occurred.]—The owners of a coal mine sued the lessees of an adjacent mine for damages in consequence of an encroachment upon, & removal of coal from, their mine :—*Held :* as part of the damages pltfs. could recover the cost of erecting an artificial barrier to protect their mine from the risk of fire, water, or foul gases coming through the encroaching galleries worked by defts. ; they were not bound to wait until that risk actually emerged, & an artificial barrier was necessary, as pltfs. were entitled to work out the pillars of coal left by defts. in the encroaching galleries.—ADJAI COAL CO. *v.* PANNA LAL GHOSH (1930), 57 L. R. Ind. App. 144, P. C.

546a. —— ——.]—TOWNEND *v.* ASKERN COAL & IRON CO., LTD., No. 922a, *post.*

549. *Add. Annotation :*—*As to* (1) **Distd.** Townend *v.* Askern Coal & Iron Co., [1934] Ch. 463.

551. *Add. Annotations :*—**Refd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

556. *Add. Annotations :*—**Consd.** Townend *v.* Askern Coal & Iron Co., [1934] Ch. 463. **Refd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

PART V. SECT. 2, SUB-SECT. 2.—B. (a).

sk. *Covenant for renewal—Whether court may sanction.*]—Where it is proposed to grant a mining lease pursuant to the provisions of Settled Land Act, 1908, & its amendments, the ct. has no power to approve of the insertion in such lease of a covenant for renewal, even although it is agreed in such covenant that the rental payable under the renewed lease shall be fixed by arbn.—MCKINNON *v.* GLEN AFTON COLLIERIES, LTD., [1929] N. Z. L. R. 202.—**N.Z.**

PART VI. SECT. 2, SUB-SECT. 5.—A. (d).

552 i. *Value of minerals at pit's mouth—Less costs of severance & bringing to bank.*]—BARTLETT *v.* NOVA SCOTIA STEEL CO. (1906), 1 E. L. R. 226.—**CAN.**

2, S' (h).

d i. —— *Deduction of costs of bringing to bank.*]—By an agreement in writing deft. was licensed by a mining co. to prospect, mine for & sell ore from a shaft, the property of the co. After the expiry of the licence, deft. continued to mine until restrained by interlocutory injunction :—*Held :* on the construction of the document, deft. had not an exclusive licence to work the mine ; he had committed trespass, &, on the facts, the damages should be assessed according to the rule in *Martin* v. *Porter*, No. 567.—MOONTA PROSPECTING SYNDICATE, LTD. *v.* NEILL (1929), S. A. S. R. 335.—**AUS.**

Damage to future working of —HILDITCH *v.* YOTT (1908), 90 W. L. R. 53.—**CAN.**

Part VII.—Contracts.

576. *Add. Annotation :*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

584. *Add. Annotation :—As to* (1) **Refd.** *Re* Sandwell Park Colliery Co., Field *v.* Sandwell Park Colliery Co., [1929] 1 Ch. 277.

623. *Add. Annotation :*—**Consd.** *Re* Wait, [1927] 1 Ch. 606.

623a. Regulation of prices of coal—By Executive Board & Central Sale Committee—Extent of powers.]—*Held :* the Executive Board & the Central Sale Committee appointed under the Midland (Amalgamated) District (Coal Mines) Scheme under the Coal Mines Act, 1930, had power to fix minimum prices for bunker coal on a f.o.b. basis, but, assuming the trade, industry, or other category of the consumer to be the same, there could only be one such f.o.b. price for the same type of bunker coal for every port in Great Britain.—A.-G. *v.* WRIGHT (1932), 49 T. L. R. 6.

Part VIII.—Absolute Dispositions.

631. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

651a. —— Reservation of "mines, minerals, & mineral substances"—Whether sand & gravel included.]—(1) *Primâ facie* the meaning of the word "minerals" both in private deeds & in statutory provisions will yield to the expressed or implied intention of the parties.

(2) In arriving at the construction of a reservation of mines & minerals in a private deed, regard must be had to cases relating to the construction of the words "mines & minerals" in statutory provisions.

(3) The two main principles to be gathered from the authorities are: that the word "minerals" when found in a reservation out of a grant of land means substances, exceptional in use, in value & in character, & does not mean the ordinary soil of the district which, if reserved, would practically swallow up the grant, & (4) in deciding whether or not in a particular case exceptional substances are "minerals" the true test is what the word means in the vernacular of the mining world, the commercial world & landowners at the time of the grant & whether the particular substance came within that meaning. (5) The question whether a given substance is or is not a "mineral" within the meaning of the instrument in which it is mentioned is a question of fact to be decided according to the circumstances of the particular case. (6) For all practical purposes "minerals" & "mineral substances" are synonymous terms, & the latter yields to the expressed or implied intention of the parties as much as the former, & accordingly what is said in the authorities as to the meaning of the word "minerals" applies with equal force to the words "mineral substances." (7) A conveyance of land made in 1925 contained a reservation of "all mines, minerals, & mineral substances":—*Held :* that the words must be construed according to their meaning in the vernacular of the mining world, the commercial world & landowners at the time of the execution of the conveyance, & that, upon the evidence, the words did not include sand or gravel.—

PART VII. SECT. 1.

m i. ——.]—LARSEN *v.* MONTGOMERY, [1930] 2 W. W. R. 796; 3 D. L. R. 966; 43 B. C. R. 89.—**CAN.**

sp. *Agreement to provide funds—In consideration of services on claim—Failure to provide funds—Effect.*]—TURNBULL *v.* EDEN (B. C.), [1929] 4 D. L. R. 261.—**CAN.**

sa. *Application of Mineral Act, R. S. B. C.*, 1924.]—An agreement with respect merely to a division of the proceeds of a sale of mineral claims & to a declaration of trusteeship as to such proceeds is not one to which sect. 19 of Mineral Act, R. S. B. C., 1924, applies.—*Re* SIEMAN (No. 3), [1930] 2 W. W. R. 411.—**CAN.**

sb. ——.]—An agreement with respect merely to a division of the proceeds of a sale of mineral claims & to a declaration of trusteeship as to such proceeds is not one to which sect. 19 of Mineral Act, R. S. B. C., 1924 (c. 167), applies.—HARRIS *v.* LINDEBORG, [1931] S. C. R. 235; 1 D. L. R. 945; *varying*, [1930] 1 W. W. R. 411; 2 D. L. R. 117; 42 B. C. R. 276; *revsg. in part*, [1929] 4 D. L. R. 178; 41 B. C. R. 262.—**CAN.**

sx. *Sale of natural gas—Purchaser's knowledge of defective title.*]—Defts. M. co. made an agreement with pltf. co. under which the latter was given the right to drill oil wells on said deft.'s leasehold with the view of benefiting both cos. The agreement provided, *inter alia*, for the sale to pltf. of the natural gas. Later deft. agreed to sell the "tail gas" to its co-deft.:—*Held :* since on the evidence it was clear that co-deft. entered into said contract with full knowledge of the contract between the M. co. & pltf. & contemplated the possibility & proceeded upon the basis that the M. co. might not have title to what it agreed to sell it could not recover damages from the M. co. because of the latter's inability to make title.—NORTHWEST CO., LTD. *v.* MERLAND OIL CO. OF CANADA, LTD., & GAS & OIL PRODUCTS, LTD., [1936] 2 W. W. R. 577; 4 D. L. R. 248.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sa. *Sale of land subject to gas lease—Where gas treated as chattel.*]—TILBURY TOWN GAS CO. *v.* MAPLE CITY OIL & GAS CO., MAPLE CITY OIL & GAS CO. *v.* TILBURY TOWN GAS CO. (1915), 7 O. W. N. 786; 9 O. W. N. 301; 35 O. L. R. 186.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

o i. —— *For sale of option to purchase mining claims.*]—GORDON *v.* EARLE (Man.) [1927] 3 W. W. R. 242.—**CAN.**

s i. —— *Sale of assets of company—Whether mining rights included.*]—MAJESTIC MINES, LTD. *v.* ROYAL TRUST CO. (Alta.), [1929] 4 D. L. R. 568.—**CAN.**

sr. *Contract to pay for mineral claim on sale thereof—Claim allowed to lapse—Measure of damages.*]—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 5.

sv. *Application of Security Frauds Prevention Act*, 1930, *s.* 3 (*h*).]—DEVINE *v.* SOMERVILLE & SOMERVILLE, [1931] 3 W. W. R. 264; 44 B. C. R. 502.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

624 iii. ——.]—MAJESTIC MINES, LTD. *v.* ROYAL TRUST CO., LTD. (No. 2), [1930] 2 W. W. R. 488; 3 D. L. R. 1010.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

650 iii. ——.]—STUART *v.* CALGARY & EDMONTON RY. CO. (Alta.), [1928] 1 D. L. R. 24; [1927] 3 W. W. R. 678; *varying*, [1927] 2 D. L. R. 271; [1927] 1 W. W. R. 639.—**CAN.**

650 iv. ——.]—The words "other minerals" in a reservation or exception from a transfer of land are susceptible of limitation or expansion according to the intention with which they are used. The exception expressed in a transfer of land of "all coal & other minerals" held to cover all minerals, including petroleum & natural gas, which at the date of the transfer were owned by the transferor.—KNIGHT SUGAR CO., LTD. *v.* ALBERTA RY. & IRRIGATION CO., [1935] 3 W. W. R. 86; *affd.*, [1936] 1 W. W. R. 416; 2 D. L. R. 125; 5 F. L. J. (Can.) 307.—**CAN.**

v. FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., [1932] 1 Ch. 276; 101 L. J. Ch. 33; 146 L. T. 107; 75 Sol. Jo. 852, C. A.

654a. Conveyance & payment concurrent acts.]—To a declaration on an agreement, setting out that "pltf. had agreed to sell, & that defts. had agreed to purchase of pltf. one-fourth share in a mining sett for £250; & that pltf. & deft. agreed forthwith to form a co., to be registered with limited liability, for working the mining sett; & that, so soon as the co. should be registered with limited liability, defts. would pay to pltf. the sum of £250 as thereinbefore stated": assignment as a breach non-payment of £250; defts. pleaded; first, that pltf. had not at the time of making the agreement, nor hath he now, any title to the said one-fourth part or share in the said mining sett, nor any right or title to convey the same. Secondly, that pltf. never has been at any time ready & willing to convey the said one-fourth share to deft. according to the agreement:—*Held:* the pleas were good.—MARSDEN *v.* MOORE & DAY (1859), 4 H. & N. 500; 28 L. J. Ex. 288; 157 E. R. 936.

Part XI.—Leases.

673. *Add. Annotation:—As to* (2) **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

678. *Add. Annotation:*—**Expld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

679. *Add. Annotation:—Generally*, **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

799. *Add. Citation:—Affg.*, S. C. *sub nom.* FORSTER *v.* ELVET COLLIERY CO., [1908] 1 K. B. 629, C. A.

Add. Annotation:—**Apld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

827. *Add. Annotation:*—**Apld.** Simons *v.* Associated Furnishers, Ltd. (1930), 47 T. L. R. 118.

Part XII.—Licences.

869. *Add. Annotation:—As to* (3) **Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

PART X.

a i. —— *For sublease of petroleum rights—Obligations of parties under agreement.*]—OHLSON *v.* WEISS (Alta.), [1927] 3 D. L. R. 24; [1927] 2 W. W. R. 25.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

st. *Chattels appurtenant to lease—What are.*]—Pltf. obtained an option on several mining leases. The ground had previously been worked by one H., who constructed a water system for washing the gravel, but after operating for a time abandoned the property, leaving certain chattels used in connection with the water system on the ground. Upon pltf. co. commencing operations it purchased the chattels from H.'s estate & used them until it in turn abandoned the properties. The owners took possession & refused to give up the chattels, claiming that the water licences authorising pltf. to use water were together with all works constructed appurtenant to the lease, & could not be separated from the property:—*Held:* defts. had not satisfied the burden of proof which was upon them to show that these chattels were in fact to be regarded as part of the works which are appurtenant to the leases. They were in fact parts of the mining machinery & appliances for recovering the gold, not of the water system, & were quite separate & distinct from those works, & not attached in any way to them or to the soil.—ENNIS GOLD MINING CO. *v.* HENDERSON (1927), 39 B. C. R. 76.—**CAN.**

sv. *Lease of right to win oil—Discovery of natural gas—Rights of parties.*]—Applt., the owner of oil sites & grantee from Govt. of the right to win oil therefrom, leased the sites & the right to win oil for twenty-five years to resps., who agreed to pay royalties on oil won by them. In sinking wells, which did not produce oil in commercial quantities, resps. found natural gas. They tapped the gas by pipes & for six years used it for their own purposes:—*Held:* applt. was not entitled to compensation for the gas so taken since (*a*) that right was not included in the right to royalties upon the oil won; & (*b*) the lease on its true construction was not merely a lease for the purpose of winning oil, & applt. having no property in the gas, resps. were entitled to reduce into possession & use it, provided they did so without injury to the leased property.—U PO NAING *v.* BURMA OIL CO., LTD. (1929), L. R. 56 Ind. App. 140.—**IND.**

sz. *Whether lessee may sue for encroachments before demise.*]—A demise of three plots of land which were being worked as a coal mine & "all those coal-mining rights or other rights of & in the said plots of coal land together with . . . all privileges, advantages, appurtenances appertaining or belonging thereto or usually enjoyed with same," does not enable the lessee to sue in respect of encroachments upon the mine which occurred before the date of the demise.—SRISCHANDRA NANDY *v.* BALJNATH JUGAL KISHORE (1934), 62 I. L. R. Ind. App. 40, P. C.—**IND.**

PART XI. SECT. 3, SUB-SECT. 3—B. (a) i.

r i. —— *Tributers' agreement—Validity.*]—Applts. were the lessees of a gold mine in Western Australia. Resps. were tributers of the mine under tribute agreements made with applts. on May 15, 1930, & approved & registered by the warden. Resps. instituted proceedings in the warden's ct. in 1933, claiming in substance an account of all sums due to them from applts. under the tribute agreement. Applts., in their defence, contended that by an agreement of Mar. 18, 1932, the parties had agreed that applts. should pay to resps. for the gold delivered by them to applts. certain sums other than those stipulated for by the tribute agreements, & on making such payments should be released & discharged from their liability to make the payments agreed to be made in the tribute agreements, that they had made such payments & that the sums were received in full settlement of all claims. Resps. in reply maintained that the agreement of Mar. 18, 1932, was illegal & void as being contrary to the Mining Acts, 1904-23, s. 152:—*Held:* the Mining Act was intended to protect tributers in respect of their own contracts, & to interfere with their liberty of contract in their own interests, & its terms were plainly obligatory. The agreement was invalid, both as to past & future payments.—LAKE VIEW & STAR, LTD. *v.* COMINELLI, [1937] A. C. 653; [1937] 2 All E. R. 285; 106 L. J. P. C. 87; 157 L. T. 123; 53 T. L. R. 466; 81 Sol. Jo. 293, P. C.—**AUS.**

PART XI. SECT. 6, SUB-SECT. 2.

d i. *Fine in lieu of forfeiture.*]—A warden of mines having recommended the forfeiture of a mineral lease on account of default, without reasonable cause, in compliance with the covenant with regard to the expenditure of money, the Mining Board imposed a fine of £200 in lieu of forfeiture.—HILL *v.* THE TASMANIAN METALS EXTRACTION CO., LTD. (1925), Tas. L. R. 38.—**AUS.**

PART XI. SECT. 7.

t i. ——.]—*Re* MCGREGOR, [1927] 2 D. L. R. 588; 59 N. S. R. 231.—**CAN.**

sm. *By impossibility of performance—*

Part XIII.—Easements and Rights affecting Mines.

907. *Add. Annotation :*—**Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

913. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

922a. Order of Railway & Canal Commission.]—(1) A mining co., for the proper working of its mines, obtained an order from the Railway & Canal Commission under Mines (Working Facilities & Support) Act, 1923 (c. 20), & the Mining Industry Act, 1926 (c. 28), granting it facilities to work the coal under land adjoining its mines upon the terms & conditions therein stated. One of the paragraphs in the order was in these terms: "Every dispute concerning any matter or thing whatsoever arising out of this Order shall be referred to the Commission." The owners of the land brought an action for injury done to their property by a subsidence which took place subsequent to the date of the order. The co. took the preliminary objection that the action was not maintainable, & that the questions in dispute were wholly questions to be determined by the Commission, & not by the High Ct. :—*Held :* the Railway & Canal Commission had no jurisdiction enabling it to oust the jurisdiction of the High Ct., but the effect of an order made by that Commission, under the above-mentioned Acts, may be to make not actionable an act or acts which apart from the order would have been tortious &, in this way, to deprive a pltf. of a cause of action which he would otherwise have had, or it may affect the relief to which pltf. would otherwise have been entitled.

(2) A mining co., for the proper working of its mines & having made an application to the Railway & Canal Commission for an order, under the above-mentioned Acts, giving it facilities to work minerals under adjoining land together with ancillary rights of working including that of letting down the surface on payment of compensation, committed a trespass by working under adjoining property before the order was granted but after the application was filed. An action was brought by the owners of the adjoining land for damages for trespass for working the coal without an order of the Commission so to do :—*Held :* in the circumstances, the trespass was not wilful & pltfs. were entitled only to reasonable damages & not to penal damages, the co. being allowed all expenses of hewing & raising.—TOWNEND *v.* ASKERN COAL & IRON CO., [1934] Ch. 463 ; 103 L. J. Ch. 201 ; 151 L. T. 196 ; 50 T. L. R. 200 ; 78 Sol. Jo. 103.

933. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

934. *Add. Annotations :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488; Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

940. *Add. Annotations:*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

What amounts to.]—FIRTH *v.* HALLORAN (1926) 38 C. L. R. 261.—**AUS.**

PART XII. SECT. 1, SUB-SECT. 2.

d i. —— *Assignment.*]—SHAW *v.* ROBINSON (1910), 8 E. L. R. 557.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 3.

sa. *Licence to bore for oil—Royalties payable under—Whether recoverable.*]—Pltf. sought to recover from defts. under a certain deed granting oil-boring rights a sum reserved by the deed by way of rental in the following terms : "Provided further that if after the expiration of the said first 5 years as aforesaid the co., the predecessor in title of present defts., shall commence & regularly & punctually continue to pay to the grantors, the predecessors in title of pltf., for & in respect of the said lands mentioned in the said schedule by equal monthly payments at the rate of . . . then this grant or licence shall remain in full force & effect" :—*Held :* the deed amounted merely to a qualified grant of the rights conferred, depending for its continuance on defts. regularly paying the rentals or royalties therein specified, & implied no covenant by defts. to keep up such payments, which were accordingly not recoverable.—BLOOMFIELD *v.* LYSNAR, [1928] N. Z. L. R. 285.—**N.Z.**

PART XIII. SECT. 1, SUB-SECT. 2.—A.

sb. *Right of tenant against landlord—Landlord proprietor of underground workings causing subsidence.*]—In an action of damages for personal injuries brought by a woman against a colliery co., the pursuer averred that, while residing in a house belonging to defenders of which her son was tenant, she was injured by the fall of a ceiling, due to the fact that, unknown to the pursuer & the other residents in the house, defenders were working their coal seams beneath the house. She further averred that it was the duty of defenders, in working these seams, to avoid any operation which might render the house unsafe for any of its occupants, & that, in breach of this duty, they had proceeded with their operations, although aware that she was living in the house & that its stability was being imperilled :—*Held :* although defenders were under no obligations to pursuer *qua* landlords of the house, her averments set forth a relevant case of negligence towards her on their part *qua* proprietors of the underground workings, which, if established, would entitle her to damages.—M'CORMICK *v.* FIFE COAL CO., [1931] S. C. 19.—**SCOT.**

PART XIII. SECT. 1, SUB-SECT. 3.—C. (a).

930 i. *When right to let down surface implied.*]—A mining lease purported to confer upon the Colliery Co. a right to mine, excavate & remove all coal that lay under the surface of the land, & made reference to the removal of the whole of the coal, including the ultimate removal of the pillars, walls, & ranges, which in the earlier stages of the operation are to support the surface. In addition the following clause was included in the lease : "5. The lessor shall have the full & absolute right subject as aforesaid to the use of the surface of all land hereby demised & the lessee co. shall not interfere with or damage the surface of any of the said land except so far as such interference or damage may be unavoidably occasioned by the working of the demised mines in accordance with the provisions of these presents." In answer to a question of law argued before trial :—*Held :* the mining lease carried with it & conferred upon the Colliery Co. the right to let down the surface of the land in so far as such letting down may be unavoidably occasioned by the working of the demised mines in accordance with the provisions of the mining lease ; & the Colliery Co. was not bound to abstain from removing any part of the coal in order to avoid or reduce such letting down ; to this extent the rights of the Colliery Co. under the mining lease were inconsistent with the full continuance of the natural right of support.—WARD *v.* PUKEMIRO LAND CO., LTD., & PUKEMIRO COLLIERIES, LTD., [1936] N. Z. L. R. s. 9 ; G. L. R. 94 ; 12 N. Z. L. J. 5.—**N. Z.**

PART XIII. SECT 3, SUB-SECT. 2.—A.

sg. *Right of entry—Grant of rights of lessee.*]—On an application under the regulations of the Department of Lands & Mines for an order giving appct. a right of entry on the surface of a certain parcel of land for the purpose of drilling an oil well, & a right of way thereto, appct. having acquired title to the gas & petroleum rights under said land :—*Held :* under all the circumstances, appct. should not be given an absolute title to the land required but merely the rights of a lessee, the compensation being payable in the form of an annual rent.—*Re* OKALTA OILS, LTD., [1937] 2 W. W. R. 489.—**CAN.**

942. *Add. Annotation :—As to* (2) **Overd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

943. *Add. Annotation :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

944a. —— **Reservation of mines & minerals on sale of land under Land Tax Redemption Act, 1802 (c. 116)—"Proper & necessary powers of working."**]—In 1804 land in the city of Coventry was sold by a bishop in exercise of the power conferred by this Act, & in 1903 a lease of the mines & minerals under the land for the term of ninety-nine years was granted by his successors in title. The question arose whether the lessees of the mines & minerals were entitled to work & get them in such a manner as to damage & let down the surface of the land & the erections thereon :—*Held :* the reservation of the mines & minerals together with all proper & necessary powers for opening & working the same, did not reserve either expressly or by necessary implication the right to work the mines & minerals so as to let down the surface. As it was not known at the date of the Act & the conveyance, as it was at the present time, that the mines & minerals could not be worked safely & with commercial efficiency without letting down the surface of the land, there was, in the absence of express words, nothing to affect the ordinary presumption that the land when conveyed was conveyed with the common right to support.—WARWICKSHIRE COAL CO., LTD. *v.* COVENTRY CORPN., [1934] Ch. 488 ; 103 L. J. Ch. 269 ; 151 L. T. 181 ; 78 Sol. Jo. 336, C. A.

Annotation :—**Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co. [1936] Ch. 172.

946. *Add. Annotation :—As to* (1) **Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

947. *Add. Annotation :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

954. *Add. Annotation :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

976a. —— **Plaintiff formerly tenant—Whether damages for subsidence while tenant recoverable.**]—S., a yearly tenant of a certain farm, subsequently purchased the fee simple of the surface of the land. The underlying minerals had been reserved to the original owners by a previous conveyance, together with the right to work the same, but there was a proviso in that conveyance granting reasonable compensation to the surface owner for damage caused to the surface by the working of the minerals. This proviso constituted a covenant between the parties running with the land. The conveyance to S. was subject to this reservation of the underlying minerals, & S. accordingly obtained the benefit of the covenant. The minerals had been worked for some time both before & after the sale to S., & damage had been caused to the surface thereby. In an action by S. claiming compensation for damage caused to the surface by the working of the underlying minerals both before & after the conveyance to him, it was admitted that compensation for damage caused after the date of the conveyance was recoverable by him :—*Held :* he was not entitled in the absence of an express assignment to recover under the covenant any compensation for damage which had accrued before the conveyance to him of the surface.—SNOWDON *v.* ECCLESIASTICAL COMRS. FOR ENGLAND, [1935] Ch. 181 ; 104 L. J. Ch. 153 ; 152 L. T. 417 ; 78 Sol. Jo. 820.

982. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

1007. *Add. Annotation :—As to* (1) **Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1021. *Add. Annotation :—As to* (1) **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

1023. *Add. Annotation :*—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

1054. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1065. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1067. *Add. Annotation :*—**Refd.** Pontardawe Rural Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

1071. *Add. Annotations :—As to* (2) **Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. *As to* (3) **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114 ; Wilkins *v.* Leighton, [1932] W. N. 68.

1077. *Add. Annotation :*—**Refd.** Conquer *v.* Boot [1928] 2 K. B. 336.

1086. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1089. *Add. Annotations :*—**Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. **Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215 ; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Glanville *v.* Sutton (1927), 44 T. L. R. 98 ; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

Part XIV.—Statutory Regulation of Mines.

1104. *Add. Annotation :—As to* (2) **Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

1106a. Wages agreement—Decision of chairman of conciliation board—Whether award.]—By a Conciliation Board agreement provision was made for the payment of a subsistence allowance to low-paid colliery workers in South Wales, &, the parties having failed to agree as to the amount & conditions of payment, the matter came before the independent chairman of the board, & he gave a decision. The parties failed to agree as to the interpretation of the decision, & representative workmen then brought an action against

representative employers for declarations, (*a*) that on the true construction of the decision the subsistence allowance ought to be calculated for each shift separately, & (*b*) as to the method of reckoning overtime for the purpose of calculating subsistence allowance. The judge in chambers, on the grounds that the wages agreement incorporating the conciliation agreement amounted to a submission to arbitration, & that the chairman's decisions were awards, made an order that the action be adjourned & that the awards be remitted to the chairman to deal with the two questions raised by the pleadings. The Ct. of Appeal set aside the order of the judge & granted the declarations claimed :—*Held :* the chairman had decided both questions in favour of pltfs. & they were entitled to the declarations claimed—CARDIFF COLLIERIES, LTD. *v.* MEREDITH (1929), 45 T. L. R. 321, H. L. ; *affg.* S. C. *sub nom.* CHARLES *v.* CARDIFF COLLIERIES, LTD. (1928), 44 T. L. R. 448, C. A.

1107. *Add. Annotation :—As to* (1) **Consd.** Matthews *v.* Amalgamated Anthracite Collieries, Ltd. (1935), 52 T. L. R. 23.

1108. *Add. Annotation :—As to* (1) **Consd.** Matthews *v.* Amalgamated Anthracite Collieries, Ltd. (1935), 52 T. L. R. 23.

1110. *Add. Annotation :*—**Refd.** *Re* Midland (Amalgamated) District (Coal Mines) Scheme, 1930, Holliday (Robert) & Sons, Ltd. *v.* Executive Board (1934), 152 L. T. 212.

1116a. Agreement for payment on large coal gotten—Small coal necessarily produced.]—Applt., a collier, was employed on terms embodied in a Conciliation Board Agreement dated Feb. 9, 1931, which provided that "the mineral to be gotten is clean large coal only as hereinafter described," & that his wages were to be paid on the weight of the large coal gotten by him. The rate of wages payable to him was contained in a price list. In the process of mining coal the collier had of necessity to produce a certain amount of small coal in the course of mining large coal. He contended that the agreement was illegal as being in contravention of Coal Mines Regulation Act, 1887 (c. 58), s. 12, which stated that "where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them, those persons shall be paid according to the actual weight gotten by them," & he claimed to be paid on a contract basis which included payment for small coal :—*Held :* his wages were to be calculated on a *quantum meruit* basis on the weight of both the large & small coal gotten by him.—MATTHEWS *v.* AMALGAMATED ANTHRACITE COLLIERIES, LTD. (1935), 52 T. L. R. 23 ; 79 Sol. Jo. 795, H. L.

1117. *Add. Annotation :*—**Refd.** *Re* Midland (Amalgamated) District (Coal Mines) Scheme, 1930, Mitchell Main Colliery Co. *v.* Executive Board, [1934] Ch. 712.

1117a. —— Validity—Failure to give notice to all persons entitled to appoint.]—(1) A checkweigher in a mine appointed by a majority, ascertained by ballot, of the persons employed in the mine, & paid according to the mineral gotten, & acting as such checkweigher, is entitled to payment of a proportionate part of his wages from all persons so employed & paid, & it is no defence to such claim against any one of these persons that another checkweigher has been appointed, during the material period, by ballot, but not by a majority as aforesaid, to act as checkweigher on his behalf.

(2) A notice convening a meeting to appoint a checkweigher addressed to a part of those entitled to appoint is bad, & the appointment of a person chosen by the subsequent meeting is invalid.—BELL *v.* BENNETT, [1928] 2 K. B. 206 ; 97 L. J. K. B. 713 ; 139 L. T. 70 ; 92 J. P. 106 ; 44 T. L. R. 424 ; 72 Sol. Jo. 284 ; 26 L. G. R. 249, D. C.

1119a. Dismissal—Whether available for re-election.]—Pltf., a checkweigher duly appointed under Coal Mines Regulation Act, 1872 (c. 76), s. 18, received a fortnight's notice to quit his employment from the men employed in the mine. Before the notice expired, the men held a fresh election, at which pltf. (with others) presented himself as a candidate, & was again appointed :—*Held :* the true construction of sect. 18 was to limit the class of persons from whom the men might appoint a checkweigher to persons employed in the mine by the mine-owner ; pltf. ceased to have any employment under the mine-owner when he was first appointed checkweigher by the men ; & therefore his second appointment was invalid.—HOPKINSON *v.* CAUNT (1885), 14 Q. B. D. 592 ; 54 L. J. Q. B. 284 ; 49 J. P. 550 ; 33 W. R. 522 ; 1 T. L. R. 345.

Annotation :—**Consd.** Unsworth *v.* Pease & Partners, Ltd., [1937] 2 All E. R. 817.

1120a. Who entitled to recover—Co-existence of majority & minority checkweighers.]—BELL *v.* BENNETT, No. 1117a, *ante.*

1123. *Add. Annotation :*—**Refd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1124. *Add. Annotation :*—**Consd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1126. *Add. Annotation :*—**Refd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1126a. —— —— Act need not be unlawful.]—A checkweigher at a certain pit was also secretary of the local branch of the miners' union of which the men employed at that pit were members. It had been the custom of the district to work a short shift on a Saturday. The colliery gave notice that a full shift would in future be worked at that pit on a Saturday instead of a short shift. The checkweigher tried to persuade the managers of the colliery to work only a short shift on Saturdays. On the Friday he chalked on the pavements in the neighbourhood of the colliery words to the effect that the workmen at that pit had decided at a mass meeting not to work on Saturday unless a short shift should be worked. On Saturday a number of miners assembled at the pit in their pit clothes with their water bottles filled & day's food. After the checkweigher had been told by the manager that the mine would work a full shift instead of a short shift,

PART XIV. SECT. 1, SUB-SECT. 2.—B.

r 1. —— *Deduction for indebtedness on account of purchased goods—Invalid.*]—R. *v.* DOMINION COAL CO. (1907), 41 N. S. R. 137.—CAN.

he went to the men & said: "It's a full shift. Come on, lads," & walked away, & the men did the same & did not work that day:—*Held:* there was evidence upon which the justices were entitled to come to the conclusion that the checkweigher had interfered with the management of the mine contrary to Coal Mines Regulation Act, 1887 (c. 58), s. 13, & to make an order removing him from his office of checkweigher.

Per AVORY, J. It was sufficient that the act of the checkweigher did in fact interfere with the management of the mine. It was not necessary that the act should be unlawful either as being in breach of some statute or unlawful according to the common law.—HAMPTON *v.* WEST CANNOCK COLLIERY CO., LTD., [1932] 2 K. B. 293; 101 L. J. K. B. 366; 147 L. T. 76; 96 J. P. 197; 48 T. L. R. 387; 30 L. G. R. 257; 29 Cox, C. C. 458.

1129a. —— **Rate applicable.**]—MCCARTHY *v.* PENRIKYBER NAVIGATION COLLIERY CO., LTD., [1937] 4 All E. R. 597; 54 T. L. R. 187, C. A.

1132. *Add. Annotation:*—**Consd.** Pockney *v.* Atkinson, [1930] 1 K. B. 197.

1133. *Add. Annotation:*—*Generally*, **Refd.** Pockney *v.* Atkinson (1929), 45 T. L. R. 639.

1148a. —— **Failure to provide safe system of working.**]—In an action by a miner against his employers for damages for personal injury alleged to be due to the negligence of the employers in that they had failed to provide a reasonably safe system of working the colliery, questions were raised (i) whether the employers were liable at common law for a defective system of working negligently provided or permitted to be carried on by a servant to whom the duty of regulating the system of working had been delegated by the employers, the employers' board of directors being unaware of the defect, & (ii) if they were liable, whether the employers were relieved of their liability in view of the prohibition contained in Coal Mines Act, 1911 (c. 50), s. 2 (4), against the owner of a mine taking any part in the technical management of the mine unless he is qualified to be a manager:—*Held:* (1) the employers were not absolved from their duty to take due care in the provision of a reasonably safe system of working by the appointment of a competent person to perform that duty. Although the employers might, & in some events were bound to, appoint some one as their agent in the discharge of their duty, the employers remained responsible; (2) the doctrine of common employment does not apply where it is proved that a defective system of working has been provided. To provide a proper system of working is a paramount duty, &, if it is delegated by a master to another, the master still remains liable.—WILSONS & CLYDE COAL CO., LTD. *v.* ENGLISH, [1937] 3 All E. R. 628; 106 L. J. P. C. 117; 157 L. T. 406; 53 T. L. R. 944; 81 Sol. Jo. 700, H. L.

1166. *Add. Annotations:*—**Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

1168. *Add. Annotations:*—**Consd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

1170. *Add. Annotations:*—*As to* (2) **Consd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566. *As to* (3) **Consd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

1173. *Add. Annotations:*—**Consd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566; Wheeler *v.* New Merton Board Mills, Ltd. (1933), 148 L. T. 549; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1. **Refd.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

1173a. Liability of manager—Provision of refuge holes—Proceedings without consent.]—A manager was charged with omitting to provide refuge holes of the character required by Coal Mines Act, 1911 (c. 50), s. 44. The actual duty of providing them fell on others, but under sect. 75 the manager also was personally liable. By the same sect. he escaped responsibility if he proved that he had taken all reasonable means of enforcing (*inter alia*) the provisions of sect. 44. This applt. failed to prove:—*Held:* the omission to provide such holes was not an offence committed personally by the manager within sect. 102 (5) of the Act, & consequently the justices had no jurisdiction to entertain a prosecution by the resp., who was not an inspector nor acting with the consent in writing of the Secretary of State.—DAVIES *v.* MAY, [1937] 2 K. B. 260; [1937] 2 All E. R. 582; 106 L. J. K. B. 526; 157 L. T. 143; 101 J. P. 250; 53 T. L. R. 656; 81 Sol. Jo. 529; 35 L. G. R. 237.

1173b. Avoidance of breach of duty not practicable.]—Resp., whilst employed underground in applt. co.'s colliery, sustained serious injuries to his right hand, when it was caught in certain machinery. In an action for damages based upon a breach by applt. co. of its duty under Coal Mines Act, 1911 (c. 50), s. 55, to keep securely fenced dangerous parts of the machinery used in or about the mine, applt. co. contended that, as the cover which fenced the machinery in question had necessarily to be removed for a short time to enable the co.'s engineer to inspect the machinery when it was being tested after repair, & as absolute compliance with sect. 55 was therefore impossible, applt. co. was protected by

PART XIV. SECT. 1, SUB-SECT. 9.—A.

sp. *Statutory defence—Nature of.*]—Observations on the nature of the statutory defence competent to mine-owners under Coal Mines Act, 1911 (c. 50), s. 102 (8).—PARK *v.* WILSONS & CLYDE COAL CO., HAGGERTY *v.* WILSONS & CLYDE COAL CO., [1928] S. C. 121.—SCOT.

sr. *Safety of apparatus—Onus of proof—Liability for acts of servant.*]—*Held:* (1) pursuer's injury having been caused by the defective condition of apparatus provided by defenders, it was for them to show that all reasonable steps had been taken to maintain the apparatus in a safe condition; they had failed to discharge this onus; & accordingly, a failure to comply with Reg. 124 (*a*) of the General Regs. had been established; (2) even if the duty to comply with Reg. 124 lay, not upon the defenders themselves as owners, but only on their responsible servants, defenders were nevertheless liable for their servants' failure, unless they could bring themselves within the protection of sect. 102 (8) of Coal Mines Act, 1911, by showing that it was not reasonably practicable to prevent the breach of regulation.—CRANE *v.* BAIRD (WILLIAM) & CO., [1935] S. C. 715.—SCOT.

st. *Liability of owner—Provision of adequate working space.*]—Reg. 123 (*c*) of the General Regs. for Coal Mines, 1911, which requires that adequate working space, free from danger, shall be provided for all apparatus worked by any person, imposes an absolute statutory duty on mine owners to see that the working space provided is adequate & safe, & this duty cannot be [illegible] BAIN *v.* FIFE COAL CO., [1 S. C. 681.—SCOT.

102 (8) of the Act of 1911 :—*Held :* as it was not, in the circumstances, reasonably practicable to avoid or to prevent the breach of statutory duty, applt. co. was protected by Coal Mines Act, 1911 (c. 50), s. 102 (8).—COLTNESS IRON CO., LTD. *v.* SHARP, [1937] 3 All E. R. 593 ; 106 L. J. P. C. 142 ; 157 L. T. 394 ; 53 T. L. R. 978, H. L.

1180. *Add. Annotation :*—**Refd.** Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

(d) Fencing (p. 743).

1184a. Fencing machinery—Machinery exposed & dangerous—Coal Mines Act, 1911 (c. 50), s. 55.]—WING *v.* SOAR (1926), 54 T. L. R. 44, n., D. C.

1184b. —— —— ——.]—Resps., as owners of a mine, & the agent & manager thereof, were charged with unlawfully contravening the Coal Mines Act, 1911 (c. 50), s. 55, in that all exposed & dangerous parts of machinery used in or about the mine, to wit, the return end of a belt conveyor, were not kept securely fenced. The bottom portion of the belt was 4 ins. from the floor, & the distance between the top & bottom portion of the belt was 3 ft. The rollers of the belt conveyor were encased in a cab or cage, which purported to shield them in such a manner as to prevent their being an object of danger to those employed in & about the belt conveyor. At each side of the cab or cage was a D-shaped aperture, which would enable the human arm to be put through for the purpose of oiling the rollers, when necessary. In front of the rollers, & between the top & bottom parts of the belt, there was no fencing. On Oct. 19, 1936, at a time when the belt conveyor had stopped, a fitter employed in connection therewith got on to the bottom portion of the belt & commenced to crawl along it on his hands & knees towards the return end & towards the rollers, apparently attempting to discover the cause of the stoppage. The belt, which was driven by an engine, & controlled by an operator some 50 yds. away, commenced to move. A shout was heard, the belt was stopped, & the fitter was found dead, with his head & arm fast between the top rollers of the bottom set at the return end. The information was dismissed on the grounds that the fitter, when he met with the accident, was acting in a wrong & extraordinary manner, & that, if he wished to get at the rollers, he could & should have got at them through the D-shaped apertures, & that the machinery in question was undoubtedly dangerous, but was not exposed within sect. 55 of the Act of 1911 :—*Held :* (1) it was wrong to assume that no offence was committed because the workman could have got at the rollers in some other ....., because the Act of 1911 was designed to protect not only the careful workman, but also the person who, through carelessness or forgetfulness, got near to machinery ; (2) the machinery was exposed as well as dangerous within the meaning of sect. 55 of the Act of 1911.—CAREY *v.* OCEAN COAL CO., LTD., CAREY *v.* RICHARDS, CAREY *v.* REES, [1937] 4 All E. R. 219 ; 157 L. T. 516 ; 101 J. P. 571 ; 54 T. L. R. 40, D. C.

1188. *Add. Annotation :*—**Refd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337.

1189a. Failure to support roof—Amounts to negligence within Workmen's Compensation Act, 1925 (c. 84), s. 29.]—The pursuer in an action under the common law of Scotland claimed damages for the death of his son, a miner lately in the employment of the applts. The pursuer averred that, in breach of Coal Mines Act, 1911 (c. 50), s. 49, which provides that the roof of every working place shall be made secure & that a person shall not (with an immaterial exception) work in any working place which is not so made secure, his son was ordered or permitted to work in a working place where the roof had not been made secure, & that, while he was there at work, part of the roof fell & killed him :—*Held :* these averments disclosed a case of " personal negligence of the employers " within Workmen's Compensation Act, 1925 (c. 84), s. 29 (1), & the action was competent.—LOCHGELLY IRON & COAL CO., LTD. *v.* M'MULLAN, [1934] A. C. 1 ; 102 L. J. P. C. 123 ; 149 L. T. 526 ; 49 T. L. R. 566 ; 77 Sol. Jo. 539 ; 26 B. W. C. C. 463, H. L.

Annotations :—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126 ; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669 ; Hannaford *v.* May, [1935] 2 K. B. 385 ; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206 ; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

1190. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1192. For " —— ——."]—read " **Prohibiting order by Secretary of State—Application of order.**"]

1199. *Add. Annotation :*—**Consd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1212a. Failure to keep register—Who may prosecute.]—The manager of a mine caused a register to be kept there purporting to be the register to be kept under Coal Mines Regulation Act, 1908 (c. 57), s. 2 (1), & by the custom of the mine an official of the mine known as " the banksman " was appointed to keep the register & to make the necessary entries

PART XIV. SECT. 1, SUB-SECT. 9.—B. (d).

sv. Coal Mines Act, 1911, s. 55—Meaning of dangerous machinery.]—*Held :* the question whether a part of the machinery in a mine was " dangerous " within Coal Mines Act, 1911, was always one of degree, & sect. 55 did not apply to machinery which, in normal conditions & circumstances, was not a source of danger, & which became dangerous only in the extraordinary & exceptional circumstances of a general breakdown.—TODRICK *v.* HALLIDAY, [illegible]

PART XIV. SECT. 1, SUB-SECT. 9.—B. (j).

Duty to inspect every part of mine in which work is carried on.]—*Held :* a disused out through was part of a mine, in respect of which inspection was necessary.—*Ex p.* DELLACA (1927), 27 S. R. N. S. W. 64 ; 44 N. S. W. W. N. 39.—**AUS.**

PART XIV. SECT. 1, SUB-SECT. 10.

sz. Penal Act—Where no penalty imposed—Construction.]—*Held :* a contravention of the amendment to sect. 4 of Coal Mines Regulations Act, prohibiting the employment of Chinamen, was not made an offence under the Act for which any penalty is imposed, & the penal Act should not be extended beyond the reasonable construction which the words used would bear.—R. *v.* LITTLE (1898), 6 B. C. R. 78 ; 1 M. M. Cas. 220.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 4.

t i. —— Mining Act of Ontario, R. S. O., 1914 (*c.* 32), *s.* 164.]—DOYLE *v.* FOLEY-O'BRIEN, LTD. (1915), 7 O. W. N. 780 ; 8 O. W. N. 362 ; 24 O. L. R. 42.—**CAN.**

——.]—HULL *v.* SENECA SUPERIOR SILVER MINES, LTD. (1916), 8 O. W. N. 301 ; 33 O. L. R. 557 ; 24 D. L. R. 254.—**CAN.**

therein. In the register there were in respect of a certain date no entries giving particulars of the cause or causes of certain workmen being below ground on that date for more than the time fixed ; & an offence was thus committed against that sub-sect. which could be prosecuted before a ct. of summary jurisdiction :—*Held :* that offence was an offence "committed personally" by the manager of the mine within Coal Mines Act, 1911 (c. 50), s. 102 (5) ; & consequently that sub-sect. did not prevent a prosecution from being instituted against the manager for that offence by a miner's agent who was neither an inspector nor acting with the consent of the Secretary of State.—HANNAFORD *v.* MAY, [1935] 2 K. B. 385 ; 104 L. J. K. B. 606 ; 153 L. T. 380 ; 99 J. P. 267 ; 51 T. L. R. 483 ; 33 L. G. R. 297, D. C.

Annotation :—**Distd.** Davies *v.* May, [1937] 2 K. B. 260

Part XV.—Quarries.

1228. *Add. Annotation :*—**Reld.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

MISREPRESENTATION AND FRAUD.

Part I.—Representations Generally.

1. *Add. Annotations :—As to* (1) & (2) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. *As to* (3) **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

11. *Add. Annotations :—As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

12. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

16. *Add. Annotation :—Generally*, **Refd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

24. *Add. Annotations :—As to* (1) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575. **Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

50. *Add. Annotation :*—**Consd.** *Re* Leighton's Conveyance, *Re* Land Registration Act, 1925, [1936] 1 All E. R. 667.

52. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part II.—How Representations may be Made.

79. *Add. Annotations :*—**Refd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

Part III.—What Constitutes Misrepresentation.

109. *Add. Annotation :—As to* (2) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

113. *Add. Annotations :*—**Apld.** Hands *v.* Simpson Fawcett (1928), 44 T. L. R. 295. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

118. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

119. *Add. Annotations :—As to* (2) **Refd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *Generally*, **Refd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

138a. —— ——.]—The L. Co., who held more than 99 per cent. of the share capital of the N. Co., agreed with one B. that he should be in the service of the L. Co. for a term of years, during which he should act as chairman of the board of directors of the N. Co. at a salary of £8,000 a year. They made a similar agreement with one S. that he should be vice-chairman of the board at a salary of £6,000 a year. While acting as chairman & vice-chairman respectively, B. & S. entered on their own account into secret speculations in cocoa, a commodity in which the N. Co. dealt, of such a character as, on the finding of the jury in answer to a specific question, would have justified the L. Co. in terminating their agreements of service & the N. Co. in dismissing them from their offices of chairman & vice-chairman. Subsequently the N. Co. became amalgamated with another co., & it became necessary to cancel the appointments of B. & S. as chairman & vice-chairman. Being unaware of the aforesaid breaches of duty by B. & S., the L. Co. agreed to pay to B. £30,000 & to S. £20,000 as compensa-

PART I. SECT. 2, SUB-SECT. 3.

19 i. *Distinguished from representation.*]—A collateral promise to do some act, though it may effectively induce the promisee to enter into a contract, is not, properly speaking, a representation at all.—LALA HIRA LAL *v.* MUNSHI JAGATPATI SAHAI (1928), I. L. R. 8 Pat. 2.—**IND.**

PART I. SECT. 4.

32 ii. —— ——.]—Since the law is presumed to be equally within the knowledge of both parties to a contract, a misrepresentation of law does not render a contract voidable by the party misled thereby, unless there are special circumstances.—RULE *v.* PALS, [1928] 3 D. L. R. 295; [1928] 2 W. W. R. 123; 22 Sask. L. R. 514.—**CAN.**

32 iii. —— ——.]—A false representation as to a point of law will not ground an action for damages.—KAVANER *v.* BOWBEY, [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART I. SECT. 6.

53 i. *Effect—Contents misdescribed—To one unable to read.*]—J. R. WATKINS Co. *v.* MINKE, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

53 ii. —— *Printed contract—Where misleading.*]—INTERNATIONAL TRANSPORTATION ASSOCN. INCORPORATED *v.* CAPITAL STORAGE CO., [1928] 4 D. L. R. 480.—**CAN.**

PART I. SECT. 7.

g i. ——.]—LAMB *v.* WALTERS, [1926] App. D. 358.—**S. AF.**

g ii. ——.]—An honest expression of value, even if erroneous, is not a misrepresentation of fact; but a statement of value which is known to the representor not to be the true value cannot be deemed the expression of an honest opinion.—BERGE *v.* GREW, [1928] 1 D. L. R. 361; 23 Alta. L. R. 281; [1927] 3 W. W. R. 811.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

123 i. *Whether amounting to misrepresentation.*]—Where although representations, inducing the making of a contract, are true so far as they go, they do not cover the whole truth, the non-disclosure, whether fraudulent or innocent, may, according to circumstances, so relate to the essence of the contract as to entitle the representee to rescission.—CANADIAN FARM IMPLEMENT CO., LTD. *v.* ALBERTA FOUNDRY & MACHINE CO., LTD. (Alta.), [1927] 2 D. L. R. 871; [1927] 1 W. W. R. 1025.—**CAN.**

123 ii. ——.]—FRIGHT *v.* SCHECK (1863), 10 Gr. 254.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

m i. —— *Fiduciary relationship.*]—PICKFORD *v.* THOMPSON (1902), 40 N. S. R. 632. **CAN.**

tion for terminating their services; B. & S. agreed to accept these sums, & they were duly paid. The jury, in answer to a further question, found that the L. Co. if they had been aware of the breaches of duty by B. & S. would have terminated their agreements, & B. & S. would have been dismissed from their offices without any compensation. The action in which the jury so found was brought in the first instance by the L. Co. alone, the N. Co. being joined in the course of the proceedings as co-pltfs. against B. & S., claiming rescission of the compensation agreements & repayment of the sums paid thereunder on the ground of fraudulent misrepresentation, & alternatively, as the House construed the points of claim, on the ground of unilateral mistake induced by fraud, but not on any ground of mutual mistake innocently made by the defts. so far as they were concerned. There was a specific alternative claim that the agreements of settlement & the payments under them were made under a mistake of fact. The jury negatived the charges of fraud, & found that at the time of negotiating the compensation agreements B. & S. had not in mind their breaches of duty:—*Held:* the action failed as to unilateral mistake, on the ground that defts. under their contracts of service with the L. Co. owed no duty to them to disclose the impugned transactions.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98, H. L.; *revsg.* S. C. *sub nom.* LEVER BROS., LTD. *v.* BELL, [1931] 1 K. B. 557, C. A.

Annotations:—**Refd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455; Swain *v.* West (Butchers), Ltd., [1936] 1 All E. R. 224.

Part IV.—Fraudulent and Innocent Misrepresentation.

185. *Add. Annotations:*—*As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380; United Motor Finance Co. *v.* Addison & Co., [1937] 1 All E. R. 425. *As to* (2) **Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

187. *Add. Annotation:*—*Generally*, **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

214. *Add. Annotation:*—*As to* (2) **Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

219. *Add. Annotation:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

228. *Add. Annotation:*—**Apld.** With *v.* O'Flanagan, [1936] Ch. 575.

229a. —— ——.]—In Jan., 1934, negotiations were entered into for the sale of a medical practice, & the vendor then represented to the purchasers that the takings of the practice were at the rate of £2,000 *per annum*. The contract was signed on May 1, 1934, but by that date the circumstances had changed, as the practice had fallen off owing to the illness of the vendor & the employment of several *locum tenentes*. The change of circumstances was not disclosed to the purchasers, & when they took possession on that date they found that the practice was almost non-existent. They thereupon commenced an action for rescission of the contract:—*Held:* the representation was made with a view to induce the purchasers to enter into the contract & must be treated as continuing until the contract was signed, & it was the duty of the vendor to communicate the change of circumstances to the purchasers.—WITH *v.* [1936] Ch. 575; [1936] 1 All E. R. 727; 105 L. J. Ch. 247; 154 L. T. 634; 80 Sol. Jo. 285, C. A.

234. *Add. Annotation:*—**Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

293a. ——.]—Pltf. firm financed for defts. the hire-purchase of motor cars, the purchaser of the car paying one-third of the price, & pltf. firm the other two-thirds, less an agreed commission. The hire-purchase agreement was then entered into between pltf. firm & the purchaser. It was a stipulation of the agreement between pltf. firm & defts. that the purchaser should pay not less than one-third of the purchase price as a deposit, & in the present action fraud was alleged against defts. by reason of the fact that they (*a*) in some cases had allowed a discount to the purchaser which was set off against the initial deposit, (*b*) in other cases had effected the same result by buying from the purchaser a used car at a price greater than its value, & (*c*) in other cases had caused pltf. firm to enter into such hire-purchase agreements purporting to be in respect of new cars, when they had in fact allowed the purchaser to use the car for such a period that its value was so depreciated that it was not a proper security for the balance of the purchase-price:—*Held:* the intention to deceive is not necessarily an intention to injure or to cheat, & if defts. made to pltf. firm a statement as to price & deposit which they knew to be untrue,

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PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

173 ii. ——.]—MACFARLANE *v.* DAVIS (Sask.) (1911), 18 W. L. R. 498.—CAN.

ad.——*Pleading.*]—Where a declaration alleged that representations were made by deft. falsely & fraudulently, to induce pltf. to act upon them, but did not contain any allegation that deft. knew the representations so made by him to be false:—*Held:* the declaration was sufficient.—MCKAY *v.* CAMPBELL (1871), 8 N. S. R. (2 G. & O.) 475.—CAN.

ae. —— ——.]—The declaration alleged that deft. before the committing of the grievance, etc., was a carrier & express agent; that pltf. delivered to one W. a sum of money to be handed to deft., to be carried & delivered to S., & that deft. falsely & fraudulently represented to pltf. that W. had delivered said money to him, whereby pltf. was satisfied of the fact, whereas in truth it had not been so delivered, but appropriated by W. to his own use; & by reason of such false & fraudulent representation W. obtained time to & did abscond, & pltf. lost said money, which he would otherwise have recovered from W.:—*Held:* it was unnecessary to allege that deft. knew the representations to be false, the words falsely & fraudulently being equivalent to knowingly.—YOUNG *v.* VICKERS (1872), 32 U. C. R. 385.—CAN.

PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

249 i. *Effect of mere negligence.*]—A negligent statement does not give any cause of action. It must be a fraudulent misrepresentation.—CLARK *v.* BANK OF NOVA SCOTIA, [1933] 3 D. L. R. 287; 5 M. P. R. 415.—CAN.

& did so with a view to pltf. firm entering into a purchase, there was a sufficient basis for an action of deceit, provided always that pltf. firm relied upon the statement. The damages could not be modified upon any assumption that pltfs., had they known the facts, would have entered into some modified contract with the purchasers, & so have lost money in any event. In all of the three classes of misrepresentation pltf. ... to succeed.—UNITED MOTOR FINANCE CO ADDISON & CO., LTD., [1937] 1 All E. R. P. C.

325. *Add. Annotation :*—**Refd.** Trading Co. L. & J. Hoff *v.* De Rougemont (1928), 34 Com. Cas. 291.

328. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

Part V.—Inducement, Materiality, and Alteration of Position.

396. *Add. Annotation :*—*As to* (2) **Apld.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

417. *Add. Annotation :*—*As to* (2) **Consd.** Bellotti *v.* Chequers Developments, Ltd., [1936] 1 All E. R. 89.

432. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

434a. ——.]—HUTCHINSON *v.* MORLEY (1839), 2 Arn. 2 ; 7 Scott, 341 ; 3 Jur. 288.

439. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1927] A. C. 487.

445a. —— ——.]—Pltf. desired to be present at the first performance of a play at a theatre. He knew that, in consequence of his having made certain serious & unfounded charges against some members of the theatre staff, an application for a ticket in his own name would be refused. He therefore obtained a ticket through the agency of a friend, who bought the ticket at the theatre without disclosing that it was for pltf. By order of deft., the managing director of the theatre, pltf. was refused admission to the theatre on the night in question. Pltf. claimed damages from deft. for maliciously procuring the proprietors of the theatre to break a contract for the admission of pltf. to the theatre, alleged to have been made by them with pltf. by the sale of the ticket :—*Held :* the non-disclosure of the fact that the ticket was bought for pltf. prevented the sale of the ticket from constituting a contract as alleged, the identity of pltf. being in the circumstances a material element in the formation of the contract, & the action failed.—SAID *v.* BUTT, [1920] 3 K. B. 497 ; 90 L. J. K. B. 239 ; 124 L. T. 413 ; 36 T. L. R. 762.

Annotations :—**Consd.** Dyster *v.* Randall, [1926] Ch. 932. **Apld.** Scammell *v.* Hurley, [1929] 1 K. B. 419. **Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

454. *Add. Annotation :*—**Refd.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

455. *Add. Annotations :*—**Consd.** Haseldine *v.* Hosken, [1933] 1 K. B. 822. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311.

PART IV. SECT. 1, SUB-SECT. 8.—A.

300 iii. —— ——.]—ELLIOTT *v.* DALGETY & CO., LTD., [1929] Argus L. R. 201 ; [1929] S. R. (Q). 253.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 8.—C.

d i. —— *Conversation with third party.*]—FITZPATRICK *v.* MICHEL (1928), 28 S. R. N. S. W. 285 ; 45 N. S. W. W. N. 69.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.

337 v. ——.]—CANADIAN BANK OF COMMERCE *v.* DISTRICT REGISTRAR OF WINNIPEG, [1929] 4 D. L. R. 318 ; 2 W. W. R. 467 ; 38 Man. L. R. 275 ; *affg.*, [1928] 3 W. W. R. 630.—**CAN.**

337 vi. ——.]—Since in an action for deceit pltf. cannot succeed without proof of deft.'s fraudulent intent, deft.'s state of mind is of the essence of the case ; & the inference as to what his state of mind was is one which the jury must make for itself from the facts given in evidence.—MCLEOD *v.* HUGHES, [1930] 1 W. W. R. 835 ; 2 D. L. R. 937 ; 24 Alta. L. R. 427.—**CAN.**

337 vii. ——.]—A claim for damages for misrepresentation inducing the making of a contract cannot be sustained in the absence of proof of a fraudulent intent.—WHITNEY *v.* MACLEAN, [1932] 1 W. W. R. 417 ; 26 Alta. L. R. 209.—**CAN.**

337 viii. ——.]—Misrepresentation by a husband to his wife as to the effect of an assignment of her property does not affect the assignee who was not party to the misrepresentation, although this resulted in a loan to the husband by the assignee on the security of the wife's property.—DAVISON *v.* DOUGLAS, [1935] 1 D. L. R. 176 ; *on appeal*, [1935] 3 D. L. R. 456 ; 9 M. P. R. 485.—**CAN.**

sg. *Inducement to perform binding contract.*]—For one party to a binding contract to induce another to perform it by representations of fact false to his knowledge is not actionable as deceit.—AUSTRALASIAN BROKERAGE, LTD. *v.* AUSTRALIAN & NEW ZEALAND BANKING CORPN., LTD. (1935), 52 C. L. R. 430.—**AUS.**

PART V. SECT. 1, SUB-SECT. 6.—C. (c).

428 i. *Admission that inducement not relied on.*]—S. purchased certain farming land from the C. Co. S. brought an action against the co. & H. its managing director jointly, claiming damages incurred by him as a result of being induced to purchase the land by reason of the fraudulent representations made to him by the co. & H. The jury returned a verdict in favour of S. In cross-examination S. admitted that he had had experience as a dairy farmer in other parts of the State, & that he went over the land in question before purchasing it & had used his own judgment in what he saw :—*Held :* the jury were not bound to interpret the admission made by S. as being that he had relied exclusively on his own judgment, but might accept it as meaning that he applied his own judgment to the facts presented to him by his own observations & by the information he derived from defts.—SAGAR *v.* CLOSER SETTLEMENT, LTD. (1929), 29 S. R. N. S. W. 199 ; 46 N. S. W. W. N. 79.—**AUS.**

PART V. SECT. 3.

sf. *Representation relating to restrictive covenant.*]—Where a person entitled to the benefit of a restrictive covenant has made a positive representation to another person, that the covenant will not be enforced as against him, & has thereby induced the other person to alter his position for the worse, so that it would be unjust to ask a ct. of equity to compel the performance of the covenant by injunction, the representation raises an equity which debars a claim for equitable relief in respect of the covenant.—GREATER SYDNEY DEVELOPMENT ASSOCN., LTD. *v.* RIVETT (1929), 29 S. R. N. S. W. 356 ; 46 N. S. W. W. N. 99.—**AUS.**

Part VI.—Who are deemed Parties to the Representation.

464. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Konskier *v.* Goodman, [1928] 1 K. B. 421; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

Part VII.—Remedies for Misrepresentation.

SUB-SECT. 3.—INJUNCTION (Vol. XXXV., p. 52).

For "**Passing off action.**]—*See* TRADE & TRADE UNIONS" read "**Passing off action.**]—*See* TRADE MARKS, Vol. XLIII., pp. 264 *et seq.*"

474. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

479. *Add. Annotation :*—**Refd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

486. *Add. Annotations :*—**Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Cruse *v.* Mount (1932), 102 L. J. Ch. 74; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960; Terrene, Ltd. *v.* Nelson, [1937] 3 All E. R. 739.

493. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Terrene, Ltd. *v.* Nelson, [1937] 3 All E. R. 739.

509. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

510a. ——.]—A testator by his will & codicil appointed W., B. & H. trustees & directed the income of his residuary estate to be paid to his son H. S. for life & after the death of H. S. his wife was to recive an annuity out of residue during widowhood & thereafter a similar annuity was to be paid to the daughter of H. S. Upon the death of the daughter the residue was to go to her children as she should appoint, & in default of children there was a gift over to a named charity. The trustees had power to retain investments existing at the date of the testator's death; & the number of the trustees was not to fall below three. At the death of testator there were living H. S., the wife of H. S., & their daughter who was married & had two children living. Testator's residuary estate consisted of shares in two brick-making cos., both of which were well managed & paid an extremely high rate of dividend, but which held their brickfields upon leases expiring in 1950, & the shares were therefore wasting securities. After H. S. had enjoyed the income of the two cos. for 10 years, it occurred to the trustees that something should be done to protect the interests of the remaindermen; & they accordingly proposed to H. S. that they should either sell the shares in the cos. & invest the proceeds in trustee securities, or that they should create a sinking fund out of the income of H. S. In reply to this, H. S. offered to settle £40,000 (his wife consenting) on his daughter & her children, the interests of the daughter & the grandchildren not to take effect until his death. This offer was accepted by the trustees. The settlement, however, was not made. H. (one of the trustees) then died, & H. S. wanted to be appointed in his place. Shortly afterwards W., another trustee, died. H. S. wrote to the sole remaining trustee, B., saying that the draft deed to settle the £40,000 had been prepared & was only awaiting the appointment of two new trustees. Relying on this letter B. appointed H. S. & the latter's friend Q. as trustees. H. S. then died, & it appeared that no settlement had been made or even prepared. H. S. had a private fortune of £120,000, which he left by his will wholly to his mistress & their two illegitimate children. The trustee B. then brought this action against the exors. of H. S., claiming specific performance of the promise to make a settlement. It was contended that (*a*) this action could not be brought by B., but only by the trustees of the will as a body; (*b*) there was no consideration moving from the daughter & her children to H. S.; (*c*) the contract could not be enforced, as the appointment of H. S. as a trustee of the will was a breach of trust :—*Held :* (1) B. & W. had been contracting for a benefit to the daughter & her children, not in the capacity as beneficiaries under the will, but for a benefit for them entirely outside the will; (2) the consideration was the withdrawal of a valid objection to H. S. as trustee; (3) the appointment of a tenant for life as trustee was not a breach of trust. If it were, specific performance should be decreed, because a contract involving an innocent breach of trust is enforceable; (4) H. S. by his conduct

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PART VI. SECT. 2, SUB-SECT. 3.

457 ii. ——.]—If A. causes B. to get C., a stranger, to transfer his property to A., which both A. & B. believe to be for their own advantage, & B. induces C. to do so by fraudulent misrepresentation, A. is not in equity a holder in good faith & is in no better position than B.—ORCHARDSON *v.* DOMINION BANK, [1923] 2 W. W. R. 958.—**CAN.**

PART VII. SECT. 1.

468 i. *Damages & rescission alternative—Except as to damages due to partial execution of contract.*]—A party to a contract entitled to have it declared rescinded on the ground of fraudulent misrepresentations may, in addition to rescission, obtain judgment for damages for any loss incurred by him owing to his partial execution of it. The rule that a party who has been led into a contract by fraud cannot both repudiate the contract & recover damages contemplates those damages which are given for breach of contract & which, therefore, are incompatible with repudiation.—HILL *v.* STEPHEN MOTOR & AERO CO., LTD., [1929] 3 D. L. R. 676; 2 W. W. R. 97; 23 S. L. R. 552; *revsg.*, [1929] 2 D. L. R. 556.—**CAN.**

468 ii. ——.]—MORGAN *v.* HUDSON BAY MINING & SMELTING CO., [1930] 2 D. L. R. 587.—**CAN.**

—— made himself trustee of £40,000 for the benefit of his daughter & her children & there should be a declaration that his exors. held £40,000 with interest at 4 per cent. from the date of the death of H. S. for the benefit of his daughter & her children.—BRIGGS *v.* PARSLOE, [1937] 3 All E. R. 831; 81 Sol. Jo. 702.

Part IX.—Proceedings for Rescission.

634. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

645. *Add. Annotation :—As to* (3) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

649. *Add. Annotation :*—**Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

673. *Add. Annotation :*—**Consd.** Delavenne *v.* Broadhurst (1930), 70 L. Jo. 355.

682. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

686. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

695. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; May *v.* May (1929), 98 L. J. K. B. 770.

725. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

PART VIII. SECT. 1, SUB-SECT. 2.—A.

531 iv. —— ——.]—IRVING *v.* MERRYGOLD (1847), 5 U. C. R. 272.—**CAN.**

531 v. —— ——.]—ADAIR *v.* TILTON, [1928] 4 D. L. R. 183; [1928] 3 W. W. R. 92.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—B.

543 i. *General rule—Proof of damage necessary.*]—In order to establish a cause of action for deceit pltf. must not only allege but also prove that he suffered actual damage in consequence of deft.'s false representation.—CALGARY HERALD, LTD. *v.* BARNES CORPN., [1929] 1 D. L. R. 992; 1 W. W. R. 428; 24 Alta. L. R. 120; *revsg.*, [1929] 1 D. L. R. 114; [1928] 3 W. W. R. 543.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—C.

549 v. ——.]—In an action of deceit: —*Held :* the co. whose bonds pltf. had been induced by deft. applt. to buy was not, as represented by applt., "an established industry making money," & since applt. knew it was not & pltf. was induced by said representation into making the purchase, he was entitled to damages.—FERGUSON *v.* NORTHWEST BRICK & SUPPLY CO., LTD., [1931] 1 W. W. R. 543; [1931] 2 D. L. R. 275; 25 Alta. L. R. 198.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

559 ii. —— *To prove prima facie case.*]—CHURCH *v.* JONES (1935), 5 F. L. J. (Can.) 180.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A.

sa. *Misrepresentation as to number of sheep—Date of ascertaining number for assessment of damages.*]—On a claim for damages for fraudulent misrepresentation, it was found that in order to induce pltf. to enter into an agreement on Aug. 15, 1928, deft. fraudulently represented that, in his opinion, there were 7,000 ewes of the value of 25*s.* each depasturing on a certain property. A muster made on Sept. 18, 1928, showed that there were 4,050 ewes then on the property :—*Held :* in assessing the amount of damages, Aug. 15 & not Sept. 18 was the date on which the number & value of the ewes should be ascertained.—GERAGHTY *v.* RIDGE, [1929] S. R. (Q.) 205.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 5.—B

572 i. *Damage must be natural result of representation.*]—GOSSE-MILLERD, LTD. *v.* DEVINE, [1928] 2 D. L. R. 869; [1928] S. C. R. 101.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—C.

583 iii. ——.]—BLOIS *v.* CITY OF HALIFAX (1921), 54 N. S. R. 207; 56 D. L. R. 239.—**CAN.**

583 iv. ——.]—JENSEN *v.* LEACH, [1931] 2 W. W. R. 815.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—D.

588 viii. ——.]—In an action for damages for deceit, pltfs. alleged false representations by deft. in regard to land in B. C. which deft. had conveyed to pltf. in exchange for land in A. :—*Held :* deft. made no knowingly false representations as to the situation of the western boundary of the land, or as to the amount of timber upon the land; but deft. did represent to pltf. that there were two springs upon the land, which was not the truth, as he knew, & that this misrepresentation was material, was relied upon by pltf., & constituted fraud & deceit which rendered deft. liable in damages. The true measure of damages was the difference between the value of the land, without the springs & its value assuming the springs to be on it as represented.—PERRY *v.* DOWNS (1913), 24 W. L. R. 407; 11 D. L. R. 670.—**CAN.**

593 i. *Date of ascertainment of value —Date of purchase.*]—HARDMAN *v.* MCLEOD (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 1.

616 viii. —— ——.]—An action for the rescission of an executory contract for the sale of land will lie on the ground of a material innocent misrepresentation inducing the contract, & in such action it is not necessary for pltf. to establish that the misrepresentation is such as to go to the root of the consideration, the test of materiality being the same as that applicable where it is sought to set aside a contract on the ground of fraud.—WILSON *v.* BRISBANE CITY COUNCIL, [1931] S. R. (Q.) 360.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

639 ii. —— ——.]—Where a party to a contract seeks to vitiate it for fraud he is under the burden of pleading & establishing facts sufficient for that purpose. The burden of proof cannot be shifted until he has established a *prima facie* case.—LASBY *v.* JOHNSON & SIGMETH, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—

642 i —— L. R. 12.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 2.—D.

648 i. *Whether ground for dismissing entire action.*]—Where a statement of claim which alleges fraud also alleges other facts sufficient, if proved, to entitle pltf. to judgment although no fraud is proved, the failure to prove fraud does not prevent pltf. from recovering.—MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 3.—A.

sd. *Sale of assets & goodwill—Misrepresentation that trade mark registered.*] —Deft., managing director & chief owner in deft. co. entered into an agreement for sale of the assets & goodwill of the co. to pltfs., including a secret formula & trade mark which deft. represented as duly registered :—*Held :* the statement that a trade mark was registered when it was not is a material misrepresentation upon which rescission of a contract will be ordered.—SCEATS & MURRAY *v.* YOUNG (1930), 43 B. C. R. 321.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 3.—E.

687 vi. ——.]—A party to a contract, as soon as he has knowledge of any fraud or false representations, must decide at once either to continue to carry out the contract or take immediate steps to repudiate it. If he continues to carry out the contract, he cannot later, on the ground of such fraud or false representations, ask for payment on a basis different from that provided for in the contract or on *quantum meruit* or as damages arising from the fraud or misrepresentations. —NOVA SCOTIA CONSTRUCTION CO., LTD. *v.* QUEBEC STREAMS COMMISSION & ROYAL BANK OF CANADA, [1933] S. C. R. 220; 2 D. L. R. 593.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

703 v. —— ——.] — CANADIAN CREDIT MEN'S TRUST ASS'N. *v.* BUNGALOW CONSTRUCTION CO., [1928] 2 D. L. R. 84.—**CAN.**

703 vi. —— ——.]—Right to rescission for unilateral misrepresentation depends on being in position to offer *restitutio in integrum.*—DOMINION ROYALTY CORPN., LTD. *v.* GOFFATT, [1935] 1 D. L. R. 780; O. R. 169; *affd.*, [1935] S. C. R. 565; 4 D. L. R. 736; 5 F. L. J. (Can.) 179.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A.

708 i. *When ordered.*]—HESS *v.* RC ES (Sask.) (1912), 22 W. L. R. 742; 3 W. W. R. 251; 8 D. L. R. 798.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 5.—C.

722 i. *General rule.*] — KLEYNHAUS BROTHERS *v.* WESSELS' TRUSTEE, [192] App. D. 271.—**S. AF.**

748. *Add. Annotations :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

751. *Add. Annotation :*—**Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

751a. ——.]—A party to a contract is not entitled to rescind it on the ground of bribery when he is not in a position to offer *restitutio in integrum*, but he can recover damages in respect of the giving of the secret commission.—STEEDMAN *v.* FRIGIDAIRE CORPN., [1932] W. N. 248 ; 74 L. Jo. 405, P. C.

755. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

Part X.—Misrepresentation as a Defence.

773. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

774. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

Part XI.—Effect of Fraud on Innocent Parties.

782. *Add. Annotations :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38 ; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

794. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

PART IX. SECT. 3, SUB-SECT. 6.

742 ii. ——.]—CARRIQUE *v.* CATTS (1914), 7 O. W. N. 500 ; 32 O. L. R.

742 iii. ——.]—MORIN *v.* ANGER, [1931] 1 D. L. R. 827 ; 66 O. L. R. 327. —CAN.

742 iv. ——.] — WEYERMAN *v.* FAGEOL MOTOR SALES Co., [1931] 2 D. L. R. 817.—CAN.

PART IX. SECT. 3, SUB-SECT. 9.

757 vii. —— ——.]—In proceedings for curial rescission of a contract to take shares, the shareholder's claim for rescission may be barred by laches or delay on the ground that equity will not lend its aid to those who sleep on their rights.—*Re* LUCKS, LTD. (SERPELL'S CASE), [1928] V. L. R. 466 ; [1928] Argus L. R. 288.—AUS.

757 viii. —— ——.]—CAHILL *v.* , [1929] 1 D. L. R. 239.—CAN.

PART X. SECT. 1.

sp. *Although no claim for rescission.*] —TRUSTS & GUARANTEE Co. *v.* SCHOOLEY, [1932] 3 D. L. R. 789.—CAN.

PART X. SECT. 3, SUB-SECT. 1.

773 ii. —— ——.]—A doctor sold his practice for £500. The purchaser paid two instalments of the price, but, when sued for the balance of the price, he stated in defence that he had been induced to enter into the contract by the false & fraudulent misrepresentations of the seller :—*Held :* the purchaser's claim of damages, being illiquid, & based not upon the contract of sale but upon delict, could not constitute a relevant defence to the action, & could not be dealt with as a counterclaim in that action.—SMART *v.* WILKINSON, [1928] S. C. 383.—SCOT.

PART XI.

r i. *S. P.* RUTLEDGE *v.* ANDERSON (1914), 27 W. L. R. 75 ; *affd.* (1915), 28 W. L. R. 393 ; 20 D. L. R. 97 ; 24 Man. L. R. 403.—CAN.

MISTAKE.

Part I.—Nature of Mistake.

5. *Add. Annotation :*—**Refd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

Part II.—Mistake of Law.

17. *Add. Annotation :*—**Follld.** Jervis *v.* Howle, [1936] 3 All E. R. 193.

17a. ——.]—Pltf. & the first deft. verbally agreed that the first deft. should take a lease of pltf.'s coal mine & pay pltf. a royalty of threepence per ton free of tax on all coal sold. The terms of this agreement were set out in a memorandum signed by pltf. containing the words " free of tax " in pltf.'s writing. The lease provided that the first deft. should pay the rent therein mentioned & the royalty free of tax. He carried out both provisions until he assigned the lease to deft. co., & he did not pay the income tax on the royalty. The co. continued to pay the royalty free of tax, & also not to pay the income tax thereon, until the Inland Revenue authorities demanded it. It was then paid to date, & the co. deducted the whole of it from the current instalment of royalty, & claimed to be entitled to deduct it rateably from future instalments, on the ground that the provision in the lease for the payment of royalty free of tax was in contravention of the Income Tax Acts. On a claim by pltf. for rectification of the lease by substituting for the provision for the payment of the royalty of threepence free of tax a provision for the payment of a royalty of such an amount as after the deduction of income tax of the standard rate from time to time should leave threepence :—*Held :* that there was " strong irrefragable evidence " of the parties' intention on executing the lease, & it must be rectified in accordance with pltf.'s claim.—JERVIS *v.* HOWLE & TALKE COLLIERY CO., LTD., [1937] Ch. 67 ; [1936] 3 All E. R. 193 ; 106 L. J. Ch. 34 ; 155 L. T. 572 ; 80 Sol. Jo. 875.

Annotation :—**Refd.** Noel *v.* Trust & Agency Co. of Australasia, Ltd., [1937] Ch. 438.

27. *Add. Annotations :—As to* (1) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. *As to* (2) **Consd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455.

31. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

34. *Add. Citation :—previous proceedings, sub nom.* AINSWORTH *v.* WILDING, [1896] 1 Ch. 673.

Add. Annotation :—Generally, **Refd.** Kinch *v.* Walcott, [1929] A. C. 482.

34a. —— ——.]—There is no authority for the proposition that if two parties enter into what is on the face of it a binding contract, in ignorance of their legal rights, each believing the other to be legally bound to enter into such a contract when he is in fact not so bound, the contract so entered into is not enforceable. To hold otherwise would be to decide that a common mistake of law vitiated a contract.

On Feb. 1, 1935, pltf. co. by a formal contract in writing agreed with deft. K. that pltf. co. should have the exclusive right to the services of K. & his band for the purposes of making gramophone records for twelve months. The terms & conditions were set out in the contract. Clause 1 of the contract was in the same terms as those of clause 1 of the contract of Mar. 15, 1934, except that the inapt word " hereinafter " was omitted. When making the contract both K. & the representative of pltf. co. thought that they were legally bound to do so by the terms of clause 1 of the contract of Mar. 15, 1934 :—*Held :* the contract was enforceable.—BRITISH HOMOPHONE, LTD. *v.* KUNZ & CRYSTALLATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. (1935), 152 L. T. 589.

—— **Payment of tax.**]—The suppliant co. paid betting duty under Finance Act, 1926 (c. 22), s. 15, in respect of a totalisator, & afterwards the House of Lords, in a precisely similar case, held that betting duty was not payable. The suppliant co. then presented a petition of right claiming the return of the amount of the duty on the ground that it had been paid under a mistake of fact :—*Held :* the suppliants' mistake as to their liability to the duty was a mistake of law & not of fact, & therefore they could not recover.—NATIONAL PARI-MUTUEL ASSOCN., LTD. *v.* R. (1930), 47 T. L. R. 110, C. A.

PART II. SECT. 2, SUB-SECT. 1.

11 v. ——.]—*Held :* even if the money had been paid under a mistake of law, it could not be recovered back.—CAULFIELD *v.* ARNOLD (No. 2), [1925] 1 D. L. R. 898 ; 34 B. C. R. 398.—**CAN.**

11 vi. ——.]—Where a licence fee is demanded by a municipality under a claim of right, without fraud or imposition, & the person of whom it is demanded knows that it is demanded only by reason of a certain bye-law, & chooses to yield to the demand rather than contest it, the payment is regarded as a voluntary one & the money cannot be recovered back even if the bye-law was *ultra vires.*—COLWOOD PARK ASSOCN., LTD. *v.* OAK BAY CORPN., [1928] 3 D. L. R. 812 ; [1928] 2 W. W. R. 593.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

a i. —— *Payment of tax.*]—Money paid voluntarily to a municipal corporation under a claim of right, without fraud or imposition, for a tax or licence cannot, without statutory aid, be recovered back, even though such tax or licence could not have been legally demanded or enforced.—FOWLER & ANDREWS *v.* SPALLUMCHEEN TOWNSHIP, [1930] 3 W. W. R. 12 ; 53 B. C. R. 47.—**CAN.**

Part III.—Mistake of Fact.

58a. ——.]—The L. Co., who held more than 99 per cent. of the share capital of N. Co., agreed with one B. that he should be in the service of L. Co. for a term of years, during which he should act as chairman of the board of directors of N. Co. at a salary of £8,000 a year. They made a similar agreement with one S. that he should be vice-chairman of the board at a salary of £6,000 a year. While acting as chairman & vice-chairman respectively, B. & S. entered on their own account into secret speculations in cocoa, a commodity in which N. Co. dealt, of such a character as, on the finding of the jury in answer to a specific question, would have justified the L. Co. in terminating their agreements of service & N. Co. in dismissing them from their offices of chairman & vice-chairman. Subsequently N. Co. became amalgamated with another co., & it became necessary to cancel the appointments of B. & S. as chairman & vice-chairman. Being unaware of the aforesaid breaches of duty by B. & S., L. Co. agreed to pay to B. £30,000 & to S. £20,000 as compensation for terminating their services; B. & S. agreed to accept these sums, & they were duly paid. The jury, in answer to a further specific question, found that the L. Co. if they had been aware of the breaches of duty by B. & S. would have terminated their agreements, & B. & S. would have been dismissed from their offices without any compensation. The action in which the jury so found was brought in the first instance by the L. Co. alone, N. Co. being joined in the course of the proceedings as co-pltfs., against B. & S., claiming rescission of the compensation agreements & repayment of sums paid thereunder on the ground of fraudulent misrepresentation, & alternatively, as the House construed the points of claim, on the ground of unilateral mistake induced by fraud, but not on any ground of mutual mistake innocently made by the defts. so far as they were concerned. There was a specific alternative claim that the agreements of settlement & the payments under them were made under a mistake of fact. The jury negatived the charges of fraud, & found that at the time of negotiating the compensation agreements B. & S. had not in mind their breaches of duty:—*Held:* the action failed; as to mutual mistake, on the ground that the mutual mistake related not to the subject-matter, but to the quality of the service contracts.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98, H. L.; *revsg.* S. C. *sub nom.* LEVER BROS., LTD. *v.* BELL, [1931] 1 K. B. 557, C. A.

Annotation:—**Refd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455.

64. *Add. Citations:*—96 L. J. K. B. 621; 137 L. T. 233; 43 T. L. R. 417; 33 Com. Cas. 16, H. L.

65. *Add. Annotation:*—**Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

66. *Add. Annotation:*—**Consd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

71. *Add. Annotation:*—**Refd.** Lake *v.* Simmons, [1927] A. C. 487.

72. *Add. Annotations:*—**Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. **Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

75. After this case add "*See, also,* MISREPRESENTATION & FRAUD, No. 445a."

PART III. SECT. 2, SUB-SECT. 2.

53 ii. —— ——.]—Deft. as purchaser signed a contract of sale & purchase of a piece of land, which, in her ignorance, she believed was a contract for the purchase of an option to purchase the land. Deft., however, pleaded that she informed pltf.'s agent that she desired an option only, & that later the agent saw her & said that he had seen pltf. & "fixed it up." She alleged that the contract which was signed was put forward & signed in the belief that it gave effect to an agreement for an option only. The jury found that such belief was not induced by the representations of pltf.'s agent:—*Held:* as deft. had herself misconstrued the document she was bound by the contract, &, as she had charged fraud & failed, she should not succeed on another ground.—BURROWS *v.* WINTER (1931), 24 Tas. L. R. 45.—**AUS.**

54 ii. —— *Status of individual.*]—Pltf. a sharemilker under agreement with deft. D., met with an accident of which due notice was given & deft. co., D.'s insurer, admitted liability. Some nineteen months after the accident a doctor was able to pronounce that pltf. had suffered a 50 per cent. permanent disability. The co. was then advised that pltf. was not a "worker" within Workers' Compensation Act, 1922. Pltf. claimed compensation in the Arbn. Ct. on the grounds (1) that pltf. was a "worker" within the Act, & (2) that deft. D., through his insurers, had agreed to admit liability & to pay compensation. The judgment of that ct. was that pltf. was not a "worker" within the Act & that being so, the ct. had no jurisdiction to enforce the alleged agreement. Pltf. then brought this action for specific performance of the alleged agreement, or, alternatively, for £1,000 damages for breach of contract. On the evidence set out in the judgment:—*Held:* giving judgment for defts. there was no consideration in the ordinary sense for the admission & nothing in the nature of a compromise & the admission was made through a mutual mistake of fundamental fact.—DAVIDSON *v.* ATLAS ASSURANCE CO., LTD. & DAYSH, [1932] N. Z. L. R. 1163; G. L. R. 426.—**N.Z.**

58a. *Ignorance of rights dependent on mixed questions of law & fact—Mistake of title—"Belief."*]—In K. B. R. 603, which provides for the relief of a person who makes lasting improvements on the land of another under the belief that it is his own, the words "under the belief that the land is his own" imply a mistake regarding sufficiency of title & not a mistake regarding the boundaries of his own land; &, even if the rule covers mistakes as to boundaries, the "belief" must be real, *bonâ fide* & reasonable, that is, it must be founded on information or assurances such as would guide an ordinarily careful & competent man, & not predicted merely on the absence of information or inquiry, especially where inquiry is suggested by the nature of the circumstances.—AUMANN *v.* , [1928] 3 W. W. R. 233.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

61 i. —— *Mistake as to identity of payee—Intention of payor—Question for jury.*]—BUNGE (AUSTRALIA) PTY., LTD. *v.* YING SING (1928), 28 S. R. N. S. W. 265; 45 N. S. W. W. N. 60.—**AUS.**

PART III. SECT. 2, SUB-SECT. 4.—B.

84 i. *Unilateral mistake.*]—Deft. was offered a house described as "No. 6"; he carelessly went & inspected No. 16 in the same street, & then signed an offer for No. 6 believing it to be the house he had inspected. The mistake was deft.'s & was in no way attributable to pltf. or her agent, neither of whom was made aware of the fact that deft. had made the inspection. Deft. knew he had inspected No. 16, & afterwards signed the offer for No. 6 after reading it. In an action by pltf. for specific performance, or, alternatively, for damages:—*Held:* the case was one of mistake as to the identity of the subject-matter of the contract, but such mistake was purely unilateral, as pltf. was guiltless of such mistake & was unaware until the contract was complete that deft. believed he was buying No. 16. Deft. was accordingly bound by the contract.—WALLACE *v.* MCGIRR, [1936] N. Z. L. R. 483; G. L. R. 388; 12 N. Z. L. J. 187.—**N. Z.**

85. *Add. Annotation :*—*As to* (2) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

86. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

87. *Add. Citations :*—96 L. J. Ch. 38 ; 136 L. T. 235.
Add. Annotation :—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

94. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.
After this case add "*See, also,* CONTRACT, No. 3081a."

95. *Add. Annotations :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1931), 146 L. T. 258. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

100. *Add. Annotations :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

101. *Add. Annotations :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47 ; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

125. *Add. Annotations :*—*As to* (1) **Consd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628. *As to* (3) **Apld.** London Holeproof Hosiery Co. *v.* [illegible]

258 ; Sullivan *v.* Constable
T. L. R. 369.

135. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

157. *Add. Annotation :*—**Refd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

173. *Add. Annotation :*—*Generally,* **Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

Part IV.—Mistake in Expression of Intention and Relief Therefor.

203a. ——.]—P. & M., who had been partners as garage proprietors, agreed to dissolve the partnership as from Mar. 4, 1929, on the terms, as was found, that M. should take over all liabilities of the firm incurred after Mar. 4. P. informed his father, who was a solr., of the dissolution of the partnership, & the father prepared a written agreement to carry it out. By this document M. was made liable to indemnify P. in respect of all rent due before Mar. 4. This agreement was handed to M., who was asked to read it, & he looked through it & signed it, although he said he could not understand it. On a claim by P. to be indemnified in accordance with the written agreement in respect of rent accrued due before Mar. 4, M. pleaded that he signed the agreement under the belief that it embodied the oral agreement of Mar. 4, that it was drawn up under a mutual mistake of fact, & that the only agreement arrived at was that M. should indemnify P. to the extent agreed upon orally. Fraud was not pleaded, nor was rectification claimed in the pleadings. At the trial the judge found that M. signed the agreement handed to him with practically no consideration of its terms, & that as a stipulation had been inserted therein which he had not orally agreed to, that term could not be relied upon, &, accordingly, that the written agreement must be rectified to make it conform to the oral agreement. P. appealed :—*Held :* (1) as M. knew that the agreement which he signed was an agreement for the dissolution of the partnership between him & P., it was not open to him, in the absence of fraud or misrepresentation by P. as to the legal effect of the document, to rely on the plea of *non est factum* merely because if he had carefully read & understood the document he would have objected to one of its terms as not in accordance with the oral agreement ; (2) in the absence of any allegation of fraud or conduct amounting to fraud, & in the absence of any claim for rectification, it was not open to the judge to rectify the written agreement ; (3) there was no evidence of mutual mistake.—BLAY *v.* POLLARD & MORRIS, [1930] 1 K. B. 628 ; 99 L. J. K. B. 421 ; 143 L. T. 92 ; 74 Sol. Jo. 284, C. A.

PART III. SECT. 2, SUB-SECT. 6.—A.

115 ii. ——.]—Where a sale, which was not by order or description, but of a specific chattel known to the buyer, was made on the understanding & in the honest belief that it was inherently a better article than it really was, *e.g.* that it was a new motor car of recent make, whereas it was in fact a used & damaged car of an earlier make, but there was no representation or warranty, & title passed before the parties discovered their mistake, the purchaser was held not to be entitled to rescission or other relief.—BROOK *v.* CRIPPS, [1930] 1 W. W. R. 595 ; 2 D. L. R. 818.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

——.]—BURKE *v.* RITCHIE (1906), Cout.

PART III. SECT. 2, SUB-SECT.

i, 2 M. P. R. 309.—**CAN.**

r ii. —— ——.]—TATTRIE *v.* DYKINS (1930), 2 M. P. R. 118.—**CAN.**

t i. —— *Mortgage—Mortgagor insolvent to knowledge of mortgagee.*]—A party taking a mtge. from a mtgor. to his knowledge insolvent cannot, on the ground of mutual mistake, rectify his mtge. by including additional land, as against a subsequent mtgee. or trustee in bkpcy.—*Re* MONKLEY, BANK OF NOVA SCOTIA *v.* WRIGHT, [1933] 3 D. L. R. 384 ; 5 M. P. R. 523.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—C.

sb. *Assignment of judgment.*]—The assignment specifically mentioned two judgments, & the judgment in question was a third judgment owned by the assignor :—*Held :* since at the time of the assignment the assignee did not have said third judgment in mind at all & it was not mentioned, there was no *consensus ad idem* with respect to it, &, therefore, the assignment did not cover it, although the assignor was willing to assign it, & believed he was ——— it.—RYGUS *v.* ZAWITKOWSKI & ROSS, [1928] 1 D. L. R. 521 ; [1928] 1 W. W. R. 332 ; 22 Sask. L. R. 305.—**CAN.**

PART III. SECT. 2, SUB-SECT. 9.—C.

d i. —— ——.]—STINSON *v.* MOORE (1863), 10 Gr. 94.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—A.

192 ii. ——.]—MASTER *v.* PHIPPS (1855), 5 Gr. 253.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—C.

e i. ——.]—Where the parties have made an agreement & one party records it erroneously, the other party, if he knows at the time that there is an error, acts fraudulently if he seeks to take advantage of that error, & cannot be allowed to enforce it.—BINNS (W. C.) *v.* A[illegible] & A.), 8.—**IND.**

Part V.—Relief in Cases of Mistake.

216. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

229. *Add. Annotation :*—**Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

236. *Add. Annotation :*—**Refd.** Dixon (J. J.) *v.* Taylor & Cowells (trading as Pine-exx Liquid & Disinfectant Soap Co.) (1933), 50 R. P. C. 405.

244. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

248. *Add. Annotations :*—**Refd.** *Re* Russ & Brown's Contract (1933), 49 T. L. R. 443 ; *Re* Russ & Brown's Contract, [1934] Ch. 34.

249. *Add. Annotation :*—*As to* (1) **Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

254. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

263. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

281. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

283. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

293. *Add. Annotation :*—**Refd.** Eagle Star & British Dominions Insce. *v.* Reiner (1927), 43 T. L. R. 259.

298. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

300a. ——.]—BLAY *v.* POLLARD & MORRIS, No. 203a, *ante*.

308. *Add. Annotation :*—*As to* (2) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

310. *Add. Annotation :*—**Consd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

312a. ——.]—In an action for a declaration that, upon the true construction of an agreement under the seals of a district council & a city corpn., for an additional supply of water to the council by the corpn. therein expressed to be "at a *pro rata* charge as £540 is to 450,000 gallons subject to measurement," the council were entitled to such additional supply at a *pro rata* charge of £540 "*per annum*" for 450,000 gallons "*per diem*" or in the alternative, for rectification of the agreement on the ground of mutual mistake by the insertion therein of the words "*per annum*" & "*per diem*" :—*Held :* the agreement bore the construction which the council claimed to have placed upon it. If that construction were wrong the ct. would, notwithstanding the absence of any antecedent binding contract, rectify the instrument of agreement, so as to give effect to what was proved to have been the concurrent intention of the parties at the moment of executing the same—namely, to contract on the basis of a payment of £540 "*per annum*" for a supply of 450,000 gallons "*per diem*" subject to measurement.

The statement in the judgment of JAMES, V.-C. in *Mackenzie* v. *Coulson* (1869), L. R. 8 Eq. 368, at p. 375 : "It is always necessary for a pltf. to show that there was an actual concluded contract antecedent to the instrument which is sought to be rectified ; & that such contract is inaccurately represented in the instrument" does not warrant the suggestion that the jurisdiction of the ct. cannot be exercised, even in cases of clear mutual mistake in the attempt to embody in the instrument the concurrent intention of the parties existing at the moment of the execution of the instrument, unless a previously existing contract can be proved.—SHIPLEY URBAN DISTRICT COUNCIL *v.* BRADFORD CORPN., [1936] Ch. 375 ; 105 L. J. Ch. 225 ; *on appeal*, [1936] Ch. 399 ; 154 L. T. 444, C. A.

336. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

340. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

PART V. SECT. 2, SUB-SECT. 1.

216 ii. —— *Mistaken belief that money due—Onus of proof on plaintiff.*]—RECSEY *v.* REICHE, [1927] App. D. 554.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 1.—C. (b).

p i. —— ——.]—MAHON *v.* MCLEAN (1867), 13 Gr. 361.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A. (a).

282 iii. *Revsd.* on other grounds, [1919] 3 W. W. R. 480 ; 48 D. L. R. 447.

282 ix. —— ——.]—SAMSON *v.* BUTT, [1927] N. Z. L. R. 119.—**N.Z.**

282 x. —— ——.]—An agreement for the sale of mineral claims held to have been entered into under a mistake common to both parties, they thinking that they were contracting with respect to claims of a reasonable size, whereas the claims in question were in fact substantially encroached upon by a previously Crown granted claim. The purchasers were, therefore, held entitled to an abatement of the purchase-price.—BARRON *v.* MORGAN & SILVER LEAF MINES, LTD., [1930] 3 W. W. R. 65 ; 4 D. L. R. 935 ; 43 B. C. R. 84.—**CAN.**

282 xi. —— ——.]—CORSON *v.* MORGAN, [1932] S. C. R. 722 ; 4 D. L. R. 799.—**CAN.**

282 xii. —— ——.]—EVANS *v.* NYLAND, [1933] 1 W. W. R. 139 ; 46 B. C. R. 441.—**CAN.**

282 xiii. —— ——.]—Refusal to reform mtge., as evidence not sufficient to establish mutual mistake.—STEEVES *v.* LAYTON (1935), 9 M. P. R. 156.—**CAN.**

xi. Reasonableness of mistake.]—*Held :* not a question in issue.—TSHOBA COLLIERY (NATAL), LTD. *v.* TSHOBA COAL SYNDICATE, LTD. (1926), 47 N. L. R. 526.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 2.—A. (b).

300 ii. ——.]—COTTINGHAM *v.* BOULTON (1857), 6 Gr. 186.—**CAN.**

300 iii. —— *Unless induced by other party.*]—*Re* GOLD MEDAL FURN. MFG. CO., *Ex p.* SCYTHES & CO. (Ont.), [1927] 2 D. L. R. 323 ; 8 C. B. R. 169.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A. (f).

326 i. *Whether granted.*]—Where an instrument purporting to evidence an agreement for the sale of land does not accurately represent the true agreement, the ct. will entertain an action to have it rectified & for the specific performance of the real agreement, even though only oral evidence is adduced in support of the claim for rectification.—LINGS *v.* ZBRYSKI, [1930] 3 W. W. R. 415 ; 4 D. L. R. 1040.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—C. (a).

328 xi. ——.]—Where a parcel of land is omitted by mistake, a mtge. may be rectified although there is no memorandum to satisfy the Stat. of Frauds.—ELKINGTON *v.* WILLETT (1934), 49 B. C. R. 316.—**CAN.**

343. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

345. *Add. Annotation :—Generally,* **Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

355. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

356. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

376. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

389. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

401. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

403. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

414a. —— ——.]—SMITH *v.* PAWSON (1855), 25 L. T. O. S. 40, C. A.

420. *Add. Annotations :*—**Expld.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

Part VI.—Recovery of Money Paid under Mistake.

457. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

458. *Add. Annotations :*—**Apld.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134. **Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

461. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

462. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

463. *Add. Annotations :*—**Refd.** *Re* Regent Finance & Guarantee Corpn., Ltd. (1930), 69 L. Jo. 283 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

463a. —— ——.]—A bookmaker brought an action for money had & received in order to recover a sum of money which he had accidentally overpaid deft., one of his clients, in respect of wagering transactions :—*Held :* (1) as the ct. could determine the amount of overpayment only by examining accounts of gaming transactions, which it was forbidden to do by Gaming Act, 1845 (c. 109), the action could not be entertained ; (2) a payment made under a mistake of fact, which, if true, would not have rendered the payer liable, cannot be recovered in law.—MORGAN *v.* ASHCROFT, [1937] 3 All E. R. 92 ; 106 L. J. K. B. 544 ; 157 L. T. 87 ; 53 T. L. R. 786 ; 81 Sol. Jo. 477, C. A.

464a. Mistake must have been cause of payment.]—Where an action was brought for money paid under a mistake of fact, & pltf.'s evidence showed that if he had known of the fact, his ignorance of the law would still have led him to pay :—*Held :* as knowledge of the fact would not have affected his conduct the action failed.—HOME & COLONIAL INSURANCE CO., LTD. *v.* LONDON GUARANTEE & ACCIDENT CO., LTD. (1928), 45 T. L. R. 134 ; 73 Sol. Jo. 60 ; 34 Com. Cas. 163.

465. *Add. Annotation :*—**Consd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

470. *Add. Annotations :*—**Consd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

363 iii. —— ——.]—Even in a common-law action on a written contract, the defence of mutual mistake may be raised, & parol evidence admitted to support it, although deft. does not claim rectification or rescission of the contract.—CLARK *v.* APPLEBY, [1928] 2 D. L. R. 95 ; [1928] 1 W. W. R. 784.—**CAN.**

363 iv. —— ——.]—Extrinsic evidence allowed in case of mutual mistake as to the consideration for a mtge.—CYR *v.* DIONNE (1936), 11 M. P. R. 107.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

456 v. ——.]—MAXWELL E. J., LTD. *v.* BANK OF NOVA SCOTIA, [1929] 1 D. L. R. 616 ; 63 O. L. R. 323 ; *revsg.* [1928] 4 D. L. R. 490 ; 62 O. L. R. 660. —**CAN.**

456 vi. ——.]—A lessee of a hotel covenanted with the lessor to pay the rates on the land occupied by the hotel. The hotel formed part of a building standing on land in the city of Sydney, the property of the lessor. The hotel occupied part of the ground floor & the whole of the first floor of the building, the other part of the ground floor being occupied by a shop leased to another lessee. The council rated the land as an undivided lot & forwarded the rate notices in each of several years to the owner, who in turn sent them to the lessee of the hotel. The lessee paid the rates under the impression that the notices only referred to the land occupied by the hotel. In an action against the council to recover that portion of the rates which he had not covenanted to pay :—*Held :* the lessee could not recover that part of the rates from the council as it paid the rates voluntarily to the council instead of to the owner of the land, who alone was in legal relationship with the rating authority.—TOOHEY'S, LTD. *v.* SYDNEY MUNICIPAL COUNCIL (1936), 13 L. G. R. 52.—**AUS.**

sg. *Extent of onus of proof.*]—In order to succeed in an action to recover back money paid under a mistake of fact pltf. must prove, not only the mistake of fact which induced him to part with the money, but also that under the particular circumstances the law is able to impute to deft. the fiction of a promise to repay it. The conditions under which the law will impute such a promise cannot, it seems, be reduced to a common formula.—GARDEN RIVER RURAL MUNICIPALITY *v.* MONTREUIL, [1928] 3 W. W. R. 22 ; *affd.*, [1929] 2 D. L. R. 396 ; 1 W. W. R. 486 ; 23 S. L. R. 439. —**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

466 i. *General rule.*]—In a proper case money paid under a mistake of fact may be recovered back. The four conditions of a proper case are : (*a*) the mistake was an honest one, *i.e.* there was a genuine *bonâ fide* belief on the part of the payer of the money that certain facts existed which did not exist ; laches or negligence do not of themselves affect the *bona fides* of his belief, & means of knowledge will not impute knowledge unless he wilfully abstained from inquiry ; (*b*) the mistake must have been between the payer & the receiver of the money, *i.e.* the receiver must have been in some way a party to the mistake, either as inducing it or as responsible for it or connected with it ; (*c*) the facts as they were believed to be must have imposed an obligation, legal, equitable or moral, to make the payment ; (*d*) the receiver of the money had no legal, equitable or moral right to retain the money as against the payer.—ROYAL BANK OF CANADA *v.* R., [1931] 1 W. W. R. 709 ; 2 D. L. R. 685.—**CAN.**

471. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

484. *Add. Annotation :*—**Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

484a. —— **Mistake of agent.**]—Pltf. co., which had its head office at G. & had a district office at N., contracted with defts. for the supply of water to their branch factory at S. The original contract, in 1925, provided for a minimum quarterly payment of £375 by pltfs. In 1927 a new contract was made, under which the quarterly payment was reduced to £100. This contract was negotiated by pltfs.' managing director at G., & by mistake the factory manager at S. was not notified of the new contract, nor was the commercial manager at N. Defts., also by mistake, continued to send out demands at the old rate of £375, which were passed for payment by pltfs.' branch manager at S. & forwarded to the commercial manager at N., who drew cheques which were signed as a mere matter of routine without further inquiry by the managing director on his next visit to N. The error was not discovered until 1936, when pltf. co. sought to recover the amounts overpaid :—*Held :* (1) the mistake was a mutual mistake of fact, not of law, & pltfs. were *primâ facie* entitled to recover ; (2) even if the principles on which a co. is held liable for the fraud of an agent apply equally to cases of innocent mistake, the mistake of the factory manager & the commercial manager was the mistake of pltf. co., which could rely on it, & it was immaterial that the managing director of the co. knew of the existence of the second contract, he not being aware that it was not being acted on.—ANGLO-SCOTTISH BEET SUGAR CORPN., LTD. *v.* SPALDING URBAN DISTRICT COUNCIL, [1937] 2 K. B. 607 ; [1937] 3 All E. R. 335 ; 106 L. J. K. B. 885 ; 157 L. T. 450 ; 53 T. L. R. 822 ; 81 Sol. Jo. 734.

487. *Add. Annotations :*—*As to* (2) **Apld.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134. *As to* (2) **Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455.

494. *Add. Annotation :*—**Refd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

511. *Add. Annotations :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

515. *Add. Annotation :*—*Generally,* **Refd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

520. *Add. Annotation :*—**Refd.** Anglo-Scottish Beet Sugar Corpn. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

522. *Add. Annotation :*—*As to* (2) **Consd.** Anglo-Scottish Beet Sugar Corpn. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

526. *Add. Annotation :*—**Refd.** Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

530. *Add. Annotation :*—**Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

533. *Add. Annotations :*—*As to* (1) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman [1930] 2 K. B. 292. *As to* (2) **Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. *Generally,* **Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

536. *Add. Annotations :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

537. *Add. Annotations :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

540. *Add. Citations :*—[1927] 2 K. B. 92 ; 96 L. J. K. B. 539 ; 137 L. T. 127 ; 43 T. L. R. 299.

562. *Add. Citations :*—137 L. T. 533 ; 17 Asp. M. L. C. 305.

Add. Annotation :—**Expld.** Smith Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

PART VI. SECT. 2, SUB-SECT. 3.

475 xix. ——.]—CANADIAN MORTGAGE ASSOCN. *v.* R., [1917] 1 W. W. R. 1130 ; 10 Sask. L. R. 30 ; 33 D. L. R. 43.—**CAN.**

475 xx. ——.]—The rule that where money is paid upon the supposition that a specific fact, which if true would entitle the payee to the money, is true, but it is in reality untrue, the money may, generally speaking, be recovered back, was applied herein in favour of pltf., a co. engaged in financing the sale of motor cars, where it advanced money to deft., a wholesale dealer in cars, thinking that it was dealing with respect to & obtaining title to a car then being sold by deft., whereas in truth the car in question had, without the knowledge of deft., & through the fraud of a retail dealer, been sold by the latter & title thereto had passed to the purchaser from him.—PACIFIC FINANCE CO., LTD. *v.* FREEMAN CO., LTD., [1931] 2 W. W. R. 493 ; 3 D. L. R. 755 ; 25 Alta. L. R. 395.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.

488 iv. ——.]—Money honestly paid under a mistake of fact can be recovered back even though the person paying it did not avail himself of the means of knowledge which he possessed.—ST. ROSE RURAL MUNICIPALITY *v.* ROYAL BANK OF CANADA, [1928] 1 W. W. R. 663.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 7.

508 v. ——.]—Rent wrongfully collected & paid under a mistake is recoverable by action for money had & received.—SCOTT *v.* SPEARIN (1930), 50 B. C. R. 466.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

† i. ——.]—FISHER *v.* LUKE, [1926] V. L. R. 190 ; 47 A. L. T. 165.—**AUS.**

† ii. ——.]—A wrong interpretation of an agreement is a mistake of law, & money paid in consequence of such misinterpretation cannot be recovered.—OTTAWA ELECTRIC RY. CO. *v.* OTTAWA, [1934] 4 D. L. R. 731.—**CAN.**

562 i. *Effect of change in understanding of law—Subsequent declaration of law by court.*]—Money voluntarily paid at a time when the law is in favour of the payee cannot be recovered, if a subsequent judicial decision reverses the former understanding of the law.—JULIAN *v.* AUCKLAND (MAYOR, ETC.), [1927] N. Z. L. R. 453.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 2.

ak. *Money paid to municipality—For licence to instal petrol pump—No power to grant licence.*]—In 1926 pltf. applied to deft. for permission to instal two petrol pumps on footpaths in the municipality, & deft. granted such permission on the condition that pltf.

577. *Add. Annotations :*—**Consd.** *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79. **Refd.** *Re* Regent Finance & Guarantee Corpn., Ltd. (1930), 69 L. Jo. 283.

583a. Deduction of tax on sum regarded as interest —Sum dealt with by Inland Revenue as capital.]—Certain claims arose to be settled in connection with the increased burden falling upon pltf. council consequent upon the alteration of the boundaries of the city of Oxford under Oxford Extension Act, 1928. Terms of settlement were recommended to the parties by accountants appointed to negotiate a settlement, & by letter pltfs. stated that they accepted the following settlement : capital sum, £4,100 ; one year's burden in respect of highways, £1,925 ; plus interest at the rate of 5 per cent. *per annum* from Oct. 1, 1929 [the amount being left blank]. Defts. in reply sent a cheque for £6,759 5*s.* & a receipt for execution under pltf. council's seal. This receipt stated that the sum of £6,759 5*s.* was received " in full satisfaction & discharge of all claims of pltfs. upon defts. in connection with or arising out of the alteration of the boundaries of the city of Oxford under Oxford Extension Act, 1928, as follows : capital sum, £6,025 [the total of the two capital sums above-mentioned]; interest at 5 per cent. *per annum* from Oct. 1, 1929, to Dec. 31, 1932, £979, less income tax at 5*s.* in the £, £244 15*s.*" The income tax authorities regarded the payments, including the so-called interest portion, as capital sums, & intimated that they would not look to defts. to account for tax in respect of the deductions made. Pltfs. claimed from defts. £244 15*s.*, the sum stated in the receipt to have been deducted in respect of income tax :—*Held :* as the settlement was expressed to be in full satisfaction & discharge of all claims upon defts., & the contract was not entered into under a mistake as to the present existence of an essential fact recognised by law as the foundation of the contract, the settlement could not be re-opened & pltfs. could not recover the sum claimed.—BULLINGDON RURAL DISTRICT COUNCIL *v.* OXFORD CORPN., [1936] 3 All E. R. 875 ; 80 Sol. Jo. 1037.

should pay an annual fee of £5 5*s.* in respect of each pump. Pltf. paid £10 10*s.* in pursuance of that arrangement & installed the two pumps. When it was subsequently discovered that deft. had no power to authorise the erection of petrol pumps pltf. sued to recover the money he had paid, & obtained judgment in the local ct. :—*Held :* allowing the appeal, there had been no failure of consideration, as pltf. had the full enjoyment of that for which he bargained ; further, if the money had been paid under a mistake it was a mistake of law, & the money could not be recovered.—MIDLAND JUNCTION MUNICIPALITY *v.* KENT, [1932] W. A. L. R. 99.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 4.

80. *Payment under ultra vires statute.*]—*Held :* pltf.'s contention, that although money paid voluntarily under a mistake of law with full knowledge of the facts is not as a general rule recoverable, yet this rule does not apply where the receiving person was *ab initio* without authority to receive it, is not sustained by the decisions.—INDEPENDENT MILK PRODUCERS' CO-OPERATIVE ASSOCN. *v.* BRITISH COLUMBIA LOWER MAINLAND DAIRY PRODUCTS BOARD, [1937] 1 W. W. R. 679. - **CAN.**

MONEY AND MONEY-LENDING.

Part I.—Money.

Add. Annotations:—**Refd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

10. *Add. Annotations:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

Part II.—Currency and Rate of Exchange.

12. *Add. Annotations:*—*As to* (1) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373.

15a. **Salary in Turkish pounds—Employment in Cyprus.**]—In 1905 resp. became a member of the pensionable staff of a Turkish banking corpn. of which applts. were the Cyprus branch. By the contract then made he was entitled on retiring to a pension based upon his salary in the previous year. His salary was a sum in Turkish pounds. Before the war the Turkish pound was a coin of specified gold content, but in 1915 paper money was issued by the Turkish Govt. & made legal tender in Turkey. Resp., who previously had served in Turkey, was transferred to Cyprus in 1923, & was employed there by the applts. until the end of 1931, when he retired. In Cyprus his salary was paid at the rate of 100 Cyprus pounds per 110 Turkish pounds. That rate was adopted when both England & Turkey were on the gold standard, & was based upon the gold content of the English sovereign, which was interchangeable with the Cyprus pound, & of the Turkish pound. The Cyprus currency had since depreciated in terms of gold:—*Held:* resp.'s pension was payable in Turkish gold pounds converted into Cyprus currency at the rate of exchange on the day of each payment.—OTTOMAN BANK OF NICOSIA *v.* DASCALOPOULOS, [1934] A. C. 354; 103 L. J. P. C. 73; 151 L. T. 151, P. C.

PART I. SECT. 1.

sa. *Purchase & sale of gold coins without license.*]—On appeal from a conviction of applt. of the offence of unlawfully carrying on the business of a gold-coin dealer without being the holder of a license, contrary to clause 2 of the regulations under the Board of Trade Act, 1929:—*Held:* the first ground of appeal—namely, that as sovereigns are still legal tender in New Zealand & are therefore part of the currency, they cannot be purchased or sold, but can only be exchanged for currency in a different form—failed, as the giving of a higher value in cash for a sovereign is a purchase of that sovereign, & it is taken by the purchaser not as a current coin of the realm, but as a piece of gold of standard fineness, & is bought as gold for the purpose of making a profit on the gold. —MORRIS *v.* RITCHIE, [1934] N. Z. L. R. Supp. 196; G. L. R. 734.—N.Z.

PART II. SECT. 1.

sd. *Australian notes — In New Guinea.*]—*Held:* Australian notes issued pursuant to Part VIA., Division 4 of Commonwealth Bank Acts, 1911–1931, are legal tender throughout the Territory of New Guinea, by virtue of sect. 60H (1) (*b*) of that Act, which sect. was made applicable by sect. 13 of the New Guinea Acts, 1920–1926; further, the Commonwealth Parliament had legislative power to pass the New Guinea Acts, 1920–1926.—JOLLEY *v.* MAINKA, [1933] Argus L. R. 506; 7 A. L. J. 214.—AUS.

PART II. SECT. 2, SUB-SECT. 1.

16 i. *Mortgage debt.*]—Where a contract provides that the money payable thereunder shall be paid in a foreign country the question as to what currency it is payable in is determined by the intention of the parties as expressed by the terms of the contract. Where by a contract money payable in a foreign currency is made payable at a fixed & definite time, the time so fixed for payment is the date as to which the rate of exchange is to be calculated. Under a mtge. made in Winnipeg on Winnipeg property the mtgor. covenanted to pay the principal on Nov. 1, 1932, "in gold or its equivalent at the office of the mtgee. in the City of Detroit"; & covenanted to pay interest at 7 per cent. *per annum* by half-yearly payments at the same place "in gold or lawful money of Canada." The mtge. also provided that all interest in arrears should become principal & bear interest at the rate aforesaid:—*Held:* the mtgee. was entitled to payment of the principal in an amount in Canadian dollars which on Nov. 1, 1932, would have bought the principal amount in United States dollars, but that the clause specifically providing that interest might be payable in lawful money of Canada governed the payment of interest. Moreover the clause which provided that all interest should become principal made the interest principal only for the purpose of bearing interest.—JOHNSON *v.* PRATT, [1934] 1 W. W. R. 321; 2 D. L. R. 802; 42 Man. L. R. 93.—CAN.

• i. ——.]—Provisional sentence was claimed upon a mtge. bond in which deft. acknowledged her indebtedness to pltfs. in the sum of "two hundred & fifty pounds (£250) sterling, arising from & being the balance of purchase-price & agreed costs in connection with the purchase" of a certain motor car bought by deft. from pltfs. A condition of the bond provided that all payments of interest & principal should be made in "British sterling money" at a particular place in Natal:—*Held:* as the parties could not have intended, in a transaction which was between South Africans in South Africa concerning such an ordinary article of commerce as a motor vehicle, that the amount to be paid in discharge of such a purely domestic debt should vary with the exchange between South Africa & Great Britain, the word "sterling" in the acknowledgment of debt meant nothing more than standard money, & if deft. could discharge her obligation by a payment in British sterling money, it would have to be equivalent to £250 in South African money, & provisional sentence must therefore be granted, for £250 as prayed.—FISHER, SIMMONS & RODWAY (PTY.), LTD. *v.* MUNESARI, [1932] N. L. R. 77.—S. Af

• ii. ——.]—Pltf. was the holder of debentures issued by deft. municipal corpn. in which it promised to pay "to the holder of this Debenture the sum of Five Hundred Dollars ($500.00) of lawful money of the Dominion of Canada, or £102 14s. 10d., its sterling equivalent, at the rate of $4.86 2/3 to the one pound sterling, on the 13th day of Nov. 1933, at any branch of the Bank of British North America, either at Victoria, B.C., Toronto, Montreal, the City of New York, U.S.A., or London, England, at the holder's option." On the due date English money was at a premium over Canadian money. On said date pltf. duly presented the debentures for payment at the Bank of Montreal, Victoria, B.C. (the successor to the Bank of British North America) & demanded payment in English money of £102 14s. 8d., or its equivalent in Canadian money at

17a. —— **Agreement to pay in sterling in gold coin—Payment in bank notes.**]—One F. was the holder of a bond for £100, one of a series of bonds issued in 1928 by a Belgian co. Each bond provided for payment of £100 on Sept. 1, 1963, or at an earlier date in accordance with indorsed conditions, & of interest during the continuance of the security at the rate of 5½ per cent. *per annum*, " in sterling gold coin of the United Kingdom of or equal to the standard of weight & fineness existing on the first day of Sept. 1928," by equal half-yearly payments on every Mar. 1 & Sept. 1 in accordance with coupons attached thereto. One of the indorsed conditions provided that the bond should be construed & the rights of the parties regulated according to the law of England as a contract made & according to the terms thereof to be performed in England. A half-yearly instalment of interest on the bond having fallen due, the co. claimed to pay the nominal sum specified in the coupon in whatever might be legal tender in England at the day of payment in full discharge of their obligation under the bond. Upon an originating summons, F., as pltf., claimed such a sum in sterling as would purchase in the market on the day of payment gold of the weight & fineness contained in the gold coin of the United Kingdom sufficient to discharge the payment if falling due on Sept. 1, 1928 :—*Held :* pltf. was entitled to a declaration that upon the true construction of the bond he was entitled as the holder thereof to receive from the co. from time to time by way of principal & interest thereunder & on the due dates of payment therefor such a sum in sterling as should represent the gold value of the nominal amount of each respective payment, such gold value to be ascertained in accordance with the standard of weight & fineness existing on Sept. 1, 1928, &, where the nominal amount comprised a fraction of a pound, a sum in sterling representing a corresponding fraction of the gold value, ascertained as aforesaid, of a pound, part of the nominal amount aforesaid.—FEIST *v.* SOCIÉTÉ INTERCOMMUNALE BELGE D'ÉLECTRICITÉ, [1934] A. C. 161 ; 103 L. J. Ch. 41 ; 50 T. L. R. 143 ; 78 Sol. Jo. 64 ; 39 Com. Cas. 145 ; *sub nom. Re* INTERCOMMUNALE BELGE ; FEIST *v.* SOCIÉTÉ INTERCOMMUNALE BELGE 150 L. T. 41, H. L.

Annotations :—**Distd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13. **Consd.** R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., & Chilean Stores, [1937] 3 All E. R. 349.

17b. —— —— **Payment in gold illegal.**]—In 1917 the British Govt. made an offer in New York of 5½ per cent. secured loan convertible gold Notes, the principal & interest of which & of the bonds into which they might be converted were to be payable, without deduction for British taxes, in New York in United States gold coin, or, at the option of the holder, in London, in sterling at the fixed rate of 4·86½ dollars to the pound. The offer was made " subject to the approval by our counsel of necessary formalities." Resps. were the holders of a bond, in exchange for a

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the rate of exchange on the due date, which demand was refused by the bank, but at the same time the bank offered to pay pltf. £500 in Canadian money in respect of each debenture which in turn pltf. refused. Pltf. thereupon brought an action claiming the said sum in English money or its equivalent at the rate of exchange at the date the writ was issued, but at the trial pltf.'s counsel conceded that, if pltf.'s contentions were upheld, it would be entitled to payment at only the rate of exchange at the due date of the debentures :—*Held :* pltf. was entitled to only the face value of the debentures in Canadian dollars, *i.e.*, £500 per each debenture. The words " its sterling equivalent " indicate that the amount of English money was to be of the same value as the amount in Canadian dollars & the addition of the words & figures " at the rate of $4.86 2/3 " makes it clearer that the intention was that the English money should be the equivalent of 500 Canadian dollars. The purpose of inserting the latter words was to fix the rate of exchange. No matter in what foreign currency an obligation is payable in Canada, any judgment obtained in our cts. must be for an amount in the currency of this country.—ROYAL TRUST CO. *v.* OAK BAY CORPN., [1934] 3 W. W. R. 210 ; 4 D. L. R. 697 ; 48 B. C. R. 514. —**CAN.**

1 l. —— *Municipal debentures payable in Canadian currency or sterling.*]—A provincial statute empowering cities to pass bye-laws for the issue of debentures stated that " The bye-law may provide that the debentures & coupons shall be payable in lawful money of Canada or in sterling money of Great Britain or as to part thereof in one & part thereof in the other of the said moneys of equivalent value, & may be made payable at any place or places in Canada, Great Britain or the United States of America ; the equivalent value of the said moneys shall be the value provided in the Currency Act of Canada ; . . . " :—*Held :* the power of the cities thereunder was limited to the issue of debentures payable either in lawful money of Canada or sterling money ; &, therefore, payment of certain debentures issued by pltf. city expressed to be payable both as to principal & interest in dollars either in New York or in London could be lawfully made by payment of the specified amount in Canadian currency, converted, when necessary, into the lawful money of the place of payment, notwithstanding that the currency of the place of payment was at a premium over Canadian currency.—SASKATOON CITY *v.* LONDON & WESTERN TRUSTS CO., LTD., [1933] 2 W. W. R. 296 ; [1934] 1 D. L. R. 103.—**CAN.**

1 m. " *Gold* " *bond issue by Toronto company—Holder of interest coupons resident in Belgium—Currency of payment.*]—DERWA *v.* RIO DE JANEIRO TRAMWAY, LIGHT & POWER CO., [1928] 4 D. L. R. 542 ; 62 O. L. R. 669.—**CAN.**

1 n. *Interest on railway bond—Payable in England.*]—Interest on railway bond payable in England held payable in English currency.—BROWN *v.* ALBERTA & GT. WATERWAYS RY. CO. (1921), 59 D. L. R. 520.—**CAN.**

1 o. *Insurance policy.*]—A Canadian living in Ontario insured his life by a policy of insurance payable in dollars at the co.'s office in Indiana :—*Held :* he was entitled to payment in Canadian money at the face value of the policy.—WEISS *v.* STATE LIFE INSURANCE CO., [1934] 4 D. L. R. 469 ; O. R. 677 ; *affd.*, [1935] S. C. R. 461 ; 5 F. L. J. (Can.) 99.—**CAN.**

1 p. *Mortgage of land in New Guinea.*]—In pursuance of an agreement for the sale & purchase of land situate in the mandated territory of New Guinea, mtges. executed in 1926 at Rabaul by applt. in favour of resp., provided that all payments thereunder " shall be made in gold or in currency equivalent thereto at the market or exchange rate current at the time when every such payment is actually made." The principal sums secured by the mtges. were expressed in pounds. On May 1, 1931, applt. paid to the credit of resp.'s account with a bank at Rabaul nine hundred Australian one pound notes in full payment of £900 interest falling due under the mtges. on June 30, 1931. At all material times the equivalent of £900 in gold in Rabaul was eleven hundred & seventy-two Australian pound notes :—*Held :* the provisions of sect. 60H (1) (*b*) of Commonwealth Bank Act, 1911-1931, applied to the territory of New Guinea &, therefore, the payment of nine hundred Australian one pound notes satisfied the debt of £900 due under the mtges.—JOLLEY *v.* MAINKA (1934), 49 C. L. R. 242.—**AUS.**

1 q. *Contract made in England—For performance in New Zealand—" Pounds sterling."*]—*Held :* the payment in New Zealand where the contract was to be performed in the stipulated number of pounds in New Zealand currency was complete performance of the contract.—BALLANTYNE (J.) & CO., LTD. *v.* DE BUEGER, [1936] N. Z. L. R. 511 ; G. L. R. 410 ; 12 N. Z. L. J. 186.—**N. Z.**

1 r. *Identity of English & Australian pound—Materiality.*]—The identity of the English & Australian pound in measuring obligations is of no significance where it becomes necessary to ascertain the relative value of the two currencies in which those obligations are discharged.—PAYNE *v.* FEDERAL COMR. OF TAXATION (1935), 51 C. L. R. 197.—**AUS.**

Note, by which the British Govt. promised to pay one thousand dollars on Feb. 1, 1937, either in New York, at the office or agency to be maintained there by them, in gold coin of the United States of the standard of weight & fineness existing in Feb. 1917, or in London in sterling money at the fixed rate of 4·86½ dollars to the pound. The payment was to be made without deduction for any British taxes. In 1933 by a Joint Resolution of the Congress of the United States, which it was admitted had the force of law, it was provided that every provision contained in any obligation which purported to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, was against public policy, & that any such obligation should be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment was legal tender for public or private debts. On a petition of right by resps. claiming that they were entitled to be paid such a sum in dollars as would equal in value the number of dollars of the standard specified in the bond—namely, of the weight & fineness which was prescribed by the law of the United States existing in Feb. 1917:—*Held:* (1) a consideration of all the circumstances relating to the offer of the loan—the fact that the Notes were issued in the first instance in the United States, were expressed to be in terms of United States currency, & were to be paid on one option in New York on a value estimated by reference to United States coins—pointed to the law of the United States being the proper law of the contract; (2) the Joint Resolution of Congress had the statutory effect of requiring the bond to be discharged upon payment of dollar for dollar of the nominal amount.—R. *v.* INTERNATIONAL TRUSTEE FOR PROTECTION OF BONDHOLDERS AKTIENGESELLSCHAFT, [1937] A. C. 500; [1937] 2 All E. R. 164; 106 L. J. K. B. 236; 156 L. T. 352; 53 T. L. R. 507; 81 Sol. Jo. 316; 42 Com. Cas. 246, H. L.

Annotations:—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., & Chilean Stores (Gath & Chaves), Ltd., [1937] 3 All E. R. 349; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

17c. —— ——.]—(1) Defts. issued on Aug. 1, 1884, 6,000 First Mtge. Gold Bonds of like amount, tenor & date. The bonds were secured by a mtge. trust deed & all became due on Aug. 1, 1934. The bonds stated that on that date defts. for value received promised "to pay to the bearer or registered holder thereof £100 sterling gold coin of Great Britain of the present standard of weight & fineness at its agency in London, England, with interest thereon" at 5 per cent. *per annum* payable in London or at the holder's option at deft.'s office in New Brunswick. The interest coupon stated that the co. would pay the bearer £2 10*s.* sterling at its agency in London, England, or at its office in New Brunswick on Aug. 1, 1934. Pltfs., holders of 992 such bonds, claimed in respect of each bond the sum in sterling calculated on Aug. 1, 1934, then representing the gold value of £100 on Aug. 1, 1884:—*Held:* pltfs. were not entitled to be paid on such gold basis, but only £100 sterling; because upon the true construction of the bond, & the question was purely one of construction, the contract was not one for a payment of gold *in specie*, but one for the repayment of £100 sterling. The interest was similarly payable in sterling.

(2) In an action between the same parties upon one of the said bonds pltfs. obtained judgment on Nov. 7, 1934, upon the gold basis now claimed, the present defts. not having put in any defence to that action. The statement of claim in that action did not allege that all the bonds were identical in their terms:—*Held:* there was no estoppel by record, because each bond was a distinct contract &, further, the record of the previous action did not show that all the bonds were in the same terms.—BRITISH & FRENCH TRUST CORPN. *v.* NEW BRUNSWICK RY. CO., [1936] 1 All E. R. 13; 154 L. T. 191; 80 Sol. Jo. 148; *revsd.* [1937] 1 All E. R. 516.

—— **Debenture payable in London or New Zealand.**]—Resps. were the holders of a number of debenture bonds in denominations of £100, dated 1920, & the interest coupons outstanding under them, which were issued by the Auckland, New Zealand, Corpn. under the Local Bodies Loans Act, 1913, & sect. 26 of Appropriation Act, 1915, in payment for the purchase by the Corpn. from a private undertaking of the City's tramway system. The debentures & the interest thereon, at the rate of 5¼ per cent. *per annum*, were payable at the holder's option either in Auckland, New Zealand, or in London. The currency of New Zealand having become depreciated resps. exercised their option to be paid in London, &, having been there offered payment of the equivalent in sterling of the nominal amount in New Zealand currency, they claimed a declaration that they were entitled to be paid in sterling—in the currency of England—both as to principal & interest, without any deduction for exchange:—*Held:* that there being a common unit of account, the pound, in England & New Zealand, the mode of performance of the contract must be governed by the law of the place of performance, & accordingly the debt must be discharged by payment in the currency of the place of payment. Provided, therefore, that the bearer exercised his option to be paid in London, the interest coupons were payable in English currency without any allowance for exchange, as also were the debentures when they fell due. The Local Bodies Loans Act, 1913, which contained a code regulating the conditions & the procedure under which a local authority in New Zealand were entitled to borrow money for public purposes, did not take the present case out of the ruling in the Adelaide case, No. 17i, *post.* The word "pound" contemplated & authorised by that Act meant the common unit of account current in Great Britain & in various parts of the British Empire, & the currency which it connoted in the case of any particular loan would be determined by the place, whether within or outside New Zealand, stipulated as the place of payment in the debenture.—AUCKLAND CORPN. *v.* ALLIANCE ASSURANCE CO., LTD., [1937] A. C. 587; [1937] 1 All E. R. 645; 106 L. J. P. C. 40; 156 L. T. 367; 53 T. L. R. 347; 81 Sol. Jo. 96, P. C.

Money payable abroad on demand in foreign currency—Refusal to pay—Whether remedy in debt or damages.]—*See* BANKERS & BANKING, No. 276a, *ante*.

17e. **Bill payable abroad—Sum in sterling—Of "value cheque on London."**]—Resp., a British subject residing in Manchester, was in the habit of consigning Manchester goods to customers in Beyrout. The course of business was for him to draw a bill at sight on the customers for the amount in sterling, representing the cost of the goods & commission, & to hand it, with the bills of lading & invoices, to the Manchester branch of applts., a bank incorporated in Turkey. The Manchester branch then made an advance to him on the bill, & sent the documents to their Beyrout branch, who collected the price from the customer in exchange for the goods. On the Manchester branch being advised by the Beyrout branch that the price had been paid, a cheque for the sterling value of the goods, less any advance made, was handed to resp. In accordance with this practice resp. consigned to Beyrout goods which arrived there shortly before the outbreak of war, on Nov. 5, 1914, between this country & Turkey, on which date applts. held the bills & the documents representing the goods. The bills were in the following form: "Please pay to our order value cheque on London the sum of £ sterling. Shipping documents attached to be given up on payment." After the outbreak of war the Beyrout branch of applts. delivered the goods to the customers, taking payment in piastres of a sum fixed by the Beyrout branch as the price of sterling in London, & on the conclusion of the war, the piastres having fallen in value, the applts. claimed that they were only liable to pay the resp. an amount in sterling which at the then current rate of exchange represented the value of the piastres they had received for the goods. Resps. sued applts. to recover the sterling amount of the bills, or, alternatively, damages for the conversion of the goods:—*Held:* the words "value cheque on London" meant that the payment, which would ordinarily be in Turkish currency, must be so calculated on the exchange of the day as to represent the price of a cheque on London for the amount of the bill.—OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269; 97 L. J. K. B. 502; 139 L. T. 194; 44 T. L. R. 525; 72 Sol. Jo. 516; 33 Com. Cas. 260, H. L.

17f. **Charterparty—Commission on freight.**]—KING LINE, LTD. *v.* WESTRALIAN FARMERS, LTD. (1932), 48 T. L. R. 598, H. L.; *revsg.* S. C. *sub nom.* WESTRALIAN FARMERS, LTD. *v.* KING LINE, LTD. (1931), 47 T. L. R. 586.

Annotations:—**Consd.** Auckland Corpn. *v.* Alliance Assurance Co., [1937] A. C. 587. **Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

17g. **Repayment of bank deposit—Application of foreign law.**]—In 1913 pltf., who was a Turkish subject & was then resident in Smyrna, deposited with the Smyrna branch of the Ottoman Bank 12,500 piastres in Turkish pounds. In 1930 he demanded repayment of the balance of his account in gold, but the bank refused to pay otherwise than in the paper piastres which were then the currency at Smyrna. In an action against the bank to recover the value of the the balance on a gold basis with compound interest evidence was given that by decisions of the Turkish Cts., even if the original contract was to repay in gold, the debt could, in consequence of certain decrees, be satisfied by payment in paper:—*Held:* that in these circumstances pltf.'s claim failed—KRICORIAN *v.* OTTOMAN BANK (1932), 48 T. L. R. 247; 76 Sol. Jo. 147.

17h. **Insurance policy—Application of Treaty of Lausanne.**]—In 1909 an insurance co., whose principal place of business at all times material was at Trieste, issued a policy to a man & his wife, Ottoman subjects domiciled in Palestine, agreeing that upon the death of either the co. would pay 10,000 gold francs to the survivor. Trieste was Austrian territory in 1909, but in 1920 it became Italian territory under the Treaty of St. Germain. The Treaty of Lausanne made between the allied powers, including Italy, & the Ottoman Empire was signed on July 24, 1923, & became part of the municipal law of Palestine in 1924. The Treaty, as translated, provided that "life assurance policies contracted in currencies other than Turkish pounds, entered into before Oct. 29. 1914, between cos. possessing at this date [*actuellement*] the nationality of an allied power & Turkish nationals" should be settled, if the amount was stipulated in gold francs, by paying French francs for the period before Nov. 18, 1915, & Turkish paper pounds for the period after that date. The wife having died in 1925, the husband claimed 10,000 gold francs under the policy. The co. was willing to pay 10,000 francs at the then rate of exchange in Paris; that was more favourable to the assured than payment in Turkish pounds:—*Held:* the provision of the Treaty of Lausanne applied, as the co. was of Italian nationality at the date of the Treaty, & consequently the assured was not entitled to payment in gold francs.—ASSICURAZIONI GENERALI *v.* SELIM COTRAN, [1932] A. C. 268; 101 L. J. P. C. 81; 146 L. T. 233; 76 Sol. Jo. 50, P. C.

17i. **Dividends of Australian company payable in England.**]—The A. E. Co. was an English co. incorporated under Cos. Acts, 1869 to 1909, as a co. limited by shares & having its registered office in London & a branch office in Adelaide, South Australia, where it carried on its business of supplying electric light. The capital of the co. included certain 5 per cent. A cumulative preference shares (A shares) & certain 6½ per cent. C cumulative preference shares (C shares). On June 1, 1925, & thenceforward the P. Co. was & remained registered in England as the holder of A shares which had been issued in England in 1919. In 1924 & 1928 the same co. was registered as the holder of C shares which had been offered for subscription concurrently in England & Australia.

In 1921 by special resolutions duly passed & confirmed the whole conduct & control of the A. E. Co.'s business, except formalities required by statute to be observed in England, were transferred to Australia, & it was provided that all dividends should be declared at general meetings to be held in Australasia & should be paid in & from Adelaide or elsewhere in Australasia, & that all pre-

ference dividends declared by the board of directors should be declared at meetings to be held in Australasia & should be paid in & from Adelaide or elsewhere in Australasia, & that no part of the profits of the co. should be transmitted to the United Kingdom except in payment of dividend to members ordinarily resident there. In 1929 the A & C shares were converted respectively into A stock & C stock. On & since Mar. 1, 1931, the A. E. Co. paid dividends on its stock by delivering to the stockholders warrants payable at the Bank of Adelaide, South Australia. The P. Co. claimed a declaration that they & all other holders of A stock & C stock registered in the A. E. Co.'s register in England were entitled to be paid their dividends in sterling in England in English legal tender for the full nominal amount thereof & not subject to deduction for Australian exchange, & to an order for payment accordingly less the amount already received in respect of the dividends :—*Held :* inasmuch as the dividends were by agreement between the parties to be paid in Australia, the A. E. Co. had discharged its obligation by paying in Australian currency that which was in Australia legal tender for the nominal amount of the dividend warrants.—ADELAIDE ELECTRIC SUPPLY CO., LTD. *v.* PRUDENTIAL ASSURANCE CO., LTD., [1934] A. C. 122 ; 103 L. J. Ch. 85 ; 150 L. T. 281 ; 50 T. L. R. 147 ; 77 Sol. Jo. 913 ; 39 Com. Cas. 119, H. L.

Annotations :—**Apld.** Auckland Corpn. *v.* Alliance Assurance Co., [1937] A. C. 587. **Refd.** Payne *v.* Deputy Federal Comr. of Taxation, [1936] 2 All E. R. 793.

17j. —— Option for payment in Australia or London—Payment in London.]—BROKEN HILL PROPRIETARY CO., LTD. *v.* LATHAM, No. 61a, *post.*

17k. Damages for collision with foreign ship—Payment by order of foreign court in foreign currency.]—THE BAARN, No. 55a, *post.*

28. *Add. Annotation :*—**Consd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

30a. Voluntary undertaking to pay money—Legacy of sum payable under undertaking.]—In 1911, S., a German subject living in England, executed in Germany, together with his brothers & sisters, a document which recorded their intention to make gifts to certain members of the next generation of the family. S. undertook *inter alia* to give to E. B. S. on attaining the age of twenty-five, or marrying under that age, 100,000 marks. In June, 1922, being then a naturalised British subject domiciled in England, S. made his will & directed his trustees to fulfil his obligations under the document of 1911. S. died in Oct. 1922, & E. B. S. attained the age of twenty-five in 1934. Upon a summons taken out to determine the validity of the document of 1911 & what, if any, sum should be paid to E. B. S., either under that document or under the will of S. :—*Held :* the document of 1911 was merely a record of intention & not a deed of family arrangement & was not enforceable in a German ct. ; the legacy under the will was one not of 100,000 marks, but of such sum as would give to E. B. S. a sum which S. would have had to give her if there had been an enforceable obligation under the document of 1911 ; the German ct., acting according to German law, if it had to value the obligation treated as a binding obligation, would have put the figure at approximately £5,000, & E. B. S. was entitled to that sum with interest from Oct. 31, 1934.—*Re* SCHNAPPER, WESTMINSTER BANK, LTD. *v.* SCHNAPPER, [1936] 1 All E. R. 322.

30b. Annuity subject of compromise in foreign court.]—Under their father's will, the female pltf. was given an annuity & certain other rights & deft. was the residuary legatee. The rights of the parties were subsequently, in 1905, the subject of a compromise approved by the German ct., under which, so far as is material to this case, the female pltf. was to receive an annuity of 8,000 marks. In 1926 the trustees, in pursuance of a decision of the Ct. of Appeal in England, appropriated £8,489 14*s.* 11*d.* 5 per cent. War Loan in respect of this annuity. Deft. contended that the female pltf. was entitled to only the produce of this War Loan—which had been converted into 3½ per cent. stock—& the female pltf. contended that she was entitled at the present time to receive 8,000 reichsmarks :—*Held :* (1) the female pltf. was not restricted to the actual sum produced by the appropriated investment ; (2) she was not entitled to 8,000 reichsmarks, but to such a sum as a German ct. would award having regard to the original liability & to all the circumstances of the case, in this case found to be £500 *per annum*, payable in reichsmarks at the rate of exchange on the dates of payment ; (3) the assessment of such a sum was not an exercise of the discretion of the ct. which could be made by a German ct. only, but a question of fact, which could be determined by the ct. in England.—KORNATZKI *v.* OPPENHEIMER, [1937] 4 All E. R. 133.

PART II. SECT. 2, SUB-SECT. 2.

30. *Mortgage of land in New Guinea.*]—In pursuance of an agreement for the sale & purchase of land situate in the mandated territory of New Guinea, mtges. executed in 1926 at Rabaul by applt. in favour of resp., provided that all payments thereunder "shall be made in gold or in currency equivalent thereto at the market or exchange rate current at the time when every such payment is actually made." The principal sums secured by the mtges. were expressed in pounds. On May 1, 1931, applt. paid to the credit of resp.'s account with a bank at Rabaul nine hundred Australian one pound notes in full payment of £900 interest falling due under the mtges. on June 30, 1931. At all material times the equivalent of £900 in gold in Rabaul was eleven hundred & seventy-two Australian pound notes :—*Held :* the provisions of sect. 60H (1) (*b*) of Commonwealth Bank Act, 1911-1931, applied to the territory of New Guinea &, therefore, the payment of nine hundred Australian one pound notes satisfied the debt of £900 due under the mtges.—JOLLEY *v.* MAINKA (1934), 49 C. L. R. 242.—**AUS.**

PART II. SECT. 3, SUB-SECT. 1.

31. *Winding-up of partnership—Payment to assignee of partner—Rate at date of realisation of assets.*]—As regards the rate of conversion of dollars into British Indian currency, to which the assignee was entitled, the rate prevailing at the date on which the winding-up of the partnership was completed & the assets were realised is the proper rate to be allowed to the assignee.—VEERAPPA CHETTY *v.* MUTHIAH CHETTY (1929), I. L. R. 52 Mad. 509.—**IND.**

32. *Income received abroad in foreign currency—Assessment to income tax.*]—Applt., resident in Australia, included in his Federal income tax return a sum of £5,671, interest on British funded stock, which had been received by him by credits to his account with a bank in London & retained in England. The assessing officer added to applt.'s net income return a sum of £1,097, representing the difference between the £5,671 & the sum which would have been produced in Australia at the then existing rate of exchange by telegraphic transfer upon the respective dates of credit of the sums constituting the £5,671. On a claim by the applt. that the sum of £5,671 should not be included in his return at any other figure than £5,671 :—*Held :* the Aus-

34a. —— —— **Date of ascertainment of rate.**]—A testatrix who died domiciled in England, leaving property in both England & the United States, by her will gave a legacy of 10,000 dollars or the equivalent thereof in sterling at current rates of exchange to the rector & churchwardens or other the governing body of Chiswick Church for the purpose of keeping the burial ground & monument therein to her late husband & herself in good & sufficient repair & for the maintenance of the church & the decorations thereof. Testatrix, who died in 1925, was buried in Chiswick cemetery immediately adjoining the churchyard, which had long been closed for burials, in the same grave as her husband :—*Held:* a valid charitable bequest, to be divided equally between the vicar & churchwardens of Chiswick Parish Church as the controllers of the church & churchyard & the Borough Council as managers & owners of the cemetery. Further, the value of the legacy, & therefore the rate of exchange from dollars into sterling, must be ascertained on the first anniversary of the death of testatrix. —*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524 ; 104 L. J. Ch. 254 ; 153 L. T. 295 ; 51 T. L. R. 404.

35. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

36. *Add. Annotation :*—**Refd.** The Baarn (No. 2), [1934] P. 171.

39. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Expld.** The Baarn (1933), 49 T. L. R. 554. **Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1936] 2 All E. R. 678.

43. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

44. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

45a. ——.]—Deft., an English subject, incurred a debt of Frs.18,035 to pltfs. in France. The debt fell due on Dec. 31, 1914, & its value at that date in sterling was £715. In an action for recovery of this debt deft. admitted the debt, but pleaded that her liability in sterling should be reckoned at the date of the judgment. Between the issue of the writ & the day of hearing deft. paid Frs.18,035 to pltfs. in France, & a receipt was given her as for money deposited :—*Held :* in arriving at the proper equivalent in English currency, the rate of exchange prevailing between the two countries on Dec. 13, 1914, when the debt became due, & not that prevailing at the date of the judgment, should be adopted.—SOCIETE DES HOTELS DU TOUQUET-PARIS-PLAGE *v.* CUMMING, [1921] 3 K. B. 459 ; 91 L. J. K. B. 17 ; *revsd. on other grounds,* [1922] 1 K. B. 451, C. A.

46. *Add. Annotations :*—**Refd.** The Baarn (1933), 102 L. J. P. 120 ; Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1936] 2 All E. R. 678.

52. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

52a. ——.]—Resp., an Armenian & a Turkish subject, was in the permanent employment of applt. bank. In 1922, while employed at their Smyrna branch, he was sent on business of the bank to the head office at Constantinople, & was given temporary employment there. He informed applts. that his life was in danger in Constantinople from the Turkish authorities, & asked to be transferred to a branch outside Turkey. That being refused he fled from Constantinople. He was dismissed without notice, & brought an action for wrongful dismissal :—*Held :* conversion into sterling of the damages in Turkish currency in respect of resp.'s pension under the contract should be at the rate of exchange at the date of his dismissal, not at the date of the judgment.—OTTOMAN BANK *v.* CHAKARIAN, [1930] A. C. 277 ; 99 L. J. P. C. 97.

Annotation :—**Expld. & Distd.** Ottoman Bank of Nicosia *v.* Dascalopoulos, [1934] A. C. 354.

52b. ——.]—SFORZA *v.* OTTOMAN BANK OF NICOSIA (1937), 54 T. L. R. 127, P. C.

52c. ——.]—OTTOMAN BANK OF NICOSIA *v.* CHAKARIAN, [1937] 4 All E. R. 570 ; 54 T. L. R. 122, P. C.

53. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

54. *Add. Annotation :*—**Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1936] 2 All E. R. 678.

55a. ——.]—A Chilean vessel owned by pltfs. received damage while at anchor in the territorial waters of Ecuador through being run into by a Dutch vessel owned by defts. The Dutch vessel was arrested in this country, & her owners put in bail, admitted liability, & consented to a reference to assess the damage. The admission & consent were filed in the registry & became an order of ct. The Chilean vessel was repaired in Chile, & pltfs. filed their claim & vouchers comprising some 70,000 Chilean pesos & some small sums in Ecuador sucres, U.S. dollars, & sterling, the whole amount quantified into sterling being claimed at £2,533 19*s.* 1*d.*

Under Chilean law a debtor can make a

tralian Income Tax Acts, which provide than the amount of income tax payable is to be ascertained by reference to a rate based on a calculation of pence per pound of taxable income, in referring to pounds & pence are referring only to those units of Australian currency known as pounds & pence. To calculate Australian income tax at a rate of so many pence per pound of taxable income the assessable income of the taxpayer must, whatever be the currency in which he derives it, all be expressed in terms of Australian currency. Applt.'s derived income had, therefore, for the purposes of income tax, & dealt with in terms of Australian currency, & the £1,097 was rightly included in his assessment. —PAYNE *v.* DEPUTY FEDERAL COMR. OF TAXATION, [1936] A. C. 497 ; [1936] 2 All E. R. 793 ; 105 L. J. P. C. 98 ; 155 L. T. 309 ; 52 T. L. R. 627 ; 80 Sol. Jo. 508, P. C.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B.

43 ii. ——.]—A Victorian co. which was in voluntary liquidation was indebted to a creditor in England under a contract made in England which expressed the indebtedness in pounds, shillings & pence, & provided for payment in England :—*Held :* proof should be admitted by the liquidator for such a sum in Australian currency as would have been of equal value to the sum due in England at the date when it became due, according to the then current rate of exchange.—*Re* TILLAM BOEHME & TICKLE PTY., LTD., [1932] V. L. R. 146.—**AUS.**

49 iii. ——.]—The rule that, in translating damages from foreign currency into sterling, the date at which that process has to be effected is the date of the breach of contract, which was laid down in *In re British American Continental Bank, Ltd., Goldzieher & Penso's Claim* [(1922) ; Ch. 575, at p. 587), is applicable to the case of currencies between the Dominions although expressed in sterling.—MCDONALD (A. H.) & CO. PROPRIETARY, LTD. *v.* WELLS (1932), 45 C. L. R. 506.—**AUS.**

valid payment, even against the will of the creditor, by depositing the amount owed in a Chilean bank in the name of the creditor, &, the exchange value of the peso having fallen heavily, defts. deposited in a bank at Valparaiso 80,000 pesos in pltfs.' name, an amount which defts. alleged was more than sufficient to cover the whole claim with interest at 6 per cent. On pltfs.' application for a day to be fixed for the hearing of the reference, defts., on the ground that the claim had been paid in full, moved to have the action dismissed & the bail discharged. LANGTON, J., held that so far as the payment related to the claim in pesos it was a good discharge, but having regard to the fall in the exchange it was not necessarily a good discharge for the items of the claim in other currencies, & that so far as they were concerned there must be a reference to the registrar to report whether the amount deposited in pesos was in fact sufficient to cover these items with interest. Both parties filed notice of appeal. Before the appeal was heard, however, pltfs. accepted a sum tendered in respect of the small items in currencies other than the Chilean pesos, & the appeal was confined to the question whether the payment in Chile of the 80,000 pesos in respect of repairs & demurrage was a good discharge:—*Held:* on the evidence there was no final decision by the Chilean cts. that the payment in depreciated pesos was sufficient, while proceedings were still pending in the English ct.; accordingly the reference must proceed, & the registrar must treat the payment in Chile as a payment on account of the sums expended & lost in pesos in respect of the repairs & demurrage, & ascertain, in accordance with the decision in *The Volturno*, No. 55, the amount due to pltfs. by converting the sums so expended & lost into sterling at the rate of exchange prevailing at the time the pesos were paid or lost.—THE BAARN, [1933] P. 251; 102 L. J. P. 120; 150 L. T. 50; 49 T. L. R. 554; 18 Asp. M. L. C. 434, C. A.

61a. Debentures of Australian company—Option for payment in Australia or London—Payment in London.]—In Oct. 1920, an Australian co. incorporated in Victoria, & having also a registered office in London, England, issued mtge. debentures secured by a trust deed. By each of the debentures the co. covenanted to pay the principal moneys on Oct. 1, 1940, or such earlier date as they should become payable in accordance with the conditions indorsed thereon, & in the meantime to pay interest thereon at 7 per cent. *per annum* in accordance with the coupons annexed thereto. Under the conditions both principal & interest were payable in either Australia or London, at the holder's option. In accordance with a supplemental trust deed dated Sept. 1, 1921, an additional register of debentures was established in London, & the co. had power to make provision for (*inter alia*) transfer of registration from one register to the other. At the date of the last drawing of debentures for redemption before this summons—namely, Oct. 7, 1931, over 6,000 debentures were outstanding, of which 137 were on the London register:—*Held:* on the true construction of the debentures & of the annexed coupons there was no implied stipulation that, in the event of a debenture holder exercising his option to be paid in London, the co. could be required to pay the principal moneys & interest thereby secured in sterling & not in Australian currency. Therefore, the appeal must be allowed, & there must be a declaration that the sums payable by the co. in London in redemption of, & for interest on, the debentures in question ought in all cases to be paid in Australian currency converted into sterling at the rate of exchange current in London on the due date for payment thereof.—BROKEN HILL PROPRIETARY CO., LTD. *v.* LATHAM, [1933] Ch. 373; 102 L. J. Ch. 163; 148 L. T. 412; 49 T. L. R. 137; 77 Sol. Jo. 29, C. A.

Annotations:—**Apld.** Prudential Assurance Co. *v.* Adelaide Electric Supply Co. (1933), 49 T. L. R. 224. **Overd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

63. *Add. Citations:*—96 L. J. K. B. 930; 137 L. T. 431.

Add. Annotation:—**Refd.** De Beéche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148.

Part III.—Interest.

101a. ——.]—SWEETLAND *v.* SMITH (1833), 1 Cr. & M. 585; 3 Tyr. 491; 2 L. J. Ex. 190; 149 E. R. 532.

Add. Annotation:—**Folld.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631.

PART III. SECT. 2, SUB-SECT. 1.—A.

sc. *General rule.*]—A successful pltf. in an action for debt may recover interest if he can show that deft. agreed expressly or impliedly to pay interest or, in the absence of such agreement, if he can convince the ct. that he is entitled to interest as damages. It is only, however, in the case of a contract express or implied to pay interest at a fixed rate that the claim can be said to constitute a liquidated demand.—VALADE *v.* MCEWEN, [1930] 2 W. W. R. 490; 4 D. L. R. 123; 24 S. L. R. 527. —CAN.

n. *Revsd.*, 64 S. C. R. 396.

PART III. SECT. 2, SUB-SECT. 1.—B.

95 vi. ——.]—DUNN *v.* R. (1901), 1 Cout. Dig. 728.—CAN.

PART III. SECT. 2, SUB-SECT. 1.—C.

sk. *Intention that no interest payable.*]—One brother lent £100 to another, & the debtor granted a written acknowledgment of the receipt of "£100 on loan to be repaid later." The creditor lived for eighteen years after the date of the loan, & during his lifetime no interest was demanded or paid. After his death his executrix claimed repayment of the loan with interest from its date:—*Held:* although as a general rule interest is due on a loan, the proper inference from the whole circumstances of the case, & in particular from the facts that the parties were brothers, that the creditor had made no demand for interest during his lifetime, & that the acknowledgment bore that the money was "to be repaid later" was that the intention of the parties was that no interest should be paid.—SMELLIE'S EXECUTRIX *v.* SMELLIE, [1933] S. C. 725.—SCOT.

PART III. SECT. 2, SUB-SECT. 2.—A.

117 v. ——.]—When an instrument provides for future payments, but the time for payment, & the amount, if any, payable, both depend upon contingent events, there is not "a sum certain payable by a written instrument at a certain time" so as to enable interest to be allowed under sect. 24, sub-sect. 1, of the New Brunswick Jud. Act, 1909, the language of which is not distinguishable from that in the English Civil Procedure Act, 1833, s. 28.—MAINE & NEW

* SUB-SECT. 2.—BY STATUTE (p. 182).

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 3.

119. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

123. *Add. Annotations :*—**Refd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

125. *Add. Annotations :*—**Apprvd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631. **Refd.** Shell Mex, Ltd. *v.* Elton Cop Dyeing Co., Ltd. (1928), 34 Com. Cas. 39.

219. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

224. *Add. Citation :*—136 L. T. 114.

243. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

255. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

257. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 21 Ch. 352.

260. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

262. *Add. Annotation :—As to* (1) **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

270. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81; I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179.

Part IV.—Money-Lending.

286. *Add. Annotation :—Generally,* **Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

302. *Add. Annotation :*—**Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

303. *Add. Annotation :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

304. *Add. Annotation :*—**Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

316. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

343. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

345. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

346. *Add. Annotation :—As to* (1) **Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

346a. —— **Company registered as money-lender—Security payable to secretary.**]—Deft. society became incorporated as a limited co. & began to carry on business as money-lenders & were registered as such, & they made an advance to pltfs., who signed a promissory note agreeing to pay the amount to the secretary of deft. society, which was mentioned by name in the note as the society of which he

BRUNSWICK ELECTRICAL POWER CO. *v.* HART, [1929] A. C. 631.—**CAN.**

137 i. *Demand in writing—Sufficiency of—Claim on writ.*]—The inclusion of a claim for interest in a statement of claim is not a demand therefor within 3 & 4 Will. 4, c. 42, s. 28.—PEARSON-BURLEIGH, LTD. *v.* PIONEER GRAIN CO., LTD., [1933] 1 W. W. R. 179; 1 D. L. R. 714; 41 Man. L. R. 65.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—C.

—— ——.]—THE CUSTODIAN *v.* BLUCHER, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—**CAN.**

sd. *Under Crown Suits Act,* 1898 (62 *Vict. No.* 9, *W. A.*)—*Whether payable by Crown.*]—R. *v.* MCNEIL, [1927] A. C. 380; 96 L. J. P. C. 41; 136 L. T. 646.—**AUS.**

se. *Under Interest Act.*]—The proviso to the Interest Act, s. 1, only enables the ct. to award interest in all cases where it was payable in law before the Act, & the cts. in India, following the practice of the English cts., did not, prior to the Indian Act, award interest in the case of ordinary debts, but did so only in certain special cases.—NANCHAPPA GOUNDAN *v.* ITTICHATHARA MANNADIAR (1929), I. L. R. 53 Mad. 549.—**IND.**

PART III. SECT. 2, SUB-SECT. 3.—A.

sk. *Money obtained by threat.*]—FURPHY *v.* NIXON (1925), 37 C. L. R. 161; 26 S. R. N. S. W. 380.—**AUS.**

sl. *Rescission of contract & return of purchase-money.*]—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the money paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—SKINNER *v.* JAMES SYPHONIC VISIBLE MEASURES, LTD. (1927), 28 S. R. N. S. W. 20.—**AUS.**

PART III. SECT. 6, SUB-SECT. 1.

261 v. ——.]—CLYDE NAVIGATION TRUSTEES *v.* KELVIN SHIPPING CO., LTD., [1927] S. C. 622.—**SCOT.**

sm. *Rule in India.*]—In India compound interest is common, & often may be necessary & proper upon a borrowing for necessity.—SUNDER MULL *v.* SATYA KINKER SAHANA (1927), L. R. 55 Ind. App. 85.—**IND.**

PART IV. SECT. 1, SUB-SECT. 1.—A.

282 i. *Question of fact.*]—In each case it is a question of fact whether a person is carrying on the business of money-lending.—KERR *v.* LOUISSON, [1928] N. Z. L. R. 154.—**N.Z.**

282 ii. ——.]—A pltf., who alleges that deft. is carrying on business as a money-lender, discharges the *primâ facie onus* resting on him upon proof merely of a series of loan transactions by deft. of a volume & frequency sufficient to indicate the existence of a money-lending business; but if further evidence is adduced which explains the real nature of those transactions & the circumstances surrounding their creation, it then becomes a question of fact upon a consideration of the whole of the evidence whether the existence of a business of money-lending has been affirmatively established.—LAPIN *v.* HEAVENER (1929), 29 S. R. N. S. W. 514; 46 N. S. W. W. N. 164.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.—B.

sn. *Cash order business.*]—Resp. co. carried on the business of providing its customers with written orders on shopkeepers requesting them to supply goods to a certain amount to the customer. The customer signed a memorandum stating that in consideration of the co. making a certain advance at his request he undertook to pay to the co. a sum larger than the price of goods supplied by a deposit & instalments :—*Held :* the business so carried on was not that of money-lending, & resp. co. was not under an obligation to register under the Money-lenders Act, 1924.—ALLCHURCH *v.* POPULAR CASH ORDER CO., LTD., [1928] S. A. S. R. 189.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

301 ii. —— ——.]—Where a person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, & does any of those acts within the Irish Free State, he must, in order to make his contracts legal & enforceable within the Irish Free State, comply in the Irish Free State with the provisions as to registration contained in Money-lenders Act 1900, s. 2 (1) (*a*).—LONDON FINANCE & DISCOUNT CO., LTD. *v.* BUTLER, [1929] I. R. 90.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.

324 i. *What amounts to—Question of fact.*]—GOLDSTEIN *v.* CRAFT (1926), 26 S. R. N. S. W. 354; 43 N. S. W. W. N 13.—**AUS.**

was secretary. In an action for a declaration that the transaction was void, on the ground that defts. had taken a security in a name other than their registered name, contrary to Money-lenders Act, 1900 (c. 51), s. 2 (1) (*c*):—*Held:* as no one could sue on the note except the secretary, the security had been taken in a name other than defts.' registered name, & pltfs. were entitled to the declaration claimed.—MERZ *v.* SOUTH WALES EQUITABLE MONEY SOCIETY, LTD., [1927] 2 K. B. 366; 96 L. J. K. B. 1020; 137 L. T. 626; 43 T. L. R. 456, C. A.

SUB-SECT. 5.—RESTRICTIONS ON CONTRACTS.

See Money-lenders Act, 1927 (c. 21), ss. 6, 8.

353a. Note or memorandum signed by borrower—Contract contemplating security—Whether contract must set out terms of security.]—Money-lenders brought an action against a borrower to recover sums of £200, £100, & £100 lent by them to the borrower & alleged to be due upon three promissory notes payable at a specified address, the first in fourteen monthly instalments with interest at 60 per cent. *per annum*, & the others in three months after their respective dates with interest at 80 per cent. *per annum* until payment. If default were made the whole unpaid principal & interest thereon became due & was to carry interest in the case of the first sum at 60 per cent. *per annum* & in the case of the other two sums at 80 per cent. *per annum* from the date of default until payment. In intended compliance with Money-lenders Act, 1927 (c. 21), s. 6, in each case before the money was lent there was made & signed by the borrower a note or memorandum of the contract stating that the sum referred to therein was advanced on the security of a promissory note, but not stating where repayment of the sum was to be made. Copies of the notes or memoranda were duly delivered to the borrower:—*Held:* (1) the note or memorandum in each case was sufficient. The ct., without deciding the point, inclined to the view that the terms of a security given for repayment of a loan need not be set out in the note or memorandum of the contract, at any rate where the security does not impose terms more onerous than those stated in the note or memorandum.

(2) Where the interest charged exceeds the rate mentioned, Money-lenders Act, 1927 (c. 21), s. 10 (1), imposes on the money-lender the burden of showing that the interest is not excessive & that the transaction of loan is not harsh or unconscionable; & in the circumstances pltfs. had in each case discharged themselves of this burden.—READING TRUST, LTD *v.* SPERO, SPERO *v.* READING TRUST, LTD., [1930] 1 K. B. 492; 99 L. J. K. B. 186; 142 L. T. 361; 74 Sol. Jo. 12; 46 T. L. R. 117, C. A.

Annotations:—*As to* (1) **Consd.** Collings *v.* Charles Bradbury, Ltd., [1936] 3 All E. R. 369. **Refd.** Bennett & Co. *v.* Smith (1931), 47 T. L. R. 592; Temperance Loan Fund, Ltd. *v.* Rose, [1932] 2 K. B. 522; Dunn Trust, Ltd. *v.* Feetham, [1936] 1 K. B. 22. *As to* (2) **Refd.** Parkfield Trust *v.* Dent, [1931] 2 K. B. 579.

353b. —— —— Substituted contract in settlement of action to recover loan.]—The male deft. borrowed, by promissory note, money from pltfs., a firm of money-lenders, & agreed to repay the same by monthly instalments. In this transaction the requirements of Money-lenders Act, 1927 (c. 21), s. 6, were duly complied with. The borrower made default in paying the instalments, whereupon pltfs. issued a writ to recover the amount. Negotiations then took place, & in the result an arrangement was made by which the male deft. & the second deft., his wife, gave pltfs. a joint & several promissory note in respect of the amount unpaid on the first promissory note, an amount for interest, & certain agreed costs. A memorandum of this contract was signed by both defts., but no copy was sent to them within seven days, as required by sect. 6. The amount of the promissory note not having been repaid on the due date, pltfs. sued defts. to recover the same:—*Held:* (1) although the contract sued on was a substituted agreement for, or a variation of, the original contract entered into by the male deft., it was nevertheless a contract "for the repayment by a borrower of money lent to him" within sect. 6; (2) as a copy of the contract had not been sent as required by that sect., the contract was unenforceable against the male deft.; (3) it was likewise unenforceable against the female deft., inasmuch as it appeared that she signed the promissory note solely as a surety, & the male deft. not being liable she also was discharged from liability.—ELDRIDGE & MORRIS *v.* TAYLOR, [1931] 2 K. B. 416; 100 L. J. K. B. 689; 145 L. T. 499; 47 T. L. R. 516.

Annotations:—*As to* (1) **Apld.** Temperance Loan Fund, Ltd. *v.* Rose, [1932] 2 K. B. 522. *As to* (2) **Refd.** Bennett & Co., Ltd. *v.* Smith (1931), 47 T. L. R. 592.

353c. —— —— What amounts to security—Guarantee.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353v, *post*.

353d. —— —— —— Post-dated cheques.]—A lady of no business experience borrowed money from money-lenders, & in respect of the loan gave them a promissory note payable by instalments & post-dated cheques in respect of the instalments. The cheques were handed over with the note before the transaction was completed. The interest secured by the notes was 81·23 per cent., & the money-lender knew the borrower was a lady of some means but made no further inquiry on the matter:—*Held:* (1) the handing over of the cheques formed a term of the contract & must be mentioned in the memorandum of the contract of loan given in accordance with the provisions of the Money-lenders Act, 1927 (c. 21), s. 6. As they were not referred to therein, the loan was unenforceable by the money-lender; (2) the transaction was harsh & unconscionable within sect. 10 of the Act & the interest must be reduced to 25 per cent.—COLLINGS *v.* CHARLES BRADBURY, LTD., [1936] 3 All E. R. 369.

353e. —— Duty to send copy to borrower.]—ELDRIDGE & MORRIS *v.* TAYLOR, No. 353b, *ante*.

353f. —— Discharge of surety—On failure to send copy.]—ELDRIDGE & MORRIS *v.* TAYLOR, No. 353b, *ante*.

353g. —— —— Omission of date.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353v, *post*.

353h. —— Date of loan inaccurately stated.]—If the memorandum required by Money-lenders Act, 1927 (c. 21), s. 6, states the date of the

loan incorrectly, the contract is unenforceable, even although the inaccuracy has caused no deception & is due merely to a clerical error.—GASKELL, LTD. *v.* ASKWITH (1929), 45 T. L. R. 566 ; 73 Sol. Jo. 465, C. A.

Annotations :—**Consd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492. **Expld.** Temperance Loan Fund, Ltd. *v.* Rose, [1932] 2 K. B. 522.

353i. —— ——.]—The copy of the memorandum required by sect. 6 of the Money-lenders Act, 1927 (c. 21), s. 6, to be delivered to the borrower is not vitiated by the absence of a copy of the signature of the borrower, & the memorandum itself is not vitiated by an accidental slip in the date of the loan.—SHERWOOD *v.* DEELEY (1931), 47 T. L. R. 419 ; 75 Sol. Jo. 345.

Annotation :—**Consd.** Bennett & Co., Ltd. *v.* Smith (1931), 47 T. L. R. 592.

353j. —— ——.]—The copy of the memorandum required by Money-lenders Act, 1927 (c. 21) s. 6, to be delivered to the borrower must be an exact copy, & therefore, when the memorandum correctly states the date of the loan, the copy is vitiated by an imperfect statement of the date.—BENNETT (T. W.) & Co., LTD. *v.* SMITH (1931), 47 T. L. R. 592 ; 75 Sol. Jo. 645.

353k. —— **Rate of interest incorrectly stated.**]—Pltfs., who were registered money-lenders, agreed to lend a borrower the sum of £500 in consideration of the additional sum of £150, the whole sum of £650 to be repaid by two instalments of £325 each paid at the end of the first & second months. In the memorandum of the contract dated May 25, 1933, the loan was stated to be payable with interest at the rate of £240 per cent. *per annum* & to be made upon the terms of a promissory note of the same date, a copy of which was attached. The promissory note contained a promise to pay £500 together with interest at the rate of £240 per cent. *per annum* " such sum of £500 to be paid together with interest then due by consecutive monthly instalments of £325 each " on June 25 & July 25, 1933 :—*Held :* the rate of interest was incorrectly stated in the memorandum & therefore the contract was unenforceable. Having regard to the form of the memorandum the rate of interest could not be treated as having been calculated in accordance with the provisions in Sched. I. to Money-lenders Act, 1927 (c. 21), & in order that the instalments should include interest at £240 per cent. *per annum* the second instalment must have been £330 & not £325.

Per SLESSER and ROMER, L.JJ. : In a case where the rate of interest stated in the memorandum has been calculated in accordance with the provisions of Sched. I. to the Act, this fact must be stated in the memorandum in order to comply with sect. 6 of the Act.—PARKFIELD TRUST, LTD. *v.* CURTIS, [1934] 1 K. B. 685 ; 103 L. J. K. B. 609 ; 150 L. T. 486, C. A.

Annotation :—**Extd. & Apld.** Mason & Wood, Ltd. *v.* Greene, [1936] 2 All E. R. 509.

353l. —— ——.]—A borrower, who had had several loan transactions with a firm of registered money-lenders, was adjudicated bkpt. in July, 1933, & the money-lenders proved in that bkpcy. for £257 in respect of [illegible] & interest but received no dividend in respect thereof. In May, 1934, the borrower applied to the money-lenders for a loan of £100, &, on the money-lenders refusing to make the loan, offered that £50 out of the £100 advance should be retained by the money-lenders to compensate them in part for the loss they sustained in his bkpcy. The money-lenders thereupon made the loan, two cheques for £50 each being made out by the money-lenders, one of which was endorsed by the borrower & returned to the money-lenders. The memorandum & promissory note, which were signed by the borrower, stated that an advance of £100 had been made with interest at the rate of £64 per cent. *per annum* to be repaid by fourteen consecutive monthly instalments of £10 each. In the default clause in the memorandum the principal sum was stated to be £140, but the typist who typed the document said in an affidavit that she typed £140 by mistake & that the sum ought to have been £100. The money-lenders brought an action on the promissory note on a failure by the borrower to pay more than one monthly instalment :—*Held :* the memorandum did not contain all the terms of the contract, inasmuch as the amount actually lent was only £50, & therefore the amount of the principal of the loan was not correctly stated according to the definition of " principal " in Money-lenders Act, 1927 (c. 21), s. 15 ; the sum of £50, given by the borrower or retained by the money-lenders, was an amount in excess of the principal, paid to the money-lender in consideration of the loan, & was therefore " interest " within the definition of " interest " in sect. 15, & accordingly that the interest charged on the loan was not truly stated in the memorandum, & therefore the contract for the repayment of the money lent to the borrower by the money-lenders was, under sect. 6 (1) of the Act of 1927, unenforceable.

Per SLESSER & ROCHE, L.JJ., the insertion in the default clause of the memorandum of £140 instead of £100 was a material error which would invalidate the transaction.—DUNN TRUST, LTD. *v.* FEETHAM, [1936] 1 K. B. 22 ; 105 L. J. K. B. 52 ; 154 L. T. 53, C. A.

353m. —— ——.]—In each of two money-lending transactions secured by a promissory note for payment of £70 by fourteen monthly instalments the memorandum of the contract stated that " the amount of principal being advanced in respect of the said promissory note for £70 is £50, & the interest charged of £20 is equivalent to interest at the rate of £64 per cent. *per annum.*" The rate of interest was in fact calculated in accordance with the provisions of Sched. I. to Money-lenders Act, 1927 (c. 21). After default had been made in payment of instalments the assignees for value of the promissory notes, who were also money-lenders, brought proceedings to recover the balance of principal & interest :—*Held :* the contracts & promissory notes were unenforceable having regard to sect. 6 (2) of the Act, because the memorandum failed to state that the rate of interest was calculated in accordance with the provisions of Sched. I. to the Act.—MASON & WOOD, LTD. *v.* GREENE, [1936] 2 K. B. 370 ; [1936] 2 All E. R. 509 ; 105 L. J. K. B. 774 ;

155 L. T. 11; 52 T. L. R. 636; 80 Sol. Jo. 510, C. A.

353n. —— **Principal incorrectly stated.**]—DUNN TRUST, LTD. *v.* FEETHAM, No. 353l, *ante*.

353o. —— **Effect of clerical error.**]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353v, *post*.

353p. —— **Omission of copy of borrower's signature.**]—SHERWOOD *v.* DEELEY, No. 353i, *ante*.

353q. —— **Power of court to go behind.**]—(1) A memorandum under Money-lenders Act, 1927 (c. 21), s. 6, must be stamped before it can be received in evidence.

(2) If such a memorandum is not a true representation of the transaction, the ct. will go behind it, & if there is no memorandum of the real transaction there is no enforceable contract.—B. S. LYLE, LTD. *v.* CHAPPELL (1931), 47 T. L. R. 562; 75 Sol. Jo. 511; *revsd. on other grounds*, [1932] 1 K. B. 691, C. A.

Annotations:—Generally, **Reld.** Temperance Loan Fund, Ltd. *v.* Rose, [1932] 2 K. B. 522; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380; Dunn Trust, Ltd. *v.* Feetham, [1936] 1 K. B. 22.

353r. —— **Necessity for stamp.**]—B. S. LYLE, LTD. *v.* CHAPPELL, No. 353q, *ante*.

353s. —— ——.]—(1) By virtue of Money-lenders Act, 1927 (c. 21), s. 10, where a money-lender seeks to recover judgment against a borrower for more than a sum equal to the money lent & 48 per cent. *per annum* interest, he must satisfy the ct. that, in all the circumstances of the case, the rate of interest which he claims to recover is not excessive & that the transaction is not harsh & unconscionable. Although the borrower does not appear to the writ, or does not further defend the action, the onus is still on pltf. money-lender to satisfy the ct. on these two points. He must therefore prove a transaction which comes within Money-lenders Act, 1927 (c. 21), s. 6, & consequently he must prove a note or memorandum of the contract made in accordance with that sect.

(2) Such a note or memorandum is a memorandum of a contract within Stamp Act, 1891 (c. 39), s. 1 & Sched. I. to that Act, & therefore must be stamped with a 6*d*. stamp.—PARKFIELD TRUST, LTD. *v.* DENT, [1931] 2 K. B. 579; 101 L. J. K. B. 6; 146 L. T. 90.

Annotation:—As to (1) **Consd.** Collings *v.* Charles Bradbury, Ltd., [1936] 3 All E. R. 369.

353t. —— **Onus of proof.**]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353s, *ante*.

353u. —— **Renewal—Must appear on second memorandum.**]—When the time for payment of an original loan granted by a money-lender has expired without complete repayment, there is no objection to extending the time for repayment on altered terms by treating the old loan as paid off by means of a new loan on the altered terms, provided that the fact that this is being done is shown on the face of the second memorandum signed by the borrower before the new security is given. Such a memorandum is signed by the borrower before the money is lent within the meaning of sect. 6 (1) of the Money-lenders Act, 1927 (c. 21), s. 6 (1).

At the time when the second memorandum is signed neither a cheque nor cash need be handed over by the money-lender to the borrower & then returned. The money is lent within Money-lenders Act, 1927 (c. 21), s. 6, if it is appropriated by the money-lender to the purposes of the borrower, in any way which the borrower authorises (GREER, L.J.).—B. S. LYLE, LTD. *v.* CHAPPELL, [1932] 1 K. B. 691; 101 L. J. K. B. 185; 48 T. L. R. 119, C. A.

Annotations:—**Consd.** Temperance Loan Fund, Ltd. *v.* Rose, [1932] 2 K. B. 522; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380. **Distd.** Dunn Trust, Ltd. *v.* Feetham, [1936] 1 K. B. 22.

353v. —— —— ——.]—(1) Every contract between a money-lender & a borrower for the repayment by the latter of money lent to him, & that includes a promise by the borrower to pay the balance of money previously lent to him, is brought within the purview of Money-lenders Act, 1927 (c. 21), s. 6. Where a transaction is the renewal of an old loan, the fact that it is such ought be set out in the memorandum in order to comply with sect. 6.

(2) If the transaction between a money-lender & a borrower is unenforceable against the borrower by reason of non-compliance by the money-lender with the requirements of sect. 6, for example, by the omission from the memorandum of the date on which the loan was made, it is equally unenforceable against a person who has guaranteed the payment of the debt.

(3) A security "given by the borrower" within sect. 6 of the Act of 1927 may take the form of a guarantee given by a third party.

(4) *Gaskell, Ltd.* v. *Askwith*, No. 353h, *ante*, did not decide that a mere clerical error in the memorandum required by sect. 6 will invalidate the memorandum; & it must not be taken that a mere clerical error will have that effect (SCRUTTON, L.J.).

The Money-lenders Acts are not to be construed strictly in favour of lenders; they are to be construed on the same canons as any other Act (SLESSER, L.J.).—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, [1932] 2 K. B. 522; 101 L. J. K. B. 609; 147 L. T. 330, C. A.

Annotation:—As to (1) **Reld.** Dunn Trust, Ltd. *v.* Feetham, [1936] 1 K. B. [illegible]

353w. —— **Real transaction must be stated.**]—*Per* SCRUTTON, L.J.: The memorandum of the transaction of Aug. 5, 1931, was void because it did not state the real transaction. It contained an admission by the mother that £575 was then due & owing by her, whereas at that date nothing was due, & if it were assumed that the principal & *pro rata* interest were then to be paid, the amount payable would only be £535, & there would be a bonus to the money-lenders of about £40 for accepting payment before it was due, which ought to have been stated on the face of the memorandum, but was not. In effect the money-lender was obtaining interest on interest, which was prohibited under Money-lenders Act, 1927 (c. 21), s. 7.—LANCASHIRE LOANS, LTD. *v.* BLACK, [1934] 1 K. B. 380; 103 L. J. K. B. 129; 150 L. T. 304, C. A.

353x. —— **Loan on security of bill of sale—Number of instalments payable not stated in memorandum.**]—A loan was made by registered money-lenders on the security of a bill of sale given by the borrower on his furniture. The transaction was a money-lending transaction within the meaning of the Money-lenders Act, 1927 (c. 21). The memorandum of the transaction stated the date of the loan, the amount of the principal

advanced & the rate of interest charged. The bill of sale, which was in the form required by Sched. to Bills of Sale Act (1878) Amendment Act, 1882 (c. 43), was also set out verbatim in the memorandum. Under the bill of sale the borrower agreed to pay to the lenders the principal sum advanced together with the interest then due by equal monthly payments of £3 to be paid on a specified date of each month until the whole amount including principal & interest was repaid. Neither the bill of sale nor the memorandum stated the number of instalments that had to be paid. Objection was taken that the contract was unenforceable, as the memorandum did not contain all the terms of the contract because the number of instalments payable had not been stated therein:—*Held:* the contract was enforceable, as the memorandum set out the particulars specifically required by Money-lenders Act, 1927 (c. 21), s. 6 (2), & also set out verbatim the bill of sale, which was in the statutory form, & accordingly contained all the terms of the contract. What had not been set out was the effect of those terms according to the decisions of the cts. in various cases, but the statute did not require that to be set out in the memorandum.—SIMMONS *v.* RUSSELL FINANCIERS, LTD., [1934] 2 K. B. 487; 103 L. J. K. B. 724; 151 L. T. 472, C.A.

353y. —— Loan to company—Signature by director & Secretary.]—*Re* BRITISH GAMES, LTD. (1937), 54 T. L. R. 137.

353z. Duty of money-lender to supply information—Application to proceedings on judgment summons.]—PRACTICE NOTE (1929), 45 T. L. R. 476; [1929] 1 B. & C. R. 54.

353aa. Interest—Rate of—How calculated.]—MUTUAL LOAN FUND ASSOCN., LTD. *v.* SANDERSON, No. 353bb, *post.*

353bb. —— Appropriation of payments to—After default—Whether compound interest.]—A borrower was in debt to a money-lender in the sum of £301 19*s.* 10*d.* On June 14, 1935, he received a further sum that made his total indebtedness £500. The memorandum stated that the principal sum was to be applied in discharge of the previous advance. It also stated that the interest upon the sum of £500 was to be £200, & was at the rate of 34·65 per cent. *per annum.* The repayment was to be made in equal instalments, which were appropriated to principal & interest in proportions other than that of the principal to the total interest. If an instalment was more than seven days overdue, the whole balance of the principal was then to become due with interest to date. The memorandum then stated: "the principal sum outstanding in the schedule of repayments shall become immediately repayable, together with the instalment of interest due as shown in the schedule aforesaid, together with simple interest at the rate per cent. *per annum* aforesaid on the sum payable (whether for principal or interest) until payment, & such interest shall not be reckoned as part of the interest charged in respect of the loan." In accordance with this clause pltfs. took the amount of principal & interest due at the date of default, namely £451 2*s.* 10*d.*, & charged interest thereon until the date of the first payment on account. Such interest amounted to £173 0*s.* 5*d.* The payment then made of £169 9*s.* 7*d.* was appropriated to interest, leaving the principal sum of £451 2*s.* 10*d.* still due & a balance of £3 10*s.* 10*d.* of interest still due. Further interest was afterwards charged on the principal sum of £451 2*s.* 10*d.*:—*Held:* (1) the loan was one at an actual rate of interest, & the provisions of Money-lenders Act, 1927 (c. 21), s. 15 (2), which required instalments to be allocated to principal & interest in the proportion of the principal to the total interest, did not apply; (2) the memorandum sufficiently showed that nature of the transaction in respect of the past loan; (3) the appropriation of payments after default to interest did not amount to a charge of interest upon interest contrary to the Money-lenders Act, 1927 (c. 21), s. 7.—MUTUAL LOAN FUND ASSOCN., LTD. *v.* SANDERSON, [1937] 1 All E. R. 380.

366. *Add. Annotation:*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

376. *Add. Annotation:*—**Consd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

377. *Add. Annotations:*—*As to* (1) **Refd.** Crossingham *v.* Park (1927), 96 L. J. K. B. 1036. *Generally,* **Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust. Ltd., [1930] 1 K. B. 492; Collings *v.* Charles Bradbury, Ltd., [1936] 3 All E. R. 369.

377a. Before proceedings taken by money-lender for recovery of money lent.]—(1) A county ct. has jurisdiction under Money-lenders Act, 1900 (c. 51), s. 1 (2), to entertain an application by a borrower from a registered money-lender to reopen a money-lending transaction, only when the amount of the money lent, whether repayable by instalments or otherwise, without the addition of any claims arising under any agreement to pay interest or an amount charged for "expenses, inquiries, fines, bonus, premium, renewals, or any other charges," is within the jurisdiction of the county ct.

(2) If this condition is fulfilled, the ct. may entertain the application, although the money-lender has not taken any proceedings to recover the money lent, & although the time has not come for taking such proceedings.—CROSSINGHAM *v.* PARK, [1928] 1 K. B. 330; 96 L. J. K. B. 1036; 137 L. T. 651; 43 T. L. R. 647, D. C.

378. *Add. Annotation:*—**Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

379a. Jurisdiction of county court—Amount of money lent over £100.]—CROSSINGHAM *v.* PARK, No. 377a, *ante.*

380a. Construction of Moneylenders Acts—Whether in favour of lender.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353v, *ante.*

381a. —— —— ——.]—(1) *Held:* in Money-lenders Act, 1927 (c. 21), s. 5 (3), the words "no person shall act as such agent or canvasser" must be construed as meaning

" no person shall act as an agent or canvasser employed by a money-lender or any person on his behalf for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender." The Act does not, therefore, prohibit canvassing or touting for this purpose, where the canvasser acts without the authority or mandate of the money-lender to whom he is introducing a customer.

(2) Although a rate of interest on a loan not exceeding 48 per cent. does not carry the legal presumption introduced by sect. 10 of the Act that the transaction is harsh & unconscionable; yet, where in addition to his contract for repayment of the loan the borrower gives a bill of sale over his furniture of ample security for such repayment, a rate of 48 per cent. is, in such circumstances, so excessive as to render the transaction harsh & unconscionable for the purposes of Money-lenders Act, 1900 (c. 51), s. 1.—VERNER-JEFFREYS *v.* PINTO, [1929] 1 Ch. 401; 98 L. J. Ch. 337; 140 L. T. 360; 45 T. L. R. 163, C. A.

389a. —— ——.]—PARKFIELD TRUST (1935), LTD. *v.* PORTMAN (1937), 81 Sol. Jo. 687.

409. *Add. Annotations :*—**Apprvd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117. **Refd.** Parkfield Trust, Ltd. *v.* Dent, [1931] 2 K. B. 579.

410a. ——.]—VERNER-JEFFREYS *v.* PINTO, No. 381a, *ante*.

410b. ——.]—READING TRUST, LTD. *v.* SPERO, SPERO *v.* READING TRUST, LTD., No. 353a, *ante*.

410c. ——.]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353s, *ante*.

410d. —— **Effect of consent to judgment.**]—*Held :* in a case where the interest charged exceeded 48 per cent. *per annum* & deft. consented to judgment, such consent did not relieve the ct. of the duty of enforcing the presumption arising under Money-lenders Act, 1927 (c. 21), s. 10, in the absence of proof to the contrary thereof, & the ct. was not entitled by reason merely of such consent to enter judgment in accordance therewith.—MILLS CONDUIT INVESTMENTS, LTD. *v.* LESLIE, [1932] 1 K. B. 233; 100 L. J. K. B. 685; 145 L. T. 585; 47 T. L. R. 514, C. A.

Annotations :—**Consd.** Parkfield Trust, Ltd. *v.* Dent, [1931] 2 K. B. 579; Nihalchand Navalchand *v.* McMullan [1934] 1 K. B. 171. **Refd.** B. S. Lyle, Ltd. *v.* Chappel, (1931), 146 L. T. 236; *Re* Debtor (No. 591 of 1934), *Ex p.* Debtor, [1935] Ch. 353.

410e. ——.]—COLLINGS *v.* CHARLES BRADBURY, LTD., No. 353d, *ante*.

430a. Charges for expenses—Solicitor's costs.]—DUNN TRUST, LTD. *v.* ASPREY (1934), 78 Sol. Jo. 767.

434. *Add. Annotation :—As to* (2) **Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

434a. Remitting action to county court—Whether claim founded on contract—County Courts Act, 1919 (c. 73), s. 1.]—Pltf., a borrower from a money-lender, issued a writ claiming to have re-opened a money-lending transaction between pltf. & deft., a declaration that the interest charged therein was excessive & the transaction harsh & unconscionable, accounts & inquiries, payment of the sum found due to pltf. & other & necessary relief under Money-lenders Acts. Pltf. having applied to have the action remitted to the county ct. for trial, the claim being restricted to £100 :—*Held :* pltf.'s claim was founded on contract within County Cts. Act, 1919 (c. 73), s. 1, & could be remitted to the county ct. under that sect. for hearing.—WHITE *v.* SMITH (1927), 96 L. J. K. B. 397; 137 L. T. 48; 43 T. L. R. 288; 71 Sol. Jo. 191, C. A.

438a. —— —— **Onus of proof.**]—READING TRUST, LTD. *v.* SPERO, SPERO *v.* READING TRUST, LTD., No. 353a, *ante*.

438b. —— —— ——.]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353s, *ante*.

438c. —— —— **Effect of consent to judgment.**]—MILLS CONDUIT INVESTMENTS, LTD. *v.* LESLIE, No. 410d, *ante*.

442. For "**Party seeking relief—Ordered to pay costs**" read "**Costs—Party seeking relief—Ordered to pay costs.**"]

442a. —— **Action by money-lender — Judgment for reduced amount—Discretion to deprive plaintiff of costs.**]—In an action by money-lenders in the county ct. for money lent & interest, where the judge is satisfied that the transaction was harsh & unconscionable &

PART IV. SECT. 7, SUB-SECT. 1.— A.

sl. *Although security unenforceable.*]—By a mtge. bond resp. mtged. certain property therein specified as security for the repayment of sums of money lent to him by appts. upon certain promissory notes. The promissory notes admittedly did not comply with the provisions of sect. 10 (1) of the Ceylon Money-lending Ordinance, 1918, inasmuch as they did not state the "interest, premium, or charges" deducted or paid in advance, & they were consequently unenforceable under sub-sect. (2) of sect. 10 of the Ordinance. It was further admitted that the default was not due to inadvertence, & that the promissory notes must be taken to be fictitious to the knowledge of the lender within the meaning of sect. 14 of the Ordinance. On a claim by appts. to recover the sums lent on the security of the bond & upon the promissory notes :—*Held :* although the promissory notes were notes in which the amounts stated as due were to the knowledge of the lender fictitious within the meaning of sect. 14 of the Ordinance, & could not be enforced by reason of the provisions of sect. 10, the trial judge had jurisdiction under sect. 2 of the Ordinance to re-open the transactions & to take an account between the lender & the person sued. The provisions of sect. 13 of the Ordinance, which make the taker of a fictitious promissory note liable to a penalty, do not prevent the ct. from re-opening the transaction & taking the account under the provisions of sect. 2. Where, however, the trial judge exercises his discretion & re-opens the transaction & takes the account, the unenforceable promissory notes must not be admitted in evidence to prove the loans.—SOCKALINGHAM CHETTIAR *v.* RAMANAYAKE, [1937] A. C. 230; [1937] 1 All E. R. 196; 106 L. J. P. C. 23; 156 L. T. 227; 81 Sol. Jo. 136, P. C.—**IND.**

PART IV. SECT. 7, SUB-SECT. 1.— C. (d).

sp. *Money borrowed for illegal transaction—Excessive interest paid cannot be recovered.*]—SIEGEL *v.* O'BRIEN, [1931] 2 D. L. R. 882.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.— F. (a).

sq. *Bill in favour of money-lender—"Summary diligence"—Money-lenders Act, 1927, s. 18 (h).*]—*Held :* "summary diligence" in sect. 18 (*h*) means the execution of diligence & not the obtaining of the summary warrant on which it proceeded; &, accordingly, an arrestment executed after Jan. 1, 1928, on a bill in favour of a money lender was incompetent, although the warrant on which the arrestment proceeded was obtained before that

S. C. (Ct. of Sess.) 647.—**SCOT.**

the interest excessive, & where, after reopening the transaction, he gives judgment for pltfs. for a reduced amount, he has a discretion to deprive pltfs. of costs.—TEMPERANCE LOAN FUND *v.* ERWOOD (1927), 137 L. T. 449; 43 T. L. R. 530, D. C.

445. *Add. Annotation:*—**Consd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

446. *Add. Annotation:*—**Reld.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

447. *Add. Annotations:*—**Consd.** Crossingham *v.* Park (1927), 96 L. J. K. B. 1036. **Reld.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

448. *Add. Annotation:*—**N.F.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

449. *Add. Citations:*—[1927] 2 K. B. 181; 96 L. J. K. B. 480, [illegible]

or canvasser—Money-
1), s. 5 (3).]—VERNER-
, No. 381a, *ante.*

MORTGAGE.

Part I.—Nature of Mortgage.

4. *Add. Annotations :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399; Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

17. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179.

20a. Distinguishes mortgage for sale.]—In a transaction of sale the vendor is not entitled to get back the subject-matter of the sale by returning to the purchaser the money that has passed between them. In the case of a mtge. or charge, the mtgor. is entitled, until he has been foreclosed, to get back the subject-matter of the mtge. or charge by returning to the mtgee. the money that has passed between them. The second essential difference is that if the mtgee. realises the subject-matter of the mtge. for a sum more than sufficient to repay him, with interest & the costs, the money that has passed between him & the mtgor. he has to account to the mtgor. for the surplus. If the purchaser sells the subject-matter of the purchase, & realises a profit, of course he has not got to account to the vendor for the profit. Thirdly, if the mtgee. realises the mtge. property for a sum that is insufficient to repay him the money that he has paid to the mtgor., together with interest & costs, then the mtgee. is entitled to recover from the mtgor. the balance of the money, either because there is a covenant by the mtgor. to repay the money advanced by the mtgee., or because of the existence of the simple contract debt which is created by the mere fact of the advance having been made. If the purchaser were to resell the purchased property at a price which was insufficient to recoup him the money that he paid to the vendor, of course he would not be entitled to recover the balance from the vendor (ROMER, L.J.).—*Re* GEORGE INGLEFIELD, LTD., [1933] Ch. 1, 27; 101 L. J. Ch. 360; 147 L. T. 411; 48 T. L. R. 536; [1931] B. & C. R. 220, C. A.

Annotation :—**Refd.** Ashby, Warner & Co. *v.* Simmons [1936] 2 All E. R. 697.

35. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

36. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

70a. ——.]—The mtgor. of an estate released the equity of redemption to the mtgee. for a valuable consideration; the mtgee., at the same time, gave mtgor. a note, that if he should, within a year, pay a certain sum, being the original mtge. money, & the consideration for the release of the equity, he, the mtgee., would sell & convey to him the premises :—*Held :* this was an original agreement between the parties, & did not operate as a defeasance of the release, or raise any new equity to the mtgor.; & the money not being paid, the party was not entitled to any relief.

A distinction has been made, by the Ct. of Chancery, between contracts originally founded upon lending & borrowing money, with an agreement for a purchase in a certain event; & cases, where after a mtge. a new agreement hath been entered into & executed by the parties for an absolute purchase; although there be a subsequent declaration, that the mtgor. may have his estate upon payment of interest, principal, & costs; or where a release of the equity of redemption is given, with a collateral agreement to re-convey upon re-payment of the purchase-money; & in the latter cases it hath been determined that no re-purchase shall be allowed, unless upon strict performance of the conditions stipulated.—ENSWORTH *v.* GRIFFITHS (1706), 5 Bro. Parl. Cas. 184; 2 E. R. 615, H. L.

72a. *S. P.* RATCLIFF *v.* DAVIS (1610), 1 Bulst. 29; Cro. Jac. 244; Yelv. 178; Noy, 137; 80 E. R. 733.

Annotations :—**Consd.** Ryall *v.* Rolle (1749), 1 Atk. 165. **Refd.** Kinsey *v.* Heyward (1699), 1 Ld. Raym. 432; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585.

78a. —— —— ——.]—Ordinarily by the common law, although a mtge. may be given without delivering possession, yet a mere pledge cannot be given without the delivery of the possession of the goods (MELLISH, L.J.).—AYERS *v.* SOUTH AUSTRALIAN BANKING CO. (1871), L. R. 3 P. C. 548; 7 Moo. P. C. C. 432; 19 W. R. 860; 17 E. R. 163; *sub nom.* AYRES *v.* SOUTH AUSTRALIAN BANKING CO., 40 L. J. P. C. 22, P. C.

Annotation :—**Refd.** Burdick *v.* Sewell (1883), 10 Q. B. D. 363.

PART I. SECT. 1.

8a. *Agreement to deliver mortgage—Meaning of mortgage—Registrable mortgage.*]—SABANT SINGH & JAGAT SINGH KEHAR SINGH GILL (B. C.), [1929] 4 D. L. R. 396; 2 W. W. R. 431.—**CAN.**

8c. *Mortgage of fruit-bearing trees—Whether mortgage of immovable property.*]—Whether or not a mtge. of fruit-bearing trees is a mtge. of immovable property is a question dependent in each case upon the intention of the contracting parties & cannot be settled by an inflexible rule.—SHIR DAYAL *v.* PUTTU LAL (1931), I. L. R. 54 All. 437.—**IND.**

PART I. SECT. 4, SUB-SECT. 2.

37 v. —— ——.]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—MAUNG SHWE PHOO *v.* MAUNG TUN SHIN (1927), I. L. R. 5 Ran. 644.—**IND.**

PART I. SECT. 6, SUB-SECT. 1.

51 xvii. ——.]—HERRON *v.* MAYLAND (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768; *affd.*, [1928] 2 D. L. R. 858; [1928] S. C. R. 225.—**CAN.**

51 xviii. ——.]—BHAGWAN SAHAI *v.* BHAGWAN DIN (1890), I. L. R. 12 All. 387; L. R. 17 Ind. App. 98.—**IND.**

51 xix. ——.]—Where the instrument professes fully & clearly to give the reasons & considerations on which it proceeds, collateral evidence is admissible to show that the transaction is not thereby truly stated, although, in such cases, only the most cogent evidence avails to rebut the presumption to the contrary.—WILSON *v.* WARD, [1930] S. C. R. 212; 2 D. L. R. 433; *revsg.*, [1929] 2 W. W. R. 122; 3 D. L. R. 209; 24 Alta. L. R. 48.—**CAN.**

65 i. —— *Sufficiency of agreement for repurchase.*]—*Re* WEBBER, *Ex p.* VALINSKY, [1931] 4 D. L. R. 583.—**CAN.**

Part II.—Classification of Mortgages.

196a. Further advances—What are.]—By two memoranda of charge the testator charged in favour of his two sisters his share in an estate in Dominica to secure certain stated sums & such further sums as should be advanced to him by them or either of them. The two sisters at various times deposited securities belonging to them respectively with the testator's bank by way of collateral security for the testator's loan account. After testator's death the bank realised these securities & applied the moneys in discharge of testator's loan account:—*Held:* the moneys so applied by the bank were in the nature of further sums advanced to testator by his two sisters within the meaning of the two memoranda of charge.—*Re* SMITH, LAWRENCE *v.* KITSON, [1918] 2 Ch. 405; 88 L. J. Ch. 131; 120 L. T. 25.

224. *Add. Annotation:*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

225. *Add. Annotation:*—*As to* (3) **Distd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

260. *Add. Annotations:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

268. *Add. Annotation:*—**Refd.** Chowood, Ltd. *v.* Lyall (2), [1930] 2 Ch. 156.

272. *Add. Annotation:*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

305. *Add. Annotation:*—*As to* (1) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

PART II. SECT. 1.

sq. *Form of—Whether statutory form essential.*]—IMPERIAL ELEVATOR & LUMBER CO. *v.* OLIVE (1914), 99 W. L. R. 339; 6 W. W. R. 1562; 19 D. L. R. 248.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

91 v. ——.]—Pltf., as administrator, sued upon deft.'s alleged promise to execute a mtge. to testator on certain land, in consideration that testator would discharge a mtge. which he then held thereon, so as to enable deft. to give a first mtge. on the land to one L.:—*Held:* the alleged promise required to be in writing, as relating to an interest in land.—STODDART *v.* STODDART (1876), 39 U. C. R. 203.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

e i. —— ——.]—LEYS *v.* HOLLINGHEAD (1878), 29 C. P. 66.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

109 i. *Specific performance.*]—JEWAN LAL DAGA *v.* NILMANI CHAUDHUR. (1927), L. R. 55 Ind. App. 107.—**IND.**

PART II. SECT. 2, SUB-SECT. 5.—A.

sr. *Necessity for good faith—Effect of laches.*]—*Re* AYLWARD, *Ex p.* MCMILLAN (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—**CAN.**

sv. *Law in Ontario.*]—The law in regard to the creation of equitable mtge. by delivery or deposit is the same in Ontario as England.—ZIMMERMAN *v.* SPROAT (1912), 26 O. L. R. 448.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.—B.

sd. *Transfer in blank—& certificate of title.*]—*Re* HANS C. CHRISTENSEN, LTD., THOM *v.* EVERETT, [1928] 4 D. L. R. 668; [1928] 3 W. W. R. 314.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.—I.

se. *Property as it stands at date of sale or foreclosure.*]—For the purpose of creating an equitable mtge. of a share in an indigo concern it is quite sufficient to deposit the title deeds under which that share was acquired. Where such a share is mortgaged the parties must be taken to intend that when foreclosure or sale takes place, at some subsequent date, the share shall pass to the purchaser as it stands at the date of the foreclosure or sale, & not merely as it existed at the date of the various title deeds when it was acquired.—TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

PART II. SECT. 2, SUB-SECT. 6.

sl. *Agreement giving rights over building to creditor.*]—CLUTTERBUCK *v.* IMPERIAL LUMBER CO., [1928] 3 W. W. R. 123.—**CAN.**

PART II. SECT. 2, SUB-SECT. 7.—A.

sg. *Charge on debt—Order to debtor to pay third party out of specific fund.*]—An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor will create a valid equitable charge upon such fund.—PRABODHCHANDRA MITRA *v.* ROAD OILS (INDIA), LTD. (1930), I. L. R. 57 Calc. 1101.—**IND.**

sk. *What amounts to.*]—A document without a defeasance clause, but containing a covenant to repay the consideration with interest, in default of which the grantee might re-enter, creates an equitable charge against the lands.—GENERAL TRUST & EXECUTOR CORPN. *v.* BISHOP (1933), 7 M. P. R. 79.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

n i. ——.]—An instrument of transfer lodged for registration under Transfer of Land Act, 1915, expressed the consideration for the transfer to be "the sum of £200, this day lent to me by M., which sum is to be repaid within two years from the date hereof, together with interest at the rate of £6 per cent. *per annum* in the meantime." The transaction between the parties to the transfer was, to the knowledge of the registrar of titles, a mtge. transaction. The registrar refused to register the transfer:—*Held:* the registrar was justified in refusing to register the transfer.—PUTZ *v.* REGISTRAR OF TITLES, [1928] V. L. R. 348; [1928] Argus L. R. 224.—**AUS.**

n ii. ——.]—In order to be registrable under Land Titles Act a document given to secure a debt or loan must be in the form prescribed for a mtge.—DEVENISH *v.* CONNACHER, [1930] 1 W. W. R. 958; 2 D. L. R. 973; *on appeal*, [1930] 2 W. W. R. 254; 3 D. L. R. 977; 24 Alta. L. R. 535.—**CAN.**

b i. *Certificate of registry—Requisites of.*]—*Re* BRADSHAW & SIMCOE COUNTY REGISTRAR (1867), 26 U. C. R. 464.—**CAN.**

bb i. —— *How ascertained.*]—*Re* LAND TITLES ACT (1921), 65 D. L. R. 770.—**CAN.**

hh i. —— *Proceedings for foreclosure—Who has jurisdiction.*]—A mtge. of land, under a new system, operates as a security only, & not as a transfer of the land or of any estate or interest therein, Real Property Act, s. 100; & proceedings for foreclosure can be taken only before the district registrar, as provided for in sects. 113, 114 of the Act; & the ct. of K. B. has no jurisdiction to make a final or other order of foreclosure in respect of such a mtge., in the absence at all events of a special agreement between the parties raising equities as to title or for a conveyance of an estate in the land.—*Re* ALAIRE & FRECHETTE (1913), 25 W. L. R. 648.—**CAN.**

sl. *Necessity for affidavit in Form E—Land Titles Act, 1917, s. 100.*]—*Re* LAND TITLES ACT (Sask.), [1919] 1 W. W. R. 713.—**CAN.**

sm. —— ——.]—*Re* LAND TITLES ACT, CANADA'S LIFE ASSURANCE CO.'S CASE (Sask.), [1919] 2 W. W. R. 47.—**CAN.**

sn. *Registration fees—By whom payable.*]—A purchaser who, to secure a balance of purchase-money, has given a mtge. to the ct., must pay the fees for registration of his mtge.—SWEETNAM *v.* SWEETNAM (1873), 6 P. R. 83.—**CAN.**

sp. *Reference under Land Titles Act, R.S.A., 1922, s. 159—Duty of judge.*]—G., a second mtgee., obtained, on Apr. 25, 1923, a vesting order directing the registrar to issue title in his name clear of all encumbrances except the first mtge. The order was not registered until Oct. 8, 1923, & meanwhile, on May 23, 1923, a mechanics' lien was registered. When the title issued, in pursuance of the vesting order, in G.'s name, the mechanics' lien was left off. On Oct. 12, 1923, a bank registered a mtge. dated July 26, 1923, which was given & taken to replace a previous security by way of assignment by G. to the bank of the moneys owing under his mtge. & as a condition of the bank extending time to G. for payment of his then existing debt. The bank had no notice of the lien as a registered interest or of the error made with respect to it:—*Held:* on a reference under sect. 159 of Land Titles Act, R.S.A., 1922, as to priority between the bank's mtge. & the mechanics' lien (no question as to priority under the Mechanics' Lien Act being raised) the mtge. had priority, sect. 175 of Land Titles Act concluding the matter, in the absence of fraud or express notice.—*Re* RICHERT CO., LTD., [1935] 1 W. W. R. 345.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

o i. —— *Action to redeem & set aside sale under power in mortgage—No allegation of fraud—Subsequent action to redeem & set aside on ground of fraud.*]—RUDGE *v.* HADDINGTON ISLAND QUARRY CO., LTD. (1929), 41 B. C. R. 502.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.

293 i. *Validity—Omission of penal sum in obligatory clause.*]—*Held:* the omission did not render the bond uncertain & ineffectual.—GREAT WEST LIFE ASSURANCE CO. *v.* CAMPBELL (Man.), [1928] 1 D. L. R. 263; 37 Man. L. R. 164; [1927] 3 W. W. R. 645.—**CAN.**

Part III.—Parties to Mortgages.

368a. Cost of purchasing adjoining land—Maintenance of value of trust property.]—*Re* HAIG (1912), cited in Underhill's Law of Trusts & Trustees, 8th ed., p. 231.

371. *Add. Annotation :—Generally,* **Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

383a. —— —— ——.]—As a general rule long terms of years do not answer the description of "real securities," within the meaning of a power for trustees to lend on mortgage of "real securities."—*Re* BOYD'S SETTLED ESTATES (1880), 14 Ch. D. 626; 49 L. J. Ch. 808; 43 L. T. 348.

385a. —— **Fourteen years.**]—Trustees being empowered under a settlement to invest trust moneys upon mtge. of freehold, copyhold, or leasehold estate, invested upon mtge. of leaseholds, with only fourteen years to run, the ct. directed the mtge. to be called in, without prejudicing any question as to the liability of the trustees in the event of a loss. —PINCE *v.* BEATTIE (1863), 2 New Rep. 546; 32 L. J. Ch. 734; 9 L. T. 315; 27 J. P. 804; 9 Jur. N. S. 1119; 11 W. R. 979.

385b. ——.]—BOURNE *v.* MOLE (1843), 1 L. T. O. S. 12; *subsequent proceedings* (1845), 8 Beav. 177; 50 E. R. 70.

389a. Real security in Scotland—Power forbidding investment on real security in Ireland.]—Trustees of the will of a testator, who died in 1845, had power to invest on "real securities in England or Wales, but not in Ireland." The ct. declined advising the trustee to invest, under the powers contained in the 22 & 23 Vict. c. 35, s. 32, on a mtge. of Scottish estate.—*Re* MILES' WILL (1859), 27 Beav. 579; 29 L. J. Ch. 47; 1 L. T. 122; 23 J. P. 805; 5 Jur. N. S. 1236; 8 W. R. 54; 54 E. R. 229.

389b. House property—Value dependent on covenants.]—An investment by trustees of £2,183, trust funds, which they were empowered to lend on real security, in a mtge. of house property in a town, occupied for commercial purposes & valued at £2,800, a value also in some measure dependent on the performance of covenants, held not to be justified.—PHILLIPSON *v.* GATTY, GATTY *v.* PHILLIPSON (1848), 7 Hare, 516; 12 L. T. O. S. 445; 13 Jur. 318; 68 E. R. 213.

Annotations :—**Apld.** Norris *v.* Wright (1851), 14 Beav. 291. **Refd.** *Re* Massingberd's Settlement, Clark *v.* Trelawny (1890), 63 L. T. 296.

415a. Investment improvident owing to nature of property.]—*Re* SALMON, PRIEST *v.* UPPLEBY (1889), 42 Ch. D. 359; 62 L. T. 270; 38 W. R. 150; 5 T. L. R. 583, C. A.

Annotations :—**Consd.** Exploring Land & Minerals Co. *v.* Kolckmann (1905), 94 L. T. 234. **Refd.** Blyth *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth, [1891] 1 Ch. 337; *Re* Turner, Barker *v.* Ivimey, [1897] 1 Ch. 536; Head *v.* Gould, [1898] 2 Ch. 250; *Re* Lake, *Ex p.* Howe, Trustees, [1903] 1 K. B. 439.

438. *Add. Annotation :—As to* (1) **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

Part IV.—Form and Contents of Mortgage.

488. *Add. Annotation :*—**Distd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

490. *Add. Annotation :—As to* (1) **Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

501. In the catchwords for "**charged**" read "**changed.**"

501a. —— ——.]—JACKSON *v.* INNES (1819), 1 Bli. 104; 4 E. R. 38, H. L.

Annotations :—**Apld.** Clark *v.* Burgh (1845), 2 Coll. 221. **Consd.** Whitbread *v.* Smith (1854), 3 De G. M. & G. 727. **Apld.** Heather *v.* O'Neill (1857), 4 Jur. N. S. 181. **Consd.** Atkinson *v.* Smith (1858), 3 De G. & J. 186. **Apld.** Hastings *v.* Astley (1861), 30 Beav. 260. **Expld.** Dawson *v.* Bank of Whitehaven (1877), 6 Ch. D. 218. **Distd.** Jones

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PART III. SECT. 1, SUB-SECT. 1.

o i. ——.]—Under Act Respecting Homesteads, s. 2, the registrar cannot register a mtge. of homestead land if the same is not signed by mtgor.'s wife, although in a paper attached to the mtge. she purports to have relinquished her homestead rights in favour of mtgee.—*Re* LAND TITLES ACT, [1919] 1 W. W. R. 711.—**CAN.**

o ii. —— *& acknowledgment.*]—A mtge. by a husband of his homestead was in fact consented to by his wife of her own free will & knowing what it was. To it was attached her written consent & a certificate by a comr. of her acknowledgment of execution of it of her own free will, etc. Being on its face in compliance with the Dower Act, 1917, it was registered. The facts, however, were that the wife had not made before the comr. the acknowledgment to which he certified. The husband had participated in this breach of the statute in order, apparently, to save his wife, who was in ill-health, the inconvenience of going from the farm to the comr.'s office :—*Held :* since the wife's consent was not evidenced in the manner prescribed by the statute, the mtge. was, in this sense, not made with her consent, & was null & void as against her dower right; there were no grounds for holding her estopped. But since the husband by his conduct had induced the mtgee. to believe that his wife's consent had been properly & regularly given & the mtgee. had on the strength of this belief parted with the property for the payment of which the mtge. was security, the husband was estopped from setting up her lack of effective consent as a defence to an action on the mtge. Moreover, he was, in any event, personally liable on the covenant.—PARSLOW *v.* MOORE, [1930] 2 W. W. R. 340; 4 D. L. R. 750.—**CAN.**

sp. *Mortgage by alleged absolute owner—Third party in possession.*]—GREY *v.* COUCHER (1868), 15 Gr. 419.—**CAN.**

PART III. SECT. 2, SUB-SECT. 10. —A.

sq. *Payment of rates.*]—Where land is sold by a mtgee. the proceeds must be applied firstly in payment of the rates shown in the rate book, as there is a lien as soon as the rate book is approved. — ANTIGONISH TOWN *v.* CHISHOLM, [1933] 1 D. L. R. 571; 6 M. P. R. 173.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

341 ii. —— —— *What estate passes.*]—BANQUE PROVINCIALE DU CANADA *v.* CAPITAL TRUST CORPN., [1928] 4 D. L. R. 390; 62 O. L. R. 458.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A. (a) i.

343 i. *Whether mortgagee concerned with application of money.*]—PLACE *v.* SPAWN (1859), 7 Gr. 406.—**CAN.**

sr. *Power given by testator to mortgage "my estate"—Property subject to life interest of wife.*]—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679; 63 O. L. R. 12; *affd.*, [1930] S. C. R. 119; 1 D. L. R. 1003.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

483 iv. ——.]—There is an implied covenant on the part of a mtgor. to repay the mtge. money, even though the bond contains no express promise to repay it.—CHHATHI LAISAH KALWAH *v.* BINDESHWARI PRANAD SAHU (1928), I. L. R. 8 Pat. 16.—**IND.**

... Plowden *v.* Hyde (1852), 2 De G. M. & G. 684; Eddleston *v.* Collins (1853), 3 De G. M. & G. 1; Walker *v.* Armstrong (1856), 21 Beav. 284; Heather *v.* ... L. J. Ch. 512; Plomley *v.* Fleton (1888),

505a. —— ——.]—A mtge. of property does not alter the existing limitations affecting it, except for the purpose of the mtge., unless an express intention be shown to resettle it.—HASTINGS (LORD) *v.* ASTLEY (1861), 30 Beav. 260; 8 Jur. N. S. 225; 10 W. R. 73; 54 E. R. 888.

508. *Add. Annotation:*—**Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

509. *Add. Annotation:*—**Refd.** Davis *v.* Symons, [1934] Ch. 442.

510. *Add. Annotation:*—**Consd.** Davis *v.* Symons, [1934] Ch. 442.

525. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

538. *Add. Annotations:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183; Golden Horseshoes (New) Ltd. *v.* Thurgood (1934), 150 L. T. 427.

583a. —— —— ——.]—On a mtge. of a public house the goodwill is not included unless expressly mentioned.—*Re* BENNETT, CLARKE *v.* WHITE, [1899] 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406.

587. *Add. Annotations:*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

590. *Add. Annotation:*—*As to* (2) **Consd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

590a. ——.]—HALIFAX BUILDING SOCIETY *v.* KEIGHLEY, No. 1357a, *post.*

623a. —— —— **Covenant for payment of yearly premium & other costs & charges of insurance.**]—*Held:* a mtge. for £1,500, with covenants for payment of the yearly premium & other costs & charges of an insurance of £1,000 upon a particular life for seven years, required a £25 stamp.—HALSE *v.* PETERS (1831), 2 B. & Ad. 807; 1 L. J. K. B. 2; 109 E. R. 1342.

Annotations:—**N.F.** Doe d. Merceron *v.* Bragg (1838), 8 Ad. & El. 620. **Consd.** Richards *v.* Macclesfield, Cocks *v.* Edwards (1841), 10 L. J. Ch. 329. **Distd.** Wroughton *v.* Turtle (1843), 1 Dow. & L. 473. **Dbtd.** Lawrance *v.* Boston (1851), 21 L. J. Ex. 49. **Refd.** Loyd *v.* Heathcote (1833), 3 Tyr. 309.

625a. —— **Second mortgage—Covenant to pay sum secured by first mortgage—First mortgage duly stamped.**]—A second mtge. of freehold property subject to an existing first mtge. contained a covenant by the borrower to pay by instalments (*a*) a sum equivalent to the amount of the loan, the subject of the first mtge.. (*b*) a sum equivalent to the amount of the loan, the subject of the second mtge., & (*c*) a sum equivalent to the interest on the amounts remaining unpaid under both mtges. There was a proviso for redemption on payment of the amount of the second mtge. & interest thereon. The first mtge. had been duly stamped with the appropriate duty on the amount thereby secured:—*Held:* the second mtge. was liable to stamp duty in the aggregate of the two sums secured by the two mtges., the covenant contained in the second mtge. to pay the amount secured by the first mtge. being an additional covenant made with a different covenantee.—MUTUAL PROPERTY INSURANCE CO., LTD. *v.* INLAND REVENUE COMRS. (1926), 136 L. T. 354.

Part VI.—Rights and Liabilities of the Mortgagor.

633. *Add. Annotation:*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

732a. Service of notice to quit—Whether Small Tenements Recovery Act, 1838 (c. 74),

PART IV. SECT. 5, SUB-SECT. 3.—A. (a).

517 iv. —— ——.]—DOMINION TRUST CO. *v.* MUTUAL LIFE ASSURANCE CO., BRITISH CANADIAN SECURITIES *v.* MUTUAL LIFE ASSURANCE CO., [1917] 3 W. W. R. 941.—**CAN.**

sg. *Mortgage including "buildings"—Movable granaries.*]—In a mtge. the words charging the land were followed by the clause: "together with all buildings now or hereafter erected or placed on the said lands & which the mtgor. hereby declares to form part of the freehold of the said lands & of this security whether annexed to the said freehold or not." The mtgor., after the date of the mtge., moved on to the land two wooden granaries which were built on skids & were moved about the land as the farming operations required. The mtgor. defaulted & gave the mtgee. a quit-claim deed & the latter sold the land to deft., who took possession of the granaries & moved them on to other lands. The mtgor. sued for their value, & his action was dismissed. On appeal:—*Held:* even if the granaries retained their character of chattels, they had become part of the mtge. security by virtue of the word "buildings" in the clause above quoted, & since it was the intention of the quit-claim deed that the mtgee. should have all its security the deed divested the mtgor. of any interest he had in the granaries.—HERRIOTT *v.* CRONIN, [1935] 1 W. W. R. 571; 2 D. L. R. 637; 43 Man. L. R. 71.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—B. (a).

k i. ——.]—Recess beds screwed to the wall of an apartment house are not fixtures & may therefore be claimed by a conditional vendor against a mtgee. of the building.—CALIFORNIA WALL BED CO. OF CANADA, LTD. *v.* PRUDENTIAL INSURANCE CO. OF AMERICA, [1935] 1 D. L. R. 279; O. R. 59; *varied*, [1935] 2 D. L. R. 434; O. R. 227.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

620 ii. —— —— *Security for future advances—Construction of Stamp Act,* 1891 (*c.* 39), *ss.* 15 (1), 88 (1) (2).]—O'SULLIVAN *v.* LOUGHNAN, [1927] I. R. 493.—**IR.**

620 iii. —— ——.]—A trust deed to secure debentures recited that the C. Co. had determined to issue a series of debentures for a sum not exceeding £100,000, & the first of the conditions indorsed on each debenture stated: "This debenture is one of a series of debentures all in the like form for securing principal sums not exceeding at any one time in the aggregate £100,000." The trust deed also contained a capitalisation clause, the effect of which was that if any interest should be in arrear for a period of six months, it should be added to the principal sum due under the debenture, & treated as principal money for all purposes. The debentures were expressed to become payable on Jan. 11, 1938. The mtgor. claimed that stamp duty was payable not on a limited sum, but as on an amount "uncertain or without limit":—*Held:* the amount which the trust deed was intended to secure was a sum readily ascertainable by arithmetical calculation, &, therefore, was not "without any limit" within Sched. 1 of Stamp Duties Act, 1882, & that duty should be paid in respect of £100,000. — CASCADE BREWERY CO., LTD. *v.* A COLLECTOR OF STAMP DUTIES (1929), 23 Tas. L. R. 18.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 5.

ss. *No right to growing crops.*]—JACKSON *v.* PENFOLD, [1931] 1 D. L. R. 808; 66 O. L. R. 440.—**CAN.**

applicable.]—A mtge. deed contained a clause by which the mtgor. attorned tenant from year to year to the mtgees. at a nominal rent. It was also provided that, if the mtgor. made default in payments under the deed, the mtgees. might give to the mtgor. seven days' notice in writing to determine the tenancy created by the deed. The mtgor. defaulted & the mtgees. served on him a notice to quit. The mtgor. refused to give up possession:—*Held:* the term or interest of the mtgor. in the mortgaged property had been "duly determined by a legal notice to quit or otherwise" within sect. 1 of above Act, &, therefore, justices had power to issue a warrant to give possession of the property to the mtgees.—DUDLEY & DISTRICT BENEFIT BUILDING SOCIETY *v.* GORDON, [1929] 2 K. B. 105; 98 L. J. K. B. 486; 141 L. T. 583: 93 J. P. 186; 45 T. L. R. 424; 27 L. G. R. 448, D. C.

737. *Add. Annotation:*—**Apld.** Dudley & District Benefit Building Society *v.* Gordon, [1929] 2 K. B. 105.

739. *Add. Annotation:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

768a. Restriction of statutory power—Effect on common law power.]—By a legal charge dated Oct. 1, 1935, defts. charged by way of legal mtge. certain freehold properties to pltfs., & they covenanted with pltfs. that they would not, except with the previous written consent of pltfs., exercise the power of leasing or agreeing to lease or of accepting surrenders of leases conferred by the Law of Property Act, 1925 (c. 20), on a mtgor. while in possession. By a tenancy agreement dated Oct. 8, 1935, defts. granted a lease of part of certain premises included in the legal charge, from Sept. 29, 1935, upon a yearly tenancy. Pltfs. were not asked for & did not give their consent to the execution by defts. of the tenancy agreement & no counterpart thereof had at any time been delivered to pltfs. in accordance with the requirements of sect. 99 (11) of Law of Property Act, 1925 (c. 20):—*Held:* defts., in granting the lease of Oct. 8, were not exercising their statutory power, & consequently they did not commit any breach of the covenant contained in the legal charge of Oct. 1.—IRON TRADES EMPLOYERS INSURANCE ASSOCN., LTD. *v.* UNION LAND & HOUSE INVESTORS, LTD., [1937] Ch. 313; [1937] 1 All E. R. 481; 106 L. J. Ch. 206; 156 L. T. 322; 53 T. L. R. 341; 81 Sol. Jo. 159.

772a. —— ——.]—KING *v.* BIRD, No. 774, *post.*

775a. —— **Lease at best rent—Covenant by mortgagor to pay rates—Subsequent improvements by mortgagor increasing rateable value.**]—A mtgor. granted a lease of the mtged. property to his son-in-law without any independent bargaining, & in the lease covenanted to pay the rates. The mtgor. effected great improvements on the mtged. premises which might increase the rateable value of the premises. The mtgee. claimed that the improvements & the covenant had rendered the rent under the lease not the best rent reasonably obtainable in the circumstances, & the lease was void under Law of Property Act, 1925 (c. 20), s. 99:—*Held:* in the absence of any covenant by the landlord to effect improvements which might increase the rateable value of the property or of any actual increase of the rateable value the covenant to pay the rates, though unusual in the case of a lease for a long term, was not sufficient to render the rent reserved not the best rent reasonably obtainable, & upon the evidence the rent reserved was, having regard to the condition of the property at the time when the lease was granted, the best rent reasonably obtainable, & the action by the mtgee. failed.—COUTTS & CO. *v.* SOMERVILLE, [1935] Ch. 438; 104 L. J. Ch. 243; 153 L. T. 216.

PART VI. SECT. 3, SUB-SECT. 7.

665 iv. —— —— ——.]—A mtgor. in possession is entitled to cut timber on the land & to give third persons a licence to do so, unless it is shown that the security is thereby impaired. The *onus* is on the party seeking to establish impairment to plead & offer proof of it.—REID *v.* GALBRAITH, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287; *varying*, [1926] 4 D. L. R. 814; [1926] 3 W. W. R. 500; 38 B. C. R. 36.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—D.

g i. —— *Position of mortgagor.*]—Where a mtgee. leases the land to the mtgor., the latter does not take the lease in his character as mtgor., but in his individual capacity only, & as such he stands in the same position as a stranger to the mtge.—MASSEY-HARRIS CO. *v.* MANLEY, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 3.—A.

h. *Revsd.*, [1924] 1 W. W. R. 1233 18 Sask. L. R. 269.

sk. *Effect of Landlord & Tenant Act, R. S. O.*, 1914 (c. 155), s. 3.]—KENNEDY *v.* AGRICULTURAL DEVELOPMENT BOARD, [1926] 4 D. L. R. 717; 59 O. L. R. 374.—**CAN.**

sl *Effect of Land Titles Act, s.* 117.]—MATTHEWSON BROTHERS & MATHER *v.* GOOD, [1927] 3 D. L. R. 422; [1927] 1 W. W. R. 728; 21 Sask. L. R. 403.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 5.

772 i. *What leases within powers—Lease with no condition of re-entry—Void.*]—A mtgor. in possession made an agreement in writing whereby he let to a tenant a public-house & dwelling together with certain lands "as a yearly tenancy at a yearly rent of £35 payable quarterly in advance." The agreement provided that the tenancy should commence from a certain date, & that the tenant should pay the first quarter's rent on that date, & that he would "punctually pay the rent thereafter according to the terms of this agreement." The agreement also provided that the tenancy might be determined by either party giving to the other three months' notice in writing. There was no condition of re-entry on the rent not being paid:—*Held:* although the undertaking to pay the rent contained in the agreement might be a sufficient compliance with Conveyancing Act, 1881 (c. 41), s. 18 (7), as to payment of the rent, since the agreement, not being under seal, there could be no covenant therein, yet the omission of a condition of re-entry on the rent not being paid invalidated the agreement as against an incumbrancer, the provision in the agreement entitling the landlord to determine the tenancy by a three months' notice to quit not being sufficient to satisfy the condition.—MURPHY & CO. *v.* MARREN, [1933] I. R. 393.—**IR.**

PART VI. SECT. 5, SUB-SECT. 6.—B. (a).

784 vii. —— ——.]—Where a lease made by a mtgor. is subsequent to the mtge., the mtgee. has not the right at common law to require the tenant to pay the rent to him & to sue for its recovery unless the relationship of the landlord & tenant has been created between them by mutual agreement; & the mere fact of the tenant remaining in possession after notice from the mtgee. to pay the rent to him is not evidence of such an agreement. The provision in Real Property Act, R. S. M., 1913, s. 114, that a mtgee. upon default by the mtgor. "may enter into possesson of the mortgaged or encumbered land by receiving the rents & profits thereof," does not give the mtgee. a right of action for rent against a tenant holding under a lease made by the mtgor. after the mtge.—AIKENHEAD *v.* SPIVAK, [1931] 2 W. W. R. 721; 4 D. L. R. 721; 39 Man. L. R. 541.—**CAN.**

PART VI. SECT. 7.

c i. —— —— *Mortgage overdue—Right of possession in mortgagee.*]—Ejectment cannot be sustained by a mtgor. against a stranger where the mtge. is overdue & unsatisfied, & the fee & right of possession being in the mtgee.—DOE d. MCBERNIE *v.* LUNDY (1844), 1 U. C. R. 186.—**CAN.**

sl. *Payment into court of amount due on mortgage—Application for order under Mortgages Act, R. S. O.*, 1914 (c. 112)—*Mode of application.*]—*Re* APPLETON & ROSS, [1927] 4 D. L. R. 1125; 61 O. L. R. 338.—**CAN.**

836. *Add. Annotation :*—**Expld. & Distd.** Schalet *v.* Nadler, Ltd., [1933] 2 K. B. 79.

845. *Add. Annotation :*—**Refd.** The W. H. Randall, [1928] P. 41.

846. *Add. Annotations :*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611. **Refd.** Hotel *v.* Jenkins, [1927] 2 Ch. 225 ; field, [1932] 1 Ch. 79.

Part VII.—Equity of Redemption.

853. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

854. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

864. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

866a. Whether mortgagee trustee of equity of redemption.]—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, No. 1017a, *post.*

904. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

909. *Add. Annotation :*—**Refd.** Hodgson *v.* Salt, [1936] 1 All E. R. 95.

971a. Clause giving mortgagee interest in property on redemption.]—Provisions in a mtge. deed conferring on the mtgee. upon redemption an interest in the mortgaged premises are a clog or fetter on the equity of redemption, & being so are void not only against the mtgor., but also against the purchaser of his interest, since they are inconsistent with the very nature & essence of a mtge.—MEHRBAN KHAN *v.* MAKHNA (1930), 57 L. R. Ind. App. 168, P. C.

984. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

990. *Add. Annotation :*—**Consd.** Davis *v.* Symons, [1934] Ch. 442.

995a. Mortgage including policies—Redemption postponed to date later than maturity of policies.]—A mtge. of land together with an endowment policy on the life of the mtgor., made in 1926, contained mutual covenants between mtgor. & mtgee. that the principal sum should be allowed to remain on the security for a period of twenty years, or until the earlier death of the mtgor., & so long as interest was punctually paid, & there was no breach of covenant, should not be called in by the mtgee. during the same period. The covenants in the mtge. were made applicable to a further charge given in 1926, by which another endowment policy was mortgaged. This policy would mature in 1942, & the further charge provided that if the mtgor. survived the date of maturity, the policy moneys with profits should be paid to the mtgee. in reduction of the mtge. debt. The other policy also would mature before the date for redemption :—*Held :* the postponement of redemption for twenty years, together with the other provisions which made the policies in effect irredeemable, was a clog on the equity, & the mtgor. was entitled to judgment in an action for redemption.—DAVIS *v.* SYMONS, [1934] Ch. 442 ; 103 L. J. Ch. 311 ; 151 L. T. 96 ; 78 Sol. Jo. 297.

PART VII. SECT. 3, SUB-SECT. 8.

sm. *Under decree for sale—What is incident to land—Manure in heaps on land.*]—Manure in heaps on land, not the produce thereof, does not pass to the purchaser of the equity of redemption under a decree of sale, as an incident to the land ; & if he uses it, it is a conversion, for which the mtgor. may recover in trover without a demand.—THOMSON *v.* WALSH (1852). 2 All. 369.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.

946 iv. —— ——.]—Roman-Dutch law as applied in Ceylon recognises a principle which bears a close resemblance to the principle of English law embodied in the maxim "once a mtge. always a mtge."

A syndicate purchased forest land in Ceylon & conveyed it by deed to resp., who had provided the greater part of the purchase-price. A second deed of the same date recited the facts, & provided that resp. should hold as absolute owner with power to manage & to sell the lands for the best available price, approval to be obtained if the price was less than Rs. 100 per acre, & to apply all moneys realised in payment of sums due to him for purchase-price or management expenses, & that he should pay over the balance *pro rata*, according to their interests, among the syndicate. A year later, before the lands had been sold, members of the syndicate sued claiming to redeem. Resp. had settled with all pltfs. except two, who were represented by applt. :—*Held :* upon the true construction of the two deeds they created a security for money advanced, there being imposed upon resp. duties & obligations of the nature of trusts, & that applt. was entitled to redeem the shares of the two pltfs. on payment of their rateable proportion of the amount due, which was to be ascertained on taking accounts as directed. —SAMINATHAN CHETTY *v.* POORTEN, [1933] A. C. 178 ; 102 L. J. P. C. 54 ; 148 L. T. 360, P. C.—**CEYLON.**

946 v. —— ——.]—M., the registered proprietor & licensee of hotel property, obtained a loan from a brewery co., & as security gave a mtge. of the freehold & a lease for a term of fifteen years. The co. then gave M. a sub-lease for the same term less one day & M. mtged. the sub-lease to the co. The sub-lease contained a brewer's tie that the sub-lessee would deal exclusively with the sub-lessor for all liquors & would not during the term of the lease purchase or obtain any liquors from any other person. B. subsequently purchased from M. the unencumbered fee simple & the unexpired term of the sub-lease. B. obtained an advance from a bank & repayment was guaranteed by the brewery co. The mtges. over the freehold & sub-lease were released & M. transferred to B. the sub-lease & the freehold free of mtge. B. then gave a mtge. over the sub-lease to the brewery co. to secure the moneys owing to the bank. B. paid off the loan from the bank & asserted that he held the property free of the brewer's tie. In an action by the brewery co. claiming that the lease & sub-lease were binding on B. :—*Held :* the lease & sub-lease were not binding on B.—QUEENSLAND BREWERY, LTD. *v.* BAKER, [1936] Q. S. R. 98.—**AUS.**

sk. *Whether English decisions applicable in India.*]—In India there is a codified law of mtge., & it would be improper for the cts. in India to ignore that law & to look to English cases as their guide in determining what amounts to a clog on the equity of redemption. Where the statutory law will not help them, it may then be open to them to look to English cases for rules of justice, equity & good conscience.—SHUBRATAN *v.* DHANPAT GADARIYA (1932), I. L. R. 54 All. 1041. —**IND.**

PART VII. SECT. 4, SUB-SECT. 2.—A.

968 iv. —— —— —— ——.]—TOOHEY *v.* GUNTHER (1927), 28 S. R. N. S. W. 229 ; 45 N. S. W. W. N. 11.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

sn. *Agreement for future advances.*]—Where a mtge. is for a definite amount & also covers future advance but the amount outstanding & secured by the mtge. may be ascertained at any time, & on payment thereof there is nothing to prevent the mtgor. from getting back the mortgaged property & enjoying it just as he did before making the mtge., it cannot be said that the mtge. constitutes a clog on the equity of redemption.—STEPHEN & STEPHEN *v.* TRANS-CANADA FINANCE CORPN., LTD., [1931] 2 W. W. R. 448 ; 4 D. L. R. 783.—**CAN.**

1017a. Mortgage by company—Dissolution of company—Whether bona vacantia.]—In 1899 a limited co. mortgaged to trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia* :—*Held :* (1) Cos. Act, 1929 (c. 23), s. 296, did not apply, as that section was not retrospective ; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia*.

(3) The equity of redemption, then, was a right of property which could be disposed of by the mtgor. In a general sense the mtgee. was not a trustee for the mtgor. ; their interests were antagonistic, though the mtgee. might be trustee in a limited sense—that was, in respect of surplus purchase-moneys after his own claims had been satisfied (LORD HANWORTH, M.R.).—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, [1933] Ch. 29 ; 101 L. J. Ch. 346 ; 148 L. T. 5 ; 48 T. L. R. 617, C. A.

1018. *Add. Annotation :*—**Consd.** *Re* Mainwaring, Mainwaring *v.* Verden, [1936] 3 All E. R. 540.

1024. *Add. Annotation :*—**Refd.** Ideal Films Richards, [1927] 1 K. B. 374.

1025. *Add. Annotation :*—**Refd.** Ideal Films Richards, [1927] 1 K. B. 374.

Add. Annotation :—**Refd.** Cromwell Property Investment Co. *v.* Western & Toovey, [1934] Ch. 322.

1041. *Add. Annotation :*—**Refd.** Cromwell Property Investment Co. *v.* Western & Toovey, [1934] Ch. 322.

1041a. —— —— Length.]—A co. in consideration of £25,000, executed on Oct. 5, 1931, in favour of two lenders, a mtge. containing a clause providing that if the co. paid interest at the rate of 5½ per cent. *per annum* within fourteen days after the several days on which it should fall due & performed & observed all the covenants & stipulations in the mtge. to be performed & observed by it, save that for repayment of the principal sum, the lenders would not enforce repayment before Oct. 15, 1936, the principal sum being deemed to be due for the purposes of the exercise of the statutory powers on Mar. 25, 1932. On Aug. 11, 1932, the co., in consideration of £24,000 executed in favour of the same lenders & in respect of different property, a mtge. containing a like clause, in which the lenders agreed not to enforce repayment before Sept. 29, 1937, the principal sum being deemed to be due for the purposes of the exercise of the statutory powers on Dec. 25, 1932. In the course of correspondence the lenders, in answer to the co., wrote that they would be prepared to accept repayment of both sums "on reasonable notice." On Jan. 23, 1933, they wrote that they would be prepared to accept three months' notice, & on Jan. 24 the co. wrote giving notice of intention to pay off the mtges. on Apr. 25. On Apr. 20, during a telephone conversation between clerks of the co.'s solrs. & the lenders' solrs., it was made clear that completion would not take place on Apr. 25, & the lenders' solrs.' clerk acquiesced & asked to be informed when it would take place as soon as the co.'s solrs. knew. It did not take place

PART VII. SECT. 4, SUB-SECT. 2.—E.

996 iv. —— —— ——.]—Attached to & expressed as forming part of a mtge. of land was an agreement stating that in further consideration for the loan the mtgor. granted to the mtgee. an option to purchase the land for a specified amount ; the option to be open for acceptance until the due date of the amount secured, &, in the event of payment not being then made, until the amount secured was fully paid & the mtge. discharged. The mtgee. sued for specific performance of the option agreement :—*Held :* the option was a clog on the equity of redemption & therefore void.—HOAR *v.* MILES (No. 2), [1935] 1 W. W. R. 433.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—F.

q i. —— *Permanent lease.*]—Permanent leases executed by the mtgor. in favour of the mtgee. subsequent to the mtge. constitute a clog on the equity of redemption & are null *v.* LAXMIBAI (1928), I. L. R. 53 Bom. 360.—**IND.**

sp. *Covenant creating right of pre-emption in favour of mortgagee—Limited to life of parties.*]—A covenant in a mtge. deed creating a right of pre-emption in favour of the mtgee., the operation of which is not meant to extend beyond the lifetime of the parties, is neither a clog on the equity of redemption nor obnoxious to the rule against perpetuities.—MATURA RAO *v.* SURENDRANATH SAHU I. L. R. 8 Pat. 243.—**IND.**

PART VII. SECT. 5.

1013 i. *Amount appearing in receipt clause—How far conclusive.*]—A bill alleged that a mtge. was executed by W. to deft. in consideration of $450 ; that deft. advanced only $150 thereon, & W being entitled to receive the balance assigned such right & conveyed his equity of redemption to pltf. ; that deft. refused to pay the balance & claimed to hold the mtge. as security for $450. The prayer was for specific performance or, in the alternative, a declaration of the above facts, & for general relief :—*Held :* upon the facts alleged in the bill, namely, that the mtge. was being held for more than had been advanced thereon, &, therefore, to that extent had formed a cloud on the title, pltf. would be entitled to a declaration to that effect, & appropriate relief.—CALVERT *v.* BURNHAM (1881), 6 A. R. 620.—**CAN.**

a i. —— —— ——.]—FREDERIKSEN *v.* WESTERN CAN. INV. CO. (Sask.), [1927] 1 D. L. R. 804.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1

sq. *Statute for Sale of Equities of Redemption—When applicable.*]—FITZGIBBON *v.* DUGGAN (1865), 11 Gr. 188.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.

1018 x. —— —— *Limitation of action—When time begins to run.*]—LEWINGTON *v.* RAYCROFT, [1935] 4 D. L. R. 378 ; O. R. 474.—**CAN.**

xi, —— ——.]—The personal liability of the purchaser of an equity of redemption to pay the mtge. debt, or to indemnify the vendor against it, is implied by law.—HOLMES *v.* FAGAN, [1935] 4 D. L. R. 69.—**CAN.**

1018 xii. —— ——.]—Although the implied equitable obligation of the purchaser of an equity of redemption to indemnify the vendor against liability on the mtge. debt arises in every case where it can reasonably be implied that it was the intention of the parties that such an indemnity should be given :—*Held :* under all the circumstances of the present case, including the absence of an express covenant of indemnity, said obligation did not exist.—BRITISH COLUMBIA LAND & INVESTMENT AGENCY, LTD. *v.* MONTREAL TRUST CO., [1935] 3 W. W. R. 566.—**CAN.**

o i. —— *Assignee not barred by twenty years' possession of assignor claiming under mortgagor.*]—COLLINS *v.* REID (1866), 6 N. S. R. (2 Old.) 252.—**CAN.**

sg. *Covenant by purchaser to pay—Agent of all mortgagors.*]—The purchaser of the equity of redemption who covenants to pay the mtge. is the agent of all the mtgors.—COLEMAN *v.* YARMOLINSKY, [1935] 3 D. L. R. 314 ; O. R. 266.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 4.—B.

sr. *By motion for judgment—Proceedings by action—Limitation of recoverable.*]—MALKOWICH *v.* [illegible] [1928] 3 W. W. R. 65.—**CAN.**

on Apr. 25, & on that date the lenders' solrs. wrote informing the co.'s solrs. that as the mtges. had not been redeemed in accordance with the notice interest in lieu of notice would have to be paid on completion; & on Apr. 27 they wrote that the lenders would accept interest up to the actual date of repayment, plus three months' interest in lieu of notice, if redemption took place "not later than Thursday of next week." On May 10 the lenders' solrs. refused the co.'s solrs.' tender of a sum representing principal & interest to date on both mtges. :—*Held :* (1) nothing in the mtges. freed the co. from the rule of equity that six months' notice must be given of intention to pay off a mtge., or six months' interest in lieu thereof be paid; (2) when failure to pay off on the date fixed in the notice is unexplained, a new notice must be given or interest in lieu thereof be paid, but the new notice need not in every case be six months' notice; (3) in the present case only a "reasonable notice" was required after Apr. 25, 1933, & three months was a "reasonable notice."—CROMWELL PROPERTY INVESTMENT CO., LTD. *v.* WESTERN & TOOVEY, [1934] Ch. 322; 103 L. J. Ch. 168; 150 L. T. 335.

1049. For the existing catchwords read "—— —— ——."

1085. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

1091a. —— **Claim for repayment of excess received by mortgagee over amount due under mortgage.**]—Where shares in a co. were mortgaged to secure a loan with interest, & the value of the shares increased enormously so that the mtgee. received dividends sufficient to pay off the loan & interest, & a summons was subsequently taken out claiming redemption, & also repayment of the excess of the amount of dividends received by the mtgee. over & above the amount due under the mtge. :—*Held :* an order for payment of the excess claimed against the mtgee. could, by R. S. C., Ord. 55, r. 5A, be obtained upon orginating summons.—WELD *v.* PETRE, [1929] 1 Ch. 33; 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

1092. *Add. Annotation :*—**Refd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

Part VIII.—Assignment and Devolution of Mortgage.

1177. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

1234. *Add. Annotation :—Generally*, **Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

1242a. A firm of solrs. held about £2,000 belonging to the estate of one of their clients. The client had before his death mtged. certain property to secure a sum of £700. This mtge. was transferred to the then surviving partner in the firm of solrs.' The trustees of the client's estate—the persons entitled to the equity of redemption—gave no directions for the appropriation of part of the £2,000 in discharge of the mtge. The surviving partner then parted with the title deeds, in return for £700, to another client, who thus became an equitable transferee of the mtge. No notice of this transfer was given to the trustees until some time later, when the firm of solrs. was found to be insolvent & the surviving partner was made a bkpt. The trustees thereupon claimed to recover from the assignee the title deeds free & discharged from any claim in respect of the mtge. debt :—*Held :* as the trustees had not joined in, & had no notice of, the transfer of the mtge., the transferee took subject to the right of set-off which the trustees had against the transferor, the surviving partner, & were entitled to redeem the mtged. property without further payment.—PARKER *v.* JACKSON, [1936] 2 All E. R. 281; 155 L. T. 104; 80 Sol. Jo. 365.

1245. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1256. *Add. Annotation :*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

1260. *Add. Annotation :*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

1269. *Add. Annotation :*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

PART VIII. SECT. 1, SUB-SECT. 1.

b 1. —— *Mortgage paid off by mortgagor.*]—Sect. 99 of Land Titles Act, which provides that a mtgee. on receiving payment of a mtge. which the mtgor. is entitled to pay off is bound to transfer the mtge. to a third party if the mtgor. so directs, does not have the effect of continuing the life of a mtge. so transferred if it has been paid off in full by the mtgor. himself. In such a case there is nothing to assign or transfer.—DEVENISH & DEVENISH *v.* CONNACHER (Alta.), [1929] 4 D. L. R. 1004; 3 W. W. R. 555.—**CAN.**

ss. *Executor—Necessity for proof of probate.*]—An assignment of a mtge. by an exor. is not admissible in evidence without proof of the probate.—DOE *v.* HANSON (1857), 8 N. B. R. (3 All.) 427.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

b 1. ——.]—Since by virtue of the covenant implied by sect. 54 of Land Titles Act, R. S. A., 1922 (c. 133), there is a direct personal liability of the transferee of mortgaged land to the mtgee., the original mtgor. becomes a surety for the transferee to the mtgee. &, therefore, is entitled to pay off the mtge. money as soon as there is default, without waiting till he is sued or pressed for payment, & on paying it off is entitled, under sect. 99 of the Act & under sect. 5 of Mercantile Law Amendment Act (Imp.) (19 & 20 Vict. c. 97), to require the mtgee. to transfer the mtge. to a third party as a valid security.—DEVENISH *v.* CONNACHER, [1930] 2 W. W. R. 254; 3 D. L. R. 977; 24 Alta. L. R. 535; *revsg.*, [1930] 2 D. L. R. 973; 1 W. W. R. 958.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

112 vi. —— ——.]—The covenant which is implied by Real Property Act, R. S. M., 1913, s. 97, on the part of the transferee of mortgaged land with the transferor is one which can be rebutted by evidence of circumstances which make it inequitable that it should be enforced. The sect., therefore, leaves the law for all practical purposes the same as it was before the section was enacted.—SOKOLOV *v.* KACHMARK, [1929] 2 D. L. R. 305; 1 W. W. R. 353; 38 Man. L. R. 99.—**CAN.**

1279a. Sale on bankruptcy of mortgagor of mortgage of settled premises—Effect of—Right of purchaser to hold mortgage as first charge on estate.]—SIMPSON *v.* O'SULLIVAN (1840), 7 Cl. & Fin. 550; West, 332; 7 E. R. 1179.

1324a. —— ——.]—The legal estate in property vested in a testator by way of mtge. does not pass under the description of "securities for money," or "money invested on any security."—*Re* GORFETT'S TRUST, *Ex p.* PRICE (1850), 19 L. J. Ch. 173; 14 Jur. 53.

1326a. —— ——.]—Testator, who was a mtgee., devising all the rest & residue of his freehold, leasehold, & copyhold estates in possession or reversion, together with all his goods, chattels, etc. mtges. & debts to a legatee, subject to the payment of his debts, etc., & also appointing the legatee exor. of his will:—*Held:* not to have thereby devised the legal estate in the mortgaged premises to such legatee.—SILVESTER *v.* JARMAN (1822), 10 Price, 78; 147 E. R. 248, Ex. Ch.

Annotations:—**Refd.** Galliers *v.* Moss (1829), 9 B. & C. 267; Doe d. Guest *v.* Bennett (1851), 6 Exch. 892; *Re* Field's Mortgage (1851), 15 Jur. 1004.

Part IX.—Rights and Liabilities of the Mortgagee.

1352. To the existing paragraph, after the last words "toll gates," add as follows:—

; (3) he was entitled to have a receiver appointed.

1357. *Add. Annotation:*—**Folld.** Halifax Building Society *v.* Keighley. [1931] 2 K. B. 248.

1357a. Effect of Law of Property Act, 1925 (c. 20), s. 108—On Conveyancing Act, 1881 (c. 41), s. 23.]—A mtge. deed made in 1919 provided that the mtgees. might insure the premises against fire, & that the mtgors. should pay the premiums to them. Before 1925 the mtgees. effected insurances of the premises under the deed. Before that year the mtgors. also effected with other insurers an insurance of the premises apart from statute or the deed in their own names. In 1930, while the deed & insurances were all in force, the premises were damaged by fire. The respective insurers paid to the mtgors. & mtgees. the proportions of the loss for which they were responsible. The mtgees. brought an action against the mtgors. for payment over of the money paid to the latter by their insurers:—*Held:* pltfs. were not entitled to succeed in the action, either (1) under Conveyancing Act, 1881 (c. 41), s. 23 (4), inasmuch as that sub-sect. had been repealed by Law of Property Act, 1925 (c. 20), s. 207), subject to a proviso that the repeal should not affect any right acquired before the latter Act. & no right to the money which pltfs. claimed had accrued to them before that Act; or (2) under Law of Property Act, 1925 (c. 20), s. 108 (4), inasmuch as the insurance effected by defts. was not an insurance effected under that Act or any enactment replaced thereby, or an insurance for the maintenance of which defts. were liable under the mortgage deed; or (3) on the footing that defts. were trustees of the money for pltfs. or otherwise liable to them therefor.

Conveyancing Act, 1881 (c. 41), s. 23 (4), in so far as it may remain unrepealed by Law of Property Act, 1925 (c. 20), is not subject to the limitation which restricts sub-sect. (3) of that sect. to money received on an insurance effected under the mtge. deed or under the Act; but is subject to the limitation that it applies only to money received on an insurance in which the mtgor. & the mtgee. are one or other or both interested.—HALIFAX BUILDING SOCIETY *v.* KEIGHLEY, [1931] 2 K. B. 248; 100 L. J. K. B. 390; 145 L. T. 142.

1361. *Add. Annotations:*—**Folld.** *Re* Smith's Mortgage, Harrison *v.* Edwards, [1931] 2 Ch. 168. **Refd.** *Re* Leighton's Conveyance, [1937] Ch. 149.

1362a. ——.]—Trespass will not lie against the occupier of land at the suit of the mtgee., who has never been in actual possession or been seised of the land, & has not obtained a judgment in ejectment, either by default or by verdict; & therefore he cannot, in such case, waive the tort, & maintain an action of use & occupation.—TURNER *v.* CAMERON'S COALBROOK STEAM COAL CO. (1850), 5 Exch. 932; 20 L. J. Ex. 71; 16 L. T. O. S. 285; 155 E. R. 407.

PART VIII. SECT. 1, SUB-SECT. 4.—F.

l. *Revsd.*, 19 Gr. 59.

PART VIII. SECT. 1, SUB-SECT. 15.

sa. *Application of Land Titles Act (Alta.), sects.* 101, 102, 103.]—These sects., relative to transfer of mtges., have no application where the mtgor.'s interest in the land has disappeared before transfer & there remains nothing but the personal responsibility of the mtgor. arising under covenant or otherwise.—STANDARD TRUSTS CO. *v.* LA VALLEY, [1931] S. C. R. 595.—**CAN.**

sb. *Effect of transfer on lease by mortgagee in possession.*]—*Semble:* an assignment of a mtge. is not by itself effective to transfer a lease given by the mtgee. in possession.—KONKIN *v.* CANADIAN BANK OF COMMERCE (Sask.), [1927] 3 W. W. R. 123.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

b i. ——.]—GARRETT *v.* SAUNDERS (1876), 23 Gr. 566.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—C.

n i. ——.]—Pltfs. were mtgees. under a mtge. from B. An insurance policy covering the property mortgaged was issued by the defts. in favour of pltfs. "as mtgees., B. as owner." This was afterwards altered to read in favour of pltfs. "as mtgees. of B." The premises insured by the policy were burnt down. After the fire B. repaid to pltfs. the amount due under the mtge., the pltfs. agreeing at the time of such repayment to prosecute on behalf of B. pltfs.' claim against defts. under the policy. After such repayment pltfs. instituted an action against defts. on the policy:—*Held:* the existence of a personal loss or damage in pltfs. at the time the action was begun was not essential to their right to maintain the action, if in fact other interests intended to be covered by the policy subsisted & loss had occurred in respect of them, & pltfs. were therefore entitled to recover.—HORDERN *v.* FEDERAL MUTUAL INSURANCE CO. OF AUSTRALIA (1924), 24 S. R. 267; 41 W. N. 54. **—AUS.**

PART IX. SECT. 1, SUB-SECT. 2.—D.

a. *Varied.*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287.

PART IX. SECT. 1, SUB-SECT. 2.—E.

sc. *Seizure & sale of mortgaged goods.*]—A mtgee. may maintain an action against a person seizing & selling the property mtged., the right of possession of the goods at the time of such sale being rightfully in the mtgor., & the reversionary estate in pltf. as mtgee.—MCLEOD *v.* MERCER (1856), 6 C. P. 197.—**CAN.**

1408a. Right to possession as against subsequent lessee.]—SPENCER *v.* MASON (1931), 75 Sol. Jo. 295.

1445. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

1499a. Application for judgment under R. S. C., Ord. 14—Leave to defend—When granted.]—Pltf., a legal mtgee., brought an action to recover possession of the mtged. land, & applied for judgment under R. S. C., Ord. 14. Deft. alleged that the terms of the mtge. deed had been varied by a parol agreement to the effect that the mtgee. should not exercise his right of re-entry before the end of 1936. To this pltf. objected that the mtge. being required to be in writing under Stat. Frauds the alleged variation must be in writing. Deft. then alleged that he had entered upon the land & spent money upon the property, in effect, setting up a plea of part performance : —*Held :* it could not be said that the defence was unarguable & deft. ought to be given leave to defend, & the action should be transferred to the Ch. Div.—KNAPP-FISHER *v.* CRISP, [1936] 3 All E. R. 560, C. A.

1502. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

1506. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

Part X.—Consolidation.

1592. *Add. Annotation :*—**Refd.** Hayes Bridge Estate *v.* Portman Building Society, [1936] 2 All E. R. 1400.

Part XII.—Priority of Mortgagees.

1830. *Add. Annotation :—Generally,* **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

1916a. —— ——.]—The provisions of sect. 113 of Law of Property Act, 1925 (c. 20), are merely concerned with relieving persons who are investigating title to land from being affected by notice of & from making inquiries into equitable interests, of which they may have actual or constructive notice, relating to the money secured by mtges. on the land. There is nothing in the sect. giving to a person who acquires an equitable interest in the mtge. debt last in point of time a better equity than that of a person whose equitable interest is earlier in point of time.—BEDDOES *v.* SHAW, [1937] Ch. 81 ; [1936] 2 All E. R. 1108 ; 106 L. J. Ch. 4 ; 155 L. T. 348 ; 80 Sol. Jo. 594.

PART IX. SECT. 2, SUB-SECT. 1.

sd. *Whether possession by lessee of mortgagor—Under lease made after mortgage.*]—*Re* SHANTZ & HALLMAN, [1927] 3 D. L. R. 658 ; 60 O. L. R. 543 ; *affd. sub nom.* MODERN REALTY CO. *v.* SHANTZ, [1928] 2 D. L. R. 705 ; [1928] S. C. R. 213.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 2.—A.

ol. —— *Against lessee—Under Land Acts.*]—MUNGALL *v.* MANN, *Ex p.* MANN (1928), 22 Q. J. P. R. 66.—**AUS.**

PART IX. SECT. 4, SUB-SECT. 1.

se. *No liability to pay taxes.*]—A mtgee. who has never been in possession of the land or in receipt of any income therefrom is not, in the absence of an agreement therefor, under any obligation to the mtgor. to pay the taxes ; & the fact that he has paid part of them does not bind him to pay them all.—BATTRUM *v.* NOAKES, [1931] 2 W. W. R. 74 ; 3 D. L. R. 91 ; *affg.*, [1931] 1 W. W. R. 213 ; 25 S. L. R. 253.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 1.—A.

sf. *Validity of lease—Non-compliance with Land Titles Act, R. S. S.,* 1920 (c. 67), *s.* 108).]—MASSEY-HARRIS CO. *v.* MANLEY, [1927] 1 D. L. R. 464 ; [1927] 1 W. W. R. 35 ; 21 Sask. L. R. 256.—**CAN.**

PART IX. SECT. 14.

sh. *Right to indemnity—Mortgage of shares.*]—MASTERS *v.* MCLELLAN (1889), (1825-97), N. B. Dig. 316.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.

1603 i. *One mortgage by sole mortgagor—Other jointly with partner.*]—J. & T., who were partners, made a mtge. to pltf. upon partnership land, parcel B., & J. alone, at a later date, made a mtge. to pltf., upon a different parcel of land, A. J. became bkpt., & deft. was the authorised trustee of his estate. T. afterwards conveyed his undivided half interest in parcel B. to deft. as authorised trustee of the estate of J. :—*Held :* pltf. was not entitled to consolidation, & either mtge. might be redeemed without redeeming the other.—WATKINS *v.* ADAMSON, [1929] 1 D. L. R. 572 ; 63 O. L. R. 315.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—A.

1838 iv. ——.]—A person who pays off a first mtge. on property & accepts a new mtge. on the property & a discharge of the old first mtge. is entitled to rank as first mtgee. upon the property, although there is a mtge. subsequent to the original mtge. but prior to his mtge. registered upon the property.—GORDON *v.* SNELGROVE, [1932] O. R. 253 ; 2 D. L. R. 300.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 3.—A.

1903 iv. ——.]—By a memorandum of agreement, made in 1915 between C. & his aunt, M., C. agreed to give M. " during her life the exclusive use of the drawing-room & bedroom over same, with fuel & suitable support & maintenance," in a certain dwelling-house, " free of charge, the consideration for same being natural love & affection & services rendered " by M. to C. ; & C. thereby agreed with M. " to execute a deed whenever called upon to carry out & give effect to the foregoing contract." No deed was ever executed pursuant to the said agreement. The agreement was not registered in the Registry of Deeds. M. went into exclusive occupation of the two rooms, & so continued, & was supplied with fuel & maintenance. The rest of the house was in the occupation of C., who held the premises under a fee-farm grant. In 1921 C. deposited the title deeds of the premises with a bank by way of equitable mtge. to secure the payment of present & future advances. In 1927, C. being indebted to the bank for a large sum, the bank issued a summary summons to enforce the mtge. against C. M. claimed to be entitled under the agreement to an equitable life interest in the two rooms, & also to a charge on the whole of the premises in her favour for fuel & suitable support & maintenance during her life, & that the bank's equitable mtge. was pulsne to her life interest & charge. She stated in an affidavit that on the faith of the agreement, & on the security of the rights thereby conferred on her, she had from time to time made advances to C. of sums amounting to £252. The manager of the bank stated in an affidavit that at the date of the deposit the bank had no knowledge of any claim by M. against the premises :—*Held :* M. was entitled to an equitable life estate in the two rooms, which interest was not subject to the bank's equitable mtge. M. was not entitled to a charge upon the premises for fuel & support & maintenance.—NATIONAL BANK *v.* KEEGAN, [1931] I. R. 344.—**IR.**

m i. *Charge on land—Whether priority given over registered assignment—Dealing only with estate which assignor then had.*]—CANADIAN PORT HURON CO. *v.* BURNETT (1907), 17 Man. L. R. 55.—**CAN.**

1977. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

1989. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321 ; Parker *v.* Judkin, [1931] 1 Ch. 475.

2013. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2017. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

2019a. ——.]—MANCHESTER & COUNTY BANK, LTD. *v.* MONK (1929), 73 Sol. Jo. 465.

2036. *Add. Annotation :—Generally,* **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

2038. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2041. *Add. Annotation :—As to* (1) **Refd.** *Re* Leighton's Conveyance, *Re* Land Registration Act, 1925, [1936] 1 All E. R. 667.

2044. *Add. Annotation :*—**Apld.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

2131. *Add. Annotation :*—**Distd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

2136. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

2145. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

2149. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

2150. *Add. Annotations :*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715 ; Abigail *v.* Lapin, [1934] A. C. 491.

2168. *Add. Annotation :*—**Consd.** Abigail *v.* Lapin, [1934] A. C. 491.

2173. *Add. Annotations :*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294 ; Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715 ; Abigail *v.* Lapin, [1934] A. C. 491.

2175. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

2178. *Add. Annotation :*—**Distd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

PART XII. SECT. 1, SUB-SECT. 4.—C.

f (p. 458) i. ——.]—THOMSON *v.* HARRISON, [1927] 3 D. L. R. 526 ; 60 O. L. R. 484.—**CAN.**

f (p. 458) ii. ——.]—CARROLL *v.* ROGERS (1900), 2 N. B. Eq. Rep. 159 ; 21 C. L. T. 96.—**CAN.**

f (p. 458) iii. ——.]—The Registry Act cannot be used to perpetrate a fraud, & therefore registration cannot be relied upon as notice when the person registering knows the mtgor. to be a fictitious person.—MCLAUGHLIN *v.* CLIFF (1932), 5 M. P. R. 72.—**CAN.**

o (p. 458) i. —— —— ——.]—SCHATZ *v.* STEINHAUER, [1930] 2 D. L. R. 998.—**CAN.**

o (p. 458) ii. ——*What amounts to caveating interest.*]—By an agreement one C., the owner of certain land, agreed to " allow " resp. an equal third share of the " net profits " which C. might make on the resale of this land. The land was sold at a considerable profit. On the completion of the purchase, a mtge. was given by the purchasers to applt. for £1,800, which purported to be a loan by applt., but, in fact, part of this amount was the balance of the purchase-money which applt. was to hold in trust for C., subject to a charge for money advanced. Resp. entered a *caveat* against dealings with the mtge. :—*Held :* applt. had, at most, a claim against C. under his contract to an account, & for payment of any moneys found due thereon, &, accordingly, had no caveating interest.—SHEPHERD *v.* HOUSTON, [1927] S. A. S. R. 144.—**AUS.**

o (p. 458) iii. —— *Failure to lodge—Loss of priority.*]—Resps., who were registered under Real Property Act, 1900, of New South Wales, as proprietors of lands, transferred them to the nominee of a creditor by transfers expressed to be made in consideration of money payments, & handed the certificates of title to the transferee, who caused the transfers to be registered & indorsed upon the certificates. The transfers, though absolute in form, were made merely as security for the debt, but resps. lodged no caveat. Subsequently the transferee mtged. the land to applt. to secure a loan then made. Applt. had no notice that the resps. had any equitable interest, but had not searched the register. The mtge. to him was not registered :—*Held :* resps.' equity should be postponed to that of applt., because resps. had armed their transferee with power to deal with the lands as owner ; applt.'s failure to search the register did not affect the case, because his priority did not arise from any representation to him by resps., & because they had lodged no *caveat.* Further, it was to be inferred that resps. had authorised their transferee to raise money upon the lands, & accordingly the case was one of an agent exceeding his authority but acting within its apparent *indicia.*—ABIGAIL *v.* LAPIN, [1934] A. C. 491 ; 103 L. J. P. C. 105 ; 151 L. T. 429, P. C.—**AUS.**

sx. *Effect of omission from memorial of addition of witness.*]—*Held :* under 9 Vict. c. 34, registry in accordance with the Act was imperative ; & a deed registered upon a memorial in which the addition of the witness to the deed was omitted was, therefore, fraudulent & void as against a subsequent mtgee.—ROBSON *v.* WADDELL (1865), 24 U. C. R. 574.—**CAN.**

sy. *Postponement of mortgage—Power of registrar to register.*]—*Re* WINDOVER & GREAT WEST LIFE ASSURANCE CO. (Alta.), [1927] 3 D. L. R. 829 ; [1927] 2. W. W. R. 414.—**CAN.**

sz. *Right to registration—Duplicate certificate in hands of mortgagor.*]—*Re* TOTH & CASE J.I. THRESHING MACHINE CO. (1910), 14 W. L. R. 704 ; 3 Sask. L. R. 270.—**CAN.**

sb. *Notice to solicitor.*]—A client is not a " person claiming . . . without notice " within Nova Scotia Registry Act, R. S. N. S., 1923, s. 18, if his solr. has express notice of an outstanding mtge.—CROSS *v.* DARES, [1933] 2 D. L. R. 97 ; 6 M. P. R. 215.—**CAN.**

sd. *Failure to register—Priority of execution creditor.*]—MCDONALD *v.* ROYAL BANK OF CANADA, [1933] 1 D. L. R. 796 ; *revsd.*, [1933] 2 D. L. R. 680 ; O. R. 418.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 1.—A. (a).

1995 iii. —— —— ——.]—KIRK *v.* HARVEY (1913), 26 W. L. R. 747 ; 5 W. W. R. 980 ; 15 D. L. R. 488 ; 18 B. C. R. 645.—**CAN.**

1995 iv. —— —— ——.]—COLPITTS *v.* SHERWOOD (Alta.), [1927] 3 D. L. R. 7.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 3.—B. (b).

2170 i. *Mortgagee parting with deeds to mortgagor—Failure to return—Laches of mortgagee.*]—G., a customer, deposited the title deeds of immovable property with deft. bank to secure an overdraft. Subsequently G. obtained possession of the title deeds on a misrepresentation to deft. bank that he wanted them for inspection by an intending purchaser, & deposited the deeds with pltf. bank to secure a loan ; —*Held :* by the conduct of deft. bank pltf. bank had priority of charge over the mortgaged property.—LLOYDS BANK *v.* GUZDAR & CO (1929), I. L. R. 56 Calc. 868.—**IND.**

PART XII. SECT. 13, SUB-SECT. 4.

sa. *Priority of mortgage over lien of lender—Of advance in reduction of mortgage.*]—*Held :* the lender could not claim priority for his advance.—IMPERIAL LOAN & INVESTMENT CO. *v.* O'SULLIVAN (1879), 8 P. R. 162.—**CAN.**

sb. —— *Of advance in payment of purchase money.*]—*Held :* the lender could not claim priority in respect of his lien for unpaid purchase money.—WATSON *v.* DOWSER (1881), 28 Gr. 478.—**CAN.**

sc. *Prior mortgagee purchasing rights of puisne mortgagee.*]—FATEH ALI *v.* GEHNA (1927), I. L. R. 9 Lah. 88.—**IND.**

Part XIII.—Remedies of Mortgagee.

2229. *Add. Annotation :—Generally,* **Refd.** Hunter *v.* Hunter, [1936] A. C. 222.

Weld *v.* Petre

2288. *Add. Annotation :*—**Refd.** Hunter *v.* Hunter, [1936] A. C. 222.

2291a. Part of mortgage debt due.]—There is nothing in Law of Property Act, 1925 (c. 20), s. 101, to prevent a mtgee. from exercising his power of sale when part only of the mtge. debt has become due, & where a mtge. debt is payable in instalments the right to enforce payment arises as each instalment becomes due.—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, [1932] 1 K. B. 241 ; 100 L. J. K. B. 626 ; 145 L. T. 575 ; 95 J. P. 173 ; 47 T. L. R. 532 ; 29 L. G. R. 507.

2291b. Debt payable in instalments.]—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, No. 2291a, *ante.*

2299a. Personal representative of transferee of mortgagee.]—SALOWAY *v.* STRAWBRIDGE (1855), 7 De G. M. & G. 594 ; 25 L. J. Ch. 121 ; 1 Jur. N. S. 1194 ; 4 W. R. 34 ; 44 E. R. 232, L. JJ.

Annotations :—**Consd.** Ashton *v.* Wood (1857), 30 L. T. O. S. 85. **Refd.** *Re* Rumney & Smith, [1897] 2 Ch. 351.

2312a. ——.]—Property comprised in a mtge. was sold by the mtgee. by public auction, & at the sale the mtgee.'s solr. became the purchaser :—*Held :* the purchase by the solr. was invalid, & must be set aside.—LAWRANCE *v.* GALSWORTHY (1857), 30 L. T. O. S. 112 ; 3 Jur. N. S. 1049.

Annotation :—**Refd.** Nutt *v.* Easton (1899), 80 L. T. 353.

2333. *Add. Annotation :*—**Refd.** Payne *v.* Cardiff R. D. C., [1932] 1 K. B. 241.

2378a. —— **Sale at undervalue.**]—WARING *v.* LONDON & MANCHESTER ASSURANCE CO., LTD., No. 2479a, *post.*

2381. *Add. Annotation :—As to* (1) **Apld.** Waring *v.* London & Manchester Assurance Co., [1935] Ch. 310.

PART XIII. SECT. 1, SUB-SECT. 1.

2190 i. *Application of rule—Foreclosure—Proceedings on bond.*]—*Re* CHANDLER'S ESTATE (1883), 17 N. S. R. (5 R. & G.) 78.—**CAN.**

k i. —— *Action on covenant—Entry into possession.*]—GREAT WEST LIFE ASSURANCE CO. *v.* POLLOCK (Alta.), [1929] 2 D. L. R. 468 ; 1 W. W. R. 742.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.

2210 i. *Sale of collateral securities—Foreclosure for balance.*]—Pltf., a first mtgee., sued McD., as mtgor., & deft. bank, as second mtgee., for an account of the amount due for principal & interest under pltf.'s mtge. &, in default of payment, for foreclosure. It held, as collateral to the mtge. debt, certain co. shares owned by McD. & duly assigned. Having obtained leave under the Mtgors.' & Purchasers' Relief Act, 1932, to proceed with the action, & no appearance being entered by either deft., it obtained a default judgment against McD. & an order to take accounts of what was due to it under the mtge., & also an order that on payment of the amount so found it should reconvey the mtged. property & deliver up the share certificates or in default (the event which happened) there should be foreclosure. After the order *nisi* but before the final order for foreclosure was obtained the bank was permitted by pltf. to enter an appearance. Thereupon the bank called upon pltf. to realise in its collateral & thus reduce the debt. This being refused, the bank moved to have the writ of summons & all subsequent proceedings set aside on the ground of misjoinder in that an action for recovery of land was without leave joined with another cause of action, viz., a claim for foreclosure of securities ; also that the order *nisi* be set aside & the bank be allowed to defend the action, since the order *nisi* gave pltf. relief to which it was not entitled :—*Held :* the order *nisi* & personal judgment be

TRUST CO. *v.* MCDONALD & ROYAL BANK OF CANADA, [1935] 1 W. W. R. 481 ; 2 D. L. R. 278 ; 49 B. C. R. 468.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—B. (b) i.

sd. *Length of.*]—*Held :* (1) In enacting Property Law Amendment Act, 1927, the Legislature must be presumed to have intended the repeal of Mortgages Final Extension Act, 1924, s. 70 ; (2) until the mtgor. took some active step towards availing himself of the protection granted him he acquired no right which survived the repeal of the protecting Act, & the mtgee. was, therefore, entitled to exercise his power of sale without giving three months' notice of his intention to do so. —MATTHESON *v.* HALL, [1929] N. Z. L. R. 333.—**N.Z.**

so. *Power of sale with notice on default—Notice to some persons entitled only—Effect on power of sale after three months without notice.*]—The right of a mtgee. of land to sell under power of sale contained in the mtge. on three months' default without notice is not lost merely because the mtgee. under a power of sale with notice on immediate default contained in the mtge., gives notice of sale to some only of the persons entitled to redeem.—O'BRIEN *v.* MIDLAND LOAN & SAVINGS CO., [1934] O. R. 433 ; 3 D. L. R. 358 ; *affd.*, [1934] 4 D. L. R. 803.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—D.

se. *Sale of two properties subject to mortgages—Sale by mortgagee of one property on default by purchaser—Rights of purchaser of other property against mortgagor & defaulting purchaser.*]—NORRIS *v.* MEADOWS (1882), 7 A. R. 237.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 3.—D.

sf. *Sale under Land Titles Act—Jurisdiction to stay proceedings.*]—*Re* LAND TITLES ACT, *Re* FIELDING & NORTH OF SCOTLAND MTGE. CO., [1927] 3 D. L. R. 690 ; [1927] 2 W. W. R. 423 ; 22 Alta. L. R. 575.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—A.

k i. *Order permitting purchase at price fixed by court—With leave to recover deficiency—Whether foreclosure.*]—SECURITY TRUST CO., LTD. *v.* SAYRE & GILFOY, [1920] 3 W. W. R. 469.—**CAN.**

k ii. —— —— ——.]—CANADA LIFE INSURANCE CO. *v.* MCHARDY, [1922] 3 W. W. R. 855 ; 69 D. L. R. 712.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—D.

so. *Servant of mortgagee.*]—Under a power of sale enabling a bank as mtgee. to sell certain land by private sale or public tender, it sold the land by private sale to a servant in its employ for the amount owing to the bank on the mtge. for principal & interest, after unsuccessfully attempting to sell by tender or otherwise. The sale to the servant was made in good faith & not at an undervalue. It was the servant's duty to help generally in the administration of the bank's business in the district where the land was situate, but he had no power to sell land, & all he could do was to submit offers to the head office of the bank, which had a separate sales department. The servant was the person who would have received tenders if any had been made, but he would have transmitted them to the head office with such advice as he thought fit. In fact, no tender & no offer had been received, & the servant had taken no active step in relation to the exercise of the bank's power of sale :—*Held :* the sale to the servant was not wrongful.—SEWELL *v.* AGRICULTURAL BANK OF WESTERN AUSTRALIA (1931), 44 C. L. R. 104.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 6.—A.

2331 i. *Position of mortgagee—Whether a trustee.*]—A mtgee., in exercising his power of sale, must exercise it in good faith. He has a right to look after himself first, but he is not at liberty to look after his own interests alone. He must not wilfully & recklessly deal with the property in such a manner that the interests of the mtgor. are sacrificed. Therefore, he is bound to take reasonable precautions in exercising the power of sale to see that the advertisements of the sale are adequate & that the property is not sold at such a manifest undervalue as in itself to indicate disregard of the mtgor.'s interest.—HARTLEY *v.* HUMPHRIS, [1928] S. R. Q. 83 ; *affd.*, 2 A. L. J. 106.—**AUS.**

2479a. —— **By contract of sale.**]—The ct. will not grant to a mtgor. tendering the moneys due under the mtge. an injunction restraining the mtgee. from completing by conveyance a contract to sell the mtged. property in exercise of his power of sale unless it is proved that the mtgee. entered into the contract in bad faith.

A co. entered as mtgee. into a contract for the sale of the mtged. property. The mtgor. had been given many opportunities to find the money due under the mtge. &, at his request & upon his undertaking to put the property up for sale by auction, the co. had refused a good offer to purchase. When the mtgor. did put the property up for sale by auction, when the period within which he had undertaken to do so was past, no acceptable bid was received, &, after a long period during which he was to the co.'s knowledge negotiating with a third party for a fresh loan on the security of the mtged. property, & during which the co., in order to help him as much as possible, had postponed selling, the co. ultimately contracted to sell the property for an amount less than that which it had refused at his request & upon his undertaking. On a motion by the mtgor. for an injunction to restrain completion on the grounds that there was no sale until conveyance & that the contract had been entered into in bad faith at a gross undervalue, & for leave to redeem the property upon paying into ct., as he claimed to be able to do, the moneys due under the mtge. :—*Held :* (1) a mtgee.'s exercise of his power under Law of Property Act, 1925 (c. 20), s. 101 (1) (i), to sell the mtged. property by public auction or private contract is binding on the mtgor. before completion unless it is proved that he exercised it in bad faith ; (2) the fact that a contract for sale was entered into at an undervalue is not by itself enough to prove bad faith.—WARING *v.* LONDON & MANCHESTER ASSURANCE CO., LTD., [1935] Ch. 310 ; 104 L. J. Ch. 201 ; 152 L. T. 390 ; 78 Sol. Jo. 860.

2504. *Add. Annotation :*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2535. *Add. Annotations :—As to* (2) **Refd.** *Re* Wait, [1927] 1 Ch. 606 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

2578a. ——.]—MASTERS *v.* CROUCH (1927), 63 L. Jo. 557.

2605. *Add. Annotation :—As to* (1) **Apld.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo.

2631. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

PART XIII. SECT. 2, SUB-SECT. 6. —C.

sg. *Duty to credit mortgagor with whole purchase-price.*]—Where a mtgee., selling under a general power of sale (without special power to sell on torms), agrees with the purchaser to leave part of the purchase-money on mtge., conveys the property & takes a mtge. back, he must credit the mtgor. both with the amount received & the amount secured by mtge., & the mtgor.'s personal covenant is discharged to the extent of the amount received by the mtgee. in cash & of the amount for which the mtgee. is secured by mtge.—WRIGHT *v.* NEW ZEALAND FARMERS' CO-OPERATIVE ASSOCN. OF CANTERBURY, LTD., [1934] N. Z. L. R. 1037.—**N.Z.**

PART XIII. SECT. 2, SUB-SECT. 8.—A.

sg. *Sale under second mortgage.*]—FLEMING *v.* MCDOUGALL (1880), 8 P. R. 200.—**CAN.**

sh. *Right of purchaser of part of mortgaged property to marshal—Against purchaser of other part subject to entire mortgage debt.*]—KAMTA SINGH *v.* CHATURBHUJ SINGH (1929), I. L. R. 8 Pat. 585.—**IND.**

sj. *Whether fee passes.*]—Where mtgees. in fee in possession executed a deed purporting to "convey, assign, release & quit claim" to the grantees, "their heirs & assigns for ever," all & singular the mortgaged land, *habendum* "as & for all the estate & interest" of the grantors "in & to the same" :—*Held :* sufficient to pass the fee to the grantees.—BRIGHT *v.* MCMURRAY (1882), 1 O. R. 172.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—B. (a).

q. *Revsd.*, 7 A. R. 10.

PART XIII. SECT. 2, SUB-SECT. 9.

sk. *Sale under second mortgage—Purchaser's right to possession—Lease from first mortgagee to mortgagor.*]—Land having been sold under a power of sale in a second mtge. :—*Held :* the mtgor. was estopped from setting up a lease from the first mtgee. as against a claim for possession by a transferee from the purchaser, even though at the time of securing the lease the equity of redemption was no longer in the mtgor.—SEWELL *v.* HNATIW & HNATIW (Man.), [1927] 3 W. W. R. 577 ; *revsd.*, [1928] 1 D. L. R. 570 ; [1928] 1 W. W. R. 274 ; 37 MAN. L. R. 247.—**CAN.**

sl. *Right of second mortgagee of part of mortgaged property—Where other portion already sold by mortgagor—To compel first mortgagee to proceed against that portion—& have purchaser joined as party.*]—THANMUL SOWCAR *v.* NATTU RAMADOSS REDDIAR (1927), I. L. R. 51 Mad. 648.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 10. —A.

sm. *No liability for wages of persons working mortgaged lands.*]—MACPHERSON *v.* LONDON LOAN ASSETS, LTD., [1931] 2 D. L. R. 630 ; O. R. 109 ; 12 C. B. R. 302.—**CAN.**

sp. *Title of mortgagor subject to covenant to maintain mother—Lump sum payment on sale.*]—P. E. I. AGRICULTURAL MUTUAL FIRE INSURANCE CO. *v.* CAIRNS (1933), 5 M. P. R. 577.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 10.—D.

sa. *Subrogation — Contribution.*]—BOUCHER *v.* SMITH (1862). 9 Gr. 347.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—D. (a).

sc. *Duty of owner of estate to account—From what date.*]—The owner of an estate which is subject to an equitable mtge. or charge is not bound to account as a trustee from the date of the institution of proceedings by the owner of the incumbrance to raise the amount thereby secured, or from the date of the order for sale ; but from the date of the appointment of a receiver.

Deft., owner of an estate which was subject to certain charges, consented to an order being made *ex parte* by the judge referring to Chambers the account of receipts & outgoings which he had furnished to pltf. the chargeants, they having taken proceedings to raise the amount of the charges :—*Held :* deft. had not estopped himself from disputing his liability to account.—BUTLER *v.* BUTLER, [1925] 1 I. R. 185.—**IR.**

PART XIII. SECT. 3, SUB-SECT. 1.—E. (d).

2565 i. *Receiver appointed.*]—BRANTFORD CORPN. *v.* GRAND RIVER NAVIGATION CO. (1860), 8 Gr. 246.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—F. (a).

sd. *Service of order for attornment—Whether relationship of landlord & tenant created.*]—MANUFACTURERS LIFE INSURANCE CO. *v.* DAVID SPENCER, LTD., [1933] 1 W. W. R. 319 ; 46 B. C. R. 451.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—F. (b).

sf. *Variation by receiver in mode of payment—Effect on mortgagee.*]—Interference by a receiver in the mode of payment of rent by a tenant to the mtgor. held not to create a liability against the mtgee.—WESTMINSTER MORTGAGE CORPN. *v* ADAIR (1932), 47 B. C. R. 1.—**CAN.**

sk. *Failure to pay—Right of receiver to possession.*]—A receiver in an undetermined foreclosure action has not the same rights as a landlord under the Landlord & Tenant Act, R. S. B. C., 1924, to obtain possession on account of the tenant's non-payment of occupation rent fixed in the foreclosure action.—COULSON *v.* GUNN (1936), 50 B. C. R. 330.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—H. (a).

2589 i. *Interlocutory application.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., [1927] 1 D. L. R. 421 ; 59 N. S. R. 123.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 5.

sk. *Conditional sale contract.*]—A receiver of the rents of a large business block appointed under an order *nisi* in a mtge. foreclosure action & authorised thereby to manage the beat-

2665. Delete " No. 2189, *ante* " & add the following :—

A mtgee. concurred with the transferee of the equity of redemption in selling the property, & he allowed such transferee to receive the purchase-money :—*Held :* the mtgee. could not afterwards sue the mtgor. for the debt, & he was perpetually restrained from doing so, & ordered to pay the costs of the suit.—PALMER *v.* HENDRIE (No. 2) (1860), 28 Beav. 341 ; 54 E. R. 397.

2688. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

2757. After this case add " *See, also,* LIMITATION OF ACTIONS, No. 1369a, *ante.*"

2777a. ——.]—After decree in a suit by a mtgee., to redeem the first & foreclose subsequent mtgees. one of the subsequent mtgees. assigned his interest in the premises to A. A. then filed a bill against all the parties to the former suit, praying to be entitled to the benefit of that suit, & to redeem the mtgees. who were prior to himself, & to foreclose the others. The bill was dismissed as against all defts, except the assignor : & A. was declared to be entitled to stand in his place, & to use his name in the further prosecution of the first suit.—BOOTH *v.* CRESWICKE (1837), 8 Sim. 352 ; 59 E. R. 139.

2779. *Add. Annotation :*—**Distd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

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ing & janitor services & make incidental repairs, installed, without leave, a mechanical stoker & a modern system of hot-water heating, in order to reduce heating expenses, & entered into a conditional-sale agreement to pay therefor. The mtgee. applied to have the receiver's actions approved :—*Held :* the approval asked for should be given.—GEORGIA INVESTMENT CO., LTD. *v.* STRATFORD REALTY CO., LTD. & NELSON, [1937] 1 W. W. R. 699.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.

d i. —— *Mortgage for purchase-money.*]—TULLY *v.* BRADBURY (1861), 8 Gr. 561.—**CAN.**

d ii. ——.]—Assignee may sue on covenant for repayment, on joining mtgee. as co-pltf., debtor having no notice of assignment.—PRINGLE *v.* HUTSON (1909), 19 O. L. R. 682.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—A.

2647 i. *General rule—Assignee not liable.*]—POWER *v.* NOVA SCOTIA TRUST CO., [1928] 4 D. L. R. 570.—**CAN.**

i i. —— ——.]—The implied covenant under Land Titles Act, R. S. A., 1922 (c. 133), s. 54, does not arise in the case of the transfer of only part of the mortgaged land.—*Re* MACDONALD, [1925] 2 D. L. R. 748 ; [1925] 1 W. W. R. 1031 ; 21 Alta. L. R. 66.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 4.

sm. *Effect of consent to variation of principal sum.*]—MORTLEMAN *v.* PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—**N.Z.**

sn. *Mortgage for purchase-money—Vendor accepting from purchaser transfer of other land subject to incumbrances—Right of vendor to add amount of incumbrances to claim under mortgage.*]—MAULSON *v.* MOORE (1860), 8 Gr. 448.—**CAN.**

so. *Mortgage to managing director of company assigned to company—Right of mortgagor to set off against amount due—claim against managing director for services rendered.*]—NORTHARD & LOWE CO. *v.* DURNO, [1927] 2 D. L. R. 892 ; 59 N. S. R. 310.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 5.—B. (a).

2664 v. ——.]—MCCUAIG *v.* BARBER (1898), 29 S. C. R. 126.—**CAN.**

2664 vi. ——.]—Where after a final order of foreclosure the mtgee. sues the mtgor. on his covenant, the mtgee. must be in the position, if redemption is sought, to restore the mortgaged property intact.—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360 ; [1927] 2 W. W. R. 94 ; *affd.,* [1928] 3 D. L. R. 784 ; [1928] S. C. R. 440—**CAN.**

2664 vii. ——.]—Pltf., mtgee., being the transferee of the title under a tax-sale, was held entitled to recover in an action upon the covenant in the mtge. deed, notwithstanding he had put it out of his power to transfer the land to defts. in case they paid the mtge. moneys.—SERVAIS *v.* SHEAR, [1929] 2 D. L. R. 633 ; 63 O. L. R. 381 ; *revsg.,* [1928] 1 D. L. R. 549 ; 61 O. L. R. 490.—**CAN.**

sd. *Deterioration of property—No defence to action on covenant.*]—A covenant between a mtgor. & mtgee. which relates chiefly to articles, matters & things (which words indicate movable chattels) & provides that such things shall (in addition to other fixtures on the land) become a part of the realty is not a covenant running with the land.—SASKATCHEWAN FARM LOAN BOARD *v.* MORGAN, [1932] 2 W. W. R. 676.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 5.—C.

t i. —— *Right of mortgagor to repay debt & redeem.*]—Even after foreclosure under Land Titles Act, the mtgee. may sue upon the covenant for the payment of the mtge. moneys, though, if he does, the mtgor., on payment of the debt is entitled to redeem his property.—DOUGLAS *v.* THE MUTUAL LIFE ASSURANCE CO., [1918] 3 W. W. R. 529 ; *sub nom.* MUTUAL LIFE *v.* DOUGLAS, 44 D. L. R. 115.—**CAN.**

s i. —— ——.]—CATES CO., LTD. *v.* BANK OF MONTREAL, [1937] 3 W. W. R. 87.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 5.—E.

m i. —— *To purchaser from mortgagor.*]—In an action by a mtgee. against a mtgor. on his covenant to pay, the mtgor. pleaded that he had been released by an extension of time given without his consent to a purchaser of the land from him :—*Held :* judgment must be given for pltf.—ALLOWAY & CHAMPION, LTD. *v.* STEPHENSON, [1927] 3 D. L. R. 220 ; [1927] 2 W. W. R. 337 ; 36 Man. L. R. 636.—**CAN.**

so. *Mortgage containing receipt clause but no covenant for repayment.*]—A mtge., which contains an acknowledgment of receipt of the money, but no covenant for repayment, does not of itself afford conclusive evidence of a debt, so that the mtgee., or his assigns, can maintain an action for its recovery.—LONDON LOAN CO. *v.* SMYTH (1882), 32 C. P. 530.—**CAN.**

sp. *Money advanced for illegal purpose.*]—WILKINSON *v.* HARWOOD & COOPER, [1931] S. C. R. 141 ; [1931] 2 D. L. R. 479.—**CAN.**

sq. *Variation of mortgage—By assignee of mortgagor—Mortgagor consenting provided liability not increased.*]—PUBLIC TRUSTEE *v.* MORTLEMAN, [1928] N. Z. L. R. 337.—**N.Z.**

sr. *Grant of option to purchase to tenant.*]—The fact that for some time between the obtaining of a final order for foreclosure of a mtge. & an action to recover the amount of the mtge. debt the mtgee. might have been bound to convey the premises to a tenant to whom he had given an option to purchase, had the conditions of the option agreement been fulfilled, does not prevent him recovering said debt where said agreement has fallen through.—SASKATCHEWAN GENERAL TRUSTS CORPN., LTD. *v.* MCCARTHY, [1932] 3 W. W. R. 592.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 6.

sv. *Action against sureties—Parties.*]—The action herein was on a bond by which deft. became a surety for the repayment of the amount due under a mtge. given by the Y.M.C.A. of Calgary on its leasehold interest in land owned by the C.P.R. Co. The C.P.R. Co. had joined in the mtge. " for the purpose of securing the repayment of the said loan " but upon the expressed condition that it should incur no personal liability with respect to the repayment :—*Held :* deft. had the right to compel pltf. to add both the said Y.M.C.A. & the C.P.R. Co. as defts.—HOLLAND-CANADA MORTGAGE CO., LTD. *v.* HUTCHINGS, [1934] 2 W. W. R. 137.—**CAN.**

PART XIII. SECT. 6.

2687 i. *Varied,* 39 U. C. R. 280.

PART XIII. SECT. 7, SUB-SECT. 2.—A. (a).

sx. *Application for sale after order nisi—Mortgage to secure barrister's fees—Objection that fees not taxed.*]—Where the period fixed by an order *nisi* for the redemption of a mtge. given to a barrister & solr. to cover his fees has expired & an application is made in pursuance of the order for the sale of the mortgaged property, it is then too late to raise the objection that the agreement fixing the amount for which the mtge. was given had not been examined & allowed by a taxing officer as required by r. 748.—MACKIE *v.* IVANCHUK, [1930] 2 W. W. R. 43 ; 4 D. L. R. 76 ; 24 Alta. L. R. 635.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 2.—A. (d).

sr. *Duty of mortgagor—To see to parcelling out of land directed to be sold.*]—BEATY *v.* RADENHURST (1871), 3 Ch. Ch. 344.—**CAN.**

ss. *Postponement of sale—Fresh advertisement unnecessary—Note of postponement at foot of old advertisement sufficient.*]—THOMPSON *v.* MILLIKEN (1868), 15 Gr. 197.—**CAN.**

su. *Conveyance—Parties—Wife joining in execution of incumbrance.*]—MOORE *v.* SHINNERS (1858), 1 Ch. Ch. 59.—**CAN.**

PART XIII SECT. 7, SUB-SECT. 2.—B. (a).

t i. —— ——.]—DE COTEAU *v.* PHILLIPS (No. 2), [1930] 3 W. W. R. 615.—**CAN.**

sv. *Mortgagee executor de son tort—Sufficient assets of deceased mortgagor—No right to foreclose.*]—KENNY *v.* KENNY (1825–1897), N. B. Dig. 311.—**CAN.**

2876. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2890. *Add. Annotation :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

2897a. —— ——.]—As a general rule, all persons beneficially interested in an equity of redemption ought to be made parties to a foreclosure suit.—CROPPER *v.* MELLERSH (1855), 3 Eq. Rep. 492 ; 24 L. J. Ch. 430 ; 24 L. T. O. S. 267 ; 1 Jur. N. S. 299 ; 3 W. R. 202.

Annotation :—**N.F.** Wilkins *v.* Reeves (1855), 3 Eq. Rep. 494.

2897b. —— ——.]—A suit was instituted by a mtgee. against the trustee for sale of the property & exor. of the mtgor. for a foreclosure :—*Held :* the persons beneficially interested in the equity of redemption were not necessary parties to the suit.—WILKINS *v.* REEVES (1855), 3 Eq. Rep. 494 ; 24 L. T. O. S. 337 ; 3 W. R. 305.

2928a. —— ——.]—A surviving trustee & extrix., who was also tenant for life of mortgaged property, was made sole deft. to a bill for foreclosure or sale :—*Held :* the parties interested in remainder were sufficiently represented.—MARRIOTT *v.* KIRKHAM (1862), 3 Giff. 536 ; 31 L. J. Ch. 312 ; 6 L. T. 17 ; 8 Jur. N. S. 318 ; 10 W. R. 340 ; 66 E. R. 521.

2940. *Add. Annotation :*—**Refd.** Hodgson *v.* Salt, [1936] 1 All E. R. 95.

2943a. ——.]—Where a foreclosure suit was instituted before 15 & 16 Vict. c. 86, & stood over, in order that the *cestuis que trust* under the mtgor.'s will might be made parties :—*Held :* after the Act came into operation, the suit might proceed in their absence, the trustees & exors. of the mtgor. representing them sufficiently.—SALE *v.* KITSON (1853), 3 De. G. M. & G. 119 ; 22 L. J. Ch. 344 ; 20 L. T. O. S. 320 ; 17 Jur. 170 ; 43 E. R. 47.

2991. *Add. Annotation :*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

2997a. Application for foreclosure of registered charge—Should not ask for rectification of register.]—PRACTICE NOTE, [1932] W. N. 6 ; 173 L. T. Jo. 40.

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sw. *Breach of covenant to pay taxes—Defence.*]—In an action for foreclosure of a mtge. on the ground that the mtgor. had defaulted in performing his covenant to pay taxes, it was shown that deft. was paying the arrears of taxes by instalments under an arrangement satisfactory to the city to which the taxes were payable, & it was held that he was, therefore, entitled to relief from the consequences of his default, & that the action should be dismissed, subject to the right of the pltf. to apply forthwith for judgment should deft. default in the performance of the order made herein for the payment of costs & for the continuance of the instalments on the taxes.—TILLET *v.* CARLSON & BRITTON, [1932] 1 W. W. R. 463 ; 45 B. C. R. 52.—**CAN.**

sx. ——.]—The right of pltf., a mtgee., to bring an action for foreclosure because of default under the covenant to pay taxes held to arise forthwith on the default whether or not he had paid the taxes himself, his right of action & to judgment being subject, of course, to Mtgors.' & Purchasers' Relief Act & to the ct.'s power to relieve against forfeiture.—TATROFF *v.* RAY, [1934] 3 W. W. R. 493 ; 49 B. C. R. 24 ; *on appeal*, [1935] 3 W. W. R. 41.—**CAN.**

sz. ——.]—A mtgor. having defaulted with respect to the payment of taxes, the mtgee. paid the taxes & brought suit for foreclosure. The taxes so paid were for three years, & it appeared that a receiver, if appointed, would not be able to pay out of the rents & profits anything on account of said taxes until there was some substantial increase in the net receipts from the premises :—*Held :* a foreclosure order should be granted ; but the redemption period should be twelve months, instead of the usual six months.—CANADA LIFE ASSURANCE CO. *v.* COUGHLAN, [1935] 3 W. W. R. 38 ; 50 B. C. R. 194.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 2.—E.

2869 i. —— *Mortgagees by deposit—Deposit of debentures.*]—Debentures secured by a trust deed were issued by deft. co. under an arrangement with pltf. that the proceeds expected therefrom should be used in paying off the debt owing from the co. to him & in continuing deft.'s business. The trust deed provided that the debentures, after execution thereof by the directors, should be delivered to the trustee & certified to by him from time to time as required by resolution of the directors, & should be returned to them or delivered to their order. It being found impossible to sell any of the debentures, deft.'s managing director, at the request of pltf., instructed the trustee to deposit the debentures with pltf. as collateral security for said indebtedness & to secure further advances. Thereafter advances were made by pltf. & the business continued for a year :—*Held :* pltf. was entitled to enforce his security by requiring the trustee to enforce the trust deed in the usual manner.—ANDERSON *v.* MCNAIR LUMBER & SHINGLE CO., LTD., [1929] 2 D. L. R. 209 ; 1 W. W. R. 480 ; 40 B. C. R. 466.—**CAN.**

sy. *Claim of judgment creditor to be added—After order nisi.*]—RADERMACHER *v.* RADERMACHER, [1934] 1 W. W. R. 795.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (b).

sw. *Widow of intestate mortgagor—Application for widow to represent estate.*]—*Held :* an application under K. B. Rule 205 should be refused, since Surrogate Cts. Act made ample provision for the requirements of the mtgee.—*Re* GREAT WEST LIFE ASSURANCE CO., *Re* CHRISTIE ESTATE (Man.), [1927] 3 W. W. R. 302.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—E.

m i. —— *Death after commencement of action.*]—NETHERLANDS INVESTMENT CO. *v.* TRUSTS & GUARANTEE CO., [1929] 1 D. L. R. 463 ; 1 W. W. R. 62 ; 23 Alta. L. R. 631.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—H.

2945 iv. ——.]—KAULBACH *v.* TAYLOR (1880), R. E. D. 400.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—J. (f).

m i ——.]—T. M. BALL LUMBER CO., LTD. *v.* BUNTING, [1933] 1 W. W. R. 57 ; *revsd.*, [1933] 3 W. W. R. 214.—**CAN.**

sg. *Transfer of proceedings.*]—CANADA LIFE ASSURANCE CO. *v.* MACMURCHY, [1936] 2 W. W. R. 421.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 5—D.

sk. *Transfer of proceedings.*]—Sect. 36 (3) of King's Bench Act, R. S. S., 1930, does not prevent the making of an order for the transfer of a mtge. foreclosure action from the judicial district wherein the land is situated & wherein the action was begun to another judicial district, when deft. has given his solr. his written instructions to consent to such an order & his solr. has so consented.—CANADA LIFE ASSURANCE CO. *v.* MACMURCHY, [1936] 2 W. W. R. 421.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 5.—F. (c).

l i. ——.]—The clause added to sect. 113 of Land Titles Act, R. S. S., 1930, by 1933, c. 19, s. 8, which provides that in a foreclosure action the ct. "may authorise the mtgee. to enter into possession of the lands . . ." does not entitle pltf. as a matter of course to an order for possession prior to the final foreclosure order, but in view of the law prior to 1933, should be read as leaving it to the ct. to refuse such an order at that stage of the action, even where the mtge. contains a covenant that on default the mtgee. shall have quiet possession.—DEVLIN *v.* WILSON, [1936] 1 W. W. R. 705.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 5.—L.

p i. —— *After order nisi—Time for redemption.*]—RADERMACHER *v.* RADERMACHER (No. 2), [1935] 1 W. W. R. 29.—**CAN.**

s. *Decree nisi by default—Setting aside—Amount excessive.*]—CANADA WEST GRAIN CO., LTD. *v.* MELFORT MILLS, LTD., [1937] 3 W. W. R. 522.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—A.

c i. —— *Action upon mortgage—What is.*]—By an agreement extending the time for payment of a mtge. the mtgors. "guaranteed" payment of the interest & agreed that the mtgee. "shall have the right to recover same as for a debt owing without first applying for foreclosure & sale of the said lands ; it being understood that this clause shall operate as a collateral guarantee by the parties of the second part for the payment of the said interest & that any default in payment of such shall entitle the party of the first part to personal judgment for the amount so in default, reserving at all times to the party of the first part the additional right to foreclosure & sale" :—*Held :* an action by the mtgee., in so far as it was based upon the so-called guarantee, was an "action brought upon a mtge. of land," within sect. 37 (o) (*i*) of Judicature Act, R. S. A., 1922.—CRANG *v.* RUTHERFORD, [1936] 2 W. W. R. 205 ; 6 F. L. J. (Can.) 99.—**CAN.**

3081a. —— **As to loss of title deeds.**] —The title deeds being stolen from a mtgee., the account directed with an inquiry.—STOKOE *v.* ROBSON (1814), 3 Ves. & B. 51; 35 E. R. 398.

3104a. —— ——.]—*Re* HEGINBOTHAM; PEIRCE *v.* HARRISON (1935), 180 L. T. Jo. 455.

3122. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

3140a. —— ——.]—A District Council having advanced the sum of £200,000 upon the security of freehold houses, the mtgor. became bkpt. The council put in a proof for their debts, valuing their security at £160,000, without obtaining a professional valuation. The council also issued a foreclosure summons against the mtgor., again valuing their security at £160,000, & a foreclosure order *nisi* was made according to the form in Seton's Judgments & Orders, 7th ed., vol. iii., p. 1892, which has been in use in such cases for many years. The order contained a declaration that pltfs. were entitled to hold the mtged. property as security for £160,000 & interest thereon. The council subsequently obtained a professional valuation of the mtged. property at £200,000, & they moved in bkpcy. to amend the valuation in their proof. The judge in bkpcy. held that he could not consider the application as long as the valuation of £160,000 in the foreclosure order stood. The council then moved in the Ch. Div. for leave to amend the foreclosure order by increasing the valuation to £200,000: —*Held:* the foreclosure order as it stood prevented the council from exercising the right they had in bkpcy. to apply to amend their proof, & notwithstanding the long period between the date of that order & the date of the application & the long period during which the form of order had been used, it was right to discharge the order & make a fresh order with a declaration that pltfs. were entitled to hold the mtged. properties for the respective amounts of principal & interest due to them upon the security of the mtges.—HAYES & HARLINGTON URBAN DISTRICT COUNCIL *v.* WILLIAMS TRUSTEE, [1936] Ch. 315; 105 L. J. Ch. 312; 154 L. T. 695; 80 Sol. Jo. 91; [1936] B. & C. R. 87.

3155a. —— **Property vested in mortgagee.**]—By a foreclosure decree on an equitable mtge., the mtgor. was declared a trustee, & an order was made vesting the estate in the mtgee.—LECHMERE *v.* CLAMP (No. 2) (1861), 30 Beav. 218; 30 L. J. Ch. 651; 9 W. R. 860; 54 E. R. 872.

PART XIII. SECT. 7, SUB-SECT. 6.—B. (a).

sa. *Questions of mixed law & fact involved—Defendant though not appearing filing notice disputing amount claimed.*]—RAFELMAN *v.* KIPROFF, [1928] 4 D. L. R. 310; 62 O. L. R. 629.—**CAN.**

sb. *Misdating of master's report.*]—Where accounts were taken in a foreclosure action & the master's report was dated a day earlier than it should have been:—*Held:* the report was good.—NORWICH UNION LIFE INSURANCE SOCIETY *v.* OKE, [1933] 2 D. L. R. 749; O. R. 679.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—B. (c).

m —— *Power of master to compute.*]—TORONTO GENERAL TRUST CORPN. *v.* TURTON, [1929] 4 D. L. R. 1072; 1 W. W. R. 915; 23 S. L. R. 625.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (b) i.

sc. *Inclusion of injunction against waste by mortgagor in possession.*]—CAWTHRA *v.* MCGUIRE (1859), C. L. J. O. S. 142.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (b) ii.

3105 v. —— —— ——.]—REDMOND *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1931] 1 W. W. R. 197.—**CAN.**

d i. —— ——.] — WALLACE *v.* MCMASTER, [1931] 1 W. W. R. 79; 1 D. L. R. 1016; 25 S. L. R. 219.—**CAN.**

sy. *Effect of payment—Action at an end.*]—DE COTEAU *v.* PHILLIPS, [1930] 1 W. W. R. 844; 2 D. L. R. 1004; 24 S. L. R. 397.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (c).

sz. *Crown judgment creditor for income tax & sales tax—Foreclosure as subsequent encumbrancer.*]—In a mtge. action, the King & the A.-G. for Canada were added as parties in a local master's office, as subsequent encumbrancers in respect of executions against the mtgor. upon judgments recovered for income & sales tax:—*Held:* the Crown was not in any sense the owner of the equity of redemption, & having submitted itself to the ordinary rules of procedure in an action, by recovering judgment & issuing execution for Crown debts, could be foreclosed in another action as an ordinary execution creditor of the mtgor.—BARTLETT *v.* OSTERHOUT, [1931] 3 D. L. R. 609; O. R. 358.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) i.

sd. *Sale of mortgagor's interest—Not land itself.*]—It is the proper practice in Nova Scotia, in an action by a mtgee. for foreclosure & sale, that the order provide for the advertisement & sale, not of the lands & premises in question *simpliciter*, but only of the interest of deft., mtgor., & of persons claiming under or through him. The ct. has full power & control over the advertising & the form of the deed which the sheriff is to execute.—MORTGAGE CORPN. OF NOVA SCOTIA *v.* ALLEN, [1930] S. C. R. 16; *affg.*, [1929] 4 D. L. R. 529.—**CAN.**

sf. *Provision that sale be subject to reserve bid.*]—In Saskatchewan an order for sale in a mtge. action should not provide that the sale be subject to a reserve bid.—BK. TORONTO *v.* MATHESON & MCCASKILL, [1928] 2 D. L. R. 991; [1928] 1 W. W. R. 846; 22 Sask. L. R. 467.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) ii.

q i. —— *To postpone sale.*]—MURDOCK *v.* LAWSON (1874), 9 N. S. R. 454.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—E. (a).

3166 i. *When made in first instance.*]—On motion for judgment in default of defence, immediate foreclosure will be ordered if it appears that the allowance of a period for redemption would be detrimental to the mtgee. & no benefit to mtgor.—ELKINGTON *v.* WILLETT (No. 2), 49 B. C. R. 325.—**CAN.**

3169 i. —— *On default of defence.*]—ANGLICAN SYNOD *v.* RUSSELL & MAY (1927), 38 B. C. R. 400.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—E. (c) i.

g i. —— ——.]—W., having a "charge" on lands duly recorded in the land titles office, alleging that the charge was in arrear, began foreclosure proceedings in the Supreme Ct. of Ontario, which resulted in a decree & final order for foreclosure:—*Held:* the master should record W. as owner of the land if he found that all persons having claims subsequent to the charge were foreclosed by the decree & order. It is not the duty of the master of titles to review the proceedings in the ct.; he must give the orders of the ct. their full effect without going behind them in any way. He is entitled to ask for proof that there has been no appeal or application to open the foreclosure; but not for proof that the proceedings leading up to the decree & final order were regular & sufficient.—*Re* WEST, [1928] 1 D. L. R. 937; 61 O. L. R. 540.—**CAN.**

sw. *Ex parte application—No right to apply for immediate possession.*]—Rule 542 (*f*) does not warrant the making on an *ex parte* application for a final decree of foreclosure in a mtge. action a special application for immediate possession. The application which may be made *ex parte* under rule 542 (*f*) is for the decree provided in the rules. If pltf. is seeking greater or different relief, or setting up facts not impliedly admitted on default of defence, deft. is entitled to notice thereof & must be given an opportunity to contest the new issue thus raised. On an *ex parte* application the applicant is under the duty of disclosing all pertinent facts.—SANFASON *v.* ALTICE, [1931] 1 W. W. R. 118.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 8.—A. (a).

3229 viii. —— ——.]—HURON & ERIE CORPN. *v.* WILLIAMS, [1934] 2 W. W. R. 479.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 8.—A. (b).

d i. —— *By mortgagee—Mortgage obtained by fraud.*]—BRABAZON *v.* PETERSON, [1932] 3 W. W. R. 666.—**CAN.**

3378. *Add. Citations :—sub nom. Re* CLAYTON & BARCLAY'S CONTRACT, [1895] 2 Ch. 212 ; 64 L. J. Ch. 615 ; *sub nom.* CLAYTON *v.* BARCLAY, 72 L. T. 764 ; 59 J. P. 489 ; 43 W. R. 549 ; 11 T. L. R. 415 ; 39 Sol. Jo. 503 ; 13 R. 556.

Add. Annotations :—**Refd.** London & County Contract *v.* Tallack (1903), 51 W. R. 408 ; Official Receiver *v.* Cooke, [1906] 2 Ch. 661 ; *Re* Kent County Gas Light & Coke Co., [1909] 2 Ch. 195.

Part XIV.—Discharge of Mortgages.

3384a. —— **Assignment of one property subject to mortgage.**]—M. was entitled to a life interest & a contingent reversionary interest under a settlement. He mtged. these interests together with a life policy & subsequently was adjudicated bkpt. The trustee in bkpcy. sold the interests under the settlement & assigned them subject to the mtge. but retained the life policy. The purchasers of the interests under the settlement paid the mtge. interest & the premiums on the policy as they fell due. M. then died & the mtge. was satisfied out of the policy moneys. The question raised was whether the discharge of the mtge. debt fell (i) wholly upon the proceeds of the policy, or (ii) wholly upon the settlement interests, or (iii) must be apportioned between the proceeds of the policy & the settlement interests in the proportion of their respective values :—*Held :* the mtge. debt must be rateably apportioned between the policy moneys & the settlement interests. The assignment was subject to the mtge., & there was nothing in the assignment or in the relevant surrounding circumstances to displace the *primâ facie* rule that contribution takes place. It was true that the trustee in bkpcy. stood in no better position than the bkpt., but the latter, though he retained one of the properties mtged., was not compelled to bear the whole debt when he had expressly assigned the other subject to the mtge.—*Re* MAINWARING, MAINWARING *v.* VERDEN, [1937] Ch. 96 ; [1936] 3 All E. R. 540 ; 106 L. J. Ch. 49 ; 156 L. T. 11 ; 53 T. L. R. 103 ; 80 Sol. Jo. 931, C. A.

3385. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

3399. *Add. Annotation :*—**Consd.** *Re* Mainwaring, Mainwaring *v.* Verden, [1936] 3 All E. R. 540.

3400. *Add. Annotation :*—**Consd.** *Re* Mainwaring, Mainwaring *v.* Verden, [1936] 3 All E. R. 540.

3404. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3423. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3427. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3433. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3434. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3436a. —— —— ——.]—In the absence of express authority or holding out, the mere receiving of interest on a mtge. by the mtgee.'s solr. does not imply authority to receive the principal. The solr. is, for this purpose, agent of the mtgor. & not of the mtgee.—BONHAM *v.* MAYCOCK (1928), 138 L. T. 736 ; 44 T. L. R. 387 ; 72 Sol. Jo. 254.

PART XIII. SECT. 7, SUB-SECT. 8.—H. (a).

g i. —— *Agreement in mortgage to extend time.*]—MACKENZIE *v.* MACKENZIE ESTATE, [1932] 3 W. W. R. 159.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.—C. (b).

3389 i. *Creditors of testator.*]—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369 ; 45 N. S. W. W. N. 88.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 1.—A.

d (p. 603) i. ——.]—CAMPBELL *v.* RAYNOR, [1926] 4 D. L. R. 686 ; 59 O. L. R. 466.—**CAN.**

sx. *Payments on account—Whether mortgage discharged.*]—*Held :* the transactions which had taken place discharged the mtge. debt.—BUCHANAN *v.* KERBY (1855), 5 Gr. 332.—**CAN.**

sy. —— ——.]—*Held :* the circumstances were sufficient to show that the mtge. was intended to cover a floating balance, & was not satisfied.—RUSSELL *v.* DAVEY (1858), 7 Gr. 13.—**CAN.**

3423 i. *Set-off.*]—DICK *v.* SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—**CAN.**

3423 ii. ——.]—Pltfs. sought a declaration that a mtge. of which deft. was the assignee had been wholly paid & satisfied by the exercise of the right of set-off in an action in which pltf. K. had sued deft.'s assignor on a mtge. which the assignor had assumed & which had become payable in consequence of the assignor's default in paying taxes. It was found that express notice in writing of the assignment had been given pltfs. after said default :—*Held :* the claims of the parties under, respectively, the mtge. assigned by deft. & the assignor's said breach of covenant had a common origin & the obligations which gave rise to them were interwoven in the one & the same contract, & there was a legal set-off available to pltfs. against deft. assignee unless pltfs. were estopped & there was no evidence to support the plea of estoppel.—MACDONALD APARTMENTS, LTD. *v.* FALSE CREEK LUMBER CO., LTD., [1936] 1 W. W. R. 543.—**CAN.**

b (p. 604) i. —— *Defects in.*]—The absence of the residence & occupation of the subscribing witness to a certificate of discharge of mtge., on the face of the certificate, though stated in the affidavit :—*Held :* clearly no objection, being cured by 36 Vict. c. 17, s. 8 (O.).—STODDART *v.* STODDART (1876), 39 U. C. R. 203.—**CAN.**

d (p. 604) i. ——.]—EWART *v.* DRYDEN (1867), 13 Gr. 50.—**CAN.**

sz. *Payment to mortgagor's nominee —Nominee absconding — Mortgagor e.* PALM (1925), 35

PART XIV. SECT. 2, SUB-SECT. 1.—B

p i. ——.]—ROWE *v.* JOHNSON, [1928] V. L. R. 515 ; 49 A. L. T. 311.—**AUS.**

sa. *Payment by assignee of second mortgage—To solicitor of first mortgagee —Misappropriation by solicitor—Position of assignee.*]—LIVINGSTONE *v.* TORONTO WINE MANUFACTURING CO., LTD., [1932] S. C. R. 175 ; 1 D. L. R. 529.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—D.

sk. *On rights of subsequent encumbrancer.*]—KERSCHNER *v.* CONVENTION OF BAPTIST CHURCHES, [1930] 2 W. W. R. 280 ; 4 D. L. R. 135 ; 43 B. C. R. 4.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.

sm. *Discharge of mortgage on execution & performance of agreement.*]—WEST ACCIDENTAL FIRE INSURANCE CO. .. [1927] 3 D. L. R. 260.—**CAN.**

PART XIV. SECT. 3, SUB SECT. 1.

n i. ——.]—Pltf. was the assignee of a mtge., & defts., the purchasers of the equity of redemption from R., the mtgor., covenanted to assume the incumbrances on the land, & pltf., in consideration of the assignment to him of that covenant of indemnity, released R. from all liability upon his personal covenant contained in the mtge. :—*Held* the mtge. debt was not wiped out by the release, & pltf.

3451. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

3453a. ——.]—By a mtge. made in 1922 the widow of J., who was tenant for life under his will, mtged. a farm to W., a brother of J., to secure £1,000 & interest at 5 per cent. The widow died in 1923, having appointed her two daughters, E. & A., exors. of her will. The mtge. contained no personal covenant for payment of the principal, & the mtgee. accepted interest at 3½ per cent., reduced in 1924 to 3 per cent. In 1924 W., who was on very friendly terms with his brother's family, gave the deeds relating to the farm, other than the mtge. deed, to E. & A. to retain in their custody. On Dec. 11, 1927, W., who had since 1922 been suffering from an incurable disease & knew that he could not possibly live long, called upon his nieces, who were aware of his state of health, & gave them an envelope indorsed in his own handwriting: "Deeds relating to X. farm to be given up at death. W.," saying: "I have brought this down for you; put it away." After he had left the house the envelope was opened, & was found to contain the mtge., which the nieces placed in their safe. On Jan. 23, 1928, W. died of pneumonia following a chill. In an action by his exors. for a declaration that the mtge. was a subsisting security & to enforce it:—*Held:* there was a valid *donatio mortis causâ* by W., & a release of the mtge. to the two daughters of J. for the benefit of his estate.—WILKES *v.* ALLINGTON, [1931] 2 Ch. 104; 100 L. J. Ch. 262; 144 L. T. 745; 47 T. L. R. 307; 75 Sol. Jo. 221.

3453b. —— ——.]—RICHARDS *v.* SYMS (1740), Barn. Ch. 90; 2 Eq. Cas. Abr. 617; 27 E. R. 567, L. C.

Annotations :—**Consd.** Hassell *v.* Tynte (1756), Amb. 318; Cross *v.* Sprigg (1849), 6 Hare, 552. **Refd.** Duffield *v.* Elwes (1827), 1 Bli. N. S. 497.

3477a. Title of mortgagee extinguished by Statute of Limitations.]—Where the owner of a legal estate in fee simple in land executes a mtge. & hands over the mtge. & other title deeds to the mtgee., but fails to pay any interest on the mtge. or give any acknowledgment of the mtge. debt for more than twelve years, the mtgee. loses all title to the land & the mtgor. can recover possession of the mtge. & other title deeds.—LEWIS *v.* PLUNKET, [1937] Ch. 306; [1937] 1 All E. R. 530; 106 L. J. Ch. 125; 156 L. T. 211; 53 T. L. R. 299; 81 Sol. Jo. 179.

3495a. Jurisdiction to stay—Terms.]—In an ejectment on a forfeiture in not paying mtge. money, deft. is entitled to have proceedings stayed under Mortgage Act, 1733 (c. 20), upon payment of the principal & interest due on the mtge. deed, with the costs incurred, without paying any bygone interest not included in the mtge. or the expense of preparing the mtge. deed or any assignment of it.—DOE d. BLAGG *v.* STEEL (1832), 1 Dowl. 359.

3514a. Endorsed receipt—No statement that payer not entitled to immediate equity of redemption—Validity.]—SIMPSON *v.* GEOGHEGAN (1934), 78 Sol. Jo. 930.

3587a. —— —— **Tenant for life in remainder.**]—When a tenant for life in remainder pays off a mtge. on the property, the mtge. is, in the absence of evidence of a contrary intention, kept alive for his benefit.—*Re* CHESTERS, WHITTINGHAM *v.* CHESTERS, [1935] Ch. 77; 104 L. J. Ch. 65; 152 L. T. 210; 78 Sol. Jo. 634.

3596. *Add. Annotation :*—**Apld.** *Re* Chesters, Whittingham *v.* Chesters, [1935] Ch. 77.

was entitled to enforce the covenant of indemnity.—ESSER *v.* PRITZKER, [1926] 2 D. L. R. 645; 58 O. L. R. 537.—**CAN.**

f i. *Statutory discharge executed by one of two executors of deceased mortgagee.*]—*Held:* effective, when registered, as a reconveyance of the land.—*Re* A. & B., [1927] 3 D. L. R. 1070; 60 O. L. R. 647.—**CAN.**

s b. *Right of mortgagee to release portion of mortgaged property—To purchaser of that portion—Bond given by purchaser to mortgagor for payment of proportion of debt.*]—BANK OF MONTREAL *v.* HOPKINS (1864), 2 E. & A. 458.—**CAN.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

t i. —— *Effect of Land Registry Act.*]—Notwithstanding Land Registry Act, R. S. B. C., 1924, s. 183, a mtgor. is entitled to a reconveyance on paying the amount due on the mtge.—RICHARDSON *v.* ROYAL TRUST CO. (1932), 45 B. C. R. 512.—**CAN.**

PART XIV. SECT. 3, SUB-SECT. 5.—E.

si. *Memorandum of discharge—"Duly executed"—What amounts to.*]—A memorandum of discharge of a mtge. is "duly executed" within Real Property Act, R. S. M., 1913, s. 112, when it is executed by the person appearing on the register as the owner of the mtge.—DALLAS *v.* TORONTO GENERAL TRUSTS CORPN., [1936] 3 W. W. R. 219; 4 D. L. R. 233; 6 F. L. J. (Can.) 116, *sub nom.*—TORONTO GENERAL TRUSTS CORPN. *v.* DALLAS (1936), 44 Man. L. R. 320.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—C.

3556 iv. ——.] — The principle, enunciated in *Smith* v. *Phillips*, No. 3578, which is based on *Toulmin* v. *Steere*, No. 3555, is not applicable to India.—MANGTULAL BAGARIA *v.* UPENDRA MOHAN PAL CHAUDHURI (1929), I. L. R. 57 Calc. 82.—**IND.**

PART XIV. SECT. 4, SUB-SECT. 2.—D.

3565 ii. ——.]—If a third person at the request of mtgor. pays off a first mtge. such third person, in default of evidence to the contrary, is entitled in equity to be subrogated to the rights & position of the first mtgee. who has been paid off. Under Registry Act, R. S. O., 1927 & Mtges. Act, R. S. O., 1927, s. 11, the third party's right of subrogation is not void as against subsequent purchasers or assignees who have actual notice of the circumstances giving rise to the third person's right of subrogation.—FERGUSON *v.* ZINN, [1933] O. R. 9; 1 D. L. R. 300.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—E.

n i. ——.]—CLARY *v.* BOULAY, [1928] 2 D. L. R. 144.—**CAN.**

3573 xv. —— ——.]—In order that a subsequent mtgee., who has paid off a prior mtge., should have priority over the rest, it is sufficient to show that the parties intended that the mtgee. should have the first & only charge, & it is immaterial whether there was any intention to keep alive the prior mtge.—PANDIT DURGA MISSIR *v.* BAIJNATH SARAN (1928), I. L. R. 8 Pat. 360.—**IND.**

PART XIV. SECT. 4, SUB-SECT. 2.—G. (b) i.

3605 xi. ——.]—An owner of land who has paid off a mtge. thereon is deemed to have extinguished the mtge., unless it appears from the circumstances of the transaction that he intended to keep it alive for his own benefit.—HOPPS *v.* BOROWSKI, [1928] 2 D. L. R. 72; [1928] 1 W. W. R. 545; 22 Sask. L. R. 434.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—G. (b) iv.

3624 i. *Devise to mortgagee.*]—*Re* PARSHALLE ESTATE, SHAW *v.* COX, [1930] 2 W. W. R. 802; 3 D. L. R. 1004; *sub nom. Re* PARSHALLE, COX, 43 B. C. R. 68.—**CAN.**

Part XV.—Avoidance of Mortgages.

3646. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part XVI.—Accounts.

3663. *Add. Annotation :*—*As to* (1) **Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

3694. *Add. Annotation :*—**Distd.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

3698. *Add. Annotations :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Smith *v.* Wood (1928), 139 L. T. 250.

3765. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

3777. *Add. Annotation :*—**Folld.** *Re* Smith's Mortgage, Harrison *v.* Edwards, [1931] 2 Ch. 168.

Part XVII.—Interest on Mortgages.

3950. *Add. Annotation :*—*As to* (1) **Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

3974. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81; I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179.

3990. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

Part XVIII.—Costs, Charges, and Expenses.

4054. *Add. Annotations :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732; Thomas *v.* Jones, [1928] P. 162.

4061a. ——.]—In 1897 the trustees of the will of J. & Mrs. J. executed a consolidating mtge. to B. upon certain securities to secure a certain amount. In 1924 & 1926 B. made further advances to Mrs. J., who was the owner in fee, upon the same securities. Mrs. J. died in 1926. In Jan. 1927 her trustees applied

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PART XV.

sc. *Lien granted over unpatented land —Transfer to third party—Patent issued to third party on payment of arrears.*]—NORTHWEST THRESHER CO. *v.* BOURDIN (1910), 15 W. L. R. 181.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.

sd. *Subsequent encumbrancers—In absence of fraud or collusion.*]—In the case of a common-law mtge. an account whether taken in or out of ct. between a mtgee. & mtgor., or person standing in his place, binds subsequent encumbrancers, though they were not privy to the taking of it, unless there is fraud or collusion; & there is nothing in Land Titles Act, R.S.A., 1922, which renders this rule inapplicable with respect to a mtge. under that Act.—CANADIAN BANK OF COMMERCE *v.* POSTMAN & POSTMAN, [1931] 3 W. W. R. 737.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 3.—B.

3770 i. *Improvements by mortgagee—Occupation rent not increased—Unless improvements allowed.*]—DONOVAN *v.* HANNA, [1926] N. Z. L. R. 883.—**N.Z.**

PART XVI. SECT. 2, SUB-SECT. 4.—A.

sf. *Mortgagees carrying on business with mortgagor in their employ—Payment of wages—Value of goodwill.*]—VAN VOLKENBERG *v.* WESTERN CANADA RANCHING CO. (1898), 6 B. C. R. 284.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 4.—C.

n i. —— ——.]—FOSTER *v.* MORDEN (1881), 29 G. R. 25.—**CAN.**

PART XVII. SECT. 1.

3907 i. *A charge on mortgaged property.*]—MANGHI *v.* DIAL CHAND (1926), I. L. R. 7 Lah. 559.—**IND.**

e i. ——.]—Applt. agreed to loan to T. Co., on mtge. of real estate, $30,000, at 7½ per cent. interest, but stipulated that, in consideration of making the loan, it should receive a bonus of $3,000, to which T. Co. agreed. The mtge. on its face was one for $30,000, bearing interest half-yearly at 7½ per cent. *per annum*, & containing no reference to the bonus. Applt. issued its cheque to T. Co. for $28,505.55, being the $30,000 less deductions for taxes, insurance premiums & solrs.' costs, & took a cheque from T. Co. for the $3,000 bonus. Some payments were made, but T. Co. became insolvent, &, the mtge. being in arrear, applt. advertised the property for sale, & the liquidator paid off the amount owing, on the basis of the full face amount of the mtge., without knowledge of the bonus. He sued to recover the $3,000, with interest paid thereon, invoking sects. 6 to 9 of Interest Act, R. S. C., 1927 (c. 102):—*Held:* he could not recover. The agreement for the bonus was legal & enforceable. The Act did not apply; in view of the effect of the legislation in question, its application should be confined to mtges. coming clearly within its description; &, taking the precise language of sect. 6, it applies only to mtges. which on their face come within the description in that sect.—LONDON LOAN & SAVINGS CO. OF CANADA *v.* MEAGHER, [1930] S. C. R. 378; 2 D. L. R. 849; *revsg.*, [1930] 1 D. L. R. 701; 64 O. L. R. 600; *affg.*, [1929] 4 D. L. R. 565; 64 O. L. R. 221.—**CAN.**

e ii. ——.]—Where a mtge. does not comply with Interest Act, 1927, s. 6, the mtgor. is relieved from all liability for interest.—ROGERS *v.* LABOW, [1929] 3 D. L. R. 845; 64 O. L. R. 309.—**CAN.**

e iii. ——.]—LAURIER *v.* VALLEE, [1931] 1 D. L. R. 465.—**CAN.**

e iv. ——.]—Where there was nothing upon the face of the mtge. which brought it within Interest Act, R. S. C., 1927, s. 6, & where the mtge. had on its face a statement showing the amount of the principal money & the rate of interest chargeable, the mtge. was held not to come within sect. 6, & therefore sect. 9 did not apply.—BOWMAN *v.* DENISON, [1930] 4 D. L. R. 671; 65 O. L. R. 613.—**CAN.**

e v. ——.]—LEVY *v.* BOOKSPAN, [1931] 2 D. L. R. 1007.—**CAN.**

g (p. 657) **i.** —— *When granted.*]—The ct. cannot reduce the rate of interest or interfere with the stipulation for compound interest merely on the ground that the interest stipulated is considered to be excessive or that the interest has amounted to a large sum owing to deft. not paying it at the stipulated periods of the rests agreed upon in the bond.—RAM KRISHNA KULASI *v.* HERAMBA CHANDRA RAY (1929), I. L. R. 56 Calc. 960.—**IND.**

PART XVII. SECT. 4, SUB-SECT. 2.

3964 z. ——.]—*Re* BROWN, [1928] 1 D. L. R. 1125; 61 O. L. R. 602.—**CAN.**

PART XVII. SECT. 16.

sm. *Effect of consent to variation of rate of interest.*]—MORTLEMAN *v.* PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—**N.Z.**

for & were granted a further advance on the same securities by B., whose solrs. had attended to the previous transactions. The deed secured an immediate advance, & it also secured all the previous existing securities, although the old securities had been kept on foot for the purpose of preserving priorities, & there was a new proviso for redemption. B.'s solrs. carried in a bill for taxation, the charges being according to the scale in Sched. I., Part I., of the General Order under Solrs.' Remuneration Act, 1881 (c. 44), for "investigating title & preparing & completing deed of security." The taxing master took the view that Sched. I. did not apply, & taxed the bill accordingly:—*Held:* there had been an "investigation of title" within Sched. I., & the matter must be referred back to the taxing master.—*Re* COWARD, CHANCE & Co., [1928] Ch. 379; 97 L. J. Ch. 234; 139 L. T. 113; 72 Sol. Jo. 225.

4070. *Add. Annotations:—As to* (2) **Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

4127a. Action by devisee of mortgagee—Against heir & executor of mortgagor—Heir of mortgagee also party.]—The devisee of a mtgee. filed his bill against the heir & exor. of the mtgor. for a foreclosure, & also made the heir of the mtgee. a party in order to establish the will against him. This latter party cannot have his costs out of the estate.—SKIPP *v.* WYATT (1787), 1 Cox, Eq. Cas. 353; 29 E. R. 1200.

4246a. ——.]—In [actions for redemption of mtges.] where redemption is opposed altogether, the mtgee. may either be deprived of costs up to trial or may be—more frequently is—ordered to pay them; but never, so far as I am aware, is the mtgor. who succeeds, in spite of opposition, in obtaining a judgment for redemption ordered to pay any of the mtgee.'s costs up to judgment (WARRINGTON, L.J.).—CARLTON MAIN COLLIERY CO., LTD. *v.* CLAWLEY, [1917] 2 K. B. 691; 86 L. J. K. B. 1294; 117 L. T. 324; 33 T. L. R. 448; 61 Sol. Jo. 629; 10 B. W. C. C. 384. C. A.; *revsd. on other grounds, sub nom.* CLAWLEY *v.* CARLTON MAIN COLLIERY CO., LTD., [1918] A. C. 744, H. L.

4324. *Add. Annotation:*—**Folld.** *Re* Smith's gage, Harrison *v.* Edwards, [1931] 2 Ch.

4326a. —— **Sale by mortgagee under Bid by mortgagor—Registration of estate contract—Costs of action for specific performance & of removal of estate contract from register.**]—The first mtgees. of property subject to a second mtge. put it up for sale by auction in exercise of their statutory power. The mtgor. attended the sale & bid for the property, but her bid was not accepted; & the highest genuine bidder was declared the purchaser. The mtgor. claiming that she had purchased the property, registered an estate contract in respect of it & sued the vendors for specific performance. The action was dismissed with costs. Upon a summons taken out by the first mtgees. against the second mtgees.:—*Held:* the costs of the action & of taking the estate contract off the register were not "costs, charges or expenses, properly incurred incident to the sale" within Law of Property Act, 1925 (c. 20), s. 105, & the first mtgees. were not entitled to deduct them from the net proceeds of the sale.—*Re* SMITH'S MORTGAGE, HARRISON *v.* EDWARDS, [1931] 2 Ch. 168; 100 L. J. Ch. 276; 145 L. T. 441.

4326b. —— **Proceedings for rectification of register—Action by poor person.**]—The general rule that a mtgee. is entitled to add the costs, charges & expenses of defending his title to his security applies notwithstanding that the mtgor. has obtained leave to sue as a poor person. R. S. C., Ord. 16, r. 28, which provides that "a poor person shall not be ordered to pay any costs" is dealing with costs of litigation & not with such a matter as a mtgee.'s right to add his costs, charges & expenses to his security, which is treated as an incidental or implied term of the mtge. contract.—*Re* LEIGHTON'S CONVEYANCE, [1937] Ch. 149; [1936] 3 All E. R. 1033; 106 L. J. Ch. 161; 156 L. T. 93; 53 T. L. R. 273; 81 Sol. Jo. 56, C. A.

4391. *Add. Annotation:* — **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4392. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4393. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

PART XVIII. SECT. 3, SUB-SECT. 2.

q i. —— *Not limited to sum paid into court.*] — LEMIEUX *v.* MCDONALD (Sask.), [1929] 3 D. L. R. 644.—**CAN.**

sp. *Appropriate scale.*]—**CANADA LIFE ASSURANCE CO.** *v.* MCCLELLAN, [1933] 3 W. W. R. 557; 47 B. C. R. 438.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 4.—B.

4240 i. *Overstatement of amount due.*]—The mere fact that a mtgee. suing for foreclosure claims a larger amount than that found due to him is not such misconduct as justifies depriving him of his costs.—MAYHEW *v.* ADAMS, [1931] 1 D. L. R. 611; [1930] 3 W. W. R. 359; 25 S. L. R. 204.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 4.—G.

so. *Right of mortgagee to set off amount of taxes paid against liability for costs—Parties entitled to costs not liable for taxes.*]—FRIESEN *v.* SASKATCHEWAN MORTGAGE & TRUST CORPN., [1924] 2 D. L. R. 1246; [1924] 2 W. W. R. 608.—**CAN.**

PART XVIII. SECT. 13.

4398 i. *Costs of appeal—How borne—Right to payment forthwith.*]—A mtgor. & *puisne* mtgee. having appealed unsuccessfully from an order setting aside the registrar's certificate & directing a new account to be taken:—*Held:* the mtgee. was entitled to have the usual rule, that the cost of an unsuccessful appeal are payable forthwith, adhered to.—CANADA PERMANENT MORTGAGE CORPN. *v.* DALGLEISH, [1928] 3 D. L. R. 59; [1928] 1 W. W. R. 922.—**CAN.**

PART XIX.

sc. *Debt Adjustment Acts—Application for cancellation of certificate—Matters for consideration.*]—A certificate under Debt Adjustment Act 1931, should not be withheld or withdrawn if, without real injustice & hardship to any creditor, it offers a reasonable possibility that "the resident" will be able to recover himself financially when conditions become normal again.—*Re* PETRICH & ERICKSON & DEBT ADJUSTMENT COMR., [1932] 1 W. W. R. 459.—**CAN.**

sf. —— —— ——.]—ANDERSON *v.* DEBT ADJUSTMENT COMR., [1932] 2 W. W. R. 120.—**CAN.**

sg. —— *Restraint of sale of homestead.*]—REIDER *v.* NATIONAL TRUST CO., LTD., [1932] 3 W. W. R. 428; 40 Man. L. R. 657.—**CAN.**

sh. —— *Mortgage after Apr. 1, 1931 for prior indebtedness.*]—*Held:* where an unsecured debt existed prior to Apr. 1, 1931, the amount being in dispute, & after that date a settlement was arrived at by which the amount was agreed upon & the debtor gave a mtge. as security therefor, & the mtgee. sought to exercise his power of sale under the mtge. the case was not one in which "the whole of the original consideration" within Debt Adjustment Act, 1932, s. 7, arose after Apr. 1, 1931. Therefore, the Act applied to the sale proceedings.

The covenant referred to in sect. 7 of said Act is the covenant to pay

contained in the mtge. & not the right given by Landlord & Tenant Act to appropriate the rents. Where the mtgor. is not a farmer or home owner said right & the similar right under sect. 8 of Real Property Act, R. S. M., 1913. are not interfered with.—McDIARMID *v.* McDIARMID (J.) Co., LTD., [1933] 1 W. W. R. 554; 3 D. L. R. 187: 41 Man. L. R. 81.—**CAN.**

sk. —— *Default in payment of taxes.*]—HOUGHTON *v.* TRUST & LOAN CO. OF CANADA, [1933] 2 W. W. R. 125; 3 D. L. R. 493; 41 Man. L. R. 299.—**CAN.**

sm. —— *Appeal—Jurisdiction.*]—The Ct. of Appeal of Manitoba has jurisdiction to entertain an appeal from an order of a County Ct. made upon an appeal to it from an order of the Debt Adjustment Comr.—*Re* HETHERINGTON ESTATE, FAULKNER & OLIVER *v.* MARTENS & DELICHTE, [1934] 3 W. W. R. 29; 4 D. L. R. 243; 42 Man. L. R. 393.—**CAN.**

sn. —— *Commissioner cannot reopen agreement between mortgagor & mortgagee.*]—A mutually acceptable agreement between mtgor. & mtgee. cannot be reopened or varied by the Comr. under Debt Adjustment Act, 1932, Man.—*Re* HETHERINGTON ESTATE, FAULKNER & OLIVER *v.* MARTENS & DELICHTE, [1934] 3 W. W. R. 29; 4 D. L. R. 243]: 42 Man. L. R. 393.—**CAN.**

sp. —— *Jurisdiction of county court.*]—Under Debt Adjustment Act, 1932, the county ct., which is the "ct." within said Act, has no jurisdiction to entertain an application under sect. 22c as enacted by 1934, c. 9, s. 14, for a stay of proceedings where the appct. is an assignee of an agreement for sale from a purchaser who was the mtgor. under the mtge. under which the sale or foreclosure proceedings have been taken, since such appct. is neither the owner subject to a mtge. given by himself nor the purchaser under an agreement for sale executed by himself.—TAYLOR *v.* LONDON LIFE INSURANCE CO., [1935] 1 W. W. R. 69; 43 Man. L. R. 97.—**CAN.**

sr. —— *Action by mortgagee—Leave to proceed against second mortgagee—Necessity for.*]—GREAT WEST LIFE ASSURANCE CO. *v.* STOUTENBURG & McDONALD, [1935] 1 W. W. R. 721.—**CAN.**

ss. —— *Sale of land on crop payment plan.*]—*Re* RICHMOND *v.* DYCK, [1934] 3 W. W. R. 735.—**CAN.**

st. —— *"Retired farmer resident"—Who included.*]—A "retired farmer resident" within Debt Adjustment Act, 1932, includes the personal representative, child, widow or widower of a deceased retired farmer resident.—*Re* BLANKS, [1935] 1 W. W. R. 379.—**CAN.**

su. —— *Action begun before Act in force—Whether leave for execution necessary.*]—FREEDMAN *v.* HOWARD, [1935] 2 W. W. R. 267; 2 D. L. R. 285; 49 B. C. R. 417.—**CAN.**

sc. ——*Order for transfer to mortgagee—Lease to mortgagor with option to repurchase—Effect of.*]—Mtgees. under a mtge. in default applied to the Comr. under Debt Adjustment Act, 1932, for leave to proceed on the mtge. Leave was refused, but the Comr. ordered the mtgor. to give the mtgee. a quit-claim deed or transfer, & the mtgees, to give the mtgor. a lease of the land at a one-third crop rental, the lease to contain an option for the repurchase of the land, at any time during the term of the lease, at an amount not exceeding the amount of the claim under the mtge., provided that in order to exercise said option, the mtgor. should pay $500 on account of the mtge., the proceeds of the sale of one-third of the crop to be applied on this $500. The transfer of the land was executed & registered, & the mtgees. gave a lease containing said option:—*Held:* notwithstanding the transfer & lease, the relationship continued to be that of mtgor. & mtgee., the transaction being intended merely to facilitate & ensure collection; & even if a new relationship was established, it should be found that the mtgor. or her personal representatives were able to pay the $500 at the expiration of the lease & the consummation of the transaction was frustrated by the mtgees.—FAULKNER *v.* MARTENS (No. 2), [1935] 3 W. W. R. 212.—**CAN.**

se. —— *Refusal of permit to foreclose—Notice of intention to continue action under* 1934 *Act—Right to give.*]—*Held:* flat & letter under the Act of 1933 amounted to nothing more than the refusal of a permit; therefore, the saving clause in sect. 16 (1) of the Act of 1934 did not apply; & pltf. had the right to give the notice of intention under the Act of 1934, & also the notice under rule 657, there being nothing in the Act of 1934 to prevent the giving of that notice, although after giving it the right under the Act to continue the action must be obtained.—GEORGIA INVESTMENT CO., LTD. *v.* LONDON BUILDING & INVESTMENT CO., LTD., [1935] 3 W. W. R. 460; 5 F. L. J. (Can.) 164.—**CAN.**

sg. —— *Application by mortgagor—Necessity for "substantial interest" in land.*]—A mtgor. applied under sect. 22c of Debt Adjustment Act, 1932, for a stay of an action which had been brought on the mtge. covenant, foreclosure or sale not being asked, & for a stay of sale proceedings in the land titles office on the mtge. The application was dismissed on the ground that on the evidence the mtgor. did not have, as required by said sect., a "substantial interest" in the land. On appeal:—*Held:* said finding was justified by the evidence & was a sufficient answer to both stays asked for.—McIVOR *v.* PATERSON, [1937] 2 W. W. R. 201.—**CAN.**

sh. —— *Proceedings by Canadian Farm Loan Board.*]—*Re* REID & CANADIAN FARM LOAN BOARD, [1937] 3 W. W. R. 1.—**CAN.**

sz. *Mortgagors' & Purchasers' Relief Act — Effect of leave.*] — Only one order granting leave to commence or continue proceedings is contemplated by Mtgors.' & Purchasers' Relief Act, 1932, & an order thereunder to commence or continue proceedings includes all such steps as may be necessary to be taken, either before or after judgment.—*Re* BRITISH COLUMBIA REALTY DEVELOPMENT CORPN., LTD., [1934] 3 W. W. R. 136.—**CAN.**

sb. —— *Order of master—Appeal.*]—There is a right of appeal from the order of a master on applications under Mtgors. & Purchasers Relief Act, 1933 (Ont.).—*Re* WATERMAN, [1936] 1 D. L. R. 117; O. R. 47.—**CAN.**

sd. —— *British Columbia Act of* 1934 *—Whether repealed.*]—*Re* INTENDED ACTION OF KNOX *v.* VENNING, [1937] 3 W. W. R. 112.—**CAN.**

NAME AND ARMS.

Part I.—Name.

62a. Costs of compliance.]—The tenant for life under a will must pay the expenses of taking testator's name & arms as directed by the will. —*Re* MERCER, DREWE-MERCER *v.* DREWE-MERCER (1889), 6 T. L. R. 95.

64. *Add. Citations :*—96 L. J. Ch. 9 ; 136 L. T. 23 ; *subsequent proceedings*, [1927] 1 Ch. 593.

64a. ——.]—SEMPLE *v.* HOLLAND (1863), 33 Beav. 94 ; 55 E. R. 302.

66. After this case add :—

—— **Land held in undivided shares.**]—*See Re* HIND, BERNSTONE *v.* MONTGOMERY, SETTLEMENTS, No. 3143g.

PART I. SECT. 7, SUB-SECT. 1.

8a. *Whether infant may change.*]—*Semble :* it is impossible for an infant to accomplish the act of taking or assuming surname by any voluntary action on his part.—*Re* TALBOT, [1932] I. R. 714.—IR.

NEGLIGENCE.

Part I.—General Principles.

1. *Add. Annotations :—As to* (1), (2) & (3) **Consd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566. *As to* (4) **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551 ; Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

2. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

3. *Add. Annotation :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

4. *Add. Annotations :—Generally,* **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296 ; Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. ; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124.

·] — HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

7. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnmouth (1929), 46 T. L. R. 85 ; Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

9. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119 ; Parker *v.* Oloxo, Ltd. & Senior, [1937] 3 All E. R. 524. **Refd.** Oliver *v.* Sadler & Co., [1929] A. C. 584 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551 ; Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606 ; Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85 ; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781 ; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

10. *Add. Annotations :*—**Refd.** Fanton *v.* Denville [1932] 2 K. B. 309 ; Haynes *v.* Harwood & Son, [1934] 2 K. B. 240.

12. *Add. Annotations :*—**Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262. **Apld.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151.

15. *Add. Annotations :—As to* (1) **Consd.** Bromily *v.* Collins, [1936] 2 All E. R. 1061. *Generally,* **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

26. *Add. Annotations :—As to* (1) **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551 ; Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

PART I. SECT. 1, SUB-SECT. 1.

5 iv. —— ——.]—Negligence is not the absence of care which will prevent an accident, but rather the absence of that care which a reasonably prudent person would exercise.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392 ; [1931] 1 D. L. R. 87 ; 25 Alta. L. R. 104 ; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

sa. *Failure to take ordinary care.*]—Negligence is a failure to take ordinary care, not a failure to take extraordinary care. In the circumstances of the present case it was open to the jury, on the evidence before them, to suppose that the infant pltf. committed a mere error of judgment, & to find that, at the most, she only failed to take extraordinary care. As it was open to the jury to think that, in relation to the acts or omission which contributed to the cause of the collision, deft. was negligent in that he failed to take ordinary care while pltf. was not negligent in that, at the most, it had been proved that she failed to take extraordinary care, the jury were bound to find for pltf., & their verdict could not be disturbed.—WRIGHT *v.* ANDERSON (No. 2), [1936] N. Z. L. R. 724 ; G. L. R. 524 ; 12 N. Z. L. J. 232.—**N. Z.**

PART I. SECT. 1, SUB-SECT. 2.

sd. *Meaning of.*]—"Gross negligence" within a statute providing that a gratuitous guest in a motor vehicle shall not have a cause of action for damages against the owner or driver for injuries sustained in an accident unless the accident was caused by the "gross negligence or wilful & wanton misconduct" of the owner or driver :—*Held :* to mean such recklessness or deliberate act as shows a disregard or indifference to the rights or safety of others as distinguished from a mere temporary lapse or involuntary & momentary neglect. The absence of even a slight degree of care to avoid obvious dangers is, undoubtedly, gross negligence.—NIX *v.* GODFREY, [1936] 1 W. W. R. 680 ; 2 D. L. R. 626 ; 5 F. L. J. (Can.) 308 ; *affd.*, [1936] 2 W. W. R. 497 ; 4 D. L. R. 365 ; 44 Man. L. R. 201.—**CAN.**

sf. ——.]—"Gross negligence" in the phrase "gross negligence or wilful & wanton misconduct" in sect. 8 of 1936, c. 106, amending sect. 85 of Vehicles Act, 1935, connotes criminal negligence, which differs from civil negligence because, objectively, it implies a want of care which may endanger human life while, subjectively, it implies a state of mind indifferent to consequences. By reserving to a passenger a cause of action against the owner & operator of a private motor vehicle for injuries sustained by him by reason of gross negligence on the part of the driver, besides those arising from wilful & wanton misconduct, the Legislature meant to make sure that he would have the right to recover for conduct of a certain tortious quality in regard to matters of omission as well as in regard to those of commission. While, therefore, there is thus obviously a distinction between the ideas involved in these terms so stated alternatively, yet the fact of their association as if affording equal grounds for liability is a reasonable basis for the assumption that the legal gravity of the fault to be predicated of the one is on a parity with that included in the other. Since "gross negligence" in said sect. does not imply so much an intention to do wrong but rather the absence of an intention to do right, the trial judge's charge to the jury herein was erroneous in so far as it instructed them in effect that the conduct constituting "gross negligence" must be intentional ; but this defect was cured by the fact that he also told them that the driver would be guilty of "gross negligence" if his conduct had shown a reckless disregard for, *i.e.* a complete indifference to, the safety & rights of others ; & by the supplemental instruction, in which in answer to the jury's question as to what kind of indifference could constitute gross negligence, he told them in the circumstances it would mean that indifference which showed that the driver was careless of the consequences & "took a chance."—SHORTT *v.* RUSH & BRITISH AMERICAN OIL CO., LTD., [1937] 2 W. W. R. 191.—**CAN.**

sg. ——.] LLOYD *v.* MILTON & DERKSON (No. 2), [1937] 3 W. W. R. 504.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

33 xxv. ——.]—An action of damages was brought against a firm of ginger beer manufacturers on behalf of two children who had been injured through drinking a bottle of ginger beer, manufactured by defenders, which contained the decayed body of a mouse. The bottle was bought from a retailer, but the mouse, unknown to the manufacturers, was in the bottle when it left their factory. It was possible for mice to enter empty bottles at a factory, but the manufacturers' system of cleansing & inspecting the bottles before filling was the best system known in the trade. There was no affirmative proof of carelessness by any of the manufacturers' servants in carrying out the system :—*Held :* defenders fell to be assoilzied ; on the ground that, as defenders neither knew that the contents of the bottle were dangerous, nor were dealers in articles *per se* dangerous, they owed no duty to the consumers, who had not contracted with them.—MULLEN *v.* BARR & CO., LTD., M'GOWAN *v.* BARR & CO., LTD., [1929] S. C. (Ct. of Sess.) 461.—**SCOT.**

33 xxvi. ——.] Pltf., who was employed by deft. in his store, observed deft. handling a loaded revolver &

38. *Add. Annotations :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776 ; Lee *v.* Luper, [1936] 3 All E. R. 817.

47. *Add. Annotation :*—**Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

52. *Add. Annotation :*—**Refd.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283.

53. *Add. Annotations :*—**Distd.** Oliver *v.* Sadler & Co., [1929] A. C. 584. **Apld.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606. **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458 ; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781 ; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

55. *Add. Annotations :*—**Distd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551. **Refd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59. *Add. Annotations :*—**Consd.** Coleshill *v.* Man-n., [1928] 1 K. B. 776 ; Gilmour *v.* Belfast Harbour Comrs. (1933), 150 L. T. 63.

59a. ——.]—In Mar. 1926, defts. carried out demolition work on premises adjoining other premises, called X., under a limited licence given by the owners of premises X. One of the conditions of the licence was that defts. should make good all damage done to premises X. by reason of the demolition operations. In the course of the operations defts. allowed debris to drop on an inaccessible part of the roof of premises X. & did not remove all the debris therefrom when the demolition work was completed. In July pltf. became the occupier of premises X. under a lease. In Sept. a heavy storm of rain washed the debris which had been left by defts. on the roof of premises X. into the gutters on the roof, & a gulley was choked & the basement of premises X. was flooded, & goods which pltf. kept there were damaged. In an action by pltf. claiming damages for defts.' negligence :—*Held :* there could be no negligence, as there was no duty on the part of defts. towards pltf.—KONSKIER *v.* GOODMAN (B.), LTD., [1928] 1 K. B. 421; 97 L. J. K. B. 263; 138 L. T. 481; 44 T. L. R. 91, C. A.

59b. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

61. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

64. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

66. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

78. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

79. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

later overheard deft. in his office inform one of her fellow-employees that he was going out to shoot himself or some one. Deft. was drunk. Shortly afterwards deft.'s statement was repeated to pltf. by the employee to whom it was made & pltf. became nervous. Deft. left his office & pltf. heard a shot fired, but shortly afterwards deft. returned unharmed. Later still, deft. continuing his erratic behaviour, tore up banknotes in pltf.'s presence, saying that he would not be there in the morning to mend them & that a death would be heard of. Pltf. alleging that deft.'s conduct shocked her & caused her to become ill, sued deft. for damages for negligence, breach of contract, assault, & for wilfully causing her harm. At the trial of the action a verdict was entered by direction of the trial judge for deft. Upon appeal :—*Held :* there was no evidence of any breach of any duty, contractual or other, towards pltf., no assault, & no intention to injure pltf. &, therefore, that the trial judge was right in directing a verdict for deft. & the appeal should be dismissed.—BUNYAN *v.* JORDAN (1936), 36 S. R. N. S. W. 350 ; 53 N. S. W. W. N. 130.—**AUS.**

60 i. *Application to recreation as well as work—Accident at game of golf.*]—Pltf. while playing golf lost her eye as the result of being struck by a golf ball played by deft. :—*Held :* deft. in playing the ball as he did, under the circumstances in question, was guilty of negligence, &, therefore, could not escape liability on the ground that pltf. had accepted the risks incidental to the ——.—RATCLIFFE *v.* WHITEHEAD, [1933] 3 W. W. R. 447; 41 Man. L. R. 570.—**CAN.**

60 ii. —— ——.]—Pltf., while playing golf on a certain course, was struck on the eye by a ball played by deft. The eye was so injured that in a few days it had to be removed. He now brought action claiming £500 by way of damages, the parties having agreed that this ct. should have jurisdiction to hear the action. On the facts stated in the judgment :—*Held :* no lack of reasonable care on deft.'s part in having failed to notice pltf. prior to making her shot had been established, nor had pltf. established that, even on the basis that deft. had or should have seen him before playing her shot, she was guilty of negligence in failing to warn him before she played.—EDWARDS *v.* MEHAFFEY (1936), 31 M. C. R. 45.—**N. Z.**

PART I. SECT. 2, SUB-SECT. 3.—A.

68 iii. ——.]—While deft. was driving a motor car along a well-used trail on the grounds of an agricultural fair assocn. he noticed three men standing talking a few feet from the left edge of the trail. His speed was not more than four miles per hour, & when three or four rods from the men he sounded his horn. One of the three, pltf., whose back was towards the car, stepped backwards just as the front of the car was opposite him. He was struck & fell, & the car went over & fractured his ankle. Deft. stopped the car while pltf. was between the front & rear wheels :—*Held :* the appeal should be dismissed, deft.'s conduct being that of a reasonably prudent man under the circumstances.—MONNINGTON *v.* WHITE, [1936] 2 W. W. R. 362 ; 3 D. L. R. 745 ; 44 Man. L. R. 237.—**CAN.**

73 iv. ——.]—PACIFIC STAGES, LTD. *v.* JONES, [1928] 2 D. L. R. 897 ; [1928] S. C. R. 92.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—C.

77 ii. ——.]—ARMAND *v.* CARR & CARR & WILCOX, [1926] 3 D. L. R. 592 ; [1926] S. C. R. 575.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—D. (a).

80 xxii. ——.]—ZEIDEL *v.* WINNIPEG ELEC. Co., [1928] 3 D. L. R. 570 ; [1928] 2 W. W. R. 601 ; 34 Can. Ry. Cas. 267 ; 37 Man. L. R. 412 ; *revsd. sub nom.* WINNIPEG ELEC. Co. *v.* ZEIDEL, [1929] 3 D. L. R. 610 ; S. C. R. 538.—**CAN.**

80 xxiii. ——.]—Even though a motor car is travelling on the right-hand side of the road, the driver is not justified in holding to his course regardless of the consequences, but is bound to exercise reasonable care to avoid injuring others, & owes this duty to the driver of an approaching car even if the latter has not yet complied with the statutory provision requiring him to turn out to the right of the centre of the highway.—AUDET *v.* WETSCH, [1928] 3 W. W. R. 655.—**CAN.**

80 xxiv. ——.]—MANN *v.* SHARP (P. E. I.), [1929] 4 D. L. R. 949.—**CAN.**

80 xxv. ——.]—A motorist making a turn into the path of vehicles coming in the opposite direction is responsible for a collision with an oncoming motor cyclist.—BEAZLEY *v.* MILLS BROS., LTD., PLUNKETT *v.* MILLS BROS., LTD., [1937] 1 D. L. R. 205 ; 51 B. C. R. 197.—**CAN.**

82 vii. —— —— ——.]—Persons lawfully doing a work which interferes with a public right, *e.g.* contractors working on a highway, must use reasonable care not to injure persons lawfully exercising that right, &, therefore, must take reasonable precautions to warn such persons of dangers created by the doing of the work which the latter could not with reasonable care discover.—MCCULLOCH *v.* STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970 ; [1928] 1 W. W. R. 211 ; 22 Sask. L. R. 231.—**CAN.**

82 viii. —— —— ——.]—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1929] 2 D. L. R. 422 ; 1 W. W. R. 72 ; 35 Crim. Ry. Cas. 274 ; 23 S. L. R. 257.—**CAN.**

83. *Add. Annotations :*—**Refd.** Stein *v.* Gates (1935), 79 Sol. Jo. 252 ; Burnham *v.* Boyer & Brown, [1936] 2 All E. R. 1165.

83a. —— —— —— **Liability to blind person.**]—STEIN *v.* GATES (1935), 79 Sol. Jo. 252.

83b. —— —— ——.]—A crowd artiste in a film production was injured by the intensity of the lighting in a ballroom scene. The lighting was not abnormal for a scene of this kind, but its effect was increased by the high polish of the floor. The film co. pleaded that they themselves were not responsible for the lighting & pltf. joined the second deft. who, pltf. alleged, was in charge of the lighting. Defts. then added a defence of common employment :—*Held :* (1) lighting of the intensity used was not frequently used in the production of films & there was a duty upon the film co. to warn the artistes or to take precautions against injury to them ; (2) it was the system of lighting that was at fault & there was no question of common employment ; (3) the second deft. took no responsibility for the effect of the lighting upon the performers. He was there to provide the lighting the co. required, & the likelihood of damage to the performers was known to the film co., & was a risk which they took upon themselves. His employment afforded them no protection against their negligence in using such brilliant lights without proper precautions.—RUSSELL *v.* CRITERION FILM PRODUCTIONS, LTD., [1936] 3 All E. R. 627 ; 53 T. L. R. 117 ; 80 Sol. Jo. 1036.

85. *Add. Annotations :*—**Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57 ; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

89a. —— **Permanent waving.**]—Pltf., who was in the habit of bleaching & dyeing her hair herself, was, upon her own instructions, given a permanent wave by a servant of defts. Bleached hair becomes brittle & devitalised. No warning was given to pltf. of the risk attached to a permanent wave of bleached hair, &, without testing one or two curls first, defts.' servant put 20 curls into the heaters at the same time. Five heaters were removed & put on to other curls & the 15 curls which had already been heated were heated again. Upon removal of the heaters pltf.'s hair fell off for the most part, leaving short strands. In the instructions issued by the manufacturers with regard to the process of permanent waving were the words " do not attempt to permanent wave over-bleached hair without testing for heat a few curls in the most difficult part " :—*Held :* the work was done in a negligent & unskilful manner & defts. were liable to pltf. in damages.—DOBBIN *v.* WALDORF TOILET SALOONS, LTD., [1937] 1 All E. R. 331.

90a. Negligent repair of car—Negligent driving—Effect on liability of repairer.]—VAILE BROS. *v.* HOBSON, LTD. (1933), 149 L. T. 283.

92. *Add. Annotation :*—**Consd.** Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

95. *Add. Annotation :*—**Consd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

112. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

118. *Add. Annotations :*—*As to* (1) **Distd.** Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333. *As to* (2) **Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146. *As to* (4) **Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

121. *Add. Annotation :*—**Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

124. *Add. Annotation :*—**Refd.** The Kate, [1935] P. 100.

128. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

131a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

134. *Add. Annotations :*—*As to* (1) **Consd.** Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30. **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

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82 ix. —— ——.]—Where a person driving a motor car on a narrow country road sees men & teams engaged on construction work on the road ahead of him he should at once slow down & look for a signal to proceed unless upon a careful survey it is clear that the road is open to traffic.—PHILLIPS *v.* MCKAY, [1932] 1 W. W. R. 730 ; 2 D. L. R. 614 ; 40 Man. L. R. 235.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—E. (b).

89a i. *Barber—Burn during permanent waving.*]—Whilst having her hair permanently waved in resp.'s hairdressing establishment, applt.'s head was burnt, with the result that she incurred a small permanent bald patch. Applt. claimed damages :—*Held :* applt. had been burnt by steam generated in a cylinder passing through the aperture of a clip to the scalp, & not by a heated clip coming into contact with the scalp ; in the case of a steam burn the duty was on resp. through his assistants, first to adjust the apparatus properly, secondly to warn applt. to co-operate, & thirdly, upon a complaint by applt., to take immediate steps to relieve her ; on the evidence, resp. had discharged those duties ; resp.'s assistant stopped what burning was going on as soon as a complaint was made ; applt. was burnt before she complained & she did not make the complaint in sufficient time to enable the assistant to prevent the mischief, & applt. was not entitled to succeed.

Semble : if applt. has suffered from a metal burn the inference would probably be that it was caused by the negligence of resp.—JOLLIFFE *v.* TURNER (1936), N. L. R. 358.—**S. AF.**

89a ii. ——.]—TAYLOR *v.* KINNON, [1937] 3 W. W. R. 94.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—F.

93 i. *Carriers.*]—A motor vehicle owned by two defts. was being driven by one of them, L., & pltf. was injured in a collision which followed :—*Held :* pltf., though not a passenger for hire, could maintain an action for damages for his injuries, want of ordinary & reasonable care on the part of L. being shown.—PARLOV *v.* LOZINA & RAOLOVICH (1920), 47 O. L. R. 376 ; 18 O. W. N. 139.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

125 xiii. ——.]—MONTREAL TRAMWAYS CO. *v.* DUPERE, [1934] 1 D. L. R. 807.—**CAN.**

132 ix. *Revd.*, [1919] 1 W. W. R. 806.

132 ix. ——.]—Following a collision at night between deft.'s motor car & pltfs.' motor truck, the truck which was disabled, stood at an angle across the road, & the female pltf. went back along the road to try to " flag " or warn, by means of lighted matches, oncoming cars. While doing so she was struck by such a car. She had already sustained injury in the first accident. About ten minutes elapsed between it & the second accident. Deft. having been found liable for the first accident, the question arose whether he was liable also for the additional injuries suffered by the female pltf. in the second accident :—*Held :* deft. could not be held so liable. The circumstances did not bring the female pltf.'s case within those in which a " rescuer " or " intervener," attempting on a sudden impulse & without time for deliberation to save another from immediate danger, has been held entitled to recover from the person whose negligence created the danger. Moreover, deft.'s negligence was not the proximate cause of the female pltf.'s second injury.—BRINE & BRINE *v.* DUBBIN, [1933] 2 W. W. R. 25.—**CAN.**

132 x. ——.]—CROSBIE *v.* WILSON & LANGLOIS (1933), 47 B. C. R. 384.—**CAN.**

132 xi. ——.]—HOLLUM *v.* ROBERTSON (1936), 50 B. C. R. 551.—**CAN.**

135. *Add. Annotations:*—**Refd.** The Edison, [1932] P. 52; The Arpad, [1934] P. 189.

139. *Add. Annotation:*—**Refd.** The Edison (1932), 147 L. T. 141.

142. *Add. Annotations:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

143. *Add. Annotations:*—*As to* (2) **Refd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656; Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *Generally*, **Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., Ltd., [1936] A. C. 108; Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106; Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430; Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

151. *Add. Annotations:*—**Refd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106; The Edison, [1932] P. 52; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449; Haynes *v.* Harwood & Son, [1934] 2 K. B. 240; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

156. *Add. Annotation:* — **Refd.** S.S. Singleton Abbey *v.* S.S. Paludina, [1927] A. C. 16.

161. *Add. Annotation:*—**Refd.** H. *v.* H., [1928] P. 206.

162. *Add. Annotation:*—**Consd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

181. *Add. Annotation:*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

188. *Add. Annotation:*—**Refd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

195. *Add. Annotation:*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

196a. ——.]—Pltf. was the widow of a man employed by deft. co. as a derricker. Deceased had left the barge on which he was employed & volunteered to act temporarily as tipper on a second barge in order to relieve a fellow workman. The fellow workman was in fact a director of the co., but at the time he was acting merely as a foreman over the job, & was not there as representing the board of directors. While engaged as a tipper in these circumstances he stumbled & fell into the hold, sustaining minor injuries. He was removed to hospital & given an anæsthetic under which he collapsed & died. The *post mortem* examination showed that he had a diseased heart, but neither the history of the man's activities nor the use of a stethoscope did or would have disclosed the man's condition. At the trial it was held that the death was due to the negligence of defts., who were ordered to pay to pltf. £785, of which sum £300 was not to be recoverable in any event. On appeal:—*Held:* on the facts there was no negligence on the part of defts.; the fact that the fellow worker was a member of the board of directors did not in a case where he was in fact acting as a foreman bar the defence of common employment; on the work upon which deceased was engaged at the time he was merely a volunteer & the defence of *volenti non fit injuria* applied; the administration of the anæsthetic was not a wrongful act intervening between the accident & the death, & could not be relied on as a case of *novus actus intervenions*.—BLOOR *v.* LIVERPOOL DERRICKING & CARRYING CO., LTD., [1936] 3 All E. R. 399, C. A.

Part II.—Negligence in regard to Property.

208. *Add. Annotations:*—**Consd.** Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Consd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781. **Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; The Hayle, [1929] P. 275; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Knott *v.* London County Council, [1934] 1 K. B. 126; Marshall *v.* Lindsey County Council, [1935] 1 K. B. 516; Weigall *v.* Westminster Hospital, [1936] 1 All E. R. 232; Ellis *v.* Fulham Corpn., [1937] 2 All E. R. 454; Woodman *v.* Richardson & Concrete, Ltd., [1937] 3 All E. R. 866.

209. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

213. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

138 xix. ——.]—GRUNNELL CO. *v.* WARREN, [1937] S. C. R. 353; 1 D. L. R. 705.—**CAN.**

150 i. *Injury not capable of being foreseen or anticipated—Liability only where negligence established.*]—HARDING *v.* EDWARDS & TATISICH, EDWARDS *v.* TATISICH, GALL *v.* EDWARDS & TATISICH, [1929] 4 D. L. R. 598; 64 O. L. R. 98.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.—B.

171 iv. — —.]—STEPHEN *v.* MCNEILL, [1929] 1 D. L. R. 1003; S. C. R. 537; *affg.*, [1928] 4 D. L. R. 172; [1928] 3 W. W. R. 182.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.—C.

188 ii. —— .]—Negligence of a third party is no excuse for a driver colliding at an intersection with a parked car.—PELLE *v.* BERSEA, [1936] 4 D. L. R. 517; 50 B. C. R. 546.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

206 iv. ——.]—**Pltf. was hired with his teams by L., who had a contract with deft. co. to get out logs for use in co.'s lumber business.** Pltf. took a team over a private way leading to the co.'s limits, & in crossing a culvert one of the horses met with an accident by stepping upon a board which broke under its weight. Pltf. charged negligence in respect of the rotten condition of the board. There was no evidence that deft. co. placed the board there, or knew or should have known of its presence there:—*Held:* pltf. had failed to prove any negligence of deft. co.—GUERTIN *v.* FASSETT LUMBER CO., [1931] 4 D. L. R. 916; O. R. 589.—**CAN.**

216. *Add. Annotation :*—**Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

217. *Add. Annotations :*—**Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30; Weigall *v.* Westminster Hospital, [1936] 1 All E. R. 232; Bromiley *v.* Collins, [1936] 2 All E. R. 1061.

219. *Add. Annotations :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

223. *Add. Annotations :*—*As to* (1) **Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Apld.** Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333. **Refd.** Sycamore *v.* Ley (1932), 147 L. T. 342; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30; Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454. *As to* (2) **Consd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. *Generally*, **Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

239. *Add. Annotation :*—**Expld.** Davis *v.* Lisle, [1936] 2 All E. R. 213.

242. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

PART II. SECT. 1, SUB-SECT. 2.—A. (a).

sp. *Independent contractor.*]—C., while engaged in cleaning out a septic tank connected with deft.'s hospital, was killed by poisonous gas that had accumulated in the tank. The widow brought an action under Fatal Accidents Act. The judge instructed the jury that its first duty was to determine whether the relationship of C. to deft. was that of a servant or that of an independent contractor. He then told the jury that in answering the question, "Was deft. negligent," it should apply a higher standard of care if it had found that C. was a servant than it should apply if it found that C. was a contractor: in the former case deft. was negligent if it had let C. do the work knowing that it was dangerous or if it should have made inquiries to ascertain if the work was dangerous, but that, if he was a contractor, then deft. was required merely not to lead him into a trap. The jury found that the relationship was that of principal & independent contractor & there was no negligence on the part of deft.:—*Held :* the charge to the jury was objectionable because deft.'s duty to C. was the same whether he was an independent contractor or a servant & therefore the jury should not have been asked to find in which capacity he was employed, & also because it told the jury that the duty of deft. towards an independent contractor was merely not to lead him into a trap. The proper questions for the jury were, first, whether deft. knew of the danger, & second, if it did not know, could it by the exercise of reasonable care & diligence have become aware of the existence of the danger.—COTE *v.* LAMPMAN UNION HOSPITAL BOARD, [1933] 2 W. W. R. 81.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A. (b).

228 i. *Customer in shop.*]—Pltf., a customer in deft.'s store, slipped when approaching the steps leading to the ground floor, fell down a few steps & was injured. There was no question of structural defect or lack of lighting or handrails or guards. No one saw exactly how she came to fall, & she did not know; but alleged that it was due to a pool of water caused by drippings from an umbrella:—*Held :* pltf. had not proved any negligence on the part of deft. Even if there was a pool of water as alleged, & it was found that there was not, it was not a danger such as deft. ought to have known of; & it would be unreasonable to expect the deft. to employ people throughout the shop to mop up any dampness or moisture or drippings from umbrellas.—WITT *v.* DAVID SPENCER, LTD., [1935] 2 W. W. R. 644; 50 B. C. R. 35.—**CAN.**

242 i. *Spectator at public exhibition.*]—At a motor cycle race meeting conducted by a co., a spectator was injured through a motor cycle getting out of control, & after colliding with another motor cycle, jumping over the fence. The racing took place at high speeds on a flat track surrounded by a wire mesh safety fence, a foot outside which was a picket fence of the same height. In addition, in places, there was another fence erected on top of the picket fence. Outside the picket fence there were seats, & the heads of persons sitting thereon would be below the level of the picket & safety fences. The spectator, who had not been to motor cycle races before, attended in consequence of an advertisement, paid for admission, & took a seat at a place where there was no fence above the picket fence. He saw a notice: "Danger. Do not lean on fence." He assumed that the fence gave him sufficient protection. Unknown to the spectator, a motor cycle had on a previous occasion similarly gone over the fence:—*Held :* deft. was liable.—CHATWOOD *v.* NATIONAL SPEEDWAYS, LTD., [1929] S. R. (Q.) 29.—**AUS.**

242 ii. ——.]—In an action for damages for injuries sustained by pltfs. by the sudden stopping of an amusement device known as a "whoopee wheel" upon which they were seated as paying passengers:—*Held :* the negligence of deft. in not providing an emergency brake was the cause of the breaking of the shaft & the consequent injuries.—BALNE *v.* SUNNYSIDE AMUSEMENT CO., LTD., [1931] 4 D. L. R. 487: O. R. 549.—**CAN.**

242 iii. ——.]—The infant pltf. while watching a hockey game at deft.'s rink was hit by a puck & seriously injured. He had paid for his ticket & had selected a seat in a front box on a level with the ice. He had played hockey for a number of years. The negligence of which he complained particularly was the absence of wire or other netting for the protection of spectators. The evidence was that such protection was not provided at other rinks in Winnipeg or other cities:—*Held :* the action failed; deft. was not an insurer against dangers incident to the game which any reasonable spectator could see, & pltfs. must be held to have had a thorough knowledge of the risks assumed by the spectators of hockey & of the protection customarily afforded them.—ELLIOTT *v.* AMPHITHEATRE, LTD., [1934] 3 W. W. R. 225.—**CAN.**

242 iv. ——.]—It is negligence to provide torn matting upon which persons attending a concert on the premises may trip.—SANGSTER *v.* DURBAN CORPN., [1934] N. L. R. 347.—**S. AF.**

242 v. ——.]—DENT *v.* CENTRAL CANADA EX. ASSOCN. (1935), 5 F. L. J. (Can.) 85.—**CAN.**

242 vi. ——.]—The W. Racing Club was the owner of a racecourse at T., where the saddling-paddock was an area of about an acre & a half, & the conditions surrounding it were of the usual kind on racecourses. Pltf. was walking on a footpath bordering the saddling-paddock when he was kicked by one of two horses owned by the other defts., but as he was unable to identify the horse that kicked him he was non-suited in respect of those defts. Pltf. had full opportunity of avoiding the negligence complained of as against the club, as he observed that one of the horses was fractious & pulling away from the stable-boy in charge, & yet continued to walk in close proximity to it whilst there was ample room to keep clear, as there was the full width of the footpath (8 ft. to 9 ft.), & there was grass on the farther side. There was no evidence that a saddling-paddock is ever fenced on racecourses; or that the particular horse was more fractious than ordinary racehorses; that it was a kicker; or that it required more strength to restrain it than in the case of any other horses; or that the boy in charge was less capable of controlling it than a full-grown man. No such accident had happened before, or at least during the previous thirteen years. In an action by the injured spectator, who was a paying visitor to the course, the question for the ct. was whether or not he was entitled to recover damages, in respect of the injuries sustained by him, from the Racing Club itself:—*Held :* it was the duty of the club to see that its premises were as free from danger as reasonable care & skill could make them: but it was not an insurer against accidents which no reasonable diligence could foresee, or against perils which the ordinary spectator might be expected to appreciate & take precautions against, or against perils incidental to the ordinary conduct of a racecourse which a reasonable spectator can foresee & of which he takes the risk. As the conditions surrounding the position & conduct of the saddling-paddock were similar to those in racecourses generally & for at least thirteen years there had been no accident on the course in the nature of the present one, which was an unlikely & improbable accident against which it would be unreasonable to expect the club to provide & which would not have occurred if pltf. had taken ordinary reasonable care, there was no breach of duty on the part of the club, or failure to comply with any terms or implications arising from the contract.—MOLOUGHNEY *v.* WELLINGTON RACING CLUB, [1935] N. Z. L. R. 800; 11 N. Z. L. J. 255.—**N.Z.**

243a. ——.]—Resps. were the proprietors of a space of land known as "Dreamland," which was a place for the entertainment of the public. On part of this land the "Atlantic Flyer" was erected by S., under the terms of an agreement with resps., by which a part of the land at "Dreamland" was taken over by S. for the purpose of erecting & running the "Atlantic Flyer." Resps. under the agreement were to be paid 33⅓ per cent. of S.'s gross receipts, but all moneys were in the first instance to be paid to the resps., who had the right to appoint the cashiers. Under rules & regulations attached to the agreement, a right was reserved to resps. to refuse admission to any person & to charge for admission to the ground. S. was bound to provide at his own expense a ticket-taker. Resps. advertised inviting persons to "Dreamland." W. was killed while on one of the boats of the "Flyer" in consequence of a bolt giving way & the occupants being flung out. Applt., as his mother & partial dependant, claimed damages under Fatal Accidents Act, 1846 (c. 93), against resps.:—*Held:* on the terms & rules of the agreement, there was no contractual relation between resps. & deceased, & as the advertisements of resps. did no more than invite people to the area of land owned by them, there was no invitation to deceased to enter upon property on which there was a hidden danger under the control of the inviter.—HUMPHREYS *v.* DREAMLAND (MARGATE), LTD. (1930), 100 L. J. K. B. 137; 144 L. T. 529; 74 Sol. Jo. 862, H. L.

243b. ——.]—Action for injuries received while watching a polo match, through a polo pony leaving the ground & passing through a hedge:—*Held:* there was no negligence.—PIDINGTON *v.* HASTINGS (1932), The "Times" Mar. 12.

Annotation:—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

243c. ——.]—Pltf. had paid for admission to witness motor car races on a course occupied & managed by defts. As the result of a collision between two motor cars near the railing behind which pltf. was standing one of the cars leapt into the air & went right through the railing, with the result that pltf. & several other spectators sustained serious personal injuries. It was not disputed that this accident was the first time when any spectator had been injured by a car leaving the track. In an action claiming damages for personal injuries the jury found (*inter alia*) that defts. had omitted to take reasonable precautions for the safety of spectators, & awarded damages to pltf. On appeal:—*Held:* there was no evidence that defts. had failed to take proper care to make their premises reasonably safe for spectators. Defts. were not under any obligation to insure safety under all circumstances, but only to provide against damage to spectators which any reasonable person in their position would have anticipated as likely to happen. The spectator himself took the risk of remoter damage when he elected to attend the races.—HALL *v.* BROOKLANDS AUTO-RACING CLUB, [1933] 1 K. B. 205; 101 L. J. K. B. 679; 147 L. T. 404; 48 T. L. R. 546, C. A.

Annotations:—**Refd.** Weigall *v.* Westminster Hospital, [1936] 1 All E. R. 232; Fryer *v.* Salford Corpn., [1937] 1 All E. R. 617; Woodman *v.* Richardson & Concrete, Ltd., [1937] 3 All E. R. 866.

246. *Add. Annotation:*—**Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

246a. Relation visiting paying patient in hospital.]—Pltf., the mother of a patient occupying, for payment, a private ward in a hospital desired to consult one of its honorary surgeons, with whom she had made a personal contract for the treatment of her son. He invited her into a small room often used, to the knowledge of the hospital authorities, for such consultations between the honorary medical staff & relatives of patients. The floor was highly polished for antiseptic reasons. She trod on a mat, which slid along the floor beneath her foot, so that she fell & suffered personal injury:—*Held:* in these circumstances pltf. was an invitee of deft. hospital, because she was in the room in pursuance of an interest common to her, the surgeon, & the hospital, &, therefore, the hospital authorities owed her the duty of taking reasonable steps to make the room safe, which duty they had not discharged. The mat was an unusual danger, of which they ought to have known, & pltf. was entitled to recover.—WEIGALL *v.* WESTMINSTER HOSPITAL, [1936] 1 All E. R. 232; 52 T. L. R. 301; 80 Sol. Jo. 146, C. A.

242 vii. ——.]—Two ladies, proceeding along the passage-way towards the auditorium of deft.'s picture theatre, fell & injured themselves in tripping over the end of a strip of linoleum forming part of the floor covering. The accident happened where two strips met. The ends were not secured but one partly overlapped the other so that the upper end faced the street. On a claim for damages:—*Held:* the omission of deft. to make the junction of the two ends as little dangerous as could reasonably be, was a breach of its duty to pltf., & as they were not negligent they were entitled to recover damages for the injuries received.—DODDS *v.* KEMBALL THEATRES, LTD. (1936), 31 M. C. R. 65.—**N. Z.**

aa. *Child in corporation playground.*]—Deft. city corpn. established & conducted "supervised playgrounds" throughout the city & employed supervisors to take charge of them:—*Held:* the corpn. assumed, or held itself as having assumed the obligation of taking reasonable care of such children as should resort to the playgrounds, & was bound to make some reasonable effort to protect them from dangers known or reasonably to be apprehended.—MCSTRAVICK *v.* OTTAWA, [1929] 4 D. L. R. 492; 64 O. L. R. 275; *affg.*, [1929] 3 D. L. R. 317; 63 O. L. R. 626.—**CAN.**

ab. *Person sharing offices with friend.*]—Pltf. had for a number of years shared with a friend an office in deft.'s building which the friend leased from deft. Pltf. paid the friend half of the rent, & they gave one another mutual assistance in their business. When pltf. was entering a passenger elevator in the building it began to slide downwards, with the result that pltf. fell forward & was injured. A jury returned a verdict for damages on which judgment was given for pltf., & deft. appealed:—*Held:* pltf. was an invitee, &, therefore, deft. was under the duty towards him of taking reasonable care that the promises were safe.—GORDON *v.* CANADIAN BANK OF COMMERCE, [1931] 3 W. W. R. 185, 373; 4 D. L. R. 635; 44 B. C. R. 213.—**CAN.**

af. *Contractor using ladder.*]—Pltf. was employed to paint the smoke stack of defts.' tannery. He was thrown to the ground from a defective ladder:—*Held:* defts. owed pltf. a duty to pltf. to use reasonable care to see that their property & appliances were fit for the purpose for which they were used, & defts. were therefore liable to pltf.—MCGRATH *v.* LECKIE (J.) & CO. (1932), 45 B. C. R. 534.—**CAN.**

ak. *Swimmer—Submerged wall in municipal swimming pool.*]—A submerged partition wall in a municipal swimming pool, dividing deep from shallow water, is not a dangerous construction so as to render the municipality liable for injuries to a swimmer who knew of the wall, & dived into the pool & struck it.—KESTER *v.* HAMILTON, [1937] 2 D. L. R. 330; 6 F. L. J. (Can.) 262.—**CAN.**

Bather at bathing pool.]—Pltf. was the father & administrator of a schoolboy, aged 15 years, who was killed by breaking his neck when diving from a diving board maintained by a borough council in a swimming pool under the control of the council. The accident was due to the insufficient depth of the water, of which no warning was given either by attendants or by the exhibition of a notice :—*Held :* the placing of the diving board at a point where there was an insufficient depth of water, accompanied by the failure to give any warning, amounted to a trap.—SIMMONS *v.* HUNTINGDON CORPN., [1936] 1 All E. R. 596.

254. *Add. Annotations :—As to* (2) **Consd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455; **Refd.** Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

256. *Add. Annotations :—As to* (1) **Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681. *Generally*, **Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

260. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

261. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

267a. Proprietor of Turkish baths—Dangerous insects.]—Circumstances (*see* CONTRACT, No. 5168a, *ante*), in which :—*Held :* apart from contract, defts. were under an obligation to a person using their premises to abstain from negligence, & if they, knowing of the danger, did not take sufficient precautions & such person were injured, he could recover.—SILVERMAN *v.* IMPERIAL LONDON HOTELS, LTD. (1927), 137 L. T. 57; 43 T. L. R. 260.

275. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

276. *Add. Annotations :*—**Consd.** The Kate, [1935] P. 100. **Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

277. *Add. Annotation :*—**Consd.** The Kate, [1935] P. 100.

277a. —— ——.]—R. had contracted to erect a building, & to do so he had to erect a scaffolding for the use of his own workmen & of the sub-contractors' workmen. Pltf., a workman employed by the sub-contractors, was working on the scaffolding when he saw a ladder, by which he had ascended, being removed by two men employed by R. These two men informed pltf. that there was another ladder at the other end of the scaffolding. Pltf. found this other ladder & was descending by it, when, as two rungs were missing, he slipped & sustained injuries. The evidence showed that the defective ladder had been put on a dump with discarded plant, a place from which no employee of R. had any right to remove it & again put it in use. There was no evidence as to how, or by whom, the defective ladder had been placed against the scaffolding. In an action for negligence against R. :—*Held :* pltf. could not succeed

PART II. SECT. 1, SUB-SECT. 2.—B. (a).

247 xi. —— ——.]—GUILFOIL *v.* MCAVITY (T.) & SONS, LTD. (N. B.), [1927] 3 D. L. R. 672.—**CAN.**

252 i. —— —— —— *Danger unknown to invitee.*]—GORDON & GORDON *v.* BLAKELY, [1931] 2 W. W. R. 902.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B. (b).

259 v. —— —— ——.]—On a day of falling snow the female pltf., after making some purchases in deft.'s shop, was picking up her parcels as she was leaving, or about to pick them up, when she slipped & was injured. It was found on conflicting evidence that the floor was covered by a mixture of water, mud & oil (sawdust & oil were used every two weeks to keep dust down, the last time having been two weeks before the accident), & that it was owing to this condition of the floor that pltf. fell; the fact that none of the 300 other customers who had been in the shop that day had fallen was held not to be an answer to what the evidence demonstrated to have been the cause of the mishap :—*Held :* deft. was liable.—REITH *v.* SAFEWAY STORES, LTD., [1935] 1 W. W. R. 36; *revsd.* [1936] 1 W. W. R. 481.—**CAN.**

261 ii. ——.]—Pltf. went to deft.'s butcher shop to buy meat; he asked the employee who served him about peas, & the employee motioned with his head to a shelf where there were [illegible] pltf. walked across the shop to the shelf, but stepped into a hole in the floor near the shelf, fell into the cellar & was injured. The employee knew the trap door which guarded the hole was up, & did not warn pltf. The [illegible] to which customers occasionally went :—*Held :* pltf., an invitee, was not in a part of the shop to which he was not invited, & it could not be said that he was not exercising ordinary care because, going across a shop to look at goods upon a particular shelf, he did not cast his eyes on the floor to see that no trap had been laid for him.—RUDLEN *v.* BRIDGEMAN, [1930] 3 D. L. R. 224; 65 O. L. R. 224.—**CAN.**

261 iii. ——.]—Pltf., a customer of deft.'s department store, slipped on an orange peel on the stairs in the store & was injured. There was no evidence that he did not use reasonable care :—*Held :* deft. was negligent in allowing pieces of orange peel to remain on the stairs for a long time without being removed &, in answer to the contention that pltf. had not proved that the particular piece of peel on which he slipped had been allowed to remain on the stairs any length of time, it was *held* that since pltf. had proved that the cleaning system established by deft. for the removal of orange peel & other refuse from the stairs was not properly carried out & had not been properly functioning for more than an hour prior to the accident & that pieces of orange peel had been allowed to be during the whole of that time on the stairs on which he slipped & fell upon an orange peel, he had proved enough to shift the onus to deft. of proving that the particular piece of orange peel upon which he slipped was not there by its negligence & that it was blameless in respect of the cause of the accident; & since deft. did not satisfy this onus, it was liable.—EDGLIS *v.* WOODWARD STORES, LTD., [1936] 1 W. W. R. 502; 50 B. C. R. 403.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B. (f).

sb. *Public Library Board.*]—*Held :* liable for injury sustained by pltf., by a fall upon an icy step of the public library building, which she was leaving after exchanging books in the library] —NICKELL *v.* CITY OF WINDSOR, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—C.

268 iv. ——.]—Pltf., looking for employment, came by permission of defts.' foreman upon their premises during the erection thereon of a building, & spoke to the foreman at the foot of a stair. The foreman told him to wait there, or wait where he was & he would see about him. Pltf. was injured by a piece of wood, part of an open hoist, which some time afterwards fell upon him when he was in another part of the premises :—*Held :* although pltf. was an invitee, the invitation to remain was limited, & did not justify him in leaving the place indicated & going to another part of the premises where there was danger; he had no right to be where he was when struck & defts. in the circumstances owed him no duty.—AZZOLE *v.* YATES CONSTRUCTION CO., [1928] 1 D. L. R. 233; 61 O. L. R. 416.—**CAN.**

268 v. ——.]—It would be imposing too great a liability on a landowner who permits his premises to be used as a picnic ground, in the hope of profit, to hold him liable for a disaster to a child whose parents permit him, not merely to bathe upon the safe beach in front of the picnic grounds, but to stray away to a danger in front of adjacent premises where he could not be supposed to be invited to disport himself.—DRINKWALTER *v.* MORAND, [1929] 4 D. L. R. 421; 64 O. L. R. 124.—**CAN.**

in his action as he had failed to prove negligence on the part of R. *Per* GREER, L.J.: Inasmuch as pltf. had failed to give evidence to show that the scaffolders put the defective ladder into position, or to show that some of the foremen on the job had seen, or ought to have seen, the defective ladder, & had failed to get it removed, his case necessarily failed for want of evidence. *Per* SLESSER, L.J.: The risk that the defective ladder would be taken back into service in its defective state was not a risk the knowledge of the danger of which could be imputed to R., the fact that the ladder belonged to R. did not seem to alter the position, &, in the absence of any evidence or finding that it was replaced by his servants or with his knowledge, he could not be held liable.—WOODMAN *v.* RICHARDSON & CONCRETE, LTD., [1937] 3 All E. R. 866; 81 Sol. Jo. 700, C. A.

280. *Add. Annotation* :—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

291. *Add. Annotations* :—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

304. *Add. Annotations* :—*As to* (1) **Consd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681; **Refd.** Burnham *v.* Boyer & Brown, [1936] 2 All E. R. 1165.

PART II. SECT. 1, SUB-SECT. 3.—A.

285 ii. —— *Children walking along track.*]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—**CAN.**

287 i. *Guests.*]—Pltfs., who were gratuitous passengers in deft.'s motor car, were injured in a collision between it & another motor car. The trial judge found negligence on the part of deft. & awarded both pltfs. damages. Deft. appealed :—*Held :* the appeals should be dismissed.—LECHTZIER *v.* LECHTZIER, LEVY *v.* LECHTZIER, [1931] 1 W. W. R. 425; 1 D. L. R. 1004 43 B. C. R. 423.—**CAN.**

287 ii. ——.]—A guest in a car accepts all risks & cannot hold the driver responsible for accidents occurring without any negligence.—MACKENZIE *v.* MEYERS, [1933] 1 D. L. R. 413; *affd.*, [1934 4 D. L. R. 803.—**CAN.**

st. *Person driving car in another's drive.*]—*Held : per* the Lord Justice Clerk, if it were the law that a person driving a car in another person's avenue was, as a mere licensee, entitled to no higher right than that of protection against hidden dangers or traps, a car negligently driven by the owner of the avenue or his servant might, & in the present case did, constitute such a hidden danger or trap.—BOWIE *v.* SHENKIN, [1934] S. C. 459.—**SCOT.**

sw. *Premises rented for musical recital—Person assisting pianist.*]—Deft. rented its auditorium to H. for a musical recital which H. was giving, & permitted H., without charge, to use it for a rehearsal previous to the recital. Pltf., H.'s brother, was, for a fee, which also covered his preparatory work, to assist H. as a pianist in the recital. During the rehearsal, while pltf. was playing a piano on the stage of the auditorium, the lens of a spotlight suspended above the piano burst & a piece of broken glass cut his hand. He sued deft. for damages :—*Held :* pltf. was a mere licensee of deft., without an interest, pltf. not having entered the auditorium upon business which concerned deft. upon deft.'s invitation, express or implied. Upon the evidence, the spotlight in question was not a trap or hidden peril within the meaning of the cases.—HAMBOURG *v.* T. EATON CO., LTD., [1935] S. C. R. 430; 3 D. L. R. 305.—**CAN.**

PART II. SECT. 1, SUB-SECT. 3.—B. (a).

288 xiii. —— ——.]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—**CAN.**

288 xiv. —— ——.]—The driver of a motor car is liable for injuries caused a gratuitous passenger by his negligence in driving the car.—LIMB & LIMB *v.* STEWART (B. C.), [1929] 2 D. L. R. 349; *revsg.*, [1926] 3 D. L. R. 550; 3 W. W. R. 205.—**CAN.**

288 xv. —— ——.]—The driver of a motor car which is travelling behind another car is under the duty to a passenger in his car to anticipate & take reasonable care to avoid the risk which may arise from the driver of the car ahead doing what he should not do, *e.g.* making a sudden left-hand turn at an intersection without giving any signal of his intention to turn.—MCLEOD *v.* BOULTBEE & ATKINS, [1931] 2 W. W. R. 805; 4 D. L. R. 912; 44 B. C. R. 375.—**CAN.**

288 xvi. —— ——.]—In an action for damages for personal injuries, brought against the magistrates of a burgh as the owners & occupiers of an esplanade, pursuer averred that the esplanade included a granolithic footway; that adjacent to the footway were a number of seats on platforms clear of the footway; that the public were permitted by defenders to have access to the footway; that the esplanade was not lighted at night; & that he, while walking on the footway at night, had fallen over a seat placed on the footway, & had been injured. He further averred that he had believed that the footway was free from obstructions, & that all the seats were on the platforms & not on the footway; that he was entitled to expect that the footway would be kept safe for foot traffic, or guarded & lighted if not so; the defenders ought to have known that the seat was in a dangerous position, & in leaving it unlit after dark they were guilty of negligence :—*Held :* as pursuer was merely a licencee, defenders' only duty was not to subject him to a trap & there were no relevant averments of a trap.—BOLTON *v.* GOUROCK MAGISTRATES, [1932] S. C. 239.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 3.—B. (b.)

305 iii. ——.]—HAUSER *v.* MCGUINNESS, [1934] 3 W. W. R. 321; 34 B. C. R. 289.—**CAN.**

306 v. ——.]—An occupier of premises is under no duty to a bare licensee to insure that the premises are safe; but he is bound not to create a trap or to permit a concealed danger to exist on the premises which is known to him but is not apparent to the licensee.—DYMOND *v.* WILSON [1936] 2 W. W. R. 193; *revsd.*, [1937] 1 W. W. R. 419; 1 D. L. R. 730.—**CAN.**

306 vi. ——.]—A member of the public lawfully using a public park is a licensee with respect at least to portions of the park, & the occupier is liable to such licensee for injury caused by a concealed trap, of which the occupier was aware, situated upon any portion of the park so lawfully used. Pltf. claimed damages from deft., the occupier of a public park, for injury caused to her by her foot slipping into a hole covered by a piece of paper. The hole was in a water table adjacent to a retaining wall, & pltf. after entering the park was proceeding along the water table, which lay between the retaining wall & a garden plot, for the purpose of viewing a procession. At the trial pltf. was non-suited on the ground that no invitation express or implied, was extended to her to use the particular part of the park where she was injured. Upon appeal :—*Held :* the case should have been left to the jury to determine on the evidence whether the right or license of pltf. to use the park did in fact extend to the place where the injury was sustained &, if so, whether the injury was caused by a concealed trap of which deft. was aware.—PETTIET *v.* SYDNEY MUNICIPAL COUNCIL (1936), 36 S. R. N. S. W. 125; 53 N. S. W. W. N. 52; 12 L. G. R. 155.—**AUS.**

306 vii. ——.]—In an action against the Municipal Council of Sydney evidence was given that pltf. was injured by stepping into a hole in a narrow space between a raised wall & a light iron fence erected round some flower beds in Hyde Park, which is vested in the council under the Public Parks Act, 1912. The hole was in a drainage gutter & would have been plainly visible to any one walking in the vicinity, but for the fact that it had become covered with rubbish & papers, which were wet. A number of other people were sitting near the hole & newspapers were scattered about :—*Held :* there was no evidence upon which the jury were entitled to find that deft. was aware that the hole had become covered & a verdict should be entered for deft. The pltf.'s counsel asked the trial judge to direct the jury that the council was bound not to expose persons visiting the park to a hidden peril & that if it knew of a danger in the park it must warn them & owed a duty to them not to lay a trap :—*Held :* he had not asked for a direction that deft. was liable, if by the exercise of reasonable care it ought to have known of the extent of the danger, & the ct. could not consider the question whether a finding by the jury, that the council had failed to exercise such reasonable care, would have rendered deft. liable for the injury sustained.—PETTIET *v.* SYDNEY MUNICIPAL COUNCIL (No. 2) (1936), 13 L. G. R. 24.—**AUS.**

PART II. SECT. 1, SUB-SECT. 4.

307 xiv. ——.]—The adult pltf., having business with defts., drove his motor-truck into their enclosed premises & left it standing therein. His daughter, the infant pltf., who had accompanied him, remained seated in the truck. It was struck by a car of deft.'s which was pushed over the end of a railway siding. The truck was damaged & the infant pltf. injured :—*Held :* the infant pltf. was a mere trespasser & could not recover.—BETTLES *v.* CANADIAN NATIONAL RYS., [1929] 4 D. L. R. 175; 35 Can. Ry. Cas. 309; 64 O. L. R. 211; *revsg.*,

307a. ——.]—Applts. were members of a stevedores' gang employed to load a steamship from resps.' barge *H*. The cargo in the hold of the barge consisted of bicarbonate of soda in bags & soda in kegs on top of the bags. The foreman required the bags to be loaded before the kegs. The kegs were therefore laid along the deck of the barge to enable the bags to be slung on board the steamer by the ship's derricks. After this had been done the crew of the barge replaced the hatch covers on the after portion of the hatch, unsupported by the fore & aft beam. The engineer threw a sling on one of the hatch covers & applts. placed seven kegs in the sling. When they were moving the eighth keg, the hatch covers gave way & the applts. fell into the hold & were injured. The men knew that it was dangerous & improper to load cargo off the hatch covers :—*Held :* applts. had no cause of action against resps. because : the crew of the *H*. had no authority to invite applts. to use the hatch covers for the purpose for which, or in the way in which, they were used ; consequently, applts. in so using the hatch covers were trespassers, & not invitees of resps ; even if they were invitees they were guilty of contributory negligence.—HILLEN & PETTIGREW *v.* I. C. I. (ALKALI), LTD., [1936] A. C. 65 ; 104 L. J. K. B. 473 ; 153 L. T. 403 ; 51 T. L. R. 532 ; 41 Com. Cas. 29, H. L.

Annotations :—**Consd.** Henaghan *v.* Rederiet Forangirene, [1936] 2 All E. R. 1426. **Refd.** Marshall *v.* Lindsey County Council, [1935] 1 K. B. 516.

309. *Add. Annotation :*—**Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

309a. —— ——.]—A piece of waste land, whose owner was laying it out as a building estate, adjoined the highway & was unfenced, & the children of the neighbourhood, without any licence to do so, used it as a playground. On the land there was a large elm tree, & by a contract between the owner & deft.. who was a nurseryman, the latter undertook to fell the tree. On the day on which the tree was expected to fall there were many children on the land, & deft. or his assistant more than once drove them back from the tree. At 5.15 p.m. the tree was held up by one root only, & deft., knowing that when that root was cut the tree would fall within two minutes & without giving any further warning to the children, cut that last root, whereupon the tree fell & in its fall hurt pltf., a boy ten years of age. In an action in the county ct. by pltf. against deft. for personal injuries the judge found that deft. had been guilty of negligence in not warning the children that the tree was about to fall, & that pltf.'s injuries were due to that negligence ; but he further found that pltf. was a trespasser on the land, & on that ground he gave judgment for deft. On appeal :—*Held :* deft. owed a duty even to a trespasser not to do any act, which would alter the condition of the land & might injure him, without giving him warning; the judge in finding that deft. had been negligent had found that he had committed a breach of that duty towards pltf., though a trespasser ; & pltf. was entitled to judgment.—MOURTON *v.* POULTER, [1930] 2 K. B. 183 ; 99 L. J. K. B. 289 ; 143 L. T. 20 ; 35 Com. Cas. 308 ; *sub nom.* MOULTON *v.* POULTER, 94 J. P. 190 ; 46 T. L. R. 256 ; 74 Sol. Jo. 170.

Annotations :—**Distd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B 455. **Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

310a. —— —— **Felling tree.**]—MOURTON *v.* POULTER, No. 309a. *ante.*

312. *Add. Annotation :*—**Refd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

315. *Add. Annotation :*—**Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

321. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

[1929] 2 D. L. R. 782 ; 35 Can. Ry. Cas. 305 ; 63 O. L. R. 537.—**CAN.**

308 iv. —— *To whom defence available.*]—The defence that the party complaining of negligence was a trespasser at the time he suffered his injury is available only to the owner or occupier of the premises trespassed upon.—COBURN *v.* SASKATOON CITY, [1935] 1 W. W. R. 392 ; 2 D. L. R. 810. —**CAN.**

PART II. SECT. 1, SUB-SECT. 6.

d i. —— *Window broken by negligence of servants.*]—Defts. were the occupiers of a building abutting on the street. Two servants of defts. were engaged on the third floor of the building in moving a large table by means of an electric hoist. Overlooking the street on this floor was a window, half of which was projecting over the street, having been opened to give the table more play. One servant was holding the table top, & the other servant was working the hoist. At a time when the table was suspended in the air, the foot of the servant holding the table slipped, & in consequence the table struck that half of the window projecting over the street. The window was broken & the glass fell on pltf. passing in the street below & injured him. The other windows on this floor of the building had been broken on previous occasions by rolls of linoleum whilst being moved by the electric hoist :—*Held :* pltf.'s injuries were caused by the negligent use & management of defts.' property by their servants, & that such negligence was the effective cause of pltf.'s injuries.—MORE *v.* EDWARDS & LAMB, [1929] S. R. (Q.) 171.—**AUS.**

d ii. —— *Dead tree falling on highway.*]—The occupier of land on which there is standing a dead tree which had grown there naturally & which is not overhanging his boundary is not liable to a person who while on the adjoining highway is injured by the falling of the tree across the highway.—PATTERSON *v.* BOARD OF SCHOOL TRUSTEES OF NORTH VANCOUVER, PATTERSON *v.* CANADIAN ROBERT DOLLAR CO., [1929] 3 D. L. R. 33 ; 2 W. W. R. 181 ; 41 B. C. R. 123.—**CAN.**

d iii. —— *Snow falling off roof.*]—Pltf., while walking on the street in front of a building owned by deft. was struck on the head by snow which slid off the roof. Deft. knew that snow had accumulated on the roof & that if it was not removed it would slide on to the street ; & it gave orders to its caretaker with respect thereto which, apparently, were not carried out :—*Held :* these was a duty on deft. : it was negligent in discharging that duty ; & that negligence caused the accident.—ZIEMER *v.* COLUMBUS HALL ASSOCN., LTD., [1935] 3 W. W. R. 33.—**CAN.**

sx. *Unguarded excavation on properly—Property unfenced from sidewalk.*]—Deft. owned a property at the corner of F. Street & First Avenue. There was a fence along F. Street but no fence on First Avenue. There was an unguarded excavation on the property intended for the basement of a house, about two feet from the line of F. Street & about twenty feet from the line of First Avenue. On a dark & foggy night pltf., who was a stranger in the town, was walking to his home He missed his way on First Avenue where there was no sidewalk, fell into the excavation & was injured :- *Held :* as there was no fence, pltf. in straying upon deft.'s land was not a trespasser, & there was a duty upon deft. not to maintain a trap such as this excavation. Pltf. was therefore entitled to recover—BLANCHARD *v.* VAUGHAN (1930), 42 B. C. R. 446.—**CAN.**

sz. *Structure erected over highway.*]—There is no absolute liability on a builder who erects a structure over a public highway to compensate any member of the public who is injured by some part of the structure falling upon & injuring him.

Where pltf. had been injured on a Sunday by the falling of a pole used as a prop by a builder to support a framework into which concrete had been poured to form a verandah projecting from a building & the evidence showed that when work was discontinued by the builder's servants on the Saturday the props were all in order, but that the pole in question had thereafter become loosened through some outside agency prior to the accident :—*Held :* the builder had not been negligent in the erection of the

322. *Add. Citations:*—136 L. T. 681; 91 J. P. 69; 25 L. G. R. 94.

——. *Annotation:*—**Distd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

334. *Add. Annotation:*—**Refd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

339. *Add. Annotation:—Generally,* **Consd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

353. *Add. Annotations:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119; Parker *v.* Oloxo, Ltd. & Senior, [1937] 3 All E. R. 524. **Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

353a. —— **Hot water boiler—Heated by gas burner without flue.**]—Defts., who were builders, sold a house to a purchaser, the contract providing that before conveyance the house was to be completed with a design similar to that of other houses on defts.' building estate & to be fit for habitation. In these houses the hot water for the bath was provided by a kitchen boiler heated by a gas burner with no flue to carry off waste products & with a linen shoot between the kitchen & the bathroom. A similar apparatus was installed by defts. in the house in question, & after the installation the gas co., on behalf of the purchaser, who was already in occupation as a tenant-at-will pending completion, set the regulator at 45 feet an hour, & the apparatus, when so regulated, was perfectly safe. The purchaser or his wife, in all probability, afterwards altered the regulator to 75 feet an hour, which was dangerous, & they were found dead in the bathroom, death being due to the inhalation of carbon monoxide. On behalf of their infant daughter their administrators brought against defts. an action for damages, (*a*) for breach of a contract to render the house fit for habitation, & (*b*) for negligently installing the apparatus so that noxious gases or products of combustion would be emitted into the house. The evidence established that such an installation, properly regulated, was not dangerous, & that defts. had nothing to do with the regulation:—*Held:* (1) since, apart from statutory exceptions which did not apply, a landlord or a vendor of real estate was not, in the absence of express contract, liable to his tenant or purchaser for dangerous defects, & since there was no evidence of the house being unfit for habitation with the apparatus properly regulated, pltfs. could not succeed on the ground of contract; (2) since the apparatus as installed by defts. was not dangerous, pltfs. could not recover on the ground of tort.—BOTTOMLEY *v.* BANNISTER, [1932] 1 K. B. 458; 101 L. J. K. B. 46; 146 L. T. 68; 48 T. L. R. 39, C. A.

Annotations:—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

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props; further, inasmuch as the props were not *per se* dangerous to the public it was not the duty of the builder to adopt the unusual course of having a watchman on the works during the week-end to look after the props.—COLMAN *v.* DUNBAR, [1933] App. D. 141.—S. AF.

sc. *Defective stonework on building—Natural disintegration.*]—Pltf. was in possession of a car under a hire-purchase agreement. The car was standing on a public road at a conveyance stand when an ornamental stone structure of the building near by broke off & fell on the car damaging it. In a suit to recover damages for negligence against the owner of the building:—*Held:* deft. was not liable, as the fall was due to an internal flaw which led to a gradual disintegration of the inside material of the stone, & this was not capable of being easily detected.—D'SOUZA *v.* CASSAMILLY (1933), I. L. R. 58 Bom. 189.—IND.

PART II. SECT. 2.

sl. *Failure to prevent freezing.*]—Where deft., tenant of pltfs.' house, knew that damage from frost was likely to happen if precaution were not taken to prevent the water which he had brought into the house by pipes from freezing, & failed to take reasonable precaution to that end, but, on the contrary, did that which increased the danger & led to the freezing of the water & consequent damage to the demised premises:—*Held:* tenant was liable to the landlord for such injury.—CONKLIN *v.* DICKSON (1917), 40 O. L. R. 460.—CAN.

PART II. SECT. 3, SUB-SECT. 1.

337 vi. —— *Application of R. S. O.,* 1927, *c.* 146.]—An "accidental fire" within above Act does not include a fire which had its origin in negligence, but is confined to the case of a fire produced by mere chance, or incapable of being traced to any cause.—MCAULIFFE *v.* HUBBELL, [1931] 1 D. L. R. 835; 66 O. L. R. 349.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—A.

342 xvi. ——.]—Deft. who set fire to orchard prunings & brush which he had piled up on his land, held to have been negligent in failing to take proper precautions to see that the fire did not get beyond his control to the injury of pltf.'s adjoining property.—MARSHALL *v.* HUTTON, [1928] 2 W. W. R. 33.—CAN.

342 xvii. ——.] — MCRURY *v.* DOMINION COAL CO., LTD. (1896), 40 N. S. R. 89.—CAN.

342 xviii. ——.]—When a fire is caused by negligence on uncleared arable and damages are to be assessed on the ordinary principle that pltf. is entitled to have the difference in value to him of the property before & after the fire. Damages allowed should take into account the extra cost of clearing, loss of productivity, & loss of feed, & against these should be offset any advantages arising, such as the sale of timber partially burnt & any deductions such as the restoration of the land to its original condition by natural growth before there is a likelihood of its being used for farming purposes.—GENDERS *v.* SOUTH AUSTRALIAN RYS. COMR., [1928] S. A. S. R. 272.—AUS.

342 xix. ——.]—Destruction of a barn from fire caused by the escape of a spark from burning refuse on deft.'s land held to be caused by deft.'s negligence.—DICKIE *v.* BRIDGES, [1935] 2 D. L. R. 809; 8 M. P. R. 352.—CAN.

PART II. SECT. 5, SUB-SECT. 2.—A.

353a i. *Whether article dangerous—Hot water boiler—Heated by gas.*]—Pltfs. sued P. Co. & O. Co. for damages for injury to one of them (wife of the other) alleged to have been caused by escape of gas from P. Co.'s premises (which were in the building as pltfs.' premises). O. Co. had, five years before the alleged injury, installed gas appliances in P. Co.'s premises, & it supplied gas to P. Co. At the trial the jury found that pltf. was injured by gas; that it escaped from gas appliances on P. Co.'s premises; that P. Co. had not satisfied the jury that it was not guilty of negligence causing or contributing to the escape; that O. Co. did not take the precautions it ought to have taken in installing & maintaining the gas appliances; that its failure to take such precautions caused or contributed to the causes of the injury; that O. Co. was guilty of negligence in the installation or maintenance, causing in whole or in part the injury, "in failing to install fume pipe on boiler when said boiler was installed"; that there was a verbal agreement between P. Co. & O. Co. "to install the aforementioned boiler & maintain same in good order"; & that the cos. failed to observe the terms of such agreement "by not insisting on the installation of fume pipe on boiler at the time said boiler was installed"; that O. Co.'s failure to observe its agreement caused or contributed to the causes of the injury; & assessed damages. Judgment was given against both defts.:—*Held:* there should be a new trial.—DOZOIS *v.* PURE SPRING CO., LTD. & OTTAWA GAS CO., [1935] S. C. R. 319; 2 D. L. R. 384.—CAN.

d i. ——.]—Action by a landlord against the tenant of a dwelling-house for damage to the house caused by explosion & fire. No certain evidence as to the cause of the explosion or fire was given, but deft. admitted that, in his opinion, the explosion was caused by contact between gasoline & an electric heater in the basement, & nowhere in the pleadings or in the evidence was any alternative cause for the explosion or fire alleged or suggested. Deft. had brought five gallons of gasoline on to the premises for the use of his wife in drycleaning curtains owned

354. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

355. *Add. Annotation :*—**Refd.** Bromiley *v.* Collins, [1936] 2 All E. R. 1061.

356. *Add. Annotations :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

359. *Add. Annotations :*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91. **Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

361a. ——.]—The law seems to be (1) if a barge which has carried petrol is an article dangerous in itself, it is the duty of the owners to take proper & reasonable precautions to prevent its doing damage to people likely to come in contact with it. These precautions may be fulfilled by entrusting it to a competent person with reasonable warning of its dangerous character, if that danger is not obvious. If such precautions are not taken, the owner will be liable to third persons with whom he has no contract for damage done by the barge, which they could not have avoided with reasonable care; (2) If the barge which has carried petrol is not dangerous in itself, but becomes dangerous because it has been insufficiently cleaned, & the owner is ignorant of the danger, the owner is not liable for damage caused by it to persons with whom he has no contract; (3) In the case of a thing dangerous in itself, where either the danger is obvious or the owner has given proper warning to the person entrusted with it, not being his servant, the owner is not liable for negligence of such person causing injury to a third party; such negligence is *nova causa interveniens* (SCRUTTON, L.J.).—HODGE & SONS *v.* ANGLO-AMERICAN OIL CO. (1922), 12 Ll. L. Rep. 183.

Annotations :—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

361b. ——.]—TAYLOR (J.) & SONS, LTD. *v.* UNION-CASTLE MAIL S.S. CO., LTD. (1932), 48 T. L. R. 249; 76 Sol. Jo. 148.

——.]—Pltf.'s husband, who was a dust collector employed by a local authority, was asked by deft.'s wife to take away with the refuse from deft.'s house a metal cylinder which in fact contained gas but which deft. did not know to be dangerous. The cylinder was put in a pail at the back of the dust-cart & soon afterwards it exploded & caused fatal injuries to pltf.'s husband. In an action for negligence the jury found that the death of pltf.'s husband was caused by the handling of the cylinder, & the judge held that in view of the small quantity of gas in the cylinder it was not dangerous in the condition in which it was handed over to the dustman, & he gave judgment for the deft. :—*Held :* as there was evidence to support the judge's decision it must be affirmed.—PATTENDON *v.* BENEY (1934), 50 T. L. R. 204; 78 Sol. Jo. 121, C. A.

364. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Apld.** Pattendon *v.* Beney (1933), 50 T. L. R. 10.

364a. —— —— —— ——.]—By Scots & English law alike the manufacturer of an article of food, medicine, or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health.—M'ALISTER (OR DONOGHUE) *v.* STEVENSON, [1932] A. C. 562; 101 L. J. P. C. 119; 147 L. T. 281; 48 T. L. R. 494; 76 Sol. Jo. 396; 37 Com. Cas. 350, H. L.

Annotations :—**Distd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606. **Consd.** Pattendon *v.* Beney (1933), 50 T. L. R. 10. **Apld.** Malfroot *v.* Noxal, Ltd. (1935), 51 T. L. R. 551. **Distd.** Evans *v.* Triplex Safety Glass Co., [1936] 1 All E. R. 283; **Apld.** Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85. **Consd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960; Kubach *v.* Hollands, [1937] 3 All E. R. 907. **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551; Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257; Brown *v.* Cotterill (1934), 51 T. L. R. 21; Haynes *v.* Harwood, [1935] 1 K. B. 146; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781; London, Midland & Scottish Ry. Co. *v.* Ribble Hat Works, Ltd. (1936), 80 Sol. Jo. 1038.

364b. —— —— —— —— **Defect discoverable on examination—& discovered by injured party.]**

by her & used in a store occupied by her for her separate business. He knew that the use of gasoline for dry-cleaning was dangerous but he did not take any precautions to minimise the risk. The bringing of such a quantity of gasoline into the house was a violation of a city bye-law :—*Held :* independently of the covenants in the lease & of any negligence by his wife, deft. had violated his general duty to his landlord to guard against damage to the house from its use for purposes beyond those incident to its natural & ordinary use as a dwelling. Moreover, his duty to the landlord was, under all the circumstances, an absolute one.—CHAMBERLIN *v.* SPERRY, [1933] 3 W. W. R. 74; [1934] 1 D. L. R. 189. —**CAN.**

362 i. *Liability of manufacturer of dangerous article—To warn purchaser of dangerous character—Liability to third party—Article dangerous in itself.*]—Where the vendor of a chattel, in this case a firework, which belongs to the dangerous class delivers it with a proper warning to recipient, he owes no further duty to the person who receives it from the recipient, nor, where the danger is apparent on the face of the thing, does he owe a greater duty with regard to the manufacture of the article than if it was not a dangerous thing in itself.—BROWNLEE *v.* HAND FIREWORK CO., [1931] 1 D. L. R. 127; 65 O. L. R. 646.—**CAN.**

364 i. —— —— —— *Article dangerous owing to unknown defect.*]—Pltf. alleging that his health had been injured as the result of his drinking part of the contents of a bottle of coca cola which contained a deleterious substance, brought an action for damages against the manufacturer. The bottle had been purchased from a retailer who had obtained it from the manufacturer, & it was capped in a way that showed the manufacturer intended it to reach the consumer unaltered; it had not been tampered with & there were no means of inspection which could disclose the alleged danger from the time it was distributed by the deft. to the retailer until it reached pltf. Caustic soda in solution was used by deft. in cleaning the bottles before filling them, & pltf. alleged that through deft.'s negligence the soda was intermingled with the beverage & thus rendered it poisonous. Pltf. contended that upon proof that the bottle contained caustic soda, that the beverage was manufactured & bottled by deft. & distributed by him for consumption, & that injury to pltf. had ensued upon drinking of its contents, the principle of *res ipsa loquitur* applied. Verdict for deft. Appeal dismissed.—WILLIS *v.* COCA COLA CO. OF CANADA, LTD., [1934] 1 W. W. R. 145; 2 D. L. R. 173; 47 B. C. R. 481.—**CAN.**

364 ii. —— —— —— ——.]—A dairy co. is liable to a consumer for chips of glass contained in a bottle of milk purchased from a dealer, & the dealer is liable for breach of implied warranty under Sale of Goods Act.—SHANDLOFF *v.* CITY DAIRY, [1936] 4 D. L. R. 712; O. R. 579; 6 F. L. J. (Can.) 166.—**CAN.**

—**Crane** manufacturers sold a crane in parts to a firm of builders, the arrangement being that the parts were to be assembled by the builders' men. The builders had in their employment an experienced crane erector, who in assembling the parts found that certain cog-wheels worked stiffly, did not fit accurately, & required to be remedied; he accordingly marked in chalk the places where there was inaccurate fitting, saying at the same time that he would have to report the matter to his employers. Before the defects so discovered had been remedied the erector began working the crane, & while he was so engaged a part of it fell & killed him, the fall being due to the defects above mentioned. In an action by his widow under Fatal Accidents Act, 1846 (c. 93), against the manufacturers of the crane:—*Held:* the defects being discoverable on reasonable inspection, &, having in fact been discovered by the deceased man, the manufacturers owed him no duty & were not liable for the accident.—FARR *v.* BUTTERS BROS. & Co., [1932] 2 K. B. 606; 101 L. J. K. B. 768; 147 L. T. 427, C. A.

Annotation:—**Consd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

364c. —— —— —— —— ——.]—Defts. were the manufacturers of a bull-ring, a ring through which an overhead trolley-wire passed, & which had been supplied to a local authority to be used in their overhead system of wires. An employee of the local authority, while working on the wires, was knocked from a wagon & killed by the breaking of the ring. The ring had not at any time been subjected to any test, either by defts. or by the corpn. Pltf., the widow of the employee, sued defts., alleging that the breaking of the ring was due to the negligence of defts. She also sued as administratrix of her husband, &, as such, claimed damages for his loss of expectation of life:—*Held:* (1) although defts. were negligent in the manufacture of the ring, & such negligence was the cause of the accident, there was an opportunity for intermediate examination of the ring by the local authority, which examination would have disclosed the defect. Defts. as manufacturers of the ring were not, therefore, liable in damages to pltf.; (2) if defts. had been liable, the damages for the loss of expectation of life would have been £500, & this sum, under the Administration of Estates Act, 1925 (c. 23), s. 46, would be the absolute property of the widow.—DRANSFIELD *v.* BRITISH INSULATED CABLES, LTD., [1937] 4 All E. R. 382; 54 T. L. R. 11.

364d. —— —— ——.]—Applt., who contracted dermatitis of an external origin as the result of wearing a woollen garment which, when purchased from the retailers, was in a defective condition owing to the presence of excess sulphites which, it was found, had been negligently left in it in the process of manufacture, claimed damages against both retailers & manufacturers. The presence of the deleterious chemical in the garment was a hidden & latent defect, & could not be detected by any examination that could reasonably be made; nothing happened between the making of the garment & its being worn to change its condition; & the garment was made by the manufacturers for the purpose of being worn exactly as it was worn in fact by applt.:—*Held:* those facts established a duty to take care as between the manufacturers & applt. for the breach of which the manufacturers were liable in tort. The principle of *M'Alister* v. *Stevenson*, No. 364a, can be applied only where the defect is hidden & unknown to the customer or consumer. The liability in tort was independent of any question of contract.—GRANT *v.* AUSTRALIAN KNITTING MILLS, LTD., [1936] A. C. 85; 105 L. J. P. C. 6; 154 L. T. 18; 52 T. L. R. 38; 79 Sol. Jo. 815, P. C.

Annotations:—**Distd.** Evans *v.* Triplex Safety Glass Co., [1936] 1 All E. R. 283; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781; Kubach *v.* Hollands, [1937] 3 All E. R. 907.

364e. —— —— —— **Onus of proof.**]—Pltf. bought a motor car fitted with a "Triplex Toughened Safety Glass" windscreen of defts.' manufacture. When the car was being used, about a year after the date of purchase, the windscreen suddenly & for no apparent reason broke into many fragments & injured the occupants of the car:—*Held:* in these circumstances the manufacturers were not liable in damages, for the following reasons: the lapse of time between the purchase of the car & the occurrence of the accident; the possibility that the glass might have been strained when screwed into its frame; the opportunity for examination by the intermediate seller; & the breaking of the glass might have been caused by something other than a defect in manufacture.—EVANS *v.* TRIPLEX SAFETY GLASS CO., LTD., [1936] 1 All E. R. 283.

— **Goods not tested by retailer.**]—A schoolgirl was carrying out a chemical experiment with chemicals supplied by the teacher of the chemistry class, when an explosion occurred whereby she was severely injured. The experiment was one for the making of oxygen by heating a mixture of potassium chlorate & manganese dioxide, a perfectly harmless experiment. The teacher had purchased the chemicals from the second defts., receiving as manganese dioxide a black powder so labelled in a packet. In fact the black powder was a mixture of antimony sulphide & manganese dioxide, indistinguishable from manganese dioxide to the eye, but dangerous when heated with potassium chlorate. The second defts. had purchased this powder as manganese dioxide from the third party, whose invoice stated: "The above goods are accurate as described on leaving our works but they must be examined & tested by user before use. The above goods are not invoiced as suitable for any purpose but they are of the nature & quality described." The second defts. had carried out no test on the powder & had not advised the teacher that an examination or test would be advisable. The second defts. knew that the powder would be used for the purpose of school experiments, but they had not told the third party that the powder might be so used. The schoolgirl recovered damages, in an action for negligence, from the second defts., who sought an indemnity or contribution from the third party:—*Held:* (1) as the third party had no notice of the intended user of the powder, which might have been resold for a variety of purposes or

in innocuous compounds or mixtures, & as the second defts. had not carried out a test, as the invoice prescribed, & which the second defts. had ample opportunity for doing, the third party was not liable to indemnify the second defts.; (2) as the third party could not have been successfully sued by the schoolgirl, the third party was not liable to contribute as a joint tortfeasor.—KUBACH *v.* HOLLANDS, [1937] 3 All E. R. 907; 53 T. L. R. 1024; 81 Sol. Jo. 766.

364g. —— —— —— **Hair dye.**]—Pltf. had been in the habit of having her hair dyed with henna at the second deft.'s shop. The second deft. suggested that pltf.'s hair should be dyed with Oloxo, a dye which she described as harmless, & which was prepared by & bought by the second deft. from the first deft. Pltf. raised objections to the use of such a dye but was assured it was safe to use. Pltf. as the result of the use of the dye had an acute attack of dermatitis & nervous trouble. The first deft. by its agent had warranted the dye as safe, but for trade reasons it had supplied the second deft. through a wholesale hairdressers' sundriesman. A booklet was issued with the dye which stated it was dangerous if used without a skin test; but no warning was given to the second deft. as to the danger. A certain quantity of the dye being purchased by the second deft., she was entitled to & did attend certain lectures & demonstrations given on behalf of the first deft. & the lecturer upon behalf of the co. stated that the co. would indemnify hairdressers using this dye against claims arising out of its use:—*Held:* (1) pltf. was entitled to recover against the second deft. in contract: (2) pltf. was entitled to recover against the first deft. in tort; (3) the second deft. was entitled to recover from the first deft. damages for breach of contract & those damages were the damages the second deft. had to pay to pltf. in this action & her costs of the action; (4) the indemnity given at the lectures was not made at such a time that it could be considered a part of the contract with the second deft.—PARKER *v.* OLOXO, LTD. & SENIOR, [1937] 3 All E. R. 524.

364h. —— **To retailer—Sale through sundriesman.**]—PARKER *v.* OLOXO, LTD. & SENIOR, No. 364g, *ante*.

— Lectures on use—Indemnity.] PARKER *v.* OLOXO, LTD. & SENIOR, No. 364g, *ante*.

364k. Liability of repairer of dangerous article.]—While the male pltf., the owner of a motor cycle to which a few days previously defts. had fitted a sidecar, was driving the combination along a public road the sidecar became detached from the motor cycle. Both the male pltf., & the female pltf. who was a passenger in the sidecar, sustained personal injuries. In an action for damages:—*Held:* defts. were guilty of negligence in fitting the sidecar to the motor cycle, that they were liable to the male pltf. in contract & in tort, & to the female pltf. in tort.—MALFROOT *v.* NOXAL, LTD. (1935), 51 T. L. R. 551; 79 Sol. Jo. 610.

364l. ——.]—Pltf. was working as an electric welder in a boiler of a steamship when an explosion occurred & steam came in through the furnace door. After one vain attempt he succeeded in making his way through the door. He was badly scalded but suffered far more from shock & was rendered neurasthenic. The escape of steam was due to the fact that in a valve chest a bridge, in which a brass bush fitted, had been put in upside down. The valve had been assembled & fitted by the second defts. Pltf. alleged that both defts. were negligent in that the valve chest was made of cast iron. Against the first defts. he alleged negligence in not taking sufficient precautions against water hammer by securing effective drainage of the steam pipes, & that having brought the steam upon the ship they were liable under the principle of *Rylands* v. *Fletcher* for not keeping it under control. Against the second defts. he alleged negligence in wrongly assembling & fitting the valve chest, contending that though there was no privity of contract they were liable in tort for supplying a dangerous article:—*Held:* there was no negligence in using a valve chest made of cast iron; there was no negligence in the shipowners in not having an improved system of drainage of the steam pipes to exclude the possibility of water hammer; the doctrine of *Rylands* v. *Fletcher* was not applicable because there was no escape of the steam off the premises & the steamship owners were not making an unnatural user of their premises; the defective bridge was not a source of danger which the first defts. knew or ought to have known, & they were not liable to pltf. as invitee or licensee; in reassembling the valve with the bridge upside down the second defts. by negligent repair converted an article not dangerous in itself into a dangerous article & they knew of the danger which they were so creating. This imposed upon them a liability for injuries caused to pltf., altogether apart from their liability arising out of their contract with the first defts.—HOWARD *v.* FURNESS HOULDER ARGENTINE LINES, LTD., & BROWN, LTD., [1936] 2 All E. R. 781; 80 Sol. Jo. 554; 41 Com. Cas. 290.

Part III.—Negligence in relation to Highways.

382a. Motor-van mounting pavement.]—Where a motor-van gets on to a pavement intended for foot-passengers & injures persons standing there, these facts, in the absence of

PART III. SECT. 9, SUB-SECT. 1.—B.

g (p. 59) i. —— *Driving in* The driver of a tramcar when (in a fog should keep his car under control that he may stop it within the limits of his vision.—VANCOUVER ICE & STORAGE CO. *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1927] 1 W. W. R. 631; 38 B. C. R. 234.—CAN.

h (p. 60) i. ——.]—The driver of a motor vehicle upon city streets may be grossly negligent if his car is travelling at the permitted speed of 20 miles per hour, or even at a much

explanation, constitute evidence of negligence.—ELLOR *v.* SELFRIDGE & Co., LTD. (1930), 46 T. L. R. 236; 74 Sol. Jo. 140.

Annotation :—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353, C. A.

382b. ——.]—A skid is a sufficient explanation to negative the suggestion of want of care in the case of a car mounting the pavement.—HINTON *v.* GILCHRIST (1930), The Times, March 8, 1930, D. C.

389a. Inability to pull up within limits of vision.]—It seems to me that when a man drives a motor car along the road he is bound to anticipate that there may be things & people or animals in the way at any moment, & he is bound to go not faster than will permit of his stopping, or deflecting his course, at any time to avoid anything he sees, after he has seen it. If there is any difficulty in the way of his seeing, like a fog for instance, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the driver, the deft., is in this dilemma; either he was not keeping a sufficient look out, or, if he was keeping the best look out possible, then he was going too fast for the look out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look out, the probability is that the accident would never have happened (ROWLATT, J.).—PAGE *v.* RICHARDS & DRAPER (1920), cited in 149 L. T. p. 263, D. C.

Annotation :—**Folld.** Tart *v.* Chitty & Co., [1933] 2 K. B. 453.

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lower rate of speed: what is an excessive rate must depend upon the circumstances of each case. In this case, where there was a collision of motor vehicles at the intersection of two city highways:—*Held:* the driver of the vehicle on the right had not such a clear view of approaching traffic as made it safe to approach the intersection at the rate at which his vehicle was travelling—15 miles an hour or more.—MARTIN *v.* POWELL, POWELL *v.* MARTIN, [1928] 4 D. L. R. 149; 62 O. L. R. 436.—**CAN.**

h (p. 60) ii. ——.]—In ordinary circumstances, if a driver turns out of & across the line of traffic, after giving the usual warning by putting out his hand (although his duty may not be so great as to make sure), he acts negligently unless he has at least reasonable ground, beside the mere fact of his warning, for believing that he can cut across without endangering approaching traffic.—GREEN *v.* HARDY, [1929] S. A. S. R. 58.—**AUS.**

h (p. 60) iii. ——.]—CAMERON *v.* MCDONALD, [1931] 1 W. W. R. 731; 2 D. L. R. 978.—**CAN.**

u (p. 61) i. ——.]—COLLINS *v.* GENERAL SERVICE TRANSPORT CO. (B. C.), [1927] 2 D. L. R. 353.—**CAN.**

u (p. 61) ii. ——.]—SCHONBERNER *v.* BARRON (Alta.), [1927] 3 D. L. R. 708; [1927] 2 W. W. R. 417.—**CAN.**

u (p. 61) iii. ——.]—Even though a motor car is travelling on the right-hand side of the road, the driver is not justified in holding to his course regardless of the consequences, but is bound to exercise reasonable care to avoid injuring others, & owes this duty to the driver of an approaching car even if the latter has not yet complied with the statutory provision requiring him to turn out to the right of the centre of the highway.—AUDET *v.* WETSCH, [1929] 2 D. L. R. 186; 23 S. L. R. 165; [1928] 3 W. W. R. 655.—**CAN.**

u (p. 61) iv. ——.]—A driver of a motor vehicle must expect the presence of other persons & animals on the highway, & his failure to see them in time to avoid running into them may amount to negligence.—KEATLEY *v.* SPEARING, [1931] 2 W. W. R. 309.—**CAN.**

u (p. 61) v. ——.]—Pltf., a pedestrian, was proceeding over a footpath to a gate into a place on a racecourse where motor vehicles parked. A motor car proceeding over the footpath, which at this point was asphalted as a track for motor cars, & into the parking place, ran down pltf. from behind. Pltf. did not see or hear deft.'s car, but before approaching the asphalted track he looked into the motor park & also on to the roadway, but along the direction opposite to which pltf. was approaching. On approaching the gate, he stopped momentarily facing the motor park. The driver of the car gave no sufficient warning, & came from such a direction that the pltf. was entitled to expect a warning. The car was accelerated just before it struck pltf.:—*Held:* deft. was guilty of negligence in driving at an excessive speed, & had disabled himself from avoiding the consequences of pltf.'s default in not keeping a more careful look out.—RANKIN *v.* RICHARDS (1929), S. A. S. R. 100.—**AUS.**

384 i. *Breach of regulations under Motor Car Acts.*]—The breach of a statutory regulation under Motor Vehicles Act, 1921, which results in damage will usually afford *primâ facie* evidence of negligence. *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.*, [1923] 1 K. B. 539, applied. This rule indisputably applies when the nature of the regulation is such that the breach is calculated to deceive other users of the highway, & so as to create the situation of danger that results in the damage sustained.—FORBY *v.* LAUCKE, [1933] S. A. S. R. 60.—**AUS.**

386 x. —— ——.]—SOLOMON *v.* MUSSETT & BRIGHT, LTD., [1926] App. D. 427.—**S. AF.**

386 xi. —— ——.]—A motor truck proceeding westerly upon a highway was about 5 feet from the south kerb, when, as it approached an intersecting highway, it struck a boy riding a bicycle & injured him. In an action to recover damages for the injury from the owner of the truck alleging negligence of the driver, the trial judge directed the jury as a matter of law that they were entitled to find the driver negligent, from the one circumstance that he was on the wrong side of the highway:—*Held:* misdirection, & a new trial was ordered.—ALLEN *v.* LORD, [1928] 4 D. L. R. 62; 62 O. L. R. 433.—**CAN.**

386 xii. —— ——.]—The driver of a motor vehicle is guilty of negligence in travelling on the left side of the road, without any just excuse for doing so, if he knows or ought to know that by so proceeding he is likely to collide with another vehicle coming from the opposite direction, & under such conditions he is under the duty to use more care & keep a better look out to avoid a collision than would be required of him if he were on his proper side of the road.—ERICKSON *v.* KLATT, [1929] 3 D. L. R. 295; 2 W. W. R. 5; 23 S. L. R. 567.—**CAN.**

389 i. *Insufficient lighting.*]—In an action for damages resulting from a collision between automobiles the judge found that the real cause of the accident was that deft.'s car was being driven at night with only one lighted headlight. Deft. appealed:—*Held:* said finding was justified & the appeal should be dismissed.—NESBITT *v.* CARNEY, [1930] 3 W. W. R. 504; [1931] D. L. R. 106; 25 S. L. R. 129.—**CAN.**

389 ii. ——.]—RUBBERNUS *v.* DOWNARD, [1930] 2 D. L. R. 767.—**CAN.**

389 iii. *Infringement of lighting regulation—No tail light.*]—Liability for negligence does not arise solely from the failure to have a red tail light burning.—FALSETTO *v.* BROWN, [1933] 3 D. L. R. 545; O. R. 645.—**CAN.**

389a i. *Inability to pull up within limits of vision.*]—(1) In an action resulting from a collision at night between a motor car driven by pltf. & a car which, owing to its lights having gone out, had been stopped on the side of the highway without having its rear light burning:—*Held:* the contention of deft. could not be sustained that the mere occurrence of the collision was in itself conclusive evidence that pltf. must have been driving at an excessive speed or not keeping a proper lookout, & that his ultimate negligence in one or other of said respects was the real cause of the accident.

(2) Too much weight should not be placed upon an admission of fault made by a motorist immediately after a collision in which he was injured.—BROCKIE *v.* MCKAY, [1934] 1 W. W. R. 725; 2 D. L. R. 690; 42 Man. L. R. 39.—**CAN.**

389a ii. ——.]—Some time after dark the electric lights of a motor float failed & the driver, while in search of a mechanic to remedy the defect, left the float near the unlighted side of a suburban road. The night had been wet, & the road & a tarpaulin partially covering the float were so similar in colour as to be almost indistinguishable. A motor car proceeding at a speed of twenty to twenty-five miles an hour along the road, with its headlights on but "dipped," collided with the float:—*Held:* the evidence led for pursuer as to the invisibility of the float was credible, & accordingly it was not a necessary inference that pursuer was in fault in not avoiding the accident; also, the accident was due solely to the fault of the driver of the float in leaving his vehicle unlighted so as to be a dangerous obstruction on the road.—SCOTT *v.* M'INTOSH, [1935] S. C. 199.—**SCOT.**

389a iii. ——.]—In an action for damages resulting from a collision, about six a.m. on Sept. 25, between deft.'s motor truck & pltf.'s waggon which was stationary on the right hand side of a paved one-way highway:—*Held:* deft., on his own testimony, was either not keeping a proper look-out or had not kept his truck under such control that he could stop within the limits of his vision; &, furthermore, deft., whether or not the waggon was unlawfully on the highway, was negligent in not using the skill & standard of care required of him in controlling the direction his truck was taking. It should be kept

389b. ——.]—On the road from Basingstoke to Winchester there is a "draw-up" opposite a refreshment hut. A stationary lorry of defts. was drawn up in the roadway opposite the draw-up, & there was a conflict of evidence whether this lorry was showing a rear light. It was a moonlight night, but the stationary lorry was in shadow. Pltf.'s lorry when driving from Basingstoke to Winchester ran into defts.' stationary lorry. The driver of pltf.'s lorry said that he was unable to see defts.' lorry owing to a beam of light thrown by a third lorry, which was in the draw-up across the road. The jury found a verdict for pltf. & judgment was entered for him. On appeal SCRUTTON, L.J., said that he thought that there was just enough evidence to support the verdict of the jury, namely, that as to the beam of light thrown by the third lorry. The Ct. of Appeal had stated in three cases, as indeed had the Div. Ct., though unfortunately these cases had not been reported, that if a driver at night proceeded at such a speed that he could not pull up within the limits of his vision, he was in the wrong. As Lord BRAMWELL had once observed: "If you cannot see where you are going, you must not go." The decision in that case did not weaken the force of these observations.—EVANS *v.* DOWNER & CO., LTD. (1933), 149 L. T. p. 264 n., C. A.

Annotation:—**Consd.** Tidy *v.* Battman (1933), 103 L. J. K. B. 158.

389c. ——.]—On a dark evening, when it was raining & blowing hard, a Foden steam wagon pulled up, 9 in. from the kerb in a 14 ft. street, that the driver's mate might attend to the rear lamp, which had gone out. The place where the wagon pulled up was very dark. A motor cyclist whose light threw a

in mind that many of the older automobile collision cases which deal especially with "agony periods & spaces" dealt with brakes & controlling mechanisms for automobiles which were much less efficient than those of the present day.—SHUST *v.* HARRIS, [1936] 2 W. W. R. 54; 44 Man. L. R. 121.—**CAN.**

389a iv. —— .]—The contention that in *Ristow* v. *Wetstein*, [1934] S. C. R. 128, the law of Canada, in cases where the driver runs into a stationary object, was settled in accordance with the rule supposed to be laid down in *Tart* v. *Chitty & Co.*, [1933] 2 K. B. 453; & *Baker* v. *Longhurst*, [1933] 2 K. B. 461, is disposed of by the judgment of MARTIN, J.A., in *Hall* v. *West Coast Charcoal & Wood Products Co., Ltd.*, [1935] 2 W. W. R. 134; 50 B. C. R. 18.

In an action by a gratuitous passenger in a motor car for injuries sustained when late on a wet night the car ran into a pile of excavated earth, which was not so lighted or guarded, as it was held it should have been, so that the danger would be plainly obvious under any possible conditions:—*Held:* after referring to the rule that the presence of the trap did not excuse the driver if when he became aware of it, or ought to have become aware of it, he was able by the exercise of ordinary care to avoid it, that he had not been shown to have been negligent.—THOMPSON *v.* WOOD, [1937] 2 W. W. R. 511.—**CAN.**

se. *Failure to give signal—Of intention to turn.*]—It is incumbent upon the driver of a vehicle, who desires to change his course & to turn into another street, to give a warning to that effect, & to turn the corner at a pace which will give him complete control over his vehicle.—UYS *v.* UYS, [1927] App. D. 394.—**S. AF.**

sf. *Lack of sufficient control.*]—The driver of an automobile should have his car under such control that he is able to come to a stop in the space which he sees clear ahead.—MACGILL *v.* HOLMES (1927), 39 B. C. R. 65.—**CAN.**

sg. *Failure to give notice of intention to cross street.*]—BLOW *v.* MAYLAND (Alta.), [1929] 4 D. L. R. 561.—**CAN.**

sh. *Absence of "clear view"—Insufficient headlight.*] — RUTTAN *v.* O'CONNOR-FENTON, [1929] 4 D. L. R. 62; 64 O. L. R. 208.—**CAN.**

si. —— *Failure to slow down.*]—When a person driving a motor car at night knows that another car is on the road a short distance ahead, & his vision is so interfered with by the lights of an approaching car that he cannot see the location of the car ahead, he is under the duty of slowing down & proceeding with his car under control as will prevent it from crashing into the car ahead.—FLETCHER *v.* MULLEN, [1930] 2 W. W. R. 529; 3 D. L. R. 919; 24 S. L. R. 520.—**CAN.**

sk. —— ——.]—No general rule can be laid down as to the duty of a driver of a motor car to stop when the lights of an approaching car interferes with his vision. The circumstances of each case must be carefully examined before concluding that a driver should stop, or almost stop, when his vision for any reason is impaired.—NORTHERN ELECTRIC CO., LTD. *v.* KELLY, [1931] 3 W. W. R. 527.—**CAN.**

sm. *Restarting taxi in fog—Passengers not told to alight.*]—While a taxicab was being driven in a dense fog astride a street-car rail its engine stalled, & before the driver could start it again the cab was run into by a street car which, despite the warnings of the taxi driver, approached from behind & the passengers in the cab were injured:—*Held:* the fact that the driver did not first get his passengers out of the cab before attempting to get it under way again did not constitute negligence; nor did the driver by driving astride the rail or because of the position of the car after it stalled violate the traffic bye-law relied on by pltfs.—NOWELL *v.* YELLOW CAB CO., LTD., [1930] 1 D. L. R. 491; [1929] 3 W. W. R. 616; 41 B. C. R. 494; *revsg.*, [1929] 4 D. L. R. 280; 1 W. W. R. 822.—**CAN.**

sn. *Failure to keep distance from cars ahead.*]—There is no authority for propounding a rule that the failure of the driver of a motor car to keep at a greater distance than six to eight feet from cars ahead of him always constitutes negligence.—STANLEY *v.* NATIONAL FRUIT CO., [1929] 3 W. W. R. 522; *revsd.*, [1931] 1 D. L. R. 306; S. C. R. 60.—**CAN.**

so. *Car parked for reasonable time.*]—The driver of a vehicle has a right to stop temporarily upon a highway to load or unload his vehicle, but this right is limited by the correlative right of others to pass along the highway. The right of the driver so to stop must be exercised reasonably; & whether the length of time or extent of stoppage is reasonable is a question of fact to be determined by the circumstances of each case.—BRAIN *v.* CRINNIAN, [1931] 1 D. L. R. 546; 66 O. L. R. 223.—**CAN.**

sp. *No liability to pedestrian appearing suddenly from behind parked cars.*]—Deft. driving car had a right to expect that pedestrians would act reasonably; & she had no reason to anticipate that any one would be so foolish as to come out suddenly from between two lines of parked cars without looking to see if there were any moving cars too near, as pltf. did.—TAYLOR *v.* AINSLIE, [1931] 3 D. L. R. 26; O. R. 188.—**CAN.**

sq. *Intersection controlled by light signals—No liability when pedestrian suddenly disobeys signals.*]—When the driver of a motor vehicle has the signal lights with him he knows that they are against pedestrians crossing his path, & he has a right to expect that the signals will be obeyed by them. He must use every precaution to avoid an accident, but he is not in all cases to be regarded as negligent because he fails to observe negligent conduct of a pedestrian.—HULME *v.* CREELMAN, [1931] 1 D. L. R. 682; 66 O. L. R. 360.—**CAN.**

sr. *Driver of one car negligent—Damage caused by driver of second car swerving to avoid accident—Liability of first driver.*]—TATISICH *v.* EDWARDS, [1931] S. C. R. 671; 2 D. L. R. 521.—**CAN.**

ss. *Approaching intersection at excessive speed.*]—*Held:* pltf. was also negligent in approaching the intersection at an unlawful & excessive rate of speed, namely, about forty miles an hour.—ANDERSON *v.* PARNEY, [1930] 4 D. L. R. 833; 66 O. L. R. 112.—**CAN.**

su. *Crossing arterial road at slow speed.*]—BAILEY *v.* GROGAN & BAILEY, [1937] 3 W. W. R. 29.—**CAN.**

sv. *Glaring headlights.*]—TINKLER *v.* GOEBEL, [1931] 2 W. W. R. 413.—**CAN.**

sb. ——.]—(1) No absolute rule can be formulated as to the duty of the driver of a motor car to stop when his eyes are dazzled by the lights of an approaching vehicle; the facts of the particular case must determine the necessity for his doing so. (2) In the absence of an apparent danger of a grazing collision, it is not negligence for the driver of a motor car to drive with his left elbow projecting over the window sill.—BEARDSLEY *v.* CLARK, [1932] 2 W. W. R. 481; 4 D. L. R. 237; 40 Man. L. R. 449.—**CAN.**

sd. ——.]—Resp.'s servants left a roller on the side of a road at night without any light or other warning. The driver of pltf.'s truck, seeing a car coming towards him, pulled further over to the left of the road, but being dazzled by the lights of the car he did not see the roller & collided with it, damaging the truck:—*Held:* there was no negligence on the part of the driver of the truck, & the negligence of deft. was the real cause of the accident.—TAYLOR *v.* MAIN ROADS BOARD, [1931] W. A. L. R. 48.—**AUS.**

sf. ——.]—It is negligence to drive a car when the driver is so blinded by the headlights of an approaching car that he cannot see anything in front of him.—MCGIBBON *v.* MOORES (1931), 4 M. P. R. 209.—**CAN.**

sw. *Putting chains on car after dark—No rear light.*]—It is negligence for the driver of a motor car to kneel in the

beam of 15 yds. crashed into the back of the wagon & he was injured. On these facts, in an action brought by the motor cyclist against the owners of the wagon, the county ct. judge found that defts.' servants were negligent, but that defts. had not shown that pltf. was negligent:—*Held:* there was no evidence upon which a judgment could be founded that pltf. was not guilty of contributory negligence. Either pltf. was not keeping a proper look out or he was travelling at such a speed that he was unable to stop his motor cycle or to swerve so as to avoid the collision.—TART *v.* CHITTY (G. W.) & Co., LTD., [1933] 2 K. B. 453; 102 L. J. K. B. 568; 149 L. T. 261, D. C.

Annotations:—**Consd.** Baker *v.* Longhurst & Sons, Ltd. (1933), 102 L. J. K. B. 573; Tidy *v.* Battman, [1934] 1 K. B. 319.

389d. ——.]—A person driving a motor vehicle at night must drive at such a pace that he can pull up within his limits of vision; accordingly, if he collides with something, either he was riding unduly fast or he was not keeping a good look out; that is, in the absence of some other factor causative of the collision.

Pltf., motor cycling at night, ran into a horse tip-cart proceeding in the same direction in front of him on its near side of the road. The cart was without a light. Pltf. in his evidence said that his speed was 15-20 m.p.h., & he could stop easily within 10 yds. The beam of his lamp showed 30 yds. ahead. He said that he never actually saw it was a cart. He saw a dark object loom up & swerved to avoid it:—*Held:* as on pltf.'s evidence, when proving the negligence of defts., contributory negligence was established, there was no contest of fact & judgment must be entered for defts.—BAKER *v.* LONGHURST (E.) & SONS, LTD., [1933] 2 K. B. 461; 102 L. J. K. B. 573; 149 L. T. 264, C. A.

Annotation:—**Distd.** Tidy *v.* Battman, [1934] 1 K. B. 319.

389e. ——.]—Deft.'s motor lorry was drawn across the road running from Chichester to Arundel at 7.45 p.m. on Feb. 23, 1932, in such a position as to be an unlighted obstruction. A motor car had stopped behind the lorry about ten yards away on the near side, when pltfs.' son, who had been following the car on his motor cycle, drew out from behind, dashed into the lorry, & was killed. Pltfs. brought an action in the county ct. under Lord Campbell's Act for compensation for loss as a result of the negligence of deft. or his servant. The defence was that the accident was caused by the contributory negligence of deceased. The county ct. judge left the case to the jury, who found that deft. was negligent, & that deceased could not by the exercise of ordinary care have avoided the consequences of that negligence. On appeal by deft.:—*Held:* on the above facts, the questions of negligence & contributory negligence were rightly left to the jury.—TIDY *v.* BATTMAN, [1934] 1 K. B. 319; 103 L. J. K. B. 158; 150 L. T. 90, C. A.

389f. ——.]—WARING *v.* KENYON & Co. (1927), LTD. (1935), 79 Sol. Jo. 306.

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roadway after dark for such a purpose as the putting on of chains without having the red light on the rear end of his car which is called for by Motor Vehicle Act.—STEFURA *v.* RIDGE, [1931] 1 D. L. R. 694; [1930] 3 W. W. R. 465; 39 Man. L. R. 256.—**CAN.**

sx. *Backing car into lane without warning.*]—EVA *v.* JOHNSON, [1932] 3 W. W. R. 502; 40 Man. L. R. 628.—**CAN.**

sy. *Breach of lighting regulation as contributory negligence.*]—MORRISON *v.* FERGUSON, [1930] 1 D. L. R. 913; 1 M. P. R. 81.—**CAN.**

sa. *Failure to look out before turning.*]—The driver of a car before making a turn looked in the mirror of his car, but did not look out of & behind his car:—*Held:* negligence.—HILBORN *v.* JOHNSON (1932), 4 M. P. R. 262.—**CAN.**

sc. *Breach of Regulations.*]—The driver of a motor car at an intersection failed to give way, as required by the Regulations, to a tram-car, alongside which a motor-cyclist was riding at a reasonable speed, the tram-car preventing the latter from seeing the motor car coming from the right. The motor-car driver just missed the tram-car & collided with & injured the motor cyclist, neither seeing the other until at or immediately before impact:—*Held:* under the circumstances the bare fact that pltf., the motor cyclist, did not give way to a vehicle approaching from his right was not evidence of negligence; the question of negligence was one for the jury, which was entitled to find that pltf. was not negligent.—ALGIE *v.* BROWN (D. H.) & SON, LTD., [1932] N. Z. L. R. 779.—**N.Z.**

sh. *Negligent approach to narrow bridge in fog.*]—BALDWIN *v.* BELL, [1933] S. C. R. 1; 1 D. L. R. 232.—**CAN.**

sk. *Leaving truck without lights.*]—While a motor truck was being driven on a highway about an hour & a half before sunset a tyre blew out & the owner-driver, deft., after drawing it somewhat to the side of the road, left it in the way of traffic approaching from its rear & without putting any one in charge or turning on the lights. Shortly after dark it was run into by pltfs.' car coming from behind. The evidence as to the time of the accident was too uncertain to justify a finding that the deft. violated the statutory provision requiring motor-car lights to be turned on within one hour after sundown:—*Held:* in so leaving the truck deft. was guilty of negligence for which he was liable to pltfs.; the pltf. driver being found not guilty of any contributory negligence.—ELLIS *v.* ZIMMERMAN, MORGAN *v.* ZIMMERMAN, [1933] 1 W. W. R. 550.—**CAN.**

sl. ——.]—HALL *v.* WEST COAST CHARCOAL & WOOD PRODUCTS CO., LTD., [1935] 2 W. W. R. 134; 3 D. L. R. 53; 50 B. C. R. 18.—**CAN.**

sm. ——.]—In an action for injuries to a passenger on a motor truck which collided about six o'clock of an Oct. morning with an oil tank truck which, owing to a broken axle, had been left on the highway over night:—*Held:* the negligence of both defts. or their servants contributed jointly to the accident & could not be so separated that it could be said that the negligence of either was the sole cause thereof; therefore, both were liable to pltf. Under all the circumstances, it was negligence to leave the oil truck on the highway for such a length of time without taking reasonable precautions to prevent such an accident, even if the statutory duty as to reflectors was complied with. The negligence of the driver of the other truck was in not keeping a proper lookout, in driving too fast under the circumstances, in not having his car under sufficient control, & in the fact that his headlights did not comply with sect. 36a of said Act.—WANDELEER *v.* DAWSON, [1936] 3 W. W. R. 282; *affd.*, [1936] 3 W. W. R. 478; 6 F. L. J. (Can.) 195.—**CAN.**

so. *Both vehicles without lights.*]—Appt., a pillion-rider on an unlighted motor cycle driven by his brother, was injured in a collision on a dark night with an unlighted motor car coming the opposite way. There was a continuing act of negligence on the part of the two drivers up to the point of impact, & neither had the opportunity of avoiding the other:—*Held:* although the unlighted condition of the vehicles was the *causa sine qua non* of the collision, in order to ascertain the *causa proxima* it was necessary to ascertain where the vehicles were & on what side of the road the collision took place, for, even as between the drivers of the two vehicles, a collision could have been avoided, despite the want of lights, if each had kept to his own side of the road, & therefore the driver of the cycle would be entitled to succeed if the real cause of the collision was that the car, owing to the negligence of its driver, was on the wrong side of the road.—BOURKE *v.* JESSOP, [1933] N. Z. L. R. 1418.—**N.Z.**

sp. *Insufficiency of gasoline.*]—Failure to have sufficient gasoline, which caused deft.'s car to stall, whereby pltf.'s car ran into it, is negligence.—IRVINE *v.* METROPOLITAN TRANSPORT CO., [1933] 4 D. L. R. 682; O. R. 823.—**CAN.**

sr. *Driving with worn tyre.*]—Where a tyre on a motor car was, to the knowledge of the driver & owner, so worn & damaged as to be unsafe for use at a speed of 35 miles per hour:—*Held:* the driver was negligent in driving the car with the tyre in that condition & the owner was negligent in that it did not take reasonable care in maintaining the tyres.—FRASER *v.* CHILDREN'S AID SOCIETY, [1935] 1 W. W. R. 667; 43 Man. L. R. 102.—**CAN.**

396. *Add. Annotation :*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

400a. Presumption that car driven by owner or agent.]—Where a pltf. in an action for negligence proves that damage has been caused by deft.'s motor car, the fact of ownership of the motor car is *primâ facie* evidence that the motor car, at the material time, was being driven by the owner, or by his servant or agent.—BARNARD *v.* SULLY (1931), 47 T. L. R. 557. D. C.

407. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458 ; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

408. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85 ; Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

414. *Add. Annotation :*—**Consd.** Deen *v.* Davis, [1935] 2 K. B. 282.

Unhorsed van.]—Where an action for damages was brought for injuries sustained by a child of seven years of age who, while playing with other children in a public street, had climbed on to & fallen from an unhorsed van belonging to defts. & left standing unattended in the street outside their premises : —*Held :* such an object as a sound, stationary & unhorsed van possessed no inherent attribute which rendered it dangerous in itself, & had about it nothing which was in the nature of a trap or concealed peril, so as to render the owner thereof liable in damages. Further, in the present case there was no relation of cause & effect between an obstruction of the use of the highway & the occurrence of the accident.—DONOVAN *v.* UNION CARTAGE CO., LTD., [1933] 2 K. B. 71 ; 102 L. J. K. B. 270 ; 148 L. T. 333 ; 49 T. L. R. 125 ; 77 Sol. Jo. 30.

Annotation :—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

421a. Parties—Defendant insured—Institution of third party proceedings against insurer.]—(1) As a general rule, in the absence of special circumstances, the insurance co. which has issued a motorist's insurance policy should not be brought in as a third party at the hearing of an action for damages by the injured party against the motorist.

(2) It is a well established rule of practice at the Bar, enforced by the judges, that in an action against a motorist the jury should not be informed that deft. is insured.—GOWAR *v.* HALES, [1928] 1 K. B. 191 ; 96 L. J. K. B. 1088 ; 137 L. T. 580, C. A.

Annotations :—As to (1) **Consd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586. **Refd.** Grinham *v.* Davies (1928), 139 L. T. 379. *As to* (2) **Apld.** Grinham *v.* Davies (1928), 139 L. T. 379. **Consd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

421b. —— —— ——.]—LOTHIAN *v.* EPWORTH PRESS (1926), [1928] 1 K. B. 199, n. ; 96 L. J. K. B 1092, n. ; 137 L. T. 582, n., C. A.

Annotation :—**Distd.** Gowar *v.* Hales, [1928] 1 K. B. 191.

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st. *Absence of mirror.*]—GEMMILL *v.* GRAIN, [1935] 2 W. W. R. 447 ; 43 Man. L. R. 155.—**CAN.**

sw. *Reliance on having given signal.*]—It is negligence for a motorist about to make a left turn who has given a signal with his left arm to rely solely on that signal & to turn without taking precautions to see that the turn can be made without the risk of collision with a car coming behind him.—LEONARD MCLAUGHLIN MOTORS, LTD. *v.* BARNES, [1935] 1 W. W. R. 598.—**CAN.**

sz. *Pushing car from side road into highway.*]—Pushing a car from private property on to a highway, & into the path of a truck so that the latter cannot avoid a collision, is negligence.—PINEO *v.* HARRIS, [1937] 2 D. L. R. 62. **CAN.**

PART III. SECT. 9, SUB-SECT. 1.—C.

400a i. *Presumption that car driven by owner or agent.*]—Proof that deft. is the owner of the car is not of itself sufficient to establish a *primâ facie* case of liability on his part for damage caused by the negligence of the driver of his private motor car.—MCKENZIE *v.* MCEWIN, [1933] V. L. R. 309.—**AUS.**

Vehicle driven by third party—With owner's permission.]—*See* AGENCY, Part IX., Sect. 4, sub-sect. 1 C. ; STREET TRAFFIC, Part V., Sect. 3, sub-sect. 5.

PART III. SECT. 9, SUB-SECT. 1.—D.

401 i. *Duty of driver to give place to pedestrian.*]—ELLIOTT *v.* JOHNSON, [1929] 1 D. L. R. 208 ; [1928] S. C. R. 408.—**CAN.**

401 ii. ——.]—A pedestrian who is boarding a street car has a right to expect that a car driver will see him & slacken his speed.—JAMES *v.* PIEGL (1932), 46 B. C. R. 285.—**CAN.**

402 i. *Injury must be attributable to negligence of driver—Effect of contributory negligence of pedestrians—Effect of bye-law against "jay-walking."*—CHESTER *v.* KINNEAR (Alta.), [1927] 1 D. L. R. 47 ; [1926] 3 W. W. R. 601.—**CAN.**

402 ii. —— —— *Duty of tramcar drivers.*]—SYMONS *v.* WINNIPEG ELECTRIC CO. (Man.), [1928] 1 D. L. R. 159 ; [1927] 3 W. W. R. 650 ; *affd. sub nom.* WINNIPEG ELECTRIC CO. *v.* SYMONS, [1929] 2 D. L. R. 197 ; [1928] S. C. R. 627.—**CAN.**

402 iii. —— ——.]—HOARE *v.* INVERARITY (1926), 29 W. A. L. R. 67. —**AUS.**

402 iv. —— *Pedestrian in sight for three seconds.*]—If it is proved in a running down case that the period of vision of the pedestrian by the driver of the motor car was as much as three seconds, the conclusion properly follows that the driver exercising due care could & should have avoided the collision.—FALLON'S ESTATE *v.* CLARET, [1932] App. D. 177.—**S. AF.**

sk. *Failure of driver to give warning.*]—Where a danger of collision arose only at the time when a child started to run across the road & it was too late for a warning to be effective, there is no duty to give warning of the approach of a motor car.—JOLLY *v.* WALLMAN, [1936] S. A. S. R. 121.—**AUS.**

PART III. SECT. 9, SUB-SECT. 2.

413 i. *Defective steering gear of motor car—Knowledge of defect.*]—MOIR *v.* HILL (1927), 30 W. A. L. R. 56.—**AUS.**

413 ii. *Defective steering gear of motor car.*]—Deft. was driving a motor car with defective steering gear when the car swerved owing to such defect & ran over pltf.'s dog :—*Held :* that driving a motor car in a defective condition if the injury may reasonably be discovered or is known renders a person liable for the injuries of which the defect is the effective cause.—MOIR *v.* HILL, [1928] W. A. L. R. 56.—**AUS.**

413 iii. ——.]—In an action by gratuitous passengers for damages for injuries sustained while riding in deft.'s motor car it was found that the car was in an unfit condition for driving owing to a defective steering gear :—*Held :* deft., who had bought the car secondhand, was negligent in driving it when he knew or ought to have known that it was in that unfit condition.—DE LANOIS & JOHNSON *v.* FLESH, [1937] 1 W. W. R. 122 ; *revsd.* [1937] 3 W. W. R. 101.—**CAN.**

PART III. SECT. 9, SUB-SECT. 7.

n i. —— *Absence of licence & lights.*]—The failure to take out a licence to operate a motor car does not bar the recovery of damages resulting from the negligence of the driver of another car ; & a breach of the statutory duty as to carrying lights is a bar only if it can be shown that such breach was a proximate cause of the accident.—CASSEL *v.* THOMPSON, [1930] 1 W. W. R. 1000 ; 3 D. L. R. 65.—**CAN.**

Part VII.—Children.

437a. ——.]—A boy just over the age of twelve years entered a recreation ground provided by deft. local authority "for the use of children under twelve years only." He fell off a swing & was injured by the swing in motion hitting him twice before he could get away. In an action against defts. he was awarded damages for these personal injuries on the ground that there being approximately two hundred children in the recreation ground & but one attendant provided by defts., pltf.'s injuries were the result of lack of adequate supervision on the part of defts., & judgment was entered for him. Defts. did not contend that pltf. was a trespasser in the recreation ground. On appeal, judgment was entered for defts. on the ground that pltf.'s fall from the swing, as appeared from the evidence, was due to his sickness & fainting & that there was no evidence on which the jury could find that pltf.'s injuries were due to lack of supervision on the part of defts.—PURKIS *v.* WALTHAMSTOW BOROUGH COUNCIL (1934), 151 L. T. 30; 98 J. P. 244; 78 Sol. Jo. 207, C. A.

Annotations :—**Consd.** Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

440a. —— **Unhorsed van.**]—DONOVAN *v.* UNION CARTAGE CO., LTD., No. 420a, *ante*.

443. *Add. Annotations :*—**Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101. **Refd.** Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333.

449a. ——.]—Defts., at the request of the police, erected a casualty tent in a public place where it was anticipated large crowds would gather. Nearby they erected a flag pole which was supported only by four guy ropes. A man was left in charge of the tent, & it was his duty to prevent interference with the flag pole. Children who came to play round the pole & to swing on the rope, were repeatedly warned by the attendant to keep away. While the attendant was assisting a casualty inside the tent, the pole fell & injured pltf. No warning had been given to pltf. & to other people near the pole :—*Held :* the accident was due to defts.' negligence in the erection of the pole & the insufficient means taken to protect it from interference by children, having regard to the fact that it was an allurement to them.

Semble : the flag pole came within the doctrine of *Rylands* v. *Fletcher*.—SHEFFMAN *v.* VENERABLE ORDER OF THE HOSPITAL OF ST. JOHN OF JERUSALEM, [1936] 1 All E. R. 557; 80 Sol. Jo. 346.

449b. ——.]—A tip-up lorry in the charge of a single driver had delivered coke in a school playground, & was driving away when a number of boys jumped on to the rear of the lorry causing the tipping part to tip up. Another boy, pltf., had jumped on to the lorry immediately behind the driver's cab, & when the tipping part of the lorry was suddenly released it came down on pltf. & crushed his leg. The headmaster of the school had left the boys to play in the playground & had returned into the school premises before the arrival of the lorry. He did not know of the arrival of the lorry. In an action for damages against the managers of the school, the headmaster & the owners of the lorry :—*Held :* (1) the headmaster was not negligent in leaving the boys in the playground without supervision, nor ought he to have taken steps to stop the lorry from coming during playtime. The headmaster & the managers were accordingly not liable; (2) the owners of the lorry had sent the lorry in the charge of a reasonable adult, & ought not reasonably to have anticipated interference; (3) the driver was not negligent in not looking to see if the boys had jumped on to the lorry, & he could not have anticipated sufficient weight to tip the lorry. The owners of the lorry were, therefore, not liable; (4) a lorry as such is not an allurement to children.—RAWSTHORNE *v.* [1937] 3 All E. R. 902.

PART IV. SECT. 2, SUB-SECT. 4.

sg. *Breach of scaffolding regulations—Contributory negligence.*]—Contributory negligence prevents a workman from recovering damages for injuries received, notwithstanding a continuing breach, on the part of the employer, of statutory regulations up to the time of the accident.

Pltf. was a carpenter employed by deft. He was working on a scaffold fixing boxing for ferro-concrete supports when the plank on which he was standing broke & pltf. fell to the floor & was seriously injured. He alleged breaches of the provisions of Regs. 8 & 14 made under Scaffolding & Excavation Act, 1922; inadequate supervision of the erection of the scaffold; & that the scaffold was erected without sufficient support & with unsuitable material :—*Held :* (1) the building operations were carried out under a definite & well-planned system, & whatever departures from that system were made in particular instances were either inseparable from the carrying on of the work or from the wrongful or improper conduct of those engaged in the work; (2) assuming, but not deciding, that the alleged breach of the regulations had been established, pltf.'s conduct in forcing struts or props from the plank on which he was standing to the bottom of the boxing, & persisting in this against the definite warning & orders of his supervisor, amounted to wilful misconduct & negligence which substantially contributed to the breaking of the plank, & pltf. was therefore not entitled to recover damages.—DUNNE *v.* NEW ZEALAND REFRIGERATING CO., LTD., [1932] N. Z. L. R. 1040.—**N.Z.**

PART VII. SECT. 1.

433 i. *Liability dependent on breach of duty—Public park close to railway.*]—*Held :* there was no obligation on the corpn. owning the park to build a fence to separate it from the railway.—RICHARDSON *v.* CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—B.

445 i. *Duty to guard against—Trap or lure—Moving freight train.*]—PINKAS & PINKAS *v.* CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 321.—**CAN.**

446 xi. ——.]—Resp., as father & tutor of his minor son, brought an action in damages against applt. for injuries sustained by his son, then seven years of age, resulting from a serious accident due to the alleged fault of applt. Resp.'s son was playing with a small tricycle in a lane behind his father's house; in that lane, facing the house, applt. had placed a cement mixer at a short distance from a garage which he was constructing. Resp.'s son, on his tricycle, approached the mixer & put his hand on the machine while in motion, with the result that his hand was caught & drawn into the machine, where it remained until he was extricated. The evidence shows that the machine had been left unattended & unguarded at the moment of the accident :—*Held :* applt. was liable.—BOUVIER *v.* FEE, [1932] S. C. R. 118; 2 D. L. R. 424.—**CAN.**

sp. *What amounts to.*]—An abandoned power house level with a pathway down a hill is not an allurement, & a boy climbing thereon is a trespasser who cannot recover damages for injury by contact with an exposed wire.—DESJARDINS *v.* GATINEAU POWER CO., [1936] 3 D. L. R. 338.—**CAN.**

450. *Add. Annotations* :—**Expld.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Consd.** Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333; Haynes *v.* Harwood & Son, [1934] 2 K. B. 240; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454. **Refd.** Cunard *v.* Antifyre, [1933] 1 K. B. 551.

——.]—A co. having works near a railway, under a licence from an adjoining landowner, constructed a siding on his land & erected thereon a post to which a pulley block was attached called a sheave. To move a truck along the siding, a wire rope passed through the sheave & round a winch worked by a dynamo, & one end of the rope was fastened to the front of the truck & the other to the back. The siding adjoined some fields which were let to the local authority as a playground. A boundary fence between the siding & the fields had disappeared, &, to the knowledge of the co., children frequented the siding & played round the sheave without interruption except when the haulage machinery was about to be put in motion, which occurred about three times a week. On one occasion when a truck had to be moved two of the co.'s employees, in accordance with their usual practice, walked to the sheave for the purpose of seeing that the rope was properly adjusted & of driving children away. After the men went back to start the machine a little girl, aged five, was seen swinging on the rope, & the movement of the rope caused her hands to be caught in the pulley & crushed, & her brother, aged nine, was similarly injured in coming to her rescue. The father, for himself & as next friend of the children, claimed damages against the co. for the injuries sustained by the children :—*Held :* it being well known to the co. that when the machine was going to start it was extremely likely that children would be near the sheave, the duty owed by the co. when they set the machine in motion was to see that no child was in such a position as to be exposed to danger by the occasional use to which the machine was put, & that they had failed in that duty. The immediate danger being apparent, it was not material whether the children were or were not trespassers.—Excelsior Wire Rope Co., Ltd. *v.* Callan, [1930] A. C. 404; 99 L. J. K. B. 380; 142 L. T. 531; 94 J. P. 174; 35 Com. Cas. 300; 28 L. G. R. 543, H. L.

——.]—Mourton *v.* Poulter, [1930] 2 K. B. 183. **Consd.** Sycamore *v.* Ley (1932), 147 L. T. 342. ——. Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

451b. ——.]—Deft. council maintained a children's recreation ground, upon which were devices for the amusement of children, &, *inter alia*, a chute or children's slide. The infant pltf., aged 3¼, & a boy aged 14, while sliding on the chute, collided with a chain, which had improperly been fixed across the chute by another child, pltf. receiving serious injuries. The chain was used, with others, to prevent the use of the chute on Sundays, & was kept padlocked to a pole at the recreation ground. It was found that the recreation ground attendant had negligently failed to secure the chain to the pole, whereby a child had been able to remove it. In an action for damages, deft. council contended that the recreation ground was provided for children of school age only, & that pltf. was a trespasser :—*Held :* (1) pltf. was accompanied by a competent guardian, & was, therefore, a licensee; (2) the injuries were caused by a danger which was known to deft. council; (3) the damages in the present case ought to be increased from £1,300 to £3,000.—Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602; 157 L. T. 415; 101 J. P. 483; 81 Sol. Jo. 627, C. A.

453. *Add. Annotations* :—**Consd.** Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454. **Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

457. *Add. Annotations* :—**Apprvd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

457a. ——.]—A boy four years of age was killed by being crushed in the terminal wheel of a haulage system belonging to a colliery co. The system, which was used for depositing ashes on a bing situated in a field adjoining the colliery, consisted of an endless wire cable operated from time to time, as might be necessary, from the pithead by an electric motor, while at the other end of the system, which was not visible from the pithead, there

PART VII. SECT. 2, SUB-SECT. 2.—C.

450 vii. ——.]—Hayman *v.* City Property Investment Trust Corpn., Ltd., [1929] S. C. (H. L.) 65.—**SCOT.**

450 viii. —.]—The responsibility of a person who endangers the safety of small children who have not reached the age of discretion is a very heavy one. Defts. were *held* liable for the kicking of a young boy by a colt which the infant deft. riding a saddle pony, was leading on a grass strip or boulevard which was between the middle of a street & a cinder path on which the boy & a companion had been standing, it being held that the infant deft. was negligent in not pa attention to the boys after he —— passed them.—Ramsay & Ramsay *v.* Rickard & Rickard (No. 1), [1936] 1 D. L. R. 308; [1935] 3 W. W. R. 554; 5 F. L. J. (Can.) 227; *affd.* [1936] S. C. R. 302; 3 D. L. R. 321; 6 F. L. J. (Can.) 115.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

454 x. ——.]—Pinkas & Pinkas *v.* Canadian Pacific Ry. Co., [1928] 1 W. W. R. 321.—**CAN.**

454 xi. ——.]—In an action for injuries sustained by a child through letting her fingers get caught in a bread-mixing machine in deft.'s bake shop :—*Held :* the child was a trespasser &, therefore, even if the omission to provide a guard for the revolving gears of the machine might in some circumstances be negligence with respect to an invitee or licensee, there was no duty to take such a precaution with respect to the child.—Humeny *v.* Chaikowski, [1931] 3 W. W. R. 398.—**CAN.**

454 xii. ——.]—There is no liability to infant trespassers when the children know that they are [illegible] to go

Ry. Co., [1934] 1 D. L. R. 484; 47 B. C. R. 453.—**CAN.**

454 xiii. ——.]—A railway porter, in the course of his duties, was burning rubbish in the goods yard of a small railway station when a boy of eleven years of age entered the yard attracted by the fire. Very shortly afterwards a detonator, accidentally concealed in the burning rubbish, exploded & severely injured one of the boy's eyes :—*Held :* the boy was a trespasser & not a licensee in respect that (*a*) he was knowingly trespassing, & (*b*) the porter had no authority to grant permission for the boy to remain in the yard in breach of the railway regulations, the granting of such permission being without the scope of his duties; further, there was no duty upon [illegible] proprietor of land summarily to exclude [illegible] & in the present case, the porter's failure immediately to exclude the boy did not amount to permission to him to remain in [illegible]
Breslin *v.* London & N Ry. Co., [1936] S. C. 816.—**SCOT.**

was a heavy horizontal iron wheel round which the cable passed & returned. The field was surrounded by a hedge, which was quite inadequate to keep out the public, & it was, to the knowledge of the colliery co., used as a playground by young children. The colliery officials at times warned children out of the field, but their warnings were disregarded. The wheel was dangerous & attractive to children, & at the time of the accident it was insufficiently protected. The accident occurred owing to the wheel being set in motion by the colliery servants without taking any precaution to avoid accident to persons frequenting the field. The boy had been warned by his father not to go near the field or the wheel. In an action for damages by the father against the co.:—*Held:* the boy was a trespasser & went on the colliery premises at his own risk, & the co. owed him no duty to protect him from injury.—ADDIE, R. & SONS (COLLIERIES) *v.* DUMBRECK, [1929] A. C. 358; 98 L. J. P. C. 119; 140 L. T. 650: 45 T. L. R. 267; 34 Com. Cas. 214, H. L.

Annotations:—**Expld.** Mourton *v.* Poulter, [1930] 2 K. B. 183. **Consd.** Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454. **Refd.** Excelsior Wire Rope Co. *v.* Callan, [1930] A. C. 404; Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30; Morgan *v.* Incorporated Central Council of the Girl's Friendly Society, [1936] 1 All E. R. 404; Weigall *v.* Westminster Hospital, [1936] 1 All E. R. 232; Hawkins *v.* Thames Stevedore Co. & Cold Storage Co., [1936] 2 All E. R. 472.

457b. ——.]—EXCELSIOR WIRE ROPE CO., LTD. CALLAN, No. 451a, *ante*.

457c. ——.]—MOURTON *v.* POULTER, No. 309a, *ante*.

457d. ——.]—In the course of carrying out a road improvement in their district deft. council's workmen had to excavate a large quantity of soil which, till it could be cleared away, was placed on the new verge of the road against a new retaining wall which the council had built. This heap of soil formed a slope giving easy access to the top of the wall. There was evidence that the children of the neighbourhood played about the works, but were always warned off when workmen were there. On a Saturday afternoon, after the workmen had left, two boys were sitting on the new wall, & seeing them there the pltf., a boy of seven years of age, who also had been previously warned off, climbed up the heap & sat on the wall between the other two, & in trying to show them how bees flew he waved his arms &, losing his balance, fell backwards & sustained injuries in respect of which he sued deft. council:—*Held:* (1) in climbing up the heap of soil & in sitting on the wall pltf. was a trespasser to whom defts. owed no duty, not having constructed or placed the heap where it was with a view of causing him an injury, or, indeed, in contemplation of him at all; (2) the temporary heap of soil placed as it was on undedicated land did not constitute a nuisance.

Per SCRUTTON, L.J.: To make a landowner liable for injury to children on his land, it must be proved that he expressly or impliedly invited them on to his land, & either did an act which caused damage with knowledge that it might injure them, or knowingly permitted the existence on his land of a hidden danger or trap. An invitation may be implied from knowledge that children frequented the land without interference. For obvious dangers, such as unguarded water, natural or artificial, the landowner is not liable. The decision in *Cooke* v. *Midland Great Western Railway of Ireland*, No. 450, must be treated as dealing with a child who was impliedly licensed to use the turntable which for a child constituted a trap.—[illegible] *v.* NORTH RIDING OF YORKSHIRE COUNCIL, [1934] 2 K. B. 101; 103 L. J. K. B. 527; 151 L. T. 202; 98 J. P. 319; 50 T. L. R. 377; 78 Sol. Jo. 349; 32 L. G. R. 241, C. A.

Annotation:—**Refd.** Coates *v.* Rawtenstall Borough Council, [1937] 1 All E. R. 333.

457e. ——.]—HOWARD *v.* PICKFORDS, LTD. (1934), 79 Sol. Jo. 69.

457f. ——.]—PROCTOR *v.* BRITISH NORTHROP CO., LTD. (1937), 81 Sol. Jo. 611, C. A.

460a. ——.]—COATES *v.* RAWTENSTALL BOROUGH COUNCIL, No. 451b, *ante*.

462a. ——.]—A borough council maintained public paddling-pool for children. A quantity of sand had been placed at one side of the pool, some of which had silted, or been pushed under the water. A boy, the son of a ratepayer of the borough, while paddling, stepped upon a piece of glass hidden in the sand, & cut his toe. This accident happened almost immediately after the pool had been raked out by an official of the council:—*Held:* deft. council knew of the possibility of danger, & was under a duty to see that it was provided against, which duty it failed to perform. It was, therefore, liable, whether the child were a licensee or an invitee; *per* SLESSER & MACKINNON, L.JJ.: the child was a licensee & not an invitee, since he was not invited for some purpose of business or material interest. In this respect a ratepayer or his son is in no different position from any other visitor to the park.—ELLIS *v.* FULHAM BOROUGH COUNCIL, [1937] 3 All E. R. 454; 157 L. T. 380; 101 J. P. 469; 53 T. L. R. 884; 81 Sol. Jo. 550; 35 L. G. R. 507, C. A.

Annotation:—**Apld.** Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602.

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458 i. *Licensee.*]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—CAN.

458 ii. ——.]—EDWARDS *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1928] S. C. (Ct. of Sess.) 471.—SCOT.

PART VII. SECT. 4, SUB-SECT. 1.

469 iii. ——.]—A woman went with her child two & a half years old to the defts.' shop to buy clothing for both. While there a mirror fixed in the wall, & in front of which the child was, fell & injured him:—*Held:* it was a question for the jury whether the mirror fell without any active interference on the child's part; if so, that in itself was evidence of negligence; but if not, the question for the jury would be whether defts. were negligent in having the mirror so insecurely placed that it could be overturned by a child; & if that question was answered in the affirmative, the child, having come upon defts.' premises by their invitation & for their benefit, would not be debarred from recovering by reason of his having directly brought the injury upon himself.—SANGSTER *v.* EATON (T.) & CO., LTD. (1894), 25 O. R. 78; *affd.* (1894), 21 A. R. 624; *affd.* (1895), 24 S. C. R. 708.—CAN.

469 iv. ——.]—Deft. sold cartridges to the infant pltf., a boy about twelve years old. The sale was a violation of the prohibition in s. 119 of Criminal Code. When a rifle with which said boy & a friend were shooting was

471. *Add. Annotation :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

471a. ——.]—An infant four years old was crossing a road in charge of his grandfather. He was struck by a motor omnibus & received permanent injuries to his left hand. The jury found that the accident occurred through the negligence of the driver of the motor omnibus, & the contributory negligence of the grandparent. The county ct. judge held that the doctrine of identification no longer applied & gave judgment for pltfs. Defts. appealed : —*Held :* the county ct. judge was right. Since the decision of the House of Lords in *Mills* v. *Armstrong ; The Bernina*, No. 807, the doctrine of identification was no longer part of the law of England. The appeal must be dismissed.—OLIVER *v.* BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD., [1933] 1 K. B. 35 ; 102 L. J. K. B. 65 ; 147 L. T. 317 ; 48 T. L. R. 540.

Part VIII.—Liability of Persons Jointly Interested.

473a. Liability of party in control of proceedings.]—Circumstances (*see* AGENCY, No. 2318b, *ante*) in which :—*Held :* the landlord was liable for the damage, on the grounds (*inter alia*) of (*a*) control of the proceedings, & (*b*) a joint tortious enterprise, & (*c*) that, having undertaken the examination, he was under a duty to take reasonable care to avoid damage resulting from it, & could not escape liability by getting some one else to make the examination or part of it for him.—BROOKE *v.* BOOL, [1928] 2 K. B. 578 ; 97 L. J. K. B. 511 ; 139 L. T. 376 ; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.

Annotation :—**Consd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

Part IX.—Proof of Negligence.

482. *Add. Annotation :*—*Generally*, **Refd.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461.

484. *Add. Annotation :*—**Apld.** Desborough Portsmouth (1934), 27 B. W. C. C. 192.

loaded with one of the cartridges so obtained something went wrong with the foresight & he, standing in front of the rifle, attempted to put it right while the friend was holding it. The rifle went off & injured the infant pltf. He sued for damages for the injuries so sustained & his mother sued for hospital & medical expenses :—*Held :* the boy's negligence prevented him from recovering.—WASNEY *v.* JURAZSKY, [1933] 1 W. W. R. 155 ; 1 D. L. R. 616 ; 41 Man. L. R. 46.—**CAN.**

q i. ——.]—In children's cases the question of contributory negligence resolves itself into whether, having regard to pltf.'s age & appreciation of the risk, his conduct was culpable negligence or not. If he showed as much care as a person of his age & appreciation may reasonably be expected to show he cannot be said to have been culpable. Deft. held liable for injuries suffered by the infant pltf. as the result of the tipping of doors which deft. had piled on top of a cupboard which he had put in a public lane & which the infant pltf., while at play, climbed upon.—TURNER & TURNER *v.* KOREN, [1931] 3 W. W. R. 684 ; *affd.*, [1932] 1 W. W. R. 480 ; 26 Alta. L. R. 129.—**CAN.**

t i. —— ——.]—While passing a group of small boys the driver of defts.' motor truck invited them, or at least permitted a number of them, to get on the truck. Before one of the group, pltfs.' son aged six & a half years, could secure a place on the running board it became filled & he grabbed a rod that extended along the truck in front of the rear wheels & was keeping up in this way with the truck when, its speed being increased, he fell & was killed by being run over by a rear wheel. The driver testified that he had told the boys for whom there was no room to stand back & that then pltfs.' boy had gone as far from the truck as to the side ditch. The testimony adduced by pltfs. contradicted that of the driver. The trial judge excluded the question of contributory negligence from the consideration of the jury, & it returned a general verdict for pltfs.' :—*Held :* the direction of the trial judge to the jury on the questions of law was correct, & the verdict of the jury was justified by the evidence.—LESLIE & LESLIE *v.* CLARKE & BUZZA, LTD. & BUZZA, [1930] 1 W. W. R. 513 ; 3 D. L. R. 369 ; 42 B. C. R. 391.—**CAN.**

PART VIII.

474 i. *Joint liability — Co-owners of vehicle—Negligent driving.*]—MCEWEN *v.* ARMOUR, [1928] 2 D. L. R. 958.—**CAN.**

477 i. *What defendants may be joined —Separate torts.*]—ENDERBY *v.* SCOTT & WANGANUI CITY, [1928] N. Z. L. R. 407.—**N.Z.**

477 ii. —— *Employer of driver & of owner of car.*]—Where the driver & owner of a car are sued, an order may be made under Negligence Acts, 1930 (Ont.) & 1931 (Ont.) joining as party deft. the employer of both driver & owner where owner was paid for use of car & driver was alleged to be on employer's business.—LANG *v.* HOOEY, [1932] O. R. 363 ; 2 D. L.R. 778.—**CAN.**

sf. *Costs awarded to successful defendant—Recovery from unsuccessful defendant.*]—Where a passenger injured in a collision between two motor cars, in one of which he was travelling, brought an action for negligence against both drivers, he was held entitled to recover as against the unsuccessful deft. the costs awarded against him in respect of the successful deft.—KIRKLAND *v.* MERRETT & MCLUCAS, [1930] N. Z. L. R. 223.—**N.Z.**

PART IX. SECT. 1, SUB-SECT. 1.

sg. *Wilful neglect—A question of law.*]—The term "wilful neglect" has a special significance in law, as established by judicial decisions, & the question whether facts established in the case amounted to "wilful neglect" is a question of law & not of fact.—SECRETARY OF STATE *v.* GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

sh. *Contradictory evidence—Decision of trial judge binding on court of appeal.*]—ABBOTT *v.* DAVIS (Man.), [1929] 4 D. L. R. 993.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—A.

sk. *Non-suit—Based upon answers to interrogatories—Effect of defendants tendering no further evidence.*]—KIRBY *v.* PALMER, [1928] 1 W. W. R. 968 ; 37 Man. L. R. 277.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

485 i. *General rule.*] — While the general rule of law is that a judge may withdraw an action for negligence from the jury & non-suit pltf., where, on the undisputed facts of the case, it appears that the accident was directly caused by pltf.'s own negligence, although there may have been, on the facts, some negligence on the part of defts., yet this power should not be exercised unless the evidence is so strong that it would be wholly unreasonable for the jury to find that pltf. had not caused the accident by his own negligence.—ERICKSON *v.* CANADIAN PACIFIC RY., [1928] 3 W. W. R. 694 ; *affg.*, 22 Sask. L. R. 299.—**CAN.**

PART IX. SECT. 1, SUB-SECT.

502 xi. ——.]—Pltf. cannot recover for negligence when the evidence is equally consistent with the cause of the accident being the negligence of pltf. or deft. or when the accident is equally attributable to some cause other than deft.'s negligence.—HAYWARD *v.* MITTON (1932), 4 M. P. R. 530.—**CAN.**

507. *Add. Annotations :—As to* (1) **Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. *As to* (2) **Consd.** The Kite (1933), 49 T. L. R. 525. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296. *Generally*, **Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124.

510a. ——.]—Pltfs. were the widow & children of a workman who was killed by being crushed between the buffers of two trucks during shunting operations on a siding of the Great Western Railway. No one saw the accident happen, & there was no evidence to show how the deceased came to be at the place where he was killed. Pltfs. sued under Lord Campbell's Act, & obtained judgment, but the judgment was reversed on appeal & pltfs. now appealed to the House of Lords :—*Held :* although there was no direct evidence relating to the accident, it was a reasonable inference from all the circumstances that it had been caused by the negligence of the railway co., & pltfs. were therefore entitled to recover.—JONES *v.* GREAT WESTERN RY. Co. (1930), 144 L. T. 194 ; 47 T. L. R. 39 ; 36 Com. Cas. 136, H. L.

512. *Add. Annotation :—As to* (2) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

518. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

519. *Add. Annotation :*—**Refd.** Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

519a. ——.]—A widow, whose husband had been killed in a motor accident, brought an action for damages against the driver of the motor car in which her husband was riding when he was killed. At the close of pltf.'s case, the trial judge, partly at the invitation of deft.'s counsel, held that there was no case to go to the jury & gave judgment for deft. On appeal by pltf., the Ct. of Appeal held that the facts proved required explanation by the driver of the motor car, as they constituted an accident of a kind which would not usually happen with proper driving, & therefore the case ought not to have been withdrawn from the jury. There must therefore be a new trial. There must be a special order with regard to the costs. Pltf. must have the costs of the appeal, but with regard to the costs of the first trial, if pltf. succeeded in the new trial, she would have the costs of the first trial, but deft. was not to have the costs of the first trial in any event.—HALLIWELL *v.* VENABLES (1930), 99 L. J. K. B. 353 ; 143 L. T. 215 ; 74 Sol. Jo. 264, C. A.

548. *Add. Annotation :*—**Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

565. *Add. Annotations :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698 ; Powell *v.* Streatham Manor Nursing Home, [1935] A. C. 243 ; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

PART IX. SECT. 1, SUB-SECT. 3.

544 xxii. ——.]—*Held :* there being a dispute as to the facts from which the inference of contributory negligence was to be drawn, the question was properly left to the jury by the trial judge for the jury to decide.—ANSON *v.* BLACK & WHITE CABS, LTD., BLACK & WHITE CABS, LTD. *v.* ANSON, [1928] N. Z. L. R. 321.—**N.Z.**

c i. ——.]—The jury need not answer specific questions put to it by the ct. in an action for negligence, but can return a general verdict.—EVANS *v.* HUDSON'S BAY CO., [1930] 2 W. W. R. 718 ; 3 D. L. R. 951 ; 43 B. C. R. 81.—**CAN.**

sl. *Speed of car.*]—BRANCH *v.* ELLIS, [1930] 2 D. L. R. 756.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—A.

554 iii.——.]—HOYT'S PROPRIETARY, LTD. *v.* O'CONNOR, [1928] V. L. R. 222 ; [1928] Argus L. R. 117 ; 40 C. L. R. 566.—**AUS.**

554 iv. ——.]—Non-direction is a ground for granting a new trial only when it produces a verdict against the evidence.—MOUNTAIN *v.* EDMONTON CITY, [1928] 4 D. L. R. 697 : [1928] 3 W. W. R. 270.—**CAN.**

sn. *On plea of contributory negligence.*]—New trial, there being no direction to the jury on the plea of contributory negligence.—MCDONALD *v.* MCNEIL, [1933] 1 D. L. R. 330 ; 5 M. P. R. 514. —**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—B.

561 ii. ——.]—HARRIS *v.* HEALING A. G. & Co. PTY., LTD., [1927] S. A. S. R. 131.—**AUS.**

so. *Reference to documents improperly admitted.*]—On appeal from the dismissal of an action for damages for injuries sustained by a child on deft.'s escalator :—*Held :* there had been a mistrial, because, *inter alia*, of the admission in evidence of the affidavit of the secretary of the bureau of labour with a report attached of an inspector, & the admission of certain Govt. permits & certificates with respect to the escalator based on governmental inspection, without evidence by the inspector of his qualifications or of the nature & extent of the alleged inspection. Also, the charge to the jury based on these documents was a misdirection.—WYRZYKOWSKI *v.* HUDSON'S BAY CO., [1936] 2 W. W. R. 650 ; 4 D. L. R. 208 ; 44 Man. L. R. 256.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—C.

565 xlv. ——.]—DAVISON *v.* CONRAD (1924), 58 N. S. R. 218.—**CAN.**

565 xlvi. ——.]—ANSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 321.—**N.Z.**

565 xlvii. ——.]—DALGETTY *v.* HAMILTON RADIAL ELECTRIC RY. Co. (1928), 62 O. L. R. 613.—**CAN.**

565 xlviii. ——.]—GOLDEN *v.* CANADIAN CONSOLIDATED GRAIN CO., LTD. & BEATON, [1936] 3 W. W. R. 153 ; 3 D. L. R. 550.—**CAN.**

sp. *Judgment entered for defendant—Power of Court of Appeal.*]—After the third trial of an action for damages resulting from a collision, motions for judgment on the jury's answers to questions were made by both parties & referred by the judge to the Ct. of Appeal. In their view the findings for pltf. were against the weight of evidence, &, therefore, judgment for pltf. was out of the question. It appeared from their opinions that, but for the fact that the action had been tried already before three juries, they would have ordered a new trial only ; but deeming it impossible to conclude, on the then undisputed facts of the case, that any verdict for pltf. by any subsequent jury could be other than perverse, the ct. directed judgment to be entered at once for deft. Pltf. appealed :—*Held :* after reviewing the facts & the findings of the jury, the Ct. of Appeal had in so directing judgment usurped the functions of the jury ; & pltf.-applt. was in accordance with the verdict of the jury entitled to judgment as a matter of right.—BENSON *v.* KWONG CHONG, [1932] 3 W. W. R. 61.—**N.Z.**

PART IX. SECT. 1, SUB-SECT. 4.—D.

h i. —— *Inconclusive.*]—MARSHMAN *v.* MCDOWELL, [1928] S. R. Q. 308.—**AUS.**

k i. —— —— ——.]—KEETCH *v.* JOHNSON (N. B.), [1929] 1 D. L. R. 503.—**CAN.**

n i. —— ——.]—In an action for personal injuries the jury found that both pltf. & deft. were negligent, that notwithstanding pltf.'s negligence, deft. could have avoided the accident & that the degree of fault attributable to each was 50 per cent. :—*Held :* these findings were inconsistent & there should be a new trial.—DE YOUNG *v.* FRASER (1932), 4 M. P. R. 450.—**CAN.**

n ii. —— ——.]—New trial owing to conflicting answers by jury & failure to decide the proximate cause of the accident.—MCARTHUR *v.* GOOD (1932), 4 M. P. R. 535.—**CAN.**

r i. —— ——.]—PEDLOW *v.* CANADIAN NATIONAL RY. Co., [1928] 4 D. L. R. 776 ; 62 O. L. R. 481.—**CAN**

sj. *Damages assessed on wrong principle.*]—Where damages have been assessed on a wrong principle a new trial will be ordered.—DRYDEN *v.* ORR (1928), 28 S. R. N. S. W. 216 ; 45 N. S. W. W. N. 44.—**AUS.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

573 xxvi. ——.]—CHIPPENDALE *v.* Co., [1928] . L. R. 920 ; [1928] 1 W. W. R. 238 ; 37 Man. L. R. 207.—**CAN.**

573 xxvii. ——.]—LEWIS *v.* MOSES (1932), 5 M. I R. 353.—**CAN.**

573 xxviii. ——.]—KAPOOR LUMBER Co., CANADIAN NORTHERN —— RY. Co. (No. 2), [1933] 3 W. W. R. 513, P. C.—**CAN.**

578. *Add. Annotation:*—**Reld.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

580a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

590. *Add. Annotations:*—**Consd.** Ellor *v.* Selfridge & Co. (1930), 46 T. L. R. 236; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

594. *Add. Annotation:*—**Distd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

595. *Add. Annotation:*—**Expld.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91.

PART IX. SECT. 2, SUB-SECT. 1.—B.

581 xxi. —— ——.]—BLACKER *v.* WATERS (1928), 28 S. R. N. S. W. 406; 45 N. S. W. W. N. 111.—**AUS.**

581 xxii. —— ——.]—HOCKING *v.* BRITISH COLUMBIA MOTOR TRANSPORTATION, LTD. (1932), 46 B. C. R. 307.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 2.

583 viii. ——.]—In an action for damages for negligence, once initial negligence on the part of deft. is established the burden of proof is upon deft. to establish contributory negligence in pltf., & that that contributory negligence was a proximate cause of the accident. A verdict for pltf. cannot be set aside on the ground that contributory negligence has been conclusively proved unless on the facts in evidence there is no explanation of his conduct consistent with proper care on his part.—WILLIAMS *v.* ROAD TRANSPORT & TRAMWAYS COMR. (NEW SOUTH WALES) (1934), 50 C. L. R. 258. —**AUS.**

PART IX. SECT. 4, SUB-SECT. 1.

589 xiii. —— *Tooth in patient's lung after extraction of teeth.*]—*Held:* the maxim *res ipsa loquitur* did not apply. —MCTAGGART *v.* POWERS, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—**CAN.**

589 xiv. —— *Fault possibly due to action of third party.*]—Observations upon the applicability of the maxim *res ipsa loquitur* in cases where there is a possibility that the fault may be due to the action of a third party.—CARRUTHERS *v.* MACGREGOR, [1927] S. C. 816.—**SCOT.**

589 xv. ——.]—HENDERSON *v.* MAIR, [1928] S. C. 1.—**SCOT.**

589 xvi. —— *Dangerous article thrown from train.*]—HOFFMAN *v.* NIELSEN, [1928] S. R. Q. 364; 22 Q. J. P. R. 147.—**AUS.**

589 xvii. ——.]—SEREDIUK *v.* POSNER, [1928] 1 D. L. R. 648; [1928] 1 W. W. R. 258; 37 Man. L. R. 230.—**CAN.**

589 xviii. ——.]—While proceeding at a moderate speed deft.'s car struck pltf., a pedestrian, who was crossing the street at a slow pace. The accident took place near the centre of the street; there were no other vehicles or pedestrians in the vicinity, & there was nothing to obstruct deft.'s view of pltf.:—*Held:* the *onus* was on deft. to show, if he was to escape the imputation of negligence, that the accident happened without fault on his part.—KATZENSTEIN *v.* DUVENHAGE (1929), 50 N. L. R. 294.—**S. AF.**

589 xix. ——.]—Pltfs. agreed with defts. to clean the brick & stone front of a block of stores. During the cleaning, water mixed with acid entered a display window of one of the stores & damaged the goods in the window, stained the varnished floor, etc.:—*Held:* the onus was upon pltfs. to account for the entry of the water & acid.—CAPITAL BUILDING CLEANERS *v.* SLATER-SHERWOOD, [1930] 3 D. L. R. 596; 65 O. L. R. 364.—**CAN.**

589 xx. —— *Manhole blown off waterworks system—Accumulation of gas.*]—The infant pltf., five years old, was playing upon a city street when an explosion took place in a subterranean chamber erected by the city corpn. under the street pavement as part of its waterworks system. The explosion blew a heavy iron lid into the air, & the boy was injured seriously by burns from flames which came from the opened manhole & by bruises received as he fell upon the pavement:—*Held:* the maxim *res ipsa loquitur* should be applied & the city corpn. found guilty of negligence.—CORSINI *v.* HAMILTON, [1931] 4 D. L. R. 313; O. R. 598.—**CAN.**

589 xxi. ——.]—Generally speaking, when one car runs into another from behind the fault is in the driving of the rear car, & the driver of the rear car must satisfy the ct. that the collision did not occur as a result of his negligence.—BEAUMONT *v.* RUDDY, [1932] O. R. 441; 3 D. L. R. 75.—**CAN.**

589 xxii. ——.]—Deft.'s servants having sole control of certain boom sticks, made them fast to the shore of K. Island in the F. River, in an improper & insecure manner, & then left them unattended. The sticks escaped & caused damage to pltf.'s property:—*Held:* deft. not having rebutted the presumption of negligence raised against it by the pleadings, the evidence & the admissions made at the trial, by showing the cause of the accident & that it was inevitable, the doctrine of *res ipsa loquitur* was applicable & deft. must be held liable in damages to pltf.—R. *v.* CANADIAN TUG BOAT CO., LTD., [1933] Ex. C. R. 104.—**CAN.**

589 xxiii. ——.]—Where a passenger of a common carrier is injured in an accident of a kind which does not as a rule occur except through default in the performance of the carrier's obligation to see that proper care & skill are used, the maxim *res ipsa loquitur* applies, &, in the absence of explanation by the carrier, proof of the accident itself affords some evidence that what happened did in fact arise through the failure to discharge said obligation.—SEVICH *v.* CANADIAN NATIONAL RAILWAYS, [1933] 2 W. W. R. 109; 4 D. L. R. 668; 41 Man. L. R. 276.—**CAN.**

589 xxiv. ——.]—Where a motor vehicle is so driven that it mounts on the footpath & injures a foot passenger thereon, the case falls within the principle *res ipsa loquitur* & the onus is on the owner of the vehicle of explaining the occurrence & showing that it took place without any negligence on his part.—CORCORAN *v.* WEST, [1933] I. R. 210.—**IR.**

589 xxv. ——.]—Pltf. seeing no traffic coming from either direction, proceeded on a bright, clear day to cross a street at a place where, under a city bye-law, she was prohibited from doing so; & before she looked again for traffic she was run down by a taxicab. There were no other vehicles in motion at the scene of the accident:—*Held:* in the absence of an explanation by the driver of the happening of the accident, the ct. was bound to infer that he was not keeping that careful lookout which a motorist is obliged to keep & that his negligence in that respect was the proximate cause of the accident.—HACKING *v.* BRITISH COLUMBIA MOTOR TRANSPORTATION, LTD., [1933] 1 W. W. R. 14.—**CAN.**

589 xxvi. ——.]—The doctrine of *res ipsa loquitur* does not necessarily apply to an accident so as to throw the burden of disproving negligence upon deft.—BECK *v.* DEXTER, [1935] 2 D. L. R. 335; 8 M. P. R. 468.—**CAN.**

589 xxvii. ——.]—Falling upon a slippery floor is not an occurrence such that a reasonable man might be justified in inferring negligence from the fact that the accident happened; it is one thing for a person to suffer injury from an instrument or object which he has not touched, & it is quite another thing when the injury occurs from an object which such person is himself using.—PHILPOTT *v.* DAIRY SUPPLY & COLD STORAGE CO., [1934] N. L. R. 331.—**S. AF.**

589 xxviii. ——.]—Speed alone is not negligence, & a skid causing injury is not evidence of negligence.—FILLION *v.* O'NEILL, [1934] 4 D. L. R. 598; O. R. 716.—**CAN.**

589 xxix. ——.]—Pltf., while she was on a footpath, was struck & injured by a riderless motor bicycle. Deft. had started the bicycle by pushing it with its engine in gear, but, before he could mount, a part of the machine struck his knee so that he fell & lost his hold of the bicycle, which ran on & hit pltf.:—*Held:* the facts afforded evidence of negligence.—MERCOVICH *v.* MULLANEY, [1934] V. L. R. 285; 40 Argus L. R. 311.—**AUS.**

589 xxx. ——.]—A motor service co. used large quantities of gasoline poured on a cement floor to clean grease thereon, with the result that the gasoline reached a heating tank & caused an explosion:—*Held:* a dangerous operation & the maxim *res ipsa loquitur* applied.—UNITED MOTORS SERVICE INC. *v.* HUTSON, [1937] S. C. R. 294; 1 D. L. R. 737.—**CAN.**

589 xxxi. ——.]—The fact that deft. had just started on his honeymoon after leaving the wedding ceremony cannot be considered as a factor in determining his negligence. The natural inference in such a case is that greater care was exercised.—HEANS *v.* MITCHELL, [1936] 2 D. L. R. 260; 10 M. P. R. 375; 5 F. L. J. (Can.) 245.—**CAN.**

589 xxxii. ——.]—Where there is a duty of care on the part of deft., & the injurious agency is entirely within his control, negligence will be inferred under the rule *res ipsa loquitur* & the burden is on deft. to disprove it.—MITCHELL *v.* CAMPBELL, [1937] 1 W. W. R. 212; 1 D. L. R. 603; *affd.*, [1937] 2 W. W. R. 497.—**CAN.**

589 xxxiii. ——.]—There is no general rule that when an overtaking vehicle collides with an overtaken vehicle, *prima facie*, the driver of the former is guilty of negligence. Where pltf. was riding a bicycle & a motor car was following, &, without warning, pltf. swerved to the right & so came into collision with a motor car which was just passing or about to pass him at a reasonable speed in the daytime:—*Held:* the driver of the motor car had not been guilty of any negligence.—JACKSON *v.* THOMPSON, [1935] S. A. S. R. 391.—**AUS.**

589 xxxiv. ——.]—The fact that a foot-passenger crossing a highway is knocked down by a passing motor car raises no presumption of negligence against the driver of that car.—GUNTRIP *v.* OAWOOD, [1937] N. Z. L. R. 76; 13 N. Z. L. J. 30.—**N.Z.**

595a. ——.]—MCGOWAN *v.* STOTT (1920), 99 L. J. K. B. 357, n.; 143 L. T. 217, C. A.

Annotation :—**Follid.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

595b. ——.]—ELLOR *v.* SELFRIDGE & CO., LTD., No. 382a, *ante*.

601. *Add. Annotations :*—**Consd.** Ellor *v.* Selfridge & Co. (1930), 46 T. L. R. 236; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Apld.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. **Distd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91. **Consd.** The Kite (1933), 49 T. L. R. 525. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can. Co. *v.* Same, [1927] 2 K. B. 432; Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551; Williams (Samuel) & Sons, Ltd. *v.* Port of London Authority (1933), 39 Com. Cas. 77.

607. *Add. Annotation :*—**Consd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

Part X.—Defences.

615. *Add. Annotations :*—**Refd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106; Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

620a. ——.]—A horse belonging to defts. & attached to one of their vans was seen by pltf. running past his house without the driver. It entered a field immediately adjoining, & separated by a hedge from, pltf.'s garden, & the driver, who had followed it, was trying to pacify it, but as it continued very restive, the driver, who was excited, shouted "Help, help," whereupon pltf. went over the hedge & attempted to hold the horse, but it suddenly reared & threw him to the ground causing him serious injuries, in respect of which he sued defts. There was evidence that the horse had bolted once, if not twice, before. The jury found (*a*) that pltf. did not freely & voluntarily, with full knowledge of the nature of the risk he ran, impliedly agree to incur it; (*b*) that the defts. were guilty of negligence in employing the horse to draw the van; & (*c*) that that negligence was the cause of the accident: —*Held :* the negligence (if any) of defts. in employing the horse could not be said to be the cause of the accident, inasmuch as there was a *novus actus interveniens*—namely, pltf.'s attempt to hold the horse, which he must have known was attended with risk, & therefore that the principle of *volenti non fit injuria* applied & precluded pltf. from recovering.

Per SCRUTTON, L.J.: If a horse bolts in a highway & a bystander tries to stop it & is injured, the owner of the horse is under no legal liability to the injured person.

Per SLESSER, L.J.: If a man sees his child in great peril in the street from a runaway horse, &, moved by paternal affection, dashes out & is injured in attempting to stop the horse, it may in those circumstances well be said that there is in law no *novus actus interveniens*.—CUTLER *v.* UNITED DAIRIES (LONDON), LTD., [1933] 2 K. B. 297; 102 L. J. K. B. 663; 149 L. T. 436, C. A.

Annotation :—**Expld. & Distd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

620b. —— **Duty to take risk.**]—Pltf., a police constable, was on duty inside a police station in a street in which, at the material time, were

596 i. *Sparks from engine.*]—*Held :* there being evidence which would justify the jury in drawing the inference that the fire was occasioned by a spark from the engine, it was not necessary for pltf. to show negligence in the operation of the engine.—MORWICK *v.* PROVINCIAL CONTRACTING CO., LTD. (1923), 55 O. L. R. 71.—**CAN.**

g i. ——.]—BURNSIDE *v.* REID, [1928] 2 D. L. R. 303.—**CAN.**

sk. *Rebuttal of presumption.*]—*Held :* assuming the maxim *res ipsa loquitur* applied, defender would still be entitled to succeed in respect (1) that he had offered several reasonable explanations of the accident, & so had discharged the *onus* laid upon him by the application of that maxim, & (2) that, in any event, he had definitely disproved negligence on his part.—HENDERSON *v.* MAIR, [1928] S. C. 1.—**SCOT.**

sp. *Plea of specific acts or omissions —Whether presumption waived.*]—The doctrine of *res ipsa loquitur* is not waived by pleading specific acts or omissions which are alleged to constitute negligence.—NEAL *v.* T. EATON CO., LTD., [1933] 3 D. L. R. 306; O. R. 645.—**CAN.**

sr. *Storage of meat—Deterioration.*]—In an action there was evidence that A., a butcher, in pursuance of a previous arrangement with B., the owner of freezing rooms, placed some meat in a portion of a room assigned to him for that purpose. The meat, when placed in the room, was in good condition, but shortly after it was taken out it was unfit for consumption. The plaint, after alleging the agreement between pltf. & deft., alleged that deft. did not keep the meat with sufficient care, but allowed the temperature of the room in which it was stored to rise so that the meat afterwards became unfit for human consumption. No evidence was given that in fact the temperature of the room had risen, & deft. called no evidence, contending that pltf.'s evidence did not establish any cause of action. For the pltf. it was contended that the evidence established a breach of contract & that the doctrine of "*res ipsa loquitur*" applied :—*Held :* without deciding the question of bailment or "*res ipsa loquitur*" the evidence was sufficient to establish a breach of contract.—GAYLARD *v.* MILNE (1934), 28 Q. J. P. R. 1.—**AUS.**

sw. *Accident on highway.*]—ANDANOFF *v.* SMITH (1935), 5 Can. L. Jo. 85.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.

sl. *Application of maxim.*]—There being no evidence showing how an accident happened :—*Held :* the maxim *res ipsa loquitur* did not apply.—RICHARDSON *v.* CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

sm. ——.]—The distinction between cases in which the maxim *res ipsa loquitur* applies & those in which the cause of the accident is unknown, referred to.—MCCLINTOCK *v.* WINNIPEG ELECTRIC CO., [1927] 3 D. L. R. 519; [1927] 2 W. W. R. 226; 33 Can. Ry. Cas. 39; 36 Man. L. R. 497.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

608 ii. ——.]—GENERAL TRUST OF CANADA *v.* ST. JACQUES, [1931] 3 D. L. R. 654.—**CAN.**

608 iii. ——.]—Pltf. was travelling with a friend along a street in Durban in a ricksha hired by the latter when she was injured by a motor vehicle driven by deft.'s servant. The street had been proclaimed a "one-way" street by notice boards affixed at each end. The ricksha was travelling in the prohibited direction when it collided with the motor vehicle which was travelling in the opposite direction : —*Held :* the maxim *volenti non fit injuria* did not apply in the absence of evidence to show that pltf. knew that the ricksha was travelling in a prohibited direction, or that she appreciated the danger of its so travelling.—COOMBS *v.* MASON (1931), 52 N. L. R. 105.—**S. AF.**

608 iv. ——.]—CRAIG *v.* DALTON, ELFORD *v.* DALTON, [1934] 3 D. L. R. 797.—**CAN.**

608 v. ——.]—An inspector employed as overseer by a corpn. is not entitled to eject a workman from a position of danger. If he persists in staying after warning there is no liability on the part of the corpn. if an accident occurs.—LATOUR *v.* STE. ANNE DES PLAINES, [1935] 3 D. L. R. 609.—**CAN.**

a large number of people, including children. Seeing defts.' runaway horses with a van attached coming down the street he rushed out & eventually stopped them, sustaining injuries in consequence, in respect of which he claimed damages:—*Held:* (1) on the evidence defts.' servant was guilty of negligence in leaving the horses unattended in a busy street; (2) as defts. must or ought to have contemplated that some one might attempt to stop the horses in an endeavour to prevent injury to life & limb, & as the police were under a general duty to intervene to protect life & property, the act of, & injuries to, pltf. were the natural & probable consequences of defts.' negligence; (3) the maxim "*volenti non fit injuria*" did not apply to prevent pltf. recovering.—HAYNES *v.* HARWOOD, [1935] 1 K. B. 146; 104 L. J. K. B. 63; 152 L. T. 121; 51 T. L. R. 100; 78 Sol. Jo. 801, C. A.

Annotation:—As to (3) **Distd.** Sylvester *v.* Chapman, Ltd. (1935), 79 Sol. Jo. 777.

620c. ——.]—SYLVESTER *v.* CHAPMAN, LTD. (1935), 79 Sol. Jo. 777.

623. *Add. Annotation:*—**Refd.** Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

628. *Add. Annotation:*—**Refd.** Cleghorn *v.* Oldham (1927), 43 T. L. R. 465.

629. *Add. Annotation:*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

633. *Add. Annotations:*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376; Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669; Haynes *v.* Harwood & Son, [1934] 2 K. B. 240; Olsen *v.* Corry & Gravesend Aviation, Ltd., [1936] 3 All E. R. 241; Russell *v.* Criterion Film Productions, Ltd., [1936] 3 All E. R. 627; Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

636a. —— ——.]—Pltfs., stevedores at the port of Tampico, in Mexico, undertook to load a steamship of defts.', the Essex Isles, with kerosine & gasoline. The cargo being of a dangerous character, pltfs., who had had much experience in handling such cargoes, stipulated that they should have entire control of the loading. While the loading was in progress an explosion occurred, which killed & injured many of the workmen engaged & destroyed the ship. There was no direct evidence as to the cause of the explosion. Pltfs. brought an action against defts. for damages, & it was found as a fact that the explosion was caused by a spark made by a beam which fell into the hold, the fall of the beam being caused by a blow from a tray which was being hoisted by pltfs.' men from the hold. Pltfs. contended that if the beam had been properly secured by bolts it would not have fallen, & they said that defts. had been negligent in leaving the beam unbolted. Defts. contended that the proximate cause of the explosion was the negligence of pltfs. in not hoisting the tray with proper care, & they counter-claimed for the loss of their ship:—*Held:* on the facts the shipowners had not been guilty of negligence in leaving the beam unbolted, or that if they had been guilty of negligence in so leaving it pltf. stevedores knew, or ought to have known, that the beam was unbolted, & took the risk; & the stevedores themselves had been negligent in failing to use proper care in hoisting the tray.—COMPANIA MEXICANA DE PETRÓLEO EL AGUILA *v.* ESSEX TRANSPORT & TRADING CO., LTD. (1929), 141 L. T. 106; 34 Com. Cas. 198; 17 Asp. M. L. C. 590, C. A.

641. *Add. Annotation:*—**Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

643. *Add. Annotation:*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

647. *Add. Annotations:*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

650. *Add. Annotation:*—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

621 i. *Application to recreation—Accident at game.*]—Four farm labourers were engaged in building a stack of straw, three on tramping down & one in actually building. The three, besides doing their work, were engaged in knocking one another over in the straw. The fourth took no part in the play but took no objection to it. Suddenly he was knocked off the stack by one of the others who had intentionally or unintentionally pushed against him, & falling on his head was severely injured. He brought an action against his companion who had knocked him over:—*Held:* as the pursuer had not been engaged in the play, he had been injured through the fault of the defender & was entitled to damages.

A person who is injured in the course of a game in which he takes part by any cause ordinarily occurring in such a game is not entitled to damages therefor, but takes the risks of the game in which he joins (LORD YOUNG). —REID *v.* MITCHELL (1885), 12 R. (Ct. of Sess.) 1129; 22 Sc. L. R. 748.—**SCOT.**

ar. *Failure of master to provide protection.*]—An employer must take something more than a passive concern for his servant's safety so far as machinery is concerned in order to protect himself from liability on the ground of negligence for injuries sustained by the servant in the course of his employment. With respect to the defence of *volenti non fit injuria* to an action for personal injuries brought by a servant against his employer the distinction must be observed between the case where a servant undertakes to do work which is inherently dangerous & the case where the work is rendered dangerous by the employer's neglect to provide the servant with an appliance which would protect him against a preventable danger.

Once the employer's neglect of said duty has been established in a case where the defence of *volenti non fit injuria* has been raised, then the burden falls upon him of proving to the satisfaction of the tribunal trying the case that the servant had voluntarily undertaken & contracted to accept the risk for himself: this is a question of fact.—HILL *v.* BAADE, [1933] 3 W. W. R. 592.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A.

622 ix. ——.]—REID *v.* MIMICO, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—**CAN.**

622 x. ——.]—*Held:* pltf. was debarred from the recovery of damages by the findings of the jury in reference to his state of knowledge of the dangers to be anticipated in the area through which he chose voluntarily to walk in the dark, although another safe & well-lighted route, which was only forty yards longer, was provided for him. In these circumstances, if he chose to walk in the dark, he walked at his peril.—GILMOUR *v.* BELFAST HARBOUR COMRS., [1933] N. I. 114.—**IR.**

622 xi. ——.]—A gratuitous passenger in a motor car who is shown to have clearly appreciated the risk which he was incurring because of the speed with which the car was being driven on a dangerous road but who made no protest, although he had time before an accident resulted to warn the driver, must be deemed to have voluntarily incurred the risk.—JENNINGS *v.* DAVIES & CAMPBELL, WILSON & HORNE, LTD., [1934] 1 W. W. R. 686; *affd.*, [1934] 2 W. W. R. 587.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—B.

638 v. ——.]—MCLEAN *v.* BOURCET (B. C.), [1929] 4 D. L. R. 359; 3 W. W. R. 44.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—C.

643 iii. ——.]—LEOPOLD *v.* WILE, [1930] 3 D. L. R. 445.—**CAN.**

650a. —— ——.]—Defts. installed in their factory as part of the plant with the intention that it should be used by their employees a dangerous machine which was not fenced or guarded as required by Factory & Workshop Act, 1901 (c. 22). Owing to the condition of the machine, pltf., a workman in the employment of defts., was injured by it in the course of his work. It was found that it was not by the negligence of defts. but of their foreman that the machine had been allowed to be used in the condition in which it was at the time of the accident:—*Held:* the defence of *volenti non fit injuria* had no validity against an action based on breach of statutory duty; further, pltf.'s injury was caused by the "wilful act" of defts. within Workmen's Compensation Act, 1925 (c. 84), s. 29 (1), & defts. were therefore not protected by that sect. from liability to pltf. independent of the Act.

Defts. appealed, & contended that the maxim *volenti non fit injuria* was a defence to the action:—*Held:* the defence of *volenti non fit injuria* was no answer to a claim made by a workman against his employer for injury caused through a breach by the employer of a duty imposed upon him by statute. *Baddeley* v. *Granville* (*Earl*), which had so decided in 1887, had been the law for nearly fifty years, & it was now too late for that ct. to interfere with the decision.—WHEELER *v.* NEW MERTON BOARD MILLS, LTD., [1933] 2 K. B. 669; 103 L. J. K. B. 17; 149 L. T. 587; 49 T. L. R. 574; 26 B. W. C. C. 231, n., C. A.

Annotation:—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

651. *Add. Annotations:*—**Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A.C. 206.

652. *Add. Annotation:*—**Apld.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

653. *Add. Annotations:*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

657. *Add. Annotation:*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

658. *Add. Annotations:*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

662a. —— ——.]—A firm of stevedores employed by a shipowner & a porterage co. employed by the consignee of the ship's cargo were engaged in unloading a ship. The cargo consisted of bags of maize, which were made up into loads by the stevedores & held together by rope slings provided by the stevedores, & the bags were then raised by the stevedores from the hold to a steelyard on the deck. The stevedores' duty ended with the deposit of the bags on the steelyard, from which they were transported to the dock by the porterage co. by means of a dock crane. The stevedores gratuitously permitted the porterage co. to use their slings, which were already round the bags, for the transport of the bags to the dock, & it was a matter of mutual convenience that the same slings should be used throughout. The stevedores employed a servant specially charged with the duty of inspecting the slings, &, as the stevedores knew, the porters relied on the care of the stevedores for the safety of the slings. A sling broke while the bags were being transported from the steelyard to the dock, & the bags fell & killed a servant of the porterage co. In an action of damages brought by his dependants against the stevedores:—*Held:* in the special circumstances of the case the firm of stevedores owed a duty to the porters to see that the sling was in a fit condition to take the weight of the load entrusted to it, & on the facts, the finding of the Lord Ordinary that they had failed to discharge that duty ought not to be disturbed.—CHAPMAN OR OLIVER *v.* SADDLER & Co., [1929] A. C. 584; 98 L. J. P. C. 87; 141 L. T. 305; 45 T. L. R. 456; 34 Com. Cas. 277, H. L.

Annotations:—**Consd.** McAllister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

667. *Add. Annotation:*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

674. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

678. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

681. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

693. *Add. Annotations:*—**Refd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106; Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430.

695. *Add. Annotations:*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

701. *Add. Annotation:*—**Consd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

703. *Add. Annotation:*—**Dbtd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57.

704. *Add. Annotation:*—**Dbtd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57.

Add. Annotations:—**Consd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57. **Refd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

706. *Add. Citations:*—*Revsd. sub nom.* GREAT WESTERN RY. CO. *v.* MOSTYN (OWNERS), THE MOSTYN, [1928] A. C. 57; 97 L. J. P. 8; 138

PART X. SECT. 1, SUB-SECT. 3.

m i. ——.]—JESSON *v.* RURAL MUNICIPALITY OF LIVINGSTONE (Sask.), [1929] 2 D. L. R. 474; 1 W. W. R. 474.—CAN.

m ii. —— *Breach of lighting regulation.*]—The principle that the maxim *volenti non fit injuria* does not afford a defence to an action for injuries resulting from a breach of a statutory duty, applied where deft. had not carried lighted lamps on his motor car as required by sect. 48 (1) (*a*) of Vehicles Act, 1932.—MIKENAS *v.* BURLEY, [1933] 3 W. W. R. 451.—

PART X. SECT. 6, SUB-SECT. 1.

673 vii. —— —— ——.]—The fact that a motor vehicle, proceeding along a wide roadway, owing to the icy nature of the surface, of the danger of which the driver was fully aware, endeavours to but fails to make a slight turn & skids across the pavement into an oncoming vehicle, demonstrates that the accident was not unavoidable under the circumstances.—MCINTOSH *v.* BELL, [1932] 2 D. L. R. 55; O. R. 179.—CAN.

L. T. 403; 92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367, H. L.

Add. Annotations :—**Refd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

718. *Add. Annotations :*—**Consd.** Lindsey County Council *v.* Marshall, [1936] 2 All E. R. 1076. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; Strangeways-Lesmere *v.* Clayton, [1936] 1 All E. R. 484.

719. *Add. Annotations :*—**Refd.** Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535; Lindsey County Council *v.* Marshall, [1937] A. C. 97.

720. *Add. Annotations :*—**Consd.** Strangeways-Lesmere *v.* Clayton, [1936] 1 All E. R. 484; Lindsey County Council *v.* Marshall, [1936] 2 All E. R. 1076. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535.

722. *Add. Annotations :*—**Consd.** Forbes, Abbot & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286; G. W. Ry. *v.* Durnford (1926), 139 L. T. 145. **Refd.** Marbe *v.* George Edwardes (Daly's Theatre) (1927), 138 L. T. 51; Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6; Lensen Shipping Co. *v.* Anglo-Soviet Shipping Co. (1935), 40 Com. Cas. 320.

Part XI.—Contributory Negligence.

726. *Add. Annotations :*—**Apld.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Tidy *v.* Battman, [1934] 1 K. B. 319.

729. *Add. Annotations :*—**Apld.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Consd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73. **Refd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467.

731. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

731a. ——.]—In an action for damages under Lord Campbell's Act brought by pltf. in respect of the death of her husband, who had been killed in a collision between his motor-bicycle & deft.'s motor car, the judge directed the jury that, if they found that the accident was due to the negligence of both parties substantially, there would be contributory negligence on the part of the deceased man & both would be to blame, & the jury would have to find for deft. The jury found for deft. The Ct. of Appeal directed a new trial, holding that the jury should have been directed that if the deceased man was guilty of negligence, but deft. could by exercising reasonable care have avoided the collision, they were still entitled to find for pltf. :—*Held :* since, on the facts of the case, from the moment when the parties became aware of their respective positions there could have been no time for deft. to do anything to avoid the impact, & therefore the negligence of each party contributed to the collision, the judge's directions to the jury were sufficient, & there must be judgment for deft.—SWADLING *v.* COOPER, [1931] A. C. 1; 100 L. J. K. B. 97; 46 T. L. R. 597; 74 Sol. Jo. 536; *sub nom.* COOPER *v.* SWADLING, 143 L. T. 732, H. L.

Annotations :—**Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

PART X. SECT. 8.

719 i. —— *Professional assistance called in—Local authority providing medical attention.*]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

PART XI. SECT. 1, SUB-SECT. 1.

726 ix. ——.]—KENZIE *v.* HART (Sask.), [1927] 3 D. L. R. 839.—CAN.

726 x. ——.]—JOHNSTON *v.* McMORRAN (B. C.), [1927] 4 D. L. R. 335; [1927] 3 W. W. R. 37.—CAN.

726 xi. ——.]—PEACOCK *v.* STEPHENS

726 xii. ——.]—NASON *v.* HODNE (B. C.), [1929] 4 D. L. R. 490.—CAN.

726 xiii. ——.]—ATWOOD *v.* LUBOTINA (1928), 40 B. C. R. 446.—CAN.

726 xiv. ——.]—McNALLY *v.* SENTNER, (1934), 7 M. P. R. 346.—CAN.

726 xv. ——.]—Pltf., a member of deft. assocn., while scuffling with another member on the verandah of deft.'s building was thrust against the railing of the verandah with such force that it gave way & pltf. fell to the pavement & was injured. It was found that the railing was reasonably safe for all purposes for which it was intended to be used :—*Held :* pltf. was not using reasonable care for his own safety & his conduct amounted to negligence which was the cause of his injury, there being no negligence on the part of deft.—McCOLL *v.* CALGARY YOUNG MEN'S CHRISTIAN ASSOCN., [1936] 1 W. W. R. 81; F. L. J. (Can.) 243.—CAN.

lxviii ——.]—McLAUGHLIN *v.* LONG, [1927] 2 D. L. R. 186; [1927] S. C. R. 303; *varying*, [1926] 3 D. L. R. 918.—CAN.

732 lxix. ——.]—The statutory *onus* on the driver of a motor car of showing that loss or damage resulting from its use did not arise from his negligence does not operate to compel the ct. to hold to be negligence that which would not otherwise be negligence or to refuse to give effect to the defence of contributory negligence where the evidence supports it, but merely goes to the burden of proof.—PRUDEN *v.* FOXON, [1928] 3 W. W. R. 245.—CAN.

732 lxx. ——.]—DENT *v.* USHER, [1929] 4 D. L. R. 716; 64 O. L. R. 323; *affd.*, [1930] 2 D. L. R. 736; 65 O. L. R. 117.—CAN.

732 lxxi. ——.]—SCHMULAND *v.* LUCAS (Alta.), [1929] 3 D. L. R. 848.—CAN.

732 lxxii. ——.]—ROOT *v.* McKINNEY, [1930] S. C. R. 337; 2 D. L. R. 984; [1929] 4 D. L. R. 138; 2 W. W. R. 340; 24 Alta L. R. 181; *affg.*, [1929] 2 D. L. R. 604; 1 W. W. R. 884.—CAN.

732 lxxiii. ——.]—In an action against the comrs. of a development district for damages because of the freezing of the water pipes in pltf.'s house after he had closed the house up & had asked the man in charge of defts.' waterworks system to cut off the water from the branch service pipe : *Held :* pltf. must fall on the ground that his own failure to take the reasonable precautions which he should have taken under the circumstances was the cause of his loss, & also on the ground that said loss was not shown to have been the natural & probable consequence of defts.' negligence. The alternative claim under Contributory Negligence Act was also disposed of by the above findings, since this Act applies only to a case where the fault of two or more persons causes damage to one of them, & the failure of deft. to shut off the water at the main did not "contribute" to cause the pltf.'s loss.—LEAHY *v.* NAKUSP DEVELOPMENT DISTRICT COMRS., [1930] 1 W. W. R. 97.—CAN.

732 lxxiv. ——.]—Pltf. alighted from a motor omnibus & ran behind into deft.'s automobile :—*Held :* deft. was not bound to anticipate that the girl would run into the road in front of her so as not to give deft. a chance to stop; deft. could not be expected to know the actual intention of every one on the road, but only the intention manifested by outward acts or to be

735. *Add. Annotations :*—**Apld.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628. **Consd.** Lochgelly Iron & Coal Co. *v.* M'Mullan (1933), 49 T. L. R. 566. **Refd.** Flower *v.* Ebbw Vale Steel Iron & Coal Co., [1936] A. C. 206.

736a. Jury unable to decide liability.]—In an action for damages for personal injuries alleged to have been caused by deft.'s negligent driving of a motor car, the jury found that there was negligence on both sides, but they were unable to agree on the question whose negligence was really responsible for the accident :—*Held :* on this verdict judgment could not be given for either party.—SERVICE *v.* SUNDELL (1929), 99 L. J. K. B. 55; 46 T. L. R. 12; 73 Sol. Jo. 729, C. A.

Annotation :—**Expld.** Cooper *v.* Swadling (1929), 46 T. L. R. 73.

736b. Breach of statutory duty by defendant.]—Contributory negligence of pltf. is a valid defence to an action founded on breach of a statutory duty by deft.—FLOWER *v.* EBBW VALE STEEL, IRON & COAL CO., LTD., [1934] 2 K. B. 132; 103 L. J. K. B. 465; 151 L. T. 87; 78 Sol. Jo. 154, C. A.; *revsd. on other grounds*, [1936] A. C. 206, H. L.

Annotations :—**Consd.** Bailey *v.* Geddes, [1937] 3 All E. R. 671; Craze *v.* Meyer-Dumore Bottlers' Equipment Co., [1936] 2 All E. R. 1150.

743. *Add. Annotations :*—**Dbtd.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

745. *Add. Annotations :*—**Distd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Folld.** Tart *v.* Chitty & Co., [1933] 2 K. B. 453. **Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59;

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expected from the ordinary course of events; the sole negligence causing the accident was that of the girl herself.—WILSON *v.* REBOTOY, [1930] 1 D. L. R. 273; 64 O. L. R. 458.—**CAN.**

732 lxxv. ——.]—PRICE *v.* BRITISH COLUMBIA MOTOR TRANSPORT, LTD. & LEDBURY, [1932] S. C. R. 310; 2 D. L. R. 161.—**CAN.**

732 lxxvi. ——.]—WATT *v.* REID, BURCH *v.* REID, [1930] 2 D. L. R. 215; 42 B. C. R. 90.—**CAN.**

732 lxxvii. ——.]—NASON *v.* BICKFORD (1932), 5 M. P. R. 434.—**CAN.**

732 lxxviii. ——.]—A patrolman on a racing track was struck by a car while crossing the track to chase boys away. He sued for damages for negligence alleging an insufficiency of patrolmen :—*Held :* the damage was not the natural & probable cause of he negligence, but was due solely to the voluntary act of pltf.—CLAGUE *v.* WINNIPEG JOCKEY CLUB (1933), 41 Man. L. R. 421.—**CAN.**

732 lxxix. ——.]—HAYNES *v.* THOMPSON (1933), 41 Man. L. R. 513.—**CAN.**

732 lxxx. ——.]—Pltf., a passenger on a steamer operated by deft., was injured when landing therefrom. She jumped from the deck to the wharf or float when the steamer was about a foot away from it & gradually drifting out. Her evidence was that she had jumped because the captain had said to her : " You will have to jump quick because the wind is carrying me out." The jury found deft. negligent in " lack of proper care & warning in preventing pltf. from disembarking in the proper manner " & found that pltf. was contributorily negligent in " over anxiety to disembark." The proportion of fault of pltf. & deft. were fixed at one-quarter & three-quarters respectively & on these answers judgment went for pltf. for three-quarters of the damages found. On appeal, the ct. being equally divided, the appeal was dismissed.—BONIFACE *v.* HARBOUR NAVIGATION CO., LTD., [1934] 1 W. W. R. 612; 2 D. L. R. 714; 48 B. C. R. 136.—**CAN.**

732 lxxxi. ——.]—Pltf., a pedestrian, was struck at a street intersection by deft.'s motor car. He had seen the motor car approaching but thought that he had time to cross. Deft. saw pltf. crossing & blew his horn when about 15 or 20 feet from pltf., after pltf. had passed the line of the course of his car. Pltf. upon hearing the horn stepped back into the path of deft.'s car & was injured :—*Held :* the real blame of the accident must fall on pltf. since he failed to watch deft.'s car which he had seen approaching.—ROBERTSON *v.* ANTONIUK, [1934] 2 W. W. R. 293; 4 D. L. R. 46.—**CAN.**

732 lxxxii. ——.]—In an action arising out of a collision on the highway between pltf.'s motor car & deft.'s horse, alleged to have been negligently left unattended on the highway, the jury in answer to questions submitted to them, found that deft. was negligent in not having full control of the horse, & that pltf.'s driver was guilty of contributory negligence in driving too fast & not keeping a sharp look-out. In addition the following question was submitted to & answered by the jury as follows : " (5) If there was negligence on the part of deft., could pltf.'s driver, notwithstanding deft.'s negligence, have prevented the accident by the exercise of reasonable care, &, if so, how could he have prevented it ? Answer : Yes, by keeping a sharp look-out & driving at a slower rate of speed " :—*Held :* the trial judge properly gave judgment for deft.—CLONEY *v.* THERRICE (1933), 6 M. P. R. 500.—**CAN.**

732 lxxxiii. ——.]—PERDUE *v.* EPSTEIN (1933), 48 B. C. R. 115.—**CAN.**

732 lxxxiv. ——.]—TILLEY *v.* WILSON, [1936] 1 W. W. R. 72; 50 B. C. R. 276; 5 F. L. J. (Can.) 163.—**CAN.**

732 lxxxv. ——.]—BARNES *v.* BRADSHAW, [1937] 2 D. L. R. 203; 51 B. C. R. 338.—**CAN.**

sn. *Breach of statutory regulation by plaintiff.*]—If a breach by the pltf. of a statutory regulation against pillion-riding occurs, then, provided that the circumstances are such that the management of pltf.'s motor vehicle was a determining factor of the collision, it is to be assumed, without further evidence, that the pillion-riding did in fact make the management of the motor vehicle more difficult, & was negligence contributing to the accident.—MORTESS *v.* FRY, [1928] S. A. S. R. 60.—**AUS.**

sp. *Presumption with modern traffic.*]—When a ct. has to deal with modern quick-moving traffic, though it is sometimes possible where the parties are successively negligent to determine which negligence was by the result the cause of the accident, in most such cases the last acts follow one another so closely in time, & are so closely interconnected as to justify the view that the resulting damage was due to the negligence of both parties.—SOUTH AFRICAN RAILWAYS *v.* STEGMANN, [1932] App. D. 318.—**S. AF.**

sr. *Defence available in civil proceedings only.*]—Defence of contributory negligence is not available in criminal prosecutions involving criminal negligence.—R. *v.* SUTHERLAND (1933), 7 M. P. R. 172.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 2.—A.

744 xxxii. ——.]—DAVIDGE *v.* JOHNSON & MCDONALD, LTD. (1926), 59 N. S. R. 76.—**CAN.**

744 xxxiii. ——.]—BALLANTINE *v.* INTERNATIONAL RY. CO., [1927] 4 D. L. R. 951; 61 O. L. R. 273.—**CAN.**

744 xxxiv. ——.]—Where in an action for damages arising out of the collision of two motor cars at the crossing of two roads it was proved that deft. had been negligent in not keeping a proper look out, but it was also proved that the driver of pltf.'s car had seen deft.'s car at a considerable distance from the crossing, but had ignored it, considering as he was on the main road & had the right of way he could continue his course :—*Held :* the driver of pltf.'s car had not acted reasonably in ignoring the approaching car on the assumption that deft. would respect his right of way, & he had been guilty of contributory negligence which disentitled pltf. from succeeding.—ROBINSON BROS. *v.* HENDERSON, [1928] App. D. 138.—**S. AF.**

744 xxxv. ——.]—TREVOR-SMITH *v.* WALTERS (1928), 49 N. L. R. 351.—**S.AF.**

744 xxxvi. ——.]—The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming.—MICHALINSKI *v.* CANADIAN PACIFIC RAILWAY CO., [1928] 3 W. W. R. 238.—**CAN.**

744 xxxvii. ——.]—JOHNSON *v.* HILBORN, [1932] 1 D. L. R. 683.—**CAN.**

744 xxxviii. ——.]—MACDONALD *v.* THOMAS (1933), 41 Man. L. R. 657.—**CAN.**

744 xxxix. ——.]—KOEPPEL *v.* COLONIAL COACH LINES, LTD., [1933] 3 D. L. R. 469; S. C. R. 529.—**CAN.**

744 xl. ——.]—Possession of the right of way does not absolve any motor-car driver from the duty of taking reasonable care. In an action arising from a collision of motor cars at an intersection :—*Held :* the fact that the female pltf. who was a passenger in the male pltf.'s car & sitting on the front seat had her back towards the door & was reading a newspaper & continued to read it, without warning the driver of danger although she had seen the deft.'s car when it was some distance from the intersection, did not, under the circumstances, constitute contributory negligence.—FOSTER *v.* REDGRAVE, [1935] 1 W. W. R. 33.—**CAN.**

744 xli. ——.]—Deft. driver was found to have been negligent in so turning on to the left side of the road without attempting to see that the road was clear but it was contended that, nevertheless, pltf., the driver of the oncoming car, had time to, & could have avoided a collision by merely swinging his car out a few feet :

Tidy *v.* Battman, [1934] 1 K. B. 319; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

1. *Add. Annotations :*—**Apld.** Hargrove *v.* Burn (1929), 46 T. L. R. 59.; Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** The Vectis, [1929] P. 204; The Chatwood, [1930] P. 272; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

765a. ——.]—The fact that a man was killed while endeavouring to cross in front of an electric tramcar at the intersection of two streets in a town, at a place where the rules of the tramway co. laid down that "the speed must be reduced & the car kept carefully under control," is not evidence of recklessness on his part amounting to contributory negligence sufficient to free the co. from liability for the accident, the jury having found that the driver of the tramcar was in fault.—TORONTO RY. CO. *v.* KING, [1908] A. C. 260; 77 L. J. P. 272.

Annotation :—**Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

770a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

770b. ——.]—In a running-down case, if it is established that although pltf. was negligent deft. could have avoided the collision by the exercise of reasonable care, then it is deft.'s failure to take that reasonable care to which the resulting damage is due, & pltf. is entitled to recover.—MCLEAN *v.* BELL (1932), 147 L. T. 262; 48 T. L. R. 467; 76 Sol. Jo. 414, H. L.

780. *Add. Annotation :*—**Refd.** Tidy *v.* Battman, [1934] 1 K. B. 319.

781. *Add. Annotations :*—**Distd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Apld.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Consd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73; Hargrove *v.* Burn (1929), 46 T. L. R. 59; Service *v.* Sundell (1929), 99 L. J. K. B. 55; M'Lean *v.* Bell (1932), 48 T. L. R. 467; Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

781a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

782. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

—*Held :* while it seemed that some drivers more skilled than pltf. & more accustomed to quick & instinctive judgment in an emergency could have so avoided the collision, yet to hold pltf. guilty of contributory negligence because he did not do so would be to demand the taking of an extraordinary precaution in the agony of a situation entirely attributable at that stage to the negligence of the deft. driver; & that is untenable.—DAVIDNER *v.* SCHUSTER, RIESENBERG *v.* SCHUSTER (No. 2), [1936] 1 W. W. R. 120.—**CAN.**

744 xlii. ——.]—A pedestrian who steps suddenly from between standing cars & is knocked down is guilty of contributory negligence barring recovery.—ARMSTRONG *v.* HOUSTON, [1936] 2 D. L. R. 65; 5 F. L. J. (Can.) 293.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 2.—B.

771 xxxix. *Subsequent proceedings*, [1923] 4 D. L. R. 727; [1923] S. C. R. 730; [1923] 3 W. W. R. 938.

771 lv. ——.]—HEALING (A. G.) & CO. PROPRIETARY, LTD. *v.* HARRIS (1927), 39 C. L. R. 560; [1927] Argus L. R. 386.—**AUS.**

771 lvi. ——.]—PENROSE *v.* BARR (B. C.), [1927] 4 D. L. R. 407; [1927] 3 W. W. R. 104.—**CAN.**

771 lvii. ——.]—HAMILTON *v.* PALLISER HOTEL AUTO & TAXI CO., LTD., [1928] 4 D. L. R. 962; [1928] 3 W. W. R. 497.—**CAN.**

771 lviii. ——.]—NELSON *v.* DENNIS (Man.), [1929] 4 D. L. R. 282; 2 W. W. R. 513; *revsd.*, [1930] 1 W. W. R. 656; 3 D. L. R. 215; 38 Man. L. R. 553.—**CAN.**

771 lix. ——.]—JEREMY & JEREMY *v.* FONTAINE, [1931] 1 W. W. R. 671; *affd.*, [1931] 3 W. W. R. 203; 4 D. L. R. 556; 26 Alta. L. R. 499.—**CAN.**

771 lx. ——.]—Where in an action for negligence the jury finds on sufficient evidence that, notwithstanding the negligence which it found pltf. guilty of, deft. could by the exercise of reasonable care have avoided the accident pltf. is entitled to recover; & the Contributory Negligence Act, 1925, has no application.—KEY *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1931] 1 D. L. R. 532; [1930] 3 W. W. R. 569; *affd.*, [1931] 3 D. L. R. 587.—**CAN.**

771 lxi. ——.]—LANGSET *v.* DUFF FLINT & CO., [1930] 2 D. L. R. 142.—**CAN.**

771 lxii. ——.]—BRITISH COLUMBIA ELECTRIC RY. CO. *v.* KEY, [1931] 3 D. L. R. 587; [1932] S. C. R. 106.—**CAN.**

771 lxiii. ——.]—CHISHOLM *v.* AIRD (1930), 43 B. C. R. 354.—**CAN.**

771 lxiv. ——.]—Pltf., a boy twelve years old, alighted from a hayrack, on which he had been riding while it was being driven westward in the outskirts of a city, & went around the back of the rack with the intention of crossing the road. As he emerged from behind the rack he ran into the side of deft.'s motor car, driven by his son, which was travelling eastwards at thirty miles per hour. The judge, who found the driver of the car negligent in not sounding his horn before coming to the hayrack & in driving at an excessive speed under the circumstances, gave judgment for pltfs. On appeal :—*Held :* the appeal should be dismissed but the damages should be reduced.—VENIOT *v.* BLACK, [1933] 2 W. W. R. 198; 3 D. L. R. 517; 41 Man. L. R. 217; *revsd.*, [1934] 1 D. L. R. 803.—**CAN.**

771 lxv. ——.]—In an action resulting from a collision at dusk at a well-lighted intersection between a bicycle ridden by the infant pltf. & deft.'s motor car :—*Held :* although the infant pltf. was negligent in not having a headlight on his bicycle, yet the direct cause of the accident was the negligence of deft. in failing to keep a proper lookout & in making a turn to the left too soon & too short & on the wrong side of the intersection.—DAVIS *v.* HALL & DAVID HALL SIGN CO., LTD., [1936] 1 W. W. R. 419.—**CAN.**

771 lxvi. ——.]—Where in a collision between a motor cycle & a motor car a pillion rider sustained injury, it was not shown that the negligence of the motor cyclist was alone the effective cause of the injury, & it was shown that the negligence of deft. motor driver was a contributory factor in the effective cause, deft. is liable.—DEED *v.* LIDDLE, [1935] S. A. S. R. 188.—**AUS.**

771 lxvii. ——.]—WAGELER *v.* CRAIG & CHARMBURY, [1937] 3 W. W. R. 513.—**CAN.**

771 lxviii. ——.]—REOPEL *v.* ROSS, [1937] 3 W. W. R. 471.—**CAN.**

PART XI. SECT. 2.

782 xvi. ——.]—HOARE *v.* INVERARITY (1926), 28 W. A. L. R. 125.—**AUS.**

782 xvii ——.]—ERICKSON *v.* CAMPBELL'S, LTD. (1928), 39 B. C. R. 472.—**CAN.**

h i. —— ——.]—VANCOUVER ISLAND COACH LINES, LTD. *v.* E. LEBUS & CO., LTD., [1931] 2 W. W. R. 337; 3 D. L. R. 811; 44 B. C. R. 102.—**CAN.**

h ii. *Contributory Negligence Act*, 1925—*Application of.*]—In applying above Act, the questions which the trial judge should ask himself are: "By whose fault was the accident caused? By one of the parties only, or by both parties, &, if so, in what proportions?"—HARPER *v.* MCLEAN, [1928] 2 D. L. R. 220; [1928] 1 W. W. R. 444; 39 B. C. R. 426.—**CAN.**

h iii. —— ——.]—TEDLOCK *v.* MCKELVIE (B. C.), [1929] 4 D. L. R. 691.—**CAN.**

h iv. —— —— *Costs.*]—HARPER *v.* MCLEAN, [1928] 2 D. L. R. 986; [1928] 1 W. W. R. 912; 39 B. C. R. 480.—**CAN.**

h v. —— —— ——]—In applying sect. 4 of Contributory Negligence Act, 1925, costs must be apportioned in accordance with the decision in *Katz v. Consolidated Motors, Ltd. & Thomson*, [1930] 1 W. W. R. 305; 42 B. C. R. 214, "unless the judge otherwise directs" for good cause arising in the action. In otherwise directing the trial judge must exercise a judicial discretion; he cannot decline to follow the general rule merely because he thinks its application will produce an unsatisfactory or "anomalous" result.—WEGENER *v.* MATOFF & FUR SALES, LTD., [1934] 3 W. W. R. 429; 4 D. L. R. 783; 49 B. C. R. 125.—**CAN.**

h vi. —— ——.]—In an action wherein damages were apportioned under Contributory Negligence Act, 1925, as between the adult pltf. & deft., & damages were awarded the infant pltf., a gratuitous passenger in the adult pltf.'s car, as against deft. :—*Held :* the latter was entitled to have the damages payable to the infant pltf. included as part of the loss sustained by deft. & to claim payment from the adult pltf. of his proportion thereof according to his degree of blame for the accident.—PRICE *v.* FRASER VALLEY MILK PRODUCERS ASSOCN., [1931] 3 W. W. R. 48; *varied*, [1932] 2 W. W. R. 65; 3 D. L. R. 55; 45 B. C. R. 285.—**CAN.**

h vii. —— ——.]—PATTERSON *v.* HALE & PUGH, 1932] 3 W. W. R. 280.—**CAN.**

783. *Add. Annotations :*—**Refd.** The Vectis, [1929] P. 204 ; Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

784. *Add. Annotation :*—**Refd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73.

784a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

789. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

790a. Stevedores loading dangerous cargo—Stipulation for sole control of loading.]—COMPANIA MEXICANA DE PETROLEO EL AGUILA *v.* ESSEX TRANSPORT & TRADING CO., LTD., No. 636a, *ante*.

791. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

792. *Add. Annotation :*—**Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

793. *Add. Annotations :*—**Consd.** Haynes *v.* Harwood & Son, [1935] 1 K. B. 146. **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

798. *Add. Citation :*—17 Asp. M. L. C. 117.

Add. Annotation :—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

803. *Add. Annotations :*—**Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59; Swadling *v.* Cooper (1930), 46 T. L. R. 597.

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sm. *Contributory Negligence Act*, 1926 (*N.S.*).]—Where damage is caused through the negligence of both driver & pedestrian judgment should be against the driver subject to the provisions of Contributory Negligence Act, 1926 (N.S.).—HANRAHAN *v.* MCSWEEN, [1935] 2 D. L. R. 670 ; 8 M. P. R. 431.—**CAN.**

so. *Where negligence continuous.*]—COMMISSIONER OF RAILWAYS *v.* SKINNER (1927), 30 W. A. L. R. 45.—**AUS.**

sq. *Negligence Act*, 1930 (*Ont.*)—*Application of.*]—STEELE *v.* FERGUSON, [1931] 3 D. L. R. 810 ; O. R. 427.—**CAN.**

st. —— ——.]—LECOMTE *v.* BELL TELEPHONE CO., LTD., & OTTAWA, [1932] 3 D. L. R. 220.—**CAN.**

sv. —— —— *Injury to wife—Contributory negligence of husband.*]—M., driving his motor car northwards, & Y., driving his southwards, collided, after dusk, about 50 feet north of the north end of a curve, on a paved highway, in Ontario. Y.'s wife was riding with him. Y. & his wife sued M., & M. counterclaimed against Y., for damages. It was alleged against each driver that he was on the wrong side of the road. The jury found that negligence of M. & Y., equally, caused the collision, the negligence consisting, on M.'s part, " by being too far over on his wrong side, swerved to east (his right) side of road but was too late to avoid the accident," & on Y.'s part, " on seeing M.'s car coming towards him, swerved to the east (his wrong) side of the road in the direction of oncoming car " :—*Held :* the ct. could not award to M. indemnity against Y. in respect of the damages awarded to Y.'s wife ; sect. 3 of Negligence Act provided for contribution & indemnity only in the case of joint & several liability, &, under the law, Y. could not be sued by his wife for damages caused by the accident, & therefore was not & could not be found liable jointly & severally with M. to her.—MACKLIN *v.* YOUNG, [1933] S. C. R. 603.—**CAN.**

PART XI. SECT. 3.

785 vii. ——.]—In an action of damages against a corpn., as the statutory authority charged with the duty of providing light in common stairs within the city during the hours of darkness, defenders moved that the action should be dismissed as irrelevant, in respect that upon her own averments pursuer was guilty of contributory negligence in going down a stair which she knew to be in darkness without first obtaining a light :—*Held :* pursuer's averments did not disclose contributory negligence on her part such as to warrant dismissal of the action.—JACKSON *v.* GLASGOW CORPN., [1928] S. C. 37.—**SCOT.**

785 viii. ——.]—Knowledge alone of the dangerous condition of premises is not a bar to a claim by an invitee against an invitor in respect of an injury resulting therefrom. Such knowledge is relevant to the question of the extent of the duty of care owed by the invitor ; & it is relevant also where there is a defence of *volenti non fit injuria*, or of contributory negligence.—HOY *v.* AUCKLAND HARBOUR BOARD, [1928] N. Z. L. R. 716.—**N.Z.**

785 ix. —— *Excessive speed of car—Failure of passenger to remonstrate.*]—Pltf. was well aware from experience that deceased was a fast driver, but he also knew that he had always driven him carefully & he had no reason to anticipate that fast driving on this occasion would result in an accident :—*Held :* therefore, no contributory negligence.—SMYTHE *v.* CAMPBELL, [1930] 4 D. L. R 376 ; 65 O. L. R. 597.—**CAN.**

788 i. —— *Entering vehicle when driver perceptibly drunk.*]—In an action against the driver of a motor car to recover damages for injuries sustained in a collision caused by the driver's negligence, pltf. is not entitled to succeed where such negligence was due to the intoxicated condition of deft., of which condition pltf. was aware at the time that he accepted the invitation to travel in the car.—FINNIE *v.* CARROLL (1927), 27 S. R. N. S. W. 495 ; 44 N. S. W. W. N. 182.—**AUS.**

789 i. *Effect of warning of danger.*]—The fact that a pltf. suing for damages for negligence received a casual warning from a friend against the danger does not afford much support to a plea of contributory negligence ; nor is forgetfulness *per se* contributory negligence, the question still remains whether it amounted under all the circumstances to a failure to exercise ordinary care.—HILL *v.* CITY OF SASKATOON, [1929] 2 D. L. R. 627 ; 1 W. W. R. 562 ; 23 S. L. R. 249.—**CAN.**

PART XI. SECT. 4.

791 i. ——.]—A man who, by another's want of care, finds himself in a position of imminent danger cannot be held guilty of negligence merely because in that emergency he does not act in the best way to avoid the danger.—THORNTON *v.* FISHER, [1928] App. D. 398.—**S. AF.**

t i. ——.]—PATTERSON *v.* GOODERHAM, [1928] 1 D. L. R. 131.—**CAN.**

t ii. ——.]—CARTER *v.* VAN CAMP & ANDERSON, VAN CAMP *v.* CARTER & ANDERSON, [1930] S. C. R. 156 ; *affg.*, [1929] 4 D. L. R. 625 ; *varg.*, [1929] 1 D. L. R. 429 ; 63 O. L. R. 257.—**CAN.**

t iii. ——.]—WILKINS *v.* DODDS (Sask.), [1929] 4 D. L. R. 119.—**CAN.**

t iv. ——.]—The negligence of the driver of deft. co.'s automobile, at the intersection of two streets, forced pltf. who was driving his own automobile, in the face of imminent collision with deft. co.'s automobile, to choose between collision & the chance of avoiding it by turning his automobile up the intersecting street, which in attempting to do he ran into & the curbing & damaged his automobile :—*Held :* the negligence of deft. co.'s driver in effect caused the damage sustained by pltf.—HARDIMAN *v.* YELLOW CAB, LTD., [1929] 1 D. L. R. 947 ; 60 N. S. R. 352.—**CAN.**

t v. ——.]—Deft., the driver of an automobile trying to overtake & pass another automobile on a curve at an excessive rate of speed, collided with the automobile of pltf. approaching the curve from the opposite direction on his proper side of the road. The former contended that the latter might have passed between the overtaking & overtaken automobiles :—*Held :* there was no duty on the driver of the approaching automobile to do so.—MCDONALD *v.* BEZANSON, [1929] 1 D. L. R. 272 ; 60 N. S. R. 332.—**CAN.**

t vi. ——.]—Applt. H., driving a car belonging to applt. co., proceeding along the road on his correct side, finding himself suddenly confronted by resp.'s approaching car, which had cut a blind corner leading into the road, in order to avoid what appeared to be an imminent collision, swerved to the opposite side of the road, & there collided with resp.'s car, which had simultaneously swerved on to its correct side :—*Held :* applt.'s action in swerving to his wrong side of the road was reasonable & unattended by negligence.—HINDMARSH *v.* GUTHRIE, SHELL CO. OF NEW ZEALAND *v.* GUTHRIE, [1930] N. Z. L. R. 15.—**N.Z.**

sz. *Act on impulse of personal peril.*]—When deft.'s motor car cut in sharply in front of pltf.'s car the male pltf., who was driving, attempted to use the foot brake but, in his agitation, stepped on the accelerator with the result that his car swerved over the sidewalk & collided with an electric light pole :—*Held :* notwithstanding what pltf. driver so did, deft. was solely liable.—FUJIWARA *v.* OSAWA, [1937] 1 W. W. R. 364 ; 2 D. L. R. 133 ; 51 B. C. R. 388.—**CAN.**

PART XI. SECT. 5.

803 iv. —— —— ——.]—The contributory negligence of the driver of a vehicle who is not the servant or agent of a passenger therein is no defence to an action by the latter for damages for personal injuries caused by the negligence of another person.—MCCULLOCH *v.* STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970 ; [1928] 1 W. W. R. 211 ; 22 Sask. L. R. 231.—**CAN.**

803 v. —— —— —— ——.]—The mere fact of a passenger being a passenger does not so identify him with his driver as to make him responsible for the driver's negligence.—MARA *v.* HARTLEY, [1931] 2 D. L. R. 734 ; O. R. 69.—**CAN.**

803 vi. —— —— —— ——.]—In an automobile collision case in which pltf. was a passenger in one of the cars & deft. was the driver of the other car :—*Held :* since the negligence of the driver of the car in which pltf. was riding was not a defence open to deft. as against pltf., & since deft.

804. *Add. Annotation :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

807. *Add. Annotations :*—*As to* (1) **Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. *Generally*, **Refd.** The Vectis, [1929] P. 204.

Part XII.—Damages.

810. *Add. Annotations :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359 ; Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

817. *Add. Annotation :*—**Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

828. *Add. Annotations :*—**Consd.** Roach *v.* Yates, [1937] 3 All E. R. 442. **Refd.** Heaps *v.* Perrite, Ltd., [1937] 2 All E. R. 60 ; Rose *v.* Ford, [1937] 3 All E. R. 359.

835a. —— **Shortened expectation of life.**]—A pltf. met with an accident through the negligence

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had been guilty of negligence without which the accident would not have occurred, pltf. was entitled to recover. —MATTHEWS *v.* MCKINNON, [1934] 3 W. W. R. 590 ; 1 D. L. R. 255.—**CAN.**

803 vii. ——— ——— ———.]—A boy was injured by a collision between a car & a bicycle, on the handlebars of which he was riding. The lamp on the bicycle was unlighted. Since he did not know that the lamp was unlighted & therefore had no knowledge of the danger, he was held not guilty of contributory negligence.—MACKENNEY *v.* HORNE (1934), 7 M. P. R. 470.—**CAN.**

803 viii. ———.]—Pltf., while a member of a family party on a motor car outing, was injured as the result of her brother's negligence in driving the car, which was owned by her step-father, & sued her brother for damages. Pltf. did not drive a car at all & trusted solely to her brother to do the driving :—*Held :* it could not be said that pltf. was in any way in control of the car &, therefore, identified with her brother's negligence.—KERR *v.* STEPHEN, [1930] 1 W. W. R. 896 ; 2 D. L. R. 978 ; 42 B. C. R. 518.—**CAN.**

803 ix. ———.]—Pltf. M. sued as administrator of the estate of his son who was a passenger, on a "joy jaunt," in pltf. H.'s car & was killed in the collision :—*Held :* although he was not identified with the negligence of his driver, yet, since he must have known the condition of the car in which he was travelling, he was identified with it, & was an accomplice in the offence of operating the car without legal lighting ; the result being that both he & H. were in the same legal position with respect to deft.—MCMARTIN *v.* ELLIOTT & BURNS & CO., LTD., HADLEY & HADLEY *v.* ELLIOTT & BURNS & CO., LTD., [1932] 2 W. W. R. 664 ; *on appeal*, [1933] 1 W. W. R. 85.—**CAN.**

803 x. ——— *Pillion passenger.*]—Where a motor cycle with a pillion passenger was being driven along a public road without lights on a dark night, the passenger taking a share in the direction & control of the motor cycle, & both driver & passenger being equally aware of the foolhardy & dangerous nature of their undertaking, they were engaged in a common purpose or joint enterprise, *i.e.*, "concerted action towards a common end." The negligence of the driver must, therefore, be attributed to the passenger.—BOURKE *v.* JESSOP (No. 2), [1934] N. Z. L. R. Supp. 81 ; G. L. R. 495.—**N.Z.**

803 xi. ———.]—In sect. 71b of Vehicles & Highway Traffic Act, 1924, which provides that, except in the case of motor vehicles ordinarily used for carrying passengers for hire, "a person" who is a gratuitous passenger shall have no right of action against an owner or driver of a motor vehicle for injuries sustained by reason of its "negligent operation," the words "negligent operation" include only such negligence as is due to forgetfulness, inadvertence or carelessness, but not such an operating of a vehicle as can be classed as reckless, wilful or illegal, or is due to improper conduct or is contrary to the various provisions of the Act.—FRASER *v.* FRASER, [1936] 2 W. W. R. 225 ; 6 F. L. J. (Can.) 36 ; *revsd.* [1936] 3 W. W. R. 616 ; [1937] 1 D. L. R. 67 ; 6 F. L. J. (Can.) 243.—**CAN.**

803 xii. ———.]—Deft., a market gardener, was driving a number of his employees in a motor truck to their work when the truck hit a telephone pole & two of the employees were injured :—*Held :* said employees were not "guests" of deft. within sect. 60A of Highway Traffic Act, 1930.—TYCHOLITZ *v.* CROP, KOWPAK *v.* CROP, [1936] 2 W. W. R. 222, 272 ; *affd.* [1936] 2 W. W. R. 416 ; 44 Man. L. R. 146.—**CAN.**

c i. ———.]—If an injury is done by the wrongful act of one to the property of another, the wrongdoer is liable to the owner quite apart from the existence of any contract of bailment. The Contributory Negligence Act, R. S. O., 1927, does not affect the rights of a bailor who is not guilty of any negligence.—FLETCHER *v.* THOMAS, [1931] 3 D. L. R. 142 ; O. R. 195.—**CAN.**

sw. *Failure of lights of omnibus—Passengers continuing with knowledge.*]—HORNING *v.* SYCAMORE & FLEXMAN (1935), 11 N. Z. L. J. 201.—**N. Z.**

sz. *Contributory negligence of guest—What amounts to.*]—A guest in a car is not guilty of contributory negligence in failing to keep a look out, or to warn the driver, when approaching a railway crossing.—BOOTH *v.* GRIEVE, [1936] 1 D. L. R. 682 ; O. R. 111 ; 5 F. L. J. (Can.) 228.—**CAN.**

PART XII. SECT. 2, SUB-SECT 2.

818 i. *Fear of personal injury—Impending collision.*]—WALKER *v.* PITLOCHRY MOTOR CO., [1930] S. C. 565.—**SCOT.**

PART XII. SECT. 3, SUB-SECT. 1

a i. —— *Destruction of orchard by fire.*]—Pltf.'s apple orchard consisting of trees of a kind which did not bear fruit until thirteen years after planting & which had been planted for sixteen years, was destroyed by fire caused through the negligence of deft.'s servants :—*Held :* pltf. was entitled to damages in a sum which would place her in as good a position financially as she would have been if no fire had occurred, & where the evidence showed that pltf. could derive from trees which would take only six years to bear fruit an income not less than that obtained from the destroyed trees, she was entitled to judgment for a sum representing the actual cost to her of restoration of the orchard with such more quickly bearing trees, including the cost of re-planting, fertilising, cultivating, pruning, etc., to which must be added a sum representing the loss of income pltf. would suffer pending such restoration, that is to say, for a period of six years. —OATES *v.* UNION GOVERNMENT, [1932] N. L. R. 198.—**S. AF.**

a ii. *Sum sufficient to give annuity equal to annual earnings—Whether awarded on wrong principle.*]—BLOUDOFF *v.* CANADIAN NATIONAL RAILWAY (Sask.), [1928] 4 D. L. R. 29 ; [1928] 2 W. W. R. 519.—**CAN.**

832 i. —— *Not cost of re-instatement.*]—ROUSSEAU *v.* LYNCH & FOURNIER, [1931] 4 D. L. R. 595 ; 3 M. P. R. 355.—**CAN.**

835 iv. ——— ———.]—In an action for damages for personal injuries a claim for loss of wages or earnings to the date of the commencement of the action or of the trial is not recoverable as special damages ; such a loss is one to be taken into consideration by the jury in assessing general damages.—TRACHE *v.* CANADIAN NORTHERN RY. CO., [1929] 2 D. L. R. 321 ; 1 W. W. R. 100 ; 35 C. R. C. 258 ; 23 S. L. R. 576. —**CAN.**

835 v. ——— ———.]—In an action for damages for personal injuries a claim for wages lost by reason of the injury is an element of damage to be considered in assessing general damages ; it cannot be recovered as special damages because, by reason of the uncertainties connected with employment & with human life, it is incapable of exact assessment.—TAYLOR *v.* ADDEMS & ADDEMS, [1932] 1 W. W. R. 505.—**CAN.**

835 vi. ———.]—In an action for damages for personal injuries caused by negligence the fact that the pltf. is entitled under his contract with his employer to a cumulated credit for sick leave for a period exceeding that during which he was absent from work as the result of his injuries, &, therefore, has not actually lost any salary because of such absence, is not a ground for depriving him of damages for loss of time. Time lost from work as a result of injuries caused by negligence is an element to be considered in assessing general damages ; it cannot be recovered as special damages.—TUBB *v.* LIEF & GORDON, [1932] 3 W. W. R. 245.—**CAN.**

c i. ——— ———.]—An impairment of a young woman's prospects of marriage because of injuries or disfigurement may be taken into consideration in assessing damages for personal injuries.—TAYLOR *v.* ADDEMS & ADDEMS, [1932] 1 W. W. R. 505.—**CAN.**

c ii. ——— ———.]—In an action for damages for negligent driving by which pltf. was crippled :—*Held :* the possibility that pltf. might be inconvenienced in motherhood, & also that her condition might lessen her chances of marrying at all were proper matters to consider in assessing damages.—

of deft. & sustained serious personal injuries whereby the expectation of his life was materially shortened. Pltf. brought an action to recover damages for the injuries he had sustained :—*Held :* in assessing the damages the judge was entitled to take into consideration as one of the elements of damage the fact that pltf.'s normal expectation of life had been materially shortened.—FLINT *v.* LOVELL, [1935] 1 K. B. 354 ; 104 L. J. K. B. 199 ; 152 L. T. 231 ; 51 T. L. R. 127 ; 78 Sol. Jo. 860, C. A.

Annotations :—**Consd.** Slater *v.* Spreag, [1936] 1 K. B. 83. **Apld.** Roach *v.* Yates, [1937] 3 All E. R. 442. **Apprvd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

835b. —— ——.]—As a result of severe injuries to the brain sustained through negligence for which deft. admitted liability, a bricklayer, aged 32, who had formerly led a vigorous, happy & healthy life, became very nearly a hopeless lunatic, who, for the rest of his life, would require nursing attendance day & night. His wife & sister-in-law gave up their respective employments in order to nurse him. In an action for damages the judge awarded him £2,750, which included £542 special damages. He appealed on the ground that the damages were inadequate :—*Held :* (1) in assessing damages for shortened expectation of life, it is not a material fact to be taken into consideration that, as a result of an accident, a pltf.'s health is so affected that he no longer desires to live, or that he is unable to appreciate that his expectation of life has been shortened ; (2) in assessing damages for loss of wages, regard must be had to pltf.'s normal expectation of life, & not to his expectation of life after the accident ; (3) in the present case a sum ought to be included for expenses of nursing based upon the wages, amounting to £3 a week, formerly earned by the wife & sister-in-law ; (4) the damages in the present case ought to be increased to £6,542.—ROACH *v.* YATES, [1937] 3 All E. R. 442 ; 81 Sol. Jo. 610, C. A.

—.]—*Compare* Nos. 953b, 953c, *post.*

835c. ——.]—The successful pltf. in an action for damages for personal injuries had been awarded £10,000 for the loss of both hands. Defts. appealed against the judgment on the ground that this amount was excessive :—*Held :* the judge was entitled to consider other matters besides the mere loss of earning power. The amount awarded, though large, was not unreasonable in the unusual circumstances of this case.—HEAPS *v.* PERRITE, LTD., [1937] 2 All E. R. 60 ; 81 Sol. Jo. 236, C. A.

837. *Add. Annotations :*—**Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** The Edison (1932), 147 L. T. 141 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

838a. Loss of wages.]—ROACH *v.* YATES, No. 835b, *ante.*

838b. Nursing expenses.]—ROACH *v.* YATES, No. 835b, *ante.*

WELDON *v.* STEEVES (1934), 8 M. P. R. 53.—**CAN.**

d i. —— *Unreasonable refusal to submit to operation.*]—Where the continuance or increase of an injured person's incapacity is due to his unreasonableness in refusing to allow himself to be operated on, the quantum of damages allowable to him must be limited to what would be reasonable compensation if he had acted as a reasonable man.—MASNY *v.* CARTER-HALLS-ALDINGER CO., LTD. (Sask.), [1929] 3 W. W. R. 741.—**CAN.**

d ii. —— *Inability to follow trade.*]—A dairy-farmer, who had suffered injury through accident, prayed & was awarded special damages for, *inter alia,* loss of goodwill of milk customers & loss of crops through inability to sow because of the injuries he had received, & he also prayed & was awarded general damages on account of being unable to follow his occupation as a dairy-farmer & for permanent disability as the result of the accident. The special damages relating to the items mentioned were disallowed, the jury having been directed to take into consideration when assessing general damages the incapacity of suppliant to carry on his business, as those items could not be separated from the business & treated as distinct & separate matters of special damage.—DUFFY *v.* R., [1935] N. Z. L. R. 745.—**N.Z.**

d iii. —— *Possibility of further injury.*]—In an action for damages for a broken leg, the abnormal delay of the healing processes, & the possibility of a further easy break within six months of the jury's verdict, with its attendant economic loss & physical pain, make it not unreasonable for the jury to award damages which in a normal might seem to be excessive.—KAS *v.* BYRNE, [1935] N. Z. L. R. s. 121.—**N.Z.**

sr. *Loss of limb.*]—Damages to be allowed to pltf., who has sustained the loss of part of his leg through the negligence of deft., discussed.—CLARK *v.* WILSON, [1926] S. A. S. R. 342.—**AUS.**

st. *Action by husband for injury to wife—Effect of contributory negligence of wife.*]—Damages having been assessed by the jury to both husband & wife :—*Held :* the finding of negligence on the part of the wife cut down the award of damages to the husband.—DORITY *v.* OTTAWA ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1930] 3 D. L. R. 633 ; 65 O. L. R. 360.—**CAN.**

sv. —— *No loss of consortium.*]—Where a husband sued a surgeon in respect of an operation performed by him on pltf.'s wife, on the grounds that the surgeon should not have operated at all :—*Held :* the action failed, as there was no evidence that pltf. lost more of the *consortium* than if there had been no operation.—DAVY *v.* MORRISON, [1931] 4 D. L. R. 619 ; [1932] O. R. 1.—**CAN.**

sx. ——.]—CORKILL *v.* VANCOUVER RECREATION PARKS, LTD., [1933] 1 W. W. R. 413 ; 46 B. C. R. 532.—**CAN.**

sf. *Damage to car.*]—In an action for injuries to a motor car where the cost of putting the car back into the same condition it was in before the injury would have cost more than the sum for which the car as repaired could be sold for :—*Held :* the proper measure of damages was the fair value of the car just before it was injured, *i.e.* the price for which a similar car in like condition could have been bought, less what the injured car was worth as scrap.—DEWEES *v.* MORROW, [1932] 2 W. W. R. 228 ; 2 D. L. R. 800 ; 45 B. C. R. 154.—**CAN.**

sh. *Duty of jury.*]—It is the duty of the jury in an action for negligence to pass upon general damages as well as the special damages claimed, & then failure to do so will be ground for ordering a new trial.—JAMIESON *v.* BRITISH COLUMBIA AMUSEMENTS CO. (1930), 43 B. C. R. 317.—**CAN.**

sk. *Money stolen from pocket while unconscious.*]—PATTEN *v.* SILBERSCHEIN, [1936] 3 W. W. R. 169 ; 51 B. C. R. 133.—**CAN.**

sm. *Damage to car.*]—It is not the law that the amount of damages recoverable in the case of a damaged motor car is always the costs of repairing it plus depreciation.—STEWART *v.* SMITH, [1936] 3 W. W. R. 1.—**CAN.**

sp. *Duty of plaintiff to minimise damages—Whether bound to undergo operation.*]—On the question whether pltf. should submit to an operation to minimise the damages flowing from personal injuries due to deft.'s negligence :—*Held :* the onus was on the defence to prove that pltf. could minimise such damages, & that it was reasonable for him to undergo one or other of the operations suggested.—BUTLER *v.* DURRAN CORPN. (1936), N. L. R. 139.—**S. AF.**

sr. *Injury to three year old child.*]—THOMAS *v.* WINNIPEG CITY, [1937] 3 W. W. R. 141 ; *affd.,* [1937] 3 W. W. R. 393.—**CAN.**

PART XII. SECT. 4.

sv. *Mitigation—Whether contributory negligence of plaintiff may go in.*]—In an action for negligence if pltf. is held entitled to succeed he cannot be deprived of part of the damages which he has proved or of his costs, on the ground that he was guilty of contributory negligence.—BARRY *v.* WINNIPEG ELECTRIC CO., [1926] 2 W. W. R. 791 ; 36 Man. L. R. 27.—**CAN.**

sw. —— *Payment under insurance policy.*]—In an action by pltf. to recover damages for the destruction of his dwelling-house & a quantity of chattel property caused by sparks omitted from deft.'s steam tug through deft.'s negligence :—*Held :* deft. was not entitled to deduct from the amount of damages found to have been sustained by pltf. an amount paid to pltf. by an insurance co. under an insurance on the property.—BROWN *v.* (1889), 17 O. R. 712.—**CAN.**

—— ——.]—FARMER *v.* GRAND RY. CO. (1891), 21 O. R. 299.—**CAN.**

842. *Add. Annotations :*—**Consd.** Grinham *v.* Davies (1928), 139 L. T. 379 ; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

842a. —— ——.]—GOWAR *v.* HALES, No. 421a, *ante.*

842b. —— ——.]—It is an established rule of practice that, in an accident case, it should not be intimated to a jury that deft. is insured &, where this rule has been violated, it is within the discretion of the judge to discharge the jury, at the expense of the party whose advocate has violated the rule.—GRINHAM *v.* DAVIES, [1929] 2 K. B. 249 ; 98 L. J. K. B. 703 ; 139 L. T. 379 ; 44 T. L. R. 523 ; 72 Sol. Jo. 303, D. C.

842c. —— ——.]—ELLIS *v.* MAYHEW (M.), LTD. (1926), cited in [1929] 2 K. B. at p. 252 ; 98 L. J. K. B. at p. 705.

Annotation :—**Consd.** Grinham *v.* Davies, [1929] 2 K. B.

Part XIII.—Negligence causing Death.

SECT. 1.—**LIABILITY AT COMMON LAW.**

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, & sect. 3, *post.*

843. *Add. Annotations :*—*As to* (2) **Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354 ; Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** Grein *v.* Imperial Airways, Ltd., [1937] 1 K. B. 50.

846. *Add. Annotations :*—**Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354 ; Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** The Edison, [1932] P. 52 ; Grein *v.* Imperial Airways, Ltd., [1937] 1 K. B. 50.

851. *Add. Annotation :*—**Consd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

864. *Add. Annotation :*—**Refd.** Wilsons & Clyde Coal Co. *v.* English, [1937] 3 All E. R. 628.

865. After this case add :—

—— ——.]—*See, now,* Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (1).

—— **Adopted child.**]—*See* Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (1), (2).

867. *Add. Annotation :*—**Refd.** Donovan *v.* Union Cartage Co. (1932), 148 L. T. 333.

PART XII. SECT. 6.

842 i. *Defendant insured against liability—Whether court informed thereof.*]—WALSH *v.* PEAT (N. B.), [1927] 2 D. L. R. 1120.—**CAN.**

842 ii. —— ——.]—Although it is, as a general rule, improper for counsel for pltf., when cross-examining deft., to ask whether deft. is entitled to an indemnity from an insurance co., yet special circumstances may justify the judge in not withdrawing the case from the jury.—WILSON *v.* KENT (GEORGE) & SONS, LTD., [1928] N. Z. L. R. 166.—**N.Z.**

sl. *Action by infant—Injury while en ventre sa mere.*]—Resp.'s wife, being seven months pregnant, was descending from a tram car belonging to applt. co. when, by reason of the negligence of the motorman, she fell, or was thrown, from the car & was injured. Two months later she gave birth to a female child who was born with club feet. Resp., as tutor to his child, brought an action against applt. co. claiming that the deformity of the child was the direct consequence of the negligence of applt. co. by which the mother was injured. The action was tried with a jury who found in favour of resp. & judgment was rendered accordingly, which was affirmed by a majority of the appellate ct. :—*Held :* the judgment appealed from should be affirmed & the appeal dismissed. There was sufficient evidence adduced at the trial to produce in the jury's minds a conviction that it was reasonably probable that the deformity of the child resulted as a consequence of the mother's injury, &, consequently, their verdict should not be disturbed. The fact that applt.'s fault caused the deformity of the child cannot, from the nature of things, be established by direct evidence. It may, however, be established by a presumption or inference drawn from facts proved to the satisfaction of the jury.

Under the civil law, a child, who suffers injury while in its mother's womb as the result of a wrongful act or default of another has the right after birth to maintain an action for damages for the injury received by it in its pre-natal state.—MONTREAL TRAMWAYS CO. *v.* LEVEILLE, [1933] S. C. R. 456 ; 4 D. L. R. 337.—**CAN.**

sy. *Particulars — When ordered.*]—Where an action for negligence is one in which the onus of disproving negligence is placed by statute upon deft., pltf. will not be required to give particulars of the negligence alleged.—WHITE *v.* HENTON, [1930] 1 W. W. R. 685 ; 2 D. L. R. 959 ; 24 Alta. L. R. 423.—**CAN.**

sd. *New trial.*]—WINSTON *v.* NELLES, [1932] S. C. R. 341 ; 3 D. L. R. 527.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 2.

860 i. *Personal representative—Foreign administrator.*]—BYRN *v.* PATERSON S.S., LTD., [1936] 3 D. L. R. 111 ; O. R. 311 ; 6 F. L. J. (Can.) 20.—**CAN.**

865 i. *Child—Adopted child—Fatal Accidents Act, R. S. O.*, 1914 (c. 151), s. 2 (*a*).]—HOWIE *v.* LAWRENCE, [1927] 1 D. L. R. 477 ; 59 O. L. R. 641.—**CAN.**

g i. ——.]—Sisters of deceased are not entitled, as such, to the benefits of Fatal Accidents Act, 1920 (c. 29) ; & the mere allegation that they were dependent on him does not bring them within the Act.—SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951 ; [1927] 1 W. W. R. 193 ; 21 Sask. L. R. 345.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 3.

o i. ——.]—W. was injured by falling into a gullet, which was in a street under the care of an urban district council. W. brought no action in his lifetime, & died within six months after the accident, & in consequence thereof. An action was instituted by the widow under Lord Campbell's Act, 1846 (c. 93), more than six months after the accident, & more than eight months from the death of W. :—*Held :* pltf. was entitled to maintain the action.—WALSH *v.* BALLINA URBAN DISTRICT COUNCIL (1921), 55 I. L. T. 140.—**IR.**

sf. *Action within six months by widow—Subsequent action as administratrix.*]—Within six months of the death of a railway passenger, who was killed as the result of being thrown from the train owing, it was alleged, to a sudden stop, his widow & infant child brought an action for damages against the railway co. The widow afterwards obtained letters of administration of his estate, &, having discontinued said action, brought, as administratrix, another action based on the same allegations of facts as those set up in the first action. The second action was begun within a year from the death of the husband :—*Held :* the second action was not barred by sect. 4 or sect. 5 of Act Respecting Compensation to Families of Persons Killed by Accident, R.S.M., 1913.—SEVICH *v.* CANADIAN NATIONAL RYS., [1933] 1 W. W. R. 244 ; *on appeal,* [1933] 2 W. W. R. 109 ; 4 D. L. R. 668 ; 41 Man. L. R. 276.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—B. (a).

883 xiv. ——.]—In order to succeed in an action under Lord Campbell's Act it is necessary for pltf. to show that he has lost a reasonable probability of pecuniary advantage.—SANFORD *v.* CROSSLEY, [1931] 44 B. C. R. 481.—**CAN.**

883 xv. ——.]—An action under Lord Campbell's Act was brought by an executrix for the benefit of the father & stepmother of the deceased. At the time of his death deceased was thirty-six years old, he had not acquired any property, he was engaged to be married within a few months to pltf. & for six years his father had not heard from or of him :—*Held :* under the circumstances the father or stepmother had no reasonable expectation of some pecuniary benefit if the death of deceased had not occurred. Also, *semble :* pltf. was not entitled in her action to maintain a claim for damages to the estate of the deceased, even if there were, as there was not, evidence of the amount of damage sustained by the estate.—CLARKE *v.* OGILVIE FLOUR MILLS CO., LTD., [1933] 1 W. W. R. 417.—**CAN.**

883 xvi. ——.]—In an action under Fatal Accidents Act, R. S. S., for the death of a girl, two years & four months old, who was killed by a motor car, it was held that the accident was caused by deft.'s negligence in taking

894. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

895. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

896. *Add. Annotations :*—**Consd.** Grein *v.* Imperial Airways, Ltd., [1937] 1 K. B. 50. **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

After this case add :—

Carriage by air.]—*See* STREET TRAFFIC, No. 260d, *post.*

899. *Add. Annotations :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Knott *v.* London County Council, [1934] 1 K. B. Wilsons & Clyde Coal Co. *v.* English, 3 All E. R. 628.

900. *Add. Annotations :*—**Refd.** Bottomley — Minister (1931), 101 L. J. K. B. 46 ; Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588 ; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

905. *Add. Annotations :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Holloway *v.* Donaldson Line, Ltd. (1935), 41 Com. Cas. 47.

906. *Add. Annotation :*—**Refd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575.

909. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

910. *Add. Annotations :*—**Apld.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628. **Refd.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206.

929. After this case add :—

——.]—*See, now,* Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (3).

930. *Add. Annotation :*—*Generally,* **Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

941. *Add. Annotations :*—*As to* (1) **Refd.** Owen *v.* Sykes, [1936] 1 K. B. 192 ; Rose *v.* Ford, [1936] 1 K. B. 90.

942. *Add. Annotations :*—*As to* (3) **Refd.** Owen *v.* Sykes, [1936] 1 K. B. 192 ; Rose *v.* Ford, [1936] 1 K. B. 90 ; Roach *v.* Yates, [1937] 3 All E. R. 449.

943. *Add. Annotation :*—**Refd.** Carling *v.* Lebbon, [1927] 2 K. B. 108.

944. *Add. Citations :*—[1927] 2 K. B. 108 ; 96 L. J. K. B. 515 ; 137 L. T. 255 ; 43 T. L. R. 454.

After this case add :—

"—— —— ——.]—*See, now,* Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10), s. 22."

953a. Payment into court with denial of liability—Death of plaintiff—Application by executor for payment out—What order made.]—A pltf. who

his eyes off of the road ahead of him when driving the car, but that since pltf. had not shown any reasonable expectation of pecuniary benefit from the continued life of the child, he could not recover.—KLEISINGER *v.* DIMINYATZ, [1937] 1 W. W. R. 600.—**CAN.**

887 ii. *Add. Citation :*—*affd.* (1903), 34 S. C. R. 215.

887 vi. [1937] 3 W. W. R. 481.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—B. (b).

sg. *Gratuitous services by wife.*]—A husband suing on behalf of himself under Families' Compensation Act for the death of his wife shows a pecuniary loss when he shows that services were rendered him gratuitously by the deceased & that there had been a reasonable prospect that they would have continued to be rendered gratuitously for a time at least, had not her death been caused by the accident in question.—HAINES & HAINES *v.* WILLIAMS, WILLIAMS & WILLIAMS *v.* HAINES, [1933] 1 W. W. R. 644 ; 47 B. C. R. 69.—**CAN.**

sk. *Son of divorced parents.*]—The father of a nine-year-old son who was divorced from the son's mother & who had been paying for the son's maintenance in the custody of the mother, held to have no right to expect that the son's continued life would have been of any pecuniary advantage to him. The son's mother, however, was held to have suffered a pecuniary loss in the death of the child.—MARTEL *v.* CHARTIER, [1934] 3 W. W. R. 244 ; *on appeal,* [1935] 1 W. W. R. 305 ; 43 Man. L. R. 54.—**CAN.**

sl. *Husband working "on relief."*]—The widow & child of an automobile mechanic, who was working "on relief" when he was killed, are entitled to claim under the Fatal Accidents Act.—HUMPHREYS *v.* CITY OF LONDON, [1935] 1 D. L. R. 300 ; O. R. 91 ; *affd.,* [1935] 3 D. L. R. 39 ; O. R. 295.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 7.

sp. *Action against Canadian National open to Crown.*]—SEVIGH *v.* CANADIAN NATIONAL RYS., [1933] 1 W. W. R. 244, *on appeal,* [1933] 2 W. W. R. 109.—**CAN.**

sr. *Release.*]—HOWELL *v.* STAGG, [1937] 2 W. W. R. 331.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 7.—B.

907 ix. ——.]—A claim for damages by a widow or the minor children of a person, whose death is alleged to have been caused by the negligence of deft., is not barred by the fact that the death was caused by the combined negligence of the latter & deceased.—UNION GOVERNMENT (MINISTER OF RAILWAYS) *v.* LEE, [1927] App. D. 202.—**S. AF.**

907 x. ——.] — MORAWITSKI *v.* KOSTUCHENKO (Man.), [1929] 2 W. W. R. 384 ; 38 Man. L. R. 228 ; *affd.,* [1929] 1 W. W. R. 585.—**CAN.**

907 xi. ——.]—In an action under Fatal Accidents Act, R. S. O., 1927, where deceased has been guilty of contributory negligence, & though his degree of fault has much exceeded that of deft., Contributory Negligence Act, R. S. O., 1927, is applicable to enable the action to be maintained ; & it is also applicable for the purpose of providing for apportionment of the liability for damages.—LITTLEY *v.* BROOKS & CANADIAN NATIONAL RY. CO., [1932] S. C. R. 462 ; 2 D. L. R. 386.—**CAN.**

907 xii. ——.]—Contributory Negligence Act, 1925, applies to an action brought under Families' Compensation Act, R. S. B. C., 1924.—HUNTER *v.* CLARKE, [1932] 1 W. W. R. 466 ; 44 B. C. R. 554.—**CAN.**

907 xiii. ——.]—IRVINE *v.* MUSSALLEM (1935), 50 B. C. R. 72.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—A.

st. *How calculated.*]—Damages under Lord Campbell's Act should be such a sum as would, if put out at interest, yield at the end of ten years a sum equal to the pecuniary loss of those for whose benefit the action is brought.—NOBLE *v.* BATH, BRITISH & FLORENCEVILLE HYDRO ELECTRIC DISTRICT COMRS., [1935] 2 D. L. R. 615 ; 9 M. P. R. 257 ; 6 F. L. J. (Can.) 35.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—D.

930 v. ——.]—LEIGH *v.* LUTZ, [1937] 3 W. W. R. 190.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—E.

937 v. ——.]—In an action under Lord Campbell's Act brought by a husband for the death of his wife :—*Held,* although he could not recover hospital, nursing, doctor's or funeral expenses or anything by way of a solatium, but only such pecuniary damages as he had suffered, yet the word "pecuniary" should not be narrowly interpreted as to limit it to an immediate loss of money or property.—AGNEW *v.* ELLEN, [1936] 3 W. W. R. 337.—**CAN.**

h i. ——.]—The dependants of a person who has lost his life through the negligence of deft. are entitled to compensation only for the material loss caused to them by the accident, & not for mental suffering or distress, or to improve their material prospects.—SMART *v.* S. AFRICAN RYS. & HARBOURS (1928), 49 N. L. R. 361.—**S. AF.**

m i. —— —— *Consideration of insurance.*]—BURNS *v.* MACDONALD CONSOLIDATED, [1931] 3 W. W. R. 54.—**CAN.**

sa. *Fine imposed under Penal Code in respect of accident—Taken into account.*]—NATHU RAM *v.* CHAND KUAR (1927), I. L. R. 50 All. 408.—**IND.**

sc. *Jury may consider savings.*]—In assessing damages under Lord Campbell's Act the jury may consider savings, less expenditure.—NOBLE *v.* HYDRO ELECTRIC COMRS. (No. 2), [1935] 4 D. L. R. 271 ; *on appeal,* [1936] 2 D. L. R. 192.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—F.

NADIAN [1927]

PART XIII. SECT. 2, SUB-SECT. 9.

953 i. *Verdict not set aside—I*

IN *v.* CO.,

I.

had issued a writ for damages for personal injuries died from a cause not due to the accident. Her exor. was substituted as pltf. & he applied by summons for payment out to him of money paid into ct. by deft. with a denial of liability. Deft. was held entitled to an adjudication of the questions whether there was liability &, if so, what were the damages, the amount of which might be affected by the death of the original pltf., & no order was made on the summons except that the money should remain in ct. to await the trial.—DAWSON *v.* SPAUL (1935), 152 L. T. 444; 51 T. L. R. 247; 79 Sol. Jo. 162.

SECT. 3.—**SURVIVAL OF CAUSE OF ACTION.**

See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

953b. Measure of damages—Death without recovering consciousness—Pain & suffering.]—A motor car negligently driven by deft., struck a man who was at once rendered unconscious & died two days later without having recovered consciousness. The administratrix of deceased brought an action against deft. under (*inter alia*) Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1, alleging that causes of action against deft. had vested in deceased & survived for the benefit of his estate for damages in respect of pain & suffering caused to him by his physical injuries & by apprehension of shortening of his life, & claiming damages for his estate in respect of these causes of action:—*Held:* deceased having been unconscious & incapable of experiencing physical or mental pain from the time of the accident until his death, no cause of action in respect thereof had vested in him or survived for the benefit of his estate; but *semble:* if after the accident deceased had for a time been conscious & endured such pain & suffering, pltf. could have recovered damages in respect thereof in so far as it arose from his physical injuries, & possibly also in so far as it arose from his anticipation of a shortening of his life.—SLATER *v.* SPREAG, [1936] 1 K. B. 83; 105 L. J. K. B. 17; 153 L. T. 297; 51 T. L. R. 577; 79 Sol. Jo. 657.

Annotation:—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

953c. —— —— ——.]—A young woman was injured in a motor accident due to the negligence of deft. Her injuries were serious, including a combined fracture of her right leg & thigh. Two days later gangrene set in, & it became necessary to amputate the leg; but the infection had already spread above the point of severance, & two days later she died as the result of the injuries, having been unconscious the greater part of the four days she survived the accident. Her father, as her administrator, brought an action claiming damages (*inter alia*) under Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), for the shortening of her expectation of life:—*Held:* there was vested in the deceased before she died a cause of action which entitled her to sue for loss of expectation of life, & under the Act of 1934 that cause of action survived, &, so surviving, was enforceable by applt. as her personal representative; (2) also the principle laid down in

f i. ——.]—FITZPATRICK *v.* SCHRAM, 1928] 1 W. W. R. 751.—**CAN.**

g i. —— *Sufficiency.*]—SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

g ii. —— *Description of plaintiff—Executor.*]—It is not of the essence of the cause of action of an exor. under Fatal Accidents Act, R. S. A., 1922, that pltf. therein be described in the statement of claim as an exor. The Act does not make the pleading of his appointment as exor. one of the constituent elements of his right of action nor prescribe that such a plea shall be made; it does no more than make it a condition precedent to the action being maintainable within the first six months after the death of the injured person that it shall be brought by his exor., if there be an exor.—MILLER *v.* CANADIAN PACIFIC RY. CO., [1933] 1 W. W. R. 233: 1 D. L. R. 761.—**CAN.**

sk. *Death after commencement of action—Survivorship.*]—An Action for negligence resulting in personal injuries was commenced by the injured party. Pltf. died, the action not having been brought to trial:—*Held:* the action was properly revived in the name of the administratrix, she being entitled, under Trustee Act, R. S. O., 1927, s. 37, to maintain an action for all torts or injuries to the person of deceased.—BOWLER *v.* BLAKE, [1930] 1 D. L. R. 683; 64 O. L. R. 499.—**CAN.**

... -Where after an action had been brought by an employee against his employer for damages for injuries sustained in the course of his employment pltf. died before trial, & an action was then brought by his widow, in her capacity as executrix, claiming damages under Fatal Accidents Act, R. S. A., 1922:—*Held:* the executrix was entitled to proceed with both actions.—BRADY *v.* CANADIAN PACIFIC RY. CO., [1933] 1 W. W. R. 83.—**CAN.**

sm. —— ——.]—Sect. 28 of Trustee Act, R. S. A., 1922, which provides that exors. or administrators of a deceased may maintain an action for torts or injuries to his person, except for libel & slander, as he would if living have been entitled to do, is not limited to cases where the deceased died from causes other than a tort which gives a right of action under Fatal Accidents Act, R. S. A., 1922. The fact that a dependant shares in the estate of the deceased has no bearing on the question except in so far as it may affect the amount of damages recoverable under Fatal Accidents Act.—BRADY *v.* CANADIAN PACIFIC RY. CO., [1933] 1 W. W. R. 250; 1 D. L. R. 643.—**CAN.**

sn. —— ——.]—The infant son of pltf. was injured by a motor car driven by one of defts. & owned by the other deft. Pltf. incurred expenses for medical & hospital charges & nursing & the child suffered considerable pain. Shortly after its recovery from said accident the child was struck by another motor vehicle & killed. Pltf. suing as the personal representative of the deceased child, brought an action for the damages caused by the first of said accidents:—*Held:* by virtue of sect. 48 of Trustee Act, 1931, the action was maintainable; &, defts. not having satisfied the statutory onus of disproving negligence, pltf. was entitled to recover as damages the said expenses & also damages for the pain & suffering of the child.—CREEMER *v.* ENGLUND, [1933] 3 W. W. R. 277; *revsd.*, [1934] 2 W. W. R. 339; 42 Man. L. R. 139.—**CAN.**

so. —— ——.]—The concluding part of sect. 48 (1) of Trustee Act, 1931, is a bar to a claim by exors. to recover from a tortfeasor the medical, nursing & hospital expenses incurred by the deceased in consequence of the tort which caused his death.—FRASER *v.* CHILDREN'S AID SOCIETY, [1935] 1 W. W. R. 667; 43 Man. L. R. 102.—**CAN.**

a (p. 142) i. ——.]—LESLIE *v.* BUZZA, [1929] 1 D. L. R. 903; 40 B. C. R. 441.—**CAN.**

c (p. 142) i. ——.]—Actions under the Act respecting compensation to families of persons killed by accident must be *primâ facie* tried without a jury.—SEVICH *v.* CANADIAN NATIONAL RAILWAYS (1934), 42 Man. L. R. 254.—**CAN.**

sb. *Fatal Accidents Act*, 1920, *s.* 7—*Neglect to file affidavit under.*]—An order dispensing with the filing of the affidavit required under above sect. should not be made when the result of making it would be to prejudice a right of deft. which has accrued since the commencement of the action.—SWINDELL *v.* NORTHERN ELEVATOR CO., LTD., [1928] 4 D. L. R. 982; [1928] 3 W. W. R. 433.—**CAN.**

sd. *Particulars.*]—In an action under Fatal Accidents Act, 1846, in respect of the alleged negligence of deft. in the driving of a car, the particulars of negligence furnished by pltf. included the following para.: "Pltf. will rely also upon any other acts or omissions of deft. constituting negligence or breach of duty as may be given in evidence or otherwise appear at the trial of this action." Upon a motion by deft. for an order striking out this particular it was ordered that the following should be substituted: "Pltf. will also rely on such facts in proof of the negligence alleged in the

Flint v. *Lovell* is not confined to the case where the injured person is alive at the date of the action.—ROSE *v.* FORD, [1937] A. C. 826; [1937] 3 All E. R. 359; 106 L. J. K. B. 576; 157 L. T. 174; 53 T. L. R. 873; 81 Sol. Jo. 683, H. L.

Annotation:—Generally, **Reid.** Roach v. Yates, [1937] 3 All E. R. 442.

953d. —— —— **Shortened expectation of life.**]—SLATER *v.* SPREAG, No. 953b, *ante.*

953e. —— —— ——.]—ROSE *v.* FORD, No. 953c, *v.* BRITISH INSULATED CABLES, LTD., No. 364c, *ante.*

953g. —— —— ——.]—A young girl of 8 years of age was killed in a street accident, & damwere claimed in respect of her loss of expectation of life:—*Held:* though, in the case of a very young child, some reduction of damages must be made, having regard to children's ailments, yet, in the case of one who has outlived such dangers, there should be no such reduction on account of the infancy. The question of the inability of the child to appreciate the loss of expectation of life is wholly immaterial. The damages were assessed at £1,500.—TRUBYFIELD *v.* GREAT WESTERN RY. CO., [1937] 4 All E. R. 614; 54 T. L. R. 221; 81 Sol. Jo. 1002.

953h. —— —— ——.]—MORGAN *v.* SCOULDING (1937), 54 T. L. R. 253; 81 Sol. Jo. 1041.

-.]—*Compare* No. 835a, *ante.*

statement of claim as are in the knowledge of deft. but not of pltf. & appear in the evidence of deft. & her witnesses at the hearing of the action." The order further provided that pltf. should have liberty to rely also upon such other particulars of negligence as pltf. might, not later than ten days before the commencement of the trial of the action, give notice of, in writing, to deft.—MCWATTERS *v.* MAXWELL, [1932] I. R. 176.—**IR.**

sf. ——.]—Pltf. was held to be obliged, a demand for particulars having been made, to give the best particulars in her possession or reasonably available to her of the negligence complained of & of the acts or omissions constituting it, whether or not she was right in her contention that the maxim *res ipsa loquitur* applied to the case.—SEVICH *v.* CANADIAN NATIONAL RYS., [1933] 1 W. W. R. 244; *on appeal,* [1933] 2 W. W. R. 109; 4 D. L. R. 668; 41 Man. L. R. 276.—**CAN.**

sk. *Change of name of plaintiff—Administrators substituted for widow & children.*]—BROCKEST *v.* RADIO OIL CO. LTD., [1935] 2 W. W. R. 285.—**CAN.**

-.]—WESTERN TRUST CO. *v.* STUART, [1937] 3 W. W. R. 225.—**CAN.**

PART XIII. SECT. 3.

sp. *Administration Act Amendment Act,* 1934—"*Action pending*"—*Appeal.*]—After giving notice of appeal from the dismissal of her action for damages pltf. died before the appeal was heard. Her exor. moved before the Ct. of Appeal for an order that the proceedings be continued between himself as exor. & deft., & that he be substituted as applt. under sect. 2 (4) of Administration Act Amendment Act, 1934:—*Held:* the words in said sect. 2 (4) "action pending" include an appeal &, therefore, the motion should be allowed.—DYMOND *v.* WILSON (No. 2), [1937] 1 W. W. R. 417; 1 D. L. R. 286; 51 B. C. R. 206.—**CAN.**

st. —— *Action under Families' Compensation Act, R. S. B. C.,* 1924.]—Administration Act Amendment Act, 1934, applies to actions based upon the death of a person wrongfully or negligently caused by another & brought under Families' Compensation Act, R. S. B. C., 1924, as well as to those brought under the Administration Act & amendments thereto.

Compensation Act does not in itself give a right of action against the exor. of the estate of a person who has wrongfully or negligently caused the death of another but said Act & Administration Act Amendment Act, 1934, combined do give such a right of action for the benefit of the relatives mentioned in the first-named Act.

Administration Act Amendment Act, 1934, does not alter the law in respect to damages for nervious shock.

In the present action wherein pltf. was held to have sued as administratrix for the benefit of herself as wife of deceased & for the benefit of his children but not to have claimed damages also for the benefit of his estate:—*Held:* on the pleadings as they stand, she could not recover for nursing & hospital expenses or for burial expenses.

Pltf. had brought a previous action as wife of deceased against the alleged tortfeasor himself. This action was discontinued pursuant to an order made after his death:—*Held:* notwithstanding sect. 5 of Families' Compensation Act, the present action does lie.—BOWCOTT *v.* WESTWOOD, [1937] 1 W. W. R. 657.—**CAN.**

NOTARIES.

[illegible] SUB-SECT. 1.

Number of notaries practising in district.]—*Re* STEWART (B. C.), [1929] 4 D. L. R. 528.—CAN.

PART II. SECT. 2, SUB-SECT. 1.

ss. *Who may appoint—Whether local judge.*]—BRITISH COLUMBIA LAW SOC. *v.* STEWART, [1928] 4 D. L. R. 572.—CAN.

PART III.

§ 1. ——.]—There is impropriety, to say the least, for a notary to insert in a will passed before him a clause by which the testator directs that the exors. & the heirs shall employ him for the execution of the will. It is consonant to sound legal principle, & even to public order, that a deed passed before a notary do not contain any stipulation in his favour.—ST. DENIS *v.* THIBODEAU, [1929] 3 D. L. R. 749; S. C. R. 346; *affg.*, 44 Que. K. B. 207.—CAN.

NUISANCE.

Part I.—Definition, Nature and Characteristics.

1. *Add. Annotations:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752; Chesham (Lord) *v.* Chesham Urban District Council (1935), 79 Sol. Jo. 453.

8. *Add. Annotation:*—**Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

9a. **Nuisance distinguished from negligence.**]—We think that "nuisance" (we are speaking of private nuisance only) is correctly confined to injuries to property, whether to easements, such as the obstruction of light or of rights of way, or the diversion of watercourses, or the withdrawal of support from a house; or to other kinds of property, as by noise, noxious vapours, smoke, or the like. In all such cases the pltf. in order to maintain an action must show some title to the thing to which the nuisance is alleged to be. No doubt a nuisance may be caused by negligence, & there may be cases in which the same act or omission would support an action of either kind, but, generally speaking, these two classes of actions on the case are distinct, & the evidence necessary to support them is different (*per* CUR.).—CUNARD *v.* ANTIFYRE, LTD., [1933] 1 K. B. 551; 103 L. J. K. B. 321; 148 L. T. 287; 49 T. L. R. 184, D. C.

18. *Add. Annotation:*—*As to* (3) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

22. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

31. *Add. Annotations:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Refd.** Harper *v.* Haden & Sons, Ltd., [1933] Ch. 298.

44. *Add. Annotations:*—**Consd.** Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633. **Refd.** Harper *v.* Haden & Sons, [1933] Ch. 298; Andreæ *v.* Selfridge & Co., [1936] 2 All E. R. 1413.

48. *Add. Annotation:*—*As to* (1) **Consd.** Harper *v.* Haden & Sons, Ltd., [1933] Ch. 298.

56. *Add. Annotation:*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

58. *Add. Annotation:*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

65. *Add. Annotations:*—**Refd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

66. *Add. Annotation:*—*As to* (2) **Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

73. *Add. Annotation:*—*As to* (2) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

Part II.—Nuisances in respect of Particular Matters.

76. *Add. Annotation:*—**Consd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

77. *Add. Annotation:*—**Consd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

83. *Add. Annotations:*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. **Refd.** Harper *v.* Haden & Sons, Ltd., [1933] Ch. 298.

94a. —— **Demolition & rebuilding.**]—Pltf. was the occupier of a hotel upon the northern side of an island site. Deft. co. acquired the leasehold interests upon the site &, in the course of doing so, bought the residue of pltf.'s term & proceeded to demolish first the building on the south-east corner of the island site, & later those in the south-west corner of that site & to build new buildings upon the site. Pltf. complained that her business had been seriously interfered with by the demolition & rebuilding operations by reason of noise & dust. Pltf. in a letter of complaint suggested that deft. co. should pay a further sum on account of the balance of the purchase-price of the lease, & ultimately deft. co. paid £3,000 to be taken as a payment of £3,840 on account of payment being made before the due date, such prepayment being without any admission of liability, but "simply as an endeavour to make up to some extent for the inconvenience" said to have taken place & likely to occur in the future:—*Held:* (1) the letter did not amount to a binding agreement not to sue in respect of the nuisance caused by the operations of deft. co.; (2) in considering whether the development of property is abnormal, the methods of building must not be taken as stabilised, but the development of the day must be regarded; but the operations of demolition, excavation or building must be carried out with reasonable care & skill, which may require (*inter alia*) restriction of hours of work, limitation of amount of a particular class of work done simultaneously in a particular area, & the use of proper scientific means of avoiding inconvenience; (3) in estimating the damage done to a business by such operations, damage caused by

PART I. SECT. 1.

10 i. *Nuisance definable by local authority—By bye-law.*]—Where a thing is of such a character that it can be a nuisance it rests with the local authority to say whether it shall be considered a nuisance in the particular locality for which it has power to make bye-laws.—RAMATHULA *v.* R., [1933] N. L. R. 11.—S. AF.

PART II. SECT. 9, SUB-SECT. 1.

91 i. *Building operations—Mechanical drills.*]—DAILY TELEGRAPH CO., LTD. *v.* STUART (1928), 28 S. R. N. S. W. 291; 45 N. S. W. W. N. 48.—AUS.

the lawful operations of deft. must be carefully excluded, & pltf. could only recover for loss caused by acts which were abnormal or not carried out with proper care & skill. The loss due to a change in the general amenities of the neighbourhood resulting from demolition, building, or rebuilding operations could not be recovered.—ANDREAE *v.* SELFRIDGE & Co., LTD., [1937] 3 All E. R. 255; 157 L. T. 317; 81 Sol. Jo. 525, C. A.

—— ——.]—Pltf. purchased a house in a partly rural, but largely residential district. Adjoining this house was a poultry farm, & about 100 yards from pltf.'s house was an orchard in which the poultry farmer kept large numbers of cockerels. Ptf. complained of the noise made by the cockerels in the early mornings, & threatened proceedings unless they were removed. The cockerels were removed, but after some months numbers of cockerels reappeared & the farmer made no attempt to rearrange his farm so as to keep the cockerels further from pltf.'s property. Pltf. brought an action for an injunction:—*Held:* a nuisance had been proved & an injunction should be granted.—LEEMAN *v.* MONTAGU, [1936] 2 All E. R. 1677; 80 Sol. Jo. 691.

98b. Hotel kitchen.]—The making or causing of such a noise on premises as materially interferes with the ordinary physical comfort of a neighbour constitutes an actionable nuisance; & it is no answer to say that the best known means have been taken to reduce or prevent the noise complained of or that the cause of the nuisance is the exercise of a business or trade in a reasonable & proper manner. In accordance with these principles an injunction was granted in an action by the occupier of a house abutting on a highway to restrain the owners of a neighbouring hotel from causing a nuisance to pltf. by noise arising from the hotel kitchen.—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., [1930] 1 Ch. 138; 99 L. J. Ch. 84; 142 L. T. 198; 94 J. P. 23; 27 L. G. R. 752.

98c. Greyhound racing.]—TARRY *v.* CHANDLER (1934), 79 Sol. Jo. 11.

98d. Motor-cycle racing.]—TARRY *v.* CHANDLER (1934), 79 Sol. Jo. 11.

98e. Loud-speakers at Stadium.]—TARRY *v.* CHANDLER (1934), 79 Sol. Jo. 11.

111. *Add. Annotations:*—**Consd.** Andreæ *v.* Selfridge & Co., [1936] 2 All E. R. 1413. **Refd.** Matania *v.* National Provincial Bank, Ltd. (1935), 154 L. T. 103.

121a. ——.]—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., No. 98b, *ante*.

134a. Manure manufacture.]—CARDELL *v.* NEW QUAY LOCAL BOARD (1875), 39 J. P. Jo. 742.

134b. Rag & bone business.]—P. set up a business of a rag & bone merchant without leave. The bones were stored in bags & removed weekly. The justices having found as a fact that the business was noxious & *ejusdem generis* with those specified, convicted P.:—*Held:* the conviction was right.—PASSEY *v.* OXFORD LOCAL BOARD (1879), 43 J. P. 622, D. C.

152. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

212. After this case add:—

—.]—*See, also,* PUBLIC HEALTH, Vol. XXXVIII., p. 198, Nos. 337, 341."

221. *Add. Annotation:*—**Refd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

223a. ——.]—WALLIS *v.* UNITED FRENCH-POLISHERS' LONDON SOCIETY (1905), Times, Nov. 28th.

232a. Meaning of premises—Overhanging rock.]—PONTARDAWE RURAL COUNCIL *v.* MOORE-GWYN, No. 364a, *post*.

95 i. *Dairy — Noisy churns.*]—MCKELVEY *v.* INVERCARGILL MILK SUPPLY CO., LTD., [1928] N. Z. L. R. 223.—**N.Z.**

95 ii. —— ——.]—DUCHMAN *v.* OAKLAND DAIRY CO., [1929] 1 D. L. R. 9; 63 O. L. R. 111.—**CAN.**

so. *Milk vendor—Noise of horses.*]—In an action for nuisance, where it was shown that deft. had taken much trouble to make the carrying on of his business as unobjectionable as possible, & had carried on his business in a fair & reasonable way & at a site proper for such a business:—*Held:* on the evidence that noises caused in the early mornings by the movements & stamping of horses which disturbed the sleep of pltf. constituted an actionable nuisance & should be restrained by injunction.—PAINTER *v.* REED, [1930] S. A. S. R. 295.—**AUS.**

sr. *Biscuit factory.*]—Noise from a biscuit factory at night held not to be a nuisance.—HOURSTON *v.* BROWN-HOLDER BISCUITS, LTD., [1937] 2 D. L. R. 53.—**CAN.**

PART II. SECT. 9, SUB-SECT. 2.

e i. ——.]—Every person has a right, independent of custom, to worship in his own method, & according to his own rites; the right, however, is not absolute, but is limited by the rights of others.—JANKI PRASAD *v.* KARAMAT HUSAIN (1931), I. L. R. 53 All. 836.—**IND.**

ss. *Crowing cocks.*]—An injunction had been granted, after a trial by affidavit, restraining deft. from keeping roosters, or allowing roosters to be kept, on his premises, in a residential area, in such manner & under such conditions as to cause a nuisance to pltfs.:—*Held:* on the evidence it was impossible to determine the real degree of noise caused by deft.'s birds during the relevant period, & consequently pltfs. had not established a nuisance.—RUTHNING *v.* FERGUSON (1930), S. R. (Q.) 325.—**AUS.**

PART II. SECT. 11, SUB-SECT. 7.

sb. *Fox farm.*]—A fox farm 20 feet from pltf.'s house held not a nuisance *per se;* but, in view of evidence of a certain slackness in conducting the farm for some time prior to the time when the present action became imminent, an order was granted that defts. should so carry on the business of the farm as not to occasion a nuisance to the pltf.—MILLER *v.* KRAWITZ, [1931] 1 W. W. R. 577; 2 D. L. R. 784.—**CAN.**

sc. *Tobacco factory.*]—Smoke & fumes from a tobacco factory held to constitute a nuisance, but injunction refused on the ground that the effect of throwing a large number of persons out of work would be against public policy.—BOTTOM *v.* ONTARIO LEAF TOBACCO CO., [1935] 2 D. L. R. 699; O. R. 205.—**CAN**

PART II. SECT. 13, SUB-SECT. 4.

sd. *Hospital.*]—SHUTTLEWORTH *v.* VANCOUVER GENERAL HOSPITAL, No. 673 iv, *post*.—**CAN.**

PART II. SECT. 14, SUB-SECT. 2.—B.

se. *"Unfit for human habitation"—Absence of plumbing.*]—Although under sect. 35 of Public Health Act, 1924, the determination of the question whether a particular building or part of a building is unfit for human habitation depends upon the opinion of the medical health officer or other official mentioned therein, nevertheless, it was not intended that such opinion should be made arbitrarily but only upon reasonable grounds. Where it is based upon "absence of plumbing," a proper opinion would seem to predicate at least a personal examination of the building by the officer, & an exposition of conditions arising from the absence of plumbing which would justify a reasonable conclusion that they rendered it unfit for human occupation because they created a situation which "was or might become injurious or dangerous to health or which prevented or hindered in any manner the suppression of disease." The absence of plumbing does not in itself render a house "unfit for human habitation."—R. (WILSON) *v.* HOLMES, [1931] 2 W. W. R. 41; 3 D. L. R. 218.—**CAN.**

235. *Add. Annotation :*—**Refd.** Ager *v.* Gates (1934), 151 L. T. 98.

300a. **Exhibiton of coloured light in proximity to railway.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* RIBBLE HAT WORKS, LTD. (1936), 80 Sol. Jo. 1038.

Part III.—Neighbouring Owners.

302. *Add. Annotations :*—**Apld.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56. **Refd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

309. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Apld.** Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

310. *Add. Annotation :*—*As to* (2) **Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

311. *Add. Annotations :*—**Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. **Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Distd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 1 All E. R. 74. **Consd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108. **Apld.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106. **Distd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781. **Consd.** Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430. **Apld.** Shiffman *v.* Venerable Order of Hospital of St. John of Jerusalem, [1936] 1 All E. R. 557. **Distd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200. **Refd.** Glanville *v.* Sutton (1927), 44 T. L. R. 98; G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57; Bartlett *v.* Tottenham, [1932] 1 Ch. 114; Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257; Knott *v.* London County Council, [1934] 1 K. B. 126; Markland *v.* Manchester Corpn., [1934] 1 K. B. 566; Deen *v.* Davies, [1935] 2 K. B. 282; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

313. *Add. Annotations :*—**Refd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825; London, Midland & Scottish Ry. Co. *v.* Ribble Hat Works, Ltd., [1936] 80 Sol. Jo. 1038.

314. *Add. Annotations :*—**Consd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106.

315. *Add. Annotations :*—**Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108; Shiffman *v.* Venerable Order of Hospital of St. John of Jerusalem, [1936] 1 All E. R. 557; Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

315a. ——— ———.]—Pltf. was working as an electric welder in a boiler of a steamship when an explosion occurred & steam came in through the furnace door. After one vain attempt he succeeded in making his way through the door. He was badly scalded but suffered far more from shock & was rendered neurasthenic. The escape of steam was due to the fact that in a valve chest a bridge, in which a brass bush fitted, had been put in upside down. The valve had been assembled & fitted by the second defts. Pltf. alleged that both defts. were negligent in that the valve chest was made of cast iron. Against the first defts. he alleged negligence in not taking sufficient precautions against water hammer by securing effective drainage of the steam pipes, & that having brought the steam upon the ship they were liable under the principle of *Rylands* v. *Fletcher* for not keeping it under control. Against the second defts. he alleged negligence in wrongly assembling & fitting the valve chest, contending that though there was no privity of contract they were liable in tort for supplying a dangerous article :—*Held :* the doctrine of *Rylands* v. *Fletcher* was not applicable because there was no escape of the steam off the premises & the steamship owners were not making an unnatural user of their premises.—HOWARD *v.* FURNESS HOULDER ARGENTINE LINES, LTD. & BROWN, LTD., [1936] 2 All E. R. 781; 80 Sol. Jo. 554; 41 Com. Cas. 290.

316a. —— **Confined to owners in possession.**]—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS No. 349a, *post.*

316b. —— **In case of water gas & electricity—Not applicable to domestic uses.**]—In premises adjoining those of pltf. a fire originated, due to some unknown defect in the electrical wiring. Pltf.'s premises were damaged by the water used for extinguishing the fire :—*Held :* in the absence of any proof of negligence by defts. in the installation or the maintenance of the electrical wiring, they were not liable in damages to pltf. The doctrine of *Rylands* v. *Fletcher* does not apply to the use of water, gas or electricity for ordinary domestic purposes, which must be distinguished from the handling of them in bulk in mains or reservoirs.—COLLINGWOOD *v.* HOME & COLONIAL STORES, LTD., [1936] 3 All E. R. 200; 155 L. T. 550; 53 T. L. R. 53; 80 Sol. Jo. 853, C. A.

323. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

325. *Add. Annotation :*—**Distd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

PART III. SECT. 2, SUB-SECT. 2.—B. (c).

326 ii. —— —— *Measure of damages.*]—Where by digging a ditch beneath the natural surface of the soil an occupant of land causes surface water, not moving in any defined watercourse, to be discharged upon the land of another, he is liable in damages. The damages in the present case were held to include the net value to pltf. of the crop which he would have put in on the flooded part of his land but for the flooding.—QUALLEY *v.* DAY, [1929] 2 D. L. R. 928; 1 W. W. R. 200; 23 S. L. R. 425; *revsg.*, [1926] 3 D. L. R. 56; 1 W. W. R. 961; 32 S. L. R. 442.—CAN.

m i. —— *Alteration of land.*]—Where deft. co. carried out alterations

Adjoining premises in warehouses.]—NG WHARFAGE CO., LTD. *v.* PEEK BROS. & WINCH, LTD. (1935), 79, Sol. Jo. 363.

330a. Tapping springs.]—Before the year 1919 the land of pltf. & of deft. was in the same ownership. On Mar. 25, 1919, the common owners conveyed a cottage & garden to C., & on Aug. 25, 1919, part of the land. On July 19, 1921, C. conveyed the whole of the land to pltf. On Dec. 20, 1929, the common owners conveyed other part of their land to deft. In about 1888 a tank Y. had been constructed by the common owners, mainly on what became the land of pltf., but which projected partly on to the land which became the land of deft. The water from that tank was led by a pipe to another tank Z. wholly situate on deft.'s land. The tank Z. was tilted so that the water overflowed on to land which became pltf.'s. The overflow was diminished by the cattle using the tank as a drinking trough; what overflowed was conveyed by a stone drain to a point where it discharged into an open watercourse which was also fed by an underground spring on pltf.'s land. The open watercourse became a natural stream along the southern boundary of pltf.'s land, where there were two dipping places used by pltf. for watering his cattle & by some cottagers. Pltf.'s land was always boggy in places, & was now overgrown with rank vegetation. In Feb. 1930, deft. replaced tank Z. by another, which had two outlet holes, one only of which acted as an overflow outlet on to pltf.'s land. The overflow from the other outlet, which was on the west side, was led to a ram on deft.'s land. These alterations diminished the overflow on to pltf.'s land, who alleged that it affected the supply at the dipping places. He also alleged deft., in the alternative, had tapped springs the water from which escaped on to pltf.'s land, rendering part of it waterlogged. Pltf. claimed the right to a continuance of the overflow by grant as successor in title to C. or by prescription:—*Held:* the fact that owing to the natural & proper user by deft. of her own land some of the water in the water-bearing stratum below the surface had, to a small extent, been diverted, did not entitle pltf. to damages for any alleged injury arising from such diversion, & deft. not having diverted any defined watercourse nor altered the level of her land nor erected any structure upon it so as to cause rain water which would ordinarily soak into her ground to pass on to pltf.'s land, pltf. was not entitled to the relief claimed in paras. 3 & 4 of the prayer of the statement of claim.—BARTLETT *v.* TOTTENHAM, [1932] 1 Ch. 114; 101 L. J. Ch. 160; 145 L. T. 686.

330b. Escape from factory premises.]—Defts., the occupiers of factory premises on the second floor of a building, on several occasions allowed water to escape into the factory premises of pltfs. on the floor below, whereby damage was caused to pltfs.' property. Defts.' business included the washing of cinematograph film, for which purpose an extraordinarily large quantity of circulating water was necessary, also a boiler, & carboys for storing water:—*Held:* as the water was brought by defts. on to their premises for their own special purposes, & not for the common benefit of defts. & pltfs., & defts.' user was not a normal user for the purposes for which both pltfs. & defts. were occupying the premises, the principle of the decision in *Rylands* v. *Fletcher*, applied, & defts. were liable to pltfs. in damages & need not prove specific acts of negligence by pltfs. on each occasion.—WESTERN ENGRAVING CO. *v.* FILM LABORATORIES, LTD., [1936] 1 All E. R. 106; 80 Sol. Jo. 165, C. A.

331a. Overflow from boiler used for manufacturing purposes.]—Pltfs. were tenants, & in occupation of the ground floor of commercial premises. Defts. were tenants & occupiers of the first & second floors of the premises. For the purpose of their business defts. had installed a boiler on the second floor connected with the main water supply of the building; an overflow of water occurred from the boiler, &, flowing down to the ground floor, damaged pltfs.' stock of paper goods. At the time of the overflow defts., although carrying on their business elsewhere, were still tenants of the premises, & it was their custom to send employees over to the premises. The boiler apparatus was fitted with two stop-cocks or safety wheel-valves, but not with a trough or overflow waste pipe. Pltfs. claimed damages for breach of a duty of absolute care, or for negligence, or for nuisance:—*Held:* (1) the introduction of a boiler into the upper floor of a building of this kind was an ordinary & proper use of the building; & that, therefore, the defts. were under no absolute duty of care in respect of water used for the boiler, the principles laid down in *Rylands* v. *Fletcher* not applying; (2) there was no negligence on the part of defts. in the construction of the boiler or in the condition in which it was left. Accordingly, pltfs. were not entitled to claim damages.—MARCHANT MANUFACTURING CO., LTD. *v.* LEONARD D. FORD & TELLER, LTD. (1936), 154 L. T. 430.

332. *Add. Annotations:—As to* (1) **Refd.** Shiffman *v.* Venerable Order of Hospital of St. John of Jerusalem, [1936] 1 All E. R. 557. *Generally*, **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

343. *Add. Annotation:*—**Consd.** Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

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to its land with the result that, when rain fell, rain water poured from deft.'s land on to pltf.'s council's streets in a more concentrated form & carried with it more sand & silt than would be the case in the ordinary course of nature:—*Held:* pltf. was entitled to an injunction restraining deft. from permitting its land to remain in such a condition that these results ensued, & an inquiry as to what damage had accrued to pltf.'s streets arose from the operations of deft.—NEWCASTLE COUNCIL *v.* AUSTRALIAN AGRICULTURAL CO., LTD. (1928), 29 S. R. 212; 9 L. G. R. 71.—AUS.

sg. *Melted snow.*]—In an action for damage to property which was alleged to have been caused by deft. city bringing on to its own land large quantities of snow which on melting caused a flow of water to pltf.'s land & injured her building:—*Held:* the water from the one scraperful of snow which had been shown to have been banked on to the city's land by the city was so negligible that the damage must have been caused by what fell naturally or was brought on to the land by parties other than the city; & also the fact that the city after constructing a drain to remove the water lying on the land had, some years later, obstructed the drain when building a concrete side-walk did not render it liable.—GRAHAM *v.* ST. BONIFACE CITY, [1935] 1 W. W. R. 282; 2 D. L. R. 488.—CAN.

344a. Collapse of wall.]—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS, No. 349a, *post.*

344b. ——.]—WILKINS *v.* LEIGHTON, No. 349b, *post.*

344c. Permitting occupation of land by caravan dwellers—Misconduct by occupants.]—Deft., in return for payment, allowed persons to place caravans on a disused brickfield & to live in them, & some of these persons committed in the vicinity, but not in the brickfield, acts which interfered with the comfort of people in the neighbourhood. In an action by the A.-G. at the suit of the local district council for an injunction to restrain deft. from permitting the brickfield to be occupied in such a way as to be a nuisance :—*Held :* as deft. was putting his land to an abnormal use he was responsible for the nuisance which existed in the vicinity, & he must be restrained from permitting the occupiers of the land to do the acts constituting the nuisance.—A.-G. *v.* CORKE, [1933] Ch. 89 ; 148 L. T. 95 ; 48 T. L. R. 650 ; 76 Sol. Jo. 593 ; 31 L. G. R. 35 ; *sub nom.* A.-G. & BROMLEY RURAL COUNCIL *v.* CORKE, 102 L. J. Ch. 30.

349a. —— —— No knowledge of danger or defect.]—Pltfs. were the owners of an ancient inn, one side of which was bounded by the ancient city wall of Exeter, part of which was the property of defts. On either side of the fireplace in the kitchen of the inn recesses had a retaining wall some seventy feet long & thirteen feet high. The adjoining land beyond & above the wall was left unbuilt on until 1925, when a house was erected & was afterwards purchased by deft. A. L. Early in 1930 the retaining wall collapsed almost entirely, causing pressure against & damage to an outside wall of a room which had been on to "A. Hall." Pltf. alleged & the ct. found as a fact that the collapse of the wall was due to the additional pressure upon it caused by the weight of the new house built in 1925, & he claimed a mandatory order to restore the wall & to take such further steps as might be necessary to prevent any further damage to his property, & an injunction & damages :—*Held :* (1) deft. A. L. as the owner of the house was under no liability to pltf. based on the doctrine of *Rylands* v. *Fletcher*, as her predecessor in title had only used the land for the natural & normal purpose of building a house on it ; (2) the claim as based on nuisance failed, as there was no evidence that deft. knew or could have known that her house constituted a nuisance or hidden danger to pltf.'s property, or that any such nuisance in fact existed.—WILKINS *v.* LEIGHTON, [1932] 2 Ch. 106 ; 101 L. J. Ch. 385 ; 147 L. T. 495 ; 76 Sol. Jo. 232.

a considerable portion of the wall belonging to defts. collapsed & completely demolished pltfs.' inn :—*Held :* (1) inasmuch as the damage caused to pltfs.' premises did not arise from an abnormal or unnatural user of defts.' property, & defts. were not occupiers of the wall at the time the damage took place, the doctrine of *Rylands* v. *Fletcher* did not apply, & (2) it had not been proved that defts. had knowledge of the defect which ultimately resulted in the fall of the wall or that there had been a failure on their part by due diligence to ascertain that knowledge.—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS (1928), 140 L. T. 1 ; 92 J. P. 180 ; 44 T. L. R. 703 ; 26 L. G. R. 638, C. A.

Annotations :—As to (2) **Folld.** Wilkins *v.* Leighton, [1932] 2 Ch. 106. **Refd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56. *Generally,* **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

349b. —— —— ——.]—The owner of land situate on a steep natural slope built in 1888 a house called "A. Hall." The ground was then excavated on the upper side to a depth of thirteen feet, forming a vertical bank on the boundary. In order to protect this from weathering & crumbling the owner erected

350. *Add. Annotation :*—**Refd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106 ; Marchant Manufacturing

353. *Add. Annotations :*—**Distd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106. **Refd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114 ; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108 ; Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430 ; Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

356. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

357. *Add. Annotations :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. **Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123 ; Matania *v.* National Provincial Bank, Ltd. (1935), 154 L. T. 103.

359. *Add. Annotation :*—**Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

360. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

PART III. SECT. 2, SUB-SECT. 2.—B. (i).

d i. ——.]—MCCARTNEY *v.* MILLER (1905), 7 Terr. L. R. 367 ; 2 W. L. R. 87.—CAN.

d ii. ——.]—BETTCHER *v.* TURNER (Sask.) (1913), 25 W. L. R. 136.—CAN.

sg. *Overloading floor of warehouse.*]—Pltf., an automobile dealer, was the tenant of part of the ground floor of a warehouse. Deft., a dealer in seed grain, was the tenant of part of the third floor directly above pltf.'s premises. About three months after deft. had stored a large quantity of oats on his floor it collapsed, the oats fell through & brought the second floor down upon pltf.'s cars. In an action for the resulting damage, the immediate cause for the collapse could not be definitely assigned, but it was shown that the floors of a building constructed for general warehousing purposes should have a carrying capacity far in excess of the load under which deft.'s floor collapsed. There was no evidence that the building in question was ever held out to the public, or prospective tenants, as a general warehouse, although parts of it had been leased from time to time to various tenants for miscellaneous storage purposes :—*Held :* deft. was guilty of negligence, not only in overloading, but in disregarding the duty which, under the circumstances including the general flimsiness of the building, was upon him to inquire & inspect ; & also his liability could be based on the principle of *Rylands* v. *Fletcher*.—MADDER *v.* MCKENZIE (A. E.) & CO., LTD., [1931] 1 W. W. R. 344 ; 2 D. L. R. 522 ; *affd.*, [1931] 3 W. W. R. 540 ; [1932] 1 D. L. R. 129 ; 40 Man. L. R. 24.—CAN.

sl. *Flood lighting.*]—Flood lighting does not come within *Rylands* v. *Fletcher*, as light is not noxious or dangerous.—NOYES *v.* HURON & ERIE MORTGAGE CORPN., [1932] O. R. 426 ; 3 D. L. R. 143.—CAN.

363. *Add. Annotations :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

364. *Add. Annotations :*—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1 ; **Refd.** Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232.

364a. Maintaining overhanging rock.]—The owner of land on which there is an outcrop of rock overhanging a steep slope is not liable for damage caused by reason of portions of that rock breaking away & falling down the slope if the break is due to natural causes, such as weathering, & the owner has used his land in an ordinary way, without any mining or quarrying operations. Rocks in such a position, though they may become dangerous are not " premises in such a state as to be a nuisance " within Public Health Act, 1875 (c. 55), s. 91.—PONTARDAWE RURAL COUNCIL *v.* MOORE-GWYN, [1929] 1 Ch. 656 ; 98 L. J. Ch. 242 ; 141 L. T. 23 ; 93 J. P. 141 ; 45 T. L. R. 276 ; 27 L. G. R. 493.

366. *Add. Annotation :*—**Refd.** Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257.

369. *Add. Annotations :*—**Refd.** Western Engraving Co. *v.* Film Laboratories, Ltd., [1936] 1 All E. R. 106 ; Collingwood *v.* Home & Colonial Stores, Ltd., [1936] 3 All E. R. 200.

372. *Add. Annotation :*—*As to* (1) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

374. *Add. Annotations :*—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. **Apld.** Wilkins *v.* Leighton, [1932] 2 Ch. 106. **Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

376. *Add. Annotations :*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57 ; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

379. *Add. Annotation :*—**Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C 108 ; Shiffman *v.* Venerable Order of Hospital of St. John of Jerusalem, [1936] 1 All E. R. 557.

386. *Add. Annotations :*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640 ; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

389. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

414. *Add. Annotation :*—**Refd.** Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd. (1936), 155 L. T. 74.

416. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

430. *Add. Annotation :*—**Consd.** Andreæ *v.* Selfridge & Co., [1936] 2 All E. R. 1413.

432a. —— Silver fox breeding—Firing gun on adjoining property.]—Pltf. co. carried on the business of breeding silver foxes on their land. During the breeding season the vixens are very nervous, & liable if disturbed either to refuse to breed, to miscarry, or to kill their young. Deft., an adjoining landowner, maliciously caused his son to discharge guns on his own land as near as possible to the breeding pens for the purpose of injuring pltfs. by interfering with the breeding of the foxes :—*Held :* pltfs. were entitled to an injunction & damages, although the firing took place on deft.'s own land, over which he was entitled to shoot.—HOLLYWOOD SILVER FOX FARM, LTD. *v.* EMMETT, [1936] 2 K. B. 468 ; [1936] 1 All E. R. 825 ; 105 L. J. K. B. 829 ; 155 L. T. 288 ; 52 T. L. R. 611 ; 80 Sol. Jo. 488.

Part IV.—Remedies.

438. *Add. Annotations :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226 ; Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

439. *Add. Annotation :*—*As to* (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

PART III. SECT. 2, SUB-SECT. 2.—C. (a) ii.

n i. ——.]—Deft. lit a fire on his land on Feb. 15, 1933, for the purpose of burning off approximately 100 acres of stubble. The stubble was burnt off as an ordinary farming operation & in the way in which the majority of farmers in the district burnt their stubble. During the operation a tree stump became ignited & smouldered until Feb. 20, when a high wind caused the fire from the stump to spread to & damage pltf.'s land :—*Held :* the lighting of such a large area of stubble was not a natural or ordinary user of the land & deft. was liable for the damage thus caused.—WERBER *v.* HAZELWOOD (1934), 34 S. R. N. S. W. 155 ; 51 N. S. W. W. N. 53.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—C. (f).

378 i. *General rule—Owner not liable.*]—The true view of the law as to the act of a stranger, both as relieving from initial or original negligence & by way of exception to or as a limitation of the rule in *Rylands* v. *Fletcher*, is that where the escape of the dangerous article or agency is caused by the act of a stranger over whom the owner or keeper thereof has no control, the happening or the injurious effect of whose act he could not reasonably be expected to anticipate, such owner or keeper is not liable for the escape & its results.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1934] 1 W. W. R. 675 ; *revsd. on the facts* (1934), 3 W. W. R. 641 ; 1 D. L. R. 135 ; [1935. 4 D. L. R. 737 ; 3 W. W. R. 446, P. C] —**CAN.**

se. *Sparks from machine used by defendant on another's land causing fire on plaintiff's land.*]—PETT *v.* SIMS PAVING & ROAD CONSTRUCTION CO. PTY., LTD., [1928] V. L. R. 247 ; [1928] Argus L. R. 213.—**AUS.**

PART III. SECT. 2, SUB-SECT. 3.

389 i. *Duty of neighbouring owner.*]—During a windstorm, one of the brick walls of deft.'s garage was drawn outwards, & the falling wall injured the infant pltf. who was playing in her father's yard on the adjoining property. The judge found that both in design & construction the wall was sufficient for the purpose for which it was intended, & that its fall was due to the storm, which he found to be one of such extraordinary violence that it could not reasonably have been anticipated ; he found also that the wall was not a nuisance ; & that the breach of a building bye-law, in not employing an architect, could not be said to have caused the accident ; moreover the bye-law in question gave no right of action to pltf. :—*Held :* deft. was not liable.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 1 W. W. R. 689 ; 4 D. L. R. 618 ; *affd.*, [1933] 3 W. W. R. 281.—**CAN.**

PART III. SECT. 4.

c i. —— *Ammonia plant causing loss of patronage to theatre—Loss due to change in character of district.*]—AVENUE THEATRE, LTD. *v.* VANCOUVER GAS CO. (1928), 40 B. C. R. 275.—**CAN.**

444. *Add. Annotations :—As to* (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. *Generally*, **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

445. *Add. Annotations :*—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. **Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

447. *Add. Annotation :—As to* (1) **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

465. *Add. Annotation :*—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

517. *Add. Annotation :*—**Consd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

527. *Add. Annotations :*—**Consd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551. **Refd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

528. *Add. Annotation :*—**Consd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551.

542. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons, [1933] Ch. 298.

545. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

549. *Add. Annotation :*— **Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

550. *Add. Annotations :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752 ; Harper *v.* Haden & Sons, Ltd., [1933] Ch. 298.

552. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

553. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons, [1933] Ch. 298.

566. *Add. Annotation :* — **Consd.** Cornford *v.* Havant & Waterloo Urban District Council (1932), 97 J. P. 137.

—— ——.]—Certain sewage disposal works were vested in P., a local authority. As these disposal works served an area within the jurisdiction of H., another local authority, H., by arrangement with P., had operated the sewage disposal works. Pltfs. brought an action against both P. & H., claiming an injunction to restrain them from causing a nuisance by smell arising from the sewage disposal works :—*Held :* an injunction must be granted against H., which operated the sewage disposal works, but P., the authority owning the works, having had no notice of the nuisance until action brought, no injunction could be granted against them.—CORNFORD *v.* HAVANT & WATERLOO URBAN DISTRICT COUNCIL (1933), 97 J. P. 137 ; 31 L. G. R. 142.

567a. ——.]—SHORT *v.* TAYLOR (1709), 2 Eq. Cas. Abr. 522 ; 22 E. R. 441.

Annotation :—**Apld.** Williams *v.* Jersey (1841), Cr. & Ph. 91.

582. *Add. Annotation :—Generally*, **Refd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

584. *Add. Annotations :—As to* (1) **Consd.** Cornford *v.* Havant & Waterloo Urban District Council (1932), 97 J. P. 137. *Generally*, **Refd.** Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

589. *Add. Annotation :*—**Refd.** Cornford *v.* Havant & Waterloo Urban District Council (1932), 97 J. P. 137.

598a. Jus tertii.]—In an action of trespass a deft. cannot set up a *jus tertii* against a possessory title. The same rule applies to an action for polluting a several fishery & damaging the fish.

Now does the *jus tertii* rule apply to such an action ? I must confine my remarks most strictly to actions of the kind before me. There are many kinds of nuisance actions,

PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

442 ii. ——.]—MCLOUGHLAN *v.* MARTIN (1864), 5 Nfld. L. R. 44.—**NFLD.**

PART IV. SECT. 1, SUB-SECT. 2.—C. (a).

sg. No right to abate—Nuisance by building—Rule in India.]—There is no statutory provision in India justifying a private person or a member of the public in demolishing a building & causing loss to another person by way of abating a nuisance. Such an act is contrary to sect. 23 of the Indian Penal Code & is governed by Indian statute law & not English common law.—NARASIMHULU *v.* NAGUR SAHIB (1933), I. L. R. 57 Mad. 351.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (a) i.

483 i. —— *Of permanent character.*]—An owner who is not in occupation of a house can file a suit for damages for nuisance without joining the occupier if the nuisance complained of is " permanent " & of such a character as to injuriously affect the reversion. Where the nuisance is caused by machinery installed in certain premises for the purposes of supplying electricity to a city in pursuance of a licence granted by Government for the said purpose, the nuisance is practically a " permanent " one, *i.e.* one " which will continue indefinitely unless something is done to remove it."—ALWAR CHETTY *v.* MADRAS ELECTRIC SUPPLY CORPN., LTD. (1933), I. L. R. 56 Mad. 289.—**IND.**

483 ii. —— ——.]—To give a reversioner a right of action for nuisance, the injury must be of a permanent character.—LANDZICK *v.* ROBINSON (1935), 43 Man. L. R. 30.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (b).

sf. Tenant.]—A tenant is entitled to recover damages for a nuisance which affects his use & enjoyment of he leased premises, even though the nuisance existed to his knowledge when he entered into the lease.

An injury to the pltf.'s business caused by a nuisance is a ground for damages.—BILLINGSGATE FISH, LTD. *v.* BRITISH COLUMBIA SUGAR REFINING CO., LTD., [1933] 1 W. W. R. 530 ; 46 B. C. R. 543.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (c) i.

540 xiii. ——.]—In an action by a landowner against a golf club wherein he sought an injunction on the ground of nuisance :—*Held :* pltf. was entitled to show that the acts of deft. in maintaining & operating the golf course constituted a public nuisance & that, because thereof, he suffered particular, direct, & substantial special damage, above that sustained by the public at large.—CHISWELL *v.* CHARLESWOOD RURAL MUNICIPALITY, & GOLF CLUB, LTD., [1935] 3 W. W. R. 217.—**CAN.**

PART IV. SECT. 2, SUB-SECT 2.—A.

566 i. *Person permitting nuisance—Nuisance created by licensee.*]—Where a person uses land merely as a licensee the owner or licensor may be liable for any nuisance the licensee commits & which the licensor or owner does not prevent him from carrying on. There is a great difference between the position of responsibility with relation to a licensee with exclusive rights pending the term & a mere transitory licensee. There may also be a difference between a landlord & a lessor.—GRIERSON *v.* OSBORNE STADIUM, LTD., [1933] 1 W. W. R. 634 ; 3 D. L. R. 598 ; 41 Man. L. R. 163.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

i. *Liability of joint contributors.*]—ere two or more persons contribute art only to the creation of a nce, each is severally liable. may be restrained from doing the act which contributes to that which becomes, in the aggregate, a nuisance. —L'ESTRANGE *v.* THE BRISBANE GAS CO., [1928] S. R. Q. 180.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.—A.

sk. *Delay—Action by Attorney-eral—Laches of relator.*]—Proceed- were brought by the A.-G at the tion of the County Council of Down, & by county council for a

e.g. an action for infringement of ancient lights, & so on, & I am very far from ... that the *jus tertii* rule applies to every kind of nuisance action. But in this case I am dealing with a nuisance action of a kind peculiar to itself & to other pollution actions. It is not trespass, but it is very analogous to trespass. In my judgment where defts. are doing acts *per se* illegal, & therefore not justifiable under any outside authority, they cannot set up a *jus tertii* as a defence in an action of this kind (FARWELL, J.).—NICHOLLS *v.* ELY BEET SUGAR FACTORY, [1931] 2 Ch. 84, 87; 100 L. J. Ch. 259; 145 L. T. 113.

598b. Clause in lease permitting rebuilding of adjacent property.]—ANDREÆ v. SELFRIDGE & CO., LTD., No. 94a, *ante*.

599. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

601. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons, [1933] Ch. 298.

608. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

609. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

612. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

613. *Add. Citation :*—25 L. G. R. 1.

626. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

640. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

660. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

669. *Add. Annotation :*—**Refd.** Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

681. *Add. Annotation :*—**Refd.** Graigola Co. *v.* Swansea Corpn., [1928] Ch. 235.

730. *Add. Annotation :*—**Refd.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

774a. Appeal to quarter sessions—Objection to original notice & order—Jurisdiction of quarter sessions.]—On failure by an owner of premises to abate a nuisance thereon when required by notice to do so, the sanitary inspector caused a complaint to be preferred to a ct. of summary jurisdiction. The ct. made an order requiring the owner to abate the nuisance, & the owner did not appeal against that order. On the failure of the owner to comply with the order the sanitary inspector caused a further complaint to be preferred to the same ct., which ultimately made an order imposing penalties on the owner. Against that order the owner appealed to quarter sessions, & on the hearing of the appeal for the first time took objection to the original notice & order. The ct. of quarter sessions allowed the appeal on the ground that the original notice & order were bad :—*Held :* the ct. of quarter sessions on appeal against the order imposing penalties had no jurisdiction to inquire into the validity of the original notice & order, inasmuch as no objection had been made to the original complaint & no appeal brought against the original order.—AGER *v.* GATES (1934), 151 L. T. 98; 98 J. P. 223; 32 L. G. R. 167; 30 Cox, C. C. 105, D. C.

793. *Add. Annotation :*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

794. *Add. Annotation :*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

799. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

declaration that defts. had wrongfully obstructed the public highway by erecting a public lavatory, & for a mandatory injunction to compel defts. to pull down the structure & restore the highway :—*Held :* the delay on the part of the county council had disentitled them to an injunction, but the laches of a relator is not necessarily to be attributed to the A.-G., & while delay on his part with knowledge of the alleged violation of his rights cannot be ignored, there was no sufficient evidence of the A.-G.'s knowledge of the infringements of the rights of the public to justify a refusal of the mandatory injunction.—A.-G. & DOWN COUNTY COUNCIL *v.* NEWRY No. 1 RURAL DISTRICT COUNCIL, [1933] N. I. 50.—**IR.**

PART IV. SECT. 2, SUB-SECT. 4.

s1. *Nominal damages.*]—MURPHY *v.* BACON, [1931] 1 D. L. R. 1001; 1 M. P. R. 586.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 6.—A. (e).

673 iv. ——.]—In a *quia timet* action for an injunction restraining the establishment of a hospital, on the ground that it will constitute a nuisance to pltf., he must prove a strong probability almost amounting to moral certainty that the hospital will be an actual nuisance.—SHUTTLEWORTH *v.* VANCOUVER GENERAL HOSPITAL, [1927] 2 D. L. R. 573; [1927] 1 W W. R. 476; 38 B. C. R. 300.—**CAN.**

673 v. ——.]—Pltfs. moved for an injunction to prevent a nuisance, which they feared would arise from noise & vibration caused by the establishment of a factory then in course of erection :—*Held :* as it had not been established that the damage apprehended was imminent & of a substantial character, the claim was premature.—ROBERTSON *v.* DUTHIE STEEL CASEMENT CO., LTD., [1927] N. Z. L. R. 826.—**N.Z.**

OPEN SPACES AND RECREATION GROUNDS.

Part I.—General Rights of Public.

1. *Add. Annotation :*—**Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

10. After this case add :—

Open space within London Open Spaces Act, 1893, c. lxxi—Whether liable to expropriation under Housing Act.]—*See* COMPULSORY PURCHASE, No. 2225f, *ante*.

Part II.—Exemption from Rates, Charges, etc.

12. *Add. Annotations :*—**Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277. **Distd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241. **Consd.** Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450.

13. *Add. Annotation :*—**Dbtd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241.

14a. —— ——.]—Applts. were a body incorporated by Royal Charter for the purpose of providing playing fields for the use of clubs & persons who could not afford to pay full economic rents. Land was conveyed to applts. by a deed containing a restrictive covenant that the land should be used for the purposes of Recreation Grounds Act, 1859 (c. 27), as though it had been conveyed under that Act, but subject to the power of applts. to sell the whole or any part of the land. Applts. successfully appealed to Quarter Sessions against a poor rate in which they were rated & assessed in respect of the land. On resps.' appeal by case stated :—*Held :* since the land was not " struck with sterility " as a matter of law, there being no statutory & irrevocable dedication to the public, applts. were in rateable occupation.—LONDON PLAYING FIELDS SOCIETY *v.* ESSEX (S. W. AREA) ASSESSMENT COMMITTEE (1930), 144 L. T. 233 ; 94 J. P. 241 ; 46 T. L. R. 631 ; 74 Sol. Jo. 662 ; 28 L. G. R. 591 ; (1926–31), 1 B. R. A. 367, D. C.

Part III.—Powers of Regulation and Management.

24a. **Garden committee—Membership—Eligibility of women.**]—Sex Disqualification (Removal) Act, 1919 (c. 71), s. 1, removes the bar imposed by Kensington Improvement Act, 1851, s. xliii., by which " . . . the male inhabitant householders . . . shall be & are hereby constituted & appointed a committee for the care & management " of the respective gardens referred to, & entitles women householders to be appointed to the committees.—*Re* EDWARDES SQUARE GARDEN COMMITTEE, SMITH *v.* MITCHELL (1934), 51 T. L. R. 35 ; 78 Sol. Jo. 767.

Part IV.—User of Open Spaces.

33. *Add. Annotation :*—**Refd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

35. *Add. Annotations :*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. **Refd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

38. *Add. Annotations :*—**Folld.** *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. **Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

39. *Add. Annotation :*—**Consd.** A.-G. *v.* Sunderland Corpn., [1929] 2 Ch. 436.

40. *Add. Annotation :*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

41a. —— —— ——.]—A local authority acquired land in fee simple to be used as an open space & covenanted to preserve the land as an open space & take all necessary steps to maintain the land as such. By a private Act the corpn. was permitted to erect on the land so conveyed bathing & other huts & similar structures, tents, booths, & stalls & construct & maintain bathing pools, baths, shelters, pavilions & conveniences ; but by a later sect. it was not to exercise these powers except within an area not exceeding 4 acres, & no erection was to be more than 14 ft. in height. The corpn. executed extensive works upon the land including a promenade lavatories, pavilion, café, car park, putting

green, & enclosed a portion of the land & laid it out as a garden. The extent of all these works was in fact more than 4 acres. The corpn. then desired to build a bungalow for the occupation of a resident caretaker. The building did not infringe any of the restrictions other than the extent of the land upon which structures might be placed under the Act. It was contended, on the one hand, that the corpn. had by these acts withdrawn more than 4 acres from public use &, on the other hand, that as the land actually covered with buildings was approximately ½ acre, the corpn., if acting under the powers given by the private Act, was acting well within its powers; but it was contended that the bungalow was not being erected under or in pursuance of any power given by the private Act. The covenantee, party to the conveyance of the land, raised no objection to the proposed use, & it was found as a fact that the corpn. was acting honestly in the best interests of the public in requiring a bungalow for a resident caretaker:—*Held:* (1) the conveyance in fee simple being a deed *inter partes*, the covenant therein could only be enforced by the covenantee, & as the covenantee was not a party to the action, no question on the covenant could arise; (2) the corpn. had power under Open Spaces Act, 1906 (c. 25), to erect a caretaker's house if it thought it necessary for the proper maintenance of the open space, provided that not more than $\frac{1}{20}$ of the open space was covered with buildings, which would not be the case here; (3) as the powers given by the private Act were in addition to & not in derogation of those given by the public Acts, & there was no express prohibition in the private Act of what was intended to be done, the proposed erection was in order.—A.-G. *v.* Poole Corpn., [1937] 3 All E. R. 608; 106 L. J. Ch. 319; 157 L. T. 209; 101 J. P. 498; 53 T. L. R. 924; 81 Sol. Jo. 627; 35 L. G. R. 472, C. A.

PARLIAMENT.

Part I.—Nature and Powers.

2a. —— ——.]—It is not the practice in Acts of Parliament to attempt to restrain future Parliaments in their enactments; & the Legislature could not have intended to suggest such an object without expressing it in very distinct terms (WILDE, C.J.).—BODEN *v.* SMITH (1849), 18 L. J. C. P. 121; 12 L. T. O. S. 377; 13 J. P. 153; 13 Jur. 428.

Annotations:—**Refd.** R. *v.* Smith (1873), L. R. 8 Q. B. 146; Jenkins *v.* Great Central Ry. Co., [1921] 1 K. B. 1.

2b. —— ——.]—The exemption is in general terms. It may have been intended to include all taxes & assessments whatsoever, present or future, then imposed or to be imposed by any future Act of Parliament. But even if the exemption had been enacted in those very terms, it is plain that such an enactment could not have bound future Parliaments (CHANNELL, J.).—ASSOCIATED NEWSPAPERS, LTD. *v.* LONDON CITY CORPN., [1913] 2 K. B. 281; 82 L. J. K. B. 928; 108 L. T. 789; 77 J. P. 273; 11 L. G. R. 554; *on appeal*, [1914] 2 K. B. 603, C. A.; *sub nom.* LONDON CITY CORPN. *v.* ASSOCIATED NEWSPAPERS, LTD., [1915] A. C. 674, H. L.

2c. —— ——.]—Parliament cannot bind itself as to the form of subsequent legislation & cannot effectively enact that a provision in one statute shall not be altered by a subsequent Act save by express words.—ELLEN STREET ESTATES, LTD. *v.* MINISTER OF HEALTH, [1934] 1 K. B. 590; 103 L. J. K. B. 364; 150 L. T. 468; 98 J. P. 157; 32 L. G. R. 233, C. A.

Part II.—The House of Lords.

4. *Add. Annotation:*— **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

22. *Annotation:*—Delete Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

37. *Add. Annotation:*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

38. *Add. Citations:*—[1927] A. C. 732; 96 L. J. K. B. 1093; 137 L. T. 656.

Add. Annotations: — **Consd.** Co-operative Wholesale Society, Ltd. *v.* Lally (1930), 23 B. W. C. C. 513. **Refd.** The Young Sid, [1929] P. 190; Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28; London Welsh Estates, Ltd. *v.* Philip (1931), 144 L. T. 643; Midland Employers' Mutual Assurance, Ltd. *v.* Lewis (1930), 23 B. W. C. C. 192; Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485; Hamilton *v.* Branch, [1933] W. N. 11; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380; Brown *v.* New Empress Saloons, Ltd., [1937] 2 All E. R. 133; Cecil-Wright *v.* McCulloch, [1936] 3 All E. R. 518; Culver *v.* Beard, [1937] 1 All E. R. 301; Evans *v.* Bartlam, [1937] A. C. 473; *Re* Margolin's Registered Design, [1936] 3 All E. R. 347; Williams *v.* Dorothea Slate Quarry Co. (1936), 29 B. W. C. C. 174.

39. *Add. Annotation:* — **Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

41. *Annotation:*—For "*As to* (1) **Mentd.**" read

Add. Annotation:—As to (3) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

54a. —— **Citations of cases referred to by Judge.**]—In a properly prepared case, where, in the course of the judgments printed in the appendix, a judge mentions a reported case, without giving the reference, the reference should be added in the margin.—PRACTICE NOTE, [1932] W. N. 61; 173 L. T. Jo. 243; 73 L. Jo. 273, H. L.

77a. **Duty not to burden House with unnecessary authorities.**]—BLACKIE *v.* BLACKIE, [1935] W. N. 105; *sub nom.* PRACTICE NOTE, 80 L. Jo. 148, H. L.

99. *Add. Annotation:—As to* (1) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

113. *Add. Annotation:*—**Refd.** Woolmington *v.* Public Prosecutions Director (1935), 104 L. J. K. B. 433.

135a. ——.]—In an action by an agent for a claim for commission from the purchaser on the sale of a business, the trial judge found on the facts that the agent had earned his commission, & his decision was affirmed by the appellate ct.:—*Held:* the concurrent findings of the cts. below ought not to be disturbed.—BOW'S EMPORIUM, LTD. *v.* BRETT (A. R.) & Co., LTD. (1927), 44 T. L. R. 194, H. L.

155a. **In Admiralty actions—Collision cases—Both vessels to blame.**]—CANTON (OWNERS) *v.* RHESUS (OWNERS), [1928] W. N. 214; *sub nom.* THE CANTON, 31 Lloyd, L. R. 289, H. L.

Annotation:—**Refd.** The Young Sid, [1929] P. 190.

162. *Add. Annotation:* — **Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

190. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

PART II. SECT. 2, SUB-SECT. 1.

16 i. *Appeals from Scottish courts—From Lords of Session—From interlocutory order.*]—Ross *v.* Ross, [1927] S. C. (H. L.) 4.—SCOT.

PART II. SECT. 2, SUB-SECT. 7.—C.

85 i. *Not admitted.*] — PORTLAND (DUKE) *v.* WOOD'S TRUSTEES, S. C. (H. L.) 1.—SCOT.

PART II. SECT. 2, SUB-SECT. 12.—A.

168 i. *Lords may vary own Order inconsistent with judgment.* — order pronounced by the House of Lords disposing of an appeal, which

Part III.—The House of Commons.

229. After this case add " *See* House of Commons Disqualification (Declaration of Law) Act, 1931 (c. 13), s. 1.

Part V.—The Legislative Work of Parliament.

256a. —— **Metropolis Gas Act, 1860 (c. 125).]**—Sect. 56 of above Act enacts that " the costs, charges, expenses of & incident to the passing of this Act, & preliminary thereto, shall be paid by the Metropolitan Board of Works" out of certain funds:—*Held:* the persons to whom such payment is to be made by the board are the promoters of the Act, & not the solr. or parliamentary agent retained & employed by them for hire & reward to do the necessary work.—WYATT *v.* METROPOLITAN BOARD OF WORKS (1862), 11 C. B. N. S. 744; 31 L. J. C. P. 217; 142 E. R. 988.

Annotations:—**Apld.** *Re* Skegness & St. Leonard's Tram. Co., *Ex p.* Hanly (1888), 41 Ch. D. 215. **Refd.** *Re* Kent Tram. Co. (1879), 12 Ch. D. 312.

See, also, COMPANIES, Vol. X., p. 1113, No. 7830.

261. *Add. Citations:*—*sub nom. Re* PETERSON, [1909] 2 Ch. 398; 79 L. J. Ch. 53; 101 L. T. 480; 73 J. P. 461.

263a. —— **Metropolis Gas Act, 1860 (c. 125).]**—WYATT *v.* METROPOLITAN BOARD OF WORKS, No. 256a, *ante.*

286. This is the same case as No. 287, *post.* The order made was subsequently reconsidered & reversed, *see* [1876] W. N. 80.

288a. Failure to invest—Liability of Paymaster-General.]—*Re* WILDBORE (1903), Y. S. C. P.

291a. —— **Leave for claimant to attend to examine other claims.]**—*Re* PECKHAM & EAST DULWICH TRAMWAYS CO., [1911] W. N. 15.

Part VII.—Privileges of Parliament.

365. *Add. Annotation:*—**Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

377. *Add. Annotation:*—**Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. 594.

396. *Add. Annotation:*—*As to* (3) **Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. 594.

436. *Add. Annotation:*—**Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. 594.

437. *Add. Annotation:*—**Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

466a. Internal affairs of House—Sale of intoxicating liquor.]—The House of Commons has the privilege of regulating its own internal affairs & procedure, including the sale, within the precincts of the House, of intoxicating liquor without a licence, through its employees in the Refreshment Department of the House.

Appct. applied in the police ct. for summonses against certain members of the Kitchen Committee of the House of Commons & the manager of the Refreshment Department of the House on the ground that they had on two occasions unlawfully sold by retail intoxicating liquor for the sale of which they did not hold a justices' licence as required by Licensing (Consolidation) Act, 1910 (c. 24), s. 65. The magistrate held that, assuming that there had been a sale of liquor without a licence, his jurisdiction was excluded by the privileges of the House & he declined jurisdiction. Rules *nisi* having been obtained by appct. for orders in the nature of *mandamus* calling on the magistrate, the members of the Kitchen Committee affected & the manager of the Refreshment Department to show cause why the magistrate should not proceed to hear & determine the application for the summonses:—*Held:* in the sale of liquor in the precincts of the House without a licence, the House was acting, through its Kitchen Committee & its employee, the manager of the Refreshment Department, in a matter which fell within the scope of the internal affairs of the House &, therefore, within the privileges of the House so that no ct. of law had jurisdiction to interfere.—R. *v.* GRAHAM-CAMPBELL, *Ex p.* HERBERT, [1935] 1 K. B. 594; 104 L. J. K. B. 244; 152 L. T. 556; 51 T. L. R. 198; 79 Sol. Jo. 12; 33 L. G. R. 136; 30 Cox, C. C. 209, D. C.

had been submitted to both parties prior to its pronouncement & had not been objected to by them, was subsequently discovered to contain an error which prevented it from giving effect to the judgment of the House. In a petition presented by appts., the House altered the order so as to make it conform to the judgment of the House.—COATS *v.* UNION BANK OF SCOTLAND, [1930] S. C. (H. L.) 63.—**SCOT.**

PART VIII.

m (p. 295) l. —— *Canadian senate-*

... ty of women.]—The words " qualified persons " in British North America Act, 1867, s. 24, include women, &, therefore, women are eligible for membership of the Senate of Canada.—EDWARDS *v.* A.-G. FOR CANADA (1929), 46 T. L. R. 4.—**CAN.**

PARTITION.

Part III.—Partition by Agreement.

33. After this case add :—

Application of Law of Property Act, 1925 (c. 20), s. 28 (3).]—*See* TRUSTS & TRUSTEES, No. 3639a, *post.*

35a. —— ——.]—ANON. (1820), 4 Bro. C. C. (Belt's edn.), 284 n. ; 29 E. R. 894, L. C.

Annotation :—**Consd.** Bradshaw *v.* Fane (1856), 4 W. R. 422.

PART I.

h (p. 300) i. —— ——.]—It is essential for the maintainability of a suit for partition that pltf. should be in actual or constructive possession of the properties.—SABJAN BIBI *v.* ASHANULLA BEPARI (1926), I. L. R. 54 Calc. 524.—**IND.**

h (p. 300) ii. —— ——.]—Pltf. & deft. were entitled, after their mother's life estate in certain land, to the remainder as tenants in common. The mother refused to consent to a partition :—*Held :* pltf. was not entitled as against deft. to an order for partition of the lands. Only those entitled to possession of their shares in land are entitled to partition.—BUNTING *v.* SERVOS, [1931] 4 D. L. R. 167 ; O. R. 409.—**CAN.**

ll (p. 300) i. —— —— *In case of absentee.*]—Sect. 4 of Partition Act, R. S. O., 1927, is intended to operate so as to convey the estate & interest of an absentee in lands sought to be partitioned ; &, if he is dead leaving a widow, she should be regarded as one entitled to claim under or through him. The lands being sold under the partition order, her claim for dower would be upon the money which would stand in the place of the lands.—*Re* STROUD & MANDELL, [1930] 2 D. L. R. 135 ; 65 O. L. R. 4.—**CAN.**

aaa (p. 300) i. —— ——]—Apart from such discretion as is given by Partition Act, 1868, as to sale in lieu of partition, a decree or judgment of partition is a matter of right & not dependent upon the discretion of the ct., except where certain acts may be required to be performed as a condition precedent by the doctrine that he who seeks equity must do equity. For example, a party seeking partition may be required to reimburse his co-tenants for his share of money expended for the benefit of the property. The right to partition may, however, be limited, modified or waived by agreement express or implied. Where there is no specific agreement as to the duration of the joint ownership, the purpose or idea which the owners may have had in acquiring property does not preclude either of them from determining it by an action for partition ; but if the implication of an agreement to postpone partition is to be gathered from the circumstances & purpose of such acquisition it may be given effect to, but only by way of contract.—WIKSTRAND & MANNIX *v.* CAVANAUGH & DILLON, [1936] 1 W. W. R. 113 ; 5 F. L. J. (Can.) 275 ; *affd.*, [1936] 2 W. W. R. 69.—**CAN.**

c (p. 301) i. —— —— ——.]—HUESTIS *v.* HUESTIS (1928) 54 N. B. R. 1.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

With part performance.]—STEVENS *v.* STEVENS, [1930] 3 D. L. R. 762.—**CAN.**

PART III. SECT. 9.

aa. *Agreement to pay amount in equalisation—Evidence.*]—PHERRILL *v.* PHERRILL (1867), 13 Gr. 476.—**CAN.**

PARTNERSHIP.

Part I.—Partnership Generally.

8. *Add. Annotation :*—**Refd.** Dominion Iron & Steel Co. *v.* Invernairn, [1927] W. N. 277.

Part II.—Tests of Partnership.

43. *Add. Annotation :*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

44. *Add. Annotation :*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

77. *Add. Annotation :*—**Refd.** English Insce. Co. *v.* National Benefit Assce. Co. (Official Receiver), [1929] A. C. 114.

89. *Add. Annotation :*—**Consd.** Stanley & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

91. *Add. Annotation :*—*As to* (1) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

107. *Add. Annotation :*—*As to* (2) **Refd.** Watson *v.* Haggitt (1927), 44 T. L. R. 90.

129. *Add. Annotation :*—**Folld.** Pratt *v.* Strick (1932), 17 Tax Cas. 459.

129a. —— —— ——.]—Applt. having agreed to purchase a medical practice, a deed of assignment was executed on July 15, 1929, whereby the vendor, on payment at the date of execution of a specified part of the purchase price, assigned the practice & goodwill thereof to applt. The vendor covenanted (*inter alia*) to continue, from July 15, 1929, until Sept. 30, 1929, to reside at the house from which the practice was being carried on &, during that period, to introduce applt. to his patients, with a view to maintaining the connections of the practice, including National Health Insurance works, & generally to aid & assist him in the practice. It was also agreed that the earnings & expenses of the practice from the commencement of the period of introduction until Sept. 30, 1929, should belong to & be borne by the vendor & purchaser in equal shares. On July 15, 1929, applt. took up residence with the vendor &, until Sept. 30, 1929, they carried on the practice in conjunction, the earnings & expenses of the practice being divided equally between them. On appeal against an assessment to income tax under Sched. D. made upon him for the year 1930–31 in respect of his professional profits, applt. contended that the practice was sold outright to him on July 15, 1929, & that his income tax liability should be computed on the footing that the practice was commenced anew by him on that date. The General Comrs. decided that the deed of July 15 constituted articles of partnership between applt. & the retiring doctor, & that, in the absence of notices under the proviso to r. 11 (1) of the Rules applicable to Cases I. & II. of Sched. D., the practice must be treated as a continuing one throughout :—*Held :* there was an out-and-out sale of the practice on July 15, 1929, & there had been no partnership.—Pratt *v.* Strick (1932), 17 Tax Cas. 459.

171. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

PART I. SECT. 2.

d i. *S. P.* Brojo Lal Saha Banikya *v.* Budh Nath Pyarilal (1927), I. L. R. 55 Calc. 551.—**IND.**

sd. *Whether firm "resides" at partnership premises.*]—The office of a partnership is not the residence of the firm, since a partnership is not a legal entity.—Odegarde *v.* Lynch, [1935] 2 D. L. R. 493, 9 M. P. R. 127—**CAN.**

PART II. SECT. 1.

sx. *Statutory partnership under Registration of Partnerships Act, R. S. N. S., 1923—What amounts to.*]—Hobrecker *v.* James, [1930] 2 D. L. R. 415 ; 1 M. P. R. 177.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

43 iii. —— *Co-owners of coal leases.*]—Davies *v.* Schuilli, [1928] 4 D. L. R. 132 ; [1928] 3 W. W. R. 158.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

sy. *Contract for dismantling vessel.*]—The relationship between the parties herein created by a contract for the dismantling by them of the hulk of a vessel :—*Held :* not to constitute a partnership.—Gilchrist Manufacturing Co., Ltd. *v.* International Junk Co., Ltd., [1931] 1 W. W. R. 101 ; 1 D. L. R. 595 ; 43 B. C. R. 258.—**CAN.**

s o. *Unit holders in mining syndicate.*]—Under the "trust agreement" in question herein which provided for the divisions into "units" of the assets of a mining syndicate & authorised the trustees to sell a certain number of the "units" :—*Held :* the "unit holders" must be taken to be parties thereto & it constituted them, not partners *inter se*, but co-adventurers in a mining venture ; but they did not, through becoming signatories of the agreement, confer, either individually or collectively, any authority on deft. which would make them in any way legally concerned with a fraud committed by him in the sale of further units.—Wearmouth *v.* MacPherson, [1936] 1 W. W. R. 623.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

78 i. *Builder & building owner.*]—A building contractor & the owner of a lot agreed that the former should build a house on the lot for a certain sum in cash plus what the contractor could obtain on a mtge. by the owner ; & the agreement further provided that the house when completed should be sold by the owner & the profit thereon, *i.e.* the surplus over said contract price, should be divided equally between them. Pltfs., lumber merchants, sued for the balance due on lumber supplied to the contractor & used in building the house :—*Held :* the relationship between the owner & contractor was not that of partners, or such as to entitle pltfs. to say that the contractor was the agent of the owner to pledge his credit for the materials used in the house.—Shuckett *v.* Lockhart & Kyle, [1932] 2 W. W. R. 330 ; 3 D. L. R. 466 ; 40 Mar. L. R. 344.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

91 xxi. ——.]—Lotbiniere Lbr. Co. *v.* Fortin, [1927] 4 D. L. R. 167.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.

110 iv. ——.]—Raghunandan Nanu Kothare *v.* Hornasjee Bezonjee Bamjee (1926), I. L. R. 51 Bom. 342.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.

152 xvii. ——.]—Ideal Coal Co. *v.* Geddes (Sask.), [1929] 2 D. L. R. 588.—**CAN.**

Part III.—Creation and Duration of Partnership.

210. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

213. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

Add. Annotation :—As to (2) **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

Part IV.—Relations between Partners and Third Parties.

313a. —— —— **After attempted dissolution by other partner.**]—LAND *v.* BURTON (1935), 79 Sol. Jo. 180.

345a. ——.]—A. & B. partners as woollen drapers, A. receives money in the shop, & gives his note for it. Though no proof that this money was brought into stock, or used in trade; yet this note being given in the shop by one of the partners, it shall bind both; & though this note at law binds only the exor. of the surviving partner, yet in equity the creditor may follow the estate of the other.—LANE *v.* WILLIAMS (1692), 2 Vern. 277, 292; 23 E. R. 779, 789.

Annotations :—**Consd.** Devaynes *v.* Noble (1816), 1 Mer. 539. **Refd.** Bank of Australasia *v.* Breillat (1847), 6 Moo. P. C. C. 152.

403. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

449. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

520. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

556a. —— **Contract for work & labour.**]—Pltf. was directed by the captain of a vessel to repair it, & also to repair the fitting-up of the cabins for passengers; afterwards there was an agreement come to between the parties to the effect that deft. & the captain should become partners in the ultimate profits; deft. did not hold himself out that he would be liable for these repairs :—*Held :* deft. was not liable for the repairs to the vessel or to the cabin fittings.—ELLIS *v.* STEELE (1855), 25 L. T. O. S. 183.

572a. —— **Liability of retired partner—After proof by holder in bankruptcy of firm.**]—In 1927 pltf. became a partner in a firm carrying on business under the title of Samuel Dobree & Sons. While he was a partner the firm accepted a number of bills payable at various dates, & those bills eventually passed into the possession of defts. as holders for value. In Dec. 1928, before the majority of the bills had become due, pltf. retired from the partnership & a new partner was admitted in his place, the new firm so constituted taking over all the liabilities of the old firm. Before the outstanding bills had been paid the new firm became bkpt. Defts. as holders of the bills proved in the bkpcy. & received a small dividend, & they then brought an action against pltf. to recover from him the balance owing on the bills after credit had been given for the amount recovered in the bkpcy. proceedings. As pltf. was residing in France the action was begun in a French Ct., & judgment was obtained against him on the first of the outstanding bills, with the right to claim payment on the later bills when considered appropriate. Pltf. then brought this action in England, alleging that he had been induced to enter into the partnership by fraud, & claiming a declaration (*a*) that he had never become liable to defts. on the bills, or (*b*) that, if he ever was liable, he had been discharged from liability owing to the fact that defts. had elected to treat the new firm as their debtors in respect of the bills. An order was made that a preliminary issue should be tried to dispose of certain points raised in the pleadings, the issue in effect being whether the fact that defts. had proved in the bkpcy. of the new firm prevented them from now claiming against pltf. as a retired partner. The preliminary issue was tried by MACKINNON, J., who gave judgment for defts. :—*Held :* as there had not been an

PART III. SECT. 1, SUB-SECT. 1.

sa. *Firm as partner in another firm.*]—A firm cannot legally be a partner in another firm.—*Re* JAI DAYAL MADAN GOPAL (1932), I. L. R. 54 All. 846.—**IND.**

PART III. SECT. 3, SUB-SECT. 2.—B.

237 iii. *S. P.* ARCHIBALD *v.* MCNERHANIE (1899), 29 S. C. R. 564.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.—A.

sb. *What amounts to continuation.*]—The acts of a surviving partner in a firm of farmers in threshing & marketing grain grown before the death of the deceased partner are not a continuing of the firm's business within sect. 45 of Partnership Act, R. S. M., 1913, but the planting & harvesting of a new crop is such a continuing.—*Re* HEAD ESTATE (1932), 40 Man. L. R. 570.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—D.

sd. *Disclaimer—Whether alternative plea permissible.*]—CHHATTOO LAL MISSER *v.* NARAINDAS BAIJNATH PRASAD (1928), I. L. R. 56 Calc. 704.—**IND.**

PART IV. SECT. 1, SUB-SECT. 2.—F.

e i. —— ——.]—Defts., A. & B., were registered as partners carrying on the business of money-lending. A., the active partner, had from time to time borrowed money from M., giving as security promissory notes in the name of the partnership. M. sued A. & B. jointly on the promissory notes. A. did not appear. B. appeared & defended the action. The partnership between A. & B. did not contain any express authority to borrow money. A verdict was found for pltf. :—*Held :* as the partnership agreement did not give express authority to borrow money, & as the business of money-lending did not necessarily involve the borrowing of money so as to give an implied authority, the verdict should be set aside & a non-suit entered.—MANDELBERG *v.* ADAMS (1931), 31 S. R. N. S. W. 50; 48 N. S. W. W. N. 23.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 2.—G.

401 i. *Contract for tenancy—For partnership purposes—Possession not taken.*]—H. entered into a partnership with N. Desiring an office, N. signed on behalf of the partnership & in the partnership name a lease of property owned by pltf. N. told nothing of this to H. The firm never took possession of pltf.'s premises :—*Held :* there having been no occupation of the premises by the firm, & N. having had no authority to bind his partner, H. & the firm were not liable for the rent.—SECURITIES DEVELOPMENT CO., LTD. *v.* NOBLE & HODGINS, [1931] 4 D. L. R. 161; O. R. 749.

agreement between pltf. as retiring partner, the new firm, & defts. as holders of the bills, whereby defts. released pltf. from liability & agreed to treat the new firm as solely responsible on the bills, the mere fact that defts. had first proved in the bkpcy. of the new firm did not prevent them from subsequently recovering from pltf. the amount remaining due on the bills.—DE BEARN (PRINCE) *v.* LA COMPAGNIE D'ASSURANCES LA FEDERALE DE ZURICH (1937), 42 Com. Cas. 189.

590. *Add. Annotation :—Generally,* **Refd.** De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

609. *Add. Annotation :—***Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

631a. ——.]—CAMPBELL *v.* BAILLIE (1823), Coop. Pr. Cas. 503 ; 47 E. R. 622.

653. *Add. Annotation :—***Consd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

656a. —— ——.]—C., M., & N. carried on business under the name of J. K. & Sons ; & being indebted to A., C. retired from the partnership, & M. & N. agreed to liquidate all the concerns of the partnership. M. afterwards retired, & advertisements of the dissolutions of both partnerships were at the same time inserted in the *Gazette*. N. then took in a new partner, & the business was carried on in the original name of J. K. & Sons. A.'s account was transferred to the new firm, & he received accounts & payments from them ; but it did not appear that he ever saw the *Gazette*, or that either he or the new partner ever agreed to the substitution of the responsibility of the new firm for that of the old :—*Held :* the three original partners were not released from their responsibility, but were liable at the suit of A.—KIRWAN *v.* KIRWAN (1834), 2 Cr. & M. 617 ; 4 Tyr. 491 ; 3 L. J. Ex. 187 ; 149 E. R. 907.

*Annotations :—***Consd.** *Re* Waldon, *Ex p.* Bradbury (1839), 4 Deac. 202 ; Mills *v.* Boyd (1842), 6 Jur. 943 ; Harris *v.* Farwell (1851), 15 Beav. 31. **Refd.** Thompson *v.* Percival (1834), 3 L. J. K. B. 98 ; Oakeley *v.* Pasheller (1836), 4 Cl. & Fin. 207 ; Hart *v.* Alexander (1837), 2 M. & W. 484 ; Longmore *v.* Calvert (1859), 32 L. T. O. S. 310.

662. *Add. Annotations :—***Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

680. *Add. Annotation :—***Consd.** *Re* Fuller's Contract, [1933] Ch. 652.

718a. Action by partnership—In respect of goods supplied to partner before creation of partnership.]—Defts. contracted in writing with first pltf. to supply him with all the brass ashes produced at their mill at a certain fixed price, the ashes being agreed to be equal to a certain sample. Some ashes were delivered, & then pltf. took co-pltfs. into partnership, & ashes were delivered by defts. to the firm without any new or special contract. Neither the ashes supplied before the formation of the partnership nor those supplied afterwards were equal to sample, & pltfs. commenced an action to recover damages in respect of the breach of agreement :—*Held :* pltfs. could not recover in respect of the deliveries of ashes which took place prior to the formation of the partnership, but they could do so in respect of those which took place afterwards.—BOUNTY *v.* HEATON (1865), 13 L. T. 238.

782. *Add. Annotation :—***Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

794. *Add. Annotation :—***Consd.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

PART IV. SECT. 2, SUB-SECT. 3.—B. (b).

581 ii. —— —— *Liability of retired partner.*]—When after a dissolution of partnership the business is continued in the same firm name, a partner who has retired at the dissolution is liable upon a contract made by the new firm with a person who has previously dealt with the old firm, unless that person has received notice of the dissolution, even though public notice by advertisement has been given.—JWALADUTT R. PILLANI *v.* BANSILAL MOTILAL (1929), L. R. 56 Ind. App. 174.—**IND.**

PART IV. SECT. 2, SUB-SECT. 3.—B. (c).

582 xi. ——.]—Creditors of a partnership who had received notice that it had been dissolved & that the business was being continued by one of the dissolved firm & a new partner :—*Held :* by their course of dealing with the new firm to have adopted it as their debtors with respect to debts incurred both before & after the dissolution & thereby to have discharged the retiring partners from liability. Other creditors who were found neither to have received notice of the change nor to have so acted after it were held entitled to recover against the former partners.—BURNS & CO., LTD. *v.* MARCUS & DIMOR, PALMER & CO. *v.* DIMOR, MARCUS & DIMOR, [1931] 1 W. W. R. 169 ; 2 D. L. R. 1004 ; 43 B. C. R. 517.—**CAN.**

582 xii. ——.]—The agreement required by sect. 18 (3) of the Partnership Act in order to release a retiring partner must be an agreement between the creditor & each of the two partners ; agreement between any two of them would not be enough.—MCWHE *v.* CREBER, [1931] 1 D. L. R. 642 ; 66 O. L. R. 372 ; *affg.*, [1930] 3 D. L. R. 804 ; 65 O. L. R. 389 ; 11 C. B. R. 457.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

593 ii. ——.]—Where a partner dies before the institution of a suit against the partnership, & a decree is obtained against the firm alone in the firm name, the private estate of the deceased partner is not liable to be proceeded against in execution of such decree.—MAHOMED YUSUF *v.* BADSHA SAHIB (1929), I. L. R. 52 Mad. 885.—**IND.**

PART IV. SECT. 3, SUB-SECT. 1.

sl. *Insurances effected by firm—Firm turned into limited company.*]—*Held :* there was such a change of interest as to invalidate the insurances, in the absence of notification of the change to, & assent by, the insurance co.—PEUCHEN CO. *v.* CITY MUTUAL FIRE INSURANCE CO. (1891), 18 A. R. 446.—**CAN.**

so. *Death of partner—Third ... have express notice of dissolution.*]—Persons dealing with a firm, which is alleged to be dissolved by the death of a partner, are entitled to continue to deal with it on the same footing as before the death of that partner, unless they had express notice that the firm was so dissolved.—BABU *v.* DAYAMBAI (1935), I. L. R. 60 Bom. 5.—**IND.**

PART IV. SECT. 6, SUB-SECT. 1.—B.

737 ii. ——.]—*Held :* a partner with whom a contract has been personally made is entitled to sue upon that contract in his own name, without joining the co-partners as pltfs., although the benefit of the contract will result to the partnerships firm.—KAPURJI MAGNIRAM *v.* PANAJI DERICHAND (1928), 1. L. R. 53 Bom. 110.—**IND.**

PART IV. SECT. 6, SUB-SECT. 1.—C.

sm. *Medical partnership.*]—A partnership consisting of members of the College of Physicians & Surgeons of the Province of Alberta is entitled to sue in the firm name for professional services rendered by one of the members of the firm at deft.'s request.—CALGARY ASSOCIATE CLINIC *v.* JOHNSTON, [1931] 2 W. W. R. 717 ; 4 D. L. R. 247 ; 25 Alta. L. R. 470.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—A.

d i. ——.]—Defts. as named in the writ of summons herein were " L. P. & J. G., carrying on business as the W. L. Co. & the said W. L. Co." G. moved to have his name struck out of the style of cause or, alternatively, that pltf. be compelled to elect to proceed against defts. L. P. & J. G. or against deft. W. L. Co. ; the ground of the motion being that it was improper to sue defts. thus in their own names & also 'n their alleged partnership name : —*Held :* the action was properly constituted & the motion was, therefore, dismissed.—DOMINION BANK OF CANADA *v.* PALITTI, [1931] 3 W. W. R. 377 ; 45 B. C. R. 89.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—D.

799 ii. *Action in firm name—Whether representatives of deceased partner necessary parties.*]—In a suit against a firm in the firm name, the firm having been dissolved to pltf.'s know-

814. *Add. Annotation :*—*As to* (1) & (2) **Expld.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

816. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

817. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

821. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

822. *Add. Annotation :*—**Refd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

824. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

826. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

830a. —— ——.]—Pltf. brought an action for libel in respect of a statement published in the Melbourne *Argus*, a newspaper published in Melbourne & in London. Defts. were the Australian Press Assocn., who carried on business in London, & the firm of W. & M., proprietors of the *Argus*, who, as stated in the paper itself, were a Melbourne firm, but who had a branch office in London & carried on business there. W. & M., who were British subjects, were sued in the firm name. Pltf., in ignorance that W. & M. had a London branch, applied under R. S. C., Ord. 11, for leave to serve the writ on the firm of W. & M. out of the jurisdiction, which HUMPHREYS, J., granted, & the writ was served in Melbourne. W. & M. applied to CHARLES, J., to discharge the order, on the grounds that they had a place of business in this country, &, further, that the right allowed by R. S. C., Ord. 48a, r. 1, of suing two or more partners in the firm's name, did not apply to cases of service of a writ outside the jurisdiction under R. S. C., Ord. 11. CHARLES, J., made the order as prayed :—*Held :* there being an inter-relation between the various Orders of the Supreme Ct., & so between R. S. C., Ord. 11 & Ord. 48a, the right conferred by the former Order was not inapplicable to the case of a pltf. availing himself of the latter one. The order made by HUMPHREYS, J., was therefore right, & the service effected under it was good service.—HOBBS *v.* AUSTRALIAN PRESS ASSOCN., [1933] 1 K. B. 1 ; 101 L. J. K. B. 713 ; 147 L. T. 225 ; 48 T. L. R. 586 ; 76 Sol. Jo. 494, C. A.

858. *Add. Annotations :*—**Refd.** Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780 ; Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

859. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

Part V.—Relations of Partners inter se.

926. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

945a. —— **Of interest in partnership effects & profits.**]—WARTNABY *v.* SHUTTLEWORTH & TAYLOR (1837), 1 Jur. 469, L. C.

952a. —— ——.]—A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner ; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general partners ; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889 (c. 49), s. 5, asking that some fit & proper person might be appointed to act as arbitrator :—*Held :* only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re* FRANKLIN & SWATHLING'S ARBITRATION, [1929] 1 Ch. 238 ; 98 L. J. Ch. 101 ; 140 L. T. 403.

955. *Add. Annotation :*—**Distd.** *Re* Franklin & Swathling's Arbitration, [1929] 1 Ch. 238.

997. After this case add :—

Application of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—*See Re* FULLER'S CONTRACT, SETTLEMENTS, No. 3143f.

ledge before the institution of the suit by reason of the death of a partner, the suit as so framed does not include the legal representatives of the deceased partner, & it is necessary to add them as parties in order to obtain judgment against the private estate of the deceased partner, as opposed to mere judgment against the partnership assets.—MATHURDAS CANJI MATANI *v.* EBHRAHIM FAZALBHOY (1927), I. L. R. 51 Bom. 986.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.—A.

r i. ——.]—COLE *v.* REED (1914), 29 W. L. R. 786.—**CAN.**

r ii. —— *Assignment of obligation.*]—A partner is under obligation to account to his co-partners. This obligation cannot be assigned.—GHISHULAL & GANESHILAL *v.* GAMBHIRMAL PANDYA (1934), I. L. R. 62 Calc. 510.—**IND.**

r iii. —— *Construction of agreement.*]—DAVIS *v.* LOWRY (1912), 20 W. L. R. 839 ; 3 D. L. R. 157.—**CAN.**

b i. —— *Partner confidential agent of other partners.*]—GROSCH *v.* LOVERIDGE, SMITH *v.* LOVERIDGE, [1930] 1 D. L. R. 309 ; 64 O. L. R. 465 ; *affd.*, [1931] S. C. R. 142 ; 2 D. L. R. 502.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

917 ii. —— ——.]—Where a partner during the partnership, which was about to expire, received an offer for himself to negotiate for the renewal of a lease enjoyed by the partnership : —*Held :* he was under no obligation to accept the offer for the benefit of the partnership.—WEIZEL *v.* KAIN (1926), 27 S. R. N. S. W. 140 ; 44 N. S. W. W. N.

PART V. SECT. 7, SUB-SECT. 1.

c i. —— *Does not belong to individual partners.*]—SAWYER-MASSEY *v.* SCHLEY (1914), 29 W. L. R. 454.—**CAN.**

e i. —— *Delivery to Pool—One partner only member of Pool.*]—Pltf. & one B. were equal partners in a fishing business. B. was a member of the 'Fish Pool," under Manitoba Co-operative Associations Act, 1925, & had entered into the " Uniform Pool Contract " with it. Pltf. delivered fish to the Pool, & a receipt therefor was issued to him & B. :—*Held :* the fish in question was partnership property, which was delivered to the pool as such, *i.e.* as the property of pltf. & B., & its delivery must be held to have been governed by the Pool rules as stated in said pool contract. —KRIST-JANSON *v.* MANITOBA CO-OPERATIVE FISHERIES, LTD., [1931] 3 W. W. R. 743.—**CAN.**

1127. *Add. Annotation :*—**Consd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

1159. *Add. Annotation :*—**Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551.

1160. *Add. Annotation :*—**Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551.

1162a. Profits from underwriting syndicate—Clause negativing apportionment.]—By his will a testator declared that "all income arising from any part of my estate shall at all times be used & applied as income & no part thereof shall be added to capital & in particular all income received immediately subsequent to my death shall be treated wholly as income & shall not be apportioned." Testator was a member of three Lloyd's underwriting syndicates. It was not possible to ascertain what profits were made or what loss was suffered by a syndicate in any particular year until two further years had passed. A question arose as to how testator's interests in the syndicates were to be treated as between capital & income, testator having given the income of his residuary estate to his widow during her widowhood :—*Held :* (1) the profits from the syndicates were "income arising from any part of my estate" within the meaning of the will ; (2) the profits of the syndicates accrued at the end of each year, although they could not be ascertained until after two further years had passed. The profits so accruing up to the death of testator were to be treated as capital, & the profits so accruing subsequent to the death of testator were to be treated as income.—*Re* LYNCH-WHITE, SMITH *v.* LYNCH-WHITE, [1937] 3 All E. R. 551 ; 81 Sol. Jo. 628.

1189. *Add. Annotation :*—**Consd.** Naamlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S (1937), 42 Com. Cas. 200.

1192a. Interest on overdrawings.]—SULEMAN *v.* ABDUL LATIF, No. 1199a, *post.*

1199a. From date of final decree.]—The decree in a suit for dissolution of partnership & accounts should provide for payment of interest upon the amount due only from the date of the final decree by which the amount (if any) is found due, not from the date of the plaint.

A partner is not charged with interest in respect of overdrawings in the absence of special circumstances.—SULEMAN *v.* ABDUL LATIF (1930), 57 L. R. Ind. App. 245, P. C.

1201. *Add. Annotation :*—**Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551.

1211. *Add. Annotation :*—**Refd.** Gilford Motor Co. *v.* Horne, [1933] Ch. 935.

1219. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1242. *Add. Annotation :*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

1370. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll (1928), 98 L. J. K. B. 282.

1397. *Add. Annotation :*—*As to* (1) **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

1407a. Balance found to be due.]—DUNN *v.* CAMPBELL (1879), 27 Ch. D. 254 n.

Annotations :—**Apld.** Hampden *v.* Wallis (1884), 27 Ch. D. 251 ; Wanklyn *v.* Wilson (1887), 35 Ch. D. 180.

PART V. SECT. 7, SUB-SECT. 2.—A.

sb. *Membership in livestock exchange.*]—*Re* HENDERSON & RUDD ESTATE, [1931] 3 W. W. R. 142.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.—C. (a).

sc. *Consent of other partners—Effect of assignment without consent.*]—Where a partnership agreement provides for the consent of the other partners to a transfer of his share by one partner, the transfer without such consent is a nullity.—HARNAM SINGH *v.* KAPOOR SINGH (1932), 46 B. C. R. 195.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.—C. (c).

sd. *Whether bound by settlement of accounts—After date of assignment.*]—The assignee of the interest of a partner is not bound by a settlement of accounts of the partnership, made behind his back after the date of the assignment. —VEERAPPA CHETTY *v.* MUTHIAH CHETTY (1929), I. L. R. 52 Mad. 509.—**IND.**

PART V. SECT. 9, SUB-SECT. 1.

1091 i. *Right of contribution.*]—WALKER *v.* CORNELL, Cass. Dig. (2nd edn.) 595.—**CAN.**

se. *Advances due to defendant partner's default in contributing capital.*]—A. agreed with B. & C. to join them in contributing in equal shares the money required for a venture which B. & C. had agreed with D. to carry on & in which D. was to get one-third of the profits & stand one-third of the losses. In entering into the first-mentioned agreement neither the possibility of losses nor the amount of capital required was discussed. As money was required from time to time to carry on the business, A. failed to pay his share & B. advanced amounts in excess of B.'s one-third share. The venture resulted in a loss. D., on the termination of the business, did not, & admittedly was unable to, pay any part of the loss. A.'s exors. sued B. with respect to another claim, & B. counterclaimed for payment or a set-off of said excess amounts expended by him :—*Held :* A.'s liability to B. arose from time to time as B. made the advances & was not dependent either on the ultimate condition of the business or on D.'s fulfilling or failing to fulfil his agreement to pay part of the loss.—MCGOUGAN *v.* MACDONALD & MACAW (Man.), [1929] 3 W. W. R. 337.—**CAN.**

sx. *Effect of obtaining declaration of indemnity.*]—LUKIS, STEWART & CO. *v.* HUMPHREY, [1930] 4 D. L. R. 330.—**CAN.**

PART V. SECT. 10, SUB-SECT. 1.

sz. *Division of assets.*]—On the dissolution of a firm of three members carrying on a hotel & restaurant business they executed a quit claim deed under which two of them transferred to the third J. D. all their interest in the goods & chattels pertaining to the restaurant business, subject to the payment by him of the outstanding liabilities incurred with respect to said part of the partnership business, & he covenanted to assume & pay said liabilities :—*Held :* a proper construction of the deed did not show that it was intended that the two transferring partners should have a lien on the chattels as security for the payment by J. D. of the outstanding liabilities.—*Re* DIMOR, [1932] 1 W. W. R. 53 ; 45 B. C. R. 22.—**CAN.**

PART V. SECT. 11, SUB-SECT. 1.—B. (a).

sf. *Profits on sale of portion of individual share.*]—MITCHELL *v.* GORMLEY (1885), 9 O. R. 139 ; *affd.* (1886), 14 A. R. 55.—**CAN.**

PART V. SECT. 12, SUB-SECT. 3.—C.

1213 i. *Production of partnership documents—Grounds for refusal—Denial of partnership.*]—HARNAM SINGH *v.* KAPOOR SINGH (1927), 39 B. C. R. 485.—**CAN.**

PART V. SECT. 13, SUB-SECT. 5.—B.

1296 i. *Whether necessary.*]—An action for accounts cannot be brought in the firm name. Whether any account is taken during the subsistence of the partnership is a matter for the discretion of the ct.—SANDHAM *v.* SANDHAM BROS., [1933] 3 D. L. R. 292 ; O. R. 590.—**CAN.**

PART V. SECT. 13, SUB-SECT. 5.—C. (b).

e i. ——.]—The rule of English law that a mtgee. or an assignee of a partner cannot sue the other partners for accounts represents the law in India where there is no statutory provision to that effect.—MISTRY GOA PETHA *v.* N. H. MOOS (1931), I. L. R. 10 Pat. 792.—**IND.**

PART V. SECT. 13, SUB-SECT. 5.—H. (b).

1366 ii. ——.]—MOMPLE *v.* MOMPLE (1927), 48 N. L. R. 374.—**S. AF.**

PART V. SECT. 13, SUB-SECT. 5.—H. (d).

1378 i. *Denial of partnership—Onus of proof.*]—WONG *v.* HOU, [1928] 1 W. W. R. 480 ; 39 B. C. R. 425.—**CAN.**

1436. *Add. Annotation :*—**Consd.** Naamlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S (1937), 42 Com. Cas. 200.

1459a. Foreign firm—Branch office in England.]—Partnership Act, 1890 (c. 39), s. 23, applies to a foreign firm having a branch house of business in England.—BROWN, JANSON & CO. *v.* HUTCHINSON & CO., [1895] 1 Q. B. 737 ; 64 L. J. Q. B. 359 ; 73 L. T. 437 ; 43 W. R. 533 ; 11 T. L. R. 291 ; 14 R. 354, C. A. ; *subsequent proceedings*, [1895] 2 Q. B. 126.

1480a. ——.]—(1) Where it is not the object of a suit to obtain the dissolution of a partnership, but, on the contrary, to continue the partnership, it is not according to the practice of the ct. in the course of that suit to grant a receiver & manager. (2) Cases, however, may arise in which the conduct of deft. being such as to endanger the existence of the partnership concern, the ct. will appoint an interim receiver & manager.—HALL *v.* HALL (1850), 3 Mac. & G. 79 ; 20 L. J. Ch. 585 ; 17 L. T. O. S. 11 ; 15 Jur. 363 ; 42 E. R. 191, L. C.

Annotation :—As to (1) **Refd.** Medwin *v.* Ditcham (1882), 47 L. T. 250.

1496a. —— ——.]—HALL *v.* HALL, No. 1480a, *ante*.

1540. *Add. Annotation :*—**Consd.** Newport *v.* Pougher, [1937] Ch. 214.

1544a. —— ——.]—In an action for dissolution of partnership a receiver was appointed, who collected the assets & paid them into ct. In the course of the action deft. partner was adjudicated bkpt. & his trustee in bkpcy. added as a deft. The assets proved insufficient to pay the creditors in full. Judgment creditors then obtained a charging order on the fund in ct. & any moneys in the hands of the receiver in the form made in *v. Attrill* (1886), 34 Ch. D. 345. This order ended with the statement : "The intention of this ct. being to preserve to appcts. such legal rights as they would have had if the sheriff had seized under the execution & sold on this day." At a subsequent date both pltf.'s solr. & the solrs. of deft.'s trustee in bkpcy. obtained charging orders for their bills of costs under Solrs. Act, 1932 (c. 37), s. 69, on the fund in ct. :—*Held :* by EVE, J., (1) the solrs.' charging orders were properly made, as the assets had been recovered or preserved through their exertions, & these orders ranked before all other claims on the fund in ct. ; by the Ct. of Appeal, (2) the charging order in the form made in *Kewney* v. *Attrill* gave the judgment creditors priority over the general body of creditors ; (3) the passage declaring the intention of the order should be omitted from the form of order.—NEWPORT *v.* POUGHER, [1937] Ch. 214 ; [1937] 1 All E. R. 276 ; 106 L. J. Ch. 166 ; 156 L. T. 181 ; 53 T. L. R. 291 ; 81 Sol. Jo. 78, C. A.

1544b. —— **Whether giving priority over general creditors.**]—NEWPORT *v.* POUGHER, No. 1544a, *ante*.

1545. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

1580. *Add. Annotations :—Generally*, **Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461 ; Mitchell *v.* Alexander (1935), 79 Sol. Jo. 381.

1604. *Add. Annotation :*—**Consd.** Farey *v.* Cooper, [1927] 2 K. B. 384.

1610. *Add. Citation :—sub nom.* CARL BROS., LTD. *v.* WEBSTER, 52 W. R. 413.

1614. *Add. Citations :*—96 L. J. Ch. 361 ; 137 L. T. 409.

Add. Annotation :—**Refd.** *Re* Thomson, Thomson *v.* Allen, [1930] 13 Ch. 20.

Part VI.—Dissolution.

1645a. —— **Notice by one partner—Effect of.**]—By a deed of partnership between a father & his five sons it was provided, *inter alia :* "2. The partnership shall commence as from Oct. 11, 1923. The death or retirement of any partner shall not terminate the partnership. . . . 10. If any partner shall . . . do or suffer any act which would be a ground for the dissolution of the partnership by the ct. then he shall be considered as having retired." One of the sons, claiming that as no term had been fixed for the dura-

PART V. SECT. 13, SUB-SECT. 8.—C. (a).

sg. *Where existence of partnership disputed.*]—There is no rule of practice that, where in a suit for dissolution of a partnership the existence of the alleged partnership is denied, the ct. will not appoint an interim receiver unless the assets are in danger.—TATE *v.* BARRY (1928), 28 S. R. N. S. W. 330 ; 45 N. S. W. W. N. 83.—

PART V. SECT. 13, SUB-SECT. 9.—B. (e) ii.

r i. ——.]—A dispute having arisen between pltf. & deft. as to whether a partnership existed between them, pltf. brought an action to have the matter determined. Subsequently the parties agreed to refer the matter to arbn., & the arbitrator found that a partnership had existed between them, but that it had been dissolved. By his award the arbitrator directed that the goodwill, stock in trade, & all other assets of the business should belong to the pltf. absolutely, & that deft. was entitled to a certain sum of money for his share of the goodwill, stock in trade, & other assets of the business. The trade that had been carried on during the partnership was that of wholesale dealers supplying the retail trade with sweets, confectionery, etc. Deft. used to travel through the country soliciting orders from retail dealers for these goods. After the arbitrator had made his award deft. continued to travel through the country soliciting orders from retailers who had been customers of the firm before it was dissolved. Pltf. applied for an interlocutory injunction to restrain deft. from so doing :—*Held :* pltf. was entitled to an interlocutory injunction to restrain deft. from applying personally or by a traveller to any person who was at the date of the dissolution of the partnership a customer of the firm asking such customer to continue after the dissolution to deal with him, deft., or not to deal with pltf. ; but the restraint on deft. from applying as aforesaid by a traveller was to be in force only so long as deft. should carry on the business, either under his own name or any name introducing it, of a wholesale dealer in goods of the general class of those for which pltf. was at the date of the dissolution of the said p

I. R. 152.—IR.

tion of the partnership it was a partnership at will, gave notice of dissolution & brought an action for a declaration that the partnership had been dissolved, for an account & for an order that the partnership be wound up by the ct. :—*Held :* (1) upon a proper construction of the deed, the partnership could not be determined by a single partner, although he could determine the partnership as between himself & the other partners ; (2) the partnership was not a partnership at will, but one to continue, unless dissolved by the ct. or some other event, so long as two of the partners were still living & had not retired.—ABBOTT *v.* ABBOTT, [1936] 3 All E. R. 823 ; 81 Sol. Jo. 58.

1648. *Add. Annotation :*—**Refd.** Abbott *v.* Abbott, [1936] 3 All E. R. 823.

1654a. Death of partner sending notice before notice received—Date of dissolution of partnership.]—Where a partner sends by post a notice to the other partner to determine the partnership as from the date of the notice, & dies before the other partner receives the notice, the partnership is dissolved, not by the notice, but by the death of the partner sending it, inasmuch as the statutory dissolution by notice is not brought about until receipt of the notice. In such a case the surviving partner has the rights which by the terms of the partnership he is to have on the death of a partner during the partnership.—MCLEOD *v.* DOWLING (1927), 43 T. L. R. 655.

1670a. Partner sending notice of intention to dissolve partnership—Death before notice received by other partner.]—MCLEOD *v.* DOWLING, No. 1654a, *ante*.

SUB-SECT. 1.—COURTS HAVING JURISDICTION.

(Vol. XXXVI., p. 503.)

County court—Action for declaration & account—Denial of partnership.]—*See* COUNTY COURTS, No. 244a.

1744. *Add. Annotation :*—**Refd.** *Re* Davis & Collett, Ltd., [1935] Ch. 693.

1835. *Add. Citations :*—96 L. J. Ch. 65 ; 136 L. T. 238.

1841a. —— For share of " net profits "—Dissolution by death.]—Applt. & H. entered into partnership, the arts. providing that each partner was entitled to a salary & half the " net profits " during the term of the partnership, & that if either partner died the surviving partner was for five years to pay to the exors. a third of the " net annual profits." H. died, & the partnership was thereby dissolved :—*Held :* the expression " net profits." was not necessarily to be interpreted as having the same meaning in every part of the arts., & applt., in calculating the share of the net profits payable to the exors., was not entitled to deduct any salary for himself.—WATSON *v.* HAGGITT, [1928] A. C. 127 ; 97 L. J. P. C. 33 ; 138 L. T. 306 ; 44 T. L. R. 90 ; 71 Sol. Jo. 963, P. C.

1845. *Add. Annotation :*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

1899a. —— —— ——.]—The rule that in the bkpcy. of a firm the exors. of a deceased partner may not prove in competition with the creditors of his surviving partners may be inapplicable when the share of the deceased partner has been ascertained before the adjudication in bkpcy., & no joint liability can be shown to exist. On the death of a partner in a London firm a sum was found due to his estate from the surviving partners in respect of his share in the business, & certain claims & accounts between the deceased partner & another firm in Dundee, of which during his life he was also a partner, & which firm was after the death of the deceased partner a creditor of the London firm, were also compromised & settled by his exors. before the bkpcy. of the London firm :—*Held :* the proof of a debt put in by the deceased partner's exors. in the bkpcy. of the London firm ought to be admitted.—*Re* DOUGLAS, *Ex p.* DOUGLAS' (JAMES) EXECUTORS, [1930] 1 Ch. 342 ; 142 L. T. 379 ; [1929] B. & C. R. 76 ; *sub nom.* *Re* DOUGLAS, DOUGLAS & HILL *v.* MYERS (J. E.), 99 L. J. Ch. 97.

PART VI. SECT. 1, SUB-SECT. 3.

sl. *Death of partner intestate—Disposal of interest in partnership assets.*]—*Ex p.* SESSIONS (1869), 2 Ch. Ch. 360.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 8.

m i. —— *Construction of agreement.*]—ARMSTRONG *v.* WHITTEN, [1932] 1 W. W. R. 818 ; 40 Man. L. R. 284 ; 3 D. L. R. 38.—**CAN.**

sm. *Transfer of partnership assets—Subject to payment of existing liabilities.*]—KERR *v.* BRADFORD (1876), 26 C. P. 318.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

sg. *Proceedings in county court—Practice.*]—Proceedings for the dissolution of a partnership within the competence of the county ct. by virtue of Partnership Act, R. S. O., 1927, ss. 1, 35, cannot be initiated in that ct. by an originating notice of motion.—BENDJY *v.* MUNTON, [1932] 1 D. L. R. 534 ; O. R. 123.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—C. (b) ii.

1731 i. *Violation of articles—Promotion of companies by chartered accountant.*]—The financing & promotion of cos. does not fall within the scope of a chartered accountant's business as such, & the doing of such work by one partner does not constitute, by itself, a breach of the partnership agreement entitling the other partner to a dissolution of the partnership.—PETTIT *v.* COX (1928), 54 N. B. R. 246.—**CAN.**

sn. *Refusal to accept business—Reasonable refusal.*] — Where on partner is in charge of a business, his refusal to accept certain business on the ground that it would not be profitable, will not afford a ground upon which dissolution should be granted, if he has honestly exercised his best judgment, even if he were wrong in the conclusion he arrived at.—PETTIT *v.* COX (1928), 54 N. B. R. 246.—**CAN.**

PART VI. SECT. 4.

sp. *Registration of memorandum of dissolution—Under Partnership Registration Act, R. S. O., 1914 (c. 139)—Effect of.*]—DOMINION SUGAR CO. *v.* WARRELL, [1927] 2 D. L. R. 198 ; 60 O. L. R. 169.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.

r i —— *Rights in respect of asset received after dissolution.*]—HIOUX *v.* COTE (1933), 6 M. P. R. 421.—**CAN.**

Part VII.—Limited Partnership.

1909a. Bankruptcy of sole general partner—What debts provable.]—Where an individual who is the sole general partner in one or more limited partnerships is adjudged bkpt., all the debts & liabilities owing by such limited partnerships at the date of the receiving order are provable in bkpcy., whether the firms are mentioned in the proceedings or not. Accordingly, if the bkpt. be the sole general partner in two limited partnerships, namely, the "A" firm & the "B" firm, it makes no difference if there are successive bkpcies., in one of which only the A. firm & in the other of which only the B. firm are mentioned in the proceedings. Creditors will be entitled to prove in the same way as they are entitled to prove against an individual in successive bkpcies. *Qu.:* whether, for purposes of administration, the trustee ought not to distinguish between the assets of the respective firms & the bkpt.'s own separate estate.—*Re* BARNARD, MARTIN'S BANK, LTD. *v.* TRUSTEE, [1932] 1 Ch. 269; 101 L. J. Ch. 43; 146 L. T. 191; [1931] B. & C. R. 73.

PATENTS AND INVENTIONS.

Part I.—Definitions.

1. Before this case add :—
Statutory definition—Includes patents of addition.]—*See Re* Maschinenfabrik Augsburg-Nurnberg A C. Patents (1929), 47 R. P. C. 193.

8. *Add. Annotation :—As to* (2) **Distd.** Walsh *v.* Albert Baker & Co. (1898), Ltd. (1930), 47 R. P. C. 283.

Part III.—"True and First Inventor."

17. *Add. Annotation :—As to* (1) **Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

25. *Add. Annotation :—As to* (1) **Consd.** Mullard Radio Valve Co. *v.* Philco Radio & Television Corpn. of Great Britain, Ltd. (1935), 52 R. P. C. 261.

39. *Add. Citations :*—41 T. L. R. 545 ; *affd.* (1927), 96 L. J. Ch. 470 ; 137 L. T. 794 ; 43 T. L. R. 717 ; 44 R. P. C. 453, C. A.
Add. Annotation:—**Reld.** Mackenzie-Kennedy *v.* Air Council 1927), 138 L. T. 8.

45. *Add. Annotation :*—**Consd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

48. For " 86 L. J. Ch. 468 " read " 86 L. J. Ch. 486."
Add. Annotation :—**Reld.** Adamson *v.* Kenworthy (1931), 49 R. P. C. 57.

49a. —— ——.]—Deft. was a leading draughtsman in the employ of pltfs. In 1924 deft. was instructed by pltfs. to design an unlubricated crane brake, a branch of work upon which deft. had not been directly engaged. The design he produced was tested but was unsatisfactory. In 1926 deft. was again instructed to design such a brake, & did in fact design a brake incorporating a resilient disc which proved to be satisfactory. This design was patented in deft.'s name. Pltfs. claimed that deft. was a trustee for them of his interest in the patent & claimed a declaration to this effect. Deft. alleged that the successful feature of the resilient disc had been evolved solely by him in 1918 outside the scope of his duties, & claimed to be entitled to the beneficial interest in the patent :—*Held :* it is the duty of a draughtsman when instructed by his employer to prepare a design to use such skill & inventive faculty as he may possess in order to produce the best possible design within his ability, & in this case deft. evolved the invention which was the subject of the patent as a result of instructions given to him by pltfs. & in the discharge of his duty. The declarations & injunction asked for were granted, & an order upon deft. to assign the patent to pltfs. was made with costs.—ADAMSON *v.* KENWORTHY (1931), 49 R. P. C. 57.
Annotation :—**Consd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

49b. —— ——.]—Deft., M., was employed by pltf. co. as chief draughtsman for the purpose (*inter alia*) of developing a gyroscopic turn indicator for use on aeroplanes. The terms of his employment contained a specific covenant, namely, " that all work done whilst in the service of said co. was to be secret & confidential & the property of said co." In the course of developing the instrument certain problems arose & discussions took place as to proposed solutions of them, in which deft., M., took part. Before an instrument embodying features of design & construction, made possible as a result of the solution of the various problems, was put into production by pltf. co. deft., M., left the service of said co. Deft., M., together with one Pierce, an ex-employee of pltf. co., promoted deft. co., which began to incorporate the said features of design & construction in a gyroscopic turn indicator which was offered for sale & sold in competition with the instruments made & sold by pltf. co. Deft., M , also applied for letters patent, & he filed provisional specifications describing said features of design & construction. Deft., M., alleged that the features of design were not novel, that they had not been evolved by pltf. co., & that knowledge of them had not been acquired by him in the course of his employment by pltf. co. Deft., M., also stated that he had not disclosed or made any wrongful use of any confidential information acquired by him in the course of his employment by pltf. co. :—*Held :* letters patent granted in accordance with the first provisional specification filed by deft., M., would, if valid, enable M. to prevent pltf. co. from making gyroscopic turn indicators in accordance with their present design ; the second provisional specification filed by deft., M., included matters discussed with him while he was in pltf. co.'s employ, & letters patent granted in accordance with this provisional specification would, if valid, enable M. to prevent pltf. co. from making use of one at least of the matters discussed with him while he was in their employ ; deft., M., must be assumed to know what he was claiming as his invention, & that he could only claim what he sought to protect on the ground that it was secret & confidential ; it was not unfair to treat deft. M.'s provisional specifications as an admission by him of such

fact; further, the gyroscopic turn indicators made by deft. co. were made substantially in accordance with information & knowledge acquired by deft., M., while he was in pltf. co.'s employ; the designing of a gyroscopic turn indicator by deft., M., with assistance, suggestions, & advice from pltf. co., was, from the start of M.'s employment by pltf. co., a confidential matter; deft., M. was not at liberty, while he remained in the employ of pltf. co., to disclose to any one difficulties which had arisen in the manufacture of gyroscopic turn indicators nor the methods discussed, used, or proposed to be used for overcoming such difficulties; deft., M., was not at liberty to make drawings embracing matters discussed with him while he was in pltf. co.'s employ, & while still in their employ to disclose such drawings to any third party; & deft., M., could not better his position by terminating his employment with pltf. co. An injunction was granted; & delivery up of all turn indicators which would constitute a breach of the injunction was ordered. A declaration was made that pltfs. were entitled to the benefit of the applications for grant of letters patent covered by the provisional specifications filed by deft., M., subject to certain limitations, together with costs.—REID & SIGRIST, LTD. *v.* MOSS & MECHANISM, LTD. (1932), 49 R. P. C. 431.

62. *Add. Annotation:*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

63. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

65. *Add. Annotation:*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

67. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

Part IV.—Subject-Matter of Patent.

97. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

109. *Add Annotations:*—**Refd.** *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407; *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

115. *Add. Annotation:*—**Refd.** *Re* Battig's Patent (1929), 49 R. P. C. 415.

116. *Add. Annotation:*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

116a. —— —— **Selective cultivation of oil-seed.**]—*Re* RAU G.m.b.H. PATENT (1935), 52 R. P. C. 362.

116b. —— —— **Stabilising electric arc.**]—*Held:* there was no evidence to support a finding that the stabilisation of the arc which resulted from the combination must necessarily have been foreseen by any person skilled in the art without the necessity for practical experiment & observation.—*Re* JOHNSON'S APPLICATION FOR A PATENT (1934), 52 R. P. C. 61.

117. *Add. Annotations:*—*As to* (2) **Consd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 707; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495. **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

121. *Add. Citation:*—*on appeal, sub nom.* HENNEBIQUE *v.* COWLIN (WILLIAM) & SONS (1909), 26 R. P. C. 280, H. L.

128a. **Subjection of known material to known process.**]—Subjection, for the first time, of a known material to a known process may support an application.—*Re* I. G. FARBENINDUSTRIE AKTIENGESELLSCHAFT, APPLICATION FOR A PATENT (1928), 46 R. P. C. 271.

PART III. SECT. 2, SUB-SECT. 2.

f. *Varied*, [1927] S. C. 597; 44 R. P. C. 175.

PART IV. SECT. 1, SUB-SECT. 3.—C. (a).

k i. ——.]—A patented process to be valid must denote ingenuity of invention. It is not enough, in order to constitute invention, to disclose something which has been but dimly seen before.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

m i. ——.]—There is no invention in a mere adaptation of an idea in a well-known manner for a well-known, or clear purpose without ingenuity, though the adaptation may effect an improvement which may supplant an article already on the market.—VAN HEUSEN, PRODUCTS INC. *v.* TOOKE BROS., LTD., [1929] Ex. C. R. 89.—**CAN.**

sa. *Not mere mechanical skill.*]—*Held:* the lantern in question was new & useful, & the changes made in the ventilation in the lantern to control the quantity & direction of the air currents was not the result of mere mechanical skill, but required thought, study & an inventive mind, & constituted invention.—ADAMS & WESTLAKE CO. *v.* E. T. WRIGHT, LTD., [1928] Exch. C. R. 112; *affd. sub nom.* E. T. WRIGHT, LTD. *v.* ADAMS & WESTLAKE CO., [1929] 4 D. L. R. 1061; S. C. R. 81.—**CAN.**

sc. *Change of form.*]—The invention claimed is for a radiator for heating purposes. The ct. found that, at best, if pltf. had added to the prior art it was merely the product of that mechanical skill which normally results from habitual & intelligent practice, & was not invention:—*Held:* it is not enough that a thing should be new in the sense that in the shape or form in which it is produced it shall not have been known before, & that it shall be useful, but it must, under the Patent Act, amount to an invention or discovery. A change of form within the domain of mere construction is not invention.—MAUCK *v.* DOMINION CHAIN CO., LTD., [1933] Ex. C. R. 120.—**CAN.**

sf. *Simplicity.*]—Narrowness & simplicity of invention will not invalidate a patent.—R. *v.* SMITH INCUBATOR CO. & BUCKEYE INCUBATOR CO., [1936] Ex. C. R. 105; *revsd.* [1937] S. C. R. 238.—**CAN.**

sh. *General commercial adoption.*]—Evidence of general commercial adoption of a certain device is not conclusive of invention.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* CROSLEY RADIO CORPN., [1935] Ex. C. R. 190; [1936] 1 D. L. R. 508; *affd.*, [1936] S. C. R. 551; 3 D. L. R. 737; 6 F. L. J. (Can.) 163.—**CAN.**

si. *Application of principle.*]—The patents in suit, infringement of which was claimed by pltfs., were for methods of severing package wrappers. The ct. found that there was no subject-matter in the patents & dismissed the action:—*Held:* when a principle is not new, a patent for a method of applying it only secures to the patentee protection in respect of the particular method specified, & the use of different methods of carrying the same principle into effect cannot be restrained.—IMPERIAL TOBACCO CO. OF CANADA, LTD. & WRIGLEY JR. CO., LTD. *v.* ROCK CITY TOBACCO CO., LTD., [1936] Ex. C. R. 229; [1937] 2 D. L. R. 11 *affd.*, [1937] S. C. R. 399.—**CAN.**

sq. *Mere adoption of method not invention.*]—It is not invention to adopt a method to accomplish a result when that method is simply a case of engineering judgment or skill.—PORTER & MACGLASHEN *v.* TORONTO CORPN., FOUNDATION CO. OF ONTARIO, LTD. & TORONTO IRON WORKS, LTD., [1936] Ex. C. R. 217; [1937] 1 D. L. R. 745.—**CAN.**

Add. Annotation :—**Refd.** Adelmann & Ham Boiler Corpn. *v.* Llanrwst Foundry Co. (1928), 45 R. P. C. 413.

138. *Add. Annotations :*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

142. *Add. Annotation :*—**Refd.** British United Shoe Machinery Co. *v.* Gimson Shoe Machinery Co. (1928), 45 R. P. C. 290.

147. *Add. Annotation :*—**Refd.** Parkes Samuel & Co., Ltd. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

148. *Add. Citation :*—*affd.* (1912), 29 R. P. C. 656, C. A.

149. *Add. Annotation :*—*As to* (3) **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

162. *Add. Annotations :*—*As to* (3) **Consd.** British Thomson-Houston Co. *v.* Metropolitan Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495. *Generally*, **Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

163. *Add. Annotation :*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

172. *Add. Annotation :*—*As to* (2) **Refd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

187. *Add. Annotation :*—*As to* (2) **Refd.** Rondo Co., Ltd. *v.* Gramophone Co. (1929), 46 R. P. C. 378.

192. *Add. Annotations :*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; Heap Samuel & Son *v.* Bradford Dyers' Assocn. (1929), 46 R. P. C. 254.

207. *Add. Annotations :*—*As to* (2) **Refd.** Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287; N. V. "Splendor" Gloeilampen Fabrieken *v.* Omega Lampworks, Ltd. (1933), 50 R. P. C. 393.

210a. ——.]—*Held :* the patentee had obtained a result superior to any other at the date of the patent, & there was good subject-matter & the patent was valid.—Rondo Co., Ltd. *v.* Gramophone Co., Ltd. (1929), 46 R. P. C. 378.

222a. ——.]—The claim was as follows: "In a coin-controlling vending machine of the kind set forth, means for arresting the legend displaying wheels independently of the automatic stop mechanism, wherein the usual, automatically operated, locking pawl is divided intermediately of the length of its normally upright end position, the two parts being pivoted together about a transverse axis, stops being provided on the pawl lever so as to limit the pivotal movement of the outer portion, & wherein said outer portion is connected by lever, or link & lever, mechanism with a key or other handle outside the mechanism so as to be adapted when said key is depressed, to engage with the teeth of the star wheel." In an action for infringement of the patent it was contended on behalf of pltfs. that the patented invention, when incorporated in a known type of machine, changed a game of chance into a game of skill, & that defts. had used a modified form of pltfs.' invention :—*Held :* the patentees' idea was not new, & no problem had had to be solved in carrying it into effect, & that all that the patentees had done was to effect a perfectly natural & ordinary workshop alteration in a known machine, & that the patent was bad for want of subject-matter—Lennards Perfect Skill Control Co., Ltd. *v.* Holloway & Sampson Novelty Co., Ltd. (1929), 46 R. P. C. 353.

231. *Add. Annotation :*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

246. *Add. Annotation :*—**Refd.** Parkes Samuel & Co. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

248. *Add. Annotation :*—**Refd.** *Re* De Havilland's Patent (1931), 49 R. P. C. 438.

249a. ——.]—Letters patent were granted for "Improvements in or relating to boot or shoe end stiffeners." Claim 1 of the specification was as follows: "As an article of

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PART IV. SECT. 1, SUB-SECT. 3.—C. (b).

133 iii. ——.]—Guettler *v.* Canadian International Paper Co., [1928] 2 D. L. R. 801; [1928] S. C. R. 438; *affg.*, [1927] 4 D. L. R. 517; [1928] Ex. C. R. 21.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

153 i. —— —— *Unless coupled with discovery of mode of putting principle into practice.*]—A principle cannot be the subject of a patent, & a claim to every mode or means of carrying a principle into effect amounts to a claim for the principle itself. A patent may be granted for a principle coupled with a mode of carrying the principle into effect, but such principle may be carried into effect under several patents operating in different ways & by different means.—Grissinger *v.* Victor Talking Machine Co. of Canada, Ltd., [1929] Ex. C. R. 24; *affd.*, [1931] S. C. R. 144; [1930] 4 D. L. R. 617.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—B. (b).

176 iii. —— ——.]—Prentice Manufacturing Co. *v.* Kenny, [1931] 2 D. L. R. 465; Ex. C. R. 24.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—B. (c).

185 ii. —— ——.]—Mailman *v.* Gillette Safety Razor Co. of Canada, [1932] S. C. R. 724.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—A.

193 vii. ——.]—Guettler *v.* Can. Internat'l Paper Co., [1927] 4 D. L. R. 517.—**CAN.**

193 viii. ——.]—Where a specific machine already exists producing certain effects, & additions have been made to such machine to produce the same effect in a better manner :—*Semble :* a patent cannot be taken for the whole machine, but for the improvement only.—Sherbrooke Machinery Co., Ltd. *v.* Hydraulic Co., Ltd., [1927] Exch. C. R. 114.—**CAN.**

193 ix. ——.]—Every trifling improvement is not invention, & the industrial public should not be embarrassed by patents for every small improvement. A slightly more efficient way of doing a thing, small changes in size, shape, degree, or quality in a manufacture or machine, even assuming novelty, is not invention. More is necessary to justify a monopoly.—Lightning Fastener Co., Ltd. *v.* Colonial Fastener Co., Ltd. & Prentice (G. E.) Manufacturing Co. (No. 13633), [1932] Ex. C. R. 101.—**CAN.**

193 x. ——.]—*Held :* factory improvements, the little improvements & betterments in technique that skilled workmen devise, because they are skilled, should not be the subject of monopoly & do not constitute subject-matter for a patent.—Gillette Safety Razor Co. of Canada, Ltd. *v.* Pal Blade Corpn., Ltd. & Metropolitan Stores, Ltd., [1932] Ex. C. R. 132; *affg.*, [1933] S. C. R. 142; 2 D. L. R. 29.—**CAN.**

xa. *Extent of protection—Means used.*]—The invention in question is for an improvement in locking devices, for use on separable slider fasteners :—*Held* as the essence of the invention was the production of an old result, even though there is invention, the patentee is only protected in respect of the particular means he sets forth in his specification, & in such circumstances it may not be infringement to achieve the same result by using other means, by a different device.—Lightning Fastener Co., Ltd. *v.* Colonial Fastener Co., Ltd. & G. E. Prentice Manufacturing Co., [1932] Ex. C. R. 127; *affd.*, [1933] S. C. R. 377.—**CAN.**

manufacture, a thermoplastic impregnated-fabric toe puff which prior to its incorporation in a shoe upper has had flexibility imparted to its back margin by hot pressure in a die having a bevelled marginal portion, so as to expel impregnant from said margin by graduated pressure thereon & to leave the surface of the puff substantially free from local excess of impregnant." Claim 5 was as follows: "In the manufacture of a toe puff of the kind claimed in Claims 1, 2, 3, or 4 the use of a die & an advancing pressure which causes a pinch to travel over the margin or margins to be treated":—*Held:* there was a problem to be solved, namely, to produce a thermoplastic puff with a flexible back margin which was produced gradually in the sense that there was a gradual & practically imperceptible descent from the thick portion of the puff to the outer margin & prior to the patent the nearest to which any one had got was a double operation process, & there was an inventive step & the patent possessed subject-matter.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* PEMBERTON (ALBERT) & CO. (1930), 47 R. P. C. 134.

281. *Add. Annotation:—As to* (1) **Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

284. *Add. Annotation:—Generally,* **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

285. *Add. Annotation:*—**Consd.** Mullard Radio Valve Co. *v.* Philco Radio & Television Corpn of Great Britain, Ltd., [1936] 2 All E. R. 920.

299. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

302. *Citation:*—For "14 L. R. 487, H. L.," read "14 T. L. R. 487, H. L."

308a. ——.]—*Held:* the applying to a ham boiler of a rack & catch was the addition of something which in itself had no novelty, & the patent was invalid for want of subject-matter.—ADELMANN & HAM BOILER CORPN. *v.* LLANRWST FOUNDRY CO. (1928), 45 R. P. C. 413.

308b. ——.]—*Held:* (1) the first claim as to an apparatus was so vague as to be bad; (2) a combination claimed in the second claim did not produce a new result, & was merely the use successively of two pieces of apparatus, neither of which was patentable, & did not constitute a patentable combination, but was mere juxtaposition.—HANKS *v.* COOMBES (1928), 45 R. P. C. 237, C. A.

308c. ——.] — JOHN WRIGHT & EAGLE RANGE, LTD. *v.* GENERAL GAS APPLIANCES, LTD. (1928), 46 R. P. C. 169, C. A.

308d. ——.]—In 1930 letters patent were granted in respect of "improvement in or connected with hinged flaps for furniture, walls or supports." The claim was as follows: "A combined hinge & stay for use with fold down flaps of articles of furniture in combination with means on which the stay slides for holding the flap in the horizontal or nearly horizontal position, comprising a butt hinge having one member longer than the other & securable to the flap, & to which longer member or a projecting piece thereon is pivotally connected a slotted stay bar which slidably engages a headed pin projection or a screw, the smaller member of the hinge being secured to a shelf or some horizontal part of the article to which the combined hinge & stay is to be applied, the headed pin or the screw being secured to some vertical part of the structure, as set forth." In 1933 pltfs. commenced an action for infringement of the patent, claiming the usual relief, the alleged infringement being a similar device but in which the stay bar was solid instead of slotted. Defts. denied infringement & counterclaimed for the revocation of the patent:—*Held:* the device was a mere combination of well-known integers & accordingly the patent was invalid; & further, it

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PART IV. SECT. 1, SUB-SECT. 5.—B.

250 iv. *affd.*, [1928] 2 D. L. R. 448; [1928] S. C. R. 8.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.—A.

270 xx. —— ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

270 xxi. —— ——.]—Though the action & properties of each constituent of a chemical composition or mixture was known, where a new formula has been made known & the constituents have been so combined as to overcome difficulties or disadvantages in known herbicides, such combination is patentable. A chemical compound intended for the accomplishment of a specific purpose, which has never before been known, used, or published within the meaning of the Patent law, may be patented, provided one may assume some degree of skill & ingenuity, or the exercise of intelligent research & experiment successfully directed to a particular purpose or end.—CHIPMAN CHEMICALS, LTD. *v.* FAIRVIEW CHEMICAL CO., LTD., [1932] Ex. C. R. 107.—**CAN.**

287 i. *Ambit of protection.*]—Where each element in a combination functions with all the other elements for the purpose of attaining a result, & when one of the elements is removed from the combination the usefulness of all disappears, then such a combination is a true combination within the meaning of patent law, whereas in a mere aggregation, if any one element is removed, the remaining elements would continue to function.—J. O. ROSS ENGINEERING CORPN. & ROSS ENGINEERING OF CANADA, LTD. *v.* PAPER MACHINERY, LTD. & HELLSTROM, [1932] Ex. C. R. 238; *affd.*, [1933] 3 D. L. R. 241.—**CAN.**

287 ii. *Ambit of protection.*]—The two patents in suit related to electric signalling & particularly to signalling over ocean cables. The ct. found that there was no infringement & :—*Held:* on a true construction of the patents, the monopoly claimed must be limited to the precise combination described, & if the claims purport to go beyond this, then such claims, if not the patents themselves, would be void. These were not cases where the doctrine of equivalency applies.—WESTERN ELECTRIC CO. INCORPORATED & NORTHERN ELECTRIC CO., LTD. *v.* BALDWIN INTERNATIONAL RADIO OF CANADA, LTD., [1934] Ex. C. R. 132; *affd.*, [1934] S. C. R. 570; 4 D. L. R. 129.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.—B. (a).

292 iv. ——.]—Patent for a loud speaker. Previous to this patent the best loud speakers had a frequency range of somewhere from 300 cycles to about 2,500 cycles, which meant that the overtones were not reproduced & the tones of high & low pitch were distorted or not faithfully reproduced. By certain structural changes in the sound box, the present invention overcomes these defects. With it a frequency response as low as 60 cycles & good response as high as 4,000 cycles can be obtained. Between 4,000 & 6,000 cycles there is slightly reduced response, & a useful response as high as 8,000 cycles, thus permitting the overtones to be reproduced, giving a faithful reproduction of the tones of high pitch and a more uniform amplitude:—*Held:* the invention in question being for a new & valuable loud speaker, structurally & operatively different from anything which preceded it, & giving much more satisfactory results, such invention disclosed ingenuity & was patentable. Even if all elements in a combination are old, where the combination produces an old result or object in a more convenient, cheaper, or more useful way, it is proper subject matter for a patent assuming there is evidence of ingenuity or skill in the production of such combination.—BALDWIN INTERNATIONAL RADIO CO. OF CANADA, LTD. *v.* WESTERN ELECTRIC CO. INC. & NORTHERN ELECTRIC CO., LTD., [1934] S. C. R. 94; 1 D. L. R. 369.—**CAN.**

292 v. ——.]—A combination of known articles does not give rise to subject-matter for letters patent.—HORTON *v.* CENTRAL SHEET METAL WORKS, [1935] 2 D. L. R. 760; 49 B. C. R. 303.—**CAN.**

was held that it was an essential part of pltf.'s invention that the stay should be slotted & that deft.'s device did not infringe the patent. The action was dismissed with costs & an order for revocation of the patent was made.—DOCTORS (SOLOMON) *v.* WARSHAWER & SON, LTD. (1934), 51 R. P. C. 385.

311a. —— ——.]—In 1925 Letters Patent were granted in respect of "Improvements in Garden Shears." Claim 1 was as follows: "A garden shears with a straight knife edged blade & an abutment blade against which the cutting blade beds when the shears are closed, the serial blades being pivoted together on an axis offset in relation to the line of the knife edge so that a drawing cut is obtained in operating the shears." In 1935 pltfs. commenced an action for infringement of the patent, claiming the usual relief. Defts. denied infringement & alleged that the patent was invalid by reason of anticipation & lack of subject-matter & counterclaimed for revocation of the patent:—*Held:* though none of elements of the invention taken singly was new, there was no anticipation of the combination, & the evidence of the inventor himself as to how he evolved the invention, & the evidence of commercial utility established the fact that the invention was not obvious, & the patent was accordingly valid & infringed. There was judgment for pltf. with costs, & a certificate of validity was granted.—HOWALDT, LTD. *v.* CONDRUP, LTD. (1936), 54 R. P. C. 121.

315. *Add. Annotations:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

317. *Add. Annotation:*—**Consd.** R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 53 R. P. C. 167.

325. *Add. Annotation:*—**Refd.** Hanks *v.* Coombes (1928), 45 R. P. C. 237.

327. *Add. Annotation:*—**Refd.** Hanks *v.* Coombes

329. *Add. Annotation:*— **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

335. *Add. Annotation:*—**Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

336. *Add. Annotations:*—**Refd.** Jones & Attwood *v.* National Radiator Co. (1928), 45 R. P. C. 71; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

337. *Add. Citation:*—*affd.*, 41 R. P. C. 604, C. A.

339. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

346. *Add. Annotations:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

349. *Add. Annotations:*—**Refd.** Safveans Akt. *v.* Ford Motor Co. (England) (1926), 44 R. P. C. 49; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

351. *Add. Annotation:*—**Refd.** *Re* Application (1928), 46 R. P. C. 321.

351a. —— **If giving substantial advantage to all selected members.**]—(1) Selection patents do not differ in their nature from other patents, but they must be based on some substantial advantage to be gained by the use of the selected members, the whole of the selected members must possess this advantage this advantage must be of a special character peculiar to the selected group.

(2) Amendments which sought to exclude certain groups of bodies altered the basis of the selection & the patents would then claim an invention substantially different from that originally claimed, & the amendments were therefore inadmissible.—*Re* I. G. FARBENINDUSTRIE PATENTS (1930), 47 R. P. C. 289.

Annotation:—As to (1) **Consd.** *Re* Compagnie Centrale des Emeris et Produits a Polir for Letters Patent No. 343,970 (1933), 52 R. P. C. 167.

351b. Conditions necessary for grant.]—The considerations laid down by MAUGHAM, J., in *Re I. G. Farbenindustrie A.-G.'s Patents*, 47 R. P. C. 289, at p. 322, line 45, as being those on which a selection patent must depend for its validity apply with equal force when the question under consideration is whether a patent shall be granted or not.—*Re* COMPAGNIE CENTRALE DES EMERIS ET PRODUITS A POLIR FOR LETTERS PATENT NO. 343,970 (1933), 52 R. P. C. 167.

361. *Add. Annotations:*—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105; Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Wright (John) & Eagle Range *v.* General Gas Appliances (1928), 46 R. P. C. 169; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

365. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

372. *Add. Annotation:—Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

383. *Add. Annotation:*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

390. *Add. Annotations:—As to* (1) **Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259. *Generally*, **Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

PART IV. SECT. 1, SUB-SECT. 7.—B. (c).

323 vii. ——.]—A new combination of old elements is not a patentable invention simply because it is useful & possesses advantages not produced before. The patent in question was held invalid because the improvement for which it was granted did not, having regard to the prior state of knowledge, require such exercise of the inventive faculty as would justify the granting of a monopoly.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD. & G. E. PRENTICE MANUFACTURING CO., [1933] S. C. R. 371; 3 D. L. R. 342.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 9.—A.

352 viii. *affd.*, [1928] 2 D. L. R. 448; [1928] S. C. R. 8.—**CAN.**

352 x. —— ——.]—BERGEON *v.* DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—**CAN.**

352 xi. —— ——.]—DETROIT RUBBER PRODUCTS INC. *v.* REPUBLIC RUBBER CO., [1927] 4 D. L. R. 724 *affd.*, [1928] 3 D. L. R. 81.—**CAN.**

352 xii. —— ——.]—NIEBLO MANUFACTURING CO. *v.* STANDARD CO., [1927] 4 D. L. R. 785; *affd.*, [1929] 2 D. L. R. 186; [1928] S. C. R. 579.—**CAN.**

.]—*Held:* the specification claimed the process of mercerising the cotton in a mixed fabric of cotton & cellulose acetate silk by applying for that purpose the old familiar process of mercerisation; that it was only discovery for the patentee to find that an application of the old process to the particular mixed fabric did not occasion deleterious effect to the cellulose acetate artificial silk, & the patent was invalid for want of subject-matter.—HEAP (SAMUEL) & SON, LTD. *v.* BRADFORD DYERS' ASSOCN., LTD. (1929), 46 R. P. C. 254.

402. *Add. Annotation:—Generally,* **Reld.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

409. *Add. Annotation:*—**Consd.** Wright & Eagle Range *v.* General Gas Appliances (1928), 45 R. P. C. 346.

412. *Add. Annotation:*—**Reld.** Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

412a. ——.]—Where a known apparatus is first used for a particular purpose, a presumption of patentable subject-matter is raised by novelty in the mode of use, as distinguished from novelty of purpose. New mode of use may be based on advantage in treatment of particular materials.—*Re* SIMON-CARVES, LTD. & ROBINSON'S PATENT (1928), 45 R. P. C. 407.

423. *Add. Annotation:—Generally,* **Reld.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

434. *Citations:*—For "44 R. P. C. 69," read "44 R. P. C. 367; *affd.* 45 R. P. C. 153, C. A."

Add. Annotation:—**Reld.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

435. *Add. Annotation:*—**Consd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

457. *Add. Annotation:*—**Consd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

459a. —— ——.]—WHITE *v.* TODD OIL BURNERS, LTD. (1929), 46 R. P. C. 275.

459b. —— ——.]—Letters patent were granted for "combined Bag & Cushion." Claim 1 of the specification was as follows: "A combined bag & cushion consisting of a bag made of waterproof material lined at one or both sides with padding covered by ordinary fabric, & adapted to be turned inside out." In an action for infringement of the letters patent pltfs. alleged infringement of claims 1, 2, & 3. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter, prior public user, & prio publication:—*Held:* the patent was invalid for want of subject-matter. The action was dismissed with costs.—BERTON (ARTHUR), LTD. *v.* JARRETT RAINSFORD & LAUGHTON, LTD. (1930), 47 R. P. C. 444.

459c. —— ——.] — FRANC-STROHMENGER & COWAN (INC.) *v.* PETER ROBINSON, LTD. (1930), 46 T. L. R. 579; 47 R. P. C. 493.

459d. —— ——.]—Letters patent were granted for "improvements in electric combs for the hair." Claim 1 of the specification was as follows: "As a new article of manufacture, a self-contained electric hair comb in which a comb complete in itself has insulated comb members in a simple circuit with a removable battery which is attached to the comb." In an action for infringement of the patent pltfs. alleged infringement of claims 1, 2, 3, 7, 13, 14, & 15. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter. Further allegations of prior user, & inutility, & an allegation that the patentee was not the true & first inventor, were not relied on by defts. at the trial:—*Held:* all the claims which were alleged to have been infringed were invalid for want of subject-matter. The action was dismissed, & defts. were given the general costs of the action save in so far as they had been increased by the inclusion of the allegations upon which defts. did not rely at the trial. Pltfs. were given their costs so far as they had been increased by the inclusion of the said allegations, with a set-off.—WILDEY & WHITES MANUFACTURING CO., LTD. *v.* FREEMAN (H.) & LETRIK, LTD. (1931), 48 R. P. C. 405.

PART IV. SECT. 2, SUB-SECT. 1.

436 xii. —— ——.]—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

436 xiii. —— ——.]—There must be a substantial exercise of the inventive power, though it may in some cases be very slight, to sustain a grant for a patent for invention. Slight alterations may produce important results & may disclose great ingenuity.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

436 xiv. —— ——.]—LOWE-MARTIN CO., LTD. *v.* OFFICE SPECIALTY MANUFACTURING CO., LTD., [1930] Ex. C. R. 181; 4 D. L. R. 918.—**CAN.**

436 xv. —— ——.]—*Held:* where all deft. has done was to adopt pltf.'s combination of materials & d[illegible] functioning similarly, producing similar results obtained in a similar manner, with slight mechanical changes, there is no ingenuity of invention; & where in view of the disclosures in pltf.'s patent no ingenuity of invention was required to construct deft.'s device, then such latter device is an infringement of the said patent.—INTERNATIONAL FIRE EQUIPMENT CORPN. *v.* FIREGAS SERVICE, LTD., [1930] Ex. C. R. 168; 4 D. L. R. 708.—**CAN.**

436 xvi. —— ——.]—*Held:* utility is not an infallible test of originality, & to support a patent there must be something more than a new & useful manufacture, the invention must have required for its evolution some amount of ingenuity to constitute subject-matter or invention.—CANADIAN GYPSUM CO., LTD. *v.* GYPSUM, LIME & ALABASTINE, CANADA, LTD., [1931] Ex. C. R. 180.—**CAN.**

436 xvii. —— ——.]—Novelty & utility, without something more requiring the exercise of inventive ingenuity, is not sufficient to make an article a good subject-matter of a patent. The patentee must show an inventive step. Commercial success is nothing more than a question of fact depending upon several factors; & although it may assist in determining whether there is invention, it cannot afford a basis for controverting the conclusion that the alleged improvements of a known article are not of such a character as to show invention in a pertinent sense. The making or the selling, without more, of an element of a patented combination does not of itself constitute an infringement of the combination.—BURT BUSINESS FORMS, LTD. *v.* AUTOGRAPHIC REGISTER SYSTEMS, LTD., [1933] S. C. R. 230; 2 D. L. R. 449.—**CAN.**

436 xviii. —— ——.]—In determining whether an alleged new use of a known device will support a patent the distinction is to be observed between novelty in the mode of using a known thing & novelty in the object or purpose of using it. In the former case there is invention, in the latter merely discovery.—BALDRY *v.* MCBAIN, [1935] 2 W. W. R. 593; 4 D. L. R. 160; 43 Man. L. R. 245; *affd.*, [1936] S. C. R. 120; 1 D. L. R. 673.—**CAN.**

436 xix. —— ——.]—If any variation of an existing process could be made the subject of a monopoly, merely because it had not been done before, patents would exist & be supported for innumerable trivial details & industrial effort would be hampered.—UNIVERSAL BUTTON FASTENING & BUTTON CO. OF CANADA, LTD. *v.* CHRI [illegible] [1936] Ex. C. R. 185.—**CAN.**

1924 letters patent were granted in respect of "improvements in record strips for autographic registers," Claim 1 being as follows: "A record strip for autographic registers adapted to be fed by said register, said strip being provided with filing or folding apertures arranged in series therein & adapted to co-operate with strip folding mechanism to fold the strip into a zig-zag pad, all of the said filing apertures being so disposed as to assume positions at the same end of the said zig-zag pad." It was stated in the specification that the invention related to improvements in record strips employed in autographic registers & more especially to an improved zig-zag supply pad for autographic registers as described in specification No. 229,616, which was a specification of the same patentees & of the same date. Pltfs. commenced an action for infringement of this patent & of two other patents in respect of which they discontinued the action at the trial. Defts. denied infringement & alleged that the patents were invalid by reason of want of novelty, subject-matter & utility:—*Held:* although the strip was novel, the patent was invalid for want of subject-matter, since any invention that may have been exercised was in the machine which was the subject of Patent No. 229,616, & not in the strip. The action was dismissed with costs. A certificate for the particulars of objections was granted in respect of the patent proceeded upon, the costs in connection with the other two patents being left to the absolute discretion of the taxing master.—LAMSON PARAGON SUPPLY CO., LTD. *v.* CARTER-DAVIS, LTD. (1930), 48 R. P. C. 133.

Annotation:—Refd. Hardaker *v.* Boon (1934), 52 R. P. C. 89.

459f. —— ——.]—Letters patent were granted to A. for "improvements in or relating to means or apparatus for use in combined cinematograph & phonograph productions." The specification claimed a method of inserting into a cinematograph film blank pieces of film marked with letters or numbers which, when flashed upon the screen, indicated to the operator when he was to start or stop a mechanical sound-producing apparatus. Defts. showed a "talking picture" in which the operator was provided with a "cue sheet" which told him at what points in showing the film, indicated by sub-titles appearing upon the screen which were part of the film, he was to operate or change over the sound-producing apparatus. Pltf. claimed that this was an infringement of his patent:—*Held:* there could be no novelty in using an incident, such as a sub-title, in the film as a cue for the operator, what defts. were doing was no infringement, & the invention as disclosed in pltf.'s specification was not novel.—JOHNSON *v.* WARNER BROS. PICTURES LTD. (1930), 48 R. P. C. 343.

.]—In 1914 Letters Patent were granted in respect of "An improved process & apparatus for sterilising water & making it aseptic." Claim 1 was as follows:—"A process for sterilising flowing water which consists in a minor body of running water being brought as a film or in a state of fine distribution into contact with chlorine gas which is thus quantitatively absorbed, this minor body of water being led continuously to the main body of flowing water through which it becomes immediately & uniformly distributed." In 1929 pltfs. commenced an action for infringement of the patent, claiming a declaration that defts. had infringed the patent, & other relief. Defts. denied infringement, & alleged that the patent was invalid by reason of novelty, subject-matter & utility. At the trial it was held that there was no subject-matter to support the patent, & the action was dismissed with costs. Pltfs. appealed:—*Held:* the invention provided for the continuous introduction into the water to be sterilised of chlorinated water of the desired strength immediately after its chlorination & that it was novel & possessed subject-matter. It was further held, after argument, that defts. at the trial had unreservedly admitted infringement. The appeal was allowed, with costs, an order for a declaration that defts. had infringed the patent & for an inquiry as to damages was made & a certificate that the validity of the patent came in question was granted.—PATERSON ENGINEERING CO., LTD. *v.* CANDY FILTER CO., LTD. (1932), 50 R. P. C. 1, C. A.

Annotation:—Consd. Schuster *v.* Hine Parker & Co. (1935), 52 R. P. C. 345.

459h. —— ——.]—A patent (hereinafter referred to as the first patent) was granted in 1920, the first claim whereof was: "Process of manufacturing artificial silk & like threads or filaments from solutions of cellulose acetate, nitrocellulose or other cellulose derivatives containing volatile liquids such as acetone, alcohol-benzene, ether-alcohol & the like, characterised in that the artificial silk of filaments are spun downwards in an enclosing casing, & the travelling threads or filaments, solidified by the evaporation of the volatile solvent by an atmosphere of warm air, are led out continuously & wound up mechanically on apparatus located outside the casing." The second claim related to apparatus & concluded: "devices located outside the casing, for winding up the threads or filaments & means serving to feed or convey the threads or filaments to the winding-up devices with or without the interposition of twisting or other devices . . .":—*Held:* (1) there was no inter-related working between the integers, but each performed an independent part, & therefore there was no subject-matter in the combination: the evidence of commercial success resulting from the invention was insufficient: the adoption of the various integers was obvious in the light of common general knowledge: the patent was invalid for want of subject-matter & was also anticipated by certain publications, which disclosed the combination as a whole. (2) The second patent was granted in 1922 & related to the twisting & winding up of the filaments by means of a known device, the cap spinning apparatus:—*Held:* this was an analogous, if not an identical, user of the device. (3) The function of expert witnesses & the nature of the questions that might be put was considered, &:—*Held:* such a witness is entitled to give evidence as to the state of the art, the meaning of technical terms, to give an opinion whether, on a hypothetical construction of a specification, a skilled worker could carry it into effect, to say what

such construction or a given piece of apparatus would have taught or suggested, & generally to explain scientific facts. But he may not be asked (even as engineer or chemist) what a specification means, nor whether any step is obvious. Numerous examples of inadmissible questions & answers were given.

The appeal was dismissed with costs.—BRITISH CELANESE, LTD. *v.* COURTAULDS, LTD. (1935), 152 L. T. 537; 79 Sol. Jo. 126; 52 R. P. C. 171, H. L.

459j. —— ——.]—Letters patent were granted for "improvements in frames & covers for manholes & the like." The claim of the specification (as amended) was as follows: "A frame & cover with the cover made in substantially rectilinear triangular sections, & the frame made with suitable bearing blocks or seatings to support the sections of the cover at their corners, substantially as set forth." In an action for infringement of the patent it was held that the patent was invalid on the ground that the principle of three point support, applied to covers, was known having been so applied to a cover substantially triangular in form & used before the date of the patent & known as the Seamac cover, & that there was no subject-matter in splitting a cover into triangular sections in order to apply the principle. Pltf. appealed: —*Held:* the claim was too wide, & would include modifications in which there was no inventive step, namely, dividing the Seamac cover into two triangular sections & laying triangular sections together to form a cover; &, in view of the Seamac cover being known & used before the date of the patent, there was no subject-matter. The appeal was dismissed with costs.

Semble, per ROMER, L.J., the patent might have been valid, if limited to rectangular covers.—WOODROW *v.* LONG, HUMPHREYS & CO., LTD. (1933), 51 R. P. C. 25.

459k. —— ——.]—In 1927 letters patent were granted for "improvements in & relating to fish cookers." Claim 1 was for "a fish cooker of the coke or like fired type provided with an escape flue for the fumes, such flue leading downwards with a delivery outlet some distance above the base of the flue in which a fan is situated & the delivery outlet leading to beneath the fire grate to deliver the fumes or the like thereto, substantially as described." In 1932 pltf. commenced an action for infringement of the patent, claiming the usual relief. Defts. denied infringement & alleged that the patent was invalid for want of novelty, subject-matter & utility. Defts., who had been licensees under the patent, counterclaimed for the return of moneys paid by them to pltf. & also for damages for breach of warranty of validity of the patent. At the trial defts. abandoned their counterclaim:—*Held:* the patent was invalid for want of subject-matter; & had the patent been valid, there was no infringement. The action was dismissed with costs. The counterclaim was also dismissed with costs. A set-off was ordered & a certificate was granted in respect of certain of the particulars of objections.—TOMLIN *v.* ACME ENGINEERING CO., LTD. (1933), 51 R. P. C. 117.

459l. —— ——.]—Letters patent were granted for "Improvements in or relating to circuit arrangements & discharge tubes for amplifying electric oscillations." Claim 1 of the patent was for "a circuit arrangement for amplifying electric oscillations by means of one or more thermionic discharge tubes connected in series or cascade, etc." Claim 2 was for "a discharge tube having at least three auxiliary electrodes between the cathode & the anode, characterised in that the auxiliary electrode nearest to the anode is directly connected to the cathode so as to be maintained continuously at the cathode potential." Claim 5 was for "the discharge tube substantially as described." The present applts., in an action for infringement of the patent, alleged infringement of claims 2 & 5 in respect of the sale of certain wireless valves. No infringement of claim 1 was alleged. The present resps. at first denied, but subsequently did not dispute infringement, & claimed that the letters patent were invalid for want of novelty or patentable subject-matter, & by reason of prior grant & prior publication:—*Held:* claim 1 was valid as an invention possessing novelty, utility & subject-matter; claim 2 was invalid, as the monopoly claimed was wider than the subject-matter of the invention; & claim 5 was consequently also invalid as it related to subject-matter within claim 2 & was also ambiguous.—MULLARD RADIO VALVE CO., LTD. *v.* PHILCO RADIO & TELEVISION CORPN. OF GREAT BRITAIN, LTD., [1936] 2 All E. R. 920; 53 R. P. C. 323, H. L.

Annotation:—**Reid**, Molins & Molins Machine Co., Ltd. *v.* Industrial Machinery Co., Ltd., [1936] 3 All E. R. 709.

459m. —— ——.]—Letters patent were granted for an "Improved construction of metal aeroplane spars." Claim 1 of the specification was as follows: "A thin metal member of girder form comprising two oppositely disposed flanges or booms & one or more connecting webs in which the thin metal both of the booms or flanges & of the webs is stiffened to withstand shear & longitudinal compression stresses by being bent about longitudinal axes so that its cross-section is an arc or a sinuous curve substantially as & according to the principles described." In an action for the infringement of the patent defts. denied infringement & alleged the patent was invalid by reason of prior publication, want of subject matter & ambiguity:—*Held:* there was insufficient subject-matter for letters patent in corrugating longitudinally the webs & flanges of a thin metal aeroplane spar in view of the common knowledge of corrugating for the purposes of adding resistance to buckling & the patent was invalid. Action was dismissed with costs.—A. T. S., LTD. *v.* HANDLEY PAGE, LTD. (1936), 53 R. P. C. 99.

459n. —— ——.]—Letters Patent No. 377,330 were granted for "Improvements in packing of invert sugar & like substances for transport." Claim 1 was as follows: "1. An improved method of packing a predetermined quantity (for example, one hundredweight) of invert sugar & like crystallisable substances, comprising the step of pouring the sugar when liquid into a paper bag or like pre-formed & pre-shaped container positioned in a mould of a shape requisite to the form

of a package suitable for man-handling & transport, the said sugar container being thereby pressed against the surface of the mould by the weight of the liquid sugar so that it constitutes a closely fitting detachable lining of the mould, a crystallising vessel in the sugar gradually sets to a compact & shaped crystallised sugar block & thereafter serves as a container or wrapper for transport for said sugar block which by reason of it having set by crystallisation, serves as the rigid or firm member of the package." In an action for infringement of the patent defts. denied infringement & validity & counterclaimed for revocation of the patent. It was held at the trial that the patent was valid, but not infringed as defts.' carton was more or less rigid. By agreement between the parties the appeal was limited to the issue of infringement & defts. did not oppose the appeal:—*Held:* the patent had been infringed by defts., & a declaration to this effect was granted with liberty to apply for an inquiry as to damages. No order was made as to costs as these, both in the High Ct. & the Ct. of Appeal, had been provided for by the agreement between the parties.—MANBRÉ & GARTON, LTD. *v.* ALBION SUGAR CO., LTD. (1937), 54 R. P. C. 243, C. A.

D. ——— ———.]—*Re* KODAK, LTD.'S APPLICATION FOR A PATENT (1936), 53 R. P. C. 276.

——— ———.]—*Re* CELLULOSE ACETATE SILK CO.'S LTD., APPLICATION FOR A PATENT (1935), 53 R. P. C. 128.

471. *Add. Annotation:*—**Consd.** Kestos, Ltd. *v.* Kempat, Ltd. & Vivian Fitch Kemp, *Re* Kestos, Ltd. Registered Design (No. 725,716) (1935), 53 R. P. C. 139.

472a. ———.]—It is not enough to show that an apparatus described in an earlier specification alleged as an anticipation could have been used to produce a certain result; it must also be shown that the specification contains clear & unmistakable directions so to use it.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* METROPOLITAN-VICKERS ELECTRICAL CO. LTD. (1928), 45 R. P. C. 1, H. L.; *affg.* S. C. *sub nom.* METROPOLITAN-VICKERS ELECTRICAL CO., LTD. *v.* BRITISH THOMSON-HOUSTON CO. LTD. (1925), 43 R. P. C. 76, C. A.

Annotations:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

475. *Add. Annotation:*—**Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

Add. Annotation:—**Refd.** *Re* De Havilland's Patent (1931), 49 R. P. C. 438.

—BIRTWHISTLE *v.* SUMNER ENGINEERING CO., LTD. (1928), 46 R. P. C. 59.

———.]—HOROWITZ *v.* WALD (H.) & CO. (1930), 47 R. P. C. 183.

502c. ———.]—In 1926 letters patent were granted for "Improvements in & relating to the spinning of metal hollow-ware." Claim 1 was as follows: "An improved method of spinning metal hollow-ware consisting in hammer-marking or otherwise embossing or ornamenting the face or faces of a chuck or mandrel upon which a blank is spun, so that similar ornamenting is produced in the metal of the blank which is forced into close contact with the mandrel by the pressure of the spinning tool or tools." Pltfs. brought an action for infringement & defts. alleged that the patent was invalid by reason of prior publication in certain specifications & by reason of a prior public user. Defts. also alleged that there was no subject-matter & that the invention was not useful; they also denied infringement:—*Held:* the patent was invalid for want of novelty by reason of public prior user, & the action was dismissed with costs.—JOSEPH *v.* JENKINS (B. J.), LTD. (1929), 47 R. P. C. 61.

502d. Subject-matter—Avoidance by prior user.]—LUSTY (W.) & SONS *v.* SCOTT (G. W.) & SONS, LTD. (1932), 49 R. P. C. 620.

517. *Add. Annotation:*—**Refd.** Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

518. *Add. Annotations:*—**Consd.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

518a. Prior specification.]—Letters patent were granted for "an improved ash receptacle for smokers' use." Claim 1 of the specification was as follows: "An ash receptacle which without the use of movable parts retains the smoke rising from objects thrown into it, characterised by the fact that it consists of a closed container (1, 2) into which extends a shaft (3) of substantially constant cross-section, the sides of which with the sides of the receptacle form a trapped space closed above whilst wholly beneath the shaft is provided a deflecting member (4) which deflects objects thrown in wholly to one side of the lower mouth of the shaft, the dimensions of the shaft & of the deflecting member being so chosen relatively to one another & to the sides of the closed container that the smoke rising from objects thrown into the container is collected entirely in the trapped space, & after cooling is thrown down again without being able during this movement to pass the lower mouth of the shaft." Pltfs. commenced an action for infringement of this patent & defts. counterclaimed for its

IV.

B. (a).

480 iv. ———.]—Evidence of user in support of a plea of tion, depending upon the re of witnesses over a number of years, & implying fine distinctions or close diversities between two things, should be considered with great caution & should be disregarded unless established beyond a reasonable doubt, before it is accepted to defeat a patent under which a patented article is made, & particularly when it has gone into substantial use by the public.—CORDS & CORDS PISTON RING CO. OF CANADA, LTD. *v.* STERLOCRAFT PISTON RING CO. CANADA, [1935] Ex. C. R. 38; 3 D. L. R. 18; *affd.*, [1935] ——, L. R. 507.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) i.

sb. *Known thing transferred from one user to another.*]—Where a known thing is merely transferred from one use to another there is prior user & the new use cannot be the subject of patent.—GALT ART METAL CO. *v.* THE PEDLAR PEOPLE, LTD., [1935] 2 D. L. R. 353; O. R. 126.—CAN.

J.S.

revocation :—*Held :* (1) the patent was valid but not infringed. The appeal was allowed on the issue of validity & the order for revocation was rescinded. A special order was made as to costs in the Ct. of Appeal & below. A monopoly may be defined by reference to the result & the proportions need not be exactly laid down, if there is a field in which the proportions may vary & yet within which success may be ensured, & if the dimensions are sufficiently described as to be ascertainable by tests not involving the exercise of any inventive faculty; (2) a prior specification, not being a use at all, cannot be adduced by way of an analogous user.

Semble : per MAUGHAM, L.J., a paper offer for sale unaccompanied by exposure for sale of any infringing article does not constitute infringement, but might be a threat to infringe.—NO-FUME, LTD. *v.* FRANK PITCHFORD & Co., LTD. (1935), 52 R. P. C. 231, C. A.

518b. User outside three mile limit.]—V. D., LTD. *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD., No. 613a, *post*.

549a. —— ——.]—*Re* LEO AXIEN'S APPLICATION FOR A PATENT (1935), 53 R. P. C. 127.

556. *Add. Annotations :*—**Reld.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills (1929), 98 L. J. P. C. 50.

559. *Add. Annotations :*—**Reld.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175: Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

560. *Add. Annotations :*—**Reld.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

561. *Add. Annotations :*—**Reld.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495.

574. *Add. Annotation :*—**Reld.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

585. *Add. Annotations :*—**Consd.** Wright John & Eagle Range *v.* General Gas Appliances (1928), 46 R. P. C. 169. **Reld.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

589a. —— ——.]—Letters patent were granted in 1917 for "improvements in electric heating apparatus." Claim 1 was as follows: "improvement in & relating to electric heating apparatus characterised by the insulating supporting blocks, through which the conductor passes, being suspended in such a manner as to be capable of movement with the conductor under the influence of heat." Pltfs. brought an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of anticipation by prior publication, & for want of subject-matter & utility :—*Held :* the patent was invalid by reason of anticipation by prior publication & for want of subject-matter, & it was not infringed. The action was dismissed with costs.—NAAMLOOZE VENNOOTSCHAP FABRIEK VAN INSTRUMENTEN EN ELECTRISCHE APPARATEN "INVENTUM" *v.* SCHNEIDER (1931), 48 R. P. C. 87.

593. *Add. Annotations :*—*As to* (3) **Reld.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. *Generally*, **Reld.** Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) ii.

523 iii. ——.]—GEORGESON *v.* URWIN & Co., [1928] N. Z. L. R. 207.—N.Z.

c i. —— ——.]—POPE APPLIANCE CORPN. *v.* SPANISH RIVER PULP & PAPER MILLS, [1929] A. C. 269.—CAN.

c ii. —— —— "*Not known or used by any other person.*"]—*Held :* though, as decided in *Pope Appliance Corpn. v. Spanish River Pulp & Paper Mills, Ltd.*, the public use or sale for more than a year previously to the application must be public use or sale in Canada, yet the words "which was not known or used by any other person before his [appct.'s] invention thereof," are not qualified by the words "in Canada," & accordingly, if it can be shown that the invention was known or used by any other person in any part of the world before the invention in Canada, that fact alone would render the patent invalid.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD. (1929), 46 T. L. R. 18.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) iii.

540 i. *User followed by abandonment.*]—An experiment which never becomes completed, but up to the last remains an experiment & nothing more does not as a rule anticipate a novel machine, device or process, but if the experimental stage is over & the machine or device operates effectively for the purpose for which it was designed, & it is used by persons capable of understanding its use there is a completed invention & a completed publication even though for some other reason work with it is subsequently discontinued.—VEASEY *v.* DENVER ROCK DRILL & MACHINERY CO., LTD., [1930] App. D. 243.—S. AF.

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) v.

sj. "*On sale*"—*Within Patent Act—What amounts to.*]—SEMET-SOLVAY CO. *v.* COMR. OF PATENTS, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218; *affd.*, [1929] 4 D. L. R. 1081; S. C. R. 172.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

594 ii. ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—CAN.

594 iii. ——.]—MAUNDER *v.* WAN GANUI SASH & DOOR FACTORY & TIMBER CO., LTD., [1928] N. Z. L. R. 566.—N.Z.

594 iv. ——.]—By sect. 7 (1) of Patent Act, 1923, of Canada, any person who has invented any (*inter alia*) new & useful art, process, machine or manufacture "not known or used by others before his invention thereof," & as to which other specified circumstances do not exist, may obtain a patent granting him an exclusive property in the invention :—*Held :* the knowledge or user by others contemplated by the words quoted above is not confined to knowledge or user within Canada, nor to knowledge or user of a public or open character excluding that which is secret or confidential. In construing the provision the natural & ordinary meaning of the words should not be departed from in order to reconcile it with any theory of patent law evolved otherwise than from the language of the Act itself.—RICE *v.* CHRISTIANI, [1931] A. C. 770; 100 L. J. P. C. 202; 145 L. T. 624; 47 T. L. R. 537; 75 Sol. Jo. 525, P. C.—CAN.

594 v. ——.]—*Held :* by the date of discovery of the invention is meant the date at which the inventor can prove he first formulated, either in writing or verbally, a description which affords the means of making that which is invented. There is no necessity of a disclosure to the public. He who first communicates an invention to "others" would be the true & first inventor in the eyes of the patent law of Canada, as it stood previous to Sept. 1932.—J. G. ROSS ENGINEERING CORPN. & ROSS ENGINEERING OF CANADA, LTD. *v.* PAPER MACHINERY, LTD. & HELLSTROM, [1933] Ex. C. R. 238; *affd.*, [1933] 3 D. L. R. 241.—CAN.

594 vi. ——.]—In order to establish that a patent has been anticipated, any information as to the alleged invention given by any prior publication must,

598. *Add. Annotations:*—**Reld.** Jones & Attwood *v.* National Radiator Co. (1928), 45 R. P. C. 71; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

604. *Add. Annotation:*—*As to* (2) **Follid.** V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co. (1935), 52 R. P. C. 303.

604a. —— — ——.]—An action was commenced by V. D., Ltd., for infringement of five patents relating to deep sea fishing gear. Claim 1 of letters patent No. 175,824 was as follows: "1. A trawling gear of the type set forth in which the width of opening of the net is maintained by two separating panels or otter boards which are connected on the one side by towing lines or cables to a single boat & on the other side to the net by means of cables of relatively great length which converge towards the net so that the width of opening of the net is directly controlled by the inclination of the cables to each other, substantially as described." Defts., former licensees, denied infringement. E. P. & B. A. P. applied by petition for the revocation of these five patents. An application for leave to amend the first patent (No. 175,824) was made by pltfs. upon which deft. & petitioners & several others appeared as resps.:—*Held:* (1) all the claims of letters patent No. 175,824 were invalid for want of novelty or subject-matter, & that patent would be invalid even if the specification were amended as asked, & amendment was refused; & patent 209,032 was invalid for want of subject-matter, & patent 211,165 was invalid for want of subject-matter as well as prior publication; & all these three patents & patent 232,914, which was admitted to be invalid, were ordered to be revoked, subject to suspension of the order in the case of an appeal; (2) letters patent No. 210,396 (patent of addition to No. 209,032) fell with the parent patent but of itself had subject-matter & should become an independent patent, but that it had not been infringed. No certificate of validity as to it was given. The infringement action & the application to amend were dismissed with costs; (3) the deposit of a document on the shelves in the library of the Ministry of Agriculture & Fisheries in London held to be publication; (4) a patent does not run at sea outside the three-mile limit & user outside such limit could not constitute either a prior user or an infringement; (5) pltfs.' conduct in knowingly allowing an invalid claim in a specification of letters patent to remain unamended might be a bar to relief by way of amendment; (6) the question discussed whether the ct. can treat an agreement not to dispute validity as having any legal validity; (7) *semble:* licensees in respect of specified vessels were not by reason of that fact estopped from setting up invalidity where other vessels were concerned.—V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd., *Re* Vigneron Dahl et cie Petition for Revocation of Letters Patent, *Re* Vigneron's Application for Letters Patent (No. 175,824) (1935), 52 R. P. C. 303.

613a. Publication in drawings.]—*Re* Crowther's Application for a Patent No. 373,942 (1933), 51 R. P. C. 72.

613b. Publication in scientific paper.]—I. G. Farbenindustrie Aktiengesellschaft's Application for Revocation of Letters Patent No. 376,746 granted to O. F. Bloch & Ilford, Ltd. (1935), 53 R. P. C. 92.

613c. ——.]—British Acoustic Films, Ltd., Poulsen & Petersen *v.* Nettlefold Productions No. 1213b, *post.*

613d. Publication in document deposited in library of Ministry of Agriculture.]—(1) The deposit of a document on the shelves in the library of the Ministry of Agriculture & Fisheries in London held to be publication. (2) A patent does not run at sea outside the three mile limit & user outside such limit could not constitute either a prior user or an infringement.—V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1935), 52 R. P. C. 303.

for the purpose of practical utility, be equal to that given by the subsequent patent. The latter invention must be described in the earlier publication that is held to anticipate it, in order to sustain the defence of anticipation. Where the question is solely one of prior publication it is not enough to prove that an apparatus described in an earlier specification, could have been used to produce this or that result. It must also be shown that the specifications contain clear & unmistakable directions so to use it. It must be shown that the public have been so presented with the invention, that it is out of the power of any subsequent person to claim the invention as his own.—Cords & Cords Piston Ring Co. of Canada, Ltd. *v.* Steelcraft Piston Ring Co. of Canada, [1935] Ex. C. R. 38; 3 D. L. R. 18; *affd.*, [1935] 4 D. L. R. 507.—**CAN.**

594 vii. ——.]—In order to establish that a patent has been anticipated, any information as to the alleged invention given by any prior publication must, for the purpose of practical utility, be equal to that given by the subsequent patent. The latter invention must be described in the earlier publication that is held to anticipate it in order to sustain the defence of anticipation.—Northern Electric Co., Ltd. & Western Electric Co. Inc. *v.* Burkholder, Kelley & Burkholder & Kelley, Ltd., [1935] Ex. C. R. 127; 4 D. L. R. 598.—**CAN.**

594 viii. ——.]—B. V. D. Co., Ltd. *v.* Canadian Celanese, Ltd., [1936] Ex. C. R. 139.—**CAN.**

594 ix. ——.]—Sect. 61 (1) (*a*) of the Patent Act require that before a patent shall be declared void on the ground of anticipation it must be established that before the date of the application for such patent another inventor had disclosed or used the invention in such manner that it had become available to the public.—B. V. D. Co., Ltd. *v.* Canadian Celanese, Ltd., [1936] Ex. C. R. 139; *revsd.* [1937] S. C. R. 221.—**CAN.**

sv. *Private exhibition.*]—Australian letters patent No. 21809/25 were granted in 1925 in respect of an invention of "Improvements in paper bags." Claim 1 was as follows:—"1. A paper bag of the kind hereinbefore referred to having its walls composed of a plurality of plies of paper which are relatively movable at the places subjected to bending & having one or both of its ends closed by means of sewing, stapling or the like." A petition for revocation of the patent was presented to the High Ct. of Australia on the grounds of anticipation, want of subject-matter, ambiguity, & want of novelty by reason of an exhibition by the patentee's agent prior to the date of the patent of a bag made in accordance with the specification. The High Ct. & the Full Ct. dismissed the petition & upheld the validity of the patent, holding that the exhibition was private & the patentee was protected by sect. 124 of Australian Patents Act, 1903–1921. Petitioners appealed by leave to the Privy Council:—*Held:* the appeal should be allowed with costs & the patent be revoked, on the ground that (*a*) the patent was invalid in that the demonstration of the bags was such as to be outside the protection of sect. 124 of the Australian Patents Act, 1903–1921, & (*b*) the patent was also invalid for want of subject-matter, commercial success induced by commercial acumen & in the absence of any demand for a substitute for jute bags forming no criterion of the inventive step. The point of law whether sect. 124 forms any defence to revocation proceedings or only operates to take away a ground or grounds upon which a grant of letters patent could be refused was not decided, a decision not being necessary in the circumstances.—Paper Sacks Proprietary, Ltd. *v.* Cowper (1935), 53 R. P. C. 31, P. C.—**AUS.**

616. *Add. Annotation:*—**Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

625. *Add. Annotation:*—**Refd. Sharp & Dohme Inc.** *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

633. *Add. Annotations:*—**Consd.** *Re* L'AirL iquide Société Anonyme pour L'Etude et L'Exploitation des Procedes George Claude's Patent (1930), 49 R. P. C. 428; Mullard Radio Valve Co. *v.* Philco Radio & Television Corpn. of Great Britain, Ltd., [1936] 2 All E. R. 920.

636. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

640. *Add. Annotation:*—**Refd. Sharp & Dohme Inc.** *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

642a. ——.]—*Re* I. G. FARBENINDUSTRIE AKTIENGESELLSCHAFT'S APPLICATION FOR REVOCATION OF LETTERS PATENT No. 361,917 GRANTED TO IMPERIAL CHEMICAL INDUSTRIES, LTD. (1933), 51 R. P. C. 53.

Annotation:—**Apld.** *Re,* Dreyfus' Application for a Patent (No. 285,968) (1935), 52 R. P. C. 299.

642b. ——.]—Pltfs. were the owners of letters patent relating to a cigarette-making machine, the feature of which was that it had slanting vanes which ensured that the shower of tobacco falling upon the paper should not have a vertical movement, but should have a component of motion in the direction in which the paper was moving. The advantage of the machine was that it avoided an uneven distribution of the tobacco in the cigarettes, & by its use the speed of production was markedly increased. There was, however, a German patent of 1880, in the specification of which there was a drawing of a similar arrangement of vanes, & the arrangement was described, but its purpose was not described, nor was it claimed that such an arrangement had the effect of increasing the speed of production of a perfect cigarette. The machine shown in the 1880 specification worked at a much lower speed than did that of pltfs. An application was made, in an infringement action, to amend the specification by limiting the invention claimed to machines capable of moving at a high speed, thereby excluding the earlier invention:—*Held:* (1) without the proposed amendment, the patent in suit was invalid by reason of anticipation by the earlier patent; (2) the amendments sought were such as would distinguish the invention from the earlier one without enlarging its scope, & were such as might be allowed within Patents & Designs Acts, 1907–1932, s. 22; (3) the patent as amended was valid; (4) the claim as originally framed had been framed in good faith & with reasonable skill & knowledge. Therefore, although the patent was invalid at the time when it was infringed, damages could be awarded in respect of such infringements.—MOLINS *v.* INDUSTRIAL MACHINERY CO., LTD., [1937] 4 All E. R. 295; 81 Sol. Jo. 980, C. A.

655a. —— **Question of construction—Evidence of intention inadmissible.**]—Whether a specification is an anticipation of a later patent, apart from statutory provisions, depends upon the construction of the specification, verbal evidence as to the intention of the person whose specification it is being inadmissible.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1930] A. C. 97; 99 L. J. P. C. 58; 142 L. T. 106; 47 R. P. C. 69, P. C.

Annotation:—**Refd.** Rice *v.* Christiani (1931), 47 T. L. R. 537.

659. *Add. Citation:*—*Affd. sub nom.* BRITISH THOMSON-HOUSTON CO., LTD. *v.* METROPOLITAN-VICKERS ELECTRICAL CO., (1928), 45 R. P. C. 1, H. L.

Add. Annotations:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495.

659a. —— ——.]—In 1927, a patent was granted in respect of "improvements in or relating to actuating devices for the control of the carburetters of internal combustion engines, but applicable for other purposes." The first claim was as follows: "Actuating provision suitable for use in connection with the control of the carburetters of internal combustion engines but applicable for other purposes having a rotary hand grip or operating member adapted to displace a longitudinally movable member incorporated within or substantially within the overall transverse dimension of said grip or operating member & a front collar for said grip or operating member said front collar being adapted to embrace the handle bar or other supporting member upon which the said actuating member is adapted to be mounted & in which the said grip or operating member is of a character such that power transmission mechanism which it may be adapted to actuate can be disconnected from it at a time at which it is mounted or located upon said handle bar or supporting member with said front collar in its normal position." Pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of anticipation by prior specifications & prior users, for want of subject-matter & utility & for insufficiency, & counterclaimed for the revocation of the patent. Pltfs. alleged that the object of the invention was to be able to expose the point of attachment of the power transmission mechanism, for ease of replacement, while keeping all the parts in operative engagement upon the handle bar. One of the prior specifications of A.M.A.C. relied on by defts. described such a device in the letter-press, but showed in the drawings a mechanism which could not be operated so as to fulfil the objects of pltfs.' patent:—*Held:* assuming that the specification was not ambiguous, & that its object was as alleged by pltfs., the specification of A.M.A.C. disclosed in its drawings a device that could be modified by a skilled mechanic so as to fulfil pltfs.' objects & that accordingly the patent was invalid either by reason of anticipation or want of subject-

PART IV. SECT. 2, SUB-SECT.

615 iii. ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, [1927] 2 D. L. R. 9 C. R. 134.—CAN.

the ——— to be applied in ———on is that the specification which is relied upon as an anticipation must give the same knowledge as the specification of the invention itself.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD., [1934] 3 D. L. R. 737; 51 R. P. C. ··· P. C.—CAN.

matter. The action was dismissed with costs & an order was made for the revocation of the patent, such order to lie in the office for six weeks, or if notice of appeal be given, until judgment in the appeal.—AMALGAMATED CARBURETTERS, LTD. *v.* BOWDEN WIRE, LTD. (1930), 48 R. P. C. 105.

680a. ——.]—In an action for infringement defts. denied infringement, & alleged that the patent was invalid by reason of (*inter alia*) want of utility. Pltfs. proved the utility of their invention:—*Held:* the patent was valid, & had been infringed.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* LAMBERT HOWARTH & SONS, LTD. & GIMSON SHOE MACHINERY CO., LTD. (1927), 44 R. P. C. 511; *subsequent proceedings* (1929), 46 R. P. C. 315.

680b. *S. P.* BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* GIMSON SHOE MACHINERY CO., LTD. (1928), 45 R. P. C. 290, C. A.

680c. *S. P.* PARKES S. & CO., LTD. *v.* COCKER BROS., LTD. (1929), 46 R. P. C. 241, C. A.

680d. ——.]—Letters Patent No. 317,199, dated July 14, 1928, & No. 320,603, dated July 14, 1928, were granted to N. & G., Ltd. & M. Letters Patent No. 294,972, dated May 3, 1927, were granted to V. N. & G., Ltd. & M. brought an action for infringement against J., to which V. was afterwards joined as co-pltf. Claim 1 of No. 294,972 was as follows: "A process for making diazotypes by exposing under a transparent original a layer containing a diazo-compound decomposable by light, & then developing, wherein there is present in the finished picture a reducing agent." Deft. denied infringement, & alleged that Nos. 317,199 & 320,603 were anticipated by certain prior users, & that No. 294,972 was invalid by reason of want of novelty & subject-matter, insufficiency, inutility, & false suggestion. Deft. counterclaimed for the revocation of all three patents & also for relief in respect of actionable threats. At the trial, in consequence of certain evidence given for pltfs., deft. obtained leave to amend his particulars of objections by adding an allegation of non-disclosure of the best method known to the patentee. Pltfs. did not seek to prove infringement of No. 320,603, & at a later stage did not seek to support the validity of this patent or of No. 317,199:—*Held:* as to patent No. 294,972 on the evidence (*a*) some five or six of the very numerous bodies comprised in the preferred classes of reducing agents were effective, (*b*) others of the same bodies would be incapable of producing the desired result, but would be known to a competent chemist as unsuitable, (*c*) others of the same bodies would not be so known, but their suitability could be tested by simple experiment; that, assuming in the patentee's favour that claims 1 & 16 covered only the use of reducing agents which he had indicated to be suitable, the fact that many of these bodies were useless rendered the claims bad for want of utility; that it was essential to the success of the process that the print should finish neutral or acid, that this had been known to the patentee, & had not been disclosed, & that consequently the patent was invalid under sect. 25 (2) (j); infringement had not been proved; Nos. 317,199 & 320,603 were invalid for want of novelty; also, deft. had proved actionable threats. Judgment was given for deft., with costs, & he was granted an injunction to restrain threats in respect of the three patents in suit & agreed damages. The costs of the application to amend the particulars of objections at trial were ordered to follow the event, & a certificate was given in respect of certain particulars of objections. The order for revocation of patent No. 294,972 was stayed in the event of an appeal within one month upon terms that the patentee should not seek to amend.—NORTON & GREGORY, LTD. *v.* JACOBS (1936), 54 R. P. C. 58; *affd.* (1937), 54 R. P. C. 271, C. A.

688a. ——.]—ROSE STREET FOUNDRY & ENGINEERING CO., LTD. *v.* INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. (1929), 46 R. P. C. 294, C. A.

Annotation:—**Refd.** Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930), 48 R. P. C. 33.

Part V.—Application for Patent.

695. *Add. Annotation:*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

700a. —— ——.]—*Re* I. G. FARBENINDUSTRIE AKTIENGESELLSCHAFT APPLICATION FOR A PATENT (1934), 51 R. P. C. 196.

700b. Effect of.]—Samples & indorsements thereon, deposited under Patents & Designs Act, 1907 (c. 29), s. 2 (5), can be relied on in aid of the interpretation of the specification, & as effective prior publication against a subsequent claim.—NOTES OF OFFICIAL RULINGS 1928 (B) (1928), 45 R. P. C. App. iv.

704. *Add. Annotation:*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

709a. Power to modify forms.]—The Comptroller may only modify patents forms so as to adapt them for some purpose akin to the purpose for which they are primarily intended.—*Re* SALLES' APPLICATION (1927), 45 R. P. C. 61.

709b. Power to divide or antedate application on second application.]—*Re* WINGATE'S PATENT, No. 724a, *post.*

PART IV. SECT. 3, SUB-SECT. 1.

2 D. L. R. 448

[1928] S. C. R. 8.

693 i. *Degree of utility necessary to support patent.*]—*Held:* a definite amount of utility is not required by law to sustain an invention; a slight amount of utility being sufficient. Commercial utility is the very essence of a patent, & a favourable reception by the purchasing public is strong evidence of that degree of utility required by law.—PRENTICE *v.* DOMINION RUBBER CO., LTD., [1928] C. R. 196.—CAN.

PART IV. SECT. 3, SUB-SECT. 2.

690 i. *Effect of non-user.*]—ELECTRO LYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R., 94; affd., [1930] S. C. R. 462; 4 D. L. R. 1.—CAN.

717. *Add. Annotations:—As to* (1) **Consd.** *Re* Farbenindustrie Aktiengesellschaft, Application for a Patent (No. 307,758) (1933), 50 R. P. C. 249; *Re* Kodak, Ltd.'s Application for a Patent (1936), 53 R. P. C. 276. **Reld.** *Re* Farbenindustrie Akt's Application (1928), 46 R. P. C. 271. *As to* (2) **Reld.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

724a. **Whether prohibition lies.**]—On Oct. 26, 1928, W. lodged an application & provisional specification for a patent for improvements in folding spectacles. The complete specification was lodged in July, & accepted in Dec. 1929, as No. 322,297. In Feb. 1930, notice of opposition was given by E. & the T. Optical Co. In Apr. 1930, W. lodged another application with a complete specification, differing only from No. 322,297 in the claims, which were fewer in number, but widened by the omission of certain limiting words. This specification was accepted on Apr. 28, 1930, as No. 328,584. W. then made an application for a division of the patent under r. 13 of the Patents Rules, & the Comptroller allowed it, holding that No. 328,584 should be treated as an application for a patent for an invention excluded by amendment from specification No. 322,297, & should bear date Oct. 26, 1928. The opponents, contending that the Comptroller could not divide or antedate the application, & that his decision, in the circumstances, was *ultra vires* the Patents & Designs Act & the rules thereunder, moved for a writ of prohibition to restrain the Comptroller & W. from proceeding with application No. 328,584: —*Held:* (1) the decision of the Comptroller being in a matter of the administration of the Patent Office & the procedure in granting a patent, was final, subject to an appeal to the Law Officer under the Act, & to directions which might be given by the officer under sect. 74, & prohibition would not lie against the Comptroller or the Law Officer in respect of any act or decision so done or made; (2) the division or antedating of an application for a patent provisionally decided by the Comptroller before opponents have been heard is a matter which can be reopened & the decisions thereon reviewed in opposition proceedings, according to long established practice in the Patent Office, notwithstanding that such questions are not specifically included in the grounds of opposition enumerated in sect. 11 of the Act.—*Re* WINGATE'S PATENT, [1931] 2 Ch. 272; 100 L. J. Ch. 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416.

727. For the existing paragraph substitute the following paragraph:—

Injunction to restrain acceptance — Lawful ground of objection—"Secret processes."]—Where an injunction had been granted to restrain appct. for a patent from disclosing processes derived from pltf. co., or from doing any act which might cause same to become public or commonly known, & the Comptroller-General refused to undertake when he should receive an application for the acceptance of a complete specification to consider such injunction a "lawful ground of objection" to the acceptance of the complete specification within Patents & Designs Act, 1907 (c. 29), s. 7 (3), objecting to his duty prescribed by the Patent Acts being in any way interfered with by the ct., the ct. granted an injunction restraining the Comptroller-General from accepting the complete specification, as under sect. 9, on such acceptance, the matter would be thrown open to public inspection, the specification being concerned with some of the processes which, as between pltf. co. & appct., appct. had been restrained from disclosing, & because the Comptroller-General might accept the complete specification on the footing that the injunction against appct. would not constitute a lawful ground of objection within sect. 7 (3). On appeal the S.-G. on behalf of the Comptroller-General undertook that the injunction granted against appct. would be properly considered in deciding whether the specification should be accepted as being something which might constitute "a lawful ground of objection" to such acceptance, & by consent the order against the Comptroller-General was discharged, notice of discontinuance to be served upon him. Appct. was also further restrained from proceeding with his application in addition to the injunction granted against him in the ct. below.—REX CO. & REX RESEARCH CORPN. *v.* MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38, C. A.

Part VI.—Specifications.

736. *Add. Annotation:*—**Reld.** Kraft, Kraft Cheese Co. (Incorporated) & Kraft Walker Cheese Co. Proprietary, Ltd. *v.* McAnulty (1931), 48 R. P. C. 536.

757. *Add. Annotation:*—**Reld.** *Re* Bramwell's Patent (1930), 49 R. P. C. 431.

763. *Add. Annotation:*—**Reld.** *Re* Hull's Patent (1930), 49 R. P. C. 433.

PART V. SECT. 5, SUB-SECT. 1.

1 l. —— *Statement of date—No power to amend.*]—*Held:* after disclosure made between the parties in conformity with r. 32, an order in chambers should not be made allowing one of the parties to amend its statement of the date of the invention relied on in the action.—LARKIN-WARREN REFRIGERATING CORPN. *v.* FRIGIDAIRE CORPN., [1932] Ex. C. R. 67.—CAN.

PART VI. SECT. 4, SUB-SECT. 1.

4a. *General rules.*]—DE FOREST PHONOFILM OF CANADA, LTD. *v.* FAMOUS PLAYERS CANADIAN CORPN., LTD., [1931] Ex. C. R. 27; 3 D. L. R. 803.—CAN.

4c. *Reference in claim to ..... claim in same specification.*]—*Held:* the inclusion by reference in one claim, of one or more preceding claims, in the specification accompanying an application for letters patent for an invention, is permissible under Patent Act.—A. C. COSSOR, LTD. *v.* PATENTS COMR., [1935] Ex. C. R. 22; 2 D. L. R. 769.—CAN.

773. *Add. Annotation:*—**Refd.** *Re* Dreyfus' Applns. (1927), 44 R. P. C. 291.

789. *Add. Annotation:*—**Consd.** Kraft, Kraft Cheese Co. (Incorporated) & Kraft Walker Cheese Co. Proprietary, Ltd. *v.* McAnulty (1931), 48 R. P. C. 536.

789a. —— ——.]—*Held:* assuming applts.' contention that a process for the production of a permanently keeping cheese was the main object of the specification was right, the patentee had not fulfilled his promise & shown the way to secure a permanently keeping cheese, even allowing that the patentee used the expression in a commercial sense intelligible to those concerned in the trade; & there was insufficiency in the description of the process to be followed; the patent was invalid.—KRAFT, KRAFT CHEESE CO. (INCORPORATED) & KRAFT WALKER CHEESE CO. PROPRIETARY, LTD. *v.* MCANULTY (1931), 48 R. P. C. 536, P. C.

795. *Add. Annotations:*—**Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259; Compagnie Centrale des Emeris et Produits a Polir for Letters Patent No. 343,970 (1933), 52 R. P. C. 167.

796a. ——.]—ROSE STREET FOUNDRY & ENGINEERING CO., LTD. *v.* INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. (1929), 46 R. P. C. 294, C. A.

Annotation:—**Refd.** Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930), 48 R. P. C. 33.

796b. ——.]—Pltfs. were owners of letters patent for "improvements in & relating to apparatus for grinding cylindrical bodies." The machine, the subject of the patent, was known as a centreless grinding machine, since the work to be ground was not supported between centres, but was caused to rotate between the grinding wheel & two other points of support. In pltfs.' embodiment of the invention & in the machine illustrated in the specification, the work rotated between a peripherally acting grinding wheel & a peripherally acting regulating wheel & rested upon a work rest placed between the two wheels. The specification described a theory according to which the machine was said to work. Claim 1 of the specification was for "a method of grinding cylindrical bodies, which consists in supporting a substantially cylindrical body in operative relation to a grinding surface having portions progressively more distant from the surface supporting the cylindrical body, rotating said body by means of a driving member, & in moving said rotating body into contact with more distant portions of said grinding surface as said driving member moves said body relative thereto when said member engages projecting irregularities in said body." Centreless grinders using non-peripherally acting wheels either for regulating or grinding were old. Pltfs. brought an action for infringement against defts. who had built a machine with peripherally acting wheels, similar to pltfs.' machine. Defts. disputed the validity of the patent, & also submitted that, as their machine had been sold & supplied in parts & assembled at the works of the purchasers, this did not constitute infringement by them. Defts. counterclaimed for revocation of the patent:—*Held:* it had not been proved that pltfs.' machine worked according to the theory given in the specification; the claims were not limited to peripheral grinding or regulating wheels, but included machines whose grinding or regulating wheels were discs; the "driving member" claimed was a mechanical equivalent of a fixed back rest which was therefore included in the claim; & therefore the claims were anticipated & were invalid for lack of novelty; also that, on a construction of the specification put forward by pltfs., the invention had not been distinctly stated & that it merely consisted in certain, not novel, adjustments of well-known parts of a well-known machine, &, if the patent had been valid, the infringement would have been committed by the user who operated the machine in the infringing configuration & not by defts., the sellers of the machine alleged to infringe. The action was therefore dismissed & an order was made for revocation under the counterclaim. Pltfs. appealed:—*Held:* the patent was not limited to the use of peripherally acting wheels & was therefore bad for want of subject-matter & novelty; it was also bad for ambiguity & want of utility; & the specification as drawn was calculated to prevent a workman from using the tools of his trade. The appeal was therefore dismissed.—CINCINNATI GRINDERS (INC.) *v.* B. S. A. TOOLS, LTD. (1930), 48 R. P. C. 33.

Annotation:—**Refd.** Lamson Paragon Supply Co., Ltd. *v.* Carter-Davis, Ltd. (1930), 48 R. P. C. 133.

796c. ——.]—In 1919 letters patent were granted in respect of "improvements in the cylinders of internal combustion chambers." Claim 1 was as follows: "In an internal combustion engine in which both the inlet & exhaust valves are disposed in one & the same side space or pocket, the combination with a cylinder whose head is flat & arranged so as to permit only the minimum clearance between it & the piston which is necessary for mechanical reasons, of a valve pocket constituting the combustion chamber or space which is situated at the side of the cylinder & formed with a part which overlaps the cylinder head or bore where is a port whose area is substantially the same as that of the inlet valve port." In 1931 pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of lack of novelty, subject-matter, & utility, & by reason of ambiguity & insufficiency of definition:—*Held:* the invention solved a problem which had existed in 1919 by a means new in 1919; the invention did not relate only to the form of the combustion chamber, but had another feature; the patent was novel & had subject-matter; & there was not sufficient ambiguity in the words "minimum clearance," "port or passage," "substantially the same area," to invalidate the patent; construing the specification as a whole & considering the purpose of the invention the words "area of a port or passage" were sufficiently definite & meant "the minimum cross-sectional area of a passage"; defts.' engine had minimum clearance & the minimum area of its cylinder head port or

——— was, though not equal, substantially equal to the area of the inlet valve port; & the patent was valid & had been infringed.—RICARDO & RICARDO & CO., ENGINEERS (1927), LTD. *v.* ROOTES, LTD. & HILLMAN MOTOR CAR CO., LTD. (1933), 51 R. P. C. 35, 92.

796d. ———.]—Pltfs. brought an action for infringement of their patent for "Improvements in or relating to apparatus for printing late news in newspaper printing machines." Defts. denied infringement & alleged that the patent was invalid. The words "substantially as hereinbefore described" appeared in the usual way at the end of the claims. The following words also appeared in the specification: "It will be understood that the invention is not limited to the actual construction or to the combination of the features of the construction hereinbefore described as the operations described may be carried out in constructions considerably different without departing from the invention." BENNETT, J., held that the patent was void for ambiguity. Pltfs. appealed:—*Held:* any ambiguity must be resolved in the favour of pltfs. & the restriction of the invention to a particular type of mechanism; the words "substantially as hereinbefore described" merely refer back to the body of the specification & their scope & meaning vary in each particular case; in this case they referred to the whole specification & to each element in the combination but they had not the effect of making the claim one for a principle; the words set out above beginning "it will be understood . . ." though now common in specifications, are obscure in their meaning, are not a description of anything, cannot be imported into the claim by the words "substantially as hereinbefore described," & are not a proper way of claiming a principle. The use of such words is to be avoided.—CRABTREE & SONS, LTD. *v.* HOE & CO., LTD., [1936] 2 All E. R. 1639; 53 R. P. C. 443, C. A.

799. *Add. Annotation:*—**Refd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

804. *Add. Annotations:*—**Consd.** Hanks *v.* Coombes (1928), 45 R. P. C. 237; Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294; Crabtree & Sons, Ltd. *v.* Hoe & Co. (1935), 52 R. P. C. 367. **Refd.** Submarine Signal Co. *v.* Henry Hughes & Son, Ltd. (1931), 49 R. P. C. 149; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 40 R. P. C. 495; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259; Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287; Mullard Radio Valve Co. *v.* Philco Radio & Television Corpn. of Great Britain, Ltd., [1936] 2 All E. R. 920.

804a. As to apparatus.]—HANKS *v.* COOMBES, No. 308b, *ante.*

810a. ———.]—*Re* CHEMISCHE FABRIK AUF ACTIEN (VORM E. SCHERING) PATENT (1928), 45 R. P. C. 403.

810b. ———.]—The employment in claims of such terms as "known methods" & "general methods" leads to ambiguity & doubt.—*Re* BRITISH CELANESE, LTD., ELLIS & BROWN, APPLICATION FOR A PATENT (1934), 51 R. P. C. 192.

814. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

833. *Add. Annotation:*—*As to* (1) **Refd.** Norton & Gregory, Ltd. *v.* Jacobs (1936), 54 R. P. C. 58.

842a. ——— ———.]—The Minnesota Mining & Manufacturing Co., applied to the Comptroller-General of Patents under sect. 26 of Patents & Designs Acts, 1907–1932, for the revocation of Letters Patent No. 387,125 granted to Johnson & Johnson (Great Britain), Ltd. on a communication by Johnson & Johnson, a corpn. organised by the laws of certain States in the United States of America for "Improvements in or relating to Waterproof Fabrics & the Production thereof." The grounds set up for the application were prior publication & insufficient & unfair description. The Assistant-Comptroller ordered the patent to be revoked. The patentees appealed to the ct. & were allowed to adduce further evidence as to the meaning of technical terms used in the specification & in the art. The patentees offered further amendments at the hearing of the appeal:—*Held:* the complete specification as filed was bad for insufficiency, such insufficiency could not be cured by any proper amendment, as if the proposed amendments were allowed the patent would be converted into one for an invention substantially different from that claimed. The appeal was dismissed.—*Re* JOHNSON'S PATENT (No. 387,125) (1936), 54 R. P. C. 151; *affd.*, [1937] 4 All E. R. 561, C. A.

843. *Add. Annotation:*—**Refd.** *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.

868. *Add. Annotation:*—*Generally*, **Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

886. *Add. Annotation:*—**Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

894a. Suitable drawings—What are.]—*Re* STANDARD TELEPHONES & CABLES, LTD.'S APPLICATION (1928), 46 R. P. C. 183.

896a. ———.]—In 1930 letters patent were granted in respect of "an improved hair curler." Claim 1 was as follows:—"An improved

PART VI. SECT. 4, SUB-SECT. 2.—A. (b).

q i. ——— *Quantities of ingredients.*]—MICO PRODUCTS, LTD. *v.* ACETOL PRODUCTS, L[illegible], [1930] Ex. C. R. 64; 3 D. L. R.

As to process.]—The specification of a patent for a process must point out clearly the method by which the process is to be performed so as to accomplish the object in view.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.

PART VI. SECT. 4, SUB-SECT. 2.—B. (a).

Matters outside limits at time of [illegible]*tion.*]—No patent is "defective or inoperative" within the meaning of the Act, by reason of its failure to describe & claim subject-matter outside the limits of that invention, as conceived or perceived by the inventor, at the time of his invention.—NORTHERN ELECTRIC CO., LTD. WESTERN ELECTRIC CO. *v.* [illegible] C. R. 75; [1936] S. C. R. 6 CAN.

curler of the kind referred to provided with a pressure balancing elastic cord on the opposite side of the body to the gripping cord, substantially as herein described." In 1932 pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of lack of novelty, subject-matter & utility & by reason of false suggestion of effects & advantages contained in the specification:—*Held:* the patent was invalid by reason of false suggestion & want of subject-matter, but had the patent been valid it would have been infringed. The action was dismissed with costs, save so far as they had been increased by the issue of infringement & a certificate was granted as to the particulars of objections.—AKEROYD *v.* STRANGE (1932), 50 R. P. C. 23.

897a. Invalid claim knowingly included—Bar to right to amend.]—V. D., LTD. *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD., *Re* VIGNERON DAHL ET CIE PETITION FOR REVOCATION OF LETTERS PATENT, *Re* VIGNERON'S APPLICATION FOR LETTERS PATENT (No. 175,824), No. 604a, *ante*.

910. *Add. Annotations:—As to* (3) **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105. *Generally*, **Refd.** Parkes Samuel & Co. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

918. *Add. Annotation:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

921. *Add. Annotations:—As to* (1) **Consd.** British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259. **Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

953. *Add. Annotation:*—**Refd.** *Re* Adamson (Daniel) & Co. & Kerfoot Patent 353,087 (1932), 50 R. P. C. 171.

954a. Opponents' specification.] — *Re* BRITISH CELANESE, LTD., HENRY DREYFUS, & CLIFFORD IVAN HANEY'S APPLICATION (1933), 50 R. P. C. 247.

954b. Reference with disclaimer—Form of.]—If a specific reference is inserted in a specification followed by a disclaimer, the disclaimer should state as clearly as possible the precise matter disclaimed.—*Re* SOCIÉTÉ DES USINES CHIMIQUES RHONE-POULENC PATENT (No. 340,445) (1933), 50 R. P. C. 230.

954c. Proceedings under section 11—Statutory reference—No power to insert.]—*Re* DREYFUS APPLICATION FOR A PATENT (No. 285,968) (1935), 52 R. P. C. 299.

969. *Add. Annotation:—Generally*, **Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

978. *Add. Annotations:—Generally*, **Refd.** *Re* Dewrance Patent (1930), 49 R. P. C. 424; Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

996. *Add. Annotations:*—**Apld.** Hanks *v.* Coombes (1928), 45 R. P. C. 237. **Consd.** Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1934), 51 R. P. C. 254; *Re* Application for Compagnie Centrale des Emeris et Produits a Polir for Letters Patent No. 343,970 (1933), 52 R. P. C. 167; Crabtree & Sons, Ltd. *v.* Hoe & Co. (1935), 52 R. P. C. 367; Mullard Radio Valve Co. *v.* Philco Radio & Television Corpn. of Great Britain, Ltd., [1936] 2 All E. R. 920. **Refd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259; Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

1000. *Add. Annotations:*—**Refd.** R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 52 R. P. C. 206; Crabtree & Sons, Ltd. *v.* Hoe & Co., [1936] 2 All E. R. 1639.

1002. *Add. Annotations:*—**Consd.** R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 53 R. P. C. 167. **Refd.** R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 52 R. P. C. 206.

1013a. ——.]—*Re* GILL'S APPLICATION (1935), 54 R. P. C. 119.

1022. *Add. Annotation:—As to* (1) **Refd.** Mullard Radio Valve Co., Ltd. *v.* Philco Radio & Television Corpn. of Great Britain, Ltd. (1935), 52 R. P. C. 261.

1028. *Add. Annotation:*—**Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

1040. *Add. Annotations:*—**Consd.** Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294; Mullard Radio Valve Co., Ltd. *v.* Philco Radio & Television Corpn. of

novelty or improvement—General rule.] —A patentee, in a patent for an improvement on a known device, must not throw his net so wide as to omit to disclose honestly what belongs to the prior art as distinct from his new claim.—BERGEDON *v.* DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181. —CAN.

[illegible] 5,

989 i. *Necessity for* [illegible] patentee must define & [illegible] precision what he claims to have invented, & everything not clearly claimed becomes *publici* [illegible]

(2) A patentee must clearly set forth the various steps in a process claimed, & if designedly or unskilfully he makes it ambiguous, vague or indefinite, the patent is bad.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX REDUCING CO. OF CANADA, LTD., [1[illegible]] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—CAN.

989 ii. ——.]—Anything disclosed the specifications of a patent, & for [illegible] no claim is made, becomes [illegible] *v.* DE [illegible] MFG. CO., LTD., [1[illegible]] [1927] Exch. C. R. 181. —CAN.

992 i. *Necessity for clear statement.*]—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., No. 989 i, *ante*.—CAN.

k i. *Failure to claim advisable addition as necessary element of invention.*]—Where in the specification in a patent for an oven the patentee states that a certain device or addition is advisable or preferable, but does not claim it as a necessary element of the invention any oven so constructed as to [illegible] the invention patented, but without such additional device, will be an infringement of the patent.—SEMET-SOLVAY CO. *v.* COMR. OF PATENTS, [1927] 3 D. L. R. 385; [1927] Exch. 318; *affd.*, [1929] 4 D. [illegible] 1081;

Great Britain, Ltd. (1935), 52 R. P. C. 261. **Refd.** British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932), 49 R. P. C. 495; Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

1055. *Add. Citation :*—*affd.*, 24 R. P. C. 33, C. A.

1081. *Add. Annotation :*—**Refd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

1093. *Add. Annotation :*—**Consd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 63.

1127. *Add. Annotation :*—**Refd.** Gibson *v.* Cossor, Ltd. (1934), 51 R. P. C. 375.

1134. *Add. Annotation :*—**Refd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

1168a. —— Jurisdiction of Appeal Tribunal to strike out.]—In one application, where a reference previously inserted in the specification under sect. 8 (2) of the Acts was left in by the Assistant-Comptroller, his order was varied by the Appeal Tribunal, which directed such reference to be struck out.—*Re* RUTH-ALDO CO. (INCORPORATED) APPLICATIONS FOR PATENTS (NOS. 282,788, 303,135 & 305,096) (1933), 50 R. P. C. 253.

1178. *Add. Annotation :*—**Consd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

1182a. —— As to time & mode of hearing.]—*Held :* by the Ct. of Appeal, the appeal must be dismissed with costs as the matter was within the discretion of the judge.—BRITISH CELANESE, LTD. *v.* COURTAULDS, LTD. (1932), 49 R. P. C. 345, C. A.

1199. *Add. Annotation :*—**Refd.** *Re* Kirk's Specification (1929), 49 R. P. C. 412.

1199a. Two applications—Practice.]—Where, in an action, there were two separate motions for leave to amend the specification, all the proposed amendments were directed to be included in the second notice of motion, & an order was made allowing pltfs. to proceed with the application for leave to amend, & that the application should come on with the trial of the action & counterclaim. But, *semble*, the hearing of such motions with the trial may not usually be convenient.—BRITISH ACOUSTIC FILMS, LTD. *v.* NETTLEFOLD PRODUCTIONS (1935), 52 R. P. C. 296.

1205a. —— —— Order of Court of Appeal in action for infringement.]—DOUGLAS PACKING CO. (INCORPORATED), DOUGLAS PECTIN CORPN. & POSTUM CO. (INCORPORATED) *v.* EVANS & CO. (HEREFORD & DEVON), LTD. (1929), 46 R. P. C. 493, C. A.

1205b. —— —— Before fiat of Attorney-General obtained or petition presented—After notice of intended proceedings & receipt of draft petition & particulars of objection.]—*Re* WESTERN ELECTRIC CO., LTD. LETTERS PATENT NO. 195,589 (1932), 50 R. P. C. 59.

1208a. —— ——.]—In 1927 a patent was granted in respect of "improvements in or connected with galvanic batteries," & in 1928 a patent was granted in respect of improvements in or relating to boxes or containers for electrical accumulators." Pltfs. brought an action for infringement of the patents, & defts. counterclaimed for the patents to be revoked. Pltfs. applied under sect. 22 of Patents & Designs Acts, 1907–1932, for leave to amend the specification of the second patent by way of disclaimer, correction or explanation. Leave was given to proceed, the form of the order being similar, with one addition, to that made in *N. V. Hollandsche Glas-en-Metaalbank* v. *Rockware Glass Syndicate, Ltd.* (1931), 48 R. P. C. 181.—ROWLAND EDWARDS & CO., LTD. *v.* THREE STAR ACCUMULATORS, LTD. (1933), 51 R. P. C. 23.

1209. *Add. Annotation :*— **Refd.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.

1212. *Add. Annotation :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1927), 44 R. P. C. 367.

PART VI. SECT. 6, SUB-SECT. 1.—A.

1057 i. *General rule—Question for judge.*]—In an action for infringement of a patent, not only is the construction of the specification exclusively within the province of the ct., & not within that of the jury or expert witnesses, but it is also for the ct. a question of law.—WESTERN ELECTRIC CO., INCORPORATED & NORTHERN ELECTRIC CO. *v.* BALDWIN INTERNATIONAL RADIO OF CANADA, [1934] S. C. R. 570; 4 D. L. R.

1059 i. —— —— *Identity of two inventions.*]—*Held :* the construction of the language of the specification of a patent is a question of law for the ct., & pltf. co.'s specification covered not merely the precise mechanism described, but the attainment of a novel result at which, according to the arbitrator's findings, deft.'s machine was designed to arrive by means of a process substantially equivalent to that disclosed in pltf. co.'s specification, such findings in consequence establishing what is in law an infringement of pltf. co.'s patent.—FARMERS' MILKING MACHINE CO., LTD. *v.* KNAPP, [1928] N. Z. L. R. 501.—N.Z.

PART VI. SECT. 6, SUB-SECT. 2.—B.

1090 i. *General rule.*]—The claims at the end of the specification in a patent must be regarded as definitely determining the scope of the patent monopoly, having regard to the due & proper construction of the expressions they contain. They must be construed in the light of the rest of the specification; that is to say, the specification must be considered in order to assist in comprehending & construing the meaning—& possibly the special meaning—in which the words or the expressions contained in the claims are used; but, on the issue either of validity or of infringement, the criterion must be determined according to the scope of the monopoly as expressed in the claims (though it is not necessary, to justify a holding of infringement, that the infringing article be found identically, or in every respect, the same as the patented article; it is sufficient if the infringer has borrowed the substance or spirit of the invention as it can be ascertained from the claims, except in details which could be varied without detriment to the successful working of it).—SMITH INCUBATOR CO. *v.* SEILING, [1937] S. C. R. 251.—CAN.

PART VI. SECT. 6, SUB-SECT. 2.—C.

1105 i. *General rule.*]—The language in a patent should be liberally construed with a view to maintaining its validity.—DAVIS LOG & RAFT PATENTS CO. *v.* GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—CAN.

PART VI. SECT. 7, SUB-SECT. 2.—B.

sa. *To sanction amendment notwithstanding action for infringement or revocation.*]—When an application has been made under sect. 71 of Patents Act, 1903–1921, of Australia, to amend a complete specification, & afterwards an action for infringement, or for revocation, is commenced, sects. 80 & 81 of the Act do not preclude the ct. which has seisin of the application from permitting a modification of the amendments proposed & from sanctioning the modified amendments. After the High Ct. of Australia had affirmed an order by which a patentee's application under sect. 71 had been dismissed upon the ground that the amendments, contrary to sect. 78, would make the invention substantially different from that originally claimed, proceedings were commenced for revocation of the patent. Upon appeal to the Privy Council the patentee was allowed to modify the amendments proposed, but the Board, not being satisfied that the amendments even as modified were permissible under sect. 78 except as to certain uncontested items, affirmed the judgment of the High Ct., subject to allowing the uncontested amendments.—COWPER (N. L.) *v.* PAPER SACKS PROPRIETARY, LTD., [1932] A. C. 709; 101 L. J. P. C. 165; 148 L. T. 27.—AUS.

1213a. —— —— —— ——.]—Letters patent were granted in 1916 for a "method & apparatus for separating quantities of molten glass or like material from mass." Claim 1 was as follows: "The method of delivering charges of viscous glass from a viscous mass thereof which consists in producing by preforming a charge of glass of such form & dimensions & so related to the condition under which it is to be deposited that it will not fold, lap or coil when so deposited, & depositing it in such a manner that it will not fold, lap or coil." After commencing an action for infringement, pltfs. moved for leave to amend the specification pursuant to sect. 22 of Patents & Designs Acts, 1907–28, but deleting some of the claims & certain optional alternatives, & by incorporating other consequential amendments. Defts. contended that the amended form of one claim, which was appendant upon a claim which the amendment sought to delete, was inadmissible:—*Held:* leave be granted to amend the specification by deleting the claims desired, appendant claim to have the whole of the claim to which it was appendant incorporated in it, & by deleting the optional alternatives as asked for; the costs of the motion & the costs of & occasioned by such amendments of the pleadings as were necessitated by the amendment of the specification to be defts. in any event.—HOLLANDSCHE (N. V.) GLAS-EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD. (1931), 48 R. P. C. 425

1213b. —— —— —— ——.]—In 1931 letters patent were granted in respect of "Improvements in & relating to the recording of sound on films." The first claim was as follows (amendments allowed in the present proceedings being included): "A method of producing a photographic sound record of the varying width constant density type, in which a beam of light is passed through a triangular & rectangular slit in that order on to a moving film to form thereon a transversely disposed narrow strip of light & in which the beam of light is caused to vibrate in the direction of movement of the film relatively to the said slit in a manner depending upon both the variations in the form of the sound waves & upon the intensity of the sound so that the mean width of the exposed area of the sound track is reduced as the intensity of the sound decreases." In 1933 pltfs. commenced an action for infringement. Subsequently as a result of amendments of the defence, pltfs. twice gave notice of motion to amend the patent & it was ordered that the amendments proposed in the first motion should be incorporated in the second motion, & that that motion should be heard at the trial of the action. Defts. in their pleadings denied infringement, but at the trial admitted it, if the patent was valid, but alleged that the patent was invalid by reason of want of novelty, want of subject matter & of ambiguity:—*Held:* (1) the amendments proposed (with certain consequential amendments not advertised) should be allowed, so as to exclude certain alternatives that were not useful. The amendments included certain alterations to the claims which were held to be by way of explanation, & not to alter the scope of the invention on the true construction of the original specification. An objection of want of skill & knowledge not sustained. But observed that, in the majority of cases, it is more convenient to deal with an application to amend pltf.'s specification before the trial of an action for infringement; (2) the amended patent was valid as a combination of items of public knowledge, & (infringement being admitted) an injunction & order for delivery up were granted, but no damages prior to the date of judgment (without prejudice however to the date from which damages might accrue in another pending action); (3) publication in a Journal, even of wide circulation in the art, did not constitute common general knowledge, in the absence of evidence, not merely of reading, but of acceptance generally by those engaged in the art, & such knowledge is difficult to attribute when there has been no user. Defts. were ordered to pay the costs of the action & the counterclaim, pltfs. to pay the costs of the motion to amend with a set off. A certificate of validity of the patent was granted.

A stay of the order for the injunction & delivery up was allowed, pending appeal, in the special commercial circumstances of the case & pltfs. not objecting & defts. undertaking to keep on account.—BRITISH ACOUSTIC FILMS, LTD., POULSEN & PETERSEN *v.* NETTLEFOLD PRODUCTIONS (1935), 53 R. P. C. 221; *on appeal* (1937), 54 R. P. C. 267, C. A.

1213c. —— —— —— **Effect of delay.**]—Letters patent No. 303,690 were granted in 1928 in respect of "improvements in or relating to boxes or containers for electrical accumulators." Claim 1 was as follows: "An electric cell having a liquid electrolyte & a gas-venting device adapted to prevent the escape of electrolyte, wherein a space sufficient to receive all the electrolyte is provided between the plates & one of the outer walls of the cell, the arrangement being such that the internal opening to the venting device is above the level of the electrolyte when in the space when said outer wall is lowermost, & wherein the plates can be entirely covered with electrolyte when said outer wall is either uppermost or on one side of the cell." Pltfs. were the proprietors of the patent, & also of patent No. 295,516, of earlier date & being a concurrent grant, in respect of "improvements in or connected with galvanic "batteries." After commencing an action for infringement of the patents, pltfs., moved for leave to amend the specification of patent No. 303,690 under sect. 22 of Patents & Designs Acts, 1907–1932, by deleting Claim 1 & inserting a disclaimer of the construction the subject of the earlier patent, & making other consequential amendments. Defts. contended that Claim 2 was substantially the same as Claim 1 & ought, therefore, to be deleted if Claim 1 were dropped, & that the proposed amendments would result in ambiguity:—*Held:* leave be granted to amend the specification in the manner proposed, with some modification of the form of the disclaimer, but that having regard to the delay of pltfs. in making the application they should be precluded from claiming damages from defts. in respect of infringements committed prior to the date of the order; the costs of the motion & the costs of all necessary amend-

ments of the pleadings & the costs thrown away to be paid by pltfs. in any event.—ROWLAND EDWARDS & CO., LTD. *v.* THREE STAR ACCUMULATORS, LTD. (1934), 51 R. P. C. 370.

1219a. Extension of time—Appeal to wrong court]. —An application was made to the Comptroller-General of Patents under sect. 21 to amend a patent specification. That application was opposed & the opponents applied to the Comptroller-General for an order for discovery of certain documents. The Comptroller-General by his decision dismissed that application & made no order. Thereupon the opponents gave notice of appeal from that decision to the Patents Appeal Tribunal. It was held that the Patents Appeal Tribunal had no jurisdiction to hear the appeal. The opponents then filed a petition to the High Ct. under R. S. C., Ord. 53A, r. 5 (*a*), & they sought leave to present the petition out of time:—*Held:* time for presenting such a petition could only be extended in "special circumstances," that the circumstances were not "special" & the leave sought was refused.—*Re* WESTERN ELECTRIC CO., LTD. PATENT NO. 259,664 (1935), 52 R. P. C. 364.

1233. *Add. Annotation:*—**Refd.** *Re* Kirk's Specification (1929), 49 R. P. C. 412.

1236. *Add. Annotation:*—**Refd.** *Re* Kirk's Specification (1929), 49 R. P. C. 412.

1242. *Add. Annotation:*—**Refd.** *Re* Eveno's Patent, [1932] 2 Ch. 167.

1242a. ——.]—In 1927, letters patent were granted in respect of "Improvements in radio receiving systems." Claim 1 was as follows: "A high frequency signal receiving system, including an amplifying valve & a detector, in which the direct current passing through the detector controls the mean potential between two of the electrodes of the amplifying valve, so as to regulate the sensitivity of the amplifier in accordance with the strength of the high frequency input oscillations." In 1934, M. W. T. Co., Ltd. & E. M. I., Ltd. applied for leave to amend the specifications by (*inter alia*) correcting a misdirection concerning the substitution of an electrical circuit shown in Figure 3 for a part of the electrical circuit shown in Figure 1. The application was opposed by M. R. V. Co., Ltd. The Superintending Examiner, acting for the Comptroller, disallowed the principal amendments sought & M. W. T. Co., Ltd. & E. M. I., Ltd. petitioned the ct. by way of appeal:—*Held:* the mistake sought to be corrected by amendment was a clear misdescription; the correction of a misdescription was not necessarily unallowable, but each case must depend upon its own facts; the specification must be read as addressed to persons reasonably skilled in the art; here the proposed amendments would not make the invention substantially different from that originally claimed & described & they were not objectionable. Further evidence having been admitted it was *held*, that the origin of the mistake had been properly explained & that the delay in discovering it had been properly accounted for. The amendments sought were allowed, but in the circumstances petitioners were ordered to pay the HOUSTON CO., LTD.'S PATENT (No. 283,120) (1935), 53 R. P. C. 255.

1248. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

1257a. ——.]—Letters patent were granted in 1927 for "an improved reflector & advertising sign for window, shop, & general display purposes." Claim 1 was as follows: "A combined lighting unit & advertising sign of the kind hereinbefore referred to wherein the means for carrying the lamp or lamps is formed integral with the portion of the body of the sign which acts wholly as a reflector." After commencing an action for infringement, pltf. moved for leave to amend the specification pursuant to sect. 22 of the Patents & Designs Acts, 1907–1928, by limiting the construction covered by the claims to one embodying a particular means of suspension:—*Held:* the desired amendment limited the claim, but would result in a claim for protection for an invention which had not been foreshadowed in the original specification & was a different invention from that claimed by the original specification. The motion was dismissed with costs.—WALSH *v.* ALBERT BAKER & CO. (1898), LTD. (1930), 47 R. P. C. 283; 47 R. P. C. 458, C. A.

1261a. Amendments altering basis of selection patent.] — *Re* I. G. FARBENINDUSTRIE PATENTS, No. 351a, *ante*.

1261b. Addition of feature of later claim.]—In 1927, letters patent were granted in respect of "improvements in & relating to frictional gearing & the like mechanism." Claim 1 was as follows: "A friction gear of the type indicated, in which the transmission of power through the gear is divided between friction members interconnected as regards power transmission & arranged co-axial with, & on opposite sides of, another friction member having friction surfaces on its opposite sides, while intermediate members are interposed between each of such interconnected friction members & said other friction member for transmitting the power there between, said interconnected friction members acting as driving members & said other friction member as a driven member, or *vice versâ*, substantially as described." In 1932, G. M. C. applied for leave to amend the specification by (*inter alia*), limiting Claim 1 by introducing one feature the subject of a later claim & another feature, that of connecting by a casing or its equivalent the central friction member of the gear to a shaft aligned with the shaft carrying the outer friction members. This feature of coaxiality of the driving & driven members was not described in the specification but was illustrated in the drawings of the preferred embodiment. The Superintending Examiner, acting for the Comptoller-General, disallowed these amendments, & G. M. C. petitioned the ct. by way of appeal:—*Held:* if it can be shown that in the invention as disclosed in the specification there is a proper ground for differentiating it from the prior art, then although that ground has not been emphasised in the original specification, an amendment directed to the insertion in the description of that ground ought to be allowed; in this case the feature sought to be emphasised by the amendments was in

fact to be found in the drawings, & the amendments were directed, not to claiming a different invention, but to embodying a proper description of the difference distinguishing the invention from the prior art, & should be allowed. Liberty was given to petitioners to amend the specification.—*Re* THOMSON'S PATENT (1934), 51 R. P. C. 241.

1261c. Disclaimer & explanation.]—In 1924, Letters Patent were granted in respect of "Improvements in or relating to dust collectors or separators & the like." Claim 1 was as follows: "Improved apparatus for the separation & removal of dust & grit from dust laden air or from the gaseous products of combustion of furnaces of the kind referred to comprising in combination a vortex or separating chamber, an admission opening therein for the current of dust laden air or gases, means for setting up the necessary whirling motion of the said current in the vortex chamber, an exhaust passage for the purified air or gas connected to the side of the vortex chamber, a draught inducing device connected so as to draw or force the said current into the vortex chamber & the purified air or gas from thence through the said exhaust passage, a tangential dust outlet arranged at any desired point of the periphery of the vortex chamber, & a connection from the said outlet to a suitable dust receptacle, or to a settling chamber." In 1935, D. & Co., Ltd., applied for leave to amend the specification by (*inter alia*) limiting the invention to separators in which the air stream was induced by a suction fan as opposed to those in which such stream was induced by a pusher fan. D. & Co., Ltd., also sought to limit the invention to apparatus in which there were two separators. The amendments sought were opposed by the G. E., Co., Ltd., & by J. H. & Co. (L.), Ltd. The Comptroller-General allowed the first set of amendments sought, namely, those limiting the invention to separators in which the air stream was induced by a suction fan, but he disallowed the second set of amendments sought & so far as that part of his decision was concerned D. & Co., Ltd., petitioned the ct. by way of appeal:—*Held:* the amendments sought were by way of disclaimer & of explanation that they came within the provisions of sect. 21 of Patents & Designs Acts, 1907–1932, & they ought to be allowed with certain variations. Liberty was given to petitioners to amend the specification & resps. were directed to pay one-half of the costs of the petitioners.—*Re* DAVIDSON'S PATENT (1936), 53 R. P. C. 453.

1337a. Costs occasioned by amendment during action for infringement.]—HOLLANDSCHE (N. V.) GLAS-EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD., No. 1213a, *ante*.

Part VII.—Grant of Patent.

1342a. —— When granted.]—Two applications by L. for inventions having been made, & a complete specification in respect of them having been filed, an application was made by W. requesting that in the case of the earlier application a patent should be granted to him & L. jointly, W. claiming under an agreement with L. that L. would on certain conditions assign to him one-half share of the patent when granted. L. did not consent, & he applied to the Comptroller to settle a dispute between him & W. It was held by the Comptroller that sect. 12 (1) (*b*) & sect. 12 (2) were not applicable & that he had no jurisdiction to deal with the matters in issue. W. appealed to the Patents Appeal Tribunal. The appeal was dismissed with costs.

Proviso (*b*) to sect. 12 (1) of the Acts does not cover the case of an agreement in writing by a sole appct. to assign merely a part interest in the patent when granted. Sect. 12 (2), which relates to disputes arising between joint appcts. or their assigns as to proceeding with an application, cannot be invoked in connection with an application for a patent made by one person alone.—*Re* LANFRANCONI'S (FRÉDÉRIC ALEXANDRE) APPLICATIONS FOR LETTERS PATENT (1936), 53 R. P. C. 317.

1352a. —— —— ——.]—*Re* A. B.'s APPLICATION (1902), 19 R. P. C. 403.

1352b. Jurisdiction to refuse grant—Prerogative—Patent for contraceptive.]—*Re* RUFUS (1935), 53 R. P. C. 57.

1353. *Add. Annotation:—As to* (2) **Reld.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

1363a. —— ——.]—The manufacturer of a particular article may be regarded as interested in commercial processes for making such article marketable; but an opposition is not necessarily admissible, merely because it is not frivolous, vexatious or blackmailing.—*Re* CLAVEL'S APPLICATION (1928), 45 R. P. C. 222.

1364. *Add. Annotation:*—**Reld.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1369. *Add. Annotation:*—**Consd.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1408. *Add. Annotation:—As to* (2) **Dbtd.** *Re* Hull's Patent (1930), 49 R. P. C. 433.

1413. *Add. Annotation:*—**Apld.** *Re* Carpmael's Application (1928), 46 R. P. C. 321.

1419. *Add. Annotation:*—**Folld.** *Re* Carpmael's Application (1928), 46 R. P. C. 321.

1424a. ——.]—Letters patent were granted for "Improvements in apparatus for breaking up, untwisting, & teasing the fibres in the form of ropes & the like." Claim 1 of the specification was as follows: "In a rope untwisting, breaking up, & teasing machine, the combination with a rotary right-angled nozzle having a guide passage adapted to receive a rope through its axial arm & discharge it through the radial one, of stationary teasing spikes fixed in the plane of rotation of the rope end, & a hood or casing so shaped as to form a guide for the end of the rope whirled round by the said

radial arm so as to direct it against the spikes." In an action for infringement of the patent pltfs. alleged infringement of Claims 1 & 2. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter, inutility, insufficiency & ambiguity :—*Held :* the patent was confined to, or at any rate included, lateral guidance by the casing; on a proper construction of the specification the passages in the rotating fan in defts.' machine could not be described as a rotating right-angled nozzle & there was no infringement of Claims 1 or 2; the patent was, on this construction, admittedly not anticipated by any of the prior specifications, but there was no inventive step between certain of the latter & pltfs.' patent, & the patent was also invalid on the grounds of insufficiency & ambiguity. The action was dismissed with costs.—BORE & BORE *v.* GREAVES & THOMAS (1932), 49 R. P. C. 571.

1430. *Add. Annotations :*—**Consd.** *Re* Dreyfus' Application for a Patent (No. 285,968) (1935), 52 R. P. C. 299. **Refd.** *Re* Ehrenreich's Patent (1931), 49 R. P. C. 437.

1437. *Add. Annotations :*—**Refd.** *Re* Mooney's Application (1927), 44 R. P. C. 294; *Re* Clifford Haigh Crowther, Application for a Patent No. 373,942 (1933), 51 R. P. C. 72.

1440. *Add. Annotation :*—**Refd.** *Re* Clifford Haigh Crowther, Application for a Patent No. 373,942 (1933), 51 R. P. C. 72.

1457. *Add. Annotations :* — **Refd.** *Re* Adamson (Daniel) & Co. & Kerfoot Patent 353,087 (1932), 50 R. P. C. 171; *Re* British Celanese, Ltd., Henry Dreyfus & Clifford Ivan Haney, Application for a Patent (No. 298,667) (1933), 50 R. P. C. 247; *Re* Société Des Usines Chimiques Rhone-Poulenc Patent (No. 340,445) (1933), 50 R. P. C. 230.

1468. *Add. Annotation :*—**Consd.** *Re* Adamson (Daniel) & Co. & Kerfoot Patent 353,087 (1932), 50 R. P. C. 171.

1468a. ——.]—*Re* ADAMSON (DANIEL) & CO., LTD. & KERFOOT, APPLICATION FOR A PATENT No. 353,087 (1932), 50 R. P. C. 171.

1468b. —— **Invention constituting new departure in art.**]—Where a particular prior invention not available to the public is described in the public interest, this description should contain a reference by number to the prior specification, but such description is only necessary when it refers to an invention which constitutes a new departure in the art.—*Re* BAKER, APPLICATION FOR LETTERS PATENT, No. 373,702 (1933), 51 R. P. C. 145.

1474. *Add. Annotation :*—**Refd.** *Re* Bramwell's Patent (1930), 49 R. P. C. 431.

1474a. Statement derogatory to prior patent of opponent.]—*Re* HANS EHRIG & ULRICH KEILHAUER, APPLICATION FOR A PATENT (No. 361,787) (1933), 50 R. P. C. 176.

1474b. No new method disclosed.]—*Held :* that it is open to an opponent under sect. 11 (1) (*c*) to oppose the grant of a patent on the ground that the specification discloses no new method of manufacture; where there were but three methods by which liquid could be circulated in an industrial process, the selection of two of these methods, either singly or together, did not constitute any new method of manufacture.—*Re* I. G. FARBENINDUSTRIE AKTIENGESELLSCHAFT APPLICATION FOR A PATENT (No. 307,758) (1933), 50 R. P. C. 249.

Annotation :—**Refd.** *Re* Kodak Ltd.'s Application for a Patent (1936), 53 R. P. C. 276.

1474c. Opposition amounting to objection under sect. 38A (1).]—*Held :* an objection based upon sect. 38A (1) cannot be brought under sect. 11, & an opponent cannot be heard in this connection; but the Comptroller has full power at any time before the grant of a patent is made to take any objection to the grant which is open, no matter when the objection is brought to his notice. Application remitted to Patent Office for reconsideration under sect. 38A (1) as amended by the Act of 1932. Application held to be free from objection under that sub-sect. & patent sealed with amendments of the specification to meet ground (*b*) of the opposition.—*Re* H. A. METZ LABORATORIES INC. APPLICATION FOR A PATENT (No. 311,382) (1933), 50 R. P. C. 355.

1485a. —— ——.]—*Re* LINOTYPE & MACHINERY, LTD.'S APPLICATION (1937), 54 R. P. C. 228.

1495a. —— ——.]—*Re* CARPMAEL'S APPLICATION (1928), 45 R. P. C. 411.

1496a. —— **Interlocutory orders—Order for discovery.**]—A. having applied for the grant to him of letters patent, the application was opposed by B., who claimed that he was the first & true inventor. In the course of the proceedings before the Comptroller an order for the discovery & production of documents was made against A. A. thereupon applied by originating summons by way of appeal asking that the order be set aside. At the hearing B. took a preliminary objection to the ct.'s jurisdiction :—*Held :* the jurisdiction of the ct. to entertain the appeal was excluded by sect. 11 (3) of the Patents & Designs Acts, 1907 to 1928. The provision for appeal to the law officer thereby made includes not only final decisions but interlocutory matters; & this is not affected by sect. 77 (2) of the Consolidated Patent Acts. The words which put the Comptroller in the same position in all respects as an official referee do not imply any other right of appeal.—*Re* ROBERTSON'S APPLICATION FOR LETTERS PATENT, [1930] 1 Ch. 186; 99 L. J. Ch. 145; 142 L. T. 307; 46 T. L. R. 17; 47 R. P. C. 215.

Annotation :—**Refd.** Dennis *v.* Malcolm, [1934] Ch. 244.

1503a. —— **Essentials.**]—Practice of the Comptroller-General under rr. 42 & 43 of the Patents Rules, 1920, in relation to the filing of statements & counter-statements in proceedings by way of opposition to the grant of a patent or of application for the revocation of a patent. The statement filed under r. 42 must fully set out the facts upon the opponent bases his case, & the counter-statement filed under r. 43 must fully set out the grounds upon which the opposition is contested. The issue between the parties should be clearly defined in the statement & counter-statement, & should not be left to be defined later in declarations filed under rr. 44 & 45.—NOTES OF OFFICIAL RULINGS, 1932 (A) (1932), 49 R. P. C., App. i.

1505a. —— **Essentials.**]—NOTES OF OFFICIAL RULINGS, No. 1503a, *ante*.

1505b. Disclosure of vital documents—Time for—Not limited to five days provided by rule 48.]—NOTES OF OFFICIAL RULINGS (1929) B. (1929), 46 R. P. C. App. iii.

1508a. —— Opposition overloaded with documents.]—*Re* METALLGESELLSCHAFT AKTIENGESELLSCHAFT APPLICATION FOR A PATENT (No. 359,868) (1934), 51 R. P. C. 368.

Part VIII.—Register of Patents.

1522a. —— Agreement as to ownership.]—*Re* SMITH'S (H. E.) PATENT (1929), 46 R. P. C. 400.

Part IX.—Maintenance of Patent.

1526. *Add. Annotation :*—**Folld.** *Re* Ruth-Aldo Co. (Inc.), Application for Patent (Nos. 282,791 & 303,099) (1933), 50 R. P. C. 409.

1526a. —— —— ——.]—Patent No. 303,099 was a patent of addition to Patent 282,791. When renewal fees became due upon the original patent, the patentees decided to allow that patent to lapse, not appreciating that this would also make the patent of addition void. The patentees applied to restore both patents, so that the original could then be surrendered & the patent of addition be made an independent patent :—*Held :* restoration could not be granted.—*Re* RUTH-ALDO CO. (INC.), APPLICATION FOR PATENT (Nos. 282,791 & 303,099) (1933), 50 R. P. C. 409.

Part X.—Assignment and Devolution of Patents.

1534a. Assignment dependent on happening of future event.]—A. by indenture (reciting that a suit was depending between him & B. respecting certain patents & that the same could not be assigned without hazard of defeating the suit) granted absolutely the said patents together with some others to C., excepting however until the determination of the above-mentioned suit, such patents as should be necessary to support A.'s legal title. Then followed a covenant that A. upon the determination of the suit, should assign the excepted patents to C. & that until such assignment, A. should stand legally possessed of the same :—*Held :* the legal interest in the excepted patents vested in C. upon the determination of the suit, without assignment.—CARTWRIGHT *v.* AMATT (1799), 2 Bos. & P. 43.

1534b. Agreement for assignment—Whether representation that grantee was "original inventor" material misrepresentation.]—*Held :* it had not been proved that a material misrepresentation had been made.—THOMPSON *v.* JEFFERSON (1928), 45 R. P. C. 309, P. C.

Construction.]—*See* Nos. 1555–1557a, *post.*

1546. *Add. Annotations :*—**Reld.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86; Gilford Motor Co. *v.* Horne, [1933] Ch. 935.

1553. *Add. Annotation :*—**Reld.** Suhr *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1557a. —— Of all patents in relation to preparation & application of gutta percha—What patents within agreement.]—BEWLEY *v.* HANCOCK (1856), 6 De G. M. & G. 391; 26 L. T. O. S. 264; 2 Jur. N. S. 289; 4 W. R. 334; 43 E. R. 1285, L. C.

—— By joint owners of patents—Assignments to "contain covenants by vendors" that patents valid—"& such other covenants as may be reasonably required."]—*See* CONTRACT, Vol. XII., pp. 29, 30, No. 73.

1557b. Assignment of all assignor's interest in patent—Passes right to apply for extension of term.]—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1562. *Add. Annotation :*—*As to* (3) **Apld.** The W. H. Randall, [1928] P. 41.

1577. *Add. Annotations :*—**Overd.** English Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** Curtis Brown, Ltd. *v.* Jarvis, Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

PART VIII.

sg. *Abandonment.*]—*Held :* (1) the abandonment of his invention by an inventor can only be inferred from such conduct as clearly denotes the voluntary surrender to the public of his rights in some form or other; (2) non-user of a patented invention is not fatal to a patent; (3) the Comr. of Patents in the exercise of his discretion, having granted a patent under Patent Act of 1923, the ct. will not now hold that the filing date given to appct. should be changed to another date & thus render the application subject to certain provisions of the Patent Act of 1906; (4) the Patent Act of 1923 does not affect the operation of the Act of 1906 in respect of applications for patents made under that Act or to affect any right or privilege acquired by an appct. for a patent under that Act; (5) sect. 50 of the Patent Act means, that if a person has acquired in some way or other, something which was the subject of an application for a patent by another who is presumably the first inventor, but for which a patent had not yet issued, he, the former, should have a continuing right to use & vend the same notwithstanding the issue of the patent to the other person.—SCHWEYER ELECTRIC & MANUFACTURING CO. *v.* NEW YORK CENTRAL RAILROAD CO., [1934] Ex. C. R. 31; *affd.*, [1935] S. C. R. 665; 4 D. L. R. 273.—CAN.

PART X. SECT. 3.

1545 1. *Covenant for payment of royalties by assignees—Covenant to "warrant & defend" by assignor.]*—GREEN *v.* WATSON (1884), 10 A. R. 113.—CAN.

Part XI.—Licences.

1584. *Add. Annotation :—As to* (2) **Consd.** Trico Products Corpn. & Trico-Folberth, Ltd. *v.* Romac Motor Accessories, Ltd. (1933), 51 R. P. C. 90.

1585a. Assignment of benefits from licence.]—A patentee granted a licence, one term of which was that the licensee should communicate further improvements. A further improvement was made & patented. The patentee assigned his patents to pltfs. who commenced an action against defts., assignees of the licensee, & claimed a declaration that defts. should communicate the improvements to them. The judge found in favour of defts. Pltfs. appealed to the Ct. of Appeal :—*Held :* the patentee was entitled to assign the benefits due to him under the licence agreement.—NATIONAL CARBONISING CO., LTD. *v.* BRITISH COAL DISTILLATION, LTD., [1936] 2 All E. R. 1012 ; 80 Sol. Jo. 652 ; 54 R. P. C. 41, C. A.

1587a. Agreement by parties to use each other's invention—Whether royalties payable on use of own invention.]—Pltf. & defts., who were the respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the other. The agreement contained a clause whereby defts. undertook to pay a royalty upon conveyors made by them which were made in accordance with pltf.'s letters patent. Pltf. alleged that defts. had made such conveyors & had refused to pay the royalties due thereon. Defts. denied that such conveyors were an infringement of pltf.'s letters patent & stated alternatively that, even if they were, no royalties were due since the conveyors were in fact made in accordance with defts.' own letters patent & it was an implied term of the agreement that neither party was to pay royalties upon conveyors made in accordance with his own letters patent :—*Held :* (1) the agreement covered all conveyors made wholly or in part in accordance with either of the patents ; if it was intended to qualify the obligation to pay royalty by excluding conveyors made in accordance with the particular invention of the manufacturer notwithstanding that they were made wholly or in part in accordance with the invention of the other patentee, the intention ought to have been expressed in clear & unambiguous language ; also defts.' conveyors complained of were made in part in accordance with pltf.'s invention. Defts. appealed :—*Held :* the agreement must be looked at as a whole, & bearing in mind that it had been entered into with a view to terminating the dispute between the parties, it should not be read as imposing a liability on applts. to pay a royalty on conveyors manufactured in accordance with their own patent. The appeal was allowed with costs in the Ct. of Appeal & below.

(2) During the cross-examination of a witness for pltf. a prior specification was sought to be put to him to show the state of the art at the date of the patent in suit : —*Held :* the only object of such evidence was really to impugn validity &, since this could not be disputed, the evidence was disallowed.—CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD. (1933), 50 R. P. C. 213.

1590. *Add. Citation :*—28 R. P. C. 229.
Add. Annotation :—**Refd.** Lacteosote *v.* Alberman, [1927] 2 Ch. 117.

1602a. Condition limiting price—Notice—Expiration of patent.]—In Sept. 1917, letters patent were granted in respect of "improvements in tobacco-pipes, cigar-holders & the like." In Mar. 1933, pltfs. commenced an action against defts. to restrain them from selling bruyère pipes manufactured by pltfs. in accordance with the patent at a price less than that authorised by pltfs. in breach of the terms of a limited licence under which alone the pipes might be sold. Defts. denied (*inter alia*) that the limited licence had been brought to their notice. The restrictive conditions were on a wrapper & the pipe, the sale of which was complained of, passed through several hands & defts. suggested that the outer cover had never been removed whilst the article was in their possession, In Sept. 1933, before the hearing of the action, the patent expired :—*Held :* the suggested defence had not been proved & defts. must be taken to have knowledge of the limited licence, & the patent in respect of which the action had been brought having expired, the ct. did not think fit to make any order, except that pltf.'s costs should be taxed & paid by defts.—ALFRED DUNHILL, LTD. *v.* GRIFFITHS BROS. (1933), 51 R. P. C. 93.

1603. *Add. Annotation :—As to* (1) **Apld.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1603a. —— —— ——.]—(1) A licence to "make use, exercise, & vend" a patented invention for a particular form of collapsible tube contained a condition that the licencees should purchase from the inventor all such wires for connecting the caps with the tubes as they should use with the tubes, the cap being not within the protection of the patent :—*Held :* the condition was null & void under Patents & Designs Act, 1907 (c. 29), s. 38.

(2) Another condition in the licence provided that the patentee should at his own cost, at the request of the licencees, commence & prosecute all legal proceedings in respect of infringement or suspected infringement of the patent :—*Held :* in the circumstances of the case a refusal to take proceedings when requested to do so by the licencees was not

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PART XI. SECT. 1, SUB-SECT. 1.

sp. *Nature of.*]—A personal, non-exclusive, non-assignable licence to use & exercise inventions which are the subject of letters patent, which neither transfers to nor confers upon the licensee any interest in the inventions or in the letters patent, is distinguishable from a licence of the kind referred to in sect. 122 (2) of Patents, Designs, & Trade-marks Act, 1921-32, & from the grant of a *profit à prendre.*—COLLIER & BEALE, LTD. *v.* STAMP DUTIES COMR., [1936] N. Z. L. R. 264 ; G. L. R. 161 ; 12 N. Z. L. J. 43.—N. Z.

—— a breach of the contract as would disentitle the assignees of the licencors to sue upon another stipulation contained in it.—HUNTOON Co. *v.* KOLYNOS (INCORPORATED), [1930] 1 Ch. 528; 99 L. J. Ch. 321; 143 L. T. 165; 46 T. L. R. 253; 47 R. P. C. 403; *subsequent proceedings*, 48 R. P. C. 98, C. A.

1603b. Interdependent conditions—What are.]—HUNTOON Co. *v.* KOLYNOS (INCORPORATED), No. 1603a, *ante*.

1603c. Sale below price fixed by patentee—Form of order.]—The owners of letters patent relating to gramophone records brought an action against defts., who carried on a retail business, complaining of sales by defts. of pltfs.' records at prices below those fixed by the limited licence which regulated the terms of such sales. Defts. failed to deliver a defence, & at the trial the ct. made an order (*inter alia*) restraining defts. from selling records made in accordance with the letters patent in suit & sold by pltfs. subject to a limited licence governing the retail price at prices lower than those fixed by pltfs. in force at the date of such retail sale.—COLUMBIA GRAPHOPHONE Co., LTD. *v.* OXFORD CAMERA & TRADING Co., LTD. (1933), 50 R. P. C. 413.

1608. *Add. Annotation:*—**Refd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

1609. *Add. Annotations:—As to* (1) **Dbtd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93. **Refd.** Suhr *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1614. *Add. Annotation:*—**Refd.** Suhr *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1616. *Add. Annotation:*—**Refd.** Suhr *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1619a. After expiration of licence.]—A patentee brought an action for damages for infringement against a certain firm who gave judgment by consent before declaration filed, & immediately took a licence to use the patent for a term. On a bill being filed by the patentee, after the expiration of the licence, to restrain an alleged further infringement of his patent, by defts. in the action & certain other persons who had joined the firm after the date of the judgment at law:—*Held:* upon motion for decree, defts. in the suit were not estopped either by the licence or by the judgment at law from denying the validity of pltf.'s patent.—GOUCHER *v.* CLAYTON (1865), 5 New Rep. 360; 34 L. J. Ch. 239; 11 L. T. 732; 11 Jur. N. S. 107; 13 W. R. 336.

1619b. Executed agreements.]—Pltf., who exploited patents, in 1930 acquired from one S. the sole rights of exploitation of letters patent No. 267,795 for a three-wheel motor delivery carrier. On Oct. 29, 1930, he entered into an agreement with defts. that they should take over the sole manufacturing rights for Great Britain & export to any part of the world except Germany, in which it was (*inter alia*) agreed that the manufacture of the vehicle was to commence forthwith on the understanding that the patent rights were sound & that defts. were kept safeguarded & indemnified against infringement. Defts. were to provide the necessary facilities to enable the manufacture to be accomplished & to make an original payment, part of which was payable on signing the agreement & to pay certain royalties. In Sept. 1931, pltf. commenced an action against defts., claiming a certain sum under the agreement. Defts. by their defence denied that the agreement was binding on them, alleging (*inter alia*) fraud & misrepresentation, & that the agreement was entered into upon the understanding that the patent rights were sound, & that they were not sound, & that the patent was on various grounds invalid; they also denied the title of pltf. to grant the rights granted under the agreement. Defts. counter-claimed for money paid to pltf. & for expenses incurred by them:—*Held:* the defences of fraud & misrepresentation failed & the agreement did not contain any guarantee of the validity of the patent by pltf., but it meant that both parties had agreed that manufacture should begin forthwith on the assumption that the patent was valid & that they should co-operate to prevent infringement; the agreement had been executed & therefore, even if there had been a guarantee of validity by pltf., defts. could not set up a plea of invalidity whilst continuing to manufacture under the agreement; the doctrine of estoppel applied & defts. were not entitled to deny pltf.'s title. Judgment was given for pltf. with costs & the counter-claim was dismissed with costs.—SUHR (R. F. H.) *v.* CROFTS (ENGINEERS), LTD. (1932), 49 R. P. C. 359.

1638. *Add. Annotation:*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1638a. —— Failure of patentee to stop infringement after notice.]—Letters patent were granted in 1926, for "improvements in incandescent electric lamps, & like sealed envelopes." Claim 1 was as follows: "An envelope of the kind set forth in which the exhaust tube is provided with a bulbous closed end before insertion into the stem tube." Pltfs., the registered proprietors of the patent, granted defts. a licence to make & sell electric lamps & bulbs in accordance with patent, on payment of a royalty by defts. The licence further provided that defts. were to notify pltfs. of any infringement of the patent whereupon the pltfs. were within six weeks to take steps to prevent such infringement. Pltfs. brought an action for royalties. An infringement had been reported by defts. to pltfs., & defts. alleged that pltfs. had not taken proper steps as required by the licence. Pltfs. contended that the patent had not been infringed:—*Held:* the patent had been infringed; under the clause in the licence pltfs. were bound to take such steps as a reasonable

PART XI. SECT. 1, SUB-SECT. 5.—B. 1604 *v.* ——.]—In an action for royalties against the licensee of a patent:—*Held:* No covenant that the patent was valid was to be implied in the agreement, the licensee is a purchaser of personal property & the rule of *caveat emptor* applies. A judgment declaring the patent void would be no defence to an action for royalties.—ANDERSON *v.* SHEPARD, LTD., [1931] 1 D. L. R. 204; 66 O. L. R. 105.—CAN.

PART XI. SECT. 1, SUB-SECT. 6. ... of sp. *parties.*]—HILL *v.* MOISAN, [1927] 2 D. L. R. 1089.—CAN.

PART XI. SECT. 1, SUB-SECT. 8. h i. —— *Invalidity of patent.*]—CHANNELL *v.* O'CEDAR CORPN. (1927), 60 O. L. R. 525; *varied*, [1928] 3 D. L. R. 843; [1928] S. C. R. 542.—CAN.

energetic patentee would take to protect what he thought was a valuable patent, & pltfs. had not taken the necessary steps to prevent the infringement. The action was dismissed with costs, except on one issue.—N. V. "SPLENDOR" GLOEILAMPEN FABRIEKEN *v.* OMEGA LAMPWORKS, LTD. (1933), 50 R. P. C. 393.

1641. After this case add :—

-.]—*See, now*, 1907 Act, s. 38 (2).

1642a. —— **Article made by licensee not within ambit of monopoly.**]—DOBSON *v.* ADIE BROS., LTD. (1935), 52 R. P. C. 358.

1650. *Add. Annotation :*—**Refd.** Curtis Brown, Ltd. *v.* Jarvis, Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

1651a. —— ——.]—*Held :* the phrase "the public interest" was to be construed in its widest meaning, & not simply with regard to the purchasing public.—*Re* BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD. (1929), 45 T. L. R. 584 ; 46 R. P. C. 457.

Annotation :—**Refd.** *Re* Loewe Radio Co.'s Application (1929), 46 R. P. C. 479.

1652. *Add. Annotation :—Generally*, **Consd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

1655a. —— ——.]—*Re* BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD. (1929), 45 T. L. R. 584 ; 46 R. P. C. 457.

Annotation :—**Refd.** *Re* Loewe Radio Co.'s Application (1929), 46 R. P. C. 479.

1656a. —— **Question of degree.**]—*Re* LOEWE RADIO CO., LTD.'S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES (1929), 46 R. P. C. 479.

Annotation :—**Refd.** *Re* Cathro's Applications (1934), 51 R. P. C. 461.

1658a. Abuse of monopoly rights—What amounts to.]—Letters patent No. 225,523 were granted to a German Co. in respect of improvements in the manufacture of lithopone. The I. G. Farbenindustrie Aktiengesellschaft, the assignees of the patent, & their licensees Orr's Zinc White, Ltd., appealed by way of a joint petition against the decision of the Comptroller allowing McKechnies' application for a compulsory licence on the grounds of abuse of monopoly under all three heads of sect. 27 (2) (*a*), (*b*), (*d*) of Patents & Designs Acts, 1907–1932, & ordering the grant of a non-exclusive licence to appcts., the form of which the Comptroller settled, owing to the parties not agreeing as to the form :—*Held :* on a true construction sect. 27 (2) (*a*) provides that the actual facts at the date of hearing as well as those at the date of application may be considered in determining whether the invention is being worked on a commercial scale & the scale must by the definition in sect. 93 be adequate to meet the demand for the patented article in the United Kingdom ; there was an abuse of monopoly under sect. 27 (2) (*a*) in that there was not at the date of hearing working on a commercial scale, the licence to Orr's not having been shown to have been granted *bonâ fide* ; & accordingly it was unnecessary to consider whether a case had been made out under para. (*b*) or para. (*d*), & a licence ought to be granted to appcts. ; although the licence to Orr's was not *bonâ fide* from the point of view of securing working in the United Kingdom, the royalty reserved must be taken to have been fixed on a fair commercial basis ; but amendments were ordered to be made in the form of compulsory licence. The petition was dismissed with costs.—*Re* MCKECHNIE BROS., LTD., FOR COMPULSORY LICENCE IN RESPECT OF CERTAIN LETTERS PATENT (1934), 51 R. P. C. 461.

1658b. —— ——.]—*Re* CATHRO'S APPLICATION (1934), 51 R. P. C. 475.

1665. *Add. Annotation :*—**Refd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

1665a. —— **Undertakings to Comptroller-General—Should not be required.**]—*Re* LOEWE RADIO CO., LTD.'S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES (1929), 46 R. P. C. 479.

Annotation :—**Refd.** *Re* Cathro's Applications (1934), 51 R. P. C. 461.

1666a. Cancellation of endorsement—Procedure.]—(1) Where a patentee applies, under sect. 24 (5), of Patents & Designs Acts, 1907 & 1919, for the cancellation of the indorsement, "licences of right," on a patent, the Comptroller-General of Patents may advertise the application, indicating the procedure to be followed by any person wishing to oppose it, may require the filing of statements & evidence by the patentee & an opponent, & may hear the parties before deciding the application.

(2) Rules 73, 74, & 75 of Patents Rules, 1920, are *intra vires* & valid.—R. *v.* COMPTROLLER-GENERAL OF PATENTS, *Ex p.* ENGL, [1930] 1 K. B. 517 ; 99 L. J. K. B. 271 ; 142 L. T. 600 ; 47 R. P. C. 118.

1669. *Add. Annotations :—As to* (1) **Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730. *As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

1673a. —— —— ——.]—(1) No action for a declaration of the validity of a patent, or for compensation for user of the invention by the Crown, against the Govt. department concerned is competent or open to the patentee under Patents & Designs Act, 1919 (c. 80), s. 8, if the Crown do not consent to its being dealt with in proceedings under sect. 8, but the remedy is by petition of right or by originating notice of motion addressed to the department. The true effect of sect. 8 is to give merely a right of compensation to the patentee against the Crown for the use by its officers of his invention for the purposes of the Crown, & it does not give any right in itself to sue the department concerned.

(2) A claim for a declaration of the validity of the patent is not a claim in tort because the

PART XI. SECT. 2, SUB-SECT. 1.

sq. *Non-manufacture in Canada—Cost when imported unreasonably large.*] —MITCHELL CO. *v.* ATLAS SYSTEMS. 1929] 1 D. L. R. 538.—CAN.

PART XI. SECT. 2, SUB-SECT. 2.

1662 l. *Grant of licence—On what terms granted—Licence fee—How calculated.*] —CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1927] 1 D. L. R. 402 ; [1927] S. C. R. 300.—CAN.

From Exchequer Court—under Patent Act, 1923 (c. 23), *s.* 40—*Jurisdiction of Supreme Court of Canada.*]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1927] 1 D. L. R. 402 ; [1927] S. C. R. 300.—CAN.

Crown has the right to use the patent on the statutory terms set out in sect. 8.

An action in which such a declaration was claimed against the Air Council, dismissed on the above grounds.—ROWLAND & MACKENZIE-KENNEDY *v.* AIR COUNCIL (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.

Annotations:—Generally, **Refd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8; Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

Part XII.—Term of Patent.

1681a. —— Being beneficial owner.]— *Re* WHITE & GRAY'S PATENT (1927), 45 R. P. C. 119.

1684a. —— Interests of foreign shareholders acquired by Public Trustee—Patents & Designs Acts, 1907–1919, s. 18 (6).]—*Re* STIRLING'S PATENT, *Re* STIRLING & SCHMIDT'S SUPERHEATING CO. (1910), LTD.'S PATENT (1928), 46 R. P. C. 133.

1687a. Joinder of grantee—Application by assignee.]—Where a grantee declines to join in an application for the extension of the term of a patent & lodges notice of opposition, it is unnecessary to join such grantee as a party to the summons.—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1687b. —— Discretion of court to dispense with.]—*Re* DRESSLER'S PATENTS (NO. 2) (1928), 46 R. P. C. 165.

1687c. —— ——.]—*Re* SMITH'S (E. J.) PATENTS (1928), 46 R. P. C. 166.

1687d. ——.]—*Re* ALLEN & BENNETT BROS. LTD. PATENTS (1929), 46 R. P. C. 397.

1687e. Assignor.]—*Re* OWEN'S PATENT (1928), 46 R. P. C. 333.

1687f. Person entitled to apply for Convention patent.]—A co. became entitled in 1914 to apply for a patent in this country for an invention protected by letters patent in America dated May 18, 1914, & was therefore in a position to apply under sect. 91 of Consolidated Patents & Designs Acts, 1907 & 1919, for a Convention patent, the date of which when granted would be the same as that of the American letters patent. Owing to the war the co. made no application for any grant of letters patent until Mar. 1920, when by virtue of powers of extension vested in the Comptroller under temporary rules made by the Board of Trade & having statutory force, a grant was made to the co. of letters patent in respect of the invention. Shortly before the expiration of this grant the co. in 1929 applied by originating summons for an extension of the term of the letters patent on the ground of losses which they alleged they had suffered by reason of the war:—*Held:* the patentees having been entitled to apply for a Convention patent were within the description of "patentee as such" in sect. 18 (6) of Consolidated Patents & Designs Acts, 1907 & 1919, the application for a grant had been properly postponed, & they had suffered loss or damage owing to the war. They were therefore entitled to the extension they sought. As the term of the letters patent had expired at the date of the hearing a re-grant was necessary.—*Re* WESTERN ELECTRIC CO., LTD.'S PATENT, [1931] 1 Ch. 68; 100 L. J. Ch. 82; 144 L. T. 299; 46 T. L. R. 549; 48 R. P. C. 155.

Annotation:—**Refd.** *Re* British Thomson-Houston Co., Letters Patent Nos. 15,448 of 1915 & 148,129 (1931), 49 R. P. C. 218.

1690a. Government Departments—Represented by Comptroller.]—Western Electric Co., Ltd., applied by originating summons for the extension of the term of two patents granted in respect of "improvements in Cores for Pupin Loading Coils, electromagnets, & the like." One of the patents expired prior to the hearing of the summons. The application was opposed by the Postmaster-General, who alleged that there had been a postponed demand owing to the War & arising out of the non-installation of older types of apparatus:—*Held:* (1) in the preliminary proceedings Govt. Depts. were sufficiently represented by the Comptroller, & should not be otherwise represented; (2) at the hearing there had been loss of opportunity owing to the war, but this had been counterbalanced in part by a postponed demand. An extension of eighteen months was granted.—*Re* WESTERN ELECTRIC CO., LTD., LETTERS PATENT NO. 103,188 & 107,007 (1932), 49 R. P. C. 342.

1695a. ——.]—*Re* BRITISH THOMSON-HOUSTON CO., LTD., LETTERS PATENT NOS. 15,448 of 1915 & 148,129 (1931), 49 R. P. C. 218.

1706a. ——.]—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1711. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1724a. —— ——.]—T. was the grantee of a patent for an invention for an improved pipe joint. A co. which had bought the patent applied by petition for an extension of the term of the patent. On the "return day" of the petition the Comptroller raised a question regarding disclosure of documents to be disclosed by petitioners:—*Held:* (1) petitioners must make an affidavit of documents & must give discovery of any document in such affidavit, the said affidavit to be filed within three weeks from the "return day" & discovery to take place within ten days from such date of filing; (2) after further hearing, "patentee" included the original inventor, those associated with him, & successive owners of the patent during its life; the remuneration of all such persons must be considered; where the original inventor & his associates had been adequately remunerated & were not parties to the petition brought by an assignee, it was no part of the duty of the ct. to grant an extension of the term of the patent to enable such assignee to remedy what had proved to

be an unremunerative commercial speculation; the invention was undoubtedly meritorious, but the accounts were unsatisfactory, & the costs of maintaining subsidiary patents & trade marks ought not to be included in the accounts of loss under the patent. The application was dismissed with costs. Petitioners were ordered to pay the costs of the Comptroller, including costs incurred by him in obtaining expert examination of the accounts.—*Re* TRIBE'S PATENT (1936), 53 R. P. C. 131.

1743. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1750a. ——.]—*Re* NEUFELDT & KUHNKE G.m.b.H. PATENTS (1930), 47 R. P. C. 553.

1750b. ——.]—P. & B. were the grantees of two patents. The first patent was granted in respect of an invention for "improvements in or relating to gyro-compasses." The second patent was granted for another invention for "improvements in or relating to gyro-compasses." P. died on Aug. 4, 1920, & under his will the patents became vested in B. On June 17, 1930, leave was granted to present the petition out of time: —*Held:* the inventions were of exceptional merit & utility; the patentees had made a substantial loss & in the circumstances no objection should be taken to the accounts; & each patent should be extended for ten years from the date of expiry in each case.—*Re* PERRY & BROWN'S PATENTS (1930), 48 R. P. C. 200.

1750c. ——.]—A. H., Ltd., T. & G., were the grantees of a patent granted in respect of improvements in finishing prisms or lenses or combinations of the same & in apparatus therefor; A. H., Ltd., & T. were the grantees of a later patent granted in respect of improved process & apparatus for finishing lenses. The patentees applied for extensions of the terms of the patents:—*Held:* the inventions were of very exceptional merit & utility; the patentees had been inadequately remunerated; possible purchasers of the patented apparatus were few & commercial development of the patents must necessarily be slow; taking all these matters into consideration the first patent must be extended for ten years, & the second patent extended for such a term as to expire contemporaneously with the first patent.—*Re* ADAM HILGER, LTD., TWYMAN & GREEN PATENTS (1931), 49 R. P. C. 245.

1750d. ——.]—W. was the grantee of a patent for an invention for an "improved construction of metal aeroplane spars." Assignees of the patentee applied for an extension of the term of the patent:—*Held:* the invention was an exceptional one meriting five years' extension of the patent, but that it was not an "extra-exceptional" one; also petitioner must pay the costs of the Comptroller-General of Patents.—*Re* WYLIE'S PATENT (1934), 51 R. P. C. 377.

1765. *Add. Annotations:*—**Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193. **Refd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1777. *Add. Annotation:*—*As to* (4) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1783. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1795. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1808a. —— —— ——.]—*Re* FAIREY'S PATENT (1937), 54 R. P. C. 297.

1810. *Add. Annotation:* — **Refd.** *Re* Murray's Patent (1932), 49 R. P. C. 445.

1825a. Effect of later improvements.]—M. was the grantee of a patent in respect of an invention by which new & improved fabrics were made by applying an adhesive to yarn, then untwisting the yarn, & using the twistless yarn for weaving. M. & a co. applied by petition for an extension of the terms of the patent. On the "appointed day" when application was made to fix a day, the Comptroller objected that patents for certain later improvements were not disclosed. Leave was given to amend the petition. The petition was opposed by one D. & the Comptroller, on the grounds (*inter alia*) that there was insufficient invention or benefit to the public, that any success achieved was due to later improvements, that the accounts were incomplete, & that insufficient efforts had been made by the patentee to exploit the invention. At the hearing it appeared that there was a quantity of undisclosed correspondence relevant to the latter ground:—*Held:* there had been no *mala fides*, & the hearing was adjourned for further discovery; the opponent D. was allowed to withdraw & received his costs; there was sufficient merit to justify extension, the fact that later improvements contributed to success did not destroy that merit, & the insufficiency of accounts could be excused where there were not profits; also Claim 1 should not be extended, but any amendments made should be purely consequential. As the patent had expired, a new grant limited to the remaining claims was necessary & this was ordered to be for five years subject to an undertaking to register licences, & to submission of the amendments to the Comptroller.—*Re* MEYER'S PATENT (1933), 50 R. P. C. 341.

1832a. ——.]—*Re* LETTERS PATENT (No. 120,941) TO JACOB OCHSNER (1933), 51 R. P. C. 4.

1836. *Add. Annotations:*—**Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193. **Refd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

PART XII. SECT. 2, SUB-SECT. 5. —G. (a).

1839 ii. ——.]—The method related to the fixing of uprights consisting of single steel pillars comprising two channel irons connected together at the base & at short intervals throughout their height. The channel irons were provided with slots through which movable thouhg self-locking thwarts were passed. The invention was proved to be of considerable utility. The remuneration received by the patentee in respect of his invention amounted to £2,147 drawn from royalties of £1 payable for each upright. The patentee had been prevented from receiving further remuneration because of the prolo period of depression in the building industry. The patentee tioned for an extension of the of the patent. The ct. refused an extension of the term, holding that the remuneration of petitioner had not been inadequate.—*Re* MACILWAINE'S NT (1934), 51 R. P. C. 415.—SCOT.

9 iii. ——.]—In 1919 a patent was granted to W. for "an improved method of & apparatus for use in making faced concrete building blocks or slabs & the like." The method related to (*a*) the forming of a con-

1842a. ——.]—In 1920 Letters Patent No. 149,233 were granted to E. entitled "Improved method & means for storing, transporting & delivering for use gas under pressure from liquefield gas" on a communication from abroad by the Heylandt Gesellschaft für Appartebau m.b.H. for an invention relating to the construction of insulated tanks or vessels for the transport of liquefied gases & mechanism, consisting of valves & the like, for delivery of the gas. In the exploitation of the patent various cos. had at various times acquired an interest therein. These cos. & the inventor Christian Wilhelm Paul Heylandt joined in a petition for extension. The grounds of the application were difficulties in the way of the development of the patent & inadequacy of remuneration. The opposition was based chiefly on the grounds that petitioners had failed to show that the remuneration received was inadequate:—*Held:* though it was impossible to ascertain the precise remuneration obtained by the various interested parties, some considerable remuneration had in fact been received, &, where a patent is purchased as a commercial transaction in the last years of its life, special considerations must apply; where a patentee is also a manufacturer, the profits which he makes as manufacturer must also be taken into consideration; further, the accounts kept were inadequate.—*Re* EVANS' PATENT (1937), 54 R. P. C. 259.

1863. *Add. Annotation:—As to* (1) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1883a. ——.]—*Re* LAKE'S PATENTS (1928), 46 R. P. C. 135.

1904. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1914. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1925a. Patent endorsed "licences of right"—Form of order for extension.]—*Re* SANDERS' (THOMAS) PATENT (1931), 48 R. P. C. 342.

1944. *Add. Annotation:*—**Refd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1945. *Add. Annotations:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193; *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

1947a. Insufficiency excused where no profits.]—*Re* MEYER'S PATENT (1933), 50 R. P. C. 341.

1955. *Add. Annotation:—As to* (2) **Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1956a. —— ——.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

1959a. Not confined to profits of petitioner assignee—Includes profits of original inventor & all subsequent holder.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

1997a. —— **Irregularity in service of advertisements—Excused.**]—*Re* PANICALI & BRENNI'S PATENT (1927), 44 R. P. C. 509.

2004a. Discovery—Affidavit of documents.]— *Re* TRIBE'S PATENT, No. 1724a, *ante*.

2005a. Withdrawal of opposition—Terms on which permitted.] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. (1929), 47 R. P. C. 193.

2005b. Necessity for accurate statements in affidavits.]—*Re* BROWN & BOSTOCK PATENT (1931), 48 R. P. C. 215.

2012. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents

2019a. —— **Over eight months prior to expiry—Hearing over five months prior to expiry.**]—*Re* MILLS & MORRIS, LETTERS PATENT No. 105,857 (1932), 49 R. P. C. 326.

2021. *Add. Annotation:*—**Refd.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2021a. ——.]—*Re* BOUYER'S PATENT (1928), 45 R. P. C. 268.

2023a. —— **Six months after expiry.**]—*Re* HORSTMANN, HORSTMANN & EDGAR'S PATENT (1928), 46 R. P. C. 1.

2027a. —— **Notice of opposition.**] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2027b. Form of petition.]—*Re* RUTH'S PATENT (1931), 48 R. P. C. 553.

2027c. Amendment of summons by addition of parties after expiry—Restoration of original summons.]—*Held:* in view of the amendment in sect. 18 (1) of the Patents & Designs Acts, 1907–32, which removed the power of the ct. to allow an application after a patent had expired, the original summons should be restored & the necessary parties added as resps.—*Re* MOSSAY, JACOBY & ENCLOSED MOTOR CO., LTD. PATENTS (1933), 50 R. P. C. 256.

2029a. —— —— ——.]—*Re* MORF'S PATENT (1929), 46 R. P. C. 335.

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crete block face upwards in a mould, & coating the face while still moist with a layer of cement & depositing pebbles on the wet surface & allowing the whole mass to set in the mould, & (b) a machine for depositing the pebbles evenly on to the face of a block in the mould. The invention was proved to be of considerable merit & utility. The remuneration received by the patentee & afterwards by his widow as the person succeeding him in right of the patent amounted to £8,653. In addition the patentee had received payment as managing director of a limited co. which worked the patent under licence from him & also dividends on capital invested by him in the limited co. The widow of the patentee & the limited co. petitioned for an extension of the term of the patent. The ct. refused an extension of the term, holding that the remuneration of the patentee & petitioner had not been inadequate. The ct. held further that in reckoning the amount of profits made by the patentee as such, sums received by a patentee for services as managing director of a limited co. working the patent under licence, & dividends on capital invested by him in such limited co. were not to be taken into consideration.—*Re* WILSON'S PATENT (1935), 53 R. P. C. 1.—SCOT.

PART XII. SECT. 2, SUB-SECT. 8.—E.

ss. Form of application—In Scotland—Petition.]—*Held:* the fact that procedure by originating summons was unknown in Scotland did not preclude a patentee in Scotland from obtaining from the ct. in Scotland an extension of his patent under Patents & Designs Act, 1907 (c. 29), s. 18 (6), as amended by Patents & Designs Act, 1919 (c. 80), s. 7 (3); & such an extension was granted in the course of an ordinary application by petition for the extension of a patent.—MURRAY *v.* COMPTROLLER-GENERAL OF PATENTS, [1932] S. C. 726.—SCOT.

PART XII. SECT. 2, SUB-SECT. 8.—F.

2029 i. *Form of application—Petition.*]—In 1916 a patent was granted to M. for "A piece of furniture convertible for use as a bed, a couch, a bath chair or the like." The patentee expended a considerable sum in connection with the patent, but very few of the articles were sold. Manufacture of the article had been impeded by the war. The patentee petitioned

2031. *Add. Annotation:*—**Reld.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

2036a. ——.]—*Re* BRITISH THOMSON-HOUSTON CO., LTD.'S PATENT (1929), 46 R. P. C. 367.

Annotation:—**Mentd.** *Re* Western Electric Company's Patent (1930), 46 T. L. R. 549.

2038a. ——.]—*Re* I. G. FARBENINDUSTRIE AKTIENGESELLSCHAFT LETTERS PATENT (1937), 54 R. P. C. 250.

2044a. —— —— ——.]—*Re* WADE'S PATENT, *Re* DOUGLAS' PATENT (1929), 46 R. P. C. 518.

2055a. —— **Application of R. S. C. (No. 2), 1933, r. 8.**]—*Re* DRAKE'S PATENT (1933), 51 R. P. C. 323.

2056. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

2060a. ——.]—*Re* CLYDE & DOBBIE MCINNES, LTD. PATENTS (1929), 46 R. P. C. 429.

2062a. —— ——.]—*Re* GILBERT'S PATENTS (1927), 44 R. P. C. 527.

2062b. ——.]—*Re* WESTERN ELECTRIC CO., LTD.'S PATENTS (1927), 45 R. P. C. 117.

2062c. Manufacture in Irish Free State—Before Treaty.]—*Held:* as the patentee was working within the area of the British patent before the Irish Treaty, the considerations as to manufacture abroad were subject to modification & did not debar extension; also in the case of war losses the merits scarcely came into consideration.—*Re* HILTON (JOHN) PATENT (1932), 49 R. P. C. 398.

2064a. —— **Loss partly made good by subsequent profits.**]—An application for an extension of the term of a patent was opposed on the ground (*inter alia*) that sales lost during the war had been balanced by accumulated deferred sales after the war:—*Held:* there had been a loss which had been in part, but not wholly, made good by a subsequent gain, & an extension of two & a half years should be granted.—*Re* HIGGINSON & ARUNDEL'S PATENT (1927), 44 R. P. C. 430.

2064b. —— ——.]—*Held:* in order to show that a loss had been counterbalanced by subsequent gains, it should be established that, as the result of the cessation of hostilities, those who had been holding up their demands had loosed them, so that, in the post-war years, the arrears of orders had been executed in addition to the work which would normally have been done in the normal development of the patent.—*Re* BATES & UNITED SHOE MACHINERY CO., LTD.'S PATENT, *Re* BATES RICHARDS & UNITED SHOE MACHINERY CO., LTD.'S PATENT (1928), 45 R. P. C. 270.

2064c. ——.]—*Re* BOUYER'S PATENT (1928), 45 R. P. C. 268.

2077a. Illness of patentee owing to war.]—*Re* EVANOVITCH'S PATENT (1928), 46 R. P. C. 168.

2090a. ——.]—*Re* ENFIELD CYCLE CO., LTD. & SMITH'S PATENT (1927), 44 R. P. C. 526.

2094. *Add. Annotation:*—**Reld.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2105a. ——.]—*Re* SPENGLER'S PATENT (1929), 46 R. P. C. 331.

2112. *Add. Annotation:*—**Reld.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2113a. ——.]—Electrical Research Products, Inc., & Standard Telephones & Cables, Ltd., applied by originating summons for the extension of the term of a patent granted in respect of "improvements in electric wave amplifying apparatus." The patent expired prior to the hearing of the summons. The application was opposed by Radio Manufactures Assocn., Columbia Graphophone Co., Ltd., Mullard Radio Valve Co., Ltd., Mitcham Works, Ltd., & Philips Lamps, Ltd. The opponents denied that any loss was suffered by reason of the war, & alleged that by the earlier development by reason of the war of various uses to which the patent could be applied, the use of the patent had been accelerated & not retarded by the war. They further contended that the ct. must not consider the mere length of time lost, but its relative value compared with a similar period of time at the end of the life of the patent:—*Held:* the opponents failed to show that appcts. had been compensated by reason of the war for loss of opportunity for the period during which they were prevented by the war from dealing with the patent, & that the patent should be extended for four years.—*Re* WESTERN ELECTRIC CO., LTD.'S PATENT (No. 275 OF 1915) (1931), 48 R. P. C. 218.

2123a. —— **Postponed demand.**]—*Re* WESTERN ELECTRIC CO., LTD., LETTERS PATENT NO. 103,188 & 107,007, No. 1690a, *ante*.

2124. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Western Electric Co.'s Patent (1930), 46 T. L. R. 549.

2127a. ——.]—*Re* MELLINGER'S PATENT, *Re* AUTOMATIC TELEPHONE MANUFACTURING CO., LTD. (1928), 46 R. P. C. 4.

2130a. —— ——.]—*Re* HOGG & CARR'S PATENTS (1927), 45 R. P. C. 120.

2130b. Three years' difference in grant—Adjournment.]—*Re* EDUCATIONAL SUPPLY ASSOCN., LTD.'S PATENTS (1928), 46 R. P. C. 330.

2136a. Within statutory definition of patent.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2136b. Right to extension—Limited to period of extension of main patent.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2136c. —— **What must be considered.**] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

Annotation:—**Consd.** *Re* Letters Patent (No. 130,941) granted to Jacob Ochsner (1933), 51 R. P. C. 4.

2136d. Conversion of application for patent into application for patent of addition—To patent applied for at later date.]—*Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., ERIC WILLIAM FAWCETT & ERIC EVERARD WALKER, APPLICATION FOR A PATENT (1935), 53 R. P. C. 157.

for an extension of the term of the patent:—*Held:* the patent did not possess sufficient merit & utility to justify an extension of its term from war loss; but, on the ground that the patentee had sustained loss by reason of the war, the patent was extended for two years, notwithstanding that the application for extension was made by way of petition & not by originating summons.—*Re* MURRAY'S PATENT (1932), 49 R. P. C. 445.—**SCOT.**

Part XIII.—Revocation.

2144. *Add. Annotation:—As to* (3) **Reld.** *Re* Ivor Perrett's Patent (1928), 49 R. P. C. 406.

2171a. —— **Razor blades.**]—In 1925 letters patent were granted for "Improvements in Safety Razors." The patentee claimed to have discovered that each time a razor is used for shaving, the cutting edge is upturned or bent back by reason of the resistance offered by the hair of the face; that honing the blade returned the bent back portions of the blade to their original position in the line of the cutting edge, & that, if the upturning or bending back always takes place in the same direction, greatly increased life is obtained from the cutting edge. In order to ensure that the upturning always takes place in the same direction, the patentee provided that the blade should be non-reversible in the holder. This was done by means of cut out portions in the blade asymmetrically disposed relatively to the longitudinal & transverse axes of symmetry of the blade & positioning studs similarly mounted on the holder adapted to engage the cut out parts of the blade. Claim 1 was as follows: "In a safety razor, the combination of a thin cutting blade, a holder for said blade, cut out parts provided in said blade asymmetrically disposed relatively to the longitudinal & transverse axes of the said blade & positioning studs similarly mounted on said holder & adapted to engage said cut out parts in the blade." Claim 5 was as follows: "Safety razor blades substantially as described & illustrated in the accompanying drawing." The Valet Auto Strop Co., Ltd., petitioned to revoke the patent on the ground that it was invalid by reason of prior publication, that it lacked subject-matter & utility, & that the patent had been obtained by false suggestion:—*Held:* the theory upon which the patent was founded was erroneous; there was no subject-matter or utility in the invention, & the patent was anticipated by at least one of the prior specifications cited & was invalid. An order for the revocation of the patent was made, with costs.—*Re* Le Rasoir Apollo, Letters Patent No. 239,112 (1931), 49 R. P. C. 1.

2174a. Prior publication.]—In the case of an application for the revocation of a patent already granted, appct. must establish his case in the clearest possible manner, & where prior publication is relied on, it is necessary to point to a clear & specific disclosure of something which can fairly be stated to be the patentee's invention.—*Re* Lowndes' Patent (1927), 45 R. P. C. 48.

2174b. Insufficient description.] — *Re* Gas Chambers & Coke Ovens, Ltd., Application for Revocation of Letters Patent No. 366,656 (1934), 52 R. P. C. 81.

2175a. Insufficiency—Characteristics defined by reference to result.]—No-Fume, Ltd. *v.* Frank Pitchford & Co., Ltd., No. 518a, *ante*.

2186. After this case add:—

Application for directions.]—*See* R. S. C., Ord. 53A, r. 21A, & Nos. 2944a–2944l, *post*.

2222a. Power to order amendment of specification —Extent of power.]—*Re* Eveno's Patent, No. 2261b, *post*.

2251a. —— ——.]—*Re* Koerner's Patent (1928), 45 R. P. C. 442.

2254a. Application to make order rule of court—By Side Bar Motion.] — Practice Note (1930), 69 L. Jo. 80; 169 L. T. Jo. 54; [1930] W. N. 9.

2257. *Add. Annotation:—As to* (2) **Consd.** *Re* Adamson (Daniel) & Co. & Kerfoot Patent 353,087 (1932), 50 R. P. C. 171.

2260a. Ambiguity.]—I. B. E., Ltd., applied to the Comptroller-General of Patents under sect. 26 of Patents & Designs Acts, 1907–1928, for the revocation of letters patent No. 321,721 granted to D. The Assistant-Comptroller ordered the specification to be amended. I. B. E., Ltd., appealed to the ct. It was contended (*inter alia*) for applts. that the letters patent ought to be revoked on the ground of (1) insufficient description, & (2) ambiguity. It was contended (*inter alia*) for resps. that the ct., on an appeal under sect. 26, had no power to order an amendment:—*Held:* by virtue of sect. 92 (2) of Patents & Designs Acts, 1907–1928, & of R. S. C., Ord. 53a, r. 6, the ct. has jurisdiction to order an amendment; & the ground of ambiguity, unless it be identical with the ground of insufficiency of description covered by sect. 11 (1) (*c*), is not open to a petitioner under sect. 26. The order of the Assistant-Comptroller was varied, & further amendments ordered.—*Re* International Bitumen Emulsions, Ltd., Petition for the Revocation of Dehn's Patent (1932), 49 R. P. C. 368.

2261a. Power of court—To order amendment of specification.]— *Re* International Bitumen Emulsions, Ltd., Petition for the Revocation of Dehn's Patent (1932), 49 R. P. C. 368.

PART XIII. SECT. 1, SUB-SECT. 1.—A.

so. *Person interested—Who is.*]—Pltf. is licensee in Canada of a patent issued to G. Co., relating to improvements in cooling containers, & deft. W. S. Incorporated is the owner of a patent for improvements in a method of refrigeration, & the other deft. is licensee under the same patent:—*Held:* where an individual is using an invention in respect of which another person claims to have a patent, which the unlicensed user believes to be invalid; or where a person is desirous of using anything described in a patent, but which patent he has reason to believe is void, then he has such an interest as to qualify him to initiate proceedings to annul such letters patent; & is a person "interested" within the rules of this ct.—Refrigerating Equipment, Ltd. *v.* Drummond & Qaltham System, Incorporated, [1930] Ex. C. R. 154; 4 D. L. R. 926.—CAN.

PART XIII. SECT. 1, SUB-SECT. 1.—B.

sp. *Proceedings by information—Validity.*]—*Held:* the present action to impeach & annul certain patents of invention instituted in this ct. by information in the name of the A.-G. of Canada was properly instituted under rule 16, notwithstanding the provisions of sect. 37 of Patent Act providing for procedure by *scire facias*; (2) the Exchequer Ct. Act authorises the Crown to institute proceedings upon the information of the A.-G. of Canada to impeach a patent of invention, without showing that it is otherwise a party interested.—R. *v.* Myers Canadian Aircraft Co., Ltd. [1931] Ex. C. R. 146.—CAN.

PART XIII. SECT. 1, SUB-SECT. 2.—F.

m i. ——.]—Wright *v.* Bell Telephone Co. (1887), 2 Exch. C. R. 552.—CAN.

2261b. —— —— **Extent of power.**]—In proceedings for the revocation of a patent under sect. 26 of Patents & Designs Acts, 1907 & 1919, the power of the Comptroller to require the specification to be amended by disclaimer, correction, or explanation does not enable him to accept an amendment put forward by the patentee covering a wider claim or a different claim from that made in the unamended specification. Sect. 26 does not widen or enlarge the powers of amendment conferred on the Comptroller under sect. 21 or on the ct. under sect. 22.

The procedure of amendment by way of disclaimer cannot be used so as to extract from the specification some feature or features not claimed or suggested as constituting the original invention, & to claim them as being the invention.—*Re* PATENT, [1932] 2 Ch. 167; 101 L. J. Ch. 395; 147 L. T. 478; 49 R. P. C. 385.

Annotation:—**Refd.** *Re* Johnson's Patent (No. 387,125) (1936), 54 R. P. C. 151.

Part XIV.—Infringement.

2268a. ——.]—Letters patent were granted for "improvements in or relating to bag corner sewing & like operations." Claim 1 of the specification was as follows: "A machine as hereinbefore characterised in which a work-engaging portion of the internal work-support has movement of accommodation to either side of the sewing point in a direction substantially parallel to the stitching line." In an action for infringement of the patent, defts. denied infringement & alleged that the patent was invalid by reason of prior publication, prior user, want of subject-matter, & inutility, & they counterclaimed for the revocation of the patent:—*Held:* the first feature of the invention described & claimed in the specification was for the work-engaging member or tablet at the tip of the horn & consisted in its shape & method of attachment, the tablet used in defts.' machine differed wholly in form & method of attachment from the tablet described in the specification of the patent, defts.' machine did not embody any invention described in & claimed by the specification, & therefore there was no infringement; further, on that interpretation of the specification there had been no prior publication or user of the invention described, which possessed utility, & defts. had failed to establish any ground of revocation. The action & counterclaim were dismissed with costs, with the usual set-off, & a certificate with respect to certain of the particulars of objections & a certificate of validity were granted.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* ISAACSON & RALPHS (NORWICH), LTD. (1934), 51 R. P. C. 289.

2268b. ——.]—Letters Patent No. 403,952 were granted for "improvements in or relating to reflecting signs for roads & streets." Pltfs. commenced an action for infringement. Defts. denied infringement & alleged that the patent was invalid & counterclaimed for its revocation. Claim 1 of the patent was as follows: "A reflector sign illuminated by an external source of light, comprising in combination with the matter to be displayed a light-condensing plate of clear glass or other transparent material, one face of which is provided with a plurality of small lenses of convex external surface, the foci of which are at the plane face of the plate, & a dispersively reflecting surface at said plane face." It was held at the trial that the patent had not been infringed & was invalid for want of subject-matter & the patent was ordered to be revoked. Pltfs. appealed. The parties settled the appeal, after argument, upon terms that the appeal in the action should be allowed subject to pltfs. (applts.) abandoning their claim that defts. had infringed. Resps. thereupon took no part in the appeal against revocation of the patent:—*Held:* the patent was not wanting in subject-matter & was valid; & that the appeal against the order for revocation should be allowed & that order be discharged; & a certificate of validity was granted; also that the method of dissecting a combination into its constituent elements, & then examining each element to see whether it was obvious or not, is to be applied with great caution as tending to obscure the fact that the selection of the elements presupposes the conception of the combination & the result to be obtained.—ALBERT WOOD & AMCOLITE, LTD. *v.* GOWSHALL, LTD. (1936), 54 R. P. C. 37, C. A.

2270a. Ownership without user.]—In 1934 pltf. commenced an action for infringement of three patents, the date of acceptance of the earliest of which was Nov. 1932. By his particulars of breaches, pltf. alleged infringement by reason of the ownership of a machine purchased from pltf. in 1930 & subsequent to Jan. 1932, & prior to the issue of the writ modified so as to be in accordance with the specifications of the patents & in infringement of each of the claims of the same. Defts. moved to strike out the statement of claim on the grounds that it disclosed no cause of action & that it was embarrassing:—*Held:* the statement of claim did not necessarily disclose any cause of action, as the particulars of breaches merely stated that defts. owned a machine which they had modified, possibly at a time when they were entitled to do so. The statement of claim was struck out. Pltf. appealed to the Ct. of Appeal:—*Held:* on appeal, the statement of claim did not allege infringement of the patents after the date of acceptance of the complete specifications, & therefore it did not disclose a good cause of action; mere ownership without possession was not sufficient to raise a presumption of an intention to use & the commission of an act which did not give rise to a cause of action was no evidence of an intention to commit an act that was unlawful. The appeal was dismissed with costs.—SCHUSTER *v.* HINE PARKER & CO., LTD. 2 R. P. C. 345, C. A.

2273. *Add. Annotation :—As to* (4) **Folld.** & Co. *v.* Bracke[illegible] [illegible]elting [1932] 1 Ch. 18

2274a. —— —— ——.]—PITTEVIL & Co. *v.* BRACKELSBERG MELTING PROCESSES, LTD., No. 3317a, *post.*

2281a. ——.]—STELOS RE-KNIT, LTD. *v.* LADDA-MEND CO., LTD. (1931), 48 R. P. C. 435.

2298. *Add. Annotation :*—**Refd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

2302. *Add. Annotation :*—**Refd.** V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1935), 52 R. P. C. 303.

2302a. —— —— **User at sea outside three-mile limit.**]—V. D., LTD. *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD., *Re* VIGNERON DAHL ET CIE PETITION FOR REVOCATION OF LETTERS PATENT, *Re* VIGNERON'S APPLICATION FOR LETTERS PATENT (No. 175,824), No. 604a, *ante.*

2307. *Add. Annotation :—As to* (1) **Consd.** Schuster *v.* Hine Parker & Co. (1935), 52 R. P. C. 345.

2312. *Add. Annotations :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153 ; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills (1929), 98 L. J. P. C. 50.

2332. *Add. Annotation :*—**Consd.** *Re* L'Air Liquide Société Anonyme pour L'Etude et L'Exploitation des Procedes George Claude's Patent (1930), 49 R. P. C. 428.

2337a. —— **Form of patented article modified.**]—The patentee of a collapsible tube & cap for holding tooth paste licensed defts. to make & sell the tube & cap, but with the condition that each tube should be stamped with certain words. Defts. sold a modified form of tube & cap unstamped :—*Held :* the modified form was not within the patent, & there was consequently no infringement.—HUNTOON CO. *v.* KOLYNOS (INCORPORATED) (1930), 47 T. L. R. 57 ; 47 R. P. C. 430 ; *affd.*, 48 R. P. C. 98, C. A.

2342. *Add. Annotation :*—**Folld.** Chloride Electrical Storage Co. *v.* Silvia Wireless Stores (1931), 48 R. P. C. 468.

2344a. —— —— **Attached to article.**]—The owners of letters patent relating to electrical batteries brought an action for infringement against defts. claiming damages & an injunction restraining them from infringing by selling certain batteries of the D. T. G. type manufactured by pltfs. below authorised prices. It was alleged by pltfs. that each of the said batteries had a label pasted upon it that it must not be sold below the catalogue price fixed by the patentee, & was enclosed in a carton on which was printed a notice in the same terms. P. J. S., trading as deft. firm which carried on business at a shop in L., admitted in evidence & in his answers to interrogations that he had knowledge of the restrictions, but denied (*a*) that all of the batteries sold by pltfs. bore the alleged label ; (*b*) that all of such batteries were enclosed in the alleged cartons ; (*c*) that deft. firm had ever sold any of such batteries below the price fixed by pltfs. as alleged :—*Held :* defts. having had knowledge of the restrictions upon the evidence sold batteries at prices lower than that fixed by pltfs. as patentees. Judgment was given for pltfs. & an injunction was granted with costs.—CHLORIDE ELECTRICAL STORAGE CO., LTD. *v.* SILVIA WIRELESS STORES (1931), 48 R. P. C. 468.

2358a. ——.]—Letters patent were granted in 1916 for "Improvements in ironing machines & apparatus." One of the claims was as follows : "In an ironing machine of the type specified, mounting the device employed to control the movements of the iron on the mechanism by which reciprocating motion is imparted to the iron in such a manner that said device partakes of both the horizontal & the vertical movements of the element which carries the iron." Pltfs. alleged that defts. had infringed the patent. Defts. denied infringement, & alleged that the patent was invalid for want of novelty, by reason of prior publication & prior public general knowledge, & for want of subject-matter :—*Held :* there was novelty & subject-matter & the patent was valid, but that the claims were limited to machines "of the type in which a flat iron of such a weight as will give the necessary pressure is employed," & defts.' machine was not of this type & consequently there was no infringement. The action was dismissed. Pltfs. & defts. were directed to tax their respective costs of the action, pltfs. to have one-fifth & defts. four-fifths of such costs.—LISTER BROS. *v.* THORP, MEDLEY & Co. (1930), 47 R. P. C. 99 ; *affd.*, 47 R. P. C. 526, C. A.

2358b. ——.]—In 1924 letters patent were granted for "Improvements in electric couplings, terminals, & the like." Claim 14 was as follows : "An electric coupling substantially as described with reference to figs. 11 & 12 of the accompanying drawing." Pltfs. brought an action for infringement of this claim. Defts. denied infringement & alleged that the patent was invalid by reason of prior publication & for want of utility :—*Held :* Claim 14 was for a combination of a & socket & that, as defts. sold a plug was not combined with a socket, they did not infringe.—CHAPMAN & COOK & LECTRO LINX, LTD. *v.* DELTAVIS, LTD. (1930), 47 R. P. C. 163.

2358c. ——.]—Letters patent dated Aug. 13. 1923, were granted to pltf. entitled "improvements in or relating to apparatus for tipping & discharging railway wagons." Claim 1 was as follows : "Apparatus of the type herein referred to, for tipping & discharging railway wagons, wherein the carrier is pivoted to & carried by the lower short arms of a pair of levers carried by stationary standards or supports arranged at the opposite ends of the carrier, the longer & upwardly extending arms of the levers being connected together by a sustaining beam that serves to hold a wagon on the carrier during the tipping operation but which is normally in an in-

PART XIV. SECT. 1, SUB-SECT. 6.—A.

2337 i. ***Sale in breach of limited licence —Necessity for knowledge of limitation.***]—In a suit by a patentee of articles against a vendor of them for infringement of pltf.'s patent by selling them contrary to conditions imposed by the patentee, it is necessary to [illegible] in the statement of claim that acquired the patented articles with knowledge of those conditions.—COLUMBIA GRAMOPHONE CO., LTD. *v.* FOSSEY (1927), 27 S. R. N. S. W. 246 ; 44 N. S. W. W. N. 87.—AUS.

operative position clear of the wagon, the pivotal connections between the levers & the carrier & between the levers & the standard being so arranged that the centre of gravity of the carrier & a wagon thereon will in all working positions of the carrier be to that side of the vertical plane passing through the pivotal connections between the levers & stationary standards or supports that is opposite to that side to which the carrier & wagon are moved for tipping the wagon substantially as described." In 1931 pltf. commenced an action for infringement of the patent claiming the usual relief. Defts. denied infringement & alleged that the patent was invalid:—*Held:* the letters patent were valid; the words "short" & "longer" in relation to the arms of levers referred to in the specification were words limiting the monopoly claimed & not describing the best way known to the patentee of working his invention, & upon this construction there was no infringement. The action was dismissed with costs.—MITCHELL *v.* WEST'S GAS IMPROVEMENT CO., LTD. (1934), 51 R. P. C. 177.

2358d. ——.]—Letters patent were granted for "improvements in & relating to sound recording apparatus." The invention related to the reduction of background noise, by reducing the transparent area of the photographic sound track during periods of low sound intensity, but utilising a rectified component of the microphone current. Claims 1, 2 & 6 were as follows: "1. In the method of making a photographic sound record consisting in varying the amount of light falling upon an elementary transverse strip of a moving film in accordance with the wave form of the sound to be recorded, producing automatically in accordance with the volume of the sound to be recorded a superimposed variation either of the mean intensity of the recording light beam (in variable density recording) or of the mean position of the light beam with reference to the sound track (in variable width recording).

2. The method of making a photographic sound record in which the clear area varies with the volume of the sound being recorded which comprises exposing a sensitive film to a light beam, vibrating the beam laterally of the film in accordance with the wave form of the sound being recorded, & producing an additional lateral displacement of the beam in accordance with the volume of the sound. . . . 6. Apparatus for photographically recording sound on a moving sensitive film comprising a light source, an oscillograph galvanometer arranged to reflect a light beam therefrom on to the film & adapted to be vibrated by an alternating current corresponding to the wave form of the sound to be recorded thereby forming a variable width sound record, & means for superimposing on the alternating current a rectified component thereof which varies in accordance with the volume of the sound being recorded":—*Held:* on the true construction of the specification the patentee had limited his claims to a lateral displacement of the light beam, whereas defts. had obtained their result by a longitudinal displacement of a triangular beam intersecting a slot; also the patentee had limited his claims to the use of a component of the microphone current, whereas defts. used that component to control another current in inverse phase to the first; defts. had not infringed the patent.—R. C. A. PHOTOPHONE, LTD. *v.* GAUMONT-BRITISH PICTURE CORPN., LTD., & BRITISH ACOUSTIC FILMS, LTD. (1935), 52 R. P. C. 206; *affd.* (1935), 53 R. P. C. 167 C. A.

2366. *Add. Annotation:—As to* (1) **Refd.** Norton & Gregory, Ltd. *v.* Jacobs (1936), 54 R. P. C. 58.

2389. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

2389a. ——.]—Letters patent were granted in 1931 for "A new or improved rowing machine or rowing exercise apparatus." The first claim was as follows: "A rowing machine or rowing exercise apparatus, of the type herein referred to, which comprises an open rectangular or like frame or base of metallic tubular construction, a tubular footrest raised integrally from said frame or base, a stool or seat slidably supported on rollers or runners upon the side tubes of said frame or base & having spiral tension spring attachments to the forward part thereof, & a pair of handles or hand grips mounted on the forward part of said frame or base & having spiral tension spring attachments to the rearward part thereof." Pltfs. alleged infringement by the sale of a "Spenby Sculling Machine." Defts. alleged that the patent was invalid on the grounds of want of novelty, by reason of prior publication in a number of prior specifications, & common general knowledge, want of subject-matter, insufficiency of description & lack of utility:—*Held:* defts.' machine did not infringe pltfs.' claim, since the machine did not contain all the integers of that claim. In the circumstances it was unnecessary for the issue of validity to be decided. The action was dismissed. Pltfs. were ordered to pay defts.' costs, except in so far as they had been increased by the issue of validity.—TERRY & ROWLEY *v.* SPENCER & BEATTIE (1935), 52 R. P. C. 154.

2389b. ——.]—In 1928 letters patent were granted in respect of "Improvements in rams & like devices." Claim 1 was as follows: "A ram of the type set forth in which the supporting rod engages with the piston in other than a rigid manner to allow of relative displacement, the distance between both elements when at their limiting positions in the internal combustion engine cylinder away from the ram proper being equal to the suction stroke of the piston." In 1935 pltfs. commenced an action for infringement of the patent. In the alleged infringement the working piston was rigidly attached to the supporting rod, but there was a second piston which was not attached thereto. Defts. denied infringement & alleged that the patent was invalid by reason of lack of novelty & subject-matter & insufficiency:—*Held:* the patent was valid, but the claims were limited to cases in which the working piston was not rigidly attached to the supporting rod, in this case the doctrine of "pith & marrow" or mechanical equivalents had no application & there was no infringement. The action was dismissed & pltfs. were ordered to pay nine-tenths of defts.' costs. A certificate of

validity was granted.—HAAGE *v.* PEGSON, LTD. (1935), 53 R. P. C. 58.

2441. *Add. Annotation :*— **Refd.** N. V. " Splendor " Gloeilampen Fabrieken *v.* Omega Lamp-works, Ltd. (1933), 50 R. P. C. 393.

2456a. What amounts to patent of principle.]—In 1913 letters patent were granted in respect of " improvements in receivers for use in wireless telegraphy & telephony." Claim 1 was as follows : " A receiving system for electrical oscillations which contains a valve for magnifying the oscillations & which is so arranged that the circuit in which are set up the magnified oscillations reacts on the circuit in which occur the oscillations to be magnified substantially as described." In 1930 pltfs. commenced an action against defts. for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of lack of novelty, subject-matter & utility, & because the specification was ambiguous :—*Held :* the patent was valid, but it did not claim a principle of construction but an apparatus of particular construction & method of working, & defts. had not infringed. The action was dismissed, defts. being given four-fifths of their costs, & pltfs. one-fifth of their costs, a direction being given to the taxing master to include in defts.' costs the reasonable costs of putting in evidence certain matters referred to in the particulars of objections. No order was made on an application by defts. for costs on the higher scale & for three counsel.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* PHILIPS LAMPS, LTD. (1933), 50 R. P. C. 287.

2461. *Add. Annotation :—Generally,* **Refd.** Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

2469. *Add. Annotation :*—**Refd.** Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

2474. *Add. Annotations :*—**Refd.** Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287 ; R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 53 R. P. C. 167.

2479. *Add. Annotation :—As to* (1) **Refd.** Rondo Co., Ltd. *v.* Gramophone Co. (1929), 46 R. P. C. 378.

2528. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2537a. —— ——.]—*Held : Heap* v. *Hartley,* No. 1584, did not decide that a licensee could not properly be joined with the patentee in an action for infringement, & he should not be struck out on this application, which was dismissed.—TRICO PRODUCTS CORPN. & TRICO-FOLBERTH, LTD. *v.* ROMAC MOTOR ACCESSORIES, LTD. (1933), 51 R. P. C. 90.

2538a. Prior grantee.]—NORTON & GREGORY, LTD. *v.* JACOBS (1933), 50 R. P. C. 257.

2556. *Add. Annotation :*—**Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

2560. *Citations :*—For " 47 Sol. Jo. 365 " read " 67 Sol. Jo. 365."

Add. Annotation :—**Refd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8.

2563. *Add. Annotation :*—**Refd.** British Oxygen Co. *v.* Gesellschaft für Industriegasverwertung M. B. H. (1930), 48 R. P. C. 130.

2570a. Motion to strike out—Action for declaration.]—Pltf., who was the grantee & registered legal owner of four letters patent, commenced an action against deft. claiming a declaration that he was the first & true

PART XIV. SECT. 1, SUB-SECT. 9.

2419 i. *Not conclusive of infringement —Difference in method.*]—*Held :* the essence of the alleged invention rested on what the patentee describes as a process of destructive distillation of waste liquors, the evaporation of all water & combustion of nearly all the consumable products in the liquor, *i.e.* woody or ligneous matter, in its downward flight in the upper zone of the furnace, leaving nothing but a carbon residue & non-volatile salts reaching the floor of the furnace, & the method employed by defts., where recovery takes place on the hearth & not by distillation in the upper zone, was radically different, was based on an altogether different idea & principle & could not be said to be an infringement of pltfs.' patent.—ROSS (J. O.) ENGINEERING CORPN. & C. L. W. PATENTS CORPN. *v.* CANADA PAPER CO. & HOWARD SMITH PAPER MILLS, LTD., [1932] Ex. C. R. 141 ; *revsd.,* [1934] 1 D. L. R. 786.—CAN.

sm. *Difference in method.*]—Pltf. alleged infringement of a patent relating to handles for use on caskets & other receptacles. The ct. found that there was invention in pltf.'s idea of the mode of construction of the two members of the handle which permitted the looking of the handle to be effected by merely lifting the grip after it was placed in the base ; that there was no anticipation in the prior art ; that deft.'s handle differed from that of pltf. only in the practice of locking the members by a machine operation, a means which produced the same handle & the same result :—*Held :* infringement cannot be evaded because one chooses to adopt a slower & more expensive method of doing what a patent clearly states may be done in another & better way. Invention should not be denied upon the ground of the mere simplicity of the thing invented & patented. — DOMINION MANUFACTURERS, LTD. *v.* ELECTROLIER MANUFACTURING CO., LTD., [1933] Ex. C. R. 141 ; *affd.,* [1934] S. C. R. 436 ; 3 D. L. R. 657.—CAN.

PART XIV. SECT. 1, SUB-SECT. 14.

n i. —— ——.]—PARIS *v.* LEDINGHAM, [1931] 44 B. C. R. 289.—CAN.

n ii. —— *Obvious equivalent.*]—When an invention consists in the production of a new result, the patentee is not tied down to the particular means, or the identical parts mentioned in his specification. In other words one cannot make use of the novel principle of an invention, the carrying of which into effect is the real substance of the patentee's invention, by substituting obvious equivalents for some of the parts mentioned in the patentee's specifications, & thus escape infringement.—CANADIAN RADIO PATENTS, LTD. *v.* HOBBS HARDWARE CO., LTD., [1933] 4 D. L. R. 82 ; Ex. C. R. 238.—CAN.

PART XIV. SECT. 1, SUB-SECT. 15.

2519 ii. —— ——.]—Pltf., owner of a patent of invention, known as the H. patent, for a radio receiving circuit, alleged that the circuit used in the set manufactured & sold by deft. was an infringement of the said H. patent & asked that it be so declared & that deft. be restrained from further manufacturing & using the said circuit :—*Held :* even assuming that deft.'s circuit contained component parts & arrangements distinguishing it from the specific circuit disclosed by H., & were patentable improvements, nevertheless, the H. invention being new & useful, the fact that it was more useful with the subsequent improvements, afforded no ground for infringing the original invention by using it with the subsequent improvement.—WESTERN ELECTRIC CO., LTD. *v.* BELL, [1929] 4 D. L. R. 943 ; Ex. C. R. 213.—CAN.

PART XIV. SECT. 2, SUB-SECT. 1.—A.

2536 iii. ——.]—CHANNELL *v.* O'CEDAR CORPN. (1927), 60 O. L. R. 525 ; *varied* [1928] 3 D. L. R. 843 ; [1928] S. C. R. 542.—CAN.

st. *Subsidiary company.*]—A New Jersey co. owning a patent sold its goods through a subsidiary Canadian co. :—*Held :* the New Jersey co. could recover damages for infringement in Canada, but the Canadian co. had no cause of action & was not entitled to be joined as pltf.—ELECTRIC CHAIN CO. *v.* ART METAL WORKS, INC., [1933] 4 D. L. R. 240 ; S. C. R. 581.—CAN.

PART XIV. SECT. 2, SUB-SECT. 3.—A.

sv. *Service of.*]—*Held :* service of the statement of claim at the place of business of deft., a registered firm doing business in the Province of Quebec & owned by one G. who was not served with the statement of claim personally, constituted good service & was regular, valid & legal.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* NATIONAL ILLUMINATION CO., [1935] Ex. C. R. 242 ; [1936] 2 D. L. R. 10.—CAN.

inventor of the subject-matter of the patents & an injunction restraining deft. from representing that he had any claim or interest in the patents. By his statement of claim pltf. alleged (*inter alia*) that he was the first & true inventor of the subject-matter of the patents & that deft. had falsely represented that he was the co-inventor, together with pltf., of the inventions & that he had a claim to or interest in the patents. Deft. moved to strike out the statement of claim on the grounds that it disclosed no cause of action & tended to prejudice, embarrass or delay the trial of the action :—*Held :* the discretion of the ct. was one to be exercised at the trial, having regard to the facts which might then be established, & the motion must be dismissed with costs.—KILLEN *v.* MACMILLAN (1931), 48 R. P. C. 380.

2595. *Add. Annotation :*—**Consd.** Schuster *v.* Hine Parker & Co. (1935), 52 R. P. C. 345.

2596. After this case add :—

.]—*See, also,* INJUNCTION, No. 839a.

2601a. Application stood over—Where unreasonable & oppressive.]—Pltfs. commenced an action for the infringement of four patents granted in respect of improved manufacture of cathodes for electric discharge valves. By their particulars of breaches pltfs. alleged that defts. had infringed the patents by importing into this country certain wireless valves which had certain specified characteristics, or some of them, & which had been manufactured by a process comprising certain specified steps, or some of them. Defts. issued a summons for further particulars of the aforesaid characteristics & steps :—*Held :* defts. had full knowledge of the patented processes & of those used for the production of the alleged infringing valves, & their application for particulars was unreasonable & oppressive. The application was stood over generally with liberty to restore.—MULLARD RADIO VALVE CO., LTD. *v.* TUNGSRAM ELECTRIC LAMP WORKS (GREAT BRITAIN), LTD. (1932), 49 R. P. C. 279.

2606a. ——.]—LEKTOPHONE CORPN. *v.* BROWN (S. G.), LTD. (1929), 46 R. P. C. 203 ; *affd.*, 46 R. P. C. 439, C. A.

Annotation :—**Refd.** Marconi's Wireless Telegraph Co. *v.* Philips Lamps, Ltd. (1933), 50 R. P. C. 287.

2614. *Add. Annotations :*—**Apld.** Heap Samuel & Son *v.* Bradford Dyers' Assocn. (1929), 46 R. P. C. 254. **Refd.** British United Shoe Machinery Co. *v.* Gimson Shoe Machinery Co. (1928), 45 R. P. C. 85 ; Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930), 48 R. P. C. 33 ; Woodrow *v.* Long, Humphreys & Co. (1933), 51 R. P. C. 25 ; Hardaker *v.* Boucher & Co. (1934), 51 R. P. C. 278.

2627a. ——.]—In 1917, letters patent were granted in respect of " improvements relating to electrodes for electric arc soldering." Claim 1 was as follows :—" In a method of coating electrodes for electric arc soldering by an extrusion process, winding the wire with asbestos yarn or other suitable non-conducting material (*i.e.* a second class conductor) in open spirals, substantially as & for the purposes set forth." In 1932, pltfs. commenced an action for infringement of the patent, claiming the usual relief. Defts. denied infringement & alleged that the patent was invalid. They also pleaded that by reason of an order made in 1924, embodying an undertaking by pltfs. in an action against defts. not to bring any further action in respect of the infringements of the patent complained of in that action, pltfs. were estopped from bringing this action. This plea was ordered to be tried as a separate issue under R. S. C., Ord. 53A, r. 21a :—*Held :* upon the preliminary issue, pltfs. were not estopped from bringing this action, & defts. must pay the costs of this issue in any event. Upon the trial of the action, the patent was invalid by reason of anticipation & want of subject-matter, & defts. had not infringed. The action was dismissed with costs.—MUREX WELDING PROCESSES, LTD. *v.* WELDRICS (1922), LTD. (1933), 50 R. P. C. 178.

2629a. Agreements by plaintiff containing illegal condition—Defendant unable to give particulars until after discovery—Printed form issued by plaintiffs.]—In an action for infringement of a patent relating to foam baths, defts. alleged that pltfs. had entered into agreements, in relation to a licence to use or work the process protected by the patent, on a printed form requiring the persons with whom the agreements were made to acquire from pltfs. or their nominees an extract not protected by the patent, & defts. relied on sect. 38 (4) of Patents & Designs Acts, 1907–1932. Defts. were unable until after discovery to give particulars of the persons with whom such agreements had been entered into. Pltfs. issued a summons for further & better particulars, which was adjourned into ct. as a procedure summons :—*Held :* although the rule was clearly intended to prevent any general fishing allegation having no apparent foundation on any particulars which defts. could give, defts. ought not at the present stage, having regard to the printed form, to be prevented from setting up the defence. Accordingly, the application was ordered to stand over until after discovery, the costs to be costs in the action.—SOAPLESS FOAM, LTD. *v.* PHYSICAL TREATMENT INSTITUTES, LTD. (1935), 52 R. P. C. 256.

2633a. Insertion by patentee of void condition in contracts—R. S. C., Ord. 53A, r. 8—Particulars of contracts—Time for.]—In 1931 pltfs. commenced an action for infringement of two patents. By their defence, defts. alleged (*inter alia*) that pltfs. had entered into certain contracts containing conditions which offended sect. 38 (4) of Patents & Designs Acts, 1907–32, particulars of certain of which

ART XIV. SECT. 2, SUB-SECT. 3.—B. (b).

ex. *Inapplicability of English prac-*ce.]—Under r. 28 of the General ules & Orders of this ct., the ct. or a dge thereof may order such further better particulars as such ct. or dge may see fit. The practice laid own in Order 53A of the High Ct. of Justice in England has not so far been adopted in this ct.—CANADIAN RADIO PATENTS, LTD. *v.* HIGEL RADIO, LTD., [1929] Ex. C. R. 107.—CAN.

PART XIV. SECT. 2, SUB-SECT. 3.—C. (a).

2621 i. *Patent irregularly obtained—Untruth in affidavit verifying for patent.*]—FADA RADIO, CANADIAN GENERAL ELECTRIC CO., LTD., [1927] 3 D. L. R. 922 ; [1927] S. C. R. 520.—CAN.

2621 ii. —— *Absence of affidavit in of petition for re-issued patent.*] RADIO, LTD. *v.* CANADI GENERAL ELECTRIC CO., LTD., [1927] L. R. 922 ;

contracts appeared in the particulars of objections, & by their particulars of objections they alleged that among the contracts relied on were a number of specified contracts. An order for discovery was made containing a proviso that discovery should be limited to a specimen copy of each type of contract & a disclosure of the total number of each type. Before discovery was made, pltfs. issued a summons for an order for particulars sufficient to identify each of the contracts relied on in defence other than those set out in the particulars of objections:—*Held:* the particulars given complied with R. S. C., Ord. 53A, r. 8, & the application must stand over till after discovery. Pltfs. appealed to the Ct. of Appeal:—*Held:* though there was some obscurity in the exact meaning of the defence, it was not embarrassing to pltfs., & the appeal was dismissed with costs.—GERRARD INDUSTRIES, LTD. *v.* BOX WIRING CO., LTD. (1933), 50 R. P. C. 125.

2633b. Embarrassing defence.]—Defts. to an action for infringement of letters patent being estopped from denying validity pleaded (*a*) that the alleged infringement was old, & (*b*) by an amendment made in the course of the motion to strike out they denied infringement, giving particulars of the prior art relied upon for construing the specifications in suit. Pltfs. applied by motion to strike out the defence as showing no cause of action:—*Held:* the defence was embarrassing & should be struck out save only the plea denying infringement.—V. D., LTD. *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD. (1934), 52 R. P. C. 1, C. A.

2641a. Plea by licencee—Sued as stranger.]—The rule that the licencee of a patent is estopped from denying the validity of the novelty of his licencor's patent is limited to proceedings in which the licencee is sued as such, & does not apply in an action for infringement of patent by making & selling the patented article in a manner & to an extent in & to which the licence would be no defence.

Deft. was a licencee of a patent for the making & fitting of boiler joints, the licence being limited to the counties of Northumberland, Durham, Lincoln, & part of Yorkshire, & entitled under the terms of the licence to trade under a certain registered business name within that limited area. He traded in the patented articles & in the said business name outside that area, whereupon pltfs., who were the owners of the patent, brought an action against him for infringement & passing-off. The licence was referred to in the pleadings for the purpose of defining the limited area within which it was available to deft. Deft. by his defence pleaded that the patent was invalid by reason of objections, particulars of which were given, & also for want of novelty. Pltfs. moved to strike out the paragraphs setting up the invalidity of the patent & the particulars of objections, on the ground that deft. as a licencee was estopped from denying the validity of the patent:—*Held:* the objection failed, as deft. was not sued as licencee, but as a stranger for infringement outside the area for which the licence was available.—FUEL ECONOMY CO., LTD. *v.* MURRAY, [1930] 2 Ch. 93; 99 L. J. Ch. 456; 143 L. T. 242; 47 R. P. C. 346, C. A.

Annotation:—Refd. V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1935), 52 R. P. C. 303.

2641b. ——.]—V. D., LTD. *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD., *Re* VIGNERON DAHL ET CIE PETITION FOR REVOCATION OF LETTERS PATENT, *Re* VIGNERON'S APPLICATION FOR LETTERS PATENT (No. 175,824), No. 604a, *ante*.

2648a. Mutual licence agreement—Covenant not to dispute validity.]—Pltf. & defts., who were respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the other. The agreement recited the acknowledgment by the parties of the validity of the respective patents of the other, & contained a covenant by defts. not at any time hereafter to dispute the validity of pltf.'s patent. The agreement also contained a clause referring to arbn. any dispute between the parties other than the question of infringement or the recovery of royalties. In an action for royalties under the agreement & damage for infringements committed prior to it defts. pleaded that pltf.'s patent was invalid, & that there was an implied term in the agreement that pltf. should accept the same in satisfaction of all claims in respect of infringements then outstanding. The questions as to whether in view of the covenant in the agreement defts. could put the validity of pltf.'s patent in issue, & whether such a term as pleaded in the defence could be implied, were set down for hearing as preliminary questions of law:—*Held:* in view of the covenant in the agreement defts. were not entitled to dispute the validity of pltf.'s patent, & such a term as pleaded in the defence must be implied in the agreement in order to give business efficacy to the contract.—CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD. (1931), 49 R. P. C. 38.

2648b. —— Infringement prior to agreement—Implied term precluding denial of validity.]—CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD., No. 2648a, *ante*.

2664a. —— Objection of want of conformity between provisional & complete specifications.]—Where deft. in a patent action objects to the validity of pltf.'s patent on the ground that there is a want of conformity between the provisional & complete specifications, it is not sufficient for him to state in his particulars of objection that the invention described in the complete specification is not the same as the invention described in the provisional specification: he must state in what the difference consists.—ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPN. *v.* CROMPTON (1886), 34 Ch. D. 152; 56 L. J. Ch. 167; 55 L. T. 722; 35 W. R. 125; 3 T. L. R. 136; (1884-1886), Griffin's Patent Cases 34, C. A.

2668a. Ambiguity.]—Pltfs. commenced an action against defts. for infringement of letters

patent. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty, subject-matter, & utility, & because the specification & claims of the patent were ambiguous. Pltfs. issued a summons asking for particulars of what parts & in what respects defts. alleged the specification was ambiguous:—*Held:* no useful purpose would be served by the particulars, & they might be embarrassing to defts. The application for particulars was refused.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* CRAMER (J. B.) & CO., LTD. (1932), 49 R. P. C. 400.

2676a. —— ——.]—HARDAKER *v.* BOUCHER & CO., LTD. (1934), 51 R. P. C. 278.

2676b. —— **Allegation of long period of "regular manufacture"—No dates specified.**]—BRITISH THOMSON-HOUSTON CO., LTD. *v.* CROMPTON PARKINSON, LTD. (1935), 52 R. P. C. 409.

2679. *Add. Annotation:*—**Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

2697a. —— ——.]—BIRTWHISTLE *v.* SUMNER ENGINEERING CO., LTD. (1928), 46 R. P. C. 59.

2703a. —— **Earliest & latest dates of prior user.**]—In a petition for the revocation of two patents petitioner alleged that the patents were invalid by reason (*inter alia*) of prior public user, & that neither appct. was the true & first inventor. In the particulars of objections sundry instances of prior public user were given:—*Held:* resps. are entitled under R. S. C., Ord. 53A, r. 16, to particulars giving the earliest & latest dates of each alleged prior public user, distinguishing between manufacture, sale, demonstration & use.—*Re* MARTIN'S PATENTS, [1936] 1 All E. R. 711.

2709. *Add. Annotation:*—**Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

2723a. Defendant relying on manufacture out of United Kingdom.]—In an action for infringement of three patents, defts. revised (*inter alia*) the defence that the patents were liable to the revoked under sects. 25, 27 of Patents & Designs Act, 1907 (c. 29), on the ground that the patented articles & processes were manufactured & carried on exclusively as mainly outside the United Kingdom. Pltfs. obtained an order in chambers directing certain particulars to be given (*inter alia*) of whom & by whom such articles have been manufactured as aforesaid, where & by whom the processes had been carried on, & by whom & from whom the impartial commodity had been obtained. The order was appealed against by way of motion to discharge, but this motion was refused with costs. Defts. gave particulars under the order. These particulars alleged (*inter alia*) manufacture on the continent of Europe by pltfs. as other persons who manufactured for or sold to pltfs. & by named persons, & "by persons who are the manufacturers of the Saccharin referred to" in an official annual statement, the names of such persons & their places of manufacture being unknown to defts. Pltfs. then obtained an order for certain further particulars to be given within fourteen days after service of notice of trial, & defts. moved to discharge this order:—*Held:* the particulars given amounted to a mere general statement that all the Saccharin imported into the United Kingdom was Saccharin manufactured exclusively on the continent, & was manufactured for & sold to pltfs. The motion was dismissed & the costs to be pltfs.' in any event.—SACCHARIN CORPN. *v.* NATIONAL SACCHARIN CO., LTD. (1910), 27 R. P. C. 354, C. A.

2736a. ——.]—LUSTY (W.) & SONS *v.* SCOTT (G. W.) & SONS, LTD. (1931), 48 R. P. C. 475.

2761. *Add. Annotation:—Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

2781a. ——.]—BRITISH THOMSON-HOUSTON CO., LTD. *v.* HENRY (P.) & CO., LTD. (1928), 45 R. P. C. 218, C. A.

2 19a. —— **Plaintiffs' contract unreasonable & oppressive.**]—Pltfs. were the registered legal owners of letters patent granted in respect of loud speakers, & sold units made in accordance therewith subject to the limited licence that they were not to be resold at a price less than 25*s.* Deft. sold such a unit for 17*s.* 6*d.* Pltfs. demanded that deft. should sign an undertaking not to sell pltfs.' loud speaker units below the authorised price, to pay pltfs.' costs & to pay for the publication of a full page apology in two trade papers, of which the cost would be £29 15*s.* Defts. signed the undertaking & paid the sum demanded by pltfs. in respect of their costs, but refused to pay the costs of advertising the apology, & stated that, if proceedings were commenced against them, they would submit to a consent order. Pltfs. thereon moved for an interlocutory injunction:—*Held:* pltfs.' demands were unreasonable & oppressive, & defts. were not threatening or intending to continue to sell pltfs.' loud speaker units below the authorised price. The motion was dismissed, the costs to be deft.'s costs in any event. Pltfs. subsequently obtained judgment with costs upon motion for judgment in default of defence.—BRITISH BLUE SPOT CO., LTD. *v.* KEENE (1931), 48 R. P. C. 375.

2829a. ——.]—Where an injunction is asked to restrain the infringement of a patent, the ct. has occasion to consider, first, the validity of the patent; &, secondly, the fact of the infringement. Where those two facts are established, it is within the power, as it is the duty of the ct., to grant the injunction.

There are many cases in which it is not clear either that the patent is legally valid, or that it has been infringed. It depends on the degree of doubt which exists on these questions, whether the ct. will grant the interim injunction. In such cases it will cautiously consider the degree of convenience & inconvenience to the parties by granting or not granting the injunction (LORD LANGDALE, M.R.).—BRIDSON *v.* MCALPINE (1845), 8 Beav. 229, 230; 50 E. R. 90.

2848a. —— ——.]—MARSHALL & THE LACE WEB SPRING CO., LTD. *v.* THE CROWN BEDDING CO., LTD. (1929), 46 R. P. C. 267.

2864a. ——.]—In an action for infringement of a patent relating to boot & shoe machinery, & counterclaim for revocation, the validity of the patent was attacked on the grounds (*inter alia*) of prior publication, prior public user, prior common general knowledge, want of subject-matter, & inutility. An order for

discovery was made by the judge in chambers, which pltfs. moved to discharge. An affidavit was filed on behalf of pltfs., stating that by reason of the extensive nature of their business a general order would be oppressive. Pltfs. contended that, until the summons under R. S. C., Ord. 53A, r. 21A, had been dealt with, the order was premature, & ought in any event to be limited by exclusion of the issues relating to common general knowledge & utility:—*Held:* a deft. who desires discovery ought not to be made to wait until pltf. is ready to give notice of trial, & the order for discovery was not premature; further the size of pltfs.' business organisation afforded no ground for limiting the order. The motion was dismissed with costs. Pltfs. appealed to the Ct. of Appeal. The appeal was dismissed with costs.—BRITISH UNITED SHOE MACHINERY CO., LTD. & UNITED SHOE MACHINERY CORPN. *v.* HOLDFAST BOOTS, LTD., A. T. RALPHS (NORWICH), LTD. & MASCHINENFABRIK MOENUS (1934), 51 R. P. C. 489.

2868a. Size of business organisation.]—BRITISH UNITED SHOE MACHINERY CO., LTD. & UNITED SHOE MACHINERY CORPN. *v.* HOLDFAST BOOTS, LTD., A. T. RALPHS (NORWICH), LTD. & MASCHINENFABRIK MOENUS, No. 2864a, *ante*.

2873. After this case add:—

-.]—*See* R. S. C., Ord. 53A, r. 21A, & No. 2944a, *post*.

2906. *Add. Annotation:*—**Refd.** Jonesco *v.* Beard, [1930] A. C. 298.

2933a. —— ——.]—In 1919 pltf. was granted letters patent in respect of "Improvements in resilient surfaces for seats, cushions & upholstery." In 1931 pltf. commenced an action for infringement. Defts. denied infringement & alleged that the patent was invalid, but were not represented at the trial. Pltf. submitted at the trial that it was unnecessary to call evidence of the validity of the patent:—*Held:* it was doubtful whether evidence of validity was necessary, but it was better to follow the usual practice of calling such evidence. An injunction & inquiry as to damages were granted, with costs.—WEBER *v.* XETAL PRODUCTS, LTD. (1933), 50 R. P. C. 211.

2944. *Add. Annotation:—Generally,* **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

After this case add:—

Application for directions.]—*See* R. S. C., Ord. 53A, r. 21A.

2944a. —— **Order for inspection.**]—Letters patent were granted in 1918 in respect of "improvements in axles for motor-driven road vehicles." Pltfs. commenced an action for infringement of the patent & defts. denied infringement & alleged that the patent was invalid. Pltfs. issued a summons under R. S. C., Ord. 53A, r. 21A, for further directions & that they might have inspection of defts.' process, & asked that the time for setting down the action for trial should not run until after the date of inspection, in order that costs of preparing for trial should not be incurred unnecessarily. Defts. were willing to give inspection & also to undertake not to do anything to increase the costs of the action until three weeks after the date of the inspection:—*Held:* an order for inspection be made to take place before the expert witnesses of both sides at a date to be mutually agreed & upon defts. giving an undertaking as above, the action should be set down in the usual way within six weeks of the close of pleadings.—BUTLER *v.* ENGLISH STEEL CORPN., LTD. (1931), 48 R. P. C. 551.

2944b. —— —— **Secret process.**]—Pltfs. sued defts. for infringement of two patents No. 212,106 & No. 212,188 relating to the manufacture of asphaltic mastic. Application for directions under R. S. C., Ord. 53A, r. 21a, was made, including (*inter alia*) an order that pltfs. agree with defts. the analysis, or should disclose their own statement of analysis, of the red mastic complained of & particularised in the particulars of breaches. Defts. objected on the ground that their product was the subject of a secret process. Pltfs. filed evidence for the purpose of making out a *primâ facie* case for inspection:—*Held:* a *primâ facie* case of infringement had been established as regards the Patent No. 212,106 sufficiently to justify an order for inspection. Inspection was ordered of defts.' mastic & process for making same, limited to solr., counsel & an expert, on behalf of pltfs., none of whom should disclose anything appearing at the inspection which was claimed by defts. to be a secret process except by leave of the ct., but should be entitled to report to pltfs., without giving any details, whether or not in the opinion of any of them the mastic infringed the patent. A case for inspection as regards the other patent not having been made out, pltfs. elected to discontinue as regards that patent.—COLOURED ASPHALTE CO., LTD. *v.* BRITISH ASPHALT & BITUMEN, LTD. (1935), 53 R. P. C. 89.

2944c. —— **Whether order for particulars of prior common general knowledge granted.**]—SOLAFLEX SIGNS AMALGAMATED, LTD. *v.* ALLAN MANUFACTURING CO., LTD. (1931), 48 R. P. C. 577.

2944d. —— ——.]—In 1924, letters patent were granted to M. in respect of "improvements in or relating to electrically operated indicating apparatus for vehicles." In 1931, M. commenced an action for infringement of the patent against S. & B. S. denied infringement & B. denied infringement & alleged that the patent was invalid for want of novelty by reason of prior publication & prior common general knowledge, & for want of subject-matter & utility. S. issued a summons for an order that the issue of infringement might be tried before the issue of validity. M. issued a summons for an order that B. should (*inter alia*) give particulars of the matters referred to in the patent which he alleged were prior common general knowledge:—*Held:* upon S. undertaking to be bound by the decision against B., all further proceedings should be stayed against S. until after the action against B. was determined. The order that B. should give particulars of prior common general knowledge was refused.—MCCREATH *v.* SOUTH SHIELDS CORPN. & BAKER (1932), 49 R. P. C. 349.

2944e. —— Jurisdiction in regard to summons.]—It has been decided that, though the master has jurisdiction to deal with a summons under R. S. C., Ord. 53A, r. 21A, for the present it must be adjourned to the Judge in Chambers, who, if he is of opinion that the matter is of sufficient importance, may adjourn it into ct.—PRACTICE NOTE, [1932] W. N. 22; 173 L. T. Jo. 76.

2944f. —— ——.]—*Held:* (1) extra time might be allowed for deposit in view of exchange difficulties, but that the action must be set down at once; (2) under the above rule that interrogatories should normally be dealt with by the master. The form of order concerning experiments & models was settled. —JUNKERS *v.* FORD MOTOR CO., LTD., & COOPER (1932), 49 R. P. C. 347.

2944g. —— Failure to apply—Dismissal for want of prosecution.]—*Held:* eight months was undue delay, the ct. had an inherent jurisdiction in this matter apart from the rules, & defts. were entitled to make an application to dismiss the action in lieu of giving notice under the rule. It was ordered that, unless pltfs. proceeded under the rule before a certain date, the action should be dismissed. —BAIRD TELEVISION, LTD. *v.* GRAMOPHONE CO., LTD. (1932), 49 R. P. C. 227.

2944h. —— Defence of non-infringement—Order for trial as separate issue.]—GIBSON *v.* A. C. COSSOR, LTD. (1934), 51 R. P. C. 375; *on appeal* (1935), 52 R. P. C. 201, C. A.

2944j. —— Petition for revocation—Form of order.]—*Re* VIGNERON & VIGNERON, DAHL ET CIE PETITION FOR REVOCATION OF FIVE LETTERS PATENT (1934), 52 R. P. C. 5.

2944k. —— Statements to be delivered by parties.]—In 1932, Letters Patent were granted to pltf. in respect of "Improvements in & relating to cutting implements." In 1936 pltf. commenced an action for infringement of the patent against defts. Pltf. issued a summons under R. S. C., Ord. LIIIA., rule 21A for directions & in particular as to whether & in what manner statements should be delivered by the parties:—*Held:* while the ct. must not be treated as stating that it thought that the best procedure was being adopted, an order should be made that statements as to construction & other matters should be delivered successively by the parties, pltf. being entitled to deliver a further statement by way of rebuttal—FRASER *v.* SIMPSONS (PICCADILLY), LTD. & PLATINUM PRODUCTS, LTD. (1937), 54 R. P. C. 109.

2944l. —— Statements as to construction—Further & better statement ordered.]—ULTRA ELECTRIC. LTD. *v.* JOHN BARNES & CO., LTD. (1937), 54 R. P. C. 269.

2963. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

2967. *Add. Annotation:*—**Refd.** *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.

2967a. —— ——.]—BRITISH CELANESE, LTD. *v.* COURTAULDS, LTD., No. 459h, *ante*.

2976. *Add. Annotation:*—**Consd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

After this case add:—

——.]—*Compare* FUEL ECONOMY CO. *v.* MURRAY, No. 2641a, *ante*.

2996a. Motion for leave for further cross-examination.]—Letters patent were granted in 1919 in respect of "improvements in methods of & apparatus for feeding molten [illegible]." Claim 1 was as follows: "Method of feeding molten glass wherein successive masses or gathers are suspended beneath an outlet & mold charges are separated therefrom while suspended, whilst the shape of the masses or gathers is controlled by variation of the movement of a movable controlling member adapted to act as a piston in the outlet, or by the means for separating the mold charges, or by the variation of the location of the controlling member or of the said separating means relatively to the outlet." Pltfs. commenced an action for infringement. Defts. denied infringement & counterclaimed for the revocation of the patent on the grounds that it lacked novelty, subject-matter, & utility, & that the specification was ambiguous & insufficient. It was held that the patent was invalid on the grounds that it had been anticipated & lacked subject-matter in that it merely used an old method for controlling the weight of gathers for the new purpose of controlling their shape; but defences of prior grant, inutility, & insufficiency failed; & that if the patent had been valid, defts. would have infringed it. The action was dismissed & an order for revocation of the patent was made, the order to lie in the office for one month &, if the pltfs. appealed & prosecuted the appeal with due diligence, until after the appeal. Pltfs. were ordered to pay the costs of the action & counterclaim, a certificate for certain of the particulars of objections being granted. Pltfs. appealed to the Ct. of Appeal & moved for an order that the expert witness called on behalf of defts. at the trial might be called before the Ct. of Appeal for further cross-examination, or alternatively that the witness' evidence given in another case might be read as part of the evidence in the case:—*Held:* the patent was invalid on the grounds that it had been anticipated & lacked subject-matter, & for ambiguity & uncertainty. The appeal was dismissed with costs & a stay of the order for revocation pending an appeal to the House of Lords was refused. The motion for leave to further cross-examine defts.' expert witness was dismissed with costs.—BRITISH HARTFORD-FAIRMONT [illegible] DICATE, LTD. *v.* JACKSON BROS. (I TINGLEY), LTD. (1932), 49 R. P. C. 495, C. A.; *affd.* (1934), 51 R. P. C. 254, H. L.

2997a. Declaration that plaintiff true & first inventor.]—KILLEN *v.* MACMILLAN, No. 2570a, *ante*.

PART XIV. SECT. 2, SUB-SECT. —C.

2986 ii. —— —— ——.]—DAY LOG & RAFT PATENTS CO. *v.* GATHELS —C.), [1937] 4 D. L. R. 95; 2 W. W. R. 753.—CAN.

PART XIV. SECT. 2, SUB-SECT. 9.—D.

sb. *Evidence discoverable at time of trial.*]—*Held:* the evidence which it was sought to adduce having been discoverable for the hearing before Supreme Ct., & no having been advanced

the motion should notwithstanding any appit. might suffer from the evidence not having been adduced

2997b. Patents & Designs Act, 1907 (c. 29), s. 32A—Application of.]—SUBMARINE SIGNAL CO. *v.* HUGHES (HENRY) & SON, LTD. (1931), 49 R. P. C. 149.

Annotation:—**Refd.** R. C. A. Photophone, Ltd. *v.* Gaumont British Picture Corpn., Ltd. & British Acoustic Films, Ltd. (1935), 53 R. P. C. 167

3003a. —— After expiration of patent—Infringing articles manufactured during patent.]—Injunction granted generally to restrain the sale, both before & after the term limited by the patent, of machines piratically manufactured while the patent was in force.—CROSSLEY *v.* BEVERLEY, CROSSLEY *v.* DERBY GAS LIGHT CO. (1829), 1 Russ. & M. 166, n.

3032a. —— ——.]—Letters patent dated Jan 13, 1930, were granted for "improvements in or relating to electric lampholders." On June 21, 1933, pltf. commenced an action against deft. for an injunction to restrain him from infringing pltf.'s patent & by the particulars of breaches alleged that deft. had by a letter threatened to infringe. Deft. denied that the lampholder which he proposed to make would be an infringement of pltf.'s patent & alleged that that patent was invalid:—*Held:* letters patent No. 341,265 were valid & the letter was a clear statement of intention to make a cap & lampholder in accordance with specification of letters patent No. 389,664, & such a construction would be an infringement of pltf.'s letters patent No. 341.265. An injunction to restrain infringement & a certificate that the validity of the patent came in question were granted, & deft. was ordered to pay pltf.'s costs of the action.—BLOOM *v.* SHULMAN (1934), 51 R. P. C. 308.

3054. *Add. Annotation:*—*As to* (1) **Consd.** No-Fume, Ltd. *v.* Frank Pitchford & Co. (1935), 52 R. P. C. 231.

3081. *Add. Annotation:*—**Refd.** British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 259.

3081a. —— To date of amendment of specification.]—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* GIMSON SHOE MACHINERY CO., LTD. (No. 2) (1928), 46 R. P. C. 137.

3081b. —— On proof of valid claim—Validity of other claims not proved.]—BENJAMIN ELECTRIC, LTD. *v.* GARNET, WHITELEY & CO. (1930), 47 R. P. C. 44; 169 L. T. Jo. 7; [1929] W. N. 293.

3093. *Add. Annotation:*—**Consd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

3098a. —— Article capable of user without infringement.]—Pltfs. had been successful in an action against defts. for infringement of their letters patent, & the registrar had made an order (*inter alia*) for delivery up as prayed in the statement of claim, the judgment being silent as to the form of order to be made. Defts. applied to the ct. to have the registrar's order varied so as to exclude delivery up, on the ground that the infringement proved was by user only:—*Held:* as the valve was capable of use without infringement & the set without the valve was not an infringement, no order for delivery up ought to be made.—ELECTRIC & MUSICAL INDUSTRIES, LTD. & BOONTON RESEARCH CORPN. *v.* LISSEN, LTD., ELECTRIC & MUSICAL INDUSTRIES, LTD. & BOONTON RESEARCH CORPN. *v.* KALIS, [1936] 3 All E. R. 234; 80 Sol. Jo. 1014; 54 R. P. C. 5.

3107. *Add. Annotation:*—**Refd.** Gibson *v.* Cossor (A. C.), Ltd. (1934), 51 R. P. C. 375.

3108a. Refusal to grant certificate that validity in question—Whether appeal lies to Court of Appeal.]—No appeal lies to the Ct. of Appeal under Jud. Act, 1873 (c. 66), s. 19, against the decision of a ct. or a judge in an action for infringement of a patent granting a certificate under Patents, Designs & Trade Marks Act, 1883 (c. 57), s. 31, that the validity of the patent came in question.—HASLAM FOUNDRY & ENGINEERING CO., LTD. *v.* HALL (1888), 20 Q. B. D. 491; 57 L. J. Q. B. 352; 59 L. T. 102; 36 W. R. 407; 4 T. L. R. 350; 5 R. P. C. 144, C. A.

Annotation:—**Refd.** Acetylene Illuminating Co. *v.* United Alkali Co., [1902] 1 Ch. 494.

3112a. ——— ———.]—BLOOM *v.* IMPERIAL LIGHTING CO. (IMPLITICO, LTD.) (1935), 52 R. P. C. 162.

3120a. ——— ———.]—In an action for infringement, the ct. held defts. had not infringed, & the action was dismissed with costs. A certificate, that the validity of the patent had come into question, was granted.—TECALEMIT, LTD. *v.* WAKEFIELD (C. C.) & CO., LTD. (1927), 44 R. P. C. 471.

3120b. —— ——.]—In an action for infringement, the ct. held defts. had not infringed, & the action failed. A certificate of particulars of objections was granted to defts., & a cer-

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PART XIV. SECT. 2, SUB-SECT. 10.—D. (a).

3a. *Expiration of patent.*]—An action for damages for infringement of a patent will lie, although the patent has expired.—JENYNS *v.* JENYNS, [1927] S. R. Q. 313.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 10.—D. (b.) i.

3054 ii. —— ——.]—*Held:* (1) in the assessment of damages in patent matters pltf. should be compensated for the loss caused him by the infringer's acts; he should be restored by monetary compensation to the position which he would have occupied but for the wrongful acts of deft.; (2) deft.'s acts being tortious the burden of proof on pltf. is lightened by the presumption that invasion of a patentee's monopoly will cause him damage; (3) in the assessment of damages every article that is manufactured or sold which infringes the rights of the patentee, is a wrong to him, & the patentee is entitled to recover in respect of each one of those wrongs; (4) where a patentee uses his monopoly by manufacturing the object covered by his patent in order to get the increased profits, his loss, generally speaking, is to be calculated on the basis of the loss of profits to him on the sales of the object made & sold by deft., which the patentee would have sold; (5) in case of sales by deft. which would not have been made by pltf., the basis for damage is a fair royalty; (6) the basis for assessing damages in this case should be the profit that pltf. would have obtained had it sold the completed fastener, & not the stringer alone, since the stringer is not only an integral part of the article but is the main part, & what pltf. lost by means of defts.' breach of its monopoly is the sale of the article as a whole; (7) where the infringement is a part only of the article manufactured & sold by deft. pltf. is only entitled to recover damages in respect of that part alone, if the infringing part is clearly separable & does not co-operate with the rest to produce the new effect which is the feature of the patented invention in question; (8) pltf. cannot claim to have suffered a loss of profit on sales it refused to make or for any other reason it would not have made; (9) since pltf. had not a monopoly of the Canadian market, it cannot obtain damages from defts. on the ground that it was forced to reduce the price of its articles to meet price reduction by defts.; (10) loss by pltf. due to the establishment of an office in the City of Montreal, Quebec, allegedly to meet free delivery in that city by defts., is not a natural & direct consequence of defts.' act, & therefore a claim for such loss must be refused.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD. & PRENTICE MANUFACTURING CO., [1936] Ex. C. R. 1; 2 D. L. R. 194; *on appeal*, [1937] S. C. R. 36; 1 D. L. R. 21.—**CAN.**

tificate of validity to pltfs.—TECALEMIT, LTD. *v.* EWARTS, LTD. (1927), 44 R. P. C. 488.

Annotation:—**Refd.** Kestos, Ltd. *v.* Kempat, Ltd. & Vivian Fitch Kemp, *Re* Kestos, Ltd. Registered Design (No. 725 716) (1935), 53 R. P. C. 139.

3130a. ——.]—DESCOMBES & ARONDEL *v.* LESTOR & PARTON (1931), 48 R. P. C. 473.

3137a. —— ——.]—ENTICKNAP E. G. & ENTICKNAP CONCRETE MACHINES, LTD. *v.* HUMBYS, LTD. (1929), 46 R. P. C. 351.

3137b. —— ——.]—TRICO PRODUCTS CORPN. & TRICO FOLBERTH, LTD. *v.* ROMAC MOTOR ACCESSORIES, LTD. (1935), 52 R. P. C. 292.

3150. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

3151a. ——.]— BRITISH HARTFORD - FAIRMONT SYNDICATE, LTD. *v.* JACKSON BROS. (KNOTTINGLEY), LTD., No. 2996a, *ante*.

3152a. —— **Sale of patented articles below price fixed by licence—Plaintiff awarded costs.**]—COLUMBIA PHONOGRAPH CO., GENERAL *v.* REGENT FITTINGS CO. (1913), 30 R. P. C. 484.

3158a. —— **Application to amend particulars.**]—In an action for infringement of a patent, deft. counterclaimed for the revocation of the patent. After delivery of the usual pleadings, deft. applied to amend his defence, counterclaim & particulars of objections by citing further alleged anticipations:—*Held:* pltf. should within three weeks elect whether to discontinue or to proceed with his action; if he should discontinue, the letters patent should be revoked & the taxing master should tax the costs of deft. of the action up to & including the date of delivery of the original particulars of objections & of the counterclaim except in so far as they had been increased by the failure to deliver the full particulars on the said date, & the taxing master should tax the costs of pltf. of the action subsequent to the said date to the date of this order, & of the counterclaim in so far as they had been increased by deft.'s failure aforesaid, & there should be a set-off of the costs so taxed: if pltf. did not elect to discontinue, deft. should be at liberty to amend his pleadings & pltf. should be at liberty to deliver an amended reply & defence to counterclaim.—SEE *v.* SCOTT-PAINE (1932), 50 R. P. C. 56.

3161a. Defendant successful—General costs of action—Except as to allegations dropped at trial.]—WILDEY & WHITE'S MANUFACTURING CO., LTD. *v.* FREEMAN (H.) & LETRIK, LTD., No. 459d, *ante*.

3161b. Costs left to discretion of taxing master.]—LAMSON PARAGON SUPPLY CO., LTD. *v.* CARTER-DAVIS, LTD., No. 459e, *ante*.

3161c. ——.]—Letters patent were granted in respect of "Improvements appertaining to the Harness Cords of Jacquard Machines used in Looms for Weaving." Claim 1 was as follows: "In the production of the harness cords of jacquard machines for the purpose described, the interlacing or interweaving of cross binding cords with the extending looped ends of the harness cords by arranging the cross binding cords to return & be interwoven so as to present loops which will resist the pull of the side harness cords, substantially as herein specified." The patentee commenced an action for infringement of this patent & also one other, but any claim in respect of the latter was abandoned at the trial. Defts. denied infringement & alleged that the patent proceeded with was invalid by reason of prior user, want of novelty & subject-matter:—*Held:* patent was invalid both for want of novelty & by reason of prior user, & even if valid, it has not been infringed. The action was dismissed with costs. A certificate with respect to certain of the particulars of objections was granted in respect of the patent proceeded upon, the costs in connection with the other patent, including any question as to the reasonableness or otherwise of the particulars cited against it, were left to the unfettered discretion of the taxing master.—HARDAKER *v.* BOON (1934), 52 R. P. C. 89.

3165a. —— ——.]—LISTER BROS. *v.* THORP, MEDLEY & CO., No. 2358a, *ante*.

3165b. —— ——.]—*Held:* both patents were valid, but since on the construction argued by pltfs. the patents would have been invalid, the action was dismissed with costs except so far as those costs had been increased by the defence of invalidity & the counterclaim was dismissed without costs.—HOLLANDSCHE (N. V.) GLAS EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD. (1932), 49 R. P. C. 288.

3174. *Add. Annotations:*—**Refd.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

3177. *Add. Annotation:*—*Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

3185. *Add. Annotation:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

3198. *Add. Annotation:*—**Refd.** The Edison (No. 2), [1934] P. 115.

3200. *Add. Annotations:*—**Refd.** White *v.* Todd Oil Burners (1929), 46 R. P. C. 275; British Celanese, Ltd. *v.* Courtaulds, Ltd. (1933), 50 R. P. C. 63.

3207a. ——.]—Letters patent were granted in 1930 in respect of "improvements in electric switches, of the push & pull type." Claim 1 was as follows: "An electric switch, of the type referred to comprising a base, a sliding actuating rod or stem passing through the base, fixed contacts on the base, a transversely disposed contact bar or bridge extending from opposite sides of the said rod or stem so as to engage & connect the said fixed contact contacts by an outward pull of the rod or stem, & laterally spaced outstanding

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PART XIV. SECT. 2, SUB-SECT. 10. G. (a).

sb. *By whom granted—Court of Session.*]—Pursuers, who were the registered owners of a patent relating to thermostats, brought an action in Scotland for infringement in which they sought interdict against a co. which engaged in the manufacture & sale of thermostats which they alleged contained improvements described in the specification of pursuers' patent. Defenders denied infringement & alleged that the pursuers' patent was invalid for want of novelty & subject-matter, & also that the complete specification of the letters patent was vague, ambiguous & misleading:—*Held:* the patent was valid & had been infringed. A certificate of validity was given.—RHEOSTATIC CO., LTD. *v.* ROBERT MACLAREN & CO., LTD. (1934), 52 R. P. C. 42; *on appeal* (1935), 53 R. P. C. 109.—SCOT.

guard parts or walls on the base between which the contact bar or bridge moves throughout its range of travel & which thus prevent turning or rotating of the actuating rod or stem in both the 'on' & 'off' positions of the switch." Pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty, subject-matter, & utility:—*Held:* in the alleged infringement the contact bar or bridge did not move throughout its range of travel between the outstanding guard parts or walls. & consequently defts. had not infringed the patent; & under the circumstances it was unnecessary to consider or express any opinion upon the validity of the claims of the patent. The action was dismissed with costs, &, after argument, a certificate was granted that the particulars of objections were reasonable.—BUSBY & Co., LTD., & TWINE *v.* TELSEN ELECTRIC CO., LTD. (1932), 49 R. P. C. 587.

3212a. —— **Plaintiff failing on issue of infringement.**]—TECALEMIT, LTD. *v.* EWARTS, LTD., No. 3120b, *ante*.

3215a. Action dismissed for want of appearance—Restoration of action.]—Leave was granted to a pltf. to restore the action upon terms, & the action came on for hearing:—*Held:* on the construction of the specification submitted by pltf., the patent had not been infringed by defts. & the action was dismissed with costs, including the costs of the first hearing & of the application to restore. A certificate was granted for the particulars of objections.—MCCREATH *v.* SOUTH SHIELDS CORPN. & BAKER (1933), 50 R. P. C. 119.

3243a. —— **Plaintiff not appearing at trial.**]—In 1924, letters patent were granted to J. M. in respect of "Improvements in or relating to electrically operated indicating apparatus for vehicles." In 1931, J. M. commenced an action for infringement of the patent against the Mayor of South Shields & J. A. B. J. A. B. denied infringement & alleged that the patent was invalid for want of novelty, subject-matter & utility. Proceedings against the Mayor of South Shields were stayed to abide the result of the action as against B. When the action was called on against J. A. B., J. M. did not appear:—*Held:* the action must be dismissed with costs, but, the ct. being of the opinion that the action had not proceeded to trial within R. S. C., Ord. 53A, r. 20, a certificate for the particulars of objections would not be granted.—MCCREATH *v.* SOUTH SHIELDS CORPN. & BAKER (1933), 50 R. P. C. 119.

3243b. —— ——.]—Defts. had obtained injunctions against two firms to restrain them from infringing their letters patent. They issued a leaflet to this effect to their travellers, & it was stated that the latter had used this leaflet to suggest to customers that there was an action going on & had told them that they would find a difficulty in obtaining supplies:—*Held:* this did not amount to a threat.—SURRIDGE'S PATENTS, LTD. *v.* TRICO-FOLBERTH, LTD., [1936] 3 All E. R. 26; 53 R. P. C. 420.

3243c. —— **Patents revoked before trial.**]—An action was brought by pltf. co. against defts. for infringement of five patents, of which one only (No. 300,998) is material for the present purpose. The patent was held to be invalid by CLAUSON, J., on the grounds of prior user, prior publication & want of subject-matter, & was ordered to be revoked, & the action on that patent was dismissed. Pltfs. appealed. The patent was for "Improvements in or relating to processes & apparatus for the production of artificial filaments or threads," the first claim of the specification being "A process of spinning artificial silk or like filaments or threads from solutions of cellulose acetate or other cellulose derivative, comprising spinning the solutions into closed or substantially closed chambers or cells through which passes an evaporative medium, the chambers or cells being provided with collector devices so that substantially the whole of the evaporative medium is constrained to pass through the immediate vicinity of the spinning orifice or orifices." Claim 4 was for a modification of the process in which only a proportion of the evaporative medium was constrained to pass through the immediate vicinity of the orifices:—*Held:* the idea of rapid removal of solvent was not new & the invention, if any, must lie in the mechanism; that was anticipated by prior user & by prior publication, also the patent was invalid for lack of subject-matter. The appeal was dismissed with costs. Leave to appeal to the House of Lords was refused on the grounds that the case was not difficult, & four judges had been unanimous.—BRITISH CELANESE, LTD. *v.* BRITISH ACETATE SILK CORPN., LTD., MALONEY & HILLIER, PARKER, MAY & ROWDEN (1936), 53 R. P. C. 478, C.A.

3246. *Add. Annotations:*—**Refd.** McCreath *v.* South Shields Corpn. & Baker (1933), 50 R. P. C. 119; British Celanese, Ltd. *v.* British Acetate Silk Corpn., Ltd., Maloney & Hillier, Parker, May & Rowden (1935), 53 R. P. C. 11.

3283. *Add. Annotations:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

3289. *Add. Annotation:*—**Consd.** *Re* Mundy *v.* Butterley Co., [1932] 2 Ch. 227.

3292a. Extension of time for—Grounds for—Exchange difficulties.]—JUNKERS *v.* FORD MOTOR CO., LTD., & COOPER, No. 2944f, *ante*.

3301. *Add. Annotation:*—**Follid.** Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

3301a. —— —— ——.]—An application on behalf of the resps. for an order that the expenses of the attendance of two experts during the hearing of the appeal should be allowed on taxation refused.—SOCIÉTÉ ANONYME SERVO-DEWANDRE *v.* CITROEN CARS, LTD. (1929), 47 R. P. C. 221, C. A.

Part XV.—Legal Proceedings.

3312a. —— **Stay of proceedings—Pending determination of action between other parties.**]—MULTIPLE UTILITIES CO., LTD. *v.* SOUCH (1929), 46 R. P. C. 402, C. A.

3314a. Action for declaration that plaintiff first & true inventor—Whether Attorney-General necessary party—Effect of admission by defendant.]—Pltf., who was the grantee of four letters patent, commenced an action against deft., alleging that deft. had falsely represented to be co-inventor & entitled to an interest in the patents, & claiming a declaration that pltf. was the sole first & true inventor & an injunction to restrain deft. from representing that he had any interest in the patents. Deft. denied that pltf. was the sole first or true inventor. At the trial pltf. withdrew his claim to an injunction, & deft. admitted that pltf. was the sole first and true inventor:—*Held:* although it was doubtful whether a declaration could be made that a certain person was a first & true inventor in the absence of the A.-G., upon deft.'s admission at the trial pltf. was to be treated as the successful party so far as the claim was for a declaration. An order was made that, upon deft. admitting that pltf. was the sole first & true inventor, deft. should pay the costs of the action, except so far as they had been increased by the claim for an injunction, & that pltf. should pay deft.'s costs of the action so far as they had been increased by the claim for an injunction, with a set-off.—KILLEN *v.* MACMILLAN (1932), 49 R. P. C. 258.

3314b. —— **Costs.**]—KILLEN *v.* MACMILLAN, No. 3314a, *ante*.

3315. *Add. Annotation:*—**Refd.** *Re* Keifer's Patent (1931), 49 R. P. C. 440.

3317a. ——.]—(1) The amendment of Patents & Designs Act, 1907 (c. 29), s. 36, by Patents & Designs Act, 1919 (c. 80), was not intended to abrogate the rule which had prevailed ever since *Challender* v. *Royle*, No. 2273, was decided, that a pltf. in a threats action might, if he so desired, raise the question of the validity of the patent. The obvious reason for the amendment was to widen the scope of the section so as to enable a threats action to be brought not merely against the patentee, but against any person claiming to have an interest in the patent. The alterations in the subsequent part of the section were consequential upon the main alteration & were not intended to, & did not in fact, abrogate the rule which was laid down in *Challender* v. *Royle*, No. 2273.

(2) I do not understand how a patent that is invalid can be infringed. The truth of the matter is, that when one talks of the infringement of a patent one does not mean an infringement of the document, but the letters patent itself. You cannot infringe a document. One means infringement of the monopoly rights conferred by the letters patent (ROMER, L.J.).—PITTEVIL & CO. *v.* BRACKELSBERG MELTING PROCESSES, LTD., [1932] 1 Ch. 189; 101 L. J. Ch. 8; 146 L. T. 53; 75 Sol. Jo. 797; 49 R. P. C. 23, C. A.

3322a. ——.]—An English co., having brought an action against a German co. to restrain threats in respect of certain letters patent, applied for & obtained leave to serve notice in lieu of service of the writ out of the jurisdiction upon defts. Defts., having entered a conditional appearance, applied by motion to discharge the order giving such leave on the ground that the evidence on that application did not fully & fairly disclose the facts or the true nature of the action to enable the ct. properly to exercise its discretion, & evidence was filed on that motion:—*Held:* the motion must be dismissed, the ct. not being judicially satisfied that the facts, if proved, would not support the action, & it seeming to the ct. that there was a substantial question between pltfs. & defts. as to whether pltfs. were entitled to have the trial.—BRITISH OXYGEN CO., LTD. *v.* GESELLSCHAFT FÜR INDUSTRIEGASVERWERTUNG M. B. H. (1930), 48 R. P. C. 130.

3322b. Evidence for defendant—Affidavit of plaintiff read on interlocutory motion.]—Pltfs. commenced an action against deft. claiming an injunction to restrain deft. from threatening pltfs. or their customers with an action for infringement of patent. Deft. denied having threatened. At the hearing of the action deft. sought to put in as evidence an affidavit filed by pltfs. upon an interlocutory motion & sworn by a deponent who was not called as a witness at the hearing:—*Held:* deft. was entitled to put in as evidence & comment upon any affidavits actually read by pltfs. upon the interlocutory motion; further, deft. had issued threats, & an injunction & inquiry as to damages were granted, with costs.—EARLES UTILITIES, LTD. *v.* JACOBS (1934), 51 T. L. R. 43; 52 R. P. C. 72; *sub nom.* PRACTICE NOTE, [1934] W. N. 198.

3326. *Add. Annotation:*—*Generally*, **Refd.** Farr *v.* Weatherhead & Harding (1932), 49 R. P. C. 262.

3343a. —— **Question of fact—Threat may be implied from words used.**]—LUNA ADVERTISING CO., LTD. *v.* BURNHAM & CO. (1928), 45 R. P. C. 258.

3348a. —— ——.]—Pltfs. were the marketers & distributors of a particular type of kettle. Deft. was a solr. Deft. wrote in Oct. 1933, to pltfs. & to the firm who were manufacturing the kettles for pltfs. in the following terms: "I understand you are manufacturing a certain kettle which is an infringement of Patent No. 165,299 vested in a client of mine. Unless I receive forthwith your assurance that you will at once cease manufacturing such kettles I shall have no

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PART XV. SECT. 1.

q i. —— —— *To order rehearing.*]—B.V.D. CO., LTD. *v.* CANADIAN CELANESE, LTD., [1937] S. C. R. 441.—**CAN.**

sd. *Conflict action—Abandonment by defendant.*]—*Held:* deft. in a conflict action having abandoned his application for a patent at trial & consequently there then being no conflict in the claims of rival appcts. to consider the proper disposition of the matter is to declare that pltf. is entitled to a patent or refer the matter back to be disposed of by the Comr. of Patents.—AKTIENGESELLSCHAFT FUER STICKSTOFFDUENGER *v.* SHAWINIGAN CHEMICALS, LTD., [1936] Ex. C. R. 50; 2 D. L. R. 746.—**CAN.**

alternative but to advise my clients to apply for an injunction. Will you also please let me have an account of the number of those kettles made to date & the names of the people to whom they have been supplied." Deft. also caused to be inserted in a trade paper an advertisement in his name in which it was stated that anyone manufacturing or selling a kettle constructed in accordance with the patent was liable to an action for infringement:—*Held:* a letter written by a solr. in which he stated that in certain circumstances he would advise his client to bring an action did not amount to a threat within sect. 36 of Patents & Designs Acts, 1907–1932, & the advertisement in the trade paper was gratuitous advice by a solr. & not a threat. The action was dismissed with costs.—EARLES UTILITIES, LTD. *v.* HARRISON (1934), 52 R. P. C. 77.

3351a. —— In respect of registered design.]—FINKELSTEIN *v.* BILLIG (1930), 47 R. P. C. 516.

3353a. —— ——.]—TIBO PRODUCTS CO., LTD. *v.* SALT (1929), 46 R. P. C. 451.

3353b. ——.]—On a motion for an interim injunction in an action, under sect. 36 of Patents & Designs Acts, 1907–1932, to restrain the issue of threats under certain patents, in respect of radio sets marketed by pltfs., defts. alleged that pltfs.' sets in fact infringed the patents, & pltfs. put in no evidence in reply to this allegation:—*Held:* the evidence did not show a *primâ facie* case under the sect., & an injunction was refused. —CABARET ELECTRIC CO., LTD. (TRADING AS MOTOROLA DISTRIBUTING CO.) *v.* MARCONI'S WIRELESS TELEGRAPH CO., LTD. (1934), 52 R. P. C. 104.

3353c. Primâ facie case of invalidity of patent.]—On a motion for an interlocutory injunction in an action to restrain defts. from threatening pltfs. or their customers with an action for infringement of patent or registered design or other like proceedings, in respect of the sale by pltfs. of ladies' vanity cases, defts. alleged that pltfs.' vanity cases were imitations of their registered design No. 790,245. Pltfs. alleged that the registration was invalid by reason of the prior sale by defts. of vanity cases identical with the registered design:—*Held:* there was a strong *primâ facie* case that the registration was invalid, & an injunction was granted.—INTERNATIONAL SALES, LTD. *v.* TRANS-CONTINENTAL TRADING CO., LTD. & BENNO MAISEL (1934), 52 R. P. C. 107.

3353d. Counterclaim for infringement—Plaintiffs not represented.]—CABARET ELECTRIC CO., LTD. *v.* MARCONI WIRELESS TELEGRAPH CO., LTD. (1930), 53 R. P. C. 254.

3355a. —— Motion for interim injunction treated as trial of action.]—This was an action to restrain threats commenced under sect. 36 of Patents & Designs Acts, 1907–1932. Pltf. moved for an interlocutory injunction to restrain threats issued by defts., in respect of an alleged infringement by pltf. of certain letters patent. Defts. consenting to treat the motion as the trial of the action, a final order was made in the form set out. A declaration that the threats were unjustifiable was included in the order.—DESIDERIO *v.* CURRUS, LTD. (1934), 52 R. P. C. 201.

3384a. —— Interim injunction.]—In 1931, letters patent were granted for "improvements in & relating to end pieces or terminal ends for necklets." In 1932 pltf. commenced an action against defts. to restrain them from threatening under patent & moved for an interim injunction. Defts. did not deny that they had issued threats, but alleged that the patent was valid & that it had been infringed by pltf.:—*Held:* it was not a case for an interim injunction, & the motion was dismissed, the costs to be costs in the action. —STRINGER *v.* PLATNAUER (R.), LTD. (1932), 50 R. P. C. 61.

3413a. ——.]—Pltfs., who were the exclusive licencees in this country for the sale of a furnace known as a "Sesci" furnace, in Apr. 1931, brought an action to restrain threats made by defts., who claimed to have a beneficial interest in two patents Nos. 283,381 & 306,141 granted to B. Deft. co.'s legal title to the patents was not completed till Dec. 2, 1931, & the writ issued by them in an action for infringement was not issued until Dec. 3, 1931. Defts. admitted that threats had been made, & at the trial stated that they did not intend to contest the case with regard to the second patent. They submitted to an injunction in terms of the writ as regards that patent. Pltfs. alleged that the first patent was neither valid nor infringed & they relied on prior publication, prior common general knowledge, & lack of utility. Defts. affirmed that the patent was valid & that it had been infringed; & they proposed to rely also on the proviso to sect. 36 of Patents & Designs Acts, 1907–1928:—*Held:* the proviso had on application to the present case, as the action for infringement had not been commenced & prosecuted with due diligence; the patent was valid but that there was no infringement. An injunction was granted & defts. were ordered to pay the costs of the action except in so far as the costs had been increased by the issue of validity of the first patent, & defts. were given the costs as far as related to the validity of that patent with a set-off; & an inquiry as to damages was ordered.—PITTEVIL & CO. *v.* BRACKELSBERG MELTING PROCESSES, LTD. (1931), 49 R. P. C. 73; *affd.* (1932), 49 R. P. C. 327, C. A.

3414a. —— No mala fides or special damage.]—In Apr. 1929, letters patent were granted to W. & H. In Oct. 1930, W. & H. commenced an action against F. for infringement of the patent; F. denied infringement & counterclaimed for revocation of the patent. In Mar. 1931, the patent was revoked by order of the ct. In June, 1931, F. commenced an action against W. & H., alleging that between Aug. & Dec. 1930, W. & H. had falsely & maliciously published statements that machines manufactured by F. were infringements of the patent, whereby he had been injured in his business & lost profits that he otherwise would have made:—*Held:* the statements published by W. & H. amounted to threats & they were not justifiable, but there was no evidence of *mala fides* or of special damage. The action was dismissed with costs.—FARR *v.* WEATHERHEAD & HARDING (1932), 49 R. P. C. 262.

3415. *Add. Annotation:*—**Consd.** Solanite Signs, Ltd. *v.* Wood (1933), 50 R. P. C. 315.

3419. *Add. Annotation :*—**Folld.** Solanite Signs Ltd. *v.* Wood (1933), 50 R. P. C. 315.

3422a. — —— Break down of negotiations caused by threats.]—SOLANITE SIGNS, LTD. *v.* WOOD (1933), 50 R. P. C. 315.

Part XVI.—International and Colonial Arrangements.

3423. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

3424. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

3430. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

3432. *Add. Annotation :*—*Generally*, **Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

3433a. Opposition to English grant—Disconformity between English & foreign application.]—The introduction of the ground 1 (*e*) into sect. 11 by 1919 Act does not alter the construction to be placed on sect. 91 (1).—*Re* ARNO ANDREAS APPLICATION FOR LETTERS PATENT NO. 360,547 (1934), 51 R. P. C. 188.

3433b. Several foreign applications—Whether constituting single invention—Decision of Comptroller—Finality of.]—*Held :* the Comptoller having expressed his opinion that the whole of the inventions in respect of which the foreign applications were made were not such as to constitute a single invention, the Tribunal had no jurisdiction to entertain the appeal, which was dismissed.—*Re* BRUNO CLAUS APPLICATION FOR A PATENT (1934), 51 R. P. C. 383.

3433c. "Any foreign state"—Meaning of.]—The words "any foreign state" in sect. 91 (2) mean "any one foreign state" & not "any foreign state or states."—*Re* N. V. PHILIPS' GLOEILAMPENFABRIEKEN APPLICATIONS FOR A PATENT (1934), 52 R. P. C. 111.

Part XVII.—Patent Agents.

3434. *Add. Annotations :*—*As to* (1) **Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494. *As to* (2) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485; A.-G. *v.* Premier Line, Ltd. (1931), 48 T. L. R. 104. *Generally*, **Refd.** Tattersall *v.* Sladen, [1928] Ch. 318; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

3442a. —— Inference from correspondence.]—THOMPSON *v.* BETTINGER (No. 2) (1928), 46 R. P. C. 189.

3443. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

PART XVI.

3426 i. *To whom patent granted under International Convention—Assignee of foreign inventor.*]—The right of a foreign inventor, who had applied for protection in his own country, to apply under Patents Act, 1903–1909, s. 121, for a patent for his invention in priority to other appcts. is purely personal, & could not have been exercised by his assignees in their own names prior to Patents Act, 1921.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* DAVID JONES, LTD. (1928), 28 S. R. N. S. W. 355; 45 N. S. W. W. N. 96.—**AUS.**

p. *Revsg.*, [1924] 4 D. L. R. 484.

se. *Application in several countries—Priorities.*]—Under the International Convention, where inventors have filed applications for patents for invention in the United States, & subsequently apply for patents in Canada for the same thing, they are entitled to have the priority of invention determined by the date of the filing of their applications in the United States.—GOODYEAR TIRE & RUBBER CO. *v.* RUBBER SERVICE LABORATORIES CO., [1929] Ex. C. R. 63.—**CAN.**

PART XVII.

sf. *Registration of patent agents—Solicitor in Irish Free State.*]—O'NEILL *v.* BRADLEY, [1929] I. R. 422.—**IR.**

PAWNS AND PLEDGES.

Part II.—Pawns at Common Law.

7. *Add. Annotation :—As to* (2) **Refd.** Best *v.* Butler & Fitzgibbon, [1932] 2 K. B. 108.

30. *Add. Annotations :—***Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

31. *Add. Annotation :—***Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

67. *Add. Annotation :—***Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

138. *Add. Annotation :—***Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

146. *Add. Annotation :—***Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

168. *Add. Annotations :—***Consd.** Lake *v.* Simmons, [1927] A. C. 487. **Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

169. *Add. Annotation :—***Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

171. *Add. Annotation :—***Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

172a. **Goods delivered "on appro" by false representation.**]—Where the owner of goods is induced, by a false representation made by another with fraudulent intent that he can sell them, to deliver the goods to that other on "appro," for the purpose of his endeavouring to sell them, the case is one not of larceny by a trick but of obtaining by false pretences. If, therefore, the fraudulent person pledges the goods before the contract between him & the true owner is avoided, the pledgee who takes *bonâ fide* obtains a good title as pledgee.—London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206 ; 103 L. J. K. B. 429 ; 151 L. T. 124 ; 50 T. L. R. 436 ; 78 Sol. Jo. 413 ; 39 Com. Cas. 290, C. A. ; *revsg.* S. C. *sub nom.* London Jewellers, Ltd. *v.* Sutton, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., 50 T. L. R. 193 ; 78 Sol. Jo. 82.

173a. **Revesting of property in stolen goods—Sale of Goods Act, 1893 (c. 71), s. 24—Who may sue—Owner from whom goods actually stolen.**]—Pltfs. were wholesale dealers. They had as clients the S. S. Co., who introduced a customer, a Captain Le M. Captain Le M. was accompanied by a friend, M. Captain Le M. purchased a ring, which he was allowed to take away, & which was immediately pawned by M. with defts. A few days later M., purporting to act on behalf of Captain Le M., took away a diamond bracelet, which he disposed of in the same way to defts. Both the ring & bracelet were invoiced to the S. S. Co. M. was convicted & sentenced for larceny by a trick, but the ct. refused restitution of the property. Pltfs. had been paid the price of the ring by the S. S. Co. as invoiced to them, & now sought to recover the bracelet from defts. :—*Held :* pltfs. had no title in law to maintain the action. A fundamental point fatal to pltfs.' claim was that the words "owner of the goods" in Sale of Goods Act, 1893 (c. 71), s. 24 (1), meant the owner of the goods from whom they were actually stolen, & not some previous owner from whom the title had been derived. In the present case the sale was to the S. S. Co., & the property in the goods had passed to them & from them to Captain Le M., by whose authority it had been pledged.—Buller & Co., Ltd. *v.* Brooks, T. J., Ltd. (1930). 142 L. T. 576 ; 46 T. L. R. 233 ; 74 Sol. Jo. 139 ; 35 Com. Cas. 205.

Part III.—Pawns under Pawnbrokers Acts.

178. *Add. Annotation :—***Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

PART II. SECT. 1, SUB-SECT. 2.—A.

e i. ——.]—In the case of the pledge of an instrument creating or evidencing a right the thing pledged must be taken to be both the instrument & the right, not the bare instrument without the right nor the mere right without the instrument.—Royal Bk. of Canada *v.* Talbot, [1928] 3 D. L. R. 157 ; [1928] 2 W. W. R. 190 ; 34 Alta. L. R. 395.—**CAN.**

PART III. SECT. 1.

sb. *Meaning of pawnbroker.*]—A pawnbroker is a person who lends money upon the security of pawns with sufficient frequency or system to constitute the business of a pawnbroker. There must be a series or repetition of acts of pawning.—V. A. S. M. Chettyar Firm *v.* King Emperor (1934), I. L. R. 13 Ran. 32.—**IND.**

PEERAGES AND DIGNITIES.

Part I.—Peerage.

68. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

69. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

89a. —— —— ——.]—Deft. having voted at the election of Scotch peers :—*Held :* as a Scotch peer, entitled to be discharged from arrest, although his vote had been protested against, his claim to the title disputed, & never recognised by the House of Lords or at ct.—DIGBY *v.* STIRLING (LORD) (1831). 8 Bing. 55 ; 1 Dowl. 248 ; 1 Moo. & S. 110 ; 131 E. R. 321 ; *sub nom.* DIGBY *v.* ALEXANDER, 1 L. J. C. P.

Annotation :—**Refd.** Smart *v.* Johnstone (1837), Murp. & H. 351.

262. *Add. Annotation :*—*Generally*, **Refd.** *Re* Davy, [1935] P. 1.

PERPETUITIES.

Part I.—The Rule Against Perpetuities.

2. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

19a. ——.]—CLEMENTI *v.* FIELDING (1848), 12 L. T. O. S. 309.

28. *Add. Annotation :*—**Refd.** *Re* Talbot, Jubb *v.* Sheard (1933), 49 T. L. R. 462.

29. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

35. *Add. Annotation :*—**Refd.** *Re* Talbot, Jubb *v.* Sheard (1933), 49 T. L. R. 462.

53. *Add. Citation :—sub nom.* ALFORD'S CASE, O. Bridg. 584, L. C.

Add. Annotations :—**Refd.** Howard *v.* Norfolk (Duke) (1681), 3 Cas. in Ch. 14 ; Goodtitle d. Gurnall *v.* Wood (1740), Willes, 211 ; Thellusson *v.* Woodford (1798), 4 Ves. 227.

54. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

56. *Add. Annotation :—As to* (2) **Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

58. *Add. Citations :—subsequent proceedings* (1788), 2 Term Rep. 241 ; 2 Bro. C. C. 344, L. C.

Add. Annotation :—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

60. *Add. Annotation :*—**Consd.** *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

64. *Add. Annotation :*—**Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

66. *Add. Annotation :*—**Apprvd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

66a. —— —— **Survivor of Queen Victoria's descendants living.**]—By his will dated June 14, 1921, & confirmed by a codicil of Feb. 2, 1926, testator, who died on Sept. 6, 1926, gave his property to his trustees upon certain trusts as to income & capital for his participating issue as therein defined, using a well known common form so as to tie it up in such a way that the capital was not to vest until the expiration of "the period ending at the expiration of twenty years from the day of the death of the last survivor of all the lineal descendants of Her Late Majesty Queen Victoria who shall be living at the time of my death" :—*Held :* though the existing lives selected were very numerous & it would be extremely difficult & expensive in the future to ascertain the date of the survivor's death, it could not be said to be so impracticable or beyond the scope of the ordinary legal testimony probably then available as to avoid the trust *ab initio* for uncertainty or perpetuity, & the trust was valid.—*Re* VILLAR, PUBLIC TRUSTEE *v.* VILLAR, [1929] 1 Ch. 243 ; 98 L. J. Ch. 223 ; 140 L. T. 90 ; 45 T. L. R. 13; 72 Sol. Jo. 761, C. A.

67. *Add. Annotations :—As to* (4) **Apld.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471. *As to* (5) **Consd.** Elliot *v.* Joicey, [1935] A. C. 209. *Generally*, **Refd.** *Re* Villar, Public Trustee *v.* Villar (1928), 45 T. L. R. 13.

70. *Add. Annotations :—As to* (1) **Consd.** Athey *v.* Pickerings (1926), 96 L. J. K. B. 250. **Folld.** Elliot *v.* Joicey, [1935] A. C. 209.

80. *Add. Annotation :*—**Refd.** Elliot [1935] A. C. 209, H. L.

98. *Add. Annotations :—As to* (1) **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895. *Generally*, **Refd.** *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

103. *Add. Annotation :—As to* (1) **Consd.** *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

108. *Add. Annotation :*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

138. *Add. Annotation :*—**Refd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

166a. ——.]—OAKES *v.* CHALFONT (1674), Poll. 38 ; 86 E. R. 504 ; *sub nom.* CHALFONT *v.* OAKES, 1 Cas. in Ch. 239.

Annotation :—**Refd.** Smith

175. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

181. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

192. *Add. Annotation :*—**Folld.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

210. *Add. Annotation :—As to* (1) **Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

272. [illegible] L.

277. *Add. Annotation :*—**Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

289. *Add. Annotation :*—**Refd.** *Re* Prevost, Lloyds Bank, Ltd. *v.* Barclays Bank, Ltd., [1930] 2 Ch. 383.

PART I. SECT. 2, SUB-SECT. 3.—B.

191 i. *Discretionary trust—For maintenance.*]—*Re* ANTROBUS. HENDERSON *v.* SHAW & MORTON, [1928] N. Z. L. R. 364.—N.Z.

PART I. SECT. 2, SUB-SECT. 4.—A.

197 i. *Contract giving equitable interest—Land.*]—Where an agreement for the sale to a co. of the oil & gas rights under a parcel of land in consideration of a certain number of shares in the co. provided that, if the co. should cease to do business for a specified period, said rights should revert to the vendor, & the shares were allotted & the co. failed to go ahead for said period, the reverting of said rights to the vendor was held not to be subject to her returning the shares to the co. Pltf. co., which had purchased the assets of the co. above referred to & was the assignee of its interests under said agreement sued the vendor for specific performance & contended that the condition that if the co. failed to go ahead the oil rights should revert to the vendor was void under the rule against perpetuities as applied in *London & S. W. Ry. Co. v. Gomm*, No. 197 :—*Held :* the rule did not apply under the circumstances.—NEW FEDERAL OILS, LTD. *v.* ROWLAND, [1929] 1 D. L. R. 472 ; 1 W. W. R. 263 ; 24 Alta. L. R. 19.—CAN.

PART I. SECT. 2, SUB-SECT. 4.—D.

206 ii. —— ——.]—KALACHAND MUKHERJI *v.* JATINDRA MOHAN BANERJI (1928), I. L. R. 56 Calc. 487.—IND.

293. *Add. Annotation :*—**Refd.** *Re* Chardon, Johnston *v.* Davies, [1928] Ch. 464.

295. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

324. *Add. Annotation :*—**Consd.** *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

334. *Add. Annotation :—Generally*, **Refd.** *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

334a. ——.]—In the exercise of a special power of appointment conferred upon him by a deed of 1891, a testator by his will appointed a sixth part of the settled funds upon the following trusts in favour of his two grandchildren : " upon trust during the joint lives [of the grandchildren] to pay the income thereof in equal shares as tenants in common & after the death of either of them to pay the whole of the income thereof to the survivor of them during the residue of his or her life." Then followed a disposition of the capital upon the death of the surviving grandchild. Neither of the two grandchildren was alive at the date of the deed conferring the power of appointment :—*Held :* the reversionary life interest in the whole income appointed to the surviving grandchild was a contingent interest, & the appointment, therefore, in the circumstances, was void by reason of the rule against perpetuities.—*Re* LEGH'S RESETTLEMENT TRUSTS, PUBLIC TRUSTEE *v.* LEGH, [1937] 3 All E. R. 823 ; 157 L. T. 270 ; 53 T. L. R. 1036 ; 81 Sol. Jo. 701, C. A.

335. *Add. Annotation :*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 582.

336. *Add. Annotations :—Generally*, **Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528 ; *Re* Legh's Resettlement Trusts, Public Trustee *v.* Legh, [1937] 3 All E. R. 823.

346. *Add. Annotations :—As to* (1) **Consd.** *Re* Payne, Taylor *v.* Paine, [1927] 2 Ch. 1. **Apld.** A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. **Distd.** *Re* Cohen's Will Trusts, Cullen *v.* Westminster Bank, Ltd., [1936] 1 All E. R. 103. **Consd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528. **Apld.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661.

369a. ——.]—A testator gave his residuary estate on trust to invest & accumulate the same during the minority of the youngest of his grandchildren living at his decease ; & he directed that, so soon as " such grandchildren " should attain twenty-one, the trust fund should remain & be " for all & every " the testator's " grandchildren then living, who, being a son or sons, shall attain twenty-one, . . . & to be divided between them (if more than one) equally." Then followed this proviso : " Provided always that, if any grandchild shall die leaving a child or children who, being a son or sons, shall attain twenty-one . . . then & in every such case the last-mentioned child or children shall take (&, if more than one, equally between them) the share which is . . . or their parent would have taken if living " :—*Held :* the gift was not void for remoteness.—*Re* WATKINS, JAMES *v.* CORDEY (1889), 37 W. R. 609, C. A.

372. *Add. Annotation :—As to* (1) **Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

385. *Add. Annotation :*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

393. *Add. Annotation :*—**Refd.** *Re* Canning's Will Trusts, Skues *v.* Lyon, [1936] Ch. 309.

397. *Add. Annotations :*—**Apld.** *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661. **Consd.** A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. **Apld.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

402a. First person becoming adult tenant in tail in possession.]—Testator gave his real & personal estate to trustees as to the personal estate upon trusts for conversion & investment & upon trust to pay the income thereof to the person, if any, who under the trusts or limitations thereinafter contained should for the time being be tenant for life of or otherwise entitled to the possession or receipt of the rents & profits of his real estate until such real estate should become vested in some person who should become adult tenant in tail thereof in possession, & from & after the happening of such last-mentioned event then as to both capital & income upon trust for such last-mentioned person absolutely ; & as to his real estate upon trust for his brother during his life, & from & after his death upon trust for the first & every other son of his said brother successively in remainder one after another according to their respective seniorities in tail general :—*Held :* the trust of the personal estate in favour of the person who should become adult tenant in tail in possession could not be construed as applying to a tenant in tail by purchase only, & was therefore void for remoteness.—*Re* ATKINSON, ATKINSON *v.* ATKINSON, [1916] 1 Ch. 91 ; 85 L. J. Ch. 159 ; 114 L. T. 44 ; 60 Sol. Jo. 190.

408a. Interest in personalty analagous to determinable fee—Gift to cemetery so long as graves maintained.]— Testator gave £200 to his trustees on trust to invest it, & to pay the income thereof to a cemetery co. " during such period as they shall continue to maintain & keep " two specified graves " in the cemetery in good order & condition with flowers & plants thereon, as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned :—*Held :* the gift did not infringe the rule against perpetuities.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464 ; 97 L. J. Ch. 289 ; 139 L. T. 261.

Power given to trustees—Appointment of Public Trustee.]—By his will a testator, who died in 1887, appointed four named persons as the exors. & trustees of his will & gave his real & personal estate to them upon trust that they & the survivors & survivor of them & the heirs, exors. or administrators of such survivor their or his assigns, each & all of whom were intended to be included in the term " my trustees " thereinafter used, should distribute the net residue of his estate to & among such of the descendants of his brothers & sisters in such shares, proportions or amounts & at such proper times as the trustees, in whom he " placed full confidence," in their absolute & uncontrolled discretion should determine. Two of the trustees died in 1902, one retired in 1907, when another was appointed who retired in 1923 in favour of yet another. In 1934 the two remaining trustees retired & the Public Trustee was appointed in their place. In a summons to determine the effect of the will, it was argued by testator's next of kin that: (i) the gift of the residuary estate was void, because there was no longer anybody who, in accordance with the terms of the will, was entitled to exercise the power of selecting the descendants of testator's brothers & sisters who were to take, & (ii) the gift was void as infringing the rule against perpetuities, because the descendants of testator's brothers & sisters might be selected by persons ascertained outside the limit fixed by the rule against perpetuities, & might themselves be persons who took outside that time:—*Held:* (1) the Public Trustee, as an assign, came within the definition of " my trustees " in the will & was entitled to exercise the power of selection; (2) the gift was void as infringing the rule against perpetuities.—*Re* SYMM'S WILL TRUSTS, PUBLIC TRUSTEE *v.* SHAW, [1936] 3 All E. R. 236; 80 Sol. Jo. 994.

414. *Add. Annotations:—As to* (3) **Refd.** *Re* Symm's Will Trusts, Public Trustee *v.* Shaw, [1936] 3 All E. R. 236. *Generally*, **Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

415. *Add. Annotations:*—**Consd.** *Re* Canning's Will Trusts, Skues *v.* Lyon, [1936] Ch. 309. **Expld. & Distd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

424. *Affd.* by LORD LYNDHURST, see *per* LORD COTTENHAM in 3 My. & Cr. at p. 151.

428. *Add. Annotation:*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

453. *Add. Annotation:*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

466. *Add. Annotation:*—**Expld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

492. *Add. Annotation:*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

493a. Subsequent independent limitations valid.]—Limitations, in themselves valid, which follow, but are not dependent upon, limitations offending the rule against perpetuities, are not affected by the invalidity of the prior limitations.—*Re* CANNING'S WILL TRUSTS, SKUES *v.* LYON, [1936] Ch. 309; 105 L. J. Ch. 241; 154 L. T. 693.

Annotation:—**Folld.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

493b. —— ——.]—Under the will of a testator a share of residue given to one of his sons, W. was settled upon discretionary trusts for W. during his life, & after his death upon similar discretionary trusts for any widow W. might leave & for all or any of the children of W., & after the death of such widow, upon trust for the children of W. at twenty-one or marriage, in equal shares:—*Held:* though the discretionary trust in favour of W.'s widow was void for remoteness, as W. might marry a woman who was not born at the death of testator, the ultimate trust in favour of W.'s children being vested, & not contingent or dependent on the void trust, was valid.—*Re* COLEMAN, PUBLIC TRUSTEE *v.* COLEMAN, [1936] Ch. 528; [1936] 2 All E. R. 225; 105 L. J. Ch. 244; 155 L. T. 402.

511. *Add. Annotation:*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

545. *Add. Annotation:*—**Consd.** *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

Part II.—The Rule Prohibiting Limitations to Issue of Unborn Persons.

576. *Add. Annotation:*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

Part III.—Restriction of Accumulation.

610. *Add. Annotation:—As to* (3) **Apld.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

615. *Add. Annotation:*—**Refd.** *Re* Watt's Will Trusts, Watt *v.* Watt, [1936] 2 All E. R. 1555.

PART I. SECT. 4, SUB-SECT. 5.—B.

466 i. *Power changing nature of interests—Outside limit of rule.*]—DAVIS *v.* SAMUEL (1926), 28 S. R. N. S. W. 1.—**AUS.**

PART I. SECT. 6, SUB-SECT. 1.

sp. *Subsequent limitation in default of appointment.*]—The principle that a limitation depending or expectant upon a prior limitation, which is void for remoteness, is invalid, does not necessarily apply to limitations in default of appointment.—*Re* HAY, [1932] N. I. 215.—**IR.**

PART III. SECT. 2, SUB-SECT. 1.

612 ii. —— —— ——.]—When a direction to accumulate contained in an *inter vivos* deed comes into operation in the lifetime of the grantor, the only period during which the accumulation can, under above Act, be lawfully continued is the lifetime of the grantor.—UNION BANK OF SCOTLAND, LTD. *v.* CAMPBELL, [1929] S. C. (Ct. of Sess.) 143.—**SCOT.**

a i. —— *Applicable in Scotland—Notwithstanding repeal in England.*]—*Held:* the operation of above Act in

646. *Add. Annotations :—As to* (1) **Consd.** Elliot *v.* Joicey, [1935] A. C. 209. **Refd.** Athey *v.* Pickerings (1926), 96 L. J. K. B. 250.

648. *Add. Annotation :*—**Refd.** *Re* Watt's Will Trusts, Watt *v.* Watt, [1936] 2 All E. R. 1555.

648a. —— ——.]—A testator by his will directed that the share of his son G. in testator's trust estate (called the G. fund), should be held by special trustees upon trust that, subject to certain provisions for the maintenance of G. & his children & the payment of annuities to G. & his wife, " the special trustees shall during the minority of the children or child of G. accumulate the surplus (if any) of the income of the G. fund . . . for the benefit of the persons who shall eventually become entitled to the capital of such fund." The will further provided : " Subject as aforesaid the special trustees shall stand possessed of the capital & income of the G. fund & of the said accumulations in trust for all or any of the children or child of G., who being male, attain the age of twenty-one years, or being female attain that age or marry, & if more than one in equal shares." Testator died in Oct. 1928, & was survived by G., G.'s wife & three children of G., who were born respectively in 1914, 1917 & Jan. 1928. When G.'s eldest child attained the age of twenty-one a summons was taken out to determine : (i) whether the direction for accumulation was valid ; (ii) whether G's. eldest son became indefeasibly entitled in possession upon attaining the age of twenty-one to one equal third part of the G. fund & the accumulations of the income of such fund, subject to & after the appropriation of a sufficient sum to provide for the annuities to & maintenance of G. & his wife & children, or whether any child of G., who may hereafter be born & attain the age of twenty-one would be entitled to participate in the distribution of the G. fund & the accumulations, & (iii) if G.'s eldest child did not upon attaining the age of twenty-one become indefeasibly entitled in possession to one equal third part of the G. fund, subject as aforesaid, whether under Trustee Act, 1925 (c. 19), s. 31 (1) (ii), G.'s eldest child on attaining the age of twenty-one became entitled to be paid the income of his expectant share of the G. fund & the accumulations of the income thereof, & if so during what period :—*Held :* (1) the direction for accumulation was valid & effectual so long as any child of G. living at the date of testator's death was under the age of twenty-one ; (2) G.'s eldest child did not become indefeasibly entitled in possession to one equal part of the G. fund & any child of G. born whilst any child of G. living at the death of testator was alive & under the age of twenty-one would if he or she attained the age of twenty-one, be entitled to participate in the distribution of the G. fund & the accumulations ; (3) G.'s eldest child did not on attaining twenty-one become entitled to be paid the income of his expectant share of the G. fund & the accumulations.—*Re* WATT'S WILL TRUSTS, WATT *v.* WATT, [1936] 2 All E. R. 1555.

652a. —— **Commencement during twenty-one years from testator's death.**]—Testator, who died in 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one with a gift over in default. On Mar. 11, 1896, the surplus income was ordered to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. On Nov. 12, 1914, it was declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), but that notwithstanding sect. 43 (2) any income not so applied passed as on an intestacy. On July 20, 1927, the elder child attained twenty-one, & her contingent moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 12, 1914, ought still to be acted on with regard to the younger child's contingent moiety :—*Held :* (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), & the balance could be validly accumulated under sect. 43 (2) ; (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re* MABER, WARD *v.* MABER, [1928] Ch. 88 ; 97 L. J. Ch. 101 ; 138 L. T. 318.

679. *Add. Annotations :—As to* (2) **Consd.** *Re* Chartres, Farman *v.* Barrett, [1927] 1 Ch. 466. *As to* (3) **Refd.** *Re* Watt's Will Trusts, Watt *v.* Watt, [1936] 2 All E. R. 1555.

681. *Add. Annotation :—As to* (1) **Folld.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

721. *Add. Annotations :*—**Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341. **Refd.** *Re*

Scotland has not been affected by the repeal of that Act by Law of Property Act, 1925 (c. 20), in respect that sect. 209 (3) of the latter Act has expressly limited its application to England & Wales.—SMITH'S TRUSTEES *v.* GAYDON, [1931] S. C. 533.—SCOT.

a li. —— *Effect of.*]—*Held :* the effect of Accumulations Act, 1892 (c. 58), was not to annul the whole provisions relative to the purchase of lands, but only to prohibit the accumulation of income.—ROBERTSON'S TRUSTEES *v.* ROBERTSON'S TRUSTEES, S. C. 639, S. C.—SCOT.

PART III. SECT. 2, SUB-SECT. 3.—B.

sk. *Accumulations resulting from operation of forfeiture clause.*]—Testator directed that the residue of his estate should be divided into three equal parts, one of which was destined to his widow in liferent, & upon her death or remarriage to her daughter in liferent & to the daughter's issue in fee. The other two parts of residue were destined to testator's two daughters by his first marriage in liferent, & to their issue in fee. The will further directed that beneficiaries claiming their legal rights were to forfeit all benefit under the will, the forfeited interest to accresce to the other beneficiaries " in the same manner, for the same interests of liferent, fee or otherwise & upon the same conditions as the other provisions in their favour " :—*Held :* after the lapse of 21 years from testator's death, further accumulations of income under the scheme for behoof of the fiars were struck at by Thellusson Act, in respect that they resulted from the directions of testator contained in the forfeiture clause.—MOSS'S TRUSTEES *v.* BRANWELL, [1935] S. C. 123.—SCOT.

Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626; *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

724. *Add. Annotations :—As to* (1) **Consd.** *Re* O'Hagan, O'Hagan *v.* Lloyds Bank, Ltd., [1932] W. N. 188. **Refd.** *Re* Tong, Hilton *v.* Bradbury, [1920] 2 Ch. 400.

725. *Add. Annotation :—As to* (1) **Refd.** *Re* Tong, Hilton *v.* Bradbury, [1930] 2 Ch. 400.

726a. ——.]—Where certain funds were settled upon trust to accumulate the surplus income until the death or remarriage of the settlor's wife, it was held that the accumulations made after the death of the settlor were invalid, & there was a resulting of them to his estate. The right to receive the surplus income was in the nature of a terminable annuity, & until sold by the exors. the surplus income as it accrued ought to be applied as income of the estate of the settlor.—*Re* O'Hagan, O'Hagan *v.* Lloyds Bank, Ltd., [1932] W. N. 188; 174 L. T. Jo. 122; 74 L. Jo. 196.

740a. ——.]—A testator by his will gave to his trustees his real & personal estate, not otherwise disposed of, in trust out of the income thereof to pay to M. during his life a certain annual sum, & he declared that his trustees should stand possessed of his real & personal estate from & after the death of M. "upon trust to sell the same & to stand possessed of the net proceeds thereof & the balance of the income accumulated during the lifetime of [M.] & the interest thereof in trust to divide the same amongst such of the London hospitals situate within the administrative County of London as my trustees for the time being shall in their absolute discretion select & to be paid to or for such hospitals in such proportions as my trustees for the time being may think proper." Upon a summons to determine the effect of the gift of residue, it was sought to show that upon testator's death there was an immediate vested gift to charity, postponed as to time of payment, & that the A.-G. could stop the accumulations :—*Held :* there was no interest vested in anybody, the gift being to a class of institutions to be ascertained in the future, & the direction in the will for accumulation of the income in excess of that required for meeting the annuity to M. became void twenty-one years after testator's death. There was an intestacy as regards excess income accruing after the expiration of the period of twenty-one years from testator's death until the death of M.—*Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626.

740b. ——.]—A testator, who died on Jan. 1, 1925, by his will gave & devised all his property both real & personal to his trustees upon trust to pay out of the income thereof a large number of annuities, some being to certain religious institutions, & he directed that these last annuities should determine on the death of the last of the personal annuitants. He also gave certain legacies. He further directed that so long as any of the annuitants were alive the balance of the income of the residuary estate & the income resulting therefrom should be accumulated & invested, & subject as aforesaid he gave the whole of his property after the death of the last personal annuitant to the Congregational Union of England & Wales to be invested as capital. The secretary of that charity asked for an order that the trust for accumulation should be determined, & that either the surplus income in each year should be paid to the charity or that proper provision should be made for the payment of the legacies & annuities, & that subject thereto the residuary estate should be transferred to the charity :—*Held :* if any of the annuitants survived the period of twenty-one years from testator's death, when the accumulations would cease by virtue of sect. 164 of Law of Property Act, 1925 (c. 20), the surplus income down to the death of the last surviving annuitant would be undisposed of & would pass as on an intestacy; & the ct. ought not to make the order asked for by the residuary legatees, as the effect of such an order would be to prejudice & possibly defeat altogether the possible interests of the persons taking under an intestacy, & the ct. ought never to make such an order if the effect might be to prejudice any interest in any other persons, whether present or future, vested or contingent, without their consent. —*Re* Blake, Berry *v.* Geen, [1937] Ch. 325; [1937] 1 All E. R. 742; 106 L. J. Ch. 99; 156 L. T. 231; 53 T. L. R. 411; 81 Sol. Jo. 197, C. A.

752. *Add. Annotation :*—**Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

PERSONAL PROPERTY.

Part I.—Definitions and Enumeration.

9. *Add. Annotation :*—**Reld.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part II.—Possession.

52. *Add. Annotation :*—**Reld.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

Part III.—Ownership.

72. *Add. Annotation :*—*As to* (2) **Reld.** Fleetwood Hesketh *v.* I. R. Comrs. (1935), 180 L. T. Jo. 99.

78. *Add. Annotations :*—*As to* (1) **Reld.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

94. For "—Mutual wills by husband & wife—Agreement not to revoke" read Mutual wills—By husband & wife—Agreement not to revoke."

—— ——.]—Leasehold property was given to two sisters as joint tenants, & they mutually agreed to bequeath it in trust for each other for life, & for their nieces after the death of the survivor :—*Held :* the agreement between the sisters, carried out by the making of mutual wills, severed the joint tenancy.—*Re* WILFORD'S ESTATE, TAYLOR *v.* TAYLOR (1879), 11 Ch. D. 267; 48 L. J. Ch. 243; 27 W. R. 455.

Annotation :—**Reld.** *In the Estate of* Heys, Walker *v.* Gaskill, [1914] P. 192.

Part IV.—Alienation.

114. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

121a. **Contract for exchange by infant—Void.**]—A contract for the exchange of chattels entered into by an infant is a contract for goods supplied, &, if not for necessaries, is absolutely void under Infants Relief Act, 1874 (c. 62), s. 1.—PEARCE *v.* BRAIN, [1929] 2 K. B. 310; 98 L. J. K. B. 559; 141 L. T. 264; 45 T. L. R. 501; 73 Sol. Jo. 402; 93 J. P. Jo. 380, D. C.

130. *Add. Annotation :*—**Consd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

PART II. SECT. 4.

42 v. ——.]—Possession of a movable raises a presumption of ownership.—TERRY *v.* SHAM'S GARAGE, [1934] N. L. R. 407.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 4.

sv. *Tyres on car.*]—The doctrine of title by accession does not apply to tyres on a car sold under a registered conditional sale contract.—GOODRICH SILVERTOWN STORES *v.* MCGUIRE MOTORS, LTD., [1936] 4 D. L. R. 519.—**CAN.**

PART III. SECT. 3.

74 ii. —— —— *Extent of right.*]—The cts. cannot suffer a man to take for himself that which he cannot obtain by way of an action. The right of recaption does not exist unless there is a right to the possession of the property, & a right to possession means, for this purpose, one that is specifically enforceable by judicial proceedings. If, therefore, the claimant cannot by way of judicial proceedings obtain specific restitution of the property, he cannot recover it by recaption either. Even when the retention of another's property is unjustifiable, the owner is not entitled to seriously injure the wrongdoer in attempting to recover it.—PHILLIPS *v.* MURRAY (Sask.), [1929] 3 D. L. R. 770; 2 W. W. R. 314.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—B.

r i. —— *Murder of one joint tenant by the other—Whether right of survivorship operates.*]—*Re* BARROWCLIFF, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* KENNY, [1927] S. A. S. R. 147.—**AUS.**

PART III. SECT. 4, SUB-SECT. 2.

sd. *How arising—Joint purchase of shares.*]—*Held :* even if the shares were purchased out of money contributed in equal amounts, & though transferred into the joint names of the purchasers, the shares were held by them in equity as tenants in common.—O'CONNELL *v.* HARRISON, [1927] I. R. 330.—**IR.**

PART IV. SECT. 1.

se. *Document giving right to seize & sell.*]—A document may give authority to seize & sell chattels without being a bill of sale, chattel mtge., or conditional sale agreement.—SAMSON *v.* CHAMPION, [1933] 2 D. L. R. 138.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (a) ii.

af. *Dependent on nature of property.*]—There is no such thing as "actual" or "symbolical" delivery of possession irrespective of the nature of the property to be delivered. The difference is due to the nature of the property & not on account of the difference in the nature of possession.—RAM PRASAD OJHA *v.* BAKSHI BINDESHWARI PRASAD SINHA (1932), I. L. R. 11 Pat. 165.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (c).

sg. *Exchange of cars—Action for breach of contract.*]—SWEENEY *v.* STARRAT, [1931] 2 D. L. R. 473; 2 M. P. R. 544.—**CAN.**

sk. *Warranty of title on exchange.*]—A warranty of title is implied in the case of an exchange of chattels.—GAVIN *v.* MOKLER, [1934] 1 D. L. 286.—**CAN.**

PLEADING.

See PLEADING & PRACTICE at end of Volume after WORK & LABOUR.

POLICE.

Part II.—Police Forces.

4. *Add. Citation :*—1 B. R. A. 500.
Add. Annotation :—**Refd.** Lodge *v.* Lancashire County Council (1934), 152 L. T. 167.

24. *Add. Annotations :*—**Expld. & Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364. **Consd.** Cooper *v.* Wilson, [1937] 2 K. B. 309.

25a. Dismissal—Power of watch committee—Resignation before meeting of committee—Appeal.]—Applt., a sergeant in the Liverpool police force, on July 27, 1933, handed in the statutory month's notice of resignation. On Aug. 8 charges were preferred against him of offences against discipline. On Aug. 14 the Chief Constable, after an inquiry, purported to dismiss him ; & on Aug. 29 the Watch Committee at a meeting, at which the Chief Constable was present during the deliberations, purported to dismiss applt.'s appeal from the Chief Constable's sentence of dismissal. The Watch Committee thereupon refused to repay to applt. the accumulated rateable deductions from his pay to which he claimed to be entitled under sect. 20 (1) of Police Pensions Act, 1921 (c. 31). Applt. then sued the Chief Constable & the Watch Committee claiming declarations that he had duly resigned, & was therefore entitled to be repaid the rateable deductions that had been made from his pay :—*Held :* (1) in a borough the right to dismiss a police constable is vested solely in the Watch Committee, but in this case that Committee had no power to dismiss applt., who had already terminated his service by due notice of resignation, & it had no power *ex post facto* to treat him as dismissed as from a date prior to the hearing by them of an application to confirm the purported dismissal by the Chief Constable ; (2) it could not be said that by appearing before the Watch Committee applt. must be taken to have abandoned his notice of resignation ; (3) applt. was not limited to the right of appeal to the Secretary of State given by Police (Appeals) Act, 1927 (c. 19) ; (4) he was entitled to the declarations claimed.
Semble : the proceedings before the Watch Committee were contrary to natural justice owing to the presence of the Chief Constable during the Committee's deliberations on applt.'s appeal.—COOPER *v.* WILSON, [1937] 2 K. B. 309 ; [1937] 2 All E. R. 726 ; 106 L. J. K. B. 728 ; 157 L. T. 290 ; 101 J. P. 349 ; 53 T. L. R. 623 ; 81 Sol. Jo. 357 ; 35 L. G. R. 436, C. A.

75. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

76. *Add. Annotation :*—**Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

Part IV.—Duties, Powers, and Privileges of Constables.

82. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

92. *Add. Annotation :*—**Refd.** Vanderpant *v* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

Part V.—Legal Proceedings by and against Police.

97. *Add. Annotation :*—**Consd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

100. *Add. Annotation :*—**Refd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 45 T. L. R. 92.

SECT. 2.—PROCEEDINGS AGAINST POLICE (Vol. XXXVII., p. 189).

Civil proceedings—Acceptance of bribes.] *See* AGENCY, No. 1608b.

PART I.

a i. —— *Power of Commissioner of Police.*]—POWER *v.* R., [1929] N. Z. L. R. 267.—**N.Z.**

b i. —— *What amounts to "hearing" by Police Commission.*]—TAYLOR *v.* RITCHIE, [1932] 4 D. L. R. 418 ; 5 M. P. R. 15.—**CAN.**

b ii. —— *Power of Commissioner of Public Safety.*]—The Comr. of Public Safety has no power to dismiss members of the police force.—R. *v.* WALSH, [1936] 3 D. L. R. 50 ; 66 Can. C. C. 118 ; 10 M. P. R. 383 ; 5 F. L. J. (Can.) 292.—**CAN.**

ss. *Policeman—Meaning of—Railway Act (Dom.), s.* 351.]—R. *v.* CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RY., [1928] 2 D. L. R. 386 ; [1928] 1 W. W. R. 785 ; 34 C. R. C. 292 ; 23 Alta. L. R. 401.—**CAN.**

sd. *Responsibility of city—For conversion by constable.*]—A city is not liable to refund funds collected & illegally converted by a police constable.—PHINNEY *v.* HALIFAX, [1935] 3 D. L. R. 627 ; 64 Can. C. C. 236.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

sk. *Liability.*]—A special constable is not liable to be indicted for general inattention to his duties. For an indictment to lie it must be shown that there has been a wilful refusal or neglect to perform some specific duty.—GRAY *v.* CHILMAN (No. 2), [1935] S. A. S. R. 359.—**AUS.**

Part VII.—Superannuation and Other Allowances.

136. *Add Annotation:*—**Apld.** Piper *v.* St. Marylebone Licensing JJ., [1928] 2 K. B. 221.

142. After this case add:—

PART VII.

132 i. *Computation of pension—Based on annual pay—What included therein—Allowance for special duties.*]—MARTIN *v.* R. (1928), 40 C. L. R. 162; [1928] V. L. R. 38; [1928] Argus L. R. 17.—**AUS.**

a i. —— *Temporary employes of police department.*]—The Superannuation Act, R. S. B. C., 1924, applies to temporary employees of the city police department.—KNOX *v.* BAKER (1936), 51 B. C. R. 62.—**CAN.**

sm. *Necessity for claim.*]—On the proper construction of Police Pensions Act, 1921 (c. 31), s. 2 (1) (*b*), a member of a police force who desires to retire & claim a pension must intimate his claim & tender a medical certificate at the time when he intimates his intention to resign.—DRUMMOND *v.* PEEBLES COUNTY COUNCIL, [1937] S. C. 36.—**SCOT.**

Effect of bankruptcy.]—*See* BANKRUPTCY, No. 6296a.

Compensation for loss of office.]—*See* PUBLIC AUTHORITIES, No. 1048a.

POOR LAW.

NOTE 1.—The Act now in force is the Poor Law Act, 1930 (c. 17). References to sections of the 1927 Act should therefore be checked with the Comparative Table appended below. Omitted sections of the 1927 Act were either repealed or replaced by the Local Government Act, 1929 (c. 17).

1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.
1	1 (1)		23	77	47	107	75	157 (4), (5)	156	221	9 (1–3)
2 (1)	2	49	21	78	52	108	93, 94	158	120	222	9 (2)
29 (1–3)	10	50	22	79	26	109	84	162	111	223	160 (1–6)
29 (4)	12	51	28	80	83	110	85	165	121	224	155
30	11 (1), (2)	52	33	81	53 (1–3)	111	86	170	123	225 (1)	158
		53	34	82	53 (4), (5)	112	87	171	124	226 (1), (2)	144
31	13	54	27	84	54	113	88	172	125	227	145
32	116	55	112	85	55	114	89	174	126	228	146
34	15	56	24	86	58	115	90	183	133	229	147
35 (1)	16 (1), 17 (1)	57	25	87	56	116	91, 108	184	127	230	148
		58	82	88	57	117	92	186	128	231	149
(2)	79	59	29	89	71	118	104	187	129	232	151
(3)	17 (2)	60	30	90	72	119	105	188	130	233	153
(4)	17 (2), 79	61	31	91	73	120	102	189	131	234	154
		62	32	92	74	121	95	190	132	235	159
(5)	16 (2)	63	35	93	59	122	96	192	134	236	157
36 (1)	80	64	36	94	61	123	98	209	135	241	140
(2)	17 (3)	65	37	95	62	124	99 (1–7)	210	11 (3)	242	162
37	81	66	38	96	63	125	99 (8)	211	136 (1), (2)	244	163
38	67	67	39	97	64	126	100			245	164, 165 (4)
39	70	68	40	98	60	127	97	212 (1)	1 (2)	Sch. V.	Sch. II.
40	150	69	41	99	65	128	103	213	161	Sch. VI.	Schs. I. & III.
41	14	70	42	100	66	129	106	214	136 (3–5)		
42	18	71	44	101	69	130	107	215	137		
43	19	72	43	102	68	131	101	216	138		
44	20	73	45	103	75	132	109	217	141		
45	49	74	46	104	77	145	114	218	139		
46	50	75	152	105	78	147	113	219	142		
47	51	76	48	106	76	148 (1)	115				

NOTE 2.—By Local Government Act, 1929 (c. 17), Sched. X., para. 1, references in any enactment to the terms mentioned in the first column, *infra*, must be constructed as references to the terms mentioned in the second column. These adaptations, so far as affecting Poor Law Act, 1927 (c. 14), have since been embodied in Poor Law Act, 1930 (c. 17).

Reference.	*Adaptation.*
Board of guardians	County Council or County Borough Council.
Board of management or managers of a school district	County Council or County Borough Council.
Chargeability for any poor law purpose to any parish, township or place, or to a parish or union, or to a union or parish, or to the common fund of a union.	Chargeability to a County or County Borough.
Clerk to the guardians	Clerk of County Council or town clerk of County Borough or such other officer as may be appointed or designated by the council.
Common fund of the union or fund of board of guardians for a single parish.	County fund or general rate fund of County Borough.
District school or district poor law school	Separate school.
Guardian—as an individual	Member of County Council or County Borough.
Guardians—as a corporate body	County Council or County Borough.
Medical officer of board of guardians or of a union	Poor law medical officer of a County or County Borough.
Officer of a board of guardians, or guardians, or officer of a union or other area for which a board are constituted.	Officer concerned with the relief of the poor.
Parish—as the area for which a board of guardians are constituted.	County or County Borough.
Parish—as the area in which a settlement is acquired or derived.	County or County Borough.
Parochial relief	Poor relief.
Poor law union	County or County Borough.
Treasurer of poor law union	County treasurer or treasurer of County Borough.
Union or other area for which a board of guardians are constituted.	County or County Borough.
Union or parochial relief	Poor relief.

Part I.—Poor Law Authorities.

SECT. 4.—**OVERSEERS** (Vol. XXXVII., p. 204).

24a. Overseer becoming transferred officer—Removal—Powers of rating authority.]—By Local Government Act, 1894 (c. 73), s. 5 (1), the power of appointing & revoking the appointment of an assistant overseer for any rural parish having a parish council is transferred to & vested in the parish council.—An assistant overseer so appointed by a parish council which was subsequently transformed into an urban district council, became a "transferred officer" under the Rating & Valuation Act, 1925 (c. 90). He was summarily dismissed by the urban district council as the rating authority:—*Held:* the council could dismiss the officer without notice or cause, & without affording him a hearing, provided that in so dismissing him they did not act dishonestly, corruptly, or in bad faith—BROWN *v.* DAGENHAM URBAN COUNCIL, [1929] 1 K. B. 737; 98 L. J. K. B. 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 284; 73 Sol. Jo. 144; 27 L. G. R. 225.

Annotation:—**Distd.** Field *v.* Poplar Corpn., [1929] 1 K. B. 750. **Consd.** McManus *v.* Bowes, [1936] 2 All E. R. 665.

See, now, Local Government Act, 1933 (c. 51), s. 121.

31. *Add. Citations:*—96 L. J. K. B. 741; 137 L. T. 558; 25 L. G. R. 267.

34a. Abolition—Local Government Act, 1929 (c. 17), s. 1—Transfer of "parish property"—What included.]—Pltfs., the City of London Corpn., claimed a declaration that a certain capital fund invested in 5 per cent. War Loan Stock in the hands of the City of London Guardians, being the balance of the proceeds of the sale by defts. of a poor law institution as the H. Institution, was "parish property" within Local Government Act, 1929 (c. 17), s. 115, & that it was "property with respect to which special provision is made" within sect. 113 of the 1929 Act, & would on Apr. 1, 1930, by virtue of sect. 115 of the 1929 Act, be transferred to & vest in pltfs. & not in the London County Council. By sect. 1 of 1929 Act, the functions of the City of London Guardians were transferred to the London County Council on Apr. 1, 1930, on which date the Guardians were abolished. Sect. 113 of the 1929 Act transferred to the London County Council all property & liabilities of the City of London Guardians, except those for which special provision was made in the Act. The only special provision which was suggested to apply was that contained in sect. 115. By sect. 115, sub-sect. 1, of all parish property on the appointed day, namely, Apr. 1, 1930, vested in a board of guardians was to be transferred to the appropriate council, in this case the Common Council of the City of London. The H. Institution & Infirmary was acquired by the City of London Guardians in 1871 for the purposes of their functions in the relief of the poor. By an order dated Apr. 6, 1921, the Minister of Health, the successor of the Local Government Board, sanctioned the sale by the City of London Guardians by the H. Institution, &, by a further order, directed that the net proceeds of the sale should be invested in 5 per cent. War Loan Stock, & that the Guardians should stand possessed of the securities so purchased on trust to receive & pay into the common fund of the Union the interest accruing therefrom:—*Held:* (1) the property in the capital fund in question & the interest thereon was not "parish property" within 1929 Act, s. 115; (2) it was not transferred by that Act to the representative of the City of London; (3) the property in the fund was transferred to & vested in the London County Council for the benefit of the whole area administered by the London County Council; & (4) it was not subject to any condition that the income of the fund should be credited to the City Corpn. in computing the amount of the contributions due from the City Corpn. to the County fund.—LONDON (CITY) CORPN. *v.* LONDON COUNTY COUNCIL. [1931] 1 K. B. 25; 99 L. J. K. B. 577; 143 L. T. 372; 94 J. P. 219; 46 T. L. R. 533; 74 Sol. Jo. 421; 28 L. G. R. 451, C. A.

38a. Loans to strikers' families—Resolution cancelling repayment—Void.]—Defts., a board of guardians, upon the outbreak of the coal dispute of 1926 resolved to give outdoor relief to the wives & families of miners & other workmen who were unemployed because of the dispute, & that such relief should be given by loan, subject to an undertaking to be given by the head of each household to repay the loan by weekly instalments, or, by arrangement with the employers, deductions from wages to commence five weeks after the resumption of work. In pursuance of this resolution defts. granted relief to miners' families during the continuance of the dispute to the amount of £195,957. Repayment commenced in Jan. 1927, the terms being modified from time to time. On July 11, 1929, the total balance due on the loans was £145,924, & it was then being repaid by about 5,000 miners at the rate of nearly £400 a week, some having already repaid their loans in full, & others having been entirely released from payment. On that day defts. passed a resolution that the whole balance of the loans owing in respect of relief received by miners' wives & families should be excused & cancelled. In an action by pltf. at the relation of the corpn. of a borough situate & owning rateable property within defts.' area:—*Held:* (1) the resolution to cancel the loans was *ultra vires* & void & must not be acted upon; (2) even if there was any general discretionary power in defts. to release the debtors, it was not properly or reasonably exercised, as they had considered solely the interest of the debtors, without any inquiry into the ability of all or any of them to continue paying off their loans, there being no evidence of any general inability to repay, or request for the cancellation of the debts.—A.-G. *v.* TYNEMOUTH UNION, [1930] 1 Ch. 616; 99 L. J. Ch. 307; 143 L. T. 70; 94 J. P. 191; 46 T. L. R. 272; 74 Sol. Jo. 169; 28 L. G. R. 179.

63a. Guardians acting in loco parentis—Right to grant of administration.]—By Poor Law Act, 1927 (c. 14), a board of guardians may

in certain circumstances as *in loco parentis* in respect of an orphan child, & in that capacity is entitled to take out letters of administration of the estate of the child's deceased parent for the benefit of the child.—*Re* PETERS (1929), 142 L. T. 328 ; 46 T. L. R. 119 ; 74 Sol. Jo. 13.

75a. —— **To dismiss—Transferred officer.**]—The effect of Local Government Act, 1929 (c. 17), s. 121 (1), is that an officer of a poor law authority who has been transferred to the appropriate county council or county borough council under sect. 119 of the Act retains all the incidents of his service & there is no change in the terms of his employment. If, therefore, the poor law authority was entitled to terminate his service by giving him proper notice & to re-engage him on different terms, the council are also entitled to do so.—MOUNTFORD *v.* LONDON COUNTY COUNCIL, [1935] 2 K. B. 243 ; 104 L. J. K. B. 477 ; 153 L. T. 236 ; 99 J. P. 354 ; 51 T. L. R. 486 ; 79 Sol. Jo. 503 ; 33 L. G. R. 323.

87. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

88a. **Officer placed on half-pay—Validity.**]—Applt. had been a poor law relieving officer in the service of the Stepney Guardians, who, in 1927, had made a set of regulations governing, *inter alia*, payment of sick pay to their officers. By Local Govt. Act, 1930, he was automatically transferred to the service of resp. council, & in 1932 entered into a new contract of service with it at a higher scale of pay. The contract included a clause concerning sick pay. In Dec. 1933, applt. became wholly incapacitated through ill-health, & he was superannuated on Sept. 30, 1934. Until July he received full pay, & thereafter sick pay at a half rate scale. Applt. claimed the difference between this half rate & his full rate of salary. He contended that, by virtue of Arts. 172, 173 of General Order of 1847, made under Poor Law Amendment Act, 1834 (c. 76), & also by the Public Assistance Order, 1930, Art. 162, resp. council had no power to decrease his salary without the consent of the Minister of Health, which consent had not been obtained, & therefore any regulation purporting to give the council such power was *ultra vires*. Resp. council contended that the regulations of 1927 had been imported into applt.'s contract of service :—*Held :* (1) the sick pay clause in the contract of service enabled resp. council to put applt. upon half-pay in July, 1934 ; (2) placing applt. upon half-pay was not a reduction of remuneration within the meaning of Art. 162, & the consent of the Minister of Health was not required. In deciding this the whole contract made in 1932 had to be considered, & under it applt. received an increase of remuneration & not a decrease.—LITTLEJOHN *v.* LONDON COUNTY COUNCIL, [1937] 3 All E. R. 43 ; 106 L. J. K. B. 488 ; 157 L. T. 128 ; 53 T. L. R. 774 ; 81 Sol. Jo. 477 ; 35 L. G. R. 497, C. A.

91a. —— **Certificate as to guardians' liabilities—Finality of.**]—On the transfer of the functions of poor law boards of guardians to county councils, the certificate to those councils of his valuation of the non-institutional liabilities of the guardians by the district auditor under Local Government Act, 1929 (c. 17), Sched. VI., clause 2 (1), is final & conclusive within the meaning of clause 2 (2) of the Sched., both as to the determination of what are the non-institutional liabilities & as to their value.—R. *v.* AYTON, *Ex p.* CARDIFF CORPN., [1935] 1 K. B. 225 ; 104 L. J. K. B. 9 ; 152 L. T. 238 ; 99 J. P. 1 ; 51 T. L. R. 57 ; 32 L. G. R. 453, D. C.

100a. **"Regularly employed"—Employment as deputy.**]—Pltf. was in the service of defts.' predecessors in their capacity of poor law guardians for fifteen years before his retirement, but during five of those years he was only employed as gate porter to a poor law institution in substitution for its regular gate porter who was away on war service :—*Held :* in computing the amount of his superannuation allowance under Poor Law Officers' Superannuation Act, 1896 (c. 50), pltf., though only a temporary substitute for the regular gate porter, was entitled to reckon his actual five years' deputy service as regular employment in the capacity of a poor law officer or servant.—HAMMOND *v.* LONDON COUNTY COUNCIL, [1931] 1 Ch. 540 ; 100 L. J. Ch. 125 ; 144 L. T. 720 ; 95 J. P. 97 ; 29 L. G. R. 350 ; *sub nom.* HAMMOND *v.* WESTMINSTER GUARDIANS, 47 T. L. R. 249.

105. *Add. Annotations :*—**Consd.** Gissing *v.* Liverpool Corpn., [1935] Ch. 1. **Expld.** Tees Conservancy Comrs. *v.* James, [1935] Ch. 544. **Consd.** Jones *v.* London County Council, [1936] Ch. 50. **Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 1 K. B. 540 ; Powell *v.* Sheffield Corpn., [1936] 1 K. B. 680 ; Tibbals *v.* Port of London Authority, [1936] 2 All E. R. 819.

105a. **Transferred officer—Construction of Local Government Act, 1929 (c. 17), s. 124 (1).**]—Sect. 124 (1) of Local Government Act, 1929 (c. 17), enacts that if an officer who has made contributions required by Poor Law Officers' Superannuation Act, 1896 (c. 50), is by the Act of 1929 transferred to the service of any council, then, if the council to whose service he is so transferred has no superannuation scheme, the Act of 1896 shall apply to him, "& shall continue so to apply to him so long as he is in the service of the council of any county . . ." :—*Held :* the words "so long as he is in the service of the council of any county" were not to be read with some such implied addition as "to whose service he shall have been so transferred," but included the case of an officer who after transfer resigned his employment & obtained service with another county council.—POUNDER *v.* LONDON COUNTY COUNCIL, [1934] 1 K. B. 26 ; 103 L. J. K. B. 79 ; 150 L. T. 169 ; 97 J. P. 306 ; 50 T. L. R. 26 ; 31 L. G. R. 414, C. A.

PART I. SECT. 4.

sm. *Conditions precedent to* —Necessity for request to overseers before they can be liable.—MCDONALD *v.* CAPE BRETON COUNTY POOR DIS 13 (1939), 6 M. P. R.

1.—CAN.

sn. ——.]—A brother, claiming from overseers expenses incurred for the relief of a pauper must prove (1) that there is another person liable before him, or (2) that he had not sufficient means. — MCGILLIVRAY *v.* ARISAIG POOR DISTRICT No. 1, [1933] 2 D. L. R. 134 ; 6 M. P. R. 35.—CAN.

PART I. SECT. 5, SUB-SECT. 7.—C.

q. For "585" read "258."

105b. —— ——.]—Pltf. was employed as a cleaner by a board of guardians from 1897 until Apr. 1, 1930, but until Oct. 1929, no deductions in respect of superannuation contributions under Poor Law Officers' Superannuation Act, 1896 (c. 50), ss. 12, 13, were made from the pltf.'s wages. From Oct. 1929, the guardians deducted 6*d.* a week in respect thereof, & on Mar. 27, 1930, an arrangement was made that they should deduct a further 1*s.* 6*d.* a week in part payment of arrears of contributions, & this further deduction was made on Mar. 29, 1930. On Apr. 1, 1930, by the Local Govt. Act, 1929 (c. 17), the guardians were abolished & pltf. was transferred to the service of deft. corpn. Until Feb. 1932, deft. corpn. continued to deduct the 6*d.* & the 1*s.* 6*d.* a week, but then ceased to do so & returned the contributions on the ground that pltf. was not within the superannuation scheme provided by 1896 Act. In an action claiming that pltf. was entitled, under sect. 124 (1) of 1929 Act to the benefit of that scheme & that the arrangement of Mar. 27, 1930, was binding on defts.:—*Held:* although pltf.'s contributions had not been made exactly as & when they ought to have been made there was no impediment to her receiving her pension.—GISSING *v.* LIVERPOOL CORPN., [1935] Ch. 1; 104 L. J. Ch. 68; 151 L. T. 513; 98 J. P. 359; 50 T. L. R. 525; 78 Sol. Jo. 601; 32 L. G. R. 499, C. A.

Annotations:—**Expld.** Tees Conservancy Comrs. *v.* James, [1935] Ch. 544. **Refd.** Jones *v.* London County Council, [1936] Ch. 50.

105c. —— **Amount of pension.**]—Under the Poor Law Officers' Superannuation Act, 1896, poor law officers became entitled to superannuation allowance, certain deductions to provide therefor being made from their salaries, the amount of superannuation being a defined proportion of the average of the last five years' salary preceding the day when they ceased to hold office.

Pltf. became a clerk under an assessment committee of a union & held the office for twenty-four years, his salary for the last five years averaging £30 *per annum.* In 1927, under the provisions of the Rating & Valuation Act, 1925 (c. 90), the union ceased to exist, & pltf. was transferred to the new rating authority created by the Act, & held the office for a further seven years, his average salary for the last five years of this service being £165:—*Held:* Rating & Valuation Act, 1925 (c. 90), s. 51 (1), applied Poor Law Officers' Superannuation Act, 1896 (c. 50), to pltf. after his transfer, & not only down to the time in 1927 when he ceased to be an officer of the dissolved union. He was therefore entitled to superannuation allowance based on £165 & not on £30.—NEWILL *v.* CLUN ASSESSMENT COMMITTEE (1935), 79 Sol. Jo. 839; 34 L. G. R. 8.

105d. Election to contract out—Cancellation.]—Pltf. entered the service of a board of guardians in 1904 as a probationer nurse & certain annual deductions were made from her salary for superannuation purposes. In 1907 she obtained employment as a charge nurse under the Metropolitan Asylums Board, & gave notice that, as a female nurse within Poor Law Officers' Superannuation Act Amendment Act, 1897 (c. 28), she wished to contract out of superannuation benefits, *i.e.*, did not wish to avail herself of the provisions of the Poor Law Officers' Superannuation Act, 1896 (c. 50). No deductions were therefore made from her salary by way of contribution to superannuation benefit, & the same procedure continued when after leaving the Asylums Board in 1908 she was employed from Feb. 1909 to 1923, as a superintendent nurse by another board of guardians. In that year she obtained employment under a different board of guardians as a charge nurse, but shortly after her appointment requested to be allowed to contribute to the poor law officers' superannuation fund. This request was granted by the board on her paying to them the deductions which would have been made from her salary for superannuation benefit while in the service of her two previous employers if she had not contracted out. This was duly paid by pltf., & the necessary deductions made from her salary down to 1927, when she was appointed by the board to be an assistant matron at an orphanage, & therefore (having ceased to be a female nurse within the 1897 Act) could not contract out of the 1896 Act. The proper deductions were therefore made by the board from her salary down to 1930, when by virtue of Local Govt. Act, 1929 (c. 17), the duties & functions of the board of guardians were transferred to deft. council whose servant pltf. consequently became. Down to 1933 deft. council made deductions from pltf.'s salary at the rate of 3½ per cent., but in 1933 they informed her that her rate of contribution under the superannuation scheme would be reduced to 2½ per cent. as from Apr. 1, 1930, being the rate in respect of employees whose period of service did not on Apr. 1, 1930, exceed ten years. They accordingly repaid her a sum which included (*inter alia*) the amount paid back by pltf. in 1923 while employed as a charge nurse, & the consequent deductions made from her salary down to 1927. These sums pltf. accepted under protest. She accordingly commenced an action against deft. council for a declaration (*inter alia*) that her contributions ought to be calculated at 3½ per cent. on the total amount of her salary on the footing that the period of her service to be considered in fixing the amount of these contributions to the superannuation scheme was on Apr. 1, 1930, more than twenty years. This deft. council denied, on the ground that as pltf. had in 1907 contracted out of the 1896 Act, her service with poor law authorities down to 1927 when she became an assistant matron could not be aggregated for superannuation purposes; that the deductions made from her salary when she became a charge nurse in 1923 & down to 1927 were illegal; & that the board of guardians in accepting from pltf. the payment of the deductions from her salary above mentioned had acted *ultra vires.* They further contended that a contracting-out notice once given could never be withdrawn & that it applied to the whole of her future service as a female nurse:—*Held:* the board of guardians had not acted illegally in 1923 in permitting the withdrawal of the contracting-out notice & requiring pltf. as a condition of that withdrawal to repay the sums which would in the past years have been deducted

from her salary if she had not contracted out of superannuation benefits; pltf. was an officer by whom, on her transfer to deft. council, the annual contributions required by the 1896 Act had been made; & on Apr. 1, 1930, pltf.'s employment extended over the aggregate period covered by her combined periods of service & exceeded twenty years. The deductions to be made by deft. council out of pltf.'s salary should therefore be at the rate of 3½ per cent.—JONES *v.* LONDON COUNTY COUNCIL, [1936] Ch. 50; 105 L. J. Ch. 53; 154 L. T. 211; 99 J. P. 370; 79 Sol. Jo. 642; 33 L. G. R. 404.

120. *Add. Annotation:*—**Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

Part II.—Poor Law Areas.

157. *Add. Annotation:*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

164. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part III.—Workhouses.

174. *Add. Annotation:*—**Refd.** London (City) Corpn. *v.* London County Council (1930), 99 L. J. K. B. 577.

Part IV.—Relief of the Poor.

188. *Add. Annotations:*—*As to* (1) **Refd.** Reeve *v.* Walker, [1932] 1 K. B. 454. *As to* (3) **Consd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205.

197a. Whether disability pension disregarded.]—An ex-service man, whose sole income for the maintenance of himself, his wife & five children was a 100 per cent. disability pension of £2 per week, applied for poor relief from the local authority because he was unable adequately to maintain himself & his family. The local authority decided that appct. was not entitled to relief on the ground that his income of £2 per week was sufficient for maintenance, & contended that, as the above sect. of the Act applied only for the purposes of regulating the amount of relief to be afforded to persons who have first of all been found entitled to relief, they were not bound to disregard the first one pound of appct.'s pension when determining whether appct. was entitled to relief:—*Held:* resps. were bound by the above sect. to disregard the first pound of applt.'s disability pension when considering whether or not he was entitled to relief as well as when calculating the amount of relief payable.—DUNCAN *v.* ABERDEEN COUNTY COUNCIL, [1936] 2 All E. R. 911; 106 L. J. P. C. 1; 156 L. T. 145; 80 Sol. Jo. 702, H. L.

206. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

225a. Within what time proceedings must be taken.]—Applts., a board of guardians, in 1926 gave relief, by way of loan, to resp. under Poor Law Amendment Act, 1834 (c. 76), s. 58. In Feb. 1927 applts. made a written application to resp. for repayment, & in Aug. 1927 summonses were issued against resp. &

PART IV. SECT. 1.

r i. ——— ———.]—BUTTS *v.* SYDNEY MINES, [1927] 1 D. L. R. 546; 59 N. S. R. 90.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

201 i. *Right to recover costs of relief—From parish to which pauper belongs—Condition precedent.*]—No claim for the support of a pauper can be made against his district of settlement unless a request to the district to provide relief has been made.—MCKENZIE *v.* BIG POND OVERSEERS, [1933] 1 D. L. R. 252.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

sa. ——— ——— *Capricious finding age of child in order to give jurisdiction.*]—*Re* KELLY (N. B.), [1929] 1 D. L. R. 716; 51 Can. Crim. Cas. 113.—**CAN.**

sb. *Deserted child—Order for maintenance — Jurisdiction.*]—Under an order of the police magistrate for the county of F. made in Jan. 1927, under Children Protection Act, R. S. O., 1914, & amendments, two infants were delivered into the custody of pltf. society & became its wards. The order directed that the corpn. of the united counties of L. & G. should pay a weekly sum to the society for the maintenance of the infants. It was afterwards discovered that the town of X., of which the infants were residents, was a separate municipality, so constituted by Act of Ontario legislature in 1922; & on May 19, 1927, the magistrate amended his order by directing that the maintenance money should be paid by the town corpn. instead of the counties corpn. The town corpn. repudiated its liability & this action was brought to enforce payment:—*Held:* the magistrate had jurisdiction to make the first order, but the magistrate not having, on or before May 19, 1927, been designated a "judge" within Children's Protection Act, 1927, had no jurisdiction to make the amending order.—FRONTENAC CHILDREN'S AID SOC. *v.* GANANOQUE, [1929] 3 D. L. R. 104; 63 O. L. R. 560.—**CAN.**

sc. *Extent of liability of municipality—Child Welfare Act, C. A.*, 1924.]—DIRECTOR OF CHILD WELFARE *v.* RURAL MUNICIPALITY OF CARTIER, [1931] 2 W. W. R. 7; 2 D. L. R. 845.—**CAN.**

sm. *Meaning of municipality.*]—A village municipality is not a "municipality" within the meaning of that word as used in Infants Act, R. S. B. C., 1924, unless under the powers given the Lieutenant-Governor in Council by sect. 7 (c) of Village Municipalities Act, R. S. B. C., 1924, it has been declared to be a municipality under the Infants Act.—RILEY & CHILDREN'S AID SOCIETY *v.* MISSION VILLAGE, [1933] 1 W. W. R. 20; 46 B. C. R. 330.—**CAN.**

against his employers to recover the amount due. The justices held, as more than six months had elapsed since the date when the last instalment of the loan was advanced, they had no jurisdiction by reason of Summary Jurisdiction Act, 1848 (c. 43), s. 11, & they dismissed the summons:—*Held:* the matter of complaint did not arise until the application for repayment was made.—ASHBY-DE-LA-ZOUCH GUARDIANS *v.* SUMMERS, [1928] 2 K. B. 397; 97 L. J. K. B. 397; 139 L. T. 46; 92 J. P. 72; 44 T. L. R. 406; 72 Sol. Jo. 241; 26 L. G. R. 245; 28 Cox, C. C. 494, D. C.

225b. In what court proceedings must be taken.]—A ct. of summary jurisdiction is not a "county ct. or other ct. for the recovery of small debts" within Poor Law Act, 1927 (c. 14), s. 46 (1), & under that sub-sect. relief granted by way of loan by the guardians to a poor person cannot be recovered therein.—EVANS *v.* MORGAN, [1928] 2 K. B. 527; 97 L. J. K. B. 703; 139 L. T. 612; 92 J. P. 146; 44 T. L. R. 544; 26 L. G. R. 386, D. C.

248. *Add. Annotation:*—**Apld.** Hogton *v.* Hogton (1933), 103 L. J. P. 17.

254. *Add. Annotations:*—**Reld.** Grubb *v.* Grubb (1934), 98 J. P. 99; Markovitch *v.* Markovitch (1934), 151 L. T. 139.

289a. Under Summary Jurisdiction Act, 1879 (c. 49).]—Where an order has been made in petty sessions upon a husband to pay a sum weekly or otherwise towards the cost of poor relief given to his wife, & the payments thereunder fall into arrear, complaint may be made to a ct. of summary jurisdiction, & the ct. has power under the Summary Jurisdiction Act, 1879 (c. 49), to enforce the payments due under the order as a civil debt, although no mode of recovery is prescribed by Poor Law Act, 1930 (c. 17), s. 19 (1), re-enacting Poor Law Act, 1927 (c. 14), s. 43 (1).—LONDON COUNTY COUNCIL *v.* BETTS, LONDON COUNTY COUNCIL *v.* DOWNES, [1936] 1 K. B. 430; [1936] 1 All E. R. 144; 105 L. J. K. B. 289; 154 L. T. 267; 100 J. P. 183; 52 T. L. R. 257; 80 Sol. Jo. 187; 34 L. G. R. 169; 30 Cox, C. C. 345, D. C.

Part V.—Settlement.

304. *Add. Annotation:*—**Consd.** Newport Borough Council *v.* Leicester County Council, [1937] 1 All E. R. 439.

315a. Construction of private Act—Meaning of "immediately before" appointed day.]—A poor person had resided in the county of Monmouth for such a period & in such circumstances, before Feb. 23, 1935, as to acquire a settlement in that county. On Feb. 23, 1935, the poor person went to live in the county of Leicester. On Apr. 1, 1935, by the Newport Extension Act, 1934, the boundary of the borough of Newport was altered to include, *inter alia*, that part of the county of Monmouth in which the poor person had formerly lived. The poor person subsequently became chargeable to the county of Leicester. The Newport Extension Act, 1934, s. 26, provides: "Every person resident in the added areas immediately before the appointed day [Apr. 1, 1935] who has acquired a settlement in the county . . . shall be deemed to have acquired . . . a settlement in . . . the borough":—*Held:* the poor person was not resident in the county of Monmouth "immediately before" Apr. 1, 1935, within the Newport Extension Act, 1934, s. 26, & his settlement remained in the county of Monmouth.—NEWPORT BOROUGH COUNCIL *v.* LEICESTER COUNTY COUNCIL, [1937] 1 All E. R. 439; 106 L. J. K. B. 157; 156 L. T. 110; 101 J. P. 103; 53 T. L. R. 229; 81 Sol. Jo. 80; 35 L. G. R. 42, D. C.

327. *Add. Citations:*—[1927] 2 K. B. 511; 96 L. J. K. B. 793; 137 L. T. 524.

PART IV. SECT. 3, SUB-SECT. 2.—A. (a).

sp. *Parents' Maintenance Act, 1923—What amounts to dependence.*]—If a father has a sufficient income of his own to provide him with food, clothing, & other necessaries, his age, disease, or other infirmities will not enable him to claim any money from his children as their "dependent" within Parents' Maintenance Act, 1923.—STE. MARIE *v.* STE. MARIE (Sask.), [1929] 4 D. L. R. 1076; 1 W. W. R. 890.—**CAN.**

st. —— *Joint & several liability of children.*]—R. *v.* SKILLING, [1935] 1 W. W. R. 183.—**CAN.**

sb. *Settlement by* ——. FORD OVERSEERS *v.* OVERSEERS, [1932] 1 D. L. R. 400.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—D.

sg. *Liability of city.*]—Counties are not liable for the institutional care of an illegitimate child where the child has been in the custody of a city for more than one year.—*Re* LEVERTI, [1936] 1 D. L. R. 731; O. R. 139; 65 Can. C. C. 251.—**CAN.**

PART V. SECT. 1.

sf. *New settlement—Burden of proof.*—The burden of showing a new settlement is upon the county of original settlement of an infant's father.—*Re* LEWIS, [1935] 3 D. L. R. 188; 9 M. P. R. 415.—**CAN.**

sh. *Loss—Receipt of poor relief—What amounts to.*]—A person does not receive aid from the overseers of the poor, so as to deprive him of settlement, by asking the overseers to make a payment to a nurse attending the woman with whom he is living.—*Re* SCHNARE, [1935] 3 D. L. R. 116; 9 M. P. R. 378.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

339 i. —— —— *Derivative settlement.*] — OLD KILPATRICK PARISH COUNCIL *v.* KILMARNOCK PARISH COUNCIL, [1929] S. C. (Ct. of Sess.) 651.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 4.—A. (a).

sm. *Municipality where mother born—Child & mother not resident.*]—A municipality in which a mother was born, but in which neither the mother nor the child reside is not liable for the maintenance of a child under Children's Protection Act, R. S. O., 1927.—*Re* FORMAN, [1927] 2 D. L. R. 263.—**CAN.**

sp. *County where mother lived & employed over one year.*]—Under Ontario Children's Protection Act, s. 10, where a child is less than one year old the county where the mother has resided & been continuously employed for more than one year is liable for its maintenance.—*Re* AMEY, [1936] 4 D. L. R. 129.—**CAN.**

PART V. SECT. 3, SUB-SECT.

402 i. *Follow mother's settlement.*]—An illegitimate child takes the settlement of the mother acquired through marriage subsequent to the birth of the child.—*Re* MAIN'S SETTLEMENT, [1936] 2 D. L. R. 64; 10 M. P. R. 263; 65 Can. C. C. 262; 6 F. L. J. (Can.) 38.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.—B. (a).

433 i. *Whether relegated to birth settlement where mother's settlement derived from sub-*

COUNCIL *v.* ELGIN PARISH COUNCIL, [1928] S. C. (Ct. of Sess.) 918.—**SCOT.**

335. *Add. Citations :*—96 L. J. K. B. 511 ; 137 L. T. 98 ; 91 J. P. 41 ; 25 L. G. R. 21, H. L.

351. *Add. Annotation :*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

415. *Add. Annotation :*—**Refd.** Norwich Union *v.* Henstead Union, [1927] 2 K. B. 511.

436. *Add. Annotation :*—*As to* (2) **Consd.** Norwich Union *v.* Henstead Union, [1927] 2 K. B. 511.

473. *Add. Annotations :*—**Apld.** Birkenhead Borough Council *v.* Lancashire County Council (1934), 150 L. T. 414. **Folld.** Lancashire County Council *v.* Birkenhead County Borough Council, [1934] 2 K. B. 226.

473a. —— —— ——.]—A married woman, deserted by her husband, may acquire a settlement for herself, but by residence only, under Poor Law Act, 1930 (c. 17), ss. 84 (2) (*b*) (i.), 86 (2), & not by any of the other ways enumerated in sect. 84 (2) (*b*).—LANCASHIRE COUNTY COUNCIL *v.* BIRKENHEAD BOROUGH COUNCIL, [1934] 2 K. B. 226 ; 103 L. J. K. B. 407 ; 32 L. G. R. 38 ; *sub nom.* BIRKENHEAD BOROUGH COUNCIL *v.* LANCASHIRE COUNTY COUNCIL, 150 L. T. 414 ; 98 J. P. 68, D. C.

482a. —— **Nurse—Sent to training establishment.**]—On July 20, 1920, A. signed an agreement at C. in the parish of F., by which she was to undergo a year's free training in nursing under the C. Nursing Assocn. & thereafter to remain in their employment for three years. She was sent to D. on the same day for her training & returned to C. on July 9, 1921. She remained at C. under her contract till July 2, 1924, on which day she was allowed to go on holiday, & had no intention of returning, as her three years expired during her holiday. She subsequently became chargeable as a pauper lunatic :—*Held :* since she had not resided physically in the parish of F. for three complete years when she left on July 2, 1924, & had then no *animus revertendi*, she had not acquired a settlement there, there being no evidence that she resided there between July 20, 1920, & July 9, 1921.—FARNHAM UNION *v.* CAMBRIDGE UNION, [1929] 1 K. B. 307 ; 98 L. J. K. B. 177 ; 140 L. T. 377 ; 93 J. P. 21 ; 45 T. L. R. 73, D. C.

486a. —— —— **Territorial in camp.**]—*Held :* a poor person who had enlisted as a man of the Territorial Force, was not, while attending the annual training camp of that Force, serving in the military service of the Crown as a soldier within proviso (*a*) of sect. 93 (1) of Poor Law Act, 1930 (c. 17). The period of his attendance at the camp was not to be excluded in computing his period of residence, so as to prevent him from acquiring a settlement in a county borough by residence in that county borough for a term of three years within sect. 86 (1) of the Act.—DERBYSHIRE COUNTY COUNCIL *v.* MIDDLESEX COUNTY COUNCIL, [1936] 1 K. B. 533 ; 105 L. J. K. B. 101 ; 154 L. T. 125 ; 99 J. P. 391 ; 52 T. L. R. 15 ; 79 Sol. Jo. 777 ; 33 L. G. R. 449, D. C.

494. *Add. Annotations :*—**Refd.** Coventry Corpn. *v.* Surrey County Council, [1935] A. C. 199 ; London County Council *v.* Berkshire County Council (1935), 153 L. T. 463.

495. *Citation :*—For " [1912] " read " [1913]."

498. *Add. Annotation :*—**Apld.** Farnham Union *v.* Cambridge Union, [1929] 1 K. B. 307.

503. *Add. Annotations :*—**Refd.** Morris *v.* Britannic Assurance Co., [1931] 2 K. B. 125 ; Coventry Corpn. *v.* Surrey County Council, [1935] A. C. 199.

C. Adopted Children.

504a. Effect of adoption order.]—W. was born an illegitimate child in the county of Leicester & lived with a foster-mother in the county borough of Leicester until he was eleven years of age. He was then, by an order under sect. 1 of the Adoption of Children Act, 1926 (c. 29), s. 1, adopted by one C., & his wife, with whom he lived continuously for four years in the county borough of Leicester, from which place the adopters were irremovable & in which they were settled at the date of the order. A few days after he had reached the age of sixteen years the child became chargeable to the county of Surrey. The justices of Surrey ordered his removal to Coventry, where his mother was then last settled :—*Held :* the order for removal must be quashed, for the removability & settlement of a poor person are matters relating to his custody, maintenance & education ; therefore the rights, duties, obligations & liabilities of the mother in relation thereto were extinguished & vested in the adopter as though the child was a child born to the adopter in lawful wedlock, in which case the child could not be removed to the place of settlement of his mother.—COVENTRY CORPN. *v.* SURREY COUNTY COUNCIL, [1935] A. C. 199 ; 103 L. J. K. B. 590 ; 152 L. T. 49 ; 98 J. P. 401 ; 50 T. L. R. 529 ; 78 Sol. Jo. 567 ; 32 L. G. R. 373, H. L.

720. *Citations :*—For " (1733), Cun. 76 ; 2 Sess. Cas. K. B. 245," read " (1734), Cun. 76 ; 1 Sess. Cas. K. B. 251."

778a. —— **Weekly tenancy—Effect of Poor Law Act, 1930 (c. 17), s. 89.**]—In order to satisfy the terms of Poor Law Act, 1930 (c. 17), s. 89, the tenancy must be a yearly

PART V. SECT. 5, SUB-SECT. 2.—B.

86. *Before settlement acquired—Liability of former district.*]—Where a person resident in one municipal district who has not previously received relief as an indigent moves into another district, & such relief is furnished to him by the latter district before he has become a " resident " therein within Municipal District Act, 1926, s. 150 (3) (*c*), & continued after the date when he becomes a " resident," it is only for the relief furnished before said date that the relieving district can obtain reimbursement from the district of which he was previously a resident.—WHEATLAND MUNICIPAL DISTRICT *v.* IRON CREEK MUNICIPAL DISTRICT, [1929] 2 D. L. R. 15 ; 1 W. W. R. 531 ; 24 Alta. L. R. 141.—CAN.

PART V. SECT. 5, SUB-SECT. 3.—A.

493 i. *Capacity of child to acquire independent settlement.*]—Where, while a child is living with its own parents as a member of the family under a foster agreement made with them by the Comr. of Child Protection, they change their residence to another municipality, & the child continues to so live with them therein for six months, it then, if one year of age or older, " belongs " to said municipality within Child Welfare Act, 1927, c. 60, s. 28 (2).—*Re* BALASANOVICH (OR BAILEY), FOAM LAKE TOWN *v.* RURAL MUNICIPALITY OF INSINGER, [1928] 4 D. L. R. 127 ; [1928] 2 W. W. R. 448.—CAN.

493 ii. ——.]—*Re* KLYNE, [1932] 3 W. W. R. 615.—CAN.

tenancy, & therefore a person who rents or occupies a house for a period longer than a year upon a weekly tenancy does not acquire a settlement under the sect. In this respect the sect. has made no alteration in the law as it was before 1930.—NOTTINGHAM COUNTY COUNCIL *v.* MIDDLESEX COUNTY COUNCIL, [1936] 1 K. B. 141; 105 L. J. K. B. 94; 154 L. T. 131; 100 J. P. 1; 52 T. L. R. 76; 79 Sol. Jo. 922; 33 L. G. R. 499, D. C.

Part VI.—Removal.

1079a. Effect of Local Government Act, 1929 (c. 17), Sched. IX.]—A poor person who was born at C. in the county of L. on Aug. 25, 1878, was a domestic servant from 1894 to 1896, residing in the parish of L. in the said county. From 1896 to May 25, 1900, she resided in the parish of O. in the said county. From May 25, 1900, to Aug. 27, 1900, she was an inmate of O. Union poor law institution. From Aug. 27, 1900, to Oct. 3, 1907, & from Nov. 7, 1907, to Jan. 25, 1911, she resided at various addresses in the parish of O. without receiving relief. From Jan. 25, 1911, to Mar. 12, 1913, she was again an inmate of O. poor law institution. From Mar. 12, 1913, to Mar. 16, 1913, she resided in the county borough of S. without receiving relief. On Mar. 16, 1913, she was admitted into the casual wards at the county borough of S., & on Mar. 17, 1913, she was transferred to O. Union poor law institution, where she remained until Mar. 14, 1931. Before Apr. 1, 1930, the "appointed day" under Local Government Act, 1929 (c. 17), the parish of O. & the area comprised in the county borough of S. were within the O. poor law union. After the "appointed day" the area comprising the county borough of S. became a separate poor law area, & that comprising the parish of O. became part of the poor law area of the county of L. From Mar. 14, 1931, to Nov. 17, 1931, & again from Nov. 17, 1931, to Mar. 3, 1933, the poor person resided in the county borough of S., & was in receipt of outdoor relief. On Oct. 12, 1932, the Minister of Health made an order under Poor Law Act, 1930 (c. 17), s. 161, that the poor person was chargeable to the county borough of S. On Mar. 3, 1933, S. justices made an order that she should be removed to the county of L., but L. Quarter Sessions reversed this order, holding that the poor person was resident in the county borough of S. immediately before the appointed day, & that she had acquired there a status of irremovability by virtue of the Local Government Act, 1929 (c. 17), Sched. IX., Part I., para. 3, sub-paras. 2 & 3. On appeal by the county borough of S. the Divisional Ct. reversed the order of quarter sessions, holding that the poor person had not acquired a status of irremovability in S. On appeal by the L. County Council:—*Held:* Poor Law Act, 1930 (c. 17), is a complete code dealing with settlement & removability, & it alone applied, unaffected by Local Government Act, 1929 (c. 17), Sched. IX., Part I.; therefore the removal order was rightly made.—LANCASHIRE COUNTY COUNCIL *v.* SOUTHPORT BOROUGH COUNCIL, [1935] 1 K. B. 216; 104 L. J. K. B. 177; 152 L. T. 242; 99 J. P. 69; 51 T. L. R. 122; 79 Sol. Jo. 11; *sub nom.* SOUTHPORT BOROUGH COUNCIL *v.* LANCASHIRE COUNTY COUNCIL, 33 L. G. R. 61, C. A.

1123a. —— —— Effect of Mental Treatment Act, 1930 (c. 23), s. 18 (1) (b).]—A married woman, normally residing with her husband, had been during the greater part of the three years next preceding Oct. 4, 1935, in receipt of relief as a rate-aided patient in a mental hospital. No other relief had been granted to her or to her husband. The husband, who was previously settled in the County of L., had resided during those three years in the County Borough of R.; but there had been no period of residence sufficient to give him a settlement or status of irremovability there, if the period of his wife's receipt of relief was to be excluded. The wife having become chargeable to the County of L. an order was made by justices for her removal to R.:—*Held:* the effect of the second proviso to sect. 18 (1) of Mental Treatment Act, 1930 (c. 23), was that the husband's settlement must be determined by the antecedent law, as though that sect. had not been passed, & consequently that by sect. 93 (1) of Poor Law Act, 1930 (c. 17), the time of his wife's confinement as a rate-aided patient must be excluded from the computation, & that he was not & therefore his wife was not, last settled in R., & the order of removal was bad.—ROCHDALE CORPN. *v.* LANCASHIRE COUNTY COUNCIL, [1937] 1 K. B. 632; [1937] 1 All E. R. 559; 106 L. J. K. B. 523; 156 L. T. 259; 101 J. P. 174; 53 T. L. R. 421; 81 Sol. Jo. 257; 35 L. G. R. 142, D. C.

1138. *Add. Annotation:*—**Consd.** Derbyshire County Council *v.* Middlesex County Council, [1936] 1 K. B. 533.

1146. *Add. Annotation:*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

1148. *Add. Annotation:*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

1148a. —— Poor Law Act, 1930 (c. 17).]—Quarter sessions made an order for the removal from the city of B. to her county of settlement of a pauper & her child who were not entitled to any of the exceptions from removability contained in Poor Law Act, 1930 (c. 17), s. 93. At the date of the order the husband of the pauper was serving a sentence of six months' imprisonment at B. after conviction of forgery, & by the prison regulations the pauper was permitted to visit her husband in prison at intervals of several weeks. Neither the pauper nor her husband consented to the order:—*Held:* (1) the order was rightly made, since the common law principle that an order could not be made without consent for the removal of a wife

so as to separate her from the husband with whom she was actually or constructively residing had ceased to be of effect since the passing of Poor Law Act, 1930 (c. 17), ss. 93, 94, & 104 of which exclusively governed the matter, & rendered the pauper removable as being a person in receipt of relief within sect. 94 & not rendered irremovable by sect. 93; (2) the order was also right on the ground that in the circumstances the pauper & her husband could not be said to be constructively living together.—GLAMORGAN COUNTY COUNCIL *v.* BIRMINGHAM CORPN., [1933] 1 K. B. 198; 102 L. J. K. B. 6; 148 L. T. 16; 96 J. P. 409; 48 T. L. R. 664; 30 L. G. R. 426, D. C.

1177. *Add. Annotation:*—**Apld.** London County Council *v.* Berkshire County Council (1935), 99 J. P. 300.

1215a. —— ——.]—The last legal settlement of a rate-aided mental patient, & that of her father & mother, was in the county borough of Reading. Her mother had obtained a status of irremovability from the county of London, under the proviso to Poor Law Act, 1930 (c. 17), s. 93 (2), as a wife deserted by her husband:—*Held:* the patient, during a period when she was residing in the county of London apart from her mother, had taken & was following the settlement of her father in Reading & the mother's status of irremovability from London did not, under the above sub-sect., confer a similar status on her daughter, so as to enable the above period to count towards the three years requisite to secure for the patient a settlement by residence in the county of London.—LONDON COUNTY COUNCIL *v.* BERKSHIRE COUNTY COUNCIL (1935), 153 L. T. 463; 99 J. P. 300; 79 Sol. Jo. 504; 33 L. G. R. 345, D. C.

Part VII.—Vagrancy.

1607a. Making false statement to obtain relief—Poor Law Act, 1930 (c. 17), s. 150—Meaning of "relief"—Work coupled with payment.]—Applt. was convicted, under Poor Law Act, 1930 (c. 17), s. 150, of making a false statement to a relieving officer for the purpose of obtaining relief for himself & his wife. The false statement in question was made to induce the relieving officer to give to applt. a card entitling him to work on the roads maintainable by the local authority & to be paid for his work a sum of 23*s.* No benefit other than the employment to be provided & the payment to be made was sought or received by applt.:—*Held:* the provision of work & wages constituted relief within sect. 150 & applt. was rightly convicted.—REEVE *v.* WALKER, [1932] 1 K. B. 454; 101 L. J. K. B. 324; 146 L. T. 137; 96 J. P. 3; 48 T. L. R. 102; 30 L. G. R. 17; 29 Cox, C. C. 410, D. C.

1616. *Add. Annotations:*—**Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205; Reeve *v.* Walker, [1932] 1 K. B. 454.

1628. *Add. Annotation:*—**Expld. & Distd.** Prothero *v.* Watson (1931), 47 T. L. R. 627.

1629. *Add. Annotation:*—**Expld. & Distd.** Prothero *v.* Watson (1931), 47 T. L. R. 627.

1653. *Add. Annotation:*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1659. *Add. Annotation:*—**Consd.** Ledwith Roberts, [1937] 1 K. B. 232.

1659a. —— ——.]—RAWLINGS *v.* SMITH (1937), 81 Sol. Jo. 1024.

1664a. Sentence — Imprisonment — Duration.]—Where an incorrigible rogue has been committed to quarter sessions for sentence, it is the duty of the ct., before passing sentence, to examine into the circumstances of the con-

PART VII. SECT. 1, SUB-SECT. 1.

p i. —— —— *Restaurant.*]—R. *v.* BENSON, [1928 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

g i. —— *Impeding passengers—What must be proved.*]—The mere holding of a meeting in the street does not necessarily imply the impeding or incommoding of passengers, & proof of actual impeding is essential to justify a conviction.—R. *v.* BURAY, [1930] 1 D. L. R. 540; 52 Can. C. C. 263; 64 C. L. R. 531.—**CAN.**

g ii. —— *Whether single disturbance sufficient to support conviction.*]—The commission of a single disturbance of the kind, & at a place, referred to in sub-sect. (*f*) of sect. 238 of Criminal Code is sufficient to justify a conviction thereunder for being a disorderly person or vagrant. The other sub-sections of said section seem, however, to require that the conduct complained of be something more than a single act, & at least a manner of behaviour of some duration.—R. *v.* OISEBERG, [1931] 3 W. W. R. 507; [1932] 1 D. L. R. 348; 40 Man. L. R. 5.—**CAN.**

g iii. —— *Refusal to work.*]—An unemployed person receiving relief who refuses work does not thereby necessarily become a vagrant.—R. *v.* FLEURY (1933), 60 C. C. C. 32.—**CAN.**

g iv. —— *Ability to work.*]—Proof of physical ability to work & mere lack of proof of financial ability are not sufficient to support a conviction for vagrancy.—R. *v.* KELLY (1933), 60 C. C. C. 116.—**CAN.**

st. *Neglect to maintain wife & family—Miner on hunger march.*]—A miner, in receipt of unemployment benefit amounting to 31*s.* 3*d.* weekly, left his wife & children & joined other unemployed on a "hunger march" to London to make representations to the Govt. He went with his wife's consent, &, in addition to informing her of his route, wrote to her during the march. Before leaving, he applied at the Employment Exchange for a travelling card to enable him to draw unemployment benefit while away, but this was refused. During the march he earned nothing & received no benefit, although, had he remained at home, he would have continued to receive the weekly payment of 31*s.* 3*d.* His wife, being left destitute, applied to the Public Assistance Authority for relief, which she obtained. In a complaint charging him with neglecting to maintain his wife & children, contrary to Poor Law (Scotland) Act, 1845 (c. 83), s. 80:—*Held:* as at the time of the alleged offence the accused was unable to maintain his wife & children, & as his inability was due to no failure in legal duty on his part, it could not be said that he had neglected to maintain them within the sect.—WILSON *v.* MANNARN, [1934] S. C. 92.—**SCOT.**

PART VII. SECT. 2, SUB-SECT. 1.

so. *Application of Marriage Act,* 1915.]—Marriage Act, 1915, s. 97 (1), refers to a person who, being in Victoria, or resident in Victoria, deserts his wife or children. After the accused had left Victoria & had been for some months resident in New Zealand, he deserted his wife & children, who had remained in Victoria, & left them without adequate means of support":—*Held:* no offence under the sect. was disclosed.—R. *v.* FRANKE, [1929] V. L. R. 285; Argus L. R. 230.—**AUS.**

PART. VII. SECT. 2, SUB-SECT. 7.

sk. *Place adjacent to street—Railway hotel.*]—The entrance hall & staircase of the Central Station Hotel in Glasgow, which opened directly on to a public street, is a place adjacent to a street or highway in the sense of Vagrancy Act, 1824, s. 4, as amended & applied to Scotland by Prevention of Crimes Act, 1871, s. 15.—MCINTYRE *v.* MORTON, [1912] S. C. (J.) 58.—**SCOT.**

viction at petty sessions &, after affording the prisoner an opportunity of cross-examining any witnesses called for the Crown & of addressing the ct., to pass such sentence as is appropriate in the circumstances of the particular case.—R. *v.* HOLDING, R. *v.* LONG (1934), 104 L. J. K. B. 28; 152 L. T. 216; 98 J. P. 459; 78 Sol. Jo. 841; 25 Cr. App. Rep. 28; 32 L. G. R. 512; 30 Cox, C. C. 201, C. C. A.

Annotation:—**Consd.** R. *v.* Riordan, [1937] 2 All E. R. 62.

1667a. Hearing of appeal—Circumstances of conviction to be considered.]—R. *v.* HOLDING R. *v.* LONG, No. 1664a, *ante*.

Part VIII.—Old Age Pensions.

1672a. Statutory conditions—Widow's pension—Husband's "entry into insurance."]—The expression "entry into insurance" in Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 5, means "last entry into insurance."—WADSWORTH *v.* MINISTER OF HEALTH (1927), 138 L. T. 519; 44 T. L. R. 159, D. C.

1672b. —— Contributions—Payments made after appointed day—Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 8.]—TAYLOR *v.* MINISTER OF HEALTH, [1928] W. N. 244, D. C.

PART VII. SECT. 4.

sa. *Vagrancy—Allegation of—Criminal Code, s.* 238.]—R. *v.* ROSENFELD, [1928] 3 W. W. R. 67; 50 Can. Crim. Cas. 305.—**CAN.**

sb. —— —— ——.]—*Re* R. *v.* KNOWLES (Ont.), (1929), 52 Can. Crim. Cas. 377.—**CAN.**

sd. *Swearing—Form of information.*]—An information reciting that "J. B. Washington . . . did unlawfully cause a disturbance in a public place by swearing contrary to sect. 238 (*f*) of the Criminal Code" discloses an offence which on proof is punishable by sect. 239 of the Code.—R. *v.* WASHINGTON (1935), 50 B. C. R. 238; 65 Can. C. C. 106.—**CAN.**

POST OFFICE.

Part II.—Constitution.

1. *Add. Annotation:*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

Part III.—Conveyance of Mails.

43. *Add. Annotation:*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

Part V.—Offences.

52a. —— —— ——.]—Deft. was charged before a ct. of summary jurisdiction with stealing a postal packet in course of transmission by post. A test letter containing stamps & notes, & bearing a Saffron Walden postmark, was placed by an official of the Post Office in a post office letter-box at Edgware, but there was no evidence that the letter ever had gone to Saffron Walden. Another official of the Post Office specially collected the letter on the same day, kept it in his possession overnight, & on the following morning placed it with letters to be delivered by deft. The letter was not proper to deft.'s delivery, & should have been thrown out by him as a mis-sort. Deft., as he subsequently admitted, stole the stamps & notes from the letter & burned the cover & letter. The justices held that the letter was not in the ordinary course of transmission by post & dismissed the information:—*Held:* the letter never ceased to be a postal packet in course of transmission by post from the time when it was put in the post office down to the time when it was stolen by deft.; &, *per* AVORY, J., if there were any room for doubt on that point, it became in the course of transmission by post when delivered to deft. on the morning following the posting, because by Post Office Act, 1908 (c. 48), s. 90 (*b*), such delivery was deemed to be delivery to a post office. The case must be remitted to the justices with a direction to find the offence charged proved.—HOOD *v.* SMITH (1933), 150 L. T. 477; 98 J. P. 73; 32 L. G. R. 30; 30 Cox, C. C. 82, D. C.

SECT. 5.—**OTHER OFFENCES** (p. 377).

75a. **Accommodation address—False information by user.**]—Resp. was summoned for giving false information to the keeper of an accommodation address registered for the receipt of letters, contrary to Official Secrets Act, 1920 (c. 75), s. 5 (4). The magistrate dismissed the summons on the ground that sect. 5 applied only to offences committed by keepers of accommodation addresses as distinct from persons using them, & that resp. could not be convicted under that sect.:—*Held:* the words of sect. 5 (4) were wide enough, & precise enough, to include also offences committed by users of accommodation addresses, & resp. ought to have been convicted.—STEVENSON *v.* FULTON, [1936] 1 K. B. 320; 105 L. J. K. B. 167; 154 L. T. 162; 99 J. P. 423; 52 T. L. R. 89; 80 Sol. Jo. 75; 34 L. G. R. 26; 30 Cox, C. C. 293, D. C.

PART I.

8d. *Right of public to use postal service.*]—All members of the public in Canada have the right to make use of the public postal service provided the Post Office Act is complied with, & an illegal denial by the Postmaster-General of that right would be actionable.—LITERARY RECREATIONS, LTD. *v.* SAUVE, [1932] 3 W. W. R. 123; 4 D. L. R. 553; 58 C. C. C. 385; 46 B. C. R. 116.—CAN.

PART II. SECT. 1.

a i. ——.]—The power of the Postmaster-General under sect. 7 of Post Office Act, R. S. C., 1927, & reg. 219 made in pursuance thereof, to determine what is & what is not "mailable matter" & to prohibit the use of the mails for what he has declared not to be "mailable matter," is absolute & not open to review by a ct.—LITERARY RECREATIONS, LTD. *v.* SAUVE, [1932] 3 W. W. R. 123; 4 D. L. R. 553; 58 C. C. C. 385; 46 B. C. R. 116.—CAN.

PART VI. SECT. 5.

af. *Wilfully delaying postal packet.*]—Where a postman through forgetfulness failed to deliver a letter & having discovered that failure before he had finished his round, did not return & deliver the letter, but took it back to the post-office intending to deliver it in the ordinary course next day:—*Held:* he was not guilty under Post & Telegraph Act, 1901–1923, s. 109, of the offence of wilfully delaying the letter.—TAYLOR *v.* THORN, [1932] Argus L. R. 377; 6 A. L. J. 237; 47 C. L. R. 148.—AUS.

PART VII.

aa. *Grant of licence to sell stamps by automatic machine—Whether revocable.*]—The Postmaster-General granted to resp. a general licence to sell postage stamps, etc., by means of automatic machines, "such licence to be for a period of ten years . . . & if this contract has been properly fulfilled then for a further period of ten years without further agreement & upon the termination of the said periods above the licence shall be renewed for further periods of ten years each successively unless & until" either party terminated by notice. The Postmaster-General terminated the agreement at the end of 10 years:—*Held:* the licence was revocable at the Postmaster-General's discretion. He had no authority to grant it so as to bind his successor or the country at a future time. The question was one of statutory administration of the public service; the Minister could depute the performance of his duties only so far as authorised by Parliament.—R. *v.* DOMINION OF CANADA POSTAGE STAMP VENDING CO., LTD., [1930] S. C. R. 500; 4 D. L. R. 241.—CAN.

Part IX.—Post Office Property.

81a. ——.]—Premises approved by the Postmaster-General for use as a sub-post office & occupied as such by a scale payment sub-postmistress are not premises occupied " on behalf of the Crown " within Rating & Valuation Act, 1925 (c. 90), s. 64 (3), so as to be exempt from rateability.—WILLIAMS *v.* NEATH ASSESSMENT COMMITTEE (1935), 154 L. T. 261 ; 100 J. P. 71 ; 52 T. L. R. 152 ; 80 Sol. Jo. 77 ; 34 L. G. R. 80, D. C.

POWERS.

Part I.—Definition and Classification.

9. *Add. Annotation :*—**Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

Part II.—Creation of Powers.

17. *Add. Annotation :—As to* (1) **Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

Part III.—Construction of Powers.

28. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

81. *Add. Annotation :*—**Consd.** *Re* Shuker's Estate, Bromley *v.* Reed, [1937] 3 All E. R. 25.

86. *Add. Annotation :*—**Consd.** *Re* Shuker's Estate, Bromley *v.* Reed, [1937] 3 All E. R. 25.

87. *Add. Annotation :*—**Consd.** *Re* Shuker's Estate, Bromley *v.* Reed, [1937] 3 All E. R. 25.

87a. ——.]—By his will a testator gave his residuary estate to his two sisters, C. L. & A. J. L., equally " for their respective lives with full power to deal therewith as if it were their own & on the death of either of them or in the event of either or both of them predeceasing me then I give & bequeath her or their share or shares to W. B. A. absolutely." A. J. L. died during testator's lifetime. C. L. survived testator having made a will which, if it were proved, & if C. L. had a general power of appointment by will over the property given to her by the testator's will, would operate as an execution of her power :—*Held :* upon the construction of the will & in the events which had happened, C. L. was entitled to a life interest together with a general power of appointment exercisable either *inter vivos* or by will over one moiety of the capital of testator's residuary estate.—*Re* LAWRY'S ESTATE, ANDREW *v.* COAD, [1937] 4 All E. R. 1.

87b. ——.]—A testator appointed his wife to be his sole executrix & trustee, & after her death his two nephews to be the exors. & trustees of his will. He gave all his property, both real & personal, to his wife, her heirs, exors., administrators & assigns respectively, upon trust to deal with the same by way of conversion, realisation, investment or otherwise as she in her absolute discretion might think proper, & without regard to any restriction or limitation of law or otherwise imposed upon trustees or exors., & to retain the income thereof for her own use & benefit absolutely with power to convert to her own use from time to time such part or parts as she might think fit of the capital of testator's real & personal estate, & after her death testator gave all his said property, or so much thereof as should not have been converted by his wife to her own use, to his trustees upon trust for sale & conversion for the benefit of themselves & other nephews & nieces. Upon the death of testator, his widow caused a statement to be drawn up in which she set out the property & the terms of its administration, stated that the debts & funeral expenses had been paid & declared that she had converted the whole of the property to her own use :—*Held :* the will gave the widow a life interest in & a general power of appointment over testator's estate. The declaration was a sufficient exercise of this power, & the whole had become vested in the widow absolutely.—*Re* SHUKER'S ESTATE, BROMLEY *v.* REED, [1937] 3 All E. R. 25 ; 81 Sol. Jo. 498.

133a. **Power to appoint part of share—Whether including accrued shares.**]—*Re* HUTCHINSON'S SETTLEMENT, *Ex p.* DUNN (1852), 5 De G. & Sm. 681 ; 17 Jur. 59 ; 64 E. R. 1297.

145. *Add. Annotation :—As to* (1) **Refd.** *Re* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

PART III. SECT. 3, SUB-SECT. 1.—B. (a).

46 i. *Whether life estate enlarged.*]—A will next directed trustees : " To divide the residue of my estate into two equal shares each of which shares shall be held in trust by my said exor. & trustee & net income therefrom paid to my nephew, the aforesaid P. T., & my niece, the aforesaid J. T., during their respective lives. On the death of either the said P. T. or the said J. T., the share of my estate from which they receive the net income shall be distributed as they shall by deed or will appoint & in default of such appointment or insofar as such appointment shall not extend, to their respective next of kin " :—*Held :* the donees of the power could separately exercise the power in his or her own favour so as to entitle them to have the half of the residue transferred to him or her immediately.—*Re* TEMPLETON ESTATE, TEMPLETON *v.* ROYAL TRUST CO., [1936] 2 W. W. R. 347 ; 3 D. L. R. 782 ; 44 Man. L. R. 154.—**CAN.**

PART III. SECT. 8.

8d. *Power to donee to pass corpus as well as income.*]—SHAW *v.* SHAW (1927), 59 N. S. R. 349.—**CAN.**

Part IV.—Exercise of Powers.

170. *Add. Annotation :*—**Refd.** *Re* Symm's Will Trusts, Public Trustee *v.* Shaw, [1936] 3 All E. R. 236.

171a. Appointment "absolutely"—Passes fee simple.]—In exercise of a special power of appointment among her children given by the will of testator to Mrs. C., a married daughter of testator, Mrs. C. appointed that one-third share of certain freehold hereditaments & of the investments for the time being representing the same should be held in trust for her daughter E. N., her heirs, exors., administrators & assigns absolutely. Later, in 1901, in exercise of the same power, Mrs. C. by a deed made supplemental to the former deed of appointment, appointed that the trustees of testator's will should stand possessed of the residue then remaining unappointed of the said hereditaments in trust, as to one-fourth share thereof for the said E. N. & as to three-fourth shares thereof for her son C. absolutely :—*Held :* applying the principle stated above, that the appointment made in 1901 in favour of E. N. & C. upon its true construction carried the fee simple to those appointees according to their respective appointed shares.—*Re* ARDEN, SHORT *v.* CAMM, [1935] Ch. 326 ; 104 L. J. Ch. 141 ; 152 L. T. 453 ; 79 Sol. Jo. 68.

185. *Add. Annotation :*—**Distd.** *Re* Mewburn's Settlement, Perks *v.* Wood, [1934] Ch. 112.

186. *Add. Annotation :*—**Distd.** *Re* Mewburn's Settlement, Perks *v.* Wood, [1934] Ch. 112.

187. *Add. Annotation :*—**Consd.** *Re* Mewburn's Settlement, Perks *v.* Wood, [1934] Ch. 112.

187a. —— ——.]—A settlement executed before 1926 declared trusts in favour of the children or remoter issue of the donee of a power of appointment under the settlement "with such gifts over & generally in such manner for the benefit of such issue" as the donee should by will or codicil appoint, but so that under any appointment a child should not take a vested interest unless being a son he attained the age of twenty-one years or being a daughter she attained that age or married. By his will, also executed before 1926, the donee exercised the power, in accordance with its terms, in favour of his sons, daughters, & remoter issue, & further declared & appointed that the trustees for the time being of the settlement might at any time, but, with regard to any estate, funds or moneys in which any person or persons might have a prior life or other interest, with the written consent of that person or those persons while having that interest, raise up to one-half of the then expectant, presumptive or vested share of any grandchild or remoter issue of his under the appointments made by the will & pay or apply the amounts raised for their benefit as the trustees should think fit :—*Held :* the power of appointment was validly exercised by the will, & the trustees could properly exercise the power of advancement.—*Re* MEWBURN'S SETTLEMENT, PERKS *v.* WOOD, [1934] Ch. 112 ; 103 L. J. Ch. 37 ; 150 L. T. 76 ; 77 Sol. Jo. 467.

187b. —— **Appointment on "protective trusts."**]—Testator, in exercise of a power of appointment among children & issue contained in his marriage settlement, bequeathed specific property to his son W., & directed his trustees to hold the income of the remainder of the trust property upon protective trusts for the benefit of his son O., & subject thereto to hold the remainder of such property in trust for his granddaughter M. :—*Held :* as the appointment upon "protective trusts," as defined by Trustee Act, 1925 (c. 19), s. 33, gave a discretion to the trustees to apply the income in the event of a forfeiture for the benefit either of O. or of his wife or children, it was to that extent void, both as being (1) a delegation of the power & (2) in excess of it, & the clause contained in sect. 33 (1) (ii) must be struck out of the will for all purposes ; (3) there was no interval of time during which the income of the appointed fund was undisposed of, but there was a valid appointment to O. for life or until an event should happen depriving him of the right to receive the income, & subject thereto for the granddaughter M. absolutely.—*Re* BOULTON'S SETTLEMENT TRUST, STEWART *v.* BOULTON, [1928] Ch. 703 ; 97 L. J. Ch. 243 ; 139 L. T. 288.

208. *Add. Annotations :*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; H. & H., [1928] P. 206.

256. *Add. Annotations :*—**Folld.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347. **Distd.** *Re* Watts, Coffey *v.* Watts, [1931] 2 Ch. 302. **Apld.** *Re* Joicey, Thompson *v.* Duncan (1932), 173 L. T. Jo. 453.

256a. —— ——.]—Under a settlement a fund was given to such persons, after the death of A., as he should, with the consent of the trustees, appoint by deed :—*Held :* the power was a general power, & the power having been exercised, the fund was equitable assets for the payment of A.'s debts, notwithstanding that the consent of the trustees to the exercise of the power was necessary.—*Re* PHILLIPS, LAWRENCE *v.* HUXTABLE, [1931] 1 Ch. 347 ; 100 L. J. Ch. 65 ; 144 L. T. 178.

Annotations :—**Distd.** *Re* Watts, Coffey *v.* Watts, [1931] 2 Ch. 302. **Apld.** *Re* Joicey, Thompson *v.* Duncan (1932), 173 L. T. Jo. 453.

256b. —— ——.]—*Re* JOICEY, THOMPSON *v.* DUNCAN (1932), 76 Sol. Jo. 459.

256c. —— **Consent of settlor's mother.**]—A marriage settlement, dated in 1904, contained a clause empowering the settlor, the wife, at any time during the life of her mother by deed to revoke, with the consent of her mother, the trusts declared by the settlement, & to appoint & declare, with the consent of her mother, any new or other trusts powers & provisions concerning the premises to which such revocation should extend. By a deed, dated in 1913, the settlor, with the consent of her mother, exercised the power of revocation & new appointment in such a manner that after her death in 1928 the question arose whether certain trusts declared by the deed of 1913

were valid, their validity depending upon the decision by the ct. of the qu[illegible] whether the power of revocation & new appointment was a general power or a special power:—*Held:* it would not be right to hold that, upon the terms of the powers contained in the marriage settlement, the settlor was in substance the owner of the property, & consequently free to deal with it in any way she pleased, & the power was a special power.—*Re* WATTS, COFFEY *v.* WATTS, [1931] 2 Ch. 302; 100 L. J. Ch. 353; 145 L. T. 520.

269a. —— **Exercise by joint will.**]—Testator devised & bequeathed the residue of his real & personal estate to his wife for life & after her death to his son & daughter for their sole & separate use during the term of their natural lives & after their decease to such persons & to such ends & purposes as the son & daughter should by will appoint & in default of appointment to his right heirs for ever. The brother & sister executed a joint will. The brother died in Nov. 1917, having by his separate will confirmed the joint will, & the joint will, the separate will, & a codicil thereto were admitted to probate as being his last testamentary disposition. The mother died on Aug. 8, 1931. The question then arose whether the appointment by the joint will was a good exercise of the power of appointment by the brother & sister:—*Held:* a joint appointment by will could be made by two persons; if the sister did not revoke the joint will, then upon her death & the joint will being admitted to probate as part of her testamentary dispositions it would be an effective exercise of the power of appointment, & would comply with the requirements in the will of the father.—*Re* DUDDELL, ROUNDWAY *v.* ROUNDWAY, [1932] 1 Ch. 585; 101 L. J. Ch. 248; 146 L. T. 565.

299a. ——.]—ELLIS *v.* ATKINSON (1792), 3 Bro. C. C. 565; 2 Dick. 759; 29 E. R. 701, L. C.

Annotations:—**Refd.** Socket *v.* Wray (1793), 4 Bro. C. C. 483; Guise *v.* Small (1794), 1 Anst. 277; Whistler *v.* Newman (1798), 4 Ves. 129; Sperling *v.* Rochfort (1803), 8 Ves. 164; Parkes *v.* White (1805), 11 Ves. 209; Richards *v.* Chambers (1805), 10 Ves. 580; Francis *v.* Wigzell (1816), 1 Madd. 258.

303. *Add. Annotation:*—**Consd.** *Re* Shuker's Estate, Bromley *v.* Reed, [1937] 3 All E. R. 25.

351a. Limitation to more restricted class in default of appointment.]—Testator gave his widow E. full & complete control in the disposal of the principal moneys of his estate, at such times & in such proportions as she might see fit, whether by will or otherwise, for the benefit of his children or grandchildren; but in the event of E.'s marriage or death, the trustees of the will were to divide the estate ratably amongst testator's children share & share alike. E. executed a deed poll appointing a portion to a child, a portion to a grandchild, & a further portion to trustees in trust for the child:—*Held:* all these appointments were valid executions of the power.—JOB *v.* JOB (1853), 2 W. R. 25.

352. *Add. Annotation:*—**Consd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

360. *Add. Annotation:*—**Refd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

360a. ——.]—Testator empowered his wife to appoint his estate, subject to her own life interest therein, to his two children, a son & a daughter, in such proportions as she should think fit, & directed that in default of appointment it should be divided equally between them. The son predeceased him, leaving one child. Testator's widow by her will appointed the estate to the daughter. Upon a summons to determine whether the power was valid at the date of testator's death, & whether the appointment was valid in regard to one-half of the estate:—*Held:* (1) by reason of the death of the son before testator the widow had power to appoint only one-half of the estate; (2) the appointment, though excessive, was not wholly void, but was valid up to one-half of the estate.—*Re* TURNER, HUDSON *v.* TURNER, [1932] 1 Ch. 31; 101 L. J. Ch. 49; 146 L. T. 209.

362. *Add. Annotation:*—**Consd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

425. *Add. Annotation:*—**Refd.** *Re* Baker, Steadman *v.* Dickson (1934), 78 Sol. Jo. 336.

429. *Add. Annotations:*—*As to* (3) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347. *Generally*, **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

452. *Add. Annotation:*—**Consd.** *Re* Vander Byl, Fladgate *v.* Gore (1930), 74 Sol. Jo. 770.

453. *Add. Annotation:*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

484. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

486. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

487. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

505a. —— —— ——.]—Under the will of a testator who died in 1890, A. had a general testamentary power of appointment over a share of his residuary trust estate. There was a provision that in default of appointment the unappointed share should be held in trust for the persons who at the death of A. would be entitled under Statutes of Distribution. A. by her will appointed her sister I. her executrix & directed that all her debts & funeral expenses should be paid, & after giving certain pecuniary legacies she gave "all the remainder of my property to my sister, I., to be disposed of as she thinks fit at her death." A. died a spinster in Feb. 1929, but, as the husband of I. had witnessed the will, the residuary gift could not take effect. Doubts having arisen whether A. had effectually exercised the general power of appointment given her by the will of testator:—*Held:* testatrix had shown an intention of taking the property subject to the power of appointment out of the instrument creating the power by treating it as forming one mass with her own property. It passed, therefore, as if she had died intestate in respect of it & went to the persons entitled according to the Administration of Estates Act, 1925 (c. 23).—*Re* VANDER BYL, FLADGATE *v.* GORE, [1931] 1 Ch. 216; 100 L. J. Ch. 108; 144 L. T. 401; 74 Sol. Jo. 770.

—— **Subsequent confirmation by codicil.**]—(1) Testatrix in her will expressed an intention to exercise a power to appoint a life interest in certain trust funds or other property to her husband, but at the date of the will no such power had been created.

Subsequently, a power was created whereby she was given a power to appoint a life interest in certain trust funds to her husband, &, subsequently to the creation of such power, the testatrix made a codicil confirming her will in respect *inter alia* to the exercise of such power:—*Held:* there was a valid exercise of the power of appointment of such life interest in favour of her husband.

(2) Subsequently to the date of the codicil another power was created, whereby the testatrix was given a power to appoint a life interest in other trust funds to her husband, but before her death she made no other will or codicil nor executed any other instrument whereby she exercised such other power:—*Held:* there had been no valid appointment of such life interest in such other trust funds in favour of her husband.—*Re* BOWER, BOWER *v.* MERCER, [1930] 2 Ch. 82; 99 L. J. Ch. 17; 141 L. T. 639; 143 L. T. 674.

521b. —— **No subsequent exercise of power.**]—*Re* BOWER, BOWER *v.* MERCER, No. 521a, *ante*.

627. *Add. Annotation:*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

637a. ——.]—GUINAND *v.* NAISH (1845), 6 L. T. O. S. 18; 9 Jur. 703.

652. *Add. Annotation:*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

671a. **Appointment to husband by will—Husband predeceasing testatrix—No intention to benefit husband's estate.**]—A wife, who was of illegitimate birth, having under the trusts of her marriage settlement, made in 1892, a general testamentary power of appointment in default of issue, by her will in express exercise of that power & "to the intent that this my will shall take effect, whether I survive or predecease my husband," appointed the residue of the settled funds, after payment thereout of her debts & some legacies, to her husband for his own use & benefit absolutely. Her will contained no other disposition than the appointment. Her husband having predeceased her & she having died on Mar. 11, 1932, childless:—*Held:* even assuming testatrix knew that, if she died childless & her husband predeceased her, the settlement funds would in consequence of her illegitimacy pass to the Crown, the prefatory words were ineffectual to appoint the residue of those funds to the exors. of the husband, so as to make it part of his estate, & the appointment failed by lapse.—*Re* LADD, HENDERSON *v.* PORTER, [1932] 2 Ch. 219; 101 L. J. Ch. 392; 147 L. T. 433.

723. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

726. *Add. Annotation:*—**Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

730. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Clarkson-Webb, [1933] 1 K. B. 507.

748. *Add. Annotation:*—**Consd.** *Re* Chartres, Farman *v.* Barrett, [1927] 1 Ch. 466.

751. *Add. Annotation:*—**Refd.** Chamberlain *v.* Haig Thomas (1933), 17 Tax Cas. 595.

768. *Add. Annotation:*— **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

783. *Add. Annotation:*—**Refd.** *Re* Bower Williams. *Ex p.* Trustee, [1927] 1 Ch. 441.

Part V.—Appointment Not in accordance with Terms of Power.

830a. —— **Appointment to trustees of child's marriage settlement — Share settled.**] — A daughter being entitled under the marriage settlement of her father & mother to such share & interest in land & money as the surviving mother should appoint, provided by her own marriage settlement that all such share & interest to which she should become entitled, under her mother's settlement, should be vested in trustees to the use of her intended husband for life, remainder to herself for life, remainder to the children of the marriage. Four years after the marriage the mother appointed a sum to be paid to the trustees of the daughter's settlement, upon the uses therein expressed, in satisfaction of the daughter's share & interest under the marriage settlement of the father & mother:—*Held:* this was substantially an appointment to the daughter, & valid.—LIMBERT *v.* GROTE (1832), 1 My. & K. 1; 39 E. R. 581; *sub nom.* LAMBARD *v.* GROTE, 2 L. J. Ch. 10.

PART IV. SECT. 10, SUB-SECT. 2.—B. (a).

683 ii. ——.]—In execution of the powers reserved by a marriage settlement, a revocable appointment was made by deed whereby the appointors, husband & wife, directed the trustees to hold the net purchase-money already received & to be received in respect of a certain contract of sale upon trust, on the death of the survivor of the appointors, as to three several sums of £15,000 for each of three of their daughters, & as to £12,500 for their fourth daughter, & as to the "remainder" one moiety to each of their two sons. The contract of sale referred to was for a sum of £100,000, of which £20,000 had already been paid. The contract of sale was subsequently rescinded on the purchaser paying a further sum of £20,000:—*Held:* in the events which had happened, the principle that, where a person disposing of a sum among different persons acts on the assumption that he is dealing with a fund of specific amount, & gives ... the residue to another, if the fund falls short, all the gifts abate proportionately, would not apply, & the sons would get nothing under the gift of the "remainder."—A'BECKETT *v.* TRUSTEES, EXECUTORS & AGENCY CO. (1908), 5 C. L. R. 512.—**AUS.**

PART V. SECT. 3.

8a. *Appointment to issue of child—Where not among objects of power.*]—MOUBRAY'S TRUSTEES *v.* MOUBRAY, [1929] S. C. (Ct. of Sess.) 254.—**SCOT.**

8b. *Power to appoint among children—Appointment to child—With power to appoint to child's children—Void.*]—*Re* MCLEAN, PERPETUAL EXORS. & TRUSTEES ASSOCN. OF AUSTRALIA, LTD. *v.* LAWRANCE, [1929] Argus L. R. 216.—**AUS.**

Part VI.—Excessive, Defective, and Fraudulent Appointments.

872a. —— —— **Appointment on "protective trusts."**]—*Re* BOULTON'S SETTLEMENT TRUST, STEWART *v.* BOULTON, No. 187b, *ante*.

887. *Add. Annotation :*—**Consd.** *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

891. *Add. Citation :—subsequent proceedings*, 2 Bro. C. C. 344, L. C.

910a. ——.]—*Re* TURNER, HUDSON *v.* TURNER, No. 360a, *ante*.

971. *Add. Annotation :—As to* (1) **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

986. *Add. Annotation :*—**Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

1004. *Add. Annotation :*—**Folld.** *Re* Penrose, Penrose *v.* Penrose (1933), 49 T. L. R. 285.

1005. *Add. Annotation :*—**Refd.** *Re* Penrose, Penrose *v.* Penrose (1933), 49 T. L. R. 285.

1005a. —— ——.]—By her will E. J. P., a married woman, gave devised & bequeathed all her residuary real & personal estate to her trustees upon trust to pay the income thereof to her husband J. D. P. for his life & from & after his death upon trust for (*inter alia*) such of the following persons as her said husband should by deed or will appoint—namely, any issue (immediate or remote) of her husband's late father subject to the rule against perpetuities. In default of the exercise of the power & subject to any partial exercise thereof testatrix declared that her residuary estate should be held in trust for her four named sons as therein mentioned. Testatrix having died was survived by her husband, who by a deed poll executed shortly afterwards purported to appoint a certain sum of testatrix's residuary estate to himself. He subsequently died, & on his death the question arose what estate duty became payable in respect of the residuary estate of testatrix. The point having arisen whether under the circumstances & having regard to the power of appointment given to the husband by the will of testatrix he was a person "competent to dispose" under Finance Act, 1894 (c. 30), s. 5 (2), of the said residuary real & personal estate; & whether, therefore, this residuary estate & the moneys which he purported to appoint under the deed poll were liable for any & if so what estate duty, an originating summons was taken out by his trustees for the purpose (*inter alia*) of determining this question :—*Held :* the husband was himself an object of the power & could, after the death of testatrix, appoint to himself the whole of the fund by deed. Further, he was a person "competent to dispose" within Finance Act, 1894 (c. 30), s. 5 (2), & therefore estate duty became payable on his death in respect of such part of testatrix's residuary estate as then remained subject to the trusts of her will.—*Re* PENROSE, PENROSE *v.* PENROSE, [1933] Ch. 793; 102 L. J. Ch. 321; 149 L. T. 325; 49 T. L. R. 285.

1036a. ——.]—*Re* NICHOLSON'S SETTLEMENT, MOLONY *v.* NICHOLSON (1937), 54 T. L. R. 249.

1051. *Add. Annotation :—As to* (1) **Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

Part VIII.—Extinguishment and Suspension of Powers.

1093. *Add. Annotation :*—**Consd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1101a. —— **Power appendant or appurtenant.**]—A testator by his will directed the income of his net residuary estate to be accumulated for a period of twenty-one years from his death, & subject to certain trusts in favour of an infant grandson, & his issue which failed owing to the death of the grandson unmarried, declared that the trust fund & all statutory accumulations of income were to be held upon such trusts for the benefit of all or any one of the children & remoter issue of testator's father, who in the opinion of testator's brother, one of the two trustees of the will, should evidence an ability & desire to maintain the family fortune by replacing the sums of which it had been depleted by

PART VI. SECT. 1, SUB-SECT. 2.—A.

1 i. ——.]—Where the exercise of a power, in so far as it purported to reduce the right of fee conferred on the objects of the power to a life rent, was *ultra vires* & invalid :—*Held :* as it was impossible to separate the valid from the invalid portions of the appointment without dislocating the whole scheme of division contemplated by the truster, the whole exercise of the power fell to be disregarded.—MACDONALD'S TRUSTEES *v.* [1927] S. C. 424.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 1.

e i. ——.]—Testator by his will directed trustees to stand possessed of his trust estate upon trust for any one or more of his children & in such manner as his wife should by deed or by will appoint. After his death, the trustees, one of whom was the wife, transferred all the trust estate except one parcel of land to certain of the children, purporting to do so in pursuance of the power of appointment contained in the will. The wife by her will devised, bequeathed, & appointed all her real & personal estate over which she had a general power of appointment to one particular child :—*Held :* the power of appointment created by testator in his will was a special power, & it was not executed by the exercise of the general power of appointment by the wife in her will.—*Re* HOGARTH, [1935] Q. S. R. 211.—**AUS.**

PART VII.

1085 i. *Not aided by equity.*]—Under a settlement made in respect of a previous marriage a person reserved power to appoint in favour of any after-taken wife a specified interest in certain property. The power was exercisable by deed executed prior to remarriage or by will. The first marriage was dissolved. A proposal of marriage made by him to another lady was accepted subject to her father's consent. The father required information as to his financial position & what provision he proposed to make for his prospective wife. In a document written by him, but unsigned, he gave a short account of the estate from which his property was derived, & how he had settled his interests therein, & continued : "The effect of the estate on D. In the event of my death before D.—D. will be paid a third of the estate during her lifetime." The marriage was duly celebrated, but four months later he died intestate :—*Held :* the document did not evidence an intention to execute the power; therefore, as it was a case of non-execution of a power, & not defective execution, it could not be aided by the ct.—ALISON *v.* ALISON (1934), 51 C. L. R. 653; 34 S. R. N. S. W. 488; 51 N. S. W. W. N. 172; 8 A. L. J. 194.—**AUS.**

death duties & other taxation, as testator's brother should by any deed revocable or irrevocable appoint, & in default of such appointment in trust for such brother absolutely :—*Held :* the power was a power appendant or appurtenant & not a power coupled with a trust or a duty in the nature of a trust, & accordingly that it could be validly released by the donee.—*Re* MILLS, MILLS *v.* LAWRENCE, [1930] 1 Ch. 654 ; 99 L. J. Ch. 396 ; 143 L. T. 409 ; 46 T. L. R. 328 ; 74 Sol. Jo. 437, C. A.

1102. *Add. Annotation :*—**Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1103. *Add. Annotation :*—**Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

1104. *Add. Annotation :*—**Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1105a. Mutual wills—Wife expressly refraining from exercising power.]—Where by her will the wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it, & confined the operation of her will to her own property, & there was nothing in the husband's will, which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held :* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391 ; 97 L. J. P. C. 85 ; 139 L. T. 469 ; 44 T. L. R. 654, P. C.

1111. *Add. Annotation :*—**Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1115. *Add. Annotation :*—**Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

Part IX.—Powers in the Nature of Trusts.

1135. *Add. Citation :—on appeal, sub nom.* WALTER *v.* MAUNDE (1815), 19 Ves. 424, L. C.

Add. Annotations :—**Refd.** *Re* Sinclair's Settlement, Crump *v.* Leicester (1886), 56 L. T. 83. **Mentd.** Christian *v.* Foster (1846), 2 Ph. 161.

1151a. Validity—Power to donee to appoint to any one "other than herself."]—A power to a donee to appoint the income of a fund to any person, "other than herself," or persons or charitable institution or institutions, is valid.

Testator gave his residuary estate to his trustee in trust to pay the income thereof to any person, "other than herself," or persons or charitable institution or institutions, & in such shares & proportions as his sister, J., should from time to time during her lifetime direct in writing, & from & after her decease in trust as to both capital & income for the Imperial Merchant Service Guild for the benefit of their stress fund absolutely :—*Held :* the trust was a valid & effectual trust, & the power conferred thereby on J. was a valid power, exercisable by her.—*Re* PARK, PUBLIC TRUSTEE *v.* ARMSTRONG, [1932] 1 Ch. 580 ; 101 L. J. Ch. 295 ; 147 L. T. 118.

1213. *Add. Annotation :*—**Refd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

1233a. —— ——.]—DAVIE *v.* HOOPER (1711), 6 Bro. Parl. Cas. 51 ; 2 E. R. 926 ; *sub nom.* DAVY *v.* HOOPER, 2 Vern. 665 ; 1 Eq. Cas. Abr. 336, pl. 6, H. L.

Annotations :—**Refd.** Bellasis *v.* Uthwatt (1737), West *temp.* Hard. 273 ; Cholmondeley *v.* Meyrick (1758), 1 Eden, 77.

PRACTICE.

See PLEADING & PRACTICE at end of Volume after WORK & LABOUR.

PRESS AND PRINTING.

Part II.—Printers and Publishers.

13. **After this case add :—**
Printers of bank-notes — Standard of care required.]—*See* BANKERS, No. 456a.

16. *Add. Annotation :*—**Consd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

Part III.—Editors, Authors, and Journalists.

36. *Add. Annotation :*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

40. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B 251.

44. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part IV.—Newspapers.

79. *Add. Annotation :*—*As to* (2) **Refd.** Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

83. *Add. Annotation :*—**Refd.** Cope *v.* Evans (1875), 30 L. T. 292.

90. *Add. Annotation :*—**Refd.** Sinanide *v.* La Maison Kosmeo (1928), 139 L. T. 365.

102a. **Plumber & Decorator, Gas & Sanitary Engineering Journal—Plumbing & Decorating, Sanitary, Water, & Gas Engineering Chronicle.]** —*Held :* there was no such close resemblance of title between these titles as would justify the ct. in granting an injunction restraining the publication of the latter journal.—DALE, REYNOLDS & Co. *v.* GENERAL NEWSPAPER Co. (1884), 1 T. L. R. 177, D. C.

Part V.—Publications Other than Newspapers.

114. *Add. Annotations :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178 ; Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

PART I. SECT. 2.

sa. *Meaning of printing—Reproduction by Roneo process.*]—An accused was charged under sect. 3 (2) of Printing Act, 1899, with having dispersed a pamphlet, upon which the name and place of abode of the printer was not printed. He had distributed papers containing a notification of a lecture to be delivered at a hall. The writing on the papers so distributed was produced by a process known as the "Roneo" process, & the papers did not contain the name and address of the person responsible for their production :—*Held :* the production of writing by the "Roneo" process was not printing within Printing Act, 1899, & accused was not guilty of the offence charged.—R. *v.* BANKS (1932), 32 [illegible] V. W. N.

sd. *Printer also publisher.*]—Where the same person or body is both the printer & publisher of a newspaper the printing thereon of the statement that it is "published by" said person or body is a substantial & sufficient compliance with sect. 10 of Newspapers Act, R. S. M., 1913, which provides that in some part of every newspaper there shall be printed the real name "of every printer & publisher thereof."—SEDZIAK *v.* POLISH WORKERS' ASSOCN., [1937] 2 W. W. R. 67.—**CAN.**

II. SECT. 1.

general.]—HAR [illegible] (1928), I. L. R. 50 All. 806.—

sb. *Right of action for work done—of layout & cover—No order for printing given.*]—MORTIMER CO., LTD. *v.* FRONTENAC BREWERIES, LTD., [1930] 1 D. L. R. 182.—**CAN.**

PART III. SECT. 3.

sc. *Duty to become acquainted with his duties & liabilities.*]—K. R. *v.* MAUNG TU SAW (1927), I. L. R. 6 Ran. 39. —**IND.**

sf. *Contract in restraint of trade—What amounts to.*]—A contract to serve as a journalist for two years contained a provision that the journalist would not, without the previous consent in writing of the co. contribute any articles or supply any information to any newspaper published or printed in Australasia with one named exception. During her contract she was bound to supply a weekly page to the newspaper of her employer. During the time of her contract the journalist ceased to supply this weekly page ; she was offered employment by another newspaper, which published an announcement that the journalist was exclusively engaged by that newspaper. The journalist also informed her previous employer that she would not supply any more matter for its newspaper. An interlocutory injunction was granted prohibiting the journalist from contributing to any newspaper published & printed in Australasia (with the exception mentioned above), & a corresponding injunction was granted against the other newspaper :—*Held :* it did not clearly appear on the evidence that the clause restricting contributions to other newspapers was void or an injunction was an inappropriate remedy.—GORDON *v.* SMITH'S NEWSPAPERS, LTD., [1931] S. A. S. R. 307.—**AUS.**

PART IV. SECT. 1.

sd. *What are.*]—The "Social & Industrial Review," a publication printed & published by the Dept. of Labour appearing once a month & containing some items of news of a special character, but principally articles upon industrial & economic subjects :—*Held :* not to be a newspaper within sect. 7 (2) of Act 27 of 1925.—R. *v.* LEWIN, [1930] App. D. 344.—**S. AF.**

sf. *Local newspaper—What is.*]—"Local newspaper" in sect. 55 (2) of Railways Act means a newspaper which is issued from the locality & not one which, issued from elsewhere, may be read in the locality.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HARNARAIN BENGALCHAND (1931), I. L. R. 53 All.—**IND.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

sm. *Use of disused name—Action for passing off.*]—The mere fact of a newspaper having ceased to use a name that had become associated with the goodwill of its business was held to be in itself no absolute bar to a right of action for "passing-off" by use of the disused name.—"INDEPENDENT" NEWSPAPERS *v.* "IRISH PRESS," [1932] I. R. 615.—**IR.**

PART V.

sl. *What amounts to printing—In Press Act.*]—The operation of multiplying copies by means of a cyclostyle

115a. Title of publication—Infringement of right of property—What amounts to.]—This action was brought to restrain defts., Sir Isaac Pitman & Sons, Ltd., from selling or offering for sale two books which they had recently put on the market entitled: "How to appeal against your rates within the Metropolis" & "How to appeal against your rates without the Metropolis" as being books offered for sale under titles likely to be confused with two books published by pltf. entitled: "How to appeal against your rates in the Metropolis," & "How to appeal against your rates outside the Metropolis." Pltf.'s books were first published in the year 1887 & went through several editions. The books had been extensively advertised & the last editions of the books were published in Nov. 1929. Defts.' books were first published in Jan. 1930. Notwithstanding the fact that it was proved defts.' books had on one occasion been confused with pltf.'s books it was held not to be established by the evidence that defts. had been passing off their books as the books of pltf.:—*Held:* the words "How to Appeal against your Rates" which were fairly descriptive of the contents of defts.' book as well as of pltf.'s, had not acquired a secondary or special meaning as meaning pltf.'s books only. The action was dismissed with costs.—MATHIESON *v.* PITMAN (SIR ISAAC) & SONS, LTD. (1930), 47 R. P. C. 541.

Part VI.—Advertisements.

119. *Add. Annotation:*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; Kitchener *v.* Evening Standard Co., [1936] 1 All E. R. 48.

After this case add:—

—.]—*See* CRIMINAL LAW, Nos. 8178a, 8178b, *ante*.

Part IX.—Stationery Office.

140. After this case add:—

——.]—*See, also,* COPYRIGHT, Vol. XIII., pp. 198, 199, Nos. 333-343.

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machine is a printing operation within Press & Registration of Books Act, 1867.—RAMESHWAR PRASAD VERMA *v.* KING-EMPEROR (1932), I. L. R. 10 Pat. 492.—**IND.**

PART VI. SECT. 4.

sf. *Action for refusal to insert.*]—Pltf. published the programmes for all the motor cycle race meetings conducted by W. A. Speedways, Ltd. Pltf.'s canvasser interviewed deft., & obtained from him a written order to insert a full page advertisement in each issue of the programme at the rate of £2 per issue. After the advertisement had appeared several times, deft. refused to go on with the arrangement:—*Held:* on the facts there was a valid contract for the insertion of the advertisement in the whole issue of programmes for the season.—CUNEEN *v.* VAN HEURCK & THOMAS, LTD. (1930), W. A. L. R. 13.—**AUS.**

PRISONS.

Part II.—Prison Officers.

8a. —— Detention after receipt of remission marks.]—MORRISS *v.* WINTER, No. 34b, *post*.

Part III.—Prisoners.

32a. Right of prisoner's solicitor to see witness in prisoner's presence.]—A. was to be tried for felony at the assizes for the county of W., & B., a material witness for A., was committed to the W. city prison for further examination, on a charge of felony:—*Held:* before the trial of A., the governor of the W. city prison ought to allow A.'s attorney to see B. in his presence.—R. *v.* SIMMONDS (1835), 7 C. & P. 176.

34a. Receipt of remission marks.]—MORRISS *v.* WINTER, No. 34b, *post*.

SUB-SECT. 2.—ON EARNING REMISSION (Vol. XXXVII., p. 561).

34b. No legal right to discharge.]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to injure M., & that he had not made a false statement:—*Held:* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison; that deft. was protected by Public Authorities Protection Act, 1893 (c. 61), as the action was not brought within six months of the act that caused the damage, there being no continuance of the injury or damage, as there was no continuance of the act by that deft. which caused the damage; lastly, the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243; 99 L. J. K. B. 101; 142 L. T. 67; 45 T. L. R. 643; 28 Cox, C. C. 687.

PART III. SECT. 1, SUB-SECT. 1.

8a. *Irregular removal of prisoner—Under Police & Prisons Regulation Act—Release by habeas corpus.*]—Police & Prisons Regulation Act, R. S. B. C. 1924, c. 91, s. 33, cannot be invoked to support the A.-G.'s removal from one gaol to another of a prisoner who has been committed for an offence under the Criminal Code. Where a prisoner convicted under the Code was so removed under said section after serving part of his sentence an order for his release was made under *habeas corpus*.—R. *v.* TARCHUK, [1928] 3 W. W. R. 577; 50 Can. Crim. Cas. 423.—CAN.

PART III. SECT. 1, SUB-SECT. 3.

j 1. *Right to take finger prints.*]—By regulations dated Aug. 20, 1904, made under Penal Servitude Act, 1891 (c. 69), s. 8, it is enacted that untried criminal prisoners shall not be measured while in prison save by order of the Secretary for Scotland or upon a sheriff's or magistrate's warrant:—*Held:* at common law the police were entitled, without a warrant, to take the finger prints of a person apprehended on a criminal charge but not yet committed to prison, & their right to do so was unaffected by the statute & regulations referred to.—ADAIR *v.* M'GARRY; BYRNE *v.* H.M. ADVOCATE, [1933] S. C. (J.) 72.—SCOT.

PART III. SECT. 2, SUB-SECT. 4.

8b. *Breach of parole—Prisoner unlawfully at large.*]—A prisoner is unlawfully at large under sect. 185 if he breaks his parol.—R. *v.* CLARKE (1934), 63 Can. C. C. 296.—CAN.

PART III. SECT. 4, SUB-SECT. 2.

8d. *Injury to prisoner—Non-repair of prisons—Whether action lies against municipality.*]—A municipality is not liable for injury to a prisoner caused by failure to repair a gaol.—GAUTREAN *v.* WESTMORLAND, [1934] 3 D. L. R. 572; 8 M. P. R. 45.—CAN.

PRIZE LAW AND JURISDICTION.

Part II.—Rights in Prize.

29a. Power unaffected by Civil List Acts.]—The power of bounty which the Crown was accustomed to exercise by way of redress of hardship to subjects or neutrals from decrees of the Prize Ct. exists unimpaired by the Civil List Acts.—THE ODESSA, THE WOOLSTON, [1916] 1 A. C. 145; 85 L. J. P. C. 49; 114 L. T. 10; 32 T. L. R. 103; 60 Sol. Jo. 292; 13 Asp. M. L. C. 215, P. C.

Annotation:—**Consd.** The Zamora, [1916] 2 A. C. 77.

Part III.—Enemy Character.

176. *Add. Annotation:*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

192. *Add. Annotation:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

220. *Add. Annotation:*—**Distd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

220. After this case add:—

Abandonment to neutral underwriter by enemy—After seizure in prize—Detention under Order in Council — Application of Trading with the Enemy Amendment Act, 1914 (c. 12), s. 6.]—*See* ALIENS, No. 389a.

Part IV.—Capture.

327. *Add. Annotation:*—*As to* (1) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

Part V.—Rights, Duties and Liabilities of Captors.

497. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

620. *Add. Annotation:*—**Consd.** The Bathori [1933] P. 22.

Part VII.—Contraband.

780. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

866. *Add. Annotation:*—*Generally*, **Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

Part IX.—Jurisdiction of Prize Courts.

1066. *Add. Annotation:*—**Refd.** The Bathori, [1933] P. 22.

1071. *Add. Annotation:*—*Generally*, **Consd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1080. *Add. Annotation:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

PART V. SECT. 4, SUB-SECT. 3.—A.

571 l. *Liability for wrongful capture.*]—THE ZODIACK (1812), Stewart, 333.—CAN.

PART VI. SECT. 4, SUB-SECT. 6.

f. *Revsd.*, Stewart, 38, n.

PART VI. SECT. 7.

n. *Revsd.*, Stewart, 38, n.

PART VII. SECT. 6, SUB-SECT. 4.

r. *Revsd.*, Stewart, 122, n.

Part X.—Claims.

1103a. —— —— **Enemy country annexed to Allied country by treaty—"Property rights & interests" of nationals transferred to Allied Powers.**]—In 1930 applts., then & since an Italian corpn., brought an action in the Prize Ct. claiming damages against the Crown on the ground that in Sept. 1914, a British cruiser had sunk their steamship while she was proceeding from Havre to Vigo under a safe conduct issued by the French authorities & confirmed by the British. The ship flew the Austro-Hungarian mercantile flag, & throughout the war applts. were nationals of Hungary. They contended, however, that the treaty of peace with Hungary (the Treaty of Trianon) was not binding upon them, because before it came into effect they had ceased to be nationals of Hungary, as Fiume, where they were domiciled, had been recognised as an independent state; further, that the treaty, upon its true construction, did not adversely affect their claim. The Treaty of Trianon provided by sect. IV., art. 232: "the question of private property, rights & interests in an enemy country shall be settled according to the principles laid down in this sect. & to the provisions of the annex hereto"; & by the annex: "No claim or action shall be made or brought against any Allied or Associated Power . . . by any Hungarian national, or by or on behalf of any national of the former Kingdom of Hungary, wherever resident, in respect of any act or omission with regard to his property, rights or interests during the war. . . ." An Order in Council declared that the above provisions of the treaty should have full force & effect as law. The Order was made under the Treaty of Peace (Hungary) Act, 1921 (c. 11), & by sect. 1 (2) of that Act was to have "effect as if enacted in this Act":—*Held:* applts.' right, if any, to claim before an English Prize Ct. would be property in England, & the above provision of the annex defeated it. That provision was clearly intended to cover applts., & having regard to the terms of the 1921 Act any English Ct., whether in prize or not, was precluded from considering whether in international law the treaty bound those who at its effective date were no longer Hungarian nationals.—THE BATHORI, [1934] A. C. 91; 103 L. J. P. 25; 150 L. T. 221; 50 T. L. R. 102; 18 Asp. M. L. C. 458, P. C.

1104. *Add. Annotation:*—**Refd.** The Bathori, [1933] P. 22.

1110. *Add. Annotation:*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

1121. *Add. Annotation:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1131. *Add. Annotation:*—**Consd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1177a. ——.]—THE ANNA CHRISTIANA (1778), Hay & Marr. 161; 165 E. R. 37.

1189a. ——.]—THE VROUW HENRIETTA (1803), 5 Ch. Rob. 75, n.; 165 E. R. 702.

Annotation:—**Apld.** The Roland (1915) 84 L. J. P. 127.

Part XI.—Procedure.

1302a. —— **Ship formerly enemy property—Transfer of ownership.**]—THE KANKAKEE, THE HOCKING, THE GENESEE (1917), 8 Lloyd, Pr. Cas. 74. P. C.

Part XII.—Prize Salvage.

1419. *Add. Annotation:*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

Part XVI.—Requisition by Admiralty.

1563. *Add. Annotation:*—**Consd.** The Bathori, [1933] P. 22.

PUBLIC AUTHORITIES, BODIES AND OFFICERS.

Part I.—Acts of State.

11. *Add. Annotation:*—**Consd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

13. *Add. Annotations:*—**Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liquori, [1937] 3 All E. R. 8. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

14. *Add. Annotation:*—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

16. After the cross-reference following this case add "**Status of person claiming diplomatic privilege.**]—*See* CONSTITUTIONAL LAW, No. 418a."

47. *Add. Annotations:* — **Folld.** Civilian War Claimants Assocn., Ltd. *v.* R., [1932] A. C. 14. **Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109. **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

48a. ——.]—By Treaty of Versailles (Art. 232), Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her allies, & moneys were received by the Crown under this Article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression during the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above Article. The case made by the petition was that the claimants had sent particulars of their claims, first, to Foreign Claims Office &, afterwards, to Reparation Claims Department in accordance with the instructions of His Majesty's Govt., that these claims had been duly verified by the Govt., & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of claimants:—*Held:* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognizable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 78 Sol. Jo. 813, H. L.

Annotation:—**Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

57. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

58a. **Dominion statute—Municipal courts will not inquire as to validity.**]—On an application by defts., the Grand Trunk Ry. Co. of Canada & the Canadian National Ry. Co. claiming a declaration that two Acts of the Canadian Legislature were *ultra vires*, the judge held that the statement of claim in an action brought by a shareholder, on behalf of himself & all other holders on Jan. 18, 1932, of First Preference stock of the Grand Trunk Ry. Co. of Canada did not disclose any cause of action maintainable in an English Ct.; he had no jurisdiction to deal with it; the matter could not be put right by amendment, & the action must be dismissed.—BOARDMAN *v.* GRAND TRUNK RY. CO. OF CANADA (1933), 49 T. L. R. 218.

66. To the cross-references following this case add "**Decrees of Russian Soviet Government—Effect of.**]—*See* No. 13, *ante*; COMPANIES, Nos. 8523, 8524, 8527a—8527c; CONSTITUTIONAL LAW, No. 387a; INSURANCE, 712a."

66a. ——.]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Republic, which was recognised in 1924 by the British Government as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion:—*Held:* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY OLGA PRINCESS *v.* WEISZ, [1929] 1 K. B. 718; 98 L. J. K. B. 405; 141 L. T. 207; 45 T. L. R. 365; 73 Sol. Jo. 283, C. A.

Annotation:—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

PART I. SECT. 2, SUB-SECT. 1.—B.

46 i. *Sovereign power not compellable to account.*]—The Crown can only be constituted a trustee by express statutory provisions or a contract to which the Crown is a party.—CHIPMAN *v.* R., [1934] Ex. C. R. 152.—CAN.

PART I. SECT. 2, SUB-SECT. 3.

59 i. *Municipal courts will not inquire as to validity.*]—A British Indian ct. will not inquire into the legality of acts done by a foreign government against its own subjects in respect of property situate in its own territory.—CHUNILAL *v.* CHATURBHUJ PIRAMAL (1931), I. L. R. 56 Bom. 9.—IND.

PART II.

88. *Remuneration.*] — (1) The fact that a statute which creates a public office provides that the remuneration of the officer as fixed by order in council shall be paid out of the consolidated revenue fund does not imply a condition that there must be a special vote of supply by the Legislature for such remuneration in order to render the officer entitled to payment thereof; & the fact that the Legislature does make such special votes from year to

Part III.—Exercise of Statutory Powers, Duties, etc.

84a. Acquiescence in wrongful exercise—What amounts to.]—Pltf. does not acquiesce in the wrong-doing of a local authority by simply standing by & assuming that the local authority is acting within its statutory powers.—PIGGOTT *v.* MIDDLESEX COUNTY COUNCIL, [1909] 1 Ch. 134; 77 L. J. Ch. 813; 99 L. T. 662; 72 J. P. 461; 52 Sol. Jo. 698; 6 L. G. R. 1177.

86. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

90. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

103. *Add. Annotation :*—*As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

105. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

109. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

114. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

123. *Add. Annotation :*—**Consd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

124. *Add. Annotation :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

125. *Add. Annotations :*—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

127. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

132. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

135. *Add. Annotations :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

137. *Add. Annotations :*—*As to* (3) **Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

140. *Add. Annotations :*—*As to* (1) **Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108. *As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

141. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

142. *Add. Annotation :*—**Refd.** Pronek *v.* Winnipeg, Selkirk & Lake Winnipeg Ry. Co., [1933] A. C. 61.

147. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180.

148. *Add. Annotation :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

160. *Add. Annotation :*—*As to* (1) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

177. *Add. Annotations :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

178. *Add. Annotations :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235; Symes & Jaywick Assocn. Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551.

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year does not establish that such practice is legally necessary.

(2) Where such a statute provided that the officer was to be appointed by order in council & should hold office during good behaviour but be removable by the Lieutenant-Governor in Council for cause & an order in council had appointed, & fixed the remuneration of, an officer, who gave no cause for removal, & an amendment to the statute transferred his duties & repealed the provision as to his tenure of office & removal for cause, but did not abolish the office :—*Held :* even if such amendment placed the officer in a position where his remuneration might be terminated by the Lieutenant-Governor in Council, yet an order in council was necessary to terminate it, & until such order was passed the officer, having continued ready to perform his duties, was entitled to receive said remuneration.—MACDONALD *v.* R., [1930] 1 W. W. R. 700; 3 D. L. R. 465.—**CAN.**

PART III. SECT. 1.

sx. *Exercise of discretion—No interference by courts.*]—The rule that the ct. will not interfere with the exercise of the discretion of Ministers of the Crown provided no statutory provision is infringed applied herein in holding that the payment by the Department of Education of the secondary school grant to the S. school district was legal & authorised under Public Schools Act.—RUSSELL SCHOOL DISTRICT *v.* SHELLMOUTH RURAL MUNICIPALITY, [1931] 2 W. W. R. 629; 4 D. L. R. 309; 39 Man. L. R. 528.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

aa. Delete this case.

e (p. 28) l. ——.]—Applt. municipality in the exercise of powers conferred by Municipal Corpns. Act, 1906, s. 235, constructed certain roads, & there was evidence that in consequence thereof storm waters which formerly soaked away now flowed down on to the resp.'s lands, which were low-lying, to a greater extent than formerly & flooded them. It was within the powers of applt. municipality to carry out at considerable cost such a system of drainage as might have obviated the injury to resps., but it did not do so :—*Held :* resps. were without remedy since applt. municipality constructed the roads without negligence in a proper manner & in the *bonâ fide* exercise of its statutory powers.—CLAREMONT MUNICIPALITY *v.* FERGUSON, CLAREMONT MUNICIPALITY *v.* L. M. FERGUSON, CLAREMONT MUNICIPALITY *v.* A. E. N. FERGUSON, [1928] W. A. L. R. 117.—**AUS.**

e (p. 28) ii. ——.]—Owing to the bursting of a water pipe which was part of deft. city's waterworks system pltfs.' lands were flooded & damaged. The system was installed by the city under statutory authority, & it was found that the city in doing so had not been guilty of any negligence & had not acted in any unreasonable or oppressive way :—*Held :* the city was not liable.—RENAHAN *v.* VANCOUVER CITY, [1930] 3 W. W. R. 166; 4 D. L. R. 1018; 43 B. C. R. 147.—**CAN.**

e (p. 28) iii. ——.]—Municipality held not liable for damage to pltf.'s gas mains whilst constructing a sewer without negligence, under statutory authority.—OTTAWA GAS CO. *v.* CITY OF OTTAWA, [1937] 1 D. L. R. 579; O. R. 13.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

151 ii. ——.]—No remedy can be obtained for injury which inevitably results from the doing by a public body of an act authorised by statute unless that statute provides for compensation; but there is a duty on the part of the public body to take due care to prevent any avoidable injury, & a person injured through failure to take such care may maintain an action for negligence. Where a statute imposes upon a public body the duty of providing a drainage or sewerage system, it does not follow that the duty is owed to individual members of the public so that damages can be obtained by them for mere nonfeasance.—CAMPISI *v.* WATER CONSERVATION & IRRIGATION COMMISSION (1936), 36 S. R. N. S. W. 631; 13 L. G. R. 56; 53 N. S. W. W. N. 198.—**AUS.**

PART III. SECT. 4, SUB-SECT. 3.

n. *Revsd.*, [1933] S. C. R. 397.

193. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

209. *Add. Annotations :*—*As to* (1) **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *As to* (3) **Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. *As to* (5) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. *Generally*, **Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50.

221. *Add. Annotations :*—*As to* (3) **Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486. *Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

226. *Add. Annotation :*—*Generally*, **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

244. *Add. Annotation :*—*Generally*, **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

249. *Add. Annotation :*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

256. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

263a. —— **Fumes from power station.**]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers, & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance :—*Held :* the Electric Lighting (Clauses) Act, 1899 (c. 19), did not expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171; 99 L. J. K. B. 83; 94 J. P. 62; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145, H. L.

Annotation :—**Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co, [1936] A. C. 108.

268. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

PART III. SECT. 5, SUB-SECT. 1.

192 xiv. *Revsd.*, 31 S. C. R. 61.

192 xxxiii. ——.]—In an action for negligence on the part of a municipality in failing to take proper measures to put out a fire :—*Held :* the firemen did not act negligently in failing to cut high voltage wires & this activity amounted to non-feasance for which the city was not liable.—STEVENS-WILLSON *v.* CHATHAM CITY & CHATHAM PUBLIC UTILITIES COMMISSION, [1933] 2 D. L. R. 407; O. R. 305; *affd.*, [1934] 3 D. L. R. 1; S. C. R. 353.—**CAN.**

192 xxxiv. ——.]—Where a city establishes a fire department, even though it is not under a legal obligation to do so, it is obliged to see that no damage is caused to anybody by the negligent doing of the thing undertaken. It is misfeasance, not non-feasance, which gives rise to a cause of action.—ARIAL *v.* EDMONTON CITY, [1935] 2 W. W. R. 536.—**CAN.**

192 xxxv. ——.]—Deft. was in control of a drain, taken over from a predecessor, which collected & conveyed water in such a manner & position as to be a source of danger if such water were not removed from the vicinity of pltf.'s land. Deft. neglected to prevent the drain from becoming choked, & interfered with it by reducing its capacity at least one point. Pltf.'s land, consequently, became flooded, & pltf. thereby sustained injury for which he obtained a verdict for damages. On appeal :—*Held :* the verdict should not be disturbed.—CAMPISI *v.* WATER CONSERVATION & IRRIGATION COMMISSION (1936), 36 S. R. N. S. W. 631; 53 N. S. W. W. N. 198; 13 L. G. R. 56.—**AUS.**

—— of municipality to councillor—Contributory negligence.]—What an officer of a corpn. does in his corporate capacity cannot hurt him in his individual capacity. Thus the mere fact that a pltf. who has sustained personal injury as the result of the negligence of a village council is a member of the council does not preclude him from recovering damages —— the village. Pltf., a member of the council of the deft. village, was injured by the explosion of a chemical fire extinguisher while he was proceeding to use it in helping, together with others, to put out a fire in the village. The jury found that deft. village was negligent in not having the fire extinguisher properly inspected & kept in perfect working order, & also found pltf. guilty of contributory negligence, but only because of the fact that he was a councillor & not because of his operation of the extinguisher. The village had appointed a fire chief & instructed him, at a council meeting, to see that the fire extinguishers were kept in proper working order :—*Held :* judgment should be entered for pltf.—SMITH *v.* KELLIHER VILLAGE, [1931] S. C. R. 672; 4 D. L. R. 102; *affg.*, [1930] 2 W. W. R. 638; 4 D. L. R. 938; 25 S. L. R. 65; *revsg.*, [1930] 1 D. L. R. 878; 24 S. L. R. 198; [1929] 3 W. W. R. 655.—**CAN.**

PART III. SECT. 6, SUB-SECT. 1.—A.

225 vii. ——.]—Deft. city having constructed & maintained a common sewerage system under the powers given it by its charter is compelled by Public Health Act, R. S. A., 1922, s. 12 (2), (3), to maintain a sewage disposal plant in connection therewith & to obtain a certificate, which it did obtain, from the provincial Board of Health stating that the proposed plant could be operated without injury or danger to the public health. Deft., therefore, is not liable for any nuisance resulting from the mere fact that it has erected & operated the plant in question :—*Held :* however, the sewage disposal plant was being operated negligently & such negligence caused a nuisance, for which deft. was liable in damages.—CLARKE *v.* EDMONTON CITY, [1933] 1 W. W. R. 113.—**CAN.**

228 i. —— *Flooding.*]—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* ALLADIN (1928), I. L. R. 51 All. 291.—**IND.**

228 ii. —— ——.]—BIFROST RURAL MUNICIPALITY *v.* STADNICK, [1928] 3 D. L. R. 103; [1928] S. C. R. 304.—**CAN.**

——.]—STEWART *v.* SPRINGFIELD & TACHE RURAL M—— PALTIES, [1940] 3 D. L. R. 593; [1928] 3 W. W. R. 198; 37 Man. L. R. 453.—**CAN.**

228 iv. —— ——.] — CALCUTTA COMRS., PORT OF *v.* CALCUTTA CORPN. (1937), 81 Sol. Jo. 763, P. C.—**IND.**

228 v. —— *In handling of wheat—Delivered under Wheat Harvest Acts—Right of indorsee of certificates.*]—When an owner of wheat who has delivered it to the Govt. of South Australia under Wheat Harvest Acts, 1915-17, indorses & delivers the certificate for supplementary advances issued to him, there passes to the transferee, not only the right to receive the advances, but also the right of the owner to sue the Govt. for damages for negligence in the care & handling of the wheat so delivered for the year whereby the amount payable under the certificates is diminished.—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469.—**AUS.**

sm. *Action against municipality—Effect of change of boundaries.*]—OBIREK *v.* BIFROST RURAL MUNICIPALITY, [1930] 1 W. W. R. 949; 3 D. L. R. 507.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.—A.

255 i. *No implied authority to commit nuisance—Sewer causing nuisance.*]—RIDEAU LAWN TENNIS CLUB *v.* OTTAWA, [1936] 3 D. L. R. 535; 6 F. L. J. (Can.) 38.—**CAN.**

261 i. —— *Vibration from blasting operations.*]—In the course of its operations in constructing a weir, deft. co., by blasting with dynamite, caused injury to some of pltf.'s buildings :—*Held :* liable for damages. While Department of Railways & Canals Act, R. S. B. C., 1927, gives general authority to direct the construction of all railways & canals & all works appertaining thereto, Parliament did not sanction the use of a particular means, namely, dynamite.—PILLITTERI *v.* NORTHERN CONSTRUCTION CO., [1930] 4 D. L. R. 731; 66 O. L. R. 128.—**CAN.**

263 i. —— *Sewage escape.*]—A municipality is not liable for overflow from sewers where they are not defective, & there is no negligence in raising the street level.—SOLOMON *v.* DARTMOUTH, [1935] 4 D. L. R. 653.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.—B.

268 i. *General rule.*]—SURATEE, BARA BAZAAR CO., LTD. *v.* MUNICIPAL CORPN. OF RANGOON (1927), I. L. R. 5 Ran. 722.—**IND.**

273. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

275. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

280. *Add. Annotation :*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

282. *Add. Annotations :*—*As to* (1) **Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

283. *Add. Annotation :*—**Refd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

284. *Add. Annotations :*—*As to* (1) **Refd.** Harper *v.* Haden & Sons, [1933] Ch. 298. *Generally*, **Refd.** Andreæ *v.* Selfridge & Co., [1936] 2 All E. R. 1413; Matania *v.* National Provincial Bank, Ltd. (1935), 154 L. T. 103; Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

286. *Add. Annotation :*—**Refd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

288. *Add. Annotations :*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533. **Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

289. *Add. Annotations :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159; Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

291a. Construction of dam — Flooding — Contributory negligence.]—A power co. constructed a dam across the St. Francis River. Upon the occasion of exceptional floods in the spring of 1928, a railway embankment was severely damaged & a serious accident occurred to a passenger train. The dam was constructed under statutory authority which provided that the owner or lessee of the work should be liable for all damages resulting therefrom whether from excessive elevation or otherwise. The railway was the property of the Dominion of Canada, & the ownership had never been conveyed to the Canadian National Railways Co., although the co. had been entrusted with its management & operation by statute, & also by statute given a right to bring an action of this kind. It was proved at the trial that the flood was being watched by the inhabitants generally for some time before the accident, but it was not until a short time before the accident that the disintegration of the embankment was apparent. The power co. contended that the action should have been brought by the railway co. & not by the Crown, & that the railway co. was guilty of contributory negligence :—*Held :* (1) the Crown was the proper party to bring the action; (2) the statute imposed an absolute duty on the power co., & contributory negligence could not be pleaded except as to foolish & irrational acts of the claimants; (3) upon the facts the railway co. had no opportunity of warning & stopping the train, & damages for injury & loss of the locomotive & carriages were recoverable.—R. *v.* SOUTHERN CANADA POWER CO., LTD., SOUTHERN CANADA POWER CO., LTD. *v.* R., [1937] 3 All E. R. 923; 81 Sol. Jo. 785, P. C.

298. *Add. Annotation :*—**Folld.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

298a. ——.]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—FISHER *v.* OLDHAM CORPN., [1930] 2 K. B. 364; 99 L. J. K. B. 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154.

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275 xxi. ——.]—The provisions of Public Health Act, R.S.A., 1922, read together with those of the Edmonton Charter with respect to sewerage systems & the expropriation of land required therefor held to give the city more than mere permissive authority for their construction. Therefore, the maintenance by the city of a sewage disposal plant, in accordance with said provisions, gives no cause of action for nuisance, in the absence of negligence in its construction or operation.—TOPHAM *v.* EDMONTON CITY, [1932] 1 W. W. R. 636.—**CAN.**

275 xxii. ——.]—A house was damaged by blasting operations in the vicinity. In an action against the contractor for nuisance he was held liable in damages, having failed to satisfy the onus of proof upon him to establish that the explosion was necessary in the performance of work which he had undertaken with statutory authority.—AIKMAN *v.* MILLS & CO., LTD., [1934] O. R. 597; 4 D. L. R. 264.—**CAN.**

283 i. *Exemption from liability—Obstruction in highway.*]—The Legislature of Ontario has not given the municipalities of the Province authority to permit telephone cos. to occupy the streets & highways with their poles & wires for a longer period, at one time, than five years. An agreement by a municipality to permit, by irrevocable licence, a telephone co. to occupy the streets with poles & wires is *ultra vires.*—COBALT CORPN. *v.* TEMISKAMING TELEPHONE CO. (Ont.) (1919), 59 S. C. R. 62; 47 D. L. R. 301.—**CAN.**

so. *Interference with level of water—Private corporation in charge of dam—Subject to control of Government Commission—Exemption from liability.*]—STIRRETT & SONS, LTD. *v.* KAMINISTIQUIA POWER CO., LTD., [1930] 1 D. L. R. 445.—**CAN.**

PART III. SECT. 7.

296 xxiii. ——.]—MCSORLEY *v.* ST. JOHN CORPN. (1882), 6 S. C. R. 531.—**CAN.**

296 xxiv. ——.]—Where a municipality, in obedience to an Act of the Legislature, appoints an officer to perform a public service in which the corpn. has no special interest, & from which it derives no special benefit in its corporate capacity, such officer is not the servant or agent of the municipality, &, therefore, it is not liable for his negligence in the performance of his duties.—MEAD *v.* MARQUIS RURAL MUNICIPALITY, [1928] 2 D. L. R. 524; [1928] 1 W. W. R. 756.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.

sa. *Injunction—Claim to take more land than necessary.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work :—*Held :* granting an injunction restraining the corpn. from taking the whole of the land, it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work: & further it was not legally justified in refusing the appln. for a permit to build on the ground of its intention to take the land, & a writ of *mandamus* should issue compelling it to hear & determine the appln.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 2.

316 i. *Whether general jurisdiction of courts ousted.*]—Deft. corpn. erected a power-house, & pltf. claimed damages against the corpn. for the escape of grit & smoke from the power-house, & asked for an injunction to restrain the corpn. from using the power-house as it was being used :—*Held :* pltf. must be nonsuited, as his only remedy must be determined in the manner provided by Public Works Act, 1908.—O'BRIEN *v.* WELLINGTON CITY CORPN., [1928] N. Z. L. R. 215.—**N.Z.**

o i. ——.]—Pltf., by her statement of claim, alleged that deft. village corpn. in 1927 lowered the grade of a street in the village in front of her lands, thereby cutting off her access to her property from the street :—*Held :* there being no allegation in the statement of claim that the corpn. was

317. *Add. Annotations :*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

318. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

330. *Add. Annotations :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419 ; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1 ; Monk *v.* Warbey, [1935] 1 K. B. 75.

333. *Add. Annotation :*—**Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

334. *Add. Annotation :*—**Apld** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

Part IV.—Exemptions from Liability.

343. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

343a. —— **Ministry of Health.**]—Ministry of Health Act, 1919 (c. 21), s. 7 (1), does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86 ; 101 L. J. Ch. 81 ; 146 L. T. 231 ; 47 T. L. R. 439.

349. *Add. Annotation :*—**Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R. (1930), 99 L. J. Ch. 483.

355. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

362. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

363. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

364. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

365a. **Ministry of Health.**]—GILLEGHAN *v.* MINISTER OF HEALTH, No. 343a, *ante*.

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guilty of negligence in the construction of the work, & no ground alleged which would entitle pltf. to damages at common law, &, so far as appeared from the statement of claim, the corpn. having acted within its powers in constructing the work, the only right of pltf. was to claim compensation for the injurious affection of her lands, under sect. 342 of Municipal Act, & she was restricted to that right & had no right to bring an action.—HOWE *v.* PT. DALHOUSIE, [1929] 1 D. L. R. 585 ; 63 O. L. R. 305.—**CAN.**

sb. *Order of Public Utility Board—Right of appeal.*] — NORTHWESTERN UTILITIES, LTD. *v.* EDMONTON CITY, [1929] S. C. R. 186.—**CAN.**

sc. —— ——.]—The Public Utilities Act, 1923, Amendment Act, 1927, provides for an appeal from an order of the Board upon a question of jurisdiction or upon a question of law, but upon no other ground. In fixing a base for rates to be charged by applt. co. the Board took into account the act that the co. had earned undistributed profits beyond the return rate fixed for the preceding period & the Board, as a consequence of treating such earnings as excessive profits & available for the amortisation fund, had reduced the base on which the rates for the ensuing period were fixed. The co., which contended that this method of calculation was unfair & unreasonable & involved questions of jurisdiction or questions of law, applied for leave to appeal :—*Held :* no point of jurisdiction or of law was involved & the appeal could not be entertained. —WAINWRIGHT GAS CO., LTD. *v.* WAINWRIGHT, TOWN OF, & BOARD OF PUBLIC UTILITY COMRS. OF ALBERTA, [1930] 3 W. W. R. 337 ; 4 D. L. R. 1000.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—A.

b i. —— —— *Agreement made for ulterior purpose.*]—QUEENSLAND INSURANCE CO., LTD. *v.* SUBIACO MUNICIPALITY (1927), 30 W. A. L. R. 32.—**AUS.**

c i. —— *Secretary of State for India in Council.*]—In order that a contract may be binding upon the Secretary of State for India in Council, it must be made in strict conformity with the provisions laid down in the statutes governing the matter.—KESSORAM, PODDAR & CO. *v.* SECRETARY OF STATE FOR INDIA (1926), I. L. R. 54 Calc. 969.—**IND.**

c ii. —— *Minister of Agriculture.*]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty, the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, &, therefore, is not subject to attachment by garnishee proceedings.—MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE, [1928] V. L. R. 390 ; (1928), Argus L. R. 234.—**AUS.**

344 i. *Personal liability—Question of fact.*]—BOOZ *v.* HUGONNARD (1899), 4 Terr. L. R. 69.—**CAN.**

sb. *Indemnity Act*, 1920 (c. 48)—*Effect of.*]—Indemnity Act, 1920, s. 1 (1), does not apply to actions to enforce the implement by Govt. Departments of their wartime contracts. The saving of actions in respect of "rights under, or alleged breaches of, contract" contained in sect. 1 (1) (*b*) applies to cases in which rights under a contract have been interfered with, or a contract has been directly breached, by the exercise of some prerogative power.—GREENOCK CORPN. *v.* THE ADMIRALTY, [1928] S. C. 227.—**SCOT.**

sd. *British Columbia Magistrates Act—Meaning of "officer."*]—The term "officer" in sect. 9 of the British Columbia Magistrates Act should not be limited in such a way as to exclude all officers who are not judicial officers from its denotation : such interpretation would involve the contention that an act or thing done by any person, in order to fall within the ambit of the section, must be an act or thing in its nature judicial. Any public officer, not belonging to any of the specific classes of officers enumerated, is, when performing executive duties, within the descriptive words of the section, &, subject to the conditions prescribed, entitled to claim the benefit of it.—JORNSTON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1932] S. C. R. 219 ; 2 D. L. R. 462 ; 58 C. C. C. 1.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—B.

gi. —— *Against Union Government—Money received by magistrate as workman's compensation.*]—A magistrate who receives from an employer a sum of money as compensation in respect of the death of a workman in terms of sect. 27 (1) of the Workmen's Compensation Act 25 of 1914 is not in regard to the disposal of such money a servant of the Crown, & an action against the Union Govt. for payment of this sum will not therefore lie.—SMITH *v.* UNION GOVERNMENT, [1933] A. D. 363.—**S. AF.**

se. *Who are Crown Servants—Vancouver Harbour Commission.*]—MCLEAN *v.* VANCOUVER HARBOUR COMRS., [1936] 3 W. W. R. 657 ; 51 B. C. R. 169.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—C.

sg. *Who are Crown servants—Vancouver Harbour Commission.*]—The Vancouver Harbour Commission is a servant or agent of the Crown.—MCLEAN *v.* VANCOUVER HARBOUR COMRS., [1936] 3 W. W. R. 657.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—A.

366 ii. ——.]—A servant of the Crown is liable for his own wrongful acts.—MORTON *v.* BARTLETT (1874), 15 N. B. R. (2 Pug.) 215.—**CAN.**

373 xii. —— *Trespass by pathmaster.*] —In trespass against a municipal corpn. for the act of their pathmaster, in causing statute labour to be performed on certain land of pltf., alleged by defts. to be an orginal allowance for road, it appeared that the pathmaster acted under an order written by the clerk, by the direction of the council while in session :—*Held :* sufficient to render the corpn. liable, & a bye-law was not necessary.—NEVILLE *v* ROSS TOWNSHIP CORPN. (1872), 22 C. P. 487.—**CAN.**

si. *Liability in private capacity—Pleadings.*]—The action for negligence in question herein held to be an action brought against defts. B. & P. in their official capacity as minister & deputy minister of public works. On a motion on their behalf an order striking out the statement of claim as against them on the ground that as they were sued

375. *Add. Annotation :*—**Refd.** Williams *v.* Williams & Nathan, [1937] 2 All E. R. 559.

376. *Add. Annotation :*—**Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. 594.

378. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

387. *Add. Citation :*—138 L. T. 8.

391. *Add. Annotations :*—**Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730 ; Buckland *v.* R. (1933), 102 L. J. K. B. 404.

401. *Add. Annotation :*—**Follid.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

402a. —— **Detention after receipt of remission marks.**]—MORRISS *v.* WINTER, No. 940a, *post.*

411. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

420. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

436a. —— **Failure to record appearance—Officer of court.**]—FINCH *v.* RISLEY (1593), cited Poph. 25 ; 79 E. R. 1145.

482a. —— ——.]—Pltf. having left his wife & two children, his wife obtained a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), for the payment by him of a weekly sum. Pltf. having failed to comply with the order, his wife made complaint to a magistrate at D., which was within the county of Chester, that £19 12*s.* 6*d.* was then in arrear under the order, & thereupon the magistrate issued a warrant, addressed to each & all of the constables of the county of Chester, commanding them to apprehend pltf. & convey him before a ct. of summary jurisdiction at D. to be dealt with according to law. The warrant showed on its face that £19 17*s.* was payable by pltf. & was in the form prescribed by the Bastardy (Forms) Order, 1915, but it did not contain the words " unless said sum & all costs & charges be sooner paid " which were directed to be inserted in such warrants by Bastardy (Forms) Amendment Order, 1921. The warrant was delivered to deft., the superintendent of police at D., & some time later pltf. was arrested by a constable acting under deft.'s orders. Pltf. was taken in custody through the streets & placed in a cell by deft.'s order. At the time the arrest was effected the warrant was in deft.'s possession at the police station, & was not in the possession of the constable who made the arrest. Pltf.'s father immediately after the arrest tendered £19 17*s.* to deft. & asked for his son's release, but deft. refused to accept the money. Pltf.'s solr. then sent a letter to deft. enclosing £19 17*s.* & demanding pltf.'s release, but deft. did not open the letter & pltf. was kept overnight in the cell. Pltf. was brought on the following morning before a ct. of summary jurisdiction at D., when the solr.'s letter was produced & found to contain £19 17*s.*, whereupon the magistrates ordered pltf.'s immediate release. Pltf. brought an action against deft. for false imprisonment, & the jury returned a verdict in pltf.'s favour & awarded £175 as damages for arrest, & £175 as damages for unlawful detention at the police station after the tender of the money : —*Held :* deft. was not protected by Constables Protection Act, 1750 (c. 44), s. 6, in respect of the arrest, but he was protected by that Act in respect of the unlawful detention at the police station after the tender of the money, inasmuch as deft. in detaining pltf. was merely acting in obedience to the warrant.—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355 ; 101 L. J. K. B. 177 ; 146 L. T. 280 ; 96 J. P. 123 ; 30 L. G. R. 153 ; 29 Cox, C. C. 422.

483. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

486. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

494. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

511. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

512. *Add. Annotation :*—**Consd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

513. *Add. Annotation :*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

in said capacity it disclosed no reasonable cause of action against them as such :—*Held :* pltf. should be allowed to amend so as to make it clear that she was suing defts. in their private capacity.—GRAY *v.* PATERSON, [1933] 2 W. W. R. 558; 48 B. C. R. 70.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—B. (a).

378 xviii. ——.]—The Land Settlement Board, created by Land Settlement & Development Act, R. S. B. C. 1924, c. 128, is a department of the Govt., &, there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382 ; [1928] 2 W. W. R. 475 ; 39 B. C. R. 523 ; *affd.*, [1929] 1 D. L. R. 242.—**CAN.**

378 xix. ——.]—Where an act is done by an officer of Govt. in the course of exercise of powers, which cannot be lawfully exercised save by the sovereign power, no action in tort lies against the Secretary of State for India in Council upon the principle of *respondeat superior.*

A suit may lie against the Secretary of State for India in Council for torts committed by the Govt. in connection with a private undertaking or an undertaking not in exercise of sovereign power.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* SHREEGOBINDA CHAUDHURI (1932), I. L. R. 59 Cal. 1289.—**IND.**

378 xx. —— *Federal District Commission.*]—Federal District Commission is an incorporated Govt. department & cannot be sued in tort unless it actually committed the tortious act, or was privy to it, or gave orders for it to be done.—MOORE *v.* FEDERAL DISTRICT COMMISSION & OTTAWA CITY, [1937] 1 D. L. R. 461 ; O. R. 200.—**CAN.**

378 xxi. —— *Forests Commission.*]—The Forests Commission is in substance a body incorporated by statute to administer a department of Govt. &, being an instrumentality of the Crown, is not liable in tort for the negligence of its employees in the course of their employment.—MARKS *v.* FORESTS COMMISSION, [1936] V. L. R. 344 ; 42 Argus L. R. 476.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 2.—C. (d) ii.

516 i. *Compliance with demand.*]—*Held :* production, perusal, & a copy of a search-warrant having been demanded by pltfs. & furnished to them, their remedy, if aggrieved, was against those issuing the warrant, & an action against the constables was stayed by an order made upon summary application under Public Authorities Protection Act, R. S. O., 1927, ss. 8, 10.—SOLLOWAY MILLS & CO. *v.* WILLIAMS, [1930] 3 D. L. R. 953 ; 53 Can. C. C. 403 ; 65 O. L. R. 243.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—A. (a).

ss. Secretary of State for India.]—No suit lies against the Secretary of State for damages for wrongful arrest & detention of a person by a police officer.—M. A. KADER ZAILANY *v.* SECRETARY OF STATE IN COUNCIL (1931), I. L. R. 9 Ran. 375.—**IND.**

PART IV. SECT. 3, SUB-SECT. 4.—A. (b).

xi. Commissioners of Public Works.]—By a private Act, St. Stephen Green, Dublin, which previously had been vested in comrs. as a private square, was vested in the Comrs. of Public Works, who were, by the Act, charged with the duty of maintaining the same,

541. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

550. *Add. Annotation :*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

553. *Add. Annotations :*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579 ; O'Connor *v.* Waldron, [1935] A. C. 76.

555. *Add. Annotation :*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

601. *Add. Annotation :*—**Consd.** More *v.* Weaver, [1928] 2 K. B. 520.

604. *Add. Annotations :*—**Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

636. In the third line of the existing paragraph read " 1813 " for " 1913."

669. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

694. *Add. Annotation :*—**Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

698. *Add. Annotation :*—**Consd.** Wisbech R. D. C. *v.* Ward (1928), 138 L. T. 308.

701. *Add. Citations :*—[1928] 2 K. B. 1 ; 97 L. J. K. B. at p. 59 ; 138 L. T. 308 ; 26 L. G. R. 10.

707. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

708. *Add. Annotations :*—*As to* (2) **Consd.** Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337 ; Marriott *v.* Minister of Health (1935), 105 L. J. K. B. 125. **Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737. *As to* (3) **Consd.** Errington *v.* Minister of Health, [1935] 1 K. B. 249 ; Offer *v.* Minister of Health, [1936] 1 K. B. 40. **Refd.** Frost *v.* Minister of Health, [1935] 1 K. B. 286. *Generally*, **Refd.** Leslie *v.* L. N. E. R. & L. M. S. (1936), 24 Ry. & Can. Tr. Cas. 182 ; Cooper *v.* Wilson, [1937] 2 K. B. 309 ; Ex-Army Transport, Ltd. *v.* Diamond & Co. (1936), 24 Ry. & Can. Tr. Cas. 303.

Part V.—Interest or Bias of Judicial and Quasi-Judicial Bodies.

715. *Add. Annotation :*—**Consd.** Cooper *v.* Wilson, [1937] 2 K. B. 309.

719. *Add. Annotation :*—*Generally*, **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

721. *Add. Annotations :* — **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602 ; R. *v.* Huntingdon Confirming Authority, *Ex p.* George & Stamford Hotels, Ltd., [1929] 1 K. B. 698.

Part VI.—Statutory Protection—Public Authorities Protection Act.

731. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

733. *Add. Annotation :*—*As to* (1) **Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

736. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1928), 138 L. T. 465.

739a. *S. P.* Moss *v.* Salford Corpn. (1908), 72 J. P. Jo. 341.

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to be used as a public park, with power to accept private subscriptions from persons willing to contribute towards carrying into execution the purposes of the Act, but with no power to levy rates or tolls, though authorised to defray such of the expenses incurred in carrying the Act into execution as could not be defrayed out of moneys received by them under the Act out of moneys to be provided by Parliament. Pltf. in this action sought damages for injuries received by him while lawfully using the square, by coming in contact with an iron railing, which the statement of claim alleged was erected therein by the Comrs. of Public Works in a negligent & dangerous manner :—*Held :* the Comrs. of Public Works in Ireland were not, by virtue of the Act, constituted servants of the Crown.—Wheeler *v.* Comrs. of Public Works, [1903] 2 I. R. 202.—IR.

PART IV. SECT. 3, SUB-SECT. 4.—B.

f i. *Driver of fire-engine.*]—Morash *v.* Dartmouth, [1931] 1 D. L. R. 413.—CAN.

h. Add the following paragraph :—

Held : the treasurer, though appointed by deft. corpn., was not, in discharging or omitting to discharge a duty imposed on him by Assessment Act, the servant or agent of the corpn., who were therefore not liable for his omission to give the notice required by sect. 171 of Assessment Act.

t. *Revsd.*, [1927] 1 D. L. R. 969 ; [1927] S. C. R. 226.

sg. *Inspectors appointed under Noxious Weeds Act.*]—Inspectors appointed by a municipality under Noxious Weeds Act, 1924, c. 20, are not employees or agents of the municipality, but are public officers performing public services for the benefit, not of the municipality in its corporate capacity, but of its inhabitants & those of the Province generally.—Mead *v.* Marquis Rural Municipality, [1928] 2 D. L. R. 524 ; [1928] 1 W. W. R. 756. —CAN.

PART IV. SECT. 4, SUB-SECT. 1.

543 ii. —— ——.]—*Re* O'Connor *v.* Lemieux, [1927] 3 D. L. R. 831 ; 60 O. L. R. at p. 374.—CAN.

PART IV. SECT. 4, SUB-SECT. 6.—B. (b).

sh. *Failure to return conviction—Form of action.*]—Drake *v.* Preston (1873), 34 U. C. R. 257.—CAN.

PART IV. SECT. 5, SUB-SECT. 2.—B. (c).

g i. —— *Board of Public Utility Commissioners—Public Utilities Act, 1923 (c. 53), s. 137 (2).*]—*Re* Stanton & Gordon, [1927] 1 D. L. R. 273 ; [1926] 3 W. W. R. 769 ; 22 Alta. L. R. 387.—CAN.

PART VI. SECT. 2.

739 iii. —— —— *Harbour trustees.*]—The mere fact that bodies such as harbour trustees administer their undertakings under Acts of Parliament is not sufficient to entitle them, as successful defenders, to expenses as between agent & client under Public Authorities Protection Act, 1893 (c. 61), s. 1 (*b*). They must base their motion upon such of the enactments regulating their constitution & functions as are relevant to the question whether the

741. *Add. Annotation :*—**Consd.** Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67.

760. After this case add :—
Wheat Commission.]—*See* AGRICULTURE, No. 979f, *ante*.

766. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

775. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

777a. **Duty to prosecute.**]—*Held :* the duty to prosecute for an offence is not a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1.—HARTIN *v.* LONDON COUNTY COUNCIL (1929), 141 L. T. 120; 93 J. P. 160; 45 T. L. R. 318; 27 L. G. R. 497; 28 Cox, C. C. 618.

Annotation :—**Refd.** Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327.

777b. **Stolen goods handed over to alleged owner by Receiver for Metropolitan Police.**]—In the end of 1924 the Metropolitan Police found at the house of pltf. & took into their possession a quantity of goods including certain cloth. Pltf. was brought before the police ct. on charges of receiving, & some of the evidence there given tended to show, but did not prove, the identity of the cloth with cloth which had been stolen from a firm of carriers. Pltf. was committed for trial at the London sessions on indictments charging him with having received certain of the goods other than the cloth knowing them to have been stolen, & on an indictment charging him with a similar offence in respect of the cloth, & in Feb. 1925, he was convicted on the first-mentioned indictments & sentenced to five years' penal servitude. He was never tried on the indictment relating to the cloth, but it was allowed to remain upon the record. On Apr. 2, 1925, pltf. not having as yet made any credible claim to the cloth, the Receiver for the Metropolitan Police District handed it over to the firm of carriers, who claimed it, taking from them a written indemnity. On Jan. 16, 1931, pltf. having less than six months before made an unsuccessful demand for the cloth as his property, brought an action against the Receiver & the firm of carriers claiming damages for detinue & conversion of the cloth. The first-named deft. relied, among other defences, upon Public Authorities Protection Act, 1893 (c. 61). The jury, having heard the evidence, found that it did not establish the identity of the cloth with that stolen from the carriers, & they returned a verdict for pltf. against both defts. :—*Held :* (1) the first deft. in handing over the cloth to the second defts. in Apr. 1925, had acted in "intended execution" of a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1, & as the action in respect of the act of conversion so effected had not been commenced within six months after that act, it was not maintainable in respect thereof; (2) pltf. could not elect to rely only on his claim in detinue, so as to make the time run from his demand & to bring the date of the action within six months after the cause of action. Therefore, judgment should be entered for the first deft. against pltf., & for pltf. against the second deft.—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER & CARTER PATERSON & Co., LTD., [1932] 2 K. B. 595; 101 L. J. K. B. 588; 147 L. T. 336; 96 J. P. 327; 48 T. L. R. 517; 76 Sol. Jo. 474; 30 L. G. R. 349.

783. *Add. Annotation :*—**Consd.** McManus *v.* Bowes, [1937] 3 All E. R. 227.

784. *Add. Annotations :*—**Consd.** Paul, Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; McManus *v.* Bowes, [1937] 3 All E. R. 227. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344; Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327.

795. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

800. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

803. *Add. Annotation :*—**Apld.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

804. *Substitute Citations.*—[1929] A. C. 344; 98 L. J. Ch. 233; 140 L. T. 505; 93 J. P. 121; 45 T. L. R. 219; 73 Sol. Jo. 109; 27 L. G. R. 243, H. L.

808a. ——.]—If a party *bonâ fide*, & not absurdly believes that he is acting in pursuance of a statute, he is entitled to the special protection which the legislature intended for him, although he has done an illegal act.—SPOONER *v.* JUDDOW (1850), 4 Moo. Ind. App. 353; 6 Moo. P. C. C. 257; 18 E. R. 734, P. C.

827. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

834a. ——.]—The time limited for bringing actions against justices of a Metropolitan police district in respect of a conviction under 2 & 3 Vict. c. 47, s. 18, made in exercise of the jurisdiction given them by 3 & 4 Vict. c. 84, s. 6, is three calendar months, the period prescribed by 2 & 3 Vict. c. 71, s. 53, & not six calendar months, the period given by 10 Geo. 4, c. 44, s. 41.—BARNETT *v.* COX (1847), 9 Q. B. 617; 115 E. R. 1410.

839. *Add. Annotation :*—**Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

854. *Add. Annotation :*—*As to* (1) **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

854a. ——.]—Where deft. appears to be acting as a member of a public body under statutory authority & pleads the six months' limitation imposed by Public Authorities Protection Act, 1893 (c. 61), as the period within which an action must be brought in respect of his acts, pltf. can defeat that claim by proving, on sufficient evidence, that deft. was not really intending to act in pursuance of his statutory authority, but was using his pretended authority from some improper motive,

action was "for an act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority."—LIVINGSTONIA S.S. Co., LTD. *v.* CLYDE NAVIGATION TRUSTEES, [1928] S. C. 270.—SCOT.

PART VI. SECT. 3, SUB-SECT. 2.

¶ 1. —— *Negligence—Claim under Fatal Accidents Act.*]—APPEL— WEST CORK BOARD OF HEALTH, [1929] I. R. 107.—IR.

such as spite or for a purpose entirely outside statutory justification.

Where defts. are found purporting to execute a statute, the burden of proof is on pltf. to prove the existence of such a dishonest motive & the absence of any honest desire to execute the statute, & such existence & absence should be found only on strong & cogent evidence.—SCAMMELL G. & NEPHEW, LTD. *v.* HURLEY, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53; *sub nom.* SCAMMELL G. & NEPHEW, LTD. *v.* ATTLEE, 45 T. L. R. 75; 73 Sol. Jo. 12, C. A.

Annotation :—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

857. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

859a. Proceedings by infant.]—Public Authorities Protection Act, 1893 (c. 61), s. 1, applies to claims by infants against a public authority.—JACOBS *v.* LONDON COUNTY COUNCIL, SHAW *v.* LONDON COUNTY COUNCIL, [1935] 1 K. B. 67; 104 L. J. K. B. 84; 152 L. T. 78; 99 J. P. 10; 51 T. L. R. 16; 78 Sol. Jo. 734; 32 L. G. R. 409, C. A.

860. *Add. Annotations :*—**Folld.** Runcorn Guardians *v.* Worrall (1930), 94 J. P. Jo. 205. **Refd.** Allen *v.* Waters & Co., [1935] 1 K. B. 200.

860a. —— **Recovery of loan by guardians.**]—RUNCORN GUARDIANS *v.* WORRALL (1930), 94 J. P. Jo. 205, D. C.

861. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

863. *Add. Annotation :*—**Apld.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

864. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

869. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

870. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

876. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

882a. ——.]—*Certiorari* is not a "proceeding" within Public Authorities Protection Act, 1893 (c. 61), s. 1.—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* SWAN & EDGAR (1927), LTD. (1929), 141 L. T. 590; 45 T. L. R. 512, D. C.

884. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

885. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

886. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

887. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

888. *Add. Annotations :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590. **Mentd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500; R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746.

920a. ——.]—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER, No. 777b.

931. *Add. Annotations :*—**Consd.** Morriss *v.* Winter (1929), 45 T. L. R. 643. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

940a. Detention after receipt of remission marks—Continuance by successive prison Governors.]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to injure M., & that he had not made a false statement :—*Held :* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison; & that deft. was protected by the Public Authorities Protection Act, 1893 (c. 61), as the action was not brought within six months of the act that caused the damage, there being no continuance of the injury or damage, as there was no continuance of the act by that deft.

PART VI. SECT. 5, SUB-SECT. 1.

sm. *Admiralty proceedings in Exchequer Court of Canada—Act not applicable.*]—SYDNEY, CAPE BRETON & MONTREAL S.S. CO. *v.* MONTREAL HARBOUR COMRS. (1913), 15 Exch. C. R. 1; 20 D. L. R. 828.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

861 i. "*Action*" — *Against "person"* — *Wrongful tax sale.*] — *Held :* Public Authorities Protection Act not applicable.—KOWNATZKI *v.* BEAR LAKE MUNICIPAL DISTRICT, [1931] 1 D. L. R. 334; [1930] 3 W. W. R. 353; *revsd. on other grounds*, [1931] 1 W. W. R. 357; 2 D. L. R. 318; 25 Alta. L. R. 751.—**CAN.**

so. "*Judgment.*"]—"Judgment" in Public Authorities Protection Act includes a decision of the Inner House pronounced upon a reclaiming note; also, *semble*, a decision of the House of Lords in an appeal against a decision of the Inner House.—SMITH *v.* GLASGOW EDUCATION AUTHORITY, [1933] S. C. (H. L.) 51.—**SCOT.**

PART VI. SECT. 5, SUB-SECT. 3.

sp. *Continuing trespass—Action not barred by Towns Incorporation Act,* 1895 (c. 4).]—ARCHIBALD *v.* TRURO CORPN. (1900), 33 N. S. R. 401.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A.

h i. —— *Release of insurance company by corporation from liability for accident.*]—On an appln. under The Town Act, 1927, s. 566, for leave to bring an action against a town for injuries sustained, more than three months previously, owing to alleged defective wiring belonging to the town :—*Held :* the fact that the town had released an insurance co. from further liability with respect to the accident did not prejudice it in such a manner as to lead the ct. to refuse to exercise its discretion under said section to allow the action to be brought.—*Re* RUTH & ESTEVAN TOWN, [1928] 4 D. L. R. 509; [1928] 2 W. W. R. 686.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—B.

h. *Citations :*—For "[1923] S. C. R. 586," read "63 S. C. R. 586."

which caused the damage, & the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243; 99 L. J. K. B. 101; 142 L. T. 67; 28 Cox, C. C. 687.

942. *Add. Annotation :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486.

947. *Add. Annotation :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 485.

949. *Add. Annotation :—As to* (1) **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

949a. **Negligence of dock company—Improper repair of ship.**]—A dock co. were empowered by a private Act of Parliament to raise, destroy, & remove wrecks in their docks, to sell the wreck & cargo, &, after paying expenses, to pay over the balance to the owners. A ship caught fire & partially sank in their dock. In Feb. 1930 the dock co. repaired the ship, but on taking her out of the dockyard it was found that the repairs were useless, & in June, 1931, she was sold to shipbreakers, & a statement was then prepared & issued by the dock co. showing the amount available for division amongst the cargo owners. In July, 1931, the cargo owners issued a writ claiming damages from the dock co. by reason of their having acted negligently in having tried to repair the ship, whereby the sum available for division amongst the owners was diminished. The dock co. relied on the Public Authorities Protection Act, 1893 (c. 61), s. 1 (*a*), but the cargo owners contended that the action was in time, as their rights were not ascertainable until the preparation of the adjustment statement, & as part of their complaint was the rendering to them of a statement showing too small a balance :—*Held :* the act or default complained of was in substance the alleged negligence of the dock co. in repairing the ship, this had taken place more than six months before action brought, & therefore the action was barred by the operation of the Public Authorities Protection Act, 1893 (c. 61), s. 1 (*a*).—COPPER EXPORT ASSOCN. INCORPORATED *v.* MERSEY DOCKS & HARBOUR BOARD (1932), 147 L. T. 320; 48 T. L. R. 542.

953. *Add. Annotations :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486. **Refd.** Morriss *v.* Winter (1929), 45 T. L. R. 643; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

955. *Add. Annotations :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235. **Refd.** Morriss *v.* Winter (1929), 45 T. L. R. 643; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

955a. ———.]—Pltf., who had sustained injuries in an accident on Jan. 3, 1930, which he alleged was due to the negligence of defts., commenced an action for damages on July 4, 1930. There was no suggestion that any act done by defts. after Jan. 3 had caused any repetition of damage to pltf. :—*Held :* the action was not maintainable, as it had not been commenced within the time limited by Public Authorities Protection Act, 1893 (c. 61), s. 1.—RAWLINS *v.* GILLINGHAM CORPN. (1932), 146 L. T. 486; 96 J. P. 153.

956. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Harper *v.* Haden & Sons, [1933] Ch. 298.

966. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

PART VI. SECT. 6, SUB-SECT. 6.

n (p. 133) i. ——— ———.]—Under the Medicine Hat Charter :—*Held :* notice of the claim & injury was not a condition precedent to the right to maintain an action against the city for the recovery of damages to property caused by an explosion of natural gas from a leak resulting from disrepair of a gas main owned & maintained by the city.—FREEDMAN & LESK *v.* MEDICINE HAT CITY, LESK *v.* MEDICINE HAT CITY, [1936] 1 W. W. R. 602.—**CAN.**

n (p. 133) ii. ——— *Where action in respect of want of repair caused by misfeasance.*]—PRENTICE *v.* SAULT STE. MARIE, [1927] 4 D. L. R. 800; 61 O. L. R. 246; *revsd.*, [1928] 3 D. L. R. 564; [1928] S. C. R. 309.—**CAN.**

c (p. 134) i. ——— ———.]—MCGREGOR *v.* R., [1929] 1 D. L. R. 181.—**CAN.**

c (p. 134) ii. ——— *As to injuries.*]—MILLS *v.* CITY OF LETHBRIDGE (Alta.), [1927] 4 D. L. R. 1019; [1927] 3 W. W. R. 421.—**CAN.**

oo (p. 135) i. ——— ———.] — Pltf. was injured by his car striking an obstruction in deft.'s highway. During the ten days following the accident he was incapacitated by reason of his physical & mental condition from giving the notice required by Municipal Act, sect. 469 (4) :—*Held :* there being no evidence that deft. corpn. was prejudiced by the failure to give notice within the statutory time, the ct. should be astute in finding reasonable excuse.—WEIR *v.* TURNBERRY, [1931] 3 D. L. R. 255; O. R. 309.—**CAN.**

oo (p. 135) ii. ——— ———.]—To constitute reasonable excuse there must be such incapacity, either mental or physical, on the part of the injured person, as to render him incapable of discussing business affairs or giving instructions for the notice.—BISSELL *v.* ROCHESTER, [1930] 3 D. L. R. 825; 65 O. L. R. 310.—**CAN.**

oo (p. 135) iii. ——— ——— *Infancy.*]—An adult is not excused by ignorance of the law from giving the notice of claim & injury required by the Municipal Act, but an infant of ten years of age cannot be presumed to know the law, & ignorance of the law is a good excuse for him.—FERGUS *v.* TORONTO CITY, [1932] O. R. 257; 2 D. L. R. 807.—**CAN.**

oo (p. 135) iv. ——— ———.]—In an action against a city for damages for negligence the finding by the trial judge that there was a reasonable excuse for pltf.'s delay in giving the notice of the accident required by statute to be given to the city & that the city had not been prejudiced in its defence by the delay is subject to review on appeal.—CARMICHAEL & CARMICHAEL *v.* EDMONTON CITY, [1933] 1 W. W. R. 533; 2 D. L. T. 702; *affd.*, [1933] S. C. R. 650; 1 D. L. R. 197.—**CAN.**

oo (p. 135) v. ——— ———.]—Pltf.'s expectation & hope that her knee, which had been injured by her falling on a sidewalk & was causing her much pain & inconvenience, would soon get better so that a claim against the town would not be necessary, *held* not to constitute a "reasonable excuse" within sect. 568 of Town Act, R. S. S., 1930, for not giving the town notice of her claim & injury within the time prescribed by sect. 567.—NICHOLS *v.* KAMSACK TOWN, [1935] 3 W. W. R. 355.—**CAN.**

oo (p. 135) vi. ——— ———.]—Pain, suffering & worry held not sufficient excuse for omission of notice of damage against city.—SCHUMAN *v.* VANCOUVER CITY (1934), 48 B. C. R. 191.—**CAN.**

oo (p. 135) vii. ———.]—Failure to serve notice of action in time on a municipal corpn. is a complete bar to action, whatever the reason for the omission.—TRUSSLER *v.* KITCHENER, [1936] 1 D. L. R. 98; O. R. 53; 5 F. L. J. (Can.) 180.—**CAN.**

sq. *Fishery inspector.*]—In an action by an Indian living on an Indian reserve against a fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve, defts. justified under Dominion Fisheries Act, 1914, & Ontario Game & Fisheries Act, 1914, no license to fish having been taken out by pltf. or those who used the seine for fishing :—*Held :* no notice of action was necessary.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

sr. *Effect of negotiations by city claims agent—After notice given—Limitation period suspended.*]—CAMILLO *v.* EDMONTON, [1930] 3 D. L. R. 679.—**CAN.**

PART VI. SECT. 7.

st. *Pleading.*]—In an action against deft. in his capacity as sheriff & his servants & agents for wrongful trespass & wrongful seizure of grain the sheriff set up (*inter alia*) sect. 2 of Public Authorities Protection Act,

Part VIII.—Tenure and Compensation for Abolition of Office.

1015a. —— ——.]—To prove continuance in office as First Lord of the Admiralty :—*Held :* sufficient to prove appointment, the onus being on the other party to prove determination.—R. *v.* BUDD (1805), 5 Esp. 230 ; 170 E. R. 795, N. P.

1037. *Add. Annotation :*—**Apld.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

1039a. Children of deceased constable—Constabulary (Ireland) Act, 1922 (c. 55), Sched. Part I, r. 4.]—EGAN *v.* A.-G., No. 1048a, *post.*

1042. *Add. Annotation :*—**Distd.** Mountford *v.* London County Council, [1935] 2 K. B. 243.

1046. *Add. Annotation :*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

1047. *Add. Annotation :*—**Consd.** Kiddie *v.* Port of London Authority (1929), 93 J. P. 203.

1048a. For loss of salary—Meaning of salary—Constabulary (Ireland) Act, 1922 (c. 55).]—(1) In Constabulary (Ireland) Act, 1922 (c. 55), by which compensation on the basis of salary is payable to the members of the disbanded Royal Constabulary, the word "salary" means wages or pay & does not include allowances, such as allowances for lodging, house-rent, & servant. (2) Under Part I, r. 4 of the Sched. to the Act the children of a constable who has received compensation on his compulsory retirement are not, on his death, entitled to any pension or gratuity unless his death has taken place within 12 months from the date of his receipt of such compensation, inasmuch, as, by clause 6 of Royal Irish Constabulary Pensions Order, 1922, the children of a pensioned constable are not, by the mere fact of his death, entitled to any allowances unless he has died within 12 months from the grant of his pension.—EGAN *v.* A.-G., [1931] A. C. 113 ; 100 L. J. Ch. 18 ; 144 L. T. 227 ; 47 T. L. R. 91 ; 74 Sol. Jo. 849, H. L.

1049a. London Passenger Transport Act, 1933—Lump sum or annuity.]—In assessing compensation for loss of office under London Passenger Transport Act, 1933, s. 73 (6), the Standing Arbitrator may award compensation either in the form of a lump sum or an annuity. The recipient of the compensation has no option & cannot insist upon the award in either form. If a lump sum is awarded, the arbitrator may apply any actuarial tables that he thinks fit, provided that the total sum awarded does not exceed the sum which could have been awarded to a civil servant under the provisions of the Acts & regulations in force on Aug. 13, 1888, *i.e.*, the regulations made by the Treasury on July 27, 1871.—RICH *v.* LONDON PASSENGER TRANSPORT BOARD, [1936] 1 All E. R. 912 ; 80 Sol. Jo. 384, C. A.

Annotation :—**Consd.** Allen *v.* London Passenger Transport Board, [1936] 2 All E. R. 122.

1049b. —— **Managing director of company taken over.**]—A joint managing director of each of two omnibus cos. taken over by the London Passenger Transport Board was not offered any office or employment, & his services were dispensed with on the ground that they were no longer required. The question arose whether he was entitled to have his compensation assessed under London Passenger Transport Act, 1933, s. 73 (4) or (6) :—*Held :* compensation ought to be assessed under sub-sect. (6).—ALLEN *v.* LONDON PASSENGER TRANSPORT BOARD, [1936] 2 All E. R. 122, D. C.

1057. *Add. Annotation :*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

R. S. A., 1922, & relying thereon, moved under rule 255 to have the statement of claim struck out as disclosing no cause of action against said sheriff, or, alternatively, under rule 114, to have the questions of law raised by said defence set down for hearing before trial :—*Held :* the better course would be to set down for hearing before trial the question whether sect. 2 of said Act was a complete answer to the statement of claim.—BARRY *v.* RAE, [1934] 1 W. W. R. 74.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

h i. —— —— *Notwithstanding contract for term certain—Contract ultra vires.*]—LARKINS *v.* SUMMERSIDE, [1928] 4 D. L. R. 841.—**CAN.**

i. *Appointment until successor appointed—Appointment of successor—Right to salary in lieu of notice.*]—BLAKELEY *v.* CHARLESWOOD RURAL MUNICIPALITY, [1928] 2 D. L. R. 657 ;

l i. —— *Of weights & measures.*]—*Held :* (1) the office of inspector was a freehold public office tenable during life or good behaviour ; (2) an inspector was not liable to dismissal at the pleasure of the Governor in Council as the holder of a public office under the Govt., but could only be removed from office by the justices in petty sessions for good cause, & after being called upon to show cause against his removal ; (3) the acceptance of a salary did not affect the tenure of his office, or render him liable to dismissal by the Govt. as a public servant.—*Ex p.* EVANS (1909), 10 S. R. N. S. W. 1 ; 26 N. S. W. W. N. 189 ; 9 C. L. R. 140.—**AUS.**

st. *Delegation of authority to departmental heads.*]—The municipal council of Sydney passed a resolution providing that the discharge or disrating or suspension of any employee should be left in the hands of the heads of the respective departments subject to appeal to the town clerk, whose decision was to be final. An employee who was subsequently dismissed by a departmental head brought an action against the council for wrongful dismissal :—*Held :* the council had power to delegate its authority to discharge employee.—BAYLY *v.* SYDNEY MUNICIPAL COUNCIL (1927), 28 S. R. N. S. W. 149 ; 45 N. S. W. W. N. 40.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 2.

n. For "WIGG *v.* COCHRANE *v.* A.-G., [1927] I. R. 285" read "WIGG *v.* A.-G. OF IRISH FREE STATE, [1927 A. C. 674 ; 96 L. J. P. C. 88 ; 137 L. T. 460 ; 43 T. L. R. 457."

See, further, DEPENDENCIES, Nos. 714b, 714c.

PART VIII. SECT. 2, SUB-SECT. 3.

sw. *Calculated on years of actual service—Addition of years under county scheme.*]—O'SULLIVAN *v.* LIMERICK C. C. NAUGHTON *v.* LIMERICK C. C., [1928] I. R. 493.—**IR.**

PUBLIC HEALTH AND LOCAL ADMINISTRATION.

Part III.—Control by Ministry of Health.

9. *Add. Annotation :*—**Refd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

10a. —— **Confirmation of unauthorised improvement scheme—Effect of Housing Act, 1925 (c. 14), s. 40 (5).**]—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, No. 506c, *post.*

14. *Add. Annotation :*—**Dbtd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

20. *Add. Annotation :*—*As to* (1) **Consd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

23. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

29. *Add. Annotation :*—*Generally,* **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

29a. —— —— —— ——.]—The duty of a local authority under 1875 Act, s. 15, to keep sewers in repair cannot be enforced by an action by a private person for a mandatory injunction. The proper remedy is a complaint to the Minister of Health under sect. zvv of the Act.—CLARK *v.* EPSOM RURAL DISTRICT COUNCIL, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.

38. *Add. Annotations :*—**Apld.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

Part V.—Bye-Laws.

49. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

70. *Add. Annotations :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98;

PART I.

a. *Power to acquire land—For offices.*]—MAYVILLE LOCAL ADMINISTRATION & HEALTH BOARD *v.* GIELINK (1928), 49 N. L. R. 148.—**S. AF.**

PART II. SECT. 3.

c i. —— *Order for abatement of nuisance made on report of—Effect of report of Department of Health.*]—LEATHER *v.* DOOLITTLE CO., LTD., [1928] 2 D. L. R. 805; 62 O. L. R. 162.—**CAN.**

PART III. SECT. 1.

sb. *Meaning of "public show" in bye-law — Dog racing.*]—*Held :* dog racing handicaps, conducted in a ground specially adapted for dog racing, to which the public were admitted as spectators on payment, were not a "public show" within Burgh Police (Scotland) Act, 1892, s. 397.—BREMNER *v.* MORRISON, [1930] S. C. (J.) 42.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 1.

sd. *Whether jurisdiction must be shown—Order under Housing Acts.*]—An order of a local authority under the Housing Acts, if it follow the prescribed form, need not show jurisdiction on its face like the order of an inferior ct.—MCCOY *v.* CORK CORPN., [1934] I. R. 779.—**IR.**

PART V. SECT. 1.

a (p. 156) i. —— *By Railway & Municipal Board—Does not validate invalid bye-law.*]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

a (p. 156) ii. —— —— *Leave to appeal from Board—Grounds for granting.*]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

a (p. 156) iii. —— *Necessity for—Bye-law amending bye-law.*]—Approval of municipal board held necessary to a bye-law amounting in effect to an amendment of another bye-law.—WORTHINGTON *v.* FOREST HILL VILLAGE, [1934] 1 D. L. R. 608; O. R. 17.—**CAN.**

h (p. 156) i. —— ——.]—*Held :* the statutory duty to publish a bye-law in the newspaper of a village under Municipal Act, R. S. O., 1914, was imperative.—*Re* POULIN & L'ORIGINAL VILLAGE (1918), 42 O. L. R. 483.—**CAN.**

cc (p. 156) i. —— ——.]—Where pending the return of a summons to show cause why a certain bye-law of the city of Winnipeg should not be quashed as *ultra vires* the council repealed the bye-law & enacted a new bye-law which overcame appot.'s ground of complaint & the motion made on the return was, therefore, dismissed :—*Held :* on appeal from the refusal of costs to appot. he was entitled to costs since the sect. of the Charter under which the motion was made provides that the judge may "according to the result of the application award costs for or against the corpn." & in the circumstances the word "result" should not be read so literally as to be confined to the fact of the dismissal of the application.—*Re* TURNER & WINNIPEG CITY, [1933] 1 W. W. R. 651; 3 D. L. R. 486; 41 Man. L. R. 372.—**CAN.**

ee (p. 156) i. —— ——.]—*Re* MCCUTCHEON & TORONTO CORPN. (1863), 22 U. C. R. 613.—**CAN.**

ii. (p. 156) i. —— ——.]—Pursuant to the power given it by the city charter to pass bye-laws regulating its proceedings the Winnipeg city council passed a bye-law reading : "Notice at a previous regular meeting shall be given of all motions for introducing new matter other than matters of privilege & bringing up petitions, reports & communications, & no motion shall be discussed unless such notice has been given . . . :—*Held :* the bye-laws in question herein which provided for the compulsory closing of shops on Saturday or on Wednesday afternoons introduced "new matter" within the bye-law quoted above &, since no notice of the motion to introduce them had been given at any previous meeting of the council, said bye-laws were invalid, although no member of the council had objected to their introduction; &, they must be quashed. Costs given appot.—RANNARD *v.* WINNIPEG CITY, [1935] 3 W. W. R. 35; 43 Man. L. R. 385; *revsd.* [1937] 1 W. W. R. 539.—**CAN.**

jj (p. 156) i. —— —— *Non-compliance with condition precedent.*]—When in passing a bye-law a municipal council exceeds its limited jurisdiction or ignores a condition precedent to the exercise of the powers conferred on it by statute the duty of the ct. is to quash the bye-law for illegality or, in the case of a prosecution under it, to dismiss the charge; &, therefore, evidence is admissible to show that the condition precedent had not been complied with.—R. *ex rel.* DONALD *v.* THOMPSON (No. 1) (Sask.), [1929] 4 D. L. R. 958; 2 W. W. R. 563; 52 Can. Crim. Cas. 47.—**CAN.**

mm (p. 156) i. —— —— ——.]—Where the illegality of a bye-law appears upon its face there is no discretion in the ct. to refrain from quashing it. A rating bye-law provided "that the rate for public school purposes be as requested by public school trustees" :—*Held :* it was invalid, because it attempted to delegate the power which by the Municipal Act is vested solely in the township council to the public school trustees of the several school sections, & the illegality appeared on the face of the bye-law.—*Re* MIDDLETON & GODERICH, [1931] 4 D. L. R. 75; O. R. 392.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

52 v. —— ——.]—R. *v.* PENNER, [1930] 1 D. L. R. 834; 53 Can. C. C. 242.—**CAN.**

ooo (p. 157) i. —— *Bye-law prohibiting keeping of animals—Except with consent of council — Conditions under which consent given not set out.*]—MILLER *v.* BRIGHTON CITY, [1928] V. L. R. 375; [1928] Argus L. R. 209.—**AUS.**

dddd (p. 157) i. —— ——.]—*Re* FOXCROFT & LONDON, [1927] 4 D. L. R. 684; 61 O. L. R. 209; *revsd.* [1928] 1 D. L. R. 849; 61 O. L. R. 553.—**CAN.**

r (p. 158) i. —— —— *Scrutiny—Powers of county court judge.*]—A county ct. judge holding a scrutiny of

British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 147 L. T. 318.

89. *Add. Annotation :*—**Consd.** Ireland *v.* Wilson, [1936] 3 All E. R. 358.

91a. —— **Conduct.**]—By a local Act, a local authority was empowered to make such bye-laws as it thought fit for (*inter alia*), the regulating of hackney carriages & carts plying for hire within the borough & for the ballot papers deposited in a vote on a municipal bye-law may go behind the voters' list & inquire if a tenant whose name is placed thereon has the residential qualification entitling him to vote. The judge has no power to inquire whether rejected ballots were cast for or against the bye-law. Ballots rejected on a scrutiny must be deducted from the total number of votes cast in favour of the bye-law.—McPherson *v.* Mehring, [1913] 47 S. C. R. 451.—**CAN.**

aa (p. 158) **i.** —— ——.]—*Re* Howard & Toronto Corpn., *Re* Sweet & Toronto Corpn., [1928] 1 D. L. R. 952 ; 61 O. L. R. 563.—**CAN.**

aa (p. 158) **ii.** —— *Question for municipal council.*]—A bye-law expropriating a public park land passed by a township council was attacked upon the ground that it was not enacted in the public interest, but in the interest of a land co. :—*Held :* the matter was one to be determined by the council.—Hurst *v.* Mersea, [1931] 3 D. L. R. 355 ; O. R. 290.—**CAN.**

bb (p. 158) **i.** —— *Test.*]—In determining whether a municipal bye-law was passed in the public or a private interest the primary moving force behind the bye-law must be looked at, & if that force emanates from a private source & is to save harmless or to reimburse the corpn. with respect to all costs & is to reap the primary direct benefit from the bye-law, it may safely be concluded that the bye-law was in a private & not in the public interest.—Wallace *v.* Dauphin Town, [1932] 2 W. W. R. 405.—**CAN.**

bc. *Right to question validity—In summary proceedings.*]—*Held :* it is competent in a summary proceeding to challenge the validity of a bye-law made by a local authority, even though it has obtained the approval of the Sheriff & of the Secretary of State.—David Lawson, Ltd. *v.* Torrance, [1929] S. C. 119 (J.).—**SCOT.**

bd. *Bye-law in the "interests of the city."*]—In determining whether a city bye-law was "passed *bonâ fide* in the interests of the city" within the city's charter, allegations of unreasonableness, oppressiveness & unequal operation are of importance only so far as they have a bearing upon the questions of "*bona fides*" & "public interests." The question of what are the interests of the city is certainly, at least *primâ facie*, one for the city council to pass upon without undue interference from the cts. The mere fact that a bye-law benefits one individual or class at the expense of another does not necessarily indicate that it is not in the "interests of the city." The burden of showing that a bye-law, otherwise valid, was not passed in good faith in the interests of the city is on the person attacking it.—Keily *v.* Edmonton City, [1931] 1 W. W. R. 365 ; 2 D. L. R. 705.—**CAN.**

be. *Bye-law in future tense—Valid.*]—St. Gervais *v.* Goulet, [1931] 3 D. L. R. 604.—**CAN.**

bf. *Petition for bye-law relating to local improvement—Sufficiency of petition.*]—The ct. cannot quash a bye-law of a council for undertaking a work on petition, if the clerk certified to the sufficiency of the petition, even though the clerk in giving his certificate made a mistake of law by misinterpreting the requirements of Local Improvement Act, R. S. O., 1927, s. 11.—*Re* Britton & Toronto City, [1934] 1 D. L. R. 368.—**CAN.**

bk. *Jurisdiction of court.*]—The ct. cannot question the validity of a bye-law which has been approved by the Ontario Railway & Municipal Board.—*Re* Harper & East Flamborough Township (1914), 32 O. L. R. 490.—**CAN.**

bl. *Bye-law in excess of powers—Whether corporation liable in damages.*]—A corpn. is not liable for damages caused by a bye-law passed under a misconstruction of its powers unless such liability is imposed by statute.—Pocock *v.* Toronto City Corpn. (1896), 27 O. R. 635.—**CAN.**

bo. *Non-observance of statutory requirements.*]—Fleming *v.* Sandwich Town (1918), 44 O. L. R. 514.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.

54 iii. ——.]—*Re* Dunlop & Township of Douro (1859), 18 U. C. R. 227.—**CAN.**

54 iv. ——.]—In relation to the subject-matter of a bye-law, the powers of the corpn. must be exercised strictly within the limits & in the manner prescribed by the statute.—*Re* Hom-fray & Kamloops Building Inspector (1933), 46 B. C. R. 475.—**CAN.**

k (p. 160) **i.** —— —— *Creation of monopoly.*]—Toronto *v.* Mandelbaum, [1932] 3 D. L. R. 604.—**CAN.**

ee (p. 160) **i.** —— *Bye-law creating lien—For unpaid water rates—Ultra vires.*]—Burchell *v.* Sydney Corpn., [1927] 1 D. L. R. 486 ; 59 N. S. R. 94.—**CAN.**

h (p. 161) **i.** —— —— ——.]—*Re* Boylan & Toronto Corpn. (1887), 15 O. R. 13.—**CAN.**

m (p. 161) **i.** —— —— —— *New Year's Day.*]—A county licensing ct. issued a bye-law that all licensed premises within the district including inns & hotels, except as regarded travellers & lodgers therein, should be closed wholly on New Year's Day, &, when New Year's Day fell on a Sunday, then on Monday, Jan. 2 :—*Held :* under this bye-law a Monday falling on Jan. 2 must be treated as a Sunday, &, accordingly, that an hotel-keeper who had supplied a customer on such a Monday outwith the permitted week-day hours had not infringed his certificate where the customer was a *bonâ fide* traveller, who could lawfully have been supplied on Sunday.—Henderson *v.* Ross, [1928] S. C. (J.) 74.—**SCOT.**

t (p. 161) **i.** —— —— *Rate likely to produce less money than required.*]—*Held :* the ct. would not interfere.—*Re* Gilchrist & Sullivan Corpn. (1879), 44 U. C. R. 588.—**CAN.**

e (p. 161) **i.** —— —— —— *Street not yet opened.*]—A bye-law provided for the construction of side walks on a street to be opened :—*Held :* as the street shown on the plan was not yet & might never be a public street, the council exceeded its authority in passing the bye-law, which should therefore be quashed ; the discretion of the ct. should not be exercised in favour of the bye-law.—*Re* Chappus & La Salle Town, [1928] 2 D. L. R. 950 ; 62 O. L. R. 140.—**CAN.**

e (p. 161) **ii.** —— —— *Bye-law authorising improvement of street—Passed before land acquired.*]—*Re* Chappus & La Salle Town, [1928] 2 D. L. R. 950 ; 62 O. L. R. 140.—**CAN.**

e (p. 161) **iii.** —— —— *Bye-law regulating width of streets on laying-out building sites—Whether applicable to roads giving access to building estate.*]—Rose *v.* Sydenham Local Administration & Health Board (1928), 49 N. L. R. 203.—**S. AF.**

dd (p. 161) **i.** —— —— *Fee imposed on every truck delivering merchandise—Whether applicable to trucks belonging to owner outside municipality.*]—Municipal Act, R. S. B. C. 1924, c. 179, s. 290 (34), as enacted by 1925, c. 35, s. 28, which empowers a municipality to impose a licence fee on "the owner or driver of every truck plying for hire or used for the delivery of wood, coal, merchandise or other commodity," authorises it to demand the fee from every owner of a truck used for the delivery of merchandise within the municipality, even though the owner is an outsider.—North Vancouver *v.* F. R. Stewart & Co., [1928] 1 W. W. R. 586 ; 49 Can. Crim. Cas. 216 ; 39 B. C. R. 401.—**CAN.**

dd (p. 161) **ii.** —— —— *Bye-law requiring vehicles licensed by town council to obtain additional county licence.*]—Scottish Motor Traction Co., Ltd. *v.* Lanarkshire County Council, [1928] S. C. (Ct. of Sess.) 909 ; *revsd.* (1929), 142 L. T. 170 H. L.—**SCOT.**

dd (p. 161) **iii.** —— —— *Bye-law prohibiting use of vehicle in jitney bus service without licence—Jitney licences no longer issued.*]—R. *v.* Shawra, [1929] 1 D. L. R. 321 ; 50 Can. Crim. Cas. 267 ; 63 O. L. R. 158.—**CAN.**

dd (p. 161) **iv:** —— *Bye-law prescribing parking areas for vehicles—Whether bye-law regulating traffic—Right to charge for use of parking areas.*]—Schilling *v.* Melbourne City, [1928] V. L. R. 302 ; [1928] Argus L. R. 203.—**AUS.**

h (p. 162) **i.** —— *Bye-law restricting the carrying-on of restaurants.*] — *Re* Bye-Law No. 304 of Minnedosa Town, Wong Sing *v.* Minnedosa, [1918] 3 W. W. R. 181.—**CAN.**

o (p. 162) **i.** —— —— *Power to sweep chimneys confined to chimney inspectors.*]—R. *v.* Johnston (1876), 38 U. C. R. 549.—**CAN.**

se. —— *Regulation of botanic park—Bye-law prohibiting meetings without consent of governors—Valid.*]—Fox *v.* Allchurch, [1926] S. A. S. R. 384 ; *affd.*, 40 C. L. R. 135.—**AUS.**

sf. —— *Licensing taverns.*]—*Re* Brodie & Bowmanville Corpn. (1876), 38 U. C. R. 580.—**CAN.**

sg. —— *Bye-law increasing service tax—Invalid.*]—Hardy *v.* Edmonton Corpn. (Alta.), [1925] 1 D. L. R. 256 ; [1924] 3 W. W. R. 936.—**CAN.**

sh. —— *Bye-law regulating the housing of motor trucks & apparatus used in truck cartage business—Construction.*]—*Re* Stronach, [1928] 3 D. L. R. 216 ; 49 Can. Crim. Cas. 336 ; 61 O. L. R. 636.—**CAN.**

si. —— *Tax on non-resident building contractors—Amounts to indirect taxation—Ultra vires.*]—Applt. city was by statute empowered "to pass bye-laws imposing a tax on contractors resident outside this province doing business within" the city. It passed a bye-law enacting that all contractors non-residents of the province who should engage in the business of a contractor for the performance of any work within the city, under a contract or agreement, should pay to the city "on every such contract or agreement a direct tax," the tax to be a percentage of the contract price, graduated on a sliding scale according to the amount of the contract. The city claimed from resp. payment of a tax, in accordance with the bye-law, of a percentage on the amount of resp.'s contract for

regulating the conduct of the drivers thereof reasonably. A bye-law was accordingly made which provided: "Every driver of a hackney carriage shall when working or plying for hire . . . conduct himself in a proper civil & decorous manner at all times." In a prosecution under the bye-law it was contended that the bye-law was uncertain as to the standard required & unreasonable, & that it was therefore void & unenforceable:—*Held:* the bye-law was neither uncertain nor unreasonable & was therefore valid & enforceable.—IRELAND *v.* WILSON, [1936] 3 All E. R. 358.

97a. Bye-law regulating conduct.]—IRELAND *v.* WILSON, No. 91a, *ante*.

120. *Add. Annotation:*—**Refd.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

121a. —— ——.]—Pltfs., a firm of builders who had, as a private enterprise of their own, built a number of houses upon land situate within the jurisdiction of defts., had not complied with defts.' bye-laws as to the drainage, with the result that differences arose between the parties. Subsequently, by agreement, defts. appointed a sub-committee to settle all outstanding matters, & an agreement was arrived at between pltfs. & the sub-committee. One of the terms of that agreement was that pltfs.' drainage scheme should remain, although it was contrary to defts.' bye-laws. Defts. having repudiated the agreement to which their sub-committee was a party, pltfs. brought an action claiming specific performance:—*Held:* as it had not been established that the building of the houses by pltfs. was, or formed part of, a housing scheme to which Housing Act, 1925 (c. 14), s. 99, applied, the verbal contract made by the sub-committee was not binding on defts., for the reason that defts. could not confer upon the sub-committee a power of entering into any such contract. Neither had the Minister power under sect. 99 to relax the bye-laws in a private building scheme.—WILLIAM BEAN & SONS, LTD. *v.* FLAXTON RURAL DISTRICT COUNCIL, [1929] 1 K. B. 450; 98 L. J. K. B. 20; 139 L. T. 320; 92 J. P. 121; 26 L. G. R. 335, C. A.

Part VI.—Legal Proceedings.

137a. —— —— **Town Police Clauses Act, 1847 (c. 89).**]—A corpn. was convicted upon an information preferred on behalf of a limited co. under sect. 47 of above Act, by one of its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act:—*Held:* that P. H. Act, 1875, s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that Act, & therefore except in the case of information by a party aggrieved or the local authority for the district, the consent of the A.-G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police Clauses Act, 1847 (c. 89).—

the building of an hotel:—*Held:* the tax was "indirect taxation," & the bye-law imposing it was *ultra vires*.—CHARLOTTETOWN CITY *v.* FOUNDATION MARITIME, LTD., [1932] S. C. R. 589.—**CAN.**

so. *Discrimination between skilled & unskilled labour.*]—A bye-law which requires a licence for carrying on an occupation, & discriminates between skilled & unskilled labour is *ultra vires*.—R. *v.* MCDONALD, [1935] 2 D. L. R. 605; 8 M. P. R. 558.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

ll i. —— *Bye-law regulating dance halls.*]—A bye-law passed in purported exercise of the power given by Winnipeg Charter to regulate & license dance halls defined "dance hall" as *inter alia* "any building or portion thereof . . . the use of which is permitted to any person or group of persons for dancing":—*Held:* this part of the definition was void because its generality rendered it uncertain & unreasonable; & since if the bye-law applied to deft.'s premises it could be only because of said clause, his conviction for a violation of the bye-law was quashed.—R. (MCCORQUODALE) *v.* WONG, [1937] 1 W. W. R. 552; 1 D. L. R. 347; 67 Can. C. C. 288.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

a (p. 165) **i.** —— *Excessive fee for licence.*]—CROOKSTON *v.* MILLER, [1912] 7 D. L. R. 771.—**CAN.**

l (p. 165). *Add. Citation:*—*affd.*, 22 O. L. R. 342.

PART V. SECT. 3.

sb. *Bye-law for licensing palmists—Meaning of "carrying on calling of palmist."*]—The definition of the word "palmist" in Winnipeg bye-law No. 10,634, which provides that the term shall include "any person who gives free palm readings in connection with the sale of books . . . or of the performance of any service for which a charge is made" & imposes a licence fee "to carry on the calling of a palmist" does not add anything to the significance of the word as used in the sect. of the Winnipeg Charter authorising the city to pass bye-laws for the preventing, regulating, limiting, *inter alia*, "palmists" & for defining "palmists." The giving of free instructions in art held to be carrying on of the calling of a palmist.—R. *v.* BEST, [1934] 3 W. W. R. 635; [1935] 1 D. L. R. 158; 62 C. C. C. 340.—**CAN.**

sd. *Bye-law fixing prices for dry cleaning.*]—A city bye-law fixing prices for dry cleaning does not apply to an agency within the city, although the cleaning is done elsewhere.—R. *v.* MARVO SYSTEM OF DRY CLEANING, LTD., [1935] 3 D. L. R. 480; 64 Can. C. C. 46.—**CAN.**

sf. *Dance hall — What is.*] — A restaurant permitting dancing without extra charge is a "dance hall" requiring to be licensed by a bye-law relating to dance halls.—R. (MCCORQUODALE) *v.* WONG, [1937] 1 W. W. R. 552; 1 D. L. R. 347; 67 Can. C. C. 288.—**CAN.**

PART V. SECT. 4.

l i. —— *Attorney-General.*]—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—A.-G. & LUMLEY *v.* T. S. GILL & SON PTY., LTD., [1927] V. L. R. 22; [1927] Argus L. R. 223.—**AUS.**

sj. *Action to restrain enforcement of illegal bye-law—Effect of Rural Municipality Act, s. 335.*]—The provision of sect. 335 of Rural Municipality Act, R. S. S., 1920 (c. 89), that no action can be commenced in respect of anything done under an illegal bye-law or resolution until a month after the quashing or repealing of the bye-law or resolution & until a month after written notice of the intention to bring the action does not apply to an action to prevent the municipality from enforcing rights claimed by it under an illegal bye-law.—VILLENEUVE *v.* RURAL MUNICIPAL OF KELVINGTON, [1929] 2 D. L. R. 919; 1 W. W. R. 186; 23 S. L. R. 406.—**CAN.**

sl. *When enforceable by injunction.*]—A bye-law which is aimed at the conduct of a business rather than at the use of the land for the purpose of the business cannot be enforced by injunction.—TORONTO CITY *v.* MANDELBAUM, [1932] O. R. 552.—**CAN.**

so. *Discretion of council of corporation.*]—The ct. cannot interfere with the discretion of the council of the corpn. in the administration or carrying out of a bye-law.—*Re* JOY OIL CO., LTD. & TORONTO, [1937] 1 D. L. R. 541; O. R. 243; 67 Can. C. C. 325.—**CAN.**

PART V. SECT. 5.

sr. *Bye-law relating to licensing of chimney-sweeps—Municipality not entitled to fix charges for cleaning.*]—SCANES *v.* JOHNSTON, [1930] 4 D. L. R. 290.—**CAN.**

PART VI. SECT. 2.

sy. *Keeping marine store without licence—In whose name action lies.*]——— CITY *v.* O'CONNOR (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

——— Corpn. *v.* Kitson, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 142 L. T. 20; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533; 28 Cox, C. C. 674, D. C.

139. *Add. Annotation :*—**N.F.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

158. *Add. Annotation :*—**Consd.** R. *v.* South-Eastern Essex Assessment Committee, *Ex p.* Patterson (1935), 153 L. T. 152.

168. *Add. Annotation :*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

Part VII.—Particular Provisions.

198. *Add. Annotation :*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

199. *Add. Annotation :*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

200. *Add. Annotation :*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

203. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

204a. —— **Validity.**]—By the proviso to Advertisements Regulation Act, 1907 (c. 27), s. 2, any bye-laws made under that section must provide for the exemption from the operation of such bye-laws of any hoardings or similar structures in use for advertising purposes at the time of the making of the bye-laws & of any advertisements exhibited at that time for a period not less than five years. In 1911 a county council made bye-laws under the section containing such an exemption as is there specified. In 1927 the council made further bye-laws under Advertisements Regulation Acts, 1907 (c. 27) & 1925 (c. 52), containing a similar exemption, which, however, was qualified by the words " but this exemption shall not extend to any hoarding or similar structure or any advertisement to which the bye-law (of 1911) applied " :—*Held :* (1) the bye-law in this form was valid & *intra vires*, since hoarding, etc., to which the earlier bye-law applied had already enjoyed the statutory period of exemption, & were not entitled to a second period ; while others were in no way prejudiced by the exception ; (2) a gable end of a building 25 feet high was not a " hoarding or similar structure."—Gloucester Billposting Co., Ltd. *v.* Hopkins (1932), 96 J. P. 462 ; 30 L. G. R. 488.

—— **Construction—" 12 feet in height."**]—Deft. was summoned for erecting & maintaining for advertising purposes a hoarding or similar structure in contravention of a bye-law made under Advertisements Regulation Act, 1907 (c. 27), s. 2, prohibiting the erection or maintenance for advertising purposes of any hoarding or similar structure exceeding 12 feet in height. The alleged hoarding or structure consisted of rectangular panels or advertisement boards measuring approximately 20 feet in length horizontally & 10 feet in height vertically & attached to the wall of a building. On these panels picture posters were pasted. Although the panels did not themselves exceed 12 feet in height, they were fixed in such a position on the wall as to be more than 12 feet above ground level :—*Held :* (1) the words 12 feet in height meant the measurement of the hoarding itself & not the height at which it was above ground level ; (2) *per* Avory, J., neither the wall nor the panels were hoardings or similar structures within the meaning of the bye-law, which was intended to apply to some independent structure erected on the ground & not to panels fixed to a wall.—Royle *v.* Orme (1932), 96 J. P. 468 ; 30 L. G. R. 494.

204c. **" Hoarding or similar structure "—What amounts to.**]—Gloucester Billposting Co., Ltd. *v.* Hopkins, No. 204a, *ante*.

204d. ——— ———.]—Royle *v.* Orme, No. 204b, *ante*.

204e. —— —— **View of rural scenery affected.**]—Scrimgeour *v.* Stoke-on-Trent & North Staffordshire Billposting Co., Ltd. (1936), 80 Sol. Jo. 324, D. C.

259a. **Dwelling-house—Means of communication with street—Validity of notice.**]—By sect. 129 (1) of the Essex County Council Act, 1933, it is provided that " on the deposit with a local authority of the plans of any new building intended or adapted for use as a dwelling-house . . . the local authority may by notice in writing require the provision before the building is erected sold let or occupied (as the local authority shall specify) of sufficient means of communication between the building & a street. . . ." A local authority, purporting to act under this sub-sect., served a notice upon a building owner requiring the provision of means of communication before the buildings were " erected sold let or occupied " :—*Held :* the notice was bad, inasmuch as it did not specify whether the work was to be done before the erection of the buildings, or before their sale,

PART VI. SECT. 5, SUB-SECT. 1.

ss. *Powers of arbitrator — Assessment of compensation—Where corporation had no power to expropriate claimant's land.*]—*Re* St. Michael's College & Toronto Corpn., [1928] 3 D. L. R. 710; 62 O. L. R. 410.—CAN.

PART VI. SECT. 6, SUB-SECT. 1.—B.

h. *Citations :*—For " [1923] S. C. R. 586," read " 63 S. C. R. 586."

PART VII. SECT. 2, SUB-SECT. 1.

k i. —— *Requiring licence—Valid.*]—Wroblewski *v.* McLaren (1927) 29 W. A. L. [illegible]

PART VII. SECT. 5, SUB-SECT. 1.—A.

sd. " *Store.*"]—*Held :* a gasoline service station is a " store."—*Re* Domestic Storage & Forwarding Co. & Forest Hill, [1932] O. R. 350; 3 D. L. R. 175.—CAN.

se. " *Dwelling-house* " — *Self-contained flats under one roof.*]—A municipal bye-law prescribed the minimum areas of land upon which a dwelling-house or attached houses might be built, & provided that not more than two houses should be attached together. Deft. proposed to erect, upon land having an area less than the prescribed for attached houses, but more than that prescribed for a single dwelling-house, a building which would comprise, under the one roof, five self-contained flats :—*Held :* the erection of the building would not be in contravention of the bye-law.—A.-G. (Jackman) *v.* Griffith, [1934] V. L. R. 338 ; 40 Argus L. R. [illegible] AUS.

PART VII. SECT. 5, SUB-SECT. 2.—C.

sn. " *Addition* " *to building—What amounts to—Not new gambrel roof in lieu of old pitch roof.*]—Danby *v.* Village of Wakaw & Kraus (Sask.), [1927] 3 W. W. R. 107.—CAN.

or letting, or occupation.—HORNCHURCH URBAN DISTRICT COUNCIL *v.* STANDEN (1934), 33 L. G. R. 1, D. C.

265a. WOOD URBAN DISTRICT COUNCIL *v.* LEE (1931), 145 L. T. 208; 95 J. P. 164; 29 L. G. R. 335, C. A.

Annotations:—**Apld.** Mitcham Urban District Council *v.* Seale (1933), 97 J. P. 295. **Consd.** Gumbrell *v.* Swale Rural District Council, [1936] 3 All E. R. 935.

265b. —— **Caravans.**]—An owner of land allowed certain movable structures, such as caravans, converted omnibuses & tramway cars which had been erected in a yard upon her land without the permission of the local authority to be used as dwelling-places with all the ordinary conveniences of life except sanitary conveniences:—*Held:* (1) these structures were temporary buildings within the Public Health Acts Amendment Act, 1907 (c. 53), s. 27; (2) a declaration that the local authority are entitled to pull down or remove such buildings may be made against a person affected by such pulling down or removal even though that person is not the owner of the buildings. The owners of the buildings should, however, be made defts. where they are known.

(3) Under Public Health Acts Amendment Act, 1907 (c. 53), s. 27 (4), the local authority may pull down unauthorised buildings without having first obtained an order from the ct.—MITCHAM URBAN DISTRICT COUNCIL *v.* SEALE (1933), 97 J. P. 295; 49 T. L. R. 490; 31 L. G. R. 344.

265c. —— **Converted omnibuses & tramcars.**]—MITCHAM URBAN DISTRICT COUNCIL *v.* SEALE, No. 265b, *ante*.

265d. —— **Converted omnibus & lorry.**]—Pltf. was the owner of land on which were two caravans on wheels, one an obsolete omnibus, & the other a motor-lorry; both were adapted for use for human habitation & pltf. had used them from time to time as living accommodation. The bus was found to have been brought to the place where it stood for the purpose of a cheap & handy dwelling. It stood apparently on firm ground on a plateau on top of a hill, but owing to the state of the soil down the side of the hill it was found to be nearly if not quite impossible to remove it. The motor lorry, although adapted for use as a bedroom & used as such, was found to have been brought there in the first instance for agricultural purposes. Pltf. did not apply for permission under Public Health Acts Amendment Act, 1907 (c. 53), s. 27, to erect the caravans as temporary buildings. The local authority purporting to act under their powers under the same sect. pulled down the caravans. In an action for damages for trespass:—*Held:* the bus was & the motor lorry was not a temporary building within 1907 Act, s. 27, & pltf. was entitled to damages in respect of the motor lorry.—GUMBRELL *v.* SWALE RURAL DISTRICT COUNCIL, [1936] 3 All E. R. 935; 80 Sol. Jo. 976.

266a. **Removal—Whether order necessary.**]—MITCHAM URBAN DISTRICT COUNCIL *v.* SEALE, No. 265b, *ante*.

266b. —— **Declaration of right to pull down—Against whom made.**]—MITCHAM URBAN DISTRICT COUNCIL *v.* SEALE, No. 265b, *ante*.

272. *Add. Annotation:*—*As to* (1) **Distd.** London County Council *v.* Harling Street Owners, [1935] 2 K. B. 322.

272a. —— —— —— **Jurisdiction of magistrate.**]—On an application by the London County Council to a petty sessional ct. under London Building Act, 1930 (c. clviii), s. 141 (1), for an order for the payment of the expenses of demolishing dangerous structures on the default of the owners, after due notice, to demolish them, the magistrate has jurisdiction to inquire into the reasonableness of such expenses & to determine their amount.—LONDON COUNTY COUNCIL *v.* HARLING STREET, [1935] 2 K. B. 322; 104 L. J. K. B. 377; 152 L. T. 594; 99 J. P. 213; 51 T. L. R. 373; 33 L. G. R. 196, D. C.

286. *Add. Annotation:*—*As to* (3) **Apld.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

308. *Add. Annotation:*—**Apld.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

313. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

329a. —— ——.]—By Public Health Act, 1875 (c. 55), s. 158, where the execution of any work is an offence, in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form & state as to be in contravention of the bye-law shall be deemed to be a continuing offence.

A builder was convicted for building a house without sufficient air space, contrary

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PART VII. SECT. 5, SUB-SECT. 4.—A.

so. *What is public building — Club premises used for dances—Liability of club secretary.*]—LISTER *v.* HUMPHRIES, [1928] V. L. R. 106; [1928] Argus L. R. 27.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 4.—B.

sp. *Who are owners—County court house.*]—R. *v.* TYRONE COUNTY JJ., [1928] N. I. 103.—**IR.**

PART VII. SECT. 5, SUB-SECT. 6.—B. (a).

sq. *Bye-law providing for formation of residential area—Permitting erection of shops in specified streets.*]—BARNES *v.* COBURG CITY, [1928] V. L. R. 334; [1928] Argus L. R. 197.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 9.—A.

312 i. *For* "*Not retrospective*" read "*Retrospective.*"

312 ii. ——.]—*Held:* the mere deposit of plans & the making of an application for a permit under the then existing building bye-law, while constituting a *primâ facie* right to have the plans approved, was not enough to prevent the council from exercising its statutory power to pass a bye-law to prevent the erection of buildings of the character proposed, within a defined area.—*Re* UPPER CANADA ESTATES & MACNICOL, [1931] 4 D. L. R. 459; O. R. 465; *affd.*, [1932] 2 D. L. R. 528.—**CAN.**

sr. "*Store or manufactory*"—*Restaurant.*]—Pltf., owner of a hospital & swimming baths in the city of T., proposed to add to his group of buildings a new building & to use part of it as a restaurant in connection with the hospital & baths:—*Held:* a restaurant is not a "store or manufactory" within a bye-law of the city forbidding the erection or use in a certain area of a building for, *inter alia*, "stores" or "manufactories."—MCCORMICK *v.* TORONTO (1923), 54 O. L. R. 603.—**CAN.**

ss. *Amendment—What court will consider.*]—The ct. will consider the interests of owners who bought property because of the restrictions where it is considering the grant of an amendment of building restrictions.—*Re* BEARDMORE, [1935] 4 D. L. R. 562; O. R. 526.—**CAN.**

sz. *Must be certain.*]—SPRINGBANK MUNICIPAL DISTRICT *v.* RENDER, [1936] 2 W. W. R. 430; 4 D. L. R. 193.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 9.—C.

329 i. *Continuing offence—Erection of building without approval of plans—No notice of disapproval served by council.*]—*Held:* the contravention of the bye-laws was a continuing offence.—PORTSTEWART URBAN DISTRICT COUNCIL *v.* HAMILL, [1927] N. I. 181.—**IR.**

to a bye-law. The builder was not the owner, & had not been in possession, nor had any right to go on the premises after the conviction. Afterwards the builder was prosecuted for a continuing offence in respect of the continuance of the work in the same state, in contravention of the bye-law, & convicted. On a case stated:—*Held:* the builder, having no power to remedy the breach complained of, was not guilty of a continuing offence, & the conviction was wrong.—WELSH & SON *v.* WEST HAM CORPN., [1900] 1 Q. B. 324; 69 L. J. Q. B. 114; 82 L. T. 262; 16 T. L. R. 114; 19 Cox, C. C. 480.

333a. Relaxation of bye-law—Under Housing Act, 1925 (c. 14), s. 99.]—WILLIAM BEAN & SONS, LTD. *v.* FLAXTON RURAL DISTRICT COUNCIL, No. 121a, *ante*.

335a. Fees—How recoverable.]—A weekly tenant brought an action against his landlord for special damages in respect of injury to his wife caused by the breach of the landlord's duty to keep the premises in repair, & the county ct. judge awarded a sum for damages which included an amount claimed by the London County Council for the wife's expenses at a hospital provided by them. On appeal:—*Held:* (1) whether or not the hospital expenses were recoverable by the council from the tenant, more than six months having elapsed since the discharge of the patient from hospital, the county ct. judge was entitled in assessing the special damages to take these expenses into account & to award their amount for payment over to the council; (2) the hospital expenses were still recoverable by the council & therefore on this ground also their amount had been properly included in the special damages. The provision in Local Govt. Act, 1929 (c. 17), s. 14, giving the council the like power to provide hospitals as was conferred on local authorities by Public Health Act, 1875 (c. 55), s. 131, did not operate to incorporate sect. 132 of the 1875 Act, which gives power to recover hospital expenses at any time within six months of the patient's discharge from hospital, & the duty imposed by 1929 Act, s. 16 (1), on the council to recover these expenses impliedly carried with it the power to recover these expenses in any ct. of competent jurisdiction, a power additional to the power to recover these expenses summarily conferred by 1929 Act, s. 16 (2), & not subject to the six months' limitation applicable to summary proceedings.—ALLEN *v.* WATERS & Co., [1935] 1 K. B. 200; 104 L. J. Ch. 249; 152 L. T. 179; 99 J. P. 41; 51 T. L. R. 50; 78 Sol. Jo. 784; 32 L. G. R. 428, C. A.

Annotation:—As to (2) **Refd.** Middlesex County Council *v.* Nathan, [1937] 2 K. B. 272.

335b. —— Recovery from person liable to maintain —Pleading.]—By Poor Law Act, 1930 (c. 17), s. 14 (1), & s. 19 (2), a county council may obtain a maintenance order upon relations liable under the Act to maintain any person whose relief would be chargeable "if possessed of sufficient means." By Local Govt. Act, 1929 (c. 17), s. 5, the county council have powers to provide assistance otherwise than by poor relief, including (sect. 14) the power to provide hospitals conferred on local authorities by Public Health Act, 1875 (c. 55), s. 131; & (sect. 16) it is the duty of the council to recover from any person maintained in any institution or "from any person legally liable" to maintain that person such part, if any, of the expenses "having regard to their financial circumstances" as they are in the opinion of the council able to pay:—*Held:* the words "legally liable" in Local Govt. Act, 1929 (c. 17), s. 16, include persons rendered liable for the cost of maintenance by statute, & not only those liable at common law; but, before an order for payment can be made upon any person under that sect., it is incumbent upon the council to show that deft. is possessed of sufficient means to pay the amount claimed.—MIDDLESEX COUNTY COUNCIL *v.* NATHAN, [1937] 2 K. B. 272 [1937] 3 All E. R. 283; 106 L. J. K. B. 818 157 L. T. 24; 101 J. P. 441; 81 Sol. Jo. 553 35 L. G. R. 341.

339. *Add. Annotation:—Generally,* **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 325.

PART VII. SECT. 6, SUB-SECT. 1.—B.

352 ii. —— —— *Employer—Evidence of contract for medical & surgical care of employees.*]—QUEEN VICTORIA MEMORIAL HOSPITAL *v.* BOOTH, LTD., [1927] 4 D. L. R. 1016; 61 O. L. R. 293.—**CAN.**

352 iii. —— —— *Patient admitted as resident of city—But having legal settlement elsewhere.*]—On the certificate of her physician that she was a resident of the City of Sydney, G. was admitted to the Sydney hospital as a patient for treatment. It was discovered some time later that G. had a legal settlement at Glace Bay, & she was removed there & accepted. In the meantime there was due to the Sydney hospital the sum of $194.5 for hospital services, including drugs & medicines. The amount due was admitted:—*Held:* the City of Sydney, paying the claim of the hospital, was entitled to indemnity against deft., & judgment should be entered in favour of pltf. for the amount claimed with costs.—SYDNEY CITY *v.* GLACE BAY TOWN, [1928] 1 D. L. R. 729; 59 N. S. R. [illegible]

352 iv. —— —— *Injured prisoner.*]—An injured prisoner is not liable to a hospital for medical treatment received against his will while under arrest.—SOLDIERS MEMORIAL HOSPITAL *v.* SANFORD, [1934] 2 D. L. R. 334; 7 M. P. R. 334.—**CAN.**

352 v. —— *Charge on patient's land —Gives no charge on land of husband for treatment of wife.*]—*Re* LAND TITLES ACT, *Re* MCCRANEY RURAL MUNICIPALITY CAVEAT, [1922] 2 W. W. R. 898; 66 D. L. R. 819.—**CAN.**

352 vi. —— —— *No precedence over prior mortgage.*] — MANUFACTURERS LIFE INSURANCE CO. *v.* FLOWERY PLAINS (No. 33), [1924] 1 D. L. R. 66; 20 Alta. L. R. 100; [1923] 3 W. W. R. 1361.—**CAN.**

352 vii. —— *Action to recover—Condition precedent.*]—Proof of the written order required by Town Act, 1927, s. 153 (4), is essential to the maintenance of an action under s. 153 (9) for the recovery by a municipality of the value of the treatment & care furnished in a municipal hospital to an indigent sick person.—SISTERS OF CHARITY OF THE PROVIDENCE GENERAL HOSPITAL OF DAYSLAND *v.* MARTY, EDMONTON CITY *v.* MARTY (Alta.), [1929] 4 D. L. R. 797; 3 W. W. R. 265.—**CAN.**

352 viii. —— —— *Implied contract.*]—VERNON JUBILEE HOSPITAL *v.* POUND, [1932] 2 D. L. R. 813.—**CAN.**

k i. —— *For treatment of indigents—Emergency.*]—Where an indigent resident of a rural municipality was admitted to a hospital, as an emergency case, & the matron of the hospital called in a doctor on the rota to treat the case, held that, under Rural Municipality Act, R. S. S., 1920, c. 89, he was entitled to recover from the rural municipality his reasonable charges for necessary services rendered the patient.—COLES *v.* WAWKEN RURAL MUNICIPALITY, [1928] 3 W. W. R. 532; *affd.*, [1929] 4 D. L. R. 1071; 1 W. W. R. 663.—**CAN.**

k ii. —— —— ..]—The phrase "in case of emergency" in sect. 208 (1) of Rural Municipality Act, R. S. S., 1930, which imposes a liability on rural municipalities for hospital services [illegible] emergency, [illegible] need, some condition of the patient requiring his immediate admission to a hospital.—PRINCE ALBERT CITY *v.* CANWOOD RURAL MUNICIPALITY, [1931] 2 W. W. R. 36; 2 D. L. R. 955.—**CAN.**

k iii. —— —— *Contract—Fulfilment of statutory conditions.*]—The council of deft. municipality passed a resolution authorising the reeve & secretary to "handle the case" of a boy who

had been admitted to pltf.'s hospital, &, following a report from the secretary as to his interview with pltf., the council passed another resolution authorising the payment of a certain sum per week while the boy continued in the hospital. Pltf. sued for the balance of an amount alleged to be due to him under said arrangement:—*Held:* pltf. was entitled to assume in entering into the contract that the conditions necessary to enable the council to act had been fulfilled & was not obliged to prove at the trial that the patient came within them.—BUDD *v.* CAMBRIA RURAL MUNICIPALITY, [1931] 1 W. W. R. 177; 2 D. L. R. 258.—CAN.

k iv. —— —— *Tubercular patients.*]—Sect. 15 (2) of Sanatoria for Consumptives Act, R. S. O., 1927, is not impliedly repealed by sect. 21 of Hospitals & Charitable Institutions Act, R. S. O., 1927. Pltf. assocn., therefore, held entitled to recover from deft. municipality for treatment of an indigent patient resident in the municipality.—NATIONAL SANATORIUM ASSOCN. *v.* BRACEBRIDGE, [1930] 4 D. L. R. 417; 65 O. L. R. 623; *revsg.*, 65 O. L. R. 395.—CAN.

k v. —— —— ——.]—Prior to the patient in question being admitted to a hospital in Fort William, she had not become a resident in Fort William, within the meaning of Sanatoria for Consumptives Act, 1931, because she had only been in the City of Fort William some six weeks & therefore the City was not responsible under the statute for the cost of her maintenance.—TORONTO HOSPITAL FOR CONSUMPTIVES *v.* FORT WILLIAM CITY & O'CONNOR TOWNSHIP, [1933] O. R. 183; 1 D. L. R. 770.—CAN.

k vi. —— ——.]—It is only in cases where the municipality has authorised the treatment or attendance that it can be held liable under Rural Municipality Act, 1920, to a physician for services rendered by him to an indigent.—BLACK *v.* EDENWOLD RURAL MUNICIPALITY OF, [1931] 1 D. L. R. 577; [1930] 3 W. W. R. 529; 26 S. L. R. 136.—CAN.

k vii. —— ——.]—Where a city owns a hospital & the hospital board is not a body corporate, but merely a managing body which the city may appoint to conduct the hospital, the right of action to recover for the treatment of indigents which arises under Rural Municipality Act, ss. 198, 199, is vested in the city, not in the hospital board. In such an action the fact that deft. municipality did not answer the notice which the hospital board, as required by sect. 199 (1) (*a*), sent to it, does not preclude it from disputing the alleged residence & indigence of the patients in question.—MOOSE JAW, CITY OF *v.* RURAL MUNICIPALITY OF TERRELL (Sask.), [1930] 2 D. L. R. 81; [1929] 3 W. W. R. 573; 24 S. L. R. 170.—CAN.

k viii. —— ——.]—A physician or surgeon cannot hold a municipal district liable for services rendered a resident indigent in the absence of the written order required by sect. 150 (4) of Municipal District Act, 1926, except where under sect. 150 (5) the order may be dispensed with in respect of a first visit in a case of sudden & urgent necessity; but even in the latter case the practitioner who voluntarily renders such services cannot hold the district liable therefor unless they have been sanctioned by the district.—WAGNER *v.* PINE LAKE MUNICIPAL DISTRICT, [1931] 2 W. W. R. 481; 4 D. L. R. 481; 25 Alta. L. R. 473.—CAN.

k ix. —— —— *Whether village liable.*]—Sect. 179 of Village Act, R. S. S., 1920, does not render a village liable to a physician for medical services rendered to an indigent. In order for a village to be held to be under such liability, there must be proof of a contractual relationship between the village & the physician.—JACKES *v.* ST. WALBURG VILLAGE, [1931] 3 W. W. R. 534.—CAN.

k x. —— ——.]—Under Hospitals Act, R. S. A., 1922, a municipal district is not liable to a hospital for hospital services rendered an indigent resident of the district unless they have been authorised by the written order of the municipal authority or, where the case was one of urgent & sudden necessity, by a verbal order.—EDMONTON HOSPITAL BOARD *v.* MUNICIPAL DISTRICT OF LIBERTY, [1932] 1 W. W. R. 599; 2 D. L. R. 374; 26 Alta. L. R. 166.—CAN.

k xi. —— ——.]—Rural Municipality Act, R.S.S., 1930, s. 223 (4), does not create a liability on a rural municipality to a physician to pay for services rendered by him to an indigent where they have not been authorised by the municipality, even where the case is one where under sub-sect. (4) a written order may be dispensed with.—ROSE *v.* BLAINE LAKE RURAL MUNICIPALITY, [1935] 3 W. W. R. 15.—CAN.

k xii. —— ——.]—Where an indigent patient in pltf.'s hospital had her leg amputated therein, & the hospital notified, in accordance with sect. 18 of Hospital Aid Act, 1933, deft. town, of which she was a resident, to remove her, but the town did not do so for several months:—*Held:* it was liable to the hospital for the *per diem* fee prescribed by sect. 18 for her care while she remained in the hospital.—ST. ANTHONY'S HOSPITAL *v.* FLIN FLON TOWN, [1937] 1 W. W. R. 255; 1 D. L. R. 811.—CAN.

k xiii. —— *Municipality of settlement—Necessity for compliance with Local Hospitals Act (N. B.).*]—Municipality of settlement is not liable for hospital treatment of a pauper patient unless the requirements of the Local Hospitals Acts (N. S.) are complied with.—SYDNEY *v.* NORTH SYDNEY, [1934] 3 D. L. R. 525; 8 M. P. R. 178.—CAN.

k xiv. —— —— *Necessity for actual payment.*]—A municipality has no claim against a municipality of settlement for hospital treatment of a pauper patient until payment has actually been made to the hospital.—SYDNEY *v.* DOMINION, [1934] 3 D. L. R. 577.—CAN.

k xv. —— *Injury to infant—Sum paid into court—Right of municipality to recover out of sum.*]—An action for damages for injuries to an infant was settled by the payment into ct. of $1,000 which was accepted on behalf of the infant. The infant had been taken to a hospital forthwith after incurring said injuries & the hospital's account for its services having been paid by the city of Winnipeg, as sect. 12 of Hospital Aid Act, 1933, required it to do, it applied under sect. 108 (2) of Child Welfare Act 1936, for payment thereof out of said fund. The infant's father was unable to pay for the medical services, & there was no other fund from which to pay the account:—*Held:* the city's application should be allowed.—*Re* OBERT & HOSPITAL AID ACT, [1936] 3 W. W. R. 747; 44 Man. L. R. 357.—CAN.

4.—Housing of Working Classes.

XXXVIII., p. 212.)

See Housing Act, 1930 (c. 39).

470. *Add. Annotations :—As to* (1) **Distd.** Cohen *v.* West Ham Corpn., [1933] Ch. 814. **Refd.** Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

471. *Add. Annotation :*—**Distd.** *Re* Bowman, South Shields (Thames Street) Clearance Order, 1931 (1932), 96 J. P. 207.

481a. Power to make order when satisfied that house unfit for habitation—Meaning of "satisfied."]—By Housing Act, 1930 (c. 39), s. 19 (1), a local authority, if, upon consideration of an official representation or a report from their officers or other information in their possession, they are "satisfied" that a dwelling-house is unfit for human habitation & is not capable at a reasonable expense of being rendered so fit, may make a demolition order :—*Held :* (1) "satisfied" must mean *primâ facie* satisfied. It was the duty of the local authority to treat that satisfaction merely as a temporary satisfaction on the information then before them & open to be modified or changed should the owner of the house give them further information or make a further offer to do certain works ; (2) an appeal lay to a county ct. judge against a demolition order made by a local authority both on questions of fact & on questions of law.—Fletcher *v.* Ilkeston Corpn. (1931), J. P. 7 ; 48 T. L. R. 44 ; 30 L. G. R. 6, C. A.

485a. Acceptance of undertaking to convert.]—Two back-to-back dwelling-houses, belonging to one owner, & of a type suitable for occupation by persons of the working classes, were found to be unfit for human habitation & that neither could, by itself, be rendered so fit. The local authority rejected a proposal by the owner to turn the two houses into one, & made a demolition order. On appeal to the county ct. the judge found that the two houses could be combined into one at a reasonable expense & that the combined house would be suitable for occupation by persons of the working classes, & he accepted an oral offer of the owner to carry out the work :—*Held :* there was nothing in Housing Act, 1930 (c. 39), s. 19, to prevent the local authority accepting the undertaking of the owner to turn the two houses into one ; the county ct. judge was entitled to accept the undertaking, which should, however, have specified the period within which the work should be carried out. —Johnson *v.* Leicester Corpn., [1934] 1 K. B. 638 ; 103 L. J. K. B. 541 ; 151 L. T. 8 ; 98 J. P. 165 ; 50 T. L. R. 214 ; 78 Sol. Jo. 122 ; 32 L. G. R. 147, C. A.

491a. —— —— Challenge of—Necessity for appeal.]—On Apr. 1, 1932, the council's medical officer of health, acting under Housing Act,

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PART VII. SECT. 6, SUB-SECT. 2.—C.

sr. *Liability of municipality to pay nurses—& those furnishing necessities at request of health officer.*]—Cameron *v.* Dauphin (1904), 14 Man. L. R. 573 ; 24 C. L. T. 99.—**CAN.**

PART VII. SECT. 10.

st. *Dangerous slope adjoining street—Liability of owner to pay cost of fencing—Erected by local authority.*]—Buckie Magistrates *v.* Seafield's Dowager Countess Trustees, [1928] S. C. (Ct. of Sess.) 525.—**SCOT.**

PART VII. SECT. 11, SUB-SECT. 4.—B. (a).

476 **t.** *Disobedience of order—Letting by husband of proprietrix.*]—The proprietrix of two houses, with regard to which a closing order was then operative, was charged with a contravention of Housing (Scotland) Act, 1925 (c. 15), s. 9, in respect that she, "being the owner within the meaning of the Act," had let the houses as dwelling-houses, or alternatively had permitted them to be so occupied. It appeared that the houses, which had been closed in 1928 under a closing order, remained unoccupied until 1930, when, by permission of the husband of the accused, they were occupied by tenants, from whom he collected rents. It further appeared that, for the period involved in the case, the husband was generally known to act as factor for his wife in the management of her properties, including the houses in question. On these facts the Sheriff-substitute found the charge not proven :—*Held :* in the absence of an express finding that the husband was in fact his wife's factor, & that, in that capacity, he had let the subjects with his wife's knowledge & approval, it could not be said that she had been proved to have let them, or permitted them to be occupied, within the meaning of the statute.—Haig *v.* Thompson, [1931] S. C. (J.) 29.—**SCOT.**

sp. *Whether owner may be heard.*]—An owner of a building has no right to be heard by a local authority before it issues a closing order under sect. 58 of Public Health Act, 1902, declaring the building to be unfit for human habitation or occupation. *Semble :* where, subsequently to the issuing by it of a closing order, a local authority refuses an application by an owner to be heard as to whether the building is unfit for human occupation, &, if so, whether the repairs specified in the order are necessary, a *mandamus* will lie.—*Re* Central Illawarra Shire Council, *Ex p.* Ballantine (1936), 12 L. G. R. 137.—**AUS.**

PART VII. SECT. 11, SUB-SECT. 4.—B. (b).

sk. *House declared insanitary—Validity of declaration — Prohibition.*]—Resps., a corporate body constituted by the Singapore Improvement Ordinance, 1927, & entrusted with the duty of carrying out the provisions of the Ordinance, made a declaration that a dwelling-house belonging to applts. was insanitary within sect. 57 of the Ordinance. Having heard objections by applts. to the declaration, resps. in due course submitted it for consideration by the Governor in Council in accordance with the provisions of sect. 59 of the Ordinance. Applts. thereupon applied for a writ of prohibition to prohibit resps. from proceeding further in respect of the declaration, on the ground (*inter alia*) that they had acted *ultra vires* in making it :—*Held :* (1) the grounds on which resps. made the declaration did not justify it, & they were therefore acting beyond their powers & the declaration was not enforceable ; (2) in deciding whether, after considering the objections raised by applts. against the declaration, it should be revoked or submitted to the Governor in Council under sect. 59 (1) of the Ordinance, resps. were exercising quasi-judicial functions ; (3) a writ of prohibition should issue. Although the declaration had been submitted to the Governor in Council by resps. they were not *functus officio* because in the exercise of their quasi-judicial functions they had still (*inter alia*) the discretionary power under sect. 61 (1) of the Ordinance, if the Governor in Council approved the declaration, of requiring the applts. to demolish the building. There was, therefore, something upon which prohibition could still operate, & the application for the writ was not made too late ; (4) when a house is stated to be unfit for human habitation, it is the whole house that is being so described.—Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] A. C. 898 ; [1937] 3 All E. R. 324 ; 106 L. J. P. C. 152 ; 157 L. T. 358 ; 53 T. L. R. 829 ; 81 Sol. Jo. 783, P. C.—**STRAITS SETTLEMENTS.**

sm. *Validity of demolition order—Effect of delay.*]—On June 10, 1931, a local authority served upon the owner of dwelling-houses a notice stating that the houses were unfit for habitation, & that a meeting of the authority would be held on July 13, when the owner would be entitled to be heard upon the matter. The owner did not attend the meeting, & no undertaking regarding the houses was given. At the time when the notice was served there were tenants in the houses for whom accommodation had to be provided. Owing to difficulties which occurred in obtaining a site for, & in building, new houses for the tenants, no demolition order was served upon the owner until March 14, 1934. The owner maintained that the order, in view of the delay in issuing it, did not comply with the provisions of Housing (Scotland) Act, 1930 (c. 40), s. 16, & was invalid :—*Held :* the demolition order was validly made, in respect that sect. 16 did not impose upon the authority a duty of making the order within a specified time, & that the delay was not unreasonable in the circumstances, & had occasioned no prejudice to the owner of the houses.—Brown *v.* Bonnyrigg & Lasswade Magistrates, [1936] S. C. 258.—**SCOT.**

1930 (c. 39), s. 17, reported to their Housing Committee that seven houses were unfit for human habitation & capable at a reasonable expense of being rendered fit: the committee reported that, having considered that representation, it recommended service upon the landlords of notices under the section requiring the execution of works upon the houses; on Apr. 26 the council adopted the committee's report, & on Apr. 28 seven notices were served on the owner's agents (the persons "having control" within sect. 17 (2)) requiring them within fifty-six days to execute the works therein specified. Pltfs. who knew that the notices had been served, bought, on or about Sept. 8, 1932, four of the seven houses, on which none of the work, specified in the notices served in respect of them had yet been done. A requirement in one notice was "to take down & re-build the front, back main & back addition walls where necessary; . . . rake out & re-point the walls of the water-closet, . . ."; another, in two notices, was to "take down & re-build the front & back addition walls where necessary & re-point the remainder of walls (*sic*), where necessary"; & another, in the fourth notice, was to "take down & re-build the front, back addition & water-closet walls where necessary; . . . re-point around reveals of front door; . . ." Pltf. did work on all the houses but rebuilt no walls (though he repointed all or most of them), & all the work that he did was finished by Oct. 14. He contended that he had complied with the notices, which the council denied: & there was evidence that the council's senior sanitary inspector stated that the council would enter upon the houses, rebuild the walls, & take off the roofs. Pltf. did not appeal to the county ct. against the notices, as he could have done under sect. 22 of the Act, with the result that they became, under that sect., operative on the expiration of twenty-one days after service & final & conclusive as to any matters which could have been raised on such an appeal. He alleged that they were invalid, on the ground that there was no sufficient proof that the council had properly considered what it was necessary for them to consider under sect. 17 of the Act before serving them. He accordingly commenced the present action, claiming declarations that the notices were invalid, & that the council were not entitled to enter upon the houses, to pull down their walls or to take off their roofs, & an injunction to give effect to the declarations. Evidence was given for pltf. that the use of the words "where necessary" in notices of the kind before the ct., though not unusual, was not common:—*Held:* (1) by the Ct. of Appeal, in the absence of any evidence one way or another, the ct. would not assume that the council had not properly discharged the duties imposed upon them by sect. 17 of the Act, the proper course for pltf. to adopt if he challenged the validity of the notices was to appeal to the county ct. under sect. 22 of the Act within the twenty-one days thereby limited, & as he had not done so the notices must be regarded as valid notices under sect. 17.

By MAUGHAM, J., (2) local authorities must exercise discretion as to the nature of works to be specified in notices served under sect. 17 (1) of the Act, which they can do through their appropriate committees or persons chosen thereby; (3) the notices required pltf. to take down & rebuild only those parts of the walls which needed rebuilding; (4) local authorities have no power, under sect. 18 of the Act relating to the enforcement of notices served under sect. 17 (1), to enter upon & do work in dwelling-houses, or give notice in writing of intention to do so, unless non-compliance with notices given under sect. 17 (1) can be shown, & pltf. was therefore free to prove, if he could, that he had complied with the notices, & thus prevent the council from proceeding under sect. 18.—COHEN *v.* WEST HAM CORPN., [1933] Ch. 814; 102 L. J. Ch. 305; 149 L. T. 271; 97 J. P. 155; 31 L. G. R. 205, C. A.

491b. —— —— **Contents.**]—COHEN *v.* WEST HAM CORPN., No. 491a, *ante*.

491c. —— **Enforcement—Execution of works by local authority—Conditions precedent.**]—COHEN *v.* WEST HAM CORPN., No. 491a, *ante*.

502a. —— —— **From owner—Who is owner.**]—A solr., acting for the administratrix of a deceased person's estate, employed a builder to collect the rents of three working-class houses, & to pay the proceeds over to him. The local authority having executed works under Housing, Town Planning, etc. Act, 1919 (c. 35), s. 38 (*see, now*, Housing Act, 1925 (c. 14), s. 3), sought to recover the expenses from the solr. as "owner" within sect. 38:—*Held:* he was the owner, though he was not the person who received the rent directly from the tenants, as there might be more than one owner, & every one receiving the rent, as rent, in succession became the "owner."—WATTS *v.* BATTERSEA CORPN., [1929] 2 K. B. 63; 98 L. J. K. B. 273; 140 L. T. 594; 93 J. P. 137; 45 T. L. R. 224; 73 Sol. Jo. 143; 27 L. G. R. 307, C. A.

502b. —— —— **Statutory charge—Incidence of charge.**]—The charge created by Housing Act, 1925 (c. 14), s. 3, is not a charge on the interests of the rack-rent owner only, but is a charge upon the entirety of the interests in the premises.—PADDINGTON BOROUGH COUNCIL *v.* FINUCANE, [1928] Ch. 567; 97 L. J. Ch. 219; 139 L. T. 368; 92 J. P. 68; 26 L. G. R. 283.

Annotations:—**Folld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622. **Apld.** Bromley Rural District Council *v.* Brooker. Orpington Urban District Council *v.* Brooker, [1934] W. N. 237.

502c. —— —— —— ——.]—The charge given to a local authority in respect of repairs by Housing Act, 1925 (c. 14), s. 3, is a charge on the whole of the proprietary interests in the premises, & ranks in priority to a fee farm rent already issuing out of the premises.—BRISTOL CORPN. *v.* VIRGIN, [1928] 2 K. B. 622; 97 L. J. K. B. 522; 139 L. T. 375; 92 J. P. 145; 44 T. L. R. 546; 26 L. G. R. 443, D. C.

502d. —— —— **Demand for payment—Necessity for signature by town clerk.**]—On the default of defts. to render fit for human habitation two blocks of houses, numbering twenty-three houses altogether, which were under their control, after proper notices served on them, the pltf. corpn., under Housing Act, 1930 (c. 39), s. 18 (1), did the work themselves, & served a demand for payment on

defts. under Housing Act, 1930 (c. 39), s. 18 (3). The claim was signed by one of pltfs.' officials, not the town clerk. It claimed two sums, one in respect of each block of houses, giving the totals of the different items of expenditure, labour & materials, but there was no demand for the expenditure on each or any house separately. On these demands being made defts. did not appeal to the county ct. under sect. 22 (1) (*b*) of 1930 Act:—*Held:* (1) the demands were bad, firstly, in that they were not signed by the town clerk as directed by Housing Act, 1925 (c. 14), s. 120 (2), which by sect. 65 (1) of 1930 Act is to be construed as one with the latter Act; (2) because they did not specify the sums spent on each separate house; (3) further, the fact that defts. did not appeal to the county ct. did not make the demands good demands, & " demand " in sect. 22 (1) (*b*) of 1930 Act means a valid demand. Defts., therefore, were not bound to appeal to the county ct.—WEST HAM CORPN. *v.* BENABO (CHARLES) & SONS, [1934] 2 K. B. 253; 103 L. J. K. B. 452; 151 L. T. 119; 98 J. P. 287; 50 T. L. R. 392; 78 Sol. Jo. 298; 32 L. G. R. 202.

502e. —— —— —— **Must specify sum spent on each house.**]—WEST HAM CORPN. *v.* BENABO (CHARLES) & SONS, No. 502d, *ante*.

502f. —— —— —— **Failure to appeal to county court—Effect on invalid demand.**]—WEST HAM CORPN. *v.* BENABO (CHARLES) & SONS, No. 502d, *ante*.

(*e*) *Clearance Areas.*

See Housing Act, 1930 (c. 39), s. 1 (1).

502g. **What is " dwelling-house "—Common lodging-house.**]—A common lodging-house is a " dwelling-house " within Housing Act, 1930 (c. 39), s. 1 (1), so as to come within the scope of the section. The fact that the people who dwell in it are of such a character & live under such conditions as to make it a common lodging-house does not cause it to cease to be a dwelling-house.—*Re* ROSS & LEICESTER CORPN. (1932), 96 J. P. 459; 30 L. G. R. 382.

502h. **Validity of clearance order—Mistake in number of days allowed for vacation—Confirmation with modification by Minister of Health.**]—A clearance order made by a local authority under Housing Act, 1930 (c. 39), purported to require that certain of the buildings to which it related should be vacated in a less number of days from the date on which it would become operative than the period of twenty-eight days from that date as required by the Act. The Minister of Health confirmed the order with the modification that the less number of days was altered to twenty-eight days. The order did not include a " starred " note to the form of clearance order prescribed by Provisional Regulations, 1930, made under the Act setting forth the substance of sect. 11 of the Act. On an application to the High Ct. under sect. 11 (3) by the owner of these buildings as a person aggrieved by the order to question its validity in regard to them:—*Held:* (1) the mistake as to the number of days in the order as originally made did not render it an order which was not within the powers of the Act, or prevent it from applying to these buildings; the order having been confirmed by the Minister with the above-mentioned modification, it could not be said that the requirement of the Act as to the number of days was not complied with by the order; &, therefore, that mistake in the order as originally made was not a ground on which the High Ct. should quash the order in so far as it affected these buildings; (2) the omission of the starred note did not render the order an order which was not within the powers of the Act; assuming that it was a requirement of the Act that that note should be included in the order, there was no evidence in the case before the ct. to show that the interests of appct. had been substantially prejudiced by that requirement not having been complied with; &, therefore, the omission of the note was not a ground on which the High Ct. ought to quash the order. *Semble:* that it was not a requirement of the Act that the starred note should be included in the order.

(3) The High Ct. will entertain an application under Housing Act, 1930 (c. 39), s. 11 (3), by a person aggrieved by a clearance order, who desires to question its validity only on the grounds mentioned in that sub-section or either of them, namely, that the order is not within the powers of the Act, or that any requirement of the Act has not been complied with, or possibly on the further ground that there is no evidence to support the order; & not on the ground that the evidence is insufficient to support the order.—*Re* BOWMAN, SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931, [1932] 2 K. B. 621; 101 L. J. K. B. 798; 147 L. T. 150; 96 J. P. 207; 48 T. L. R. 351; 76 Sol. Jo. 273; 30 L. G. R. 245.

Annotations:—As to (3) **Consd.** Falmouth (Well Lane, Sedgmonds Court & Smithwick Hill) Clearance Order, 1936, Halse' Application, [1937] 3 All E. R. 308; Halse *v.* Minister of Health (1937), 35 L. G. R. 421. *Generally*, **Refd.** *Re* Mason (1934), 50 T. L. R. 392.

502j. —— **Omission of starred note relating to Housing Act, 1930 (c. 39), s. 11.**]—*Re* BOWMAN, SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931, No. 502h, *ante*.

502k. —— **Alternative accommodation—For residential & not business purposes.**]—On an application by a person who was the owner of business premises affected by a clearance order, & who complained that the authority had not satisfied themselves with regard to the provision of business accommodation for the persons to be displaced:—*Held:* Housing Act, 1930 (c. 39), s. 1 (1), proviso (*a*), applies only to residential accommodation & there is no duty on the authority to satisfy themselves that suitable business accommodation exists or can be provided.—*Re* GATESHEAD COUNTY BOROUGH (BARN CLOSE) CLEARANCE ORDER, 1931, [1933] 1 K. B. 429; 102 L. J. K. B. 82; 148 L. T. 264; 97 J. P. 1; 49 T. L. R. 101; 77 Sol. Jo. 12; 31 L. G. R. 52.

502l. —— **Confirmation of clearance order—Powers of Minister of Health.**]—Where a local authority has made a clearance order under Housing Act, 1930 (c. 39), s. 1, & has submitted the order to the Minister of Health for confirmation, & objections are made thereto by the owners, the Minister must comply with the provisions of 1930 Act, Sched. I., para. 4, & cause a public local inquiry to be held, & consider any objections not withdrawn & the report of the person who held the inquiry. In deciding whether or not

he shall confirm the clearance order the Minister occupies a quasi-judicial function & must not take into consideration any matters other than those mentioned in para. 4 of Sched. I. If the Minister holds a private inquiry to which the owners are not invited or takes into consideration ex parte statements with which the owners have had no opportunity of dealing he is not acting in accordance with correct principle of justice, & his confirmation of the clearance order would not be within the powers conferred upon him by the Act, & the owners would be entitled as being persons aggrieved to have the confirmation order quashed.—ERRINGTON *v.* MINISTER OF HEALTH, [1935] 1 K. B. 249; 104 L. J. K. B. 49; 152 L. T. 154; 99 J. P. 15; 51 T. L. R. 44; 78 Sol. Jo. 754; *sub nom. Re* JARROW NORTH WARD (NO. 1) CLEARANCE ORDER, 1933, *Ex p.* ERRINGTON, 32 L. G. R. 481, C. A.

Annotations:—**Apld.** Frost *v.* Minister of Health, [1935] 1 K. B. 286. **Distd.** Offer *v.* Minister of Health, [1936] 1 K. B. 40; Horn *v.* Minister of Health, [1936] 2 All E. R. 1299. **Refd.** Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337; Marriott *v.* Minister of Health, [1936] 2 All E. R. 865; Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

502m. —— —— ——.]—FROST *v.* MINISTER OF HEALTH, No. 502v, *post.*

502n. —— —— ——.]—The Minister of Health has, under Housing Acts of 1925 & 1930, the right to give advice to local authorities & to make inquiries in order to determine whether any powers under the Acts should be put in operation in any area, notwithstanding that under Housing Act, 1930 (c. 39), s. 2, the duty is imposed upon the Minister of deciding in a semi-judicial capacity whether or not a clearance order made by a local authority should be confirmed. The representatives of a local authority applied to the Ministry of Health for advice with regard to the preparation of their 1933 five-year slum clearance programme & saw C., one of the Minister's chief housing & town planning inspectors. C. declined to give any advice as he was not sufficiently acquainted with the conditions in the borough. He subsequently visited the borough & inspected the exteriors of properties in various parts of the borough in co. with the chief sanitary inspector of the borough, & C. told the sanitary inspector that the properties which he had seen appeared *primâ facie* to be the class of property which other local authorities were including in clearance orders, but that he could not express any definite opinion nor was he in a position in any way to bind the Minister. The local authority subsequently made a clearance order in respect of certain properties the owners of which objected to the confirmation of the order. At the public local inquiry the above facts were disclosed. The clearance order was confirmed by the Minister, but C. took no part in deciding whether or not the order should be confirmed. The owners appealed under sect. 11 of 1930 Act on the ground that the Minister in confirming the order had failed to act judicially:—*Held:* upon the facts, the statement of opinion by C., which did not bind the inspector who held the inquiry, nor the Minister of Health, was in no way inconsistent with the exercise of the duty imposed upon the Minister of deciding *in a semi-judicial capacity, after a consideration of the objections & the report of the inspector who held the public local inquiry,* whether or not the clearance order made by the local authority should be confirmed, & the objectors had no cause of complaint against the confirmation of the order.—OFFER *v.* MINISTER OF HEALTH, [1936] 1 K. B. 40; 105 L. J. K. B. 6; 153 L. T. 270; 51 T. L. R. 546; 79 Sol. Jo. 609; 33 L. G. R. 369, C. A.

Annotation:—**Consd.** Horn *v.* Minister of Health, [1936] 2 All E. R. 1299, C. A.

502o. —— —— ——.]—A local authority in pursuance of their powers under Part III. of Housing Act, 1925 (c. 40), made an Order for the compulsory purchase of certain land. The owner of the land objected to the confirmation of the Order by the Minister of Health. A public local inquiry was held by an inspector of the Ministry of Health at which it was stated that the land was required by the local authority partly for slum clearance & partly for the erection of new houses required under Housing Act, 1935 (c. 40), on account of overcrowding. The local authority, before the inquiry was held, asked the Minister to receive a deputation with a view to expediting the provision of new houses under Housing Act, 1935 (c. 40), & securing the payment of a subsidy as large as possible. This deputation was received at the Ministry after the public local inquiry was held, but before the confirmation by the Minister of the Compulsory Purchase Order. It was suggested by the owner of the land that representations with regard to the purchase of his land must have been made at that interview in his absence. But the representatives of the local authority & of the Minister deposed that no reference was made at that interview to the purchase of the land in question. The Minister subsequently to the interview confirmed the Compulsory Purchase Order. In proceedings to quash the Confirmation Order:—*Held:* inasmuch as the interview between the representatives of the Minister & the local authority was held for the sole purpose of carrying out the duties imposed upon the Minister & the local authority by Housing Act, 1935 (c. 40), s. 1, of consulting together for the purpose of carrying that Act into effect, & there was no evidence that the order for the compulsory purchase of the land in question was discussed at the interview, there was no such identity between the subject-matter of the deputation & the subject-matter of the Confirmation Order as to amount to an interference with the exercise by the Minister of his semi-judicial functions in confirming the Compulsory Purchase Order, & that consequently there was no ground for quashing the Compulsory Purchase Confirmation Order.

Per SLESSER, L.J.: Where the Minister has the right under one Act of giving advice to a local authority, & under another Act the duty of confirming Orders made by local authorities, his duty is to carry out both those powers, & they cannot be said to be contrary to one another, inasmuch as the Legislature has imposed upon him the duty of doing both.

Per SCOTT, L.J.: Where public departments are given quasi-judicial duties to perform as well as administrative duties,

obligation to carry out their quasi-judicial duties in strict accordance with natural justice must always be considered in the light of their administrative duties.—HORN *v.* MINISTER OF HEALTH, [1937] 1 K. B. 164; [1936] 2 All E. R. 1299; 105 L. J. K. B. 649; 155 L. T. 335; 100 J. P. 463; 80 Sol. Jo. 688; 34 L. G. R. 495, C. A.

—— —— ——.]—A clearance order was made which related to an area including a house owned by applt., & applt. was in due course served with notice of the making of the order. He lodged an objection to the order, in accordance with the provisions of the Housing Acts, & was duly served with notice of the principal grounds on which the local authority was satisfied that the premises were unfit for human habitation. The Minister of Health caused a public local inquiry to be held, at which applt. was represented & his objections to the making of the order were stated. The inspector looked at the houses in question & made a report to the Minister, who decided to confirm the clearance order. Applt. appealed on the ground that there was no evidence upon which the Minister could confirm the order:—*Held:* as applt. had shown neither that the order was not within the powers of the Act, nor that any requirement of the Act had not been complied with, the ct. could not interfere with the Minister's decision.—*Re* FALMOUTH (WELL LANE, SEDGMOND'S COURT & SMITHWICK HILL) CLEARANCE ORDER, 1936, HALSE'S APPLICATION, [1937] 3 All E. R. 308; 157 L. T. 140; 101 J. P. 490; 53 T. L. R. 853; 81 Sol. Jo. 590.

Annotation:—**Reid.** *Re* Hammersmith (Berghem Mews) Clearance Order, 1936, Wilmot's Application, [1937] 3 All E. R. 539.

502q. —— —— ——.]—(1) There is no duty on the Minister of Health when considering whether to confirm a clearance order under sect. 1 of Housing Act, 1930 (c. 39), to hear evidence tendered by persons who oppose the confirmation of the order. Both the local authority & the Minister must consider the matter fairly & reasonably & then make such order as they think proper.

(2) No appeal lies from the making or confirmation of the order except in cases where applt. can show either that the order is not within the powers of the Act or that some requirement of the Act has not been complied with.—HALSE *v.* MINISTER OF HEALTH (1937), 35 L. G. R. 421.

502r. —— —— **Postponement pending inquiry into scheme of county council.**]—A borough council gave notice to the London County Council that they were about to take into consideration the question of declaring certain land to be a clearance area, & the London County Council did not notify the borough council within the prescribed period that they themselves intended to deal with the area. Thereafter the borough council made an order declaring the area to be a clearance area, & requested the Minister of Health to confirm such order. Before the Minister had taken any steps the London County Council notified the Minister of their intention to deal with the same area by means of a different scheme, & the Minister ordered a local inquiry into the county council's scheme, suggesting that the borough council should be represented thereat, & refused to consider the question of confirming the order of the borough council until after such inquiry had taken place:—*Held:* there had been no refusal by the Minister to perform his statutory duty, but merely a postponement of his decision until after the inquiry. Therefore the issue of a writ of *mandamus* would not be justified. —R. *v.* MINISTER OF HEALTH, *Ex p.* FINSBURY BOROUGH COUNCIL (1934), 32 L. G. R. 349.

502s. —— —— **Houses demolished before confirmation.**]—Nottingham Corpn. on June 4, 1934, resolved that a certain area should be a clearance area, & on the same day made a compulsory purchase order in respect of part thereof. Upon that part of the area there were 39 houses of which 27 were the property of appct. On July 21 appct. instructed a builder to demolish all the 27 houses, & the demolition work began on July 26 & was completed before Oct. 2. Notice of the order was served on appct. on July 30, & he lodged his objection on Aug. 15. On Oct. 2 the public local inquiry began at which the fact of the demolition was proved. On Jan. 16, 1935, the Minister confirmed the order. Appct. questioned the validity of the order & applied under Housing Act, 1930 (c. 39), s. 11 (3), to have it quashed:—*Held:* before confirming an order the Minister ought to consider matters as they are at the time of the local inquiry, & as there was at that time no subject-matter on which the Act could operate, the Minister ought not to have confirmed the order either with or without modification.—MARRIOTT *v.* MINISTER OF HEALTH, [1937] 1 K. B. 128; [1936] 2 All E. R. 865; 106 L. J. K. B. 149; 155 L. T. 94; 100 J. P. 432; 52 T. L. R. 643; 80 Sol. Jo. 533; 34 L. G. R. 401, C. A.

Annotation:—**Reid.** Denby (William) & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

502t. —— —— **Whether owner entitled to see report of inspector.**]—A person whose property is affected by a clearance order made by a local authority under Housing Act, 1930 (c. 39), is not entitled to see the report made to the Minister of Health by the person whom the Minister has caused to hold a public local inquiry as required by Sched. I. of the Act.—DENBY (WILLIAM) & SONS, LTD. *v.* MINISTER OF HEALTH, [1936] 1 K. B. 337; 105 L. J. K. B. 134; 154 L. T. 180; 100 J. P. 107; 80 Sol. Jo. 33; 34 L. G. R. 61, D. C.; *sub nom.* BAILDON URBAN (PARK LANE AREAS) CONFIRMATION ORDER, 1935, BAILDON URBAN TONG PARK NO. 1 HOUSING CONFIRMATION ORDER, 1935, 52 T. L. R. 173.

502u. —— —— **Local inquiry—Procedure.**]—At a public local inquiry by the Minister of Health to consider the question of the confirmation of a compulsory purchase order in respect of a part of the White City, counsel for the owners of the land sought to state the intentions of his clients as to the future use of the property. He had already stated that he did not intend to call any evidence. The inspector refused to allow the statement to be made:—*Held:* the inspector was right in refusing to hear such a statement unsupported by evidence, & the complaint made afforded no ground for quashing the order.—*Re* LONDON (HAMMERSMITH) HOUSING ORDER, LAND DEVELOPMENT, LTD.'S

APPLICATION, [1936] 2 All E. R. 1063; 80 Sol. Jo. 690.

502v. —— **Area in map accompanying advertisement differing from area at time of resolution.**]—By a resolution passed on Oct. 4, 1933, a local authority declared an area within their district to be a clearance area under Housing Act, 1930 (c. 39), s. 1 (1). The map defining the area included within it certain houses belonging to the local authority. In Dec. certain communications passed between the local authority & the Minister of Health regarding the terms of the clearance order, & on the advice of the Minister the houses belonging to the local authority were excluded from the area. Accordingly, when the clearance order was advertised in Mar. 1934, it was accompanied by a new map which did not include within the area the houses in question. Objections to the order having been made, an inquiry under Sched. I., para. 4, to the Act was held on May 29, & on Sept. 29 the order was confirmed without modification by the Minister of Health:—*Held:* (1) the fact that the area covered by the order confirmed by the Minister was different from that defined on the map made at the time of the resolution of the local authority did not render the order one which was not within the powers of the Act, although it might be one with regard to which a requirement of the Act had not been complied with; (2) up to the time of objections to the order being made, the Minister of Health acted in an administrative, & not in a judicial, capacity, & he was, therefore, entitled through the officials of his department, to advise the local authority on what the terms of the clearance order should be.—FROST *v.* MINISTER OF HEALTH, [1935] 1 K. B. 286; 104 L. J. K. B. 218; 51 T. L. R. 171; *sub nom. Re* BIRKENHEAD, CAMBRIDGE PLACE, CLEARANCE ORDER, 1934, *Ex p.* FROST, 152 L. T. 330; 99 J. P. 87; 33 L. G. R. 20.

Annotation:—**Refd.** Offer *v.* Minister of Health [1936], 1 K. B. 40.

502w. —— **Failure to hear objections before resolution passed.**]—A local authority passed a resolution under Housing Act, 1930 (c. 39), s. 1, declaring an area in their district to be a clearance area. An owner of property in that area contended that the clearance order based on the resolution was bad, because he had not been given an opportunity of being heard in opposition to it before the resolution was passed:—*Held:* there was no rule of law obliging the local authority to hear objections by owners of the property affected before passing the resolution, & the resolution & subsequent order were valid.—FREEDMAN *v.* MINISTER OF HEALTH (1935), 154 L. T. 240; 100 J. P. 104; 80 Sol. Jo. 56; 34 L. G. R. 153.

502x. —— **Part of premises not dwellings.**]—A clearance order was made in respect of certain premises consisting of garages & workshops with dwelling rooms over, the dwellings not being let, occupied or used in connection with the garages & not being in communication therewith. The owner of the premises contended that it was not within the powers of the local authority under the Housing Acts to order the demolition of the whole of the premises, as the garages & workshops were not dwellings or parts of dwellings. It was also contended that, if that part of the building which was a dwelling were taken away & certain repairs were effected to that part which remained, it might become a desirable garage & could not be a danger to any one living in the neighbourhood:—*Held:* the structure was all one building, & the local authority had acted within its powers in ordering the demolition of the whole.—*Re* HAMMERSMITH (BERGHEM MEWS) CLEARANCE ORDER, 1936, WILMOT'S APPLICATION, [1937] 3 All E. R. 539; 157 L. T. 142; 81 Sol. Jo. 751; *sub nom.* WILMOT *v.* MINISTER OF HEALTH, 35 L. G. R. 482.

502y. **Power to purchase adjacent land.**]—A local authority made, & the Minister of Health confirmed, an order for the compulsory purchase of certain land adjacent to a clearance area. The acquisition of that land was reasonably necessary for the carrying out of a scheme for the development of that clearance area in conjunction with other clearance areas in the neighbourhood, but would not have been necessary had it been proposed to develop the area as a separate unit:—*Held:* Housing Act, 1930 (c. 39), s. 3, conferred power on the local authority to make, & on the Minister to confirm, the above-mentioned compulsory purchase order.—SHEFFIELD BURGESSES *v.* MINISTER OF HEALTH (1935), 154 L. T. 183; 100 J. P. 99; 52 T. L. R. 171; 80 Sol. Jo. 16; 34 L. G. R. 92.

502z. **Discretion of local authority as to method of clearance.**]—The owner of certain property included in a compulsory purchase order contended that the onus was upon the local authority to satisfy the Minister of Health that, by making a compulsory purchase order rather than a clearance order, it had chosen the most appropriate method for securing the clearance of the area:—*Held:* Housing Act, 1930 (c. 39), s. 1 (3), gave the local authority an absolute right to secure the clearance of the area in either of the two ways as it should decide, or partly in one and partly in the other. At the local inquiry the local authority was not required by the Act to call evidence to show why it thought one way more appropriate than another to the particular case, but it was open to the Minister not to confirm the order if he thought the local authority had adopted a wrong method.—*Re* GREENWICH (PRINCE OF ORANGE LANE) HOUSING ORDER, 1936, WILLEY'S APPLICATION, [1937] 3 All E. R. 305; 157 L. T. 67; 101 J. P. 495; 53 T. L. R. 839; 81 Sol. Jo. 501; *sub nom.* WILLEY *v.* MINISTER OF HEALTH, 35 L. G. R. 416.

502aa. **Compulsory purchase order—Objection—Sufficiency of notice—Satisfaction of Minister.**]—Appct., the owner of certain properties in a clearance area, gave notice to the Minister of Health of objection to a compulsory purchase order. The local authority served notices upon appct. under Housing Act, 1935 (c. 40), s. 63 (1), alleging that the properties were unfit for human habitation, & stating the facts which the local authority alleged to be its principal grounds for being satisfied as to the unfitness. Appct. objected to the notices on the ground that they did not give him sufficient particulars of the facts in support of the local authority's allegation of unfitness, & he contended

the Minister had no power to hold a public local inquiry into the local authority's application for confirmation of the compulsory purchase order:—*Held:* by Housing Act, 1935 (c. 40), s. 63 (1), it is the Minister, & not the objector, who is to be satisfied that the local authority has served appropriate notices under that sect., & as the Minister was satisfied, in the present case, that a sufficient notice had been served upon appct., appct. could not object to the hol[illegible] of the public inquiry after the expiration of the period required by sect. 63 (1).—R. *v.* MINISTER OF HEALTH, *Ex p.* HACK, [1937] 3 All E. R. 176; 157 L. T. 118; 101 J. P. 430; 81 Sol. Jo. 461; 35 L. G. R. 349.

502bb. Powers of London County Council.]—*Re* LONDON COUNTY (STOKE NEWINGTON) HOUSING ORDER, 1936, STOCKER'S APPEAL, [1937] 4 All E. R. 678; 54 T. L. R. 233.

C. Town Planning Schemes (p. 215).

See, now, Town & Country Planning Act, 1932 (c. 48).

503a. —— Claim for compensation—When scheme "made."]—By Town Planning Act, 1925 (c. 16), s. 10, it is provided that any person whose property is injuriously affected by the making of a town planning scheme shall, if he makes a claim within the time limited by the scheme, be entitled to obtain compensation in respect thereof from the responsible authority. & by sect. 2 of the Act it is provided that a town planning scheme shall not have effect, unless it is approved by an order of the Minister of Health, who may refuse his approval except with such modifications as he thinks fit, & a scheme when so approved shall have effect as if it were enacted in the Act:—*Held:* upon the true construction of the Act, the person entitled to obtain compensation under sect. 10 is the person whose property, at the date of "the making" of the scheme, that is, when an order has been made by the Minister approving the scheme, & not before, is injuriously affected thereby.—MARKHAM *v.* DERBY CORPN., [1935] Ch. 320; 104 L. J. Ch. 108; 152 L. T. 416; 99 J. P. 35; 33 L. G. R. 69.

506a. Improvement scheme—Validity—Particulars of proposed development must be shown.]—An improvement scheme purporting to be made under the provisions of Housing Act, 1925 (c. 14), after providing for the acquisition & clearing of an unhealthy area, proceeded to empower the local authority to sell, lease or otherwise dispose of, as they thought fit, the cleared area or to appropriate or use it for any purpose approved by the Minister of Health. The scheme further provided that if the Minister so required, the local authority should provide a number of dwellings, not exceeding 72, suitable for accommodation of persons of the working classes, on a site either within or without the area, according to a scheme to be approved by the Minister. The scheme had been presented to the Minister with a petition for its confirmation: *Held:* in order to be a valid improvement scheme within Part II. of the Act, a scheme must, besides providing for the acquisition & clearance of an area, contain particulars of the proposed development of the area, & not confer on the local authority an unrestricted power to sell or lease the cleared area.—R. *v.* MINISTER OF HEALTH, *Ex p.* DAVIS, [1929] 1 K. B. 619; 98 L. J. K. B. 636; 141 L. T. 6; 93 J. P. 49; 45 T. L. R. 345; 27 L. G. R. 677, C. A.

Annotations:—**Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494. **Consd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226. **Reid.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; Marriott *v.* Minister of Health, [1936] 2 All E. R. 865.

506b. —— —— Power of local authority to sell or lease cleared area.]—R. *v.* MINISTER OF HEALTH, *Ex p.* DAVIS, No. 506a, *ante.*

506c. —— —— Confirmation of unauthorised scheme—Effect of Housing Act, 1925 (c. 14), s. 40 (5).]—Housing Act, 1925 (c. 14), s. 40, which empowers the Minister of Health to make an order confirming, with or without modifications, an improvement scheme made under the Act, & provides that "the order of the Minister when made shall have effect as if enacted in this Act," does not preclude the ct. from calling in question the order of the Minister where the scheme presented to him for confirmation is inconsistent with the provisions of the Act.

The Corpn. of Liverpool submitted to the Minister of Health for confirmation a document under the common seal purporting to be an improvement scheme under Housing Act, 1925 (c. 14), s. 35, in respect of an unhealthy area within the city. The first part of this document, after defining the area proposed to be dealt with, by clause 5, empowered the corpn. in general terms to make & widen & stop up or deviate any street in the area, directed them to appropriate other parts of the land to the erection of dwelling-houses for the working classes, & provided that any lands not required for these purposes might be disposed of as the corpn. might think fit. The second part contained estimates of the cost of acquiring the land & of the lay-out, & stated that there were no surplus lands. The Minister, after holding a public local inquiry, made an order modifying the scheme by providing (*inter alia*), in lieu of clause 5, that the whole of the lands in the area should, subject to the provision of any necessary streets & approaches, be used for the purposes of rehousing, & confirming the scheme as so modified. The owner of two houses which it was proposed to acquire compulsorily under the scheme on account of their sanitary condition obtained a rule *nisi* for a writ of *certiorari* to quash the order of the Minister as being made without jurisdiction, inasmuch as the scheme which the order purported to confirm was not an improvement scheme within the meaning of the Act in respect that (*a*) it was not accompanied by a lay-out plan & (*b*) it provided that land within the area might be disposed of as the corpn.

PART VII. SECT. 11, SUB-SECT. 4.—C.

sv. *Town Planning & Development Act, 1920—Whether applicable to subdivision into farming areas—Private roads marked on plan.*]—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked "private roads to be vested in" the owner:—*Held:* the fee-simple of these roads did not vest, by virtue of Town Planning & Development Act, 1920, in the district council.—LOXTON DISTRICT COUNCIL *v.* BRUCE. [1927] S. A. S. R. 463.—AUS.

might think fit:—*Held:* the scheme, whatever its defects, was an improvement scheme within the meaning of the Act, & any defects in the scheme had been cured by the order of the Minister.—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, [1931] A. C. 494; 100 L. J. K. B. 306; 47 T. L. R. 337; 75 Sol. Jo. 232; *sub nom.* R. *v.* MINISTER OF HEALTH, *Ex p.* YAFFE, 145 L. T. 98; 95 J. P. 125; 29 L. G. R. 305, H. L.

Annotations:—**Consd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226. **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd. (1931), 144 L. T. 464; *Re* Bowman, South Shields (Thames Street) Clearance Order, 1931 (1932), 96 J. P. 207; R. *v.* Minister of Health, *Ex p.* Purfleet Urban District Council (1934), 104 L. J. K. B. 18; R. *v.* West Midland Traffic Area Licensing Authority *Ex p.* Great Western Ry. Co., [1935] 1 K. B. 449.

506d. —— **Lapse of powers of authority—Power to make new scheme.**]—In 1922 an improvement scheme under the Housing Acts was made by a local authority & confirmed by the Minister of Health, but before it was attempted to be enforced the local authority's powers of compulsory purchase had lapsed:—*Held:* the local authority were not thereby precluded from making a new scheme under the Housing Act, 1930 (c. 39), or the Minister from confirming it.—ELLEN STREET ESTATES, LTD. *v.* MINISTER OF HEALTH, [1934] 1 K. B. 590; 103 L. J. K. B. 364; 150 L. T. 468; 98 J. P. 157; 32 L. G. R. 233.

508a. Rent—Discrimination—Validity.]—Where a local authority erect houses for the working classes with the aid of additional contributions provided by the Govt. under Housing (Financial Provisions) Act, 1924 (c. 35), it is competent to them in fixing the amount of the rents to be paid for houses of the same type in the same area to discriminate according to the means of the particular tenants, provided that in so doing they observe the provision in sect. 3 (1) (*e*) of the Act, that "the rents charged in respect of the houses shall not in the aggregate exceed the total amount of the rents that would be payable if the houses were let at the appropriate normal rents charged in respect of working-class houses erected prior to the third day of Aug. 1914."—LEEDS CORPN. *v.* JENKINSON, [1935] 1 K. B. 168; 104 L. J. K. B. 182; 152 L. T. 126; 98 J. P. 447; 51 T. L. R. 19; 78 Sol. Jo. 734; 32 L. G. R. 416, C. A.

509a. Subsidy—Amount—Houses completed after passing of Housing Financial Provisions Act, 1924 (c. 35).]—STEIN (JOHN G.) & CO., LTD. *v.* STIRLING COUNTY COUNCIL EASTERN DISTRICT COMMITTEE (1927), 91 J. P. 205; 26 L. G. R. 51, H. L.

509b. —— **Agreement waiving compliance with bye-law—Whether authorised under Housing Act, 1925 (c. 14), s. 99.**]—WILLIAM BEAN & SONS, LTD. *v.* FLAXTON RURAL DISTRICT COUNCIL, No. 121a, *ante.*

509c. —— **Condition as to maximum "selling price"—Validity.**]—Pltfs., a local authority, were empowered, under Housing, etc., Act, 1923 (c. 24), & Housing (Financial Provisions) Act, 1924 (c. 35), to assist builders by making grants in respect of working-class houses of a specified character. The grants might be subjected by the local authority to terms & conditions having the approval of the Minister of Health, who would reimburse pltfs. in respect of such grants out of the public funds. Defts., a firm of builders, applied to pltfs. for such assistance in respect of certain houses then under construction, which pltfs. granted, subject to a condition that the selling price or value of each house should not exceed £550. The houses were completed & the subsidies duly paid to defts. Defts. subsequently sold three of the houses for sums exceeding £550. Pltfs. brought an action for repayment of the three sums of £75 paid in respect of such houses. Defts. contending: (1) that the term "selling price" referred to the price at which a house might reasonably be expected to be sold, & that a house having qualified for subsidy on that footing should not subsequently become disqualified by any actual sale at a higher figure; (2) that the condition limiting selling price was void, (*a*) as being *ultra vires* pltfs. to impose or the Minister of Health to approve, or (*b*) for repugnance:—*Held:* (1) the "selling price" of a house meant the price at which such house was actually sold, as distinct from any previously estimated value; (2) a condition imposed by a local authority limiting the selling price of houses in respect of which assistance is being granted under the Housing, etc., Act, 1923 (c. 24), is one which the local authority has power to impose & the Minister of Health to approve, & is *prima facie* valid. The facts having established a contract between the parties, defts. were liable, upon the breach of such condition, to repay moneys received subject thereto.—BURNHAM-ON-SEA URBAN DISTRICT COUNCIL *v.* CHANNING & OSMOND, [1933] Ch. 583; 102 L. J. Ch. 196; 148 L. T. 547; 97 J. P. 115; 49 T. L. R. 246; 77 Sol. Jo. 177; 31 L. G. R. 192.

509d. —— —— **Meaning of "selling price."**]—BURNHAM-ON-SEA URBAN DISTRICT COUNCIL *v.* CHANNING & OSMOND, No. 509c, *ante.*

513a. —— **Appeal to county court—Not limited to question of law.**]—FLETCHER *v.* ILKESTON CORPN., No. 481a, *ante.*

518. *Add. Annotations:*—*As to* (2) **Consd.** Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337; Marriott *v.* Minister of Health (1935), 105 L. J. K. B. 125. **Refd.** Brown *v.* Dagenham U.D.C., [1929] 1 K. B. 737; Cooper *v.* Wilson, [1937] 2 K. B. 309; Ex-Army Transport, Ltd. *v.* Diamond & Co. (1936), 24 Ry. & Can. Tr. Cas. 303. *Generally.* **Refd.** Offer *v.* Minister of Health, [1936] 1 K. B. 40; Leslie *v.* London & North Eastern & London, Midland & Scottish Ry. Co.'s (1936), 24 Ry. & Can. Tr. Cas. 182.

(*c*) *Town Planning Schemes* (p. 218).

See, now, Town & Country Planning Act, 1932 (c. 48), ss. 18–24.

524. After "(*d*)" following this case add:—

(*e*) *Clearance Orders.*

See Housing Act, 1930 (c. 39), s. 11; R. S. C. (No. 2), 1932, S. R. & O., 1932 No. 514, and PRACTICE, Part LXIII., *post.*

524a. Application to High Court—Grounds for.]—*Re* BOWMAN, SOUTH SHIELDS (THAMES CLEARANCE ORDER, 1931, No. 502), *ante.*

524b. —— ——.]—HALSE *v.* MINISTER OF HEALTH, No. 502q, *ante*.

Costs.]—*Re* MASON (1934), 50 T. L. R. 392; 78 Sol. Jo. 414.

524d. Interim development order—Grant of permission to build by council—Certiorari.]—A *certiorari* will lie to bring up a decision of a local authority to permit development pending the final approval by the Minister of Health of a town-planning scheme. Resolutions had been passed by a rural district council for the preparation of a town-planning scheme, & the scheme was awaiting the approval of the Minister of Health, who had made, under Town Planning Act, 1925 (c. 16), s. 4, an Interim Development Order, under which persons could apply to the council for permission to build, pending the approval of the scheme by the Minister. This permission, if granted, would safeguard the appcts.' right to compensation under sect. 10 of the Town Planning Act, 1925 (c. 16), s. 10, in the event of their property being injuriously affected by the making of the town-planning scheme. An application was made to the council for permission to develop certain premises in the area covered by the proposed town-planning scheme. Objections were invited & considered by the council, who unanimously decided to permit the proposed development, pending the final approval by the Minister of Health of the town-planning scheme:—*Held:* as the decision of the council to permit the development in question conferred a legal right to compensation in certain events & affected the rights of subjects, it was sufficiently near a judicial decision to be the subject of a writ of *certiorari*. Where, therefore, one of the councillors voting in favour of the resolution to grant permission to develop, had such an interest in the matter as to disqualify him from taking part or voting, on account of bias, an order *nisi* for a writ of *certiorari* to quash the decision of the council was made absolute.—R. *v.* HENDON RURAL COUNCIL, *Ex p.* CHORLEY [1933] 2 K. B. 696; 102 L. J. K. B. 658; 149 L. T. 535; 97 J. P. 210; 49 T. L. R. 482; 31 L. G. R. 382, D. C.

530a. Filling station—Preservation of amenities—Validity of bye-law.]—Purporting to act upon the powers conferred upon them by Petroleum (Consolidation) Act, 1928 (c. 32), s. 11 (1), which, with certain modifications, applies to Scotland, the Corpn. of Glasgow applied to certain areas in the city a set of model bye-laws which had been confirmed by the Scottish Office & approved by the Secretary of State. The areas affected by the bye-laws formed a belt round the centre of the city & covered a surface of 35 square miles. Certain motor traders & suppliers of petroleum, feeling themselves aggrieved by the extent of the area & the restrictions in relation to the filling stations, claimed a decree reducing the bye-laws on the ground that they were *ultra vires*, unreasonable, & uncertain:—*Held:* the Act left to the Corpn. the power of determining to what part of their area bye-laws should be made to apply in order to preserve the amenity of the places mentioned in sect. 11; they were the judges of the beauty or picturesque character of the places; & the bye-laws were not *ultra vires* or unreasonable or uncertain.—ROBERT BAIRD, LTD. *v.* GLASGOW CORPN., [1936] A. C. 32; 105 L. J. P. C. 33; 154 L. T. 65, H. L.

533. *Add. Citations:—sub nom.* R. *v.* WARBLINGTON OVERSEERS, 22 L. T. O. S. 304; 18 J. P. 647; *sub nom. Ex p.* WARBLINGTON OVERSEERS, 18 Jur. 494.

534. *Add. Citation:—sub nom.* R. *v.* DEVERELL, 23 L. J. M. C. 121.
Add. Annotations:—**Refd.** R. *v.* Kingswinford Overseers (1854), 2 E. & B. 688; Backhouse *v.* Bishopwearmouth (1861), 7 Jur. N. S. 338.

A. Slaughter-Houses, Knackers' Yards and Knackers (p. 222).

See Slaughter of Animals Act, 1933 (c. 39).

549. *Add. Annotation:*—**Consd.** Woolliscroft *v.* Stoke-on-Trent Corpn. (1928), 92 J. P. 150.

556a. Registration—Removal from register—Grounds for.]—Pltfs. were the owners of premises which had been used for a long period prior to Mar. 1924, as a slaughter-house in connection with their business as meat salesmen, & were a registered slaughter-house within Towns Improvement Clauses Act, 1847 (c. 34), s. 126. By a resolution passed by the City Council on July 22, 1926, pltfs.' slaughter-house was removed from the register upon the ground that no slaughtering had been done on the premises between Mar. 1924, & July, 1926:—*Held:* upon the evidence, these premises had throughout the period in question been continuously occupied by pltfs. as a slaughter-house & used as such. The local authority were therefore not entitled under sect. 126 to remove the name from the register, even although there had been a breach of the regulations on the part of pltfs. —WOOLLISCROFT *v.* STOKE-ON-TRENT CORPN. (1928), 92 J. P. 150; 26 L. G. R. 522, C. A.

PART VII. SECT. 12, SUB-SECT. 1.

Injury to employee—Whether must be proved.]—Pltf. while working for deft. in clearing brush from the latter's farm was injured by —— ——losive which deft. had brought he land for use in the clearing of it, & which pltf. by pure chance struck with an axe;—*Held:* pltf. must prove negligence.—PIETRZAK *v.* ROCHELEAU, [1928] 2 D. L. R. 46; [1928] 1 W. W. R. 428; 23 Alta. L. R. 337.—CAN.

sw. *Explosives Act, R. S. C., 1927—Not binding on Crown.*]—R. *v.* LEBLANC (1930), 1 M. P. R. 21.—CAN.

PART VII. SECT. 12, SUB-SECT. 2.—A.

sx. *Oil in Navigable Waters Act, 1922 (c. 39), s. 1 (1)—"Vessel"—Ship being broken up.*]—A ship in process of being broken up, & no longer capable of being navigated, may be a "vessel" within Oil in Navigable Waters Act, 1922 (c. 39), s. 1 (1).—THOMAS W. WARD, LTD. *v.* WAUGH, [1934] S. C. (J.) 13.—SCOT.

sc. *Gasoline pump in street to remove—Conviction.*]—Appeal from the dismissal of a charge of non-compliance with an order made by an assistant fire marshal, under Fire Marshal Act, R. S. B. C., 1924, for the removal of a gasoline pump from a public street, allowed, & accused fined, without costs. The fact that accused had been previously convicted & fined, for violating, with respect to the same pump, a regulation under said Act prohibiting the installing of such a pump on a public street, held not to sustain the plea of *autrefois convict.*—KERR *v.* LLOYD, [1936] 1 W. W. R. 16; 65 Can. C. C. 359.—CAN.

sk. *Licence for pump—Grounds for revoking.*]—The Board of Public Utilities is not justified in revoking a licence for a gasoline pump merely because the noise & smell of the pumps is likely to interfere with guests in a hotel.—*Re* [1937] 1 D. L. R. 807.—CAN.

PART VII, SECT. 12, SUB-SECT. 2.—B.

529 i. *Petroleum for light vehicles—Locomotives on Highways Act, 1896, c. 36, s. 5—Application to Scotland of regulations made by Home Secretary.*]—GALLOWAY *v.* ANDERSON, [1928] S. C. (J.) 70.—SCOT.

584a. —— Who are "professional

"Fire brigade duties" in Fire Brigade Pensions Act, 1925 (c. 47), s. 23, para. 2, comprise only the work done by firemen as such: they do not include other duties which firemen may be called upon to do in accordance with the terms of their employment by local authorities. Firemen who may so be called upon to do other duties, are not "wholly & permanently" employed on fire brigade duties, & therefore are not "professional firemen" within the meaning of the section.—WHELAN *v.* BILLINGHAM URBAN DISTRICT COUNCIL, [1937] Ch. 662; [1937] 3 All E. R. 387; 106 L. J. Ch. 350; 101 J. P. 511; 53 T. L. R. 883; 81 Sol. Jo. 552; 35 L. G. R. 554.

SUB-SECT. 1.—IN GENERAL.

(Vol. XXXVIII., p. 227.)

584b. Adoption of Acts—Right to poll.]—A meeting of ratepayers was summoned for the p of determining whether the provisions of the Public Libraries Acts should be adopted in defts.' district. A chairman having been chosen, the resolution to adopt the Acts was carried upon a show of hands; a poll was demanded, but the chairman refused to grant it. Defts. declined to put in force the Acts: —*Held:* the right to demand a poll existed by the common law, & had not been taken away by any of the provisions contained in the Public Libraries Acts, & defts. could not be compelled by mandamus to carry out the Acts.

The question is whether it is not an attribute at common law of all public meetings, that any qualified person may demand a poll, & the meeting may be enlarged so that all persons duly qualified may come in & take part in the decision. Cannot a meeting be adjourned at common law? Both reason & authority show that where a large class of persons exists who are qualified to take part in a meeting, an opportunity ought to be given of summoning them & of allowing them to record their votes (BRETT, L.J.).—R. *v.* WIMBLEDON LOCAL BOARD (1882), 8 Q. B. D. 459; 51 L. J. Q. B. 219; 46 L. T. 47; 46 J. P. 292; 30 W. R. 400, C. A.

607. *Add. Annotations:*—Refd. Grant *v.* Derwent, [1929] 1 Ch. 390; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

SECT. 22.—TOWN PLANNING.

. *See* Town & Country Planning Act, 1932 (c. 48).

670a. Claim for betterment.]—Where by the construction of a street within the area of a town planning scheme, which includes among its purposes the execution of street works, any property is increased in value, the responsible authority are entitled, under Town Planning Act, 1925 (c. 16), s. 10 (3), to recover from the owner of the property one-half of the amount of the increase in value, as the authority's claim arises by the coming into operation of a provision contained in the scheme, & therefore "by the making of [a] town planning scheme" within above sub-sect. An authority's claim for betterment under above sub-sect. is not restricted by the fact that the property in respect of which the claim arises is not itself within the area of the scheme, but only contiguous thereto.—R. *v.* WEBSTER, *Ex p.* YOUNG (1934), 152 L. T. 535; 99 J. P. 51; 51 T. L. R. 201; 33 L. G. R. 5, D. C.

670b. Assessment of compensation.]—An owner of building land, which was scheduled as an open space under the Town & Country Planning Act, 1932, claimed compensation under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), which, he contended, should include, in addition to the ordinary market value of the land, the loss he had sustained by being deprived of the profit he expected to make by the erection of houses on the land:—*Held:* compensation could be paid only in respect of the ordinary market value of the land being "the amount which the land if sold in the open market by a willing seller might be expected to realise," as provided by sect. 2 (2) of the Act of 1919, & that would not include any compensation for the loss of profit expected to be made by its development as building land. Interest on the amount of compensation was payable as from the date of the arbitrator's award only, & not from any earlier date.—COLLINS *v.* FELTHAM URBAN DISTRICT COUNCIL, [1937] 3 All E. R. 189, D. C.

See, further, Nos. 503–506, *ante.*

PART VII. SECT. 14, SUB-SECT. 4.

h i. —— —— —— *Negligence.*]—FORREST *v.* METROPOLITAN MEAT INDUSTRY BD. (1928), 28 S. R. N. S. W. 621; 45 N. S. W. W. N. 193.—AUS.

h ii. —— —— *Bye-law depriving owners of animals slaughtered of portion of offal—Whether reasonable.*]—A bye-law, made by a controlling authority of an abattoir, in pursuance of Slaughtering & Inspection Act. 1908, s. 18, & sect. 3 of the Amendment Act, 1910, is *intra vires* & reasonable notwithstanding that its operation deprives the owners of animals slaughtered of a proportion of the offal & effects a confiscation of same.—SMITH *v.* BLENHEIM BOROUGH COUNCIL, [1928] N. Z. L. R. 536.—N.Z.

PART VII. SECT. 20, SUB-SECT. 1.—A.

sx. *Depositing refuse so as to be nuisance.*]—Health Act, 1919, s. 32 (2), makes it unlawful for a private citizen, as well as for a municipal council, to deposit refuse or rubbish in any place where it may be a nuisance. A deposit contributing to a continuing nuisance held sufficient to support a conviction under the section.—PAINTER *v.* O'CONNELL, [1928] V. L. R. 259; [1928] Argus L. R. 159.—AUS.

PART VII. SECT. 20, SUB-SECT. 1.—B.

sy. *Right of disposal of owner of garbage.*]—A statute giving a municipality power to "establish, maintain, equip, own, & operate garbage collection & garbage disposal & reduction works" does not support a bye-law which purports to take away from an owner of garbage his right to dispose of it to whomsoever he pleases provided he does not thereby create a nuisance or violate some valid health or other regulation.—R. *v.* BELL (Alta.), [1929] 2 W. W. R. 337; 51 Can. Crim. Cas. 414.—CAN.

PART VII. SECT. 22.

sz. *Zoning bye-law — Relaxation—Powers of Board.*]—On appeal to the Board of Review under sect. 16 (1) (*c*) of Town Planning Act, 1925, the owners of a property on which there was a small gasoline service station, which was in operation before the passing of zoning bye-law 1930 of the city of Kamloops, & therefore not affected thereby, alleged that they wished to arrange with purchasers of the property to erect a modern public garage & gasoline service station thereon, & asked to have the property excluded from the "restricted area" within which under said bye-law such a business shall not be conducted:—*Held:* in view of the powers of the Board under sect. 16 (3) of said Act to "make such relaxations as special cases call for" & its duty to "endeavour to see that substantial justice is done," the Board had jurisdiction to entertain the appeal, & taking into consideration the preamble to the Act & all the circumstances, the appeal should be allowed & the permission which the owners sought should be granted by the municipal council.—*Re* KAMLOOPS CITY, [1935] 3 W. W. R. 206.—CAN.

RAILWAYS AND CANALS.

Part I.—Railway Companies Generally.

5a. Purchase of Indian railway—Deductions for sinking fund—Construction of Act.]—*Held:* on a summons taken out by the annuity trustees under the Great Indian Peninsular Railway Purchase Act, 1900 (63 & 64 Vict. c. cxxxviii), that, for the purpose of providing the sinking fund to replace capital at [illegible] deducted under sect. 21 of the Act from each half-yearly payment of Class B annuities was 5*s.* 8*d.* in the pound, being the amount fixed by resolution in Dec. 1900; & the trustees had no power to vary the rate of deduction.—ARMSTRONG *v.* MEAD (1930), 46 T. L. R. 216.

31a. [illegible]—EDINBURGH, PERTH & DUNDEE RY. CO. *v.* PHILIP, No. 855, *post*.

PART I. SECT. 1.

k i. —— ——.]—Under an agreement, confirmed by statute, between resp. comrs. & the predecessors in title of applt. co. with respect to a franchise for an electric railway which had now terminated, it was provided that on its determination the co. should be duly compensated for its railway, equipment, machinery & other works, the compensation to be determined by arbn. On the termination of the franchise, the railway, with its equipment, machinery & other works, passed to resp. comrs. as an organic railway capable of operation *in situ*. The railway had not been, & could not be made to be, a financial success, but the agreement expressly stipulated that the co. was not to be compensated "in respect of any franchises for holding or operating" the railway:—*Held:* on the proper construction of the agreement & statute, the compensation should not be fixed (as decided below) at the break-up value of the railway to the comrs. but on the basis of reconstruction cost less depreciation. The effect of the words quoted was to exclude any allowance for past or future profits.—*Re* INTERNATIONAL RY. CO. & NIAGARA PARKS COMMISSION, [1937] 2 W. W. R. 641, P. C.—**CAN.**

k ii. —— ——.]—In connection with the transfer of the Grand Trunk Railway to the Govt. of Canada as a going concern, the Govt. & the applt. railway co. entered into an agreement, confirmed by a Dominion statute, whereby a Board of three arbitrators was to determine "the value, if any, to the holders thereof, of the preference & common stock" of the co.; an appeal to the Privy Council was provided for upon any question of law if the arbitrators were not unanimous. The arbitrators unanimously came to a preliminary decision that the value of the stock should be determined on the basis of the net earning capacity of the railway, & that principle was accepted by all parties concerned. By a majority the arbitrators held that evidence of the value of the physical assets, whether the selling value or the cost of replacement, was not admissible, & a majority award was made after the exclusion of evidence of that description. It was contended that the cost of replacing the assets was material, among other reasons, because under legislation in the United States, in which about a third of the length of the railway lines was situate, regard was to be had to the aggregate value of railway property in certain groups in fixing maximum rates of freight:—*Held:* having regard to the principle upon which the value was being ascertained, the excluded evidence was not material or admissible; it was not established that the United States legislation above referred to resulted in there being a relation between the cost of replacement & net earning capacity.—GRAND TRUNK RY. CO. OF CANADA *v.* R., [1923] A. C. 150, P. C.—**CAN.**

sg. *Action by Canadian National Railways—Whether in name of King.*]—*Held:* as the Canadian National Railways Act, R. S. C., 1927, does not vest ownership of the Govt. railways in the Canadian National Ry. Co., it being entrusted only with the management & operation of the railways as an agent or mandatory for the govt., they remaining the property of the Crown, an action for damages to the Canadian National Railways, brought in the name of H.M. the King, is properly instituted.—R. *v.* SOUTHERN CANADA POWER CO., LTD., [1934] Ex. C. R. 142; *on appeal*, [1936] S. C. R. 4; 1 D. L. R. 331; *affd.* [1937] 3 All E. R. 923, P. C.—**CAN.**

PART I. SECT. 2.

sl. *"Working expenses"—Interest on bonds.*]—The interest on bonds issued under the authority of sect. 63 of Saskatchewan Railway Act, R. S. S., 1930, is not a "working expenditure," within sects. 64 (1), 65 (1) of said Act; &, therefore, does not rank *pro rata* with the claims of wage-earners.—*Re* MOOSE JAW ELECTRIC RY. CO., [1936] 1 D. L. R. 226; [1935] 3 W. W. R. 419.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

sa. *Power of federal railway to sell its assets—Necessity for sanction of Governor-General in Council.*]—OTTAWA VALLEY RY. CO. *v.* CENTRAL RY. CO., LTD. (1926), Q. R. 42 K. B. 284.—**CAN.**

sb. *Power to carry on business reasonably incidental to operation of railway—Sale of souvenirs, photographs & refreshments.*]—QUEEN VICTORIA NIAGARA FALLS PARK COMRS. *v.* INTERNATIONAL RY. CO., [1928] 4 D. L. R. 755; 63 O. L. R. 49.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

n (p. 252) **i.** —— —— *Powers of Minister.*]—The Crown expropriated a certain area for use in the building of the terminal of the Hudson Bay Railway at Churchill & for a port on Hudson Bay. At the date of the taking there were no permanent habitations anywhere in the vicinity save a Hudson Bay Post & Mounted Police Post. The future of Churchill was altogether dependent upon the completion of the work for which the land was taken:—*Held:* under the Expropriation Act a Minister of the Crown may take any land for the use of His Majesty as he thinks advisable to take, & his decision or judgment that the lands so taken are necessary for a public work is not open to review by the cts. This power or authority does not interfere with the security in the enjoyment of private property, as the Crown must compensate the owner of any lands so taken for the value thereof & all damages resulting from the expropriation. Speculative prices paid by purchasers of real estate in the vicinity, some fifteen years before the expropriation in question, are not a fair criterion of the market value of similar property at the date of the expropriation thereof. The advantages due to the carrying out of the scheme for which the lands were taken cannot be considered in fixing the compensation to be paid for the said lands.—R. *v.* BEECH, [1930] Ex. C. R. 133.—**CAN.**

n (p. 253) **ii.** —— —— —— *None to Supreme Court of Canada.*]—CEDAR RAPIDS MFG. & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

pp (p. 253) **i.** —— —— *Site value for factory.*]—Notice of expropriation under Railway Act, 1919 (Dom.), was given to the owner & to the tenant of land used with the buildings thereon by the tenant in its business as a dealer in coal & coke. By an arrangement between the owner & the tenant, to which the ry. co. was not a party, the arbitrator was asked to treat their claims for compensation as one claim, *i.e.*, as if there were only one person interested therein. The arbitrator accepted as the basis of the valuation of the land its value on the footing that it had been cleared of its business & buildings & was a vacant site available for a factory or some other industry; but nevertheless, in addition to the sum which he awarded the owner, he awarded over $100,000 to the tenant as compensation for the disturbance of its business & for the value of the buildings, equipment, etc.:—*Held:* the value of the buildings, etc., & compensation for business disturbance could no longer properly enter into the matter, not because the value of the land had been increased by any specific figure representing actually either the value of the buildings or damages for business disturbance; but because an increased value had been attributed to the land upon a hypothesis which is inconsistent with the existence of a claim either for the value of buildings or for damages for business disturbance.—TORONTO TERMINALS RY. CO. *v.* STANDARD FUEL CO. OF TORONTO, LTD., [1935] 2 W. W. R. 667, P. C.—**CAN.**

ddd i. —— ——.]—Applt. B., as owner, & applt. P. Coals, Ltd., as lessee from her, of a certain quarter section situated in Alberta, presented an application to the Board of Railway Comrs. under sect. 197 of Railway Act, asking the Board to fix the amount of compensation payable to applts. in respect of coal lying under the right of way of resp. railway. The latter alleged that, in 1914, it purchased the right of way from the then owner, predecessor in title of applts., paid him in full for all the coal required to be left for the support of the right of way & that by virtue of the transfer itself, it was entitled to such support:—

50. After cross-reference following this case add :—

—— **Abolition of duty.**]—*See* Finance Act, 1929 (c. 21), s. 3.

Part II.—Construction and Repair of Railways.

69. *Add. Annotation :*—**Refd.** A.-G. *v.* Smethwick Corpn., [1932] 1 Ch. 562.

118. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn. (1929), 98 L. J. K. B. 224.

121. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

126. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

136. *Add. Annotations :*—**Consd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763 ; London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

171. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

197a. —— ——.]—A railway co. agreed with a landowner, through whose estate the railway would pass, to construct & maintain a siding connected with their railway at B., together with all necessary approaches thereto for public use, & for the reception & delivery of goods :—*Held :* (1) specific performance could be decreed of the agreement to construct the siding & approaches, without decreeing the co. to maintain them when made ; (2) the agreement did not bind the co. to erect sheds. or to keep one of their servants in attendance at the siding, but it obliged them to construct a proper siding, with approaches & a wharf or raised platform for the loading & unloading of goods ; (3) " necessary approaches " meant " proper approaches."—LYTTON *v.* GREAT NORTHERN RY. Co. (1856), 2 K. & J. 394 ; 27 L. T. O. S. 42 ; 2 Jur. N. S. 436 ; 4 W. R. 441 ; 69 E. R. 836.

221. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

222. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

225. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

Held : the judgment of the Board dismissing appits.' application should be affirmed.—BERG & PENN COALS, LTD. *v.* NORTHERN ALBERTA RYS. CO., [1935] S. C. R. 120.—**CAN.**

eee (p. 253) i. —— *Jurisdiction of Exchequer Court—Effect on proceedings commenced in Provincial Court.*]—*Held :* (1) the Exchequer Ct. of Canada has no jurisdiction to hear & determine an action by the Canadian National Railway, for fixing the compensation to be paid for lands expropriated by it before June 14, 1929, date when the C. N. R. Act came into force, conferring jurisdiction on this ct. ; (2) the legal proceedings already instituted before the Provincial Cts., under the Railway Act, should be there continued & even enforced, defts. having a vested right to do so under the law existing at the date of expropriation. When the effect of a repeal is to take away a right, *primâ facie*, it is not retroactive ; but when it deals exclusively with procedure it is retroactive.—CANADIAN NATIONAL RY. CO. *v.* LEWIS, [1930] Ex. C. R. 145 ; 4 D. L. R. 537.—**CAN.**

sc. *Right to alienate lands taken.*]—PRATT *v.* GRAND TRUNK RY. CO. (1884), 8 O. R. 499.—**CAN.**

sd. *Acquisition from tenant for life.*]—MIDLAND RY. OF CANADA *v.* YOUNG (1893), 22 S. C. R. 190.—**CAN.**

se. *For what purpose land may be taken—Hotel purposes—Minerals not included.*]—The Canadian National Rys. Co. has the right to expropriate land for the purposes of a hotel ; but has no right to expropriate the minerals that may be in or under that land.—*Re* CANADIAN NATIONAL RYS. CO. & TERWINDT, [1930] 3 W. W. R. 52 ; 4 D. L. R. 1004.—**CAN.**

sm. *Costs.*]—Costs of an arbn. to fix the compensation to be paid in an expropriation by a railway are to be taxed as between party & party on a rather more liberal scale than party & party costs, but not as between solr. & client.—*Re* EWART & TORONTO TERMINALS RY. CO., [1932] 1 D. L. R. 582 ; O. R. 170.—**CAN.**

sp. *Construction of subway—Injurious affection of land—Proceedings for compensation.*]—Where lands are injuriously affected by the construction of a subway by order of the Railway Board the only remedy is by way of arbn. proceedings under the Railway Act.—BOLAND *v.* CANADIAN NATIONAL RY., [1934] 4 D. L. R. 613 ; O. R. 709.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.

sf. *Lien of Government for subsidies—Priority of bondholders.*]—MINISTER OF RAILWAYS & CANALS *v.* HEREFORD RY. CO., *Re* BOND & MACKINNON & MINISTER OF RAILWAYS & CANALS, [1928] Ex. C. R. 223 ; *affd.*, [1930] S. C. R. 37 ; 1 D. L. R. 187 ; 36 C. R. C. 149.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.

p (p. 254) i. —— *When demurrage chargeable.*]—J. BROWNLEE & CO. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 291.—**CAN.**

p (p. 254) ii. —— ——.]—CONSOLIDATED RENDERING CO. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 294.—**CAN.**

uu i. —— *Application of stop-off charge.*]—DOMINION MILLERS' ASSOCN. *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (1925), 33 Can. Ry. Cas. 6.—**CAN.**

uu ii. *Dressing in transit—Application of stop-off.*]—NEILSON MAGANN LUMBER CO. *v.* CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 286.—**CAN.**

oo (p. 256) i. ——.]—CANADIAN LUMBERMEN'S ASSOCN. *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (1927), 33 Can. Ry. Cas. 1.—**CAN.**

PART II. SECT. 1.

sg. *Rails — Whether fixtures.*]—The rails of a railway which had been built to permit the hauling of coal from a coal mine to the main line of the C. P. R. but which, at the time of the issue of the certificate of title to the quarter section of land in question to deft., had been abandoned & allowed to become destroyed as a railway :—*Held :* to have become part of said land & to be the property of deft.—WEST CANADIAN COLLIERIES, LTD. *v.* RINALDI, [1936] 1 W. W. R. 635 ; 2 D. L. R. 601.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C.

f i. ——.]—WINDSOR CORPN. *v.* CANADIAN PACIFIC RY. CO. (WYANDOTTE STREET BRIDGE CASE) (1926), 32 Can. Ry. Cas. 26.—**CAN.**

sf. *Liability to reconstruct private bridge as highway bridge.*]—LEDUC *v.* CANADIAN PACIFIC RY. CO. (1927), 33 Can. Ry. Cas. 24.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

sg. *Claim for damage—Three months' notice of claim.*]—*Re* ST. ANDREW'S CHURCH TRUSTEES & GREAT WESTERN RY. CO. (1862), 12 C. P. 399.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.—B. (b).

aa. *Revsd.*, 31 S. C. R. 155.

PART II. SECT. 6, SUB-SECT. 4.—C. (a).

215 xiv. —— —— ——.]—JAMES *v.* GRAND TRUNK RY. CO. (1900), 31 O. R. 672.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.—C. (C) ii.

229 x. ——.]—Pltf. had some sheep which grazed, with the sheep of other persons, upon a mountain side bordering a public road. On the other side of the public road a ry. co. had its line, & beyond the line was arable land owned by pltf. The soil of the public road was pltf.'s property. Pltf.'s sheep & other sheep crossed from the mountain side to the public road, thence on to the ry. line & thence on to the arable lands of pltf., owing to the fences of the ry. co. & of pltf. being defective. The sheep having caused damage to these arable lands, pltf. issued a civil bill against the ry. co. for damages :—*Held :* as the ry. co. was bound under sect. 68 of Rail-

231. *Add. Annotation :*—**Consd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

231a. —— **Occupier becoming owner.**]—In 1885 the owners of a farm conveyed a small part of it to a ry. co. & in the conveyance it was agreed that the consideration paid should be taken to be not only the purchase money but also compensation for the accommodation work, including fences, which the ry. co. was otherwise required to make & maintain by Railways Clauses Consolidation Act, 1845 (c. 20), s. 68. No similar agreement was entered into with pltf.'s father, who at that time was occupier as tenant from year to year, & the ry. co. proceeded to erect fences on either side of the railway & to maintain them. In 1911 pltf.'s father bought the fee simple of the farm. On the father's death in 1932 pltf., who had been occupying the farm with his father, became the sole occupier & soon after had the fee simple conveyed to him by the father's personal representatives. Two sheep belonging to pltf. strayed on to the railway through a gap in a fence & were killed. Pltf. claimed damages & the county ct. judge made an order for £5 damages. On appeal :—*Held :* there had been no merger of the occupiers' interest with the fee simple on the purchase of the farm & pltf. was, therefore, entitled to damages for the loss of the sheep by reason of the ry. co.'s failure to maintain the fence pursuant to the Railways Clauses Consolidation Act, 1845 (c. 20), s. 68. —Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98 ; 51 T. L. R. 491 ; 79 Sol. Jo. 434, C. A.

263. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14 ; Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

265. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

Part III.—Equipment and Working of Railways.

312. *Add. Annotations :*—**Apld.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606. **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458.

314a. Signals—Interference with safe working—Exhibition of coloured lights on adjoining property—Negligence.]—London, Midland & Scottish Ry. Co. *v.* Ribble Hat Works, Ltd. (1936), 80 Sol. Jo. 1038.

316. *Add. Annotation :—Generally,* **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

Part IV.—Level Crossings.

322. *Add. Annotation :—Generally,* **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

325. *Add. Annotation :*—**Consd.** London & North Eastern Ry. Co. *v.* North Riding of Yorkshire County Council, [1936] 1 All E. R. 692.

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ways Clauses Consolidation Act, 1845, to fence against trespass on both sides of the ry. line, liability was imposed on them to prevent, by fencing, the cattle of owners or occupiers of lands adjoining the ry. line from straying upon the line & therefrom into other adjoining lands, & accordingly the co. were liable in damages to pltf.—Moynihan *v.* Great Southern Railways Co., [1935] I. R. 132.—**IR.**

PART II. SECT. 8.

p i. ——.]—R. *v.* Smith (1878), 43 U. C. R. 369.—**CAN.**

ah. *Laying down of railway in public street — Necessity for consent — Who proper authority.*]—Port Adelaide City Corpn. *v.* South Australian Rys. Comrs., [1927] S. A. S. R. 197.—**AUS.**

PART III. SECT. 9

ak. *" Policemen travelling on His Majesty's service "—Whether Provincial policemen included.*]—R. *v.* Canadian Pacific Ry. Co. & Canadian National Ry., [1928] 2 D. L. R. 386 ; [1928] 1 W. W. R. 785 ; 34 C. Ry. Cas. 292 ; 23 Alta. L. R. 401.—**CAN.**

PART IV. SECT. 1.

aj. *Extent of duty—Effect of Railway Act,* 1919 (c. 68).]—Colebourne *v.* Harrop (Ont.), [1927] 1 D. L. R. 116 ; 32 Can. Ry. Cas. 208.—**CAN.**

324 i. ——.]—Scott *v.* Winnipeg Electric Co., [1927] 2 D. L. R. 686 ; [1927] 1 W. W. R. 739 ; 32 Can. Ry. Cas. 397 ; 36 Man. L. R. 357 ; *affd.*, [1928] 2 D. L. R. 420 ; [1928] S. C. R. 52 ; 34 C. Ry. Cas. 260.—**CAN.**

324 ii. —— *Power to remove planks—From farm crossing.*]—MacDonald *v.* Canadian Pacific Ry. Co. (Que.) (1927), 33 Can. Ry. Cas. 60.—**CAN.**

324 iii. —— ——.]—Although a road allowance had never been graded, or had work done on it by the municipality, & had not been regularly travelled, it was held to be a highway within sect. 265 of Railway Act (Dom.); & its intersection by deft. co.'s railway was held not to be a " farm crossing ", within general order 47 of Feb. 10, 1909, of the Board of Railway Comrs. ; & therefore the co. was held liable for injuries sustained by pltf. owing to the absence of planking between the rails, which projected about five inches above the level of the ground.—Bruce *v.* Canadian Pacific Ry. Co., [1929] 1 D. L. R. 344 ; 1 W. W. R. 56 ; 35 C. R. C. 145 ; 23 Alta. L. R. 595.—**CAN.**

324 iv. —— *Railway Act, ss.* 264, 265 *&* 266—*Not applicable.*]—Pltfs.' tractor & threshing outfit, moving along a highway, became stalled upon a level crossing of defts.' railways & were struck by a train & destroyed :—*Held :* sects. 264, 265 & 266 of the Railway Act, 1927, impose no liability in respect of a level crossing.—Ostrander *v.* Michigan Central Ry. Co. & Pere Marquette Ry. Co., [1930] 1 D. L. R. 34 ; 36 C. R. C. 60 ; 64 O. L. R. 408.—**CAN.**

324 v. ——.]—Rails of a railway track projecting four or more inches above the highway at a level crossing held to constitute an obstruction which, not being authorised by statute or other lawful authority, constituted a nuisance for the maintenance of which the ry. co. was liable to a person injured thereby.—Macgregor *v.* Canadian National Rys. & Edmonton City, [1930] 3 W. W. R. 392 ; [1931] 1 D. L. R. 87 ; 25 Alta. L. R. 104 ; *varg.*, [1930] 3 W. W. R. 237.—**CAN**

m i. —— *Effect of accident causing death or injury—Application of " slow order."*]—*Re* Railway Assocn. of Canada & Slow Orders (1926), 32 Can. Ry. Cas. 238.—**CAN.**

m ii. ——.]—Canadian National Rys. *v.* Hydro Electric Power Commission & Department of Highways for Ontario (Westhill Crossing Case) (1926), 32 Can. Ry. Cas. 297.—**CAN.**

f (p. 309) **i.** —— ——.]—Montreal Corpn. *v.* Canadian Pacific Ry. Co. (Gouin Boulevard Crossing Case) (1926), 32 Can. Ry. Cas. 245.—**CAN.**

f (p. 309) **ii.** —— ——.]—Springfield (Village) *v.* Michigan Central Ry. Co. (1926), 32 Can. Ry. Cas. 254.—**CAN.**

f (p. 309) **iii.** —— ——.]—Montreal Corpn. *v.* Canadian National Rys. (1927), 33 Can. Ry. Cas. 29.—**CAN**

f (p. 309) **iv.** —— ——.]—Canadian National Rys. *v.* Montreal Tramways (Guy St. Crossing Case) (1927), 33 Can. Ry. Cas. 32.—**CAN.**

f (p. 309) **v.** —— ——.]—Sherbrooke Corpn. *v.* Canadian Pacific Ry. Co. (1927), 33 Can. Ry. Cas. 35.—**CAN.**

355. *Add. Annotations :*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124; The Kite (1933), 49 T. L. R. 525.

f (p. 309) vi. —— ——.]—*Re* ANGLIERS RAILWAY CROSSING REFERENCE, [1937] S. C. R. 451.—**CAN.**

sk. *Railway Act*, 1927, ss. 264, 265, 266—*Not applicable to level crossings.*]—OSTRANDER *v.* MICHIGAN CENTRAL RAILROAD CO. & PERE MARQUETTE RY. CO., [1930] 1 D. L. R. 34; 64 O. L. R. 408.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

sm. *Gate left open—Obligation on person crossing track to take reasonable precautions.*]—The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming.—MICHALINSKI *v.* CANADIAN PACIFIC RY. CO., [1928] 3 W. W. R. 238.—**CAN.**

sp. —— ——.]—A person who found the gates of a railway level crossing open, & was thereby misled into thinking the line safe for crossing, was held not bound to minute circumspection, & the co. was liable to him in damages, his car having been broken by a passing engine.—DAYA SHANKAR *v.* BOMBAY, BARODA & CENTRAL INDIA RY. CO. (1931), I. L. R. 53 All. 943.—**IND.**

PART IV. SECT. 2, SUB-SECT. 2.

a (p. 311) i. —— *Whether gate wilfully left open—Gate wilfully opened by stranger.*]—BROWN *v.* GREAT NORTHERN RY. CO., [1927] 2 D. L. R. 316; [1927] 1 W. W. R. 516; 32 Can. Ry. Cas. 320; 38 B. C. R. 115.—**CAN.**

PART IV. SECT. 3.

aa (p. 314) i. ——.]—SMART *v.* SOUTH AFRICAN RYS. & HARBOURS (1928), 49 N. L. R. 129.—**S. AF.**

aa (p. 314) ii. ——.]—In an action for damages resulting from a collision at an unguarded level crossing, between a motor car & a freight train which had been standing on a siding :—*Held :* even if the evidence favourable to deft. as to the time when the peril arose was correct, it was negligence on the part of the train crew not to have seen the motor car in time to give an effective warning before backing up the train, & such negligence was the cause of the accident.—DOWSER *v.* CANADIAN NATIONAL RY. (Alta.), [1929] 4 D. L. R. 233; 2 W. W. R. 654.—**CAN.**

aa (p. 314) iii. ——.]—A farm-crossing is not a highway-crossing, & sect. 308 of Railway Act, 1927, which requires, in the case of a train approaching a highway-crossing at rail level, that the engine-whistle shall be sounded at least 80 rods before reaching the crossing, has no application to a farm-crossing. — HIGHLEY *v.* CANADIAN PACIFIC RY., [1930] 1 D. L. R. 630; 36 C. R. C. 217; 64 O. L. R. 615.—**CAN.**

aa (p. 314) iv. ——.]—GOODWIN *v.* GOODWIN & C. P. R., [1933] O. R. 225; 1 D. L. R. 753.—**CAN.**

aa (p. 314) v. ——.]—In an action for injuries to a person at a highway crossing :—*Held :* although there was no statutory duty to sound the whistle at 550 feet, failure to do so might well be negligence.—GRAY *v.* WABASH RY. CO. (1916), 35 O. L. R. 510.—**CAN.**

aa (p. 314) vi. ——.]—LITOWITZ *v.* CANADIAN NATIONAL RAILWAYS, [1934] 3 W. W. R 520; [1935] 1 D. L. R. 216; 42 Man. L. R. 504.—**CAN.**

aa (p. 314) vii. ——.]—The duty of a driver approaching a level crossing discussed.—SOUTH AFRICAN RAILWAYS *v.* SYMINGTON, [1935] App. D, 37.—**S. AF.**

e (p. 315) i. ——.]—CANADIAN NATIONAL RY. *v.* POMERLEAU, [1931] S. C. R. 287; 1 D. L. R. 209; *affg.*, [1930] 3 D. L. R. 841; 37 C. R. C. 76; 48 Que. K. B. 97.—**CAN.**

e (p. 315) ii. ——.]—The duty of the driver & the fireman of an engine approaching a level crossing discussed.—SOUTH AFRICAN RAILWAYS *v.* VAN DER MERWE, [1934] A. D. 129.—**S. AF.**

e (p. 315) iii. ——.]—A fireman is not required to neglect his other duties in order to keep a look-out when approaching a crossing.—GAVEL *v.* CANADIAN NATIONAL RAILWAYS, [1935] 2 D. L. R. 627; 9 M. P. R. 501.—**CAN.**

e (p. 315) iv. ——.]—Pltf.'s husband was killed by a train at a level crossing. Deft. railway co. alleged that the crossing was a private crossing for the use of those having business with the railway & that deceased was a trespasser. The evidence was that for many years the crossing had been used, without any objection from deft., by every one who wished to cross the railway, although deft. in building & maintaining it may have intended that it should primarily be used by those having business with deft. The jury found that deceased was a licensee :—*Held :* in view of the long-established user of the crossing by the public, deft. was bound to use reasonable care to avoid, if possible, injuring any one on the crossing. The rule that a licensee must accept the premises as he finds them with their "concomitant conditions &, it may be, perils" does not free the licensor from liability for injuries to the licensee caused by negligent acts committed by the licensor or his servants when the licensee is on the premises.—GREEN *v.* CANADIAN PACIFIC RY. CO., [1937] 2 W. W. R. 145.—**CAN.**

p (p. 315). *Revsd.*, [1927] 3 D. L. R. 888; [1927] S. C. R. 505; 33 Can. Ry. Cas. 55.

p (p. 315) i. —— ——.]—TREMBLAY *v.* CANADIAN PACIFIC RY. CO. (1927), Q. R. 65 S. C. 406.—**CAN.**

r (p. 315) i. —— ——.]—Where the Railway Administration has used a particular warning to announce the approach of a train at a level crossing, thereafter, upon an occasion when such warning is not given, a collision occurs between an engine & a vehicle crossing the line, the ct. in deciding whether the driver of the vehicle took reasonable care in approaching the crossing will take into account the fact that the driver may have been thrown off his guard by the absence of the usual form of warning.—MANCHO *v.* SOUTH AFRICAN RYS. & HARBOURS, [1928] App. D. 89.—**S. AF.**

r (p. 315) ii. —— ——.]—MAYOARD *v.* CANADIAN PACIFIC RY. (Alta.), [1929] 4 D. L. R. 1064; 2 W. W. R. 652.—**CAN.**

r (p. 315) iii. —— ——.]—Two actions were brought against defts. by the driver & passenger of a car to recover damages for injuries sustained by the car being struck by a train at a level crossing. It was found that the train was travelling more than 10 miles an hour in breach of sect. 309 (c) of the Railway Act, but the actual & proximate cause of the collision was the negligence of the driver of the car in attempting to cross the tracks when the train was so near. Defts. therefore held not liable.—GAULEY *v.* CANADIAN PACIFIC RY., BIRKETT *v.* CANADIAN PACIFIC RY., [1930] 4 D. L. R. 354; 36 C. R. C. 365; 65 O. L. R. 477; *revsg.*, [1930] 1 D. L. R. 225; 36 C. R. C. 215; 64 O. L. R. 527.—**CAN.**

r (p. 315) iv. —— ——.]—In an action for damages for personal injuries resulting from a collision between an automobile & a railway train at a level crossing the trial judge, who misdirected himself in treating the whistling of the mile post as one of the warnings required by sect. 308 of the Railway Act, R. S. C., 1927, said that he accepted the testimony of the engineer "corroborated in some particulars by the evidence of other witnesses." The engineer's testimony was corroborated as to one only of the statutory signals & by only one of the three witnesses referred to. The testimony of the other two witnesses was that the train whistled at the mile post. On appeal : —*Held :* it being impossible for the ct. to say whether the trial judge would have concluded that the statutory signals had been given if he had properly appreciated the requirements of the statute & the limited amount of the corroborative testimony with respect to them, his finding could not stand & there must be a new trial.—NAGEL & NAGEL *v.* CANADIAN NORTHERN RY. CO., [1930] 2 W. W. R. 431; 4 D. L. R. 366; 24 S. L. R. 502; *setting aside*, [1930] 1 D. L. R. 1004.—**CAN.**

r (p. 315) v. —— ——.]—It is negligence to attempt to pass over a level railway crossing without looking both ways for trains as carefully as a reasonably prudent man would, unless there is some reasonable excuse for not doing so.—GREEN *v.* CANADIAN NATIONAL RAILWAYS CO., [1931] 3 W. W. R. 448; [1932] 1 D. L. R. 253; *revsd.*, [1932] S. C. R. 689; 4 D. L. R. 593.—**CAN.**

r (p. 315) vi. —— —— *Question for jury.*]—Pltf., while standing on a railway track at a level crossing, was struck by a train. There was a snowstorm at the time, & he was assisting in getting clear of the track a motor car driven by another person which had stuck in a drift on the track. The jury found that the engine whistle was not blown nor was the bell rung, as required by statute; that the absence of these signals caused the accident; & that there was no contributory negligence on the part of pltf. At the close of pltf.'s case deft.'s counsel had moved to have the case withdrawn from the jury on the ground that it was manifest that there had been contributory negligence :—*Held :* the case should have been taken from the jury on the ground that it was evident from pltf.'s own case that, even if the facts were that deft. had not given the proper warnings, the accident could not have happened but for pltf.'s negligence in remaining on the track.—CONVERSE *v.* CANADIAN PACIFIC RY. CO., [1932] 2 W. W. R. 1.—**CAN.**

r (p. 315) vii. —— ——.]—A guest passenger in a motor car held to have been under no duty, under the circumstances, to keep a look out when approaching a level railway crossing, &, therefore, the fact that he did not do so was held, in an action resulting from a collision of the motor car with a train, not to have been contributory negligence on his part.—TOLLPASH *v.* CANADIAN NATIONAL RY., [1932] 1 W. W. R. 348.—**CAN.**

r (p. 315) viii. —— ——.]—Resp.'s automobile was struck by appt.'s train at a railway crossing. The statutory signals (ringing bell & blowing whistle) were not given

357. *Add. Annotation:*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

361. *Add. Annotations:* — **Distd.** Compania Mexicana De Petroleo " El Aguila " *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Consd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59; Service *v.* Sundell (1929), 99 L. J. K. B. 55; M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** Service *v.* Sundell (1929), 45 T. L. R. 569; Cooper *v.* Swadling (1929), 46 T. L. R. 73; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

Part V.—Arrangements between Railway Companies.

371. *Add. Annotation:—As to* (1) **Distd.** Crediton Gas Co. *v.* Crediton U. D. C., [1928] Ch. 447.

475. *Add. Annotations:—As to* (1) **Consd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. *Generally*, **Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

503a. Claim for compensation—" Determination " by company—What amounts to.]—Pltfs. were transferred to the co.'s employment when it became an amalgamated co. under Railways Act, 1921 (c. 55). In accordance with Sched. 3 to that Act they put forward claims to compensation for loss suffered by reason of the amalgamation. Sched. 3, para. 4, provides that any question whether the provisions of para. 3, dealing with the transfer of existing officers or servants, has been complied with, should be referred to a Standing Arbitrator or board of arbitrators appointed by the Lord Chancellor, & para. 5 provides that claims shall be determined in accordance with Local Government Act, 1888 (c. 41), s. 120, with the necessary modifications. By sub-sect. 4 of that sect., the time for appeal to a Standing Arbitrator is fixed at three months from the date of the determination. The claims were discussed at a meeting held on Apr. 26, 1928, at the co.'s registered office. L., the co.'s assistant general manager, concluded by asserting that the cases of all pltfs. were governed by a decision of the Standing Arbitrator refusing the claim of one B., but no formal letter refusing the claims was sent to pltfs. or their solr. It was subsequently contended on behalf of the railway co. that the co. had given its " determination " of the claims, within Railways Act, 1921 (c. 55), at the meeting of Apr. 26, & that the proposed appeals were out of time. In an action by pltfs. for a declaration that their claims were not determined by the co. on Apr. 26, 1928 within Railways Act, 1921 (c. 55), Sched. 3, para. 5, or at all:—*Held:* decisions on claims for compensation must be formulated in a definite manner in the name & on behalf of the co. & communicated forthwith to the claimants; & on the facts there had been no such determination.—MACDONALD *v.* GREAT WESTERN RY. CO., [1930] 1 Ch. 364; 99 L. J. Ch. 164; 142 L. T. 460; 28 L. G. R. 171.

503b. —— Loss of employment must be due to amalgamation.]—*Re* DAWSON & LONDON, MIDLAND & SCOTTISH RY. (1929), 73 Sol. Jo. 748.

Owing to bluffs & shrubbery intercepting his view, resp. was unable to see down the railway in the direction of the approaching train until he had reached the right-of-way. Resp. had listened for the whistle & looked for smoke. When he reached the right-of way, he took a hurried glance along the track, which did not disclose any danger. He then gave his attention to his automobile as it went up a grade towards the track & did not again look along the track until too late to avoid the accident. In an action for damages, the jury negatived contributory negligence on the part of resp. & he recovered damages:—*Held:* resp.'s failure under the existing circumstances to make a more careful & complete observation, which would have disclosed the approaching train, did not so incontrovertibly amount to contributory negligence that no jury could reasonably find otherwise.—CANADIAN NATIONAL RYS. *v.* CLARK, [1923] S. C. R. 730.—**CAN.**

r (p. 315) ix. —— ——.]—Pltf. on behalf of herself & her husband, sued deft. under Compensation to Relatives Act, 1897, for damages for the death of her son who was killed by a train whilst crossing a level crossing controlled by deft. At the crossing there were two sets of gates, traffic gates & wicket gates for pedestrians. At the trial, one of defts.' regulations, which instructed gatekeepers at this class of gate to warn pedestrians of risk & prevent them crossing during operations, was admitted in evidence. The negligence charged against deft. was failure to have a gatekeeper on duty at the gates & failure on the part of the train driver to keep a look out & give warning:- although deft.'s regulation relating to the duty of gatekeepers was admissible in evidence, there was no evidence of negligence in the management & control of the level crossing, but there was evidence upon which the jury were entitled to hold that the accident, despite pltf.'s contributory negligence, was due to the failure of the train driver to keep a sufficient look out.—ALCHIN *v.* RAILWAYS COMR. (1935), 35 S. R. N. S. W. 498; 52 N. S. W. W. N. 156.—**AUS.**

r (p. 315) x. —— *Admissibility of order made by provincial railway—Before becoming federal railway.*]—LITTLEY *v.* BROOKS & CANADIAN NATIONAL RY. CO., [1930] S. C. R. 416; 4 D. L. R. 1; 37 C. R. C 13; *revsg.*, 36 C. R. C. 357.—**CAN.**

q (p. 316). *Revsd.*, [1928] S. C. R. 397.

s (p. 316) i. *Defective approach to crossing.*]—RASPBERRY *v.* CANADIAN NATIONAL RY. CO., [1928] 3 D. L. R. 831; 62 O. L. R. 406.—**CAN.**

b (p. 317) i. ——.]—CANADIAN NATIONAL RAILWAYS *v.* POMERLEAU, [1931] S. C. R. 287; [1931] 1 D. L. R. 209.—**CAN.**

c (p. 317). *Revsd.*, 48 S. C. R. 561.

d (p. 317) i. *Duty to trespasser.*]—In an action for damages for personal injuries sustained by a pedestrian at a level railway crossing the jury found deft. negligent & that pltf. had been contributorily negligent, & apportioned the damages under Contributory Negligence Act. Deft. appealed:—*Held:* pltf., who when he was struck by the train was on a pathway at the side of the plank roadway, was a trespasser, & deft. had not been guilty of any breach of duty towards him.—JURE *v.* VANCOUVER HARBOUR COMRS., [1931] 3 W. W. R. 157; 4 D. L. R. 916; 44 B. C. R. 271.—**CAN**

PART V. SECT. 2, SUB-SECT. 4.—A.

sg. *Agreement for equal division of freight.*]—Upon an agreement made between C. P. R. & the C. N. R. dated Jan. 29, 1929, being Sched. " C " to Northern Alberta Railways Act, & upon the facts & circumstances existing with regard to traffic, rates & carriage, grain shipped from stations on the Northern Alberta Railways to Prince Rupert (reached by the C. N. R. alone) or to Victoria (reached by the C. N. R. by transporting loaded cars of grain on barges, but not so reached by the C. P. R.) for export, & exported from either of those ports (to, say, the United Kingdom), is " outbound freight traffic destined to competitive points on or beyond the lines of the parties " within art. 7 of said agreement, & is not to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under art. 7. In the light of the objects of the agreement as ascertained from it as a whole, & the conditions the parties must necessarily have had in view, the words " competitive points on or beyond the lines of the parties " should not be construed as limited to points on the lines of the parties or their connecting rail carriers to which the parties are prepared to handle traffic offered at equal rates.—CANADIAN PACIFIC RY. CO. *v.* CANADIAN NATIONAL RY. CO., [1934] S. C. R. 305; 3 D. L. R. 385; *affd.*, [1935] 4 D. L. R. 145; 3 W. W. R. 121; 5 F. L. J. (Can.) 67.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.

t. *Revsd.*, 1 O. L. R. 575, 594.

Part VI.—Relations between Railway Companies and the Public.

528. *Add. Annotation :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

535. *Add. Annotation :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

543. *Add. Annotation :*—**Distd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

545. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

554. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

557. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

558. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

561. *Add. Annotation :*—**Refd.** Pronek *v.* Winnipeg, Selkirk & Lake Winnipeg Ry. Co., [1933] A. C. 61.

564. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

580. *Add. Annotations :*—**Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455; Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

584. *Add Annotation :*—*As to* (2) **Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

Part VII.—Railway Companies and their Servants.

598a. Injury to ganger—Duty to provide look-out man—Prevention of Accidents Rules, 1902, r. 9.]—The foreman of a gang in the employ of a railway co. was employed to repair some signalling apparatus on the permanent way, & took with him a member of his gang to assist him. Whilst engaged in working on the down line he with his fellow workman stepped off the line on the up line to avoid a down train & both men were killed by an up train. In an action by the widow of the foreman for damages against the co. for

PART VI. SECT. 1.

f i. —— —— *Passenger standing on platform of car—Contrary to statutory notice duly posted.*]—DOBIE *v.* CANADIAN PACIFIC RAILWAY (B. C.), [1931] S. C. R. 277; 3 D. L. R. 856; *revsg.*, [1930] 1 D. L. R. 790; [1930] 1 W. W. R. 6; 36 C. R. C. 200; 42 B. C. R. 30; *affg.*, [1929] 2 D. L. R. 901; 35 Can. Ry. Cas. 302.—**CAN.**

PART VI. SECT. 4.

so. *Trespass by unlicensed porter.*]—A person used to work as a licensed porter at the Allahabad railway station, but was dismissed for absenting himself without permission. Subsequently he entered the platform for the purpose of carrying passengers' luggage, & was prosecuted for unlawfully entering railway premises. It was not alleged that there was any barrier leading to the platform, or that entry to the platform was permitted only to ticket-holders :—*Held :* the entry was with the implied permission of the railway authority, & was not therefore unlawful within sect. 122 of the Railways Act; nor did it become so by reason of the fact that his intention was to work as a porter although unlicensed, which he knew was prohibited by the railway authority.—EMPEROR *v.* CHANDAI [1933], I. L. R. 56 All. 254.—**IND.**

PART VI. SECT. 5, SUB-SECT. 1.

m (p. 347) l. ——.]—A railway co. dug pits upon their land & allowed water to escape, to the injury of their neighbour. In an action for damages :—*Held :* the limitation sect. of the Railway Act was not applicable, the right sought to be enforced not arising from the statute, but the action was upon the case & must be brought within 6 years after the cause of action arose. — TORONTO GENERAL TRUSTS CORPN. *v.* CANADIAN NATIONAL RY., [1930] 2 D. L. R. 286; 36 C. R. C. 187; 64 O. L. R. 622; *revsg.*, [1929] 1 D. L. R. 600; 35 C. R. C. 119; 63 O. L. R. 320.—**CAN.**

m (p. 347) ii. ——.]—An action for damages against a railway must be commenced within two years, Govt. Railways Act, R. S. C., 1927, having inferentially repealed Railway Act, R. S. C., 1927.—SHEA *v.* MCDONALD, [1935] 3 D. L. R. 569; 9 M. P. R. 150; 5 F. L. J. (Can.) 69.—**CAN.**

sn. *Liability of Government railway for negligence—Application of Provincial Contributory Negligence Act.*]—CANADIAN NATIONAL RY. Co. *v.* ST. JOHN MOTOR LINE, LTD., [1930] S. C. R. 482; 3 D. L. R. 732; 37 C. R. C 29.—**CAN.**

sg. *Injury to land by subway—Jurisdiction of Dominion Railway Board.*]—The Dominion Railway Board, & not the Supreme Ct. of Ontario, has jurisdiction to entertain an action by a landowner against a railway co. for injury to his land by the absence of a retaining wall & under-drainage in connection with a subway erected by the railway co.—BOLAND *v.* CANADIAN NATIONAL RYS., [1934] O. R. 126.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.—A.

556 iii. —— ——.]—When in pursuance of the authority or obligation conferred on it by sect. 281 (*a*) of Railway Act. R. S. C., 1927, & the regulations of the Board of Railway Comrs. issued thereunder, a railway co. proceeds to burn a fireguard it is not liable for damage caused by the spread of the fire therefrom unless it is shown that the escape of the fire was due to the co.'s negligence.—YOUNG & YOUNG *v.* CANADIAN PACIFIC RY. Co., [1931] 2 W. W. R. 14; 2 D. L. R. 968.—**CAN.**

so. *Damage to timber—Failure to patrol right of way—Defects in locomotive.*]—MID-LAKES TIMBER CO. *v.* CANADIAN PACIFIC RY. Co., [1928] 4 D. L. R. 922; [1928] 3 W. W. R. 745.—**CAN.**

sp. *Death due to fire caused by sparks from engine—Claim by dependants — Where enforceable — Meaning of "losses."*]—VICTORIAN RYS. COMRS. *v.* SPEED, [1928] V. L. R. 150; [1928] Argus L. R. 77: 40 C. L. R. 434.—**AUS.**

PART VII. SECT. 1.

k. *Revsd.*, 47 S. C. R. 634.

provision in sect. 308 of Railway Act, R. S. C., 1927, for the blowing of the whistle & the ringing of the bell at the approach to a highway crossing is intended only for the benefit of persons coming upon the crossing; others (*e.g.*, a section foreman as the present pltf. was) lawfully on the track in the proximity of the crossing are not entitled to the protection afforded by the statute.

In an action for damages for injuries resulting from being struck by a train, it is necessary, in order for the pltf. to recover on the ground of alleged negligence in not having the headlight lighted, that there should be evidence upon which the jury can reasonably find, not merely that the presence of the headlight *might* have prevented the accident, but that it *would* have prevented it.—HESSLER *v.* CANADIAN PACIFIC RY. Co., [1934] 2 W. W. R. 24; *revsd.*, [1935] S. C. R. 585; [1936] 1 D. L. R. 9.—**CAN.**

sq. *Injury while on duty—Salary during incapacity—Rate.*]—Pltf., who was a temporary cleaner employed by deft., but who was qualified to act as a fireman, was injured, & temporarily incapacitated, while acting, for one day, in the latter capacity :—*Held :* under sect. 100B of Govt. Rys. Act, 1912, as inserted by sect. 22 of Govt. Rys. (Amendment) Act, 1916, the rate at which pltf. was entitled to be paid, during the period of his incapacity, was that prescribed for a temporary cleaner, & not that prescribed for a fireman.—LINDFIELD *v.* NEW SOUTH WALES RY. COMRS. (1929), 30 S. R. N. S. W. 346; 47 N. S. W. W. N. 115.—**AUS.**

st. *Injury through failure to apply emergency brake.*]—Pltf., a workman employed by deft., was injured while

breach of statutory duty, the judge directed the jury that a regulation of the co. under which the foreman of a gang was entrusted with the duty of seeing that a look-out man was provided whenever he or any of his gang were at work upon the line was a compliance with r. 9. The jury found that the co. had not omitted to perform their statutory duty of providing a look-out man, & that the foreman's death was caused by the negligence of one or the other or both of the men, & judgment was entered for the co. :—*Held :* (1) a motion for a new trial, on the grounds of misdirection & that the verdict was against the weight of evidence, must be refused ; (2) the rule does not require the look-out man provided to be some one who is not a member of the gang itself, but is appointed additionally. (3) *Semble :* the duty of the railway co. under the rule in any case of danger is an absolute duty to provide a look-out man & to see that he is instructed to act. The co. does not comply with the rule by merely making regulations under which the foreman of a gang is entrusted with the duty of appointing a look-out man ; &, if the foreman fails in that duty, the co. may be made liable for injury happening to a member of the gang other than the foreman himself.—VINCENT *v.* SOUTHERN RY. CO., [1927] A. C. 430 ; 96 L. J. K. B. 597 ; 136 L. T. 513 ; 71 Sol. Jo. 34, H. L.

Annotation :—**Refd.** Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669.

Part IX.—Controlling Powers of Ministry of Transport.

602. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

Part X.—Railway Tribunals.

612. *Add. Annotation :*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

618. *Add. Annotation :—As to* (1) **Refd.** Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10.

631. *Add. Annotations :*—**Consd.** British Trawlers' Federation. Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14 ; London & North Eastern Ry. Co. *v.* British Trawlers Federation, Ltd., [1934] A. C. 279.

631a. Facilities must arise out of railway traffic.]—The jurisdiction of the Railway & Canal Traffic Commission is limited to questions arising directly or indirectly out of traffic upon a railway. Therefore the Commission refused to entertain an application for improved facilities by the owner of an occupation road which was crossed by a line of railway & interrupted by gates which were said to be kept shut ; & on a summons taken out by resps. the application was dismissed, no evidence being heard, on the ground that

laying new track on deft.'s right-of-way. His foot was caught between a rail & a tie & a wheel of the "pioneer" of the work train which was proceeding behind the workmen struck & crushed his leg. The jury found deft. responsible for the injury because of the fault of the brakesman on the "pioneer" in not responding quickly enough in applying the emergency air-brake when sensing the danger. The jury negatived any negligence on pltf.'s part. The evidence as to whether the brakesman applied the emergency brake at all was contradictory :—*Held :* the jury's finding must be taken to mean that, if the brakesman did apply the brake, he did not do so as quickly as he might & ought to have applied it ; & on the evidence it was open to the jury to so find.—KLAPISCHUK *v.* CANADIAN PACIFIC RY. CO., [1932] 1 W. W. R. 528.—CAN.

sv. *Injury through defective brake.*]—An employee of deft. was killed while engaged in switching operations in deft.'s yard. The accident was not seen, but he was found dead on the ground after "riding" down a "hump" a car which, as later found, had a defective brake :—*Held :* deft.'s appeal to this ct. should be dismissed.—CANADIAN PACIFIC RY. CO. *v.* MURRAY, [1932] S. C. R. 112 ; 2 D. L. R. 806.—CAN.

sx. *Contributory negligence.*]—Pltf., while engaged in operating a steam shovel in deft.'s railway yards, was drawn into the coils of a steel cable about a revolving drum. In an action for damages the jury, in answer to questions, found that deft. was guilty of negligence "that caused the accident," which negligence it described as lack of protection at the niggerhead, & absence of proper signalling when about to start operation of the shovel ; the jury also found that pltf. was guilty of negligence that caused the accident in that he approached too close to the niggerhead when the latter was in motion :—*Held :* the judge was right in interpreting the verdict as a dismissal of pltf.'s claim.—CHERBON *v.* CANADIAN PACIFIC RY. Co., [1932] 1 W. W. R. 513.—CAN.

sy. *Injury to switchman.*]—On appeal by deft. railway co. in an action wherein a trainman was awarded damages for injuries sustained by being run down by a train while he was opening switches :—*Held :* notwithstanding the strong *prima facie* case of negligence against pltf. there was evidence on which the jury could reasonably find, as it did, that he was not guilty of contributory negligence.—EMERY *v.* CANADIAN PACIFIC RY. CO., [1933] 2 W. W. R. 369.—CAN.

sz. *Injury by fellow servant of Crown.*]—In an action by an employee of the Canadian National Railways who was injured by a collision between two of the co.'s trains :—*Held :* he could not recover because (1) he was injured by a fellow servant ; (2) the action did not lie against the Crown ; (3) a [illegible]

[1933] 4 D. L. R. 605 ; 6 M. P. R. 337.—CAN.

PART VII. SECT. 3.

sr. *Superannuation allowance — Who entitled to.*]—F. entered the employment of the Railway Comrs. in 1910, & remained in their employ for upwards of ten years. He was employed on the temporary staff until 1927, when he joined the permanent staff. He remained a member of the permanent staff until his retirement in 1929. He was then over the age of 60 years :—*Held :* F. was entitled to a superannuation allowance under Govt. Rys. Act, 1912, s. 113 (*a*).—*Re* CLEARY, *Ex p.* FULLER (1929), 30 S. R. N. S. W. 407 ; 47 N. S. W. W. N. 189.—AUS.

PART VIII.

st. *Arrest without warrant — When justifiable.*]—Under Railways Act, s. 122, to justify an arrest without a warrant, much more than trespass on railway premises or travelling without a ticket is necessary. In the case of trespass, it will have to be shown that there was reason to believe that the person to be arrested would abscond, or that his name & address were unknown & he refused to give his name & address, or that the name & address given by him was incorrect. In the case of travelling without a ticket, it will, further, have to be shown that there was a refusal to pay the sum charged.—HAMID *v.* SUDHIRMOHAN GHOSH (1929), I. L. R. 57 Calc. 102.—IND.

it disclosed no matter with which the Commission was competent to deal.—SANDILANDS *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

684. *Add. Annotation :*—**Refd.** Tate & Lyle, Ltd. *v.* London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. (1926), 20 Ry. & Can. Tr. Cas. 166.

685a. —— ——.]—Railway & Canal Traffic Act, 1888 (c. 25), s. 18, gives the Railway & Canal Commission power to review, rescind or vary any order which it has made. Under this provision orders may be varied owing to change of circumstances & may be varied at any time upon proper evidence of such change. Under the Rules of Procedure, r. 69, an order may be varied upon an application made within 28 days of the decision for the purpose of correcting any accidental slip or miscalculation in it. The two applications are, however, distinct, & an application to correct a miscalculation, especially in a case of great magnitude & complexity, must be made promptly & an application for "re-argument" is not within the rule.—*Re* RAILWAY ASSESSMENT AUTHORITY'S APPLICATION, [1936] 2 All E. R. 316; 80 Sol. Jo. 388; *sub nom. Re* SOUTHERN RY. Co.'s APPEAL, 155 L. T. 63; 100 J. P. 313; 34 L. G. R. 270; *sub nom.* RAILWAY ASSESSMENT AUTHORITY *v.* SOUTHERN RY. Co., 24 Ry. & Can. Tr. Cas. 168.

691a. Effect of death of judge during hearing.]—*Held :* if the judge assigned to the Commission dies during the hearing of an application, but after the evidence has been completed, it is a proper course (the parties consenting) for his successor to read the shorthand notes of the evidence & of the arguments, & to continue the hearing from the point reached at the last adjournment.—BRITISH REINFORCED CONCRETE ENGINEERING Co., LTD. *v.* LONDON & NORTH EASTERN RY. Co. (1928), 45 T. L. R. 186: 20 Ry. & Can. Tr. Cas. 78.

691b. Dismissal of application irrelevant on face.]—SANDILANDS *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 631a, *ante*.

702a. —— ——.]—*Held :* the decision of the Comrs. was on a question of fact; in coming to their decision they had not considered any matters which under the Acts they ought not to have considered; & consequently no appeal from their decision could be entertained.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCN. *v.* SOUTHERN RY. Co. (No. 2) (1934), 21 Ry. & Can. Cas. 126.

703. *Add. Annotations :*—**Apld.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746. **Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

705. *Add. Annotations :*—**Refd.** *Re* Railways Act, 1921, *Re* Great Western Ry. Co.'s Application, [1933] 2 K. B. 391; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

727a. —— ——.]—*Held :* appct.'s claim was frivolous & vexatious & must be dismissed with costs.—STOKES *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1932), 21 Ry. & Can. Tr. Cas. 30.

738. *Add. Annotations :*—**Consd.** Lloyd del Pacifico *v.* Board of Trade (1930), 46 T. L. R. 476. **Refd.** London Welsh Estates, Ltd. *v.* Phillip (1931), 144 L. T. 643.

752. *Add. Annotation :*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

755. *Add. Annotation :*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W. Ry., L. M. & S. Ry., L. & N. E. Ry. & Southern Ry. (1928), 19 Ry. & Can. Tr. Cas. 285.

756a. Adjustment of charges to revenue—Railway carrying on subsidiary business—Railways Act, 1921 (c. 55), s. 58.]—In dealing with the subject of dock undertakings belonging to railway cos. the Railway Rates Tribunal accepted the division between "railway" & "dock" set out in the railway cos.' estimates, by which all receipts & expenses in respect of railways, sidings & warehouses, whether they were within the area of a dock or not, were treated as "railway" receipts & expenses, & all receipts & expenses in respect of "docks" other than those entered as "railway" receipts & expenses, were treated as "dock" receipts & expenses :—*Held :* (1) this division of receipts & expenditure between railways & docks could not be supported, as it involved the exclusion from consideration of charges at dock warehouses or storage spaces where none of the goods stored therein used railways, & all charges in respect of the conveyance on railways in docks in whatever circumstances the rails were laid or charges were made for their use; (2) (BANKES, L.J.) under sect. 58 (4) of the above Act the Tribunal has to take into consideration the different operations which go to make up the business of a dock undertaking, for which operations separate & distinct charges are made; (3) *Semble* (SCRUTTON, L.J.): warehousing on a dock undertaking goods exported or imported, storing such goods in the open on dock lands, the use of transit sheds, & services such as coopering, are dock & not railway charges.—MANCHESTER SHIP CANAL Co.'s & DOCK & HARBOUR AUTHORITIES ASSOCN.'s APPLICATIONS, [1927] 2 K. B. 154; 96 L. J. K. B. 421; 137 L. T. 39; 43 T. L. R. 301; *sub nom.* STANDARD CHARGES (DOCKS HARBOURS & PIERS), 19 Ry. & Can. Tr. Cas. 75, C. A.

756b. —— —— ——.]—STANDARD CHARGES (COLLECTION & DELIVERY-WAREHOUSING) (1925), 19 Ry. & Can. Tr. Cas. 53.

756c. —— **Consideration of ancillary business—Modification condition precedent.**] — *Held :* Railways Act. 1921 (c. 55), s. 58 (2), (4), does not become applicable until the Tribunal. having reviewed the charges, has decided to modify them.—STANDARD & EXCEPTIONAL CHARGES (FIRST REVIEW) (1929), 20 Ry. & Can. Tr. Cas. 87.

756d. —— —— ——.]—*Held :* (1) if on review the Rates Tribunal does not modify charges it has no discretion to consider the financial results obtained from ancillary businesses; (2) the Tribunal will not exercise any discretion it may have, under Railways Act, 1921 (c. 55), s. 59 (4), to limit the allowance in respect of additional capital, where such capital has been invested under statutory powers, & the investment has not been shown to be unwise or imprudent.—STANDARD &

EXCEPTIONAL CHARGES (SECOND (1930), 20 Ry. & Can. Tr. Cas. 90.

756e. —— **What must be considered.**]—By Railways Act, 1921 (c. 55), s. 59 (4), if on review it is found that the net revenue is less than the standard revenue the Tribunal are required "to make such modifications in all or any of the standard charges & such a corresponding general modification of the exceptional charges of the co. as they may think necessary to enable the co. to earn the standard revenue":—*Held:* (1) in such a case, if the Tribunal are of opinion that neither a general increase nor a general reduction in charges will enable the co. to earn the standard revenue, they are not at liberty to make any modification at all; (2) until the Tribunal have reached the conclusion that a general modification will enable the co. to earn the standard revenue, they are precluded from entertaining any of the considerations prescribed by sect. 59 (6), such as the effect of the existing charges on the traffic of a particular industry.—STANDARD & EXCEPTIONAL CHARGES (FOURTH REVIEW) (1932), 21 Ry. & Can. Tr. Cas. 97.

756f. —— **What must be shown.**]—*Held:* (1) it is sufficient for a railway co. claiming the allowance under sect. 59 to show the items debited or credited to capital account in each year with a brief description of each item, provided that on the review a witness is called who can give any necessary explanations in cross-examination; (2) when an allowance is claimed under sect. 59, it is irrelevant for the Tribunal to consider whether the capital expenditure in respect of which the allowance is claimed has or has not enhanced the value of the undertaking.—STANDARD & EXCEPTIONAL CHARGES (FIFTH REVIEW) (1933), 21 Ry. & Can. Tr. Cas. 102.

756g. Allowance in respect of additional capital—Discretion to limit—When exercised.]—STANDARD & EXCEPTIONAL CHARGES (SECOND REVIEW), No. 756d, *ante*.

758. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

758a. —— ——.]—When a railway co. seeks the consent of the Railway Rates Tribunal under Railways Act, 1921 (c. 55), s. 37 (1), to the grant of exceptional rates for certain traffic which are more than 40 per cent. below the standard rates chargeable, the tribunal is only concerned to consider (*a*) whether the effect of the exceptional rates proposed will be to affect prejudicially the revenue of the co., & (*b*) whether persons using or desiring to use the railway will be prejudiced. The tribunal is not therefore concerned to inquire whether the exceptional rate will prejudice coastal carriers by placing them at a disadvantage & will therefore be undesirable in the national interest.—GREAT WESTERN RY. CO. *v.* UNITED KINGDOM CHAMBER OF SHIPPING, [1937] 2 K. B. 30; [1937] 2 All E. R. 138; 106 L. J. K. B. 721; 156 L. T. 467; 81 Sol. Jo. 317; 25 Ry. & Can. Tr. Cas. 223, C. A.

761a. Interrogatories—Discretionary.]—*Held:* (1) the ordering of interrogatories by the Rates Tribunal is discretionary; (2) the Tribunal is not bound by the practice of the High Ct.: (3) the Ct. of Appeal will not interfere with their discretion except where it is shown that there were no grounds on which it could have been exercised.—BRISTOL CORPN. *v.*

PART X. SECT. 3.

a (p. 375) i. —— —— *To Dominion railways only.*]—The B. C. Co. was incorporated in England & operates in British Columbia under a provincial licence. Under agreement with the C. P. R. Co. it operates by electricity the V. & L. I. Ry., which connects with the C. P. R., & which, in 1901, was leased to the C. P. R. Co. for 999 years, & was declared by Parliament to be a work for the general advantage of Canada. The B. C. Co.'s "Central Park Line" runs from Vancouver to its connection with a branch of the V. & L. I. Ry. & thence over the latter to the latter's terminus at or near New Westminster, from which terminus the B. C. Co.'s "Central Park Line" continues for one mile to a point where it makes physical connection with the Canadian National Ry. The Board of Railway Comrs. for Canada directed the B. C. Co. & the Canadian National Rys. to publish & file, between stations on the V. & L. I. Ry. & points on the Canadian National Rys., "*via* direct connection between the co.s," joint rates on the same basis as those published between the said V. & L. I. points & stations on the C. P. R. The B. C. Co. appealed against the order on the ground of lack of jurisdiction in the Board to compel it to file joint rates as aforesaid over the said one mile of its line, which, it contended, was subject only to provincial jurisdiction:—*Held:* the Board had not jurisdiction to make the order.—BRITISH COLUMBIA ELECTRIC RY. CO., LTD. & CANADIAN PACIFIC CO. *v.* CANADIAN NATIONAL RY. CO., NORTH FRASER HARBOUR COMRS. & PROVINCE OF BRITISH COLUMBIA, [1932] S. C. R. 161.—CAN.

a (p. 375) ii. —— —— *To lines within legislative authority of Parliament of Canada.*]—NORTH FRASER HARBOUR COMR. *v.* BRITISH COLUMBIA ELECTRIC RY. CO. & CANADIAN PACIFIC RY., [1932] 2 D. L. R. 728. —CAN.

a (p. 375) iii. —— *Over street railway incorporated by provincial legislature—Work for general advantage of Canada.*] —Where a street railway co. operating within a province was originally incorporated by a provincial legislature, but its undertaking is subsequently declared by a Dominion Act to be a work for the general advantage of Canada, the execution of its powers is within the jurisdiction of the Board of Railway Comrs. for Canada.—QUEBEC RAILWAY, LIGHT & POWER CO. *v.* MONTCALM LAND CO., [1928] 1 D. L. R. 143; [1927] S. C. R. 545.—CAN.

a (p. 375) iv. —— *Under Railway Act, ss. 345, 351.*]—BRITISH COLUMBIA & ALBERTA PROVINCES *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (FARES FOR PROVINCIAL POLICE CASE) (1927), Can. Ry. Cas. 322.—CAN.

d (p. 375) i. —— —— —— *Or to employ servants in inferior position.*]—DEATH *v.* NEW SOUTH WALES RAILWAY COMRS. (1927), 27 S. R. N. S. W. 187; 44 N. S. W. W. N. 53.—AUS.

e (p. 375) i. —— —— ——.]—ST. BRIGID'S PARISH, IBERVILLE COUNTY, P.Q. *v.* CANADIAN NATIONAL RYS. (1927), 33 Can. Ry. Cas. 15.—CAN.

ll (p. 375) i. —— —— —— *To contribute to cost of works.*]—The Board of Railway Comrs. for Canada when making an order for contribution to the costs of works is entitled to have regard to the state of matters existing when the order for contribution is made. If new interests which are affected by the work have arisen since it was originally ordered, the Board can competently order contribution to the cost to be made from such quarters. The test of liability to contribute is not necessarily to be found in the answer to the question whether an order to execute the work could originally have been pronounced against the party sought to be made liable to contribute. Once it is established that a co., municipality or person was within the meaning of the Railway Act "interested in or affected by" the construction of a work, the jurisdiction of the Railway Board under the Act to order it to contribute to the cost of the works is unassailable. The question of the quantum of the contribution is a matter entirely in the discretion of the Board. The Parliament of Canada has jurisdiction to confer on the Board authority to compel such contribution from a corpn. so interested or affected even though it is a provincial corpn.—CANADIAN PACIFIC RY. CO. *v.* TORONTO TRANSPORTATION COMMISSION, TORONTO TRANSPORTATION COMMISSION *v.* CANADIAN NATIONAL RYS., [1930] 3 W. W. R. 189; 4 D. L. R. 849; A. C. 686; *affg.*, [1930] 1 D. L. R. 231; S. C. R. 94; 36 C. R. C. 175; & *revsg. in part*, [1930] 1 D. L. R. 290; S. C. R. 73; 36 C. R. C. 157.—CAN.

oo (p. 375) i. —— —— *As to effect of order of Board.*]—*Re* BOLAND & CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 127.—CAN.

oooo i. —— —— *Prevention of alteration in routing of traffic.*]—BOARD OF TRADE OF HALIFAX, ST. JOHN & SACKVILLE, N.B., CANADIAN LUMBERMEN'S ASSOCN. *v.* CANADIAN NATIONAL

GREAT WESTERN RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 28, C. A.

761b. Not bound by practice of High Court.]—BRISTOL CORPN. *v.* GREAT WESTERN RY. Co., No. 761a, *ante*.

761c. Discretion—Interference by Court of Appeal.]—BRISTOL CORPN. *v.* GREAT WESTERN RY. Co., No. 761a, *ante*.

761d. Who may oppose.]—By Railways Act, 1921 (c. 55), s. 37, a railway co. may grant new exceptional rates, "so, however, that a new exceptional rate so granted shall not, without the consent of the rates tribunal, be less than 5 per cent. or more than 40 per cent. below the standard rate chargeable." By sect. 78 (3) of the same Act, any authority or body having the privileges conferred by the Act on a representative body of traders, "may appear in opposition to any application,

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RYS. (1926), 32 Can. Ry. Cas. 37.—CAN.

t (p. 376) i. —— —— *Transit rate—With stop-over privileges—Refusal to order.*]—ROSS LEAF TOBACCO CO., LTD. *v.* CANADIAN FREIGHT ASSOCN. (1927), 32 Can. Ry. Cas. 320.—CAN.

bb (p. 376) i. —— —— ——.]—Applts. made an application to the Board of Railway Comrs. for Canada for an order requiring resp. railway co. to reduce the freight rates on potatoes in carloads from shipping points within "select territory" in the Maritime Provinces to points within certain areas of Ontario & Quebec in which resps. had published reduced rates for the express purpose of meeting motor-truck competition. The Board found that applts. had failed to establish that the competitive tariffs complained of had resulted in the destruction of, or to the prejudice of, the advantages given by Maritime Freight Rates Act to shippers in the "select territory" in favour of persons or industries located elsewhere & dismissed the application:—*Held:* the judgment of the Board should be affirmed.—NOVA SCOTIA PROVINCE *v.* CANADIAN NATIONAL RYS., [1937] S. C. R. 271.—CAN.

oo (p. 376) i. —— —— ——.]—STANDARD HARDWOOD LUMBER CO. *v.* CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RYS. (COAL & COKE RATES CASE) (1926), 32 Can. Ry. Cas. 282.—CAN.

pp (p. 376) i. —— —— ——.]—The Board of Railway Comrs. for Canada, by its General Order No. 448, dated Aug. 26, 1927, ordered (*inter alia*) "that the rates on grain & flour from all points on Canadian Pacific branch lines west of Fort William to Fort William . . . be equalised to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crow's Nest Pass agreement not to be exceeded)" & "that all other railway companies adjust their rates" on grain & flour to the Canadian Pacific rates:—*Held:* (1) what was required of the Canadian National Rys. under Order 448 was to adjust its rates in such a way that in territory competitive as between it & the Canadian Pacific Ry. Co. grain shippers in such territory would be placed on as equal a rate basis as possible, all things considered; & the Canadian National Rys., in adopting the mileage grouping in effect from the nearest point, parallel or contiguous, main or branch line station, on the Canadian Pacific, had complied with the order; (2) the Board's order (construed as above) & the Board's allowance of the rates in question (fixed on above basis) were within its powers.—ALBERTA GOVERNMENT *v.* CANADIAN NATIONAL RYS. & CANADIAN PACIFIC RY. Co., [1931] S. C. R. 656; [1932] 1 D. L. R. 335.—CAN.

qq (p. 376) i. —— —— ——.]—CANADIAN SHIPPERS' TRAFFIC BUREAU *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 3.—CAN.

yy (p. 376) i. —— —— *Goods of same description.*]—HARDY'S, LTD. *v.* NEW SOUTH WALES RAILWAY COMRS. (1928), 28 S. R. N. S. W. 313; 45. N. S. W. W. N. 82.—AUS.

yy (p. 376) ii. —— —— *Compulsory reduction—Application of Maritime Freight Rates Act*, 1927.]—CANADIAN NATIONAL RY. Co. *v.* NOVA SCOTIA PROVINCE, [1928] 1 D. L. R. 369; [1928] S. C. R. 106; 34 Can. Ry. Cas. 223.—CAN.

yy (p. 376) iii. —— —— *Wharfage rates.*]—The Board of Railway Comrs. for Canada has no power, under Railway Act, R. S. C., 1927, to regulate, no question as to discrimination being involved, as to absorption by a railway co. of wharfage charges in respect of transpacific freight, at the point where the goods are transferred from rail to ship for ocean carriage to the transpacific country. The function of the Board as to tolls & charges is, excepting as to powers conferred by sect. 358 of the Act, limited to regulating charges for carriage & for those other services which are incidental to carriage, as railway services, within the meaning of the Act. The wharfage service in question is not such a service. This would appear to be so independently of, but is put beyond doubt by, sect. 358. The definition of "toll" cannot properly be construed as declaring that any wharfage service is a railway service in the above sense.—*Re* POWERS TO WHARFAGE CHARGES, [1931] S. C. R. 431.—CAN.

yy (p. 376) iv. —— —— *Consideration of other statutes & agreements.*]—Sub-sect. (5) of sect. 325 of the Railway Act declares the powers of the Board under the Act to fix & determine just & reasonable rates shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, or by any agreement made or entered into pursuant thereto, save & except as to rates on grain & flour from points west of Fort William to Fort William and Port Arthur. The wording of this sub-sect. should not be construed as a restriction upon the powers of the Board to fix the rates set out in the Order now in question. On the contrary, it seems from the language used that Parliament contemplated that the Board would look at & consider the statutes & agreements relating to rates which had been in force or agreed upon, & desired to make it clear that, with the exception of the Crow's Nest Agreement, the Board was not to be bound by any such statute & agreement. What weight these statutes & agreements shall have is left to the discretion of the Board; &, subject to certain conditions, the obligation rests upon the Board of fixing rates which are "fair & reasonable." In this case, the own conduct of the Canadian National Railways since the Order in question was made has been such as to justify the inference that, in their judgment, the rates were not unfair or unreasonable.—*Re* BOARD OF RY. COMRS. ORDER NO. 448 REGARDING RY. FREIGHT RATES IN CANADA, [1930] S. C. R. 288.—CAN.

yy (p. 376) v. —— —— *Maritime Freight Rates Act.*]—It is within the jurisdiction of the Board of Railway Comrs. for Canada (*a*) to approve from time to time, under s. 9 of Maritime Freight Rates Act (R. S. C., 1927, c. 79), tariffs filed by "other companies" therein referred to (companies other than the Canadian National Railways), specifying tolls lower than those specified in the tariffs originally filed and approved (which provided for reductions in rates of approximately 20 per cent.) under s. 9; (*b*) to certify from time to time (as distinct from the provision in s. 9 (4) for certifying in every third year, etc., as to revision of the normal tolls & subsequent use of revised normal tolls) normal tolls in respect of particular freight movements differing from those originally certified at the time of approving the tariffs originally filed & approved under said s. 9; & (*c*) to certify as the amount of reimbursement to the company the difference between the lower tolls referred to in (*a*) *supra* & the modified normal tolls referred to in (*b*) *supra*.—*Re* MARITIME FREIGHT RATES ACT, 1927, [1933] S. C. R. 423; 4 D. L. R. 764.—CAN.

yy (p. 376) vi. —— —— *International freight traffic.*]—*Re* INTERNATIONAL FREIGHT SHIPMENT CHARGES, [1935] 2 D. L. R. 148.—CAN.

ccc (p. 376) i. —— —— *Refusal of facility involving variation of established principle.*]—PARISH OF LANCASTER, ST. JOHN, N.B. *v.* DOMINION EXPRESS CO. & CANADIAN NATIONAL EXPRESS CO. (1926), 32 Can. Ry. Cas. 33.—CAN.

mmm (p. 376) i. —— —— ——.]—MULDOON *v.* CANADIAN PACIFIC RY. Co. (1927), 33 Can. Ry. Cas. 13.—CAN.

rrr (p. 376) i. —— —— ——.]—*Re* CANADIAN PACIFIC RY. Co., GRAND PILES, P.Q. (1926), 32 Can. Ry. Cas. 1.—CAN.

hh (p. 377) i. —— —— *Restoration of train services—Refusal to order.*]—ANNAPOLIS MUNICIPALITY N.S. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 257.—CAN.

pp (p. 377) i. —— —— —— *Refusal to fix responsibility for future accidents.*]—CANADIAN NATIONAL RYS. *v.* TOWNSHIP OF STAMFORD (1926), 32 Can. Ry. Cas. 252.—CAN.

qq (p. 377) i. —— —— —— *Power to order substitution of private crossing.*]—CALHOUN *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry Cas. 236.—CAN.

vv. *Revsd.*, [1912] A. C. 224.

vv i. —— —— *Use of railway bridge for vehicular traffic.*]—SASKATCHEWAN DEPARTMENT OF HIGHWAYS *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 23.—CAN.

aaa (p. 377) i. —— —— *Removal of utilities on construction of subway.*]—The Canadian National Railways applied to the Board of Railway Comrs. for the approval of plans & profiles for carrying its tracks across certain highways. The Board, in final Orders granting the applications, authorised the construction of subways or other structures in connection with the highway crossings &, at the same time, directed the present applts., amongst others, to move such of their utilities as may be affected by the construction or changes so authorised. Applts. urged that the Board was without jurisdiction to make the Orders in so far as it directed applts. to move their utilities; that, in any event, the Orders were made irregularly & not in accord-

representation or submission in any case where such authority, or the persons represented by them, appear to the Board of Trade to be likely to be affected by the decision on any such application, representation or submission" :—*Held :* (1) on an application for the consent of the Rates Tribunal to the granting of a new exceptional rate more than 40 per cent. below the standard rate chargeable, such a body so certified by the Board of Trade has a right to appear & be heard, whether in support of or in opposition to the proposed new rate ; (2) where a party is heard to object to the proposed new rate the only grounds of objection that can be entertained are the fiscal effects of the proposed new rate upon the standard revenue of the company proposing it. *Semble :* a trader interested in the proposed new rate has no right to be heard in opposition thereto.—GREAT WESTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BRISTOL CORPN. (1928), 20 Ry. & Can. Tr. Cas. 22.

Annotation :—**Reid.** Great Western Ry. Co. *v.* United Kingdom Chamber of Shipping, [1937] 2 K. B. 30.

SECT. 2A.—ROAD AND RAIL TRAFFIC APPEAL TRIBUNAL.

Jurisdiction & procedure.]—*See* CARRIERS, NOS. 1539–1562, *ante.*

ance with the rules binding upon the Board ; that sects. 255, 256 & 257 of the Railway Act were not applicable to the Canadian National Railways, & that the Board had not the power to compel public utilities cos. to remove their facilities without previous compensation :—*Held :* these Orders were made within the exercise of the powers vested in the Board by the Railway Act, & more particularly by the provisions of sects. 39, 255, 256 & 257 of that Act.—BELL TELEPHONE CO. OF CANADA *v.* CANADIAN NATIONAL RYS., MONTREAL LIGHT, HEAT & POWER CONSOLIDATED *v.* CANADIAN NATIONAL RYS., MONTREAL TRAMWAYS CO. & MONTREAL TRAMWAYS COMMISSION *v.* CANADIAN NATIONAL RYS., BELL TELEPHONE CO. OF CANADA *v.* TORONTO, HAMILTON & BUFFALO RY. CO. & HAMILTON CORPN., [1932] S. C. R. 224 ; 2 D. L. R. 753 ; *affd.*, [1933] A. C. 563, P. C.—**CAN.**

aaa (p. 377) ii. —— —— *Electric lines across railways.*]—The Board of Railway Comrs. issued a General Order in respect of the conditions & specifications applicable to the erection, placing & maintaining of electric lines, wires or cables along or across all railways, subject to the jurisdiction of the Board ; & sect. 2 of the Order stipulated that "the appct. shall, at all times, wholly indemnify the co. owning, operating or using the railway, from & against all loss, damage, injury & expense to which the railway co. may be put by reason of any damage or injury to persons or property, caused by any of appct.'s wires or cables, or any works herein provided for by the terms & provisions of this order, as well as against any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the appct., unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere" :—*Held :* the Order was within the jurisdiction of the Board.—CANADIAN ELECTRICAL ASSOCIATION & HYDRO ELECTRIC POWER COMMISSION OF ONTARIO *v.* CANADIAN NATIONAL RAILWAYS, [1932] S. C. R. 451 ; 3 D. L. R. 118.—**CAN.**

aaa (p. 377) iii. —— —— *Repair of bridge over railway.*]—A street ran east & west through (& continuing beyond) the northern part of the city of Toronto & of the adjoining village of Forest Hill. At a point in Forest Hill it was carried over a ravine by a bridge under which a railway (under Dominion jurisdiction) crossed the street. The bridge was 500 feet beyond the nearest point of the Toronto city limits. The Board of Railway Comrs. for Canada, on application of the village of Forest Hill, authorised reconstruction of the bridge, & directed that the city of Toronto contribute to the cost. The city appealed :—*Held :* The board had not jurisdiction under the Railway Act to direct that the city contribute to the cost of the work. There were no circumstances to warrant a holding that the city was "interested or affected" by the board's order, within the Act.—TORONTO CORPN. *v.* FOREST HILL VILLAGE, YORK TOWNSHIP & CANADIAN NATIONAL RAILWAYS, [1932] S. C. R. 602 ; 4 D. L. R. 401.—**CAN.**

aaa (p. 377) iv. —— —— *Construction of subway.*]—The matter of where traffic through a subway under a railway originates and the volume of it from various districts is not a factor in deciding whether or not a particular municipality is "interested or affected" by the work of constructing the subway, within sect. 39 of Railway Act, R. S. C., 1927. In the present case :—*Held :* Board of Railway Comrs. for Canada had no jurisdiction to order applt. city to pay a portion of the cost of a subway wholly situate within the limits of resp. town & at some distance from the limits of applt. city, notwithstanding that access to & from applt. city (having a large population) from & to other municipalities might be largely through said subway.—WINDSOR CORPN. *v.* WALKERVILLE CORPN., [1933] S. C. R. 341 ; (1932), 2 D. L. R. 657.—**CAN.**

aaa (p. 377) v. —— —— *Grants from "Crossing Fund"*]—The Board of Railway Comrs. for Canada has jurisdiction to order that a grant will be made from the "Railway Grade Crossing Fund" to help construction work, only when the crossing is eliminated or such protection is provided by the work that the danger is lessened and the safety & convenience of the public increased. The Board has no power to grant an application for a contribution from that fund towards the costs of highway diversions whereby rail level crossings are not eliminated, although they would relieve the crossings from a substantial volume of highway traffic. —*Re* RAILWAY GRADE CROSSING FUND (S. 262 OF RAILWAY ACT), [1933] S. C. R. 81 ; 1 D. L. R. 660.—**CAN.**

ccc (p. 377) i. —— —— *Construction of branch line.*] — CANADIAN NATIONAL RYS. *v.* CANADIAN PACIFIC RY. CO., [1929] 4 D. L. R. 1076 : R. S. C. 135.—**CAN.**

ccc (p. 377) ii. —— *To order Provincial undertaking to contribute to cost of work.*]—Under sect. 39 of the Railway Act of Canada, R. S. Can., 1927, c. 170, the Railway Board has jurisdiction to impose a proportion of the cost of work, which in the exercise of its powers it has ordered to be carried out, only upon a co., municipality, or person interested in or affected by the order. But in determining whether a particular co., municipality or person is so interested or affected the Railway Board can have regard to the circumstances existing not only when the work was ordered but also when it makes its order allocating the cost, or reviews that order under sect. 51 ; further, absence of benefit from the work executed does not necessarily show absence of interest in or affection by the order to carry out the work. In cases in which the Railway Board has jurisdiction the amount of the contribution is within the discretion of the Board. The sect. is not invalid to the extent to which it enables the Railway Board to order a Provincial undertaking to contribute.—CANADIAN PACIFIC RY. CO. *v.* TORONTO TRANSPORTATION COMMISSION, TORONTO TRANSPORTATION COMMISSION *v.* CANADIAN NATIONAL RYS., [1930] A. C. 686 ; 99 L. J. P. C. 219, P. C.—**CAN.**

ccc (p. 377) iii. —— *To grant leave for construction of works—On conditions.*]—By sect. 372 of the Railway Act of Canada the Board of Railway Comrs., when granting the leave thereby required to construct or maintain telegraph or telephone wires or appliances, or electric power cables, along or across a railway, may order on what "terms & conditions" the work may be executed ; & leave is not to be necessary when works have been, or are to be, constructed or maintained by consent, & in accordance with general orders approved by the Board for that purpose.—CANADIAN ELECTRICAL ASSOCN. *v.* CANADIAN NATIONAL RYS., [1934] A. C. 551 ; 103 L. J. P. C. 127 ; 151 L. T. 453 ; 51 T. L. R. 25, P. C.—**CAN.**

ccc (p. 377) iv. —— *Consideration of provincial drainage works.*]—Where drainage works are undertaken under a provincial Act the functions of the Railway Board are confined to seeing that the works so far as they affect the railway are sufficient & safe.—MELANCTHON TOWNSHIP *v.* CANADIAN PACIFIC RY. CO., [1935] 3 D. L. R. 379.—**CAN.**

ccc (p. 377) v. *Action against commissioners—When triable in Supreme Court.*]—M. B. RAIL ANCHOR, LTD. *v.* VICTORIAN RYS. COMRS., [1928] V. L. R. 339 ; [1928] Argus L. R. 114.—**AUS.**

nnn (p. 377) i. —— *Question of law or jurisdiction.*]—On an appeal from the Railway Board :—*Held :* the established practice of leaving questions of law or jurisdiction to the Supreme Ct. of Canada should be followed.—MICHIGAN CENTRAL RY. CO. (EMPLOYEES) *v.* MICHIGAN CENTRAL RY. CO., [1933] 3 D. L. R. 71.—**CAN.**

g (p. 378) i. —— ——.]—*Re* CASA LOMA, [1927] 4 D. L. R. 645 ; 61 O. L. R. 187.—**CAN.**

sg. *Order of Board not interfered with —Unless manifestly wrong.*]—An order of the Board of Railway Comrs. will not be interfered with by the Governor in Council unless the board have manifestly been subject to error.—*Re* RAILWAY FREIGHTS IN CANADA, [1933] 2 D. L. R. 209.—**CAN.**

Part XII.—Abandonment and Dissolution.

850. *Add. Annotation :*—**Refd.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

Part XIII.—Canals.

925. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

925. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

931a. —— **Extent of duty.**]—(1) The duty of a railway co. under Regulation of Railways Act, 1873 (c. 48), s. 17, to keep its canals in repair & open for navigation is not an absolute duty, nor, on the other hand, is it limited, as in the case of highway authorities, to acts of misfeasance. It is a duty to take reasonable care.

(2) A railway co. acquired a canal 150 years after it had been constructed. One of the locks collapsed. It was found that the baulks of timber on which the walls rested were laid transversely on the soil which formed the bed of the lock. The proper method would have been to lay the baulks upon vertical piles driven into the ground :—*Held :* no evidence of negligence on the part of the railway co. that on the appearance of cracks in the walls & subsidence of the soil at the side of the walls they failed to investigate the foundations of the lock, an operation which might have involved the closing of the canal for some months.

(3) In order to found a claim for damages for the closing of a canal, pltf. must show that there has been caused to him thereby peculiar damage greater than that caused to the general public.

(4) An agreement by traders with a railway co., that they would establish a gravel business near a canal of the railway co., & would pay a reduced rate to be afterwards agreed for the transport of gravel by the canal, & would erect machinery at their own expense, in consideration whereof the railway co. would permit the traders to erect machinery & other plant for carrying gravel over the canal & railway, & would repair the canal :—*Held :* to be void for uncertainty.

(5) A district engineer of the railway co. has no general authority to enter into such an agreement.—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., [1931] 2 K. B. 334 ; 100 L. J. K. B. 401, C. A. ; *sub nom.* LONDON & NORTH EASTERN RY. CO. *v.* BLUNDY, CLARK & CO., LTD., 145 L. T. 269 ; 20 Ry. & Can. Tr. Cas. 92, C. A.

Annotations :—As to (1) **Consd.** Gulfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. *As to* (3) **Consd.** Harper *v.* Haden & Sons, Ltd., [1933] Ch. 298.

931a. —— **Damages—Right of individual to sue.**]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY., No. 931a, *ante.*

936a. —— **What amounts to negligence.**]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante.*

948a. —— **Pumping from one level to another.**]—ELLWELL *v.* BIRMINGHAM CANAL NAVIGATION PROPRIETORS (1852), 3 H. L. Cas. 812 ; 10 E. R. 323, H. L.

970. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

978. *Add. Annotation :*—**Expld. & Distd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

978a. —— —— —— **Liability of county council on covenant—Tow-path raised to avoid flooding.**]—The construction of a canal involved the interception of a certain public road ; & the canal co., in accordance with its statutory obligations, carried the road over the canal by means of a bridge. The canal subsequently became vested in a railway co., who were required under s. 17 of the Regulation of Railways Act, 1873 (c. 48), s. 17, to keep the canal open & navigable. At a later date the railway co. entered into an agreement with the county council having jurisdiction in the locality under which the council agreed to remove the bridge & to construct a new bridge in substitution therefor ; & the council covenanted that they would "from time to time & at all times thereafter well & sufficiently maintain & repair the new bridge & the roadway & footpaths upon the same & the approaches thereto." The agreement provided for a headway of six feet between the arch of the new bridge & the towing-path passing under it. The bridge & the neighbouring part of the canal for considerable distances on both sides of the bridge were in a mining area which had been subsiding for a long time prior to the agreement ; & within sixteen years thereafter, owing to further subsidences, there was a general sinking of the bridge, & the towing-path. As, however, the water level remained the same, the railway co. found it necessary, in order to avoid flooding, to raise the towing-path—the resulting effect being that the headway between the bridge & the towing-path was

reduced to four feet six inches, which was insufficient for the convenient working of the canal:—*Held:* the covenant on the part of defts. to "maintain" the bridge did not impose upon them an obligation to raise the bridge so as to obtain the six feet of clearance for the use of the waterway, even although pltfs. had found it necessary to raise the towing-path.—GREAT WESTERN RY. *v.* MONMOUTHSHIRE COUNTY COUNCIL (1929), 94 J. P. 6; 27 L. G. R. 569, C. A.

980. Add the following paragraph:—

The right to navigate the dredged channel is confined to vessels paying dues to enter or leave the canal, & the right of navigation does not include a right to ground on the bank (*per* CUR.).—

1032. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

1043a. Agreement void for uncertainty.]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante*.

1043b. Authority of district engineer.]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante*.

RATES AND RATING.

Part I.—Liability to be Rated.

5. *Add. Annotations :*—**Consd.** L. C. C. *v.* Hackney B. C., [1938] 2 K. B. 588. **Refd.** Bertram *v.* Wightman, [1936] 2 All E. R. 487.

7. *Add. Annotations :—As to* (1) **Consd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105. **Refd.** Bertram *v.* Wightman, [1936] 2 All E. R. 487.

PART I. SECT. 1.

8 iii. —— —— ——.]—Sect. 476 of the Halifax City Charter applies to cases when the interest of the occupier of real estate is assessed as well as to cases, when the owner of the real estate is assessed, & a retroactive assessment may be made under s. 476 for the business tax authorised by the legislation of 1918.—HALIFAX *v.* DILL, [1929] 1 D. L. R. 643 ; 60 N. S. R. 219. **CAN.**

y i. —— ——.]—*Re* COLEMAN TOWNSHIP & NORTHERN ONTARIO LIGHT & POWER CO., LTD. (1927), 60 O. L. R. 405.—**CAN.**

y ii. —— —— *Mercantile business.*]—On the question whether the business of manufacturing lumber is a "mercantile business" within Rural Municipality Act, R. S. S., 1920, s. 232, which provided for the assessment of every person who was engaged in mercantile business & owner of a stock in trade liable to assessment :—*Held :* it is a mercantile business.

Under a statute authorising the assessment of "land, buildings, & business," a stock in trade is not assessable. — PEARSE & EDWORTHY BROS. *v.* RURAL MUNICIPALITY OF BJORKDALE, B. F. HARRIS CO., LTD. *v.* RURAL MUNICIPALITY OF BJORKDALE, [1929] 2 D. L. R. 507, 537 ; 1 W. W. R. 682 ; 23 S. L. R. 386.—**CAN.**

y iii. —— —— *Licence fee in lieu.*]—ATLAS CONSTRUCTION CO., LTD. *v.* ST. JOHN CITY, [1931] 4 M. P. R. 100. —**CAN.**

y iv. —— ——.]—A business having ceased prior to the year of levy of business tax, the fact of its appearance on the assessment roll upon which such levy was made did not make the tax enforceable, as the property had ceased to be rateable.—*Re* LYMAN BROS., [1932] O. R. 419 ; 3 D. L. R. 343 ; *revsd.*, [1933] 1 D. L. R. 738 ; O. R. 159.—**CAN.**

y v. —— ——.]—A practising dentist incorporated a co. with power *inter alia* to buy, hold & sell real estate & to carry on the business of real estate agents. He held all but two shares & he contended that his purpose was that the co. manage his own property & control real estate for the investment of his own money, not for speculation. He conveyed his real estate property to the co. in exchange for shares. These lands increased considerably in value & were sold at a profit. He contended that such profits were accretions to capital & not income made in the business of buying & selling real estate &, therefore, not subject to assessment as such :—*Held :* these profits were profits acquired in a scheme for profit making, which applt. co. was putting into effect as part of its business, &, therefore, were liable to assessment under the provincial Income Tax Act.—MERRITT REALTY CO., LTD. *v.* BROWN, [1932] S. C. R. 187 ; 2 D. L. R. 465 ; *affg.*, [1932] 1 W. W. R. 234 ; 1 D. L. R. 795 ; 44 B. C. R. 438.—**CAN.**

y vi. —— —— *Club.*]—**Ontario Assessment Act, R. S. O., 1927, s. 9 (2)** does not apply to a horse-racing club which serves meals for only two weeks each year during race meets.—ONTARIO JOCKEY CLUB *v.* TORONTO, [1932] 4 D. L. R. 423 ; O. R. 637 ; *on appeal*, [1934] S. C. R. 223 ; 2 D. L. R. 254.—**CAN.**

y vii. —— ——.]—One of the premises in question herein was leased from the owner by Falcon Oils, Ltd., which sublet it to S. & S., who oporated a filling station thereon as their own business. S. & S. hired the help, regulated their hours, paid the taxes & took the profits or paid the losses. They also carried on other businesses there, such as repairs, the sale of tyres, greasing, etc. Under their lease they were obliged to sell the products of their lessor, said oil co., & keep certain stocks & their signs were controlled :—*Held :* the station was an "independent filling station" under Winnipeg Charter, 1918, s. 282.—FALCON OILS, LTD. *v.* WINNIPEG CITY, IMPERIAL OIL, LTD. *v.* WINNIPEG CITY, [1936] 1 W. W. R. 305 ; 1 D. L. R. 790 ; 43 Man. L. R. 557.—**CAN.**

y viii. —— ——.]—TORONTO CORPN. *v.* FAMOUS PLAYERS' CANADIAN CORPN., LTD., [1936] S. C. R. 141 ; 2 D. L. R. 129.—**CAN.**

y ix. —— ——.]—In fixing the "annual rental value" of business premises for the purpose of levying the business tax under Winnipeg Charter, 1918, the test must be the market value of the use of the premises for the year in question. Where the premises are occupied by their owner that test is how much rent possible tenants would probably pay, &, in considering possible tenants, the owner must be included. The solution cannot be based on actual facts, a certain amount of speculation & assumption must come into play, but all the elements ought to be grouped & fairly considered.—NATIONAL TRUST CO. *v.* WINNIPEG CITY, [1937] 2 W. W. R. 90.—**CAN.**

y x. —— ——.]—The business tax assessed under the City Act, 1934, is not a tax on land.—MOOSE JAW CITY *v.* BRITISH AMERICAN OIL CO., LTD., [1937] 2 W. W. R. 35 ; *affd.* 2 W. W. R. 309.—**CAN.**

y xi. —— ——.]—Sect. 282 of Winnipeg Charter, 1918, as amended, provides for "a business tax based on the annual rental value of the premises occupied" :—*Held :* the "rental value" must be confined to the particular year for which the assessment is made. Neither the past nor the future value can have any direct influence on such value.—CITY DAIRY, LTD. *v.* WINNIPEG CITY, [1937] 2 W. W. R. 44 ; 2 D. L. R. 259.—**CAN.**

y xii. —— ——.]—A tenant of business premises who intended to move to smaller & less expensive quarters was persuaded by the owner to remain at a lower rent. The owner knew that many other premises suitable for the tenant were then available at a low rent & he wished to keep his premises occupied at almost any price. The tenant wished to avoid the trouble & expense of moving :—*Held :* the actual lower rent agreed upon under said circumstances was not, as a matter of principle, "the annual rental value" of the premises for that year within Winnipeg Charter, but, in the absence of any evidence of their rental value other than that upon which the assessment was based & the rent actually paid by the tenant, that actual rent must be taken to be the nearest approach by evidence to the rental value for the year in question.—NEWTON (W. S.) & CO. *v.* WINNIPEG CITY, [1937] 2 W. W. R. 351.—**CAN.**

hh i. —— ——.]—*Held :* under City of St. John Assessment Act, 1918, two classes of person are liable to assessment : those who are actual inhabitants & residents, & those who are constructively so by sect. 6 (3).—TENNANT *v.* ST. JOHN CITY (1932), 5 M. P. R. 107.—**CAN.**

h h (p. 425) **i.** —— ——.]—LOBLAW GROCETERIAS CO., LTD. *v.* TORONTO CORPN., [1936] S. C. R. 249 ; 3 D. L. R. 346.—**CAN.**

fff i. —— ——.]—*Re* STOUT & TORONTO, [1927] 2 D. L. R. 1100 ; 60 O. L. R. 313.—**CAN.**

fff ii. —— ——.]—*Re* DONALD MASON & CO. (Ont.). [1927] 4 D. L. R. 1061 ; 61 O. L. R. 350.—**CAN.**

fff iii. —— ——.]—Money received by manufacturers under fire policies insuring them in respect of loss of net profits that would have accrued had there been no interruption of business caused by fire is income from a business within the meaning of sect. 2 of British Columbia Taxation Act, R. S. B. C., 1924, & accordingly is to be brought into account in computing the net income chargeable to tax under that Act.—IT. *v.* BRITISH COLUMBIA FIR & CEDAR LUMBER CO., LTD., [1932] A. C. 441 ; 101 L. J. P. C. 113 ; 147 L. T. 1 ; 48 T. L. R. 284, P. C.—**CAN.**

fff iv. —— ——.]—Resp. co. was incorporated to (*inter alia*) "purchase . . . lands & to sell" the same &, although it had wide powers, it was apparently formed to acquire & resell at a profit, if possible, the property in question herein. Of its authorised capital of 50,000 shares of $1 each five shares only were issued. It purchased a certain lot in V. for $40,000 in 1926, & sold it for $70,000 in 1928 ; & the Minister of Finance sought to recover income tax on said difference of $30,000, which, he contended, was profit made by the co. It had not had, of course, sufficient subscribed capital to make the purchase in the ordinary way & had consummated the deal by obtaining proportionate parts of the purchase-price from its shareholders, in consideration of its undertaking to distribute the anticipated profits among them, & it did so distribute them. The co. contended that it had not made a profit in the ordinary course of its business, but had merely distributed to its shareholders a capital

As to (4) **Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

14. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

15. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

16. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. **Dbtd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419.

17. *Add. Annotation :*—**Expld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

36. *Add. Annotations :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. **Refd.** Bertram *v.* Wightman, [1936] 2 All E. R. 487 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419.

37a. ——.]—Defts. were the overseers of a parish. Within the parish was a building, the property in which was vested in pltfs., managed by them in the early part of 1926 as an industrial school. After Mar. 1926 the building was no longer used as an industrial school & pltfs. removed their stores &

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asset which had appreciated in value : —*Held :* the $30,000 profit was "income" of the co. within the meaning of Taxation Act, R. S. B. C., 1924.—*Re* HASTINGS STREET PROPERTIES, LTD., [1931] 1 D. L. R. 604 ; [1930] 3 W. W. R. 561 ; 43 B. C. R. 209.—**CAN.**

fff v. —— ——.]—On the expropriation of the property of a co. being wound up annual payments were provided for which were held to be an addition to the fixed purchase-price in consideration for the extended time for payment :—*Held :* such annual payments were taxable as income of the co. under Taxation Act, R. S. B. C., 1924 (c. 254).—ESQUIMALT WATER WORKS CO. *v.* LEEMING, [1930] 1 W. W. R. 401 ; 2 D. L. R. 37 ; 42 B. C. R. 163.—**CAN.**

fff vi. —— ——.]—On the expropriation of the property of a co. being wound up annual payments were provided for which were held to be an addition to the fixed purchase-price in consideration for the extended time for payment :—*Held :* said sums were taxable under Part III., not under Part IX., of Taxation Act, R. S. B. C., 1924.—LEEMING *v.* ESQUIMALT WATERWORKS CO. (No. 2), [1931] 1 W. W. R. 148 ; 1 D. L. R. 615 ; 43 B. C. R. 251. —**CAN.**

fff vii. —— ——.]—R. *v.* BRITISH COLUMBIA FIR & CEDAR LUMBER CO., [1930] 3 D. L. R. 609 ; 42 B. C. R. 401.—**CAN.**

fff viii. —— —— *Effect of death.*]—K., a resident of the city of T., died on Aug. 12, 1929. In 1928 he had made a return to the assessment comr. of the city of his income received in the year ending Dec. 31, 1927. He was assessed on that return in 1928 & paid the income tax due in respect thereof in 1929. On Feb. 8, 1929, he made a return of the income received by him for the year ending Dec. 31, 1928, & an assessment of $365,120 was made :—*Held :* his exors. were not assessable in respect of an income that had not been received ; the income was received in 1928 by K. himself, whose death before the completion of the roll made impossible his assessment in 1929 for the 1928 income.—*Re* KEMP & TORONTO, *Re* NATIONAL TRUST CO. & TORONTO, *Re* KILMER & TORONTO, [1930] 4 D. L. R. 91 ; 65 O. L. R. 423. —**CAN.**

fff ix. —— —— ——.]— This action was brought by a city corpn. against P.'s executrix for the amount of the income tax purported to be imposed upon P. after his decease :—*Held :* the attempt to tax P. after his death was a mere nullity.—TORONTO *v.* POWELL, [1931] 3 D. L. R. 86 ; *affd.*, 4 D. L. R. 336 ; [1931] O. R. 495.—**CAN.**

fff x. —— —— *Assessment Amendment Act*, 1930 (*Ont.*).]—The amendments made to the Assessment Act by Assessment Amendment Act, 1930, do not justify the assessment of the legal personal representative of a deceased person in respect of income received by him prior to Jan. 1, 1930. The amendments have no retroactive operation either over persons or income as to any period before that date.—*Re* NATIONAL TRUST CO., LTD. *v.* TORONTO, [1931] 4 D. L. R. 355 ; O. R. 496.—**CAN.**

fff xi. —— —— —— *Several executors residing in different municipalities —Whether income taxable where deceased resided.*]—*Re* JOST, [1932] 3 D. L. R. 555 ; 5 M. P. R. 52.—**CAN.**

fff xii. —— —— *Assessment.*]—By R. S. B. C., 1924, s. 51, the tax on income is assessed upon the net income during the last preceding calendar year. Where the "gross amount earned could not, owing to the nature of the business, be ascertained until after the time for making a return had expired & the money was not received until after the amount was ascertained :—*Held :* this sum should not be included in the assessment for that year.—*Re* LONDON & BROWN (1931), 45 B. C. R. 92.—**CAN.**

fff xiii. —— —— *Necessity for residence—When assessment roll made up.*]—OTTAWA CITY *v.* WILSON, [1933] O. R. 21 ; 1 D. L. R. 273.—**CAN.**

fff xiv. —— —— ——.]—The decision of a District Ct. judge with respect to the rate of income tax payable by mining cos. under Ontario Assessment Act is final.—TECK *v.* HAYWARD, [1936] 3 D. L. R. 125.—**CAN.**

fff xv. —— —— ——.]—Income tax is not payable in Quebec by reason of having a house in Quebec used only at week ends.—MONTREAL *v.* JACOBS, [1936] 2 D. L. R. 245.—**CAN.**

ppp i. —— —— —— *Income not "brought into" Province—Cheques.*]—Resp., a Dominion co., which is engaged in refining sugar in British Columbia & has its head office in Vancouver, had invested its surplus profits in Dominion bonds & shares of the Steel Co. of Canada, whose head office is at Hamilton, the bonds & shares being held by resp. in Vancouver. Cheques for the interest on these two investments were sent from Ottawa & Hamilton respectively to resp. in Vancouver. Resp. endorsed the cheques & immediately remitted them to a bank in Montreal for deposit to the credit of an account which the resp. maintained there. The amount of the cheques was shown in resp.'s profit & loss account :—*Held :* the money represented by said cheques was income "brought into" the province within sect. 42 (*d*) of Taxation Act, R. S. B. C., 1924.—A.-G. FOR BRITISH COLUMBIA *v.* BRITISH COLUMBIA SUGAR REFINING CO., [1931] 3 W. W. R. 639 ; [1932] 1 D. L. R. 626 ; 44 B. C. R. 531. —**CAN.**

ppp ii. —— —— ——.]—*Re* KOBINSKI, [1936] 3 W. W. R. 637 ; [1937] 1 D. L. R. 69 ; 44 Man. L. R. 502.—**CAN.**

b (p. 426) i. —— —— ——.]—Resp. co. was incorporated with power to generate & sell electric power. Sect. 23 (1) provided that for a certain period "the co. & its property in N. B. pertaining to the development of power on the Saint J. river shall be exempt from all municipal & other taxation & assessment" The question before this ct. was whether or not the co. was liable to be assessed in the town of G. F., N. B., where its head office was, upon or with respect to income derived by it from or by virtue of the sale of power generated at its plant in G. F. from the use of the waters of said river :—*Held :* the co. was not liable to be so assessed.—KELLY *v.* SAINT JOHN RIVER POWER CO., [1931] S. C. R. 349 ; 2 D. L. R. 553 ; *affg.*, 3 M. P. R. 56.—**CAN.**

b (p. 426) ii. —— —— ——.]—A "householder" for the purpose of exemption from Assessment Act, R. S. O., 1927, includes a married woman owning property & paying taxes, etc., out of her own money.—*Re* MOFFATT & HAMILTON, [1932] 4 D. L. R. 791.—**CAN.**

b (p. 426) iii. —— —— ——.]—Appt. corpn., as exor. of an estate, received in Ontario, during the year 1932, income on behalf of & payable to persons resident outside of Ontario. It was assessed in respect of such income by resp. city, & the questions for determination were, whether applt. was entitled to exemption under sect. 4 (22) of Assessment Act, R. S. O. 1927, & if so, to what extent :—*Held :* for the purposes of such assessment, applt. was not a "person" within the phrase "all other persons" in said sect. 4 (22) & was not entitled to exemption thereunder.—TORONTO GENERAL TRUSTS CORPN. *v.* OTTAWA CITY, [1935] S. C. R. 531 ; 2 D. L. R. 337.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A.

14 ii. ——.]—OTTAWA CORPN. *v.* OTTAWA PUBLIC SCHOOL BOARD (1923), 54 O. L. R. 633.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

e i. —— *Closed during trade depression.*]—Premises purchased by resps. in 1923 were used by them as a malt-house until the autumn of 1927, when, owing to trade depression, they dismissed their staff & closed the premises indefinitely. The premises were not subsequently utilised by resps. in any way. When the premises were closed the machinery therein was left intact, but none of it could be removed without damaging the building, except a screening cylinder, which would cost more to remove than it was worth. Resps. tried to sell the premises, but failed to do so. The premises as they stood were not capable of use save as a malt-house :—*Held :* the premises were capable of being used as malting premises at any time, but there had been no beneficial occupation of the premises during the year for which the poor rate was claimed. — OFFALY COUNTY COUNCIL & RIORDAN *v.* WILLIAMS, [1930] I. R. 39.—**IR.**

sa. *Holding certificate of free grant entry under Soldier Settlement Act.*]—POPLAR VALLEY RURAL MUNICIPALITY *v.* MOYER, [1929] 3 D. L. R. 865 ; 2 W. W. R. 88 ; 23 S. L. R. 628.—**CAN.**

furniture. The removal was completed in Apr. 1926, except that a caretaker was left in possession with a few articles of furniture for his use. In Mar. 1927 pltfs. decided to use the premises partly as an elementary school & partly for other purposes. Defts. rated pltfs. in respect of the building for the two periods ending Sept. 30, 1926, & Mar. 31, 1927, & it was admitted that the rate was duly made & confirmed. Pltfs. objected that the rate was invalid, as there was no beneficial occupation by them. Upon their refusing to pay, defts. complained to the justices, who issued a distress warrant, & defts. seized a tramcar belonging to pltfs. Pltfs. did not appeal to quarter sessions, but took proceedings in replevin :—Held : (1) pltfs. were not in beneficial occupation during the relevant period, & were not ratable; (2) the jurisdiction of the justices to grant a distress warrant depended on the question of actual occupation within the parish & not on that of beneficial occupation, & as pltfs. had failed to show that the distress was unlawful, the action of replevin failed.—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, [1928] 2 K. B. 588; 97 L. J. K. B. 694; 139 L. T. 407; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366; (1926–31), 1 B. R. A. 249.

Annotation :—As to (1) **Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

42. *Add. Annotations :—As to* (1) **Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277; London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 144 L. T. 233; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 147 L. T. 396; *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. *As to* (2) **Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322. **Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26. *As to* (4) **Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585. **Refd.** Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450.

62. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

65. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

66. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

69. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

73. *Add. Annotation :*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

86. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

87. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

112. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

115a. —— **Levy of rates in stipendiary district by county council.**]—9 & 10 Vict. c. lxv. created a stipendiary justice's district. Under the Act the quarter sessions of the county could levy rates on the district in the same manner as was then authorised for making county rates. There were now two county boroughs under the Local Govt. Act, 1888 (c. 41), in the district :—*Held :* on a question submitted summarily to the ct. under Local Govt. Act, 1888 (c. 4), s. 29, the county council had the power to levy the rates on such part of the stipendiary district as was not included within either of the county boroughs, & the liability of the county boroughs could be redeemed by an adjustment under Local Govt. Act, 1888 (c. 41), s. 32.—*Ex p.* STAFFORDSHIRE QUARTER SESSIONS (CHAIRMAN) (1889), 54 J. P. 72; 6 T. L. R. 45.

122. *Annotations :*—Delete "**Consd.** Jones *v.* I. R. Comrs., Sweetmeat Automatic Delivery Co. *v.* I. R. Comrs., [1895] 1 Q. B. 484."
Add. Annotation :—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

135. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

139. *Add. Citation :*—(1926–31), 1 B. R. A. 183.
Add. Annotations :—**Apld.** Towler *v.* Thetford Rural Council (1929), 99 L. J. K. B. 258. **Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

139a. **Shooting rights.**]—TOWLER *v.* THETFORD RURAL COUNCIL, No. 552b, *post*.

149. *Add. Annotation :*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

150. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R.

154. *Add. Annotations :*—**Consd.** Salisbury House Estate *v.* Fry, [1930] 1 K. B. 304. **Apld.** Towle *v.* Improved Industrial Dwellings Co., 17 Tax Cas. 231. **Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

155. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

PART I. SECT. 2, SUB-SECT. 3.—B. (f).

f i. —— *Station agent.*]—*Held :* not occupying the land in an official capacity under the Crown.—*Re* COCHRANE TOWN & KING, [1925] 2 D. L. R. 550; 56 O. L. R. 477.—CAN.

PART I. SECT. 2, SUB-SECT. 4.—A.

113 i. *Necessity for.*]—CHRISTCHURCH (MAYOR, ETC.) *v.* PYNE, GOULD, GUINNESS, [1928] N. Z. L. R. 318.—N.Z.

PART I. SECT. 2, SUB-SECT. 4.—B. (c).

sb. *Licence to cut timber.*]—The holder of a permit to cut timber on Dominion lands is not the "occupant" within Rural Municipality Act, R. S. S. 1920, c. 89, of the land included in the berth; & since, in assessing him as such, the assessor acts without jurisdiction, the confirmation of the assessment by the Saskatchewan Assessment Commission does not, under the effect given it by sect. 270 of said Act, prevent him from defending an action to collect the taxes.—BUCKLAND RURAL MUNICIPALITY *v.* DONALDSON & HORTON, [1928] 1 D. L. R. 436; [1928] 1 W. W. R. 40; 22 Sask. L. R. 326.—CAN.

sc. *Lessee of right of way.*]—A lessee of a portion of the right of way of the Canadian Pacific Railway who is in physical possession thereof is subject to assessment as an "occupant" within the City Act, 1926, s. 433 (3), although the land itself is specially exempted by law from taxation.—MAPLE LEAF MILLING CO., LTD. *v.* WEYBURN, CITY OF (Sask.), [1929] 4 D. L. R. 1063; 2 W. W. R. 452.—CAN.

156. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

157. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

160. *Add. Annotations :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322. **Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

162. *Add. Annotation :*—**Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322.

163. *Add. Annotation :*—**Consd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

163a. —— ——.]—*Re* SOUTHERN RY. CO., No. 226qq, *post.*

171. *Add. Annotations :*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. **Refd.** Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618 ; Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26.

178. *Add. Annotations :*—*As to* (1) **Apld.** Gooding *v.* Benfleet Urban District Council (1933), 49 T. L. R. 298. *As to* (2) **Consd.** Westminster Corpn. *v.* Southern Ry. Co., [1936] 2 All E. R. 322. *Generally*, **Refd.** New Liverpool Eastham Ferry & Hotel Co., Ltd. *v.* Ocean Accident & Guarantee Corpn., Ltd (1929), 142 L. T. 349.

185. *Add. Annotation :*—**Refd.** Townley Mill Co (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

189. *Add. Annotations :*—**Refd.** Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585 ; Bertram *v.* Wightman, [1936] 2 All E. R. 487.

193. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Southern Ry. Co. (1935), 153 L. T.

202. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., 17 Tax Cas. 231.

218. *Add. Annotation :*—*As to* (3) **Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

SUB-SECT. 4.—UNDER RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (c. 44).

Agricultural hereditaments.] — *See* Local Government Act, 1929 (c. 17), s. 67, & Nos. 345a, 552a, 955a, *post.*

226a. **Industrial hereditaments—Whether used as factory or workshop—Test to be applied.**]—In determining whether a hereditament occupied & used as a factory is primarily occupied & used for purposes which are not those of a factory it is the actual use to which the hereditament itself is put that has to be considered, & not the use to be made of the products of the hereditament or of the work there carried on.—MOON (LAMBETH REVENUE OFFICER) *v.* LONDON COUNTY COUNCIL, POTTERIES ELECTRIC TRACTION CO., LTD. *v.* BAILEY (STOKE-ON-TRENT REVENUE OFFICER), [1931] A. C. 151 ; 100 L. J. K. B. 153 ; 144 L. T. 410 ; 95 J. P. 64 ; 47 T. L. R. 154 ; 29 L. G. R. 131 ; (1926–31), 2 B. R. A. 573, H. L.

Annotations :—**Consd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249. **Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. [1931], 47 T. L. R. 468 ; Carmarthen Revenue Officer *v.* United Dairies (Wholesale), Ltd. (1931), 95 J. P. Jo. 88 ; Sedgwick *v.* Watney, Combe, Reid & Co., [1931] A. C. 447.

PART I. SECT. 2, SUB-SECT. 5.—C.

sd. *Owner rated for whole property—Notice that parcels of land sold to specified persons—Whether sufficient notice of change of ownership.*]—CLEARVIEW, LTD. *v.* YATALA SOUTH DISTRICT COUNCIL, [1927] S. A. S. R. 555.—**AUS.**

PART I. SECT. 2, SUB-SECT. 6.

202 i. *What amounts to separate occupation — Flats.*]—Dwelling-houses, each hitherto occupied as the residence of one family, were divided by structural alterations into separate residences, each consisting either of a flat or of a single apartment. This work was done in some cases by the proprietors of the houses, in other cases by lessees. The flats were then let on yearly leases, & the apartments by the month, the rents covering the exclusive use of the flats or apartments, & the use of hall & staircase, central heating & supply of hot water, occupier's rates, & the services of a caretaker who performed a number of duties in connection with the building :—*Held :* as the tenants of the flats & apartments were not merely inmates of the houses under the landlords, but were exclusive occupiers of distinct & separate tenements, each flat & each apartment fell to be separately entered in the Roll at a yearly rent or value representing the proportion of the rent paid to the landlord which could fairly be attributed to the occupation of the heritable subjects.—WRIGHT *v.* GLASGOW ASSESSOR, [1936] S. C. 344.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 7.

203 l. *Revsd.*, 32 S. C. R. 505.

PART I. SECT. 3, SUB-SECT. 2.

b. Delete.

c. For citation read "CANADIAN NIAGARA POWER CO. *v.* STAMFORD ; ELECTRICAL DEVELOPMENT CO. *v.* STAMFORD ; ONTARIO POWER CO. *v.* STAMFORD.

e i. —— *Stock assessed for business tax.*]—Income from stock in a co. assessed for business tax is not exempt from municipal income tax by Assessment Act, R. S. O., 1927, s. 4 (20).—BRADBURN *v.* PETERBOROUGH, [1934] 3 D. L. R. 684 ; O. R. 555.—**CAN.**

PART I. SECT. 3, SUB-SECT. 4.

sa. *Agricultural lands & heritages—Piggery.*]—*Held :* entitled to benefit of Act.—INLAND REVENUE *v.* RENFREWSHIRE ASSESSOR, [1930] S. C. 345.—**SCOT.**

—— *Golf course—Additional rent paid for grazing rights.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* ROSS & CROMARTY, [1930] S. C. 404.—**SCOT.**

sc. —— *House & garden adjoining nursery garden.*]—*Held :* not entitled to benefit of Act.—LANARKSHIRE ASSESSOR *v.* FINDLAY BROS., [1930] S. C. 407.—**SCOT.**

sd. —— ——.]—*Held :* entitled to benefit of Act.—DOUGLAS *v.* EDINBURGH ASSESSOR, [1931] S. C. 407.—**SCOT.**

se. —— [illegible] *poultry farm.*]—*Held :* they did not fail to be assessed as a *unum quid.*—CARTER *v.* LANARKSHIRE ASSESSOR, [1932] S. C. 424.—**SCOT.**

sf. —— *Farm for breeding silver foxes.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* ARDROSS ESTATES CO., [1930] S. C. 487.—**SCOT.**

sg. —— *House occupied by chief constable with grazing ground attached.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* BANFF ASSESSOR, [1930] S. C. 552.—**SCOT.**

sh. —— *Farmhouse sublet as dwelling-house.*]—*Held :* not entitled to benefit of Act.—FIFE ASSESSOR *v.* TRUSTEES, [1931] S. C. 412.—**SCOT.**

sk. —— *Plot rented for future building—Ploughed for crop.*]—*Held :* entitled to benefit of Act.—ABERCORN ESTATES CO. *v.* EDINBURGH ASSESSOR, [1935] S. C. 868.—**SCOT.**

sl. —— *Dwelling-houses erected by small landholders for own use.*]—Dwelling-houses erected or acquired by small landholders for their own occupation & use on holdings of which they are tenants, & which are not larger than is reasonably necessary for their accommodation, are agricultural heritages & entitled to derating.—INVERNESS-SHIRE ASSESSOR *v.* MACKAY, [1936] S. C. 300.—**SCOT.**

sj. *Industrial lands & heritages—Factory or workshop—Meaning of "used."*]—In determining the question whether "silent works," *i.e.*, works standing idle were or were not industrial lands & heritages :—*Held :* the word "used" did not mean "fit & ready for immediate use," but meant "actually in use," subject to the qualification that works in which for the moment no work was being done owing to some temporary cause, as

226b. —— —— —— **Potential user insufficient.**]—The words " occupied & used " as a factory in the definition of " industrial hereditament " in Rating & Valuation (Apportionment) Act, 1928 (c. 44), s. 3 (1), imply actual, & not merely potential user. Therefore where a cotton-mill, though fully equipped & ready to restart work at any time, had, at the material date been closed for fourteen months owing to trade depression :—*Held :* it was not an industrial hereditament.—YATES (REVENUE OFFICER FOR BURNLEY ASSESSMENT AREA) *v.* BURNLEY RATING AUTHORITY (1933), 97 J. P. 226 ; 31 L. G. R. 322, D. C.

226c. —— —— **Particular instances—Printing works of tramway undertaking.**]—The owners of a tramway undertaking occupied certain printing offices & works used exclusively for the printing of tramway tickets & other matter required for the purposes of their undertaking. The hereditament in question was a factory within the Factory & Workshop Act, 1901 (c. 22) :—*Held :* the hereditament was not primarily occupied & used for purposes which were not those of a factory or workshop & was therefore an industrial hereditament.—MOON (LAMBETH REVENUE OFFICER) *v.* LONDON COUNTY COUNCIL, [1931] A. C. 151 ; 100 L. J. K. B. 153 ; 144 L. T. 410 ; 95 J. P. 64 ; 47 T. L. R. 154 ; 29 L. G. R. 131 ; (1926–31), 2 B. R. A. 573, H. L. ; *affg.*, [1931] 1 K. B. 385, C. A.

226d. —— —— —— **Omnibus repair shop.**]—An omnibus co. operating a fleet of motor omnibuses occupied & used a hereditament, so far as material to the present appeal, for the manufacture of spare parts for the fleet & for other manufacturing & repair processes distinct from ordinary maintenance in connection with the fleet. The hereditament was registered as a factory :—*Held :* the hereditament was not occupied & used for purposes which were not those of a factory or workshop ; (2) the manufacture of an article needed to maintain differed from " maintenance " as used in 1928 Act, s. 3 (2), & the hereditament, except as to one part thereof used as a paint shop, was a factory within the sub-sect. & was an industrial hereditament.—POTTERIES ELECTRIC TRACTION CO., LTD. *v.* BAILEY (STOKE-ON-TRENT REVENUE OFFICER), [1931] A. C. 151 ; 100 L. J. K. B. 153 ; 144 L. T. 410 ; 95 J. P. 64 ; 47 T. L. R. 154 ; 29 L. G. R. 131, H. L. ; (1926–31), 2 B. R. A. 573 ; *revsg.* S. C. *sub nom.* BAILEY (STOKE-ON-TRENT REVENUE OFFICER) *v.* POTTERIES ELECTRIC TRACTION CO., LTD., [1931] 1 K. B. 385, C. A.

Annotations :—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468 ; Cardiff Revenue Officer *v.* Cardiff Assessment Committee, etc., etc. [1931] 1 K. B. 47.

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contrasted with works for which there was no reasonable prospect of a resumption of business in the near future, might be regarded as " actually in use " for the purposes of the sect.—MITCHELL BROS. *v.* INLAND REVENUE, INLAND REVENUE *v.* STEPHENS, SONS & CO., [1930] S. C. 531.—**SCOT.**

sk. —— —— *Rooms in decorators' premises where paints mixed.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SINCLAIR'S CASE), [1930] S. C. 342.—**SCOT.**

sl. —— —— *Editorial department of newspaper premises.*]—*Held :* having regard to Sects. 4 (2) & 9 (6) of the Act, & Factories Act, 1901, s. 149 (4), the part of the premises in question was used for a purpose other than the manufacturing process carried on in the other part of the premises, & there must be apportionment of the valuation.—OUTRAM & CO. *v.* INLAND REVENUE, [1930] S. C. 351.—**SCOT.**

sm. —— —— *Fish hatchery & fish-breeding ponds.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* HOWIETOUN & NORTHERN FISHERIES CO., [1930] S. C. 355.—**SCOT.**

sn. —— —— *Saddler's workshop & smithy forming part of contractor's stables.*]—*Held :* not entitled to benefit of Act, as being merely ancillary to contractor's business.—WORDIE & CO. *v.* INLAND REVENUE, [1930] S. C. 365.—**SCOT.**

so. —— —— *Repair shop & garage of contractor.*]—*Held :* not entitled to benefit of Act.—WORDIE *v.* INLAND REVENUE (No. 2), [1930] S. C. 370.—**SCOT.**

sp. —— —— *Estate sawmill.*]—*Held :* not entitled to benefit of Act. The subject was not a factory or workshop, in respect that the sawmill was not carried on " by way of trade or for purposes of gain."—INLAND REVENUE *v.* PERTHSHIRE ASSESSOR, [1930] S. C. 379.—**SCOT.**

sq. —— —— *Recreation grounds for employees of industrial company.*]—*Held :* not entitled to benefit of Act, as not being *unum quid* with factory.—INLAND REVENUE *v.* FALKIRK ASSESSOR, [1930] S. C. 402.—**SCOT.**

sr. —— —— *Corporation slaughter-houses.*]—*Held :* entitled to benefit of the Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SLAUGHTERHOUSES CASE), [1930] S. C. 429.—**SCOT.**

st. —— —— *Plasterers' premises.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* M'INTYRE & CO., [1930] S. C. 465.—**SCOT.**

sv. —— —— *Metal merchants' premises where scrap metal cut & bundled for blast furnaces.*]—*Held :* the metals were " adapted for sale " within Factory & Workshop Act, 1901, s. 149, & so the premises were entitled to benefit of the Act.—BROWN, MACFARLANE & CO. *v.* INLAND REVENUE, INLAND REVENUE *v.* EDINBURGH ASSESSOR (WAUGH'S CASE), [1930] S. C. 468.—**SCOT.**

sw. —— —— *Rag merchants' & sack restorers' premises.*]—*Held :* not entitled to benefit of Act, since the articles were not altered or " adapted for sale."—INLAND REVENUE *v.* EASSON BROS., [1930] S. C. 480.—**SCOT.**

sx. —— —— *Joiner's workshop belonging to co-operative society & doing work for society's property.*]—*Held :* not entitled to benefit of Act, in respect that work carried on was not " by way of trade or for purposes of gain " with Factory & Workshop Act, 1901.—INLAND REVENUE *v.* PAISLEY PROVIDENT CO-OPERATIVE SOCIETY, [1930] S. C. 497.—**SCOT.**

sy. —— —— *Premises for demolishing & reconditioning motor cars & selling parts & scrap.*]—*Held :* entitled to benefit of Act, in respect that articles were altered & adapted for sale.—INLAND REVENUE *v.* CAPLAN, [1930] S. C. 507.—**SCOT.**

sz. —— —— *Premises of asphalt work contractors.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* CURRIE & CO., [1930] S. C. 513.—**SCOT.**

sa. —— —— *Plumbers' premises.*]—INLAND REVENUE *v.* COLIN TURNER, LTD., [1930] S. C. 520.—**SCOT.**

sb. —— —— *Warehouse, excise office, railway siding, & pend of distillery.*]—*Held :* not entitled to benefit of Act.—DISTILLERS CO. *v.* EDINBURGH ASSESSOR, DISTILLERS CO. *v.* GLASGOW ASSESSOR, [1931] S. C. 393.—**SCOT.**

sg. —— —— *Peat moss.*]—*Held :* not entitled to benefit of Act.—ABERDEENSHIRE ASSESSOR *v.* MARR'S TRUSTEES, [1934] S. C. 204.—**SCOT.**

sh. —— —— ——.]—*Held :* not entitled to benefit of Act.—LANARKSHIRE ASSESSOR *v.* JEFFRAY'S TRUSTEES, [1935] S. C. 381.—**SCOT.**

si. —— —— *Blacksmith's house & shop.*]—*Held :* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR (1930), S. L. T. 381.—**SCOT.**

sp. —— —— *Bakehouse, shop & house.*]—*Held :* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR (1930), S. L. T. 381.—**SCOT.**

sr. —— —— *Joiner's house & shed.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR (1930), S. L. T. 381.—**SCOT.**

sk. —— *Exceptions—Dwelling-house —Country bakehouse.*]—*Held :* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

sr. —— —— —— *Country smithy.*]—*Held :* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

se. —— —— —— *Country joiner's shop.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

sf. —— —— *Retail shop—Workshop of garage.*]—*Held :* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (HUNTER'S CASE), [1930] S. C. 362.—**SCOT.**

sg. —— —— —— ——.]—*Held :* not entitled to benefit of Act.—SCOTTISH MOTOR TRACTION CO. *v.* EDINBURGH ASSESSOR, WYLIES, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 416.—**SCOT.**

226e. —— —— —— **Barge building & repairing yard.**]—*Held:* entitled to benefit of Act.—BARTON (POPLAR REVENUE OFFICER) *v.* UNION LIGHTERAGE CO., LTD., [1931] 1 K. B. 385; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 581; 28 L. G. R. 550; (1926–31), 2 B. R. A. 742, C. A.

226f. —— —— —— **Coffee blending warehouse.**]—*Held:* entitled to benefit of Act.—BARTON (STEPNEY REVENUE OFFICER) *v.* TWINING (R.) & CO., LTD., [1931] 1 K. B. 385; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 688; 28 L. G. R. 550; (1926–31), 2 B. R. A. 730, C. A.

Annotation:—**Folld.** Toogood & Sons, Ltd. *v.* Green, Lipton, Ltd. *v.* Barton (1931), 47 T. L. R. 565.

226g. —— —— —— **Tea blending premises.**]—Resps. occupied & used premises which were registered under the Factory & Workshops Acts. They imported teas from Ceylon, Java, India, China, & other foreign countries. The teas were brought to the premises in question for blending, sifting, cutting, milling, & packing for export abroad for sale wholesale to the public as tea. No tea went out of the premises until after blending, & no blended teas from the premises were supplied or distributed to any part of the United Kingdom, & no blended teas came into the premises, Apart from the basement, which was used & occupied solely as a tin-box factory, the premises were used (*a*) as premises for blending, sifting, cutting, milling, & packing teas imported from abroad so as to make the teas suitable for export abroad for sale wholesale to the public as tea; & (*b*) as premises for exporting abroad for sale to the public as blended tea the tea leaves so blended. There was no finding that wholesale business was carried on on the premises:—*Held:* the primary purpose of the occupation & use of the premises was a factory purpose, & therefore the premises must be derated.—LIPTON, LTD. *v.* BURTON, [1932] 1 K. B. 204; 100 L. J. K. B. 529; 145 L. T. 476; 95 J. P. 211; 47 T. L. R. 565; 29 L. G. R. 642; (1926–31), 2 B. R. A. 940, C. A.

226h. —— —— —— **Cold storage.**]—A hereditament was occupied & used for the refrigeration & the refrigerated storage of food & other produce. The hereditament was a factory, & the refrigeration was effected by means of an elaborate process involving the use of machinery. Seventy-five per cent. of the produce received was already refrigerated & was kept by the occupiers in that state:—*Held:* the hereditament was primarily occupied for the purposes of storage within exception (*d*) in 1928 Act, s. 3 (1).—UNION COLD STORAGE CO., LTD. *v.* BANCROFT (MANCHESTER REVENUE OFFICER), [1931] A. C. 459; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Distd.** Carmarthen Revenue Officer *v.* United Dairies (Wholesale), Ltd. (1931), 95 J. P. Jo. 88. **Reld.** Union Cold Storage Co. *v.* Moon, [1932] 2 K. B. 648.

Compare No. 226ss, *post.*

226j. —— —— —— **Premises where seeds cleaned for sale.**]—A seed merchant's warehouse was used for the cleansing & preparation for sale of seeds by the use of machinery. The revenue officer objected to the inclusion of this hereditament in the special list as an industrial hereditament on the ground that it was primarily occupied & used for the purposes of wholesale distributive business:—*Held:* it was an industrial hereditament.—HINES (IPSWICH REVENUE OFFICER) *v.* EASTERN COUNTIES FARMERS' CO-OPERATIVE ASSOCN., LTD., [1931] A. C. 456; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Consd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

sh. —— —— —— *Bespoke tailor's premises.*]—*Held:* as to certain premises, entitled to benefit of Act; as to other premises, not so entitled.—INLAND REVENUE *v.* GUNN, COLLIE & TOPPING, [1930] S. C. 389.—**SCOT.**

sk. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—ABERDEEN ASSESSOR *v.* COLLIE, [1932] S. C. 304.—**SCOT.**

sl. —— —— —— ——.]—*Held:* entitled to benefit of Act.—BRODIE & SONS *v.* GLASGOW ASSESSOR, [1932] S. C. 373.—**SCOT.**

sm. —— —— —— *Bootmaker's premises.*]—INLAND REVENUE *v.* MOFFAT, [1930] S. C. 412.—**SCOT.**

sn. —— —— —— *Boot repairing premises.*]—*Held:* not entitled to benefit of Act.—GLASGOW ASSESSOR *v.* MATHIESON, [1931] S. C. 718.—**SCOT.**

so. —— —— —— *Photographer's shop & studio.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* HAMPTON, [1930] S. C. 419.—**SCOT.**

sp. —— —— —— *Bakehouse & baker's shop.*]—*Held:* entitled to benefit of the Act.—INLAND REVENUE *v.* MALCOLM, [1930] S. C. 437.—**SCOT.**

sq. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—BROWN (M. & A.) *v.* GLASGOW ASSESSOR, [1932 S. C. 354.—**SCOT.**

Saddler's shop & workshop.]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (GIBSON'S & ALLEN'S CASES), [1930] S. C. 443.—**SCOT.**

—— —— —— *Jeweller's shop & workshop.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (GIBSON'S & ALLEN'S CASES), [1930] S. C. 443.—**SCOT.**

Shop for repair of weighing-machines.]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* AVERY (W. & T.), [1930] S. C. 490.—**SCOT.**

sw. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—AVERY (W. & T.) *v.* GLASGOW ASSESSOR, [1932] S. C. 421.—**SCOT.**

sx. —— —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—**SCOT.**

sy. —— —— —— *Plumbers' premises.*]—INLAND REVENUE *v.* COLIN TURNER, LTD., [1930] S. C. 520.—**SCOT.**

Premises where machinery reconditioned & sold.]—*Held:* not entitled to benefit of Act.—THOS. W. WARD, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 438.—**SCOT.**

— *Workshops of electrical engineers.*]—*Held:* not entitled to benefit of Act.—M'WHIRTER & SONS *v.* GLASGOW ASSESSOR, [1932] S. C. 407.—**SCOT.**

sb. —— —— —— *Saumakers.*]—*Held:* not entitled to benefit of Act.—GLASGOW ASSESSOR *v.* WRIGHT, BINDLEY & CELL, [1932] S. C. 393.—**SCOT.**

sc. —— —— —— *Premises of lorry & marine engine builders.*]—*Held:* entitled to benefit of Act.—GLASGOW ASSESSOR *v.* THORNYCROFT (JOHN I.) & CO., [1932] S. C. 387.—**SCOT.**

sd. —— —— —— *Engraver's shop.*]—*Held:* entitled to benefit of Act.—ABERDEEN ASSESSOR *v.* LUMSDEN'S HEIRS, [1932] S. C. 379.—**SCOT.**

se. —— —— —— *Horse- premises.*]—*Held:* not entitled to benefit of Act.—WEIR & SON *v.* GLASGOW ASSESSOR, [1932] S. C. 368.—**SCOT.**

sf. —— —— —— *Workshops of co-operative society.*]—*Held:* entitled to benefit of Act.—ST. CUTHBERT'S CO-OPERATIVE ASSOCN. *v.* EDINBURGH ASSESSOR, [1931] S. C. 386.—**SCOT**

sg. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—ST. CUTHBERT'S CO-OPERATIVE ASSOCN. *v.* EDINBURGH ASSESSOR, [1932] S. C. 340.—**SCOT.**

not entitled to benefit of Act.—

226k. —— —— —— ——.]—*Held:* entitled to benefit of Act. — PRITCHARD (CARDIFF REVENUE OFFICER) *v.* LEWIS (WILLIAM) & SONS, [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 661; 28 L. G. R. 550; (1926-31), 2 B. R. A. 742, C. A.

Annotation:—**Reid.** Toogood & Sons, Ltd. *v.* Green (1932), 101 L. J. K. B. 453.

2261. —— —— —— ——.]—Applts., a firm of seed merchants, owned & occupied a hereditament consisting of a large warehouse, used for cleaning & testing seeds of their own growth for the purposes of sale, & certain subsidiary buildings, including offices, which were admittedly not used for industrial purposes. The hereditament was registered as a factory. A claim that the hereditament was an industrial hereditament was opposed by the Crown on the ground that the premises were primarily occupied & used for the purposes of a retail shop. By a special case stated it was found that all the seeds were sold to customers other than the trade, that orders for the same were received by applts. at their offices, & that the seeds were despatched from the warehouse in fulfilment of such orders. At the hearing in the House of Lords, in answer to a request by the House for further information as to the exact nature of the uses to which the hereditament was put, it was agreed that the seeds were sold in approximately equal quantities to trade customers & to customers other than the trade, that the retail sales were effected either by travellers or by letters addressed to the hereditament or by telephone; that the offices had none of the physical features of a shop, & that the applts. had no accommodation adapted for the purpose of the physical resort of customers:—*Held:* the hereditament was not primarily occupied & used for the purposes of a retail shop & it was an industrial hereditament.—TOOGOOD & SONS, LTD. *v.* GREEN, [1932] A. C. 663; 101 L. J. K. B. 453; 147 L. T. 201; 96 J. P. 249; 48 T. L. R. 463; 76 Sol. Jo. 458; 30 L. G. R. 301, H. L.

Annotations:—**Consd.** McGowan *v.* Osgoldcross Assessment Committee, West Riding of Yorkshire, [1936] 2 All E. R. 170; Ritz Cleaners, Ltd. *v.* West Middlesex Assessment Committee, [1937] 2 All E. R. 368.

226m. —— —— —— **Wool sorters.**] — *Held:* entitled to benefit of Act.—WEATHERHEAD (BRADFORD REVENUE OFFICER) *v.* BRADFORD ASSESSMENT COMMITTEE & LAYCOCK, SON & CO., LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 628; 28 L. G. R. 550; (1926-31), 2 B. R. A. 632, C. A.

DALZIEL CO-OPERATIVE SOCIETY *v.* MOTHERWELL & WISHAW ASSESSOR, CARLUKE CO-OPERATIVE SOCIETY *v.* LANARKSHIRE ASSESSOR, [1932] S. C. 413.—**SCOT.**

sj. —— —— —— *Motor repair shop.*]—*Held:* entitled to benefit of Act.—GLASGOW ASSESSOR *v.* HENDERSON & CO., [1932] S. C. 337.—**SCOT.**

sk. —— —— —— *Monumental sculptor's yards & workshops.*]—*Held:* entitled to benefit of Act.—MUIR & GRAY *v.* GLASGOW ASSESSOR, [1932] S. C. 313.—**SCOT.**

sl. —— —— —— *Electrical repair shop acting for insurance company.*]—A co., whose principal business was the repair of electrical machines, occupied premises consisting of a large engineering shop & the ordinary adjuncts. The premises bore no resemblance, either internally or externally, to a retail shop. No provision was made for the reception of customers, & the bulk of the co.'s business was done to the orders of an insurance co., one of the conditions of whose policies was that, in the event of the breakdown of machinery insured, the insurance co. could either repair the machinery or pay for its repair at their option:—*Held:* the insurance co. occupied a position analogous to that of a middleman, & that, in the whole circumstances, the subjects did not fall within the exception of a "retail shop" but fell to be entered as "industrial lands & heritages."—BRITISH ELECTRICAL REPAIRS, LTD. *v.* GLASGOW ASSESSOR, [1933] S. C. 322.—**SCOT.**

sn. —— —— *Distributive wholesale business—Wholesale seed merchants' premises where seeds cleaned, stored, & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DONALDSON & CO., [1930] S. C. 348.—**SCOT.**

so. —— —— —— *Premises of wholesale manufacturing chemists also dealing in proprietary medicines.*]—*Held:* the premises were industrial, but were subject to a [illegible] INLAND REVENUE *v.* HATRICK & CO., [1930] S. C. 359.—**SCOT.**

sp. —— —— —— *Premises where proprietary whisky blended, bottled, boxed, & dispatched.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* JOHNNIE WALKER & SONS, [1930] S. C. 372.—**SCOT.**

sq. —— —— —— ——.]—*Held:* entitled to benefit of Act.—BUCHANAN (JAMES) & CO. *v.* GLASGOW ASSESSOR, [1932] S. C. 358.—**SCOT.**

sr. —— —— —— *Factory for treating brewers' draff, grain, & yeast.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO. (No. 2), [1930] S. C. 383.—**SCOT.**

st. —— —— —— *Warehouse of glass manufacturers where glass cut to suit customers.*]—*Held:* not entitled to benefit of Act.—PILKINGTON BROS. *v.* INLAND REVENUE, [1930] S. C. 387.—**SCOT.**

sv. —— —— —— —— entitled to benefit of Act.—PILKINGTON BROS. *v.* GLASGOW ASSESSOR, [1932] S. C. 330.—**SCOT.**

sw. —— —— —— *Premises for the repair of packing cases & washing of bottles of whisky blenders.*]—*Held:* not entitled to benefit of Act.—WHITE HORSE DISTILLERS *v.* INLAND REVENUE, [1930] S. C. 426.—**SCOT.**

swv. —— —— —— *Wool brokers' & Wool merchants' premises.*]—*Held:* not entitled to benefit of Act.—M'LEOD & SONS *v.* INLAND REVENUE, [1930] S. C. 434.—**SCOT.**

sww. —— —— —— *Brewers' premises where beer chilled, carbonised, bottled, packed, & dispatched.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* MACLACHLANS, LTD., [1930] S. C. 449.—**SCOT.**

not entitled to benefit of Act.—INLAND REVENUE *v.* WILLIAM YOUNGER & CO., [1930] S. C. 548.—**SCOT.**

[illegible] *Premises for oil-[illegible]ng.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* SHARP & CO., [1930] S. C. 463.—**SCOT.**

szz. —— —— —— *Printing machine manufacturers' distributing depot—Old machines taken in part payment, reconditioned & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DAWSON, PAYNE & ELLIOTT, [1930] S. C. 493.—**SCOT.**

saa. —— —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—**SCOT.**

sbb. —— —— —— *Premises where coffee essence bottled & pasteurised.*]—*Held:* entitled to benefit of Act.—PATERSON & SONS *v.* GLASGOW ASSESSOR, [1931] S. C. 432.—**SCOT.**

scc. —— —— —— *Warehouse in Scotland of English brewery used for quieting, fining, bottling, & maturing beer.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WHITBREAD & CO., [1930] S. C. 516.—**SCOT.**

sdd. —— —— —— *Premises where grain cleaned & dressed to make it fit for sale.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* ABERDEEN COMMERCIAL CO., INLAND REVENUE *v.* HUTCHEON, [1930] S. C. 555.—**SCOT.**

see. —— —— —— *Wholesale produce dealers & ham curers.*]—*Held:* not entitled to benefit of Act.—LAIRD & CO. *v.* GLASGOW ASSESSOR, [1931] S. C. 442.—**SCOT.**

sff. —— —— *Purposes of storage—Duty-free warehouse of distillery.*]—*Held:* not entitled to benefit of Act.—DISTILLERS CO. *v.* INLAND REVENUE, [1930] S. C. 329.—**SCOT.**

not entitled to benefit of Act.—SCOTTISH MALT DISTILLERS, LTD. *v.* INLAND REVENUE, [1930] S. C. 335.—**SCOT.**

shh. —— —— —— *Premises of cold storage company.*]—*Held:* not entitled to benefit of Act.—UNION COLD STORAGE CO. *v.* INLAND REVENUE, [1930] S. C. 337.—**SCOT.**

sjj. —— —— —— *Wholesale seed merchants' premises where seeds cleaned, stored, & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DONALDSON & CO., [1930] S. C. 348.—**SCOT.**

skk. —— —— —— *Contractor's building where fodder cut, crushed, & mixed by machinery.*]—*Held:* not entitled to benefit of Act.—WORDIE & CO. *v.*

226n. —— —— —— **Scrap metal works.**]—*Held:* entitled to benefit of Act.—PICKIN (LANGBAURGH REVENUE OFFICER) *v.* LANGBAURGH ASSESSMENT COMMITTEE & ROBERT CHEYNE & Co., LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 46 T. L. R. 601; 74 Sol. Jo. 629; (1926–31), 2 B. R. A. 742, C. A.

226o. —— —— —— ——.]—*Held:* entitled to benefit of Act.—LOFTHOUSE (LANGBAURGH REVENUE OFFICER) *v.* LANGBAURGH ASSESSMENT COMMITTEE & A. BAINBRIDGE, LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 46 T. L. R. 601; 74 Sol. Jo. 629; (1926–31), 2 B. R. A. 742, C. A.

—— —— —— **Rag sorters.**]—A rag merchant's warehouse was occupied & used, as to one-third of its area, for the grading, blending & sorting of rags, &, as to two-thirds, for the storage of rags (*a*) awaiting these processes; (*b*) in the course of preparation; & (*c*) fully dealt with & ready for despatch to the rag merchant's customers. The rags, after being subjected to the above processes, were sold wholesale to heavy woollen cloth manufacturers for use in the heavy woollen cloth industry, & until so treated were useless for that purpose. The revenue officer objected to the inclusion of these premises in the special list as an industrial hereditament, on the ground that the premises were primarily occupied & used for the purposes of wholesale distributive business or for the purposes of storage:—*Held:* (1) the hereditament was primarily occupied & used not for the purposes of wholesale distributive business, but for the conversion of the articles which entered the hereditaments into finished & saleable articles by means of the processes to which they were there subjected, & that this was an adaptation for sale; (2) the storage was merely incidental to those processes. Therefore the hereditament was an industrial hereditament.—KAYE (DEWSBURY REVENUE OFFICER) *v.* BURROWS & DEWSBURY ASSESSMENT COMMITTEE, [1931] A. C. 454; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

226q. —— —— —— **Bakehouse & baker's shop.**]—Resp. carried on a retail business in bread & confectionery in a hereditament comprising a shop with living rooms over & a bakehouse in the rear:—*Held:* the bakehouse, which made goods for the business, although a factory, was an ordinary part of a baker's shop, & the whole hereditament was primarily occupied & used for the purposes of a retail shop, & was therefore not an industrial hereditament.—FINN (WIMBLEDON REVENUE OFFICER) *v.* KERSLAKE, [1931] A. C. 457; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249. **Folld.** Wilkinson *v.* Sibley, [1932] 1 K. B. 194. **Consd.** McGowan *v.* Osgoldcross Assessment Committee, West Riding of Yorkshire, [1936] 2 All E. R. 170; Ritz Cleaners, Ltd. *v.* West Middlesex Assessment Committee, [1937] 2 All E. R. 368.

226r. —— —— —— ——.]—*Held:* entitled to benefit of Act.—LUTON REVENUE OFFICER *v.* DEELEY, [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 596; 28 L. G. R. 550; (1926–31), 2 B. R. A. 742, C. A.

226s. —— —— —— **Motor repair shop & garage.**]—A garage & motor repair depot was occupied & used for repairing motor cars, motor boats & agricultural tractors brought or sent to the premises by the owners, for garaging cars, & for the sale of petrol & small motor accessories, but the greater part of the business there carried on consisted in the repair of motor cars:—*Held:* the hereditament was primarily occupied & used for the

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INLAND REVENUE, [1930] S. C. 365.—SCOT.

sll. —— —— —— *Factory for treating brewers' draff, grain, & yeast.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO. (No. 2), [1930] S. C. 383.—SCOT.

smm. —— —— —— *Premises of public works contractor.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* MELVILLE, DUNDAS & WHITSON, [1930] S. C. 477.—SCOT.

snn. —— —— —— *Warehouse in Scotland of English brewery used for quieting, fining, bottling, & maturing beer.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WHITBREAD & Co., [1930] S. C. 516.—SCOT.

soo. —— —— —— *Wholesale produce dealers & ham curers.*]—*Held:* not entitled to benefit of Act.—LAIRD & Co. *v.* GLASGOW ASSESSOR, [1931] S. C. 442.—SCOT.

spp. —— —— —— *Premises where machinery reconditioned & sold.*]—*Held:* not entitled to benefit of Act.—THOS. W. WARD, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 438.—SCOT.

srr. —— —— *Primary purpose other than that of factory or workshop—Refuse destructor of town council.*]—*Held:* not entitled to benefit of Act.—PAISLEY ASSESSOR *v.* INLAND REVENUE, [1930] S. C. 339.—SCOT.

stt. —— —— —— *Photographer's shop & studio.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* HAMPTON, [1930] S. C. 419.—SCOT.

soo. —— —— —— *Corporation slaughterhouses.*]—*Held:* entitled to benefit of the Act, as the premises were primarily occupied & used for the purpose of a factory or workshop, & not for providing the necessary statutory facilities for the slaughter of animals, a purpose which would have brought the premises within exception (*f*).—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SLAUGHTER-HOUSES CASE), [1930] S. C. 429.—SCOT.

spp. —— —— *Manufacturing & repairing shops of steamship owners.*]—*Held:* entitled to benefit of Act. The premises were occupied for the purposes of manufacture & repair, which were factory purposes, & as they were expressly included among factories by the Factory & Workshop Act, 1901, Sched. VI, they were within the 1928 Act.—INLAND REVENUE *v.* CLAN LINE STEAMERS, [1930] S. C. 445.—SCOT.

sqq. —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—SCOT.

srr. *Freight-transport lands & heritages—Dock purposes—Ground, warehouses, custom-house, & cattle sheds at docks.*]—As regarded the buildings belonging to the dock authority & the ground within the dock precincts leased to shipowners, the Inland Revenue Officer, in view of an undertaking given in Parliament, conceded that, with the exception of the custom-house, they were freight-transport lands & heritages.

As regarded the custom-house, the buildings erected & owned by the occupiers, the ground out-with the dock precincts leased to the occupiers, & the cattle sheds:—*Held:* they were not freight transport subjects, in respect that they were not occupied & used for dock purposes as part of a dock undertaking, but for the special purposes of the occupiers.—CLYDE NAVIGATION TRUSTEES *v.* INLAND REVENUE, INLAND REVENUE *v.* KIRKWALL ASSESSOR, [1930] S. C. 454.—SCOT.

stt. —— *Dock purposes—Offices let to stevedores by dock company.*]—*Held:* entitled to benefit of Act.—CLYDE NAVIGATION TRUSTEES *v.* GLASGOW ASSESSOR, [1931] S. C. 400.—SCOT.

szz. —— *Cattle sheds adjacent to pier or dock.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* ORKNEY STEAM NAVIGATION (1930), S. L. T. 284.—SCOT.

saa. *Who may appeal as to classification—Officer of Inland Revenue—Sect. 9 (10).*]—*Held:* an appeal at his instance was competent.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO., [1930] S. C. 323.—SCOT.

purpose of a retail shop, as defined by 1928 Act, within exception (*b*) in sect. 3 (1), & was not an industrial hereditament.—TURPIN *v.* MIDDLESBROUGH ASSESSMENT COMMITTEE & BAILEY, [1931] A. C. 451; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Folld.** Wilkinson *v.* Sibley, [1932] 1 K. B. 194. **Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249. ——— McGowan *v.* Osgoldcross Assessment Committee, West Riding of Yorkshire, [1936] 2 All E. R. 170; Ritz Cleaners, Ltd. *v.* West Middlesex Assessment Committee, [1937] 2 All E. R. 368.

226t. —— —— —— ——.]—A hereditament was occupied & used for the repair of motor cars & the storage of motor cars undergoing repair, & for the storage of spare parts & accessories needed for repairs, & petrol was sold there as incidental to such repairs only. The occupiers owned other premises in the borough, where they sold cars & motor accessories:—*Held:* the hereditament was primarily occupied & used for the purpose of a retail shop, as defined by 1928 Act, within exception (*b*) in sect. 3 (1), & was not an industrial hereditament.—KAYE (BARNSLEY REVENUE OFFICER) *v.* EYRE BROS., LTD., [1931] A. C. 451; 100 L. J. K. B. 1; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

226u. —— —— —— **Beer bottling premises.**]—Brewers occupied a bottling store in which beer brewed by them elsewhere was matured, carbonated, filtered & bottled, & from which, after the bottles had been corked & labelled, it was distributed to the trade. The beer when it entered the premises was unmarketable, & was converted by processes carried on therein into the commodity known as bottled beer. The hereditament was a factory within Factory & Workshop Acts. The revenue officer objected to the inclusion of the hereditament in the special list as an industrial hereditament under 1928 Act, s. 3, on the ground that it was primarily occupied & used for the purposes of distributive wholesale business within exception (*c*) in sect. 3 (1):—*Held:* the treatment to which the beer was subjected in the hereditament was not a mere prelude to distribution, but changed the liquid from an unfinished article to a finished one, namely, bottled beer, which was not ready for distribution until the bottles had been corked & labelled, & the hereditament did not fall within the exception & was therefore an industrial hereditament.—SEDGWICK (CAMBERWELL REVENUE OFFICER) *v.* CAMBERWELL ASSESSMENT COMMITTEE & WATNEY, COMBE, REID & Co., [1931] A. C. 447; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Folld.** Toogood & Sons, Ltd. *v.* Green, Lipton, Ltd. *v.* Barton (1931), 47 T. L. R. 565.

226v. —— —— —— **Chain cable testing establishment.**]—Resps. occupied & used a testing establishment for the purpose of carrying on the business of testing & finishing cables & anchors under a licence from the Board of Trade, pursuant to the Anchors & Chain Cables Act, 1899, & they gave certificates in respect of the cables & anchors which had passed the tests. The Act of 1899 prohibited the sale in this country of anchors & cables which had not been proved according to its provisions. The hereditament was admitted to be a factory within Factory & Workshop Acts. The processes employed involved the manufacture & replacement of faulty links in cables or faulty parts in anchors, & the scaling, tarring & finishing of cables & anchors before delivery to the ultimate consignees. The revenue officer objected to the inclusion of the hereditament in the special list as an industrial hereditament on the ground that it was primarily occupied & used for purposes which were not those of a factory or workshop within exception (*f*) in 1928 Act, s. 3 (1):—*Held:* the hereditament was primarily occupied & used for the purpose of testing operations, which were not factory purposes, & fell within the exception.—GROVE (DUDLEY REVENUE OFFICER) *v.* LLOYD'S BRITISH TESTING CO., LTD., [1931] A. C. 450; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

226w. —— —— —— **Oil-blending factory.**]—*Held:* entitled to benefit of Act.—POPLAR REVENUE OFFICER *v.* POPLAR ASSESSMENT COMMITTEE (1930), 99 L. J. K. B. 510; 143 L. T. 490; 94 J. P. 142; 46 T. L. R. 428; 74 Sol. Jo. 320; 28 L. G. R. 327; (1926–31), 2 B. R. A. 502, D. C.

226x. —— —— —— **Bespoke tailor's workshop.**]—*Held:* not entitled to benefit of Act.—STAINCROSS REVENUE OFFICER *v.* STAINCROSS ASSESSMENT COMMITTEE & WHITEHEAD (1930), 143 L. T. 525; 94 J. P. 161; 46 T. L. R. 516; 28 L. G. R. 414; (1926–31), 2 B. R. A. 698, D. C.

Retail shop on same premises.]—Resps. were the occupiers of a hereditament entered by the assessment committee in the special list & therein apportioned as to £59 industrial user & as to £146 non-industrial user. The revenue officer appealed against the inclusion of the hereditament in the special list on the ground (*inter alia*) that it was primarily occupied & used for the purposes of a retail shop. The hereditament consisted of a three-storied building which was in the sole occupation of resps., who were bespoke tailors & outfitters. They also owned a retail shop for the sale of shirts, collars, socks, hats & ties on the same premises in which the manufacture of clothes was carried on. The hereditament was registered as a workshop:—*Held:* as a matter of law the hereditament could not be dissected as being occupied & used partly as a retail shop but mainly as a workshop. The business conducted on the hereditament was a unified business & the workshop must be treated as ancillary to the trade or business of a retail shop.—(TAUNTON REVENUE OFFICER) *v.* DONOVAN [1932] 1 K. B. 194; 101 L. J. K. B.

26; 146 L. T. 1; 95 J. P. 208; 29 L. G. R. 633; (1926–31), 2 B. R. A. 926, C. A.

Annotations:—**Consd.** Toogood & Sons, Ltd. *v.* Green, [1932] 1 K. B. 204; McGowan *v.* Osgoldcross Assessment Committee, West Riding of Yorkshire, [1936] 2 All E. R. 170.

226z. —— —— —— **Receiving office of dyers & cleaners.**]—*Held:* not entitled to benefit of Act.—IDEAL CLEANERS & DYERS, LTD. *v.* WEST MIDDLESEX ASSESSMENT COMMITTEE & REVENUE OFFICER FOR WEST MIDDLESEX (1930), 143 L. T. 483; 94 J. P. 139; 46 T. L. R. 371; 74 Sol. Jo. 319; 28 L. G. R. 341; (1926–31), 2 B. R. A. 536, D. C.

226aa. —— —— —— **Processes carried out on premises.**]—A firm of cleaners & dyers were in occupation under a lease for years of a hereditament situated in a busy shopping street in a London suburb. The hereditament, which had the external appearance of a shop, consisted of three floors, there being five rooms on the ground floor, two on the first floor, & two on the second floor. One of the rooms on the ground floor was entered from the street & had a counter for receiving & despatching goods; another room on that floor which faced the street & had a plate-glass window contained a plant for cleaning & drying articles; all the other rooms on the ground & first floors were used for purposes connected with the work of cleaning & dyeing, & the rooms on the second floor were unused. The firm dealt direct with members of the public & did not work for any other firm. Articles received for cleaning were brought to the hereditament by customers & by the firm's vanmen, who collected from two receiving offices maintained by the firm, & from an agency, & from customers' houses in response to orders received by post or telephone. Not more than one-third of the articles received at the hereditament was brought there by the customers themselves. Most of the articles brought by the customers to the hereditament were, after cleaning, delivered to the customers by the firm's vanmen:—*Held:* the proper legal inference from these facts was that the hereditament as a whole was primarily occupied & used for the purposes of a "retail shop"; &, accordingly, it was a retail shop & therefore not an industrial hereditament, & was not derateable. The question whether or not upon the ascertained facts the purposes for which a hereditament is used & occupied are those of a "retail shop," as defined for the purposes of Rating & Valuation (Apportionment) Act, 1928 (c. 44); by sect. 3 (4), thereof, is a question of law & not of fact.—RITZ CLEANERS, LTD. *v.* WEST MIDDLESEX ASSESSMENT COMMITTEE, [1937] 2 K. B 642; [1937] 2 All E. R. 368; 106 L. J. K. B 398; 157 L. T. 423; 101 J. P. 307; 53 T. L. R. 588; 81 Sol. Jo. 337; 35 L. G. R. 309, C. A.

226bb. —— —— —— **Newspaper offices & printing works—Apportionment of editorial & advertising rooms.**]—Printing offices & works in which a newspaper was composed, printed & published, were included in the special list under 1928 Act as an industrial hereditament, & an apportionment was made of the net annual value of the hereditament according as its various parts were used for industrial or non-industrial purposes:—*Held:* (1) the hereditament was properly included in the special list as an industrial hereditament, as the composing, printing, & publishing of a newspaper was the making of an article & the adapting for sale of an article within Factory & Workshop Act, 1901 (c. 22), s. 149, & therefore the hereditament came within the definition of a non-textile factory, the primary purpose for which the hereditament was occupied & used being an industrial purpose; (2) the annual value of the hereditament must be apportioned according to the occupation & use thereof for industrial purposes, & the occupation & use for other purposes; those portions of the premises which were occupied & used for printing, composing, engraving, publishing & circulating were used for industrial purposes & entitled to be derated, but that those portions of the premises which were occupied & used for the editorial department, general administrative offices & clerical staff, advertising department, stationery counter, & returns store were used for non-industrial purposes & not entitled to be derated.—CARDIFF REVENUE OFFICER *v.* CARDIFF ASSESSMENT COMMITTEE & WESTERN MAIL, LTD., CARDIFF REVENUE OFFICER *v.* CARDIFF ASSESSMENT COMMITTEE & DAVID DUNCAN & SONS, LTD., WESTMINSTER REVENUE OFFICER *v.* DAILY MIRROR NEWSPAPERS, LTD., [1931] 1 K. B. 47; 99 L. J. K. B. 672; 143 L. T. 500; 94 J. P. 146; 46 T. L. R. 499; 74 Sol. Jo. 466; 28 L. G. R. 372; (1926–31), 2 B. R. A. 542, D. C.

226cc. —— —— —— **Printing works with shop.**]—Applt. occupied an hereditament consisting of a printer's works & shop, which did not form a large part of the business, but in which some orders for printing work were received. All the printing work was done in fulfilment & not in expectation of orders. A newspaper was printed on the premises. The premises had until Jan. 1934, been rated largely as an industrial hereditament, but the assessment committee then altered the rating to general. Quarter sessions held on appeal that this was an industrial hereditament. The assessment committee appealed:—*Held:* the hereditament was industrial, for it was primarily occupied & used as a factory, for the purpose of doing work & labour in accordance with orders given by customers, & the handing over of & receiving payment for the work did not make the premises a retail shop.—MCGOWAN *v.* OSGOLDCROSS ASSESSMENT COMMITTEE, WEST RIDING OF YORKSHIRE, [1936] 2 All E. R. 170; 80 Sol. Jo. 614, D. C.

226dd. —— —— —— **Wholesale dairy.**]—Resps., who were wholesale dairymen, occupied & used certain premises for carrying out the processes of cleaning & pasteurising milk & of cheesemaking. The milk, after cleaning & pasteurisation, & the cheese after ripening, were sent to the respondents' selling centres. The assessment committee found that the premises were an industrial hereditament & were entitled to be derated:—*Held:* as the question was one of fact, & as there was no evidence on which the conclusion of the assessment committee could be varied, their decision must be affirmed.—CARMARTHEN REVENUE OFFICER *v.* UNITED DAIRIES (WHOLESALE), LTD. (1931), 47 T. L. R. 233; 75 Sol. Jo. 138.

226ee. ——**Meaning of "contiguous."**]—The only

point decided in this case which was remitted to sessions for further consideration of other points was that a hereditament in the occupation of the resps. was not "contiguous" to another 235 yards away, & that Quarter Sessions was wrong in law in holding that it was contiguous so as to be treated as forming one hereditament with the other premises for purposes of de-rating.—SOUTHWARK REVENUE OFFICER *v.* HOE (R.) & Co., LTD. (1930), 143 L. T. 544; 94 J. P. 170; 46 T. L. R. 528; 28 L. G. R. 446; (1926–31), 2 B. R. A. 723.

226ff. —— ——.]—The word "contiguous" must be construed in its ordinary & proper sense as meaning "touching," & not in its loose sense as meaning "neighbouring."

In five cases properties in the same occupation as the main industrial hereditaments were alleged to be part of the main industrial hereditament as being contiguous thereto. The distance in a direct line between the two properties sought to be treated as part of a single hereditament varied from 20 yards to 60 yards. In one case the properties were only separated by a public thoroughfare, but in that case the property sought to be added was used as a stable. In the other four cases the properties were separated by other properties in different ownership:—*Held:* the two properties in four of the cases were not contiguous to each other & therefore could not be treated as parts of a single hereditament within sect. 3 (3), & in the fifth case, inasmuch as the property sought to be added was used as a stable, & therefore, under sect. 3 (2), was to be deemed not to form part of the factory or workshop, it could not therefore be one of the properties which "are used as parts of a single . . . factory" within sect. 3 (3).—SPILLERS, LTD. *v.* CARDIFF ASSESSMENT COMMITTEE & PRITCHARD (CARDIFF REVENUE OFFICER), PIERCE (WIRRAL REVENUE OFFICER) *v.* WIRRAL ASSESSMENT COMMITTEE & SPILLERS, LTD., PINSENT (PLYMOUTH REVENUE OFFICER) *v.* PLYMOUTH ASSESSMENT COMMITTEE & OCTAGON BREWERY CO., BLUNT (WEST DERBY REVENUE OFFICER) *v.* WEST DERBY ASSESSMENT COMMITTEE & TATE & LYLE, LTD., [1931] 2 K. B. 21; 100 L. J. K. B. 233; 144 L. T. 503; 95 J. P. 49; 47 T. L. R. 231; 75 Sol. Jo. 173; 29 L. G. R. 411; (1926–31), 2 B. R. A. 818.

Annotation:—**Refd.** New Plymouth Borough Council *v.* Taranaki Electric Power Board, [1933] A. C. 680.

226gg. —— **Allowance of difference in rates to sub-lessee — Whether "outgoing" as between head-lessor & lessee.**]—*Held:* the meaning of the word "landlord" in Local Government Act, 1929 (c. 17), s. 73 (1), is not confined to a head landlord, but extends to a lessee who has sub-let the hereditament, so that the lessee is liable to his sub-lessee, the occupying tenant, for the amount of the difference in rates; (2) where a lessor covenanted to indemnify his lessee against "all rates, taxes & outgoings whatsoever," & the lessee was compelled to pay his sub-lessee the amount referred to in the above section, the payment was not an "outgoing" for which the lessor was liable to indemnify his lessee under the covenant.—DEPENDABLE UPHOLSTERY, LTD. *v.* BRASTED, [1932] 1 K. B. 291; 100 L. J. K. B. 631; 145 L. T. 588; 47 T. L. R. 521; (1926–31), 2 B. R. A. 485, C A.

226hh. —— —— **Meaning of "landlord."**]—DEPENDABLE UPHOLSTERY, LTD. *v.* BRASTED, No. 226gg, *ante.*

226jj. Freight-transport hereditament—Particular instances.]—(1) Certain bonded warehouses near the port of Liverpool were used for the storage of tobacco, wine & sugar passing through the port, & the bulk of these goods was stored for a very substantial time:—*Held:* on the facts the warehouses were primarily used for warehousing merchandise not in the course of transport & were not subjects for derating.

(2) A wool warehouse not actually connected with any particular dock & not a bonded warehouse was used as a storage place for wool conveyed thereto by the Dock Authority at the charge of the consignee to be sold at the regular wool sales:—*Held:* the warehouse was not used for transport purposes, but as a place for preparing goods for sale, & was not entitled to be derated.

(3) Three grain warehouses had as their special feature an elevator by which grain was discharged from ships, barges or carts into the warehouse, & when sold, moved out again into sea or land vehicles. The bulk of the grain remained in the warehouses for a short time only, & the revenue derived from shipping & unshipping exceeded that derived from storage & warehousing:—*Held:* the warehouses were used to a substantial extent for purposes of shipping & unshipping & were entitled to be derated as freight-transport hereditaments.

(4) By Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 45), s. 225, an action is defined as a civil proceeding begun by writ "or in such other manner as may be prescribed by rules of ct." By R. S. C., Ord. 58, r. 15, no appeal to the Ct. of Appeal from any order, whether final or interlocutory, in any matter not being an action, shall be brought after the expiration of fourteen days from the time at which the order is signed, entered or otherwise perfected:—*Held:* an appeal from the Div. Ct. to the Ct. of Appeal on a special case stated by Quarter Sessions on an appeal from a draft rating assessment made by an Assessment Committee was an appeal in a proceeding which was not an action as defined, & the time for appeal was therefore fourteen days.—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40; 95 J. P. 186; 47 T. L. R. 468; (1926–31), 2 B. R. A. 846, C. A.

Annotations:—*As to* (3) **Refd.** Union Cold Storage Co. *v.* Moon, [1932] 2 K. B. 648. *As to* (4) **Folld.** Wilkinson *v.* Sibley & Donovan (1931), 101 L. J. K. B. 26.

226kk. —— **Railway—Transfer of benefit to public—Who entitled—General engineering works.**]—The mischief which the Railway Freight Rebate Scheme is designed to cure is a mischief in respect of iron & steel works, not a mischief in respect of general engineering works. Therefore, when a general engineering works consists of four departments, one

of which falls within the definition of "iron & steel works" in Local Government Act, 1929 (c. 17), Sched. XI., Part I., para. 17, it cannot for the purpose of the above scheme be considered as four separate works, but must be regarded as a whole, & a general engineering works is not an iron & steel works.—CENTRAL MARINE ENGINE WORKS *v.* AMALGAMATED RY. COS. (1930), 20 Ry. & Can. Tr. Cas. 141.

226ll. —— —— —— **Railway Freight Rebate Fund—Form of accounts.**]—The Railway Clearing House is not entitled to enter on the credit side of the accounts kept by them in pursuance of para. 13 of Sched. XI. of Local Government Act, 1929 (c. 17), sums paid into the Railway Freight Rebates Fund by the railway cos. in respect of the excess of actual rate relief received by them over estimated rate relief.—MINISTER OF TRANSPORT *v.* RAILWAY CLEARING HOUSE (1933), 149 L. T. 305.

226mm. —— —— —— **Jurisdiction of Rates Tribunal.**]—(1) Bunker coal shipped on a cable vessel proceeding to the high seas & returning to the British Islands without touching at any foreign port is exported within Local Govt. Act, 1929 (c. 17), Sched. XI., Part I., para. 17, which defines "exported" as meaning (*inter alia*) shipped as bunkers for ships proceeding to places outside the British Islands. (2) The Rates Tribunal have jurisdiction to determine whether a rebate under the Railway Freight Rebates Scheme is allowable not whether one ought to be allowable.—MONMOUTHSHIRE & SOUTH WALES COAL OWNERS' ASSOCN. *v.* AMALGAMATED RY. CO.'S (1932), 21 Ry. & Can. Tr. Cas. 90.

226nn. —— —— —— **"Exported" coal.**]—MONMOUTHSHIRE & SOUTH WALES COAL OWNERS' ASSOCN. *v.* AMALGAMATED RY. CO.'S, No. 266mm, *ante*.

226oo. —— —— —— **Calculation of rebate on mixed consignment.**]—Where a charge is made on a mixed consignment, calculated at more than its actual weight, in order to give the benefit of a minimum tonnage rate, the carriage charge on each portion of the consignment is the same proportion of the total charge as the weight of that portion bears to the actual weight. Rebate for the Railway Freight Rebates Scheme must be calculated accordingly.—SPILLERS & CO., LTD. *v.* AMALGAMATED RY. CO.'S (1933), 21 Ry. & Can. Tr. Cas. 70.

226pp. —— —— —— **"Treacle delivered direct to farmers."**]—The words "treacle delivered direct to farmers" in Sched. XI., Part II., mean treacle on an uninterrupted journey to a farmer; they do not mean treacle intended to be delivered in the same state to a farmer, & do not therefore apply to imported treacle on its journey to a retailer who intends to deliver it in an unaltered state to a farmer.—UNITED MOLASSES CO., LTD. *v.* AMALGAMATED RY. CO.'S (1932), 21 Ry. & Can. Tr. Cas. 26.

226qq. —— —— **What included.**]—(1) Certain offices of the ry. co. at London Bridge, Waterloo, & Southampton, & occupied by various officials of the co., were used in connection with the "general direction & management of the ry. co." within the meaning of sect. 5 (1) (*a*) (i) & the proviso thereto, & sect. 5 (2) (*a*) of Rating & Valuation (Apportionment) Act, 1928 (c. 44), & were therefore hereditaments other than freight transport hereditaments & must be separately assessed, those offices being distinct from any purpose of the station as a railway station.

(2) High-tension electric cables & electrical sub-stations, which were essential to the operation of the railway, were "hereditaments consisting of land used only as a railway," & rateable accordingly.—*Re* SOUTHERN RY. CO. (1935), 153 L. T. 105; 99 J. P. 283; 51 T. L. R. 415; 79 Sol. Jo. 322; 33 L. G. R. 242; *sub nom.* SOUTHERN RY. CO. *v.* RAILWAY ASSESSMENT AUTHORITY, 22 Ry. & Can. Tr. Cas. 269.

226rr. —— **Canal—Building occupied by canal company's employees.**]—*Held:* not entitled to benefit.—LEE CONSERVANCY BOARD *v.* R. (1931), 39 Ll. L. R. 47, D. C.

226ss. —— **Cold storage—Apportionment.**]—Applt. co. occupied two hereditaments abutting on the Thames which were used as cold stores, being equipped with refrigerating machinery & insulation necessary for dealing with shipments of refrigerated goods arriving in the port of London from colonial & foreign markets. The goods were brought to the hereditaments from the ocean-going steamers in insulated barges, on delivery into which the liability of the shipowners ceased. The goods were sorted to marks in the hereditaments. In one of these 17½ per cent. of the goods were delivered out immediately after sorting, while of the balance of 82½ per cent. part did not remain in the hereditament longer than twenty-eight days, & part remained for a longer period. In the other hereditament 12 per cent. were delivered out immediately after sorting, the balance remaining for a period up to twenty-eight days or longer. Each hereditament had, besides its refrigerating chambers & machinery, a crane for the unshipping of goods, a non-insulated reception front & a non-insulated delivery front. On a claim by applt. co. for the derating of the hereditaments:—*Held:* (1) the hereditaments, so far as regarded the refrigerating machinery & chambers, were "primarily occupied & used for warehousing merchandise not in the course of being transported," & therefore were not entitled to be derated; (2) the crane, non-insulated reception front & non-insulated delivery front were primarily used for dock purposes, & were entitled to be derated; & therefore (3) the value of the hereditaments for derating purposes must be apportioned, the apportionment being between the value of the refrigerating chambers, etc., which were not the subject of derating, on the one hand, & the value of the crane, non-insulated reception & delivery fronts, which were the subject of derating, on the other hand.

Per SCRUTTON, L.J.: The primary use of refrigerating chambers is to store goods not being transported, rather than, like barges, to serve as a means of transport.—UNION COLD STORAGE CO. *v.* MOON, [1932] 2 K. B. 648; 101 L. J. K. B. 791; 147 L. T. 487; 96 J. P. 432; 30 L. G. R. 433, C. A.

226tt. —— **Premises forming part of industrial undertaking.**]—Resps. were the occupiers of a hereditament, consisting of storage bins, offices & premises, which adjoined premises

occupied by manufacturers of fertilisers & artificial manures. By a lease of resps.' premises granted to them by the manufacturers, resps. were given rights of way between their premises & the highway to Barking. Resps.' premises were separated from the water front by the manufacturers' premises, which consisted (*inter alia*) of a wharf, in addition to their factory & plant for the manufacture of fertilisers. In terms of an agreement between resps. & the manufacturers, the latter erected upon their premises & up to the distribution centre of resps., a conveyor, from which loading of materials held by the storage bins could be carried out into road transport vehicles. The goods landed at the wharf for transfer to resps.' premises during one year constituted a considerable part of the total goods landed at such wharf. Resps. maintained that their premises were part of a dock undertaking, & were used wholly for docking purposes, whereof a substantial portion of the volume of business related to shipping & unshipping of merchandise not belonging to, or intended for the use of, the undertakers, the manufacturers, & that the hereditament ought to be entered & distinguished in the valuation list as a freight transport hereditament:—*Held:* as the undertaking carried on by the manufacturers was an industrial undertaking, & not a dock undertaking, there was no dock undertaking of which resps.' undertaking could form part, &, therefore, resps.' premises ought not to be entered or distinguished in the valuation list as a freight transport hereditament.—SOUTHERN ESSEX ASSESSMENT COMMITTEE *v.* BETTY & TOM, LTD., [1937] 1 All E. R. 461; *affd. sub nom.* BETTY & TOM, LTD. *v.* SOUTHERN ESSEX ASSESSMENT COMMITTEE, [1937] 3 All E. R. 441, C. A.

Compare No. 226h, *ante*.

229a. Land used for exhibition of advertisements—Show-cases.]—WESTMINSTER CORPN. *v.* SOUTHERN RY. CO., RAILWAY ASSESSMENT AUTHORITY & SMITH & SON, LTD., WESTMINSTER CORPN. & KENT VALUATION COMMITTEE *v.* SOUTHERN RY. CO., RAILWAY ASSESSMENT AUTHORITY & PULLMAN CAR CO., LTD., No. 800g, *post*.

230. Before this case add "*See, now,* Local Government Act, 1929 (c. 17), s. 67.'

233. *Add. Annotation:*—**Consd.** Monro & Cobley *v.* Bailey (1932), 148 L. T. 50.

235. *Add. Annotation:*—**Reld.** Engelke *v.* Musmann, [1928] A. C. 433.

PART I. SECT. 4, SUB-SECT. 2.

sd. *Land improved for grain-growing—What amounts to.*]—A parcel of land improved for grain-growing cannot be otherwise than land which is cleared & broken & made ready for grain-growing, as well as land actually in crop.—LUTHY *v.* ST. VITAL RURAL MUNICIPALITY, [1935] 1 W. W. R. 478. 43 Man. L. R. 126.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.—A.

g i. —— *Education of poor—Religious vow of poverty.*]—On an application for exemption from rates on the ground that premises were used for charitable purposes:—*Held:* the words "for the education of the poor" in Poor Relief (Ir.) Act, 1838 (c. 56), s. 63, do not refer to persons who have become poor by the adoption of a religious vow of poverty.—MCGAHAN & RYAN *v.* COMR. OF VALUATION, [1934] Ir. 736.—**IR.**

h i. —— ——.]—Christ College Trust, as the owner of certain lands & buildings in Hobart, was rated by the municipal council in respect of such buildings which were used as a public boys' school. All pupils, with unimportant exceptions, were liable to pay fees. The fees received were considerably less than the expense of the school. The deficiency was made good from income derived from capital invested in trust for the school. Under the trust deed by which the school was established, & Christ College Acts, 1926, no member of the board of management could derive any profit from the school:—*Held:* even if the school were used for charitable purposes it was not used solely for such purposes, in that the compulsory payment of fees by pupils made the institution a business; &, the words "charitable purposes" should be construed *ejusdem generis* with hospital & benevolent society, & not in their technical sense.—CHRIST COLLEGE TRUST *v.* HOBART CORPN., 22 Tas. L. R. 67.—**AUS.**

n i. —— —— *Whether buildings used solely for educational purposes exempted.*]—*Held:* in Hobart Corpn. Act, 1893 (Tas.), s. 116, as amended by Hobart Corpn. Act, 1921 (Tas.), s. 18, & in Hobart Water Act, 1893 (Tas.), s. 60, the words "charitable purposes" should be construed *ejusdem generis* with hospital & benevolent asylum & not in their technical sense, therefore, buildings used solely for educational purposes were not exempted from rates by those sections, even if such purposes were charitable in the technical sense.—CHRIST COLLEGE TRUST *v.* HOBART CORPN. (1928), 40 C. L. R. 308.—**AUS.**

t i. —— *Y. W. C. A.*]—City Act, R. S. S., 1930, s. 447 (6), provides that the buildings, & grounds not exceeding four acres, of the "Y. W. C. A." shall be exempt from taxation, & a like provision for exemption is made for "any assocn. or organisation doing work for young women similar to the work done by the Y. W. C. A.":—*Held:* the word "work" in said provision means the goal or objective of an assocn. & not its activities, &, since the objective of pltf. assocn. was "similar" to that of the Y. W. C. A., it was entitled to the benefits of the provision.—SISTERS OF SION (SOCIETY) *v.* SASKATOON (CITY), [1934] 2 W. W. R. 553.—**CAN.**

t ii. —— ——.]—Premises of the Young Women's Christian Association, not being used exclusively for the purposes of the assocn.:—*Held:* not exempt from taxation.—YOUNG WOMEN'S CHRISTIAN ASSOCN. *v.* HALIFAX, [1933] 2 D. L. R. 713.—**CAN.**

t iii. —— *Work similar to Y.M.C.A.*]—Sect. 453 (6) of City Act, 1934, provides that "The building & grounds . . . used in connection with & for the purposes of . . . any assocn, or organisation doing work for young women similar to the work done by the Young Women's Christian Assocn." shall be exempt from taxation. Pltf. corpn., in addition to other activities, operated a girls' home for the purpose of giving girls permanently resident in the home & any girls not in the home but who come there "good moral & religious training which will lead them to pure womanhood":—*Held:* pltf. was entitled to the exemption.—RUTHENIAN SISTERS OF THE IMMACULATE CONCEPTION *v.* SASKATOON CITY, [1937] 2 W. W. R. 625.—**CAN.**

b i. —— ——.]—On the hearing of valuation appeals in the Circuit ct., it was held that a convent, in which resided 43 nuns, was not exempt; & that a laundry, managed by some of the nuns & worked by the inmates of a Magdalen Asylum, & which returned a profit of £1,300 a year, was not exempt. The nuns appealed in respect of the convent. Of the 43 nuns residing in the convent, 14 were allocated to manage an Industrial School; the remaining 29 attended to the management of the Asylum & the laundry. There was no evidence as to the number of nuns exclusively engaged in working the laundry. The produce of the land went to the support of the nuns & the penitents in the Magdalen Asylum:—*Held:* the convent was not used exclusively for charitable purposes, since it accommodated not only those nuns who were engaged exclusively in charitable work, but also those who were engaged in working the laundry, & therefore it was not exempt from rateability.—GOOD SHEPHERD NUNS *v.* COMR. OF VALUATION, [1930] I. R. 646.—**IR.**

c i. —— *Seamen's Friendly Society—Work given up by society & continued by Navy League of Canada.*]—*Held:* the latter body was not exempt.—*Re* NAVY LEAGUE OF CANADA (ASSESSMENT OF HALIFAX BRANCH OF), [1927] 2 D. L. R. 184; 59 N. S. R. 212.—**CAN.**

g (p. 460) **i.** —— *Reserve for show ground.*]—CONNOR *v.* ROCKHAMPTON CITY COUNCIL (1928), 22 Q. J. P. R. 91.—**AUS.**

g (p. 460) **ii.** —— *Salvation Army Home.*]—Certain land in the City of Sydney was vested in deft. upon trust for social work of the Salvation Army. Upon the land was a building known as the Salvation Army Men's Home, & used exclusively to supply needy persons with accommodation in the way of beds and meals which otherwise they could not obtain. The charge made for beds was generally less than that made elsewhere, & in some cases no charge was made. In the majority of cases meals were supplied free of charge.—*Held:* the land was used solely for a charitable purpose & therefore was not rateable.—SYDNEY MUNICIPAL COUNCIL *v.* SALVATION ARMY (N. S. W. PROPERTY TRUST) (1931), 31 S. R. N. S. W. 585; 48 N. S. W. W. N. 219; 10 L. G. R. 113.—**AUS.**

248. *Add. Annotations:*—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committe, [1936] 1 K. B. 585; Bertram *v.* Wightman, [1936] 2 All E. R. 487.

267a. —— **Roman Catholic Church divided into "blessed" & "unblessed" parts.**]—A Roman Catholic Church was divisible by a movable partition into two parts, a "blessed" part in which the altar stood, & an "unblessed" part. The whole building was used for public religious worship, but on certain nights in the week the partition was drawn across & the "unblessed" part was used for dances, the proceeds of which were devoted exclusively to church purposes:—*Held:* the "unblessed" part was not exempt from rates under the Poor Rates Exemption Act, 1833 (c. 30), & was properly included in the valuation list.—CARDIFF ARCHDIOCESE TRUS- *v.* PONTYPRIDD AREA ASSESSMENT COMMITTEE & MOUNTAIN ASH RATING AUTHORITY (1930), 144 L. T. 207; 94 J. P. 246; 46 T. L. R. 633; 28 L. G. R. 535; (1926-31), 1 B. R. A. 389, D. C.

Annotation:—**Consd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

281. *Add. Annotations:*—**Consd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1. **Apld.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

286. *Add. Annotations:*—*As to* (3) **Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. *Generally,* **Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585; Williams *v.* Neath Assessment Committee (1935), 34 L. G. R. 82.

PART I. SECT. 4, SUB-SECT. 6.—B.

h i. ——.]—Buildings used to house the domestic staff of a public hospital constitute hospital buildings & also buildings used solely for charitable purposes within sect. 110 (5) of Sydney Corpn. Act, 1902, & are, therefore, not liable to be rated.—SYDNEY MUNICIPAL COUNCIL *v.* PRINCE ALFRED HOSPITAL (1934), 51 N. S. W. W. N. 145; 12 L. G. R. 32.—**AUS.**

sk. *Hospital carried on by religious community.*]—The A. Community, a society of women who devoted themselves to the religious life & to the relief of the suffering of the sick & infirm, consisted of thirty-two sisters all engaged in the work of a hospital carried on by the community. In addition other women, who were not members of the community, were engaged as nurses. Patients paid fees, except a negligible number who paid nothing. Normally profits were made every year & these had been used in developing the property. No funds had been accumulated & none had been distributed amongst the sisters, who were not permitted to own property individually:—*Held:* the property was not exempt from rates, not being used exclusively for charitable purposes.—AUGUSTINIAN COMMUNITY TRUSTEES *v.* PIETERMARITZBURG CORPN., [1933] N. L. R. 309.—**S. AF.**

PART I. SECT. 4, SUB-SECT. 7.

l i. —— *Seminary for education of missionary priests.*]—*Held:* the building could not be deemed to be one "used for church purposes" within School Assessment Act, R. S. A., 1922 (c. 52), s. 24 (*d*), & was not exempt.—RUTHENIAN CATHOLIC MISSION OF THE ORDER OF ST. BASIL THE GREAT IN CANADA *v.* MUNDARE SCHOOL DISTRICT, No. 1603, [1924] 2 D. L. R. 1143; [1924] 2 W. W. R. 481; 20 Alta. L. R. 338.—**CAN.**

m i. —— *Building also used for receipt of rent.*]—*Held:* a building which is used or occupied for religious teaching is "solely" used or occupied for that purpose within Metropolitan Water, Sewerage & Drainage Act, s. 88 (1) (*h*), notwithstanding that rent for land of the owner, other than the land which is occupied by & used in connection with the building, is payable & is paid in the building.—ROMAN CATHOLIC ARCHBISHOP OF SYDNEY *v.* METROPOLITAN WATER, SEWERAGE & DRAINAGE BOARD (1928), 40 C. L. R. 472; [1928] Argus L. R. 162.—**AUS.**

m ii. ——.]—Although in order for a building to be exempt from taxation as a "place of public worship," within sect. 453 of City Act, 1934, it is not necessary that it should be used exclusively for such purpose, yet the main or principal or dominant use thereof be as a place of public worship. The Act has not provided any method of exempting part of a building where only that part is used for said purpose.—SASKATOON EPISCOPAL CORPN. *v.* SASKATOON CITY, [1935] 3 W. W. R. 330.—**CAN.**

e i. —— *Place of public worship.*]—A building in question herein was built & maintained by pltf. corpn. Part of it was consecrated for & used regularly for religious services to which the public was admitted. Another part was equipped & used as a religious library for the instruction of Roman Catholic students attending the nearby University of Saskatchewan. Another part was used by a students' religious society known as the Newman Club:—*Held:* the building was a "place of public worship" within the sub-sect.; pltf., whose name was that under which the Roman Catholic Bishop of the Diocese of Saskatchewan & each of his successors was constituted by statute a body corporate, with power to acquire & hold property, was a "religious organisation" within the sub-sect.—SASKATOON EPISCOPAL CORPN. *v.* SASKATOON CITY, [1936] 2 W. W. R. 91.—**CAN.**

PART I. SECT. 4, SUB-SECT. 10.—B.

297 vi. —— *Halifax Harbour Commissioners.*]—Halifax Harbour Comrs. are exempt from business tax as agents & servants of the Crown.—HALIFAX *v.* HALIFAX HARBOUR COMRS., [1934] 3 D. L. R. 614; *sub nom. Re* HALIFAX HARBOUR COMRS.' ASSESSMENT, 8 M. P. R. 263; *affd.,* [1935] S. C. R. 215.—**CAN.**

PART I. SECT. 4, SUB-SECT. 10.—C.

sf. *Liability before issue of patent.*]—RUDDELL *v.* GEORGESON (1873), 9 Man. L. R. 407.—**CAN.**

sg. ——.]—O'GRADY *v.* MCCAFFRAY (1882), 2 O. R. 309.—**CAN.**

sh. —— *Half-breed lands.*]—*Re* MATHERS (1891), 7 Man. L. R. 434.—**CAN.**

sj. *Whether lessee of Commonwealth land liable.*]—The lessee of land leased by a private individual from the Commonwealth of Australia, the owner of the land, is not liable to be rated by a local authority, the land itself not being rateable land.—COALDRAKE *v.* BRISBANE CITY COUNCIL (1928), 22 Q. J. P. R. 34.—**AUS.**

PART I. SECT. 4, SUB-SECT. 12.—A. (a).

sk. *Agreement with municipality exempting taxpayer from taxes—School taxes collected separately by school trustees—Whether exemption applies to school taxes.*]—*Ex p.* BATHURST CO., [1928] 4 D. L. R. 65.—**CAN.**

sl. *Professors' residences.*]—Sect. 320 (5) of the Edmonton Charter, 1913, exempts from taxation, except for local improvements, "the land not exceeding four acres of and attached to or otherwise *bona fide* used in connection with & for the purposes of any university, college . . . so long as such land is actually used and occupied by such institution, but not if otherwise occupied." Deft. owned certain lots at some distance from its college buildings on which lots the residences of its professors were situated:—*Held:* the fact that the land on which said residences were situated was used & occupied by professors employed by deft. institution did not constitute occupation by the institution within the meaning of the section & since these lots were assessed from other land on which the college was situated the assessment of these lots was good.—EDMONTON CITY *v.* EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, & OTHER STATES, [1933] 2 W. W. R. 310; 4 D. L. R. 196; *affd.,* [1934] 2 D. L. R. 513; S. C. R. 280.—**CAN.**

sp. *Training school for clergy.*]—A collegiate institution, where the education given is a preparation for Holy Orders & nothing more, is not exempt from rating as "lands & buildings used for a school not carried on exclusively for pecuniary gain or profit" within the meaning of para. (*g*) of the exceptions to the definitions of rateable property contained in Rating Act, 1925, s. 2, as the institution does not give a sufficiently general education to constitute it such a school.—AUCKLAND CITY CORPN. *v.* ST. JOHN'S COLLEGE TRUST BOARD, [1935] N. Z. L. R. 934.—**N.Z.**

PART I. SECT. 4, SUB-SECT. 12.—B.

so. *University of Manitoba.*]—All lands owned by the University of Manitoba are exempt from taxation, including lands acquired by foreclosure, & not in actual use for University purposes.—UNIVERSITY OF MANITOBA *v.* CITY OF WINNIPEG (1934), 42 Man. L. R. 566.—**CAN.**

sq. ——.]—Land of which the university was & still is the registered owner was sold by it in 1917 under an agreement for sale. From 1928 to 1932 inclusive it was assessed in the name of the purchaser. From 1933 to 1935 it was assessed in his name & in that of the university. In 1935, the purchaser being in default under the agreement the university cancelled it under its provisions. The taxes from 1928 to 1935 inclusive were not paid, & the university sued for a declaration that the land was exempt from taxation & to restrain the sale thereof for the unpaid taxes:—*Held:* the land

327. *Add. Annotation:*—**Refd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1.

SUB-SECT. 14A.—INDUSTRIAL HEREDITAMENTS.

See Sect. 3, sub-sect. 4, *ante*.

345a. —— **Bed of river running through farm—Fishing rights let.**]—A river which flowed through a farm was used for watering stock & for providing gravel for repairing farm buildings & roads. By oral agreement the farmer had let the right to fish the river to another person:—*Held:* the rating appeals committee were justified in holding that the bed of the river was "agricultural land," as defined by sect. 2 (2) of Rating & Valuation (Apportionment) Act, 1928 (c. 44), & was therefore exempt from rateability by reason of sect. 67 (1) of Local Govt. Act, 1929 (c. 17), & accordingly that the farmer was not assessable to rates in respect of his receipts from letting the fishing.—WATKINS *v.* HEREFORDSHIRE ASSESSMENT COMMITTEE (1935), 154 L. T. 262; 100 J. P. 79; 52 T. L. R. 148; 34 L. G. R. 84, D. C.; *sub nom.* HEREFORDSHIRE ASSESSMENT COMMITTEE *v.* WATKINS, 80 Sol. Jo. 127, D. C.

349. *Add. Annotation:*—**Refd.** Lodge *v.* Lancashire County Council (1934), 152 L. T. 167.

350. *Add. Annotation:*—**Consd.** Lodge *v.* Lancashire County Council (1934), 152 L. T. 167.

384. *Add. Annotation:*—**Refd.** New Liverpool Eastham Ferry & Hotel Co. *v.* Ocean Accident & Guarantee Corpn., Ltd. (1929), 142 L. T. 349.

385a. Houseboat.]—A person who has the exclusive occupation of the moorings of a houseboat to the bank of a river under licence from the tenant of the bank is rateable in respect of them.—GOODING *v.* BENFLEET URBAN DISTRICT COUNCIL (1933), 49 T. L. R. 298; 77 Sol. Jo. 177.

403a. Liability for "parochial taxes"—What are.]—34 Geo. 3, c. 24, enacted that a canal co. should be rated to all parliamentary & parochial taxes & assessments for its lands & buildings, in the same proportion as other lands & buildings lying near should be rated, & as the lands & buildings of the co. would be rateable if they were the property of individuals in their natural capacity:—*Held:* A., a parish in Buckinghamshire, was to be assessed to the county rate on an estimate in which the co.'s lands & buildings were assessed as directed by the statute. For, under 12 Geo. 2, c. 29, the county rate was to be paid out of the poor rate of the several parishes, & was therefore a parochial tax.—R. *v.* AYLESBURY WITH WALTON INHABITANTS (1846), 9 Q. B. 261; 4 Ry. & Can. Cas. 314; 1 New Mag. Cas. 560; 7 L. T. O. S. 226; 10 J. P. Jo. 371; 115 E. R. 1273.

444. *Add. Annotation:*—**Consd.** R. *v.* London County Council, *Ex p.* Swan & Edgar (1927) (1929), 45 T. L. R. 512.

448a. ——.]—A drill hall erected by a county Territorial Army Assocn. for the use of a local coy. of that army was regularly used for the ordinary military purposes for which it was provided. The hall was, however, also used each Saturday night during the winter for dances organised by the officer commanding the co., to which members of the coy. with their wives & fiancées were admitted free & the public on payment of 6*d.* each, & the profit after payment of expenses was distributed for the benefit of the members of the co. or their dependants, the purpose of the dances being to keep the men of the co. together during the winter & to stimulate recruiting. It was contended by the rating authority that the above statutory provision should be construed as if, in accordance with the previous state of the law, the word "exclusively" was inserted therein immediately before the word "occupied," or at least as if the word "where" at the beginning of the provision meant "in so far as" or "to the extent to which," & that in view of the user of the hall for the dances it came, consistently with one or other of these respective constructions, either not at all or not entirely within that provision & was therefore either wholly or partially rateable:—*Held:* the provision must be construed according to the natural meaning of its words without regard to the previous state of the law, none of the constructions contended for could be supported, & the hall came wholly within the provision; even if one or other of the proposed constructions was the true construction, the hall was in the circumstances exclusively occupied on behalf of the Crown for public purposes & would come within the provision; & consequently the hall was entirely exempt from rates.—DERBY (TERRITORIAL ARMY ASSOCIATION) *v.* DERBY (SOUTH EASTERN AREA) ASSESSMENT COMMITTEE, [1935] 2 K. B. 373; 104 L. J. K. B. 611; 153 L. T. 340; 99 J. P. 260; 51 T. L. R. 456; 79 Sol. Jo. 403; 33 L. G. R. 285, D. C.

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was exempt & the appeal must, therefore, be dismissed.—MANITOBA UNIVERSITY *v.* PORTAGE LA PRAIRIE RURAL MUNICIPALITY, [1937] 1 W. W. R. 583. —CAN.

PART I. SECT. 4, SUB-SECT. 16.

st. *Land flooded by power company.*]—Land which had been flooded by a power co. in order to raise the level of a river to a certain elevation for the purpose of establishing a power house is assessable & must be given some actual or real value.—MONTREAL ISLAND POWER CO. *v.* LAVAL DES RAPIDES TOWN, [1936] 1 D. L. R. 621; [1935] S. C. R. 304.—CAN.

PART I. SECT. 4, SUB-SECT. 20.—A.

t i. —— —— *Construction of Assessment Act, R. S. O.*, 1927.]—The question of what are "mineral lands" within Assessment Act, R. S. O., 1927, is one of fact.—TISDALE TOWNSHIP *v.* HOLLINGER CONSOLIDATED GOLD MINES, LTD., [1933] 3 D. L. R. 15; S. C. R. 321.—CAN.

t fi. —— *Loading pier & equipment for shipment of coal.*]—*Re* ACADIA COAL CO.'S ASSESSMENT, [1925] 1 D. L. R. 1179; 58 N. S. R. 17.—CAN.

ss. *Coal land—What amounts to.*]—"Coal land" within sect. 2 of Taxation Act, R. S. B. C., 1924, includes coal reserved to the vendor on a sale of land in fee simple.—*Re* JONES ESTATE, RUDD *v.* AITKEN, [1933] 3 W. W. R. 453; 4 D. L. R. 399; 47 B. C. R. 439. —CAN.

PART I. SECT. 4, SUB-SECT. 24.—C. (a).

l i. —— *Land used for quarrying stone for harbour works.*]—Land used for quarrying stone for the purposes of harbour works is not exempt from rating.—NAPIER BOROUGH COUNCIL *v.* NAPIER HARBOUR BOARD, [1930] N. Z. L. R. 239.—N.Z.

PART I. SECT. 4, SUB-SECT. 24.—K.

432 fi. ——.]—ESTCOURT CORPN. *v.* UNION GOVERNMENT (1929), 50 N. L. R. 21.—S. AF.

PART I. SECT. 4, SUB-SECT. 24.—L.

sn. *Land leased to commissariat officer & occupied by troops.*]—*Held:* exempt. —PRINCIPAL SECRETARY OF STATE FOR WAR *v.* TORONTO CORPN. (1863), 22 U. C. R. 551.—CAN.

453. *Add. Annotation :*—**Consd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

501a. Royal Academy of Dramatic Art.]—*Ex p.* ROYAL ACADEMY OF DRAMATIC ART (1930), 74 Sol. Jo. 106, D. C.

503. *Add. Annotations :*—**Consd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* I. R. Comrs. (1928), 97 L. J. K. B. 578 ; Midland Counties Institution of Engineers *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 285. **Apld.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466. **Refd.** Master Mariners, Honourable Co. of *v.* I. R. Comrs. (1932), 17 Tax Cas. 298.

508. *Add. Annotation :*—**Consd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

525. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

540. *Add. Annotation :*—**Consd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

549. *Add. Annotations :*—**Consd.** Towler *v.* Thetford Rural Council (1929), 99 L. J. K. B. 258. **Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

551. *Add. Annotation :*—**Apld.** Hastings, Lord *v.* Walsingham Revenue Officer, [1930] 2 K. B. 278.

552a. —— **Not let—Whether within Rating & Valuation (Apportionment) Act, 1928 (c. 44).**] —Where sporting rights over agricultural land are severed but not let the person exercising those rights is not entitled to the exemption from rates conferred on the occupiers of agricultural land by the Agricultural Rates Act, 1929 (c. 26).—HASTINGS (LORD) *v.* WALSINGHAM (REVENUE OFFICER), [1930] 2 K. B. 278 ; 99 L. J. K. B. 385 ; 143 L. T. 474 ; 94 J. P. 136 ; 46 T. L. R. 425 ; 74 Sol. Jo. 298 ; 28 L. G. R. 304 ; (1926–31), 1 B. R. A. 402, D. C.

Annotation :—**Folld.** Cleobury Mortimer Rural District Council *v.* Childe 1933), 97 J. P. 217.

552b. —— **Necessity for severance.**] — Applt. owned 3,000 acres of land. Two thousand acres he let to tenant farmers reserving to himself the sporting rights ; 700 acres of the remainder was waste land & he farmed 300 acres himself. He let the sporting rights over the whole 3,000 acres to B., under an agreement contained in correspondence between them. There was no grant by deed. Applt. was rated separately on the sporting rights so let & appealed from an order of the justices directing the issue of a distress warrant in respect of those rates :—*Held :* applt. was not rateable in respect of the sporting rights as there was no legal severance of the right from the occupation of the land. —TOWLER *v.* THETFORD RURAL COUNCIL (1929), 99 L. J. K. B. 258 ; 143 L. T. 45 ; 94 J. P. 77 ; 28 L. G. R. 108 ; (1926–31), 1 B. R. A. 298.

552c. —— **Sporting rights reserved.**]—A farm was let to a tenant under an agreement in writing, not under seal. The agreement contained a clause reserving to the owner the sporting rights over the agricultural land. The owner refused to pay the rates in respect of the sporting rights so reserved. An application for a distress warrant was refused by the justices on the ground that there had been no severance of the sporting rights from the occupation of the land within Rating Act, 1874 (c. 54) :—*Held :* a grant of sporting rights over land could be validly made only by a deed under seal, but where the owner of the land, by an agreement in writing, not under seal, let the land, &, by the same document, reserved to himself the sporting rights, there was in fact a severance of the sporting rights from the occupation of the land within Rating Act, 1874 (c. 54), s. 6, & the owner was rateable in respect of those rights under sect. 6 (3).—CLEOBURY MORTIMER RURAL DISTRICT COUNCIL *v.* CHILDE, [1933] 2 K. B. 368 ; 102 L. J. K. B. 580 ; 149 L. T. 495 ; 97 J. P. 217 ; 49 T. L. R. 485 ; 31 L. G. R. 268, D. C.

556. *Add. Annotation :*—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

580. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

630a. —— ——.]—In an ancient market, of which S. was lessee of tolls, the frequenters of the market brought corn & potatoes in carts which stood within the limits of the market, & one sack was taken out & pitched in the street for buyers to examine. A toll was payable to S. in kind for the whole quantity brought in bulk, including the sample sack :—*Held :* S. was rateable to the poor-rate in respect of these tolls.—*R. v.* BARNARD CASTLE INHABITANTS (1863), 27 J. P. 534.

632a. —— ——.]—Applt. was rated as the occupier of tolls, lands, & buildings situated in the Ashford cattle market ; & among the gross receipts upon which the valuation was estimated, were items for the sheep, cattle, pigs, & horses admitted into the market during the year at a fixed sum per head. In 1671 Charles II. granted by charter to Lord Strangford, his heirs & assigns, a market to be holden every alternate Tuesday within or near to the town of Ashford, together with the tolls & profits thereof. No evidence is to be found of the actual establishment of a market under this charter ; but in 1784 a

PART I. SECT. 4, SUB-SECT. 24.—Q.

a i. ——.]—*Re* HYDRO-ELECTRIC COMMISSION OF ONTARIO & [illegible] TOWNSHIPS (1924), O. L. R. 481.—CAN.

Zoological gardens reserve—

Zoological gardens.]—*Held :* the land was used for a public reserve within s. 132 (*c*) of the Local Government Act, 1919, s. 132 (*c*), & was exempt from rates.—MUNICIPAL COUNCIL OF MOS-[illegible]

st. *Bookstalls & shops at station.*]—In making up his roll for the year ending Whitsunday, 1937, the Assessor of Public Undertakings included in his valuation of the undertakings of two railway cos. the bookstalls & other stalls & shops at certain stations in Glasgow. These subjects had been included every year since the first quinquennial valuation made in the year 1933–1934. In May, 1936, the House of Lords, in a case relating to an English railway, decided that similar subjects did not form part of the undertaking :—*Held :* the subjects in question, in so far as covered by the decision of the House of Lords, fell to be excluded from the roll of the Assessor of Public Undertakings.—GLASGOW CORPN. *v.* ASSESSOR OF PUBLIC UNDERTAKINGS, [1936] S. C. 754.—SCOT.

sv. *Property of Toronto Transportation Commission.*]—Toronto Transportation Commission held liable to pay local improvement rates on land controlled & managed by the Commission.—TORONTO *v.* TORONTO TRANSPORTATION COMMISSION, [1937] 1 D. L. R. 522 ; O. R. 42.—CAN.

stock market was established, & for some time afterwards held upon every fourth Tuesday. From 1793 to 1856 a stock & cattle market was held on every alternate Tuesday in the main street of Ashford, the lord of the manor & the inhabitants receiving certain payments for the use of such pens as either of them supplied respectively, but no tolls appeared to have been levied upon animals sold at the market. After many mesne assignments, in 1856 applt.'s lessors, incorporated as a limited co., obtained a conveyance in fee of a piece of land in the manor, & " all the tolls, stallages, dues, profits, or emoluments whatsoever arising from all markets & fairs held in the said town of Ashford," except the meat, fish, & vegetable market. In 1874 applt. hired from the co., at a fixed annual rent, certain fixed tolls of the cattle market, the lands belonging thereto, & the fairs & other perquisites. The land occupied by the market is fenced in, & kept locked when not used for market or other purposes. Some pens in the market are appropriated to particular owners & salesmen, & others are free for any animals in the market. All animals, however, pay toll for admittance to the market :—*Held :* upon a case stated, that the tolls for admittance to the market were incident to the soil so as to be taken into consideration as increasing the value of the occupation, & were not mere market tolls which could not be rated.—PERCY *v.* ASHFORD UNION (1876), 34 L. T. 579 ; 40 J. P. 502.

632b. —— ——.]—Applt. rented two stalls in Bodmin market year by year at a rent payable weekly. The stalls in question had been put up to auction & were bought by applt. & used by him on market days. The stalls thus rented were capable of being removed, & there was no agreement that they should always stand on the same identical spot, though applt. had a right to retain the same relative position in the row :—*Held :* there was no such occupation of the stall as rendered applt. liable to be rated under 43 Eliz. c. 2, he having acquired only the right to a given stall in a given row, & not the right to place one on any definite portion of ground.—SPEAR *v.* BODMIN UNION GUARDIANS (1880), 49 L. J. M. C. 69 ; 49 L. J. Q. B. 656 ; 43 L. T. 127 ; 44 J. P. 764.

636. *Add. Annotation :*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

669. *Add. Annotation :*—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

670. *Add. Citation :*—(1926-31), 1 B. R. A. 80, C. A.

675a. House let out in apartments or lodgings—Representation of the People Act, 1867 (c. 102), s. 7.]—By Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7, where the owner is rated at the passing of this Act to the poor rate in respect of a dwelling-house situate in a parish wholly or partly within a parliamentary borough, instead of the occupier, his liability to be rated for the future shall cease ; & after the passing of this Act no owner of any dwelling-house so situate shall be rated to the poor rate instead of the occupier, except as hereinafter mentioned. . . . When the dwelling-house shall be wholly let out in apartments or lodgings, not separately rated, the owner of such dwelling-house shall be rated to the poor rate.

Applt. & five other persons each occupied a room in a six-roomed dwelling-house in a parish within a parliamentary borough, & had the use in common of the street door, passage, staircase & domestic conveniences ; the owner did not occupy any part of the premises, nor retain any control over the tenants, each of whom had the exclusive possession of his own room. At the time of the passing of above Act the owner was rated in respect of the whole house, instead of the occupiers, by virtue of Small Tenements Act, 1850 (c. 99). After the passing of above Act, the overseers of the parish made a rate, in which each of the six occupiers was separately rated :—*Held :* the owner of the house, & not the several occupiers, was rateable : for that the house came within the exception in sect. 7.—STAMPER *v.* SUNDERLAND OVERSEERS (1868), L. R. 3 C. P. 388 ; 37 L. J. M. C. 137 ; 18 L. T. 682 ; 32 J. P. 439 ; 16 W. R. 1063.

Annotations :—**Consd.** Thompson *v.* Ward (1871), L. R. 6 C. P. 327 ; Boon *v.* Howard (1874), L. R. 9 C. P. 277 ; Bradley *v.* Baylis (1881), 8 Q. B. D. 195 ; White &

PART I. SECT. 4, SUB-SECT. 34.

t (p. 512) **1.** —— *Plant & camp of oil company.*]—*Re* ROYALITE OIL CO., LTD. (Alta.), [1929] 4 D. L. R. 1070 ; 1 W. W. R. 311.—**CAN.**

g (p. 512) **1.** —— *Fee still in Crown.*]—Where the fee still remains in the Crown, the interest of the holder of a homestead claim is not subject to taxation by a municipality, although the holder personally is.—R. *v.* MATSQUI MUNICIPALITY (1901), 8 B. C. R. 289.—**CAN.**

so. *Property temporarily in district—Rolling stock & machinery of railway company.*]—*Re* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & MCLELLAN SCHOOL DISTRICT, [1928] 2 W. W. R. 684.—**CAN.**

sp. —— *Machine used for digging reservoir.*]—*Re* MANNIX & WALGREN & MCLENNAN SCHOOL DISTRICT, [1928] 2 W. W. R. 686.—**CAN.**

sq. *Stock-in-trade.*]—Under a statute authorising the assessment of " land, buildings, & business," a stock-in-trade is not assessable.—PEARSE & EDWORTHY BROS. *v.* RURAL MUNICIPALITY OF BJORKDALE, B. F. HARRIS CO., LTD. *v.* RURAL MUNICIPALITY OF BJORKDALE, [1929] 2 D. L. R. 507, 537 ; 1 W. W. R. 682 ; 23 S. L. R. 386.—**CAN.**

sr. *Gantry crane.*]—*Held :* the gantry crane on resp.'s premises was not assessable or liable to taxation under Ontario Assessment Act, 1927, was affirmed, it being held that the subject of assessment clearly fell within sub-sect. 19 of sect. 4 of said Act, & was not taken out by the exception ; the movable part of the crane, if it should not be regarded as a chattel & not within sect. 1 (*h*), was " machinery used for manufacturing," & not " machinery used for the production or supply of motive power."—FORD CITY *v.* FORD MOTOR CO. OF CANADA, LTD., [1929] 4 D. L. R. 597 ; S. C. R. 490 ; *affg.*, [1929] 2 D. L. R. 109 ; 63 O. L. R. 410.—**CAN.**

ss. *Gasoline pumps & tanks at service station.*]—IMPERIAL OIL, LTD. *v.* LISTOWEL (Ont.), [1929] 1 D. L. R. 479.—**CAN.**

sv. *Logs.*] — Logs brought down a river into a town for the purpose of shipment, & kept awaiting shipment, in a boom in the river within the limits of the town, at the time an assessment is made, may be assessed by the town under the Assessment Act, R. S. N. S. 1923.—HOLLINGSWORTH & WHITNEY, LTD. *v.* BRIDGEWATER, [1929] 1 D. L. R. 481 ; 60 N. S. R. 240.—**CAN.**

sy. *Unoccupied golf course.*]—Where land had been let as a golf course but at the time of assessment it was not in [illegible] proprietor contended that it should be entered as grazing land.—MAITLAND TENNANT *v.* EDINBURGH ACCOUNTANT, [1930] S. C. 560.—**SCOT.**

PART I. SECT. 5.

sw. *Mortgagee—Of leasehold interest in land.*]—*Held :* not a mtgee. of " ratable property " within Rating Act, 1925, s. 70.—WAITOMO COUNTY COUNCIL *v.* MILES, [1928] N. Z. L. R. 22.—**N.Z.**

sx. *Colliery company letting houses to workmen during employment.*]—BUCKHAVEN & METHIL CORPN. *v.* WEMYSS COAL CO., [1928] S. C. 66.—**SCOT.**

Hales *v.* Islington Corpn., [1909] 1 K. B. 133. **Follid.** Griggs *v.* Stevens (1909), 101 L. T. 950. **Consd.** R. *v.* Roberts, *Ex p.* Stepney Borough Council (1915), 84 L. J. K. B. 1577. **Refd.** Mason *v.* Bennett (1868), L. R. 4 C. P. 502; Barnes *v.* Peters (1869), L. R. 4 C. P. 539; Cull *v.* Austin, Austin *v.* Cull (1872), L. R. 7 C. P. 227.

675b. —— ——.]—Resp. was rated & assessed to a general rate in respect of a house which was situate in the parish of H., which was, at the date of the passing of Representation of the People Act, 1867 (c. 102), & had ever since been, situate in a parliamentary borough. Resp. did not occupy or reside in or exercise any supervision or control over the house, which was a private dwelling-house consisting of a basement, a ground floor & two other floors, & was let by resp. to, & was occupied by, three tenants. The rateable value of each of the tenements was under £20. Each tenant had a separate letting & a separate key, & had the exclusive use & occupation of the rooms let to him or her. On an appln. for a distress warrant against resp., it was contended on behalf of applt. that the borough council were entitled to rate resp. under Representation of the People Act, 1867 (c. 102), s. 7, inasmuch as the house was wholly let out in apartments or lodgings not separately rated. It was contended on behalf of resp. that the house was not wholly let out in apartments or lodgings not separately rated within the meaning of that section, & that the demand was bad, as no allowance, abatement or deduction had been made to resp. under Poor Rate Assessment & Collection Act, 1869 (c. 41). The justices were of opinion that the house was not in point of law a dwelling-house wholly let out in apartments or lodgings within the meaning of sect. 7, & they dismissed the summons:—*Held:* on the authority of *Stamper* v. *Sunderland Overseers*, No. 675a, *ante*, the council were entitled to rate resp. under sect. 7 of the Act of 1867, & the appeal must be allowed.—Griggs *v.* Stevens (1909), 101 L. T. 950; 74 J. P. 67; Konst. & W. Rat. App. 154; 8 L. G. R. 63, D. C.

675c. —— —— **Effect of Poor Rate Assessment & Collection Act, 1869 (c. 41).**]—Resp. was the owner of a tenement situate in a borough which in the year 1867 was, & ever since had been, a parliamentary borough. The tenement was wholly let out in apartments or lodgings not separately rated within Representation of the People Act, 1867 (c. 102), s. 7. Purporting to act under that sect., the rating authority rated resp. as owner, instead of the occupiers of the tenement, without allowing him any commission, abatement or deduction:—*Held:* the Act under which resp. was rateable as owner instead of the occupiers was not Representation of the People Act, 1867 (c. 102), but was Poor Rate Assessment & Collection Act, 1869 (c. 41), & he was entitled to the commission, abatement or deduction specified in sect. 3 or sect. 4 of the later Act.—Davis *v.* Wallis, [1908] 2 K. B. 134; 77 L. J. K. B. 432; 98 L. T. 411; 72 J. P. 165; 24 T. L. R. 350; 6 L. G. R. 493, D. C.

Annotations:—**Consd.** Griggs *v.* Stevens (1909), 101 L. T. 950. **Overd.** White & Hales *v.* Islington Corpn., [1909] 1 K. B. 133. **Refd.** Nokes *v.* Strong, [1909] 2 K. B. 625.

675d. —— —— ——.]—Applts. were the owners of tenements situate in a borough which in the year 1867 was, & ever since had been, a parliamentary borough. The tenements were wholly let out in apartments or lodgings not separately rated within Representation of the People Act, 1867 (c. 102), s. 7. Purporting to act under that sect., the rating authority rated applts. as owners, instead of the occupiers of the tenements, without allowing them any commission, abatement or reduction:—*Held:* applts. were properly rated as owners, instead of the occupiers, under Representation of the People Act, 1867 (c. 102), s. 7, & were, therefore, not entitled to any commission, abatement or reduction from the amount of the rate. That portion of Representation of the People Act, 1867 (c. 102), s. 7, which provides for the rating of owners of houses wholly let out in apartments or lodgings not separately rated has not been repealed by implication by Poor Rate Assessment & Collection Act, 1869 (c. 41), or otherwise.—White & Hales *v.* Islington Corpn., [1909] 1 K. B. 133; 78 L. J. K. B. 168; 73 J. P. 44; 25 T. L. R. 121; 2 Konst. Rat. App. 798; 7 L. G. R. 133; 53 Sol. Jo. 97: *sub nom.* Hales *v.* Islington Borough Council, 100 L. T. 22, C. A.

Annotations:—**Consd.** Griggs *v.* Stevens (1909), 101 L. T. 950. **Follid.** Nokes *v.* Strong, [1909] 2 K. B. 625. **Consd.** R. *v.* Roberts, [1914] 1 K. B. 369; R. *v.* Carson Roberts, *Ex p.* Stepney Corpn., [1915] 3 K. B. 313. **Refd.** Kent *v.* Fittall, [1911] 2 K. B. 1102.

Who may be liable—Agent.]—An agent who is employed by the owner of a dwelling-house, situate in a parliamentary borough, & wholly let out in apartments, to collect the rents on his behalf is not liable to be rated as owner under above Act.—Nokes *v.* Strong, [1909] 2 K. B. 625; 78 L. J. K. B. 1041; 101 L. T. 318; 73 J. P. 417; 7 L. G. R. 876, D. C.

Annotation:—**Consd.** Metropolitan Water Board *v.* Brooks (1910), 79 L. J. K. B. 705.

675f. —— —— **To what boroughs applicable.**]—The council of a metropolitan borough, which became a parliamentary borough some years after the passing of Representation of the People Act, 1867 (c. 102), rated the owners of two dwelling-houses which were wholly let out in apartments or lodgings not separately rated, & allowed them the commissions or abatements authorised by Poor Rate Assessment & Collection Act, 1869 (c. 41). The local govt. auditor at his audit made a surcharge on the rate collector in respect of the amount of these abatements:—*Held:* the words "all boroughs" in Representation of the People Act, 1867 (c. 102), s. 7, extended to all boroughs which had since the passing of that Act become parliamentary boroughs, & were not limited to boroughs which were in existence as parliamentary boroughs at the date of its passing; the owners ought to have been rated under that sect. & were therefore not entitled to any commission, abatement or deduction from the amount of the rate; & the surcharge was, therefore, rightly made by the auditor.—R. *v.* Roberts, [1914] 1 K. B. 369; *sub nom.* R. *v.* Roberts, *Ex p.* Battersea Borough Council, 83 L. J. K. B. 146; 109 L. T. 466; 77 J. P. 403; 57 Sol. Jo. 644; 1 B. R. A. 121; [illegible] 168 L. T. 64, D. C.; *subsequent proceedings*,

sub nom. ROBERTS *v.* BATTERSEA METROPOLITAN BOROUGH (1914), 110 L. T. 566, C. A.

Annotation :—**Refd.** Crow *v.* Hilleary (1912), 11 L. G. R. 226.

675g. Premises occupied by owner.]—The provisions of sect. 211 (1) (*a*) of Public Health Act, 1875 (c. 55), as to assessing an owner on a reduced annual value, where the owner is rated instead of the occupier, do not apply to a case where the owner is himself the occupier of the premises to be rated.—R. *v.* PROPERT, [1911] 1 K. B. 83 ; *sub nom.* R. *v.* PROBERT, *Ex p.* JONES (1910), 80 L. J. K. B. 98 ; 103 L. T. 844 ; 74 J. P. 474 ; 9 L. G. R. 38.

676. After this case add " *See, also,* LANDLORD & TENANT, Nos. 4353, 4354."

Part II.—Basis of Assessment.

695. *Add. Annotation :*—*As to* (1) **Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26.

698. *Add. Annotations :*—*Generally,* **Consd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585. **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336 ; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64 ; *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299.

703. *Add. Annotations :*—**Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

705. *Add. Annotations :*—**Apld.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396. **Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

711. *Add. Annotation :*—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

713. *Add. Annotations :*—**Refd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 147 L. T. 396 ; Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585 ; Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450 ; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

725. *Add. Annotations :*—**Distd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396. **Consd.** Yates *v.* Burnley Rating Authority (1933), 97 J. P. 226 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419.

726. *Add. Annotations :*—**Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419. **Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396.

727. *Add. Annotation :*—*Generally,* **Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area, [1931] A. C. 396.

735. *Add. Annotations :*—**Consd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26. **Refd.** Consett Iron Co., Ltd. *v.* Durham County Assessment Committee for the North-Western Area, [1931] A. C. 396 ; Salisbury House Estate *v.* Fry, [1930] 1 K. B. 304 ; Leney & Co. *v.* Whelan,

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PART II. SECT. 1, SUB-SECT. 1.

y i. ——.]—*Re* HUDSON'S BAY CO. & CITY OF EDMONTON, [1932] 1 W. W. R. 796 ; 2 D. L. R. 815.—**CAN.**

y ii. —— *Possible use of property restricted.*]—GRAMPIAN REALITIES CO. *v.* MONTREAL EAST, [1932] 1 D. L. R. 705.—**CAN.**

sy. *Agreement for fixed assessment value—Basis of valuation—Construction of agreement.*]—CITY OF OTTAWA *v.* CANADIAN NATIONAL RYS., [1925] 3 D. L. R. 762 ; [1925] S. C. R. 494.—**CAN.**

sz. *Valuation for unearned increment tax.*]—*Re* WALLBRIDGE & REGISTRAR OF LAND TITLES, [1930] 2 W. W. R. 361 ; 3 D. L. R. 752 ; 4 D. L. R. 768 ; 3 W. W. R. 259.—**CAN.**

sa. *Equalisation of assessment.*]—Sect. 96a of Assessment Act was intended to govern the future method of equalising the assessment. The curtailment of the power to levy in future was to be in respect of an equalisation arrived at by the altered method but effected according to the orderly procedure already established by the Assessment Act & not otherwise.—*Re* ROCKCLIFFE PARK VILLAGE & CARLETON COUNTY, [1931] 4 D. L. R. 737 ; O. R. 737.—**CAN.**

sc. *Benefit from local improvements—Burden to be considered.*]—Where under City Act, R. S. S., 1930, the cost of local improvements is charged in whole or in part against the abutting or other property specially benefited thereby, the general assessment of such property should not be increased because of its additional value due to the local improvements, without, at least, taking into consideration the burden of the special assessments therefor.—HILLIER *v.* REGINA CITY, [1932] 2 W. W. R. 561.—**CAN.**

sf. *Cash value at public auction.*]—The governing rule for the valuation of property is the actual cash value realisable at public auction.—*Re* WILLISTON & CLARKE ASSESSMENT & DARTMOUTH, [1935] 4 D. L. R. 250.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A.

dd i. ——.]—EDINBURGH ASSESSOR *v.* CAIRA & CROLLA, [1928], S. C. 398.—**SCOT.**

dd ii. ——.]—HERITABLE SECURITIES & MTGE. INVESTMENT ASSOCN., LTD. *v.* GLASGOW ASSESSOR, [1928] S. C. 401.—**SCOT.**

sv. *Farm let by father to son—Whether rent conditioned as fair annual value.*]—MARSHALL *v.* WIGTOWNSHIRE ASSESSOR, [1929] S. C. (Ct. of Sess.) 333.—**SCOT.**

sz. " *Consideration other than rent*" *—What is.*]—*Held :* a special clause in a lease binding the tenant, in the event of the subject losing the benefit of derating, to indemnify the landlord for the loss he would suffer by his having to pay increased rates, was not a " consideration other than rent," &, accordingly, had no effect upon the valuation of the subjects so long as they remained derated & the obligation to indemnify remained contingent only. —LIVERPOOL VICTORIA FRIENDLY SOCIETY *v.* GLASGOW ASSESSOR, [1934] S. C. 193.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 2.—B.

f i. ——.]—RANGOON CITY CORPN. *v.* DAWOODJEE (1928), I. L. R. 6 Ran. 669.—**IND.**

g i. ——.]—RANGOON TURF CLUB *v.* RANGOON CORPN. (1927), I. L. R. 6 Ran. 75.—**IND.**

[1934] 2 K. B. 511; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

741. *Add. Annotation :—As to* (4) **Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

742. *Add. Annotation :—Generally*, **Refd.** Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

752. *Add. Annotation :—***Consd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48.

754. *Add. Annotations :—***Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277. **Refd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 147 L. T. 396; Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585; Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

769. *Add. Annotations :—***Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

781. *Add. Annotation :—***Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

785. *Add. Annotation :—***Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419.

792. *Add. Annotation :—***Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

794a. —— Mill closed down—Machinery left in position.]—A co. which owned & occupied a cotton spinning mill, stopped working; they sold the stores & let the basement, & left the remainder of the structure & its contents in charge of a caretaker with a view to selling or letting them if occasion occurred. At the material time there remained in the mill machinery & plant of the classes mentioned in sect. 24 (1) (*a*) of 1925 Act (which for convenience was described as "motive machinery & plant"). There were also certain fixed machines & loose chattels falling within sect. 24 (1) (*b*) (called for convenience "process machinery & plant"):—*Held :* the co. were not rateable as the occupiers of premises used as a warehouse for the process machinery, on the grounds (*a*) that by sect. 24 (1) (*b*), no account is to be taken of the value of such plant or machinery; (2) the Act applies to hereditaments whether in active operation or out of work.

Qu. : whether the practice of treating the owner of an empty house as not rateable is an exception to the general law of rating.—Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1937] A. C. 419; [1937] 1 All E. R. 11; 106 L. J. K. B. 140; 156 L. T. 81; 101 J. P. 125; 53 T. L. R. 205; 81 Sol. Jo. 13; 35 L. G. R. 69, H. L.

Annotation : **Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298, C. A.

Sub-sect. 1.—Railways.

(Vol. XXXVIII., p. 534.)

See, now, Railways (Valuation for Rating) Act, 1930 (c. 24).

800. After this case add :—

Derating of railways.]—*See* Rating & Valuation (Apportionment) Act, 1928 (c. 44), ss. 1, 5; Local Government Act, 1929 (c. 17), ss. 68, 136; Sched. XI.; & Nos. 226kk–226qq, *ante*.

800a. Railways (Valuation for Rating) Act, 1930 (c. 24)—Meaning of revenue—Compensation for use during war.]—The sums distributed by the Govt. among the railway cos. of Great Britain in satisfaction of all claims which they might otherwise have had for compensation under the Regulation of the Forces Act, 1871 (c. 86), the Ministry of Transport Act, 1919 (c. 50), or otherwise, are not "revenue" within Railways (Valuation for Rating) Act,

PART II. SECT. 2, SUB-SECT. 1.—A.

800a i. *Railways (Valuation for Rating) Act*, 1930 (c. 24)*—Exclusion of ferry.*]—L. & N. E. Ry. Co. in which, as successor of the North British Ry. Co., the rights of ferry across the Forth at Queensferry were vested by statute, entered into an agreement with a firm of shipbuilders, under which the latter obtained the sole & exclusive right to work the ferry, & also to use certain piers in connection therewith, for a period of ten years. Under the agreement the shipbuilders provided the vessels & the staff at the piers, & fixed, collected, & retained the tolls & charges, except that they were bound, in the event of the revenue from the ferry exceeding a certain sum, to pay a proportion of the excess to the ry. co.; & they relieved the ry. co. of all obligations & liability in connection with the working of the ferry. They were, further, entitled to assign their rights under the agreement or to sublet:—*Held :* the agreement constituted a lease of the ferry & was not a mere grant of a right to work the ferry, & accordingly, the ferry was excluded from the undertaking of the ry. co., under Railways (Valuation for Rating) Act, 1930 (c. 24), s. 22 (9).—London & North Eastern Ry. Co. *v.* Fife Assessor, [1935] S. C. 352.—**SCOT.**

800a ii. —— *Error—Appeal.*]—Finality for the quinquennial period under Railways (Valuation for Rating) Act, 1930, s. 22, applies only where the value of the undertaking has been fixed in accordance with the provisions of the Act, &, accordingly, where heritages which do not legally form "part of its undertaking" are included in the valuation, the provision as to finality does not render incompetent an appeal for the correction of the error during the quinquennium.—Glasgow Corpn. *v.* Assessor of Public Undertakings, [1936] S. C. 754.—**SCOT.**

800a iii. —— *Method of assessment.*]—The Assessor of Railways & Canals, in valuing for the first time under sect. 22 of Railways (Valuation for Rating) Act, 1930, the heritable subjects in Scotland belonging to the L.M.S. & L.N.E.R., adopted the following method. Taking in each case the average Scottish net receipts as certified by the Anglo-Scottish Railways Assessment Authority, he deducted for interest on tenant's capital a sum of 5 per cent. of such capital, & of the balance he assigned 40 per cent. to the tenants for tenant's profits & risks, & 60 per cent. to the landlord. He fixed the valuation at the latter figure, bringing out a valuation for the L.M.S. of £940,005 as against the preceding year's valuation of £717,243, & for the L.N.E.R. a valuation of £628,898 as against one of £436,979. The method of valuation adopted by the Assessor was the method he had applied in the case of a number of public utility cos., except that, instead of the ordinary deduction of 20 per cent. for tenant's profits & risks, he deducted, in the case of the railway cos., 4 per cent. having regard to their financial position at the time. The ct. approved in principle of the

1930 (c. 24), s. 4 (3) (ii.) (*d*), & were never intended to come into the computation of rateable value. They are sums part of which may be properly regarded as paid in restoration of losses on capital account, & the fact that they may also be applied for revenue purposes is not enough to justify the conclusion that the entire funds are in their nature revenue. The words " set aside out of revenue " in Railways (Valuation for Rating) Act, 1930, s. 4 (3), mean placed to a revenue account in the accounts kept under Railway Accounts Act, 1911.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANGLO-SCOTTISH RAILWAYS ASSESSMENT AUTHORITY, LONDON & NORTH-EASTERN RY. CO. *v.* ANGLO-SCOTTISH RAILWAYS ASSESSMENT AUTHORITY (1933), 150 L. T. 361; 98 J. P. 134; 50 T. L. R. 130; 77 Sol. Jo. 899; 32 L. G. R. 41; 23 Ry. & Can. Tr. Cas. 38, H. L.

Annotation:—**Refd.** Central London Railway *v.* I. R. Comrs., London Electric Railway *v.* I. R. Comrs., Metropolitan Railway *v.* I. R. Comrs. (1934), 151 L. T. 333.

800b. —— —— **Bridge maintained by bridge company—Cost of upkeep.**]—The building of the Forth Bridge by the Forth Bridge Ry. Co. was authorised by the Forth Bridge Acts, 1878–1882. By sect. 16 of the 1882 Act, the works authorised are for all purposes whatsoever the undertaking of the Forth Bridge Co., & by sect. 38 the London & North Eastern Ry. Co. are forever to maintain & work the railway (*i.e.* carried by the bridge) with the same powers & obligations as if it formed part of the London & North Eastern Railway system, while the Forth Bridge Co. are to maintain & repair the structure of the bridge carrying the railway. In pursuance of these Acts the London & North Eastern Ry. Co. take all the traffic receipts of the Forth Bridge, but hand over to the Forth Bridge Co. the interest on the capital subscribed for building the bridge & the cost of maintaining the structure. Nevertheless, for the purpose of the Railways (Valuation for Rating) Act, 1930 (c. 24), the Forth Bridge is part of the London & North Eastern Railway undertaking, & the expense of maintaining the structure, though not in fact included in the Statutory Account No. 10, on which the valuation is required to be based, ought to have been so included, & was properly included by the Joint Assessment Authority in their ascertainment of the net railway revenue of the London & North Eastern Co.—FIFE & WEST LOTHIAN COUNTY COUNCILS *v.* LONDON & NORTH EASTERN RY. CO. & ANGLO-SCOTTISH RAILWAYS ASSESSMENT AUTHORITY (1933), 21 Ry. & Can. Tr. Cas. 76.

800c. —— **Railway hereditaments.**]—*Held:* (1) notwithstanding the provisions of Railways (Valuation for Rating) Act, 1930 (c. 24), s. 4 (2), the method known as the profits basis was still to be applied in assessing the rateable value of railway hereditaments. That method consists of ascertaining three factors, namely, (*a*) the estimated capital value of the plant & implements required by the tenant; (*b*) the percentage to be allowed to the tenant on his capital as remuneration; & (*c*) the net receipts from the undertaking. By dividing the first factor by the second, & subtracting the result from the third, a figure is obtained which is to be deemed to be the net annual value of the ry. co.'s undertaking; (2) in estimating for the purposes of the above calculation the value of the ry. co.'s rolling stock, a deduction must be made for depreciation of each item since its last reconditioning & a further deduction for depreciation due to obsolescence of the type, but no addition may be made for the profit which a manufacturer would have charged the hypothetical tenant for manufacturing each item of plant. Each such item must be taken into account at its actual cost to the ry. co., since the only conceivable tenant is the ry. co. itself.—*Re* SOUTHERN RY. CO. APPEALS (1935), 152 L. T. 299; 51 T. L. R. 233; 79 Sol. Jo. 127; 33 L. G. R. 101; *affd. sub nom.* RAILWAY ASSESSMENT AUTHORITY *v.* SOUTHERN RY. CO., LONDON COUNTY COUNCIL *v.* SOUTHERN RY. CO., [1936] A. C. 266.

800d. —— ——.]—(1) Railways (Valuation for Rating) Act, 1930 (c. 24), s. 4, has not put an end to the system of assessing the hypothetical rent by deducting from the net receipts a percentage of the amount of the capital required by the tenant for the working of the undertaking, & allowing the balance only as rent, though there may be circumstances in which it is inapplicable; (2) there are three elements in assessing the percentage to be allowed on the tenant's capital, (*a*) the interest on capital, (*b*) profit on the adventure, (*c*) fair return on his capital having regard to the risks which he undertook; (3) the alteration in the economic position of railways since 1921 by virtue of legislation then & subsequently passed is not a relevant fact to affect the construction of the language of Railways (Valuation for Rating) Act, 1930 (c. 24), though it may be relevant in estimating the rent at which the railway premises would let as a whole; (4) in the case of a railway within Railways (Valuation for Rating) Act, 1930 (c. 24), the hypothetical landlord is not entitled to a higher rent in respect of the large capital expended in creating the immovable parts of the undertaking; (5) the " fair & just division " in Railways (Valuation for Rating) Act, 1930 (c. 24), s. 4, is not an aliquot division on an unspecified basis, but involves the ascertainment of the landlord's share in the form of rent; (6) the landlord must be contemplated as a possible tenant, & the difficulties of finding a tenant must not influence the valuation; (7) the Railway Assessment Authority are not limited by Railways (Valuation for Rating) Act, 1930 (c. 24), s. 4 (1) (*a*) to considering only the actual results for the years 1928 & 1929, but may take into account the tendencies shown by the results of years preceding or following

Assessor's method of valuation, but, in view of the falling receipts of the cos., they substituted a deduction of 55 per cent. for the Assessor's deduction of 40 per cent.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ASSESSOR OF RAILWAYS & CANALS FOR SCOTLAND, [1933] S. C. 590.—**SCOT.**

ex. *Profits basis.*]—The correct method of assessing the annual value of a railway is on the profits basis; the " contractor's test " is unsuitable & incorrect, as are also the " train mileage " & the " route mileage " system.—SECRETARY OF STATE FOR INDIA *v.* RANGOON MUNICIPAL CORPN. (1932), I. L. R. 10 Ran. 540.—**IND.**

those years; (8) the tenant is not a mere investor to be compensated by the ordinary rate of interest on his investment. The rate must be such as to afford a profit commensurate with the risk involved & to induce him to embark on the undertaking. The actual figure is a question of fact for the Railway Assessment Authority.—RAILWAY ASSESSMENT AUTHORITY *v.* SOUTHERN RY. CO., LONDON COUNTY COUNCIL *v.* SOUTHERN RY. CO., [1936] A. C. 266; [1936] 1 All E. R. 26; 105 L. J. K. B. 115; 154 L. T. 314; 100 J. P. 123; 52 T. L. R. 237; 80 Sol. Jo. 223; 34 L. G. R. 103; 24 Ry. & Can. Tr. Cas. 86, H. L.; *affg.* S. C. *sub nom. Re* SOUTHERN RY. CO. APPEALS (1935), 152 L. T. 299.

—— —— **What are.**]—A railway co. in pursuance of a statute, constructed over a river a bridge consisting of an upper deck carrying a railway & a lower deck carrying a roadway for use by the public for vehicular & pedestrian traffic on payment of tolls. The construction of the roadway was a condition imposed on the co. by the statute empowering the co. to construct the bridge. The question raised was whether the roadway formed a "railway hereditament" or part of a "railway hereditament" within Railways (Valuation for Rating) Act, 1930 (c. 24), s. 1 (3):—*Held:* as the railway co. was given statutory authority to construct the bridge only on condition that the co. also constructed & maintained the toll-bearing road deck, it followed that the maintenance & the carrying on of the road deck was either an incidental & necessary part of the co.'s principal undertaking, or was an undertaking subsidiary or ancillary to its principal undertaking; on either view, therefore, the road deck was a hereditament occupied for the purpose of the co.'s undertaking & was thus a railway hereditament within sect. 1 (3) of the Act of 1930.—NEWCASTLE-UPON-TYNE & GATESHEAD CORPN. *v.* RAILWAY ASSESSMENT AUTHORITY & LONDON & NORTH EASTERN RY. CO., [1937] A. C. 275; [1936] 3 All E. R. 616; 106 L. J. K. B. 1; 53 T. L. R. 114; 80 Sol. Jo. 931; 35 L. G. R. 61; *sub nom. Re* LONDON & NORTH EASTERN RY. CO. VALUATION ROLL, *Re* NEWCASTLE-UPON-TYNE & GATESHEAD CORPN., 156 L. T. 1, H. L.

800f. —— —— ——.]—A railway co. was in occupation under statutory authority of a pier which, owing to the sea having receded, could no longer be used for purposes of transport, & of a neighbouring ornamental garden. The co. used the pier & garden, which were situated not far from one of its stations, only as a place of recreation & amusement for members of the public, whom it admitted thereto on payment of a small fee:—*Held:* the pier & garden were a "railway hereditament" as defined for the purposes of Railways (Valuation for Rating) Act, 1930 (c. 24), by sect. 1 (3) thereof, & they had been properly entered in the railway valuation roll as such a hereditament.—CLEETHORPES URBAN DISTRICT COUNCIL *v.* LONDON & NORTH EASTERN RY. CO., [1936] 1 K. B. 264; 105 L. J. K. B. 68; 33 L. G. R. 445; 23 Ry. & Can. Tr. Cas. 222; *sub nom. Re* LONDON & NORTH-EASTERN RY. CO. VALUATION ROLL, *Re* CLEETHORPES URBAN DISTRICT COUNCIL, 154 L. T. 17; 52 T. L. R. 20; 80 Sol. Jo. 34.

800g. —— —— ——.]—(1) Bookstalls, chemist's shop, kiosks, hairdressing saloons & other tenements within the area of a railway station:—*Held:* to have been "so let out as to be capable of separate assessment" within the proviso to sect. 1 (3) of Railways (Valuation for Rating) Act, 1930 (c. 24), & therefore not to be "railway hereditaments" within sect. 1 (3), but to be rateable under the general law of rating.

(2) Show-cases *held* by LORD MACMILLAN & LORD WRIGHT (LORD RUSSELL OF KILLOWEN *contra*) not to be "used for the exhibition of advertisements" within Advertising Stations (Rating) Act, 1889 (c. 27), s. 3, & accordingly to be rateable under the general law & not under the sect.—WESTMINSTER CORPN. *v.* SOUTHERN RY. CO., RAILWAY ASSESSMENT AUTHORITY & SMITH & SON, LTD., WESTMINSTER CORPN. & KENT VALUATION COMMITTEE *v.* SOUTHERN RY. CO., RAILWAY ASSESSMENT AUTHORITY & PULLMAN CAR CO., LTD., [1936] A. C. 511; [1936] 2 All E. R. 322; 105 L. J. K. B. 537; 52 T. L. R. 541; 80 Sol. Jo. 671; 34 L. G. R. 313; 24 Ry. & Can. Tr. Cas. 189; *sub nom. Re* SOUTHERN RY. CO.'S APPEALS, 155 L. T. 33; 100 J. P. 327, H. L.

800h. —— **Rolling stock.**]—*Re* SOUTHERN RY. CO. APPEALS, No. 800c, *ante.*

800k. —— **Adjustment after appeal—Jurisdiction of Railway Assessment Authority.**]—In terms of the Railways (Valuation for Rating) Act, 1930 (c. 24), the Railway Assessment Authority in July, 1933, settled the draft valuation roll as affecting the Southern Railway Co., & the total rateable value of the whole undertaking was shown to be £2,225,000, part of which, relating to Southampton Dock, was assessed at £101,520. After the draft roll had been settled, notice thereof was given to various persons, including the rating authority of Southampton. Thereupon the Southampton rating authority, in terms of the Act of 1930, made a representation objecting to the apportionment relating to Southampton Dock, on the ground that it was insufficient, as full regard had not been paid to all material considerations, including the net receipts derived from the hereditament, & the relative value of the land & buildings then occupied, & that it was therefore less than a fair apportionment. After considering the representation, the Railway Assessment Authority decided that effect ought not to be given to it. Meanwhile, as a result of an appeal to the Railway & Canal Commission, followed by an appeal to the House of Lords, the rateable value of the whole undertaking, being the *cumulo* in the draft valuation roll, had been reduced to £2,180,000, with consequential reductions in the various parts of the whole undertaking, including a reduction, as regards the Southampton Dock, from £101,520 to to £100,000. On Apr. 27, 1934, the draft valuation roll was completed by the Railway Assessment Authority, in pursuance of the provisions of the third schedule of the statute, notice whereof was given by the Authority on May 1, 1934, to all interested parties, including the Southampton rating authority,

&, at the same time, attention was particularly directed to the right of appeal, under sect. 9 of the Act of 1930, within two months after completion of the railway valuation roll, to the Railway & Canal Comrs. against an incorrect determination of the net annual or rateable value of any railway hereditament. The Southampton rating authority did not appeal. Later, the rateable value of the whole undertaking was reduced by the Railway & Canal Commission to £1,077,131 & the Comrs. made an order under the Act, directing the Railway Assessment Authority to make the necessary adjustment, which was, on appeal, confirmed by the House of Lords, & became operative within the time limited by sect. 10 of the Act. Thereupon the Railway Assessment Authority inserted the new aggregate sum in the roll, & made proportionate deductions in the case of each constituent undertaking, &, by that time, the period for making representations under the Act had elapsed. A revision was now sought of the apportionment in respect of Southampton Dock:—*Held:* the duty of the Railway Assessment Authority was properly performed, without any excess of jurisdiction, & the Act did not provide, in the circumstances, for a reiteration of the objections made by the local rating authority without success in 1933.—R. *v.* RAILWAY ASSESSMENT AUTHORITY, *Ex p.* SOUTHAMPTON CORPN., [1937] 1 All E. R. 431; 106 L. J. K. B. 393; 156 L. T. 236; 101 J. P. 163; 53 T. L. R. 317; 81 Sol. Jo. 277; 35 L. G. R. 136.

803. *Add. Annotation:*—**Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26.

832. *Add. Annotation:*—*Generally*, **Refd.** *Re* Southern Railway Co. Appeals (1935), 125 L. T. 299.

839. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299. *As to* (3) **Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585. *Generally*, **Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

848. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299. *Generally*, **Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

853. *Add. Annotation:*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

875. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299. **Refd.** Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618.

878. *Add. Annotation:*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

896. *Add. Annotation:*—*As to* (1) **Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

901. *Add. Citation:*—(1926–31), 1 B. R. A. 111.
Add. Annotations:— **Consd.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570; Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee, [1934] A. C. 33. **Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26.

903. *Add. Annotations:*—**Folld.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570. **Consd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48.

903a. —— ——.]—By sect. 111 of the Manchester Corpn. Waterworks Act, 1847, the corpn. were authorised to levy a domestic water rate on occupiers of property in the city & a public water rate on owners of such property. A poor rate was made in respect of a hereditament consisting of part of the aqueduct from T. to M. in the township of L. The method of assessment adopted by the corpn. & the assessment committee was that approved by the House of Lords in *Kingston Union* v. *Metropolitan Water Board*, No. 901, the profits basis system. For the relevant year the revenue of the corpn. in respect of their water undertaking was £755,043 5*s.* 8*d.*, including £79,099 13*s.* 11*d.*, the amount collected in respect of the public water rate. After deducting the expenditure of carrying on the undertaking there remained a balance of £462,335 4*s.* 2*d.*, &, out of this, provision was made (i) for payment of interest & dividends; (ii) for sinking fund in respect of the moneys borrowed by the corpn. under the statutory powers for their water undertaking, including sums to meet expenditure on the construction of works, none of which were completed or occupied or brought into use until after the period for which this rate was made; & (iii) for the promotion of the Bill for the Manchester Corpn. Act, 1919, by which the corpn. were empowered to make & maintain further reservoirs at H. & other works, the construction of no part of which had been commenced The sum which had to be provided in the following year for debt charges in respect of moneys borrowed for the last-mentioned purposes amounted to £114,674, but there was no earmarking of

PART II. SECT. 2, SUB-SECT. 3.—A. (a).

† i. —— —— *Extraordinary cost of constructing reservoir during war.*]—FIFE ASSESSOR *v.* DUNFERMLINE DISTRICT COMMITTEE, [1929] S. C. (Ct. of Sess.) 304.—**SCOT.**

† ii. ——.]—Local Govt. (Scotland) Act, 1929, provided for the payment of an annual Exchequer grant to local authorities to make good the loss to rates due to derating & to the discontinuance of certain Govt. grants:—*Held:* in valuing the water undertaking of a burgh on the revenue principle, the Exchequer grant was a surrogatium

the undertaking.—MAGISTRATES *v.* STIRLINGSHIRE ASSESSOR, [1933] S. C. 338.—**SCOT.**

the proceeds of the public water rate against this sum. The assessment committee, for the purposes of their valuation of this hereditament, included the whole of the sum of £79,099 13*s.* 11*d.*, the proceeds of the public water rate, in the gross revenue of the corpn.'s water undertaking & made no deduction in respect of debt charges:—*Held:* this sum should be excluded. But for the fact that the landlords' charges were included in the account there would have been no need for the hypothetical tenant to raise this public water rate or any part of it. The sum raised by the public water rate was part of a larger sum provided to meet debt charges in respect of money borrowed by the corpn. for the construction of additional works uncompleted & not in occupation at the date of the rate.—MANCHESTER CORPN. *v.* BOLTON AREA ASSESSMENT COMMITTEE & LITTLE HULTON URBAN DISTRICT COUNCIL (1931), 144 L. T. 571; (1926–31), 1 B. R. A. 463.

St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48.

904. *Add. Annotations:*—**Consd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48. **Refd.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570.

908. *Add. Annotations:*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. **Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26.

920. *Add. Annotations:*—*As to* (3) **Refd.** Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26. *Generally.* **Refd.** Consett Iron Co., Ltd. *v.* Durham County Assessment Committee for the North-Western Area (1930), 99 L. J. K. B. 277; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

928a. —— **Hereditament must be assessed as productive or unproductive.**]—In the rating of a water undertaking extending over several parishes, ascertained on the profits basis as approved by the House of Lords in *Kingston Union & Metropolitan Water Board*, No. 901, a hereditament, part of the undertaking, in a parish which has been assessed on the contractor's basis as "indirectly productive" in that parish, cannot be at the same time further assessed at an additional sum as "directly productive." To do so would be to produce that very injustice which the profits formula was designed to prevent.—MANCHESTER CORPN. *v.* BOLTON AREA ASSESSMENT COMMITTEE & WESTHOUGHTON URBAN DISTRICT COUNCIL (1930), 144 L. T. 618; 95 J. P. 60; 47 T. L. R. 210; 29 L. G. R. 185; (1926–31), 1 B. R. A. 445, D. C.

932. *Add. Annotation:*—**Refd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299.

934. *Add. Annotation:*—**Consd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

955a. —— **Adjoining land agricultural—Whether lands of canal company derated.**]—Under Grand Junction Canal Act, 1794, applts. were liable to be rated in respect of their land & buildings in the same proportions as any other lands, grounds or buildings lying near the same. The adjoining lands & buildings were in fact or in law either agricultural land or buildings & were accordingly derated:—*Held:* the hereditaments of applt. were also to be deemed to have no rateable value.—GRAND UNION CANAL CO. *v.* DACORUM ASSESSMENT COMMITTEE & DACORUM REVENUE OFFICER (1933), 102 L. J. K. B. 622; 49 T. L. R. 491; 31 L. G. R. 311, D. C.

971. *Add. Annotation:*—*Generally,* **Refd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48.

978. *Add. Annotation:*—**Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

1016. *Add. Annotations:*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. **Refd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48.

1017. *Add. Annotation:*—**Consd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 97 J. P. 48. **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1025. *Add. Annotations:*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. **Refd.** Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

1028. *Add. Annotations:*—**Refd.** Lency & Co. *v.* Whelan, [1934] 2 K. B. 511; Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

1031. *Add. Annotation:*—**Consd.** Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

1031a. Monopoly value.]—In Apr. 1932, the owner & occupier of an hotel obtained the grant of

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PART II. SECT. 2, SUB-SECT. 3.—B.

c i. —— *Houses occupied by employees —Showroom for sale of gas appliances.*] —CRIEFF GAS LIGHT CO., LTD. *v.* PERTHSHIRE ASSESSOR, KELTY GAS CO. [illegible] C. (Ct.

l i. ——.]—The County Council of [illegible] the accounts of whose [illegible]ing showed a very large [illegible]ar for a period of years which could be wiped out by any increase in the prices charged to consumers decided to levy, under statutory powers, for a period of 4 to 5 years a "gas contingent guarantee rate" to be applied to the liquidation of this debt:—*Held:* in valuing the undertaking upon the revenue principle, the sum produced by this rate in any year did not fall to be included in the revenue of the undertaking of that year, in respect that it was revenue of an exceptional character & could not be regarded as part of the ordinary revenues of the undertaking.—[illegible]SHIRE ASSESSOR *v.* LANARKSHIRE [illegible] S. C. SCOT.

sb. *Gas mains—Taxable where situated.*]—MONTREAL LIGHT, HEAT & POWER CONSOLIDATED *v.* OUTREMONT, [1932] 2 D. L. R. 305.—CAN.

PART II. SECT. 2, SUB-SECT. 6.—A.

d i. ——.]—COUSIN *v.* EDINBURGH ASSESSOR, [1928] S. C. 392.—SCOT.

a new on-licence for five & a quarter years subject to the payment of £3,000 monopoly value made payable by five annual instalments of £600 each. The question arose whether in fixing the value of the premises for the purposes of the valuation list the instalments ought to be taken into consideration by way of diminishing the estimated rent that a hypothetical tenant would pay & therefore the gross value:—*Held:* the liability for these instalments ought not to be taken into account in fixing the estimated rent; by LORD WRIGHT, M.R. & ROMER, L.J. (SCOTT, L.J. dissenting) on the ground that the annual instalments being payments necessary to maintain the premises as licensed premises, they came within the words " other expenses " to be borne by the landlord under the definition of gross value in sect. 68; by LORD WRIGHT, M.R. & SCOTT, L.J. on the ground that the rent to be paid by the hypothetical tenant under sect. 68 was in respect of the premises when licensed & therefore when embodying the monopoly value, so that the monopoly value must be borne by the landlord in order to secure the licence.—APPENRODT *v.* CENTRAL MIDDLESEX ASSESSMENT COMMITTEE, [1937] 2 K. B. 48; [1937] 2 All E. R. 325; 106 L. J. K. B. 690; 157 L. T. 201; 101 J. P. 283; 53 T. L. R. 601; 81 Sol. Jo. 356; 35 L. G. R. 383, C. A.

1041. *Add. Annotation:*—**Refd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

1044. *Add. Annotation:*—**Refd.** Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

1048. *Add. Annotation:*—**Consd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

1052. *Add. Annotations:*—**Overd.** Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298. **Refd.** Leney & Co. *v.* Whelan, [1934] 2 K. B. 511; Marston's Dolphin Brewery, Ltd. *v.* Loughnan (1934), 151 L. T. 532; *Re* Paulin, *Re* Crossman, [1935] 1 K. B. 26.

1054a. —— —— ——.]—In assessing a licensed public-house to rates, regard should be had to the competition between brewers, each desirous of obtaining a tenancy of the house in order to carry on the business there by means of a manager in his own employment, & thereby to secure the use of the house for the sale of beer from his own brewery, & thus to obtain a larger output & a profit thereon over & above the retail profit which a tenant other than a brewer might reasonably expect to make, & to the rent which a competing brewer who desired the house for these reasons might be willing to give.

The fact that a decision of a Div. Ct. given in 1898, in a case relating to the rating of a licensed public-house had been since acted upon by rating authorities throughout the country, noticed without disapproval by several other & higher cts., & disapproved by no other ct.:—*Held:* not to preclude the Ct. of Appeal from overruling it on finding that the decision was erroneous in law.—ROBINSON BROS. (BREWERS), LTD. *v.* HOUGHTON & CHESTER-LE-STREET ASSESSMENT COMMITTEE, [1937] 2 K. B. 445; [1937] 2 All E. R. 298; 106 L. J. K. B. 835; 157 L. T. 147; 101 J. P. 321; 53 T. L. R. 609; 81 Sol. Jo. 396; *sub nom.* ROBINSON BROS. (BREWERS), LTD. *v.* DURHAM ASSESSMENT COMMITTEE, 35 L. G. R. 357, C. A.

1057a. —— —— ——.]—On an appeal to quarter sessions against a rate for the half-year ended Mar. 31, 1928, in respect of certain coal mines of which applts. were occupiers, applts. contended that, inasmuch as the mines had been worked at a loss since 1925, the rateable values thereof should be reduced to nil, or, alternatively, to nominal amounts. On May 10, 1928, applts. entered into a new lease for a term of twenty years of part of their properties. Quarter sessions found that under the trade conditions prevailing at the time when the rate was made, none of applts.' properties could be worked except at a loss, & that there was no indication that conditions of trade were likely to improve within a year; &, further, that the only basis on which any one could have been found who might have entered into a tenancy of the properties at that time would have been on the assumption that his tenancy would continue for a term of years & in the hope that conditions of trade would improve during that period. Upon these findings they rejected applts.' contention:—*Held:* (1) the expression " term of years," as used by quarter sessions, meant a tenancy from year to year, which might be put an end to on notice; where a colliery was actually being worked by the occupier as a going concern the expectation of better trade subsequent to the year of assessment was a consideration which might be taken into account in arriving at the true assessment; (2) inasmuch as quarter sessions had not included any matter of law which they ought to have excluded, or excluded any matter of law which they ought to have included, the *quantum* of the rateable values of the mines was a pure question of fact for that ct.—CONSETT IRON CO., LTD. *v.* DURHAM COUNTY ASSESSMENT COMMITTEE FOR NO. 5 OR NORTH-WESTERN AREA, [1931] A. C. 396; 100 L. J. K. B. 242; 144 L. T. 649; 95 J. P. 98; 47 T. L. R. 301; 29 L. G. R. 231; (1926-31), 1 B. R. A. 308, H. L.

Annotations:—Generally, **Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

1089. *Add. Annotation:*—**Apld.** Cleobury Mortimer Rural District Council *v.* Childe (1933), 97 J. P. 217.

1097a. Effect of redemption.]—Under an order of the Ministry of Agriculture & Fisheries, under Tithe Acts, the tithe rentcharges issuing out of certain lands in a parish were redeemed in consideration of an annuity payable by the landowner for the term of forty years.

Thereupon the overseers of the parish made a supplemental valuation list increasing the gross estimated rental & rateable value of the lands, & reducing the assessments of the tithe rentcharges affected by the redemption by amounts equal to the amount by which the gross estimated rental of the lands was increased :—*Held :* the lands could not be revalued by this simple process & the rule laid down by Parochial Assessments Act, 1936, s. 1, for ascertaining the rateable value must again be applied.—TWITCHIN *v.* ALTON UNION (1924), 22 L. G. R. 482.

PART II. SECT. 2, SUB-SECT. 13.

n (p. 574) **i.** ——.]—QUEENSLAND DEPOSIT BANK, LTD. *v.* BRISBANE CITY COUNCIL, [1928] S. R. Q. 13.—**AUS.**

n (p. 574) **ii.** ——.]—Pltf. sued for a declaration that the assessments of taxes made by deft. city against three parcels of land owned by him for the years 1932, 1933 & 1934 were invalid & that no taxes are legally due & payable in respect of said property for said years, & he, also, prayed for an injunction restraining deft. from proceeding, as it had threatened, to enforce by sale or otherwise the collection of taxes based upon said assessments :—*Held :* each of said parcels was a "rateable parcel of land" within the Act & their assessment together as one property & the taxes based thereon were invalid & illegal, although the assessments could not be treated as nullities in the sense that they were so wholly void & unauthorised by reason of the very foundation of the assessment being wanting that they could not have been corrected by a Ct. of Revision if it had full power to review the action of the assessor.—VANCOUVER WATERFRONT, LTD. *v.* VANCOUVER CITY, [1936] 1 W. W. R. 248 ; 50 B. C. R. 294.—**CAN.**

h (p. 574) **i.** —— *Assessment made in one year adopted as assessment for following year—Removal of person from municipality.*]—Pltf. removed from the City of T. to the Township of Y. on Dec. 14, 1923. He paid an income tax to the City of T. in 1923 & to the Township of Y. in 1924. An assessment roll for the City of T. was prepared & settled in 1923, pursuant to bye-law under Assessment Act, R. S. O., 1914, s. 57, & pltf., then resident in T., was entered on this roll for income. This assessment of 1923 was, pursuant to sub-sect. 5 of said sect. 57, adopted by the City council of 1924, by bye-law passed Feb. 28, 1924, & the City levied on pltf. an income tax in 1924, which he paid under protest. He now sought repayment :—*Held :* pltf. should succeed.—SIFTON *v.* TORONTO CITY, [1929] 3 D. L. R. 852 ; S. C. R. 484 ; *revsg.*, [1929] 1 D. L. R. 953 ; 63 O. L. R. 937.—**CAN.**

h (p. 574) **ii.** —— —— ——.]—Pltf. corpn. sued deft. for income tax levied on her in 1930, based on an assessment roll prepared in 1929 & completed & returned by the assessor on Sept. 20, 1929, at which time deft. was residing in Ottawa. On Nov. 8, 1929, she removed from Ottawa & did not reside there again :—*Held :* from Nov. 8, 1929, to Apr. 3, 1930, deft. had a vested right to freedom from municipal taxation in Ottawa for 1930, & the Assessment Amendment Act of 1930, which came into force on Apr. 3, 1930, was not retroactive so as effectively to cancel & destroy deft.'s vested right.—OTTAWA *v.* KEMP, [1931] 4 D. L. R. 412 ; O. R. 753.—**CAN.**

aa (p. 574) **i.** *Effect of change of conditions in locality.*]—HUDSON'S BAY CO. *v.* PRINCE ALBERT, [1930] 3 W. W. R. 81.—**CAN.**

dd (p. 574) **i.** *Bridge over international river—Whether doctrine of "ad medium filum" applies.*]—*Re* FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE CO., [1928] 1 D. L. R. 723 ; 61 O. L. R. 502.—**CAN.**

n (p. 575) **i.** *Lands converted from "dry" to "wet."*]—SECRETARY OF STATE FOR INDIA *v.* RAMANUJACHARIAR (1928), L. R. 55 Ind. App. 289.—**IND.**

r (p. 575) **i.** —— *Proper deductions from gross income.*]—(1) A joint stock trading co. being assessed for income by a city corpn. was held to have no right to deduct from its gross receipts a sum received from a building co. for dividends upon shares of the building co. owned by the trading co. The profit from which the dividends were paid by the building co., though derived from rentals of real property, & therefore not subject to assessment as income of the building co., were not received by the trading co. as rentals.

(2) The amount of the allowance for "overhead expenses" should be fixed & determinable in the proportion which the amount of non-taxable income bears to total gross income.

(3) The trading co., having power under its charter to acquire, hold, & sell the bonds & shares of other incorporated cos. purchased shares & bonds of the A. Co. ; &, to finance the purchase, borrowed money from a bank :—*Held :* in the circumstances, interest paid by the trading co. to the bank upon the money borrowed should not, in fixing the amount of the trading co.'s assessable income, be deducted, as being expenses or carrying charges, from the gross receipts.—*Re* WALLACE REALTY CO. & OTTAWA, [1929] 4 D. L. R. 784 ; 64 O. L. R. 265 ; *affd. as to* (1) & (2) ; *revsd. as to* (3), [1930] S. C. R. 387 ; 3 D. L. R. 417.—**CAN.**

sw. *Deduction in respect of—Works used for manufacture of steel—What are—Not works preparing scrap metal for sale to steel manufacturers.*]—JOHN JACKSON & CO. (IRON MERCHANTS), LTD. *v.* GLASGOW ASSESSOR, [1928] S. C. 416.—**SCOT.**

sx. —— *Works for refining crude oil—What are—Works for refining tar.*]—JAMES ROSS & CO. (LIME WHARF), LTD. *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 420.—**SCOT.**

sy. —— *Manufactory—What is—Not cellars & warehouse used for "quieting," "fining," bottling & maturing beer.*]—WHITBREAD & CO., LTD. *v.* EDINBURGH ASSESSOR, [1928] S. C. 425.—**SCOT.**

sz. —— —— —— *Not warehouse stores & workshops of whisky blender.*]—JOHN WALKER & SONS, LTD. *v.* KILMARNOCK ASSESSOR, [1928] S. C. 430.—**SCOT.**

sb. *Distillery—Bonded warehouses apart from distillery—Whether whole entitled to deduction as manufactory.*]—DISTILLERS CO., LTD. *v.* EDINBURGH ASSESSOR, [1926] S. C. (Ct. of Sess.) 435.—**SCOT.**

sc. —— *Bonded warehouse forming integral part of distillery—Whether whole entitled to deduction as manufactory.*]—LANARKSHIRE ASSESSOR *v.* DISTILLERS CO., LTD., [1928] S. C. (Ct. of Sess.) 439.—**SCOT.**

sd. —— *Erected on ground rented by manufacturer—Whether works & ground entitled to deductions.*]—LONDON & NORTH-EASTERN RY. CO. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 325.—**SCOT.**

sf. *Grandstand & buildings erected for greyhound racing track.*]—SCOTTISH GREYHOUND RACING CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 285.—**SCOT.**

sh. *Manufactory—Part of process carried on at separate works—Whether whole entitled to deduction.*]—GLASGOW ASSESSOR *v.* SCOTTISH TUBE CO., LTD., [1928] S. C. (Ct. of Sess.) 466.—**SCOT.**

sk. —— *Stores, warehouses or other subjects associated with but not forming integral part of manufactory—Whether whole entitled to deduction.*]—JOHN LENG & CO., LTD. *v.* DUNDEE ASSESSOR, DUNDEE ASSESSOR *v.* DON BROS. BUIST & CO., LTD., DUNDEE ASSESSOR *v.* CAIRD (DUNDEE), LTD., BELL & SYME *v.* DUNDEE ASSESSOR, DISTILLERS CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 315.—**SCOT.**

sl. —— *Premises used for cold storage—& manufacture of ice—Whether premises entitled to deduction.*]—MILNE, WILLIAM, LTD. *v.* GLASGOW ASSESSOR, UNION COLD STORAGE CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 296.—**SCOT.**

sm. *Combined iron & steel works—Whether to be treated as unum quid for purposes of deductions.*]—COLVILLE DAVID & SONS, LTD. *v.* AYRSHIRE ASSESSOR, [1928] S. C. (Ct. of Sess.) 460.—**SCOT.**

so. *Carting contractor's premises—Comprising stables, workshops, etc.—Capable of being let for separate occupation—Whether whole to be treated as unum quid.*]—COWAN & CO. *v.* EDINBURGH ASSESSOR, COWAN & CO. *v.* GLASGOW ASSESSOR, [1928] S. C. (Ct. of Sess.) 450.—**SCOT.**

sp. *Real property—Exemption of fixed machinery—What is.*]—*Held :* certain structures, known as "racks," for storage of barrels of whisky during the maturing & aging process, were, along with the erections enclosing them, assessable under Assessment Act, R. S. O., 1927, as being real property, & the racks not being "machinery" within the exemption in sect. 4 (19) of "fixed machinery used for manufacturing purposes" ; but the maturing & aging of the whisky was a part of the process of manufacture, & an elevator (for hoisting the barrels, etc.) & a fan (for the circulation of heated air), being used in connection with such process, came within said exemption ; the sprinkling system & electric wiring were not machines, therefore not exempt, & were assessable.—HIRAM WALKER & SONS, LTD. *v.* WALKERVILLE CORPN., [1933] S. C. R. 247 ; 3 D. L. R. 433.—**CAN.**

sq. *Actual value—College building.*]—In determining for assessment purposes the "actual value" within sect. 212 (1) of Municipal Act, R. S. B. C., 1924, of an improvement such as a building constructed for permanent & continuous use as a college & in use as, but practically unsalable at present as, a college, the words "actual value" should not be construed to mean the sum which would be realised for the building at a forced sale, nor by taking as the dominant consideration the structural cost of the building or the cost of replacement. The measure of valuation which should be applied is the value in exchange, properly understood. The test of such value is, what would a prudent investor be likely to pay or agree to pay for the building by way of investment ?—the assessor keeping in mind the likelihood that the reversible currents which affect land, causing it sometimes to depreciate and at others to appreciate in value, will not at

Part III.—Special Rate.

1123. *Add. Citation :*—[1928] Ch. 340.

Part IV.—The Assessment.

1145. *Add. Annotations :*—**Distd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336 ; R. *v.* Cornwall County Valuation Committee, *Ex p.* Falmouth Rating Authority, [1937] 2 K. B. 22.

1146. *Add. Citations :*—97 L. J. K. B. 10 ; (1926–31), 1 B. R. A. 231.

1146a. —— —— **Rating & Valuation Act, 1925 (c. 90), Sched. I., provisions 11, 12.**]—By provision 12 of Sched. I. to the Rating & Valuation Act, 1925 : " No person who is a member of any committee to which the duties of the rating authority with respect to the preparation of the valuation list are delegated shall be qualified for appointment as a member of the assessment committee."

A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on the resp. assessment committee. The applicant had given notice of objections to his assessment to the resp. committee, & on learning the above facts, obtained a rule *nisi* for a prohibition to that committee from hearing & determining his objection :—*Held :* (1) a writ of prohibition would lie to an assessment committee ; (2) within provision 12, the duties of the rating authority with respect to the preparation of the valuation list had been delegated to the sub-committee of which P. & G. were members, &, consequently, they were disqualified from sitting on the assessment committee under provision 12, although at the time of their appointment thereto they were not disqualified ; (3) P. & G. were not interested " otherwise " within provision 11, which refers to an interest *ejusdem generis* as that of an owner or occupier.—R. *v.*

least to the same degree, affect a building of said character. Moreover, the building must be valued for assessment purposes *qua* college as long as it remains such ; it is improper to convert it mentally into a revenue-producing commercial structure, *e.g.*, an apartment house, & value it accordingly.—VICTORIA (BISHOP) *v.* VICTORIA (CITY), [1933] 3 W. W. R. 332 ; 4 D. L. R. 524; 47 B. C. R. 264.—**CAN.**

sm. *Consideration of special adaptability.*]—In assessing land it is proper to take into consideration its special adaptability to such a use as the land in question in this case was being put to, *viz.* its use in developing a valuable water power which without it could not have been developed.—*Re* ONTARIO & MINNESOTA POWER CO. *v.* FORT FRANCES (1916), 35 O. L. R. 459.—**CAN.**

sp. *Land & buildings—Meaning of " value."*]—Under the Winnipeg Charter where land has buildings thereon the land & buildings must be valued for assessment purposes as a unit. The " value at the time of the assessment " which under sect. 294 of said Charter the assessor is required to ascertain, is that amount which a prudent investor, taking into account all the factors creating value, might reasonably be expected to pay for the property. In determining such value, every factor past, present, future or potential, which enables its owner to exchange property for money must be taken into account. There is nothing in said Charter which authorises " uniformity " or equalisation of assessments. The assessor is not entitled to consider the assessments of other properties. In determining value the facts as to the sales of other properties are admissible as evidence of value. But this evidence must be of sales of property in the neighbourhood at the time the assessment was made. The amount which might be obtained at a forced sale is no test of value but the price asked in a *bond fide* offer to sell is weighty evidence of value. The net revenue of the property & the replacement cost are also factors to be considered in conjunction with all the others.—*Re* PHILLIPS ESTATE, [1934] 1 W. W. R. 449 ; 41 Man. L. R. 582.—**CAN.**

st. " *All purposes of civic taxation* " *—School taxes.*]—School taxes are within the expression " all purposes of civic taxation in the said city levied by or with the authority of the city council " in Moncton Tramways, Electricity & Gas Co., Ltd., given a fixed valuation for these purposes.—R. *v.* ANDERSON, *Ex p.* MONCTON TRAMWAYS, ELECTRICITY & GAS CO., LTD. (1933), 6 M. P. R. 319.—**CAN.**

sv. *Fair value.*]—Where it is provided by statute that land in a municipality shall be assessed at its fair value & buildings & improvements at a percentage of their fair value, & that in case of an assessment of any specified land being more or less than its fair value, the assessment shall not be varied on appeal, if such assessed value bears a fair & just proportion to the value at which other lands in the municipality are assessed ; the fair value is the dominant factor in determining the assessment & the provision as to proportionate assessment is subservient to it. A further provision that " the dominant factor in the assessment of subjects of taxation shall be equity " does not alter the situation, as the latter provision is directed towards ensuring equality & uniformity as between various " subjects of taxation," *e.g.* lands, businesses, & special franchises, & not as between specific lands, etc. Where it is provided that local improvement rates shall not, unless the municipality determines otherwise, be taken into consideration as a factor in the reduction of the general assessment of land to the extent of the local improvement rate levied, or at all, & the municipality has made no determination, the burden of the local improvement tax, being its capitalised value, does not lower the value of the land for assessment purposes.—ROSEBOROUGH *v.* REGINA CITY, [1934] 2 W. W. R. 636.—**CAN.**

sx. *Buildings—Exemption where income from land chief source of income—Meaning of " income."*]—" Income " in the phrase " occupant's chief source of income " in the fifth line of sect. 25 (1) of Assessment Act, 1934, does not mean " livelihood."—AGAR *v.* EAST ST. PAUL RURAL MUNICIPALITY, [1935] 1 W. W. R. 381 ; 2 D. L. R. 811 ; 43 Man. L. R. 114.—**CAN.**

sf. *Apartment block.*]—*Re* BELGO-CANADIAN REAL ESTATE CO., LTD. & WINNIPEG CITY, [1937] 2 W. W. R. 57 ; 2 D. L. R. 324.—**CAN.**

sv. *Undeveloped property—Net revenue.*]—The owner of property has the right to develop it or not as he sees fit, within the means at his command ; & a municipality has not the right to penalise him in taxes because he does not develop it in the way someone else may think advisable so as to secure from it the largest possible annual return. Under Winnipeg Charter the city has the right to tax the property only at its value as it is, & not at a value which might be the result of further improvements. The future or present possibilities of the property is something which can be considered only in connection with every other feature. The fact, however, that the property is far from being fully developed is almost a complete answer to the contention that the assessment should be based upon the net revenue obtained.—*Re* CHRISTIE & CLARK'S APPEAL, [1937] 1 W. W. R. 81 ; 44 Man. L. R. 405.—**CAN.**

PART IV. SECT. 1.

sd. *Duty to assess & collect rate.*]—A municipal corpn. without special authority granted by the legislature, cannot renounce directly or indirectly its right, nor fail in its duty, to collect from assessable property the funds needed for general administration & for the performance of public works.—

NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, [1929] 2 K. B. 397; 98 L. J. K. B. 605; 141 L. T. 557; 93 J. P. 199; 45 T. L. R. 525; 27 L. G. R. 458; (1926-31), 1 B. R. A. 279, D. C.

1146b. —— Jurisdiction of High Court—Prohibition.]—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, No. 1146a, *ante*.

1146c. —— Right of officer of valuation committee to be present.]—The county valuation committee under sect. 18 (2) of the Act of 1925 is entitled to send its valuation officer or duly authorised representative to meetings of an assessment committee during the hearing by them of any objections to draft valuation lists or of any proposals to amend current valuation lists, & the assessment committee have no right to exclude him from such meetings.

Per ROMER, L.J.: Power to attend such meetings is one of the powers conferred upon county valuation committees by sect. 18 (2) of the Act, &, that being so, it is not possible for an assessment committee to exclude an officer properly appointed for the purpose of the valuation committee from one of those meetings on the plea of exercising the power conferred upon them by Sched. I. to the Act of regulating their proceedings. The powers so given to the assessment committees of regulating their proceedings are in terms conferred subject to the provisions of the Act. —MIDDLESEX COUNTY VALUATION COMMITTEE, *Ex p.* ROYAL AUTOMOBILE CLUB, [1937] 2 All E. R. 403; 106 L. J. Ch. 215; 156 L. T. 252; 101 J. P. 203; 53 T. L. R. 365; 81 L. Jo. 157; 35 L. G. R. 211, C. A.

Annotation:—**Consd.** R. *v.* Salford Assessment Committee, [1937] 2 K. B. 1.

1146d. —— Who may be clerk of.]—An officer of a rating authority, whose duty was to attend the meetings of the rating committee for the purpose of taking minutes of their proceedings, & so would obtain knowledge of all the transactions of the rating authority, was appointed by the assessment committee for that area acting clerk to that committee, & would have to advise the assessment committee upon matters of procedure. The assessment committee would have to consider an objection by the rating authority to a proposal to amend the valuation list. An application was made to prohibit the assessment committee from acting on the resolution appointing the officer acting clerk to the assessment committee & also from acting upon a resolution directing him to remain in attendance on the committee during the hearing of the objection to the applt.'s proposal to amend the valuation list & the deliberations of the committee thereon on an allegation of liability to suspicion of bias. The Div. Ct. held that the appointment was valid:—*Held:* the assessment committee should be prohibited from allowing the officer to remain in attendance on that committee during the hearing of applt.'s objections & proposal & during the subsequent deliberations thereon, on the ground that the assessment committee in hearing objections to the draft valuation list under sect. 27 of 1925 Act, was a body performing judicial or quasi-judicial functions, & if the officer were present at the meeting of the assessment committee when this objection & proposal were being heard, & advised that committee on procedure, it would be impossible to hold that it was a case where justice appeared manifestly & undoubtedly to be done.—R. *v.* SALFORD ASSESSMENT COMMITTEE, *Ex p.* OGDEN, [1937] 2 K. B. 1; [1937] 2 All E. R. 98; 106 L. J. K. B. 344; 156 L. T. 474; 101 J. P. 225; 53 T. L. R. 474; 81 Sol. Jo. 198; 35 L. G. R. 219, C. A.

1147a. —— Revaluation—Right to revalue by instalments—One part of county revalued before another.]—*Held:* on the true construction of 1925 Act, ss. 18, 37 (1), the county valuation committee, in carrying out the duty imposed upon it by sect. 18 (2) of promoting uniformity of valuation in the county, were not bound to make proposals for the correct valuation of all the hereditaments in the county at the same time, but might in the exercise of their discretion proceed by instalments & make proposals for the correct valuation of the hereditaments in succession. Consequently, where in several areas of a county the prevailing valuations were too low, & the county valuation committee made proposals for the correct valuation of a large number of hereditaments in one of the areas only, & the assessment committee determined many of these proposals & in particular made an order increasing the gross & rateable value of one hereditament, the rating authority for that area was not entitled to obtain either a writ of *certiorari* to quash the order of the assessment committee, or a writ of prohibition to prevent the county valuation committee from making or the assessment committee from determining & enforcing any other such proposal, on the ground that any such proposal made by the county valuation committee in regard to part only of the county must be made in disregard of its statutory duty to promote uniformity of valuation in the county.—R. *v.* CORNWALL COUNTY VALUATION COMMITTEE, *Ex p.* FALMOUTH RATING AUTHORITY, [1937] 2 K. B. 222; [1937] 2 All E. R. 266; 106 L. J. K. B. 703; 157 L. T. 157; 101 J. P. 271; 53 T. L. R. 550; 81 Sol. Jo. 295; 35 L. G. R. 321, C. A.

n (p. 580) i. —— ——.]—VARSON *v.* TOWN OF VEGREVILLE (1916), 34 W. L. R. 504.—CAN.

ff (p. 580) 1. —— *Error as to owner* —— *v.* SHEPARD (Alta.), [1927] 3 D. L. R. 354; [1927] 2 W. W. R. 880; *affd.*, [1928] 3 D. L. R. 887; [1928] S. C. R. 487.—CAN.

TOWN LAKE DISTRICT ——— *Ex p.* CALHOUN (1863), 10 N. B. R. (5 All.) 454.—CAN.

q (p. 582) i. —— —— "*Parcel*"—*What is.*]—*Re* MCBRIDE (1927), 38 B. C. R. 431.—CAN.

ss. —— *Licence fee—Violation of tax exemption Act.*]—A bye-law imposing an annual licence fee on insurance cos. doing business through an agent within the municipality:—*Held:* *ultra vires* as being in violation of Municipal Tax Exemption Act, R. S. Q., 1925.—LA MODERNE CO. OF MUTUAL FIRE ASSCE. *v.* BLACK LAKE, [1933] 1 D. L. R. 18.—CAN.

sd. *Change of ownership after return of roll.*]—There is no error in the roll giving jurisdiction to the Ct. of Revision when a change of ownership of property takes place after the roll is returned.—*Re* WILLIAMS & REGIMBAL, [1935] 2 D. L. R. 283; O. R. 199.—CAN.

1157. *Add. Annotations :*—**Consd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336 ; R. *v.* Cornwall County Valuation Committee, *Ex p.* Falmouth Rating Authority, [1937] 2 K. B. 222.

1158a. —— **No injustice—Similar properties incorrectly assessed.**]—Applts., who were assessed in respect of their premises at £325 gross & £267 rateable value, objected that they had been incorrectly & unfairly assessed in that seven other hereditaments of the same class in the same valuation list had been assessed at lower figures. Applts. called no evidence to prove that their assessment was higher than the rent which might be expected to be obtained for their premises, & their only witness agreed that the rent would be at least £325 ; nor did applts. seek to alter the assessments of the seven other hereditaments, but they sought to use these as evidence that their own assessment was excessive & unfair :—*Held :* as applts.' hereditament had been entered in the valuation list at the proper figure, evidence that the seven other hereditaments had been assessed at a lower figure was irrelevant & could not be used to justify a reduction of applts.' assessment. That evidence was of no weight unless for the purpose, on proper notice, of correcting the inaccuracy of the other hereditaments.—LADIES' HOSIERY & UNDERWEAR, LTD. *v.* WEST MIDDLESEX ASSESSMENT COMMITTEE, [1932] 2 K. B. 679 ; 101 L. J. K. B. 632 ; 147 L. T. 390 ; 96 J. P. 336 ; 30 L. G. R. 369, C. A.

Annotations :—**Apld.** Lilley & Skinner, Ltd. *v.* Essex County Valuation Committee (1935), 153 L. T. 64. **Consd.** R. *v.* Cornwall County Valuation Committee, *Ex p.* Falmouth Rating Authority, [1937] 2 K. B. 222.

1158b. —— —— ——.]—The occupiers of a shop, the assessment of which had been increased together with the assessments of most of the shop properties in the borough, contended that their assessment ought to be reduced, on the ground that there had been no corresponding increase in the assessments of dwelling-house properties within the borough. The gross & rateable value of the shop arrived at as the result of the above increase were admittedly not higher than the gross & rateable value as defined by Rating & Valuation Act, 1925 (c. 90) :—*Held :* the Act did not require that revaluations of shops & dwelling-houses must be made at one & the same time, &, as the hereditament in question was admittedly not over-assessed, the ct. could not, merely for the sake of uniformity, substitute a lower figure which admittedly would be inaccurate.—LILLEY & SKINNER, LTD. *v.* ESSEX COUNTY VALUATION COMMITTEE (1935), 153 L. T. 64 ; 99 J. P. 254 ; 51 T. L. R. 432 ; 79 Sol. Jo. 321 ; 33 L. G. R. 272, D. C.

Annotation :—**Consd.** R. *v.* Cornwall County Valuation Committee, *Ex p.* Falmouth Rating Authority, [1937] 2 K. B. 222.

1158c. Return required by rating authority—Form—Validity.]—Defts. for the purpose of making a new valuation list under Rating & Valuation Act, 1925 (c. 90), s. 40, having served a notice on pltf. requiring him to make a return of certain particulars, including " gross takings & outgoings " of his licensed premises & other particulars not contained in Rating & Valuation Act (Returns) Rules, 1926, Sched., pltf. commenced an action for a declaration that the form of returns required was illegal, unauthorised & *ultra vires*, & called evidence to prove that the offending requisitions were not " reasonably required for the purpose of carrying out this Act " within the above sect. :—*Held :* pltf. had proved his case & was entitled to the declaration claimed.—GRANT *v.* KNARESBOROUGH URBAN COUNCIL, [1928] Ch. 310 ; 97 L. J. Ch. 106 ; 138 L. T. 488 ; 92 J. P. 30 ; 44 T. L. R. 224 ; 26 L. G. R. 165; (1926–31), 1 B. R. A. 238.

1158d. Revaluation during quinquennial period—Validity.]—A county valuation committee notified a borough rating authority in the county that in the opinion of the committee the quinquennial valuation list for the borough, which had recently come into force, was not in accordance with 1925 Act, in the matter of gross values. After a conference with the county valuation committee, the rating authority were satisfied that a very large number of assessments of shops, houses & flats in the borough were incorrect, & ought to be increased. They accordingly made many thousands of proposals for the amendment of the valuation list, & a large number of objections fell to be decided by the assessment committee. It was sought to quash the assessment committee's decision on one such objection on the grounds (*a*) that no such proposal for the amendment of a valuation list could lawfully be made under sect. 37 of 1925 Act ; (*b*) that sect. 37 of that Act did not empower the rating authority to make a general revaluation of their district to take effect during the currency of a quinquennial valuation list ; & (*c*) that the rating authority could not be " aggrieved " within the meaning of that sect. :—*Held :* since the rating authority were merely correcting existing inaccuracies in the valuation list, & were not making a new valuation on the ground of any alleged general increase in values, they were not, in truth any more than in form, making a new valuation list, & were acting within sect. 37, though on a large scale, & the rating authority might well be aggrieved both as a local authority & as a ratepayer by the acceptance of incorrect values by the assessment committee in the quinquennial valuation list.—R. *v.* HORSHAM & WORTHING ASSESSMENT COMMITTEE, *Ex p.* BURGESS, [1937] 2 K. B. 408 ; 157 L. T. 41 ; 101 J. P. 411 ; *sub nom.* R. *v.* WORTHING BOROUGH COUNCIL & HORSHAM & WORTHING ASSESSMENT COMMITTEE, *Ex p.* BURGESS, [1937] 2 All E. R. 681 ; 106 L. J. K. B. 810 ; 53 T. L. R. 755 ; 81 Sol. Jo. 572 ; 35 L. G. R. 285, D. C.

1159. *Add. Annotation :—As to* (2) **Refd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

1161a. —— —— **County valuation committee.**]—A county valuation committee, as an aggrieved person is entitled to make a proposal for the amendment of a valuation list during the quinquennium within which the list is in force, although they have not objected to the draft list & the time for making such objection has passed.—R. *v.* SOUTH-EASTERN ESSEX ASSESSMENT COMMITTEE, *Ex p.* PAT-

TERSON (1935), 153 L. T. 152; 99 J. P. 238; 33 L. G. R. 222, D. C.

Annotation :—**Refd.** R. *v.* Worthing Borough Council & Horsham & Worthing Assessment Committee, *Ex p.* Burgess, [1937] 2 All E. R. 681.

1162. *Add. Annotation :—As to* (2) **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1162a. Local Government Act, 1929 (c. 17), s. 70 (4)—Time for making claim.]—(1) A claim under Local Govt. Act, 1929 (c. 17), s. 70 (4), by the occupier of a hereditament to the rating authority that it should be treated as an industrial hereditament for the purposes of a valuation list, though made after the rating authority has deposited the list & at the time when notice of objection to the list is given by the occupier to the assessment committee, is not invalid as having been made too late.

(2) An objection by the occupier of a hereditament in a Metropolitan borough to its non-inclusion in a special valuation list as an industrial hereditament assessable as such at a quarter only of its net annual value, was disallowed by the assessment committee, & their decision was affirmed by quarter sessions, subject to an appeal to the High Ct. by case stated. In these circumstances a quinquennial list for the borough came into force in which the hereditament was entered as a non-industrial hereditament assessable at its full net annual value. In the course of the twelve months preceding the making of a subsequent supplemental list the High Ct. determined on the case stated that the hereditament was an industrial hereditament, & quarter sessions accordingly made an order that it should be inserted as such in the special list; & the decision of the High Ct. was affirmed by the Ct. of Appeal. In the supplemental list when deposited the hereditament was not included or referred to :—*Held :* the decisions of the High Ct. & the Ct. of Appeal & the order of quarter sessions effected, within Valuation (Metropolis) Act, 1869 (c. 67), s. 46, " alterations " in matters stated in the quinquennial list, namely, alterations in the statements therein that the hereditament was a non-industrial hereditament & rateable as such; & the hereditament should be inserted in the supplemental list as an industrial hereditament & its rateable value reduced accordingly.—LIPTON, LTD. *v.* SHOREDITCH ASSESSMENT COMMITTEE, [1934] 2 K. B. 470; 103 L. J. K. B. 700; 151 L. T. 329; 98 J. P. 310; 50 T. L. R. 432; 30 Cox, C. C. 128; *sub nom.* SHOREDITCH ASSESSMENT COMMITTEE *v.* LIPTON, LTD., 32 L. G. R. 295, D. C.

1164. *Add. Citation :*—(1926-31), 1 B. R. A. 70. *Add. Annotation :*—**Consd.** Kingston Mill, Stockport *v.* Owen (1928), 141 L. T. 161.

1168a. —— Valuation officer present—Proceedings invalid.]—Where a proposal made under Rating & Valuation Act, 1925 (c. 90), by the occupier of premises in an assessment area of a county to amend the valuation list in respect of the premises, comes before the Assessment Committee for the area, the county valuation officer, as having a possible interest, is disqualified from being present with the committee while they are hearing the proposal or considering their decision, & if he has been so present a writ of *certiorari* will be granted to bring up & quash the decision.—R. *v.* SURREY ASSESSMENT COMMITTEE, NORTH-EASTERN ASSESSMENT AREA, *Ex p.* WOOLWORTH (F. W.) & CO., LTD., [1933] 1 K. B. 776; 102 L. J. K. B. 763; 148 L. T. 428; 97 J. P. 46; 31 L. G. R. 119, D. C.

Annotations :—**Consd.** Middlesex County Valuation Committee *v.* West Middlesex Assessment Committee, [1937] Ch. 361; R. *v.* Salford Assessment Committee, [1937] 2 K. B. 1.

1169. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

1170a. County panel of valuers for special properties—Validity.]—In the course of preparing a new valuation list under Rating & Valuation Act, 1925 (c. 90), a conference was held between the county valuation committee (a committee of the Surrey County Council) & representatives of the rating authorities in that county, including pltf. council, at which it was resolved that uniformity in the assessment of properties of a special character would be best secured if one valuer were appointed to value each class of property throughout the county, & that the best means of attaining that end would be by co-operation between the county valuation committee & the rating authorities in the exercise of their respective powers under the Act & the appointment by the county valuation committee of a county panel of valuers to value special properties on behalf of the rating authorities & themselves, the valuers appointed, if possible, to be valuers who had previously acted for rating authorities in the county; & further, that, having regard to the interest of each rating authority in the attainment of uniformity not only in its own area but also as between its own area & all other areas in the county, the payment of the valuers employed on the panel should be met by the county valuation committee as a county charge. Accordingly, defts., in professed exercise of their powers under the said Act, appointed a panel of valuers to value the special properties throughout the county with the view to advising the county valuation committee & any rating authorities desirous of availing themselves of their advice & assistance in connection with such valuation, & in due course delivered a precept to pltfs. for their share of the county rate, which included the fees & expenses connected with the panel of valuers. In consequence of such action pltfs. challenged the power of defts. to appoint a panel of valuers to value special properties on behalf of pltfs., a mode of procedure which they alleged had the effect of throwing upon the county rate the whole of those fees & expenses & to spread the burden over the whole county, including pltfs.' area, which contained relatively few of the special properties, to the relief of areas which contained a larger number of special properties; & by this action they claimed a declaration that defts. had no power under the said Act or otherwise to appoint or maintain a county panel of valuers to value special properties on behalf of rating authorities or to charge fees or other payments to such valuers or the expenses of establishing &

maintaining the panel against the county rate:—*Held:* the appointments by defts. of valuers to value special properties throughout the county were not in fact made by defts. on behalf of pltfs., & further, that the action of defts. in making the appointments & charging the fees & expenses in connection therewith against the county rate was no usurpation by defts. of pltfs.' functions under the Act, but was within the scope of defts.' duties & powers within the meaning & intent of sect. 18 other provisions contained in the said Act.

Qu.: whether, had there been evidence to prove that the action of defts. was *ultra vires*, the ct. would, in the absence of the A.-G., have jurisdiction to grant any relief to pltfs.—COULSDON & PURLEY URBAN DISTRICT COUNCIL *v.* SURREY COUNTY COUNCIL, [1934] Ch. 694; 103 L. J. Ch. 342; 151 L. T. 522; 98 J. P. 437; 78 Sol. Jo. 535; 32 L. G. R. 447.

Part V.—Making of the Rate.

SECT. 2.—**AMENDMENT OF RATE** (Vol. XXXVIII., p. 585).

Add the following case:—

1184a. Duty of rating authority to alter "then current rate"—On alteration of valuation list by assessment committee.]—Applts., in Jan. 1927, gave notice of objection to the valuation list, & relief was refused by the assessment committee. In Nov. 1927 the new assessment committee which came into being on Apr. 1, 1927, reconsidered applts.' objection & granted relief, as from Apr. 1, 1926. They altered the valuation list accordingly, but the rating authority refused to alter the rate book, on the ground that the assessment committee could not make their reconsidered decision relate back to the earlier rating period in which the objection had been originally taken & decided:—*Held:* it was the duty of the rating authority to alter their "then current rate" on receipt of notice from the assessment committee, & "then current rate" meant the rate current at the date of the objection.—KINGSTON MILL, STOCKPORT, LTD. *v.* OWEN (1928), 141 L. T. 161; 93 J. P. 58; 45 T. L. R. 107; 27 L. G. R. 12; (1926-31), 1 B. R. A. 273, D. C.

1188a. Change in amount—Disallowance of relief.]—The duty cast by Companies Act, 1929 (c. 23), ss. 78, 264, upon a receiver appointed by debenture holders of a co. to pay rates then due from the co. & "having become due & payable within twelve months next before" his appointment in priority to any claim for principal & interest in respect of the debentures, applies to a subsequent increase in those rates resulting from an appeal being allowed against the derating of part of the co.'s premises under Local Government Act, 1929 (c. 17). This is so, because, by Rating & Valuation Act, 1925 (c. 90), s. 37 (10) (which is made applicable to such a case by Sched. IX., Pt. II., para. 1, sub-para. 4, of Local Government Act, 1929 (c. 17)), the resulting amendment of the valuation list is to be deemed to have had effect as from the commencement of the period in respect of which the rate was made & to be recoverable, under the combined effect of that sub-sect. & sect. 36 (2), "as if it were arrears of the rate."—*Re* AIREDALE GARAGE CO., LTD., ANGLO-SOUTH AMERICAN BANK, LTD. *v.* AIREDALE GARAGE CO., LTD., [1933] Ch. 64; 101 L. J. Ch. 289; 147 L. T. 372; 96 J. P. 312; 48 T. L. R. 477; 30 L. G. R. 286, C. A.

1193. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

1225. *Add. Annotation:*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

Part VI.—Appeals.

1297a. No appeal from sessions on question of fact—What is question of fact—Quantum of rateable value of mine.]—CONSETT IRON CO., LTD. *v.* DURHAM COUNTY ASSESSMENT COMMITTEE FOR NO. 5 OR NORTH-WESTERN AREA, No. 1057a, *ante*.

PART V. SECT. 1, SUB-SECT. 7.

t i. —— ——.]—Pltf., a purchaser under an agreement for the sale of land (his interest in the land being in reality that of a mtgee.), brought action against deft. city to recover an amount which he paid as taxes in excess, it was alleged, of that for which the property could be legally assessed. Pltf. besides setting up the alleged illegality of the assessment alleged that the amount which he paid was paid in consequence of the false & fraudulent representations of the deft. that said amount was then owing the city:—*Held:* the dismissal of the action should be affirmed.—ERAUT *v.* DRUMHELLER CITY, [1935] 2 W. W. R. 129; 2 D. L. R. 756.—CAN.

PART V. SECT. 3.

sd. *Time of commencement.*]—A municipal tax is formally created at the date the bye-law imposing it is adopted & not at the time of the entry into force of the collection roll.—CANADIAN ALLIS-CHALMERS, LTD. *v.* LACHINE CITY, [1934] S. C. R. 445; 4 D. L. R. 479.—CAN.

PART V. SECT. 4, SUB-SECT. 1.

sb. *Expense of aqueduct.*]—ST. HYACINTHE (ŒUVRE DU PATRONAGE DE) *v.* ST. HYACINTHE CITY (1926), Q. R. 41 K. B. 496.—CAN.

PART V. SECT. 4, SUB-SECT. 2.—C.

sc. *Government annuity.*]—*Held:* the annuity paid to a person by virtue of a Dominion Government annuity contract, issued under the provisions of 7 & 8 Edw. 7, c. 5, is "income" within Income War Tax Act, 1917, & is not issued free of taxation.—KENNEDY *v.* MINISTER OF NATIONAL REVENUE, [1929] Ex. C. R. 36.—CAN.

PART V. SECT. 9, SUB-SECT. 3.

p (p. 599) i. ——.]—If an assessment is not based on the principle outlined in sect. 59 (1) of Assessment Act, S. M., 1934, the Manitoba Tax Commission has the power, & it is its duty, to vary the assessment on an appeal to the said Commission.—SUN LIFE ASSURANCE CO. OF CANADA *v.* TUXEDO TOWN, [1936] 2 W. W. R. 367; 44 Man. L. R. 60.—CAN.

PART VI. SECT. 1, SUB-SECT. 1.

b (p. 600) i. ——.]—Observations upon the impropriety of members of a valuation committee taking part in the decision of a case, in which they have a personal interest.—LANARKSHIRE ASSESSOR *v.* O'HARA, [1928] S. C. 391.—SCOT.

b (p. 600) ii. —— *To report to municipal council.*]—COLQUHOUN *v.* DRIS-

1297b. Appeal from Divisional Court to Court of Appeal — Time for.]—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., No. 226jj, *ante*.

1309. For "*affg.*" read "*revsg.*"

Add. Annotation:—As to (1) **Consd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

1321a. —— Appeal by county valuation committee —Against several assessments—One notice sufficient.]—Where a county valuation committee appointed under Rating & Valuation Act, 1925 (c. 90), s. 18, appeals to quarter sessions in respect of the assessments of a number of hereditaments in the same assessment area, it may serve one notice of appeal, & set out the particulars of the assessments in a schedule. Separate appeals are not necessary, provided that copies of the notice are served upon all persons who would be entitled to be served if separate appeals were lodged.—GLAMORGAN COUNTY VALUATION COMMITTEE *v.* BARRY AREA ASSESSMENT COMMITTEE, [1931] 1 K. B. 157; 99 L. J. K. B. 516; 144 L. T. 203; 94 J. P. 238; 46 T. L. R. 635; 28 L. G. R. 523; (1926–31), 1 B. R. A. 433, D. C.

1328a. —— Where one notice of appeal against several assessments.]—GLAMORGAN COUNTY VALUATION COMMITTEE *v.* BARRY AREA ASSESSMENT COMMITTEE, No. 1321a, *ante*.

1332. *Add. Annotation:*—**Consd.** Embleton *v.* Norwich Union Life Insce. Soc., Norwich Union Life Insce. Soc. *v.* Embleton (1927), 11 Tax Cas. 681.

1355. *Add. Annotation:*—**Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1381. *Add. Annotation:—As to* (2) **Consd.** Glamorgan County Valuation Committee *v.* Barry Area Assessment Committee (1930), 99 L. J. K. B. 615.

COLL (1894), 10 Man. L. R. 254.—**CAN.**

b (p. 600) **iii.** —— *Appeal against equalised assessment—Under Public Schools Act.*]—On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, *i.e.* made his equalisation on the basis of the equalisation made by the Manitoba Tax Commission.—*Re* BEAUSEJOUR SCHOOL DISTRICT, [1928] 3 W. W. R. 310.—**CAN.**

b (p. 600) **iv.** —— *Board of Revision & Valuation—To state case—Question of law.*]—*Re* WINNIPEG CHARTER, [1928] 1 W. W. R. 613.—**CAN.**

b (p. 600) **v.** ——.]—*Re* VANCOUVER INCORPORATION ACT & CANADIAN PACIFIC RY., [1930] 4 D. L. R. 80.—**CAN.**

ll (p. 600) **i.** —— ——.]—On appeal against assessment, a county ct. judge has no power to state a case for the opinion of the Ct. of Appeal.—*Re* NIAGARA TOWN & KIRBY [1933] O. R. 174; 2 D. L. R. 60.—**CAN.**

l (p. 601) **i.** —— ——.]—B. was a tenant of property in a city when an assessor was making his rounds, & she was correctly entered on his roll as a separate school supporter. Some time later, before the roll was finally revised, B. vacated the premises & they were occupied by another resident who was a public school supporter:—*Held:* although the entry of B.'s name was not an error at the time it was made, it became an error before the roll was finally returned, & the absence from the roll of the new tenant was an omission; & the error as to one tenant & the omission as to the other were, upon a proper appeal, open to correction by the ct. of revision or by the county ct. judge upon appeal from the ct. of revision.—*Re* BAYACK, [1929] 3 D. L. R. 480; 64 O. L. R. 14.—**CAN.**

l (p. 601) **ii.** —— ——.]—The Ct. of Revision under s. 56 of Assessment Act, R. S. O., 1927, has no higher power than to make such corrections as the assessor might, & if he had been aware of them, ought to have made.—CAVEN *v.* OTTAWA, [1932] O. R. 369; 3 D. L. R. 42.—**CAN.**

l (p. 601) **iii.** —— —— *Validity of bye-law.*]—A bye-law relating to appeals to the Ct. of Revision is bad if it provides that the ct. must reject an application for reduction or cancellation.—*Re* MCLAUGHLIN & TORONTO CITY, [1933] 3 D. L. R. 430; O. R. 642.—**CAN.**

l (p. 601) **iv.** —— ——.]—The Board of valuation & revision for the City of Winnipeg cannot increase the valuation of a building on an appeal from the assessment comr.—*Re* GRANTHAM & TUPPER (FRASER ESTATE) (1934), 42 Man. L. R. 575.—**CAN.**

bb (p. 601) **i.** —— *Lands Valuation Appeal Court—Appeal not involving question of value.*]—GLASGOW ASSESSOR *v.* GLASGOW CORPN., [1929] S. C. (Ct. of Sess.) 291.—**SCOT.**

bb (p. 601) **ii.** —— *Whether to Court of Appeal.*]—No appeal lies to the Ct. of Appeal from the opinion of a judge of the King's Bench delivered on a case stated by Manitoba Tax Commission under Assessment Act, C. A., 1924.—*Re* WINNIPEG, SELKIRK & LAKE WINNIPEG RY. CO. & WEST KILDONAN RURAL MUNICIPALITY, [1934] 1 W. W. R. 744; 3 D. L. R. 153.—**CAN.**

bb (p. 601) **iii.** —— ——.]—Appeal on a question of fact from a county ct. judge affirming an assessment lies to the Ontario Railway & Municipal Board, & not to the Ct. of Appeal.—*Re* GUARDIAN REALTY CO. OF CANADA, LTD. & TORONTO CITY, [1934] 2 D. L. R. 721; O. R. 266.—**CAN.**

tt (p. 601) **i.** ——.]—*Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—**CAN.**

tt (p. 601) **ii.** ——.]—QUINN *v.* SALMON ARM, [1929] 4 D. L. R. 1085; 40 B. C. R. 111.—**CAN.**

tt (p. 601) **iii.** ——.]—A complaint having been made to a ct. of revision against an assessment it merely dismissed the complaint & ordered a new assessment. Two days later it adopted the assessor's report of the new assessment which reduced the former assessment:—*Held:* the taxpayer could not be deprived by said procedure of his right of appeal to the judge of the county ct.—BAIRD *v.* WEST KILDONAN, [1929] 4 D. L. R. 306; 2 W. W. R. 455; 38 Man. L. R. 232.—**CAN.**

tt (p. 601) **iv.** ——.]—By Municipal Act, R. S. B. C., 1924, s. 223A, a person appealing from the decision of a Ct. of Revision has one week from the day on which he receives notice of the ct.'s decision, to give notice of appeal.—*Re* GRICE & MUNICIPAL ACT ASSESSMENT APPEAL, [1933] 2 D. L. R. 206.—**CAN.**

xx (p. 601) **i.** —— *Method of appeal laid down by taxing statute.*]—CHARLOTTETOWN *v.* TANTON, [1930] 4 D. L. R. 61.—**CAN.**

ss. *Whether barred where appellant has furnished statement of value.*]—*Held:* when a person has, under Lands Valuation (Scotland) Act, 1854, s. 7, furnished the assessor with a written statement of value, he is not thereby barred from appealing, under sect. 9 of the Act, against that value as excessive.—COWDENBEATH PUBLIC-HOUSE SOCIETY, LTD. *v.* FIFE ASSESSOR, [1929] S. C. (Ct. of Sess.) 280.—**SCOT.**

sl. *Failure to appeal—Claim of exemption not barred.*]—Failure to appeal against an assessment does not estop pltf., in an action to recover taxes, that the lands are exempt.—BECKER *v.* TORONTO CITY, [1933] 4 D. L. R. 736; O. R. 843.—**CAN.**

sk. *Premises destroyed by fire after assessment.*]—The Ct. of Tax Appeals cannot reduce an assessment on premises destroyed by fire after assessment but before expiration of time to appeal.—*Re* MUTUAL LIFE ASSCE. CO. *v.* HALIFAX, [1935] 2 D. L. R. 267; 8 M. P. R. 473.—**CAN.**

sm. *Reduction—When possible.*]—A tax can only be reduced under Assessment Act as long as it remains a tax, *i.e.* is unpaid.—ONTARIO JOCKEY CLUB *v.* TORONTO, [1935] 3 D. L. R. 461; O. R. 333.—**CAN.**

sp. *Whether mandamus lies.*]—Where an assessment has been fixed by the Alberta Assessment Commission on an appeal to it, *mandamus* does not lie to compel it to make a re-assessment in accordance with the principles laid down by Alberta Municipal Assessment Commission Act, 1935, which it is alleged have been departed from.—*Re* WILLSON & ALBERTA ASSESSMENT COMMISSION, [1937] 1 W. W. R. 712; *affd.*; 2 W. W. R. 396.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 7.

a i. —— —— —— *Time for bringing action.*]—BARISH & CO. *v.* GAP NO. 3 RURAL MUNICIPALITY & BISS, [1925] 3 D. L. R. 738; [1925] 2 W. W. R. 518; 19 Sask. L. T. 560.—**CAN.**

1392a. Next sessions after date of rate—Not date of realisation of grievance—County Rate Act, 1852 (c. 81), s. 22.]—The appeal given by above sect., to a parish which is "aggrieved by any rate or assessment" made upon the county rate basis to "the next quarter sessions of the peace after such cause of appeal shall have arisen" must be brought to the next practicable quarter sessions after the parish is in fact aggrieved by the rate; the appeal is not to the next practicable quarter sessions to be held after the parish finds out that it is aggrieved.

A county rate which affected the parish of M. was made in Oct. 1904. In Jan. 1905, as the result of an appeal by a railway co. against their assessment to the poor rate in the parish of M., the rateable value of the parish for the purpose of the county rate basis or standard was reduced by a considerable sum. On Apr. 17, 1905, the parish council of M. gave notice of appeal to the next quarter sessions against such part of the basis or standard as affected that parish, & also against the rate existing upon that basis or standard, they alleging that they only knew of the result of the appeal by the railway co. & its effect on the county rate basis on Mar. 28:—*Held:* the parish council had not appealed against the county rate to the next quarter sessions after the "cause of appeal" had arisen within above sect., & therefore the quarter sessions had no jurisdiction to entertain the appeal against the rate.—WEST RIDING OF YORKSHIRE COUNTY COUNCIL *v.* MIDDLETON PARISH COUNCIL, [1906] 2 K. B. 157; 75 L. J. K. B. 485; 94 L. T. 785; 70 J. P. 326; 22 T. L. R. 493; 4 L. G. R. 624, D. C.

Annotations:—**Consd.** Glamorgan County Council *v.* Barry Overseers, [1912] 2 K. B. 603; R. *v.* Carnarvonshire JJ., *Ex p.* Carnarvon County Council, [1918] 1 K. B. 280.

1392b. —— Time for giving notice of appeal.]—On Mar. 17, 1910, a county council fixed the county rate assessment basis for a parish, & on the same day made a rate on the basis so fixed. The county council forwarded their warrant for the first instalment to the guardians of the union in which the parish was included, making the instalment payable by two equal payments. The guardians of the union in due course issued their precept to the overseers of the poor for the amount of the warrant, making it payable in two equal portions, one portion being made payable on Aug. 20, 1910. The county council subsequently forwarded their warrant for the second instalment to the guardians of the parish, making it payable by two equal payments, & the guardians duly issued their precept to the overseers for the amount of the warrant, making it payable in two equal portions, one portion being made payable on Feb. 18, 1911. The parish overseers made the payments in Aug. 1910, & Feb. 1911, as required by the precepts. On Sept. 2, 1910, a railway co. gave notice to the assessment committee of the union in which the parish was included of objection to their assessment in respect of a portion of their line within the parish on the ground of over assessment, & similar notices were during 1910 given by other ratepayers within the parish. For the purposes of the present case the poor rate valuation was taken to be the same as the county rate assessment basis. On Sept. 27, 1910, the parish overseers gave notice to the county council that they felt aggrieved by & objected to the county rate of Mar. 17, 1910, & that they intended to appeal against the rate at the next quarter sessions for the county. On Apr. 13, 1911, the union assessment committee reduced the assessment of the railway co., & from time to time the assessment of the other objectors. The parish overseers subsequently repaid to the railway co. & other objectors £121 6*s.* in respect of over assessment to the county rate as regarded the instalment payable on Aug. 20, 1910, & £107 5*s.* as regarded the instalment payable on Feb. 18, 1911. The hearing of the appeal of the parish overseers to quarter sessions was by consent respited from time to time & ultimately took place on June 27, 1911, when the ct. of quarter sessions ordered the county council to refund to the parish overseers the two sums of £121 6*s.* & £107 5*s.* as being the amounts overpaid by them in Aug. 1910, & Feb. 1911, respectively:—*Held:* it was not competent for the ct. of quarter sessions to hear the appeal or to order repayment by the county council to the parish overseers of either of the two sums inasmuch as, assuming that the parish overseers were aggrieved, the grievance arose either on Mar. 17, 1910, when the county rate was made, in which case the notice of appeal of Sept. 27, 1910, was too late, or on Apr. 13, 1911, when the reduction in the assessment of the railway co. & the other objectors was made by the union assessment committee, in which case the notice of appeal was premature; further, even if the notice of appeal had been given at the proper time, the ct. of sessions would have had no power to order repayment to the overseers of the sum of £121 6*s.* inasmuch as the payment of that sum was made by them in Aug. 1910, before their notice of appeal to quarter-sessions of Sept. 27, 1910, was given, & under County Rates Act, 1852 (c. 81), ss. 22, 23, power is only conferred on a ct. of quarter sessions to which the overseers appeal against a county rate to order repayment to the overseers of any sums overpaid by them after their notice of appeal against the county rate is given by them.—GLAMORGAN COUNTY COUNCIL *v.* BARRY OVERSEERS, [1912] 2 K. B. 603; 81 L. J. K. B. 836; 108 L. T. 118; 76 J. P. 307; 10 L. G. R. 477.

Part VII.—Collection of Rate.

1426a. Transfer—Remuneration.]—In 1927 the Egremont U.D.C. appointed pltf. rent collector at a commission of 2 per cent. on all moneys collected. In 1928 it was resolved that pltf. should be paid at the rate of 3 per cent. on all rents collected by him. Although described as a rent collector, pltf. in fact collected rates as well as rent. In 1934 Egremont was transferred to deft. council, pltf. becoming an officer of that council. By

the order which effected the transfer pltf. was, while performing similar duties, to receive not less remuneration than he would have been entitled to if the order had not been made. Defts. appointed pltf. a rate collector. In an action for remuneration at the rate of 3 per cent. defts. contended that pltf. was entitled to no remuneration in respect of rates. This contention was abandoned at the hearing, defts. then arguing that remuneration should be at the rate of 2 per cent. & not 3 per cent.:—*Held:* upon the evidence pltf. was entitled to remuneration at the rate of 3 per cent. from the Egremont U.D.C. for collecting both rent & rates, & he was therefore entitled to 3 per cent. in respect of the rates collected on behalf of defts.—COWAN *v.* ENNERDALE RURAL DISTRICT COUNCIL, [1936] 3 All E. R. 684.

Part VIII.—Recovery of Rate.

1464. After this case in cross-reference "Poverty of ratepayer.]—See Rating & Valuation Act, 1925 (c. 90), s. 4" read "s. 2 (3), (4)" for "s. 4."

1477a. —— Depends on actual occupation.]— LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, No. 37a, *ante*.

PART VIII. SECT. 1.

e (p. 621) i. —— *What defences available.*]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044; 61 O. L. R. 327.—**CAN.**

e (p. 621) ii. —— *Effect of distraining on right to sue.*]—When a rural municipality distrains under Rural Municipality Act, R. S. S., 1920, for overdue taxes, its right to recover judgment for the taxes as a debt is suspended while the distress exists & until the sale thereunder, since although the Act provides that overdue taxes may be recovered by distress & also by action as a debt it does not provide that these remedies may be pursued concurrently.—GISLASON *v.* RURAL MUNICIPALITY OF FOAM LAKE & WARD, [1929] 2 D. L. R. 386; 1 W. W. R. 233; 23 S. L. R. 359.—**CAN.**

e (p. 621) iii. —— *Against purchaser of land—Effect of War Revenue Amendment Act, 1926, s. 6.*]—*Held:* the expression "the personal covenant to pay" in above sect. means "any personal covenant to pay," & thereby protects a purchaser from actions to recover on a covenant to pay interest or taxes as well as on one to pay the purchase-money, even though the taxes agreed to be paid by the purchaser have been paid by the vendor.—ROBSON *v.* GRAHAM, [1929] 4 D. L. R. 902; 3 W. W. R. 149; 38 Man. L. R. 336.—**CAN.**

e (p. 621) iv. —— *Lands in name of non-existent syndicate.*]—Where lands are entered upon the assessment roll in the name of a non-existent syndicate the city cannot recover personal judgment for arrears of taxes against the individual members of the alleged syndicate.—NORTH BAY CITY *v.* GORDON, 1934] O. R. 376; 3 D. L. R. 328.—**CAN.**

e (p. 621 v. —— *Time for bringing.*]—Assessment Act, C.A.M., 1924, s. 228, bars the recovery of taxes levied under Towns' & Villages' Business Tax Act, R.S.M., 1913, unless proceedings are commenced within six months of payment.—CANADIAN HOTEL CO. *v.* NEEPAWA, [1934] 4 D. L. R. 316.—**CAN.**

e (p. 621) vi. —— *After abortive sale & forfeiture of land.*]—Although the filing of a caveat under Tax Recovery Act of 1922 had not been implemented by the steps required to be taken under that Act to give title to pltf. town it proceeded, after the coming into force of Tax Recovery Act of 1929, to hold a public sale in accordance with that Act of 1929. No bid was offered at the sale, & no further steps taken by the town, until it sued deft. as owner, for arrears of taxes:—*Held:* sect. 36 of the Act of 1929 continued the effect of the caveat; an abortive sale was an offering for sale within sect. 9 of the Act of 1929, & since sect. 19 thereof vests in the town the legal & beneficial ownership of the land on the expiry of one year "from the date of sale," & that year had expired, the town's action failed.—VULCAN TOWN *v.* ELVES, [1935] 2 W. W. R. 587; *affd.*, [1936] 1 W. W. R. 560.—**CAN.**

e (p. 621) vii. —— *Failure to distrain —Effect.*]—GLANFORD *v.* FERRIS (1935), 5 F. L. J. (Can.) 37.—**CAN.**

e (p. 621) viii. —— *Right of municipality to settle.*]—A municipality may settle an action for taxes before it is tried, as this is not a breach of the prohibition against giving a reduction or exemption from taxation.—DESCHENES *v.* LOVEYS, [1936] 3 D. L. R. 210.—**CAN.**

e (p. 621) ix. *In summary way—Impost sanctioned under Water Act, 1912.*]—The impost sanctioned in Water Act, 1912, s. 88 (1), is a rate & may be recovered in a summary way in accordance with the procedure prescribed by sect. 89 (3) of that Act.—*Re* JAMIESON, *Ex p.* CHRISTIAN (1928), 28 S. R. N. S. W. 275.—**AUS.**

n (p. 621) i. —— —— ——.]—CLARY *v.* BOULAY (Ont.), [1928] 2 D. L. R. 144.—**CAN.**

n (p. 621) ii. —— —— ——.]—A mtgee. who purchases at a tax sale & obtains a tax title is in the same position as if he had obtained a foreclosure absolute.—*Re* ARREARS OF TAXES ACT, *Re* LAND TITLES ACT, [1937] 1 W. W. R. 696.—**CAN.**

n (p. 621) iii. —— —— *Lessee.*]—HEYDEN *v.* CASTLE (1888), 15 O. R. 257.—**CAN.**

p (p. 621) i. —— —— *Mayor.*]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

q (p. 621) i. —— —— *Reeve.*]—TOTTEN *v.* TRUAX (1889), 16 O. R. 490.—**CAN.**

bb (p. 621) i. —— —— ——.]—TETRAULT *v.* VAUGHAN (1899), 12 Man. L. R. 457.—**CAN.**

bb (p. 621) ii. —— —— ——.]—BANNATYNE *v.* PRITCHARD (1906), 16 Man. L. R. 407; 5 W. L. R. 478.—**CAN.**

bb (p. 621) iii. —— —— *Agricultural co-operative association.*]—MEASNER *v.* BENGERT, [1927] 3 D. L. R. 938; [1927] 2 W. W. R. 713; 21 Sask. L. R. 572; *varying*, [1927] 3 D. L. R. 205.—**CAN.**

bb (p. 621) iv. —— —— *Life tenant —Whether rights of remainderman defeated.*]—A life tenant cannot by defaulting in the payment of taxes & then acquiring the tax-sale title, instead of redeeming, defeat the remainderman's rights.—MAYO *v.* LEITOVSKI, 1928] 1 W. W. R. 700.—**CAN.**

dd (p. 621) i. —— ——.]—CONNOR *v.* MCPHERSON (1871), 18 Gr. 607.—**CAN.**

ff (p. 621) i. —— —— ——.]—GEMMEL *v.* SINCLAIR (1885), 1 Man. L. R. 85.—**CAN.**

kk (p. 621) i. —— —— *Lots on plan in registry not duly certified by surveyor.*]—ASTON *v.* INNIS (1878), 26 Gr. 42.—**CAN.**

kk (p. 621) ii. —— —— *Fixtures—Buildings & machinery.*]—Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

ll (p. 621) i. —— ——.]—*Re* HENDERSON (1891), 7 Man. L. R. 481.—**CAN.**

ll (p. 621) ii. —— ——.]—*Re* CAREY & LOT 65, SUB-DIVISION OF LOT 39 E., ST. JOHN (1893), 9 Man. L. R. 483.—**CAN.**

ll (p. 621) iii. —— ——.]—RUSH *v.* PEMBINA (Alta.), [1927] 1 D. L. R. 394; [1927] 1 W. W. R. 215.—**CAN.**

qq (p. 621) i. —— —— —— *How far deed conclusive.*]—ARCHIBALD *v.* YOUVILLE (1891), 7 Man. L. R. 473.—**CAN.**

qq (p. 621) ii. —— —— —— ——.]—SCHULTZ *v.* ALLOWAY (1894), 10 Man. L. R. 221.—**CAN.**

tt (p. 621) i. —— —— —— ——.]—WEEGAN *v.* MCDIARMID (1862), 12 C. P. 499.—**CAN.**

vv i. —— —— —— ——.]—LOUNT *v.* WALKINGTON (1868), 15 Gr. 332.—**CAN.**

e (p. 622) i. —— —— —— *Whether seal valid.*]—MCRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—**CAN.**

e (p. 622) ii. —— —— —— ——.]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—**CAN.**

e (p. 622) iii. —— —— —— *Deed not in duplicate.*]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—**CAN.**

e (p. 622) iv. —— —— —— *Injunction to restrain issue of deed—No bye-law passed.*]—JAMES *v.* BELL, 11 C. L. T. Occ. N. 57.—**CAN.**

e (p. 622) v. ——— *Amendment of Tax Recovery Act, 1919 (c. 20), s. 44a.*]—THACKER *v.* SMOKY LAKE MUNICIPAL DISTRICT, SHEARER *v.* SMOKY LAKE MUNICIPAL DISTRICT, A.-G. OF ALBERTA *v.* SMOKY LAKE MUNICIPAL DISTRICT, PELLETIER *v.* OPAL MUNICIPAL DISTRICT (Alta.), [1924] 3 W. W. R. 929.—CAN.

g (p. 622) i. ——— If when land has been sold by a municipality for taxes the notice provided for by sect. 42 of Tax Recovery Act, or in lieu thereof that provided for by sect. 9 of Tax Sale Relief Act, 1922, has not been sent to the owner the sale is invalid. If in an action by the owner to recover damages for the wrongful sale he testifies that he never received said notice & the ct. sees no reason to disbelieve him, the onus is on the municipality to prove that it was sent.—KOWNATZKI *v.* BEAR LAKE, MUNICIPAL DISTRICT, [1930] 3 W. W. R. 353; [1931] 1 D. L. R. 334; *revsd. on other grounds*, [1931] 1 W. W. R. 757; 2 D. L. R. 318; 25 Alta. L. R. 351.—CAN.

n (p. 622) i. ——— DOE d. UPPER *v.* EDWARDS (1849), 5 U. C. R. 594.—CAN.

n (p. 622) ii. ——— DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—CAN.

bb (p. 622) i. ——— —WHITE *v.* MUNICIPAL DISTRICT OF INGA & PIDGEON, [1929] 1 D. L. R. 360; 1 W. W. R. 172; 23 Alta. L. R. 585; *revsg.*, [1928] 3 D. L. R. 829; 3 W. W. R. 251.—CAN.

dd (p. 622) i. ——— *Notice to mortgagee of application for title sent to wrong address & not delivered.*]—HOWE *v.* KIPP, [1927] 3 D. L. R. 1048; [1927] 2 W. W. R. 522; 21 Sask. L. R. 637.—CAN.

ff (p. 622). *Revsd.*, [1927] 1 D. L. R. 1063; [1927] S. C. R. 50.—CAN.

gg (p. 622) i. ——— RUSH *v.* PEMBINA (Alta.), [1927] 1 D. L. R. 394; [1927] 1 W. W. R. 215.—CAN.

kk (p. 622) i. ——— DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—CAN.

ggg (p. 622) i. ——— — SUMMERLAND DEVELOPMENT CO., LTD. *v.* SUMMERLAND, [1928] 4 D. L. R. 258; [1928] 3 W. W. R. 145.—CAN.

mmm (p. 622) i. ——— —HILL *v.* MACAULAY (1884), 6 O. R. 251.—CAN.

mmm (p. 622) ii. ——— —REED *v.* SMITH (1884), 1 Man. L. R. 341.—CAN.

mmm (p. 622) iii. ——— —TETRAULT *v.* VAUGHAN (1899), 12 Man. L. R. 457.—CAN.

rrr (p. 622) i. ——— GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—CAN.

ttt (p. 622) i. ——— WOOD *v.* BIRTLE (1887), 4 Man. L. R. 415.—CAN.

k (p. 623) i. ——— McDONALD *v.* ROBILLARD (1863), 23 U. C. R. 105.—CAN.

r (p. 623) i. ——— *Whether sale conducted in fair, open & proper manner.*]—DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—CAN.

r (p. 623) ii. ——— McRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—CAN.

r (p. 623) iii. ——— SCOTT *v.* IMPERIAL LOAN CO. (1896), 11 Man. L. R. 190.—CAN.

dd (p. 623) i. ——— *Right to recover damages against municipality—Assessment Act, R. S. M. (c. 101), s. 192.*]—CLEMONS *v.* ST. ANDREWS (1896), 11 Man. L. R. 111.—CAN.

oo (p. 623) i. ——— *Property not sufficiently defined or described.*]—TOWNSEND *v.* ELLIOTT (1861), 11 C. P. 217.—CAN.

oo (p. 623) ii. ——— —DOMANISKY *v.* FITZGERALD (1921), 62 D. L. R. 524; 55 N. S. R. 1.—CAN.

pp (p. 623) i. ——— *Issued statute.*]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—CAN.

hhh (p. 623) i. ——— *To mortgagee.*]—The mailing to a registered mtgee. of the tax-sale notice is a condition precedent to the exercise of any jurisdiction to hold a tax sale of the mrtged. land; & since the notice in question herein sent to pltf. mtgee. was not such a notice as is so prescribed: —*Held:* any sale or proceedings to sell the land covered by her registered charge would be illegal.—LOWE *v.* CAWSTON IRRIGATION DISTRICT, [1933] 3 W. W. R. 151; 4 D. L. R. 385; *affd.*, [1934] 1 W. W. R. 508; 2 D. L. R. 464; 48 B. C. R. 83.—CAN.

nnn (p. 623) i. ——— *Burden of proof—Of invalidity.*]—McRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—CAN.

nnn (p. 623) ii. ——— *Of validity.*]—ALLOWAY *v.* CAMPBELL (1891), 7 Man. L. R. 506.—CAN.

nnn (p. 623) iii. ——— *Irregularities in assessment.*]—Complete failure to observe the requirements of Assessment Act, R. S. M., 1913, & its amendments, with respect to assessing one of the two owners of undivided halves of a quarter section & notifying him of the assessment & the tax-sale proceedings:—*Held:* to render the tax sale of his interest ineffective against him.—SZEWCZYK *v.* GILBERT PLAINS RURAL MUNICIPALITY, [1933] 2 W. W. R. 326.—CAN.

nnn (p. 623) iv. ——— *Sale before expiration of redemption period.*]—HYLAND *v.* HALIFAX CITY, [1932] 3 D. L. R. 760; 5 M. P. R. 174; *revsd.*, [1933] 2 D. L. R. 115; S. C. R. 317.—CAN.

ooo (p. 623) i. ——— *Bidding more than amount due for taxes & costs—Effect of.*]—*Re* DUNN & EXPROPRIATION ACT (1898), 12 Man. L. R. 78.—CAN.

ooo (p. 623) ii. ——— *Mortgagee—Taking assignment of tax sale certificate & obtaining title—Extinguishment of mortgagor's rights.*]—FARROW *v.* MASSEY-HARRIS CO., LTD., [1927] 3 D. L. R. 997; [1927] 2 W. W. R. 539; 21 Sask. L. R. 610.—CAN.

ooo (p. 623) iii. ——— —McNABB *v.* LANDED BANKING & LOAN CO., [1935] 2 W. W. R. 630; 43 Man. L. R. 265; 5 F. L. J. (Can.) 68.—CAN.

ooo (p. 623) iv. ——— *Statement in certificate of title that title subject to existing leases—Effect of.*]—SHEWCHUK *v.* SEAFRED, [1927] 3 D. L. R. 280; [1927] 2 W. W. R. 207; 36 Man. L. R. 469.—CAN.

ooo (p. 623) v. ——— *Issue of certificate of title—Effect of—On judgment for alimony filed against land.*]—*Re* SMITH, *Re* LAND TITLES ACT, [1925] 2 D. L. R. 556; [1925] 1 W. W. R. 1057; 19 Sask. L. R. 577.—CAN.

ooo (p. 623) vi. ——— *No to mortgagee for rentals received.*]—Deft. purchased at a tax sale land of which pltf. co. was mtgee. & let the land to a tenant. Pltf. co. redeemed the land & then sued deft. for the rental he had received in the interval: —*Held:* deft. had the right to lease the land as an owner could, & to receive the rents. The mtgee., not being in possession, could not claim an accounting merely because it had paid the arrears of taxes.—NATIONAL TRUST CO. *v.* BARKER, [1931] 3 D. L. R. 583; O. R. 388.—CAN.

ooo (p. 623) vii. ——— *Whether liable for arrears—Statutory provision for liability of owner until redemption.*]—MARCELIN VILLAGE *v.* DEBENTURE CO. OF CANADA, LTD., [1934] 3 W. W. R. 356.—CAN.

ooo (p. 623) viii. ——— *Application for title—Debt Adjustment Act, 1932, s. 6.*]—A tax-sale purchaser of a homestead registered in the name of the wife applied for notices of its application for title to be served upon those interested in the land. The district registrar refused to do so unless he was furnished with a certificate under Debt Adjustment Act, 1932, authorising proceedings against the husband. On appeal:—*Held:* that sect. 6 of said Act applied & the registrar was right in refusing to issue the notice in the absence of said certificate.—*Re* NOWASAD, [1935] 1 W. W. R. 665; 43 Man. L. R. 108.—CAN.

uuu (p. 623) i. ——— *Treasurer.*]—The treasurer is a necessary party to an action to set aside a tax sale.—CRUISE *v.* RIVERSIDE, [1935] 2 D. L. R. 171; O. R. 151.—CAN.

k (p. 624) i. ——— *Time for bringing.*]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—CAN.

624) ii. ——— *Costs—of purchaser.*]—BLANCHARD *v.* SCANLAN (1885), 3 Man. L. R. 13.—CAN.

k (p. 624) iii. ——— *Misdescription.*]—Title to mining property having been granted by the Crown in 1906 to one K., the latter appeared in the books of applt. municipality as owner until 1926, when the property & the buildings erected thereon were sold for unpaid taxes which were alleged to be due by K. Resp. co. bought the property in 1922. According to the books of applt. municipality in 1926 & previously, the land & the buildings were not described on the valuation roll under consecutive numbers nor on the same pages of the book. Accounts for municipal & school taxes were sent & paid by resp. co. It was not disputed that the taxes on the buildings were paid; but the municipality claimed taxes were due on the land. Applt. municipality, in the public notice of sale for unpaid taxes, described the whole lot as being to be sold without indicating that the buildings were excluded. In 1928, title to the property was delivered to the purchaser at the tax sale by applt. Resp. co. had no knowledge of the sale until 1929 when notified by the purchaser & then took an action to annul the sale:—*Held:* the tax sale was null & void *ab initio*, & the title of the purchaser should be set aside.—ST. JOSEPH DE COLERAINE (LA CORPN. DE LA PAROISSE DE) *v.* COLONIAL CHROME CO., LTD., [1933] S. C. R. 13.—CAN.

d (p. 624) i. ——— *Re* LEWIS & PHALEN (N. W. T.) (1905), 1 W. L. R. 36.—CAN.

e (p. 624) i. ——— *Meaning of "sale."*]—There is a "sale" within the meaning of "sale" in Tax Recovery Act, R. S. A., 1922, s. 21 (1), as amended by 1923, s. 28, when a *bona fide* agreement has been made to sell to a purchaser at the auction sale authorised by said Act.—STANDARD TRUST CO. *v.* MUNICIPALITY OF STEWART, [1929] 2 D. L. R. 271; W. W. R. 650; 24 Alta. L. R. 5[illegible] *revsg.*, [1928] 4 D. L. R. 802; 3 W. W. R. 409.—CAN.

f (p. 624) i. ——— *of land sold under decree.*]—TURRILL (1877), 7 P. R. 142.—CAN.

L. R. 458.—CAN.

1488. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1519. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1525a. Effect of compounding allowance—On proceedings for recovery under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.]—Where owners are rated instead of the occupiers, the fact that the owners are entitled to an allowance if the rate is paid by a certain date does not preclude the rating authority from enforcing at an earlier date payment of so much of the rate as is recoverable at one time under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.—LOWERY *v.* KINGSTON-UPON-HULL CORPN., [1930] 1 K. B. 368 ; 73 Sol. Jo. 819 ; *sub nom.* LOWERY *v.* HULL CORPN., 99 L. J. K. B. 127 ; 142 L. T. 286 ; 94 J. P. 50 ; 28 L. G. R. 27 ; 46 T. L. R. 57 ; (1926-31), 1 B. R. A. 359, D. C.

Part IX.—Rates and Rating in the Metropolis.

1530a. —— Service of—Whether necessary.]—By Metropolis Management Act, 1855 (c. 120), s. 158, every vestry & district board shall from time to time " by order under their seal require " the overseers of their parish to levy the sums which such vestry or board may require for defraying the expenses of the execution of the Act. By sect. 161 the overseers " to whom any such order as aforesaid is issued shall levy the amount mentioned therein according to the exigency thereof " : —*Held :* such an order became effective when sealed, & service of it on the overseers was not necessary to authorise them to levy rates, but rates made by overseers in pursuance of such order, after notice of it having been sealed, were valid.—GLEN *v.* FULHAM OVERSEERS (1884), 14 Q. B. D. 328 ; 54 L. J. M. C. 9 ; 54 L. J. Q. B. 176 ; 51 L. T. 856 ; 49 J. P. 519 ; 1 T. L. R. 135 ; 33 W. R. 165.

1531. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1536. *Add. Annotations :*—**Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277 ; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City)

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kk (p. 624) i. —— —— *Whether adequate remedy.*]—SCHULTZ *v.* ALLOWAY (1894), 10 Man. L. R. 221.—**CAN.**

kk (p. 624) ii. —— —— *Sale by purchaser—Whether waiver of right to ender.*]—NEW BRUNSWICK LAND & INVESTMENT CO. *v.* SIME, [1928] 4 D. L. R. 214 ; *affd.*, [1929] 3 D. L. R. 197.—**CAN.**

kk (p. 624) iii. —— —— *Sale by treasurer.*]—A treasurer selling land in exercise of a statutory power is still the agent or officer of the municipality & if he fails to give the statutory notice to redeem the right of the former owner to set aside the deed is barred if he has not paid the taxes within 3 years or redeemed within 1 year.—LANGDON *v.* HOLTYREX GOLD MINES, LTD., [1937] S. C. R. 334 ; 2 D. L. R. 364.—**CAN.**

oo (p. 624) i. —— *Rates owing to local authority—Incorporated with municipality before payment.*]—BRISBANE CITY COUNCIL *v.* HODGE, [1928] S. R. Q. 102 ; 22 Q. J. P. R. 63.—**AUS.**

hhh (p. 624) i. —— ——.]—A co. was granted a fixed tax in a municipality, on condition that its pay roll did not fall below a specified amount. If it did so fall, assessed taxes for past years became payable. It did so fall, & the co. being insolvent, the town claimed payment in priority to mtgees. & holders of receiver's certificates :—*Held :* there was a lien for taxes in priority to all other claims except the Crown.—NOVA SCOTIA TRUST CO. *v.* STARR MANUFACTURING CO., [1934] 4 D. L. R. 571.—**CAN.**

ooo (p. 624) i. —— —— *When proceedings taken to collect tax.*]—*Re* MCKENZIE H. D. CO., [1928] 1 D. L. R. 336 ; 8 C. B. R. 509.—**CAN.**

ppp (p. 624) i. —— —— —— ——.]—A person who, although he has not yet any estate in possession, is entitled to an estate in remainder for life, is a " person who has some interest in the land," within the meaning of sect. 229 of Assessment Act, 1924.—ROGERS *v.* CICNYK, [1931] 3 W. W. R. 20 ; 40 Man. L. R. 233.—**CAN.**

ppp (p. 624) ii. —— *Crop payment lease—Whether lessor assignee of lessee.*]—Where there is a crop-payment lease the lessor's title to his share of the undelivered crop cannot be said to be derived by " assignment from a taxable person " within sect. 357 (c) (ii) of Municipal District Act, 1926, but is vested in the lessor directly by virtue of Crop Payments Act, 1922 ; &, therefore, is not property which is " liable to seizure for taxes " within sect. 361 of said Municipal District Act.—GREAT WEST LIFE ASSURANCE CO. *v.* STERLING MUNICIPAL DISTRICT, [1931] 3 W. W. R. 730 ; [1932] 1 D. L. R. 688 ; 26 Alta. L. R. 199.—**CAN.**

ppp (p. 624) iii. —— *Sale of land—Inquiry by purchaser—Estoppel of city.*]—Property was sold for arrears of taxes & the owner remained in possession with power to redeem within two years. Before the expiration of this time the owner sold to a purchaser who obtained a statement from the city collector of " all the city charges " against the property, the lien for taxes being omitted :—*Held :* the city was estopped from asserting a claim for these taxes against the purchaser.—MELYNK *v.* SYDNEY, [1934] 2 D. L. R. 74 ; 7 M. P. R. 428.—**CAN.**

ppp (p. 624) iv. *Recovery by taxpayer —Limitation of action.*]—Sect. 228 of Assessment Act, 1924, applies to taxes levied under Towns' & Villages' Business Tax Act, R. S. M., 1913.—CANADIAN HOTEL CO., LTD. *v.* NEEPAWA TOWN, [1934] 2 W. W. R. 591 ; 4 D. L. R. 316.—**CAN.**

sq. *Percentage on arrears.*]—*Held :* the 10 per cent. charged upon arrears of taxes due upon land was to be added to the whole amount due upon the lot & not upon the amount of each year's taxes separately, thereby making it a compound computation of 10 per cent. each year.—GILLESPIE *v.* HAMILTON (1862), 12 U. C. C. P. 426.—**CAN.**

sg. *Recovery of taxes paid under protest.*]—AYLEWORTH *v.* TORONTO (1936), 4 D. L. R. 229 ; 6 F. L. J. 4.—**CAN.**

PART VIII. SECT. 2.

sr. *Demand upon tenant—What amounts to.*]—A demand for taxes in the joint names of owner & tenant is not a demand upon the tenant within Assessment Act, R.S.O., 1927.—*Re* CAMPBELL'S HARDWARE, [1935] 2 D. L. R. 349 ; O. R. 228.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 2. —A.

sy. *Expenses of distress.*]—The tariff set out in Distress Act, R. S. M., 1913, is not exclusive & expenditures not provided for but necessarily incurred by, for instance, a mtgee. are to be allowed him. The bailiff or party making a distress cannot make for himself any sums other than the charges described in Sched. A to Distress Act.—SALTER & ARNOLD, LTD. *v.* NEEPAWA TOWN, [1933] 2 W. W. R. 105 ; 4 D. L. R. 371 ; 41 Man. L. R. 258.—**CAN.**

sz. *Seizure of crop—Failure to sell—Liability to lessor.*]—Where a crop on the land of a tenant under a crop-sharing lease was seized under Rural Municipality Act, R. S. S., 1930, for taxes due a rural municipality :—*Held :* the municipality was liable to the lessor for the value of the crop lost through its negligence in not selling the crop & in permitting it to be diverted to meet other claims.—HAGEL *v.* CANA RURAL MUNICIPALITY, [1935] 3 W. W. R. 190 ; *affd.*, [1935] 3 W. W. R. 192.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 2.—D.

sd. *Liability for wrongful arrest.*]—Liability of municipality for false arrest for non-payment of poll-tax, pltf.'s name not being on assessment roll.—ELMS *v.* MULGRAVE, [1933] 4 D. L. R. 820.—**CAN.**

Assessment Committee (1932), 147 L. T. 396; Railway Assessment Authority *v.* Southern Ry. Co., London County Council *v.* Southern Ry. Co., [1936] 1 All E. R. 26; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585; Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

1545. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

1546. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., 17 Tax Cas. 231.

1550. *Add. Annotation :*—**Consd.** Liptons, Ltd. *v.* Shoreditch Assessment Committee (1934), 50 T. L. R. 432.

1561. *Add. Annotation :*—**Apprvd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1564a. Failure to object in time—Whether mandamus to alter lies.]—W. & Sons occupied premises which they claimed were entitled to be derated, as being industrial hereditaments. The claim was rejected by the local authority & by quarter sessions, but was finally upheld by the Divisional Ct. Pending the appeal to that ct., the new quinquennial valuation list had been prepared, in which the premises had been entered as fully rateable, & W. & Sons had not appealed against it as provided for by Valuation of Property (Metropolis) Act, 1869 (c. 67), in the belief that if their appeal to the Divisional Ct. were successful their premises would, *ipso facto*, be transferred to the industrial hereditaments list. The local authority, however, refused to transfer, & W. & Sons obtained a rule *nisi* for *mandamus* ordering them to do so, which ultimately was made absolute by the Ct. of Appeal :—*Held :* the relevant statutory provisions for the preparation & deposit of valuation lists showed that the Legislature had provided fully for any person affected to make objection & appeal, & it was of the first importance that the list once settled should be conclusive. The writ of *mandamus* was founded to prevent the failure of the performance of some public duty, & applts. had failed in no duty. Resps. had neglected their right under the Valuation (Metropolis) Act, 1869 (c. 67), to object & appeal against the list, & it was not necessary to add new safeguards, such as proceeding by writ of *mandamus*, to those already provided by statute. *Mandamus* was not granted where there was another sufficient & convenient remedy.—STEPNEY BOROUGH COUNCIL *v.* WALKER (JOHN) & SONS, LTD., [1934] A. C. 365; 103 L. J. K. B. 380; 50 T. L. R. 287; 78 Sol. Jo. 238; *sub nom.* R. *v.* STEPNEY CORPN., *Ex p.* WALKER (JOHN) & SONS, LTD., 151 L. T. 42; 98 J. P. 191; 32 L. G. R. 181, H. L.

Annotation :—**Refd.** R. *v.* Railway Assessment Authority, *Ex p.* Southampton Corpn., [1937] 1 All E. R. 431.

1588a. Classification of hereditament as industrial.]—LIPTON, LTD. *v.* SHOREDITCH ASSESSMENT COMMITTEE, No. 1162a, *ante*.

1601. *Add. Annotations :*—**Consd.** R. *v.* Worthing Borough Council & Horsham & Worthing Assessment Committee, *Ex p.* Burgess, [1937] 2 All E. R. 681. **Refd.** Lipton, Ltd. *v.* Shoreditch Assessment Committee (1934), 50 T. L. R. 432.

1603. *Add. Annotation :*—**Consd.** Lewis *v.* Elgy (1927), 11 Tax Cas. 723.

1608. *Add. Annotations :*—**Refd.** Leney (Alfred) & Co. *v.* Whelan, [1934] 2 K. B. 511; Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48.

1609. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Westminster Assessment Committee, *Ex p.* Black (1933), 102 L. J. K. B. 541.

1611. *Add. Annotations :*—**Distd.** R. *v.* Westminster Assessment Committee, *Ex p.* Black, [1934] 1 K. B. 159. **Refd.** R. *v.* Minister of Transport, *Ex p.* Upminster Services, Ltd., [1934] 1 K. B. 277.

1611a. Power to transpose entries—Although no objection as to one.]—In May, 1932, a double flat which had formerly been occupied as a single flat was divided by the owner into two flats & let to separate tenants & was known as Nos. 3 & 4, Duke Street Mansions. In Oct. 1932, a provisional valuation list was made which included the two flats. That list showed No. 3 to be rated at £169 gross & £137 rateable value & No. 4 at £146 & £118 rateable value. The owner pursuant to Valuation (Metropolis) Act, 1869 (c. 67), s. 47 (4), gave notice of objection to the provisional list so far as it related to No. 3, but he gave no notice of objection in respect of No. 4. The owner's representative attended & objected that the figures entered opposite Nos. 3 & 4 had by accident been transposed. The assessment committee amended the provisional valuation list with the result that the valuation of the two flats was increased by £58. The owner objected that no notice had been given him that the valuation of No. 4 would be considered by the assessment committee. The Div. Ct. held that under sect. 47 (7) of 1869 Act the assessment committee had power to alter entries in the provisional list even where no objection had been made to those entries. On Appeal :—*Held :* on the facts, the two flats, Nos. 3 & 4, must be regarded as one hereditament, & that being so, all the requirements of sect. 47 of 1869 Act had been duly complied with.—R. *v.* WESTMINSTER ASSESSMENT COMMITTEE, *Ex p.* BLACK, [1934] 1 K. B. 159; 103 L. J. K. B. 62; 150 L. T. 86; 97 J. P. 323; 31 L. G. R. 405, C. A.

1616a. Time for hearing appeal.]—When it is impossible for justices to dispose of their list by Mar. 31, they have jurisdiction after that date to hear an appeal of which notice was given at the proper time, &, if the parties are not ready for trial as soon as the justices are able to hear the appeal, the justices have a discretion to postpone the hearing, so that they may have proper materials before them. —R. *v.* LONDON COUNTY JJ., *Ex p.* LOCKE LANCASTER & JOHNSON (W. W. & R.) & SONS, LTD., [1929] 1 K. B. 81; 98 L. J. K. B. 44; 139 L. T. 609; 92 J. P. 183; 44 T. L. R.

728; 72 Sol. Jo. 584; 26 L. G. R. 549; (1926–31), 1 B. R. A. 267, D. C.

Annotation:—**Consd.** R. *v.* London Justices, *Ex p.* Shoreditch Assessment Committee (1932), 96 J. P. 323.

1617a. —— Power to extend time.]—The time fixed by Valuation (Metropolis) Act, 1869 (c. 67), s. 42 (13), for the hearing of appeals is imperative & not merely directory. Therefore the jurisdiction conferred on justices by sect. 34 of that Act to order notice of appeal to be given after the date, Jan. 14, specified in s. 42 (12) in an appropriate year only enables that to be done where the notice can be given in time for the hearing of the appeal before the ensuing Mar. 31, as provided by s. 42 (13).—R. *v.* LONDON JUSTICES, *Ex p.* SHOREDITCH ASSESSMENT COMMITTEE, [1932] 2 K. B. 697; 101 L. J. K. B. 599; 147 L. T. 357; 96 J. P. 323; 48 T. L. R. 531; 30 L. G. R. 357, D. C.

REAL PROPERTY AND CHATTELS REAL.

Part I.—In General.

5. *Add. Annotation :*—**Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

14. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

Part II.—Estates and Interests in Real Estate.

135. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

159a. ——.]—A leasehold for lives being settled on A. for life, with remainder to B., as *quasi* tenant in tail, with remainders over :—*Held :* the *quasi* tenant in tail could not, by fine or otherwise, during the life of A., bar the subsequent remainders without the concurrence of A.—SLADE *v.* PATTISON (1835), 5 L. J. Ch. 51.

Annotations :—**Refd.** Edwards *v.* Champion (1853), 3 De G. M. & G. 202 ; Pickersgill *v.* Grey (1862), 30 Beav. 352.

183a. **Cestui que vie dead—& death concealed.**]—*Re* JOBHERNS, *Ex p.* FLETCHER (1835), 4 L. J. Ch. 219.

220. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART I. SECT. 1.

3 ii. —— ——.]—HUNTER *v.* FARRELL (N. B.) (1913,) 13 E. L. R. 354 ; 14 D. L. R. 556.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

f i. —— *Right to build.*]—The right to build a house on another man's land is not an incorporeal hereditament. Such a right is a mark of title & of exclusive enjoyment, & is not an easement or *profit à prendre.*—PITMAN *v.* NICKERSON (1891), 40 N. S. R. 20.—**CAN.**

PART I. SECT. 6.

c i. —— —— *Erections by purchaser under instalment agreement.*] — What may be only a chattel if erected by a tenant for years may well become part of the soil if erected by a purchaser of the land under an agreement for sale.

Wire fencing & fence posts erected or completed by the deft. while he occupied land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, &, therefore, to have passed to the Crown when deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of pltf. when he purchased the land from the Crown.—LAROCHELLE *v.* MARCHAND, [1928] 3 W. W. R. 731.—**CAN.**

c ii. —— ——.]—On the question whether articles affixed to land have become part of the realty, the intention of the person who affixed them is material only in so far as it can be presumed from the degree & object of the annexation. Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They, therefore, became the property of deft., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

l i. *Printing presses.*]—RICHARDSON *v.* HARDIE, [1928] 2 W. W. R. 246.—**CAN.**

m (p. 663) i. *How far English law of fixtures applicable in Canada—As between original vendor & subsequent vendees.*]—TRAVIS-BARKER *v.* REED 1922), 66 D. L. R. 426 ; 17 Alta. L. R. 319 ; [1921] 3 W. W. R. 770 ; *revsd.* on the facts, [1923] 3 D. L. R. 927 ; [1923] 3 W. W. R. 451.—**CAN.**

PART I. SECT. 7.

o. —— *When presumed—After long possession.*]—DOE d. MCKAY *v.* ALLEN (1851), 7 N. B. R. (2 All.) 191.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

sm. " *Use forever* " — *Effect.*]—An Act provided that the county of L. should pay a sum towards the cost of a building owned by the town of L. for the " use forever " of certain rooms in the building :—*Held :* an interest in land unknown to the common law may be created by statute. The words " use forever " did not give a fee simple or a joint tenancy, but gave a right in perpetuity, the fee simple remaining in the town.—LUNENBERG (TOWN) *v.* LUNENBERG (MUNICIPALITY), [1932] 1 D. L. R. 386 ; 4 M. P. R. 181. —**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A. (a).

sa. *Estate of widow of locatee—Public Lands Act (Ont.), 1914, s. 47.*]—*Re* COURT, [1930] 1 D. L. R. 113 ; [1929] S. C. R. 50.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A. (b).

a i. —— *To grantee " for ever."*]—TRUST & LOAN CO. *v.* CLARKE (1878), 3 A. R. 429.—**CAN.**

a ii. —— " *& the heirs of his body for twenty-one years or the term of his life fully to be completed.*"]—Deft. on Oct. 13, 1852, granted the land in question to one S. to hold " to the said S. & the heirs of his body for twenty-one years, or the term of his natural life, from Apr. 1, 1853, fully to be completed & ended " :—*Held :* by the lease S. took a life estate, in which the term merged, & he, therefore, had no interest which the sheriff could sell under the *fi. fa.* against goods.—DALYE *v.* ROBERTSON (1860), 19 U. C. R. 411.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

m i. —— *Homestead.*]—Pltf. transferred to his wife a city house which was their homestead within Dower Act, C. A., 1924. The transfer was registered subject to a mtge. Later he & his wife moved from the house to a farm where he built a new house in which they resided until his wife left him. She never returned, & in 1934 died. Her will devised the city house to deft. :—*Held :* in view of sect. 4 of said Act, pltf. was entitled to his " dower " rights in the city house ; he was not obliged to reimburse his wife's estate for the amount of the mtge., which she had paid off ; & he was entitled to the rents & profits of the house from the death of his wife less the cost of taxes, insurance & ordinary repairs.—BEATTY *v.* COLMAN, [1936] 1 W. W. R. 714 ; 2 D. L. R. 591 ; 44 Man. L. R. 28.—**CAN.**

sa. *Effect of Married Women's Property Act.*]—*Re* BROWN (1936), 5 F. L. J. (Can.) 293.—**CAN.**

PART II. SECT. 4, SUB-SECT. 6.

sg. *Claims of creditors & mortgagee.*] —Claims of creditors & mtgee. held to have priority over husband's claim to curtesy.—*Re* COYLE, [1934] 3 D. L. R. 792.—**CAN.**

PART II. SECT. 5.

pp (p. 679) i. —— —— ——.]—CAMPBELL *v.* ROYAL CANADIAN BANK (1872), 19 Gr. 334.—**CAN.**

o (p. 680) i. —— —— ——.]—*Re* LESPERANCE, [1927] 4 D. L. R. 391 ; 61 O. L. R. 94.—**CAN.**

o (p. 680) ii. —— —— ——.]—*Re* WILLIAMS (1903), 24 C. L. T. 91 ; 7 O. L. R. 156 ; 3 O. W. R. 251.—**CAN.**

t (p. 680) i. —— ——.]—*Re* TIERNEY, [1927] 3 D. L. R. 943 ; 60 O. L. R. 652.—**CAN.**

qq (p. 680) i. —— *Lands passing to husband under intestacy of father—Husband dying intestate.*]—*Re* ARCHIBALD (1908), 5 E. L. R. 510.—**CAN.**

aaa (p. 680) i. —— —— *What is.*]—IRONSIDES *v.* GREEN (Man.), [1927] 3 D. L. R. 168 ; [1927] 2 W. W. R. 59.—**CAN.**

aaa (p. 680) ii. —— —— ——.]—*Re* RIPSTEIN ESTATE (Man.), [1927] 3 W. W. R. 791.—**CAN.**

aaa (p. 680) iii. —— —— ——.]—A claim of homestead under the Dower Act, C. A., 1924, c. 54, rests upon a dwelling-house being not merely occupied by the owner but " as his home." The words " his home " import something more than a mere temporary or occasional lodging place. Though not every home is a homestead, yet, sub-

285a. Father & daughter living together—Daughter maintained out of mixed fund.]—A daughter was entitled to one-fifth of some property, & her father to the remainder. She resided with, & was maintained by him, & he received the whole of the rents. After

ject to certain qualifications as to the need of a written consent to a change of homestead, the homestead (if any) can only be where the home is. There cannot be more than one homestead at any one time.—NATIONAL TRUST CO., LTD. *v.* GREENGARD (Man.), [1930] 1 D. L. R. 58; [1929] 3 W. W. R. 363.—**CAN.**

aaa (p. 680) iv. —— —— ——.]—An upstairs suite in an apartment block cannot be a "homestead" within Dower Act, C. A., 1924, c. 53; nor can the fact that the owner of such a block resides in one of the suites therein render the whole block his "homestead."—*Re* RIPSTEIN ESTATE, [1929] 2 D. L. R. 935; 1 W. W. R. 788; 38 Man. L. R. 184; *affg.*, [1927] 3 W. W. R. 791.—**CAN.**

aaa (p. 680) v. —— —— ——.]—Dower Act, R.S.A., 1922, does not give a widow a dower interest in the unexpired portion of a lease of land, unless *semble* where the lease was one which created in the husband an estate of a duration greater than the possible duration of a widow's life. Even assuming that dower attaches to the interest of the husband in land rented to him on a crop-sharing basis, Dower Act does not transfer to the widow the ownership of his share of a crop growing thereon at his death. Dower Act Amendment Act, 1926, does not affect either sect. 2 of Dower Act, *supra*, which contains a definition of homestead, or sect. 3 thereof, which declares every disposition by act *inter vivos* of the homestead of any married man null & void unless made with the written consent of the wife; but it applies only to sect. 4 of the Dower Act & thus operates only to make any disposition by will, or devolution following death intestate of a married man, of such exempted chattels subject to & postponed to an estate for the life of the married man's wife, but does not interfere with or require the consent of the wife to a disposition by him *inter vivos* of such chattels; & does not affect chattels owned by him in excess of those exempt from execution; they continue as before the amendment to be disposable by him by disposition *inter vivos* & by will & devolve ordinarily if he dies intestate.—*Re* SCOTT ESTATE, [1935] 1 W. W. R. 325; 5 F. L. J. (Can), 3.—**CAN.**

aaa (p. 680) vi. —— ——.]—FROSTAD *v.* LIBEK, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—**CAN.**

aaa (p. 680) vii. —— —— *Effect of adultery.*]—Neither at common law nor under Dower Act does adultery disentitle a wife to dower, although it is a circumstance to be taken into account by the judge in deciding whether it is fair & reasonable to order that her consent to the disposition of the homestead be dispensed with under sect. 8. Except, however, by her consent or under such an order her right to dower in the homestead cannot be denied her.—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

aaa (p. 680) viii. —— —— *Change of homestead without wife's consent.*]—A husband & wife lived together on property owned by him in the town of V. She left him & they lived separately thereafter. After the separation he changed his residence to a farm where he resided until his death. Her consent to the change was not given &, apparently, never asked for; although while they were living together in the town she consented to a mtge. placed on the farm: —*Held:* on his death, she was entitled to select either property as the homestead in which to take her life estate.—*Re* MCLEOD ESTATE, MCLEOD *v.* MCLEOD (Alta.), [1929] 4 D. L. R. 659; 3 W. W. R. 241; *affg.*, [1929] 3 D. L. R. 640; 2 W. W. R. 252.—**CAN.**

ccc (p. 680) i. —— *Land purchased subject to mortgage—Registration of conveyance before discharge of mortgage by vendor.*]—*Re* KUNTZ & HODGINS, [1927] 4 D. L. R. 1009; 61 O. L. R. 298.—**CAN.**

ddd (p. 680) i. —— *Lands in which testator had any estate of freehold by virtue of any mortgage.*]—LOW *v.* SPARKS (1863), 14 C. P. 25.—**CAN.**

ddd (p. 680) ii. —— *Lands assigned by husband for benefit of creditors—& released by wife from dower—Subsequent reassignment to husband.*]—*Re* IRVINE, [1928] 3 D. L. R. 268; 62 O. L. R. 319.—**CAN.**

ddd (p. 680) iii. —— *Land granted by Crown subject to mineral rights—Whether land granted as mining land.*]—*Re* IRVINE, [1928] 3 D. L. R. 268; 62 O. L. R. 319.—**CAN.**

ddd (p. 680) iv. —— *Land comprised in offer to purchase—Accepted by husband—Acceptance not posted till after husband's death.*]—*Re* IRVINE, [1928] 3 D. L. R. 268; 62 O. L. R. 319.—**CAN.**

g (p. 681) i. —— *Effect of election to take under will.*]—In order for a widow to be entitled to take under her husband's will & have also in addition to the bequest thereunder, or any part thereof, the special rights & priorities granted by Dower Act, C.A., 1924, she must establish clearly by the terms of the will that her husband so intended. A will gave to testator's wife "one-third share or interest in my whole estate & a life interest in my homestead as provided for by Dower Act," & then, after leaving specific legacies, gave all the residue of the estate in equal shares to the wife & testator's four children. The widow elected to take under the will, instead of under Dower Act, but contended, nevertheless, that with respect to her total share she was entitled to the priority provided for by sect. 20 of Dower Act: —*Held:* no such intention appeared from the will &, therefore, the widow when she elected to take under the will had forfeited the special privileges & rights which would have been hers had she elected to take under Dower Act.—*Re* JACKSON ESTATE, JACKSON *v.* JACKSON, [1935] 1 W. W. R. 62; 42 Man. L. R. 472.—**CAN.**

ttt (p. 681) i. —— ——.]—MCLENNAN *v.* GRANT (1868), 15 Gr. 65.—**CAN.**

ttt (p. 681) ii. —— ——.]—LEYS *v.* TORONTO GENERAL TRUSTS CO. (1892), 22 O. R. 603.—**CAN.**

ttt (p. 681) iii. —— ——.]—SABINE *v.* WOOD (1910), 9 E. L. R. 169.—**CAN.**

ttt (p. 681) iv. —— ——.]—Testator, after bequeathing certain legacies, devised his lands to his sons, charging them, however, with the legacies & also with an annuity of $100 to his widow, to whom he also bequeathed his furniture, apartments in his dwelling-house, & sundry other things. The estate was sufficient to answer all legacies, & also the widow's dower:—*Held:* the widow was not put to her election as between the will & her dower.—WILSON *v.* WILSON (1883), 7 O. R. 177.—**CAN.**

ttt (p. 681) v. —— ——.]—A will bequeathing to a wife the dwelling-house for her natural life, the household goods, & an annuity of $300 secured to her out of the estate:—*Held:* not to put the widow to her election.—*Re* BIGGAR, BIGGAR *v.* STINSON (1884), 8 O. R. 372.—**CAN.**

ttt (p. 681) vi. —— ——.]—A will bequeathed to a wife one-third of the net income from the whole blended fund of his realty & personalty for her life or during widowhood:—*Held:* she was put to her election.—*Re* HENDRY, [1931] 4 D. L. R. 908; O. R. 448.—**CAN.**

f (p. 682) i. —— —— ——.]—PULKER *v.* EVANS (1856), 13 U. C. R. 456.—**CAN.**

f (p. 682) ii. —— —— ——.]—Where a will in express terms makes provision for the testator's wife in lieu of dower, thus bringing directly to her mind that she cannot have dower & the benefits of the will as well, a much slighter dealing with the property left to her will evidence an election on her part to take under the will, than would be sufficient in the absence of such express provision:—*Held:* there being such provision, the evidence set out in the report of the case was sufficient to establish an election to take under the will, though, otherwise, it would not have been.—NIXON *v.* ASHENHURST (1884), 7 O. R. 664.—**CAN.**

f (p. 682) iii. —— —— *Right to elect—Question for Surrogate Court.*]—*Re* JACKSON ESTATE, [1934] 3 W. W. R. 562.—**CAN.**

ooo (p. 682) i. —— ——.]—HILL *v.* GREENWOOD (1864), 23 U. C. R. 404.—**CAN.**

ooo (p. 682) ii. —— ——.]—CHUDYJ *v.* CANADA PERMANENT MORTGAGE CORPN., [1937] 2 W. W. R. 225, C. A.—**CAN.**

c (p. 683) i. —— —— *Consent judgment in alimony action.*]—In an action for alimony, a judgment was pronounced by consent whereby it was adjudged that pltf. should deed to deft. all her interest in properties owned by pltf. & deft. jointly, & pltf. should stand debarred of any interest in any property, real or personal, hereafter acquired by deft. The wife executed in favour of the husband a deed in fee simple of land of which they were joint tenants, wherein she released to him all her claims upon the land:—*Held:* pltf. was, by the consent judgment, barred of any right to dower, inchoate or otherwise, which she might have had in this land, which was acquired by him after the judgment.—LUBOVICH *v.* CUCKOVICH, [1930] 4 D. L. R. 339; 65 O. L. R. 451; *revsg.*, 37 O. W. N. 49.—**CAN.**

k (p. 683) i. —— —— ——.]—Where a wife of her own consent leaves the society of her husband & then commits adultery, she is barred of her action for dower.—WHIMBEY *v.* HYDE, [1927] 3 D. L. R. 237; 60 O. L. R. 399.—**CAN.**

m (p. 683) i. —— —— *Determination of issue—Jurisdiction.*]—The issue which arises under sect. 21 of the Dower Act, 1924, *i.e.* whether the wife was at the time of the death of the husband living separate & apart from him, is one which must be disposed of, in the summary method provided by the Act, by the Surrogate Ct. judge. The Ct. of K. B. has no jurisdiction to entertain an action to determine it.—WEAVER *v.* BAIRD, [1930] 1 W. W. R. 918; 3 D. L. R. 875.—**CAN.**

m (p. 683) ii. —— —— ——.]—Where a husband & wife live apart under an agreement between them neither can be said to have "left" the other, within Dower Act, C. A., 1924, s. 20, &, therefore, to have forfeited his or her rights under the Act.—*Re* MATCHETT ESTATE, [1931] 2 W. W. R. 512.—**CAN.**

his death, she, for the first time, claimed against his estate an account of one-fifth of the rents for twenty years. The ct. concluded that the common establishment had been maintained out of the mixed fund, & rejected the claim.—SMITH *v.* SMITH, TRINDER *v.* SMITH (1857), 23 Beav. 554; 29 L. T. O. S. 215; 53 E. R. 218.

297a. Whether court will supply word "of."]—By a voluntary settlement A. & his cousin limited certain gavelkind lands to a relative, C., for life, with remainder to her issue, & for default of such issue "to the use of the right heirs of E., deceased, & J.," who was then living, "the two sisters of the said A., their heirs & assigns, as tenants in common for ever":—*Held:* the ct. declining to read the limitation as a limitation to "the right heirs of E., deceased, & of J.," J. herself took a vested remainder in fee simple in a moiety of the property expectant on the death of C., without issue; &, accordingly on the death of C., who survived J., & died without issue, the moiety passed to J.'s co-heirs in gavelkind.—HAWES *v.* HAWES (1880), 14 Ch. D. 614; 43 L. T. 280.

Annotations:—**Folld.** *Re* Featherstone's Trusts (1882), 22 Ch. D. 111. **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

443. *Add. Annotation:*—**Consd.** Hanson *v.* Newman, [1934] Ch. 298.

497. *Add. Annotation:*—*As to* (3) **Refd.** *Re* Orlebar, Orlebar *v.* Orlebar, [1936] Ch. 147.

509a. ——— ———.]—WILLIAMS *v.* WATERS (1845), 14 M. & W. 166; 5 L. T. O. S. 130; 153 E. R. 434.

Annotation:—**Folld.** *Re* Watson & Morrison's Contract, Watson *v.* Kerr (1900), 44 Sol. Jo. 529.

520a. ———.]—CAIN *v.* TEARE (1843), 4 Moo. P. C. C. 249; 7 Jur. 567; 13 E. R. 297, P. C.

527. *Add. Annotation:*—**Refd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

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cc (p. 683) i. ——— *Lapse of time.*]—PYATT *v.* MCKEE (1883), 3 O. R. 151.—**CAN.**

f (p. 684) i. ——— ——— *Res judicata.*]—Issues adjudicated in proceedings in the Surrogate Ct. with respect to an executorship & not in any way with respect to a claim for dower under Dower Act, C. A., 1924, or incidental thereto, held not to be *res judicata* in an action brought by the widow in the King's Bench in which she claimed dower rights.—PERCY *v.* CANADIAN GUARANTEE & TRUST CO., [1931] 1 D. L. R. 1013; [1930] 3 W. W. R. 498; 39 Man. L. R. 251.—**CAN.**

oo (p. 684) i. ——— ——— *Competency of wife as witness—Action by husband & wife.*]—In an action for dower by husband & wife, the wife is a competent witness.—CADMAN *v.* STRONG (1843), 10 U. C. R. 591.—**CAN.**

kkk. (p. 684) i. ——— *Claim admitted—Award by commissioners—Right of court to disturb.*]—ROBINET *v.* PICKERING (1879), 44 U. C. R. 337.—**CAN.**

l (p. 685) i. *Application for order under Dower Act, R. S. O.*, 1897 (c. 164), *s.* 12—*Duty of court.*]—*Re* KING (1899), 18 P. R. 365.—**CAN.**

aa. *Priority in administration—Devise of portion to which widow entitled under Dower Act.*]—Testator devised his estate to his exors. in trust to pay & convey to his widow "that portion of my estate which she shall be entitled to under the provisions of the Manitoba Dower Act" & the remaining estate in his residence; & upon further trusts with respect to the balance of his estate:—*Held:* the portion of the estate given to the widow was that which without the will she would have been entitled to under said Act, &, also, that what was given & what incidents would attach to it were to be determined by applying the provisions of the Act, including sect. 20 thereof.—*Re* COWAN ESTATE, [1932] 1 W. W. R. 79; 1 D. L. R. 771; 40 Man. L. R. 221.—**CAN.**

ad. *Conflict of laws.*]—Although a testator died resident & domiciled outside of Manitoba & his widow was then resident, & has continued to reside, outside of Manitoba, she is entitled to the benefits of Dower Act, C. A., 1924, but her rights thereunder are restricted to testator's real property in Manitoba, *i.e.*, the total estate of which she is entitled to one-third is said real property.—*Re* ELDER ESTATE, [1936] 2 W. W. R. 70; 3 D. L. R. 422; 44 Man. L. R. 84.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—C. (b).

q i. ———.]—Conveyance by a husband to himself & his wife in fee simple creates a right of survivorship by which the husband can convey alone after the wife's decease.—*Re* SHERRETT & GREY, [1933] 3 D. L. R. 723; O. R. 690.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—C. (d).

sg. *Purchase of house by husband & wife as joint tenants—Death of husband—Wife not liable for husband's share of purchase-price.*]—H. & C., husband & wife, who had been separated, came together under a written agreement providing for the formation of a fund to be held in trust to pay for the purchase of a house & premises to be a home for the re-united spouses, & to be vested in them as joint tenants. A property was selected, paid for out of the fund, & conveyed to them as joint tenants. A mtge. of the property was made by the two:—*Held:* the presumption was that the husband & wife were as between themselves equally liable, & neither could call on the other to pay more than his proper share.—MCMILLAN *v.* NATIONAL TRUST CO., [1931] 2 D. L. R. 369; 66 O. L. R. 601.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—D. (a).

sb. *By execution.*]—Lands were conveyed to a man & his wife as joint tenants, & not as tenants in common:—*Held:* estates by entireties having been abolished, the joint estate was severable; & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

sd. ———.]—A joint tenancy is severed by (*inter alia*), execution of a writ of *fi. fa.* But mere delivery of a writ of *fi. fa.* to the sheriff is not part of execution. Therefore death of one joint tenant after delivery to but before execution by the sheriff of a writ of *fi. fa.* vests the property in the survivor free from the claim of the execution creditor.—POWER *v.* GRACE, [1932] 2 D. L. R. 793; O. R. 357; *affg.*, [1932] 1 D. L. R. 801.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—D. (b).

r i. ——— ——— *Admission of parol evidence.*]—TAN CHEW HOE NEO *v.* CHEE SWEE CHENG (1928), L. R. 56 Ind. App. 112.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—D. (c).

c i. ——— ———.]—*Re* WHITE, [1928] 1 D. L. R. 846.—**CAN.**

375 ii. ——— *Deposit paid into account of one tenant—Balance paid to his executors.*]—A husband & wife joined in an open contract for the sale of land of which they were registered as joint proprietors. The whole of the deposit was paid by the husband into his own bank account. The husband died, & the balance of the purchase-money was paid to his exors.:—*Held:* there had been no severance of the joint tenancy, & therefore no part of the proceeds of the sale formed part of the husband's estate.—*Re* ALLINGHAM, ALLINGHAM *v.* ALLINGHAM, [1932] V. L. R. 469; Argus L. R. 393.—**AUS.**

PART II. SECT. 6, SUB-SECT. 1.—D. (d).

sc. *Intention to sever—Sufficiency of evidence.*]—A husband & wife, under a certain deed executed in 1884, prior to their marriage, became equitable joint tenants of a farm at C., held under a tenancy from year to year, & also of another farm at R. In 1900 the wife purchased the farm at R., & was registered a owner in fee simple, subject to equities. In 1911 the husband purchased the farm at C., & was registered as owner in fee simple, subject to equities. The husband died in 1921, &, by his will, left the farm at C. to one of his sons. The wife claimed the farm by survivorship:—*Held:* a severance of the joint tenancy in the farm did not, as a matter of law, result from the purchase of the fee simple by the husband. Also, on the evidence, the ct. could not infer that the husband & wife had agreed to sever the joint tenancy in both farms.—FLYNN *v.* FLYNN, [1930] I. R. 337.—**IR.**

PART II. SECT. 6, SUB-SECT. 1.—E. (a).

sd. *General rule.*]—CHANDRA KISHORE CHAKRAVARTY *v.* BISESWAR PAL (1927), I. L. R. 55 Calc. 396.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—E. (b) i.

394 ii. ——— ——— *Method of accounting.*]—SPROULE *v.* CLEMENTS (B. C.), [1927] 3 D. L. R. 955; [1927] 2 W. W. R. 825.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—E. (c).

o i. ——— ———.]—A co-sharer, by himself, can maintain an action of trespass against a wrongdoer.—CURRIMBHOY & CO., LTD. *v.* CREET (1929), I. L. R. 57 Calc. 170.—**IND.**

PART II. SECT. 6, SUB-SECT. 2.

g i. ———.]—HARKESH SINGH *v.* HARDEVI (1927), I. L. R. 49 All. 763.—**IND.**

535. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

536a. ——.]—BARCLAY *v.* COLLETT (1838), 4 Bing. N. C. 658 ; 1 Arn. 287 ; 6 Scott, 408 ; 7 L. J. C. P. 235 ; 132 E. R. 942.

537a. ——.]—He who has occasion to use a deed is legally entitled to the custody of it ; &, where several are equally interested in it, either having possession may retain it against the others.—FOSTER *v.* CRABB (1852), 12 C. B. 136 ; 21 L. J. C. P. 189 ; 16 Jur. 835 ; 138 E. R. 853 ; *subsequent proceedings*, 12 C. B. 379.

Annotations :—**Refd.** Taylor *v.* Sparrow (1863), 4 Giff. 703 ; Leathes *v.* Leathes (1877), 36 L. T. 646 ; Wright *v.* Robotham (1886), 33 Ch. D. 106.

537b. —— **Common law rule confined to assurances.**]—Testator died, having by his will bequeathed settled legacies & having thereby also by legal limitations settled freeholds which in the events which happened became vested free from incumbrances & charges in pltf. From time to time there had been appointments of new trustees of testator's will for the purposes of the Settled Land Acts & other purposes, including three by deeds of 1902, 1904, & 1915. In 1924 pltf. had been appointed Settled Land Act trustee of testator's will, jointly with the then trustees thereof, the appointment being limited to the freeholds. At the date when the freeholds became vested absolutely in pltf., the trusts of some of the settled legacies were still on foot. In an action by pltf. claiming the custody of the appointments of 1902, 1904, & 1915, as forming part of his title to the freeholds :—*Held :* absolute ownership of land does not necessarily carry with it the right to title deeds ; *semble :* the phrase " title deeds " in the old authorities includes only deeds assuring or dealing with land or legal interests therein.—CLAYTON *v.* CLAYTON, [1930] 2 Ch. 12 ; 99 L. J. Ch. 498 ; 143 L. T. 696.

Annotation :—**Consd.** Lewis *v.* Plunkot, [1937] Ch. 306.

584a. ——.]—WARMAN *v.* SEAMAN (1677), Cas. *temp.* Finch, 279 ; 23 E. R. 153.

Annotations :—**Refd.** *Ex p.* Wynch (1854), 5 De G. M. & G. 188 ; Roddy *v.* Fitzgerald (1858), 6 H. L. Cas. 823.

592a. —— **Addition of " & if more children than one."**]—By a marriage settlement estates were limited to the wife & the husband for their lives, with remainder to the heirs of the body of the husband on the body of the wife, & their heirs, & if more children than one, equally to be divided among them as tenants in common, & for default of such issue to the wife & her heirs :—*Held :* the husband did not take an estate in tail special, but for life only, & the children took by purchase as tenants in common in fee in remainder.—NORTH *v.* MARTIN (1833), 6 Sim. 266 ; 58 E. R. 593.

Annotations :—**Consd.** Jordan *v.* Adams (1861), 9 C. B. N. S. 483. **Refd.** Gummoe *v.* Howes (1857), 23 Beav. 184.

628a. Limitation to particular persons.]—WAKER *v.* SNOWE (1622), Palm. 359 ; 81 E. R. 1123.

Annotations :—**Refd.** Sayer *v.* Masterman (1757), Amb. 344 ; Doe d. Long *v.* Laming (1760), 2 Burr. 1100 ; Winter *v.* Perratt (1843), 9 Cl. & Fin. 606 ; Tarleton *v.* Liddell (1851), 17 Q. B. 390.

663a. —— **Death of protectors.**]—The trustees of the real estate under a will were appointed also protectors of the estates tail created by the will. They all died, & new trustees of the real estate were appointed by the ct. :—*Held :* the tenant for life had become protector of the settlement, & he & the first tenant in tail could convey.—CLARKE *v.* CHAMBERLIN (1880), 16 Ch. D. 176 ; 29 W. R. 415.

669. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

670. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

671. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

672. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

677. For " (1841) " read " (1839)."

696. *Add. Annotation :*—**Refd.** *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

697. *Add. Annotations :*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412. **Apld.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1.

705. *Add. Annotation :*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

761a. —— —— ——.]—SMITH *v.* RISLEY (1639) Cro. Car. 529 ; 79 E. R. 1058 ; *sub nom.* GERMAN *v.* RISLEY, W. Jo. 418.

Annotation :—**Refd.** Barker *v.* Keete (1678), Freem. K. B. 249.

PART II. SECT. 10, SUB-SECT. 1.

sa. *Real Chattels Act*, 1834—*Effect of.*]—DOE d. EVANS *v.* DOYLE (1860), 4 Nfld. L. R. 432.—**NFLD.**

PART II. SECT. 10, SUB-SECT. 4.—E.

p i. ——.]—It is, at least, doubtful whether a mtge. in fee by a tenant in tail in possession bars the entail ; & whether, upon a discharge being executed, the mtgor. does not take back his original estate.—*Re* DOLSEN (1872), 4 Ch. Ch. 36.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.—B.

li. ——.]—BABBITT *v.* CLARKE, [1925] 3 D. L. R. 55 ; 57 O. L. R. 60.—**CAN.**

l ii. ——.]—The statement that possession is evidence of seisin in fee means that there is some evidence that the title to the land has come to the person claiming possession in one of the following ways, namely : by Crown grant, sixty years' possession adverse to the Crown, conveyance from a prior owner, devolution or by twenty years' adverse possession.—NOLAN *v.* THOMPSON (1928), 28 S. R. N. S. W. 479 ; 45 N. S. W. W. N. 141.—**AUS.**

sc. *How far possession extends—Occupation of small portion of wild land.*]—When a referee finds in favour of a title acquired by adverse possession against the legal paper title, his certificate must show of what portion of the lot the claimant has been in possession, for by the occupation of one or more acres of a wild lot of land a party will not acquire title to the whole lot.—LOW *v.* MORRISON (1868), 14 Gr. 192.—**CAN.**

sd. *Possession under agreement—Subject to performance of condition—Possession for ten years after time fixed for performance.*]—BISHOP *v.* COX, [1928] 2 D. L. R. 990.—**CAN.**

Part III.—Transfer of Land inter vivos.

869. *Add. Annotation:*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

885a. Effect of memorial—Evidence of contents of deed.]—The registered memorial of a deed conveying lands in Middlesex is secondary evidence of the contents of such deed against the personal representatives of the party by whom such deed is registered.—WOLLASTON *v.* HAKEWILL (1841), 3 Man. & G. 297; 3 Scott, N. R. 593; 10 L. J. C. P. 303; 133 E. R. 1157.

891. In the last line of the existing paragraph substitute the word " register " for the words " sale without registration."

898a. —— —— ——.]—In 1886 the owners of a freehold estate in London entered into a contract to sell it to builders, & part of the property was conveyed by the owners & builders to a purchaser F., who covenanted to build a house thereon & to use it only as a private residence, subject to certain stipulations. The vendors entered into reciprocal covenants with F. that every building lease or other assurance of the rest of the estate should contain covenants on the part of the purchaser or lessee with the builders (*inter alia*) to use the land for the purpose of a private dwelling-house only. Pltf. derived title under the conveyance to F. & a similar deed executed in 1887. In 1890 the same vendors conveyed adjoining land to a purchaser N., who entered into covenants with the owners & the builders & their assigns, similar to those contained in the conveyance of 1886, to build a house thereon to be used as a private dwelling-house only. Ultimately this land & the house built upon it became vested in P. in fee. In 1935 P. was registered at the Land Registry as pro-

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PART III. SECT. 1.

834 i. *Grant must not commence in futuro.*]—*Re* SMITH & DALE (1920), 46 O. T. R. 403.—**CAN.**

b i. —— *Assigned by husband alone—Subsequent abandonment of homestead—Right of wife to oppose validity of assignment.*]—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence, the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—DOUGLAS *v.* ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37; *affd.*, [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 463.—**CAN.**

b ii. —— —— *Effect.*]—The fact that the transfer by a husband of an interest in a homestead under the Homesteads Act is not executed in compliance wih said Act does not render it absolutely void; it is merely unenforceable so long as the property remains the homestead & the Act is not complied with.—DOUGLAS *v.* ADDIE (Nos. 1 & 2), [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 463 *affg.*, [1928] 4 D. L. R. 167; 3 W. W. R. 37.—**CAN.**

b iii. —— *Order dispensing with consent of wife—Under Dower Act, 1922—Husband's conduct conducing to adultery of wife.*]—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

b iv. —— *Without wife's consent—Void.*]—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

b v. —— *Mortgage — Examination of wife—Conclusiveness of certificate.*]—The certificate in the required form that the wife of a mtgor. of a homestead was examined in the manner called for by Homestead Act, is, in the absence of fraud, conclusive. The statute seems to contemplate an examination nearly contemporaneous with, if not preceding, the signing of the mtge. or other instrument, but the antedating of the certificate in the present case so as to make it appear that the signing & examination were on the same day was held innocuous.—FERRY *v.* HERDE (Sask.), [1929] 3 W. W. R. 700; [1930] 1 D. L. R. 997; *affd.*, [1930] 2 W. W. R. 152; 4 D. L. R. 314; 24 S. L. R. 426.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

n (p. 570) i. ——.]—Sect. 72 (2) of Land Registry Act Amendment Act, 1914, means that once the registrar has accepted what he considers satisfactory proof that a parcel of land against which a judgment has been registered has been released by the act of the judgment creditor from such judgment, & has acted thereon by cancelling the registration of the judgment as against that parcel, & has caused the proper entries to be made to effect such cancellation, then so far as Land Registry Act is concerned said judgment can never again be registered against said parcel if no appeal against the registrar's action has been taken.—HANSEN *v.* TAYLOR, [1933] 2 W. W. R. 16; 46 B. C. R. 556.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

se. *Abandonment.*]—Real estate or an interest therein cannot pass from one person to another by "abandonment."—JONES *v.* MCCLEAN, [1931] 1 W. W. R. 315; 2 D. L. R. 244; 39 Man. L. R. 321; 12 C. B. R. 238.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

e i. —— *Effect of 26 Geo. 3, c. 3.*]—DOE d. WILT *v.* JARDINE (1836), 2 N. B. R. (Ber.) 245.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.

af. *Crown leaseholds—Duty of transferor to obtain consent.*]—MAY *v.* DALY, [1927] S. A. S. R. 428.—**AUS.**

PART III. SECT. 4.

865 i. *What words operate as grant—"Demise."*]—SPEARS *v.* MILLER (1882), 32 C. P. 661.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.

r (p. 746) i. —— *Portion of land acquired for improvement of road—Not sub-divided.*]—The D. County Council acquired, in order to lay out, maintain & keep a new road or an improvement of an existing road, the use of a portion of a holding subject to a land purchase annuity, without the consent of the Ministry of Finance:—*Held:* the county council were entitled to have registered under the Act as a burden the use of portion of the holding, as no "sub-division" of the holding within Northern Ireland Land Act, 1925, s. 30 (1), had been effected.—*Re* LENNON, [1928] N. I. 195.—**IR.**

k (p. 747) i. *S.P.* WATERLOO *v.* BARNARD (Man.) (1915), 33 W. L. R. 223; 9 W. W. R. 870.—**CAN.**

k (p. 747) ii. —— *What is.*]—BOURQUE *v.* CHAPPELL (1900), 21 C. L. T. 132; 2 N. B. Eq. Rep. 187.—**CAN.**

n (p. 747) i. ——.]—SPEPPARD *v.* KENNEDY (1884), 10 P. R. 242.—**CAN.**

n (p. 747) ii. —— *Subsequent discontinuance of action—Whether filing of lis pendens constitutes cause of action.*]—COWAN *v.* MACAULAY (1897), 5 B. C. R. 495.—**CAN.**

n (p. 747) iii. —— *Discharge of.*]—GRAHAM *v.* CHALMERS (1866), 2 Ch. Ch. 53.—**CAN.**

n (p. 747) iv. —— *By plaintiff in creditors' action.*]—BEVILOCKWAY *v.* SCHNEIDER (1893), 3 B. C. R. 90.—**CAN.**

r (p. 747) i. *Subdivision.*]—There is implied in Transfer of Land Act, 1915, s. 201, a right in a registered proprietor to submit to the office of title a plan of a proposed subdivision of his land, & a corresponding duty on the part of the Registrar to receive the plan & take into consideration the proposed subdivision. The Registrar may then exercise such of the powers given to him in relation to the plan as he thinks proper.—R. *v.* THE REGISTRAR OF TITLES, *Ex p.* FORESTRY PULP & PAPER CO. OF AUSTRALIA, LTD., [1929] V. L. R. 178; [1929] Argus L. R. 152.—**AUS.**

sk. *Final order for cancellation of agreement for sale.*]—*Re* LAND TITLES ACT, AVELSGAARD'S CASE (Sask.) [1918] 2 W. W. R. 946.—**CAN.**

sl. *Judgment—Registration of as mortgage—Sufficiency of affidavit.*]—*Re* MURPHY, [1928] I. R. 479.—**IR.**

sm. *Conveyance by mortgagee under power of sale—Where judgment registered subsequently to mortgage—& quit claim deed taken from mortgagor.*]—*Re* LOT 5, SECTION 13, SPRING RIDGE, VICTORIA CITY, *Re* LAND REGISTRY ACT & AMENDING ACTS (B. C.), [1929] 3 D. L. R. 723; 1 W. W. R. 739; 41 B. C. R. 74.—**CAN.**

sn. *Not notice of trust—What amounts to—Description of owner as "executor."*]—A trust corpn. claimed the right to be registered under Land Titles Act, 1927, as owner of a charge, & to be described, not as a trustee, but as exor. of C., deceased:—*Held:* the description of appt. as exor. of C. was not notice of any trust, express, implied or constructive, & the entry therefore would not contravene sect. 95 (1) of the Act.—*Re* CASSIDY (1931), 3 D. L. R. 392; O. R. 259.—**CAN.**

of the freehold with an absolute title. The last-mentioned covenant was entered upon the charges register. P. granted a lease of the premises for a term of twenty-eight years to lessees, who afterwards assigned it to the defts. The lease contained a covenant by the lessees not to use the premises for any purpose other than a private dwelling-house or private suites or flats. Defts. had no actual notice of the covenant on the registered title. Pltf. brought the action to restrain defts. from committing a breach of the covenant on the charges register by converting the house into a set of private suites:—*Held:* (1) under sect. 50 (2) of Land Registration Act, 1925 (c. 21), defts., as persons deriving title under P., were affected with notice of the covenant entered on the register & were bound by it; (2) pltf. was not a person entitled to the benefit of the covenant under sect. 56 (1) of Law of Property Act, 1925 (c. 20), or otherwise, & could not enforce it; (3) on the facts the defence of acquiescence by pltf. in changes which had taken place in the neighbourhood failed. The action, having failed on the second ground, was dismissed.—WHITE *v.* BIJOU MANSIONS, LTD., [1937] Ch. 610; [1937] 3 All E. R. 269; 157 L. T. 105; 53 T. L. R. 818; 81 Sol. Jo. 498.

Annotation:—*As to* (2) **Consd.** Zetland (Marquess) & Zetland Estates Co. *v.* Driver, [1937] 3 All E. R. 795.

902. *Add. Citations:*—*sub nom. Re* REGISTERED TITLE, No. 213,437; 63 L. Jo. 82; 163 L. T. Jo. 52.

PART III. SECT. 6, SUB-SECT. 4.

aa (p. 747) **i.** —— —— *Upon registration of transfer—Whether certificate should be clear of subsequent executions.*]—QUEBEC BANK *v.* ROYAL BANK (1916), 34 W. L. R. 137; 10 W. W. R. 218.—**CAN.**

q (p. 748) **i.** —— —— *Executor of estate entitled to lands as devisee—Whether execution to be registered as against executor personally.*]—*Re* GALLOWAY (1898), 3 Terr. L. R. 88.—**CAN.**

bb (p. 748) **i.** —— —— *As against claimant by adverse possession.*]—WASHINGTON & G. N. TOWNSITE CO. *v.* HOLBROOK, [1924] 1 D. L. R. 818; [1924] 1 W. W. R. 511; 33 B. C. R. 388.—**CAN.**

bb (p. 748) **ii.** —— —— *On sale by owner of two adjoining lots to separate purchasers—Alleged arrangement between vendor & purchaser of one lot.*]—CANADIAN BIRKBECK INVESTMENT & SAVINGS CO. *v.* RYDER (1905), 12 B. C. R. 92; 2 W. L. R. 158.—**CAN.**

bb (p. 748) **iii.** —— —— *Transfer by administrators to one of themselves entitled only as life tenant—Claim by remainderman.*]—BREMNER *v.* TRUSTS & GUARANTEE CO., [1928] 4 D. L. R. 913; [1928] 3 W. W. R. 415.—**CAN.**

bb (p. 748) **iv.** —— *Issued to municipality—Failure to offer land for sale—Rights of former owner.*]—SHAW *v.* YOUNGSTOWN, [1928] 3 D. L. R. 404; [1928] 2 W. W. R. 310.—**CAN.**

bb (p. 748) **v.** —— *Duty of registrar when issuing.*]—*Re* CANADIAN PACIFIC RY. CO. (1899), 4 Terr. L. R. 227.—**CAN.**

bb. (p. 748) **vi.** —— *Under Quieting Titles Act—Title acquired by adverse possession—Costs.*]—LOW *v.* MORRISON (1868), 14 Gr. 192.—**CAN.**

bb (p. 748) **vii.** —— —— *Certificate of sheriff—Form of.*]—Where the petitioner's title was acquired within two years before the filing of the petition, the sheriff's certificate was required as to executions against the prior owner, as any such executions, if duly renewed, might bind the land.—*Ex p.* LYONS (1869), 2 Ch. Ch. 357.—**CAN.**

bb (p. 748) **viii.** —— —— ——.]—*Re* HARDING (1871), 3 Ch. Ch. 232.—**CAN.**

bb (p. 748) **ix.** *Necessity for production.*]—A certificate from the sheriff of no executions against petitioner must be produced.—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—**CAN.**

bb (p. 748) **x.** —— —— *Certificate from county treasurer—Form of.*]—*Re* HARDING (1871), 3 Ch. Ch. 232.—**CAN.**

bb (p. 748) **xi.** —— —— —— *Title ... hands of trustee to pay ... fees & advertisements necessary.*]—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—**CAN.**

bb (p. 748) **xii.** —— —— *... in proof—By whom made.*]—.

bb (p. 748) **xiii.** —— *Endorsement of restrictive covenant.*]—When a conveyance purporting to contain a restrictive covenant is put in for registration, the Registrar must, under sect. 148 of Land Registry Act, R. S. B. C., 1924, determine whether or not the covenant is restrictive & if he finds it is he must endorse it on the certificate, for the sect. is mandatory. The sect. does not suggest he should decide whether or not the covenant is an interest in land or is enforceable. It gives him no discretion.—HOME OIL DISTRIBUTORS *v.* BENNETT, [1936] 1 W. W. R. 385; 50 B. C. R. 382.—**CAN.**

ff (p. 748) **i.** —— *Not executor of administratrix.*]—PUBLIC TRUSTEE *v.* REGISTRAR-GENERAL OF LAND, [1927] N. Z. L. R. 839.—**N.Z.**

hh (p. 748) **i.** —— *Under Quieting Titles Act—Not purchaser selling before completion of contract.*]—*Re* BROWN (1871), 3 Ch. Ch. 158.—**CAN.**

hh (p. 748) **ii.** —— *Purchaser under sale by order of court—In foreclosure action.*]—CANADIAN PACIFIC RY. CO. *v.* MANG (1908), 8 W. L. R. 774; 1 Sask. L. R. 219.—**CAN.**

hh (p. 748) **iii.** —— *Executrix of Scottish will—Resealed in British Columbia.*]—*Re* CLAZY, [1928] 2 D. L. R. 971; [1928] 1 W. W. R. 974.—**CAN.**

hh (p. 748) **iv.** —— *Purchaser from trustee in bankruptcy—Selling with permission of inspectors.*]—The proper conclusion from the provisions of Land Titles Act, R. S. O. 1927, c. 158, ss. 66, 69 (5), having regard to Bankruptcy Act, R. S. C. 1927, c. 11, s. 27, is that when land, vested in a trustee in bkpcy., has been transferred by the trustee with the permission in writing of the inspectors, the transferee, upon proper proof of the fact, is entitled to have himself registered as owner.—*Re* PACEY, [1928] 4 D. L. R. 425; 62 O. L. R. 616.—**CAN.**

mm (p. 748) **i.** —— *Filed by registrar—Form of—Necessity for affidavit.*]—HAMILTON & WRAGGE *v.* STOKES, [1921] 2 W. W. R. 921; 62 D. L. R. 282; 30 B. C. R. 65.—**CAN.**

q (p. 749) **i.** —— —— —— *Minister of Agriculture—In respect of claim under Live Stock Encouragement Act, R. S. A., 1922 (c. 65).*]—R. *v.* RUMSEY & MORTHEN NO. 551 MUNICIPAL DISTRICT (Alta.), [1926] 2 D. L. R. 792; [1926] 2 W. W. R. 34.—**CAN.**

d (p. 749) **i.** —— —— *Person claiming partnership interest in land—Claim not founded on written document.*]—*Re* MACCULLOUGH & GRAHAM (Alta.) (1912), 21 W. L. R. 349; 5 D. L. R. 834.—**CAN.**

d (p. 749) **ii.** —— —— *Execution creditor.*]—The vendor & [illegible] under an agreement for the sale of land executed a deed by which the purchaser gave up to the vendor all of whatever interest he, the purchaser, had in the land as such & took in lieu of such interest the vendor's covenant to do all she could to effect a resale of the land & to pay to said purchaser a certain amount out of the purchase-price received on the resale. There was nothing in the deed to give the purchaser any equitable mtge. or equitable charge on the land. The vendor resold the land:—*Held:* purchaser had no longer any interest in the land &, therefore, sect. 120 of Land Titles Act did not entitle an execution creditor of his to maintain a caveat.—HAY *v.* MCCULLOCH'S, LTD., [1930] 1 W. W. R. 434; 2 D. L. R. 93.—**CAN.**

e (p. 749) **i.** —— —— *Husband having interest under Lower Act, C. A.*, 1924 (c. 53).]—SHINBANE *v.* MINUK, [1927] 3 D. L. R. 550; [1927] 2 W. W. R. 121; 36 Man. L. R. 530.—**CAN.**

e (p. 749) **ii.** —— —— *Rural municipality—Against Crown lands for money advanced for seed grain.*]—*Re* LAND TITLES ACT, [1918] 3 W. W. R. 13.—**CAN.**

e (p. 749) **iii.** —— —— *Claimant to part proceeds of sale of land.*]—SHEPHERD *v.* HOUSTON, [1927] S. A. S. R. 144.—**AUS.**

e (p. 749) **iv.** —— —— *Person entitled to benefit of restrictive covenant.*]—WANEK *v.* THOLS, [1928] 2 D. L. R. 793; [1928] 1 W. W. R. 903.—**CAN.**

e (p. 749) **v.** —— —— *Assignee of purchaser.*]—The assignee of the purchaser of land under an agreement containing a clause providing that no assignment by the purchaser shall be valid unless for his entire interest & approved in a writing signed by the vendor:—*Held:* to have no status to file a caveat where such approval was refused.—MCAVOY *v.* INTERIOR TRUST CO., [1933] 2 W. W. R. 591.—**CAN.**

o (p. 749) **i.** —— —— *On failure to file evidence of commencement of proceedings—Whether applicable to caveat filed by registrar.*]—HAMILTON & WRAGGE *v.* STOKES, [1921] 2 W. W. R. 921; 62 D. L. R. 282; 30 B. C. R. 65.—**CAN.**

dd (p. 749) **i.** —— —— *Lis pendens on file.*]—Land Registry Act, s. 49 (8), does not require that the *lis pendens*, or other evidence, of a caveator shall be filed during the currency of the caveat; the words "have filed" are to be construed as meaning "have on file."—CROFT *v.* WHITING (1910), 14 W. L. R. 634.—**CAN.**

ff (p. 749) **i.** —— —— *Appeal from order for discharge—Registration of order pending appeal.*]—*Re* MCINNIS, [1927] 1 D. L. R. 481; [1927] 1 W. W. R. 209; 21 Sask. L. R. 309.—**CAN.**

ff (p. 749) **ii.** —— —— *Claim under agreement for sale—No proof of agreement.*]—BABITT *v.* BOILEAU (1907), 7 Terr. L. R. 481; 6 W. L. R. 260.—**CAN.**

ff (p. 749) **iii.** —— —— *Where caveator does not assert rights ... How made.*]—*Re* MACDONALD, [1924] 2 D. L. R. 802.—**CAN.**

906. *Add. Annotation:*—**Refd.** Chowood, Ltd. v. Lyall (2), [1930] 2 Ch. 156.

907a. Vesting order — Contents.]— Originating summonses asking for an order vesting

ff (p. 749) iv. —— *Motion to vacate—Caveator must show cause for continuance.*]—ZWICK *v.* PARKDALE RURAL MUNICIPALITY, [1934] 1 W. W. R. 17.—**CAN.**

rr (p. 749) i. —— —— ——.]—WILKINSON *v.* SHACKLETON, [1930] 1 W. W. R. 721; 3 D. L. R. 304; 24 Alta. L. R. 377.—**CAN.**

o (p. 750) i. —— —— ——.]—LENG *v.* SMITH (1902), 14 Man. L. R. 258.—**CAN.**

oo (p. 750) i. —— —— ——.]—MCKAY *v.* MCDOUGALL, [1921] 3 W. W. R. 833; 63 D. L. R. 247; 15 Sask. L. R. 24; *affd.* (1921), 68 D. L. R. 245.—**CAN.**

oo (p. 750) ii. —— —— ——.]—BISHOP *v.* WESTERN TRUST CO. (Sask.), [1922] 3 W. W. R. 818; 70 D. L. R. 451.—**CAN.**

oo (p. 750) iii. —— —— ——.]—The effect of a caveat is to prevent the registration of any instrument the registration of which would have the effect of adversely affecting the claim of the caveator, without giving him the opportunity of invoking the assistance of the ct. in order to have effect given to his claim if he can establish it. Meanwhile, the caveat protects whatever interest the caveator has & the registrar cannot enter any transfer in the register or encumber or deal with or affect the land except subject to the claim of the caveator.—NICHOLAS *v.* RUF, [1936] 3 W. W. R. 647.—**CAN.**

ll (p. 750) i. —— —— *When maintainable.*]—PENDLETON *v.* PENDLETON, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—**CAN.**

pp (p. 750) i. —— ——.]—In an action under sect. 126 of Land Titles Act, R. S. A., 1922, to maintain a caveat by which the caveators claimed an interest in the land under an assignment from the purchaser thereof of all his right, title & interest therein & in the agreement for its purchase & sale:—*Held:* the inference to be drawn from the complicated series of transactions between the parties was that when subsequently to said assign- of the vendor, with the consent of the caveators, conveyed the land to the purchaser & took a mtge. back, this arrangement was substituted for the original agreement for sale which then came to an end; &, since at the time the caveat was filed the agreement was spent & discharged neither the agreement nor the purchaser's assignment of it could be made the basis of a caveat, &, therefore, the caveat failed because the caveators had not substantiated the title, estate or interest claimed by the caveat; in other words, the caveat did not state truly the nature of the actual interest which the caveators had at the time the caveat was filed.—HAMLYN *v.* KAPLAN, [1936] 2 W. W. R. 293; 3 D. L. R. 56; 6 F. L. J. (Can.) 115.—**CAN.**

qq (p. 750) i. —— *Filed before registration of transfer—Interest of caveator purchased by transferor—Right of transferee.*]—BENNETT *v.* GILMOUR (1906), 4 W. L. R. 196; 16 Man. L. R. 304.—**CAN.**

m (p. 751) i. —— —— *Sub-division of parcel into lots under unregistered plan.*]—*Re* RYAN & VANCOUVER DISTRICT REGISTRAR OF TITLES (B. C.) (1914), 26 W. L. R. 982.—**CAN.**

gg (p. 751) i. —— *To accept caveat based on mortgage before registration of grant from Crown.*]—*Re* LAND TITLES ACT, CANADA LIFE ASSURANCE CO.'S CASE, (Sask.), [1919] 2 W. W. R. 47.—**CAN.**

gg (p. 751) ii. —— —— *Transfer for executory consideration—Right to mandamus on refusal to register.*]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; [1928] Argus L. R. 293.—**AUS.**

gg (p. 751) iii. —— —— *After foreclosure decree.*]—*Re* WEST, [1928] 1 D. L. R. 937; 61 O. L. R. 540.—**CAN.**

nn (p. 751) i. —— —— ——.]—HALL *v.* YORKTON LAND REGISTRATION DISTRICT (REGISTRAR) (1911), 16 W. L. R. 568.—**CAN.**

ooo (p. 751) i. —— *To decide as to status of person applying to amend plan.*]—*Re* CHISHOLM & OAKVILLE TOWN CORPN. (1885), 12 A. R. 225.—**CAN.**

ooo (p. 751) ii. —— *To pay over proportion of fees to treasurer—After deducting disbursements—Whether court can review inspector's decision as to disbursements.*]—SIMCOE COUNTY *v.* SANDERSON, [1923] 1 D. L. R. 1185 51 O. L. R. 239.—**CAN.**

ooo (p. 751) iii. —— *Registration under Real Property Act, 1913—Effect of.*]—CANADIAN BANK OF COMMERCE *v.* WINNIPEG DISTRICT REGISTRAR, [1928] 3 W. W. R. 630; *affd.*, [1929] 4 D. L. R. 318; 2 W. W. R. 467; 38 Man. L. R. 275.—**CAN.**

s (p. 752) i. —— —— *Land not described in assignment — Effect of affidavit made for purposes of registration.*]—*Re* ASTON & WHITE (1920), 48 O. L. R. 168; 18 O. W. N. 5.—**CAN.**

ee (p. 752) i. —— ——.]—PUTZ *v.* TITLES REGISTRAR, [1928] V. L. R. 348; [1928] Argus L. R. 224.—**AUS.**

sn. *Application under Quieting Titles Act—Jurisdiction of court—To grant certificate.*]—*Ex p.* CHAMBERLAIN (1869), 2 Ch. Ch. 352.—**CAN.**

so. —— —— *To waive irregularity—In advertisement.*]—*Re* HARRIS (1888), 12 P. R. 430.—**CAN.**

sp. *Liability of county council—To pay for books supplied to registrar.*]—READ *v.* KENT COUNTY MUNICIPAL COUNCIL (1857), 13 U. C. R. 572.—**CAN.**

sq. —— *To furnish offices, vaults, etc.*]—R. *v.* NORTHUMBERLAND & DURHAM COUNTIES CORPN. (1861), 10 C. P. 526.—**CAN.**

sr. *Liability of city council—To pay for statement of titles—Furnished by registrar of county—To registrar of city separated from county.*]—DURAND *v.* KINGSTON CITY (1864), 14 C. P. 439.—**CAN.**

PART III. SECT. 6, SUB-SECT. 5.

q (p. 753) i. —— —— ——.]—"Fraud" under Land Titles Act, 1917, ss. 59, 174 & 194, means actual fraud.—DOMINION FIRE-BRICK & CLAY PRODUCTS, LTD. *v.* POLLOCK (Sask.), [1919] 2 W. W. R. 245.—**CAN.**

q (p. 753) ii. —— ——.]—The fact that a person who obtains a transfer of land & registers it, knowing that there is an outstanding unregistered transfer to the same land, may, in addition to his wish to acquire the land, have been actuated by the wish to get rid of an undesirable neighbour who is in occupation of the land, cannot amount to "fraud" within sect. 216 of Land Titles Act, R. S. S., 1930, which provides that a person taking a transfer from the registered owner shall not, except in the case of his own fraud, be affected by any notice, direct, implied or constructive, of any trust or unregistered interest in the land, "any rule of law or equity to the contrary notwithstanding"; & that his knowledge of such trust or unregistered interest "shall not by itself be imputed as fraud."—HACKWORTH *v.* BAKER, [1936] 1 W. W. R. 321; 5 F. L. J. (Can.) 309.—**CAN.**

g (p. 753) i. —— *Certificate given by Commissioner under ch. 126, Acts, N. S. 1908.*]—*Re* TRINITY CHURCH, LIVERPOOL (1930), 3 M. P. R. 209.—**CAN.**

r (p. 753) i. —— ——.]—ANNABLE *v.* COVENTRY (1912), 22 W. L. R. 254; 5 D. L. R. 661; 2 W. W. R. 816.—**CAN.**

aa (p. 753) i. —— ——.]—PARAMOUNT THEATRES, LTD. *v.* BRANDENBERGER, [1928] 4 D. L. R. 573; 62 O. L. R. 579.—**CAN.**

kk (p. 753) i. —— —— ——.]—CANADIAN PROVINCIAL POWER CO., LTD. *v.* NOVA SCOTIA POWER COMMISSION, [1927] 2 D. L. R. 475; 59 N. S. R. 234.—**CAN.**

r (p. 754) i. —— —— ——.]—HALL *v.* PELMADULLA VALLEY TEA & RUBBER CO. (1929), 98 L. J. P. C. 174.—**CEYLON.**

aaa (p. 754) i. —— —— *Conveyance by registered owner—Judgment registered against registered owner after date of conveyance.*]—*Re* MURPHY, [1928] I. R. 479.—**IR.**

h (p. 755) i. —— ——.]—THOMAS *v.* GUAY, [1927] 2 D. L. R. 1146.—**CAN.**

oo (p. 755) i. —— —— *Rights of purchaser from ostensible owner.*]—P. L. T. A. R. CHETTYAR FIRM *v.* MAUNG KYAING (1929), I. L. R. 7 Ran. 276.—**IND.**

mm (p. 755) i. —— *Right of owner of land sold for taxes to sue under Land Titles Act, s.* 110—*Delay in bringing action.*]—BLACKSTOCK *v.* NORTH ALBERTA LAND REGISTRATION DISTRICT REGISTRAR (Alta.), [1917] 2 W. W. R. 938.—**CAN.**

rr (p. 755) i. —— *Conveyance of Crown land by squatter.*]—ROBIN, COLLAS & CO., LTD. *v.* THERIAULT (1904), 25 C. L. T. 68; 3 N. B. Eq. Rep. 14.—**CAN.**

ooo (p. 755) i. —— —— *Right of purchaser of one lot on building estate—As to roads.*]—*Re* MCILMURRAY & JENKINS (1895), 22 A. R. 398.—**CAN.**

ggg (p. 755) i. —— *Restrictive covenants.*]—*Re* ROWAN & EATON, [1927] 2 D. L. R. 722; 60 O. L. R. 245.—**CAN.**

sx. *Real nature of transaction immaterial to stranger.*]—MORRIS *v.* MORRIS, [1931] 3 D. L. R. 325; 3 W. W. R. 427; 44 B. C. R. 166.—**CAN.**

sz. *Deletion of plan from register—Variation.*]—Land having been purchased by a municipality on condition that the registered plan is deleted by order of ct., such plan cannot be varied for the benefit of abutting owners who had no notice.—HARRISON *v.* HAMILTON, [1936] 1 D. L. R. 293; O. R. 70.—**CAN.**

sa. *Transfer by administrator to child of intestate—Whether transferee purchaser for value.*]—One who succeeds to an interest in the estate of an intestate & who by a mutual arrangement with the other beneficiaries & the administrator accepts in satisfaction of such interest a transfer of land of the estate & becomes the registered owner thereof is not a purchaser for value, & must be presumed to have known that the property of the estate is subject to such equities as the intestate may have created.—PAULSON *v.* BARKEN, [1937] 2 W. W. R. 398.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.

h i. —— *Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in Real Property Act, made by the registered owner, & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequently acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

registered land should not ask for rectification of the Register. They should not be entitled in the matter of the Land Registration Act. The order should contain a direction to the trustees to produce the order to the Land Registrar.—PRACTICE NOTE, [1932] W. N. 6; 173 L. T. Jo. 40.

908a. Unregistered sub-demise—By mortgagor—In breach of covenant.]—BRITISH MARITIME TRUST *v.* UPSONS, LTD., [1931] W. N. 7; 71 L. Jo. 135; 171 L. T. Jo. 77.

910a. —— With absolute title—Claim that land subject to collateral agreement—Failure to prove agreement.]—Pltfs. were the registered owners in fee simple of a plot of land forming part of a building estate upon which plot they had erected a house. The property comprised in this title was originally the freehold property of defts., S. J. & E. I., who were carrying on business in partnership & who were the registered owners with an absolute title of the whole estate. Before the purchase of the plot by pltfs., a plan was produced of the proposed lay out of the estate. This plan showed, amongst other things, a small strip of land adjoining pltfs.' plot: that strip bore upon it the words "Tennis Courts." Pltfs. stated that in addition it was orally represented to them by defts. that this strip would be used only as tennis courts; & that they were therefore induced to purchase the plot. After the purchase defts. S. J. & E. I. transferred their business & the whole of the unsold portion of the building estate to deft. co., H. C. J. & Co., Ltd., who were duly registered as owners in fee simple with an absolute title. Defts. having erected three garages on the strip of land in question pltfs. sought a mandatory injunction to remove them, alleging that when they purchased the plot there was a collateral agreement that this strip was only to be used as tennis courts, & that on the faith of this agreement they agreed to the purchase. This was denied by defts. During the action the statement of claim was amended to enable pltfs. to claim rectification of deft. co.'s registered title by inserting therein a notice that the strip of land was affected by the restrictive agreement prohibiting the user thereof otherwise than as tennis courts:—*Held:* (1) pltfs. had not succeeded in establishing the collateral agreement they alleged; (2) in all the circumstances of the case there was nothing which could be considered to make it unjust not to rectify under Land Registration Act, 1925 (c. 21), s. 82 (3). The action therefore failed.—HODGES *v.* JONES, [1935] Ch. 657; 104 L. J. Ch. 329; 153 L. T. 373; 79 Sol. Jo. 522.

911a. First registration under Land Transfer Acts, 1875 & 1897—Effect of Land Registration Act, 1925 (c. 21), s. 147.]—The purchasers of freehold land caused themselves to be registered as first proprietors with an absolute title under Land Transfer Acts, 1875 & 1897, of the land purporting to be conveyed to them, which included two narrow strips of woodland of which, as the ct. decided in this action, an adjoining owner was in possession, having acquired a good title by possession to the fee simple at the time of the registration:—*Held:* that notwithstanding Land Registration Act, 1925 (c. 21), s. 147, the power to rectify the register conferred by sect. 82 (1) of that Act enabled the ct. to order rectification of entries made in the register under Land Transfer Acts, 1875 & 1897, & accordingly that the order for rectification of the register by excluding from pltfs.' registered title the land erroneously included in it had been properly made.—CHOWOOD, LTD. *v.* LYALL (2), [1930] 2 Ch. 156; 99 L. J. Ch. 405; 143 L. T. 546, C. A.

Annotation:—**Refd.** *Re* Chowood, Ltd. (1933), 149 L. T. 70.

911b. Entry procured by fraud.]—A daughter without her mother's knowledge arranged for the sale of certain registered land from the mother to herself. Without explaining the true nature of the document, the daughter secured the execution of the necessary transfer by her mother & her own registration as owner with an absolute title. The daughter subsequently created charges upon the property, the chargees being ignorant of the fraud upon the mother, & giving full consideration for their charges:—*Held:* the mother was entitled, under Land Registration Act, 1925 (c. 21), s. 82, to rectification of the register by striking out the daughter's name & inserting the mother's name as owner with an absolute title. There was, however, no ground for any rectification of the charges register.—*Re* LEIGHTON'S CONVEYANCE, [1936] 1 All E. R. 667. *On appeal,* [1936] 3 All E. R. 1033, C. A.

h ii. —— *On registration of transfer—Previous transfer without consideration—Transferor subsequently becoming of unsound mind.*]—RATTIGAN *v.* REGAN, [1929] I. R. 342.—**IR.**

st. *Owner giving agent authority to sell—Agreement between agent & purchaser—Purchaser taking transfer from owner—Whether entitled to registration.*]—JOHNSON *v.* SENFT (Sask.), [1929] 4 D. L. R. 519.—**CAN.**

sw. *Transfer of homestead by husband to wife—Existing judgment registered against land—Right of wife to certificate free from judgment.*]—BEJKO *v.* ROBSON, [1934] 2 W. W. R. 366; 4 D. L. R. 561; 42 Man. L. R. 214.—**CAN.**

sz. *Mortgaged land.*]—SUPERIOR BUILDERS, LTD. *v.* SCOTT & SHORE, [1937] 2 W. W. R. 274.—**CAN.**

PART III. SECT. 8, SUB-SECT. 8.—A.

bb 1. —— ——.]—Pltf., to whom deft. was indebted, knowing that deft. was the real owner of certain land & held an unregistered transfer therefor, went behind his back & obtained a transfer to itself from the registered owner, which it registered, & attempted to deprive deft. of possession:—*Held:* the case was one of actual fraud, & deft. was entitled to have the registration of the transfer to pltf. cancelled & to have the duplicate certificate of title in the name of pltf. delivered up for cancellation. In the event of pltf. not so delivering up the duplicate certificate, there should be an order vesting the land in the name of deft., subject to a mtge. which, with deft.'s consent, the registered owner had given pltf. as security for deft.'s debt to pltf.—BEAVER LUMBER CO., LTD. *v.* PRITCHARD, [1933] 3 W. W. R. 35.—**CAN.**

sw. *Lis pendens—Dismissal of bill—Order discharging lis pendens unnecessary.*]—DEXTER *v.* COSFORD (1868), 1 Ch. Ch. 22; 5 C. L. J. O. S. 67.—**CAN.**

PART III. SECT. 6, SUB-SECT. 8.—B.

kk (p. 757) **i.** —— —— *Mandamus to Minister of Finance.*]—The prosecutors herein had been given judgment in an action in which they alleged that defts. therein had fraudulently obtained a deed of conveyance which had been placed in escrow, & had fraudulently registered it & imposed a mtge. thereon. By said judgment the charge of fraud was sustained, & the land was vested in the prosecutors subject to the mtge., & the judgment further provided for a reference to the district registrar to ascertain the amount received by the wrongdoers under the mtge. & also rents & profits, & that the prosecutors recover "the sum found due on the taking of such account." This amount having been so fixed, the district registrar, without making any further application to the ct. entered judgment therefor. Writs of execution having been issued on such judgment & returns of *nulla bona* made thereto, a demand

913a. —— **No loss suffered by rectification.**]—On Apr. 22, 1925, Chowood, Ltd. (hereinafter called "Chowood"), were registered as proprietors, with an absolute title, of certain freehold lands which they had purchased from & had had conveyed to them by the vendor. The lands so registered included strips of woodland to which, without the knowledge of Chowood, a title by possession under Real Property Limitation Acts had, before the date of Chowood's registration, been acquired by one Lyall, an adjoining owner. In an action by Chowood against Lyall for trespass on the strips of woodland, Lyall established her title under the Limitation Acts & counterclaimed rectification of the register. LUXMOORE, J., ordered rectification of the register by removing therefrom Chowood's title to the strips, & the register was rectified accordingly. Upon an application by Chowood against the A.-G. (on behalf of the official trustees of the Insurance Fund established under Land Transfer Act, 1897 (c. 65)), that their claim to be indemnified under Land Registration Act, 1925 (c. 21), s. 83, in respect of loss alleged to have been suffered by reason of the rectification might be determined by the ct.:—*Held:* as appcts.' registered land was subject to the overriding rights of Lyall to the strips of woodland which she had then already acquired under Real Property Limitation Acts, the rectification of the register for the purpose of giving effect to those overriding rights had put appcts. in no worse position than they were in before such rectification; with the result that appcts. having suffered no loss by reason of the rectification were not entitled to be indemnified under Land Registration Act, 1925 (c. 21), s. 83.—*Re* CHOWOOD'S REGISTERED LAND, [1933] Ch. 574; 102 L. J. Ch. 289; 149 L. T. 70; 49 T. L. R. 320.

Part IV.—Extinguishment of Title.

915. *Add. Annotation:*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

918. *Add. Annotation:*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

919. *Add. Annotation:*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

921. *Add. Annotation:*—**Apld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

Part V.—Action for Recovery of Land.

956. *Add. Annotation:*—**Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

1040a. —— ——.]—SPEAR'S GLASS WORKS (LTD.) *v.* SPEAR (1902), 37 L. Jo. 578.

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was made upon the Minister of Finance pursuant to sect. 218 of Land Registry Act, R.S.B.C., 1924, for payment of the amount of the judgment out of the assurance fund provided for by said Act. This demand being refused, the prosecutors obtained an order for a writ of *mandamus* commanding him to pay. From that order the Minister appealed:—*Held:* the order was properly made.—R. (ANDLER) *v.* MINISTER OF FINANCE OF B. C., [1935] 1 W. W. R. 113; 49 B. C. R. 223; *revsd.*, [1935] S. C. R. 278; 3 D. L. R. 316.—**CAN.**

c i. —— *Forged transfer.*]—A transfer of title to land owned by pltf. was forged, the forger being made the transferee, & a mtge. was given by the forger to an innocent mtgee. & registered. Pltf. first received notice of the registration of the mtge. when she was served with notice of sale proceedings under the mtge. She forthwith engaged a solr.; & she was required to attend before the district registrar for examination. Pltf.'s insurance policy had also been stolen & a forged assignment thereof made in favour of the mtgee.:—*Held:* the district registrar should pay such amount as would enable pltf. to clear the title to her land as from the date of such payment, including the mtgee.'s costs in respect of the mtge. sale proceedings as between solr. & client.—BONNEAU *v.* WINNIPEG DISTRICT REGISTRAR, [1935] 3 W. W. R. 181; 43 Man. L. R. 371.—**CAN.**

sg. *Payment from assurance fund —Mandamus.*]—*Mandamus* lies to Minister of Finance ordering him to pay out of the assurance fund provided by Land Registry Act, R.S.B.C., 1924.—R. *v.* MINISTER OF FINANCE OF BRITISH COLUMBIA, [1935] 1 D. L. R. 333; 48 B. C. R. 412.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

e. *Revsd.*, [1927] 3 D. L. R. 1; [1927] S. C. R. 403.

PART V. SECT. 1.

sa. *Duty of court—To decide upon legal rights of parties.*]—A judge sitting at *nisi prius* & hearing an action of ejectment has only to decide upon the legal rights of the parties, & if pltf. makes out a legal title to the property he is entitled to recover, even though deft. may be entitled to relief in equity. —DOE d. MOFFATT *v.* THOMPSON (1877), 1 P. & B. 516.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (a) i.

1057 vi. ——.]—STEVENS *v.* SKIDMORE, [1931] 2 D. L. R. 467; *affd.*, [1931] 3 D. L. R. 455; O. R. 649.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

f (p. 766) i. *Claimant by adverse possession—Against Crown grantee.*]—DOBEK *v.* JENNINGS, [1928] 1 D. L. R. 736; [1928] 1 W. W. R. 348; 23 Alta. L. R. 306.—**CAN.**

se. *Lessor—Suit to obtain possession for lessee.*]—A landlord, though he has given a lease to a third person, is entitled, for the purpose of putting his lessee in possession, to maintain a suit to eject a trespasser.—DAMODAR PRASAD TEWARI *v.* LACHMI PRASAD SINGH (1928), I. L. R. 7 Pat. 496.—**IND.**

sf. *Trustees of church—Unincorporated body.*]—DOE d. GALT PRESBYTERIAN CHURCH TRUSTEES *v.* BAIN (1847), 3 U. C. R. 198.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

t i. —— ——.]—LOUNT *v.* SMITH 1848), 5 U. C. R. 302.—**CAN.**

f i. —— *Wife living apart from husband—Circumstances precluding presumption of being husband's agent.*]—Where a wife, living apart from her husband, is in possession of land, under such circumstances as precludes the presumption of her being agent of her husband, she must be made a deft. in ejectment for the land.—WOODWARD *v.* CUMMINGS (1873), 6 P. R. 110.—**CAN.**

sg. *Tenants in one house—Occupying separate tenements.*]—Where several tenants occupied different apartments in one house, as several tenements:—*Held:* a single action might be brought for the premises, serving each tenant with a copy & notice.—DOE d. BELL *v.* ROE (1834), 3 O. S. 64.—**CAN.**

sh. *Whether sub-tenants necessary parties.*]—In an action by a landlord for possession of the premises, it is not necessary to make sub-tenants in actual possession parties deft., & a judgment for possession may be given against the tenant under which the sub-tenants must go out.—INCORPORATED SYNOD OF TORONTO *v.* FISKEN (1898), 29 O. R. 738.—**CAN.**

PART V. SECT. 4.

b i. —— —— *Tenancy terminable by either party.*]—ECKHARDT *v.* RABY (1861), 20 U. C. R. 458.—**CAN.**

b ii. —— *Defendant put into possession by lessor of plaintiff—Denial of lessor's title.*]—DOE d. BOUTER *v.* FRAZER (1835), 4 O. S. 80.—**CAN.**

1042a. Suit for redemption.]—PHILLIPS *v.* PHILLIPS (1900), 44 Sol. Jo. 551.

1064. *Add. Annotation :*—**Distd.** Dudley & District Benefit Building Soc. *v.* Gordon, [1929] 2 K. B. 105.

1198. *Add. Annotation :*—**Refd.** The Edison (No. 2), [1934] P. 115.

b iii. —— *Defendant put into possession by devisee for life—Right of remainderman.*]—DOE d. FIELDS *v.* MCKAY (1844), 4 N. B. R. (2 Kerr) 435.—**CAN.**

o (p. 770) **i.** —— *Action dismissed for failure to give—Right to bring second action after making demand.*]—Where an appln. for a writ of possession was dismissed because no notice of determination of the lease had been given :—*Held :* the landlord was not thereby barred from making another appln. after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—B.

1076 iii. —— *Affidavit of service—Contents of.*]—Affidavit of service of declaration by fixing a copy to the door of house should state the name of the tenant from whom the rent is due.—DOE d. WHITE *v.* ROE (1844), 4 N. B. R. (2 Kerr) 360.—**CAN.**

PART V. SECT. 8.

sm. *Claim under paper title—Defendant setting up right under lease from plaintiff—Right of defendant to rely upon forfeiture of lease—Though not pleaded.*]—PETTIGREW *v.* DOYLE (1867), 17 C. P. 459.—**CAN.**

PART V. SECT. 10.

1125 i. —— *Title of plaintiff defective.*]—DOE d. MUNRO *v.* HANSON (1831), (1825-1897) N. B. Dig. 293.—**CAN.**

r (p. 777) **i.** —— ——.]—TOWNSHIP OF COLCHESTER SOUTH *v.* HACKETT, [1927] 4 D. L. R. 317; 61 O. L. R. 77; *affd. sub nom.* HACKETT *v.* COLCHESTER SOUTH MUNICIPAL CORPN., [1928] 3 D. L. R. 107.—**CAN.**

r (p. 777) **ii.** —— —— *Act of Limitations—Effect of possession by tenant in common.*]—DOE d. WILLIAMS *v.* LEAVITT (1843), 4 N. B. R. (2 Kerr) 83.—**CAN.**

r (p. 777) **iii.** —— —— *Against plaintiff taking forcible possession.*]—Possession short of twenty years is a sufficient title in ejectment against a party, who, without any show of title, comes & takes forcible possession of land.—DOE d. FRENCH *v.* DUNN 1859), 4 Nfld. L. R. 404.—**NFLD.**

r (p. 777) **iv.** —— ——.]—SOHAN LAL *v.* MOHAN LAL (1928), I. L. R. 50 All. 986.—**IND.**

aa (p. 777) **i.** —— —— *Title acquired through person who entered by permission of plaintiff.*]—In an action to recover possession of land, defts. limited their defence to a portion of the land claimed, & as to that portion depended upon title acquired from H., who entered by permission of pltf. :—*Held :* both defts. & H. were estopped from denying pltf.'s title.—LAKEVIEW MINING CO. *v.* MOORE (1903), 36 N. S. R. 333.—**CAN.**

o (p. 778) **i.** —— ——.]—MILNER *v.* RINGWOOD (*circa* 1875), R. E. D. 123.—**CAN.**

o (p. 778) **ii.** —— —— *Possession obtained by exchange from plaintiff's father.*]—RELL *v.* CARRUTHERS (1869), 2 N. S. D. 1.—**CAN.**

o (p. 778) **iii.** —— —— *Agreement by plaintiff to grant perpetual lease—Performance of acts referable to agreement.*]—ARIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

t (p. 778) **i.** —— *Purchase at sale under writ of execution—Judgment irregular to purchaser's knowledge.*]—*Held :* the sheriff's deed could not defeat pltf.'s right to recover.—HAMILTON *v.* LIGHTBODY (1870), 21 C. P. 126.—**CAN.**

t (p. 778) **ii.** —— *Colour of title.*]—BOYD *v.* MILLETT (1873), 9 N. S. R. 292.—**CAN.**

t (p. 778) **iii.** —— ——.]—MCDONALD *v.* MCISAAC (1905), 38 N. S. R. 163; *affd. sub nom.* MCISAAC *v.* MCDONALD, 39 S. C. R. 157.—**CAN.**

t (p. 778) **iv.** —— *Defendant in possession as tenant of plaintiff.*]—FISHER *v.* JOHNSTON (1866), 25 U. C. R. 616.—**CAN.**

t (p. 778) **v.** —— *Transfer to plaintiff made by party not in possession.*]—GAMMON *v.* JODREY (1877), 11 N. S. R. (2 R. & C.) 314.—**CAN.**

t (p. 778) **vi.** —— *Tenant of mortgagee—Title of mortgagee—Against holder of equity of redemption.*]—DOE d. SMITH *v.* SNARR (1877), 17 N. B. R. (1 P. & B.) 56.—**CAN.**

t (p. 778) **vii.** —— *Defendant tenant from year to year—No notice to terminate tenancy.*]—LAPORTE *v.* WILSON (1913), 24 O. W. R. 543.—**CAN.**

t (p. 778) **viii.** —— *Defendant in possession under conveyance from plaintiff — Error in conveyance — Boundaries agreed between vendor & vendee.*]—MCDONALD *v.* KNUDSEN, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—**CAN.**

PART V. SECT. 11, SUB-SECT. 1.

d i. —— *Sufficiency of evidence.*]—ALLISON *v.* SMITH (1877), 1 P. & B. 199.—**CAN.**

aa (p. 779) **i.** ——.]—In a suit for ejectment, although pltf. may not be able to establish any title in himself, he is entitled to succeed if he can prove that he was in possession of the property in dispute until he was forcibly ousted by deft., provided deft. does not establish a better title in himself.—RANJIT SINGH PRINCE *v.* JHORI SINGH (1928), I. L. R. 8 Pat. 351.—**IND.**

ad. *Ejectment for non-payment of ent—Motion for judgment against casual ejector—Tenant in possession not lessee—Whether necessary to show how tenant holds.*]—DOE d. ST. JOHN CORPN. *v.* ROE (1885), 25 N. B. R. 149.—**CAN.**

ae. *Unregistered lease—Prior in date to Crown grant—Whether admissible to prove right of tenant.*]—NORTH PACIFIC LUMBER CO. *v.* BRITISH AMERICAN TRUST CO. (1917), 23 B. C. R. 332.—**CAN.**

PART V. SECT. 11, SUB-SECT. 2.—A.

1134 i. *Plaintiff recovers on own title.*]—CLARKE *v.* HANEY & DUNLOP (1899), 8 B. C. R. 130; 1 M. M. Cas. 281.—**CAN.**

1140 i. *Plaintiff claiming as purchaser under writ of execution—Proof of judgment & writ.*]—PERRY *v.* PIQUOTT (1855), 12 U. C. R. 372.—**CAN.**

o (p. 780) **i.** —— ——.]—PENLINGTON *v.* BROWNLEE (1868), 28 U. C. R. 189.—**CAN.**

aa (p. 780) **i.** —— *Proof of judgment unnecessary.*]—RALSTON *v.* HUGHSON (1867), 17 C. P. 364.—**CAN.**

aa (p. 780) **ii.** ——.]—JEX *v.* HICKS (1876), 39 U. C. R. 606.—**CAN.**

n (p. 781) **i.** —— *Loan to be paid off by instalments—Date of expiration of mortgage uncertain—Release of mortgagor by mortgagee after action brought.*]—ASHFORD *v.* MCNAUGHTON (1854), 11 U. C. R. 171.—**CAN.**

q (p. 781) **i.** —— *Not registered—Admissible where no registered instrument.*]—An unregistered Crown grant is admissible in evidence where it is not sought to set it up against a registered instrument.—DORRELL *v.* CAMPBELL (No. 2), [1917] 1 W. W. R. 500; 23 B. C. R. 500.—**CAN.**

c (p. 781) **i.** —— *Purchaser for value without notice—Defendant in possession—Claim by adverse possession.*]—CANADA PERMANENT LOAN & SAVINGS CO. *v.* MCKAY (1881), 32 C.P. 51.—**CAN.**

ff (p. 781) **i.** *Title acquired pendente lite.*]—*Held :* insufficient.—ADAMSON *v.* ADAMSON (1878), 25 Gr. 550.—**CAN.**

hh (p. 781) **i.** —— *Question for jury.*]—EADES *v.* MAXWELL (1859), 17 U. C. R. 173.—**CAN.**

sm. *Claim by executrix under mortgage from defendant—Right to show mortgage to testator.*]—SKEAHON *v.* WHELAN (1864), 24 U. C. R. 174.—**CAN.**

sn. *Evidence that ancestor of plaintiff's lessors had cut wood off land.*]—MCDONALD *v.* CHISHOLM (1858), 3 N. S. R. (2 Thom.) 404.—**CAN.**

so. *Claim by devisee—Land mortgaged by testator—Foreclosure—Land sold under decree of court.*]—KEARNEY *v.* CREELMAN (1886), 14 S. C. R. 33.—**CAN.**

sp. *Title derived from foreclosure in equity suit—Property mortgaged by remainderman—Defendant in possession as tenant for life.*]—COLONIAL INVESTMENT & LOAN CO. *v.* DEMERCHANT (1908), 38 N. B. R. 431; 4 E. L. R. 546.—**CAN.**

sr. *Prima facie title.*]—In ejectment pltf. is only required to prove a *prima facie* case on title, unless he alleges an illegal title in deft., when he must prove it.—GARDINER *v.* CHARLOTTETOWN CITY, [1933] 4 D. L. R. 809; 5 M. P. R. 574.—**CAN.**

PART V. SECT. 13.

sy. *Nature of action.*]—An action for mesne profits is in origin an action of trespass, & is regulated by the broad principles applicable to actions for damages against wrongdoers.—KAMALA PROSAD SUKUL *v.* KISHORI MOHAN PRAMANIK (1927), I. L. R. 55 Calc. 666.—**IND.**

p i. ——.]—HERR *v.* WESTON (1872), 32 U. C. R. 402.—**CAN.**

q i. —— *Right to costs of ejectment—Before taxation.*]—In an action for mesne profits, after judgment by default in ejectment, it is not necessary that the costs of the ejectment should be taxed before they can be recovered.—BANK OF UPPER CANADA *v.* ARMSTRONG (1843), (1823-1900), 1 Ont. Dig. 2158.—**CAN.**

q ii. —— —— *Necessity for proof of payment.*]—DOE *v.* CAHILL (1853), 2 All. 650.—**CAN.**

1175 v. ——.]—Under the definition of "mesne profits" in Code of Civil Procedure, 1908, s. 2 (12), the sum to be awarded is not what pltf. has lost by his exclusion from the land, but what deft. has made, or might with reasonable diligence have made, by his wrongful possession. In the case of agricultural land that depends upon what an ordinary prudent agriculturist would have grown, & if deft. for his own purposes has grown a less profitable crop the mesne profits are not thereby limited. If deft. has let the land the rent received is ordinarily the measure of the profits in the absence of

evidence that a higher rent could have been obtained by reasonable diligence; but if he has cultivated the land himself the cultivation profits are the primary consideration. — GRAY *v.* [illegible] MIAN (1929), 57 L. R. Ind. App. 105, P. C.—**IND.**

PART V. SECT. 14.

o 1. *Decision of master in chambers—On originating notice—Whether valid.*]—A master in chambers has no power to make an order, upon originating notice, for the delivery up of possession of land by an overholding tenant.—MACDONALD *v.* GEORGIADES (1916), 34 W. L. R. 964.—**CAN.**

sq. *Motion for—Plaintiff's case not conclusively made out.*]—COOK *v.* LEMIEUX (1885), 10 P. R. 577.—**CAN.**

sr. *Verdict entered for plaintiff by consent—Enforcement conditional on certain payments—Judgment entered on verdict before payments made—Right of defendant to damages.*]—WATSON *v.* KETCHUM (1882), 2 O. R. 237.—**CAN.**

PART V. SECT. 15.

p 1. —— —— *Notice to quit as to part given too late.*]—Ejectment for a house & small lot of land adjoining. It appeared that, as to the house, notice to quit had been given too late, but that pltf. was entitled to the land. It was ordered that unless pltf. would confine his judgment to the land, deft. should have a new trial.—CONLEY *v.* LEE (1855), 12 U. C. R. 456.—**CAN.**

st. *Rebuttal of plaintiff's evidence—Defendant in actual adverse occupation or twenty years.*]—DOE d. MCMACKIN *v.* DEVINE (1841), 3 N. B. R. (1 Kerr) 411.—**CAN.**

PART V. SECT. 16.

sv. *Undefended suit.*]—In entering judgment in an undefended suit for the recovery of land, pltf. is not entitled to enter judgment for costs incurred in the proceeding.—STATE ADVANCES SUPERINTENDENT *v.* HARWOOD, [1934] N. Z. L. R. 828; G. L. R. 594.—**N.Z.**

PART V. SECT. 17.

sw. *Death of lessor of plaintiff before trial—Whether sciere facias necessary.*]—In ejectment under the old form, where the lessor of the pltf. died before the trial:—*Held:* no *sci. fa.* was necessary, but that judgment might be entered, & a writ of possession obtained.—DOE d. HAY *v.* HUNT (1855), 12 U. C. R. 625.—**CAN.**

RECEIVERS.

Part II.—Appointment by Court.

106a. —— ——.]—An *interim* appointment of a receiver of property in the possession of, & claimed by, deft. in the suit should be made only if there is a well-founded fear that, in the absence of protection, the property will be dissipated or irreparably injured.—BEVOY KRISHNA MUKHERJEE *v.* SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.

233a. ——.]—A receiver appointed to collect in assets, & to bring actions in the name of an extrix., must give security to indemnify the extrix. on account of such actions.—TAYLOR *v.* ALLEN (1741), 2 Atk. 213; 26 E. R. 532, L. C.

Annotations :—**Refd.** Anon. (1806), 12 Ves. 4; Pemberton *v.* Chapman (1857), 7 E. & B. 210.

233b. ——.]—SNARE *v.* BAKER, BEASLEY *v.* SNARE (1849), 13 Jur. 203.

390. *Add. Annotation :*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

403. *Add. Annotation :*—*Generally*, **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

451a. ——.]—HALL *v.* JENKINSON (1813), 2 Ves. & B. 125; 35 E. R. 266, L. C.

555. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

556. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

557. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

571. *Add. Annotation :*—**Apld.** A.-G. *v.* Glen Line, Ltd. & Liverpool & London War Risks Insce. Assocn., Ltd. (1929), 34 Com. Cas. 309.

Part III.—Effect of Appointment.

659. *Add. Annotation :*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

682. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 170.

Part IV.—Rights, Powers and Duties.

755. *Add. Annotation :*—**Apld.** *Re* Debtor No. 76 of 1929, [1929] 2 Ch. 146.

Part VI.—Interference with Receiver.

895a —— ——.]—A libel on the business carried on by a receiver & manager appointed by the ct. is a contempt of ct., & may be punished by committal of the offender.—HELMORE *v.* SMITH (No. 2) (1886), 35 Ch. D. 449; 56 L. J. Ch. 145; 56 L. T. 72; *sub nom.* HELMORE *v.* SMITH, *Ex p.* SMITH, 35 W. R. 157; 3 T. L. R. 139, C. A.

Annotations :—**Consd.** *Re* Gent, Gent-Davis *v.* Harris (1892), 40 W. R. 267. **Apld.** King *v.* Dopson (1911), 56 Sol. Jo. 51. **Refd.** *Re* Evelyn, *Ex p.* General Public Works & Assets Co., [1894] 2 Q. B. 302; Robb *v.* Green (1895), 64 L. J. Q. B. 593; R. *v.* Davies, [1906] 1 K. B. 32; R. *v.* Daily Mail Editor, *Ex p.* Farnsworth (1921), 90 L. J. K. B. 871.

PART II. SECT. 1, SUB-SECT. 2.—A.

h i. *Master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—IR.

PART II. SECT. 6, SUB-SECT. 2.—N.

n i. —— ——.]—In an action by a vendor of land for specific performance an order may be made, before the land is sold, for the appointment of a receiver of the rents & profits of the land.—KNOWLES *v.* JENKINS (Alta.), [1923] 1 W. W. R. 1279.—CAN.

PART III. SECT. 1.

n i. —— *Possession of receiver is possession of court—For benefit of person entitled thereto.*]—BISHESHWAR PRATAP NARAYAN SAHI *v.* CHANDRESHWAR PRASAD NARAYAN SINGH (1928), I. L. R. 7 Pat. 319.—IND.

PART III. SECT. 2.

587 iv. ——.]—BOTTOMS *v.* PACIFIC NORTHWEST LBR. CO. (B. C.), [1929] 4 D. L. R. 415.—CAN.

PART III. SECT. 5, SUB-SECT. 5.—B.

685 viii. ——.]—NATIONAL TRUST CO. *v.* DOM. IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—CAN.

PART IV. SECT. 4.

p (p. 66) i. —— *Against receiver—Effect of order.*]—An order of the ct. giving leave to a party to sue its receiver does not amount to a relinquishment of possession of the properties by that ct., & an order of decree against the receiver cannot be enforced in execution as against him without leave of the ct. appointing him.—SRIMATI JUGAL KISHORE DEBI *v.* DEVA PRASANNA MUKHERJI (1928), I. L. R. 7 Pat. 684.—IND.

p (p. 66) ii. —— *In British court—Receiver appointed in Baroda.*]—A receiver appointed by a ct. of the Baroda State can be recognised as a proper party for the purpose of filing suits in a British ct.—CHANDULAL MADHAVLAL *v.* MANEKLAL LALLURAM (1930), I. L. R. 55 Bom. 309.—IND.

PART IV. SECT. 5.

776 i. *Purchase by receiver —Without leave of court—Purchasing receiver a trustee.*]—The rule in *Nugent* v. *Nugent*, No. 776, *supra*, that a person in a fiduciary position, having special means of knowledge, ought not to be allowed to buy or bid for property without the leave of the ct., is a sound & salutary rule & should be followed in British India. In the case of receivers it is well recognised in England & the United States of America.—JITESWARI DASI *v.* SUDHAKRISHNA MUKHERJI (1931), I. L. R. 59 Calc. 956.—IND.

PART X. SECT. 5.

sa. *Stipulation that receiver to sign bond—Failure to sign.*]—Where a surety on a receiver's bond executes the bond on the distinct understanding that it is also to be executed by the receiver himself, the failure to secure the signature of the receiver thereto discharges said surety.—LARBONNE *v.* SHORE, [1928] 2 D. L. R. 977; [1928] 2 W. W. R. 8; 39 B. C. R. 508.—CAN.

REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

Part I.—Central and Local Registration Authorities.

SECT. 2.—**REGISTRATION DISTRICTS.**

(Vol. 39, p. 99.)

See, now, Local Government Act, 1929 (c. 17), ss. 21–28.

Part II.—The Registers.

16. *Add. Annotation :—As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART III.

sh. " *Indians in province of Natal* " *—Includes only Indian immigrants—Act* 17, 1923, *ss.* 6, 42 (1).]—*Ex p.* BADAT (1927), 48 N. L. R. 435.—**S. AF.**

PART IV.

sj. *Amendment of register—When order granted.*]—Appct., whose first name was, according to his birth certificate, S., but who had always believed it to be C., was married in Natal in 1928, the latter name being recorded in the marriage register. He applied for an order authorising the registrar to amend the marriage register so as to show his first name as S., alleging that it was only when he obtained a copy of his birth certificate that he discovered his name was S. :—*Held :* order should be granted.—*Ex p.* KYRIAKIDES (1929), 50 N. L. R. 305.—**S. AF.**

RENTCHARGES AND ANNUITIES.

Part I.—Nature.

24. To cross-refs. before this case add :—
Law of Property (Entailed Interests) Act, 1932 (c. 27), s. 2.

52. *Add. Annotation :*—**Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

54. *Add. Annotation :*—**Consd.** *Re* Alington & L. C. C. Contract (1927), 138 L. T. 131.

57. *Add. Annotation :*—**Consd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

58. *Add. Annotation :*—**Consd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

61. *Add. Annotation :*—**Folld.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

62a. ——.]—(1) A testator by his will bequeathed various pecuniary legacies, & he directed that a fund, the market value of which at the time of appropriation should amount to £40,000, should be held on trust to pay the income thereof to certain named persons & in the proportions therein directed for their respective lives, & he further directed that a sum of £5,000 should be so set aside & the income thereof paid to L. for his life & after his death to his wife, G., during the remainder of her life, subject to a restraint on anticipation during coverture, & that on the determination of the life or other interests in any part or parts of those funds, such part or parts should fall into & form part of his residuary estate. The estate of testator proved insufficient to meet the pecuniary legacies & to provide for the two funds :—*Held :* the legatees entitled to life interests in the two funds ought to be treated as annuitants.

(2) Testator declared that the two funds should carry interest at the rate of 5 per cent. from the date of his death until the date of appropriation :—*Held :* the annuities should be calculated as from the date of the order, & 4 per cent. should be allowed for the purpose of calculating the value of the respective annuities.

(3) A legatee, entitled to a share in the £40,000 fund, who survived testator two years, died before the date of the order :—*Held :* the estate of the deceased legatee was entitled to 5 per cent. on the capital value of his interest under the will up to the date of his death, & no more.

(4) With regard to the £5,000 fund :—*Held :* the husband & wife must be treated as being entitled to two separate annuities, the husband to an annuity during his life & the wife to a reversionary annuity expectant upon his death & contingent upon her surviving him.—*Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193 ; 104 L. J. Ch. 53 ; 152 L. T. 370.

Part II.—Creation of Rentcharges and Annuities.

85a. —— **No words of inheritance—Limitations exhausting fee simple.**]—Grant *v.* Edmondson, No. 912a, *post.*

188. *Add. Annotation :*—**Distd.** Nicholson's Will Trusts, Ortmans *v.* Burke, [1936] 3 All E. R. 832.

195. *Add. Annotation :*—**Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

212. *Add. Annotation :*—**Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

221a. —— **Bankruptcy of covenantor.**]—A marriage having been dissolved by a decree absolute in 1925, the wife remarried shortly afterwards. Immediately before the remarriage the former husband executed a settlement on his former wife in consideration of her release of any claim to alimony or maintenance from him. By the settlement the husband covenanted with his former wife & as a separate covenant with the trustees to pay her, during their joint lives, an annuity of such an amount as after deduction of income tax would yield the clear sum of £3,000 a year for her separate use without power of anticipation whilst under coverture. In 1929 the former husband was adjudicated bkpt. Pltfs., as trustees of the settlement, & defts., the former wife, jointly proved in the bkpcy. for a large sum made up of several items, of which £41,723 represented the capital value of the annuity of £3,000. The proof was admitted, & in Dec. 1931 a dividend of 6*d.* in the pound was paid to pltfs. This amounted to £2,322, of which £1,043 1*s.* 6*d.* was the proportion attributable to the annuity. On a summons taken out by pltfs. to determine the question whether they ought to pay to deft. the dividend so far as it was attributable to the annuity, notwith-

PART I. SECT. 1.

11 i. —— *Devise of land subject to annuity.*]—Testator devised a half interest in land to his son & two daughters "subject to the payment" of an annuity :—*Held :* the annuity was charged upon the half interest.—Pearce *v.* Wright (1926), 39 C. L. R. 16.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—A.

k i. —— *Mode of ascertaining capital sum.*]—Testator directed that on the happening of a certain event, & at a certain time, his trustees should give to certain persons such capital sum as should fairly represent the capital value of a perpetual annuity of £400. The event had happened, & the date at which the gift should take effect had arrived & was found to be May 7, 1929. The only irredeemable Govt. stock in the State of New South Wales is the 4 per cent. Interminable Stock of N. S. W., which is free of Federal & State income tax. Testator had not directed that the beneficiaries should receive the capital value of a perpetual annuity of £400 free of those taxes :—*Held :* as the basis for ascertaining the amount of the capital money bequeathed by the will that Government security in this State, which is the most permanent & the least likely to be redeemed, must be selected.—Gilmour *v.* Gilmour (1931), 31 S. R. N. S. W. 83 ; 48 N. S. W. W. N. 15.—**AUS.**

standing the restraint upon anticipation, or whether they ought to invest the same, as being capital, in purchasing an annuity for the life of deft. :—*Held :* the trustees could properly pay the whole dividend to deft.—*Re* HORNE'S SETTLEMENT, COUTTS & CO. *v.* DUSMET DE SMOURS (DUCHESSA), [1932] 2 Ch. 180 ; 101 L. J. Ch. 359 ; 147 L. T. 492.

229. *Add. Annotations :*—**Consd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183. **Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

231. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

Part III.—Alienation of Rentcharges and Annuities and Estates Charged Therewith.

246. *Add. Annotation :*—**Refd.** *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

247. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

247a. —— ——.]—Under the will of her then husband made in 1902 & a separation deed & settlement made in 1903 V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime, the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :—*Held :* there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document. But even assuming there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—KENNEDY *v.* THOMASSEN, [1929] 1 Ch. 426 ; 98 L. J. Ch. 98 ; 140 L. T. 215 ; 45 T. L. R. 122.

254a. —— **Sale to raise charge paramount to annuities — Annuitants necessary parties to conveyance.**]—SULLIVAN *v.* SULLIVAN (1860), 28 Beav. 102 ; 54 E. R. 304.

Annotation :—**Refd.** Thompson *v.* Raine (1873), 28 L. T. 362.

254b. —— **Annuity charged on premises & business—Sale of business to company—Undertaking of company to pay annuity.**]—By his will made in 1913 P. appointed his two sons exors. & devised & bequeathed to them the freeholds upon which his business was carried on & the businesses subject to the payment of an annuity of £300 to his wife. Testator died in 1914. In Feb. 1923 the two sons agreed to sell to a trustee for an intended co. the undertaking & assets of the business in consideration of cash & shares in the co. & an undertaking by the co. to pay all the liabilities of the vendors in relation to the business, including the annuity & a charge to secure the bank overdraft of the vendors' firm. That agreement was carried out by two deeds dated June 1, 1923, one an assignment of the goodwill & the other a conveyance of the freehold premises of the vendors in connection with the business, including freehold premises at L. The conveyance recited the charge to the bank effected by deposit of the deeds, but made no reference to the annuity, & the will was also shortly recited. The conveyance was made by the vendors as beneficial owners, & the *habendum* was expressed to be subject to a charge by way of collateral security to the bank to secure £774 8*s.* 4*d.*, the amount of the firm's overdraft. On Nov. 19, 1929, the co. sold the freehold premises at L. to deft. J. by a conveyance of the fee simple free from incumbrances in the usual form. The co. having paid off the £774 8*s.* 4*d.* were able to hand over the title deeds to J. The widow was paid her annuity to Dec. 1929, when the co., owing to bad trade, were unable to pay it. The widow then brought this action claiming that J. had taken the property with notice which ought to have put him on inquiry whether the premises were freed from the annuity :—*Held :* the conveyance to the co. being made subject to the bank charge prevented any inference by J. that the vendors had ceased to act as exors., & the vendors to the co. were shown on the conveyance to be sole beneficiaries under their father's will as well as exors., & the fact that the vendors to the co. conveyed as beneficial owners did not put J. on inquiry, as he was entitled to assume that they were selling as exors.—PARKER *v.* JUDKIN, [1931] 1 Ch. 475 ; 100 L. J. Ch. 159 ; 144 L. T. 662, C. A.

Part IV.—Rights as Affected by Various Forms of Limitation.

292a. —— ——.]—A. devises to his nephew £5 *per annum*, without saying to his exors. or administrators, to be paid him during his, the testator's, wife's life, whom he made executrix, on condition that he demeaned himself civilly to her. By his death the £5 *per annum* is determined.—NEAL *v.* HANBURY (1701), Prec. Ch. 173; 24 E. R. 83; *sub nom.* ANON., 2 Eq. Cas. Abr. 362.

Annotation:—**Refd.** Savery *v.* Dyer (1752), Amb. 139.

296. *Add. Annotation:*—**Refd.** *Re* Fitch's Will Trusts, Public Trustee *v.* Nives (1928), 139 L. T. 556.

335a. —— **Grant by Crown—Effect of Law of Property (Entailed Interests) Act, 1932 (c. 27).**]—*Re* CHARLES II., KINGS GRANT, GIFFARD *v.* PENDEREL-BRODHURST (1936), 80 Sol. Jo. 92.

336a. Bequest to several—No words of survivorship.]—A bequest of an annuity to several persons during their lives, without words of survivorship, is a bequest to each of them of a separate annuity for an aliquot share of the whole, & upon the death of each his separate annuity ceases.—*Re* EVANS, THOMAS *v.* THOMAS (1908), 77 L. J. Ch. 583; 99 L. T. 271.

336b. During continuance of fund.]—Testator having bequeathed annuities issuing out of a leasehold estate, to some annuitants for life, to some during the continuance of the fund, & to others indefinitely, with a general provision for an increase or diminution of the annuities, in proportion to the increased or diminished income of the estate; & a particular provision that, on the death of some of the annuitants for life, their portions should be paid to the survivors; the annuities given indefinitely are payable during the continuance of the fund.—HACK *v.* TUCK (1818), 3 Swan. 270; 36 E. R. 858.

353. *Add. Annotations:*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), 140 L. T. 371, n.; *Re* Smith, Public Trustee *v.* Aspinall (1928), 140 L. T. 369.

392. *Add. Annotations:*—**Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325; *Re* Coller's Deed Trusts, Coller *v.* Coller, [1937] 3 All E. R. 292.

436. *Add. Annotation:*—**Refd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

456. *Add. Annotation:*—**Refd.** *Re* Coller's Deed Trusts, Coller *v.* Coller, [1937] 3 All E. R. 292.

457. *Add. Annotation:*—**Refd.** *Re* Coller's Deed Trusts, Coller *v.* Coller, [1937] 3 All E. R. 292.

457a. —— ——.]—By a deed of family arrangement, certain assets representing the residuary estate of a testator were directed to be held by the trustees of his will (*a*) upon trust to pay out of the income thereof the sum of £10 a week to testator's widow during her widowhood, (*b*) upon trust to pay out of the income thereof the sum of £3 a week to testator's widowed daughter during her widowhood, (*c*) upon trust to pay out of the income thereof the sum of £1 a week to testator's mother during her life, (*d*) during the widowhood of testator's widow to pay or apply the whole or any part of the balance of the income for the maintenance, support or otherwise for the benefit of testator's widow & his four sons as the trustees in their absolute discretion should think fit & subject as aforesaid to apply the said balance in payment off of the existing mtges. on testator's estate, (*e*) upon trust as to capital & income for testator's four sons in equal shares. The weekly sums fell into arrear & the widow asked for a declaration that the three weekly sums were a charge on the capital of the trust fund, or, alternatively, were a continuing charge on the income of such fund:—*Held:* the weekly sums were neither a charge on the capital nor a continuing charge on the income of the trust fund. The direction in the deed as to surplus income arising during the widowhood of testator's widow showed that the parties to the deed intended that the weekly sums in any year should be paid out of the income of that year, & of that year alone.—*Re* COLLER'S DEED TRUSTS, COLLER *v.* COLLER, [1937] 3 All E. R. 292; 106 L. J. Ch. 326; 157 L. T. 84; 53 T. L. R. 859; 81 Sol. Jo. 550, C. A.

Part V.—Rights as Affected by Insufficiency of Grantor's Estate.

493. *Add. Annotation:*—**Distd.** *Re* Beecham's Settlement, Johnson *v.* Beecham, [1934] Ch. 183.

498. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

510. *Add. Annotation:*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

511a. ——].—A. gave by will an annuity of £1,000 to his widow, & directed that in case of his estate being insufficient to make up her income from all sources to that amount, a sufficient part of the *corpus* to make up the deficiency should from time to time be sold. B. subsequently by will gave her an annuity of £200, & directed that it should not be taken into account in regard to any other income, it being his express will & desire that it should

be a clear beneficial addition to her income :—*Held :* the widow was not bound to include the £200 annuity in her computation of income, & was entitled to have a sufficient amount of the *corpus* sold to make up her income, independently of that annuity to £1,000.—*Re* HEDGES' TRUST ESTATE (1874), L. R. 18 Eq. 419 ; 44 L. J. Ch. 116 ; 31 L. T. 160 ; 22 W. R. 819.

516. *Add. Annotation :*—**Refd.** Bowen *v.* I. R. Comrs., [1937] 1 All E. R. 607.

525a. ——.]—A testator directed his trustees, of whom his wife was one, to permit his wife to receive the rents & profits of his real estates, & thereout in the first place to retain to herself an annuity of £400 a year, & to pay annuities of £100 a year to each of his daughters :—*Held :* these words did not give a priority to the wife in respect of her annuity over the daughters.—JENKINS *v.* BRIANT (1834), 6 Sim. 603 ; 3 L. J. Ch. 169 ; 58 E. R. 719 ; *subsequent proceedings* (1836), 5 L. J. Ch. 348.

532. *Add. Annotation :*—**Refd.** *Re* Ellis, Nettleton *v.* Crimmins, [1935] Ch. 193.

548. *Add. Annotation :—As to* (2) **Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

Part VI.—Payment of Rentcharges and Annuities.

571. *Add. Annotations :*—**N.F.** *Re* Riddell, Public Trustee *v.* Riddell, [1936] Ch. 747. **Refd.** *Re* Hulton, Midland Bank Executor & Trustee Co. *v.* Thompson, [1936] 2 All E. R. 207.

571a. —— **Not payable out of annuities.**]—Testator gave his wife an annuity of £8,000 *per annum* during her life & certain other annuities to a large number of persons, & he appointed the Public Trustee to be one of the trustees of his will :—*Held :* the income fee of the Public Trustee is one of the expenses of administration & is not to be paid out of the portions of the estate which have been given before the residue is disposed of, &, therefore, not to be paid out of the annuities.—*Re* RIDDELL, PUBLIC TRUSTEE *v.* RIDDELL, [1936] Ch. 747 ; [1936] 2 All E. R. 1600 ; 105 L. J. Ch. 378 ; 155 L. T. 247 ; 52 T. L. R. 675 ; 80 Sol. Jo. 595.

Annotation :—**Distd.** *Re* Roberts' Will Trusts, Younger *v.* Lewins, [1937] Ch. 274.

586. *Add. Annotations :*—**Refd.** Shrewsbury & Talbot *v.* I. R. Comrs., [1936] 2 All E. R. 101.

586a. —— **Direction to set aside fund—To produce stated income "without deduction of tax."**]—By his will a testator directed his trustees to set aside out of his residuary estate such proportion thereof as should be sufficient to produce a specified income "without deduction of income tax" & to pay that income to his wife during her life :—*Held :* the words "without deduction of income tax" had the same meaning as "free of income tax" & therefore the sum to be set aside was such a sum as would produce the specified income after income tax at the current rate had been paid.—*Re* WILLIAMS, WILLIAMS *v.* TEMPLETON, [1936] Ch. 509 ; [1936] 1 All E. R. 175 ; 105 L. J. Ch. 362 ; 154 L. T. 640 ; 80 Sol. Jo. 223, C. A.

587. *Add. Annotations :*—**Distd.** *Re* Jones, Jones *v.* Jones (1933), 49 T. L. R. 516. **Consd.** *Re* Kingcome's Will Trusts, Hickley *v.* Kingcome, [1936] 1 All E. R. 173.

587a. —— ——.]—Testatrix by her will directed her trustees to pay to or apply for the benefit of her daughter M. L. J. such an annuity as after deducting income tax therefrom at the current rate for the time being would amount to the clear yearly sum of £350. In Dec. 1932, the I. R. Comrs. paid to a receiver appointed by the ct. of the income of M. L. J. the sum of £131 12*s.* 7*d.*, being allowances & reliefs in respect of income tax upon the annuitant's income for the three preceding financial years :—*Held :* (1) so much of that sum as was attributable to tax upon the annuity in question belonged to the annuitant & not to the residuary estate of testatrix ; (2) income tax "at the current rate" means tax at the standard rate, irrespective of reliefs & abatements.—*Re* JONES, JONES *v.* JONES, [1933] Ch. 842 ; 102 L. J. Ch. 303 ; 149 L. T. 417 ; 49 T. L. R. 516 ; 77 Sol. Jo. 467.

587b. —— ——.]—Where the trustees of a will requested an annuitant, to whom the annuity was payable free of income tax, to sign an application form claiming relief from income tax (the sum so recoverable being for the benefit of testator's estate) & she refused to do so :—*Held :* she was a trustee of her statutory right to recover for the benefit of testator's estate the tax overpaid in respect of her annuity & was bound at the request of the trustees to sign a proper application form for that purpose.—*Re* KINGCOME, HICKLEY *v.* KINGCOME, [1936] Ch. 566 ; [1936] 1 All E. R. 173 ; 105 L. J. Ch. 209 ; 154 L. T. 462 ; 52 T. L. R. 268 ; 80 Sol. Jo. 112.

587c. —— **Income tax "at the current rate"—Meaning of.**]—*Re* JONES, JONES *v.* JONES, No. 587a, *ante.*

589. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Refd.** *Re* Hulton, Hulton *v.* Midland Bank Exor. & Trustee, Ltd. (1930), 99 L. J. Ch. 316.

590. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Refd.** *Re* Armaghdale, Craig *v.* Armaghdale (1928), 44 T. L. R. 239.

591. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Distd.** *Re* Veale's Will & Codicils, Malone *v.* James (1931), 75 Sol. Jo. 780.

592a. —— ——.]—By his will dated Nov. 12,

1924, testator, after appointing exors. & trustees, & giving certain specific & pecuniary bequests, bequeathed to his trustees the sum of £200,000 upon trust to invest the same in any of the investments thereinafter authorised, & to hold the said investments upon trust thereout to pay his wife during her life the annual sum of £5,000 "free of income tax":—*Held:* the wife was entitled to the annual sum free of sur-tax as well as of ordinary income tax.—*Re* RECKITT, RECKITT *v.* RECKITT, [1932] 2 Ch. 144; 101 L. J. Ch. 333; 147 L. T. 275, C. A.

592b. —— **Devise "free & clear of all taxes & incumbrances whatsoever."**]—*Re* VEALE'S WILL & CODICILS, MALONE *v.* JAMES (1931), 75 Sol. Jo. 780, C. A.

593. *Add. Annotations:*—**Consd.** *Re* Armaghdale, Craig *v.* Armaghdale (1928), 44 T. L. R. 239; Fleetwood-Hesketh *v.* Fleetwood-Hesketh, [1929] 2 K. B. 55. **Follid.** *Re* Hulton, Hulton *v.* Midland Bank Executor & Trustee, Ltd. (1930), 99 L. J. Ch 316.

593a. **Application to sur-tax—Devise free of super-tax.**]—Where a testator who died before 1927 has directed under his will that his trustees shall pay to an annuitant out of the income of the trust estate "a clear yearly sum after paying or deducting income tax & super-tax," the proportion of the sur-tax payable in respect of the annuity under the provisions of Finance Act, 1927 (c. 10), s. 38, & Finance Act, 1928 (c. 17), s. 15, is payable out of the income of the trust estate. In every essential feature super-tax & sur-tax are the same tax.—HULTON, *Re*, HULTON *v.* MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD., [1931] 1 Ch. 77; 99 L. J. Ch. 316; 144 L. T. 343; 46 T. L. R. 348; 74 Sol. Jo. 233.

Annotation:—**Refd.** *Re* Reckitt, Reckitt *v.* Reckitt, [1932] 2 Ch. 144.

625. *Add. Annotation:*—**Refd.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345.

632. *Add. Annotation:*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

654. *Add. Annotation:*—**Follid.** *Re* Thompson, Public Trustee *v.* Husband, [1936] Ch. 676.

662. *Add. Annotation:*—**Consd.** *Re* Webster, Goss *v.* Webster, [1937] 1 All E. R. 602.

708. *Add. Annotation:*—**Refd.** *Re* Webster, Goss *v.* Webster, [1937] 1 All E. R. 602.

777. *Add. Annotation:*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

PART VI. SECT. 3, SUB-SECT. 2.

593 i. *Application to sur-tax—Liability of residue of estate—Method of calculation.*]—Testator directed his trustees to pay to each of his two daughters an annuity of £5,000, & to hold the residue of his estate for his son in liferent & his son's children in fee; & further provided: "I hereby specially provide & declare that the income tax payable from time to time upon the said annuities . . . shall be payable out of . . . the income of the residue." It had previously been decided that, under this provision, super-tax as well as income tax on the annuities was payable out of the income of the residue. Both daughters had income from other sources:—*Held:* the intention of testator with regard to sur-tax was that the income of the residue should be burdened only with the amount of tax which would have been payable if the annuities had been the only income of the annuitants.—BAIRD'S TRUSTEES *v.* BAIRD, [1933] S. C. 553.—**SCOT.**

n i. ——.]—By his trust disposition & settlement testator directed his trustees to dispose of "the free annual income of the residue" of his means & estate between the date of his death, which was May, 1925, & Martinmas, 1931 (*inter alia*), as follows: (1) By paying to an adopted daughter "an annual allowance of £600," which he declared to be alimentary; (2) by paying in certain events, to each of her daughters "an annual allowance of £100"; & (3) by paying, in certain events, to each of her sons "such an annual allowance as my trustees in their sole direction . . . shall think right & proper, but not exceeding £100." Testator also directed "My trustees shall accumulate whatever balance may remian of said annual income, all accumulations of income to be added to the capital of my estate & dealt with as residue":—*Held:* the annual allowances fell to be paid under deduction of income tax.—HUNTER'S TRUSTEES *v.* MITCHELL, [1930] S. C. 978.—**SCOT.**

n ii. —— *Bequest free of income tax & super tax.*]—Testator bequeathed to his wife an annuity of "five thousand pounds to be paid free of income tax & super tax which shall be borne by my trust estate to the relief of my wife." Testator's wife was possessed of income, apart from the annuity, amounting to £1,600 a year. She received from the Inland Revenue Authorities repayment of the personal allowances provided in the Income Tax Acts:—*Held:* (1) the testator's trustees were bound to pay a proportion of the total sur tax assessed upon his widow equivalent to the proportion which the amount of the annuity, with income tax & sur-tax thereon, bore to her total income; (2) in ascertaining the amount of the income tax & sur tax of which they were bound to relieve the widow, the trustees were not entitled to take into account, by way of deduction, the amount of the personal allowances repaid to her.—RICHMOND'S TRUSTEES *v.* RICHMOND, [1935] S. C. 585.—**SCOT.**

n iii. —— *"Free of all duties & taxes."*]—An annuity given "to be paid clear & free from all deductions whatsoever & free of all duties & taxes" is to be paid free of both income-tax & unemployment-relief tax.—*Re* RICHARDS, RICHARDS *v.* RICHARDS [1935] N. Z. L. R. 909.—**N.Z.**

n iv. —— *Excessive tax repaid—Whether annuitant entitled.*]—A testator, who died in 1919, by his trust disposition & settlement directed his trustees to pay to his wife, who survived him, an alimentary annuity of "Three hundred pounds *per annum* free of all deductions including income tax." From 1919 until 1927, when the widow intimated to the trustees that she elected to claim her rights of *jus relictæ* & terce, & thereafter until 1931, when her claim was settled, the trustees paid to her the full amount of her annuity. Throughout the whole period they accounted to the Inland Revenue for income tax on the £300 at the current rate or rates, & in each year they got the widow to reclaim a proportion of the tax paid by them, representing the personal allowances to which she was entitled. These claims over the period amounted to £630 17*s.* 6*d.*, &, as & when paid to the trustees by the Inland Revenue, they were credited to the trust. A question having arisen as to whether these sums fell to be repaid to the widow, or remained part of the general trust estate, a petition for directions was presented to the ct. by the sole trustee then acting:—*Held:* the widow was not entitled to the sums in question, the only obligation of the trustees being to keep her *indemnis quoad* income tax, to the effect that, if more tax was paid than ought to have been paid, the excess, when recovered, belonged to the trust estate.—*Re* MILNE'S TRUSTEES, [1936] S. C. 706.—**SCOT.**

se. *Jurisdiction of court—Inland Revenue not represented.*]—Under an agreement contained in missive letters, the proprietor of a business agreed to sell his interest in it for a sum payable in cash & an annuity "payable quarterly during his lifetime, but for a minimum of five years." On his subsequent refusal to enter into a formal agreement embodying the terms of the missives, the purchaser brought an action for implement, & (*inter alia*) for declarator that the annuity fell to be paid under deduction of income tax. The Inland Revenue were not called as parties to the cause. Defender pleaded that the declaratory conclusion was incompetent in the absence of the Inland Revenue:—*Held:* the question whether the annuity was or was not payable under deduction of income tax could competently be determined although the representatives of the Inland Revenue had not been convened; & plea repelled.—ALLEN (DAVID) & SONS, BILLPOSTING, LTD. *v.* INLAND REVENUE COMRS., [1933] S. C. 253.—**SCOT.**

sf. *Intention of testator.*]—*Re* ROGERS (1936), 5 F. L. J. (Can.) 213.—**CAN.**

Part VII.—Forfeiture and Extinguishment of Rentcharges and Annuities.

810. After this case add "**Money paid in ignorance of death of annuitant—Recovery of.**]—*See* CONTRACT, No. 3081a."

814. *Add. Citation :*—138 L. T. 131.
Add. Annotations :—**Refd.** *Re* Draycott S. E., [1928] Ch. 371; Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

821. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

Part VIII.—Recovery of Rentcharges and Annuities.

906. *Add. Annotation :*—*As to* (2) **Expld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

907. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

908. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

911. *Add. Annotation :*—**Folld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

912a. —— ——.]—The benefit of a covenant to pay a rentcharge does not run with the rentcharge at law, but the covenant is only in gross.

By deed dated Apr. 26, 1867, the Earl of W., the tenant for life of the W. estates, in exercise of certain powers under a private Act, conveyed part of the settled lands to E. in fee simple; & E. granted thereout to the Earl & the person or persons who would for the time being have been entitled to the receipt of the rents & profits thereof if the conveyance had not been made yearly & for every year for ever thereafter the rent of £142 7*s.* 3*d.* There were the usual powers of distress & entry & a covenant by the grantee for himself, his heirs, exors., administrators & assigns with the Earl his heirs & assigns & other the person or persons who would for the time being have been entitled as aforesaid that he, the grantee, his heirs & assigns, would pay the yearly rent thereby reserved to the person or persons entitled thereto under the reservation thereinbefore contained. The Earl died in 1882, & under & by virtue of various deaths & two successive disentailing deeds & resettlements the W. estates passed ultimately to the present infant tenant in tail & became vested in the pltfs. as statutory owners thereof. In none of those title deeds was there an express assignment of the benefit of the covenant to pay the rentcharge. E. died in 1887, leaving a will of which the first deft. was exor., he & the other defts. being the present trustees thereof. In 1920 the trustees sold & conveyed the land conveyed to their testator in 1867 to W. in fee simple, subject to the rentcharge & to the covenants on the part of the grantee contained in the conveyance of 1867. In 1927 W. became bkpt., & by an order of Aug. 8, 1929, the bkpt.'s interest in the land was vested in pltfs. in fee simple. Payments of the rentcharge having ceased to be made since Dec. 25, 1927, pltfs. brought this action for payment by defts. of £231, the arrears which accrued down to the date when the land was vested in them :—*Held :* (1) notwithstanding the absence of express words of limitation a perpetual rentcharge had been effectually created; (2) the benefit of a covenant to pay the rentcharge did not run with the rentcharge; (3) Real Property Act, 1845 (c. 106), s. 5, now Law of Property Act, 1925 (c. 20), s. 56, did not affect the second question, as the sect. only applied to covenants which ran with the land or property.—GRANT *v.* EDMONDSON, [1931] 1 Ch. 1; 100 L. J. Ch. 1; 143 L. T. 749, C. A.

948. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson (1931), 100 L. J. Ch. 1.

953. *Add. Annotation :*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

REVENUE.

Part I.—Authorities Controlling the Revenue.

2. *Add. Annotation :*—**Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R. (1930), 99 L. J. Ch. 483.

3a. **Appropriations in aid—Payment for armed guards for British ships.**]—There is no legally enforceable duty on the Crown to protect British subjects from danger in foreign parts & to provide armed guards for British ships. Shipowners who require those services must pay for them if the Crown requires them to pay. The payment, when made, is sanctioned & controlled by Parliament in the Appropriation Act under the system of appropriations in aid under the Public Accounts & Charges Act, 1891 (c. 24).—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197 ; 101 L. J. K. B. 478 ; 147 L. T. 22 ; 48 T. L. R. 375 ; 18 Asp. M. L. C. 288, C. A.

Part IV.—Duties on Land Values.

53. *Add. Annotation :—Generally,* **Refd.** Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

55a. —— **What amounts to.**]—*Re* WINDSOR STEAM COAL CO. (1901), LTD. (1928), 165 L. T. Jo. 32.

55b. —— **Whether rent includes supply of free coal.**]—Under a mining lease the rent included an obligation to deliver a certain quantity of coal to the lessor or other such persons as they appoint & to their agents & to such person or persons as such agents shall appoint. The value of the supply of such coal was excluded from the assessment of rent for the purposes of Mineral Rights Duty & Royalties Welfare Levy under Finance (1909-10) Act, 1910 (c. 8), s. 20 :—*Held :* the value of such supply of coal was wrongly excluded. " Rent " & " rental value " in the above sect. are not confined to rent as known at common law, but apply to every part of the consideration for the right to mine the minerals.—HATHERTON *v.* INLAND REVENUE COMRS., [1936] 1 All E. R. 608 ; 80 Sol. Jo. 386 ; *sub nom.* INLAND REVENUE COMRS. *v.* HATHERTON (LORD), [1936] 2 K. B. 316 ; 105 L. J. K. B. 285 ; 155 L. T. 415 ; 52 T. L. R. 368.

61. For " [1914] 2 K. B. 192 " read " [1914] 3 K. B. 192."

Add. Annotation :—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn. [1929] 2 K. B. 266.

Part V.—Customs Duties.

70a. **" Baggage of passengers "—What amounts to—Parcels of cinematograph films.**]—Suppliant, who was a producer of cinematograph films, was informed towards the end of June, 1925, that such duties would probably be imposed. He went to Berlin, where he had six films, which he packed in cardboard boxes. He took them to the railway station

PART II. SECT. 1, SUB-SECT. 1.

sa. *Power to reward informer—Validity of agreement before receiving information.*]—*Held :* Inland Revenue Regulation Act, 1890, s. 32, does not warrant the Comrs. of Inland Revenue, or the Treasury, before receiving information from an informer, in entering into an agreement with him as to the payment of a reward.—RIACH *v.* LORD ADVOCATE. [1932] S. C. 138; 18 Tax Cas. 18.—**SCOT.**

sc. *Tariff Board—Extent of jurisdiction.*]—The Tariff Board, as constituted under c. 55 of the statutes of 1931, has no authority to determine questions of law as distinct from questions of fact. The Tariff Board has no authority under that Act to determine that the orders of the Minister of National Revenue, fixing the values for duty of goods, under the authority of sect. 8 of the Customs Act prior to the enactment of c. 7 of 1932-33, were annulled & ceased to be effective from the date of the last-mentioned enactment in respect of goods entitled to entry under the British Preferential Tariff. The decisions of the Tariff Board, when acting under the provisions of Part II. of its constitutory Act, as to the [illegible] of goods for duty purposes, are subject to the approval of the Minister of National Revenue.—*Re* TARIFF BOARD OF CANADA JURISDICTION REFERENCE. [1934] S. C. R. 538 ; 4 D. L. R. 193.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

13 i. *Obstruction of officer—What amounts to.*]—A person driving a car who refuses to stop when ordered to by a Customs officer is guilty of wilfully obstructing a public officer.—R. *v.* GRIFFIN, [1935] 2 D. L. R. 503 ; 9 M. P. R. 84 ; 63 C. C. C. 286.—**CAN.**

sf. *Improper refusal of importation—Injunction.*]—Injunction granted against member of customs department for preventing the importation of the Pacific Daily Racing Form as being in contravention of sect. 235 (*g*) of the Criminal Code.—HARDY *v.* HOPGOOD (1936), 65 Can. C. C. 400 ; 50 B. C. R. 392.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—D. (b) ii.

39 ii. —— *Seizure outside three mile limit.*]—MASON *v.* COFFIN, [1928] 2 D. L. R. 263 ; 49 Can. Crim. Cas. 276. —**CAN.**

sg. *Petition of right.*]—The Crown is liable on a petition of right for the wrongful seizure of goods by customs officer, & such petition may be brought by a friendly alien.—MASSEIN *v.* R., [1935] 1 D. L. R. 701.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

bb i. —— *Meaning of.*]—" Value for duty " wherever used in the Customs Act & amendments has reference to the basis on which the true amount of duty *ad valorem* is payable, & to nothing else.—R. *v.* CORNET, [1928] 2 D. L. R. 767 ; 49 Can. Crim. Cas. 200 ; 61 O. L. R. 583.—**CAN.**

sc. *Goods transferred within territorial waters.*]—Where goods are transferred within the territorial waters of Canada, without the intention of fraudulently relanding or bringing the same back into Canada, no offence is committed under Customs Act.—COOK *v.* R., [1928] Exch. C. R. 49.—**CAN.**

sf. *Offence of smuggling—Not complete until opportunity of reporting to Customs House*]—R. *v.* LANGILLE, [1932] 2 D. L. R. 226 ; 57 C. C. C. 151 ; 4 M. P. R. 473.—**CAN.**

—. *Vessel stranded to avoid capture.*]—Sect. 203, para. 4, of Customs Act, which applies only to vessels arriving within three miles of the coast of Canada, & sect. 11 of the

on June 29, 1925, & registered them through to Victoria Station, London. Suppliant & his wife travelled by the same trains & boat in which the films were conveyed. At Folkstone, in answer to the inquiry by the Customs officer whether he had anything to declare, suppliant produced the registration receipt & pointed out the boxes of films, but the Customs officer said he had no authority to deal with them there & then. At Victoria Station, which was reached at 9.30 p.m. on June 30, after the latest hour for entry of goods, the films were detained on the ground that they were liable to forfeiture for non-entry. Later, the Customs authorities offered to waive the forfeiture on payment of the duty under the new Act to which they were liable if entered after June 30, but suppliant declined to pay the duty. After correspondence & negotiations extending over several years, the suppliant claimed by petition of right the return of the films & damages for their detention:—*Held:* the films were not "baggage of passengers" within Customs Consolidation Act, 1876 (c. 36), s. 66, but were merchandise, & not having been duly entered with the Customs on June 30, 1925, they were liable to the duty imposed by the Finance Act, 1925 (c. 36).—BUCKLAND *v.* R., [1933] 1 K. B. 767; 102 L. J. K. B. 404; 148 L. T. 557; 49 T. L. R. 244, C. A.

Annotation:—**Refd.** Piddington *v.* Co-operative Insurances Society, Ltd., [1934] 2 K. B. 236.

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same Act, which impliedly allows the master of a vessel opportunity of complying with its conditions before being deemed to have committed the offence of smuggling, have no application under the following circumstances of this case: a vessel, on board of which were both applts., having cleared from Lévis, opposite Quebec, for Gaspé, stopped somewhere below Rimouski to take over from a schooner a cargo of liquor & then turned back to try & land those smuggled goods at some point on the shores of the St. Lawrence, & then, to avoid capture by the Govt. patrol, the vessel was deliberately stranded & abandoned by its crew on the shores of Beaumont, within the limits of the harbour of Quebec, several hundred miles inland.—CHESNEL *v.* R., DAIGLE *v.* R., [1934] S. C. R. 519; 4 D. L. R. 530; 62 C. C. C. 81.—**CAN.**

sh. *Validity of coasting regulations.*]—Regs. 4 & 12 of those brought into force by Order in Council of Apr. 17, 1883, which regs. 4 & 12 were made under sects. 13 & 125 (3) of Customs Act, 1877, & provided (*inter alia*) that an officer of customs might go on board a coasting vessel & if any goods had been unladen therefrom before the master had reported to a customs officer, the goods & vessel should be forfeited, etc., & that no goods should be put out of any coasting vessel while on her voyage by river, lake or sea, were legally operative, notwithstanding that the procedure described by sect. 4 (1) of Merchant Shipping (Colonial) Act, 1869, requiring that an Act or Ordinance of the legislature of a British possession regulating its coasting trade should contain a suspending clause providing that the Act or Ordinance should not come into operation until Her Majesty's pleasure thereon had been publicly signified in the British possession, was not observed. The matters dealt with in said sects. 13 & 125 (3) of the Customs Act, 1877, & said regs. 4 & 12 were not "regulation of the coasting trade" within sect. 4 (1) of the Imperial Act of 1869.—R. *v.* SHEARWATER CO., LTD., [1934] S. C. R. 197; 3 D. L. R. 544.—**CAN.**

si. *Concealment — No manifest.*]—Where there is no manifest there can be no concealment, & therefore no offence under Customs Act, 1927, s. 4.—R. *v.* BOUDREAU, [1935] 1 D. L. R. 725; 8 M. P. R. 405; 63 Can. C. C. 181.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

c i. ——.]—MORIN *v.* R. (1927), 49 Can. Crim. Cas. 231; 43 Que. K. B. 192.—**CAN.**

so. *Necessity for duty to comply with Act.*]—R. *v.* BORKOWSKI (1934), 63 Can. C. C. 65.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

r i. —— —— *What amounts to.*]—A ship is seized & forfeiture takes place when a "hovering" ship fails to stop on being so ordered by the customs officer.—R. *v.* MASON, [1935] 2 D. L. R. 161; 9 M. P. R. 97; 63 Can. C. C. 97; *affd.*, [1935] S. C. R. 513.—**CAN.**

t (p. 229) **i.** —— —— ——.]—*Held:* inasmuch as by the first part of sect. 181 of Customs Act, which deals with the penalty for having liquor in one's possession illegally, it is provided that the offence exists "whether (the party is) the owner thereof or not," & in the second part, where provision is made for the forfeiture of the liquor or vehicle in which it is being transported, the words "whether the owner thereof or not" are omitted, if it is proved that the vehicle used is the property of an innocent party who claims it, the Crown has no power to forfeit the same.—R. *v.* KRAKOWEC, DAHLBERG & EKLUND & CONTINENTAL GUARANTY CORPN. OF CANADA, LTD., [1931] Ex. C. R. 137; 56 Can. C. C. 150; *revsd.*, 57 Can. C. C. 96, [1932] 1 D. L. R. 316.—**CAN.**

t (p. 229) **ii.** —— —— ——.]—*Held:* there is no material dissimilarity in the essential provisions of Excise Act & Customs Act pertaining to seizure & forfeiture; claimant having failed to prove that his boat had been illegally seized & forfeited, the forfeiture was held good & valid, Customs Act attaching to the vehicle unlawfully used the penalty of forfeiture, independently of the guilt or innocence of the owner.—SANDNESS *v.* R., [1933] Ex. C. R. 78; 4 D. L. R. 662; 60 C. C. C. 220.—**CAN.**

se. *For failure to answer questions—By master of vessel.*]—*Held:* the delivery of the report required by Customs Act, s. 96 (1), to the Customs officer by the master was not the "answer of questions demanded of him" referred to in Customs Act, s. 246.—PARKER *v.* R., [1928] Exch. C. R. 36.—**CAN.**

sf. *Power of election as to penalty—Whether power exerciseable by Revenue Commissioners or by Attorney-General.*]—*Held:* by the High Ct., on a case stated, the power of election which is conferred upon the Revenue Comrs., as the successors of the Comrs. of Customs, as to which of the two penalties prescribed by Customs Consolidation Act, 1876, s. 186, shall be imposed for any offence under that section, must be exercised by them, & not by the A.-G.—A.-G. *v.* PERCY, [1929] I. R. 514.—**IR.**

sg. *Illegal unshipment—Forfeiture of bonds—Forged landing certificates.*]—The Exchequer Ct. has jurisdiction in an action by the Crown upon a bond entered into pursuant to the Inland Revenue Act of Canada upon the withdrawal of goods from a bonded warehouse for the purpose of export. Upon the true construction of the printed departmental form of bond used in those circumstances the bond becomes void if the obligor accounts for the goods to the satisfaction of the collector of inland revenue. That condition is performed where the collector, acting upon apparently genuine official documents certifying the landing of the goods at the foreign port, has cancelled the bond by making an entry in his book of record, even if, without the knowledge of the collector or obligor, the documents have been fabricated.—CONSOLIDATED DISTILLERIES, LTD. *v.* R., [1933] A. C. 508; 102 L. J. P. C. 66; 149 L. T. 318; 49 T. L. R. 506, P. C.—**CAN.**

sk. *Damages—Measure of.*]—On assessment of damages for rum-running, damages held to be the value of the rum where purchased, together with cost of containers, local tax & freight, but profit on cargo was not included as there was no evidence of an available market at the port of seizure.—CROSS *v.* MCCARTHY, [1931] 3 M. P. R. 414.—**CAN.**

so. *Proceedings for treble value—Bar to summary proceedings.*]—When the Revenue Comrs. have elected, under sect. 186 of Customs Consolidation Act, 1876 (c. 36), to proceed for a penalty of treble the value, including the duty, of smuggled goods, & have directed a prosecution under that sect. a District Justice has no jurisdiction to apply the provisions of sect. 233 of the same Act & proceed summarily, notwithstanding such election & direction, to impose a penalty amounting to the single value, including the duty, of such goods. Only in the absence of such direction & election can the District Justice proceed summarily.—A.-G. *v.* TRAYNOR, [1935] I. R. 155.—**IR.**

sp. *Harbouring uncustomed goods—Whether proof of mens rea necessary.*]—Deft. in a customs prosecution was charged with having knowingly harboured uncustomed goods, viz., five bullocks & two heifers, imported from the Irish Free State into Northern Ireland, with intent to defraud His Majesty the King of the duties thereon, contrary to sect. 186 of Customs Consolidation Act, 1876. It was also charged against him that he did not, when required, furnish proof as provided under sect. 16 of Finance Act, 1934, to the satisfaction of the Comrs. of Customs & Excise, that the cattle had not been imported from the Irish Free State, & that under sect. 186 of Customs Consolidation Act, 1876, he had incurred a penalty of £225, being treble the duty paid value of the cattle, for which the Comrs. of Customs had elected to sue. A statement had been given by deft. to the police in which he professed to account for the history of the cattle. No evidence was given at the hearing of the complaint at petty sessions contradicting deft.'s statement. At the conclusion of complainant's case before the justices,

80. *Add. Annotation :*—**Reld.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

80a. —— **To take reasonable precautions.**]—Defts. were a firm of furriers who had imported from Russia a consignment of squirrel skins in Aug. 1934. Out of the consignment ten packages were stored by defts. in the bonded warehouse of pltfs. Whilst in the warehouse they were stolen on the night of Sept. 7–8, 1934. Pltfs. as bonded warehousemen were compelled by law at the demand of the Customs to pay the duties on those packages out of their own moneys. Defts. had refused to supply pltfs. with the necessary funds for that purpose. Pltfs. claimed from defts. the amount of the duties, £823 17*s.* 10*d.*, which they had thus been called upon to pay to the Customs, on the ground that, as between themselves & defts., defts. were primarily liable for the duties. Defts. counterclaimed for £4,119 9*s.* 3*d.* as being the value of the furs, on the ground that the furs were stolen by reason of the negligence of pltfs. & of their failure to exercise due care in the safe keeping of the goods :—*Held :* (1) the duty of pltfs. with regard to the care of the goods could not be put higher than that they must do what was reasonable. They were not insurers & they had established their defence by satisfactory evidence that the precautions they took were such as reasonable & prudent care demanded. The counterclaim accordingly failed, as did the defence to the claim so far as it was based on the allegation that the loss was due to want of care in the custody of the goods ; (2) the Customs duties on the goods became due from the importers at the date of importation & remained so due until the goods were discharged from the custody of the Customs ; (3) pltfs. having been compelled under sect. 85 of Customs Consolidation Act, 1876 (c. 36), to pay the duties on defts.' goods were entitled to be reimbursed the amount of the duties they had so paid.—Brook's Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534 ; [1936] 3 All E. R. 696 ; 106 L. J. K. B. 437 ; 156 L. T. 4 ; 53 T. L. R. 126 ; 80 Sol. Jo. 991 ; 42 Com. Cas. 99, C. A.

Annotation :—**Reld.** The Stranna, [1937] P. 130.

85. *Add. Annotation :*—*As to* (1) **Apld.** Brook's Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

85a. —— —— **Goods stolen—Duty paid by warehousemen.**]—Brook's Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., No. 80a, *ante*.

85b. —— **Duty due on first entry.**]—Brook's Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., No. 80a, *ante*.

Part VI.—Excise Duties.

Sub-sect. 1.—Betting Duty (Vol. XXXIX., p. 232).

Note.—*This Duty was abolished by Finance Act*, 1930 (*c.* 28), *s.* 4.

Add the following case :—

93a. Who liable to duty — Club — Managing totalisator.]—A limited co. was the proprietor of a club formed for social intercourse. Upon the club premises betting on horse races was transacted through the instrumentality of two machines, called totalisators, owned by the co. & worked by the co.'s servants. Any member desiring to

it was submitted on behalf of deft. that as no evidence of *mens rea* on the part of deft. had been given, deft. was entitled to a direction. On behalf of complainant it was submitted that by reason of the provisions of sect. 16 (2) of Finance Act, 1934, it was not necessary in proceedings under sect. 186 of Customs Consolidation Act, 1876, claiming penalties for harbouring uncustomed goods to establish *mens rea* on the part of deft. The justices refused the application for a direction made on behalf of deft. & convicted deft. of the offence charged but stated a case for the opinion of the King's Bench Division :—*Held :* the justices were wrong in law in holding that it was not now necessary for the complainant by reason of the provisions of sect. 16 (2) of Finance Act, 1934, to establish *mens rea* on the part of deft., & the onus of proving guilty knowledge still lay upon the prosecution.—R. (King) *v.* Gass, [1936] N. I. 144.—**IR.**

sq. *Evasion of duty—Onus of proof.*]—Deft. was charged at petty sessions on Sept. 26, 1934, with being knowingly concerned in an attempted evasion of customs duty by dealing with two cattle imported from the Irish Free State into Northern Ireland with intent to defraud, contrary to sect. 186 of Customs Consolidation Act, 1876. The principal evidence against deft. was a certificate signed by order of the Comrs. of Customs & Excise to the effect that some of the cattle in respect of which he was charged were found in the possession or control of C. O'D., on July 13, & that on July 15 some of the same cattle were found in possession of A. M., & that C. O'D. & A. M. being required to furnish proof that the goods had not been imported from the Irish Free State or that customs duty had been paid on them, did not furnish proof to the satisfaction of the Comrs. of Customs & Excise as provided by sect. 16 of Finance Act, 1934. The justices convicted deft. of the offence with which he was charged, but stated a case for the opinion of the King's Bench Division as to whether they were right in law in convicting deft. of the charge, & whether the certificate related only to the goods & was valid & admissible in evidence against any person dealing with the goods, whether such person is or is not named in the certificate, & whether if admissible the certificate casts the onus of proof upon deft. though not named in the certificate :—*Held :* the certificate was wrongly admitted in evidence against deft. & his conviction should not stand ; also, as deft. was never required to explain his possession of the cattle & was afforded no opportunity of making an explanation, sect. 16 of Finance Act, 1934, never applied to his case, & the onus of proof rested on the prosecution & not on deft.—R. (Emerson) *v.* Haughey, [1936] N. I. 186.—**IR.**

PART V. SECT. 2.

sm. *Destruction of Government warehouse—No liability for warehouse charges.*]—Rum, stored in resp.'s name in a Govt. public warehouse in Port of Spain from & after Aug. 30, 1930, was destroyed with the warehouse by fire on June 25, 1932. In a suit by the A.-G. of Trinidad & Tobago against resps. for warehousing charges at the monthly rental rate provided for in the rules made under the Ordinance :—*Held :* that the Ordinance provided a complete scheme for the recovery of warehousing charges from the owner of spirits warehoused on his withdrawal or re-warehousing of the spirits ; a right to recover charges by suit was not contemplated & could not be extracted from the terms of the Ordinance a contingency such as the present was not provided for & the Govt. had no right to suit resps.

Judgment of the Supreme Ct. affirmed for a different reason : there was not a frustrated agreement but no agreement at all, the rights of the parties being wholly prescribed by the Ordinance.—A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., Ltd., [1935] A. C. 532 ; 104 L. J. P. C. 82 ; 153 L. T. 441, P. C.—**WEST INDIES.**

PART VI. SECT. 4, SUB-SECT. 1.

sh. *On what bets exigible—Ready money office-betting.*]—Smith *v.* Adam, [1929] S. C. (J.) 33.—**SCOT.**

bookmaker—

use these machines for the purpose of backing horses applied to join the club pool, &, if elected as a pool member, he became entitled on payment of a small subscription to operate, & for this purpose he was supplied with credit vouchers of varying amounts. Under the rules of the pool 10 per cent. of the gross amount of the stakes on each race was retained by the co. in respect of the facilities provided & the expenses of management, & the balance was divided among the backers, called in the rules "investors," of the winning horse in the proportion of their stakes. The winnings for each week were paid by the co. from its own funds irrespective of any possible loss owing to dishonour of the vouchers. The rules provided that the club acted simply as a distributing agent. Upon an information preferred by the A.-G. against the co. alleging that the co. was liable to pay betting duty in respect of wagers on horse races made by members of the club by means of these machines it was admitted that the co. was a bookmaker & that the transactions in question were bets within Finance Act, 1926 (c. 22), s. 15:—*Held:* the bets were not made with the co., but by the members *inter se*, & the claim of the Crown failed.—A.-G. *v.* LUNCHEON & SPORTS CLUB, LTD., [1929] A. C. 400; 98 L. J. K. B. 359; 141 L. T. 153; 45 T. L. R. 294, H. L.

Annotations:—**Consd.** National Pari-Mutuel Assocn., Ltd. *v.* R. (1930), 47 T. L. R. 110; Everett *v.* Shand (1931), 145 T. L. R. 216; Shuttleworth *v.* Leeds Greyhound Assocn., [1933] 1 K. B. 400; Streatham Cinema, Ltd. *v.* John McLauchlan, Ltd. (1933), 31 L. G. R. 219. **Apld.** Elderton *v.* United Kingdom Totalisator Co., [1935] Ch. 373. **Refd.** Baker *v.* Sillitoe (1931), 47 T. L. R. 632; Daniels *v.* Pinks (1930), 100 L. J. K. B. 337; Samuel *v.* Adelaide Club, Ltd., [1934] 2 K. B. 69.

93b. —— **Employee of bookmaker.**]—A bookmaker, who held a bookmaker's certificate & also an entry certificate in respect of certain premises, had in his service at the premises an employee, who received a weekly salary & was the only person employed there. The employee had sole charge of the premises in the absence of the bookmaker, who attended race meetings in other towns during the flat racing season, & had on one occasion been absent from the premises for ten days consecutively. Although the employee had no authority to open new accounts in the absence of his employer, he could accept personal bets & bets over the telephone, & he had said that he had no responsibility, but answered the telephone & recorded messages. On a certain date the employee when in sole charge of the premises was seen to take two or three bets on the telephone & enter them upon a slip, he himself not holding a bookmaker's certificate. On proof of these facts:—*Held:* the employee carried on business as a "bookmaker" within Finance Act, 1926 (c. 22), s. 18 (1).—LAKE *v.* CRONIN, HUNT *v.* CRONIN, [1929] 1 K. B. 31; 98 L. J. K. B. 47; 140 L. T. 118; 92 J. P. 191; 44 T. L. R. 819; 72 Sol. Jo. 546; 28 Cox, C. C. 554; 26 L. G. R. 568, D. C.

Payment under mistake of fact.]—*See* MISTAKE, No. 36a, *ante*.

SUB-SECT. 6.—OTHER CASES (Vol. XXXIX., p. 232).

93c. Safeguarding Acts—Construction—Duty of court to consider intention of Legislature—Duty on "packing or wrapping paper."]—POWELL LANE MANUFACTURING CO., LTD. *v.* PUTNAM (1928), [1931] 2 K. B. 305, n.; 100 L. J. K. B. 347, n.

Annotation:—**Folld.** Newman Manufacturing Co. *v.* Marrable (1930), 100 L. J. K. B. 345.

93d. —— —— —— **Duty on "buttons."**]—By Finance Act, 1928 (c. 17), s. 9 (1), a customs duty is imposed on buttons imported into the United Kingdom. By sect. 9 (3) the expression "buttons" means buttons made of

Street bet.]—A licensed bookmaker who made a bet in the public street under circumstances which might possibly have made him liable to prosecution under Street Betting Act, 1906, held liable to pay the betting duty imposed by Finance Act, 1926, s. 24, in respect of said bet. The section is not limited to bets either upon a horse race or upon a greyhound coursing contest, but the words "&, in every other case, 5 per cent. of the amount of the bet" cover every other case of a bet made by a bookmaker.—A.-G. *v.* MEEHAN, [1932] I. R. 61.—IR.

sk. *Statutory power to issue "tax-paid betting pads"—Authorised issue of "betting sheets"—Valid.*]—*Held:* egulations made by the Revenue Comrs. under Finance Act, 1926, s. 25, by which provision was made for the issue of "official betting sheets" were *intra vires*.—A.-G. *v.* M'LOUGHLIN, [1931] I. R. 430.—IR.

PART VI. SECT. 4, SUB-SECT. 6.

s. *Affd. sub nom.* DOMINION PRESS, LTD. *v.* CUSTOMS & EXCISE MINISTER, [1928] A. C. 340; 97 L. J. P. C. 91; 139 L. T. 338.

† i. —— —— *Equitable mortgagee or pledgee realising security.*]—The sales tax was not intended to be imposed upon the person realising, by means of sale, property pledged to him to secure a debt; a going concern was in contemplation.—R. *v.* DOMINION BANK, [1930] 1 D. L. R. 664; 11 C. B. R. 152; 64 O. L. R. 448.—CAN.

† ii. —— —— *Retail florist.*]—A co. which carried on business as a retail florist went into voluntary liquidation. In the course of its business, both prior to & during the liquidation, the co. (*inter alia*), made up & sold wreaths, bouquets, posies, floral baskets & sheaves of flowers. Neither the co. nor the liquidator were registered as a manufacturer or as a wholesale merchant under Sales Tax Assessment Acts, 1930-31. During the course of the liquidation the liquidator sold the office furniture of the co., which had been acquired prior to Aug. 1, 1930. The co. was assessed for sales tax both on the sales of the floral articles & on the sale of the office furniture:—*Held:* the co. was a manufacturer within Sales Tax Assessment Acts, 1930-31, & therefore sales tax would have to be paid on the the sales of the floral articles. Also, as the co. was a manufacturer, the co. was liable to pay sales tax on the sale of the office furniture, such articles, even though not manufactured by the company, being manufactured goods within the Acts.—*Re* SEARLS, LTD. (1932), 49 N. S. W. W. N. 195; 2 A. T. D. 129.—AUS.

† iii. —— —— *Shorthand writers & typists.*]—Defts. were professional shorthand writers licensed under the Evidence Act, 1928 (Vict.), & typists. Their business consisted chiefly of reporting judicial proceedings pursuant to the provisions of Evidence Act. They were remunerated for this work by fees prescribed under the Act, which consisted of fees specified for attendance at the proceedings, including the taking of notes, & fees calculated by the folio for transcripts supplied to the parties. Sometimes, with the consent of the parties, they supplied transcripts to other persons. They also reported conferences & meetings of various bodies. Occasionally they were instructed to take shorthand notes & not to supply a transcript, & sometimes to make copies of documents. Defts. usually supplied the paper & other materials required for the preparation of transcripts. For work done otherwise than under Evidence Act their fees were fixed by private arrangement, & in general approximated to those chargeable under the Act:—*Held:* defts. were not engaged in the manufacture or production of goods or commodities within Sales Tax Assessment Act (No. 1), 1930, & were, therefore, not obliged to register or give security thereunder.—ADAMS *v.* RAU, [1932] Argus L. R. 87; 46 C. L. R. 572.—AUS.

† iv. —— —— *Distributing agent—Goods imported in parts & assembled.*]—Deft. co. is the distributing agent in New South Wales & Queensland of a well-known English make of motor cycles. The motor cycles are imported by deft. co. from England in cases, each case containing all the parts necessary to complete a motor cycle, with the exception of tyres & tubes. Before exportation the parts of each cycle are assembled &, with old tyres & tubes retained for the purpose, the motor cycle is submitted to a practical test on a road. Upon arrival at deft. co.'s works in Sydney the parts are removed from [illegible] particular case & re-assembled, us by a lad with the aid of a spanner,

any material, & whether finished or unfinished, of a description commonly used for the fastening or decorating of wearing apparel or household linen, not being buttons forming part of any other article. Beads or button blanks, nearly spherical in shape, made of trocas shell & perforated by one hole were imported into the United Kingdom. After grading them the importers made or completed the making of them into shoe-buttons in the United Kingdom, by the insertion of shanks by means of a machine into & through the holes, & then sorting, cleaning, dyeing, repolishing & resorting them for shade. The cost of the shanking was one-seventh of the total cost of the completed article; material, labour & a proportion of overheads:—*Held:* in deciding what is the meaning of the expression "unfinished" button in sect. 9 (3), the ct. should

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&, tyres & tubes locally purchased having been fitted thereto, the motor cycle is then ready for sale:—*Held:* deft. co. is not a manufacturer within Sales Tax Assessment Act (No. 1), 1930, & is not obliged to register as such.—IRVING *v.* MUNRO & SONS, LTD. 1932), 46 C. L. R. 279.—**AUS.**

n i. —— —— *Imported goods—Change in form on coming out of bond.*]—*Held:* where goods imported are so changed before taking them out of the bonded warehouse for consumption that they take on a form altogether different from that in which they were imported, the sales tax, under the Special War Revenue Act, 1915, should be calculated on the sale price of the goods after such change, & not upon the duty-paid value thereof as imported in bulk.—R. *v.* DOMINION DISTILLERY PRODUCTS CO., [1928] Exch. C. R. 170. —**CAN.**

n ii. —— —— *Exempting regulation of Minister of Customs & Excise—Necessity for strict compliance.*]—A.-G. FOR CANADA *v.* GOLDBERG (Ont.), [1929] 1 D. L. R. 711.—**CAN.**

n iii. —— —— *Sale by manufacturer to sales agency—Tax computed on price charged by sales agency to trade.*]—R. *v.* CAPUANO & PASQUALE CO. (Que.), [1929] 1 D. L. R. 1004.—**CAN.**

n iv. —— —— —— ——.]—A.-G. FOR CANADA *v.* COLEMAN PRODUCTS CO. (Ont.), [1929] 1 D. L. R. 658.—**CAN.**

n v. —— —— *On beverages.*]—The word "beverages" in Sched. II. of Special War Revenue Act, 1915, controls the whole classification of the products referred to in that portion of the sched. which is introduced by said word. The product in question herein which was sold by deft. to "bottlers" &, after certain ingredients were added to it by the latter, was sold by them to the consuming public:—*Held:* not to be a "beverage" in the condition in which it was when sold by deft.—R. *v.* WHISTLE CO. (OF CANADA), LTD., [1929] 3 W. W. R. 30; 38 Man. L. R. 347; *affd.*, [1930] 1 W. W. R. 92; 1 D. L. R. 1000; 38 Man. L. R. 420.—**CAN.**

n vi. —— —— *Market price.*]—The shares of both deft. cos. outside of qualifying shares, were owned & held by P. Co. of Delaware, U.S.A. Previous to 1924, C. Co., Ltd., manufactured & sold soap & toilet articles at Toronto & in that year P. M. Co. (Ontario), Ltd., was organised to take over the manufacturing end of the business. The business of both cos. was carried on in the same premises & the officers of both were the same. The manufacturing co. sold the major portion of its products to the selling co. on the basis of costs plus 15 per cent. profit. The Crown claimed that the manufacturing, or alternatively both cos. were liable for the sales tax upon the basis of the sales price to the public by the selling co., namely, the market price.—*Held:* the selling price arranged between the two deft. cos. was not the sale price within the statute. In a taxing statute where the tax is based on the selling price of goods, sale price can only mean the market price unless there are express words saying it is some other kind of price.—R. *v.* COLGATE-PALMOLIVE-PEET CO., LTD. & PALMOLIVE MANUFACTURING CO. (ONTARIO), LTD., [1932] Ex. C. R. 120; varied *sub nom.* PALMOLIVE MANUFACTURING CO. (ONTARIO), LTD. *v.* R. & SOLGATE-PALMOLIVE-PEET CO., LTD., R. *v.* COLGATE-PALMOLIVE-PEET CO., LTD. & PALMOLIVE MANUFACTURING CO. (ONTARIO), LTD., [1933] S. C. R. 131; 2 D. L. R. 81.—**CAN.**

n vii. —— —— *Selling price.*]—Resp. co. was engaged in the business of wholesale dealers in, & dyers & dressers of, raw furs: it purchased raw furs or skins, dressed & dyed them & then sold them to other furriers or to retailers. Resp. paid the tax computed on the actual selling price; but, claiming that it should have been computed on the current market value of the dressed furs, under the regulation quoted below, resp. sued to recover the amount alleged to have been overpaid, *i.e.* it urged that it should have only paid the tax imposed on dyers & dressers who were performing that work for others.—*Held:* the sales made by resp. were sales within the scope of sect. 86 of Special War Revenue Act; & the tax payable by resp. should be computed on the actual selling price of the dressed furs & not on its current market value.—R. *v.* VANDEWEGHE, LTD., [1934] S. C. R. 244; 3 D. L. R. 57.—**CAN.**

n viii. —— —— *Inclusion of excise tax.*]—Resp., a licensed manufacturer under Part XIII. of Special War Revenue Act, manufactured & sold playing cards. It paid the sales tax on all cards sold, said tax being computed on the sale price of the cards exclusive of the excise tax imposed by sect. 82 of the Act. The Crown contended that the sales tax should have been computed on the sale price including the excise tax:—*Held:* the excise tax should have been included in the sale price of such cards for the purpose of calculating the sales tax. The definition of "sale price" in the Act is very comprehensive: "sale price" is inclusive of every item entering into the price just before the consumption or sales tax is added & must therefore include the excise tax.—R. *v.* CONSOLIDATED LITHOGRAPHING MANUFACTURING CO., LTD., [1934] S. C. R. 298; 2 D. L. R. 161.—**CAN.**

o. *affd. sub nom.* BRADSHAW *v.* MINISTER OF CUSTOMS & EXCISE, [1928] 2 D. L. R. 352; [1928] S. C. R. 54.—**CAN.**

o i. —— *Exemption of goods exported—Onus of proof.*]—*Held:* the Act being a taxing statute, must be construed strictly, & the *onus* was upon the Crown to show that defts. came within the taxing provisions, but the exemption of goods "exported" being in the nature of a proviso, it was incumbent upon defts. to plead it, & the *onus* was upon them to show that they came within it.—R. *v.* GOODERHAM & WORTS, LTD., [1928] 3 D. L. R. 109; 62 O. L. R. 218.—**CAN.**

o ii. —— —— *Meaning of export.*]—The words "sale" & "export" as used in the Act, mean a sale & export by the manufacturer or producer, the exportation being an act consummating a transaction to which the tax does not apply. The language of the proviso relates only to exportation by the manufacturer, & cannot be extended to a case where the manufacturer loses control of the goods by selling & disposing of the same to a purchaser in Canada.—R. *v.* FROWDE, LTD., [1929] 2 D. L. R. 721; Ex. C. R. 119; *affd.*, [1930] S. C. R. 375; 2 D. L. R. 725.—**CAN.**

o iii. —— —— ——.]—Special War Revenue Act, 1915, of Canada, as amended by later statutes, imposes gallonage tax and the sales tax upon specified goods, including beer, manufactured in Canada. It is provided, however, that gallonage tax shall not be payable "when such goods are manufactured for export under regulations prescribed by the Minister of Customs & Excise," & that sales tax shall not be payable on "goods exported," with a provision for a refund on "domestic goods exported under regulations" similarly prescribed:—*Held:* the exemption from gallonage tax, like that from sales tax, applied only to goods actually exported. & it operated although no regulations had been prescribed; & an export of beer to the U.S.A. was within the exempting provisions although the import was contrary to the law of that country. Further, beer sold to a purchaser in the U.S.A. was within the exemptions where it had been consigned to him at a Canadian port, & was proved to have been shipped from there into the U.S.A. in smaller consignments, mostly to sub-purchasers.—CARLING EXPORT BREWING & MALTING CO., LTD. *v.* R., [1931] A. C. 435; 100 L. J. P. C. 140; 145 L. T. 26; 47 T. L. R. 319, P. C.—**CAN.**

o iv. —— *Exemption of magazine—What is.*]—*Held:* the pamphlet in question, printed by deft. monthly for the Canadian Kodak Co., Ltd., & called "Kodakery," was a "magazine," & as such exempt from sales tax. The word "magazine" in the exempting provision is used in its ordinary sense & must be construed & applied in that sense. Its meaning in ordinary usage discussed, with regard to its application to the pamphlet in question.—MILN-BINGHAM PRINTING CO., LTD. *v.* R., [1930] S. C. R. 282; 2 D. L. R. 263; *revsg.*, R. *v.* MILN-BINGHAM PRINTING CO., LTD., [1929] Ex. C. R. 133.—**CAN.**

o v. —— *Government charge on assets of person indebted for sales taxes—Meaning of assets.*]—In 12 & 13 Geo. V., c. 47, s. 17, which sect. gave the Crown a first charge on the assets of a person indebted for sales taxes, the word "assets" was not intended to include any other assets than such as were the property of the debtor at the time his assets were sought to be administered or distributed.—R. *v.* HYDE, [1928] 2 W. W. R. 253.—**CAN.**

o vi. —— —— ——.]—GOODMAN & A.-G. FOR CANADA *v.* BANK OF TORONTO (1924), 56 O. L. R. 318.—**CAN.**

o vii. —— —— *Effect of section—Priority of Crown on insolvency—Not lien.*]—R. *v.* DOMINION BANK, [1930] 1 D. L. R. 664; 11 C. B. R. 152; 64 O. L. R. 448.—**CAN.**

o viii. —— —— *Liability of purchaser of goods not subject to tax.*]—R. *v.* JACK PINE LUMBER CO. & CANADIAN BANK OF COMMERCE, [1928] 4 D. L. R. 976; [1928] 3 W. W. R. 419.—**CAN.**

o ix. —— —— *Liability of purchaser without notice.*]—A bank advanced money to a manufacturer, took an assignment of a chattel mtge. on his assets & seized & sold thereunder without knowing that he was indebted to the Crown for sales taxes & without inquiring into the question. The Crown issued an information claiming damages for conversion, the seizure being alleged to constitute the conversion, & a declaration that the bank was indebted to the Crown for the taxes collected by the manufacturer & paid to the credit of his account with the bank. The mortgaged goods were still intact on the manufacturer's premises:—*Held:* no liability had been established against the bank.—R. *v.* BANQUE CANADIENNE NATIONALE (Man.), [1929] 2 W. W. R. 668; *affd.*, [1930] 2 W. W. R. 586; 4 D. L. R. 441; 39 Man. L. R. 108.—**CAN.**

ox. —— —— *By one company for another—Joint control.*]—Deft. co. manufactured bricks & sold its entire output to the V. Co., paying the sales tax on the sale price of such bricks. The V. Co. sold these bricks by retail together with other builders' supplies, & bricks purchased from other manufacturers. For all practical purposes the control of both cos. was in one J. A. W. & his wife. The Crown contended that the Victoria Co. was merely the agent of deft. co. in the sale of its bricks & that deft. co. was therefore taxable on the sales price of the V. Co.:—*Held:* the two cos. are separate entities even though controlled by the same persons, & though the officers & shareholders of the two cos. are much the same & the cos. have business relations with each other those facts alone do not constitute the one co. the agent of the other.—R. *v.* B. C. BRICK & TILE CO., LTD., [1936] Ex. C. R. 71; 3 D. L. R. 23.—**CAN.**

o xi. —— *Effect of repeal—On lien of Crown for taxes.*]—*Ite* WILNER, [1928] 2 D. L. R. 396.—**CAN.**

o xii. —— —— *On liability incurred before repeal.*]—In view of Interpretation Act, s. 10, a liability for sales taxes under special War Revenue Act, 1915, & amendments thereto, which was incurred prior to enactment of 1925 Act, c. 26, s. 9, remains in force.—R. *v.* BANQUE CANADIENNE NATIONALE (Man.), [1929] 2 W. W. R. 668.—**CAN.**

o xiii. —— *Goods manufactured—By contractor for company.*] — R. *v.* DOMINION PRESS CO., [1928] Exch. C. R. 122.—**CAN.**

o xiv. —— —— *For person's own use.*]—When goods are manufactured & produced in Canada, not for sale, but for the use of the manufacturer or producer, such transactions are for the purposes of the Act to be regarded as sales.—R. *v.* BANK OF NOVA SCOTIA, [1929] Ex. C. R. 155; [1930] 1 D. L. R. 721; S. C. R. 174.—**CAN.**

o xv. —— —— —— *Used for purpose for which made.*]—Resp. was a manufacturer of lumber for sale, & consumed a portion in construction & building operations, carried on over a period of years, the lumber so consumed having been taken from stock in its yards, produced & manufactured in the ordinary course of its business of manufacturing for sale, & not produced or manufactured especially for the purpose for which it was used:—*Held:* resp. was liable, under Special War Revenue Act, R. S. C., 1927, ss. 86, 87, for sales tax on the lumber so consumed. The intention of the Act was to levy the tax on the sale [illegible] produced or manufactured in Canada, whether they sold by the manufacturer or consume by himself for his own purposes.—R. *v.* FRASER COMPANIES, LTD., [1931] S. C. R. 490; 3 D. L. R. 145.—**AN.**

o xvi. —— —— —— *Samples.*]—Deft., in the course of its business as a manufacturer of pharmaceutical preparations, put up in special small packages & distributed free amongst physicians & druggists samples of its products, to acquaint them with their character & quality. The question in issue was whether or not deft. was liable for the consumption or sales tax in respect of the samples, under sects. 86 (*a*) & 87 (*d*) of Special War Revenue Act, R. S. C., 1927, c. 179. Clause 4 of the special case agreed on stated that "the cost of producing such samples was paid by [deft.] as a necessary expense of business, & [deft.] in its books treated such expense as a necessary cost of production of articles manufactured & sold, in respect of which last-mentioned articles [deft.] has paid sales tax":—*Held:* the "use" by the manufacturer or producer of goods not sold, dealt with in sect. 87 (*d*), includes any use whatever that he may make of such goods, & is wide enough to cover their "use" for advertising purposes by their distribution as free samples, & would have covered their use in the present case, & the samples would have been subject to the tax, but for said clause 4 of the special case, which must be taken as an admission that the sales tax had already been paid upon the cost of producing the samples for free distribution, in which case to hold them now subject to the tax would involve double taxation, which the legislature should not be taken to have intended.—R. *v.* HENRY K. WAMPOLE & CO., LTD., [1931] S. C. R. 494; 3 D. L. R. 754.—**CAN.**

o xvii. —— —— "*Leads.*"]—Deft. carried on both the business of a saw mill & the business of coal mining, & manufactured at its mills "leads" for use in its mining operations. In some isolated cases it would purchase such "leads" in the market for the same purpose. These "leads" are logs put through the mill, sawn in half longitudinally & again into the required lengths for the use aforesaid:—*Held:* such "leads" were manufactured at deft.'s mill & used by them not in the course of manufacturing the same, but were used in a different & distinct undertaking or operation quite apart from manufacturing of the same at their mill, & they were manufactured articles bought & sold on the market, & clearly within the Act.—R. *v.* MIRAMICHI LUMBER CO., LTD., [1929] Ex. C. R. 172.—**CAN.**

o xviii. —— —— *Who is "manufacturer" — Not merchant tailor.*]—MINISTER OF NATIONAL REVENUE *v.* OGULNIK & CO., LTD., [1932] 4 D. L. R. 412.—**CAN.**

o xix. —— —— —— ——.]—A merchant tailor who sells by retail, but also makes uniforms for the employees of cos. is not within the definition of merchant tailor in Special War Revenue Act, R.S.C., 1927, so as to be exempt from sales tax payable by a manufacturer.—MINISTER OF NATIONAL REVENUE *v.* OGULNIK & CO., [1935] 1 D. L. R. 30.—**CAN.**

oxx. —— —— ——.]—Special War Revenue, R. S. C., 1927, does not impose any consumption or sales tax upon a person who, not being a manufacturer by trade, manufactures or produces, for his own use & with no intent of disposing of it by sale or otherwise, an object or article, which is not used in connection with any trade or business.—R. *v.* SHELLY, [1935] Ex. C. P. 179; [1936] 1 D. L. R. 415.—**CAN.**

[illegible] in bulk lots, by the [illegible] motor vehicle tyres which co[illegible] longer be used [illegible] them at so[illegible]

the

walls along with the serial number marked thereon by deft. These rebuilt tyres were sold under the name Biltrite Tyres to casual purchasers or wholesale dealers; deft. also carried on a mail order business in such tyres:—*Held:* deft. was a manufacturer within the scope of Special War Revenue Act, R. S. C., 1927, c. 179, & amendments thereto, & liable to pay the sales & excise taxes & licence fees provided in such Act.—R. *v.* BILTRITE TYRE CO., [1937] Ex. C. R. 1; *affd.* [1937] S. C. R. 364; 2 D. L. R. 417.—**CAN.**

o xxii. —— *To what sales applicable.*]—Sales tax imposed by Sales Tax Acts (No. 1), 1930, is chargeable on goods manufactured in Australia, & treated by the manufacturer as stock for sale by him by retail prior to Aug. 1, 1930, where such goods were on that date or afterwards sold, either to persons not registered under Sales Tax Assessment Acts (Nos. 1–9), 1930, or to persons who had not under those Acts quoted their certificate of registration.—TAXATION COMR. *v.* BEARD, WATSON & CO., LTD., [1931] Argus L. R. 278.—**AUS.**

o xxiii. —— *Priority of Crown in winding up.*]—In the winding-up of a co. under Cos. Act, 1899, the Commonwealth Govt. is entitled to priority over unsecured creditors for the amount due from the co. in respect of unpaid sales tax.—*Re* KEEP, MCPHERSON, LTD. (1931), 48 N. S. W. W. N. 180.—**AUS.**

o xxiv. —— *When tax exigible.*]—Deft co., a manufacturer of chocolate products subject to the tax, sought to avoid payment of the increased tax by accepting orders for future delivery of goods which were set apart in its warehouse & marked "Reserved stock sold." There was no identification of the particular goods representing the order of any individual purchaser. When a customer wished delivery of a portion of the goods ordered they would be taken from the reserved stock & payment made when shipped. Deft. notified the Department of National Revenue each month of the quantity of goods thus sold & later remitted the tax thereon calculated at the rate of 1 per cent. The action was brought to recover the amount of the tax calculated at the rate of 4 per cent. upon the sale price of goods sold after Mar. 2, 1931, & delivered after June 2, 1931:—*Held:* the tax was exigible by the manufacturer when the transaction was finally consummated by delivery of the goods to the purchaser, regardless of the precise date of sale, or where or when the title to the goods passed to him.—R. *v.* WILLIAM NEILSON, LTD., [1934] Ex. C. R. 124.—**CAN.**

o xxv. —— *Exemption of newspapers What are.*]—The daily stock exchange sheets, issued in respect of transactions on the Montreal Stock Exchange & the Montreal Curb Exchange, & the weekly comparative reviews of transactions on the two exchanges fall within the meaning of the word "newspapers" as used in Sched. III. of Special War Revenue Act & therefore exempt from taxation under the provisions of that Act.—R. *v.* MONTREAL STOCK EXCHANGE, R. *v.* EXCHANGE PRINTING CO., [1935] S. C. R. 614; 4 D. L. R. 630.—**CAN.**

o xxvi. —— *Exemptions under Sales Tax Assessment Act, No. 1—"Cakes"—Sponge.*]—Sales Assessment Act (No. 1), 1930, expressed an exemption from sales tax of "pastry but not including cakes or biscuits":—*Held:* "sponge" came within the description of "cakes" in the Sched., & accordingly that applt. was liable to pay sales tax.—HERBERT ADAMS PROPRIETARY, LTD. *v.* FEDERAL COMRS. OF TAXATION (1933), 47 C. L. R. 222.—**AUS.**

o xxvii. —— —— "*Boxes, cases or crates*"—*Beer casks.*]—A kilderkin cask is a cask or barrel made to hold about

consider the object of the sect., which is to protect the English button trade. The statute was directed against those who imported goods, which were not quite buttons, but upon which the bulk of the work had been done abroad, very little remaining to be done by the manufacturers in the United Kingdom. The bead or button blank was an "unfinished" button within sect. 9 (3).—NEWMAN MANUFACTURING CO. *v.* MARRABLE, [1931] 2 K. B. 297; 100 L. J. K. B. 345; 145 L. T. 117.

93e. Duty on buttons—"Unfinished" buttons—What are.]—NEWMAN MANUFACTURING CO. *v.* MARRABLE, No. 93d, *ante*.

Part VII.—Excise Licences.

104. *Add. Citation :*—97 L. J. K. B. 36.

112. *Add. Annotations :—Generally,* **Refd.** Appenrodt *v.* Central Middlesex Assessment Committee, [1937] 2 K. B. 48; Leney (Alfred) & Co. *v.* Whelan (1936), 20 Tax Cas. 321; Robinson Bros. (Brewers), Ltd. *v.* Houghton & Chester-Le-Street Assessment Committee, [1937] 2 All E. R. 298.

114a. Sale of tobacco without licence—Offence depends upon place of appropriation—Supply of cigarettes to automatic cabinets in private houses.]—Two informations were preferred alleging the unlawful sale of tobacco without licence contrary to Tobacco Act, 1842 (c. 93), s. 13, as modified by Revene Act, 1867 (c. 90), ss. 8, 9. In each case the respective suppliers, who had a licence entitling them to sell tobacco at their business premises, agreed to supply customers with automatic cigarette cabinets in their private houses. In each case the contract contained a condition: "The place of delivery of the packets of cigarettes shall be place of business of the [suppliers]." In each case a cabinet was delivered to the customer, & the suppliers' representative visited at regular intervals the customer's house, unlocked the cabinet with a key, which at all material times was in the suppliers' control, removed the coins inserted in the cabinet, & any remaining packets of cigarettes, for which the customer was not asked to pay, & restocked the cabinet. In the first case, on each occasion when the packets of cigarettes were brought to the customer's house they were done up in cartons with his name & address thereon, & the cigarettes returned were placed in the cartons & taken away by the suppliers' representative. In the second

seventeen gallons of beer when filled :—*Held :* the definition in Sched. I. was not wide enough to exempt these particular articles from sales tax.—FEDERAL COMR. OF TAXATION *v.* FISHER'S COOPERAGE PTY., LTD. (1933), 2 A. T. D. 377; 7 A. L. J. 282.—**AUS.**

o xxviii. —— —— "*Flour*"—*Self-raising flour.*]—"Self-raising" flour is not "flour" within Sched. I. of Sales Tax Assessment Acts (No. 1), 1930–31.—JACKETT *v.* DEPUTY FEDERAL COMR. OF TAXATION, [1932] S. A. S. R. 405; 2 A. T. D. 203.—**AUS.**

o xxix. —— *Intention of Act—Tax on goods—Not on individuals.*]—Suppliant was engaged in the business of dressing & dyeing furs for others & not for its own account. It paid to resp. certain sums of money as sales tax imposed by Special War Revenue Act, 1915, & amendments thereto. Suppliant was prepaid or repaid by the customer, the tax so paid, being out of pocket only such amounts as certain customers failed to repay it. Suppliant brought suit to recover all money paid by it as sales tax, alleging such payments to have been made by mistake of law & of fact :—*Held :* under sect. 87 (*c*) it is the goods of the owner, manufactured by the labour of another, that are to be taxed as a sale; it is not intended the person performing the labour should be taxed for the goods so manufactured or produced. The suppliant, not having paid the tax itself, but rather as an intermediary for & on account of its customers, has no right of action against the Crown to recover the same.—HOLLANDER & SON, LTD. *v.* R., [1935] Ex. C. R. 90; 4 D. L. R. 471.—**CAN.**

o xxx. —— "*Produced or manufactured goods*"—*Fish & chips.*]—The Federal Comr. of Taxation brought action against deft. to recover ... alleged to be payable as sales tax upon sales by deft. of cooked fish ... by preparing & cooking the fish & "chips" deft. ... neither produced nor manufactured goods within Sales Tax Assessment Acts & accordingly no tax was payable by deft.—FEDERAL TAXATION COMR. *v.* ROCHESTER (1934), 50 C. L. R. 225; 2 A. T. D. 466; 8 A. L. J. 65.—**AUS.**

o xxxi. —— *Sale of second-hand goods.*]—In both these cases defts. carried on business of purchasing second-hand motor vehicles, wrecking them & selling the parts so obtained. The sales were made to (*a*) persons who used them in reconditioning second-hand vehicles to be sold; (*b*) persons who used them in repairing vehicles for customers; & (*c*) to persons who purchased the parts for resale. The A. Co. also carried on business in new parts & accessories. The sales of these goods were made to the same classes of persons as were the sales of the second-hand parts. The goods were never resold in bulk quantities :—*Held :* the sales of goods in question were not subject to sales tax.—DEPUTY FEDERAL TAXATION COMR. *v.* ADELAIDE MOTOR WRECKING CO., LTD. & O'DONNELL (1934), 3 A. T. D. 108.—**AUS.**

o xxxii. —— ——.]—Deft. co. was registered as a wholesale merchant & as a manufacturer. Its business was in electrical goods & it sold them retail as well as wholesale. Part of its business was in second-hand goods which were in some cases repaired prior to re-sale. During the period from Feb. 1931 to Nov. 1932 sales of second-hand goods amounted to £970 18*s.* 3*d.* in value. These sales were to unregistered persons or to registered persons who did not quote their certificates. The Comr. contended that the sales tax was payable because the goods were either manufactured or imported goods & were sold by a registered person to persons of the classes mentioned :—*Held :* the general words of the Acts should not be treated as applying to goods which have already been retailed in Australia & gone into use.—DEPUTY FEDERAL TAXATION COMR. *v.* ELLIS & CLARE, LTD. (1934), 3 A. T. D. 98.—**AUS.**

o xxxiii. —— *Granite & freestone from quarries.*]—Granite & freestone which, in Australia, are cut out of quarries & moved in large blocks & then sawn into sizes suitable for use in the construction of buildings are goods manufactured in Australia within Sales Tax Assessment Act (No. 1), & are not exempted by sect. 20 (1) (*g*) of the Act as "being primary products which are derived directly from operations carried on in Australia in ... mining ... & which have not been subject to any process or treatment resulting in an alteration of the form, nature or condition of the goods."—DEPUTY FEDERATION COMR. OF TAXATION (QUEENSLAND) *v.* STRONACH (1926), 55 C. L. R. 305; 42 Argus L. R. 345; 10 A. L. J. 111; 3 A. T. D. 365.—**AUS.**

o xxxiv. —— *Exemption of municipal purchasers—To whom applicable.*]—Municipal purchases exempt from Quebec sales tax do not include individual purchases by municipal employees, or purchases made by a city tax inspector for the purpose of obtaining evidence.—FERLAND *v.* PHILIE, [1935] 4 D. L. R. 648.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 5.

sl. *Finance Act,* 1926—*Whether applicable to street bookmaker.*]—*Held :* the provision of the Finance Act, 1926, which imposes a penalty on any one carrying on business as a bookmaker without having in force the certificate required by the Act, applies not only to a bookmaker carrying on his business legally, but also to a street bookmaker carrying on his business in contravention of Street Betting Act, 1906.—M'COLL *v.* HYNDMAN, COOKSON *v.* MACKIE, HERLIHY *v.* KELLY, [1928] S. C. (J.) 17.—**SCOT.**

sm. *Registration—Continuation of certificate of suitability—Conditions of.*]—SCOTT *v.* M'CARTHY, [1928] I. R. 611.—**IR.**

case, the packets of cigarettes were brought to the house by the suppliers' traveller loose in an attaché case, & were not in any special cartons or done up in bundles. In each case the information was dismissed :—*Held :* the test in each case was where the appropriation of the goods to the contract had taken place. In the first case, there was sufficient evidence that the appropriation had taken place at the suppliers' licensed premises to justify the magistrates in dismissing the information. In the second case, however, all the evidence went to show that the appropriation took place at the customer's premises, & the magistrates should have found that the offence was proved.—FITZPATRICK *v.* BATE, MITCHELL *v.* PAGE (1934), 151 L. T. 17 ; 98 J. P. 215 ; 50 T. L. R. 309 ; 78 Sol. Jo. 256, 277 ; 32 L. G. R. 136 ; 30 Cox, C. C. 95, D. C.

116. *Add. Annotation :*—**Distd.** Westminster Coaching Services, Ltd. *v.* Piddlesden, Hackney Wick Stadium, Ltd. *v.* Piddlesden (1933), 97 J. P. 185.

128. *Add. Annotation :*—**Apld.** Dennis *v.* Leonard (1929), 141 L. T. 94.

140a. **Petrol-electric vehicle—Whether "electrically-propelled."**] —A vehicle commonly known as a "petrol-electric" motor derived its primary motive power from an ordinary internal combustion engine ; that engine was connected with an electric dynamo, & the electricity generated in the dynamo was transmitted to an electric motor, which drove the rear wheels of the car through a cardan shaft & differential gear :—*Held :* the vehicle was an "electrically propelled" vehicle within Finance Act, 1926 (c. 22), Sched. I., para. 5.—TILLING-STEVENS MOTORS *v.* KENT COUNTY COUNCIL, [1929] A. C. 354 ; 98 L. J. Ch. 198 ; 140 L. T. 624 ; 93 J. P. 146 ; 45 T. L. R. 249 ; 27 L. G. R. 261, H. L.

]—*See, now,* Finance Act, 1930 (c. 28), s. 6 (1) ; Finance Act, 1934 (c. 32), s. 18 (2).

140b. **Private car used for conveyance of goods.**]—In 1931 applt., who carried on business as a greengrocer at Neath in Glamorganshire, held a licence for a private motor-car, duty being paid thereon at the "horse-power" rate under Finance Act, 1920 (c. 18), Sched. II., para. 6. The car was neither "constructed" nor "adapted" for use for the conveyance of goods, but applt. while the licence was in force, used it occasionally for the conveyance of goods in the course of his trade. An information was preferred against him at Cardiff under Finance Act, 1922 (c. 17), s. 14, on the ground that this user was for a purpose which brought the car within a class to which the higher rate of duty under Sched. II., para. 5, of 1920 Act, became chargeable. Upon this applt. was convicted & fined :—*Held :* the user was "for a purpose" which brought the car within Finance Act, 1920 (c. 18), Sched. II., para. 5, & applt. was rightly convicted.—PAYNE *v.* ALLCOCK, [1932] 2 K. B. 413 ; 101 L. J. K. B. 775 ; 147 L. T. 96 ; 96 J. P. 283 ; 48 T. L. R. 396 ; 76 Sol. Jo. 308 ; 30 L. G. R. 294 ; 29 Cox, C. C. 475, D. C.

143. *Add. Annotation :*—**Distd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

144. *Add. Annotation :*—**Consd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

145a. **Use of car without licence—Car loaned subject to condition of renewing licence—Owner not liable.**]—The owner of a motor car, before going abroad, gave permission to one P., who was not his servant or agent, to use the car during his absence abroad on condition that P. renewed the excise licence. P. used the car after the expiration of the licence, while the owner was still abroad :—*Held :* the owner was not the person responsible for the use of the vehicle within Roads Act, 1920 (c. 72), s. 13, & could not be convicted of an offence under that sect.—ABERCROMBY *v.* MORRIS (1932), 147 L. T. 529 ;

PART VII. SECT. 4, SUB-SECT. 1.

so. *Invalid condition—What is.*]—Where a municipal corpn. is empowered to collect a licence fee "from any retail trader, not exceeding twenty dollars, for every six months," the licence to be granted "so as to terminate on the 15th day of July or the 15th day of Jan.," the corpn. may not stipulate that appct. shall confine his trading to week days only of the period of the licence, & may not withhold the licence if he refuses to subscribe to such a condition.—VASILATOS *v.* VICTORIA CORPN. (1910), 15 B. C. R. 153.—**CAN.**

sp. *Licence for delivery trucks—Delivery within municipality—Owner outsider.*]—NORTH VANCOUVER *v.* STEWART F. R. & Co., [1928] 1 W. W. R. 586 ; 49 Can. Crim. Cas. 216 ; 39 B. C. R. 401.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—C.

sr. *Person using vehicle.*]—COCKBURN *v.* GORDON, [1928] S. C. (J.) 87.—**SCOT.**

PART VII. SECT. 4, SUB-SECT. 3.—D.

ss. *"Weight unladen"—How ascertained—Loose equipment.*]—Movable shelving, fitted to slide on brackets in a baker's van, & used to facilitate the delivery of goods to customers, is loose equipment within Roads Act, 1920 (C. 72), s. 7 (6), & does not fall to be included in the weight unladen of the vehicle.—DARLING *v.* BURTON, [1928] S. C. (J.) 11.—**SCOT.**

sg. *Additional duty for "trailer"—What is.*]—A contractor, in the course of road-repairing operations, used a roadman's hut, furnished with desk, chair, & coal stove, as an office for his foreman. The hut was mounted on four cast-iron wheels of fifteen inches diameter, & fitted with a drawbar. Although normally kept stationary, it was drawn from place to place by the contractor's motor lorry. The additional excise duty chargeable in the case of a vehicle used for drawing a trailer had not been paid in respect of the motor lorry. The contractor having been charged with the offence of having made use of the motor lorry without having paid the additional duty :—*Held :* the roadman's hut was a "trailer" within Finance Act, 1920 (c. 18), Sched. II., para. 5, & the contractor had committed the offence charged.—HORN *v.* DOBSON, [1933] S. C. (J.) 1.—**SCOT.**

sk. *Change in user.*]—A motor lorry belonging to a carting contractor, when used at infrequent intervals for the transport of sheep & cattle, had superimposed upon it a float as the container of the load. The float was a large box, having a floor & four sides & open at the top, & it was secured to the lorry by ropes. In a question whether, for the purpose of Finance Act, 1922 (c. 17), s. 14, the float formed part of the lorry or part of the load :—*Held :* in calculating unladen weight under Road Traffic Act, 1930 (c. 43), s. 26, the float was an alternative body which formed part of the lorry.—STEWART *v.* M'COWAN, [1935] S. C. (J.) 33.—**SCOT.**

sm. ——.]—A motor lorry belonging to a carting contractor, when used at infrequent intervals for the transport of sheep & cattle, had superimposed upon it a float as the container of the load. The float was a large box, having a floor & four sides & open at the top, & it was secured to the lorry with ropes. It was not adapted for use on the lorry alone as a separate body, but only for use in conjunction with the fixed body of the lorry. In a question whether, when the lorry was being used with the float, the weight of the float fell to be taken into account in calculating the unladen weight of the lorry for purposes of duty under Finance Act, 1922, s. 14 :—*Held :* the float was neither an alternative body nor a part necessary to, or ordinarily used with, the lorry, within Road Traffic Act, 1930, s. 26 ; &, accordingly, the use of the float in conjunction with the lorry did not subject the lorry to a higher rate of duty.—M'COWAN *v.* STEWART, [1936] S. C. (J.) 36.—**SCOT.**

96 J. P. 392; 48 T. L. R. 635; 76 Sol. Jo. 560; 30 L. G. R. 407; 29 Cox, C. C. 553, D. C.

224. *Add. Annotation :*—**Consd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

SUB-SECT. 6.—GUN LICENCES.

For "Pistols Act, 1903 (c. 18), ss. 3, 8" read "Firearms Act, 1920 (c. 43)."

302a. Firearms Act, 1920 (c. 43), s. 12 (1)—What is "firearm"—Air pistol.]—An air pistol is not *per se* a firearm within the definition of "firearm" in above sect., but it is an "air gun or air rifle" within the proviso, which empowers a Secretary of State to make rules declaring certain types of air guns & air rifles to be specially dangerous, &, if it is so declared, it is to be deemed to be a firearm.—SAINT *v.* HOCKLEY (1925), 41 T. L. R. 555; 69 Sol. Jo. 575.

302b. —— What is "air gun or air rifle"—Air pistol.]—SAINT *v.* HOCKLEY, No. 302a, *ante*.

Part VIII.—Drawbacks and Excise Allowances.

360. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

Part IX.—Stamp Duties.

372. *Add. Annotation :*—**Apprvd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

390. *Add. Annotation :*—**Refd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

435. *Add. Annotation :*—**Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

436. *Add. Annotation :*—**Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

437a. —— Separate contract for each lot—Whether "series of transactions" within Finance (1909–10) Act, 1910 (c. 8), s. 73.]—At a public sale by auction of dwelling-houses offered in twelve lots, resps. bought from the same vendor six lots at prices in two cases exceeding £500 & in four cases not exceeding £500 in respect of each lot, but in the aggregate exceeding £500. Six contracts of sale were signed by resps., each separately stamped. Six deposits were paid & six separate abstracts of title were supplied in respect of the six lots so purchased :—*Held :* each sale did not form part of a larger transaction or of a series of transactions in respect of which the aggregate amount or value of the consideration exceeded £500, within sect. 73 of Finance (1909–10) Act, 1910 (c. 8), &, therefore, in the four cases where the consideration did not exceed £500, the double tax thereby imposed was not payable.—A.-G. *v.* COHEN, [1937] 1 K. B. 478; [1937] 1 All E. R. 27; 106 L. J. K. B. 262; 156 L. T. 130; 53 T. L. R. 214; 81 Sol. Jo. 57, C. A.

440a. Voluntary disposition inter vivos—Property disposed of including stock exempt from stamp duty.]—A deed of settlement, which operated as a voluntary disposition *inter vivos*, was made of certain stocks, shares, marketable securities & policies of life insurance, including

PART VII. SECT. 4, SUB-SECT. 3.—G. (b) i.

sk. *Validity of bye-law.*]—The tax sought to be imposed by the city of Winnipeg under bye-law No. 14,415 on all motor vehicles owned by residents of Winnipeg & used in that city is a "fee or charge" within the meaning of sect. 107 (2) of Highway Traffic Act, 1930, as amended, & therefore one which falls within the prohibitions of said sect. 107 (2).—WINNIPEG CITY *v.* CRESCENT CREAMERY CO., [1934] 1 W. W. R. 228; 41 Man. L. R. 564.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—A.

h i. —— *Amendment of charge—Validity.*]—On a prosecution under Summary Convictions Act, R. S. B. C., 1924, accused was convicted on an information charging him with having in his possession an unlicensed dog, "contrary to sect. 3 of Sheep Protection Act Amendment Act, 1929." Said Act has no sect. 3, but comprises only two sects. On appeal by the accused, the Crown moved for leave to amend the charge. The accused contended that the proceedings were a nullity & could not be amended. The Crown contended that the accused was not & could not have been misled, & that the error was an irregularity only. Clause (*d*) of sect. 62 of Summary Convictions Act corresponds to sect. 723 (*d*) of the Criminal Code :—*Held :* since accused could not have been misled, the amendment should be allowed.—R. *v.* MEGGITT, [1937] 1 W. W. R. 193.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—B. (b) ii.

sk. *Retrospective operation.*] — A farmer had two dogs at his farm on July 12, 1932, in respect of which neither licences nor a certificate of exemption had at that date been issued. On Aug. 8 he obtained a certificate of exemption in respect of these dogs. He was subsequently charged with having, on July 12, been in breach of Dog Licences Act, 1867 (c. 5), s. 8 :—*Held :* the justices were entitled to acquit, in respect that the certificate of exemption applied to the year terminating on Dec. 31, 1932, & exempted the holder from payment of duty for that year.—BORRELL *v.* MACDONALD, [1933] S. C. (J.) 19.—**SCOT.**

PART IX. SECT. 1.

sk. *Reference to court on abstract question—Incompetent.*]—A reference by the Chief Controlling Revenue Authority for opinion of ct. on an abstract question is incompetent & is not within the purview of Indian Stamp Act, 1899, s. 57.—*Re* MARINE INSURANCE POLICIES (1929), I. L. R. 57 Calc. 669.—**IND.**

PART IX. SECT. 3, SUB-SECT. 1.

sk. *Application for refund—When time begins to run.*]—A local poor law authority purchased property for poor law purposes, the deed of conveyance being dated Jan. 30, 1932. The conveyance was executed by the vendors but retained by them as an escrow pending payment of the purchase money. The purchase money was paid on May 19, 1932, & the deed was then delivered to the purchasers. The deed, which was exempt from stamp duty under sect. 96 of Poor Relief (Ireland) Act, 1838, was inadvertently stamped by pltf., as solr. for the purchasers, £90 being paid for duty. Pltf. claimed a refund of the £90 on Apr. 25, 1934, which was refused by the Revenue Comrs. defts., on the ground that it was not made within the prescribed period of two years from the date of the conveyance. In an action by pltf. claiming a declaration that his application to defts. for a refund had been made within the statutory period of two years :—*Held :* the date of the instrument was the date appearing upon its face & accordingly pltf.'s application had been out of time.—BYRNE *v.* REVENUE COMRS., [1935] I. R. 664.—**IR.**

certain Govt. stocks. The settlement operated as a transfer of the policies of life insurance, but the stocks, shares & marketable securities were subsequently transferred to the trustees of the settlement by separate transfers. *Ad valorem* "voluntary disposition" duty under Finance (1909–10) Act, 1910 (c. 8), s. 74, was subsequently paid or assessed, without dispute, in respect of the stocks, shares & marketable securities & policies of life insurance, with the exception of the Govt. stocks, which were exempt from duty on transfer by the General Exemptions from all Stamp Duties in the First Schedule to Stamp Act, 1891 (c. 39). The comrs. held that the settlement was also chargeable with *ad valorem* "settlement" duty on the value of the Govt. stocks included in it. The settlor, however, contended that no duty was payable in respect of those stocks, as they were included in the settlement with other stocks in respect of which *ad valorem* transfer duty & not settlement duty was payable under Finance (1909–10) Act, 1910 (c. 8), s. 74 (4):—*Held:* the Govt. stocks were distinct matters, within Stamp Act, 1891 (c. 39), s. 4 (*a*), from the other property dealt with by the settlement, &, therefore, the settlement could be separately charged, as if it were a separate instrument, with settlement duty in respect of the Govt. stock.—ANSELL *v.* INLAND REVENUE COMRS., [1929] 1 K. B. 608; 98 L. J. K. B. 384; 143 L. T. 437.

473a. Allotment of shares—In consideration of annuity—Valuation of shares.]—By a deed of covenant executed in Canada applt., in consideration of the allotment to him of certain shares in a Canadian co., agreed to pay to the co. for such period as he should continue to carry on his profession an annual sum "equal to nine-tenths of the total income derived from" his profession which was carried on in England. The Comrs. decided that *ad valorem* duty was chargeable on the deed & they valued the consideration at four times one year's gross income derived from applt.'s profession:—*Held:* the deed of covenant related to a matter or thing done or to be done in the United Kingdom within Stamp Act, 1891 (c. 39), s. 14 (4); the allotment of shares was good consideration for the sale of an annuity; the deed of covenant was properly chargeable with *ad valorem* duty under Stamp Act, 1891 (c. 39), s. 60; in the circumstances of the case the valuation of the shares was a proper one.—FABER *v.* INLAND REVENUE COMRS., [1936] 1 All E. R. 617; 155 L. T. 228; 80 Sol. Jo. 407.

478. *Add. Annotation:*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

482. Add the following paragraph:—
Semble: such a charterparty must be stamped with an impressed & not an adhesive stamp. After this case add:—
—— —— ——.]—*See, now,* Stamp Act, 1891 (c. 39), ss. 49–51.

548a. Memorandum within Money-lenders Act, 1927 (c. 21), s. 6.]—A note or memorandum in writing within Money-lenders Act, 1927 (c. 21), s. 6, is a memorandum of a contract within Stamp Act, 1891 (c. 39), s. 1 & Sched. I., & therefore must be stamped with a 6*d.* stamp.—PARKFIELD TRUST, LTD. *v.* DENT, [1931] 2 K. B. 579; 101 L. J. K. B. 6; 146 L. T. 90.

Annotation:—**Refd.** Collings *v.* Charles Bradbury, Ltd., [1936] 3 All E. R. 369.

548b. ——.]—A memorandum under Money-lenders Act, 1927 (c. 21), s. 6, must be stamped before it can be received in evidence.—B. S. LYLE, LTD. *v.* CHAPPELL (1931), 47 T. L. R. 562; 75 Sol. Jo. 511; *revsd. on other grounds,* [1932] 1 K. B. 691, C. A.

588. *Add. Annotation:*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

591. *Add. Annotation:*—**Refd.** Hennell *v.* I. R. K. B. 415.

611. *Add. Annotation:*—**Consd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

614. *Add. Annotation:*—**Consd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

619. *Add. Annotation:*—**Consd.** Hennell *v.* I. R. Comrs., [1933] 1 K. B. 415.

619a. Covenant to pay during joint lives of covenantor & covenantee.]—A covenant to pay during the joint lives of the covenantor & the covenantee "the sum of £21 13*s.* 4*d.*, hereinafter referred to as 'the monthly sum,' on the first day of every calendar month" is not a "security for an annuity" within the first clause of the heading "Bond, Covenant, or Instrument of any kind whatsoever" in Stamp Act, 1891 (c. 39), Sched. I., but is a covenant for a "sum periodically payable" within the same clause.—HENNELL *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 415; 102 L. J. K. B. 69; 148 L. T. 150; 49 T. L. R. 31; 76 Sol. Jo. 849, C. A.

619b. Insurance policy—Sum payable over period of years.]—An insurance co., in consideration of a payment of £1,000, issued a policy securing to the insured the payment of half-yearly sums of £52 5*s.* over a period of 11 years:—*Held:* the policy was to be stamped as a security for the payment of an annuity by way of repayment under Stamp Act, 1891 (c. 39), s. 87 (2), & attracted stamp duty at the rate of 2*s.* 6*d.* per £100 on the sum of £1,000.—COMMERCIAL UNION ASSURANCE CO., LTD. *v.* INLAND REVENUE

PART IX. SECT. 6, SUB-SECT. 3.—B.

sl. *Assignment.*]—There is no necessity for an assignment to be stamped, unless it is in the special form of an order, & possibly also unless it is directed to the persons having control of the money in question in such circumstances as to lead to the conclusion that they hold to the order of the person assigning it.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus L. R. 417.—**AUS.**

sm. *Bank guarantee.*]—By instrument of guarantee addressed to a bank, the granter guaranteed to the bank payment to the extent of £3,000 of all sums for which a third party was, or might become, liable to the bank. It had been the practice of the Inland Revenue authorities to treat such instruments for the purposes of stamp duty as "agreements," &, as such, liable to a duty of 6*d.* under Stamp Act, 1891, Sched. I.; but they now maintained that the instrument was a "bond" for the payment of £3,000, &, as such, liable to an *ad valorem* duty under that Sched.:—*Held:* the instrument of guarantee was an "agreement" within the meaning of the Sched., &, accordingly, was liable to a duty of 6*d.* only.—NORTH OF SCOTLAND BANK *v.* INLAND REVENUE COMRS., [1931] S. C. 149.—**SCOT.**

COMRS., [1937] 4 All E. R. 159; 54 T. L. R. 34; 81 Sol. Jo. 884.

620. After this case add :—
Reconstruction & amalgamation—Exemption from duty on issue of shares in transferee company to holders of shares in existing company.]—*See* BROTEX CELLULOSE FIBRES, LTD. *v.* INLAND REVENUE COMRS.; MUREX, LTD. *v.* INLAND REVENUE COMRS., COMPANIES, Nos. 7155a, 7155b.

627. *Add. Annotations :—As to* (2) **Expld.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** *Re* John Sinclair, Ltd.'s Trade Mark 437,870 (1932), 146 L. T. 417; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64.

636. *Add. Annotation :*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

640. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

641. *Add. Annotations :*—**Apld.** Cohen & Moore *v.* I. R. Comrs., [1933] 2 K. B. 126. **Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

643a. ——.]—In 1932 a father was tenant for life under the will of a testatrix who died in 1898 of the settled estates (which then consisted mainly of investments) & his son was tenant in tail in remainder. An arrangement was made between the father & the son by which the son was to disentail & the father to purchase from him for £160,000 his absolute reversion in certain of the investments, the son taking over from the father his liability to pay an annual sum to his wife during her life. This sum of £160,000 was then applied in purchasing some of the investments which had thus become the father's property. The only document relating to the sale of the son's reversion for £160,000 was an acknowledgment signed by the son & dated Dec. 14, 1932, by which the son acknowledged the receipt from the father of the sum of £160,000, "being the purchase price agreed as part of a family arrangement for my absolute reversion under the will . . . & a disentailing deed . . . expectant on the life interest" of the father under the will in the investments mentioned in the Sched. thereto :—*Held :* the acknowledgment was chargeable with *ad valorem* duty as an agreement for sale within Stamp Act, 1891 (c. 39), s. 59.

Qu. : whether the acknowledgment was chargeable as a conveyance on sale within sect. 54 of the Act.—FLEETWOOD-HESKETH *v.* INLAND REVENUE COMRS., [1936] 1 K. B. 351; 105 L. J. K. B. 676; 153 L. T. 409, C. A.

651. *Add. Annotation :*—**Refd.** Faber *v.* I. R. Comrs., [1936] 1 All E. R. 617.

658a. Contract for sale of land & building contract.]—A contract for the sale of land for £500 was entered into, to be completed in three weeks. On the same date a contract between the same parties, expressed as conditional on the completion of the contract of sale, was entered into, whereby the vendor of the land contracted to build a house thereon for the purchaser for £1,350. It was contended by the revenue authorities that this was one transaction & that the amount of stamp duty on the conveyance should be on the real consideration therefor—namely, the aggregate of the above sums, £1,850 :—*Held :* this was not a contract for the sale of a house & the land on which it stood, but constituted separate transactions, a contract of sale of land & a contract to build a house thereon, & duty on £500 only was payable.—KIMBERS & CO. *v.* INLAND REVENUE COMRS., [1936] 1 K. B. 132; 105 L. J. K. B. 97; 154 L. T. 305; 51 T. L. R. 421; 79 Sol. Jo. 402.

Annotation :—**Consd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

661. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

661a. —— ——.]—An agreement for sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

Annotation :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

PART IX. SECT. 6, SUB-SECT. 18.—A. (a).

631 i. *Partnership property—Transfer of share by partner's executors.*]—DUCKETT *v.* COLLECTOR OF IMPOSTS, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] Argus L. R. 379.—**AUS.**

so. *Land—Undivided share.*]—A transfer of an undivided share of land is, for the purposes of Stamps Act, 1915, a transfer of land. A transfer of land may be dutiable as a transfer of land on a sale thereof, though the sale includes both land & personal property.—DUCKETT *v.* COLLECTOR OF IMPOSTS, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] Argus L. R. 379.—**AUS.**

sp. *Licence to use property.*]—An agreement between a racing club & S. conferred on the latter, for valuable consideration, the sole right of supplying, at prices fixed by the club, all the refreshments, eatables & drinkables to be sold or disposed of within two reserves during race meetings to be held on the club's course for a period of three years. All plant, etc., was to be supplied by S., & it was implied that he should have the use of the club's refreshment rooms. It was a term of assignment of interest would under any circumstances be allowed unless written permission be granted for same the agreement that no sub-letting or by the chairman of the club. The right was reserved by the club to enter & view the refreshment rooms at any time & to take such steps as appeared necessary from time to time to secure the proper management & control of the business. Y., with two other persons, entered into a joint & several bond with the club to secure the due performance by S. of the contract. S. died, & by an agreement between Y. & the club it was arranged that Y. should carry out the terms of the original agreement in the place of S., the currency thereof being extended for a further three years :—*Held :* the agreement was not within sect. 41 (1) or sect. 65 of Stamp Duties Act, 1920-24 (N.S.W.), because it was an executory contract giving rise to a mere personal right of selling refreshments with ancillary stipulations. Such a right was not "property" within the meaning of the Act, & therefore the agreement was not liable to *ad valorem* duty appropriate to a conveyance. Nor was the agreement within sect. 71, as there was neither a sale nor a right within that sect.—COMR. OF STAMP DUTIES (NEW SOUTH WALES) *v.* YEEND (1929), 43 C. L. R. 235; 3 A. L. J. 319.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 18.—A. (b).

st. *Entries in buyer's account book.*]—A buyer of bullion & ornaments used to get each seller to make an entry in the buyer's account books giving the seller's name & a description of the goods purchased & the price paid, together with the signature of the seller thereon. These entries were all unstamped :—*Held :* the transactions of sale were completed by delivery & payment of price, & so the entries did not transfer any property & were not conveyances within Stamp Act, 1899, s. 2 (10).—EMPEROR *v.* RAGHUBAR DAYAL (1933), I. L. R. 56 All. 680.—**IND.**

663. *Add. Annotation :*—**Refd.** Faber *v.* I. R. Comrs., [1936] 1 All E. R. 617.

667. *Add. Citations :*—[1928] 1 K. B. 703; 97 L. J. K. B. 116; 138 L. T. 171.

Add. Annotation : —**Overd.** Stanyforth *v.* I. R. Comrs., [1930] A. C. 339.

669a. —— **Whether overriding powers of revocation & reappointment to be considered.**]—By a deed poll dated in 1911 a partial resettlement was effected of the Portman family estates. The deed poll was executed under a joint power of revocation & new appointment contained in previous dispositions of the estates & the appointment thereby made was expressly subject to a further exercise of such power; & the deed poll itself also contained a fresh power of revocation & new appointment. In arriving at the value of the property transferred by the deed poll for the purpose of assessing the *ad valorem* stamp duty payable thereon under Finance (1909–10) Act, 1910 (c. 8), s. 74, the I. R. Comrs. disregarded the powers of revocation & new appointment :—*Held :* these overriding powers ought to have been regarded as affecting the value.—STANYFORTH *v.* INLAND REVENUE COMRS., [1930] A. C. 339; 99 L. J. K. B. 327; 142 L. T. 641; 46 T. L. R. 288, H. L.

670. *Add. Annotations :*—**Apld.** Westmorland *v.* I. R. Comrs., [1928] 1 K. B. 703. **Refd.** Stanyforth *v.* Inland Revenue Comrs. (1929), 98 L. J. K. B. 764.

674. After this case add :—

—— **Exemption of copies of probate & letters of administration.**]—*See* Finance Act, 1930 (c. 28), s. 43.

734. To cross-references before this case add " *See, also*, Finance Act, 1930 (c. 28), s. 44."

PART IX. SECT. 6, SUB-SECT. 22.

sr. *Deed of gift.*]—C. proposed to his two sons A. & B. that on condition that A. should convey his interest in property " W. P. " to B., C. would convey his property " R." to A. A. & B. agreed to the proposal. The conveyance of " R." by C. to A. was stamped as a " deed of gift " ; it was now claimed that the conveyance by A. of his interest in " W. P." to B. should be stamped with a denoting stamp :—*Held :* the transaction was not a sale, *i.e.* a transfer of land in consideration of a sum of money paid as the price therefor & therefore the provisions as to denoting stamps did not apply; but the transaction in substance was a conveyance by A. of his interest in " W. P." to B. in consideration of the conveyance by C. to A. of " R.", & although such conveyance was not a gift properly so called it was an instrument transferring property which was made upon a valuable consideration other than a *bona fide* pecuniary consideration, which was a " deed of gift " within the meaning of the Sched. to Stamp Duties Amendment Act, 1904.—CAMPBELL *v.* STAMP DUTIES COLLECTOR (1932), 25 Tas. L. R. 121.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 27.

sv. *Duty assessed on value of feu-duty.*]—K. offered to feu to M. a plot of ground for the erection of a house at a feu-duty of £4 4*s*. On the same date K., Ltd., a building co. under K.'s control, offered to build for M. a house on the plot of ground at a price of £630. These offers were accepted by M. After the house was built K. granted a feu of the ground to M. by a feu contract at the stipulated feu-duty :—*Held :* the stamp duty on the feu contract was assessable on the value of the feu-duty, capitalised in terms of sect. 56 (2), together with the price of the house, & not on the value of the feu-duty alone, in respect that the agreements regarding the land & the house constituted one transaction by which the property in both was transferred.—M'INNES *v.* INLAND REVENUE, [1934] S. C. 424.—**SCOT.**

sx. ——.]—Following upon missive offers to feu plots of land, but before the feu charters were granted, two prospective feuars entered into contracts with builders for the erection of houses on the land to be feued. In one case no part of the house had been built at the date of the feu charter; in the other case it had been partly built. The superiors & the builders were independent parties. In a third case a house was built upon the land of a landowner with his consent, on an oral agreement with him that a feu of the site would be granted. A feu charter was granted after the house had been built :—*Held :* in each case the stamp duty was assessable on the value of the feu duty only, capitalised in terms of Stamp Act, 1891 (c. 39), s. 56 (2), & not on the feu duty together with the value of the house, in respect that the consideration for the feu charter was the feu duty only, the house in each case being the subject of a separate contract with an independent party.—PAUL *v.* INLAND REVENUE, SPAN *v.* INLAND REVENUE, BLAIR *v.* INLAND REVENUE, [1936] S. C. 443.—**SCOT.**

PART IX. SECT. 6, SUB-SECT. 30.

sp. *Mortgage stamped in Irish Free State—Double Taxation Relief Act.*]—The vendor of an estate situate in County Antrim, which was in process of sale through the Land Purchase Commission under the Northern Ireland Land Act, 1925, executed a mtge. to the Bank of Ireland of the bonus payable in respect of the sale. This instrument, which was dated Apr. 24, 1926, contained a covenant on the part of mtgees. to re-assign the premises on re-payment of the principal & interest thereby secured. It was executed by the mtgor. at his residence in County Antrim & by the mtgees. in Dublin, where it was stamped with an Irish Free State Stamp in respect of the duty chargeable thereon. Upon the ruling of the final schedule of incumbrances the Judicial Comr. declined to accept the mtge. in evidence on the ground that it was not properly stamped in accordance with the provisions of the Stamp Act, 1891 :—*Held :* by the Ct. of Appeal the mtge. was chargeable with stamp duty in the Irish Free State within Double Taxation Relief Act (Northern Ireland), 1923 (c. 14), Part III., para. (*a*), & it was accordingly properly stamped & admissible in evidence in Northern Ireland.—*Re Estate of* MACARTNEY, [1933] N. I. 1.—**IR.**

PART IX. SECT. 6, SUB-SECT. 34.

734 xi. —— *Receipt granted to heritor on account of stipend.*]—In the case of a parish where a minister was in right of the whole standardised stipend, a question arose whether a receipt granted by the General Trustees to a heritor on account of stipend paid by him was exempt from stamp duty in virtue of Finance Act, 1924, s. 36 :—*Held :* in virtue of the nature of standardised stipend as determined by Church of Scotland (Property & Endowments) Act, 1925, s. 36, the receipt granted by the General Trustees to the heritor on account of standardised stipend could not be described as given on account of any salary or other like payment within Finance Act, 1924, s. 36, even though the minister of the parish was in right of the whole standardised stipend thereof; & accordingly, the receipt was not entitled to the exemption from stamp duty conferred by that section.—CHURCH OF SCOTLAND GENERAL TRUSTEES *v.* INLAND REVENUE COMRS. [1932] S. C. 97.—**SCOT.**

734 xii. —— *Acknowledgment of loan.*]—In an action brought in 1932 by testamentary trustees for recovery of a loan alleged to have been made by testator to defender, pursuers produced a document consisting of a letter, dated 1920, from defender's father to testator, & a docquet holograph of & signed by defender. In the letter defender's father undertook, if testator advanced £1,000 to defender, to arrange for payment of interest. The docquet, which was undated, but must have been executed before July, 1931, bore " I acknowledge receipt of the sum of One Thousand Pounds." The document was not stamped, & defender maintained that it could not be received in evidence, in respect that, being a receipt, it could not be stamped more than one month after its date :—*Held :* when the letter & docquet were read together, it was clear that the £1,000 was received as a loan, & accordingly, the docquet was not a receipt within Stamp Act, 1891 (c. 39), & might be stamped more than one month after its date.—SIMPSON'S TRUSTEES *v.* SIMPSON, [1933] S. C. 128.—**SCOT.**

sh. *Failure to give stamped receipt—Money received against voucher.*]—Applt., a commercial traveller employed by a joint stock co., received from the co.'s cashier a sum of £10 to be expended in travelling expenses & in return signed a petty-cash voucher, which he handed to the cashier in acknowledgment of his having received the said money. Subsequently he accounted to the cashier for it, producing receipts where receipts had been given to him. He was convicted of a breach of sect. 71 (2) of Stamp Acts, 1894 to 1930, which makes it an offence, in any case where a receipt would be liable to duty, not to give or issue forthwith a receipt duly stamped. For the purposes of those Acts " the expression 'receipt' includes any note, memorandum, or writing whereby any money amounting to two pounds or upwards . . . is acknowledged or expressed to have been received, or deposited, or paid.

On appeal :—*Held :* the voucher did not merely evidence the passing of money from one servant

762a. Verbal declaration of trust—Followed by deed of settlement.]—A deed of settlement executed on June 24, 1931, after reciting, as was the fact, that on May 20, 1931, for the same consideration as was mentioned in the deed, which then existed in draft form, the settlors had verbally declared that they would thenceforth, until trustees were appointed in their place, hold the securities mentioned in the first & second scheds. thereto, being of the value of £55,344, as trustees upon the same trusts as would be set forth in respect of the securities mentioned in the third & fourth scheds. thereto, being of the value of only £1,512, when the same were formally transferred, went on to witness that in consideration of matters therein mentioned the settlors thereby assigned & transferred to the trustees the securities mentioned in the third & fourth scheds., that the trustees should stand possessed of all the property & securities vested in them upon certain specified trusts, & that the settlors thereby appointed the trustees of the settlement to be the trustees of the securities mentioned in the first & second scheds. thereto. A question having arisen as to the stamp duty with which the deed was chargeable:—*Held:* although the verbal declaration of trust had been made before the deed, the two nevertheless formed one single transaction & the deed was chargeable under the head "Settlement" in Stamp Act, 1891 (c. 39), Sched. I., with *ad valorem* stamp duty on the total value of the property mentioned in all its four scheds.—namely, £56,856.—COHEN & MOORE *v.* INLAND REVENUE COMRS., [1933] 2 K. B. 126; 102 L. J. K. B. 696; 149 L. T. 252.

767a. Unqualified person drawing instrument relating to real property.]—Under Stamp Act, 1891 (c. 39), s. 44, it is an offence for a person not so qualified as provided therein to draw or prepare, in expectation of a fee, an instrument which purports to be a lease, but which is invalid, being unsealed. Such a document is not an "agreement under hand only" within the meaning of the proviso.—HARTE *v.* WILLIAMS, [1934] 1 K. B. 201; 103 L. J. K. B. 108; 150 L. T. 238; 30 Cox, C. C. 57, D. C.

Part X.—Corporation Duty.

780. *Add. Annotations:*—**Distd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* I. R. Comrs. (1928), 97 L. J. K. B. 578. **Consd.** Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285. **Apld.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466. **Refd.** Master Mariners, Honourable Co. of *v.* I. R. Comrs. (1932), 17 Tax Cas. 298.

Part XII.—Entertainments Duty.

784. *Add. Annotations:*—**Consd.** A.-G. *v.* Arts Theatre of London, Ltd., [1933] 1 K. B. 439; A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226; A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858.

785. *Add. Annotations:*—**Consd.** A.-G. *v.* Arts Theatre of London, Ltd., [1933] 1 K. B. 439; A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858.

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of the co. to another; that the payment of the amount of £10 must be assumed to have been made to applt. in pursuance of an antecedent liability; & the conviction was right.—COLLINSON *v.* WARD, *Ex p.* WARD, [1936] Q. S. R. 190; 30 Q. J. P. R. 103.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 35.

h i. ——— ———.]—NEW SOUTH WALES STAMP DUTIES COMRS. *v.* THOMSON (1928), 40 C. L. R. 394; [1928] Argus L. R. 30.—**AUS.**

sp. *Exemption—Transfer of stock—Equitable interest.*]—A deed of settlement otherwise dutiable under Stamps Act, 1928 (Vict.) purported to transfer Australian consolidated inscribed stock to a trustee upon the terms of the settlement. The transfer was not in the form prescribed by Commonwealth Inscribed Stock Act, & consequently did not operate to vest in the trustee the legal property in the inscribed stock:—*Held:* as the deed of settlement transferred only the equitable interest in the stock, it was not a "document relating to the . . transfer . . . of any stock" within sect. 52A of Commonwealth Inscribed Stock Act, 1911-1933, as that provision applied only to transfers of legal interests, & the deed of settlement was consequently not exempted from stamp duty under Victorian Stamps Act, 1928 by sect. 52A of the Commonwealth Inscribed Stock Act.—FAIRBAIRN *v.* COMPTROLLER OF STAMPS FOR VICTORIA (1935), 53 C. L. R. 463; 41 Argus L. R. 377; 9 A. L. J. 205.—**AUS.**

sr. *Revocable mandate.*]—The instruments referred to in Part IX. of Third Sched. to Stamps Act, 1928, include instruments not under seal. A beneficiary entitled under a will to the residuary estate of testator, delivered to the exor. named in the will a letter, by which he requested the exor. upon the issue of probate to pay out of his interest, in shares or in money at the exor.'s discretion, various amounts to a number of persons & institutions. The exor. transferred shares & made cash payments in compliance with these directions:—*Held:* the letter was not dutiable under Stamps Act, 1928, as a deed of settlement or of gift within Part IX. of Sched. III. since it was not an instrument whereby property was settled or given, but was a mere revocable mandate.—HOWARD-SMITH *v.* COMPTROLLER OF STAMPS, [1935] V. L. R. 387; 41 Argus L. R. 467; *affd.*, 54 C. L. R. 614; 10 A. L. J. 39; 42 Argus L. R. 198.—**AUS.**

PART IX. SECT. 7.

765 i. —— *Liability of master for penally incurred by servant.*]—A servant authorised to give receipts, gave a receipt liable to duty & not duly stamped. The receipt was in form an acknowledgment by the principal through the servant that the principal had received the money:—*Held:* the principal was liable to a penalty under Stamps Act, 1928, s. 55.—FRASER *v.* BRENNAN, [1935] V. L. R. 371; 41 Argus L. R. 508.—**AUS.**

PART XII.

sa. *Club picnic—Sea trip & shore amusements.*]—A club conducted an excursion to a seaside resort & a picnic there & sold tickets in connection with the excursion & picnic. The holders of tickets were conveyed to the resort by a boat chartered by the club, where for a few hours ashore they might take part in games, pastimes & amusements in a park, of which the club had the use for the day. They afterwards returned by the same boat. The whole outing extended over some eleven or twelve hours. No ticket or special payment was needed for participation in the amusements in the park, in which persons other than ticket-holders were at liberty to join:—*Held:* there was no payment for admission to an entertainment.—TAXATION COMR. *v.* VICTORIAN HARDWARE CLUB, [1931] Argus L. R. 145.—**AUS.**

786. *Add. Annotations :*—**Consd.** A.-G. *v.* Arts Theatre of London, Ltd., [1933] 1 K. B. 439; A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226; A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858.

786a. —— **Theatre club.**]—A club was formed with the object of creating a social rendezvous & providing its members with the amenities of a London club, including the provision of meals & refreshments. In addition it provided its own theatre on the club premises & produced regularly at the theatre with professional casts new plays & revivals for short runs, & also provided therein concerts, lectures, etc. There were two classes of members—namely, full members, who paid annual subscriptions at full rates, & enjoyed all the privileges & amenities of the club, & associate members, who paid annual subscriptions at much lower rates than the full members, & were entitled only to a few of the privileges of the full members. Both full members & associate members were entitled to enter the theatre & attend the theatrical performances given there upon payment of the prices charged for admission, which were the same for both full members & associate members, & varied according to the cost of production of each play, & were calculated so as to cover the cost of production throughout each year. There was no admission for the public at large. The Comrs. of Customs & Excise determined that a portion of the subscriptions paid by both full members & associate members was in respect of the right of admission to entertainments & that entertainments duty was payable thereon :—*Held :* by FINLAY, J., on the facts, a portion of the annual subscriptions paid both by the full members & the associate members was paid in order to entitle them to join the privileged class of persons who alone had the right, upon making a further payment, to be admitted to the entertainments in the theatre, & that portion of the annual subscriptions was chargeable with entertainments duty.

On appeal it was contended on behalf of applts. that the duty could not attach, because Finance (New Duties) Act, 1916 (c. 11), s. 1 (4), referred to a payment for admission & not to a part payment for admission to an entertainment :—*Held :* by the Ct. of Appeal, that under s. 1 (4) of the 1916 Act, the Comrs. were charged with the duty of breaking up the lump sum paid in respect of the subscription paid to the club to see whether there was contained in it a sum which represented any payment for admission to the theatre, & that if it did, the tax attached; & even though, subsequently or successively, there might have been a direct payment for the ticket of admission which was used by the member, nevertheless the totality of the two sums which had been paid represented a payment made for admission to an entertainment of which he had paid the first portion in his subscription to the club & the second portion directly in the purchase of his ticket, & the duty was payable on the totality of the two sums paid for admission :—*Held :* therefore, the tax attached.—A.-G. *v.* ARTS THEATRE OF LONDON, LTD., [1933] 1 K. B. 439; 102 L. J. K. B. 105; 148 L. T. 266; 49 T. L. R. 38; 76 Sol. Jo. 831, C. A.

Annotation :—**Consd.** A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858.

787. *Add. Annotations :*—**Distd.** A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858. **Refd.** A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226.

787a. Revue during meals at restaurant.]—Defts. co. was in occupation of premises which had previously been used as a theatre. These premises were adapted for use as a restaurant, but the general aspect of a theatre was retained; the stage was enlarged, the seats in the stalls & dress circle were replaced by tables & chairs, & staircases were built from the dress circle to the stage. Food & drink were supplied, as in an ordinary restaurant, & patrons were able to dance on the stage. There was in addition an elaborate revue performed on the stage, which was fitted & adapted for the production of such a revue. Patrons were allotted tables as in an ordinary restaurant; there was a fixed menu each night, but dishes could be ordered *à la carte*. A minimum charge of 15*s.* 6*d.* was made, payments being made before leaving. The question arose as to whether the co. was liable to pay entertainment duty :—*Held :* upon the evidence, the 15*s.* 6*d.* was paid by patrons for admission to an entertainment within Finance (New Duties) Act, 1916 (c. 11), but, as part of the payment was in respect of other privileges & rights, only that part of the payment which represented the right of admission to the entertainment was dutiable.—A.-G. *v.* LONDON CASINO, LTD., [1937] 3 All E. R. 858; 53 T. L. R. 1017; 81 Sol. Jo. 718.

788. *Add. Annotations :*—**Consd.** A.-G. *v.* London Casino, Ltd., [1937] 3 All E. R. 858. **Refd.** A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226.

791a. Bathing pool—Admission of non-bathers.]—The corpn. of a borough were the proprietors of an enclosure which adjoined the sea-shore & included a sea-bathing lake; two areas reserved for sun-bathing; dressing accommodation for about a thousand bathers; terraces with seating accommodation for several thousands of non-bathers sheltered from the wind, & an upper terrace promenade, that accommodation giving the non-bathers a view of the bathing lake, adjacent parks, recreation ground & sea-shore; & a café. The bathing was not organised. The lake & grounds were widely used by visitors & residents as a meeting-place & resort for sheltered sitting & resting in the sun. The sheltered seats, terraces & café were open & used at the same prices whether or not there was bathing. The enclosure was open from Apr. 30 to Oct. 1 from 7 a.m. to 8 p.m. on week-days, & for shorter hours on Sundays. The charges for non-bathers were between 2 p.m. & 5 p.m. 4*d.*, & at any other time 3*d.*, these charges being somewhat less than those for bathers. Admission was by ticket obtained at a turnstile :—*Held :* the bathing, not being organised, was not an "entertainment" within the meaning of that term as defined by Finance (New Duties)

Act, 1916 (c. 11), s. 1, & consequently that entertainments duty under the Act could not be charged on the payments made by non-bathers for admission to the enclosure.—A.-G. *v.* SOUTHPORT CORPN., [1934] 1 K. B. 226; 103 L. J. K. B. 117; 150 L. T. 273; 98 J. P. 51; 50 T. L. R. 122; 77 Sol. Jo. 899; 32 L. G. R. 71, C. A.

Part XIII.—Recovery of Revenue Duties and Penalties.

799. *Add. Annotation :*—**Apld.** Chowood, Ltd. *v.* Lyall, [1929] 2 Ch. 406.

811a. Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act, 1842 (c. 79), s. 13.]—An information was preferred by a police officer against the conductor of a motor omnibus, alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to

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PART XIII. SECT. 1, SUB-SECT. 1.

p i. —— *Action against broker—For value of revenue stamps.*]—Under Special War Revenue Act, R. S. C., 1927, the omission to affix the revenue stamps required by sect. 58 of Part VII. to be affixed on stocks or bonds on a sale or transfer thereof does not, when a sale is made by a broker as an agent, render him liable to pay the money value of such stamps as a debt due to the Dominion of Canada.—R. *v.* CRABBS, [1934] S. C. R. 523; 4 D. L. R. 324; 47 B. C. R. 293.—**CAN.**

st. *Trial of issue—To determine fact essential to defence—Amendment of defence.*]—R. *v.* MUTUAL FIRE ASSOCN. OF CANADA, LTD. (1926), 58 N. S. R. 420.—**CAN.**

sv. *Statutory presumption from possession.*]—R. *v.* LEGGE, [1929] 1 D. L. R. 808; 51 Can. Crim. Cas. 11; 60 N. S. R. 226.—**CAN.**

sw. ——.]—On a charge under Customs Act, R. S. C., 1927, s. 217 (2), of unlawfully importing liquor the onus is on the accused to prove lawful importation, without proof by the Crown of importation.—R. *v.* CHEVERIE (1933), 7 M. P. R. 147; 62 C. C. C. 283. —**CAN.**

sx. ——.]—R. *v.* DEMPSEY (1933), 7 M. P. R. 189.—**CAN.**

sa. *Unlawful removal from distillery.*] —*Held :* (1) where an inspection of the stock of spirits in a distillery, made according to the directions of the statute, shows that on a given date a substantive quantity of spirits had in some way been removed from the distillery, & that the distillery stock books, required to be kept under the Act, did not show said deficiency to have been lawfully removed, such evidence, unless rebutted by proper & legal evidence, will be proof that said shortage was unlawfully removed; (2) it results from the proper reading of sects. 53, 149, 151 & 152 of the Excise Act, that, upon it being shown that any distilled spirits have been unlawfully removed from a distillery, the excise duties thereon become payable forthwith; (3) it is no defence in the present action to show that the spirits had been unlawfully removed by its sales manager, who was also a director, without the knowledge of the other directors.—R. *v.* ATLANTIC DISTILLING CO., LTD., [1931] Ex. C. R. 117.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—A.

806 iv. ——.]—R. *v.* CHENG TONG SENG, [1928] 1 W. W. R. 33; 49 Can. Crim. Cas. 79; 39 B. C. R. 157.—**CAN.**

806 v. ——.]—R. *v.* BOUTILIER, [1928] 2 D. L. R. 555; 49 Can. Crim. Cas. 312.—**CAN.**

806 vi. ——.]—R. *v.* MANUEL, [1928] 2 D. L. R. 755; 50 Can. Crim. Cas. 32. —**CAN.**

806 vii. —— *Railway Passenger Duty Act, 1842.*]—*Held :* under Burgh Police Act, sect. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1842 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland Revenue or Customs Act, within the meaning of Burgh Police Act, s. 454.—CAMERON *v.* SWEENEY, [1928] S. C. (J.) 34.—**SCOT.**

sd. *Election as to penalty—When made.*]—A summons charged deft. "that he . . . was concerned in carrying, to evade the payment of duty thereon, certain uncustomed eggs . . . contrary to sect. 186 of Customs (Consolidation) Act, 1876 (c. 36), whereby the said deft. has forfeited the penalty of £100 for which the Comrs. have elected to sue." Deft. was convicted & the justices ordered him "to pay the sum of £10 11*s.* 0*d.* being three times the value including the duty thereon of sixty dozen of eggs which we adjudge deft. to be carrying to evade payment of the duties thereon . . . & for costs the sum of £1 14*s.* 6*d.* within one month & if said sums be not paid within one month, we adjudge P. M. to be imprisoned in Londonderry Gaol for fourteen days with hard labour unless said sums be sooner paid." On a motion to make absolute a conditional order of *certiorari* which brought up the order of the justices for the purpose of being quashed :—*Held :* (1) it was open to the Comrs. at any time prior to conviction to say for what penalty they intended to sue; (2) the addition of the punishment of something not warranted in law was not a "defect" within sect. 223 of 1876 Act, but made the order wholly bad; (3) the order could not be sent back to the justices to be amended after *certiorari* proceedings had been taken; (4) if it was not competent for the justices to amend the order the ct. had no power, either to direct or request them to do so. —R. (MEEHAN) *v.* COUNTY TYRONE, CHAIRMAN & JUSTICES, [1934] N. I. 67. —**IR.**

811a i. *Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act, 1842 (c. 79), s. 13.*]—HORN *v.* DUCKETT, [1929] S. C. (J.) 63.—**SCOT.**

t i. —— *Effect of Criminal Justice Administration Act, 1914 (c. 58), s. 16.*] —*Held :* sect. 12 of the Customs & Inland Revenue Act, 1879 (c. 21), which provides that any person convicted of an offence against the Customs Acts, & who had been adjudged to pay a penalty of £100 or upwards may for a first offence be imprisoned for not less than six months nor more than nine months, & for a subsequent offence may in lieu of payment of the penalty be imprisoned with or without hard labour, for not less than six months nor more than twelve months, was repealed by sect. 16 of Criminal Justice Administration Act, 1914 (c. 58).—R. (MCCONVILLE) *v.* ARMAGH COUNTY JUSTICES, [1934] N. I. 222.—**IR.**

1 i. —— *Notice of seizure.*]—The giving of the notice of seizure which is required by Excise Act, 1927, s. 77, is not a condition precedent to the prosecution of a charge laid under sect. 176 (*e*) of said Act.—R. *v.* KOLYK, [1929] 2 D. L. R. 636; 1 W. W. R. 766; 51 Can. Crim. Cas. 372; 38 Man. L. R. 166.—**CAN.**

sw. *Improper adjournment—Effect of.*] —A justice of the peace having intervened in a prosecution under the Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid, & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed.—R. *v.* PYKE, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 341.—**CAN.**

sx. *Information in writing—By whom laid.*]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—R. *v.* WITSIEWICZ, [1928] 2 W. W. R. 19; 49 Can. Crim. Cas. 330.—**CAN.**

sy. —— *Whether necessary.*]—*Held :* an information in writing required by Customs & Inland Revenue Act, 1879, is no longer a necessary preliminary to the issue of a summons charging an offence under the Customs Acts.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

sz. *Information — Description of informant—Sufficiency.*]—An information for an offence against the Excise Act which describes the informant as a Customs & Excise officer "on behalf of His Majesty the King" shows sufficiently that he belonged to the class of persons by whom such an information may be laid & gives the magistrate the right to proceed thereunder.—R. *v.* HENDERSON (B. C.), [1929] 4 D. L. R. 984; 2 W. W. R. 209; 52 Can. Crim. Cas. 82.—**CAN.**

sb. —— *Must be laid before two justices.*]—R. *v.* O'HALLORAN (1928), 54 Can. C. C. 227.—**CAN.**

sc. —— *Must state value of goods illegally imported.*]—R. *v.* BENT (1930), 54 Can. C. C. 169.—**CAN.**

sd. —— *Necessity for averment that goods unlawfully imported.*]—R. *v.* REID, [1932] 2 D. L. R. 303; 4 M. P. R. 328; 57 C. C. C. 396.—**CAN.**

se. —— *Description of offence—Sufficiency—Whether "without lawful excuse" necessary.*]—JACOBS *v.* R. (1931), 56 Can. C. C. 200.—**CAN.**

sf. —— —— ——.]—An information under Customs Act, 1927, is valid when it uses the word "keep," which is identical with "have in one's possession."—R. *v.* MCLEOD, [1935] 2

carry, contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13 :—*Held :* the prosecution was not a proceeding for the recovery of a fine or penalty under an Act relating to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—KIRKBY *v.* MINTY, [1929] 2 K. B. 165; 98 L. J. K. B. 733; 141 L. T. 515; 93 J. P. 176; 45 T. L. R. 427; 27 L. G. R. 438; 28 Cox, C. C. 640, D. C.

816. *Add. Annotation :*—**Refd.** Roche *v.* Willes (1934), 151 L. T. 154.

D. L. R. 510; 9 M. P. R. 145; 63 Can. C. C. 155.—**CAN.**

sg. *Penalty should be proportionate to extent of illegal operations.*]—R. *v.* PETIT, [1931] 4 D. L. R. 548; 57 C. C. C. 108.—**CAN.**

sk. *Harbouring goods—Implication of ownership.*]—In a prosecution under Customs Act, R. S. C., 1927, "harbouring" implies ownership.—R. *v.* FORAN (1932), 59 C. C. C. 268.—**CAN.**

sl. ——*Meaning of "value for duty."*]—In a charge of harbouring goods of the "value for duty" of over $200, "value for duty" means the value to be stated in the bill of entry even though there is no *ad valorem* duty.—R. *v.* BALLARD, [1933] 2 D. L. R. 67; 59 C. C. C. 220; 6 M. P. R. 193.—**CAN.**

sm. *No power to suspend sentence.*]—Customs Act, R. S. C., 1927, s. 282, deprives the ct., in respect of offences under the Customs Act, of its usual power to suspend the sentence of persons convicted.—R. *v.* LOWERY, [1933] O. R. 19; 59 C. C. C. 112.—**CAN.**

sp. *Form of order.*]—The prosecutor was charged at petty sessions on a summons with being (*inter alia*) knowingly concerned in a fraudulent evasion of duties of customs in respect to ten head of cattle. He was convicted & was ordered to pay the sum of £300 or in default to be imprisoned until that sum be paid or discharged according to law.

On an application to make absolute a conditional order for a writ of *habeas corpus* notwithstanding cause shown: —*Held :* it was necessary for the justices to state the limit of the term of imprisonment imposed, & as no term was fixed, the order of the justices was bad.—R. (MCCAUGHEY) *v.* TYRONE COUNTY JJ., [1936] N. I. 10.—**IR.**

sr. *Fines—Property of Crown.*]—Fines imposed in a prosecution for a conspiracy to violate the revenue laws of Canada belong to the Crown & not to the Provincial Treasurer.—*Re* PROVINCIAL TREASURER'S CLAIM, [1937] 1 D. L. R. 534; 11 M. P. R. 335; 67 Can. C. C. 317; *affd. sub nom.* A.-G. FOR NOVA SCOTIA *v.* A.-G. FOR CANADA, [1937] S. C. R. 403.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—C.

n i. —— ——.]—*Held :* where goods alleged to have been smuggled are found & seized in the possession of any person, the *onus*, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, & if so, to prove that the duty upon them was paid.—WEISS *v.* R., [1928] Exch. C. R. 106.—**CAN.**

r i. —— —— ——.]—R. *v.* ROGZINSKI, [1930] 2 W. W. R. 636; 54 Can. C. C. 158; 39 Man. L. R. 152.—**CAN.**

r ii. —— —— ——.]—The present action was one to recover a penalty to the amount of the duty paid value of goods harboured by D. unlawfully imported, & incurred under the provisions of Customs Act. Plff. proved the finding of the goods in the premises of D. & the duty paid value thereof. D. offered no evidence at all :—*Held :* by sect. 217 of Customs Act, the burden of proving that the goods harboured were lawfully imported is upon the person in whose possession the goods are found, & sect. 262 provides that in case of any question relating to identity, origin, importation or payment of duty, the burden is on the owner or possessor of the goods, & D. having failed to discharge the burden put upon him by law, plff. was entitled to judgment for the duty paid value of the goods so found on his premises.—R. *v.* DOULL, [1931] Ex. C. R. 159.—**CAN.**

t i. ——.]—R. *v.* MOYLE (1928), 49 Can. Crim. Cas. 375.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—D.

sa. *Sentence of imprisonment in default of payment of costs—Invalid.*]—*Ex p.* MONAHAN (N. B.), [1929] 1 D. L. R. 804; 51 Can. Crim. Cas. 15.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—E.

c i. —— *Court not named—Validity.*]—Notice of appeal from conviction under Customs Act is good, although the ct. is not named.—R. *v.* MCLEOD (1933), 61 C. C. C. 319.—**CAN.**

d i. ——.]—Although the only appeal expressly granted by Customs Act, R. S. C., 1927, is one from a conviction, an appeal lies from the dismissal of a charge thereunder, both impliedly under sect. 279 (4) of said Act & by virtue of sect. 749 of Criminal Code which is incorporated in the Act except in so far as it is incompatible therewith.—R. *v.* WOOLLAND, [1935] 3 W. W. R. 220; 64 Can. C. C. 313.—**CAN.**

l i. —— *From decision of county court judge on appeal.*]—Under sect. 279 (2) of the Customs Act there is no appeal from a decision of a county ct. judge on appeal.—R. *v.* ALBERT (1935), 8 M. P. R. 549; 63 Can. Can. C. 363.—**CAN.**

sb. *Evidence—Retrospective operation of amending Act.*]—Statutes of Canada, 1928 (c. 16), s. 5, which amended R. S. C., 1927 (c. 42), s. 262, & changed the law of evidence in prosecutions under c. 42, is retroactive in effect & applicable to the hearing of an appeal to the county ct. from a conviction made prior to its passing.—R. *v.* BINGLEY, [1929] 1 D. L. R. 777; 51 Can. Crim. Cas. 268; 60 N. S. R. 311.—**CAN.**

sg. *Powers of Supreme Court.*]—On appeal to Supreme Ct. from quashing of conviction for harbouring spirits, the ct. by Customs Act, may affirm & amend conviction.—R. *v.* MCKENZIE, [1932] 4 D. L. R. 586; 5 M. P. R. 32; 58 C. C. C. 239.—**CAN.**

PART XIII. SECT. 2.

q i. —— *Foreign vessel.*]—The *A.*, a ship owned by the claimant, C. of St. John's, Newfoundland, the port of registry, cleared from Halifax, N.S., unladen, took on a cargo at St. Pierre & unloaded that cargo on to another vessel at a point some fourteen or fifteen miles off the coast of Nova Scotia. The ship then put into Halifax on account of engine trouble; the claimant, L., master of the ship, in reporting to the Collector of Customs at Halifax, as required by sect. 11 of Customs Act, 1927, made an untrue report. Later the ship was seized by the Royal Canadian Mounted Police for an alleged violation of sect. 185 of the Customs Act. On appeal from the decision of the Minister of National Revenue, confirming the seizure, claimants contended *inter alia* that sect. 11 of the Customs Act was *ultra vires :—Held :* (1) for customs purposes, a vessel which is not registered in a Canadian port, even though a British vessel, must be considered a foreign vessel; (2) putting into port under constraint does not carry any legal right to exemption from local law or local jurisdiction; (3) the report required by sect. 11 of the Customs Act is required to be made only after the vessel has entered a Canadian port, & the fact that disclosure is required of acts which may have occurred during the course of the voyage, outside of the territorial waters of Canada, does not render the enactment extra-territorial in its operation; (4) the offence charged herein under sect. 185 of the Customs Act is that of having made an untrue report; (5) the Parliament of Canada, for the protection of the revenue, has the right to require a master coming into a Canadian port, to make a full & complete statement, in his report, of the dealings in cargo which he had during the voyage which immediately preceded his arrival at the port.—CASHIN & LEWIS *v.* R., [1935] Ex. C. R. 103.—4 D. L. R. 547; 64 Can. C. C. 258.—**CAN.**

sc. *Ship within three mile limit—Entry due to "unavoidable cause."*]—Deft. ship was seized by the Customs Authorities under sect. 183 (c. 42) of R. S. C., 1927 (c. 42), s. 183, as being in Canadian waters contrary to its provision. The defence alleged that the entry into Canadian waters was due to the fact that the sole man in command, during the illness of the master believed himself without the three mile limit. The anchorage was made in the dark, & this man had been battling with the elements for two days alone, had only had three hours' sleep in 72, & was exhausted :—*Held :* in the circumstances, he could not be regarded as a mariner in ordinary conditions, & could not be called upon to take such precautions as would in other circumstances be required by this ct., & the entry was due to "unavoidable causes."—R. *v.* "MARY C. FISCHER" (B. C. Adm.), [1929] 4 D. L. R. 679; Ex. C. R. 207; 52 Can. Crim. Cas. 273.—**CAN.**

sd. —— *Waters deemed international.*]—A foreign vessel belonging to a foreigner was seized in the territorial waters of British Columbia, having cleared from Seattle, bound for Alaska :—*Held :* as passage over these waters is necessary & convenient they should be deemed international in that sense; want of jurisdiction had been established, & accused was entitled to his discharge.—R. *v.* HARDY (1932), 46 B. C. R. 152; 59 C. C. C. 394.—**CAN.**

se. *Seizure of unregistered motor boat — Departure without clearance.*]—A certain unregistered motor boat of less than 10 tons tonnage was seized under sect. 244 of Customs Act for departing from a port in Canada without a clearance. She had been moored at one pier in the Customs port of Sydney & left this pier to go to another point in the same port :—*Held :* (1) inasmuch as the motor boat in question was not required to be registered, & was not eligible for clearance by Customs on a coasting voyage, she was not required to obtain a clearance under the provisions of the Customs Act before leaving her port or place of mooring &, in consequence, she was not liable for penalty imposed by sect. 244 of the Act; (2) the boat in question did not depart from the

826a. Jurisdiction of justices—Order for condemnation.]—A motor tank wagon was seized by officers of the Customs & Excise on the ground that it was being used in the conveyance of goods liable to forfeiture under the Customs Acts. The owners claimed the vehicle under Customs Consolidation Act, 1876 (c. 36), s. 207, & an information was exhibited before justices on behalf of the Comrs. of Customs & Excise for the forfeiture & condemnation of the vehicle under sect. 226 of the Act :—*Held :* it having been admitted that the vehicle had been used in the conveyance of goods liable to forfeiture (in which case sect. 202 of the Act provides that the vehicle itself shall be forfeited), the justices were bound to condemn the vehicle, sect. 226 giving them no discretion to refuse to do so on the ground, for example, of hardship on an innocent owner.—DE KEYSER *v.* BRITISH RAILWAY TRAFFIC & ELECTRIC CO., LTD., [1936] 1 K. B. 224 ; 154 L. T. 158 ; 52 T. L. R. 73 ; 79 Sol. Jo. 904 ; *sub nom.* DE KEYSER *v.* HARRIS, DE KEYSER *v.* BRITISH RAILWAY TRAFFIC & ELECTRIC CO., LTD., 105 L. J. K. B. 74 ; 99 J. P. 403 ; 33 L. G. R. 463.

Part XIV.—Expenditure of the Revenue.

837. *Add. Annotations :*—**Apprvd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

839. *Add. Annotations :*—**Apprvd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

841a. Right to pension—Not enforceable at law.]—An established civil servant of the Crown has, on the true construction of Superannuation Acts, 1834 to 1909, no legal right to a superannuation allowance or, when such an allowance has been awarded to him by the Lords Comrs. of the Treasury, to an allowance of an amount fixed by reference to the scale contained in Superannuation Act, 1859 (c. 26), s. 2, as amended by Superannuation Act, 1909 (c. 10), ss. 1, 3 (1).

Applts., four retired civil servants who had qualified for the award of a superannuation allowance, claimed to be entitled as of right to have superannuation allowances calculated on the full amount of their annual salaries & emoluments, including a bonus granted by the Treasury to civil servants, in accordance with the scale provided by Superannuation Act, 1859 (c. 26), s. 2, as amended by Superannuation Act, 1909 (c. 10), ss. 1, 3 (1). Two of applts. entered the Civil Service on the faith of a statement contained in a Treasury minute of June 14, 1859, to the effect that all persons appointed subsequent to the passing of the Act of 1859 were to be held entitled to the retiring allowances prescribed by the second sect. of that Act, & they contended that the minute was a continuing offer by the Treasury on behalf of the Crown to such persons that they

port of Sydney within the meaning of said section & the provisions of the statute do not apply to a small boat which is unregistered & which is proceeding from one point in any port to another point in the same port without goods on board, & that she was not required to clear.—HEARN *v.* R., [1931] Ex. C. R. 201.—**CAN.**

sg. *Seizure of vessel—Who may recover.*]—The owner alone may recover possession of a vessel seized for transporting liquor contrary to Alcoholic Liquor Possession & Transportation Act (Que.).—ROBERTSON *v.* QUEBEC LIQUOR COMMISSION, [1933] 1 D. L. R. 78 ; S. C. R. 246 ; 59 C. C. C. 191.—**CAN.**

sk. *Locality of seizure.*]—On seizure of a schooner with liquor :—*Held :* the *locus* of the seizure, approximately one & three-quarter miles from the shore, was part of the Province of New Brunswick & therefore, both as to property & jurisdiction, the Province of New Brunswick included the territory within which the offence was alleged to have been committed, & the offence as set forth in the conviction was committed within the Province of New Brunswick & within the body of a county.—R. *v.* BUET (1932), 5 M. P. R. 112.—**CAN.**

sm. *Unlawful seizure—Liability of Crown.*]—Certain goods were seized by Canadian Customs officers, & by consent of counsel, an order was made by the Exchequer Ct. dissolving such seizure & directing that the property be restored to the suppliant. Some months later when he went for delivery of the goods, it was discovered there was a shortage, for the value of which this action was brought :—*Held :* the Crown is liable for the value of goods unlawfully seized or detained if restoration cannot be made.—MASSEIN *v.* R., [1934] Ex. C. R. 223.—**CAN.**

PART XIV. SECT. 1.

841a i. *Right to pension—Not enforceable at law.*]—*Held :* a civil servant, retired or removed from office, has no right of action to recover any allowance under the Superannuation Act, such allowance being entirely in the discretion of the executive authority. That no contractual re- Crown & its servants with respect to such allowances. To create such contractual relationship would require express statutory enactment.—MILLER *v.* R., [1931] Ex. C. R. 22.—**CAN.**

1 i. —— ——.]—G. entered the service of the Govt. Railways in 1887. On Nov. 11, 1911, he was dismissed for misconduct. On Mar. 6, 1913, he was again engaged & continued in the service until Feb. 1, 1928, when he retired. The Superannuation Board decided that he was entitled to a retiring allowance calculated only in respect of his service from Mar. 6, 1913, to the date of his retirement :—*Held :* he was entitled to the payment of superannuation allowance calculated upon the whole period of his service, —*Ex p.* GIBBONS (1928), S. W. 182 ; 46 N. S. W. W. N. 56.—**AUS.**

q i. —— *Except when "in service of the State"—Who is.*]—Superannuation (Amendment) Act, 1918, s. 3, provides as follows : "A person to whom a superannuation allowance under any Acts relating to the Public Service . . . may be at any time payable shall not be deemed . . . to be entitled to be paid such allowance . . . in respect of any period . . . during which he . . . is employed in the service of the State . . . ":—*Held :* a tipstaff to a justice of the Industrial Arbn. Ct. was "in the service of the State" within the sect., &, therefore, while so employed was not entitled to be paid any superannuation allowance which had accrued due to him.—*Re* THE SUPERANNUATION BOARD, *Ex p.* DOCKRELL (1929), 47 N. S. W. W. N. 91.—**AUS.**

q ii. —— *Meaning of salary.*]—Sums of money paid by the Govt. Savings Bank Comrs. to its officers in respect of their children, & known as "family allowances," are not salary within Superannuation Act, 1916, s. 3.—*Re* SUPERANNUATION ACT, *Ex p.* NEW SOUTH WALES, COMRS. OF THE GOVERNMENT SAVINGS BANK (1929), 47 N. S. W. W. N. 165.—**AUS.**

sl. *Right of Crown to fix amount.*]—KIDD *v.* R., [1924] Exch. C. R. 29.—**CAN.**

sk. *Manual labourer.*]—Pltf., who had been employed by deft. city as a manual labourer on the hour basis :—*Held :* (1) to have been a "permanent employee" within the city's pension bye-law ; (2) to have been in the city's service for 15 years ; & (3) to be "unfit for further service in the employ of the city," within the bye-law.—TAWNY *v.* WINNIPEG CITY, [1936] 2 W. W. R. 123 ; *affd.*, [1936] 2 W. W. R. 625 ; 4 D. L. R. 498 ; 44 Man. L. R. 243.—**CAN.**

should receive superannuation allowances on the terms therein contained, & that that offer had been accepted by both applts. A third applt. entered the service of the National Telephone Co. in 1895, & on the transfer of the telephones to the Post Office under Telephone Act, 1911 (c. 26), assigned his share in a contributory pension fund to the Postmaster-General, & was appointed to a pensionable office in the Post Office which qualified him for a superannuation allowance under sect. 6 of that Act, which, by sect. 10, was to be read as one with the Superannuation Acts, 1834 to 1909. The Lords Comrs. of the Treasury, acting in accordance with a Treasury minute dated Mar. 20, 1922, awarded to each of applts. a superannuation allowance calculated on a basis differing from & less favourable to him than that provided by sect. 2 of 1859 Act, as amended by sect. 1 & sect. 3 (1) of 1909 Act, & computed his allowance (*a*) on his fixed annual salary & emoluments, exclusive of his bonus emoluments; & (*b*) on a sum less than the full amount of his annual bonus emolument:—*Held:* (1) applts. had no legal right enforceable in a ct. of law to superannuation allowances calculated according to the scale fixed by sect. 2 of 1859 Act as amended by sect. 1 & sect. 3 (1) of 1909 Act; (2) as to the claim founded on contract, the only power of the Lords Comrs. of the Treasury was conferred by statute, & they had no authority to contract themselves out of it; (3) applt. employed in the Post Office received his superannuation allowance on the same footing as the other applts.—NIXON *v.* A.-G., [1931] A. C. 184; 100 L. J. Ch. 70; 144 L. T. 249; 47 T. L. R. 95, H. L.

841b. Amount of pension—Whether war bonus included in calculation.]—Upon its incorporation resp. authority took over a pension scheme, whereby it was provided that deductions be made from the wages payable to certain employees (including applt.), & that, for the purpose of computing the superannuation allowance or pension payable to each employee, the wages were to be deemed to be at the rate of the actual wages paid to him at the time of his superannuation or retirement "exclusive of any gratuities, allowance for house, or other additions." From 1915 onwards, a weekly sum called "war bonus" was paid to each employee in addition to wages. The bonus rose from time to time, & in May 1918 a part of the bonus was consolidated with the wages. In 1919 a document, containing the words "war bonus 15*s.* per week added to wage, counting for pension, plus 11*s.* 6*d.* per week floating war bonus," was left with each employee. In the same year applt. (as one of the employees), when asking for a reconsideration of his rate of wages, added "Present conditions of annual leave, sick pay, & pensions." No deduction in respect of superannuation or pension was made from that part of the wages which formed the bonus. In Mar. 1925, when a further revision took place, the wages of applt. were described in a circular issued by resp. authority as "68*s.* 6*d.* per week as a maximum, non-pensionable floating bonus 12*s.*" Resp. authority, in rejecting a demand by applt. for deductions from the bonus payments, informed him that "the authority are prepared to continue the payment of a non-pensionable bonus in addition to your wages in accordance with the terms of the circular, & by accepting that bonus you must be deemed to have agreed to the conditions upon which it is granted." Without accepting the view of the authority, applt. continued to work as usual, & to receive the bonus payments. Upon his retirement, applt. claimed that the payments of war bonus made to him were part of his wages, & ought to be included in the computation of the amount of his superannuation allowance or pension:—*Held:* by the terms of the agreement between the employers & the workmen, the bonus payments were at all times to be regarded as non-pensionable, & therefore could not be taken into consideration for the purpose of calculating the amount of pension.—TIBBALS *v.* PORT OF LONDON AUTHORITY, [1937] 2 All E. R. 413; 81 Sol. Jo. 496, H. L.

Officers of local authorities.]—Following this cross-ref. add:-

841c. —— Contracting out—What amounts to.]—The claimant was employed in the service of the H. Urban District Council. That council was, in 1921, amalgamated with the city of S. By an agreement entered into between the claimant & the S. Corpn. in 1920, before but in contemplation of the amalgamation, it was agreed that the corpn. should pay to the claimant an annuity of £300 as compensation "in full discharge for all claims to which he shall or may become entitled in any respect whatsoever by reason of his said office or otherwise in relation to the said urban district of H." This annuity was to be suspended while the claimant should hold any office under the S. Corpn. He in fact entered their service as from the date of the amalgamation & continued to hold a post in the engineer's & surveyor's department until he attained the age of sixty-five years on Jan. 15, 1935. In 1930 the S. Corpn. adopted the Local Govt. & Other Officers' Superannuation Act, 1922 (c. 59), & among the posts which they designated as established posts for the purpose of that Act was the post of "divisional surveyor." The claimant maintained that the post which he held was that of "divisional surveyor" & that he was therefore entitled to claim a superannuation allowance under the Act of 1922, in addition to the annuity payable under the agreement of 1920. The corpn. did not admit that the claimant held the post of district surveyor, & threatened to dismiss him from their service if he did not withdraw his claim. In Oct. 1932, the claimant & the corpn. entered into an agreement under seal (expressed to be supplemental to the agreement of 1920) whereby it was declared that the claimant held his employment at the pleasure of the corpn., & that the post which he occupied was not & should not be deemed to have been designated as an established post for the purpose of the Act of 1922. It was also agreed that the claimant withdrew his claim & should not at any time be entitled to receive superannuation allowance from the corpn. On reaching the age of sixty-five years the claimant retired & claimed that he was en-

titled to superannuation allowance, & that in calculating the amount his service with the H. Urban District Council must be taken into account. He contended that the agreement of 1932 was void as being an attempt to "contract out" of the Act of 1922. The corpn. contended that the agreement was valid. They did not contend that the rights of the holder of an established post could be diminished by "contracting out," but that this was a *bonâ fide* compromise of a dispute whether the claimant did hold an established post. Anyhow, they said, the service with the H. Council was excluded by the terms of Art. 52 of the Provisional Order effecting the amalgamation: ". . . no officer shall be entitled to claim or receive both compensation for any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary & a superannuation or retiring allowance in respect of the same period of service & the same pecuniary loss." The matter having been referred to arbn. under sect. 22 of the Act of 1922, the arbitrator found as a fact that the claimant did occupy an established post as district surveyor, & decided in his favour on both points, but stated his award in the form of a special case:—*Held:* (1) the agreement of 1932 was void. The rights conferred by the Act of 1922 could not be got rid of by "contracting out" either directly or by the indirect method of agreeing that a post which was (as the arbitrator had found) an established post should "not be deemed to be" an established post; (2) the claimant's service with the H. Council must be excluded in arriving at the amount of the superannuation allowance.—POWELL *v.* SHEFFIELD CORPN., [1936] 1 K. B. 680; 105 L. J. K. B. 330; 154 L. T. 150; 100 J. P. 139; 52 T. L. R. 248; 80 Sol. Jo. 246; 34 L. G. R. 156.

841d. —— **Amount of allowance—Effect of receipt of compensation for loss of office.**]—POWELL *v.* SHEFFIELD CORPN., No. 841c, *ante*.

843a. Savings Certificates — Nomination to — Validity.]—War Savings Certificates Regulations, 1919, although they do not expressly mention Savings Banks Act, 1887 (c. 40), are not *ultra vires*, because they modify, & incorporate & apply as modified, the rules as to nominations contained in that Act. Thus, they make it possible for any holder of War Savings Certificates to nominate recipients of the certificates held, & any such nomination may include certificates held in excess of the authorised maximum, notwithstanding that certificates so held are liable to be forfeited.—*Re* KIMBER, VALE *v.* ROCKMAN, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

849. *Add. Annotation:—Generally*, **Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

853. *Add. Annotation:*—**Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213.

880a. —— —— ——.]—*Ex p.* ROSKNOW, [1885] W. N. 3.

ROYAL FORCES.

Part I.—The Royal Navy.

1. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

9. *Add. Annotation :*—**Refd.** Admiralty Comrs *v.* Valverda Owners, [1937] 1 K. B. 745.

27. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

31. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

32. *Add. Annotation :*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

33a. Right to indemnity—For expenses in case of damage to ship or stores.]—A Govt. steamer assisted a merchantman, on a stipulation to reimburse all expenses arising from damage to the steamer or the stores :—*Held :* such stipulation was no bar to salvage compensation.—THE LUSTRE (1834), 3 Hag. Adm. 154; 166 E. R. 363.

Annotations :—**Consd.** The Ewell Grove (1835), 3 Hag. Adm. 209; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745. **Refd.** The Lord Dufferin (1849), 7 Notes of Cases, Supp. xxxiii.

38. *Add. Annotation :*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

44. *Add. Annotation :*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

51. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

56a. —— Ship "specially equipped with salvage plant."]—The owners of the motor vessel *V.*, being informed that the ship was on fire, made a contract in writing with the Admiralty that warships belonging to His Majesty should render salvage services. Such services, including towage, were in fact rendered : —*Held :* it was not open to the parties by a contract otherwise valid to contract out of the provisions of Merchant Shipping Act, 1894 (c. 41), s. 557.

Per SLESSER, L.J., on the ground that the effect of sect. 557 of Merchant Shipping Act, 1894 (c. 41), was to take away from the Crown the right to claim for salvage services which it might otherwise possess; that the prohibition to claim for salvage services was general in its nature & not enacted solely for the benefit of those persons who were to receive the services & accordingly could not be waived, & that the ct. had no jurisdiction to entertain a claim for services excluded by the sect.

Per SCOTT, L.J., on the ground (1) that the agreement ought to be construed as an undertaking to pay such salvage remuneration as was not barred by the combined operation of the two Acts of 1894 & 1916 & no more; (2) that sect. 557 of the Act of 1894 must be interpreted as meaning that the banned claims were not to be allowed in the King's Cts., & that therefore no cause of action for any of the banned heads of remuneration could exist; (3) that even if there was any ambiguity in the construction of sect. 557, the crucial words in it ought to be construed as a prohibition, & that the Admiralty could not make an agreement for the express purpose of creating by contract a cause of action for salvage remuneration falling within the statutory ban enforceable in the Cts. notwithstanding the statute.

GREER, L.J., held that there was nothing in sect. 557 of Merchant Shipping Act of 1894 which made it illegal for the Admiralty to agree that if they did what they were not bound to do, *i.e.* stand by a ship & tow her to safety, they were to receive remuneration, or which rendered a promise to pay for such services made by the owners of the salved ship illegal & void, & that therefore the contract which the owners of the salved ship entered into with the Admiralty was a binding contract.—ADMIRALTY COMRS. *v.* VALVERDA OWNERS, [1937] 1 K. B. 745; [1937] 1 All E. R. 49; 106 L. J. K. B. 203; 156 L. T. 98; 53 T. L. R. 194; 81 Sol. Jo. 14; 42 Com. Cas. 142, C. A.

56b. Agreement for remuneration—Waiver of Act.]—The owners of the motor vessel *V.*, being informed that the ship was on fire, made a contract in writing with the Admiralty that warships belonging to His Majesty should render salvage services. Such services, including towage, were in fact rendered :—*Held :* notwithstanding the provisions of Merchant Shipping (Salvage) Act, 1916 (c. 41), s. 1, it was open to the parties by a contract otherwise valid to contract out of the provisions of the sect., & for the owners thereby to waive the benefit conferred on them by the sect.—ADMIRALTY COMRS. *v.* VALVERDA OWNERS, [1936] 1 K. B. 724; [1936] 1 All E. R. 350; 105 L. J. K. B. 240; 154 L. T. 302; 52 T. L. R. 286; 80 Sol. Jo. 265; 41 Com. Cas. 174; 18 Asp. M. L. C. 620; *revsd.*, 82 L. Jo. 443, C. A.

SECT. 2.—COLONIAL NAVAL FORCES.

See, now, Colonial Naval Defence Act, 1931 (c. 9).

Part V.—The Regular Army.

111. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

120a. **Disposition of forces—Prerogative right of Crown.**]—When Parliament has by the Army (Annual) Act sanctioned the raising & keeping of the army for one year, the right of the Crown in time of peace as to the disposition & use of the forces so raised is a prerogative right the exercise of which cannot be controlled by the cts.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197; 101 L. J. K. B. 478; 147 L. T. 22; 48 T. L. R. 375; 18 Asp. M. L. C. 288, C. A.

130. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

137a. **Whether action lies against Crown.**]—No engagement between the Crown & any of its military or naval officers in respect of services present or past can be enforced in a ct. of law.—KYNASTON *v.* A.-G.. (1933), 49 T. L. R. 300, C. A.

139. *Add. Annotation :*—**Consd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

Part VIII.—The Air Force.

Acquisition of land.]—*See* COMPULSORY PURCHASE, No. 263a, *ante*.

Injury to aircraftsmen by negligence—Action by Crown—Measure of damages.]—*See* MASTER & SERVANT, No. 1456a, *ante*.

Part IX.—Matters Common to Navy, Army and Air Force.

265. *Add. Annotation :*—**Consd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8.

SECT. 6.—WAR PENSIONS.

266a. **Final award—Notice of right of appeal—Construction of Regulation.**]—War Pensions Act, 1921 (c. 49), s. 4, provided for final awards & for appeals within one year from those awards. Sub-sect. 3 provided: "The Minister shall, in such manner as may be prescribed by regulations made by him under this section, bring the provisions of this subsection to the notice of persons having a right of appeal thereunder."

Sub-sect. 4 brought into the scope of the section officers in whose cases final awards had been made before the Act, but substituted for one year from the award one year from a date to be fixed by the Minister by regulations. By War Pensions (Final Awards) Amendment Regs., 1923, the date fixed was Feb. 7, 1923, & Reg. 3 provided:

"Notice of the right of appeal shall be published in three successive issues of the *British Legion* & in six successive issues of the principal daily or weekly newspapers circulating in London & the provinces, & suitable notices shall be displayed in the local offices of the Ministry :—*Held :* so far as the regulation required publication in London newspapers it did not require publication in more than one principal daily newspaper.—R. *v.* WHYTT, *Ex p.* MINISTER OF PENSIONS (1931), 48 T. L. R. 189; 76 Sol. Jo. 68.

Part X.—Disciplinary Tribunals.

279. *Add. Annotation :*—*As to* (1) **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

281. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

PART V. SECT. 1.

sa. *Effect of enlistment.*]—Enlistment by a subject under the Militia Act, is in the nature of a formal transmutation of a citizen into a soldier for the time being, & as required by the Defence of the Realm, & does not constitute a contract between the subject & the Crown creating mutual rights & obligations.—COOKE *v.* R., [1929] Ex. C. R. 20.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

d i. ——.]—Military officers & soldiers, while in the service of the Crown hold their positions at & during the pleasure of the Crown, & no action at law lies for their pay.—COOKE *v.* R., [1929] Ex. C. R. 20.—**CAN.**

sb. *Pension act of grace only.*]—Pensions are an act of grace & bounty of the Crown which must be left to the discretion of the Govt.; & there can be no review of the discretion of the Pensions Board by the ct.—THOMAS *v.* R., [1928] 2 D. L. R. 535; [1928] Exch. C. R. 26.—**CAN.**

sc. *Jurisdiction of Federal Appeal Board.*]—In Jan. 1923, the Board of Pension Comrs. refused pension in the matter of one S. on the ground that his death was not attributable to military service. An appeal was taken to the Federal Appeal Board under 13 & 14 Geo. 5, c. 62, s. 10, & the latter found the death was due to military service. By 14 & 15 Geo. 5, c. 60, s. 10, the Appeal Board was required to give certain information in its judgment. The Comrs., claiming the Appeal Board had not complied with the statute, refused to pay the pension. The Minister, under 18 & 19 Geo. 5, c. 38, s. 30 (8), referred the matter to this ct. for determination :—*Held :* the appeal having been heard & decided in 1926, the question of its jurisdiction must be determined under the law in force at that time, & under 13 & 14 Geo. 5, c. 62, s. 10, the Appeal Board had jurisdiction to hear & determine appeals from the refusal of pension by the Board of Pension Comrs.—SKITCH *v.* MINISTER OF PENSIONS & NATIONAL HEALTH, [1931] Ex. C. R. 97.—**CAN.**

SALE OF GOODS.

Part I.—The Contract of Sale Generally.

9. *Add. Annotations :*—**Consd.** Robinson *v.* Graves, [1935] 1 K. B. 579. **Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

10. *Add. Annotation :*—**Distd.** Robinson *v.* Graves, [1935] 1 K. B. 579.

10a. —— ——.]—Deft. orally commissioned pltf., an artist, to paint the portrait of a lady & promised to pay 250 guineas therefor. Deft. subsequently repudiated the contract before the portrait was completed. In an action by pltf. for the agreed price of the portrait :—*Held :* it was a contract for work & labour & not for the sale of goods, as the substance of the contract was that skill & labour should be exercised upon the production of the portrait, & that it was only ancillary to that contract that there would pass from the artist to his customer some materials—namely, the paint & the canvas, the addition to the skill & labour involved in the production of the portrait, & therefore pltf. could recover notwithstanding that there was no note or memorandum in writing of the contract.—ROBINSON *v.* GRAVES, [1935] 1 K. B. 579; 104 L. J. K. B. 441; 153 L. T. 26; 51 T. L. R. 334; 79 Sol. Jo. 180; 40 Com. Cas. 217, C. A.

11a. ——.]—BOWMAKER, LTD. *v.* WILLIAMS (1930), 74 Sol. Jo. 836.

28a. Option clause—Terms of future contract not set out—"Prices to be agreed upon."]—MAY & BUTCHER *v.* R., [1934] 2 K. B. 17, n.; 103 L. J. K. B. 556, n.; 151 L. T. 246 n.

Annotations :—**Distd.** Hillas *v.* Arcos, Ltd. (1932), 147 L. T. 503; Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1. **Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

28b. —— ——.]—An agreement entered into on May 21, 1930, for the sale & purchase of Russian softwood timber for delivery in 1930 provided that the buyers should have the option of entering into a contract with the sellers for the purchase of further timber for delivery during 1931. The option clause did not specify what kinds or sizes or what qualities were to be supplied, nor did it define the dates & ports of shipment & discharge :—*Held :* (1) the option having been exercised, the parties intended to enter into, & did in fact, enter into, a complete & binding agreement not dependent on any future agreement for its validity. Both as regards the quality & description of the goods & the times of delivery & shipment the contract was neither uncertain nor incomplete; (2) as regards damages, as resps. did not give the learned judge such help as was in their power, with the full knowledge they possessed, they could not complain of his award of damages on the material then before him.—HILLAS & Co., LTD. *v.* ARCOS, LTD. (1932), 147 L. T. 503; 38 Com. Cas. 23, H. L.

Annotations :—*As to* (1) **Consd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1; Saxton *v.* Nicholson & Co. (1935), 154 L. T. 149. *As to* (2) **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589. *Generally*, **Refd.** Way *v.* Latilla, [1937] 3 All E. R. 759.

28c. Agreement giving use subject to payment of interest & depreciation.]—By a contract contained in letters the purchasing co. agreed with the vendors' agents to buy a crane "for a deferred purchase price of £4,000." The contract provided for annual payments by the purchasing co. for "interest" & "depreciation" respectively, to be deducted from the £4,000. In the meantime the purchasing co. were to have "entire charge & responsibility" for the crane. Three years later, & before payment of the whole of the purchase price, the purchasing co. went into voluntary liquidation & the liquidator entered into a contract, which was shortly afterwards confirmed by the ct., for the sale of the assets to a new co. In the liquidation the vendors

PART I. SECT. 1.

e 1. —— *Contract between fishermen & cannery.*]—SALO *v.* ANGLO BRITISH COLUMBIA PACKING CO., LTD., [1929] 1 D. L. R. 874; 1 W. W. R. 385; 40 B. C. R. 481.—CAN.

sm. *Distinguished from contract in respect of trade-mark or copyright.*]—BERTRAND *v.* WARRÉ, [1932] S. C. R. 364; 2 D. L. R. 47.—CAN.

sp. *Distinguished from exchange.*]—Pltf., a storekeeper, agreed to sell goods to deft. at regular prices, & deft. agreed to sell & pltf. to buy pulpwood to the amount of the price of the goods, the accounts to be set off :—*Held :* a sale & not an exchange in barter.—MESSENGER *v.* GREENE, [1937] 2 D. L. R. 26; 11 M. P. R. 326.—CAN.

PART I. SECT. 2.

sa. *Real nature of transaction regarded—Provision for payment by commission.*]—By agreement between pltf. co. & deft., deft. was granted the sole selling-rights for New Zealand for certain of pltf. co.'s manufactures. The agreement provided that deft. should be entitled by way of remuneration to a "commission" of 10 per cent. on the invoiced value of the manufactures, to be deducted by deft. therefrom. Payments for the manufactures were to be made against receipt of shipping documents by deft.'s London or other English agent. In an action by pltf. co. against deft. for an account of the proceeds of sales of pltf. co.'s products by deft. :—*Held :* notwithstanding that the agreement provided for the remuneration of deft. by way of a "commission," the provisions therein relative to payment for the goods by deft. pointed to the relationship between the parties being that of vendor & purchaser & the account should be taken on that basis.—GANNOW ENGINEERING CO., LTD. *v.* RICHARDSON, [1930] N. Z. L. R. 361.—N.Z.

si. *Contract to deliver potatoes—As payment for fertiliser.*]—WADE *v.* WALKER (1930), 2 M. P. R. 405.—CAN.

sm. *Purchase of grain by elevator company—Sale of stored grain with deft. elevator co. & was given a graded storage receipt therefor in pursuance of sect. 148 of the Canada Grain Act, 1925. Afterwards pltf. & deft. [illegible] that pltf. would sell the grain to deft. at a price three cents per bushel above the Fort William price, less freight & charges, at any time that pltf. elected so to sell, & deft. agreed to [illegible] until it was destroyed by fire [illegible] pltf. had made such election :—*Held :* the ownership of the grain had not passed to deft. under the contract.—BUSSE *v.* EDMONTON GRAIN & HAY CO., LTD., [1932] 1 W. W. R. 296; 1 D. L. R. 745; 26 Alta. L. R. 83.—CAN.

PART I. SECT. 6.

sp. *Shares in company.*]—"Goo[ds]" as defined in the Indian Contract [Act] 1872, comprise every kind of mov[able] property, including shares in a c[ompany]. DOMINGO *v.* DE SOUZA (1928), I. L. 50 All. 695.—

contended that the property in the crane had not passed to the purchasing co. & therefore that it was not included in the assets sold to the new co. & claimed that the liquidator must either accept the obligations arising & continue the instalments payable under the contract or return the crane to the vendors. The liquidator rejected these claims. EVE, J., held that the property in the crane passed to the purchasing co. on the making of the contract, in accordance with rule 1 of Sale of Goods Act, 1893 (c. 71), s. 18:—*Held:* sect. 18 of the Act applied only "unless a different intention" appeared, &, reading the contract as a whole, a different intention did appear—namely, that the property in the crane should not pass until the purchase was completed by payment of the purchase price; therefore, in the circumstances of the case, the liquidator must be taken to have determined to carry out the contract & to make use of it for the purposes of the liquidation. He was accordingly bound to pay the balance of the purchase-money due to the vendors under the contract.—*Re* ANCHOR LINE (HENDERSON BROS.), LTD., [1937] Ch. 1; [1936] 2 All E. R. 941; 105 L. J. Ch. 330; 155 L. T. 100; 80 Sol. Jo. 572, C. A.

34. *Add. Annotation:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

44. *Add. Annotations:*—**Apld.** Robinson *v.* Graves, [1935] 1 K. B. 579. **Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

48. *Add. Annotation:*—**Distd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

49. *Add. Annotation:*—**Consd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

50. *Add. Annotation:*—**Consd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

Part II.—Formation of Contract.

73. *Add. Annotation:—Generally,* **Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

138. *Add. Annotation:—As to* (1) **Refd.** Elmes *v.* Trembath (1934), 19 Tax Cas. 72.

180a. —— **Pending alterations.**]—GOLFING AMUSEMENTS, LTD. *v.* EVERARD & ELLIS (1931), 75 Sol. Jo. 330.

200. *Add. Citations:*—138 L. T. 154; 72 Sol. Jo. 14; 33 Com. Cas. 101.

248. *Add. Annotation:*—**Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

269. *Add. Annotation:*—**Refd.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

341. *Add. Annotations:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

370a. Whale oil.]—Applts. in these two cases were engaged in whale fishery in the Antarctic, & resps. in the course of their business used large quantities of whale oil for the manufacture of margarine & soap. By contracts now in question resps. bought from each of applt. cos. the entire production of whale oil per a named steamer for the season 1930–1931. In the events which happened both cos. tendered to resps. not only oil which was brought to Europe by the named steamers themselves but also oil which had been loaded by the named steamers into other vessels. Resps. refused to accept any of the oil whatever, & contended that upon a true construction of the contract in each case they were only bound to take such oil as could be brought by the named steamer herself. They contended that both by the words of the contracts & by an implied term from the previous course of business between the parties the transfer of oil from the named steamers to other vessels put an end to the contracts. Applts. brought actions against resps. claiming damages for non-acceptance:—*Held:* upon a true construction of the contracts resps. had bought the whole of the oil produced by the named steamers & applts. were entitled to deliver not only the

PART II. SECT. 4, SUB-SECT. 7.—B. (a).

sc. *Marginal note—Giving power to ... option.*]—*Held:* the ... cient ... satisfy Stat. Frauds.—J. B. ROGERS, LTD. *v.* HARRY LEGNIE, LTD. (1937), 37 S. R. N. S. W. 427; 44 N. S. W. W. N. 149.—AUS.

PART II. SECT. 4, SUB-SECT. 7.—C. (b) i.

... verbal ... made at ... the purchaser ... goods at the ... Immediately ... & handed to the vendor's ... contained the ... the words ... us with the following goods," but which did not contain any further reference to the place at which the goods were to be delivered:—*Held:* giving the ordinary business meaning to the words quoted, & having regard to the fact that the parties were business men, & to the circumstances in which the document was written, the document indicated with sufficient clearness where the place of delivery of the goods was to be, & constituted a sufficient note or memorandum of the agreement within Goods Act, 1915, s. 9 (1).—WISKIN *v.* TERDICH BROS. PTY., LTD., [1928] V. L. R. 387; [1928] Argus L. R. 242.—AUS.

PART II. SECT. 4, SUB-SECT. 8.—C. (d).

se. *Oral contract by agent—Revocation of agency before signature.*]—MOYER & CO. *v.* SMITH & GOLDBERG, LTD., [1929] 4 D. L. R. 416; S. C. R. 625; *affg.*, [1929] 2 D. L. R. 542; 63 C. L. R. 388.—CAN.

PART II. SECT. 4, SUB-SECT. 9.

339 x. —— —— ——.]—PAGE *v.* PROCTOR (1884), 5 O. R. 238.—CAN.

346 i. —— *By execution of contract.*]—COOLIN *v.* COOLIN (Sask.), [1920] 3 W. W. R. 812.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

sb. *Sale of oil petroleum as required—Whether petrol included.*]—By a written tender, which was accepted, applt. agreed that for a specific period he would supply a military dept. with various oils at named prices, as required; one of the items was "oil petroleum." On certain occasions the dept. called on him to supply "petrol" which he did, charging & being paid at the agreed price for "oil petroleum." Upon the dept. buying petrol elsewhere he sued for damages for breach of contract:—*Held:* the suit failed, because "oil petroleum" did not mean or include "petrol."—MADHO RAM *v.* SECRETARY OF STATE (1933), I. L. R. 15 Lah. 143.—IND.

oil brought by the named steamers themselves but also oil produced by them & transferred from them to other vessels.—

SKAP *v.* UNILEVER, LTD., HVALFANGERSELSKABET GLOBUS AKTIESELSKAP *v.* UNILEVER, LTD. (1933), 77 Sol. Jo. 388; 39 Com. Cas. 1, H. L.

370b. **Slag—Payments to cease if no suitable slag "available."**]—WRIGHT *v.* BASSETTS, LTD. (1936), 80 Sol. Jo. 935.

380. *Add. Annotations :*—**Consd.** Gaze W. H. & Sons *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** *Re* Windsor Steam Coal Co. (1901) (1928), 140 L. T. 80; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274; Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436; Lensen Shipping Co. *v.* Anglo-Soviet Shipping Co. (1935), 40 Com. Cas. 320.

401. *Add. Annotations :*—Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

403a. —— **Perishing of only part of goods.**]—Sale of Goods Act, 1893 (c. 71), s. 6, applies where there is a contract for the sale of specific goods & a part, but not the whole, of the goods has, without the knowledge of the parties to the contract, already ceased to exist.—BARROW, LANE & BALLARD, LTD. *v.* PHILLIP PHILLIPS & CO., LTD., [1929] 1 K. B. 574; 98 L. J. K. B. 193; 140 L. T. 670; 45 T. L. R. 133; 72 Sol. Jo. 874; 34 Com. Cas. 119.

417a. **Deduction of railway carriage from price—Seller entitled to benefit of rebate.**]—WALLEY *v.* UNITED DAIRIES (WHOLESALE), LTD. (1933), 77 Sol. Jo. 251.

424. *Add. Annotations :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39; Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

430. *Add. Annotations :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503; Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

430a. **"Current prices."**]—By an agreement dated July 12, 1927, pltfs. & defts. agreed that pltfs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, pltfs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous weeks' shipments. Disputes having arisen between the parties about the prices which pltfs. ought to charge for the pig iron which they sold, defts. notified pltfs. that they terminated the agreement as from Apr. 22, 1928. Pltfs. brought an action for breach of contract, because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron." Defts. contended that the phrase "current prices" were the list prices which were published every week in a trade newspaper by a group or combine of iron founders in Middlesbrough, but pltfs. contended that "current prices" meant the price at which pig iron was actually being sold in Scotland by the sole agent of the combine :—*Held :* the expression "current prices" in the agreement meant the list prices which were published every week by the combine in Middlesbrough, & did not mean the price at which pig iron was actually being sold in Scotland by the sole agent of the combine.—JACKS & CO. *v.* PALMER'S SHIPBUILDING & IRON CO. (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.

433a. **Minimum price—Construction of standard contract.**]—The ct. held, on the construction of a standard contract for the sale of sugar-beet by the growers thereof to manufacturers of beet-sugar at a price depending on variable factors, there being a provision for a sliding scale minimum price & for a tonnage bonus, that the manufacturers were entitled to include the tonnage bonus in the minimum price, & the bonus applied only if it would bring the contract price above the minimum.—BROWN & SONS *v.* LINCOLNSHIRE BEET SUGAR CO., LTD. (1929), 45 T. L. R. 199, D. C.

434. *Add. Annotation :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

446. *Add. Annotation :*—*As to* (2) **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

446a. —— ——.]—By an agreement in writing pltf. agreed to sell & defts. to purchase a piece of land adjoining other land belonging to pltf., which defts. intended to use for their business as motor coach proprietors. The sale was made subject to defts. entering into another agreement to purchase from pltf. all the petrol required for their said business. On the same date that second agreement, described as supplemental to the first, was executed, which, after reciting that pltf. was the proprietor of a petrol-filling station on the land retained by him, provided that defts. would purchase from him all the petrol required by them for the running of their said business, "at a price to be agreed by the parties in writing & from time to time"; & further, that defts. would purchase no petrol from any other person so long as pltf. was able to supply them with quantities sufficient to satisfy their daily requirements.

PART II. SECT. 7, SUB-SECT. 1.

af. *Meaning of "cost landed price."*]—REVILLON WHOLESALE, LTD. *v.* GAULTS, LTD., [1929] 3 D. L. R. 709; S. C. R. 528; *affg.*, [1929] 2 D. L. R. 217; 1 W. W. R. 325; 24 Alta. L. R. 129.—CAN.

ag. "*Current market price.*"]—Defts. oil co. agreed to furnish pltf., a dealer, with gasoline "at the same current market price" as furnished to the trade & because pltf. agreed to buy his gasoline from defts. for three years defts. agreed to give him an extra discount of one cent. The usual & current trade discount at the time was four cents off the retail or "wagon price." Subsequently defts. made special contracts with other dealers, representing about 90 per cent. of the trade. Under these contracts defts. was given the exclusive sale to said dealers for a period of years & the dealers were allowed an extra discount of two cents over the usual four cents :—*Held :* said subsequent special contracts did not displace the original "current market price" as the foundation of pltf.'s rights under his contract, &, therefore, he was not, as he contended, entitled to a discount

Clause 8 was in these terms: "If any dispute or difference shall arise on the subject-matter or construction of this agreement the same shall be submitted to arbn. in the usual way in accordance with the provisions of the Arbn. Act, 1889."

The land, the subject of the first agreement, was duly conveyed to defts., & for three years defts. obtained their petrol from pltf. Thereafter disputes arose between them, & thereupon defts. purported to repudiate the second agreement, alleging that it had no binding force because (1) no agreement in writing as to price had ever been made, & (2) the clause requiring defts. to take all their petrol supplies from the pltf. was an unreasonable & unnecessary restraint of their trade. In an action by pltf. claiming a declaration that the petrol agreement was valid & binding, & an injunction to restrain defts. from purchasing petrol required for their said business from any person other than pltf.:—*Held:* (1) a term must be implied in the agreement that the petrol supplied by pltf. should be of reasonable quality & sold at a reasonable price, & that if any dispute arose as to what was a reasonable price it was to be determined by arbn. pursuant to clause 8; (2) inasmuch as defts. were only required to purchase petrol from pltf. for the purpose of the business carried on by them on the land purchased from pltf., & so long only as it was supplied of a reasonable quality & at a reasonable price, the obligation was not an unreasonable & unnecessary restraint of their trade; & (3) the agreement therefore was valid & binding on defts.—*v.* CLASSIQUE COACHES, LTD., [1934] 2 K. B. 1; 103 L. J. K. B. 550; 151 L. T. 242, C. A.

Annotation:—As to (1) **Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

453a. —— **"Free house London."**]—*Held:* an "agreement to the contrary" within Finance Act, 1901 (c. 7), s. 10, & the foreign seller was liable for duty imposed by Abnormal Importations (Customs Duties) Act, 1931.—LANIFICIO DI MANERBIO S. A. *v.* GOLD (I. & R.) (1932), 76 Sol. Jo. 289.

462. *Add. Annotation:*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

472. *Add. Annotation:*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

Part III.—Conditions and Warranties.

495. *Add. Annotation:*—**Consd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

512. *Add. Annotations:*—**Refd.** Morelli *v.* Fitch & Gibbons, [1928] 2 K. B. 636; Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402; Grenfell *v.* E. B. Meyrowitz, Ltd., [1936] 2 All E. R. 1313.

526. *Add. Annotations:*—**Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Cruse *v.* Mount (1932), 102 L. J. Ch. 74.

527a. —— ——.]—A quantity of Finnish timber was sold to buyers in London by a contract providing that the goods were to be properly seasoned for shipment, & that in the event of a dispute the buyers should not reject the goods but should accept or pay for them against shipping documents. Owing to bad weather the sellers were unable to season part of the goods properly:—*Held:* the provision as to seasoning was not a condition but only a warranty, & therefore the buyers were not entitled to reject the goods, but could only claim an allowance off the price.—MONTAGUE L. MEYER, LTD. *v.* KIVISTO (1929), 142 L. T. 480; 46 T. L. R. 162; 74 Sol. Jo. 58, C. A.

Annotations:

539a. **Omission of usual trade description in invoice.**]—STOPP *v.* HILL & SONS (1928), 72 Sol. Jo. 122.

Add. Citations:—*affd.* (1928), 138 L. T. 663; 44 T. L. R. 297; 17 Asp. M. L. C. 428; 33 213,

557. *Add. Annotation:*—**Refd.** Gurney *v.* Grimmer (1932), 38 Com. Cas. 7.

558. *Add. Annotations:*—**Consd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

564. *Add. Annotations:—As to* (1) **Consd.** Montague L. Meyer, Ltd. *v.* Osakeyhtio Carelia Timber Co. (1930), 36 Com. Cas. 17. **Refd.** Finlay *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

581a. ——.]—The seller offered for sale potatoes "for Saturday's steamer." The buyer accepted the potatoes by telegram, adding the words "next steamer," which was in fact "Saturday's steamer." The seller sent the consignment of potatoes to the docks in time for loading in the ordinary way on the Saturday steamer, but that steamer was too heavily laden to take them, & they were delayed for two days at the docks. Prices having fallen in the meantime, deft. refused to accept delivery:—*Held:* deft. was entitled to reject the potatoes, as it was a condition of the contract that they should be sent by the Saturday steamer.—WILSON *v.* WRIGHT, [1937] 4 All E. R. 371, C. A.

619a. **Sale of wine of particular brand.**]—Pltf. asked for a bottle of S.'s ginger wine at the licensed premises of defts. While pltf. was endeavouring to draw the cork with a corkscrew, the bottle broke at the neck & injured him:—*Held:* the sale was one by description, & the bottle was not of merchantable quality,

& the condition that it was of such quality implied under Sale of Goods Act, 1893 (c. 71), s. 14 (2), had been broken, & pltf. was entitled to damages.—MORELLI *v.* FITCH & GIBBONS, [1928] 2 K. B. 636; 97 L. J. K. B. 812; 140 L. T. 21; 44 T. L. R. 737; 72 Sol. Jo. 503, D. C.

621. *Add. Annotation:*—**Refd.** Barker *v.* Agius (1927), 33 Com. Cas. 120.

622a. **Goods "ready for shipment."**]—Sellers in Finland sold to buyers in England a quantity of timber. The contract described the sale as a sale of "wood goods hereinafter specified," to be loaded at one of two named ports & "to be ready for shipment on June 15, 1928." A specification followed, giving particulars of the timber sold, & at the foot of the contract was the stipulation "loading place & ready date to be definitely declared to buyers by Apr. 1, 1928." Several clauses were printed on the back of the contract, one of them being "the buyers shall not reject the goods herein specified. . . ." In the events which happened delay occurred in delivery of the timber, & a large proportion of the goods which were finally tendered consisted of goods of the 1929 season & not of goods which had been ready for shipment on June 15, 1928. The buyers refused to accept some of the goods so tendered &, as required by the contract, the dispute was referred to arbn. An award was made in the form of a special case, deciding, subject to the opinion of the ct., that the buyers were entitled to reject:—*Held:* the date of readiness for shipment was of the essence of the contract, & the words "ready for shipment on June 15, 1928," were part of the description of the goods sold & were not a mere warranty; & the clause providing that the buyers should not reject, though not required in cases where there had only been a breach of warranty & intended to protect the sellers where there had been a breach of a condition, did not apply where the goods tendered by the sellers were not of the contract description.—MONTAGUE L. MEYER, LTD. *v.* OSAKEYHTIO CARELIA TIMBER CO., LTD. (1930), 36 Com. Cas. 17, C. A.

622b. **Sale by trade name—Composition as at time of order.**]—A buyer ordering an article by its trade name must be taken to have ordered it as it was manufactured at the date of giving the order, whatever its composition may have been at some previous time.—HARRIS & SONS *v.* PLYMOUTH VARNISH & COLOUR CO., LTD. (1933), 49 T. L. R. 521; 38 Com. Cas. 316.

628. *Add. Annotation:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

629. *Add. Annotations:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Grenfell *v.* E. B. Meyrowitz, Ltd., [1936] 2 All E. R. 1313.

632. *Add. Annotations:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

643a. ——.]—MELLISH *v.* MOTTEUX (1792), Peake 156; 170 E. R. 113, N. P.

Annotations:—**N.F.** Baglehole *v.* Walters (1811), 3 Camp. 154. **Refd.** Pickering *v.* Dowson (1813), 4 Taunt. 779.

643b. ——.]—If a ship is sold "with all faults," the seller is not liable to an action in respect of latent defects which he knew of without disclosing at the time of the sale, unless he used some artifice to conceal them from the purchaser.—BAGLEHOLE *v.* WALTERS (1811), 3 Camp. 154; 170 E. R. 1338, N. P.

Annotations:—**Apld.** Pickering *v.* Dowson (1813), 4 Taunt. 779; Bywater *v.* Richardson (1834), 1 Ad. & El. 508. **Apprvd.** Ward *v.* Hobbs (1879), 48 L. J. Q. B. 281. **Refd.** Gorton *v.* Macintosh (1882), 31 W. R. 232.

643c. ——.]—Although a ship be sold "to be taken with all faults," the vendor cannot avail himself of that stipulation, if he knew of secret defects in her, & used means to prevent the purchaser from discovering them, or made a fraudulent representation of her condition at the time of the sale.—SCHNEIDER *v.* HEATH (1813), 3 Camp. 506; 170 E. R. 1462, N. P.

Annotations:—**Consd.** Ward *v.* Hobbs (1877), 3 Q. B. D. 150. **Refd.** Cornfoot *v.* Fowke (1840), 6 M. & W. 358.

645a. ——.]—A contract for the sale of about 1,500 tons of meat & bone meal provided that the meal was to be of a certain specified quality, & that it was to be shipped 125 tons monthly during 1928 in equal weekly quantities. The contract also provided that "each delivery or shipment shall be treated as a separate contract, & the failure to give or to take any delivery or shipment shall not cancel the contract as to future deliveries or shipments." "The goods to be taken with all faults & defects; damaged or inferior, if any, at valuation to be arranged mutually or by arbitration." The sellers made several deliveries under the contract amounting to nearly half the contract amount which the buyer accepted, but eventually the buyer requested the sellers to cancel the delivery of 782 tons then due for delivery under the contract, which the sellers consented to do on the buyer agreeing to pay £782 by four instalments on specified dates. The buyer paid two instalments under the agreement, & then discovered that all the meal that had been delivered to him under the contract had been adulterated & was not of the contract description, so that the deliveries might have been rejected by him. He thereupon refused to pay any further instalments under the agreement. The sellers, who were blame-

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PART III. SECT. 4, SUB-SECT. 2.—A.

623 vi. —— ——.]—FOXTON *v.* HAMILTON STEEL & IRON CO., LTD. (1901), 21 C. L. T. 286; 1 O. L. R. 393.—CAN.

623 vii. —— ——.]—MADER *v.* JONES (1875), 10 N. S. R. (1 R. & C.) 82.—CAN.

PART III. SECT. 4, SUB-SECT. 2.—C. (a).

sb. *"Furber"—Sale of violin.*]—Pltf., who was learning to play the violin, bought a violin from deft., who is a dealer in violins & a violin & bow maker. Pltf. had informed deft. that he wished to exchange the violin he then had for a better one, paying the difference in cash. Deft. showed pltf. a violin which had been recently received from England & told pltf. that it was one made by Furber, "one of the old English makers":—*Held:* an essential term of the sale was the description of the article as a Furber.—BAILEY *v.* CROFT, [1932] 1 W. W. R. 106; 1 D. L. R. 777; 46 Man. L. R. 146.—CAN.

sd. *"New" car.*]—In a contract for sale of a new engine the primary meaning of the word "new" is not old or of recent origin. In the absence of context "new" does not mean only "unused." If mere lapse of time results in deterioration in quality or depreciation in value an article is no longer "new" according to ordinary English usage.—ANDERSON *v.* SCRUTTON, [1934] S. A. S. R. 10.—AUS.

less with regard to the adulteration & had delivered the meal in good faith, thereupon brought this action to recover the balance of the £782 due under the agreement. The buyer by his defence alleged that the agreement was made under a mutual mistake of fact in that both the sellers & the buyer contracted in the belief that the goods supplied by the sellers were in accordance with the contract, whereas the meal was not in accordance with the contract, & he counterclaimed for rescission of the agreement & for the return of the money paid under it & also for damages for the breach of contract:—*Held:* the various deliveries of meal which had been made by the sellers before the date of the agreement did not, by reason of the adulteration, answer the contract description & therefore might have been rejected by the buyer if the defects had been discovered in time, notwithstanding the clause in the contract: "the goods to be taken with all faults & defects, damaged or inferior, if any, at valuation to be arranged . . ." because that clause applied only to goods which answered the trade description, & did not shut out the overriding warranty in Sale of Goods Act, 1893 (c. 71), s. 13, that in a sale of goods by description there is an implied condition that the goods shall correspond with the description. Further, that the clause in the contract that "Each delivery or shipment shall be treated as a separate contract, & the failure to give or to take any delivery or shipment shall not cancel the contract as to future deliveries or shipments" could not be construed so as to defeat the rights of the buyer under Sale of Goods Act, 1893 (c. 71), s. 31 (2), to treat the breach of contract by the sellers as a repudiation of the whole contract; notwithstanding that the sellers had no knowledge of the defects & had no intention to deliver defective articles, inasmuch as the intention of a seller must be judged from his acts. But although the buyer, if he had at the date of the agreement for cancellation ascertained all the facts relating to the past deliveries, might have been entitled to treat the contract as having been repudiated by the sellers, yet as it was in the circumstances doubtful whether he would have so elected, the defence that the agreement had been entered into under such a mutual mistake as would justify a rescission of the agreement failed, even apart from any question of *restitutio in integrum*. The buyer, however, was entitled to damages in respect of the defective quality of the meal that had been delivered, & to a declaration that, in view of the defective quality of the meal, he was not bound to take delivery of the meal that was undelivered.—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, [1930] 2 K. B. 312; 99 L. J. K. B. 703; 143 L. T. 565; 35 Com. Cas. 232.

Annotation:—**Consd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

661. *Add. Annotation*:—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

663a. "Safety glass."]—An aviator in 1932 purchased from certain opticians flying goggles described in a catalogue as fitted with "safety-glass lenses." The goggles were made of laminated glass consisting of two sheets of glass & an interposed sheet of plastic, & evidence showed that the term "safety-glass" in 1932 referred only to such laminated glass. In the opticians' catalogue notice was given that the purchaser of any goggles of the type here in question was given free insurance to cover £1,000 in the case of loss of sight or expenses incurred in the event of a lesser injury to an eye caused by splintering. In 1935 the aviator was involved in a flying accident in which (*inter alia*), he suffered injury due to a splinter from the goggles entering his eye. The aviator brought an action for breach of contract against the opticians, alleging that the goggles did not correspond with the description "safety-glass," & alternatively that if they did so correspond that they were not of merchantable quality:—*Held:* there was no warranty of absolute safety in the word "safety-glass"; pltf. did obtain what he purported to buy, namely, "safety-glass" goggles as generally understood by

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PART III. SECT. 5, SUB-SECT. 1.

681 viii. —— —— ——.]—MURRAY *v.* REEVES SUPPLY CO., [1928] 2 D. L. R. 873.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—A.

f i. —— —— *Hair-drying machine.*]—In an action brought against a firm of hairdressers a customer averred that she had been injured through the fault & negligence of the hairdressers in using a defective hair-drying machine. A jury having awarded the customer damages, which together with the expenses of the action amounted to a sum of over £600, the hairdresser brought an action against the manufacturers of the machine concluding for payment of that sum as damages resulting from breach of implied warranty with regard to the condition of the hair-drying machine, in terms of sect. 14 (1) of Sale of Goods Act, 1893:—*Held:* whether or not the action was competently laid as one of relief, the hairdressers had relevantly averred a breach of implied warranty on the part of the manufacturers of the machine in terms of sect. 14 (1) of Sale of Goods Act, 1893; &, if such breach of warranty was established, they would be entitled to an award of damages.—BUCHANAN & CARSWELL *v.* EUGENE, LTD., [1936] S. C. 160.—**SCOT.**

f ii. —— —— *Shoes.*]—Pltf. claimed from deft. damages for an alleged breach of a warranty of fitness implied under sect. 19 (1) of Sale of Goods Act, 1923 (N.S.W.), in relation to the purchase of a pair of shoes from deft. who was a retail distributor of footwear not manufactured by it. Pltf. stated in evidence that she told deft.'s saleswoman who attended her that she wanted walking shoes, that she had a bunion on her foot & wanted a comfortable pair of shoes; that she was shown three pairs, & finally purchased a particular pair which she had tried on, on the recommendation of the saleswoman. On the third occasion of wearing them the heel of one of the shoes came off, & as a result pltf. sustained a fractured leg. Evidence was given that the shoes were "a very bad job" & that the heels were not properly fastened on:—*Held:* (1) there was evidence fit to be submitted to a jury in respect of a cause of action under sect. 19 (2) of the Sale of Goods Act, 1923 (N.S.W.) as there was evidence upon which the jury was entitled to find (*a*) that the shoes were bought by description, & (*b*) that the implied condition that they were of merchantable quality had been broken; (2) in respect of any cause of action founded upon sect. 19 (1) of the Sale of Goods Act, 1923, it was for the jury, upon the evidence, to determine what was the particular purpose made known to the seller for which the buyer required the shoes, & whether the buyer relied upon the seller's judgment in that respect, & whether the shoes were reasonably fit for such purpose.—DAVID JONES, LTD. *v.* WILLIS (1935), 52 C. L. R. 110.—**AUS.**

s*f. Exceptions to rule—Goods intended for one purpose—Use for another.*]—MCNEILL *v.* MOTOR SERVICE CO. (Alta.), [1929] 1 D. L. R. 594.—**CAN.**

s*k. Express provision as to fitness—Inconsistent condition not implied.*]—There cannot be implied in a contract under which one person supplies a chattel to another to be used for an agreed or stated purpose, or for a purpose indicated by the nature of the chattel, a condition as to fitness of the chattel for that purpose, which is inconsistent with the express provisions of the contract.—GEMMELL POWER FARMING CO., LTD. *v.* NIES (1935), 35 S. R. N. S. W. 469; 52 N. S. W. W. N. 162.—**AUS.**

persons making or using them, *i.e.*, goggles made from laminated glass; there was no evidence that the goggles were not of merchantable quality.—GRENFELL *v.* E. B. MEYROWITZ, LTD., [1936] 2 All E. R. 1313, C. A.

674a. Timber sold as " under deck "—Carried on deck & damaged.]—Buyers bought a quantity of timber to be shipped from Sweden to London, the contract describing the goods as " under deck " & providing that " the buyers shall not reject the goods herein specified, but shall accept or pay for them in terms of the contract against shipping documents." When the timber arrived the buyers found that almost the whole of it had been carried on deck & had been damaged by sea water, & they refused to accept it, on the ground that it was not the timber specified in the contract:—*Held:* the words " under deck " were a condition of the contract, & were part of the contract description of the goods, & on both grounds the buyers were entitled to reject.—MONTAGUE L. MEYER, LTD. *v.* TRAVARU A/B H. CORNELIUS, OF GAMLEBY (1930), 46 T. L. R. 553; 74 Sol. Jo. 466.

Annotation:—**Consd.** White Sea Timber Trust, Ltd. *v.* W. W. North, Ltd. (1932), 148 L. T. 263.

675a. Effect of adulteration.]—ROBERT A. MUNRO & Co., LTD. *v.* MEYER, No. 645a, *ante.*

682. *Add. Annotations:*—**Refd.** London Holeproof Hosiery Co. *v.* Padmore (1928), 44 T. L. R. 499; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

694. *Add. Annotation:*—**Consd.** Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

700. *Add. Annotation:*—**Consd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

705. *Add. Annotations:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Parker *v.* Oloxo, Ltd., & Senior, [1937] 3 All E. R. 524.

709. *Add. Annotation:*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

709a. —— —— Woollen underwear.]—Applt. who contracted dermatitis of an external origin as the result of wearing a woollen garment which, when purchased from the retailers, was in a defective condition owing to the presence of excess sulphites which, it was found, had been negligently left in it in the process of manufacture, claimed damages against both retailers & manufacturers:—*Held:* the retailers were liable in contract for breach of implied warranty or condition under exceptions (i) & (ii) of sect. 14 of the South Australia Sale of Goods Act, 1895, which is identical with the English Sale of Goods Act, 1893 (c. 71), s. 14.—GRANT *v.* AUSTRALIAN KNITTING MILLS, LTD., [1936] A. C. 85; 105 L. J. P. C. 6; 154 L. T. 18; 52 T. L. R. 38; 79 Sol. Jo. 815, P. C.

715a. —— —— Mineral water.]—MCALISTER (OR DONOGHUE) *v.* STEVENSON, No. 856a, *post.*

719. *Add. Annotation:*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

726. *Add. Annotations:*—**Consd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141. **Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

726a. ——.]—A firm of shipbuilders agreed to build for & sell to the U. M. Co. two sister ships with main propelling Diesel engines designed for carrying petroleum or molasses, each ship to be classed A1 at Lloyd's. The ships with their engines were distinguished in the shipbuilders' yard by the numbers 972 & 973. The shipbuilders entered into a contract with the M. B. & B. Co., who were makers of ships' propellers out of manganese bronze prepared by a special process, for the manufacture of two propellers for these ships, to be of special Parsons manganese bronze, of a specified diameter, & pitch, each with four blades of a specified total developed area & of a maximum brake horse-power at a specified number of revolutions per minute. Each propeller was to be finished, chipped, & polished in style of the highest class, with boss bored, faced, & keyway cut to the shipbuilders' template, with edges brought up to fine lines, to be true to pitch; all in accordance with the shipbuilders' blue print, to be ready for fitting to the shaft on delivery; & to be to the entire satisfaction of the U. M. Co.'s representative & that of the shipbuilders themselves. They were to be delivered on July 14 & Aug. 1, 1930, respectively. The working drawings gave the information necessary to enable the work to be carried out, including the thickness required along the medial lines of the blades; but beyond this & apart from the direction that the " edges " were " to be brought up to fine lines," further details as to the thickness of the blades were left to the skill & judgment of the M. B. & B. Co. Two propellers constructed in accordance with the design & working drawing were passed by Lloyd's surveyor as satisfactory in tensile strength & similar respects, & were fitted to the two vessels. On trial the propeller fitted to No. 972 caused so much noise that the vessel could not be classed as A1 at Lloyd's & the U. M. Co. would not accept it. The propeller which had been fitted to No. 973 was tried on No. 972 & proved satisfactory. The M. B. & B. Co. then made a second propeller for No. 972, without prejudice to the rights of the parties. Although this propeller conformed with the design & working drawing, & was free from fault in other respects, it nevertheless showed the same defect as the former one, & the U. M. Co. were again dissatisfied. The M. B. & B. Co. then made yet another propeller upon the same terms as to the rights of the parties, & this last attempt proved satisfactory. The shipbuilders brought an action against the M. B. & B. Co. claiming £6,277 5*s.* 1*d.* damages for delay in executing the work & expenses incurred in consequence:—*Held:* pltfs. were

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PART III. SECT. 5, SUB-SECT. 2.—B. (a).

sg. *Proof that purpose known—Notwithstanding warranty limiting liability.*]—CRISS *v.* ALEXANDER (1928), 28 S. R. N. S. W. 297; 45 N. S. W. W. N. 76.—AUS.

PART III. SECT. 5, SUB-SECT. 2.—B. (d) i.

sl. *Sale of seed grain oats—Both parties farmers.*]—MADSEN *v.* ANDERSON, [1937] 3 W. W.

entitled to recover on the grounds that defts. had failed to comply with the condition that the propeller should be to the entire satisfaction of the U. M. Co.'s representative; the agreement was a contract for the sale of future goods & the case fell within the first exception to Sale of Goods Act, 1893 (c. 71), s. 14, inasmuch as pltfs. had made known to defts. the purpose for which the propeller was required, & relied upon their skill & judgment; it is not necessary for the purposes of that sub-sect. that the buyer should rely totally & exclusively on the skill & judgment of the seller for every detail in the production of the goods; it is sufficient if reliance is placed on the skill & judgment of the seller to some substantial extent; & in the present case with regard to that part of the work which was left to the skill & judgment of the sellers there was a breach of the implied condition that the propeller should be reasonably fit for the purpose for which it was required.—CAMMELL LAIRD & Co., LTD. *v.* MANGANESE BRONZE & BRASS Co., LTD., [1934] A. C. 402; 103 L. J. K. B. 289; 151 L. T. 142; 50 T. L. R. 350; 39 Com. Cas. 194, H. L.

Annotations :—**Consd.** Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204. **Refd.** Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46; Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85.

727. *Add. Annotation :—As to* (2) **Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

733. *Add. Annotation :*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

744. *Add. Annotation :*—**Apld.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

744a. Effect of Sale of Goods Act, 1893 (c. 71), s. 14 (1).]—MEDWAY OIL & STORAGE Co., LTD. *v.* SILICA GEL CORPN. (1928), 33 Com. Cas. 195, H. L.

Annotation :—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402; Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85.

744b. ——.]—CAMMELL LAIRD & Co., LTD. *v.* MANGANESE BRONZE & BRASS Co., LTD., No. 726a, *ante*.

753. *Add. Annotation :—As to* (1) **Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

762. *Add. Annotation :*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

766. *Add. Annotations :*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

780a. —— —— **Bottle—For wine.**]—MORELLI *v.* FITCH & GIBBONS, No. 619a, *ante*.

782. *Add. Annotation :*—**Refd.** Morelli *v.* Fitch & Gibbons, [1928] 2 K. B. 636.

787. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

788. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

788a. Purchase of propeller—Unsuitable for particular engine.]—CAMMELL LAIRD & Co., LTD. *v.* MANGANESE BRONZE & BRASS Co., LTD., No. 726a, *ante*.

790. *Add. Annotations :*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

813. *Add. Annotations :*—**Apld.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402. **Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

849. *Add. Annotations :—As to* (2) **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46. *Generally*, **Refd.** Parker *v.* Oloxo, Ltd., & Senior, [1937] 3 All E. R. 524.

852. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

854. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119; Bottomley *v.* Bannister, [1932] 1 K. B. 458.

856a. —— ——.]—Under English & Scots law alike a manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, & with the knowledge that the absence of reasonable care in the preparation & putting up of the products will result in injury to consumer's life or property owes a duty to consumer to take that reasonable care, & an action by the ultimate consumer will lie against the manufacturer.

Applt. drank a bottle of ginger beer, manufactured by resp., which a friend had bought from a retailer & given to her. The bottle contained the decomposed remains of a snail which were not & could not be detected (the glass of the bottle being of a dark colour):—*Held :* she was entitled to succeed in a claim for damages for injury to health against the manufacturer of the ginger beer put by him in the bottle.—M'ALISTER (OR DONOGHUE) *v.* STEVENSON, [1932] A. C. 562; 101 L. J. P. C. 119; 147 L. T. 281; 48 T. L. R. 494; 76 Sol. Jo. 396; 37 Com. Cas. 350, H. L.

Annotations :—**Distd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606. **Consd.** Pattendon *v.* Beney (1933), 50

PART III. SECT. 5, SUB-SECT. 3.—A.

765 v. ——.]—WINSLEY BROS. *v.* WOODFIELD IMPORTING Co., [1929] N. Z. L. R. 480.—**N.Z.**

775 i. *Application of rule—Sale of commodity for resale—Food or drink—Apples.*]—There is an implied warranty that apples sold by a grower to a merchant are fit for human food & merchantable in the ordinary course of business.—HEBB *v.* STODDARD, [1935] 4 D. L. R. 394.—**CAN.**

PART III. SECT. 9.

854 ii. —— ——.]—Pltf. purchased underwear manufactured by deft. manufacturer from deft. retailer, whose business it was to supply goods of that description. He became acutely affected by dermatitis, which he alleged was caused by the presence of a sulphite or other chemical in the garments. He brought an action of damages against the manufacturer for negligence, & against the retailer for breach of implied warranties, that the garments were of merchantable quality & were reasonably fit for the purpose of his wear:—*Held :* on the evidence pltf. had no cause of action against either of defts.—AUSTRALIAN KNITTING MILLS *v.* GRANT, [1933] Argus L. R. 453; 7 A. L. J. 206; 50 C. L. R. 387; *revsd. sub nom.* GRANT *v.* AUSTRALIAN KNITTING MILLS, LTD. (1935), 79 Sol. Jo. 815, P. C.—**AUS.**

T. L. R. 10. **Apld.** Brown *v.* Cotterill (1934), 51 T. L. R. 21; Malfroot *v.* Noxal, Ltd. (1935), 51 T. L. R. 551. **Distd.** Evans *v.* Triplex Safety Glass Co., [1936] 1 All E. R. 283. **Apld.** Grant *v.* Australian Knitting Mills, Ltd., [1936] A. C. 85. **Consd.** Kubach *v.* Hollands, [1937] 3 All E. R. 907. **Refd.** Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551; Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257; Haynes *v.* Harwood, [1935] 1 K. B. 146.

856b. —— —— **Defect ascertained by third party.**] Crane manufacturers sold a crane in parts to a firm of builders, the arrangement being that the parts were to be assembled by the builders' men. The builders had in their employment an experienced crane erector, who in assembling the parts found that certain cog-wheels worked stiffly, did not fit accurately, & required to be remedied; he accordingly marked in chalk the places where there was inaccurate fitting, saying at the same time that he would have to report the matter to his employers. Before the defects so discovered had been remedied the erector began working the crane, & while he was so engaged a part of it fell & killed him, the fall being due to the defects above mentioned. In an action by his widow under the Fatal Accidents Act, 1846 (c. 93), against the manufacturers of the crane:—*Held:* the defects being discoverable on reasonable inspection, &, having in fact been discovered by the deceased man, the manufacturers owed him no duty & were not liable for the accident.—FARR *v.* BUTTERS BROS. & Co., [1932] 2 K. B. 606; 101 L. J. K. B. 768; 147 L. T. 427, C. A.

856c. —— ——.]—Pltf. had been in the habit of having her hair dyed with henna at the second deft.'s shop. The second deft. suggested that pltf.'s hair should be dyed with Oloxo, a dye she described as harmless, & prepared by & bought by the second deft. from the first deft. Pltf. raised objections to the use of such a dye, but was assured it was safe to use. The pltf. as the result of the use of the dye had an acute attack of dermatitis & nervous trouble. The first deft. by its agent had warranted the dye as safe, but for trade reasons it had supplied the second deft. through a wholesale hairdressers' sundriesman. A booklet was issued with the dye which stated it was dangerous if used without a skin test; but no warning was given to the second deft. as to the danger. A certain quantity of the dye being purchased by the second deft., she was entitled to & did attend certain lectures & demonstrations given on behalf of the first deft., & the lecturer upon behalf of the co. stated that the co. would indemnify hairdressers using this dye against claims arising out of its use:—*Held:* (1) pltf. was entitled to recover against the second deft. in contract; (2) pltf. was entitled to recover against the first deft. in tort; (3) the second deft. was entitled to recover from the first deft. damages for breach of contract, & those damages were the damages the second deft. had to pay to pltf. in this action & her costs of the action; (4) the indemnity given at the lectures was not made at such a time that it could be considered a part of the contract with the second deft.—PARKER *v.* OLOXO, LTD., & SENIOR, [1937] 3 All E. R. 524.

857. *Add. Annotations:*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Apld.** Pattendon *v.* Beney (1933), 50 T. L. R. 10.

877. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

877a. —— **Nomination of vessel by buyer—No warranty of seaworthiness.**]—A contract for the sale of oil by a series of deliveries provided for delivery at B. into tank steamers of the buyers, & 15 days' notice of arrival of steamer was to be given to the sellers. The contract further provided that in the event of accidents on board steamers the operation of the contract was to be suspended & at the buyers' option the contract quantity was to be reduced *pro rata*. For one of the deliveries the buyers nominated a steamer which they had on time charter, but at the time the steamer, without the knowledge of the buyers, was unseaworthy, & the buyers, on learning that the steamer had had an accident & must be dry docked, intimated their exercise of their option to reduce the quantity of oil to be taken. The sellers contended that it was the duty of the buyers to charter some other vessel:—*Held:* on a case stated by an arbitrator, the buyers did not warrant the seaworthiness of vessels which they nominated for the performance of such a contract, & they were entitled to exercise their option.—MEDWAY OIL & STORAGE CO., LTD. *v.* RUSSIAN OIL PRODUCTS, LTD. (1931), 47 T. L. R. 402; 75 Sol. Jo. 408.

885a. **Date of shipment—In bill of lading—C.i.f. contract.**]—JAMES FINLAY & CO. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ No. 1814a, *post*.

893. *Add. Annotations:—As to* (2) **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

903a. **Exclusion of implied conditions & warranties—Contract for new car—Car not new.**] —An agreement between defts. & pltfs., whereby defts. appointed pltfs. their sole

PART III. SECT. 17, SUB-SECT. 1.

sh. *Goods "to be reshipped" by vendor—Whether reshipment by carrying vessel necessary.*]—SCARLETT & CO. *v.* H. A. STEPHENSON & SON, LTD., [19[illegible] W. A. L. R. 1.—**AUS.**

sk. *Insurance by vendor—Parol evidence.*]—WATERLOO MOTORS, LTD. *v.* FLOOD, [1931] 1 D. L. R. 762; 3 M. P. R. 318.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.

sl. *Sale of seed flax.*]—The representation by a farmer selling seed flax that it was good seed flax held to be a warranty.—UHLE *v.* KROEKER, [illegible] 1 D. L. R. 97; 37 Man. L. R. 154; [1927] 3 W. W. R. 636.—**CAN.**

PART III. SECT. 18, SUB-SECT. 1.

c. *Reved on the facts,* 59 S. C. R. 118.

c 1. —— —— ——.]—Defts. purchased from pltf. a second-hand motor truck under a buyer's order signed by defts. containing a clause providing that "the whole agreement between the parties is contained herein & no representations, warranties or conditions expressed or implied other than those herein contained shall be binding upon the vendor." Defts. required a truck for immediate use on a contract for the construction of a new highway, necessitating a truck in first-class mechanical condition for immediate & continuous use for hauling purposes. All this was known to one H., pltf.'s representative, who stated to defts. that the truck was in first-class mechanical condition. Defts. had trouble from the start in keeping the truck running, but they continued to use it, both parties trying to remedy its condition. In an action to recover the purchase price defts. counterclaimed for damages for breach of warranty:—*Held:* both parties understood the order to call for a certain second-hand truck in first-class mechanical con-

dealers within a named area for the sale of new Singer cars, contained a clause, clause 5, providing that all cars sold by defts. were subject to the terms of an express warranty set out in a schedule to the agreement, & that " all conditions, warranties, & liabilities implied by statute, common law, or otherwise are excluded." Under that agreement pltfs. ordered from defts. a new Singer car. Defts. delivered to pltfs. a car which the ct. found on the evidence was not a new Singer car :—*Held :* it was an express term of the contract that the car should be a new car, & as the car which defts. delivered to pltfs. was not a new car, defts. were not protected from liability for breach of contract by clause 5, which excluded implied conditions, warranties, & liabilities.—ANDREWS BROS. (BOURNEMOUTH), LTD. *v.* SINGER & CO., LTD., [1934] 1 K. B. 17 ; 103 L. J. K. B. 90 ; 150 L. T. 172 ; 50 T. L. R. 33, C. A.

Annotation :—**Refd.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

905. *Add. Annotation :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154.

916a. —— **Warranty excluded as to defect not apparent on reasonable examination.**] — Claimants, grain exporters in Canada, sold a quantity of barley to resps., merchants in Germany. The sale was on c.i.f. terms, & the contract contained a clause providing that the grain was not warranted free from defect rendering it unmerchantable if such defect would not be apparent on reasonable examination. The barley was of a type which was generally used for feeding pigs, & shortly before the consignment which was the subject of this contract arrived in Germany other barley from the same crop had been delivered to German buyers & had been given by them to pigs, with the result that the pigs refused to eat it or, if they ate it, became ill. The German Govt. thereupon ordered that no further barley of the crop should be admitted into the country until they had made an analysis & discovered the cause of the trouble, & accordingly when the barley covered by this contract arrived resps. refused to take up the documents, & eventually the barley was resold at a lower price. The claimants, in an arbn., claimed as damages for non-acceptance the difference between the contract price & the price realised on resale, & the arbitrators decided in their favour, subject to the opinion of the ct. on a special case. It appeared that the barley was infected by a fungus which produced the ill-effects complained of, but that the presence of the fungus could not have been ascertained by any ordinary commercial examination :—*Held :* (1) as the defect was not one which could have been discovered on any reasonable examination by claimants before shipment, claimants were protected by the contract & were entitled to recover ; (2) the finding of the arbitrators that the barley was not in fact unmerchantable could not be upset on the evidence. The award was therefore confirmed.—CANADA ATLANTIC GRAIN EXPORT CO. (INC.) *v.* EILERS (1929), 35 Com. Cas. 90.

919. *Add. Annotation :*—**Refd.** Green *v.* Arcos, Ltd. (1931), 47 T. L. R. 336.

926. *Add. Citation :*—33 Com. Cas. 120.

927. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

928a. Right to treat breach as breach of warranty.]—If a representation amounting to a condition is broken & the injured party does not avail himself of his right to be discharged from the contract, or if the contract has been executed, the injured party can recover damages as on a breach of warranty.—SULLIVAN *v.* CONSTABLE (1932), 48 T. L. R. 369, C. A.

937. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

940. *Add. Annotation :*—**Refd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

948. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

961. *Add. Annotation :*—As to (1) **Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1931] 1 Ch. 310.

dition, & such being the subject-matter of the sale the above recited clause in the order did not give pltf. the right to supply something different. Pltf. failed to provide a truck of the standard contemplated by the parties, & was liable in damages to defts. for breach of warranty.—HAYES MANUFACTURING CO. *v.* PERDUE & COPE, [1931] 2 D. L. R. 610 ; 43 B. C. R. 545.—**CAN.**

.]—In an action on lien notes given for the price of a tractor deft. pleaded failure of consideration & counterclaimed for damages for breach of conditions & also for the price of extra fuel & oil & for loss of time. Deft., although he constantly complained to pltf. that the tractor was not working satisfactorily, had used it during the whole of two seasons in the cultivation of many hundreds of acres. The trial judge, finding that the alleged conditions had not been fulfilled & that deft. had not accepted the tractor & was justified in returning it, as he had done, dismissed the action on the ground of total failure of consideration ; he also dismissed the counterclaim. On appeal :—*Held :* while it could not be said that deft. had not accepted the tractor & was entitled to return it, he to damages for breach of therefrom by a clause in the contract by which he agreed " not to bring any suit for breach of warranty or plead ane alleged breach of warranty as a defency or by way of set-off after one year from the date of delivery of the machine to him." The trial judge having found a total failure of consideration, *i.e.* that the tractor was valueless to deft. & there being evidence to support that finding, the amount of damages was the full purchase-price. — MASSEY-HARRIS CO., LTD. *v.* SKELDING, [1933] 2 W. W. R. 567 ; *affd.*, [1934] 3 D. L. R. 193 ; S. C. R. 431.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

k. *Revsd.*, 43 S. C. R. 614.

PART III. SECT. 19, SUB-SECT. 1.—A.

927 vi. —— —— ——.]—The fact that a contract for the sale of goods negatives warranties does not prevent a buyer whose acceptance of the goods disentitles him to rescind the contract for breach of a condition from treating such breach as a breach of warranty & recovering damages therefor.—MCNICHOL *v.* DOMINION MOTORS, LTD., [1930] 1 W. W. R. 631 ; 3 D. L. R. 270 ; 24 Alta. L. R. 441.—**CAN.**

PART III. SECT. 19, SUB-SECT. 1.—B.

d. *Revsd.* on the facts, 59 S. C. R. 118.

PART III. SECT. 19, SUB-SECT. 2.—B.

sk. *Right to rescind—Lost by acceptance.*]—A right of rescission for latent defects is lost by the acceptance by the purchaser of the goods sold.—RENFREW MACHINERY CO. *v.* ILLSLEY, [1933] 2 D. L. R. 674 ; 6 M. P. R. 512.—**CAN.**

PART III. SECT. 19, SUB-SECT. 2.—D. (a).

sl. *Nominal damages.*]—SMITH *v.* WARD, [1928] 4 D. L. R. 850 ; [1928] 3 W. W. R. 341 ; 37 Man. L. R. 528.—**CAN.**

sm. *F.o.b. contract—Damages at date of delivery.*]—BRONSTONE *v.* BURDETT, [1928] 1 D. L. R. 877.—**CAN.**

so. *Breach of warranty of age of car—Necessity for proof of damage.*]—Before more than nominal damages can be recovered for the breach of a warranty of the age of a motor car the buyer must adduce evidence on which the ct. can find that he is worse off with the car in question than he would have been had it been a car of the age it was represented to be.—HUDSON *v.* WATSON MOTOR CO., [1931] 3 W. W. R. 621 ; [1932] 1 D. L. R. 280 ; 40 Man. L. R. 84.—**CAN.**

980. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1931] 1 Ch. 310.

992. *Add. Annotation :*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

995. *Add. Annotations :*—**Consd.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50. **Apld.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66. **Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604; Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

996. *Add. Annotations :*—**Apld.** Barker *v.* Agius (1927), 33 Com. Cas. 120. **Consd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402; Andrews Bros. (Bournemouth), Ltd. *v.* Singer & Co., [1934] 1 K. B. 17. **Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528; L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

1001. *Add. Annotations :*—**Apld.** Dobell (G. C.) & Co. *v.* Barber & Garratt (1930), 46 T. L. R. 420. **Consd.** Kubach *v.* Hollands, [1937] 3 All E. R. 907.

1012. *Add. Annotation :*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

1016. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

1024. *Add. Annotations :*—**Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136; United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

1025. *Add. Annotations :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

1026. *Add. Annotations :*—**Apld.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; The Arpad, [1934] P. 189.

1029. *Add. Annotation :*—**Consd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R.

Part IV.—Effects of the Contract.

1033. *Add. Annotation :*—**Refd.** Modern Light Cars, Ltd. *v.* Seals, [1934] 1 K. B. 32.

1089. *Add. Citations :—affd.* (1928), 138 L. T. 663; 44 T. L. R. 297; 17 Asp. M. L. C. 428; 33 Com. Cas. 213, C. A.

1089a. ——.]—SHELL-MEX, LTD. *v.* ELTON COP DYEING CO., LTD. (1928), 34 Com. Cas. 39.

1091a. Notice of appropriation—When required.]—Applts. sold to resps. by a c.i.f. contract a quantity of Australian wheat to be shipped to London or Hull by one of two named steamers, the contract providing that "Notice of appropriation with ship's name date of bill or bills of lading & approximate quantity loaded shall within 21 days from date of bill of lading be cabled by the shipper . . . direct to his buyer . . . or to his . . . representative in Europe. . . . If vessel is named in contract no appropriation shall be deemed to be necessary. Provisional invoice based on bill of lading weight with ship's name & date of bill of lading shall be sent by shipper's house . . . to his buyer within seven days after arrival of documents in Europe. . . ." The bills of lading were dated Sept. 13, 1929, & the only appropriation (if any) gave their date as Sept. 4, 1929, & stated the name of the steamer, which was one of the two mentioned in the contract. The invoice sent later gave the true date of the bills of lading, & the buyers refused to accept the documents on the ground that the invoice did not agree with the appropriation :—*Held :* as no vessel was named in the contract in such a way that the contract could attach to her, notice of appropriation was required, &, as a correct notice

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PART III. SECT. 19, SUB-SECT. 2.—D. (b).

g i. ——.]—Circumstances in which :—*Held :* pltf. was not entitled to damages for the loss alleged to have been sustained by him by his inability to carry out contracts into which he alleged he had entered.—MCKENNY *v.* DRUMMOND & DVORETSKY (1927), 29 W. A. L. R. 6.—**AUS.**

so. *Return of purchase-money.*]—MCKENNY *v.* DRUMMOND & DVORETSKY (1927), 29 W. A. L. R. 6.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.

1032 xii. ——.]—MARCUS CLARK (AUSTRALIA), LTD. *v.* BROWN (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—**AUS.**

1032 xiii. ——.]—In Mar. 1928, pltf. sold to deft. certain movables in terms of a written agreement which provided that delivery should be given immediately, that the purchase price should be paid in two instalments in June, 1929, & Dec. 1929, respectively, & that ownership should not pass until the whole price had been paid. In June, 1929, pltf. sued deft. for cancellation of the agreement, redelivery, & damages on the ground of deft.'s failure to pay the first instalment. Deft. excepted to the declaration on the ground that the claims for cancellation & redelivery were bad in law, in the absence of any provision in the agreement for its cancellation on non-payment of the first instalment :—*Held :* allowing the exception, the provision in the agreement postponing the passing of ownership did not take the case out of the ordinary rule.—STRACHAN *v.* NEL (1929), 50 N. L. R. 273.—**S. AF.**

sp. *Property passing under consent judgment—Failure of purchaser to fulfil terms of judgment.*]—DONALDSON *v.* ALBERTA FOUNDRY & MACHINE CO., LTD., [1930] 1 W. W. R. 426; 1 D. L. R. 918.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (a).

1062 i. —— *Counting & inspection.*]—Under the contract in question for the sale of cedar poles to be manufactured by the seller, the "individuality" or identity of the goods could not be finally determined until after the final count & inspection provided for by the agreement, & that, therefore, it was not until then that the property in the poles would pass.—NAUGLE POLE & TIE CO. OF CANADA, LTD. *v.* WILSON (B. C.), [1929] 3 W. W. R. 730.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (b) ii.

1081 xii. ——.]—COFFEY *v.* QUEBEC BANK (1869), 20 C. P. 110.—**CAN.**

1091 i. *Validity of appropriation—Appropriation by sellers—Sellers without title to goods.*]—The provision of Sale of Goods Act that under a contract for the sale of unascertained goods by description the property in the goods passes to the seller when goods of that description & in a deliverable state are unconditionally appropriated to the contract, cannot apply to the case where when the appropriation is made the seller has no title to the goods.—HUNTER *v.* TRANS-CANADA FINANCE CORPN., [1930] 1 W. W. R. 801; 3 D. L. R. 275; 38 Man. L. R. 571; *revsg.*, [1930] 1 D. L. R. 346; [1929] 3 W. W. R. 503, C. A.—**CAN.**

of appropriation had not been given, the buyers were entitled to reject.—DALGETY & Co., LTD. *v.* BRADFORD (T. G.) & Co., LTD. (1930), 46 T. L. R. 274; 35 Com. Cas. 213.

1092a. Conclusiveness of appropriation—Wrong ship stated in notice of appropriation.]—A contract for the sale of goods to be shipped from a foreign port provided that notice of appropriation, setting out *inter alia* the name of the vessel in which the goods were shipped, should be given by the seller to the buyer within a specified time, & that such appropriation, when once made, should be irrevocable. The goods were in fact shipped per steamship *T.*, but owing to a clerical error a notice of appropriation was given by the seller's agent to the buyer in which it was stated that the goods had been shipped per steamship *I.* The buyers refused to accept delivery :—*Held :* the appropriation of the *I.* was valid & irrevocable, & the buyers were entitled to refuse delivery of goods in any other ship.—GRAIN UNION CO., S/A ANTWERP *v.* A/S HANS LARSEN, AALBORG (1933), 150 L. T. 78; 49 T. L. R. 540; 38 Com. Cas. 260; 18 Asp. M. L. C. 449.

1146. *Add. Annotation :*—**Refd.** Robinson *v.* Graves, [1935] 1 K. B. 579.

1166. *Add. Annotation :*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

1189a. Goods to be "collected."]—GALE *v.* NEW, [1937] 4 All E. R. 645; 54 T. L. R. 213, C. A.

1211. *Add. Annotation :*—**Refd.** Elmes *v.* Trembath (1934), 19 Tax Cas. 72.

1252. *Add. Annotations :*—**Folld.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. **Refd.** Buller & Co., Ltd. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

1252a. Goods obtained on approval—By trick.]—Where a person who has received goods "on appro" pledges them he thereby does an act adopting the transaction within the meaning of the Sale of Goods Act, 1893, s. 18, r. 4 (*a*), so that the property in the goods passes to him, & the original owner cannot recover them from the *bonâ fide* pledgee.—LONDON JEWELLERS, LTD. *v.* ATTENBOROUGH, LONDON JEWELLERS, LTD. *v.* ROBERTSONS (LONDON), LTD., [1934] 2 K. B. 206; 103 L. J. K. B. 429; 151 L. T. 124; 50 T. L. R. 436; 78 Sol. Jo. 413; 39 Com. Cas. 290, C. A.; *revsg.* S. C. *sub nom.* LONDON JEWELLERS, LTD. *v.* SUTTON, LONDON JEWELLERS, LTD. *v.* ROBERTSONS (LONDON), LTD., 50 T. L. R. 193; 78 Sol. Jo. 82.

1258. *Add. Annotation :*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan, (1930) 47 T. L. R. 81.

1261. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

1268. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

1272. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

1296. *Add. Annotations :*—**Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

1355. *Add. Annotation :*—*As to* (3) **Refd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

1361. *Add. Annotations :*—**Refd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243; Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

1362. *Add. Annotations :*—**Dbtd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

1376a. —— Delivery order not in accordance with contract—Agreement for delivery order "from bond"—Delivery order of goods in bond.]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered ex warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks, including seizure or confiscation, & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000, & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation

PART IV. SECT. 1, SUB-SECT. 5.—C.

1209 iv. —— ——.]—Where on a sale of stacks of hay the buyer agreed to have it pressed & the seller undertook to load it when bailed into the cars :—*Held :* the latter undertaking was a supplementary obligation distinct from the essentials of the contract of sale, & that the property in the hay had passed although the hay had not yet been so loaded by the seller.—MARCQ *v.* BERTHOLET, [1928] 2 D. L. R. 691; [1928] 1 W. W. R. 843; 37 Man. L. R. 307.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—D.

sc. *Goods lost by act of God before measurement.*]—TOWLE *v.* RUSSELL TIMBER CO., [1932] 1 D. L. R. 793.—**CAN.**

sq. *Condition as to weight—Buyer taking possession knowing goods not weighed.*]—In an action for the price of scrap steel sold & delivered, the contract providing "railway weight to govern material loaded in Halifax—in Dartmouth according to ship's draft," deft. was held bound by the weight proved by plt., as he took possession of the shipment knowing it was not weighed. WHITZMAN *v.* DEITCHER, [1936] 1 D. L. R. 780; 10 M. P. R. 301; *affd.*, [1936] S. C. R. 539; 3 D. L. R. 282.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 9.—B.

sq. *Assumption of chattel mortgage as part of purchase-price—Liability to indemnify seller.*]—Where on a sale of personal property the buyer assumes a chattel mtge. thereon as part of the purchase-price, he is under an implied obligation to indemnify the seller against the latter's personal liability to the mtgee.—WALKER *v.* WOODYATT, [1931] 2 W. W. R. 306; 3 D. L. R. 516; 44 B. C. R. 110.—**CAN.**

at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order:—*Held:* L. by giving the delivery order to D. & M. had not committed a breach of the agreement, & if he had, F. could not complain of the breach after having himself taken a transfer of the delivery order.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

1377a. —— **Containing letters "O.K."—Meaning of.**]—DAWSONS BANK, LTD. *v.* JAPAN COTTON TRADING CO., LTD. (1935), 79 Sol. Jo. 213, P. C.

1378. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

1399. *Add. Annotation:*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

1399a. —— **Appointment as "sole selling agents."**]—By an agreement in writing certain manufacturers of bricks & other building materials appointed a firm of builders' merchants "sole selling agents of all bricks & other materials manufactured at their works." The agreement was expressed to be for three years & afterwards continuous subject to twelve months' notice by either party. While the agreement was in force the manufacturers informed the merchants that they intended in the future to sell their goods themselves without the intervention of any agent, & thereafter they effected sales to customers directly. In an action by the merchants against the manufacturers for breach of the agreement:—*Held:* (1) the effect of the agreement was to confer on pltfs. the sole right of selling the goods manufactured by defts. at their works, so that neither defts. themselves nor any agent appointed by them, other than pltfs., should have the right of selling such goods; (2) the agreement was one of vendor & purchaser & not one of principal & agent.

(3) If there had been an ambiguity & the intention of the parties had been in question at the trial, I think it might have been held that the parties had placed their own construction upon the contract &, having acted upon a certain view, had thereby agreed to accept it as the true view of its meaning (GREER, L.J.).—LAMB (W. T.) & SONS *v.* GORING BRICK CO., LTD., [1932] 1 K. B. 710; 101 L. J. K. B. 214; 146 L. T. 318; 48 T. L. R. 160; 37 Com. Cas. 73, C. A.

1403. *Add. Annotation:*—**Apld.** Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

1404. *Add. Citations:*—[1928] Ch. 264; 138 L. T. 274.

Add. Annotation:—**Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1935), 52 T. L. R. 61.

1409. *Add. Annotation:*—**Consd.** Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

1417. *Add. Annotations:*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39; Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1421. *Add. Annotation:*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

1435. *Add. Annotation:*—**Refd.** Barker *v.* Agius (1927), 33 Com. Cas. 120.

1441. *Add. Annotation:*—*Generally*, **Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

1451. *Add. Annotation:*—**Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

1454. *Add. Annotation:*—**Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

1458. *Add. Annotations:*—**Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. **Refd.** Ellis *v.* Stenning & Son, Ltd., [1932] 2 Ch. 81.

1461a. Seller remaining in possession as bailee.]—H., a dealer in motor vehicles, & defts., a finance co., entered into a transaction for the sale of a motor lorry by H. to defts. & the

PART IV. SECT. 2, SUB-SECT. 1.

1440 i. *Goods obtained by larceny—Title of bonâ fide purchaser.*]—Where the owner of a motor car was induced to part with possession of it by the representations of the recipient that he was acting as agent for another person whom he named as the buyer of it & the owner when delivering the car thought he had sold it to the alleged principal, a cheque in the latter's name having been given for the purchase-price, but the alleged buyer was a fictitious person, held that the car had been stolen by a trick, &, therefore, deft. who innocently bought it from the thief obtained no title to it.—CUFF-WALDRON MANUFACTURING CO., LTD. *v.* HEALD, [1930] 2 W. W. R. 3 D. L. R. 901; 24 S. L. R. 441.

h i. ——.]—The mere fact that the owner of a chattel has given the possession or use of it to another, not a mercantile agent, who, purporting to be the actual owner, fraudulently sells it to an innocent purchaser, does not estop the owner from asserting his title against the purchaser.—NACHTIGAL *v.* PREMIER MOTORS, LTD., [1929] 2 D. L. R. 190; 1 W. W. R. 641; 24 Alta. L. R. 80.—CAN.

l i. ——.]—BRADSHAW *v.* EPP, [1937] 3 W. W. R. 577.—CAN.

PART IV. SECT. 2, SUB-SECT. 7.

80. *Sale by dealer — Subsequent fraudulent sale to third person.*]—E., a dealer in automobiles, sold or went through the form of selling an automobile to C., under a conditional sale agreement, taking a promissory risk for a part of the price. This note he took to defts., an automobile financing co., & discounted it, at the same time transferring the agreement to defts., who duly filed it in accordance with Conditional Sales Act. The automobile was left in the possession of E., who dishonestly sold it to pltf.:—*Held:* the real owner of the car being E. or C. or both. E. had authority to dispose of his security, the conditional sale agreement to defts., & defts. were thereafter the owners in law of the automobile; the effect of the transaction between E. & C. along with that between defts. & E. was a "sale," & whether defts. or C. should be considered the purchaser, E., the person having sold the goods continued in possession & was in possession when he sold the automobile to pltf., & this was effective to transfer the property to pltf. under Sale of Goods Act, R. S. O., 1927, s. 25.—BENI NATIONAL ACCEPTANCE CORPN., O. L. R. 215.—

letting of the lorry by defts. to H. on an agreement in the form of a hire-purchase agreement. The transaction was carried out by means of the printed forms used by defts. in their business, which were more appropriate to a case in which they bought a vehicle & let it on hire-purchase to a third party, than to the present case. H. being in possession of the lorry then fraudulently sold it to pltfs., who were not aware of the previous transaction between H. & defts. The payments due from H. to defts. under the hire-purchase agreement between them having fallen into arrear, defts. resumed possession of the lorry & refused to deliver it to pltfs. at their request. Pltfs. thereupon brought an action against defts. claiming delivery up of the lorry or damages for its detention :—*Held :* H., after the transaction between him & defts. had been completed by the agreement for hire-purchase, was not in possession of the lorry as a person who " having sold goods, continues or is in possession of the goods " within Sale of Goods Act, 1893 (c. 71), s. 25, but as a bailee, & therefore the delivery or transfer by him of the lorry under the sale by him to pltfs. had not, by virtue of that section, the same effect as if it had been authorised by defts., & was not thereby rendered valid as against defts.—STAFFS MOTOR GUARANTEE, LTD. *v.* BRITISH WAGON CO., LTD., [1934] 2 K. B. 305; 103 L. J. K. B. 613; 151 L. T. 396.

Annotation :—**Distd.** Union Transport Finance, Ltd. *v.* Ballardie, [1937] 1 K. B. 510.

1461b. Possession not referable to contract of sale.]—Co. A. entered into an agreement with co. B. that B. should make for A. a number of matrices from which B.. as requested from time to time by A., would press sound records, B. thus remaining in possession of the matrices. Later B. mortgaged its assets & property to a bank, & subsequently went into compulsory liquidation. Its assets were then purchased by C. On a claim by A. against C. for the return of the matrices :—*Held :* on the contract & the evidence although the matrices remained in B.'s possession, the property in them was always in A.; & the mtge., not applying to property which did not belong to the mtgor., did not attach to the matrices, & accordingly Sale of Goods Act, 1893 (c. 71), s. 25 (1), had no application, & A. was entitled to succeed.—AHRENS, LTD. *v.* COHEN (GEORGE), SONS & CO., LTD. (1934), 50 T. L. R. 411.

1461c. Goods in possession of agent.]—L. & Co. held certain furs in its warehouse which were the property of H. subject to the payment of £178 0*s.* 6*d.*, its charges in respect of them. H. sold these furs to pltfs., who gave him a bill of exchange for the price on the representation that he would pay off L. & Co. & obtain delivery orders for pltfs. Instead of doing this, he arranged to pledge them with defts. for the sum of £178 0*s.* 6*d.* Defts., on Aug. 21, 1936, drew a cheque for that amount in favour of L. & Co., & that cheque was cleared on Aug. 22. L. & Co. then received an order from H. to deliver the furs to defts., which was done. Defts., who had no notice of pltfs.' title, contended that by virtue of Sale of Goods Act, 1893 (c. 71), s. 25 (1), they were entitled to hold these furs as if delivery to them had been expressly authorised by pltfs. :—*Held :* the furs after L. & Co. had been paid the £178 0*s.* 6*d.* by defts. were in the possession of H. as vendor in possession, & there was a disposition or pledge of them by H. to defts. They were entitled to hold the furs under this pledge & the claim of pltfs. for delivery to them failed. The word " possession " in Sale of Goods Act, 1893 (c. 71), s. 25 (1), must be construed with reference to Factors Act, 1889 (c. 45), s. 1 (2), & includes possession by another person on behalf of the person whose possession is material, & it was immaterial that the agreement of pledge was made before the transfer of the furs could be carried out.—CITY FUR MANUFACTURING CO., LTD. *v.* FUKEENBOND (BROKERS) LONDON, LTD., [1937] 1 All E. R. 799; 81 Sol. Jo. 218.

1461d. Sale under hire-purchase agreement.]—On May 17, 1935, T., a branch manager of pltf. co., bought for & on behalf of the co. from C. a motor-car which was forthwith let on hire under a hire-purchase agreement to F., an employee of C., who was not in a financial position to buy a car on any terms. C., T. & F. all knew that the hire-purchase transaction was not genuine in the sense that it was never intended that F.'s part in it should be a real one or that the car should be delivered to F., either by its physical transfer to his custody or by C. submitting to hold it as his bailee. C. made such payments to pltf. co. as were made under the agreement between co. & F., &, although F. had agreed not to change the permanent garage of the vehicle, which was expressed to be at his mother's residence, nor to part with its possession or control, & had signed a document acknowledging that he had received delivery of the car, the car remained in C.'s garage, in his possession, & under his control. On Aug. 9, 1935, C. let the car on hire under a further hire-purchase agreement to deft., who took it in good faith & without notice of the transaction between C. & T. In an action by pltf. co. to recover the car from deft. :—*Held :* C., having sold the car to pltf. co., had continued in possession of it within sect. 8 of Factors Act, 1889 (c. 45), with the result that the delivery or transfer by C. of the car to deft. had the same effect as if C. had been expressly authorised by pltf. co. to make the same, & pltf. co. could not, therefore, succeed in the action.—UNION TRANSPORT FINANCE, LTD. *v.* BALLARDIE, [1937] 1 K. B. 510; [1937] 1 All E. R. 420; 106 L. J. K. B. 268; 156 L. T. 142; 53 T. L. R. 240; 81 Sol. Jo. 159.

Part VI.—Performance of the Contract.

1476. *Add. Annotation ;*—**Consd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1516. *Add. Annotation :—As to* (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

1569. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

1577. *Add. Annotation :*—**Consd.** Ellis *v.* Noakes, n.

1585. *Add. Annotation :*—**Refd.** The Arpad, [1934] P. 189.

1613. *Add. Annotation :*—**Consd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

1619. *Add. Annotation :*—**Refd.** Monroe Bros., Ltd. *v.* Ryan, [1935] 2 K. B. 28.

1677. *Add. Annotations :—As to* (1) **Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330 ; Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1678a. Right to compensation—Option not to ship goods—Short delivery.]—By a printed form of contract for the sale of timber it was provided that " In the event of under-shipment of any item buyers are to accept . . . the quantity shipped, but have the right to claim compensation for such short shipment." This form of contract was used for a contract for sale of timber for shipment from a port in the Arctic Circle which is open for shipping only for about 21 days in the year. The details of the particular contract were added to the printed form in typewriting & a clause was also added which provided that the goods were " sold subject to shipment : any goods not shipped to be cancelled." In a claim for damages for short delivery :—*Held :* the contract gave to the sellers an option whether or not they would ship any timber, but once shipped the sellers were obliged to supply the timber in fulfilment of the contract. If, however, the full quantity of timber was not shipped, the buyers could not recover damages for short delivery.—HOLLIS BROS. & CO., LTD. *v.* WHITE SEA TIMBER TRUST, LTD., [1936] 3 All E. R. 895 ; 80 Sol. Jo. 934.

1682a. ——.]—GABRIEL, WADE & ENGLISH, LTD. *v.* ARCOS, LTD. (1929), 73 Sol. Jo. 483.

1686a. —— ——.]—TAMVACO *v.* LUCAS (1859), 1 E. & E. 581, 592 ; 120 E. R. 1027, 1032 ; *sub nom.* TANVACO *v.* LUCAS, 28 L. J. Q. B. 150, 301 ; 1 L. T. 161 ; 5 Jur. N. S. 731, 1258 ; 7 W. R. 568.

Annotations :—**Consd.** Shipton, Anderson & Co. *v.* Weil Bros. & Co., [1912] 1 K. B. 574. **Refd.** Ireland *v.* Livingston (1866), L. R. 2 Q. B. 99.

1728a. —— Provision in contract that each item should be considered separately.]—A contract for the sale of timber contained a clause dealing with allowances for overshipment & undershipment, concluding with the words " each item of this contract to be considered a separate interest." The buyer rejected the whole of the goods on the ground that part of them did not comply with the contract specification :—*Held :* the stipulation that each item was to be treated as a separate unit was only applicable to disputes with respect to quantity, & as part of the goods were defective in quality, the buyer was entitled to reject the whole, in accordance with Sale of Goods Act, 1893 (c. 71), s. 30 (3).—RAAHE O/Y OSAKEYTIO *v.* GODDARD (1935), 154 L. T. 124 ; 80 Sol. Jo. 93.

1745a. Agreement to cancel future instalments—In consideration of payments by buyer—Buyer ignorant that goods not corresponding with description—Rights of parties.]—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, No. 645a, *ante.*

1746. *Add. Annotation :*—**Consd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

1747. *Add. Annotations :*—**Consd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

1762a. Goods not complying with statutory requirements.]—The main tests to be considered in applying sect. 31 (2) are, first, the quantitative ratio which the breach bears to the contract as a whole, &, secondly, the degree of probability that such a breach will be repeated.

A contract in writing was entered into between pltfs. & defts. for the sale by the former to the latter of 100 tons of rag flock to be delivered in three loads of 1½ tons each per week as required, & the weekly deliveries to be separately paid for, it being stipulated that there should be a written guarantee that all flock supplied should conform to Govt. standard. By statute the Govt. standard was that of not more than 30 parts of chlorine in 100,000 parts of flock, & it was made a penal offence to use flock not conforming thereto. The sixteenth load

PART VI. SECT. 1, SUB-SECT. 2.

1476 v. ——.]—WEBB & HENDERSON *v.* CUPPLES, [1928] S. R. Q. 316.—AUS.

PART VI. SECT. 1, SUB-SECT. 3.

1498 iii. —— *C.i.f. contract.*]—Under a c.i.f. contract providing for payment against documents the purchaser is under no obligation to take up documents that do not in fact relate to goods of the description contracted for, & a refusal to take up a draft does not necessarily prove that the buyer was not ready & willing to perform the contract.—HENRY DEAN & SONS (SYDNEY), LTD. *v.* P. O'DAY PROPRIETARY, LTD. (1927), 39 C. L. R. 330 ; [1927] Argus L. R. 233.—AUS.

sg. *Repudiation—Any ground may be relied upon.*]—In a suit for damages for breach, by repudiation, of a contract for the sale of goods, deft. can rely upon any ground for repudiation which existed when he repudiated ; he is not confined to the ground which he then stated.—SIVAYYA *v.* RANGANAYAKULU (1935), I. L. R. 58 Mad. 670, P. C.—IND.

PART VI. SECT. 2, SUB-SECT. 9.—B.

f i. ——.]—THOMPSON & ALIX, LTD. *v.* SMITH, [1933] S. C. R. 172 ; 2 D. L. R. 214.—CAN.

PART VI. SECT. 2, SUB-SECT. 9.—D.

sm. *Refusal to take one instalment—[Whether repudiation or severable breach.]*—THOMPSON & ALIX, LTD. *v.* SMITH (1929), 1 M. P. R. 510.—CAN.

sp. *Refusal to call for delivery—Vendor's right to rescind.*]—When a contract for the sale of goods relates to the purchase of buyer's total requirements in instalments at stated times, but in uncertain quantities, the buyer's refusal to call for delivery amounts to renunciation & seller may treat the contract as at an end.—LANDREVILLE *v.* GRAHAM NAIL CO., [1934] 4 D. L. R. 681 ; O. R. 752.—CAN.

delivered was duly accepted & used, &, after two further loads had been delivered, defts. notified pltfs. that a sample drawn from the sixteenth load had been analysed & showed a contamination of 250 parts of chlorine, & defts. claimed to rescind the contract. During ensuing negotiations two more deliveries were taken, but defts. adhered to their claim to rescind & refused to accept any further deliveries. Pltfs. thereupon brought an action against defts. for damages for breach of contract by the latter in so refusing. Defts. alleged, in defence, that pltfs. by making the defective delivery had repudiated the whole contract, whereby defts. were not obliged to accept further deliveries. It was found at the trial that pltfs.' business was well conducted, & that the contamination complained of by defts. was extraordinary:—*Held:* in these circumstances pltfs.' breach of the contract was not, within Sale of Goods Act, 1893 (c. 71), s. 31 (2), a repudiation of the whole contract, that defts.' refusal of further deliveries was a breach by them of the contract, & pltfs. were entitled to judgment on their claim in the action.—MAPLE FLOCK CO., LTD. *v.* UNIVERSAL FURNITURE PRODUCTS (WEMBLEY), LTD., [1934] 1 K. B. 148; 103 L. J. K. B. 513; 150 L. T. 69; 50 T. L. R. 58; 39 Com. Cas. 89, C. A.

1765. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

1766. *Add. Annotation:*—**Refd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

1769. *Add. Annotations:* —**Consd.** Robert (A.) Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

1769a. —— **Notwithstanding agreement that each instalment separate contract — Goods not corresponding with description.**]—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, No. 645a, *ante*.

1801. *Add. Annotations:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

1811. *Add. Annotation:*—**Refd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

1812. *Add. Annotation:*—*As to* (2) **Consd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

1812a. —— —— **Shipment of goods before contract—Ship visiting other ports before issue of bill of lading.**]—A contract, dated July 2, provided for the sale of frozen rabbits & their shipment from Sydney c.i.f. Liverpool by a named steamer to sail during Aug. The bill of lading, which was dated Aug. 17, stated that the goods had been shipped by the steamer, then lying in Sydney. The steamer shipped the goods, or the bulk of them, at Sydney on June 25, when she proceeded to Queensland ports, thereafter returning to Sydney, & finally sailing from that port for Liverpool on Aug. 17. The buyers declined to take delivery of the goods, & the sellers claimed damages from them for breach of contract:—*Held:* the sellers were not entitled to recover, inasmuch as they had themselves committed breaches of the contract, by supplying goods the shipment of which had already taken place before the date of the contract of sale, & by tendering a bill of lading the issue of which had been delayed for so long as seven weeks after the shipment, the steamer having in the meantime visited other ports several hundred miles from the port of shipment.—FOREMAN & ELLAMS, LTD. *v.* BLACKBURN, [1928] 2 K. B. 60; 97 L. J. K. B. 355; 139 L. T. 68; 33 Com. Cas. 359; 17 Asp. M. L. C. 461.

1813. *Add. Annotation:*—**Refd.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong (1928), 98 L. J. K. B. 251.

1814a. —— —— **Date of shipment incorrectly stated.**]—The seller under a c.i.f. contract tendered to the buyer a bill of lading which stated, not fraudulently, but contrary to the fact, that the shipment had taken place in the contract month. Being unaware of this fact at the time of the tender, the buyer accepted the shipment, & entered into sub-contracts for the sale of a portion of the goods, those sub-contracts containing a clause that "the bill or bills of lading shall be conclusive evidence of the date of shipment." The sub-purchasers refused to take delivery, alleging that the shipment had not been made during the contract month. The buyer under the original contract having then ascertained that the goods had not been shipped during the contract month:—*Held:* (1) he was entitled to damages for the breach by the seller of his obligation to deliver a bill of lading stating the date of shipment correctly, the measure of damages being the difference between the market price & the contract price of the goods; (2) the buyer was not bound to enforce, for the purpose of minimising the damages, the contracts with the sub-purchasers, as to do so, after he knew that the shipment date was incorrect, might seriously injure his commercial reputation.—FINLAY (JAMES) & CO. *v.* N. V. KWIK HOO TONG H. M., [1929] 1 K. B. 400; 98 L. J. K. B. 251; 140 L. T. 389; 45 T. L. R. 149; 34 Com. Cas. 143; 17 Asp. M. L. C. 566, C. A.

Annotations:—As to (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48. *As to* (2) **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal, [1932] A. C. 452; The Edison (1932), 147 L. T. 141.

1815. *Add. Annotation:*—*As to* (2) **Refd.** The Njegos, [1936] P. 90.

1816. *Add. Annotations:*—**Refd.** De Monchy *v.* Phœnix Insce. of Hartford (1928), 138 L. T. 703; Tredegar *v.* Harwood, [1928] Ch. 59.

1850. *Add. Annotation:*—**Refd.** De Monchy *v.* Phœnix Insce. of Hartford (1928), 138 L. T. 703.

PART VI. SECT. 2, SUB-SECT. 11.—B.

1828 i. *Irregularity in documents—Invoice—C.i.f. contract.*]—*Semble:* the office of the invoice in a c.i.f. contract is to show how the amount of the draft for the contract goods is arrived at, & provided it makes that clear, the fact that there is on the face of the invoice matter not in accordance with the contract does not justify the buyer in refusing to accept the usual shipping documents, nor in itself does it amount to a breach by the seller of his obligation to tender such valid & effectual shipping documents as are contemplated by the contract or as are usual.—SAMUEL MCCAUSLAND, LTD. *v.* RAILTON, [1931] V. L. R. 247.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.

sp. *Retention of goods—With knowledge of mistake by vendor—Acceptance implied.*]—ACKERMAN *v.* MORRISON (1911), 45 N. S. R. 185; 9 E. L. R. 307.—**CAN.**

1858. *Add. Annotation:*—**Distd.** Aronson *v.* Mologa Holzindustrie A/G Leningrad (1927), 138 L. T. 470.

1870. *Add. Annotation:—As to* (1) **Reld.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

1887a. ——.]—MONTAGUE L. MEYER, LTD. *v.* OSAKEYHTIO CARELIA TIMBER CO., LTD., No. 622a, *ante*.

1887b. ——.]—Applts. were an English co. which sold Russian Govt. goods in this country. Under contracts made in 1929 they agreed to sell to resps. certain Russian redwood & whitewood staves of specified dimensions. Resps. alleged that the goods delivered did not satisfy the description as to measurement & the matter was referred to arbn. pursuant to the terms of the contract. The arbitrator found, in effect, that the staves which under the contract description were to be of the thickness of half an inch, when received, exceeded half an inch in thickness & were, at shipment, also in excess of that measure, though not to the same extent; but he held that the staves, when shipped, were commercially within & merchantable under the contract specification & that were not entitled to reject the goods. The award being in the form of a special case came before WRIGHT, J., who held that the difference in the sizes was not of such a trivial character as to justify it being disregarded by the ct., & the finding as to measurement showed that the goods were not those contracted to be sold, & it was those goods, & not their commercial equivalent, that resps. were entitled to demand. The Ct. of Appeal confirmed that view. Sale of Goods Act, 1893 (c. 71), s. 13, provides that where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description:—*Held:* the fact that the goods were merchantable under the contracts was no test proper to be applied in determining whether the goods satisfied the contract description: the use of the word "commercially" itself showed that, while the goods did not in fact answer the description, they could, as a matter of commerce, be so dealt with, but the rights of resps. under the contracts were not so limited.—ARCOS, LTD. *v.* RONAASEN (E. A.) & SON, [1933] A. C. 470; 102 L. J. K. B. 346; 149 L. T. 98; 49 T. L. R. 231; 77 Sol. Jo. 99; 38 Com. Cas. 166, H. L.; *affg.* S. C. *sub nom.* RONAASEN (E. A.) & SON *v.* ARCOS, LTD. (1932), 48 T. L. R. 356, C. A.

1887c. —— **Goods to be carried "under deck"—Carriage as deck cargo.**]—A contract for the sale of wood strips of sizes & quantities as specified, to be shipped from Archangel, contained a condition that the whole was to be shipped under deck & a clause providing that "buyers shall not reject the goods herein specified but shall accept or pay for them in terms of contract against shipping documents." About a quarter of the whole was shipped as deck cargo & suffered injury by being so carried, & the rest was carried under deck. The buyers rejected the whole shipment:—*Held:* the words "herein specified" did not refer merely to the part of the contract headed "Specification" but meant "herein described," & part of the description of the goods was that they were to be carried under deck, & as about a quarter of the goods was carried on deck the buyers had the right to reject the whole.—WHITE SEA TIMBER TRUST, LTD. *v.* W. W. NORTH, LTD. (1932), 148 L. T. 263; 49 T. L. R. 142; 77 Sol. Jo. 30; 18 Asp. M. L. C. 367.

Annotation:—**Reld.** Raahe O/Y Osakeytio *v.* Goddard (1935), 154 L. T. 124.

1889. *Add. Annotations:*—**Apld.** Montague L. Meyer, Ltd. *v.* Kivisto (1929), 142 L. T. 480. **Consd.** Montague L. Meyer, Ltd. *v.* Osakeyhtio Carelia Timber Co. (1930), 36 Com. Cas. 17; Green *v.* Arcos, Ltd. (1931), 47 T. L. R. 336. **Distd.** Arcos, Ltd. *v.* Ronaasen & Son (1933), 49 T. L. R. 231.

1895. *Add. Annotation:*—**Reld.** Hillas & Co. Arcos, Ltd. (1932), 147 L. T. 503.

1897. *Add. Annotation:*—**Apld.** Barrow, Lane & Ballard *v.* Phillip, Phillips & Co., [1929] 1 K. B. 574.

1905a. —— **No right to reject goods specified—Wrong quantity tendered.**]—A buyer bought a quantity of timber to be shipped from Russia, the contract providing that at sellers' option the quantity was subject to a variation of 10 per cent. not exceeding twenty standards on any item, & that "buyers shall not reject the goods therein specified, but shall accept or pay for them in terms of contract against shipping documents." When the cargo arrived the buyer found that, after allowing for the permitted variation, in some classes of the timber there had been overshipment, in some classes there had been short shipment, & in some classes there had been no shipment at all. The buyer thereupon rejected the whole of the timber on the ground that the sellers had failed to perform the contract:—*Held:* on a special case stated by an arbitrator, the clause as to rejection could not prevent rejection where the goods tendered were not the goods "specified," &, as the goods tendered were not, in respect of quantity, the goods speci-

PART VI. SECT. 3, SUB-SECT. 2.

1866 i. *Whether implied.*]—SCOTIA FLOUR & FEED CO. *v.* STRONG, [1928] 4 D. L. R. 678; [1928] S. C. R. 319.—CAN.

sq. *Special contract—"Inspection acceptance Winnipeg."*]—SCOTT *v.* ROGERS FRUIT CO., [1928] 1 D. L. R. 201; 37 Man. L. R. 145; [1927] 3 W. W. R. 628.—CAN.

sr. *Nature of right.*]—Where a buyer of a motor car took delivery thereof under a contract which expressly acknowledged acceptance & used the car in the usual course of his business for 10 days it was held that, in the absence of any agreement giving him the right to test the car for that time, it was not possible to hold that he had not accepted it. The reasonable opportunity, given by Sale of Goods Act, R. S. B. C., 1924, s. 40, of examining the goods for the purpose of ascertaining whether they are in conformity with the contract is, in at least an action for rescission, a right of inspection, & not a right to make use of a piece of machinery for an indefinite or any time to test its capacity of performance & perfection of construction.—REEVIE *v.* WHITE CO., LTD. (B. C.), [1929] 4 D. L. R. 296; 3 W. W. R. 33.—CAN.

PART VI. SECT. 3, SUB-SECT. 3.—B. (a).

1887 vii. ——.]—WENTWORTH ORCHARD CO., LTD. *v.* MERCHANTS CONLTD. (Man.), [1[illegible] W. W. R. 291; 68 D. L. R. 227.—CAN.

1887 viii. ——.]—CANADIAN INTERNATIONAL PAPER CO. *v.* SOPER, [1931] 3 D. L. R. 801; S. C. R. 718.—CAN.

r i. —— *Sale of "stack branded" or "stack graded" goods—Brand marks matter of identification not description.*]—NEW ZEALAND LOAN & MERCANTILE AGENCY CO., LTD. *v.* WRIGHT STEPHENSON & CO., LTD., [1930] N. Z. L. R. 630.—N.Z.

fied, the clause did not apply, & the buyer was entitled to reject.—GREEN *v.* ARCOS, [illegible]. (1931), 47 T. L. R. 336, C. A.

49 T. L. R. 231. Ltd. *v.* Ronaasen & Son (1933),

1923. *Add. Annotations :—As to* (1) **Consd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148. *As to* (2) **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

Part VII.—Rights of Unpaid Seller Against Goods.

2059. *Add. Annotation :*—**Refd.** The Rehearo (1933), 49 T. L. R. 559.

2164. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2169. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2171. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2218a. —— —— **Goods sold "free house, London."**]—Napier Bros. having ordered goods from plts. these were dispatched from Hamburg to London by steamer. According to the confirmation of the order the terms of the contract were "Free house, London." The goods arrived in London & defts., the carriers, were instructed by Napier Bros. on Jan. 14 to warehouse them at the dock. On Jan. 18 Napier Bros. executed a deed of arrangement with their creditors. It was contended that by the terms of the contract the transit did not end until the goods reached the warehouse of Napier Bros., & that therefore a stoppage *in transitu* on Jan. 18, was in order :—*Held* the transit terminated as soon as the carriers warehoused the goods on behalf of Napier Bros., & the words "Free house, London," did not necessarily mean that the goods were in transit until they reached the premises of Napier Bros. in London.—PLISCHKE & SOHNE G.m.b.H. *v.* ALLISON BROS., LTD., [1936] 2 All E. R. 1009.

2384. *Add. Annotation :*—**Apld.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

After this case add :—"As regards hire-purchase agreements generally, *see* BAILMENT, Vol. III., p. 96, Nos. 257, 258."

2388. *Add. Annotation :*—**Distd.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

Part VIII.—Breach of the Contract.

2390. *Add. Annotation :—As to* (1) **Consd.** Calico Printers' Association, Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

2421a. —— ——.]—Pltfs. sold two second-hand motor lorries to defts. for £475, as to £250 of which they were to be paid in cash, & as to £225 of which they were to receive in part-exchange two other lorries, provided that the latter were delivered within a month. The cash was paid, but the purchaser failed to deliver the lorries :—*Held :* this was an entire contract of sale, in which defts. had a right to discharge £225 of the purchase price by the delivery of the lorries within a month; but upon their failure to do so, pltfs. were entitled to sue for the remainder of the purchase price as a debt due. Pltfs.' remedy in such a case is not an action of detinue for the detention of the lorries, but an action for the balance of the purchase price.—DAWSON (CLAPHAM), LTD. *v.* DUTFIELD, [1936] 2 All E. R. 232.

2424. *Add. Annotation :*—**Refd.** Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204.

2427. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2473. *Add. Citation :—revsg.* S. C. *sub nom.* STEWARDS & CO., LTD. *v.* R. (1900), 17 T. L. R. 111, C. A.

[illegible] 3, SU
D. (b) 1.

st. *Execution of chattel mortgage on goods.*]—METALS, LTD. *v.* DIAMOND, [1930] 3 D. L. R. 886.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.—C. (a).

r 1. ——.]—E. who had been for some time selling & delivering carcasses of beef for cash to a meat co., delivered four carcasses at the co.'s shop, whereupon the manager who was then busy asked him to call back for his cheque. The seller thereupon left the shop & came back a few hours later for the cheque, but in the meantime a garnishee order had been served on the manager by a creditor of the seller :—*Held :* by his conduct the seller had agreed to give credit to the buyer.—COUPLAND *v.* ELMORE, [1928] 2 D. L. R. 308; [1928] 1 W. W. R. [illegible]

PART VI. SECT. 4, SUB-SECT. 6.—G.

sv. *Right of holder to follow proceeds of goods.*]—LEIGH *v.* ADAMS, WOOD & LTD., & O'NEIL, [1931] 1 W. W. R. 686; [1931] 2 D. L. R. 595; 25 Alta. L. R. 341.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 11.—A.

2014 ii. —— —— ——.]—CLARKE BROS. & CO. *v.* LAWRENCE, [1931] 1 W. W. R. 252; 2 D. L. R. 503.—**CAN.**

PART VIII. SECT. 1.

sd. *Repudiation—Grounds for—What may be relied upon.*]—In a suit for damages, for breach, by repudiation of a contract for the sale of goods, deft. can only rely upon any ground for repudiation which existed when he repudiated; he is not confined to the ground which he then stated.—NUNE SIVAYYA *v.* MADDU RANGANAYAKULU (1935), L. R. 62 Ind. App. 89.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 1.—A.

sg. *Payment of price dependent on performance of term—Performance prevented by buyer.*]—Where the buyer prevents the seller from performing a term of a contract of sale upon which depends the payment of the price, then the seller is excused from performing the term, or, in other words, the seller is deemed to have performed the term.—EAST ASIATIC CO., LTD. *v.* HANSEN, [1933] N. L. R. 297.—**S. AF.**

sj. *No right of repossession.*]—The vendor in an unconditional contract has no right of repossession, but an action for goods sold & delivered only.—CONWAY *v.* CAMPBELL, [1935] 3 D. L. R. 696; 10 M. P. R. 223.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—E. (a).

2445 i. *Effect of joinder of claims.*]—WETTLAUFER BROS., LTD. *v.* ROBERT ELDER CARRIAGE WORKS, LTD., ROBERT ELDER CARRIAGE WORKS, LTD. *v.* SNOW MOTORS INCORPORATED, [1928] S. C. R. 580.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

h i. —— *Shipment f.o.b.*]—VIPOND *v.* SISCO (1913), 29 O. L. R. 200; 4 O. W. N. 1498.—**CAN.**

2486. *Add. Annotation :*—**Refd.** The Njegos, [1936] P. 90.

2487. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2488. *Add. Annotation :*—**Refd.** Siveyer *v.* Allison, [1935] 2 K. B. 403.

2493a. ——[illegible]——.]—STURGE *v.* PHILPOTTS (1839), 8 L. T. 30.

2496. *Add. Annotation :—As to* (3) **Consd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

2501. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

2515. *Add. Annotation :*—**Refd.** Kroch *v.* Rossell et Compagnie Société des Personnes à Responsibilité, Ltd., [1937] 1 All E. R. 725.

2516a. Right to repurchase or resell on default—Agreement to give notice—Effect of repurchase without notice.]—By certain contracts for the sale of wheat it was provided by clause 5 : " In default of fulfilment of contract by either party, the other, at his discretion, shall, after giving notice by letter or telegram, have the right of re-sale or repurchase, as the case may be, & the defaulter shall make good the loss, if any, on such repurchase or re-sale on demand. In case either party shall suspend payment, he shall be deemed to be in default, & the other party shall after giving notice by letter or telegram to the defaulting party, & notwithstanding any bkpcy. or liquidation, be entitled immediately to re-sell or re-purchase, as the case may be, & shall also be entitled to be paid, or to prove in any bkpcy., liquidation or otherwise, for the loss, if any, or shall account for the profit, if any, occasioned by such re-sale or repurchase." Before the arrival of the first of the ships which were carrying the parcels appropriated to the various contracts, the sellers suspended payment. The buyers becoming aware of this, proceeded to buy wheat of the description which they were expecting to get under their contracts with the sellers, in order to have wheat to deliver in fulfilment of the contracts which they had made. No notice of any kind was given to the sellers of such purchases. The liquidator of the sellers claimed against the buyers the difference between the price payable under the contracts between the sellers & the buyers & the price at which the buyers purchased the wheat of similar quality & quantity :—*Held :* in the event of suspension of payment by one party, the party not in default had an option either to wait until the time for fulfilment of the contract & exercise his common law rights in respect of the default of fulfilment or to proceed under clause 5, & re-sell or re-purchase as the case might be. In order to proceed under this clause, he must give the notice required by the clause & he would be under a liability to account; the buyers, having given no notice, had not proceeded under clause 5, & were not liable to account to the sellers.—SHIPTON, ANDERSON & Co. (1927), LTD. *v.* MICKS, LAMBERT & Co., [1936] 2 All E. R. 1032.

2519a. —— —— ——.]—Applts., pltfs. in the action, contracted to supply defts. with a machine which would do certain specified work to the satisfaction of defts. Pltfs. delivered a machine in pursuance of the contract, but it was not satisfactory ; & after pltfs. had made several unsuccessful efforts to remedy its defects defts. rejected it. Pltfs. contended that the failure of the machine to give satisfaction was owing to improper user by defts., & defts. contended that it was due to negligence or lack of skill on the part of pltfs. Defts. had paid £350 on account of the price of the machine, & pltfs. brought this action to recover the balance of the price ; defts. counterclaimed for the return of their £350 & for certain expenses incurred by them in obtaining other machinery & in respect of other matters. The contract contained a guarantee by pltfs. to replace defective parts or make good defective workmanship, & added : " We do not give any other guarantee & we do not accept responsibility for consequential damages " ; & pltfs. contended that by the latter clause they were relieved from liability for any damages caused to defts. by the fact that they had supplied a machine which was not in accordance with the contract :—*Held :* on the facts, the machine supplied by pltfs. was not in accordance with the contract & defts. were justified in rejecting it ; & upon a true construction of the guarantee clause pltfs. were not relieved from the obligation to pay damages arising directly & naturally from their breach of contract. Pltfs. appealed, & the ct. dismissed the appeal, holding that the damages claimed by defts. were the direct result of pltfs.' breach of contract.—MILLAR'S MACHINERY Co., LTD. *v.* WAY & SON (1935), 40 Com. Cas. 204, C. A.

2519b. Failure of seller to deliver correct bill of lading — Measure of damages.] — JAMES FINLAY & Co. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, No. 1814a, *ante*.

PART VIII. SECT. 2, SUB-SECT. 2.—C. (a).

2490 xiv. ——.]—In an action for damages for breach of a contract to purchase a new motor car :—*Held :* the damages recoverable were those provided for under sect. 49 of Sale of Goods Act, R. S. M., 1913, *i.e.*, those which had directly & naturally resulted from the breach of the contract, which in this instance were held to be the difference between the wholesale & the retail price.—BROWN *v.* BUCK, [1934] 2 W. W. R. 561 ; 4 D. L. R. 446 ; 42 Man. L. R. 336.—**CAN.**

2501 i. —— *No available market.*]—Where a purchaser of a motor-truck chassis from a dealer refused to accept delivery of the motor-truck, which was then re-sold at a profit, there being evidence that similar motor-trucks were available for immediate delivery, & the property not having passed :—*Held :* the seller was entitled to retain the profit on re-sale, & also to damages for loss of profit on the original sale. It cannot be said that an available market for a particular make of motor chassis within Sale of Goods Act, 1895, s. 49 (3), exists in South Australia.—CAMERON *v.* CAMPBELL & WORTHINGTON, LTD., [1930] S. A. S. R. 402.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.

st. *Contract in breach of duty to employer.*]—The mere fact that an employee who has contracted to give all his working time to his employer's business & not to deal personally in any kind of goods dealt in by the employer is guilty of a breach of duty in entering into a personal contract with a third party for the purchase of goods of such a kind does not disentitle him to recover damages for breach of the contract.—MADDISON *v.* DONALD H. BAIN, LTD., [1929] 1 D. L. R. 843 ; 1 W. W. R. 437 ; 40 B. C. R. 499 ; *affd.*, [1930] S. C. R. 299 ; 1 D. L. R. 63.—**CAN.**

sv. *Failure of buyer to complete—No right to deposit.*]—In the absence of fraud, the purchaser of a car, who fails to carry out his contract, cannot recover from the vendor the value of an old car taken as deposit.—GIBSON *v.* FOWNES, LTD., [1936] 1 D. L. R. 363.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

t i. ——.]—ROBINSON (E. S. & A.), LTD. *v.* WAYAGAMACK PULP & PAPER Co., [1930] 1 D. L. R. 369.—**CAN.**

2522a. Action for recovery of purchase price—Attempt to obtain goods by false pretences.]—Pltf., who was formerly a member of a tobacco assocn. but had been placed on its stop-list for breach of its rules & was therefore unable to obtain supplies of cigarettes from any of its members, arranged with R., who was a member of the assocn., that R. should order in his own name from defts., who were wholesale members of the assocn., a supply of cigarettes which pltf. required. Accordingly, R. having ordered the cigarettes, S., one of pltf.'s assistants, accompanied by one of R.'s representatives, attended at defts.' premises to receive the cigarettes & to pay the money for them. S. paid the money, but defts., having doubts as to the *bona fides* of the transaction, refused either to deliver the cigarettes or return the purchase money. Pltf. thereupon brought the present action for the recovery of the money. MACNAGHTEN, J., by whom the action was tried, dismissed it on the ground that pltf. had been guilty of an attempt to obtain goods by false pretences & that the ct. would not assist him to recover the money. On appeal:—*Held:* to succeed in his action for money had & received pltf. must prove the exact circumstances in which the money was paid & the circumstances which he said entitled him on ground of justice to have an order for repayment; if he proceeded to that proof he could only establish his claim by proving facts which showed that he was engaged in a criminal attempt to obtain goods by false pretences; & the ct. on well-established principles would refuse to give its aid to any claim which could only be established by proving facts of that nature.—BERG *v.* SADLER & MOORE, [1937] 2 K. B. 158; [1937] 1 All E. R. 637; 106 L. J. K. B. 593; 156 L. T. 334; 53 T. L. R. 430; 81 Sol. Jo. 158; 42 Com. Cas. 228, C. A.

Annotation:—**Refd.** Briggs *v.* Parsloe, [1937] 3 All E. R. 831.

2542. *Add. Annotation:*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2547. *Add. Annotation:*—*As to* (1) **Consd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

2552a. Sample not of specified dimensions—A contract for the sale of timber provided that the sale was "subject to a sample quantity" of about fifty logs to be cut in specified thicknesses. The samples delivered were of the contract quality, but not of the specified dimensions. The buyer complained, & the seller thereupon refused to deliver the bulk:—*Held:* the object of the sample was to show quality, & if that were satisfactory, the seller could not refuse to deliver the bulk, notwithstanding that the buyer was claiming damages in respect of the incorrect dimensions of the sample.—SAXTON *v.* NICHOLSON & CO., LTD. (1935), 154 L. T. 149; 80 Sol. Jo. 93.

2557. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2567. *Add. Annotation:*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

2569. *Add. Annotations:*—**Distd.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; The Arpad (1934), 50 T. L. R. 505.

2570. *Add. Annotations:*—*As to* (1) **Refd.** The Njegos, [1936] P. 90. *As to* (2) **Consd.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400; The Arpad (1934), 50 T. L. R. 505. **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2571. *Add. Annotations:*—**Consd.** Finlay (James) & Co., Ltd. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400, C. A.; The Arpad (1934), 50 T. L. R. 505. **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2574. *Add. Annotation:*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

2575. *Add. Citations:*—97 L. J. K. B. 60; 33 Com. Cas. 60.

Add. Annotation:—**Refd.** The Arpad (1934), 50 T. L. R. 505.

2583. *Add. Annotation:*—*Generally*, **Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

2585. *Add. Annotation:*—*As to* (1) **Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2588. *Add. Annotation:*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

2590. *Add. Annotations:*—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** Kasler & Cohen *v.* Slavouski, [1928] 1 K. B. 78; The Edison, [1932] P. 52.

2612. For existing para. substitute:—

On Nov. 3, 1925, defts., Messrs. P., sold to pltfs., Messrs. H., an unascertained cargo of Australian wheat of the quality & description & at the price stated in the contract for Dec. or Jan. shipment. Messrs. H., without waiting to receive the cargo, resold it to buyers on the same terms except as to price. There were further subsales in a chain of string contracts. By subsequent nomination, Messrs. P., in Jan. 1926, nominated the steamship *I.* as the ship which was containing the cargo, the subject of the contract of Nov. 3, 1925. Messrs. P. (the sellers) had in their hands the documents of the cargo of the steamship *I.*, & could have delivered them to their purchasers &, although they knew that their purchasers had resold the

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PART VIII. SECT. 3, SUB-SECT. 2.—B. (a).

sv. *Sale of fishing tackle—No licence to fish—Failure of seller to procure licence.*]—To a claim for damages for delay in the delivery of fishing-net equipments sold by pltf. to deft. the seller set up the defence that the buyer had no licence to fish on the days for which he claimed damages:—*Held:* since the seller had undertaken to obtain the licence for the buyer & had neglected to do so for several months, he could not rely on its absence as a defence, unless the buyer was guilty of wrongdoing of a character which the ct. could not overlook.—JONASSON *v.* DUBINAK, [1928] 3 D. L. R. 501; [1928] 2 W. W. R. 588; 37 Man. L. R. 430.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

sw. *Self-elected measure.*]—BURKARD & Co., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—AUS.

PART VIII. SECT. 3, SUB-SECT. 2.—C. (c).

d (p. 677) **i.** ——— *Not necessarily market value at place of delivery.*]—The place stipulated for the delivery of goods sold does not fix the locality of the relevant market for the purpose of estimating the damages for failure to deliver, although it may involve an adjustment of the market price.—MACKAY *v.* KAMESHWAR SINGH (1932), L. R. 59 Ind. App. 399, P. C.—IND.

cargo, they broke their contract & refused to deliver the documents to their purchasers. The breach of contract was admitted, the only question being with regard to the measure of damages. The matter went to arbn., & the arbitrators stated that they were " unable to find that it was in the contemplation of the parties or ought to have been in the contemplation of Messrs. P. at that time (*i.e.* the date of the contract), that the cargo would be resold, or was likely to be resold before delivery; in fact, the chances of its being resold as a cargo & of its being taken delivery of by Messrs. H. were about equal." There was evidence before the arbitrators that Messrs. H., the purchasers, carried on a trade in which they used themselves about half of the cargoes which they bought & resold the remainder: —*Held:* (1) that the contract which was not merely for the sale of corn in bulk, but for the sale of the cargo of an individual ship was effectively made on Nov. 3, 1925. That contract & the conditions which it incorporated showed that it was contemplated that the cargo might be passed on by way of subsale if the buyer did not choose to keep it for himself, & that the seller, in such a case, contracted to put the buyer in a position to fulfil his sub-contracts if he entered into them. Whether the latter was likely to enter into such sub-contracts & pass the cargo down a chain of resales was not material. It was enough that the contract contemplated by its terms that he should have the right to do so if he chose; (2) a breach having been admitted, the measure of damages was not merely the amount of damage measured by loss in the market which arose in the ordinary course of business from the breach. It extended, whenever the special circumstances required this, to such possible damages as might reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.—*Re* HALL (R. & H.), LTD. & PIM (W. H.) JUNIOR & CO.'S ARBITRATION (1928), 139 L. T. 50; 33 Com. Cas. 324; 30 Ll. L. Rep. 159, H. L.

Annotations:—As to (1) **Consd.** Finlay & Co., Ltd. *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400; The Arpad (1934), 50 T. L. R. 505. **Refd.** The York, [1929] P. 178; Foscolo Mango & Co., Ltd. *v.* Stag Line, Ltd., [1931] 2 K. B. 48, C. A. *As to* (2) **Consd.** Patrick *v.* Russo-British Grain Export Co., Ltd., [1927] 2 K. B. 535.

2618. *Add. Annotation:*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

2644. *Add. Citation:*—[1927] B. & C. R. 140. *Add Annotation:—As to* (2) **Apld. Shell-Mex** *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2657. *Add. Annotations:—As to* (1) **Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n. *Generally,* **Refd.** Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

2672. *Add. Annotation:*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

2673. *Add. Annotations:*—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

2676. *Add. Annotation:*—**Refd.** Churchill & Sim *v.* Goddard, [1937] 1 K. B. 92.

2684. *Add. Annotation:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2687. *Add. Citation:*—138 L. T. 470.

2699a. —— **Loss of freight—C.i.f. contract—Policy not in accordance with contract—Refusal of insurer to pay.**]—A quantity of copra was sold for shipment from Australasia to London on the terms of cost, freight, & insurance, & the contract provided: " Insurance including war risk on free from particular average terms to be effected by sellers at the contract price plus 5 per cent. on the net shipping weight. . . . Such insurance to cover the copra until delivered in the ordinary course of transit into warehouse at the port of destination." In policies taken out by the sellers the goods & the freight were valued separately, & there was a " freight contingency clause," as follows: " On freight payable at destination . . . being increased value of copra through payment of freight or from such time as freight becomes due at destination, this insurance being deemed to be part of the total amount insured on the copra valued at such total amount." By the bill of lading the freight was payable only if the vessel arrived at the place of destination. The vessel took fire on the voyage & with her cargo became a total loss. The insurance co. paid to the buyers the insurance on the goods, but refused to pay the insurance on the freight on the ground that it had never become covered. The buyers then claimed damages from the sellers on the ground that the policies did not comply with the contract:— LODERS & NUCOLINE, LTD. *v.* BANK OF NEW ZEALAND (1929), 45 T. L. R. 203.

2701. *Add. Annotation:*—**Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

PART VIII. SECT. 3, SUB-SECT. 3.

2643 1. —— *Property in goods not passed — Growing timber.*]—*Re* WESTERN CANADA PULPWOOD & LUMBER CO., LTD., NEWTON *v.* MANITOBA PULP & PAPER CO., LTD., [1929] 4 D. L. R. 337; 3 W. W. R. 81; 38 Man. L. R. 351; 11 C. B. R. 28; *affd.*, [1929] 3 W. W. R. 544; [1930] 1 D. L. R. 652; 38 Man. L. R. 378; 11 C. B. R. 125.—CAN.

PART VIII. SECT. 3, SUB-SECT. 4.

2656 1. *Whether granted—Where specific performance would not be decreed.*]—The ct. will not grant an injunction to restrain the breach of a contract for the sale & delivery of future chattels, expressed in an affirmative form, even though the contract so expressed involves a negative in substance, in a case where damages would be a complete remedy, where the contract is of such a nature that it cannot be specifically enforced, & where payment for the goods in question has not been made.—WOOD *v.* CORRIGAN (1928), 28 S. R. N. S. W. 492; 45 N. S. W. W. N. 134.—AUS.

Part IX.—Misrepresentation and Fraud.

2719. *Add. Annotations :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47; Cruse *v.* Mount (1932), 102 L. J. Ch. 74.

2720. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

2723a. ——.]—In June, 1930, resps., pltfs. in the action, made large purchases of Russian timber from applts. The purchases were made in reliance on terms contained in a price list issued by applts., one of the terms being that resps. should not resell the timber at less than certain specified prices. Subsequently resps. discovered that before the date of their purchases applts. had entered into a contract with another party to supply him with timber on terms which were much more favourable than those under which resps. were purchasing, the result being that owing to the competition of that other party in the market resps. were unable to resell their timber. They therefore brought this action claiming damages, firstly, on the ground that applts. had induced them to purchase the timber by falsely representing that they were not granting better terms to any other buyer; & secondly, on the ground that there was an implied term in applts.' contract with resps. that applts. had not previously to entering into that contract done anything which would render that contract ineffective, & that applts. had broken that implied term & had committed a breach of duty in not disclosing the fact to resps. :—*Held :* applts. had induced resps. to purchase the timber by fraudulent misrepresentations, & the appeal must therefore fail.—JEWSON & SONS, LTD. *v.* ARCOS, LTD. (1933), 39 Com. Cas. 59, C. A.

PART IX. SECT. 2, SUB-SECT. 2.

t (p. 687) i. —— —— ——.]—A contract for the sale of goods cannot be rescinded on the ground of an innocent misrepresentation inducing the contract, unless the misrepresentation was such that there is a complete difference in subject-matter between the thing bargained for & that obtained, so as to constitute a failure of consideration.—WATT *v.* WESTHOVEN, [1933] V. L. R. 458; Argus L. R. 448.—**AUS.**

PART X.

n (p. 688) i. —— —— ——.]—To come within the provisions of Bulk Sales Act, R. S. N. S., 1923, a sale must be a sale of an interest in a business or trade in which there is "a stock of goods, wares, & merchandise."—NORRIS *v.* MCKENZIE, [1933] 3 D. L. R. 713; 6 M. P. R. 556.—**CAN.**

e (p. 688) i. —— —— *Sale in ordinary course of business of substantially whole stock-in-trade.*]—A sale of 80 per cent. of the stock of one co. to another held to be a bulk sale.—COMMERCIAL MOTOR BODIES & CARRIAGES, LTD. *v.* PERTH, LTD., [1930] 4 D. L. R. 1010; 66 O. L. R. 209; *affg.*, [1930] 3 D. L. R. 617; 65 O. L. R. 383.—**CAN.**

e (p. 688) ii. —— —— *Seizure under lien note.*]—OGILVIE FLOUR MILLS CO., LTD. *v.* EMPIRE BAKERY, LTD., [1931] 2 W. W. R. 766.—**CAN.**

dd (p. 688) i. —— —— ——.]—PADDON *v.* MCFARLAND & MCFARLAND & GOLDBERG, [1930] 3 W. W. R. 632.—**CAN.**

g (p. 689) i. —— —— —— ——.]—On an interpleader issue resulting from the seizure under execution of a motor truck, the claimant being the seller of the truck under a conditional sale agreement :—*Held :* the description of the chattel in the agreement was sufficient to satisfy the requirements of Conditional Sales Act, R. S. A., 1922, s. 2, although it did not state that the chattel was a motor truck.—O'HANLON *v.* COOKE & HUGHES, [1935] 2 W. W. R. 481; *affd.* [1936] 2 W. W. R. 373; 4 D. L. R. 58; 6 F. L. J. (Can.) 115.—**CAN.**

m (p. 689) i. —— —— —— *Creditor —Who is.*]—Pltf. was held not to be in a position to attach the bulk sale, as he was not a creditor as the result of any contractual relationship between them. The term cannot be extended to include persons who have contingent claims arising out of torts or transactions of a tortious character until the relationship has become really that of debtor & creditor by virtue of a judgment.—COMMERCIAL MOTOR BODIES & CARRIAGES, LTD. *v.* PERTH, LTD., [1930] 4 D. L. R. 1010; 66 O. L. R. 209; *affg.*, [1930] 3 D. L. R. 617; 65 O. L. R. 383.—**CAN.**

q (p. 689) i. —— —— *Landlord.*]—A lease of shop premises contained a proviso that if the term should be taken in execution or attachment, or if the lease should make any assignment for the benefit of creditors or, becoming bkpt. or insolvent, should take the benefit of any Act in force for bkpt. or insolvent debtors, the then current month's rent & the rent for the three months following should immediately become due & payable & the term forfeited & void. During the term, the lessee made a bulk sale of the goods in the shop, & deft. co. was appointed trustee under Bulk Sales Act :—*Held :* the making of a bulk sale did not bring the proviso into operation. Bulk Sales Act, s. 4, makes the Assignments & Preferences Act applicable to the distribution of the bulk sale purchase-money; but the latter Act does not give a landlord a preferential lien for unearned rent.—MORTON *v.* CANADIAN CREDIT MEN'S ASSOCN., [1929] 1 D. L. R. 911; 63 O. L. R. 334; 10 C. B. R. 442.—**CAN.**

q (p. 689) ii. —— —— *On failure to comply with Act.*]—The creation in the Bulk Sales Act of a presumption of fraud on the part of both purchaser & vendor as against the vendor's creditors, indicates a legislative intention to put a sale in bulk made without compliance with that Act in the same category as sales made with an intention to defraud the vendor's creditors. This presumption of fraud has the effect of bringing into play all other statutes passed for the protection of creditors against a fraudulent sale of his goods by a debtor to the prejudice of his creditors, & the right to recover from a fraudulent transferee the proceeds of goods coming into his possession by an invalid transfer, & resold by him, is given by Assignments Act, R. S. N. S., 1928, s. 21 (1).—GARSON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1929] 3 D. L. R. 300; S. C. R. 282; 10 C. B. R. 504; *affg.*, *sub nom. Re* CROUSE, [1928] 2 D. L. R. 985; 60 N. S. R. 214; 10 C. B. R. 123; *affg.*, 8 C. B. R. 576.—**CAN.**

t (p. 689) i. —— —— *Fees.*]—A trustee under Bulk Sales Act, R. S. N. S., 1923, is entitled to a fee of 3 per cent. of the total proceeds of sale, which is to be deducted from the claims of general creditors.—*Re* CRYSTAL SPRINGS MANUFACTURING CO., [1935] 4 D. L. R. 331.—**CAN.**

ll (p. 689) i. —— —— —— ——.]—NATIONAL DISCOUNT CORPN. *v.* FRECH & JACKSON, [1928] 2 D. L. R. 256; 61 O. L. R. 659.—**CAN.**

g (p. 690) i. —— —— *Sufficiency of.*]—The fact that the name of the vendor of a motor car sold under a lien agreement appears on the covering over the spare tire carried at the rear of the car is not a sufficient compliance with sect. 9 of Conditional Sales Act, R. S. S., 1920 (c. 201), as amended by 1928 (c. 81), s. 3.—GLOEDEN *v.* HICKS MOTOR CO., LTD. (Sask.), [1929] 4 D. L. R. 245; 3 W. W. R. 126.—**CAN.**

g (p. 690) ii. —— —— *Non-renewal of—Effect on creditor with notice.*]—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* DEALERS FINANCE CORPN., LTD., [1932] 1 W. W. R. 681.—**CAN.**

k (p. 690) i. —— —— ——.]—Deft. & H. purchased from pltf. a team of horses, to be paid for in weekly instalments. The terms of the bargain were embodied in a document signed by deft. & H. in which they promised to pay at the times stated in a schedule endorsed on the document, & it was provided that "possession of the said property shall not pass until this note is paid in full," & pltf. "has full power to declare the note due & take possession of said property at any time he deems himself unsecure, even before the maturity of this note." Possession was in fact given to the purchasers :—*Held :* the parties did not really intend that possession should be retained by pltf.—HARRIS *v.* TONG, [1930] 3 D. L. R. 32; 65 O. L. R. 133.—**CAN.**

m (p. 690) i. —— —— ——.]—A contract for the erection of a building is not one for the sale of goods but for work & labour, & the owner is not a "purchaser," within Conditional Sales Act, of materials, *e.g.* a refrigeration system, placed in accordance with the contract in the building; &, in any event if the materials are not bought by the contractor until after he has entered into the contract with the owner, the latter is not a "subsequent purchaser."—WELCH *v.* GENERAL REFRIGERATION, LTD., [1930] 2 D. L. R. 672; 42 B. C. R. 107; [1929] 3 W. W. R. 660.—**CAN.**

n (p. 690) i. —— —— *Document giving power to seize goods.*]—A docu-

ment purporting to be a lien note, but made payable to one who did not own the goods on which it was given & had not sold them to the maker of the note, is not a lien note within Conditional Sales Act, but merely an authority to seize & sell the goods in default of payment; &, for the same reasons that a chattel mtgee. cannot buy at the mtge. sale, the holder of the note is not entitled to buy at his sale under the note.—MCCORMICK *v.* HAWORTH (or HARWORTH), [1929] 2 D. L. R. 835; 1 W. W. R. 129; 23 S. L. R. 312.—CAN.

n (p. 690) ii. —— —— ——.]—An agreement for the sale of goods for valuable consideration which gives the seller the right to seize & sell the goods on default by the buyer in making his payments thereunder is not invalid between the immediate parties because of the fact that it is not a conditional sale agreement within Conditional Sales Act. Creditors of the buyer who have had notice of such an agreement are in equity bound by it & their rights are subject to the right of the seller to seize & sell the goods.—HUDSON'S BAY CO. *v.* CAMPBELL, [1933] 3 W. W. R. 289.—CAN.

n (p. 690) iii. —— —— *Exchange between retail dealers.*]—Two retail dealers in motor cars agreed upon an exchange of a certain car from the stock of one for a certain car from the stock of the other, the difference in value between the two cars to be paid for in cash. The cars were delivered & each gave the other a cheque for the full value of the respective cars:—*Held:* whether or not the transaction was a sale or a barter, it was not a sale "in the ordinary course of his business" within Conditional Sales Act, s. 4.—ALBUTT (W. J.) & CO., LTD. *v.* RIDDELL, [1930] 1 W. W. R. 555; 2 D. L. R. 166; 42 B. C. R. 344; *revsd.*, [1930] 2 W. W. R. 623; 4 D. L. R. 111; 43 B. C. R. 74.—CAN.

p (p. 690) i. —— —— —— *Notice of seizure—Whether necessary.*]—There can be no seizure by a person of goods which are in his own possession & control. The word "seizure" in Extra-Judicial Seizures Act, R. S. A., 1922, has the ordinary meaning of the word, *i.e.* a forcible taking of possession. Since said Act applies only to cases where seizure is required, it does not apply to the case where goods sold under a conditional sale agreement have been voluntarily returned by a buyer in default to the seller & are in the latter's possession.—PACIFIC FINANCE CO. *v.* IRELAND, [1931] 2 W. W. R. 593; 4 D. L. R. 186; 25 Alta. L. R. 369.—CAN.

kk (p. 690) i. —— —— —— ——.]—The mere retaking of possession will not, without more, bring the contract to an end, if it is made clear that the seller's purpose in retaining possession is to hold the goods as security for the purchase-money, the contract will not be rescinded nor will the purchaser be released from his obligation to pay the purchase-price.—MAXWELL RADIO CO. *v.* DE WILDE, MAXWELL RADIO CO. *v.* BLONTROCK, [1931] 2 D. L. R. 123; 66 O. L. R. 519.—CAN.

mm (p. 690) i. —— —— —— *Authority to resell.*]—E., a dealer in automobiles, sold, or went through the form of selling, an automobile to C. under a conditional sale agreement, taking a promissory note for a part of the price. This note he took to defts., an automobile financing co., & discounted it, at the same time transferring the agreement to defts. who duly filed it in accordance with Conditional Sales Act. The automobile was left in the possession of E. who dishonestly sold it to pltf.:—*Held:* the real owner of the car being E. or C. or both, E. had authority to dispose of his security, the conditional sale agreement, to defts., & defts. were thereafter the owners in law of the automobile.—BENDER *v.* NATIONAL ACCEPTANCE CORPN., LTD., [1929] 1 D. L. R. 222; 63 O. L. R. 215.—CAN.

mm (p. 690) ii. *Delivery of goods for purpose of resale—What amounts to.*]—Deft. co. having a lien upon two houses being erected by F. obtained a judgment for its claim & afterwards, in satisfaction of the judgment, took from F. a quit-claim deed of the houses. Thereafter, the co. agreed to sell the houses to pltf. A furnace had been purchased by F. upon a conditional sale agreement with the vendor & placed in one of the houses:—*Held:* the furnace was not delivered to a purchaser "for the purpose of resale by him" within Conditional Sales Act, R. S. O., 1927, s. 2 (3); it was to be placed by him in the house he was building, of which it would become an integral part; a sale of the house would not be the sale of a chattel.—COLLIS *v.* CAREW LUMBER CO., LTD., [1930] 4 D. L. R. 996; 65 O. L. R. 520.—CAN.

mm (p. 690) iii. —— —— —— *Notwithstanding buyer's claim for breach of warranty.*]—The fact that a buyer of goods under a conditional sale contract has asserted a claim for damages for breach of warranty does not prevent the seller from repossessing the car on the buyer defaulting in his payments.—LOVE *v.* MOTOR FINANCE CO., LTD., [1931] 3 W. W. R. 510; [1932] 1 D. L. R. 268; 40 Man. L. R. 106.—CAN.

mm (p. 690) iv. —— —— —— *Effect of acceleration clause.*]—In an action by the seller under a conditional sale contract the seller, who had retaken possession of the goods, set up an acceleration provision in the contract & claimed the whole of the unpaid balance of the purchase-price:—*Held:* although under the terms of the contract the seller had a right of action for said balance & the further right to take possession of the goods, yet the result of the bringing of the action for the balance was that the goods became the property of the buyer & the right which the seller had over them by virtue of its possession was equivalent to the unpaid seller's lien provided for by sect. 38 of Sale of Goods Act, R. S. S., 1930.—INDUSTRIAL ACCEPTANCE CORPN., LTD. *v.* DOUGHAN, [1932] 1 W. W. R. 619.—CAN.

mm (p. 690) v. —— —— —— *Notwithstanding existence of registered mortgage.*]—Where a furnace is installed under a conditional sales agreement during the currency of a registered mtge. the vendors have a right to remove & repossess the furnace on default by the purchaser.—WARNER *v.* FOSTER, [1934] 3 D. L. R. 605; O. R. 519.—CAN.

nn (p. 690) i. —— —— —— ——.]—In order to hold a buyer under a conditional sale agreement who has defaulted thereunder liable for the deficiency on a resale of the goods by the seller the notice to the buyer of said resale must be in strict accordance with the requirements of Conditional Sales Act, R. S. B. C. 1924, c. 44, s. 10 (3), notwithstanding that the agreement provides that the seller can exercise the power of resale "by public or private sale with or without notice."—MARSH *v.* SIMPSON [1928] 1 W. W. R. 956.—CAN.

nn (p. 690) ii. —— —— —— ——.]—So long as the buyer under a conditional sale agreement has five days' notice of the intended resale, whether he gets it as the result of personal service or because it is left at his place or sent to him by registered mail, the Conditional Sales Act, R. S. A. 1922, c. 150, s. 11, is complied with.—MINNEAPOLIS STEEL & MACHINERY CO. *v.* PAULERROU (No. 2), [1928] 1 W. W. R. 976.—CAN.

nn (p. 690) iii. —— —— —— ——.]—In an action by a vendor, under a conditional sale agreement for the balance of the purchase-price after he has repossessed & resold the goods, the defence is raised that the Act has not been complied with, the burden of proving compliance rests on the vendor.—THOMPSON *v.* SHOLINDER, [1928] 1 W. W. R. 386.—CAN.

nn (p. 690) iv. —— —— —— ——.]—Notice is not required to be given the buyer in a case where the seller merely exercises his right under the contract of repossessing the goods on the buyer's default & continues to hold them without a resale or without making any use of them for his own purposes.—WATKINS GARAGE, LTD. *v.* MCKORYK, [1928] 3 W. W. R. 429.—CAN.

nn (p. 690) v. —— —— —— ——.]—MOTOR CAR LOAN CO. *v.* BONSER, [1928] 3 D. L. R. 875; [1928] 1 W. W. R. 801.—CAN.

nn (p. 690) vi. —— —— —— ——.]—A notice that, failing to receive payment of the amount due to the holder of the security before a certain hour of a certain day, the holder would sell the goods, was held not to comply with Conditional Sales Act, s. 7 (2), as not being notice of a definite proposed sale.—INDUSTRIAL ACCEPTANCE CORPN., LTD. *v.* CODE, [1931] 1 D. L. R. 980; 66 O. L. R. 376.—CAN.

b (p. 691) i. —— —— —— ——.]—HEALMAN *v.* PRYCE, [1930] 2 D. L. R. 608; 42 B. C. R. 104.—CAN.

b (p. 691) ii. —— —— —— ——.]—In an action to recover the deficiency due on a resale of chattels repossessed under a conditional sale agreement, strict compliance with the statutory conditions as to notice of resale is necessary.—GOODISON (JOHN) THRESHING MACHINE CO. *v.* LINDSAY, [1935] 2 D. L. R. 344; O. R. 219.—CAN.

d (p. 691) i. —— —— —— ——.]—Where goods sold under conditional sale agreement are repossessed by the seller but the required statutory notice of the resale thereof is not given, the seller cannot after reselling recover for a deficiency as to the purchase-price unless the agreement expressly so provides.—THOMAS GARAGE, LTD. *v.* PROZANOWSKI, [1931] 1 W. W. R. 248; 2 D. L. R. 179; 25 Alta. L. R. 457.—CAN.

f (p. 691) i. —— —— —— ——.]—It is open to a buyer of goods under a contract of conditional sale to waive by the terms of the contract his right under Conditional Sales Act, R. S. S., 1930, s. 8, to notice of the seller's intention after seizure to resell.—COMMERCIAL CORPN. SECURITIES, LTD. *v.* NICHOLS (OTHERWISE BUTTERFIELD), [1933] 1 W. W. R. 484; 3 D. L. R. 56.—CAN.

(p. 691) i. —— —— —— *Request to retake.*]—Under a conditional sale agreement which provided that on default in payment of any instalment the seller would have the right to re-enter & take possession of the goods & "to forthwith cancel this agreement," held that the retaking of possession of the goods did not in itself cancel the agreement, but that something more was required to be done in order to exercise the right of cancellation. A request by the buyer that the seller retake possession of the goods is not a waiver of the requirements of the Conditional Sales Act. In the absence of a provision in the agreement to the contrary, where a conditional sale agreement provides for the retaking possession & resale of the goods the resale contemplated must be take

mentioned provisions, & a resale made without complying therewith rescinds the contract.—ADELKIND *v.* AMIES, [1930] 2 W. W. R. 702; [1931] 1 D. L. R. 181; 25 S. L. R. 87.—**CAN.**

bb (p. 691) i. ——— ———.]—Conditional Sales Act, R. S. N. B., 1927, s. 10, is only applicable where the contract provides that the buyer shall be liable for a deficiency on resale. Otherwise, a vendor cannot retake & sue for the purchase-price.—HUMPHREY'S MOTORS, LTD. *v.* ELLIS, [1934] 3 D. L. R. 140; 8 M. P. R. 57; *affd.*, [1935] S. C. R. 249; 2 D. L. R. 705.—5 F. L. J. (Can.) 19.—**CAN.**

bb (p. 691) ii.——— ——— *Goods exchanged.*]—Where a conditional vendor of a radio repossessed the cabinet & left another in exchange: —*Held:* this did amount to rescission so as to preclude the vendor from suing for the balance due.—FLEMINGS MUSIC HOUSE *v.* WILKINSON, [1937] 1 D. L. R. 247.—**CAN.**

mm (p. 691) i. ——— ——— *Necessity for retention for 20 days.*]—Where goods sold under a conditional sale agreement & repossessed by the seller are not retained by him for at least 20 days, as provided by sect. 10 of Conditional Sales Act, R. S. A., 1922, before being resold, he cannot recover the balance remaining unpaid under said agreement if the buyer has not waived his right to the protection of said sect. The goods in question herein had been seized by pltf., the seller's assignee, under an execution issued on a judgment for the balance of the purchase-price, & were in the hands of the sheriff's bailee under said seizure when pltf. claimed & obtained possession from the sheriff in order that it might realise under its lien under the agreement:—*Held:* the 20 days prescribed by said sect. 10 ran from the date when possession was retaken under the agreement.—MUTUAL ACCEPTANCE CORPN. *v.* MCDERMID, [1930] 3 W. W. R. 349; [1931] 1 D. L. R. 497.—**CAN.**

mm (p. 691) ii. ——— ——— *No duty to resell.*]—Where a chattel sold under a conditional sale agreement is repossessed by the seller because of default by the buyer, the seller is not, in the absence of a provision therefor in the contract, under a duty to the buyer to resell the chattel at all, &, if he does exercise his right under the contract to resell, he will not be held liable to the buyer because the chattel brought less, owing to a falling market, than it would have brought had it been resold sooner.—STERLING SECURITIES CORPN., LTD. *v.* WAFFLE, [1931] 2 W. W. R. 273; 4 D. L. R. 765.—**CAN.**

c (p. 692) i. ——— ——— *Pleading.*]—GREAT WEST SADDLERY CO. *v.* PRIME, [1928] 3 W. W. R. 705.—**CAN.**

d (p. 692) i. ——— ——— *Effect of Debt Adjustment Act, 1932, s. 16.*]—Debt Adjustment Act, 1932, s. 16, does not prevent a vendor under a conditional sale agreement from suing on the personal covenant to recover the unpaid purchase-money, & to restrict him to his rights under the lien.—CHILD & GOWER PIANO CO., LTD. *v.* GAMBREL, [1933] 2 W. W. R. 273.—**CAN.**

d (p. 692) ii.——— ——— *Effect on transaction.*]—Pltf. obtained judgment for the balance owing on a washing machine sold under a conditional sale contract. Pltf. had not registered the contract but relied on sect. 6a of Conditional Sales Act, R. S. A., 1922, having glued on the machine a piece of paper on which pltf.'s name was printed. Prior to pltf.'s recovery of judgment, the buyer had resold the ——— to deft., on the interpleader issue herein, who bought in good faith & for value. Before buying it said deft. asked at pltf.'s office where the original sale had been made & whether anything was owing on it. After searching its records pltf. informed deft. that nothing was owing. Pltf.'s office had through carelessness entered the account under a wrong name. The original contract provided that on default by the buyer pltf. might take the machine & treat the payments made as payments for hire or, at its option, & without demand or notice, the whole balance unpaid should become due & payable:—*Held:* in suing for & recovering judgment pltf. had elected said second alternative & thereby made the conditional sale an absolute one, so that it could not now insist that the property in the machine had not passed.—BEATTY BROS., LTD. *v.* JOHNSON & ARDLEY, [1937] 1 W. W. R. 458.—**CAN.**

f (p. 692) i. ——— ———.]—The taking by the seller under a conditional sale agreement of a chattel mortgage from the buyer upon the very goods covered by the conditional sale agreement, held to be consistent only with an agreement between the parties that the property in the goods should pass to the buyer, the conditional sale agreement cease to be effective & the chattel mortgage take its place.—ASHMORE *v.* TRANS-CANADA FINANCE CORPN., LTD., [1930] 2 W. W. R. 558; 4 D. L. R. 982; 39 Man. L. R. 52; *affd.*, [1930] 3 D. L. R. 488; 1 W. W. R. 537.—**CAN.**

k (p. 692) i. ——— *To declaration of ownership.*]—EDWARD RENNEBURG & SONS CO. *v.* ALBION FISHERIES, LTD., [1931] 1 W. W. R. 231.—**CAN.**

p (p. 692) i. ——— *Against landlord selling goods under distress warrant.*]—Goods purchased under a conditional sale agreement & not yet paid for in full were sold under a distress warrant issued by deft. co. for rent owing by assignees of the purchasers. Pltf., who had been employed by the tenants & had also become an assignee of the vendor's interest in said agreement, notified deft. co. before the distress sale of his interest in the goods. On the day of the sale he sued the tenants for wages, & in that action garnished deft. co. for the amount thereof. Out of the proceeds of the distress it paid amounts into ct. or directly to pltf. which nearly equalled his claim for wages. He then brought the present action for the balance remaining due under the conditional sale agreement: —*Held:* while pltf. had, it seemed, debarred himself from bringing an action for conversion, his present action was not in form one for conversion but one for money had & received for that part of the proceeds of the distress sale which he was entitled to as assignee of the original vendors; & it was, therefore, consistent with the garnishee proceedings which were directed to that part, if any, of the proceeds which the tenants were entitled to as purchasers of the goods.—CLEARWATER *v.* CHILDS CO. OF MANITOBA, LTD., [1929] 3 D. L. R. 305; 2 W. W. R. 228; 38 Man. L. R. 205.—**CAN.**

t (p. 692) i. ——— *Furnace.*]—The furnace, having become a fixture, was not "building material" within sect. 8 of Conditional Sales Act, R. S. O., 1927.—COLLIS *v.* CAREW LUMBER CO., LTD., [1930] 4 D. L. R. 996; 65 O. L. R. 520.—**CAN.**

t (p. 692) ii. ——— ———.] Sect. 8 of Conditional Sales Act does not say that the goods, having been affixed to the realty, are, nevertheless, to be & remain chattels. If a vendor of chattels wishes to protect himself against subsequent purchasers he must register his conditional sale agreement in the registry or Land Titles office.—HOPPE *v.* CLEARWATER, [1931] 2 D. L. R. 253; 66 O. L. R. 587.—**CAN.**

t (p. 692) iii. ——— ——— *Automatic coal burner.*]—The owner of a building in which an automatic coal burner is fixed is liable under Conditional Sales Act, 1927, s. 8, to the conditional vendor if he elects to retain the fixture.—ALLEN GENERAL SUPPLIES, LTD. *v.* RITCHIE, [1934] 3 D. L. R. 296; O. R. 365.—**CAN.**

t (p. 692) iv. ——— ———.]—Wall beds installed in a house are still goods within Conditional Sales Act, s. 9.—MURPHY WALL BED CO. OF DETROIT *v.* LEVIN (1925), 57 O. L. R. 105.—**CAN.**

aa (p. 692) *affd.*, [1928] 3 D. L. R. 175; [1928] S. C. R. 200.—**CAN.**

aa (p. 692) i. ——— ———.] —Pltf. co. sold a motor car, under a conditional sale agreement, to Pacific Motors, Ltd., retail dealers in cars, who sold it, also under a conditional sale agreement, to a buyer who defaulted in her payments. With pltf.'s consent, the car was taken back by Pacific Motors, Ltd., & then, with pltf.'s consent, resold to one F. under a conditional sale agreement which was assigned to pltf. F. defaulted & the car, without pltf.'s knowledge or consent, was taken back again & sold by Pacific Motors, Ltd., to deft. S. under a conditional sale agreement which the Pacific Motors, Ltd., discounted with deft. Guaranty Corpn. which took the assignment in good faith. All the agreements were duly registered. Pltf. sued for damages for conversion & also sought a declaration that it was the owner of the car & entitled to possession of it. Guaranty Corpn. disclaimed any interest in the car. The judge applying Conditional Sales Act, s. 4, & Sale of Goods Act, s. 60, held that S. had obtained title to the car & dismissed the action. Pltf. appealed:—*Held:* the appeal should be allowed, except as to the claim for damages for conversion, & pltf. should be declared the owner & entitled to possession of the car.—ALBUTT (W. J.) & CO., LTD. *v.* CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. (B. C.), [1930] 1 D. L. R. 26; [1929] 3 W. W. R. 292; 41 B. C. R. 537.—**CAN.**

aa (p. 692) ii. ——— ———.] —KERR *v.* MOTORCAR LOAN CO., LTD., [1930] 2 W. W. R. 367.—**CAN.**

cc (p. 692) i. ——— ———.]—Where an agreement for the conditional sale of a motor car contained the following clause: "We shall not at any time, that is the buyer, suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile":—*Held:* this clause negatived the idea that the buyer could authorise the doing of repairs in such a way as to give the repairer a lien.—ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. *v.* SIMONS, [1928] 3 W. W. R. 621.—**CAN.**

ff (p. 692) i. ——— ———.]—Where a motor-car sold under a conditional sale agreement was repossessed by the seller under the terms of the contract which gave the seller wider powers than those given him by Conditional Sales Act, R. S. B. C., 1924, s. 10:—*Held:* the purchaser's right of redemption was not lost by the fact that twenty days had expired without the car being sold.—MOTORCAR LOAN CO., LTD. *v.* ADAMS, [1933] 1 W. W. R. 60.—**CAN.**

hh (p. 692) i. ——— ——— *Rights of joint purchaser.*]—Pltfs. were the joint purchasers of a motor-car sold to them by one A. under a conditional sale agreement. Deft. became the assignee of A. The car was delivered to pltfs., but during the male pltf.'s absence from home, A. obtained possession of the car from the female pltf. & induced her to sign a bill of sale of the car from her to himself, her understanding being that he would sell the car for her for more than enough to pay the balance to be paid the deft. That balance was not then yet due.

A. then entered into another conditional sale agreement with one L. as purchaser; &, leading deft.'s manager to believe that pltfs. had given up their interest in the car, induced deft. to "finance" the L. agreement. The L. agreement fell into default, & deft. took possession thereunder of the car & resold it:—*Held:* male pltf. was entitled to recover from deft. the net value of his interest in the car. The trial judge held that female pltf. was not entitled to any relief, & this holding was not appealed from.—SMITH *v.* STERLING SECURITIES COR N., LTD., [1933] 3 W. W. R. 347.—CAN.

hh (p. 692) ii. —— —— *To claim goods—After judgment for balance owing.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—CAN.

hh (p. 692) iii. —— —— *To return of purchase-money on rescission by vendor.*]—Where the seller of goods under a conditional sale agreement rescinds the agreement against the will of the buyer it is not in all cases an inevitable result of the application of the principle of *restitutio in integrum* that the buyer is entitled to the return of moneys paid by him under the contract. If he has made use of the goods & is only able to return them to the seller in a depreciated condition an amount may be allowed to the seller with respect to said use of the goods by the buyer.—STEARNS *v.* NEYS (Alta.), [1929] 3 D. L. R. 954; 3 W. W. R. 177.—CAN.

kk (p. 692) i. —— —— ——.]—The seller's assignee of a conditional-sale agreement is not a "purchaser" or "mtgee." within sect. 2 of Conditional Sales Act, R. S. S., 1930, &, therefore, is not a person entitled to the protion thereof.—GLOBE FINANCIAL CORPN., LTD. *v.* STERLING SECURITIES CORPN., LTD., [1932] 1 W. W. R. 347.—CAN.

kk (p. 692) ii. —— —— —— *Receipt of proceeds of refinancing agreement by vendor—Effect on right of assignee to seize.*]—HARDEN *v.* STERLING SECURITIES CORPN., LTD., [1932] 2 W. W. R. 28.—CAN.

mm (p. 692) i. —— —— —— *Lien agreement not registered.*]—The good title which, because of non-compliance with Conditional Sales Act, is acquired by one who without knowledge of the lien buys from the bailee is one which he can pass on to a subsequent purchaser. Even if the fact that such subsequent purchaser was the original vendor restores the lien for the benefit of an assignee of the lien agreement, nevertheless one who afterwards purchases from the original vendor is protected by the Act.—MUTUAL ACCEPTANCE CORPN. *v.* SCHIELKE, [1931] 2 W. W. R. 458; 3 D. L. R. 447; 25 Alta. L. R. 467.—CAN.

b (p. 693) i. —— —— *Presumed in absence of evidence of compliance with Act.*]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held:* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator, &, in the absence of said proof, the exor. must be presumed to have taken the chattels in satisfaction of deft.'s debt & so to have rescinded the contract.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1929] 2 D. L. R. 863; 23 S. L. R. 457; [1928] 3 W. W. R. 723.—CAN.

r (p. 693) i. —— —— *Action to determine amount due to seller.*]—BOTTOMS *v.* PACIFIC NORTHWESTERN LUMBER CO. (B. C.), [1929] 2 W. W. R. 495.—CAN.

aa (p. 693) i. —— —— *Transaction amounting to chattel mortgage—Necessity for compliance with Bills of Sale Act.*]—Applts. claimed, under certain conditional sales agreements, to be secured creditors of the estate in bkpcy. of certain motor-car dealers. Registrations were made under Conditional Sales Act, R. S. N. B., 1927, but not under Bills of Sale Act, R. S. N. B., 1927. The dealers would order the cars from the manufacturers, who would send the invoice to the dealers, & would send the bill of lading, with sight draft on the dealers attached, to a bank. The dealers would then go to one of applts. with the invoice, a conditional sale agreement covering the cars would be made, & appellant would give the dealers a cheque payable to the dealers for 85 per cent. or 90 per cent. (& in one case payable to the bank for the whole) of the amount of the draft. The dealers took the cheque to the bank & it was applied towards payment of the draft, the dealers supplying the balance. The dealers then obtained the bills of lading & took possession of the cars:—*Held:* the conditional sales agreements were valid & effective.—*Re Estate of* SMITH & HOGAN, LTD., INDUSTRIAL ACCEPTANCE CORPN., LTD. & CANADIAN ACCEPTANCE CORPN., LTD. *v.* CANADIAN PERMANENT TRUST CO., [1932] S. C. R. 661.—CAN.

bb (p. 693) i. —— —— ——.]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom the deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held:* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of the Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1928] 3 W. W. R. 723.—CAN.

cc (p. 693) i. —— ——.]—The C. co. contracted with defts. to construct sewers. To enable the co. to perform its contract, it agreed to buy the necessary sewer pipes from pltfs. & to secure to pltfs. payment of the contract price, assigned to them the money payable by defts. under the contract. Notice of the assignment was not given at the time nor until after the failure of the C. co. & after the completion of the work by new contractors employed by defts. After all the pipes had been placed in position, pltfs. asserted a right to remove the pipes, the price not having been fully paid to them & there being a provision in their contract with the C. co. that the property in the pipes was not to pass to the latter unless & until the whole price was paid:—*Held:* by Conditional Sales Act, R. S. O., 1914, s. 3 (4) the property in the pipes passed to defts., notwithstanding pltfs. had complied with the Act. The C. co. was an "other —— —— & the pipes were entrusted to it with the intention that the title should pass to defts.—DOMINION LOCK JOINT PIPE CO. *v.* YORK, [1929] 4 D. L. R. 806; 64 O. L. R. 365.—CAN.

ee (p. 693) i. —— ——.]—Where a conditional sale agreement does not provide that the goods shall be at the risk of the buyer during the continuance of the lien the loss falls on the seller in case the goods are damaged or destroyed before the property passes.—BURKE *v.* WEIR, [1928] 4 D. L. R. 837; [1928] 3 W. W. R. 257.—CAN.

ff (p. 693) i. —— *What amounts to delivery.*]—REAR *v.* MCCULLOUGH, [1928] 2 D. L. R. 434; [1928] 1 W. W. R. 716; 22 Sask. L. R. 446.—CAN.

hh (p. 693) i. —— ——.]—Under Farm Implement Act, R. S. S. 1920, c. 128, the contract in Form C. for the sale of a second-hand implement on credit constitutes the entire contract between the parties; &, therefore, where no warranties have been stated thereon, evidence of alleged oral warranties is not admissible, nor can it be added to or varied by introducing the provisions of the Sale of Goods Act as to implied warranties.—HAUG & SONS *v.* STACK, [1928] 4 D. L. R. 987; [1928] 3 W. W. R. 443.—CAN.

d (p. 694) i. —— —— —— ——.]—Where a contract for the sale of a large implement within Farm Implement Act, R. S. S. 1920, c. 128, omits from par. 4 thereof, as prescribed by Form A., which provides for the length of time repairs are to be kept available by the vendor, the words "for a period of ten years from the date of this order," the contract is invalid; since said Act provides that no contract for the sale of such an implement shall be valid unless it is worded in accordance with said form, & said omission cannot be said to constitute a "slight deviation."—WATERLOO MFG. CO., LTD. *v.* WOEPPELL, [1928] 2 D. L. R. 494 [1928] 1 W. W. R. 765.—CAN.

d (p. 694) ii. —— —— —— ——.]—In a contract in Form "A" of the Act the blanks left for the insertion of the dates of shipment were filled in by the words "at once," & it was held that, whatever the exact meaning of "at once" may be in any particular case, the deviation from the form affected the substance of the contract &, therefore, was not curable by the application of Interpretation Act, s. 23, & consequently under sect. 12 of Farm Implement Act invalidated the contract, although, under the circumstances of the case, the insertion of said words could not possibly have prejudiced deft. in any way.—ADVANCE RUMELY THRESHER CO. *v.* SELBEE (Sask.), [1929] 4 D. L. R. 103; 2 W. W. R. 553; *affg.*, [1929] 3 D. L. R. 153; 1 W. W. R. 275; 23 S. L. R. 302.—CAN.

d (p. 694) iii. —— —— —— ——.]—The form of contract prescribed by Farm Implement Act, R. S. S., 1920, is of the essence of the contract; but an immaterial deviation from the phraseology thereof is not a ground on which either party can avoid his proper obligation. With respect to the words "work" & "purpose" in the clause relating to the work which the machine is intended to perform, in so far as work implies purpose, it rests with the purchaser to state the purpose & he is equally responsible with the vendor for the words inserted to express it.—MINNEAPOLIS STEEL & MACHINERY CO. *v.* EBERLE, [1930] 3 W. W. R. 231; [1931] 1 W. W. R. 236; 999; 25 S. L. R. 248.—CAN.

d (p. 694) iv. —— —— —— ——.]—RUMELY THRESHER CO., INCORPORATED *v.* STAHL, [1930] 3 W. W. R. 623.—CAN.

k (p. 694) i. —— —— —— *Proof.*]—An affidavit which meets the requirements of Farm Implement Act, R. S. S., 1920, c. 128, s. 18 (2), *is* conclusive proof that sub-sect. (1) of said sect., which requires a contract for the sale of a "large implement" to be read

over & explained to the purchaser in a language which he understands, if he does not understand English, was complied with.—PELLETIER *v.* MINNEAPOLIS THRESHING MACHINE CO., [1928] 3 W. W. R. 463.—CAN.

k (p. 694) **ii.** —— —— —— *Effect of affidavit.*]—The affidavit provided for by sect. 18 (2) of the Act need not state what particular language was used in reading & explaining the contract to the purchaser nor give details of the explanation. An affidavit to the effect required by said sub-sect. is conclusive proof of the facts stated therein, upon proof being given of the signature of the officer before whom the affidavit purports to have been sworn & that he was an officer authorised to take such affidavit.—ADVANCE-RUMELY THRESHER CO. *v.* ——R (Sask.), [1929] 4 D. L. R. 65; 2 W. W. R. 544.—CAN.

694) **i.** —— —— *Every sale on ... of small implement.*]—The intention of sect. 13 of Farm Implement Act, R. S. S., 1930, is that in every case of a sale on credit of a "small implement" form B. is, in so far as the warranty is concerned, to be the contract whether the contract was in said form or not, & that to this contract the parties must look for their respective rights. Therefore, representations made by the seller's agents to the buyer to induce the latter to buy cannot form part of the contract or relieve the buyer from liability.—DE LAVAL CO., LTD. *v.* DAVIES, [1931] 2 W. W. R. 408.—CAN.

bb (p. 694) **i.** —— —— *Evidence of fulfilment—Provision in contract as to.*]—While a contract for the sale of farm machinery cannot validly exclude the warranties under Farm Machinery Act, R. S. A., 1922, a provision therein that the failure of the buyer to give the vendor written notice within a specified time that the machine is not working well shall be deemed conclusive evidence of the fulfilment of these warranties as well as of the warranties expressed in the contract, will be upheld as valid if clearly stated & if the periods limited thereby for the trial of the machine & for the giving of the notice are not unreasonable under all the facts & circumstances of the case.—MASSEY-HARRIS CO., LTD. *v.* BOND, [1930] 1 W. W. R. 72; 2 D. L. R. 57.—CAN.

bb (p. 694) **ii.** —— —— *Contracting out—Whether permissible.*]—The parties to an agreement cannot contract themselves out of the statutory warranty created by the Farm Machinery Act, R. S. A., 1922.—J. I. CASE THRESHING MACHINE CO. *v.* DALTON, [1935] 3 D. L. R. 721.—CAN.

cc (p. 694) **i.** —— —— ——.]—SAWYER-MASSEY CO., LTD. *v.* STURGILL, [1928] 1 D. L. R. 213; [1928] 1 W. W. R. 23; 22 Sask. L. R. 321.—CAN.

ee (p. 694) **i.** —— —— *Limitation of action.*]—Notwithstanding sect. 5 of Limitation of Civil Rights Act, 1933, the vendor of an article which comes within the provisions of said sect. remains a creditor of the purchaser until the purchase price has been paid in full, although his remedies for enforcing his rights are restricted by the sect.—*Re* MILLER, MASSEY-HARRIS CO., LTD. *v.* BOARD OF REVIEW, [1937] 2 W. W. R. 438.—CAN.

ee (p. 694) **ii.** —— *Right of vendor to take debt as security.*]—There is nothing in Farm Implement Act, R. S. S., 1930, to prevent a vendor to whom money is owing under a farm implement contract from taking, by way of security for the satisfaction of his claim, a debt due to the purchaser, *e.g.*, one due for the earnings in threshing of the implement in question.—ADVANCE-RUMELY THRESHER CO. *v.* BRAUNSTEIN, [1932] 1 W. W. R. 321.—CAN.

d (p. 695) **i.** —— *Novation.*]—PLOWMAN TRACTOR CO. *v.* ANDREWS, [1928] 1 D. L. R. 544; [1928] 1 W. W. R. 329.—CAN.

d (p. 695) **ii.** —— *Notice of defects—Right of seller to reasonable notice.*]—The fact that the particular time limited under an agreement for the sale of farm machinery for the giving of notice by the buyer that the machine does not work well is held by the ct. to be unreasonable within sect. 3 of Farm Machinery Act, is not a ground for holding that the seller has lost the right to be notified as soon as is reasonably possible. — MINNEAPOLIS THRESHING MACHINE CO. *v.* JOHNSON & JOHNSON, [1931] 2 W. W. R. 827.—CAN.

d (p. 695) **iii.** —— *Form of lien note.*—Since no provision is made in Farm Implement Act, R. S. S., 1930, for including in the lien note provided for by sect. 24 a term that the vendor may repossess the goods if he deems himself insecure, & the Act states exclusively the rights & liabilities of vendors & purchasers under contracts & lien notes to which it applies, a vendor cannot rely upon such a term in such a lien note.—PETRENY *v.* PORTEOUS, [1933] 3 W. W. R. 602.—CAN.

d (p. 695) **iv.** —— *Whether Farm Implement Act, R.S.S., 1920, applicable—Question of fact dependent on date of posting.*]—MINNEAPOLIS STEEL & MACHINERY CO. OF CANADA, LTD. *v.* BAXTER, [1928] S. C. R. 62.—CAN.

p (p. 695) **i.** —— —— *Right of vendor to recover value of use.*]—Where a contract in Form A. of Farm Implement Act, R. S. S., 1920, was executed by deft. as purchaser but was not accepted by pltf. as vendor as required by sect. 19 thereof, the fact that pltf.'s agent left the implement with deft. to give him an opportunity to pay for it & deft. was willing to obtain money for that purpose by making use of the implement, did not alter the fact that because of said Act there was no enforceable contract; &, therefore, the property in the implement remained in pltf. Pltf. was held, however, to be entitled to what had been earned by deft. by using the implement.—OLIVER, LTD. *v.* TAVENDER, [1932] 2 W. W. R. 94.—CAN.

SALE OF LAND.

Part I.—The Contract of Sale.

26a. Verbal acceptance—Proof of.]—In a conflict of recollection as to statements made at an interview, considerable weight ought to be attached to contemporaneous writings throwing some light on what in fact occurred. The *onus* of proving an unconditional verbal acceptance of an offer in writing to sell real estate ought to be regarded as a heavy one, to be discharged only by clear evidence of the fact. In a case of reasonable doubt the ct. must take the view that the verbal acceptance has not been established (MAUGHAM, J.).—WATSON *v.* DAVIES, [1931] 1 Ch. 455, 408; 100 L. J. Ch. 87; 144 L. T. 545.

27. *Add. Annotation :—As to* (1) **Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

28. *Add. Annotations :*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224. **Refd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

28a. —— —— ——.]—CURTIS MOFFAT *v.* WHEELER, No. 2475a, *post*.

32a. —— **Acceptance "subject to surveyor's report."**]—MARKS *v.* BOARD (1930), 46 T. L. R. 424; 74 Sol. Jo. 354.

32b. —— **Method of payment of purchase-price.**]—NEALE *v.* MERRETT (1930), 70 L. Jo. 95; 170 L. T. Jo. 99; [1930] W. N. 189.

73a. **Agreement to construct road.**]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him. The co. did not construct the road within a reasonable time, or at all, & the purchaser brought an action claiming damages for breach of contract :—*Held :* a promise to construct a road, apart from any conveyance of the land over which it was intended to run, was not a "contract for the sale or other disposition of land or any interest in land" & consequently that an action would lie upon it, although it was oral, without infringing the provisions of Law of Property Act, 1925 (c. 20), s. 40 (1).—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

Annotation :—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

87. *Add. Annotation :*—**Consd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

102. *Add. Annotation :*—**Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

104. *Add. Annotation :*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

128. *Add. Annotation :*—**Refd.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

133. *Add. Annotations :—As to* (2) **Refd.** Low *v.* Fry (1935), 152 L. T. 585. *Generally*, **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

PART I. SECT. 2, SUB-SECT. 2.—B.

c i. —— —— *Acceptance subject to approval of title.*]—SHENSTONE *v.* HEWN (No. 2) (1928), 29 S. R. N. S. W. 39. —**AUS.**

PART I. SECT. 3.

sg. *Agreement as to nature of transaction.*]—JACKSON *v.* WHITE, [1937] 1 W. W. R. 99.—**CAN.**

PART I. SECT. 4.

sa. *Agreement as to interest.*]—Pltf. inquired by telegram whether deft. would sell his farm for $400-$600 cash "& balance 3 years, 7 per cent." Deft. answered: "Will sell farm for $1,500, six hundred cash. Balance $200 year, paid in full 3 years." Pltf. replied that "your offer" was accepted. Deft. executed the transfer prepared by pltf. & sent it to a bank for delivery to pltf. on payment of $600 & delivery of a mtge. for the $900 payable on deft.'s terms with interest at 7 per cent. Pltf. refused to agree to pay interest, & in a suit for specific performance contended that the whole contract as to interest was evidenced by the above telegram from deft. & pltf.'s reply to it. Deft. contended that pltf.'s first telegram offering to pay interest was a material part of the correspondence forming the basis of the contract :—*Held :* there was an enforceable contract between the parties for the sale & purchase of the land & that deft.'s contention as to the interest was correct.—MORAW *v.* INNIS (Alta.), [1929] 1 D. L. R. 158; 1 W. W. R. 68.—**CAN.**

sc. *Assumption of liabilities by purchaser—"Amount at which they may be settled"—Meaning of.*]—The agreement for the sale of the apartment house to C. fixed the price at a certain sum & provided that, should the amount of liabilities assumed by C. "turn out to be" less than the sum which they were stated in the agreement to amount to, C. would pay the difference between that amount & the amount at which "they may be settled"; & that should they turn out to be larger than that stated amount D. would pay C. the difference :—*Held :* the word "settled" did not mean "paid" or "discharged," but meant "determined" or "ascertained"; &, therefore, the fact that at the time of trial some of the liabilities had not been paid by either party, & were probably then barred by the Stat. Limitations, did not render C. liable to pay D. the amount thereof as part of the purchase-money.—DEVENISH *v.* CONNACHER (No. 2), CONNACHER *v.* DEVENISH, [1932] 3 W. W. R. 645.—**CAN.**

PART I. SECT. 7, SUB-SECT. 1.

sb. *Agreement permitting party to receive rents.*]—JONES *v.* RYDER, [1931] 1 D. L. R. 441; *affg.*, [1930] 3 D. L. R. 449.—**CAN.**

PART I. SECT. 8, SUB-SECT. 4.—B. (a).

149 iii. ——.]—A receipt for a deposit paid on an agreement for the sale of land which omits reference to a term of the agreement providing for the deferring of the payment of the remainder of the purchase-money is not a memorandum sufficient to satisfy Stat. Frauds.—LESIUK *v.* SCHNEIDER, [1917] 2 W. W. R. 747; 36 D. L. R. 598.—**CAN.**

149 iv. ——.]—Applt. co. & resp. were in negotiation for the sale by applt. to resp. of a Crown leasehold station property & of cattle. Three directors of the co. & resp. attended simultaneously at the office of the co.'s agent for sale. After certain written suggestions were communicated between the parties, a discussion took place & points which had been raised were settled. As each was agreed on it was noted by one of the agents' men. The result was a memorandum which contained short notes of the terms of the arrangement, but did not comprise all the detail necessary in a contract to meet such a sale as that contemplated. Then a document was signed by resp. by which he expressed himself as handing to the agent portion of deposit on purchase of the property for a specified price "on terms as arranged between the vendors & the purchasers" :—*Held :* the "terms as arranged" mentioned in the document signed by the agent referred to the whole arrangement made at the interview between the parties & not merely to written terms, & there was no sufficient memorandum in writing to satisfy the Statute of Frauds.—SINCLAIR, SCOTT & CO., LTD. *v.* NAUGHTON (1929), 43 C. L. R. 310.—**AUS.**

PART I. SECT. 8, SUB-SECT. 4.—B. (c).

d i. —— ——.]—A receipt ran as follows: "Halifax, N. S., Mar. 15, 1926. Received from Trueman Gilbert Hirschfield fifteen hundred dollars being the price in full for all my property in Goldenville, house & barn, & all improvements with all stock & utensils." Signed :—*Held :* a sufficient memorandum under Stat. Frauds.—HIRSCHFIELD *v.* HIRSCHFIELD (1933), 7 M. P. R. 423.—**CAN.**

195. *Add. Annotation:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

198. *Add. Annotation:*—*As to* (1) **Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

199. *Add. Annotation:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

214. *Add. Annotation:*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

228a. —— **Of part of property.**]—There being a parol agreement for the purchase of a farm & farm house, the possession of the farm by the purchaser will be held an act of part performance sufficient to authorise the ct. to execute the contract, even though the house should have been occupied adversely to him.—KING *v.* TURNER (1824), 3 L. J. O. S. Ch. 58.

232. *Add. Annotation:*—*As to* (1) **Consd.** Raingold *v.* Bromley, [1931] 2 Ch. 307.

282. *Add. Annotation:*—**Folld.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

283. *Add. Annotation:*—**Apld.** Johnson *v.* Clarke, [1928] Ch. 847.

286. *Add. Annotation:*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

324. *Add. Annotation:*—**Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59.

330a. Notice to terminate—Validity.]—An agreement in writing giving an option to purchase land contained the following clause as to its duration & determination: "the option shall operate for three years certain from the date hereof & after the expiration of that time may be determined by the grantor giving to the grantee 12 months' notice to terminate at the expiration of the said term or at any later date":—*Held:* a notice given before the end of the second year of the operation of the option to determine it at the end of the third year was valid, & the option was rightly determined at the end of the third year.—*Re* DOWNES & LOBBS' CONTRACT, DOWNES *v.* LOBBS, [1937] 4 All E. R. 324; 81 Sol. Jo. 982.

In lease.]—*See* LANDLORD & TENANT, Vol. XXX., pp. 472–477.

Part III.—Sale by the Court.

334a. —— **Reversionary interest.**]—NUNN *v.* HANCOCK (1871), 6 Ch. App. 850; 40 L. J. Ch. 700; 25 L. T. 469; 19 W. R. 1041, L. JJ.

Annotations:—**Refd.** Debenham *v.* Sawbridge (1901), 49 W. R. 502; *Re* Wells, Boyer *v.* Maclean, [1903] 1 Ch. 848.

420a. ——.]—YOUNG *v.* TREGEAR (1872), 21 W. R. 215.

Part IV.—Conditions of Sale, Particulars and Special Stipulations.

567a. —— **Waiver.**]—The real estate of a testator was by his will subjected to a yearly perpetual rentcharge of £300. Upon the sale of part of the land, thirty years before the present proceedings, part of the purchase money had been paid into ct., & this money with certain securities formed a fund in ct. sufficient to provide for the annuity. Upon the former sale, the land then sold had been declared by the ct. to be free from the annuity, but no application & no declaration had been made in respect of testator's other real estate. The land now contracted to be sold remained, therefore, subject to the rentcharge, but could at any time be freed from it by an application to the ct. These lands were identified as the blue & the green land. The blue land was made the subject of a special condition, stating that it was "at one time subject to" the rentcharge, but that the purchaser should accept the fund in ct. as a full & sufficient indemnity. The green land was not stated to be subject to the rentcharge. In the course of the investigation of title, it was discovered that the green land was also subject to the rentcharge. The purchaser then objected that the blue & green lands were still subject to the rentcharge, & contended that the fund did not provide an indemnity. No objection was at this time

PART I. SECT. 9, SUB-SECT. 2.—A. (a).

——.]—BROWN *v.* HARROWER (1886), 3 Man. L. R. 441.—**CAN.**

198 ii. —— ——.]—MORRIS *v.* WHITING (1913), 26 W. L. R. 494; 5 W. W. R. 936; 15 D. L. R. 254; 24 Man. L. R. 56.—**CAN.**

PART I. SECT. 9, SUB-SECT. 2—A. (c) ii.

222 x. ——.]—A purchaser in possession under an oral agreement for sale of land who has not paid the purchase price is not entitled to specific performance.—LANGILLE *v.* HARRIS, [1937] 1 D. L. R. 723.—**CAN.**

PART I. SECT. 9, SUB-SECT. 2.—A. (c) iii.

d i. —— *Improvements such as tenant would make.*]—*Held:* no part performance of contract of sale, since improvements executed were such as a tenant would make.—ROBERTS *v.* —— (1932), 5 M. P. R. 451.—**CAN.**

PART I. SECT. 9, SUB-SECT.

259 i. *Whether collateral agreement binding—Condition to detriment of party seeking to enforce agreement.*]—KIBBLEWHITE *v.* GARLAND, [1928] N. Z. L. R. 135.—**N.Z.**

260 ii. ——.]—KITCHEN *v.* BOON (1876), 24 Gr. 195.—**CAN.**

PART I. SECT. 11.

sc. *Effect of disclaimer of option by trustee in bankruptcy.*]—One C. had an option under a certain agreement to purchase land by a certain date. The land, until purchased, was subject to certain trusts. Prior to that date he was adjudicated insolvent, & his trustee in insolvency disclaimed the option:—*Held:* by virtue of the dis—— C.'s option had come to an end, & the trustees under the agreement held the land free from the CANDY, [1929] S. A. S. R. 10.—

PART III. SECT. 8, SUB-SECT. 2.—A. k. *Revsd.*, 7 A. R. 282.

taken to the fact that the green land had not been mentioned in the special condition. The vendor replied on May 19, 1936, that the position had been fully explained at the time the agreement for sale was entered into, & that the purchaser was bound by the special condition, which was the same as that under which the vendor had purchased. No reply to this answer of the vendor was made until July 14, when the purchaser stated that he had been advised by counsel that the special condition was a misleading one, & intended to take out the present summons. The present summons sought a declaration that the purchaser was entitled to compensation in respect of the fact that the blue land & the green land were still subject to the rentcharge, & that there was no such indemnity as the special condition represented. The vendor relied upon the incorporation of the Law Society's General Conditions, which required an answer to an objection within 7 days, & further contended that, although the rentcharge was still in fact in existence, the fund in ct. provided in effect a full indemnity, &, by a proper application to the ct., the land could at any time be freed from the rentcharge:—*Held:* as to the green land there was a misstatement within clause 31 of the Law Society's General Conditions; but, a complete abstract having been then delivered, the time for a further observation on the vendor's reply of May 19 was, under clause 9 (4) of the Conditions, 7 days after the delivery thereof, & the purchaser's reply on July 14 was out of time. The reply of May 19 must therefore be considered as satisfactory & barred a claim to compensation.—*Re* OSSEMSLEY ESTATES, LTD., [1937] 3 All E. R. 774; 81 Sol. Jo. 683, C. A.

576a. —— ——.]—Leasehold shops described in the particulars of sale as "Valuable business premises" were put up for sale by auction, subject to special conditions of sale & also to the National Conditions of Sale, by one of which, namely, the sixth, it was stipulated that the leases or copies thereof might be examined at the office of the vendors' solrs. before the sale & that the purchaser, whether or not he inspected the same, should be deemed to have bought with notice of the contents thereof. Deft. only became aware of the sale on the day when it was held &, having on that day been supplied by the auctioneers with the particulars & special conditions, but not with the National Conditions, & relying upon the truth of the description in the particulars, he bid at the sale & was declared to be the highest bidder thereat. He then signed the usual form of memorandum to the effect above stated & paid a deposit to the auctioneers. In the course of investigating the title it came to deft.'s knowledge for the first time that the leases under which the properties were held were subject to covenants which prohibited any other trade or business than that of a ladies' outfitter, fancy draper & manufacturer of ladies' clothing from being carried on upon the properties. In consequence of the existence of those restrictive covenants & the failure of the pltfs. to procure their removal or the licence of the lessors to use the properties for the purposes of any business, the deft. refused to complete the purchase. In an action by the vendors for specific performance in which deft. counterclaimed rescission of the contract & to recover his deposit:—*Held:* (1) a shop which could be used for one purpose only was not fairly described as "valuable business premises"; (2) such a misleading representation by pltfs. in their particulars of sale disentitled them, notwithstanding the sixth condition, to the assistance of the ct. to compel deft., who purchased in reliance upon the truth of such representation, to specifically perform his part of a contract for a consideration different from that which he was led to expect.—CHARLES HUNT, LTD. *v.* PALMER, [1931] 2 Ch. 287; 100 L. J. Ch. 356; 145 L. T. 630; 75 Sol. Jo. 525.

Annotations:—As to (2) **Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34; Bellotti *v.* Chequers Developments, Ltd. [1936] 1 All E. R. 89.

585. *Add. Annotation:*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

634. *Add. Citations:*—97 L. J. Ch. 4; 138 L. T. 26.

636. *Add. Annotation:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

683. *Add. Annotation:*—**Consd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

771a. —— ——.]—At a sale by auction of property belonging to deft. pltf. became the purchaser of a freehold cottage, subject to the National Conditions of Sale, clause 10 of which provided that no error, misstatement or omission in the particulars should annul the sale, nor should any compensation be allowed by either party in respect thereof. The particulars stated that the cottage was let to a tenant whose notice to quite had determined, but who had been allowed to remain in occupation on sufferance, & that the premises would be sold with vacant possession on completion. The statement was misleading, as the premises were in fact in the occupation of a sub-tenant, who claimed to be entitled to remain on as a statutory tenant under Increase of Rent & Mortgage Interest (Restriction) Acts, & refused to vacate them. The purchaser refused to complete without vacant possession, with which he could have resold the property at a profit, & sued the vendor for damages for breach of contract:—*Held:* the action

PART IV. SECT. 2, SUB-SECT. 7.—A. (b) 1.

r 1. —— *When time begins to run—From delivery of proper abstract.*]—SHENSTONE *v.* HEWSON (1927), 28

PART IV. SECT. 2, SUB-SECT. 7.—B. (b) 1.

ct. ——.]—An undisclosed right of way is a defect of title & a ground for rescission.—TOMOCH *v.* NORTH BRITISH CANADIAN INVESTMENT CO., LTD., [1936] 1 W. W. R. 721; 2 D. L. R. 409; 44 Man. L. R. 1.—CAN.

PART IV. SECT. 2, SUB-SECT. 7.—B. (b) ii.

se. *Objections known to vendor.*]—Upon a stipulation providing that "if there is any valid objection to the vendor's title which the vendor shall be unable or unwilling to remove, & which the purchaser will not waive, the

if the purchaser presents objections to title which vendor knew of, & where he was reckless as to the manner in which he formulated the contract.—LAVINE *v.* INDEPENDENT BUILDERS, LTD., [1932] O. R. 669; 4 D. L. R. 569.—CAN.

PART IV. SECT. 2, SUB-SECT. 7.—B. (i).

n 1. ——.]—LOUCH *v.* PAPE AVENUE LAND CO., [1928] 3 D. L. R. 620; [1928] S. C. R. 518.—CAN.

failed. There was no breach of contract, the statement in the particulars being an error or misstatement within clause 10 of the conditions in respect of which the purchaser could claim no compensation.—CURTIS *v.* FRENCH, [1929] 1 Ch. 253; 98 L. J. Ch. 29; 140 L. T. 133; 45 T. L. R. 15; 72 Sol. Jo. 762.

814. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

821a. —— **Misrepresentation as to dimensions of garden—Before contract entered into.**]—Pltf. entered into negotiations with defts. for the purchase of a house to be built upon a building estate. He made particular inquiries as to the size of the back garden, stating he wished to erect a garage thereon. Defts. wrote to him that the length of the garden was 40 feet "approximately," but in fact, it was only 36 feet, & upon this footing the usual contract was entered into incorporating the National Conditions of Sale:—*Held:* this was an innocent material misrepresentation which had induced pltf. to enter into the contract; this was not an error, misstatement or omission within the National Conditions of Sale, clause 10; pltf. was entitled to rescind the contract & the return of the deposit; pltf. having alleged fraud which had not been proved, the judgment for him would be with the general costs of the action except so far as those costs had been increased by the allegation of fraud.—BELLOTTI *v.* CHEQUERS DEVELOPMENTS, LTD., [1936] 1 All E. R. 89.

829. *Add. Annotation:*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

838. *Add. Annotation:*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

838a. —— —— ——.]—At an auction sale the purchaser bought freehold property sold subject to certain special conditions & to the General Conditions of Sale, 1925. The particulars & conditions of sale did not disclose the fact that two sewers, vested in the local authority & known by the vendors to exist, ran along the east side of the premises & along the yard at the back. Objection was taken on behalf of the purchaser. The vendors refused to release him from the contract, contending that the existence of the sewers did not prevent the use of the premises as a dwelling-house, for which the purchaser had bought them; but abatement of the purchase price was offered by way of compensation. The purchaser declined the offer, & by this summons asked for a declaration that the property was substantially different from that agreed to be sold, & for rescission, or, alternatively, a declaration that he was entitled to compensation:—*Held:* the failure to disclose the existence of the sewers, although materially affecting the description, did not force upon the purchaser property substantially different from that agreed to be sold; & the contract could be performed subject to compensation under Condition 35 of the General Conditions of Sale, 1925.—*Re* BELCHAM & GAWLEY'S CONTRACT, [1930] 1 Ch. 56; 99 L. J. Ch. 37; 142 L. T. 182.

842. *Add. Annotation:*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

860. *Add. Annotation:*—**Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

880a. **Contract for completion "on or about" given date.**]—By a contract dated Oct. 19, 1928, pltf. agreed to sell to deft. all her right, title & interest in a licensed house known as The Thorns, of which she was the licensee. The contract provided that the purchase money should be paid "on or about" Nov. 10, 1928, & that deft. should forfeit the deposit of £120 which he had paid if he should fail to fulfil his part of the contract; also that either party refusing to comply with or neglecting to perform any part of the agreement should pay to the other, on demand, the sum of £200. On Oct. 3, 1928, deft. had given to the brewers, who were the freeholders of The Thorns, references which they had accepted by Oct. 10. He went to the magistrates' clerk & signed the ordinary notices on reference to a request for a temporary transfer on Nov. 10, & for full transfer on Dec. 8. At least a week before Nov. 10 deft. knew that he would be unable to complete the purchase of The Thorns unless he could raise a loan. His brokers acting in the matter sent him a notice to attend on Nov. 10. He did so, & first saw the brewers, telling them that he could not complete, & that the notice of application for transfer would have to be withdrawn & another one given. He then arranged with pltf. that completion should take place on Dec. 8. Deft., however, did not attend to complete. On Dec. 22 deft. stated that he would complete on Jan. 30. In an action by pltf. for a declaration that the contract had been rescinded & the deposit of £120 forfeited, & for damages:—*Held:* in the circumstances, & particularly having regard to the subject-matter, time was of the essence of the contract.—LOCK *v.* BELL, [1931] 1 Ch. 35; 100 L. J. Ch. 22; 144 L. T. 108.

895. *Add. Annotations:*—**Expld.** Bernard *v.* Williams (1928), 139 L. T. 22. **Consd.** Lock *v.* Bell, [1931] 1 Ch. 35.

901. *Add. Annotation:*—**Consd.** Lock *v.* Bell, [1931] 1 Ch. 35.

903a. —— —— ——.]—LOCK *v.* BELL, No. 880a, *ante*.

PART IV. SECT. 2, SUB-SECT. 9.—B. (d) i.

814 iii. —— ——.]—L. sold to N. a piece of land which was described in the contract as "containing by measurement 137 acres or thereabouts being farm property on C. Road at present occupied by W. & being the land comprised in" certain certificates of title. The contract also contained the following clause: "No error of misdescription of the property shall annul the sale but compensation shall be made in respect thereof. . . ." The farm occupied by W., & comprised within the said certificates, was conveyed to N., but it only contained 134 acres, & of this latter fact N. was aware before completion:—*Held:* the transactions amounted to a sale of specific property & that the deficiency of three acres was not such a qualification as to area of the description of the land as would entitle N. to recover compensation under the contract.—NIXON *v.* LOFTS (1928), 29 S. R. N. S. W. 9; 46 N. S. W. W. N. 7.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 9.—C. (b) iii.

sk. *Restrictive covenants as to user.*]—Restrictive conditions as to user of vendor's property, *e.g.*, not to build on open land at the back of the house, or not to close certain windows in a neighbour's house, are material defects entitled purchaser to refuse completion.—LALLUBHAI RUPCHAND *v.* CHIMANLAL), I. L. R. 59 Bom. 83.—**IND.**

912. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277 ; Lock *v.* Bell, [1931] 1 Ch. 35 : Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198. **Refd.** Bernard *v.* Williams (1928), 93 L. T. 22 ; Pincott *v.* Moorstons, Ltd. (1936), 80 Sol. Jo. 207.

913. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

916. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

925. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1010. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1016a. Condition to indemnify purchaser—"Local land charge of which vendor has had notice"—Apportionment under Private Street Works Act, 1892 (c. 57)—Effect of Law of Property Act, 1925 (c. 20), s. 198.]—*Re* MIDDLETON & YOUNG'S CONTRACT (1929), 167 L. T. Jo. 244 ; 67 L. Jo. 274 ; [1929] W. N. 70.

1017. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

1030. *Add. Annotation :*—**Distd.** *Re* Belcham Gawley's Contract, [1930] 1 Ch. 56.

1054. *Add. Annotation :*—**Consd.** Low *v.* Fry (1935), 152 L. T. 585.

Part V.—Vendor's Title.

1064. *Add. Annotation :*—*As to* (1) **Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1075. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1078. *Add. Annotation :*—**Distd.** Turner *v.* Watts (1928), 138 L. T. 680.

—.]—Declaration in assumpsit stated, that pltf. bargained to buy of deft., & deft. agreed to sell to him, a dwelling-house & the fixtures therein, for the residue of a term of years then and still unexpired therein, to commence from a certain day, to wit, Jan. 1, 1840, for the sum of £60 ; & that thereupon deft. promised to execute a proper conveyance, to make out an abstract of title, & deliver possession from Jan. 1, 1840, etc. At the trial, the following paper, signed by deft., was read in evidence : "I agree to sell the house & fixtures, No. 163, Piccadilly, to commence from Jan. 1 next, for £60" :—*Held :* this document imported the sale of an interest in fee simple, & did not sustain the contract as alleged in the declaration.—HUGHES *v.* PARKER (1841), 8 M. & W. 244 ; 5 Jur. 730.

1104a. Sale by vendor in specified capacity.]—Where, in a vendor & purchaser contract, it is stated that the vendor will make title in a specified capacity, the contract does not amount to a warranty that he will make title in a particular manner. The warranty is no more than a warranty that a good title shall be made ; & the purchaser can be forced to accept such good title, even though made by the vendor in a capacity other than that specified.

By special conditions of sale, subject to which two houses were sold by auction, it was stated that the vendors were selling as "trustees for sale" under the will of A. On examination of the title by the purchasers, it appeared that no trust for sale was contained in the will :—*Held :* the above statement did not affect the powers of the vendors to make a good title as the legal personal representatives of A.—*Re* SPENCER & CONTRACT, [1928] Ch. 598 ; 97 L. J. Ch. 335 ; 139 L. T. 287 ; 72 S[illegible]

1111. *Add. Annotation :*—**Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

1115. *Add. Annotation :*—*Generally,* **Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co. [1929] 1 Ch. 277.

1125. *Add. Annotation :*—**Apld.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

1130. *Add. Annotation :*—*As to* (2) **Apld.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

1134. *Add. Annotation :*—**Consd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

1136. *Add. Annotation :*—**Consd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

1138a. ——.]—A contract for sale of property held by underlease will not be enforced against a purchaser unless it distinctly specifies that that which is offered for sale is an underlease : it is not enough for the vendor to show that, after a careful study of the whole contract, it might be held that, upon its true construction, what the vendor is offering for sale is an underlease. The property in Lot 1, described in the particulars of sale as eight leasehold dwelling-houses, was sold subject to special conditions of sale & the National Conditions of Sale. Some of the houses were stated in the particulars to be held for a term of 90 years & others for a term of 99 years (less 7 days). One of the special conditions was : "The title to Lot 1 shall commence with the leases under which the respective properties are held," & the sixth of the National Conditions was : (1) "Leaseholds : The abstract of title to leasehold property shall (unless otherwise provided)

PART IV. SECT. 2, SUB-SECT. 10.—B.

r (p. 118) l. —— ——.]—SHERRIN *v.* WIGGINS, [1917] 2 W. W. R. 895 ; 27 Man. L. R. 572.—**CAN.**

sc. *Payment into bank—Payment must be made during banking "day."*]—BOERICKE *v.* SINCLAIR, [1929] 1 D. L. R. 561 ; 93 O. L. R. 237.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 10.—C. (a).

sd. *Interest on unpaid purchase-money to be added to principal.*]—Where, by a contract for sale of land, it was stipulated that, in the event of interest on the unpaid purchase-money being unpaid at the end of each year, the same should be added to the principal, the ct. refused to decree specific performance by the vendor on payment of the principal & simple interest only, or except upon payment of the interest according to the agreement.—HENDERSON *v.* DICKSON (1862), 9 Gr. 379.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.

n l. ——.]—*Re* THOMPSON & JENKINS, [1928] 4 D. L. R. 564 ; 63 O. L. R. 33.—**CAN.**

commence with the lease or underlease creating the term sold." (2) "Inspection of lease: The lease or underlease or a copy thereof may be examined at the office of the vendors' solrs. . . . & the purchaser shall be deemed to have bought with full notice of the contents thereof." (3) "Property held by underlease: When property sold is held by underlease no objection or requisition shall be made on that account. . . ." The purchaser having objected to the title on the ground that the houses which the vendors contracted to sell as leaseholds were in fact held by underlease, a summons was taken out by the vendors for a declaration that the purchaser's objection had been sufficiently answered & that a good title had been shown in accordance with the contract:—*Held:* the objection had not been sufficiently answered & no such title to the houses had been shown as the purchaser was bound to accept.—*Re* RUSS & BROWN'S CONTRACT, [1934] Ch. 34; 103 L. J. Ch. 12; 150 L. T. 125; 50 T. L. R. 19; 77 Sol. Jo. 749, C. A.

Annotation:—**Refd.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

1138b. ——.]—CUNNINGHAM *v.* SHACKLETON (1935), 79 Sol. Jo. 381.

1151. *Add. Annotation:*—**Follid.** *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1152. *Citation:*—For "[1928] W. N. 135" read "No. 1104a, *ante*."

1162. *Add. Annotation:*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

1162a. —— **Covenant by vendor to indemnify mortgagee—Registered charge.**]—On July 11, 1929, the purchaser bought Lot 2 at a sale by auction & paid a deposit. The particulars of sale described Lot 2 as an unrestricted freehold, practically an island block, with four frontages to Little Orford Street & three other streets in Chelsea, the block forming an excellent building site, when the existing buildings came into hand. On examining the vendors' registered absolute title the purchaser found Entry 7 in the Charges Register stating in effect that on the transfer of Lot 2 & other property to the vendors on May 23, 1929, by mtgees. selling under their power of sale in a mtge, of Feb. 17, 1903, from Co. A., the former owners, the vendors by way of indemnity to the mtgees., but not further or otherwise covenanted to perform the obligations of Co. A. under a deed of Dec. 23, 1905, made between Co. A. & the Chelsea Borough Council & under a London County Council Order of Dec. 12, 1905. The deed of Dec. 23, 1905, made in pursuance of a large building scheme by Co. A. provided for the stopping up (*inter alia*) of Little Orford Street & for making certain new streets, including a new transverse street bisecting Lot 2. The Borough Council were to obtain the necessary Closing Orders, & Co. A. were to lay out the new streets at their own expense. By their order of Dec. 12, 1905, the London County Council on the application of Co. A. sanctioned the new streets subject to certain conditions including a condition that Co. A. should covenant to lay them out, & on Dec. 21, 1905, Co. A. covenanted accordingly. On July 10, 1906, on the Borough Council's application, the justices made a Closing Order for Little Orford Street. For financial & other reasons this part of Co. A.'s scheme had not yet been proceeded with. Little Orford Street was still open; it was in fact repaired by the Borough Council; & at the date of the contract neither the vendors nor the purchaser knew of the Closing Order's existence. On discovering Entry 7 the purchaser required the vendors to delete it from the Register & to obtain a release of the obligations, &, on their refusal, he issued a vendor & purchaser summons for a declaration that a good title was not shown. On subsequently discovering the Closing Order he discontinued the summons & brought this action claiming a declaration that he was entitled to repudiate the contract, damages for breach, & return of the deposit. The vendors denied any breach & counterclaimed for specific performance:—*Held:* (1) as the title of the vendors & their mtgee. predecessors was paramount to the 1905 documents, so that they were not bound by Co. A.'s obligations thereunder, & the vendors' covenant of indemnity was a mere personal covenant to indemnify the mtgees. against a non-existent liability, the purchaser was not entitled to require the removal of Entry 7 from the vendors' registered title, but must be satisfied with a clean transfer not referring to the indemnity, & it would be the Registrar's duty to omit any reference thereto in the purchaser's registered title; (2) the twenty-four years' old Closing Order did not affect the title, but, if & so far as it was inconsistent with the particulars, merely raised a case of innocent misrepresentation, on which the purchaser could neither repudiate the contract nor recover damages, his only remedy being to resist specific performance. Therefore, the purchaser's action failed on both points; (3) on the vendors' counterclaim for specific performance that there was in fact no misrepresentation in the particulars, as the word "street" even in London did not necessarily mean a public highway. There was therefore no ground for refusing specific performance.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479; 99 L. J. Ch. 274; 142 L. T. 626.

1177. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

1178a. Property subject to closing order—Unknown to vendor.]—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., No. 1162a, *ante*.

PART V. SECT. 3.

sa. *Sale by company—After removal of co. from register.*]—A co. incorporated in Tasmania was registered in Tasmania as a foreign co. It acquired certain land in Tasmania. On Aug. 14, 1924, the co. filed a notice that it had ceased to carry on business in Tasmania, & the registrar thereupon removed its name from the register. On May 16, 1925, the co. contracted to sell the said land to B.:—*Held:* the land in question was still vested in the co., & there would be a declaration that it could show a good marketable title.—*Re* LABOR PAPERS, LTD. & BUTTON'S CONTRACT (1925), 21 Tas. L. R. 35.—AUS.

sd. *Property subject to apparent easements.*]—Title held good, since purchaser must have had notice from the lay out of the property, of the existence of the easements.—LUBIENSKI *v.* SILVERMAN, [1932] O. R. 396; 3 D. L. R. 320; *affd.*, [1932] 4 D. L. R. 656.—CAN.

sk. *Property subject to mortgage.*]—The fact that the vendor of property encumbered by an undischarged mtge. has not legal power to compel the mtgee. to discharge the mtge. at any

1219. *Add. Annotation :*—**Refd.** *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1219a. —— Sale of registered freeholds.]—When a vendor purports to sell registered freehold property without disclosing that his title is only possessory, which fact appears only on delivery of the abstract, the contract is misleading, & the purchaser can refuse to accept the title, notwithstanding a condition that, if objection be not taken within fourteen days of delivery of the abstract, he will be taken to have accepted the title.—*Re* BRINE & DAVIES' CONTRACT, [1935] Ch. 388 ; 104 L. J. Ch. 139 ; 152 L. T. 552.

1220. *Add. Annotation :*—**Folld.** Charles Hunt, Ltd. *v.* Palmer, [1931] 2 Ch. 287.

1220a. Property described as "valuable business premises"—Covenants restricting carrying on of business.]—CHARLES HUNT, LTD. *v.* PALMER, No. 576a, *ante.*

1236. *Add. Annotation :*—**Refd.** White *v.* Bijou Mansions, Ltd., [1937] 3 All E. R. 269.

1242. *Add. Annotation :*—**Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1259. *Add. Annotation :—Generally,* **Refd.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

1275. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

1277. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

1280. *Add. Annotation :*—**Consd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

1321. At end of paragraph for "gave notice of a trust," read "gave no notice of a trust."

1347a. Document insufficiently stamped—Whether purchaser compelled to accept statutory declaration—Open contract.]—Where a vendor is selling land under an open contract, he cannot compel the purchaser to accept a statutory declaration as sufficient evidence to contradict statements appearing in the documents of title, such as the consideration stated in a deed which shows *primâ facie* that the deed is insufficiently stamped.—*Re* SPOLLON & LONG'S CONTRACT, [1936] Ch. 713 ; [1936] 2 All E. R. 711 ; 105 L. J. Ch. 347 ; 155 L. T. 554 ; 80 Sol. Jo. 510.

1394a. —— Assent of representative—Administration of Estates Act, 1925 (c. 23), s. 36 (7)—Meaning of "sufficient evidence."]—The words "sufficient evidence" in Administration of Estates Act, 1925 (c. 23), s. 36 (7), have not the meaning of "conclusive evidence," &, accordingly, the effect of the sub-sect. is that a purchaser may safely accept a vesting assent as evidence that the person in whose favour it was made was the person entitled to have the legal estate conveyed to him only unless & until, on a proper investigation of the vendor's title, facts come to his knowledge which indicate the contrary ; in which event the vesting assent cannot be accepted as sufficient evidence of something which he has reason to believe is not in accordance with the facts.—*Re* DUCE & BOOTS CASH CHEMISTS (SOUTHERN), LTD.'S CONTRACT, [1937] Ch. 642 ; [1937] 3 All E. R. 788 ; 106 L. J. Ch. 387 ; 157 L. T. 477 ; 53 T. L. R. 1000 ; 81 Sol. Jo. 651.

1401a. Proof of ownership in fee simple—Statutory declaration of rent collector.]—The exors. of a testator, who died in 1931, entered into a contract for the sale of property described in the particulars as freehold. The sale was to be subject to the General Conditions of 1925. The vendors furnished the purchaser with an abstract of testator's will appointing them his exors., but not containing any reference to the property. The purchaser objected that this was no evidence of title, & the vendors offered to provide a statutory declaration by a person that he had collected the rents of the property & done repairs to it for the testator over a period to twenty years. The purchaser refused to accept the proposed statutory declaration :—*Held :* the proposed statutory declaration was insufficient to prove that testator had been seised in fee simple in possession free from incumbrances, & therefore the purchaser's objection prevailed.—*Re* GILBERT & FOSTER'S CONTRACT (1935), 52 T. L. R. 4.

1401b. Deed over thirty years old—Executed under power of attorney—Proof of execution.]—*Re* COPELIN'S CONTRACT, [1937] 4 All E. R. 447 ; 54 T. L. R. 130.

1416a. —— Subsequent purchase by solicitor from client.]—A solr., who has been employed to advise on a title, cannot, on purchasing the land himself of his client, set up an objection, which he did not think of any importance when advising his principal.—BEEVOR *v.* SIMPSON (1829), Taml. 69 ; 48 E. R. 28.

1458a. *S. P.* FLOOD *v.* PRITCHARD (1879), 40 L. T. 873.

1466. After this case add :—

-.]—*Sce, now,* Law of Property Act, 1925 (c. 20), s. 45 (4).

time fixed for closing the sale, does not affect his ability to convey the fee, if it can be shown that he had obtained a promise from the mtgee. to discharge the mtge. at the time of closing, & that promise had not in the meantime been revoked.—GRAY *v.* CHADWICK (1922), 49 N. B. R. 144.—**CAN.**

s1. *Part of property claimed by Dominion.*]—Pltf. sued for specific performance of an agreement of sale of land & land covered with water from him to deft. Shortly after the agreement, the Crown in the right of the Dominion of Canada had asserted a claim to a part of the land as having passed to it at Confederation, under sect. 108 of the B. N. A. Act, as part of a public harbour, &, on pltf.'s refusal to remove this objection to title, deft. had purported to terminate the agreement :—*Held :* pltf. had agreed to convey a good & sufficient title to the lands, & action dismissed.—RODD *v.* CRONIN, [1936] S. C. R. 142 ; 2 D. L. R. 337.—**CAN.**

PART V. SECT. 5, SUB-SECT. 8.—B.

sm. *Proof of charge—Note of execution on abstract of title.*]—HIND *v.* WESBROOK (1900), 7 Terr. L. R. 10.—**CAN.**

PART V. SECT. 5, SUB-SECT. 10.—C.

s i. —— *Certificate that no arrears of income tax outstanding.*]—The production of a certificate under Finance Act, 1923, s. 6, from the Revenue Comrs. that no arrears of income tax were outstanding, if required by the purchaser, is an expense which, by Conveyancing Act, 1881, s. 3 (6), must be borne by him, as the contract of sale contained no provision to the contrary.—HOPKINS *v.* GEOGHEGAN, [1931] I. R. 135.—**IR.**

Part VI.—Position of Parties Pending Completion.

Add. Annotation :—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

1488a. —— ——.]—It is sometimes said that under a contract for the sale of an interest in land the vendor becomes a trustee for the purchaser of the interest contracted to be sold subject to a lien for the purchase-money ; but however useful such a statement may be as illustrating a general principle of equity, it is only true if & so far as a ct. of equity would under all the circumstances of the case grant specific performance of the contract (*per* CUR.).—HOWARD *v.* MILLER, [1915] A. C. 318 ; 84 L. J. P. C. 49 ; 112 L. T. 403, P. C.

—— Central Trust & Safe Deposit Co. *v.* Snider, [1916] 1 A. C. 266.

1500. *Add. Annotation :*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

1509a. ——.]—PUDDICOMBE *v.* BYTHESEA (1823), 1 L. J. O. S. Ch. 186.

1517. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

1538. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

1588. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

1594. *Add. Annotations :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308 ; Sutherland *v.* German Property Administrator (1933), 149 L. T. 47.

1597a. —— ——.]—PINCKE *v.* CURTEIS (1793), 4 Bro. C. C. 333, n. ; 29 E. R. 920.

1631. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1640. *Add. Citation :*—[1928] Ch. 340.

1656. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1682. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1716. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch.

1786. *Add. Citation :*—[1927] B. & C. R. 137.

PART VI. SECT. 1, SUB-SECT. 2.—A.

1515 ii. —— ——.]—The right to possession in the purchaser is not a necessary incident to an executory contract for the sale of land. This right remains in the vendor until full payment of the purchase price, unless express provision to the contrary is made in the contract.—MANSELL *v.* SMITH, [1931] 1 W. W. R. 563.—**CAN.**

sg. *What amounts to possession—Actual occupation of part.*]—MCKINNON *v.* MCDONALD (1867), 13 Gr. 152.—**CAN.**

sh. *Right to possession as against transferee of land.*]—Pltf., a purchaser under an agreement for the sale of land which provided that he should have the right to immediate possession, entered into possession & filed a *caveat*, claiming an interest as owner under the agreement. The vendor assigned the agreement to the M. H. Co. & subsequently transferred the land to deft. co. which obtained a certificate of title subject to the *caveat*, but acquired no rights under the agreement for sale. Pltf. having left the property, deft. co. put deft. into possession without the knowledge or consent of pltf. :—*Held :* pltf. was entitled to a judgment declaring him entitled to immediate possession of the property, & was entitled also to damages for the wrongful user of his land, such damages to be calculated & allowed up to & inclusive of the day of the entry of the judgment.—WADDELL *v.* GRAY-CAMPBELL, LTD. & SCARROW, [1929] 3 D. L. R. 488 ; 2 W. W. R. 113 ; 23 S. L. R. 527 ; *revsg.*, [1929] 2 D. L. R. 362 ; 1 W. W. R. 241.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3—B.

si. *Covenant to leave improvements—Liability for removal of house.*]—Under an agreement for the sale of land, the registered owner being the vendor, the purchaser agreed for himself, his assigns, etc., that all improvements placed on the land should remain thereon & not be removed or destroyed until final payment for the land had been made. Deft. P., the assignee of the purchaser, built a house on the land. P. sold the house to deft. S., who was ignorant of the terms of said agreement. The house, although built on skids, was found to have become in fact & within the intention of the agreement part of the soil at the time of the sale to S. The vendor obtained a final order for "foreclosure," but before it was granted S. had removed the house from the land & refused to return it :—*Held :* both defts. were liable in damages to the vendor for the value of the house at the time of its removal, although it was not shown that the land was worth less than the amount owing to the vendor under the agreement for sale.—CANADIAN PACIFIC RY. CO. *v.* PRICKETT & SHOWALTER, [1930] 2 W. W. R. 65 ; 3 D. L. R. 800.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.

g i. —— *Taxes—Composition with revenue authorities—Effect of.*]—KEILL *v.* HUNTER (1928), 39 B. C. R. 396.—**CAN.**

n i. —— *To knowledge of vendor—Effect of sale on action for purchase-money.*]—Resp., representing the vendor, sued applt., representing the purchaser, for the balance of the price of sale of a certain parcel of land. The latter denied his liability on the ground that the property could not be transferred to him by the vendor as it had been sold for unpaid taxes ; but the vendor contended that the purchaser was still bound because the sale of the property for taxes was due to the failure by the purchaser to pay them as covenanted :—*Held :* resp.'s action should be dismissed. The vendor was aware that the taxes had not been paid & was looking to the purchaser for the money wherewith to pay them ; he had already collected some rent for the property which he was holding as a credit against the taxes, & it can be inferred that the vendor anticipated that payments on account of taxes, when made, would pass through his hands. When, therefore, the property was sold for taxes, it was not because the vendor was misled into a belief that the purchaser had paid or intended to pay the taxes ; the vendor had been notified, previously to the sale for taxes, that the purchaser repudiated the contract & was looking for a refund of his payments, & in withholding payment of the municipal claim the vendor acted deliberately, with a full knowledge of the facts.—ROYAL TRUST CO. *v.* KENNEDY, [1930] S. C. R. 602 ; 4 D. L. R. 868.—**CAN.**

o i. ——.]—Every vendor & purchaser of land situate in Alberta must be held to have contracted with reference to Unearned Increment Tax Act, &, in the absence of an agreement to the contrary, there is implied in an agreement for the sale & purchase of such land an obligation on the vendor to pay or cause to be paid the portion of the tax payable in respect of any increase in value prior to the making of said agreement, or, at least, there is implied an agreement by the vendor that, if the purchaser pays the vendor's portion of the tax, the purchaser will be entitled to recover it from him.—CANADIAN AMERICAN TRUST CO., LTD. & CENTRAL PROPERTIES, LTD. *v.* MCMULLEN, [1929] 3 D. L. R. 867 ; 2 W. W. R. 295 ; 24 Alta. L. R. 153 ; *revsg.*, [1929] 2 D. L. R. 555.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1—A.

sm. *Lease by purchaser.*]—A lease given by a person with only a limited right, *e.g.* a purchaser under an agreement for sale, must be subject to the infirmities or limitations of his own title. An assignment, by the purchaser, of his rights under the agreement to purchase cannot convey the interest which he had vested in his lessee by the lease, & the fact that the assignment is to his vendor makes no difference in this respect.—LINDSAY *v.* GIBBONEY, [1931] 1 W. W. R. 728 ; *revsg.*, [1931] 1 W. W. R. 613.—**CAN.**

Part VII.—Vendor and Purchaser Summons.

1802. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

1822. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1823. *Add. Annotation :*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

1832. *Add. Annotation :—As to* (2) **Folld.** Charles Hunt, Ltd. *v.* Palmer, [1931] 2 Ch. 287.

1873. In cross-references before this case, for " Ord. 63 " read " Ord. 58."

Part VIII.—Remedies under an Uncompleted Contract.

1920a. —— —— ——.]—Mussen *v.* Van Diemen's Land Co. (1937), 54 T. L. R. 225.

1930. *Add. Annotation :*—**Distd.** Harold Wood Brick Co. *v.* Ferris (1935), 79 L. Jo. 448.

1931. *Add. Annotation :*—**Distd.** Harold Wood Brick Co. *v.* Ferris (1935), 79 L. Jo. 448.

1944a. *S. P.* Westerman *v.* Pantlin (1900), 3 Seton on Judgments & Orders, 7th ed. 2218.

Annotation :—**Folld.** Olde *v.* Olde, [1904] 1 Ch. 35.

1957. *Add. Annotation :*—**Consd.** Low *v.* Fry (1935), 152 L. T. 585.

2006. *Add. Annotations :*—**Refd.** Wilson *v.* Balfour (1929), 45 T. L. R. 625; May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n.; Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

2009. *Add. Annotation :*—**Distd.** Low *v.* Fry (1935), 152 L. T. 585.

2009a. —— ——.]—Bernard *v.* Williams, No. 2182, *post.*

2013. *Add. Annotations:*—**Dbtd.** Bernard *v.* Williams (1928), 139 L. T. 22. **Consd.** Low *v.* Fry (1935), 152 L. T. 585.

2014. *Add. Annotations:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22; Low *v.* Fry (1935), 152 L. [illegible]

2049. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

2061. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell (1930), 69 L. Jo. 219. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22; Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198; Pincott *v.* Moorstons, Ltd. (1936), 80 Sol. Jo. 2[illegible]

2080. *Add. Annotation :*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2087. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2087a. —— **Provision for alternative—Repudiation by purchaser.**]—Pltf. made an agreement to purchase the lease of certain premises & paid a deposit. It was a term of the agreement that the vendors should use their best endeavours to obtain the landlord's consent

PART VIII. SECT. 1, SUB-SECT. 1.—A.

k (p. 221) i. —— *Requisites of valid cancellation notice.*]—Brown *v.* Roberts (1919), 17 B. C. R. 16.—**CAN.**

m (p. 223) i. —— *Implied repudiation by purchaser.*]—Skwarchuk *v.* Skwarchuk, [1937] 3 W. W. R. 492.—**CAN.**

o (p. 223) i. —— —— ——.]—Hamilton *v.* Taylor (1919), 47 N. B. R. 145.—**CAN.**

aa i. —— *On liability of defendant for costs.*]—Where a vendor suing for specific performance, personal judgment, & in default of payment the usual relief by way of cancellation elects immediately on becoming entitled to judgment to take a judgment for cancellation, a provision for payment of costs by the deft. personally on his failure to redeem should not ordinarily be included in the judgment, at least where deft. has not defended the action.—Beaton *v.* Hambicki (Man.), [1929] 1 D. L. R. 982; 1 W. W. R. 375.—**CAN.**

ee i. ——.]—In an action to have an agreement for the sale of land declared determined & the payments made thereunder forfeited :—*Held :* a defaulting purchaser who is persisting in his default & refusing to perform his contract cannot have any relief under the equitable jurisdiction of the ct.; therefore defts. were not entitled to [illegible] them.—Oughton

unable to give title—purchaser's acts—Liability of purchaser under contract.]—Wilkin *v.* Brown (Alta.), [1927] 2 D. L. R. 87.—**CAN.**

sn. *Time allowed purchaser to make good default—Dependent on circumstances.*]—Singer *v.* Garrett, [1929] 4 D. L. R. 132; 2 W. W. R. 201; 41 B. C. R. 160.—**CAN.**

sp. *Failure to pay instalments—Property passing to vendor—Fixtures.*]—The buildings in question herein which were erected by the purchaser under an agreement for sale which was foreclosed *held* to be the property of the vendor.—Fife *v.* Hrapko & Lutzak, [1936] 1 W. W. R. 627; 2 D. L. R. 383; 6 F. L. J. (Can.) 35.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

1971 x. —— ——.]—In an action by a purchaser to have an agreement for the sale of land declared rescinded & for the return of a sum of money paid thereunder & another sum, which was an amount realised by the vendor, out of grain sold from the land, in excess of the interest payable under the agreement :—*Held :* the two items should be considered as a deposit & as part of the cash payment respectively, that the purchaser had in fact abandoned the land, & that through the failure of the purchaser to complete the vendor had suffered loss in an amount in excess of the aggregate of said sums. Therefore, although the declaration of rescission, which was also asked for by deft., was granted, the claim for the return of the money was dismissed.—Kwara *v.* Piper [illegible]0] 1 D. L. R. 83; [1929] 392.—**CAN.**

a i. —— *Default by vendor—Prior to default by purchaser.*]—Rogers & Brown *v.* Hazelhurst, [1930] 2 D. L. R. 609; 65 O. L. R. 81.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—C. (b).

c. *Revsd.*, 33 O. L. R. 78.

PART VIII. SECT. 2, SUB-SECT. 3.—C. (e).

2062 i. *Misrepresentation—Of agent of vendor.*]—Where the ground of rescission of a contract for the purchase of land is the fraudulent misrepresentation of the agent of the vendor, &, therefore, in law of the vendor himself, the purchaser is entitled to *restitutio in integrum* from the vendor & therefore even though a deposit under the contract has been paid to the agent as " stakeholder " the purchaser is entitled to an order for the repayment of the deposit by the vendor.—Swindle *v.* Knibb (1929), 29 S. R. N. S. W. 325; 46 N. S. W. W. N. 102.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—C. (h).

so. *Deposit paid—Provision for payment of further sum on fixed date—Failure of purchaser to pay.*]—*Held :* although the vendor had neither executed nor offered to execute a conveyance he was entitled to sue before completion, inasmuch as the contract fixed a definite date for the payment & did not postpone it until completion or until after completion.—Perpetual Trustee Co. *v.* Union Trustee Co. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

to the assignment of the lease &, if they failed to obtain such consent, that they would, at the option of the purchaser, procure a declaration of trust in her favour or otherwise deal with the same as she should direct. They failed to obtain the consent of the landlord. Pltf. did not ask for the declaration of trust, but commenced an action for the return of her deposit. At the trial it was held that the purchaser had failed to fulfil her part of the contract & was not entitled to the return of her deposit. Upon appeal it was contended for pltf. that the exercise of the option to take a declaration of trust would have caused a forfeiture of the lease, & her failure to exercise such option did not therefore amount to a breach of contract:—*Held:* the inability to obtain the landlord's consent was specially provided for in the contract, & those provisions were binding on both parties. There had therefore been a breach of contract by pltf. & the deposit must be forfeited.—PINCOTT *v.* MOORSTONS, LTD., [1937] 1 All E. R. 513; 156 L. T. 139; 81 Sol. Jo. 136, C. A.

2091a. Default by purchaser—Liquidated damages less than deposit—Balance of deposit recoverable.]—Where on a contract for the sale of land a sum to be paid by way of liquidated damages is agreed, & is less than the deposit, the purchaser is, on a breach of the contract by him, entitled to the return of the balance of the deposit.—SENNETT *v.* RENDELL (1934), 79 L. Jo. 98.

2123. *Add. Annotation:*—**Consd.** Low *v.* Fry (1935), 152 L. T. 585.

2151. *Add. Annotation:*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

2153. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

PART VIII. SECT. 2, SUB-SECT. 3.—E.

f i. ——.]—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the moneys paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—SKINNER *v.* JAMES SYPHONIC VISIBLE MEASURES, LTD. (1927), 28 S. R. N. S. W. 20.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—G.

sp. *Form of action.*]—CLARKE *v.* ANDERSON (1839), 4 Ont. Dig. 7210.—**CAN.**

PART VIII. SECT. 3.

m (p. 242) i. —— ——.]—When a contract of sale & purchase is put an end to by the vendor on the purchaser's default, & it is silent as to the right in that event to retain or recover back instalments of the purchase-money already paid, the purchaser can recover them from the vendor subject to the deduction of the amount of such loss as the vendor has suffered through the purchaser's failure to complete.—STEPHENSON *v.* BROMLEY, [1928] 4 D. L. R. 737; [1928] 3 W. W. R. 370; 37 Man. L. R. 487.—**CAN.**

o (p. 242) i. —— ——.]—HAGEN *v.* FERRIS (1915), 31 W. L. R. 661; 8 W. W. R. 1039.—**CAN.**

m (p. 243) i. —— ——.]—Instalments of purchase money, other than the deposit payable, upon a sale of land cannot be retained or recovered by the vendor after the contract has been determined by his election to treat the purchaser's default as a discharge. In such a case the contract is determined only in so far as it is executory, & the party in default remains liable for damages for his breach; nevertheless, the contract being at an end, instalments which are prepayments on account of the price of the land become repayable at law, in the absence of a stipulation to the contrary, & equity relieves against such a stipulation. The liability of a surety for an instalment is also discharged when the contract of sale is so determined, because the principal debt to which his obligation is accessory is extinguished.—MCDONALD *v.* DENNYS LASCELLES, LTD., [1933] Argus L. R. 381; 7 A. L. J. 94; 48 C. L. R 475.—**AUS.**

m (p. 243) ii. —— *Repudiation by purchaser.*]—Where an agreement for the sale of land is silent as to what is to become of instalments of purchase-money already paid on the cancellation of the contract, the purchaser is not entitled to recover them from the vendor where the purchaser has repudiated or voluntarily abandoned the contract.—GREAT WEST LIFE ASS'CE CO. *v.* PRAIRIE DEVELOPMENTS, LTD., [1928] 3 W. W. R. 601.—**CAN.**

sr. *On cancellation—Necessity for express agreement.*]—CRONHOLM *v.* COLE, [1928] 3 D. L. R. 321.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

a i. —— *Failure of vendor to perform condition—Condition to leave bond on property.*]—FREEMAN *v.* MAXWELL, [1928] S. C. (Ct. of Sess.) 682.—**SCOT.**

PART VIII. SECT. 4, SUB-SECT. 3.—A. (a).

2151 vi. —— ——.]—The agreement for sale held to show an intention to sell the minerals as well as the surface; &, since the vendor was unable to make title to the minerals, the purchaser was held entitled to have the vendor's action for specific performance dismissed & to succeed on his counterclaim for rescission.—KNIGHT SUGAR CO., LTD. *v.* WEBSTER, [1929] 4 D. L. R. 591; 2 W. W. R. 505; 24 Alta. L. R. 174; *revsd.*, [1930] S. C. R. 518; 4 D. L. R. 343.—**CAN.**

st. *Vendor unable to give title—Public Works Act*, 1908, *s.* 116.]—UPHAM *v.* BARDEBS, [1927] N. Z. L. R. 722.—**N.Z.**

sw. *Prior sale to another purchaser.*]—Where a vendor of land under an agreement for sale maintained in force a judgment recovered against the purchaser for the purchase-money he was held to have thereby continued the purchaser's right to pay the money, cure his default & reinstate the agreement; & where such right in the purchaser had been so continued & was existing at the time the vendor brought suit to enforce a subsequent agreement with another purchaser, deft., for the sale of the same land & deft. had repudiated his agreement promptly on discovery of said outstanding right in the first purchaser:—*Held:* the vendor could not succeed, even though he was able to make title at the time of the hearing. Pltf.'s position was held not to have been improved by a clause in the agreement providing for acceptance of title by deft.—HARVEY *v.* MALANCHUK, [1931] 3 W. W. R. 596; [1932] 1 D. L. R. 407; 40 Man. L. R. 78.—**CAN.**

sx. *Sale of compartments in mausoleum—Vendor unable to give possession.*]—Action to recover the purchase-money alleged to be due under an agreement by which deft. agreed to purchase from pltf. co. two compartments in a mausoleum to be erected by said co. in the E. Cemetery. Under a prior agreement between pltf. co. & the cemetery co. the former had been given the right to erect the mausoleum on the land of the latter, & had proceeded with its construction. The agreement between pltf. & deft. purported to entitle the latter to "possession" of definitely specified portions of the building on payment of the purchase-money:—*Held:* whether what pltf. agreed to sell & deft. to purchase was an interest in land, or a right in the nature of an easement, or a licence to use the compartments agreed to be sold, deft. was entitled to repudiate the contract, since pltf. under its agreement with the cemetery co., had not, & had no right to call for, such a title to or right in the compartments as would permit it to grant to deft. that unrestricted "possession" which the agreement with him called for. Moreover, the cemetery co., which held the land under an agreement for sale, had not, at the time of the repudiation, any such title to the land, the use of part of which it purported to agree to give in perpetuity to pltf., & through it to the purchasers of compartments, as could be forced upon an unwilling purchaser.—CANADIAN MAUSOLEUMS, LTD. *v.* IRWIN, [1933] 1 W. W. R. 405; *affd.*, [1933] 3 W. W. R. 224.—**CAN.**

sz. *Failure of vendor to register title.*]—The neglect or refusal of a vendor under an agreement for sale to comply within a reasonable time with the purchaser's request that he register his title pursuant to sect. 27 of Land Registry Act, R. S. B. C., 1924, entitles the purchaser to repudiate the agreement & to a decree of rescission. A purchaser under an agreement for sale cannot obtain both rescission thereof & damages.—COX *v.* WHIELDON, [1934] 3 W. W. R. 145; [1935] 1 D. L. R. 8; 48 B. C. R. 522.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3—C.

h i. —— *Waiver.*]—WILCOX *v.* JEWELL, [1931] 2 W. W. R. 460; 2 D. L. R. 873; 25 Alta. L. R. 464.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

p. *Revsd.*, 15 Sask. L. R. 410.

r i. —— ——.]—WALKER *v.* ELLIOTT, [1931] 1 D. L. R. 420; 66 O. L. R. 195.—**CAN.**

2182. To the existing paragraph add as follows :—
Semble : if time had not been of the essence, pltf. would not, in an action for recovery of deposit, have been entitled to rely on the absence of any memorandum in writing of the contract.
Add. Citation :—139 L. T. 22.

2199. *Add. Annotation :*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2215. *Add. Annotation :*—**Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2220. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2223. *Add. Annotation :*—**Folld.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2224. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2227. *Add. Annotation :*—**Refd.** Sennett *v.* Rendell (1934), 79 L. Jo. 98.

2231. *Add. Annotation :*—**Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

2233. *Add. Annotation :*—**Refd.** A.-G. *v.* Cohen, [1937] 1 K. B. 478.

2242a. —— —— —— **Part of purchase-money & money spent on improvements.**]—CORNWALL *v.* WILLIAMS (1701), Colles, 117 ; 1 E. R. 209, H. L.

2243a. —— **Vendor—Notwithstanding right of resale.**]—Deft. entered into an agreement to purchase certain freehold land & buildings together with the machinery, plant & utensils thereon. Clause 15 provided for completion on Aug. 31, 1933, with an option to deft. to complete earlier at a less price & "if for any reason the actual completion of the purchase is delayed beyond Aug. 31, 1933, then nevertheless on that date the purchase money . . . shall be placed on deposit . . . but the purchase shall in any event actually be completed not later than Sept. 15, 1933. . . ." Clause 16 provided : "Should the purchaser fail to complete the said purchase in accordance with this agreement any deposit paid by the purchaser shall be forfeited to the vendors who may rescind the sale & resell the property either by public auction or private contract subject to such stipulations as they may think fit." Deft. failed to complete the purchase in accordance with the agreement :—*Held :* the date, Sept. 15, 1933, fixed for completion was of the essence of the contract, & as deft. had failed to complete the purchase & had made it plain that he was unable to do so pltf. was entitled

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PART VIII. SECT. 4, SUB-SECT. 3.—D. (b).

f i. —— —— *In certificates—Agreement to sell land "as described in certificates."*]—MCLEAN *v.* STANDARD TRUSTS Co., [1931] 1 W. W. R. 442 ; 2 D. L. R. 463 ; 25 Alta. L. R. 550.—**CAN.**

t i. —— *Value of crop.*]—In ascertaining whether an unfounded representation by a buyer or seller is open to redress in any form, the means of knowledge of the parties must be considered. If the misrepresentation is on a subject peculiarly within the knowledge of the party making it & be relied on by the other party it may be legally cognisable, but where the facts are not only available to the other party but also he applies or is able to apply unrestricted means of injury, & is not induced to withhold inquiry, the alleged misrepresentation is probably no more than "dealers' talk" in which each party from his own standpoint of buyer or seller usually indulges.
A purchaser of a farm sued for rescission of the contract of sale on the ground that he had been induced to buy by the vendor's statement that the crop, which was then cut & included in the sale but not yet threshed, was worth a certain amount which, after threshing, proved to be excessive, to the extent of about two & a half times its real value. The judge, who dealt with the representation as an innocent one, decreed rescission, & deft. appealed :—*Held :* because of the application of the above principle, & also because of the difficulty in finding that a representation of that kind was one which was really relied on by pltf. & went to the root of the contract, the appeal should be allowed.—RASCH *v.* HORNE, [1930] 1 W. W. R. 816 ; 3 D. L. R. 647 ; 38 Man. L. R. 600 ; *revsg.*, [1929] 4 D. L. R. 809 ; 2 W. W. R. 673.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—E.

st. *Restrictive covenant—Disclosure of "building covenant."*]—Certain land was sold subject to a special condition that the sale was made "subject to the existing building covenant which provides (*inter alia*) that no building may be erected other than of brick or stone or at cost of less than £500." The building covenant later disclosed on the title further provided, "& no such building so erected shall be used or occupied for any other purpose than a private dwelling-house" :—*Held :* the phrase "building covenant" did not primarily denote a covenant dealing only with the construction of the building, but included a covenant dealing with its user, & therefore, there was a sufficient disclosure by the vendors.—SHENSTONE *v.* HEWSON (No. 3) (1929), 29 S. R. N. S. W. 377 ; 46 N. S. W. W. N. 93.—**AUS.**

PART VIII. SECT. 7, SUB-SECT. 1.

r i. —— ——.]—A vendor suing a purchaser in default under an agreement for the sale of land is entitled to apply for personal judgment with leave to issue execution thereon & with liberty to apply further in the event of it being found impossible to realise the amount of the judgment. This further relief may take the form of a sale of the land or rescission of the agreement, depending on what has been done under the execution issued on the judgment.—BUCKLEY & SCHELL *v.* HECKERT, [1932] 1 W. W. R. 831.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 3.

c i. —— *Sale of hotel & licence.*]—*Held :* the measure of damages was the difference between the price agreed & the value of the land considered as a security for realising the deficiency in the sum contracted to be paid, less the amount of the deposit paid by the purchaser, & the net amount of the compensation received by the owner under the Licensing Act.—SUMMERS *v.* COCKS, [1928] W. A. L. R. 115.—**AUS.**

PART VIII. SECT. 7, SUB-SECT. 4.—A. (c).

2335 i. *Revsd.*, 10 Alta. L. R. 478.

sv. *Auction fees.*]—Pltf., at an auction of certain property, was declared the purchaser, & he thereupon paid the deposit & the auctioneer's fees, as provided by the conditions of sale. These conditions contained one in the usual form enabling the vendor to rescind the contract if the purchaser made any objection or requisition which the vendor was unable or unwilling to remove or comply with. The sale broke down following the vendor's reply to a requisition of the purchaser, the vendor having added that if the purchaser insisted on the requisition he would rescind the contract, pursuant to the conditions of sale. This reply was, in the opinion of the ct., neither capricious nor unreasonable. The purchaser replied stating that he insisted on his objection, & that he required the vendor to return the deposit & the auctioneer's fees. The vendor returned the deposit, but not the auctioneer's fees, & the purchaser subsequently sued the vendor for the amount of them :—*Held :* as the only way in which the purchaser could recover these fees was as damages for breach of contract, & as there had been no breach of contract on the vendor's part, the claim failed.—M'MAHON *v.* GAFFNEY, [1930] I. R. 576.—**IR.**

sz. *Effect on successful financing of building project.*]—There had been referred to the Exchequer Ct of Canada a claim by claimants for damages from the Crown for its refusal to carry out an alleged contract for sale by the Crown of certain land, on which, combined with certain adjoining land, there was to be erected an office building, certain floors of which were to be leased to the Crown :—*Held :* having regard to the terms of the claim as made & the form of the reference thereof to the Exchequer Ct., & to the evidence, insufficient weight had been given, in fixing the damages, to certain factors (including the absence of a lease to a certain Govt. department, on which proposed lease, as well as on the lease first above mentioned, the claimants had depended, as indicated in their claim) tending to affect adversely the claimants' successful financing of the project. In fixing damages, the claimants were entitled to a valuation of possibilities or probabilities which, if becoming actualities, might have led to success of their project.—R. *v.* DOMINION BUILDING CORPN., LTD. & FORGIE, [1935] S. C. R. 338 ; 4 D. L. R. 18.—**CAN.**

to treat the contract as broken & to claim the damages suffered by the breach of contract.—HAROLD WOOD BRICK CO., LTD. *v.* FERRIS, [1935] 2 K. B. 198; 104 L. J. K. B. 533; 153 L. T. 241; 79 Sol. Jo. 502, C. A.

2265. *Add. Annotation :*—**Followed.** Harold Wood Brick Co. *v.* Ferris (1935), 79 L. Jo. 448.

2277. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2287. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler (1929), 98 L. J. Ch. 374.

2306. *Add. Annotations :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224; Barnes *v.* Cadogan Developments, Ltd., [1930] 1 Ch. 479.

Part IX.—The Conveyance.

2366. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2367. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2379a. —— ——.]—*Re* DURRANT & STONER (1881), 18 Ch. D. 106; 45 L. T. 363; 30 W. R. 37, C. A.

Annotations :—**Refd.** *Re* Newton's Trusts (1882), 23 Ch. D. 181; Miller *v.* Collins, [1896] 1 Ch. 573.

2382. *Add. Annotation :*—**Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

2407. *Add. Annotation :*—**Refd.** *Re* Sharman & Meade's Contract, [1936] 2 All E. R. 1547.

2409. *Add. Annotation :*—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

2413a. ——.]—The draft conveyance of certain property delivered by a purchaser to a vendor identified the property by reference to a plan to be annexed to the conveyance. The vendor contended that the purchaser was not entitled to such a plan unless the purchaser paid the costs of the vendor's surveyor, which the purchaser refused to do, & he suggested that the property could be satisfactorily identified by saying that it was known by a certain number in a certain street & was bounded by other properties similarly described. The purchaser took out a summons to have the question determined :—*Held :* the duty of a vendor is to convey under a description which is a sufficient & satisfactory identification of the land sold, & in the present case identification by reference to a certain number in a certain street was a sufficient & satisfactory identification.—*Re* SHARMAN & MEADE'S CONTRACT, [1936] Ch. 755; [1936] 2 All E. R. 1547; 105 L. J. Ch. 286; 155 L. T. 277; 80 Sol. Jo. 689.

2415. *Add. Annotation :*—**Explained.** *Re* Sharman & Meade's Contract, [1936] 2 All E. R. 1547.

2419. *Add. Annotation :*—*Generally*, **Refd.** Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

2458. Add the following para. :—

The words "otherwise than by purchase for value" in the implied covenant for title were not an exception from the covenant but were part of the covenant itself, & the onus was on pltf. to prove that the dedication was made by some person through whom the vendor claimed otherwise than by purchase for value.—STONEY *v.* EASTBOURNE RURAL DISTRICT COUNCIL, [1927] 1 Ch. 367.

2459. *Add. Annotation :*—*As to* (3) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

2475. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2475a. —— **Consent in favour of specified nominee.**]—On a sale of leaseholds by an original lessee, completion in favour of a solvent nominee of the purchaser can be enforced, unless it is shown that the sale was granted upon considerations purely personal to the purchaser, but the purchaser must join in the assignment for the purpose of guaranteeing the performance of the covenants.

PART IX. SECT. 1.

sw. *What passes by conveyance.*]—Buildings erected by the owner of land or use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft. who became registered owner of the land in pursuance of the purchase thereof at a tax sale under the Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

sx. ——.]—Wire fencing & fence posts erected or completed by the deft. while he occupied land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, & therefore, to have passed to the Crown when the deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of the pltf. when he purchased the land from the Crown.—LAROCHELLE *v.* MARCHAND, [1928] 3 W. W. R. 731.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 1.—E. (a).

sy. *Description by reference to monuments.*]—Apart from special statutory provisions, the description in a conveyance of land is to be construed by reference to the monuments on the ground.—MCDONALD *v.* KNUDSEN, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 1.—E. (c).

sl. *Fixtures—What are.*]—On the question whether a certain thing is a fixture the position of an unpaid vendor with respect to a purchaser of the land, like that of a mtgee. with respect to a mtgor., is much stronger than that of a landlord where the thing is claimed by a tenant. Since the intention with which the thing was placed upon the land is one of the main factors in determining said question the inference that the real intention was that the thing should be a permanent improvement of the freehold is more readily to be drawn in the case of a purchaser who placed the thing on land which he has agreed to buy or found it already there than it is in the case where the thing is placed upon the land by a tenant. The thing in question in the present case was a two-storey building with an attached lean-to, the whole resting on stones laid on the ground, there being a dirt cellar under the main building.—PEIKOFF *v.* BRIGHTWELL (No. 2), [1932] 1 W. W. R. 59; 1 D. L. R. 732; 40 Man. L. R. 124.—**CAN.**

sm. —— —— *Fanning mill.*]—BANFORD *v.* BUCKERFIELDS, LTD., [1932] 2 D. L. R. 804.—**CAN.**

sn. —— —— *Oil burner.*]—An oil burner although only annexed to the freehold by slight attachment to the furnace & by pipes & wires attached to the walls of the house is a fixture.—FESS OIL BURNERS, LTD. *v.* MUTUAL INVESTMENTS, LTD., [1932] 2 D. L. R. 16; O. R. 203.—**CAN.**

Pltf. co. agreed to purchase from deft. property of which deft. was under-lessee. Her underlease contained a covenant not to assign without the under-lessor's consent, not to be withheld in the case of a responsible assignee. The under-lessor refused a licence to assign to pltf. co., but deft.'s solrs. were informed that a licence would be granted to complete in favour of a specified nominee. The licence was in fact available, but deft. never formally applied for it; & ultimately her solrs. returned the deposit paid by pltf. co., who thereupon brought this action for specific performance:—*Held:* deft. could be compelled to complete in favour of the specified nominee.

LORD CAIRNS indeed seems to have considered that, if the phrase [subject to the title being approved by our solrs.] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. *v.* WHEELER, [1929] 2 Ch. 224; 98 L. J. Ch. 374; 141 L. T. 538.

Annotation:—**Refd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

2483. *Add. Annotation:*—**Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

2487. *Add. Annotation:*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

2506. *Add. Annotation:*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

2530a. Right to give directions as to application of purchase-money — Application of Law of Property Act, 1925 (c. 20), s. 27.]—*Re* WIGHT & BEST'S BREWERY CO., LTD.'S CONTRACT (1928), 73 Sol. Jo. 76.

2564. *Add. Annotation:*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

Part X.—Title Deeds.

2571. *Add. Annotation:*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2576. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2588. *Add. Annotation:*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2596a. Statutory acknowledgment—Purchase from administrator.]—In view of Administration of Estates Act, 1925 (c. 23), s. 36, which provides for the indorsement, after Jan. 1, 1926, on the probate or letters of administration of notices of assents or conveyances of a legal estate by a personal representative, a purchaser of real estate can now require a vendor to include a probate or letters of administration in such statutory acknowledgment for production & delivery of copies of muniments of title as the vendor may be bound to give.—*Re* MILLER & PICKERSGILL'S CONTRACT, [1931] 1 Ch. 511; 100 L. J. Ch. 257; 144 L. T. 635.

PART IX. SECT. 7, SUB-SECT. 1.

sp. *Provision for payment by vendor.*]—A purchaser is ordinarily expected to prepare his own conveyance, but where an agreement for sale provides that it is to be prepared at the expense of the vendor, the ordinary rule does not apply.—CONSOLIDATED PRESS, LTD. *v.* J. E. GIBSON, [1933] 3 D. L. R. 64; O. R. 458.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—A.

sz. *Crop-payment plan—Conversion of crop—Liability of purchaser.*]—GROVES *v.* HULL (Alta.), [1926] 2 D. L. R. 640; [1926] 1 W. W. R. 910.—**CAN.**

sa. *Agreement by purchaser to pay a certain sum & to take over a loan of specified amount—Loan of smaller amount—Subsequent agreement by purchaser to pay difference—Action for balance of purchase price.*]—LONGOBARDI *v.* LARKIN (1928), 28 S. R. N. S. W. 248; 45 N. S. W. W. N. 64.—**AUS**

sc. *Payment by instalments—New agreement by executors—Reduction & Settlement of Debts Act, 1936.*]—SIMARD'S EXORS. *v.* VICTOOR'S EXORS., [1937] 1 W. W. R. 121; 6 F. L. J. (Can.) 291.—**CAN.**

sd. —— *Default—Limitation of action.*]—Resp. was the vendor of the land which applt. had agreed to purchase in Aug. 1927 for £200, payable by a deposit of £5 & monthly instalments of £1. The last payment was made in Oct. 1927, & the action was commenced in June 1935. The conditions of sale provided (*inter alia*) that if at the end of five years from the date of the contract any portion of the purchase-money remained unpaid, it should at once become due & payable; that if default should be made in payment of any instalment the vendor might rescind the contract, sell the land, & recover any deficiency against the purchaser; or at the option of the vendor the whole of the purchase-money should immediately become due, payable & recoverable; that the vendor might, without waiving or rescinding the contract or any condition, recover any instalment of purchase-money as it became due as if such instalment were a separate debt. Time was of the essence of the contract. The vendor did nothing to indicate any intention to exercise the "option":—*Held:* on the first default in paying an instalment, the resp. had the right to sue for the balance of the debt. & the statute then commenced to run.—FALZON *v.* ADELAIDE DEVELOPMENT CO., LTD., [1936] S. A. S. R. 93.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 3.—B. (a).

sd. *Judgment for payment by instalments—Application for extension of time—No jurisdiction to order.*]—COMMUNITY DEVELOPMENT CO., LTD. *v.* MYERS, [1933] 3 W. W. R. 283.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—B. (c) i.

b i. —— *Effect of death of agent.*]—(1) In view of the course of dealing adopted by the parties to an agreement for the sale & purchase of land:—*Held:* a private banker, to whom the purchaser made the cash payment & the payment agreed to be deposited pending the clearing of the title, was a trustee owing duties to both parties. (2) A clear title was obtained by the banker & delivered to the purchaser, but before the vendor obtained payment from the banker of the full amount of the purchase-price deposited with him the banker died & his office closed its doors. The vendor, having failed to obtain the balance of the purchase-money, sued the purchaser therefor:—*Held:* the loss which had occurred must be borne by the vendor.—STUFFCO *v.* FAHN, [1931] 1 W. W. R. 268; 2 D. L. R. 237; 25 S. L. R. 235.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—B. (c) ii.

2532 i. *Authority to receive purchase-money.*]—Where the vendor's solicitor appropriated the purchase-money to his own use:—*Held:* the solr. was agent for the vendor, who must bear the loss.—CHEESEMAN *v.* COREY (1913), 13 E. L. R. 469; 15 D. L. R. 445.—**CAN.**

—— *Payment to solicitor by cheque—Conversion by solicitor—Effect on right of action.*]—LEWIS *v.* JEY, [1934] 3 D. L. R. 228; O. R. 307.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—D. (a).

sb. *Conveyance to trustee—Agreement for sale by holders of equitable estate—Party entitled to purchase-money.*]—(1892), 21 S. C. R. 714.—**CAN.**

Part XI.—Position of Parties after Completion.

2602. *Add. Annotation:*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

2605. *Add. Annotation:*—**Aprovd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

2605a. —— —— ——.]—Where on a sale otherwise than under a building scheme a restrictive covenant is taken, the benefit of which is not on the sale annexed to the land retained by the covenantee so as to run with it, an assign of the covenantee's retained land cannot enforce the covenant against an assign (taking with notice) of the covenantor unless he can show (i.) that the covenant was taken for the benefit of ascertainable land of the covenantee capable of being benefited by the covenant, & (ii.) that he (the covenantee's assign) is an express assign of the benefit of the covenant. But when the covenantee has once parted with the whole of his retained land he cannot thereafter effectually assign the benefit of the covenant. —*Re* UNION OF LONDON & SMITH'S BANK, LTD.'S CONVEYANCE, MILES *v.* EASTER, [1933] Ch. 611; 102 L. J. Ch. 241; 149 L. T. 82, C. A.

Annotation:—**Consd.** Drake *v.* Gray, [1936] 1 All E. R. 363.

2608a. Covenant by vendor to cleanse cesspool—Work carried out by local authority—Rate levied on purchaser—Liability of vendor for reimbursement.]—MUSSETT *v.* STANDEN (1935), 79 Sol. Jo. 816.

2614. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

2615. *Add. Annotation:*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2618. *Add. Annotation:*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2623a. Covenant for joint user of cistern—Construction.]—HEY *v.* APPLEYARD (1855), 24 L. T. O. S. 310.

2625. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2626. *Add. Annotations:*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611. **Refd.** Clore *v.* Theatrical Properties, Ltd., & Westby & Co., [1936] 3 All E. R. 483.

2633. *Add. Annotation:*—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

2633a. —— —— **Covenant by purchaser with himself & others—Effect of Law of Property Act, 1925 (c. 20), s. 82.**]—In 1904, three persons, B., H. & S., were the tenants in common in fee simple of certain land intended to be laid out in plots as a building estate. After several sales had taken place, the remainder of the land was in 1906 offered for sale by auction subject to certain stipulations, one of which was that every purchaser should covenant with the vendors, & so that every person for the time being entitled to any estate in the lands should have a right to the observance of such stipulations so far as they related to the covenantors' property or plot or plots as follows, namely (*inter alia*), that not more than two dwelling-houses should be erected on any one plot. No the property was sold at this auction, but in Feb. 1907, B., H. & S. (the vendors) sold to one of themselves, namely, B., Lots 23, 24 & 25, & 45 to 51 inclusive. These lots were conveyed by two separate conveyances each dated Feb. 20, 1907. The *habendum* in each conveyance to B. was in each case to be, "subject nevertheless to the . . . covenants by the purchaser (*i.e.*, B.) hereinafter contained." These were in each case as follows: "The purchaser . . . doth hereby for himself . . . covenant with the vendors . . . (owners for the time being of any of the lands now or formerly part of the vendors' estate of which the said hereditaments form part & so that every person for the time being entitled to any estate in any such lands shall have a right to the observance & fulfilment of the stipulations in Part II. of the second schedule so far as they relate to the said hereditaments . . . hereby granted) that the stipulations last aforesaid shall be observed so far as they relate to the hereditaments last aforesaid." This Part II. contained (*inter alia*) the covenant referred to as one of the stipulations in the above-mentioned conditions of sale. In July, 1907, B., H. & S. sold to pltf. part of the property offered for sale by auction in 1906, namely, Lot 26 & part of Lot 27. Pltf. covenanted with the vendors to perform & observe certain stipulations therein set out which were (*inter alia*) similar to those in the particulars & conditions above referred to in the abortive sale by auction in 1906. Further lots were subsequently sold by B., H. & S. to various purchasers. In 1933, B. agreed to sell part of Lot 25 (the remainder having been previously disposed of) to deft., & the land was duly conveyed without any reference to the stipulations sought to be imposed by the conveyance to B. in Feb. 1907. Deft. having commenced to erect four houses on his plot of land, pltf. began an action for an injunction to prevent him from erecting more than two houses, & for damages:—*Held:* (1) on the question whether a building scheme existed when pltf. purchased his land in July, 1907, & if so, to what land it related; as regards the covenants contained in the conveyance by B., H. & S. to B. alone in Feb. 1907, although they were in form with B., H. & S. jointly, & although each of the covenantors had at that time a separate interest in the land retained, it was not possible to treat them as joint & several, & they were therefore void & unenforceable at the time they were entered into. It followed therefore that no restrictive covenants were in existence relating to

PART XI. SECT. 2, SUB-SECT. 1.

q. *affd.* [1928] 3 D. L. R. 491; [1928] 2 W. W. R. 307; 23 Alta. L. R. 474.—**CAN.**

sc. *Covenant against assignment—Waiver.*] — PEIKOFF *v.* PAISNER, BRIGHTWELL *v.* PEIKOFF, [1929] 4 D. L. R. 1077; 1 W. W. R. 931; 38 Man. L. R. 151.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 3.—B.

n i. —— *Covenant for supply of water.*] —ROSAMUND *v.* FORGIE (1871), 18 Gr. 370.—**CAN.**

any part of the land offered at the 1906 auction at the date when pltf. purchased his plots in July, 1907; & as no subsequent covenants were entered into, no building scheme ever therefore came into existence; (2) there was nothing in Law of Property Act, 1925 (c. 20), s. 82, which would enable the ct. to hold that what was insufficient to create a scheme in 1907 must by virtue of the sect. be deemed from Jan. 1, 1926, to have constituted a building scheme as from the earlier date or any intermediate date. The action therefore failed.—RIDLEY *v.* LEE, [1935] Ch. 591; 104 L. J. Ch. 304; 153 L. T. 437; 51 T. L. R. 364; 79 Sol. Jo. 382.

2641. *Add. Annotation:*—**Refd.** Ridley *v.* Lee, [1935] Ch. 591.

2645. *Add. Annotation:*—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

2646. *Add. Annotations:*—**Refd.** Chatsworth Estates Co. *v.* Fewell, [1931] 1 Ch. 224; Ridley *v.* Lee, [1935] Ch. 591.

2658a. Separate covenant with assignees of vendor —Owners of adjacent land—Enforcement by successors.]—By a conveyance dated Apr. 21, 1887, & made between the Ecclesiastical Comrs. for England of the one part & one H. G. G. of the other part, a freehold house & land known as "W. H. House" were conveyed to H. G. G. By the conveyance H. G. G. for himself & his assigns & to the intent & so as to bind not only himself . . . but also all future owners & tenants of the said land thereby conveyed or any part thereof & so that the obligations, provisions & restrictions thereinafter expressed & contained might run with & bind the said land every part thereof into whosesoever hands the same might come covenanted with the Ecclesiastical Comrs. & their successors & also as a separate covenant with their assigns owners for the time being of the lands adjoining or adjacent to the said land thereby conveyed to observe & perform a number of restrictive covenants. There was no building scheme affecting W. H. House or the surrounding land. There were several other plots of freehold land & houses adjoining or near to W. H. House which had been conveyed by the original vendors, the Ecclesiastical Comrs., to various purchasers before the date of the conveyance of Apr. 21, 1887, & had subsequently been assigned by those purchasers. The estate owners of W. H. House & land took out an originating summons for a declaration that the said house & land were no longer subject to any of the restrictive covenants contained in the 1887 conveyance, or in the alternative that it might be determined whether the said restrictive covenants or any & which of them were enforceable, & if so by whom. Resps. included the successors in title to some of the houses & land which had been sold by the Ecclesiastical Comrs. before the date of the deed of Apr. 21, 1887. Some of these adjoined W. H. House & land & others were near but not actually adjoining thereto:—*Held:* on the true construction of the covenant, the land referred to as "adjacent" included certain plots of land near to but not adjoining W. H. House, & the original covenantees who were purchasers of the land so held to be adjoining or adjacent to W. H. House & the present owners of such land were entitled to enforce the covenants, although the original covenantees were not parties to the conveyance of Apr. 21, 1887.—*Re* ECCLESIASTICAL COMRS. FOR ENGLAND'S CONVEYANCE, [1936] Ch. 430; 105 L. J. Ch. 168; 155 L. T. 281.

Annotation:—**Refd.** White *v.* Bijou Mansions, Ltd., [1937] 3 All E. R. 269.

2661. *Add. Annotation:*—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

2664. *Add. Annotations:*—*As to* (1) **Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79. **Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611. **Distd.** *Re* Ballard's Conveyance, [1937] Ch. 473. *As to* (2) **Refd.** Drake *v.* Gray (1936), 155 L. T. 145; Zetland (Marquis) & Zetland Estates Co. *v.* Driver, [1937] 3 All E. R. 795.

2665. *Add. Annotation:*—*As to* (2) **Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79.

2665a. —— —— Of part of land retained.]—In a deed by which certain lands held by trustee on trust for sale were partitioned among the beneficiaries the trustees "for themselves & their assigns to the intent & so that the covenants hereinafter contained shall be binding on the lands & premises hereby assured into whosesoever hands the same may come . . . covenant with the respective parties . . . & other the owners or owner for the time being of the remaining hereditaments so agreed to be partitioned as aforesaid & not hereby assured that the trustees their heirs & assigns will at all times hereafter perform & observe the restrictions & stipulations set out in the said sched. hereto so far as they concern the lands hereby assured." One of the restrictions as set out in the sched. prohibited the erection on any plot of a house of less than a defined cubical content. Pltf. purchased a strip of one portion of the partitioned land, & deft. purchased a strip of another portion. Deft. having erected a house on the land purchased by her of less than the defined cubical content, pltf. claimed a declaration that he was entitled to enforce the restrictive covenant against her:—*Held:* the words "the owners or owner for the time being of the remaining hereditaments so agreed to be partitioned as aforesaid" showed a clear intention to annex the covenant to each & every portion of the partitioned land; the benefit of the covenant ran with each & every part of the land; & therefore pltf. was entitled to the declaration claimed & to an injunction restraining any further breach.—DRAKE *v.* GRAY, [1936] Ch. 451; [1936] 1 All E. R. 363; 105 L. J. Ch. 233; 155 L. T. 145, C. A.

2665b. —— ——.]—In 1928 the tenant for life of certain settled lands sold & conveyed in fee-simple part of the settled land to a purchaser,

PART XL. SECT. 2, SUB-SECT. 4.—A. *af. Jurisdiction of Municipal Public Utility Board.*]—Although the Municipal & Public Utility Board is empowered to vary or vacate building restrictions, it has no jurisdiction to set aside or vary a judgment of the ct. giving effect to such a restriction.—RUMBLE *v.* ROWLIN, [1935] 1 W. W. R. 237; 2 D. L. R. 402; 43 Man. L. R. 116—CAN.

who by the conveyance entered into a covenant with the vendor, declared to be for the benefit & protection of such part or parts of the settled lands " (*a*) as shall for the time being remain unsold or (*b*) as shall be sold by the vendor or his successors in title with the express benefit of this covenant," that (*inter alia*) nothing should be " done or permitted thereon which in the opinion of the vendor may be a public or private nuisance or prejudicial or detrimental to the vendor & the owners or occupiers of any adjoining property or to the neighbourhood." In the Sched., which set out this stipulation, the term " vendor " was to include, where the context so admitted, his successors in title. Certain parts of the land so described were contiguous to the land sold & others more than a mile distant. In 1929, on the death of the vendor, pltf., his son, became entitled in possession as tenant in tail male to the unsold portions of the settled estates, & in 1936 he brought an action to restrain the then owner of the land sold, on which a shop had been erected, from selling fried fish there for consumption off the premises, being of opinion that this was detrimental to the neighbourhood & to his own property, though it was not sought to establish that it was a nuisance :—*Held :* (1) pltf. was not a person with whom the covenant was purported to be made &, therefore, could not enforce it by virtue of sect. 56 (1) of Law of Property Act, 1925 (c. 20) ; (2) a covenant could be made to run with land until it changed ownership on sale & thereafter only if there were an express assignment ; (3) inasmuch as the covenant did not touch or concern the whole of the land to which it was sought to annex it, the attempted annexation failed ; (4) accordingly, the covenant was not enforceable by pltf.—ZETLAND (MARQUESS) *v.* DRIVER, [1937] Ch. 651 ; [1937] 3 All E. R. 795 ; 106 L. J. Ch. 379 ; 157 L. T. 447 ; 53 T. L. R. 996 ; 81 Sol. Jo. 669.

2667. *Add. Annotations :*—**Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611 ; Clore *v.* Theatrical Properties, Ltd., & Westby & Co., [1936] 3 All E. R. 483. **Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749 ; Leney (Alfred) & Co. *v.* Whelan (1936), 20 Tax Cas. 321.

2675a. —— **Must concern whole land.**]—Where a restrictive covenant purports to have been annexed to land so as to run with it, & does not in fact " concern or touch " the whole of the land, the annexation is ineffective, & the covenant does not run with the land & cannot be enforced by any owner of the land other than the covenantee. Even if there is some part of the land which the covenant does " concern or touch," the ct. will not sever it & treat it as annexed to that part.—*Re* BALLARD'S CONVEYANCE, [1937] Ch. 473 ; [1937] 2 All E. R. 691 ; 106 L. J. Ch. 273 ; 157 L. T. 281 ; 53 T. L. R. 793 ; 81 Sol. Jo. 458.

Annotation :—**Consd.** Zetland (Marquess) & Zetland Estates Co. *v.* Driver, [1937] 3 All E. R. 795.

2683a. —— ——.]—STEVENS *v.* WILLING & CO., LTD. (1929), 167 L. T. Jo. 178 ; 67 L. Jo. 223 ; [1929] W. N. 53.

2683b. —— **Coal-shed.**]—Certain property was sold subject to a restrictive covenant which provided that the owner for the time being would not at any time erect any building on a certain part of the property. There was a coal-shed, a wooden structure on a concrete foundation, on part of the premises not subject to the covenant. The owner of the land had this shed carried to the part of the premises subject to the covenant, where it stood directly on the ground without any foundations :—*Held :* the owner had not erected a building within the covenant.—GARDINER *v.* WALSH, [1936] 3 All E. R. 870 ; 81 Sol. Jo.

2686. *Add. Annotations :*—**Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79. **Consd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611 ; Drake *v.* Gray, [1936] 1 All E. R. 363. **Refd.** Leney (Alfred) & Co. *v.* Whelan (1936), 20 Tax Cas. 321.

2697. *Add. Annotation :*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

2698. *Add. Annotation :*—**Consd.** Sunderland & South Shields Water Co. *v.* Hilton (1928), 97 L. J. K. B. 516.

PART XI. SECT. 2, SUB-SECT. 4.—B.

2666 viii. —— ——.]—WANEK *v.* THOLS, [1928] 2 D. L. R. 793 ; [1928] 1 W. W. R. 903.—**CAN.**

2666 ix. —— ——.]—A provision in an agreement for the sale of land that no assignment thereof by the purchaser shall be valid unless for the purchaser's entire interest & unless approved by the vendor in writing, is binding on any one who claims against the vendor through the purchaser ; & a person who, without the vendor's knowledge, has entered into an agreement with the purchaser which does not satisfy said requirements cannot acquire thereunder any right against the vendor which will affect prejudicially the vendor's rights under his contract, or in the land covered by that contract ; &, therefore, he cannot maintain a *caveat* against the vendor.—MCAVOY *v.* ROYAL BANK OF CANADA & INTERIOR TRUST CO., [1933] 3 W. W. R. 433.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) i.

d i. —— " *Sunroom* "—*Whether verandah or porch.*]—*Re* CAMPBELL & COWDY, [1928] 1 D. L. R. 1034 ; 61 O. L. R. 545.—**CAN.**

d ii. —— " *Duplex house* "—*Whether detached residence.*] — *Re* TORONTO GENERAL TRUSTS CORPN. & CROWLEY, [1928] 4 D. L. R. 609 ; 62 O. L. R. 593.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) ii.

ss. *Covenant to erect " house "—Garage.*]—Pltf. & another sold certain property to deft. subject to the condition that deft. erect a house of certain value thereon which would not be within less than six feet from the west side of the lot so sold :—*Held :* the word " house " as so used included the ordinary outbuildings, &, therefore, pltf. was entitled to an injunction restraining deft. from proceeding with the building of a garage.—MILLIKEN *v.* YOUNG, [1928] 3 W. W. R. 547 ; *on appeal*, [1929] 3 D. L. R. 64 ; 1 W. W. R. 213 ; 23 S. L. R. 370.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) iii.

2698 i. *What constitutes breach—Restriction to single dwelling—Block of flats.*]—A building two storeys in height & structurally divided into eight self-contained flats, with a carriageway or passage in the middle of the building, & a roof as one constructional unit over all, & having the entrances to all the flats contained in a common portico, constitutes more than " one house " within the meaning of a covenant not to erect more than one house.—*Ex p.* HIGH STANDARD CONSTRUCTIONS, LTD. (1928), 29 S. R. N. S. W. 274 ; 46 N. S. W. W. N. 75.—**AUS.**

2698 ii. —— —— ——.]—The owners of a suburban property laid out the lands for sale in lots according to a plan of subdivision. Lots were sold at different times. Each purchaser covenanted with the vendors that he would not build on any one lot more than one house or dwelling. The owner of one of the lots, who was the successor in title of the original purchaser & had taken with notice of the covenant, proposed to erect a building comprising four residential flats intended for occupation by separate households. Pltfs., who owned two other lots & were successors in title to the original purchaser, sought an injunction :—*Held :* the erection of

2700. *Add. Annotations :*—**Distd.** Sunderland & South Shields Water Co. *v.* Hilton (1928), 97 L. J. K. B. 516. **Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

2701a. Covenant against building bungalow—Meaning of "bungalow."]—A conveyance contained a covenant by the purchaser "not to erect more than one bungalow" on the piece of land conveyed :—*Held :* a bungalow was a building of which the walls, with the exception of any gables, were no higher than the ground floor, & of which the roof started at a point substantially not higher than the top of the wall of the ground floor, & that it was immaterial in what way the space in the roof of the building so constructed was used.—WARD *v.* PATERSON, [1929] 2 Ch. 396 ; 45 T. L. R. 519 ; 98 L. J. Ch. 446 ; 141 L. T. 683.

2703. *Add. Annotation :*—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

2705a. ——.]—Pltf. & deft. both derived title to their respective properties from a common predecessor who on his own purchase of both properties in 1876 had covenanted with his vendors not to erect any dwelling-house at a less cost price than £1,200. In 1927 deft. built houses at prices exceeding these amounts, but these houses, owing to the great increase of building prices since 1876, were not of the type indicated by the prices of that date. Pltf. sued for an injunction :—*Held :* even if pltf. had been entitled to enforce the 1876 covenants against deft., failing allegation & proof of a building scheme at that date, he could not do so, deft. had not in fact broken those covenants, which, on construction, related to the building prices ruling at the time the houses were actually erected.—GRANT *v.* DERWENT, [1928] Ch. 902 ; 97 L. J. Ch. 434 ; 73 Sol. Jo. 59 ; 27 L. G. R. 139 ; *affd. on other grounds*, [1929] 1 Ch. 390, C. A.

2711. *Add. Annotation :*—**Refd.** White *v.* Bijou Mansions, Ltd., [1937] 3 All E. R. 269.

2722. *Add. Annotation :*—**Distd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

2728. *Add. Annotation :—As to* (3) **Distd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

2751. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2757. *Add. Annotations :* — **Consd.** Southwark Revenue Officer *v.* Hoe (R.) & Co. (1930), 143 L. T. 544. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465 ; New Plymouth Borough Council *v.* Taranaki Electric Power Board, [1933] A. C. 680.

2764. *Add. Annotation :*—**Refd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

2764a. Agreement for exclusive right to supply petrol—Whether in restraint of trade.]—By an agreement in writing pltf. agreed to sell & defts. to purchase a piece of land, adjoining other land belonging to pltf., which defts. intended to use for their business as motor coach proprietors. The sale was made subject to defts. entering into another agreement to purchase from pltf. all the petrol required for their said business. On the same date that second agreement, described as supplemental to the first, was executed, which, after reciting that pltf. was the proprietor of a petrol-filling station on the land retained by him, provided that defts. would purchase from him all the petrol required by them for the running of their said business, "at a price to be agreed by the parties in writing & from time to time" ; & further, that defts. would purchase no petrol from any other person so long as pltf. was able to supply them with quantities sufficient to satisfy their daily requirements. Clause 8 was in these terms : "If any dispute or difference shall arise on the subject-matter or construction of this agreement the same shall be submitted to arbitration in the usual way in accordance with the provisions of Arbn. Act, 1889." The land, the subject of the first agreement, was duly conveyed to defts., & for three years defts. obtained their petrol from pltf. Thereafter disputes arose between them, & thereupon defts. purported to repudiate the second agreement, alleging that it had no binding force because (*a*) no agreement in writing as to price had ever been made, & (*b*) the clause requiring defts. to take all their petrol supplies from pltf. was an unreasonable & unnecessary restraint of their trade. In an action by pltf. claiming a declaration that the petrol agreement was valid & binding, & an injunction to restrain defts. from purchasing petrol required for their said business from any person other than pltf. :—*Held :* (1) a term must be implied in the agreement that the petrol supplied by pltf. should be of reasonable quality & sold at a reasonable price, & that if any dispute arose as to what was a reasonable price it was to be determined by arbn. pursuant to clause 8 ; (2) inasmuch as defts. were only required to purchase petrol from pltf. for the purpose of the business carried on by them on the land purchased from pltf., & so long only as it was supplied of a reasonable quality & at a reasonable price, the obligation was not an unreasonable & unnecessary restraint of their trade ; & (3) the agreement therefore was valid & binding on defts.—FOLEY *v.* CLASSIQUE COACHES, LTD., [1934] 2 K. B. 1 ; 103 L. J. K. B. 550 ; 151 L. T. 242, C. A.

Annotation :—As to (1) **Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

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the building would constitute a breach of the covenant, & the pltfs. were entitled to enforce the restriction.—COSBOLD *v.* ABRAHAM, [1933] V. L. R. 385 ; A. L. R. 531.—**AUS.**

2698 iii. —— —— ——.]—Where the lots in a certain township had all been sold subject to the condition (*inter alia*) that "the said lot is sold for residential purposes only & the purchaser shall have no right to subdivide or transfer any portion of the lot aforesaid, but on the contrary shall only have the right to erect one residence with the necessary outbuildings & accessories on the said lot" : —*Held :* the erection of a block of flats upon a lot was prohibited by the condition.—TRANSVAAL CONSOLIDATED LAND & EXPLORATION CO., LTD. *v.* BLACK, [1929] A. D. 454.—**S. AF.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) iv.

n i. —— ——.]—*Re* EGLINTON & BEDFORD PARK PRESBYTERIAN CHURCH, [1928] 1 D. L. R. 354 ; 61 O. L. R. 430.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) v.

p. *Revd.*, [1930] 3 W. W. R. 185.

PART XI. SECT. 2, SUB-SECT. 4.—D. (a).

aa. *Notice under Property Law Act*, 1908, *s.* 94.]—MCCONNELL *v.* MCCORMICK, [1929] N. Z. L. R. 560.—**N.Z.**

Bunsen gas burner. Above the kitchen was a bathroom. From a cupboard in the bathroom a linen chute ran down to a cupboard in the kitchen connected with the boiler by a pipe. There was no flue to carry gas or fumes from the burner to the outward air. C. B. with his wife & child went into occupation on Sept. 28. The C. Gas. Co.'s inspector examined the gas fittings & set the regulator fitted to the burner so that 45 cubic feet of gas & no more passed into burner per hour. On Oct. 26, C. B. & his wife were found dead in bathroom, poisoned by carbon monoxide gas. A few days afterwards the regulator was found so set that much more than 45 cubic feet could pass into the burner in an hour. The boiler with its burner & the linen chute were parts of the realty. The boiler with the burner properly regulated was not dangerous. It was the business of the Gas Co. & not that of the builders to regulate the flow of gas to the burner. In an action under the Fatal Accidents Act, 1846 (c. 93), by the administrators of C. B. & his wife against the builders :—*Held :* there was no evidence of a breach of any duty which the law cast upon defts. as vendors or lessors of the house towards C. B. or his wife, & pltfs. could not recover.—BOTTOMLEY *v.* BANNISTER, [1932] 1 K. B. 458 ; 101 L. J. K. B. 46 ; 146 L. T. 68, C. A.

Annotations :—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960.

2922d. —— ——.]—The first pltf. contracted with defts. for the purchase of a newly-constructed house informing them that on account of the health & nervousness of the second deft. she desired to be assured that the house was well built. Defts. thereupon assured that the house was well built & the sale was completed. About a year later a large part of the ceiling in one of the bedrooms fell on the second pltf. & seriously injured her. Later there were further falls. Both pltfs. claimed damages :—*Held :* (1) the first pltf. was entitled to damages for breach of warranty ; (2) the claim of the second pltf. being in tort failed, as the builder of a house, even though he is building for the purpose of sale, is under no obligation towards persons who may come to live in it to take reasonable care in the building.

Semble : a builder selling a house after completion is not, in his capacity as builder, under any obligation to the purchaser.—OTTO *v.* BOLTON & NORRIS, [1936] 2 K. B. 46 ; [1936] 1 All E. R. 960 ; 105 L. J. K. B. 602 ; 154 L. T. 717 ; 52 T. L. R. 438 ; 80 Sol. Jo. 306.

Annotation :—**Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781.

2922e. Action for breach of warranty—Innocent misrepresentation.]—In the particulars of an estate supplied to an intending purchaser it was stated that the estate included (*inter alia*) an inn & farm let at a rent of £193. The vendor intimated that he had had an offer of £250 a year, but had been unwilling to disturb the tenant. It was further stated that the estimated income from electric light supplied to the houses on the estate was £193. The electric light was generated from turbines, one of which had no meter. The vendor's agent had estimated the number of units generated, &, calculating at a flat rate, had arrived at the estimated income. In fact, the electric light was supplied at varying rates. It was further stated that there was a small revenue from water supplied to houses on the estate. No mention was made of the fact that the local authority supplied this water, & that it had to be paid for. In an action for damages for breach of warranty after completion of the sale of the estate, the purchaser relied on the facts (i) that the offer of £250 a year had been made some years previously, & not recently as the purchaser had supposed, (ii) that the electric plant did not generate as much electricity as estimated, & (iii) that no mention had been made of the outgoings in respect of water. There was no suggestion of fraudulent representation :—*Held :* apart from some special arrangement or some special evidence of intention, of which there was none here, a vendor does not guarantee or warrant the correctness of information given. The ct. would not allow damages for breach of an innocent misrepresentation under the guise of a breach of warranty.—TERRENE, LTD. *v.* NELSON, [1937] 3 All E. R. 739 ; 157 L. T. 254 ; 53 T. L. R. 963 ; 81 Sol. Jo. 649.

2963. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2972. After this case add :—

—— **Purchase by undischarged bankrupt.**]—*See* BANKRUPTCY, No. 8590a, *ante*.

2976. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2981. *Add. Annotation :*—**Consd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

2985. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2987. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

3035. *Add Annotation :—Generally* **Refd.** Bellotti *v.* Chequers Development Ltd., [1936] 1 All E. R. 89.

3040. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

PART XI. SECT. 4, SUB-SECT. 4.—A. (a) II.

a 1. —— *Representation that house warm.*]—Pltf. agreed to purchase a dwelling-house relying on the owner's oral representation that he would "guarantee that it was a good, warm house." Pltf. went into possession, & being unable to keep the house warm, sued for rescission. The judge found that it was a very cold house :—*Held :* pltf. was entitled to rescission.—SIEGERIST *v.* PAIN, [1930] 1 W. W. R. 951 ; 2 D. L. R. 980.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 4.—A. (b) I.

2978 iv. —— ——.]—HARILAL DALSUKHRAM *v.* MULCHAND (1928), I. L. R. 52 Bom. 883.—**IND.**

PART XI. SECT. 4, SUB-SECT. 4.—E.

3029 i. *What purchaser may be allowed—Costs of repairs & improvements.*]—Pltf., who knew that the municipality's claim against the land arose out of non-payment of taxes, into possession & made improvements while the land was subject to redemption & before the municipality was entitled to put him into possession. He contended that he relied on an assurance by the municipal officer that title would issue to him, but it was found that no such assurance had been given :—*Held :* pltf. was not entitled to a declaration of lien for improvements made under mistake of title.—HILLER *v.* RURAL MUNICIPALITY OF SHAMROCK (Sask.), [1929] 3 W. W. R. 458 ; *affd.*, [1930] 2 W. W. R. 680 ; 4 D. L. R. 276.—**CAN.**

SET-OFF AND COUNTERCLAIM.

Part I.—Set-Off.

48. *Add. Annotation :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

75. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

117. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Olivaes, [1929] 1 Ch. 221.

180. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

192. *Add. Annotations :*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co., Amersham (1927), 97 L. J. K. B. 72 ; Earle *v.* Hemsworth R. D. C., [1928] 140 L. T. 69 ; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

193. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Olivaes, [1929] 1 Ch. 221.

225. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

278. *Add. Annotation :*—**Consd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

295. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

Part II.—Counterclaim.

307. *Add. Annotations :*—*As to* (1) **Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388. *As to* (2) **Refd.** *Re* Richardson, Richardson *v.* Nicholson, [1933] W. N. 90.

314. *Add. Annotation :*—**Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

319. *Add. Annotation :*—**Refd.** Aktieselskabet Ocean *v.* Harding, [1928] 2 K. B. 371.

326. *Add. Annotation :*—*As to* (1) **Refd.** Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

327. *Add. Citation :*—72 Sol. Jo. 254.

330. *Add. Annotation :*—**Consd.** *Re* Richardson, Richardson *v.* Nicholson, [1933] W. N. 90.

331. *Add. Annotation :*—**Consd.** *Re* Richardson, Richardson *v.* Nicholson, [1933] W. N. 90.

331a. ——.]—*Re* RICHARDSON, RICHARDSON *v.* NICHOLSON, [1933] W. N. 90 ; 175 L. T. Jo. 269, C. A.

379. *Add. Annotations :*—**Consd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 254. **Refd.** Lowe *v.* Bentley 1928), 44 T. L. R. 388.

Part III.—Pleading and Practice.

535. *Add. Annotation :*—**Refd.** Medway Oil & Storage Co. *v.* Continental Contractors [1929] A. C. 88.

550. *Add. Annotation :*—**Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

PART I. SECT. 3, SUB-SECT. 1.

38 xvi. ——.]—CLARKSON *v.* ALLISTON CORPN., [1928] 2 D. L. R. 715 ; 62 O. L. R. 149.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

p. *Revsd.*, [1913] A. C. 160.

k (p. 377). For "(1867), 3 Agra, 43" read "(1868), 4 Agra, 43."

PART I. SECT. 10, SUB-SECT. 8.—A.

222 ii. —— —— *& debt due in representative capacity.*]—The rule that where an action is brought by an exor. only in his capacity of exor. deft. cannot set up by counterclaim claims against him personally & also as an exor. :—*Held :* not to apply to the case where deft. seeks, in aid of the judgment which he may obtain against the exor. personally, relief from the estate.—MACKAY *v.* LONDON & WESTERN TRUSTS CO., LTD., [1931] 1 D. L. R. 978 ; [1930] 3 W. W. R. 620.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

317 vi. ——.]—THOMAS *v.* WORDEN, [1928] 1 D. L. R. 217.—**CAN.**

317 vii. ——.]—Neither at law nor in equity can a claim unenforceable by action because of the Statute of Frauds be enforced by counterclaim or defence. —PERPETUAL EXORS. & TRUSTEES ASSOCN. OF AUSTRALIA, LTD. *v.* RUSSELL, [1931] V. L. R. 125 ; Argus L. R. 89 : 5 A. L. J. 40.—**AUS.**

317 viii. ——.]—A counterclaim even though it raises an issue entirely extraneous to the claim can only be struck out if it is embarrassing to pltf.—EXPORT BREWING & MALTING CO. *v.* DOMINION BANK, [1932] O. R. 446 ; 3 D. L. R. 128.—**CAN.**

321 x. ——.]—To allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off.—R. *v.* COSGRAVE EXPORT BREWING CO., LTD., R. *v.* JOHN LABATT, LTD., [1928] Ex. C. R. 103.—**CAN.**

321 x. *Must not be embarrassing.*]—The right to counterclaim should not be used in such a way as to embarrass & inconvenience the fair trial of the action as originally constituted.—OAKS *v.* BRITISH NORTH WESTERN FIRE INSCE. CO., [1929] 2 D. L. R. 959 ; 63 O. L. R. 593.—**CAN.**

321 xi. *Deduction based on contract.*]—Where pltf.'s claim to money is established & deft. claims a deduction based on a contract, he should counterclaim. —SCHIESS *v.* CHATENAY, [1934] 4 D. L. R. 671.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

321 xv. *Contributory negligence.*] — CAMERON *v.* MURRAY, [1931] 2 D. L. R. 654 ; O. R. 83.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.

r (p. 414) i. —— *Counterclaim for fraudulent misrepresentation.*]—*Held :* the counterclaim being based not upon the contract but upon delict, could not be dealt with in the action on the contract.—SMART *v.* WILKINSON, [1928] S. C. 383.—**SCOT.**

sb. *Action for alimony—Counterclaim for divorce.*]—A claim for divorce may be set up by a counterclaim to an action for alimony.—SCHEERER *v.* SCHEERER, [1928] 1 W. W. R. 305 ; 22 Sask. L. R. 302.—**CAN.**

PART II. SECT. 4.

378 iii. ——.]—THOMPSON *v.* SCOLLARD (B. C.), [1929] 3 D. L. R. 857 ; 2 W. W. R. 466.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

p. For "Q. R. 29 S. C. 516," read "*revsd.*, 29 S. C. R. 516."

PART III. SECT. 2, SUB-SECT. 4.—C. (a).

sc. *Statute of Limitations.*]—With respect to the application of Stat. Limitations to a counterclaim it is sufficient for pltf. to prove that the counterclaim was barred when it was pleaded.—REED *v.* THIEL, [1928] 4 D. L. R. 72 ; [1928] 2 W. W. R. 115 ; 22 Sask. L. R. 495.—**CAN.**

se. *Res judicata.*]—DAVIS *v.* DAVIS, [1928] 3 D. L. R. 69 ; [1928] 2 W. W. R. 130 ; 23 Alta. L. R. 355.—**CAN.**

PART III. SECT. 2, SUB-SECT. 9.—B. (a).

552 xvii. —— ——.]—STARK *v.* BATCHELOR, [1928] 4 D. L. R. 815 ; 63 O. L. R. 135.—**CAN.**

555. *Add. Annotation :*—**Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

562. For existing paragraph substitute :—

Where a claim & counterclaim are both dismissed with costs, upon the taxation of the costs, the true rule is that the claim should be treated as if it stood alone, & the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it. No costs not incurred by reason of the counterclaim can be costs of the counterclaim. In the absence of special directions by the ct. there should be no apportionment. The same principle applies where both the claim & the counterclaim have succeeded.—MEDWAY OIL & STORAGE CO. *v.* CONTINENTAL CONTRACTORS, [1929] A. C. 88 : 98 L. J. K. B. 148 ; 140 L. T. 98 ; 45 T. L. R. 20, H. L. ; *reversing* S. C. *sub nom.* CONTINENTAL CONTRACTORS *v.* MEDWAY OIL & STORAGE CO., [1928] 1 K. B. 238, C. A.

Annotation :—**Apld.** The Stentor, [1934] P. 133.

568. *Add. Annotations :*—**Distd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88. **Consd.** The Stentor, [1934] P. 133.

569. *Add. Annotations :*—**Folld.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88. **Consd.** The Stentor, [1934] P. 133.

570. *Add. Annotation :*—**Refd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

571. *Add. Annotations :*—**Apprvd. & Folld.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88. **Consd.** The Stentor, [1934] P. 133.

574. *Add. Annotation :*—*As to* (3) **Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

574a. ——.]—In an action for infringement of a patent, & counterclaim for revocation, an order was made dismissing the action with costs & the counterclaim with costs, with a set-off. Upon taxation the taxing master awarded pltfs. only the amount by which the costs of the proceedings had been increased by the counterclaim, amounting to a very small sum. Pltfs. moved to vary the order, & contended at the hearing of the motion that the order did not carry out the intention of the ct., which was that pltfs. should have certain costs of the issue of validity. Pltfs. relied principally on the inherent jurisdiction of the ct. to vary its orders so as to carry out its meaning :—*Held :* there had been no mistake in expressing the intention of the ct. as to what order should be made, though the consequences of the order might not have been what the ct. contemplated. The motion was dismissed with costs.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* ISAACSON & RALPHS (NORWICH), LTD. (1935), 52 R. P. C. 289.

PART III. SECT. 2, SUB-SECT. 9.—B. (b).

sg. *Discretion of judge.*]—AUSTIN *v.* O'KEEFE, [1928] V. L. R. 485 ; [1928] Argus L. R. 374.—**AUS.**

SETTLEMENTS.

Part II.—Creation and Construction of Settlements.

17a. —— **To be settled at attainment of majority.**]—LAING *v.* LAING (1839), 10 Sim. 315; 9 L. J. Ch. 48; 3 Jur. 1119; 59 E. R. 636.

74a. Express estate given not enlarged by implication.]—THEEBRIDGE *v.* KILBURNE (1751), 2 Ves. Sen. 233; 28 E. R. 150, L. C.

Annotations:—**Consd.** Campbell *v.* Harding (1831), 2 Russ. & M. 390; Verulam Earl *v.* Bathurst (1843), 13 Sim. 374. **Reld.** Lyon *v.* Mitchell (1816), 1 Madd. 467.

83a. Gift followed by proviso against absolute vesting—Subsequent trusts not exhausting absolute interest.]—Where there was an absolute gift, followed by a proviso against absolute vesting & for retention of the funds by the trustees, & the subsequent trusts did not exhaust the absolute interest, but there was a failure of those trusts:—*Held:* the proviso only had the effect of cutting down the absolute interests to the extent to which it was necessary to give effect to the trusts & no further, & the absolute gift accordingly remained.—*Re* COHEN, COHEN *v.* COHEN (1915), 60 Sol. Jo. 239.

83b. Condition for forfeiture on becoming Roman Catholic—Condition operating during minority—Invalid.]—A settlement made in 1910 provided that "If any grandchild of the said Sir R. H. B. shall at any time before attaining a vested interest under the trusts hereinbefore declared be or become a Roman Catholic or not be openly or avowedly Protestant such grandchild shall thereupon forfeit & lose one moiety of all the share right or interest in the capital or income of the said trust premises & of all other benefits (if any) conferred upon him or her by these presents":—*Held:* the condition was bad because it operated to restrain the parents of the grandchildren from doing their duty in the matter of religious instruction, & it was also bad on the ground of uncertainty.—*Re* BORWICK, BORWICK *v.* BORWICK, [1933] Ch. 657; 102 L. J. Ch. 199; 149 L. T. 116; 49 T. L. R. 288; 77 Sol. Jo. 197.

Annotation:—**Reld.** *Re* Tegg, Public Trustee *v.* Bryant, [1936] 2 All E. R. 878.

86a. —— **Ambiguity.**]—GARNER *v.* GARNER (1860), 29 Beav. 114; 3 L. T. 396; 7 L. T. 182; 54 E. R. 570.

134a. "For default of such issue."]—DOE d. LEES *v.* FORD (1853), 2 E. & B. 970; 2 C. L. R. 654; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 118 E. R. 1029.

136. *Add. Annotation:*—**Distd.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

140a. "My own heirs whatsoever."]—GORDON *v.* GORDON (1882), 7 App. Cas. 713, H. L.

146a. "Any husband who might survive her"—Whether applicable to divorced husband.]—A woman beneficiary under a settlement was given a power of appointment "for the benefit of any husband who might survive her." The beneficiary married, & she exercised the power of appointment in favour of her husband in the event of his surviving her. Afterwards she divorced her husband, & she died without having been remarried, leaving her divorced husband surviving her:—*Held:* the power could be exercised only in favour of a person who was the beneficiary's husband at the time of her death, & therefore the divorced husband did not take under the exercise of the power.—BOSWORTHICK *v.* CLEGG (1929), 45 T. L. R. 438.

Annotation:—**Apprvd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361.

146b. —— ——.]—Under a marriage settlement made in 1902 of property belonging to the wife, power was reserved to her in the event, which happened, of there being but one child of the then intended marriage, to revoke the trusts of the settlement as to three-quarters of the settled funds & to resettle the same for the benefit of any husband who might survive her, but so that he should not take more than a life interest therein, & any child or other issue of a future marriage. The wife, having been divorced, remarried in 1908, & exercised the power in favour of her second husband. In 1923 the second marriage was dissolved upon the husband's petition, & the wife again remarried. She died in 1928, leaving her first, second & third husbands surviving her:—*Held:* the second husband, although he survived his former wife, was not entitled to any interest under the appointment of 1908, as he had ceased to be her husband on the dissolution of the marriage.—*Re* WILLIAMS' SETTLEMENT, GREENWELL *v.* HUMPHRIES, [1929] 2 Ch. 361; 98 L. J. Ch. 358; 141 L. T. 579; 45 T. L. R. 541; 73 Sol. Jo. 384, C. A.

Annotation:—**Apld.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

Part III.—Contracts for Settlements.

165. *Add. Annotation:*—**Reld.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 349.

203. *Add. Annotation:*—*As to* (2) **Apld.** *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661.

204a. —— ——.]—JOHNSTONE *v.* MAPPIN (1891), 60 L. J. Ch. 241; 64 L. T. 48.

225. *Add. Annotation:*—**Reld.** London & North-Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 145 L. T. 269.

PART II. SECT. 3, SUB-SECT. 1.

sg. *Provision for devolution of property—Valid.*]—There is nothing in Intestate Succession Act, R. S. S., 1930, or other statutes of Saskatchewan, to prevent the parties to a marriage from providing by a marriage settlement for the devolution of property covered thereby.—*Re* JUTRAS ESTATE, [1932] 2 W. W. R. 533.—CAN.

PART II. SECT. 3, SUB-SECT. 3.—E.

sa. *The right heir.*]—A settlement provided that in certain events the settled lands should revert to "the right heir of (the settlor) & his or her heirs & assigns for ever":—*Held:* the words "the right heir" designated the next of kin of settlor.—*Re* MACDONALD'S SETTLEMENT, O'CALLAGHAN *v.* O'CALLAGHAN, [1928] V. L. R. 421; [1928] Argus L. R. 148.—AUS.

360. *Add. Annotation :*—**Refd.** *Re* Bennett, Bennett *v.* Bennett (1934), 78 Sol. Jo. 876.

361. *Add. Annotation :*—**Refd.** *Re* Bennett, Bennett *v.* Bennett (1934), 78 Sol. Jo. 876.

368a. —— ——.]—A covenant to leave a beneficiary a share in the covenantor's property at death cannot be defeated by a disposition during the covenantor's lifetime which is testamentary in its nature.—*Re* BENNETT, BENNETT *v.* BENNETT, [1934] W. N. 177; 78 L. Jo. 231; 178 L. T. Jo. 172; *revsd.* 78 Sol. Jo. 874, C. A.

386a. ——.]—OTWAY *v.* BRAITHWAITE (1679), Cas. *temp.* Finch, 405; 23 E. R. 221.

392. *Add. Annotation :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

533. *Add. Annotation :*—**Refd.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10.

535. *Add. Annotation :*—**Apld.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10.

564. *Add. Annotation :*—**Refd.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

583. *Add. Annotations :*—**Refd.** *Re* Brooks, Public Trustee *v.* White, [1928] Ch. 214; *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

659. *Add. Annotation :*—**Refd.** *Re* Sassoon (1933), 49 T. L. R. 407.

687. *Add. Annotation :*—**Refd.** Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

Part V.—Consideration for Settlements.

710. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

736. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

740a. —— ——.]—E. *v.* E. (1893), 37 Sol. Jo. 250.

740b. Cohabitation without marriage for several years.]—By a settlement executed in 1877, in consideration of a then intended marriage, it was declared that a sum of stock, the property of the intended wife, which had been transferred by her to two trustees, should be held by them on trust for the benefit of the intended wife, the intended husband, & the issue of the intended marriage. The marriage was not solemnised, but the parties cohabited without marriage, & three children were born. In 1883 an action was brought by the father & mother against the trustees of the settlement, to obtain a transfer of the fund to the mother :—*Held :* the contract to marry had been absolutely put an end to, & the ct. could order the stock to be transferred to the lady.—ESSERY *v.* COWLARD (1884), 26 Ch. D. 191; 53 L. J. Ch. 661; 51 L. T. 60; 32 W. R. 518.

Annotation :—**Apld.** E. *v.* E. (1893), 37 Sol. Jo. 250.

770. *Add. Annotation :*—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

800. *Add. Annotation :*—**Distd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

803a. ——.]—BURROWS *v.* GREENWOOD (1840), 4 Y. & C. Ex. 251; 5 Jur. 384; 160 E. R. 999.

803b. ——.]—The trustees & *cestui que trust* under a voluntary settlement cannot compel the settlor to perform any further act than he has already done to render such a settlement operative.—DENING *v.* WARE (1856), 22 Beav. 184; 4 W. R. 523; 52 E. R. 1078.

Part VI.—Rectification and Variation of Settlements and Articles.

840. *Add. Annotation :—As to* (1) **Apld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

849a. Omission of power to appoint by deed.]—The pltf., by summons, asked for a compromise of an action. The action claimed rectification of the pltf.'s marriage settlement dated Sept. 29, 1910, by which, her husband having died & there being no children, the trust fund of £25,000 was held upon trust for her, & thereafter as she should by will appoint, & in default for her next-of-kin. There was no power to appoint by deed, nor any trust for the wife absolutely; but the pltf. offered to release her power over one-fifth of the trust fund of £25,000 for the benefit of her next-of-kin, upon terms that a general power, exercisable by deed or will, should be inserted :—*Held :* that the facts as to the making of the settlement precluded rectification, there being no evidence that the instructions given by the settlor had not been carried out. The action would have to be tried on oral evidence, but the evidence available did not justify the ct. in sanctioning the compromise.—CONSTANTINIDI *v.* RALLI, [1935] Ch. 427; 104 L. J. Ch. 249; 152 L. T. 489; 79 Sol. Jo. 195.

875. After this case add :—

Effect on construction of referential trusts.]—*See* TRUSTS, No. 493a, *post.*

PART III. SECT. 4, SUB-SECT. 3.—L. 587 ii. ——.]—The covenant in question herein in a marriage settlement whereby the wife covenanted for settlement of after-acquired property : —*Held :* not to catch the income received by her under the will of her father without power of anticipation.—NATIONAL TRUST CO., LTD. *v.* ASHTON, [1936] 2 W. W. R. 457.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

768 i. —— *Settlor must do everything necessary to transfer property.*]—In order to constitute a valid & effective voluntary settlement binding upon the settlor, he must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done to transfer the property either to the persons for whom he intends to provide, or to a trustee for the purposes of the settlement, or have declared that he himself holds it in trust for such purposes : & the expression of a mere executory intention to create a trust, or voluntary agreement to do so is insufficient for such purpose.—HAMILTON *v.* IZARD, [1929] N. Z. L. R. 498.—**N.Z.**

PART VI. SECT. 1, SUB-SECT. 4.

m i. —— *Mistake—Sufficiency of evidence.*]—GOODWIN *v.* ROYAL TRUST CO., [1928] 1 D. L. R. 309; 39 B. C. R. 113.—**CAN.**

Part VII.—Revocation and Avoidance of Settlements.

897a. —— ——.]—By a voluntary settlement made in 1868 a settlor settled any property to which she might become entitled upon the death of her father & gave to the trustees of the settlement full power to receive & give receipts for the same or any part thereof in her name. Her father died in 1869 & during the years 1871–1874 his exors. transferred the share of the settlor under her father's will to the trustees of the voluntary settlement. In 1935 the settlor requested the trustees to transfer the funds representing the above-mentioned property to her as her absolute property:—*Held:* the original trustees had received the settlor's share under a valid authority unrevoked, & it became impressed with the trusts contained in the settlement.—*Re* BOWDEN, HULBERT *v.* BOWDEN, [1936] Ch. 71; 105 L. J. Ch. 23; 154 L. T. 157; 79 Sol. Jo. 625.

897b. —— **By subsequent sale of settled property.**]—*Held:* the selling out of the settled stock did not amount to a virtual revocation of the settlement.—BLACKWELL *v.* WOOD (1831), 1 L. J. Ch. 35.

899. *Add. Annotation:*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

913a. ——.]—GUY *v.* DORMER (1677), T. Raym. 295; 83 E. R. 152.

Annotations:—**Consd.** Doe d. Nowell *v.* Roake (1825), 2 Bing. 497. **Refd.** Bath & Mountague's Case (1693), 3 Cas. in Ch. 55.

934. *Add. Annotation:*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

938a. —— ——.]—LAMPERT *v.* LAMPERT (1789), 1 Ves. 20; 30 E. R. 210.

975. *Add. Annotation:*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

976. *Add. Annotations:*—**Consd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289. **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

Part VIII.—Beneficial Interests in Personalty.

994. *Add. Annotation:*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

1003a. —— **Equitable assignment—Covenant to pay portion of income to third party—Within three days of receipt.**]—A marriage settlement provided that the wife, if she survived the husband, might appoint all or part of the income of the settled property to be paid to any subsequent husband who might survive her, until he should (*inter alia*) assign it. A second settlement comprised property subject to like trusts, & a third gave the wife power to appoint to any subsequent husband with or without restriction. An agreement between the wife's second husband, the wife, & a lender, for a loan to be applied by the second husband & the wife in paying certain debts, provided that, while money was owing under the agreement, the second husband & the wife should, within three days after receiving any income of the settled property, pay half of it into a specified account, that the money so paid should be used in paying the debts & repaying the loan, & that what remained should be handed to the second husband & the wife or the survivor as they should direct. A later agreement provided that the second husband & the wife, so long as any money then owing by them remained owing, would pay income into a specified account within three days after receiving it, & that when so paid it should be held in trust for payments to other parties to the agreement as well as to the second husband & the wife. The wife died, having by her will appointed, within the terms of the first settlement, an interest to the second husband in the income of the property comprised in the three settlements, until he should (*inter alia*) assign it:—*Held:* (1) the covenants in the for payment into specified accounts effected an equitable assignment of the income; (2) after the wife's death the second husband became a trustee of the income, as soon as he received it, for those intended to benefit under the agreements, although he was not obliged to pay it over immediately; (3) although no assignment was intended, the second husband, on the true construction of the agreements, had forfeited his interest.—*Re* GILLOTT'S SETTLEMENT, CHATTOCK *v.* REID, [1934] Ch. 97; 102 L. J. Ch. 332; 149 L. T. 419; 77 Sol. Jo. 447.

1003b. —— **Rentcharge in respect of improvements—Some improvements not authorised by statute.**]—A tenant for life with a life interest defeasible on alienation carried out improvements in the principal mansion house. The Settled Land Act trustees agreed to discharge the cost out of capital moneys, & required him to execute, under Settled Land Act, 1925 (c. 18), s. 85, a deed creating a rentcharge to secure repayment of the cost to capital, which he did. On a summons to determine whether, if some of the improvements were not within the Act, so that more had been spent on improvements & a larger rentcharge created than the Act authorised, the defeasible interest of the tenant for life ceased on the execution of the deed:—*Held:* the trust giving to the tenant for life a life interest defeasible on alienation did not cease upon the execution of the deed.—*Re* LIBERTY'S WILL TRUSTS, BLACKMORE *v.* LIBERTY (STEWART), [1937] Ch. 176; [1937] 1 All E. R. 399; 106 L. J. Ch. 118; 156 L. T. 270; 53 T. L. R. 323; 81 Sol. Jo. 99.

1008a. —— **Order to raise capital money for benefit of tenant for life—Policy on tenant's life assigned to trustees—Premiums paid by tenant.**]—The tenant for life of a settled

legacy whose life interest was protected against any assignment or charge "whereby the income or some part thereof would if belonging absolutely to him become payable to some other person or a corpn.," with a gift over upon failure of such trust, applied to the ct. under the powers of Trustee Act, 1925 (c. 19), s. 57, for an order to authorise the trustees to raise £15,000 out of the capital of the settled legacy, which amounted to £150,000, & to apply the same in payment of his debts & generally for his benefit.

An order was made authorising the trustees to raise the money & to apply it accordingly, upon the terms that the tenant for life should effect a policy for £15,000 upon his own life & assign the same to the trustees to secure repayment of the capital raised, & that the trustees should pay the premiums on the policy out of the income unless pltf. should within seven days of each renewal date produce to the trustees a receipt for the amount of the premium paid to the insurance co. On a summons taken out to determine the question whether the tenant for life by applying for & obtaining this order had forfeited his life interest:—*Held:* so long as the tenant for life paid the premiums on the policy & produced the receipt for them to the trustees, so that the trustees were not called upon to apply any part of the income of the legacy in payment of the premiums, the order would not effect a forfeiture of the life interest.—*Re* SALTING, BAILLIE-HAMILTON *v.* MORGAN, [1932] 2 Ch. 57; 101 L. J. Ch. 305; 147 L. T. 432; 76 Sol. Jo. 344.

Annotation:—**Refd.** *Re* Mair, Richards *v.* Doxat, [1935] Ch. 562.

1008b. —— ——.]—An order of the ct. under Trustee Act, 1925 (c. 19), s. 57, giving power to trustees to raise capital moneys for benefit of life tenants will not cause a forfeiture of protected life interests, because the sect. is an overriding sect., the provisions of which are to be deemed to be read into every settlement. —*Re* MAIR, RICHARDS *v.* DOXAT, [1935] Ch. 562; 104 L. J. Ch. 258; 153 L. T. 145.

1011a. —— ——.]—By the second clause of marriage articles, it was agreed, that a sum should be settled on the wife, not stating how, & the husband renounced his marital right over it during the coverture. The fourth clause provided that, in case of her death leaving issue, it should belong to the husband & children successively; the fifth gave her a power of appointment, if she died without issue; & the sixth provided that the income should, "in all cases," belong to the husband during his life. There was no express life estate given to the wife:—*Held:* the wife, by implication, took an immediate life estate to her separate use.—BYAM *v.* BYAM (1854), 19 Beav. 58; 24 L. J. Ch. 209; 1 Jur. N. S. 79; 3 W. R. 95; 52 E. R. 270.

1054. *Add. Annotation:*—**Apld.** *Re* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

1056a. —— **Omitted words supplied.**]—A settlement recited that it was the desire of the settlor to benefit certain grandchildren described as "all the children present & future of the marriage of" A. & B. The ultimate trust for the grandchildren was worded thus: "in trust for such of the grandchildren as being male shall have attained the age of 21 years or being female shall have married under that age":—*Held:* the ct. should give effect to the settlement considered as a whole & the provision for female grandchildren should be given effect to as if it read: "or being female shall have attained the age of 21 years or shall have married under that age."—*Re* HARGRAVES' TRUSTS, LEACH *v.* LEACH, [1937] 2 All E. R. 545.

1059a. —— **Application of accumulations during minority.**]—Certain property was vested in the Public Trustee under a settlement, whereby the settlor directed him after her decease to pay the income to the tenants for life therein mentioned, & directed that after the death of any tenant for life the share of that tenant for life should be held in trust for the grandchildren of the settlor in manner therein mentioned. One of the tenants for life died in the lifetime of the settlor. A summons was taken out by the Public Trustee for the direction of the ct. as to the application of the accumulations of income of the share of the tenant for life who died in the lifetime of the settlor, having regard to the facts that (*a*) no grandchild of the settlor had attained the age of twenty-one years, or being female had married, at the death of the settlor; (*b*) one of the grandchildren of the settlor was born after the dates, when two of such grandchildren had attained the age of twenty-one years, & (*c*) a grandchild of the settlor, who survived the settlor, died under the age of twenty-one years:—*Held:* (1) the property from which the accumulated income arose must be regarded as the share to which the infant would become ultimately entitled, even though that share might be reduced by reason of other members of the class coming into existence; (2) the share of the grandchild, who had died under the age of twenty-one years, which had been provisionally assigned to that grandchild, ought to be treated as not having been properly assigned, & that portion of the money which had accrued while the infant was a member of the class, & which had not been applied in the maintenance & education of the infant, ought to be reassigned amongst the other persons who were at that time members of the class; (3) observations on the method of dealing with accumulations of income provisionally assigned to infant members of a class, having regard to Conveyancing Act, 1881 (c. 41), s. 43, & Trustee Act, 1925 (c. 19), s. 31.—*Re* KING, PUBLIC TRUSTEE *v.* ALDRIDGE, [1928] Ch. 330; 97 L. J. Ch. 172; 138 L. T. 641.

1071a. —— —— ——.]—PECK *v.* PARROT (1749), 1 Ves. Sen. 236; 27 E. R. 1004, L. C.

1081a. —— —— ——.]—Money was settled upon trust, after the death of the survivor of the parents, to pay, etc., unto all the sons & daughters, & the children of such as should be dead leaving issue (the children to take the share of their parents), with a gift over if there should be no child of the marriage, or being such, all sons, should die under twenty-one, & the daughters under twenty-one or marriage:—*Held:* the shares vested in the children on their births, & the representatives of those who died unmarried, in their infancy, & in the life of the parents,

took a share.—*Re* MINOR'S TRUSTS (1860), 28 Beav. 50; 54 E. R. 284.

1088. *Add. Annotation:*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

1094a. Absolute gift—Restrictions on enjoyment—Failure of trust.]—By a settlement it was provided that the trustees should stand possessed of the trust fund "in trust to divide it into seven equal shares & to appropriate one of such shares to each of the settlor's children," & it was further provided that: "The shares so directed to be appropriated to the settlor's said respective children shall not vest absolutely in them but shall be retained by the trustees & held upon the trusts" thereinafter declared. The income of each share was to be paid to the children during their respective lives, subject to determination on bkpcy., or assignment, & on the death of a life tenant the share was to be held in trust for the children of the life tenant as therein provided. In the event of a life tenant having no children a power of appointment by will was given to such life tenant of the share "given to such life tenant." The trustees were given power on the marriage of a life tenant to settle upon certain trusts all or any part of the trust fund given to such life tenant. One of the children died a bachelor & without having exercised his power of appointment by will. A summons was taken out to determine whether his share formed part of his estate, or whether being undisposed of, there was a resulting trust in favour of the settlor:—*Held:* upon a consideration of the settlor's intention as indicated in the settlement, there was an absolute gift in the first instance, & applying the rule in *Lassence* v. *Tierney* & *Hancock* v. *Watson* the share passed to the child's estate.—*Re* GATTI'S VOLUNTARY SETTLEMENT TRUSTS, DE VILLE *v.* GATTI, [1936] 2 All E. R. 1489; 52 T. L. R. 674; 80 Sol. Jo. 704.

1095. *Add. Annotation:*—**Refd.** Selsdon *v.* Selsdon (1934), 50 T. L. R. 469.

Part IX.—Beneficial Interests in Realty.

1260. *Add. Annotations:*—*As to* (2) **Distd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361. **Consd.** Colclough *v.* Colclough & Fisher, [1933] P. 143.

1391a. Portionist disposing of settled property—Loss of portion.]—Whenever a son, entitled to an estate in remainder under a settlement of real property which, if it were an estate in possession, would exclude him from sharing in any portions charged on the property, has exercised, by virtue of his estate in remainder, dominion over & disposed of the settled property, he at once becomes & remains excluded from the portions provision. In observing this principle the ct. will not measure the benefit to himself or the detriment to others which the son so disentailing the settled property creates.—*Re* LEEKE'S SETTLEMENT TRUSTS, BOROUGH *v.* LEEKE, [1937] Ch. 600; [1937] 2 All E. R. 563; 106 L. J. Ch. 228; 157 L. T. 481; 53 T. L. R. 735; 81 Sol. Jo. 419.

1394. *Add. Annotation:*—**Refd.** *Re* Leeke's Settlement Trusts, Borough *v.* Leeke, [1937] 2 All E. R. 563.

1397. *Add. Annotation:*—**Refd.** *Re* Leeke's Settlement Trusts, Borough *v.* Leeke, [1937] 2 All E. R. 563.

1427. *Add. Annotation:*—**Consd.** *Re* Leeke's Settlement Trusts, Borough *v.* Leeke, [1937] 2 All E. R. 563.

1429. *Add. Annotation:*—**Consd.** *Re* Leeke's Settlement Trusts, Borough *v.* Leeke, [1937] 2 All E. R. 563.

1526a. —— Sale of lands charged to pay debts—Charge on other lands of settlor.]—LEGH *v.* LEGH (1846), 15 Sim. 135; 60 E. R. 568.

Annotation:—**Refd.** *Re* Saunders-Davies, Saunders-Davies *v.* Saunders-Davies (1887), 56 L. J. Ch. 492.

1604a. —— ——.]—STAWELL *v.* AUSTIN (1677), 2 Rep. Ch. 125; 21 E. R. 635.

1746. *Add. Annotation:*—**Consd.** *Re* Arden, Short *v.* Camm, [1935] Ch. 326.

1779a. ——.]—WARMAN *v.* SEAMAN (1675), 2 Cas. in Ch. 209; Freem. Ch. 306; Poll. 112; Cas. *temp.* Finch, 279; 22 E. R. 914; *sub nom.* SEAMAN *v.* WARMAN, Freem. K. B. 306; 3 Keb. 544.

Annotations:—**Refd.** Lyon *v.* Mitchell (1816), 1 Madd. 467; *Re* Wynch Trusts, *Ex p.* Wynch (1854), 5 De G. M. & G. 188; Roddy *v.* Fitzgerald (1858), 6 H. L. Cas. 823.

1786a. —— Conditional gift.]—By marriage settlement, C., the husband, in consideration of the intended marriage & of the fortune of S., the wife, to which C. was to become entitled on the marriage, released land to the use of himself in fee until the marriage; &, after the marriage, to the use of himself for life; remainder to trustees to preserve contingent remainders; &, after the decease of C., in case S. should survive him, to the use of S. for life; remainder to trustees to preserve contingent remainders; &, after the decease of the survivor of C. & S., in case there should be only one child of the marriage, then living, & no other child then dead leaving issue, to the use of such child in fee; but, in case there should happen to be more than one such child living at the decease of the survivor of C. & S., or any child or children then dead leaving issue, then to the use of all such children of C. & S. & such children's children, respectively, for such estates as C. & S. should jointly appoint, &, in default of such appointment, as the survivor should appoint: &, in default of such appointment, to the use of all the children of the marriage as tenants in common & of the heirs of their respective bodies, with cross remainders; & "for

default of all such issue," to the use of four brothers & sisters of S. as tenants in common in fee. S. survived C.: there were two children of the marriage, of whom both died, without leaving issue, in the lifetime of S. No appointment was made:—*Held:* the remainder to S.'s brothers & sisters took effect, as it was not a limitation in remainder after the determination of the estates given to the children as tenants in common in tail by the limitation immediately preceding, but was an independent limitation to take effect in case there were, at the time of the death of the survivor of C. & S., no issue in whom any of the previous limitations could vest.—DOE d. LEES *v.* FORD (1853), 2 E. & B. 970; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 2 C. L. R. 654; 118 E. R. 1029.

Part X.—Tenant for Life and Remainderman.

1808. *Add. Annotation:*—**Apld.** *Re* Brandon, Samuels *v.* Brandon (1932), 49 T. L. R. 48.

1809. *Add. Annotation:*—**Apld.** *Re* Brandon, Samuels *v.* Brandon (1932), 49 T. L. R. 48.

1869. *Add. Annotations:*—*As to* (2) **Apld.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Reld.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662; *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1872. *Add. Annotations:*—*As to* (1) **Reld.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662. *As to* (2) **Distd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Expld.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353. **Consd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1873. For the existing paragraph substitute the following paragraph:—

—— —— ——.]—Testator, who died in 1871, devised his real estate to his trustees upon trust to divide the income during a long period, namely during the joint lives & the life of the survivor of a large class of persons, amongst another class of persons, their respective exors., administrators & assigns; & declared that, on cesser of the period, the land should be sold, & the net proceeds of sale divided amongst a third class of persons only then ascertainable, & he gave his trustees a power of sale until the trust for sale arose. Immediately before the commencement of Law of Property Act, 1925 (c. 20), all the *cestuis que vie* were dead except one, & all the original participants in income were also dead except one, & the income for many years had been distributed amongst their respective estates or: *Held:* (1) the land was held in undivided shares within Law of Property Act, 1925, Sched. I., Part IV., par. 1.

The trustees having received, through their surveyor, a notice from the local authority that certain premises, forming part of the trust estate, were in a defective condition, carried out the necessary repairs, & temporarily paid the cost thereof out of the rents of the trust estate:—*Held:* (2) the trustees having asked the ct. for directions, the ct. was free to determine how the expenses ought to be borne; (3) the expenses should be borne by capital.—*Re* ROBINS, HOLLAND *v.* GILLAM, [1928] Ch. 721; 97 L. J. Ch. 417; 139 L. T. 393.

Annotations:—*As to* (1) **Apld.** *Re* House, Westminster Bank *v.* Everett, [1929] 2 Ch. 166. *As to* (3) **Folld.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88. **Reld.** *Re* Conquest, Royal Exchange Assco. *v.* Conquest, [1929] 2 Ch. 353; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

1873a. —— —— ——.]—Law of Property Act, 1925 (c. 20), s. 28 (2), has not deprived the ct. of its inherent jurisdiction to decide, in a proper case, that the cost of certain repairs to settled land ought to be borne by capital.

The intestate died possessed of an estate which included freehold cottages in a bad state of repair. After the death the local authority served notices to carry out repairs, including re-roofing & pointing of chimney stacks. Some of these repairs, in view of the state of the property at the intestate's death, would have amounted to "permanent improvements"; & this summons, issued upon the application of the administrator of the estate, raised questions as to the incidence of their cost:—*Held:* (1) the cost of repairs which are "improvements" within Settled Land Act, 1925 (c. 18), Sched. III., Pts. I, II., may properly & *primâ facie* ought to be borne by capital; (2) works not being "improvements" within these parts of that Sched. may properly be so borne if they are shown to be works in the nature of permanent improvements; (3) ordinary current repairs & "casual repairs," *i.e.*, those carried out in the ordinary course, generally at the cost of the tenant for life, cannot be treated as being "permanent improvements"; (4) Law of Property Act, 1925 (c. 20), s. 28 (2), does not compel Settled Land Act trustees to pay the costs of all repairs out of income, & does not deprive them of their discretion under Settled Land Act, 1925 (c. 18), s. 102.—*Re* SMITH, VINCENT *v.* SMITH, [1930] 1 Ch. 88; 99 L. J. Ch. 27; 142 L. T. 178.

1873b. —— —— **Effect of Law of Property Act, 1925 (c. 20), s. 28 (1).**]—The effect of above sub-sect. is (*a*) to give to trustees for sale powers of management of land, including the repair & rebuilding of houses, the cost of which, by virtue of sub-section 3 of Settled Land Act, 1925 (c. 18), s. 102, is payable out of income, & (*b*) to give power to trustees to make improvements which, under Settled Land Act, 1925 (c. 18), s. 84, coupled with the provisions of Sched. III. thereto, can be paid for out of capital. Therefore where

PART X. SECT. 3, SUB-SECT. 4.—A. § 1. —— —— *Ordinary repairs payable out of income by tenant for life.*]—*Re* DWYER, [1930] 2 D. L. R. 897.—CAN.

sm. *Extent of rule—Corpus liable only for repairs necessary to keep estate in saleable condition.*]—WILSON *v.* IPLEY (1929), 1 M. P. R. CAN.

have a choice of powers under above ... they should be guided in their choice by the equitable principles laid down ... & the language of the judgment ... *Re Gray, Public Trustee* v. *Woodhouse*, No. 1872, is not to be construed as an authority for the contrary proposition.—*Re* CONQUEST, ROYAL EXCHANGE ASSCE. *v.* CONQUEST, [1929] 2 Ch. 353; 98 L. J. Ch. 441; 141 L. T. 685.

... :—**Refd.** *Re* Smith, Vincent *v.* Smith, [1930] 1

1878a. —— **Permanent structural repairs.**]—Dangerous structure notices were served by a local authority on trustees in respect of houses forming part of a trust estate. The necessary work involved pulling down, rebuilding, & reinstatement of the houses:—*Held:* the work involved structural reconstruction of a permanent nature, & that therefore the cost was to be provided for out of capital.—*Re* WHITAKER, ROOKE *v.* WHITAKER, [1929] 1 Ch. 662; 98 L. J. Ch. 312; 141 L. T. 28.

Annotations:—**Apld.** *Re* Conquest, Royal Exchange Assce. *v.* Conquest, [1929] 2 Ch. 353. **Consd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1878b. —— ——.]—*Re* SMITH, VINCENT *v.* SMITH, No. 1873a, *ante*.

1878c. —— —— **Ancient buildings.**]—*Re* BATTLE ABBEY SETTLED ESTATE, WEBSTER *v.* TROUBRIDGE, [1933] W. N. 215; *sub nom. Re* WEBSTER, WEBSTER *v.* TROUBRIDGE, 176 L. T. Jo. 143.

1884a. —— ——.]—Devise to A. & others on trust to apply the rents in payment of certain debts, then to apply them for the benefit of A. for life with remainders over, with a direction that A. should be allowed to occupy the premises, keeping them in repair, & paying £100 *per annum*, or such other rent as the trustees should think reasonable. A. was the only acting trustee. He continued to occupy the premises after testator's death. They were afterwards burnt down:—*Held:* A. was bound to reinstate the premises, & to pay £100 a year during the occupation after the fire.—GREGG *v.* COATES, HODGSON *v.* COATES (1856), 23 Beav. 33; 2 Jur. N. S. 964; 4 W. R. 735; 53 E. R. 13.

Annotations:—**Apld.** *Re* Williames, Andrew *v.* Williames (1885), 54 L. T. 105; *Re* Bradbrook, Lock *v.* Willis (1887), 56 L. T. 106. **Refd.** Woodhouse *v.* Walker (1880), 5 Q. B. D. 404; Batthyany *v.* Walford (1886), 33 Ch. D. 624.

1891. *Add. Annotation:*—**Refd.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

1917. *Add. Annotation:*—**Apld.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

1955. *Add. Annotations:*—**Consd.** *Re* Macnamara, Macnamara *v.* Macnamara, [1936] 1 All E. R. 602. **Refd.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71.

1956a. —— **Damage to settled property in Ireland.**]—A tenant for life unimpeachable for waste of an estate in Ireland & subject to Irish law was awarded £4,400 compensation for damage to the settled property. The compensation, which was awarded by a commission of inquiry set up by agreement between the govt. of the Irish Free State & the British Govt., was in the nature of a gratuity & was not by law recoverable by the owners of the property injured. The tenant for life in fact only received £2,600, the balance being retained by the Irish Free State Govt. in respect of an unascertained liability of the tenant for life for Irish income tax:—*Held:* by Irish law the sum awarded by way of compensation was capital money & was held by the tenant for life as a trustee for the trustees of the settled estate; in the circumstances the liability was the tenant for life was limited to £2,600, the only sum received in respect of the award.—*Re* MACNAMARA, MACNAMARA *v.* MACNAMARA, [1936] 1 All E. R. 602.

1958. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096. **Refd.** *Re* Shee, Taylor *v.* Stoger, [1934] 1 Ch. 345; Corbett *v.* I. R. Comrs., [1937] 3 All E. R. 808.

1958a. ——.]—When part of the residuary estate of a testatrix who died on Mar. 24, 1932, consisted of two houses held on lease for terms expiring in 1944 & 1945 respectively & subject to the payment of heavy ground rents & other liabilities; &, before the expiration of the first year after testatrix's death, the exors. in pursuance of their obligations under the leases, expended £353 in payment of rent & other outgoings; &, for the purpose of relieving the estate from future liabilities thereunder, acting under proper advice assigned the leases & paid out of the capital of the estate the sums of £500 & £100 to the respective assignees thereof in consideration of their undertaking those liabilities:—*Held:* as between tenant for life & remainderman under the trusts of the residuary estate, the remainderman was not entitled to have the whole of the sums of £500 & £100 recouped to capital out of the income accruing to the tenant for life, although the effect of that payment out of capital was to relieve the tenant for life from the obligations he would have been under to meet out of income the liabilities under the leases, but for the assignment thereof; the obligation to pay the sum of £353 ought not to be wholly borne by the tenant for life, as he was not put in possession of any of the income of the residuary estate until the estate had, within the due period of one year from testatrix's death, been freed from the leasehold liabilities; but, thirdly, those three sums amounting together to £953 ought to be apportioned as between capital & income upon the principle recognised in *Allhusen* v. *Whittell*.—*Re* SHEE, TAYLOR *v.* STOGER, [1934] Ch. 345; 103 L. J. Ch. 183; 150 L. T. 451.

1960a. —— **Vested legacy fund—Payment postponed.**]—(1) The income of a fund set apart to answer a legacy vested but not payable until a future date falls into the residue as capital, & must, as between the tenant for life & the remainderman of the residue, be invested, & the income only arising from such investment paid to the tenant for life.

(2) The unapplied income of a fund set apart to answer an annuity payable at the discretion of trustees belongs to the tenant for life of the residue as income.—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

Annotation:—*Generally*, **Refd.** *Re* Hawkins, White *v.* [1916] 2 Ch. 570.

1975a. ——.]—In 1838 property was demised for a term determinable on the dropping of three lives, reserving a yearly rent & a heriot payable on the dropping of each life, with a covenant for perpetual renewal at a specified fine on the dropping of each life. In 1869 the persons who had then become absolute owners subject to the lease settled the property in strict settlement, giving to a trustee ample powers of management, with powers to grant leases with or without covenants for renewal, & to perform any covenant for renewal previously entered into by any previous owner, or by the trustee for the time being, so that in every such appointment, lease or demise the best rent be reserved without taking any fine or premium. During the continuance of a tenancy for life under this settlement two lives dropped, & on each occasion a heriot was paid & the lease renewed by the trustee at a fine in pursuance of the covenant:—*Held:* the powers given to the trustee did not affect the question, & the fines & heriots were casual profits payable to the tenant for life.—BRIGSTOCKE *v.* BRIGSTOCKE (1878), 8 Ch. D. 357; 47 L. J. Ch. 817; 38 L. T. 760; 26 W. R. 761, C. A.

Annotation:—**Reid.** *Re* Rodes, Sanders *v.* Hobson, [1909] 1 Ch. 815.

1979a. Annuity charged on leaseholds—Compulsory sale.]—A settlement was made in 1892 of (*inter alia*) an annuity of £300 charged on & payable out of certain leasehold properties. The settlement provided that the trustees should pay the annuity of £300 to one H. during her life & after her death to her husband, & after the death of the survivor of those two to their three daughters during their lives with remainder to the daughters' children. H. & her husband having died, their three daughters were entitled to the income, & the children of the daughters were entitled to the capital. The settlement also provided that if & when H. & her husband or the survivor of them should so require, & after the death of the survivor of them if & when the trustees or trustee should in their or his uncontrolled discretion think it expedient, the trustees or trustee should sell the annuity of £300 & invest the proceeds in a manner specified in the settlement. The annuities in question were in fact redeemed by the owner of the leasehold properties under the provisions of sect. 191 of the Law of Property Act, 1925 (c. 20), s. 191:—*Held:* sect. 191 enabled a compulsory sale to be made, & the trustees could not be said to have exercised any discretion in the matter one way or the other. The capital money resulting from the compulsory sale must be treated as though the annuity were still subsisting so far as the relative rights of the tenants for life & the remaindermen were concerned. The trustees should sell in each year sufficient of the capital to produce with the income £300 a year, less income tax, which was to be paid to the tenants for life.—*Re* CARR'S SETTLEMENT, RIDDELL *v.* CARR, [1933] Ch. 928; 102 L. J. Ch. 327; 149 L. T. 601; 49 T. L. R. 581.

1996. *Add. Annotation:*—**Consd.** *Re* MacIver's Settlement, MacIver *v.* Rae, [1936] Ch. 198.

1998a. Distribution of capital assets.] — A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. Moneys so paid to a shareholder who is a trustee consequently will belong *primâ facie* to the person beneficially entitled to the income of the trust estate. If the moneys or any part of them are to be treated as *corpus*, there must be some provision of the trust deed which brings about that result; no statement by the co. or its officers can affect the rights of the beneficiaries in the matter.

In 1925 a pastoral co. in New South Wales sold substantially the whole of its lands, live stock & other assets, & ceased to carry on its business. In 1926 a dividend was declared & paid as "a distribution of capital assets in advance of the winding up." No question arose in the appeal as to that dividend. In Nov. 1927, the co. declared & paid a dividend, stating that it was paid out of the sale of the breeding stock. Upon an originating summons issued by trustees, who held over two-thirds of the shares issued, the Supreme Ct. held that the dividend should be treated as capital of the trust estate. Upon appeal to the Privy Council resps., while supporting that decision, contended alternatively that the dividend could not have been paid but for a breach of duty by the trustees in not opposing resolutions passed in 1926 altering one of
of assocn.:—*Held:* the
be treated as income of
estate, but the moneys should be retained by the trustees for a limited period, in order that the beneficiaries might, if they wished, assert in hostile litigation a claim based upon the alternative contention above stated, the materials necessary to dispose of that point not being fully before the board.—HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720; 144 L. T. 65; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, 99 L. J. P. C. 191, P. C.

Annotations:—**Consd.** *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773. **Reid.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

PART X. SECT. 4, SUB-SECT. 3.—M. (a).

sa. *Cash bonus—War Loan conversion.*]—M. was entitled to the income of a certain holding in British 5 per cent. War Loan stock for her life. The stock was redeemable at any time between 1929 & 1947, & by the British Finance (No. 2) Act, 1931 (c. 49), the British Treasury was empowered to convert the stock into stock bearing interest at 3½ per cent. *per annum*. Shareholders were entitled to have their holdings redeemed at par or to have them continued in the new stock, & if their applications for continuance were received before a specified date, cash bonuses were payable to them in respect of their holdings. Sect. 15 (2) of the Act provided that "as between persons having any beneficial interest in a holding, any cash bonus payable in respect of the holding shall belong to the person entitled to the income of the holding on the day when the bonus is payable":—*Held:* the ct. would apply the provisions of the Act, &, therefore, M. would be entitled to the cash bonus payable in respect of the holding.—*Re* SCHOPPERLE'S TRUSTS, [1932] I. R. 457.—**IR.**

PART X. SECT. 4, SUB-SECT. 3.—M. (b).

sa. *Dividend out of profit on sale of assets.*]—*Re* HILL, PERMANENT TRUSTEE CO. *v.* HILL (1929), 29 S. R. N. S. W. 53; 46 N. S. W. W. N. 10.—**AUS.**

1998b. ——.]—A testator, who died in 1928 & whose estate largely consisted of shares in a steamship co., by his will directed that they should not be sold during the continuance of the trusts upon which he settled them, & gave the dividends, interest, & annual income thereof to his widow during her life or until she should remarry, & subject thereto to his children during their lives & then to their issue. The co. adopted an article enabling it to distribute surplus moneys representing proceeds of sales of ships & investments among the shareholders on the footing that the same should be received as capital. In 1934 it distributed £819,000 among the shareholders in exercise of this power, of which the trustees of the will received £16,000 :—*Held :* on the true construction of the will & in the events which had happened the £16,000 must be treated as an accretion to the capital of the trust fund.—*Re* WARD'S WILL TRUSTS, RINGLAND *v.* WARD, [1936] Ch. 704 ; [1936] 2 All E. R. 773 ; 105 L. J. Ch. 315 ; 155 L. T. 346 ; 52 T. L. R. 605 ; 80 Sol. Jo. 486.

1998c. Dividends in arrear—Issue of certificates redeemable out of future profits.]—Where dividends on cumulative preference shares are in arrear & the co. issues funded dividend certificates, saleable & redeemable, the future profits of the co. to be used in redeeming them, in lieu of payment of the arrears, the certificates, as between income & capital, are to be treated as income & belong to the tenant for life.—*Re* SANDBACH, ROYDS *v.* DOUGLAS, [1933] Ch. 505 ; 102 L. J. Ch. 173 ; 149 L. T. 44.

1998d. Waiver of arrears of dividend on preference shares—In consideration of ordinary shares.]—Dividends on preference shares in a co. being several years in arrear, a scheme was approved by the shareholders & sanctioned by the ct., whereby the ordinary shareholders surrendered part of their holding to the preference shareholders, the latter consenting to waive their right to the arrears of dividends. Under the scheme trustees of a settlement received ordinary shares in lieu of the arrears of dividend due on a block of preference shares forming part of the trust estate :—*Held :* the ordinary shares received by the trustees were to be treated as income & belonged to the tenant for life.—*Re* MACIVER'S SETTLEMENT, MACIVER *v.* RAE, [1936]. Ch. 198 ; 105 L. J. Ch. 21 ; 154 L. T. 339 ; 52 T. L. R. 25.

Annotation :—**Consd.** *Re* Smith's Will Trusts, Smith *v.* Melville, [1936] 2 All E. R. 1210.

1998e. Distribution of ordinary shares to preference shareholders—In satisfaction of unpaid dividends.]—Two shares of the residue of testator's estate were directed to be settled & the trustees appropriated to such shares certain cumulative preference & ordinary shares in a co. For some years the co. was unable to pay the dividend on the preference shares, & ultimately an arrangement was made by the co. with the sanction of the ct. that the preference shareholders should receive two-thirds of the ordinary shares in satisfaction of all outstanding dividends. The trustees of the will were not entitled by their holdings of shares to control the action of the co. in this respect. The trustees having received these ordinary shares it was contended by those interested in the capital of the shares of the residue that some part of such ordinary shares should be treated as capital :—*Held :* the ordinary shares were income & must be transferred to those entitled to the income.—*Re* SMITH'S WILL TRUSTS, SMITH *v.* MELVILLE, [1936] 2 All E. R. 1210 ; 155 L. T. 248 ; 80 Sol. Jo. 612.

2000. *Add. Annotation :*—**Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

2007. *Add. Annotation :*—**Apld.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682.

2009a. ——.]—The directors of a co. owning & operating steam trawlers, having sold some of their vessels for sums largely exceeding the values at which they stood in the co.'s balance sheet, carried the proceeds to a suspense account & afterwards distributed them as cash bonuses to the shareholders, with a covering letter stating that such bonuses were capital payments not liable to income tax or super tax :—*Held :* not having been capitalised by the issue of bonus shares increasing the total capital, the payments were income receivable by the tenant for life during his life.—*Re* BATES, MOUNTAIN *v.* BATES, [1928] Ch. 682 ; 97 L. J. Ch. 240 ; 139 L. T. 162 ; 72 Sol. Jo. 468.

Annotation :—**Apprvd.** Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720.

2011. *Add. Annotation :*—**Consd.** *Re* Sandbach, Royds *v.* Douglas, [1933] Ch. 505.

2020a. ——.]—CALTHORPE'S LORD WILL CASE (*circa* 1795), cited in 14 Ves. at p. 77 ; 33 E. R. 450.

Annotations :—**Distd.** Barclay *v.* Wainewright (1807), 14 Ves. 66. **Refd.** *Re* Bouch, Sproule *v.* Bouch (1885), 29 Ch. D. 635.

2026a. ——.]—Subject to certain bequests & dispositions, a testator who died in May, 1931, by his will gave the residue of his estate to his trustees for conversion & investment & directed that the investments representing such residue should be held upon trust as to certain parts for his children therein named, such parts to be settled upon certain trusts. Testator's residuary estate consisted (*inter alia*) of £100 preference shares & £100 ordinary shares in B. B., Ltd. By the articles of B. B., Ltd., it was provided that "the profits of the co. which it shall from time to time be determined to divide in respect of any year or other period shall be applied first in paying the fixed cumulative preference dividend on the capital paid up on the preference shares to the close of such year or other period & subject thereto in paying a dividend for such year or other period on the capital paid up on the ordinary shares." At the date of testator's death £1 per share had been paid up on the ordinary shares, but nothing on the preference shares. No dividend had been declared before Mar. 1931. By legislation in the Union of South Africa, B. B., Ltd., would become liable, in the event of its not distributing in each year dividends amounting to 75 per cent. of its profits in the Union, to a special super-tax. By an arrangement with the inland revenue, B. B., Ltd., which owed a large sum in respect of income tax, super tax & sur tax, was not to make any distribution by way of dividend until such sum should be discharged. In 1932 an interim dividend was

declared on the ordinary shares " out of the profits of the co. for the year 1931." In 1933 an interim dividend was declared which was to be paid " first out of the accumulated profits of the year to Dec. 31, 1924, & if these should not suffice then recourse to be had to the profits of the year to Dec. 31, 1925." Interim dividends were declared in 1934, & 1935, payable similarly out of undistributed profits for the years 1925, 1926 & 1927. When these dividends were declared calls were made upon the ordinary shares which were satisfied out of the dividends declared. A summons was taken out to determine whether the dividends were income or capital of testator's residuary estate or fell to be apportioned between income & capital, & if so on what basis :—*Held :* the interim dividends were for the years in which they were respectively declared ; upon the evidence the intention of the co. was a distribution of profits & not the capitalisation of the amount of the dividends & the dividends declared after testator's death must be treated as income.—*Re* JOEL, JOHNSON *v.* JOEL, [1936] 2 All E. R. 962.

2035. *Add. Annotations :*—**Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682 ; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720. **Refd.** Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857 ; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962 ; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

2059. *Add. Annotation :*—**Distd.** Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720.

2090. *Add. Annotations :*—**Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145. **Refd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590.

2127. Add the following paragraph :—

If that sum had been six months' interest paid by the mtgor. instead of six months' notice before repayment of the mtge. moneys, then it would have been payable to the tenant for life (NORTH, J.).

2131a. Repayment of income tax.] — Testator directed that his residuary estate should be held in trust for such of his sons as should attain the age of twenty-one years & such of his daughters as should attain that age or marry. He further directed his trustees to hold the share of a daughter in trust to pay her the income thereof during her life, & after her death in trust for such persons as she should by will appoint, & in default of appointment in trust for all her children in equal shares, & in default of any issue of a daughter in trust for his other sons or daughters as part of their shares. Testator died in 1906, leaving one son & one daughter. The daughter attained the age of twenty-one years in 1926, & married in 1927. There was issue of that marriage one son. In 1927 the daughter claimed, under Income Tax Act, 1918 (c. 40), s. 25), repayment of moneys paid or deducted on account of tax in respect of the income of her share accumulated under the will during her minority. In 1928 the Board of Inland Revenue admitted her claim in this respect to the amount of £7,770 19*s.* 4*d.*, & that amount had been paid to her. A question was then raised whether that sum should be treated as an accretion to the capital of the daughter's share, or whether she was entitled to it absolutely :—*Held :* the daughter was entitled absolutely to the sum of £7,770 19*s.* 4*d.* —*Re* FULFORD, FULFORD *v.* HYSLOP, [1930] 1 Ch. 71 ; 99 L. J. Ch. 80 ; 142 L. T. 185.

2140a. —— Dividends on bonus shares created after death of tenant for life.]—*Re* HYDE

PART X. SECT. 4, SUB-SECT. 3.—M. (f).

2058 i. *Surplus assets—Distribution on dissolution—Repayment ordered to be by way of return of capital.*]—Money paid to an exor. of a deceased shareholder in a winding up under an order directing the repayment to be by way of return of capital becomes part of the corpus of the estate.—*Re* KEATING, [1934] S. C. R. 698 ; 3 D. L. R. 745.—**CAN.**

sb. *Right of life tenant.*]—Life tenants are not entitled to moneys which represent proceeds of sale of securities over & above their value at the time of testator's death.—*Re* NICHOL'S ESTATE (1936), 51 B. C. R. 214.—**CAN.**

PART X. SECT. 4, SUB-SECT. 3.—M. (g).

sd. *Proceeds from sale of assets—& rents & profits from leasehold & freehold properties.*]—*Held :* the moneys so received by the trustees must be treated as part of the capital of the estate.—UNION TRUSTEE CO. OF AUSTRALIA *v.* WATSON (1931), 48 N. S. W. W. N. 102.—**AUS.**

PART X. SECT. 4, SUB-SECT. 3.—P. (b).

2101 i. *Whether interest equal to interest on authorised investments.*]—A tenant for life is entitled to be paid, pending conversion, the amount allowed by the rule in *Howe* v. *Earl of Dartmouth*, notwithstanding that the income actually received falls short of the amount allowed under that rule, & is entitled to a charge on capital accordingly. The tenant for life has the same rights pending conversion in a case where the ct. authorises postponement of the sale of assets which without such authorisation the trustees would be bound to realise under the rule in *Howe* v. *Earl of Dartmouth*. *Qu.:* whether the tenant for life is entitled pending conversion to require the amount of any deficiency in the actual income to be raised by enforcement of the charge.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* GRAHAM (1931), 31 S. R. N. S. W. 528 ; 48 N. S. W. W. N. 194.—**AUS.**

2101 ii. —— *Right of tenant for life.*]—The rule in *Howe* v. *Earl of Dartmouth* was intended to operate in favour of a life tenant as well as of remaindermen. In a case, therefore, in which that rule applies, a tenant for life is entitled to be paid, pending conversion, the amount allowed by that rule, notwithstanding that the income actually received falls short of such amount, &, further, is so entitled even where the effect of the application of the rule will be to reduce the amount of capital ultimately available to the remaindermen & may *pro tanto* defeat the intention of testator.—*Re* TINDAL, UAL TRUSTEE CO., LTD. *v.* (1934), 34 S. R. N. S. W. 8.—**AUS.**

PART X. SECT. 4, SUB-SECT. 3.—Q.

sb. *Company dealing in lands of specific estate—Profits on sale.*]—*Re* VICKERS (1923), 54 O. L. R. 352.—**CAN.**

sd. *Profits from carrying on station.*]—In carrying on a station property it is the duty of the trustees to hold the scales as evenly as possible between the life tenant & remaindermen consistently with prudent management, starting with the basic principle that the capital of the business is the capital which was embarked therein at the date of the testator's death, that any profit which that capital earns as the result of a strict method of accountancy belongs to the life tenant as soon as that profit is realised in cash, that that profit should be realised in cash so soon as it prudently can be realised, & that the life tenant is only entitled to such profits as is from time to time during the life tenancy realised in cash. —*Re* PORTER, PORTER *v.* PORTER (1931), 31 S. R. N. S. W. 115 ; 48 N. S. W. W. N. 17.—**AUS.**

sf. ——.]—For the purpose of ascertaining the amount due to life tenants for income derived from the carrying on of a station for the purpose of the realisation of an estate, the whole period during which the station is carried on must be treated as one period. A book profit shown in an administrator's accounts for a part of such period is not income necessarily to be appropriated to a life tenant.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v* ECKFORD (1931), 31 S. R. N. S. W. 92 ; 48 N. S. W. W. N. 40.—**AUS.**

(WILLIAM) WILL TRUSTS, HYDE *v.* BRYCE (1930), 74 Sol. Jo. 467.

2143. *Add. Annotation :*—*As to* (2) **Apld.** *Re* Walker, Walker *v.* Patterson (1934), 177 L. T. Jo. 325.

Add. Annotation :—**Refd.** *Re* Walker, Walker *v.* Patterson (1934), 177 L. T. Jo. 325.

2146a. —— ——.]—*Re* WALKER, WALKER *v.* PATTERSON, [1934] W. N. 104 ; 177 L. T. Jo. 325.

2149a. —— —— **Sale to pay death duties.**]—A testator by his will settled his residuary estate upon trust to pay the income thereof to two ladies during their lives, & subject thereto the residue was given to various ascertained persons in certain proportions. One of the tenants for life having died, in order to pay the death duties then payable the trustees sold certain securities. At the time of the sale dividends were accruing, part of which had accrued in the lifetime of the deceased tenant for life. The dividends were subsequently received by the purchasers. The personal representatives contended that the rights of the tenant for life could not be affected by the trustees dealing with the shares before the dividends were paid & asked for an apportioned part of the dividends to be paid to them out of the purchase price. There was no difficulty in ascertaining the amount of the apportioned part of the dividends :—*Held :* the dividends ought to be so apportioned & the personal representatives of the tenant for life were entitled to receive the sum representing the proportion of the dividends which accrued up to the date of the death of the tenant for life on the securities so sold.—*Re* WINTERSTOKE'S WILL TRUSTS, GUNN *v.* RICHARDSON, [1937] 4 All E. R. 63 ; 54 T. L. R. 20 ; 81 Sol. Jo. 882.

2157a. Benefits gained by compromise of claim against estate of testator.]—A claim made against the estate of testator was compromised by the payment of a large sum several years after testator's death :—*Held :* the amount due for principal & interest at testator's death must be treated as a debt due from his estate, & the *corpus* thereof reduced by that amount ; & any benefit gained to the estate by the compromise must, as between the persons entitled to the *corpus* & income thereof, be apportioned in the ratio of the amount due from testator at the day of his death, to the further amount calculated to have been due from his estate at the time when the compromise was effected.—MACLAREN *v.* STAINTON (1867), L. R. 4 Eq. 448 ; 15 W. R. 974.

2157b. Insufficiency of assets—Sums received on realisation.]—Testator bequeathed a legacy of £10,000 with interest from his death at 4 per cent. *per annum*, to trustees upon trust to pay the income to certain persons during the life of one of them, & after her death upon trust for other persons. Testator's estate was insufficient for payment in full of his legacies, & the realisation of his assets occupied several years :—*Held :* moneys from time to time received by the trustees & applicable to the legacy were divisible rateably between capital & income, so as to attribute to income £4 per cent. from testator's death on the amount attributed to capital.—*Re* TINKLER'S ESTATE (1875), L. R. 20 Eq. 456 ; 45 L. J. Ch. 135.

Annotation :—**Refd.** *Re* Foster, Lloyd *v.* Carr (1890), 45 Ch. D. 629.

2197a. Cost of rendering accounts for succession duty.]—*Held :* (1) the expense of fencing waste lands granted to a trustee for the benefit of the estate must be paid out of capital ; (2) the costs of rendering accounts for the succession duty, payable for the first equitable tenant for life, must be paid out of income.—COWLEY (EARL) *v.* WELLESLEY (1866), L. R. 1 Eq. 656 ; 35 Beav. 635 ; 14 L. T. 245 ; 14 W. R. 528 ; 55 E. R. 1043.

2197b. Calls on shares.]—Testator bequeathed residuary personalty to trustees upon trust, either to continue existing investments or sell any part of the estate, & invest in certain stocks, shares & bonds. He directed calls, if any, which, at or after his death, might be or become due in respect of shares for the time being constituting part of his residuary personal estate, to be paid out of income :—*Held :* the direction applied to calls on railway shares held by testator at his death, but not to such shares acquired by the trustees.—BEVAN *v.* WATERHOUSE (1876), 3 Ch. D. 752 ; 46 L. J. Ch. 331.

2202. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2203. *Add. Annotation :*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2204. *Add. Annotations :*—**Apld.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88. **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2205a. Enlargement of canal, docks & harbour.]—*Held :* the expenditure was a charge on the *corpus* of the estates comprised in the term.—*Re* BUTE (MARQUESS), BUTE (MARQUESS) *v.* RYDER (1884), 27 Ch. D. 196 ; 53 L. J. Ch. 1090 ; 32 W. R. 996.

2205b. Cost of fencing waste lands.]—COWLEY (EARL) *v.* WELLESLEY, No. 2197a, *ante*.

2207a. Liability for performance of covenants in lease.]—Testator, who had assigned during his life certain leasehold property, bequeathed by his will other leaseholds & the residue of his property to tenants for life, with remainders over. The assignees of the lease-

PART X. SECT. 6, SUB-SECT. 1.

sp. *Power of trustee to effect hail insurance.*]—Where it is a prudent & proper precaution to adopt, a trustee has power to effect hail insurance, although there is no statutory provision authorising him to do so.—*Re* SEIBEL ESTATE, [1931] 2 W. W. R. [illegible]

PART X. SECT. 7, SUB-SECT. 1.—A.

2190 i. *Management expenses.*]—On the questions arising what should be given to life tenants under a will, what expenses should be charged against income & what against capital : —*Held :* any expenses incurred in connection with the management & safeguarding of the estate, as an estate, should be charged against the *corpus* ; but expenses incurred in the management, safeguarding & collection of income should be charged to income.—*Re* MITCHELL'S ESTATE, NATIONAL TRUST CO., LTD. *v.* CARSON, [1936] 3 W. W. R. 249 ; [1937] 1 W. W. R. [illegible]

d i. ——.]—By the will of a testatrix an equitable tenant for life was in occupation of the estate of the testatrix, which consisted solely of a cottage property. For a period of three years the tenant for life had neglected to pay the rates on the property :—*Held :* the tenant for life must pay the rates, & in the event of her not paying them the trustee of the will should pay the rates & enter into possession of the property to recoup himself for the amount paid.—FOLEY *v.* CANNON (1936), 53 N. S. W. W. N. 223.—**AUS.**

holds became bkpt., & the exors. of testator took a reassignment of those leaseholds. Liabilities having arisen under the covenants in the original lease, it was held that those liabilities must fall upon the *corpus*, & not upon the income, of testator's estate.—ALLEN *v.* EMBLETON (1858), 4 Drew. 226; 27 L. J. Ch. 297; 4 Jur. N. S. 79; 6 W. R. 272; 62 E. R. 87.

Annotation :—**Apld.** *Re* Owen, Slater *v.* Owen, [1912] 1 Ch. 519.

2209a. —— —— ——.]—*Re* LORIMER (1850), 12 Beav. 521; 19 L. J. Ch. 524; 16 L. T. O. S. 406; 14 Jur. 1126; 50 E. R. 1160.

2209b. —— —— ——.]—A sum of money having been paid into court under Trustee Relief Act, a petition was presented by the tenant for life for payment of the dividends :—*Held :* the *corpus* of the fund was not liable to bear the costs of the appln.—*Re* BANGLEY'S TRUST (1852), 21 L. J. Ch. 875; 19 L. T. O. S. 269; 16 Jur. 682.

2209c. —— —— ——.]—*Re* BUTLER'S TRUST (1852), 16 Jur. 324.

2222. For "*Re* WOOD'S ESTATE, No. 2311, *post*," substitute the following: "*Re* WOOD'S TRUSTS (1870), L. R. 11 Eq. 155; 40 L. J. Ch. 179; 23 L. T. 586; 19 W. R. 227."

Annotation :—**Consd.** *Re* Evans' Trusts (1872), 26 L. T. 682.

2243. *Add. Annotation :—As to* (2) **Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2243a. —— —— ——.]—POWYS *v.* BLAGRAVE (1854), 4 De G. M. & G. 448; 2 Eq. Rep. 1204; 24 L. J. Ch. 142; 24 L. T. O. S. 17; 2 W. R. 700; 43 E. R. 582, L. C.

Annotations :—**Consd.** *Re* Hotchkys, Freke *v.* Calmady (1886), 32 Ch. D. 408. **Refd.** Barnes *v.* Dowling (1881), 44 L. T. 809; *Re* Williames, Andrew *v.* Williames (1884), 52 L. T. 41; *Re* Cartwright, Avis *v.* Newman (1889), 41 Ch. D. 532; *Re* Freman, Dimond *v.* Newburn, [1898] 1 Ch. 28.

2243b. —— —— **Opposition to Bill in Parliament.**]—An estate was settled by the will of a testator, his widow being the first, & his nephew the second tenant for life. During the lifetime of the widow she expended out of her own moneys various sums in making improvements upon the estate. Some of these sums were expended before, & some after the commencement of Settled Land Act, 1882 (c. 38). With regard to those which were expended after the commencement of the Act, no scheme was, prior to the execution of the works, submitted for approval, either to the trustees of the settlement or to the ct., in accordance with sect. 26 of the Act. The widow also, prior to the commencement of the Act, paid out of her own moneys the costs of the successful opposition of the trustees to some bills in Parliament, which contained provisions injuriously affecting the estate. The repayment to the widow of all the sums thus expended by her was secured by four bonds given to her by the nephew. After the death of the widow the nephew, being then tenant for life in possession of the estate, applied to the ct. of a direction to the trustees to apply capital money in their hands in payment of the amounts due upon the bonds :—*Held :* independently of Settled Land Act, 1882 (c. 38), s. 36, the ct., under its general jurisdiction, had power to direct the payment of the costs of the Parliamentary opposition out of the capital money, & payment was directed accordingly.—*Re* ORMROD'S SETTLED ESTATE, [1892] 2 Ch. 318; 61 L. J. Ch. 651; 66 L. T. 845; 40 W. R. 490; 36 Sol. Jo. 427.

Annotations :—**Refd.** *Re* Bristol's (Marquis) Settled Estates, [1893] 3 Ch. 161; *Re* L. C. C., *Ex p.* Pennington (1901), 84 L. T. 808.

2254a. ——.]—HAWKINS *v.* HAWKINS (1836), 6 L. J. Ch. 69.

v. Makings (1860), 1 De G. F. & J. 355.

2268. *Add. Annotation :*—**Consd.** *Re* Warwick's Settlement Trusts, Greville Trust Co. *v.* Grey, [1937] 2 All E. R. 828.

2269. *Add. Annotation :—Generally,* **Refd.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345.

2270a. Interest charged on capital & income.]—The tenant for life of certain settled estates charged with a jointure & portions, together with interest on the portions, sold his equitable life interest to an unlimited co. which thereby became entitled to receive the rents & profits of the property, subject to discharging thereout all outgoings & outstanding liabilities. In three successive years the rents & profits received were insufficient to pay in full the jointure & the interest on the portions, & the co. voluntarily & without any arrangement with or notice to other persons interested in the estates made up the deficiency :—*Held :* (1) the jointure & the interest on portions were a continuing charge on the settled estates; (2) during the lifetime of the tenant for life, or so long as the settled estates remained unsold, it could not be shown that when the final account of the life tenancy was taken there would be a deficiency in the total rents & profits; (3) accordingly, during that period no claim for recoupment of a deficiency in one or more years could be sustained.—*Re* WARWICK'S SETTLEMENT TRUSTS, GREVILLE TRUST CO. *v.* GREY, [1937] Ch. 561; [1937] 2 All E. R. 828; 106 L. J. Ch. 289; 156 L. T. 495; 53 T. L. R. 703; 81 Sol. Jo. 397.

2295. *Add. Annotation :*—**Consd.** *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

2297. *Add. Annotations :*—**Consd.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345; *Re* Fenwick, Fenwick *v.* Stewart, [1936] 2 All E. R. 1096.

2297a. Annuity fund—Unapplied income.]—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, No. 1960a, *ante.*

2319a. Temporary investment—Apportionment of loss.]—A sum of money appointed to be laid out in a purchase to the use of A. for his life, remainder to his eldest son, subject to a charge for the provision of younger children; the money to be let out in any public fund, till a convenient purchase found: if a loss happens before the purchase, it must be born in an average.—CHAMBERS *v.* CHAMBERS (1730), Fitz-G. 127; 1 Eq. Cas. Abr. 115; Mos. 333; 94 E. R. 684, L. C.

Annotations :—**Expld.** Oke *v.* Heath (1748), 1 Ves. Sen. 135. **Consd.** Booth *v.* Allington (1856), 6 De G. M. & G. 613.

PART X. SECT. 8, SUB-SECT. 1.—B.

2320 ii. —— —— ——.]—Where a loss occurs under a mtge. of trust funds, the income of which is payable to a life tenant, the loss should be apportioned between the tenant for life & the remainderman by adding the amount actually realised from the security to the amount of interest therstofore received by the tenant for life & dividing the whole sum between the latter & the remainderman in the proportion in which they would have been entitled to share if the security had been paid in full, the tenant for life giving credit for the amounts already received.—*Re* PLUMB (1896), 27 O. R. 601.—**CAN.**

2324. *Add. Annotation :*—**Apld.** *Re* Walker's Settlement Trusts, Watson *v.* Walker, [1936] Ch. 280.

2329a. —— —— ——.]—A light railway co. was promoted to serve the interests of an estate that formed part of a settled estate. It was incorporated under an order made by the Light Railway Comrs. & confirmed by the Minister of Transport. Clause 50 of the order provided: "The co. may create & issue debenture stock. . . . The interest of all debenture stock & of all mtges. at any time created & issued or granted by the co. under this Order or any subsequent Order or Act of Parliament shall, subject to the provisions of any subsequent Order or Act, rank *pari passu* . . . & shall have priority over all principal moneys secured by such mtges." Debenture stock to the amount of £8,000 was issued by the co. & was registered in the names of the trustees of the settlement. On the winding up of the co., the assets that came into the hands of the trustees were not sufficient to pay off the debenture stock & the arrears of interest thereon :—*Held :* the assets should be apportioned between capital & income in accordance with the principle laid down in *Re Atkinson, Barbers' Co.* v. *Grose-Smith*, No. 2324.—*Re* WALKER'S SETTLEMENT TRUSTS, WATSON *v.* WALKER, [1936] Ch. 280; 105 L. J. Ch. 49; 154 L. T. 564; 52 T. L. R. 118; [1934-5] B. & C. R. 279.

2335. *Add. Annotation :*—*As to* (2) **Distd.** *Re* Shee, Taylor *v.* Stoger, [1934] Ch. 345.

Part XI.—Custody of Title Deeds.

2357. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2358. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2358a. ——.]—GARROD *v.* MOOR (1846), 8 L. T. O. S. 270.

2359. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2377a. Trustees with duties to perform.]—A testator died, having by his will bequeathed settled legacies & having thereby also by legal limitations settled freeholds which in the events which happened became vested free from incumbrances & charges in pltf. From time to time there had been appointments of new trustees of testator's will for the purposes of the Settled Land Acts & other purposes, including three by deeds of 1902, 1904, & 1915. In 1924 pltf. had been appointed Settled Land Act trustee of testator's will, jointly with the then trustees thereof, the appointment being limited to the freeholds. At the date when the freeholds became vested absolutely in the pltf., the trusts of some of the settled legacies were still on foot. In an action by pltf. claiming the custody of the appointments of 1902, 1904, & 1915, as forming part of his title to the freeholds :—*Held :* trustees who have duties to perform in relation to their trusts may retain title deeds lawfully in their possession as trustees.—CLAYTON *v.* CLAYTON, [1930] 2 Ch. 12; 99 L. J. Ch. 498; 143 L. T. 696.

Annotation :—**Consd.** Lewis *v.* Plunket, [1937] Ch. 306.

2379. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

Part XII.—Express Powers in Instruments.

2396. *Add. Annotation :*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

2398a. —— **Sale to tenant for life.**]—Where the trustees of lands in strict settlement have a power to sell, with the consent of the tenant for life, a sale by the trustees to the tenant for life will be held good.—HOWARD *v.* DUCANE (1823), Turn. & R. 81; 1 L. J. O. S. Ch. 85; 37 E. R. 1025, L. C.

Annotations :—**Expld.** Eland *v.* Baker (1867), 29 Beav. 137. **Apld.** Dicconson *v.* Talbot (1870), 6 Ch. App. 32. **Refd.** Grover *v.* Hugell (1827), 3 Russ. 428: Greenlaw *v.* King (1841), 10 L. J. Ch. 129; Beaden *v.* King (1852), 9 Hare, 499; Bevan *v.* Habgood (1860), 1 John. & H. 222.

2399a. —— —— ——.]—EISDELL *v.* HAMMERSLEY (1862), 31 Beav. 255; 6 L. T. 706; 54 E. R. 1136.

Annotations :—**Apprvd.** Alexander *v.* Mills (1870), 6 Ch. App. 124. **Consd.** *Re* Cooper, Cooper *v.* Slight (1884), 27 Ch. D. 565; Hardaker *v.* Moorhouse (1884), 26 Ch. D. 417. **Apld.** *Re* Bedingfeld & Herrings' Contract, [1893] 2 Ch. 332. **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

2399b. Power to sell under subsequent settlement—Reference to former settlement—"Ulterior to limitations therein."]—*Held :* the expression "ulterior to the limitations therein" meant ulterior in point of position in the deed, & not ulterior in point of time.—MORGAN *v.* RUTSON (1848), 16 Sim. 234; 17 L. J. Ch. 419; 11 L. T. O. S. 238; 12 Jur. 813; 60 E. R. 863.

2570. *Add. Annotations :*—**Refd.** A.-G. *v.* Tasker (1928), 92 J. P. 157; A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

PART XII. SECT. 2, SUB-SECT. 3.—B. (a).

q 1. —— *Lease obtained by misrepresentation—No relief.*]—*Held :* a new lease having been obtained by misrepresentation it was not made *bonâ fide* within Leases Act, 1849 (c. 26), s. 2, & there having been no surrender of existing interests, it had the incurable defect of being made in reversion, for both of which reasons Leases Act did not apply.—MOFFETT *v.* GOUGH (1878), 1 L. R. Ir. 331.—**IR.**

PART XII. SECT. 3.

n 1. —— *Power to retain non-trustee securities.*]—FOGO *v.* FOGO'S TRUSTEES, [1929] S. C. (Ct. of Sess.) 546.—**SCOT.**

Part XIII.—Statutory Powers in Relation to Settled Property.

2579. *Add. Annotation :—Generally,* **Refd.** *Re* Austen, Collins *v.* Margetts, [1929] 2 Ch. 155.

2594a. Land subject to trust for sale which may never arise.]—A trust for sale that may never arise is not a " trust or direction for sale " within Settled Land Act, 1882 (c. 38), s. 63.—*Re* GOODALL'S SETTLEMENT, FANE *v.* GOODALL, [1909] 1 Ch. 440 ; 78 L. J. Ch. 241.

Annotations :—**Consd.** *Re* Wagstaff's Settled Estates, [1909] 2 Ch. 201 ; *Re* Johnson, Cowley *v.* Public Trustee, [1915] 1 Ch. 435 ; *Re* Smith & Lonsdale's Contract (1934), 78 Sol. Jo. 173. **Refd.** *Re* Parker's Settled Estate, Parker *v.* Parker, [1928] 1 Ch. 247.

2596. *Add. Annotation :*—**Refd.** *Re* Draycott Settled Estate, [1928] Ch. 371.

2597. For the existing paragraph substitute the following paragraph :—

—— **Settled Land Act, 1925 (c. 18), ss. 1, 2.**]—Land was, on Dec. 31, 1925, held by two persons under a devise contained in a will, made in 1888, as joint tenants in fee simple absolutely, subject to a charge for £1,000 created in 1869 in consideration of marriage :—*Held :* (1) the land was settled land within Settled Land Act, 1925, ss. 1 (1) (*v*) & 2, & it was excepted from the application of Law of Property Act, 1925 (c. 20), s. 36 (1) ; (2) there was nothing in the context to give to the words " settled land " in Law of Property Act, 1925, s. 36 (1), any other meaning than that given by sect. 205 (1) (xxvi).—*Re* GAUL & HOULSTON'S CONTRACT, [1928] Ch. 689 ; 97 L. J. Ch. 362 ; 139 L. T. 473, C. A.

2598. *Add. Citations :*—97 L. J. Ch. 193 ; 139 L. T. 59.

2600a. Land subject to payment of perpetual annuity—Settled Land Act, 1925 (c. 18), s. 1 (1) (v).]—A perpetual annuity, created voluntarily, is a payment of a periodical sum for the " benefit " of the person receiving it within Settled Land Act, 1925 (c. 18), s. 1 (1) (v). Therefore land subject to such a charge became, on Jan. 1, 1926, settled land.—*Re* AUSTEN, COLLINS *v.* MARGETTS, [1929] 2 Ch. 155 ; 98 L. J. Ch. 384 ; 141 L. T. 325.

2602. *Add. Annotation :*—**N.F.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

2602a. Settlement of undivided moiety—Settlement of remaining moiety—Merger before operation of Law of Property Act, 1925 (c. 20).]—By a voluntary settlement made in 1909 an undivided moiety of a freehold estate was settled upon the usual limitations of a strict settlement, & the settlor having acquired the other moiety afterwards settled it by his will upon the same uses & trusts & with the same trustees as the settlement. The settlor died in 1910 & the tenant for life under the two settlements died in 1930 :—*Held :* the entirety of the land was settled land, the two moieties having completely merged before 1926, & on the death of the tenant for life it vested in his special exors.—*Re* SETTLED ESTATE, FOSTER *v.* FOSTER, [1931] 2 Ch. 180 ; 100 L. J. Ch. 273 ; 145 L. T. 70.

2602b. Land subject to trust or direction for sale—Trust for sale of land in building plots, but not otherwise.]—*Re* SMITH & LONSDALE'S CONTRACT (1934), 78 Sol. Jo. 173.

2619. *Add. Annotations :*—**Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276 ; *Re* Davies' Will Trusts, Bevan *v.* Williams, [1932] 1 Ch. 530.

2620a. —— **Person named in last deed of compound settlement as tenant for life.**]—Under a settlement of 1899 a jointure in favour of a widow was outstanding. In 1925 there was a resettlement by a disentailing deed under which a jointure rentcharge was created & certain charges by way of legal mtge. were made for raising jointures & portions. In 1932 appct., who was beyond dispute the tenant for life of the 1925 resettlement, by a voluntary settlement appointed & granted the settled estates to trustees in fee simple subject to the mtges. & all equitable incumbrances affecting the same upon trust that the trustees should, as soon as they lawfully could, for the purpose of giving effect to the trust for sale thereby given them in respect thereof, obtain a grant of the legal estate in the estates. By a further clause it was declared that the powers of a tenant for life under Settled Land Act were conferred upon the appct. during his life & after his death upon the trustees of the 1932 settlement :—*Held :* as Settled Land Act, 1925 (c. 18), s. 23 (1), vests the powers of a tenant for life in the person of full age on whom such powers are conferred by the settlement, appct. was, by virtue of the clause in the settlement of 1932, the tenant for life of the compound settlement.—*Re* BEAUMONT SETTLED ESTATES, [1937] 2 All E. R. 353.

2632. *Add. Annotation :*—*As to* (2) **Apld.** *Re* Alston-Roberts-West's Settled Estates, [1928] W. N. 41.

2633a. Not tenant under lease at rent.]—A person who is a tenant of settled land under a lease at a rent is, as a matter of necessary implication from the language of sect. 20 (1) (iv), of Settled Land Act, 1925 (c. 18), excluded from the class of persons upon whom the section confers the powers of a tenant for life. The amount of the rent is immaterial.—*Re* CATLING, PUBLIC TRUSTEE *v.* CATLING, [1931] 2 Ch. 359 ; 100 L. J. Ch. 390 ; 145 L. T. 613.

2648. *Add. Annotation :*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

2652. *Add. Annotation :*—**Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2676. *Add. Annotation :*—**Consd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721.

PART XIII. SECT. 1, SUB-SECT. 1.—D. (h) iii.

2643 ii. —— *Mere licensees.*]—The persons qualified to exercise the powers of leasing under Conveyancing & Law of Property Act, 1898, s. 68, are those having an estate in land, either an estate for life or a chattel interest. A person having a mere right of personal residence in a house for his life has not an estate of any kind therein, but a mere licence, &, therefore, is not qualified to exercise the powers of leasing referred to.—STEVENSON *v.* MYERS (1929), 47 N. S. W. W. N. 94.—AUS.

2679. *Add. Annotation:—As to* (2) **Distd.** *Re* Stevens & Dunsby's Contract, [1928] W. N. 187.

2679a. —— **Trust for accumulation of income for payment of mortgages.**]—*Re* Stevens & Dunsby's Contract, [1928] W. N. 187.

2727a. —— **With "intent" to extinguish—Settled Land Act, 1925 (c. 18), s. 105—To what assignors applicable—Any person in whom life estate vested.**]—*Held:* the operation of Settled Land Act, 1925 (c. 18), s. 105 (1), is not confined to the case of an assurance by the tenant for life himself of his estate, but extends to an assurance by any person in whom the life estate is vested, including a trustee in bkpcy. of the tenant for life. The "intent" referred to in the sect. was the intent of the assignor.

Where therefore a tenant for life was bkpt., & his trustee in bkpcy. sold & assured the estate for life to the tenant in tail in remainder, but the tenant for life refused to execute a vesting deed in his favour:—*Held:* the tenant in tail was entitled to a vesting order under Settled Land Act, 1925 (c. 18), s. 12 (1) (*a*).—*Re* Shawdon Estates Settlement, [1930] 2 Ch. 1; 99 L. J. Ch. 189; 142 L. T. 566; 74 Sol. Jo. 215; [1929] B. & C. R. 152, C. A.

2727b. —— —— —— —— **Trustee in bankruptcy of tenant for life.**]—*Re* Shawdon Estates Settlement, No.2727a, *ante*.

2727c. —— —— —— **Whose intent referred to—Assignor.**]—*Re* Shawdon Estates Settlement, No. 2727a, *ante*.

2732. *Add. Annotations:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2738a. Restriction on power of letting.]—Testator by his will, dated Nov. 22, 1927, directed his trustees to retain £3,000 & to apply the interest yearly in payment of the taxes, rates & repairs of his freehold house, & he desired that his aunt should "have the use of it & my furniture free of cost for her occupation during her life or so long as she may require them, but without the power to sub-let the same or any part thereof. On the termination of her occupation the house is to be sold," & from the proceeds, added to the above £3,000, certain specific legacies were given. He also directed that when the house had been sold, his nephew, G. P., should have the furniture:—*Held:* (1) the provision forbidding the tenant for life to sub-let was void under Settled Land Act, 1925 (c. 18), s. 106 (1), & the provision requiring the house to be sold & the gift over of the proceeds of sale upon the termination of her occupation was also avoided by that sub-sect., so far as that provision would operate in the event of her exercising any of her powers as tenant for life; (2) the gift over of the £3,000 was a provision which tended to induce her to abstain from exercising her powers of leasing as a tenant for life, & was void, therefore, in so far as it had that tendency; & that it should be read to take effect only upon her ceasing to reside for any reason other than the exercise of her powers of leasing as a tenant for life; (3) in the event of her selling the house she would not be entitled to be paid any part of the income of the £3,000; (4) she was entitled to the furniture during her life or until she ceased to occupy the house for any reason other than the exercise of her powers as tenant for life.—*Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

2739. *Add. Annotation:—As to* (2) **Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2739a. —— —— ——.]—By this will dated Jan. 4, 1918, the testator bequeathed his leasehold house, garden & grounds, W. Ct., together with the fixtures & fittings & all his furniture, pictures (except some), china, plate, linen, grand piano, & all chattels & other effects therein, to his trustees upon trust to permit his sister, E., to reside there after his death, if she should wish to do so, & to have the use & enjoyment thereof during her life free of rent or other payment, & he gave to his sister the use & enjoyment of his said house, garden, & grounds, & everything contained therein, for her life accordingly, & he directed his trustees after her death or during her life if she should not wish to reside or continue to reside there to sell the same (except certain articles therein), with power to postpone such sale as they might think proper, & divide the proceeds between certain charities. He died on June 26, 1918, & the lady entered into possession thereof immediately. In 1925 she went abroad temporarily for the benefit of her health, the place being left in charge of servants, & she paid the Sched. A. tax. In 1926, owing to severe illness, she was prevented from returning to England, & the house was let by her from time to time, & she still paid Sched. A. tax thereon. In 1927 she sold the house as tenant for life or a person having the powers of a tenant for life, & shortly after the contents, other than the excepted articles, were sold by the trustees. On a summons taken out by the trustees asking whether she had any, &, if any, what interest in the proceeds of sale of the leasehold property & the income thereof:—*Held:* on the evidence, it must be deemed that those powers were properly exercised by her. The power of sale in the trustees never arose, nor did they purport to exercise it. She had not therefore forfeited her interest in the proceeds of sale of the leasehold property or the income thereof.—*Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195; 98 L. J. Ch. 44; 140 L. T. 192; *sub nom. Re* Adelom, Oakshott *v.* Hawkins, 72 Sol. Jo. 810.

2739b. —— —— ——.]—Under the will of a testator who died in 1879, the C. Estate stood limited to the use of his grandson O. for an estate in tail, with remainder to the use of testator's daughter V. W., her heirs & assigns. V. W., who died in 1919, by her will devised the estate to which she was so entitled in remainder, to the use of certain persons successively in strict settlement subject to a condition that if the person who should so become entitled to that estate as tenant for life or tenant in tail should fail to reside at C. House for a certain part of every year, the estate of such person therein should cease & determine. Testatrix then bequeathed her residuary estate upon trust for her nephew O. for life & directed that, after

his death, in case the C. Estate or the greater part in value thereof should not then devolve upon the limitations of her will, a sum of £10,000 should be raised out of her residuary estate & held upon trust for certain charitable purposes, & that the remainder should be upon trust for the persons therein named. The main question was whether, in the event of O. (who was tenant in tail in possession & also the heir at law & sole next of kin of testatrix & had no intention of disentailing the estate) exercising his power of sale over the estate under Settled Land Act, 1925 (c. 18), the residuary estate of testatrix would fall to be administered under the trusts declared by her will concerning the same:—*Held:* (1) in the event aforesaid, upon the proper construction of testatrix's will, the C. Estate would not on the death of O. devolve upon the limitations of the will, with the result that the condition upon which the disposition of her residuary estate depended would be fulfilled; (2) as the effect of that disposition would be to prevent the residuary estate from passing, as upon an intestacy, to O. as sole next of kin of the testatrix, it would necessarily tend to induce him to abstain from exercising his power of sale under Settled Land Act, 1925 (c. 18), within sect. 106 of that Act; &, accordingly, the residuary estate would, subject to O.'s life interest therein, pass to him as upon an intestacy, by reason of the invalidity of the disposition thereof contained in testatrix's will.—*Re* ORLEBAR, ORLEBAR *v.* ORLEBAR, [1936] Ch. 147; 105 L. J. Ch. 92; 154 L. T. 293.

2747a. —— Of proceeds of settled land.]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 2738a, *ante*.

2763a. Settled Land Act, 1925 (c. 18), s. 64—When applicable.]—A tenant for life of settled land being desirous of paying off debts incurred by him in the upkeep of the estate, prepared a scheme & applied under Settled Land Act, 1925 (c. 18), s. 64, asking the ct. to sanction the raising of the necessary amount by sale or mtge. of part of the settled land. The judge in Chambers refused the application, holding that he had no jurisdiction, as the scheme was not for the benefit of the settled land:—*Held:* on appeal, the ct. had jurisdiction, inasmuch as the sect. was wide in its terms & applied not only to the settled land but also to persons interested under the settlement. The scheme being for the benefit of persons interested under the settlement, the appeal must be allowed & effect given to the scheme.—*Re* WHITE-POPHAM SETTLED ESTATES, [1936] Ch. 725; [1936] 2 All E. R. 1486; 105 L. J. Ch. 368; 155 L. T. 553; 80 Sol. Jo. 816, C. A.

—— ——.]—*See, also*, SETTLEMENTS, Vol. XL., p. 773, No. 3045.

2798. *Add. Annotation:*—**Refd.** *Re* Price, [1928] Ch. 579.

2189. *Add. Annotation:*—*As to* (2) **Follid.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

2829. *Add. Annotation:*—**Follid.** Bernhardt *v.* Galsworthy, [1929] 1 Ch. 549.

2889a. Power to vary leases—Settled Land Act, 1925 (c. 18), s. 59—Construction of section.]—It is apparent, in my opinion, that Settled Land Act, 1925 (c. 18), s. 59 (1), is dealing only with a question of form, because it is clear from the final words of sect. 59 (1) that no more is being authorised than what might have been done under Settled Land Act, 1925 (c. 18), s. 52 (1). The provision in question is that "every such lease or grant shall, after such variation, release, waiver or modification as aforesaid, be such a lease or grant as might then have been" granted after a surrender, etc. In my opinion sect. 59 (1) is not limited to cases where the result of the variation, release, waiver or modification will at common law effect a surrender & regrant. This section is conferring a power on the tenant for life to execute documents in a particular form which he could have executed in another form as the result of the surrender or the surrender & regrant of the land previously dealt with. It relates to the widest possible release, variation, waiver or modification, including cases in which only part of the land comprised in the old lease or grant is the subject of those alterations (MAUGHAM, J.).—*Re* SAVILE SETTLED ESTATES, SAVILE *v.* SAVILE, [1931] 2 Ch. 210, 216; 100 L. J. Ch. 274; 145 L. T. 17.

Annotation:—**Consd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316.

2900a. —— —— Effect of existence of underlease.]—A lease may be authorised under the Leases & Sales of Settled Estates Acts upon the surrender of an existing lease, although an underlease granted by the surrendering lessee is unexpired.—*Re* FORD'S SETTLED ESTATE (1869), L. R. 8 Eq. 309.

Annotation:—**Follid.** *Re* Grosvenor Settled Estates, Westminster (Duke) *v.* McKenna, [1932] 1 Ch. 232.

2900b. —— —— ——.]—Part of the freehold property comprised in a settlement was subject to a lease & also to an underlease. The tenant for life under the settlement wished to take a surrender of the lease &, without having a surrender of the underlease, to grant a new lease. On the evidence the proposed new lease reserved the best rent that could reasonably be obtained, & contained a proviso for re-entry on non-payment of the rent for twenty-one days:—*Held:* the tenant for life had power under Settled Land Act, 1925 (c. 18), s. 42 (1), & Law of Property Act, 1925 (c. 20), s. 150, to grant the new lease although the underlease remained outstanding. The new lease would take effect in immediate possession notwithstanding the existence of the underlease, & would therefore comply with Settled Land Act, 1925 (c. 18), s. 42 (1).—*Re* GROSVENOR SETTLED ESTATES, WESTMINSTER (DUKE) *v.* MCKENNA, [1932] 1 Ch. 232; 101 L. J. Ch. 145; 146 L. T. 402.

2903. *Add. Annotation:*—*As to* (2) **Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

2916a. Covenant to rebuild when necessary—Validity.]—A tenant for life has power under Settled Land Act, 1925 (c. 18), s. 41, to grant a building lease for a term of 999 years containing a covenant by the lessee to rebuild existing premises when it shall become necessary, & in particular when required by the lessor's estate surveyor so to do, but without prescribing any definite time within which such rebuilding shall be carried out or begun.—*Re* GROSVENOR SETTLED ESTATES, WESTMINSTER (DUKE) *v.* MCKENNA, [1933] Ch.

97; 102 L. J. Ch. 50; 148 L. T. 131; 49 T. L. R. 7; 76 Sol. Jo. 779.

2950. *Add. Annotation :*—**Follid.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

2950a. —— **Express provision for proper preservation.**]—*Re* WELD-BLUNDELL ESTATE, MOWBRAY (LORD) *v.* WELD-BLUNDELL (1929), 73 Sol. Jo. 585.

3032a. —— —— ——.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3032b. Architect's fees—Short occupation lease.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3032c. Solicitors' fees—Obtaining short occupation lease.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3043. *Add. Annotations :*—**Consd.** *Re* Curwen, Curwen *v.* Graham, [1931] 2 Ch. 341. **Refd.** *Re* Cayley & Evans' Contract, [1930] 2 Ch. 143.

3046. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Catchpool, Harris *v.* Catchpool, [1928] Ch. 429. **Consd.** *Re* Gaul & Houlston's Contract, [1928] Ch. 689. **Refd.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

3047. *Add. Citation :*—97 L. J. Ch. 161.

Add. Annotations :—*As to* (1) **Refd.** *Re* Gaul & Houlston's Contract, [1928] Ch. 689; *Re* Norton, Pinney *v.* Beauchamp, [1929] 1 Ch. 84.

3047a. —— ——.]—On Dec. 31, 1925, certain land stood limited to the use of A. for life, & after his death, subject to certain jointure rentcharges for life, & subject to certain portions which had been charged upon the estate, & which had been further secured by the limitation of a legal term, to the use of trustees upon trust for sale. The settlement under which the land so stood limited was a compound settlement, consisting of various

1913. In due course a vesting deed was executed in favour of A. A. died on Dec. 4, 1926, & probate, limited to the settled land, was granted to the trustees of the compound settlement as his special representatives, on the footing that that settlement did not come to an end on his death. There were separate trustees of the two deeds of 1911 & 1913. Clause 11 of the 1911 deed gave to the trustees thereof all the powers conferred on a tenant for life by Settled Land Acts, 1882 to 1890 :—*Held :* (1) the whole legal estate, the subject-matter of the settlement, was not held upon trust for sale; (2) in view of clause 11 of the 1911 deed the trustees of the two deeds of 1911 & 1913 were persons on whom Settled Land Act, 1925 (c. 18), s. 23 (1), conferred the powers of a tenant for life, & they were statutory owners under the compound settlement; & when they sold the land they would sell it as statutory owners & not as trustees for sale, & they must pay over the proceeds of sale to the trustees of the compound settlement.—*Re* NORTON, PINNEY *v.* BEAUCHAMP, [1929] 1 Ch. 84; 98 L. J. Ch. 219; 140 L. T. 348.

3048. *Add. Annotation :*—**Follid.** *Re* Shelton's Settled Estates, [1928] W. N. 27.

3049a. —— **Private Act & three conveyances.**]—On the death intestate of the tenant in tail in possession of an estate settled by a private Act & three conveyances, it was held that the Act & conveyances together constituted one settlement & the ct. appointed two trustees for the purposes of the Settled Land Act, 1925 (c. 18), & gave them liberty to apply for a grant of administration limited to the settled lands.—*Re* HEREFORD'S SETTLED ESTATES, HEREFORD *v.* DEVEREUX, [1932] W. N. 34; 173 L. T. Jo. 115; 73 L. Jo. 153.

3074a. Refusal to execute—Order of Court under Settled Land Act, 1925 (c. 18), s. 12 (1) (a).]—*Re* SHAWDON ESTATES SETTLEMENT, No. 2727a, *post.*

3074b. Contents—Vesting deed on resettlement—Compound settlement.]—X. & Y., the trustees of an indenture of resettlement dated Aug. 26, 1915, by which certain property was settled subject to a jointure, executed on May 1, 1926, a vesting deed reciting the resettlement & purporting to vest the property in the tenant for life. On Dec. 31, 1925, X. was the sole surviving trustee for the purposes of the Settled Land Acts of an indenture of settlement dated July 12, 1882, which together with the resettlement & two other documents formed the compound settlement of the property. On July 5, 1926, the tenant for life entered into four contracts for the sale of a portion of the property to a purchaser. The purchaser raised objections to the title on the ground that the vesting deed was not framed in accordance with the provisions of the Settled Land Act, 1925 (c. 18): (*a*) as it only dealt with the resettlement & not with the compound settlement; (*b*) as it was not executed by the trustees of the compound settlement; & (*c*) as it did not contain the names of the persons who were the trustees of the compound settlement. The tenant for life took out a summons for a declaration that a good title

the vesting deed did not comply with the requirements of the 1925 Act with reference to the compound settlement & the tenant for life was not able to exercise his statutory powers as tenant for life in respect of the disposal of his property; & the summons must be dismissed.—*Re* CAYLEY & EVANS' CONTRACT, [1930] 2 Ch. 143; 99 L. J. Ch. 411; 143 L. T. 405.

Annotation :—**Distd.** *Re* Curwen, Curwen *v.* Graham, [1931] 2 Ch. 341.

3074c. —— **Description of trustees as trustees of principal settlement—Sufficiency.**]—A vesting deed, executed with the intended object of giving effect to the provisions of Settled Land Act, 1925 (c. 18), with regard to the vesting of settled land in a tenant for life, contained a statement that the trustees, who were executing the deed, were trustees of the principal settlement, but it contained no reference to the fact that they were trustees of a compound settlement, consisting of the principal settlement & other documents :—*Held :* the trustees were sufficiently described, & the vesting deed was a valid & effectual principal vesting deed, made pursuant to Settled Land Act, 1925 (c. 18), in respect of the land comprised in the compound settlement, constituted by the various documents.—*Re* CURWEN, CURWEN *v.* GRAHAM, [1931] 2 Ch. 341; 100 L. J. Ch. 387; 146 L. T. 7.

Part XIV.—Trustees of Settlements.

3098. After this case add :—

Jurisdiction of court—To appoint trustees of settled land in Ireland.]—*See* COURTS, Vol. XVI., p. 104, No. 42.

Part XV.—Land Held in Undivided Shares.

3138. For the existing paragraph substitute the following paragraph :—

—— —— **Settled land.**]—By the will of testator, who died in 1884, his real estate was devised to trustees upon trust to permit his widow to receive the rents thereof during her life, & after her decease upon trust to pay same to or for the benefit of such of his two daughters, E. & M., as should be then living & should for the time being be single & unmarried in equal shares if more than one, & when both should be married upon trust as to both capital as well as income for all testator's children in equal shares. Testator's widow died in 1889, & on the death of E., in 1927, questions arose as to the respective interests of E. & M. & testator's children in the income & capital of the real estate. The ct. having decided that E. & M. were entitled to the income of the real estate during their joint lives in equal shares, & upon the death of E. her sister M. became entitled to the whole of the income during her spinsterhood, & upon her marriage or death the whole estate would become divisible in equal shares between the children of testator, the further question arose whether, on Law of Property Act, 1925 (c. 20), coming into force, the devised real estate vested in the then surviving trustee of the will upon the statutory trusts under Sched. I., Part IV., par. 1 (1), or in her or the Public Trustee under par. 1 (3) :—*Held :* (1) as the purposes of the trusts of testator's will were such as might continue beyond the life of his widow, the real estate devised by the will was, at the date of Law of Property Act, 1925, coming into force, by the effect of Wills Act, 1837 (c. 26), s. 31, vested in the then surviving trustee of the will in fee simple in trust for E. & M., who were then beneficially interested in equity until one of them should marry or die in undivided shares vested in possession ; (2) although their interests were not absolute interests, the case fell within Sched. I., Part IV., par. 1 (1), & the real estate thereupon vested in the trustee of the will upon the statutory trusts ; (3) when a case fell within par. 1 (1) it did not become necessary to consider whether it fell within any of the subsequent sub-paragraphs.—*Re* DAWSON'S SETTLED ESTATES, [1928] Ch. 421 ; 97 L. J. Ch. 343 ; 139 L. T. 94.

Annotations :—As to (2) **Folld.** *Re* Barrat, Body *v.* Barrat, [1929] 1 Ch. 336. **Refd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721.

3138a. —— —— ——.]—Testator, who died on June 16, 1881, leaving a widow & eight children, by his will gave all his estate to his wife & four children, whom he appointed exors. & trustees, upon trust to pay his debts, etc., & bequeathed the remainder of his personal effects to his wife & the income of his freeholds & leaseholds, subject to certain payments, & after her decease to pay such income to his four sons & daughters in certain shares, which were to cease at death, with a proviso as to four quarterly payments to widows of sons, &, subject thereto, gave his estate to the longest liver of his children absolutely. The widow died in 1900, & on the coming into force of the Law of Property Act, 1925, the deft. & daughter, who had since died, were the surviving trustees. All parties interested in the estate now desired a sale, & the question raised by this summons was first, whether pltf. & deft. R., the surviving trustee, were together tenant for life for the purposes of the Settled Land Act. Secondly, if it be not settled land, whether the entirety was now vested in the surviving trustee, or in the Public Trustee on the statutory trusts :—*Held :* Law of Property Act, 1925 (c. 20), Sch. I., Pt. IV., para. 4, added by the amending Act of 1926, was not applicable to the case; &, secondly, having regard to Wills Act, 1837 (c. 26), s. 31, & following *Re Dawson's Settled Estates*, No. 3138, the entirety was now vested in the surviving trustee under para. 1 (1), upon the statutory trusts.—*Re* BARRAT, BODY *v.* BARRAT, [1929] 1 Ch. 336 ; 98 L. J. Ch. 74 ; 140 L. T. 328.

3138b. —— —— ——.]—*Re* COLLINS, TOWERS *v.* COLLINS, [1929] 1 Ch. 201 ; 140 L. T. 223 ; 72 Sol. Jo. 779 ; *sub nom. Re* COLLINS, JOWERS *v.* COLLINS, 98 L. J. Ch. 47.

3139. *Add. Citation :*—72 Sol. Jo. 86.

Add. Annotations :—**Consd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Refd.** *Re* Dawson's S. E., [1928] Ch. 421.

3139a. —— **Land held under one & same settlement —Vesting in trustees—Who are trustees.**]—Where immediately before the coming into operation of Law of Property Act, 1925 (c. 20), the entirety of the land is settled land held under one & the same settlement, it vests in the trustees, if any, of the settlement under the old law as joint tenants upon the statutory trusts If there are no such trustees then, pending their appointment, the land vests in the Public Trustee upon the statutory trusts.—*Re* CATCHPOOL, HARRIS *v.* CATCHPOOL, [1928] Ch. 429 ; 97 L. J. Ch. 181 ; 139 L. T. 17 ; 72 Sol. Jo. 226.

3140. *Add. Annotations :—As to* (1) **Refd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. *As to* (2) **Refd.** Bernhardt *v.* Galsworthy, [1929] 1 Ch. 549 ; *Re* House, Westminster Bank *v.* Everett, [1929] 2 Ch. 166. *Generally*, **Refd.** *Re* Thomas, Thomas *v.* Thompson, [1930] 1 Ch. 194.

3143. *Citation :*—For the existing citation read "No. 1873, *ante*."

3143a. —— Only one trustee—Vesting of land in Public Trustee.]—Under & by virtue of the will of a testator who died in 1921, & of subsequent dispositions, acts in the law & events, the legal estate in certain freehold land was, immediately before the commencement of the Law of Property Act, 1925, vested in two persons for their lives share & share alike, the legal estate in remainder expectant upon the lives of those persons & the life of the survivor of them being vested in a single trustee upon trust after the death of the surviving tenant for life to sell the land & divide the proceeds between the testator's nephews & nieces. Upon a summons by the tenants for life, who were desirous of selling the land, to have it determined in whom, upon the coming into force of the Law of Property Act, 1925, the land was vested: — *Held:* (1) as immediately before the commencement of that Act the land was held at law & in equity in undivided shares, vested in possession, & the entirety thereof was settled land, Law of Property Act, 1925 (c. 20), Sched. I., Part IV., para. 1, sub-para. 3, would apply, if there were more than one trustee of the settlement constituted by the will, in whom the land could vest as joint tenants; but that, as there was only one trustee, the land vested, under clause (i) of the proviso to that sub-para., in the Public Trustee upon the statutory trusts; (2) if, before the Public Trustee accepted the trust, the present trustee (who before the commencement of the Law of Property Act, 1925, was the trustee of the settlement constituted by the will for the purposes of the Settled Land Acts then in force) appointed an additional trustee or trustees of that settlement, the land would vest in the trustees of the settlement as joint tenants upon the statutory trusts.—*Re* PRICE, PRICE *v.* PRICE, [1929] 2 Ch. 400; 98 L. J. Ch. 417; 141 L. T. 511.

3143b. —— —— Appointment of additional trustee —Before acceptance by Public Trustee.]—*Re* PRICE, PRICE *v.* PRICE, No. 3143a, *ante*.

3143c. ——.]—Immediately before the commencement of the Law of Property Act, 1925 (c. 20), the legal estate in land was outstanding in the personal representatives of the settlor & held upon the trusts of a marriage settlement which, in the events which had then happened, were for two daughters of the settlor in undivided shares absolutely:—*Held:* as the personal representatives then held the land in trust for the daughters in undivided shares vested in possession, they held it, after the Act came into force, upon the statutory trusts, by virtue of Sched. I., Part IV., sub-para. 1 (*b*) of the Act, with the result that the settlement trustees were not entitled, as, but for Part IV., they would be to call for a conveyance of the legal estate; but the personal representatives held the land on trust for sale & were entitled to sell the same, unless the daughters elected to call for a conveyance.—*Re* FORSTER, SOMERVILLE *v.* OLDHAM, [1929] 1 Ch. 146; 98 L. J. Ch. 27; 140 L. T. 277; 72 Sol. Jo. 761.

3143d. —— What is "settled land" within paragraph 2.]—Under a settlement contained in a will the settled property was directed to be held, after the death of the first tenant for life, in trust, as to both *corpus* & income, for the children & issue of the first tenant for life in equal shares as therein mentioned. The first tenant for life died in 1929, having by her will appointed to be her exors. & trustees two persons who, at the date of her death, were trustees of the settlement & of the will containing it. On a summons by the exors. & trustees as pltfs. for the determination (*inter alia*) of the question whether, for the purpose of vesting in themselves the land the subject of the settlement contained in the will, they should, as executors of the first tenant for life, execute in favour of themselves, as trustees of the will containing the settlement, a vesting assent upon the statutory trusts for sale of the land the subject of the settlement, or should apply for a grant to themselves of probate of the will of the first tenant for life limited to that land:—*Held:* Settled Land Act, 1925 (c. 18), s. 36, applied, & pltfs., as exors. of the first tenant for life, ought, pursuant to that sect., to execute a vesting assent in favour of themselves as trustees of the will containing the settlement.—*Re* CUGNY'S WILL TRUSTS, SMITH *v.* FREEMAN, [1931] 1 Ch. 305; 100 L. J. Ch. 145; 144 L. T. 525.

Conversion.]—*See* EQUITY, Nos. 817a-817c, *ante*.

3143e. —— Effect on interest of tenant for life under condition to reside on premises.]—Testator died in 1922, having by his will made in 1915 directed (*inter alia*) that pltf. should pay the net income of his freehold farm & lands & of his share of minerals thereunder equally between herself & his nephew until testator's youngest or only daughter should attain the age of twenty-one & thereafter between herself for life or until marriage, the nephew for life "or so long as he shall reside upon & assist in the management of my said farm," & testator's two daughters for their lives & the survivor of them for her life. Subject thereto testator devised the farm & lands to the children of his daughters as in the will mentioned. Testator's nephew lived with him at the farm, & assisted in its management until the testator's death, after which he continued to live there & to manage it. Accordingly, upon the coming into force of the Law of Property Act, 1925 (c. 20), the property vested in pltf. upon the statutory trusts. On a summons taken out by pltf. in 1931 & asking (*inter alia*) whether, upon a sale of the farm & lands under the statutory trusts, or upon the exercise by her of any power of leasing conferred on her by statute or by the will, & in particular upon the exercise of any such power in favour of testator's nephew, his interest in the income would determine:—*Held:* upon the true construction of Law of Property Act, 1925 (c. 20), s. 35, the nephew's life interest would not be forfeited upon any exercise in his lifetime of the statutory trusts.—*Re* DAVIES' WILL TRUSTS, BEVAN *v.* WILLIAMS, [1932] 1 Ch. 530; 101 L. J. Ch. 301; 147 L. T. 334.

3143f. —— Real property held by partners.]—A partnership firm in 1932 contracted to sell certain plots of freehold land to a county council. There was no special stipulation as to the commencement of title, but on examination by the purchasers it appeared that the land had been sold in 1892 to six

named persons then carrying on the partnership firm, the habendum of the conveyance being to hold the hereditaments "unto to the use of the purchasers . . . as joint tenants in trust for them the purchasers . . . as part of their co-partnership estate." On Jan. 1, 1926, the land in question was vested in three of the original purchasers in fee simple as joint tenants in trust as mentioned in the conveyance of 1892. The vendors to the county council were the four present partners, & included two of the three original purchasers living on Jan. 1, 1926, one of those purchasers having died since that date. Questions having arisen whether the land, being on Jan. 1, 1926, partnership property, was held on the statutory trusts, & therefore whether the present vendors or any of them could make a good title as trustees for sale by reason of the Law of Property Act, 1925 (c. 20), Sched. I., Part IV.:—*Held:* the words of that Sched. applied, & on Jan. 1, 1926, the property was held by the three original purchasers then living on the statutory trusts & the two survivors could make a good title as trustees for sale upon the statutory trusts.—*Re* FULLER'S CONTRACT, [1933] Ch. 652; 102 L. J. Ch. 255; 149 L. T. 237.

3143g. Application of Settled Land Act, 1925 (c. 18), s. 36—"Trust instrument"—Undivided shares created by deed or event later than instrument.]—A name & arms clause in a will dated Feb. 14, 1863, provided that if any tenant for life or in tail of testator's N. estates for the time being in possession refused to continue the use of the name & arms of H., the interest of that tenant for life or in tail & the limitations dependent thereon should cease. The tenant in tail in remainder (hereinafter called "the remainderman"), whose father was tenant for life in possession, mortgaged to pltf. the N. estates discharged as far as possible from his estate tail & from all estates to take effect after its determination or in defeasance of it: & the mtge. irrevocably appointed pltf. the remainderman's attorney in his name & on his behalf to convey the property to pltf. accordingly, but subject to the right of redemption under the mtge. As this was done without the tenant for life's consent, only a base fee was created. By a conveyance dated Apr. 3, 1914, the remainderman granted & released unto pltf. one undivided moiety of the N. estates, to hold unto & to the use of pltf., his heirs, exors., administrators & assigns, with provisions as to barring the entail similar to those in the mtge., but free from all right of redemption thereunder; & the remainderman covenanted also to perfect the disentail of the property within seven days of the tenant for life's death during his life. The tenant for life died on Feb. 18, 1929. The remainderman did not perfect the disentail within seven days, so that what was comprised in the mtge. immediately after the death was the base fee, half of it being vested in pltf. subject to the mtge. & the conveyance of 1914. On Mar. 8, 1929, the remainderman wrote informing the trustees of the will that he had decided to cease using the name of H. & to take another. On Apr. 8, 1929, he wrote to them a letter confirming that decision; & on the same date, after the confirmatory letter had been written, there was executed by pltf. as his attorney a deed of confirmation supplemental to the mtge. & to the conveyance of 1914, whereby the remainderman conveyed to pltf. the hereditaments, moneys & investments secured by the mtge. upon limitations similar to those in the mtge., to the intent that the base fee or other estate created & subsisting by virtue of the mtge. should be enlarged into an equitable fee simple, & that the mtge. should take effect out of the enlarged interest & the base fee be enlarged for all purposes; & the remainderman conveyed to pltf. one undivided moiety of the hereditaments or proceeds of sale thereof in equitable fee simple or absolutely, to the intent that, subject to the mtge., one undivided moiety should belong to pltf. & the other to the remainderman in equitable fee simple or absolutely. By deed dated Sept. 8, 1930, the remainderman recorded his change of name:—*Held:* (1) on the true construction of Settled Land Act, 1925 (c. 18), s. 36 (1), the conveyance of 1914 came within the expression "trust instrument" in that subsect.; (2) settled land may be held "on trust for persons entitled in possession under a trust instrument" in undivided shares created by a deed or event later than the instrument, which is nevertheless "the . . . instrument creating the trust"; (3) the words "entailed interest" in the Law of Property (Entailed Interests) Act, 1932 (c. 27), do not apply to a base fee; (4) the ct. could not construe Settled Land Act, 1925 (c. 18), s. 36 (6), so as to give effect to the name & arms clause, which was therefore inoperative.—*Re* HIND, BERNSTONE *v.* MONTGOMERY, [1933] Ch. 208; 102 L. J. Ch. 91; 148 L. T. 281.

Annotation:—Generally, **Refd.** *Re* Jones, Public Trustee *v.* Jones, [1934] Ch. 315.

3143h. —— "Trusts . . . requisite for giving effect to the rights of the persons interested"—Name & arms clause.]—*Re* HIND, BERNSTONE *v.* MONTGOMERY, No. 3143g, *ante*.

3143j. —— —— Law of Property (Entailed Interests) Act, 1932 (c. 27), s. 1—Whether "entailed interest" includes base fee.]—*Re* HIND, BERNSTONE *v.* MONTGOMERY, No. 3143g, *ante*.

3146. *Add. Annotations:*—**Follid.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Apld.** *Re* House, Westminster Bank *v.* Everett, [1929] 2. Ch. 166. **Refd.** *Re* Barrat, Body *v.* Barrat, [1929] 1 Ch. 336.

3148. *Add. Citations:*—97 L. J. Ch. 197; 138 L. T. 735.

3151a. Application of Law of Property Act, 1925 (c. 20), s. 34—Land settled upon trust for sale—After specified period.]—The trustees of a will, which came into operation after the commencement of the Law of Property Act, 1925 (c. 20), were directed to stand possessed of testator's residuary real & personal estate upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; &, on cesser of all the annuities, to stand possessed of the

residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from the testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested by the exor.; &, if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held:* (1) the land was held in equity in undivided shares; (2) the land was devised in undivided shares within Law of Property Act, 1925 (c. 20), s. 34 (3), with the result that it was devised to the trustees, who were trustees for the purposes of the Settled Land Act, 1925, upon the statutory trusts; (3) those trustees were the persons in whom the land ought to be vested.—*Re* HOUSE, WESTMINSTER BANK *v.* EVERETT, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

3151b. Open space held in undivided shares—Meaning of open space—Any land unbuilt upon—Back yard.]—The expression "an open space of land" in Law of Property Act, 1925 (c. 20), Sched. I., Pt. V., para. 2, means any land that is unbuilt upon.

A small yard & ashes place at the rear of two houses in a town was, immediately before the commencement of the Act, held in undivided shares by the owners of the houses with rights of access & user over same:—*Held:* the yard & ashes place were an open space within the par. & had vested in the Public Trustee. Leave given to the Public Trustee to sell same.—*Re* BRADFORD CITY PREMISES, [1928] Ch. 138; 138 L. T. 517; *sub nom. Re* BRADFORD CITY PREMISES, SCAIFE *v.* PUBLIC TRUSTEE, 97 L. J. Ch. 84.

Annotation:—**Consd.** *Re* Townsend. Townsend *v.* Townsend, [1930] 2 Ch. 338.

3151c. —— —— —— Private railway siding.]—A private railway siding consisted partly of freehold land, vested in the trustees of a will, & partly of leasehold land held for a long term by trustees of a lease containing a declaration of trust subsequently varied by deed. Neither set of trustees held upon trust for sale or had any power of sale. All rights of access to & user of the siding were vested, at the commencement of Law of Property Act, 1925 (c. 18), in lessees of adjoining property, licensees, & other persons entitled under the declaration of trust, & rents were paid by all parties interested for such user:—*Held:* that the siding was not an open space vested in undivided shares in right whereof each owner had rights of access & user thereof & did not therefore vest in the Public Trustee under Law of Property Act, 1925 (c. 20), Sched. I., Pt. V., para. 2, but was vested in the respective sets of trustees upon the statutory trusts.—*Re* TOWNSEND, TOWNSEND *v.* TOWNSEND, [1930] 2 Ch. 338; 99 L. J. Ch. 508; 143 L. T. 608.

Part XVI.—Resettlements.

3171. *Add. Annotation:—Generally*, **Refd.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

Part XVII.—Miscellaneous Clauses in Settlements.

3236. *Add. Annotations:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

3238. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

3260a. —— Payment by trustees—Right to reimbursement.]—The husband in a marriage settlement covenanted (*inter alia*) to pay the premiums on a policy of life insurance. In default of his doing so, the trustees paid the premium & sought to recover the amount so paid from the covenantor. The settlement expressly empowered the trustees to apply the income in making any payments for keeping on foot the policy, & provided that it should not be obligatory on them to enforce the husband's covenants. There was no covenant by the husband to reimburse the trustees in respect of any payment so made by them:—*Held:* (1) it was an implied term that the husband should reimburse the trustees; (2) the claim of the trustees was not in debt but for damages for breach of covenant, & therefore they could not specially indorse their writ; (3) the damages were substantial & not merely nominal, & the trustees were entitled to recover the full amount paid by them.—SCHLESINGER & JOSEPH *v.* MOSTYN, [1932] 1 K. B. 349; 101 L. J. K. B. 62; 146 L. T. 326; 48 T. L. R. 111.

3260b. —— —— Whether claim in debt or damages.] — SCHLESINGER & JOSEPH *v.* MOSTYN, No. 3260a, *ante*.

3260c. —— —— Measure of damages.]—SCHLESINGER & JOSEPH *v.* MOSTYN, No. 3260a, *ante*.

SEWERS AND DRAINS.

Part I.—Sewers and Drains for Sanitary Purposes.

9. *Add. Annotation :*—**Apld.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

11. *Add. Annotation :*—**Consd.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

14a. —— —— ——.]—Three houses owned by applts. formed part of a row of fifteen houses, the remaining twelve belonging to different owners. Each house of the fifteen was drained by a separate pipe into a common pipe which ran the whole length of the row & took the drainage of all the fifteen houses into a sewer in the street. Resp. local authority contended that the common pipe was a " single private drain " within Public Health Acts Amendment Act, 1890 (c. 50), s. 19 :—*Held :* in the absence of evidence that the pipe in question had been constructed on the requisition of the local authority under Public Health Act, 1875 (c. 55), s. 23 or s. 25 had failed to establish that the pipe was a " single private drain " within sect. 19 of the Act of 1890.—HILL *v.* ALDERSHOT CORPN., [1933] 1 K. B. 259 ; 102 L. J. K. B. 179 ; 148 L. T. 173 ; 96 J. P. 493 ; 31 L. G. R. 1, C. A.

15. *Add. Annotation :*—**Refd.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

16. *Add. Annotation :*—**Refd.** Southstrand Estate Development Co. *v.* East Preston Rural District Council, [1934] Ch. 254.

19. *Add. Annotation :*—**Distd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

19a. ——.]—Pltf. was the owner of a house & grounds on the X. estate, a leaseholder in 1900 & freeholder since 1920. Down to 1912 there was no drainage system for the estate, but in that year a system was established, which so far as affected this property was called " the northern system," by the then owners of the estate with an effective outfall, but without any reference to the local authority, which was maintained since 1920 by means of contributions from property owners to the owner of the part where the disposal works were situated. From these works the effluent passed into the river M., but owing to the filter bed ceasing to function, pollution of the river occurred, & this outfall being stopped by the action of the Thames Conservancy, the effluent was now carried over the adjoining land. In an action by pltf. for a declaration that the system vested in defts. & that they were liable to maintain it :—*Held :* the line of pipes which communicated with the disposal works was a sewer which vested in the local authority, but the remedy of pltf. was to appeal on behalf of the whole of the persons in the district to the Ministry of Health under P. H. Act, 1875 (c. 55), s. 299.—CLARK *v.* EPSOM RURAL COUNCIL, [1929] 1 Ch. 287 ; 98 L. J. Ch. 88 ; 140 L. T. 246 ; 93 J. P. 67 ; 45 T. L. R. 106 ; 27 L. G. R. 328.

23. *Add. Annotation :*—**Refd.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

47. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

50. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

51. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

52. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

52a. —— ——.]—A channel, for the greater part of its length in a covered culvert, ran through pltfs.' land. Originally the channel was a natural stream or watercourse, but at various times since 1876 sewage had been discharged into it. It was admitted that for at least 23 years before the pleadings in this action, *i.e.*, from 1909, some 20 houses had been drained into the channel & it was contended that such houses had acquired prescriptive rights of so discharging sewage into it. A further 44 houses had commenced discharging sewage into the channel at times subsequent to 1925. It was contended that the discharge of sewage into what was admittedly a natural stream at the time of the passing of Rivers Pollution Prevention Act, 1876 (c. 75), being an offence under that Act, could not convert the stream or channel into a sewer within Public Health Act, 1875 (c. 55) :—*Held :* since the passing of Rivers Pollution Prevention Act, 1876 (c. 75), a natural watercourse cannot in law be turned into a sewer by the discharge of sewerage into it.—LEGGE (GEORGE) & SON, LTD. *v.* WENLOCK CORPN., [1936] 3 All E. R. 599 ; 106 L. J. Ch. 71 ; 155 L. T. 615 ; 101 J. P. 15 ; 53 T. L. R. 111 ; 80 Sol. Jo. 913 ; 35 L. G. R. 28, C. A.

54. *Add. Annotation :*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

55. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

56. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

57. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

58. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

76. *Add. Annotation :*—**Consd.** Southstrand Estate Development Co. *v.* East Preston Rural District Council, [1934] Ch. 254.

95. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

98. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

100. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

107. *Add. Annotations :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

3a. *Whether drain or sewer.*]—SWEENEY *v.* LISNASKEA R. D. C., [1929] N. I. 119.—IR.

Refd. Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287; Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

116. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

121. *Add. Annotation :*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

121a. Whether title acquired by adverse possession against local authority.]—SOUTHSTRAND ESTATE DEVELOPMENT CO., LTD. *v.* EAST PRESTON RURAL DISTRICT COUNCIL, No. 125b, *post.*

124. *Add. Annotations :*—**Distd.** Solihull Rural District Council *v.* Ford (1931), 30 L. G. R. 483. **Consd.** Southstrand Estate Development Co. *v.* East Preston Rural District Council, [1934] Ch. 254.

125. *Add. Annotation :*—**Folld.** Solihull Rural District Council *v.* Ford (1931), 30 L. G. R. 483.

125a. —— ——.]—Deft. laid pipes & constructed sewage disposal works in accordance with plans approved by pltfs., & a number of houses on a building estate were connected therewith subject to payment by the owners to deft. for this service. Subsequently pltfs. gave deft. notice of their intention to connect a sewer of their own to his pipes. Deft. disputed their right to do so & pltfs. issued a writ claiming a declaration (*a*) that they had a right to join their pipes to deft.'s because deft.'s pipes were "sewers" vested in them; (*b*) that deft.'s disposal works were also so vested. Deft. contended that the pipes were not vested in pltfs. because they were "made for profit," & that the disposal works were not so vested because they were not "buildings works materials & things belonging" to the pipes :—*Held :* both the pipes & disposal works were vested in pltfs.—SOLIHULL RURAL DISTRICT COUNCIL *v.* FORD (1931), 30 L. G. R. 483.

125b. —— —— **Construction by purchaser from building owner.**]—It is a question of fact in each case whether a particular sewer has been made for profit or not. It is not a sufficient ground for holding that the sewer was made for profit if the only evidence is that the sewer was made by a person who was developing a building estate in the course of the development of that estate to provide sanitary facilities for houses to be erected on it. Where, however, the right to construct the necessary sewers was sold to an independent co. who paid for the construction of the sewers & charged a person wishing to use the sewers the amount of the cost of connecting his house with the sewers & also an annual rate :—*Held :* that the sewers were made by the co. for profit.

Qu. : whether, in any case, undisturbed possession of the sewers for twelve years & upwards by the co. to the knowledge of the local authority, but without claim by them to any right or interest in the sewers, would confer on the co. a statutory title to the sewers under Real Property Limitation Act, 1874 (c. 57).—SOUTHSTRAND ESTATE DEVELOPMENT CO., LTD. *v.* EAST PRESTON RURAL DISTRICT COUNCIL, [1934] Ch. 254; 102 L. J. Ch. 292; 149 L. T. 328; 49 T. L. R. 451; 31 L. G. R. 225; *sub nom.* SOUTHSTRAND ESTATE DEVELOPMENT CO., LTD. *v.* WORTHING RURAL DISTRICT COUNCIL, 97 J. P. 161.

126. *Add. Annotations :*—**Folld.** Solihull Rural District Council *v.* Ford (1931), 30 L. G. R. 483. **Consd.** Southstrand Estate Development Co. *v.* East Preston Rural District Council, [1934] Ch. 254.

137a. Whether sewer made for profit—Question of fact.]—SOUTHSTRAND ESTATE DEVELOPMENT CO., LTD. *v.* EAST PRESTON RURAL DISTRICT COUNCIL, No. 125b, *ante.*

148. *Add. Annotations :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

158. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

174. *Add. Citation :*—41 J. P. 516.

Add. Annotation :—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

175. In the tenth line of the para. for "sect. 10," read "sect. 16."

181a. ——.]—CLARK *v.* EPSOM RURAL COUNCIL, No. 19a, *ante.*

182. *Add. Annotations :*—*As to* (1) **Refd.** Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., Ltd., [1936] A. C. 108. *As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

184. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway [1931] 2 K. B. 334.

197a. —— **Sewer laid above ground—By private owner—Maintenance by local authority.**]—Defts., who were the urban sanitary authority, served notices, under Public Health Act, 1875 (c. 55), ss. 23, 36, upon the owners of a row of houses within the district requiring them within a certain time to provide water-closets in the houses & to connect the same with the main sewer. By arrangement among the owners the work was carried out by the owner of two of the houses, one of which was occupied by pltf. A six-inch earthenware pipe was laid through the gardens at the backs of the houses to receive the drainage of each house & to discharge into the main sewer. This pipe was laid underground until it came to the garden of the house in which pltf. lived, where, owing to a fall in the land half the pipe appeared above the ground. About three years after the pipe was laid pltf. in going down her garden slipped on the pipe & was injured. In an action against the urban district council to recover damages for the personal injuries so sustained, the pipe being a "sewer" which was vested in them, the jury found that the sewer was constructed so as to be dangerous to the occupants of the house, that defts. had notice of its

sb. *Non-navigable river.*]—Where a non-navigable river lies wholly within the boundaries of a county, such river is a public drain, & the county council has power to restrain the removal of gravel from the river bed.—PAHIATUA COUNTY COUNCIL *v.* AKITIO COUNTY COUNCIL, [1930] N. Z. L. R. 344.—N.Z.

dangerous condition, & were negligent in not obviating the danger:—*Held:* as deft. council would have been entitled, if they had themselves constructed the sewer, to lay it above ground, they were not guilty of any breach of duty in maintaining the sewer in the same condition as it was when laid, & were therefore not liable to pltf.—MORRIS *v.* MYNYDDISLWYN URBAN COUNCIL, [1917] 2 K. B. 309; 86 L. J. K. B. 1094; 117 L. T. 108; 81 J. P. 261; 15 L. G. R. 453, C. A.

217. *Add. Annotations:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

250. *Add. Citation:*—26 L. G. R. 174.

262a. **Liability for maintenance.**]—The Lewisham Board of Works was constituted under Metropolis Management Act, 1855 (c. 120), with an area extending over Penge, & all sewers in their district, except the main sewer, were vested in the Board, who were bound to repair them. Metropolis Management Act, 1862 (c. 102), empowered the Board to execute sewerage works beyond their own district where necessary, & in 1865 the Board, for the purpose of the drainage of Penge, constructed a sewer in Penge, which passed through the Beckenham district, not under the control of the Board, to the Lewisham district, where it joined the main sewer. The Act of 1862 did not vest this sewer in the Board, & did not in terms oblige the Board to repair it, but this obligation was expressly imposed on the Board by the Beckenham Sewerage Act of 1873, which empowered the Beckenham authority to connect up with the sewer in their area in return for certain money payments. This sewer having become inadequate, a second was constructed nearly alongside, & it assisted to carry off the sewage of Penge, By London Government Act, 1899 (c. 16). District Boards of Works were abolished, & the Lewisham Corporation was created, but by the Penge Order of 1900, made in pursuance of this Act, the district of Penge was taken out of the control of the corpn. & became part of the county of Kent, & a scheme of adjustments was made, whereby all property of the Lewisham Board used, & all liabilities of the Board incurred, solely or mainly for the benefit of Penge, where transferred to the Penge District Council, & the question whether any property had been used or any liability had been incurred solely or mainly for the benefit of Penge was to be finally determined by the commissioners appointed under the Act; but the scheme made no provision dealing with the question whether the obligation to maintain the Penge sewers, so far as they were laid in Beckenham, was cast upon the Lewisham Corpn. or not. In an action by the Urban District Council of Penge against the Lewisham Corpn. for a declaration that this obligation was cast upon the corpn.:—*Held:* (1) the jurisdiction of the ct. to determine this question was not ousted by the Penge Order; (2) both the original & the relief sewers were constructed wholly or mainly for the benefit of Penge, & that the action failed.—PENGE URBAN DISTRICT COUNCIL *v.* LEWISHAM CORPN. (1930), 95 J. P. 77.

264. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

298. *Add. Annotation:*—**Consd.** Hill *v.* Aldershot Borough Council, [1933] 1 K. B. 259.

304a. **Reconstruction of drain — What amounts to.**]—The L. C. C. made a bye-law that a person who should entirely or partially reconstruct any pipe or drain communicating with a sewer should deposit plans of the proposed work, with the proviso that plans should not be required in the case of any repair which did not involve the entire reconstruction of the pipe or drain; & another bye-law as to ventilation, which was to apply to every person who should reconstruct in an existing building any pipe or drain communicating with a sewer. Premises situate in the metropolis were drained at the rear by a line of pipes which took the surface water drainage of the premises through two gullies in the yard & which communicated with a sewer. This line of pipes was not laid upon concrete & was not ventilated, & the drain having become a nuisance, notice was served on the owner to abate the same. The owner opened up the ground, took up the pipes, most of which were defective or broken, & relaid the drain in the same line upon a foundation of concrete. He put in four new lengths of pipes & a new gully & connection, replacing in the drain one old pipe & gully only, & leaving in the ground an old pipe which was not defective:—*Held:* the work done to the drain was a " reconstruction " of

PART I. SECT. 3, SUB-SECT. 3.

1 (p. 29) i. ——— ———.]—Pltfs. claimed damages from deft. municipalities for flooding of lands caused, as alleged, by the municipalities failing to keep drainage ditches in repair:—*Held:* pltfs. could not recover from the municipalities because, while the municipalities would be liable for loss suffered by their failure to keep the ditches in repair, yet it was not shown that any of the damage suffered arose from such failure; rather, it appeared that the damage was due to the unprecedented character of the rain storms, the inadequacy of the drainage system, for which the municipalities could not be held liable, to drain lands lying as low as those of pltfs., & the damming of the main ditch by the other defts.—MAYTAG *v.* HANOVER RURAL MUNICIPALITY, [1932] S. C. R. 298; 2 D. L. R. 208.—**CAN.**

3c. *Petition for establishment of drainage district—Effect of repeal of statute.*]—R. *v.* SPRUCE GROVE MUNICIPAL DISTRICT, [1930] 3 W. W. R. 277; 4 D. L. R. 843; *affg.*, [1930] 3 W. W. R. 135.—**CAN.**

3d. *Liability of municipality to repair—Who may enforce.*]—*Held:* in view of all other relevant provisions of the Act, sect. 740 of Municipal Act, R. S. M., 1913, was intended merely to make it clea that, as between the government of the province & the municipality, the duty was on the latter to keep such drains in repair, & it was not intended to make the municipality liable to an action at the suit of an individual who might suffer damage from the municipality's failure to perform duty.—PIERCE *v.* WINCHESTER RURAL MUNICIPALITY, [1930] 2 W. W. R. 752; [1931] 1 D. L. R. 237; 39 Man. L. R. 132; *affd.*, [1931] S. C. R. 628; 4 D. L. R. 724.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.

5f. *Right to discharge sewage along drain — Continuous easement.*]—An easement consisting of a right to flow sewage water from latrines in pltf.'s house along drains in deft.'s house or land is a continuous easement.—BRIJMOHAN LAL *v.* HAZARI LAL (1935), I. L. R. 58 All. 662.—**IND.**

PART I. SECT. 9, SUB-SECT. 3.

9d. *Construction by municipality on private land—Sufficiency of bye-law.*]—MONTGOMERY *v.* ASSINIBOIA, RURAL MUNICIPALITY OF, [1930] S. C. R. 494; 4 D. L. R. 67; *varg.*, [1930] 2 D. L. R. 947; 1 W. W. R. 500; 38 Man. L. R. 527.—**CAN.**

9f. *Failure to repair—Liability of municipality—Limitation of action.*]—STEEVES *v.* DUFFERIN RURAL MUNICIPALITY, RIORDAN *v.* DUFFERIN RURAL MUNICIPALITY, [1934] 3 W. W. R. 549; [1935] 1 D. L. R. 203; 42 Man. L. R. 489.—**CAN.**

the drain, & not merely a " repair " of it, & that the bye-laws applied.—AGAR *v.* NOKES (1905), 93 L. T. 605 ; 69 J. P. 374 ; 3 L. G. R. 1168, D. C.

319. *Add. Annotation :*—**Distd.** Grant *v.* Derwent, [1928] Ch. 902.

319a. —— —— **Liability of owner requesting local authority to lay connecting pipe.**]—Subject to the rights of a corpn. as highway & sewer authority, pltf. owned the soil of a public road with a sewer therein. Deft.'s property abutted on this road, as well as on another sewered road, & he was entitled under Public Health Act, 1875 (c. 55), s. 21, to cause his drains to empty into the corpn.'s sewers, on giving proper notice & complying with regulations. At deft.'s request & acting under their local Act, the corpn. connected deft.'s combined drain with the sewer in pltf.'s road, carrying the connecting pipe through a small portion of pltf.'s subsoil :—*Held :* the corpn.'s acts were fully justified by the local Act, even if not by Public Health Acts, & whatever right for compensation pltf. might have against the corpn. for damage sustained by reason of the exercise of their statutory powers, he had no cause of action against deft. for requesting the corpn. to exercise those powers.—GRANT DERWENT, [1929] 1 Ch. 390 ; 98 L. J. Ch. 70 ; 140 L. T. 330 ; 93 J. P. 113 ; 73 Sol. Jo. 59 ; 27 L. G. R. 179, C. A.

Part III.—Sewers under Commissioners of Sewers.

341. After this case add " *See, now,* Land Drainage Act, 1930 (c. 44)."

383. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

399a. Liability to repair banks—Land Drainage Act, 1930.]—NORTH LEVEL COMRS. *v.* RIVER WELLAND CATCHMENT BOARD, [1937] 4 All E. R. 684.

403. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

407. *Add. Annotation :*—*As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. [illegible]

412. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

Part IV.—Sewers Rate.

423. After this case add " *See, now,* Land Drainage Act, 1930 (c. 44), ss. 24–28."

432a. Exemption in local Act—Effect of Land Drainage Act, 1930 (c. 44), s. 66.]—Land Drainage Act, 1930 (c. 44), s. 66, has no reference to provisions dealing with rating, & therefore it does not apply to preserve a provision in a local Act of 1816, giving exemption from a rate levied to meet the expenses of land drainage.

Qu. : whether a " comr." or " surveyor " in the local Act is within the term " local authority " in the above sect.—BELTON *v.* CROWLE DISTRICT DRAINAGE BOARD, [1935] 2 K. B. 221 ; 104 L. J. K. B. 624 ; 153 L. T. 466 ; 33 L. G. R. 413.

432b. Tidal lands—Whether exempt—Land Drainage Act, 1930 (c. 44), s. 77.]—Applt. was rated under Land Drainage Act, 1930 (c. 44), in respect of certain lands which were admittedly tidal lands within sect. 77 (2) of that Act. Applt. contended that the lands, being tidal lands, were exempt from rating by sect. 77 (1) (*c*) :—*Held :* the exemption in Land Drainage Act, 1930 (c. 44), s. 77 (1) (*c*), did not apply to applt.'s lands.—COLLARD *v.* RIVER STOUR (KENT) CATCHMENT BOARD, [1937] 1 All E. R. 436 ; 81 Sol. Jo. 16, D. C.

457. *Add. Citations :*—97 L. J. K. B. 13 ; 138 L. T. 72 (1926–31), 1 B. R. A. 191.

466a. —— **Commutation—New rate based on annual value—Validity.**]—By Land Drainage Act, 1918 (c. 17), s. 4 (1), power is given to drainage boards to levy drainage rates either

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PART I. SECT. 12, SUB-SECT. 3.

ak. *Retaining wall—Liability for cost.*]—The cost of a retaining wall built by a township along a drain to prevent erosion cannot be charged against upper townships which would not be benefited.—*Re* DAWN TOWNSHIP & CHATHAM TOWNSHIP, [1936] 2 D. L. R. 172 ; O. R. 176.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

b i. —— —— ——.]—MCKILLOP TOWNSHIP CORPN. *v.* LOGAN TOWNSHIP CORPN. (Ont.) (1899), 29 S. C. R. 702.—**CAN.**

c i. —— —— *Time for making ditch.*]—MURRAY *v.* DAWSON (1867), 17 C. P. 588.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.

d i. ——.]—ANDERTON TOWNSHIP *v.* MALDEN & COLCHESTER SOUTH TOWNSHIPS (1912), 23 O. W. R. 320 ; 4 O. W. N. 327 ; 8 D. L. R. 812.—**CAN.**

d ii. ——.]—*Re* BRIGHT & SARNIA, *Re* WILSON & SARNIA (1913), 24 O. W. R. 817 ; 4 O. W. N. 1535 ; 12 D. L. R. 848.—**CAN.**

se. *Appeal from fence viewer.*]—*Re* MCDONALD & CATTANACH (1870), 30 S. C. R. 432.—**CAN.**

sd. ——.]—*Re* BOWKER & RICHARDS (1905), 1 W. L. R. 194.—**CAN.**

se. *Award under Ditches & Watercourses Act—Who may enforce.*]—The purchaser of land from an owner who was a party to proceedings under the Act in respect of that land is entitled to enforce the award.—DALTON *v.* TOWNSHIP OF ASHFIELD (1898), 26 A. R. 363.—**CAN.**

PART III. SECT. 2.

sf. *Construction of ditch under Private Ditches Act, 1920, s. 6—Notice.*]—The service of the notice which Private Ditches Act, R. S. S., 1920 (c. 162), s. 6, requires to be made on the owners or occupants of other lands to be affected by a proposed ditch is a condition which must be complied with before the ditch can legally be proceeded with. & where such an owner has not been served an award of an engineer & an assessment & tax levy made under said Act on said owner is null & void.—VILLENEUVE *v.* RURAL MUNICIPAL OF KELVINGTON, [1929] 2 D. L. R. 919 ; 1 W. W. R. 186 ; 23 S. L. R. 406.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

sg. " *Owner for the time being* "—*Who is.*]—The term " the owner for the time being " in Nova Scotia Acts, 1920, c. 131, s. 4, an Act relating to sewers & sidewalks in the town of Springhill does not necessarily mean the registered owner.—SPRINGHILL *v.* MCLEOD, [1929] 1 D. L. R. 882 ; 60 N. S. R. 272.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.

sh. *Consideration of prior assessments.*]—CROW *v.* RALEIGH TOWNSHIP, [1931] 4 D. L. R. 330.—**CAN.**

on the basis of acreage or on the basis of annual value. Pursuant to that power resp. drainage board elected to levy a rate on the basis of acreage. By an order made by the Minister of Health in 1927 in pursuance of powers conferred on him by a local Act, power was given to resps. to require occupiers of land less than one acre in extent to commute the said acreage charge, & in exercise of those powers, they called on applt. to commute the rate imposed on his land, & he did so. By Land Drainage Act, 1930 (c. 44), s. 24 (4), every rate made by a drainage board shall, after the coming into operation of the Act, be an annual value rate. Resps. thereupon made a drainage rate on an annual value basis, & demanded payment from resp. of his proportion thereof, on the ground that the rate so imposed was a new rate to which the commutation agreement did not apply :— *Held :* the effect of the Act of 1930 was not to impose a new rate, but to fix one of the two alternative methods of assessing the existing rate, & applt. had commuted that existing rate, & was therefore not liable to be further assessed in respect of it.—LODGE *v.* LANCASHIRE COUNTY COUNCIL (1934), 152 L. T. 167 ; 98 J. P. 419 ; 32 L. G. R. 353, D. C.

SUB-SECT. 5.—COLLECTION AND RECOVERY OF RATE.

469a. Power of court to state case.]—A special case under Summary Jurisdiction Act, 1879 (c. 49), s. 33, may, by the operation of Summary Jurisdiction Act, 1884 (c. 43), s. 7, & notwithstanding the sect. 10 of that Act be stated by a justice sitting to hear a proceeding for the recovery of a sewers rate under City of London Sewers Act, 1848, 11 & 12 Vict. c. clxiii., s. 194.—R. *v.* LONDON (CORPN.) & BROWN (1887), 57 L. T. 491, D. C.

Annotations :—**Consd.** R. *v.* Glamorganshire JJ., R. *v.* Pontypool JJ. (1892), 61 L. J. Q. B. 738 ; 61 L. J. M. C. 169, C. A. **Refd.** Fourth City Mutual Building Society *v.* East Ham Churchwardens, [1892] 1 Q. B. 661 ; R. *v.* Kent JJ. (1896), 74 L. T. 618 ; R. *v.* Lincolnshire JJ., [1912] 2 K. B. 413.

469b. Annual value as assessed to income tax—Reduction of assessment—Effect on drainage rate.]—SEWERS COMRS. *v.* CHEFFINGS (1935), 80 L. Jo. 9.

469c. Amount of precept—How calculated.]—A catchment board issued a precept to a county council whose area was comprised in the catchment area, demanding a sum calculated on the basis of 2*d.* in the pound on the total of the rateable value of the area concerned. The county council objected (i) that the amount demanded was not an " estimated amount " within Land Drainage Act, 1930 (c. 44), s. 22 (2), but that the drainage board had merely proceeded on a mathematical calculation, & (ii) that the expression " estimated amount which would be produced by a rate of 2*d.* in the pound " in the same sub-sect. meant the amount which would be produced after making due allowance for costs for collection & bad debts :— *Held :* (1) as the calculation was based on the product expected from a rate in a future year, it was an estimate ; (2) upon a proper construction of Land Drainage Act, 1930 (c. 44), s. 22 (2), the catchment board had made a proper calculation & no allowance for costs of collection or bad debts ought to be made.—R. *v.* CAMBRIDGE COUNTY COUNCIL, *Ex p.* RIVER GREAT OUSE CATCHMENT BOARD, [1937] 1 K. B. 201 ; [1936] 3 All E. R. 352 ; 106 L. J. K. B. 103 ; 155 L. T. 559 ; 101 J. P. 1 ; 53 T. L. R. 84 ; 80 Sol. Jo. 934 ; 34 L. G. R. 597.

SHERIFFS AND BAILIFFS.

Part V.—Powers, Duties, and Liabilities.

274. *Add. Annotation :*—**N.F.** R. *v.* Jones, *Ex p.* McVittie, [1931] 1 K. B. 664.

274a. ——.]—Pltf. obtained judgment in a county ct. against deft. for a sum of money & costs, & an appeal to the Divisional Ct. by deft. was dismissed with costs. Pltf.'s solr. made various but futile efforts to obtain the fruits of the judgment. Deft. disobeyed a bkpcy. notice & an order for payment of the judgment debt & costs by instalments. Several judgment summonses were obtained against the deft., but deft. evaded service of them. Eventually pltf.'s solr. served deft. with a judgment summons within the precincts of a ct. of justice where deft. was waiting for a case, in which he was pltf., to be called on. Deft. applied for a writ of attachment against pltf.'s solr. for contempt of ct. in so doing :—*Held :* in the circumstances, no contempt had been committed & the rule must be discharged.—R. *v.* JONES, *Ex p.* MCVITTIE, [1931] 1 K. B. 664 ; 100 L. J. K. B. 193 ; 144 L. T. 597, D. C.

539. *Add. Annotation :*—**Refd.** Morriss *v.* Winter, [1930] 1 K. B. 243.

639a. —— ——.]—An attorney, who is arrested on a writ of *capias*, cannot maintain an action of trespass against pltf. & the officer for such arrest : his only remedy is an action on the case.—NOEL *v.* ISAAC (1835), 1 Cr. M. & R. 753 ; 5 Tyr. 376 ; 4 L. J. Ex. 56 ; 149 E. R. 1284.

Annotation :—**Refd.** Newton *v.* Constable (1841), 6 Jur. 317.

726. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee (1933), 103 L. J. Ch. 67.

Part VI.—Fees, Poundage, and Other Charges.

860. *Add. Annotation :*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART II. SECT. 3.

sa. *Right of sheriff to appoint.*]—There is nothing in the statutes of Saskatchewan which provides or implies that a sheriff cannot appoint bailiffs or officers to assist him in the discharge of his duties.—R. *v.* REZNEK, [1931] 1 W. W. R. 607 ; 3 D. L. R. 430 ; 55 Can. C. C. 153.—**CAN.**

sb. *Special bailiffs—Jurisdiction confined to county where residing.*]—DEVINE *v.* CARSON & Co., [1929] N. I. 26.—**IR.**

PART V. SECT. 6, SUB-SECT. 7.—J. (a).

e i. ——.]—HIGGINS *v.* MACDONALD, [1928] 4 D. L. R. 241 ; [1928] 3 W. W. R. 115 ; 50 Can. Crim. Cas. 353.—**CAN.**

PART V. SECT. 6, SUB-SECT. 10.—B. (a).

652 vii. —— ——.]—In an action against a sheriff for damages for a wrongful seizure & sale under an execution :—*Held :* since the sheriff had properly chosen to leave the conduct of the seizure & sale in the hands of his clerk & his bailiffs, he was not liable by reason of his personal conduct of his office, & since all of the employees (except the auctioneer) connected with the seizure & sale were not appointed by or subject to dismissal by the sheriff but were members of the civil service of the province, he was not liable for their misconduct or negligence. A sheriff in Alberta is not under the duty of taking personal cognisance of the details of essentially routine proceedings in his office, important though they may be in their effect.—GUNN'S PURE FOODS, LTD. *v.* RAE & CANADIAN SURETY CO., [1934] 2 W. W. R. 108.—**CAN.**

PART V. SECT. 6, SUB-SECT. 10.—H.

t (p. 116) **i.** —— *Unlicensed bailiff.*]—Collection Agents' Licensing Act, 1930, applies to the work of a bailiff in taking repossession of goods sold under a lien agreement ; &, therefore, where a bailiff is not licensed under the Act he has no legal right to enter upon the premises of the buyer for said purpose &, in doing so, is a trespasser *ab initio* ; & the vendor who employed him for said purpose is also liable for his trespass & for an assault committed by him in pursuance thereof.—SHADIN *v.* DAVID SPENCER, LTD. & MCMICHAEL, [1935] 1 W. W. R. 693 ; 2 D. L. R. 813 ; 50 B. C. R. 55.—**CAN.**

PART VI. SECT. 1.

sp. *Liability for.*]—A solr. acting for a disclosed principal is not liable for sheriff's fees in executing a *capias*.—BRADLEY *v.* MCNAUGHT, [1936] 1 D. L. R. 671.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

o i. —— *Execution of writ of capias ad satisfaciendum.*]—Poundage fees in respect of the execution of a writ of *ca. sa.* become due upon execution of the writ, that is, upon taking the body of the judgment debtor in execution, & such poundage may be recovered at the rate prescribed by the scale of fees under Sheriff's Act, 1900, upon the amount for which the writ was issued. —*Re* WILLIAM ARNOTT, *Ex p.* THE SHERIFF (1929), 29 S. R. N. S. W. 339 ; 46 N. S. W. W. N. 127.—**AUS.**

SHIPPING AND NAVIGATION.

Part I.—In General.

SECT. 1.—THE MERCHANT SHIPPING ACTS.

SUB-SECT. 1.—IN GENERAL (p. 159).

Powers of colonial legislatures—Exclusion of Dominions.]—*See* Statute of Westminster, 1931, s. 5.

11a. —— **Alien stowaway secreting himself at foreign port—Continuing offence.**]—An alien, while a British ship was lying at a quay in a foreign port, secreted himself in the ship & proceeded to sea. He disclosed himself the next day & was then treated as a member of the crew. When the ship reached London he was arrested & prosecuted before a Metropolitan magistrate under Merchant Shipping Act, 1894 (c. 60), s. 237 (1), for having unlawfully secreted himself & gone to sea in the ship without the consent of any person entitled to give such consent:—*Held:* the words of sect. 237 (1), "secretes himself" & "goes to sea," formed a compound term, the offence, which was a continuing one, consisting of secreting & going to sea without the necessary consent; under sect. 686 (1), the alien, not being a British subject, could be tried for committing "any offence on board any British ship"; & the magistrate had jurisdiction in the matter.—ROBEY *v.* VLADINIER (1935), 154 L. T. 87; 99 J. P. 428; 52 T. L. R. 22; 80 Sol. Jo. 76; 18 Asp. M. L. C. 560; 33 L. G. R. 474, D. C.

25. *Add. Annotation:*—**Consd.** The Champion, [1934] P. 1.

26. *Add. Annotation:*—**Refd.** The Champion, [1934] P. 1.

28. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

Part II.—Ownership and Control of Ships.

72. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

108. *Add. Annotation:*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

109. *Add. Annotation:*—**Refd.** Cammell Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

177. *Add. Annotation:*—**Refd.** Aron *v.* Mial (1928), 139 L. T. 562.

195. *Add. Annotation:*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

203. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

203a. —— —— —— ——.]—By statutory mtges. which covered sixty-four sixty-fourth shares in each ship & her appurtenances two drifters were mortgaged to pltfs., who, when the mtgors. went into liquidation, took possession of the drifters & the nets & other gear on board them. The mtgees. also claimed under the mtges. a number of nets & a quantity of other fishing gear which was lying in the store of the mtgors. & was marked with the port number of one or other of the two drifters. The evidence showed that at the date of the mtge. on the drifter *H.* the mtgors. owned no nets or other drift fishing gear; but by the date of the mtge. on the drifter *M. V.* they had acquired nets & other gear & the *M. V.* herself had gear on board. At the hearing it was agreed by counsel that the effect of the authorities cited was that nets & gear which could be said to have been appropriated to a vessel at the time of her mtge., or substituted for the purpose of maintaining her original gear, would pass as "appurtenances" under the mtge., & it was contended for the mtgees. that the marking of gear with the port number of a particular vessel was sufficient evidence that such gear had been appropriated to her:—*Held:* on the evidence, the mtgors. when renewing gear marked it indiscriminately with the port

PART I. SECT. 1, SUB-SECT. 1.

sf. *Powers of New Zealand Legislature.*]—Sect. 243 of Shipping & Seamen Act, 1908, must be interpreted *ut res magis valeat quam pereat*, & should be interpreted on this doctrine as applying to ships registered in New Zealand. The New Zealand Legislature may by implication repeal sect. 478 (6) of Merchant Shipping Act, 1894 (Imp.), as that sect. is included in the provisions of the statute which the Legislature of a British possession is empowered by sect. 735 to repeal wholly or in part. The assent of His Majesty to the Shipping & Seamen Acts, 1903 & 1908, was intended, & must be regarded, as a confirmation of these statutes for the purposes of sect. 735 of Merchant Shipping Act, 1894 (Imp.), &, as subsequent amendments have been assented to & confirmed, the principal Act which was assented to cannot be held invalid for want of confirmation. Even if there be a repugnancy between sect. 243 of Shipping & Seamen Act, 1908, & sect. 478 (6) of Merchant Shipping Act, 1894 (Imp.), that repugnancy is authorised by sect. 735 of the latter statute; &, having regard to sect. 735, it is immaterial whether the jurisdiction of the Board of Trade under sect. 478 (6) is ousted or whether the Board of Trade & the Minister of Marine in New Zealand have concurrent jurisdiction. Consequently, sect. 243 of Shipping & Seamen Act, 1908, must be regarded as a valid exercise of the power conferred upon the New Zealand Legislature by sect. 735 of Merchant Shipping Act, 1894 (Imp.), *quoad* ships registered in New Zealand.—*Re* "RANGATIRA," T. E. V., [1936] N. Z. L. R. 357; G. L. R. 250; 12 N. Z. L. J. 133.—**N.Z.**

PART II. SECT. 1, SUB-SECT. 3.

r i. —— ——.]—GRADY *v.* WAITE. [1930] 1 D. L. R. 838; 1 M. P. R. 116. —**CAN.**

PART II. SECT. 2, SUB-SECT. 4.—B.

g i. —— *Arrival in Calcutta—Jurisdiction of magistrate.*]—When some sailors committed an offence on board a British ship on high seas, which subsequently arrived in Calcutta, the Chief Presidency Magistrate had jurisdiction under Merchant Shipping Act, 1894 (c. 60), ss. 684, 686, to entertain a complaint against them, in the absence of evidence to show that they were not in Calcutta at the time. In any case, when the accused surrendered before the ct. it had jurisdiction to proceed with the trial.—BENGAL SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS *v.* RAISALEE (1932), I. L. R. 60 Calc. 44.—**IND.**

number of one of their several vessels, & there was no appropriation by them of the gear in store to either of the drifters in question; inasmuch as the mtgors. owned no fishing gear at the date when the *H.* was mortgaged it was impossible for them to appropriate any gear to her & none passed under the mtge.; but in the case of the *M. V.* gear was on board, & appropriated to her, at the time of the mtge., & the gear which was on board when the mtgees. took possession was there in substitution for the original gear & therefore passed to the mtgees. under the mtge.—THE HUMOROUS, THE MABEL VERA, [1933] P. 109; 102 L. J. P. 45; 148 L. T. 501; 49 T. L. R. 259; 18 Asp. M. L. C. 373.

204. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

251. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

274. *Add. Annotation:*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

342. *Add. Annotation:*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

347. *Add. Annotation:*—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

383. *Add. Annotation:*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., Ltd., [1936] 2 All E. R. 386.

384. *Add. Annotations:*—*As to* (2) **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356; The Njegos, [1936] P. 90.

493. *Add. Annotation:*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

Part III.—Master, Officers and Crew.

551. *Add. Annotation:*—**Consd.** Savage *v.* British India Steam Navigation Co., Power *v.* Same (1930), 46 T. L. R. 294.

551a. —— ——.]—In actions by the captain & by the chief officer of an ocean passenger steamer for alleged wrongful dismissal there was no written contract of employment, & the only documents relating to employment were various circulars dealing with the age at which officers must retire, their rights to pension, & their right to leave on full pay after certain periods of service. The circulars made it clear that pensions were only to be paid at the discretion of the employers:—*Held:* the contract of employment was determinable by either party at any time on reasonable notice, & that in the case of the chief officer reasonable length of notice would have been 12 months, & he was entitled to judgment for 12 months' salary. In the case of the captain the action was dismissed.—SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD. (1930), 46 T. L. R. 294.

Annotation:—**Consd.** Edmonson *v.* Ropner & Co. (1935), 79 Sol. Jo. 777.

560a. Termination of contract—Right to reasonable notice—What amounts to.]—SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., No. 551a, *ante*.

582. *Add. Annotation:*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

589. *Add. Annotation:*—**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

600. *Add. Annotation:*—**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

614a. Protection of open hatchways—Breach of statutory duty—Effect of contributory negligence.]—Pltf. was a coal trimmer, & in proceeding to his work on defts.' ship along a

PART II. SECT. 7.

ar. *False declaration of ownership—Who may be liable.*]—*Held:* (1) the mtgee. & transferee are, as regards this forfeiture, in as favourable a position under Merchant Shipping Act, 1894, s. 67 (2), which states that the "ship or share shall be subject to forfeiture under this Act to the extent of the interest therein of the declarant," as though they were in possession of the ship & therefore that interest should be protested in the order that should be made under sect. 76, & the balance of the proceeds of the sale of the ship should be paid to the intervener to be applied in reduction of the mtge.; (2) the owner procuring registration of himself as a British owner by fraudulent means under sect. 67 (2) is not sufficient to establish a use & assumption of flag & character for the prohibited purpose since sub-sect. (2) is obviously directed to matters occurring "on board a ship" & of such a kind as to "make the ship appear to be a British ship" as the result of something done "on board" of her in the course of her use as a ship & not something done in a registry in relation to the "Procedure for Registration" of her & the claim for forfeiture under sect. 69 must be dismissed.—R. *v.* THE "EMMA K," [1936] Ex. C. R. 92; [1935] 3 D. L. R. 673; 50 B. C. R. 97; *affd.* [1936] 3 D.L.R. 385; S.C.R. 256.—**CAN.**

PART III. SECT. 3.

f i. —— *During illness.*]—A seaman serving under articles on a ship was incapacitated by illness from performing his duties & was landed at a port other than his home port, & there put into a hospital where the shipowner paid his expenses. The seaman was later discharged from such hospital as "relieved," although not cured, &, he being fit to travel, the shipowner offered him a free passage to his home port, which offer was refused. The seaman remained at his port of landing & later sued the shipowner under sect. 127 (1) of Navigation Act, 1912–1926, for maintenance from the time of his discharge from the hospital to the date of his writ, on the ground that he was not cured:—*Held:* the shipowner had fulfilled his duty by making the offer to bring the seaman back to his home port, & that offer having been refused, no further liability attached to the shipowner.—MYRHE *v.* BURNS PHILP & CO., LTD. (1935), 29 Q. J. P. R. 93; [1935] Q. S. R. 145.—**AUS.**

f ii. —— ——.]—The articles of agreement under which a seaman was employed by a shipowner contained a clause which provided that if the seaman were landed & left at a port by reason of illness or accident in the service of the ship incapacitating him from duty, he was entitled to certain wages & benefits. The clause further provided that the illness, hurt, or injury, "shall so far as can be ascertained, be an illness contracted on board of the ship, or a hurt or injury sustained in the service of the ship or her owner." The seaman signed the articles on Jan. 10, 1933, & on Apr. 20, of the same year was landed at a port, having become incapacitated two or three days before, by an illness, pernicious anæmia. He sued the owner of the ship for wages. The medical evidence showed that the disease had been contracted some time prior to the signing of the articles, although it did not manifest itself until a few days before Apr. 20, 1933. The seaman had prior to Jan. 10, 1933, been in the service of the owner under previous articles, separate articles being signed in respect of each voyage:—*Held:* (1) an illness may be contracted within the meaning of the clause before the incapacitating results occur or are experienced; (2) in order to succeed in his claim for wages the seaman must show that the illness was contracted during the currency of the articles, it being insufficient that the illness was contracted in the service of the ship or her owner under previous articles.—BURNS PHILP & CO., LTD. *v.* MYRHE (1935), 51 C. L. R. 463; —— Q. S. R. 126.—**AUS.**

passage-way which he was entitled to go along, he stumbled & fell down an open hatchway into one of the holds of the ship, & was injured. He sued defts. for damages, basing his action on a breach of a statutory regulation made under 1894 Act, which provided for the fencing & protection of open hatchways on ships:—*Held:* pltf.'s own contributory negligence was an answer to his claim against defts. based on a breach of statutory duty.—DEW *v.* UNITED BRITISH S.S. Co., LTD. (1928), 98 L. J. K. B. 88; 139 L. T. 628; 17 Asp. M. L. C. 513, C. A.

... Sundell (1929), 99 L. J. B. 55. **Apld.** Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132. **Folld.** Craze *v.* Meyer-Dumore Bottlers' Equipment Co., [1936] 2 All E. R. 1150.

616. *Add. Annotation:*—**Refd.** Monk *v.* Warbey (1934), 151 L. T. 100.

633. *Add. Annotation:*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

676a. Duties of Humber Conservancy Board.]—THE NEPTUN (1937), 54 T. L. R. 195.

680. *Add. Annotations:*—**Consd.** Maver *v.* "Solon" Ship Owners (1929), 22 B. W. C. C. 424; Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

685. *Add. Annotations:*—*As to* (1) **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402. *As to* (3) **Refd.** First Russian Insce. *v.* London & Lancashire Insce. [1928] Ch. 922. *As to* (4) **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *Generally*, **Refd.** The Penelope, [1928] P. 180; Ottoman Bank *v.* Chakaria, [1930] A. C. 277; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

685a. Indemnity under Merchant Shipping (International Labour Convention) Act, 1925 (c. 42—For what period seaman entitled.]—*Held:* upon the true construction of sect. 1 of above Act a seaman whose service had been prematurely terminated by the wreck or loss of the ship was entitled to receive wages at the rate payable under his agreement of service for each day on which he was in fact unemployed during a period of two months from the date of the termination of the service, whether his service under the agreement would in the normal course have terminated before the expiration of that period or not, unless the owner discharged the *onus* cast upon him by sect. 1 (2).—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, [1931] A. C. 126; 36 Com. Cas. 159, H. L.; *sub nom.* THE CROXTETH HALL, THE CELTIC, 100 L. J. P. 25; 144 L. T. 441; 47 T. L. R. 147; 18 Asp. M. L. C. 184, H. L.

Annotation:—**Consd.** Barras *v.* Aberdeen Steal Trawling & Fishing Co., [1933] A. C. 402.

685b. —— Unemployment due to wreck—Onus of proof.]—ELLERMAN LINES, LTD. *v.* WHITE STAR LINE OF ROYAL & STATES MAIL STEAMERS OCEANIC NAVIGATION CO., LTD. *v.* COMERFORD, No. 685a,

—— —— **What amounts to.**]—A seaman was engaged to serve for six months as chief engineer on a steam trawler. On returning to port during the term of six months to discharge a cargo of fish the trawler collided with another vessel &, after making the port under her own steam, went into dry dock for repairs, the crew, including the chief engineer, being paid off. The trawler was laid up for fourteen days, at the end of which time the seaman was re-engaged as chief engineer. He claimed from the owners of the trawler a sum as wages for the time during which the vessel was under repair, alleging that his service had terminated by reason of the "wreck" of the trawler within Merchant Shipping (International Labour Conventions) Act, 1925 (c. 42), s. 1 (1):—*Held:* there was no wreck of the trawler.

By Viscount BUCKMASTER, Lord WARRINGTON OF CLYFFE, Lord RUSSELL OF KILLOWEN, & Lord MACMILLAN, on the ground that the word "wreck" having been used in the Act of 1894 & having received a judicial interpretation must, when used in the same context in the Act of 1925, bear that interpretation unless a contrary meaning is indicated; & the trawler was not by the collision rendered incapable of carrying out the maritime adventure in respect of which the seaman's contract was entered into, but was merely interrupted in so doing.

By Lord BLANESBURGH on the ground that the decision in *The Olympic*, [1913] P. 92, was, in view of the dissenting judgment of KENNEDY, L.J., not of sufficient authority to warrant the assumption that the word "wreck" in the Act of 1925 was used in the sense attributed to it by the majority of the Ct. of Appeal; the decision of the majority was wrong, & there was no wreck in *The Olympic* & *a fortiori* none in the present case. Consequently the seaman could not recover.—BARRAS *v.* ABERDEEN STEAM TRAWLING & FISHING CO., LTD., [1933] A. C. 402; 102 L. J. P. C. 33; 149 L. T. 169; 49 T. L. R. 391; 77 Sol. Jo. 215; 38 Com. Cas. 279; 18 Asp. M. L. C. 384, H. L.

693. *Add. Annotation:*—**Refd.** The Bathori, [1933] P. 22.

763. *Add. Annotation:*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

796. *Add. Annotations:*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528; Pockney *v.* Atkinson (1929), 142 L. T. 135;

PART III. SECT. 4, SUB-SECT. 3.—A.

685 b i. *Indemnity under Merchant Shipping (International Labour Convention) Act, 1925—Unemployment due to wreck—What amounts to.*]—A seaman was engaged under an agreement to serve as an engineer of a trawler for the period from July to Dec. 1930. On Sept. 25, 1930, the trawler sustained damage in consequence of a collision at sea, but she was able to make port under her own steam. On reaching port the crew were paid off, & the ship was laid up for repairs for a period of fourteen days; thereafter the seaman was re-engaged. He claimed wages, in terms of Merchant Shipping (International Labour Conventions) Act, 1925, s. 1 (1), for the fourteen days during which the ship was under repair, on the ground that his service had been terminated by reason of the "wreck" of the ship:—*Held:* the damage did not constitute a "wreck" within sect. 1 (1), in respect that the period required for repairs was not so prolonged as to render the ship unable to continue within a reasonable time the adventure contemplated in the agreement with the seaman.—BARRAS *v.* ABERDEEN STEAM TRAWLING & FISHING CO., [1932] S. C. 432.—SCOT.

sp. *Agreement to pay wages during unemployment — Anticipation.*]—H. BROWN *v.* CANADIAN NATIONAL STEAMSHIPS CO., LTD., [1937] Ex. C. R. 84.—CAN.

Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423.

809a. Effect of settlement at end of voyage—On right to payment in lieu of leave.]—The signing of a settlement at the end of a voyage, in full discharge & without reservation, puts an end to claims in respect of the particular voyage, but does not necessarily affect the right of a seaman to payment in lieu of leave accruing.—MCLEA *v.* ESSEX LINES, LTD. (1933), 45 Ll. L. R. 254.

847. *Add. Annotation :*—**Reld.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

932a. —— —— ——.]—R. *v.* WALL (1890), 112 C. C. Ct. Cases, 880.

932b. —— —— ——.]—R. *v.* PHILLIPS, ETC. (1891), 113 C. C. Ct. Cases, 622.

935a. —— Whether condition precedent to hearing of complaint.]—A complaint was made before justices by the master of a British ship against six seamen for continuing to neglect duty, contrary to 1894 Act, s. 225 (1) (*e*). No entry of the offence had been made in the official log-book, & the justices dismissed the complaint on this ground for want of jurisdiction :—*Held :* the making of the entry in the official log-book was not a condition precedent to the hearing of the complaint. Even where no entry of an offence had been made, & there had consequently been default under the section, the Court was not without jurisdiction to proceed. The effect of 1894 Act, s. 228 (*d*), was to confer on the ct. in such a case a discretion either to receive other evidence or to refuse to do so & dismiss the complaint.—PATTERSON *v.* ROBINSON, [1929] 2 K. B. 91 ; 98 L. J. K. B. 457 ; 141 L. T. 165 ; 93 J. P. 165 ; 27 L. G. R. 422 ; 28 Cox C. C. 626 ; 18 Asp. M. L. C. 35, D. C.

939. *Add. Annotation :*—**Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

956. *Add. Annotation :*—*As to* (2) **Reld.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

Part IV.—Authority and Liability of Master as Custodian.

966. *Add. Annotation :*—**Reld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1.

988a. ——.]—Motion by defts., owners of the steamship *G.*, to stay proceedings in an action which had been commenced against them by the owners of part of the cargo laden on the steamship *V.* for damage sustained by the cargo in consequence of a collision between the [illegible] *V.* on behalf of himself & owners of the cargo on the *V.* & bail was obtained. Subsequently judgment was given in favour of owners of the *V.* After judgment had been given in the proceedings abroad, owners of part of the cargo of the *V.* began the present action :—*Held :* the master had no authority to commence the action abroad on behalf of the cargo owners, & that they were not bound by that action, nor were they estopped by it from bringing the present proceedings. Motion dismissed.—THE "GLENLUCE" (1930), 170 L. T. Jo. 399.

[illegible] Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; Haynes *v.* Harwood, [1935] 1 K. B. 146.

1107. *Add. Annotation :*—**Reld.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

Part V.—General Statutory Provisions for Safety of Ship and Cargo.

See, now, Merchant Shipping (Safety & Load Line Conventions) Act, 1932 (c. 9).

1596. *Add. Citation :*—17 Asp. M. L. C. 303.

1597. *Add. Annotation :*—**Reld.** Great Western Ry. Co. *v.* Kassos Steam Navigation Co. (1930), 144 L. T. 121.

PART III. SECT. 4, SUB-SECT. 9.

797 i. *Advance note—Liability on.*]—Deft. gave a seaman's advance note to B. a seaman for a one-half month's wages at V., payable five days after the sailing of the M. from B.C. Pltf. cashed the note for B., who then joined his ship before sailing to Victoria, where the ship (being a rum runner) was held by the authorities for breach of customs regulations, & not allowed to leave B.C. Deft. was duly notified that pltf. held the note :—*Held :* deft.'s conduct was the sole cause of the impossibility of performance, & having by his own conduct made it impossible for the ship to leave B.C. he was liable on the note.—IMPERIAL VETERANS IN CANADA *v.* EASTERN FREIGHTERS, LTD. (1927), 39 B. C. R. 17.—**CAN.**

PART III. SECT. 4, SUB-SECT. 12.—A.

aa. *Action for unearned wages.*]—The captain, mate, & certain seamen of the *A.* had the ship arrested in a joint action *in rem* for wages. The claim made was for one month & some days, being not only the amount actually earned, but also for substantial sums not earned, which were more in the nature of damages :—*Held :* wages cannot be sued for until earned, & where a hiring at so much a month is made, no wages are or can be earned until the whole month's service is performed.—BURKE *v.* THE AMLA, [1929] 4 D. L. R. 873 ; Ex. C. R. 194.—**CAN.**

PART III. SECT. 4, SUB-SECT. 12.—C.

sd. *Set-off.*]—In an action by a seaman for wages deft. may plead set-off for value of goods sold, or necessaries furnished, to the seaman's family.—GRANDY *v.* ZWICKER & CO., [1936] 3 D. L. R. 512.—**CAN.**

PART III. SECT. 4, SUB-SECT. 12.—D.

847 i. *Appeal—From sheriff substitute—Does not lie.*]—BAIN *v.* ORMISTON, [1928] S. C. (Ct. of Sess.) 764.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

sb. *Purchaser suffering judgment—Whether liable to interest.*]—The vendee of a ship without notice of a claim for necessaries against her, who offers to suffer judgment for the amount of such claim is not liable for interest upon the same.—HODDER (W. W.) CO., INCORPORATED *v.* "STRANDHILL" (N. S. Adm.), [1929] Ex. C. R. 253.—**CAN.**

1599a.— — Method of measurement—Necessity for compliance with statute.]—Measurement of the space occupied by deck cargo on a ship must, in accordance with the provisions of Merchant Shipping Act, 1894 (c. 60), s. 85 (3), be made in the manner directed by Sched. II., r. 1, of the Act. A memorandum by an officer of Customs that the proper measurement has been made, if, in fact, that measurement has been made by some other method, is of no effect.—GREAT WESTERN RY. CO. *v.* KASSOS STEAM NAVIGATION CO. (1930), 144 L. T. 121; 18 Asp. M. L. C. 174.

Part VII.—Carriage of Goods.

1651. *Add. Annotation :*—**Refd.** The Erik Boye (1929), 142 L. T. 335.

1663a. —— —— ——.]—COMPANIA NAVIERA VASCONGADA *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD. (1936), 80 Sol. Jo. 110.

1665. *Add. Annotation :*—**Refd.** Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

1682. *Add. Annotations :*—**Refd.** A.-G. *v.* Blackpool Corpn. (1928), 92 J. P. 50; *Re* Jenkins, Jenkins *v.* Davies, [1931] 2 Ch. 218; Lazard Bros. & Co. *v.* Brooks (1932), 38 Com. Cas. 46.

1690. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1701. *Add. Annotation :*—**Refd.** De Beéche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148.

1712. *Add. Annotation :*—*As to* (1) **Refd.** Hain S.S. Co. *v.* Sociedad Anonima Comercial de Exportacion y Importacion (Louis Dreyfus & Cia), Ltd. of Buenos Aires (1934), 50 T. L. R. 387.

1715. *Add. Annotations :*—**Distd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545. **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd. (1931), 48 T. L. R. 127. **Refd.** Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399; Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249; Dreyfus (Louis) & Co. *v.* National S.S. Co., [1935] 2 K. B. 313; Mann, Taylor & Co. *v.* Royal Bank of Canada (1935), 40 Com. Cas. 267; North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328; Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co. (1937), 42 Com. Cas. 332.

1723a. " Approved commercial bills on London "—Trade usage—Ninety day bills.]—GRIPAIOS *v.* WALLIS (KAHL) & CO., LTD. (1928), 45 T. L. R. 161.

1731a. Payment of stevedores at " current rates."]—BRITAIN S.S. CO., LTD. *v.* BUNGE & CO., LTD. (1929), 46 T. L. R. 40; 73 Sol. Jo. 818; 35 Com. Cas. 163.

1750. *Add. Annotation :*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1763. *Add. Annotation :*—**Refd.** Dreyfus (Louis) & Co. *v.* National S.S. Co., [1935] 2 K. B. 313.

1764. After this case add : —

Frustration of adventure.]—*See* CONTRACT, Vol. XII., pp. 386-392, Nos. 3175 3200, & Supp.

1764a. Rescission—Innocent misrepresentation.]—Defts., who had bought a ship without knowing that the British Govt. had given directions (which in substance were as compulsory as requisition) that she should make a particular voyage, chartered her to pltfs. by a charter-party containing the statement that she was " now at Liverpool, ready to-morrow," and the following clause : " Charterers, however, take the risk of the steamer being directed to perform any special voyage or voyages by the British or French Govts." Defts. entered into the contract on the basis of a representation that the vessel was free, but in fact she had been directed by the British Govt. to go to Malta with coal. In an action for rescission of the charter on the ground of a misrepresentation which though innocent was material :—*Held :* the clause as to Govt. directions applied only to future directions,

PART V. SECT. 1.

f l. ——.]—Sect. 44 (2) of Navigation Act, 1912-1926 provides that " If a ship proceeds to sea being short in her crew of not more than one-fifth of her engine-room staff, or one-fifth of her deck complement, the master or owner shall not be liable under this sect. if it is proved that the breach was not occasioned through any fault of his own " :—*Held :* (1) the excuse contained in sub-sect. (2) is established when it is proved that deft. honestly endeavoured to obtain a full crew & that his failure to do so did not arise from his omission to do something which he reasonably ought to have done : (2) firemen & trimmers form part of a ship's engine-room staff within the sub-section.—DAY *v.* YATES (1931), 45 C. L. R. 32; 4 A. L. J. 410; [1931] Argus L. R. 128.—**AUS.**

sk. *Equipment in good condition when installed—Rust.*]—In an action for personal injuries, brought by the mate of a steam trawler against the registered owners & the master, it appeared that, while the trawl was being taken on board by means of a steam winch, the winch broke down, &, in order to save the gear, the master decided to use the hand windlass. As the windlass, although mechanically perfect, was encrusted with rust, the master ordered the engineers to put it into working order by removing the rust, & they succeeded in doing so. They, however, omitted to notice that the iron pawl, which acted as a brake to prevent the windlass from suddenly reversing while in use, had become immovable through rust, & was not operating. As a result, while the trawl was being hoisted, a roll of the vessel threw an extra strain on the windlass, which suddenly reversed, & pursuer, who was working the windlass, was struck down & seriously injured. In a question whether the accident was due to the fault of defenders, *et separatim* to the failure of the owners to observe Merchant Shipping Act, 1894, s. 458 :—*Held :* (1) the owners, as employers, had discharged their common law & statutory obligations to the pursuer, at common law, in respect that they had provided a windlass which, when installed, was free from mechanical defect, &, under statute, in respect that, even if the windlass was still a necessary part of the ship's equipment, its rusted condition did not render the ship unseaworthy within sect. 458 (1), the test of seaworthiness being whether the vessel was fit to encounter the ordinary perils of the sea; (2) the true cause of the accident was the negligence of the engineers, who were pursuer's fellow-servants; (3) as the master was entitled to delegate the work of de-rusting to the engineers as competent workmen, he had no ordinary duty to inspect the result of their work, & in the absence of an averment of any special duty of that nature, he was not liable for personal negligence. Defenders assoilzied.—M'LEOD *v.* HASTIE & SONS, [1936] S. C. 501.—**SCOT.**

PART VI. SECT. 1.

sa. *Departure without clearance—Liability to detention—Motor boat.*]—A motor boat of 8 tons burthen may be a " vessel " within Customs Act, s. 244, & so liable to detention if she departs without a clearance.—NOLAN *v.* MCKINNON (1932), 59 C. C. C. 189; 7 M. P. R. 169.—**CAN.**

& on the facts the contract had not been sufficiently performed to preclude rescission, & pltfs. were entitled to succeed.—COMPAGNIE CHEMIN DE FER PARIS—ORLEANS *v.* LEESTON SHIPPING CO., LTD. (1919), 36 T. L. R. 68.

1780a. Breach of duty—Broker assuming to charter vessel to himself—Ratification of wrongful act.]—Pltfs., owners of the *D.*, instructed H., a broker, to procure a charterparty for their ship. H. being minded, in breach of his duty as a broker, to make use of the ship for his own ends, purported to effect a charterparty dated Aug. 9, 1926, between pltfs & an export co. of Danzig " & others " as charterers. This document was signed by H. " as agent only " for the owners & by H. " on behalf of the charterers as per separate chartering notes." By one of the clauses of the document the shipowners were to have a lien for all dead freight & demurrage at the port of loading. H. had no authority to act on behalf of the export co., who knew nothing about the transaction. Defts., timber merchants in London, bought from S. & Co., shippers in Danzig, red wood at a price including cost, freight & insurance from Danzig to London. S. & Co. engaged cargo space for the wood on board the *D.*, by means of chartering notes signed by H. purporting to act " by order of the owners," but without their authority, & the wood was shipped on board the *D.* at Danzig under bills of lading signed by H. purporting to act for & on behalf of & with the authority of the master. Each bill of lading incorporated the terms, conditions & clauses of the so-called charterparty of Aug. 9, among which was the above lien clause. The bills of lading were indorsed by S. & Co. & tendered under the contract of sale to defts., who accepted them & paid S. & Co. for the goods. The *D.* left Danzig without a full cargo several days after the lay days had expired. When she arrived in London the master deposited the wood with wharfingers subject to a lien in favour of pltfs. for dead freight & demurrage, & pltfs. brought an action against defts. for a declaration that they were entitled to the lien :—*Held :* the lien clause in the document of Aug. 9 was incorporated in the bills of lading, on the grounds that (1) pltfs., by taking the cargo on board their ship & issuing bills of lading in respect of it after they knew of H.'s breach of duty in assuming to charter their vessel to himself, had ratified his act & so validated the charterparty, & (2) the incorporation of the lien clause was not in any way dependent or contingent upon the charterparty being a valid or effective document, for in the absence of a condition to the contrary, one document, or part thereof, might be incorporated in another, although the first document had, of itself, no legal effect whatever ; (3) defts. could not support a plea in avoidance of circuity of action, because it was essential to that plea that the amount recoverable by deft. pleading it from pltf. in the action in which it was pleaded should be the exact amount recoverable by pltf. from him ; & as S. & Co. were not parties to the action, it could not be averred that the damages, if any, recoverable by defts. from S. & Co. for breach of the contract of sale would be the same in amount as the sum recoverable by pltfs. from defts. under the terms of the bills of lading, & it did not appear that S. & Co. had any cause of action against pltfs., whose liabilities depended upon the bills of lading.—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., [1928] 2 K. B. 371 ; 97 L. J. K. B. 684 ; 139 L. T. 217 ; 33 Com. Cas. 277 ; 17 Asp. M. L. C. 465, C. A.

1792. *Add. Annotation :*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., [1936] 2 All E. R. 386.

1796. *Add. Annotation :—As to* (1) **Refd.** The Penelope, [1928] P. 180.

1800. *Add. Annotation :*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

1828a. Representations as to capacity of ship to carry specific cargo—Whether conditions precedent.]—After protracted negotiations pltfs.' brokers on June 12, 1934, signed on their behalf a time charter chartering defts.' tanker for twelve months with the option of cancelling it if the vessel was not ready by July 15. Pltfs. had asked defts. for details of pipe lines & heating coils, & received a reply as follows : " Pipe lines 350 mm. intake ; 300 mm. outlet ; heating coils fitted right at bottom of tanks." These statements were embodied as " guaranteed " in the charterparty which also contained an arbn. clause. Upon inspection it was found that these statements were not correct, & pltfs. cabled their agents not to sign the charter, but it had, in fact, already been signed, though it was retained in the possession of such agents. The ship was required for the carriage of molasses, for which without certain alterations she was not suitable. These alterations were not made, & ultimately pltfs. refused to take the ship :—*Held :* (1) the charterparty had become a contract binding upon the parties ; (2) the representations made before the contract was entered into had become merged in the contract by being embodied therein, & the question was therefore not one of rescission, but whether these representations had become conditions precedent for the breach of which pltfs. became entitled to & did repudiate it ; (3) the representations, being " guaranteed," had become conditions precedent, & pltfs. had properly repudiated the contract. (4) It was further contended that once the conclusion was reached that the charterparty became binding upon the parties the action should be dismissed with costs, as the arbn. clause had become operative. The pleadings, it was contended, appeared to be framed to deal only with the question whether the arbitrator had or had not jurisdiction, & defts. were not entitled to ask for a stay of the action :—*Held :* it being no longer necessary to plead conclusions of law, the pleading was sufficient

in law to raise the question whether pltfs. were entitled to & did repudiate the contract &, if defts. intended to rely upon this contention, they should have applied for a stay of the action under the Arbn. Acts, 1889–1934, in the ordinary way.—PENNSYLVANIA SHIPPING CO. *v.* COMPAGNIE NATIONALE DE NAVIGATION, [1936] 2 All E. R. 1167; 155 L. T. 294; 80 Sol. Jo. 722; 42 Com. Cas. 45.

1838. *Add. Annotation:*—**Consd.** The Kate, [1935] P. 100.

1840. *Add. Annotations:—As to* (1) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

1845. *Add. Annotation:*—**Consd.** Monroe Bros., Ltd. *v.* Ryan, [1935] 2 K. B. 28.

1859. *Add. Annotations:*—**Refd.** Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd. (1935), 104 L. J. P. C. 88; Carras *v.* London & Scottish Assurance Corpn., Ltd., [1936] 1 K. B. 291; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

1867. *Add. Annotation:*—**Consd.** Pennsylvania Shipping Co. *v.* Compagnie Nationale De Navigation, [1936] 2 All E. R. 1167.

1872. *Add. Annotation:*—**Consd.** Monroe Bros., Ltd. *v.* Ryan, [1935] 2 K. B. 28.

1873. *Add. Annotation:*—**Consd.** Monroe Bros., Ltd. *v.* Ryan, [1935] 2 K. B. 28.

1874. *Add. Annotation:*—**Refd.** Monroe Bros., Ltd. *v.* Ryan, [1935] 2 K. B. 28.

1875. *Add. Annotation:—Generally,* **Refd.** Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932), 38 Com. Cas. 79.

1878a. To load on or about a certain date—Exception of unavoidable hindrances beyond owners' control—Delay due to performance of subsequent charter with other characterers.]—By a charterparty, dated Aug. 2, 1933, shipowners chartered the S.S. *W.*, stated to be "expected ready to load about Sept. 11, 1933," to charterers to proceed "with all convenient speed" to Hamburg & there load from the charterers a full & complete cargo of sugar & salt, & being so loaded proceed with all convenient speed to Merchants Quay, Kilrush, or so near thereto as she might safely get. The charterparty contained exceptions of (*inter alia*) "any other unavoidable accident or hindrances beyond charterers' or owners' control." On Aug. 31, 1933, the shipowners chartered the S.S. *W.*, "expected ready to load on or about Sept. 6/7," to other charterers, to load a cargo of stone at Porthoustock (near Falmouth) for Felixstowe. The *W.* arrived at Porthoustock on Sept. 7, but owing to bad weather was unable to load until Sept. 11, with the result that, after discharging at Felixstowe, she did not arrive at Hamburg until Sunday, Sept. 17, & did not commence to load until Sept. 18. The shipowners' agent at Hamburg on Sept. 5 gave the shippers of the sugar & salt notice of readiness to load for Sept. 14. The cargo was accordingly brought down to Hamburg in barges ready for loading on Sept. 14. Owing to the delay in the *W.* reaching Hamburg three days' demurrage was incurred in respect of the barges, & the vessel arrived off Kilrush too late for the spring tides. As the charterers urgently required the sugar, 80 tons were lightered whilst the vessel was waiting for the next spring tides. The shipowners sued the charterers to recover the balance of the freight. This claim was admitted, but the charterers counterclaimed for (*inter alia*) demurrage on the barges at Hamburg & lighterage at Kilrush. The shipowners relied on the exception in the charterparty of Aug. 2 of "unavoidable . . . hindrances beyond . . . owners' control" as excusing the delay of the *W.* in arriving at Hamburg:—*Held:* the exceptions in the charterparty did not apply to matters which happened before the ship entered upon the charterparty voyage, & as the unavoidable hindrance beyond the owners' control, which was relied upon by the shipowners, happened upon the voyage on the intermediate charterparty of Aug. 31, & not upon the voyage on the charter party of Aug. 2, the shipowners could not rely upon the exception as a defence to the charterers' counterclaim.—MONROE BROS., LTD. *v.* RYAN, [1935] 2 K. B. 28; 104 L. J. K. B. 450; 153 L. T. 31; 51 T. L. R. 361; 79 Sol. Jo. 320; 40 Com. Cas. 193, C. A.

1879a. Provision of ice-breakers—Must enable vessel to reach loading place.]—Resps., as owners, chartered a steamer to applts. to proceed to Mariupol & load a cargo of coal, the charterparty providing, "In the event of the loading port being inaccessible by reason of ice on vessel's arrival at the edge of the ice or in case frost sets in after vessel's arrival at port of loading, the charterers undertake to provide ice-breaker assistance to enable steamer to reach, load at, & leave loading port, steamer being free of expense for ice-breaker assistance":—*Held:* by this clause the charterers undertook to provide ice-breaker assistance to enable the steamer to reach its loading place, & they could not justify their failure to do so on the pretext that the ice-breakers were not under their control.—UGLEEXPORT CHARKOW *v.* ANASTASIA S.S. OWNERS (1934), 151 L. T. 261; 50 T. L. R. 361; 78 Sol. Jo. 297; 39 Com. Cas. 238; 18 Asp. M. L. C. 482, H. L.; *affg.* S. C. *sub nom.* ANASTASIA S.S. OWNERS *v.* UGLEEXPORT CHARKOW (1933), 149 L. T. 342, C. A.

Annotations:—**Consd.** Dampskibsselskabet "Heimdal" *v.* Russian Wood Agency, Ltd. (1932), 148 L. T. 140; Danneberg *v.* White Sea Timber Trust, Ltd. (1935), 52 T. L. R. 5. **Refd.** Sanguineti Fu Davide *v.* Ugleexport of Moscow (1933), 150 L. T. 140; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; Ugleexport of Moscow *v.* Sanguineti (Andrea) Davide of Genoa (1935), 40 Com. Cas. 309; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

1879b. —— ——.]—Applt., as owner, chartered the steamship *E.* to resps. to convey a cargo of coal from Russia to Italy, the charterparty providing:—

"In the event of the port of loading being inaccessible by reason of ice on vessel's arrival at Kertch if loading at Mariupol or Berdjanska or at the edge of ice if loading at Nicolaieff or Theodosia, or in case frost sets in after vessel's arrival at loading port, the charterers undertake to provide ice-breaker to enable steamer to reach load at & leave the said port, steamer being free of expense for ice-breaker. Captains must follow official instructions issued by authorities for vessel convoyed by ice-breakers through the ice."

The charterers nominated Mariupol as the port of loading, & the *E.* proceeded to Kertch, & the authorities decided that the ice-breaker should escort her with three other ships in a convoy. The *E.* was delayed several weeks in arriving at Mariupol by the conditions of weather & ice which supervened unexpectedly after the convoy started. The shipowner claimed damages for delay & contended, "(*a*) that the ice clause imposed on the charterers an obligation to provide an ice-breaker for the exclusive service of the *E.*, & that if the obligation had been complied with *E.* would have reached Mariupol without delay; (*b*) that the charterers were responsible for the delay of the *E.* on transit from Kertch to Mariupol while the ice-breaker was engaged in ice-breaking for other vessels of the convoy & not for the *E.*" On a case stated by an umpire:—*Held:* the ice clause imposed an obligation on the charterers to make arrangements for the services of an efficient ice-breaker to be given to the *E.* in such manner as in the circumstances of weather & ice existing & to be reasonably anticipated would enable that vessel, apart from accidents, to reach her loading port without undue delay; & that, as the umpire had found as a fact that the provision of the ice-breaker to assist the *E.* together with three other vessels in a convoy was in accordance with this obligation, the shipowner's claim failed; but, on appeal:—*Held:* the case must be remitted to the umpire for reconsideration & restatement in view of recent decisions of the cts.—SANGUINETI (ANDREA), FU DAVIDE OF GENOA *v.* UGLEEXPORT OF MOSCOW (1934), 50 T. L. R. 407; 78 Sol. Jo. 307; 39 Com. Cas. 248, C. A.; *affd., sub nom.* UGLEEXPORT OF MOSCOW *v.* SANGUINETI (ANDREA) DAVIDE OF GENOA (1935), 40 Com. Cas. 309, H. L.

Annotation:—**Refd.** Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158.

1879c. —— **Assistance outside port limits.**]—Resps., as owners, chartered a steamer to applts. to take a cargo of timber in winter from Leningrad to Hull, the charterparty providing: "Charterers to supply the steamer with ice-breaker assistance if required by the captain to enable her to enter or leave port of loading free of all expenses to the owners. . . . Ice-breaker assistance to be rendered within forty-eight hours after steamer's arrival at the ice edge or readiness to leave the port of loading. Any time lost in waiting ice-breaker beyond forty-eight hours after readiness to proceed to be for charterers' account":—*Held:* the obligation extended not merely to the boundary of the port but to the point where the ship would be clear of the ice & able to proceed on her voyage, & the convoy system could be justified only so far as it could be reconciled with the paramount obligation to have regard both to the safety & to the despatch of the ship.—RUSSIAN WOOD AGENCY, LTD. *v.* DAMPSKIBSSELSKABET "HEIMDAL" (1934), 151 L. T. 261; 50 T. L. R. 361; 78 Sol. Jo. 297; 39 Com. Cas. 238; 18 Asp. M. L. C. H. L.; *affg.* S. C. *sub nom.* DAMPSKIBSSELSKABET HEIMDAL *v.* RUSSIAN WOOD AGENCY, LTD. (1933), 149 L. T. 342, C. A.

Annotations:—*As to* (1) **Refd.** Akties Steam *v.* Arcos, Ltd. (1933), 149 L. T. 428. *Generally,* **Refd.** Sanguineti Fu Davide *v.* Ugleexport of Moscow (1933), 150 L. T. 140.

1879d. —— —— **Damages for injury.**]—A charterparty provided that the charterers should supply the ship with ice-breaker assistance, if required by the captain, to enable her to enter or leave the loading port, & that the captain should notify the port authorities in due time of readiness to enter or leave the port, ice-breaker assistance to be rendered within forty-eight hours after arrival at the ice edge or readiness to leave, as the case might be, any time lost in waiting for assistance beyond forty-eight hours after readiness to proceed to be for charterers' account:—*Held:* (1) a notice given by the ship on Dec. 23, that she expected to arrive at the ice edge on Dec. 27, was a sufficient notification to impose on the charterers the duty to have an ice-breaker ready to assist her within forty-eight hours of her arrival; (2) thereafter it was the duty of the charterers to have an ice-breaker in attendance until the ship was clear of the ice; (3) the owners were entitled to damages for injury sustained by the ship during a period when she was left in the ice without ice-breaker assistance. (4) A portion of the timber loaded into the ship was coated with ice & snow, whereby its bulk was increased & the quantity which the ship could carry was reduced:—*Held:* the ship was entitled to dead freight in respect of the reduction in her carrying capacity so caused.—AKTIES. STEAM *v.* ARCOS, LTD. (1933), 149 L. T. 428; *affd.*, 39 Com. Cas. 158; 18 Asp. M. L. C. 409, C. A.

Annotations:—*As to* (2) **Refd.** Sanguineti Fu Davide *v.* Ugleexport of Moscow (1933), 150 L. T. 140. *Generally,* **Refd.** A/S Rendal *v.* Arcos, Ltd., [1936] 1 All E. R. 623.

1879e. —— **Sufficiency of notice.**]—AKTIES. STEAM *v.* ARCOS, LTD., No. 1879d, *ante.*

1879f. —— **Undertaking to "arrange for provision of ice-breaking assistance.**] — Resps., as owners, chartered a steamer to applts. to proceed to Leningrad & load a cargo of timber for carriage to Antwerp. Having regard to earlier decisions on the question of the provision of ice-breaker assistance, the present charterparty provided: "(1) In the event of the port of loading being inaccessible by reason of ice or in case ice sets in after vessel's arrival at port of loading the charterers undertake to arrange for the provision by the port authorities of ice-breaker assistance if required by the captain free of expense to the steamer, the steamer complying with official instructions & rules issued by the authorities concerning ice-breaker assistance. . . . (4) Charterers shall not be responsible for any loss of time during passage through ice &/or any loss or damage caused to the steamer by ice, or for any detention on passage through ice":—*Held:* under clause 1 the charterers must provide ice-breaker assistance which was reasonably continuous from the moment when the ship entered the ice, & under clause 4 the charterers were only protected from liability for loss of time & for damage while ice-breaker assistance was being rendered under the terms of the charterparty.—DANNEBURG *v.* WHITE SEA TIMBER TRUST, LTD. (1935), 154 L. T. 25; 52 T. L. R. 5; 79 Sol. Jo. 796; 41 Com. Cas. 60; 18 Asp. M. L. C. 542, C. A.

1879g. —— **Notice of claim for damage—Effect of reservation of right to claim.**]—A steamship was chartered by Arcos, Ltd., of London,

"for Exportles, Moscow," in terms of a Chamber of Shipping "Baltwood" charterparty, which contained a clause binding the charterers to supply the steamer with continuous ice-breaker assistance, & a provision that notice of claims must be given within twelve months of the date of the vessel's arrival at final port of discharge. As a result of breach of the ice clause by the charterers, the steamer was damaged. The owners intimated a claim for demurrage arising out of the delay caused by the ice, & the claim was dealt with by the Russian Trade Delegation at Oslo, as agents for Exportles, Moscow. The owners also intimated that they reserved their right to claim for compensation in respect of ice damage, but no further notice of claim was given within the twelve months:—*Held:* (1) the reservation by the owners of their right to claim in respect of the ice damage was a sufficient notice of claim within the charterparty; (2) adequate notice was given to the charterers through the agency of the Russian Trade Delegation at Oslo; (3) such a notice was in effect a notice to Exportles.—A/S RENDAL *v.* ARCOS, LTD., [1937] 3 All E. R. 577; 106 L. J. K. B. 756; 157 L. T. 485; 53 T. L. R. 953; 81 Sol. Jo. 733; 43 Com. Cas. 1, H. L.

1879h. —— —— **Service on agent—Proof of agency.**]—A/S RENDAL *v.* ARCOS, LTD., No. 1879g, *ante*.

1879j. **"Safely aground."**]—This was an action for damages instituted by the owners of the tanker *P.* against the owners & managers of an oil wharf at Boston (Lincs.) & of the berth adjacent thereto, & against the charterers of the *P.* under a charterparty which provided *inter alia* that the *P.* was "to proceed to Boston (Lincs.) or so near thereto as she can safely get (safely aground)" in respect of damage alleged to have been sustained by the *P.* at the said berth, & of the loss of freight resulting from the vessel's inability to complete her loading thereat. Against the first defts., pltfs. alleged negligence & breach of contract & (or) warranty, contending (*a*) that the first defts. had improperly invited the *P.* to occupy the said berth when they knew or ought to have known that it was not safe for the *P.* to lie in, & (*b*) that by so inviting the *P.* for reward, they had impliedly warranted that the said berth was safe & fit for the *P.* to occupy. As to the second defts., pltfs. said it was agreed by the charterparty that the ship should proceed to Boston or as near thereto as she could safely get (safely aground) & there load her cargo, & that by ordering the *P.* to the said berth the second defts. had expressly &/or impliedly warranted that the *P.* could lie safely aground in the said berth; that in fact the said berth was unsafe for the *P.* to lie in, & that therefore the second defts. had committed a breach of the said warranty. Both defts. denied liability, & the first defts. counterclaimed for damages in respect of damage done to their berth & to their mooring lines, alleging that the said damage was due to the negligence of those on board the *P.*, in that they had moored the vessel improperly & in an improper position. The ct. found that *P.* was moored to the wharf, which had a jetty & piling, under the general directions of the first defts.; that she lay with a slight angle out forward from the jetty & that this was not corrected; that after the ship took the ground she had a slight list to starboard; her forward part gradually slipped away, & her forward moorings, & later one of her wires aft, parted so that she pivoted on her stern & lay aground at a substantial angle to the jetty, whereby she sustained serious bottom damage; that as regards the berth, work had been done upon it during July to clear it for the *P.*; that the previous history of the berth had not given the first defts. any warning that such an accident would be likely, & that the first defts. had warned those in charge of the ship that she was lying in an improper position:—*Held:* on the above findings: (1) although a ship lying at an angle when moored would be more likely to slip than if tight up, & a careful master ought to manage his mooring ropes so as to keep the ship parallel & close up to the jetty, the mere fact that the vessel took the ground with a slight angle outward did not indicate negligence on the part of those in charge of her; (2) the accident was caused by the inability of the berth to hold up the ship as she lay slightly angled out, & that, as the first defts. did not warrant the safety of the berth & took all reasonable steps to make it safe, they were not liable; (3) the second defts., as charterers, had no more knowledge about the fitness of the berth than pltfs., & they had given no express warranty, & no warranty could be implied from the terms of the charterparty, that the berth was safe. Pltfs.' claim against both defts. & the first defts.' counterclaim were dismissed, no order being made as to the costs.—THE "PASS OF LENY" (1936), 155 L. T. 421.

1898a. **"Heavy grain"—Option to ship other cargo—Expense of discharge.**]—A steamer was chartered for a cargo of "heavy grain"—*i.e.* wheat, maize, & rye, the charterers to have the option of shipping other lawful merchandise, & the extra expense of discharging "such merchandise" over that of discharging heavy grain was to be paid by the charterers. Part of the cargo shipped consisted of lawful merchandise other than heavy grain, & part of the optional cargo cost more, & part less, to discharge than heavy grain, the total cost of discharging the optional cargo being more than in the case of heavy grain:—*Held:* the only extra expense which the shipowners were entitled to recover was the extra expense of discharging the optional cargo as a whole, & anything saved in discharging part must be set off against the extra expense for the rest.—WOODFIELD STEAM SHIPPING CO., LTD. *v.* BUNGE Y BORN INDUSTRIAL OF BUENOS AYRES (1933), 49 T. L. R. 188; 77 Sol. Jo. 64.

1899. *Add. Annotation:*—**Refd.** The Erik Boye (1929), 142 L. T. 335.

1906a. **Expenses of discharge.**]—Applt., as owner, chartered to resps. a steamer to bring a cargo of wheat, maize, or rye from Argentina, the charterparty providing, "Charterers have the option of shipping other lawful merchandise. . . . All extra expenses in . . . discharging such merchandise over heavy grain to be paid by charterers." The steamer loaded a cargo of wheat, oats, bran, & cottonseed & peanut cake, & was ordered to St.

Nazaire, where the cost of discharging wheat & maize was less than the cost of discharging rye. Wheat, maize, & rye were all heavy grain, but substantially the port of St. Nazaire did not deal with cargoes of rye from oversea. The shipowner claimed from the charterers the extra expense in discharging the cargo, other than wheat, over the expense of discharging an equivalent weight tonnage of wheat or maize, but the charterers contended that as they had the right to ship rye the equivalent weight tonnage to be used in the calculation was that of rye & not of wheat or maize:—*Held:* the charterers were liable only for the extra expense beyond what they could have caused the shipowner to incur if they had shipped a cargo of rye.—LYKIARDOPULO *v.* BUNGE Y BORN, LTD., [1934] 1 K. B. 680; 103 L. J. K. B. 277; 149 L. T. 46; 49 T. L. R. 294; 18 Asp. M. L. C. 399.

1933. *Add. Annotation:*—**Consd.** Dreyfus (Louis) & Co. *v.* National S.S. Co., [1935] 2 K. B. 313.

1933a. ——.]—Where a ship has been chartered to carry goods, in the absence of any prohibition, express or implied, in the charterparty, the shipowners are entitled to carry passengers if they can do so consistently with their obligations to the charterers.

Pltfs. chartered a ship belonging to defts. to carry grain from the River Plate to European ports. A clause in the charterparty provided: "The charterers are to have the full reach & burthen of the steamer including 'tween & shelter decks, bridges, poop, etc. (provided same are not occupied by bunker coals &/or stores)":—*Held:* the clause applied to cargo space only. It did not preclude the shipowners from carrying passengers.—SOCIEDAD ANONIMA COMMERCIAL DE ESPORTACION E IMPORTACION (DREYFUS (LOUIS) & CO.) *v.* NATIONAL S.S. CO., [1935] 2 K. B. 313; 104 L. J. K. B. 529; 153 L. T. 180; 51 T. L. R. 451; 79 Sol. Jo. 454; 40 Com. Cas. 302.

1958. *Add. Annotation:*—*As to* (4) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

1968. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

1971. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

1985. *Add. Annotation:*—*As to* (1) **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

2001. *Add. Annotations:*—*As to* (2) **Refd.** Bentall, Horsley & Baldry *v.* Vicary, [1931] 1 K. B. 253. *Generally,* **Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

2006. *Add. Annotations:*—**Refd.** Gaze W. H. & Sons *v.* Port Talbot Corpn. (1929), 93 J. P. 89; Bentall, Horsley & Baldry *v.* Vicary [1931] 1 K. B. 253.

2023. *Add. Annotation:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

2042. *Add. Annotation:*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., [1936] 2 All E. R. 386.

2050. *Add. Annotation:*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., [1936] 2 All E. R. 386.

2059. *Add. Annotation:*—**Refd.** Istros S.S. Owners *v.* Dahlstroem (F. W.) & Co., [1931] 1 K. B. 247.

2059a. —— **Express exception in charterparty.**]—By a charterparty in the form known as the Baltic & White Sea Conference Uniform Time Charter it was agreed between the owner of a steamship & charterers that the steamship should be taken on time charter by the charterers on terms & conditions which included: "Clause 8: Captain to prosecute all voyages with utmost dispatch. . . ." "Clause 10: . . . Should steamer be driven into port, or to anchorage, by stress of weather . . . causing detention to steamer, time so lost & expenses incurred shall be for charterers' account, even if caused through fault or want of due diligence by owners' servants." "Clause 12: Owners only to be responsible . . . for delay during the currency of this charter . . . if such delay . . . has been caused by want of due diligence on the part of owners or their manager, in making steamer seaworthy & fitted for the voyage, or any other personal act, or omission, or default of owners or their manager. Owners not to be responsible in any other case, nor for damage or delay whatsoever & howsoever caused, even if caused by neglect or default by owners' servants." During a voyage under the charterparty the captain, owing to bad weather, put into three harbours or sheltering places. The charterers having alleged that the captain had failed to prosecute his voyage "with utmost dispatch" within clause 8 of the charterparty & having claimed an allowance of hire in respect of the delay, recourse was had to arbn. The umpire found that there was nothing to justify the captain in putting into the harbours or sheltering places which he entered, that he had not prosecuted the voyage "with utmost dispatch" & that delay had been caused thereby, but that the delay had not been caused by any "personal act, or omission, or default" of the owner or his manager within clause 12. The award having been stated in the form of a special case:—*Held:* the owner was protected from liability for the delay by the provisions of clause 12 of the charterparty which, while not qualifying the duty to prosecute all voyages with utmost dispatch, placed on the captain by clause 8, afforded the owner a defence in such an action as the present.—ISTROS, S.S. OWNER *v.* DAHLSTROEM (F. W.) & CO., [1931] 1 K. B. 247; 100 L. J. K. B. 141; 144 L. T. 124; 36 Com. Cas. 65; 18 Asp. M. L. C. 177.

2073a. Re-delivery before expiration of period of hire—Calculation of amount repayable.]—

PART VII. SECT. 2, SUB-SECT. 21.—A.

2028 i. *What amounts on construction of chat* . . . the charterparty in suit it was provided *inter alia:* "the owner will let & the charterer will take, for the purpose of towing flats & barges, the steam launch *Srikrishna* . . . for a period of six months certain . . . provided that the charterer shall not ply the vessel . . . in salt water, nor use the same for any other purpose than towing flats & barges without the consent in writing of the owner:—*Held:* in the absence of any other provision contradictory to it, the agreement amounted to a demise of the vessel & the charterers were liable for negligence on the part of the master & crew.—VARAJA LAL & CO. *v.* RANADAPRASAD SHAHA (1935), I. L. R. 63 Calc. 53.—IND.

CHELLEW NAVIGATION CO., LTD. *v.* A. R. APPELQUIST KOLIMPORT A. G., No. 3092a, *post.*

2079a. Ship damaged—Improper loading by charterer.]—A steamer belonging to resps. was chartered by applts. under a time charterparty which provided (*inter alia*); (*a*) that the steamer should be employed in lawful trades between good & safe ports where she could lie always afloat or safe aground where steamers of similar size & draft were accustomed to lie aground in safety; (*b*) that the charterers should indemnify the owners against all consequences or liabilities arising from the captain's complying with the orders of the charterers; & (*c*) that the charterers should be responsible for loss or damage caused to the steamer or the owners by improper loading. In the events which happened the steamer was damaged in consequence of having been loaded at an unsafe berth & was off hire for some weeks under repair. Resps. claimed hire for the period during which the steamer was under repair; applts. contended that no hire was due & counterclaimed in respect of hire overpaid & other matters. The dispute was referred to arbn., & the umpire awarded, subject to the opinion of the ct. on a special case, in favour of the shipowners, the present resps. On argument of the special case before MACKINNON, J., the award was confirmed, & the charterers now appealed to the Ct. of Appeal:—*Held:* dismissing the appeal, *per* GREER, L.J., (i) if it were necessary a term must be implied in the charterparty extending the provision that the steamer must only be employed between safe ports to include a provision that she must only be loaded at safe berths in those safe ports; (ii) as the steamer had in fact been loaded at an unsafe berth she had been loaded at a berth which was outside the limits within which the owners had agreed that she should be employed & the charterers were therefore not entitled to rely on clauses inserted in the charterparty for their benefit; (iii) as the master had obeyed the orders of the charterers in loading at an unsafe berth the charterers were bound by the charterparty to indemnify the owners against the consequences thereof; (iv) the charterers were responsible for the damage to the steamer & the loss to the owners because the steamer had been improperly loaded within the meaning of the charterparty; *per* SLESSER, L.J., a term must be implied in the charterparty that the steamer must only be loaded at safe berths, & as this term had been broken by the charterers they were responsible for the consequences; *per* MAUGHAM, L.J., (i) the expression "safe port" does not include a safe berth within that port, & the suggested implied term in the charterparty could not therefore be implied; (ii) there was no finding by the umpire that the berth at which the steamer was loaded was in fact unsafe, or that it was selected by the charterers. The case ought, therefore, to go back to the umpire for further consideration & restatement.—LENSEN SHIPPING CO., LTD. *v.* ANGLO-SOVIET SHIPPING CO., LTD. (1935), 40 Com. Cas. 320, C. A.

2091. *Add. Annotation:—As to* (1) **Expld. & Apld.** Tynedale Steam Shipping Co. *v.* Anglo-Soviet Shipping Co., [1936] 1 All E. R. 389.

2094. *Add. Annotation:*—**Consd.** Tynedale S.S. Co. *v.* Anglo-Soviet Shipping Co. (1935), 51 T. L. R. 539.

2099a. —— Ship partially prevented from unloading —Loss of foremast.]—The "Baltime" Charter of 1920 includes the following clauses: ". . . the owners to maintain the steamer in a thoroughly efficient state in hull & machinery during service; . . . the steamer to be fitted & maintained with winches & derricks; . . . in the event of loss of time . . . caused by . . . accident preventing the working of the steamer & lasting more than 24 consecutive hours, hire to cease from commencement of such loss of time until steamer is again in efficient state to resume service." The steamer was damaged & lost her foremast to which the forward winches were attached. Discharge was delayed some six days & shore cranes & floating craft were hired by the charterers to give assistance:—*Held:* in the absence of an express or implied request by the owners for assistance they were not liable to repay to the charterers the sums paid for the hire of the shore cranes & floating craft; on a proper construction of the charterparty the cesser of hire clause had been put into operation by the delay, & the shipowners' right to be paid hire ceased in respect of the time occupied in discharge; in construing a standard charterparty of this nature it must be assumed that it was drawn & its terms settled with full knowledge of the cases reported prior to the time the document was settled, & was intended to be construed & ought to be construed in the light of those cases.—TYNEDALE STEAM SHIPPING CO., LTD. *v.* ANGLO-SOVIET SHIPPING CO., LTD., [1936] 1 All E. R. 389; 154 L. T. 414; 52 T. L. R. 304; 80 Sol. Jo. 224; 41 Com. Cas. 206, C. A.

2101. *Add. Annotation:*—**Consd.** Tynedale Steam Shipping Co. *v.* Anglo-Soviet Shipping Co., [1936] 1 All E. R. 389.

2104a. —— Damage sustained before making of charterparty.]—A time charterparty contained the following cesser clause: "In the event of loss of time from deficiency of men or stores, breakdown of machinery, whether partial or otherwise, collision, stranding, fire in ship & (or) cargo, damage or interference by authorities preventing the working of the vessel for more than twelve running hours, the payment of hire shall cease until she be again in an efficient state to resume her service at the place where the accident occurred. . . ." After the steamer came on hire she went into dry dock for four days to repair damage which she had sustained in collision before coming on hire. The owners allowed the charterers four days' hire, & claimed to recover the amount so allowed from the defts. in the collision action:—*Held:* the above cesser clause applied to damage arising before as well as after the making of the charterparty; the charterers were entitled to deduct four days' hire; & the owners were entitled to recover the amount so deducted from the defts. as damages for loss of use of their steamer.—THE ES ENVOY (1929), 141 L. T. 432; 35 Com. Cas. 61; 18 Asp. M. L. C. 54.

2128a. —— **In good order—"Fair wear & tear excepted."**]—CHELLEW NAVIGATION CO., LTD. *v.* A. K. APPELQUIST KOLIMPORT A. G., No. 3092a, *post.*

2129. *Add. Annotations :*—**Consd.** Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] 1 K. B. 1. **Refd.** The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386.

2136. *Add. Annotations :*—*As to* (1) **Refd.** The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242. *As to* (2) **Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *Generally*, **Refd.** Hyman *v.* Hyman, [1929] P. 1.

2139. *Add. Annotation :*—**Refd.** Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

2212. *Add. Annotation :*—*As to* (2) **Consd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

2219. *Add. Annotation :*—**Consd.** Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co., Ltd., [1932] 1 K. B. 490.

2230a. ——.]—Defts. bought timber to be shipped to Liverpool, & it was shipped in pltf.'s steamer along with the cargo of other shippers. The bill of lading was a clean bill, stating that a specified quantity had been shipped in good condition, & incorporating the terms of the charterparty, which provided that the statements in the bill of lading as to the goods having been shipped in good condition, & as to the aggregate number of pieces delivered to the steamer, should be conclusive evidence against the shipowner. At the time of signing the bill of lading the master signed a protest stating that part of defts.' goods was in bad condition. Defts. were indorsees of the bill of lading, & after the arrival of the steamer pltf. informed them that part of the cargo had been damaged before shipment. There being nothing to indicate to defts. that the damaged part belonged to them, defts. accepted the bill of lading, when presented, & they paid for the timber. On delivery they found that the timber was defective, & that the quantity was less than the specified quantity. The shipowner sued defts. for balance of freight, & defts. counterclaimed for damages for delivering part of the goods in a damaged condition, & for failing to deliver part of the goods shipped :—*Held :* as the information of defts. was not of such a nature as to justify them in rejecting the bill of lading, pltf. was estopped from disputing the statements in it, & defts. were entitled to succeed on their counterclaim.—EVANS *v.* JAMES WEBSTER & BROTHERS, LTD. (1928), 45 T. L. R. 136; 73 Sol. Jo. 60; 34 Com. Cas. 172.

Hon :—**Refd.** The Skarp, [1935] P. 134.

Add. Citation :—17 Asp. M. L. C. 307.

2254. *Add. Annotations :*—*As to* (1) **Consd.** The Skarp, [1935] P. 134. *As to* (2) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136. *As to* (4) **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

2256. *Add. Annotations :*—**Refd.** The Torni (1932), 101 L. J. P. 44; United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

2257. *Add. Annotations :*—*As to* (1) **Refd.** The St. Joseph, [1933] P. 119. *As to* (2) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136. *Generally*, **Refd.** Thomson (H. M.) *v.* Micks Lambert & Co. (1933), 39 Com. Cas. 40.

2257a. ——.]—Where a shipowner issues a bill of lading acknowledging the receipt of goods "in apparent good order & condition," he cannot afterwards prove, as against a holder or indorsee of the bill of lading, that the goods were damaged before shipment, if such damage would have been apparent on reasonable inspection: nor can he rely on the exception of insufficiency of packing within Carriage of Goods by Sea Act, 1924, Art. IV., r. 2 (*n*), if the insufficient packing was apparent on reasonable inspection.—SILVER *v.* OCEAN STEAMSHIP CO., LTD., [1930] 1 K. B. 416; 99 L. J. K. B. 104; 142 L. T. 244; 46 T. L. R. 78; 73 Sol. Jo. 849; 35 Com. Cas. 140; 18 Asp. M. L. C. 74, C. A.

Annotations :—**Consd.** The Skarp, [1935] P. 134. **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

2257b. Collateral protest as to damage signed by master.]—EVANS *v.* WEBSTER JAMES & BROS., LTD., No. 2230a, *ante.*

2259. *Add. Annotation :*—**Distd.** Evans *v.* Webster (1928), 45 T. L. R. 136.

2262a. ——.]—THE SKARP, No. 2288a, *post.*

2262b. Damage before shipment.]—EVANS *v.* JAMES WEBSTER & BROTHERS, LTD., No. 2230a, *ante.*

Annotation :—**Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266.

PART VII. SECT. 2, SUB-SECT. 22.—C.

2115 i. *Duration.*] — The pltf. chartered his boat to the deft. for fishing in the north for 60 days or longer if required. At the end of the 60 days deft. informed pltf. personally at V. that deft. would not require the boat any longer, & undertook to notify his cannery manager to that effect, but the notification did not reach the latter before the boat had left for another of deft.'s canneries, & on arrival there the manager told the captain, & also the engineer who was representing pltf., that he would not release the boat & that they should fish at a certain place. Fishing was carried on for another 30 days :—*Held :* the charterparty had been put an end to at the expiration of the 60 days.—PETERSON *v.* MILLERD PACKING CO., [1928] 4 D. L. R. 833; [1928] 3 W. W. R. 279.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 3.

2189 i. *Value of contents—Failure to insert — Limitation of shipowners' liability—To specific sum.*]—In an action by the indorsee of a bill of lading to recover damages in respect of a machine carried by the deft. ship & delivered in a damaged condition, the evidence established that its market value had been considerably depreciated & that the extent of the depreciation, based upon the market value of the machine delivered in good condition in Sydney, exceeded £100. The value of the machine had not been declared by the skipper before shipment & inserted in the bill of lading. Deft. failed to establish a case of statutory immunity from liability :—*Held :* pltf. should be awarded £100, the maximum amount of damages recoverable in those circumstances under Carriage of Goods by Sea Act, 1924, Sched., Art. IV., r. 5.—PARKE, LACEY, HARDIE, LTD. *v.* CLAN MACFADYEN, THE SHIP (1930), 30 S. R. N. S. W. 438; 47 N. S. W. W. N. 160.—**AUS.**

PART VII. SECT. 3, SUB-SECT. 4.—A.

o. Revsd., 30 S. C. R. 473.

2265. *Add. Annotation :*—**Refd.** The Njegos, [1936] P. 90

2278. *Add. Annotations :*—**Refd.** *Re* Motor-Tanker Athelviscount Owners & National Petro- Com.

——— *Annotation :*—**Refd.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2287. *Add. Annotations :*—**Refd.** Evans *v.* Webster (1929), 45 T. L. R. 136; Co., [1930] 1 K. B. 416.

2288. *Add. Annotations :*—*As to* (1) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Consd.** The Skarp, [1935] P. 134.

2288a. ——— ———.]—A quantity of timber was shipped on board defts.' ship under bills of lading which described it as shipped in " good order & condition " to be delivered " in like good order & condition." The timber was, to the knowledge of defts.' master, in a bad condition, & he added the word " condition " to a clause on the back of the bills of lading, " quality, description & measurement unknown," so that the clause read " condition, quality (etc.), unknown." Pltfs. bought the timber from the shippers on formal contracts & received the bills of lading before the timber arrived. In an action against the shipowners pltfs. based their claim on breach of contract & estoppel :—*Held :* (1) " shipped in good order & condition " are not words of contract, & the words " to be delivered in like good order & condition " cannot stand alone to make a contract to deliver in good order & condition ; & accordingly the claim in contract failed ; (2) " condition . . . unknown " was not such a qualification of the statement " shipped in good order & condition " as to convey to pltfs. that the timber was in a damaged state, & had pltfs. acted on the statement to their detriment, defts. would have been estopped from denying that the timber was shipped in good condition ; but, as there was a clause in the contracts of sale that the buyers should not reject the goods but refer any dispute to arbitration, the claim based on estoppel also failed.

(3) Two other parcels of 1398 & 494 pieces of timber were short delivered. The bills of lading were expressed to be subject to the terms of the charterparty, which provided that the bills of lading should afford conclusive evidence of the number of pieces delivered to the ship. Both parcels had been lost from a scow alongside the ship during a storm before shipment. The bill of lading in respect of the 1398 pieces made this clear, but as regards the 494 pieces the bill of lading was clausued " 494 pieces of these lots not on board, being included in specification No. 5 lost from the ship " :—*Held :* as regards the 494 pieces the bill of lading was not so clausued as to bring it to the notice of pltfs. that these pieces were not delivered to the ship ; defts. were bound by the " conclusive evidence " clause ; & to this extent pltfs.' claim succeeded.—THE SKARP, [1935] P. 134 ; 104 L. J. P. 63 ; 154 L. T. 309 ; 51 T. L. R. 541 ; 41 Com. Cas. 1 ; 18 Asp. M. L. C. 576.

2289a. ——— Statement that cargo " shipped in good order & condition "—" Quality unknown to me."]—Resps., as owners, chartered a motor tank vessel to applts. to load a cargo of fuel oil & kerosene at Constanza & discharge it at Bombay. The tanks were steamed & cleaned at Constanza to the satisfaction of Lloyd's surveyor, & the master signed bills of lading which described the kerosene as Roumanian Export Type Kerosene " shipped in good order & condition," but he qualified his signature by the words " quality unknown to me." The charterers bought from the shippers part of the kerosene shipped, & opened a credit on which the shippers were entitled to draw on presenting clean bills of lading. Having found that the kerosene from certain tanks was discoloured, the charterers claimed damages from the shipowners, & in an arbn. the umpire found that there was no evidence of the vessel being unfit to receive the cargo, that the fuel oil did not leak into the kerosene, that the discoloration did not take place after the loading, that it was not possible for the master to determine the quality of the kerosene as it was being pumped into the vessel, & that in signing the bills of lading the master relied on the description given by the shippers. On these findings the umpire held that the shipowners were not estopped by the statements in the bills of lading from denying that the kerosene was as therein stated & he dismissed the charterers' claim :—*Held :* on a case stated by the umpire, the shipowners were not estopped from alleging that there were at the time of shipment defects which were not apparent on reasonable inspection, & the umpire's award must stand.—UNITED MOLASSES CO., LTD. *v.* NATIONAL PETROLEUM CO. (1934), 50 T. L. R. 266 ; *sub nom. Re* ATHELVISCOUNT (MOTOR-TANKER) OWNERS & NATIONAL PETROLEUM CO., 49 Com. Cas. 227.

2318. *Add. Annotation :*—**Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

2329a. Conversion of cargo—Recovery of advance from owner by pledgee—Liability of charterer to indemnify owner.]—By a charterparty dated Sept. 18, 1923, & renewed Feb. 22, 1924, a steamship, the *S.*, belonging to the Strathlorne Steamship Co., resps. in the present appeal, was let on hire to Andrew Weir & Co., applts., by time charter not amounting to a demise. By a voyage charter dated June 24, 1924, Andrew Weir & Co. sublet the *S.*, as they were entitled to do, to Chinese merchants to carry a cargo of rice from Rangoon to Swatow. On the vessel's arrival at Swatow the agents of Andrew Weir & Co. instructed the master to give delivery of the rice cargo to Chinese claimants who could not produce the bill of lading, & the master obeyed those instructions although the bill of lading provided that the cargo should not be handed over unless the bill of lading was given up to be cancelled. The cargo was in fact stolen, & the shipowners were obliged to compensate the holders of the bill of lading for its loss. The shipowners then claimed to be indemnified by Andrew Weir & Co. on whose instructions they had given delivery. The claim was referred to arbn. & the arbitrator awarded, subject to the opinion of the ct. on a special case, in favour of the shipowners :—*Held :* as the delivery of the rice cargo by resps. under the directions of applts.' agents had resulted in injury to third parties, & such delivery was not an act which was apparently illegal in

itself & had been done by resps. honestly in compliance with applts.' directions, applts. were liable to indemnify resps. against the consequences.—STRATHLORNE S.S. CO., LTD. *v.* ANDREW WEIR & CO. (1934), 40 Com. Cas. 168, C. A.

2450. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

Add. Annotations :—As to (2) **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356; The Njegos, [1936] P. 90.

Add. Annotation :—As to (1) **Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

2502a. —— **Understatement of weight of cargo—Duty of charterer to indemnify shipowner.**]—Where by a charterparty the master is required to sign the bill of lading as presented by the charterers, & the bill of lading so presented understates the weight, the charterers are bound to indemnify the shipowner for any loss thereby resulting.

By a charterparty the charterers were entitled to pay freight "on bill of lading weight less 2 per cent. in lieu of weighing." The shipowners, believing that more cargo had been shipped than that stated in the bill of lading presented by the charterers, had the cargo weighed at the port of discharge, where it was found that the weight had been understated :—*Held :* the charterers were not entitled to deduct 2 per cent. from the out-turn weight.—DAWSON LINE, LTD. *v.* AKTIENGESELLSCHAFT ADLER FÜR CHEMISCHE INDUSTRIE OF BERLIN, [1932] 1 K. B. 433; 101 L. J. K. B. 57; 146 L. T. 187; 37 Com. Cas. 28; 18 Asp. M. L. C. 273, C. A.

2503. *Add. Annotations :—As to* (1) **Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433. **Consd.** Thomson *v.* Louis Dreyfus & Co., [1936] 3 All E. R. 687. **Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

2508. *Add. Annotation :*—**Expld. & Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2510a. —— **Shipowner required to sign bills of lading involving liability to third persons—Indemnity of shipowner.**]—Defts. chartered pltf.'s ship to carry a full & complete cargo of wheat in bulk from Sydney to Birkenhead. Defts. undertook to supply up to 15 per cent. of the cargo in bags for purposes of safe stowage. The captain of the ship demanded additional cargo in bags, & a dispute arose as to who was to pay for the cost of the bags & ___ of this additional cargo. This dispute was submitted to arbn., & an award was made in favour of defts. The captain was bound under the charterparty to sign bills of lading in the form indorsed, & the bills of lading signed in consequence forced the ship to deliver the cargo & the bags to defts. or their assignees. Defts. assigned the cargo to a third party, & the cargo & the bags were delivered to the assignees. Pltf. claimed the costs of the bags which had been delivered to the assignees in accordance with the bills of lading :—*Held :* the bags belonged to pltf. & as he was required by the charterparty to sign bills of lading which necessitated their delivery to the consignee he was entitled to recover the cost of them.—THOMSON *v.* LOUIS DREYFUS & CO., [1936] 3 All E. R. 687, C. A.

2515. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2526. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2548. *Add. Annotation :*—**Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

2549. *Add. Annotation :—As to* (2) **Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

2552. *Add. Annotation :—As to* (2) **Refd.** Jensen *v.* Hollis Bros. & Co., [1936] 1 All E. R. 140.

2558. *Add. Annotation :*—**Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

2573. *Add. Annotations :—As to* (2) **Consd.** The Stranna, [1937] P. 130. *Generally,* **Refd.** Patreson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

2574. *Add. Annotation :—As to* (1) **Consd.** The Stranna, [1937] P. 130.

2580. *Add. Annotations :*—**Consd.** The Stranna, [1937] P. 130. **Refd.** Goodwin, Ferreira & Co. *v.* Lamport & Holt (1929), 141 L. T. 494.

2606a. Unexplained heeling of ship.]—Pltfs.' timber was loaded on defts.' ship under

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PART VII. SECT. 3, SUB-SECT. 9.—B. (a).

c 1. —— *Refusal to pay demand draft.*]—Pltf. co., made a written contract of sale & purchase with P. for the supply of certain oils. The contract contained (*inter alia*) the following "terms": "Net cash by demand draft on arrival of vessel or vessels carrying the goods. . . . Seller's liability shall cease upon presentation of bill of lading, or, at their option, by presentation of an order for delivery alone . . . shipment of the goods to constitute delivery." P. on giving the order, gave to pltf. co. a cheque for £50, such sum to be deducted from the purchase-price when draft was presented for payment. The bill of lading, which was made to order & not to P., was tendered, with a demand draft attached, to P. & refused. The oils, upon arrival, were seized by defts. under several distress warrants on unsatisfied judgments obtained against P. On an originating summons to determine in whom was the property in the oil :—*Held :* upon a consideration of the contract & all the surrounding circumstances, the intention of the parties was that the property in the goods should not pass until payment of the demand draft, & the property in the goods never passed from pltf. co.—SOCONY PROPRIETARY, LTD. *v.* EGGE [1931] N. Z. L. R. 567.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 6.—A.

2575 i. *Fortuitous accidents.*]—*Held :* perils of navigation are something fortuitous or unexpected, & damages which flow from the ordinary expected incidents of the voyage are not covered by the exception "perils of navigation."—BUNGE NORTH AMERICAN GRAIN CORPN. & FIRE ASSOCN. OF PHILADELPHIA *v.* SKARP, S.S., [1932] Ex. C. R. 212; *on appeal,* [1933] Ex. C. R. 75.—**CAN.**

sh. *Effect of unseaworthiness.*]—A consignment of goods placed aboard ship was damaged by the admission of sea-water to the hold of the ship through corrosion of the ship's plates from the inside, arising without negligence on the part of the shipowner, but rendering the vessel unseaworthy :—*Held :* the proximate cause of the damage being the unseaworthiness of the ship, it could not be regarded as a loss arising from "danger of the sea" within Sea Carriage of Goods Act, 1922, s. 3.—WANGANUI HERALD NEWSPAPER CO. *v.* COASTAL SHIPPING CO., [1929] N. Z. L. R. 305.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 6.—B. (d).

2600 i. *Damage due to stowage.*]—Where breaking of barrels of molasses during heavy seas was found to be due to improper stowage, this was not a "peril of the sea" & the onus of showing due diligence in stowing was on the carrier.—CANADIAN NATIONAL STEAMSHIPS *v.* BAYLISS, [1937] S. C. R. 231; 1 D. L. R. 545.—**CAN.**

bills of lading which contained the following exceptions: (*a*) " perils of the sea . . . & all & every other dangers & accidents of the seas, rivers & navigation wheresoever, including ports of loading . . . of whatever nature & kind soever . . . excepted, even [illegible]

While loading, a portion of the deck cargo was lost overboard owing to the ship taking a sudden list. Pltfs. alleged that the list was due to negligence in so loading the ship, that she became unstable & that the loss did not come within the exception " perils . . . of the seas." Defts. alleged that the list was caused by a strong flood tide & undercurrent, & they relied on exception (*a*) " perils . . . & accidents of the seas " & alternatively under (*b*), on the absence of negligence, it being admitted that the words " at charterer's risk " would not protect defts. if they had been negligent:—*Held:* (1) pltfs.' claim failed, because, although the ct. was left in doubt as to how exactly the casualty was caused, the loss was of a character to which a marine adventure was subject & was within the exception " perils . . . & accidents of the seas," (2) (if it should be necessary to decide the second point) the words " at charterer's risk " did not put on the goods owner the risk of loss in every case in which the cause of the loss was unknown, &, although the cause of the listing was left in doubt, defts. had failed to provide an explanation in any sense comparable in probability with the probability of their own negligence in the loading of the timber, & therefore, that on this issue the defence failed.—THE STRANNA, [1937] P. 130; [1937] 2 All E. R. 383; 106 L. J. P. 81; 157 L. T. 462; 53 T. L. R. 558.

2607. *Add. Annotation:—As to* (2) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2609. *Add. Annotations:*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108. **Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2611. *Add. Annotation:*—**Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2613. *Add. Annotation:*—**Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2616. *Add. Annotations:*—**Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13. **Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566; Knott *v.* London County Council, [1934] 1 K. B. 126; Wheeler *v.* New Merton Board Mills, Ltd., [1933] 2 K. B. 669; Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

2620. *Add. Annotations:—As to* (2) **Refd.** Compania Mexicana De Petroleo " El Aguila " *v.* Essex Transport & Trading Co. (1929), 141 [illegible]

[illegible] Trustee, [1934] Ch. 1; Haynes *v.* Harwood & Son, [1934] 2 K. B. 240.

2642. *Add. Annotation:*—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2654. *Add. Annotation:*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2655. *Add. Annotations:—As to* (3) **Consd.** The Kafiristan, [1937] 3 All E. R. 747. **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47; Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

2677. *Add. Annotations:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

2679. *Add. Annotation:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

2680. *Add. Annotations:—As to* (1) **Expld. & Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542, H. L. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2683. *Add. Annotations:*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2691. *Add. Annotations:—As to* (1) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

2693. *Add. Annotations:*—**Consd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 133 L. T. 296; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47; Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2697. *Add. Annotation:*—**Consd.** The Torni (1932), 48 T. L. R. 471.

2699. *Add. Annotation:*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

PART VII. SECT. 4, SUB-SECT. 12.

2664 iv. —— ——.]—SCOTTISH METROPOLITAN ASSURANCE CO., LTD. *v.* CANADA STEAMSHIP LINES, LTD., [1930] S. C. R. 262; 1 D. L. R. 201; *revsg.*, 46 Que. K. B. 305.—**CAN.**

m i. ——.]—BURNS JOHN & CO. *v.* S.S. CANADIAN EXPLORER, [1928] N. Z. L. R. 767.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 14.—A.

sd. *Burden of proof.*]—Upon an action against a carrier for damages to goods shipped under bills of lading which specifically stated that the vessel should not be liable for damage caused by perils of the sea, the grounds of defence were, first that, the carrier having established at the trial a *primâ facie* case of loss by a peril of the sea, the burden of proving negligence consequently rested on resp., & secondly, that the carrier had discharged the burden of proof resting on him under clause *q*, r. 2, art. 3 of the Sched. of the Barbados Carriage of Goods by Sea Act, 1926, which was made applicable to the contract;—*Held:* the issue raised by the first ground being an issue of fact, it was incumbent upon the carrier to acquit himself of the onus of showing that the weather encountered during the voyage was the cause of the damage & it was of such a nature that the danger of damage to the cargo arising from it could not have been foreseen or guarded against as one of the probable incidents of the voyage. Also, under clause *q*, r. 2, art. 3 the burden rests upon the carrier to show that neither the actual fault nor the privity of the carrier, nor the fault or neglect of the agents or servants of the carrier, contributed to the loss or the damage; & the carrier does not acquit himself of this onus by showing that he has employed competent stevedores to stow the damaged cargo, or that proper directions as to the stowage of the cargo have been given.—CANADIAN NATIONAL S.S. *v.* BAYLISS, [1937] S. C. R. 231; 1 D. L. R. 545.—**CAN.**

2700. *Add. Annotation :*—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2703. *Add. Annotation :*—**Expld.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2704. *Add. Annotation :*—**Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2705a. Errors in navigation or management—Abandonment of ship.]—BULGARIS *v.* BUNGE & Co., LTD., No. 4313d, *post.*

2707. *Add. Annotation :*—**Consd.** The Stranna. [1937] P. 130.

2711. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717. **Refd.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223 ; The Touraine, [1928] P. 58.

2712. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424 ; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2713. *Add. Annotation :*—*As to* (3) **Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

2714. *Add. Annotation :*—**Consd.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2720. *Add. Citation :*—17 Asp. M. L. C. 294.

Add. Annotations :—*As to* (1) **Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424 ; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2721. *Add. Citations :*—*revsd. sub nom.* GOSSE MILLERD, LTD. *v.* CANADIAN GOVERNMENT MERCHANT MARINE, LTD., THE CANADIAN HIGHLANDER, [1929] A. C. 223 ; 98 L. J. K. B. 181 ; 140 L. T. 202 ; 45 T. L. R. 63 ; 34 Com. Cas. 94 ; 17 Asp. M. L. C. 549, H. L.

Add. Annotations :—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424 ; Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

2722. *Add. Citations :*—44 T. L. R. 204 ; 17 Asp. M. L. C. 413.

2724. *Add. Citation :*—33 Com. Cas. 70.

2725. *Add. Citations :*—[1928] 2 K. B. 424 ; 72 Sol. Jo. 103 ; 17 Asp. M. L. C. 447 ; 33 Com. Cas. 168.

Add. Annotations :—*As to* (1) **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

2727a. —— "At charterer's risk."]—SVENSSONS (C. WILH) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. Co., LTD., No. 2974b, *post.*

2730. *Add. Annotations :*—*As to* (1) **Apld.** Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S. S. Co. (1931), 37 Com. Cas. 83. **Consd.** The Stranna, [1937] P. 130.

2736a. Loading stopped by ice — Whether "weather" preventing loading.]—It was provided in a charterparty that a steamship should proceed to a port in Finland in mid-November & load pit-props at a specified rate "per weather working day" :—*Held :* that days on which, owing to ice, loading could not proceed were not weather working days.—DAMPSKIBSSELSKABET BOTNIA A/S *v.* BELL (C. P.) & Co., [1932] 2 K. B. 569 ; 101 L. J. K. B. 574 ; 147 L. T. 499 ; 48 T. L. R. 93 ; 76 Sol. Jo. 10 ; 18 Asp. M. L. C. 307.

2755a. Strike against loading ship of particular nationality.]—A clause in a charterparty provided that if the cargo therein referred to could not be loaded by reason of a strike or lock-out of any class of workmen essential to the loading the time for loading should not count during the continuance of the strike. The shippers or consignees were not to be exonerated, by reason of a strike or lock-out of their men only, from any liability for demurrage if by reasonable diligence they could have obtained other suitable labour. Owing to some labour dispute in Latvia in 1933 there was at that time in the port of Leningrad a sympathetic strike of stevedores & other dock workers as the result of which there was no loading of Latvian ships, though the ships of other nationalities were loaded there. Pltfs., Latvian shipowners, chartered to Exportles (a Russian corpn.) a steamer to load at Leningrad a cargo of wood. The steamer arrived at the port in July, 1933, while the strike was in progress, & no loading took place until the strike ended in Sept. 1933. On a claim by the shipowners for demurrage :—*Held :* though Exportles were a separate entity, they did not supply their own labour, there was a strike of workmen essential to the loading by which the charterers were prevented from loading, the charterers could not put an end to the strike, the strike clause applied, & the shipowners' claim failed.—SEEBERG BROS. *v.* RUSSIAN WOOD AGENCY, LTD. (1934), 51 T. L. R. 149 ; 78 Sol. Jo. 915.

2776. *Add. Annotation :*—**Refd.** Rederiaktiebolaget Macedonia *v.* Slaughter (1935), 40 Com. Cas. 227.

2777. *Add. Citation :*—17 Asp. M. L. C. 265.

Add. Annotation :—*Generally,* **Refd.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78 ; Peterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538 ; Petrofina S. A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali Genoa (1936), 53 T. L. R. 222.

2777a. "Insufficiency of packing"—Not confined to packing of goods damaged.]—GOODWIN, & Co., LTD. *v.* LAMPORT & HOLT, ., No. 3649a, *post.*

PART VII. SECT. 4, SUB-SECT. 14.—D.

2720 i. *Negligence or error in navigation or management—Carriage of Goods by Sea Act,* 1924 (c. 22), *Sched., Art. IV., r. 2 (a), (n)—Insufficient packing.*]—Where goods carried under a bill of lading under Carriage of Goods by Sea Act, 1924, are described in the bill of lading as being shipped in apparent good order & condition, but noted as "deemed insufficiently packed." & the owner proves that the goods were delivered in a damaged condition, if the carrier claims the benefit of the immunity specified in r. 2 (*n*) of Art. IV. of the Sched., the onus lies on him of affirmatively establishing (*a*) the goods were insufficiently packed, & (*b*) that the ins[illegible] packing was the cause of the damage [illegible]KE, LACEY, HARDIE, LTD. *v.* CLAN MACFADYEN, THE SHIP 30 S. R., N. S., W. 438 ; 47 N. S. W. W.

2777b. —— **Insufficiency apparent to reasonable inspection.**]—SILVER *v.* OCEAN STEAMSHIP CO., LTD., No. 2257a, *ante*.

2796. *Add. Annotations :*—**Consd.** The Erik Boye (1929), 142 L. T. 335; Fiumana Società Di Navigazione *v.* Burge & Co., [1930] 2 K. B. 47. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78; Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

2797. *Add. Annotation :*—**Consd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

2800. *Add. Annotations :*—**Consd.** Calico Printers' Assoon., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** The Hayle, [1929] P. 275; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83; Petrofina S. A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali of Genoa (1936), 53 T. L. R. 222.

2817a. —— —— **Impossible date.**]—By a charterparty, dated Aug. 30, 1934, pltfs. agreed to load certain timber at the "end of Aug. 1934." There was an option to cancel the charterparty if a vessel was not ready to load on or before Sept. 20, 1934. The vessel, was, in fact, ready for loading on Sept. 27, 1934 :—*Held :* as the date of the charterparty was practically the same as the date when the vessel was "expected ready to load," the parties could not have intended the vessel to load at that time, & the whole document must be looked at to arrive at the proper construction of the charterparty. Having regard to the cancellation clause the proper construction was : "Expected ready to load on or before Sept. 27, 1934."—JENSEN *v.* HOLLIS BROS. & CO., LTD., [1936] 1 All E. R. 140.

2826. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

2826a. Delay due to both parties—Apportionment of extra insurance.]—Pltfs. were the owners of a Swedish steamer. the *R.*, which, by a charterparty dated Oct. 9, 1931, was chartered by defts. to go to Soroka, on the White Sea, & there load a cargo of timber for carriage to Hull. As the season was coming to an end & there was the danger of ice forming it was important that the loading should be completed as quickly as possible, & by clause 36 of the charterparty the charterers undertook to complete loading in time for the steamer to leave Soroka by Oct. 31, or in default of doing so to pay any extra insurance required owing to the delay, unless the delay was attributable to pltfs. or to the ship. At the date of the charterparty the *R.* was at Gothenburg, where she had been laid up for some months. She started for Soroka in due course, but on the way was delayed by unseaworthiness, by collision, for which she was solely to blame, & by bad weather. In the result she did not reach Soroka until Oct. 30, & was unable to leave until Nov. 6. Extra insurance became payable in consequence of the delay, the amount payable being, in English money, £336 8*s.* 7*d.* Pltfs. brought this action to recover that sum from defts., & defts. refused to pay on the ground that the delay in loading had been caused by the delay in reaching the loading port, & that that delay was attributable to the ship. Pltfs. contended that so far as the delay in reaching Soroka was due to unseaworthiness & collision they were protected by an exceptions clause in the charterparty which relieved them from liability :—*Held :* the exceptions clause did not apply & the delay due to unseaworthiness & collision was attributable to the ship within the meaning of clause 36 of the charterparty, but the delay due to other causes was for the account of defts.; & the cost of the extra insurance must, therefore, be apportioned between the parties.—REDERI AKTIEBOLAG BYIGIA *v.* ANGLO-SOVIET SHIPPING CO. (1932), 38 Com. Cas. 142.

2856. *Add. Citations :*—[1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.

2923. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2931a. Option as to port of discharge—Damages reduced by cost of unloading at port most favourable to charterer.]—KAYE STEAM NAVIGATION CO., LTD. *v.* BARNETT (W. & R.), LTD. (1932), 48 T. L. R. 440; 76 Sol. Jo. 415.

Annotation :—**Refd.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

2955. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

2962. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

2974. *Add. Annotation :*—*As to* (1) **Apld.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

2974a. Whether included in loading.]—Construction of the following clause in a charterparty : "Cargo to be loaded & discharged free of expense to the steamer" :—*Held :* "load" included the operation of stowing.—A.-G. *v.* LEOPOLD WALFORD (LONDON), LTD. (1924), 18 Ll. L. R. 314.

Annotation :—**Consd.** National S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus y Cia), Ltd. (1932), 48 T. L. R. 325 (*see* 49 T. L. R. 50).

2974b. ——.]—(1) The operation of loading a ship involves all that is required, *i.e.*, stowing &, *semble*, where necessary, lashing, to put the cargo in a condition in which it can be carried.

PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sc. *Right to damages for late arrival—Although charter maintained.*]—WESTRALIAN FARMERS, LTD. *v.* TYNESIDE LINE (1920), LTD., [1929] W. A. L. R. 14.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 3.—B. (a).

2843 iii. ——.]—A ship was under charter to load a full & complete cargo of wheat in bulk or bags. The charterers supplied bulk wheat to the ship. As the ship had between decks, & could carry bulk wheat in the lower holds only, the total capacity of the ship was several hundred tons in excess of its capacity for bulk wheat. The master required the charterers to supply an additional quantity of wheat in bags to be carried between decks in order to load the ship down to its plimsoll mark. The question was whether the charterers were obliged under the charterparty to supply this additional quantity of wheat in bags :—*Held :* the charterers having provided all the bulk wheat the ship could carry were not obliged to supply any additional wheat in bags.—WESTRALIAN WHEAT FARMERS, LTD. *v.* WESTFAL-LARSEN & CO., [1936] W. A. L. R. 54.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 3.—C. (c).

, 27 L. C. J. 39 n., P. C.

By a charterparty a ship was to proceed to specified ports as ordered by the charterers, there load a cargo of pit props, & deliver it to an English port. By the charterparty the vessel was to be " provided with a deck load, at full freight, at charterers' risk, not exceeding what she can reasonably stow & carry." By an exception clause accidents of navigation, or latent defects in, or accidents to, hull &/or machinery were (*inter alia*) excepted " even when occasioned by the negligence, default, or error in judgment of the . . . master, mariners, or other persons employed by the shipowner, or for whose acts he is responsible. . . ." The ship loaded part of her cargo at one port & then proceeded to B. to ship the remainder. When the last sling load of deck cargo had been placed on deck, but before it had been stowed, the ship took a list, first to starboard & then to port, the bulwarks carried away, & a large quantity of cargo shot overboard & was lost. The judge held on the evidence that at the time of the loss the ship was unseaworthy owing to the deck load being excessive & that the captain was negligent in loading the ship as he did. In an action by the charterers against the shipowners for the value of the cargo lost:—*Held:* (2) as, at the beginning of the loading, the ship was seaworthy to receive & hold the cargo, & as, at the time of the loss, the operation of loading had not been completed, all the cargo not having been stowed, there was no breach of the warranty of seaworthiness & pltfs. were not entitled to recover; (3) although the words in the charterparty, " at charterers' risk," standing alone, did not excuse defts. in the case of a loss due to negligence on their part or on the part of their servants, those words must be read with the exception clause, & the effect of reading the two together was to enable defts. to rely on the exception clause, which protected them against the consequences of such negligence.—SVENSSONS (C. WILH.) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. Co., [1932] 1 K. B. 490; 101 L. J. K. B. 521; 147 L. T. 12; 37 Com. Cas. 83; 18 Asp. M. L. C. 284.

Annotation:—Generally, **Refd.** The Stranna, [1937] P. 130.

2979a. —— —— **Expenses of shore winchmen.**]—Where by a clause in a charterparty it was provided that " the charterers shall provide stevedors to load the cargo at a cost to the vessel of 25 cents. gold per English ton," & owing to trade union regulations in the port of loading shore winchmen had to be employed at the cost of the charterers to work the vessel's winches:—*Held:* the cost of those winchmen was an expense of the owners of the vessel with which the charterers were entitled to debit them.—SOCIEDAD ANÓNIMA COMERCIAL DE EXPORTACION Y IMPORTACION (LOUIS DREYFUS Y CIA), LIMITADA *v.* NATIONAL STEAMSHIP Co., LTD. (1932), 49 T. L. R. 50; 38 Com. Cas. 88, H. L.; *revsg.*, S. C. *sub nom.* NATIONAL STEAMSHIP Co., LTD. *v.* SOCIEDAD ANÓNIMA COMERCIAL DE EXPORTACION Y IMPORTACION (LOUIS DREYFUS Y CIA), LTD., 48 T. L. R. 325; 37 Com. Cas. 283, C. A.

3005a. ——.]—Where a charterparty uses the words " provide & pay " or " employ & pay " [a stevedore] I think the effect of such a clause is to transfer the duty & obligation, which would otherwise rest on the shipowner, to the charterer, of stowing the cargo in the way it ought to be stowed (GREER, J.). —BRYS & GYLSEN, LTD. *v.* DRYSDALE & Co. (1920), 4 Ll. L. R. 24.

Annotation:—**Consd.** National S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus y Cia), Ltd., (1932), 48 T. L. R. 325 (*see* 49 T. L. R. 50).

3030a. —— ——.]—A bill of lading, entered into in the United States of America, & therefore required by the law of that country to be expressed to be subject to all the terms & conditions of the Harter Act, provided for the loading of the ship under the inspection of a surveyor of the Board of Underwriters of New York, & the receipt of a certificate in the usual form, certifying that the vessel had conformed to the rules of that Board, & that such certificate should be accepted by the shipper & the owner & consignees of the goods as conclusive evidence that the vessel had been properly prepared, the goods properly dunnaged & stowed, notwithstanding that such certificate merely recites that the vessel completed her loading under such inspection & conformed to the above rules. The certificate granted by the surveyor to the Board stated that the ship had been under inspection from time to time during the loading, & that the stowage, so far as it came under the observation of the giver of the certificate, was in accordance with the above rules. The certificate further stated that the officers of the Board used their best endeavours to insure that their functions were duly carried out, but neither the officers nor the Board were, in any circumstances whatever, to be held responsible for any inaccuracy, error of judgment, default or negligence. In another clause, the bill of lading provided that, in claims for short delivery or damage to cargo, made upon the ship's reaching her destination, the price should be the market price at the port of destination, but it was agreed that the value of each package shipped did not exceed $250, & the carrier's liability should not exceed that sum unless a greater value was specially declared. The cargo consisted of motor cars, expressly stated to be unboxed:—*Held:* (1) the certificate was not conclusive, since it did not certify that the vessel had completed her loading under the inspection of the surveyor, & certified only as to the stowage, so far as it came under the surveyor's observation; (2) the clause providing for the certificate offended against the Harter Act, because it enabled the shipowner to escape the liability from which the Act intended he should not escape upon production of a surveyor's certificate stating that he had done that which in fact he might not have done; (3) a motor car, put on a ship without a box or crate, was not a package; (4) the clause limiting liability did not offend against the Harter Act.—STUDEBAKER DISTRIBUTORS,

LTD. *v.* CHARLTON STEAM SHIPPING CO., LTD., [1937] 4 All E. R. 304; 157 L. T. 583; 54 T. L. R. 77; 81 Sol. Jo. 982.

3036. *Add. Annotation:*—**Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

3043. *Add. Annotation:*—**Consd.** Timm & Son, Ltd. *v.* Northumbrian Shipping Co., [1937] 2 All E. R. 847.

3045. *Add. Annotation:*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.

3054. *Add. Citation:*—17 Asp. M. L. C. 311.

Add. Annotation:—**Refd.** Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

3056. *Add. Annotations:* — **Consd.** The Hayle, [1929] P. 275. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

3059a. —— ——.]—Resp. defts., in Oct. 1919, shipped 412 tons of West African produce on the applt. pltfs.' schooner, the *R.*, for carriage from C. on the west coast of Africa to Liverpool. A clause in the bill of lading provided that freight was due on shipment & should be payable on demand, ship or goods lost or not lost. Defts. paid half the freight on shipment. The vessel & cargo were lost during the voyage, & as the goods never reached Liverpool, defts. refused to pay pltfs. the balance of freight, & pltfs. now claimed the balance of freight. Defts. pleaded that the vessel was in fact unseaworthy, & that therefore the bill of lading contract could not be enforced against them. By clause 2 of the bill of lading: "The co. shall not be liable for, or for any loss or damage arising from or due to, collision, . . . or any other peril of the sea . . . of whatsoever nature or kind, whether any perils, causes, or things in this clause mentioned are due to or arise . . . from the wrongful act, omission, or error in judgment or negligence of . . . any person whomsoever in the service of the co. . . . & whether due to or arising . . . from unseaworthiness of the ship . . . provided in case of any loss, injury, or damage arising from or due to unseaworthiness of the ship at the beginning of the voyage all reasonable means shall have been taken to provide against such unseaworthiness. The co. may entrust to experienced or qualified officers, servants, or agents the duty of providing against unseaworthiness, & shall then be deemed to have fulfilled its obligations hereunder . . .":—*Held:* defts. had failed to discharge the *onus* which lay on them of proving that the vessel was unseaworthy at the beginning of the voyage. Moreover, even if the vessel had in fact been unseaworthy pltfs. were protected by clause 2 of the bill of lading, as (*a*) they had taken all reasonable means to provide against unseaworthiness, & (*b*) they had entrusted to experienced & qualified officers, servants, or agents, the duty of providing against unseaworthiness, & must therefore be deemed to have fulfilled their obligations under the bill of lading.—COSMOPOLITAN SHIPPING CO. (INC.) *v.* HATTON & COOKSON, LTD. (LIVERPOOL) (1929), 143 L. T. 296; 35 Com. Cas. 113; 18 Asp. M. L. C. 130, C. A.

Annotation:—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

3059b. —— —— **Effect of incorporation of Harter Act.**]—Where a cargo of flour, shipped under bills of lading which incorporated the United States Harter Act, was damaged owing to insufficient ventilation & failure to draw off hot air from the holds, such failure being due to the character & construction of the ship:—*Held:* (1) the damage to the flour was caused by breach of the implied warranty of seaworthiness for the cargo in question; & (2) the United States Harter Act did not exclude the implied warranty of seaworthiness for cargo, or cut down such implied warranty to an undertaking on the part of the shipowner to use due diligence to make the ship seaworthy.—THE ERIK BOYE (1929), 142 L. T. 335; 18 Asp. M. L. C. 66.

3070a. —— —— **After additional cargo taken on board.**]—Pltfs. engaged defts., who were barge owners, to lighter certain machinery from a steamer in Millwall Docks to Fulham, the contract containing an owner's risk clause. Defts.' barge, having taken the machinery on board, proceeded to another steamer & took in additional cargo. While alongside this other steamer the barge was holed by an unknown vessel, & owing to the entrance of water pltfs.' machinery was injured by rust. In an action for breach of the warranty of seaworthiness defts. denied liability on the grounds that the barge was seaworthy when pltfs.' machinery was loaded, & that since, so far as pltfs. were concerned, the loading of additional cargo was part of the voyage, defts. were protected by the owner's risk clause:—*Held:* the loading was not completed until the additional cargo had been taken on board,

PART VII. SECT. 6, SUB-SECT. 1.—B.

3039 v. —— ——.]—BURJOR F. R. JOSHI *v.* ELLERMAN CITY LINES, LTD. (1927), I. L. R. 52 Bom. 327.—**IND.**

e 1. —— —— *Whether contract within Carriage of Goods by Sea Act, 1924.*]—A firm of shipowners contracted to carry a cargo of machinery belonging to a firm of shipbuilders from the latter's premises in Glasgow to their shipyards at Belfast. The contract was arranged by correspondence, in the course of which the shipowners stipulated that the cargo was to be conveyed at owner's risk & subject to the conditions in their sailing-bills. These included a condition that, in contracts were there was no bill of lading, the shipowners would not be liable for loss resulting from unseaworthiness of the ship. The vessel carrying the machinery was lost on the voyage, along with the cargo. No bill of lading had been issued, but, after the loss of the cargo, the shipowners gave the shipbuilers a letter acknowledging receipt of the cargo & specifying it in detail. In an action at the instance of the shipbuilders against the shipowners for recovery of the value of the cargo based on the alleged unseaworthiness of the vessel, the pursuers contended that the contract between the parties was regulated by the Act of 1924, & that the defenders had failed to comply with the provisions of the Act for contracting out of their statutory liability:—*Held:* that the contract between the parties was not a "contract of carriage" within the meaning of the Carriage of Goods by Sea Act, 1924, in respect (*a*) that the only receipt granted for the cargo, *viz.* the letter of acknowledgment given by the defenders to the pursuers, did not constitute either a "bill of lading" or "similar documents of title" within Art. 1 (*b*) of the Schedule to the Act, & (*f*) that, the issue of a bill of lading not being within the contemplation of the parties to the contract, the contract could not reasonably be described as "covered" by a bill of lading within the meaning of Art. 1 (*b*); &, accordingly, that defenders were entitled to contract out of liability for loss resulting from their vessel's unseaworthiness without reference to the Act; & action dismissed.—HARLAND & WOLFF, LTD. *v.* BURNS & LAIRD LINES, LTD., [1931] S. C. 722.—**SCOT.**

&, therefore, as the barge was unseaworthy at the time when she started on her voyage, pltfs. were entitled to recover.—THOMPSON & NORRIS MANUFACTURING CO., LTD. *v.* ARDLEY, P. H., & Co. (1929), 46 T. L. R. 120; 74 Sol. Jo. 27.

3070b. —— —— **Completion of loading.**]—SVENSSONS (C. WILH.) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. CO., No. 2974b, *ante*.

3071. *Add. Annotation:*—**Refd.** Petrofina S. A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali of Genoa (1936), 53 T. L. R. 222.

3072. *Add. Annotation:*—**Refd.** Timm & Son, Ltd. *v.* Northumbrian Shipping Co., [1937] 2 All E. R. 847.

3073a. —— —— ——.]—Under Water Carriage of Goods Act, 1910 (Canada), s. 6, if the owner of any ship transporting merchandise from any port in Canada exercises due diligence to make the ship in all respects seaworthy, neither the ship nor the owner shall be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect. Under sect. 7 neither the ship nor the owner is liable for loss arising from dangers of the sea or other navigable waters. A shipowner had contracted to carry a cargo from Vancouver to Hull, & had arranged that his ship should call on the way at St. Thomas for the purpose of bunkering. The quantity of coal normally required by the ship for the voyage to St. Thomas was 650 tons, & the ship left Vancouver with 675 tons on board. A few days after passing through the Panama Canal the captain realised that he had not sufficient coal to reach St. Thomas & accordingly altered course for Jamaica. While proceeding there he struck a reef & his vessel & cargo became a total loss. The cargo owners claimed damages, & the ship-owner contended that (*a*) the ship on leaving Vancouver had sufficient coal & a proper margin to take her to St. Thomas; (*b*) there was a potential coaling port at Colon, & this fact must be regarded in fixing the margin:—*Held:* (1) on the facts the ship when she left Vancouver for St. Thomas was not carrying a proper margin of coal; (2) if Colon was to be regarded as a coaling port then the stage to be considered was Colon to St. Thomas, & it was clear on the facts that the ship when it passed Colon had not sufficient coal to take her to St. Thomas.—TIMM & SON, LTD. *v.* NORTHUMBRIAN SHIPPING CO., LTD., [1937] 2 All E. R. 847; 53 T. L. R. 681; 81 Sol. Jo. 500; 42 Com. Cas. 307.

3089a. —— **Sailing without mate.**]—BURNARD & ALGERS, LTD. *v.* PLAYER, RICHARD & Co. (1928), 72 Sol. Jo. 503.

3091. *Add. Annotation:*—**Distd.** Chellew Navigation Co. *v.* A. R. Appelquist Kolimport A. G. (1933), 49 T. L. R. 295.

3092a. —— —— **Necessary for admission to port.**]—A steamer was chartered to perform a Baltic round voyage, the charterparty providing as follows: The steamer was to be "in every way fitted for ordinary cargo service." The charterers were to pay all "port charges . . . & all other charges & expenses whatsoever," except certain specified outgoings, which were to be paid by the shipowners. The hire was payable by the charterers by the month "& *pro rata* for any fractional part of a month (the days to be taken as fractions of a month of 30 days)." On the expiration of the charterparty the steamer was to be redelivered "in same good order as when delivered to the charterers (fair wear & tear excepted)." The steamer was ordered to Stockholm, but when she arrived she had no measurement certificate, as required by Swedish law, & the charterers had to procure one & pay the cost of it. The hire began in Aug. & lasted twenty-nine days, the charterers having paid a month's hire in advance. After discharging at Stockholm the steamer went to Lulea & loaded iron ore, which was dropped into the hold from a considerable height, & which was discharged at Emden by means of grabs, & the bottom of the hold was damaged in consequence. In an arbn. the umpire found that the cost of the certificate must be borne by the charterers, that the charterers could get only one day's hire back from the shipowners, & that the damage to the hold was not fair wear & tear:—*Held:* the certificate was not a document which the shipowners were bound to supply, the charterers were entitled to repayment of hire for one day only, & the umpire was entitled in law to hold that the damage was not fair wear & tear, & therefore the award must be upheld on all three points.—CHELLEW NAVIGATION CO., LTD. *v.* A. R. APPELQUIST KOLIMPORT A. G. (1933), 49 T. L. R. 295; 38 Com. Cas. 218.

3099a. —— ——.]—A steamship was chartered to proceed to various ports in the River Plate & there load a cargo of grain for carriage to Hamburg. The shipowners had provided bunker coal more than enough to take the ship to the loading ports. Some of this coal was stowed in a reserve bunker on the port side separated from one of the ship's holds only by an unprotected steel bulkhead. The coal was unfit for the voyage. In this respect the vessel was unseaworthy. Shortly after she started on the return voyage a serious fire broke out in the port reserve bunker. The captain put into a port of refuge & incurred expense for the benefit of ship & cargo. In an action by the shipowners against cargo owners for contribution towards a general average expenditure defts. counterclaimed for damages for injury to their cargo owing to the fire. The fire having happened without the actual fault or privity of pltfs.:—*Held:* (1) by virtue of Merchant Shipping Act, 1894 (c. 60), s. 502, which relieved pltfs. from liability for loss of or damage to the cargo, they were entitled to general average contribution; (2) notwithstanding the unseaworthiness of the ship, pltfs. were not liable for loss of or injury to the cargo.—LOUIS DREYFUS & Co. *v.* TEMPUS SHIPPING CO., [1931] A. C. 726; 100 L. J. K. B. 673; 145 L. T. 490; 47 T. L. R. 542; 75 Sol. Jo. 554; 36 Com. Cas. 318; 18 Asp. M. L. C. 243, H. L.; *affg.*, S. C. *sub nom.* TEMPUS SHIPPING CO., LTD. *v.* LOUIS DREYFUS & CO., LTD., [1931] 1 K. B. 195, C. A.

Annotation:—As to (1) **Refd.** Hain S. S. Co. *v.* Tate & Lyle, Ltd., [1936] 9 All E. R. 597.

3099b. —— ——.]—FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & Co., LTD., No. 4313a, *post*.

3099c. —— ——.]—TIMM & SON, LTD. *v.* NORTHUMBRIAN SHIPPING CO., LTD., No. 3073a, *ante*.

3100. *Add. Annotations :*—**Refd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

3107. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** The Hayle, [1929] P. 275; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83; Petrofina S. A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali of Genoa (1936), 53 T. L. R. 222.

3108. *Add. Annotation :*—**Consd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

3110a. —— Flour—Insufficient ventilation of holds.]—The Eric Boye, No. 3059b, *ante.*

3110b. —— Oil—Cleanliness of tanks.]—Resps. chartered a steamer from applt. shipowners for the carriage of a cargo of oil. The charterparty contained the following clauses: "1. The steamer being tight staunch & strong & every way fitted for the voyage, & to be maintained in such condition during the voyage, perils of the sea excepted. . . . 16. The captain is bound to keep the tanks, pipes & pumps of the steamer always clean. . . . 27. Steamer to clean for the cargo in question to the satisfaction of charterers' inspector." The tanks were inspected on behalf of the charterers, & the cleaning suggested by the inspector having been carried out by the master, the ship was accepted by the charterers as fit to load. Some portion of the cargo became damaged by discoloration, for which the charterers sought to make the shipowners responsible. There was no negligence by the shipowners or their servants in making the vessel fit to carry the cargo & the master took all reasonable steps to make the tanks clean & fit for that purpose. The cause of the damage was not established :—*Held :* clauses 1 & 16 contained an express warranty of seaworthiness that the ship was fit for the particular cargo; the shipowners were not relieved from liability by clause 27, which was superadded to the charterparty for the purpose of the charterers; & that the shipowners were accordingly liable to the charterers.—Petrofina S. A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali of Genoa (1937), 53 T. L. R. 650; 42 Com. Cas. 286, C. A.

3114. *Add. Annotation :*—**Consd.** Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

3114a. —— ——.]—Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co., Ltd., No. 2974b, *ante.*

3118. *Add. Annotations :*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108. **Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; The Kite (1933), 49 T. L. R. 525. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; The Arpad (1934), 50 T. L. R. 505; Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

3124. *Add. Annotation :*—**Refd.** The Touraine, [1928] P. 58.

3125a. Absence of shifting boards.]—Applts., Swedish shipowners, chartered a steamer to resps. The charterparty provided (*inter alia*) that the steamer was "every way fitted to carry bulk & general cargoes," that the owners would maintain her in a thoroughly efficient state in hull, machinery & equipment for & during the service, "with dunnage, mats, shifting boards (as far as on board)," & that the charterers should provide & pay for coals . . . & "all other charges & expenses whatsoever appertaining to the cargo." When the steamer was delivered to the charterers she was not fitted with shifting boards. During the currency of the charterparty she was employed to carry grain in bulk, & it was necessary that shifting boards should be provided for the grain to be carried in safety. The carriage of cargo of that description was contemplated by the charterparty. A dispute arose between applts. & resps. as to which of them should bear the cost of providing the necessary shifting boards; the dispute was referred to arbn. & the arbitrator awarded, subject to the opinion of the ct. on a special case, in favour of resps. The special case was argued before Lewis, J.; he confirmed the award, & applts. now appealed to the Ct. of Appeal. Their Lordships dismissed the appeal :—*Held :* (1) as the voyage was one of the class contemplated by the charterparty & could not be safely made without shifting boards the obligation to provide shifting boards was laid upon the shipowners by the provision in the charterparty that the steamer was "every way fitted to carry bulk . . . cargoes"; (2) the provision in the charterparty that the owners would maintain the steamer with shifting boards "as far as on board" could not diminish the primary obligation of the shipowners to have the steamer every way fitted to carry bulk cargoes; (3) the provision of shifting boards was part of the duty of the shipowners & was not an expense "appertaining to the cargo" for which by the charterparty the charterers were liable; & (4) shifting boards were part of the equipment of the steamer &

PART VII. SECT. 6, SUB-SECT. 1.—D. (b) iii.

3111 iv. —— ——.]—The negligent & improper stowage of a cargo of corn by failure to provide proper shifting boards renders a ship unseaworthy.—*Re* Unus Shipping Co., [1937] 2 D. L. R. 239.—CAN.

sg. *What amounts to improper stowage—Wheat in bulk—Lack of shifting boards.*]—Wheat was shipped under a bill of lading which incorporated the Water-Carriage of Goods Act, R. S., 1927, c. 207. In the course of the voyage the ship stranded during a gale, & the wheat was lost in consequence. In an action for damages by the owners of the wheat against the shipowners, the trial judge & the appellate ct., concurrently found (*a*) that the ship was unseaworthy in that the wheat was loaded in bulk without shifting boards or other precaution to keep it from shifting, & that the shipowners had not exercised due diligence to make her seaworthy; & (2) that this unseaworthiness was the cause of the loss, in the sense that the master had been apprehensive that the wheat, so stowed, would shift if he were to put the ship upon her proper course, as that would involve putting her in the trough of the sea, & that for that reason he did not do so, whereas if she had taken the proper course she would have avoided the shoal upon which she stranded :—*Held :* the findings were findings of fact &, being concurrent, should not be disturbed; & upon them the shipowners were liable under sects. 4 & 7 of the above Act.—Paterson Steamships, Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538; 103 L. J. P. C. 166; 151 L. T. 549; 51 T. L. R. 5, P. C.—CAN.

if the owners had not provided them they would have broken the overriding warranty of seaworthiness.—REDERI AKTIEBOLAGET UNDA *v.* BURDON & CO., LTD. (1937), 42 Com. Cas. 239.

3126. *Add. Annotation :*—**Refd.** Barrett *v.* London General Insurance Co., [1935] 1 K. B. 238.

3128a. —— ——.]—COSMOPOLITAN SHIPPING CO. (INC.) *v.* HATTON & COOKSON, LTD. (LIVERPOOL), No. 3059a, *ante*.

3129. *Add. Annotation :*—**Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296. **Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

3140. *Add. Annotation :*—**Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3161. *Add. Annotation :—As to* (2) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3162a. —— **Within Carriage of Goods by Sea Act, 1924 (c. 22), Sched., Art. IV., r. 4].**—A cargo of coal was loaded on defts.' steamship, the *I.*, at Swansea, for carriage to Constantinople under bills of lading, which gave the shipowners "liberty . . . to call at any ports in any order, for bunkering or other purposes, . . . all as part of the contract voyage." The shipowners were exempted by the bills of lading from liability for loss due to perils of the seas. The *I.* was fitted, in the interests of the shipowners, with a superheater, & when she started from Swansea she had on board two engineers, who were there to observe whether the superheater was working efficiently. It was intended that these two engineers should be landed with the pilot at Lundy, but when the vessel reached that island no satisfactory trial of the superheater having been obtained, the two engineers remained on board, & were, later, landed in St. Ives Bay. In proceeding there, & for some time after leaving there, the *I.* was off the usual route. Shortly after resuming her voyage from St. Ives Bay & before she had returned to the usual route the *I.* stranded on the Cornish coast, & both ship & cargo were lost. In an action in respect of the loss of the cargo :—*Held :* (1) the departure of the *I.* from the contract route did not come within the liberty given by the bills of lading "to call at any ports in any order, for bunkering or other purposes," as the words "or other purposes" must be construed *ejusdem generis* with the word "bunkering," & as meaning the calling at a port for some purpose having relation to the contract voyage; (2) the deviation was not a "reasonable deviation" within Art. IV., r. 4, of Sched. to Carriage of Goods by Sea Act, 1924 (c. 22).

In considering whether a deviation is "reasonable" within Art. IV., r. 4, the interests to be considered are those of the parties to the contract adventure, & this may include consideration of the position of the underwriters (*per* SCRUTTON, L.J.).

The words "reasonable deviation" mean a deviation whether in the interests of the shipowner, or the cargo owner or both, to which no reasonably minded cargo owner would raise any objection (*per* GREER, L.J.).

The reasonableness of a deviation must depend upon what would be contemplated reasonably by both parties to the contract adventure, having regard to the exigencies of the route, known or assumed to be known to both parties (*per* SLESSER, L.J.).

(3) As the Act of 1924 has not altered the former rule whereby any unauthorised deviation from the contract route has the effect of displacing the exemptions in favour of the shipowners contained in the contract of carriage, the exemption from liability in respect of loss due to perils of the seas did not protect the shipowners; (4) the shipowners were liable in damages, the measure of which was the value of the coal at Constantinople if it had been delivered there in due course.—FOSCOLO, MANGO & CO., LTD. *v.* STAG LINE, LTD., [1931] 2 K. B. 48; 100 L. J. K. B. 421; 145 L. T. 146; 47 T. L. R. 278; 36 Com. Cas. 213; 18 Asp. M. L. C. 210, C. A.; *affd., sub nom.* STAG LINE, LTD. *v.* FOSCOLO MANGO & CO., LTD., [1932] A. C. 328; 146 L. T. 305; 101 L. J. K. B. 165; 48 T. L. R. 127; 75 Sol. Jo. 884; 37 Com. Cas. 54; 18 Asp. M. L. C. 266, H. L.

Annotations :—As to (1) **Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 57 Com. Cas. 224. **Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

3162b. Order to proceed to further port of loading not received by master—Return on receipt of wireless order.]—HAIN S.S. CO., LTD. *v.* TATE & LYLE, LTD., No. 3194a, *post*.

3163. *Add. Annotations :*—**Refd.** Foscolo, Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; Haynes *v.* Harwood, [1935] 1 K. B. 146; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

3165. *Add. Annotation :—Generally,* **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3169. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3170. *Add. Annotations :—As to* (1) **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249. *As to* (2) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371; Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

3172. *Add. Annotations :*—**Consd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597. **Refd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; The Torni (1932), 101 L. J. P. 44; Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418; The Njegos, [1936] P. 90; Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd. (1937), 42 Com. Cas. 332.

3174. *Add. Annotation :*—**Refd.** Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418.

3175. *Add. Annotations :*—**Folld.** Frenkel *v.* McAndrews & Co., [1920] A. C. 545. **Refd.** Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co. (1937), 42 Com. Cas. 332.

3176. *Add. Annotations :*—**Consd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545; Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597. **Refd.** Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3177. *Add. Citations :*—*affd.* [1929] A. C. 545; 98 L. J. K. B. 389; 141 L. T. 33; 45 T. L. R. 311; 34 Com. Cas. 241; 17 Asp. M. L. C. 582, H. L.

Add. Annotations :—**Refd.** The Torni (1932), 101 L. J. P. 44; Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co. (1937), 42 Com. Cas. 332.

3179. *Add. Annotations :*—**Consd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597. **Refd.** Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co. (1937), 42 Com. Cas. 332.

3179a. —— —— **For bunkering "or other purposes"—Construction ejusdem generis.**]—Foscolo, Mango & Co. *v.* Stag Line, Ltd., No. 3162a, *ante*.

3179b. —— —— —— **Purpose relating to contract voyage.**]—Foscolo, Mango & Co., Ltd. *v.* Stag Line, Ltd., No. 3162a, *ante*.

3179c. —— —— **No frustration.**]—A clause in a bill of lading covering lemons shipped at Palermo for London provided: "Nothing in this bill of lading (whether written or printed) is to be read as an engagement that the said carriage shall be performed directly or without delays, the ship is to be at liberty, either before or after proceeding towards the port of delivery of the said goods, to proceed to or return to & stay at any ports or places whatsoever (although in a contrary direction to or out of or beyond the route of the said port of delivery) once or oftener in any order backwards or forwards for loading or discharging cargo passengers coals or stores or for any purpose whatsoever whether in relation to her homeward voyage or to her outward voyage or to an intermediate voyage, & all such ports places & sailings shall be deemed included within the intended voyage of the said goods." The vessel deviated to Hull before going to London, but the deviation did not affect the condition of the lemons. In an action by indorsees of the bill of lading against the shipowners for delay in delivery, pltfs. alleged that they had suffered damage by a change in the market conditions during the interval :—*Held :* as the purpose of the voyage—namely, the carriage of a perishable cargo to London—was not frustrated, the action failed.—Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418; 78 Sol. Jo. 430.

Annotation :—**Refd.** Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co. (1937), 42 Com. Cas. 332.

3185. *Add. Annotation :*—*As to* (1) **Consd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597.

3188. *Add. Annotations :*—*As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. *Generally*, **Refd.** Akties Steam *v.* Arcos, Ltd., Akties Bruunsgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3193a. —— —— **By peril of the sea.**]—Foscolo & Co., Ltd. *v.* Stag Line, Ltd., No. 3162a, *ante*.

3193b. —— —— **Measure of damages.**]—Mango & Co., Ltd. *v.* Stag Line, No. 3162a, *ante*.

3194a. Liability of indorsees of bills of lading—General average contribution.]—By a charterparty a firm, having sold sugar to resps., chartered applt.'s steamer *T.* to load the sugar at two ports in Cuba & at one port in San Domingo "as ordered." The charterers, by notice to applts.' agents in New York, specified two loading ports in Cuba & one in San Domingo. The *T.* loaded sugar at the first Cuban port & was sent on by the local agents of the charterers to the second Cuban port. A cablegram directing the steamer to call at a loading port in San Domingo was not delivered to the master, who therefore left Cuba for home with a considerable cargo space unoccupied. Shortly afterwards the steamer was recalled by wireless & ordered to go to the loading port in San Domingo where she completed loading. On leaving San Domingo on the homeward voyage the *T.* stranded & was badly damaged. The sugar had to be discharged & part of it was lost. The cargo was brought home in another steamer, & to obtain possession of it resps. signed a Lloyd's average bond under which they were required to deposit £9,500 to cover an adequate proportion of general average charges. The present resps., indorsees of the bills of lading, brought an action against the present applts. claiming the return of their deposit under the bond, & a declaration that they were not liable to contribute in general average in respect of the Cuban sugar, on the ground that there had been an unjustified deviation from the charterparty voyage. Applts. counterclaimed for proper contribution in general average & for the balance of freight :—*Held :* although there was an unjustified deviation it was waived by the charterers, & the charterparty thus remained in force; resps., as indorsees of the bills of lading, were not personally liable to contribute to the general average loss as they had not waived the deviation; but as the general average contributions were chargeable on the goods, & applts. gave up their lien in consideration of resps.' undertaking in the bond to make the proper contribution in general average resps. were bound by the bond to make such contribution; there was no implied obligation to pay the balance of freight.—Hain S.S. Co., Ltd. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597; 155 L. T. 177; 52 T. L. R. 617; 80 Sol. Jo. 687; 41 Com. Cas. 350, H. L.

Annotation :—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3199. *Add. Annotation :*—*As to* (1) **Refd.** The Adriatic (1931), 47 T. L. R. 638.

3201. *Add. Annotation :*—**Refd.** The Adriatic (1931), 47 T. L. R. 638.

3207. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

3208. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

3219. *Add. Annotations :*—**Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd., [1936] 1 K. B. 291; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. [illegible]

3220. *Add. Annotations :*—**Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd. (1935), 40 Com. Cas. 288; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3224. *Add. Annotation :*—**Refd.** Vlassopoulos *v.* British & Foreign Marine Insce. Co., [1929] 1 K. B. 187.

3237. *Add. Annotation :*—**Refd.** Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

3245. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Dreyfus & Co., [1931] 1 K. B. 195.

3269. *Add. Annotation :*—**Refd.** Monk *v.* Warbey (1934), 151 L. T. 100.

3286. *Add. Annotation :—As to* (1) **Refd.** Frenkel *v.* MacAndrews & Co. (1929), 17 Asp. M. L. C. 582.

3293. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

3301. *Add. Annotation :—As to* (1) **Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd., [1936] 1 K. B. 291.

3346. *Add. Annotations :*—**Refd.** Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171; The Njegos, [1936] P. 90.

3395. *Add. Annotation :*—**Refd.** Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd., [1934] A. C. 455.

3449. *Add. Annotations :—As to* (2) **Refd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

3471. *Add. Annotation :—As to* (3) **Refd.** The Varing, [1931] P. 79.

3503. *Add. Annotation :*—**Consd.** Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932), 38 Com. Cas. 79.

3504. *Add. Annotation :—As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3511. *Add. Annotation :*—**Consd.** Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932), 38 Com. Cas. 79.

3514. *Add. Annotation :—As to* (1) **Consd.** Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932), 38 Com. Cas. 79.

3516. *Add. Annotation :*—**Consd.** Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932), 38 Com. Cas. 79.

3517a. Port requiring tug assistance—No tug assistance available.]—A charterparty provided that the charterers might order the chartered vessel to discharge at two or three safe ports in the United Kingdom or elsewhere within certain defined limits. The charterers ordered the vessel to Liverpool for part discharge & there ordered her to proceed to Londonderry for further discharge. Owing to her size she could not pass safely up the narrow & winding channel to Londonderry without tug assistance. No tugs were kept at Londonderry & the shipowners had to procure a tug from Glasgow to enable the vessel to reach her discharging berth, & after her discharge was completed had to procure another tug from Glasgow to enable her to leave. The shipowners claimed to recover from the charterers the cost of tug assistance so procured, on the ground that as the chartered vessel could not reach Londonderry without tug assistance & no such assistance was procurable locally Londonderry was not a safe port within the charterparty. The claim was referred to arbn., & the arbitrator awarded, subject to the opinion of the ct. on a special case, in favour of the shipowners :—*Held :* confirming the award, if tug assistance was required to enable the chartered vessel to reach her discharging port & no such assistance was obtainable at the port itself, that port, as regards that particular vessel, was not a safe port within the charterparty.—AXEL BROSTROM & SON *v.* LOUIS DREYFUS & CO. (1932), 38 Com. Cas. 79.

3555. *Add. Annotation :—As to* (3) **Refd.** Hain S.S. Co. *v.* Sociedad Anonima Comercial de Exportacion e Importacion (1934), 151 L. T. 305.

3601a. Two ports of discharge—Vessel to be left "in seaworthy trim"—Construction.]—A clause in a charterparty provided : "If the vessel is destined for two ports of discharge & the master is not so informed at the time of loading so as to enable him to arrange the stowage it is agreed that the vessel is to be

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PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

sq. *Exemption from liability in lighterman's contract—Inclusion in contract between shipowner & cargo owner.*]—An action of damages was brought by the owners of a cargo against a shipping co., who had contracted to carry a consignment of grit & shot at a through rate from Aberdeen *via* Newcastle to Boston, U.S.A. It was understood that the cargo would be taken by coasting steamer as far as Newcastle, where it would be transhipped to a vessel of defenders for carriage to Boston. The contract between the parties was based upon Shipping Instructions, containing this clause :—"All goods awaiting shipment are received & carried subject . . . to the conditions . . . of any . . . persons by whom the goods may be conveyed." During transhipment at Newcastle the goods were placed on board a lighter, where they were damaged through being left uncovered in heavy rain. The lighterman had accepted the goods from defenders under a contract, the terms of which exempted him from liability for his servants' negligence :—*Held :* the clause quoted from the Shipping Instructions applied during the transhipment of the goods by means of the lighter, & its effect was to import into the contract between pursuers & defenders the exemption from liability contained in the lighterman's conditions of carriage.—ABERDEEN GRIT CO. *v.* ELLERMAN'S WILSON LINE, [1933] S. C. 9.—SCOT.

PART VII. SECT. 7, SUB-SECT. 2.—B.

sd. *"Customary berth" — Berth designated by consignee not customary berth—Refusal to discharge.*]—NOVA SCOTIA FERTILIZER CO., LTD. *v.* S.S. "NIDAR" (Can.), [1929] 3 D. L. R. 184.—CAN.

PART VII. SECT. 7, SUB-SECT. 4.—B.

3589 v. —— ——.]—A cargo was shipped during the war from Archangel to Dundee. The consignee named in the bill of lading was the War Office. On the arrival of the ship at Dundee no bill of lading was presented to the ship's agents, who, accordingly, warehoused the goods to await the arrival of the bill. Thereafter, as the result of negotiations between the agents & a third party, the agents, after obtaining from him a letter of guarantee & indemnity which was in favour of themselves only, delivered the cargo to him without insisting on the production of the bill of lading. On Sept. 18, 1918, the third party sold the goods to the War Office & retained the price, & afterwards became bkpt. In an action at the instance of the owners against the agents for delivery of the cargo or, alternatively, for payment of the price of the goods :—*Held :* the agents were liable to the owners for the loss that had been sustained, in respect that they could have justified their action only by showing that they had acted on the authority of the owners or of the War Office.—KOLBIN (A. S.) & SONS *v.* KINNEAR (W.) & CO., KOLBIN (A. S.) & SONS *v.* UNITED SHIPPING CO., LTD., [1931] S. C. 128, H. L.—SCOT.

PART VII. SECT. 7, SUB-SECT. 5.—A.

3596 ii. —— —— ——.]—Under a contract for transfer of grain, delivery must be according to the bills of lading & the customs of the port of delivery.—PATERSON S.S. CO. *v.* CONTINENTAL GRAIN CO., [1935] 3 D. L. R. 371.—CAN.

left in seaworthy trim to proceed between ports of discharge " :—*Held:* the information given to the master at the port of loading was not sufficient to enable him to stow a cargo of grain so that the expense of bagging part of the cargo left on board after unloading at the first port of discharge could be avoided, the bagging being rendered necessary by the terms of Sched. 18 of Merchant Shipping Act, 1894 (c. 60), & Board of Trade regulations; the words " in seaworthy trim " meant that after discharge at the first port the steamer must be left in a condition in which she could safely meet the perils of the sea on her passage to the second port of discharge & not simply in the condition of riding level in still water; & the shipowners were entitled to recover from the charterers the cost of bagging so as to leave the vessel in " seaworthy trim," but not the cost of emptying the bags at the second port.—BRITAIN S.S. Co., LTD. *v.* LOUIS DREYFUS & Co. OF NEW YORK (1935), 51 T. L. R. 307; 79 Sol. Jo. 196.

3604. *Add. Annotations:*—**Distd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521. **Consd.** The Varing, [1931] P. 79. **Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725; Dalgliesh S.S. Co. *v.* Williamson & Son, Ltd. (1935), 40 Com. Cas. 312.

3609. *Add. Annotation:*—**Apld.** Leeds Shipping Co. *v.* Duncan Fox & Co. (1932), 37 Com. Cas. 213.

3611a. —— Bagging bulk cargo.]—Applts., pltfs. in the action, were the owners of a cargo of Egyptian cotton seed shipped in bulk from Alexandria to Southampton in a steamer belonging to resps. At Southampton the docks were owned by the Southern Ry. Co., who did the whole of the work of discharge. The co. refused to allow the cargo to be discharged unless it was put into bags in the hold so that the bags could be raised by the ship's tackle & placed on a weighing machine on deck before being swung ashore. As it was impossible to deliver the cargo in any other way the captain of the steamer instructed the railway co. to have it bagged, & the cargo was accordingly delivered in bags. A dispute arose between applts. & resps. as to whether the ship or the receivers must pay the cost of bagging. Applts., as receivers, brought this action to recover the cost from resps., & MACKINNON, J., by whom the action was tried, gave judgment for resps. Applts. now appealed to the Ct. of Appeal: *Held:* allowing the appeal, although as between a shipowner & a receiver the shipowner is entitled to deliver a bulk cargo over the ship's rail by any reasonable means, in this particular case it was impossible owing to the requirements of the port authority to deliver otherwise than in bags, & the captain, finding that he could not perform the ship's duty to deliver the cargo over the ship's rail in any other way, gave instructions to the port authority to put the cargo into bags. Those instructions were given on behalf of the ship, & resps. must therefore pay the cost of bagging.—BRITISH OIL & CAKE MILLS, LTD. *v.* MOOR LINE, LTD. (1935), 41 Com. Cas. 53, C. A.

3620. *Add. Annotation:*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

3623a. Provision of lighters with men willing to perform work.]—Pltfs. were the owners of timber shipped on defts.' steamer for delivery at the port of London. The bills of lading incorporated the terms of a charterparty in Baltwood form, clause 15 of which provided:—" The cargo shall . . . be discharged by the vessel in the customary manner as fast as the vessel can deliver during the ordinary working hours of the port on to the quay &/or into lighters &/or craft &/or rafts &/or wagons &/or on to bogies & thereon stowed &/or stacked as customary at the port of discharge, the consignees having the right to select any one or more of these alternatives if customary & available at the time of discharge." Pltfs. selected customary delivery into lighters, but, owing to a strike of lightermen, could not supply the men required, & thereupon defts., without notifying pltfs., discharged on to the quay on their own responsibility, & pltfs. incurred expenses for landing charges & quay rent. In an action to recover these expenses: —*Held:* (1) pltfs.' right to insist on discharge into lighters ceased when that method ceased to be available; (2) it was not sufficient to supply lighters without men; (3) there was no obligation on the defts. to notify pltfs. before adopting the only method of discharge available at the time, & therefore the action failed.—FITZGERALD *v.* LONA S.S. OWNERS (1932), 148 L. T. 166; 49 T. L. R. 77; 18 Asp. M. L. C. 364.

3624. *Add. Citation:*—17 Asp. M. L. C. 305.
Add. Annotation:—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

3624a. Failure of method selected by consignee—Duty to save delay by alternative method.]—A steamer belonging to applts., pltfs. in the action, was chartered to bring a cargo of timber from a Baltic port to the Surrey Commercial Dock, London. Resp. was the indorsee of the bill of lading of part of the cargo, & the bill of lading incorporated the terms of the charterparty. By a clause in the charterparty resp. had the right to select any one or more of a number of possible methods of discharge, if available at the port of discharge, & at the Surrey Commercial Dock there were in fact two methods of discharge which were available—into lighters alongside & on to the quay. The steamer arrived in the Surrey Commercial Dock in due course, & resp. selected the method of discharge into lighters. Discharge was thereupon begun, but before more than a small part of the cargo had been unloaded a strike occurred among the lightermen & discharge into lighters became impossible for some weeks. Applts. requested the resp. to make arrangements to take his cargo by the alternative method of discharge on to quay, which was still possible, but the resp., for whom the method of discharge into lighters was much more convenient, refused to take any steps to have his cargo landed. Applts. brought this action to recover demurrage or damages for detention of the steamer. MACKINNON, J., by whom the

action was tried, decided in favour of resp., & applts. now appealed to the Ct. of Appeal. The ct. allowed the appeal, on the ground that when the method of discharge selected by resp. became impossible it was his duty under the charterparty to save delay to the steamer by making arrangements within a reasonable time to have the discharge completed by the other method.—REDERIAKTIEBOLAGET MACEDONIA *v.* SLAUGHTER (1935), 40 Com. Cas. 227, C. A.

3634a. Charges for work done beyond "delivering cargo"—Meaning of delivery.]—By a charterparty for the carriage of a cargo of timber from the B. to G. it was provided (*inter alia*) as follows: clause 15: "For any work done by the vessel at the port of discharge beyond delivering cargo at the ship's rail if delivered by hand, or within reach of the ship's tackle or of the shore crane tackle if thereby discharged, the consignees shall pay to the shipowner the cost thereof plus 15 per cent.":—*Held:* upon the true construction of clause 15 of the charterparty the vessel had not delivered the cargo until it had lowered it into wagons & released the attachment to the crane which lowered it.—DAMPSKIP SELSKAB SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1930] 1 K. B. 83; 99 L. J. K. B. 66; 18 Asp. M. L. R. 27; *sub nom.* DAMPSELSKAB SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., 141 L. T. 521; 45 T. L. R. 591; *sub nom.* SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., 34 Com. Cas. 359; 20 Ry. & Can. Cas. 67, C. A.

Annotation:—**Consd.** The Varing, [1931] P. 79.

3634b. Consignee to select method—Right to alter method.]—FITZGERALD *v.* LONA S.S. OWNERS, No. 3623a, *ante*.

3634c. "Delivery from ship's tackles"—"Liberty to tranship"—Right to unload into lighters.]—A cargo of rice belonging to pltfs. was shipped on a steamship of defts.' line for carriage to & delivery at a specified port, the bill of lading containing a clause providing that the shipment was made "with liberty to tranship," a clause providing that the cargo was to be delivered "from the ship's tackles," a clause excepting the act of God & perils of the seas, & a clause incorporating the Hague Rules. By arrangement between defts. & a co. a practice existed at the port of delivery according to which defts. were entitled to use for discharging the cargoes of steamers of their line a wharf belonging to the co., unless the co. required it for one of its own vessels, when defts.' steamer lay in the harbour, the co. sending lighters to take discharge of its cargo & ultimately discharging that cargo at the wharf. On the arrival of the steamship at the port of delivery that wharf was not available, & in accordance with the practice pltfs.' cargo was discharged into lighters. While the cargo was still in the lighters they were sunk in a hurricane & the cargo was totally lost. Pltfs. alleging that defts. by discharging the cargo into lighters in accordance with the practice had committed a breach of the contract between them to which the loss of the cargo was due, brought an action against defts. to recover the value of the cargo:—*Held:* the action failed on the following grounds: the practice being to the knowledge of pltfs., a general practice, applicable at the port of delivery to all steamers of defts.' line, must be taken to be incorporated in the contract, unless it was unreasonable or was excluded by some provision of the bill of lading; the practice was not unreasonable; the clause in the bill of lading allowing liberty to "tranship," assuming it to be valid, not only did not by implication exclude the practice, but expressly authorised the discharge of the cargo into lighters; that clause was not prevented from being valid by Art. III., r. 8 of the Hague Rules or otherwise; the clause in the bill of lading providing for delivery from the ship's tackles did not exclude the practice; there being no other clause in the bill of lading which excluded the practice, defts., by discharging the cargo into the lighters in accordance with the practice, had not broken & determined the contract, & were therefore protected by the exception clause from liability for the loss of the cargo.—MARCELINO GONZALEZ Y COMPANIA S. EN C. *v.* JAMES NOURSE, LTD., [1936] 1 K. B. 565; 105 L. J. K. B. 158; 154 L. T. 497; 80 Sol. Jo. 93; 41 Com. Cas. 94; 18 Asp. M. L.

3634d. Nomination of stevedores.]—A steamer of applts., the Ben Line Steamers, Ltd., was chartered to carry a cargo to certain French ports as ordered. Under the charterparty the charterers had the right to nominate stevedores at the ports of loading & discharging "providing rates are not higher than captain can get the work done by other good stevedores." The charterers' agents at the ports of discharge nominated stevedores who were willing to discharge the steamer at a rate which was the usual rate prevailing at those ports for the discharge of individual vessels, but the shipowners had a standing contract with other stevedores at those ports by which, in consideration of the shipowners' employing those other stevedores for the discharge of all the vessels of their fleet, discharge was effected at a special low rate. The shipowners refused to pay the rate charged by the stevedores nominated by the charterers on the ground that in the circumstances prevailing at those ports they could get the work done at a lower rate within the meaning of the proviso in the charterparty. The dispute was referred to arbn., & the arbitrator awarded, subject to the opinion of the ct. on a special case, in favour of the charterers. The special case was argued before PORTER, J., who decided in favour of the shipowners, & the charterers now appealed to the Ct. of Appeal. Their Lordships dismissed the appeal, holding that there was sufficient evidence to justify the conclusion that the shipowners could get the work done by other good stevedores at a cheaper rate & that the charterers were therefore not entitled to nominate stevedores to discharge.—BEN LINE STEAMERS, LTD. *v.* COMPAGNIE OPTORG OF SAIGON (1937), 42 Com. Cas. 295, C. A.

3635. *Add. Annotation:*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

3642. *Add. Annotation:*—**Reld.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

3649a. —— —— **No other goods to be discharged.**]—Certain cotton goods were carried from L. to B., where they were discharged into a lighter. Certain other iron goods, packed in a wooden case, were being lowered into the same lighter when the case broke & the iron goods fell out into the lighter & holed it. Sea-water entered & damaged the cotton goods. Under the contract of carriage lighterage was to be at the risk of the owners, & the provisions of the Carriage of Goods by Sea Act, 1924 (c. 22), were also incorporated. The owners of the cotton goods claimed damages from the owners of the ship:—*Held:* (1) if the sea transit had ended when the goods were placed in the lighter, defts. were protected by the terms of the bill of lading. The sea transit, however, had not ended: the discharge into the lighter was part of the operation of discharge from the ship & was not complete as long as there were other goods to be discharged into the lighter; (2) the exception relating to loss due to insufficiency of packing in Carriage of Goods by Sea Act, 1924 (c. 22), Art. IV. (2) (*n*), was wide enough to cover the case of the packing of other goods, though primarily it would apply to the goods themselves that were lost or damaged; (3) on the evidence defts. had shown no negligence on the part of themselves or their servants & were therefore exempt from liability under Art. IV. (2) (*q*).—GOODWIN, FERREIRA & Co., LTD. *v.* LAMPORT & HOLT, LTD. (1929), 141 L. T. 494; 45 T. L. R. 521; 73 Sol. Jo. 402; 18 Asp. M. L. C. 38.

Annotation:—As to (1) **Distd.** Lindsay Blee Depots, Ltd. *v.* Motor Union Insce. Co. (1930), 46 T. L. R. 572.

3665a. "**Reversible**" **working days—How interpreted.**]—Pltf., the owner of a motor-schooner, chartered her to defts. to make a number of voyages with cargoes of bricks from R., in Belgium, to London. The charterparty provided: "The cargo to be loaded & discharged together within five reversible working days, time to commence from first high water at or off loading or discharging berth. Charterer is entitled to keep the vessel on demurrage not exceeding ten days at the rate of 1*s.* per net register ton per day payable day by day." On a claim by the owner against the charterers, for demurrage:—*Held:* the word "reversible" did not entitle the charterers to set off days saved on one voyage against days lost on another voyage under the same charter.—VERREN *v.* ANGLO-DUTCH BRICK CO. (1927), LTD. (1929), 45 T. L. R. 556; 73 Sol. Jo. 451, C. A.

3668. *Add. Annotation:—As to* (1) **Apld.** Leeds Shipping Co. *v.* Duncan Fox & Co. (1932), 37 Com. Cas. 213.

3710. *Add. Annotations:*—**Consd.** Anastasia S.S. Owners *v.* Ugleexport Charkow (1933), 149 L. T. 342; Dampskibsselskabet Heimdal *v.* Russian Wood Agency, Ltd. (1933), 149 L. T. 342. **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158.

3790. *Add. Annotation:*—**Refd.** Marcelino Gonzalez y Compania S. en C. *v.* James Nourse, Ltd., [1936] 1 K. B. 565.

3801. *Add. Annotation:*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

3816. *Add. Annotations:—As to* (2) **Apld.** Finlay, James & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. **Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** Foscolo, Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; The Njegos, [1936] P. 90.

3820. *Add. Annotations:—As to* (2) **Consd.** The Edison, [1932] P. 52; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** The Arpad (1934), 50 T. L. R. 505.

3821a. Value of goods at date of non-delivery—Contracts of resale disregarded.]—Pltfs., grain merchants of Hull, in Aug. 1930, bought from a German firm 1,000 tons of Roumanian wheat at 36*s.* a quarter, "as per sealed sample No. 727," Sept./Oct. shipment, from a Black Sea port, & immediately resold it under advance contracts at 36*s.* 6*d.* a quarter. The wheat was shipped on defts.' steamship, but a portion of it was not put on board until Nov., & in consequence the German seller had to take 24*s.* a quarter for that parcel. Deft. shipowners had no knowledge of the purchase or resale prices or that the wheat had been resold. When the ship arrived at Hull in Jan. 1931, it was found that there was a considerable quantity of barley mixed with the wheat; & in an action by pltfs. against defts. for non-delivery & conversion LANGTON, J., found that there was a short delivery of 47 tons & referred the assessment of the damages to the registrar. The registrar found that there was no market for Roumanian wheat "as per sample No. 727," & that the measure of damages was the price

PART VII. SECT. 7, SUB-SECT. 6.

3652 i. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 7, SUB-SECT. 7.—B. (b) i.

3666 iii, ——.]—A charter-party which provided for loading at a daily rate contained a clause that the steamer should employ stevedores appointed by the charterers, but the cargo was to be stowed under the captain's supervision. Time for loading was to be reckoned from twenty-four hours after the master had given written notice that the steamer was ready to load. The master, on arriving at the port of loading, gave notice of readiness. There was only one firm of stevedores at the port, which had been nominated by the charterers, but owing to shortage of labour caused by congestion of shipping the ship could not commence to load until some days after notice had been given. There was available during this time sufficient casual labour to put the cargo, which was ready in trucks, into the ship's slings. Loading at the port was a joint operation:—*Held:* the charterers were liable for demurrage.—*Re* LOUIS DREYFUS & Co. & SIR WILLIAM REARDON SMITH & SONS, LTD., [1928] S. A. S. R. 117.—**AUS.**

PART VII. SECT. 7, SUB-SECT. 9.—A.

se. *Defences—Practice as to delivery at port of destination.*]—Pltf. consigned a package of goods by deft.'s ship from Melbourne to Sydney under the terms of a bill of lading which provided that all liability of deft. should cease "as soon as the goods are free from the ship's tackles," & by another clause, indorsed thereon, that "should the owner fail to take delivery of the goods in accordance with the terms of this contract, such goods may be without notice transhipped into lighters or other craft, landed, warehoused, stored, or in any other way provided for, at the owner's sole risk & expense." Evidence was given that the invariable practice on the part of deft. in discharging cargo of the kind in question was that instead of the consignee taking delivery at the ship's slings the goods were taken by deft.'s servants & tallied into a store, & were subsequently tallied out by deft.'s servants to the consignees; that a small charge was made by deft. for stacking the goods; that the package in question was tallied into the store but could not subsequently be found. In an action by pltf. for damages for loss of the goods:—*Held:* pltf. was not entitled to succeed.—KEANE *v.* AUSTRALIAN STEAMSHIPS PTY., LTD. (1929), 41 C. L. R. 484; [1929] V. L. R. 116; 2 A. L. J. 367; [1929] Argus L. R. 81.—**AUS.**

pltfs. had paid for the wheat, which in fact (as an allowance of 6*d.* a quarter for defective quality had to be made) was the same price, except for the parcel bought at 24*s.*, as that at which the pltfs. had resold it. The price of wheat generally, however, had fallen considerably between Aug. & Jan., & defts., who contended that good Roumanian wheat equal to the sample could be bought at about 20*s.* 3*d.* a quarter, moved in objection to the registrar's report. BATESON, J., held that although, if they had received the wheat, pltfs. could have sold it, they could not buy any wheat answering to the sample, & that to make a market there must be power to buy as well as to sell; there being no market, & therefore no market price, the price pltfs. had paid for the wheat & the price at which they had resold it afforded some evidence as to what its value was to them; no other measure would give pltfs. *restitutio in integrum*, & the motion in objection to the report failed. Defts. appealed:—*Held:* the appeal must be allowed, on the grounds (*a*) that the true measure of damages was the value of the goods at the date of the non-delivery, disregarding circumstances peculiar to pltfs.; & although in a proper case, if there be no market, sub-contracts might be put in evidence to show what was the value of the goods, in the present case the prices fixed by the Aug. contracts could not be relied on as any evidence of the value in Jan., when the price of all wheat had fallen; (*b*) that in an action against a shipowner for non-delivery of goods, whether there is, or is not, a market for those goods at the port of discharge, in the absence of notice to deft., the law does not take into account, in order to fix the actual value to pltfs., intermediate contracts entered into with a third party for the purchase or sale of the goods; & therefore, although pltfs. had in fact suffered a loss of 30*s.* a quarter, they were not entitled to *restitutio in integrum;* (*c*) that on the alternative claim in tort for damages for conversion (as to which MAUGHAM, L.J., was not satisfied that any right of action existed) the measure of damages was the same; (*d*) that on the evidence the value of the wheat at the date of non-delivery should be taken to be 23*s.* 6*d.* a quarter.—THE ARPAD, [1934] P. 189; 103 L. J. P. 129; 152 L. T. 521; 50 T. L. R. 505; 78 Sol. Jo. 534; 40 Com. Cas. 16; 18 Asp. M. L. C. 510, C. A.

3836. *Add. Citation:*—17 Asp. M. L. C. 245.

3850a. —— Notwithstanding statutory exemption from liability of shipper.]—LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD., No. 3887a, *post.*

3873a. Rain—No cargo available.]—Under the terms of a berth contract a steamer was to proceed to one, two or three places on the Danube & there load a full & complete cargo of wheat &/or grain. The berth contract provided that the cargo was to be loaded at a certain rate & that "should any time be lost whilst steamer is in a loading berth owing to work being impossible through rain . . . the amount of actual time so lost during which it is impossible to work owing to rain . . . to be added to the loading time. . . . In calculating the extra time to be added to the lay days on account of interruptions by rain . . . periods of less than three hours shall be reckoned as quarter days." The charterers occupied in loading the steamer 3 days 20 hours beyond the lay days allowed for loading. Whilst the vessel was lying in loading berth in two ports ready to receive cargo rain occurred on certain occasions during working hours to an extent which would have made it impossible to load cargo into the ship had cargo been alongside. The total of the rainy periods amounted to two days. At the particular time when rain occurred the charterers had not booked cargo with shippers, although cargo was available in the port, & no cargo was alongside the ship at those times. In an arbn. the arbitrator held that the rainy periods, amounting to two days in all, were to be added to the lay days, notwithstanding that cargo was not alongside at such time, & that the shipowners were entitled to 1 day 20 hours demurrage. Upon the hearing of a special case MACKINNON, J., held that the work of loading had not been interrupted by rain, as the work of loading had not at that time commenced. The shipowners were therefore entitled to 3 days 20 hours demurrage. On appeal:—*Held:* the charterers, in order to bring themselves within the clause of the berth contract, must prove both that the work of loading cargo became impossible through rain & also that in consequence they lost time in loading. In the present case the charterers had not proved that the impossibility of loading owing to rain had caused them to lose time unloading.—BURNETT S.S. CO., LTD. *v.* DANUBE & BLACK SEA SHIPPING AGENCIES, [1933] 2 K. B. 438; 103 L. J. K. B. 44; 149 L. T. 598; 49 T. L. R. 553; 38 Com. Cas. 326; 18 Asp. M. L. C. 443, C. A.

3886. *Add. Annotation:—Generally,* **Refd.** National S.S. Co. *v.* Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus y Cia.), Ltd. (1932), 48 T. L. R. 325.

3887a. ——.]—(1) A steamer belonging to pltfs. was chartered by defts. to take a grain cargo from Australia to Callao. The charterparty provided (*inter alia*) that discharge at Callao should be made at an average rate of 450 tons per weather working day, & that if the steamer should be longer detained demurrage should be payable at a rate calculated on her tonnage, which worked out to £65 per day. The [illegible] at Callao in due that port discharge could only be effected by the employment of stevedors who were members of a trade union which would not allow each man to do more than a limited amount of work per day & would not allow more than 80 tons per day to be discharged from any one hold. As the steamer had only four holds this rule of the union made it impossible to discharge more than 320 tons per day, although the charterparty required a rate of 450 tons. After discharge had proceeded very slowly for some days the captain made an arrangement with the stevedores that in consideration of an increased wage they would do more work, & by spending £123 in this way he saved the steamer two days' demurrage, which would have amounted to £130. In this action pltfs. claimed demurrage which had been actually incurred & also the £123 by which two days' demurrage had been avoided:—*Held:* the charterparty

being one for discharge in a fixed time amounted to a guarantee by defts. that discharge would be completed within that time unless it was delayed by some fault of the shipowner, & as the idleness of the stevedores was not due to any fault of pltfs. demurrage was payable for the time occupied in discharge beyond the time allowed by the charterparty. Pltfs. must also recover the £123, the expenditure of which by the captain had saved demurrage amounting to £130, for which the defts. would have been liable.

(2) The charterparty incorporated the Australian Sea Carriage of Goods Act, 1924, which contains a provision identical with that of r. 3, Art. IV. of the English Carriage of Goods by Sea Act, 1924 (c. 22), as follows: "The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents or his servants." Defts. contended that as the idleness of the stevedores was not due to any act, fault, or neglect on their part they were protected by this rule: —*Held:* the rule did not abolish the old-established principle of law rendering the charterer liable for demurrage. — LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD. (1932), 37 Com. Cas. 213.

3899. *Add. Annotation:—As to* (1) **Refd.** Burnett S.S. Co. *v.* Danube & Black Sea Shipping Agencies, [1933] 2 K. B. 438.

3909a. Agreement to surrender claim—Validity of contract.]—An Italian steamer, the *P.*, was chartered by a German firm, Berlin Derunaptha, to bring seven cargoes of Russian oil from Batoum to Hamburg. A clause in the charterparty provided that any dispute arising under it should be settled by arbitration in London. Three voyages were made under the charter, & the *P.* arrived in due course at Batoum to load the fourth cargo on Oct. 7, 1932, & on the same day the master gave notice of readiness to load. On Oct. 8 the charterers told the master that they intended to load kerosene, which was not one of the kinds of oil specified in the charterparty. The master refused to allow kerosene to be loaded, & the owners supported him in his refusal. The charterers then raised an objection that the *P.* was unseaworthy & not fit to load any oil cargo whatever. Delay occurred in consequence, & finally on Oct. 28 the charterers offered to load if the ship would abandon all claims for demurrage. The master reported this to the owners, &, in reply, they cabled, without making any reference to demurrage, instructing him to give a fresh notice of readiness to load & to protest when loading was completed. On Nov. 3 the charterers induced the master to sign a document making him responsible for certain damages & expenses & agreeing to give up the ship's claim for demurrage. The shipowners, however, claimed demurrage; the dispute was referred to arbn. as required by the charterparty, & the umpire in the arbn. stated a special case for the opinion of the ct. on the question whether an alleged agreement between the parties expressed in [illegible] between the master & the charterers was a valid contract enforceable at law against the owners. On argument of the special case it was held that whether the letters did or did not constitute a contract there was no consideration, & therefore, if there was a contract it could not be enforced. The charterers appealed to the Ct. of Appeal:—*Held:* dismissing the appeal, *per* SCRUTTON, L.J. & GREER, L.J., the letters relied on by the charterers did not in terms show a concluded agreement, & if they had shown such an agreement it could not have been enforced against the shipowners because the master had no authority to make it on their behalf, & there was also no consideration for it; *per* SLESSER, L.J.: the letters relied on did not show that the parties were ever *ad idem*, but if they had shown an agreement the master had sufficient authority to make such an agreement & there was good consideration for it.—PORTOFINO TANK STEAMER OWNERS *v.* BERLIN DERUNAPTHA (1934), 39 Com. Cas. 330, C. A.

3909b. Frustration—Ship destroyed before loading.]—D/S A/S "GULNES" *v.* IMPERIAL CHEMICAL INDUSTRIES, LTD. (1937), 54 T. L. R. 194; 81 Sol. Jo. 984.

3914a. Sum expended by master to avoid demurrage.]—LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD., No. 3887a, *ante*.

3920a. —— "Per working hatch."]—A charterparty on a modified Form A of the Chamber of Shipping Welsh Coal Charter, 1896, provided that a coal cargo was to be taken from alongside by consignees at the port of discharge at "the average rate of 125 tons per working hatch per day." A marginal note or memorandum stated that consignees were not obliged to take cargo at a higher rate than 500 tons per day. Despatch money was to be payable at the rate of £15 per day. The cargo, which consisted of about 4,600 tons of coal, was loaded in unequal portions in four holds. In a dispute between the shipowners & charterers as to the method of calculating the lay days & the consequential payment or non-payment of despatch money:—*Held:* the term in the charterparty "working hatch" denoted a hatch which could be worked because there was cargo in the hold underneath it waiting to be discharged; the charterparty provided for discharge at the average rate of 125 tons per each working hatch per available day & not 500 tons per day for the whole ship; when in the ordinary course one hold became empty the rate of discharge from the remaining holds remained at 125 tons & was not proportionately increased; & the lay days were in the circumstances easily ascertainable by simply dividing by 125 the number of tons of coal in the hatch which contained the largest quantity of cargo.—THE SANDGATE, [1930] P. 30; 99 L. J. P. 49; 142 L. T. 356; 35 Com. Cas. 221; 46 T. L. R. 116; 18 Asp. M. L. C. 83, C. A.

3957a. Specified date—Provision for loading in regular turn—Construction.]—A charterparty provided that the ship should proceed to her loading port & there load in customary manner in regular turn with other steamers

PART VII. SECT. 8, SUB-SECT. 3.—B. (b) 1.

3921 1. *Arrival of ship.*]—Lay days begin when the vessel arrives at the place agreed on in the charterparty, & the fact that she was prevented from getting into the dock by another vessel does not affect the question.—McALONEY *v.* MERSEY PAPER CO., LTD., [1933] 2 D. L. R. 261; 6 M. P. R. 42.—CAN.

loading ore for the charterers. The time for loading was to count from 6 a.m. after the ship was reported & ready, & in free pratique (whether in berth or not) in accordance with the above provision. Lay days were not to commence before June 10, 1934, unless loading commenced sooner. The steamer arrived at her loading port on June 8, 1934, & was cleared & in free pratique, & notice given of readiness to load on the same day. There was no customary loading berth available until June 18, when in fact the loading began. The question was whether, having regard to the above provisions, the ship's loading lay time began at 6 a.m. after she arrived at the port or not until she came on turn :—*Held :* the ship's loading laytime commenced at 6 a.m. after she arrived at her loading port.—MOOR LINE, LTD. *v.* MANGANEXPORT G.m.b.H., [1936] 2 All E. R. 404 ; 155 L. T. 135 ; 80 Sol. Jo. 489.

3975. *Add. Annotation :*—**Apld.** Verren *v.* Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

3976. *Add. Annotation :*—*As to* (1) **Apld.** Dampskibsselskabet Botnia A/S. *v.* Bell (C. P.) & Co., [1932] 2 K. B. 569.

3978a. —— **Ice preventing loading.**]— DAMPSKIBSSELSKABET BOTNIA A/S. *v.* BELL (C. P.) & CO. No. 2736a, *ante.*

3988a. —— **Former religious holidays in Russia—Effect of establishment of five-day week.**]— WESTFAL-LARSEN & CO. AKTIESELSKABET *v.* RUSSO NORWEGIAN TRANSPORT CO., LTD. (1931), 75 Sol. Jo. 571.

3989. *Add. Annotation :*—**Refd.** Verren *v.* Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

3996a. —— **No time lost on balance.**]—A steamer was chartered to bring a cargo from the Danube & was to go to Sulina for orders. The charterers were to pay demurrage for detention for more than six hours in waiting for orders, and for time saved in loading they were to have £15 a day despatch money. Clause 9 of the charterparty provided that " if the steamer be longer detained than the time stipulated above demurrage shall be paid . . . at the rate of £30 per running day." The charterers were nearly five days late in giving orders as to the port of loading, but they saved 7¼ days in loading :—*Held :* clause 9 covered all references to time in the preceding clauses, &, as the steamer had spent a shorter time on her visit to the Danube than she might have taken under the charterparty, nothing was payable by the charterers to the shipowners either as demurrage or as damages for detention.—SOCIETA LIGURE DI ARMAMENTI *v.* JOINT DANUBE & BLACK SEA SHIPPING AGENCIES OF BRAILA (1931), 47 T. L. R. 296 ; 75 Sol. Jo. 191.

4001a. —— —— **Whether lien clause incorporated in bill of lading.**]—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., No. 1780a, *ante.*

4026a. —— **Insistence on special mode of discharge by consignee.**]—Under several bills of lading, which incorporated all the terms of two charterparties in identical terms, pltfs. contracted to carry on board their vessel certain timber consigned to the respective defts. from a Norwegian port to the port of Garston. Under the charterparties the vessel was to " proceed to Garston or so near thereto as she may safely get " ; &, by clause 13, the cargo was to be discharged in the customary manner " on to the quay &/or into lighters &/or craft &/or wagons &/or on to bogies & thereon stowed &/or stacked as customary at the port of discharge, the consignees having the right to select any one or more of these alternatives if customary & available at the time of discharge." Owing to congestion at Garston dock the L. M. & S. Ry. Co., the owners of the dock, informed pltfs.' agents that the co. were unable to accept any vessels for which storage accommodation was required for any material portion of their cargo, but that they could accept vessels where the whole cargo could be discharged into main line railway wagons & sent direct from ship to destination. When the ship arrived off Garston dock defts. refused to agree to this method of dischgear & alleged that the customary method of discharge for cargo destined for Garston itself was into " domestic " wagons which took the timber to the storage ground for sorting &/or storing. Ultimately, to put an end to the deadlock, the railway co. arranged to take the timber to another storage ground at Widnes, ten miles away. Pltfs. claimed demurrage or alternatively damages for the detention of their vessel. The judge of the Liverpool Ct. of Passage found for defts. on the ground that defts.' insistence that the timber should be sorted & stored was not a breach of their contract. Pltfs. appealed :—*Held :* defts. had no right to claim that they were entitled to store the timber on the railway co.'s ground at Garston ; it appeared that the respective consignments of timber could be, & in fact were, delivered without sorting ; &, as main line wagons were available, defts. were liable in damages for their breach of contract in preventing the ship arriving in her discharging berth on the date when but for their insistence on having their timber stored the railway co. would have admitted the ship into dock.—THE VARING, [1931] P. 79 ; 100 L. J. P. 105 ; 145 L. T. 433 ; 18 Asp. M. L. C. 231 ; *sub nom.* FORNYADE REDERIAKTIEBOLAGET COMMERCIAL *v.* BLAKE, 36 Com. Cas. 278, C. A.

Annotation :—**Refd.** Rederiaktiebolaget Macedonia *v.* Slaughter (1935), 40 Com. Cas. 227.

4046a. ——.]—A charterparty provided that the ship should be loaded at a certain rate, Sundays & holidays excepted, & that despatch money was to be paid by the owners to the charterers for all time saved in loading (including Sundays & holidays saved). Under a local law the work of loading was prohibited after 1 p.m. on Saturdays :—*Held :* notwithstanding the prohibition Saturdays were to be computed as full days in calculating the time for loading under the charterparty.—HAIN S.S. CO., LTD. *v.* SOCIEDAD ANONIMA COMERCIAL DE EXPORTACION Y IMPORTACION (LOUIS DREYFUS & CIA), LDA., OF BUENOS AIRES (1934), 151 L. T. 305 ; 50 T. L. R. 387 ; 78 Sol. Jo. 384.

4048a. Days saved including working holidays—Meaning of " working holiday."] — A steamer was chartered by her owners to the Joint Danube & Black Sea Shipping Agencies of Braila to go to the Danube to load a grain cargo. The charterparty provided (*inter alia*) : " 4. The cargo shall be loaded at the

average rate of 400 units per running day (Sundays & non-working holidays excepted). . . . 26. For all time saved in loading the steamer to pay £15 per day despatch money or *pro rata* for any part of a day saved, including Sundays & holidays saved " :— *Held :* if the labourers working on the ship & the men who passed the grain from the warehouses to the ship worked on a holiday without any substantial addition to their ordinary wages, that day was a working holiday.—PANAGOS LYRAS, S.S. OWNERS *v.* JOINT DANUBE & BLACK SEA SHIPPING AGENCIES OF BRAILA (1931), 47 T. L. R. 403 ; 75 Sol. Jo. 373.

4075. *Add. Annotation :—As to* (2) **Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

4113. *Add. Annotation :—As to* (2) **Consd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

4126a. Validity of charterparty—Breach of duty by broker procuring charterparty — Ratification of wrongful act.]—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., No. 1780a, *ante.*

4165. *Add. Annotations :—As to* (5) & (6) **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542. *As to* (6) **Refd.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597.

4173. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

4177. *Add. Annotation :*—**Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4202a. —— Claim based on Merchant Shipping Act, 1894 (c. 60), s. 502.]—TEMPUS SHIPPING CO., LTD. *v.* DREYFUS (LOUIS) & CO., LTD., No. 3099a, *ante.*

4208a. Loss caused by pier—In order to save ship & cargo.]—By Rule A. of the York-Antwerp Rules, 1924, " There is a general average act when, & only when, any extraordinary sacrifice or expenditure is intentionally & reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure." Rule 5 is in these terms : " *Voluntary Stranding.* When a ship is intentionally run on shore, & the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo & freight, or any of them, by such intentional running on shore shall be made good as general average."

A steam vessel, laden with a cargo of coal, anchored three or four lengths from a pier. During a gale she began to drag, her port cable parted, & she dragged closer to the pier & was unable to get head to sea & steam away. The master feared that if he let the vessel drag ashore she would lose her propeller & possibly break her back ; & she was so close to the pier that if she attempted to turn head to sea there was danger of striking the pier with her stern & damaging the propeller. The master accordingly decided to put the ship broadside against the pier, using it as a lever to get the ship's head into such a position that he could steam out to sea. While carrying out this manœuvre the vessel was grinding against the pier & also bumping upon the ground, & damage to the extent of over £14,000 was occasioned to the pier & the ship. The shipowners claimed that this sacrifice was incurred in the course of a general average act & that they were entitled to a contribution from the insurers of the cargo :— *Held :* although the vessel bumped on the ground there was not a voluntary stranding within the meaning of rule 5 ; there was an extraordinary sacrifice intentionally made ; the action was reasonably taken ; & there was a general average act in respect of which pltfs. were entitled to contribution.—THE SEAPOOL, [1934] P. 53 ; 103 L. J. P. 49 ; 151 L. T. 38 ; 50 T. L. R. 142 ; 18 Asp. M. L. C. 477.

4218. *Add. Annotations :—As to* (1) **Refd.** Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83. *As to* (3) **Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249. *Generally*, **Refd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co., [1931] A. C. 726.

4221. *Add. Annotations :*—**Refd.** Symington *v.* Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646 ; Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4225. *Add. Annotations :—As to* (1) **Consd.** Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47. *As to* (2) **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4240. *Add. Annotation :*—**Refd.** Holloway *v.* Donaldson Line, Ltd. (1935), 41 Com. Cas. 47.

4247. *Add. Annotation :*—**Folld.** Wetherall & Co. *v.* London Assurance (1931), 144 L. T. 645.

4247a. ——.]—Detention of a vessel after the completion of the voyage while repairs necessitated by a general average act are being effected is not in itself admissible in general average ; &, consequently, under a policy of marine insurance indemnifying a shipowner against general average, the insurer is not liable to the insured in respect of such detention.—WETHERALL (J. H.) & CO., LTD. *v.* LONDON ASSURANCE, [1931] 2 K. B. 448 ; 100 L. J. K. B. 609 ; 144 L. T. 645 ; 36 Com. Cas. 181 ; 18 Asp. M. L. C. 205.

4248a. ——.]—Resps. insured claimant's steamer by a policy providing that general average was to be adjusted according to the York-Antwerp Rules of 1924. The ship was chartered to go to Bordeaux to load for Cardiff, the charterparty also providing that average, if any, should be settled according to those rules. During loading at Bordeaux the foremast broke, & damage was done to the ship. For the purpose of repair she was moved to another dock within the port, & the shipowners incurred expenses as follows : wages & provisions of crew, cost of handling & discharging cargo for the purpose of repairs, cost of coal consumed in going in & out & keeping steam up, expense of towing in & out & mooring & port expenses, & cost of coal consumed in shifting the vessel. While staying at Bordeaux the ship was in no danger. On completion of repairs & loading she left for Cardiff, & while she was at sea she fouled some wreckage without any negligence of those on board her, & though there was no immediate danger she

unfit to

perils of the sea, & the master put into Cherbourg, as a port of refuge, & had repairs effected. The expenses at Cherbourg were similar to those at Bordeaux :—*Held :* (1) the cost of repairs in each case was recoverable as particular average ; (2) the other expenses at Bordeaux could not be claimed as general average, since no danger was in operation there ; (3) the other expenses at Cherbourg could be claimed as general average since, though there was no immediate danger, the vessel was not fit, without repair, to encounter the perils of the sea.—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., [1929] 1 K. B. 187 ; 98 L. J. K. B. 53 ; 140 L. T. 44 ; 44 T. L. R. 725 ; 72 Sol. Jo. 612 ; 34 Com. Cas. 65 ; 17 Asp. M. L. C. 544.

4253a. ——.]—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., No. 4248a, *ante.*

4260. *Add. Annotation :—Generally,* **Reld.** Vlassopoulos *v.* British & Foreign Marine Insce. Co., [1929] 1 K. B. 187.

4260a. ——.]—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., No. 4248a, *ante.*

4280. *Add. Annotation :*—**Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4281. *Add. Annotation :—As to* (2) **Reld.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4283a. —— **Cost of shifting**

Constantza, & for a declaration that the sum deposited on joint account in respect of freight should be paid out to them by the bank. Defts. contended that by going to Constantza to bunker the steamer had deviated from the contract voyage & the charterparty contract had thereby been destroyed & the claim for general average contribution could not be maintained. As to the sum claimed for freight, defts. admitted that it was due, but they counterclaimed for short delivery in respect of the cargo which had been jettisoned. It was admitted that Constantza was not on the direct geographical route from Poti to Sparrow's Point, but at the material time it was a regular practice for oil-burning steamers leaving Black Sea ports on ocean voyages to call at Constantza for bunkers because large supplies of cheap oil were there available. The action was tried by GODDARD, J., who delivered a reserved judgment granting both the declarations claimed by pltfs. :—*Held :* (1) upon the evidence, at the material time Constantza was on the ordinary commercial route for oil-burning steamers from Black Sea ports & therefore there had been no deviation from the contract voyage ; & (2) if pltfs. had not been able to prove that Constantza was on the ordinary commercial route the deviation clause in the charterparty would not have been sufficient to allow the steamer to go to Constantza to bunker.—REARDON SMITH LINE, LTD. *v.* BLACK SEA & BALTIC GENERAL INSURANCE CO., LTD. (1937), 42 Com. Cas. 332.

4294. *Add. Annotation :*—**Reld.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4295a. Effect of deviation.]—Pltfs. were owners of an oil-burning steamer which was chartered to go from Genoa to Poti, a Black Sea port, to load a cargo of manganese ore & take it to Sparrow's Point, near Baltimore, U.S.A. The charterparty provided (*inter alia*) that general average should be payable according to York-Antwerp Rules, 1924, & that a guarantee for cargo's liability for general average contribution should be given by the defts. It also provided that the steamer should have liberty to call at any port or ports, in any order, to bunker. The steamer loaded the cargo at Poti & then went to Constantza to take in oil fuel for the Atlantic voyage, & at Constantza she stranded on a reef. To enable her to be refloated part of the cargo was jettisoned, & when she was moved into the harbour it was found that extensive repairs were necessary. The repairs were carried out, & by arrangement between the parties the voyage to Sparrow's Point was abandoned & the cargo which remained on board was taken to Rotterdam. The jettisoned cargo had been lost & the receivers at Rotterdam refused to pay freight on it, & in consideration of pltfs.' waiving their lien on the remainder of the cargo & giving delivery of it defts. paid a sum of £1,061 14*s.* 4*d.* into a bank to a joint account of themselves & pltfs. Pltfs. brought this action for a declaration that defts. were liable to them for a general average contribution due from the cargo in respect of the stranding at

)ing Co. *v.* London Assurance, [1933] 1 K. B. 378 ; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4304. *Add. Annotation :*—**Reld.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4304a. —— Signing average bond—Application of York-Antwerp Rules as to amount payable.]—In June, 1931, pltf. as owner chartered a steamship, the *S.*, to an Australian co. to bring a cargo of wheat to one of certain specified ports in Europe. The *S.*, in the course of the voyage, met with bad weather & suffered damage which necessitated her putting into Durban as a port of refuge, & there she incurred general average expenditure & other charges. After repairs had been executed the voyage was resumed, & the *S.* finally reached Hull, which was one of the optional ports of discharge, on Oct. 21, 1931. Defts. had purchased part of the cargo on July 22, 1931 ; the purchase was made by an ordinary c.i.f. contract in which nothing was said about general average ; defts. did not see either the charterparty or the bill of lading & had no notice of any terms relating to average contained in them. When defts. claimed delivery of their wheat the ship would not part with it until defts. signed an average bond by which they agreed to pay their proper proportion of general average & other charges "to be ascertained & adjusted in the usual manner." In fact, by the charterparty & the bill of lading the shippers had agreed that general average if any should be settled according to the York-Antwerp Rules, 1924, & pltf. contended that defts. were bound by that agreement.

Defts., while admitting that they were bound to pay something for general average, contended that by the bond which they had signed they were only liable for the sum which would be payable at common law & not for the larger sum which would be payable under the York-Antwerp Rules, 1924. Pltf. brought this action to recover the latter sum:—*Held:* as the delivery order under which defts. obtained their wheat was expressed to be subject to the conditions & exceptions in the bill of lading, & defts. in the average bond had undertaken to pay general average or other charges which might be chargeable on their consignment or to which the shippers or owners of their consignment might be liable to contribute, upon a true construction of the average bond defts. had undertaken to pay general average settled according to the York-Antwerp Rules, 1924.—THOMSON *v.* MICKS LAMBERT & Co. (1933), 39 Com. Cas. 40.

4310. *Add. Annotation:—As to* (2) **Consd.** The Seapool, [1934] P. 53.

4313. *Add. Annotations:—As to* (2) **Folld.** Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47. **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4313a. —— —— —— ——.]—A steamship belonging to pltfs. was chartered to carry a cargo of grain from various ports in the River Plate & to deliver the same at Antwerp or Rotterdam. The charterparty provided that average, if any, was to be payable according to York-Antwerp Rules, 1924. It also contained an exceptions clause which provided that the steamer should not be liable for loss or damage occasioned " by fire from any cause or wheresoever occurring . . . or any latent defects in hull, machinery or appurtenances . . . arising in the navigation of the steamer, even when occasioned by the negligence, default or error of judgment of the . . . master, mariners or other servants of the shipowners . . . (not resulting, however, in any case from want of due diligence by the owners of the steamer, or by the ship's husband or manager)." The steamer bunkered at Rotterdam, where she took on board enough bunker coal to take her to the Plate & bring her back to Europe. She carried a cargo of coal from Cardiff to a port in the Plate & was kept waiting a fortnight before she could get into her berth to discharge that cargo. Shortly after she had arrived at her first loading port in the Plate & had commenced to load a cargo of maize a fire broke out by spontaneous combustion in her bunker coal, which had been on the ship for two & a half months since June 30, & had been carried through the tropics, & a portion of the bunker coal was shifted on to the deck. The ship then proceeded to another port in the Plate to complete loading her cargo of maize. On the way another fire was discovered in the bunker coal, which was extinguished after a fortnight & after discharging all the bunker coal on to the deck & subsequently replacing it in the bunkers. The owners of the steamer claimed to recover from defts., who were the indorsees of the bills of lading in respect of the cargo of maize, a contribution in general average for the expense so incurred:—*Held:* (1) the unexplained occurrence of the fires afforded a reasonable presumption that they were due to a defect or unfitness of the bunker coal at the time of the loading of the cargo which amounted to a breach of warranty, & as the ship was unseaworthy pltfs. could not recover a general average contribution from the cargo owners for sacrifice due to their own fault & breach of contract; (2) neither the exception in the charterparty of latent defects nor Rule D of the York-Antwerp Rules, 1924, which provided that a claim in general average was not to be barred because it arose by the default of the carrier, enabled pltfs. to maintain their claim for a contribution in general average.—FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & CO., LTD., [1930] 2 K. B. 47; 99 L. J. K. B. 626; 143 L. T. 287; 35 Com. Cas. 193; 18 Asp. M. L. C. 147.

4313c. —— —— —— **Effect of exception defects.**] — FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & CO., LTD., No. 4313a,

4313d. —— —— **Improper abandonment.**]—Pltfs. were the owners of a steamer which was chartered to bring a grain cargo from the Black Sea to Falmouth. Defts. became indorsees of the bills of lading & owners of the cargo. The steamer met with very severe weather in the Bay of Biscay & suffered damage which rendered her unmanageable. In reply to an S.O.S. call another steamer came up & took off the crew, but owing to the state of the weather it was impossible to salve pltfs.' steamer & she was left derelict in the Bay. Subsequently, the weather having moderated, she was picked up & salved. In a salvage action an award was made under which defts. were obliged to pay £8,303 to the salvors, their contribution as owners of the cargo. Pltfs. had incurred general average expenses & claimed from defts. £1,288 odd as cargo owners' contribution to such expenses. Defts. did not dispute that they must make some contribution to general average expenses, but they counterclaimed a sum sufficient to extinguish pltfs.' claim for £1,288, on the ground that the steamer had been unnecessarily & improperly abandoned, & that if the crew had stayed on board & done their duty the eventual salvage award would have been very much smaller:—*Held:* (1) on the facts, the state of the weather & the damaged condition of the steamer justified the abandonment, so that the contention that the steamer had been improperly abandoned failed; (2) *obiter*, even if the abandonment had been improper pltfs. would have been protected, against any claim arising out of it, by an exceptions clause in the charterparty which excluded liability of the shipowners for loss resulting from the act, neglect, or default of their servants in the navigation or management of the ship.—BULGARIS *v.* BUNGE & Co., LTD. (1933), 49 T. L. R. 237; 38 Com. Cas. 103.

4320. *Add. Annotation:*—**Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4326. *Add. Annotation:—As to* (2) **Refd.** Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249.

4347. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

4363. *Add. Annotations :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4372. *Add. Annotation :*—**Distd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4388. *Add. Annotation :*—**Refd.** De Beéche *v.* South American Stores, Ltd. & Chilian Stores Ltd., [1935] A. C. 148.

4392. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4394. *Add. Annotations :*—**Distd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Consd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521. **Refd.** Finlay, James & Co., Ltd. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400; Dalgliesh S.S. Co. *v.* Williamson & Son, Ltd. (1935), 40 Com. Cas. 312.

4395a. —— —— —— ——.]—Resps., pltfs. in the action, as owners, chartered a steamer, the *R.*, to charterers to bring a cargo from Oporto to Heysham. The charterparty provided (*inter alia*) that the cargo should be taken from alongside at the merchant's risk & expense, & that it should be delivered at Heysham in the manner customary at Heysham. The cargo was shipped under a bill of lading which incorporated the terms of the charterparty, & applts. became indorsees of the bill of lading. The port of Heysham belongs to the L.M.S. Ry. Co., & all the operations of discharging cargoes at the port are performed by the ry. co. The only practicable method of discharge is from the ship direct into wagons on railway lines at some distance from the edge of the quay. Except on one occasion the whole cost of discharging cargoes at Heysham had hitherto been borne by shipowners without objection, but in this case resps. contended that the railway wagons into which the cargo was placed were not "alongside" within the meaning of the charterparty, & that therefore applts. as receivers should repay to them a proportionate part of the sum which they paid to the railway co. to cover the whole cost. of discharge. Applts. refused to pay anything towards the cost of discharge, contending that by the custom of the port of Heysham the whole of the cost was payable by the shipowners. Resps. brought an action in the county ct. at Preston to recover the sum claimed, & obtained judgment; & applts. now appealed. The ct. dismissed the appeal :—*Held :* as the charterparty had expressly provided that the cargo should be taken from alongside at the merchant's expense, & the wagons on the railway lines into which the cargo was placed were too far away from the ship to come within the term "alongside," applts. must pay a proportionate part of the cost of discharge.—DALGLEISH STEAM SHIPPING CO., LTD. *v.* WILLIAMSON & SON, LTD. (1935), 79 Sol. Jo. 453; 40 Com. Cas. 312, C. A.

4423. *Add. Annotation :*—**Refd.** Moor Line, Ltd. *v.* Manganexport G.m.b.H., [1936] 2 All E. R. 404.

4440. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4449. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

4452. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4461a. Discharge of bulk & bag cargoes—Construction of Schedule of Stevedores' Association.]—Defts.' consignment of wheat was carried in bags in pltfs.' steamship from Australia to Avonmouth, & on arriving at its destination was by arrangement between the parties bulked in the ship's hold & thence discharged by means of defts.' bucket elevator. By the current Sched. of the Stevedores' Assocn. of Bristol, Avonmouth, & Portishead different rates were fixed for the discharging of bulk cargoes & bag cargoes :—*Held :* there was no provision in the sched. for a bag cargo which became a bulk cargo by bag starting, & on the proper interpretation of the sched. the cargo in question was a bag cargo & defts. were entitled to charge the shipowners on the basis of the stevedoring rate applicable thereto.—THE ALDINGTON COURT, [1932] P. 21; 101 L. J. P. 9; 146 L. T. 256; 48 T. L. R. 35; 18 Asp. M. L. C. 264.

4470. *Add. Citations :*—[1929] 1 K. B. 150; 97 L. J. K. B. 725; 139 L. T. 575; 72 Sol. Jo. 435; 34 Com. Cas. 47; 17 Asp. M. L. C. 505.
Add. Annotation : — **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co (1929), 141 L. T. 521.

4472. *Add. Annotations :*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4475. *Add. Annotations :*—*As to* (1) **Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dalgleish Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 40 Com. Cas. 312.

4485. *Add. Annotations :*—**Distd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Consd.** Dalgleish Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 40 Com. Cas. 312. **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4499a. —— —— ——.] — BREWSTER & CO. (WOKING), LTD. *v.* BECKETT (1929), 34 Lloyd L. R. 337.

4499b. —— —— **Exemption clause in contract between lighterer & tug.**]—THE KITE, No. 5124a, *post.*

4502a. —— —— ——.]—It is put for pltfs. that defts. are liable for a breach of duty on defts.' part through the lighterman having given a receipt for goods as marked, when, in fact, they were not marked. . . . The evidence before me is that the course of business is for

the stevedore to tally the marks, & for the lighterman, unless he is specially instructed, to accept the tallying of the stevedore.—VAVASSEUR & Co., LTD. *v.* PORT OF LONDON AUTHORITY (1920), 4 Ll. L. Rep. 289; *no appeal*, 6 Ll. L. Rep. 192, C. A.

Part VIII.—Freight.

4521. *Add. Annotation :*—**Apprvd.** Glen Line, Ltd. *v.* A.-G. (1930), 46 T. L. R. 451.

4524. *Add. Annotation :*—**Refd.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1.

4539a. —— ——.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liabilities in respect of the vessel obtained from the master the following document: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. E. A. Caspar, Edgar & Co., Ltd., & oblige." The persons described in the document as the master's agents were the pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage :—*Held :* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

4569a. —— **Excess freight required by shipowner —Not recoverable from seller.**]—MODIANO (ISAAC) BROS. & SON *v.* BAILEY (F. D.) & SONS, LTD. (1933), 50 T. L. R. 43; 77 Sol. Jo. 799.

4604. *Add. Annotation :*—**Refd.** Glen Line, Ltd. *v.* A.-G. (1930), 36 Com. Cas. 1.

4632. *Add. Annotation :*—**Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 39 Com. Cas. 318.

4650. *Add. Annotation :—As to* (1) **Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

4700. *Add. Annotation :*—**Refd.** Smith *v.* Zigurds S.S. Owners & E. A. Casper, Edgar & Co., [1934] A. C. 209.

4700. After this case add :-

-.]—*See, also,* CHOSES, Nos. 204a–204c.

4714a. Stevedore—As against equitable mortgagee of freight.]—A stevedore who unloads cargo & so by completing the adventure contributes to the bringing of the freight fund into existence is not entitled upon his claim for stevedoring charges to priority over a mtgee. who has an equitable assignment of the freight.—THE ZIGURDS (No. 4), [1932] P. 113; 148 L. T. 72; 48 T. L. R. 563; 18 Asp. M. L. C. 324.

4761. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

4764a. Right to dead freight—Cargo coated with ice—Reduction in carrying capacity.]—AKTIES STEAM *v.* ARCOS, LTD., No. 1879d, *ante*.

4837. *Add. Annotations :—Generally,* **Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39; Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631.

4846. *Add. Annotations :*—**Refd.** The Adriatic (1931), 47 T. L. R. 638; The Njegos, [1936] P. 90.

4862. *Add. Annotations :*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

4882. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4896. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

4931. *Add. Annotation :*—**Refd.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

4945. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

Part IX.—Carriage of Passengers.

4987. *Add. Annotation :*—**Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

PART VIII. SECT. 3, SUB-SECT. 3.—B. sm. *Stipulation for payment of difference in freight between steamships & first-class sailing ships—Construction.*]—COULSON *v.* GZOWSKI (1862), 22 U. C. R. 33.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1. c 1. —— ——.]—At the trial of the owner of a motor boat for a contravention of 1894 Act, s. 271 (1), the evidence adduced was that on a certain occasion the boat carried a party of more than twelve persons, gratuitously, on a pleasure excursion on the Clyde, without a Board of Trade certificate :—*Held :* that the expression "passenger steamer" did not necessarily include every ship which on any occasion carried persons other than the owner & his family, & the master & crew; &, accordingly, that it was not established that the motor boat was a passenger steamer, & that the sheriff substitute who heard the case was entitled to find the accused not guilty of the charge.—YOUNG *v.* DOCHERTY, YOUNG *v.* KYLE, [1929] S. C. (J.) 57.—**SCOT.**

Part XI.—Contract of Towage.

5055. *Add. Annotation :*—**Refd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

5056. *Add. Annotation :—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

5057. *Add. Annotation :*—**Consd.** The Kafiristan, [1937] 3 All E. R. 747.

5124a. —— **Onus of proof.**]—Pltf., cargo owners, contracted with a firm of wharfingers for the collection & transport of pltfs.' goods from one wharf on the River Thames to another. The wharfingers, who to pltfs.' knowledge owned neither tugs nor lighters, contracted with a firm of lighterers for the transport, & they in turn contracted with the defts. for a tug. Pltfs.' contract with the wharfingers was on the terms that the latter co. should not be liable for any neglect of its servants or others for whom it might be responsible, & that " persons supplying tugs or barges to the co. to enable it to fulfil its contracts shall incur no greater liability to the co.'s customers than that of the co. hereunder." The wharfingers' contract with the lighterers was on the terms of the London Lighterage Clause. It contained an exception in respect of damage arising from negligence, & further stated that the lighterage rates were quoted on the condition that the person with whom the contract was made was either the owner or the authorised agent of the owner of the goods intended to be carried. The lighterers' contract with the tug owners was on the usual towage terms containing a similar exemption from liability for negligence & also an indemnity clause. Pltfs.' goods, while on board one of the lighterers' barges, which with others was in tow of the tug, were damaged through the barge colliding with one of the abutments of Cannon Street Railway Bridge. Pltfs. brought an action against the tug owners, framing it entirely in tort. There being a *primâ facie* case of negligence against the tug, pltfs. called no evidence on this point, & defts. called one witness only, the master in charge of the tug, who did not see the actual contact but heard the blow & saw the barge " flared out," owing, in his opinion, to the breast rope not having been properly made fast by the lighterers' servants :—*Held :* (1) there was no greater probability that the accident happened through negligence on the part of the tug owners' servants than on the part of the lighterers' servants, &, following Lord DUNEDIN'S dictum in *Ballard* v. *North British Ry. Co.* (1923), S. C. (H. L.) 43, 54, that " if the defenders can show a way in which the accident may have occurred without negligence . . . the pursuer is left as he began, namely, that he has to show negligence," pltfs. failed on the issue of fact ; (2) assuming that a case of negligence was made out, there was a limited authorisation in each step of the negotiations that the contractor could reserve that the people with whom he in turn contracted should have the like exemptions from liability for negligence as the first contractor obtained, & pltfs. could not rid themselves of the exempting provisions by framing their action in tort.—THE KITE, [1933] P. 154 ; 102 L. J. P. 101 ; 149 L. T. 498 ; 49 T. L. R. 525 ; 18 Asp. M. L. C. 413.

Annotations :—**Consd.** The Mulbera, [1937] P. 82 ; The Stranna, [1937] P. 130.

5126. *Add. Annotations :*—**Consd.** Danneberg *v.* White Sea Timber Trust, Ltd. (1935), 154 L. T. 25. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51 ; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

5130. *Add. Citations :*—44 T. L. R. 140 ; 17 Asp. M. L. C. 344.

5133a. " **Whilst towing.**"]—Under a contract of towage a tug was engaged to assist a ship from a wharf to buoys further down the river. The precise time at which the towage was to begin was not defined, but it was intimated that the tug should be in attendance about 11 a.m. About 10.55 a.m. the tug arrived ; but she was travelling too fast, failed to reverse her engines in time, & struck the ship. At the time of the collision the ship had not finished discharging ; those on board her were not ready to give orders to pick up towing ropes ; & those on the tug were not expecting such orders & were only concerned in trying to avoid the collision. The tug owners contended that the collision happened " whilst towing," within the meaning of that phrase in the conditions of the contract of towage (the U.K. Standard Towage Conditions) under which it was admitted that the tug would be exempt from liability. In clause I. of the conditions the meaning of the phrase " whilst towing " is stated as follows : " For the purpose of these conditions the phrase " whilst towing " shall be deemed to cover the period commencing when the tug is in a position to receive orders direct from the hirer's vessel to pick up ropes or lines or when the tow rope has been passed to or by the tug, whichever is the sooner. . . ." :—*Held :* the Towage Conditions had not begun to apply ; it would be putting an unreasonable construction on the words to hold that the collision occurred " whilst towing " merely because the tug was within hailing distance & therefore physically " in a position to receive orders direct from the hirer's vessel to pick up ropes " ; even if regarded solely from the tug owners' point of view, the tug must at least be in a position to receive & comply with the orders ; but the conditions ought to be read with reference to both parties, & until the reasonable moment had come at which orders might be expected to be given from the ship the tug could not be said to be " in a position " to receive them.—THE URANIENBORG, [1936] P. 21 ; 105 L. J. P. 10 ; 154 L. T. 664 ; 52 T. L. R. 114 ; 18 Asp. M. L. C. 591.

PART XI. SECT. 3, SUB-SECT. 1.—A (a).

sb. *Tow sinking in heavy sea.*]—A tug is not liable, in the absence of negligence, in respect of a dredger sinking in a heavy sea while being towed.—CANADA DREDGING CO. *v.* [1936] 3 D. L. R. 44.—CAN.

5140a. —— When towage commences—More than one tug.]—The *B.*, a tug belonging to pltfs., the Port of London Authority, came into collision with defts.' steamship *C. C.* in Tilbury Dock. The *B.* & another tug, the *S.*, which also belonged to pltfs., were under contract to tow the *C. C.* from lock to berth. The *S.* was made fast ahead of the *C. C.* & was towing her, & the *B.* was proceeding to the *C. C.*, which had passed through the lock into the dock when the *B.* was struck by the revolving propeller of the *C. C.* The collision was entirely due to the improper way in which the *B.* was handled through those on board not realising that the *C. C.* had twin screws. The dockmaster had given the appropriate signal for the *C. C.* to come ahead on her main engines, & it was not disputed by pltfs. that it was the universal practice of all ships navigating through the dock to use their main engines & that no complaint about such use had ever been made by pltfs. They contended, however, that defts. had committed a breach of bye-law 19 of the Port of London Dock Bye-laws which provides that " no person shall work, or cause to be worked, the propelling engines of any ship in the dock for any purpose except with the previous consent of the dock-master, & at such time & place & in such manner as he shall approve. Penalty £5." " Such consent is only to be given (if at all) on the terms that the person on whose behalf the application for the same is made will be responsible for all damage caused by working such engines & will indemnify & save harmless the Authority & its officers against all claims in respect of such damage." Pltfs. further contended that by clause 4 of the towage contract defts. agreed to pay for any damage to any of pltfs.' property, including the tug or tugs engaged in the towage, which might arise from collision even if caused or contributed to by the negligence of any servants of pltfs. Defts. contended that clause 4 did not apply inasmuch as under clause 1 the towage was " deemed to commence when the tow rope had been passed to or by the tug." Pltfs.' reply was that the towage was to be done by two tugs & that it commenced when one of the tugs, namely the *S.*, had started towing:—*Held:* bye-law 19 did not apply at the time in question, but, even if it did, defts. did not commit a breach of it because the consent of the dock master to use the engines had been given; the towage contract could be fairly interpreted as meaning that the towage should be deemed to have commenced when the tow rope had been passed to each of the two tugs, & that until that had been done the ordinary provisions of the common law applied to the rights & duties of each party; & accordingly defts. were entitled to succeed on the claim & counterclaim.—THE CLAN COLQUHOUN, [1936] P. 153; 105 L. J. P. 65; 155 L. T. 231; 52 T. L. R. 349; *sub nom.* PORT OF LONDON AUTHORITY *v.* CLAN COLQUHOUN S.S. OWNERS, [1936] 1 All E. R. 429.

Part XII.—Collisions.

5150. *Add. Annotation:—As to* (2) **Consd.** The Champion, [1934] P. 1.

5175. *Add. Annotations:*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** The Mulbera, [1937] P. 82.

5186. *Add. Annotation:—As to* (1) **Consd.** The Otranto, [1930] P. 110.

5194. *Add. Annotations:—As to* (3) **Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

5354. *Add. Annotation:*—**Refd.** The Vectis, [1929] P. 204.

PART XI. SECT. 3, SUB-SECT. 2.

5146 1. *Liability for negligence.*]—The owners of the *P.* contracted with a towing co. to have the *P.* towed from her berth to a grain elevator to unload her cargo. The *P.* had no motive power. Owing to the breaking of the tow line at one stage of the movement the *P.* continued her forward movement past the elevator & reached the south end of the harbour where the *S.* was laid up, puncturing the latter under the water line, by an anchor left hanging down on the port bow of the *P.* partly under water. This anchor was left so hanging down by those on the tow notwithstanding a warning by the tug master:—*Held:* (1) when commencing the towing of a ship her anchor is left, by the joint negligence of the tug master & those in charge of the ship, in such a position as to constitute a danger to other vessels, & does in fact cause such damage, the tow & tug are each responsible & liable for the damages so caused; (2) when a vessel at anchor or moored at a dock is run into by another, the *onus* is upon the moving vessel to justify or excuse her action; (3) towage is a joint undertaking, & although the motive power may be wholly that of the tug, yet both tug & tow are bound to take reasonable care & to use reasonable skill in performing the operation. This duty is not affected by the term of the towage contract, which cannot regulate the relations between the tug & tow & third parties; (4) persons on board the tow such as a shipkeeper & his helpers, though not a regular navigating crew, in regard to reasonable care & skill, may be treated as agents of the owners of the ship in performing or neglecting to perform such duties as the towage contract or the exigencies of the operation casts upon them; (5) provision in a towage contract that the operation is at " owner's risk " will not absolve the tug in case of negligence in navigation so far as third parties are concerned.—CANADA S.S. LINES, LTD. *v.* S.S. PAISLEY, JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] Ex. C. R. 105; *revsg.*, JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] 2 D. L. R. 257; [1929] 2 D. L. R. 42; S. C. R. 359.—CAN.

PART XII. SECT. 2, SUB-SECT. 2.

5169 1. *Want of due caution—Canal.*]—THE KINGDOC *v.* CANADA STEAMSHIP LINES, LTD., PATERSON STEAMSHIPS, LTD. *v.* THE OXFORD, [1931] S. C. R. 288; 1 D. L. R. 146; *revsg.*, [1930] Ex. C. R. 1.—CAN.

PART XII. SECT. 2, SUB-SECT. 13.—A. (d).

• 1. ——.]—Pltf.'s barge, the *R.*, with her tug attached, was on Sept. 1, 1931, forced to anchor about 1,400 feet below G. Point on the St. Lawrence, on account of heavy fog. Another ship, the *S.*, was also anchored near her. The *P.* knew these vessels were ahead but notwithstanding the fog came on without slowing, until her captain came on the bridge at G. Point when he decided to anchor his vessel, & in manœuvring to do so the collision in question occurred. The *S.* & the tug regularly sounded their bells, & the *R.* also carried her two mooring lights, but not quite disposed according to the rules, being on the same level. The *R.* did not sound her bell:—*Held:* (1) in the circumstances, & in view of the heavy fog, the *P.* should have stopped sooner, & that the collision was solely the result of

Add. Annotation :—**Consd.** The Vectis, [1929 P. 204.

5373. *Add. Annotation :*—**Refd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

5379a. —— —— **Harwich Harbour.**]—The *E.* was leaving & the *P.* was arriving at Harwich Harbour, both vessels being in charge of a pilot, when a collision occurred. It was necessary for the *P.* at the entrance to the harbour to round Beach End buoy :—*Held:* Harwich Harbour Conservancy Board (1929), Bye-laws No. 8 applied to the entrance to the harbour, & the *E.* which was navigating against the tide, should have eased her speed & allowed the *P.* to pass clear of her.—THE PRINSES JULIANA, ESBJERB OWNERS *v.* PRINSES JULIANA OWNERS, [1936] P. 139; [1936] 1 All E. R. 685; 105 L. J. P. 58; 155 L. T. 261; 52 T. L. R. 269; 18 Asp. M. L. C. 614.

5395. *Add. Annotation :*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

5400. *Add. Annotation :*—**Folld.** The Harkaway, [1928] P. 199.

5400a. —— ——.]—Defts.' sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. Pltfs.' motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—*Held :* having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & defts. were liable to pltfs. for the damage sustained.—THE HARKAWAY, [1928] P. 199; 97 L. J. P. 113; 139 L. T. 615 44 T. L. R. 649; 17 Asp. M. L. C. 503.

Annotation :—**Refd.** Burley C. *v.* Lloyd Edw. (1929), 45 T. L. R. 626.

5401a. —— **Portland Harbour—Vessel "about to enter"—Collision in one of the "channels between the breakwaters."**]—Rule 5 of a schedule to an Order in Council relating to the Port of Portland (1931, No. 176) provides that "When any vessel or vessels are about to enter from seaward any of the channels between the breakwaters, no vessel proceeding outward by the same channel shall enter this said channel until the before mentioned vessel, or vessels, shall have passed in."

A collision between the *R.*, an outward bound submarine in command of deft., & pltfs.' vessel *P.* inward bound, took place in the North Ship Channel entrance to Portland Harbour, slightly to the southward of mid-channel & about 200 to 300 feet outside of a line drawn between the breakwaters. It was argued for deft. that r. 5 did not apply, inasmuch as a vessel "about to enter from seaward" one of the channels meant a vessel going to enter the water which might reasonably be taken to be included in the word "channels"; & that the *P.* was never in a position of being "about to enter," which implied that she must so approach as to indicate clearly her intention to enter, whereas, instead of "shaping up" at a proper distance to enter the channel, she was cutting the corner & then had to make a turn of five or six points :—*Held :* (1) the collision took place in what might fairly be called one of "the channels between the breakwaters"; taking r. 5 as a whole, its purport was not to lay down how vessels should or should not approach the harbour, but to lay down in clear language that the outgoing vessel should be the give-way vessel; & accordingly the *R.* was to blame; (2) the vessel with the right of way was not in the position of a "keep course & speed" vessel under the crossing rule; the *P.* having a bad look-out, &, considering the fine angle at which she was approaching the breakwater, too high a rate of speed, was also to blame. Both vessels accordingly held to blame in the proportions of two-thirds to the *R.* & one-third to the *P.*—H.M. SUBMARINE RAINBOW, [1933] P. 68; 102 L. J. P. 61; 149 L. T. 357; 18 Asp. M. L. C. 368.

5403. *Add. Annotation :—Generally.* **Refd.** The Rockabill, [1937] P. 93.

5439. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

5446. *Add. Annotation :*—**Refd.** Kitano Maru S.S. *v.* Otranto, S.S., [1931] A. C. 194.

5488. *Add. Annotation :—As to* (1) **Refd.** The Kafiristan, [1937] P. 63.

Add. Annotation :—As to (1) **Consd.** The Champion, [1934] P. 1.

5490a. ——.]—THE EFFRA (1936), 182 L. T. Jo. 82.

5505. *Add. Annotation :*—**Refd.** The Aeneas, [1935] P. 128.

5516. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

5517a. —— —— ——.]—THE DAGMAR, No. 5608a, *post.*

5521. *Add. Annotation :*—**Apld.** The Palembang, [1929] P. 246.

5528. *Add. Annotation :—As to* (1) **Consd.** The Palembang, [1929] P. 246.

566a. —— **Steering definite course to definite destination.**]—A pilot vessel when not engaged on her station on pilotage duty but

her negligence; (2) the *R.* being attached to her tug, which was her servant, was not required by the rules of the road to ring her bell; & the ringing of the bell by the tug was sufficient compliance with the rules; moreover, the fact that the lights on the *R.* were not placed in accordance with the rules, having had no bearing on the accident; the *R.* in no way contributed to the collision.—BARGE LINE, LTD. *v.* POPLARBAY, & POPLARBAY STEAMSHIP CO., [1932] Ex. C. R. 209.—CAN.

PART XII. SECT. 2, SUB-SECT. 15.—F.

5403 iv. —— ——.]—The descending vessel coming with the current is entitled to consideration, & an upcoming vessel, in a narrow channel, where navigation is intricate, seeing another vessel coming down stream, must stop, & if necessary come to a position of safety below the point of danger & there remain until the channel is clear.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE, [1932] Ex. C. R. 230.—CAN.

PART XII. SECT. 3, SUB-SECT. 3.—E. (b).

5447 iv. —— ——.]—*Held :* when a danger of collision occurs, a vessel is not justified in arbitrarily & obstinately insisting on her right of way conferred under rule 25. If in obstinately following out the letter of the rules regulating the course, a collision thereby occurs, she becomes at fault under rule 37.—"ELFSTONE" *v.* CHICAGO TRIBUNE TRANSPORTATION CO., LTD., CRETE SHIPPING CO., LTD. *v.* "CHICAGO TRIBUNE," [1931] Ex. C. R. 132.—CAN.

steering a definite course to a definite destination, for example, returning to port to land a pilot, must not exhibit the pilot boat lights prescribed by Art. 8 of the Regulations for Preventing Collisions at Sea, 1910, but must exhibit the ordinary navigation lights for vessels of her tonnage prescribed by the regulations.—THE KINGSTOWN, (1929), 99 L. J. P. 19.

5573. *Add. Annotation:*—**Refd.** The Tovarisch, [1929] P. 293.

5576. *Add. Annotation:—As to* (2) **Apld.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564. **Refd.** Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 2) (1934), 27 B. W. C. C. 313.

5592. *Add. Annotation:—As to* (1) **Refd.** The Tovarisch, [1929] P. 293.

5608a. ——— **Other vessel moored.**]—A dumb hopper made fast by forward moorings to a moored vessel, & swinging with the tide, is herself a moored vessel, & not a vessel under way within the Port of London River bye-laws. The *M.*, a dumb hopper loaded with spoil, had been moored alongside a dredger in Blackwall Reach, River Thames. Her after moorings were cast off, & she commenced to swing with the tide, being still made fast forward by her forward moorings. She was exhibiting one white riding light forward & one white riding light aft. In these circumstances the *D.*, a steamship bound up-river, came into collision with the *M.*:—*Held:* (1) the *M.* was not a vessel under way; (2) in any case the *M.* was probably a "lighter" within the meaning of the Port of London River bye-laws 1914–26, & was not required to carry side lights when under way, & no lights were laid down by the bye-laws for her to carry; (3) the *M.*, being moored to the dredger, which was moored to buoys, was herself moored & bound to exhibit two white riding lights in accordance with bye-law 14; (4) the *D.* was alone to blame for the collision.—THE DAGMAR (1929), 141 L. T. 271; 45 T. L. R. 303; 18 Asp. M. L. C. 41.

5608b. —— **Dumb barge.**]—Pltfs.' steamship *S.* was lying moored at a tier on the south side of the River Thames. Defts.' dumb barge *P.* was lying inside of the *S.* & attached to her by ropes fore & aft. When the work of receiving cargo from the *S.* ceased for the day the *P.* was left alongside the *S.* unlighted & unattended. The *S.* was exhibiting the usual anchor light. During the night some unknown craft came into collision with the *P.* & she filled & sank, &, as the tide ebbed, the *S.* rested on the submerged hull of the *P.* & both vessels were damaged. Under bye-law 14 of the Port of London River Bye-laws, a vessel under 150 feet in length "when at anchor or moored" by night must exhibit a riding light; but by proviso (*a*) to the bye-law: "Where masted vessels are lying made fast at the moorings in the tiers, only the outermost off shore of such vessels in each tier shall be required to exhibit the riding light"; & by proviso (*c*), ". . . Lighters made fast at wharves, piers or jetties or alongside vessels thereat, shall not be required to exhibit the riding light":—*Held:* (1) it was not negligent to leave the *P.* unattended; but (2) not being a masted vessel nor made fast to a vessel at a wharf, pier or jetty, the *P.* could not bring herself within either proviso (*a*) or (*c*); accordingly there was nothing to take her out of the obligation imposed upon her under the main part of the bye-law to exhibit a riding light; (3) as defts. could not prove that the absence of the light was not a cause of the collision with the unknown craft, they failed to discharge the *onus* upon them, & there must be judgment for pltfs.—THE PRINCESS, [1929] P. 287; 98 L. J. P. 158; 142 L. T. 94; 45 T. L. R. 627; 18 Asp. M. L. C. 56.

Annotation:—As to (3) **Refd.** The Mulbera, [1937] P. 82.

5617. *Add. Annotation:*—**Consd.** The Palembang, [1929] P. 246.

5630a. Coloured flare.]—A large four-masted barque, after seeing both lights of an approaching steamship about one & a half to two points on the starboard bow, saw only the green light at an estimated distance of about half a mile. Thereupon a green pyrotechnic flare was exhibited on the starboard side of the barque. Immediately afterwards the steamship ported her helm, &, in attempting to cross the bows of the barque, was struck on the port side by the bowsprit & stem of the barque & sank with all hands except one:—*Held:* the exhibition of the green flare by the barque was not a breach of Article 12; the green flare was intended simply to attract attention, & did not call upon the steamship to do anything except that which it was her duty to do when she saw a sailing vessel approaching with lights green to green; & the steamship, by improperly porting, was alone to blame for the collision.—ALCANTARA, S.S. OWNERS *v.* TOVARISCH, S.S. OWNERS, [1931] A. C. 121; *sub nom.* THE TOVARISCH, ALCANTARA S.S. OWNERS *v.* TOVARISCH S.S. OWNERS, 100 L. J. P. 46; 144 L. T. 230; 47 T. L. R. 89; 18 Asp. M. L. C. 182, H. L.

Annotation:—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65.

5648a. —— **Vessel under way—Meaning of "under way."**]—Under bye-law 28 (*e*) of the Port of London River Bye-laws, 1914–1926, in fog, "a steam vessel under way about to turn & whilst turning round shall sound at intervals of not more than two minutes four short blasts in rapid succession, followed, if turning with her head to . . . port, by two short blasts." Bye-law 5 provides that "in these bye-laws . . . unless there be something in the subject or context repugnant to such construction . . . the expression 'under way' when used in relation to a vessel means when she is not at anchor . . . & includes a vessel dropping up or down the river with her anchor on the ground." In order to come to anchor on account of fog pltfs.' vessel

PART XII. SECT. 3, SUB SECT. 5.—B. (I). ii.

5611 iii. ——.]—Collision caused by pltf. scow, which failed to show a riding light when anchored for the night.—FORBES *v.* BLAKENY & SON, [1935] 3 D. L. R. 428; 9 M. P. R. 280; 5 F. L. J. (Can.) 68.—CAN.

Pakeha, bound up-river on the flood tide, sounded the appropriate signal under bye-law 28 (*e*), hard-a-starboarded her helm, & put her engines full speed astern. When she had swung two or three points the anchor was let go with thirty fathoms of chain & was reported to be holding. Her navigation lights were then switched off, the anchor lights switched on & the bell commenced to be rung for fog. The engines had then to be worked half ahead & full speed ahead for about a minute & a half to avoid a small vessel at anchor, & were then put full speed astern for about a minute & then stopped. About ten minutes after the anchor had been let go, & when the *Pakeha* had nearly swung head to tide, she was run into by defts.' steamship. Defts. alleged (*inter alia*) that the *Pakeha* was a vessel under way & turning in the river, & required, therefore, to continue sounding the signal of four short blasts followed by two:—*Held:* following the criterion laid down in *The Esk*, *The Gitana*, No. 5521, as the *Pakeha* was holden by & under the control " of her anchor during all the time in question, she was not " under way," & was right in ringing her bell, the appropriate signal for a vessel at anchor in a fog.—THE PALEMBANG, [1929] P. 246; 98 L. J. P. 129; 141 L. T. 399; 45 T. L. R. 495; 18 Asp. M. L. C. 45.

5657. *Add. Annotation:*—**Distd.** The Palembang, [1929] P. 246.

5659. *Add. Annotation:—As to* (1) **Refd.** The Bremen (1931), 47 T. L. R. 505.

5660. *Add. Annotation:—Generally,* **Refd.** Canton Owners *v.* Rhesus Owners, [1928] W. N. 214.

5666a. Duty of ship hearing signals—Whether alteration of course justifiable.]—Two steam vessels, the *H.* & the *G.*, came into collision in a fog. Both had headway at the time of the collision & were to blame for excessive speed in fog & for not stopping when they first heard the fog signals of the other vessel forward of their beam. The *G.* had been sounding a succession of two prolonged blasts (the signal prescribed by Art. 15 (*b*) of the Regulations for Preventing Collisions at Sea to indicate that she was stopped in the water), when in fact she had substantial headway, & the case for the *H.*, which had meanwhile stopped her engines, was that this signal justified her in altering course &, although she still had headway, in putting her engines slow ahead again:—*Held:* before altering course in fog every precaution ought to be taken to ascertain that the vessel blowing the two blast signal, a signal which is frequently unreliable, is really stopped & not altering the bearing or getting nearer; from the sound of the blasts blown by the *G.* it should have been apparent that she was getting nearer & not really stopped; accordingly the *H.* was to blame for going on again & altering her course; & both vessels were to blame in equal degrees.—THE GASTELU, [1934] P. 86; 103 L. J. P. 97; 151 L. T. 260; 18 Asp. M. L. C. 480.

5681. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] P. 63.

5686a. —— Meaning of " existing circumstances & conditions "—Aircraft carrier with aircraft in the air.]—The words in Art. 16 of the Collision Regulations, " existing circumstances & conditions " & " circumstances of the case," refer to circumstances affecting the navigation of the ship & not to outside influences on the minds of persons on board the ship. The fact of the aircraft being in the air with only a limited supply of petrol was not a circumstance which justified the aircraft carrier for failure to comply with the regulations.—H.M.S. " GLORIOUS," [1932] W. N. 213; 74 L. Jo. 109; *affd.*, [1933] W. N. 10; 75 L. Jo. 9, C. A.

5720. *Add. Annotation:—As to* (1) **Refd.** The Bremen, [1931] P. 166.

5732. *Add. Annotation:—As to* (1) **Refd.** The Bremen, [1931] P. 166.

5748a. —— —— Meaning of " ascertained."]—In order that the position of a vessel whose fog-signal is heard by another vessel may be " ascertained " within Art. 16 of the Regulations for the Prevention of Collisions at Sea, the vessel must be known by the other vessel to be in such a position that both vessels can safely proceed without risk of collision. An inference as to the vessel's position, based upon the direction from which the fog-signal was heard, the probable course which she is taking, & the improbability of her crossing the fairway in a fog, is not an ascertainment justifying a disregard of the precautions enjoined by the above article. Implicit obedience to the Regulations, upon which navigators are entitled to rely, is of great importance.—NIPPON YUSEN KAISHA *v.* CHINA NAVIGATION CO., LTD., [1935] A. C. 177; 104 L. J. P. C. 34; 152 L. T. 313; 51 T. L. R. 203; 78 Sol. Jo. 897; 18 Asp. M. L. C. 533, P. C.

5748b. ——.]—*Held:* to comply with the direction to " stop " & then " navigate with caution " a vessel should run her way off & bring herself as nearly as possible to a standstill; & a vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines & then putting them slow ahead, & so continued alternately stopping & going slow ahead, was not complying with art. 16.—THE UNION, [1928] P. 175; 97 L. J. P. 126; 139 L. T. 448; 17 Asp. M. L. C. 483.

5748c. —— Unless clear that safe to continue course.]—Under Article 16, a steam vessel hearing the fog signals of a vessel, apparently forward of the beam, is required to stop her engines & then navigate with caution.

The *B.*, a large liner going down Channel in a dense fog at a speed of about 4 knots, heard, on the starboard side about abeam or a little abaft it, the fog whistle of the steamship *B. G.* After the whistle had been heard four or five times more, getting louder & nearer & apparently still on the same bearing, the master of the *B.* decided that he must act. He accordingly starboarded & increased his engine power to assist the helm. The *B. G.* then came into sight 100 to 150

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) i.

sl. Bare steerage way.]—EASTERN S.S. CO., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1928] Exch. C. R. 129.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) iv.

sg. Ten knots.]—OLSEN & CO. *v.* S.S. PRINCESS ADELAIDE, S.S. HAMP-

v. C. P. R. CO., [1930] Ex. C. R. 10; 4 D. L. R. 778; [illegible] D. L. R. 423; *varp.*, [1[illegible] 383; Ex. C. R. 199; 2 W. W. R. 41 B. C. R. 274.—CAN.

yards away on the starboard side, crossing the bows of the *B.* from starboard to port, & the two vessels came into collision :—*Held :* (1) the main cause of the collision was the bad navigation of the *B. G.* (*inter alia*) in altering her course in fog, proceeding at excessive speed, & failing to stop on hearing the whistle of the *B.* forward of her beam.

The conclusion on the authorities is that in fog, unless the vessel hearing a whistle is quite clear that to continue course & speed will not involve risk of collision, she should always stop her engines (*per* CUR.).

(2) The *B.* was also partly to blame, inasmuch as the fact that the fog signals of the *B. G.* were getting louder & nearer on the same bearing was a clear indication of danger, & that accordingly good seamanship required the *B.* to stop after hearing the second or third blast, when those on board would know for certain that the other ship was approaching & causing risk of collision. Both vessels accordingly held to blame, the *B. G.* to the extent of 80 per cent. & the *B.* 20 per cent.—THE BREMEN, [1931] P. 166 ; 100 L. J. P. 122 ; 145 L. T. 565 ; 47 T. L. R. 505 ; 18 Asp. M. L. C. 252, C. A.

5748d. —— **"So far as the circumstances of the case admit "—Aircraft carrier with aircraft in the air.**]—H.M.S. GLORIOUS, No. 5686a, *ante.*

5754. *Add. Annotation :*—**Consd.** The Bremen, [1931] P. 166.

5757. *Add. Annotations :—As to* (1) **Refd.** The Bremen, [1931] P. 166. *Generally,* **Refd.** The Young Sid, [1929] P. 190.

5775. *Add. Annotations :*—**Refd.** The Bremen (1931), 47 T. L. R. 505 ; Nippon Yusen Kaisha *v.* China Navigation Co., [1935] A. C. 177.

5779a. —— ——.]—The battleship *M.* came into collision with the steamship *K.* in foggy weather. The whistle of the *K.* was heard by those on the *M.* & was judged to be 10 deg. to 15 deg. on the port bow & a long way off. The engines of the *M.* were stopped for about four minutes, during which time two or three more fog signals were heard. The ship's head fell off to starboard & the engines were then put ahead again. A few minutes later, the whistle having been heard several times on an estimated bearing of 15 deg. to 20 deg. or possibly 25 deg., the captain of the *M.*, having come to the conclusion that the *K.* was on an opposite course & would pass port to port, made further substantial alterations to starboard, as the sound of the *K.'s* whistle was getting rather close & he wanted to give her more room. In fact, however, the *K.* was on the starboard bow of the *M.*, & the starboard wheel action on the *M.*, instead of terminating the risk of collision, brought it about. When the vessels came in sight of each other at a distance of about 500 yards the *M.* was on the starboard bow of the *K.* & the *K.* was on the port bow of the *M.* At that time the *K.*, which had not heard the *M.'s* fog syren until just as the *M.* came into view, was proceeding at about 11 knots & the *M.* at about 7 to 8 knots :—*Held :* (1) the look-out on the *K.* was inefficient, since the marked deterioration in visibility shortly before the collision was not noticed, & both vessels were to blame in respect of their speeds ; (2) the *M.* was also to blame for altering course, because, although there is no rule that when two vessels are approaching one another in fog the course should not be altered, a vessel is not justified in altering without reasonable grounds for concluding that the position of the other vessel is ascertained ; that the only data known to those on the *M.* were that the bearing of the whistle signals of the *K.* appeared to be one or two points on the port bow & broadening slightly, but that it was only a guess as to the direction of approaching whistle signals two to four miles away with a strong head wind blowing, & the guess was in fact erroneous.—MALAYA, H.M.S., [1937] P. 179 ; 106 L. J. P. 115 ; 53 T. L. R. 911.

5891a. ——.]—Two steam vessels, the *S.* & the *K.*, while on courses crossing one another at the fine angle of 8 degrees, sighted each other's lights at a distance of several miles. The *S.* first sighted the masthead light of the *K.* fine on the starboard bow, & afterwards, as the *K.* was yawing considerably, saw both her sidelights. The *K.* had the masthead & green lights of the *S.* open to her a little on the port bow, & the Elder Brethren were of opinion that there must have been times also when, although those on board the *K.* denied seeing it, the red light of the *S.* must also have been open. The *S.* crossed on to the starboard bow of the *K.*, & having got into a position of green light to green light altered her course to starboard, rendering a collision imminent. The *K.*, which up to that time had kept her course & speed, then went full speed astern & hard-a-ported her helm (old command). LANGTON, J., held that art. 18 applied, & that while the *S.* was to blame for porting & hard-a-porting when the vessels were green to green & for not sounding any whistle signals, the *K.* was also to blame for not at an earlier stage altering her course to starboard so as to pass port to port, & he accord-

PART XII. SECT. 3, SUB-SECT. 5.—C. (h).

5757 i. *When duty arises—Vessel approaching.*]—The question whether vessels approaching one another in a fog should not merely stop their engines but also their way, or reverse their engines, must be decided under the circumstances of each case. In the present case it was held that the *H.*, which did not reverse her engines immediately after hearing the second whistle of the *A.*, did not "navigate with caution," within the meaning of art. 16 of the Collision Regulations, after, at least, she heard that whistle & thereupon should have realised that as it showed no indication of broadening the danger was imminently increasing.—OLSEN & CO. (OWNERS OF THE "HAMPHOLM") *v.* "PRINCESS ADELAIDE," CANADIAN PACIFIC RY. CO. (OWNERS OF "PRINCESS ADELAIDE") *v.* "HAMPHOLM" (B. C. Adm.), [1929] 3 D. L. R. 383 ; Ex. C. R. 199 ; 2 W. W. R. 629 ; *varied,* [1930] 3 D. L. R. 423 ; *affd.,* [1930] 4 D. L. R. 778 ; Ex. C. R. 10.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—C. (i).

sh. *What amounts to.*]—A vessel in fog should run at such a speed that upon sighting an approaching vessel, she can pull up in the distance she can see. Art. 16 does not require a vessel running in fog to reverse her engine upon hearing of a fog signal apparently forward of her beam, but only to stop her engines & then navigate with caution, & as the *H.* could come to a stop in thirty feet & could see a vessel at three hundred feet, she was navigating with caution within Art. 16, & was not called upon to reverse before she did.—OLSEN & CO. *v.* S.S. PRINCESS ADELAIDE & S.S. HAMPHOLM *v.* CANADIAN PACIFIC RY. CO., [1930] Ex. C. R. 10 ; 4 D. L. R. 778 ; *affg.,* [1930] 3 D. L. R. 423 ; *varg.,* [1929] 3 D. L. R. 383 ; Ex. C. R. 199 ; 2 W. W. R. 629 ; 41 B. C. R. 274.—CAN.

ingly held the *S.* three-fourths to blame & the *K.* one-fourth. Both parties appealed. On appeal the assessors advised the ct. that while, owing to the yawing of the *K.*, the *S.* would "constantly" see both sidelights of the *K.*, the *K.*, although she might possibly (but not necessarily) see both sidelights of the *S.* "occasionally," would generally be seeing the green light only:—*Held:* as the substantially prevailing position was not that each vessel was generally seeing both sidelights of the other, the requirement of art. 18 were not complied with; accordingly the vessels came under art. 19, & the *S.* was alone to blame.—THE KAITUNA, [1933] P. 234; 103 L. J. P. 1; 150 L. T. 112; 18 Asp. M. L. C. 429, C. A.

5925. *Add. Annotations:*—**Refd.** The Tovarisch, [1930] P. 1; Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194; The Kaituna, [1933] P. 234.

5925a. Each vessel must see both sidelights of other.]—THE KAITUNA, No. 5891a, *ante*.

5933. *Add. Annotation:*—*As to* (1) **Consd.** The Otranto, [1930] P. 110.

5934. *Add. Annotations:*—**Apld.** The Treherbert, [1934] P. 31. **Refd.** The Otranto, [1930] P. 110; The Aeneas, [1935] P. 128.

5935. *Add. Annotations:*—**Consd.** The Treherbert, [1934] P. 31. *As to* (1) **Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5935a. —— ——.]—The first duty of a vessel keeping her course & speed under Art. 21 of the Sea Regulations, 1897, is to keep her course & speed as long as that will enable the other vessel to keep out of the way; after that point, her second duty is to take such action as will best aid to avert collision, but this second duty is not to be very severely pressed, & if the master of the vessel is found to have been watching the other vessel & doing his best to make up his mind when to act, he ought not to be held to blame for waiting a moment too long before acting.—THE RANZA (1898), 79 L. J. P. 21, n.

Annotations:—**Apprvd.** The Ornen (1900), 79 L. J. P. 23. **Consd.** The Otranto, [1930] P. 110; The Lady Belle [illegible] 49 T. L. R. 595. **Refd.** The Gulf of Sucz, [1921] P. 318.

5935b. —— ——.]—Two steamships were meeting almost end on, showing red light to red light, & defts.' vessel ported slightly. When still a long way off pltfs.' vessel wrongly starboarded & showed her green. Defts.' vessel then kept her course & speed, & the vessels approached close together, green to red. Not more than one minute before the collision, defts.' vessel sounded a short blast & hard a-ported, & afterwards before the collision stopped & reversed; pltfs.' vessel blew a short blast in reply, but by some mistake starboarded instead of porting, though, if she had ported, there would have been no collision:—*Held:* defts.' vessel was bound under Art. 21 of the Sea Regulations, 1897, to keep her course & speed until the other vessel could not by her own action alone avoid the collision.—THE ORNEN (1900), 79 L. J. P. 23, n.; 16 T. L. R. 149; 44 Sol. Jo. 195, C. A.; *revsd. on other grounds* (1901), 17 T. L. R. 359, H. L.

5935c. —— ——.]—Two steam vessels, the *K. M.* & the *O.*, were approaching each other on crossing courses of nearly a right angle at a joint speed of nearly 30 knots. The *O.*, the stand-on vessel, had the *K. M.* broad on the port bow at a distance of several miles. As the bearing of the *K. M.* did not alter, the *O.*, when the vessels were under three-quarters of a mile apart, hard-a-starboarded to pass under the stern of the *K. M.* & sounded two short blasts. Twenty or thirty seconds afterwards the *K. M.* hard-a-ported & sounded one short blast, & the two vessels came into collision less than three minutes after the alteration of course by the *O.* It being admitted that the *K. M.* was partly to blame for the collision, the question was whether the *O.* was also to blame:—*Held:* the master of the *O.* was justified in acting when he did, but not in starboarding & maintaining his speed. He ought, first of all, to have stopped & reversed his engines &, in addition, whatever action he took should have been under a port helm:—*Held:* both vessels were to blame.—KITANO MARU S.S. OWNERS *v.* OTRANTO S.S. OWNERS, THE OTRANTO, [1931] A. C. 194; 100 L. J. P. 11; 144 L. T. 251; 47 T. L. R. 163; 18 Asp. M. L. C. 193, H. L.

Annotation:—**Refd.** The Bremen (1931), 47 T. L. R. 505.

5938. *Add. Annotation:*—*As to* (3) **Consd.** The Otranto, [1930] P. 110.

5946a. Duty to avoid collision.]—THE TREHERBERT, No. 5958a, *post*.

5946b. ——.]—Under the note to art. 21 of Regulations for Preventing Collisions at Sea, 1910, when collision cannot be avoided by the action of the giving-way vessel alone, the vessel which has to keep her course & speed under the rules "shall take such action as will best aid to avert collision."

Two small steam vessels, the *M.* & the *L. B.*, on courses crossing so as to involve risk of collision, took no measures at all to keep clear of each other & came into collision. The *M.*, which had the *L. B.* on her own starboard side & consequently under art. 19 had to keep out of the way, admitted that she was partly to blame, but contended that the *L. B.*, on her own pleadings, was also to blame, as it was admitted that she merely kept her course & speed from first to last. The *L. B.* attempted to justify taking no measures under the note to art. 21 on the ground that up to the last moment the *M.* could have avoided the collision, & that in keeping her course & speed the *L. B.* was in

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) iii.

5933 i. *Duty to give appropriate signal.*]—The collision herein occurred in Halifax harbour, the bow of the *C.* striking the *K.* on her starboard quarter. The *C.* was heading for the Inner Automatic Buoy, & the *K.* was northward & westward of the buoy, each showing her red light to the other, until the *K.*, almost immediately after passing the buoy, altered her course suddenly, showing her green light on the port bow of the *C.* which would be about half to three-quarters of a mile S.S.E. of the buoy, & in attempting to cross the bow of the *C.* was struck as aforesaid. The *K.* gave no signal of her intention to change her course:—*Held:* as the vessels were travelling red to red, the *K.* by altering her course without justification, & especially without signalling the *C.* her intention to do so, & in attempting to cross the *C.'s* bow, thus creating a danger of collision, violated Arts. 19, 22, 23, 27 & 29 of the International Rules of the Road, & was guilty of mismanagement & bad seamanship, & was solely to blame for the collision which occurred. — THE CAVELIER *v.* LIVERPOOL [illegible] Co., [1931] Ex. C. R. 205,—CAN.

fact taking the action which would best aid to avert collision:—*Held:* although the exact moment when the stand-on vessel must act under the note must not be unduly pressed against her, it would render the note nugatory to say that she can be excused from taking any action at all; that at a very late stage the action of taking the way off the *L. B.* would have averted the collision, & that she also was to blame in the proportion of three-fourths to the *M.* & one-fourth to the *L. B.*

While it may be desirable in particular cases to sound a warning blast or blasts to attract the attention of a vessel which apparently is taking no steps to keep out of the way (& it would have been a wise precaution if the *L. B.* had done so), it is not the ordinary practice of seamen to sound whistle signals for which no provision is laid down in the Regns., & accordingly it is not negligent to omit to sound the whistle in such circumstances.—THE LADY BELLE, [1933] P. 275; 102 L. J. P. 134; 150 L. T. 117; 49 T. L. R. 595; 18 Asp. M. L. C. 451.

5958a. —— Channel between line of buoys & open sea.]—By the practice of pilots navigating in & out of the Thames estuary, steam vessels rounding the N.E. Spit buoy from the southward to proceed up river pass outside the buoy at a sufficient distance to the northward to enable an outward bound vessel to pass between them & the buoy port to port. Two steam vessels, the *A.*, inward bound, & the *T.*, outward bound, got into collision about 400 yards to the northward of the buoy. The *T.*, which had the *A.* on her own starboard side, &, therefore, under the crossing rule (Art. 19) had the duty to keep out of the way, alleged that the narrow channel rule (Art. 25) & not Art. 19 applied, & that the *A.* was to blame for being too close to the buoy & for not keeping to her own starboard side of the channel, the southern limit of which was the buoy. LANGTON, J., held that it was impossible to apply Art. 25 to waters which were defined only by one or more buoys & which had on the other side the whole of the North Sea; Art. 19 applied, & the *T.* was to blame for not keeping out of the way. He found, however, the *A.* also to blame, not for having been set down by wind & tide closer to the buoy than she had intended, but under the Note to Art. 21, which provides that when the vessel which has the duty of keeping course & speed under the crossing rules "finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision"; & in the result the *T.* was held three-fourths to blame & the *A.* one-fourth. On appeal:—*Held:* (1) the crossing rule & not the narrow channel rule applied; (2) the practice did not exclude the crossing rule, but was in fact the direct consequence of the group of rules of which Art. 19 was one; for, by Art. 22 the vessel which is to keep out of the way "shall . . . avoid crossing ahead of the other," &, if she does not cross ahead, she will ultimately pass port to port; (3) on the facts it appeared that with close navigation there was room for the *T.* to pass between the *A.* & the buoy, but (4) if there was not room, although a vessel ought not as a general rule to pass inside a channel buoy, the *T.*, whose draught enabled her to do so, should, to avoid immediate danger, have gone inside the buoy; (5) up to the time the *A.* acted the *T.* could easily have avoided the collision by her own unaided action, & the *T.* was alone to blame.—THE TREHERBERT, [1934] P. 31; 103 L. J. P. 65; 151 L. T. 69; 50 T. L. R. 120; 18 Asp. M. L. C. 458, C. A.

5960. *Add. Annotation:*—**Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5962. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

5964. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

5965. *Add. Annotation:*—**Refd.** The Otranto, [1930] P. 110.

5967. *Add. Annotation:*—**Consd.** The Bremen, [1931] P. 166.

5977. *Add. Annotation:*—**Refd.** The Vectis, [1929] P. 204.

6038. *Add. Annotation:*—**Refd.** The Otranto, [1930] P. 110.

6039. *Add. Annotation:*—**Consd.** The Otranto, [1930] P. 110.

6050a. Navigable channel divided into two fairways.]—THE ZILLAH, No. 6064a, *post.*

6063. *Add. Annotation:*—**Consd.** The Treherbert (1934), 151 L. T. 69.

6064a. ——.]—A collision occurred between pltfs.' & defts.' steamships in a part of Queenstown Harbour known as the inner man-of-war anchorage, where the navigable fairway is bisected by a line of Admiralty battleships' mooring buoys, thus forming a northern & a southern channel. The two vessels were navigating, pltfs.' steamship up & defts.' steamship down, the northern channel, & the collision was found by the ct. to have taken place on the south side of the said channel. By virtue of their powers under Dockyard Ports Regulation Act, 1865 (c. 125), the Lords Comrs. of the Admiralty exercise authority over Queenstown Harbour as a dockyard port, but by Order in Council of Aug. 10, 1903, it was provided that a fairway would be kept through the inner man-of-

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) v.

5961 i. *Vessel entering or leaving dock.*]—RINFRET *v.* CANADIAN S.S. LINES, LTD., [1928] Exch. C. R. 165.—CAN.

5961 ii. ——.]—Although a vessel emerging from a dock must be navigated with utmost care, yet other vessels should be manœuvred with consideration to the difficulties of the vessel that is emerging. The manœuvres & caution to be taken in such cases all depend on the distance at which the ships sight each other.—OCEANIC STEAMSHIP NAVIGATION CO., LTD. *v.* S.S. "LINGAN," LINGAN S.S. CO., LTD. *v.* S.S. "DORIC" (Que. Adm.), [1929] Ex. C. R. 71.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—E. (a).

aj. *Negligent navigation — What amounts to.*]—"WENCHITA" *v.* BEECHBAY," BEECHBAY S.S. CO. *v.* "WENCHITA," [1928] Exch. C. R. 178.—CAN.

ak. *Duties of masters.*]—*Held:* when two vessels are meeting in a narrow channel, careful watch must be kept by the masters of each vessel over the movement of the other vessel, & they must be prompt to signal in case of emergency resulting from their manœuvres. Carelessness or neglect to so act, if damage results therefrom, is negligence for which each vessel offending is liable.—EASTERN STEAMSHIP CO. *v.* "ALICE," J. P. PORTER & SONS, LTD. *v.* "WARREN," [1927] Exch. C. R. 228.—CAN.

war anchorage, & in 1909 the Cork Harbour Comrs., "in pursuance of the powers vested in them by the Cork Harbour Acts, 1820–1903," issued with the approval of the Board of Trade & the consent of the Admiralty, required by sect. 60 of the Cork Harbour Act, 1903, bye-laws for the regulation of navigation in Queenstown Harbour. By bye-law 41: "Any regulations for preventing collisions at sea for the time being in force, under the provisions of the Merchant Shipping Acts, shall be deemed to apply to the port, & shall be construed as if the following bye-laws, Nos. 42 to 52 (inclusive), were added thereto, & the entire fairway shall be deemed to be a narrow channel." By bye-law 53: "The foregoing bye-laws, where they refer to any part of the man-of-war anchorages or any other part of the dockyard port, shall apply to any merchant ships that may be temporarily using such parts of the port." The interpretation clause prefixed to the said bye-laws defined "fairway" as "the space within the port for the time being reserved as a highway for vessels in motion." In 1916 the Harbour Comrs. issued a "Description of Fairway," para. 6 of which was as follows: "From the eastern limit of the inner man-of-war anchorage to the White Point Buoy there are two fairways—the northern fairway & the southern fairway. The northern fairway is bounded on the north by an imaginary line from 20 fathoms south of Copper Point Buoy to the western end of Queenstown Deep-water Quay, & thence towards White Point House until Rushbrooke Church bears N.W. by W.½W., & thence to White Point Buoy showing a fixed white light, & on the south by the line of Admlty. battleships' mooring buoys. The southern fairway is bounded on the north by the line of Admlty. battleships' mooring buoys, & on the south by the line of Admlty. torpedo-boat & other mooring buoys along the north of Spit Bank & Haulbowline":—*Held:* subject to the general overriding jurisdiction of the Lords Comrs. of the Admiralty, the Harbour Comrs. have power to reserve space within the port as a highway for vessels in motion, & that the effect of the bye-laws, as explained by the reservation contained in the "Description of Fairway," was to constitute in the inner man-of-war anchorage two separate fairways, divided by the line of mooring buoys, in either of which vessels, whether proceeding up or down the harbour, were entitled to navigate, & pltfs.' vessel was alone in fault for the collision for failing to keep on her own starboard side of the northern fairway, in compliance with art. 25.—THE ZILLAH, [1929] P. 266; 98 L. J. P. 124; 141 L. T. 174; 45 T. L. R. 440; 17 Asp. M. L. C. 604.

6065. *Add. Annotations:*—**Consd.** H.M. Submarine Rainbow, [1933] P. 68. **Refd.** The Treherbert, [1934] P. 31.

6069a. River Plate.]—THE BUCCARI (1929), 35 Ll. L. Rep. 26.

Annotation:—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S. Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L.D. S.S. (1931), 101 L. J. P. C. 65.

6070a. ——.]—The *L.* was going down the river St. Lawrence outward bound, stemming the tide, following a course in mid-channel, a narrow channel within the meaning of Art. 25, & when about two miles apart sighted the *H.*, which was well over the southern side of the channel, her port side. The available fairway, which was limited by shoals on each side, was well lighted & about twelve hundred feet wide. The *H.* blew two port helm signals which were not heard, but when within 1,500 feet blew one short blast, put her helm hard-a-port & kept it there until collision. The *L.* only heard the last short blast. The Regulations of 1910 provided for no signal to warn an oncoming ship of an intended breach of rule by the approaching vessel:—*Held:* the two ships were jointly liable & equally to blame, & it ought to be inferred from the Regulations of 1910 that signals other than those specified & prescribed were given at the risk of the vessel which gave them; the *L.* ought to have sounded two short blasts as a signal to the *H.* of her intention to continue on her course so as to pass green to green.—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. Co.; LOUIS DREYFUS & Co. *v.* HOCHELAGA S.S.; HOCHELAGA S.S. *v.* LOUIS DREYFUS & Co.; HOCHELAGA S.S. Co. *v.* LEOPOLD L. D. S.S. (1932), 101 L. J. P. C. 65.

6104. *Add. Annotations:*—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65. **Refd.** The Otranto, [1930] P. 110.

6104a. —— Liability for.]—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. Co.; LOUIS DREYFUS & Co. *v.* HOCHELAGA S.S.; HOCHELAGA S.S. *v.* LOUIS DREYFUS & Co.; HOCHELAGA S.S. Co. *v.* LEOPOLD L. D. S.S., No. 6070a, *ante*.

6104b. Right to give signal—Vessel without steerage way.] — CLAN LINE STEAMERS, LTD. (OWNERS OF THE "CLAN STUART") *v.* USKSIDE STEAMSHIP CO., LTD. (OWNERS OF THE "USKHAVEN"), [1929] S. C. (H. L.) 69, H. L.

PART XII. SECT. 3, SUB-SECT. 5.—E. (d).

m 1. ——.]—A collision occurred between the *I.*, & the *McG.*, soon after midnight, in a narrow channel of the St. Lawrence River between buoys 23 & 24, south of the fairway, & close to buoy 23. The weather was fine & clear, somewhat overcast, but without haze, & visibility was good. Both ships were going at full speed. The *McG.* outbound, going with the stream & a tide of 3 knots an hour & the *I.* inbound. When the *McG.* was abreast of the buoy 24 she gave a one-blast signal which was answered by the *I.* when abreast of buoy 23, indicating that they would pass port to port. The *I.* always going at full speed, then directed her course to port instead of keeping to starboard, contrary to the [illegible]ven, & to Art. 25, shoving the *McG.* to the south; & the collision occurred, the *I.* striking the *McG.* on the port side just amidships, with her port bow:—*Held:* as the two vessels were travelling port to port after exchanging signals indicating they would keep their course, the speed of the *McG.* in no way contributed to the collision, but that the collision was entirely due to the fault of the *I.* in not keeping to starboard of the channel & neglecting to slow up or stop as good seamanship required.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE (Que. Adm.), [1929] Ex. C. R. 230.—CAN.

n 1. ——.]—UNITED STATES SHIPPING BOARD *v.* THE SHIP ST. ALBANS (1928), 28 S. R. N. S. W. 429; 45 N. S. W. W. N. 104.—AUS.

PART XII. SECT. 3, SUB-SECT. 5.—F. (a) 1.

a 1. —— *Failure to answer due to agony of collision.*]—C. P. R. *v.* S.S. ROSECASTLE, DOMINION SHIPPING CO. *v.* S.S. MONTROSE, [1931] 4 D. L. R. 141.—CAN.

6104c. Vessels crossing.]—THE BUCCINUM (1936), 181 L. T. Jo. 503, C. A.

6112a. Crossing vessels — Risk of collision — Whether sound signal the "ordinary practice of seamen."]—THE LADY BELLE, No. 5946b, *ante*.

6115. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

SUB-SECT. 3A.—HARWICH HARBOUR.

6144a. Waiting at bend.]—THE PRINSES JULIANA, ESBJERG OWNERS *v.* THE PRINSES JULIANA OWNERS, No. 5379a, *ante*.

SUB-SECT. 9A.—SCHELDT.

6163a. Vessel turning—Duties of other vessels—Both to blame.]—By Article 40, r. 3, of the Scheldt Bye-laws a vessel turning in the river must give the appropriate signal, & every vessel in the vicinity ("*proche*") proceeding against the tide must stop her way over the ground, & every vessel proceeding with the tide must slacken her speed, until the vessel turning no longer presents any obstacle "*au passage*."

Applts.' steamship *C.*, a collier, bound up the Scheldt with the tide, had ahead of her the steamship *A.*, which sounded the appropriate signal, that she was going to swing to get head on tide. Resps.' vessel *B.*, one of the Harwich & Antwerp mail boats, was coming down the river at her full speed of 14 knots. She saw the lights of the *C.* coming up astern of the *A.*, & when she got down towards the *A.*, which was blocking about half of the navigable waterway of some 1,000 feet, she saw the lights of the *C.* coming under the stern of the *A.* on the *B.*'s side of the waterway. The *B.* kept her speed until about one minute before the collision when she slowed, &, about half a minute afterwards, stopped & went full astern. The President absolved the *B.* from blame for the ensuing collision on the ground that Article 40, r. 3, did not apply to her under the circumstances, as there was ample waterway for her on her own proper side of the river under the stern of the *A.* He held that the *B.* was justified in keeping her speed "until her master saw that there was an element of risk in the turning movement of the *A.* combined with the oncoming of the *C.* but before that risk had developed." He held the *C.* alone to blame for over-starboarding into the water of the *B.* & for not sounding a signal that she was starboarding. The owners of the *C.* appealed :—*Held :* Article 40, r. 3, is directed, not to the moment when the approaching ships get up to the turning ship, but to the time when they are coming towards her & do not know where she may be when they get up to her ; the ship coming against the tide cannot excuse herself by saying that when she arrived in the vicinity of the turning ship there was in fact room for her to pass ; (*per* GREER, L.J.) r. 3 is a regulation for the purpose of ensuring the safety of vessels navigating the river at the time the turning movement is taking place quite as much as it is directed to the safety of the turning vessel herself, & that the rule has to be applied until the turning vessel no longer presents any obstacle "*au passage*" ; & (*per* CUR.) while the *C.* was to blame, the *B.* was also to blame for keeping her speed & not stopping & reversing her engines until the risk of collision was apparent. Decision of the President varied by holding both vessels to blame in equal degrees.—THE "CHATWOOD," [1930] P. 272 ; 100 L. J. P. 1 ; 143 L. T. 735 ; 18 Asp. M. L. C. 165, C. A.

6165a. Vessel tying-up.]—Defts.' vessel *A.*, while tying-up to the bank in the Suez Canal to allow pltfs.' vessel *B.* to pass, was exhibiting three clusters of lights which, under the Canal regulations, should only be exhibited when the operation of tying-up is completed. The *A.*, however, was still exhibiting an arc lamp which should not be extinguished until the tying-up is completed, & she was also exhibiting her masthead lights &, until a moment before the collision, her starboard side-light. Her lights, therefore, were more consistent with her not being finally tied up than with that operation being completed so as to enable the *B.* to pass in safety. In answer to pltfs.' allegation that they were misled by the lights, defts. contended that if the *B.* had kept a better lookout she would not have been misled :—*Held :* the mere fact that if the *B.* had been keeping a better lookout, she might have appreciated the situation sooner, was not sufficient to exonerate defts. ; the burden was on defts., who had broken, not indeed one of the International Regulations, but a rule of an accepted code laid down for Canal pilots, to prove not only that the breach ought not to have misled the *B.*, but that it did not in fact mislead her ; & the ct., being of opinion that the *B.* was to some extent misled, found the *A.* one-fifth to blame, & the *B.*, which was coming too fast & took drastic helm & engine action causing her to sheer into the *A.*, four-fifths to blame.—THE AENEAS, [1935] P. 128 ; 104 L. J. P. 74 ; 154 L. T. 246 ; 18 Asp. M. L. C. 571.

6166. *Add. Annotation :—Generally,* **Refd.** The Otranto, [1930] P. 110.

6174. *Add. Citation :*—17 Asp. M. L. C. 289.

6180a. —— ——.]—THE KAMENETZ PODOLSK (1937), 183 L. T. Jo. 151.

6186a. ——.]—THE UMTALI (1937), 184 L. T. Jo. 125.

6187a. —— **Duty of waiting vessel.**]—THE ROTORUA, No. 6455b., *post*.

6195. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

PART XII. SECT. 3, SUB-SECT. 5.—G. (a).

6121 iii. —— *In narrow channel —Check signal.*]—Where a vessel is overtaking another in a narrow channel such as the Welland Canal & signifies her desire to pass by blowing one blast, but receives no reply, she is bound to wait, & not attempt to go forward so as to affect the overtaken vessel until permission is obtained. Rule 29 of the Rules of the Road for the Great Lakes is imperative, & overrides the General Rules which deal with conditions not covered expressly by said Rule.

The "check" signal is not recognised by the Great Lakes Rules, & its meaning & effect can only be determined by the circumstances under which it is given & received.—SINCENNES-MCNAUGHTON LINES *v.* "STEEL CHEMIST," [1928] Exch. C. R. 182.—CAN.

Duty to give sound signal.]—By Art. 34 of Port of London River Bye-laws, 1914, steam vessels crossing the river "shall do so at a proper time having regard to vessels navigating up & down the river, & shall be navigated so as not to cause obstruction, injury, or damage to any other vessel."

Pltfs.' steamship *D.*, which had been at anchor head down on the north side of the river waiting to cross over to the south side to enter the Surrey Commercial Docks, was proceeding to work slowly across the river under port helm. In this position only her stern light was visible to defts.' steamship *B.*, which was coming down the river to the south of mid channel. The *B.* sounded a short blast to a tug coming up the river & the *D.* sounded two short blasts & starboarded her helm a little. As the *D.* got more athwart the river she opened her green light to the *B.*, which thereupon reversed her engines & dropped both anchors, but her stem came in contact with the starboard quarter of the *D.* :—*Held :* although a crossing vessel had not the duty, as she had under the old Thames Bye-laws of 1898, of keeping out of the way of vessels navigating up & down the river, Art. 34 did not give her the right of way, but specially put upon her the obligation of care both as to the time when she crossed & the way in which she crossed : the *D.* ought to have given ample warning either by means of a long warning blast or preferably a short blast to indicate that she was crossing the bows of the *B.*, or have taken timely action to allow the *B.* to pass if there was not room to cross ahead of her ; & the *D.* was alone to blame.—THE BORS, [1926] P. 5 ; 95 L. J. P. 166 ; 134 L. T. 448 ; 17 Asp. M. L. C. 22.

Annotation :—**Consd.** The Homefire (1937), 183 L. T. Jo. 172.

6200b. ——.]—THE HOMEFIRE (1937), 183 L. T. Jo. 172.

6212. After this case add :—

I. Vessel leaving Dock.

212a. St. Katherine's Docks—Sufficiency of signal.]—Bye-law 26 of the Port of London River Bye-Laws, 1914-21, provides that "A steam vessel coming out of dock or leaving a wharf or tier shall signify the same by a prolonged blast of the steam whistle, except in the case of a vessel coming out of the St. Katharine Docks requiring the bascules of the Tower Bridge to be raised in order to get into position in the river which shall signify the same by a prolonged blast of the steam whistle followed by three short blasts in rapid succession."

Defts.' steamship having, on the flood tide, come stern first out of the lock of the St. Katharine Docks into the Upper Pool of the Thames, was in collision with the pltfs.' steamship. When entering the lock defts.' steamship sounded a signal of one long blast followed by three short blasts, & this signal she twice repeated as she passed through the lock & into the river. It was contended for pltfs. that she ought in addition to have sounded the prolonged blast mentioned in the first part of bye-law 26 :—*Held :* the framers of the bye-laws must have had in mind that almost the only occasion when a vessel leaving St. Katharine Docks would require the bascules of the Tower Bridge to be raised was when she was coming out of the docks stern first on the flood tide & so would need all the room she could obtain in which to turn head down river ; the combination of one long blast & three short blasts conveyed a warning to those whom it might concern that a vessel was leaving the dock & in doing so coming astern ; if the bye-law required a vessel in those circumstances also to sound the general warning signal of a prolonged blast prescribed in the earlier part thereof, it followed that she must also, while going astern, sound three short blasts if & when any other vessel in the crowded reach came in sight ; & such a series of blasts would be wholly unnecessary & lead to confusion, & defts.' steamship was right in sounding only a signal of one long & three short blasts.—THE FALCON (1931), 47 T. L. R. 621.

J. Vessel at Anchor.

6212b. Barge dropping down river on anchor—Under-way lights shown.]—While defts.' sailing barge was dropping down the River Thames on the tide the anchor of the barge fouled the chain of a dredger lying just above Battersea Bridge. The barge continued to exhibit the regulation side lights & stern light for a sailing vessel under way. About half an hour afterwards, the master of pltfs.' tug, which was coming down the river with six barges in tow, saw the red light of the sailing barge & thought that she was under way & about to pass through the bridge. In attempting to avoid the sailing barge, when it was realised that she was foul of the dredger, the tug & one of her craft in tow struck the bridge & received damage. Bye-law 5 of the Port of London River Bye-laws, 1914-34, provides that "the expression 'under way,' when used in relation to a vessel, means when she is not at anchor, or moored, or made fast to the shore, or aground, & includes a vessel dropping up or down the river with her anchor on the ground." Bye-law 14 provides that "a vessel under one hundred & fifty feet in length when at anchor or moored shall, by night exhibit forward . . . a white light. . . ." :—*Held :* the sailing barge was "at anchor or moored" within the meaning of bye-law 14, & ought to have taken in her side lights & put up an anchor light, & she was alone to blame.—THE CURLEW, [1937] P. 30 ; 106 L. J. P. 17 ; 156 L. T. 50 ; *sub nom.* UNION LIGHTERAGE CO., LTD. *v.* CURLEW SAILING BARGE OWNERS, THE CURLEW, [1936] 3 All E. R. 676.

6212c. Lights not sufficiently visible.]—This was a claim by the owners of the Greek steamship *N.* against E. W.'s Line Limited, of Hull, owners of the steamship *T.*, for damages in respect of a collision which occurred about abreast of Shellhaven Point, Sea Reach, River Thames, on a clear but dark night, at about 2.30 a.m. on Dec. 12, 1936. The *N.*, with no pilot on board, was at anchor ; the *T.*, in charge of a fully-licensed Trinity House pilot, was proceeding down-river on a voyage from London to Hull. Pltfs.' case was that the *N.*, having failed to find a pilot off the Tongue Light Vessel, had proceeded up the river in the wake of another vessel, whose pilot had undertaken, by wireless, to lead the *N.* to a safe place of anchorage ; that when the *N.* was about abreast of Holehaven

Creek the pilot on board the other vessel had sent a wireless message to the *N.* telling her to drop anchor there & promising to return in a couple of hours to pilot the *N.* to London Docks; that the *N.* thereupon immediately dropped her starboard anchor, she being then about 300 yds. off Holehaven Creek & stemming the ebb tide, put out her navigation lights & posted her anchor lights, which thereafter burned brightly. About ten minutes before the collision those on board the *N.* observed the red light of a vessel which proved to be the *T.*, about a mile distant & bearing on the *N.'s* port bow. The *T.* came on, but instead of passing the *N.* portside to portside as she could & ought to have done, the *T.*, with her stem & port bow, struck the *N.'s* port bow, doing damage. Defts.' case was that the *T.* was proceeding down the river at full speed & doing about twelve knots over the ground. After passing West Blyth buoy on her starboard side at a distance of about 150 ft., the *T.* set a course of E. ½ S., which was maintained until just before the collision, & on that course she proceeded down Sea Reach well on the southern side of mid-channel. When about half a cable away, those on board the *T.* descried the loom of the *N.* about ahead, & very shortly afterwards a faint light was seen. Although the wheel of the *T.* was hard-a-starboarded & her engines were put full speed astern, the *T.'s* port bow struck the port bow of the *N.*, whereby the *T.* sustained considerable damage. As the *T.* then scraped along the port side of the *N.*, it was observed that some of the *N.'s* portholes appeared to be very dimly lit. Defts. denied liability & blamed pltfs. for the collision, alleging that the *N.* was improperly anchored in the fairway & was not exhibiting the anchor lights required by the Port of London River Bye-laws, 1914–1934. The learned judge having found as a fact that the *N.* was not lying where she said she was, but was anchored well in mid-channel about abreast of Shellhaven Point:—*Held:* even if the *N.'s* lights were visible at a cable's distance, as the evidence called on behalf of defts. appeared to establish, this was in flagrant breach of bye-law 14 of the Port of London River Bye-laws, 1914–1934, which required that anchor lights should be clear & visible all round the horizon at a distance of at least one mile; the failure of those on board the *T.* to descry such lights as the *N.* had before they did, did not amount to a bad look-out, & in the circumstances there was no negligence on the defts. for not having avoided the collision. Pltfs. were accordingly alone to blame.—THE TRENTINO (1937), 157 L. T. 70.

K. Vessel Grounded.

6212d. Failure to give signal—Damage not following "naturally & necessarily" from negligence.]—THE PEMBROKESHIRE (1936), 181 L. T. Jo. 470.

L. Drifting Barge.

6212e. Exhibition of light—Light waved by lighterman.]—THE SUD (1937), 183 L. T. Jo. 473.

6218. *Add. Annotations:*—**Consd.** H.M. Submarine Rainbow, [1933] P. 68. **Refd.** The Treherbert, [1934] P. 31.

6230. *Add. Annotation:*—**Consd.** The Minerva, [1933] P. 224.

6240a. —— ——.]—"BARON VERNON" S.S. *v.* S.S. "METAGAMA," [1928] S. C. (H. L.) 21, H. L.

6241. *Add. Annotations:*—**Consd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 4 All E. R. 798.

6248. *Add. Annotations:*—**Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

6253. *Add. Annotation:*—**Consd.** The Rehearo, [1933] P. 286.

6253a. Fire—Excessive wash causing stove to upset.]—WENDY II. MOTOR BOAT OWNER *v.* SOLACE MOTOR BOAT OWNER (1936), 181 L. T. Jo. 193.

6253b. Excessive speed on leaving lock—Abnormal wash causing damage.]—OLIVEGROVE S.S. OWNERS *v.* SCHUYLKILL OWNERS (1936), 182 L. T. Jo. 127.

6255. *Add. Annotations:—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

6256. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Kite (1933), 49 T. L. R. 525; The Stranna, [1937] P. 130.

6257a. ——.]—The *G.* having been damaged in collision was taken in tow to Dover & there beached. She was beached at a spot where the damaged parts were unsupported & the extent of the damage was thereby greatly aggravated. It was found that there was no failure of ordinary nautical skill in the beaching:—*Held:* in order to succeed on the question of consequential damage defts. must show that pltfs., were guilty of negligence in the beaching of the ship; the finding of the judge & the elder brethren that there had been no failure of ordinary nautical skill was a finding of no negligence; though there was no actual danger of the ship sinking immediately, the master had not unlimited time in which to decide upon the proper course to pursue, & it was necessary for defts. to show that he had been unduly ignorant or unduly careless.—GRAINTON S.S. OWNERS *v.* GENUA S.S. OWNERS, THE GENUA, [1936] 2 All E. R. 798; 155 L. T. 456.

6267. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6325. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6369. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6377a. —— ——.]—THE PRINCESS, No. 5608b, *ante*.

6414. *Add. Annotations :*—**Consd.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

6415. *Add. Annotation :*—**Refd.** Tidy *v.* Battman, [1934] 1 K. B. 319.

6417. *Add. Annotations :*—**Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; The Vectis, [1929] P. 204. **Refd.** The Chatwood, [1930] P. 272 ; The Otranto, [1930] P. 110 ; Service *v.* Sundell (1929), 99 L. J. K. B. 55 ; Swadling *v.* Cooper (1930), 46 T. L. R. 597.

6423a. Vessels failing to stop in fog.]—THE BREMEN, No. 5748c, *ante*.

6429. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

6430. *Add. Annotation :*—**Consd. & Expld.** The Vectis, [1929] P. 204.

433a. —— ——.]—Pltfs., as owners of the barge *H.*, brought an action in the Mayor's & City of London Ct. against the owners of the barge *V.* in respect of damage sustained by the *H.* in Milton Creek, River Swale, through coming in contact with the *V.*'s anchor, which was admittedly being carried in an improper position, with the stock projecting over the bows, in breach of one of the Milton Creek bye-laws. But for the position of the anchor, the use of fenders would have avoided damage to either vessel. The judge held that the master of the *H.* knew of the position of the anchor & took the risk of coming in contact with the *V.* when the rush of the flood tide swung the H., which was aground, athwart the creek & into contact with the *V.* lying moored on the opposite bank. He found that the master of the *H.* was negligent in not taking measures to avoid coming in contact with the *V.*, &, on the authority of *The Monte Rosa*, No. 6430, which he thought was in conflict with *The Dunstanborough*, No. 6429, gave judgment for defts. Pltfs. appealed :—*Held :* defts. had not established either knowledge of the position of the anchor or negligence on the part of the master of the *H.*, & the appeal succeeded.—THE VECTIS, [1929] P. 204 ; 98 L. J. P. 135 ; 140 L. T. 563 ; 45 T. L. R. 384 ; 17 Asp. M. L. C. 574.

6433b. —— ——.]—H.M. SUBMARINE RAINBOW, No. 5401a, *ante*.

6437a. ——.]—A steamer having stopped but not having, as she should have done, reversed immediately before a collision, though the ct. found as a fact that her not having done so did not affect the collision, & having thus infringed rule 14 of the Thames Rules :—*Held :* she was nevertheless not to blame, for the Thames Rules do not fall within the operation of Merchant Shipping Act, 1873 (c. 85), s. 17.—THE HARTON (1884), 9 P. D. 44 ; 53 L. J. P. 25 ; 50 L. T. 370 ; 5 Asp. M. L. C. 213 ; 32 W. R. 597.

6441. *Add. Annotations :*—*As to* (2) **Consd.** The Vectis, [1929] P. 204. *As to* (3) **Consd.** The Vectis, [1929] P. 204.

6448. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

6451. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

6453a. Collision with vessel at anchor.]—Pltfs.' vessel *C.* at anchor in London Reach, River Thames, was run into by defts.' vessel *E.* proceeding up the river. The *C.* had her anchor lights exhibited, but she was lying nearly athwart the river with her whole length to the north of mid-channel in such a position that she was obstructing a large part of the fairway. The practice in Long Reach, according to the evidence, was for vessels to anchor to the south of mid-channel, & for large vessels proceeding up & down to pass to the northward. Defts.' case was that the *C.'s* lights were defective, & that those on the *E.* only saw the dim forward anchor light, & immediately afterwards the hull, of the *C.* about 650 feet away. The ct. found, however, that the lights were effective & that they were, or should have been, seen at a considerably greater distance than 650 feet ; but that the failure of those in charge of the *E.* to identify the lights as anchor lights in time to avoid the collision was partly due to the *C.'s* improper & unexpected position in the river in a locality where bright lights on the north shore would probably make it more difficult to pick up her lights, & partly to the fact that those on the *E.*, which had a speed of at least 10 knots, were not sufficiently alert as to the possibility of danger ahead :—*Held :* (1) the *E.* was to blame, inasmuch as those in charge of her on seeing the lights should have realised the possibility that they were those of a ship or ships ahead the precise position of which was obscure, & should have reduced the speed of the *E.* immediately ; (2) the *C.'s* negligence in anchoring in an improper position contributed to the failure

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PART XII. SECT. 5, SUB-SECT. 5.—A.

6413 xviii. ——.]—SINCENNES-MCNAUGHTON LINE, LTD. *v.* "BRULIN" S.S., [1928] Exch. C. R. 45 ; *revsd.*, [1929] 3 D. L. R. 536.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—B.

q i. ——.]—*Held :* where vessels are meeting in narrow channels or areas & improper signals by whistle are exchanged, rules 22 & 23 being violated by both vessels, liability for negligence which causes a collision must be determined by the weight of evidence after consideration of the action of each vessel, having regard to rule 37.—"MANLEY" S.S. (OWNERS OF) *v.* "HECTOR" S.S. (OWNERS OF) & THE NORTHERN CONSTRUCTION CO., [1928] Exch. C. R. 42.—**CAN.**

q ii. ——.]—The collision herein occurred in the First Narrows, at the entrance to Vancouver Harbour. Both vessels were found to have been proceeding at excessive speed through a dense fog :—*Held :* since the collision was primarily caused by the joint negligence of both ships in failing to comply with the first part of Art. 16 of the International Rules of the Road, & in proceeding through a dense fog at a speed which was immoderate having regard to the existing conditions, they were equally at fault & the total damage occasioned by that joint fault should be borne equally by the parties.—THE PRINCESS ALICE S.S. *v.* WEST VANCOUVER CORPN., [1936] Ex. C. R. 115.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—C.

6426 v. ——.]—In a collision between vessels passing through a canal at night, responsibility lies upon the ship neglecting to observe the rules governing her course & speed.—SOWARDS *v.* THE "ELMBAY," [1936] 3 D. L. R. 246.—**CAN.**

6436 i. *Breach by both vessels—Rules for navigating Great Lakes.*]—"GLENROSS" *v.* CANADA S.S. LINES, LTD., SWAN, HUNTER & WIGHAM RICHARDSON, LTD. *v.* "GLENLEDI." [1929] 3 D. L. R. 282 ; S. C. R. 549.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (a).

6447 i. *Rules of Common Law & Admiralty distinguished.*]—Where the negligence of deft. is not the sole cause of the damage different principles for assessing liability are applicable at common law from those to be applied in Admiralty, for at common law the suit will fail, whereas in Admiralty where the damage is caused by the combined default of two or more vessels, the liability is to be apportioned.—"RABENFELS," THE (1929), I. L. R. 56 Calc. 763.—**IND.**

of those in charge of the *E.* to take appropriate action until it was too late, & the *C.'s* negligence was wrapped up with & part of the negligence of the *E.* Both vessels therefore were to blame & in equal degrees.—THE EURYMEDON, [1937] P. 167; 106 L. J. P. 126; 157 L. T. 457; 53 T. L. R. 863.

6455a. —— ——.]—THE BREMEN, No. 5748c, *ante.*

6455b. —— ——.]—This was a claim by the owners of the motor barge *C.*, which was towing their dumb barge *F.* up-river in the Thames, against the owners of the steamship *R.* for damage suffered by the *F.* in a collision with the *R.* which occurred on the night of Apr. 4, 1935, opposite the Royal Albert Dock, which the *R.* was waiting to enter. Pltfs. contended that as the *C.* was proceeding up-river with three barges in tow laden with cement, the *R.* which was waiting to enter the Royal Albert Dock but which was moving slowly down river & was angled across it, struck the *F.*, the port hand barge in tow of the *C.*, doing her so much damage that she had to be beached to avoid sinking in deep water. Defts. denied liability & said that the *R.* was not moving; she was stemming the tide & not altering her heading; they contended that the *C.* was alone to blame for the collision in that, instead of passing the *R.* on the starboard side, the *C.* tried to pass ahead of the *R.* from starboard to port, & although the starboard engine of the *R.* was immediately put full speed astern, the *C.* having got her craft across the tide was unable to regain control of the barges, with the result that the *F.* fell across the stem of the *R.* At a later stage in the hearing & after the conclusion of the evidence, defts. applied for leave to amend the defence by alleging that the *C.* failed to give any sound signal of her intention to alter course so as to pass the *R.* port to port. The amendment was allowed:—*Held:* in a reserved judgment, the governing fact of the collision was that the *R.* was moving down river & trailing across to the northward while her head was falling off to port; she was swinging from time to time & straddling across the water. The *R.* was to blame for bad look-out, for going across into the northern water when she ought to have been held steady in the channel if she were going to remain there at all, & for not taking timely steps to assist the C., which, owing to the action of the *R.*, had to go closer to the north shore than she originally intended; further, the *C.* was also to blame for not letting the *R.* know by sound signal what she was doing & for substantially contributing to the collision thereby. The blame was apportioned as to two-thirds on the *R.*, & as to one-third on the *C.*, the judge directing that the costs of the action should follow the event in the same proportion.—THE ROTORUA (1936), 155 L. T. 357.

6465. *Add. Annotation:*—**Refd.** The Young Sid, [1929] P. 109.

6480. *Add. Annotation:*—**Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

6484. *Add. Annotations:*—**Refd.** The Edison, [1932] P. 52; A.-G. *v.* Valle-Jones, [1935] 2 K. B. 209; Flint *v.* Lovell, [1935] 1 K. B. 354

6499. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6501. *Add. Annotation:*—**Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6504. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6546. *Add. Annotation:*—**Refd.** The Carlton, [1931] P. 186.

6562. *Add. Annotations:*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628; Service *v.* Sundell (1929), 45 T. L. R. 569.

6591. *Add. Annotation:*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

6594. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal, [1932] A. C. 452.

6594a. —— ——.]—"HARVEST HOME," THE, No. 5217, *ante.*

6601. *Add. Annotation:*—**Refd.** Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67.

6618. *Add. Annotation:*—**Refd.** The Edison (1931), 47 T. L. R. 635.

6622. *Add. Annotation:*—**Refd.** The Baarn, [1933] P. 251.

6624. *Add. Annotations:*—**Consd.** Strathfillan S.S. Owners *v.* Ikala S.S. Owners, The Ikala, [1929] A. C. 196. **Refd.** The Edison (1932), 48 T. L. R. 224; The West Wales, [1932] P. 165; The Kafiristan, [1937] 3 All E. R. 747.

PART XII. SECT. 6, SUB-SECT. 1.—D.

q 1. ——.]—The master of the *T.*, which was at all relevant times compulsorily in charge of a pilot, was in as favourable a position as the pilot to determine whether any risk of navigation was being incurred, & was aware of all the circumstances immediately preceding & leading up to the collision, but stood by & gave no warning to the pilot as to the possibility of danger or as to the breach of regulations as to speed:—*Held:* in the circumstances the master was *particeps* in the negligence of the pilot & the defence of compulsory pilotage was not available to the owners of the *T.*—FERRIES (SYDNEY), LTD. *v.* TAHITI, THE SHIP (1929), 30 S. R. N. S. W. 360; 47 N. S. W. W. N. 130.—AUS.

PART XII. SECT. 6, SUB-SECT. 2.—A.

o 1. ——.]—Sect. 117 of Navigation Act, 1901, is a valid exercise of the power conferred on Colonial Legislatures by sect. 735 of Merchant Shipping Act, 1894, of repealing or altering the provisions of the latter Act relating to ships locally registered. Consequently, sect. 117 of Navigation Act, 1901, is not to be read as subject to sect. 419 (4) of Merchant Shipping Act, 1894. Therefore, the provisions of sect. 419 (4) of Merchant Shipping Act, 1894, are not applicable to ships registered in New South Wales, & the presumption of fault does not arise against any such vessel on proof merely that she has infringed any of the collision regulations, but only where it appears to the ct. that the collision was occasioned by such breach of regulation.—BUTLER *v.* MILLIMUMUL SHIP (1929), 30 S. R. N. S. W. 182; 47 N. S. W. W. N. 66.—AUS.

PART XII. SECT. 6, SUB-SECT. 4.

6605 l. *Discretion to extend time.*]—*Held:* as no sufficient excuse had been given for failure to bring suit for damages for collision within the proper time, extension under Maritime Conventions Act, 1911, .8, should not be granted.—NIPPON YUSEN KAISHA *v.* THE MARIENFELS (1933), I. L. R. 61 Cal. 22.—IND.

s1. *Effect of Maritime Conventions Act, 1914, s. 9.*]—The present action is one *in rem* against the tug *S.* for damages to pltf.'s canal boat, when in tow of the *S.*, as a result of a collision between the said canal boat, a dumb tow & the wall of the inner basin of the harbour of Quebec, which collision was alleged to be due to the negligent navigating of the *S.*: *Held:*—sect. 9 was not limited in its application solely to actions for damages due to collision between vessels, & the present action not having been commenced within two years from the date when the damages or loss or injury was caused should be dismissed.—"SPRAY" *v.* ST. CLAIR, [1928] Exch. C. R. 56.—CAN.

6627. *Add. Annotations:*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Consd.** The Edison (1932), 46 T. L. R. 224.

6628a. —— **Detention due to collision—Owner unable to use ship owing to contract during period of detention.**]—On Mar. 12, 1927, resps.' steamship suffered damage by a collision with applts.' steamship, for which the applts. admitted liability. The damage did not render resps.' vessel unseaworthy, & she continued trading without effecting repairs. While she was so trading her owners by a memorandum of agreement dated Dec. 21, 1927, contracted to sell her. The agreement set forth that the vessel was "due London on Dec. 24, thence H. & A., expected ready for delivery between, say, Jan. 10 & Jan. 31, & to be delivered to buyer at Antwerp or a U.K. port at seller's option, but not later than Feb. 25, 1928, subject to buyer's approval afloat & to bottom examination in dry dock, as specified in Clauses 4 & 5 of this contract . . . 4. The buyer shall commence the inspection of the steamer afloat within twenty-four hours of receiving notice of steamer's readiness for inspection, & if on superficial inspection the buyer is satisfied with the general condition of the steamer, seller shall at his own risk & expense open up the engines, boilers & tanks for the inspection of the steamer afloat by the buyer. . . . The buyer shall declare acceptance or refusal of the steamer in writing within twenty-four hours after completion of such inspection afloat . . . 5. For examination of bottom &/or other water parts &/or tailend shaft, seller agrees to put the vessel into dry dock. . . ." The steamship arrived at Antwerp on Jan. 10, 1928, & her owners gave notice to the buyer of her readiness. On Jan. 16 they proceeded to open up the vessel's engines, boilers & tanks for inspection, & while the vessel was in that condition & therefore unable to trade, they took the opportunity to effect the repair of the collision damage, which was of such a nature that it could be repaired while the ship was afloat. The repairs admittedly occupied four days, & were completed on Jan. 24. Subsequently the vessel was put into dry dock for bottom examination. On the reference to assess the damage caused by the collision resps. claimed (*inter alia*) loss & expenses in respect of four days' detention while their ship was undergoing repairs:—*Held:* inasmuch as resp. shipowners had entered into contractual obligations which prevented them from trading with the vessel & earning profits during the time when the repair of the collision damage was being executed, they had not suffered any loss by the detention of their vessel in consequence of the collision, & were therefore not entitled to recover from the wrongdoer.—THE YORK, [1929] P. 178; 98 L. J. P. 147; 141 L. T. 17 Asp. M. L. C. 600, C. A.

:—**Refd.** The London Corporation, [1935] P. 70.

6635. *Add. Annotation:*—**Refd.** The Edison (1932), 147 L. T. 141.

6640. *Add. Annotation:*—**Consd.** The Edison, [1932] P. 52.

Add. Annotation:—**Overd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] 449.

6653a. —— —— ——.]—**A British battleship damaged by collision was put into a naval dry dock for her repairs. The ship's effective life was estimated at twenty years & she was under four years old at the time of the collision. In assessing the damages the registrar allowed nothing in respect of the use of dock & cranes, on the ground that the Admiralty had suffered no pecuniary expenses or loss, & in respect of the loss of use of the ship for fifteen days, the time estimated for the collision repairs, he allowed interest at 2½ per cent., on half the initial costs of the ship for the fifteen days. The Admiralty appealed:—*Held:* that the case must go back to the registrar for re-assessment, for (i) the ship occupied the dock & used the cranes, etc., to the exclusion of other vessels & some allowance, therefore, must be made to the Admiralty in respect of these items, & (ii) having regard to the estimated life of the ship, her annual depreciation & cost of maintenance, the amount awarded for detention appeared to have been computed on a wrong basis.—THE WEST WALES, [1932] P. 165; 101 L. J. P. 92; 148 L. T. 80; 18 Asp. M. L. C. 349.

6656. *Add. Annotations:*—**Consd.** The York, [1929] P. 178; 101 L. J. P. 92. **Refd.** The London Corporation, [1935] P. 70.

6659. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

6663. *Add. Annotations:*—**Consd.** The West Wales, [1932] P. 165. **Refd.** The Ikala, [1928] P. 86; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6671. *Add. Annotations:*—**Apld.** The York, [1929] P. 178. **Refd.** The London Corporation, [1935] P. 70.

6671a. —— **Although ship sold.**]—Pltfs.' & defts.' vessels, while laid up, ranged against each other & each sustained slight damage. Before any action was brought both vessels were surveyed, but no estimate of the cost of repairs was made. Pltfs.' vessel was then sold to be broken up. Defts. afterwards agreed with pltfs. that the repairs, if executed, would cost £250, but no repairs were in fact done. Defts. contended that pltfs. had suffered no loss & were not entitled to any damages:—*Held:* (1) the mere facts that the vessel had been sold to shipbreakers, & that the repairs would never be carried out, did not discharge the onus, which was on defts., of proving that pltfs. had suffered no damage; (2) *primâ facie* the value of a vessel damaged in collision is less, by the cost of the repairs, than her value if undamaged, & the fact that a vessel has been sold to be broken up is an accidental circumstance not to be taken into account in the way of diminution of damages.—THE LONDON CORPORATION, [1935] P. 70; 104 L. J. P. 20; 152 L. T. 487; 51 T. L. R. 224; 79 Sol. Jo. 86; 18 Asp. M. L. C. 535, C. A.

6672. *Add. Annotation:*—**Refd.** The Corporation, [1935] P. 70.

6674. *Add. Annotations:*—**Apld.** The York, [1929] P. 178. **Refd.** The London Corporation, [1935] P. 70.

6677. *Add. Citations:*—*affd. sub nom.*

THE IKALA, [1929] A. C. 196; 98 L. J. P. 49; 140 L. T. 177; 17 Asp. M. L. C. 555, H. L. *Add. Annotation :*—**Consd.** The York, [1929] P. 178.

6678. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 190.

6689. *Add. Annotations :*—**Consd.** The West Wales, [1932] P. 165. **Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6690. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52; The West Wales, [1932] P. 165. **Refd.** The London Corporation, [1935] P. 70.

6694a. —— —— **On special contract.**]—While the dredger *L.* was lying moored alongside the breakwater at Patras Harbour in the Hellenic Republic the steamship *E.* fouled the dredger's moorings & carried her out to sea, where she sank & was lost. The owners of the *E.* admitted sole liability for the loss. In proceedings before the Admiralty Registrar & a Merchant between the owners of the *L.* & the owners of the *E.* to assess the damages it appeared that the *L.* had been bought in 1927 for £4,000 by her owners, who had spent a further £2,000 in bringing her to Patras. They were a syndicate of civil engineers. Under a contract with the Patras Harbour Comrs. they were engaged in constructive work in the harbour, for which a dredger was necessary & for which they were using the *L.* The contract provided for completion of the work within a specified time. Delay in completion involved payment of heavy penalties &, if prolonged, cancellation of the contract. The owners of the *L.* had staked their capital & credit on the successful result of the contract. The loss of the *L.* stopped the work &, being unable from want of funds to purchase any suitable dredger which was for sale, on May 4, 1929, they hired a dredger, the *A.*, which was lying in harbour at Carlo Forte, Sardinia, to take the place of the *L.* The *A.* was more expensive in working than the *L.*, & required the attendance of a tug & two hopper barges. The *L.* was sunk on Nov. 26, 1928. The *A.* got to work on the harbour on June 17, 1929. On June 30, 1930, Harbour Comrs. bought the *A.* from her Italian owners for £9,177, & on Sept. 5, 1930, they resold her to the owners of the *L.* for the same sum payable in instalments: —*Held :* the measure of damages was the value of the *L.* to her owners as a profit-earning dredger at the time & place of her loss; & that it should include :—

(1) A capital sum made up of (*a*) the market price on Nov. 26, 1928, of a dredger comparable to the *L.*; (*b*) the cost of adapting the new dredger & of transporting & insuring her from her moorings to Patras; & (*c*) compensation for disturbance & loss suffered by the owners of the *L.* in carrying out their contract during the period between Nov. 26, 1928, & the date on which the substituted dredger could reasonably have been available for use at Patras, including in that loss such items as overhead charges & expenses of staff & equipment & the like thrown away, but neglecting any special loss or extra expense due to the financial position of one or other of the parties.

(2) Interest upon that capital sum from Nov. 26, 1928.

The rule in *The Columbus* disapproved where a vessel was in profitable employment at the time of her loss.—LIESBOSCH, DREDGER *v.* EDISON S.S., [1933] A. C. 449; 102 L. J. P. 73; 77 Sol. Jo. 176; 38 Com. Cas. 267; 18 Asp. M. L. C. 380; *sub nom.* THE EDISON, 149 L. T. 49; 49 T. L. R. 289, H. L.

Annotations :—**Refd.** Buckland *v.* R., [1933] 1 K. B. 329; The Castor, [1932] P. 142; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; The Arpad (1934), 50 T. L. R. 505.

6694b —— **Expenses of hiring substitute—Whether expenses reasonably incurred.**] — THE EDISON, No. 6694a, *ante.*

6696. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

6699. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

6705. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

6706. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assoc. (1929), 34 Com. Cas. 308. **Consd.** The Castor (1932), 48 T. L. R. 604; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6707. *Add. Annotation :*—**Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6708. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6710. *Add. Annotations :*—**Consd.** The Castor (1932), 48 T. L. R. 604; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449. **Refd.** The Arpad (1934), 50 T. L. R. 505.

6733. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The West Wales, [1932] P. 165. **Refd.** The London Corporation, [1935] P. 70.

6736a. Allowance to charterer under cesser clause.] —THE ESSEX ENVOY, No. 2104a, *ante.*

6736b. Use of naval dock & cranes—Repairs to warship.]—THE WEST WALES, No. 6653a, *ante.*

PART XII. SECT. 6, SUB-SECT. 5.—J.

11 i. —— *No market for such ... of ship.*]—On Aug. 14, 1926, a hopper digger barge belonging to the ... of the Clyde Navigation was sunk in collision with the s.s. *Ronda*, admitted that those in charge of her were solely to blame for the accident. In an action at the instance of the trustees, brought on Jan. 24, 1928, to assess & recover damages for (*inter alia*), the loss of the barge, it was proved that there was no market for such a vessel, so that the test of market value was not available. The Lord Ordinary awarded the pursuers the cost of a reasonably efficient second-hand hopper barge, & the cost of adapting it for their special purpose :—*Held :* the Lord Ordinary's method of assessing the value of the barge was not erroneous.—CLYDE NAVIGATION TRUSTEES *v.* BOWRING S.S. CO., LTD., [1929] S. C. 715.—**SCOT.**

PART XII. SECT. 6, SUB-SECT. 5. —L.

6732 i. *Damages through deprivation of use of vessel.*]—Though pltf.'s vessel is a non-profit earning ship pltf. is entitled to recover from deft. damages based on maintenance, overhead & depreciation costs, for the time the ship was actually absent from her duties as a result of the collision, in addition to the actual cost of repairs. —R. *v.* JERRY PETITE, [1933] Ex. C. R. 186.—**CAN.**

6739. *Add. Annotation :*—**Refd.** The Napier Star, [1933] P. 136.

6740. *Add. Annotations :*—*As to* (2) **Consd.** The Napier Star, [1933] P. 136. **Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6742. *Add. Annotations :*—*As to* (1) **Consd.** The Napier Star, [1933] P. 136. **Refd.** The Point Breeze, [1928] P. 135.

6751. *Add. Annotation :*—**Refd.** The London Corporation, [1935] P. 70.

6758. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

6763. *Add. Annotation :*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

Part XIV.—Wreck.

6794. *Add. Annotation :*—*As to* (2) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6796. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Oceanic Steam Navigation Co. *v.* Evans (1934), 51 T. L. R. 67.

6797. *Add. Annotations :*—**Apld.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** The Chr. Knudsen (1932), 48 T. L. R. 619.

6805. After this case add :—

—— —— **Negligent repair—Limitation of action.**]—*See* PUBLIC AUTHORITIES, No. 949a, *ante*.

6807. *Add. Annotations :*—*As to* (1) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

6809a. —— —— ——.]—A ketch belonging to defts. sank, owing to their negligence, in a river, of which first pltfs. were the conservators, & thereby obstructed the navigation of the river & second pltfs.' wharf & the approaches thereto. Immediately after the sinking of the ketch, & before any expenses were incurred in removing her, defts. abandoned her. Pltfs. jointly incurred expenses in removing the obstruction, & sued to recover the amount from defts. :—*Held :* (1) the ketch having sunk through the negligence of defts., they became liable at common law for the damage caused by the obstruction to the navigation of the river & the blocking of the approach to the wharf, & they could not escape liability for that damage by abandoning the wreck; (2) the damages recoverable were the reasonable cost of removing the obstruction.—DEE CONSERVANCY BOARD *v.* MCCONNELL, [1928] 2 K. B. 159; 97 L. J. K. B. 487; 138 L. T. 656; 92 J. P. 54; 26 L. G. R. 204; 17 Asp. M. L. C. 433, C. A.

6811a. —— —— ——.]—Defts.' steamship, a Norwegian vessel, while docking in Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred "in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ :—*Held :* the claim was for "damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, with Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1), (*a*), (iv.), & was properly commenced by a writ *in rem*.—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 148 L. T. 60; 48 T. L. R. 619; 18 Asp. M. L. C. 347.

Annotation :—**Consd.** The Minerva (1933), 49 T. L. R. 563.

Part XV.—Salvage.

6817. *Add. Annotation :*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

6821. *Add. Annotation :*—*As to* (1) **Consd.** The Castor (1932), 48 T. L. R. 604.

6849a. ——.]—THE TRES (1936), 181 L. T. Jo. 376.

6849b. Information as to course to clear ice-field.]—Defts.' steamship *T. B.*, while bound for St. John, New Brunswick, got into an extensive ice-field in which she sustained so much damage that she sent out an S.O.S. message, as it was thought that she was in danger of sinking. The S.O.S. message was heard & answered by pltfs.' steamship *N.*, which was some thirty miles away, & by other vessels, but none of these were within 200 miles of the *T. B.* The *N.* was also bound to St. John & had herself encountered the ice-

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PART XIII. SECT. 2.

h i. —— *Bridge.*]—A.-G. FOR BRITISH COLUMBIA *v.* "PACIFIC FOAM." [1928] 2 D. L. R. 877; [1928] 1 W. W. R. 965. —CAN.

h ii. —— ——.]—Action by pltfs. to recover damages suffered by them by reason of deft. ship coming into collision with a bridge being erected by pltfs. over the York River at Gaspe, P.Q. :—*Held :* the speed of the *D.* in passing through the bridge opening was, in the circumstances, excessive, & since the speed of the *D.* was excessive it could not be maintained that the ship was navigated with reasonable care & the accident was inevitable.—PHILIP T. DODGE S.S. *v.* DOMINION BRIDGE CO., LTD., DUFRESNE CONSTRUCTION CO., LTD., & LA COMPAGNIE DU PONT DE GASPE LIMITEE, [1934] EX. C. R. 181; *revsd.*, [1936] 1 W. W. R. 94; [1935] 4 D. L. R. 65; 5 F. L. J. (Can.) 131, P. C.—CAN.

aid doing. At that time the *T. B.* had been in the ice-field for some twenty-four hours, but on receipt of this information she altered course & followed the directions given to her by the *N.*, & so got clear of the ice. Pltfs. claimed salvage. Defts. denied that any salvage services were rendered, as the *N.* was under a statutory duty to go to the assistance of the *T. B.*; they alleged that the damage sustained was while she was performing that duty; that the only assistance requested—namely, to stand by, was not rendered; & that they already knew the course to steer to get out of the ice-field, but this last point was found against them. The value of the *N.*, her cargo & freight, was alleged to be over £225,000; the value of the *T. B.* was agreed at £10,000:—*Held:* each separate item of the proceedings could not be isolated & regarded by itself & the whole of the circumstances must be taken into account; without quantifying the moral support given to defts. by the knowledge that the *N.* was coming to their assistance, pltfs. rendered a very definite salvage service, in the course of which the *N.* sustained considerable damage, in giving information that the *T. B.* would find clear water within twelve miles by steering E.; & the proper award was the sum of £2,000, of which, having regard to the damage, £1,500 would go to the owners of the *N.*, £200 to the master & £300 to the crew.—THE TOWER BRIDGE, [1936] P. 30; 105 L. J. P. 33; 154 L. T. 565; 52 T. L. R. 153; 18 Asp. M. L. C. 594.

3851a. —— **Statutory duty.**]—THE TOWER BRIDGE, No.6849b, *ante.*

3927. *Add. Annotation:*—**Refd.** The Tower Bridge, [1936] P. 30.

3974. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

3990. *Add. Annotation:*—**Consd.** The Kafiristan, [1937] 3 All E. R. 747.

7035. *Add. Annotation:*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7056. *Add. Annotations:—As to* (2) **Consd.** The Kafiristan, [1937] 3 All E. R. 747. **Refd.** Akt.

7132. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

7133. *Add. Annotation:*—**Consd.** The Kafiristan, [1937] 3 All E. R. 747.

7222. *Add. Annotation:—As to* (3) **Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd. (1935), 40 Com. Cas. 288.

7276. *Add. Annotation:*—**Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd. (1935), 40 Com. Cas. 288.

7355. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7376. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7478. *Add. Annotation:*—**Consd.** The Castor (1932), 48 T. L. R. 604.

7474. *Add. Annotation:*—**Apld.** The Castor (1932), 48 T. L. R. 604.

7475. *Add. Annotation:—As to* (1) **Expld.** The Castor (1932), 48 T. L. R. 604.

7475a. —— **What should be considered—Earning power of ship—Existence of time charter.**]—In a salvage action pltfs. obtained an order for the appraisement of defts.' ship. The valuer appraised the ship on the footing that she was employed & likely to be employed, but the fact that she was under a profitable time charter which had nearly seven years unexpired was not disclosed to the valuer:—*Held:* an appraisement should be based on the value of a ship to her owners as a going concern; the earning power under the charterparty should be taken into account as one of the elements of value; accordingly the appraisement was not conclusive; &, on further evidence adduced in ct., the value should be raised from £72,820 to £85,000.—THE CASTOR, [1932] P. 142; 101 L. J. P. 88; 147 L. T. 359; 48 T. L. R. 604; 18 Asp. M. L. C. 312.

7476. This case should be No. 7477a.

7477b. ——.]—THE CASTOR, No. 7475a, *ante.*

7495. *Add. Annotation:*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

PART XV. SECT. 3, SUB-SECT. 2.—A. 6862 vi. ——.]—The bringing of a vessel filled with fish, & submerged o the pilot house, from a situation of peril in the open sea to a place of safety:—*Held:* a substantial salvage service.—SMITH *v.* THE "RACE ROCK" (1932), 45 B. C. R. 522.—CAN.

PART XV. SECT. 9, SUB-SECT. 1.—G. (a).

o 1. —— —— ——.]—PACIFIC SALVAGE CO., LTD., & VANCOUVER DRYDOCK & SALVAGE CO., LTD. *v.* THE M.S. "TEX," HOME INSURANCE CO. OF NEW YORK *v.* THE M.S. "TEX," [1931] 1 W. W. R. 153; 2 D. L. R 657; 43 B. C. R. 434.—CAN.

5140a. —— When towage commences—More than one tug.]—The *B.*, a tug belonging to pltfs., the Port of London Authority, came into collision with defts.' steamship *C. C.* in Tilbury Dock. The *B.* & another tug, the *S.*, which also belonged to pltfs., were under contract to tow the *C. C.* from lock to berth. The *S.* was made fast ahead of the *C. C.* & was towing her, & the *B.* was proceeding to the *C. C.*, which had passed through the lock into the dock when the *B.* was struck by the revolving propeller of the *C. C.* The collision was entirely due to the improper way in which the *B.* was handled through those on board not realising that the *C. C.* had twin screws. The dockmaster had given the appropriate signal for the *C. C.* to come ahead on her main engines, & it was not disputed by pltfs. that it was the universal practice of all ships navigating through the dock to use their main engines & that no complaint about such use had ever been made by pltfs. They contended, however, that defts. had committed a breach of bye-law 19 of the Port of London Dock Bye-laws which provides that " no person shall work, or cause to be worked, the propelling engines of any ship in the dock for any purpose except with the previous consent of the dock-master, & at such time & place & in such manner as he shall approve. Penalty £5." " Such consent is only to be given (if at all) on the terms that the person on whose behalf the application for the same is made will be responsible for all damage caused by working such engines & will indemnify & save harmless the Authority & its officers against all claims in respect of such damage." Pltfs. further contended that by clause 4 of the towage contract defts. agreed to pay for any damage to any of pltfs.' property, including the tug or tugs engaged in the towage, which might arise from collision even if caused or contributed to by the negligence of any servants of pltfs. Defts. contended that clause 4 did not apply inasmuch as under clause 1 the towage was " deemed to commence when the tow rope had been passed to or by the tug." Pltfs.' reply was that the towage was to be done by two tugs & that it commenced when one of the tugs, namely the *S.*, had started towing:—*Held:* bye-law 19 did not apply at the time in question, but, even if it did, defts. did not commit a breach of it because the consent of the dock master to use the engines had been given; the towage contract could be fairly interpreted as meaning that the towage should be deemed to have commenced when the tow rope had been passed to each of the two tugs, & that until that had been done the ordinary provisions of the common law applied to the rights & duties of each party; & accordingly defts. were entitled to succeed on the claim & counterclaim.—THE CLAN COLQUHOUN, [1936] P. 153; 105 L. J. P. 65; 155 L. T. 231; 52 T. L. R. 349; *sub nom.* PORT OF LONDON AUTHORITY *v.* CLAN COLQUHOUN S.S. OWNERS, [1936] 1 All E. R. 429.

Part XII.—Collisions.

5150. *Add. Annotation:—As to* (2) **Consd.** The Champion, [1934] P. 1.

5175. *Add. Annotations:*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** The Mulbera, [1937] P. 82.

5186. *Add. Annotation:—As to* (1) **Consd.** The Otranto, [1930] P. 110.

5194. *Add. Annotations:—As to* (3) **Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

5354. *Add. Annotation:*—**Refd.** The Vectis, [1929] P. 204.

PART XI. SECT. 3, SUB-SECT. 2.

5146 1. *Liability for negligence.*]—The owners of the *P.* contracted with a towing co. to have the *P.* towed from her berth to a grain elevator to unload her cargo. The *P.* had no motive power. Owing to the breaking of the tow line at one stage of the movement the *P.* continued her forward movement past the elevator & reached the south end of the harbour where the *S.* was laid up, puncturing the latter under the water line, by an anchor left hanging down on the port bow of the *P.* partly under water. This anchor was left so hanging down by those on the tow notwithstanding a warning by the tug master:—*Held:* (1) when commencing the towing of a ship her anchor is left, by the joint negligence of the tug master & those in charge of the ship, in such a position as to constitute a danger to other vessels, & does in fact cause such damage, the tow & tug are each responsible & liable for the damages so caused; (2) when a vessel at anchor or moored at a dock is run into by another, the *onus* is upon the moving vessel to justify or excuse her action; (3) towage is a joint undertaking, & although the motive power may be wholly that of the tug, yet both tug & tow are bound to take reasonable care & to use reasonable skill in performing the operation. This duty is not affected by the term of the towage contract, which cannot regulate the relations between the tug & tow & third parties; (4) persons on board the tow such as a shipkeeper & his helpers, though not a regular navigating crew, in regard to reasonable care & skill, may be treated as agents of the owners of the ship in performing or neglecting to perform such duties as the towage contract or the exigencies of the operation casts upon them; (5) provision in a towage contract that the operation is at " owner's risk " will not absolve the tug in case of negligence in navigation so far as third parties are concerned.—CANADA S.S. LINES, LTD. *v.* S.S. PAISLEY, JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] Ex. C. R. 105; *revsg.*, JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] 2 D. L. R. 257; [1929] 2 D. L. R. 42; S. C. R. 359.—CAN.

PART XII. SECT. 2, SUB-SECT. 2.

5169 1. *Want of due caution—Canal.*]—THE KINGDOC *v.* CANADA STEAMSHIP LINES, LTD., PATERSON STEAMSHIPS, LTD. *v.* THE OXFORD, [1931] S. C. R. 288; 1 D. L. R. 146; *revsg.*, [1930] Ex. C. R. 1.—CAN.

PART XII. SECT. 2, SUB-SECT. 13.—A. (d).

• 1. ——.]—Pltf.'s barge, the *R.*, with her tug attached, was on Sept. 1, 1931, forced to anchor about 1,400 feet below G. Point on the St. Lawrence, on account of heavy fog. Another ship, the *S.*, was also anchored near her. The *P.* knew these vessels were ahead but notwithstanding the fog came on without slowing, until her captain came on the bridge at G. Point when he decided to anchor his vessel, & in manœuvring to do so the collision in question occurred. The *S.* & the tug regularly sounded their bells, & the *R.* also carried her two mooring lights, but not quite disposed according to the rules, being on the same level. The *R.* did not sound her bell:—*Held:* (1) in the circumstances, & in view of the heavy fog, the *P.* should have stopped sooner, & that the collision was solely the result of

5359. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

5373. *Add. Annotation :*—**Refd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

5379a. —— —— **Harwich Harbour.**]—The *E.* was leaving & the *P.* was arriving at Harwich Harbour, both vessels being in charge of a pilot, when a collision occurred. It was necessary for the *P.* at the entrance to the harbour to round Beach End buoy :—*Held :* Harwich Harbour Conservancy Board (1929), Bye-laws No. 8 applied to the entrance to the harbour, & the *E.* which was navigating against the tide, should have eased her speed & allowed the *P.* to pass clear of her.—THE PRINSES JULIANA, ESBJERB OWNERS *v.* PRINSES JULIANA OWNERS, [1936] P. 139 ; [1936] 1 All E. R. 685 ; 105 L. J. P. 58 ; 155 L. T. 261 ; 52 T. L. R. 269 ; 18 Asp. M. L. C. 614.

5395. *Add. Annotation :*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

5400. *Add. Annotation :*—**Follid.** The Harkaway, [1928] P. 199.

5400a. —— ——.]—Defts.' sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. Pltfs.' motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—*Held :* having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & defts. were liable to pltfs. for the damage sustained.—THE HARKAWAY, [1928] P. 199 ; 97 L. J. P. 113 ; 139 L. T. 615 44 T. L. R. 649 ; 17 Asp. M. L. C. 503.

Annotation :—**Refd.** Burley C. *v.* Lloyd Edw. (1929), 45 T. L. R. 626.

5401a. —— **Portland Harbour—Vessel "about to enter"—Collision in one of the "channels between the breakwaters."**]—Rule 5 of a schedule to an Order in Council relating to the Port of Portland (1931, No. 176) provides that "When any vessel or vessels are about to enter from seaward any of the channels between the breakwaters, no vessel proceeding outward by the same channel shall enter this said channel until the before mentioned vessel, or vessels, shall have passed in."

A collision between the *R.*, an outward bound submarine in command of deft., & pltfs.' vessel *P.* inward bound, took place in the North Ship Channel entrance to Portland Harbour, slightly to the southward of mid-channel & about 200 to 300 feet outside of a line drawn between the breakwaters. It was argued for deft. that r. 5 did not apply, inasmuch as a vessel "about to enter from seaward" one of the channels meant a vessel going to enter the water which might reasonably be taken to be included in the word "channels" ; & that the *P.* was never in a position of being "about to enter," which implied that she must so approach as to indicate clearly her intention to enter, whereas, instead of "shaping up" at a proper distance to enter the channel, she was cutting the corner & then had to make a turn of five or six points :—*Held :* (1) the collision took place in what might fairly be called one of "the channels between the breakwaters" ; taking r. 5 as a whole, its purport was not to lay down how vessels should or should not approach the harbour, but to lay down in clear language that the outgoing vessel should be the give-way vessel ; & accordingly the *R.* was to blame ; (2) the vessel with the right of way was not in the position of a "keep course & speed" vessel under the crossing rule ; the *P.* having a bad look-out, &, considering the fine angle at which she was approaching the breakwater, too high a rate of speed, was also to blame. Both vessels accordingly held to blame in the proportions of two-thirds to the *R.* & one-third to the *P.*—H.M. SUBMARINE RAINBOW, [1933] P. 68 ; 102 L. J. P. 61 ; 149 L. T. 357 ; 18 Asp. M. L. C. 368.

5403. *Add. Annotation :—Generally.* **Refd.** The Rockabill, [1937] P. 93.

5439. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

5446. *Add. Annotation :*—**Refd.** Kitano Maru S.S. *v.* Otranto, S.S., [1931] A. C. 194.

5488. *Add. Annotation :—As to* (1) **Refd.** The Kafiristan, [1937] P. 63.

5489. *Add. Annotation :—As to* (1) **Consd.** The Champion, [1934] P. 1.

5490a. ——.]—THE EFFRA (1936), 182 L. T. Jo. 82.

5505. *Add. Annotation :*—**Refd.** The Aeneas, [1935] P. 128.

5516. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

5517a. —— —— ——.]—THE DAGMAR, No. 5608a, *post.*

5521. *Add. Annotation :*—**Apld.** The Palembang, [1929] P. 246.

5528. *Add. Annotation :—As to* (1) **Consd.** The Palembang, [1929] P. 246.

5566a. —— **Steering definite course to definite destination.**]—A pilot vessel when not engaged on her station on pilotage duty but her negligence : (2) the *R.* being attached to her tug, which was her servant, was not required by the rules of the road to ring her bell ; & the ringing of the bell by the tug was sufficient compliance with the rules ; moreover, the fact that the lights on the *R.* were not placed in accordance with the rules, having had no bearing on the accident ; the *R.* in no way contributed to the collision.—RED BARGE LINE, LTD. *v.* POPLARBAY, S.S. & POPLARBAY STEAMSHIP CO., LTD., [1932] EX. C. R. 209.—CAN.

PART XII. SECT. 2, SUB-SECT. 15. —F.

5403 iv. —— ——.]—The descending vessel coming with the current is entitled to consideration, & an upcoming vessel, in a narrow channel, where navigation is intricate, seeing another vessel coming down stream, must stop, & if necessary come to a position of safety below the point of danger & there remain until the channel is clear.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE, [1929] EX. C. R. 230.—CAN.

PART XII. SECT. 3, SUB-SECT. 3.—B. (b).

5447 iv. —— ——.]—*Held :* when a danger of collision occurs, a vessel is not justified in arbitrarily & obstinately insisting on her right of way conferred under rule 25. If in obstinately following out the letter of the rules regulating the course, a collision thereby occurs, she becomes at fault under rule 37.—"ELFSTONE" *v.* CHICAGO TRIBUNE TRANSPORTATION CO., LTD., CRETE SHIPPING CO., LTD. *v.* "CHICAGO TRIBUNE," [1931] EX. C. R. 132.—CAN.

Part XVIII.—Limitation of Liability of Owners and Others.

8059. *Add. Annotation :—As to* (1) **Refd.** The Napier Star, [1933] P. 136.

8070. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

8071. *Add. Annotation :—As to* (1) **Consd.** The Champion, [1934] P. 1.

8080. *Add. Annotation :*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., [1936] 2 All E. R. 386.

8083. *Add. Citation :*—17 Asp. M. L. C. 270.

Add. Annotations :—**Consd.** The Ruapehu (No. 2), [1929] P. 305. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432.

8083a. —— Company managing barge under verbal agreement with lightermen.]—For the purposes of certain constructional work pltfs. supplied defts. with barges for the removal of soil. By the negligence of a bargee damage was done to a coffer dam, part of defts.' works, & in previous proceedings, pltfs. were held to be liable. The present action was brought under Merchant Shipping Act, 1894 (c. 60), s. 503, to limit their liability to £8 for each ton of the ship's tonnage. Pltfs. had in 1916 formed a subsidiary co., Cory Lighterage, Ltd. & all lighters were transferred to the new co. & the men employed on them became employees of the subsidiary co. From 1917 the management of the subsidiary co. was carried on by the principal co. & in 1927 a notice was sent out that trading in the name of the subsidiary co. was to cease. The co. itself, however, continued to exist, & although all agreements with third parties were made with the principal co., all profits were credited to the subsidiary co. & all expenses, wages & the like were debited against it. There was not at any time any document in writing transferring the property or any rights therein from the subsidiary co. to the principal co. In these circumstances the question arose whether pltfs. were the "owners" or the charterers by demise of the barge within Merchant Shipping Act, 1894 (c. 60), s. 503, as amended by Merchant Shipping (Liability of Shipowners & Others) Act, 1900 (c. 32), s. 1, Merchant Shipping Act 1906 (c. 48), s. 71, & Merchant Shipping Act, 1921 (c. 28), s. 1 (2) :—*Held :* pltfs. were neither the owners nor the charterers by demise of the barge & were not entitled to limit their liability under Merchant Shipping Act, 1894 (c. 60), s. 503.—Cory (William) & Son, Ltd. *v.* Dorman, Long & Co., Ltd., [1936] 2 All E. R. 386 ; 155 L. T. 53 ; 80 Sol. Jo. 509 ; 41 Com. Cas. 224, C. A.

8083b. "Charterers by demise."]—Cory (William) & Son, Ltd. *v.* Dorman, Long & Co., Ltd., No. 8083a, *ante*.

8088. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

8090a. —— ——.]—Robin Hood Mills, Ltd. *v.* Paterson S.S., Ltd. (1937), 81 Sol. Jo. 569, P. C.

8099. *Add. Annotation :—As to* (2) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

8103. *Add. Annotations :—As to* (1) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

(1935), 35 S. R. N. S. W. 541 ; 52 N. S. W. W. N. 210. **AUS.**

1 i. — *Reconstruction of collision—One party absent.*]—E., the master of a steam ferry which had been involved in a collision with a coastal steamer, was summoned to appear before a Ct. of Marine Inquiry appointed to investigate the circumstances of the collision. After evidence had been entered upon, the ct. attended a reconstruction of manœuvres of vessels concerned in the collision. The reconstruction took place in E.'s absence, & without his knowledge. E. became aware of what had taken place before termination of proceedings before the Ct. of Marine Inquiry, but there was no evidence that he had communicated with his legal advisers in regard thereto. The ct. found that the collision was due to the negligent navigation of E., & indicated that he would be called upon to show cause why his certificate should not be dealt with. E. thereupon obtained a rule *nisi* for a prohibition to restrain further proceedings :—*Held :* the rule *nisi* must be made absolute on the grounds : (1) the reconstruction & the order of the ct. subsequent thereto involved a denial of natural justice to E. ; (2) the reconstruction, not being a mere view, amounted to evidence adduced otherwise than in open ct. ; it was not open to appct. to waive his rights as the inquiry was one in which the public was interested.—*Re* Court of Marine Inquiry, *Ex p.* Evans (1935), 52 N. S. W. W. N. 1.—**AUS.**

PART XVIII. SECT. 1.

sm. *Whether limitation binding on Crown.*]—The Crown is not bound by Merchant Shipping Act, 1894 (c. 60), s. 503. Where therefore the South African Railways & Harbours sued resp. co. for damages arising out of the sinking of a ship owned by resp. in the approach to a harbour & the latter pleaded sect. 503 :—*Held :* an exception to this portion of the plea should have been allowed.—South African Railways & Harbours *v.* Smith's Coasters (Pty.), Ltd., [1931] App. D. 113.—**S. AF.**

s. ——.]—As the Crown was not expressly mentioned in Merchant Shipping Act, nor was the Act expressly made applicable to it, the responsibility to the Crown could not be limited by the ct.—Canada Steamship Lines, Ltd. *v.* Emile Charland, Ltd., [1933] Ex. C. R. 147.—**CAN.**

PART XVIII. SECT. 2.

sa. *Dumb barge.*]—A lighter was not registered, & although originally fitted with a rudder, at the time of the collision it had neither a rudder nor sidelights nor any means of propulsion. It was used by the owner to carry cargo from a deepwater port to a shallow water port :—*Held :* such a lighter was a "ship" within sect. 503 of Merchant Shipping Act, 1894.—Holyman (William) & Sons Pty., Ltd. *v.* Marine Board of Launceston (1931), 24 Tas. L. R. 64.—**AUS.**

PART XVIII. SECT. 4.

8087 i. *Manner of loss—Loss due to "improper navigation."*]—Pltf.'s vessel collided with the lock gates of the L. Canal permitting the water to rush through & damage property. Four actions were instituted against pltf. & it feared other actions. Pltf. sued for limitation of liability under Merchant Shipping Act, 1894 :—*Held :* the accident which occurred was due to the engineer misunderstanding a signal given from the bridge ; & the error of the engineer was a case of improper navigation, the owners could not provide for such an event & as the collision occurred without actual fault or privity of the owners they were entitled to judgment limiting their liability.—Canada Steamship Lines, Ltd. *v.* Emile Charland, Ltd., [1933] Ex. C. R. 147.—**CAN.**

8092 i. *Loss must be without fault or privity of owner—Onus of proof.*]—*Held :* where the owner of a ship, after having been condemned in a previous action to pay damages for loss & damage to a cargo, brings another action in which he claims a limitation of his liability, either under the provisions of sect. 503 of Merchant Shipping Act or of sect. 903 of the Canada Shipping Act, he must show affirmatively that the damage or loss happened without his actual fault or privity ; he must exculpate himself (as distinguished from his servants or employees) from the responsibility for the loss or damage in respect of which he claims the limitation & the onus is upon him to show that there was no default or privity of his own.—Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1935] S. C. R. 617 ; 4 D. L. R. 637.—**CAN.**

8103a. —— **Loss direct consequence of fire.**]—TEMPUS SHIPPING CO., LTD. *v.* DREYFUS (LOUIS) & CO., LTD., No. 3099a, *ante*.

8104a. Dock owner with controlling interest in second dock—Whether second dock included in "the area" for purpose of calculating liability.]—Pltfs., a limited co., owned docks at B., in one of which defts.' vessel *R.* received damage. The *R.* was the largest vessel which had been in those docks within the statutory period, but pltfs. also had a controlling interest in docks at F. owned by another limited co. in which a larger vessel than the *R.* had been docked:—*Held:* even assuming pltfs. exercised any power over the F. docks within 1900 Act, s. 2 (1), those docks were not within "the area" contemplated by the sect., namely, the area containing within it the particular dock in which the damage was caused; & pltfs. were entitled to a limitation decree based on the tonnage of the *R.*—THE RUAPEHU, No. 2, [1929] P. 305; 98 L. J. P. 167; 142 L. T. 96; 45 T. L. R. 657; 18 Asp. M. L. C. 64; *sub nom.* GREEN (R. & H.) & SILLEY WEIR, LTD. *v.* RUAPEHU S.S. OWNERS, 35 Com. Cas. 86.

8108. *Add. Annotation:*—*As to* (1) **Refd.** Great Western Ry. Co. *v.* Kassos Steam Navigation Co. (1930), 144 L. T. 121.

8121a. Whether Merchant Shipping Act, 1906 (c. 48), s. 69, retrospective.]—Above sect., with reference to the calculation of the tonnage of a steamship for the purposes of limitation of liability, is not retrospective so as to apply to a collision occurring before the Act came into operation, though the limitation of liability action was commenced after the Act came into operation.—LANGDALE (1907), 76 L. J. P. 154; 23 T. L. R. 683.

8132. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8134. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8135. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 48 T. L. R. 579.

Part XIX.—Liens on Ship, Freight and Cargo.

8168. *Add. Annotations:*—*As to* (1) **Refd.** The Beldis, [1936] P. 51.

8182. *Add. Annotation:*—*As to* (1) **Refd.** The Minerva (1933), 49 T. L. R. 563.

8189. *Add. Annotation:*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8193. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

8215. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8216. *Add. Annotation:*—**Refd.** G.W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

8232. *Add. Annotation:*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8279. *Add. Annotation:*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

8298. *Add. Annotation:*—*Generally*, **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8310. *Add. Annotation:*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

8333. *Add. Annotations:*—**Refd.** The Minerva (1933), 49 T. L. R. 563; The Beldis, [1936] P. 51.

8367. *Add. Annotation:*—**Refd.** The Rehearo (1933), 49 T. L. R. 559.

PART XVIII. SECT. 5, SUB-SECT. 4.

sc. *Onus of proof.*]—*Held:* the *onus* was on petitioners of showing that the damage did not arise on distinct occasions; they must therefore establish that the second collision was caused by the same mistake as caused the first.—THE "LUCULLITE" *v.* THE "R. MACKAY," [1929] S. C. (Ct. of Sess.) 401.—**SCOT.**

PART XVIII. SECT. 5, SUB-SECT. 5.

g i. —— —— ——.]—*Held:* the words "engine-room space deducted," as found in Canada Shipping Act, R. S. C., 1927, s. 904, & in the corresponding provision of the Merchant Shipping Act, 1894, refers to the deduction allowed for propelling power as appearing in the certificate of registry. In calculating the tonnage of a ship in limitation of liability proceedings, the tonnage allowed for the power propelling space must be added to the register tonnage.—EASTERN S.S. Co., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1929] EX. C. R. 103. —**CAN.**

" —— .]—*Held:* for the purposes of limitation of liability under Merchant Shipping Act, 1894, s. 503, as amended by Merchant Shipping Act, 1906, s. 69, the words "engine room space" in sects. 78, 503 of the Act of 1894, & in r. 3 in Sched. II. thereto, mean the whole of the space occupied by the propelling power of a steamship, including the engine room space, &, accordingly, the proper method of calculating the tonnage of a vessel for the above purpose is to add to the net register tonnage, as shown by the ship's certificate of registry, the tonnage therein deducted "on account of space required for propelling power."—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461; 47 N. S. W. W. N. 170, 191.—**AUS.**

PART XIX. SECT. 1, SUB-SECT. 1.

sc. *Whether assignable.*]—*Held:* in an action for damages by collision, the sale of one of the ships by the owner does not disentitle him from enforcing a maritime lien on the other ship. Such a lien is in general, & in such a case as this is unassignable.—DUFF *v.* THE "PROGRESS," [1928] Exch. C. R. 157.—**CAN.**

PART XIX. SECT. 1, SUB-SECT. 4.—B. (a).

b i. —— ——.]—Services performed by a man engaged to superintend the installation of machinery in a ship, to have charge of all the operations of fitting out, purchasing supplies, & finding occupation for the ship, etc., do not create in his favour a maritime lien. His subsequent assumption of the duties of master involving the navigation of the vessel would, if properly proven, create a maritime lien for his services during the period when he was engaged in carrying out his duties as master.—NICHOLSON & SHAW *v.* THE JOYLAND, [1931] EX. C. R. 70.—**CAN.**

PART XIX. SECT. 4, SUB-SECT. 1.

8370 i. *Determined by lex fori.*]—The *A.* was an American vessel on which H. & E. Holding Company Inc., of New York held a mtge. Messrs. B., C. & M., Inc., of Connecticut had furnished certain necessaries to the vessel, for which the laws of the United States gave a maritime lien. The vessel was subsequently libelled & sold in New Brunswick, Canada, & the proceeds of the sale were deposited in ct. for subsequent distribution. The mtgee. appeared & claimed that his mtge. should be preferred to the claim of materialmen:—*Held:* though by English law a maritime lien created by a foreign law, under circumstances which do not give rise to a maritime lien according to English law, is recognised; the priority which it will be given in the distribution of proceeds is treated as relating only to the remedy determined by the law of the *forum* at which the vessel is libelled & sold, the mtge. should be preferred to the claims of the materialman.—MARQUIS *v.* THE ASTORIA, [1931] EX. C. R. 195.—**CAN.**

8406a. Lien for wages & disbursements on same footing.]—In June, 1931, the steamship *M.* was supplied by a firm of necessaries men with bunker coal, for which the then master bound himself & the ship, & in Jan. 1932, another firm supplied the ship with coal, for which the succeeding master bound himself & the ship. In actions *in rem* in the names of the respective masters for disbursements :—*Held :* (1) the claims ranked *pari passu* & not in the inverse order of their attachment ; (2) the lien of the master for disbursements is the same as his lien for wages, & accordingly ranks on the same footing ; (3) the master's lien for wages is postponed to that of the crew.—THE MONS, [1932] P. 109 ; 101 L. J. P. 67 ; 147 L.T. 260 ; 48 T. L. R. 555 ; 18 Asp. M. L. C. 311.

8406b. Disbursements by successive masters.]—The Mons, No. 8406a, *ante.*

8409. *Add. Annotation :—As to* (2) **Follid.** The Mons, [1932] P. 109.

8437a. ——.]—The Mons, No. 8406a, *ante.*

8443. *Add. Annotation :—Generally,* **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8448. *Add. Annotation :*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8457. *Add. Annotation :*—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8498. *Add. Annotations :*—**Refd.** The London, [1931] P. 14 ; The Baarn (1932), 49 T. L. R. 132.

Part XX.—Lighthouses.

8508. *Add. Annotation :*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

8511a. Liability as foreign-going ship—Effect of loading & unloading cargo at home ports on outward voyage.]—Under Merchant Shipping (Mercantile Marine Fund) Act, 1898 (c. 44), a vessel which has, at a home port, loaded cargo for abroad & has paid light dues for a voyage as a foreign-going ship & then calls at other home ports & loads cargo at those home ports with a foreign destination, is not liable in addition to pay light dues as a home-trade ship merely because she also loads cargo at one of those home ports & discharges it at her last home port of loading.—TRINITY HOUSE CORPN. *v.* CEDAR BRANCH S.S. OWNERS (1930), 46 T. L. R. 541 ; 143 L. T. 352 ; 74 Sol. Jo. 438 ; 18 Asp. M. L. C. 151.

Part XXI.—Harbours, Docks and Piers.

8520. *Add. Annotation :*—**Refd.** West (Samuel), Ltd. *v.* Wright's (Colchester), Ltd. (1935), 40 Com. Cas. 186.

8534. *Add. Citation :*—26 L. G. R. 1.

8540. *Add. Annotation :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 147 L. T. 313.

8543. *Add. Annotation :—As to* (3) **Refd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co., [1933] 2 K. B. 14.

8546. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

8564a. Exemption—Abolition of.]—*Held :* the exemption claimed having been shown to be in existence for over one hundred years, the ct. would endeavour to find a legal origin for it, but, assuming the exemption to have been proved, it was abolished by Shipping Dues Exemption Act, 1867 (c. 15).—NEWPORT CORPN. *v.* ISLE OF WIGHT FARMERS' TRADING SOCIETY, LTD. (1928), 92 J. P. 109.

8569. *Add. Annotation :*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

8594a. —— Construction of special Act against company.]—By the Liverpool Dock Acts of 8 Anne & 2 Geo. 3, certain tonnage duties are payable to the dock co. on all vessels sailing with cargoes outwards or inwards, so as no ship shall be liable to pay more than once for the same voyage out & home. This is one entire duty imposed upon one entire voyage out & home, if there be either an outward or an inward cargo in such voyage, but without making any advance if there should be both.

Must we not suppose that the legislature intended to use these words in the sense in which they are commonly understood ; that is, as descriptive of a voyage commencing from & terminating in the country to which the ship belongs, or, as here, in some particular port of such country ? If the words would fairly admit of different meanings, it would be right to adopt that which would be most favourable to the interest of the public, & most against that of the co. ; because the co. in bargaining with the public ought to take care to express

PART XXI. SECT. 1.

sp. *Lease of wharf—Ejectment.*]—Where a wharfside site in the B. Harbour E. London, had been leased to applt. by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Rys. & Harbours :—*Held :* as pltf. was the Governor-General in Council, who in railway & harbour matters sued in the name of the S. African Rys. & Harbours as directed by sect. 65 of Act 22 of 1916, & who owned the wharfside site, a contention that pltf. was not the owner of the site could not be sustained.—WINTER *v.* S. AFRICAN RYS. & HARBOURS, [1929] App. D. 100.—S. AF.

PART XXI. SECT. 4.

b i. —— —— *Ship sunk in harbour —Liability of owner for expenses of lighting, buoying & destruction.*]—Reg. 63 of the regs. under Railways & Harbours Regulation, Control & Management Act is *ultra vires* in so far as it purports to provide that the expenses reasonably incurred by the administration in the lighting, buoying, & destruction of a ship sunk in the harbour may be recovered from the owner or his agent.—SMITH'S COASTERS (PROPRIETARY), LTD. *v.* SOUTH AFRICAN RAILWAYS & HARBOURS, [1930] N. L. R. 103.—S. AF.

distinctly what payments they were to receive; & because the public ought not to be charged, unless it be clear that it was so intended (LORD ELLENBOROUGH, C.J.).—GILDART *v.* GLADSTONE (1809), 11 East, 675; 103 E. R. 1167.

Annotations:—**Consd.** Portsmouth Floating Bridge Co. *v.* Nance (1843), 6 Scott N. R. 823; Stockton & Darlington Ry. Co. *v.* Barrett (1844), 7 Man. & G. 870; Pryce *v.* Monmouth Canal & Ry. Co. (1879), 4 App. Cas. 197.

8618a. Lighter sinking after being moved—Onus of proof.]—While pltfs.' lighter *W.* was loading cargo from defts.' steamship in the Royal Albert Docks defts.' servants moved the *W.* to another position, & she was left for the night moored alongside the quay & a little inside the stem & port bow of the steamship. On the following morning the *W.* was found sunk through water having entered her hull from an unknown cause. Pltfs. failed to establish any positive evidence of negligence, but they alleged that the fact that defts. had moved & remoored the *W.*, & that she sank, raised a *primâ facie* case of negligence which defts. could only discharge by proof that the *W.* sank from a cause which they could not have avoided by the exercise of reasonable care:—*Held:* defts. were not insurers of the *W.'s* safety; they had no greater duty than to exercise reasonable care & skill in the handling & management of her; & having shown such care & skill they had discharged the burden upon them; further, assuming that the sinking of the *W.* afforded *primâ facie* evidence of negligence, defts.' suggestion that the leakage which caused her to sink was due to her condition as an old wooden barge was a reasonable suggestion; having shown a reasonable way consistent with the accident having happened without their negligence, they had shifted the burden of proof back to pltfs. to establish that it was the negligence of defts. which caused the *W.* to sink; & that accordingly the claim failed.—THE MULBERA, [1937] P. 82; 106 L. J. P. 57; 156 L. T. 348; 53 T. L. R. 314.

8620. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8624. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8629a. —— —— No duty to disclose condition of berth.]—Pltfs.' steamship was damaged by lying in an uneven berth at a wharf owned by defts., a railway co. Defts.' harbour master at the wharf acted as ship's agent for pltfs. for the limited purposes of reporting the ship at the Custom House, paying the pilot, & providing the master with funds to pay the labourers discharging the cargo. Before pltfs. arranged to send the vessel to the wharf the harbour master had in writing informed them that the berths were "perfectly safe for steamers to lie aground." Defts. alleged that the vessel came to the wharf subject to printed conditions, known to the harbour master, whereby the railway co. did not represent, warrant or guarantee that the berths alongside the wharf were safe or suitable for the accommodation of vessels, & all vessels brought alongside remained at the sole risk of their owners & on the terms that the co. should "in no event whatever be liable for any damage . . . however caused to or suffered by any such vessel." The harbour master did not in fact know that the berth was defective:—*Held:* (1) even if the harbour master ought to have known of the defective condition of the berth, which was doubtful, it was not his duty to impart to pltfs. information, acquired as harbour master, which would be against the interests of defts. & of the harbour master to disclose; (2) the notice did not form part of the contract between pltfs. & defts., & afforded defts. no defence; & accordingly pltfs. were entitled to judgment.—THE HAYLE, [1929] P. 275; 99 L. J. P. 145; 141 L. T. 429; 45 T. L. R. 560; 18 Asp. M. L. C. 50.

8632. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8632a. —— —— Whether loss recoverable from Harbour Board under Maritime Conventions Act, 1911 (c. 57), s. 1.]—Pltfs., the owners of the *K. O.*, sued defts. the owners of the *R.*, for damages arising out of a collision between the *K. O.* & the *R.* near the entrance to the Princes Half Tide Dock in the River Mersey. The owners of the *R.* pleaded that the *R.* had been ordered to leave the dock as & when she did by the officials of the Mersey Docks & Harbour Board. Pltfs. thereupon added the Dock Board as defts. The *K. O.* was lying at Princes landing stage, River Mersey; the *R.* was in the Princes Half Tide Dock, which is a little lower down the river than the landing stage. BUCKNILL, J., found on the facts that the *K. O.* left the stage before the *R.* was directed by the harbour-master to come ahead into the entrance, & absolved the *K. O.* from blame, but held both the *R.* & the Dock Board to blame on the ground that the employees of the Dock Board were co-operating with the master of the *R.* in bringing the *R.* out of dock into the river & did so at a time when, if either of defts. had had a better look-out, they would have seen that the *K. O.* had started away from the stage. He accordingly gave judgment for the *K. O.* against both defts. & dismissed the counterclaim of the *R.* against the Dock Board on the ground that the common law rule as to contributory negligence, & not the maritime rule of division of loss, applied. On appeal:—*Held:* (1) the *K. O.* was to blame for a bad look-out & for leaving the stage as & when she did, which (*per* SCOTT, L.J.) was at or about the same time as the *R.* began to come ahead through the entrance; the *R.* was also to blame because, after the direction to come ahead had been given, if she had been keeping a good look-out she would have seen the approaching *K. O.* & ought to have stopped her way & remained in the entrance; & the proportion should be two-thirds to the *K. O.* & one-third to the *R.*; (2) (*per* SLESSER & SCOTT, L.JJ.) that the directions of the dock-master were orders within the meaning of sect. 49; but (3) (*per* GREER & SCOTT, L.JJ., SLESSER, L.J., *dubitante*) the employees of the Dock Board at the time the direction

was given were not negligent; (4) if, however, there was any negligence on the part of the Dock Board (*per* CUR.) the rule as to division of loss provided for in the Maritime Conventions Act, while applicable as between the *K. O.* & the *R.*, did not apply to the Dock Board, & that, both the *K. O.* & the *R.* being negligent, on the application of the common law rule, the Dock Board would be entitled to judgment.

Per SCOTT, L.J.: the ordinary rule unless there is reason to depart from it, should be that costs should be divided in the same proportion as the liability.—THE ROCKABILL, [1937] P. 93; 106 L. J. P. 107; 156 L. T. 296; *sub nom.* THE ROCKABILL, KING ORRY OWNERS *v.* ROCKABILL OWNERS & MERSEY DOCKS & HARBOUR BOARD, ROCKABILL OWNERS *v.* MERSEY DOCKS & HARBOUR BOARD, [1937] 1 All E. R. 191, C. A.

8643. *Add. Annotation:—Generally.* **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8645. *Add. Citations:*—92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367.

Add. Annotation:—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8661. *Add. Citations:—affd.* (1927), 138 L. T. 382; 26 L. G. R. 1; *sub nom.* BOSTON CORPN. *v.* WITHAM OUTFALL BOARD, 92 J. P. 1, H. L.

8665. *Add. Annotations:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401: Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

8670. *Add. Annotation:* **Refd.** The Rockabill, [1937] P. 93.

8680. *Citations:*—For "7 T. L. R. 5" read "8 T. L. R. 546." Add 65 L. T. 674.

8683a. —— **Responsibility of owners—Custom of port—Grimsby.**]—Pltfs.' steam trawler, having sustained injury which necessitated repairs, was placed in a graving dock at Grimsby belonging to the London & North Eastern Ry. Co. for the purpose of being repaired by defts. (a local firm of ship-repairers) under a contract, by the terms of which the first dock dues were payable by pltfs. & subsequent dues by defts. In carrying out the repairs defts. removed certain of the trawler's bow plates, exposing the vessel to the necessity, when in the normal course of business the dock was refilled with water, of floating on her forward watertight bulkhead. Unknown to all the parties the said bulkhead had in its face three small rivet holes, & through these holes the dock water entered the trawler & caused her to sink & suffer damage. There was on board her at the time only a watchman employed by her owners, pltfs. Pltfs. claimed damages on the ground that it was an implied term of the contract that the repairers should safely keep the trawler during the execution of the repairs:—*Held:* defts. were entitled to judgment, for in the circumstances of the case there was no surrender of the trawler to the repairers for the purpose of the repairs, such as would have put upon them a special duty to take care, &, moreover, as regards trawlers in the public dock in question there existed a local custom that some one acting on the owners' behalf should inspect an exposed bulkhead & if necessary keep watch over the ship during the repairs.—THE REHEARO, [1933] P. 286; 102 L. J. P. 108; 149 L. T. 570; 49 T. L. R. 559; 18 Asp. M. L. C. 422.

8684a. Failure to light wreck—Limitation of action.]—Defts.' sailing barge sank & became an obstruction to navigation in the channel of the River Orwell within the limits of the Port of Ipswich, of which pltfs. were the port & harbour authority. Defts. wrote to pltfs. saying that they presumed pltfs. would take steps to raise the barge & that they (defts.) would pay the reasonable expenses. Pltfs. replied that they hoped to raise the wreck of the barge on the next spring tides, & they did so & moved the barge nearer to the shore. They negligently omitted, however, to put a light on the barge, & she was run into by a passing vessel, dragged further into the channel again, & damaged. Defts. refused to pay the expenses of raising the barge a second time &, more than six months afterwards, counterclaimed in respect of the damage the barge had received. Pltfs. alleged that in raising the barge they were acting in the exercise of their statutory duty under sect. 56 of Harbours, Docks & Piers Clauses Act, 1847 (c. 27), &/or other public duties as the authority responsible for the conservation of the navigation of the river, & that the counterclaim, not having been brought within six months of the act complained of, was barred under sect. 1 of Public Authorities Protection Act, 1893 (c. 61):—*Held:* pltfs. were under no obligation to raise the barge, which they could have blown up or got some one else to raise; they raised her in pursuance of a contract made between the parties; the negligent act complained of was not done in the direct execution of any statutory or public duty; & the provisions of sect. 1 of Public Authorities Protection Act did not apply.—THE RONALD WEST, [1937] P. 212; 53 T. L. R. 988.

8688a. ——.]—THE HAYLE, No. 8629a, *ante.*

8692a. —— **Onus of proof.**]—THE SOUND FISHER (1937), 184 L. T. Jo. 44, C. A.

PART XXI. SECT. 12, SUB-SECT. 2.—B. (b).

8685 iii. ——.]—In an action of damages brought by a shipowner against harbour trustees for injuries sustained by his ship through being given a foul berth in their harbour, it was established that the berth in question was in a tidal river; that *débris* discharged into the berth from a sewer formed a mound on the bottom of the berth which was a danger to ships taking the ground at the ebb of the tide; that when dredging the berth defenders, in view of this tendency, made it their practice to dredge at the *locus* of the mound to a greater depth than at other parts of the berth, but that no regular system of examination existed; that the berth had in fact been dredged some three weeks before the ship arrived, but that no special precaution had been taken to ascertain its condition before assigning her to it:—*Held:* defenders had failed to establish that they had taken reasonable care to make sure that the berth should be in a safe condition for vessels using it; & accordingly, as the ship had been injured owing to the condition of the berth, defenders were liable for the damage occasioned by their negligence.—CORMACK (OWNER OF THE S.S. "COLINTON") *v.* DUNDEE HARBOUR TRUSTEES, [1930] S. C. 112.—SCOT.

8692b. Reasonable precautions taken—No warranty of safety.]—THE "PASS OF LENY," No. 1879j, *ante*.

8693a. Breach of covenant to maintain berth—Measure of damages.]—A corpn. which owned the bed of a river & the quays & berths alongside, leased one of the quays to a co. & undertook to keep (*inter alia*) the quay & river berths in good order & condition. While lying aground at the quay to which she had come to discharge a cargo for the co. pltfs.' vessel received damage owing to the defective state of the berth; &, in an action against the corpn. as first defts. & the co. as second defts., recovered judgment against both on the following grounds: (*a*) that the corpn.'s harbour-master knew that the ground alongside the quay was not safe & had taken no steps to put it right, & (*b*) that the co. were liable, because, although they did not know of the actual hard ridge which caused the damage, they knew that the berth was in a generally defective state, & took no steps to assure themselves that some repairs, which the corpn. had carried out, were satisfactory or to warn pltfs.' master that they had not done so. In a third party claim by the co. against the corpn. for an indemnity in respect of the damages & costs for which they had been rendered liable:—*Held:* the fact that the co. had not fulfilled their duty to pltfs. involved no breach of duty to the corpn.; the co. were entitled to rely on the covenant by the corpn. to keep the berth in good order; the resulting damage to the vessel for which the co. were liable flowed naturally from the breach of covenant; accordingly the damages were not too remote; & the indemnity claimed would include the solr. & client costs incurred by the co. in defending the action.—THE KATE, [1935] P. 100; 104 L. J. P. 36; 154 L. T. 432: 51 T. L. R. 410; 18 Asp. M. L. C. 562.

8697a. Damage "in connection with" towage—What amounts to.]—Pltfs.' steamship with two tugs in the employ of defts., the Port of London Authority, fast to her, was proceeding from the Albert Dock to the Victoria Dock. Defts.' lock foreman had signalled to her to enter the narrow Cutting, some 300 feet long, between the two docks, but at about the same time he had signalled to another tug that she could enter the Cutting from the opposite end. In order to avoid collision with that tug the steamship put her engines astern, with the result that she got out of position & struck the walls of the Cutting, doing herself damage. Defts. relied on the terms of the towage contract, which contained a clause that the owners of the ship being towed or transported would "indemnify & hold harmless the Port Authority" against claims in respect of damage of any kind "arising in the course of & in connection with the towage or transport," & whether caused or contributed to by any negligence on the part of the Port Authority's servants:—*Held:* (1) the clause was not an indemnity against party & party claims, but only against third party claims; (2) the damage did not arise "in connection with" the towage or transport; & accordingly the shipowners were entitled to recover the amount of the damage caused by the negligence of defts.' servant.—THE CARLTON, [1931] P. 186; 100 L. J. P. 100; 145 L. T. 423; 47 T. L. R. 517; 18 Asp. M. L. C. 240.

8698a. —— Whether applicable to party & party claims.]—THE CARLTON, No. 8697a, *ante*.

8700. *Add. Annotations:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Oliver *v.* Sadler & Co., [1929] A. C. 584; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551; Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

8711a. —— ——.]—THE HAYLE, No. 8629a, *ante*.

8715. *Add. Citations:*—138 L. T. 286; 17 Asp. M. L. C. 347; 33 Com. Cas. 79.
Add. Annotations:—*As to* (1) **Follid.** Wickett *v.* Port of London Authority (1928), 138 L. T. 668. **Refd.** The Hayle, [1929] P. 275.

8715a. —— ——.]—Pltf., a lighterman, was in charge of a barge, which was being taken from a dock through a lock. The dock & lock were both the property of defts. While pltf. was navigating the barge under the orders & directions of defts., a rope attached to the barge broke & struck pltf., causing him personal injuries. Pltf. had no option to refuse to take the rope on board. Defts. relied on the terms of a notice, exhibited on the pierhead of the lock, to the effect that lightermen availing themselves of the facilities & assistance of defts.' servants must do so at their own risk, & upon the understanding that no liability whatsoever should attach to defts. or their servants for any injury from whatever cause arising to or by the craft or to or by any person on board thereof:—*Held:* the words of the above notice were *primâ facie* adequate to exempt defts. from liability for the negligence of their servants, & the fact that pltf. was compelled to regulate the barge according to the directions of the dockmaster was in no way inconsistent with the fact that he was in the circumstances "availing himself of the facilities & assistance" of defts., & did not deprive defts. of the exemption afforded by the notice.—WICKETT *v.* PORT OF LONDON AUTHORITY, [1929] 1 K. B. 216; 98 L. J. K. B. 222; 138 L. T. 668.

PART XXII. SECT. 3.

8731 i. *Superintendent of mercantile marine office — Jurisdiction — Claim under Merchant Shipping (International Labour Conventions) Act, 1925.*]—*Held:* a claim under Merchant Shipping (International Labour Conventions) Act, 1925, s. 1 (1), is to be regarded as a claim for wages & not as a claim for indemnity, & is, accordingly, within the jurisdiction conferred upon a superintendent of the Board of Trade by Merchant Shipping Act, 1894, s. 387 (1); further, it is not excluded from his jurisdiction by the fact that it involves the determination of the question whether a ship has become a wreck.—BRUCE *v.* NEISH, [1935] S. C. 500.—**SCOT.**

Part XXIII.—Pleasure Yachts.

8732a. Survey by Lloyd's Register—Liability of individual surveyor—Negligence.]—Pltf., who was the owner of a yacht, requested the society known as Lloyd's Register to make a special survey of the yacht for classification. The society stipulated for freedom from liability, & the survey was conducted by two of the society's surveyors. Deft., who was one of these two surveyors, was responsible for the mainmast. The society certified that the yacht had been reported to be in a good & efficient state & that she had been classed as A1. In fitting out the yacht for sea pltf. found that the mainmast was rotten in places & wholly unfit for use, & he claimed damages from deft. for negligence & breach of duty :—*Held :* there was no privity of contract between pltf. & deft., & that independently of contract deft. owed to pltf. no duty of care or skill with regard to the survey, & therefore the action failed.—HUMPHERY *v.* BOWERS (1929), 45 T. L. R. 297 ; 73 Sol. Jo. 191 ; 34 Com. Cas. 189.

Yacht broker—Business carried on by executor—Duty not to enter into competition.]—*See* EXECUTORS, No. 5977a, *ante*.

Part XXV.—Requisition of Ship by Government.

8733. *Add. Annotation :—As to* (2) **Distd.** Ensign Shipping Co. *v.* I. R. Comrs. (1928), 139 L. T. 111.

749. *Add. Annotation :*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

8750. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade (1928), 140 L. T. 33 ; The Clan Matheson, [1929] C. A. 514. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8751. *Add. Annotations :*—**Consd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. **Refd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8753. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514 ; Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8755. *Add. Annotations :—As to* (1) **Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. *As to* (2) **Apld.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. **Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8755a. —— —— ——.]—The *C. M.* was requisitioned on behalf of the Crown in 1917 by a charterparty, which provided that the Crown should not be liable for marine risks, but should be liable for "all consequences of hostilities or warlike operations." Whilst so requisitioned, the *C. M.* sailed from New York in convoy, destined for Nantes, then a war base, but also an ordinary commercial port, with a cargo, 84 per cent. of which in weight was for the civil commissariat, & 16 per cent. in weight was for war purposes. She was the third ship in the second column from the port hand in the convoy, another vessel, the *W. F.*, which admittedly was at all material times engaged upon & carrying out a warlike operation, being in the corresponding position on the port column. While the convoy was proceeding at night without lights the steering-gear of the *C. M.* suddenly broke down, she sheered seven points off her course & came across the bows of the *W. F.*, by which she was struck & sunk. There was no negligence on the part of those on board the *C. M.* :—*Held :* (1) the arbitrator was entitled to find that the *C. M.* was at no material time engaged, upon or carrying out a warlike operation, notwithstanding a portion of her cargo consisted of war material ; (2) the loss of the *C. M.* was not the consequence of a warlike operation, inasmuch as the dominant & direct cause of the loss was the break-down of her steering-gear & her sheering off her course.—CLAN LINE STEAMERS, LTD. *v.* BOARD OF TRADE, THE CLAN MATHESON, [1929] A. C. 514 ; 98 L. J. K. B. 408 ; 141 L. T. 275 ; 45 T. L. R. 408 ; 35 Com. Cas. 15 ; 18 Asp. M. L. C. 1, H. L.

Add. Annotations :—As to (2) **Distd.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. *Generally*, **Refd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

PART XXV. SECT. 2.

8746 i. *Amount of compensation—Interest.*]—The Crown, in Apr. 1918, pursuant to Order in Council passed under War Measures Act, 1914, requisitioned resps.' ship. The Exchequer Ct. of Canada fixed the compensation at $11,000 with interest thereon from date of requisition to date of judgment. The Crown appealed against the allowance of interest :—*Held :* the allowance for interest should be set aside. The right to interest does not depend on the income earning capacity of the property requisitioned. Where interest is allowed, it is on the ground of express or implied contract or by virtue of a statute ; & no such ground existed here. Interest was really asked for here as damages for detention of the compensation money pending the ascertainment of what was due ; & as such it could not be recovered.—R. *v.* MACKAY, [1930] S. C. R. 130 ; 1 D. L. R. 1005 ; *revsg. in part*, [1928] Ex. C. R. 149.—**CAN.**

h i. —— *Value at time of requisition.*]—The *S.* was requisitioned by the Canadian Government in 1918. In 1924 the claimant was notified of the release of the vessel. At that time she was lying partly submerged, at Kingston, a derelict hulk of no value, & claimant refused to take delivery thereof :—*Held :* on the facts, the question of hire disappeared, & that the controversy resumed itself into a question of compensation for the value of the vessel so appropriated, as at the date of the requisition thereof, & not for the profits that could have been made out of the vessel during the period of requisition.—MACKAY *v.* R., [1928] Exch. C. R. 149 ; *on appeal*, [1930] S. C. R. 130.—**CAN.**

8760. *Add. Citations:*—[1928] 2 K. B. 534; 139 L. T. 566; 34 Com. Cas. 1; 17 Asp. M. L. C. 520, C. A.; *affd. sub nom.* BOARD OF TRADE *v.* HAIN S.S. CO., [1929] A. C. 534; 98 L. J. K. B. 625; 141 L. T. 435; 45 T. L. R. 550; 35 Com. Cas. 29; 18 Asp. M. L. C. 15, H. L.

Add. Annotation:—As to (2) **Apld.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8763a. —— **Spontaneous combustion—Use as submarine tender.**]—The Admiralty requisitioned resps.' steamer on the terms of charterparty T.99, by which the Admiralty undertook the risk of damage from "all consequences of hostilities or warlike operations," & which provided that if the working of the steamer was suspended owing to deficiency of men & stores, breakdown of machinery, or any other cause, the hire should cease until the steamer was again ready for service. The vessel was loaded with steam coal at Cardiff & dispatched with it to Malta. The coal was not discharged at Malta, but petrol & other stores were put on board & the naval authorities sent the vessel to Tenedos & used her there as a submarine tender. After about four months at Tenedos the cargo took fire by spontaneous combustion, & the vessel was damaged & had to be sent back to Malta:—*Held:* the risk was a consequence of hostilities or warlike operations as the vessel had become part of a combatant fleet, & the cesser clause had no application to a case where the suspension of working was due to injury which was the result of compulsory orders.—HINDUSTAN S.S. CO. *v.* ADMIRALTY COMRS. (1921), 37 T. L. R. 856.

8764. *Add. Annotation:*—**Refd.** Dreyfus (Louis) & Co. *v.* National S.S. Co., [1935] 2 K. B. 313.

Part XXVI.—The Trinity Masters.

8788. *Add. Annotations:—As to* (1) **Refd.** The Otranto, [1930] P. 110; Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529. *As to* (2) **Apld.** The Tovarisch, [1930] P. 1.

SMALL HOLDINGS, SMALL DWELLINGS AND ALLOTMENTS.

Part III.—Allotments.

23. After this case add :—**Exemption from rates.**]—*See* Local Government Act, 1929 (c. 17), s. 67.

PART I. SECT. 5.

sa. *Agreement to quit before expiry of lease—Subsequent demand for renewal—Small Landholders (Scotland) Act*, 1911, *s.* 32.]—A statutory small tenant, under a lease terminating at Whit Sunday, 1929, entered into an agreement with his landlord to quit the holding at Martinmas 1926, the landlord undertaking to buy the straw produced at the threshing of that year's crop, & to pay certain compensations. On the faith of the agreement the landlord advertised the farm for sale with entry at Martinmas 1926, & the farm was sold. The tenant, who knew of these proceedings, refused to remove when the term arrived, & some days later took up the position that he was entitled to a renewal of his lease under above sect. (4) :—*Held :* above sect. did not apply to the circumstances of the case.—CHEYNE v. PATERSON, [1929] S. C. (Ct. of Sess.) 119.—SCOT.

SOLICITORS.

Note :—See, now, Solicitors Act, 1932 (c. 37); Solicitors Act, 1933 (c. 24).

Part II.—Admission and Registration.

6. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

9a. Company as solicitor—Whether permissible.]—LAW SOCIETY *v.* UNITED SERVICE BUREAU, LTD., No. 4725a, *post.*

Part III.—Rights and Privileges of Solicitors.

321a. County court—Exercising bankruptcy jurisdiction—Without signing court roll.]—A properly qualified solr. of the Supreme Ct. has a statutory right to practise in a county ct. in the exercise of its bkpcy. jurisdiction, & to recover his costs for so doing, although he has not signed the roll of solrs. in that county ct.—*Re* DEBTOR (No. 29 OF 1931), [1934] Ch. 280; 103 L. J. Ch. 130; 150 L. T. 126; 50 T. L. R. 38; [1933] B. & C. R. 138, C. A.

331. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

334. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

335. *Add. Annotation :*—**Refd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931) (1933), 102 L. J. Ch. 348.

Part IV.—Solicitor and Client.

414. *Add. Annotation :*—**Consd.** Warmingtons *v.* McMurray, [1937] 1 All E. R. 562.

415. *Add. Annotation :*—**Consd.** Warmingtons *v.* McMurray, [1936] 2 All E. R. 745.

PART I.

8a. *Jurisdiction of Benchers.*]—*Held :* pltf. was entitled to have his name restored to the rolls. The benchers' order striking it off was null & void. Under the Legal Profession Act, R. S. A., 1922, such an order could be made only after investigation & recommendation by the discipline committee, which never took place. The fact that the official discipline committee comprised all the benchers who eventually received & adopted the recommendation of the special committee, could not, even apart from the fact that those benchers adopting it had made no investigation of their own, overcome the statutory requirement of the acting by the discipline committee as a distinctive body.—HARRIS *v.* LAW SOCIETY OF ALBERTA, [1936] S. C. R. 88; 1 D. L. R. 401; 5 F. L. J. (Can.) 227.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

8x. *Effect of alteration of law—On right to admission.*]—Appct. on July 30, 1930, entered into written articles with an attorney who had not been in practice for seven years. On Aug. 1, 1930, R. S. C., Ord. 32, r. 53, was repealed & a new rule was substituted which provided that no attorney who had not practised in Natal for at least seven years should be entitled to take under articles any candidate attorney. Appct. applied for admission as a candidate attorney & the application was opposed by the Law Society :—*Held :* granting the application, by entering into the articles prior to the repeal of r. 53 appct. had acquired a right which was preserved to him by sect. 13 of Act 5, 1910.—*Ex p.* DE SOUZA (1930), 51 N. L. R. 221.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 5.

8m. *Absence during illness—Additional service.*]—The Rules of the Council of Legal Education provided that an articled clerk may serve under special provisions in the articles for such term as is necessary to complete the full term of service required by the rules, where he has been absent from the service for a period not exceeding thirty days in each year with the consent of the person to whom he is bound. An articled clerk, whose articles contained such special provisions & whose required term of service was four years, was absent from service during the fourth year for 114 days owing to illness. Under the special provisions in the articles he served for an additional period of thirty days, which ended on Apr. 16. He continued to serve the master, & on June 27 entered into supplementary articles for a further period of eighty-four days :—*Held :* the clerk's service did not comply with the requirements as to service under articles, & a special order that his service had been sufficient should be refused.—*Ex p.* AHERN, [1931] V. L. R. 292; Argus L. R. 246. —**AUS.**

PART II. SECT. 5.

179 i. *When application granted—Solicitor called to the Bar—Appointed to judicial office—Office abolished.*]—A solr., admitted in 1894, was struck off the roll at his own request in 1900 in order to be called to the Irish Bar. He was called to the Bar in the latter year. In 1918 he became a judge of the Chancery Div. of the then High Ct. in Ireland, & later in the same year a Lord Justice of the then Ct. of Appeal in Ireland. He held the latter office until 1924, when, following the change of government in Ireland, the office was abolished. Subsequently he was called to the English Bar, but, owing to illness, was compelled to abandon his practice. He was then disbarred both in Ireland & in England at his own request, with a view to his being readmitted a solr. in the Irish Free State. He now applied to be so re-admitted. The Incorporated Law Society did not oppose the application : —*Held :* the application be granted having regard to the special circumstances of the case, *viz.*, that appct. did not retire from his judicial office voluntary, but owing to its abolition; that as a solr. he would not be an officer of, or practise in, any ct. in which he sat as a judge; that upwards of five years had elapsed since he had ceased to hold judicial office, & during the greater part of that time he had lived out of Ireland; & that the reason for the application was the state of his health, which required active occupation, this motive displacing the idea of any improper or corrupt consideration behind the application. Appct. was, however, required to give an undertaking that he would not seek personal audience in any of the cts.—*Re* SOLICITORS ACT & SIR JAMES O'CONNOR, [1930] I. R. 623.—**IR.**

PART IV. SECT. 1, SUB-SECT. 1.

380 ii. ——.]—It is the duty of a solr. to obtain a written authority from his client before he commences a suit.—SALE & SALE *v.* MCMILLAN, [1931] 4 D. L. R. 203; O. R. 418; *revsd. on other grounds,* [1932] 2 D. L. R. 345; S. C. R. 543.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.

p i. —— *Denial by client.*]—Where on the taxation of a solr.'s bill of costs the retainer of the solr. is denied by the client the onus is on the solr. to prove the retainer.—BARKER *v.* SKRINE (No. 2), [1936] 1 W. W. R. 431; 1 D. L. R. 544; 50 B. C. R. 298.—**CAN.**

t i. —— —— ——.]—Where a solr. has undertaken legal business without a written retainer, & afterwards has a dispute with the client as to the authority conferred thereby, & there is nothing but assertion against assertion, the ct. must accept the client's denial as against the affirmation of the solr.—ECCLES *v.* RUSSELL, [1928] 3 W. W. R. 765; *affd.*, [1929] 3 D. L. R. 32; 2 W. W. R. 143.—**CAN.**

t ii. —— —— ——.]—A solr. may prove the fact of his retainer by a client without the production of a written retainer, but if the only evidence as to retainer is on affidavit, & consists merely of assertion & counter-assertion, the solr. fails to

449a. —— ——.]—Deft. had embarked upon a variety of investments & transactions which were likely to result in serious losses. She retained pltfs. generally to prosecute all such actions & proceedings as might be necessary to get her out of her difficulties. Having successfully prosecuted several matters pltfs. delivered a bill of costs. Deft., while offering to meet all disbursements in arbn. proceedings which were then being prosecuted on her behalf, intimated that she could not pay anything further. Pltfs. then discharged themselves from their retainer & delivered a second bill & brought this action upon both bills :—*Held :* this was not a case of a solr. retained to prosecute an action & no question of entire contract arose. The retainer here was one to prosecute a variety of matters & in such a case it was not reasonable that a solr. should engage himself for an indefinite time without payment. In this case the solr. could upon reasonable notice cease to act & sue for his costs.—WARMINGTONS *v.* MCMURRAY, [1937] 1 All E. R. 562 ; 53 T. L. R. 395 ; 81 Sol. Jo. 178, C. A.

483a. Change by Official Solicitor—Substitution of Official Solicitor for solicitor on record.]—The Official Solr., on appointment to defend an action in place of a deceased deft., gave notice of change of solrs. & substituted his name for that of the solrs. on the record as acting for the deceased deft., who were also the solrs. of deceased's insurance co. On summons for directions issued by pltf., counsel for the solrs. moved the learned judge to order that the Official Solr. should leave the control of the defence in the hands of the said solrs., & that they should remain on the record, & that the notice of change of solrs. should be removed from the file. The learned judge accordingly varied in this sense his original order appointing the Official Solr. to represent deceased deft. The Official Solr. appealed :—*Held :* as the Official Solr. had the same right as any other litigant to choose who should be his solr., & was entitled to act for himself, he was entitled to control the defence of himself as representative of deceased deft. & the change of solr. on the record was properly made, & the learned judge had no jurisdiction to make the variation complained of.—WATTS *v.* OFFICIAL SOLICITOR, [1936] 1 All E. R. 249 ; 80 Sol. Jo. 204, C. A.

Annotation :— **Expld.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

626a. Solicitor acting under court.]—The owner of land involved in litigation in Chancery, held not liable for the acts of a person acting as her attorney in the ct., & of his own motion, under, as he supposed, its authority, but not being her general attorney, & without her privity or actual authority in the particular matter.—OXENHAM *v.* COLLINS (1860), 2 F. & F. 172, N. P.

Annotation :—**Refd.** Oxenham *v.* Smythe (1860), 2 F. & F. 220.

699. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

700. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

701. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

711. Add the following paragraph :—

The ct. will allow a client to institute proceedings against a solr. within a reasonable number of years after the connection of solr. & client has ceased. A solr. took an assignment of some leasehold property from his client in 1810 ; their connection determined a few months afterwards. In 1828, the client filed a bill against the solr., insisting that the assignment was intended to be a mtge., & not a sale. The bill was dismissed by the Master of the Rolls in 1830 ; a petition of appeal was presented in 1840. The client has raised the question by some letters in 1811 :—*Held :* after so long a time had elapsed, the ct. would not assist him in such a claim.

prove the retainer.—MURPHY *v.* LIEBFIELD (1930), V. L. R. 142: Argus L. R. 94.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 4.—E.

sg. *All plaintiffs must concur.*]—K. B. rule 296 does not entitle one of two or more pltfs. to take out a *præcipe* order changing his solr., leaving the original solrs. on the record to represent the remaining pltf. or pltfs. Said rule can be made use of only where all pltfs. concur, & if there are any circumstances where one pltf. requires to have separate representation, be it temporary or permanent, then a special application should be made. If there develops any conflict of interest or division of opinion between co-pltfs., then one of them can apply to be given the sole conduct of the cause. The rules contemplate only one place or address where the papers shall be served on the solrs. who institute an action for two or more pltfs.—MCLEOD *v.* WINNIPEG SUPPLY & FUEL CO., LTD., [1934] 2 W. W. R. 385; 42 Man. L. R. 133.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.—F.

sy. *Joint retainer—Denial of liability—"Reasonably necessary services."*]—NORTHERN LIFE ASS'CE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512 ; *affg.* S. C. *sub nom. Re* SOLICITORS, 33 O. W. N. 175.—**CAN.**

sz. *Whether permissible — Separate defences—No conflict of interest.*]—Where there is no conflict of interest between co-defts. so far as the action is concerned, there is no reason why a solr. who had acted as solr. for one of them prior to the action & with respect to it should not act as the other's solr. & counsel in the action, even though they put in separate defences.—WADDELL *v.* GRAY-CAMPBELL, LTD. & SCARROW, [1929] 3 D. L. R. 488 ; 2 W. W. R. 113 ; 23 S. L. R. 527 ; *revsg.*, [1929] 2 D. L. R. 362 ; 1 W. W. R. 241.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (c).

t i. —— *Liability of solicitor.*]—MORAN *v.* SCHERMERHORN (1858), 2 P. R. 261.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (d).

sa. *Submission to judgment.*]—DUBUC *v.* MARSTON CORPN., [1928] 1 D. L. R. 225 ; [1927] S. C. R. 526.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

675 iii. ——.]—A transaction between solr. & client, in which the solr. takes a benefit, cannot be supported unless the solr. has taken care that his client is fully acquainted with the facts & properly advised upon them, & the onus of proving this is upon the solr.

Where the solr. for a loan co. had benefited from a loan made by the co. to B., by receiving out of the proceeds of the loan payment of certain mtges. from B. to the solr. & certain commissions & fees in connection with said mtges :—*Held :* under the circumstances of the case, the solr. must be held to have been guilty of a breach of duty to the co. & he was liable to it for loss suffered through the transaction.—BIGGS *v.* LONDON LOAN & SAVINGS CO. OF CANADA. LONDON LOAN & SAVINGS CO. OF CANADA *v.* BRICKENDEN, [1933] S. C. R. 257 ; 3 D. L. R. 161.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B.

r i. ——.]—The same considerations which apply to a purchase by a solr. from his client apply also to a sale by a solr. to his client ; & the obligations of a clerk in the service of a solr., to whom the solr. has delegated a matter, or to whom the solr.'s client goes direct, are no less in the matter upon which the clerk proceeds than are the obligations of the solr. himself. In such circumstances the solr.'s clerk will stand in a fiduciary relation to the client, although there be no privity of contract between himself & such client : & before selling his own property to the client he will be bound to make full disclosure to such client of his interest in such property.—BLAIR *v.* MARTIN, [1929] N. Z. L. R. 225.—**N.Z.**

784. *Add. Annotation :*—**Refd.** Davis *v.* Symons, [1934] Ch. 442.

813. *Add. Citation :—affd.* (1929), 45 T. L. R. 264, C. A.

904a. —— ——.]—LUCK *v.* MEYLER (1928), 72 Sol. Jo. 337.

962a. Exchange of lands.]—BARTTER *v.* GAMBRILL (1932), 76 Sol. Jo. 868.

962b. Failure to register club.]—Pltfs. were officers of the New Atlantic Club, which desired to move into premises formerly occupied by the Danesbury Club, which had been dissolved. Pltfs. retained deft. as their solr. (*inter alia*) to arrange for the transfer of the registration of the New Atlantic Club. Deft. sent the necessary documents to the justices' clerk who refused the registration on the ground that the Danesbury Club was on the register as of that address, but the papers were left at the clerk's office. It was found as a fact that deft. never notified pltfs. of this refusal, & the New Atlantic Club moved into their new premises. The police raided the club & pltfs. were prosecuted & fined for supplying drink at an unregistered club. In an action for damages for negligence, deft. denied negligence & contended that even if he was negligent the damage to pltfs. resulted not from his negligence, but from a decision of the magistrates which was wrong in law :—*Held :* deft. was negligent in not notifying pltfs. of the clerk's refusal to accept registration of the New Atlantic Club at their new premises ; notwithstanding that the clerk's duty was purely ministerial & that he could not decide whether the club should or should not be registered, the leaving of the registration papers was not sufficient to register the club, & the convictions were right ; in considering the damages recoverable no reduction should be made because the fines have been paid out of club funds.—ASHTON *v.* WAINWRIGHT, [1936] 1 All E. R. 805 ; 154 L. T. 399 ; 100 J. P. 195 ; 52 T. L. R. 372 ; 80 Sol. Jo. 346 ; 34 L. G. R. 193.

1035a. Liability of solicitor of insurance company to insured.]—Pltf. took out with an insurance co. a motor insurance policy containing a clause that pltf. would not incur any expense whether in respect of litigation or otherwise or make any payment, settlement, arrangement, or admission of liability for which the co. might be liable under the policy without the written authority of the co., & that the co. should have absolute conduct & control of all or any proceedings against pltf. Pltf.'s car was run into by a motor lorry, the collision being caused solely by the negligence of the lorry driver. A passenger in pltf.'s car was seriously injured, & issued a writ against the owners of the lorry & also, at their request, against pltf. The latter informed the insurance co., & left the matter in its hands, as he was bound to do under the policy. The co. sent the papers to its solrs., who entered an appearance to the writ & acted in the conduct of the defence. Neither the co. nor the solrs. ever at any time communicated with pltf. in any way & eventually the solrs. delivered a defence on behalf of pltf. admitting that the accident was caused solely by his negligence & write a letter to this effect to the solrs. opposing them. Having accidentally found out what was happening, pltf. protested to the local agent of the insurance co., to which agent the latter wrote. " If we had repudiated liability we ran a very serious risk of the ct. holding a different view." At the trial of the action, judgment was entered against pltf. for £1,124 12*s.* 10*d.*, damages & costs. The latter now claimed damages against the solrs. & the insurance co. for breach of duty, negligence & libel :—*Held :* (1) the question whether there was a breach of duty on the part of the insurance co. fell within the doctrine of *Scott* v. *Avery* & was a matter for arbn., the policy containing the usual clause making arbitration a condition precedent ; (2) the letter written by the insurance co. was not defamatory ; (3) the letter written by the solrs. was defamatory, the occasion on which it was written was privileged, but there was evidence of indirect motive ; (4) the solrs. were negligent ; (5) the damages for negligence were not nominal, as pltf. might have to pay an additional premium on future insurances. They must be taken at the figure assessed by the jury, £1,000 ; (6) pltf. was also entitled to recover the £1,124 awarded against him as damages in the previous action, but would hold the same as trustee for the insurance co. ; (7) deft. was entitled to a declaration that by reason of the negligence of the solrs. he was not liable to pay any part of their costs while acting for him in the action.—GROOM *v.* CROCKER, [1937] 3 All E. R. 844 ; 157 L. T. 308 ; 81 Sol. Jo. 630.

1062a. Fine & costs—Failure to register club.]—ASHTON *v.* WAINWRIGHT, No. 962b, *ante.*

1067a. Failure to issue writ—Action barred by Fatal Accidents Act—Defendant man of straw.]—CLAYTON *v.* KEARSEY (1935), 79 Sol. Jo. 180.

1096. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1103. *Add. Annotations :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

PART IV. SECT. 4, SUB-SECT. 2.—C. (b).

8d. *General rule.*]—It is not part of the ordinary duty of a solr. to act as valuer or adviser upon investments ; but, if consulted as to the wisdom of an investment, it is his duty to disclose any relevant facts within his knowledge, & to explain what inquiries should properly be made.—POLKINGHORNE *v.* HOLLAND, [1934] S. A. S. R. 475 ; 51 C. L. R. 143 ; 40 Argus L. R. 353 ; 8 A. L. J. 140.—**AUS.**

c i. —— ——.]—Where a solr. acting for both parties in the matter of a loan on mtge. did not disclose in either the application for the loan or the certificate of title the existence of two mtges. in which he was personally interested :—*Held :* he had been guilty of a breach of duty as solr. for the mtgee., & it would equally have been a breach of duty if he had been employed only in making the certificate of title. The damages to which the mtgee. was held to be entitled was the balance owing on the mtge. allowing credit for payments made by the mtgor. & for a bonus received by the mtgee., the solr. on payment of such balance to be given an assignment of the mtge., or, if the properties should be sold at the discretion of the mtgee., the latter to have judgment against the solr. for the deficiency. The claim of the mtgee. against the solr. was held not to be assignable.—LONDON LOAN & SAVINGS CO. OF CANADA *v.* BRICKENDEN, [1934] 2 W. W. R. 545 ; 3 D. L. R. 465.—**CAN.**

Part V.—Solicitor as Trustee, Receiver, or Executor.

1144. *Add. Annotation :*—**Consd.** *Re* Gertzenstein, Ltd., [1936] 3 All E. R. 341.

1146. *Add. Annotation :*—**Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

1148a. —— ——.]—In the absence of an express power in the instrument creating the trust for a solr.-trustee to charge, a solr.-trustee who employs the firm of solrs. of which he is himself a partner to act for him in the conduct of an action to administer the trust estate, is in no better position than a solr.-trustee who acts as his own solr., &, on taxation of his costs, will not be allowed profit costs, even though there be an agreement that the solr.-trustee shall have no share in profit costs.—*Re* GATES, ARNOLD *v.* GATES, [1933] Ch. 913 ; 102 L. J. Ch. 369 ; 149 L. T. 521.

Annotation :—**Apprvd.** *Re* Hill, Claremont *v.* Hill, [1934] Ch. 623.

1148b. —— ——.]—A solr. who was a trustee under an instrument which gave no power to a solr.-trustee to charge profit costs for work done in connection with the trust. took out an originating summons for the determination of certain questions in connection with the trust. The solr.-trustee was a partner in a firm of solrs., & had before this transaction arranged with his partners that he should do only a limited amount of work in connection with the partnership & should receive a salary of £600 a year out of the profits of the firm, that amount being only a small portion of their profits. The solr.-trustee employed his firm to do the legal work in connection with the trust, the work being done by a partner who was not a trustee. In taxing the solr.-trustee's bill of costs the taxing master disallowed all his profit costs & allowed only out-of-pocket disbursements, on the ground that he had employed his firm to do the work : —*Held :* inasmuch as the solr.-trustee derived some benefit from the profits of the partnership, although limited in amount, he was not entitled to employ the firm in which he was a partner to do work in connection with the trust for which profit costs could be charged. —*Re* HILL, CLAREMONT *v.* HILL, [1934] Ch. 623 ; 103 L. J. Ch. 289 ; 151 L. T. 416 ; 50 T. L. R. 487 ; 78 Sol. Jo. 446, C. A.

1151. *Add. Annotations :*—**Consd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913 ; *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623.

Part VI.—Remuneration of Solicitors—Costs.

1203. After this case add :—

Tender of debt without costs—Before action brought.]—*See* BANKERS, Vol. III., p. 200, No. 453 ; CONTRACT, Vol. XII., p. 327, Nos. 2720, 2721.

1207. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Debtor, [1929] 2 Ch. 146.

1228a. —— **Agreement to give security.**]—By Attorneys' & Solrs.' Act, 1870 (c. 28), s. 4, amended by Solrs. Remuneration Act, 1881 (c. 44), ss. 2, 8, a solr. may make an agreement in writing with his client respecting the amount & manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of contentious business done or to be done by the solr. either by a gross sum or by commission or percentage, or by salary or otherwise, & either at the same or at a greater or at a less rate as or than the rate at which

PART V. SECT. 1, SUB-SECT. 2.—A.

sp. *Under Trustee Act, R. S. S.*, 1930.]—In sect. 76 of Trustee Act, R.S.S., 1930, which provides that the allowance to a solicitor-trustee is to be increased by such amount as may be deemed fair & reasonable in respect to professional services rendered by him to the estate, the allowance referred to is the allowance to a trustee for his care, etc., & time, which is provided for by sects. 72-74 of the Act.—*Re* MACDONALD ESTATE, [1933] 1 W. W. R. 421 ; 41 Man. L. R. 417.—**CAN.**

PART VI. SECT. 1.

e i. ——.]—Where there is no tariff of costs which can be applied to charges for business done by a solr., & there is no specific contract between the solr. & his client, the general custom & practice of solrs. is to be the guide, if such custom or practice exists ; if there is no custom, the value of the services rendered is to be estimated on a *quantum meruit*.—*Re* ROYAL BANK OF CANADA *v.* MARS (No. 3), *Re* MCLEAN & COOK, [1931] 1 W. W. R. 138 ; 25 S. L. R. 225.—**CAN.**

—.]—MCLEAN *v.* COOK, [1931] 4 D. L. R. 904.—**CAN.**

h i. *Right to charge commission—Validity of Order.*]—Ord. 65, r. 29, of the Supreme Court Rules, which provides that, " In the absence of special agreement a solr. shall be entitled to charge his client a commission in lieu of costs on the collection of accounts or claims according to the following scale . . . " :—*Held :* valid & given effect to in the present action.—CORNWALL & ARCHIBALD *v.* DOYLE CONTRACTING CO., LTD., [1932] 1 W. W. R. 8 ; 45 B. C. R. 81.—**CAN.**

r i. —— —— ——.]—Where a collusive settlement between the parties to an action has the effect of depriving the solr. of one of them of his lien for costs, the opposite party will be made to pay them. The intent to defraud the solr. may be inferred from the actions of the parties.—OBIBER *v.* BIFROST RURAL MUNICIPALITY & COLEMAN (No. 2), [1931] 1 W. W. R. 359 ; 2 D. L. R. 476 ; 39 Man. L. R. 357.—**CAN.**

r ii. —— —— ——.]—The rule that a collusive settlement between the parties to an action will not be permitted to deprive a solr. of his lien for costs, is applicable to the case where the action was one for damages which had not ripened into judgment.—PONSER *v.* A. R. MCDIARMID CO., LTD., & FOSTER & MCQUARRIE, [1931] 1 W. W. R. 362 ; 2 D. L. R. 598 ; 39 Man. L. R. 360.—**CAN.**

ff i. —— *No contract to do work at sum named.*]—The solrs. rendered to a client a bill of costs amounting to $750 for services in drawing a will for the client. Upon taxation the taxing officer allowed the amount charged :—*Held :* there was no agreement as to the amount & no obligations upon the solrs. to state to the client during the course of preparation that their original rough estimate of the probable amount of their bill, before they had entered upon the work, which proved to take ninety hours of the time of one of the solrs. in consultations, drafting, revising, redrafting, etc., was inadequate ; & the amount of the bill was not excessive.—*Re* SOLICITORS, [1931] 1 D. L. R. 819 ; 66 O. L. R. 443.—**CAN.**

si. *Right of assignee to issue execution.*]—A firm of solrs. with a certificate of taxation of a bill of costs against applt. herein made, for valuable consideration, an absolute assignment of the costs to resp. herein. Resp. then obtained an order from a judge, giving him liberty to issue execution against applt. upon the certificate. On appeal :—*Held :* the appeal should be dismissed.—*Re* TAJA SINGH ; NUTTA SINGH, [1932] 2 W. W. R. 671 ; 4 D. L. R. 303 ; 45 B. C. R. 547.—**CAN.**

he would otherwise be entitled to be remunerated: Provided that the amount payable under the agreement shall not be received by the solr. until the agreement has been examined & allowed by a Taxing Master:—*Held:* this section does not apply to an agreement by a client to give his solr. security, whether by way of a charge upon or an assignment of part of a fund to be received by the solr. for the amount of costs to which upon taxation the solr. may be found to be entitled; but an agreement to that effect may be made orally & without any writing between solr. & client.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340; 101 L. J. K. B. 447; 147 L. T. 49, C. A.

1275. *Add. Annotation:*—**Refd.** Ward *v.* British Oak Insurance Co., [1931] 2 K. B. 637.

1374. *Add. Annotation:*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

1391a. To what court appeal lies—Divisional Court—Not "matter of practice & procedure" within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 31 (3).]—Resps., a firm of solrs., acted for applt. in defending him in criminal proceedings before magistrates & at the assizes. Applt. was found guilty & sentenced to imprisonment. In respect of those proceedings resps. delivered their bill of costs in summary form to applt.'s attorney, who paid it. A few years later applt. took out an originating summons under Solicitors Act, 1843 (c. 73), asking for delivery of a detailed bill of costs. The master made an order for its delivery. The judge at chambers set aside the master's order, but gave leave to appeal:—*Held:* the appeal did not relate to a matter of practice & procedure within above sub-sect., & therefore that the appeal lay not to the Ct. of Appeal but to the Div. Ct.—*Re* WITHERS & Co., [1930] 2 K. B. 192; 99 L. J. K. B. 565; 143 L. T. 347; 46 T. L. R. 540; 74 Sol. Jo. 464, C. A.

1483. *Add. Annotation:*—*As to* (1) **Consd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

1524. *Add. Annotation:*—**Refd.** Jonesco *v.* Evening Standard Co., *Re* Undertaking by Solicitors, [1932] 2 K. B. 340.

1530. *Add. Annotation:*—**Folld.** Bury (H. E. & W.) *v.* Greenwood, [1934] W. N. 119.

1531. *Add. Annotaion:*—**Refd.** *Re* C. B. & M. (Tailors), Ltd., [1932] 1 Ch. 17.

1531a. —— ——.]—BURY *v.* GREENWOOD, [1934] W. N. 119; 177 L. T. Jo. 399.

1545. *Add. Annotation:*—**Refd.** *Re* **Louch, [1930]** 2 Ch. 63.

1558. *Add. Annotations:*—**Consd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341. **Folld.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

1559. *Add. Annotation:*—**Consd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1563a. Effect of inherent jurisdiction of court.]—LIGHT & FULTON *v.* MCVITTIE (1935), 79 Sol. Jo. 341.

1563b. Taxation under Solicitors Act, 1932 (c. 37), ss. 65 (1), 81 (1)—Counsel's fees—Effect of R. S. C., Ord. 65, r. 27, reg. 29 (a).]—(1) For the purpose of taxation of a solr.'s bill under Solicitors Act, 1932 (c. 37), the phrase "costs due to a solr." in sect. 65 (1), must be deemed, having regard to the definition of "costs" in sect. 81, to include "disbursements" due from the client to the solr., which means actual payments before delivery of the bill, & any sums claimed in the bill as disbursements, *e.g.*, fees to counsel, which have not been paid before its delivery, must be disallowed. Solrs. Act, 1932 (c. 37), has not made any alteration in the law in this respect & R. S. C., Ord. 65, r. 27, reg. 29 (*a*), is still in force.

(2) Where items in a solr.'s bill are struck

PART VI. SECT. 3, SUB-SECT. 3.—A.

sb. *Absence of agreement as to scale of commission—Effect.*]—Where a solr. & client agree that the former's remuneration for collecting a claim shall be a commission, but they decide to leave the matter of the scale of the commission in abeyance, the solr., if he intends to exact payment according to the scale provided by Ord. 65, r. 27, reg. 29, should draw the client's attention to said rule & give the client to understand that, in the event of the scale of commission, not being otherwise agreed on, he will apply the rule in demanding payment. The failure to so inform the client was held to be good cause in the present case for depriving the solrs. of their costs.—CAMERON & CAMERON *v.* BOULTON, [1930] 3 W. W. R. 61; 4 D. L. R. 1021; 43 B. C. R. 39.—**CAN.**

sc. *"Fair & reasonable"—What is.*]—In deciding whether a contract between a solr. & client is "fair & reasonable to the client," within sect. 73, Law Society Act, R. S. M., 1913, the word "fair" is to be taken as relating to the means by which the contract was brought about, & "reasonable" as relating to the quantum of remuneration therefrom resulting to the solr. In deciding whether the amount is reasonable the actual work which the solr. was called on to do is a factor but not the sole factor to be considered; & where the contract is one on the contingency & percentage basis, the mere fact that under the percentage agreed on the amount payable to the solr. in the event of success has turned out to be in excess of the costs taxable on the ordinary solr. & client basis is not ground for holding the contract unreasonable. The reasonableness of such excess must depend on the reality & extent of the risk the solr. undertook & the amount of work anticipated at the time he assumed his obligation.—GALBRAITH *v.* MURRAY, ROBERTSON & THOMAS, [1930] 3 W. W. R. 120; 4 D. L. R. 1005.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B. (b).

sf. *Agreement as to counsel's fees—Incomplete statement by solicitor.*]—An agreement was made between a solr. & his client regarding the amount of fees to be paid to senior & junior counsel for the conduct of the hearing of an action. The client was adequately warned that the senior's fees were special & such as would not be recoverable from the other party on a party & party taxation. The client was informed that the junior counsel's fees were ordinarily two-thirds of senior counsel fees, & agreed in writing to pay fees amounting to about half those of senior counsel. These fees, as agreed, were reduced by the taxing master:—*Held:* although the statement as to the proportion of junior counsel's fees to senior counsel's fees was not inaccurate, it was in the circumstances of the case incomplete, & might be misleading &, accordingly, that the client was not bound thereby.—SYMON *v.* HAY, [1934] S. A. S. R. 66.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 5.

sk. *Special agreement to look to third party for payment.*]—Where a retainer or employment of a solr. or counsel is proved, coupled with services rendered, the burden of proof that some person other than the client was to pay for the services rests upon the party asserting that such mode of payment was agreed to.—MCGEER, MCGEER & WILSON *v.* FLETCHER, MCLELAN *v.* FLETCHER (B. C.), [1929] 4 D. L. R. 348; 2 W. W. R. 500.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.

so. *Application of English law in India.*]—The law & practice in England relating to solrs. & to taxation of bills of costs applies in the Bombay Presidency, except where that law & practice is inconsistent with the rules & practice of the ct. The English Solrs. Act does not apply to attorneys practising in Bombay. There is no rule which makes it obligatory on an attorney to deliver a bill to the client, though in practice the Taxing Master will see that a client has a proper opportunity of considering the bill before taxation. The English rule that a solr. must be bound by a bill once delivered to a client does not apply to Bombay. He is at liberty to substitute another & a revised bill for taxation.—REGE *v.* VASANTRAS GANPATRAS (1935), I. L. R. 59 Bom. 443.—**IND.**

out of it on taxation at the instance of the client, because the business to which the items relate was never included in any retainer given to the solr. by the client, those items cannot be taken into consideration for the purpose of estimating whether one-sixth of the amount of the bill has been taxed off under sect. 66 (5) of 1932 Act.—*Re* TAXATION OF COSTS, *Re* SOLICITOR, [1936] 1 K. B. 523; [1936] 1 All E. R. 491; 105 L. J. K. B. 376; 154 L. T. 621; 52 T. L. R. 306; 80 Sol. Jo. 224, C. A.

1572. *Add. Annotation:—Generally,* **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1582a. —— —— **Omission of permitted increase from bill.**]—A solr. who has omitted the 33⅓ per cent. increase allowed by R. S. C., Ord. 55, r. 10B, from his bill of costs can claim to have it allowed after his bill of costs has been taxed.—*Re* LOUCH, [1930] 2 Ch. 63; 99 L. J. Ch. 421; 143 L. T. 469; 74 Sol. Jo. 387.

1594. *Add. Annotation:—As to* (1) **Refd.** *Re* Louch, [1930] 2 Ch. 63.

1596. *Add. Annotation:*—**Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1609. *Add. Annotation:*—**Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1655. *Add. Annotation:—As to* (2) **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1710. *Add. Annotation:—As to* (1) **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1715a. Patent agent—Whether exclusive right to taxation in patent action.]—*Re* SOLICITORS. *Re* TAXATION OF COSTS (1935), 79 Sol. Jo. 49. D. C.

1823a. —— —— ——.]—*Re* FENTON, [1894] W. N. 128.

1849a. Recovery of damages by infant or person of unsound mind.]—The R. S. C. require that in all actions for damages brought on behalf of an infant or person of unsound mind, the costs of pltf., both as between party & party & as between solr. & client, shall be taxed & certified by the Taxing Master, & no costs other than those so certified are payable to the solr. for pltf. These provisions apply equally whether damages are recovered by a verdict & judgment after trial or by an order staying proceedings upon the terms of a settlement out of ct. In either case there is a direction by the ct. that the costs of pltf., both as between party & party & as between solr. & client, are to be taxed, & it is the duty of the solrs. on both sides to see that the direction is complied with. The Rules & the direction are made for the protection of infants & persons of unsound mind, & are imperative. It is important that it should be known that if they are deliberately disobeyed, the solrs. responsible are liable to be dealt with for contempt of ct.—PRACTICE NOTE, [1933] W. N. 190.

1863. *Add. Annotation:*—**Refd.** Warmingtons *v.* McMurray, [1937] 1 All E. R. 562.

1908. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

1909. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

1955. *Add. Annotation:*—**Refd.** *Re* Potts, *Ex p.* Etablissements Callot & De Schrijver *v.* Leonard Tubbs & Co. & Official Receiver, [1934] Ch. 356.

2016. *Add. Annotation:*—**Refd.** *Re* Solicitors (1934), 50 T. L. R. 327.

PART VI. SECT. 4, SUB-SECT. 6.

1582 i. *Whether solicitor bound by bill as delivered—Bonâ fide amendments—Before order for taxation obtained or taxation threatened by client.*]—In an action by a solr. to recover fees & disbursements:—*Held:* he was not bound by a bill previously rendered for a lesser amount than that sued for, there having been no express or implied acceptance of said account by deft. & no taxation or steps taken towards taxation.—MAULSON *v.* SHKLOV, [1935] 1 W. W. R. 568; 2 D. L. R. 476; 43 Man. L. R. 67.—CAN.

PART VI. SECT. 5, SUB-SECT. 1.—B.

se. *Arbitrators—Public Works Act, R. S. B. C.* 1924, *s.* 24.]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary. —*Re* GALT BROS. & BURNABY ARBITRATION, [1928] 1. W. W. R. 798: 39 B. C. R. 470.—CAN.

PART VI. SECT. 5, SUB-SECT. 1.—D. (b).

sf. *Whether solicitor entitled—On withdrawal of general retainer.*]—A solr. was retained by C. to conduct proceedings in an action against S. The retainer was not disputed. The solr. conducted the action until the judgment of the trial judge was given. C. decided to appeal & commenced proceedings for an appeal. From that time he took over from the solr. the conduct of & control of the proceedings & of the appeal, & thereafter the solr. merely performed such services as C. from time to time required of him. The solr. then delivered his bill of costs & in due time obtained o. *præcipe* an order for its taxation pursuant to Solicitors Act, s. 33 (c):—*Held:* C., by taking over the conduct & control of the proceedings put an end to the general retainer, as he had a right to do, & the solr. was thereupon entitled to claim payment of his costs, &, in the absence of "special circumstances," to have a *præcipe* order for taxation of his bill.—*Re* SAVIGNAC, [1928] 4 D. L. R. 433; 62 O. L. R. 589.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—B. (a).

sg. *Change of solicitor.*]—Where a solr.'s retainer to defend an action was terminated by the client by a change of solrs. before the trial & there had not been prior to the change such a break in the proceedings as to entitle the solr. to demand payment of his bill without terminating the retainer, held that the month within which, under sect. 56 of Legal Profession Act, bills of costs may be referred to taxation did not begin to run until the change of solrs.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—B. (c).

1853 i. *Right to order.*]—Although sect. 80 of Legal Professions Act, R.S.B.C., 1924, does not say that the person chargeable with a solr.'s bill may apply, after the expiration of one month, for a reference, yet from a reading thereof with sect. 81 it would appear that he has that right. An order under sect. 80 is not, however, an order of course.—*Re* MILLER, [1935] 3 W. W. R. 58; 49 B. C. R. 403.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—C. (c) i.

1996 ii. ——.]—A solr.'s bill of costs was adjusted & settled & paid in the life-time of the client, on Nov. 20, 1928. On Aug. 21, 1930, the widow & executrix of the client launched an application for taxation of the bill:—*Held:* the application, not being made within a year from the date of payment, as required by Solrs. Act, could not succeed.—*Re* SOLICITOR, [1931] 1 D. L. R. 315; 66 O. L. R. 201.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—D. (f).

2125 i. *Whether special circumstance.*] —The relationship of client & solr. is not of itself a "special circumstance," within Legal Profession Act, s. 58, for allowing the taxation of a bill of costs after the expiration of said month; but it is a circumstance that should always be considered on an application to allow such taxation.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—CAN.

2145. *Add. Annotation :*—**Consd.** *Re* Solicitors (1934), 50 T. L. R. 327.

2149. *Add. Annotation :*—**Consd.** *Re* Solicitors (1934), 50 T. L. R. 327.

2151a. —— ——.]—A solrs.' bill of costs having been paid with an express reservation of the right to ask for taxation :—*Held :* in the circumstances of the case, such a reservation amounted to a " special circumstance " within proviso to Solrs. Act, 1932 (c. 37), s. 66 (2), so as to justify the ct., in the exercise of its discretion, in making an order for taxation.—*Re* SOLICITORS (1934), 50 T. L. R. 327.

2301. *Add. Annotation :*—**Refd.** The Edison (No. 2), [1934] P. 115.

2313. The case is the same as that following, No. 2314.

2390. *Add. Annotations :*—**Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717.

2423. *Add. Annotations :*—**Consd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783. **Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138.

2430. *Add. Annotations :*—**Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717 ; Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

2466. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2467a. —— ——.]—*Re* TAXATION OF COSTS, *Re* SOLICITOR, No. 1563b, *ante.*

2468. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2498. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2647. *Add. Annotation :*—**Refd.** Davis *v.* Symons, [1934] Ch. 442.

Part VII.—Amount of Costs Recoverable.

2803. *Add. Annotation :*—*Generally,* **Refd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

2807a. Junior counsel.]—Pltf.'s solr. employed a Queen's Counsel & a junior to oppose a motion for further time to answer. The ct. held that he was justified in so doing ; & ordered the taxing master, who had disallowed the fees of the junior counsel, to review his taxation.—COOKE *v.* TURNER (1844), 12 Sim. 649 ; 59 E. R. 1282.

2813a. Counsel attending judge's chambers.]—The Supreme Ct. Rules, Special Allowances, r. 14, that " as to counsel attending at judge's chambers no costs thereof shall in any case be allowed unless the judge certifies it to be a proper case for counsel to attend " applies to taxation of costs between solr. & client as well as between party & party.—*Re* CHAPMAN (1882), 10 Q. B. D. 54 ; 52 L. J. Q. B. 75 ; 47 L. T. 426 ; 31 W. R. 266, C. A.

2902. *Add. Annotation :*—**Consd.** Jackson *v.* Jackson & Barwell, [1936] 2 All E. R. 1588.

2905. *Add. Annotation :*—**Refd.** Jackson *v.* Jackson & Barwell, [1936] 2 All E. R. 1588.

PART VI. SECT. 5, SUB-SECT. 9.—B. (c).

sk. *Denial of retainer not disclosed.*]—The fact that the client disputes the retainer *in toto* need not be disclosed when a solr. obtains an *ex parte* order for the taxation of his costs.—*Re* BARKER & SKRINE, [1935] 1 W. W. R. 751 ; 49 B. C. R. 479.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 10.—E. (a).

sl. *To ascertain " costs in the cause."*]—MCLEAN *v.* RATEKIN, [1928] 3 W. W. R. 592.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—A.

sj. *Effect of reference by court to costs as " taxed."*]—In the reasons for judgment herein, by which deft. was declared entitled to a solr.'s lien for costs, the ct., due to a misconception, referred to the bill of costs in question as " taxed." The bill of costs was not, however, finally allowed & certified by the taxing officer until two months after the delivery of said reasons, Pltf. within 15 days after the giving of the certificate gave notice under rule 693 of an application to have the taxation reviewed by a judge in chambers :—*Held :* said judgment of the ct. having not yet been entered, use of the term " taxed " did not prevent pltf. from having the review of taxation proceeded with.—ROYAL BANK OF CANADA *v.* MARS (No. 2), [1930] 2 W. W. R. 215 ; 3 D. L. R. 530 ; 1 W. W. R. 262 ; 24 S. L. R. 340, 433.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—B.

c i. —— —— *Jurisdiction of court to extend.*]—*Re* GENT ONE, *Ex p.* PRATT (1927), 27 S. R. N. S. W. 48.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (a).

2371 v. —— ——.]— A taxing officer's ruling as to whether any particular item should be allowed or excluded ought rarely to be interfered with on appeal, if it appears he understood the governing principle.—CANADIAN EDUCATIONAL FILMS, LTD. & GOODART PICTURES INCORPORATED *v.* HORAN & NICHOLS THEATRES, LTD. (1928), 39 B. C. R. 424.—**CAN.**

2371 vi. —— ——.]— NOBLE *v.* BROMILEY, [1928] 2 D. L. R. 605 ; [1928] 1 W. W. R. 899 ; 39 B. C. R. 518.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (b) ii.

2415 ii. *Whether order made.*]—Though the ct. will be desirous of giving the greatest weight to the opinion of the taxing master, on a question of the quantum of counsel's fees, upon an appeal it is the duty of the ct. to review that opinion, & if it think that the master has clearly made a mistake to rectify the mistake, & to give such decision as to it seems just.—*Re* MELBOURNE PARKING STATION, LTD. (IN LIQUIDATION) (1929), V. L. R. 5.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 12.

2433 ii. —— *To King's Bench judge—From Surrogate Court judge.*]—*Re* MCEACHEN ESTATE (No. 2), [1933] 3 W. W. R. 626.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

sl. *Solicitor to executor—" General counsel fee."*]—The practice which has been followed in Saskatchewan of allowing the solr. for an exor. a " general counsel fee " in addition to the amount of his specific charges is without legal justification.—*Re* ROEMER ESTATE, *Re* MOTT & ROEMER, [1928] 3 D. L. R. 860 ; [1928] 2 W. W. R. 566.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 4.—B. (c).

sm. *Investigation of title—Of assignee of equity of redemption—On extension of mortgage—Whether covered by scale fee.*]—It is a question whether acts are so sufficiently connected with the extension of the mtge. as to be comprised within the scale fee for effecting such extension. The investigation of the title of the assignee of an equity of redemption is not so connected, & the costs of such investigation are not covered by the scale fee.—*Re* RUSS (1927), 28 S. R. N. S. W. 7—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

so. *Attendances before registrar to settle judgment.*]—MAIR *v.* DUNCAN LUMBER CO., LTD. (No. 2), [1928] 1 W. W. R. 431 ; 39 B. C. R. 399.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

sa. *Personal attendance abroad at taking evidence on commission.*]—In a suit for dissolution of marriage in which W. acted as solr. for the petitioner, an order was made for the issue of a commission to take evidence in Java. W. warned petitioner that the costs of his personal attendance at Java might be disallowed on taxation, but he also wrongly advised her that it was necessary that he should attend personally :—*Held :* the costs of his attendance at Java were rightly disallowed on taxation between him & his client.—*Re* WINDEYER, FAWL & CO., *Ex p.* FOLEY (1931), 31 S. R. N. S. W. 145 ; 48 N. S. W. W. N. 71.—**AUS.**

Part VIII.—Solicitor's Lien.

3028. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

3087. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3195. *Add. Annotation :*—*As to* (1) **Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3213. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3302a. —— Successful appeal against receiving order.]—A receiving order was made in a county ct., & upon appeal the Div. Ct. in Bkpcy. rescinded the receiving order, dismissed the petition & ordered the petitioning creditors to pay the taxed costs of the appeal to the debtor or to his solr. The solr., having taxed the costs at £41 5*s.* 7*d.*, & not being paid by the petitioning creditors, issued a writ of *fi. fa.* & the Sheriff of Middlesex levied execution. The execution was paid out, but the petitioning creditors obtained a garnishee order *nisi* on a judgment of the K. B. D. in respect of moneys due to them from the debtor. The solr. for the debtor thereupon applied to the ct. for a charging order for his costs :—*Held :* the question was one of discretion, & the ct. would exercise its discretion by directing that the solr. should have a charging order on the moneys in the hands of the sheriff & the costs of this application.—*Re* DEBTOR (No. 29 OF 1931), WILD *v.* PETITIONING CREDITORS & DEBTOR (1934), 103 L. J. Ch. 303 ; 78 Sol. Jo. 430 ; [1934] B. & C. R. 54.

3307a. Administration action—Interest of next-of-kin on intestacy.]—A party to a probate action propounded several wills of the deceased, being also interested as next-of-kin in the event of the intestacy of the deceased. The ct. pronounced for an intestacy & against the wills. On the application of solrs. who had conducted the litigation for the party propounding the wills, & had since been discharged, the ct. made an order declaring them entitled to a charge for their costs upon the interest of their client in the intestacy as upon "property recovered or preserved through their instrumentality."—HYDE *v.* WHITE, WHITE *v.* HYDE, [1933] P. 105 ; 149 L. T. 96 ; 77 Sol. Jo. 251 ; *sub nom. Re* WHITE, 102 L. J. P. 71 ; 49 T. L. R. 325.

PART VIII. SECT. 2, SUB-SECT. 3.—A.

sb. *Whether extending to costs incurred by English agent.*]—The law agent of a co. who also acted as its secretary, was instructed to expose for sale a property in England belonging to the co. For this purpose he employed English solrs., who in turn employed auctioneers. The co. went into liquidation, & a petition was presented by the liquidator craving that the law agent should be ordained to deliver to him the titles of certain heritable properties belonging to the co. The law agent maintained that he had a lien over the titles for his own account as law agent (which was admitted), & also for the accounts of the English solrs. & auctioneers, for which the English solrs. had intimated that they hold him personally liable : —*Held :* the lien of a law agent did not extend to accounts incurred on behalf of his client which he had not in fact paid & for which he was not personally liable ; accordingly, the law agent's claim to a lien in respect of the accounts of the English solrs. & auctioneers fell to be dismissed, in respect that there was no averment either that he had paid the accounts or that he was liable to pay them.

Opinion that the fact that the law agent, who was acting for a disclosed client, gave the instructions to the English solrs. did not necessarily involve him in any personal liability for their account or for the account of the auctioneers employed by them.—ROBERTS *v.* SNODGRASS, [1932] S. C. (H. L.) 73.—**SCOT.**

PART VIII. SECT. 2, SUB-SECT. 3.—B.

sc. *For work done by English solicitors & auctioneers employed by solicitor.*]—The law agent of a co., who also acted as its secretary, was instructed to expose for sale a property in England belonging to the co. For this purpose he employed English solrs., who in turn employed auctioneers. The co. went into liquidation, & a petition was brought by the liquidator against the law agent for delivery of the titles of certain heritable properties belonging to the co. The law agent maintained that he had a lien over the titles for his own account as law agent, which was admitted, & also for the accounts of the English solrs. & auctioneers, for which the English solr. had intimated that they held him personally liable :—*Held :* the accounts of the English solrs. & auctioneers, having been properly incurred by the resp. in the ordinary course of law agency, were covered by his lien.—ROBERTS (H. STAVELEY) *v.* SNODGRASS, [1931] S. C. 580.—**SCOT.**

PART VIII. SECT. 2, SUB-SECT. 5.—E.

sf. *Action settled.*]—Deft. settling an action with pltf. after notification by solr. for pltf. of a claim of lien for services, is liable to the solr. for his costs on a solr. & client basis.—QUEEN'S ROYAL HOTEL, LTD. *v.* WATTS, [1937] 1 D. L. R. 74.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

3070 iii. —— ——.]—A solr. has, apart from any order of the ct., or any statute, a lien over any property recovered or preserved, or the proceeds of any judgment, obtained for his client by the solr.'s exertions. The right of the solr. is, in essence, a claim to the equitable interference of the ct. for the protection of the solr. The question of the solr.'s lien is unaffected by the Civil Procedure Code, & is still governed by the relevant principles of English law.—PREMSUKHDAS SINGHANIA *v.* N. C. BURAL & PYNE (1934), I. L. R. 61 Calc. 1005.—**IND.**

sa. *Rule in India.*]—The rights of attorneys in India in regard to lien are the same as the rights of solrs. in England under the common law, except in so far as the latter have been modified by statute.—DAMODAR DAS *v.* MORGAN & CO. (1933), I. L. R. 60 Cal. 1442.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

sd. *Sum paid into court by defendant —Defendant successful in first action— Unsuccessful in second action—Solicitor entitled to retainer for costs of first action on sum paid in.*]—RAY *v.* HOU (1928), 40 B. C. R. 438.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.—B. (a).

3142 vii. ——.]—The ct. will exercise its equitable interference on behalf of a solr. to protect him from being deprived of his costs where he has given the opposite party or the latter's solr. notice of his claim or where it is clearly made out that there has been collusion between the parties to cheat the solr. of his costs.—TERRY *v.* MACDONALD, [1935] 1 W. W. R. 504 ; 2 D. L. R. 812.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—B.

3192 iii. ——.]—Deft. was given costs against the three pltfs. One of pltfs. had recovered a judgment against deft. for a much larger sum in a previous action to which the other two pltfs. were not parties. & claimed the right to set-off deft.'s costs against that judgment. Deft. argued that the set-off would defeat the lien of his solr. The ct. allowed the set-off, & an appeal from the order was dismissed.—INLAY HARDWOOD FLOOR CO., LTD. *v.* DIERSSEN, [1928] 2 D. L. R. 560 ; [1928] 1 W. W. R. 897 ; 39 B. C. R. 514.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.—B. (a).

p i. —— *Basis of right—Salvage.*]—The principle of salvage is the key to the construction of Legal Professions Act, R. S. B. C., 1924, s. 104, which gives a solr. a charge on & a right of payment out of property "recovered or preserved" through his services. Claims for costs due solr. for defending actions brought for personal services, goods sold, & on a promissory note were held, therefore, not to come within said section ; but a claim with respect to a mechanic's lien action in which the lien was reduced was held to be within it.—MILLER *v.* WOLLASTON, [1929] 3 D. L. R. 348 ; 2 W. W. R. 136 ; 41 B. C. R. 145.—**CAN.**

p ii. ——.]—*Re* MCCORMACK & BROCKEST METAL WARES, LTD., *Re* MCMILLAN, [1936] 2 W. W. R. 509 ; 4 D. L. R. 463.—**CAN.**

3315. *Add. Annotation :—As to* (2) **Refd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

3350a. Matrimonial suit—Wife's costs unpaid—Bankruptcy of wife.]—A declaration that a solr. is entitled to a charging order for his costs under Solrs. Act, 1932 (c. 37), s. 69, is discretionary on the part of the ct. & should not be made if the solr. has stood by while the fund sought to be charged has been dealt with under circumstances which render it unjust that the interest of other parties should be postponed to the lien of the solr. Solrs. for a petitioning wife in a matrimonial suit obtained an order for the costs payable by resp. husband without obtaining payment from him. Petitioner became a bkpt. & the solrs. proved in the bkpcy. as unsecured creditors of petitioner for the amount of the costs ; the solrs. subsequently applied for a charging order on the amount of a legacy bequeathed to the husband in respect of which the Official Receiver in the bkpcy. had already obtained a garnishee order :—*Held :* the discretion of the ct. to make the charging order should not be exercised (*a*) because the admission of the proof of the solrs., as unsecured creditors was inconsistent with the security which the charging order would afford ; (*b*) because the property involved in the legacy had not been recovered by the solrs., being still in the hands of the trustees of the will by which it was bequeathed ; & (*c*) because a charging order would create a new right of creditors in the bkpcy., which did not exist at the date of the bkpcy., contrary to Bkpcy. Act, 1914 (c. 59), s. 7.—HIGGS *v.* HIGGS, [1934] P. 95 ; 103 L. J. P. 44 ; 150 L. T. 516 ; 50 T. L. R. 313 ; 78 Sol. Jo. 279.

3361. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

3366. *Add. Annotation :*—**Consd.** Higgs *v.* Higgs, [1934] P. 95.

3375. *Add. Annotation :—As to* (2) **Refd.** Millensted *v.* Grosvenor House (Park Lane), Ltd., [1937] 1 K. B. 717.

Part IX.—Solicitor's Remedies for Costs.

3440a. Refusal of client to pay counsel—Payment by solicitor—Recovery from client.]—Where a solr. on his client's instructions briefs counsel in an action & the counsel duly appears but after the trial the client refuses to pay counsel's fee, the solr. is entitled, on paying the fee himself, to recover it from the client.—MEDLICOTT *v.* EMERY (1933), 149 L. T. 303 ; 49 T. L. R. 427 ; 77 Sol. Jo. 389.

3451a. ——.]—HORNER *v.* CREW (1928), 72 Sol. Jo. 103.

3544a. —— ——.]—HAMILTON *v.* CARTER & BELL (1932), 173 L. T. Jo. 452, H. L.

Part X.—Solicitors as Officers of the High Court.

3563a. —— ——.]—It was alleged that two of the solrs. in the main action had been guilty of misconduct, & application was made to the judge at the trial to order them to pay the costs personally. The judge directed that the matter should be brought before him on a later day. It was then contended that the judge had no jurisdiction, on the ground that, before judgment had been given, both solrs. had ceased to be solrs. on the record. Objection was also taken that the judge was not entitled to hear the application because no affidavits had been filed verifying the facts on which the application was based :—*Held :* (1) the ct.'s summary jurisdiction over a solr. does not cease merely because he ceases to be on the record ; (2) the summary jurisdiction has not been impaired by the Solrs. Act, 1932 (c. 37), s. 5 ; (3) the judge had jurisdiction to deal with the application ; (4) it was a matter of discretion for the judge whether affidavits were required, & what form of procedure should have been followed.—BRENDON *v.* SPIRO, [1937] 2 All E. R. 496 ; 157 L. T. 265 ; 53 T. L. R. 667 ; 81 Sol. Jo. 396, C. A.

3655a. What must be shown.]—The ct. will not summarily order a solr. to deliver up a deed to his client unless it be clearly shown not

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PART VIII. SECT. 4, SUB-SECT. 3.

af. *Retainer.*]—The solr. was held not to be entitled to a lien with respect to a claim for a certain sum which his client had agreed to pay him, as a retainer, over & above his taxed costs.—*Re* CRUX, ENFANTE *v.* ENFANTE, [1932] 1 W. W. R. 93.—CAN.

ak. *Costs of administration of estate of deceased—As solicitor for executor—Executor debtor to estate.*]—*Re* FRASER ESTATE, [1934] 3 W. W. R. 222.—CAN.

PART VIII. SECT. 4, SUB-SECT. 4.—D.

k 1. ——.]—*Semble :* it is not incumbent upon a solr. to show that he cannot recover his costs from his client in order to entitle him to a charging order upon the judgment which is for those particular costs.—DELTA FINANCE CO., LTD. *v.* BYERS, [1932] 1 W. W. R. 827 ; 3 D. L. R. 139 ; 26 Alta. L. R. 300.—CAN.

PART VIII. SECT. 4, SUB-SECT. 6.

aq. *Protection of lien by declaratory judgment—Jurisdiction of court.*]—CASSIDY *v.* STUART, [1928] 3 D. L. R. 879 ; 62 O. L. R. 374.—CAN.

PART IX. SECT. 1, SUB-SECT. 1.

f 1. —— *Collusion by defendants to deprive solicitor of costs.*]—ENFANTE *v.* ENFANTE, [1932] 1 D. L. R. 788 ; 44 B. C. R. 472.—CAN.

PART IX. SECT. 1, SUB-SECT. 4.—A.

at. *After one month from delivery of bill—Not applicable where amount agreed on.*]—Sect. 66 of Legal Profession Act, R. S. S., 1930 (which provides that a barrister or solr. shall not commence an action for the recovery of fees until one month after a bill has been delivered to the party to be charged) does not apply to the case where the amount of the bill has been agreed upon.—MACMILLEN *v.* TAYLOR, [1932] 3 W. W. R. 264.—CAN.

PART X. SECT. 2, SUB-SECT. 4.—B. (a).

3656 l. *Delivery up ordered.*]—Notwithstanding the provisions of Legal Profession Practice Act, 1915, s. 8, the ct. still has power, in a proper case, to order a solr. to deliver up to his client or former client the latter's documents & papers which the solr. has in his possession.—*Re* LONG, [1929] V. L. R. 318 ; [1929] Argus L. R. 271.—AUS.

only that his solr. has no lien upon it, but that he is holding it for appct. alone, & as his solr.—*Ex p.* COBELDICK (1883), 12 Q. B. D. 149; 49 L. T. 741; 32 W. R. 239, C. A.

3670. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

3677a. Solicitors nominated by insurer—Conducting action for insured person.]—Where an action for damages for negligence arising out of an accident is conducted on deft.'s behalf by his insurance co., & solrs. are nominated by the co. under a clause in the policy to that effect, the co. only act as deft.'s agents, & the solrs. are throughout solrs. for deft. The solrs. are therefore bound, if requested so to do, to produce to their client all documents relating to the action in their possession, custody or control, either during the course of the action or after its conclusion, & the insurance co. has no right to object to the production of the documents.

The ct. will, if necessary, make an order for production of the documents.—*Re* CROCKER, *Re* TAXATION OF COSTS, [1936] Ch. 696; [1936] 2 All E. R. 899; 105 L. J. Ch. 276: 155 L. T. 344; 52 T. L. R. 565; 80 Sol. Jo. 486.

Annotation :—**Refd.** Groom *v.* Crocker, [1937] 3 All E. R. 844.

3684. *Add. Annotation :*—**Refd. Clayton v. Clayton,** [1930] 2 Ch. 12.

3868. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

3874. *Add. Annotations :*—**Apld.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120. **Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496. **Refd.** Watts *v.* Official Solicitor, [1936] 1 All E. R. 249.

3970. *Add. Annotation :*—**Folld.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

3970a. ——.]—COOPER *v.* DUMMETT (1930), 70 L. Jo. 394; 170 L. T. Jo. 468; [1930] W. N. 248.

4056a. Solicitor not holding certificate.]—*Re* REES, [1933] W. N. 194; 176 L. T. Jo. 88.

4082. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

Part XI.—Solicitors and Third Persons.

4177a. ——.]—In trespass by A. against B. for false imprisonment, B. pleaded that J. recovered a judgment against A. in the sheriffs' ct., London, that A. was summoned, & appeared before the judge of that ct., who ordered the sum recovered to be paid by instalments, that the first instalment was demanded & not paid; that the judge duly, by warrant under his hand & seal according to 8 & 9 Vict. c. 127, ordered the officer of the ct. to take A., & convey him to prison for forty days; & that B. as the attorney of J. delivered the warrant to the officer, who took A. Replication, that, by this order, it was not directed that A. should be committed, *modo et forma :—Held :* deft., having acknowledged actual participation in the act of trespass, by pleading in confession & avoidance, could not protect himself, upon this issue, by showing that he had acted merely as the attorney of J.—KINNING *v.* BUCHANAN (1849), 8 C. B. 271; 7 Dow. & L. 169; 18 L. J. C. P. 332; 13 L. T. O. S. 546; 13 Jur. 812; 137 E. R. 513; *subsequent proceedings* (1850), 15 L. T. O. S. 305.

Annotation :—**Apld.** Abley *v.* Dael (1850), 10 C. B. 62.

Part XII.—Partnership between Solicitors.

4204. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4278. *Add. Annotation :*—**Apld.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

Part XIII.—London and other Legal Agents.

4354. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4408a. Payment of account by solicitor—Sum including counsel's fees—Fees unpaid by agent—Death of agent insolvent—Rights of solicitor.]—County solrs. paid their London agent a sum of £671 19*s.* 1*d.*, the balance of an account due to him. The account included a sum of £399 19*s.* in respect of counsels' fees.

PART X. SECT. 4, SUB-SECT. 3.—B.

3873 ii. ——.]—A solr. purporting to act for a non-existing party is personally liable to pay the costs of the other party to the suit.—DHANRAJGIRJI *v.* PAYNE & Co. (1933), I. L. R. 58 Bom. 1.—**IND.**

PART XI. SECT. 2, SUB-SECT. 3.—C.

4174 ii. ——.]—Commitment after a conviction subsequently quashed for error is illegal, but a solr. who drafts the warrant is not liable for false arrest.—ROCHE *v.* GRANT, [1935] 2 D. L. R. 553; 8 M. P. R. 461; 63 Can. C. C. 315.—**CAN.**

PART XII. SECT. 1.

sx. *Sale of partnership—Custody of documents.*]—Tenders were called for the sale of partnership assets including goodwill. No offer was received for the goodwill other than an offer of £15 by S., which was not accepted; but a solr. of standing intimated his willingness to make an offer therefor if the purchaser were entitled to the custody of deeds & documents (subject to the right of the clients) & to the possession of the books of account & record, papers, accounts, draft., copies of opinions, etc. The circumstances indicated that the goodwill was of little value. S. & S. moved for an order dissolving the injunction on the ground that no sale of the goodwill had taken place :—*Held :* (1) it is illegal to sell the right to the custody of documents of clients held by a firm of solrs.; (2) under the circumstances set out in the judgment, S. & S. were not entitled to use G.'s name.—GRAY *v.* SLADDEN & STEWART, [1935] N. Z. L. R. 35.—**N.Z.**

The London agent, who died insolvent, did not in fact pay the fees. The country solrs. issued a summons in the administration action relating to the estate of deceased, by which they claimed a declaration that they were entitled to recover the sum of £399 19*s.* from the estate, or in the alternative a declaration that they were entitled to claim against the estate as creditors:—*Held:* the country solrs. could not treat that sum as received by them on a trust to pay counsel, & therefore were not entitled to recover it in full from the estate of the deceased, but they were entitled to prove as creditors for it, less an admitted set-off, as money had & received.—*Re* SANDIFORD, ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1934] Ch. 707; 103 L. J. Ch. 301; 151 L. T. 559.

Part XIV.—Discipline and Removal from Roll.

4420. *Add. Annotation:*—*As to* (1) **Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4437a. Misconduct while practising abroad—Investigation by coroner & attorney of the court.]—*Re* SOLICITOR (1928), 72 Sol. Jo. 570, D. C.

4515. *Add. Annotation:*—**Refd.** Grahame *v.* A.-G. of Fiji, [1936] 2 All E. R. 992.

4430. *Add. Annotation:*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4519. *Add. Annotation:*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4567a. —— Borrowing trust funds.]—Applt. was suspended from practice as a barrister & solr. of the Supreme Ct. of Fiji for professional misconduct. The case against applt. was twofold:—

(1) On Aug. 25, 1923, the trustees of the estate of one C., deceased, leased a portion of the trust estate to one H. for a period of ten years from May 1, 1923, with an option to purchase the freehold for £4,000. Applt. was H.'s solr. at the date of the lease & for some time prior to it. On Jan. 1, 1926, applt. became a partner with another solr., E., who acted for the C. trustees, applt. continuing to act for H., but when either was absent from Fiji the partner remaining attended to the affairs of all the firm's clients. The property leased to H. improved considerably in value, & in 1932 H. consulted applt. about the exercise of the option. On Nov. 2, 1932, H. exercised the option by a written notice to E. On Nov. 4, 1932, E. left Fiji & did not return till Dec. 23, 1932. The terms of the purchase were that of the purchase price £4,000, £1,350 were to be paid in cash, & the balance was to be secured by a mtge. at 6½ per cent. H., being unable to provide the necessary funds, agreed to sell the property to applt. on Nov. 8, 1932, in the terms of the sale to him by the C. trustees, & applt. agreed to employ H. as his commission agent for the sub-division & sale thereof. Applt., who had advanced moneys to H. on previous occasions, disclosed to E. that he was going to finance H. to the extent of £1,350, but he did not disclose to E., the extent to which he was interested in the transaction. On Mar. 15, 1933, the estate was conveeyed to H. by the C. trustees & H. executed the mtge. for the balance. The sum of £1,350 was paid by a cheque of applt. on his own account:—*Held:* the intention to exercise the option originated with H. & he solicited the assistance of applt. to enable him to carry out his intention. In those circumstances, though it is most desirable that a solr. acting for a client in any transaction should not have a personal interest in that transaction without making full disclosure, there was no duty to the C. trustees on the part of applt., since he had not instigated H. to exercise the option, to abstain from assisting his client H. to complete the purchase.

(2) The Public Trustee, as custodian trustee of the estate of one, V., appointed applt. managing trustee of that estate on Dec. 22, 1931. On Sept. 6, 1933, applt., as solr. for H., had sent a written notice to E. that the amount outstanding on the mtge. by H. to the C. trustees would be paid off on Dec. 15, 1933, & on that day applt. advanced to H. the amount necessary to obtain the transfer of the mtge., using the funds of the V. estate to repay himself the amount advanced. It was established that when applt. gave notice on Sept. 6, 1933, he intended so to use the V. trust funds, & it was admitted that applt. did not at any time disclose to the Public Trustee his interest in the transaction. On Dec. 18, 1933, the mtge. was transferred to applt. as managing trustee for the V. estate, the interest being 6½ per cent. *per annum*, the mtgor. to give 3 months prior notice in writing to repay the principal or any part of it. On Jan. 8, 1934, as managing trustee of the V. estate, applt. made an agreement with H. altering the terms of the mtge., agreeing that the beneficiaries for whom he was trustee should be paid only 5½ per cent. interest, & that the mtgor. could pay off at any time without prior notice to the mtgee.:—*Held:* in using the V. funds applt. was in fact lending trust money to himself & thereby committed a serious breach of trust. This in itself was not necessarily sufficient to constitute professional miscon-

PART XIV. SECT. 1, SUB-SECT. 5.

sl. *Dispute as to terms of contract—Powers of Law Society.*]—It is not the proper function of the Benchers of the Law Society to assume the jurisdiction of the cts. in determining questions of contract where a solr. is interested as a party. When on the hearing of a complaint against a solr. for not paying over moneys alleged to belong to a client, the discipline committee becomes aware that a question of the terms of a contract is involved, as to which there is a dispute of fact, its proper course is to direct the complainant to take such action in the cts. as he may be advised.—*Re* A SOLICITOR, [1932] 2 W. W. R. 122.—CAN.

PART XIV. SECT. 2, SUB-SECT. 2.—A.

sm. *Gross negligence.*]—Negligence, even though gross, on the part of a solr. in conducting an action does not of itself amount to "professional misconduct or conduct unbecoming a barrister or solr." within sect. 46 of Legal Profession Act, R. S. S., 1930.—

duct, but in agreeing to the alteration of the terms of the mtge., applt. was considering his own interests in preference to, & to the detriment of, the interests of the beneficiaries & was guilty of professional misconduct.—GRAHAME *v.* A.-G. OF FIJI, [1936] 2 All E. R. 992, P. C.

4636a. Application to court—Necessity for appearance by counsel.]—An application for a rule requiring an attorney to answer the matters of an affidavit must be made by a gentleman at the bar.—*Ex p.* PITT (1834), 5 B. & Ad. 1077; 2 Dowl. 439; 110 E. R. 1091; *sub nom. Re* ——, 3 Nev. & M. K. B. 566.

4636b. —— ——.]—Solrs. Act, 1888 (c. 65), s. 13, by which an application to strike the name of a solr. off the rolls, or to require him to answer allegations contained in an affidavit, is to be heard by a committee of the Incorporated Law Society, who are to embody their findings in the form of a report to the High Ct. of Justice, provides that any person, who but for the Act would have been entitled to apply to the ct. to strike a solr. off the rolls, or to require him to answer allegations contained in an affidavit, shall still be entitled so to apply, & "shall be entitled to be heard, if the society brings the report of the committee before the ct." :—*Held:* such an appct. could not be heard in person, but must appear by counsel.—*Re* A SOLICITOR, [1903] 2 K. B. 205; 72 L. J. K. B. 643; 89 L. T. 118; 51 W. R. 561; 19 T. L. R. 553; 47 Sol. Jo. 603, C. A.

4651a. Right of applicant to appear in person.]—*Re* TWO SOLICITORS, [1937] 4 All E. R. 451; 54 T. L. R. 161, C. A.

4657a. —— **From "findings"—No order made.**]—A complaint was made on behalf of the Law Society to the disciplinary committee appointed under Solrs. Act, 1932 (c. 37), s. 4, asking that a solr. might be required to answer allegations contained in an affidavit. After hearing evidence the committee promulgated their "findings & order," setting out their findings of fact & ending with the words "while not finding any professional misconduct the committee make no order as to costs." The complainant, on behalf of the Law Society, appealed:—*Held:* on a preliminary objection by resp., no appeal lay except from an "order" of the committee. There was no appeal from the "findings" with which the order was required to be prefaced, & the committee had made no order. But even if the finding that there was no professional misconduct did amount (as the ct. held that it did not) to an order dismissing the complaint, the words of Solrs. Act, 1932 (c. 37), s. 8, giving a right of appeal to appct. were not so definite as to override the long-established principle that there could be no appeal against an acquittal. The right contemplated by the sect. must be limited to cases where an order, which appct. deemed inadequate, had been made against the solr.—*Re* A SOLICITOR, [1934] 2 K. B. 463; 152 L. T. 22; 50 T. L. R. 561; 78 Sol. Jo. 587; *sub nom. Re* A SOLICITOR, *Ex p.* LAW SOCIETY, 103 L. J. K. B. 719, D. C.

4657b. —— **From order amounting to acquittal.**]—*Re* A SOLICITOR, No. 4657a, *ante*.

4660a. Extension of time to appeal—Application under R. S. C., Ord. 59, r. 16—When granted.]—*Re* A SOLICITOR (1929), 73 Sol. Jo. 191, D. C.

Re SOLICITOR, [1935] 3 W. W. R. 428; 5 F. L. J. (Can.) 229; [1936] 1 D. L. R. 368.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 5.

sn. *Providing sham bail.*]—B., who was in custody upon a criminal charge, retained H. as his solr. Bail was fixed in one surety at fifty pounds. H. obtained fifty pounds from B., attended at the Central Police Ct. with one P., & paid in that amount in P.'s name. P. then went surety for B.:—*Held:* H. had been a party to providing sham bail, & he should be suspended from practice for a period of six months.—*Re* SOLICITOR, *Ex p.* INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES (1935), 52 N. S. W. W. N. 182.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 8.

so. *Assisting director to obtain undue preference.*]—A practitioner, while acting as a solr., was knowingly party to a scheme whereby L., a director, who was an unsecured creditor of a co., obtained an undue preference over the assets of the co. The scheme was carried through by B., a party to the scheme, purporting to lend money to the co. & securing a debenture to himself for the loan. The "loan" was arranged by L., the director, obtaining from the co.'s bank, a bank cheque drawn on the co.'s account, which cheque was paid to the credit of B.'s account at another Bank. The amount of the cheque thus paid in, except a negligible sum, was immediately withdrawn by B. by cheque, & this cheque was paid to the credit of the co.'s account. A document purporting to be a transfer of the debenture from B. to L. was prepared in anticipation of the debenture being given, which furnished evidence that the practitioner knew that the money lent to the co. was not B.'s but L.'s money. The co. went into liquidation within six months of the giving of this debenture. The practitioner did not disclose to the liquidators the circumstances under which the debenture had been given:—*Held:* guilty of unprofessional conduct.—*Re* PRACTITIONER OF THE SUPREME COURT, [1930] S. A. S. R. 142.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 9.

sr. *Issuing valueless cheques.*]—Where a practitioner had drawn & passed to persons not clients of his several valueless cheques without any reasonable expectation that they would be met on presentation, & had not paid the amounts for which they were drawn:—*Held:* he had been guilty of unprofessional conduct, & should be struck off the rolls.—*Re* R. (No. 2), [1927] S. A. S. R. 448.—**AUS.**

st. *Failing to have trust account audited.*]—M., a solr., was convicted & fined for failing to have his trust account audited as required by the regulations under Law Practitioners Amendment Act, 1913. A subsequent audit proved that the account was in order & correct:—*Held:* notwithstanding the conviction & fine & the fact that the solr.'s trust account was subsequently found to be correct, his neglect to have same audited amounted to professional misconduct quite irrespective of the offence against the regulations & of the punishment for that offence, & he should be ordered to pay the Law Society's costs of proceedings.—*Re* M., [1930] N. Z. L. R. 285.—**N.Z.**

PART XIV. SECT. 3, SUB-SECT. 4.—B.

a i. ——.]—The ct. cannot review a finding by the Benchers that a solr. is unworthy to practise.—*Re* LAW SOCIETY OF UPPER CANADA & WOODS, [1935] 2 D. L. R. 557; O. R. 234.—**CAN.**

PART XIV. SECT. 4.

4682 ii. —— ——.]—Where a solr. has been proved guilty of theft & his name has been removed from the rolls, the ct. will not, except in exceptional circumstances, permit him to have his name restored.—*Ex p.* MACAULAY (1929), 30 S. R. N. S. W. 193; 47 N. S. W. W. N. 82.—**AUS.**

sv. *Mandamus—When granted.*]—MARION *v.* CAMPBELL, [1932] S. C. R. 433; 3 D. L. R. 433.—**CAN.**

Part XV.—Unqualified Persons.

4725a. —— **Corporation.**]—A corporate body is not a "person" within Solicitors Act, 1932 (c. 37), s. 46.—LAW SOCIETY *v.* UNITED SERVICE BUREAU, LTD., [1934] 1 K. B. 343; 103 L. J. K. B. 81; 150 L. T. 159; 98 J. P. 33; 50 T. L. R. 77; 77 Sol. Jo. 815; 31 L. G. R. 436; 30 Cox, C. C. 37, D. C.

4737a. Acting under power of attorney.]—An unqualified clerk purporting to act under a power of attorney in the management of the practice of a solr. who was abroad was held to be guilty of a misdemeanour & contempt of ct., & was committed to prison for two months.—*Re* THORPE (J. W.) (1932), 76 Sol. Jo. 919.

4775. After this case add :—

Jurisdiction of county court.]—*See* COUNTY COURTS, Vol. XIII., p. 555, No. 1122.

PART XV. SECT. 1.

sw. *Quebec Bar Act*, 1925—*Offence by commercial association.*]—A commercial assocn., the manager of which procures appointment as inspector in bkpcies., questions debtor & lodges criminal informations, is guilty of an offence against Quebec Bar Act, 1925.—MONTREAL BAR *v.* BETTER BUSINESS BUREAU OF MONTREAL (1933), 60 C. C. C. 306.—CAN.

PART XV. SECT. 2, SUB-SECT. 1.

sy. *Legal Profession Act, R. S. A.*, 1922, *s.* 46—*Right of assignee of debt to sue.*]—*Held:* that a person not enrolled who is the assignee of a debt under an assignment which complies with the requirements of sect. 37 of Judicature Act, R. S. A., 1922, does not violate sect. 46 of above Act by bringing an action on the debt in his own name, without the intervention of a solr., even though he gave no consideration for the assignment & has no beneficial interest in the recovery of the debt & the sole motive for the assignment was to save the expense of solr.'s fees.—R. *v.* COOK, [1931] 3 W. W. R. 707; [1932] 1 D. L. R. 89; 26 Alta. L. R. 156; 57 C. C. C. 256.—CAN.

PART XV. SECT. 3, SUB-SECT. 2.

4767 iv. ——.]—*Held:* as resps. had done a thing which is usually done by a solr., & had done it in such a way as to lead to the reasonable inference that they were solrs., they had acted in contravention of s. 87 of the Imperial Acts Application Act, 1922, s. 87, & were therefore guilty of a contempt of the Supreme Ct. & punishable accordingly.—*Re* BERRY & GULLIVER, *Ex p.* LAW INSTITUTE OF VICTORIA, [1929] V. L. R. 224; [1929] Argus L. R. 192.—AUS.

SPECIFIC PERFORMANCE.

Part II.—Limits of Jurisdiction.

61. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

105. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

107. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

107a. —— **Acceptance by agent of purchaser subject to ratification—Withdrawal by vendor before ratification.**]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with the deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a *quorum* & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later "to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* (1) on the facts the members of the deputation did not warrant their authority to bind the board, & that their acceptance of the deft.'s offer was subject to ratification by the board; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455; 100 L. J. Ch. 87; 144 L. T. 545.

160. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

Part III.—Defences to Claim for Specific Performance.

198. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

257. *Add. Annotations :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510; *Re* Williams, Richards *v.*

PART I.

1 viii. ——.]—The remedy of specific performance is amongst those principles which are administered by cts. in India by way of justice, equity & good conscience.—GULAB RAY GHUTGHUTIA *v.* MAHENDRA NATH SREEMANY (1935), I. L. R. 14 Pat. 249.—**IND.**

PART II. SECT. 2.

24 i. *General rule—Partial relief not given.*]—A contract which includes a provision for personal services to be rendered by one of the parties thereto which is not separable from the other terms of the contract is not a contract for which specific performance can be decreed.—DEADY *v.* BRUNER & ADAMS, [1933] 1 W. W. R. 398.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

65 ii. —— ——.]—The contract of lease or hire of personal service, owing to the personal character of the obligations which it contains, is not susceptible of a condemnation for specific performance: applt. could not physically be forced to keep resp. in its employ, nor could resp. be physically constrained to remain in applt.'s service.—DUPRÉ QUARRIES, LTD. *v.* DUPRÉ, [1934] S. C. R. 528; 4 D. L. R. 618.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

77 i. *Employment as manager—Theatre.*]—In an action for damages for wrongful ouster from a theatre property :—*Held :* the agreement under which pltf. claimed the right of possession was merely one of hiring & service, the remuneration being measured by reference to the profits of the theatre business; & therefore pltf. was not entitled to specific performance of the agreement, & pltf.'s possession being only ancillary to the contract of service, any interest which he had in the property ended with the termination of the contract.—DOWSLEY *v.* BRITISH CANADIAN TRUST CO., [1932] 2 W. W. R. 601; 4 D. L. R. 97; 26 Alta. L. R. 393; *affd.*, [1933] S. C. R. 115; 1 D. L. R. 481.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

127 iv. —— ——.]—RAMJI *v.* RAO KISHORESINGH (1929), L. R. 56 Ind. App. 280.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.

191 iv. —— ——.]—Defts. were in business as land agents, & were the agents of G. for the sale of certain lots. Pltf. made an offer to defts. for the lots & paid them $100 as a deposit. There was nothing in writing, & the oral offer & deposit were accepted by defts. subject to confirmation by G. The offer was submitted to G., who notified defts. of his acceptance. Defts. then, without informing pltf., obtained from G. an agreement to sell to themselves, & paid him a portion of the purchase-money. They then refused to make the sale to pltf., & returned his $100 :—*Held :* there being, no contractual, fiduciary, or other relationship between pltf. & defts., pltf. was not entitled to any relief against them.—ARMSTRONG *v.* BASTEDO (Sask.) (1913), 24 W. L. R. 87; 4 W. W. R. 481; 11 D. L. R. 241.—**CAN.**

191 v. —— ——.]—CREAGHAN (J. D.) CO., LTD. *v.* DAVIDSON, [1929] 3 D. L. R. 146; *revsg.*, [1928] 3 D. L. R. 632.—**CAN.**

191 vi. —— ——.]—FAWCETT *v.* FAWCETT (1935), 5 F. L. J. (Can.) 99.—**CAN.**

sg. *Lease executed by one party.*]—A lease signed by the lessor & a guarantor, but not executed by the lessee, is incomplete, & incapable of specific performance.—FAWCETT *v.* TINGLEY, [1935] 4 D. L. R. 373; 10 M. P. R. 170.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

235 viii. —— ——.]—An option given the lessee of a hotel to purchase it within a year for $45,000, $15,000 cash & "the balance to be arranged": —*Held :* unenforceable because incomplete.—MCSORLEY *v.* MURPHY (B. C.), [1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589; *affd. sub nom.* MURPHY *v.* MCSORLEY & PRINCE EDWARD HOTELS, LTD.—**CAN.**

235 ix. —— ——.]—GEARY *v.* CLIFTON CO., [1928] 3 D. L. R. 64; 62 O. L. R. 257.—**CAN.**

235 x. —— ——.]—CUMMINS *v.* CUMMINS, [1934] 1 W. W. R. 305; 2 D. L. R. 228; 41 Man. L. R. 607.—**CAN.**

Williams, [1930] 2 Ch. 378; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] 1 Ch. 97.

282a. Agreement subject to "model form of conveyance specially prepared"—Absence of model form.]—Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part performance, & the ct. can grant neither specific performance nor damages.

Pltf. signed an agreement, in the form of a letter prepared on behalf of deft., to purchase certain premises subject to the conditions indorsed thereon, & to take the conveyance "in the model form of conveyance specially prepared" for use in relation to the same. The conditions stated (*inter alia*) that the property sold was subject to restrictions appearing in the model form, & that if the purchaser should not after notice withdraw any objection which the vendor could not or would not remove, the vendor might by notice in writing annul the agreement. The premises were part of property conveyed to deft. by three conveyances, among others, dated respectively 1908, 1910 & 1911. They were comprised in the 1908 conveyance, & were part of what was known in deft.'s agent's office as block 4, other parts of the property being there known as blocks with other numbers. Most of the property had come to deft. subject to restrictions against user for trade purposes. At the date of the agreement the restrictions were obsolete in regard to blocks 4, 7 & 9; but in all dealings with property comprised in those blocks deft. had imposed like restrictions. No model form had been prepared for use in dealings with block 4, & through a mistake of deft.'s agent, pltf. received one appropriate to block 8. Pltf. took possession before completion, & soon raised the question of turning the premises into a shop. After long negotiations, during which the question of restrictions was thoroughly discussed, deft. refused permission, maintaining that, despite his agent's mistake in sending the wrong model form, the restrictions against trade ought to stand; & a new draft conveyance, incorporating such restrictions, was prepared on his behalf. Pltf. refused to execute it, & sought by this action to enforce the original agreement subject only to restrictions in one of the schedules to the conveyance of 1908, & thus free from restrictions on trading:—*Held:* there was no enforceable contract, as by reason of the non-existence of the appropriate model form of conveyance there were missing from the original agreement material terms which the ct. could not supply, & also that damages could therefore not be assessed.—STIMSON *v.* GRAY, [1929] 1 Ch. 629; 98 L. J. Ch. 315; 141 L. T. 456.

285. *Add. Annotation:*—**Refd.** Stimson *v.* Gray, [1929] 1 Ch. 629.

285a. ——.]—STIMSON *v.* GRAY, No. 282a, *ante*.

314a. ——.]—LANSDOWN'S LORD CASE (*circa* 1786), cited in 16 Ves. at p. 310; 33 E. R. 1002.

Annotation:—**Consd.** Moody *v.* Walters (1809), 16 Ves. 283.

398. *Add. Annotation:*—**Refd.** Dixon (J. J.) *v.* Taylor & Cowells (trading as Pine-exx Liquid & Disinfectant Soap Co.) (1933), 50 R. P. C. 405.

399. *Add. Annotation:*—**Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

548. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

556. *Add. Annotation:*—**Consd.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

624. *Add. Annotation:*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

639. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

703. *Add. Annotation:*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

707a. Property subject to old closing order.]—On July 11, 1929, the purchaser bought Lot 2 at a sale by auction & paid a deposit. The particulars of sale described Lot 2 as an unrestricted freehold, practically an island block, with four frontages to Little Orford Street & three other streets in Chelsea, the block forming an excellent building site, when the existing buildings came into hand. On examining the vendors' registered absolute title the purchaser found Entry 7 in the Charges Register stating in effect that on the transfer of Lot 2 & other property to the vendors on May 23, 1929, by mtgees. selling under their power of sale in a mtge. of Feb. 17, 1903, from Co. A., the former owners, the vendors by way of indemnity to the mtgees., but not further or otherwise covenanted to perform the obligations of Co. A. under a deed of Dec. 23, 1905, made between Co. A. & the Chelsea Borough

PART III. SECT. 2, SUB-SECT. 3.—B.

b i. ——.]—Specific performance will be decreed against a vendor, notwithstanding a dispute as to the quantity of land, especially where there has been part performance.—DAUPHINEE *v.* DAUPHINEE, [1936] 1 D. L. R. 647; 10 M. P. R. 94; 5 F. L. J. (Can.) 228.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

277 i. *Term omitted from written agreement—Terms contained in parol agreement.*]—In an action by a vendor for specific performance of an agreement for the sale of farm lands deft. contended that the whole agreement was based upon the understanding that the farming equipment would be included in the sale although no express mention of it was made in the written agreement. Deft. or his tenant remained in possession of the equipment during the winter following the making of the agreement, without any suggestion being made by pltf. that deft. was not entitled to the equipment. In Mar. pltf. retook possession of the equipment & testified that he did so because deft. had defaulted in paying certain instalments:—*Held:* if the omission of express reference in the written agreement to the equipment deprived deft. of any remedy at law, the case was a proper one in which to apply sect. 13 (*i*) of King's Bench Act, which authorises "the administration of justice in all cases in which there exists no adequate remedy at law," & justice could be done only by replacing the parties as nearly as possible in the same position in which they were before the agreement was reduced to writing.—MCLEOD *v.* KRYSKO, [1930] 3 W. W. R. 601; *revsd.*, [1931] 3 D. L. R. 282; 2 W. W. R. 27; 39 Man. L. R. 465.—**CAN.**

m i. ——.]—Specific performance refused of an agreement in writing for sale of a store where all the terms agreed upon were not included in the agreement.—MYERS *v.* COOK, [1932] 4 M. P. R. 198.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

287 viii. —— ——.]—Action for specific performance of an oral agreement to sell land dismissed, no act of part performance being established.—WARD *v.* O'LEARY (1935), 10 M. P. R. 63.—**CAN.**

Council & under a London County Council Order of Dec. 12, 1905. The deed of Dec. 23, 1905, made in pursuance of a large building scheme by Co. A. provided for the stopping up (*inter alia*) of Little Orford Street & for making certain new streets, including a new transverse street bisecting Lot. 2. The Borough Council were to obtain the necessary Closing Orders, & Co. A. were to lay out the new streets at their own expense. By their order of Dec. 12, 1905, the London County Council on the application of Co. A. sanctioned the new streets subject to certain conditions including a condition that Co. A. should covenant to lay them out, & on Dec. 21, 1905, Co. A. covenanted accordingly. On July 10, 1906, on the Borough Council's application the justices made a Closing Order for Little Orford Street. For financial & other reasons this part of Co. A.'s scheme had not yet been proceeded with. Little Orford Street was still open; it was in fact repaired by the Borough Council; & at the date of the contract neither the vendors nor the purchaser knew of the Closing Order's existence. On discovering Entry 7 the purchaser required the vendors to delete it from the Register & to obtain a release of the obligations, &, on their refusal, he issued a vendor & purchaser summons for a declaration that a good title was not shown. On subsequently discovering the Closing Order he discontinued the summons & brought this action claiming a declaration that he was entitled to repudiate the contract, damages for breach, & return of the deposit. The vendors denied any breach & counterclaimed for specific performance:—*Held:* (1) the twenty-four years' old Closing Order did not affect the title, but, if & so far as it was inconsistent with the particulars, merely raised a case of innocent misrepresentation, on which the purchaser could neither repudiate the contract nor recover damages, his only remedy being to resist specific performance. Therefore, the purchaser's action failed; (2) on the vendors' counterclaim for specific performance that there was in fact no misrepresentation in the particulars, as the word "street" even in London did not necessarily mean a public highway. There was therefore no ground for refusing specific performance.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479; 99 L. J. Ch. 274; 142 L. T. 626.

707b. Property represented as bounded by "street" —Whether confined to public highway.]—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., No. 707a, *ante.*

709. *Add. Annotation:*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

727. *Add. Annotation:*—**Refd.** Sennett *v.* Rendell (1934), 79 L. Jo. 98.

730. *Add. Annotation:*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

768. *Add. Annotations:*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell, [1931] 1 Ch. 35.

773. *Add. Annotation:*—**Consd.** Lock *v.* Bell, [1931] 1 Ch. 35.

801. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

812. *Add. Annotation:*—*Generally*, **Refd.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

829. *Add. Annotation:*—**Consd.** Grant *v.* Derwent (1928), 140 L. T. 330.

Part IV.—Particular Contracts.

951. *Add. Annotation:*—**Consd.** *Re* Franklin & Swathling's Arbn., [1929] 1 Ch. 238.

PART III. SECT. 13, SUB-SECT. 2.

p i. ——.]—*Resale by plaintiff under conditions inconsistent with completion of original contract.*]—NEW SOUTH WALES PUBLIC TRUSTEE *v.* GAVEL (1927), 40 C. L. R. 169.—AUS.

PART III. SECT. 15, SUB-SECT. 1.

q i. —— *Land of deceased intestate—Administratrix without power of sale.*]—B. died in 1920, leaving a widow & four children; letters of administration were granted to the widow. Pltf. made an offer for land which B. had owned. At this time the two younger children were infants. In 1927 the widow signed a document by which she agreed to sell certain marsh land "owned by & belonging to the estate of my late husband":—*Held:* in 1927 no marsh land belonged to the estate of B. for what had been his under Devolution of Estates Act vested in defts., & as administratrix the widow had no power of sale.—BROWN *v.* BARBER, [1929] 2 D. L. R. 391; 63 O. L. R. 512.—CAN.

PART III. SECT. 15, SUB-SECT. 3.

sd. *Agreement for sale of licensed premises—Subsequent loss of licence.*]—SUMMERS *v.* COCKS, [1928] A. L. R. 107; 40 C. L. R. 321.—AUS.

PART IV. SECT. 26.

sf. *Agreement for possession & devise or conveyance in return for services.*]—Under an oral agreement between pltf. & defts. the latter were to have exclusive possession of a parcel of pltf.'s land in return for personal services to be rendered by them to her during her lifetime or until she sold or disposed of her adjoining property, & she also agreed to leave them said parcel by her will or, in the event of the sale of the adjoining property & the removal of her residence therefrom, to convey it to them. Defts. took up their residence on the land & built a house & other improvements thereon referable only to said agreement. Pltf. brought an action to recover possession, & defts. counterclaimed for specific performance. The ct. dismissed the action & declared that defts. were entitled to specific performance on the death of pltf. or upon her removing from the neighbourhood:—*Held:* on appeal, the dismissal of the action ought to be sustained, but the decree of specific performance was premature.—LYELL *v.* CORMACK, [1928] 4 D. L. R. 902; [1928] 3 W. W. R. 284.—CAN.

sg. *Contract to take supply of gas.*]—Under a contract between deft. city & a co. to whose rights thereunder pltf. co. was held to have succeeded, the city agreed to permit the co. to connect gas wells, which the co. agreed to drill by a certain date, with the city's main & then to withdraw from the main for its own use a certain percentage of the gas thus added to the city's supply. The co. not having proceeded to drill, the city notified it that the city would not perform its part of the contract after a date specified, which was prior to that to the contract was found on the trial to have been extended by agreement of the parties. The co. then sued for a declaration that the contract was a good & subsisting contract extending to said later date, which should be specifically performed by deft., & for an extension of time in which to complete the well or wells, & for damages. Said later date had passed at the time of the trial:—*Held:* although the contract had been broken by the city, it was one with respect to which it was impossible to decree specific performance; moreover, it was beyond the power of the ct. to extend the time, &, since the question whether the co. had really sustained any damage depended upon a question which could not be answered, *viz.*, whether by said date the co. could or would have sunk the well or wells & have found sufficient gas to justify it in carrying it to the city's main, pltf. could recover nominal damages only.—MEDALTA POTTERIES, LTD. *v.* MEDICINE HAT CITY, [1931] 1 W. W. R. 217.—CAN.

Part V.—Proceedings for Specific Performance.

990. *Add. Annotation :* — **Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

1029. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

1030. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

1109a. Purchaser in possession—Delay in completion—Form of judgment.]—MUTUAL INVESTMENT SOCIETY, LTD. *v.* JOHNS, [1934] W. N. 59 ; 177 L. T. Jo. 240.

1138. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1140. *Add. Annotation :—Generally*, **Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 94 J. P. 86.

1287. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1365. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

1373. *Add. Annotation :*—**Consd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

1394. *Add. Annotation :*—**Consd.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

1474. *Add. Annotation :*—**Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34.

1519a. —— On adjournment into court—Liability for costs of adjournment.]—RAMPTON *v.* MORLEY [1928] W. N. 268 ; 66 L. Jo. 427.

PART V. SECT. 2.

a i. ——.]—BURRELL *v.* WATT & HARDINGE, [1928] 3 D. L. R. 505 ; [1928] 2 W. W. R. 482.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.—A.

q i. —— *Under Real Property Act*, 1900.]—The principle of *Tasker* v. *Small*, No. 1043, that in proceedings to enforce specific performance of a contract the parties to the contract are the necessary & sufficient parties to the action, & that where a third party sets up some equity against dealing with the land which is the subject-matter of a contract the purchaser cannot in a suit for specific performance join that third party, applies to land under the Real Property Act, 1900, as well as to land held under a common law title.—THOMSON *v.* RICHARDSON (1928), 29 S. R. N. S. W. 221 ; 46 N. S. W. W. N. 77.—**AUS.**

PART V. SECT. 6, SUB-SECT. 3.—B.

o i. —— —— *Whether varied on d.*]—SMITH *v.* OBORN, [1931] 2 W. R. 817 ; 25 Alta. L. R. 549.—**CAN.**

sc. *Declaration of vendor's lien.*]—GLENEAGLES, LTD. *v.* THOMSON, [1933] 3 W. W. R. 159.—**CAN.**

PART V. SECT. 6, SUB-SECT. 4.—D. (b) iii.

1185 ii. ——.]—Where in a suit by the purchaser for specific performance of a sale of land, a decree was passed, directing an inquiry as to whether the vendor "can make out a good title" & if so, directing him to convey :—*Held :* it is desirable to follow the English practice of including in the order directing the principal inquiry (*i.e.*, as to whether a good title can be made) a secondary inquiry (*i.e.*, as to the time at which a good title was shown).—HARISHANKAR PAL *v.* SARADAPRASAD DAS (1931), I. L. R. 59 Calc. 536.—**IND.**

PART V. SECT. 6, SUB-SECT. 4.—E.

sf. *Extrinsic evidence of parcels.*]—DAUPHINEE *v.* DAUPHINEE, [1936] 1 D. L. R. 647 ; 10 M. P. R. 94 ; 5 F. L. J. (Can.) 228.—**CAN.**

PART V. SECT. 6, SUB-SECT. 6.

sh. *Whether court will consider—Where claim to specific performance abandoned.*]—LEVY *v.* NORTON-CULHANE (1928), 28 S. R. N. S. W. 302 ; 45 N. S. W. W. N. 51.—**AUS.**

PART V. SECT. 6, SUB-SECT. 11.—A.

sn. *Amendment of claim—When allowed.*]—MAMA *v.* SASSOON (1928), L. R. 55 Ind. App. 360.—**IND.**

PART V. SECT. 8, SUB-SECT. 1.

sp. *By whom enforceable.*]—A decree for specific performance operates in favour of both parties & a deft. is as much entitled to enforce it as pltf.—HERAMBACHANDRA MAITRA *v.* JYOTISHCHANDRA SINGHA (1931), I. L. R. 59 Calc. 501.—**IND.**

STATUTES.

Part I.—In General.

3a. Meaning of Act of Parliament—Act of Imperial Parliament.]—In 1800, by the Act of Union, 39 & 40 Geo. 3, c. 67, the two Parliaments were united, & thereafter the words "some Act of Parliament" mean an Act of Parliament of the United Kingdom. Now looking at the Lotteries Act, 1923 (c. 60), it is clear to me that the words "some Act of Parliament" mean some Act of the Imperial Parliament. Although it is true that in 1922 an Act of the United Kingdom set up a Legislature for Ireland, that has not altered the meaning of the expression, "Act of Parliament" in the Act of 1823, & it is impossible to say that an Act passed by the Irish Legislature is an "Act of Parliament" within Lotteries Act, 1823 (c. 60), s. 41 (SLESSER, L.J.).—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197, 203; 100 L. J. K. B. 638; 145 L. T. 522; 95 J. P. 137; 47 T. L. R. 383; 29 L. G. R. 452, C. A.

15a. May contravene international law.]—Legislation of the Imperial Parliament, even in contravention of generally acknowledged principles of international law, is binding upon & must be enforced by the cts. of this country, for in these cts. the legislation of the Imperial Parliament cannot be challenged as *ultra vires* (*per* CUR.).—CROFT *v.* DUNPHY, [1933] A. C. 156; 102 L. J. P. C. 6; 148 L. T. 62; 48 T. L. R. 652; 18 Asp. M. L. C. 370, P. C.

Part II.—Classification and Framework.

52. *Add. Annotations :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533; Moon *v.* London County Council, Potteries Electric Traction Co. *v.* Bailey, [1931] A. C. 151.

58. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

64a. ——.]—R. *v.* HARE, No. 634a, *post.*

70. *Add. Annotation :*—**Consd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

—.]—One further point was taken upon the Superannuation Act, 1859 (c. 26), with which it is necessary to deal. The marginal notes of sect. 3 refer to "existing rights" & of sect. 12 to "right." It was contended that these catchwords could be used to explain the meaning of sects. against which they appear. For my part I cannot allow this. As explained by BAGGALLAY, L.J., in *A.-G.* v. *Great Eastern Ry. Co.*, No. 70, marginal notes are not a part of an Act of Parliament. The Houses of Parliament have nothing to do with them, & I agree with the learned Lords Justices in that case, BRAMWELL, JAMES, & BAGGALLAY, that the cts. cannot look at them. Their imperfections, spoken of by BRAMWELL, L.J., are illustrated by the note of sect. 9 of this Act (LORD HANWORTH, M.R.).—NIXON *v.* A.-G., [1930] 1 Ch. 566, 593; 99 L. J. Ch. 259; 143 L. T. 176; 46 T. L. R. 246, C. A.; *affd. on other grounds*, [1931] A. C. 184, H. L.

91. *Add. Annotation :*—**Refd.** International Ry. Co. *v.* Niagara Parks Commission, [1937] 3 All E. R. 181.

Part III.—Interpretation.

134. *Add. Annotation :*—**Consd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

135. *Add. Annotations :*—**Consd.** Assam Railways & Trading Co. *v.* I. R. Comrs., [1935] A. C. 445. **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

137. *Add. Annotation :—As to* (1) **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

139. *Add. Annotation :—As to* (1) **Expld. & Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494.

141. *Add. Annotations :*—**Refd.** R. *v.* Minister of Transport, *Ex p.* Upminster Services. Ltd., [1934] 1 K. B. 277; Errington *v.* Minister of Health, [1935] 1 K. B. 249; Manchester City (Ringway Airport) Compulsory Purchase Order, 1934 (1935), 153 L. T. 219; Offer *v.* Minister of Health, [1936] 1 K. B. 40; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337; Marriott *v.* Minister of Health (1935), L. J. K. B. 125; Barratt & Co. *v.* London, Midland & Scottish, London & North Eastern & Great Western Ry. Co.'s (1936), 24 Ry. & Can. Tr. Cas. 127; Leslie *v.*

PART I.

3a i. *Meaning of Act of Parliament.*]—An Act of Parliament does not mean any proclamation or treaty.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVERNMENT (1932), I. L. R. 60 Calc. 364.—**IND.**

a i. ——.]—The general rule that before a law or any regulation or bye-law having the force of a law can become operative, it must be duly promulgated, must be read subject to the qualifications that the word "law" in the rule must not be given too wide a connotation, & that the enabling enactment must be looked to in order to see whether the necessity for promulgation is or is not excluded.—BYERS *v.* CHINN, [1928] App. D. 322.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 6.

79 iii. ——.]—In the matter of interpretation of status, punctuation is not to be deemed a part of the statute.—NIAZ AHMAD KHAN *v.* PARSHOTAM CHANDRA (1931), I. L. R. 53 All. 374.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—B.

126 ix. ——.]—*Held :* in interpreting a statute, reference cannot be made to the debates in the Legislative Council, or the report of the Select Committee.—GURDIAL SINGH *v.* SRI DARBAR SAHIB AMRITSAR (CENTRAL BOARD LOCAL COMMITTEE) (1928), I. L. R. 9 Lah. 689.—**IND.**

London & North Eastern & London, Midland & Scottish Ry. Co.'s (1936), 24 Ry. & Can. Tr. Cas. 182.

142a. ——— ——— ———.]—Housing Act, 1925 (c. 14), s. 40, which empowers the Minister of Health to make an order confirming, with or without modification, an improvement scheme made under the Act, & provides that " the order of the Minister when made shall have effect as if enacted in this Act," does not preclude the ct. from calling in question the order of the Minister where the scheme presented to him for confirmation is inconsistent with the provisions of the Act.—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, [1931] A. C. 494; 100 L. J. K. B. 306; 47 T. L. R. 337; 75 Sol. Jo. 232, H. L.

Annotations :—**Consd.** *Re* Bowman (1932), 48 T. L. R. 351. **Refd.** R. *v.* Minister of Health, *Ex p.* Purfleet Urban District Council (1934), 104 L. J. K. B. 18; R. *v.* West Midland Traffic Area Licensing Authority, *Ex p.* Great Western Ry. Co., [1935] 1 K. B. 449.

143. *Add. Annotations :*—**Apld.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37. **Consd.** Assam Railways & Trading Co. *v.* I. R. Comrs., [1935] A. C. 445.

151. *Add. Annotation :*—*As to* (1) **Consd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

205. *Add. Annotation :*—**Consd.** *Re* Midland (Amalgamated) District (Coal Mines) Scheme, 1930, Holliday & Sons, Ltd. *v.* Executive Board (1934), 152 L. T. 212.

222. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

239. *Add. Annotation :*—**Refd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129.

240a. ———.]—It is a fundamental principle in construing Acts of Parliament to give words their ordinary sense, if by that there arises no repugnancy or inconsistency (LORD TOMLIN). —*Re* JENKINS, JENKINS *v.* DAVIES, [1931] 2 Ch. 218; 100 L. J. Ch. 265; 145 L. T. 184; 47 T. L. R. 379, C. A.

253. *Add. Annotations :*—**Refd.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564; Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 2) (1934), 27 B. W. C. C. 313.

255. *Add. Annotation :*—**Apld.** Swan *v.* Pure Ice Co., [1935] 2 K. B. 265.

277. *Add. Annotations :*—**Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402; *Re* Sassoon (1933), 49 T. L. R. 407. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

289. *Add. Annotations :*—**Consd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858. **Refd.** Leitch *v.* Emmott, [1929] 2 K. B. 236.

322. *Add. Annotation :*—**Refd.** Stokes *v.* Little, [1935] 1 K. B. 182.

337. *Add. Annotation :*—**Refd.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564.

340. *Add. Annotation :*—*As to* (2) **Refd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

342a. ———.]—The words " charitable institution " in any legislative Act should be given their technical legal sense, unless a contrary intention appears from the context.—ADAMSON *v.* MELBOURNE & METROPOLITAN BOARD OF WORKS, [1929] A. C. 142; 98 L. J. P. C. 20; 140 L. T. 107; 45 T. L. R. 3, P. C.

350. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

351. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

359. *Add. Annotation :*—**Apld.** *Re* Blücher (Prince) (1930), 47 T. L. R. 19.

378. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

PART III. SECT. 2, SUB-SECT. 2.—A.

153 xxii. ———.]—In construing an Indian Act words should be given their widest possible meaning consistent with the context unless there is something in the Act itself to indicate that they are intended to be used in the artificial & technical sense which they have acquired in English law or in any other restricted sense. — HAJI RAHIMBUX ASHAN KARIM *v.* CENTRAL BANK OF INDIA (1928), I. L. R. 56 Calc. 367.—**IND.**

153 xxiii. ———.]—The primary & exact meaning of the word " adjoining " is conterminous, & where the word is used in a statute it should be given that meaning unless the context shows that it is used in a looser sense as meaning near or neighbouring.

In Municipal Corporations Act, 1920, s. 282, of New Zealand, which authorises a municipal council to contract with the local authority of any " adjoining district " for the supply thereto of electricity, the context does not show that the word " adjoining " is not used in its exact & literal sense. The sect. therefore does not authorise the council of a borough so to contract with the council of a neighbouring borough unless the boroughs are conterminous.—NEW PLYMOUTH CORPN. *v.* TARANAKI ELECTRIC-POWER BOARD, [1933] A. C. 680; 102 L. J. P. C. 212; 149 L. T. 594, P. C.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—C.

257 xii. ———.]—R. *v.* COFFEY (Ont.), [1929] 1 D. L. R. 693; 51 Can. Crim. Cas. 100.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—D.

297 vii. ———.]—The ct. will not give to a statute an interpretation which results in a palpable injustice unless the legislature has manifested by express words an intention to produce that result. Such an intention will not be inferred from the use of merely general words.—*Re* THE EXCISE ACT (Man.), [1929] 4 D. L. R. 154; 2 W. W. R. 353.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

356 i. *Words of statute clear—Consequences not regarded.*]—MURRAY *v.* WEST VANCOUVER, [1937] 3 W. W. R. 269.—**CAN.**

369 iv. ——— ———.]—Where the actual words of a statute afford no guidance as to the intention of the legislature the ct. will conclude the legislature intended an equitable & not an inequitable result.—BORCHERDS *v.* RHODESIA CHROME & ASBESTOS CO., LTD., [1930] App. D. 112.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 4.—A.

376 xxii. ———.]—A lien is not to be considered to be imposed without a plain declaration of the intention of the legislature to impose it, shown in clear & unambiguous language.—*Re* HARDY, [1929] 1 D. L. R. 300; 63 O. L. R. 246.—**CAN.**

376 xxiii. ———.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

376 xxiv. ———.]—Where a special Act of the Dominion Legislature has authorised the construction of a bridge carrying a railway over a navigable channel " so as not to interfere with navigation," & has incorporated the Railway Act, an order made by the Railway Board under sect. 268 of that Act, which empowers the Board to authorise the construction of a bridge over navigable waters according to plans approved by the Governor in Council, affords no defence to a claim in respect of damage caused to a ship by reason of the bridge constructed being a substantial interference with navigation & therefore a public nuisance. The protection of the public right of navigation being dealt with both in the special Act & in the general Act, the express provision of the special Act overrides those of the general Act, both having regard to sect. 3 of the Railway Act & apart therefrom.—EURANA S.S. *v.* BURRARD INLET TUNNEL & BRIDGE CO., [1931] A. C. 300; 100 L. J. P. C. 68; 144 L. T. 556, P. C.—**CAN.**

376 xxv. ———.]—If the language of a section of a statute is such that in order to give a meaning to the section it must be completely altered or so

394. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

400. *Add. Annotation :—As to* (1) **Refd.** Moore *v.* Twcedale, [1935] 2 K. B. 163.

413. *Add. Annotation :*—**Refd.** Altrincham Electric Supply, Ltd. *v.* Sale Urban District Council (1936), 154 L. T. 379.

447a. —— ——.]—On a question of the true construction of an Income Tax Act a report of a Royal Commission containing certain recommendations :—*Held :* not admissible to show the purpose or object of the Legislature in passing the Act, although it appeared to adopt the recommendations.—ASSAM RAILWAYS & TRADING CO., LTD. *v.* INLAND REVENUE COMRS., [1935] A. C. 445 ; 103 L. J. K. B. 583 ; 152 L. T. 26 ; 50 T. L. R. 540 ; 18 Tax Cas. 509, H. L.

448a. —— ——.]—*Held :* Merchant Shipping (International Labour Conventions) Act, 1925 (c. 42), s. 1, being unambiguous, it was not permissible to refer to the preamble of the Act or to the draft convention to which the Act was intended to give effect in order to give the section a meaning other than its natural meaning.—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, [1931] A. C. 126 ; 36 Com. Cas. 159 ; *sub nom.* THE CROXTETH HALL. THE CELTIC, 100 L. J. P. 25 ; 144 L. T. 441 ; 47 T. L. R. 147 ; 18 Asp. M. L. C. 184, H. L.

Annotation :—**Refd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

460. *Add. Annotation :*—**Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

464. *Add. Annotations :*—**Consd.** Assam Railways & Trading Co. *v.* I. R. Comrs., [1935] A. C. 445. **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

467. *Add. Annotation :*—**Refd.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160.

492. *Add. Annotation :*—**Apld.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

497. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

503. *Add. Annotation :*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

516. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

518. *Add. Annotation :*—**Refd.** Kilbane *v.* Whitehaven Colliery Co. (1933), 26 B. W. C. C. 76.

542. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

543. *Add. Annotations :*—**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197 ; Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

545a. —— ——.]—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., No. 764a, *post.*

569. *Add. Annotations :*—**Consd.** The Croxteth Hall. The Celtic, [1930] P. 197 ; Birmingham Corpn. *v.* Barnes, [1934] 1 K. B. 484.

598a. ——.]—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, No. 448a, *ante.*

604. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

634a. ——.]—The heading of a group of sections, as is well known, forms no part of the enactment ; it is neither voted on nor passed in Parliament. Headings & marginal notes are inserted only after a bill has become law. A heading cannot control the plain meaning of the enacting part of the sect. It may, in some instances, be looked at as a preamble if there is some ambiguity in the meaning of the sect. on which it can throw light (AVORY, J.).

materially added to as to make it differ considerably from that used by the Legislature then, especially in criminal matters, the ct. should hesitate to alter the language so as to give to the words a meaning which is not manifest from the statute.—*Ex p.* MINISTER OF JUSTICE, *Re* R. *v.* JACOBSON & LEVY, [1931] App. D. 466.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 4.—C.

441 iii. ——.]—In interpreting a taxing statute of a Dominion or a colony which contains, on its face, no reference to its origin or previous legislative history, it is not permissible to consider the evolution of any British statute or provision from which the terms or whole sects. of the enactment under consideration may have been taken, or to rely on decisions as to the true interpretation in the cts. of Great Britain of those terms or sects.—ARMSTRONG *v.* ESTATE DUTY COMR., [1937] 2 W. W. R. 593. **HONG KONG.**

445 ii. —— ——.]—When construing a statute which was the outcome of a report of comrs. appointed to draft & submit a bill for adoption by the legislature, there is not the same disposition on the part of the cts. that there formerly was to deny reference to said report.—R. *v.* JEANOTTE, [1932] 2 W. W. R. 283.—**CAN.**

PART III. SECT. 2, SUB-SECT. 6.

479 iv. ——.]—*Re* SECT. 24 OF BRITISH NORTH AMERICA ACT, [1928] 4 D. L. R. 98; [1928] S. C. R. 276.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

505 iv. ——.]—Where a sect. of a statute is ambiguous ; because it is open to be grammatically construed as bearing two different meanings, a Ct. of Appeal in deciding which of these two meanings the legislature intended the statute to bear, should adopt that construction which, upon a reading of the Act & its amendments as an entire enactment, appears to better accord with the body of the enactment than does the alternative construction. —R. *v.* PUBLIC UTILITIES COMRS. (1926), 54 N. B. R. 138.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

540 iii. ——.]—If there is an ambiguity or uncertainty in the language of an Act, the title may be looked to in order to ascertain the scope of the Act & to remove the ambiguity ; but where the language of the Act is plain it must be given effect to notwithstanding the fact that it goes beyond the matters mentioned in the title. The application of c. 61, 1925–26 (Sask.), entitled An Act respecting Improvements under Mistake of Title, is not confined to mistakes of title, but extends to all cases, including those of mistake of the identity of the land or of its boundaries, where a person has made "lasting improvements under the belief that the land is his own." It is, however, a question for the ct. to determine in each case whether the person claiming for the improvements was under a *bonâ fide* belief that the land was his own.—SCHIELL & HUNT *v.* MORRISON & MORRISON, [1930] 2 W. W. R. 737 ; 4 D. L. R. 664.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—B. (d).

599 iv. ——.]—In order to restrict the scope of an Act by the terms of its preamble the ct. must be satisfied that there was an intention on the part of the Legislature that its scope should be so restricted.—KANNAMMAL *v.* KANAKASABAI (1930), I. L. R. 54 Mad. 845.—**IND.**

—R. *v.* HARE, [1934] 1 K. B. 354; 103 L. K. B. 96; 150 L. T. 279; 98 J. P. 49; 50 T. L. R. 103; 24 Cr. App. Rep. 108; 32 L. G. R. 14, 15; 30 Cox, C. C. 64, C. C. A.

649a. May not be referred to.]—NIXON *v.* A.-G., No. 78a, *ante*.

662. *Add. Annotation :*—**Refd.** Assam Railways & Trading Co. *v.* I. R. Comrs., [1935] A. C. 445.

674. *Add. Annotation :*—**Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

685. *Add. Annotation :*—**Refd.** Stokes *v.* Little, [1935] 1 K. B. 182.

689. *Add. Annotations :*—**Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141; Stokes *v.* Little, [1935] 1 K. B. 182.

731. *Add. Annotation :—As to* (1) **Consd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

745. *Add. Annotations :*—**Apld.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159; Phillips *v.* Parnaby, [1934] 2 K. B. 299.

761. *Add. Annotation :*—**Consd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

764a. ——.]—It was suggested by the A.-G. in the course of his argument for the Revenue Officers, that the ct. was entitled to consider some of the provisions of the later Derating Act as affecting the construction of the 1928 Act. It was contended that as the later Act obliged railways to pass on the benefit of the derating by reduction of railway rates to the users of railways the definition clauses of the 1928 Act should, if possible, be read as applying only to that part of their property which earned rates that could be reduced in proportion to the derating benefits received by the railway, & therefore the Act should if possible be read as excluding from the privileged classes warehouses for the use of which a customer pays rent & not railway rates & therefore could not be given the advantage of having the derating benefit passed on to him. It was further argued that if railway warehouses are outside the definition for these reasons, dock warehouses should also be deemed outside the definition. In my judgment this argument ought not to have any weight attached to it. The Act of 1928 cannot be interpreted by what Parliament chose to do by an Act of 1929. We are not entitled to assume that the need of so wording the Act as to confine the prospective advantages of differential rating to those hereditaments whose rateable occupiers could pass on the benefit to their trade customers was present to the mind of the Legislature when they passed the Act of 1928. We can, however, treat as relevant the purposes for which the Act was passed as stated in the title (GREER, L.J.).—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40; 101 L. J. K. B. 8, 95 J. P. 186; 46 T. L. R. 468 (1926–31), 2 B. R. A. 846, C. A.

765. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs., [1932] 1 Ch. 446.

766a. —— ——.]—I do not think that, in the circumstances of this case, the subsequent statute can properly be referred to for the purpose of interpreting the earlier. It is, of course, certain that Parliament can by

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PART III. SECT. 2, SUB-SECT. 8.—C.

645 vii. —— ——.]—Headings in a statute may be read, not only as explaining sects. which immediately follow them, as the preamble to the statute may be looked at to explain its enactments, but as affording a better key to the construction of the sects. which follow than might be afforded by a mere preamble.—*Re* MID-WEST GLASS CO., LTD., [1931] 3 W. W. R. 165; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—D.

m i. ——.]—Marginal notes to sections of an Act can be referred to for the purpose of interpretation if they can be regarded as inserted by, or under the authority of, or assented to by the legislature.—RAM SARAN DAS *v.* BHAGWAT PRASAD (1928), I. L. R. 51 All. 411.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—E.

650 ii. ——.]—*Semble :* the illustrations to Indian Acts of legislature are to be used as guides only & not as authoritative & binding declarations of law.—MYINGYAN MUNICIPALITY *v.* MAUNG PO NYUN (1930), I. L. R. 8 Ran. 320.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—G. (c).

658 ii. ——.]—If there are two sections in an Act which seem to clash but which can be interpreted so as to give full force & effect to both, then such an interpretation is to be adopted rather than one which will partly destroy the effect of one of them.—PRINCIPAL IMMIGRATION OFFICER *v.* BHULA, [1931] App. D. 323.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 12.—A.

sb. *Comparison with Imperial Act.*]—Although in the interpretation of a colonial statute a comparison thereof with a similar Imperial statute on the same subject-matter, & reference to the decisions on the latter statute, may often be helpful, it is quite a different thing & a perilous course to adopt to institute an elaborate textual comparison between the two statutes & to rely on conjectures as to the intention of the draftsman of the colonial statute in selecting some & rejecting other provisions of his presumed model.

The fact that the general words of a statute are subject to certain admitted qualifications does not of itself afford any presumption that they are subject to a further restriction which is not admitted.

Statutes must be read as a whole, & the language used in so-called machinery sections may be called in aid for the interpretation of the charging sections.—OEI TJONG SWAN *v.* STAMPS COMR., [1933] A. C. 378; 102 L. J. P. C. 90; 149 L. T. 145; 49 T. L. R. 428, P. C.—**STRAITS SETTLEMENTS.**

sd. *Provincial Act similar to English Act.*]—Where a provincial Act, although not identical in language with an English Act on the same subject, is "sufficiently similar in substance" to it, the provincial cts. are bound in interpreting the provincial Act to follow the interpretation given the English Act by the House of Lords.—DAVIDNER *v.* SCHUSTER & MRAZEK, RIESENBERG *v.* SCHUSTER & MRAZEK, [1936] 1 W. W. R. 45; 1 D. L. R. 560.—**CAN.**

PART III. SECT. 2, SUB-SECT. 12.—B. (a).

sd. *English statute—Attitude of South African courts.*]—It may be stated as a general proposition that our cts. would, as a general rule, follow the authoritative interpretation of a section in an English statute as laid down by the higher English cts. if that section occurs in a Union statute which in all its essentials is the same as the English statute in which the section occurs. If the decision is one of the Privy Council, & there is no difference between the Union statute & the English statute & if there is nothing in our common law which would require a different interpretation, then we would follow the decision of the Privy Council, & if an interpretation has been put upon a section of an English statute by one of the higher English cts., we would attach great weight to such an interpretation. But if our Legislature takes over a section of an English statute, that section will have to be interpreted in the light of our common law in exactly the same way as if it had not occurred in an English statute (*per* CUR.).—WEGE'S ESTATE *v.* STRAUSS, [1932] App. D. 76.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 12.—B. (c).

747 ii. ——.]—As both the Customs Tariff Act & the Tax Act are revenue Acts, a clear definition in one of these enactments of a term common to both may reasonably be referred to for the purpose of dispelling any ambiguity of meaning in the other.—R. *v.* MILN-BINGHAM PRINTING CO., LTD., [1929] Ex. C. R. 133.—**CAN.**

statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act. It would be an unnecessary step to take, unless it were intended, contrary to the general principles of legislation, to make the explanatory Act retrospective, seeing that the subsequent statute could by independent enactment do what was desired. It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear & plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual, which is what the cts. would desire to do, & it is also possible that, where a statute has created a crime or imposed a penalty, a subsequent Act showing that that crime was intended to have a limited interpretation or the circumstances regarded as narrow, in which the penalty attached, would be used for the purpose of giving effect to the well-known principle of construction to which I referred at an earlier stage (LORD BUCKMASTER).—ORMOND INVESTMENT CO. *v.* BETTS, [1928] A. C. 143; 97 L. J. K. B. 342; 138 L. T. 600; 13 Tax Cas. 400, H. L.

Annotations :—**Consd.** Port of London Authority *v.* Canvey Island Comrs., [1932] 1 Ch. 446. **Refd.** Dewar *v.* I. R. Comrs., [1935] 2 K. B. 351.

766b. —— **Erroneous recital of effect in preamble to later statute.**]—Deft. comrs. relied, first, upon the statement contained in the preamble of the 1883 Act that by the 1792 Act the comrs. thereby appointed were invested with powers (*inter alia*) of acquiring lands in the Island for the purposes of the Act. . . . In my opinion the erroneous recital of the effect of the 1792 Act does not affect the construction of that Act (LAWRENCE, L.J.).—PORT OF LONDON AUTHORITY *v.* CANVEY ISLAND COMRS., [1932] 1 Ch. 492; 101 L. J. Ch. 63; 146 L. T. 195; 96 J. P. 28; 30 L. G. R. 42, C. A.

772a. —— **Addition to provisions incorporated—Not necessarily incorporated in later Act.**]—Where provisions of an Act have been incorporated by reference into a later Act, the repeal of the earlier Act does not affect the latter Act; so, too, an addition to the provisions incorporated, unless it is expressly made applicable to the later Act, is not deemed to be incorporated into it, at all events if it is possible for the later Act to function effectually without the addition.—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSCE. SOCIETY (1931), 58 L. R. Ind. App. 259, P. C.

795. *Add. Annotations* :—**Apld.** R. *v.* Southampton County Confirming Committee, *Ex p.* Sladef, [1929] 1 K. B. 263. **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

796. *Add. Annotation* :—**Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402.

815. *Add. Citation* :—7 Tax Cas. 236.

856. *Add. Annotation* :—**Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258.

863. *Add. Annotation* :—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

905a. —— **Application to articles of association.**]—Interpretation Act, 1889 (c. 63), s. 1 (1), which deals with the inclusion of the plural in words in the singular & *vice versâ*, & which governs Table A in Companies Act, 1862 (c. 89), Sched. I., applies also to special articles of a co. which have replaced certain articles of Table A, but which are used together with the remaining articles of Table A.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252; 100 L. J. Ch. 311; 145 L. T. 356.

927. *Add. Annotation* :—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

992. *Add. Annotation* :—**Refd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

PART III. SECT. 2, SUB-SECT. 13.—A.

774 iii. —— ——.]—Where there is a doubt as to the meaning of a statute, or an award made thereunder, a construction placed thereon & long acquiesced in by all parties will not be departed from.—GAUSSEN *v.* LOWER BANN NAVIGATION TRUSTEES, [1929] N. I. 11.—IR.

PART III. SECT. 2, SUB-SECT. 13.—B.

789 vii. ——.]—It is a well-settled principle of construction that the Legislature must be presumed to know, not only the general principles of law, but, also, the constructions which the cts. have put upon particular statutes, & when a section of an Act, which had received a judicial construction, is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of the construction.—BIPULBIHARI *v.* NIKHILCHANDRA (1929), I. L. R. 57 Calc. 381.—IND.

PART III. SECT. 2, SUB-SECT. 17.—A.

o i. —— ——.]—HEATHERTON CO-OPERATIVE CO. *v.* GRANT, [1930] 1 D. L. R. 975; 1 M. P. R. 145.—CAN.

PART III. SECT. 3, SUB-SECT. 2.

907 ii. ——.]—In the construction of a statute a definition given in an interpretation clause of the statute will not be adhered to when the context & subject-matter show that the words defined were intended to have a meaning different from that set forth in the interpretation clause.—TOWN COUNCIL OF SPRINGS *v.* MOOSA, [1929] A. D. 401.—S. AF.

907 iii. ——.]—*Primâ facie*, where there is a definition of a particular word used in a statute, that definition must be applied wherever that word occurs, but the ct. is justified in departing from the definition where an adherence to it would work an injustice which both the context & subject-matter show that the legislature never intended.—SUTHERLAND *v.* R., [1930] N. L. R. 24.—S. AF.

PART III. SECT. 6, SUB-SECT. 1.

948 i. *Whether equitable construction adopted.*]—Where a statute is clear the ct. must give effect to the intention of the Legislature however harsh its operation may be to individuals affected thereby, but where two meanings may be given to a section & the one meaning leads to harshness & injustice while the other does not, the ct. will hold that the Legislature rather intended the milder than the harsher meaning.—PRINCIPAL IMMIGRATION OFFICER *v.* BHULA, [1931] App. D. 323.—S. AF.

PART III. SECT. 6, SUB-SECT. 2.

aa. *Workmen's Compensation Acts.*]—CLARKE *v.* WENTWORTH STORES, LTD., [1928] 2 D. L. R. 796.—CAN.

PART III. SECT. 9.

981 i. *Doctrine of contemporanea expositio.*]—When the construction of a statute is doubtful, it is accepted as a canon of interpretation that a useful exposition of the statute may be that which it has received from contemporary authority.—DINKEL *v.* UNION GOVT., [1929] App. D. 150.—S. AF.

Part IV.—Operation.

1057. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

1083. *Add. Annotation :*—**Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

1111. *Add. Annotation :*—**Refd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237.

1116. *Add. Annotations :*—*As to* (1) **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392 ; *Re* Dickens, Dickens *v.* Hawksley (1934), 50 T. L. R. 536 ; *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17. **Refd.** Gardner & Co. *v.* Conc (1928), 140 L. T. 72.

1172a. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

1180. *Add. Annotation :*—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237.

1207. *Add. Annotations :*—**Consd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91. **Refd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254 ; Skinner *v.* Geary (1931), 47 T. L. R. 597.

1212. *Add. Annotations :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 147 L. T. 122 ; London County Council *v.* Montague Burton, Ltd., [1934] 1 K. B. 360.

1217. *Add. Annotations :*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533 ; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159 ; Marshall *v.* Blackpool Corpn. (1932), 102 L. J. K. B. 91. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

1221. *Add. Annotation :*—**Refd.** Consett Iron Co. *v.* Clavering (1935), 153 L. T. 199.

1236. *Add. Annotations :*—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237. **Refd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17.

1244. *Add. Annotations :*—**Apld.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686. **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1248. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1248a. —— **Unless contrary construction clearly intended.**]—There is a well-known canon of construction applicable to private Acts of Parliament that if the words used by the statute are ambiguous, the meaning that is most favourable to the public should be adopted ; but I do not think that this has the effect of preventing the ct. from saying that if, when the whole of the statute in

PART IV. SECT. 2.

b l. —— ——.]—Sect. 1 of c. 30, 1923, provided for the appointment of one or two examiners for the city of Halifax. The Act was to come into force on a day to be fixed by proclamation. C. 54 of 1924, passed May 9, 1924, repealed s. 1 of c. 30, 1923, & substituted another sect. providing for the appointment of one or two examiners for the city of Halifax. On May 23, 1924, it was proclaimed that c. 30, 1923, as amended, should come into force on June 1, 1924. On the same day, May 23, 1924, M. was appointed as an examiner for the city of Halifax. Applt. contended that his appointment was void, because made under the authority of a statute that was not in force at the time of his appointment : —*Held :* the proclamation that c. 30, 1923, as amended, should come into force on June 1, 1924, had the same effect as if that date had been fixed by the statute itself as the date when it should become effective as law ; & it was common ground that in the latter case appointments could be made in anticipation of the statute coming into force ; the proclamation made that certain which had been contingent ; it must be presumed that everything was done regularly unless the contrary was shown ; the proclamation & order of appointment bore the same date & were gazetted the same day ; & it must be presumed that the proclamation preceded the appointment ; the appointment was, therefore, valid.—MCKENZIE *v.* HUYBERS, [1929] 4 D. L. R. 1059 ; S. C. R. 38 ; *affg.*, 60 N. S. R. 203.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

1040 ix. ——.]—It is a general rule established by English decisions that the Crown is not bound by an Act of Parliament unless named therein expressly or by necessary implication. That rule does not apply where the Act is made for the public good, the advancement of religion & justice, the prevention of fraud, or the suppression of injury & wrong.—HIRANAND KHUBHIRAM *v.* SECRETARY OF STATE FOR INDIA (1934), I. L. R. 58 Bom. 635.—**IND.**

PART IV. SECT. 5, SUB-SECT. 1.

p i. —— ——.]—A statute is not to be construed so as to have a greater retrospective effect than its language renders necessary.—KIRPA SINGH *v.* AJAIPAL SINGH (1928), I. L. R. 10 Lah. 165.—**IND.**

PART IV. SECT. 5, SUB-SECT. 2.—A.

1087 vi. ——.]—Statutes regulate future conduct & are construed as operating only on cases or facts which came into existence after they were passed.—PRINCIPAL IMMIGRATION OFFICER *v.* BHULA, [1931] App. D. 323. —**S. AF.**

PART IV. SECT. 5, SUB-SECT. 2.—B. (b).

1099 x. —— *Res judicata.*]—Hong Kong Ordinance 20 of 1908 by its retroactive effect gave a right of action for criminal conversation committed prior to its enactment :—*Held :* without explicit words to that effect it did not avail the respondent, whose cause of action was barred as *res judicata* by a final judgment prior to the Ordinance & founded on the then existing law.—LEMM *v.* MITCHELL, [1912] A. C. 400.—**HONG KONG.**

PART IV. SECT. 5, SUB-SECT. 6.

1146 xxvi. ——.]—METROPOLITAN ABATTOIRS BOARD *v.* SCHOLE, [1927] S. A. S. R. 444.—**AUS.**

1146 xxvii. ——.]—Alterations in procedure are always retrospective unless there be some good reason against it.—*Re* WICKS & ARMSTRONG, [1928] 2 D. L. R. 210 ; 49 Can. Crim. Can. 281 ; 61 O. L. R. 667.—**CAN.**

1146 xxviii. ——.]—Where a statute deals with practice & procedure only, it applies, unless the contrary is expressed, to actions begun before it came into force.—

1146 xxix. ——.]—An action begun after the time limited by the statute that was in force when the writ was issued cannot, because of an amending Act, be held to have been begun in time. It is erroneous to assume that a statute imposing a time limit for the commencement of actions for damages, or extending a time already limited, is necessarily to be treated as a statute effecting procedure only & so to be given a retrospective effect.—KEARLEY *v.* WILEY, [1931] 2 D. L. R. 433 ; 66 O. L. R. 490 ; *affd.*, [1931] 3 D. L. R. 68 ; O. R. 167.—**CAN.**

1146 xxx. ——.]—SHACKLETON *v.* OLDS TOWN, [1934] 3 W. W. R. 461, 766 ; *affd.*, [1934] 3 W. W. R. 657.—**CAN.**

1168 i. *Right of appeal not matter of procedure.*]—Legislation conferring a new jurisdiction on an appellate ct. to entertain an appeal cannot be construed retrospectively, so as to cover cases arising prior to such legislation, unless there is something making unmistakeable the legislative intention that it should be so construed. The matter is one of substance & of right.—SINGER *v.* R., [1932] S. C. R. 70 ; 1 D. L. R. 279.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.

1169 xiii. ——.]—ST. CATHERINES CORPN. *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1928] 3 D. L. R. 200 ; 62 O. L. R. 301 ; *affd.*, [1930] 1 D. L. R. 409, P. C.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—A.

1184 iii. ——.]—*Held :* the amendments made to the Insurance Act subsequent to the year 1926 were not retroactive & did not take away contractual rights acquired under legislation in force when the contracts were entered into.—BULLAS *v.* EMPIRE LIFE INSCE. CO., [1931] 4 D. L. R. 443 ; O. R. 769.—**CAN.**

question is considered, it appears by ——, intendment that the privilege claimed was intended to be granted, the ct. should refuse to draw this inference because the Act does not contain express words creating the privilege claimed (GREER, L.J., *in a dissenting judgment*).—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS, [1929] 1 Ch. 686; 98 L. J. Ch. 118; 140 L. T. 415; 93 J. P. 129; 27 L. G. R. 264, C. A.; *affd.*, [1930] A. C. 549, H. L.

1262. *Add. Annotations :*—**Refd.** Place *v.* Searle, [1932] 2 K. B. 497; Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1334. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1344a. —— —— **Effect of Interpretation Act, 1889 (c. 63), s. 38.**]—The Interpretation Act, 1889 (c. 63), s. 38 (2), does not apply to temporary or expiring statutes, but only to repealed statutes (ROCHE, J.).—SPENCER *v.* HOOTON (1920), 37 T. L. R. 280.

.]—No doubt there is some ground for saying that in cases of this kind, where one is dealing with a temporary Act, one must look at the particular statute which is said to be a temporary statute & see what is the meaning of it. It may be drawn in such a way that some parts of it will survive & be operative & that other parts of it are dead & gone, & this can only be ascertained by looking at the words of the particular statute which is before the ct. . . . We cannot say that the Interpretation Act, 1889, shall apply so that legal proceedings can be completed, although they would be heard & determined at a time when no offence under the statute could be committed (DARLING, J.).—R. *v.* ELLIS, *Ex p.* AMALGAMATED ENGINEERING UNION (1921), 125 L. T. 397.

1351. *Add. Annotations :*—*As to* (1) **Refd.** Kilbane *v.* Whitehaven Colliery Co. (1933), 26 B. W. C. C. 76. *As to* (2) **Refd.** De Keyser *v.* British Railway Traffic & Electric Co., [1936] 1 K. B. 224. *Generally*, **Refd.** Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

1364a. —— ——.]—" May " always means may. " May " is a permissive or enabling expression; but there are cases in which, for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it. One of those cases is where he is applied to to use the power which the Act gives him in order to enforce the legal right of appct. (TALBOT, J.).—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, [1929] 2 K. B. 180 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491, D. C.

1381. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

1386. *Add. Annotation :*—**Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1403. *Add. Annotations :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369; Evans *v.* Bartlam, [1937] A. C. 473.

1408. *Add. Annotation :*—**Apld.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

1412. *Add. Annotation :*—**Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

1452a. —— ——.]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance :—*Held :* Electric Lighting (Clauses) Act, 1899, did not expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers plaintiff was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171; 99 L. J. K. B. 83; 94 J. P. 62; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145, H. L.

Annotations :—**Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566. Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108.

Part V.—Criminal and Penal Statutes.

1531. *Add. Annotation :*—*As to* (1) **Consd.** The Torni, [1932] P. 78.

1539. *Add. Annotations :*—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322; Moore *v.* Tweedale, [1935] 2 K. B. 163.

PART IV. SECT. 7, SUB-SECT. 9.

k 1. ——.]—Where a statute directs a specific proceeding in any ct. the proceeding must be according to the practice of that ct. but where there is no practice specially applicable it is competent for the tribunal to deal with the matter as justice & common sense alike call for.—*Re* BUTLER, *Ex p.* TOOHEY'S, LTD. (1934), 34 S. R. N. S. W. 277; 51 N. S. W. W. N. 101.—

l 1. ——.]—When a statute confers upon the ct. a specific power, the ct cannot, by relying upon its inherent jurisdiction, extend the scope of that power.—R. *v.* SUKH DEV (1929), I. L. R. 11 Lah. 220.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.

1513 v. ——.]—A statute ought not to be construed as extending a penal category, if the language is equally capable of a construction that would, & one that would not, inflict the penalty, or if its denotation is uncertain, & no sure conclusion can be reached.—R. *v.* ADAMS (1935), 41 Argus L. R. 421; 53 C. L. R. 563; 9 A. L. J. 242; 8 A. B. C. 97.—**AUS.**

PART V. SECT. 2, SUB-SECT. 3.

1525 iv. ——.]—Even a penal statute must not be construed so as to narrow its words to the exclusion of cases which those words in their ordinary acceptation would comprehend.—R. *v.* KRAKOWEC, DAHLBERG & EKLUND & CONTINENTAL GUARANTY CORPN. OF CANADA, LTD., [1932] S. C. R. 134; 1 D. L. R. 316; 57 C. C. C. 96.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

1532 vi. ——.]—A statute which casts upon an accused the *onus* of disproving a charge is retrospective &, therefore, applies to a case where it has come into force between the time of the alleged offence & the laying of the information therefor.—R. *v.* KUMPS [1931] 1 W. W. R. 812; 3 D. L. R. 767; 55 Can. C. C. 320; 39 Man. L. R. 445.—**CAN.**

tion must be shown.]—General words in

1546. *Add. Annotation :*—**Refd.** R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559.

1554. *Add. Annotation :*—**Refd.** R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559.

1560. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

Part VI.—Fiscal and Revenue Statutes.

1566. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 147 L. T. 313.

1577. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1578. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1587. After this case add :—

Safeguarding Acts.]—*See* REVENUE, Nos. 93c, [illegible].

1591. *Add. Citations :*—[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

1603. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Westminster, [1936] A. C. 1.

1607. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1611a. —— ——.]—Where a taxing Act can be construed in one of two alternative ways, the one most favourable to the taxpayer should be adopted.—HENNELL *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 415; 102 L. J. K. B. 69; 148 L. T. 150; 49 T. L. R. 31; 76 Sol. Jo. 849, C. A.

1612. *Add. Annotations : — Generally,* Diggines *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527.

Part VII.—Local, Personal and Private Statutes.

1617. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1621. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

1633. *Add. Annotation :*—**Consd.** Altrincham Electric Supply Ltd. *v.* Sale Urban District Council (1936), 154 L. T. 379.

1636. *Add. Annotation :*—*As to* (2) **Consd.** Altrincham Electric Supply, Ltd. *v.* Sale Urban District Council (1936), 154 L. T. 379.

1638. *Add. Annotation : —* **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

1659. *Add. Annotations :*—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1674. *Add. Citations :*—[1929] 1 Ch. 686; 98 L. J. Ch. 118; 140 L. T. 415; 93 J. P. 129; 27 L. G. R. 264; *subsequent proceedings* (No. 2), 144 L. T. 132.

1678. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1679. *Add. Annotations :*—**Consd.** Marshall *v.* Blackpool Corpn. (1932), 102 L. J. K. B. 91; London County Council *v.* Montague Burton, Ltd., [1934] 1 K. B. 360. **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1681a. ——.]—By the will of a testator who died in 1878 land in New Zealand was devised upon trusts under which testator's natural daughter became tenant for life with remainders over in tail male to her sons. Her son, the first tenant in tail, attained the age of twenty-one years, but was killed in action in 1915 during his mother's lifetime. He was survived by an infant son who, upon the death in 1930 of testator's natural daughter, became tenant in tail in possession. The will contained no power to sell the settled land, but a private Act (the Rhodes Trust Act, 1901) was obtained & gave the trustees power to lease or sell any part of it. By sect. 5 of the Act moneys received on any

a penal statute will not be given an extra-territorial operation unless an intention to give such an operation to the statute appears expressly or by necessary implication.—R. *v.* FRANKE, [1929] V. L. R. 285; Argus L. R. 230.—AUS.

PART V. SECT. 3, SUB-SECT. 2.

1543 ii. ——.]—In so far as it deals with the disqualification of a candidate for a corrupt practice the Ontario Election Act is a penal statute, & the charge against the candidate must be proved beyond a reasonable doubt before such disqualification is ordered. —*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—CAN.

PART VI. SECT. 2.

1588 ii. ——.]—Special canons of interpretation are no more applicable to a taxing Act than to any other Act. —FOWLER & ANDREWS *v.* SPALLUMCHEEN TOWNSHIP, [1930] 3 W. W. R. 12; 53 B. C. R. 47.—CAN.

a i. —— —— *Matters of procedure.*]—The principle that a statute which imposes a duty must be strictly construed applies only in so far as the imposition of the liability is concerned. It does not extend to mere matters of procedure devised as the best means in all ordinary circumstances to collect the impost.—GOPALASAMI *v.* SECRETARY OF STATE FOR INDIA (1933), I. L. R. 57 Mad. 237.—IND.

a i. *Construction with reference to law.*]—In continuing a statute which, like a taxing statute, is meant to apply to all persons irrespective of their personal law, it is quite unnecessary to investigate the meaning of the words in the particular system of jurisprudence that may be followed by the assessee, & it is proper to construe the words in question with reference to the English Law on the point. — UMAR BAKHSH *v.* PUNJAB COMR. OF INCOME TAX (1931), I. L. R. 12 Lah. 725.—IND.

a o. ——.]—The Indian Income Tax Act differs materially from the English Income Tax statutes, & decisions under the English Act are of little assistance in applying the Indian Act. —COMR. OF INCOME TAX, BENGAL *v.* SHAW, WALLACE & CO. (1932), I. L. R. 59 Cal. 1343.—IND.

sale were to be invested by the trustees & all income produced by the investments was to be paid to the person " who but for such sale or lease would have been for the time being beneficially entitled to the occupation of the land in respect of which such moneys shall have been received." Upon an originating summons issued in 1932 :—*Held :* the fund representing the proceeds of sales, whether made before or after the death of the infant's father, belonged absolutely to the infant. Under sect. 5 of the private Act the income derived from the proceeds of sales, like the rents, was payable to the person entitled under the will as tenant in tail ; but the vesting of the corpus was postponed until there should be a tenant in tail who was entitled to actual possession or receipt of the rents & profits of the settled land.

The private Act, having been passed for the strictly limited purpose of authorising the trustees to sell or lease the settled land, should not, in the absence of unambiguous language, be given an effect which would unnecessarily alter the rights of the parties.—BARTON *v.* MOORHOUSE, [1935] A. C. 300 ; 104 L. J. P. C. 69 ; 152 L. T. 582, P. C.

Part VIII.—Enforcement.

1723. *Add. Annotations :*—**Consd.** Coles (J. H.) Proprietary, Ltd. *v.* Need, [1934] A. C. 82. **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441 ; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1726. *Add. Annotations :* — **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Distd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287 ; Allen *v.* Waters & Co., [1935] 1 K. B. 200 ; Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1728. *Add. Annotation :*—**Refd.** Gilbert *v.* Ching, [1936] A. C. 145.

1737. *Add. Annotations :*—**Consd.** A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532. **Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1739a. *Add. Annotation :*—**Refd.** Monk *v.* Warbey (1934), 151 L. T. 100.

1755. *Add. Annotations :*—*As to* (1) **Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441 ; A.-G. *v.* Premier Line, Ltd. (1931), 48 T. L. R. 104. *Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1931] A. C. 494.

1757. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1758. *Add. Annotations :*—**Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1768. *Add. Annotations :*—**Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

1776. *Add. Annotation :*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (Now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12.

1777a. —— ——.]—Had this provision been contained in the English statute I entertain no doubt that in the absence of express penalty where some one was in terms by statute in a public matter required to do a certain act, or if the act were to be done, to do it in a certain way, that if that person failed to obey that statute, the act done would be in contempt of the statute, & therefore, though there were no express penalty provided, the ordinary common law rules would apply. In such case, the matter being one of public obligation & the act done in contempt of the statute, in an appropriate case the remedy would lie for misdemeanour (SLESSER, L.J.). —THE TORNI, [1932] P. 78, 90 ; 101 L. J. P.

PART VII. SECT. 4.

1682 iii. ——.]—VANCOUVER CITY *v.* RICHMOND, [1928] 4 D. L. R. 506 ; [1928] 3 W. W. R. 166.—**CAN.**

PART VIII. SECT. 1.

8a. *Right to enforce statutory duty—No right of waiver.*]—A person entitled to sue to enforce the performance of a statutory duty cannot waive that right by acquiescence or conduct or even by an express contract.—OUTEN *v.* STEWART & GRANT & WINNIPEG CITY, [1932] 3 W. W. R. 193 ; 40 Man. L. R. 557.—**CAN.**

PART VIII. SECT. 2.

c i. ——.]—Where a statute creates a duty, an action will lie at the suit of a person injured by reason of a breach thereof if, on a consideration of the Act, it appears that it was the intention of the legislature to create that duty to persons likely to be injured by such breach. It is not essential, in order to give the right of action, that the legislature should have had in mind the protection of a particular class of persons. If, however, it appears that the Act is intended only to create a duty to the State, no such action will lie.—WHITTAKER *v.* ROZELLE WOOD PRODUCTS, LTD. (1936), 36 S. R. N. S. W. 204 ; 53 N. S. W. W. N. 71.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.

1734 xxv. ——.]—Where a liability not existing at common law is created by a statute which at the same time gives a special & particular remedy for enforcing it, the remedy provided by the statute must be followed.—FT. FRANCES PULP CO. *v.* SPANISH RIVER PULP CO., [1928] 1 D. L. R. 753 ; 61 O. L. R. 512 ; *affd.,* [1929] 4 D. L. R. 192 ; 64 O. L. R. 148.—**CAN.**

1734 xxvi. ——.]—Where a liability not existing at common law is created by a statute which also gives a particular & special remedy for enforcing it that remedy must be followed.—DISTRICT MUNICIPALITY, COLDSTREAM OF *v.* BELLEVUE (B. C.), [1929] 4 D. L. R. 52 ; 2 W. W. R. 597.—**CAN.**

1734 xxvii. ——.]—FORT FRANCES PULP & PAPER CO. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1931] 2 D. L. R. 97.—**CAN.**

1734 xxviii. ——.]—A party injured by the diversion of a watercourse is confined to the compensation & remedy given by Municipal Act, R.S.O., 1927.—MCCURDY *v.* BAYHAM TOWNSHIP, [1935] 2 D. L. R. 580 ; O. R. 271.—**CAN.**

1734 xxix. ——.]—Where a statute creates an offence & defines remedies an injured party has no remedies other than those specified. There is no private right of action, therefore, for offences within the Combines Investigation Act, 1927.—TRANSPORT OIL CO. *v.* IMPERIAL OIL CO., [1935] 1 D. L. R. 751 ; O. R. 111 ; *affd.,* [1935] 2 D. L. R. 500 ; O. R. 215 ; 63 Can. C. C. 108.—**CAN.**

44; 147 L. T. 208; 48 T. L. R. 471; 18 Asp. M. L. C. 315, C. A.

1779. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

1812. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

1850. *Add. Annotations :*—**Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Monk *v.* Warbey, [1935] 1 K. B. 75.

1858. *Add. Annotation :*—**Refd.** Monk *v.* Warbey, [1935] 1 K. B. 75.

1858. *Add. Annotations :*—**Refd.** Monk *v.* Warbey, [1935] 1 K. B. 75; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1936] A. C. 206.

1873. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

Part IX.—Repeal.

1896. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

1918. *Add. Annotation :*—**Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267, C. A.

1919. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

1928a. ——.]—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, No. 772a, *ante*.

1935. *Add. Annotation :*—**Consd.** Smith *v.* Benabo, [1937] 1 K. B. 518.

1939a. ——.]—If a later statute again describes an offence created by a previous one. & imposes a different punishment, or varies the procedure, the earlier statute is repealed by the later statute (GODDARD, J.).—SMITH *v.* BENABO, [1937] 1 K. B. 518; [1937] 1 All E. R. 523; 106 L. J. K. B. 367; 156 L. T. 194; 101 J. P. 141; 53 T. L. R. 353; 81 Sol. Jo. 200; 35 L. G. R. 130; 30 Cox, C. C. 540.

1952. *Add. Annotations :*—**Consd.** Montreal (City) Corpn. *v.* Montreal Industrial Land Co., [1932] A. C. 700. **Refd.** Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67.

1955. *Add. Annotation :*—**Refd.** Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67.

1963. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

1968. *Add. Annotations :*—*As to* (1) **Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. *As to* (2) **Consd.** R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

1974. *Add. Annotations :*—**Consd.** A.-G. *v.* Liverpool Corpn. & London, Midland & Scottish Ry. Co., [1937] Ch. 450; Drapers Co. *v.* London Passenger Transport Board, [1937] Ch. 344. **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1; Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67; R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

1989. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1990. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn. (1929), 98 L. J. K. B. 224.

2007. *Add. Annotation :*—**Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

2048. *Add. Annotations :*—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237. **Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

2053. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Villiers, [1936] 1 All E. R. 817.

PART VIII. SECT. 5, SUB-SECT. 2.—A.

1842 i. *Who may bring action—Members of statutory class.*]—Where it appears either from a reading of an enactment itself or from that & a regard to surrounding circumstances that the Legislature has prohibited the doing of an act in the interest of any person or class of persons, such person, or any one of such class of persons, can obtain the intervention of the ct. to enforce the prohibition without proof of special damage.—ROODEPOORT - MARAISBURG TOWN COUNCIL *v.* EASTERN PROPERTIES (PROP.), LTD., [1933] App. D. 87.—S. AF.

PART IX. SECT. 1, SUB-SECT. 2.—D.

1924 ii. ——.]—Sections of a public Act which are incorporated by reference in a private Act are not repealed by the repeal of the public Act.—GRANBY CONSOLIDATED MINING, SMELTING & POWER CO., LTD. *v.* WEST KOOTENAY POWER & LIGHT CO., LTD., [1929] 2 D. L. R. 651; 2 W. W. R. 470; 41 B. C. R. 89; *affg.*, [1928] 4 D. L. R. 724; 3 W. W. R. 301; 40 B. C. R. 269.—CAN.

1924 iii. ——.]—Where a statute is incorporated by reference into a second statute the repeal of the first statute by a third does not affect the second. This rule would apply *a fortiori* to legislation by one legislative body which incorporates the enactments of another legislative body by reference.—R. *v.* ZASLAVSKY, [1935] 2 W. W. R. 34; 3 D. L. R. 788; 64 Can. C. C. 106.—CAN.

PART IX. SECT. 1, SUB-SECT. 2.—F. (b) i.

1941 xiv. —— ——.]—As a rule, a general statute will not override the provisions of a special Act, & general powers do not override special powers.—ENGEL *v.* GALLANT (1934), 7 M. P. R. 219; 62 C. C. C. 302.—CAN.

PART IX. SECT. 1, SUB-SECT. 2.—F. (b) iv.

1975 vii. ——.]—In the case of conflict between a general statute & one passed for a particular purpose the latter must, so far as that purpose extends, prevail, whether the special Act was passed before or after the general Act.—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—CAN.

PART IX. SECT. 1, SUB-SECT. 2.—G. (b).

1983 vii. —— ——.]—R. *v.* RUDDICK, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—CAN.

Part XI.—Codifying and Consolidating Statutes.

2094. *Add. Annotations :*—**Consd.** Shotts Iron Co. *v.* Curran, [1929] A. C. 409. **Apld.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R.

127. **Consd.** Derbyshire Territorial Army Assocn. *v.* South-East Derbyshire Assessment Committee, [1935] 2 K. B. 373.

Part XII.—Statutory Rules and Orders.

2114. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2132. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2134. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

PART XII. SECT. 1.

sg. *Power of disallowance—Time limit for exercise.*]—Sect. 10 of the Acts Interpretation Act, 1904-1930, requires all Regulations made under statutory power to be laid before both Houses of Parliament, & further provides that: "If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect":—*Held:* the words above quoted indicated that it was the intention of the legislature to fix a time beyond which the disallowance of any Regulation should not be effected, & not to impose a condition on the power to disallow.—DIGNAN *v.* AUSTRALIAN STEAMSHIPS PTY., LTD., [1931] Argus L. R. 213; 5 A. L. J. 74.—**AUS.**

sk. *Repeal of Act authorising Orders —Effect of.*]—The repeal of an Act, or clause of an Act, authorising the passing or adoption of Orders in Council, regulations or bye-laws, has the effect of repealing or voiding the Orders in Council, regulations or bye-laws passed or adopted under the authority of such Act or clause, unless there be in the repealing Act a stipulation preserving their validity notwithstanding the repeal. Orders in Council, regulations & bye-laws are subordinate to the Act & when the Act is repealed the Orders in Council, regulations & bye-laws made thereunder, unless otherwise expressly provided, lapse.—BLAKEY & CO., LTD. *v.* R., [1935] Ex. C. R. 223; 4 D. L. R. 670.—**CAN.**

PART XII. SECT. 2.

2126 iii. ——.]—BYERS *v.* CHINN, [1928] App. D. 322.—**S. AF.**

2126 iv. —— *Not when in conflict with statute.*]—R. *v.* WRIGHT, [1928] 1 D. L. R. 701; 59 N. S. R. 443.—**CAN.**

PART XII. SECT. 3.

2132 ii. —— *Conflict between regulations & statute.*]—If regulations are in conflict with an Act, the statutory provisions should be treated as dominant & the regulations as subordinate thereto in order to carry out the intention of Parliament.—ENGLAND *v.* PENFOLD, *Ex p.* PENFOLD, [1934] S. R. (Q.) 125; 28 Q. J. P. R. 90.—**AUS.**

PART XIII. SECT. 4.

sc. *Object & construction.*]—All rules of ct. are nothing but provisions intended to secure the proper administration of justice, & it is essential that they should be made to serve & be subordinate to that purpose.—SALDANHA *v.* SALDANHA (1929), I. L. R. 54 Bom. 288.—**IND.**

STOCK EXCHANGE.

Part II.—Constitution.

14. *Add. Annotation :*—**Refd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

Part III.—Relation between Parties to Stock Exchange Transactions.

21. *Add. Annotation :—As to* (7) **Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

26. *Add. Annotation :*—**Consd.** Solloway *v.* Johnson, [1934] A. C. 193.

30a. **Whether broker exercises public calling.**]—*Per* SLESSER, L.J. : A stockbroker does not exercise a "public calling" in the sense in which that term is used as applied to carriers & certain others.—JARVIS *v.* MOY, DAVIES, SMITH, VANDERVELL & CO., [1936] 1 K. B. 399 ; 105 L. J. K. B. 309 ; 154 L. T. 365, C. A.

67. *Add. Annotation :—Generally,* **Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

69. *Add. Annotation :*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

PART III. SECT. 1.

sc. *Town broker & country broker—Agency.*]—A broker acting as correspondent for an out-of-town brokerage firm is not necessarily the agent of that firm, nor the agent of his customers.—ST. PIERRE *v.* O'HEARN, [1936] 1 D. L. R. 441.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

24 i. *Fiduciary relation—Agency—Client's right to follow money.*]—Where share certificates are delivered by the owner thereof to a broker with instructions to sell them the broker's relation to the owner is a fiduciary one, the certificates are impressed with a trust, & the broker should not be heard to give any explanation of his dealing with the certificates inconsistent with his authority.—PLUMMER *v.* MACK & TIMMS, [1930] 2 W. W. R. 107 ; 3 D. L. R. 999 ; *affd.*, [1930] 3 W. W. R. 188 ; 4 D. L. R. 768.—**CAN.**

24 ii. —— ——.]—The legal relationship of a stockbroker & his client is a fiduciary one, that of agent & principal ; &, therefore, the broker is not entitled, without the fullest knowledge & assent of the client, to put himself in a position where his interest conflicts with that of his client. He must deal for a client in the capacity of agent, &, therefore, has not the right to trade on the stock markets for himself & at the same time transact his clients' business thereon as their broker.—R. *v.* SOLLOWAY & MILLS, [1930] 2 W. W. R. 516 ; 54 Can. C. C. 129.—**CAN.**

h i. ——.]—HUNNINGS (H. E.) & CO., LTD. *v.* HALL, [1932] 2 W. W. R. 541 ; 4 D. L. R. 270 ; 46 B. C. R. 12.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

sx. *Onus of proof.*]—In an action by a customer against a stockbroker for wrongfully selling certain stocks & bonds, which he had deposited with the broker as collateral security for his account, & retaining the proceeds : —*Held :* pltf. was not under the onus of proving that the conditions which under the contract between the parties would give deft. the right to sell the securities had not come into existence, but that the onus was on deft. to prove that said conditions had arisen ; & even if this view as to the onus was incorrect, pltf. had at any rate made out a *primâ facie* case.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD., [1931] 3 W. W. R. 302 ; *affd.*, [1932] 1 W. W. R. 886 ; 46 B. C. R. 211.—**CAN.**

sy. ——.]—Sale of securities delivered to stock-brokers as collateral amounts to conversion, & the onus is on them to prove their right to dispose of them.—BLUMBERGER *v.* SOLLOWAY, MILLS & CO., LTD. (1932), 46 B. C. R. 241 ; *affg.* (1931), 45 B. C. R. 66.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

sa. *Pledging securities of client—For advances to broker.*]—*Held :* when collateral security is deposited with a broker & is by him pledged to a bank for any sum, & the loan from the bank is entirely paid off, & at the same time the debt to the broker for which the collateral has been deposited, the rights of both the broker & the bank are at an end, & the owner of the collateral is entitled to its return.—*Re* WIGGINS, LTD., [1931] 3 D. L. R. 383 ; O. R. 337.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—A.

43 i. *Purchase for client—Readiness to deliver.*]—When stockbrokers are instructed to buy on margin they must be at all times ready & able to deliver to their customer.—ROCHESTER *v.* SOLLOWAY MILLS, [1933] 2 D. L. R. 90 ; O. R. 230 ; *on appeal*, [1934] O. R. 483.—**CAN.**

sd. *Duty to use due care & skill.*]—GLENNIE *v.* McD. & C. HOLDINGS, LTD., [1935] S. C. R. 257 ; 2 D. L. R. 561.—**CAN.**

sf. *Duty owed to principal only.*]—A broker is under no duty to exercise care in regard to market prices towards a person with whom no relationship of principal & agent exists.—OLMSTEAD *v.* E. A. PIERCE & CO., [1937] 1 D. L. R. 625 ; O. R. 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—B.

50 iii. ——.]—ENGLISH *v.* KERN AGENCIES, LTD., [1931] 2 W. W. R. 22 ; 2 D. L. R. 948.—**CAN.**

q i. —— ——.]—Pltf., a customer of a broker, delivered to the latter a share certificate registered in his name with instructions to sell the shares at a certain price or better. The broker sold the shares for its own purposes at a lower price. & when pltf. demanded his certificate the broker tendered him another certificate of the same co. for the same number of shares. This pltf. refused ; & sued for conversion :—*Held :* pltf. was entitled to judgment &, in the absence of other evidence of the value of the shares at the date of the sale, the amount to which pltf. was entitled was that for which the shares were sold.—MACINNES *v.* CARTWRIGHT & CRICKMORE, LTD., [1931] 1 W. W. R. 81 ; 1 D. L. R. 572 ; *affd.*, [1931] S. C. R. 425 ; 3 D. L. R. 693.—**CAN.**

q ii. ——.]—SOLLOWAY *v.* BLUMBERGER, [1933] S. C. R. 163 ; 3 D. L. R. 86.—**CAN.**

t i. —— *Defence—Rules of stock exchange.*]—Damages were claimed for breach of an alleged agreement to carry certain stocks & maintain pltf. in a short position with respect thereto :—*Held :* even if there was such a definite agreement, the claim failed because under the rules of the stock exchange deft. was obliged to return the stock borrowed with respect to the short transactions before the shares had dropped to the covering point which was alleged by pltfs., & deft.'s evidence had not been refuted that other stock could not be secured to take their place &, therefore, deft. had to buy "to cover."—CLAY & CLAY *v.* POWELL & CO., LTD., [1931] 2 W. W. R. 325 ; 3 D. L. R. 538 ; 44 B. C. R. 124 ; *revsd. on other grounds*, [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

sg. *Instructions to buy "futures."*]—The term "futures" refers to a speculative transaction & a broker is therefore under no obligation to buy the commodity indicated in his instructions to buy for future delivery.—BETCHERMAN *v.* PIERCE & CO., [1933] 3 D. L. R. 99 ; O. R. 505 ; *revd.*, [1934] 2 D. L. R. 449.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—A. (a).

sl. *Cover deposited by married woman—Whether broker may inquire as to title.*]—A broker is not entitled to question the title of a married woman to securities placed in his hands to guarantee speculation.—JOHNSTON *v.* CHANNELL, [1935] 4 D. L. R. 401.—**CAN.**

101. *Add. Citations :*—[1929] 1 K. B. 321; 98 L. J. K. B. 243; 73 Sol. Jo. 13.

Add. Annotation :—**Refd.** Woodward *v.* Wolfe, [1936] 3 All E. R. 529.

147a. —— **Part of account.**]—MORTEN *v.* HILTON GIBBES & SMITH, [1937] 2 K. B. 176, n.

Annotation :—**Apld.** Samson *v.* Frazier Jelke & Co., [1937] 2 K. B. 170.

147b. —— ——.]—Pltf. was a speculator on the New York & London stock exchanges. Defts., who were members of the New York exchange but not of the London exchange, acted for him on margin terms, the London transactions being carried out through brokers who were members of the London stock exchange. Defts. became personally liable to these brokers for the fulfilment of pltf.'s contracts. Pltf.'s speculations were unsuccessful & defts. required him to provide further cover. He failed to do so, & defts. sold part of his shares to provide cover for the remainder :—*Held :* defts. were entitled, pltf. being in default, to close part of the account & carry over the remainder, their only duty being to act in good faith & do what was reasonable in the interests of themselves & their client.—SAMSON *v.* FRAZIER JELKE & Co., [1937] 2 K. B. 170; [1937] 2 All E. R. 588; 106 L. J. K. B. 854; 157 L. T. 530; 81 Sol. Jo. 398.

160. *Add. Annotations :*—*As to* (1) **Refd.** Morten *v.* Hilton Gibbes & Smith, [1937] 2 K. B. 176, n.; Samson *v.* Frazier, Jelke & Co., [1937] 2 K. B. 170.

161. *Add. Annotation :*—**Refd.** Samson *v.* Frazier, Jelke & Co., [1937] 2 All E. R. 588.

162. *Add. Annotations :*—**Refd.** Morten *v.* Hilton Gibbes & Smith, [1937] 2 K. B. 176, n.; Samson *v.* Frazier, Jelke & Co., [1937] 2 K. B. 170.

178. *Add. Annotation :*—**Refd.** *Re* Wheeler & Co., Trustee *v.* Kirby & Grainger (1933), 76 L. Jo. 86.

189. *Add. Annotation :*—**Consd.** Solloway *v.* Johnson, [1934] A. C. 193.

195. *Add. Annotations :*—**Refd.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

211a. Right of jobber to sue third party.]—C. an outside broker, who conducted his brokerage business through defts., who had a seat on the Toronto Standard Stock & Mining Exchange, gave instructions for the purchase & sale of shares without disclosing the name of his clients. Most of the transactions were on margin. C. found himself unable to find the cash for large purchases of a certain class of stock then open, & could not find the client for whom the purchases had been made. Defts., purporting to act under powers given by the contract between them & C., proceeded to sell shares bought & held as security on the general account, which mainly consisted of shares bought on behalf of C.'s clients, & in that way indemnified themselves against the loss on the particular stock in question. C. went into bkpcy., making an assignment for the benefit of his creditors. On a claim for damages by C. & his trustee in bkpcy. against defts., the trial judge made a declaration (*inter alia*) that defts. held the securities which they sold in trust for C. or his trustee in bkpcy. as trustee for C.'s customers & clients, & that defts. had no right to charge those securities with the purchase price of the stock, & the judgment made provision for the determination & payment of damages. On appeal by defts. the Ct. of Appeal of Ontario set aside this judgment. Pltfs. appealed :—*Held :* that judgment of the trial judge could not stand. So far as the rights of the parties depended upon contract, C. had no claim against defts. in the capacity of trustee. Although there had been numerous actions in which an agent for undisclosed principals had sued in his own name, there appeared to be no precedent for such an agent suing as trustee for his principals; further, if the case were regarded as a wrongful dealing with property apart from privity of contract the result was the same. If there was nothing due from the undisclosed principal in respect of the shares which had been bought, either he or the agent must sue: no question of trusteeship arose. With regard to shares deposited as margin, the agent was in the position of mtgee. with a right to submtge. A mtgee. was not a trustee, & if the shares were improperly dealt with by the submtgee., the mtgee. could sue in his own right, or the mtgor. might, under proper conditions, sue to protect his property. The mtgee. could not sue as trustee for the mtgor., for he was not a trustee. In the present case either C.'s rights passed to his trustee in bkpcy., or C.'s customers alone could sue, & neither C. nor his trustee could sue as

All E. R. 828; 106 L. J. P. C. 14; 156 L. T. 149; 53 T. L. R. 176, P. C.

215. *Add. Annotation :*—**Consd.** Stanley & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

217a. —— —— **What amounts to "loss sustained" by principal.**]—By an agreement in writing between pltfs., who were stockbrokers & members of the Stock Exchange, & defts., who were also stockbrokers but not members of the Stock Exchange, the latter agreed that in consideration of receiving 50 per cent. of any commission on business introduced by them to pltfs. they would be liable for 50 per cent. of any "loss sustained" by pltfs. in connection with such business. Defts. introduced to pltfs. one W., & as a result of his transactions he incurred a debt to pltfs. no part of which had been paid. W. executed a deed of assignment of his property for the benefit of his creditors, & both pltfs. & defts. were assenting creditors to the deed. Pltfs. claimed that on the execution of that deed of assignment a loss had been sustained by them within the meaning of the above-mentioned agreement, & they brought an action to recover 50 per cent. of W.'s debt :—*Held :* the mere signing of the deed of assignment by W. did not establish a loss sustained by pltfs., & that in the absence of evidence of actual loss sustained by them the action failed.—STANLEY (MONTAGU) & Co. *v.* SOLOMON (J. C.), LTD., [1932] 2 K. B. 287; 101 L. J. K. B. 532; 147 L. T. 196, C. A.

223a. Necessity for consent of principal.]—Under

the Rules & Regulations of the Stock Exchange & under the general law half-commission is not payable to an agent without the principal's consent.—WAITHMAN, DONEGAN & Co. *v.* RAMIREZ (1932), 48 T. L. R. 360; 76 Sol. Jo. 290.

Part V.—Breach of Contract.

373. *Add. Annotation :*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

Part VI.—Default and Bankruptcy.

384a. —— **Trustee not entitled to recover against jobber.**]—Applt. was a director of S. M. & Co., a Canadian stock brokerage co. with several branches. T. F. & Co. were a stock brokerage co. carrying on business at a town in British Columbia where there was no stock exchange. In Apr. 1928, S. M. & Co. agreed to accept orders from T. F. & Co. for the sale & purchase of shares, both for cash & on open account, & to divide the commissions with them; T. F. & Co. were to provide 33⅓ per cent. as margin. T. F. & Co. made numerous contracts with S. M. & Co. in pursuance of orders from their clients, also some on their own behalf. The contract notes were all in the name of T. F. & Co., who did not send them to their clients, but a separate contract was made for each order. Money paid to T. F. & Co. by their clients went into their general account. S. M. & Co. knew that the transactions were entered into by T. F. & Co. mainly, at least, on behalf of their clients. In Sept. 1929, T. F. & Co. became bkpt.; resp. was trustee in the bkpcy. In an action brought by him as trustee he obtained judgment for the return of all sums paid by T. F. & Co. to S. M. & Co. on transactions upon open account, & against applt. for the amount of those sums as damages. The grounds were that S. M. & Co. adopted a fraudulent system of not making independent contracts in respect of shares dealt in, & that applt. was a party thereto. There was no appeal by S. M. & Co. :—*Held :* the judgment against applt. should be set aside, because T. F. & Co.'s clients were undisclosed principals to the contracts made upon their orders, & resp. therefore could not maintain the action as to those contracts, & because the action failed as to all the contracts in the absence of evidence that the fraudulent system had been used in connection with any particular contract; further, that even if the judgment could be sustained against the co., applt. was not liable in the absence of proof of loss.—SOLLOWAY *v.* JOHNSON, [1934] A. C. 193; 103 L. J. P. C. 49; 150 L. T. 421; 50 T. L. R. 268.

387. *Add. Annotation :*—**Refd.** Solloway *v.* John son, [1934] A. C. 193.

PART IV. SECT. 7, SUB-SECT. 1.

sb. *Delay in delivery of certificates—What is reasonable time.*]—Defts., stockbrokers in C., on Sept. 14, 1929, wired pltfs., stockbrokers in T., to buy certain shares at a named price. Pltfs. were, to the knowledge of defts., members of the T. Stock Exchange. Pltfs. bought the shares upon the Exchange on the same day & at the named price. Defts. knew that the shares would be bought on the Exchange & according to its rules & customs. Pltfs. were not able to procure delivery of the certificates for the shares until Sept. 27. On Oct. 1 they drew on defts. for the price, attaching the certificates to the draft. Defts. on Oct. 4 refused to take delivery on account of the delay :—*Held :* in the absence of an express stipulation as to the immediate forwarding of the certificates or of a demand to forward them at once, the delay in procuring & forwarding them was not unreasonable & defts. were not justified in repudiating the contract.—CRANG & CO. *v.* PLOTKE & CO., [1931] 1 D. L. R. 668; 66 O. L. R. 332.—**CAN.**

PART V. SECT. 1.

373 ii. —— ——.]—If broker fails to deliver, purchaser is entitled to value of the shares at time of tender of balance due & demand, less any balance owing on them, & less commission & interest.—CROFT *v.* MITCHELL (1913), 14 D. L. R. 914.—**CAN.**

373 iii. —— *Failure to deliver within reasonable time—Waiver.*]—CLARK & Co. *v.* ROBINSON, [1930] 4 D. L. R. 158; 42 B. C. R. 409.—**CAN.**

373 iii. —— ——.]—In an action in which stockbrokers were held liable in damages to a customer for selling without his authority shares of his which they were holding for him :—*Held :* in assessing damages, the date when pltf. would have sold the shares had he not been prevented from doing so by their prior sale by the brokers should be determined on the assumption that he would have done what prudent people would have done & have sold when the hour came to sell. In the present case it was held that this point of time was fixed as at that date when pltf., after objecting to a statement of his account which showed said shares as sold, requested that they be placed to his credit because he wanted to sell them. He was, therefore, awarded the difference between the low market price on that day & the price at which defts. had previously sold.—SUNDERLAND *v.* SOLLOWAY MILLS & Co., LTD., [1930] 3 W. W. R. 641; 43 B. C. R. 297; *affd.*, [1931] 2 W. W. R. 393; 44 B. C. R. 24; *affd.*, [1931] S. C. R. 714; [1932] 4 D. L. R. 795.—**CAN.**

PART VI. SECT. 2.

400 i. *Property available for distribution among creditors—Shares purchased by broker for client.*]—In determining on the bkpcy. of a stockbroker whether certain shares, certificates for which were in his possession at the time of the bkpcy., are the property of a claimant thereto who had been dealing, as a buyer of such shares, with the broker, or are assets in the hands of the trustee, the distinction must be observed between the case where the relationship of the broker & the claimant was that of vendor & purchaser & the case where the relationship was that of agent & principal. In the former case the shares will not be held to be the property of the claimant unless certificates therefor have been specifically appropriated to the claimant's contract. In the latter case, *i.e.* where the relationship was that of principal & agent, it must be held that the certificates on hand include those for the shares bought for the claimant if the certificates on hand of the kind in question are sufficient to meet the demands of all purchasers of such shares; & the claimant will be entitled to delivery of the certificates provided he has either paid, or pays therefor in full, or if he has to his credit on the books of the broker an amount sufficient to meet the balance, if any, due from him on said shares.—*Re* STOBIE-FORLONG-MATTHEWS, LTD., *Re* KERN AGENCIES, LTD., [1931] 1 W. W. R. 817; 3 D. L. R. 170; 39 Man. L. R. 476; 12 C. B. R. 313; *revsg.*, [1931] 1 W. W. R. 304.—**CAN.**

400 ii. —— *Card of membership of Exchange.*]—A registered broker in the Sir Dinshaw Petit Native Share Brokers' Hall, Bombay, was declared a defaulter & his card of membership was forfeited by the directors. Shortly afterwards he was adjudicated an insolvent under Presidency Towns Insolvent Act, 1909, & by virtue of the material sections thereof all his property wherever situated which might belong to or be vested in him vested in the Official Assignee of Bombay & became divisible among the insolvent's creditors. In an action by the Official Assignee claiming against the Native Share & Stock Brokers' Assocn. a declaration that the card of the insolvent & all rights & benefits annexed thereto were vested in the Official

403a. Cash in hands of broker—Right to follow.] — Where a client has paid money to a stock & share broker for the purchase of shares which have not been delivered to him, & the broker becomes bkpt., if the transaction was one between principal & agent, & not between principal & principal, a fiduciary relationship is created & the client is entitled to the return of his money, if it can be followed.—*Re* WHEELER (ARTHUR) & Co. (No. 389 OF 1931), TRUSTEE *v.* KIRBY & GRAINGER (1933), 102 L. J. Ch. 341; [1933] B. & C. R. 124.

Assignee, & that he was entitled to the net proceeds of their sale:—*Held:* by virtue of the nature & character of the assocn. as regulated by the deed of assocn. & the rules made thereunder, in the case of a defaulting member who was expelled from the assocn., no interest in his card remained in himself & none that could pass to his assignee. —BOMBAY OFFICIAL ASSIGNEE *v.* SHROFF (1932), 48 T. L. R. 443, P. C.—**IND.**

n i. —— *Payment to obtain shares—Lien for salvage.*]—Where in pursuance of the authority of an order of the ct. the stockbroker's trustee in bkpcy. has obtained share certificates from another broker who acted as the bkpt.'s correspondent on another exchange & in order to do so has had to pay said correspondent the amount due on said shares, these shares are, except with respect to the money so expended, in the same position as shares which, in the ordinary course, come into the hands of the trustee in taking possession of the assets of the bkpt.; the amount expended to salvage such shares, & interest thereon, constitutes, however, a lien upon them which should be paid *pro rata* by the customers who benefited by the course pursued by the trustee.—*Re* CLARK (R. P.) & Co. (VANCOUVER), LTD., [1931] 3 W. W. R. 79; 44 B. C. R. 301.—**CAN.**

sx. *Rights of clients.*]—On the bkpcy. of a stockbroker, if there are sufficient shares of any particular description on hand to satisfy orders given therefor by customers to the broker they should be delivered to such customers if the latter have paid for them in full. If the shares have not been fully paid for by the customers they should, before receiving the shares, be required to make payment of the balance due thereon with interest & to make payment of any other indebtedness owing the broker. If there are not available sufficient share certificates of a particular description to satisfy the purchases by the different customers, the latter should be given their *pro rata* number of the shares which are available.—*Re* CLARK (R. P.) & Co. (VANCOUVER), LTD., [1931] 3 W. W. R. 79; 44 B. C. R. 301.—**CAN.**

sy. ——.]—On the bkpcy. of a stockbrokerage co.:—*Held:* the procedure by which it recorded its transactions on behalf of its customers was such as enabled the latter to identify & claim certain specific securities or the proceeds thereof as their property.—*Re* KERN AGENCIES, LTD. (No. 3), [1932] 1 W. W. R. 585.—**CAN.**

sa. *Pledge of own & client's stock—Right of client to payment out of proceeds.*]—*Re* WIGGINS, LTD., TRAVERS' & SPRATT'S CLAIMS, [1931] 4 D. L. R. 338; O. R. 573.—**CAN.**

sb. *Recovery of amount paid for shares on behalf of customer.*]—The trustee in bkpcy. of a stock-brokerage co. sued to recover money paid by the brokers for the purchase of shares on behalf of deft. Pltf. was at all times ready to deliver, & during the trial did deliver, enough shares of the particular stocks purchased, free from the demands of others, to satisfy deft.'s demand:—*Held:* it was not necessary that the identical shares purchased for deft. should have been earmarked & kept available for him, the brokers being only required to have available for delivery, on demand & payment, enough of the kind of shares ordered by him; but deft. was obliged to tender the amount due the brokers before he could insist on delivery of the shares, & since he had not done so, & enough shares were available for him, the trustee was entitled to judgment.—STOBIE-FORLONG ASSETS, LTD. *v.* BARKER, [1932] 2 W. W. R. 274; 3 D. L. R. 182; 45 B. C. R. 394.—**CAN.**

sd. *Pledge of shares to bank—Return of shares by bank to trustee—Customer not entitled to return of specific shares.*]—*Re* CARROLL & WRIGHT, *Ex p.* BAIN, [1932] 3 D. L. R. 410; O. R. 474.—**CAN.**

sf. —— *Return of some shares—Distribution.*]—If on the bkpcy. of a stockbroker it is found that he has wrongfully pledged the securities of customers including both securities purchased outright & those purchased on margin & that, after the pledgee had sold enough of the pledged securities to satisfy his claim, there was a surplus in cash or securities remaining, but not enough to satisfy the claims of the broker's customers, the owners of securities purchased outright but remaining unsold are not entitled, in the distribution of the surplus cash & securities, to claim their securities without making a *pro rata* contribution to the "burden of the loan," nor are the customers who purchased outright entitled to a preference over margin customers; but, in accordance with the principle that "equality is equity" all classes of customers must share equally in the said burden.—*Re* CLARK MARTIN & Co., LTD., [1933] 3 W. W. R. 261; [1934] 1 D. L. R. 521.—**CAN.**

sg. ——.]—Where a stockbroker has, in breach of his duty, repledged customers' securities pledged with him, & subsequently is made bkpt., & the pledgee realises on some of the securities & returns others, a sole unsatisfied customer is entitled to payment from the trustee in priority to the general creditors.—*Re* HERON & Co., *Ex p.* ROBERTSON, [1933] 4 D. L. R. 43; O. R. 693.—**CAN.**

sk. ——.]—On an application under Trustee Act for advice & directions, made by the trustee under a deed of arrangement between a stockbrokerage co. & all except two of its creditors:—*Held:* where a stockbroker has wrongfully pledged securities belonging to his customers to a bank which has sold part of them to liquidate the debt owed it & those remaining unsold are not sufficient to satisfy the claims of his customers, the ct. cannot, in view of *Sinclair* v. *Brougham*, [1914] A. C. 398, at pp. 418–21, apply the doctrine of the American Cts. termed "sharing the burden of the loan," but must hold in the case of a creditor customer that where securities remaining unsold are earmarked & can be identified as those pledged by the customer or in which he specifically directed his money to be invested he is entitled to delivery of them, & where they cannot be so identified he should be credited with their market value as of the date when he became a creditor. In the case of customers indebted to the broker & who left securities with him as collateral the customer on paying the amount which he owes the broker is entitled to their return if they can be identified.—*Re* JACKSON & MUIR & Co., LTD., [1935] 1 W. W. R. 72; 2 D. L. R. 808.—**CAN.**

PART VI. SECT. 3.

sd. *Differences payable from one stockbroker to another—Whether divisible among stock exchange creditors only on insolvency.*] — KAIKUSHROO TALYARKHAN *v.* BAI GULAB (1928), I. L. R. 53 Bom. 508.—**IND.**

PART VII. SECT. 1, SUB-SECT. 1.

sf. *Security Frauds Prevention Acts—Security—Agreements relating to real property—"Lunch & lecture" method.*]—*Held:* the purpose & intent of the Act are to prevent & put an end to such dealings & therefore an order enjoining resps. for so trading in securities was granted.—A.-G. OF ONTARIO *v.* HUTESON, [1931] 1 D. L. R. 56; 66 O. L. R. 387.—**CAN.**

sh. —— *Officer of Dominion company trading—No defence.*]—R. *v.* HAZZARD (1931), 57 Can. C. C. 254.—**CAN.**

sk. —— *Shares in company.*]—Shares in a co. are "securities" within Security Frauds Prevention Act, 1930. —R. *v.* MCDONNELL, [1935] 1 W. W. R. 175; 1 D. L. R. 532; 63 Can. C. C. 150.—**CAN.**

sl. —— *What amounts to trading.*]—The conduct of applt. in systematically soliciting & obtaining from the public subscriptions to the capital stock of a proposed co. which was in process of incorporation, held to constitute a "trading" in "securities" within Security Frauds Prevention Act, 1929 (c. 10).—R. *ex rel.* SYMONS *v.* SPRINGER, [1930] 2 W. W. R. 396.—**CAN.**

sm. —— *Security—Club membership.*]—A membership in the club in question herein, which was duly incorporated as a co. is not a "security" within Securities Act, 1929, formerly entitled The Security Frauds Prevention Act, 1929, & therefore, the sale of memberships by the members of the club does not render the club a trader in securities within said Act.—*Re* SECURITIES ACT, *Re* AMALGAMATED BUSINESS MEN'S CLUB, LTD., [1933] 1 W. W. R. 172.—**CAN.**

sp. —— *Investigation—Delegation of authority by Attorney-General.*]—The authority to investigate which under sect. 10 of Securities Act, 1930, may be delegated by the A.-G. to his representative & the terms of the authority so delegated in the present case to deft.:—*Held:* broad enough to cover the investigation being carried on by him including an investigation of pltfs.' transactions in the shares of the co. in question.—BARTLEY & Co. *v.* RUSSELL, [1935] 1 W. W. R. 26; *affd.*, [1935] 2 W. W. R. 64; 3 D. L. R. 135; 64 Can. C. C. 57; 49 B. C. R. 502.—**CAN.**

sq. —— *Conduct of inquiry.*]—The investigation provisions of the statute dealing generally with the prevention of fraud by stock brokers were part & parcel of the administrative machinery for the attainment of the general purposes of the statute. The investigator was not a ct. of law nor was he a ct. in law While the investigator was bound to act judicially in the sense of being fair & impartial, that is something quite different from the right asserted by applts. of freedom of cross-examination of all the witnesses.—ST. JOHN *v.* FRASER, [1935] S. C. R 441; 64 Can. C. C. 90; 49 B. C. R 302.—**CAN.**

sr. —— *Right of rescission.*]—Securities Act, 1930 (Ont.) does not

Part VII.—Illegality and Fraud.

430. *Add. Annotations :—As to* (1) **Consd.** Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321. **Refd.** Ironmonger & Co. *v.* Dyne (1928), 44 T. L. R. 497 ; Townsend *v.* Grundy (1933), 18 Tax Cas. 140 ; Woodward *v.* Wolfe, [1936] 3 All E. R. 529.

432. *Add. Annotations :*—**Consd.** Ironmonger & Co. *v.* Dyne (1928), 44 T. L. R. 497. **Refd.** Ellesmere Earl *v.* Wallace, [1929] 2 Ch. 1 ; Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321 ; Townsend *v.* Grundy (1933), 18 Tax Cas. 140.

433. *Add. Annotations :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1 ; Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321.

434a. —— —— **One party agent.**]—BROWN *v.* ST. PHALLE, LTD. (1930), 74 Sol. Jo. 122.

450. *Add. Annotation :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

459. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

give the purchaser of shares a right of rescission where there is no fraud or misrepresentation, even if vendor is liable to the penalties of the Act.—LUMLEY *v.* BROADWAY COFFEE CO. & UNWIN, [1935] 1 D. L. R. 813 ; O. R. 104 ; *affd.*, [1935] 2 D. L. R. 417 ; O. R. 278.—**CAN.**

sw. *Liability of company.*]—A co. is subject to indictment under sect. 231 of the Criminal Code.—WEBSTER & KIRKNESS *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1930] 3 W. W. R. 381 ; *on appeal*, [1931] 1 D. L. R. 831 ; [1930] 3 W. W. R. 445.—**CAN.**

sy. —— *Certificate of registration—Powers of Superintendent.*]—Sect. 5 (2) of Securities Act, 1930, as amended reads : "The Superintendent may attach to any registration such terms, conditions, & restrictions as he thinks advisable, all of which shall be set out in the certificate of registration, & he may from time to time by notice in writing to the holder of the certificate vary, add, or omit any terms, conditions, or restrictions" :—*Held :* it was not intended thereby that persons who had acquired contractual rights as against the co. might without being heard, without compensation & without remedy, be despotically despoiled of such rights.—BRISCOE *v.* YORKSHIRE & CANADIAN TRUST, LTD. OF VANCOUVER & LONDON & WESTERN TRUST CO., LTD., [1936] 3 W. W. R. 513 ; 51 B. C. R. 222.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

425 xi. —— ——.]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421 ; *affg.*, [1930] 1 D. L. R. 219.—**CAN.**

425 xii. —— ——.]—On a defence of sect. 231 of the Criminal Code to an action by stockbrokers, for balance due, it must be shown that plts. had no *bonâ fide* intention of selling or making delivery.—O'BRIAN, BELL-IRVING, STONE & ROOK, LTD. *v.* BENTHAM (1932), 45 B. C. R. 532.—**CAN.**

sp. *Burden of proof.*]—In order for transactions between a broker & his customer to be illegal under sect. 231 of the Criminal Code both parties must intend that instead of the delivery of the article dealt in there shall be a mere payment of the difference between the contract price & the market price. The burden of proving that the transaction was illegal as being a mere cover for the settlement of "differences" rests with the party making the assertion ; he must plead the other party's participation in the illegal purpose & prove facts such as to lead to the judicial inference that the other party knew of the illegal purpose & knowingly assisted in carrying it out.—TULL (G. F.) & ARDERN, LTD. *v.* SHOULDICE, [1932] 1 W. W. R. 144.—**CAN.**

STREET AND AERIAL TRAFFIC.

Part I.—Regulation of Traffic.

3. *Add. Annotations :*—**Folld.** Edwards *v.* Wanstall (1929), 46 T. L. R. 101 ; Etherington *v.* Carter, [1937] 2 All E. R. 528.

3a. —— —— —— ——.]—Under sect. 21 of above Act, a local authority is not confined to making orders for special occasions, but may make an order of a general character restricting traffic of certain kinds in certain streets between specified hours daily, & such order is valid without being confirmed as a bye-law under Public Health Act, 1875 (c. 55), s. 184.—EDWARDS *v.* WANSTALL (1929), 142 L. T. 288 ; 94 J. P. 51 ; 46 T. L. R. 101 ; 28 L. G. R. 38 ; 29 Cox, C. C. 56, D. C.

Annotation :—**Consd.** Etherington *v.* Carter, [1937] 2 All E. R. 528.

3b. —— —— **Whether confirmation of order necessary—Under Public Health Act, 1875 (c. 55), s. 184.**]—EDWARDS *v.* WANSTALL, No. 3a, *ante*.

5a. **Acquisition of land for parking places—Public Health Act, 1925 (c. 71), s. 68—Objection—When appeal lies.**]—Where a local authority has given notice under sect. 68 (2) of above Act, of a proposal to acquire land in order to provide parking places for vehicles, & has given a decision against an objection duly made thereto under sub-sect. 3, the objector, being entitled to make the objection, is a "person . . . aggrieved" by the decision, & may accordingly appeal therefrom under the provisions of sub-sect. 3, although he alleges no grounds of objection personal to himself, but such only as are common to himself & other ratepayers & inhabitants.—SEVENOAKS URBAN DISTRICT COUNCIL *v.* TWYNAM, [1929] 2 K. B. 440 ; 98 L. J. K. B. 537 ; 141 L. T. 566 ; 93 J. P. 189 ; 45 T. L. R. 508 ; 73 Sol. Jo. 334 ; 27 L. G. R. 525, D. C.

—— —— **To what land applicable—Land acquired for street widening.**]—*Held :* where land may be lawfully applied for the purpose

above Act, use it as a parking place for motor cars.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436 ; 93 J. P. Jo. 480 ; 45 T. L. R. 618 ; *affirmed*, [1930] 1 Ch. 168 ; 99 L. J. Ch. 44 ; 142 L. T. 61 ; 94 J. P. 57 ; 46 T. L. R. 10, C. A.

5c. —— —— **Corporation shareholders in omnibus company.**]—KEIGHLEY CORPN. *v.* YORKSHIRE THEATRES, LTD. (1937), 81 Sol. Jo. 863, D. C.

PART I. SECT. 1.

sa. *"Parking" of vehicles—Whether regulation of traffic.*]—SCHILLING *v.* MELBOURNE CITY, [1928] V. L. R. 302 ; [1928] ARGUS L. R. 203.—**AUS.**

sc. *Regulation by constable—Action against constable for negligence—Contributory negligence.*]—DANGERFIELD *v.* SMITH, [1934] 1 W. W. R. 577 ; 2 D. L. R. 505 ; 48 B. C. R. 125.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

e i. ——.]—WIMBLE F. T. & CO. *v.* GUILLESSER, [1928] S. R. Q. 20 ; 22 Q. J. P. R. 38.—**AUS.**

e ii. ——.]—When two vehicles approach one another at an intersection the driver of the vehicle on the left is under a duty to permit the other vehicle to pass over the intersection first, & if a person is injured because of the failure of the driver on the left to observe this rule there is evidence of negligence on the part of said driver, & the burden is cast upon him to show that under all the circumstances he was not negligent.—MESS *v.* CALVER, [1929] 3 D. L. R. 684 ; 2 W. W. R. 442 ; 23 S. L. R. 505.—**CAN.**

e iii. ——.]—LLOYD *v.* HANNAFIN [1931] 1 W. W. R. 415 ; 2 D. L. R. 1000 ; 43 B. C. R. 401.—**CAN.**

e iv. —— *Validity of municipal bye-law.*]—A regulation as to the right of way of vehicles at street intersections is a rule of the road within the meaning of a statute which empowers a municipality to regulate traffic, but limits this power to regulations other than rules of the road. Therefore a municipal bye-law which lays down a rule as to the right of way which is in conflict with the rule established by a statute applicable to the municipality is *ultra vires*.—PIPE *v.* HOLLIDAY, [1930] 1 W. W. R. 225 ; 2 D. L. R. 73 ; 42 B. C. R. 230.—**CAN.**

e v. ——.]—*Held :* the fact that the car to the left is within the intersection before the car to the right enters it does not displace the latter's right to have the right of way. On the contrary, in an action resulting from a collision within an intersection the first question to be answered is : Why did not the driver to the left give way & keep out of the danger zone ?—KENNEDY LUMBER CO., LTD. *v.* PORTER, [1932] 1 W. W. R. 230.—**CAN.**

e vi. ——.]—With respect to motorists approaching an intersection from different directions the fact that the one on the left has been the first to reach or even enter upon the intersection does not render the rule of the road inoperative.—HALL *v.* TINCK, [1932] 3 W. W. R. 104.—**CAN.**

e vii. —— *Effect of traffic lights.*]—In Winnipeg at street intersections where traffic lights are in operation a motorist approaching an intersection when the green light is facing him has the right of way over a motorist who, after coming from the opposite direction, has made a left-hand turn within the intersection.—FANN *v.* WINNIPEG ELECTRIC CO., [1933] 2 W. W. R. 577 ; 3 D. L. R. 801 ; 41 Man. L. R. 388.—**CAN.**

e viii. ——.]—RAHAL *v.* BURNETT (1931), 45 B. C. R. 122.—**CAN.**

e ix. ——.]—Motorists who make left turns across opposing traffic, whether they have the right of way or not, must keep in mind sect. 40 (1) of Highway Traffic Act, 1930.—RYZ *v.* NASH-SIMINGTON CO., LTD., [1934] 1 W. W. R. 629 ; 2 D. L. R. 804 ; 42 Man. L. R. 251.—**CAN.**

e x. ——.]—In every cross road collision between two motor vehicles where the streets are of equal importance, the burden which plff. undertakes of proving that deft.'s negligence is the proximate cause of the accident, is in practice so heavy that it is seldom, if ever, discharged.—MURRAY *v.* BRITZ (1933), N. L. R. 352.—**S. AF.**

e xi. ——.]—REED *v.* LAWSON & GIVENS, [1934] 1 W. W. R. 405 ; 2 D. L. R. 564 ; 48 B. C. R. 103.—**CAN.**

e xii. ——.]—HENDERSON *v.* DOSSE (1932), 46 B. C. R. 401.—**CAN.**

e xiii. ——.]—*Held :* the word "intersection" must be construed in its ordinary natural meaning, & is not intended to apply only where two streets cross at right angles.—RICHARDSON *v.* COLLINS, [1932] W. A. L. R. 101.—**AUS.**

e xiv. ——.]—LITTLEWOOD *v.* WALKER, [1935] 1 W. W. R. 576.—**CAN.**

e x [illegible] of turning across the line of oncoming traffic is one that involves a duty of care, which is not necessarily discharged by giving the conventional signal of the intention to turn. The public safety is best conserved by imposing upon every vehicle the duty of observing the precautions appropriate to its own situation. If undue stress is laid upon any particular circumstance there must always be some tendency for the other vehicle to consider itself absolved from the full duty of care appropriate to the particular situation. In default of anything that brings or ought to bring to the knowledge of the driver of a vehicle that another person is acting or likely to act without a reasonable regard for his own safety, the driver of every vehicle may be excused for acting upon the assumption that other people will act reasonably. The act of passing at an important intersection involves a degree of care which is at least equal to that required of the driver who turns out of a road.—KLEEMAN *v.* WALKER, [1934] S. A. S. R. 199.—**AUS.**

5d. Direction by constable to keep to line of traffic—Failure to comply.]—An information charged a deft. that he "did unlawfully fail" to make a motor car keep to a particular line of traffic when directed to do so by a police constable, contrary to Road Traffic Act, 1930 (c. 43), s. 49. That sect. renders it an offence if any person driving or propelling a vehicle "neglects or refuses" to make it keep to a particular line of traffic, when so directed. The justices convicted deft. :—*Held:* the information properly disclosed the offence charged & was not calculated to mislead the deft. Accordingly, both information & conviction were good.—PONTIN *v.* PRICE (1933), 150 L. T. 177; 97 J. P. 315; 31 L. G. R. 375; 30 Cox, C. C. 44, D. C.

5e. Traffic sign—"Stop, Road Traffic Officer"—Validity.]—By an information preferred by an inspector of weights & measures of the Buckingham County Council—a person duly authorised to weigh motor vehicles for the

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e xvi. ——.]—Pltf.'s motor car, travelling at a reasonable speed, was halfway across an intersection when it was struck by a vehicle approaching from its right which was travelling at an excessive speed. The magistrate found that the real cause of the accident was the negligence of deft. in going across the intersection at too great a pace when the other vehicle was already there & crossing:—*Held:* the magistrate's decision was correct.—HUDDLE *v.* O'CALLAGHAN, [1936] W. A. L. R. 3.—**AUS.**

e xvii. ——.]—Where one street meets another & does not continue beyond it, but makes, at the place of meeting a T-shaped formation, there is an intersection within the meaning of reg. 67 of the Regulations made under Motor Traffic Act, 1909.—SUMMERS *v.* O'NEILL (1936), 53 N. S. W. W. N. 226.—**AUS.**

m i. —— ——.]—It is the duty of traffic on a side road to give way to that on the main road, but the traffic on the main road is not entitled to continue its course & speed without regard to traffic from the side roads.—RENNIE *v.* FREMANTLE MUNICIPAL TRAMWAYS & ELECTRIC LIGHT BOARD (1927), 29 W. A. L. R. 130.—**AUS.**

m ii. —— ——.]—BURNS & Co., LTD. *v.* CORRY, [1928] 1 W. W. R. 889; *sub nom.* BURNS & Co. *v.* CARLTON HOTEL, [1928] 2 D. L. R. 845.—**CAN.**

m iii. —— ——.]—The fact that the driver of a motor car has the right of way with respect to the driver of a car on an intersecting street does not entitle him to recover for damage resulting from a collision where the real cause of the damage was the excessive speed of his car & his failure to take precautions to avoid the collision.—RADIO TAXICAB CO., LTD. *v.* AVERBACK, [1928] 1 W. W. R. 685.—**CAN.**

m iv. —— ——.]—HORNBY *v.* PATERSON (B. C.), [1930] 1 D. L. R. 86; [1929] 3 W. W. R. 276; 41 B. C. R. 548.—**CAN.**

m v. —— ——.]—PAUL *v.* DINES, [1929] 3 D. L. R. 617; 3 W. W. R. 287; 41 B. C. R. 49.—**CAN.**

m vi. —— ——.]—Although it is the duty of the driver of a motor vehicle entering a main road from a private road or cross road to proceed with the greatest caution, it does not follow that a driver on the main road is relieved from responsibility; he is not entitled to rely on the driver on the private road stopping & allowing him to pass, but he must watch the vehicle on the private road & take the steps necessary to avoid a collision if the driver on the private road does not give way.—CURRIE *v.* MILNE & MILNE, [1930] 2 W. W. R. 159; 3 D. L. R. 995; 24 S. L. R. 437.—**CAN.**

m vii. —— ——.]—HOLLIS *v.* KIRKPATRICK (1930), 2 M. P. R. 418.—**CAN.**

m viii. —— ——.]—Observations on the duties of drivers of vehicles approaching an intersection.—LYALL *v.* MCALINDEN, [1930] W. A. L. R. 113.—**AUS.**

m ix. —— —.]—Where two motor cars are approaching an intersection & the one on the left of the other makes a substantial entry thereon before the latter, the right of way which the latter would otherwise have had is displaced.—CHAMBERS, CLARK & CRIGHTON *v.* SAMPSON, [1931] 2 W. W. R. 251; 3 D. L. R. 206; 44 B. C. R. 134.—**CAN.**

m x. —— ——.]—In an action resulting from a collision of motor cars at a street intersection the driver at the left does not satisfy the onus of proving that in entering upon the intersection he was acting with reasonable care merely by establishing the fact that his car was within the intersection before the car to his right entered it. He must show that he had reached the intersecting street substantially ahead of the car having the right of way & that the way appeared to be clear; or, in other words, he must show that he had made a reasonable as well as a substantial prior entry upon the intersection, that is, had exercised reasonable care in entering upon, as well as continuing the crossing of, the intersection. A driver of a motor car must exercise reasonable care not only when entering upon an intersection but also while crossing it. Although the driver coming from the right has by statute & bye-law the right of way at an intersection, yet where a vehicle at his left has reached the intersecting street substantially ahead of him the driver at the left is not obliged to wait upon the other if the way appears to be clear. A driver who has ceased to go forward at a "stop sign" long enough for him to make, & has made, the necessary observations as to all the then existing relevant circumstances on the "through highway" & elsewhere around him, has come to a "full stop" according to the requirements of a bye-law requiring him to do so; but, nevertheless, the question of his right to proceed is left to be determined according to the then existing circumstances.—HAINES & HAINES *v.* WILLIAMS, WILLIAMS & WILLIAMS *v.* HAINES, [1933] 1 W. W. R. 478.—**CAN.**

m xi. —— ——.]—MCLEOD & MCLEOD *v.* CONSTERDINE, [1934] 1 W. W. R. 19.—**CAN.**

m xii. —— ——.]—WILLS *v.* SWARTZ BROS., LTD. & HUDSON, [1935] S. C. R. 628; 3 D. L. R. 277; 5 F. L. J. (Can.) 243.—**CAN.**

m xiii. —— ——.]—MITCHELL *v.* ADLAM, [1935] 2 W. W. R. 613.—**CAN.**

m xiv. —— ——.]—An action for damages resulting from a motor-car collision at a street intersection. Pltf. was on deft.'s right, but when pltf. reached the intersection deft. was well within it & gave no indication of intending to stop. The intersection was on a wide street divided by street car tracks into thoroughfares for one-way traffic & declared by bye-law to be an arterial highway. By usage & necessity the statutory definition of "intersection" was not, in fact, applied to the whole intersection as so defined but to each of the two squares comprising it. When pltf., who was on the arterial highway, reached the intersection deft.'s car was between the two lines of street-car track & pltf. continued on his way on the assumption that deft. had seen him & would stop:—*Held:* the action failed because of pltf.'s improper insistence on the right of way.—FRANKLIN *v.* GEDDES, [1935] 1 W. W. R. 580; 2 D. L. R. 720; 43 Man. L. R. 92.—**CAN.**

m xv. —— ——.]—Where the driver of a motor car approaching an intersection had the right of way over a car which he saw to be about 125 feet to the left of the intersection:—*Held:* he was entitled to assume that the driver of that other car would respect his right of way & permit him to cross, unless he observed or should, by reasonable care, have observed from the speed of that car or manner in which it was being driven or other circumstances that its driver was not likely to be willing or able to bring that car under control so as to make it safe for him to act on that assumption.—GROH *v.* RITTER, [1935] 2 W. W. R. 472; 4 D. L. R. 243; 50 B. C. R. 129. **CAN.**

m xvi. —— ——.]—It is the duty of the driver of a motor-vehicle, who intends to alter his course & go down an intersecting street, before turning to his right across the line of route of a vehicle within a short distance & approaching along the street from which the turn is being made, to stop until the approaching vehicle has crossed his line of route, unless he is satisfied that the driver of the approaching vehicle has seen & appreciated his signal of intention to make the turn.—COMMERER *v.* STRATFORD CARRYING CO., LTD., [1934] N. Z. L. R. 551; G. L. R. 485.—**N.Z.**

m xvii. —— ——.]—Although it is the duty of the driver of a vehicle, when approaching an intersection, to give way to traffic on his right, there is a stage when that duty is qualified by the duty of traffic coming from the right to take care in crossing an intersection. As a general rule if the driver of a motor car has already entered an intersection he is entitled to proceed in front of traffic on the right which has not yet reached the boundary of the intersection.—DEARDEN *v.* LILLEYMAN, [1935] W. A. L. R. 3.—**AUS.**

m xviii. —— ——.]—In an action resulting from a collision of motor cars at an intersection:—*Held:* the accident was due solely to the negligence of deft., who was on the right of pltf., in not keeping a proper lookout & in not giving pltf. the right of way which he had obtained. Pltf., after coming to a full stop at the stop sign, looked both to the right & left, &, having concluded that there was no danger of collision, proceeded to cross, deft.'s car being then at least 250 feet away from the intersection & going about 30 miles an hour:—*Held:* therefore, he was justified in proceeding & had displaced deft.'s right of way. It could not be said that deft.'s car was going at an obviously high or dangerous rate of speed, & that pltf. was negligent in crossing ahead of a "speed maniac."—WELCH & DOWNIE *v.* GRANT, [1936] 1 W. W. R. 312; 50 B. C. R. 385.—**CAN.**

m xix. —— ——.]—ROYAL TRUST CO. *v.* TORONTO TRANSPORTATION COMMISSION, [1935] S. C. R. 671; 3 D. L. R. 420.—**CAN.**

m xx. —— ——.]—Where a road allowance has not been graded but there is a used trail thereon which

purposes of sect. 27 of Road Traffic Act, 1930 (c. 43)—a cartage co. was charged with "unlawfully aiding, abetting, counselling & procuring" a driver of one of its motor vehicles "to fail to conform to the indication given by a traffic sign . . . for regulating the movement of traffic" authorised by the Minister of Transport, pursuant to sect. 48 of Road Traffic Act, 1930 (c. 43), as amended by the Road Traffic Act, 1934 (c. 50). By a second information the driver was charged with failing to conform to the indication given by the said sign. The sign consisted of a portable revolving board, bearing on one side the words "Stop, Road Traffic Officer, Bucks C. C.," &, as found by the justices, conformed in all material respects to the authorisation & directions of the Minister of Transport. On appeals by defts. from the decisions of the justices it was contended that the device in question was not a traffic sign within the meaning of sects. 48 & 49 of the Act of 1930; that the purported authorisation of the said device by the Minister was *ultra vires;* & that the road traffic officer had no authority or right in law to stop a motor vehicle travelling on the road:—*Held:* the said device was a sign for regulating the movement of traffic within the meaning of sects. 48 & 49 of the Act of 1930; the stopping of a vehicle was the regulating of its movements within the meaning of those sects.; & the authorisation by the Minister was therefore *intra vires* his powers, & the appeals must be dismissed.—LANGLEY CARTAGE CO., LTD. *v.* JENKS, ADAMS *v.* JENKS, [1937] 2 K. B. 382; [1937] 2 All E. R. 525; 106 L. J. K. B. 559; 156 L. T. 529; 101 J. P. 393; 53 T. L. R. 654; 81 Sol. Jo. 399; 35 L. G. R. 246.

18. After this case add:—

-.]—*See, now,* Road Traffic Act, 1930 (c. 43), s. 49.

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at an intersection with a graded road cuts the corner sharply to the left a driver of a motor car on making that turn is not required to risk the hidden dangers involved in driving to the right of the trail, except to turn out to pass traffic, but he is under the duty of approaching the intersection with care, having his car under control & being ready to act in case of emergency.—WOLOWIDNYK *v.* SWIDESKIE, [1936] 1 W. W. R. 141.—**CAN.**

m xxi. —— ——.]—In an action for damages resulting from a collision between an automobile & a street car:—*Held:* the driver of the automobile was negligent in not looking to her right after entering the intersection, regardless of whether it was true, as she stated, that she had stopped at the stop sign & then proceeded slowly or whether the facts were, as stated by passengers on the street car, that she did not stop at the sign & entered the intersection rapidly. The fact that the motor-man did not see the automobile sooner & in time to avoid the accident was not, under the circumstances, negligence on his part. The collision was due wholly to the negligence of the driver of the automobile.—MUNTON *v.* EDMONTON & FINDLEY, [1936] 2 W. W. R. 481.—**CAN.**

m xxii. —— ——.]—*Held:* the right conferred on the motor car to the right & the duty imposed on the car at the left is not one to be lost on a split second.—ROBERT SIMPSON WESTERN, LTD. *v.* GOLDMAN & GOLDMAN, [1936] 3 W. W. R. 429.—**CAN.**

m xxiii. ——.]—Although where two cars approach an intersection the driver of the one on the right of the other is given by statute the right of way he is nevertheless under the duty of exercising reasonable care to avoid a collision with the car on his left.—MANN *v.* STRUGNELL & JOHNSTON, [1937] 1 W. W. R. 730.—**CAN.**

m xxiv. —— ——.]—EVANS *v.* DANN, [1937] 3 W. W. R. 610.—**CAN.**

m xxv. —— ——.]—RUBINSTEIN *v.* MALKIN, [1937] 3 W. W. R. 529.—**CAN.**

n i. —— *Traveller on cross road reaching intersection first.*]—The mere fact that the traveller holding the servient position reaches the limit of intersection first, while relevant evidence, does not of itself give him the right of way.—SANDS *v.* GREER, [1930] 3 D. L. R. 67; 65 O. L. R. 169.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.

19 i. *No other traffic on road.*]—Notwithstanding Highway Traffic Act, 1930, requiring vehicles to travel on the right-hand side of the road, the driver of a vehicle may travel on any part of a road so long as there is no other traffic in the neighbourhood.—BELL *v.* HUTCHINGS, [1931] 2 W. W. R. 488; *revsd. on other grounds,* [1932] 1 W. W. R. 49; 1 D. L. R. 468.—**CAN.**

sx. *Vehicles crossing.*]—In an action resulting from a collision between pltf.'s motor cycle & deft.'s automobile:—*Held:* the cause of the accident was deft.'s negligence in driving his car across the street in face of the oncoming motor cycle, which he admitted he saw; & there was no contributory negligence. The provision in sect. 47 of Vehicles & Highway Traffic Act, 1924, that a driver meeting another vehicle upon the highway must keep to the right:—*Held:* not to apply to pltf. in the circumstances since deft.'s automobile was not meeting pltf.'s motor cycle but was crossing in front of it.—BATTAGIN *v.* BIRD, [1937] 1 W. W. R. 719; *affd.* 2 W. W. R. 365.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.

sb. *General rule.*] — Drivers of vehicles on highways cannot be required to regulate their driving as if in constant fear that other drivers who are under observation, & apparently acting reasonably & properly, may possibly act at a critical moment in disregard of their own, as well as others, safety.—COLDWELL *v.* MUNICIPAL TRAMWAYS TRUST, [1929] S. A. S. R. 88.—**AUS.**

sc. ——.]—The rules to be observed by a careful motorist are not limited to those laid down by the Motor Vehicle Act.—BERRY *v.* RICHARD (1932), 5 M. P. R. 62.—**CAN.**

26 iii. —— ——.]—The driver of a motor car is usually able, & is expected, to keep a look out for vehicles & pedestrians crossing his path upon their lawful occasions, & to warn them if they appear to be unaware of his approach.—MATHEWS *v.* WARD, [1930] S. A. S. R. 286.—**AUS.**

k i. —— *Duty to slow up at intersection.*]—A pedestrian crossing at an intersection has a right to assume that anyone who may come up to the crossing she has already entered will exercise care by reducing his speed, or stopping.—ALTER *v.* SOLOWAY, [1931] 2 D. L. R. 328; 66 O. L. R. 610.—**CAN.**

k ii. —— *Pedestrian walking in same direction.*]—The fact that a motorist sounds his horn once or oftener on seeing a pedestrian on the road ahead of him & walking in the same direction does not justify him in driving on without taking due care according to the circumstances. If he perceives that the pedestrian is not heeding the horn it is his duty to bring his car under such control, even to the extent of coming to a full stop, that he will be able to guard against an accident should the pedestrian suddenly swerve in his course so as to come in front of the car.—WOOD *v.* POWELL, [1932] 3 W. W. R. 100.—**CAN.**

k iii. —— ——.]—When the driver of a motor car perceives that a pedestrian is not heeding the horn & is not aware of the car's approach he should bring his car under control & if necessary stop it. If he first blows his horn when so close to the pedestrian as to alarm him he should take care to have his car under sufficient control to be prepared for any emergency resulting from the pedestrian's alarm.—MALAWSKI *v.* WALTON, [1932] 3 W. W. R. 330.—**CAN.**

k iv. —— *Pedestrian boarding street car.*]—A pedestrian stepping from a sidewalk at a street intersection with the object of boarding a street car has a right to expect that the driver of an approaching automobile then some distance away will see him & not come too close to the crossing for safety; & that the driver will slacken his speed & have his car under such control that it can be stopped almost instantly.—JAMES & JAMES *v.* PIEOL, [1932] 3 W. W. R. 365.—**CAN.**

k v. —— *Pedestrian alighting from street car.*]—The effect of sect. 11 of Motor-vehicle Act, R. S. B. C., 1924, which provides that an automobile must stop behind a street car when that street car is halted & discharging passengers & must remain stopped until the passengers get to the curb or are otherwise in safety, is that the onus is placed on a motorist to watch passengers getting off street cars & make sure before proceeding that they have reached the curb or else that they are in safety, as, *e.g.* if they clearly intimate that they intend to remain in the safety zone until the automobile has passed. This provision of said Act cannot be altered by any city bye-law so as to affect civil rights defined by the Act.—MACDONALD *v.* BAILEY, [1934] 1 W. W. R. 342.—**CAN.**

k vi. —— ——.]—ROLLAND *v.* WARSABA, [1937] 2 W. W. R. 706.—**CAN.**

k vii. —— *Motorist driving on wrong side—Overtaken by another car.*]—Even though there be no provision by statute or bye-law forbidding a motorist to travel on the left part of the right-hand side of a street, nevertheless, since the fact that a motorist occupies that position virtually compels another driver overtaking him to do so on his right, he is bound to use a particularly high degree of care as soon as he realises that the other car is coming

31a. Duty to halt at major road.]—A motorist was approaching certain cross-roads when he passed a road sign which read: "Halt at major road ahead." The word "Halt" was in large letters fitted with reflecting lenses, the other words being in small letters without reflecting lenses. It was dark at the material time & the motorist could reasonably see only the word "Halt." He had, however, passed the sign previously in daylight. The motorist halted at the sign & then slowly approached & turned into the major road. The construction of the sign conformed with the directions for such signs in the regulations & orders issued by the Minister of Transport: —*Held:* the motorist failed to conform to the

up to him. Moreover, such an emergency is expressly provided for by sect. 37 (4) of Highway Traffic Act, 1930, which says that if the driver of an overtaken vehicle finds it impracticable to give way to the right, he shall immediately stop.—HRABEC *v.* LUCID, [1933] 2 W. W. R. 636; 4 D. L. R. 452; 41 Man. L. R. 383.—**CAN.**

k viii. —— *Contributory negligence of pedestrian.*]—Pltf. when walking across a street between intersections about 4.30 a.m. on Jan. 1, in order to get to his parked motor car, saw deft.'s car approaching on his left about 225 feet away. He continued to walk until when about three feet from his car he stopped for about two seconds to see what the driver of a car parked to his right, the self-starter of which was working, intended to do. He was struck by deft.'s car. Deft. did not see pltf., but he was seen by a passenger in deft.'s car, when it was 150 to 160 feet away. She said pltf. would not have been struck had he not taken a step back; & pltf. admitted that if he had looked again he could have avoided the accident by taking one step:—*Held:* deft. was negligent in not seeing pltf.; & deft. was contributorily negligent in not looking to his left when he stopped; his degree of the total fault was 25 per cent.—DIXON *v.* SINCLAIR, [1936] 3 W. W. R. 527.—**CAN.**

30 iii. —— *Observance of rule of road not sufficient.*]—ACORN *v.* MACDONALD (P. E. I.), [1929] 3 D. L. R. 173.—**CAN.**

o i. —— ——.]—*Held:* even if a driver has no intimation that a street-car ahead of him is about to stop until he is within ten feet from it, he is nevertheless bound to stop his car as quickly as possible as soon as he becomes aware that the street-car is about to stop for the purpose of taking on or letting off passengers.—KATZ *v.* CONSOLIDATED MOTORS, LTD., & THOMSON, [1930] 1 W. W. R. 305; 2 D. L. R. 241; 42 B. C. R. 214.—**CAN.**

sc. *When accident occurs—Duty to stop—Extent of duty.*]—Under Motor Vehicles Act, 1921, s. 36, as amended by Acts of 1925 & 1927, there is an obligation on the driver of a motor vehicle to stop when such motor vehicle is concerned in any accident happening on any road or street:—*Held:* the obligation to "stop" must be understood in the light of the circumstances in each case, & a reasonable interpretation of the obligation was that the motor vehicle must be brought to rest within such a distance & period of time as is reasonable in all the circumstances, including those peculiar to the driver, such as his power or loss of self-control.—MINERVINI *v.* WALSH, [1928] S. A. S. R. 286.—**AUS.**

sd. —— *Duty to report to police station.*]—In rule 32 of the rules framed by the United Provinces Govt. under Motor Vehicles Act, 1914, the words "if any person is injured" govern the whole of the clause; the duty of reporting an accident at the nearest police station arises, therefore, only if any person is injured.—R. *v.* MANSA SINGH (1929), I. L. R. 51 All. 996.—**IND.**

se. *Duty to sound horn.*]—Under s. 40 of the Vehicles & Highways Traffic Act, 1924, which provides that every motor vehicle shall be equipped with a suitable bell, horn, or other sufficient means of giving warning of its approach, but gives no direction as to under what circumstances the horn should be sounded or the warning given, the necessity for the sounding of the horn or the giving of a warning is a matter of discretion on the part of the driver determinable by the particular circumstances confronting him.—BLISS *v.* MALBERG (Alta.), [1930] 1 D. L. R. 361; [1929] 3 W. W. R. 641; 24 Alta. L. R. 334; *revd.*, [1931] 4 D. L. R. 264; S. C. R. 710.—**CAN.**

sm. —— *Car approaching intersection—Effect of bright headlights.*]—Having regard to the fact that it was late at night & that the reflection of the powerful headlights of his car would sufficiently serve as a warning of his approach to the intersection, the driver of a car was not negligent in failing to blow his horn on approaching the intersection.—HARRIS *v.* SMITH (1932), 5 M. P. R. 378.—**CAN.**

so. ——.]—The effect of sub-sect. (3) of sect. 37 the Highway Traffic Act, 1930, is that in closely built-up sections of a city the driver of a motor vehicle is not obliged to sound his horn every time he passes a vehicle. A bicycle is a vehicle within sect. 2 (*q*) of the above Act.—DYIKACH *v.* MCAREAVY, [1934] 3 W. W. R. 307.—**CAN.**

sp. *Vehicle approaching bridge.*]—A person driving a motor car in a country where the roads are not yet permanently & smoothly surfaced must expect to meet varying surface conditions therein & is under the duty when approaching a bridge to exercise that reasonable care by which the effect of an inequality, if any, between the surface of the road & the floor of the bridge may be avoided.—BURGESS *v.* HODGINSON (Alta.), [1929] 3 D. L. R. 133; 2 W. W. R. 21.—**CAN.**

sq. *Vehicle driving into dark area.*]—There is a duty on the driver of an automobile in driving from a well-lighted area into a darkened area to take increased precautions, commensurate with the darkness, against possible dangers lurking therein.—OWENS *v.* CRANSTON (Man.), [1929] 4 D. L. R. 1072; 1 W. W. R. 498.—**CAN.**

sr. *Duty to move seasonably to right of road.*]—In an action for damages resulting from a collision between a bicycle which pltf. was riding & an automobile driven by deft. H.:—*Held:* the cause of the accident was the fact that deft. did not "seasonably" move his car to the right of the centre line of the highway; under the circumstances pltf. when faced with the oncoming car was not negligent in turning his bicycle to his left when he saw deft. was not moving his car to his right.—HARRIS *v.* HOWES & CHEMICAL DISTRIBUTORS, LTD., [1929] 4 D. L. R. 1066; 1 W. W. R. 217; 23 S. L. R. 306.—**CAN.**

ss. *Duty in case of vehicle driving upon private drive opening on busy street.*]—COATES *v.* PARKER (N. B.), [1929] 3 D. L. R. 148.—**CAN.**

st. *Driving in high wind.*]—The standard of skill & experience which the law requires of the driver of a motor car on a highway of varying surface resistances & running through open & sheltered stretches is not that of a novice; & a person driving a car when a normally high wind is blowing should be prepared for any normal exigencies to which the wind may give rise.—HIRD *v.* MILNE, [1930] 1 W. W. R. 977; 3 D. L. R. 513.—**CAN.**

su. *Duties of driver of car to driver of horse.*]—Pltfs. were proceeding upon a highway in a vehicle drawn by a horse when deft. in an automobile came along behind them & wishing to pass them, ran into the horse as it was being turned to the left to go into a lane:—*Held:* pltf. driving the horse had the right to expect that deft. would give a signal, as required by Highway Traffic Act, s. 38. As no signal was given, there was no contributory negligence on the part of pltfs. in not seeing deft.—DE MOTT *v.* CLYSDALE, [1931] 2 D. L. R. 316; O. R. 1.—**CAN.**

sk. *Effect of automatic signals on standard of care.*]—The fact that a motor car is brought to a stop at a street intersection marked by a "stop" sign does not entitle the driver thereof to abandon care upon resuming the journey. Care must be exercised at all stages, & the first requirement of motor-car drivers is to be alert; to keep a sharp look out for possible dangers. — PIPE *v.* HOLLIDAY, [1930] 1 W. W. R. 225; 2 D. L. R. 73; 42 B. C. R. 230.—**CAN.**

sl. *Turning across line of traffic.*]—Where there are two streams of traffic proceeding in opposite directions along a road, the driver of a vehicle who desires to turn across the line of traffic coming towards him is not bound to wait until there are no vehicles travelling towards him which may be interfered with by his vehicle. He is entitled to make his turn, but must give ample warning of his intention both to vehicles behind him & to those approaching him, & must do so at an opportune moment & in a reasonable manner.—MILTON *v.* VACUUM OIL CO. OF SOUTH AFRICA, LTD., [1932] App. D. 197.—**S. AF.**

so. *Speed in passing vehicle "going in opposite direction,"*]—Sect. 39 (1) of Vehicles Act, R. S. S., 1930, which provides that "No motor vehicle shall be driven at a greater speed than thirty-five miles per hour when passing any motor or other vehicle going in the opposite direction" does not apply to the case where the vehicle which is being passed is standing still on the road.—MCINTOSH *v.* PETERSON, [1933] 1 W. W. R. 440; *affd.*, [1934] 1 D. L. R. 289.—**CAN.**

sr. *Duty when overtaking.*]—A driver of a motor car who attempts to pass another vehicle going in the same direction assumes a grave responsibility; he must observe whether there are any vehicles approaching from the opposite direction; if other vehicles are coming he must make sure of the distance these vehicles are from him & see that he has time to pass & resume his position on the right side of the highway before their arrival; he must also observe the width & condition of the road & any circumstance which would tend to limit the movements of any of the cars; if the conditions are such that he cannot pass in safety it is his duty to drop back to his original position & not attempt to pass. —RODGERS *v.* WAINWRIGHT, NELSON *v.* WAINWRIGHT, [1933] 3 W. W. R. 620.—**CAN.**

indication given by the sign & thereby committed an offence against the Road Traffic Act, 1930 (c. 43), s. 49 (*b*).—BROOKS *v.* JEFFERIES, [1936] 3 All E. R. 232; 53 T. L. R. 34; 80 Sol. Jo. 856, D. C.

31b. ——.]—About 25 yds. from a road junction a duly authorised & approved traffic sign was erected, on the front of which were the words "Halt at major road ahead." Applt., who was approaching the junction, reduced speed to walking pace, observed the roads in all directions & proceeded slowly across:—*Held:* applt. should have brought his car momentarily to a standstill, & in failing to do so he had committed an offence under the Road Traffic Act, 1930, (c. 43), s. 49, as amended by Road Traffic Act, 1934 (c. 50), Sched. 3.—TOLHURST *v.* WEBSTER, [1936] 3 All E. R. 1020; 156 L. T. 111; 101 J. P. 121; 53 T. L. R. 174; 80 Sol. Jo. 1015; 35 L. G. R. 102.

31c. Pedestrian crossing—Duty to stop—Contributory negligence of pedestrian—Whether defence.]—Deft. in a running-down action alleged that pltf. had been guilty of contributory negligence, in that, while using a pedestrian crossing, he had emerged from behind other traffic, & had continued to cross, without looking to see whether the road was clear:—*Held:* although in some cases a deft. can plead contributory negligence as a defence to a claim based on a breach of a statutory duty, yet the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, regs. 3, 4, are so framed as to make it impossible for this defence to be raised in cases to which these regulations apply.—BAILEY *v.* GEDDES, [1937] 3 All E. R. 671; 157 L. T. 364; 53 T. L. R. 975; 81 Sol. Jo. 681, C. A.

SECT. 4.—RESTRICTIONS AS TO TRAFFIC.

(Vol. XLII., p. 846.)

See, also, Road Traffic Act, 1930 (c. 43), ss. 46, 47.

33a. Restriction of motor coaches in certain areas—Validity of regulations.]—A motor coach co., which held a number of metropolitan stage-carriage licenses, owned coaches which plied for hire on regular services in the metropolitan area & home counties. These coaches started from Upper Regent Street, London, where the booking office of the co. was. The Minister of Transport gave notice that he proposed to make regulations under London Traffic Act, 1924 (c. 34), s. 10, which in effect provided that motor coaches should not at any time on any week-day be on any street within a prescribed "inner area" of London, & that they should not be on any street within a prescribed "outer area" except at certain permitted hours. Upper Regent Street was within the outer area, & just on the border of the inner area:—*Held:* the Minister had power under the Act to make the proposed regulations.—R. *v.* MINISTER OF TRANSPORT, *Ex p.* SKYLARK MOTOR COACH CO., LTD. (1931), 144 L. T. 700; 47 T. L. R. 325.

33b. Prevention of obstruction—Restriction of sales in streets—Validity.]—A borough council being empowered by Town Police Clauses Act, 1847 (c. 89), s. 21, from time to time to "make orders for the route to be observed by all carts, carriages, horses, & persons, & for preventing obstruction of the streets . . ." made an order as follows: "During the months of May, June, July, Aug. & Sept. in each year no hawker, pedlar or other person shall use the streets set out in the sched. hereto, for the purpose of selling therein toys, postcards, souvenirs, fruit, vegetables, flowers, confectionery or ice-cream, & all constables are directed to enforce the provisions of this order." Applt. was charged with having unlawfully & wilfully committed a breach of the said order by using one of the streets referred to in the sched. for the purposes of selling confectionery, & was convicted & fined 5*s.* Applt. contended (*inter alia*) that the order was not a valid order, in that it was too general, as it did not specify the hours within which the streets might not be used for the sale of the articles mentioned:—*Held:* the order was valid, as the generality thereof was not in excess of the powers conferred on the borough council by sect. 21 of 1847 Act.—ETHERINGTON *v.* CARTER, [1937] 2 All E. R. 528; 81 Sol. Jo. 460.

Part II.—Traffic Nuisances and Offences.

34. *Add. Annotation:*—**N.F.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

34a. Proceedings under Town Police Clauses Act, 1847 (c. 89), s. 47—Consent of Attorney-General.]—A corpn. was convicted upon an information preferred on behalf of a limited co. under above sect. by one of its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act:—*Held:* Public Health Act, 1875 (c. 55), s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that Act, & therefore except in the case of information by a party aggrieved or the local authority for the

PART I. SECT. 3.

33 ll. —— —— ——.]—*Held:* the statutory rules for the regulation for motor traffic have not diminished the common law rule with regard to the duty of pedestrians—*viz.*, that a pedestrian who is run down when crossing a road cannot offer as evidence of negligence the fact that the vehicle was being driven on the wrong side of the road, but is under a duty to look both to his right & to his left before crossing, for, as regards a foot-passenger, a carriage may go on either side of the road.—HARRIS *v.* MCKINNON, [1933] N. Z. L. R. 153.—**N.Z.**

PART I. SECT. 4.

s1. *Operation of omnibus service—Order of Public Utility Board—Validity.*]—WINNIPEG CITY *v.* WINNIPEG ELECTRIC CO., *Re* MANITOBA AVENUE BUS SERVICE, [1933] 1 W. W. R. 136; 2 D. L. R. 285; 41 Man. L. R. 74.—**CAN.**

district, the consent of the A.-G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police Clauses Act, 1847 (c. 89).—SHEFFIELD CORPN. *v.* KITSON, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 142 L. T. 20; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533; 28 Cox, C. C. 674, D. C.

SUB-SECT. 21.—RINGING DOOR BELLS.

See Town Police Clauses Act, 1847 (c. 89), s. 28.

50a. Offence by tradesman — Delivery of newspapers.]—The mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint against him under Town Police Clauses Act, 1847 (c. 89), s. 28, charging him with having "wilfully & wantonly" disturbed the party & his family by violently knocking & ringing at the door at an unreasonable hour of the night.—CLARKE *v.* HOGGINS (1862), 11 C. B. N. S. 545; 142 E. R. 909.

Part III.—Lights on Vehicles.

55a. Effect of Road Transport Lighting Act, 1927 (c. 37), s. 11 (2)—On powers of Minister of Transport under Roads Act, 1920 (c. 72), s. 12 (1).]—*Held:* the words "or other authority" in Road Transport Lighting Act, 1927 (c. 37), s. 11 (2), did not include the Minister of Transport, & his power to make regulations under the powers conferred upon him by Roads Act, 1920 (c. 72), s. 12 (1), had not been revoked by Road Transport Lighting Act, 1927 (c. 37), s. 11 (2), & therefore a regulation which the Minister of Transport made on June 12, 1928, requiring a lamp to be carried on vehicles on the road at night for the illumination of the identification plate, was not *ultra vires*.—SWAITS *v.* ENTWISTLE, [1929] 2 K. B. 171; 98 L. J. K. B. 648; 142 L. T. 22; 93 J. P. 232; 45 T. L. R. 483; 73 Sol. Jo. 366; 27 L. G. R. 540; 28 Cox, C. C. 680, D. C.

Part IV.—Hackney and Stage Carriages.

As to Public Service Vehicles, *see, now,* Road Traffic Act, 1930 (c. 43), Part IV.

76. *Add. Annotation:*—**Consd.** White *v.* Cubitt (1929), 46 T. L. R. 99.

76a. Public service vehicles—Transitional provisions—Right to continue service operating

PART IV. SECT. 1.

56 iv. ——.]—Railway Passenger Duty Act, 1842, ss. 13 & 15, contain regulations for the prevention of overcrowding in any "stage carriage." The Act contains no definition of the term "stage carriage":—*Held:* a motor omnibus, which had been chartered by the secretary of a football club to convey a party of club supporters to a match at a fixed fare per passenger, was not a stage carriage on the occasion in question, in respect that it was not plying for hire from one stage to another, but was engaged in the performance of a private contract; & conviction of the conductor for overcrowding accordingly quashed. . WEIR, [1929] S. C. (J.) 14. —SCOT.

sa. *"Carrying passengers for reward at separate & distinct fares for each passenger"—Some passengers so carried.*]—A motor-car is "used for carrying passengers for reward at separate & distinct fares for each passenger," within the definition of "motor omnibus" in Motor Omnibus Act, 1928, s. 21, if some of its passengers are so carried.—BLYTH *v.* ANDERSON, . L. R. 153; Argus L. R. 154.—

sd. *Public vehicle.*]—A car does not become a public vehicle because the owner, being licensed as a chauffeur, contracts with a number of men to take them to & from work daily at a monthly rate.—R. *v.* BILJAN, [1935] 1 D. L. R. 477; O. R. 52; 63 Can. C. C. 203.—CAN.

sf. *Power of Motor Carrier Board.*]—The Motor Carrier Board in New Brunswick has power to grant a right to operate omnibuses in a town in which another co. already has an exclusive franchise granted by the town council.—CAPITAL TRANSIT, LTD. *v.* HIGHWAY TRANSPORT, LTD. (11 M. P. R. 33.—CAN.

sl. *Road motor undertaking—What is.*]—Pltf., who was the proprietor of two hotels, owned two motor omnibuses which were reserved entirely for hotel guests, & which he had used partly for the purpose of conveying hotel guests to & from his hotels, from & to Larne & Belfast, & partly in taking guests who came to his hotels upon inclusive week's tourist tickets, on advertised motor tours:—*Held:* such operation by pltf. of the said omnibuses did not constitute a road motor undertaking within Road & Railway Transport Act, 1935.—MURPHY *v.* NORTHERN IRELAND ROAD TRANSPORT BOARD, [1937] N. I. 22.—IR.

PART IV. SECT. 2, SUB-SECT. 1.

c i. —— *Regulation of taxicabs.*]—The city bye-law in question which required operators & drivers of cabs for hire to take out licences, prescribed a "zone tariff" for non-taximeter cabs, a tariff by distance for cabs equipped with taximeters & a rate "by the hour" for both classes of cabs, with a proviso in this case of a minimum charge. It also provided that no owner of a licensed cab should require or permit any driver employed by him to be on duty more than sixty hours in any week. A further provision prohibited the granting of a licence to an operator of a motor vehicle who was not insured in the form required by Part VII. of Highway Traffic Act, 1930, subject to a proviso in the case of an owner of ten cabs; & provided for depriving of his licence an operator whose insurance had terminated:—*Held:* said provisions of the bye-law, except that requiring insurance, were valid.—*Re* WINNIPEG BYE-LAW NO. 14272, [1932] 2 W. W. R. 679; 3 D. L. R. 625; 40 Man. L. R. 413.—CAN.

c ii. ——.]—*Held:* sect. 12 (1) of Highway Traffic Act, 1930 (Man.), authorised a bye-law which provided: "No person shall keep or operate any cab within the Town or use the streets thereof in connection with such business without first having obtained a licence therefor from the Town;" & which defined "cab" as meaning "any taxicab or other motor vehicle used or intended to be used for the conveyance of persons for hire." The words "keep" & "operate" as used in the bye-law were held to have the meaning of "having" & "conducting" or "carrying on" as used in the statute.—R. (THOM) *v.* SIMPKIN (NO. 2), [1933] 3 W. W. R. 580; 41 Man. L. R. 527.—CAN.

sb. *Licence fee for trucks plying for hire—Liability of owners outside municipality.*]—NORTH VANCOUVER *v.* STEWART F. R. & CO., [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401.—CAN.

sc. *Omnibus licensed by town council plying for hire in county—Bye-law requiring additional licence to be taken out—Whether valid.*]—SCOTTISH MOTOR TRACTION CO., LTD. *v.* LANARKSHIRE COUNTY COUNCIL, [1928] S. C. (Ct. of Sess.) 909; *revsd. sub nom.* LANARKSHIRE COUNTY COUNCIL *v.* SCOTTISH MOTOR TRACTION CO., LTD. (1929), 142 L. T. 170, H. L.—SCOT.

sd. *Compliance with statutory requirements—Personal to owner of public vehicle—Effect on contract to assign "stage - run."*]—MCLEAN - BUTORAC MOTORS *v.* CAMPBELL, [1930] 3 W. W. R. 39.—CAN.

se. *Transportation of passengers without certificate from Motor Carrier Board—What constitutes.*]—R. *v.* TAYLOR (1932), 5 M. P. R. 406.—CAN.

sq. *Bye-law providing minimum wage for taxi-driver—Meaning of "on duty."*]—Time spent by a taxi-cab driver with

before Road Traffic Act, 1930 (c. 43)—Validity of regulation fixing date when service must have been operating.]—Road Traffic Act, 1930 (c. 43), s. 72 (1) prohibits the use of any vehicle as a stage carriage or express carriage for public service, as defined by sect. 61, except by persons holding a road service licence or licences to be granted by the comrs. of the traffic areas created by the Act, through which the route passes subject to the conditions thereby provided. By sect. 96 the Minister of Transport is authorised to make such orders as he may consider necessary for the transition from the enactments superseded by Part IV. of the Act, regulating the use of public service vehicles, to the provisions of Part IV., & may provide that existing licences in force before the commencement of the Act shall continue in force for a period fixed by the Order. By Public Service Vehicles (Transitory Provisions) No. 2 Order 1931, dated Mar. 13, the Minister ordered that where a person was, on Feb. 9, 1931, operating a service of public vehicles, & had before Mar. 31, 1931, applied for a road service licence under the Act, it should not be deemed to be an offence for him to continue that service pending the grant or refusal of that application. The prohibition contained in sect. 72 (1) of the Act was first brought into force, by Order of the Minister of Transport, on Apr. 1, 1931. Defts. commenced to operate a service of express coaches over a route between London & Aylesbury on Feb. 26, 1931, & applied in the prescribed manner for the grant of a road service licence from the Comrs. of the Eastern Area through which the route passed before Mar. 31, 1931, but their application was refused & an appeal to the Minister from the refusal dismissed. Defts. were later prosecuted & convicted at petty sessions for running their service without a road service licence, but, notwithstanding the conviction, continued to do so. In an action by the A.-G., at the relation of other motor coach owners holding licences to operate on the same route, for an injunction to restrain defts. from continuing their service :—*Held :* (1) the action was maintainable notwithstanding that the Act created a statutory offence & provided a penalty for its breach ; (2) as defts. were not operating a service of coaches on the route in question on Feb. 9, 1931, they did not come within the terms & conditions of Public Service Vehicles (Transitory Provisions) Order, No. 2 ; (3) in fixing Feb. 9 as the critical date on which coach services must have been in operation to obtain the protection of the last-mentioned Order, the Minister was not acting *ultra vires* the Act or unreasonably ; (4) sect. 81 (3), dealing with appeals to the Minister from a refusal to grant a new licence to a person who had held an old licence did not apply to defts. as they had never held any licences for the particular route under the Act, only under earlier superseded Acts ; (5) the ct. made a declaration in favour of the relators on defts. undertaking not to renew the service without obtaining a licence.—A.-G. *v.* PREMIER LINE, LTD., [1932] 1 Ch. 303 ; 101 L. J. Ch. 132 ; 146 L. T. 297 ; 48 T. L. R. 104 ; 75 Sol. Jo. 852 ; 30 L. G. R. 126.

Annotation :—**Consd.** Goldsmith *v.* Deakin (1933), 150 L. T. 157.

76b. —— **Road service licence—Omission to obtain—Injunction.**]—A.-G. *v.* PREMIER LINE, LTD., No. 76a, *ante.*

76c. —— —— —— **Information—By whom laid.**]—WESTMINSTER COACHING SERVICES, LTD. *v.* PIDDLESDEN, HACKNEY WICK STADIUM *v.* PIDDLESDEN, No. 76f, *post.*

76d. —— —— **Licence continuing in force pending appeal to Minister—Must be licence obtained under Road Traffic Act, 1930 (c. 43).**]—A.-G. *v.* PREMIER LINE, LTD., No. 76a, *ante.*

76e. —— —— **"Stage carriages"—What amount to.**]—A motor coach proprietor, having no road service licence for the conveyance of spectators from a point in T. to the football ground of the T. City Club, arranged that the coaches should be hired by the club, which conveyed the spectators to the ground at separate fares, which were paid to the club :—*Held :* on these facts, the coaches were "stage carriages" not "contract carriages" & the proprietor ought to have been convicted on an information for permitting them to be used without a road service licence.—OSBORNE *v.* RICHARDS, [1933] 1 K. B. 283 ; 102 L. J. K. B. 44 ; 147 L. T. 419 ; 96 J. P. 377 ; 48 T. L. R. 622 ; 30 L. G. R. 385 ; 29 Cox, C. C. 524, D. C.

Annotation :—**Refd.** Newell *v.* Cross, [1936] 2 K. B. 632.

76f. —— —— —— ——.]—The second [illegible] were the proprietors of a greyhound racing stadium, & they entered into an agreement by which the first applts., who were proprietors of motor-coaches, should provide a certain number of vehicles at a fixed charge to be paid by the second applts., to convey would-be patrons of the stadium to & from other points in London free of charge. No payment whatever was collected from persons using the vehicles, & on going into the stadium (which they were not compelled to do) they were charged the same price as those who had not availed themselves of the motor-vehicles provided. They could exchange at the turnstiles the ticket issued on the outward journey for another ticket entitling them to a free ride back after the racing. Passengers on either journey could

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his cab at a telephone station after completing a trip & awaiting instructions from his employers' office to make another held to be time spent "on duty" within sect. 35 of bye-law 14487 of the city of Winnipeg which prescribes a minimum wage for cab drivers.—R. *v.* MOORE'S TAXI CO., LTD., [1935] 1 W. W. R. 316 ; 2 D. L. R. 338.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

s. *Licence for taxi-cab—Requirement that owner insured—Validity of bye-law.*]—A bye-law provided that no person licensed to keep a cab should operate it until he had filed with the inspector of licences an "owner's policy" as defined in sect. 165 of Insurance Act, 1932, issued by an insurance co., & that no person should operate an automobile after such policy had lapsed or been cancelled. Applt., whose insurance policy had been cancelled, was convicted of continuing to operate her car contrary to said bye-law :—*Held :* the bye-law in compelling licensees to obtain insurance went beyond the authority conferred by the statute, there being no authority clearly conferred with respect to insurance, except as to the "placing" of the same ; &, moreover, the bye-law left a licensee at the will or mercy of insurance cos. & delegated to such cos. the power to determine whether an appct. should be granted a licence. Therefore the provisions of the bye-law on which the conviction was based were held bad & the conviction set aside.—R. *v.* HELFRICK, [1933] 3 W. W. R. 179 ; 61 C. C. C. 60 ; *revsd.*, [1933] 3 W. W. R. 561.—CAN.

be picked up & set down at intermediate points. Applts. were summoned on an information signed by a superintendent & an Assistant Commissioner of Metropolitan Police (who held a general letter of authorisation from the Commissioner) with using the vehicles & causing them to be used as stage carriages without a road service licence in that behalf. The magistrate convicted:—*Held:* (1) the effect of Road Traffic Act, 1930 (c. 43), s. 61 (2), was to bring into the category of "stage carriages," in the circumstances there defined, vehicles which but for that sub-sect. would have been "contract carriages" & exempt from the necessity for a road service licence, & the magistrate was entitled to find that the payments made by the passengers for admission to the stadium were made partly in respect of the journey, & therefore the vehicles were used by applts. as stage carriages; (2) the information was duly laid by a person authorised in that behalf by a chief officer of police.—WESTMINSTER COACHING SERVICES, LTD. *v.* PIDDLESDEN, HACKNEY WICK STADIUM, LTD. *v.* PIDDLESDEN (1933), 149 L. T. 449; 97 J. P. 185; 49 T. L. R. 475; 31 L. G. R. 245; 29 Cox, C. C. 660, D. C.

76g. —— —— —— ——.]—A dance was organised, & the advertisement thereof in a newspaper contained the words "Bus to Chesham after dance." The organisers arranged to hire a 20-seater motor-coach from resp. to take passengers to Chesham after the dance for the price of 15*s.*, which sum was paid on a date after the dance. Resp. was unaware of the terms of the advertisement, & did not know that during the dance one of the organisers announced that any person who desired to travel by the coach to Chesham must buy a ticket at the door of the hall, & that tickets were issued to those persons, who each contributed not less than 6*d.* Any person attending the dance, although not a member of the club which organised it, could obtain a ticket. An information was preferred in two separate cases by applt. against resp., under Road Traffic Act, 1930 (c. 43), s. 72 (1), (10), for permitting the motor vehicle to be used as a stage carriage otherwise than under a road service licence. The justices dismissed the information, holding that the coach was being used, not as a stage carriage, but for conveyance of a private party on a special occasion. Applt. contended that, as the driver of the vehicle was in possession of a work ticket as required by statute, resp. must have known that separate payments were to be made by each passenger, & he therefore deliberately abstained from making inquiries regarding the fares, & whether there had been any advertisement in the newspapers:—*Held:* the vehicle was being used as a stage carriage, but, as the resp. was unaware of the use to which it was being put, he was not guilty of the offence charged. The only element which prevented the use of this vehicle being innocent was that the possibility of using the vehicle had been advertised to the public.—EVANS *v.* DELL, [1937] 1 All E. R. 349; 156 L. T. 240; 101 J. P. 149; 53 T. L. R. 310; 81 Sol. Jo. 100; 35 L. G. R. 105; 30 Cox, C. C. 558.

76h. —— —— **"Contract carriages"—What amount to.**]—OSBORNE *v.* RICHARDS, No. 76e, *ante*.

76j. —— —— **"Express carriages"—What amount to.**]—A co. which owned motor omnibuses entered into an agreement with a railway co. whereby they undertook to provide motor vehicles for the conveyance of passengers arriving by certain specified excursion trains at a named station to a neighbouring works, where conducted tours took place. Persons taking part in these combined rail & road excursions obtained from the railway co. two tickets, one for the rail journey & the other for the journey by road from the station to the works, & did not pay any fare direct to the motor omnibus owners, who received from the railway co. a certain sum for each passenger carried. Part of the sum paid by the railway co. was contributed by the owners of the works where the conducted tours took place. Neither the railway co. nor the motor omnibus owners held a road service licence to operate public service vehicles in connection with the visits to the works:—*Held:* the motor omnibus owners were guilty of an offence under Road Traffic Act, 1930 (c. 43), s. 72, as their vehicles were being operated as "express carriages" within sect. 61 (1) (*b*). They were not protected by the proviso to that section as the vehicles were not being used "for the conveyance of a private party" nor "on a special occasion."—BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON, [1933] 1 K. B. 188; 102 L. J. K. B. 47; 147 L. T. 435; 96 J. P. 385; 48 T. L. R. 620; 30 L. G. R. 390; 29 Cox, C. C. 529, D. C.

Annotation:—**Consd.** Miller *v.* Pill (1933), 97 J. P. 197.

76k. —— —— —— ——.]—A motor vehicle which is used for conveying market produce, & its owners as paying passengers, to market is an express carriage within Road Traffic Act, 1930 (c. 43), s. 61 (1) (*b*), & requires a public service vehicle licence & a road service licence.—DREW *v.* DINGLE, [1934] 1 K. B. 187; 103 L. J. K. B. 97; 150 L. T. 219; 98 J. P. 1; 50 T. L. R. 101; 77 Sol. Jo. 799; 31 L. G. R. 417; 30 Cox, C. C. 53, D. C.

761. —— —— —— ——.]—Two persons, C. & P., severally hired taxicabs (neither of which had a road service licence as an express carriage) to drive themselves & friends to a certain destination & back for 14*s.* in each case. C. had made an antecedent arrangement with her friends that each of them should pay her share of the fare. P. had made no such arrangement, though some of her friends in fact subsequently offered to pay & did pay their shares. On the journey the taxicabs were stopped by a police officer & a traffic examiner, who questioned the passengers as to the arrangements for payment, but did not caution them. The hirers were charged with causing & the drivers with permitting the taxicabs respectively to be used as express carriages when there were not in force licences authorising them to be so used. The justices dismissed all the summonses, & expressly found that the drivers did not know, & had no reason to know, that the passengers were sharing the fares:—*Held:* since there was in C.'s case an antecedent contract for payment by the other

passengers of their shares they were " carried in a motor-vehicle in consideration of separate payments made by them," & therefore by sect. 61 (2), the vehicle was to be " deemed to be a vehicle carrying passengers for hire or reward at separate fares," & was brought within the definition of " express carriage " in sub-sect. (1), & C. was therefore guilty of the offence charged. In the absence of an antecedent contract by P. the justices were right in dismissing the charge against her. Nor could it be said that they had erred in law in dismissing the charges against the drivers; further, there is no provision of Road Traffic Act which authorises the questioning of passengers in taxicabs as to who is paying the fare, or which requires passengers to furnish such information. If such questions are to be asked it is the duty of the officer to administer the usual caution. —NEWELL *v.* CROSS, NEWELL *v.* COOK, NEWELL *v.* PLUME, NEWELL *v.* CHENERY, [1936] 2 K. B. 632; [1936] 2 All E. R. 203; 105 L. J. K. B. 742; 155 L. T. 173; 100 J. P. 371; 52 T. L. R. 489; 80 Sol. Jo. 674; 34 L. G. R. 364; 30 Cox, C. C. 437, D. C.

76m. —— —— —— **Exemption—" Conveyance of a private party."**]—BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON, No. 76j, *ante*.

—— —— —— —— —— —— **Necessity for driver's work ticket.**]—A motor-coach owner, H., by arrangement with a theatre manager, M., caused a party to be taken from Hounslow to Epsom Races & back. H. had no road service licence to run motor coaches from Hounslow to Epsom, & the coach drivers carried no work tickets. Informations were laid against H. for using & against M. for causing to be used motor vehicles as express carriages otherwise than under road service licences, contrary to Road Traffic Act, 1930 (c. 43), s. 72. The justices found that H. had been induced by M. to believe that the party was a private one, &, therefore, there being no *mens rea*, that he had committed no offence under sect. 72. The justices consequently found that M. had not caused an offence to be committed, & dismissed both informations. The informant appealed:—*Held:* as the drivers had not carried work tickets, the conditions of Road Traffic Act, 1934 (c. 50), s. 25, had not been complied with & resps. could not be heard to say that the party was a private one within that sect. Therefore in the absence of a road service licence, both H. & M. had committed offences against sect. 72 of the Act of 1930; *mens rea* is not a necessary ingredient of an offence against Road Traffic Act, 1930 (c. 43), s. 72.—EVANS *v.* HASSAN, [1936] 2 All E. R. 107; 80 Sol. Jo. 409, D. C.

76o. —— —— —— —— **" On a special occasion."**] —BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON, No. 76j, *ante*.

76p. —— —— —— —— ——.]—The words " special occasion " in the proviso to Road Traffic Act, 1930 (c. 43), s. 61 (2), have the same meaning as that which they bear in the proviso to sect. 61 (1). They refer, not merely to the views & intentions of the members of the private party, but to a special local occasion. Where, therefore, a vehicle was used to take a party of private individuals on an excursion to the seaside on which a similar party went every year:—*Held:* (1) that was not a " special occasion " within the proviso to sect. 61 (2).

(2) A regular weekly market or a cattle market held on the second, fourth, & (if any) the fifth Tuesday in every month is not a " special occasion " within sect. 61 (1).—MILLER *v.* PILL, PILL *v.* FURSE, PILL *v.* MUTTON (J.) & SON, [1933] 2 K. B. 308; 102 L. J. K. B. 713; 149 L. T. 404; 97 J. P. 197; 49 T. L. R. 437; 77 Sol. Jo. 372; 31 L. G. R. 236; 29 Cox, C. C. 643, D. C.

76q. —— —— —— —— ——.]—A motor car adapted to carry less than 8 persons was used to convey 4 persons from Leeds to Blackpool in order that those persons might view the illuminations there. These illuminations were continued for 49 days:—*Held:* this was not a " special occasion " within Road Traffic Act, 1930 (c. 43), s. 61 (1). Such occasions must be *ejusdem generis* with those given in the proviso to the sub-sect. & must be a particular & individual occasion.—NELSON *v.* BLACKFORD, [1936] 2 All E. R. 109, D. C.

PART IV. SECT. 2, SUB-SECT. 3.

76o i. *Public service vehicles—Necessity for licence—Conveyance of private party—" On a special occasion."*]—In a prosecution of the owner & hirer of a motor omnibus for using it as an express carriage without having in force a road service licence, it was established that the hirer, having decided to get up a party to go to Blackpool for the day to see the illuminations, hired the omnibus for the purpose for £14. The party consisted of the hirer & friends or acquaintances of his or of the owner's sister, & of friends of the these friends or acquaintances. There was no public advertisement. The owner of the omnibus drove. The hirer collected £13 12*s.* from the party which, with a contribution of 8*s.* from himself, made up the £14. The accused held no road service licence for the omnibus:—*Held:* the omnibus was a vehicle " used on a special occasion for the conveyance of a private party," &, accordingly, it was not an " express carriage."—M'DOUGALL *v.* PATERSON, [1933] S. C. (J.) 39.—SCOT.

76o ii. —— —— —— ——.]—A football club in an Ayrshire village hired for a fixed sum five motor omnibuses to convey club supporters to a football match to be played by the club team at Dunblane. The excursion was advertised by the club on its private notice board in a public place in the village. The advertisement stated that the omnibuses were being run in connection with the match, & indicated that application for seats should be made to the club secretary, but no intimation was given of the persons eligible to apply or of the charge to be made. The club was supported by the villagers generally, & the excursion party consisted of villagers, not all of whom were members of the club. The proprietors of the omnibuses & their servants took no part in collecting fares, which was done by club officials. In a prosecution of the proprietors of the omnibuses & the secretary of the club for using the omnibuses as express carriages without having a road service licence:—*Held:* although the particular excursion constituted a " special occasion," the party conveyed by the omnibuses was not a " private party," &, accordingly, the vehicles were used as express carriages & required a road service licence; further, it was no defence on the part of the proprietors to maintain that they were ignorant of the use made of the vehicles. *Opinion reserved* as to whether an ordinary football match would amount to a " special occasion."—MACMILLAN *v.* WESTERN S. M. T. CO., LTD., [1933] S. C. (J.) 51.—SCOT.

76o. *Omnibus—Agreement to carry passengers on specified journey for lump sum—Whether licence necessary.*]—BLYTH *v.* HUDSON, [1928] V. L. R. 587; [1928] Argus L. R. 397.—AUS.

76o. *Motor omnibus.*]—The definition of " motor omnibus " in Motor Omnibus (Urban & Country) Act, 1927 (Vict.), s. 3, may be satisfied although the reward at separate & distinct fares for each passenger is not paid to a person who is an " owner " of the vehicle.—BLYTH *v.* HUDSON (1929), 41 C. L. R. 465; 2 A. L. J. 370; [1929] V. L. R. 82; Argus L. R. 73.—AUS.

76o. *Construction of bye-law—Carrying on business of hiring vehicles " within the town."*]—THOM *v.* SIMPKIN, [1932] 3 W. W. R. 522; [1933] 1 D. L. R. 158; 40 Man. L. R. 610.—CAN.

—— —— **"Permitting" user of motor vehicle—Meaning of.**]—Resp. owned a motor-coach, which he was licensed to use as a contract carriage, but not as a stage carriage. A club which was organising a dance, open to the public, hired the coach to convey persons between the dance hall & the club's headquarters. Resp. received a fixed sum for the use of the coach, which was driven by his servant. It was arranged that the driver should collect tickets from passengers, to prevent unauthorised persons from using the coach. Tickets were in fact sold by the officials of the club entitling the holders to travel in the coach, which on the return journey set them down, if desired, at intermediate points. The tickets (which were plain cards bearing numbers but no indication of price) were collected by the driver, but no money was paid by passengers either to him or to the resp. Resp. was charged with permitting the vehicle to be used as a stage carriage, & the justices found that it was in fact so used, & that the dance was not a "special occasion," nor were the persons attending it a "private party," so as to exempt resp. under Road Traffic Act, 1930 (c. 43), s. 61 (2). But they found that resp. was unaware that it was so used & therefore could not be held to have permitted the use: —*Held:* if a person hires out a vehicle in circumstances in which he ought to know that it probably will be or may be used as a stage carriage & puts his servant in charge of the vehicle to use it in any way which the hirer may direct, he is, within the meaning of the statute, permitting it to be used as a stage carriage, even though he does not actually know that it is so used. In the present case, since resp. knew that tickets were to be collected, & that either the price was included in that of the dance ticket or that a separate charge must be made for the coach tickets, he in fact allowed the vehicle to be used & did not care whether it was used in contravention of the statute. In those circumstances actual knowledge was immaterial, & the justices ought to have found the offence proved.—GOLDSMITH *v.* DEAKIN (1933), 150 L. T. 157; 98 J. P. 4; 50 T. L. R. 73; 31 L. G. R. 420; 30 Cox, C. C. 32, D. C.

Annotations: **Consd.** Evans *v.* Dell, [1937] 1 All E. R. 349; Newell *v.* Cross, [1936] 2 All E. R. 203.

76s. —— —— —— ——.]—WEBB *v.* MAIDSTONE & DISTRICT MOTOR SERVICES, LTD. (1934), 78 Sol. Jo. 336.

76t. —— —— **Discretion of Minister—Right to adopt report of Traffic Commissioner.**]—R. *v.* MINISTER OF TRANSPORT, *Ex p.* GREY COACHES, LTD. (1933), 77 Sol. Jo. 301.

—— —— **Power of Minister on appeal against grant—Order for contingent revocation.**]—*Held:* notwithstanding the wide power conferred by Road Traffic Act, 1930 (c. 43), s. 81 (2), the Minister was only entitled to make an order for the revocation of a licence when the making of such an order was appropriate to the subject-matter of the appeal before

When therefore opponents to the grant of a road service licence & backing authorising the running of a service of motor-coaches along a particular route appealed to the Minister against the grant on the ground that the service was not needed in the interest of the public, the Minister had no jurisdiction to make orders on the appeals which in effect were orders for the revocation of the licence & backing as soon as adequate provision had been made for road services on the particular route. The only subject-matter of the appeals before him was whether the licence & backing had been properly granted, & there was no jurisdiction to make orders for a future contingent revocation.—R. *v.* MINISTER OF TRANSPORT, *Ex p.* UPMINSTER SERVICES, LTD., [1934] 1 K. B. 277; 103 L. J. K. B. 257; 150 L. T. 152; 98 J. P. 81; 50 T. L. R. 60; 32 L. G. R. 61, C. A.

—— —— ——.]—Appcts. had since 1926 provided a seasonal service of express carriages between London & the South Coast. In 1933 their licence was made subject to a provision that they should only issue return tickets for a journey from London & then back to London & a single ticket should only be issued in respect of an outward journey from London. In 1935 they secured the relaxation of these conditions by a proviso which allowed them to issue single tickets in the reverse direction subject to certain conditions, & their licence was so backed in the south eastern area. The Southern Railway Co. & Southdown Motor Services, Ltd., who ran services competing with appcts. & who, though they had not opposed the grant of the original licence, had opposed the insertion of the proviso, appealed to the Minister of Transport against the inclusion of the proviso & the Minister ordered its deletion:—*Held:* (1) no objection to the backing could be sustained on the ground that the conditions thereby imposed affected the scope or utility of the licence not in the south eastern area, but also elsewhere, including the area in which it was granted; (2) the Southern Railway Co. & Southdown Motor Services, Ltd., were entitled under the Road Traffic Act, 1930 (c. 43), s. 81, as amended by Road Traffic Act, 1934, s. 40, to appeal to the Minister; (3) the order of the Minister was good, though it nullified an order made by the comrs. in the exercise of their discretion; (4) the Southern Railway Co., who were mainly concerned with rail traffic, had a right of appeal to the Minister, because under Road Traffic Act, 1930 (c. 43), s. 72 (3) (*d*), the comrs. must have regard to the co-ordination of all forms of passenger transport, including transport by rail.—R. *v.* MINISTER OF TRANSPORT, *Ex p.* VALLIANT DIRECT COACHES, LTD., R. *v.* TRAFFIC COMRS. FOR SOUTH EASTERN TRAFFIC AREA, *Ex p.* VALLIANT DIRECT COACHES, LTD., [1937] 1 All E. R. 264; *sub nom.* R. *v.* SOUTH-EASTERN TRAFFIC COMRS., *Ex p.* VALLIANT DIRECT COACHES, LTD., R. *v.* MINISTER OF TRANSPORT, *Ex p.* VALLIANT DIRECT COACHES, LTD., R. *v.* SOUTH-EASTERN TRAFFIC COMRS., *Ex p.* VALLIANT DIRECT COACHES, LTD. 53 T. L. R. 227; 81 Sol. Jo. 138.

76w. —— —— **Who may appeal.**]—R. *v.* MINISTER OF TRANSPORT, *Ex p.* VALLIANT DIRECT COACHES, LTD., R. *v.* TRAFFIC COMRS. FOR SOUTH EASTERN TRAFFIC AREA, *Ex p.* VALLIANT DIRECT COACHES, LTD., No. 76v.

76x. —— —— **Backing of licence—Conditions.**]—R. *v.* MINISTER OF TRANSPORT, *Ex p.* VALLIANT DIRECT COACHES, LTD., *R.* v. TRAFFIC

COMRS. FOR SOUTH EASTERN TRAFFIC AREA, *Ex p.* VALLIANT DIRECT COACHES, LTD., No. 76v, *ante*.

Licensing of goods vehicles.]—*See* Road & Rail Traffic Act, 1933 (c. 53).

86. *Add. Annotation :*—**Apld.** A.-G. *v.* Sharp (1929), 45 T. L. R. 628.

86a. —— ——.]—Deft., who was licensed to ply for hire with motor omnibuses in two districts connected by roads through M., but who had no licence to ply for hire in M., had garages in M., & his omnibuses stopped outside them to take up persons who had bought tickets in the garages :—*Held :* defts.' omnibuses were plying for hire in M.—A.-G. *v.* SHARP (1929), 45 T. L. R. 628 ; 27 L. G. R. 764.

92. *Add. Citations :*—98 L. J. K. B. 209 ; 140 L. T. 194 ; 93 J. P. 61 ; 27 L. G. R. 39 ; 28 Cox, C. C. 576.

94a. —— **Private ground—Separated from highway by stone setts.**]—A motor car stood on a piece of private ground belonging to a public-house at Barnes & separated from the highway only by a line of level stone setts, which offered no obstruction to the passage either of the motor car or of persons desiring to enter it from the highway. There members of the public entered the car, which was licensed as a hackney carriage for revenue purposes, but which was not licensed to ply for hire within the Metropolitan Police District, & on payment of 6*d.* to the driver were driven to the Richmond Park Golf Club :—*Held :* the motor car was plying for hire in a " public street, road, or place " within Metropolitan Public Carriage Act, 1869 (c. 115).—WHITE *v.* CUBITT, [1930] 1 K. B. 448 ; 99 L. J. K. B. 129 ; 142 L. T. 427 ; 94 J. P. 60 ; 46 T. L. R. 99 ; 73 Sol. Jo. 863 ; 28 L. G. R. 44 ; 29 Cox, C. C. 80, D. C.

116. *Add. Citation :*—28 Cox, C. C. 515.

117a. —— **Overcrowding—Liability of employer for aiding & abetting.**]—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which, by sect. 15, imposed a penalty for this offence on the " driver, conductor, or guard." His employer was not present at the time :—*Held :* the employer was liable to be proceeded against for " aiding & abetting, counselling & procuring " the commission of the offence.—GOUGH *v.* REES (1929), 142 L. T. 424 ; 94 J. P. 53 ; 46 T. L. R. 103 ; 28 L. G. R. 32 ; 29 Cox, C. C. 74, D. C.

117b. —— —— **Commencement of proceedings—Whether order of Commissioners of Inland Revenue necessary.**]—An information was preferred by a police officer against the conductor of a motor omnibus alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to carry, contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13 : —*Held :* the prosecution was not a proceeding for the recovery of a fine or penalty under an Act relating to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—KIRKBY *v.* MINTY, [1929] 2 K. B. 165 ; 98 L. J. K. B. 733 ; 141 L. T. 515 ; 93 J. P. 176 ; 45 T. L. R. 427 ; 27 L. G. R. 438 ; 28 Cox, C. C. 640, D. C.

PART IV. SECT. 2, SUB-SECT. 4.

g iv. —— *Police car.*]—The driver of a motor car was charged with exceeding the speed limit on a road in a built-up area. At the time of the alleged offence the accused was admittedly driving his car at a speed which exceeded the statutory limit applicable to such a road, but it was proved that he had done so in good faith while following a police car for the sole purpose of ascertaining the speed at which the police car was travelling so that he might have evidence to place before the Chief Constable that the driver of the police car was guilty of an offence against the provisions of the Road Traffic Acts. The accused's car was not being used for police purposes in the sense of Road Traffic Act, 1934, s. 3, & he should have been convicted. Observed, that prosecutions of the police for exceeding the speed limit in circumstances in which sect. 3 does not justify them in so doing should be instructed & conducted on exactly the same footing as prosecutions against private individuals.—STRATHERN *v.* GLADSTONE, [1937] S. C. (J.) 11.—**SCOT.**

n i. —— *One occasion.*]—*Semble :* although the words " car plying for hire between definite points " *prima facie* connote the idea of a course of action, the section might be contravened by a plying for hire on one occasion only.—NAYANAH *v.* R., [1931] N. L. R. 332.—**S. AF.**

Vehicle engaged to carry club under ——ct—Fares collected by driver.]—*Held :* deft. was " plying for hire " within Motor Omnibus Act, 1924, s. 13 (1).—DICKENS *v.* MULHOLLAND (1929), 41 C. L. R. 397 ; 2 A. L. J. 369 ; [1929] Argus L. R. 76.—**AUS.**

PART IV. SECT. 3.

sh. *Overcrowding—Whether mens rea necessary—Dublin Carriage Act.*]—*Held :* the prohibitions contained in this regulation were absolute, &, accordingly, in the case of a summons charging an offence under the regulation the absence of *mens rea* was no defence.—M'ADAM *v.* DUBLIN UNITED TRAMWAYS CO., [1929] I. R. 327.—**IR.**

sj. —— *Vehicle not on hire.*]—Where the permit granted in respect of a motor vehicle prohibits the carrying of more than four passengers, the carrying of more than this number is an infringement of the terms of the permit & is punishable under Motor Vehicles Act, 1914, s. 16, even though, at the time of the infringement, the vehicle was not on hire.—KING-EMPEROR *v.* RAM TAHAL SINGH (1929), I. L. R. 9 Pat. 169.—**IND.**

sk. *Passengers standing on cars.*]—GLASGOW CORPN. *v.* STRATHERN, [1929] S. C. (J.) 5.—**SCOT.**

sl. *Permitting omnibus to be overcrowded—Whether offence against Inland Revenue & Customs Acts.*]—A complaint was brought in a burgh police ct., which set forth that the accused was the conductor of a motor omnibus, in which a greater number of passengers were conveyed than the omnibus was constructed to carry, in contravention of Railway Passenger Duty Act, 1842, s. 13 :—*Held :* under Burgh Police Act, s. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1842 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland Revenue or Customs Act, within Burgh Police Act, s. 454.—CAMERON *v.* SWEENEY, [1928] S. C. (J.) 34.—**SCOT.**

sm. —— ——.]—HORN *v.* DUCKETT, [1929] S. C. (J.) 63.—**SCOT.**

so. —— *Summary proceedings—of time.*]—ORR *v.* STRATHERN, [1929] S. C. (J.) 30.—**SCOT.**

PART IV. SECT. 4, SUB-SECT. 1.

sp. *Motor Omnibus Act—Minimum fares prescribed by Order in Council—Liability of owner.*]—DICKENS *v.* MITCHELL, [1928] V. L. R. 506 ; [1928] A. L. R. 323.—**AUS.**

PART IV. SECT. 5.

f i. —— ——.]—Deft., a taxi-cab owner, was convicted for unlawfully permitting his taxi-cab to stand at other than a cab-stand contrary to a municipal bye-law which read as follows : " Excepting at places designated by bye-law as cab stands, no cab shall stand in any street or lane unless hailed by a prospective passenger & then only for sufficient time to take in such passenger, or unless waiting for a passenger for whom the cab has been ordered. The fact of any sign being exhibited on a cab indicating that it is vacant or waiting to be hired shall be conclusive evidence that such cab is not waiting to keep an engagement. Nothing herein shall be construed as prohibiting a cab from stopping at the side of any street for a sufficient length of time, & in order to discharge a passenger, nor as relieving any cab-driver from the duty of complying with all bye-laws of the City relating to parking." During the time in question the car was parked at the side of a street & its windshield carried a card marked " Engaged," & deft. & his wife were at a nearby theatre, & when they came out they drove home in the car. On appeal :—

146a. —— Agreement not to compete with tramway company—Construction of agreement.]—A local authority entered into an agreement with a tramway co. that they (the local authority) would not promote or be financially interested in any vehicles plying for hire "between any points served by the co.'s service." The local authority later established a motor omnibus service running approximately parallel to the route of the co.'s tramways at a distance of some 300 yards away from any point served by those tramways:—*Held:* the expression "between any points served by the co.'s service" meant definite spots or places on the route of the co.'s tramways which were actually passed by the tramway cars & not points within areas the inhabitants of which might reasonably be expected to use the tramway service. Therefore, there had been no breach by the council either of the agreement, or of sect. 57 of the Cleethorpes Urban District Council Act, 1928, which substantially reproduced it.—GREAT GRIMSBY STREET TRAMWAYS CO. *v.* CLEETHORPES URBAN DISTRICT COUNCIL (1934), 99 J. P. 81; 33 L. G. R. 33, H. L.

146b. Rudeness of driver of hackney carriage—Validity of bye-law.]—By a local Act, a local authority was empowered to make such bye-laws as it thought fit for (*inter alia*) the regulating of hackney carriages & carts plying for hire within the borough & for regulating the conduct of the drivers thereof reasonably. A bye-law was accordingly made which provided: "Every driver of a hackney carriage shall when working or plying for hire . . . conduct himself in a proper civil & decorous manner at all times." In a prosecution under the bye-law it was contended that the bye-law was uncertain as to the standard required & unreasonable, & that it was therefore void & unenforceable:—*Held:* the bye-law was neither uncertain nor unreasonable & was therefore valid & enforceable.—IRELAND *v.* WILSON, [1936] 3 All E. R. 358.

Part V.—Locomotives and Motor Cars.

See, now, Road Traffic Act, 1930 (c. 43), Part I.

154a. Driver's licence—Person under twenty-one—Vehicle driven for previous six months—Exemption of agricultural tractor.]—(1) An agricultural tractor driven in the course of the internal operations of a farm is exempted from the above provisions. (2) The onus of proof lies on a deft. to bring himself within the above excepting clause, if he can. It is not for the prosecution to prove affirmatively that a deft. does not come within the clause.—ROCHE *v.* WILLIS (1934), 151 L. T. 154; 98 J. P. 227; 32 L. G. R. 286; 30 Cox, C. C. 121.

154b. —— —— —— Onus of proof.]—ROCHE *v.* WILLIS, No. 154a, *ante.*

163. After this case add:—

—— ——.]—*See, now,* Finance Act, 1920 (c. 18), s. 13, Sched. II., para. 4, as amended by Finance Act, 1926 (c. 22), s. 13, & Finance Act, 1927 (c. 10), s. 11, Sched. IV.; Roads Act, 1920 (c. 72), ss. 1, 20 (3).

Held: the cab did not at the time in question "stand" in any street or lane within the meaning of the bye-law & the appeal was allowed.—It. *v.* LEWIS, [1935] 1 W. W. R. 254; 1 D. L. R. 766; 63 Can. C. C. 171.—**CAN.**

g i. —— *Classification of vehicles on basis of possession of metres—Validity of bye-law.*]—R. *v.* JOHNSTON (1931), 56 Can. C. C. 358.—**CAN.**

PART IV. SECT. 9.

sq. *Licence granted subject to approval of time-table—Failure to observe time-table—Liability of owner.*]—Art. 14 of the Omnibus Bye-laws for Aberdeen, 1926, is as follows: "the proprietor of any omnibus shall submit, for the approval of the magistrates, a time-table showing the time of arrival at & departure from the stance . . . & every such omnibus shall leave the aforesaid stance . . . punctually at the time stated in the said time-table as approved by the magistrates." A co. owning motor omnibus, with which it was duly licenced to ply for hire in Aberdeen, obtained from the magistrates approval of a time-table showing the starting times of its omnibuses from a particular stance. On a day when it was anticipated that, owing to special traffic congestion, the arrivals at the stance of the co.'s incoming omnibuses would be delayed, a servant of the co. acting with the manager's approval, took out an additional omnibus to augment the usual service. He started from the stance with this omnibus at a time which was not one of those authorised in the co.'s approved time-table. In a prosecution of the manager, as representing the co. for the contravention of art. 14:—*Held:* a contravention of art. 14 by one of the co.'s servants acting within the scope of his employment, was an offence for which the manager, as representing the co. was responsible.—BEAN *v.* SINCLAIR, [1930] S. C. (J.) 31.—**SCOT.**

sr. *Agreement between corporation & street railway—Prevention of competition—What amounts to breach of bye-law—Sight-seeing omnibus.*]—R. *v.* RED LINE, LTD., [1930] 3 D. L. R. 747; 53 Can. C. C. 280; 65 O. L. R. 199.—**CAN.**

sv. *Loitering.*]—A taxi cab driver, who drove slowly along a street looking for passengers was convicted of an offence against reg. 125 (*d*) made under the Transport Act, 1930, which provides that "the driver of a public vehicle upon any public street shall not permit the public vehicle to loiter." Upon appeal by way of statutory prohibition:—*Held:* slowness of speed did not in itself constitute sufficient evidence of loitering &, therefore, the conviction was bad.—*Re* MICHAELIS, *Ex p.* HIVIS (1933), 50 N. S. W. W. N. 90; 11 L. G. R. 96.—**AUS.**

PART V. SECT. 2, SUB-SECT. 2.

r i. —— *Licensing of vehicles carrying goods.*]—R. *v.* STORIE, R. *v.* VALENS, [1930] 3 W. W. R. 366; 54 Can. C. C. 403.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

sv. *Construction of Regulation.*]—Motor Vehicles (Construction & Use) Regs., 1931, provide by Reg. 59 that the weight transmitted to the road surface "by any two wheels in line transversely" shall not exceed 8 tons in the case of a motor vehicle with 4 wheels:—*Held:* "transversely" does not mean "obliquely," & the two wheels referred to are either the two front wheels, or the two back wheels, & not a front wheel & a back wheel on opposite sides of the vehicle.—THOMAS *v.* GALLOWAY, [1935] S. C. (J.) 27.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 4.

g i. —— —— *Necessity for averment of Order.*]—Under powers conferred by Locomotives on Highways Act, 1896, s. 12, regulations were made by the Heavy Motor Car (Scotland) Order, 1905, & amending orders, with regard to heavy motor cars, the effect of which was to fix a speed of 20 miles an hour for motor cars exceeding 3 tons in weight. A motor driver was charged in the Sheriff Ct. upon a complaint which set forth that over a distance of 7 miles on a public highway he "did drive a motor car, viz., a motor omnibus, at a speed exceeding 20 miles per hour, viz., about 27 miles per hour, contrary to the Motor Car Act, 1903, s. 9." The weight of the omnibus unladen exceeded 3 tons. None of the Statutory Orders were libelled in the complaint. The sheriff having repelled an objection that sect. 9 did not apply to the omnibus, & having convicted the accused:—*Held:* the complaint as laid was irrelevant, in respect that the provisions of sect. 9 of the 1903 Act

180a. Liability for damage to bridges—Locomotive Act, 1861 (c. 70), s. 7—To what bridges applicable—County bridge.]—*Held:* above sect. does not apply to a county bridge.—R. *v.* KITCHENER (1873), L. R. 2 C. C. R. 88; 43 L. J. M. C. 9; 29 L. T. 697; 38 J. P. 134; 22 W. R. 134; 12 Cox, C. C. 522, C. C. R.

Annotations:—**Refd.** R. *v.* Dorset Inhabitants (1881), 45 L. T. 308; Sharpness New Docks & Gloucester & Birmingham Navigation Co. *v.* Worcester Corpn., A.-G. *v.* Sharpness New Docks & Gloucester & Birmingham Navigation Co., [1913] 1 K. B. 422.

185. *Add. Annotation:*—**Apld.** Dennis *v.* Leonard (1929), 141 L. T. 94.

185a. —— Steam tractor.]—CARPENTER *v.* FOX, No. 232a, *post.*

185b. —— Petrol-driven tractor.]—An "Austin" petrol-driven tractor was driven on a public highway. Upon an information under Locomotives on Highways Act, 1896 (c. 36), s. 7, for breach of Motor Cars (Use & Construction) Order, 1904, Article II., clause 3, the justices held that the vehicle in question was not a motor car within the meaning of that order & Act, stating that the tractor type of vehicle was never contemplated when the order of 1904 was made:—*Held:* that the tractor was such a motor car.—DENNIS *v.* LEONARD (1929), 141 L. T. 94; 28 Cox, C. C. 621, D. C.

186. *Add. Citations:*—[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

188a. Trade licence—"Some other or further use"—What amounts to.]—By Art. D of reg. 29 of Part II. of Road Vehicles (Registration & Licensing) Regulations, 1924, S. R. & O., 1924, No. 1462: "(1) A general trade licence shall not be used upon any vehicle other than a vehicle which is in the possession of the holder of such licence in the course of his business as a manufacturer or repairer of or dealer in mechanically propelled vehicles. (2) A general trade licence shall not at any time be used upon a vehicle which is being used for the conveyance of passengers for profit or reward. . . . (4) Subject to the provisions of paras. (1) & (2) of this article a vehicle may be used upon a public road under a general trade licence for any purpose connected with the business as a manufacturer or repairer of or dealer in mechanically propelled vehicles of the holder of such licence, & so long as such vehicle is *bonâ fide* being used for such purpose the holder of the licence shall not by reason only that some other or further use is being made of the vehicle be deemed to commit a breach of these regulations":—*Held:* the words "some other or further use" are limited to a use by the holder of the licence, & do not cover the delivery, for reward, by an intending purchaser of a motor vehicle of his own goods to his customers during a demonstration run.—WESTOVER GARAGE, LTD. *v.* DEACON (1931), 145 L. T. 357; 95 J. P. 155; 47 T. L. R. 509; 29 L. G. R. 474; 29 Cox, C. C. 327, D. C.

188b. Driver's licence—Applicant suffering from specified disability — Refusal of licence — Whether applicant entitled to appeal.]—The Ct. of Appeal, reversing a decision of the Div. Ct., granted a rule *nisi* for a *mandamus* to justices to hear an appeal from a licensing authority under Road Traffic Act, 1930

applied only to motor vehicles under 3 tons in weight; to make it relevant it was necessary to libel the Statutory Orders which made vehicles exceeding 3 tons in weight subject to a speed limit.—DURNION *v.* PATERSON, [1930] S. C. (J.) 12.—**SCOT.**

g ii. —— —— *Whether notice of prosecution necessary.*]—Two police officers, who had detected a heavy motor car travelling in excess of the speed limit of twenty miles an hour, overtook & stopped the car, & one of them thereupon informed the driver that he had been travelling at a speed exceeding twenty miles an hour, & that his speed was twenty-six miles an hour. The driver was subsequently prosecuted for an offence against the Order of 1905. In defence he pleaded that he had not received the warning required by sect. 9 of Motor Car Act, 1903:—*Held:* a prosecution for a contravention of the Order of 1905 is not a prosecution for an offence under sect. 9 of Motor Car Act, 1903; &, accordingly, the warning or notice required by that sect. is not a condition precedent to conviction for a contravention of the Order.—TAYLOR *v.* HORN, [1929] S. C. (J.) 111.—**SCOT.**

g iii. —— *Evidence of—Speedometer.*]—The driver of a motor charabanc was convicted of exceeding the speed limit of twenty miles an hour. The only evidence was that of two police officers, who followed the charabanc along the street, travelling in a motor cycle combination fitted with a recently tested speedo-meter. They deponed that, for a distance of 300 yards, their motor cycle kept 20 yards behind the charabanc, & that, during this distance, the speedometer registered a speed of twenty-six miles per hour. An objection to the sufficiency of the evidence, on the ground that the method of registering the speed of the charabanc was unreliable, repelled; & conviction sustained.—TAYLOR *v.* HORN, [1929] S. C. (J.) 111.—**SCOT.**

PART V. SECT. 3, SUB SECT. 1.

sb. *Validity of bye-law.*]—The tax imposed by Winnipeg Bye-law No. 14,415 on motor vehicles used in the city is a "fee or charge" within the prohibition in Highway Traffic Act, 1930, s. 107 (*r*).—WINNIPEG CITY *v.* CRESCENT CREAMERY CO., [1934] 1 W. W. R. 228; 41 Man. L. R. 564.—**CAN.**

sd. ——.]—Validity of bye-laws regulating scales of fares, & prohibiting owners from allowing drivers to work more than sixty hours a week, & requiring them to take out motor vehicle liability insurance policy.—*Re* WINNIPEG BYE-LAW NO. 14,272 (1932), 60 C. C. C. 385; 41 Man. L. R. 448.—**CAN.**

se. ——.]—A bye-law made by the Police Comrs. reducing taxi fares held nugatory in view of the power given to the city of Hamilton by Hamilton Street Railway Co. Act, 1927.—R. (PERRIN) *v.* ALTOBELLI (1934), 62 Can. C. C. 266.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

188b i. *Driver's licence—Driving car while disqualified—In place to which public have access.*]—The driver of a motor vehicle was convicted of an offence under sect. 7 (4) of Road Traffic Act, 1930, on the ground that, while disqualified for holding a driving licence, he had driven a vehicle on a road forming the access from a public highway to a farm. The road in question was part of the farm & led only to the farmhouse, where it terminated. It had no other houses on it, & it was not maintained by any public authority but by the farm tenant in terms of his lease. There was no gate at the entrance to it, & no intimation that it was not open to the public; & except at times in summer, when the farmer placed a pole across it to prevent the straying of cattle, there was no obstacle to prevent the public having access to it. The road was used by the public as an access to the farm, & members of the public not having business there also frequently walked on it. They had, on several occasions, been turned off by the farmer when there were growing crops in the adjoining fields:—*Held:* the road was a road to which the public had access within Road Traffic Act, 1930, s. 121 (1).—HARRISON *v.* HILL, [1932] S. C. (J.) 13.—**SCOT.**

a (p. 868) i. —— *Officer driving car owned by Crown.*]—A provision of a provincial Act which prohibits the driving of a motor car by any one, other than the owner of the vehicle holding a certificate of registration, unless he, the driver, is a duly licensed chauffeur or the holder of a permit to operate, cannot be applied to the driving of a motor car by a member of His Majesty's Permanent Forces where the car is owned by His Majesty in the right of the Dominion & is being used by said driver in the discharge of his military duties.—R. *v.* ANDERSON, [1930] 2 W. W. R. 595; 54 Can. C. C. 321; 39 Man. L. R. 84.—**CAN.**

a (p. 868) ii. —— ——.]—Ontario Highway Traffic Act, R. S. O., 1927 s. 66, which requires an operator's licence, does not apply to a member of His Majesty's Permanent Forces in the Dominion while he is driving a motor vehicle the property of His Majesty in the right of the Dominion while on military or public duty & in obedience to the order of a superior officer. The Crown, not being expressly mentioned in Ontario Highway Traffic Act, is not

(c. 43), s. 5, but held, when the rule came on for argument, that as appct. suffered from a specified disability which he admitted in his declaration & which compelled the licensing authority to refuse the licence the rule must be discharged.—R. *v.* CUMBERLAND JUSTICES, *Ex p.* HEPWORTH (1931), 146 L. T. 5; 95 J. P. 206; 47 T. L. R. 610; 30 L. G. R. 1; 29 Cox, C. C. 374, C. A.

188c. —— **Disqualification for indefinite period.**]—R. *v.* FOWLER, No. 254c, *ante*.

192. *Add. Citation :*—28 Cox, C. C. 498.

199a. —— **Speedometer—Whether corroboration necessary.**]—Resp. was charged with driving a motor car on a road in a built-up area at a speed greater than 30 miles per hour. Applt., a police inspector gave evidence that he followed resp.'s car in another car for a distance of about a mile & a half & that the inspector's speedometer showed that the speed of his car varied between 35 & 42 miles an hour. A police officer also gave evidence that he tested the speedometer on applt.'s car & that it was correct. No evidence was tendered by or on behalf of resp., who submitted that there was no corroboration of applt.'s evidence as required by Road Traffic Act, 1934 (c. 50), s. 2. Applt. contended that the evidence was sufficient as it was coupled with the evidence of the accuracy of the speedometer. Without ruling upon the submissions made by the parties, the justices dismissed the charge, " being of opinion that in cases of this kind it is not desirable that the evidence of a police officer checking a person's speed from the speedometer in his own car should be accepted unless corroborated by another witness present at the time " :—*Held :* (1) although resp.'s submission was incorrect in point of law, the justices were wrong in laying down what purported to be a new rule of law of universal application, as there was no rule of law requiring corroboration in the circumstances of the case; (2) as, but for the justices' decision, resp. might have desired to call evidence by way of answer, the proper course was to remit the case back to the justices to hear & determine it according to law.—RUSSELL *v.* BEESLEY, [1937] 1 All E. R. 527; 53 T. L. R. 298; 81 Sol. Jo. 99, D. C.

203. *Add. Annotation :*—**Consd.** Milner *v.* Allen (1933), 97 J. P. 111.

207a. **Motor coach—Schedule necessitating excessive speed—Liability of employer for aiding & abetting.**]—Resps. owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of the resps. between L. & P. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.' servant was stopped by the police, & the resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held :* resps. ought to have been convicted of counselling & procuring.—NEWMAN *v.* OVERINGTON, HARRIS & ASH, LTD. (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

210. *Add. Annotation :*—**Refd.** R. *v.* Surrey Justices, *Ex p.* Witherick (1931), 146 L. T. 164.

216. *Add. Annotation :*—**Consd.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

217. *Add. Annotation :*—**Consd.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

222a. **Under Road Traffic Act, 1930 (c. 43)—" Driving without due care & attention or without reasonable consideration "—Separate offences.**]—Applt. was convicted before jus-

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bound thereby.—R. *v.* RHODES, [1934] O. R. 44; 1 D. L. R. 251; 61 C. C. C. 3.—**CAN.**

d i. —— ——.]—BULLOCK *v.* HANSEN, [1928] 2 W. W. R. 528; 37 Man. L. R. 450.—**CAN.**

d ii. —— ——.]—By Highway Traffic Act, R. S. O., 1927, s. 66, the result of driving without a licence is liability to a fine; the unlicensed driver does not become an outlaw on the road. In a proper case, therefore, he may recover damages in respect of negligent driving by another party.—DOWNEY *v.* HYSLOP, [1930] 4 D. L. R. 578; 65 O. L. R. 548.—**CAN.**

f i. —— *Person " using."*]—COCKBURN *v.* GORDON, [1928] S. C. (J.) 87.—**SCOT.**

m i. —— —— ——.]—The fact that a person drives a vehicle on a highway without carrying the number plates required by statute does not preclude him from recovering damages for injuries sustained as the result of the negligence of the driver of another vehicle.—SEYMOUR *v.* ARROWSMITH, [1931] 3 W. W. R. 561.—**CAN.**

n (p. 869) i. —— *New car using number plates of old car.*]—Although under Vehicles Act, 1924, c. 42, where a registered car has been disposed of & another one obtained the number plates on the former are to be used on the latter car, the new car must first be registered before the owner is entitled to drive it on public highways with the old plates on it.—BUNK *v.* BOUFFARD, [1928] 3 W. W. R. 219.—**CAN.**

o (p. 869) i. —— *Meaning of learning.*]—A person is " *bonâ fide* learning to drive a motor car " if the relation of pupil & teacher in fact exists, even although he is receiving instruction after he has completely learnt the art of driving & guiding a motor car. When a pupil is being *bonâ fide* taught matters pertaining to the safe control of a motor car on a highway he comes within the Act.—HUDD *v.* WILSON, [1929] V. L. R. 132; [1929] Argus L. R. 138.—**AUS.**

PART V. SECT. 3, SUB-SECT. 4.—A. (a).

d i. *Evidence of speed — Speedometer.*]—Instruments such as, & including, speedo-meters, may be presumed to function accurately, unless the contrary is shown.—PETERSON *v.* HOMES, [1927] S. A. S. R. 419.—**AUS.**

g i. —— *Wrongful admission of constable's notes.*]—Where, on a prosecution for exceeding the speed limit, the special magistrate, who stated that he believed the police evidence, wrongly admitted as evidence notes taken by the police constables, & said in his judgment that the police evidence was supported by notes taken at the time :—*Held :* as it could not be inferred that the conviction would have been made had the notes been excluded, the conviction must be set aside.—PELHAM *v.* HOMES, [1928] S. A. S. R. 105.—**AUS.**

k i. —— —— ——.]—R. *v.* KNOTT (Alta.), [1929] 1 D. L. R. 773; 1 W. W. R. 804; 51 Can. Crim. Cas. 189.—**CAN.**

sr. *Motor fire engine—Whether exempt from regulations.*]—The fact that a motor vehicle operated by a fire department is answering a fire alarm does not exempt its driver from the obligations of the Motor Vehicle Act, even though it has the right of way.—LAWTON *v.* WINNIPEG & INTERURBAN SERVICES, LTD., [1928] 4 D. L. R. 887; [1928] 3 W. W. R. 354; 37 Man. L. R. 468.—**CAN.**

sv. *What constitutes speed limit—Erection of notice board.*]—A speed limit of fifteen miles per hour is not constituted by the erection of a single notice board on which the figure " 15 " appears without any indication of the limits within which the restriction is to apply.—WALLACE *v.* DURBAN INSPECTION OF POLICE, [1931] N. L. R. 282.—**S. AF.**

sw. *Motor Vehicle Act, 1935, s. 53—Whether affecting civil liability.*]—Sect. 53 of Motor Vehicle Act, 1935, is a penal sect. & does not affect civil liability.—MCDERMID *v.* BOWEN (No. 1), [1937] 2 W. W. R. 347.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A. (b).

210 ii. —— *Speed of car—Possibility of control.*]—R. *v.* DURAND, [1928] 2 D. L. R. 703; 49 Can. Crim. Cas. 217; 60 N. S. R. 54.—**CAN.**

tices on an information which charged him with driving a motor vehicle on a road "without due care & attention or without reasonable consideration for other persons using the road contrary to sect. 12 of Road Traffic Act, 1930":—*Held:* the section created two separate offences & the conviction was bad for duplicity, applt. having been charged with those two offences in the alternative.—R. *v.* SURREY JUSTICES, *Ex p.* WITHERICK, [1932] 1 K. B. 450; 101 L. J. K. B. 203; 146 L. T. 164; 95 J. P. 219; 48 T. L. R. 67; 75 Sol. Jo. 853; 29 L. G. R. 667; 29 Cox, C. C. 414, D. C.

Annotation:—**Consd.** R. *v.* Wilmot (1933), 97 J. P. 149.

222b. —— **"Driving recklessly or in a manner dangerous to the public"—Separate offences.**]—R. *v.* MILLS (1932), 173 L. T. Jo. 57 (Quarter Sessions).

—— —— ——.]—Applt. was convicted on a count of an indictment in the following terms: "Statement of offence. Driving motor vehicle in a manner dangerous to the public, contrary to sect. 11 (1) of the Road Traffic Act, 1930 (c. 43). Particulars of offence. Charles Wilmot . . . on a certain road . . . in the county of Lincoln, drove a motor car recklessly, or at a speed or in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the road, & the amount of traffic which was actually at the time, or which might reasonably have been expected to be, on the said road." Applt. was represented by counsel at the trial, but no objection to the validity of the count was taken until after verdict:—*Held:* the point with regard to the validity of the count was one which under the old practice could have been taken on a writ of error &, although it had not been taken at the trial, the ct. were bound to allow it to be raised on appeal. As the count charged several offences in the alternative, it was bad for duplicity, & the conviction must be quashed.—R. *v.* WILMOT (1933), 149 L. T. 407; 97 J. P. 149; 49 T. L. R. 427; 77 Sol. Jo. 372; 31 L. G. R. 189; 24 Cr. App. Rep. 63; 29 Cox, C. C. 652, C. C. A.

222d. —— **"Driving in a manner dangerous to the public"—Charge reduced to "driving without due care & attention"—Jurisdiction of justices.**]—When a person is charged with driving a motor car in a manner dangerous to the public contrary to sect. 11 of Road Traffic Act, 1930 (c. 43), the justices have no jurisdiction, without the consent of the accused, to reduce the charge to one of driving without due care & attention under sect. 12 of the Act.—R. *v.* SOUTHAMPTON JUSTICES, *Ex p.* TWEEDIE (1932), 102 L. J. K. B. 11; 147 L. T. 530; 96 J. P. 391; 48 T. L. R. 636; 76 Sol. Jo. 545; 30 L. G. R. 410; 29 Cox, C. C. 556, D. C.

222e. —— —— **Validity of conviction—Acquittal on charge of manslaughter in same indictment.**]—Applt. was charged on an indictment containing two counts: (1) manslaughter of a man who was knocked down & killed by applt.'s motor lorry; (2) driving the lorry in a manner dangerous to the public, contrary to Road Traffic Act, 1930 (c. 43), s. 11. The jury acquitted applt. of manslaughter, but convicted him of dangerous driving. On a submission that this verdict was bad, in that the *mens rea* required for the two officers was identical, & that it was therefore impossible for the jury to negative that *mens rea* on the first count, & to find it proved on the second, MACKINNON, J., overruled the submission, & upheld the conviction. He sentenced applt. to one month's imprisonment in the second division, but admitted him to bail, & granted a certificate that the case was fit for appeal:—*Held:* the conviction was right. Each count in an indictment is a separate indictment, & since applt. on an indictment for manslaughter could not have been convicted of dangerous driving, he could not have pleaded *autrefois acquit* if the charge of dangerous driving had been tried separately. It is, however, in the opinion of the ct., undesirable that a charge of dangerous driving should be made a count in an indictment for manslaughter. Where the prosecution desire to prefer both charges they ought to do so in two separate indictments.—R. *v.* STRINGER, [1933] 1 K. B. 704; 102 L. J. K. B. 206; 148 L. T. 503; 97 J. P. 99; 49 T. L. R. 189; 77 Sol. Jo. 65; 31 L. G. R. 84; 24 Cr. App. Rep. 30; 29 Cox, C. C. 605, C. C. A.

Annotation:—**Refd.** R. *v.* Carr (1934), 24 Cr. App. Cas. 199.

222f. —— —— —— **Negligence not amounting to manslaughter.**]—Where a person is indicted for manslaughter for having, while driving a motor car, unlawfully killed a man, the judge, in directing the jury, should in the first instance tell them that the facts must be such that in their opinion the negligence of the accused went beyond a mere matter of compensation between subjects & showed such a disregard for the life & safety of others as to amount to a crime against the State & conduct deserving punishment; he should then explain that such degree of negligence is not necessarily the same as that which is required for the offence of dangerous driving; & further he should indicate the conditions under which they may acquit the accused of manslaughter & convict him of dangerous driving. A direction that all the jury have

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222a i. *Under Road Traffic Act, 1930 (c. 43)—Joinder of charges against two drivers in one complaint.*]—A complaint charging two motor drivers with having contravened sect. 12 (1) of Road Traffic Act, 1930, set forth that they had each driven a motor vehicle without due care & attention & without reasonable consideration for other persons using the road, & had respectively caused each of the vehicles to collide with & damage the other:—*Held:* it was competent to charge the two drivers in the one complaint.—MATHEWSON *v.* RAMSAY, [1936] S. C. (J.) 5.—**SCOT.**

ix. *Driving recklessly & failure to stop.*]—Accused was charged on an indictment which set forth that, while on a public road & under the influence of intoxicating liquor so as to be incapable of driving a car, he drove a car in a reckless manner & at an excessive speed into a motor bicycle on which there was a pillion passenger; that although aware of the accident he failed to stop, & that in consequence of the collision he injured the driver of the bicycle & killed the passenger. Objection was taken that it was incompetent to incorporate in the indictment averments of intoxication & failure to stop, matters which might each have been charged as a separate & independent statutory offence:—*Held:* the averments objected to formed part of the circumstances surrounding the crime charged, & might cast a light upon the culpability of accused with regard to that crime &, further, they gave accused notice of the case which he would have to meet.—H.M. ADVOCATE *v.* TULLY, [1935] S. C. (J.) 8.—**SCOT.**

to consider is whether death was caused by dangerous driving within sect. 11 of Road Traffic Act, 1930 (c. 43), & no more, is a misdirection.—ANDREWS *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1937] A. C. 576; [1937] 2 All E. R. 552; 106 L. J. K. B. 370; 101 J. P. 386; 53 T. L. R. 663; 81 Sol. Jo. 497; 26 Cr. App. Rep. 34; 35 L. G. R. 429; *sub nom.* R. *v.* ANDREWS, 156 L. T. 464; 30 Cox, C. C. 576, H. L.

222g. —— — —— **On charge of manslaughter.**]—Applt. was indicted at the Central Criminal Ct., charged with manslaughter. By Road Traffic Act, 1934, s. 34, it is enacted that, on an indictment of manslaughter in connection with the driving of a motor vehicle, the jury can bring in a verdict of driving to the public danger under Road Traffic Act, 1930 (c. 43), s. 11. The accused was driving his car along a road on a dark night when he collided from behind with a young woman, causing her injuries from which she died. The accused did not know that he had struck anybody at all. He was driving at a speed of about 20 miles per hour with side lights only. In his summing up to the jury, the judge referred to the opinion that if a person by reckless driving kills another the proper verdict is a verdict of manslaughter. "I apprehend," he continued, "that what Parliament intended [by Road Traffic Act, 1930 (c. 43), s. 11] was this, that there might be cases where a man was driving a motor car in a dangerous manner, & then had the misfortune to kill somebody, where nevertheless a jury might think, either having regard to the age of the accused or for some reason or other, there were circumstances which would justify the jury in returning a less serious verdict":—*Held:* the direction to the jury in the summing up was adequate & correct.—R. *v.* LEACH, [1937] 1 All E. R. 319, C. C. A.

222h. —— —— **& driving while disqualified—Charges tried together.**]—R. *v.* POMEROY (1935), 80 Sol. Jo. 94; 25 Cr. App. Rep. 147, C. C. A.

222j. —— —— **What amounts to.**]—To constitute the offence of dangerous driving of a motor vehicle under sect. 11 (1) of Road Traffic Act, 1930 (c. 43), it is unnecessary that actual danger to any member of the public should be proved. It is sufficient if it be shown that there was potential danger, as, for instance, to traffic which might reasonably be expected to be on the road.—KINGMAN *v.* SEAGER (1937), 157 L. T. 535; 101 J. P. 543; 81 Sol. Jo. 903; *sub nom.* KINGHAM *v.* SEAGER, 54 T. L. R. 50, D. C.

222k. —— **Driving under influence of drink—In "public place"—Field to which public admitted.**]—A field to which the public are admitted is "a public place" within sect. 15 (1) of above Act.—R. *v.* COLLINSON (1931), 75 Sol. Jo. 491; 23 Cr. App. Rep. 49, C. C. A.

222l. —— —— **Ambiguous verdict.**]—R. *v.* HAWKES (1931), 75 Sol. Jo. 247; 22 Cr. App. Rep. 172, C. C. A.

222m. —— —— **Form of indictment.**]—(1) An indictment for the offence of driving a motor vehicle when under the influence of drink, contrary to Road Traffic Act, 1930 (c. 43), s. 15 (1) (*b*), should avoid the use of the word "drunk."

(2) A charge of the above offence should not be tried together with a charge of manslaughter, even though counsel for the defence consent to such a course being taken.—R. *v.* CARR (1934), 24 Cr. App. Rep. 199, C. C. A.

222n. —— —— **Joinder of count for manslaughter.**]—R. *v.* CARR, No. 222m, *ante*.

222o. **Failure to give hand-signal of intention to stop.**]—Applt. & resp. were defts. in an action for damages for personal injuries caused by negligence. Applt. had suddenly & violently applied her brakes while driving her motor car in a stream of traffic. She gave no signal by hand of her intention to stop, but her car was fitted with a stop-light which was automatically operated when the brakes were applied. A car travelling immediately behind her was unable to pull up in time, & collided slightly with applt.'s car. Resp.'s car, the last one in the stream of traffic, was also unable to pull up, & collided violently with the car in front. Pltf. was a passenger in resp.'s car, & suffered severe injury. At the trial, the judge found that applt. had been negligent, in that she stopped too suddenly & failed to give any warning by hand-signal. Resp. was also found to have been negligent, in that he failed to apply his brakes sufficiently to stop, but instead first pulled out to his off side in an endeavour to overtake. Immediately after judgment had been delivered, an application was made to the judge to apportion the blame between two defts. in accordance with the provisions of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30). The judge apportioned the blame, two-thirds to applt. & one-third to resp.:—*Held:* (1) such an application was within the terms of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6 (2), & the judge therefore had jurisdiction to make an apportionment; (2) such an apportionment was a matter of discretion for the judge, & would not be disturbed by the Ct. of Appeal unless it could be shown that the judge had acted upon a wrong principle in law; (3) a stop-light automatically operated by the brakes of a motor car does not give sufficient warning of the intention of a driver to slow down or to stop. A hand-signal should also be given. It is no defence to an allegation of negligence for a driver to contend that he has done everything suggested in the Highway Code, which is merely a code of suggested behaviour on the road, & is not binding as a statutory regulation.—CROSTON *v.* VAUGHAN, [1937] 4 All E. R. 249; 54 T. L. R. 54; 81 Sol. Jo. 882, C. A.

223. *Add. Annotation:*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

PART V. SECT. 3, SUB-SECT. 4.—A. (c).

m i. ——.]—The liability imposed by Highway Traffic Act, Ont., 1927 (c. 251), ss. 9 (1), 41 (1), exists even in absence of negligence; the failure to have a tail light burning & visible on a motor vehicle in accordance with s. 9 (1) is a violation of the Act, &, if a cause of a collision resulting in damages, may involve civil liability under s. 41 (1), even though the light was burning until shortly before the accident & went out without the knowledge or personal fault or negligence of the driver of the vehicle.—HALL *v.* TORONTO GUELPH EXPRESS CO. & HATCH, [1929] 1 D. L. R. 375; S. C. R. 92; 63 O. L. R. 355; setting aside O. L. R., *loc. cit.*—CAN.

232a. Leaving car so as to obstruct highway—To what vehicles applicable—Steam tractor.]—*Held:* (1) Motor Cars (Use & Construction) Order, 1904, Article IV., clause 2, does not apply to a steam tractor weighing 13 tons unladen, which while being driven on the highway caused an obstruction, inasmuch as it is not a motor car; (2) although the above tractor was in motion, being driven along the highway at the time of the commission of the offence, it was "standing" thereon within the meaning of Article IV., clause 2.—CARPENTER *v.* FOX, [1929] 2 K. B. 458; 98 L. J. K. B. 779; 142 L. T. 234; 93 J. P. 239; 45 T. L. R. 571; 27 L. G. R. 601; 29 Cox, C. C. 42, D. C.

232b. —— What amounts to standing.]—CARPENTER *v.* FOX, No. 232a, *ante*.

232c. Obstruction of "road"—Whether footway included.]—The word "road" as used in Road Traffic Act, 1930 (c. 43), & in the Motor Vehicles (Construction & Use) Regulations, 1931, includes the footway as well as the carriageway, & therefore:—*Held:* a person who left a motor car standing on the footway ought to have been convicted of allowing it to stand on the "road" so as to cause unnecessary obstruction thereof.—BRYANT *v.* MARX (1932), 147 L. T. 499; 96 J. P. 383; 48 T. L. R. 624; 76 Sol. Jo. 577; 30 L. G. R. 405; 29 Cox, C. C. 545, D. C.

Duties in case of accident.]—*See* Road Traffic Act, 1930 (c. 43), s. 22.

232d. —— Refusal to give name & address—Accident reported to police—Not compliance with Act.]—The failure of the driver of a motor vehicle, who has been concerned in an accident, to comply with Road Traffic Act, 1930 (c. 43), s. 22 (1), by giving his name & address to any person having reasonable grounds for requiring him to do so, is not excused by a subsequent compliance with sect. 22 (2), which requires the driver to report the accident to the police if he has not given his name & address to any such person.—DAWSON *v.* WINTER (1932), 149 L. T. 18; 49 T. L. R. 128; 77 Sol. Jo. 29; 31 L. G. R. 298; 29 Cox, C. C. 633, D. C.

232e. Excessive load—In relation to speed—Heavy motor car.]—Road Traffic Act, 1930 (c. 43), s. 2 (1) (*d*), defines a class of vehicles to be known as heavy motor cars, & by para. 2 (*d*) of Sched. I., a maximum speed of 16 miles an hour is prescribed for heavy motor cars if all the wheels are not fitted with pneumatic tyres but are fitted with soft or elastic tyres. By Reg. 38 of Motor Vehicles (Construction & Use) Regulations, 1931, a heavy motor car is required to have its maximum speed painted on it. By Reg. 59 of those Regulations the sum of the weights transmitted to the road surface by all four wheels of a heavy motor car is not to exceed 12 tons. By Reg. 10 of Motor Vehicles (Construction & Use) (Amendment) Provisional Regulations, 1931, Reg. 59 is altered by the addition of the following proviso: "Provided that in the case of a heavy motor car with four wheels & propelled by steam . . . the sum of the weights transmitted to the road surface by all the wheels of such heavy motor car may equal, but shall not exceed . . . 14 tons, provided that its maximum speed with or without a trailer does not exceed 12 miles per hour":—*Held:* this proviso did not allow a vehicle whose maximum speed, as allowed by the Sched. to the Act, & painted on the vehicle, was 16 miles an hour, to carry a load between 12 & 14 tons if it reduced its actual speed on that journey to 12 miles an hour; & on proof of the facts that 16 miles an hour was painted on the vehicle, & that the load exceeded 12 tons, the justices were entitled to convict of an offence against Reg. 59 without any evidence that the speed in fact exceeded 12 miles an hour.—PRITCHARD *v.* DYKE (1933), 149 L. T. 493; 97 J. P. 179; 49 T. L. R. 473; 31 L. G. R. 301; 30 Cox, C. C. 1, D. C.

232f. —— Effect of gradient between front & rear wheels when weight measured.]—An information was preferred against the owners of a four-wheeled heavy motor vehicle for permitting it to be used in such a manner that the sum of the weights transmitted to the road surface by the two rear wheels in line transversely exceeded 8 tons, contrary to

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PART V. SECT. 3, SUB-SECT. 4.—A. (e).

232d i. *Duty to report accident—Name & address given to other party.*]—*Held:* where a motor vehicle has collided with another vehicle & the driver of the motor vehicle has given his name & address to the driver of the other vehicle, he is under no duty thereafter to report the accident to the police.—ADAIR *v.* FLEMING, [1932] S. C. (J.) 51.—**SCOT.**

232d ii. *Duty to stop.*]—Where a driver of a motor vehicle which had, to the knowledge of the driver, been involved in an accident, did not stop his vehicle until about 300 yards after the impact:—*Held:* on the facts, the driver had not complied with the obligation to stop imposed by sect. 52 of Road Traffic Act, 1934. The driver's object in returning to the place of an accident is not an element in any offence created by sect. 52, but may be relevant to the quantum of penalty.—JARMAN *v.* WALSH, [1936] S. A. S. R. 25.—**AUS.**

232d iii. ——.]—Sect. 52 of Road Traffic Act, 1934, requires the driver to stop for such a period as may be reasonable to enable the questions to be put if there is anybody in the vicinity who desires to put them.—NOBLET *v.* CONDON, [1935] S. A. S. R. 329.—**AUS.**

232j i. *Commercial vehicles—Permitted hours for drivers—Constructive driving.*]—A co. carrying on business as carriers between L. & G. were charged with contraventions of Road Traffic Act, 1930, s. 19 (1) (ii.), & were convicted. In a stated case, it appeared that the sheriff-substitute, in computing driving periods, had taken into account (*inter alia*) time during which drivers of the co.'s vehicles were waiting in the G. depot of the co., subject to be called upon at any time to do work. It was maintained against the co. that such periods of waiting, not being periods of rest within Road & Rail Traffic Act, 1933, s. 31 (1), had been properly taken into account as periods of constructive driving:—*Held:* (1) 1933 Act, s. 31 (1), had no application, in respect that it dealt solely with the calculation of minimum periods of rest under 1930 Act, s. 19 (1) (iii.), & did not affect the calculation of maximum periods of driving under sect. 19 (1) (ii.), which was the subhead on which alone the present complaint was based; (2) the drivers of the co.'s vehicles while waiting in the depot were not constructively driving within 1930 Act, s. 19 (2) (*b*); (3) the sheriff-substitute had misdirected himself in taking such periods of waiting into account in his computation of driving periods.—JESSNER & SONS *v.* WAUGH, [1936] S. C. (J.) 47.—**SCOT.**

q i. —— *Charge of having care & control of automobile "while under the influence of liquor".—No offence.*]—R. *v.* OEULLETTE (1931), 55 Can. C. C. 389.—**CAN.**

di. ——.]—MARANO & MARANO *v.* LETT (Alta.), [1929] 4 D. L. R. 982; 3 W. W. R. 345; *affg.*, [1929] 4 D. L. R. 314; 3 W. W. R. 170.—**CAN.**

sv. *Drunkenness — Alternative offences — Validity of conviction.*]—*Held:* a finding by a magistrate that deft. while intoxicated was in charge of a motor vehicle did not justify a conviction for driving while intoxicated, as s. 285 (4) of the Criminal Code deals with two alternative offences.—R. *v.* HIGGINS, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—**CAN.**

sx. —— *Accused at wheel of disabled*

the Motor Vehicles (Construction & Use) Regulations, 1931, reg. 59. There was a camber of the road at the place where the weights were measured, & in consequence of the use of the weighing instruments the rear wheels were at the time when the weights were recorded lifted slightly from the ground. The justices dismissed the information on the ground that there should be no unevenness of surface or gradient between the places where the front wheels & the rear wheels stood, & that no evidence had been given of this fact. They also held there was no evidence that the defts. " permitted " the offence :—*Held :* the Motor Vehicles (Construction & Use) Regulations, 1931, reg. 59, in its universal language, makes no exception with regard to the place at which or the gradient on which the weight is to be ascertained ; defts., in accepting the load to be carried, permitted the user of the vehicle contrary to the regulation.—PROSSER *v.* RICHINGS, [1936] 2 All E. R. 1627 ; 155 L. T. 284 ; 100 J. P. 390 ; 52 T. L. R. 677 ; 80 Sol. Jo. 794 ; 34 L. G. R. 456 ; 30 Cox C. C. 457, D. C.

232g. —— **To what vehicles applicable—Date of registration.**]—A certain four-wheeled motor vehicle fitted with pneumatic tyres was stopped & found to weigh, with its contents, 13 tons. The owners were charged with having unlawfully caused or permitted the use of a vehicle which did not comply with the Motor Vehicles (Construction & Use) Regulations, 1931, reg. 59. The vehicle had been registered under the Roads Act, 1920, in Sept. 1931. The justices dismissed the information, holding that reg. 59 did not apply to the vehicle as it was registered " on or after Jan. 1, 1932 " within the Motor Vehicles (Construction & Use) (Amendment) Provisional Regulations, 1931, reg. 10 (ii). The informant appealed :—*Held :* the Motor Vehicles (Construction & Use) (Amendment) Provisional Regulations, 1931, reg. 10 (ii) applies only to a vehicle which is registered for the first time on or after Jan. 1, 1932, & the justices should have found that the offence charged had been proved.—MACKINNON *v.* PEATE, [1936] 2 All E. R. 240 ; 80 Sol. Jo. 387, D. C.

232h. **Indivisible load of exceptional length.**]—Applt. used on the road a motor-drawn trailer loaded with five fir trees, securely fixed, which projected over the back of the trailer for 32 ft. He was convicted at petty sessions for using a trailer in such a condition that danger was likely to be caused, in breach of the Motor Vehicles (Construction & Use) Regulations, 1931, regs. 62, 85. He appealed to quarter sessions on the ground that reg. 51 provides that a trailer may exceed 22 ft. in length if constructed & normally used for the conveyance of indivisible loads of exceptional length. This appeal was dismissed : —*Held :* there was evidence on which the justices could find that the distribution of the load was dangerous to persons on the trailer or on the highway, & therefore the proviso in reg. 51 did not protect the user of the vehicle. —CRIPPS *v.* COOPER, [1936] 2 All E. R. 48, D. C.

232j. **Commercial vehicles—Permitted hours for drivers—Road Traffic Act, 1930 (c. 43), s. 19.**] —During a period of twenty-four hours, the driver of a motor lorry constructed to carry goods other than the effects of passengers worked for a number of periods which in the aggregate amounted to more than eleven hours, but were each separated by an interval of at least half-an-hour :—*Held :* offences against sect. 19 (1) of the Act had been committed by the driver & by his employers.—COOK *v.* ALFRED PLUMPTON, LTD., COOK *v.* HENDERSON (1935), 153 L. T. 462 ; 99 J. P. 308 ; 51 T. L. R. 513 ; 79 Sol. Jo. 504 ; 24 Ry. & Can. Cas. 237 ; 30 Cox, C. C. 270 ; 33 L. G. R. 363, D. C.

232k. —— —— —— **Evidence—Admissibility of record kept by driver.**]—In a prosecution of resps. for permitting the driver of a motor vehicle belonging to them constructed to carry goods, to drive on one day for continuous periods amounting in the aggregate to more than 11 hours contrary to Road Traffic Act, 1930 (c. 43), s. 19, the only evidence tendered in support of the information was the " current record " of hours

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car being towed.]—Accused, while intoxicated, was in control of the steering wheel of a motor car, which, having become disabled at night on a main highway owing to the choking of the gasoline pipe, was being towed at the end of a rope by a service motor truck which he had hired. The steering apparatus was in order. He was charged with having " under his care or control a motor vehicle while he was intoxicated," contrary to sect. 285 (4) of Criminal Code. The magistrate, holding himself bound by *R.* v. *Higgins*, 63 O. L. R. 101, dismissed the charge. On appeal by the Crown by way of a stated case :—*Held :* the magistrate was not right in holding that the accused could not be convicted, on said facts, of said offence. The order of dismissal was set aside & the case remitted to the magistrate.—*R. v.* HENRY, [1934] 1 W. W. R. 234 ; 2 D. L. R. 51 ; 61 C. C. C. 207 ; 41 Man. L. R. 545.—**CAN.**

sy. —— *Form of proceedings.*]—The offence of driving a car while intoxicated may be dealt with summarily or by indictment.—*R. v.* FANNING, [1935] 3 D. L. R. 720 ; 9 M. P. R. 376 ; 63 Can. C. C. 377 ; 5 F. L. J. (Can.) 4.—**CAN.**

sz. *Leaving car without brakes set—In drive.*]—The driver of a motor vehicle was convicted of having near a road quitted his vehicle without having set the brakes so as effectually to prevent two at least of the wheels from revolving. The driver had left his vehicle in the drive at the side of his house, & it had run down the drive, through the gate at the end of the drive, which was open, & on to the public road, where it ran into & damaged the wall & railing in front of another house. The public had no right to use the drive, & tradesmen & others seeking access to the house generally used a path leading from another gate : —*Held :* the Sheriff-Substitute was entitled to convict, *per* the Lord Justice Clerk & Lord Anderson on the ground that the drive was a road in the sense of the Act, & *per* Lord Murray on the ground that, on the assumption that the drive was not a road, the vehicle had been moving on the public road with its brakes not set. *Opinion, per* the Lord Justice Clerk, that the offence might be committed although the vehicle was not on a road.—DAVIDSON *v.* ADAIR, [1934] S. C. (J.) 37.—**SCOT.**

sc. *Taking car without consent of owner.*]—J. was charged under sect. 526A of Crimes Act with taking & using a certain motor car without the consent of the owner. The facts disclosed that J. had the consent of the owner to take & use the car up to a certain time. He used the car after the expiration of the said time, & was convicted under this section by the magistrate :—*Held :* inasmuch as deft. had the consent of the owner to take & use the car during a certain period, the subsequent unlawful use was not sufficient to constitute an offence under this sect.—*Re* TURNBULL, *Ex p.* JOHNSTONE (1935), 52 N. S. W. W. N. 194.—**AUS.**

sg. *Duty to remain at scene of accident — Validity of Act.*]—Subsect. (7) of sect. 60 of Motor Vehicle Act, 1935, which imposes a penalty upon the driver of a motor vehicle who, having caused damage or injury, fails to remain at or return to the scene of the accident, is *ultra vires*, since the same subject in the same aspect is covered by sect. 285 (2) of the Criminal Code.—*R. v.* SALT, [1937] 1 W. W. R. 785.—**CAN.**

worked kept by resps.' driver as required by Road & Rail Traffic Act, 1933 (c. 53), s. 16 :—*Held :* inasmuch as the "current record" was one which the statute required to be kept & to be kept accurately it was properly admissible in evidence against resps. though they naturally delegate the actual manual keeping of it to their drivers, or other servants.—BEER *v.* W. H. CLENCH (1930), LTD., [1936] 1 All E. R. 449 ; 154 L. T. 428 ; 100 J. P. 191 ; 52 T. L. R. 300 ; 80 Sol. Jo. 266 ; 34 L. G. R. 187 ; 24 Ry. & Can. Tr. Cas. 118 ; 30 Cox, C. C. 364, D. C.

232l. —— —— —— **Driver acting in breach of orders—Whether a defence.**]—On the prosecution of an employer for permitting his driver to drive for more than eleven hours in twenty-four it is no defence that the driver acted in contravention of his master's orders. —SIDCUP BUILDING ESTATES, LTD. *v.* SIDERY (1936), 24 Ry. & Can. Tr. Cas. 164.

232m. —— —— —— **Driver not resting.**]—Where a driver, by his own wish, & not at the orders of his employers, chose to spend part of the hours allowed for rest in returning home by train from the place where his period of driving ended :—*Held :* no offence was committed by the employers, their duty under Road Traffic Act, 1930 (c. 43), s. 19, being to allow 10 hours "for" rest, not to insist on 10 hours "of" rest. If the driver chose to employ part of the time allowed for rest in some other way the employers were not concerned.—BEER *v.* FAIRCLOUGH (T. M.) & SONS, LTD. (1937), 156 L. T. 238 ; 101 J. P. 157 ; 53 T. L. R. 345 ; 81 Sol. Jo. 180 ; 35 L. G. R. 113 ; 25 Ry. & Can. Tr. Cas. 129 ; 30 Cox, C. C. 551, D. C.

232n. —— **Failure to keep records — Whether mens rea necessary.**]—A guilty intention is not a necessary ingredient in the offence of failing to comply with the provisions of Road & Rail Traffic Act, 1933 (c. 53), s. 16, & the Regulations made thereunder as to the keeping of records of hours of work, journeys & the greatest weight of goods carried at any one time.—COX & SONS, LTD. *v.* SIDERY (1935), 24 Ry. & Can. Tr. Cas. 69.

Annotation :—**Consd.** Beer *v.* W. H. Clench (1930) Ltd., [1936] 1 All E. R. 449.

232o. —— —— —— **Exemption—Business of agriculture.**]—The holder of a licence to use an authorised vehicle under Road & Rail Traffic Act, 1933 (c. 53), was charged with having failed to cause to be kept a current record in respect of the period during which a driver in his employ was driving such vehicle, contrary to Goods Vehicles (Keeping of Records) Regulations, 1935. The driver was charged with having failed to keep such a record. The regulations specially exempt the driver & owner of a vehicle used in the business of agriculture from the duty of keeping or causing to be kept such records. The vehicle in question was loaded with agricultural implements & furniture in order that they might be moved from one farm to another :—*Held :* the vehicle was being used in the business of agriculture, & the offences charged had not been committed. FLATMAN *v.* POOLE, FLATMAN *v.* OATEY, [1937] 1 All E. R. 495 ; 25 Ry. & Can. Tr. Cas. 142.

232p. —— **Time for making records.**]—Regulation 7 (2) of Goods Vehicles (Keeping of Records) Regulations, 1935, provides that each item of information required by the appropriate form shall be made in the Record as soon as the particular to be recorded is ascertained. A driver entered an item of information before the particular to be recorded was ascertained :—*Held :* his employers ought to be convicted of the offence of failing to cause current records to be kept under the Road & Rail Traffic Act, 1933 (c. 53), s. 16 (1).—NELSON *v.* COVENTRY SWAGING CO., LTD. (1936), 25 Ry. & Can. Tr. Cas. 68.

232q. Goods vehicle—What is—Sound-recording van.]—The driver of a sound-recording van drove it at more than 30 m.p.h. on a road where the speed of private motor cars was not restricted. The apparatus fitted in the van was an essentially permanent fixture within Road Traffic Act, 1930 (c. 43), s. 2 (4) (*b*). The driver was convicted of an offence under sect. 10 (1), the ct. holding that the car was a goods vehicle within Sched. I., para. 2. The driver appealed, submitting that the car was a private car, as it was taxed as a private car & the apparatus was not a load within sect. 2 (4) (*b*) : —*Held :* the car was a goods vehicle, for the apparatus was a burden within Sched. I., para. 2.—BURMINGHAM *v.* LINDSELL, [1936] 2 All E. R. 159 ; 80 Sol. Jo. 367, D. C.

232r. —— —— **Utility car.**]—Resp. was charged with having unlawfully driven a Ford utility car, fitted with pneumatic tyres & constructed or adapted for the conveyance of goods or burden, on a public highway at a speed greater than 30 miles per hour (being the speed specified in the Road Traffic Act, 1934 (c. 50), Sched. I., as the maximum speed for such a vehicle), contrary to sect. 2 of that Act. The justices dismissed the charge, holding that the vehicle was a car & not a van, that it had not been proved that the vehicle was a goods vehicle within the meaning of the sched., & that the vehicle was constructed solely for the carriage of passengers & their effects. The justices were also of opinion that the act of lifting out the rear seat of the vehicle was not an adaptation of the vehicle for use for the conveyance of goods, & that it had not been proved that the sides of the vehicle had been boarded up for the purpose of facilitating the conveyance of goods :—*Held :* although the vehicle was also designed to carry, not solely but in part, passengers & their effects, it was nevertheless a vehicle constructed or adapted for use for the conveyance of goods or burden within the meaning of the section of the Act of 1934, & the offence charged was therefore proved.—HUBBARD *v.* MESSENGER, [1937] 4 All E. R. 48 ; 157 L. T. 512 ; 101 J. P. 533 ; 54 T. L. R. 1 ; 81 Sol. Jo. 846, D. C.

232s. —— —— **Goods vehicle adapted to carry passengers.**]—FRY *v.* BEVAN (1937), 81 Sol. Jo. 60, D. C.

232t. —— **Exemption from Regulations.**]—UNION CARTAGE CO., LTD. *v.* HEAMON, EGGLETON *v.* HEAMON, No. 232v, *post*.

232v. User of trailer—Validity of Regulations.]—Applts. were charged with unlawfully permitting a motor tractor, with trailer attached,

to be driven on the road without a person, in addition to the driver of the vehicle, for the purpose of attending the trailer, contrary to Road Traffic Act, 1930 (c. 43), s. 17, & the regulations made thereunder. The Motor Vehicles (Construction & Use) Regulations, 1931, reg. 77, provides that: "The requirements of Road Traffic Act, 1930 (c. 43), s. 17, with regard to the employment of drivers & attendants shall not apply . . . (c) where a motor tractor is drawing—(i) any closed trailer specially constructed & used for the conveyance of meat between docks & railway stations, or between wholesale markets & docks or railway stations." Although it was generally used for the conveyance of meat between docks & railway stations or between wholesale markets & docks or railway stations, for which purpose it had been specially constructed, on the date of the alleged offence the trailer was loaded with, & was being used for the conveyance of tiles. Applt. contended that, by reason of reg. 77, no offence had been committed, & that, alternatively, in so far as that regulation purported to refer to the user of a trailer, it was *ultra vires*:—*Held*: (1) Motor Vehicles (Construction & Use) Regulations, 1931, reg. 77, was within the powers conferred upon the Minister of Transport by Road Traffic Act, 1930 (c. 43); (2) as the trailer was at the material time carrying tiles & not meat, it was not within the exemption in reg. 77 (c) (i), & an offence had been committed against Road Traffic Act, 1930 (c. 43), s. 17.—UNION CARTAGE CO., LTD. *v.* HEAMON; EGGLETON *v.* HEAMON, [1937] 1 All E. R. 538; 25 Ry. & Can. Tr. Cas. 137.

245a. Service of notice of prosecution—When excused.]—(1) In the proviso to Road Traffic Act, 1930 (c. 43), s. 21, the expression "the ct." refers to the judge & not the jury, & "reasonable diligence" means "reasonable diligence on the part of the officer in charge of the case."

(2) Where the police have ascertained the name & address of the registered owner of the vehicle in time for a notice to be served on or sent to him within fourteen days of the commission of the offence, although they have not been able to ascertain the name of the driver, & they have not served such notice on the owner, the proviso cannot apply, &, if none of the alternative conditions precedent to conviction provided in sect. 21 has been complied with, the failure so to comply is a bar to the conviction of the driver.—R. *v.* BOLKIS (1932), 148 L. T. 358; 97 J. P. 10; 49 T. L. R. 128; 77 Sol. Jo. 13; 24 Cr. App. Rep. 19; 31 L. G. R. 32; 29 Cox, C. C. 578, C. C. A.

245b. —— Sufficiency of notice.]—Within fourteen days after the commission of an alleged offence under the Road Traffic Act, 1930 (c. 43), a notice was sent to the offender, who had not been warned at the time of the alleged offence, stating that "you have been reported for the question of prosecution to be considered in respect of your having driven a motor car in a manner dangerous to the public." Then followed particulars of the day, hour, locality, & circumstances. The offender was summoned for driving without due care & attention at that time & place, & he contended that the notice was bad in that (*a*) it was not a notice of intended prosecution, but only a notice that the question of prosecution was being considered, & (*b*) he was prosecuted for a different offence from that specified:—*Held*: the notice was good. It sufficiently specified "the nature of the offence," & "driving to the danger of the public" was not a term of art referable only to Road Traffic Act, 1930 (c. 43), s. 11. The accused had no right to complain that he was prosecuted for a less serious offence than was specified. Nor need a prosecution be irrevocably decided on before the notice is sent.—MILNER *v.* ALLEN, [1933] 1 K. B. 698; 102 L. J. K. B. 395; 149 L. T. 16; 97 J. P. 111; 49 T. L. R. 240; 77 Sol. Jo. 83; 31 L. G. R. 161; 29 Cox, C. C. 629, D. C.

245c. —— ——.]—PERCIVAL *v.* BALL, [1937] W. N. 106, D. C.

249. *Add. Annotation*:—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

250. *Add. Annotation*:—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

250a. —— Secondary evidence of policy—Notice to produce not given.]—On a charge of using a motor vehicle without there being in force a policy of insurance complying with Part II. of Road Traffic Act, 1930 (c. 43), a police officer was about to give evidence of the contents of a certificate of insurance produced by deft. at the time when the vehicle was stopped, but objection was taken on behalf of the deft. that, as no notice to produce had been given, secondary evidence of the contents of the document was inadmissible. The justices upheld the objection:—*Held*: the evidence should have been admitted.

Semble: (*per* TALBOT, J.) the onus of proving the possession of the policy was on the deft.—WILLIAMS *v.* RUSSELL (1933), 149 L. T. 190; 97 J. P. 132; 49 T. L. R. 315; 77 Sol. Jo. 198; 31 L. G. R. 182; 29 Cox, C. C. 640, D. C.

254a. —— Failure to inform accused of right to trial by jury.]—R. *v.* LEICESTER JJ., *Ex p.* WALKER, MYERS *v.* WALKER (1935), 80 Sol. Jo. 54, D. C.

254b. —— Conviction—Failure to endorse licence as required.]—R. *v.* LEICESTER, JJ., *Ex p.* WALKER, MYERS *v.* WALKER (1935), 80 Sol. Jo. 54, D. C.

254c. —— Excessive sentence—Previous offences.]—Applt. was convicted of driving a motor vehicle while under the influence of drink & was sentenced to six months' imprisonment in the second division & disqualification from holding a licence for an indefinite period. Applt. had been convicted on two previous occasions for driving without due care & attention. Applt. appealed against the sentence:—*Held*: (1) the offences of careless driving & of driving while under the influence of drink are of a similar character, & the ct. which convicted applt. was entitled to take

into consideration the two previous offences when it imposed the sentence. There were no grounds for reducing the sentence of imprisonment; (2) the ct. had no power to disqualify for an indefinite period.—R. *v.* FOWLER, [1937] 2 All E. R. 380; 157 L. T. 558; 101 J. P. 244; 53 T. L. R. 649; 81 Sol. Jo. 422; 26 Cr. App. Rep. 80; 35 L. G. R. 265, C. C. A.

254d. —— Disqualification for indefinite period.]—R. *v.* FOWLER, No. 254c, *ante*.

PART V. SECT. 3, SUB-SECT. 5.

sa. *Motor Traffic Regulations—Passing stationary tramcar—Whether evidence of negligence.*]—LANE *v.* NORTON (1927), 28 S. R. N. S. W. 143; 45 N. S. W. W. N. 38.—**AUS.**

si. *Meaning of "intersection of highways."*]—*Semble:* a right-angled bend in a highway is not an "intersection of highways" within sect. 35 (1) of Vehicles Act, 1924 (c. 42), which provides that a person operating a motor or other vehicle shall at the intersection of highways keep to the right of the intersection of such highways when turning to the right, & pass to the left of such intersection when turning to the left.—CLARK *v.* HETHERTON, [1930] 1 W. W. R. 165; 1 D. L. R. 964; 24 S. L. R. 275. C. A.—**CAN.**

sm. ——.]—A private road is not a "highway" within Vehicles Act, 1924 (c. 42), & the point at which such a road opens on to a highway is, therefore, not an intersection of highways within the meaning of sect. 35 (2) of said Act.—COPELAND *v.* ROBERTS, [1930] 1 W. W. R. 145; 3 D. L. R. 460; 24 S. L. R. 224.—**CAN.**

q (p. 878) **i.** —— ——.]—R. *v.* TORONTO TRANSPORTATION COMMISSION (Ont.) (1929), 52 Can. Crim. Cas. 413.—**CAN.**

q (p. 878) **ii.** —— —— *Onus of proof.*]—*Held:* under s. 42 of Highway Traffic Act the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the driver or owner of the motor vehicle was upon defts.—ROSS *v.* GRAY COACH LINES, LTD., [1929] 3 D. L. R. 841; 64 O. L. R. 178.—**CAN.**

q (p. 878) **iii.** —— —— *Effect of Highway Traffic Amendment Act*, 1929, *s.* 9.]—The effect of above sect. repealing Highway Traffic Act, R. S. O., 1927, s. 41, is to reduce the responsibility of the owner of a motor vehicle to that at common law.—TUDHOPE *v.* HENDERSON, HENDERSON *v.* TUDHOPE, [1930] 3 D. L. R. 245; 65 O. L. R. 238.—**CAN.**

q (p. 878) **iv.** —— ——.]—Motor Vehicle Act, R. S. B. C., 1924, does not add to the civil liability at common law of an owner of a motor vehicle who has entrusted it to another person through whose negligence in operating it a third person is injured.—RUFF *v.* SUTHERLAND & MOSS, [1931] 1 D. L. R. 651; [1930] 3 W. W. R. 544; 43 B. C. R. 218.—**CAN.**

q (p. 878) **v.** —— ——.]—While deft. H. was negotiating with the local agent of deft. co. for the purchase of a motor car its wholesale salesman arrived in the course of one of his regular trips, & it was arranged that H. & the local agent would go on with him so that H. could get practice in driving such a car. Before starting, the wholesale salesman met pltf.'s husband & agreed to the latter's request to be taken along with them. They started on the trip with H. at the wheel & had gone less than a mile when the car overturned, & pltf.'s husband was thrown out & killed. The local agent testified that H. was to his knowledge an incompetent driver, at least of a car of the type in question, & that he, the agent, had informed the wholesale representative that H. was an "erratic" driver. H. had been driving a car with two-wheel brakes for about two years, but had not driven one with four-wheel brakes, which the car in question had. The judge found that no negligence had been established against either deft. On appeal, the ct. found that the accident was caused by H.'s incompetence to handle a car of such, to him, a new & different type; & both defts., the co. & H., were liable.—KERR *v.* HAUG MOTORS, LTD. (No. 2), [1931] 1 D. L. R. 962; [1930] 3 W. W. R. 470; 39 Man. L. R. 238.—**CAN.**

q (p. 878) **vi.** —— ——.]—MARTEL *v.* CHARTIER, [1935] 1 W. W. R. 305; 43 Man. L. R. 54.—**CAN.**

q (p. 878) **vii.** —— ——.]—WOOD *v.* FREEMAN (1935), 5 F. L. J. (Can.) 21.—**CAN.**

q (p. 878) **viii.** —— ——.]—Under sect. 71a of Vehicles & Highway Traffic Act, 1924, the owner of a motor car which with his consent, express or implied, is being used by his employee, is liable for damage caused by the negligence of the employee in driving it, even though the consent was a limited one & the driver was exceeding it when the damage was sustained. Thus, where the owner's consent was expressly restricted to the use of the car on the owner's farm & the employee was driving outside the farm when the accident occurred the owner was held liable.—LYON & LYON *v.* NOBLE FARMS, LTD., [1935] 3 W. W. R. 582; [1936] 1 D. L. R. 153.—**CAN.**

q (p. 878) **ix.** —— —— *Defence of contributory negligence.*]—POOLE & THOMPSON *v.* MCNALLY, [1934] S. C. R. 717; [1935] 1 D. L. R. 161.—**CAN.**

q (p. 878) **x.** —— ——.]—Under the enactment as to onus dealt with in *Poole & Thompson, Ltd.* v. *McNally*, [1934] S. C. R. 717, s. 65 (1) of the Prince Edward Island Highway Traffic Act, in substance the same, in the pertinent respects, as that now in question, standing by itself, deft. may acquit himself of the onus cast upon him, by establishing that pltf.'s negligence materially contributed to the mishap, & that he could not, in the result, by the exercise of reasonable care, have avoided the consequences of that negligence; or that the mischief was directly caused by the negligence of pltf. as well as that of himself co-operating together. The enactment does not itself appear to aim at altering the substantive rules of common law touching the effect of contributory negligence; its purpose seems to be to change the law as to the burden of proof. It would seem that deft. had shown that, in the situation which confronted him, he had not failed in that standard of care, skill & judgment which can fairly & properly be required of the driver of a motor vehicle. . . . The standards to be applied are not standards of perfection (*per* DUFF, C.J.).—MCMILLAN *v.* MURRAY, [1935] S. C. R. 572; 4 D. L. R. 666; 3 W. W. R. 117; 5 F. L. J. (Can.) 211.—**CAN.**

q (p. 878) **xi.** —— —— ——.]—The onus cast on a motorist by sect. 66 of Vehicles & Highway Traffic Act, 1924, can be discharged "by establishing that pltf.'s negligence materially contributed to the mishap, & that he could not, in the result, by the exercise of reasonable care, have avoided the consequences of that negligence; or that the mischief was directly caused by the negligence of pltf. as well as that of himself co-operating together."—ADAMS & ADAMS *v.* BETTS, [1935] 3 W. W. R. 542; [1936] 1 D. L. R. 183; 5 F. L. J. (Can.) 227.—**CAN.**

q (p. 878) **xii.** —— —— ——.]—In an action resulting from the collision of a motor vehicle with a pedestrian who was crossing an intersection:—*Held:* neither the driver nor pltf., the pedestrian, saw the other & that both parties were negligent in not keeping a look out, &, following *Murray* v. *McMillan* [1935] S. C. R. 572, notwithstanding the statutory onus on the driver, pltf.'s contributory negligence prevented her from recovering; a city bye-law as to the right of way of a pedestrian at an intersection did not relieve her of the duty of taking ordinary care.—SHANAHAN *v.* TOOLE PEET TRUST CO., LTD. (No. 2), [1936] 2 W. W. R. 540.—**CAN.**

q (p. 878) **xiii.** —— —— *Injury to passenger.*]—The liability thereunder of an owner is not restricted to the case of a person injured on a highway but applies also to injuries sustained by a passenger in the offending motor car.—SMITH *v.* DREWRY'S, LTD. & STEPHENSON, [1937] 1 W. W. R. 107.—**CAN.**

q (p. 878) **xiv.** —— ——.]—Under Nova Scotia Motor Vehicles Act, 1932, the onus is upon the owner to show that a person operating a car was not acting as his servant or agent. This is a question of fact for the jury.—PATTERSON *v.* FATOUH, [1936] 3 D. L. R. 136; 10 M. P. R. 350.—**CAN.**

s (p. 878) **i.** ——.]—NEILSON *v.* RICHARD (B. C.), [1929] 4 D. L. R. 1052; 2 W. W. R. 153; *revsd.*, [1930] 1 W. W. R. 656; 3 D. L. R. 215; 38 Man. L. R. 553.—**CAN.**

c (p. 879) **i.** ——.]—CHORBA *v.* KIMBRIEL, [1928] 3 D. L. R. 718; [1928] 2 W. W. R. 386; 22 Sask. L. R. 602.—**CAN.**

c (p. 879) **ii.** —— —— ——.]—The statutory onus does not increase the degree of diligence required of the owner or driver of a motor vehicle.—STANLEY *v.* NATIONAL FRUIT CO. (Sask.), [1929] 3 W. W. R. 522; [1930] 2 D. L. R. 106; 24 S. L. R. 137; *revsd.*, [1931] 1 D. L. R. 306; S. C. R. 60.—**CAN.**

c (p. 879) **iii.** —— —— ——.]—HEITNER *v.* GILLSTROM (Sask.), [1929] 4 D. L. R. 670; 3 W. W. R. 227; *revsd.*, [1930] 2 W. W. R. 113; 3 D. L. R. 860; 24 S. L. R. 462.—**CAN.**

c (p. 879) **iv.** —— —— ——.]—MARANO & MARANO *v.* LETT (Alta.), [1929] 4 D. L. R. 982; 3 W. W. R. 345; *affd.*, [1929] 4 D. L. R. 314; 3 W. W. R. 170.—**CAN.**

c (p. 879) **v.** —— —— ——.]—YONKER *v.* SERVANT, [1931] 1 W. W. R. 433; 2 D. L. R. 495; 25 Alta. L. R. 247.—**CAN.**

c (p. 879) **vi.** —— —— ——.]—Under sect. 62 of Manitoba Motor Vehicle Act, which provides that when any injury is caused to a person by a motor vehicle the *onus* of proof that the injury did not arise through his negligence shall be upon the owner or driver of the motor vehicle, the *onus* of negativing negligence in an action for damages so caused remains on deft. throughout the proceedings. Thus, although deft. has adduced the evidence of credible witnesses that the accident was due to a latent defect in the mechanism of the motor vehicle & pltf. has adduced no evidence to the contrary, the case should not be withdrawn from the jury but should be left to them to decide by their verdict whether deft. has satisfied the statutory *onus* of proof.—WINNIPEG ELECTRIC CO. *v.* GEEL, [1932] A. C. 690; 101 L. J. P. C. 187; 148 L. T. 24; 48 T. L. R. 657, P. C.—**CAN.**

Part VII.—Aircraft.

Carriage by air.]—*See* Carriage by Air Act, 1932 (c. 36).

260a. —— **Goods—Implied warranty.**]—Pltf. delivered to defts. at Baghdad a quantity of gold for carriage to London. Between Baghdad & Tiberias, the carriage was to be

c (p. 879) **vii.** CHERNIAK *v.* PARSONS, [1931] 2 W. W. R. 549.—**CAN.**

c (p. 879) **viii.** —— —— ——.]—Where in an action for damages for injuries caused by a motor car the judge, after hearing & weighing the whole of the evidence, comes to the definite conclusion that the accident was caused solely by pltf.'s own negligence, the *onus* which sect. 43a of Vehicles Act, 1924, places on the owner or driver of disproving negligence ceases to be a factor in the case.—PURCELL *v.* WALLACE, [1930] 1 W. W. R. 732; 2 D. L. R. 1004; 24 S. L. R. 1004.—**CAN.**

c (p. 879) **ix.** —— —— —— *Application of Act in favour of passenger.*]—*Semble:* the *onus* of negativing negligence which sect. 62 of Motor Vehicle Act, 1924, places on the driver of a motor car applies, not only in favour of pedestrians, but also in favour of a passenger in the motor car which caused the damage.—HIRD *v.* MILNE, [1930] 1 W. W. R. 977; 3 D. L. R. 513.—**CAN.**

c (p. 879) **x.** —— —— —— *Injury to guest while car driven by owner.*]—DREW *v.* MACK, [1931] 4 D. L. R. 395.—**CAN.**

c (p. 879) **xi.** —— —— ——.]—CHARTRAND *v.* D'AOUST FRENETTE AUTO, LTD., [1933] 4 D. L. R. 813.—**CAN.**

c (p. 879) **xii.** —— —— ——.]—CAMPBELL *v.* BELT, [1934] 1 D. L. R. 694; 41 Man. L. R. 625.—**CAN.**

c (p. 879) **xiii.** —— —— ——.]—In an action for damages for injuries resulting from the female pltf. coming into collision with deft.'s motor car while she was walking across a street at an intersection, the case being one in which she did, in a sense, walk into the side of the car, that is, she involuntarily in the moment of danger thrust forward her arm against the car with the result that the arm was caught in the handle of the car door:—*Held:* deft. had not satisfied the statutory onus on him of showing that the injury was not caused by his negligence, &, moreover, the evidence proved that his negligence actually caused the injury.—DUNBAR *v.* HUNTER, [1934] 1 W. W. R. 440; 42 Man. L. R. 112.—**CAN.**

c (p. 879) **xiv.** —— ——.]—KUHMO & LAAKSO *v.* HELBERG, [1931] 4 D. L. R. 323.—**CAN.**

c (p. 879) **xv.** —— —— *Collision between motor vehicles—Onus on passenger to prove negligence.*]—Sect. 66 (2) of Vehicles & Highway Traffic Act, 1924, is not limited to its application as between drivers or owners of the motor vehicles; &, therefore, in the case of an action brought by a passenger in a motor vehicle for injuries sustained in a collision between it & another motor vehicle he cannot succeed without proving negligence.—HAYHURST *v.* INNISFAIL MOTORS, LTD., [1935] 1 W. W. R. 385; 2 D. L. R. 272.—**CAN.**

c (p. 879) **xvi.** —— ——.]—The onus imposed on the driver of a motor by sect. 58 (1) of Highway Traffic Act, 1930, does not require him to explain the antecedent movements of a person struck by the car if he proves that he was keeping a good lookout & that said person suddenly emerged from some place where he was not visible & ran in front of the car.—KSIONEK *v.* WALLACE, [1937] 2 W. W. R. 530.—**CAN.**

c (p. 879) **xvii.** —— *Liability of owner for damages caused by third party driving his car without permission.*]—Pltfs. were injured by a motor car while it was being driven by the 17 year old son of the owner. The boy, who was attending school, lived with his father as a member of the household & was found to have used the car at least seven or eight times during the two years prior to the accident. The car was kept in a yard between the father's house & his store, & one of the two car-keys was either in the house or in the store where it was accessible to the son. The trial judge accepted the testimony of the father that he had never given the son permission to use the car & did not know that he had ever driven it. The father did not say that he had forbidden the son to drive it:—*Held:* the father could not be heard to say that the car had been "wrongfully taken out of his possession" within Motor Vehicle Act, C. A., 1924 (c. 131), s. 63.—BOBBY *v.* CHODIKER, [1929] 2 D. L. R. 590; 1 W. W. R. 770; 38 Man. L. R. 171; *revg.*, [1928] 3 W. W. R. 392.—**CAN.**

c (p. 879) **xviii.** —— ——.]—NELSON *v.* DENNIS (Man.), [1929] 4 D. L. R. 282; 2 W. W. R. 513.—**CAN.**

c (p. 879) **xix.** —— ——.]—WALKER *v.* SCOTT, NICHOL *v.* SCOTT (Man.), [1929] 3 D. L. R. 647; 2 W. W. R. 92.—**CAN.**

c (p. 879) **xx.** —— ——.]—BOYD *v.* SMITH, [1931] 1 D. L. R. 729.—**CAN.**

c (p. 879) **xxi.** —— ——.]—Deft., the owner of a car, refused to let M. have or hire it unless deft.'s chauffeur, P., was taken along to drive it. During the journey M. got drunk, & insisted on driving the car. He was resisted by P. who, though not actually ejected by force, was threatened with a fight & gave way. While M. was driving on a highway the car struck pltf.'s car & damaged it:—*Held:* the change of operators was due to duress, & brought about a situation contrary to deft.'s express instructions & the bargain made with M., &, the car being "in the possession of some person other than the owner or his chauffeur, without the owner's consent," deft. was not liable.—KUHMO & LAAKSO *v.* HELBERG, [1931] 4 D. L. R. 328; O. R. 630.—**CAN.**

c (p. 879) **xxii.** —— ——.]—When a car is driven by a third party permitted to drive by the lessee of the car, it is still in the "possession" of the lessee, & the owner is not protected as when a motor vehicle is without the owner's consent in the possession of some person other than the owner.—THOMPSON *v.* BOURCHIER, [1933] 3 D. L. R. 119; O R. 525.—**CAN.**

c (p. 879) **xxiii.** —— ——.]—Where a car is lent to A., who lends it to B., B. cannot be said to have acquired possession of it with the consent express or implied of the true owner.—MARTEL *v.* DOMINION MOTORS, LTD., [1935] 2 D. L. R. 187.—**CAN.**

c (p. 879) **xxiv.** —— *Crown bound by Act—Liability of officer of the Crown—Reckless driving in execution of duty.*]—R. *v.* MCLEOD, [1930] 4 D. L. R. 226; 53 Can. C. C. 292.—**CAN.**

c (p. 879) **xxv.** —— *Who is "chauffeur"*]—"Chauffeur" in Vehicles Act, R. S. S., 1930, s. 2 (1), does not include a person employed for the main purpose of doing work other than driving a motor car but which incidentally requires him to drive a car part of the time; especially if at the time as to which he is charged with driving a motor car without having a chauffeur's licence he was not driving it on his employer's business but for his own purposes.—R. (ARMSTRONG) *v.* PRESTON, [1931] 3 W. W. R. 505.—**CAN.**

c (p. 879) **xxvi.** —— *Limitation of action.*]—A statute limiting the time for commencing an action is to be construed retroactively, in the absence of words therein showing a contrary intention; especially where the statute itself expressly provides that its operation is to be postponed.—BEATTIE *v.* DOROSZ & DOROSZ, [1932] 2 W. W. R. 289.—**CAN.**

c (p. 879) **xxvii.** —— *Joint ownership of car.*]—GRAY *v.* NORD & NELSON, OLIVER & COOK *v.* NORD & NELSON, [1936] 2 W. W. R. 489; 4 D. L. R. 182.—**CAN.**

sg. *Breach of statutory duty by plaintiff—Whether defence to action for damages.*]—The fact that at the time of a collision between an automobile & a motor cycle, the driver of the motor cycle was violating sect. 19A of Motor-Vehicle Act, R. S. B. C., 1924, by allowing a passenger to occupy the driver's seat, &, was, therefore, liable to a penalty:—*Held:* not to deprive driver or his passenger, pltf. herein, of his civil rights against the driver of the automobile, where such violation in no way caused or contributed to the accident.—GAMON *v.* EASTMAN, [1932] 2 W. W. R. 622; 46 B. C. R. 23.—**CAN.**

sk. *Absence of tail light.*]—The duty imposed by Highway Traffic Act, 1930, s. 13 (1) (*a*), to carry a lighted lamp on the rear of a vehicle upon a highway between sunset & sunrise is an absolute one, & where in an action for negligence it is found that the breach of said duty was a cause of the accident the fact that the person in charge of the car did not know that the light was out does not relieve said person, or a person whose agent he was, from liability for the consequences of said breach.—CONNELL *v.* OLSEN, [1933] 1 W. W. R. 654; 3 D. L. R. 419; 41 Man. L. R. 197.—**CAN.**

sl. *Limitation of action—Enlargement of time—When granted.*]—Sect. 73 (3) of Vehicles Act, 1932, which provides that a judge may, "having regard to all the circumstances of the case," enlarge the time allowed by sect. 73 (1) for bringing an action to recover damages occasioned by a motor vehicle, must have been intended to prevent injustice & when it appears that the delay in bringing the action was due to the mistake of the intended pltf.'s solr., that the mistake was *bona fide*, that the delay was trifling, that prompt action was taken as soon as the error was discovered, & that the other party has suffered no injury which cannot be compensated by costs, the relief should be granted.—LINDSAY *v.* HEAGLE, [1935] 2 W. W. R. 373; 5 F. L. J. (Can.) 86.—**CAN.**

sp. *Liability of parent for negligence of minor—Minor owner of car.*]—FRASER *v.* HARRIS & KAUFFMAN, [1937] 2 W. W. R. 488.—**CAN.**

PART VII.

ss. *Aircraft in distress—Right to land.*]—The aeroplane in question was seized by the Customs authorities on the ground that it had landed at a place other than an airport & for not

by aeroplane, & from Tiberias to Brindisi by seaplane. The consignment note provided that the goods were accepted for carriage only at the risk of pltf., & that defts. undertook no responsibility for loss, damage, or delay caused directly or indirectly during the conveyance by aeroplane or otherwise in connection therewith. The clause continued: "This refers to all obligations of the defts. either in respect of carriage, storage, or other operations in connection with the goods." The consignment note further stated that the defts. were not, & would not accept the obligations of, common carriers. In an action for damages for loss of the goods pltf. alleged that the seaplane had no compartment suitable for the carriage of bullion & reasonably fit to resist thieves, that the goods were placed in a compartment not fitted with any means of securing them, & that in consequence they were lost. He further alleged defts., as common carriers, had been guilty of breach of duty, & he relied upon non-delivery as evidence of negligence, & he set up an implied warranty that the goods would be carried only in a thief-resisting compartment. Defts. admitted non-delivery, but they denied that they were common carriers & that they had been guilty of negligence. On an order for the trial of preliminary issues:—*Held:* (1) on the terms of the consignment note defts. were not under the liabilities of common carriers but were only bailees & so could be liable only for negligence; (2) there was no implied undertaking to provide a bullion room; & (3) the only implied warranty was to use reasonable care & skill to make the seaplane safe for the carriage of pltf.'s goods so far as was consistent with the nature of a seaplane, & the consignment note protected defts. from liability for negligence (if any) in this respect, though it did not mention negligence specifically.—ASLAN *v.* IMPERIAL AIRWAYS, LTD. (1933), 149 L. T. 276; 49 T. L. R. 415; 77 Sol. Jo. 337; 38 Com. Cas. 227.

260b. —— —— **Liability for loss—Bullion.**]—ASLAN *v.* IMPERIAL AIRWAYS, LTD., No. 260a, *ante*.

260c. —— —— —— ——.]—Defts. received bar gold valued at £9,138 for transport from London to Paris. The gold was removed by motor-van to Croydon, where it was placed in the strong room of the aerodrome. On the following morning the door of the strong room was found open & the gold was missing.

reporting to a Customs Officer:—*Held:* where the evidence establishes that an aeroplane was forced to land on account of engine trouble & to avoid a crash, she is justified in so doing at any place that such landing can be safely made & for the same reasons that a vessel in distress may enter a port for shelter.—PENTZ *v.* R., [1931] Ex. C. R. 172.—**CAN.**

sb. *Regulation of aviation — Whether exclusive power of Dominion Legislature.*]—*See* DEPENDENCIES, No. 130g, *ante*.

sd. — — *Validity of Regulations.*]—The convention for the Regulation of Aerial Navigation, 1919, provides that each contracting State is to register the aircraft of its own nationals & accord freedom of innocent passage to the aircraft of other contracting States, whilst denying passage to aircraft not possessing the nationality of a contracting State. It also provides that no aircraft is to be registered in any State unless it belongs wholly to such nationals. The Regs. made pursuant to sect. 4 of Air Navigation Act, 1920, departs from the terms of the Convention. They contain no prohibition of aircraft not possessing the nationality of a contracting State, & do not restrict registration to persons who have been defined as nationals by any Australian law. They purport to empower the Minister to exempt any aircraft or person from the requirements of the Regs., & differ from the terms of the Convention as to ascertaining the fitness of pilots. The Commonwealth of Australia being one of the contracting States, Art. 30 of the Convention defines State aircraft as military aircraft & aircraft exclusively employed in the State service, such as posts, customs & police aircraft, & declares every other aircraft to be private aircraft. This art. subjects to the terms of the Convention all State aircraft (other than military, customs & police aircraft), as well as private aircraft. The individual Australian States not being parties to the Convention, the Regs. purport to allow the Govt. of any Australian State to use aircraft within its State for its own purposes, & in exercise of its police power, without being subject to the Regs.:—*Held:* by reason of these & other inconsistencies between the terms of the Convention & the Regs., the Regs. are rendered invalid. R. *v.* BURGESS, *Ex* . HENRY (1936), 55 C. L. R. 618; Argus L. R. 482; 10 A. L. J. 335.—**AUS.**

sl. *Insurance—Flight contrary to Government regulations.*]—OBALSKI CHIBOUGAMAU MINING CO. *v.* AERO INSURANCE CO., [1932] S. C. R. 540; 3 D. L. R. 25.—**CAN.**

so. *Carriage by air—Extent of liability to passengers & owners of goods.*]—Aviation Act, 1918, "an Act to control aviation in New Zealand," by sect. 3 conferred upon the Governor-General in Council the power to make regulations for a number of purposes (*inter alia*), by sect. 3 (1), para. (*f*), "for the issue & cancellation of licences authorising the use of aircraft, & prescribing the conditions subject to which such aircraft may be so used, including conditions as to the carriage of passengers & goods," & by sect. 3 (1), para. (i), "prescribing fines for offences against any such regulations, not exceeding one hundred pounds for any such offence."

Regulations (provisional) were made on Feb. 21, 1921, by clause 6, of which "passenger aircraft" & "goods aircraft" are defined as meaning respectively aircraft intended for carrying passengers or goods (including mails), for hire or reward, & including respectively aircraft on which passengers or goods are actually carried. Clause 1 prescribes a number of "General Conditions of Flying," including the licensing of the personnel of the aircraft in the prescribed manner. No. 4 of the Regns., under the title of "Penalties" provides in sub-clause 1 that where any aircraft flies in contravention of or fails to comply with regulations or any provision thereof, the owner of the aircraft & also the pilot or commander shall be deemed to have contravened or, as the case may be, failed to comply with the regulations; & in sub-clause 3 that any person contravening or failing to comply with the regulations or any provision thereof is liable on summary conviction to a fine not exceeding £100.

The Second Sched. provides for the certificates of pilots of flying-machines, which are denominated "A" & "B." "A" is described as "Flying-certificate for private pilots (not valid for flying passenger or goods aircraft"); & "B," "Pilot's flying-certificate for flying passenger or goods aircraft." The qualifications required to obtain these certificates are set out, & a higher degree of skill & of physical & mental health is required for a pilot desirous of obtaining a "B" certificate than for an "A." Included in the requirements for a "B" certificate is the passing of a medical examination carried out under the control of the Air Board, & among the requirements of mental & physical fitness are: (*a* Good family & personal history, with particular reference to nervous stability. Absence of mental, moral, or physical defect which will interfere with flying efficiency. (*b*) General medical examination. The appct. must not suffer from any disease or disability which renders him liable suddenly to become incompetent in the management of aircraft:—*Held:* Aviation Act, 1918, & the regulations made thereunder, so far as they dealt with conditions as to the carriage of passengers & goods by air, were intended for the protection of a particular class, that is to say, passengers & owners of goods carried in aircraft, as distinct from the general public—& imposed a duty for the benefit of that class, which conferred a right of action upon a passenger being injured by such breach.—DOMINION AIR LINES, LTD. *v.* STRAND, [1933] N. Z. L. R. 1, 2, 3.—**N.Z.**

sp. *Accident to club passenger—Liability of company.*]—M. met his death while travelling as a passenger carried for hire in an aeroplane operated by the M. Aero Club. His widow sued the club & the N. Z. Airways Co., Ltd., under Deaths by Accidents Compensation Act, 1908, for damages in respect of his death. The machine crashed in consequence of one of the bolts in one of the bell-crank levers on the elevator-control line becoming unshipped owing to a defective cotter pin. There was an inspection door where this particular bell-crank lever was. As the result of a previous accident the machine was repaired by the co. The club's contract with the co. was that the machine

The consignment had the following on the back: "Carriage by air: The general conditions of carriage of goods are applicable to both internal & international carriage. These general conditions are based upon the Convention of Warsaw of Oct. 12, 1929, in so far as concerns international carriage within the special meaning of the said Convention." In an action to recover the value of the gold: —*Held:* the carriage by air of the bar gold had commenced; the statement on the back of the consignment note was not a sufficient statement that the carriage was subject to the rules relating to liability established by the convention; upon the facts pltfs. had not made a special declaration of value nor paid any supplementary rate within Carriage by Air Act, 1932 (c. 36), Sched. I, Art. 22 (2), & no question of the additional liability of the carrier under that article could arise.—WESTMINSTER BANK, LTD. *v.* IMPERIAL AIRWAYS, LTD., [1936] 2 All E. R. 890; 155 L. T. 86; 52 T. L. R. 607; 80 Sol. Jo. 794; 42 Com. Cas. 1.

Annotation:—**Refd.** Philippson *v.* Imperial Airways, Ltd., [1937] 3 All E. R. 318.

260d. —— —— **"High contracting parties"—Who are.**]—A consignment note for the carriage of gold from England to Belgium by air was subject to general conditions of carriage of goods based on the Convention of Warsaw. The conditions applied to both internal & international carriage. The contract in the present case was made in Mar. 1935, & by the conditions international carriage included all carriage by air between places within the territories of the high contracting parties to the Convention of Warsaw:—*Held:* the contract must be construed according to English law & high contracting parties meant the parties as defined in the English Carriage by Air Act, 1932 (c. 36), giving effect to the Convention of Warsaw. The term high contracting parties was therefore confined to those who, under sect. 1 (2) of that Act, had been declared to be such by order in council before the date of the contract. As Belgium had not been so declared, the carriage was not international.—PHILIPPSON *v.* IMPERIAL AIRWAYS, LTD., [1937] 3 All E. R. 318; 157 L. T. 112; 53 T. L. R. 850; 81 Sol. Jo. 590.

260e. —— **"International carriage"—What amounts to.**]—G. took a ticket from London to Antwerp & back, with an agreed stopping place at Brussels, by defts.' air service. The ticket, which was available for fifteen days, was issued in three parts, one which G. was to give up at the place of departure, another at the place of destination, & the third he was to keep; & it stated the fare as £4 for the outward journey, & £2 8*s.* for the journey from Antwerp to London. If G. did not return within the fifteen days he would be entitled to a refund of the £2 8*s.* Great Britain is, & Belgium is not, a High Contracting Party to the Convention of Warsaw which is scheduled to the Carriage by Air Act, 1932 (c. 36), & which applies to "all international carriage . . . by aircraft for reward," & which defines "international carriage" as "any carriage in which, according to the contract made by the parties, the place of departure & the place of destination, whether or not there be a break in the carriage, . . . are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty . . . of another Power, even though that Power is not a party to this Convention." The Convention further provides that "in the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs." On the journey back from Antwerp to London the aeroplane in which G. was travelling was wrecked in

was to be repaired to certificate of airworthiness standard, & a certificate of airworthiness was to be obtained from the proper authorities. After a meticulous inspection by the aviation authorities, the certificate of airworthiness was issued. The machine thereafter was restored by the co. to the club. Pltf. rested her case against the club on the failure to hold a ground inspection & breach of the statutory regulations in the non-holding of such inspection, but, on the evidence of pltf.'s witnesses, the ground inspection did not touch the defect causing the accident:—*Held:* so far as deft. club was concerned, that the necessary *nexus* between the injury to the passenger & the breach of the statutory duty had not been established. On the evidence, so far as deft. co. was concerned, the onus of establishing that the cotter pin was not properly fixed in position when it left the co.'s hands had not been discharged by pltf.—MAINDONALD *v.* MARLBOROUGH AERO CLUB & NEW ZEALAND AIRWAYS, LTD., [1935] N. Z. L. R. 371.—N.Z.

sr. *Pilot—Acting without certificate—Misstatement of Act.*]—An information was laid against the accused charging him with acting as pilot of an aircraft "without holding a certificate of the Air Board of Canada authorising him to act, contrary to the provisions of the Aeronautics Act, 1919, & the regulations thereunder." The magistrate dismissed the case on the ground that there is no such Act & stated a case under sect. 761 of the Code:—*Held:* while the regulations made by the old Air Board under Air Board Act are still in force & still contain the original clause 33, which provides that no person shall act as pilot without a certificate issued "by the Air Board," & although this clause is still in force to the extent that it still imposes the obligation to procure a certificate before flying, yet by the effect of the change made by National Defence Act, 1922, in the personnel of the administration of the Act, the obligation is now to procure a certificate, not from the Air Board, which no longer exists, but from the Minister, which is not what the information alleges to have been contravened. Neither the substance of the charge nor the statement of the Act, both defective, supplied the information which the other lacks. Therefore the magistrate was right.—A.-G. FOR CANADA *v.* MACDOUGALL, [1934] 1 W. W. R. 621; 62 C. C. C. 7; 42 Man. L. R. 117.—CAN.

sw. —— *Liability of club for—Collision between car & aeroplane.*]—Pltf. sought damages arising out of a collision between an aeroplane the property of deft. club & driven & piloted by defts., B., & a motor car the property of pltf. It was clear that the accident was due to the negligence of B. & the question to be determined was whether or not at the time of the collision the aeroplane concerned was under the control of B. as the servant or agent of deft. club:—*Held:* having regard to all the circumstances of the case as shown by the evidence the relationship between deft. club & B. with regard to the particular aeroplane was that of bailor & bailee & not that of master & servant or principal & agent & therefore pltf. could not succeed against deft. club.—EBBETT MOTORS, LTD. *v.* WESTERN FEDERATED FLYING CLUB (INCORPORATED) (1935), 30 M. C. R. 91.—N.Z.

sz. —— *Negligence of.*]—An aeroplane crashed as the result of a stall caused by loss of flying-speed when the machine was approaching a landing, & a passenger received injuries from which he died. Engine-failure was not a factor in the accident. It is not a test of diligence that the pilot may have been desirous of using all care; the test is whether he in fact exercised the care & attention which were customary & proper. On this objective test, deft. pilot failed at a critical stage to take the customary & proper precaution of maintaining air speed, & was guilty of negligence.—BAILEY *v.* TAYLOR, [1936] N. Z. L. R. 806; G. L. R. 557; 12 N. Z. L. J. 262.—N. Z.

sd. *Negligence—Hired aeroplane.*]—Consideration of jury's findings in action for damages for negligent use & operation of hired aeroplane.—SAUNDERS *v.* GOODWIN, [1937] 1 D. L. R. 630; 11 M. P. R. 318.—CAN.

...n, & G. was killed. In an action by his widow claiming damages in respect of his death, LEWIS, J., found that the accident was due to the negligent management of the aeroplane; that the tickets issued to G. involved two distinct carriages, one from London to Antwerp & another from Antwerp to London; that the latter carriage, during which G. met his death, being a carriage from a place not within the territory of a High Contracting Party was not "international carriage" within the meaning of the Convention; & therefore that the liability of the defts. was not limited to the English equivalent of 125,000 francs. On appeal:—*Held:* there was one carriage only—namely, from London to Antwerp & back; it was "international carriage"; & therefore the damages recoverable were limited to the English equivalent of 125,000 francs.

Semble: the words "act, neglect or default" in the Fatal Accidents Act, 1846 (c. 93), are wide enough to include a negligent breach of contract.—GREIN *v.* IMPERIAL AIRWAYS, LTD., [1937] 1 K. B. 50; [1936] 2 All E. R. 1258; 106 L. J. K. B. 49; 155 L. T. 380; 52 T. L. R. 681; 80 Sol. Jo. 735; 42 Com. Cas. 10, C. A.

260f. —— Negligence—Limitation of damages—Action under Fatal Accidents Act, 1846 (c. 93).]—GREIN *v.* IMPERIAL AIRWAYS, LTD., No. 260e, *ante*.

260g. —— —— No liability to hirer's guests.]—Negotiations were entered into with the first defts. for the hire of an aeroplane for the carriage of the hirer & a party of guests. The aeroplane hired was in fact the property of the second defts. & the pilot was their servant. The negotiations, however, were conducted throughout by the first defts., & it was found that they held themselves out as principals. No mention was made of any special conditions. Just as the aeroplane was preparing to leave, an envelope containing a "ticket" was handed to the hirer by the pilot. The "ticket" was a document called a special charter which contained (*inter alia*) a number of conditions, one of which exempted the second defts. from liability for their own or their servants' negligence. The ticket contemplated signature by the "passenger" & its return when signed to one of the second defts.' officials. Before the hirer had an opportunity of seeing the contents of the envelope, the aeroplane started on its journey & almost immediately it crashed, two of the hirer's guests being killed. The disaster was found to be due to the negligence of the pilot. In an action by the widow of one of the guests on behalf of herself & her three infant daughters for damages under the Fatal Accidents Act:—*Held:* (1) as there was no contractual relationship between the first defts. & the hirer's guests, the first defts. were not liable to the widow; (2) a condition binding on the hirer would also be binding on his guests, as the burden was upon the hirer to pass on to his guests the information as to the existence of the conditions; (3) the condition exempting the second defts. from liability was not communicated to the hirer before the journey started, & the second defts. were not protected by it. As the pilot was negligent, the second defts. were liable to pltf. for her husband's death.—FOSBROKE-HOBBES *v.* AIRWORK, LTD., & BRITISH-AMERICAN AIR SERVICES, LTD., [1937] 1 All E. R. 108; 53 T. L. R. 254; 81 Sol. Jo. 80.

260h. —— —— Exemption on ticket—Necessity for communication.]—FOSBROKE-HOBBES *v.* AIRWORK, LTD., & BRITISH-AMERICAN AIR SERVICES, LTD., No. 260g, *ante*.

260j. Liability for collision—Taking off—Air Navigation Act, 1920 (c. 80), s. 9 (1.).]—CUBITT & TERRY *v.* GOWER (1933), 77 Sol. Jo. 732.

260k. Contract for supply of machine—Alterations required contrary to Air Ministry Regulations—Whether contract enforceable.]—COMMERCIAL AIR HIRE, LTD. *v.* WRIGHTWAYS, LTD. (1937), 81 Sol. Jo. 944.

Construction of life assurance policy.]—*See* INSURANCE, No. 2971a, *ante*.

Injury to pupil at aerodrome.]—*See* MASTER & SERVANT, No. 200a, *ante*.

TELEGRAPHS AND TELEPHONES.

Part I.—Definitions.

—— **Broadcasting.**]—Their Lordships think broadcasting falls within the description of "telegraphs." No doubt in everyday speech telegraph is almost exclusively used to denote the electrical instrument which by means of a wire connecting that instrument with another instrument makes it possible to communicate signals or words of any kind. But the original meaning of the word "telegraph" as given in the Oxford Dictionary is:

"An apparatus for transmitting messages to a distance, usually by signs of some kind" (*per* CUR.).—*Re* RADIO COMMUNICATION IN CANADA, A.-G. OF QUEBEC *v.* A.-G. OF CANADA, A.-G. OF ONTARIO, A.-G. OF NEW BRUNSWICK, A.-G. OF MANITOBA, A.-G. OF SASKATCHEWAN, A.-G. OF ALBERTA & CANADIAN RADIO LEAGUE, [1932] A. C. 304; 101 L. J. P. C. 94; 146 L. T. 409; 48 T. L. R. 235, P. C.

Part III.—Construction and Maintenance of Telegraphs.

15. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

18a. —— —— —— **Amenities of district.**]—POSTMASTER-GENERAL *v.* SOUTHGATE CORPN. (1935), 79 Sol. Jo. 181.

24a. **Erection of posts on railway—Acquiescence—Implied licence—Revocability.**]—Whether any & what restrictions exist on the power of a licensor to determine a revocable licence to occupy land depends upon the circumstances of each case. In 1926 the Crown proceeded against applts. alleging that poles, carrying telegraph wires, which they had erected on the roadway of a Canadian Govt. railway, were a trespass thereon, & claiming damages; alternatively the Crown claimed a declaration of the applts.' rights, if any. As to the main section of the telegraph line, the poles, as they stood in 1926, had been erected upon the roadway between 1905 & 1910 without leave or licence. As to two branch lines, the poles had been erected in 1893 & 1911 respectively, in each case while an agreement was in negotiation though no agreement was eventually concluded. The whole telegraph line, which was about 500 miles in length, was used by the public as well as by applts.:—*Held:* (1) on the facts, at the date of the proceedings all the poles were on the roadway with the licence of the Crown. Although the applts. had originally been trespassers in respect of the main line poles, many years' acquiescence & a claim to the payment of rent, had long since prevented them from being so regarded; in the case of the branch lines, it was to be inferred that the poles had been erected by licence. (2) The licence was revocable in the absence of any facts from which a contract that it should be irrevocable could be implied; having regard to the circumstances, the licence could be revoked only by a notice determining it upon a specified future date such as would give the applts. sufficient time, not only to remove the poles & wires, but also to arrange for erecting them elsewhere.—CANADIAN PACIFIC RY. CO. *v.* R., [1931] A. C. 414; 100 L. J. P. C. 129; 145 L. T. 129, P. C.

28a. **Alteration of lines in consequence of town-planning scheme—Liability of Post Office for costs.**]—In pursuance of an approved scheme under the Housing & Town Planning Acts, 1909 & 1919, the Birmingham Corpn. widened certain streets & altered the line or level thereof. In so doing they altered the telegraphic lines. Upon a case stated the question was raised whether the Postmaster-General or the Corpn. should pay the expenses of altering the telegraphic lines:—*Held:* the work had been carried out in conformity with a scheme under the Town Planning Acts, but that provision had been "otherwise made . . . with respect to such alteration," by Telegraph Act, 1863 (c. 112), s. 15, & the expenses were payable by the Postmaster-General under that sect. & not by the Corpn. under Telegraph Act, 1878 (c. 76), s. 7.

The word "enactment" in sect. 7 of the Act of 1878 is not confined to the particular enactment which authorises the alteration, but includes general Acts of Parliament.—POSTMASTER-GENERAL *v.* BIRMINGHAM CORPN., [1936] 1 K. B. 66; 105 L. J. K. B. 10; 153 L. T. 405; 99 J. P. 361; 51 T. L. R. 581; 79 Sol. Jo. 592; 33 L. G. R. 395, C. A.

PART V.

28a. *Regulations by Governor-General—Validity.*]—*Held:* reg. 21A (2) of the Telephone Regulations, 1913, which provides that a person who enters into occupation of any premises having a telephone service shall not be entitled to use the service until he has obtained a transfer of it, & that if he uses it before transfer he shall be deemed to have assumed the service & shall be liable for all amounts owing in respect of the service, at the time he entered into occupations of the premises, is not *ultra vires.*—GIBSON *v.* MITCHELL (1929), 41 C. L. R. 275; 2 A. L. J. 332.—AUS.

PART VI.

28d. *Regulations by Governor-General—Validity.*]—Sect. 10 of Wireless Telegraphy Act, 1905–1919 provides that "the Governor-General may make regulations . . . prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act." Two of pltf. cos. were established to erect & maintain broadcasting stations for the purpose of transmitting messages by means of wireless telegraphy, & the fees to which they were entitled were fixed by regulation. Subsequently a regulation was passed on Aug. 7, 1928, purporting to amend

Part VIII.—Adjustment of Differences.

49. *Add. Annotation :—As to* (2) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

Part IX.—Compensation.

53. *Add. Annotation :*—**Refd.** Kiddie *v.* Port of London Authority (1929), 93 J. P. 203.

Part X.—Penal Provisions relating to Telegraphs.

61a. Wireless licence—Necessity for—Block of flats—Wireless supplied to tenants.]—The landlords of a block of flats installed therein a wireless receiving set for which they paid the 10*s.* licence. The set was fitted with an amplifier, which was connected by wires to a socket in each flat, including that of resp. In this flat resp. had installed a loud-speaker with a wire & plug, & by inserting the plug into the socket he had from time to time received broadcast programmes. The operation & tuning of the receiving set was under the landlords' control, & it was switched off by them nightly at 11 o'clock. Resp. had no wireless licence :—*Held :* resp. had "worked" an "apparatus for wireless telegraphy without a licence" within sect. 1 (3) of Wireless Telegraphy Act, 1904 (c. 24).—KING *v.* BULL, [1937] 1 K. B. 810 ; [1937] 1 All E. R. 585 ; 106 L. J. K. B. 430 ; 156 L. T. 276 ; 101 J. P. 169 ; 53 T. L. R. 409 ; 81 Sol. Jo. 219 ; 35 L. G. R. 147 ; 30 Cox, C. C. 567.

Part XI.—Rights and Liabilities of Telegraph Undertakers.

66. *Add. Annotation :*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

the earlier regulation by reducing the remuneration payable to the two cos., & by clause (2) thereof purporting to make such reduction operate retrospectively as from Nov. 1, 1927 :—*Held :* clause (2) of the regulation which made the reduction operate as from a date anterior to the passing of the regulation was void.—BROADCASTING CO. OF AUSTRALIA PTY., LTD. *v.* COMMONWEALTH (1935), 52 C. L. R. 52 ; 41 Argus L. R. 89 ; 8 A. L. J. 427.—**AUS.**

PART X.

sc. *Wireless licence—Liability for failing to take out.*]—On Sept. 8, 1928, deft. was the owner of an unlicenced wireless receiving set. Later in the same day, after a visit of an inspector which was not shown to have been communicated to him, he took out a licence. On a charge of maintaining an unauthorised wireless set :—*Held :* the fractions of the day were to be taken into account, & deft. was guilty of the offence.—BEARE *v.* WARD, [1928] S. A. S. R. 1.—**AUS.**

sd. —— —— *Radio receiving set—Whether "radiotelegraph" — Within Radiotelegraph Act,* 1913.—NOLAN *v.* MCASSEY, [1930] 2 D. L. R. 323.—**CAN.**

se. —— —— —— —— *Within Radiotelegraph Act,* 1927.]—NOLAN *v.* SHARP, [1930] 4 D. L. R. 1016.—**CAN.**

sf. *Meaning of "establishing" & "working" radio set.*]—When a person installs a radio receiving set in his private dwelling-house he establishes a radiotelegraph station within Radiotelegraph Act, R. S. C., 1927, s. 6. But he does not work the set within this sect. if some one in the owner's absence turns on the current & manipulates the dials.—R. *v.* GIGNAC, [1934] 2 D. L. R. 113 ; O. R. 195 ; 61 C. C. C. 371.—**CAN.**

sg. *Damage to telephone pole—Defence —Abatement of nuisance.*]—Deft. was convicted for that he wilfully did, without legal justification or excuse, & without colour of right, unlawfully commit damage by cutting down a telephone pole belonging to a telephone co. A telephone line to a summer hotel was erected many years ago across deft.'s property. It was never used for more than a few months in summer, & for years it was not used at all. No easement for the extension of wires over deft.'s lands existed : & it did not appear that the telephone co. acquired any right to use the line. So far as was established in evidence, the pole was a nuisance to deft. & he acted in what he thought was the exercise of a right when he cut it down :—*Held :* he had good grounds for supposing that he had a right to abate what was to him a nuisance on his own land ; according to the evidence, the telephone co. was a mere trespasser there.—R. *v.* PIMMETT, [1931] O. R. 705 ; 56 Can. C. C. 363.—**CAN.**

sv. *Transmission of betting information.*]—The furnishing of racing news to newspapers as part of a syndicate service without any proof of active participation in betting operations is not enough to sustain a conviction under Criminal Code, sect. 235 (i.), which provides that it is an indictable offence for any one to wilfully & knowingly send, transmit, deliver or receive any message by telegraph, telephone, mail or express conveying any information relating to book-making, pool-selling, betting or wagering, or to assist in book-making, pool-selling, betting or wagering.—R. *v.* GENERAL NEWS BUREAU INCORPORATED, [1933] 1 W. W. R. 741 ; 60 C. C. C. 66 ; 46 B. C. R. 459.—**CAN.**

sz. *Appliance for receiving messages—Broadcast receiving set.*]—A wireless set kept for the reception of broadcast programmes is an appliance maintained for the purpose of receiving messages by means of wireless telegraphy within sect. 6 of Wireless Telegraphy Act, 1905–1919.—R. *v.* BRISLAN, *Ex p.* WILLIAMS (1936), 54 C. L. R. 262 ; 9 A. L. J. 348 ; 42 Argus L. R. 45.—**AUS.**

PART XII.

n i. —— *Order limiting liability—Whether binding on sender of telegram.*]—The order of the Board of Railway Comrs., contemplated by sub-sect. (2) of sect. 348 of Railway Act, R. S. C., 1927, merely determines the extent to which a railway co. may limit its liability with respect to the carriage of traffic, leaving it to the co. to make such limitation if it sees fit to do so ; but does not prevent the co. from carrying traffic without limiting its liability. General Order No. 162 of said Board, approving conditions of liability, set out therein, with respect to the transmission of telegraphic messages :—*Held :* to be an order made under the powers given by the provision then in force corresponding with sub-sect. (2). It, therefore, has not the effect of making a statutory contract between the sender of a telegram & the co., but only authorises such a contract to be made ; &, conse-

Part XIV.—Rateability of Property occupied for Telegraphic Purposes.

74. *Add. Annotation :*—**Refd.** Kiddie *v.* Port of London Authority, Durrant *v.* Same (1929), 45 T. L. R. 430.

quently, the conditions are not binding on a sender who had in fact no knowledge of them & to whom they cannot be held to have been communicated.—JANKELSON *v.* CANADIAN NATIONAL TELEGRAPHS, [1931] 1 W. W. R. 337; [1931] 2 D. L. R. 86; 25 Alta. L. R. 230.—**CAN.**

sp. *Telephone switchboard—Whether "immovable."*]—A telephone switchboard with associated equipment belonging to applt. co. & connected with its telephone system by wires & cables was so placed in premises of which the co. was lessee as to rest on the floor without being attached thereto :—*Held :* the switchboard & its equipment, not being a structure incorporated with or adherent to the soil, or physically incorporated as part of a structure which was incorporated with or adherent to the soil, was not a structure "immoveable by its nature" within the meaning of "building" in art. 376 of the Quebec Civil Code. The test whether a structure is "immoveable by its nature" under that article is incorporation with, or adherence to, the soil, or physical incorporation as part of a structure so incorporated with, or adhering to, the soil. The question whether the structure of which it is claimed to be part—in the present case the poles, wires & cables of applt.'s telephone system—is commercially able to operate without its assistance is irrelevant, & it could not be said that the switchboard was physically incorporated in the structure composed of the poles, wires & cables of applt.'s undertaking.—BELL TELEPHONE CO. OF CANADA *v.* ST. LAURENT (VILLE), [1936] A. C. 73; 105 L. J. P. C. 1; 153 L. T. 390; 52 T. L. R. 1, P. C.—**CAN.**

PART XVI.

sw. *Implied transfer—On sale of business.*]—Under a contract for the purchaser of all the assets of a co. the purchaser was after Sept. 1, 1931, to cease to use the name of the vendor co. & the co. was "to have full rights to the same." At the date of the agreement the co. used a certain word as its cable address :—*Held :* it must have been intended that the co. would have the right to use this cable word after Sept. 1, 1931.—MILLER *v.* WINCH & WINCH (R. V.) & CO., [1933] 3 W. W. R. 215.—**CAN.**

THEATRES AND OTHER PLACES OF ENTERTAINMENT.

Part I.—Theatres.

Discretion must be properly exercised.]—R. *v.* CARDIFF CORPN., *Ex p.* WESTLAN PRODUCTIONS, LTD., NEW THEATRE (CARDIFF), LTD. & MOSS EMPIRES, LTD. (1929), 73 Sol. Jo. 766, D. C.

36. *Add. Annotation :*—**Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

49. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546 ; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

52. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

53. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

Add. Annotation :—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

59. After this case add :—

Liability for income tax — Appropriate schedule.]—*See* INCOME TAX, No. 312a, *ante.*

63. *Add. Annotations :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503 ; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

64a. —— **"Formal contract to be signed in due course."**]—RONALD FRANKAU PRODUCTIONS, LTD. *v.* BELL (1927), 65 L. Jo. 33 ; 164 L. T. Jo. 504.

68. *Add. Annotation :*—**Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

68a. ——.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts, &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary, & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* (1) upon the construction of the contract, it bound applts. to give resp. an opportunity of appearing in public in a part answering the stipulated description ; (2) it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209 ; 99 L. J. K. B. 165 ; 142 L. T. 585 ; 46 T. L. R. 230 ; 74 Sol. Jo. 187, H. L.

71. *Add. Annotations :*—**Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209. **Expld.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536, C. A.

78. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

89. *Add. Annotation :*—**Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

89a. —— ——.]—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, No. 68a, *ante.*

89b. —— ——.]—Our attention has been quite rightly called to the cases which have been decided in the Ct. of Appeal & the House of Lords with regard to the rights of an actress or an actor, or a public performer, who has been deprived of the opportunity of gaining the prestige & reputation that he would have obtained if he had been allowed to perform in the agreed character. It may be, & I think it is, that very special considerations apply to an agreement with an artist who is to perform in public, because it is a matter of common knowledge that in a large majority of the cases the consideration to the artist when he accepts the engagement is just as much, if not more, the opportunity, certainly in the early stage of the artist's career, to appear before the public & make his reputation, which is of much greater value than the mere money wages fixed for the period of his employment. It seems to me it is for that reason that it is regarded as the essence of the matter that the artist should have the opportunity for which he has bargained, &, these

PART I. SECT. 1, SUB-SECT. 1.

sa. *Greenock Corporation Act,* 1909, *s.* 251—*Theatre—Whether picture house included.*]—*Held :* a building, which it was proposed to erect for use as a picture house was not a "theatre" within the meaning of, & subject to the regulations of, above sect., in respect that its general character, as disclosed by the plans before the ct., was that of a picture house, rather than of a theatre, & that the sect., as it imposed a restriction on a right of property, must be strictly construed ; & according to *contemporanea expositio,* the expression "theatre" in the sect. did not include a building devoted to the exhibition of cinematograph films.—SCOTTISH CINEMA & VARIETY THEATRES, LTD. *v.* RITCHIE, [1929] S. C. (Ct. of Sess.) 350.—SCOT.

PART I. SECT. 1, SUB-SECT. 2.

sd. *Who should take out—Person keeping theatre open—Lessee.*]—The lessee of a theatre is the person who "keeps the theatre open" & not its owner.—UPENDRAKUMAR MITRA *v.* CALCUTTA CORPN. (1931), I. L. R. 58 Calc. 1293.—IND.

considerations make exceptional principles applicable to the case of artists who perform in public (GREER, L.J.).—*Re* GOLOMB & PORTER & Co.'s, LTD., ARBITRATION (1931), 144 L. T. 583, C. A.

89c. —— ——.]—Pltf., who was a variety artiste, was engaged by deft. co. to appear & perform a certain sketch at the London Palladium for three consecutive weeks, commencing July 6, 1931, at a gross salary of £300 per week, he provided the supporting actors & properties. The contract contained a clause by which pltf. agreed, should defts. so desire, to transfer the engagement to any hall owned, controlled by or associated with defts. either in London or the provinces. Pltf. had a preliminary trial week at Portsmouth, & after viewing a performance there defts. on July 2, 1931, gave pltf. notice that they would not allow him to perform at the London Palladium under the agreement. Pltf. sued the defts. claiming damages for breach of contract, including loss of publicity & reputation. At the trial counsel for pltf. suggested to the jury that pltf. had thereby suffered damage to his reputation. The judge in summing up the case told the jury that they must put some figure upon the loss of publicity because pltf. was not allowed to perform at the Palladium. He did not refer in his summing-up to the option in the contract. The jury returned a verdict for pltf. for the salary he had lost & £1,000 for loss of publicity. On appeal by defts.:—*Held:* (1) damage to a reputation already existing by not allowing an actor to appear in accordance with his contract was not a matter which could be taken into consideration by a jury in assessing damages for breach of contract. What had to be taken into consideration was whether if the actor had been allowed to appear that appearance would have given him an exhanced reputation. That distinction had not been explained to the jury by the judge, & therefore there would have to be a new trial on the question of damages; (2) pltf. had under the contract no absolute right to appear at the Palladium; defts. had an option as to the halls at which he should appear; in assessing damages for the breach of a contract which the defts. could at their option perform in alternative ways it must be assumed that defts. would perform it in the way most beneficial to themselves & not in the way that would be most beneficial to pltf.; & as there had been no direction by the judge with regard to this there must be a new trial on this ground also.—WITHERS *v.* GENERAL THEATRE CORPN., LTD., [1933] 2 K. B. 536; 102 L. J. K. B. 719; 149 L. T. 487, C. A.

92. *Add. Annotation:*—**Distd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

107. *Add. Annotation:*—**Followed.** Warner Bros. Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

111. *Add. Annotation:*—**Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

Part III.—Music and Dancing and Other Public Entertainments.

142. After this case add:—
Film actress—Whether workman within Workmen's Compensation Acts.—*See* MASTER & SERVANT, No. 2057b, *ante.*

147a. —— **Wireless in hotel—Occasional user.**]—BADGER *v.* JAMES (1934), 78 Sol. Jo. 768, D. C.

159a. **Premises must be in existence.**]—Cinematograph Act, 1909 (c. 30), s. 2 (1), empowers county councils, or justices where the powers have been delegated to them, to grant licences to persons to use "premises specified in the licence" for the purposes of a cinema, subject to certain terms, conditions & restrictions. A practice was stated to be in existence whereby, in cases where it was intended to erect premises for use as a cinema, justices were asked to approve the plans of the building to be erected, & thereby honourably to commit themselves or their successors to grant the licence after completion of the premises:—*Held:* (1) the Act gave no power to grant licences except in respect of premises actually in existence, & the practice was beyond the powers given by the Act, & unenforceable. It is improper for justices by a gentleman's agreement to fetter, limit, control, or in any way affect their own future decisions, or those of their successors or of other justices.—R. *v.* BARNSTAPLE, JJ., *Ex p.* CARDER, [1937] 4 All E. R. 263; 101 J. P. 547; 54 T. L. R. 36; 81 Sol. Jo. 963, D. C.

164a. —— **Subsequent order permitting Sunday opening subject to conditions—Invalid.**]—It was the practice of a certain County

PART I. SECT. 7, SUB-SECT. 4.

p i. —— *Rental based on "gross receipts" — Amusement tax not included.*]—LYNN *v.* NATHANSON, [1931] 2 D. L. R. 457.—**CAN.**

sy. *Contract to supply all films available—What amounts to.*]—By agreement in writing deft. agreed (*inter alia*) to supply & pltf. agreed to exhibit in the "Plaza" Theatre, Auckland, all motion-picture films with sufficient supporting subjects to make a programme to be released in New Zealand by deft. from the date of the agreement until Sept. 30, 1933, in accordance with the terms & conditions in the said agreement contained:—*Held:* there was on the true construction of the contract at the least an obligation on the part of applt. to release & supply to resp. all films which applt. actually had from time to time in New Zealand available for lease.—BRITISH DOMINIONS FILMS, LTD. *v.* DOMINION PICTURE-THEATRES CO., LTD., [1935] N. Z. L. R. Supp. 50.—**N.Z.**

PART I. SECT. 7, SUB-SECT. 5.

sz. *Contract to supply child pianist.*]—A person contracting to furnish a theatre & pay a booking agency for the services of a 14-year-old pianist cannot plead either the prohibition of the Inspector of the Dept. of Labour or the death of the King as excuses for failing to carry out the contract.—MANAGEMENT CHAS. L. WAGNER *v.* BOURDON, [1937] 2 D. L. R. 473.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—A.

151 i. *Discretion of justices—Bona fides in exercise.*]—R. *v.* CHARLEVILLE TOWN COUNCIL, *Ex p.* CORONES, [1928] S. R. Q. 155.—**AUS.**

Council, in granting licences to use premises for cinematograph exhibitions, to impose the condition that the premises should not be so used on Sundays, Christmas Day or Good Friday; but also to entertain applications for permission to open the premises for cinematograph entertainments on those days. A co. applied for a licence to open & use premises for cinematograph entertainments, & also for permission to open the premises for such purposes on Sundays, Christmas Day & Good Friday. In compliance with this application the County Council made an order to the effect that, "subject to arrangements at the premises being completed to its satisfaction, the council will take no action for the present in the event of the above-named premises being opened for cinematograph entertainments on Sundays, Christmas Day & Good Friday as from & including Sunday, July 6, 1930, provided: (i) that a sum of £35 be paid to charity in respect of each Sunday, Christmas Day & Good Friday on which the premises are opened for cinematograph entertainments." The permission was also subject to conditions relating to the auditing of receipts & expenses, the character & hours of the entertainments, & the employment of servants:—*Held:* that a writ of *certiorari* should issue to bring up & quash the order of the County Council as having been made without jurisdiction, the council having no power to dispense with the provisions of the Sunday Observance Act, 1780 (c. 49).—R. *v.* LONDON COUNTY COUNCIL, *Exp.* ENTERTAINMENTS PROTECTION ASSOCN., LTD., [1931] 2 K. B. 215; 100 L. J. K. B. 760; 144 L. T. 464; 95 J. P. 89; 47 T. L. R. 227; 75 Sol. Jo. 138; 29 L. G. R. 252, C. A.

-.]—*See* Sunday Entertainments Act, 1932 (c. 51).

Part VI.—Cinematographs.

Licences.]—*See* THEATRES, Vol. XLII., pp. 919, 920, Nos. 148–150, 154, 156–175; 159a, *ante*.

Sunday performances.]—*See* THEATRES, Vol. XLII., p. 921, No. 164; 164a, *ante*; TIME, No. 127a, *post*, & Sunday Entertainments Act, 1932 (c. 51).

Regulations for securing safety—Exhibition of films by dealer.]—*See* THEATRES, Vol. XLII., p. 923, No. 183.

—— **Meaning of "inflammable" films.**]—*See* THEATRES, Vol. XLII., p. 924, No. 187.

Right of entry by constable.]—*See* THEATRES, Vol. XLII., p. 919, No. 142.

Copyright—Breach of—Representation of sketch by film.]—*See* COPYRIGHT, Vol. XIII., p. 215, No. 509.

—— —— **Exhibiting advertisements of film.**]—*See* COPYRIGHT, Vol. XIII., p. 215, No. 510.

News films.]—*See* COPYRIGHT, No. 489d, *ante*.

Title of film—Liability for passing off.]—*See* COPYRIGHT, Nos. 523a, 523b, 523c, *ante*.

"Talkie"—Defamation by—Whether libel or slander.]—*See* LIBEL, No. 24b, *ante*.

—— **Infringement of patent—Construction of specification.**]—*See* PATENTS, No. 2358d, *ante*.

Novelty.]—*See* PATENTS, No. 459f, *ante*.

—— **Whether included in registration of trade mark for "cinematograph films"—Talkies unknown at time of registration.**]—*See* TRADE MARKS, No. 511a, *post*.

Contract for exclusive performance by music hall performer—Reproduction on cinematograph.]—*See* THEATRES, Vol. XLII., p. 914, No. 101.

Agreement for exclusive rights of play—Includes film rights.]—*See* COPYRIGHT, Vol. XIII., p. 196, No. 308; No. 16a, 308a, *ante*.

PART III. SECT. 3.

sc. *Regulations for securing safety in cinematograph exhibitions — Moving Picture Act—Order of fire marshal.*]—Letters from the fire marshal to the agent of a theatre owner insisting that certain alterations be made in the theatre in order to comply with the regulations under Moving Picture Act, R. S. B. C., 1924, held to have been given by him as fire marshal acting in pursuance of Fire Marshal Act, R. S. B. C., 1924, & to have amounted to an "order" within the meaning of sect. 17 (3) of the latter Act.—MCMORDIE *v.* FORD (B. C.), [1929] 3 W. W. R. 159; *affd.*, [1930] 2 W. W. R. 203; 3 D. L. R. 398; 42 B. C. R. 486. —CAN.

PART III. SECT. 5.

sf. *Exhibition of uncensored film—"Place for admission to which charge made"—Society.*]—Deft. society was incorporated with the object of encouraging among its members an understanding & appreciation of cinematic art & craft, & of exhibiting before its members films not screened in the ordinary commercial way, & also films that had been screened. The annual subscription for membership was £1 1s., which entitled a member & a friend to view each film screened by the society. Members of the general public were not admitted. On a charge of exhibiting a film which had not been approved by the censor, the question was whether such film had been exhibited "in any place for admission to which a charge is made in respect of any person or persons" within sect. 7 of Cinematograph Act, 1928:—*Held:* as the main, & substantially the only privilege, to which a member of the society was entitled, was the right to view the films, & as admission to the place where the films were shown could not be gained without payment of the subscription, that place was one "for admission to which a charge is made" & therefore the exhibition of the uncensored picture came within the Act & deft. must be convicted.—POLICE *v.* WELLINGTON FILM SOCIETY (INC.) (1934), 29 M. C. R. 87.—N.Z.

PART IV.

sk. *Necessity for licence—Billiard table on club premises.*]—Accused, who was managing secretary & a member of a club & of its executive committee, was convicted for keeping for hire a billiard table without being licensed to do so. The billiard table was in premises leased & operated by the club. The prosecution admitted that the club was a *bonâ fide* one. It had not, however, been exempted as a non-proprietary club, under the provisions of sect. 709 (117) of Winnipeg Charter, 1918, as amended:—*Held:* the conviction must be affirmed. No doubt the city's decision could be made the subject of attack in special proceedings by the club, &, if the evidence warranted it, a mandatory order could be made directing the city to pass a bye-law for the club's relief. But the matter could not be so dealt with in these proceedings, & until such a bye-law had been passed there could be no answer to the charge. Also, the club had no existence apart from its members. The matters complained of in the information (treating the club by virtue of the admissions as being a non-proprietary club) were the acts of the members in carrying out the objects for which the club was formed. It followed that responsibility for them attached in criminal law to the members, with the right in the Crown to prosecute any one or all of them as it might determine.—R. *v.* THEIL, [1936] 3 W. W. R. 505; 4 D. L. R. 811; 67 Can. C. C. 136; *sub nom.* MCCORQUODALE *v.* THEIL, 44 Man. L. R. 378.—CAN.

195a. —— Provision that no "talkie" should be made—Film rights already sold.]—ARCHIE PARNELL & ALFRED ZEITLIN, LTD. *v.* THEATRE ROYAL (DRURY LANE), LTD. (1936), 80 Sol. Jo. 284, C. A.

195b. Contract to perform—Negative stipulations—Whether against public policy.]—GAUMONT-BRITISH PICTURE CORPN., LTD. *v.* ALEXANDER, No. 195d, *post.*

195c. —— —— Enforcement by injunction.]—By a contract in the usual form in the industry, a prominent film actress undertook during the term of the employment not to render any services for or in any other photographic stage or motion picture production or business of any other person or engage in any other occupation without the written consent of the producer:—*Held:* where the enforcement of such negative covenants does not amount to a decree of the specific performance of the positive covenants or to obliging the employee to remain idle or perform the positive covenants, they can be enforced by injunction; the granting of such an injunction was discretionary & should be limited to what is reasonable in all the circumstances of the case; in the circumstances of this case an injunction to enforce the negative stipulations should be granted limited in area to the jurisdiction of the ct. & in the time to the duration of the contract or three years whichever period should be the shorter.—WARNER BROTHERS PICTURES INC. *v.* NELSON, [1937] 1 K. B. 209; [1936] 3 All E. R. 160; 106 L. J. K. B. 97; 155 L. T. 538; 53 T. L. R. 14; 80 Sol. Jo. 855.

195d. —— Clause relating to suspension of salary—Right of employer to sue for damages.]—(1) Restrictions placed upon an employee under a contract of service to take effect during the contract are not in general against public policy.

(2) A clause in an artiste's agreement suspending salary upon her failure to appear & perform does not prevent the employers recovering damages for breach of contract as well as suspending her salary. The suspension of salary is not a penalty.—GAUMONT-BRITISH PICTURE CORPN., LTD. *v.* ALEXANDER, [1936] 2 All E. R. 1686; 80 Sol. Jo. 816.

Annotation:—Generally, **Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

Whether film actress "workman" within Workmen's Compensation Acts.]—*See* MASTER & SERVANT, No. 2057b, *ante.*

195e. Injury to performer by excessive lighting—Liability of camera man.]—A crowd artiste in a film production was injured by the intensity of the lighting in a ballroom scene. The lighting was not abnormal for a scene of this kind, but its effect was increased by the high polish of the floor. The film co. pleaded that they themselves were not responsible for the lighting & pltf. joined the second deft. who, pltf. alleged, was in charge of the lighting. Defts. then added a defence of common employment:—*Held:* lighting of the intensity used was not frequently used in the production of films & there was a duty upon the film co. to warn the artistes or to take precautions against injury to them; it was the system of lighting that was at fault & there was no question of common employment; the second deft. took no responsibility for the effect of the lighting upon the performers. He was there to provide the lighting the co. required, & the likelihood of damage to the performers was known to the film co., & was a risk which they took upon themselves. His employment afforded them no protection against their negligence in using such brilliant lights without proper precautions.—RUSSELL *v.* CRITERION FILM PRODUCTIONS, LTD., [1936] 3 All E. R. 627; 53 T. L. R. 117; 80 Sol. Jo. 1036.

195f. —— Duty of film company.]—RUSSELL *v.* CRITERION FILM PRODUCTIONS, LTD., No. 195e, *ante.*

195g. Contract to write film—Breach—Measure of damages—Loss of publicity.]—Pltfs. were engaged by defts. to write a screen play based upon a novel & by a collateral agreement defts. were to give pltfs. screen credit & their names were to be thrown upon the screen with a statement that they were joint authors of the work. Defts. wrongfully refused to accept pltfs.' work & pltfs. sued them for breach of contract:—*Held:* an author, as well as an actor, is entitled to recover damages for loss of publicity. Substantial damages should be awarded, & there must be a separate assessment in respect of each pltf.—TOLNAY *v.* CRITERION FILM PRODUCTIONS, LTD., [1936] 2 All E. R. 1625; 80 Sol. Jo. 795.

195h. Use of song in film—Failure to give screen credit—Implied contract.]—Defts. had purchased a song lyric from pltf., the author of the song. In a film they ascribed the authorship of the song to a third party:—*Held:* there was an implied contract that defts. would not give screen credit to any one other than author of the song & pltf. was entitled to damages.—MILLER *v.* CECIL FILM, LTD., [1937] 2 All E. R. 464; 53 T. L. T. 544; 81 Sol. Jo. 318.

PART VI.

sl. *Breach of contract by distributor.*]—Pltf., the operator of a moving picture theatre:—*Held:* entitled to damages from deft., a picture distributor, for not providing pictures called for by its contract, the proposed substitution of two specific pictures being held not to be in accordance with the contract.—ISIS THEATRE, LTD. *v.* COLUMBIA PICTURES OF CANADA, LTD., [1937] 2 W. W. R. 686.—**CAN.**

TIME.

Part I.—The Calendar and Divisions of Time.

19. After this case add :—
——].—*See, now,* Law of Property Act, 1925 (c. 20), s. 61.

Part II.—Sundays and Holidays.

105. After this case add :-
——.]—*See, now,* Hairdressers' & Barbers' Shops (Sunday Closing) Act, 1930 (c. 35).

107. *Add. Annotation :*—**Apld.** Lee *v.* Craven, [1935] 2 K. B. 161.

107a. —— **Proprietor of lending library.**]—A person who conducts a lending library is a "tradesman" within Sunday Observance Act, 1677 (c. 7), s. 1, & commits an offence against the Act if he lends out books on Sunday.—LEE *v.* CRAVEN, [1935] 2 K. B. 161 ; 104 L. J. K. B. 269 ; 153 L. T. 62 ; 99 J. P. 211 ; 51 T. L. R. 462 ; 79 Sol. Jo. 287 ; 33 L. G. R. 214 ; 30 Cox, C. C. 224, D. C.

111. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

127. After this case add :—

(c) *Action for Penalties.*

127a. Discharge of action by statute—Right of common informer to costs.]—The ct. held that a common informer in an action against

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PART I. SECT. 2, SUB-SECT. 2.

sy. *Supply of electric energy for fifteen years—Agreement to operate street railway continuously "throughout the year" —Calendar year.*]—MONCTON TRAMWAYS *v.* MONCTON (1931), 3 M. P. R. 158.—**CAN.**

PART I. SECT. 4.

68 i. *Sunday to Sunday—Notice of intention to appropriate.*]—ROGERS *v.* FREDERICTON (1931), 3 M. P. R. 161.—**CAN.**

ss. *Publication of notice—"Once a week for four successive weeks."*]—"For," as used in Lakes & Rivers Improvement Act, R. S. O., 1927, s. 52, is not equivalent to "in," but implies duration, & week does not mean a calendar week :—*Held :* therefore, a notice published in a daily newspaper on Sat. Feb. 9, Sat. Feb. 16, Sat. Feb. 23, & Wed. Feb. 27, was not a notice published "once a week for four successive weeks."—*Re* KYRO RIVER IMPROVEMENT CO., [1929] 4 D. L. R. 610 ; 64 O. L. R. 225.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sc. *Sale of food, drink & cigarettes.*]—R. *v.* NINOS (1928), 50 Can. Crim. Cas. 155.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

f i. ——.]—Sect. 4 of Lord's Day Act, 1927, provides that "It shall not be lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law now or hereafter in force, to sell . . . or to carry on or transact any business of his ordinary calling . . . ":—*Held :* the word "law" therein means, not the common law, but a positive enactment dealing with Sunday observance. —R. *v.* THOMPSON, [1931] 2 D. L. R. 282 ; 1 W. W. R. 26 ; 55 Can. C. C. 33 ; 39 Man. L. R. 277.—**CAN.**

sd. *Meaning of "any person whatsoever"—Construed ejusdem generis with other classes in Lord's Day Act, 1859, s.* 1.]—A.-G. OF ONTARIO *v.* HAMILTON STREET RAILWAY CO. (1902), 54 Can. C. C. 344 ; *revsd. on other grounds,* [1903] A. C. 524. P. C.—**CAN.**

sg. *Premises open for business—Dance hall.*]—Defts. conducted a restaurant & a dancing hall at which during the daytime refreshments were sold at prices fixed by a menu & some of those partaking of refreshments amused themselves by dancing. During the evenings a charge of 2*s.* was made for admission which entitled the person admitted to partake of supper & to dance. On Sat. evenings after the dancing halls in the central part of the city had closed, a very considerable number of persons went from those dance halls to the hall & there had supper & danced until two or three o'clock on Sunday morning. On an information charging defts. with keeping premises open in Sunday for the purpose of transacting business, to wit, the business of running a cabaret & with using a building as a dance hall, the same not having been licensed :—*Held :* the evidence disclosed that the dancing was an essential & not a subsidiary part of the contract which defts. made with each of his patrons on their admission, the building was used for the joint purpose of a dance hall & supper room & defts. must, therefore, be convicted on both charges.—POLICE *v.* NIXON (1934), 29 M. C. R. 111.—**N.Z.**

sk. *Driving live stock.*]—Upon appeal from the conviction by a Stipendiary Magistrate of applt. for working at his calling on a Sunday by carrying racehorses in a horse-float in breach of sect. 18 of Police Offences Act, 1927 :—*Held :* conditions of stock driving having changed since the said sect. first appeared on the Statute Book, it would be putting too narrow an interpretation upon sub-sect. (3) thereof, which *inter alia* exempted "the driving of live stock" on a Sunday, to hold that improved facilities for the transfer of stock could not be availed of on a Sunday although adherence to older methods was permitted & that therefore the acts of applt. were covered by the exemption & the appeal must be allowed.—BLACKHALL *v.* NEARY, [1936] G. L. R. 1 ; 11 N. Z. L. J. 311.—**N. Z.**

PART II. SECT. 2, SUB-SECT. 2.—B. (a) ii.

se. *Farm manager — Contract of hiring—Sale of goods involved—Invalid.*]—Defts. through an agent S., entered into an agreement with pltf. on Sunday, Mar. 23, 1930, to employ pltf. as manager of their dairy farm for one year. Pltf. took over the management of the farm at once, remaining there until Oct. 16, when he was dismissed. In an action for wrongful dismissal :—*Held :* the hiring of pltf. on a Sunday was a "transaction in connection with the ordinary calling" of defts. & so within the prohibition of the Lord's Day Act, & the action should be dismissed.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105 ; 55 Can. C. C. 197 ; 43 B. C. R. 468.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—C. (b).

k i. —— *Conditional sale of car.*]—The contract in question herein, one for the conditional sale of a motor car, held to have been made on a Sunday when, after deft's wife had approved of the car, it was handed over to him & he delivered to pltf.'s manager the documents evidencing the contract which he, deft., had signed on Saturday but had taken home with him, & the manager took possession of deft.'s old car which pltf. had agreed to accept in part payment for the new one. The contract was, therefore, unenforceable. —SUPERIOR MOTORS, LTD. *v.* CADE [1930] 2 W. W. R. 448 ; 3 D. L. R 1003 ; 24 S. L. R. 558.—**CAN.**

m i. ——.]—The ct. must take judicial notice of the fact that a contract of sale took place on a Sunday, contrary to Law No. 24 of 1878, s. 1, & is consequently unenforceable, although this point is not pleaded.—NAIDOO *v.* KARODIAN SUPPLY STORES (1936), N. L. R. 323.—**S. AF.**

t i. —— *Building contract.*]—A contract executed on a Sunday for the doing of work which is within the ordinary calling of a party thereto, *e.g.,* a building contract with a carpenter & contractor, is illegal under the Lord's Day, R. S. C., 1927 (c. 123), s. 4.

Where in the carrying out of an illegal building contract the contractor's work & materials have been incorporated into a building he cannot recover on a *quantum meruit* based on deft.'s retention of the premises, since the latter is unable to exercise an option to return the materials.—FARRELL *v.* SAWITSKI (Sask.), [1929] 4 D. L. R. 259 ; 3 W. W. R. 23.—**CAN.**

a co. for penalties for breach of the Sunday Observance Act, 1781 (c. 49), was entitled to costs down to the date when by Sunday Performances (Temporary Regulation) Act, 1931 (c. 52), the action was discharged & made void, the question of costs being made by the Act a question for the ct.—ORPEN *v.* NEW EMPIRE, LTD. (1931), 48 T. L. R. 8; 75 Sol. Jo. 763.

131a. London County Council (General Powers) Act, 1927—Sale of vegetables on Sunday—Invalidity of licence.]—Under London County Council (General Powers) Act, 1927, there is no power to grant a licence for the sale of vegetables in the streets on Sunday, as such sale is a contravention of Sunday Observance Act, 1677 (c. 7).—CLIFTON *v.* HOLBORN BOROUGH COUNCIL (1929), 142 L. T. 160; 93 J. P. 196; 45 T. L. R. 633; 73 Sol. Jo. 500; 27 L. G. R. 658; 29 Cox, C. C. 17, D. C.

Annotation :—**Refd.** Baars *v.* Keep, Brooks *v.* Kensington Borough Council (1931), 95 J. P. 153.

Part III.—Computation of Time.

246. *Add. Annotation* :—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

290. *Add. Annotation* :—**Apld.** *Re* Hector Whaling, Ltd., [1936] Ch. 208.

309. *Add. Annotation* :—*As to* (2) **Apld.** *Re* Hector Whaling, Ltd., [1936] Ch. 208.

309a. ——.]—The period of not less than twenty-one days prescribed by sect. 117 (2) of Cos. Act, 1929, relating to notices of meetings in connection with the passing of special resolutions, means a period of not less than twenty-one clear days, exclusive of the day of service of the notice & exclusive of the day on which the meeting is to be held. Provisions in the articles regulating the date on which a notice is to be deemed to be served must be considered; but an article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded.—*Re* HECTOR WHALING, LTD., [1936] Ch. 208; 105 L. J. Ch. 117; 154 L. T. 342; 52 T. L. R. 142; 79 Sol. Jo. 966.

319. *Add. Annotations* :—**Refd.** Legge *v.* Legge (1928), 45 T. L. R. 157; Shearn *v.* Shearn

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PART II. SECT. 2, SUB-SECT. 3.

k i. —— *Miniature golf course.*]—Deft. was convicted for operating a miniature golf course on Sunday, contrary to a municipal bye-law passed under powers authorising township councils to pass bye-laws for regulating & licensing exhibitions held for hire or gain, theatres, music-halls, bowling alleys, moving picture shows, & other places of amusement :—*Held* : there appearing to be no genus to which all of the specified places of amusement belonged & from which the miniature golf course could be excluded, there was no reason for saying that the golf course was not one of the places dealt with by the statute, & therefore the bye-law was one which the statute conferred authority to pass.—R. *v.* EPSTEIN, [1931] O. R. 726; 56 Can. C. C. 139.—**CAN.**

sg. *Construction of Act—"Some game or other"—Miniature golf.*]—Sect. 7 of Sunday Observance Law 28 of 1896 (T.) prohibits the owner of a public billiard room or other public place of recreation from allowing "some game or other" to be played there on Sunday :—*Held* : the word game in the section had its ordinary meaning, namely, an amusement bringing several people together in competition with each other, & included miniature golf.—R. *v.* CLARKE, [1931] App. D. 453.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 4.—A.

sl. *Ascension Day—Dies non juridicus.*]—R. *v.* MACCHIONE, [1937] 1 W. W. R. 151; 1 D. L. R. 593; 67 C. C. C. 381.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.—C.

p i. ——.]—A search & seizure made, without warrant, by a preventive officer of Alberta Liquor Control Board under the authority conferred on him by sect. 113 (2) of the Government Liquor Control Act of Alberta is not illegal because made on a Sunday. Such exercise of said authority is not within the prohibition of 29 Car. 2. c. 7, & being a ministerial act is lawful at common law.—R. *ex rel.* BEAUMONT *v.* POSTERNAK, [1929] 2 W. W. R. 487; 51 Can. Crim. Cas. 426; 24 Alta. L. R. 202.—**CAN.**

p ii. ——.]—R. *v.* WRIGHT (Alta.), [1929] 1 W. W. R. 917; 52 Can. Crim. Cas. 285.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.

a i. —— *Preparation of meals.*]—The preparation & service of meals on Sunday is a "work of necessity" within the Lord's Day Act.—GEORGES *v.* CHARLOTTETOWN, [1932] 2 D. L. R. 443; 4 M. P. R. 133; 58 C. C. C. 99. —**CAN.**

a ii. —— *Necessity of person for whom work done.*]—R. *v.* BORTNICK, R. *v.* PETLEY, R. *v.* WEBB, [1937] 3 W. W. R. 594.—**CAN.**

b i. ——.]—*Held* : neither a co., nor its agent, selling land in subdivision, came within the provisions of sect. 1 of Sunday Observance Act.—LAND DEVELOPMENT CO., LTD. *v.* PROVAN (1929), 43 C. L. R. 583; 4 A. L. J. 165; (1930), Argus. L. R. 301.—**AUS.**

sg. *Driving of live-stock—Conveyance of race-horses by motor horse-float.*]—It is an offence under sect. 18 (1) of Police Offences Act, 1927, to work at a trade or calling on Sunday in view of any public place, but, by sub-sect. (3) nothing in sub-sect. (1) shall apply to "works of necessity or charity, or the driving of live-stock," etc. B., the driver of a motor horse-float owned by his father, loaded race-horses on the horse-float in view of a public place at New Plymouth on a Sunday; & forthwith conveyed them to Trentham racecourse. On appeal from a conviction under the above-named sect. :—*Held* : allowing the appeal, the facts brought the case within the exemption of the "driving of live-stock" in sect. 18 (3) of Police Offences Act, 1927.—BLACKHALL *v.* NEARY, [1935] N. Z. L. R. 1057.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—C.

230 xv. —— ——.]—An action for the recovery of damages occasioned by a motor vehicle on Sept. 8, 1928, was begun by writ issued on Mar. 8, 1929 :—*Held* : it was not barred by Highway Traffic Act, s. 53 (1). Where anything is to be done in a certain time after a given event or date, the day of the occurrence is to be excluded. —SWITZER *v.* KAHN, [1929] 4 D. L. R. 232; 64 O. L. R. 219.—**CAN.**

230 xvi. —— ——.]—An action arising out of a collision of two motor vehicles upon a highway was begun by a writ of summons issued on Tuesday Apr. 22. The collision took place on Oct. 20 of the previous year, at about 11 a.m. Highway Traffic Act provides that no action shall be brought after the expiration of six months from the *time* when the damages were sustained. Apr. 20 & 21 were holidays :—*Held* : the action was brought in time. The day of the date of the accident was to be excluded & the ct. was not required to take notice of the hour of the day when the accident occurred.—BROWN *v.* CROUCHER & DOUSE, [1931] 4 D. L. R. 219; O. R. 541.—**CAN.**

230 xvii. —— ——.]—The phrase "more than fourteen days before a sittings," in sect. 750 Criminal Code, means at least fifteen clear days.—R. *v.* SHENOWSKI, [1932] 1 W. W. R. 192; 40 Man. L. R. 218.—**CAN.**

sl. "*Within seven clear days.*"]—R. 1 of the rules (Sask.) for cases stated under sect. 761 of the Criminal Code, provides that "an application to a justice of the peace to state & sign a case shall be . . . delivered . . . within seven clear days from the date of the proceeding questioned" :—*Held* : the word "within" was the governing word &, therefore, the word "clear" did not have the effect of rendering an application made on the eighth day in time.—*Re* BONNER & WESTFALL, [1931] 1 W. W. R. 334.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

239 i. *Construed to effectuate intention of parties.*]—Where, under a building contract work was to be completed by "Nov. 31" under penalty of damages :—*Held* : this must be construed to mean Nov. 30.—MCBEAN *v.* KINNEAR (1892), 23 O. R. 313.—**CAN.**

, 143 L. T. 772; Stephen *v.* Stephen, P. 197.

'During."]—If one was describing a thing which occupied the whole of a period, such as tenure, or presence in a given place, "during" & "for" were admirable words. But if one said that a series of payments to be made on particular dates was "during" or "for" a period, "during" or "for" must mean "in respect of" that period (ROWLATT, J.).—INLAND REVENUE COMMISSIONERS *v.* ST. LUKE, HOSTEL, TRUSTEES, REGISTERED (1930), 46 T. L. R. 412; 74 Sol. Jo. 465; *revsd. on other grounds*, 144 L. T. 50, C. A.

324b. "For."] — INLAND REVENUE COMMISSIONERS *v.* ST. LUKE, HOSTEL, TRUSTEES, REGISTERED, No. 324a, *ante*.

325. *Add. Annotation :*—**Refd.** *Re* Hector Whaling, Ltd., [1936] Ch. 208.

330a. ——.]—For the purposes of the statutory notice of appeal Sunday is not a *dies non*.—R. *v.* GREVILLE (1929), 21 Cr. App. Rep. 108, C. C. A.

342. After this case add :—

Presentation of election petition.]—*See* ELECTIONS, No. 1598a, *ante*.

367. *Add. Annotation :*—**Refd.** R. *v.* Scoffin, [1930] 1 K. B. 741.

PART III. SECT. 4, SUB-SECT. 2.

sg. *Whether Remembrance Day included.*]—Remembrance Day is not a ct. holiday in which the offices of the ct. in the Province of Saskatchewan are closed.—*Re* FORD ESTATE, [1934] 2 W. W. R. 47.—**CAN.**

PART III. SECT. 5.

334 i. *Legal proceedings—Act to be done by party—Service of notice of appeal.*]—R. *v.* CHRISTIAN COMMUNITY UNIVERSAL BROTHERHOOD, LTD., [1931] 1 W. W. R. 255.—**CAN.**

g i. —— *Adjournment to day of legal holiday.*]—The fact that a motion is adjourned to a statutory holiday does not render the notice of motion void.—ROSA *v.* KELLINGTON, [1928] 3 D. L. R. 562; [1928] 2 W. W. R. 399; 22 Sask. L. R. 505.—**CAN.**

PART III. SECT. 6, SUB-SECT. 1.

343 iv. ——.]—On Sept. 8, 1928, deft. was the owner of an unlicensed wireless receiving set. Later in the same day, after a visit of an inspector which was not shown to have been communicated to him, he took out a licence. On a charge of maintaining an unauthorised wireless set :—*Held :* the fractions of the day were to be taken into account, & deft. was guilty of the offence.—BEARE *v.* WARD, [1928] S. A. S. R. 1.—**AUS.**

TORT.

Part I.—Nature of Torts.

3. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455 ; Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56 ; Parker *v.* Oloxo, Ltd. & Senior, [1937] 3 All E. R. 524.

12. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

15. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

19. *Add. Annotations :*—**Refd.** The Arpad (1934), 50 T. L. R. 505 ; Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

23. *Add. Annotation :*—**Refd.** Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352.

24. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

26. *Add. Annotation :*—**Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

28a. Action against stockbroker for breach of instructions.]—Pltf. sued defts., a firm of stockbrokers, claiming damages for breach of his instructions as to the purchase of certain shares whereby he sustained loss. At the trial judgment was given in his favour for £60 & costs :—*Held :* the action was founded on contract, & not on tort, & therefore, by County Cts. Act, 1919 (c. 73), s. 11, pltf. was only entitled to costs on the county ct. scale.

Per GREER, L.J. : Where the breach of duty complained of arises out of the obligations undertaken by a contract, the action is founded on contract ; but where that which is complained of arises out of a liability independently of the personal obligation undertaken by a contract, an action brought in respect of this is founded on tort, & this is so even though there may be a contract between the parties.—JARVIS *v.* MOY, DAVIES, SMITH, VANDERVELL & CO., [1936] 1 K. B. 399 ; 105 L. J. K. B. 309 ; 154 L. T. 365, C. A.

30. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1. **Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

34. *Add. Annotations :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. **Refd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

35. *Add. Annotations :*—*As to* (1) **Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. *Generally*, **Refd.** Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293 ; Place *v.* Searle, [1932] 2 K. B. 497.

44. *Add. Annotation :*—**Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

Part II.—Liability for Torts.

SECT. 8.—**JOINT TORTFEASORS.**
(p. 975).

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), ss. 6, 7.

62. *Add. Annotations :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309; Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

65. *Add. Annotation :*—**Refd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

69. *Add. Annotation :*—**Apprvd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

72. *Add. Annotations :*—**Refd.** Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90 ; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

72a. Apportionment of liability—When justified.]—Applt. & resp. were defts. in an action for damages for personal injuries caused by negligence. Applt. had suddenly & violently applied her brakes while driving her motor car in a stream of traffic. She gave no signal by hand of her intention to stop, but her car was fitted with a stop-light which was automatically operated when the brakes were applied. A car travelling immediately behind her was unable to pull up in time, & collided slightly with the applt.'s car. Resp.'s car, the last one in the stream of traffic, was also unable to pull up, & collided violently with the car in front. Pltf. was a passenger in resp.'s car, & suffered severe injury. At the trial, the judge found that

PART II. SECT. 8, SUB-SECT. 1.

53 xiii. —— ——.]—In the case of a collision between two vehicles in consequence of independent acts of negligence committed by the respective drivers, both directly contributing to the accident & to the injury suffered by a third person riding in one of the vehicles, he having no control over the driver of the vehicle, both drivers are severally liable to him.—MACDONNELL & JORDAN *v.* PECH & LOVETTE, [1930] 3 W. W. R. 455 ; 4 D. L. R. 1037 ; *affg.*, [1930] 4 D. L. R. 396.—CAN.

applt. had been negligent, in that she stopped too suddenly & failed to give any warning by hand-signal. Resp. was also found to have been negligent, in that he failed to apply his brakes sufficiently to stop, but instead first pulled out to his off side in an endeavour to overtake. Immediately after judgment had been delivered, an application was made to the judge to apportion the blame between the two defts. in accordance with the provisions of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30). The judge apportioned the blame, two-thirds to applt. & one-third to resp. :—*Held :* (1) such an application was within the terms of Law Reform (Married Women & Tortfeasors) Act, 1935, s. 6 (2), & the judge therefore had jurisdiction to make an apportionment ; (2) such an apportionment was a matter of discretion for the judge, & would not be disturbed by the Ct. of Appeal, unless it could be shown that the judge had acted upon a wrong principle in law ; (3) a stop-light automatically operated by the brakes of a motor car does not give sufficient warning of the intention of a driver to slow down or to stop. A hand-signal should also be given. It is no defence to an allegation of negligence for a driver to contend that he has done everything suggested in the Highway Code, which is merely a code of suggested behaviour on the road, & is not binding as a statutory regulation.—CROSTON *v.* VAUGHAN, [1937] 4 All E. R. 249 ; 54 T. L. R. 54 ; 81 Sol. Jo. 882, C. A.

83. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

88. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264.

92. *Add. Annotation :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

99. *Add. Annotation :—As to* (1) **Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

103. *Add. Annotation :—As to* (1) **Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

108a. Statutory liability to contribute—Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30).]—Pltf., who was upon the premises of deft. in circumstances which made him in law an invitee, fell down a hole. The hole had been left uncovered by the negligence of a contractor who was carrying out certain work upon the premises, & he was added as a third party, as deft. alleged that the contractor was liable to contribute towards the damages. The damages were agreed at £200 & the action proceeded solely in respect of the claim for indemnity or contribution by deft. against the third party :—*Held :* by virtue of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6, the third party could be ordered to contribute to the damages, & in the circumstances should contribute one-half of the damages ; *Semble :* it is not necessary in a claim under Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6, that the statute be pleaded.—BURNHAM *v.* BOYER & BROWN, [1936] 2 All E. R. 1165.

108b. —— ——.]—A schoolgirl was carrying out a chemical experiment with chemicals supplied by the teacher of the chemistry class, when an explosion occurred whereby she was severely injured. The experiment was one for the making of oxgyen by heating a mixture of potassium chlorate & manganese dioxide, a perfectly harmless experiment. The teacher had purchased the chemicals from the second defts., receiving as manganese dioxide a black powder so labelled in a packet. In fact the black powder was a mixture of antimony sulphide & manganese dioxide, indistinguishable from manganese dioxide to the eye, but dangerous when heated with potassium chlorate. The second defts. had purchased this powder as manganese dioxide from the third party, whose invoice stated : "The above goods are accurate as described on leaving our works but they must be examined & tested by user before use. The above goods are not invoiced as suitable for any purpose but they are of the nature & quality described." The second defts. had carried out no test on the powder & had not advised the teacher that an examination or test would be advisable. The second defts. knew that the powder would be used for the purpose of school experiments, but they had not told the third party that the powder might be so used. The schoolgirl recovered damages, in an action for negligence, from the second defts., who sought an indemnity or contribution from the third party :—*Held :* (1) as the third party had no notice of the intended user of the powder, which might have been resold for a variety of purposes or in innocuous compounds or mixtures, & as the second defts. had not carried out a test, as the invoice prescribed, & which the second defts. had ample opportunity for doing, the third party was not liable to indemnify the second defts. ; (2) as the third party could not have been successfully sued by the schoolgirl, the third party was not liable to

PART II. SECT. 8, SUB-SECT. 5.

84 ii. —— *Acceptance of sum paid into court.*]—DOMINION COAL CO. *v.* LEYLAND & CO., [1930] 2 D. L. R. 558.—**CAN.**

88 i. —— *Causes of action separate—No discharge to others.*]—Pltf.'s husband who was a passenger in a motor car which belonged to deft., the Manitoba Power Commission, & was being driven by deft. S., was killed in a collision between that car & a truck owned by deft. T. which was being driven by deft. W. Pltf. accepted $3,000 from the Power Commission & S. & filed a notice of discontinuance of the action as against them, & the settlement was approved by an order which apportioned the $3,000 between pltf. & her infant son :—*Held :* defts. S. & the Power Commission were not joint tort-feasors with the other two defts. &, therefore, the settlement with the former did not preclude pltf. from proceeding with her action against the latter ; &, on the evidence, she was entitled to recover against them also.—NEGRICH (NEGRYCH) *v.* WERNER, [1937] 1 W. W. R. 190.—**CAN.**

PART II. SECT. 8, SUB-SECT. 6.

89 iii. ——.]—WHYTE *v.* LESLIE, [1930] 2 D. L. R. 409.—**CAN.**

PART II. SECT. 8, SUB-SECT. 7.

95 vi. —— ——.]—ESTEN *v.* ROSEN, [1929] 1 D. L. R. 275 ; 63 O. L. R. 210. —**CAN.**

95 vii. —— ——.]—REID *v.* ACORN & MCDONALD, [1932] 3 D. L. R. 239 ; 4 M. P. R. 341.—**CAN.**

so. *Effect of Negligence Act,* 1930 (*Ont.*).]—Above Act is concerned with contribution between joint tort-feasors & does not throw any liability on any party who would be liable apart from the Act.—TOPPING *v.* OSHAWA STREET RY. CO., [1931] 2 D. L. R. 263 ; 66 O. L. R. 618.—**CAN.**

sr. *Act believed lawful.*]—No right of contribution between joint tort feasors arises from the fact that, through a mistaken view of the law, they believe their act to be lawful.—WINSLOW *v.* WILSON (NO. 2), [1936] V. L. R. 247 ; 42 Argus L. R. 214.—**AUS.**

contribute as a joint tortfeasor.—KUBACH *v.* HOLLANDS, [1937] 3 All E. R. 907; 53 T. L. R. 1024; 81 Sol. Jo. 766.

112. *Add. Annotations :—As to* (2) **Apld.** Haseldine *v.* Hosken, [1933] 1 K. B. 822. **Refd.** Bradstreets British, Ltd. *v.* Mitchell (Harold) & Carapanayoti & Co., [1933] Ch. 190; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

113. *Add. Annotation :*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

115. *Add. Annotations :*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670; The Edison (1932), 147 L. T. 141; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

119. *Add. Annotation :*—**Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

120. *Add. Annotation :*—**Apld.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

124. *Add. Annotation :*—**Consd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

127a. —— ——.]—DAILY MIRROR NEWSPAPERS, LTD. *v.* EXCLUSIVE NEWS AGENCY (1937), 81 Sol. Jo. 924.

140. *Add. Annotation :*—**Refd.** R. *v.* Manley, [1933] 1 K. B. 529.

141. *Add. Annotation :*—**Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

148. *Add. Annotations :*—**Consd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450. **Refd.** Green *v.* Berliner, [1936] 1 All E. R. 199.

156. *Add. Annotations :—Generally,* **Refd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

157. *Add. Annotation :*—**Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

167. *Add. Annotations :*—**Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

167a. —— **Necessity for breach before issue of writ.**]—Pltf. was managing director & defts. were the chairman & other directors of a limited co. which was incurring heavy losses. Pltf. had urged that an investigation should be held to inquire into the reasons for these losses, but no investigation was then held. Pltf. was compelled through ill-health to leave England. Defts. at a board meeting, thinking that the co.'s poor financial position was due to pltf.'s mismanagement, suspended him from his duties & proposed the holding of an investigation. A report hostile to pltf. was duly made by the investigator. Pltf.'s salary had been paid after his suspension, but on one occasion no payment was made as the co. thought it had an account against him amounting to more than the sum due to him. Pltf. was not told why no payment had been made. He thereupon wrote to the co. demanding to know within two days whether he had been dismissed. On receiving no satisfactory reply, pltf. issued a writ against defts. for damages for wrongfully conspiring to procure a breach of his contract with the co. He also resigned his directorship :—*Held :* on the evidence pltf. had never been dismissed; a conspiracy to cause a breach of contract is not in itself good cause of action. The intended breach is an integral part of the cause of action & must take place before the writ is issued; directors in a board meeting cannot induce or conspire to induce that meeting to break a contract, though some may before such meeting so conspire; the action of those who induce others to break their contracts can only be justified where such action is taken as a duty.—DE JETLEY MARKS *v.* GREENWOOD (LORD), [1936] 1 All E. R. 863; 80 Sol. Jo. 613.

169. *Add. Annotations :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1. **Refd.** Place *v.* Searle (1932), 101 L. J. K. B. 465; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

176. *Add. Annotation :*—**Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

177. *Add. Annotation :*—**Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

179. *Add. Annotation :—Generally,* **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

180. *Add. Annotations :—As to* (1) **Refd.** Place *v.* Searle, [1932] 2 K. B. 497. *Generally,* **Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

PART II. SECT. 9.

r i. ——.]—In an action for conspiracy based on an alleged violation of the criminal law the onus on pltf. does not extend to proof beyond a reasonable doubt but is the same as is usual in civil actions.—FLOYD *v.* EDMONTON CITY DAIRY, LTD., [1934] 3 W. W. R. 326; 62 C. C. C. 254.—**CAN.**

PART II. SECT. 10, SUB-SECT. 2.

168 ii. —— ——.]—Owing to trouble having arisen from time to time between pltf., the boatswain of a ship, & the crew a number of meetings were called to consider pltf.'s behaviour & his suitability to act as boatswain. Later the question arose as to whether pltf.'s name appeared on the records of the union as a "scab," & at a further meeting it was decided to write to the union making inquiries, it being agreed by pltf. that if the reply was against him he would leave the ship. The union replied stating that pltf. had sailed as a free labourer, & as he refused to leave the crew by ballot decided not to sail with him. This decision was conveyed to the master of the ship who advised pltf. to leave, which he subsequently did & was paid off. A few days later at a stop-work meeting, at which none of the crew were present, it was unanimously resolved that in view of pltf.'s conduct he be not allowed to sign on as a boatswain or leading hand. On a claim for damages :—*Held :* the substantial reason of the seamens' refusal to sail with pltf. was his behaviour to the crew whose action was neither wanton nor malicious & did not give rise to an action for damages; there was no evidence connecting deft. union or its President with the conduct of the seamen & the claim for damages must fail.—BROWN *v.* NEW ZEALAND FEDERATE SEAMAN'S UNION (1934), 29 M. C. R. 17.—**N.Z.**

168 iii. —— ——.]—An action for damages lies against persons who act in concert with the object & result of inducing another to break a valid contract in restraint of trade entered into by him with pltf., where as

99; 3 D. L. R. 259; 45 B. C. R. 310.—**CAN.**

168 iv. —— —— *Contract of marriage.*]—A woman sued a man for damages on the ground that defender had induced his son, a minor, to break his promise to marry the pursuer. She did not aver any facts or circumstances from which it could be inferred that defender had been actuated by malicious or improper motives :—*Held :* in order to support an action against a parent for inducing his child to break a promise of marriage, specific averments that defender had acted from malicious or improper motives were necessary; action dismissed as irrelevant.—FINDLAY *v.* BLAYLOCK, [1937] S. C. 21.—**SCOT.**

Part III.—Remedies for Tort.

195. *Add. Annotation :*—**Refd.** Monk *v.* Warbey (1934), 151 L. T. 100.

198. *Add. Annotation :*—**Consd.** Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

Part V.—Waiver and Consent.

228. *Add. Annotations :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375 ; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

237. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

239. *Add. Annotation :*—**Refd.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

TRADE AND TRADE UNIONS.

Part I.—Definitions.

10. *Add. Annotation :—As to* (2) **Apld.** Frost *v.* Caslon, Frost *v.* Wilkins, [1929] 2 K. B. 138.

10a. ——.]—I can find nothing in the Act to prevent me giving to the word "business" one of its ordinary meanings—namely, work or occupation (Russell, L.J.).—Frost *v.* Caslon, Frost *v.* Wilkins, [1929] 2 K. B. 138; 98 L. J. K. B. 523; 141 L. T. 281; 93 J. P. 192; 45 T. L. R. 417; 73 Sol. Jo. 333; 27 L. G. R. 480, C. A.

19. *Add. Annotations :*—**Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. **Refd.** Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204.

23. *Add. Annotation :—As to* (4) **Refd.** Ritz Cleaners, Ltd. *v.* West Middlesex Assessment Committee, [1937] 2 All E. R. 368.

24. *Add. Annotation :*—**Refd.** Williams *v.* Neath Assessment Committee (1935), 154 L. T. 261.

Part III.—Freedom of Trade and Monopoly.

44. *Add. Annotations :—Generally,* **Refd.** Gilford Motor Co. *v.* Horne, [1933] Ch. 935; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64.

50. *Add. Annotation :*—**Refd.** Midland (Amalgamated) District (Coal Mines) Scheme, 1930 *v.* Shipley Collieries (1933), 149 L. T. 290.

51. *Add. Annotations :—As to* (1) **Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. *Generally,* **Refd.** L. *v.* L., [1931] P. 63; Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

59. *Add. Annotation :—As to* (1) **Refd.** Gilford Motor Co. *v.* Horne, [1933] Ch. 935.

73 *Annotations :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

—— —— —— **Improper use of patent number by one party.**]—Ultra Electric, Ltd. *v.* John Barnes & Co., Ltd. (1937), 54 R. P. C. 281.

Part IV.—Restraint of Trade by Custom, Bye-Law and Statute.

115. To cross-ref. before this case add :—*See, also,* Firearms Act, 1934 (c. 16).

117a. Dummy capable of adaptation.]—A person, who was not registered as a firearms dealer,

PART III. SECT. 2, SUB-SECT. 2.

m i. ——.]—The proper test in a prosecution under sect. 498 of the Criminal Code, which deals with "restraint of trade," is the injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine.—Stinson-Reeb Builders Supply Co. *v.* R., [1929] 3 D. L. R. 331; S. C. R. 276; 52 Can. Crim. Cas. 66.—**CAN.**

m ii. ——.]—In a prosecution for an unlawful combine all that need be proved is that there was a common design to do the things forbidden by statute reduced to a common undertaking to carry that intention into effect.—R. *v.* Famous Players, [1932] O. R. 307; 3 D. L. R. 791; 58 C. C. C. 50.—**CAN.**

m iii. ——.]—There must be an undue lessening of competition, or an unreasonable enhancement of price to constitute a violation of the Criminal Code, s. 498.—Floyd *v.* Edmonton City Dairy, Ltd., [1935] 1 D. L. R. 754.—**CAN.**

n i. —— ——.] — MacEwan *v.* Toronto General Trusts Corpn. (Ont.) (1917), 54 S. C. R. 381; 28 Can. Crim. Cas. 387.—**CAN.**

sm. *What amounts to "combine"—Within Combines Investigation Act,* 1927.]—An organisation creating a monopoly of the plumbing industry held to be a combine within the Act.—R. *v.* Singer, [1931] 3 D. L. R. 698; ——, 56 Can. C. C. 381.—**CAN.**

—— ——.]—"To the detriment or against the interest of the public" in Combines Investigation Act, R. S. C., 1927, s. 2, includes the words "unreasonably" & "unduly" in Criminal Code, s. 498 (*c*), (*d*).—R. *v.* Alexander, Ltd., [1932] 2 D. L. R. 109; 57 C. C. C. 346.—**CAN.**

sr. —— ——.]—Once it is established that a combine or conspiracy exists, it is unnecessary, to warrant conviction for the formation of a combine, or of the agreement to conspire, to show accused's complicity in subsequent illegal acts done by, or with the connivance of, the body against members of which conspiracy or unlawful combine is charged; provided there is sufficient proof of their complicity in the original formation of the combine, or in the agreement charged as conspiracy.—Belyea *v.* R., Weinraub *v.* R., [1932] S. C. R. 279; 2 D. L. R. 88; 57 C. C. C. 318.—**CAN.**

st. —— ——.]—R. *v.* Canadian Import Co., [1935] 3 D. L. R. 330.—**CAN.**

sw. *Copyright—Whether subject of combine.*]—Since copyright is something within the exclusive control of the owner, subject to the provisions of the Copyright Act, it cannot form subject-matter of a combine or conspiracy.—Underwriters' Survey Bureau, Ltd. *v.* Massie & Renwick, Ltd., [1937] S. C. R. 15.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

e i. —— *Sale of produce by shareholder without leave of company.*]—Aylesford Fruit & Produce Shipping Co. *v.* Nichols (1935), 5 F. L. J. (Can.) 131.—**CAN.**

sp. *Restraint by proclamation—Contents of proclamation.*]—By Local Government Act, 1919 (N. S. W.), s. 309 (1), "the Government may . . . (*a*) declare by proclamation any defined portion of an area to be a residential district . . .; (*c*) prohibit the erection in such district of any building for use for the purposes of such trades . . . as may be described in the proclamation; & (*d*) prohibit the use of any building in the district for any such purposes":—*Held:* the word "described" requires that every trade intended to be included in the prohibition is to be expressly named in the proclamation, or otherwise specified; &, therefore, where a proclamation prohibited the use of any building in a residential district for the purposes of "any trade," the prohibition was invalid as the trades intended to be included were not "described."—Dyer *v.* Luckett (1928), 41 C. L. R. 44.—**AUS.**

sq. *Carrying on business—For purpose of trade licence — Fruit packing.*]—R. *v.* Lakeside Orchards, Ltd. (B. C.), [1929] 1 W. W. R. 870; 51 Can. Crim. Cas. 182.—**CAN.**

sr. *Produce Marketing Act, B. C.—Onus of proof.*]—R. *v* Chung Chuck (B. C.) (1930), 54 Can. C. C. 174; 43 B. C. R. 125; *revsg.,* 52 Can. Crim. Cas. 292.—**CAN.**

st. *Who is a manufacturer — "Printer."*]—A printer held not entitled to be licensed as a "manufacturer" under Companies, Trades & Business License Bye-Law of the City of Vancouver.—Jones *v.* Sutherland, [1930] 1 W. W. R. 530; 2

sold a dummy revolver, which was similar in appearance to an ordinary revolver, but was fitted with a barrel & cartridge chambers only partially bored. There was a venthole in the barrel for the escape of gasses. It was incapable, as sold, of discharging a missile, but by drilling it could be converted into a weapon capable of killing a man at a distance of 5 feet. Informations were preferred under Firearms Act, 1920 (c. 43), s. 2 (1) against the seller, charging him with having, when not registered as a firearms dealer under that Act, sold a firearm, & against the wholesaler who had supplied it, for having aided & abetted the sale :—*Held :* the dummy was a firearm within Firearms Act, 1920 (c. 43), s. 12 (1), or alternatively all the parts other than the barrel were parts thereof within the same sub-sect. & the charges were well founded.—CAFFERATA *v.* WILSON, REEVE *v.* WILSON, [1936] 3 All E. R. 149 ; 155 L. T. 510 ; 100 J. P. 489 ; 53 T. L. R. 34 ; 80 Sol. Jo. 856 ; 34 L. G. R. 546 ; 30 Cox C. C. 475, D. C.

Part V.—Restraint of Trade by Agreement.

129. *Add. Annotation :*—**Refd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1935), 52 T. L. R. 61.

131. *Add. Annotations :*—*As to* (1) **Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209. *As to* (2) **Apld.** Wyatt *v.* Kreglinger & Fernau (1933), 49 T. L. R. 264. **Refd.** Wessex Dairies, Ltd. *v.* Smith, [1935] 2 K. B. 80. *As to* (6) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181. *Generally,* **Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

131a. —— —— **Grant of pension—Grantee not to enter specified trade.**]—Pltf. had formerly been in the employment of defts. as manager of a department. He retired from their employment in 1923. On his retirement defts. wrote that they had decided to grant him a pension of £200 *per annum.* They added that he was to be at liberty to undertake any other employment, or enter into any business on his own account, " except in the wool trade, & the only other stipulation we attach to the continuance of this pension is that you do nothing at any time to our detriment (fair business competition excepted)." In a further letter defts. stated that pltf. would receive full salary for three months. Pltf. accordingly received his full salary for three months, & thereafter he received from defts. a pension or remuneration at the rate of £200 *per annum* by monthly instalments of £16 13*s.* 4*d.* down to 1932, when it was discontinued. In an action for damages for repudiation of the alleged agreement to pay the pension :—*Held : per* SCRUTTON, L.J., the letters did not constitute a contract ; *per Curiam,* assuming that the correspondence did create a contractual obligation, the contract was contrary to public policy as being in restraint of trade.—WYATT *v.* KREGLINGER & FERNAU, [1933] 1 K. B. 793 ; 102 L. J. K. B. 325 ; 148 L. T. 521 ; 49 T. L. R. 264, C. A.

Annotation :—**Distd.** *Re* Prudential Assurance Co.'s Trust Deed, Horne *v.* Prudential Assurance Co., [1934] Ch. 338.

131b. —— —— —— **Grantee not to enter into competition with grantor.**]—The pension scheme of an insurance co. provided that the pension should cease if the pensioner should engage in any business in competition with that of the co. :—*Held :* whether this provision was, or was not, invalid as being in restraint of trade, its introduction into the scheme did not invalidate the scheme as a whole.—*Re* PRUDENTIAL ASSURANCE CO.'S TRUST DEED, HORNE *v.* PRUDENTIAL ASSURANCE CO., LTD., [1934] Ch. 338 ; 103 L. J. Ch. 179 ; 150 L. T. 474 ; 49 T. L. R. 558 ; 77 Sol. Jo.

133a. **Restraint operative during contract.**]—Restrictions placed upon an employee under a contract of service to take effect during the contract are not in general against public policy.—GAUMONT-BRITISH PICTURE CORPN., LTD. *v.* ALEXANDER, [1936] 2 All E. R. 1686 ; 80 Sol. Jo. 816.

Annotation :—**Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

134a. **Agreement entered into at termination of employment.**]—Deft., being a director & manager of pltf. co., who carried on business as garage proprietors & motor-car dealers, entered into a written agreement with the co. in consideration of a cash payment to resign both positions, covenanting also not to carry on or assist in carrying on a similar business within a certain radius for a period of five years. The agreement further provided that he should transfer his shareholding in the co. to another director for £250, & this sum was paid to him by a cheque drawn on the co.'s account :—*Held :* (1) assuming the agreement to be one between employer & employee, the restrictive covenant was not rendered invalid as being contrary to public policy by reason of the fact that it was entered into on the termination of the employment instead of at the beginning ; (2) if the payment for the shares by the co.'s cheque was such as to contravene sect. 45 (1) of Cos. Act, 1929, & to render the co. liable to a fine

D. L. R. 762 ; 53 Can. C. C. 349 ; 42 B. C. R. 321 ; *affd., sub nom.* R. SUTHERLAND, [1930] 4 D. L. R. 183 ; 2 W. W. R. 244 ; 54 Can. C. C. 313 ; 42 B. C. R. 367.—**CAN.**

sw. *Renewal of licence—Waterside worker.*]—An application for renewal of a licence to a waterside worker, under Transport Workers Acts, 1928–1929, was refused by the licensing officer to whom it was made, on the ground that appct. was not a member of the Waterside Workers' Federation of Australia, & was not a returned soldier or sailor. On the return of an order *nisi* for a writ of *mandamus,* directed to the licensing officer to renew the licence, the order was made absolute.—R. *v.* MAHONY, *Ex p.* JOHNSON, [1931] Argus L. R. 377 ; 5 A. L. J. 286.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 4.

sg. *Restaurant—Necessity for licence —Restaurant Act, R. S. A.,* 1922—*Whether Indian " stampede " an " agricultural fair exhibition."*]—R. *v.* GULLBERG, [1933] 3 W. W. R. 639 ; 62 C. C. C. 281.—**CAN.**

PART V. SECT. 1.

132 i. *Who may enter into —Vendor & purchaser of go.* SPENCER *v.* MCKENZIE (1926), W. A. L. R. 95.—**AUS.**

under sub-sect. (3), which was not proved, the agreement was not thereby rendered invalid.—SPINK (BOURNEMOUTH), LTD. *v.* SPINK, [1936] Ch. 544; [1936] 1 All E. R. 597; 105 L. J. Ch. 165; 155 L. T. 18; 52 T. L. R. 366; 80 Sol. Jo. 225.

139. *Add. Annotations:—As to* (5) **Apld.** Wyatt *v.* Kreglinger & Fernau (1933), 49 T. L. R. 264. **Refd.** Gilford Motor Co. *v.* Horne (1933), 102 L. J. Ch. 212.

143. *Add. Annotations:—As to* (3) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181. *Generally*, **Refd.** Gilford Motor Co. *v.* Horne (1933), 102 L. J. Ch. 212; Pellow *v.* Ivey (1933), 49 T. L. R. 422.

146a. ——.]—The managing director of a co. entered into an agreement by which it was provided that he "shall not at any time while he shall hold the office of a managing director or afterwards solicit, interfere with or endeavour to entice away from the co. any person, firm or co. who at any time during or at the date of the determination of the employment of the managing director were customers of or in the habit of dealing with the co. & also will not at any time within five years from the determination of this agreement, either solely or jointly with or as agent for any other person, firm or co., be engaged, directly or indirectly, in any business similar to that of the co. within a radius of three miles from any premises wherein the business of the co. shall for the time being be carried on":—*Held:* the covenant, though *prima facie* in restraint of trade, was definite in date, contained no ambiguity, & was reasonably necessary for the protection of the co.'s trade. It was intended to deal with persons who, during the employment, were on the books of the co., & of whom the covenantor would have full knowledge; nor were the words "customers of or in the habit of dealing with the co." too vague to be capable of being defined. The covenantor was not in a subordinate position, but in one of responsibility, in which he would be likely to obtain full knowledge of the co.'s business. The covenant must therefore be enforced.—GILFORD MOTOR CO. *v.* HORNE, [1933] Ch. 935; 102 L. J. Ch. 212; 149 L. T. 241, C. A.

146b. ——.]—*Prima facie* every contract between an employer & an employee which is in restraint of trade is illegal & unenforceable as being against public policy, & the onus is on the employer to show that the terms of the contract are not more than are reasonably necessary for the proper protection of his business & are not injurious to the public. By a contract in writing made between pltf. co. & deft. in 1929, deft. undertook, during his employment by pltf. co., to "use his best efforts to keep himself continuously informed of & acquainted with all matters pertaining to safety glass . . . & at all times when required by the co. he shall give to the co. or their agent or agents all such available information as may be required." It was also provided that any "knowledge or information gleaned or discovered by" deft. "shall be the exclusive property of the co." & that deft. should do everything necessary to vest any patents granted to him in the co. In 1932 deft., in pursuance of the co.'s instructions & during working hours, conducted certain experiments & made a certain discovery. He communicated it to the co., but the co. did nothing at the time to patent or protect it. In 1934 deft. left the service of the pltf. co. Later in that year he found that the discovery would be valuable in the business he was then conducting, which had no connection with the manufacture of safety glass. In 1935 he obtained a patent to protect the discovery. In an action by pltf. co. for a declaration that the co. were entitled to have the patent assigned to them:—*Held:* the provisions of the contract between the parties was wider than was necessary to protect pltf. co. & were therefore illegal & unenforceable as being against public policy, but it was a term of all employment, apart from express covenants, that any invention or discovery made by the employee in the course of the employment was the property of the employer, so that the employee, having made the discovery, became a trustee of it for the benefit of the employer & as such trustee must give the benefit of the discovery to the employer when called on to do so & for that purpose assign to the employer any patent which had been granted to him (the employee) to protect the discovery.—TRIPLEX SAFETY GLASS CO., LTD. *v.* SCORAH, [1937] 4 All E. R. 693; 54 T. L. R. 90.

147. *Add. Annotation:*—**Consd.** Wyatt *v.* Kreglinger & Fernau (1933), 49 T. L. R. 264.

154. *Add. Annotations:—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181; Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793. *As to* (4) **Refd.** Pellow *v.* Ivey (1933), 49 T. L. R. 422.

158. *Add. Annotation:—As to* (1) **Refd.** Pellow *v.* Ivey (1933), 49 T. L. R. 422.

164. *Add. Annotation:—As to* (1) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

186. *Add. Annotation:—As to* (1) **Refd.** Gaumont-British Picture Corpn., Ltd. *v.* Alexander, [1936] 2 All E. R. 1686.

229. *Add. Annotation:*—**Refd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

234. *Add. Annotation:—Generally*, **Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

297. *Add. Annotation:—As to* (1) **Refd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

305. *Add. Annotation:*—**Refd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

309. *Add. Annotation:*—**Refd.** Vancouver Malt & Sake Brewing Co. *v.* Vancouver Breweries, Ltd., [1934] A. C. 181.

323. *Add. Annotation:*—**Refd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

377. *Add. Annotation:—As to* (3) **Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

394. *Add. Annotation:—As to* (1) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

PART V. SECT. 3, SUB-SECT. 3.—B.

394 1. *Right to benefit o.* *General rule.*]—The benefit of a covenant in restraint of trade passes without specific mention to the transferee of the business of the covenantee. —FALLS *v.* BLOCH, [1931] 2 W. W. R. 93.—CAN.

398. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

399. *Add. Annotation :*—*As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

406. *Add. Annotation :*—*As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

435. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

438. *Add. Annotations :*—*As to* (3) **Dbtd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181. *As to* (4) **Consd.** Gilford Motor Co. *v.* Horne (1933), 102 L. J. Ch. 212.

457a. "Within ten miles from X."—Construed as within ten miles from the borough boundary of X.]—CATTLE *v.* THORPE, [1900] W. N. 83.

470. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

477. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

480. *Add. Annotation :*—**Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

488. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

489. *Add. Annotation :*—**Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

491. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

496. *Add. Annotation :*—**Refd.** Gilford Motor Co. *v.* Horne, [1933] Ch. 935.

497. *Add. Annotation :*—*As to* (1) & (2) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

498a. Clause against soliciting or canvassing customers—Contract with infant.]—Deft., while still an infant, entered into an agreement of service with C., a dairyman, as a milk roundsman. C. sold his business to pltfs., including the benefits of contracts of service with his employees. After a short time deft. left the service of pltfs. & served another dairyman, in the conduct of whose business he solicited & served the customers of pltfs. When deft. entered the service of C. he entered into an agreement of service with C. This agreement contained a restrictive clause with regard to serving soliciting or canvassing customers of the employer, & it was admitted that if the agreement with C. was binding on deft., it was also binding on him with pltfs. Pltfs. claimed an injunction & damages for acts committed by deft. which were alleged to be in breach of the agreement :—*Held :* the restrictive words were too wide & indefinite to be enforceable, especially in the case of a contract with an infant. The word "customers" alone was used in so expanded a sense that that by itself was sufficient to render the restrictive clause inoperative.—EXPRESS DAIRY CO. *v.* JACKSON (1929), 99 L. J. K. B. 181; 142 L. T. 231; 46 T. L. R. 147.

511. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

512. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

PART V. SECT. 6, SUB-SECT. 1.

sp. *How far contract severable.*]—An agreement for service of eighteen months as a salesman contained the following clause in restraint of trade:

"8. Except in the event of the determination of this agreement of effluxion of time & the employer or Universal Business Directories, Ltd. being unwilling to continue or renew the employment upon the same terms & conditions, *mutatis mutandis*, as are herein contained the employee shall not within a period of ten years from the time of his ceasing to be employed by the employer or Universal Business Directories, Ltd. & at any place in New Zealand or Australia & either alone or conjointly with or as agent for or on behalf of any other co. firm or person & whether directly or indirectly be employed engaged concerned or interested in any business similar to the 'Universal Business Directory' or to any other business carried on or which may hereafter during the term of this agreement be carried on by the employer or Universal Business Directories, Ltd." :—*Held :* the only legitimate purpose of a restraint clause in such a case was the protection of a trade connection, but the attempted extension of the restriction to all New Zealand was neither necessary nor reasonable, & the clause, as its contents could not be reduced to limits that were reasonably necessary without rewriting it, was not severable but was in its entirety, although it would have been reasonable for the employer to have subjected the employee to some restraint.—BALDWIN *v.* MCIVER, [1937] N. Z. L. R. 265; 13 N. Z. L. J. 46.—**N. Z.**

PART V. SECT. 7.

n i. ——— ———.]—A covenant in a two year employment not to engage in the same business for two years if dismissed, cannot be enforced after the termination of the contract.—NEW YORK WINDOW CLEANING CO. *v.* BILYZ, [1936] 2 D. L. R. 668.—**CAN.**

n ii. ——— *Whether extinguished by withdrawal from service.*]—Under a contract covering a certain period between a travelling salesman & his employer, the pltf., the salesman, agreed to give his whole time to his employer's service, & that he would not sell or offer for sale any goods other than those of the employer. The contract placed no restriction on him after the date of the expiry of the contract, nor did it expressly restrict him from selling other goods if before that date he should be discharged for cause under a clause stipulating a cause for his discharge. The salesman, after working under the contract, left the service & entered that of a concern selling competing goods; & his withdrawal was accepted by the pltf. as a breach of contract :—*Held :* the restriction was not intended to govern the salesman after termination of the contract by breach, & that, if so intended, it was so wide, & general as to be unreasonable & unenforceable.—GERLACH-BARKLOW CO. *v.* MACPHERSON, [1928] 3 W. W. R. 150.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A. (b).

525 iv. ———.]—Pltf. & deft. Z. had been partners in the restaurant business. Z. sold out his interest therein to pltf. & covenanted with him that he, Z., would not during the next three years "carry on or engage in, either directly or indirectly, & whether as a principal, agent, direotor of a co., servant or otherwise, or take part in the business of a restaurant or cafe or store" within the city of Victoria. Deft. P. opened a combined cafe & candy shop & employed Z. to manage the latter. Pltf. sued Z. for damages for breach of the covenant & for an injunction to restrain further breaches & also claimed damages from Z.'s wife & P. for inducing Z. to commit such breach & from all the three defts. on the ground that they had wrongfully conspired to injure his business :—*Held :* the appeal should be allowed, the injunction prayed for granted & damages awarded against the three defts.—LERIK *v.* ZAFERIS (B. C.), [1929] 3 W. W. R. 422; [1930] 1 D. L. R. 634; 41 B. C. R. 526.—**CAN.**

539 ii. ———.]—An agreement by the vendor of a restaurant business that she would "neither directly or indirectly have any interest or share or part in any other restaurant or similar place" for five years in the town of B., held not to have been broken by the fact that the vendor became a paid cook for P., a restaurant proprietor who at the time of said sale was employed by the vendor as a cook, & also lent said P. money, without obtaining therefor any right or interest in the restaurant, to be applied by P. in payment of the amount owing on P.'s purchase of the building in which she was carrying on said business.—FONG *v.* BOEHLER (Sask.), [1929] 4 D. L. R. 829; 3 W. W. R. 273.—**CAN.**

539 iii. ———.]—An agreement for sale by deft. & another of their business to pltf. co. contained a covenant by deft. that for a period of years, within a specified radius of Wellington, deft. would not "be engaged or beneficially interested in or in any way connected with . . . any trade or business similar to that hereby agreed to be sold." On proceedings against deft. for an injunction to compel observance of the covenant :—*Held :* the wording of the covenant was wide enough to cover deft.'s employment as a servant in a similar business.—SIMMONDS & OS-

549. *Add. Annotation :*—**Consd.** Gilford Motor Co. *v.* Horne, [1933] Ch. 935.

560. *Add. Annotation :*—**Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

564. *Add. Annotation :*—**Refd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

568. *Add. Annotation :*—**Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1935), 52 T. L. R. 61.

578. *Add. Annotation :*—**Refd.** Draper *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. (1935), 53 R. P. C. 66.

584. Add the following para. :—

Held : the covenant was not too wide, & an interim injunction should be granted.

591a. —— **Fifteen miles—Fifteen years.**]—Deft. carried on business as an accountant in Leek, Staffordshire, having some 60 or 70 clients. He was not a qualified accountant &, desiring to be associated with a firm of accountants, the partners in which had professional qualifications, he sold his business to pltfs., a firm practising in the Potteries. Forty pounds was paid for the goodwill of deft.'s business. Deft. was to act as manager of pltfs.' branch in Leek, being deft.'s business which pltfs. had purchased. The agreement for sale contained a covenant by deft. that he would not carry on or be concerned in the business of an accountant within 15 miles from Leek town hall for a period of 15 years from the operation of the agreement. This area included Macclesfield & Buxton. In an action to restrain deft. from setting up in business as an accountant in Leek after he had ceased to be in pltfs.' employment :—*Held :* in the circumstances, the covenant was too wide for the adequate protection of pltfs. as purchasers of deft.'s business, & the covenant was, therefore, unenforceable.—BATES & Co. *v.* DALE, [1937] 3 All E. R. 650 ; 81 Sol. Jo. 648.

597. After this case add :—

Use of initials "A. A.

See AUCTION, No. 15a, *ante*.

611a. —— —— ——.]—Applts. held a Dominion brewer's licence, renewable each year, in respect of their premises in Vancouver City, but had never brewed any liquor other than sake, a Japanese liquor made from rice. Under a similar licence resps. carried on a brewing business in Vancouver City, but brewed beer only. There were no other brewers operating in the City, but there were a few others elsewhere in the Province. By an agreement made in 1927 applts. purported to sell & assign to resps. for $15,000 all the goodwill of their brewer's licence or any renewal thereof (except so far as related to the manufacture of sake), & to covenant that for fifteen years they would not engage in the trade or business of manufacturing or selling beer, also that if they should sell their licence the sale should be made subject to the foregoing conditions :—*Held :* the agreement was an unenforceable agreement in restraint of trade, because in reality it was a bare covenant against competition, also because it was unreasonable between the parties, as the restriction was unlimited in area.—VANCOUVER MALT & SAKE BREWING CO., LTD. *v.* VANCOUVER BREWERIES, LTD., [1934] A. C. 181 ; 103 L. J. P. C. 58 ; 150 L. T. 503 ; 50 T. L. R. 253 ; 78 Sol. Jo. 173, P. C.

BORNE, LTD. *v.* BIGHAM, [1931] N. Z L. R. 502.—**N.Z.**

539 iv. ——.]—On the sale of a garage business the vendor covenanted "not to enter into the garage business" within a radius of one mile from the garage sold. The vendor became an employee of a garage within said area ; but there was no evidence that the employment was not a genuine one & concealed an interest in the business :—*Held :* the covenant had not been broken.—MORRISON *v.* MCTURK, [1931] 3 W. W. R. 765 ; 45 B. C. R. 28.—**CAN.**

t (p. 52). *varied* [1928] 1 D. L. R. 1009 ; 61 O. L. R. 558.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A. (o).

548 i. *Covenant by wife—Trade carried on by husband—Occasional assistance to husband.*]—Where a married woman on selling a business covenants that she will not for a certain period set up a competing business in the same town, either personally or through an agent, the fact that on her husband establishing such a business she renders occasional voluntary unremunerated services in assisting her husband in carrying on the business does not constitute a breach of the covenant, if the business is in reality his own & not hers.—LODGE *v.* ANDERSON, [1930] 3 W. W. R. 359 ; 4 D. L. R. 1040.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—A.

sa. *Correction of judgment—Jurisdiction of court.*]—WARREN TEA CO., LTD. *v.* REINGLASS, [1928] S. R. Q. 29. —**AUS.**

PART V. SECT. 9, SUB-SECT. 3.

sd. *Validity or reasonableness of restraint—Agreement not to "operate" within district—Five years.*]—A covenant by a vendor of a business not to "operate" as a land agent within the municipality of Thebarton for five years is not unreasonable.—LAWRENCE *v.* LLOYD, [1930] S. A. S. R. 194.—**AUS.**

PART V. SECT. 9, SUB-SECT. 5.

h i. —— *One year—Five miles.*]—*Held :* the restraint in respect of the period of one year from the termination of W.'s employment was not unreasonable ; but the area within a 5 miles radius was wider than was reasonable, & was void.—MARQUETT *v.* WALSH (1929), 29 S. R. N. S. W. 298 ; 46 N. S. W. W. N. 71.—**AUS.**

sx. *Broadcasting producer.*]—P. entered into an agreement with T. whereby T. agreed to employ P. as a broadcasting "Producer" & P., *inter alia*, agreed that he would not, at any time, divulge any of the affairs or secrets of T., & that he would not, during the continuance of his employment, be engaged, concerned or interested in any other Broadcasting Station within the State of New South Wales. T. had instituted an action against P. for damages for breach of contract & had obtained an *ex parte* interim injunction until Jan. 30, 1936. Upon an application to renew or obtain a fresh injunction evidence was produced by T. that P. had entered into an agreement to be employed by a rival co. on the termination of his present employment &, in the meantime, was soliciting advertising contracts for & on behalf of another Broadcasting Station carrying on business within New South Wales :—*Held :* there was some evidence of a breach of contract & the injunction should be continued until the termination of the contract or until the conclusion of the action, whichever should first happen.—THEOSOPHICAL BROADCASTING STATION, LTD. *v.* PARKS (1936), 53 N. S. W. W. N. 32.—**AUS.**

PART V. SECT. 9, SUB-SECT. 8.

q i. *Covenant for himself or any member of his family—Severability.*]—The contract for the sale of a butchery business contained this clause : "The vendor will undertake for himself or any member of his family not to commence the same business or a similar business within a radius of four miles of the present place of business or to be interested directly or indirectly as master or servant or otherwise in any such business within such radius." The vendor (deft.) & his son were employed by a rival butcher within the prohibited radius as servants at a weekly wage, neither having any financial or proprietary interest in the rival business. On application for injunction to restrain deft. from employment by the rival firm :—*Held :* (1) the vendor could not contract on behalf of his family, &, as the phrase "or any member of his family" was a separate & distinct covenant from his own undertaking, it could be severed from the rest of the clause ; (2) the vendor had committed a breach of the covenant ; (3) the restriction as to distance was reasonable.—BRIDGES *v.* CARSON, [1934] N. Z. L. R. 158.—**N.Z.**

634. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

641. *Add. Annotation :—As to* (1) **Consd.** Gilford Motor Co. *v.* Horne (1933), 102 L. J. Ch. 212.

644. *Add. Annotation :*—**Dbtd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

705. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

752. *Add. Annotation :—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

757. *Add. Annotation :*—**Consd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

774a. Hairdresser & tobacconist—Validity of restraint—Agreement not to carry on business within borough—No restriction as to time.]—The tenancy of certain premises at B. on which the business of a hairdresser & tobacconist was carried on was, in 1913, sold together with the goodwill of the business, & it was provided in the agreement for sale that the vendor should not carry on or conduct or be directly or indirectly concerned, interested, or employed in any capacity in the business of a hairdresser or tobacconist or either of them within the borough of B. An action was begun against the vendor by the purchasers for an injunction restraining him from carrying on the business of a hairdresser & tobacconist within the borough of B., which they alleged that he had begun to carry on in 1932 in breach of the agreement entered into by him in 1913 :—*Held :* the agreement afforded to the purchasers more than adequate protection, & the action failed.—PELLOW *v.* IVEY (1933), 49 T. L. R. 422.

791a. —— —— **Fifteen miles—Three years.**]—Pltfs., who were motor-car dealers, employed deft. as a salesman under an agreement which provided that from its termination deft. should not for three years be engaged in connection with the business of a motor-car dealer within fifteen miles of pltfs.' place of business. Deft. left pltfs.' employment & became a salesman to motor-car dealers within the prohibited area. In an action for an injunction to restrain deft. from an alleged breach of the agreement :—*Held :* as deft.'s employment with pltfs. was not of a confidential nature the restrictive clause was not reasonably necessary for the protection of pltfs.' business, & the action failed.—VINCENTS OF READING *v.* FOGDEN (1932), 48 T. L. R. 613 ; 76 Sol. Jo. 577.

808a. ——.]—PELLOW *v.* IVEY, No. 774a, *ante*.

PART V. SECT. 9, SUB-SECT. 10.

r i. —— *Five years—Twenty-five miles.*]—Applt., after being in the employment of resp. co. for about eleven months in its retail drug business in Flin Flon, signed a bond under seal in the sum of $5,000 which, after reciting that resp. co. had agreed to take him into its employment as a druggist, stated the condition of the bond was that if he should leave or be dismissed from resp.'s services he would not set himself up in like business or work for anyone else within 25 miles from Flin Flon within a period of five years after such leaving or dismissal. Applt. understood that his refusal to execute the covenant would lead to an early termination of his employment. About four years later resp. co. terminated the employment by giving applt. one month's notice, & soon after his dismissal, applt. entered service with another drug co. which had opened a drug store immediately adjoining resp.'s store :—*Held :* there was in this case legal consideration for the bond ; but, under the circumstances of this case, the bond was unreasonable & unenforceable.—MAGUIRE *v.* NORTHLAND DRUG CO., LTD., [1935] S. C. R. 412 ; 3 D. L. R. 521.—**CAN.**

PART V. SECT. 9, SUB-SECT. 13.

m i. —— *Five years—Twenty miles.*]—When a contract in restraint of trade is severable as to the areas covered thereby it may be recoverable & valid as to one part of the total area & unreasonable & invalid as to the remainder. Pltf., a physician practising in Nanaimo, who contracted to give professional service to certain miners there, engaged deft. to assist him in that work under an agreement which provided that on its termination deft. would not, for five years, practise in the city of Nanaimo or within a radius of 20 miles thereof. The agreement having been terminated, deft. commenced practice at Ladysmith, 16 miles from Nanaimo :—*Held :* that the restriction was valid as to the city of Nanaimo & invalid as to the area outside of it.—HALL *v.* MORE, [1928] 1 D. L. R. 1028 ; [1928] 1 W. W. R. 400 ; 39 B. C. R. 346.—**CAN.**

PART V. SECT. 9, SUB-SECT. 17.

697 i. *Validity or reasonableness of covenant—Covenant not to solicit employer's customers—For six months.*]—*Held :* the covenant was not unreasonable.—COOTE *v.* SPROULE (1929), 29 S. R. N. S. W. 578 ; 46 N. S. W. W. N. 180.—**AUS.**

699 i. *Construction of covenant "carrying on business."*]—Deft., who had been carrying on the business of selling & delivering milk to retail customers in the town of W., sold his business & the goodwill thereof to pltf. under an agreement which described the business as "dairy business" & in which deft. covenanted that he would not during five years from that date "either by himself or his agent carry on business of selling or delivering milk within the town of W." Deft. thereafter made daily sales of milk to one X., a retail milk vendor in W. The sales were made on the deft.'s premises in W., delivery of the milk to X. was taken there, & X. used it to augment the supplies distributed by him to his customers in the same town :—*Held :* said sales to X. constituted a breach of the covenant & pltf. was given damages & an injunction.—SNELL *v.* MIETTIENEN, [1931] 2 W. W. R. 209.—**CAN.**

PART V. SECT. 9, SUB-SECT. 25.

b (p. 72) i. ——.]—Deft. had carried on in Melbourne for some years a shoe-manufacturing business under a firm-name of which his own name formed part. By a clause in an agreement for the sale of the business & goodwill deft., as one of the vendors, undertook not to carry on or be engaged or concerned or interested in, or permit his name to be used in connection with any similar business within one hundred miles :—*Held :* the clause was not wider than was necessary to protect the goodwill, & was enforceable.—T. W. CRONIN SHOE PTY., LTD. *v.* CRONIN (1929), V. L. R. 244 ; [1929] Argus L. R. 213.—**AUS.**

n (p. 74) i. —— *Salesman—Twelve months—Within City of Toronto.*]—Covenant by salesman of cake & pastry that he would not during his employment, or within twelve months after its termination, drive a cake-wagon or sell or deliver or serve or solicit orders for any cakes, confectionery, pastry, or other bakery products within the City of Toronto, for himself or for any other person, firm or co. than pltfs. :—*Held :* reasonable as to time, but too wide as to locality & in other respects.—G. WESTON, LTD. *v.* BAIRD (1916), 37 O. L. R. 514.—**CAN.**

a (p. 75) i. *Laundry supply business—Validity of restraint—One year—Fifty-five miles.*]—CANADIAN LINEN CO., LTD. *v.* MOLE, [1937] 3 W. W. R. 324.—**CAN.**

aa. *Musician—Validity or reasonableness of covenant—Three years—Fifty miles.*]—Defts. entered into contracts of employment as members of pltf.'s orchestra, one of the terms of which was that they should not, within three years from the termination of such employment, enter into any similar engagements within fifty miles of Great Yarmouth, Redcar, Southport, New Brighton, or Belfast, these being towns in which defts. had previously played under pltf.'s direction. While defts. were playing as members of pltf.'s orchestra in a restaurant in Belfast, pltf. terminated their employment & they thereupon entered into an engagement with the proprietor of the same restaurant to play there on their own account. Pending the hearing of the action pltf. moved for an interlocutory injunction to restrain defts. from playing in the said restaurant in breach of the contracts aforesaid :—*Held :* the contracts were in undue restraint of trade & pltf. was not entitled to an interim injunction.—DOSSOR *v.* MONAGHAN, [1932] N. I. 209.—**IR.**

Part VI.—Goodwill.

834. *Add. Annotations :—As to* (1) **Consd.** *Re* John Sinclair, Ltd.'s Trade Mark (1932), 146 L. T. 417 ; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64. *As to* (2) **Consd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170 ; *Re* John Sinclair, Ltd.'s Trade Mark (1932), 146 L. T. 417.

880. *Add. Annotations :—As to* (3) **Consd.** Simpson *v.* Charrington & Co., [1934] 1 K. B. 64. **Refd.** Whiteman, Smith Motor Co. *v.* Chaplin, [1934] 2 K. B. 35.

901. *Add. Annotation :*—**Refd.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203.

908. *Add. Annotation :*—**Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

994. *Add. Annotations :*—**Consd.** Simpson *v.* Charrington & Co., [1934] 1 K. B. 64. **Refd.** Whiteman, Smith Motor Co. *v.* Chaplin, [1934] 2 K. B. 35 ; Charrington & Co. *v.* Simpson, [1935] A. C. 325.

Part VII.—Trade Unions.

954. *Add. Annotations :—As to* (1) **Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793. *As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

957. *Add. Annotation :—As to* (1) **Apld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1038. *Add. Annotation :—As to* (2) **Refd.** Upton *v.* Farmer (1930), 142 L. T. 526.

1044. *Add. Annotations :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

PART VI. SECT. 3, SUB-SECT. 1.

849 i. *Whether implied—On sale of business.*]—The question whether on the transfer of a business the goodwill itself passes is not to be decided in the negative merely because the word "goodwill" is not specifically mentioned ; but the fact of the passing of the goodwill may be inferred from the circumstances surrounding the transaction.—FALLS *v.* BLOCH, [1931] 2 W. W. R. 93.—**CAN.**

sd. ——.]—Even if *Trego* v. *Hunt*, [1896] A. C. 7, must be interpreted as going so far as to hold (& *semble* it does not so hold) that the vendor of the goodwill of a business cannot even in the capacity of servant for another party canvass the customers of the old firm, nevertheless, deft., who by the contract sued upon, sold his shares in pltf. co. to the individual pltfs., did not by said contract purport to transfer any goodwill. Such a contract in which the vendor does not expressly transfer the goodwill cannot be interpreted as having the same effect as a contract which does expressly transfer the goodwill unless the further provisions thereof make it capable of being so interpreted.—KNIGHT *v.* FAIRALL, [1934] 1 W. W. R. 131 ; 48 B. C. R. 61.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

so. *Sale of "going concern"—Whether claim against third party passes.*] —When, in a deed of sale, an autobus co. "conveys, sells, assigns & transfers to the purchaser the whole of its enterprise & undertaking as a going concern, including its goodwill & clientèle" & further specifically mentions as sold certain equipment & parking rights, such a sale includes a contract with a third party, as an accessory of & as forming part of the enterprise ; & a claim made in respect of said contract also forms part of the rights & interests assigned & transferred, together with any action already brought to enforce that claim. If, at the time of the sale, the action against the third party by the vendor be pending before the cts., the purchaser has the right to substitute himself to the pltf. vendor by way of intervention, & deal with the case as he thinks fit.—PROVINCIAL TRANSPORT CO. *v.* MONTREAL SIGHT SEEING TOURS, LTD., GENERAL MOTORS PRODUCTS OF CANADA, LTD. *v.* MONTREAL SIGHT SEEING TOURS, LTD., [1933] S. C. R. 109 ; 1 D. L. R. 591. —**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

962 i. *Common law legality.*]—A combination not to work is permissible ; but a combination to prevent others from working is unlawful. - JOHNSTON *v.* MACKEY, [1937] 1 D. L. R. 443.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

sb. *International labour union.*]—In an action by an unincorporated international labour union against an incorporated society of manufacturers to enforce an agreement in writing in the nature of a collective bargain, made in 1925 by way of settlement of disputes between local manufacturers & local labour unions, it was held the international labour union was an illegal society incapable because of its illegality of maintaining this action or any civil action in an Ontario Ct.—POLAKOFF *v.* WINTERS GARMENT CO., [1928] 2 D. L. R. 277 ; 62 O. L. R. 40.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

sd. *Agreement between union & employer—Who may enforce.*]—In the case of a "collective bargain" between a group or union of employees & an employer a workman who cannot show privity by representation, either authorised or adopted, or by statute cannot claim it, & has no right to call for the enforcement of the bargain. Where in making such an agreement the union assumes to speak on behalf of its members only, a non-member is not in a position to ratify it, although it states that it is made "for employees," & the employer intended that it should apply to all employees & has in fact so applied it. Nor since the subject-matter of such an agreement, *i.e.*, rates of wages, hours & conditions of labour, is not property the non-member cannot claim that it created any benefit for him which he can enforce as a trust.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1929] 4 D. L. R. 452 ; 2 W. W. R. 385 ; 38 Man. L. R. 283 ; *affd.*, [1931] 1 W. W. R. 49 ; 1 D. L. R. 645, P. C.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

d i. —— *Reinstatement — Claim by widow to benefit.*]—A member of a trade union having defaulted in payment of his dues & thereby having forfeited his membership was reinstated as a member & died a few months later :—*Held :* under the constitution & bye-laws of the union his default caused a loss of all the benefits of his membership prior to the date of his reinstatement so far as the right of his widow to claim against the death death fund was concerned ; &, since the period between his reinstatement & death was not long enough to entitle her, under the constitution, to set up such a claim, she could recover nothing.—HNIDEN *v.* HERR, [1931] 3 W. W. R. 546 ; [1932] 1 D. L. R. 276 ; 40 Man. L. R. 108.—**CAN.**

h i. —— *Whether common law action lies.*]—By sect. 52*i* of Part VIIA. of Industrial Arbitration Act, 1912, as inserted by the Amendment Act, 1918, No. 16, sect. 17, it is provided that certain persons "shall be entitled to be admitted to membership" of industrial unions. Pltf. applied for membership of deft. union but his application was refused. Pltf., thereupon, sued deft. union in an action at common law for damages resulting from its refusal to admit him to membership & recovered a verdict for £115. Upon appeal :—*Held :* no right of action at common law can be maintained for a breach of the provisions of sect. 52*i*.—MARTIN *v.* WESTERN DISTRICT OF AUSTRALASIAN COAL & SHALE EMPLOYEES' FEDERATION, WORKERS' INDUSTRIAL UNION OF AUSTRALIA (MINING DEPARTMENT) (1934), 34 S. R. N. S. W. 593 ; 51 N. S. W. W. N. 203.—**AUS.**

sd. *Validity of rule.*]—It is not unlawful for an industrial union of workers registered under Industrial Conciliation & Arbn. Act, 1925, to limit its membership by its rules. A rule which provides that admission to membership shall be subject to the consent of the executive of the union is valid.—WELLINGTON WATERSIDE WORKERS' INDUSTRIAL UNION OF WORKERS *v.* HARGREAVES, [1934] N. Z. L. R. 795 ; G. L. R. 679.—**AUS.**

1046. *Add. Citations:*—98 L. J. Ch. 293; 141 L. T. 83; 73 Sol. Jo. 190.

Add. Annotations:—**Apld.** Lamberton *v.* Thorpe (1929), 45 T. L. R. 420. **Reld.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309; Lumiansky *v.* Myddleton (1934), 78 Sol. Jo. 223; Stuart *v.* Haughley Parochial Church Council, [1935] Ch. 452; Wells *v.* Myddelton (1935), 78 Sol. Jo. 270; Stuart *v.* Haughley Parochial Church Council (1935), 104 L. J. Ch. 314.

1046a. —— **Meeting—Right of member to be present.**]—ROSS v. ELECTRICAL TRADES UNION (1937), 81 Sol. Jo. 650.

1047. Add the following paragraph & citations:—

Prior to the passing of the 1927 Act, various committees of a local authority passed resolutions, which were confirmed by the council, to the effect that certain of their employees be required to become members of one of the trade unions in the resolutions referred to. By that Act it was provided that it should not be lawful for any local or other public authority to make it a condition of the employment, or continuance in employment, of any person that he should or should not be a member of a trade union, & that any such condition should be void. Shortly after the passing of the Act instructions were given by a committee that only men belonging to a specified trade union should be employed in respect of certain casual labour; & an employee, who was dismissed accordingly, obtained a declaration in the county court that his dismissal was illegal. A member of the council thereupon brought forward a motion having for its object that instructions should be given that the resolutions of the committees should cease to be operative; but the motion was defeated:—*Held:* in the circumstances the ct. should declare that it was not lawful for the local authority to require any person, as a condition of employment or continuance in employment, to become or to be a member of a trade union.—A.-G. *v.* BIRKENHEAD CORPN. (1928), 93 J. P. 33; 27 L. G. R. 192.

1050. *Add. Annotation:*—**Reld.** Doyle *v.* White City Stadium, Ltd. (1935), 104 L. J. K. B. 140.

1051. *Add. Annotation:*—**Reld.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

1086. *Add. Citations:*—98 L. J. Ch. 401; 141 L. T. 294.

1087. *Add. Citations:*—[1929] 2 Ch. 58; 98 L. J. Ch. 323; 141 L. T. 178; 73 Sol. Jo. 206.

1087a. Funds collected by branches—Refusal to pay to union.]—ELECTRICAL TRADES UNION *v.* NIPPRESS (1937), 81 Sol. Jo. 629.

1092. *Add. Annotation:*—**Reld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1122. *Add. Annotation:*—*As to* (1) **Reld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1122a. —— **Not individual members—Where proceedings intra vires.**]—COTTER *v.* NATIONAL UNION OF SEAMEN, No. 1087, *ante*.

1127. *Add. Annotation:*—*As to* (1) **Reld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

PART VII. SECT. 4, SUB-SECT. 7.

1063 i. *Officers — Election — Construction of rules.*]—Pltf., a member & a trustee of a trade union, was duly nominated for the presidency, his nomination paper being perfectly regular & in order. The committee of management resolved, without any warrant under the rules of the union, to reject his nomination on the ground of personal unfitness for the office, & subsequently the returning officer declared the other candidates, H., one of defts., duly elected unopposed, no ballot having been held, H. himself presided at the meeting in question, which so resolved, without having afforded pltf. an opportunity of being heard. The meeting consisted of seven members, of whom only two had paid their subscriptions, although the rules required a quorum of five financial members. The rules provided for an attendance fee of 2*s.* 6*d.* for each member of the committee, of whom the president was an *ex officio* member, in respect of each committee meeting:—*Held:* the decision of the committee of management was invalid on the following grounds: namely, the committee had no power to reject pltf.'s nomination; H. was present, presiding at the meeting; the committee did not afford pltf. an opportunity of being heard on the question of his eligibility for office; & there was no quorum of qualified members.—CRADDOCK *v.* DAVIDSON, [1929] S. R. (Q.) 328.—**AUS.**

sk. *Honorary officer—Removal—Injunction.*]—On an application for an injunction to restrain a trade union from removing pltf. from his office as honorary chairman of one of the union's branches:—*Held:* penal powers of the kind sought to be enforced must be expressly conferred & could not be implied, & as the rules of the union contained no express power to remove honorary officers from their positions, the proceedings of the committee & sub-committee were *ultra vires*, & pltf. was entitled to the relief sought.—O'NEILL *v.* TRANSPORT & GENERAL WORKERS' UNION, [1934] I. R. 634.—**IR.**

sn. *Secretary—Misconduct—Attempt to influence ballot for officers.*]—The rules of a trade union by rule 22 provided that the secretary should not be removed from office save for fraud, misconduct, or inefficiency. On an annual election of officers of the union the secretary had sent out to members with the ballot papers a leaflet bearing his signature & suggesting the candidates for whom they should vote. At a later date the members of the union, at a meeting at which the secretary was present, terminated his services:—*Held:* the secretary, in sending out to members the leaflet with the ballot papers for the annual election of officers of the union, was guilty of misconduct of such a nature as to warrant his dismissal.—ROPER *v.* COL-; [1935] Q. S. R. 1.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

c i. —— *Claim based on arbitration decree.*]—The rules of a master plumbers' assocn. provided that members who tendered successfully for contracts should pay a percentage on these contracts to the funds of the assocn. A claim made by the assocn. against a member in terms of the rules was disputed by him, & a minute of reference was entered into by the parties referring the matter to arbitration & agreeing to abide by & implement the arbiter's decree, & consenting to registration & execution. The arbiter deemed in favour of the assocn. Thereafter the member was sequestrated, & the assocn., founding on the decree-arbitral, lodged a claim in the sequestration, which his trustee in bankruptcy rejected, in respect that, under Trade Union Act, 1871, s. 4, it was unenforceable:—*Held:* while the original claim could not have been entertained in a ct. of law in respect that it was based on an agreement excluded by sect. 4, no such restriction affected the claim here in question, which was a claim based upon a new & independent agreement by the parties to arbitrate & to implement the arbiter's decision—EDINBURGH MASTER PLUMBERS' ASSOCN. *v.* MUNRO, [1928] S. C. (Ct. of Sess.) 565.—**SCOT.**

PART VII. SECT. 5, SUB-SECT. 2.—B.

1116 i. —— *Right to benefit—Construction of rule.*]—Pltf. was a member of the Amalgamated Society of Lithographic Printers. Having attained the age of sixty years, he was entitled, under the rules of this Society, to receive superannuation benefit, provided that he had ceased to follow any employment connected with the trade of lithographic printing, or provided that he was "not practically working at the trade or under the rules of the Society." Pltf., having been employed for twenty-five years by a co. of wholesale stationers as foreman of their lithographic department, was promoted to the position of general manager of their entire business. In this capacity he supervised all their departments, including the lithographic department. The Society contended that he was still working at the trade of a lithographic printer:—*Held:* pltf. had ceased to follow any employment connected with the trade, & was not practically working at the trade, within the meaning of the rules of the Society, & he was accordingly entitled to superannuation benefit.—MCCORD *v.* SPROAT, [1931] N. I. 119.—**IR.**

PART VII. SECT. 5, SUB-SECT. 3.

1123 iv. ——.]—BRENTALL *v.* HETRICK, [1928] N. Z. L. R. 788.—

1147. *Add. Annotation :*—**Apld.** R. *v.* Bedwellty Urban District Council, *Ex p.* Price, [1934] 1 K. B. 333.

1157a. —— —— **Continuing offence.**]—Two officers of a trade union were jointly charged with wilfully withholding moneys of the trade union. It was proved or admitted that the whole of the money had been in the possession of one or other of them, but it was contended that the money was not in their possession at the date of the charge, & that that fact was a necessary ingredient of the offence, & further that the information was out of time :—*Held :* the offence of withholding money referred to in Trade Union Act, 1871 (c. 31), s. 12, was a continuing offence ; & it was not necessary to prove that the money was in the possession of the two officers at the date of the charge if there was evidence that money belonging to the trade union had been in their possession & was still being withheld.—BEST *v.* BUTLER & FITZGIBBON, [1932] 2 K. B. 108 ; 101 L. J. K. B. 759 ; 147 L. T. 99 ; 96 J. P. 303 ; 48 T. L. R. 481 ; 30 L. G. R. 315 ; 29 Cox, C. C. 482, D. C.

1164. *Add. Annotations :—As to* (1) **Refd.** Place *v.* Searle, [1932] 2 K. B. 497 ; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825 ; Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. *Generally,* **Refd.** Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293.

1179. *Add. Annotations :—As to* (1) **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1 ; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863 ; Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

1180. *Add. Annotation :*—**Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

1183. *Add. Annotation :—As to* (1) **Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863. Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. *As to* (2) **Refd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

1186. *Add. Annotations :—As to* (1) **Refd.** Place *v.* Searle, [1932] 2 K. B. 497 ; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589 ; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

1194. *Add. Annotation :—As to* (1) **Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

1204. *Add. Annotations :*—**Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589 ; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

1215. *Add. Annotation :*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1233. *Add. Annotation :*—**Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

1234. *Add. Annotation :*—**Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

1235a. —— ——.]—A trade assocn. which by its constitution is entitled to put on a stop list the name of a member or other person who has infringed its rule forbidding the sale of articles at other than the list prices relevant thereto, may, instead of putting the name of that member or other person on the stop list, require him, in furtherance of its trade interests, to pay a sum of money within reasonable limits. To ask for such payment in those circumstances is not in itself a demand of money with menaces & without reasonable or probable cause within Larceny Act, 1916 (c. 50), s. 29 (1) (*i*) :—*Held :* in a criminal charge under sect. 29 (1) the absence of reasonable or probable cause is a question of fact for the jury ; but, if the cause is reasonably capable of being associated with the promotion of lawful business interests, the judge should not allow the case to go to the jury if there is no evidence of the accused's intention going beyond such lawful business interests.—THORNE *v.* MOTOR TRADE ASSOCN., [1937] A. C. 797 ; [1937] 3 All E. R. 157 ; 106 L. J. K. B. 495 ; 157 L. T. 399 ; 53 T. L. R. 810 ; 81 Sol. Jo. 476 ; 26 Cr. App. Rep. 51, H. L.

1237. *Add. Annotations :—As to* (3) **Refd.** Paul (R. & W.), Ltd. *v.* Wheat Commission (1935),

PART VII. SECT. 6.

s1. *Hindering provision of public service — Whether indictable.*]—*Held :* the offence created by sect. 30K of Crimes Act, 1914–1926, is not an indictable offence, & the offence can be tried in a ct. of summary jurisdiction.— R. *v.* ARCHDALL & ROSKRUGE, *Ex p.* CARRIGAN, & *Ex p.* BROWN (1928), 41 C. L. R. 128.—**AUS.**

PART VII. SECT. 7, SUB-SECT. 3.—A.

1184 vi. ——.]—Pltf., a tally clerk, was employed by Westralian Farmers, Ltd., to assist in the loading of the steamer "B." Pltf. alleged that deft. union & the other defts., W. & M., who were respectively the president & the secretary of the union, combined & conspired to induce Westralian Farmers, Ltd., to dismiss pltf. from his employment & to cease to employ him. There had been a dispute between deft. union & the Australian Workers' Union, & the members of deft. union had resolved that they would not work on the wheat stacks at Geraldton. Pltf., after being elected a member of the deft. union in Nov. 1926, accepted work on the wheat stacks : — *Held :* (1) there was a common understanding among the majority of the members of the union on the jetty that morning to carry out the policy of the union not to work with a man who had worked on the wheat stacks ; (2) such common understanding was brought about by defts., W. & M. ; (3) the members of the union combined to enforce compliance with their demand that their employer should terminate its contract with pltf. ; (4) such combination was unlawful in that the real intention was to deprive pltf. of his contract & thereby injure him ; & (5) pltf. was entitled to damages & an injunction.—COFFEY *v.* GERALDTON LUMPERS' UNION (1929), W. A. L. R. 33.—**AUS.**

1184 vii. ——.]—It is an actionable wrong for members of a trade union wilfully to procure an employer to break a contract of employment with an employee, even though the object in procuring the breach is not to cause damage to the employee, but is to forward the trade interests of the members of the trade union.—KLEIN *v.* JENOVES & VARLEY, [1932] O. R. 504 ; 3 D. L. R. 571.—**CAN.**

1190 vii. —— —— ——.]—Pltf., who was not a member of deft. union, took a sub-contract under one T. to supply all the labour, but not the material, for the brickwork & masonry work upon a building being erected by T. By a rule of the union no member was to be allowed to work on any sub-contract taken from a building contractor where the sub-contract was for labour only. Two members of the union saw T. & told him that if he did not get rid of pltf. the bricklayers working for pltf. would be withdrawn, they being members of the union. Pltf., when T. told him this, said he would give up the contract, & did so ; subsequently he sued the union for damages. The two members above referred to & a third were added as defts. :—*Held :* what was done was done for the purpose, not of injuring pltf., but of forwarding or defending the trade of the members of the union, & notice that the members of the union would be warned of the situation was not a threat which was unlawful & did not give any right of action to pltf.—HAY *v.* ONTARIO BRICKLAYERS LOCAL UNION NO. 25, [1929] 2 D. L. R. 336 ; 63 O. L. R. 418.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 1.

1237 x. ——.]—Three defts., officials of a union, were charged with doing an act in the nature of a strike, in that they instigated certain employees to

152 L. T. 352. *Generally*, **Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

1264. *Add. Annotations :—As to* (1) **Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.; Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

1295. *Add. Annotation :—As to* (1) **Apld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1297a. —— **Holding "show cards" on colliery premises.**]—POWELL DUFFRYN STEAM COAL CO., LTD. *v.* EDWARDS (1935), 79 Sol. Jo. 860.

1298. *Add. Annotations :*—**Consd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450. **Refd.** Green *v.* Berliner, [1936] 1 All E. R. 199.

Part VIII.—Trade Protection Societies.

1309. *Add. Annotation :*—**Distd.** R. *v.* General Medical Council, [1930] 1 K. B. 562.

do an act in the nature of a strike, namely, to discontinue their employment in pursuance of an agreement made by the said employees to compel their employer, M., to comply with a demand by the employees to dismiss certain non-unionists :—*Held :* as there was no evidence that the agreement between the employees was entered into with intent to compel or induce the employer to comply with a demand made by the employees that non-unionists should be dismissed, the offence was not proved.—*In re* MULLER & WILLIAMS, [1927] S. A. S. R. 353.—**AUS.**

PART VII. SECT. 8, SUB-SECT. 2.

f i. —— *Criminal liability.*]—R. *v.* HOLOWASKAWE (1913), 24 O. W. R. 397; 24 Can. Crim. Cas. 224.—**CAN.**

PART VII. SECT. 10, SUB-SECT. 2.

1290 i. *Trustees of union—Extent of liability.*]—The liability imposed by Trades Disputes Act, 1906 (c. 47), s. 4 (1), on the trustees of a trade union is confined to matters in which some question is raised directly involving the property real or personal vested in them, & does not extend to cases where the property vested in them has not been instrumental in injuring pltf.—DRENNAN *v.* BEECHEY, TRUSTEES OF TRANSPORT & GENERAL WORKERS' UNION & MAGILL, [1935] N. I. 74.—**IR.**

c i. ——.]—In an action in which the One Big Union & the Winnipeg Central Labour Council were (*inter alia*) made defts. :—*Held :* the action was not properly constituted since the statement of claim did not allege that said bodies were incorporated or otherwise legal entities entitled to sue & be sued in their own names, & although it did allege that the former of them was "an assocn. or partnership" with funds or property in which pltfs. claimed that the members have a partnership interest & that the latter was "an organisation forming a party or department of the One Big Union," these allegations did not show that they were partnerships within the legal definition of that term.—SYKES *v.* ONE BIG UNION, [1934] 1 W. W. R. 655; 2 D. L. R. 753; 42 Man. L. R. 24.—**CAN.**

TRADE MARKS, TRADE NAMES AND DESIGNS.

Part I.—Trade Marks.

5. *Add. Citation :*—[1929] 1 Ch. 113.
Add. Annotation :—**Refd.** *Re* Notox, Ltd., Application by, for a Trade Mark, *Re* Inecto Incorporated (1930), 48 R. P. C. 168.

15a. —— ——.]—Applts. were the registered owners of the trade mark "Livron." They had in fact made this word up from the words "liver" & "iron." There is, however, & was at the date of registration, a town in France called Livron. It was a town of some 4,000 inhabitants where the resps. had a factory & carried on a business similar to that of applts. :—*Held :* (1) the evidence was such that the Registrar ought to have refused registration because the mark was calculated to deceive ; (2) the mark was not adapted to distinguish the goods of the proprietor ; (3) *per* Sir WILFRID GREENE, M.R., & MACKINNON, L.J., the word "livron" was a geographical word & could not, therefore, be an invented word.
Per ROMER, L.J. : A word with no signification whatever to the ordinary Englishman cannot be a geographical word, & the fact that such a word is in fact a geographical name does not prevent it from being an invented word.—*Re* SOCIÉTÉ DES USINES CHIMIQUES RHÔNE-POULENC'S APPLICATION, *Re* "LIVRON" OF BOOTS PURE DRUG CO., LTD., TRADE MARK, [1937] 4 All E. R. 23 ; 53 T. L. R. 1005 ; 81 Sol. Jo. 667 ; *sub nom. Re* BOOTS PURE DRUG CO., LTD. TRADE MARK "LIVRON," SOCIÉTÉ DES USINES CHIMIQUES RHÔNE-POLENC'S APPLICATION, 157 L. T. 225 ; 106 L. J. Ch. 352, C. A.

20. *Add. Annotations :—As to* (2) **Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99 ; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

25a. ——.]—Applications were made in the joint names of a Canadian Co. & an English Co. for the registration in respect of common soap, class 47, & in respect of perfumed toilet soap, shaving cream, shaving soap & shampoos, class 48, of a trade mark consisting of the word "Palmolive," & for the registration in respect of toilet soap (perfumed) of [illegible] the first consisting of the word "Palmolive" shown in gilt lettering on a black band across a representation of a green crêpe paper background, but unlimited as to colours, & the second consisting of the word "Palmolive" shown on a black band & also across a seal at the end of the band. The applications, which had been advertised before acceptance, were opposed by Lever Brothers, Ltd., & others, on behalf of themselves & all other members of the perfumery manufacturers' section of the London Chamber of Commerce :—*Held :* the evidence showed that the words "Palm" & "Olive" had been used in the trade to describe soap containing palm oil & soap containing olive oil respectively ; the word "Palmolive" was descriptive of appcts.' soap containing palm oil & olive oil, & would be deceptive if used upon soaps not containing those oils ; in spite of the evidence showing that to a large number of persons the word "Palmolive" did in fact distinguish appcts.' goods, the word was not adapted to distinguish within sect. 9 (5) ; the mark consisting of the word "Palmolive" in gilt lettering on a black band across a representation of a green crêpe paper background might, if limited as to colours, be regarded as satisfying the provisions of sect. 9, provided that any right to the exclusive use of the word "Palmolive" were disclaimed ; & the

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PART I. SECT. 1.

sa. *To what goods applicable.*]—The words "trade mark" have reference to marks applied to goods that are the subject of trade, trade signifying the business of exchanging commodities by barter or by buying & selling for money, & not in the sense of the word as applied to the mechanical arts.—JOURNAL OF COMMERCE PUBLISHING CO., LTD. *v.* RECORD PUBLISHING CO., LTD., [1929] Ex. C. R. 168.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

3 v. ——.]—(1) An importer of goods may have a mark of his own for use in the sale of such goods & disregard the exporter's mark, but he cannot register or appropriate to himself the exporter's mark, the mark of the producer of the goods which he imported, though he may use it in connection with such goods imported with such mark.
(2) It is not necessary for the validity of a trade mark that the public should know the name of the proprietor of a trade mark, but in the public mind such mark meant a particular manufacture.—CONTINENTAL OIL CO. *v.* CONSUMERS' OIL CO., LTD., [1932] Ex. C. R. 136.—**CAN.**

r i. —— ——.]—*Held :* the word "Zipper" having become descriptive of slide fasteners generally & the public having come to associate this word with that type of fasteners, it is not a proper word to be registered as a trade mark.—LIGHTNING FASTENER CO., LTD. *v.* CANADIAN GOODRICH CO., LTD., [1931] Ex. C. R. 90 ; 2 D. L. R. 625 ; *affd.*, [1932] S. C. R. 189 ; 1 D. L. R. 297.—**CAN.**

sb. *Official control or guarantee signs or stamps.*]—The amendment of the Trade Mark & Designs Act passed in 1928, adding paragraph (*g*) to sect. 11 of R. S., 1927, c. 201, was intended as a partial adoption of the terms of Article 6 (*ter*) of the Convention for the protection of Industrial Property, signed at The Hague in 1925, & to which Canada was a signatory. The effect of the addition of paragraph (*g*) was merely to add to the grounds upon which the Minister might refuse to register a mark. The fact that the Minister is now empowered, by said paragraph, to refuse to register trade marks which consist in whole or in part of "official control or guarantee signs or stamps" adopted by another country, is indicative of the fact that prior to 1928 it was not intended by the Trade Mark Act that a trade mark might be refused registration upon the ground that it consisted of "official control & guarantee signs or stamps."—BIRMINGHAM JEWELLERS & SILVERSMITHS' ASSOCN. *v.* STOCK, [1929] Ex. C. R. 175.—**CAN.**

sd. *Name of newspaper.*]—The name of a newspaper is not a proper subject of a trade mark susceptible of being registered under the provisions of the Trade Mark & Designs Act.—JOURNAL OF COMMERCE PUBLISHING CO., LTD. *v.* RECORD PUBLISHING CO., LTD., [1929] Ex. C. R. 168.—**CAN.**

sg. "*Royal.*"]—*Held :* Unfair Competition Act does not prohibit the use of the word "Royal" in a trade mark. The use of the word "Royal" in connection with tobacco, cigars, cigarettes & cigarette papers is not misdescriptive of the character or quality of the wares, or of the conditions of their production or place of origin.—HOUDE (B.) CO., LTD. *v.* COMR. OF PATENTS, [1934] Ex. C. R. 149.—**CAN.**

si. *Under Unfair Competition Act—Several applicants—Who entitled to registration.*]—Priority in date of application is not the sole determining factor in deciding which of two or more appcts., under Unfair Competition Act, is entitled to registration ; the words "first uses or makes known in Canada" in sect. 4 (1), must be considered when determining priority rights between rival appcts.—CONTINENTAL OIL CO. *v.* PATENTS COMR., [1934] Ex. C. R. 244 ; [1935] 1 D. L. R. 581.—**CAN.**

objection taken to the applications on the ground of the presence upon the register at the date of the applications of three marks, consisting of or comprising the word "Palmolive," & registered in the name of a different proprietor, would have been removed if the registrations of those prior marks had been subsequently cancelled. Observations were made as to what constitutes a "joint adventure." The applications were refused.—*Re* PALMOLIVE TRADE MARK (1931), 49 R. P. C. 269.

27a. Addition of diminutive suffix.]—The word "Consolette," as applicable to a gramophone model intermediate in size between a table & a pedestal or "console" model is not an invented word capable of being registered as a trade mark under Trade Marks Act, 1905 (c. 15), s. 9 (3), as it is merely a diminutive form of the word "console," which is in common use in the gramophone trade. The mark, therefore, was expunged from the register.—S. M. T. GRAMOPHONE CO., LTD. *v.* ITONIA GRAMOPHONES, LTD. (1931), 47 T. L. R. 324; 48 R. P. C. 309.

32. *Add. Annotations:*—**Consd.** S. M. T. Gramophone Co. *v.* Itonia Gramophones, Ltd. (1931), 47 T. L. R. 324. **Refd.** *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

36. *Add. Annotations:*—**Apld.** S. M. T. Gramophone Co. *v.* Itonia Gramophones, Ltd. (1931), 47 T. L. R. 324; *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

53. *Add. Annotation:*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

54. *Add. Annotation:—As to* (2) **Consd.** *Re* Hans Lauritzen's Application (1931), 48 R. P. C. 392.

57. *Add. Annotation:—Generally*, **Refd.** *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

64a. ——.]—On Mar. 10, 1930, an application was made to register in Part B of the Register of Trade Marks the word "Brick" as a trade mark in respect of a powder manufactured by appct. for use as a boiler-water purifier. The powder was supplied sometimes in the form of bricks & sometimes in powder form. The application was refused by the registrar, on the grounds (*a*) that the mark was not "capable of distinguishing" the goods of appct.; (*b*) that it might be calculated to deceive; (*c*) that it too nearly resembled a mark "Brico" already registered for similar goods. Appct. appealed to the ct.:—*Held:* the registrar had correctly decided that the word "Brick" was not "capable of distinguishing" appct.'s goods within Trade Marks Act, 1919 (c. 79), s. 2 (2), & there was too great a similarity between the word "Brick" & the mark "Brico." The appeal was dismissed with costs.—*Re* HANS LAURITZEN'S APPLICATION (1931), 48 R. P. C. 392.

67. *Add. Annotations:—As to* (2) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99. *Generally*, **Refd.** Bale & Church, Ltd. *v.* Sutton Parsons & Sutton & Astrah Products (1934), 51 R. P. C. 129; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

67a. —— **In market sought.**]—William Grant & Sons, Ltd., applied for registration in Part B. of the register in respect of "Scotch whisky for export" of a trade mark consisting of the word "Grant's" standing alone & they claimed user since 1903. The application was opposed by persons or cos. whose names included the name "Grant" on the ground that the mark was not distinctive in the export market. The registrar refused to register the mark on the ground that appcts. had failed to prove the mark capable of distinguishing their whisky in the market for which registration was sought. Appcts. appealed to the ct. At the hearing of the appeals appcts. intimated to the ct. that they wished to limit their application to "blended Scotch whisky (in bottle only) for export." Thereupon the opponents offered to withdraw their oppositions & the appeal was ordered to stand over generally with liberty to appcts. or the registrar to apply to restore the appeal & appcts. were ordered to pay the costs of the opponents. The registrar having intimated to appcts. that, in view of the limitation offered, he did not intend further to oppose the application, appcts. applied to the ct. for further directions in the matter. The registrar was ordered to proceed with the application & appcts. were ordered to pay the costs of the registrar.—*Re* GRANT & SONS, LTD.'S, APPLICATION (1936), 53 R. P. C. 467.

74. *Add. Annotation:—As to* (2) **Refd.** *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

77a. —— ——.]—The Liverpool Electric Cable Co., Ltd., applied to register the words "Liverpool Cables" in Parts A. & B. of the register in respect of electric cables. The applications were refused on the grounds that, although evidence went to show that those words indicated to the trade the co.'s electric cables, the word "Liverpool" was not *primâ facie* capable of distinguishing those cables or of becoming distinctive of them; that Liverpool was one of a class of geographical names which were of such importance that the names ought not to be

PART I. SECT. 2, SUB-SECT. 5.

49 ii. ——.]—The words "Shredded Wheat" are common descriptive words & the use of the name "Kellogg's Shredded Whole Wheat Biscuit" cannot therefore be restrained.—CANADIAN SHREDDED WHEAT CO. *v.* KELLOGG CO., [1936] 4 D. L. R. 760; O. R. 613.—**CAN.**

sp. *Word referring to character & quality—Not registrable.*]—In an action for infringement of trade mark:—*Held:* the word "Crunch" in relation to confectionery was a word having a direct reference to the character & quality of the goods in respect of which it had been registered, & was not therefore capable of registration under sect. 82 of Industrial & Commercial Property (Protection) Act, 1927.—FRY-CADBURY (IR.), LTD. *v.* LYNNOTT, [1935] I. R. 700.—**IR.**

PART I. SECT. 2, SUB-SECT. 6.—A.

sb. *Ordinary word misspelt & hyphenated—"Bar-b-q"—For barbecue—Not registrable.*]—BROOKER *v.* COLLINS, [1932] 2 D. L. R. 139; O. R. 189.—**CAN.**

sc. *Must distinguish goods of person* . . .]—The word "Leathermac" which had been registered in Part B. of the register of trade marks as the trade mark of appct.'s goods, viz., real leather outer garments, real suède outer garments, & imitation suède outer garments held not to be capable of distinguishing the goods as those of appct., & therefore the register was ordered to be rectified by the cancellation of the registration of that trade mark.—RICHARDSON *v.* WEINER, [1936] I. R. 32.—**IR.**

registered to any one trader; that the word "Liverpool" describes the common characteristic of vast quantities of goods, namely that they come from Liverpool, & that phrase "Liverpool cables" therefore meant, not the cables of the applicant co., but cables manufactured or dealt in at Liverpool:—*Held:* the Registrar had proceeded upon the right grounds, & that his decisions were correct; the Registrar is not bound to accept an application in Part B. to register upon proof of user or that the mark is in fact distinctive; it is part of his duty to consider as a judicial officer applications put before him; he may refuse registration if not satisfied that the proposed mark is capable of distinguishing; in considering whether a geographical name is registrable, both the locality & the goods must be taken into consideration; & the name of such an important commercial centre as Liverpool, even though it may in fact be distinctive of the goods in respect of which it is sought to register it, is not registrable.—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'S APPLICATIONS (1928), 46 R. P. C. 99, C. A.

Annotations:—**Consd.** *Re* Hans Lauritzen's Application (1931), 48 R. P. C. 392; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975. **Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493; *Re* Clark, Son & Morland, Ltd.'s Trade Mark, [1937] 2 All E. R. 594.

78a. —— **Addition of "s."**]—Applts., who traded in Glastonbury in articles made of sheepskin, registered the word "Glastonburys" as a trade mark. Resps. who dealt in similar goods in the same town applied to rectify the register of trade marks by expunging this mark on the grounds that it was a geographical mark & not adapted to distinguish the goods of applts. & was calculated to lead to deception. At the trial it was held that the addition of the letter "s" to Glastonbury did not alter its geographical character, & that the evidence fell very far short of what was required to show that the mark was adapted to distinguish the goods of applts. & that the register should be rectified by expunging the mark. Applts. appealed to the Ct. of Appeal:—*Held:* (1) the word "Glastonburys" had become distinctive of the goods of applts., & was rightly registered as a trade mark; (2) to exhibit to an affidavit a large number of letters received as answers to a circular is an improper method of bringing such evidence before the ct. The correct method is to notify the other side that these answers have been received & can be inspected.—*Re* CLARK, SON & MORLAND, LTD.'S, TRADE MARK, [1937] 2 All E. R. 594; 54 R. P. C. 134, C. A.

79. *Add. Annotation:*—**Refd.** *Re* Liverpool, Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

99. *Add. Annotation:*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

113a. ——.]—F. H. & Co., Ltd., applied for registration in Part B. of the Register of a label bearing the words "Hewthorn's Gaseous Black Drink," together with other matter, in respect of "A veterinary medicine," claiming user since 1897. The application was opposed by D., Son & H., Ltd., on the ground that the mark would conflict with the opponents' registered trade mark "Gaseous Fluid." The Assistant-Comptroller, acting for the Registrar, decided to register the mark, under sect. 21 of 1905 Act, subject to the limitation to the colours red, white & blue, as shown in the representation on the form of application. The opponents appealed. At the hearing of the appeal the opponents contended that the part of the mark consisting of the words "Gaseous Black Drink" had not been used for the purpose of indicating the proprietorship of the goods, within sect. 2 of 1919 Act, but merely as a description of the goods, & therefore the mark as a whole had not been used so as to fulfil the requirements of the sect.:—*Held:* the conclusion of the Assistant-Comptroller that the mark, with the limitation as to colour, was properly registrable under sect. 21 of the principal Act was correct, & the argument of the opponents was ill-founded, the mark as a whole having been used since 1897 for the purpose of indicating proprietorship. The appeal was dismissed with costs.—*Re* HEWTHORN & CO., LTD., APPLICATION FOR REGISTRATION OF A TRADE MARK (1934), 52 R. P. C. 15.

113b. ——.]—Appcts. applied to register the word "sheen" in class 23 in respect of machine twist being sewing cotton. After hearing appcts. but before delivering his grounds for refusal, the registrar requested the Keeper of the Cotton Marks to consult the Trade & Merchandise Marks Committee of the Manchester Chamber of Commerce as to whether it was desirable to register this word. Neither the question nor the answer was communicated to appcts. The application was refused on the grounds that "sheen" was one of a class of words which never could become distinctive of the goods of appcts. but should be left free for the whole trade to use. On appeal to the judge it was found that the word "sheen" had in fact become distinctive of the goods of appcts. & the registrar was directed to proceed with the application. The registrar appealed:—*Held:* (1) there was sufficient evidence of the distinctiveness of the word "sheen" to justify the judge's finding that it was distinctive & therefore registrable; (2) it is irregular for the registrar to seek the opinion of the Trade &

PART I. SECT. 2, SUB-SECT. 6.—E.

se. *Coloured strand in rope.*]—The trade mark in question was a specific trade mark to be applied to the sale of wire ropes, & consisted of a yellow-coloured strand running through the length of such ropes:—*Held:* a coloured strand woven into a wire fabric is a "mark" which may be used by any person carrying on a manufacture of wire rope for the purpose of distinguishing the article manufactured or produced or offered for sale by him from that of any other manufacture; & the same was a "mark" within sect. 5 of Trade Mark & Designs Act.—WRIGHTS' ROPES, LTD. *v.* BRODERICK & BASCOM ROPE CO., [1931] Ex. C. R. 143; 4 D. L. R. 368.—CAN.

sf. *Numerals.*]—*Held:* the registered trade marks "No. 360," "No. 361," "No. 90" & "No. 99," applied to the upper & lower blades of an animal clipping machine, & not in its original use intended as a trade mark, & being without distinctiveness, are not properly trade marks within Trade Mark & Designs Act & should be expunged. There can be no distinctiveness, as a rule, in a numeral or numerals alone, although conceivably they might be so arranged, selected or used, that they would lose, partially at least, the characteristic of numerals, & acquire a distinctiveness qualifying them

Merchandise Marks Committee of the Manchester Chamber of Commerce after the close of the hearing of an application to register a trade mark.—*Re* COATS (J. & P.), LTD.'S APPLICATION, [1936] 2 All E. R. 975; 155 L. T. 127; 80 Sol. Jo. 611; 53 R. P. C. 355, C. A.

Annotations:—As to (1) **Refd.** *Re* Clark, Son & Morland, Ltd.'s Trade Mark, [1937] 2 All E. R. 594, C. A.; Société des Usines Chimiques Rhône-Poulenc Application, *Re*, [1937] 1 All E. R. 145.

114. *Add. Annotations:*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975. **Refd.** Bale & Church, Ltd. *v.* Sutton Parsons & Sutton & Astrah Products (1934), 51 R. P. C. 129; *Re* Clark, Son & Morland, Ltd.'s Trade Mark, [1937] 2 All E. R. 594.

138. *Add. Annotations:*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

152a. —— **User in foreign country.**]—Notox, Ltd., applied to register the word "Notox" as a trade mark for hair dye, etc. The application was opposed by an American co. who alleged user by them of the mark in America & abroad. The opponents had also, four days before the application, sent out a thousand circulars to hairdressers in London advertising their goods under the mark. Appct. co. had been incorporated about nine months before the application & had made some sales under the mark. The Assistant-Comptroller decided to register the mark. The opponents appealed:—*Held:* the appct.'s right to registration was not affected by the opponents' user abroad, & the thousand circulars sent out by the opponents were not sufficient to cause a liability to confusion such as to destroy the right to registration. The appeal was accordingly dismissed.—*Re* NOTOX, LTD., APPLICATION BY, FOR A TRADE MARK, *Re* INECTO INCORPORATED (1930), 48 R. P. C. 168.

152b. —— **False trade description—"Norwegian sardines."**]—In 1907 Concord Canning Co. registered a trade mark consisting of a label which contained the words "Norwegian Sardines" in respect of "canned sardines preserved in oil." In 1915 it was held that the term "Norwegian Sardines" was a false trade description within Merchandise Marks Act, 1887. In 1932 an application was made to rectify the register by expunging the mark, or, alternatively, by deleting the words "Norwegian Sardines" therefrom. An order was made that the register should be rectified by deleting the words "Norwegian Sardines" from the mark.—*Re* CONCORD CANNING CO.'S TRADE MARK (1932), 49 R. P. C. 323.

162. *Add. Annotation:*—**Consd.** *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

166a. ——.]—*Re* HANS LAURITZEN'S APPLICATION, No. 64a, *ante*.

166b. —— **Discretion of Court of Appeal.**]—Magdalena Securities, Ltd., a Canadian Co., applied to register the word "Ucolite" as a trade mark for partially coked coal. The application was opposed by Low Temperature Carbonisation, Ltd., on the ground that the mark would conflict with the opponents' registered trade mark "Coalite." The registrar decided to register the mark. The opponents appealed. Leave was given to them to take the further objection, which by agreement had been treated as a ground of objection before the registrar, that appcts. had at the date when registration was applied for no *bonâ fide* intention to use the mark as a trade mark. At the hearing of the appeal, some of the declarants were cross-examined & further evidence was adduced:—*Held:* (1) in a case where the ct. has materials before it which were not before the registrar, the ct. has to exercise its discretion under sect. 8 (2) of Trade Marks Act, 1919, although generally speaking it ought to have considerable regard to the decision of the registrar, taking into account the fact of his special experience; the appcts. had failed to show affirmatively that the mark was not calculated to deceive, & therefore the application ought to be disallowed; (2) on the evidence there was within Trade Marks Acts no *bonâ fide* intention on the part of appcts. at the date of the application to use the mark applied for upon or in connection with the goods in question for the purpose of indicating that they were the goods manufactured by appcts. The appeal was accordingly allowed.—*Re* MAGDALENA SECURITIES, LTD., APPLICATION FOR REGISTRATION OF A TRADE MARK, *Re* LOW TEMPERATURE CARBONISATION, LTD., OPPOSITION BY (1931), 48 R. P. C. 477.

167. *Add. Annotation:—As to* (2) **Consd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1933), 149 L. T. 199.

176. *Add. Annotation:*—**Consd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 621.

PART I. SECT. 2, SUB-SECT. 7.

k i. ——.]—By its action, petitioner, owner of the trade marks "Big Ben," "Baby Ben," "Pocket Ben," "Glo-Ben" & "Ben Hur," seeks to have the trade mark "Bentima," owned & registered by deft., expunged on the ground that the same was liable to confuse & deceive the public:—*Held:* as the trade marks in question consisted of distinctive names & were printed in such a conspicuous place & manner, there could not be any confusion as to which was which, & the public, even the unwary & incautious purchaser, could not be made or led to purchase the goods of deft. for that of pltf., deft.'s trade mark was not liable or calculated to confuse or deceive the public, & was properly registered & should not be expunged.—WESTERN CLOCK CO. *v.* ORIS WATCH CO., LTD., [1931] Ex. C. R. 64; [1931] 2 D. L. R. 775; *on appeal*, [1931] 2 D. L. R. 877; S. C. R. 397.

PART I. SECT. 2, SUB-SECT. 8.—A.

173 i. *When registration allowed—Goods of different description.*]—Petitioner, owner of the specific trade-mark "Zipper" to be used in connection with the manufacture & sale of footwear, by its petition, asked that the trade mark of resp. consisting of the same word "Zipper" as applied to the sale of corsets or corsets & brassières combined, be expunged:—*Held:* there was no likelihood of confusion in the mind of the public, the registration of resp.'s mark was not calculated to deceive the public into purchasing the goods of resp. believing them to be those of petitioner, & the petition herein was refused. Petitioner, having chosen to limit its mark to footwear, could not now ask that resp.'s mark be expunged, on the ground that petitioner may at some future time make or vend corsets, or corsets combined with brassières, wherein the sliding fasteners are employed.—CANADIAN GOODRICH CO., LTD. *v.* HALL, [1933] Ex. C. R. 30.—CAN.

PART I. SECT. 2, SUB-SECT. 8.—B. (a).

178 iv. —— ——.]—Pltf.'s trade mark consisted of the words "Peter Pan" with a representation of Peter Pan, used in the sale of "woven piece goods," & deft. registered a trade mark consisting also of a representation of Peter Pan, with the words "Genuine

180. *Add. Annotations :—Generally,* **Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161 ; *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477.

185. *Add. Annotation :—Generally,* **Refd.** E. P. Mohamed Noordin *v.* S. E. S. Abdul Kareem & Co. (1931), 48 R. P. C. 491.

191. *Add. Annotation :—***Expld.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

195a. —— —— **Colour disregarded.**]—Applts. had for some years traded under, & had more recently registered, the word "Gardener" for preserved fruits, etc. They applied to register a device containing a head & shoulders representation of an oldish man. The application was opposed by the proprietors of a trade mark consisting of a young man somewhat similarly clothed, & they traded thereunder in fresh fruit, etc. The application was refused by the registrar, & the appcts. appealed to the ct. :—*Held :* colour must be disregarded &, unless the marks were compared side by side, the difference between them was insufficient to satisfy the onus upon the appcts. to show that there was no likelihood of deception. The appeal was dismissed with costs.—*Re* Morris & Jones, Ltd. Application for a Trade Mark (1934), 51 R. P. C. 199.

——.]—W. B. (Birmingham), Ltd., applied to register the word "Erectiko" in Class 49 for toys. A. C. G. Co. opposed the application on the ground that the word would conflict with the word "Erector," a registered trade mark owned by the opponents for constructional toys. The Assistant-Comptroller held that appcts. had discharged the onus of proving that no reasonable probability of confusion would result from registration of the word "Erectiko" & he accordingly decided to register it unless an appeal was entered within one month. The opponents appealed to the ct. :—*Held :* the Assistant-Comptroller had proceeded on a wrong basis ; when comparing two words to see whether one would be confused with & mistaken for the other, the words should be compared as a whole & not merely compared syllable by syllable, & regard should be paid to the fact that the word sought to be registered was to be used upon goods similar to those upon which the opponents' mark was being used. Confusion would inevitably result if registration were allowed. The appeal was allowed & resps. were ordered to pay the costs including those of the registrar. An order was made directing the registrar not to proceed.—*Re* William Bailey (Birmingham), Ltd., Application to Register a Trade Mark, *Re* Gilbert & Co. Opposition (1935), 52 R. P. C. 136.

217a. Position in foreign countries—Goods intended for export.]—*Re* Evans Sons Lescher & Webb, Ltd., Application for Registration of a Trade Mark (1934), 51 R. P. C. 423.

232. *Add. Annotation :—As to* (1) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

248. *Add. Annotations :—***Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99 ; *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477 ; *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1933), 149 L. T. 199.

249a. Picture of three pigs—Picture of four pigs—Three of four in group.]—D. applied to register two different device marks consisting of representations of pigs, one being a picture of four pigs, namely a sow & three little pigs, in respect of "pig products (for food)" & the other being a picture of three pigs in respect of "bacon & pig products for food." The applications were opposed by M., on the grounds that the marks would conflict with the opponents' trade marks, one being a picture of three pigs, but quite different from appcts.' picture of three pigs, & the other consisting of the words "Three Pigs Brand." The registrar refused to register the marks on the ground as to appcts.' picture of four pigs that the three little pigs formed a group by themselves & persons might not unreasonably identify it as a three pigs mark. Appcts. appealed, but only as to the picture of four pigs :—*Held :* there was no ground for interfering with the registrar's decision either in law or fact. The appeal was accordingly dismissed with costs.—*Re* Danish Bacon Co., Ltd.'s Application to Register a Trade Mark (1933), 51 R. P. C. 148.

249b. "Park"—"Hyde Park."]—An application was made for the registration in Part B. of

Peter Pan Garments," to be applied to "Ladies', Misses' & Children's Ready-to-Wear Garments" :—*Held :* while the Trade Mark & Designs Act permits registration of a specific trade mark, & without there being any provision for the classification of goods, nevertheless trade marks resembling one another should not be registered for different classes of goods, if the result of the junior registration "be calculated to deceive or mislead the public" ; &, in consequence, deft.'s trade mark should be expunged, notwithstanding it was applied to garments only whilst pltf.'s was applied to piece goods.—[illegible]y Glass & Co. *v.* Hampton Manufacturing Co., Ltd., [1931] 1 D. L. R. 637 ; [1930] Ex. C. R. 212.—CAN.

sg. *Similar mark having expired twenty years previously.*]—In Dec. 1929, B. & L. O. Co. applied to have the letters "B. & L." registered as a trade mark. This application was refused by the Comr. of Patents for the sole reason that one L. had registered the letters "B. L." as a specific trade mark in the year 1885. This latter mark was never renewed. Hence this appeal :—*Held :* the trade mark "B. L." having expired in the year 1910, was not at the time of the application of B. & L. O. Co. a registered trade mark within sect. 11 (*b*) of Trade Marks & Designs Act ; & the Comr. of Patents was not justified in refusing the application aforesaid solely because of the registration aforesaid made in the year 1885.—Bausch & Lomb Optical Co. *v.* Comr. of Patents, [1930] Ex. C. R. 123 ; 2 D. L. R. 981.

PART I. SECT. 2, SUB-SECT. 8.—B. (c) i.

sk. *"Lysol"—"Lysotab."*]—The ct. found, on the evidence, that the word "Lysol" was properly registered, was a valid trade mark & that "Lysotab" was calculated to deceive & mislead the public, & ordered that it be expunged.—Lysol (Canada), Ltd. *v.* Solidol Chemical, Ltd., [1933] Ex. C. R. 21.—CAN.

sm. *"Vasenol" — "Vaseline."*]—*Held :* the marks "Vasenol" & "Vaseline" were similar & the registration of the word Vasenol would be calculated to deceive & would be in conflict with the word mark Vaseline.—Vasenolwerke Dr. Köpp Aktiengesellschaft *v.* Comr. of Patents — Chesebrough Manufacturing Co., [1935] Ex. C. R. 198 ; [1936] 1 D. L. R. 532.—CAN.

the Register of a trade made in Class 45 in respect of "Cigarettes." The mark consisted of a label showing prominently the words "Hyde Park," together with other features. The application was opposed by a co. who were the registered proprietors of certain trade marks consisting of or embodying the works "Park" or "Park Drive." The opponents claimed that the names "Park Drive," "Park" & "Parks" had become distinctive of cigarettes of their manufacture; that appcts.' mark so resembled the opponents' registered trade mark as to be calculated to deceive, & that appcts.' user of their mark had been very small & had been confined to Turkish cigarettes sold retail by them at their stores in London. The opponents had offered to withdraw their opposition if appcts. would agree to limit their registration to Turkish cigarettes sold retail by themselves, but this offer, which was repeated at the hearing, was not accepted:—*Held:* contrary to submissions made on behalf of the opponents, the fact that appcts. had used their mark only upon Turkish cigarettes sold retail by them at their stores would not by itself prevent a registration in respect of cigarettes generally, & that the reference in the mark itself to "Turkish blend cigarettes" did not call for an express limitation of the application to Turkish cigarettes; although there was no likelihood of the full name "Hyde Park" being confused with the full name "Park Drive," there was a possibility that the name "Hyde Park," if used widely in the retail trade, would be contracted to or mistaken for the word "Park" or "Parks," to which the opponents' mark was in fact frequently contracted, & that in these circumstances confusion would probably occur; the proved user in the tobacco trade of certain other names embodying the word "Park" was relatively small & sporadic & did not affect the conclusion as to the possibility of confusion; the appcts.' restricted user of their mark in the past was sufficient to justify a registration which would cover a similar user in the future but, having regard to the very extensive user of the opponents' marks, was not sufficient to justify a concurrent registration which would cover an extension of appcts.' user to the opponents' market. The application was allowed, subject either to a limitation of the specification of goods to Turkish cigarettes sold retail by appcts. or to the giving of an undertaking by appcts. that they would use the mark only upon Turkish cigarettes sold retail by themselves.—*Re* HARRODS, LTD.'S APPLICATION TO REGISTER A TRADE MARK IN PART B. OF THE REGISTER (1934), 52 R. P. C. 65.

257. *Add. Annotation:*—**Refd.** *Re* William Bailey (Birmingham), Ltd.'s Application to Register a Trade Mark, *Re* Gilbert Co.'s Opposition (1935), 52 R. P. C. 136.

259. *Add. Annotation:—As to* (4) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

277a. Triangle & word "Triangle"—Triangle & word "Nicholson."]—From 1865 onwards resps., Nicholson & Sons, brewers of Maidenhead, had stencilled an outline triangle with "N" inside on their "best pale ale" casks & had also branded "Nicholson" thereon. In 1927 they applied to register the combination as a trade mark for bitter beer. Their application was opposed by appts., Messrs. Bass, on account of the similarity of the outline triangle to the well-known Bass solid triangle mark registered in 1876, but the Assistant Comptroller allowed the registration, limiting the outline triangle & "N" to the colours white or black. About the same time resps. applied to remove the word "Triangle" registered by Messrs. Bass in 1926 from the register, & the Assistant Comptroller ordered the removal:—*Held:* (1) resps.' mark had been used both as a mark of quality & of origin before Aug. 13, 1875, & was therefore registrable as an old mark. In the case of a distinctive mark non-recognition by the public is immaterial on the question of "user as a trade mark"; (2) resps.' mark was not prohibited from registration by sect. 11 as being calculated to deceive, inasmuch as the general prohibition in that section must be read subject to the specific exception in sect. 19, which impliedly authorised the Registrar to place upon the register an old mark so nearly resembling a mark of another

PART I. SECT. 2, SUB-SECT. 8.—B. (c) ii.

sl. "*Sunlight*" — "*Sunbrite.*"]—*Held:* the trade mark of deft. did not so resemble pltf.'s trade mark in appearance, sound, or otherwise, as to be calculated to deceive or mislead the public into purchasing the goods of deft. believing them to be those of pltf. Moreover, pltf.'s product & that of deft. were not of the same class, the one being a cake soap & the other a liquid, & the action of pltf. should be dismissed.—LEVER BROS., LTD. *v.* WILSON, [1932] Ex. C. R. 69.—CAN.

sm. "*Sunlight*" — *Sunrise.*]—*Held:* even if deft.'s product could be said to belong to the same class of goods as that of pltf., deft.'s label being so different in appearance, colour, lettering & subject-matter from that of pltf.'s label, & bearing on its face, in large type, the words "Sunrise Co., 711 Langlois Ave., Windsor, Ont.," it could not be said to be "calculated to deceive," within Trade Mark & Design Act.—LEVER BROS., LTD. *v.* UMBERTO PIZZUTI, [1932] Ex. C. R. 79.—CAN.

so. "*Sure to rise*"—"*Bound to rise.*"]—Pltf. had a registered trade mark for baking-powder, a prominent part of which consisted of a plate with figures of loaves over which were the words "Sure to rise." Deft. was the registered owner of a trade mark, part of which consisted of the words "Bound to rise" placed round the top of a balloon. There were many dissimilarities in the details of each mark. Deft.'s mark had been registered in 1882, & pltf. had used its mark for about fifty years & had registered it in 1912. Deft. placed part of its trade mark, namely, the words "Bound to rise," above a cake on a prominent part of its labels:—*Held:* deft. had not made an exact or substantial copy of pltf.'s trade mark, nor had deft., by putting part of its registered mark, namely, the words "Bound to rise," above a cake on a prominent part of its label, infringed the trade mark of pltf., as the words "Bound to rise" had not been so used by deft. as to be calculated to cause its goods to be taken by ordinary purchasers for the goods of pltf.—EDMONDS, LTD. *v.* SELF-HELP, LTD., [1932] N. Z. L. R. 87.—N. Z.

sq. "*Doris Kinsman*"—"*Dorikin.*"]—Eight girls, while they were still pupils of a certain Doris Kinsman, the proprietress of "Doris Kinsman's Dancing Studio," formed themselves into a troupe known as "The Dorikin Eight." Doris Kinsman sold her dancing studio to the appct., & some time afterwards resp., a member of "the Dorikin Eight" troupe, commenced a dancing school, which, with the permission of the remaining seven members of the "Dorikin Eight," was known to the public & advertised by resp. (who had no intention of interfering in any way with appct.'s business) as the "Dorikin Studio":—*Held:* the words Dancing Studio were merely descriptive of the class of business carried on & could be ignored, & as there had been no confusion in fact the names "Doris Kinsman" & "Dorikin" were not so similar that it was likely they would be so confused. Interdict therefore refused.—PATLANSKY *v.* BROWN (1931), 52 N. L. R. 147.—S. AF.

already on the register as to be calculated to deceive; (3) in view of the extensive user of applts.' mark in connection with bottled beer & the absence of any evidence that resps. had used their mark for bottled beer, bottled beer should be excluded from the specification of goods in respect of which resps.' mark was registered; (4) the registration of resps.' mark involved as a consequence the removal from the register of applts.' mark consisting of the word "Triangle."—BASS, RATCLIFF & GRETTON, LTD. *v.* NICHOLSON & SONS, LTD., [1932] A. C. 130; 101 L. J. Ch. 98; 48 T. L. R. 161; 75 Sol. Jo. 868; 49 R. P. C. 88; *sub nom. Re* NICHOLSON & SON'S APPLICATION FOR REGISTRATION OF A TRADE MARK, *Re* BASS, RATCLIFFE & GRETTON'S TRADE MARK, 146 L. T. 349, H. L.

Annotation:—**Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

277b. "Abermill"—"Hammermill."]—An application by applts., A. P. & Sons, was made for registration of a trade mark in respect of paper goods in class 39, & was opposed by the H. Paper Co., whose business was carried on in the United States of America, but which had business in this country. The H. Paper Co. had a trade mark in the United States "Hammermill Bond," which they made use of in this country after 1920, from that time exporting goods to this country, & each year sold about £2,000 in value of the goods in this country. In May, 1923, applts. adopted the mark "Abermill Bond," which they now sought to register, & their trade under that mark had been over £20,000 a year. Applts. chose the mark "Abermill" in reference to the locality where their paper for stationery was produced near Aberdeen, without any thought of the word "Hammermill" quite honestly, though they were aware of the mark "Hammermill Bond." On June 13, 1931, the Assistant-Comptroller decided that if the application had been under sect. 19 of the combined Trade Marks Act he would have refused the application, on the ground that there was a resemblance calculated to deceive, but though, therefore, he would not have registered it if it had been a new mark & the application had been under sect. 19, he exercised his discretion under sect. 21 of the Acts, & treated the case as within that section, because of there having been an honest concurrent user of the mark by the applts., & made the order for registration of "Abermill Bond":—*Held:* (1) the ct. ought to be very slow to upset the exercise of the discretion of the Comptroller or Registrar, who had to adjust various considerations; (2) accepting the view of the Comptroller & CLAUSON, J., that sect. 19 alone did not avail to secure the admission of the mark to the register, as to sect. 21 there having been an honest choice of the word "Abermill" & an honest user over a period of six years & no confusion having been proved, the ct. ought to permit the registration of the mark under sect. 21, even if it were deemed to be identical or nearly identical with the trade mark of the H. Paper Co., as that section was in no way controlled or limited by sect. 19.—*Re* HAMMERMILL PAPER CO.'S OPPOSITION, *Re* PIRIE (ALEX.) & SONS, LTD. (1932), 146 L. T. 493; *sub nom. Re* ALEXANDER PIRIE & SONS, LTD., TRADE MARK, 49 R. P. C. 195, C. A.; *affd.* (1933), 50 R. P. C. 147, H. L.

Annotation:—**Refd.** *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

285a. Duty of Registrar—To impose conditions—When possibility of deception or confusion.]—NOTES OF OFFICIAL RULINGS (1929) A (1929), 46 R. P. C. App. i.

285b. Decision of Registrar—Attitude of court towards.]—*Re* HAMMERMILL PAPER CO.'S OPPOSITION; *Re* PIRIE (ALEX.) & SONS, LTD., No. 277b, *ante.*

288. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd.. Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

291. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

300a. Use as quality mark & mark of origin.]—BASS, RATCLIFF & GRETTON, LTD. *v.* NICHOLSON & SONS, LTD., No. 277a, *ante.*

305a. —— Distinctive mark—Triangle.]—BASS, RATCLIFF & GRETTON, LTD. *v.* NICHOLSON & SONS, LTD. No. 277a, *ante.*

309. *Add. Annotation:*—**Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

314. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

318. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

320. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Nicholson & Sons, Ltd., Application *Re*, Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

321. *Add. Annotation:*—**Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

323. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

326a. —— ——.]—J. & J. Colman, Ltd., applied to register in Part A. of the register in class 42 a label in respect of semolina. The registrar refused the application, on the ground that semolina & mustard prepared for use as food were goods of the same description, & appcts. refused to agree to the association of the mark with earlier marks in respect of mustard. Appcts. appealed to

PART I. SECT. 2, SUB-SECT. 11.

sh. *Meaning of.*]—To be a fancy term & not a descriptive term, a mark applied to goods must be obviously intended to be non-descriptive. Where words are *primâ facie* descriptive, the fact that the article to which they are applied does not answer the description imported by them, will not make them fancy words.—ORANGE CRUSH (AUSTRALIA), LTD. *v.* GARTRELL (1928), 28 S. R. N. S. W. 392; 45 N. S. W. W. N. 98.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.

sx. *Mandamus to register.*]—*Held:* an application for a *mandamus* requiring the Comr. of Patents, as registrar under Unfair Competition Act, to determine whether an application to register a trade mark should be allowed, is a substantive proceeding, & not an interlocutory matter. Such a proceeding should be instituted by statement of claim & not by an originating notice of motion.—CONTINENTAL OIL CO. *v.* COMR. OF PATENTS, [1934] Ex. C. R. 118.—**CAN.**

the ct.:—*Held:* mustard falls under the description of a condiment & semolina under the description of a cereal & the goods are not of the same description, & the registrar should be directed to reconsider the question as to what association with the cereal group only should be required.—*Re* COLMAN J. J. LTD.'S APPLICATION (1929), 46 R. P. C. 126.

331. *Add. Annotations:—As to* (1) **Refd.** Champagne Heidsieck et Cie Monopole Societe Anonyme *v.* Buxton (1929), 46 T. L. R. 36. *As to* (3) **Consd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 483. **Refd.** *Re* Proctor & Gamble Co.'s Petition, Proctor & Gamble Co. *v.* Pugsley Dingman & Co. (1929), 46 R. P. C. 421; Harris (C. & T.) (Calne), Ltd. *v.* Harris (1933), 50 T. L. R. 123. *Generally*, **Refd.** Lundberg & Sons, Ltd. *v.* Letrik, Ltd., *Re* Lundberg & Sons, Ltd., Trade Marks Nos. 228,405 & 223,408 (1931), 49 R. P. C. 15.

337. *Add. Annotations:—As to* (1) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99. **Refd.** *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975. *Generally*, **Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie (Alex.) & Sons, Ltd. Application (1933), 149 L. T. 199; *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

338. *Add. Annotation:*—**Refd.** *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

339a. ——.]—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'S APPLICATIONS, No. 77a, *ante*.

353a. Withdrawal of application.]—On May 28, 1929, applts. had applied to register a trade mark. Their application was refused, & the registrar in his decision dated Feb. 28, 1930, referred to certain trade marks already registered & owned by resps. Leave was given by the ct. to applts. to serve notice of appeal to resps. Applts. did not inquire as to the objections proposed to be relied upon by resps. At the hearing resps. disclosed for the first time that they had a certain other registered trade mark. The learned judge intimated that, if resps. wished to put that matter in evidence, they would only be allowed to do so subject to terms as to costs. Resps. did not seek to rely on the matter. Thereupon the learned judge directed that the matter ought to be relied on by the registrar, who was also a party to the proceedings. Counsel for the registrar was given leave to rely upon the said registered trade mark as a ground of further objection. Applts. then sought leave to withdraw their application without payment of any costs at all:—*Held:* on applts. by their counsel withdrawing their application there be no order on the motion.—*Re* COLUMBIA PICTURES CORPN.'S APPLICATION (1932), 49 R. P. C. 491.

361. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

385. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

386a. —— **Trade mark for beer—User on barrels.**]—The ct. refused an application by resps. that the use of applts.' triangle trade mark, of which the ct. had by a majority allowed the registration as a trade mark for beer should be restricted to its use on barrels.—*Re* NICHOLSON & SONS, LTD., APPLICATION (1931), 47 T. L. R. 276, C. A.

388a. Consultation with Chamber of Commerce by Registrar.]—*Re* COATS (J. & P.), Ltd.'s APPLICATION, No. 113b, *ante*.

397a. Order of Court of Appeal permitting registration—Whether stay of execution ordered pending appeal to House of Lords.]—*Re* HAMMERMILL PAPER CO.'S OPPOSITION, *Re* PIRIE (ALEX.) & SONS, LTD. (1932), 146 L. T. 493; *sub nom. Re* ALEXANDER PIRIE & SONS, LTD., TRADE MARK (1932), 49 R. P. C. 195, C. A.

414. *Add. Citations:*—[1929] 1 Ch. 92; 140 L. T. 9.

414a. Prevention of deception—Not right to control conditions of resale.]—The statutory right now conferred on the registered proprietor of a trade mark by Trade Marks Act, 1905 (c. 15), s. 39, is the same as that which was conferred by Trade Marks Registration Act, 1875 (c. 91), s. 3, namely, the right to use the mark as a trade mark to indicate that the goods upon which it is placed are his goods & to exclude others from selling under the mark goods which are not the goods of the registered proprietor. This right does not carry with it any right to control, by the imposition of conditions or restrictions, the selling or dealing with the goods under his mark by other persons.

Pltfs. produced champagne in France. They sold "Champagne Dry Monopole" in England & France, the wine sold in France being the sweeter of the two. The labels on the bottles containing the wine sold in

PART I. SECT. 3, SUB-SECT. 2.

sk. *Security for costs—Whether ordered.*]—*Held:* a petitioner in a proceeding before this ct. for an order entitling him to register a trade mark is a pltf., & when residing abroad may be compelled to give security for costs.—ENERGINE REFINING & MANUFACTURING CO. *v.* IRVING, [1927] Exch. C. R. 235.—**CAN.**

so. *Joinder of application to expunge.*]—T. presented a petition for leave to register a trade mark, & joined with it in his petition a demand to expunge certain trade marks alleged to stand in his way, objection being made that the two issues could not be so joined in such a petition:—*Held:* inasmuch as the present case is not clearly covered by the rules of the ct., the rules in England were not applicable to this case, & to force petitioner to take a second action to expunge would only be multiplying actions to no purpose, contrary to the spirit of modern law, the ct. availing itself of the power vested in it by rr. 299 & 300, gave leave to petitioner to present his petition as libelled. The rules not being quite definite upon the subject, the application was dismissed without costs.—*Re* TURNBULL (C.) CO., LTD.'S PETITION, [1932] Ex. C. R. 6.—**CAN.**

sp. *Time for application—Unfair Competition Act.*]—*Held:* since petitioner had not applied for registration of its trademark within six months from the date on which Unfair Competition Act came into force, as required by sect. 4 of said Act, the action should be dismissed.—CANADA CRAYON CO., LTD. *v.* PEACOCK PRODUCTS, LTD., [1936] Ex. C. R. 178.—**CAN.**

PART I. SECT. 3, SUB-SECT. 8.

sr. *From refusal to register—By petition.*]—An appeal from the refusal of the Comr. of Patents to register an industrial design under Trade Mark & Design Act must be by way of petition & not by notice of motion.—ROSE *v.* COMR. OF PATENTS & CARSON CO., LTD., [1935] Ex. C. R. 188; 1 D. L. R. 558.—**CAN.**

France bore the word " Brut " & sufficiently distinguished in England, as the ct. found as a fact, that wine from the wine prepared for & sold in the English market. Pltfs., who were the registered owners of trade marks under which the wine prepared for English use was sold, took certain steps to prevent the Brut wine from being sold in England. Deft., without being a party to any breach of contract, imported pltfs.' Brut wine into England, & sold it there in bottles bearing the same labels which pltfs. themselves used on the bottles containing that type of wine. In an action for an injunction to restrain the infringement of pltfs.' trade marks by the sale of the Brut wine in England & from passing off that type of pltfs.' wine as & for pltfs.' wine prepared for the English market:—*Held:* (1) deft. by the sale of the Brut wine in England, although prohibited by pltfs., under the very marks which pltfs. themselves adopted to distinguish that type of their wine, were not guilty of passing off the Brut wine as & for pltfs.' type of wine prepared for the English market; (2) deft. was in no wise affected by the restrictions sought to be imposed by pltfs. against selling or dealing with the Brut wine in England. The action was, accordingly, dismissed.—CHAMPAGNE HEIDSIECK ET CIE MONOPOLE SOCIETE ANONYME *v.* BUXTON, [1930] 1 Ch. 330; 99 L. J. Ch. 149; 142 L. T. 324; 46 T. L. R. 36; 47 R. P. C. 28.

417a. —— ——.]—The County Chemical Co., Ltd. applied to register the word " Arlette " for perfumery goods in Class 48. Elizabeth Arden, Ltd. opposed that application on the ground that the word would cause confusion with the word " Ardenette," registered by them in Class 14 for metal goods, & with certain other of their trade marks. The opponents had sold metal compacts marked with the word " Ardenette " & containing a cake of cosmetic & had also sold refills for such compacts, such refills being marked with the word " Ardenette." The registrar allowed registration of the word " Arlette " for goods in Class 48, but not including refills for compact cases & similar containers. The opponents appealed to the ct.:—*Held:* the limitation suggested by the registrar was satisfactory & ought not to be extended. The appeal was dismissed with costs.—*Re* COUNTY CHEMICAL CO., LTD.'S APPLICATION TO REGISTER TRADE MARK (1937), 54 R. P. C. 182.

429. *Add. Annotation:*—**Consd.** Somerlite, Ltd. *v.* Brown & *Re* Somerlite, Ltd.'s Trade Mark (No. 520,004) (1934), 51 R. P. C. 205.

Of invalid assignment.]—*Re* JOHN SINCLAIR, LTD., TRADE MARK, No. 566a, *post.*

429b. —— ——.]—A trade mark had been used for wholesale purposes by a tobacco firm, who also owned retail shops & in them sold tobacco under the mark. By an assignment to the firm who had always supplied the particular goods purporting to assign the mark to that firm, together with the goodwill of the business in the goods for which it has been registered, it was in fact intended that only that part of the wholesale business connected with the mark should be transferred. The assignment was registered. Application was made by a subsequent purchaser of the goodwill of the business as it then existed together with all trade marks relating thereto to expunge the entry from the register, on the ground that the whole goodwill had not been transferred:—*Held:* the assignment was one not permissible by law & the entry of the assignment should be expunged, & the distinction sought to be made between wholesale & retail goodwill was not effective.—*Re* DOBIE & SONS, LTD., TRADE MARK (1935), 52 R. P. C. 333.

432a. —— —— **Leave to adduce further evidence—When granted.**]—*Re* CARL INGENOHL & WERNER DAVIDIS TRADE MARK, *Re* EL ORIENTE FABRIKA DE TABACOS, INCORPORATED, APPLICATION (1931), 48 R. P. C. 399.

442a. Whether application to go into witness or non-witness list—Motion to stand over to allow respondents to answer appellant's evidence.]—*Re* CEMENT GUN CO., LTD., TRADE MARKS (1933), 50 R. P. C. 195.

458. *Add Annotation:—Generally,* **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

465. *Add. Annotation:*—**Apld.** *Re* Inescourt's Trade Mark (1928), 46 R. P. C. 13.

PART I. SECT. 4, SUB-SECT. 2.

418 i. *Mark registered under specific mark—Use only in respect of one article in class—Whole class not protected.*]—*Re* PROCTOR & GAMBLE CO.'S PETITION, PROCTOR & GAMBLE CO. *v.* PUGSLEY DINGMAN & CO., LTD. (1929), 46 R. P. C. 421.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—A.

426 i. *Removal—Grounds for—Prior user by applicant.*]—GOLD MEDAL CAMP FURNITURE MFG. CO. *v.* GOLD MEDAL MFG. CO., [1928] 2 D. L. R. 819.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—C. (a).

b i. ——.]—Proceedings were taken to expunge a trade mark consisting of the words " Birdseye Macaroni," registered in respect of macaroni. It appeared that the word " birdseye " had acquired a definite meaning in the trade as denoting small annular particles of macaroni ":—*Held:* the trade mark used in respect of small annular particles of macaroni was descriptive of the character of the goods, & if used in respect of other macaroni would be likely to deceive. The trade mark was therefore ordered to be expunged from the register.—*Re* HANCOCK'S GOLDEN CRUST PTY., LTD.'S TRADE MARK, [1929] Argus L. R. 40; [1929] V. L. R. 17.—**AUS.**

b ii. ——.]—Pltf. was the owner of a registered trade-mark " Honey Dew " used in connection with the sale of a certain orange-flavoured drink. The shops where it was sold had a characteristic interior arrangement & equipment & the mark had become well known to distinguish the beverage sold by pltf. from that of others. Deft. subsequently registered the words " Flora Dew " as its trade-mark for a similar drink, displaying said trade mark in & about its shops much in the manner employed by pltf., & in a pronounced manner following the interior arrangement & equipment of pltf.'s shops:—*Held:* deft. could not be said to have adopted his mark with a view of giving a distinctive description to his beverage, but rather to take advantage of the business connection & efforts of a rival trader, & such trade mark being liable to mislead, should be expunged from the register. In considering whether one mark is an infringement of another resemblance between the two marks must be considered with reference to the ear as well as to the eye.—HONEY DEW, LTD. *v.* RUDD, [1929] 1 D. L. R. 449; Ex. C. R. 83.—**CAN.**

b iii. ——.]—In 1923 resp. registered, & began using in Canada, a trade mark consisting of a triangle bearing the words " Deer Skin Finish " above the words " Dan Dobbs," & a triangle below bearing the words " Character Hats," for use in the sale of felt & straw hats. Some years before, petitioner, who was in similar business, adopted its president's name " Dobbs " as a trade mark, to be used in the sale of its hats, & has since used the name to the present in Canada, & now by its petition asks that resp.'s trade mark be expunged:—*Held:* that the words " Dan Dobbs " & " Dobbs " are obviously words as

493. *Add. Annotation :*—**Refd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 483.

496. *Add. Citation :*—29 R. P. C. 158.

499. *Add. Annotation :*—**Apprvd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 621.

503. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

504. *Add. Annotation :*—**Refd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 483.

511a. —— Use unknown at time of registration—Mark registered for " cinematograph films "—Whether " talkie films " included.]—Appcts., Columbia Pictures Corpn., an American Corpn. manufacturing & dealing in cinematograph films, applied on Apr. 9, 1930, to rectify the Register by excluding " cinematograph films & goods of a like description to cinematograph films," from the specification of goods for which resps.' three trade marks, all of which contained the word " Columbia " prominently, were registered in class 8. An application by the Corpn. for a mark which contained the figure of Liberty & the words " Columbia Pictures " had been refused registration under sect. 19. The following ground of objection was (*inter alia*) relied on by appcts. : (1) that there had been no *bona fide* user by resps. of any of their said trade marks in respect of cinematograph films or goods of a like description during the five years immediately preceding the application to rectify. Resps. did not make nor had they ever made cinematograph films for commercial purposes. At the end of 1927 cinematograph films with sound accompaniment began to be shown commercially. Later the sound accompaniment was provided by a photographic record of the sound made at the side of the film used to project a picture on the screen. Resps. had no objection, if the words " Cinematograph films " were held only to describe films for the production of visual pictures, to the exclusion of this class of goods from their specification of goods in class 8. But, if the words were held to include films used to record & reproduce a sound accompaniment, then resps. objected to the exclusion of such goods. At the trial it was held that " cinematograph films " included films which record & reproduce acoustic matter whether alone or jointly with visual matter ; that films for acoustic reproduction, sought to be excluded, were not known at the date of resps.' registration ; that in these circumstances non-user during the five years immediately preceding the application to rectify could not be attributed to a definite intention not to use nor to a deliberate intention to abandon such trade marks in respect of such goods ; that the question of exclusion was a matter of discretion & that special circumstances must be considered ; & that the special circumstances explained the non-user. An Order was made to exclude from the specification of goods for which the resps.' three trade marks were registered in class 8, " cinematograph films for visual exhibition to the public without the addition as an integral part of such films, of any means for the reproduction of sound." Appcts. appealed to the Ct. of Appeal :—*Held :* non-user of the trade mark in respect of talking films during the whole of the five years immediately preceding the application for rectification having been proved, resps. in order to escape from the provisions of sect. 37 of Trade Marks Act, 1905, must show that their failure to use their mark at some time during the five years was due to special circumstances in the trade ; resps. had at all events about fifteen months during which they could have produced talking films, but they refrained for reasons connected with their own business, & their non-user was not due to special circumstances in the trade. The appeal was allowed. An order was made to exclude from the specification of goods for which resps.' three trade marks were registered in class 8 " goods of the following description *videlicet :* cinematograph films being transparencies adapted for the purpose of producing the illusion of moving pictures with or without a sound track incorporated thereon."—*Re* COLUMBIA GRAPHOPHONE CO., LTD. TRADE MARKS (NOS. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 621, C. A.

Annotation :—**Refd.** Newton Chambers & Co. *v.* Neptune Waterproof Paper Co. (1935), 52 R. P. C. 399.

515a. ——.]—J. Lesquendieu carried on in Paris a business called Parfumerie Lesquendieu for manufacturing perfumery goods, & used

applied to a particular kind of goods that can be confused & would tend to deceive the ordinary purchaser, & resp.'s trade mark should be expunged.—DOBBS & CO. *v.* ROBERT CREAN & CO., LTD., [1929] EX. C. R. 164 ; *varied*, [1930] S. C. R. 307 ; 3 D. L. R. 22.—**CAN.**

b iv. ——.]—Petitioner, long prior to the registration of resps.' mark, adopted for use a specific trade mark consisting of the representation of a ram, across the centre of which appears the word " Ceetee," with under the word " Ceetee " the words " Pure Wool " & over the word " Ceetee " the words " Guaranteed Unshrinkable " & under the ram the phrase " Established 1859," as applied to woollen goods of all kinds. Resps. had registered a specific trade mark consisting of the representation of a sheep arranged in front of the representation of radiating rays of light arranged under a rectangular figure, together with the name Dominion cutting through the rectangular figure & the words Woollens & Worsteds, Ltd. flanked on either side, as applied to woollens, worsteds, knitted goods & wearing apparel. The ct. found that petitioner adopted its trade mark some time previous to the adoption by resps. of their mark & the registration thereof, & :—*Held :* inasmuch as the most conspicuous part of the two trade marks & that which caught the eye was the ram which was similar in general shape & appearance, resps.' trade mark was calculated to deceive & was registered without sufficient cause & should be expunged.—TURNBULL (C.) CO., LTD. *v.* DOMINION WOOLLENS & WORSTEDS, LTD., [1932] EX. C. R. 218.—**CAN.**

b v. ——.]—Petitioner has carried on business since May, 1917, as a manufacturer of, & dealer in, lubricating & other oils, greases & similar goods, including on a small scale gasoline, under the firm name of " Atlas Oil Co." Resp. co. in Jan., 1932, was granted a specific trade mark consisting of the word " Atlas " to serve in connection with the sale of gasoline. The ct. found not only that there was a likelihood of confusion but that there had been actual confusion in the minds of the public to the prejudice & detriment of petitioner :—*Held :* a trade mark may be acquired by user & that the prior user of an unregistered trade mark, the use of which by another is calculated to deceive, is entitled to protection, whether such use by another be made fraudulently & with deliberate intent to deceive or not. A specific trade mark applies to all goods of the same class or description. —WARREN *v.* EXCEL PETROLEUM, LTD., [1933] EX. C. R. 131.—**CAN.**

b vi. ——.]—SIEGEL KAHN CO. OF CANADA, LTD. *v.* PEGGY SAGE INC., [1935] EX. C. R. 1 ; 2 D. L. R. 225.—**CAN**

all the six trade marks in question. In 1925 he promoted a French co., Parfumerie J. Lesquendieu Société Anonyme, to acquire this business. He purported to reserve for himself the right to exploit the marks in foreign countries. In 1926 an English co. was formed, called J. Lesquendieu, Ltd., which had the exclusive right to sell the products of the French co. in England, Scotland, Ireland & Wales. In 1931 & 1932 J. Lesquendieu registered the same six trade marks in England; in Aug. 1933, the Parfumerie Lesquendieu Société Anonyme moved to expunge the marks from the register. The appcts. contended that the marks were known in this country as being applied to their goods; that resp. had no *bonâ fide* intention to use the marks, & had not in fact used them. Resp. alleged that appcts. had not been aggrieved by the registrations; & that he had in fact manufactured goods bearing the marks:—*Held:* resp. when he registered the marks was under contractual arrangements with appcts., under which he undertook not to take any interest directly or indirectly for his own account, or for account of a third party, in any perfumery business for a period of twenty-five years from Mar. 1, 1929 (with a saving as to the interest in the English co.), & he had at the times when he registered the marks no *bonâ fide* intention to use the marks; the marks had become distinctive of goods manufactured by appcts. & any user of them for goods not so manufactured would be calculated to deceive; appcts. were parties aggrieved & resp. had no *bonâ fide* claim to be the owner of the marks; & the registration must be expunged from the register. Resp. was ordered to pay the costs of the motion, including the requisite fee for obtaining rectification.—*Re* LESQUENDIEU TRADE MARKS (1934), 51 R. P. C. 273.

516a. **Trade mark of gas company—Application to limit as to area.**]—The South Metropolitan Gas Co. were the registered proprietors of a trade mark consisting of the word "Metro," originally registered in 1910, in respect of "appliances or apparatus to be used in connection with the manufacture, testing, regulating, measuring & consumption of gas, & appliances or apparatus to be used in connection with the treatment of any products obtained from the manufacture of gas, all the said appliances or apparatus being included in Class 8." On Apr. 1, 1933, Metropolitan Gas Meters, Ltd., gave notice of motion for rectification of the register by removal of the mark or limitation of the territory for which the mark was registered, on the grounds that at the date of registration resps. did not use or intend to use the mark except in the area to which by statute they were entitled to supply gas, & alternatively that the application for registration was *ultra vires* the powers of resps. & that it was *ultra vires* the powers of resps. to be proprietors of the mark. At the hearing appcts. contended that on a proper construction of the Acts governing resps. they had no power to supply meters or other apparatus outside a limited area, that there was an irrebuttable presumption that they would not exceed their statutory powers, that the ct. ought accordingly to assume that they had no *bonâ fide* intention to use, & had not in fact used the mark outside that area, & that the registration ought therefore to be limited, either under the provisions of sect. 35 or sect. 37 of the Trade Marks Acts, 1905–1919, to the area to which by statute resps. were entitled to supply gas. Resps. denied that their statutory power to sell meters was limited as to area, & further contended that, even if it were so limited, this afforded no ground for limitation of the registration:—*Held:* (1) resps. had by statute a general power to deal in meters & other appliances, there was no evidence that they had not exercised that power outside the area to which they were entitled to supply gas, & accordingly there was no ground upon which the registration could be limited to a particular area; (2) on the supposition that resps.' power to deal in meters was, upon the true construction of the Acts, limited to a definite area, sect. 37 of the Trade Marks Acts was limited to the use of a trade mark on goods & had nothing to do with area or territory, & the section had no application; it would not have been right for the registrar to have refused registration of the mark merely because the use or intended use of the mark was within a limited area; at the date when the registration was made there was no power to impose a limitation as to area, the original registration was in any case protected by the provisions of sect. 41, & it would not be right now to limit the registration under sect. 35 merely because the ct. now had a power in certain cases to make conditions as to area which it had not got at the time when the mark was registered. The motion was dismissed with costs.—*Re* SOUTH METROPOLITAN GAS CO. TRADE MARK (No. 321,951) (1933), 50 R. P. C. 321.

539a. **Costs of affidavits—Discretion of taxing master.**]—Appcts., Columbia Pictures Corpn., applied by motion to rectify the register of trade marks & in support of their application they filed six affidavits. Resps. to that motion, the Columbia Graphophone Co., Ltd., filed in answer one hundred & seventy-four affidavits & alleged that it was essential to their case to have a large body of trade evidence & they challenged appcts. to produce a like volume of evidence. Appcts. thereupon filed two hundred & eighty-one affidavits in reply. The motion was allowed with costs, but a direction was given to the taxing master to have special regard to the nature of the evidence filed when he taxed appcts.' costs. The taxing master allowed the appcts. their costs in respect of two hundred affidavits. Appcts. alleged that he had acted arbitrarily in that the affidavits were all of a similar nature & directed to similar matters & that there was no principle on which he could decide to allow the costs in respect of two hundred of them & to disallow the costs of the remaining eighty-one:—*Held:* the matter was solely in the taxing master's discretion; in the absence of any mistake in principle the ct. should not interfere. The summons was dismissed with costs.—*Re* COLUMBIA PICTURES CORPN., APPLICATION (1933), 50 R. P. C. 377.

558. *Add. Citation:*—140 L. T. 19.

566. *Add. Annotation :*—**Consd.** *Re* John Sinclair, Ltd.'s Trade Mark 437,870 (1932), 146 L. T. 417.

566a. ——.]—(1) When a mark has been registered in respect of a class of goods, an assignment of the mark is invalid, unless there is assigned with it the goodwill of the business connected with the whole class, even though the mark has only been used in connection with one kind of goods in the class.

(2) When an assignment of a registered trade mark is held to be invalid in a case where the original proprietor of the mark is not before the ct., it is the entry on the register in respect of the assignment only which should be expunged & not the whole entry of the mark.—*Re* JOHN SINCLAIR, LTD.'S TRADE MARK, [1932] 1 Ch. 598 ; 101 L. J. Ch. 239 ; 146 L. T. 417 ; 49 R. P. C. 123, C. A.

Annotation :—As to (1) **Folld.** *Re* Dobie & Sons, Ltd. Trade Mark (1935), 52 R. P. C. 333.

583. *Add. Annotation :—As to* (3) **Consd.** *Re* Société des Usines Chimiques Rhône-Poulenc, [1937] 1 All E. R. 145.

594a. User of mark must be as trade mark.]—"The exclusive right to the use of a trade mark" given to its registered proprietor by sect. 39 of Trade Marks Act, 1905, implies use of the mark for the purpose of indicating, in relation to the goods upon or in connection with which the use takes place, the origin of such goods in the user of the mark by virtue of the definition of trade mark contained in sect. 3. Therefore the right to such exclusive use does not prevent the use of the registered word or phrase if not used as a trade mark.

Applts. were the registered proprietors of a trade mark "Yeast-Vite," & resp. put on his goods—

a substitute for
YEAST-VITE.

Resp.'s preparation differed substantially from applts. :—*Held :* as the user of resp. was not user as a trade mark, applts. were not entitled to an injunction restraining resp. from infringing applts.' trade mark "Yeast-Vite."—IRVING'S YEAST-VITE, LTD. *v.* HORSE-NAIL (*Ex p.*) (1934), 103 L. J. Ch. 106; 150 L. T. 402 ; 50 T. L. R. 205 ; 78 Sol. Jo. 102 ; 51 R. P. C. 110, H. L.

601a. ——.]—Pltfs. were the registered proprietors of "Sun & Moon" trade marks Nos. 265,479 & 382,012, both registered in Class 38 for articles of clothing, & commenced an action *quia timet* for infringement & passing off. Defts. had used advertising matter bearing the word "Permacola" with a sun next the letter "P" & with an embellished P & intended to continue such use. Defts. having pleaded prior to amendment the use of the trade mark No. 553,414 registered in the name of Haslam, Ltd., pltfs. applied to rectify the register by expunging that trade mark. A consent order was made that it should be expunged & the costs of obtaining the consent order should be paid by resps. Haslams, Ltd. & the costs of resps. Cotella, Ltd. reserved to the conclusion of the action :—*Held :* defts.' use of their mark did not infringe the idea symbolised by pltfs.' marks nor did their advertisements constitute anything in the nature of passing off & the action was dismissed with costs. No order was made as to those costs of the motion which had been reserved.—HOLLINS (WILLIAM) & CO., LTD. *v.* COTELLA, LTD., *Re* HASLAMS, LTD.'S TRADE MARK, NO. 553,414 (1936), 54 R. P. C. 81.

610. *Add. Annotation :*—**Consd.** Abbey Sports Co. *v.* Priest Bros. (1936), 53 R. P. C. 300.

610a. ——.]—Pltfs. in this action were the [illegible] trade mark "Corinthian," in respect of a bagatelle game. A representative of pltfs. ordered &

PART I. SECT. 6, SUB-SECT. 1.—A.

559 iii. ——.]—The assignment of a trade mark to be valid must be made in conjunction with the assignment of the business with which it is connected.—MOYER *v.* HOLLAND, [1933] Ex. C. R. 217.—**CAN.**

sd. *Breach of warranty—What amounts to.*]—HONEY DEW, LTD. *v.* RYAN, [1934] 4 D. L. R. 301.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.—C.

sm. *Assignment in gross.*]—One H., doing business under the trade name of the Carp Flour Mills, registered the trade mark "Mello-Creme" in 1925, for use in the milling & sale of a breakfast food, & used the same in his business. In 1927, H., by deed, assigned to pltf. the said trade mark with the goodwill of H., relating to the sale of cereal foods under the said mark. Notwithstanding this assignment, H. continued to carry on his business as before, using the trade mark along with his trade name on the cartons of the product milled & sold by him ; & the goodwill aforesaid was never, in fact, transferred. Pltf. did not manufacture but merely sold the product of H., marked as aforesaid, with nothing on the product associating it with them. Pltf. later registered the same trade mark to be used in the sale of all food products, including cattle, hog & hen foods, thereby attempting to extend the scope of the first trade mark. The present action is to restrain defts. from using said mark in the sale of bread :—*Held :* an assignment in gross of the right to a name is invalid, & as the goodwill of H. was never in fact transferred to pltf., & as the trade mark "Mello-Creme" was assigned by itself, notwithstanding what was alleged in the deed of transfer nothing passed to pltf. by the said transfer, & pltf. had no *locus standi* to take the present action.—MELLO-CREME PRODUCTS *v.* EWAN'S BREAD, LTD., [1930] Ex. C. R. 124 ; 4 D. L. R. 877.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.

sp. *Allocation of areas—Action for infringement.*]—L. carried on, from 1914, in partnership with various persons, the manufacture & distribution in various Australian States of a furniture & stove polish which was put up in tins of a particular size & description, of which the word "Ezywurk" was a distinguishing feature. In 1919 by agreement for dissolution of partnership L. obtained the exclusive right to manufacture & sell the polish in New South Wales, other than the Broken Hill District, & in other areas, while his former partners retained similarly exclusive rights in other States. W. who was carrying on business in Sydney in 1930 obtained consignments of the polish from areas outside pltf.'s control. In a suit by L. to restrain W. from passing off the polish so obtained by him as & for the goods of L., the ct. found as a fact that the word "Ezywurk" & the get up of the polish had become associated in the New South Wales market, other than the Broken Hill District, solely with goods of L.'s manufacture, & granted the injunction asked for.—LEACH *v.* WYATT (1931), 48 N. S. W. W. N. 173.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

st. *Resale of repaired articles.*]—There is no prohibition on the resale of repaired articles to which the trade mark of the original maker is applied, & for which he has been paid.—A. C SPARK PLUG CO. *v.* CANADIAN SPARK PLUG SERVICE, SUPER REFINED MOTOR OILS & TIMOTHY WILLIAM BRAZIL, [1935] Ex. C. R. 57 ; 3 D. L. R. 84.—**CAN.**

PART I. SECT. 7, SUB-SECT. 2.—A.

596 iii. —— *Matters special to one trader.*]—When the goods of one manufacturer are so packed or arranged externally as to resemble those of others engaged in the same trade, as in the case of starch & tea, the similarity common to all does not of itself expose the manufacturer to an action for infringement, but makes it incumbent upon him to take care that his distinguishing mark is really distinguishing. The imitation or similarity must be in respect to matters which are not common to the trade, but special to one trader. In this case the manufacturer's name, printed in large letters at the top being really distinguishing, the public could not be deceived & the action was dismissed.—HENRY K. WAMPOLE & CO., LTD. *v.* HERVAY CHEMICAL CO. OF CANADA, LTD., [1929] Ex. C. R. 78 ; *affd.*, [1930] S. C. R. 336 ; 2 D. L. R. 975.—**CAN.**

obtained from defts. by means of a " trap " order a board of another make, under circumstances which pltfs. alleged amounted to infringement of trade mark & passing off. The only connection of the board supplied with pltfs.' mark was that the mark was mentioned in a letter giving a firm order after the board which was supplied had been inspected at an interview. Subsequently, after issue of the writ, pltfs. did not proceed with the action, which was only revived after a considerable delay, because defts. inquired as to the position, & issued a summons :—*Held :* the supply of the board under these circumstances was not an infringement ; as regards passing off, the trap order was of an objectionable nature, & a single trap order without evidence of system or of dishonesty was insufficient, & the action must be dismissed [illegible] against them, & the action must be dismissed with costs.—ABBEY SPORTS CO., LTD. *v.* PRIEST BROS. (1936), 53 R. P. C. 300.

613a. Selection—What amounts to.]—In 1910 R. commenced selling oil in & around Cambridge as " Somerlite " oil & registered in respect thereof a device mark incorporating the word Somerlite. In 1914 R. started a branch at Fordham & sold oil under the name Somerlite in an area round Fordham. In 1915, deft. took over the business at Fordham & sold oil supplied to her by R. under the name Somerlite, & used in connection therewith tins bearing the device mark & R.'s name. In 1925 deft. entered into a contract for the supply of oil from C. & Co., with R.'s knowledge, &, as pltfs. alleged, under his direction ; & it was alleged that prior to the date of the contract, R. had tested the oil supplied by C. & Co. This oil deft., with R.'s knowledge, continued to sell as Somerlite. In 1931 R. registered Somerlite as a word mark & assigned the two marks to pltfs. In 1932 pltfs. commenced an action for infringement of the two marks & for passing off, alleging that deft. had infringed by selling oil not supplied by pltfs. as Somerlite. Deft. admitted the sale, but denied that she had infringed or passed off, & moved for rectification of the register by expunging the name mark, on the ground that it was not adapted to distinguish the goods of pltfs. & was calculated to deceive by reason of the continuous user of the mark on oil by deft. on her own account over an extensive territory for many years. She further alleged that pltfs. & their predecessor had known for many years of her use of the mark & were debarred from relief by laches or acquiescence. Pltfs. alleged that the oil supplied by C. & Co. was R.'s oil by virtue of his selection within Trade Marks Acts, 1905–1919, s. 3 :—*Held :* there had been no selection of deft.'s oil by R. within sect. 3 of the Trade Marks Acts ; when rectification is sought in respect of a mark which is *per se* registrable under sect. 9 (1) to (4), the circumstances under which such mark was used prior to registration must be considered ; the word mark was not distinctive of R. at the date of registration & was calculated to deceive & must be expunged. The appeal was dismissed with costs.—SOMERLITE, LTD. *v.* BROWN & *Re* SOMERLITE, LTD.'S TRADE MARK (No. 520,004) (1934), 51 R. P. C. 205, C. A.

613b. Sale of reconditioned goods.]—Defts. had reconditioned vacuum cleaners of pltf.'s manufacture & had included in the reconditioned article certain parts not of pltfs.' manufacture :—*Held :* pltfs. were entitled to an interlocutory injunction on the ground that this was an infringement of their trade mark.—HOOVER, LTD. *v.* AIR-WAY, LTD., [1936] 1 All E. R. 466 ; 53 R. P. C. 399.

616. *Add. Annotation :*—**Refd.** Bale & Church, Ltd. *v.* Sutton, Parsons & Sutton & Astrah Products (1934), 51 R. P. C. 129.

624a. What must be considered—Circumstances of use prior to registration.]—SOMERLITE, LTD. *v.* BROWN & *Re* SOMERLITE, LTD.'S TRADE MARK (No. 520,004), No. 613a, *ante.*

629a. —— ——.]—Pltfs., who were proprietors of a trade mark, consisting of the word " Nildé," registered in class 48 in respect of face powders & similar toilet articles, brought an action for infringement of the mark & for passing off against defts., who carried on business as ladies' hair-dressers under the name " Ernaldé, Ltd.," at premises which were nearly opposite to those of pltfs. Pltfs. alleged (*inter alia*) that defts.' shop front was identical with that of pltfs., save in colour & the substitution of the name " Ernaldé " for " Nildé " :—*Held :* the name " Ernaldé " was not adopted with the intention of deceiving, & did not in fact deceive, the public, & there had been no infringement of the trade mark.—SOCIÉTÉ LA PARFUMERIE NILDÉ *v.* ERNALDÉ, LTD. & FRYER (1929), 46 R. P. C. 453.

629b. —— ——.]—E. P. MOHAMED NOORDIN *v.* S. E. S. ABDUL KAREEM & CO. (1931), 48 R. P. C. 491, P. C.

655. *Add. Annotation :*—**Refd.** *Re* Inescourt's Trade Mark (1928), 46 R. P. C. 13.

655a. " Minimax."]—Defts. in this case used pltfs.' trade mark " Minimax " in connection with the sale of refills of deft.'s make for pltfs.' fire extinguishers, & pltfs. commenced an action to restrain infringement of the trade mark & passing-off :—*Held :* deft. had infringed the trade mark & had passed off his goods for those of pltfs.—MINIMAX, LTD. *v.* MOFFAT (TRADING AS L. & G. FIRE APPLIANCE CO.) (1935), 52 R. P. C. 340.

676a. " Marie Elizabeth "—" Maria Lisette."]—Pltfs., a Portuguese firm, who had carried on business by themselves & their predecessors since 1892, were importers (*inter alia*) of tinned sardines into the United Kingdom. They were the registered proprietors of trade mark No. 204,985 registered in Class 42, consisting of the words " Marie Elizabeth " & a pictorial design, & of Trade Mark No. 424,307 also registered in Class 42 consisting of the words " Marie Elizabeth " alone.

PART I. SECT. 7, SUB-SECT. 2.—B.

614 xiii. —— ——.]—MALUMIAR & CO. *v.* FINLAY & CO. (1929), I. L. R. 7 Ran. 169.—IND.

PART I. SECT. 7, SUB-SECT. 2.—D. (a).

sec. " *Peggy Sage* "—" *Peggy Royal.*"] —*Held :* the trade marks in question were so similar as to be likely to cause confusion.—PEGGY SAGE INC. & NORTHAM-WARREN, LTD., No. 15240 *v.* SIEGEL KAHN CO. OF CANADA, LTD., [1936] S. C. R. 539 ; 4 D. L. R. 151.—CAN.

Defts. sold a consignment of tinned sardines obtained from America & bearing the words "Maria Lisette," the whole of which had been sold prior to the action, & had also issued a circular offering "Marie Lisette" tins of sardines:—*Held:* the mark "Marie Elizabeth" & its abbreviation "Maries" indicated pltfs.' goods, & the use of the mark "Maria Lisette" or "Marie Lisette" was an infringement of the trade marks & was calculated to pass off; & although defts. no longer had any goods marked in this way in their possession, pltfs. were nevertheless entitled to an injunction. The usual other relief was granted.—FIALHO *v.* SIMOND & Co. (1937), 54 R. P. C. 193.

684. *Add. Citation:—on appeal* (1929), 46 R. P. C. 406, C. A.

Add. Annotations:—**Consd.** Irving's Yeast-Vite, Ltd. *v.* Horsenail (1933), 50 R. P. C. 139. **Refd.** Irving's Yeast-Vite, Ltd. *v.* Horsenail (1933), 103 L. J. Ch. 106.

696a. Striking out statement of claim—Res judicata.]—JAEGER Co., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

696b. Stay of proceedings—Pending determination of application for registration.]—JAMES (J. U.) & SONS, LTD. *v.* WAFER RAZOR Co., LTD. (1932), 49 R. P. C. 597, C. A.

739a. ——.]—In an action to restrain infringement of registered trade mark pltfs. by their statement of claim pleaded their registration but did not plead user of the mark prior to the date of registration. Defts. pleaded user by them of the same mark prior to the date of the registration of pltfs.' mark, but did not plead that they had used the mark prior to the user (if any) of pltfs. At the trial, pltfs. tendered evidence of user by them of their trade mark prior to the date of the registration pleaded. Defts. contended that such evidence was inadmissible in that user had not been pleaded by pltfs. They further contended that in setting up a defence under sect. 41 of the Trade Marks Acts where user prior to registration had been pleaded by pltfs. it was sufficient for defts. to plead user by them prior to the date of pltfs.' registration, & unnecessary & superfluous to plead user prior to the date of pltfs.' user when no such user by pltfs. was alleged in the statement of claim, & that, if pltfs. wished to rely upon such user, it must be pleaded by way of reply:—*Held:* the statement of claim was correct in that it was not necessary for a pltf. who relied upon a registered trade mark to plead user either before or after the date of registration, & accordingly the evidence of user prior to registration was admissible; in order to set up a defence under sect. 41 of the Trade Marks Acts, deft. must plead user by him at a date anterior to the user or registration of pltfs., & it was not sufficient to plead user prior to registration *simpliciter*. An injunction to restrain defts. from infringing the registered trade mark was granted.—SMITH, BARTLET & Co. *v.* BRITISH PURE OIL GREASE & CARBIDE Co., LTD. (1933), 51 R. P. C. 157.

740a. Mark not calculated to deceive—Trade Marks Act, 1919 (c. 79), s. 4.]—Pltfs., who were the registered owners of the word "Kleenoff" in Part B. of the register, brought an action against defts. in respect of their use of the word "Kleenup." Both words were used in respect of cleaners for cooking stoves, but the submission that they were too descriptive to be distinctive was rejected. The judge held that defts. had failed to establish the special defence (not calulated to deceive) under sect. 4 of the 1919 Act, & that they had infringed. An injunction was granted against infringement but not against passing off, the issues being similar, pltfs. were given their whole costs. In the absence of a motion to expunge the trade mark, & in view of the peculiar nature of a Part B. mark, a certificate of validity was refused. Defts. appealed to the Ct. of Appeal:—*Held:* the mere absence of evidence of actual deception did not enable defts. to rely on the special defence in sect. 4, for the ct. could consider probabilities, for example, in telephoned or written orders, & that deft. had not established any special defence under the proviso in sect. 4, & that a difference of get-up did not assist defts. on the question of infringement, & that defts. had infringed.

Per ROMER, L.J.: the words "upon or in connection with the goods" should be implied in sect. 4. Mis-spelling, when imitated, is relevant in deciding infringement.

Per MAUGHAM, L.J.: the words "the user of which pltf. complains" in sect. 4 extend to a consideration of the probable consequences arising from the use of a mark colourably resembling the registered mark. The test of infringement is the same where a trade mark has a descriptive element as where it has not, except so far as that element may be common to the trade. The appeal was dismissed with costs.—BALE & CHURCH, LTD. *v.* SUTTON, PARSONS & SUTTON & ASTRAH PRODUCTS (1934), 51 R. P. C. 129, C. A.

Annotations:—**Consd.** *Re* William Bailey (Birmingham), Ltd.'s Application to Register a Trade Mark, *Re* Gilbert Co.'s Opposition (1935), 52 R. P. C. 136. **Refd.** Hollins (William) & Co. *v.* Cotella, Ltd. (1936), 54 R. P. C. 81.

740b. Use as description—Use calculated to deceive.]—Pltfs. were the registered owners of a trade mark "Izal" No. 171,812 registered in 1893 in Class 3 in respect of chemical substances prepared for use in medicine & pharmacy, & they also claimed user of the mark Izal on their disinfectant fluids & on their toilet rolls which were medicated with Izal. Defts. sold toilet rolls in wrappers with the words "Medicated with Izal" on them, the words "medicated with" being in small letters compared with those of the word "Izal." Pltfs. commenced an action against defts. to restrain infringement of trade mark & passing off. Defts. claimed the right to use the words "Izal" & "medicated with" in a diamond shape as being a *bonâ fide* description of their goods which they had in fact medicated with Izal disinfectant fluid:—*Held:* defts.' use of

PART I. SECT. 7, SUB-SECT. 2.—E.

sg. *Directions on medicine.*]—Where two traders are selling the same medicine, & the one prints on his bottle directions for its use; assuming such directions to be correct, it is no infringement of such label to copy or repeat such directions; otherwise his liberty as a manufacturer would be unduly interfered with.—HENRY K. WAMPOLE & Co., LTD. *v.* HERVAY CHEMICAL CO. OF CANADA, LTD., [1929] Ex. C. R. 78.—**CAN.**

the mark Izal on their toilet roll wrappers was an infringement of pltfs.' trade mark "Izal," defts.' wrapper not constituting a fair description of the character or quality of the goods within sect. 44; also, there was evidence sufficient to support an action to restrain passing off of defts.' toilet rolls as & for pltfs. toilet rolls, but an injunction to restrain infringement of the trade mark afforded ample protection to pltfs. Judgment was given for pltfs. with costs & an injunction to restrain infringement was granted; also, an unlimited registration for a particular Class of goods conferred a right to that trade mark for all the goods in that class whenever they may be included. *Semble:* costs of & occasioned by amendment do not include costs thrown away by amendment.—NEWTON CHAMBERS & Co., LTD. *v.* NEPTUNE WATERPROOF PAPER Co., LTD. (1935), 52 R. P. C. 399.

747. *Add. Annotation:*—*As to* (2) **Refd.** Coles (J. H.) Proprietary, Ltd. *v.* Need, [1934] A. C. 82.

763. *Add. Annotation:*—**Distd.** British Blue Spot Co., Ltd. *v.* Keene (1931), 48 R. P. C. 375.

778. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

818a. —— **Possibility of confusion.**]—EDISON ACCUMULATORS, LTD. *v.* EDISON STORAGE BATTERIES, LTD. (1929), 46 R. P. C. 432.

825. *Add. Annotation:*—**Consd.** Draper *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. (1935), 53 R. P. C. 66.

836. *Add. Annotation:*—**Consd.** Johnson & Son (Loughborough), Ltd. *v.* Puffer (W.) & Co. (1930), 47 R. P. C. 95.

Part III.—False Marks and False Trade Descriptions.

859. *Add. Annotation:*—**Refd.** *Re* Concord Canning Co.'s Trade Mark (1932), 49 R. P. C. 323.

860. Power of magistrate to fix standard.]—Upon a prosecution for selling a soap described as "Lysol Soap" but which contained only a minute quantity of lysol, defts. were discharged, the magistrate being of the opinion that he had no power in a prosecution under Merchandise Marks Acts, 1887, to fix a standard:—*Held:* the magistrate had power to fix a standard upon the evidence & was bound to do so.—STOTT *v.* GREEN, STOTT *v.* HENSHAW, [1936] 2 All E. R. 354; 80 Sol. Jo. 426, D. C.

871a. Omission to indicate country of origin.]—By the Merchandise Marks (Imported Goods) No. 4 Order, 1929, art. 1: "Subject as hereinafter provided, it shall not be lawful . . . to sell or expose for sale in the United Kingdom any imported raw tomatoes unless they bear an indication of origin," Art. 2: "The indication of origin shall be marked indelibly & in a conspicuous manner as follows . . . (*b*) on exposure for sale by retail, by means of a show-ticket clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height." Art. 4: "Nothing in this order shall apply to sales of raw tomatoes in quantities of 14 lb. or less." Art. 4 of the above order applies only to actual sales, & not to exposure for sale. Where, therefore, a quantity under 14 lb. of Jersey tomatoes was exposed for sale by retail without any show-ticket bearing an indication of origin:—*Held:* an offence against arts. 1 & 2 of the Order had been committed.—DAVENPORT *v.* JOHNSTON (1937), 157 L. T. 21; 101 J. P. 259; 53 T. L. R. 671; 81 Sol. Jo. 500; 35 L. G. R. 278, D. C.

877. *Add. Annotation:*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

Part IV.—Designs.

880a. Article—Whether building or structure included.]—*Re* COLLIER & Co., LTD.'S APPLICATION FOR REGISTRATION OF DESIGNS (1937), 54 R. P. C. 253.

881. *Add. Annotation:*—**Consd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

882a. ——.]—Resps. were the owners of a design registered in Class 1 in respect of its application to a metal frame for spectacles. They also owned a patent for a similar spectacle frame. They had threatened customers of appcts. with proceedings under the patent.

PART I. SECT. 8.

sk. *Second-hand dealer pc —— boom-chains with registered mark.*]—To sustain a conviction of a second-hand dealer for possessing boom-chains having a trade mark duly registered or other mark the words or other mark must be construed *ejusdem generis*. R. *v.* KLEIN, [1936] 1 D. L. R. 189; 64 Can. C. C. 341; 50 B. C. R. 90. CAN.

PART III. SECT. 2.

o i. —— *Production two short-weight loaves from over forty thousand—No intent.*]—R. *v.* CANADIAN BAKERIES, LTD. (1930), 54 Can. C. C. 369.—CAN.

PART III. SECT. 3.

d i. —— *Gasoline stored in tank—Pump bearing trade mark attached to tank.*]—R. *v.* CADIEUX & SEGUIN (1930), 54 Can. C. C. 361.—CAN.

PART IV. SECT. 1.

sd. *Industrial design.*]—*Held:* as Trade Mark & Design Act does not define what industrial designs are within the meaning of the Act, the word "design" therein must be taken to be used in its ordinary, & not in an artificial, sense.—CLATWORTHY & SON, LTD. *v.* DALE DISPLAY FIXTURES, LTD., [1928] Exch. C. R. 159; *affd.*, [1929] 3 D. L. R. 11; S. C. R. 429.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.—B.

sg. *Not article of manufacture.*]—An industrial design, under the Act, was intended only to imply some ornamental design applied to an article of manufacture, that is to say, it is the design, drawing, or engraving, applied to the ornamentation of an article of manufacture which is protected, & not the article of manufacture itself.—CANADIAN WM. A. ROGERS, LTD. *v.* INTERNATIONAL SILVER Co. OF CANADA, LTD., [1932] Ex. C. R. 63.—CAN.

Appcts. had taken steps to revoke the patent, whereupon resps. had surrendered it. Appcts. moved to rectify the register by expunging the design. They alleged that the design was not novel by reason of certain prior publications & prior users & that it was not proper subject-matter for registration as a design since it was a method of construction or a mere mechanical device:—*Held:* prior publication & prior user had not been ——, but the differences between the prior art & the registered design were so slight that the design was not a new or original design within sect. 49 of Patents & Designs Acts, 1907–1932. An order was made that the register be rectified by expunging the design. If a design *quâ* design appeals to the eye & is new or original, it is registrable, even if it also involves a method of construction properly entitled to protection as a patent.—*Re* WINGATE'S REGISTERED DESIGN No. 768,611 (1934), 52 R. P. C. 126.

883. *Add. Annotation:*—**Consd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

886. *Add. Annotation:*—**Refd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

892. *Add. Annotation:*—**Refd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

893a. Wolf-cub head for Boy Scouts' pole.]—As a model of a wolf-cub's head produced from a mould in papier mache & intended to be displayed as their totem on the tops of poles by the Boy Scouts Assocn. consisted of "features of shape, configuration, pattern, or ornament applied to any article" of manufacture or artificial substance by an industrial process, it was therefore a design within the definition of Patents & Designs Act, 1907 (c. 29), s. 93, as amended by Patents & Designs Act, 1919 (c. 80), s. 19, & consequently was capable of being registered under the 1907 Act.—PYTRAM, LTD. *v.* MODELS (LEICESTER), LTD., [1930] 1 Ch. 639; 99 L. J. Ch. 381; 143 L. T. 227; 46 T. L. R. 290.

896. *Add. Annotation:—Generally,* **Refd.** Kestos Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139

908a. ——.]—Registration was obtained in class 12 for a design in respect of its application to a slipper-bag. Pltf. commenced an action to restrain defts. from selling or offering for sale an alleged infringement of the design. Defts. denied that they had infringed the design, & alleged that the design was neither new or original. Defts. had not moved to rectify the register, but at the trial, at the request of both parties, validity was treated as put in issue:—*Held:* pltf.'s design possessed novelty & originality & it was valid; the alleged infringement was not identical with the registered design, but that it differed materially therefrom & that it was not an infringement. The action was dismissed with costs.—WELLS *v.* ATTACHE CASE MANUFACTURING CO., LTD. (1931), 49 R. P. C. 113.

908b. ——.]—Pltfs. were the registered proprietors of a design registered in Class I. in respect of spring mattresses, & brought an action against defts. for infringement of the said design:—*Held:* there was no infringement, the mattresses being compared by the eye, & the design was invalid for lack of novelty or originality, & also because it was a mere mechanical device. The action was dismissed with costs & the design was ordered to be expunged from the register with costs against pltfs. including the cost of giving notice to the Comptroller & the costs of the Comptroller. The costs of certain citations objected to by pltfs. were left to the taxing master.—MARSDEN MANUFACTURING CO., LTD. *v.* VONO CO., *Re* MARSDEN MANUFACTURING CO., LTD., REGISTERED DESIGN No. 744,647 (1934), 51 R. P. C. 282.

908c. ——.]—Registration in Class II. was obtained for a design in respect of its application to a dress. The alleged infringing article was made exactly in accordance with the registered design. Defts. alleged (*inter alia*) that pltf.'s design was not new or original & that the alleged infringing dress had in fact been made & exposed to the public before the date of application for registration of pltf.'s design. Defts. moved to rectify the register by expunging the design. Pltf. had seen the design in the showrooms of a certain firm in Berlin & had ordered dresses according to the design which were delivered to her in this country, whereupon she applied to register the design; there was no evidence that the design was new when pltf. first saw it or as to the date of its origin. The evidence for defts. was that samples of the design were shown to certain people in this country before the date of application for the design & that a dress incorporating it was in the premises of defts. open to travellers & others before that date:—*Held:* the design was not new or original; there having been a prior user of it in public & the action was dismissed with costs, & it was ordered that the register be rectified by expunging the design, & pltf. was ordered to pay the costs including costs to be incurred by defts. in obtaining rectification of the register.—BARKER *v.* ASSOCIATED MANUFACTURERS (GOWNS & MANTLES), LTD. (1933), 50 R. P. C. 332.

908d. ——.]—Appcts., L. M. Co., Ltd., were the registered proprietors of a design registered in Class 13 in respect of its application to piece goods. Resps., C. V. M. Co., Ltd., were the registered proprietors of another design registered in the same class in respect of similar goods. Appcts. moved to rectify the register by expunging the registration of resps.' design on the ground that it was not a new or original design not previously published in the United Kingdom by reason of the prior publication of their own design. Resps. thereupon moved to rectify the register by expunging the registration of appcts.' design on the ground that it was not a new or original design not previously published in the United Kingdom by reason of a design admittedly published in 1921:—

ART IV. SECT. 2, SUB-SECT. 1.—C. (b).

904 iii. ——.]—Originality involves the exercise of intellectual activity so as to suggest for the first time the application of a particular pattern, shape, or ornament to some special subject-matter to which it had not been applied before. To constitute an original design there must be some substantial difference between it & what had theretofore existed as applied to articles of an analogous character.—CLATWORTHY & SON, LTD. *v.* DAY DISPLAY FIXTURES, LTD., [1929] D. L. R. 11; S. C. R. 429; *affg.*, [19 Ex. C. R. 159.—CAN.

' design was not sufficiently different from the 1921 design, & that it was not a new or original design; also resps.' design was neither new nor original. An order was made that the register be rectified by expunging the registrations of both appcts.' & resps.' designs therefrom. No order was made as to costs.—*Re* CALDER VALE MANUFACTURING CO., LTD., REGISTERED DESIGN, *Re* LAPPET MANUFACTURING CO., LTD. (1934), 52 R. P. C. 117.

908e. ——.]—An application was made for the registration in Class 5 of a design to be applied to a calendar pad. A statement of novelty in the following terms was indorsed on the papers of the application: "The novelty consists in the combination of the arrangement, pattern, colouring, & shape of the calendar pad as shown in the representations." Objection was raised to the application on two grounds, viz.: (1) that what was submitted for registration was not a design within the meaning of the Acts so far as concerned arrangement & colouring, & (2) did not possess any substantial novelty of shape or pattern. The application was refused by the Assistant Comptroller after a hearing. Appcts. appealed to the Patents Appeal Tribunal:—*Held:* that colour must be disregarded; "arrangement" was not proper subject-matter of a design; the letters indicating the names of the months & days, or the numerals, could not be considered as constituting an integral part of the pattern claimed; the only relevant features of the pattern were its framework, its division into blank spaces, & the sub-division of these spaces into compartments for the reception of the numerals; there was no novelty in shape, configuration, pattern or ornament applied to any of the pages of the pad; & in refusing registration, the Assistant Comptroller had exercised on a proper basis the discretion given by sect. 49 of the Acts. The appeal was dismissed.—*Re* ASSOCIATED COLOUR PRINTERS, LTD.'S APPLICATION (No. 814,271) (1937), 54 R. P. C. 203.

908f. ——.]—The registered proprietors of two designs commenced an action for infringement of them. The designs were registered in Class 15 in respect of their application to cotton piece goods. The designs consisted of stripes in various colours. Defts. denied the validity of the designs, alleging anticipation & want of novelty & that in the cotton trade & in particular in the export trade to West Africa such arrangements of stripes as in the registered designs had been commonplace for many years prior to the registration of the designs. They contended that a pattern of plain stripes in any arrangement could not be proper subject-matter for registration—the word "plain" referring to the weave. Defts.' designs complained of were identical with the registered designs:—*Held:* the registered designs were designs for stripes or checks applied to textile goods, either woven or printed, & the question of plain stripes was outside the question in the action; the defences of anticipation & want of novelty failed & pltfs. were entitled to judgment. Injunctions against infringement & an inquiry as to damages were ordered. A certificate that the validity of the designs came in question was refused.
& Co. *v.* VELEZ & Co. (1936), 53 R. P. C. 403.

910. *Add. Annotation:*—**Folld.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485.

910a. ——.]—Pltfs. were the owners of a registered design for a toy animal of three dimensions known as Mickey Mouse. Defts. had since put on the market another similar toy animal known as Squeaky which pltfs. alleged was an infringement. A motion by defts. to rectify the register by the removal of pltfs.' design was ordered to come on with the hearing of the action. Defts. pleaded in the action that there was prior publication & filed particulars of objections in which publication of pictures & representations in two dimensions of the same or a similar toy was alleged & they submitted that the design was not in the circumstances a proper subject for registration:—*Held:* (1) the registration was valid, & (2) there had been no infringement.—DEAN'S RAG BOOK CO., LTD. *v.* POMERANTZ & SONS & *Re* DEAN'S RAG BOOK CO., LTD. & THE PATENTS & DESIGNS ACTS, 1907 TO 1928 (1930), 47 R. P. C. 485.

914. *Add. Annotations:*—**Refd.** Saunders *v.* Automotive Spares, Ltd., *Re* Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450; Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

916. *Add. Annotation:*—*Generally*, **Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

923. *Add. Annotations:*—**Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403; Kangol (Manufacturing), Ltd. *v.* Centrokomisc (London), Ltd., [1937] 3 All E. R. 179.

929. *Add. Annotations:*—**Consd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139. **Refd.** Saunders *v.* Automotive Spares, Ltd., *Re* Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450.

932. *Add. Annotation:*—**Refd.** *Re* Wingate's Registered Design No. 768,611 (1934), 52 R. P. C. 126.

933. *Add. Annotations:*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485; Saunders *v.* Automotive Spares, Ltd., *Re* Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450. **Refd.** Wells *v.* Attache Case Manufacturing Co. (1931), 49 R. P. C. 113; Marsden Manufacturing Co. *v.* Vono Co., *Re* Marsden Manufacturing Co., Registered Design No. 744,647 (1934), 51 R. P. C. 282; Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

934a. ——.]—S. who was the registered proprietor of a design registered in class 1 in respect of its application to a metal cap for a ball-bearing housing, brought an action for infringement of his copyright in the design against A. S., Ltd. Defts. denied infringement, & alleged that the registration of the design was invalid by reason of want of novelty & subject-matter. Upon the action coming on for trial, an adjournment was ordered to enable defts. to give notice of motion to rectify the register by expunging the design:—*Held:* at the resumed hearing of the action & motion, the design was not new or original, in that it was only distinguishable, if at all, from well-known prior

constructions, by modifications of a kind which must be regarded as ordinary trade variants. It was ordered that the register be rectified by expunging the design, & pltf. was ordered to pay the costs.—SAUNDERS *v.* AUTOMOTIVE SPARES, LTD., *Re* REGISTERED DESIGN NO. 747,128 OF ALBERT SAUNDERS (1932), 49 R. P. C. 450.

938. *Add. Annotation :*—**Consd.** Mallards, Ltd. *v.* Gibbons Bros. " Rotary " Co., *Re* Registered Design No. 742,187 of Mallards Ltd. (1931), 48 R. P. C. 315.

939a. —— ——.]—Before the registration of a design a stranger to the registered owner had shown it to a business acquaintance for the purpose of securing orders for articles embodying the design. It was not proved that the registered owner was party to the disclosure :—*Held :* such disclosure was not a confidential but a commercial disclosure & was a prior publication of the design. The registration was therefore invalid & ought to be expunged.—KANGOL (MANUFACTURING), LTD. *v.* CENTROKOMISE (LONDON), LTD., [1937] 3 All E. R. 179 ; 54 R. P. C. 211.

940a. —— **Incorporation in private trade library.**]—The registered proprietors of a design registered in class 13 in respect of printed or woven designs on textile piece goods, other than checks or stripes, brought an action for infringement of the design against defts., who moved for rectification of the register by expunging the design. The design was a woven textile design depending upon the weave for its appearance ; other very similar, if not identical, designs were cited as anticipations ; as to one alleged anticipation, publication in a private trade library of designs was alleged. The design was prepared by the alleged author submitting a sketch & some instructions to a weaver :—*Held :* incorporation in such a library, to which numerous persons had access, constituted sufficient publication ; also, that preparation of the design in the manner above mentioned did not constitute authorship ; & the design was invalid for want of novelty, & also because pltfs. were wrongly registered as proprietors. It was ordered that the register be rectified by expunging the design accordingly.—PRESSLER (A.) & CO., LTD. *v.* GARTSIDE & CO. (OF MANCHESTER), LTD., & WIDD & OWEN, LTD., *Re* PRESSLER & CO., LTD. REGISTERED DESIGN NO. 272,672 (1933), 50 R. P. C. 240.

943a. —— **Appeal from refusal to register—Order for registration subject to statement of novelty.**]—*Re* GUTTA PERCHA & RUBBER (LONDON), LTD. (NO. 789,574) APPLICATION (1935), 52 R. P. C. 383.

943b. **Representations must be satisfactory to Comptroller.**]—*Re* ENGLISH ELECTRIC CO., LTD. (NO. 777,313) APPLICATION FOR REGISTRATION OF A DESIGN (1933), 50 R. P. C. 359.

945. *Add. Annotation :—Generally,* **Refd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

948. *Add. Annotation :*—**Consd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

948a. **Article manufactured in accordance with design.**]—Pltfs., who were the registered proprietors of a design registered in respect of its application to a bust bodice or bust support for women's wear, brought an action for infringement of their copyright in the design against deft. co. & K. its Managing Director. Defts. denied infringement & moved to rectify the register by expunging the design, alleging that the registration was invalid by reason of want of novelty or originality, on the ground that the design was a mode or principle of construction or a mere mechanical device, & on other grounds. Defts. issued a summons asking that the question of infringement by deft. co., should be tried before the question of the liability of K., & an order was made for the trial of such preliminary issue, together with the motion for rectification :—*Held :* on the trial of the preliminary issue & motion, the design was valid, but had not been infringed by deft. co. The motion was dismissed with costs, no order being made as to the costs of the trial of the preliminary question.

Defts. then moved for judgment under R. S. C., Ord. 40, r. 7, & the action was dismissed with costs, other than the costs of the trial of the preliminary question.—KESTOS, LTD. *v.* KEMPAT, LTD. & VIVIAN FITCH KEMP, *Re* KESTOS, LTD. REGISTERED DESIGN (NO. 725,716) (1935), 53 R. P. C. 139.

949a. —— **Director of company—Registration by company.**]—Pltfs., who were the registered proprietors of a design registered in 1928 in class 1 in respect of its application to fruit peelers, brought an action for infringement of their copyright in the design against defts. Defts. denied infringement & alleged that the author of the design was G., a director of the deft. co., & that the application for registration was made in fraud of defts., who first became aware of the existence of copyright on Apr. 12, 1929. Defts. further alleged want of novelty & subject-matter, & that pltfs. had not complied with the provisions as to marking contained in sect. 54 (1) (*b*) of Patents & Designs Act, 1907 to 1928. Defts. moved to rectify the register by expunging the design :—*Held :* the author of the design was H., a director of the pltf. co., & that therefore the application was not made in fraud of defts., & the design had not been published in any of the alleged anticipations, none of the features of the design were solely dictated by the functions which the article was called upon to perform, & the design was valid & subsisting & had been infringed. Pltfs. were granted an injunction & an order for delivery up, but inasmuch as they had failed to comply with the provisions as to marking contained in sect. 54 (1) (*b*) of Patents & Designs Acts, 1907 to 1928, & it was proved that defts. had no notice of the existence of copyright in the design prior to Apr. 12, 1929, an inquiry as to damages was ordered limited to infringements after that date. Defts. were ordered to pay the costs

PART IV. SECT. 2, SUB-SECT. 2.

sv. *Discretion to register.*]—*Held :* appct. for the registration of an industrial design has no absolute right to have the same registered. To allow the registration is within the discretion of the departmental officer charged with duty of administering the Act, but no registration should be lightly made. The exercise of the discretion to register must always contemplate the interests of the public which ought not to be unduly restricted in matters of trade.—JONES *v.* TEICHMAN, [1930] Ex. C. R. 103 ; 3 D. L. R. 437.—CAN.

of the action, & the motion to rectify the register was dismissed with costs.—MALLARDS, LTD. *v.* GIBBONS BROS. "ROTARY" CO., LTD., *Re* REGISTERED DESIGN NO. 742,187 OF MALLARDS, LTD. (1931), 48 R. P. C. 315.

953a. Two persons producing similar designs—Authorship communicated to each other.]—If there are two persons each of whom has produced a similar design & each has communicated the fact of such authorship to the other, neither of them alone is the proprietor of a new or original design, & neither of them can validly register it.

On Dec. 6, 1933, resp. obtained registration of a design No. 788,451 in Class 3 in respect of a frame for a tennis or other racquet. On June 15, 1934, appct. moved to rectify the register of designs by striking out resp.'s name as the proprietor of the design & by substituting therefor the name of appct., or by expunging the design from the register. Appct. alleged either that resp. had obtained the registration in fraud of appct.'s rights or that the design was improperly registered since it was not a new or original design not previously published in the United Kingdom: —*Held:* appct. had failed to establish a charge of fraud, but the design had in fact been published prior to the date of application for registration & that the register must be rectified by expunging the registration. No order was made as to costs except that each party was ordered to pay an equal share of the costs of the Comptroller-General who was a resp. to the motion.—*Re* VREDENBURG'S REGISTERED DESIGN NO. 788,451, *Re* PATENTS & DESIGNS ACTS, 1907–1932 (1934), 52 R. P. C. 7.

958a. Effect of failure to mark—On inquiry as to damages in action for infringement.]—MALLARDS, LTD. *v.* GIBBONS BROS. "ROTARY" CO., LTD., *Re* REGISTERED DESIGN NO. 742,187 OF MALLARDS, LTD., No. 949a, *ante*.

970. *Add. Annotation:—As to* (2) **Refd.** Saunders *v.* Automotive Spares, Ltd., *Re* Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450.

970a. ——.]—Registration in class 3 was obtained for a design in respect of its application to a golf ball. The representation of the design on the register consisted of a freehand drawing comprising two views of the design from different aspects. Golf balls made & sold by pltf. co. were not in fact made in strict accordance with the design, although sold in wrappings marked with the registration number thereof. The managing director of deft. co. was in fact the author of pltf.'s registered design, which he had assigned to them while in their employ. The alleged infringing balls were substantially identical with the Maxfli balls made & sold by pltfs. Defts. alleged (*inter alia*) that pltf.'s design was only new or original in certain features having regard to certain prior users & prior publications:—*Held:* obvious or fraudulent imitation of the design had not been established. The action was dismissed with costs. A certificate that the particulars of objections, subject to an exception, were reasonable was granted & a certificate that the validity of the registered design had been put in issue was granted.—DUNLOP RUBBER CO., LTD. *v.* GOLF BALL DEVELOPMENTS, LTD. (1931), 75 Sol. Jo. 173; 48 R. P. C. 268.

976. *Add. Annotations:*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485; *Re* Margolin's Registered Design, [1936] 3 All E. R. 347.

978. *Add. Annotation:*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485.

996. *Add. Annotation:*— **Refd.** Kestos, Ltd. *v.* Kempat, Ltd. (1935), 53 R. P. C. 139.

997. *Add. Annotation:—As to* (1) **Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

1002a. Cancellation—What must be proved.]—In proceedings under sect. 58 (1) of the Acts the only question to be determined under (*a*) is whether there has been prior publication of the design or not, & the question whether the design is new or original does not arise.—*Re* RADNALL'S REGISTERED DESIGN (No. 778,735) (1934), 51 R. P. C. 164.

1005. *Add. Annotation:*— **Refd.** *Re* Margolin's Registered Design, [1936] 3 All E. R. 347.

1013a. ——.]—*Re* GLEN (JOHN) & SONS, DESIGNS NOS. 308,957, 309,240, 308,956, 308,952, 308,955, 308,954, 309,241 & 308,953 (1932), 50 R. P. C. 41.

Part V.—Trade Names and Passing Off.

1019. *Add. Annotations:—As to* (1) **Apld.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 192. *Generally*, **Refd.** Champagne Heidsieck et Cie Monopole Societe Anonyme *v.* Buxton (1929), 46 T. L. R. 36.

PART V. SECT. 1.

sw. *Territorial extent of right—Effect of prior use locally—Line of motor omnibuses.*]—The action was to restrain defts. from using a certain trade name in connection with motor passenger transportation business in Alberta; pltf. claiming, as first user in the territory, an exclusive right to the name in that business in that territory: —*Held:* the judgment of the Appellate Div., which dismissed the action, should be affirmed, on the ground that, in view of the existing prior extensive use of the name by a certain co. & its affiliated corporations in the tourist transportation business in other territories, the use by pltf. of that name in a like business was not proper, being a use that would mislead the tourist public, & therefore pltf. had not shown a right to the use entitling it to claim the protection of a ct. of equity.—BREWSTER TRANSPORT CO., LTD. *v.* ROCKY MOUNTAIN TOURS & TRANSPORT CO., LTD., [1931] S. C. R. 336; [1931] D. L. R. 713; *affg.*, [1930] 1 W. W. R. 849; 3 D. L. R. 114; 24 Alta. L. R. 486.—**CAN.**

sx. —— ——.]—Ownership of a trade name is not confined to any particular territory or country; & a person who invokes the equitable jurisdiction of the ct. to restrain the use of a trade name similar to that which he has adopted must come into ct. with clean hands. Pltf. opened a retail meat store in E. under the name "Sterling Meat Market" knowing that the name "Sterling Market" had been used for some time by stores in the same kind of business in V. About two months later deft. co., which had purchased said V. stores in good faith.

1026. *Add. Citation :*—29 R. P. C. 379.

Add. Annotation :—**Consd.** Jay's, Ltd. *v.* Jacobi (1933), 49 T. L. R. 239.

1031. *Add. Annotation :*—**Consd.** Jay's, Ltd. *v.* Jacobi (1933), 49 T. L. R. 239.

1033a. —— ——.]—Pltfs., the corpn. of the Hall of Arts & Sciences, a body incorporated by Royal Charter, owned a hall, the Royal Albert Hall, commonly known as the Albert Hall, which they let for entertainments including orchestral performances. There was no orchestra employed by pltfs. Defts., Albert Edward Hall, carried on a business under the name the " Albert Hall Orchestra," which name he had registered under the provisions of the Business Names Act, 1916 (c. 58). Pltfs. alleged that the acts of deft. were calculated to induce the public to believe that his orchestra was connected with the Albert Hall & that thereby pltfs.' reputation would be injured & they would suffer damage. Deft. denied the various allegations made by pltfs. & alleged that he was known by the name Albert Hall & that he was entitled to use that name in connection with his business. Pltfs. sought an injunction to restrain deft. from using for the purposes of his business the name of the " Albert Hall Orchestra " or any other similar name in such manner as to be calculated to lead the public to believe that deft.'s orchestra was in any way connected with the Albert Hall :—*Held :* pltfs.' & deft.'s businesses were distinct & deft.'s business would not conflict with that of pltfs. ; there was no evidence of actual or immediate future risk of damage to pltfs.' reputation ; deft. had not acted fraudulently ; & in any event, in order to comply with the provisions of the Business Names Act, 1916 (c. 58), s. 18 (1) (*a*), deft. was bound to put his real name on literature relating to business carried on under his registered business name & on an undertaking being given by deft. to comply with the said provisions the action be dismissed with costs.—HALLS OF ARTS AND SCIENCES CORPN. *v.* HALL (1934), 50 T. L. R. 518 ; 51 R. P. C. 398.

1033b.————.] Pltfs., who were bacon-curers carrying on business solely in English bacon, were proprietors of a registered trade mark consisting of the word " Harris," limited to bacon, hams, lard, & brawn, & each of their sides of bacon was stamped " Harris." Deft. Harris had a number of retail shops dealing (*inter alia*) in bacon, which was solely Danish bacon & was always described as " Harris's pressure-cured Danish bacon," the sides being stamped with the words " Harris " & " Danish." In an action for passing-off & for infringement of the registered trade mark the trial judge held that as there was no evidence of any confusion between pltfs.' & deft.'s goods, & as deft. was using his own name *bonâ fide* & there was no real risk of confusion, & as deft. was therefore protected by Trade Marks Act, 1905 (c. 15), s. 44, both claims of pltfs. failed. An appeal by pltfs. was dismissed on the agreed terms of deft.'s giving an undertaking not to use the name " Harris " in connection with bacon sold by him.—HARRIS (C. & T.) (CALNE), LTD. *v.* HARRIS (1934), 50 T. L. R. 338 ; 51 R. P. C. 264, C. A.

1033c. Name acquired by reputation.]—A person who has *bona fide*, & without any intention to deceive, adopted a name for business purposes & acquired it by reputation over a considerable period is entitled to trade under that name, & cannot be restrained from so doing, even though the similarity of the name to that of another firm engaged in business in the same trade may occasionally lead to confusion.

Deft. J., who had adopted & been known for some years while managing a ladies' costumiers business in Brighton as " Miss Jay," commenced a partnership business in the same trade under the name " Jays " in Hove. Pltfs., Jay's, Ltd., an old-established firm of costumiers in Regent Street, London, sought to restrain defts. from using the name " Jays," or any other name calculated to suggest that the business was that of pltfs. or a branch thereof, or that the goods sold by defts. were supplied by pltfs. : —*Held :* on the evidence there was no passing-off proved, as the first deft. had acquired the name " Jay " by reputation & was entitled to trade under it, the names were not the same, pltfs. being a limited co. with an apostrophe before the letter " s " in their name, & the businesses being of a different class there was no risk of any confusion between them. The action, therefore, failed. —JAY'S, LTD. *v.* JACOBI, [1933] Ch. 411 ; 102 L. J. Ch. 130 ; 149 L. T. 90 ; 49 T. L. R. 239 ; 77 Sol. Jo. 176 ; 50 R. P. C. 132.

1034. *Add. Annotation :*—**Consd.** Jay's, Ltd. *v.* Jacobi (1933), 49 T. L. R. 239.

1041. *Add. Citation :—subsequent proceedings, sub nom.* JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

1041a. ——.]—An English co., the Sturtevant Engineering Co., Ltd. (herein referred to as pltf. co.), had for a number of years carried on business in England as manufacturers of & dealers in general engineering machinery. An American co., the Sturtevant Mill Co., carried on a similar business in America &

opened meat stores in E., one of which was near pltf.'s, & conducted them under deft.'s corporate name, " Sterling Food Markets, Ltd." :—*Held :* although the similarity of the names was such as to cause some confusion, for a time at least, in the public mind, pltf. had not made out a case entitling him to an injunction restraining deft. from carrying on its business under its own name in E. ; & pltf. had not been guilty of such fraud in the appropriation of a trade name as would justify an injunction against him at the suit of deft.—SHUTT *v.* ——— FOOD MARKETS, LTD., [1933] 3 W. W. R. 219.—CAN.

PART V. SECT. 2, SUB-SECT. 1.

sz. *When right arises.*]—The right of a person to a distinct name in respect of his business arises immediately on the user of that name.—HORMUS ARDESHAR KANDAWALA *v.* ARDESHAR COWASHJI DUSTOOR (1934), I. L. R. 61 Calc. 571.—IND.

PART V. SECT. 2, SUB-SECT. 2.

sg. *Effect of Unfair Competition Act.*] —*Held :* (1) Unfair Competition Act, s. 9, does not restrict an individual or a group of individuals to the use, as a trade name, of his or their personal names or surnames alone, thereby debarring him or them from adding any word or words thereto indicating a body corporate or a partnership ; (2) no man can be deprived of the right of using his name honestly in connection with his business ; (3) any individual or group of individuals may use his or their names or surnames in connection with his or their business, provided such business be commenced & carried on for his or their own direct benefit, in good faith & without any intention to deceive. Given these three conditions, confusion is immaterial.—J. V. BOUDRIAS FILS, LTD. *v.* BOUDRIAS FRERES, LTD., [1934] Ex. C. R. 88 ; 4 D. L. R. 328.—CAN.

was the sole owner of certain patents which were protected in both America & England. The American co. desired to introduce their patented machinery into England, & for that purpose entered into an agreement with pltf. co. whereby the latter was granted full licences to have the sole use of the American co.'s inventions in Europe. Under this agreement pltf. co. for 22 years manufactured & dealt with machinery which would otherwise have been protected in favour of the American co. When the agreement was determined in 1933, the patents had expired & pltf. co. continued to manufacture the machinery. Pltf. co. had acquired a considerable goodwill in England, & in England the name of Sturtevant as used in the trade was always applied to pltf. co. In 1935 a co. was incorporated in England with the name Sturtevant Mill Co. of U.S.A., Ltd., which had wide powers to deal in machinery of all kinds. The American co. held virtually all the shares in this new co. Pltf. co. brought an action against this new co. asking for an injunction restraining the new co. from using its registered name or any other name in which the word Sturtevant formed part. It was found as a fact that the use of the word Sturtevant by deft. co. would lead to confusion which would result in damage to pltf. co. Deft. co. contended (*inter alia*) (i) that in the circumstances of the case there was an equity which disentitled the English co. to the relief it was seeking, (ii) that as deft. co. was controlled by the American co. which had acquired a goodwill in America in the name of Sturtevant, pltf. co. was not entitled to protection, & (iii) that on the principle that any person is entitled to trade under his own name, deft. co., being controlled by the American co., was entitled to use the name Sturtevant:—*Held:* (1) as any benefit which pltf. co. had obtained from its connection with the American co. was the result of a voluntary agreement between the two cos., there was no equity which disentitled pltf. co. to relief; (2) the goodwill of the American co. was for the purposes of this action restricted to America & could not be treated as part of the goodwill of deft. co. & pltf. co. was entitled to protection for its goodwill; (3) the principle that any person may trade in his own real name did not, i circumstances of this case, entitle deft. co. to use the name Sturtevant.—STURTEVANT ENGINEERING CO., LTD. *v.* STURTEVANT MILL CO. OF U.S.A., LTD., [1936] 3 All E. R. 137; 80 Sol. Jo. 953; 53 R. P. C. 430.

1054a. —— —— ——.]—In a small case of default due to ignorance the judge granted relief without requiring service of notice on debtors, or advertisement in any newspaper. —*Re* OXLEY (1932), 77 Sol. Jo. 11.

1055a. —— **Registration as military officer—No claim to title.**]—*Qu.:* whether registration as a military officer by a person who has no claim to that title is an offence under the Registration of Business Names Act, 1916 (c. 58).—R. *v.* WRIGHT (1931), 23 Cr. App. Rep. 128, C. C. A.

1078. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1090. *Add. Annotations:*—**Consd.** Edison Storage Battery Co. *v.* Britannia Batteries, Ltd. (1931), 48 R. P. C. 350. **Refd.** Mathieson *v.* Pitman (Sir Isaac) & Sons, Ltd. (1930), 47 R. P. C. 541; Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386.

1091. *Add. Annotation:*—**Refd.** General Electric Co. *v.* Pryce's Stores, British Thomson-Houston Co. *v.* Pryce's Stores (1933), 50 R. P. C. 000.

1098. *Add. Annotations:*—**Consd.** Reddaway & Co. *v.* Hartley (1931), 47 T. L. R. 226. **Refd.** Mathieson *v.* Pitmas (Sir Isaac) & Sons, Ltd. (1930), 47 R. P. C. 541; Lyons & Co. *v.* Lyons (1931), 49 R. P. C. 188; *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

1099a. —— ——.]—Pltfs. had manufactured & sold since 1926 fencing under the name "Chequerboard," & in 1930 they commenced an action against defts. alleging that they had passed off fencing not of their manufacture as their "Chequerboard" fencing. At the trial of the action two managers of magazines, the manager of an exhibition & an architect's assistant were called as witnesses to prove that the mark was distinctive of pltfs.' goods. Defts. had displayed on their premises, as a background

PART V. SECT. 2, SUB-SECT. 3.

1046 i. *What constitutes default—Inaccurate description of business.*]—An Arakanese carried on a money-lending business in his own name until his death. His widow continued the business as sole proprietress, in the name of her husband, adding to that name the words "& Co." She lent moneys to resps. on a mtge., which was taken in her business name. She then registered the business under Burma Registration of Business Names Act, but erroneously entered herself as well as her children as partners. She then sued resps. in the name of the business, for the mtge. debt:—*Held:* sect. 3 (6) of the Act applied without qualification in this case, & that her particulars being inaccurate, there was no proper registration under the Act, & her suit failed under sect. 5 (1) of the Act.—MAUNG THA NYO *v.* MA UN MA PRU (1929), I. L. R. 7 Ran. 296.—**IND.**

1052 ii. —— —— ——.]—M'LACHLAN (J. J. & P.) Petitioners, [1929] S. C. (Ct. of Sess.) 357.—**SCOT.**

1052 iii. ——.]—SMITH *v.* FINCH, (1906), 12 B. C. R. 186; 3 W. L. R. 476.—**CAN.**

sz. *Separate business commenced after registration—No notification that registered business no longer sole business—Effect on right of action.*]—A person who has registered himself under Registration of Business Names Ordinance, 1918, of Ceylon, as carrying on in a business name a specified business, & as having no other business, is not precluded by sect. 9 of the Ordinance from suing upon a contract made by him in respect of a different & entirely separate business which he has commenced in his own name after the registration, although he has not notified, as required by sect. 7, that there has been a change in the registered particulars in that the registered business is no longer his sole business.—DAVID *v.* DE SILVA, [1934] A. C. 106; 103 L. J. P. C. 44; 150 L. T. 223; 50 T. L. R. 165, P. C.—**CEYLON.**

PART V. SECT. 4, SUB-SECT. 1.—A.

sd. *Use of family name—Secondary meaning acquired.*]—A family name attached to goods becomes so distinctive of the goods & of the manufacturer so as to acquire a secondary meaning when the goods come to be known in the market by the intimate attachment to the goods of the family name as the goods of a particular manufacturer.—POLICANSKY BROS., LTD. *v.* POLICANSKY, [1935] App. D. 89.—**S. AF.**

PART V. SECT. 4, SUB-SECT. 1.—C.

1087 viii. ——.]—*Held:* the evidence having established that "pyrex" had become by use the only common & convenient name for the substance to which it was applied, the word was descriptive of the character of articles made of that substance & was no longer distinctive of pltf.'s goods. Therefore the action failed, the first mark must be expunged from the register &, unless pltf. filed a disclaimer of any protection for the word "pyrex" the second mark also should be removed.—JAMES A. JOBLING & CO., LTD. *v.* JAMES MCEWAN & CO. PTY., LTD., [1933] V. L. R. 168; Argus L. R. 183. **AUS.**

of the display in their shop, panels of fencing which were not of pltfs.' manufacture, & pltfs. alleged that defts. had attempted to sell & in fact sold these panels in response to orders for " Chequerboard " fencing :—*Held :* the mark was *primâ facie* descriptive, & the evidence adduced was not of members of the public but of people in a special position to know of the origin of the goods, & was not sufficient to prove that the mark was distinctive of pltfs.' goods ; & in any event there was not sufficient evidence to establish any passing off by defts. The action was dismissed with costs.—T. & C. ASSOCIATED INDUSTRIES, LTD. *v.* VICTORIA WAGON WORKS, LTD. (1930), 48 R. P. C. 148.

1100a. " Lechat Camel Hair Belting "—For " Camel Hair Belting."]— F. R. & Co., Ltd., the proprietors of a trade mark, consisting of the words " Camel Hair " registered in July, 1908, in class 35 in respect of Belting, commenced an action to restrain deft. from passing off goods not pltfs.' manufacture as being pltfs.' goods. Pltfs. alleged that deft. had fraudulently passed off & was threatening & intending to pass off belts & belting not of pltfs.' manufacture or merchandise as & for pltfs.' belts or belting by using upon, or in connection therewith, the words " Camel " or " Camel Hair " ; they claimed a further injunction to restrain deft. from advertising or offering for sale beltings under the description " Lechat's Camel Hair Belting " or under any other name in infringement of their trade name or trade mark in breach of an undertaking given by deft. in 1926. Deft. admitted that the designation ' Camel Hair " used alone & without other distinguishing matter denoted both to the trade & to users of belting that such belts or belting were the product of pltfs. Deft. alleged that he had not used upon or in connection with belts or belting not being of pltfs.' manufacture or merchandise the words " Camel " or " Camel Hair " alone, but only with additional matter sufficient clearly to distinguish such belting from the belting of pltfs. Deft. admitted giving the undertaking on which the claim to the second injunction was founded, but denied that he was bound thereby, alleging that he was induced to give the same by certain untrue representations of pltfs. Deft. sold their goods as Lechat's Camel Hair Belting, the goods being manufactured by a Belgian firm of manufacturers of beltings known as " Etablissements J. Laroche Lechat Société Anonyme " : —*Held :* pltfs. had failed to prove their allegation that deft. had passed off or attempted to pass off belts or belting not made by the pltfs. as & for pltfs.' goods ; deft. had so used prefix " Lechat " & " J. Lechat's " as sufficiently to distinguish their belting from that of pltfs. ; & pltfs. had not made out their alleged breach of the undertaking of Dec. 3, 1926. The action was dismissed with costs.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1930), 48 R. P. C. 10, C. A.

1100b. ——— ———.]—Pltfs., who were held in *Reddaway* v. *Banham*, No. 1098, to be entitled to an injunction restraining the use of the words " camel hair " in connection with belting, not manufactured by pltfs., without clearly distinguishing such belting from pltfs.' belting, brought a passing-off action against deft. for selling camel hair belting, made by a Belgian co., under the description " Lechat's camel hair belting " : —*Held :* on the evidence, the prefix " Lechat " was insufficient to distinguish the belting sold by the deft. from pltfs.' belting, & pltfs. were entitled to an injunction to prevent passing-off.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1931), 47 T. L. R. 226 ; 48 R. P. C. 283, C. A.

1101. *Add. Annotation :—As to* (3) **Refd.** Coles (J. H.) Proprietary, Ltd. *v.* Need, [1934] A. C. 82, P. C.

1103. *Add. Annotation :*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 406.

1105. *Add. Annotations :*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99 ; *Re* Coats, Ltd.'s Application, [1936] 2 All E. R. 975.

1106. *Add. Annotation :*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 406.

1109a. ———.]—In 1926, letters patent No. 273,392 were granted to pltfs. in respect of " improvements in & relating to adjustable electric condensers & other adjustable electric apparatus." Deft. sold condenser dials, not manufactured or licensed by pltfs., bearing upon them the words " manufactured under Ormond Patent No. 273,392." Pltfs. commenced an action to restrain deft. from using these words upon any goods not manufactured or licensed by pltfs. & from passing off as goods manufactured or licensed by pltfs. any goods not so manufactured or licensed by pltfs. A claim to restrain deft. from infringing the patent was abandoned before the trial :—*Held :* assuming that the words complained of meant that deft. had been licensed by pltfs. & were untrue, there was no evidence that pltfs. were either making or selling goods of the kind in question, & pltfs. had not proved any damage & had not established any cause of action. The action was dismissed with costs.—ORMOND ENGINEERING CO., LTD. *v.* KNOPF (1932), 49 R. P. C. 634.

PART V. SECT. 4, SUB-SECT. 1.—E.

1110 i. *Whether use by other person restrained—Expiration of patent.*]—Where a person has invented & patented a new substance & given to it a new name, & during the continuance of the patent has alone made & sold the substance by that name, there being in question no registered trade mark of the same name during the life of the patent, he would not be entitled to the exclusive use of that name after the expiration of the patent, the name being descriptive of the substance itself. In such cases it is a question of fact whether or not the name is descriptive of the article itself.—LYSOL (CANADA), LTD. *v.* SOLIDOL CHEMICAL, LTD., [1933] Ex. C. R. 21.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

sp. *Law in India.*]—In India there is no statute which gives to owners of trade marks a statutory title like that obtained in England. In such cases the rules of English common law as to " passing off " actions are generally followed, & the rights & liabilities of the parties are decided according to the principles of the English common law. —ANGLO-INDIAN DRUG & CHEMICAL CO. *v.* SWASTIK OIL MILLS, LTD. (1934), 14 L. R. 59 Bom. 373.—**IND.**

sr. ———.]—There being no statutory law in India on the subject of trade marks, cases have to be decided according to rules of justice, equity, & good

1120a. —— **Misleading trade circular by successor to business.**]—Pltfs. & defts. carried on business of a similar description. On the expiration of the term in a lease of certain works to pltfs., where they had carried on their business, defts., fifteen months afterwards, had procured a lease of the same works, with the exception of certain mines of clay. Defts. issued a circular & card tending to lead the public to suppose that defts. had succeeded to the business of pltfs., & were working the same material as pltfs. had formerly used :—*Held :* although the words of the circular & card might be literally true, yet, if they tended to mislead the public, the ct. would restrain them from further circulating or issuing such or any similar circular or card.—HARPER *v.* PEARSON (1860), 3 L. T. 547.

1120b. —— **Representation as to edition prescribed for examination.**]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled " Hazlitt's Selected Essays," edited by George Sampson, which included thirteen essays & notes on the essays. In 1927 & 1928 the book was prescribed by the London University as one on which candidates for matriculation would be examined. One of defts. published & sold & the other defts. sold a book entitled " Hazlitt's Selected Essays, Edition Hollingworth," containing twenty of such essays, including the thirteen selected by Sampson. Pltfs. commenced an action against defts., alleging that defts. had passed off the Hollingworth edition as & for the Sampson edition of pltfs. by representing that the Hollingworth edition was that prescribed for the London Matriculation Examination, & also alleging infringement of copyright in their selection of essays :—*Held :* if the fact were that a purchaser had been misled into thinking that defts.' book had been prescribed for a certain examination, that was simply a representation as to quality & would give pltfs. no right of action, there had been no passing off of defts.' book as pltfs.' & there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS *v.* UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

1120c. —— **Goods sent in reply to order by plaintiff.**]—Pltfs., who had for some time used the device of a swan with the word " white " on labels on porcelain enamelled baths of their manufacture, applied on two occasions to register the device, first in class 1 in relation to enamel, secondly in class 13 in relation to baths & the like. Both applications were refused. On Jan. 25, 1926, the B. W. Assocn. registered under sect. 62, in respect of a standardised brass tap approved by the Ministry of Health, the device of a swan with the letter B. W. A. The attention of pltfs. was drawn to the sale by defts. of one of these standardised taps in Feb.; & later, upon ordering " ½-in. brass globe cocks Ministry of Health pattern swan," pltfs. received a like tap from defts. Pltfs. thereupon brought this action to restrain defts. from passing off, & at the same time moved to rectify the register by removing therefrom the B. W. Assocn.'s standardisation mark :—*Held :* pltf.'s device of a swan was known to the trade as indicating, not taps, but porcelain baths of pltfs.' manufacture or merchandise enamelled with a particular characteristic enamel ; the presence on the register of resps.' standardisation make, & the use of it upon brass taps made to the Ministry of Health specification was not calculated to deceive the trade into believing that such taps were merchandise or manufacture of pltfs. ; the sending of one of such taps by defts. in response to pltfs.' order was a reasonable response to that order : pltfs. had proved neither that the device of a swan indicated their taps to the trade, nor passing off by defts. ; & both the action & the motion failed.—WILSON'S & MATHIESON'S, LTD. *v.* MEYNELL & SONS, LTD., *Re* WILSON'S & MATHIESON'S LTD.'S APPLICATION (1929), 46 R. P. C. 80.

1137. *Add. Annotation :*—**Refd.** Crystalate Gramophone Record Manufacturing Co. *v.* British Crystalite Co. (1934), 51 R. P. C. 315.

1137a. —— —— ——.]—Pltf. co. was incorporated in Great Britain in 1909, for the purpose of carrying on a business, by means of manifold shops, for the sale of a large variety of articles at a price not over 6*d.* each. Deft. co. was incorporated on June 17, 1929, & was the buying agency of another co. which was incorporated in Australia under the name of Woolworths, Ltd., for the sale of a large variety of articles of a similar class to pltf. co.'s goods, but mainly at a higher price. There was no one with the name of Woolworth connected with deft. co. or its parent co. in Australia. The memorandum of deft. co. was framed so as to include the power to carry on retail business. Pltf. co. brought an action against deft. co. claiming an injunction restraining deft. co. from trading under its present title & from using the term " Woolworth " as part of its title or from using any other title calculated to deceive the public or to lead the public to believe that deft. co. was in any way connected with the pltf. co. :—*Held :* the evidence had not shown that there had been up to the time of the action any real confusion ; but by the name " Woolworths " pltf. co. was understood to be meant, not only among the general public, but also among traders & manufacturers ; the name Woolworths (Australasia), Ltd., must suggest some connection with pltf. co. ; deft. co.'s name so nearly resembled the name of pltf. co. as to be calculated to deceive ; the area of the trading operations of the two cos. was so much the same in many ways that there was serious risk of confusion.—WOOLWORTH (F. W.) & CO., LTD. *v.* WOOLWORTHS (AUSTRALIA), LTD. (1930), 47 R. P. C. 337.

1137b. —— —— ——.]—Pltf. had for nine years had a circus at Olympia in London during the winter, lasting each year for a period of about five weeks, which had each year been

conscience. English law on the subject may be applied, not because it is applicable as such in India, but in so of justice, Conditions (1934), I. ; , however, neces , PRAYAG NARAIN

PART V. SECT. 5, SUB-SECT. 2.—A.

1123 i. —— *Use of trade name of plaintiff.*]—GREENAWAY *v.* MCINTOSH, [1930] 2 D. L. R. 656.—CAN.

largely advertised & attended by a very large number of people. Deft. had a shop in London for animals & birds & in the past winter had had a sideshow of animals during the circus which pltf. was holding at Olympia. In 1928 he started a travelling Zoo, & shortly before the action he added a circus & advertised it as "Chapman's London Olympia Zoo & Circus." Pltf. commenced an action against deft. for an injunction to restrain him from using the words "London Olympia" as descriptive of or in connection with Zoo-Circus or other circus or entertainment & gave notice of motion for an interlocutory injunction:—*Held:* the words "London Olympia Circus" had come to mean pltf.'s circus. An interlocutory injunction was granted restraining deft. from using the words "London Olympia" in conjunction with one another as descriptive of or in connection with a Circus or Zoo-Circus.—MILLS *v.* CHAPMAN (1930), 47 R. P. C. 115.

1145a. —— **After revocation of licence.**]—In 1910 pltf. co., which was carrying on in New York the business of manufacturers of numbering machines, entered into an agreement with deft. that deft. should act as agent for pltfs. in this country for the sale of such machines, but the relationship was not of agency in the strict sense, for deft. purchased the machines from pltf. co., & paid for them on terms arranged. From the commencement of the agreement deft. carried on business in such machines under the same name as pltfs. & the machines bore the name of pltf. co. In 1933 pltf. co. terminated the agreement, but deft. continued to carry on business under that name & claimed the right to do so. Pltf. co. brought an action to restrain deft. from using that name & for breach of contract, alleging that it was a term of the agreement that deft. should not deal in such printing apparatus or be interested in the business of any competitor of pltf. co. Deft. contended that the name meant his business & that pltf. co. carried on no business in this country & he relied on the fact that from 1917 onwards he had been & still was registered under Registration of Business Names Act, 1916 (c. 58), under the said name:—*Held:* pltf. co. had acquired a sufficient reputation in this country for its machines to entitle it to protect the use of its name here; deft. merely held a revocable licence to use the name which was revoked on the termination of the agency agreement; also it was a term of the agreement that deft. would not during its existence deal with the numbering machines of any rival manufacturers, & that he had so done.

An injunction was granted restraining deft. from using the name of The Roberts Numbering Machine Co. or any name so similar to it as to be calculated to cause the belief that deft.'s business was a branch of or in any way connected with the business of pltf. co., & an inquiry was ordered as to damages in respect of the breach of agreement.—ROBERTS NUMBERING MACHINE CO. *v.* DAVIS (1935), 53 R. P. C. 79.

1155. *Add. Annotation:*—**Consd.** Lyons & Co. *v.* Lyons (1931), 49 R. P. C. 188.

1168a. —— ——.]—Pltfs. brought an action to restrain deft. from passing off goods not of pltfs.' manufacture as & for pltfs.' goods. Deft. was originally registered under the name of Sidney Lyons, but his name was later changed to Joseph Lyons. Pltf. co. was well known & had two hundred & fifty shops in Great Britain, four of which were situated in the neighbourhood of Brighton. Pltfs. also had two hundred thousand retail agents, & spent one hundred thousand pounds per annum on the advertisement of their tea. Deft. who was the keeper of a boarding establishment at Brighton had notepaper headed "J. Lyons food specialists." He advertised for canvassers & his advertisement read "J. Lyons require. . . ." He provided his canvassers with sets of packets: (i) a cardboard box labelled "J. Lyons, pure domestic cocoa," (ii) a packet of J. Lyons' cake flour, & (iii) a silver foil packet containing tea & bearing a label worded "J. Lyons' superior tea Brighton depot 8*d.* net wt. ¼ lb." Pltfs. sold tea in quarter-pound packets with a label also printed in blue on a white ground, & worded "Lyons tea, J. Lyons & Co., Ltd., Cadby Hall, Kensington." Pltfs. alleged that by reason of the similarity between deft.'s goods sold by the canvassers on behalf of deft., deft. had intended to deceive & had deceived the public into buying his goods as & for those of pltfs. Deft. denied that the acts complained of were calculated to deceive or that they had led to deception. He further claimed to be entitled to trade under his own name provided that his trade was lawful & not calculated to deceive —*Held:* the phrases "Lyons Tea" & "Lyons Cocoa" had come to mean the goods of pltfs., the quarter-pound packets of tea, sold by pltfs. & deft. respectively, were exceedingly alike, the phrase "Brighton depot" was misleading, deft. had intended to deceive & had deceived the public into buying his goods as & for pltfs.' goods. An injunction was granted, together with five pounds damages & costs.—LYONS (J.) & CO., LTD. *v.* LYONS (J.) (1931), 49 R. P. C. 188.

1168a. —— —— **Custom of mining company.**]—*Held:* (1) the valley containing the bed of minerals a part of which was owned by the Spanish Co. had become known as the Tigon Basin, & therefore the word "Tigon" had acquired a geographical significance; (2) having regard to such geographical significance & the custom of mining companies operating in the same area to adopt a name by reference to the geographical name of that area, coupled with the name of a point of the compass, the use by deft. co. of the word "Tigon" was not calculated to deceive or cause confusion in the minds of the public; (3) as pltf. co. themselves had marketed neither sulphur nor any other product under the name "Tigon," there was nothing which, by the use of the word "Tigon," deft. co. could sell or pass off as or for the product or goods of pltf. co. The action was dismissed with costs, & pltf. co. having been granted an interlocutory injunction on motion with the usual undertaking, an inquiry as to damages was ordered on the application of deft. co., the costs of that inquiry being reserved.—TIGON MINING & FINANCE CORPN., LTD. *v.* SOUTH TIGON MINING CO., LTD. (1931), R. P. C. 526.

1168b. —— ——.]—Pltfs. had a very large paper manufacturing & printing works carried on ——— Mills, at Apsley. They were incorporated in 1886, & in 1887 became the owners of a registered mark consisting of the head of the Duke of Wellington, with the words "The Apsley." It appeared that the word "Apsley" had become associated in the trade with pltf. co. Deft. co. were incorporated in 1936 under the name of the "Apsley Press, Ltd." with the object of carrying on the business of printers & publishers. Pltf. co. brought this action for an injunction to restrain deft. co. from carrying on any business similar to the business carried on by pltfs. under their present name or any name incorporating the name "Apsley":—*Held:* the use by deft. co. of the word "Apsley" was calculated to cause confusion between the business of pltfs. & defts. Such confusion was likely to lead to loss of reputation to pltfs. with loss of customers. Injunction granted.—JOHN DICKINSON & Co. *v.* APSLEY PRESS, LTD. (1937), 157 L. T. 135; 54 R. P. C. 219.

1171a. —— ——.]—Pltf. co., The Clock, Ltd., was incorporated on May 15, 1929, & in Oct. 1929, opened an establishment known as a road-house on land adjoining the Welwyn By-Pass Road near Welwyn, in the county of Hertford. A prominent feature of that establishment was a clock on the top of a gabled building. That establishment was not licensed to sell intoxicating liquor nor did it provide patrons with lodging, but it provided them with meals & offered them facilities for bathing, tennis & golf. The establishment acquired a reputation & was known to many people as The Clock, & the name The Clock had always appeared in conspicuous letters on pltfs.' premises. Deft. co., The Clock House Hotel, Ltd., was incorporated on Oct. 6, 1934, & in Nov. 1934, opened an hotel on land adjoining the Barnet By-Pass Road at a point five miles south of the point occupied by pltfs.' road-house, at New Hatfield, in the county of Hertford. A prominent feature of that hotel was a tower carrying a clock above which was written the word "Hotel," & below which were written in large letters the words "Clock House." That hotel was licensed to sell intoxicating liquors & did provide patrons with lodging. It did not offer facilities for bathing, tennis or golf, but provided meals. Pltfs. commenced an action to restrain defts. from carrying on business under the name Hotel Clock House, or any other name calculated to cause confusion with & damage to their business:—*Held:* pltfs. had acquired a reputation in the name Clock in connection with their road-house, & in the locality the words "The Clock" had come to mean pltfs.' premises; the use of the words "Hotel Clock House" by defts. constituted a real possibility of confusion which might result in actual damage to pltfs. An injunction was granted but was limited to restraining defts. from using the words complained of on their present premises. The operation of the injunction was stayed for one month to enable defts. to alter their name as it appeared on their clock, notepaper & elsewhere. Defts. were ordered to pay the costs of the action. Defts. appealed to the Ct. of Appeal. The appeal was dismissed with costs.—CLOCK, LTD. *v.* CLOCK HOUSE HOTEL, LTD. (1936), 53 R. P. C. 269.

1171b. —— ——.]—Pltfs. & their predecessors in title were the owners of properties in Droitwich called the "St. Andrews Baths" & the "Royal Baths," & have carried on business in connection with these properties under the name of "The Brine Baths." The ct. was satisfied on the evidence that to the public the term "The Brine Baths" meant pltfs.' baths & on a motion granted an interlocutory injunction restraining defts. from carrying on business under the name of "Droitwich Brine Baths, Ltd." or under any other name calculated to deceive the public into the belief that the business of defts. is that of pltfs. or connected therewith. The operation of the injunction was suspended for one month to enable deft. co. to alter their registered name.—HESKETH ESTATES, SOUTHPORT, LTD. *v.* DROITWICH BRINE BATHS, LTD. (1934), 52 R. P. C. 39.

1199. *Add. Annotation:*—**Refd.** C. & A. Modes, Ltd. *v.* Central Purchasing Assocn., Ltd. (1930), 48 R. P. C. 163.

1207a. —— ——.]—C. & A. MODES, LTD. *v.* CENTRAL PURCHASING ASSOCN., LTD. (1930), 48 R. P. C. 163.

1210a. —— —— **Use of initials of name of book.**]—Pltfs., the General Council of Medical Education & Registration of the United Kingdom were a body incorporated by Medical Council Act of 1862 (c. 91), s. 1. It was the duty of pltfs. imposed upon them by Medical Act, 1858 (c. 90), s. 54, re-enacted by Medical Council Act, 1862 (c. 91), s. 2, to publish a book containing a list of medicines

PART V. SECT. 5, SUB-SECT. 2—J.

1196 ii. —— ——.]—Pltf. co., incorporated in the United States of America in 1852, & one of the largest manufacturers of wrought-steel hardware & tools in the world, has registered trade-marks of "Stanley" & "S. W.," & its goods are & have been long known both in the wholesale & retail trade in New Zealand as "Stanley" goods. Deft. co. incorporated in 1931 with a capital of £600 under the name of "Stanley Ironworks, Ltd." took over the business of engineers, etc., carried on at Stanley Street, Auckland, by S., & known as the Stanley Ironworks. The business originally established by W. about forty-one years ago as that of a shoeing & general smith & carried on later by his nephew from whom S. acquired it in 1929, when it was a general jobbing engineering business, specialising in the production of bolts & hinges & all classes of builders' ironwork, was moved about thirty-six years ago to Stanley Street, Parnell, & the premises called "Stanley Ironworks," but up to about 1930 the goodwill of the business was attached to the name W. in respect of a jobbing & engineering business & not of a manufacturing & trading business which made articles for stock & sent out travellers to sell quantities of that stock. Deft. co., when incorporated, became definitely a manufacturing & trading co. making for stock, & employed a New Zealand representative & distributor of its products, & is manufacturing & selling articles of hardware which are also made by pltf. co. & sold in New Zealand. On a motion for a perpetual injunction restraining deft. co. from carrying on business under the name of "Stanley Ironworks, Ltd.":—*Held:* (1) deft. co. had taken the whole name of pltf. & inserted the word "iron," a common ingredient, because both cos. manufactured with it & dealt in the products; (2) the use of deft.'s name was calculated to deceive, & so either to divert business from pltf. to deft. or to lead to the belief that deft. was a branch of or otherwise connected with pltf. to the latter's prejudice; (3) deft. had not succeeded to the goodwill of an existing business carried on in Auckland in the name of "Stanley Ironworks, Ltd." in a manufacture & trade of the kind which it is now doing, so as to entitle it to the use of that name.—STANLEY WORKS *v.* STANLEY IRONWORKS, LTD., [1935] N. Z. L. R. 865.—N.Z.

& compounds & the manner of preparing them. This book was to be known as the British Pharmacopœia. The book was a valuable property & had a great reputation. When any one in the medical or the pharmaceutical professions saw the letters B.P. placed after a drug he understood such drug to conform to the specification for such drug to be found in the British Pharmacopœia. Before action brought pltfs. had published three editions of their book & since the issue of the writ they had published a further edition. Defts., Barrett Proprietaries, Ltd., were a limited co. which made & sold medical & pharmaceutical preparations contained in cartons, packages & bottles. Defts. made prominent use of the letters B.P. upon or in connection with their goods, advertisements therefor & price lists thereof. With the exception of one drug, namely acetylsalicylic acid, commonly known as aspirin, none of the preparations made & sold by defts. was to be found in the British Pharmacopœia. Pltfs. alleged that the acts of defts. were calculated to hinder & defeat the successful performance by pltfs. of their statutory duty & that the use of the letters B.P. by defts. was calculated to lead to confusion & that such confusion would result in the failure of the British Pharmacopœia to be maintained as a standard & that this failure would involve pltfs. in financial loss. Pltfs. further alleged that the use by defts. of the letters B.P. was improper & fraudulent & was done with the intention of deceiving the medical, dental & pharmaceutical professions, the trade & the public & inducing them to believe that defts.' preparations were in some manner connected with, or prepared & guaranteed to be in accordance with, the information contained in the British Pharmacopœia. Defts. denied the various allegations made by pltfs. The A.-G. was joined as a pltf. at the relation of the Council, it being contended that the public had rights in respect of the British Pharmacopœia. Pltfs. sought an injunction to restrain defts. from (*inter alia*) selling or offering for sale preparations represented to be guaranteed by pltfs. or made in accordance with the information contained in the British Pharmacopœia :—*Held :* it had not been proved that the conduct of defts. was calculated to hinder the successful performance by pltf. Council of their statutory duty to publish & keep up to date the British Pharmacopœia ; there was no evidence what the public would understand by the letters B.P., & in the absence of such evidence it was not possible to hold that the use by defts. of the letters B.P. in the manner complained of was calculated to lead to confusion ; the allegation that confusion due to the use by defts. of the letters B.P. would result in the failure of the British Pharmacopœia to maintain a standard & would result in financial loss to pltf. Council due to the diminution in sales of the book resulting from loss of reputation had not been proved ; since there was no evidence that any member of the public had bought defts.' goods in the belief that such goods had been made in accordance with the prescriptions to be found in the British Pharmacopœia, the claim put forward on behalf of the A.-G. must fail ; & the ct. could not infer from the evidence that defts. had acted fraudulently. The action was dismissed with costs.—A.-G. & GENERAL COUNCIL OF MEDICAL EDUCATION OF UNITED KINGDOM REGISTRATION *v.* BARRETT PROPRIETARIES, LTD. (1932), 50 R. P. C. 45.

1212a. —— ——.]—Pltf. co. was a public co. with a large capital incorporated in Feb. 1924, for the purpose of carrying on the business of English & foreign chemists & druggists, wholesale & retail, & had a number of retail shops in the West End of London, their most outlying shop being in Knightsbridge. Deft. co. was incorporated in Nov. 1928, with a nominal capital of £1,000 for the purpose of carrying on the business of a high-class dispensing chemist in the neighbourhood of Barons Court, London, & had one shop in that district. Deft., I. J. Eppel, took medical degrees & was a qualified chemist in Dublin in 1912, & carried on there the business of a chemist's shop until 1923. Deft., I. J. Eppel, having formed deft. co., pltf. co. sought an injunction to restrain deft. co. from trading under the name of Eppels, Ltd. :—*Held :* on the evidence there was no ground on which deft. co. could effectively resist the injunction.—HEPPELLS, LTD. *v.* EPPELS, LTD. & EPPEL I. J. (1928), 46 R. P. C. 96.

1212b. —— ——.]—MADEIRA HOUSE CO., LTD. *v.* MADEIRA HOUSE (LONDON), LTD. (1930), 47 R. P. C. 481.

1212c. —— —— **English subsidiary of foreign company.**]—STURTEVANT ENGINEERING CO., LTD. *v.* STURTEVANT MILL CO. OF U.S.A., LTD., No. 1041a, *ante*.

1215a. —— ——.]—SOCIÉTÉ LA PARFUMERIE NILDÉ *v.* ERNALDÉ, LTD. & FRYER, No. 629a, *ante*.

1226a. ——.]—Any person who has, without the use of unfair means, become acquainted with the mode of compounding a secret unpatented preparation may, after the death of the original discoverer, make & sell the compound, describing it by the name of the discoverer, provided he does not lead the public to suppose that his preparation is the manu-

PART V. SECT. 5, SUB-SECT. 3.

j i. —— *Use by purchaser for long period by agreement.*]—Resp., a trader who had carried on a fancy-goods business under a trade name for several years, made an agreement with applt. under which applt. was to obtain a new shop, on lease, & to open a new business there conducted under resp.'s trade name, buy all his stock from resp., & acquire that stock at a concession price. No term was fixed for the duration of the agreement. The trade name was actually painted upon the new shop by resp. or under his direction, & after the parties had acted on the agreement, with certain variations, for nearly three years resp., who was carrying on business in various other shops, purported to terminate the agreement, & sought an injunction to restrain applt. from continuing to use the name :—*Held :* resp. was not entitled to an injunction either at common law or on the footing of rights arising out of Business Names Act, 1928, the name having been so used under the licence that it did not identify the business as being that of resp., & resp.'s conduct having debarred him from relief.—NEED *v.* COLES (J. H.) PTY., LTD. (1932), 46 C. L. R. 470 ; [1932] Argus L. R. 139 ; 5 A. L. J. 355.—AUS.

sm. "*Canada Bud*"—*For* "*Budweiser.*"]—*Held :* although Budweiser beer was called Bud by customers there was no such resemblance or similarity as would support an action for infringement.—ANHEUSER-BUSCH INC. *v.* CANADA BUD BREWERIES, LTD., [1933] 1 D. L. R. 463 ; O. R. 75.

facture of the successors in business of the original discoverer; but he must not assert that his is the only genuine article, or suggest that the article manufactured by the successors of the original discoverer is spurious.—JAMES *v.* JAMES (1872), L. R. 13 Eq. 421; 41 L. J. Ch. 353; 26 L. T. 568; 20 W. R. 434.

1233a. ——.]—In 1909 pltfs. commenced the sale in England of storage batteries made by them in America in accordance with certain letters patent granted between the years 1900 & 1908. The storage batteries were imported & sold as Edison storage batteries by deft. Monnot & later by defts. Edison Accumulators, Ltd., who did so in accordance with the terms of various agreements made between them & pltfs. In 1929, Edison Accumulators, Ltd., changed its name to Britannia Batteries, Ltd., a new co. was formed by Monnot under the name Edison Accumulators, Ltd., & the two cos. commenced to manufacture & sell in England storage batteries made by them under the name Edison. Pltfs. commenced an action to restrain defts. from passing off their batteries as those of pltfs. & from using the expression "Edison Accumulators" as part of their name. Defts. admitted that they had sold storage batteries not of pltfs.' manufacture as Edison batteries, but alleged that the name Edison was not distinctive of pltfs.' goods, but was descriptive of all types of nickel alkaline batteries, & particularly those made in accordance with certain letters patent, & that they were entitled to continue to describe the goods sold by them as Edison storage batteries:—*Held:* the words "Edison accumulators" & "Edison storage batteries" were at the date of the writ distinctive of pltf.'s goods, & that defts. intended to pass off goods made by them as those of pltfs. Injunctions were granted restraining defts. from passing off & from using the expression "Edison Accumulators" as part of their name, with costs. An inquiry as to damages was refused.—EDISON STORAGE BATTERY CO. *v.* BRITANNIA BATTERIES, LTD. (1931), 48 R. P. C. 350.

1233b. —— ——.]—Pltf. sold greyhound race programmes outside dog racing tracks known as outside cards. His cards were a light green in colour with the names of the dogs running printed & a selection of dogs to win made under the pseudonym "Stirling." These cards became well known to the public as Stirling green cards. Deft. Freeman also sold outside racing cards which were first a buff colour but subsequently were coloured light green. He then registered under Business Names Act, 1916 (c. 58), the business name of Stirling as being the proprietor & publisher of Stirling race cards. Shortly afterwards he incorporated deft. co. which he called Stirling Press, Ltd., & his race cards had printed on them "published by Stirling Press, Ltd." On the evidence the ct. was satisfied that some of the sellers of deft.'s cards sold them as Stirling cards:—*Held:* there had been a deliberate attempt to sell defts.' cards as pltf.'s cards. An injunction was granted to restrain defts. & each of them from printing, publishing, selling or distributing greyhound racing programmes not being the programmes of pltf. as Stirling cards.—SHALLIS *v.* FREEMAN & STIRLING PRESS, LTD. (1931), 48 R. P. C. 370.

1238a. —— **Goods sold as exclusive original models of dressmaker—Goods previously sold & copied.**]—In May, 1933, defts. issued a circular to their customers in which appeared the following passages: "Our buyers have just returned from Paris with a collection of more than usual loveliness which we are able to offer at a mere fraction of the original cost. . . . Coats for restaurant, race & travel as well as one or two sumptuous evening wraps come from the salons of Paquin. . . ." The next day defts. sold a coat which had been made by pltfs. & sold by them in Feb. 1933, to an American firm who had copied it & reshipped it to England, the coat being subsequently purchased by defts. Pltfs. commenced an action to restrain defts. from offering for sale or selling as Paquin models any garments not being new garments sold by pltfs. Defts. denied that they had represented that they had purchased the garments direct from pltfs. & claimed the right to sell as "Paquin models" garments which had been sold by pltfs. to dealers for the purpose of copying. Defts. also alleged that the term "Paquin" did not indicate pltfs. exclusively:—*Held:* the circular did not represent that the garments had been purchased direct or that they had not been copied or had only been produced a short time before the issue of the circular; & the action must be dismissed. In view of the fact that defts. had put in issue the distinctiveness of the word "Paquin" but had not relied upon it, an order was made that pltfs. should pay two-thirds of defts.' costs.—PAQUIN, LTD. *v.* JOHN BARKER & CO., LTD. (1934), 51 R. P. C. 431.

1242. *Add. Annotation:*—**Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

1243a. ——.]—In 1899 a trade mark, consisting of the word "Lektrik," was registered in a number of classes, including a registration in class 50 in respect of articles not included in other classes made of vulcanised fibre, & various other goods. In 1931 pltfs., who were the registered proprietors of the mark, brought an action against Letrik, Ltd., for infringement of the mark & passing off by the use upon or in connection with electrical hair combs of the word "Letrik." Pltfs. manufactured & sold electrical goods & accessories, & they alleged that they had manufactured & sold under their trade mark "Lektrik" large quantities of electrical apparatus & accessories for use in connection with electrical hair wavers, hair dryers, & other hairdressing appliances. Defts. denied that the goods in respect of which pltfs.' mark was registered included electrical hair combs, & they further denied that pltfs. had manufactured & sold electrical apparatus for use in connection with hairdressing appliances as alleged, save in so far as pltfs. might have sold the usual switches, plugs, & sockets necessary in any electrical installation, & defts. denied that the mark "Lektrik" was distinctive of pltfs. in connection with hairdressing appliances. Defts. moved to rectify the register by excluding

from the specifications of goods, in respect of which the marks in class 50 & another class were registered, electrical hair combs & goods of a like description, on the ground of non-user of the marks in connection with such goods :—*Held :* pltfs. had never manufactured combs, & the user of their mark had been on & in connection with goods of a wholly different character; the trade in electric light & heat accessories was distinct from the trade in combs & toilet articles, & the use of defts.' mark could not legitimately be said to constitute an infringement of pltfs.' registered mark, or to be calculated to induce the belief that defts.' combs were of pltfs.' manufacture or merchandise. The action was dismissed with costs & an order to rectify the register was made, as to the trade mark registered in class 50, in the terms of the notice of motion.—LUNDBERG (A. P.) & SONS, LTD. *v.* LETRIK, LTD., *Re* LUNDBERG (A. P.) & SONS, LTD., TRADE MARKS NOS. 223,405 & 223,408 (1931), 49 R. P. C. 15.

Annotation :—**Refd.** *Re* Columbia Graphophone Co. Trade Marks (Nos. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 483.

1243b. Name must be attached to goods.]—TIGON MINING & FINANCE CORPN., LTD. *v.* SOUTH TIGON MINING CO., LTD., No. 1168a, *ante*.

1245a. Name descriptive of formula.]—Macleans, Ltd. (the predecessors of the same name as pltfs.) in 1931 marketed a preparation known as "Maclean brand stomach powder"; it was made in accordance with a formula of a Doctor Maclean, & as a prescription had been known moderately well in medical circles & to some extent by the public as "Maclean's Powder." Pltfs.' preparation, by advertisement & sales, became very well known to the public at large. In 1935 pltfs. marketed medicated sweets, or throat lozenges, under the name "Macs." After this defts. brought out a medicated sweet containing a small quantity of powder made up to Dr. Maclean's prescription. The name used for these sweets by defts. was "Vitamacs" & later "Merrimacs." The labels & advertisements referred to "Dr. Maclean's stomach powder" & in some cases to "the famous Maclean Sweets." The labels, etc., also referred, but in small type, to defts.' name or trade mark. Actual confusion between pltfs.' & defts.' goods was proved. There was also evidence that the name "Mac" had been used by other firms in the sweetstuff trade, though not in the pharmaceutical trade :—*Held :* (1) although the words "Maclean's Powder" were originally descriptive of a formula, they had become so identified with pltfs. that pltfs. were entitled to have it made clear that the powder . . . made up from a prescription of Professor Maclean was not pltfs.' powder; that, although the name or Trade Mark "Mac" had been used for ordinary sweets, it had not been applied to medicated sweets, properly sold by chemists; & this was an attempt by defts. to "filch" pltfs.' reputation. On the other hand defts. were entitled to state that their sweets contained Dr. Maclean's powder. An injunction was therefore granted in the following form ". . . from selling, supplying, offering or advertising for sale medicated sweets not being the pltfs.' goods under or in connection with the name 'Merrimacs' (or any name of which 'Macs' forms part) or the description 'The famous Maclean sweets' or 'Maclean Sweets' or any other name or description which by reason of its consisting of or comprising the name 'Maclean' or 'Maclean's' is calculated to deceive, without clearly distinguishing the said goods from the goods of pltfs."; (2) that allegations as to collusion or fraud (of pltfs.' witness) were most improper unless strict inquiry had been made; (3) in their writ pltfs. had also sought relief in respect of infringement of a Trade Mark "Mac," No. 458,654, registered in Class 111. but had not included this cause of action in their Statement of Claim. Defts., however, sought (by motion) to expunge this Trade Mark, on the ground that it had been assigned to pltfs. without any goodwill :—*Held :* that, even if there had been no goodwill to assign, but the mark was not yet expungeable under sect. 37 (22) was unqualified & a trade mark could not be assigned in gross. In the absence of the previous proprietors the Trade Mark should not be altogether expunged, but the assignment to pltfs. & previous assignments should be so dealt with.—MACLEANS, LTD. *v.* LIGHTBOWN & SONS, LTD., *Re* TRADE MARK "MAC," No. 458,654 (1937), 54 R. P. C. 230.

1246. *Add. Annotation :*—**Refd.** United Kingdom Tobacco Co. (1929), Ltd. *v.* Malayan Tobacco Distributors, Ltd. (1933), 51 R. P. C. 11.

1266a. "Navy-Spot"—For "Blue-Spot." co., who were manufacturers of wireless apparatus, & had sold large quantities of loudspeaker units under the mark "Blue-Spot" & in cartons with a distinctive get-up, claimed an injunction to restrain defts. from passing off loudspeaker units by the use upon or in connection therewith of the word "Navy-Spot" or by using a similar get-up. The form & appearance of the two loudspeaker units were almost identical. Defts. admitted that the word "Blue-Spot" was distinctive of pltfs., but they alleged that their units were always sold in their cartons, which were different from pltfs.' The trial of the action was not defended :—*Held :* defts.' loudspeaker units as sold were calculated to deceive & to be passed off as pltfs.' An injunction was granted & an inquiry as to damages was ordered, & an order as to delivery up of defts.' cartons & all parts of the units bearing the word "Navy-Spot" was made.—IDEAL WERKE A. G. *v.* WILLESDEN & DISTRICT LIGHT SUPPLY CO., LTD. (1930), 48 R. P. C. 123.

1266b. "Pine-exx"—For "Pine-ette."]—Pltf. carried on the business of a soap merchant & manufacturer in Manchester, & in the course of his business sold soap of various kinds including liquid soap. In June, 1924, pltf. began to sell his liquid soap under the name of

PART V. SECT. 5, SUB-SECT. 4.—A. (c) ii.

al. "*Mulsol*" the words were not so similar as to be likely to cause any ordinary purchaser to confuse goods marked or described as "Mulsol" with goods marked or described a "Monsol."—MONP FORDSHIRE REFINING CO., LTD. ELLIS HARLEM (1929), 41 C. L. 475; 2 A.

"Pine-ette," & in May, 1932, registered the word "Pine-ette" as a trade mark in Class 47, claiming user from June 16, 1924. Defts.' business, which was carried on at works in the City of Salford, was commenced in 1929 by one J. T. Jones who had formerly been an agent of pltf.: he began to sell liquid soap under the name of "Pine-exx." In Jan. 1932, this business was sold to defts., the sum of £85 being fixed as the price of the goodwill, which included, so far as Mr. Jones & his son (who was associated with him in the business) were able to assign the same but no further or otherwise, the right to use the word "Pine-exx." Pltf. commenced this action against defts. claiming an injunction & other relief:—*Held:* though pltf. had failed to prove actual deception, the similarity between the two words "Pine-ette" & "Pine-exx" was so close, especially when spoken, that the use of the word "Pine-exx" created a great probability of deception; & defts. had not discharged the onus which was upon them of proving acquiescence (which they alleged) on the part of pltf. in the user of the word "Pine-exx" by J. T. Jones. An injunction was granted & delivery up of infringing labels ordered, an inquiry as to damages not being asked for.—DIXON (J. J.) *v.* TAYLOR & COWELLS (TRADING AS PINE-EXX LIQUID & DISINFECTANT SOAP CO.) (1933), 50 R. P. C. 405.

1280. *Add. Annotations:*—**Consd.** Mathieson *v.* Pitman (Sir Isaac) & Sons, Ltd. (1930), 47 R P. C. 541. **Refd.** T. & C. Associated Industries, Ltd. *v.* Victoria Wagon Works, Ltd. (1930), 48 R. P. C. 148.

1289. *Add. Annotation:*—**Refd.** Houghton *v.* Film Booking Offices, Ltd. (1931), 48 R. P. C. 329.

1317. *Add. Annotation:—Generally,* **Refd.** Champagne Heidsieck et Cie Monopole Société Anonyme *v.* Buxton, [1930] 1 Ch. 330.

1322. *Add. Annotation:*—**Consd.** Reddaway & Co., Ltd. *v.* Hartley (1931), 47 T. L. R. 226.

1329. *Add. Annotation:*—**Refd.** Dixon (H. C.) & Son, Ltd. *v.* Richardson & Co. (1933), 50 R. P. C. 365.

1350a. ——.]—WILSON'S & MATHIESON'S, LTD. *v.* MEYNELL & SONS, LTD., *Re* WILSON'S & MATHIESON'S LTD.'S APPLICATION, No. 1120c, *ante.*

1350b. ——.]—Pltf. co. claimed an injunction to restrain deft. co. passing off emollient tablets as & for pltf. co.'s goods. In 1916 the trade mark "Snowfire" was registered in class 48 of which pltf. co. was the registered owner. The trade mark had been exclusively advertised & used in connection with an emollient preparation to be used for chapped hands & cracked lips. On one side of the carton containing the preparation was the word "Snowfire" in black on a red sky with snow mountains against a black background representing a dark sky & a brazier with a bright red flame & the words "Chapped Hands." On the other side were snow mountains against a black sky, the words "Snowfire," "Cracked Lips," & "Chapped Hands." Deft. co.'s carton showed on one side snow mountains with "Sunshine Snow" written below in red & a red sun with yellow rays, & on the other side the words "Sunshine Snow" were put into the sky instead of being placed down below & the sun was setting in a lower position. Deft. co. alleged that the features of which pltf. co. claimed a monopoly & the manner of the packing were common to the trade, & that the get-up was not calculated to deceive:—*Held:* the manner in which the product was packed & the shape & colour of the cartons was common to the trade, & pltf. co. had established no monopoly in regard to them; the distinctive feature of pltf. co.'s carton was the combination of snow mountains with the bright flame from the brazier forming a representation of the trade mark "Snowfire," but deft. co.'s get-up showed snow & the sun having reference to the name "Sunshine Snow" & there was nothing in the package or the get-up of deft. co.'s goods which so nearly represented pltf. co.'s goods in any distinctive feature as to be calculated to deceive; & three had been no infringement of pltf.'s trade mark. The action was dismissed with costs.—HAMPSHIRE (F. W.) & Co. (1927), LTD. *v.* GENERAL KAPUTINE SYNDICATE, LTD (1930), 47 R. P. C. 437.

1350c. ——.]—Pltfs., who were the proprietors of a trade mark consisting of a label registered in class 47 in respect of matches & fusees, brought an action against defts. for infringement of the mark & passing off by the use on defts.' match boxes of a label which pltfs. alleged to be a deceptive imita-

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PART V. SECT. 5, SUB-SECT. 4.—B. (b).

1271 ii. ——.]—Where goods are ordinarily sold by retail, a mere general resemblance with pltf.'s goods at a distance is not enough to entitle him to succeed in a passing-off suit. The test which the ct. will apply is the probability of confusion at that distance which would ordinarily intervene between the purchaser & the seller, or between the purchaser & the goods if they were placed upon the counter.—ESDAILE *v.* MATTHEWS THOMPSON, LTD. (1927), 28 S. R. N. S. W. 15.—**AUS.**

PART V. SECT. 5, SUB-SECT. 5.—A.

1289 i. *Get-up must be recognised description of plaintiff's goods.*]—Where the name, or the shape, design & appearance, under which an article has long been sold by the sole maker or owner vendor thereof, has become distinctive of the goods of that trader, although that trader acquires thereby no monopoly, a rival trader may not sell the same article under that name or that shape, design & appearance, without sufficiently, distinguishing his goods from those of the original trader as to prevent the likelihood of his goods being purchased as & for those of the original trader.—KETTLES & GAS APPLIANCES, LTD. *v.* ANTHONY HORDERN & SONS, LTD. (1934), 51 N. S W. W. N. 190.—**AUS.**

PART V. SECT. 5, SUB-SECT 5.—C. (b) i.

1313 iv. ——.]—WHITWORTH HERBERT, LTD. *v.* JAMNADAS LEMCHAND MEHTA (1927), I. L. R. 52 Bom. 228.—**IND.**

1313 v. ——.]—HARRY HORNE CO. *v.* SCHWARTZ & SONS, LTD., [1929] 2 D. L. R. 791; 60 N. S. R. 510.—**CAN.**

1313 vi. ——.]—Where the name, or the shape, design & appearance, under which an article has long been sold by the sole maker or owner-vendor thereof, has become distinctive of the goods of that trader, although that trader acquires thereby no monopoly, a rival trader may not sell the same article under that name, or that shape, design & appearance, without sufficiently distinguishing his goods from those of the original trader as to prevent the likelihood of his goods being purchased as & for those of the original trader. In cases of innocent passing off, where pltf.'s only remedy is equitable, although pltf. has made out a *primâ facie* case for relief, that right may be lost by misrepresentation on pltf.'s part amounting to a misstatement of any material fact calculated to deceive the public. The maxim that he who comes into equity must come with clean hands applies in such case.—KETTLES & GAS APPLIANCES, LTD. *v.* ANTHONY HORDERN & SONS, LTD. (1935), 35 S. R. N. S. W. 108.—**AUS.**

tion of their trade mark. Pltfs. claimed to have used their mark, substantially in the form in which it was registered, as a label for match boxes for upwards of sixty years, & they alleged that defts.' label had been designed & adopted with the object of enabling it to be mistaken for pltfs.' label. Defts.' matches were sold under the brand name "Alpha" & this name appeared prominently on their label. Defts. denied the allegations of infringement & passing off & that their label was an imitation, deceptive or otherwise, of pltfs.' label, & they further denied that it had been designed or adopted with the object of enabling it to be mistaken for pltfs.' label. It was admitted that labels printed in black upon a yellow ground, as were both pltfs.' & defts.' labels, were common to the trade:—*Held:* confusion between the two labels was probable &, while no lack of *bona fides* was to be attributed to two directors of defts.' co. personally, the design & adoption of defts.' label was deliberate, with the object of occasioning confusion with pltfs.' label. An injunction was granted both against infringement of trade mark & passing off & defts. were ordered to pay the costs of the action.—BRYANT & MAY, LTD. *v.* UNITED MATCH INDUSTRIES, LTD. (1932), 50 R. P. C. 12.

1350d. ——.]—Pltfs., shippers & merchants & exporters of knitting wool yarns to the China market, were the registered proprietors of certain trade marks registered in Class 33 in respect of yarns of wool or worsted, all of which were registered on Jan. 30, 1931. They had in the year 1928 devised a new combination marking or lay-out of marks which were printed on the wrappers of the bundles of knitting wool yarn exported by them to China surrounding a coloured ticket comprising in the top part the representation of a Mosque or Three Candlesticks or other objects, & in the bottom part of the ticket Chinese characters. Early in 1928 they began to ship such goods to China under such new lay-out, & had since continued to ship considerable quantities of knitting wool yarns so marked. In the year 1931 pltfs. discovered that defts., who were also shippers of knitting wool yarns to the China markets, were using a combination marking which pltfs. alleged to be a colourable imitation of their combination marking or lay-out of marks. As the result of correspondence between the parties defts. agreed to alter the general lay-out of their bundle paper "in such a way as to prevent the possibility of any confusion arising in the minds of the Chinese buyers." In Apr. 1932, pltfs. having discovered that defts. were using a combination marking or lay-out, which they alleged to be a close imitation of pltfs.' said lay-out, & an infringement of pltfs.' registered trade marks, commenced an action against defts. claiming injunctions, damages & other usual relief.—DIXON (H. C.) & SON, LTD. *v.* RICHARDSON (GEORGE) & CO., LTD. (1933), 50 R. P. C. 365.

1354. *Add. Annotation:*—**Refd.** E. P. Mohamed Noardin *v.* S. E. S. Abdul Kareem & Co. (1931), 48 R. P. C. 491.

1399a. —— ——.]—ROBERTS NUMBERING MACHINE CO. *v.* DAVIS, No. 1145a, *ante*.

1415a. Particulars — When ordered.]— Where a paragraph of the defence admitted the selling by defts. of certain articles, an order for further particulars of goods of which pltfs. complained was refused on the ground that defts. must be presumed to have had knowledge of what they were selling. Where pltfs. alleged that the carrying on of a trade over a long period of years by defts. was calculated to deceive, & that defts. had in fact deceived, particulars of the acts of actual passing off which pltfs. intended to rely on at the trial were ordered to be given.—JEYES SANITARY COMPOUNDS CO., LTD. *v.* PHILADELPHUS JEYES & CO., LTD. (1929), 46 R. P. C. 236.

1419a. Discovery—In inquiry as to damages.]—Pltf. in this action had acquired the goodwill of the first deft. in a business carried on under the name "Trist." Pltf. complained that defts. continued to solicit old customers & to trade under & use the name "Tristbestos" (which had been used by pltf. & the first deft. while in partnership) in a manner calculated to pass off their goods for pltf.'s goods. At the trial defts. ultimately consented to judgment, including an inquiry as to damages. Pltf. now sought discovery from defts. of customers solicited & of all sales made under the name "Tristbestos." The application was dismissed in the ct. of first instance on the ground that an inquiry as to damages & an account of profits should be distinguished in reference to discovery, & that, in a passing off action every act complained of did not necessarily result in deception & damage, & pltf. must under both inquiries prove damage before discovery. Pltf. appealed:—*Held:* when once some damage had been proved (& the judgment by consent was equivalent to admission of wrongful acts & of damage suffered by pltf. by reason of them) every act of the kind specified done by defts. was material & the documents relating to it were documents relating to the matter in question within R. S. C., Ord. 31, r. 12. An order for discovery was made with a provision that the master should decide to whom books, etc., should be shown.—DRAPER (B. E.) *v.* HUBERT H. P. TRIST & TRISTBESTOS BRAKE LININGS, LTD. (1935), 53 R. P. C. 66, C. A.

1423. After this case add:—

Commission—Evidence immaterial to issue pleaded.]—*See* EVIDENCE, No. 6269a.

PART V. SECT. 6, SUB-SECT. 2.—A

1391 i. *Party having no interest.*]—Applt. co. was the manufacturer of "Orange Crush" concentrate, which is sold to bottlers. The concentrate was used by the bottlers, in accordance with a formula supplied by applt., in the preparation of a beverage called "Orange Crush," the concentrate forming less than 1 per cent. of the finished article. The beverage was sold by the bottlers within their respective areas to their customers. Applt. sued resp. for passing off under the name of "Orange Crush" a beverage not manufactured or sold by the applt. as a beverage manufactured or sold by it:—*Held:* applt. had no legal interest in the business said to be injured by resp.'s representations; there was no connection between the commodity sold to the public as "Orange Crush," & applt.'s business except that applt. supplied one of the ingredients contained in the finished article, & this of itself was not sufficient to identify the beverage sold to the public with the business of applt. so as to justify the assertion that the commodity sold to the public was the goods of applt.—ORANGE CRUSH (AUSTRALIA), LTD. *v.* GARTRELL (1928), 41 C. L. R. 282; 29 S. R. N. S. W. 19; 46 N. S. W. W. N. 1; 2 A. L. J. 326; [1929] Argus L. R. 96.—AUS.

1427a. —— ——.]—Pltfs. were manufacturers of a sweetmeat in the form of a transparent peppermint cube. They were the owners of a trade mark consisting of the word Glacier registered in class 42. Their sweetmeat had the word Fox stamped upon its base. Pltfs. had a substantial trade & their goods were very well known to the public. Deft. owned a number of retail shops in Leicester. He sold various kinds of sweetmeats, including one in the form of a transparent peppermint cube. Pltfs. alleged that sweetmeats of this last kind had been sold by deft.'s shop assistants in response to requests by customers for Glacier mints. Five instances of passing off were alleged. In each case the sale complained of was alleged to have been in response to an oral trap order given by a person on behalf of pltfs. Pltfs. commenced an action to restrain passing off sweetmeats not of pltfs.' manufacture as & for pltfs.' Glacier Mints. Deft. denied the alleged passing off. The action subsequently came on for trial:—*Held:* in each of the alleged cases of passing off it was conceivable that deft.'s shop assistant did not hear, or did not properly hear, the word Glacier; the word might have been mistaken for a request for "glassy" sweets—for in Leicester sweetmeats of this character were often spoken of as "glassy" mints; & pltfs.' evidence was not sufficient to discharge the heavy onus placed upon them in an allegation of passing off. The action was dismissed with costs.—FOX'S GLACIER MINTS, LTD. *v.* JOBLINGS (1932), 49 R. P. C. 352.

1431a. —— **Strict proof required.**]—Pltfs. were the registered proprietors of the trade mark "Castrol" in class 47. Deft., who owned a garage, sold there petrol & lubricating oil, but, if asked for Wakefield Castrol XL oil, said he did not stock it. His house was a mile & a half away & he got his wife to sell the very small amount of petrol & oil which might be asked for there. He took to the house two empty tins marked Wakefield Castrol XL oil, from one of which he had blacked out the words "Wakefield Castrol." Pltfs., to protect their trade, sent out employees to discover any dishonesty by the selling as their Wakefield Castrol XL oil of other XL oil. Two of their employees called at deft.'s house, & after asking for & buying some petrol alleged that they asked for two pints of Castrol XL oil. Defts.' daughter, 14 years old, attended to customers & poured out of the tin on which the words "Wakefield Castrol" were blacked out a pint. The supply then gave out & she asked in the house whether there was any more XL oil & was told there was not. The oil the daughter poured out was not Castrol XL oil, but XL oil of another name. The employees asked her to give a receipt & she made out one for one pint of oil 9*d.* The the price 9*d.* was substantially less than the price at which Wakefield Castrol XL oil was sold. She was then told she had not given a receipt for Castrol & was asked to put the word Castrol on the receipt. She added the words "Castrol XL." Pltfs. claimed an injunction against deft., his servants, & agents:—*Held:* it was necessary in trap order cases for a pltf. to prove beyond peradventure his case, but that had not here been done, as there was no suggestion that deft. had ever traded dishonestly at his garage & no proof that the daughter acted dishonestly: further, there was no evidence that a train was laid by deft. so as to enable an innocent agent to commit something which would amount to dishonest trading. Therefore no injunction could be granted against deft., & the action was dismissed with costs.—WAKEFIELD (C. C.) & Co., LTD. *v.* RUSSELL (1930), 47 R. P. C. 473.

1431b. —— ——.]—Pltfs., who were manufacturers of lubricating oil known as "Castrol" & were the proprietors of a trade mark consisting of that word registered in Class 47 in respect of lubricating oil, placed two separate trap orders with deft. Pltfs. then issued a writ for infringement & passing off. Pltfs. by their statement of claim alleged that on each occasion the oil supplied by deft.'s employees in response to orders for Castrol XL, was not Castrol XL, & that on the second occasion the oil supplied was drawn from a cabinet labelled Castrol XL, the said cabinet being exposed to the public view. Deft. denied the allegations:—*Held:* in an action for passing off the offence must be proved in the fullest possible way, & notice as soon as practicable of the incident relied upon should be given to deft.; although an offence had been committed no relief by way of injunction or damages could be granted, as a course of dealing could not be inferred from an isolated instance until it had been proved beyond doubt that the offence had been committed wittingly & knowingly. Inasmuch as an offence had been committed, although deft. himself was innocent, pltfs. were justified in bringing an action. No order was made in the action for any relief asked & no order as to costs.—WAKEFIELD (C. C.) & Co., LTD. *v.* PURSER (1934), 51 R. P. C. 167.

1431c. —— **All circumstances considered.**]—SHELL-MEX & B. P., LTD. & ALADDIN INDUSTRIES, LTD. *v.* HOLMES (R. & W.) (1937), 54 R. P. C. 287.

1431d. Single trap order insufficient.]—ABBEY SPORTS CO., LTD. *v.* PRIEST BROS., No. 610a, *ante.*

1436a. Sale of second-hand goods by trade name—No deception.]—Pltfs. were manufacturers of electric lamps under the marks "Osram" & "Mazda" respectively, & such marks were well known to the public. Deft., who kept a small shop in a poor quarter of London in which he sold various goods, offered for sale second-hand lamps of pltfs.' make at reduced prices in cartons bearing the respective marks:—*Held:* the question whether a customer in such a case expects to receive new or second-hand goods depends upon the circumstances, including the nature of the locality, of the shop, & of the goods: in the present cases there was no fraud or intent to deceive, & the inference might be drawn that deft.'s customers expected to receive second-hand lamps, & passing-off was not established. Both actions were dismissed with costs.—GENERAL ELECTRIC CO., LTD. *v.* PRYCE'S STORES, BRITISH THOMSON-HOUSTON CO., LTD. *v.* PRYCE'S STORES (1933), 50 R. P. C. 232.

1442. *Add. Annotations:*—**Refd.** Stone, J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46

R. P. C. 192; Irving's Yeast-Vite, Ltd. *v.* Horsenail (1933), 103 L. J. Ch. 106.

1442. *Add. Annotation:*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 192.

1442a. ——.]—Pltfs., a German co., had for many years manufactured & sold magnetos under the name "Bosch" & certain other marks such as "Z.R.4." Before the war pltfs. formed a co. in America to make & sell magnetos, which co. was sequestrated in 1917 & formed into the American Bosch Corpn. Since 1917 magnetos had been imported into this country, manufactured by the American Corpn. & bearing the word "Bosch" as a part of the identifying marks. Pltfs. commenced an action against defts. to restrain them from passing off magnetos by using in connection with them the name "Bosch" & such marks as "Z.R.4.":—*Held:* there was no sufficient evidence that an American Bosch magneto could not properly be described as a Bosch magneto without other distinguishing words, & accordingly the word "Bosch" when applied to magnetos was not distinctive of pltfs.; & deft. was not intending to pass off magnetos not manufactured by pltfs. as manufactured by them.—ROBERT BOSCH AKTIENGESELLSCHAFT *v.* COOK (R. H.) & Co. (1930), 47 R. P. C. 462.

1448a. ——.]—HAMPSHIRE (F. W.) & Co. (1927), LTD. *v.* GENERAL KAPUTINE SYNDICATE, LTD., No. 1350b, *ante*.

1458. *Add. Annotation:*—**Follid.** Johnson & Son (Loughborough), Ltd. *v.* Puffer (W.) & Co. (1930), 47 R. P. C. 95.

1462a. ——.]—Pltfs. commenced an action asking for an injunction to restrain the defts. from passing off as & for their goods hosiery not being their hosiery by using upon or in connection therewith the word "Trinity" or any other word only colourably differing therefrom. Pltfs. were the registered proprietors of a Trade Mark No. 321,009 registered in 1910 consisting of the words Trinity Street, Street being in small letters, above a triangle within which was a monogram, & the word "Brand" below the triangle. On their hosiery, however, they had used a mark consisting of the words "Trinity Street Brand," above "All Pure Wool made in England," the word "Trinity" being in large letters & the word "Street" in small letters, & against those words was "Registered 321,009." Defts.' hosiery was dyed by a firm, whose works were in Trinity Lane, Hinckley, & they put on a mark consisting of the words "Trinity Dye & Finish," above a shield containing a representation of the arms of the Borough of Hinckley:—*Held:* pltfs., having made a misrepresentation in the mark which they had used that it was a registered trade mark, had disentitled themselves to relief & that the motion must be refused. The costs were ordered to be defts.' costs in the action.—JOHNSON & SON (LOUGHBOROUGH), LTD. *v.* PUFFER (W.) & Co., LTD. (1930), 47 R. P. C. 95.

1478. *Add. Annotation:*—*Generally,* **Refd.** Abbey Sports Co. *v.* Priest Bros. (1936), 53 R. P. C. 300.

1495a. —— **Due to mistake—As to rights of defendant.**]—In 1930, Radio Rentals commenced business in the hiring of wireless receiving sets. In the early part of 1933, Radio Rentals entered into negotiations for an increase of capital with C. & W. In July, 1933, during the continuance of these negotiations, C. & W. incorporated deft. co. In Aug. 1933, pltf. co. was incorporated & had transferred to it the business carried on by Radio Rentals. In Jan. 1934, the negotiations were abandoned & defts. commenced trading in a business similar to that of pltfs. In May, 1934, pltfs. commenced an action to restrain defts. from trading in the hire of wireless receiving sets under the name "Rentals, Ltd." or any name so closely resembling pltfs.' name as to be calculated to deceive. Defts. alleged that their name was descriptive & not calculated to deceive, & that by reason of delay pltfs. were estopped from bringing an action:—*Held:* the delay was due to the mistaken belief by pltfs. that deft. co. had acquired some rights by reason of their prior registration, & the name of defts. so closely resembled that of pltfs. as to be calculated to deceive or cause confusion between the two businesses. An injunction was granted but was suspended for four weeks & an order was made for the payment by defts. of thirty guineas damages. Relief other than in respect of the trade names having been claimed in the pleadings but not at the trial, defts. were ordered to pay two-thirds of pltfs.' costs.—RADIO RENTALS, LTD. *v.* RENTALS, LTD. (1934), 51 R. P. C. 407.

1504a. —— ——.]—CLARK (C. & J.), LTD. *v.* CLARK'S SHOE SERVICE (1935), 52 R. P. C. 254.

1516a. —— —— ——.]—Pltfs. had for some years sold motor car windscreen wipers marked with the words "Vokes-Folberth," "C. G. Vokes & Co." & with pltfs.' address. Such wipers were manufactured for pltfs. by the C. Co. under an agreement which prohibited the C. Co. from manufacturing such wipers otherwise than to pltfs.' order & from selling such wipers to persons other than pltfs. The C. Co. wrongfully sold a number of such wipers marked as above to deft. E., who resold a number of such wipers to defts. The Marble Arch Motor Supplies, Ltd., who resold to the public. Pltfs. instituted an action against defts., claiming an injunction to restrain passing off, an inquiry as to damages, & an order for delivery up:—*Held:* the wipers complained of had been manufactured & sold to deft. E. by the C. Co. wrongfully & in breach of duty to pltfs.: such wipers, not having been selected or marketed by pltfs., were spurious, & the sale thereof by defts. constituted actionable passing off: both defts. had purchased innocently, & there being no evidence of sales by defts. of spurious wipers subsequently to complaint being made by pltfs., an inquiry as to damages must be refused: both defts. had, subsequently to complaint being made by pltfs., maintained their right to sell the spurious wipers, & the action was maintain-

able. An injunction to restrain passing off was granted against both defts., & an order for delivery up was made against defts. Marble Arch Motor Supplies, Ltd. Defts. appealed, but the appeal was, by consent, dismissed.—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD. (1931), 49 R. P. C. 140, C. A.

1516b. —— **Inquiry as to damages.**]—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD., No. 1516a, *ante*.

1516c. —— **Order for delivery up.**]—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD., No. 1516a, *ante*.

1527a. Action for passing off settled—Breach of terms—Injunction.]—Pltfs. commenced an action against defts. to restrain passing off. That action was settled on terms agreed by the parties & an order was made staying all further proceedings except for the purpose of enforcing the terms scheduled to the order. On ascertaining that breaches had been committed pltfs. moved for an injunction & an inquiry as to damages resulting from such breaches:—*Held:* the procedure was proper for obtaining relief in such cases. Defts. gave an undertaking in the terms of the notice of motion & an inquiry as to damages was granted.—HYATT ROLLER BEARING CO. & DELCO REMY & HYATT, LTD. *v.* FREDERICK POLLARD & CO. (BEARINGS), LTD. (1934), 52 R. P. C. 115.

1527b. Motion for injunction in default of defence.]—Pltfs., who manufactured rectifiers for wireless purposes under the name "Westinghouse Rectifiers," commenced an action against defts. to restrain passing off their goods as those of pltfs. & moved for an interlocutory injunction. Defts. had obtained genuine goods of pltfs. & had taken them to pieces & reassembled them in an altered or mutilated form. Defts. did not appear & an interlocutory injunction was granted, of which the form was settled. After delivery of a statement of claim, pltfs. moved for judgment in default of defence, & an order was made for an injunction in terms substantially the same & for costs to be paid by defts.—WESTINGHOUSE BRAKE & SAXBY SIGNAL CO., LTD. *v.* VARSITY ELIMINATOR CO., LTD. (1935), 52 R. P. C. 295.

1557a. —— ——.]—Resps. had used for many years in India a ticket containing a picture of a lotus flower & also a combinaton of three marks, one of which also contained a picture of a lotus flower. Applts. had adopted a ticket with a different picture, but also including a lotus flower, & a combination of three marks similar in general appearance to resps.' three marks, but with a rose instead of a lotus flower. The ct. at Allahabad found that applts. had adopted these marks fraudulently, & that they were calculated to lead to passing off, & granted an injunction & damages. No case of actual deception was proved. The estimate of damages in particulars to the plaint which was verified by affidavit was Rs.25,000. The ct. awarded damages on the following basis: applts. were proved to have sold cloth bearing the marks complained of to the value of Rs.3,200,000; the ct. assumed that, if offered without these marks, only 40 per cent. of this quantity would have been sold, & gave as damages 9 per cent. as profit on the remaining 60 per cent., *i.e.* Rs.172,800. Applts. appealed:—*Held:* the injunction was rightly granted, but the damages must be calculated by estimating the trade lost to resps. by reason of the use of applts.' marks, & the damages should be reduced to Rs.67,000.—JUGGI LAL-KAMLA, PAT & JUGGILAL-KAMLAPAT MILLS OF CAWNPORE *v.* SWADESHI CO., LTD. (1928), 46 R. P. C. 74, P. C.

1570. *Add. Annotations:*—**Apld.** The Young Sid, [1929] P. 190; Co-operative Wholesale Society, Ltd. *v.* Lally (1930), 23 B. W. C. C. 513. **Refd.** Brown *v.* Dagenham U. D. C. (1929), 98 L. J. K. B. 565; Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28; Lloyd del Pacifico *v.* Board of Trade (1930), 46 T. L. R. 476; London Welsh Estates, Ltd. *v.* Philip (1931), 144 L. T. 643; Midland Employers' Mutual Assurance, Ltd. *v.* Lewis (1930), 23 B. W. C. C. 192; Hamilton *v.* Branch, [1933] W. N. 11; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380; *Re* Margolin's Registered Design, [1936] 3 All E. R. 347.

PART V. SECT. 6, SUB-SECT. 7.—F. (b) i.

sg. *Licence to use trade name—Revocation—Continued use by licensee—Injunction.*]—Applts. carried on business at shops in & near Melbourne under trade names which had become associated with their business, & they had the exclusive right to use the names by Business Names Act, 1928, s. 25 (1), as they were registered under Partnership Act, 1915, as using the names. Applts. verbally agreed with resp. that he should, at his own expense, open a shop fitted up like applts.' shops & there sell goods to be bought from them; resp., with applts.' assent, painted up over the shop their trade names, his own name not appearing. In the following year applts. complained that resp. was buying part of his stock elsewhere & required him to discontinue the use of the names, but an agreement was made that, as a temporary measure, he should purchase elsewhere goods which they could not supply. After some months resp. was buying from applts. only 10 per cent. of his stock & was finally required to discontinue the use of the names. Upon resp. refusing applts. claimed an injunction against him:—*Held:* resp. had only a revocable licence to use the names, & as it had been revoked by applts. they were entitled to an injunction; the evidence did not show that the names had ceased to be distinctive of applts.' business by reason of their user under the agreement, & if there had been any deception of the public by applts., it was not fraudulent so as to disentitle them to the relief claimed.—COLES (J. H.) PROPRIETARY, LTD. *v.* NEED, [1934] A. C. 82; 103 L. J. P. C. 13; 150 L. T. 166; 50 R. P. C. 379, P. C.—**AUS.**

sk. *Whether granted—No intention to pass off—Sale of reconditioned goods.*]—Deft. sold reconditioned spark plugs manufactured by pltf. No trade mark was added to that already on the plugs, & they were sold as "renewed spark plugs." An action against deft. for an injunction was dismissed because (*a*) it was not contrary to Unfair Competition Act, 1932, there being no competition between a new spark plug & an old one, & (*b*) it was not contrary to Criminal Code, sects. 486 to 490, since deft. did not attempt to sell a different article under pltf.'s trade name.—A.C. SPARK PLUG CO., LTD. *v.* LOGAN, [1934] 2 D. L. R. 390; O. R. 301; *revsd.*, [1934] 2 D. L. R. 390.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—F. (b) ii.

1538 i. *Whether granted—Reasonable probability of damage to be shown.*]—BREWSTER TRANSPORT CO. *v.* ROCKY MT. TOURS & TRANSPORT CO. (Alta.), [1929] 4 D. L. R. 413.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—F. (c).

1559 iii. ——.]—JUGGI LAL-KAMALAPAT *v.* SWADESHI MILLS CO., LTD. (1928), L. R. 56 Ind. App. 1.—**IND.**

Part VI.—Royal Arms.

1586a. —— —— —— Application for transfer to King's Bench Division—For trial by jury at Assizes.] — ROYAL WARRANT HOLDERS ASSOCN. *v.* SLOAN, LTD. (1931), 48 R. P. C. 387.

1589a. Improper use of device or title.]—ROYAL WARRANT HOLDERS' ASSOCN. *v.* LIPMAN (1933), 78 Sol. Jo. 64 ; 51 R. P. C. 155.

TRAMWAYS AND LIGHT RAILWAYS.

Part I.—Tramways.

25. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

85. *Add. Annotation :*—**Apld.** London Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 367.

—— —— —— **Or on leaving carriage.**]—By bye-law 12 of the London County Council's Tramways Bye-laws & Regulations : " Each passenger shall, immediately upon demand or in case no demand shall have been made, before leaving the carriage, pay to the conductor the fare legally demandable for his journey, & accept a ticket therefor " :—*Held :* the bye-law was invalid (*a*) as being repugnant to the general law of England, in that it made failure to pay a fare legally demandable an offence, irrespective of whether there was or was not an intention to avoid payment, & (*b*) as being unreasonable.—LONDON PASSENGER TRANSPORT BOARD *v.* SUMNER (1935), 154 L. T. 108 ; 99 J. P. 387 ; 52 T. L. R. 13 ; 79 Sol. Jo. 840 ; 33 L. G. R. 459.

Annotation :—**Refd.** Haynes *v.* Davey (1937), 25 Ry. & Can. Tr. Cas. 294.

91. *Add. Annotation :*—**Consd.** London Passenger Transport Board *v.* Sumner (1935), 154 L. T. 108.

115. *Add. Annotation :*—*Generally*, **Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

PART I. SECT. 3, SUB-SECT. 4.—A.

34 i. *Extent of obligation to repair.*]—The Hobart Tramway Company's Act, 1884, by sect. 15 (2), requires the Hobart Corpn. as the successor of the Tramway Co., " to cause the place where the road is opened or broken up, to be fenced & watched, & to be properly lighted at night where this is necessary for the public safety " :—*Held :* the qualification expressed by the words " where this is necessary," etc., extends to the whole sub-sect.—SEYMOUR *v.* HOBART CORPN., 22 Tas. L. R. 46.—**AUS.**

PART I. SECT. 4, SUB-SECT. 8.

m i. —— *What amounts to breach.*]—GLASGOW CORPN. *v.* STRATHERN, [1929] S. C. (J.) 5.—**SCOT.**

PART IV.

f (p. 365) i. —— *To indemnify under agreement—Damages payable through negligence of municipality.*]—A municipal corpn. cannot claim under an agreement for indemnity against a street ry. co. when the damages paid by the municipality were rendered payable by the municipality's own negligence.—OTTAWA *v.* OTTAWA ELECTRIC RY. CO., [1936] 3 D. L. R. 301. **CAN.**

h (p. 365) i. ——.]—A street railway company operating within a province, originally incorporated by a provincial legislature, but whose undertaking was subsequently declared by a Dominion Act to be a work for the general advantage of Canada, is not subject to the jurisdiction of a public service commission created by the province, but the execution of its powers is, by the provisions of the Railway Act, within the jurisdiction of the Board of Railway Comrs. for Canada.—QUEBEC RY. LIGHT & POWER CO. *v.* MONTCALM LAND CO., [1928] 1 D. L. R. 143 ; 34 Can. Ry. Cas. 275 ; [1927] S. C. R. 545.—**CAN.**

aa (p. 365) i. —— *To consider apportionment of cost of tramway.*]—An agreement between a city & a tramway co. apportioning the cost of a subway is a matter which the Railway Board may refuse to consider.—QUEBEC RAILWAY, LIGHT & POWER CO. *v.* QUEBEC, [1934] 4 D. L. R. 523.—**CAN.**

ee (p. 365) i. ——.]—By an agreement made in 1891, & confirmed by a statute of the Ontario legislature, applt. co. was given the exclusive right to construct & operate an electric railway for a period of 40 years, with a right of renewal for a further period of 20 years, on the lands of resp. commission. The agreement provided that, on its determination, the co., if unwilling to renew, was to be duly compensated by the grantors " for their railways, equipment, machinery & other works . . . but not in respect of any franchises for holding or operating the same," the compensation to be fixed by mutual agreement, or, in case of difference, by arbn., the property of the co. passing to the grantors of the franchise. The railway was operated by the co. for 40 years in accordance with the terms of the agreement, but it was not a commercial success. The franchise having terminated, an arbn. was proceeded with to determine the amount of compensation payable to applt. co., & the majority of the arbitrators were of the opinion that the railway, at the time it was handed over to resp. commission, " was of no value for operation as a railway to the railway co. or the parks commission or to anyone else," & that the compensation payable was the " scrap value," an amount which they fixed at $179,104. In case this should be held to be the wrong basis of assessment, they fixed the value of the undertaking calculated on the basis of cost of reconstructions, less depreciation, as at Sept. 1, 1932, at $967,592 :—*Held :* there was no justification under the agreement or the confirming statute for assessing the compensation at scrap value. It was fundamental that it was a railway complete with equipment, machinery, & works, which applt. co. was bound to hand over to resp. comrs. & for which it was to be duly compensated, & the proper basis of the compensation was the cost of reconstruction, less depreciation. It is well established that the reconstruction cost, less depreciation, is a correct method of valuing a public utility where the value of the franchise is excluded from consideration.—INTERNATIONAL RY. CO. *v.* NIAGARA PARKS COMMISSION, [1937] 3 All E. R. 181 ; 81 Sol. Jo. 524, P. C.—**CAN.**

ff (p. 365) i. —— *Exemption—Contract of agreement.*]—In an action to recover from deft. co. certain fees alleged to be payable under a bye-law of pltf. corpn. passed under Public Vehicles Act, R. S. O., 1927, s. 4 :—*Held :* an agreement for exemption from taxation applied to the operation of vehicles partly within & partly without the city.—OTTAWA *v.* OTTAWA ELECTRIC CO., [1930] 1 D. L. R. 551 ; 36 O. R. C. 192 ; 64 O. L. R. 537.—**CAN.**

pp (p. 365) i. *Duty to replace track.*]—The obligation of a street ry. co. by its Act to replace its track in the event of a certain street being paved by the city does not extend to relocating its track when directed to do so by the city engineer.—HALIFAX *v.* NOVA SCOTIA LIGHT & POWER CO., LTD., [1934] 4 D. L. R. 728 ; *on appeal*, [1935] 2 D. L. R. 214.—**CAN.**

e (p. 366) i. *Liability for construction of bridges.*]—Applt. co. operated in the cities of Winnipeg & St. Boniface a street railway system which had crossed the two bridges in question, but service across them had been discontinued as one of them was considered unequal to the strain of increasing general traffic over it, & applt. had provided (with consent of the municipalities) a substituted service. The municipalities replaced the bridges by new & stronger ones, the change involving construction on alignments different from those of the old bridges & the substitution of two lines of track for the former single track. On application by the municipalities, the Manitoba Municipal & Public Utility Board made an order requiring applt. to pay the cost of placing rails, ties & foundations therefor on the bridges & one-half the cost of such work in connection with the approaches :—*Held :* the order was unauthorised.—WINNIPEG ELECTRIC CO. *v.* WINNIPEG & ST. BONIFACE CITY, [1934] S. C. R. 178 ; 4 D. L. R. 181 ; *affd.*, [1935] 4 D. L. R. 657, P. C.—**CAN.**

e (p. 366) ii. ——.]—OTTAWA ELECTRIC RY. CO. *v.* OTTAWA, [1934] 1 D. L. R. 737.—**CAN.**

aa (p. 366) i. —— *Whether mandamus lies to continue.*]—A mandamus cannot be granted to compel a street railway co. to continue the operation of its line.—R. *v.* OTTAWA ELECTRIC RY. CO., [1933] 1 D. L. R. 695.—**CAN.**

ff (p. 366) i. —— ——.]—SYMONS *v.* WINNIPEG ELEC. CO., [1928] 1 D. L. R. 159 ; 37 Man. L. R. 170 ; [1927] 3 W. W. R. 650 ; *affg.* S. C. *sub nom.* WINNIPEG ELEC. CO. *v.* SYMONS, [1929] 2 D. L. R. 197 ; [1928] S. C. R. 627.—**CAN.**

ff (p. 366) ii. —— ——.]—MORGAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 2 W. W. R. 776 ; 4 D. L. R. 30 ; 42 B. C. R. 382.—**CAN.**

ff (p. 366) iii. ——— ———.]—ALLEN *v.* EDMONTON (CITY), [1930] 2 W. W. R. 25; 3 D. L. R. 539; 37 C. R. C. 23; 24 Alta. L. R. 458.—CAN.

ff (p. 366) iv. ——— ———.]—*Held:* it was the duty of defts.' motorman to take all precautions to avoid a danger which was reasonably to be anticipated; but he could not have anticipated that the driver of the automobile which he saw in front of him was going to run her vehicle out from the kerb so as to be in his way, & when he saw that an accident was imminent he did everything possible to prevent a collision.—MALONEY *v.* HAMILTON ST. R. CO., [1930] 1 D. L. R. 268; 36 C. R. C. 211; 64 O. L. R. 444.—CAN.

ff (p. 366) v. ——— ———.]—Where a truck which had become stalled on a tram track was run into by a tram & damaged:—*Held:* there was common negligence & the judge properly made them equally liable.—PETROLEUM HEAT & POWER, LTD. *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1932), 46 B. C. R. 462.—CAN.

rr (p. 366) i. ——— ———.]—MERCER *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1931] 1 W. W. R. 550.—CAN.

rr. (p. 366) ii. ——— ———.]—When a street car is travelling on its own right of way, not on a highway, the high speed of the car is not a ground of negligence unless there was some reason for the motorman anticipating an emergency.—NIXON *v.* OTTAWA ELECTRIC RY. CO., [1932] O. R. 389; 3 D. L. R. 263; *revsd.*, [1933] S. C. R. 154; 1 D. L. R. 609.—CAN.

aaa (p. 366) i. ——— ———.]—Where a railway co. runs its cars along part of a highway, its statutory right not being exclusive of the right of the public though preferential in the sense that upon the approach of a car other users of the highway have to give it right of way, the co. is under a legal duty by its servants to be on the watch for the safety of persons on the railway track, & to equip its car with lights adequate at night to enable the driver to stop in time to avoid them. It is not sufficient to equip the car with a light of a recognised & proper pattern, reasonable care must be taken that a car does not proceed when the light is out of order. There is a reciprocal duty upon persons using the highway to take reasonable care to avoid the car.

The language used by a jury in explaining their reasons for their verdict should not be construed too narrowly.—PRONEK *v.* WINNIPEG, SELKIRK & LAKE WINNIPEG RY. CO., [1933] A. C. 61; 102 L. J. P. C. 12; 148 L. T. 193, P. C.—CAN.

aaa (p. 366) ii. ——— ———.]—The duty of a railway co. towards its passengers for hire is to take reasonable care, including in that the use of skill & foresight, to see that its carriages are reasonably safe for persons using them in the ordinary & customary manner & with reasonable care; but this does not mean that the co. should be held to have absolutely warranted their safety. With respect to the constructional type of the steps of street railway cars, the duty of the co. under the above rule is fulfilled when it purchases from the best manufacturers equipment of the type customarily used for that traffic or itself manufactures such equipment in accordance with the design customarily employed by street railway companies; provided, of course, there is no special defect in the individual car in question.—GEBBIE *v.* SASKATOON, CITY OF, [1930] 2 W. W. R. 625; 4 D. L. R. 543.—CAN.

b (p. 367) i. ——— ——— *After alighting beyond stopping place.*]—Tramway co. held not liable for injury to a passenger who was struck by an automobile after alighting from a street car at a point beyond its regular stopping place.—KUCZERKY *v.* TORONTO TRANSPORTATION COMMISSION & SARACINI, [1937] 1 D. L. R. 756; O. R. 256; *revsd.*, [1937] S. C. R. 431.—CAN.

dd (p. 367) i. ——— ———.]—A violent jerk in starting & an abrupt stop to avoid a car, whereby a passenger is injured, constitute negligence.—MONTREAL TRAMWAYS CO. *v.* YERVANT [1936] 3 D. L. R. 241.—CAN.

dd (p. 367) ii. ——— *Sudden stop—Injury to passenger about to alight.*]—The mere happening of a jerk when a street car is about to stop does not of itself prove negligence on the part of the motorman or the co.; & a passenger who is thrown down within the car while about to alight must in order to succeed in an action for damages prove such negligence by affirmative evidence.—HYDE *v.* BRITISH COLUMBIA ELECTRIC RY. CO., LTD., [1933] 1 W. W. R. 174; 46 B. C. R. 443.—CAN.

hh (p. 367) i. ——— *Slippery step.*]—CHIPPENDALE *v.* WINNIPEG ELEC. CO., [1928] 3 D. L. R. 570; [1928] 2 W. W. R. 601; 34 Can. Ry. Cas. 267; 37 Man. L. R. 412; *revsd. sub nom.* WINNIPEG ELECTRIC CO. *v.* ZEIDEL, [1929] 3 D. L. R. 610; S. C. R. 538.—CAN.

ll (p. 367). *Affd. sub nom.* WINNIPEG ELECTRIC CO. *v.* SCOTT, [1928] 2 D. L. R. 420; [1928] S. C. R. 52; 34 Can. Ry. Cas. 260.—CAN.

oo (p. 367). *Revsd. sub nom.* WINNIPEG ELECTRIC CO. *v.* ODEGAARD, [1928] 2 D. L. R. 297; [1928] S. C. R. 192.—CAN.

oo (p. 367) i. ——— *Starting car before passenger seated.*]—The evidence showed that a female passenger entered a street car in the winter season, & that there was water, snow & slush on the floor of the car at the time. While pltf. was in the front vestibule of the car, trying carefully to reach a seat, the operator of the car suddenly, & before pltf. had reached a seat or a position of safety, started the car. Pltf. was thrown down & her leg broken:—*Held:* the operator, knowing the condition of the floor of the car, was negligent.—GLICK *v.* NOVA SCOTIA TRAMWAYS & POWER CO. (1928), 60 N. S. R. 198.—CAN.

oo (p. 367) ii. ——— *Collision with automobile—Injury to plaintiff by automobile.*]—ATHONAS *v.* OTTAWA ELECTRIC RY. CO., [1931] S. C. R. 139; 2 D. L. R. 473.—CAN.

oo (p. 367) iii. ——— *Misleading notice in car.*]—Pltf., a passenger in a street-car operated by deft. Commission, was injured by a fall from the car & sued the Commission & a taxicab co. for damages. Pltf. was standing on the treadle of the car, when the emergency brake was suddenly applied & she was thrown against the exit door which opened & she fell into the road:—*Held:* the notice "Do not stand on the treadle unless you wish to leave the car" was an invitation to stand on it if one wished to leave the car, & implied that it was a proper & safe place to stand whilst the car was in motion. The Commission was therefore liable for negligence.—MORTON *v.* NATIONAL TAXI, LTD., & TORONTO TRANSPORTATION COMMISSION, [1930] 4 D. L. R. 785; 66 O. L. R. 3.—CAN.

oo (p. 367) iv. ——— *Limitation of action.*]—An action for injury to a passenger while travelling on a street car is not barred by the time limit imposed by Ontario Railway Act, 1927, s. 267 (2), on action upon breach of contract relating to traffic.—BRYAN *v.* LONDON STREET RAILWAY CO., [1934] 4 D. L. R. 704; O. R. 769.—CAN.

tt (p. 367) i. ———.]—SOUTH AUSTRALIAN RAILWAYS COMRS. *v.* BARNES (1927), 40 C. L. R. 179.—AUS.

ss. *Agreement between street railway & municipality—Not enforceable by private individual.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332.—CAN.

sb. *Ontario Railway Act*, 1913, *s.* 246—*Not applicable to railway declared to be for general advantage of Canada.*]—*Held:* the railway being one of Dominion status, s. 246 has no application in so far as it is sought thereby to impose an obligation on the municipality to assume the ownership of the railway or in default submit to the continued exercise of the co.'s privileges, notwithstanding the expiration of the term of the franchise.—MERRITTON *v.* NIAGARA, ST. CATHERINES & TORONTO RY. CO., [1931] 1 D. L. R. 371; 65 O. L. R. 563; *affd.*, [1931] 2 D. L. R. 161; 66 O. L. R. 500.—CAN.

sd. *Limitation of action.*]—The benefit of sect. 60 of Consolidated Railway & Light Co. Act, 1896, which provides that actions for any damage or injury sustained by reason of the tramway or railway or the works or operations of the co. shall be commenced within six months after the time when such damage was sustained, extends to employees of the co. as well as to the co. itself.—BENTLEY *v.* ALLEN & YOUNG, [1932] 1 W. W. R. 399; 45 B. C. R. 55.—CAN.

TRESPASS.

Part I.—In General.

24. *Add. Annotations :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359 ; Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

50. *Add. Citations :*—*sub nom.* BIGGS *v.* GREENFIELD & BENGER, 8 Mod. Rep. 217 ; *sub nom.* BRIGGS *v.* GREINFEILD & BENGER, 1 Stra. 610.

Part II.—Trespass to Land.

55. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

99. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

116. *Add. Annotations :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63 ; Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433.

133. *Add. Annotation :*—*As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

162. *Add. Annotation :*—**Refd.** *Re* Southern Ry. Co. (1935), 153 L. T. 105.

165. *Add. Annotations :*—*As to* (1) **Consd.** Elias *v.* Pasmore, [1934] 2 K. B. 164 ; Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274.

173. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

176. *Add. Annotations :*—**Consd.** Elias *v.* Pasmore, [1934] 2 K. B. 164 ; Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274.

229a. —— **Value of land removed.**]—In trespass for cutting into the pltf.'s close, & carrying away the soil, the proper measure of damages is the value to pltf. of the land removed, not the expense of restoring it to its original condition.—JONES *v.* GOODAY (1841), 8 M. & W. 146 ; 11 Dowl. N. S. 50 ; 10 L. J. Ex. 275 ; 151 E. R. 985.

Annotations :—**Refd.** Whitwham *v.* Westminster Brymbo Coal & Coke Co., [1896] 1 Ch. 894 ; Wednesbury Corpn. *v.* Lodge Holes Colliery Co., Ltd., [1907] 1 K. B. 78, C. A.

233a. —— **Injury to wife.**]—A pltf. in an action of trespass may give in evidence a consequential injury to his wife, not as a substantive ground of action, but to show how violent defts.' conduct was.—HUXLEY *v.* BERG (1815), 1 Stark. 98.

PART I. SECT. 1.

22 i. —— *Interference with superincumbent air—Bodies traversing air without touching ground—Bullets.*]—Deft., who at the time was upon his own property, fired a bullet from a rifle at & killed pltf.'s cat which was then on a shed on the adjoining property occupied by pltf. The judge directed the jury that deft. had committed a trespass for which he was liable in damages to pltf. :—*Held :* the direction was right.—DAVIES *v.* BENNISON, 22 Tas. L. R. 52.—**AUS.**

PART I. SECT. 3.

31 iv. ——.]—Several persons may be properly sued jointly for trespass to the person in falsely arresting pltf. & subjecting her to a physical examination.—PACHKOWSKY *v.* ANDREWS, [1934] 4 D. L. R. 652 ; 62 C. C. C. 141 ; 42 Man. L. R. 355.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

62 xx. —— ——.—HOLLINGSWORTH & WHITNEY, LTD. *v.* WRIGHT, [1930] 3 D. L. R. 996.—**CAN.**

62 xxi. —— ——.]—In an action for damages for trespass to land, pltf. must prove possession.—BREEN *v.* LEE, [1934] 4 D. L. R. 662 ; 9 M. P. R. 68.—**CAN.**

b i. —— *Lease by committee—Trespass by* DUKE, [1931] 2 W. W. R.

PART II. SECT. 3, SUB-SECT. 1.—B.

72 xxix. ——.]—In an action of trespass :—*Held :* pltf. had failed to prove the identity of the lands which he occupied with those described in the documents under which he claimed, & his claim therefore failed.—FRENETTE *v.* TAYLOR (1935), 9 M. P. R. 212.—**CAN.**

sg. *At time of writ.*]—In an action of trespass pltf. must have a title to the land at the time of the issue of the writ.—STEWART *v.* GOSS (1933), 6 M. P. R. 72.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a).

g (p. 384) i. ——.]—CLARKE *v.* COBURN LUMBER CO. (1929), 1 M. P. R. 579.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A.

sa. *Locatee of Crown lands.*]—HAMM *v.* KROKBACK & CO., BALL *v.* KROKBACK & CO. (1928), 34 O. W. N. 81 ; *affd.*, [1928] 2 D. L. R. 389.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—H. (a).

q i. —— ——.]—A painter employed under a contract with a firm of manufacturers, painted on the wall of a shop occupied by a tenant an advertising sign. He did the work with the permission of the tenant, being under the impression that the tenant was the owner, & here presented to his employers that he had the owner's permission. In an action by the owner of the property claiming damages against the painter & his employers :—*Held :* the owner was entitled to damages against both defts., the matter complained of being of such a permanent nature as to cause injury to the reversion.—BIRTCHNELL *v.* (FRED.) & CO. PTY., LTD. (1930), Argus L. R. 176.—**AUS.**

PART II. SECT. 5, SUB-SECT. 6.—B.

1 (p. 400) i. ——.]—On an appeal from a judgment whereby pltf. in an action for trespass was awarded vindictive damages in addition to special damages, held that, in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced.—SPENCER *v.* GRANT, [1928] 1 D. L. R. 820 ; [1928] 1 W. W. R. 190 ; 22 Sask. L. R. 365.—**CAN.**

o (p. 400) i. —— ——.]—However wilful & long continued a trespass may have been, no damages can be given therefor beyond the loss sustained by pltf.—STEWART *v.* TRADERS TRUST CO., [1936] 2 W. W. R. 536 ; 4 D. L. R. 139.—**CAN.**

b (p. 401) i. —— *Depreciation in value of property—Unlawful removal of remains of building.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75 ; 2 M. P. R. 470.—**CAN.**

b (p. 401) ii. —— *Malicious damage to building.*]—The measure of compensation for the malicious destruction of, or injury to, a building, in the possession of a claimant as owner in fee is not necessarily the cost of the restoration or reinstatement of the building. The ct. should award full compensation in moneys numbered for the injury or loss sustained by the owner, due regard being had to all the circumstances of the case, including the potential value, as well as the existing value, to the owner of the property destroyed or injured.—MURPHY *v.* WEXFORD COUNTY COUNCIL, [1921] 2 I. R. 230.—**IR.**

236. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

247a. —— **Holding public meeting on private land.**]—Pltf. co. was formed to acquire & did in fact acquire land at H. to be laid out as a garden city under & by virtue of powers conferred by a private Act of Parliament. The roads in the garden city were vested in the pltfs. & were to remain so vested until made up & taken over by the highway authority. Deft. gave notice that he intended to hold an open air meeting in the neighbourhood of a church on pltfs.' property at the junction of two roads. These roads were not barred, but notices had been posted upon them announcing that they were private roads. They were not dedicated to the public, nor had they been taken over by the highway authority. Pltfs. having sought an injunction :—*Held :* it being clear that there was no public right of way along the roads in question, it was unnecessary to discuss the question about any right of holding a meeting at the junction of the roads, & pltfs. were entitled to an injunction.—HAMPSTEAD GARDEN SUBURB TRUST, LTD. *v.* DENBOW (1913), 77 J. P. 318.

258. *Add. Annotation :*—**Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

261. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

273. *Add. Annotation :*—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

274. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

308a. No right to set up jus tertii.]—In an action of trespass a deft. cannot set up a *jus tertii* against a possessory title.—NICHOLLS *v.* ELY BEET SUGAR FACTORY, [1931] 2 Ch. 84 ; 100 L. J. Ch. 259 ; 145 L. T. 113.

327a. —— ——.]—(1) Pltf. & deft. owned adjoining properties. Deft., wishing to rebuild his property, obtained leave from pltf. to underpin pltf.'s wall which abutted upon deft.'s building. Deft.'s new building was to have girders upon a steel cage, & to support this steel framework it was necessary to place stanchions at intervals along the boundary. Where these stanchions were placed deft. extended the concrete foundations some 20 ins. beyond pltf.'s wall into pltf.'s land :—*Held :* (1) the permission to underpin pltf.'s wall did not authorise the extension of the concrete foundations into pltf.'s land, & this extension amounted to a trespass. (2) Before trial, deft. paid £100 into ct. with a denial of liability. At the trial pltf. recovered £31 10*s.* damages ;—*Held :* pltf. ought to have his costs of the action up to the time of payment in, & the subsequent costs of the issue of trespass. Deft. should have the costs since payment in of the issue as to damages.—WILLCOX *v.* KETTELL, [1937] 1 All E. R. 222.

348a. ——.]—(1) If a person who keeps hounds & a hunting establishment receive notice not to trespass on the lands of A., & after this his hounds go out, followed by a number of gentlemen who go upon the lands of A., the owner of the hounds is answerable for all the damage they do, though he himself forbear to go on the lands, unless he distinctly desires the gentlemen so out with his hounds not to go on those lands.

(2) If a stag, hunted by the hounds of B. run into the barn of A., B. & his servants have no right to enter the barn to take his stag ; & if they do so they are trespassers.—BAKER *v.* BERKELEY (1827), 3 C. & P. 32 ; 172 E. R. 310.

362a. —— —— **Repair.**]—To an action on the case for prostrating part, & building on part, of a wall, & laying materials on a close, in which wall & close pltf. was interested as reversioner, deft. pleaded that his own dwelling-house, which he was repairing, accidentally & without his default fell upon the wall & threw it down, & that afterwards, & before action brought, & within a reasonable time, deft. carefully, & at his own expense, erected & built the said wall upon the said close, &, in & about such erecting & building, necessarily & unavoidably committed the grievances, etc., doing no unnecessary damage, etc., & thereupon & then, to wit at the times when, etc., at his own expense, repaired all damages sustained by pltf. by reason of the grievances, etc. :—*Held :* on demurrer, no answer to the action.—TAYLOR *v.* STENDALL (1845), 3 Dow. & L. 161 ; 7 Q. B. 634 ; 14 L. J. Q. B. 301 ; 5 L. T. O. S. 214 ; 9 Jur. 1096 ; 115 E. R. 629.

379. *Add. Annotation :*— **Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

PART II. SECT. 6, SUB-SECT. 2.—B.

sc. *Possession of mother.*]—The possession of a mother will not be considered tortious as against the heir, being her own child, but will rather be treated as the possession of a guardian.—DOE d. HOAK *v.* EMPEY (1834), 3 O. S. 488.—CAN.

PART II. SECT. 6, SUB-SECT. 3.—A.

sb. *Trespass on Indian reserve—Necessity for consent of band.*]—PAPWEE-IN *v.* BEAUDRY, [1933] 1 W. W. R. 133.—CAN.

PART II. SECT. 6, SUB-SECT. 3.—B.

sd. *Long possession of easement.*]—BROWN *v.* STREET (1844), 1 U. C. R. 124.—CAN.

PART II. SECT. 6, SUB-SECT. 6.

e i. —— ——.]—The moneys payable under an agreement for the sale of land were assigned to deft. bank, & the purchaser, who was in possession & had defaulted in his payments, agreed with the bank to pay over to it the proceeds of the crop on the part of the land which had been broken but had not been summer-fallowed for several years, & also agreed to summer-fallow it without delay. He, however, having neglected to summer-fallow it, although the bank told him that if he did not do so it would ; &, having failed to carry out a promise given by him to the weed inspector to plough under the weeds, one C., acting under instructions from the bank, entered on the land & had ploughed under the weeds on a part of it when he was ordered off by the purchaser :—*Held :* the bank & C. were liable to the purchaser for damages for trespass. The bank was not in the position of a person who has a right to abate a nuisance with or without notice even if a nuisance existed ; nor, in the absence of a contract giving it a right of entry, had it a right to enter on the principle that it was entitled to preserve its security or prevent its impairment ; & the evidence did not support a finding that the entry was by leave & licence.—ROYAL BANK OF CANADA *v.* BENDIKSEN & IRELAND, [1928] 2 W. W. R. 27.—CAN.

PART II. SECT. 6, SUB-SECT. 9.

sl. *Mistake as to land entered upon.*]—MUNRO *v.* PINDER LUMBER & MILLING CO. (1925), 52 N. B. R. 487.—CAN.

sk. *Entry by private detectives.*]—D. & another were employed as inquiry agents to obtain evidence in connection with certain divorce proceedings. Believing that they would be able to obtain the evidence required they entered the premises of M. without his consent. On a charge under sect. 4 of

Part III.—Trespass to Goods.

448a. Bottles marked with name of plaintiff—Refilled by defendant.]—Applts., who were manufacturers of aerated water, marked their name on the bottles & claimed an exclusive right of property in them. Resp. was a grocer who had no contractual relationship with applts., & he had in his shop a soda fountain by means of which he supplied customers with aerated beverages for consumption off the premises. The customers had to bring a bottle or other receptacle, & in practice resp. filled it without examination & without inquiring into the customer's right to use it. Occasionally applts.' bottles were used in this way. In an action by applts. against resp. to restrain him from receiving from customers bottles marked with applts.' name for the purpose of filling them with beverages :—*Held :* there was no duty on resp. to ascertain which bottles were applts.' property, & the action failed.

As in the particular case the requests to fill the bottles were in the nature of a trap order & were made with the authority of applts., no case of trespass was proved & for this reason the action failed (*per* CUR.).—LEITCH (WILLIAM) & CO., LTD. *v.* LEYDON, BARR (A. G.) & CO., LTD. *v.* MACGEOGHEGAN, [1931] A. C. 90 ; 100 L. J. P. C. 10 ; 144 L. T. 218 ; 47 T. L. R. 81 ; 74 Sol. Jo. 836, H. L.

448b. Retaking goods held under "display agreement"—No notice of removal.]—By a written "display agreement" made between X. co. & dealers, X. co. delivered a motor chassis to the dealers on the terms that it should remain the property of X. co., & should not be taken out on the road. The dealers made a deposit of £10 & were entitled by prepayment to purchase the chassis. X. co. were to be at liberty to remove the chassis at any time, but "if the dealer shall have constructed a body on the vehicle he shall be at liberty to dismantle the said body before removal of the vehicle under the provisions of this clause." X. co., without notice to the dealers, entered their garage &, seizing a chassis in the possession of the dealers, took it into the street, where they dismantled a body that had been fixed thereto by the dealers. The dismantling was observed by a creditor of the dealers & others :—*Held :* a term must be imported into the agreement that X. co. must give such notice of the removal to the dealers that they could remove their body from the chassis in the garage. Accordingly the co. had committed a trespass to goods for which substantial damages could be awarded.

Per SCRUTTON & MAUGHAM, L.JJ. : Exemplary damages may be awarded for trespass to goods, due to the manner of the trespass.—OWEN & SMITH (TRADING AS NUAGIN CAR SERVICE) *v.* REO MOTORS (BRITAIN), LTD. (1934), 151 L. T. 274, C. A.

Annotation :—**Consd.** Interoven Stove Co. *v.* Hibbard & Painter & Shepherd, [1936] 1 All E. R. 263.

448c. Seizure of documents at time of arrest—No search warrant.]—In order to effect the arrest of H., defts., police officers, entered pltfs.' premises. While there they seized & carried away documents found on the premises, being (*a*) documents which were afterwards used on the trial of E., (*b*) a document found on H. & used on his trial, & (*c*) documents which did not constitute evidence on these trials. At the conclusion of the trials the documents under (*a*) & (*b*) were not returned ; those under (*c*) were returned soon after seizure :—*Held :* (1) although the original seizure of the documents was unlawful, it was excused as regards documents under (*a*) & (*b*), it being to the interest of the State that material evidence should be preserved ; (2) the police had a right to search H. on his arrest, & also to seize any documents in his possession which would form material evidence against him or anybody else on a criminal charge. Any property so taken might be retained by the police until the conclusion of proceedings under any such charge.

The police, having lawfully entered the premises to arrest H., did not by reason of the subsequent unlawful seizure of the documents under (*c*) becomes trespassers *ab initio* as to the land, but only as to the documents.—ELIAS *v.* PASMORE, [1934] 2 K. B. 164 ; 103 L. J. K. B. 223 ; 150 L. T. 438 ; 98 J. P. 92 : 50 T. L. R. 196 ; 78 Sol. Jo. 104 ; 32 L. G. R. 23.

478. *Add. Annotation :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

489. *Add. Annotation :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

496a. Exemplary damages—Manner of trespass.]—OWEN & SMITH (TRADING AS NUAGIN CAR SERVICE) *v.* REO MOTORS (BRITAIN), LTD., No. 448b, *ante*.

508. *Add. Annotation :*—**Refd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

Inclosed Lands Protection Act, the magistrate found that a trespass had been committed, but dismissed the charge on the ground that defts. had a lawful excuse for entering upon the land in question :—*Held :* the entry of defts. on the land in question was without lawful excuse, as an entry by a private detective, or any other person, against the consent of the owner or occupier of land in order to obtain evidence in connection with civil proceedings, is an entry "without lawful excuse" within sect. 4 of Inclosed nds Protection Act, 1901.—MORRIS *v.* DARBY (1936), 53 N. S. W. W. N. 136.—

PART III. SECT. 1, SUB-SECT. 1.—B. (a).

433 i. *Accidental act—Arising from negligence — Ship.*]—WOLVERINE S.S. CO. *v.* CANADIAN DREDGING CO., [1930] 4 D. L. R. 684 ; 65 O. L. L. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B. (b).

sm. *Removal of books of insurance agent during illness by second agent.*]—An insurance agent removing books & effects from the office of another agent during his illness is liable for damages in trespass.—FOXALL *v.* SHOBROOK, [1936] 2 D. L. R. 155 ; 50 B. C. R. 430 ; *affd.* [1936] 4 D. L. R. 464.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.—B.

q i. ——.]—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident.—COPLEY *v.* FINKELSTEIN, [1928] 3 D. L. R. 671 ; [1928] 3 W. W. R. 89.—**CAN.**

t i. ——.]—Where a gasoline engine used in a fishing boat was wrongfully seized under a conditional sale agreement damages were awarded for loss as a result of being unable to fish during

551. *Add. Citations :—sub nom.* BIGGS *v.* BENGER, 2 Ld. Raym. 1372 ; *sub nom.* BRIGGS *v.* 1 Stra. 610.

555a. **Trap order.**]—LEITCH (WILLIAM) & CO., LTD. *v.* LEYDON, BARR (A. G.) & CO., LTD. *v.* MACGEOGHEGAN, No. 448a, *ante*.

Part IV.—Trespass to the Person.

597. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

630. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

647. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

733a. —— —— —— ——.]—If A., having no right to apprehend B., direct a police officer to take B., & he do so, B. may maintain an action for false imprisonment against A. ; but if A. merely make a statement to the officer, leaving it to him to act or not as he thinks proper, & the officer then take A., B.'s remedy against A. is, if any, by action on the case.—HOPKINS *v.* CROWE (1836), 7 C. & P. 373 ; 173 E. R. 166, N. P. ; *subsequent proceedings*, 4 Ad. & El. 774.

Annotations :—**Distd.** Hudson *v.* Howard (1837), 1 Jur. 658. **Refd.** Kine *v.* Evershed (1847), 10 Q. B. 143 ; Read *v.* Coker (1853), 13 C. B. 850 ; Derecourt *v.* Corbishley (1855), 1 Jur. N. S. 870.

757a. ——.]—S., an agent of defts., thinking pltf. guilty of larceny, gave him into custody & signed the charge-sheet. S. stated in evidence : " I did give him in charge " :—*Held :* this amounted in law to false imprisonment, but no case of malicious prosecution was shown.—CLUBB *v.* WIMPEY & CO., LTD., [1936] 1 All E. R. 69 ; *revsd.*, [1936] 3 All E. R. 148, C. A.

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the season.—ROBERTSON *v.* VIVIAN, [1934] 2 D. L. R. 775 ; 48 B. C. R. 295. —CAN.

PART III. SECT. 6, SUB-SECT. 8.

548 iv. ——.]—In an action for replevin of logs evidence by deft. of *jus tertii* is not admissible if pltf. is in possession of the land in dispute ; unless deft. can prove he entered by authority of the owner of the *jus tertii*. —PENTLAND *v.* GODIN (1932), 4 M. P. R. 385.—CAN.

PART IV. SECT. 1, SUB-SECT. 5.—D.

637 i. *How far assault justified.*]—*Held :* on the facts disclosed the blow struck was justified on the ground of self-defence.—WESTON *v.* LOTT & CHRISTOPHERSON, [1935] 2 W. W. R. 456.—CAN.

644 vii. ——.]—MCNEILL *v.* HILL (Sask.), [1929] 2 D. L. R. 296.—CAN.

PART IV. SECT. 1, SUB-SECT. 5.—F.

sp. *Assault by bailiff—Independent contractor.*]—Deft. co. authorised deft. B., who carried on business as a licensed bailiff, to seize a motor car under a conditional sale agreement. In the course of the seizure B. broke open pltf.'s garage, & assaulted pltf. Damages were awarded pltf. against both defts. The co. appealed :—*Held :* the bailiff was an independent contractor & the co. was not liable.—ROMAN *v.* MOTORCAR LOAN CO., LTD., & BURNS, [1930] 1 W. W. R. 775 : 3 D. L. R. 296 ; 42 B. C. R. 457.—CAN.

sr. *Death by shooting.*]—In an action against a police officer for the death of a person who had been killed by the ricochetting of a bullet from a revolver which the officer had fired, without aiming at any one when pursuing the deceased in order to arrest him :—*Held :* the officer believed on reasonable & probable grounds that the deceased had been abetting one whom he also believed on such grounds had broken into a shop, & the officer in shooting as he did was acting properly within his rights & doing no more than his duty required him to do.—MERIN *v.* ROSS, [1933] 1 W. W. R. 109 ; 60 C. C. C. 18 ; 46 B. C. R. 471.—CAN.

PART IV. SECT. 1, SUB-SECT. 5. —J.

676 i. *Disturbances at public meeting.*]—In an action for damages for assault alleged to have been committed by deft. when chairman of a meeting of a branch of a brotherhood, it was shown that because of pltf.'s attempt to address the meeting a breach of the peace arose & there was reasonable ground for apprehension that if he persisted it would continue & perhaps extend in area & intensity :—*Held :* under the circumstances, it became deft.'s duty as chairman to try to restore order, & the judge was right in concluding that in attempting to do so deft. was justified in using force & that he had used no more force than was necessary for that purpose.—SIKORSKI *v.* KOBRINSKI, [1935] 3 W. W. R. 433 ; 5 F. L. J. (Can.) 229.—CAN.

PART IV. SECT. 1, SUB-SECT. 7.

k i. —— —— *Provocation to assault.*]—On appeal from a judgment for pltf. in an action for assault the damages were reduced to $10, the assault having been merely a technical one, which apparently had been courted by pltf. with a view to an action for damages.—HODGKINSON *v.* MARTIN, [1928] 3 W. W. R. 763.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

714 iii. ——.]—A direct act of trespass is essential to an action for false imprisonment.—GUNTER *v.* PRINCE WILLIAM SCHOOL DISTRICT, No. 3, TRUSTEES (1934), 8 M. P. R. 15.—CAN.

731 i. —— —— *Charge made to police officer—No further action by defendant.*]—MANN *v.* RASMUSSEN, [1928] 3 D. L. R. 319 ; [1928] 2 W. W. R. 278 ; 23 Alta. L. R. 515.—CAN.

731 ii. —— —— *Incorrect repetition of statement made by defendant causing arrest.*]—SPARKS *v.* JOSEPH (1858), 7 C. P. 69.—CAN.

c i. —— *Detention without formal arrest.*]—A felony having been committed, a civic guard requested the two pltfs., whom he suspected of complicity in the crime, to go to the civic guards' barracks, which pltfs. voluntarily did. When they reached the barracks they were questioned by deft., the chief superintendent of the civic guards for the county, & were then detained in the barracks while the guards were endeavouring to procure evidence. They were not charged with any crime, nor were they formally arrested. They were detained in the barracks from an early hour of the morning of one day until the evening of the following day, when, in consequence of a letter of complaint from their solr., they were formally arrested & charged with the crime & brought before a peace comr., who remanded them on bail to the next district ct. At that ct. the charge was dismissed. It was admitted that pltfs. could have been brought before a peace comr. on either of the two days during which they were detained. Each of pltfs. then brought a civil bill against deft. for damages for false imprisonment :—*Held :* the detention of pltfs. amounted in law to imprisonment, as it was a total restraint of their liberty imposed on them by the action of the Guards. It was the duty of deft., as the officer responsible for such detention, to have brought pltfs. before a peace comr. as soon as he reasonably could. Accordingly, as he did not do so, he was liable to pltfs. in damages in respect of the period that elapsed between the time when deft. could reasonably have brought pltfs. before a peace comr. & the time when he in fact did so.—DUNNE *v.* CLINTON, [1930] I. R. 366.—IR.

c ii. —— *Submitting to be searched.*]—Pltf. when shopping in deft.'s store was wrongly accused by a house detective of theft, &, in order to prevent the necessity of actual force being used or the creating of a scene, went at the detective's request with her & the latter's assistant to a room where he was searched :—*Held :* deft. was liable in damages for false imprisonment.—CONN *v.* DAVID SPENCER, LTD., [1930] 1 W. W. R. 26 ; 1 D. L. R. 805 ; 42 B. C. R. 128.—CAN.

PART IV. SECT. 2, SUB-SECT. 3.

sa. *Warrant issued in course of duty —By clerk of court—No liability.*]—NALTY *v.* HOWELL (1929), S. A. S. R. 23.—AUS.

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

765 i. *Arrest on civil process—Defective affidavit to hold to bail—Failure to allege notice in writing to debtor as required by Judicature Act, R. S. N. B.*, 1927, *s.* 32.]—ELSTON *v.* PURDY (1929), 1 M. P. R. 421.—CAN.

769. *Add. Annotation :—As to* (1) **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

776. *Add. Annotation :*—**Refd.** McArdle *v.* Egan (1933). 150 L. T. 412.

783. *Add. Annotation :*—**Refd.** Clubb *v.* Wimpey & Co., [1936] 1 All E. R. 69.

829. *Add. Annotation :*—**Refd.** McArdle *v.* Egan (1933), 150 L. T. 412.

852. *Add. Annotations :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309 ; Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

PART IV. SECT. 2, SUB-SECT. 5.

r (p. 456) i. ——.]—Pltf. while trying to get a cash refund from deft. co. for a dress was ordered by a peace officer employed by deft. to accompany him to the office of the deft.'s superintendent. She did so, but while waiting in an outer office to speak to the superintendent, & after the officer had pointed out to her that the information she had given did not correspond with entries in the city directory, she left hurriedly & attempted to reach an elevator. The officer pursued & caught her by the arm, & after some resistance, she accompanied him to the superintendent's office, when on her refusing to give any explanation of the dress, she was permitted to leave. In an action for damages, it was found, on such of the evidence as the ct. accepted as true, that there was no assault & that there was no actual detention except for the period between the time when the officer seized her arm when she was near the elevator & the time when she was told she might go :—*Held :* the officer had reasonable ground for his suspicion that pltf. was committing an offence, & his conduct towards her was reasonable & justifiable under the circumstances.—COCHRANE *v.* T. EATON CO., LTD., [1936] 1 W. W. R. 639 ; 2 D. L. R. 513 ; 65 Can. C. C. 329 ; 44 Man. L. R. 17 ; 5 F. L. J. (Can.) 308.—**CAN.**

TROVER AND DETINUE.

Part I.—Nature and Subject-Matter.

58. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B.

68. *Add. Annotation :*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

Part II.—Liability for Conversion and Detinue.

99. *Add. Annotations :*—**Apprvd.** Oakley *v.* Lyster, [1931] 1 K. B. 148. **Refd.** Ashby *v.* Tolhurst, [1937] 2 K. B. 242.

100. *Add. Annotation :*—**Apprvd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

102. *Add. Annotations :*—**Consd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81, H. L.; United Fruit Co. *v.* [illegible] Co. (1930), 47 T. L. R. Co. *v.* Lloyds Bank, Ltd., [1932] 2 K. B. 122; The Arpad (1934), 50 T. L. R. 505.

105a. ——]—There may be a conversion of goods even though deft. has never been in physical possession of them, if his act amounts to an absolute denial & repudiation of pltf.'s right.—OAKLEY *v.* LYSTER, [1931] 1 K. B. 148; 100 L. J. K. B. 177; 144 L. T. 363, C. A.

106. *Add. Annotation :—As to* (3) **Refd.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

113. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

125. *Add. Annotation :*—**Refd.** Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

139. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

142. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

147a. **Illegal seizure of documents at time of arrest —Documents retained after trial.**]—In order to effect the arrest of H., defts., police officers, entered pltfs.' premises. While there they seized & carried away documents found on the premises, being (*a*) documents which were afterwards used on the trial of E., (*b*) a document found on H. & used on his trial, & (*c*) documents which did not constitute evidence on these trials. At the conclusion of the trials the documents under (*a*) & (*b*) were not returned; those under (*c*) were returned soon after seizure :—*Held :* although the original seizure of the documents was unlawful, it was excused as regards documents under (*a*) & (*b*), it being to the interest of the State that material evidence should be preserved; (2) the police had a right to search H. on his arrest, & also to seize any documents in his possession which would form material evidence against him or anybody else on a criminal charge. Any property so taken might be retained by the police until the conclusion of proceedings under any such charge. The police, having lawfully entered the premises to arrest H., did not by reason of the subsequent unlawful seizure of the documents under (*c*) become trespassers *ab initio* as to the land, but only as to the documents.—ELIAS *v.* PASMORE, [1934] 2 K. B. 164; 103 L. J. K. B. 223; 150 L. T. 438; 98 J. P. 92; 50 T. L. R. 196; 78 Sol. Jo. 104; 32 L. G. R. 23.

156. *Add. Annotations :*—**Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206; Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305. **Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

185a. —— **Delivery to bailee.**]—In the end of 1924 the Metropolitan Police found at the house of pltf. & took into their possession a quantity of goods including certain cloth. Pltf. was brought before the police ct. on charges of receiving, & some of the evidence there given tended to show, but did not prove, the identity of the cloth which had

PART II. SECT. 1, SUB-SECT. 1.

93 i. —— *Mere deprivation of possession not sufficient.*]—In order to support an action for conversion there must be an element of wrong; the mere fact of possession of the goods by the deft. is not sufficient.—BALL *v.* SAWYER MASSEY CO., LTD. (Sask.), [1929] 4 D. L. R. 323; 2 W. W. R. 582.—CAN.

103 iii. ——.]—Pltf. co., importer of the K. motor car, gave P. the right to sell its cars. P. found a purchaser for a K. car, who wished to trade in his old S. car as part payment. P. obtained a car from the pltf. co. & was debited with the price less his commission £346 5*s.* 0*d.* He paid pltf. co. £46 5*s.* 0*d.* & the S. car valued at £300 was accepted by pltf. co. P. who had retained possession of the S. car, sold it on behalf of pltf. co. to C. on hire purchase. C. made default under his hire purchase agreement, & P., without authority from pltf. co., seized the car, & sold it to deft. co. who in turn sold it to W. Deft. co. never had actual possession of the car. Before the sale to W. was completed pltf. co. demanded the car, but the deft. co. refused to deliver it up & completed its purchase from P. & its sale to W. P. delivered the car to W. Pltf. co. then sued for conversion of the car & the jury found a verdict in its favour :—*Held :* there was sufficient evidence of ownership in pltf. co. & of possession of the car by deft. co. to justify the finding of the jury: but even if deft. co. had not been in physical possession of the car, its denial of pltf. co.'s right amounted to a conversion in the circumstances.—MOTOR DEALERS CREDIT CORPN., LTD. *v.* OVERLAND (SYDNEY), LTD. (1931), 31 S. R. N. S. W. 516; 48 N. S. W. W. N. 205.—AUS.

PART II. SECT. 1, SUB-SECT. 2.—A. (b).

131 i. *Intermeddling with goods distrained.*]—MORT *v.* BARNES, [1928] V. L. R. 56.—AUS.

PART II. SECT. 1, SUB-SECT. 2.—B.

ss. *Unjustifiable detention by officer.*]—BARRETT *v.* GALL[illegible] (1928), 28 S. R. N. S. W. 549; 45 N. S. W. W. N. 154.—AUS.

stolen from a firm of carriers. Pltf. was committed for trial at the London sessions on indictments charging him with having received certain of the goods other than the cloth knowing them to have been stolen, & on an indictment charging him with a similar offence in respect of the cloth, & in Feb. 1925, he was convicted on the first-mentioned indictments & sentenced to five years' penal servitude. He was never tried on the indictment relating to the cloth, but it was allowed to remain upon the record. On Apr. 2, 1925, pltf. not having as yet made any credible claim to the cloth, the Receiver for the Metropolitan Police District handed handed it over to the firm of carriers, who claimed it, taking from them a written indemnity. On Jan. 16, 1931, pltf., having less than six months before made an unsuccessful demand for the cloth as his property, brought an action against the Receiver & the firm of carriers claiming damages for detinue & conversion of the cloth. The first-named deft. relied, among other defences, upon the Public Authorities Protection Act, 1893 (c. 61). The jury, having heard the evidence, found that it did not establish the identity of the cloth with that stolen from the carriers, & they returned a verdict for pltf. against both defts. :—*Held :* the first deft. in handing over the cloth to the second defts. in Apr. 1925, had acted in "intended execution" of a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1, & as the action in respect of the act of conversion so effected had not been commenced within six months after that act, it was not maintainable in respect thereof. Pltf. could not elect to rely only on his claim in detinue, so as to make the time run from his demand & to bring the date of the action within six months after the cause of action. Therefore, judgment should be entered for the first deft. against pltf., & for pltf. against the second defts.—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER & CARTER PATERSON & CO., LTD., [1932] 2 K. B. 595; 101 L. J. K. B. 588; 147 L. T. 336; 96 J. P. 327; 48 T. L. R. 517; 76 Sol. Jo. 474; 30 L. G. R. 349.

188. *Add. Annotation :*—**Refd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

200a. Bill indorsed to agent for account of plaintiff—Deposit by agent to secure advances.] —TREUTTEL *v.* BARANDON (1817), 8 Taunt. 100; 1 Moore, C. P. 543; 129 E. R. 320.

Annotations :—**Apld.** Evans *v.* Kymer (1830), 1 B. & Ad. 528. **Refd.** Wookey *v.* Pole (1820), 4 B. & Ald. 1; Sigourney *v.* Lloyd (1828), 8 B. & C. 622; Bank of Bengal *v.* Macleod (1849), 5 Moo. Ind. App. 1.

202. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

206. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

245. *Add. Annotation :*—**Refd.** *Re* Mason, [1929] 1 Ch. 1.

314. *Add. Annotation :*—*As to* (1) **Refd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

Part III.—Enforcement of Liability.

359. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

403. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

455. *Add. Annotation :*—**Refd.** Bushell *v.* Timson, [1934] 2 K. B. 79.

PART II. SECT. 1, SUB-SECT. 2.—F.

sd. Using plant.]—M. left, on premises which he quitted, certain articles, consisting of fittings & plant, used by him in the manufacture of a disinfectant. C. having entered into a contract, in writing, with the owner, to lease the premises, went into occupation thereof. Endorsed upon the contract was a provision that the above-mentioned articles were M.'s property & were not leased with the premises, & that they were "to remain where at present situated upon the lessee vacating the premises." C. manufactured a disinfectant on the premises &, in the course thereof, used those articles: —*Held :* C. had been guilty of conversion.—CRAIG *v.* MARSH (1935), 35 S. R. N. S. W. 323; 52 N. S. W. W. N. 123.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.—J.

sd. *Confusion of goods.*]—Where deft. wrongfully intermingled a certain quantity of leaves belonging to pltf. with his own, & the fact of what proportion of the same was the property of pltf. was not sought to be proved by deft. :—*Held :* deft. being a wrongdoer, the burden of proving that proportion lay upon deft. & he having made no effort to discharge that burden, the presumption was that the entire leaves belonged to pltf. & the same must be taken as the measure of pltf.'s loss.—SITARAM SYAM NARAIN *v.* ISWARI CHARAN SARANGI (1934), I. L. R. 13 Pat. 762.—**IND.**

PART II. SECT. 2, SUB-SECT. 3.—A. (a).

g i. ——.]—In an action for conversion :—*Held :* deft.'s use of the property after the action was begun, & more especially its denial, in the action, of pltf.'s ownership & right to possession, must be regarded as evidence of conversion before action.—CANADIAN ORCHESTRAPHONE, LTD. *v.* BRITISH CANADIAN TRUST CO., [1923] 2 W. W. R. 618; 4 D. L. R. 86; 26 Alta. L. R. 305.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—A. (d).

s. *Goods in custodiâ legis.*]—No conversion by refusal to deliver up on demand if chattel is *in custodiâ legis.*—FLOOD *v.* MOORE, [1933] 4 D. L. R. 392; 6 M. P. R. 492.—**CAN.**

PART II. SECT. 3.

342 vi. ——.]—*Qu. :* whether an equitable mtgee. of chattels who has never had possession of the mtgod. chattels has any such title as is required to support an action for conversion.—WHITE *v.* ELDER, SMITH & CO., LTD., [1934] S. A. S. R. 56.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—B.

371 ii. ——.]—In an action for damages for the conversion of goods it is incumbent on pltf. to prove beyond a doubt title in himself & the right of possession.—MCCUTCHEON *v.* LIGHTFOOT, [1930] S. C. R. 108; 1 D. L. R. 995; *affg.*, [1929] 1 D. L. R. 971; 1 W. W. R. 694; 38 Man. L. R. 160; *revsg.*, [1928] 2 W. W. R. 240.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—A. (a).

h i. —— *Election of remedy.*]—Where a bailee or agent wrongfully sells property the owner may claim in tort for conversion or waive the tort & claim the proceeds, but cannot do both.—TRUSTS & GUARANTEE CO. *v.* BRENNER, [1932] O. R. 245; 2 D. L. R. 688; *on appeal*, [1933] S. C. R. 656.—**CAN.**

h ii. ——.]—G. supplied X. with certain goods under a hire-purchase agreement provided (*inter alia*) that X. should not part with the possession thereof without G.'s consent. The agreement also provided that G. might retake possession of the goods on default of payment by X. of weekly instalments on account of the hire, or for breach of other provisions thereof.

484. *Add. Annotation :*—**Consd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

488. *Add. Annotation :*—**Refd.** Smart Bros. *v.* Holt, [1929] 2 K. B. 303.

494. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

503. After this case add :—
Contract for whole crop—Sale of part of crop to third party.]—*See* INJUNCTION, No. 853a, *ante*.

562. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

578a. —— **Cost of replacement—Where no market.**]—Resp. co. did work for applt. in erecting & testing a pair of experimental davits. The davits & testing apparatus were then dismantled & kept by resp. co. for several years. A dispute arose over the non-payment of part of applt.'s account for work done, & a writ was issued. Applt. counterclaimed for damages for detinue or conversion of his davits & testing apparatus, which it transpired that resp. co. had sold as scrap. The judge awarded applt. the scrap value of these articles as damages. On appeal :—*Held :* applt. was entitled to the value of the articles converted, which was ordinarily the price of similar articles in the market. As there was no market in the articles concerned, the measure of damages was the cost of replacement.—HALL (J. & E.), LTD. *v.* BARCLAY, [1937] 3 All E. R. 620, C. A.

579. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

582. *Add. Annotation :*—**Consd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

583. *Add. Annotations :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1 ; The Arpad (1934), 50 T. L. R. 505.

584. *Add. Annotation :*—**Consd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

590. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett, [1934] Ch. 1.

595. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

601. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett, [1934] Ch. 1.

615. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B.

623. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

624a. Title deeds.]—After a pltf. had recovered damages on a writ of inquiry in trover, for the conversion of his title deeds, the ct. permitted satisfaction of the damages to be entered on the roll, upon the terms of the deft. delivering up the deeds & paying all the costs, as between attorney & client, incurred by pltf. in the cause, & submitting to other terms, placing pltf. in as good a situation as he was in before cause of action. —COOMBE *v.* SANSOM (1822), 1 Dow. & Ry. (K. B.) 201.

628a. Shares—Sale by broker.]—Resp., in Oct. 1929, instructed the firm of Solloway Mills & Co., Ltd. (Ontario incorpn.), of which applts. were directors, to purchase on margin 7,000 shares in a mining co. At the same time, he deposited 3,500 shares of the same stock as collateral security, & duly received a contract note purporting to show that the transaction had been carried out. The shares declined steadily in value, &, at the request of the co. for further margin on cash, he deposited with them a further 10,500 shares of the same stock, & paid $8,000 cash. He received monthly statements, showing the shares as being carried for him. In Jan. 1930, he decided to close the account, & paid to the co. what appeared to be the balance against him on that date, a sum of $42,334,92. The co. delivered to him 21,000 shares, *i.e.*, 7,000 originally bought, 3,500 originally deposited, & 10,500 subsequently deposited. The co. in fact sold both the

X. without G.'s knowledge, gave a bill of sale over the goods to H. At a time when X. was in default in payments under the hire-purchase agreement, H., acting under his bill of sale & without objection on the part of X., caused the goods to be removed from X.'s premises & placed in store in X.'s name. The goods were subsequently sold at X's direction. G. then sued H. for conversion :—*Held :* H. had converted the goods.—GLASS *v.* HOLLANDER (1935), 35 S. R. N. S. W. 304 ; 52 N. S. W. W. N. 76.—AUS.

PART III. SECT. 3, SUB-SECT. 1.—B. (e).

532 v. ——.]—Where goods are left upon premises on termination of the lease to secure payment of rent in arrear, & sold by the landlord's agent, the agent cannot set up lien as a defence to an action of conversion for selling the goods if no claim of lien has previously been made.—KINSELLA *v.* GILLIS, [1934] 2 D. L. R. 555 ; 7 M. P. R. 31.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—B. (k).

h i. ——.]—BAXTER *v.* ADAMS, [1930] 1 D. L. R. 278.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—C. (b) i.

574 iv. —— ——.]—(1) In estimating the damages for the conversion of pltf.'s goods, the value of the goods at the place where the principal market for them exists is the right basis of calculation ; but there must be deducted from the price at which they could there have been sold the cost of conveying them thereto.

(2) In an action to recover damages from defts. for obstructing pltf.'s right of ingress & egress to a forest, & his right of obtaining & removing timber therefrom :—*Held :* on the evidence, the obstruction was not caused by the persons who were agents of defts. for the purpose of working in the forest, or of doing any class of acts analogous to those complained of, & that defts. were not shown to have knowingly adopted or ratified those acts, & the acts were not shown to have been committed for their benefit.

(3) A principal is answerable for the act of his agent in the course of his master's business & for his master's benefit, & for every such wrong of the servant or agent as is committed in the course of the service, & for the master's benefit. Though the master may not have authorised the act, if he has put the agent in his place to do a particular class of acts, he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in.—BURMAH TRADING CORPN. *v.* MIRZA MAHOMED ALLY SHERAZEE & BURMAH CO., LTD. (1878), L. R. 5 Ind. App. 130.—IND.

574 v. —— ——.]—Where pltf. has the immediate right to the possession of goods, the proper measure of damages in an action against the sheriff for wrongfully taking them is the value of the goods at the time of the conversion, though they were taken under an execution against a person who had performed labour upon them, & for which pltf. would be bound to account to such person.—RANKIN *v.* MITCHELL (1869), 12 N. B. R. (1 Han.) 495.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—C. (h) vii.

so. *Shares.*]—In an action by an owner of co. shares against his trustee for damages for their wrongful detention :—*Held :* the measure of damages, the shares being of fluctuating value,

shares & those deposited as soon as it received them, &, upon the closing of the account, bought shares in the market to fulfil its obligation to pltf. As the shares had continually fallen in value over the whole period, the co. thereby made a considerable profit. The question on appeal was the amount of damages pltf. was entitled to receive:—*Held:* pltf. was entitled to treat the sale of the shares as a conversion of them, & was therefore entitled to receive the value of the shares upon the day on which they were converted, subject only to bringing into account the value of the shares he received, this value being taken as at the time he received the shares.—SOLLOWAY *v.* MCLAUGHLIN, MCLAUGHLIN *v.* SOLLOWAY [1937] 4 All E. R. 328; 54 T. L. R. 69, P. C.

652. *Add. Annotations:*—**Reld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

653a. **What must be proved.**]—MILLS *v.* GRAHAM (1804), 1 Bos. & P. N. R. 140; 127 E. R. 413.

Annotations:—**Reld.** Gledstane *v.* Hewitt (1831), 1 Tyr 445; Whitehead *v.* Harrison (1844), 6 Q. B. 423.

653b. **Proof of taking—What amounts to.**]—Trover for bricks. Evidence that men fetched them away, saying they were ordered by deft., & evidence that the cart they took them in had on it the same name as deft.'s, is not evidence to go to the jury that deft. took them away.—EVEREST *v.* WOOD (1824), 1 C. & P. 75; 171 E. R. 1108, N. P.

664. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232. **Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

664a. —— ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926, pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J. & M. purported to sell the cut timber to the present defts. Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930:—*Held:* whether a judgment in trover was in the alternative form or was merely one for the value of the goods or for damages for their conversion, it did not by itself & apart from special circumstances divest the owner of the property of his title thereto unless & until the judgment was fully satisfied.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81, 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

667. *Add. Annotations:*—**Reld.** Ellis *v.* Stenning & Son, Ltd., [1932] 2 Ch. 81; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

668. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232. **Appld.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489. **Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

704. *Add. Annotation:*—**Reld.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

708. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232. **Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

711. *Add. Annotation:*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

should be based on the average of the market prices for such shares during the months following the refusal to deliver them up; a period when, it appeared, the shares might have been sold in reasonable quantities at such prices.—DEVENISH *v.* CONNACHER (No. 2), CONNACHER *v.* DEVENISH, [1932] 3 W. W. R. 645.—CAN.

PART III. SECT. 3, SUB-SECT. 4.

686 i. *Jurisdiction of court to order specific delivery—County court.*]—The jurisdiction conferred on the King's Bench by K. B. r. 695 with respect to enforcing the delivery up of specific goods demanded in an action of detinue is not given to the county ct.—MCINTYRE *v.* BRODIE, [1933] 1 W. W. R. 577; 3 D. L. R. 297.—CAN.

TRUSTS AND TRUSTEES.

Part I.—Trusts.

3. [1930] 1 Ch. 510.

18. *Add. Annotation :—Generally,* **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

44. *Add. Annotation :*—**Folld.** Hills & Grant, Ltd. *v.* Hodson, [1934] Ch.

54. After " estate " in line 9 add :—
" & an injunction, which had been granted by the ct. below, was, on that ground, upheld on appeal, the ct. being of opinion that the transaction amounted to the same thing as if A. had declared himself, instead of B., trustee of the debt for pltf.

61. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

62. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

89. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

94. *Add. Annotation :*—**Consd.** *Re* Franklin & Swathling's Arbitration, [1929] 1 Ch. 238.

106. *Add. Annotation :*—**Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

107. *Add. Annotation :*—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

165. *Add. Annotations :*—**Refd.** Parrin *v.* Dickson (1929), 45 T. L. R. 621; I. R. Comrs. *v.* Clarkson-Webb, [1933] 1 K. B. 507; *Re* Clay's Policy of Assurance, Clay *v.* Earnshaw, [1937] 2 All E. R. 548.

294. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244.

305. *Add. Annotations :—Generally,* **Refd.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

340a. —— **Particular desire.**]—*Re* GREEN, SHEARS *v.* LLOYDS BANK, LTD., [1935] W. N. 151; 180 L. T. Jo. 114; 80 L. Jo. 176.

379a. **" It being my wish that the same should be dealt with " as indicated in separate document—No separate document prepared.**]—*Re* BARTON, BARTON *v.* BOURNE (1932), 48 T. L. R. 205.

401a. **" On the understanding."**]—Where a will which named no exor. nor trustee directed that the estate, under £300, should be given to testator's wife in trust for two children " on the understanding " that testator's father

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PART I. SECT. 3, SUB-SECT. 1.—A. (a).

37 xv. ——.]—Parties taking a deed from a person standing in a fiduciary relation acquire no title if the circumstances should have put them upon inquiry. Neither the Registry of Deeds Act nor Statute of Frauds, requiring certain trusts to be in writing, apply to such a case.—MILLER & Co. *v.* HALIFAX POWER CO. (1915), 48 N. S. R. 370.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—A. (c).

61 iv. ——.]—CLARKE *v.* EBY (1867), 13 Gr. 371.—**CAN.**

61 v. ——.]—SMITH *v.* BENOR (1913), 24 O. W. R. 521; 4 O. W. N. 985; 10 D. L. R. 824.—**CAN.**

61 vi. ——.]—Where it has been agreed between a husband & wife that certain land which they are purchasing should be purchased in her name & that in becoming the purchaser & the registered owner she should do so as trustee for him with respect to his interest, & where after her death he sues for a declaration that he is entitled to an interest in the land, sect. 7 of Stat. Frauds does not apply, since if the wife were living it would be fraud on her part to seek to evade the trust by invoking the statute, & her devisees, as they are only volunteers, are in no better position than she would be herself, if living. If, however, the trust is alleged to have been created only after the wife had become the purchaser of the property in her own right the statute intervenes. The trust must then be established by written evidence, which may take the form, for instance, of letters, or the operation of the statute may be defeated by part performance.—BEEMER *v.* BROWNRIDGE, [1934] 1 W. W. R. 545.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—A. (a).

p i. —— —— *Grantor must have parted with his interest.*]—In order to make a declaration of trust complete there must be an effective, completed & irrevocable disposition of the beneficial interest of the person making the declaration. — *Re* GARDEN ESTATE, [1931] 1 W. W. R. 395; 1 D. L. R. 991; *affd.*, [1931] 2 W. W. R. 849; 4 D. L. R. 791; 25 Alta. L. R. 580.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—A. (b) ii.

ss. " *Knowing that he will see to the care & maintenance of my wife.*"]—*Held :* not sufficient to create a trust.—*Re* TAARE WAITARA, BEERE *v.* BATES, 1930] N. Z. L. R. 601.—**N.Z.**

PART I. SECT. 3, SUB-SECT. 3.—A. (b) iii.

sc. " *It is my wish.*"]—By his will testator gave to his wife, M. K., " all my property, personal & real, of any kind whatsoever." The will then continued : " It is my wish that after her decease my son, R. K., have the business premises, business effects, & all my land " :—*Held :* M. K. was tenant for life of the property left to R. K., namely, the business premises, the business effects, & all testator's land, & on her death R. K. would be entitled to that property absolutely.—*Re* KEITH TRUSTS, KEITH *v.* KEITH, [1931] I. R. 730.—**IR.**

PART I. SECT. 3, SUB-SECT. 3.—F.

sf. *Precatory words following words of gift.*]—Words construed as absolute gift in view of the tendency against construing merely precatory words as a trust.—*Re* THOMAS, [1932] 2 D. L. R. 334; 4 M. P. R. 431.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—H. (h).

t i. ——.]—Testator after devising & bequeathing to his wife " all my personal property, monies, securities, everything that I now possess & may possess at the time of my decease," then added " & this is my wish (her being free to use her own judgment) for her, S. K., to will at her death " in favour of several objects :—*Held :* the will did not create a precatory trust.—*Re* KEYES ESTATE, KEYES *v.* GRANT, [1928] 3 D. L. R. 558; [1928] 2 W. W. R. 295.—**CAN.**

t ii. ——.]—Testator, by his will, bequeathed the residue of his estate to trustees upon trust to divide the same amongst his wife, daughter & sons. The will then provided : " I declare it to be my wish that my trustees with the assistance of my sons shall continue the business now carried on by me in the same way as heretofore . . . but if my said sons shall not agree with regard to the carrying on of the same, or if any dispute shall at any time arise with regard to the carrying on of the same which in the opinion of my trustees cannot be satisfactorily settled, my trustees may sell the business . . ." :—*Held :* testator did not create a trust to carry on the business, but gave the trustees power to postpone the sale of the business, & expressed a desire that the trustees should endeavour to continue the business in the same way as theretofore.—WESTON *v.* WESTON, [1933] S. R. (Q.) 7.—**AUS.**

t iii. —— " *Wish & request.*"]—Testator's " wish & request " construed as constituting a precatory trust.—*Re* WELLS, REILLY *v.* LEWIN (1935), 9 M. P. R. 580; F. L. J. (Can.) 163.—**CAN.**

provided for the wife so long as she retained her present name, the ct. held on motion that the condition had no testamentary value, & made the grant of letters of administration with the will annexed to the widow as beneficially entitled.—*Re* DULSON (1929), 140 L. T. 470; 45 T. L. R. 228.

409a. ——.]—Testator, being entitled to two leasehold houses situate at P. & at R. respectively, directed his trustees to allow his wife to occupy his house at P. or at R. as she should elect, for her life, without the payment of any rent:—*Held:* the widow must elect between the two houses, & could not enjoy both.—HARBY *v.* MOORE (1860), 3 L. T. 209; 6 Jur. N. S. 883.

415. *Add. Annotations:*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318; *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

421. *Add. Annotation:*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

427. *Add. Annotation:*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

428. *Add. Citation:*—140 L. T. 369.
Add. Annotation:—**Refd.** *Re* W. D. J., [1931] Ch. 174.

438. *Add. Annotation:*—**Apld.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

451. *Add. Annotation:*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

451a. —— ——.]—A wife by her will gave all her property to her husband absolutely, "knowing that he is fully aware of my intention that at his death all my possessions are to be sold & given to" a certain church. The will further stated that testatrix was aware of her husband's intention to bestow his possessions at his death on the same church. The will also charged her husband to pay £20 to a dear friend. The will was in testatrix's handwriting, but was executed in the presence of two solrs. at an interview at which the husband was present, & at which the terms of the will were discussed in his presence without any objection by him. The wife predeceased her husband. He made no will after her death & died intestate. The Parochial Church Council of the named church claimed the wife's property; the husband's next-of-kin claimed that the husband had taken the property free from any trust or obligation:—*Held:* on the evidence the husband knew the contents of his wife's will & by his silence agreed to carry out her wishes; it was against the conscience of the husband to take the property for himself, & a ct. of equity would enforce the obligation; & the Parochial Church Council took the wife's property.—*Re* WILLIAMS, WILLIAMS *v.* ALL SOULS, (PAROCHIAL [1933] Ch. 244; 102 L. J. Ch. 58; 148 L. T. 310.

453. *Add. Annotation:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

460. *Add. Citations:*—*affd.* [1929] A. C. 318; 98 L. J. Ch. 251; 140 L. T. 444; 45 T. L. R. 208; 73 Sol. Jo. 92, H. L.

461. *Add. Annotation:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

462. *Add. Annotation:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

463. *Add. Annotations:*—**Folld.** Blackwell *v.* Blackwell, [1929] A. C. 318; *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

463a. —— —— ——.]—Testator by a codicil to his will gave to five persons £12,000 upon trust to invest the same as they should think fit, & apply the yearly income "for the purposes indicated by me to them," with power to pay over the capital sum of £8,000 "to such persons indicated by me to them" as they thought fit, & to pay the balance of £4,000 to the trustees of his will to be held as part of his residuary estate. Detailed parol instructions for the codicil were given by testator to C., one of the five trustees, & the object of the trust was known in outline to & accepted by all the rest before the execution of the codicil. On the same day, soon after the execution of the codicil, C. wrote out & signed a memorandum of the instructions given to him to the effect (*inter alia*) that the interest of the £12,000 was to be paid to a lady, whose name & full address were given, for the benefit of her & her son, whose full name followed. In an action by the widow of the testator & her son against the trustees & beneficiaries to test the validity of the trust legacy of £12,000:—*Held:* parol evidence was admissible to establish the trust; a complete valid & consistent trust had been established by the codicil & the memorandum of even date.—BLACKWELL *v.* BLACKWELL, [1929] A. C. 318; 98 L. J. Ch. 251; 140 L. T. 444; 45 T. L. R. 208; 73 Sol. Jo. 92, H. L.

Annotations:—**Consd.** *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236. **Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

464. *Add. Annotations:*—**Distd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Consd.** *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

465. *Add. Annotations:*—**Apld.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318; *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

470. *Add. Annotation:*—**Distd.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244.

PART I. SECT. 3, SUB-SECT. 5.—B. (b).

429 i. *Discretion to select among class.*]—Testator bequeathed property to a certain relative, or among certain relatives, who should within five years after his death settle in Australia. If after five years no one was qualified to receive the property, his trustees were empowered to "extend the time limit for a further three years, & after the lapse of this time were directed to hand over the property to one or more then named beneficiaries, stipulating if they think fit the terms on which" the property was to be handed over. The trustees were directed to consult two persons "about the disposal of the property." The trustees extended the time for the three additional years, but no one of the beneficiaries fulfilled the necessary qualification. During the period from the death of the testator to the disposal of his property the trustees were directed "to hand over the income to any approved object or person" in Adelaide, Australia, or to an Imperial object:—*Held:* the trustees had power to select any one or more of the named beneficiaries, & to apportion the subject-matter between them & to propose to any or all of these beneficiaries a reasonable scheme for the application of the property to some special purpose ancillary to the general objects of the recipient in question, & to be guided in the exercise of their discretionary power by the answer or answers received, & to prefer the beneficiary who was able & willing to devote the property to any approved object.—*Re* JOHNSON, [1928] S. A. S. R. 490.—**AUS.**

g. For "[1918] N. Z. L. R. 364" read "[1928] N. Z. L. R. 364."

470a. —— **Will referring to future notification to trustees.**]—A testator by his will gave to his trustees £10,000 to be held upon trust & disposed of among such person, persons or charities as he might notify to them during his lifetime, & in default of such notification to fall into the residue. Testator had on the execution of an earlier will containing a similar clause which was revoked by the later one told one of his trustees that he desired to provide for a person whose name was to be kept secret, & that he had written the name & address of the proposed beneficiary on a sheet of paper enclosed in a sealed envelope which he then handed to the trustee to be kept with his will & not to be opened until after his death. The envelope remained in the trustee's possession & no further communication relating to it was ever made by the testator. After his death it was opened & found to contain a paper bearing the words "£10,000 to G.," giving a person's name & address. The other trustee until then was ignorant of the existence of the secret trust. A summons having been taken out to determine whether a valid secret trust was created in favour of G., FARWELL, J., decided that there had been no notification of any person within the meaning of the will to the trustees by the testator during his lifetime:—*Held:* on the true construction of the will it reserved power to testator to dispose of property by a future unattested disposition, contrary to Wills Act, 1837 (c. 26). The trust sought to be established by parol evidence was one inconsistent with the terms of the will, the notification of it to the trustee being anterior to the will. The trust therefore failed & the legacy fell into residue.—*Re* KEEN, EVERSHED *v.* GRIFFITHS, [1937] Ch. 236; [1937] 1 All E. R. 452; 106 L. J. Ch. 177; 156 L. T. 207; 53 T. L. R. 320; 81 Sol. Jo. 97, C. A.

478. *Add. Annotation:*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

479. *Add. Annotation:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

480. *Add. Annotations:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318; *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244; *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

481. *Add. Annotation:*—**Refd.** *Re* Penrose, Penrose *v.* Penrose (1933), 49 T. L. R. 285.

484. *Add. Annotation:*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

487. *Add. Annotations:*—**Folld.** *Re* Hawksley's Settlements, Black *v.* Tidy, [1934] Ch. 384. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318; *Re* Keen, Evershed *v.* Griffiths, [1937] Ch. 236.

487a. ——.]—A testatrix having made a will in 1922 by which she purported to exercise certain general & special powers of appointment vested in her under certain settlements, subsequently in 1927 made a second will by which she appointed three named persons to be her executors & residuary legatees "to carry out instruction that I may leave in writing or verbally which I have not yet fully completed." This will contained a reference to a "cancelled will" which it was admitted referred to the 1922 will: testatrix having written on a copy of it the word "cancelled." The 1927 will was described as "Last will & testament," etc.:—*Held:* on the words used in the 1927 will—namely, "to carry out instructions that I may leave in writing or verbally which I have not yet completed," the residuary legatees took what was given them by the will as trustees, & it being impossible for the ct. to ascertain what the trusts intended by testatrix were, whatever passed to the residuary legatees had to be held by them on trust for testatrix's next of kin.—*Re* HAWKSLEY'S SETTLEMENTS, BLACK *v.* TIDY, [1934] Ch. 384; 103 L. J. Ch. 259; 151 L. T. 299; 50 T. L. R. 231.

493a. —— **After variation of original settlement.**]—Testator bequeathed his residuary estate upon trust for his children in equal shares & declared that as to the share of his son E. a moiety thereof should be held upon trust to pay & make over the same to the trustees of a settlement dated Sept. 23, 1916, to be held by them upon the trusts of such settlement, so far as the same should be then applicable & capable of taking effect. By the settlement so referred to, which was made after the marriage of E. with his wife G., a certain fund was vested in the trustees thereof under which E. took the first life interest & upon his death G. took an interest during her widowhood with remainders over upon trusts for E.'s children by his wife G. or any future wife. Testator died in 1917, & in 1928 the marriage was upon G.'s petition dissolved, & an order was made under which the trusts of the settlement were varied; the effect of this variation being to deprive E. of any interest under the original trusts thereof, to give G. an immediate life interest, & to vest the settlement fund after her death in P., the only child of her marriage with E.:—*Held:* upon the proper construction of testator's will, the share of E. in his father's residuary estate ought to be held upon the trusts of the settlement as originally framed without regard to the order varying those trusts.—*Re* GOOCH, GOOCH *v.* GOOCH, [1929] 1 Ch. 740; 98 L. J. Ch. 285; 141 L. T. 150.

495. *Add. Annotation:*—**Refd.** *Re* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

544a. ——.]—Testator directed by his will that his residuary real & personal estate should, after the death of his widow, be "equally divided amongst & settled for their own & sole use upon my dear children, & should they marry the husband to have no control over their property." Testator left him surviving three daughters only:—*Held:* the expression in the will of testator was not sufficiently precise to raise an executory trust.—*Re* BANNISTER, HEYS-JONES *v.* BANNISTER (1921), 90 L. J. Ch. 415; 125 L. T. 54.

549. *Add. Annotations:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

561a. —— —— **Trust for promotion of fox-hunting.**]—Where a legacy was bequeathed to

G. to be applied in such manner as he should in his absolute discretion think fit towards the promotion & furthering of fox-hunting, the ct. ordered that, upon G. undertaking to apply the legacy towards that object, the exors. should pay him the legacy, with liberty to the residuary legatees to apply in case the legacy was not so applied.—*Re* THOMPSON, PUBLIC TRUSTEE *v.* LLOYD, [1934] Ch. 342; 103 L. J. Ch. 162; 150 L. T. 451.

666. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

761. *Add. Annotation :*—**Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

769a. Agreement to convey to creditor.]—W. being indebted to C., agreed by deed to convey his estate to C., upon trust to sell the same, & to pay off certain debts of W. due to other persons, & then the debt due from W. to C., & to pay over the surplus, if any, to W. No conveyance was executed. C. being afterwards in possession of the estate under a *fi. fa.* issued on a judgment upon a warrant of attorney given by W., agreed with W.'s agent to purchase the estate. W. ratified the contract, but subsequently impeached it as one made by a trustee for his own benefit & against the interest of the *cestui que trust :*—*Held :* C. was not a trustee for W., but was a creditor holding a security for his debt; & the contract of sale was valid.—WATERS *v.* GROOM (1844), 11 Cl. & Fin. 684; 8 E. R. 1262, H. L.; *affg.* S. C. *sub nom.* CHAMBERS *v.* WATERS (1833), Coop. *temp.* Brough. 91, L. C.

Annotation :—**Refd.** Helling *v.* Lumley (1858), 28 L. J. Ch. 249.

782. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125; Madras & Southern Mahratta Ry. Co. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

790. *Add. Annotations :*—**Apld.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489. **Refd.** A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382; *Re* Cohen's Will Trusts, Cullen *v.* Westminster Bank, Ltd., [1936] 1 All E. R. 103.

792. *Add. Annotations :*—**Apld.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489. **Refd.** A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382.

798. *Add. Annotation :*—**Consd.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489.

862. *Add. Annotation :*—*As to* (1) **Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

863a. —— Effect of Law of Property Act, 1925 (c. 20), s. 20.]—*Re* VINOGRADOFF, ALLEN *v.* JACKSON, [1935] W. N. 68; 179 L. T. Jo. 274.

903. *Add. Annotations :*—**Refd.** Perrin *v.* Dickson (1929), 98 L. J. K. B. 683; *Re* Collier, [1930] 2 Ch. 37; *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197; *Re* Clay's Policy of Assurance, Clay *v.* Earnshaw, [1937] 2 All E. R. 548.

929. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

955. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

966. *Add. Annotation :*—**Refd.** Naamlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S (1937), 42 Com. Cas. 200.

977. *Add. Annotation :*—**Refd.** Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401.

Part II.—Trustees.

1110. After this case add :—

—.]—*See, now,* Trustee Act, 1925 (c. 19), s. 36 (1).

1178. After this case add :—

—.]—*See, now,* Trustee Act, 1925 (c. 19), 41 (1).

1179. Before this case add "*See. now,* Trustee Act, 1925 (c. 19), s. 41 (1)."

1185a. Bank—One beneficiary customer.]—There is no principle whatsoever that would prevent a bank from being appointed a trustee of a settlement merely because one or more of the beneficiaries are customers of the bank &,

PART I. SECT. 14, SUB-SECT. 2.—A. (c) i.

844 viii. —— ——.]—MARSHALL *v.* HETT & SIBBALD, LTD., [1932] 1 W. W. R. 520.—CAN.

PART I. SECT. 14, SUB-SECT. 2.—A. (c) iii.

866 v. *Add. Citation :—revsd.* (1923), 54 O. L. R. 205.

PART I. SECT. 14, SUB-SECT. 2.—A. (d) i.

n i. ——.]—ANDERSON, GREENE & Co., LTD. *v.* KICKLEY, [1934] S. C. R. 388; 3 D. L. R. 787.—CAN.

sa. *Loss of trust deed.*]—A settlement deed being lost :—*Held :* there were no circumstances either in the conduct of the parties or otherwise that would enable the ct. to make any inference as to the contents of the settlement, & accordingly the funds resulted to the representatives of the parties by, & on whose behalf, they were brought into settlement.—CUMMINS *v.* HALL & CUMMINS, [1933] I. R. 419.—IR.

PART I. SECT. 14, SUB-SECT. 3.—B.

sc. *Company—Application for shares.*—*Re* FADA (AUSTRALIA), LTD., *Ex p.* A. L. BROWN, [1927] S. A. S. R. 590.—AUS.

PART II. SECT. 2, SUB-SECT. 1.—A.

sd. *Persons resident in Great Britain—Tenant for life resident in England.*]—*Re* BAILLIE, WHITING *v.* CAVENDISH, [1928] V. L. R. 171; [1928] Argus L. R. 12.—AUS.

PART II. SECT. 2, SUB-SECT. 2.—B. (c).

sl. *Jurisdiction of court to vary power of appointment.*]—Trustee Act, 1925, s. 81, enables the ct. to do any administrative act in the administration of a trust, & empowers the ct. in a proper case to vary a power of appointment of new trustees.—*Re* MAYNE (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—AUS.

PART II. SECT. 2, SUB-SECT 2.—C. (d).

sg. *"Desire" for not less than three trustees—Whether mandatory or directory.*]—Testator by his will declared that the statutory power of appointing new trustees should be exercisable if any of his trustees should go to reside out of the Australian States, but expressed a "desire" that the number of trustees of the will should always be not less than three. One of the three trustees was dead :—*Held :* it was mandatory on such retirement to appoint no less than three trustees.—*Re* MAYNE (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—AUS.

in fact, have overdrawn accounts with the bank. The judge of first instance having in his discretion refused to make the appointment where the settlement contained a power to make advancements to such beneficiaries at the discretion of the trustees & having made the appointment where the beneficiaries took a protected life interest & where the income was to be divided between the beneficiaries at the discretion of the trustees, the Ct. of Appeal refused in the circumstances to interfere with such exercise of the judge's discretion, the position of the beneficiaries being such that the possibility of there being a forfeiture of the protected life interest was so remote as not to affect the exercise of the discretion in the matter. The fact that the bank are the bankers of the exors. of the settlor is also not an absolute bar to its appointment as trustee.—*Re* NORTHCLIFFE'S SETTLEMENTS, [1937] 3 All E. R. 804; 81 Sol. Jo. 716, C. A.

1226a. ——.]—The ct. declined making an order allowing a *feme sole* to propose herself to be trustee, on the ground that on her marriage her husband might interfere with the trust.—BROOK *v.* BROOK (1839), 1 Beav. 531; 48 E. R. 1046.

Annotation :—N.F. *Re* Dickenson's Trusts, [1902] W. N. 104.

1226b. ——.]—Upon the hearing of a petition under the Settled Estate Act, 1877 (c. 18), asking that two ladies, respectively a widow & a spinster, the then trustees of a will, might be authorised to sell the whole or any part or parts of the estates devised, the ct. in the first instance refused to confer the authority upon two ladies, & the petition was ordered to stand over generally. Upon further evidence showing that petitioners had been unable to procure any other suitable persons to act as trustees, though they had endeavoured to do so, the ct. made an order conferring the authority asked for on the two ladies during their joint lives, subject to the approval of the ct. in the case of each sale.—*Re* PEAKE'S SETTLED ESTATES, [1894] 3 Ch. 520; 71 L. T. 371; 42 W. R. 687; 38 Sol. Jo. 648; 8 R. 539.

1422a. —— **Sole managing trustee—Corporation.**]—Being desirous of retiring, the sole surviving trustee under a will, which gave trustees no power to charge for their services, by deed dated May 31, 1932, appointed a bank to be (*a*) managing trustee, & (*b*) custodian trustee, with a view to enabling the bank to charge fees as custodian trustee under Public Trustee Act, 1906 (c. 55), s. 4 (3) :—*Held :* the bank was not entitled so to charge. Either the deed of appointment operated to appoint the bank an ordinary trustee or it was inoperative as an attempt to do the impossible by appointing the same single body to hold the divided positions of managing trustee & custodian trustee.—FORSTER *v.* WILLIAMS DEACON'S BANK, LTD., [1935] Ch. 359; 104 L. J. Ch. 132; 152 L. T. 433; 51 T. L. R. 254; 79 Sol. Jo. 145, C. A.

. Arning *v.* James, [1936] Ch. 158.

——.]—One of two trustees under a settlement, which gave no power to trustees to charge for their services, was desirous of retiring from the trust. By a deed of appointment dated July 6, 1926, a bank was appointed to be managing trustee, together with the continuing trustee & separately, custodian trustee, with the object of enabling it to charge fees under sect. 4 (3) of the Public Trustee Act, 1906 (c. 55), s. 4 (3) :—*Held :* the whole appointment was ineffective, & the retiring trustee was never in his lifetime discharged from the trusts.—ARNING *v.* JAMES, [1936] Ch. 158; 105 L. J. Ch. 27; 154 L. T. 252.

1434a. Equitable estate of beneficiary becoming legal estate.]—On July 5, 1802, B. & another trustee who predeceased him were admitted to certain copyhold plots upon trust out of the rents & profits to raise & pay an annual rent of £7 10*s.* to H. & his heirs & subject thereto in trust for W. & his heirs. Many years after B.'s death his customary heir C., since deceased, was admitted to two plots, but no one was admitted to the third; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of C. & B. On the same date the equitable title to the land stood vested in T. & X. as joint tenants in fee, subject to the equitable rentcharge then vested in Y., subject to proof of his title. On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested :—*Held :* on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform.—*Re* KING'S THEATRE SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, [1929] 1 Ch. 483; 98 L. J. Ch. 109; 140 L. T. 463.

1470. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1492. *Add. Annotations :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251; C. Kasivisvanathan Chettiar *v.* S. V. S. Chokalingam Chettiar, [1935] A. C. 163.

1495. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1497. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

PART II. SECT. 6, SUB-SECT. 1.

1423 i. *Trustee having no duties to perform.*]—P., by his will, devised his real estate to his trustee in fee simple upon trust for the absolute & exclusive use, enjoyment, benefit, & advancement of certain named beneficiaries, including K., &, having invested his trustee with powers of selling & mortgaging such estate for payment of debts, & of leasing & managing same, declared that "if any one of the beneficiaries under this my will shall die without issue, then all his rights, titles, & interests which he has acquired by virtue of this my last will shall vest in the children of M. P. as tenants in common in equal shares :—*Held :* the trustee named in the will was not a bare trustee.—*Re* PANAPA WAREHOPI, [1929] N. Z. L. R. 815.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 2.

1439 i. *Duty to convey legal estate—To beneficiaries.*]—*Re* KEITH, KEITH *v.* EASTERN TRUST CO. (N. S.), [1929] 1 D. L. R. 599.—**CAN.**

PART II, SECT. 7, SUB-SECT. 1.—C, (b) i.

sh. *Property subject to existing contract—Trusts Ordinance, 1917, s. 93, of Ceylon—When registration necessary.*]—HALL *v.* PELMADULLA VALLEY TEA & RUBBER CO., LTD., [1929] A. C. 662.—**CEYLON.**

1499a. Acquisition from married woman trustee—In order to defeat judgment.]—Where the ct. in giving judgment against a married woman, who is a defaulting trustee, orders that the judgment be satisfied out of her separate estate, & execution proves useless, it is not open to pltf., in a new action, to obtain against her judgment in a different form for payment of the moneys into court. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her, action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft., a married woman, judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless, pltf. now brought this action, alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for the pltf., & that the second deft. received the money as constructive trustee:—*Held:* judgment could be given against the second deft., who had received the moneys as constructive trustee.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213; 98 L. J. Ch. 369; 142 L. T. 216; 45 T. L. R. 494.

1538. *Add. Annotation:—Generally,* **Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

1653. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

1811a. —— ——.]—EPSTEIN *v.* LLOYD (1933), 77 Sol. Jo. 319.

1906. *Add. Annotation:—As to* (1) **Consd.** *Re* Gower's Settlement, [1934] Ch. 365.

1910. *Add. Annotation:*—**Consd.** *Re* Gower's Settlement, [1934] Ch. 365.

1911a. —— —— Trustee Act, 1925 (c. 19), In a case where an infant is tenant in tail in remainder of settled land with divers remainders over, the ct. has power, by virtue of Trustee Act, 1925 (c. 19), s. 53, with a view to the application of the capital or income of the settled property for his maintenance, education or benefit, to authorise a mtge. of the settled land subject to interests having priority over the infant's tenancy in tail, so framed as to vest in the mtgee. a security which would be as effective a bar against the infant's issue & subsequent remaindermen as if the infant were of full age & had executed the conveyance in accordance with the Fines & Recoveries Act, 1833 (c. 74).—*Re* GOWER'S SETTLEMENT, [1934] Ch. 365; 103 L. J. Ch. 164; 150 L. T. 449.

2015a. —— Right of beneficiaries.]—In the events which had happened, a testator's residuary estate was held as to one-half in trust for pltfs. absolutely & as to the other half in trust for testator's daughter for life & subject thereto for her children absolutely. The trust fund comprised (*inter alia*) certain shares in a private limited co., which shares carried a voting power in the co. sufficient to enable the holder of them to control an ordinary resolution. By his will testator had directed the trustees not to sell these shares "unless they in their discretion shall consider it absolutely necessary," & he authorised them "to retain the same so long as they in their absolute & uncontrolled discretion shall think fit." Pltfs. required the trustees to divide the estate & to transfer to them the half to which they were entitled. The trustees contended that they were entitled to refuse to divide the shares if in their discretion they were of opinion that it was to the interest of the trust fund as a whole that they should be retained:—*Held:* pltfs. were entitled to have their half of the estate, including half of the shares in question, transferred to them.—*Re* SANDEMAN'S WILL TRUSTS, SANDEMAN *v.* HAYNE, [1937] 1 All E. R. 368; 81 Sol. Jo. 137.

PART II. SECT. 8, SUB-SECT. 1.—A.

1557 v. —— *Objects of trust not named.*]—Where a will distinctly shows an intention to create a trust but does not proceed with sufficient clearness, or at all, to denote the objects of the trust, although it distinctly names a devisee or legatee in trust, the effect is the trustee holds the property for the benefit of those on whom the law, in the absence of disposition, casts it.—FRASER *v.* FRASER, [1937] 1 W. W. R. 91; 6 F. L. J. (Can.) 276.—**CAN.**

PART II. SECT. 8, SUB-SECT. 3.

sj. *Death of trustee.*]—*Re* CATLIN & —— (1923), 54 O. L. R. 1.—**CAN.**

PART II. SECT. 8, SUB-SECT. 5.

sk. *Grant of administration for purpose of conveying—Invalid appointment of trustees.*]—Three new trustees of a will had been appointed in 1875, & the trust estate vested in them. Two of these trustees died prior to 1907, & the third, E., being desirous of retiring from the trust, C. & W. were in that year appointed new trustees. This appointment was subsequently discovered to be invalid. The legal estate was never divested from E., who died intestate in the U.S. in 1915, & no representation had been raised to his estate. The ct. gave liberty to a person, who represented some of the beneficiaries, to apply for a grant limited to conveying the legal estate & without citing the next of kin.—*Re* ECCLES, [1929] N. I. 53.—**IR.**

PART II. SECT. 9, SUB-SECT. 2.—B. (a.)

1981 iii. —— ——.]—In determining whether or not it is proper to remove a trustee, the ct. will regard the welfare of the beneficiaries as the dominant consideration. A trustee of a settlement assigned his estate for the benefit of his creditors, &, subsequently, on the death of his co-trustee, became sole trustee of the settlement. His functions as trustee involved the exercise of important discretionary powers in respect of the settled property, which was of considerable value. He was requested both by the settlor & the beneficiaries to resign his office as trustee, but he refused to do so. In an action in the Supreme Ct. of Tasmania it was ordered that he be removed from his position as trustee:—*Held:* the making of the order for his removal was a proper exercise of the Ct.'s discretion.—MILLER *v.* CAMERON (1936), 54 C. L. R. 572; 42 Argus L. R. 301; 10 A. L. J. 35.—**AUS.**

Part III.—Administration of Trusts.

2033a. —— **Misapplication of trust funds—Payment to wrong person.**]—The indemnity conferred on trustees by Trustee Act, 1925 (c. 19), s. 30 (1), does not apply where a trustee, even though as the result of an honest mistake, has misapplied trust funds by paying them to the wrong person.

The selling agents of a colliery co., which had sold its undertaking & was being voluntarily wound up, claimed £19,088 damages for alleged breach by the co. of the agency agreements. There had in fact, as the ct. held, been no breach of the agreements. The liquidator consulted the solrs. of a large shareholder, who was opposed to the claim, & they said they had advised their client that there was a valid claim but that the amount of damages was uncertain. Without taking further advice or obtaining the opinion of the ct., a course the liquidator had recognised to be open to him, the liquidator settled the claim for £15,000. A summons was taken out by a contributory to obtain repayment of this sum to the co., on the ground that the liquidator had been guilty of misfeasance, & the liquidator, whose *bona fides* was not in question, claimed the benefit of the indemnity given to trustees by Trustee Act, 1925 (c. 19), s. 30 :—*Held :* without deciding whether the liquidator was a trustee within the meaning of the Act, even if he were : (1) he was not entitled to indemnity under sect. 30 (1), because that sub-sect. does not extend to a case where a trustee had misapplied trust funds coming to his hands ; (2) he was not, on the facts, entitled to relief under sect. 61.

Even if a liquidator is a trustee within Trustee Act, 1925, he is, as a paid trustee, disentitled to relief under sect. 61 (*per* CUR.). —*Re* WINDSOR STEAM COAL CO. (1901), LTD., [1929] 1 Ch. 151 ; 98 L. J. Ch. 147 ; 140 L. T. 80, C. A.

Annotation :—*Generally*, **Refd.** *Re* Home & Colonial Insce. Co., [1930] 1 Ch. 102.

2076. *Add. Annotation :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

2092. *Add. Annotation :*—**Refd.** Flower *v.* Prechtel (1934), 150 L. T. 491.

2136. *Add. Annotation :*—**Consd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

2144. *Add. Annotations :*—**Consd.** *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623. **Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

2147a. Income fee on sums collected or distributed —Whether payable out of residue.]—A testator by his will directed that out of the yearly income of his residuary estate his trustees should pay to his wife during her life " such an amount as will give her a clear yearly sum of £12,000 after paying or deducting income tax & super tax " & that " subject thereto " his trustees should stand possessed of his trust estate upon certain trusts for his son & daughter, & directed that all devises bequests legacies & annuities given by his will should be free of all death duties payable on his death which should be paid out of his residuary estate. He directed that a trust co. whom he appointed one of his exors. & trustees should be entitled to remuneration free of duties in accordance with the scale of fees in force at the date of his will. The fee to the co. under the scale in respect of the income dealt with by the co. was fifteen shillings per cent., & the whole of such income fee had been paid out of the income of the residuary estate. Questions arose whether any part of the income fee ought to be borne by the annuity, & this summons was issued to decide the point :—*Held :* whether the income fee was to be treated as an administration expense or as a legacy it ought to be borne out of the income of the residuary estate after providing for the annuity.—*Re* HULTON, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* THOMPSON, [1936] Ch. 536 ; [1936] 2 All E. R. 207 ; 105 L. J. Ch. 273 ; 155 L. T. 226 ; 52 T. L. R. 507 ; 80 Sol. Jo. 386.

Annotation :—**Distd.** *Re* Roberts's Will Trusts, Younger *v.* Lewins, [1937] Ch. 274.

PART III. SECT. 3, SUB-SECT. 1.—A.

2a. *Claim for indemnity against trustee in bankruptcy.*]—Pltf. took & held in his own name title to certain land as trustee for a co. ; & then to assist the co., & with the approval of its directors, gave a mtge. in his own name. There was no doubt but that the amount owing on the mtge. was a debt of the co. The co. made an authorised assignment in bkpcy. ; said land was included in the assets specifically mentioned, the assignment was registered against the title, & the trustee requested a transfer of the title from pltf. & otherwise so acted as to indicate an intention to take over the property as part of the estate assets. The principal of the mtge. being overdue, the mtgees. demanded payment thereof from pltf., & he sought an order compelling the trustee in bkpcy. in its individual as well as in its representative capacity to pay said moneys, or to indemnify him against all liability under the mtge. & to have title to the land transmitted to it from his name :—*Held :* the claim for indemnity or payment should be dismissed.—ELLIOTT *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1933] 2 W. W. R. 11 ; 41 Man. L. R. 398 ; *affd.*, [1934] 1 W. W. R. 801 ; [1934] 2 W. W. R. 208 ; 3 D. L. R. 129 ; *affd.*, [1935] S. C. R. 1 ; 1 D. L. R. 353. —CAN.

PART III. SECT. 3, SUB-SECT. 1.—D. (a).

2055 ii. —— ——.]—BRIGHOUSE *v.* MORTON, [1929] 3 D. L. R. 91 ; S. C. R. 512 ; *revsg.*, 40 B. C. R. 278.—CAN.

PART III. SECT. 3, SUB-SECT. 4.—A.

2136 xxvi. ——.]—C. had mortgaged certain of his property to a bank. He became mentally defective, & allowed the payments to fall into arrear. The applicants mortgaged their own property, & paid off the bank. At their request, the bank offered C.'s property for sale, &, there being no bid, transferred it to the applicants, who sold the property to advantage. They claimed commission as trustees :—*Held :* commission or remuneration could only be allowed for services rendered in the course of the administration of a trust, & that as the services had all been rendered before appcts. became trustees, no allowance could be made.—*Re* COMMANE, [1927] S. A. S. R. 238.—AUS.

t i. —— ——.]—Apart from legislation, the general rule is that, in the absence of an expressed prior stipulation with his *cestui que trust*, a trustee will not be allowed remuneration for personal trouble & loss of time.

The right of a trustee to remuneration under Trustee Act, R. S. S., 1920, s. 65, may be disallowed where he has acted fraudulently or dishonestly in managing the trust.—PROCTOR *v.* BENTLEY (Sask.), [1929] 3 W. W. R. 711 ; [1930] 2 D. L. R. 6 ; 24 S. L. R. 206.—CAN.

s l. *Application for—Practice.*]—One co-trustee may petition alone for trustees' commission, & *quære* whether on such an application the ct. has jurisdiction to consider, &, if necessary, to award, a distribution of any commission it may allow. It is not necessary in all circumstances that the personal representatives of a deceased trustee should have notice of such an application.—*Re* BOWMAN'S SETTLEMENT, [1929] S. A. S. R. 1.—AUS.

2147b. ——— ———.]—A testatrix appointed a bank as one of her exors. & trustees & declared that the bank should be entitled to remuneration " in accordance with the bank's scale of fees now in force." The will created certain trust funds to be held on separate trusts. It was admitted that the acceptance fee charged by the bank was payable out of residue. Questions arose whether the income fees & withdrawal fees were payable out of the income & capital of the separate funds or out of residue :—*Held :* the income & capital fees were payable out of the income & capital of the separate funds.—*Re* ROBERTS'S WILL TRUSTS, YOUNGER *v.* LEWINS, [1937] Ch. 274 ; [1937] 1 All E. R. 518 ; 106 L. J. Ch. 232 ; 156 L. T. 213 ; 53 T. L. R. 358 ; 81 Sol. Jo. 199.

2175. *Add. Annotation :*—**Consd.** *Re* Nicholson's Will Trusts, Ortmans *v.* Burke, [1936] 3 All E. R. 832.

2250. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

2269. *Add. Annotation :*—**Consd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

2273a. Voluntary settlement in accordance with unexecuted will—Failure to include trust for maintenance — Remedy of beneficiary.] — LANGDON *v.* BLAKE (1865), 12 L. T. 202 ; 11 Jur. N. S. 762.

2273b. Power to pay sum out of capital—Interest of infant contingent—Meaning of " occurrence of any other event."]—Under the trusts of the will of a testator who died in 1930, an infant was entitled, subject to the life interests of testator's widow & the infant's mother who was restrained from anticipation, to a share in testator's residuary estate contingently upon surviving her mother & attaining the age of twenty-one years. Upon a summons by the mother (a married woman) of the infant asking that the trustees might be authorised under Trustee Act, 1925 (c. 19), s. 32, with the consent of pltf. & of testator's widow to raise & pay out of the capital of the contingent share of the infant in the residuary estate of testator certain sums for school fees & other incidental expenses :—*Held :* (1) upon the proper construction of the will & Trustee Act, 1925 (c. 19), s. 32, the alternative contingency therein mentioned of " the occurrence of some other event " is not restricted to the occurrence of an event having no reference to a specified age, but, while excluding the single event of attaining a specified age, includes the compound or double event of attaining a specified age & survivorship ; &, accordingly, the power of advancement conferred upon trustees by that sect. was (sub) ject to the provisoes in that sect. contained-available in respect of the interest of the infant in the residuary estate of testator ; (2) notwithstanding the restraint on anticipation imposed by the will on the interest of the mother of the infant, she was capable of giving a valid consent to the exercise of such power, within proviso (*c*) to Trustee Act, 1925 (c. 19), s. 32 (1).—*Re* GARRETT, CROFT *v.* RUCK, [1934] Ch. 477 ; 103 L. J. Ch. 244 ; 151 L. T. 194.

2273c. ——— ——— **Effect of restraint on anticipation —On power to consent to exercise.]**—*Re* GARRETT, CROFT *v.* RUCK, No. 2273b, *ante*.

2280. *Add. Annotation :*—**Refd.** *Re* Halsted's Will Trusts, Halsted *v.* Halsted, [1937] 2 All E. R. 570.

2280a. ——— ——— **Meaning of " benefit."]**—A testator directed that part of his residuary estate should be held upon trust to pay the income thereof to one of his sons & that after the son's death it should fall back into & form part of testator's residuary estate. The trustees were, however, empowered to advance to the son a sum not exceeding one-half of this settled fund for the purpose of establishing him in business " or otherwise for his benefit or advancement in life." The son, who was married, was not in a position to make provision for his wife & child in the future, & he sought to have a sum raised out of the settled fund to be settled upon himself for life & after his death for his wife for life & after her death for his children :—*Held :* the trustees had power under the terms of the settlement to raise a sum not exceeding one-half of the settled fund for the purposes of a settlement upon the son & his family, but such a settlement ought to include the wife & children only, with an ultimate trust in favour of testator's residuary trust.—*Re* HALSTED'S WILL TRUSTS, HALSTED *v.* HALSTED, [1937] 2 All E. R. 570.

2283a. ——— **Life interest protected against assignment—Forfeiture.]**—Trustees of a will held land upon trust for sale & the proceeds of sale were not subject to any trust for reconversion under the will :—*Held :* (1) they were entitled to exercise the power of advancement out of capital conferred upon them by Trustee Act, 1925 (c. 19), s. 32, in favour of a remainderman, subject to the consent of the tenant for life, whose life interest was protected against assignment ; (2) the tenant for life by consenting to the exercise of the power of advancement forfeited his life interest under the will.—*Re* STIMPSON'S TRUSTS, STIMPSON *v.* STIMPSON, [1931] 2 Ch. 77 ; 100 L. J. Ch. 312 ; 145 L. T. 249.

2285a. Property held on trust for sale.]—*Re* STIMPSON'S TRUSTS, STIMPSON *v.* STIMPSON, No. 2283a, *ante*.

2287. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

2289a. Accumulations of income applicable to overdraft—Overdraft secured by equitable mortgage—Legal mortgage of same property to pay off overdraft—Whether accumulations applicable to legal mortgage.]—A testator, when he died, owed a bank £915 by way of

PART III. SECT. 3, SUB-SECT. 5.—A.

2171 i. ——— *Question of construction.*]—Upon a summary application under Trustee Act, R. S. O., 1927, s. 59, " for the opinion, advice or direction of the ct.," the ct. will not determine legal rights.—TECUMSEH PUBLIC UTILITIES COMMISSION & MCPHEE, [1931] 1 D. L. R. 538 ; 66 O. L. R. 231.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—B.

2206 iv. ———.]—The rule that a trustee for sale is incapable of purchasing the trust property applies to a person to whom under the terms of the trust agreement the trustee was required to, & did, give the sole charge & general management of the trust property.—MCLENNAN *v.* NEWTON, [1928] 1 D. L. R. 189 ; 37 Man. L. R. 201 ; [1927] 3 W. W. R. 684.—**CAN.**

overdraft, as security for which he had deposited the deeds of thirty-five cottages owned by him. By his will he directed that the bank should be paid out of accumulations of income "till the mtge. I owe be paid." Less than two years from the death, the bank required the trustees of the will to discharge the overdraft & to meet this the trustees borrowed the sum of £1,000 from other parties on a legal mtge. of the cottages & paid off the overdraft out of these monies. There was no transfer of the bank's security. The present trustee of the will raised the question whether the legal mtge. ought to be paid off out of accumulations of income:—*Held:* the answer was in the negative. To hold the contrary the ct. would have to make a new will for the testator to meet an event for which he had not provided.—*Re* BRANDON, SAMUELS *v.* BRANDON (1932), 49 T. L. R. 48.

2289b. Trust for maintenance education or benefit of children—No power to accumulate.]—On the marriage of O. and V., H. the father of the husband executed a deed whereby he covenanted with trustees that if the husband should die in his lifetime he would pay them an annuity of £1,000 in trust for V. so long as she should remain the widow of O., & thereafter upon trust to pay or apply the same for or towards the maintenance, education or benefit of any of the infant children of the marriage as the trustees might think fit. The marriage was dissolved & the wife remarried. O. afterwards died in the lifetime of H. & the annuity became payable. There was one child of the marriage, who was an infant living with & being maintained by his mother:—*Held:* the deed created a trust to apply the whole annuity for the maintenance, education or benefit of the infant, the trustees having no power to accumulate all or any part of the income for the benefit of the infant until he should attain 21 years of age. The word "benefit" is intended to cover expenditure incurred which does not strictly come under the heads either of "maintenance" or "education."—*Re* PEEL, TATTERSALL *v.* PEEL, [1936] Ch. 161; 105 L. J. Ch. 65; 154 L. T. 373; 80 Sol. Jo. 54.

2290. *Add. Annotation:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

2357. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2361. *Add. Annotation:*—*As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2500. After this case add:—

Infant domiciled abroad.]—*See* CONFLICT OF LAWS, No. 548a, *ante*.

2503a. —— —— Fund not carried to account of particular person.]—*Re* BIRKIN, BIRKIN *v.* BIRKIN, [1901] W. N. 33.

2546a. Administrator ad litem.]—Moneys are never paid out of ct. to an administrator *ad litem*.—WILLIAMS *v.* ALLEN (No. 2) (1863), 32 Beav. 650; 55 E. R. 255.

2609a. ——.]—Testator bequeathed a fund to A. for life, with remainders over. The fund was paid into ct. under Trustee Relief Act, 1847 (c. 96). On a petition by A. for payment of the dividends, which was not served on any persons claiming in remainder:—*Held:* the ct. could not allow the costs out of the capital of the fund.—*Ex p.* FLETCHER (1848), 17 L. J. Ch. 169; 11 L. T. O. S. 218; *sub nom. Re* FLETCHER, *Ex p.* FLETCHER, 12 Jur. 619.

2635a. ——.]—Property was mtged. to two trustees of a settlement. The mtgor. had no notice of the trust. One trustee died, & the survivor became a lunatic. New trustees of the settlement were appointed under a power, but the mtge. debt was not transferred to them. The mtgor. gave notice to pay off the money. A petition was presented, asking that the new trustees might be appointed to reconvey the mtged. property to the mtgor. on payment of the mtge. money:—*Held:* the costs of the petition must be paid out of the trust funds.—*Re* JONES (1876), 2 Ch. D. 70; 45 L. J. Ch. 688; 34 L. T. 470, C. A.

2654a. —— Proceedings against trustee by action instead of summons.]—An action was brought against the surviving trustee of a will, claiming a declaration that he was not entitled to charge in account with pltf., who was a *cestui que trust* under the will, the costs of an action brought by the superior landlord in consequence of the failure by the trustee to repair some houses which formed part of the trust property, or to charge commission paid to a collector who had collected the rents of the same property, & also claiming, if necessary, administration of testator's estate. There was no practical dispute as to the facts:—*Held:* the points in dispute between the parties might have been decided upon an originating summons, under R. S. C., Ord. 55, r. 3, & although pltf. succeeded in his claim, no costs of the action would be given.—*Re* JOHNSON, WAGG *v.* SHAND (1885), 53 L. T. 136.

2714. *Add. Annotation:*—*As to* (2) **Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2777a. ——.]—SNOW *v.* TEED (1870), L. R. 9 Eq. 622; 18 W. R. 623; *sub nom.* SUM *v.* TEED, 23 L. T. 303.

2835. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

PART III. SECT. 10, SUB-SECT. 2.—B.

2655 viii. —— ——.]—BRYDEN *v.* BRYDEN (GRIERSON) (1833), 6 Wils. & S. 354; *affd.*, 9 S. 457.—**SCOT.**

2655 ix. —— ——.]—The costs of the trustee of a *donatio mortis causâ* in successfully defending an action brought against him by the administrator of the donor's estate, were ordered to be paid out of the whole fund which was the subject-matter of the *donatio mortis causâ*.—WALKER *v.* ROMAN CATHOLIC BISHOP OF ST. JOHN, [1929] 4 D. L. R. 15; 54 N. B. R. 371.—**CAN.**

PART III. SECT. 11, SUB-SECT. 7.—C.

2866 iii. ——.]—Testator being dead, the ct. is empowered, when the benefit of the estate requires it, to do what it believes a prudent testator would do if alive, & to revoke a direction which had nothing to do with the destination of the estate, but merely with its administration.—*Re* ROGERS, [1929] 1 D. L. R. 116; 63 O. L. R. 180.—**CAN.**

Part IV.—Duties of Trustees.

2953. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

3038. *Add. Annotation :*—**Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

3118a. ——.]—REYNOLDS *v.* BROWN (1852), 1 W. R. 50.

3128. *Add. Annotation :*—**Refd.** *Re* Sandeman's Will Trusts, Sandeman *v.* Hayne, [1937] 1 All E. R. 368.

3142. *Add. Annotations :*—**Distd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

Part V.—Powers and Discretions of Trustees.

3149a. Jurisdiction of court to confer power.]—Sect. 57 (1) of Trustee Act, 1925 (c. 19), provided : " Where in the management or administration of any property vested in trustees, any sale, lease, mtge., surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the ct. expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the ct. may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, & subject to such provisions & conditions, if any, as the ct. may think fit. . . ." : —*Held :* for the ct. to exercise its powers under the sub-sect. the proposed transaction must be, in the opinion of the ct., expedient, not for the benefit of one beneficiary only, but for the benefit of the whole trust.—*Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* COCKBURN (No. 2), [1937] Ch. 431 ; 106 L. J. Ch. 311 ; *sub nom Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN (No. 2), 81 Sol. Jo. 436.

3162a. Exercise of statutory powers—Duty to consult beneficiaries.]—A summons in an administration action was taken out by the trustees for the purposes of the Settled Land Act, 1925 (c. 18), of a settlement of real estate made by the will of a testator for the determination of the question whether the provisions of Law of Property Act, 1925 (c. 26), s. 26 (3), as amended by the Law of Property (Amendment) Act, 1926 (c. 11) (by which they were directed to consult the wishes of beneficiaries), applied only in respect of sales or applied also to the exercise by them of their other statutory trusts & powers :—*Held :* it was the duty of the trustees to consult the wishes of the beneficiaries not only with regard to the exercise of the trust for sale, but also with regard to the exercise of all other trusts & powers arising under Settled Land Act, 1925 (c. 18), & Law of Property Acts, 1925 (c. 26), & 1926 (c. 11), & the additional or larger powers conferred by the settlement on the trustees thereof or otherwise.—*Re* JONES, JONES *v.* CUSACK-SMITH, [1931] 1 Ch. 375 ; 100 L. J. Ch. 129 ; 144 L. T. 642.

3191a. —— **Public Trustee.**]—By his will a testator, who died in 1887, appointed four named persons as the exors. & trustees of his will & gave his real & personal estate to them upon trust that they & the survivors & survivor of them & the heirs, exors. or administrators of such survivor their or his assigns, each & all of whom were intended to be included in the term " my trustees " thereinafter used, should distribute the net residue of his estate to & among such of the descendants of his brothers & sisters in such shares, proportions or amounts & at such proper times as the trustees, in whom he " placed full confidence," in their absolute & uncontrolled discretion should determine. Two of the trustees died in 1902, one retired in 1907, when another was appointed who retired in 1923 in favour of yet another. In 1934 the two remaining trustees retired & the Public Trustee was appointed in their place. In a summons to determine the effect of the will, it was argued by testator's next of kin that : (i) the gift of the residuary estate was void, because there was no longer anybody who, in accordance with the terms of the will, was entitled to exercise the power of selecting the descendants of testator's brothers & sisters who were to take, & (ii) the gift was void as infringing the rule against perpetuities, because the descendants of the testator's brothers & sisters might be selected by persons ascertained outside the limit fixed by the rule against perpetuities, &

PART IV. SECT. 7.

sm. *Trustee following wishes of majority of beneficiaries—Against wishes of minority—No liability for breach of trust.*]—GREEN *v.* FRASER, [1931] S. C. R. 160 ; [1930] 4 D. L. R. 42 ; *affg.*, [1930] 2 D. L. R. 702 ; 65 O. L. R. 90.—CAN.

PART IV. SECT. 9.

3067 xi. ——.]—HAMILTON *v.* YORK & BALDBY (1913), 24 W. L. R. 579 ; 4 W. W. R. 859.—CAN.

sq. *Form of accounts.*]—The proper method of keeping the trust accounts of a farming business, where there are life tenants or annuitants & remaindermen, is by taking a standard value at the commencement of that period & maintaining that standard value throughout, the duty of the trustees being to see that so far as number & quality are concerned the stock is kept up to the standard value. It is not proper, therefore, for trustees in the trust of any such farming business to value the live-stock at the end of each year for the purpose of their accounts. —*Re* BASSETT, BASSETT *v.* BASSETT, [1934] N. Z. L. R. 690 ; G. L. R. 537.—N.Z.

PART V. SECT. 5, SUB-SECT. 2.—A.

g i. ——.]—MACLEOD *v.* ROYAL TRUST CO. (Alta.), [1929] 1 D. L. R. 589.—CAN.

PART V. SECT. 7, SUB-SECT. 2.—B.

sr. *Whether power of sale given—*WESSELS *v.* CARSCALLEN (1860), 10 C. P. 215.—CAN.

might themselves be persons who took outside that time:—*Held:* (1) the Public Trustee, as an assign, came within the definition of "my trustees" in the will & was entitled to exercise the power of selection; (2) the gift was void as infringing the rule against perpetuities.—*Re* SYMM'S WILL TRUSTS, PUBLIC TRUSTEE *v.* SHAW, [1936] 3 All E. R. 236; 80 Sol. Jo. 994.

3322. *Add. Annotation:*—**Consd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

3450. *Add. Annotation:*—**Distd.** *Re* Stevens & Dunsby's Contract, [1928] W. N. 187.

3466a. —— **Consent refused by tenant for life.**]—Where in the case of a trust for sale "any requisite consent cannot be obtained," because the person from whom it must be obtained refuses it, the ct., under Law of Property Act, 1925 (c. 20), s. 30, & Trustee Act, 1925 (c. 19), s. 57, can direct the trustees for sale to sell.—*Re* BEALE'S SETTLEMENT TRUSTS, HUGGINS *v.* BEALE, [1932] 2 Ch. 15; 101 L. J. Ch. 320.

3469a. —— **Consent refused—Power of court to order sale under Law of Property Act, 1925 (c. 20), s. 30.**]—*Re* BEALE'S SETTLEMENT TRUSTS, HUGGINS *v.* BEALE, No. 3466a, *ante.*

3475a. —— ——.]—In an administration action in which a decree had been made, & which was still pending, a receiver had been appointed, who was receiving the rents & profits & distributing them amongst various persons. On the coming into force of Law of Property Act, 1925 (c. 20), the statutory trusts under Sched. I., Part IV., of the Act came into operation, & the trustee, in whom the legal estate was vested, became invested with the statutory trusts for sale:—*Held:* the trustee could exercise the statutory trusts without the sanction of the ct. in the still pending suit.—BERNHARDT *v.* GALSWORTHY, [1929] 1 Ch. 549; 98 L. J. Ch. 284; 140 L. T. 685.

Annotation:—**Reid.** *Re* Thomas, Thomas *v.* Thompson [1930] 1 Ch. 194.

3475b. Persons beneficially interested in possession—Annuitants.]—The trustees of a will, which came into operation after the commencement of Law of Property Act, 1925 (c. 20), were directed to stand possessed of the testator's residuary real & personal estate upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; &, on cesser of all the annuities to stand possessed of the residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested by the exor.; &, if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held:* the annuitants were persons beneficially interested in possession within Law of Property Act, 1925 (c. 20), s. 26 (3), whose wishes should be consulted by the trustees for sale.—*Re* HOUSE, WESTMINSTER BANK *v.* EVERETT, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

3488a. —— —— ——.]—Testator, who died in the year 1901, gave the residue of his estate real & personal, consisting of certain stocks & shares, freehold hereditaments, & leasehold houses held on leases expiring in the year 1924, to trustees upon trust neither to allow the same to remain in its state of investment at his decease or, as & when his trustees should, in their absolute discretion, see fit so to do, from time to time to realise & sell & convert the same or any part thereof. Testator directed his trustees to reinvest the money when realised in trustees' securities & to hold the investments, whether original or substituted, upon trust to pay unto or permit his wife, F., who was one of the trustees, to receive the income of his residuary estate during widowhood, to be reduced to a moiety of the income on her re-marriage, & subject to her life interest the testator gave his residuary estate to his son C. to be paid to him as to a moiety at twenty-one & the residue on his attaining thirty, but should his son die under twenty-five the whole residue was given to F.:—*Held:* the words of the will created a trust for sale.—*Re* CRIPS, CRIPS *v.* TODD (1906), 95 L. T. 865.

Annotations:—**Consd.** *Re* Johnson, Cowley *v.* Public Trustee, [1915] 1 Ch. 435; *Re* White's Settlement, Pitman *v.* White, [1930] 1 Ch. 179.

3489. *Add. Annotation:*—**Distd.** *Re* White, Pitman *v.* White (1929), 46 T. L. R. 30.

3489a. —— **With consent of tenant for life.**]—By a marriage settlement made in 1882 an undivided share of real estate passing under a will was settled, together with other property belonging to the wife, upon trust either to retain the same in its present condition, or with the consent of the tenant for life during her life, to sell, & after her death to sell at the discretion of the trustees. The settlement contained various powers to the trustees appropriate to the management of real estate, but no power to postpone conversion. In 1906 a partition of the entirety of the estate was effected, & certain hereditaments appropriated & conveyed to the trustees in satisfaction of the undivided share settled. On a summons to determine the question whether the land remaining unsold was settled land or held upon trust for sale:—*Held:* the settlement having been made before the coming into operation of Law of Property Act, 1925 (c. 20), under

PART V. SECT. 7, SUB-SECT. 2.—F. (a).

m i. —— ——.]—A contract between a trustee for sale & the wife of the trustee is in law a valid contract, but the ct. of equity would presume that the contract was for the benefit of the trustee & would require evidence to displace that presumption.—*Re* DOUGLAS (1928), 29 S. R. 48.—AUS.

PART V. SECT. 7, SUB-SECT. 2.—F. (d).

c i. —— *Objection by beneficiaries—Duty to sell or apply to court for direction.*]—DUTHIE *v.* GALLAGHER & DUTHIE, [1930] 2 D. L. R. 582.—CAN

sect. 25 (4), of which it would have created a trust for sale, the question was one of construction, & having regard to the trusts & powers in the settlement for the management of the property as real estate, the land remaining subject thereto was not held upon trust for sale but was settled land.—*Re* WHITE'S SETTLEMENT, PITMAN *v.* WHITE, [1930] 1 Ch. 179; 99 L. J. Ch. 49; 142 L. T. 279; 46 T. L. R. 30.

3490. *Add. Annotations:*—**Consd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662. **Reld.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353. **Mentd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

3491a. Estate divisible among beneficiaries—Trustee must sell—Notwithstanding power to postpone under Law of Property Act, 1925 (c. 20), s. 25.]—*Re* BALL, JONES *v.* JONES (1930), 74 Sol. Jo. 298.

3590. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

3592a. ——— ———.]—A testator by his will gave the residue of his property upon trust for his wife for life or so long as she should continue his widow. In the event of her remarriage, testator directed that his trustees should set apart from the trust funds a sum sufficient to secure to the wife an annual income of £300. The principal of that sum was to be paid after the wife's death to testator's step-daughter absolutely. Testator died in 1892, & was survived by his wife. Upon a summons to determine questions arising upon the will, it was held (*inter alia*) that in the event of the widow's death without marrying again a fund sufficient when invested to produce on the date of the widow's death £300 a year would devolve upon the step-daughter absolutely. Testator's widow died in 1934 without having remarried, & the step-daughter claimed that the sum due to her, subject to adjustment in respect of advances made during the widow's lifetime, should be provided by the trustees raising & paying to her such capital sum as, if invested in 2½ per cent. consols at the date of the widow's death, would have produced an income of £300:—*Held:* the trustees had a discretion under the will to appropriate for the purpose of the widow's annual income of £300 such of the investments authorised by the will as they should think fit, & as that discretion had not been surrendered, they should be at liberty, subject to adjustment in respect of advances, to appropriate, for the purpose of constituting the fund payable to the step-daughter, investments forming part of the funds subject to the trusts of the will.—*Re* NICHOLSON'S WILL TRUSTS, ORTMANS *v.* BURKE, [1936] 3 All E. R. 832.

3617. *Add. Annotation:*—**Reld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932, 1 Ch. 178.

3626. *Add. Annotation:*—**Apld.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

3639a. Power to partition—Under Law of Property Act, 1925 (c. 20), s. 28 (3)—When exerciseable.]—(1) Law of Property Act, 1925 (c. 20), s. 28 (3), which enables trustees for sale to partition unsold land in cases where the net proceeds of sale have become "absolutely vested" in adult persons in undivided shares, does not apply where those proceeds are only vested in life tenants. A power of partition in a will-settlement is *pro tanto* inconsistent with the statutory trusts for sale, & cannot therefore be treated as an "additional or larger" power preserved by sect. 28 (1) as amended by Law of Property (Amendment) Act, 1926 (c. 11), Sched. It is therefore overridden by the statutory trusts.

(2) Where partition, though expedient, cannot be effected under any power vested in the trustees by the trust instrument or by law, the ct. can confer the necessary power for that purpose under Trustee Act, 1925 (c. 19), s. 57.—*Re* THOMAS, THOMAS *v.* THOMPSON, [1930] 1 Ch. 194; 99 L. J. Ch. 140; 142 L. T. 310.

Annotations:—*As to* (1) **Distd.** Gorringe & Braybons, Ltd. Contract, [1934] Ch. 614, n. *As to* (2) **Consd.** *Re* Brooker, Public Trustee *v.* Young, [1934] Ch. 610.

3639b. ——— ——— ———.]—*Re* GORRINGE & BRAYBONS, LTD.'S CONTRACT, [1934] Ch. 614, n.; 151 L. T. 347, n.

Annotation:—**Consd.** *Re* Brooker, Public Trustee *v.* Young, [1934] Ch. 610.

3639c. ——— ——— **Proceeds absolutely vested in trustees or personal representatives.**]—The power of partitioning land given to trustees for sale by Law of Property Act, 1925 (c. 20), s. 28 (3), in cases where the proceeds of sale have "become absolutely vested in persons of full age in undivided shares," with the consent of the persons, if any, interested in possession of the net rents & profits of the land until sale, is exerciseable when the persons in whom the proceeds of sale are vested are trustees or personal representatives, & is not confined to the case where such persons are beneficially interested in the property.—*Re* BROOKER, PUBLIC TRUSTEE *v.* YOUNG, [1934] Ch. 610; 151 L. T. 345; *sub nom. Re* BROOKER, YOUNG *v.* PUBLIC TRUSTEE, 103 L. J. Ch. 247; 78 Sol. Jo. 447.

3639d. ——— **Whether court may confer.**]—THOMAS, *Re*, THOMAS *v.* THOMPSON, No. 3639a, *ante*.

Part VI.—Investment of Trust Funds.

3677. *Add. Annotation:*—**Reld.** Nicholson's Will Trusts, Ortmans *v.* Burke, [1936] 3 All E. R. 832.

3703a. ——— ——— **What amounts to amalgamation.**]—A scheme of arrangement was promoted by the directors of six electric lighting cos.

serving different London areas, under which their capital, or at least 90 per cent. thereof, was to be acquired by a holding co. which would issue shares at par value to the stockholders in exchange for their holdings. The objects of the holding co. were to control the policy of the constituent cos. to effect economies in administration, & to carry on other business which might advantageously be combined with that of the cos., but was beyond their powers. No transfer of the undertakings of the constituent cos. to the holding co. was either effected or intended, but the pooling of profits was suggested as a future possibility:—*Held:* the scheme was not an "amalgamation of the co. with another co." within Trustee Act, 1925 (c. 19), s. 10 (3) (c), in which the trustees of a settlement comprising a sum of stock of one of the constituent cos. were authorised to concur.—*Re* WALKER'S SETTLEMENT, ROYAL EXCHANGE ASSURANCE CORPN. *v.* WALKER, [1935] Ch. 567; 104 L. J. Ch. 274; 153 L. T. 66; 51 T. L. R. 389; 79 Sol. Jo. 362, C. A.

3738. *See* [1897] W. N. 5, from which it appears that this case was reversed on appeal.

3922. *Add. Annotation:*—**Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

Part VII.—Breaches of Trust.

3996a. ——.]—*Re* WINDSOR STEAM COAL CO. (1901), LTD., No. 2033a, *ante*.

4002. *Add. Annotation:*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

4050. *Add. Annotation:*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

4136. *Add. Annotation:*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

4162. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

4322. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4356. *Add. Annotations:*—**Consd.** *Re* Windsor Steam Coal Co. (1901), [1929] 1 Ch. 151. **Apld.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4360. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Windsor Steam Coal Co. (1901), [1929] 1 Ch. 151. *As to* (3) **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

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by a settlement, the words being, "the public stocks or funds in Government securities of the United Kingdom":—*Held:* within the additional modes of investment of trust funds authorised for trustees by sect. 18 of Adaptation of Enactments Act, 1922. —*Re* WESTBY, [1932] I. R. 444.—**IR.**

PART VI. SECT 7, SUB-SECT. 1.

sn. *Action to set aside trust pending.*]—The trustee under a *donatio mortis causâ* is not guilty of *laches* if he does not invest trust funds in securities but deposits them in a bank, when suit has been brought against him to have the gift set aside, & 3 per cent. interest is all he should pay.—WALKER *v.* ROMAN CATHOLIC BISHOP OF ST. JOHN, [1929] 4 D. L. R. 15; 54 N. B. R. 371.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.—E.

sp. *Executor-trustee—Not liable for failure to invest within one year of death.*]—CAMPBELL *v.* HOGG, [1930] 3 D. L. R. 673.—**CAN.**

sq. —— ——.]—Under the decision of the Privy Council in *Campbell* v. *Hogg*, where a trustee is passing his accounts before a Surrogate Ct. judge under Trustee Act, R. S. O., 1927, s. 23, the ct. or judge cannot charge the trustee who was also exor. with losses arising from failure to sell non-trustee investments of testator within one year of the date of testator's death.—*Re* JOHNSON, [1932] O. R. 385; 3 D. L. R. 164.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.—F. (a).

p i. —— *Failure to invest—Reliance on counsel's opinion.*]—Trustees were asked by a beneficiary to invest certain moneys, most of which were admittedly due to the beneficiary pending settlement of the account. At the same time the trustees were told that a claim for interest would be made against them if the moneys continued to lie idle. The trustees, acting on the erroneous opinion of counsel that they were not entitled to invest, omitted to do so:—*Held:* the proper course was for the trustees to invest as requested, but having referred what was a matter of law to competent counsel for his opinion & having acted on it, they were not guilty of wilful neglect & default so as to make them accountable for the loss.—PERPETUAL TRUSTEE CO. *v.* WATSON (No. 2) (1927), 28 S. R. N. S. W. 43; 45 N. S. W. W. N. 3.—**AUS.**

PART VII. SECT. 1, SUB-SECT. 1.

3928 ii. ——.]—JOHNSTON *v.* SMITH & NELSON, [1928] 4 D. L. R. 774; [1928] 3 W. W. R. 495.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

3935 iii. —— *Loss of securities.*]—BROWN *v.* BROWN, [1932] 2 D. L. R. 819; *revsg.*, [1931] 4 D. L. R. 420.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—B. (a).

4100 i. —— *Trustee paying money to wrong person.*]—CHEANG THYE PHIN *v.* LAM KIN SANG, [1929] A. C. 670.—**STRAITS SETTLEMENTS.**

PART VII. SECT. 3, SUB-SECT. 2.—B. (b).

sg. *No fixed rate—Dependent on extent of breach.*]—TORONTO GENERAL TRUSTS CO. *v.* HOGG, [1932] 4 D. L. R. 465; O. R. 641; *affd.*, [1933] 3 D. L. R. 721; [1934] S. C. R. 1.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—B.

4367 i. —— *Without negligence.*]—M. & B., a solr., who were the trustees & exors. under a will, decided that certain shares, part of the trust estate, should be sold in order to provide for the payment of legacies. M. allowed B. to put himself in a position where he was able to misappropriate the proceeds of the sale of the shares, &, also, two bearer cheques drawn on the estate trust account to pay certain legatees. M. throughout acted honestly, but, although he did not suspect that B. was dishonest, M. had at least a certain amount of suspicion that there was an element of risk attaching to his conduct, & at the material dates he knew that he was omitting to perform his duty to protect the trust estate & to safeguard the interests of the beneficiaries & he took the risk of such omission:—*Held:* (1) M. had been guilty of wilful neglect & default within Trustee Act, 1925, s. 59 (2), & he was not safeguarded from responsibility for his breach of trust by the provisions of that sub-sect.; (2) M., although he had acted honestly throughout, had not acted reasonably, &, accordingly, he was not entitled to the protection of Trustee Act, 1925, s. 85 (2).—DALRYMPLE *v.* MELVILLE (1932), 32 S. R. N. S. W. 596; 49 N. S. W. W. N. 206.—**AUS.**

sm. *Loans without security—Similar loans made by testator.*]—The will of a testator domiciled in the Straits Settlements created a trust fund & provided that the trustees might invest trust moneys in such investments as they in their absolute discretion thought fit. The sole surviving trustee, a son of testator, lent trust moneys at interest upon the security of deposited jewellery without independent valuations, & made other loans without taking security. By Ordinance No. 14 of 1929, s. 60, the ct. may relieve a trustee, wholly or partly, from personal liability for a breach of trust, if it appears to the ct. that he has acted honestly & reasonably, & ought fairly to be excused:—*Held:* (1) the loans upon the security of jewellery were not breaches of trust in the absence of proof that the security was insufficient when the loans were made, but the unsecured loans were not investments, & therefore were made in breach of

4612. *Add. Annotation :—As to* (1) **Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4614. *Add. Annotation :—As to* (1) **Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4617. *Add. Annotation :—***Consd.** *Re* Wheeler & Co., Trustee *v.* Kirby & Grainger (1933), 76 L. Jo. 86.

4619. *Add. Annotation :—***Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4626a. ——.]—G. & two others, trustees of funds without power to lay out in land, purchased copyholds to be held on trusts as nearly as possible to correspond with the trusts of the settlement. The husband laid out money on the copyholds & was bkpt., & the trustees neglected to prove in respect of a portion of the fund covenanted to be paid by the husband, & the surviving trustee proceeded to sell under a power contained in the deed executed on the purchase of the copyholds. On motion for injunction to restrain his interference with the property, & for payment of the sum due on the covenant of the husband into ct. motion granted in both respects.—WILES *v.* GRESHAM (1853), 1 W. R. 514.

Part VIII.—Judicial Trustees.

4728a. Appointment in pending action for administration—Title of summons.]—*Re* JONES, JONES *v.* PICKETT, [1934] W. N. 77; 177 L. T. Jo. 274.

Part IX.—The Public Trustee.

4757. After this case add :—

Power to sell open space held in undivided shares—Law of Property Act, 1925 (c. 20), Sched. I., Pt. IV., para. 2.]—*See* SETTLEMENTS, Nos. 3151b, 3151c, *ante.*

Appearance as plaintiff & defendant.]—*See* EXECUTORS, Nos. 7812a, 8757a, *ante.*

4761. *Add. Annotations :—***Consd.** *Re* Hulton, Midland Bank Executor & Trustee Co. *v.* Thompson, [1936] 2 All E. R. 207. **N.F.** *Re* Riddell, Public Trustee *v.* Riddell, [1936] Ch. 747.

4761a. —— —— **Not payable from annuities.**]—Testator appointed the Public Trustee to be one of the exors. & trustees of his will. He bequeathed several annuities & disposed of his residuary estate :—*Held :* the income fee, to which the Public Trustee is entitled under Public Trustee Act, 1906 (c. 53), s. 9, is an administration expense & no part of it is payable out of the annuities.—*Re* RIDDELL, PUBLIC TRUSTEE *v.* RIDDELL, [1936] Ch. 747; [1936] 2 All E. R. 1600; 105 L. J. Ch. 378; 155 L. T. 247; 52 T. L. R. 675; 80 Sol. Jo. 595.

*Annotation :—***Distd.** *Re* Roberts's Will Trusts, Younger *v.* Lewins, [1937] Ch. 274.

4763. After this case add :—

—— **Construction of will—Appearance as plaintiff & defendant.**]—*See* EXECUTORS, No. 8757a, *ante.*

trust; (2) the trustee was not entitled to relief under the Ordinance because, although he had acted honestly, he had not considered whether the unsecured loans were dispositions which it was prudent & right for him to make as a trustee, but had treated it as sufficient that the testator himself made similar loans in his lifetime.

Semble : an appeal lies from the exercise by a trial judge of the discretion conferred by sect. 60 of the Ordinance.—KHOO TEK KEONG *v.* CH'NG JOO TUAN NEOH, [1934] A. C. 529; 103 L. J. P. C. 161; 152 L. T. 53, P. C.—**STRAITS SETTLEMENTS.**

PART VII. SECT. 5, SUB-SECT. 3.—C. (a).

4608 ii. ——.]—Where a trustee wrongfully mingles trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.—OFFICIAL ASSIGNEE, MADRAS *v.* MINAKSHI VIDYASALAI SANGAM (1929), I. L. R. 52 Mad. 919.—**IND.**

p i. ——.]—DAVIES *v.* CHRISTAKOS, [1931] 1 D. L. R. 1009; [1930] 3 W. W. R. 481; *varg.*, [1930] 2 D. L. R. 870.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.—A.

4651 i. *Form of proceeding.*]—The ct. may entertain upon an originating summons a claim for relief framed on a breach of trust.—PERPETUAL TRUSTEE CO. *v.* WATSON (No. 1) (1927), 28 S. R. N. S. W. 39; 45 N. S. W. W. N. 1.—**AUS.**

so. *Whether right to jury exists.*]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, pltfs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Pltfs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of pltfs. for the recovery of damages :—*Held :* the action being one which, before Administration of Justice Act, could have been brought only in the Ct. of Ch., pltfs had no right to give a jury notice, & the notice should have been struck out by the trial judge.—DAVIES *v.* NELSON, [1928] 1 D. L. R. 254; 61 O. L. R. 457.—**CAN.**

VALUERS AND APPRAISERS.

Part II.—Duties, Rights, and Liabilities.

31. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

35. *Add. Annotation :—As to* (1) **Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1935), 179 L. T. Jo. 475.

PART II. SECT. 1.

sa. *Liability for loss—Valuation bond fide.*]—Deft., a paid valuator, estimated the value of a certain property at $4,980, stating in the certificate of value that he held himself "responsible to you," pltfs., "for the correctness of this report & valuation," which was enclosed in a letter stating "the houses are unfinished, & my valuation of $4.980 is on the supposition that they will be finished in a manner similar to those adjoining. A final inspection should, I think, be made." The houses never were finished similarly to those adjoining, nor was the deft. ever called upon to make any final or other inspection, & at a subsequent sale the property, which had been taken possession of by the mtgees. & allowed to become greatly out of repair, realised only $1,800 :—*Held :* under these circumstances, there being no *mala fides* imputable to the appraiser, that he was not answerable for the loss sustained by the lender.—SCOTTISH AMERICAN INVESTMENT CO. *v.* HOPE (1879), 26 Gr. 430.—CAN.

PART II. SECT. 2.

sb. *Incomplete valuation—Effect of.*]—DANROTH *v.* RAILWAY PASSENGERS ASSURANCE CO., [1930] 2 W. W. R. 555; [1931] 1 D. L. R. 156; 43 B. C. R. 21.—CAN.

WATER SUPPLY.

Part I.—Supply by Local Authorities.

13a. Interference with existing supply.]—Pltfs. were the owners in fee simple & the tenant of a farm which had been sold to their predecessors in title in 1923. The 1923 conveyance contained the words " . . . together with the right as now enjoyed in common with others having the same right to the water supply to the hereditaments hereinbefore described through pipes from a spring. . . ." In 1933 whatever rights had been conveyed to the then purchasers in 1923 passed to pltfs. In 1934 defts., a local authority, acquired the pipes & water rights which constituted the water supply to the farm. As a result of certain alterations made by defts., the supply of water to the farm was decreased. Pltfs. sought an injunction to restrain defts. from making these alterations. It was contended that this action would not lie, the proper remedy being a claim for compensation under Public Health Act, 1875 (c. 55), s. 308 :—*Held :* (1) the action lay. Pltfs. would only be confined to their remedy by way of compensation if it were shown that the invasion of private rights was necessary for the proper carrying out of the statutory duties. The onus was on the local authority to justify its acts by showing that necessity ; (2) upon the construction of the deed of 1923 the only right conveyed was one to use such water as might be obtained through the pipe in question. There was no right to prevent the pipes being tapped or the supply of water being otherwise diminished.—BEAUCHAMP *v.* FROME RURAL DISTRICT COUNCIL, [1937] 4 All E. R. 348 ; 54 T. L. R. 81 ; 81 Sol. Jo. 962.

41. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

Part III.—Powers, Duties and Liabilities of Undertakers.

99. *Add. Annotations :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

108. *Add. Annotation :*—**Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

116. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171 ; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

124. *Add. Annotations :*—**Refd.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606 ; *Re* Simeon, [1937] 3 All E. R. 149.

136. *Add. Annotation :*—**Refd.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12.

136a. —— —— ——.]—BARNES *v.* IRWELL VALLEY WATER BOARD, [1937] 4 All E. R. 675.

150. *Add. Annotation :*—**Apld.** Manchester Corpn. *v.* Buttle, [1929] 2 Ch. 390.

PART I. SECT. 2, SUB-SECT. 1.—A.

sg. *Right of expropriation.*]—A town in Saskatchewan can expropriate land outside its own limits in order to obtain a water supply, even though the water is to be obtained not for the town's own purposes but with the object of selling it to a person or corpn. outside the town, *e.g.* as in this instance, the C.N.R. —HORWOOD *v.* CANORA TOWN, [1934] 2 W. W. R. 348.—**CAN.**

sl. *Entry on land outside district.*]—A local urban authority desired to enter lands outside its district & to make borings, for the purpose of measuring, surveying, making plans, & taking levels, to ascertain whether the lands were suitable to be acquired by them as the site of a new reservoir in connection with the water supply of their district. The justices had made an order that defts. were to admit pltf. authority to enter upon the lands for such purposes. Defts., however, appealed to the County Ct. Judge, who held that sect. 271 of Public Health (Ireland) Act, 1878, under which the application was brought, did not apply to lands outside the district of the authority. He allowed the appeals, but stated a special case for the opinion of the King's Bench Division as to whether he was right in holding as he did :—*Held :* the County Ct. Judge was right in holding that sect. 271 of Public Health (Ireland) Act, 1878, did not enable pltfs. to enter upon lands outside their district.—PORTRUSH URBAN DISTRICT COUNCIL *v.* MAIRS, PORTRUSH URBAN DISTRICT COUNCIL *v.* SLOAN, [1937] N. I. 44.—**IR.**

PART I. SECT. 2, SUB-SECT. 3.—A.

sa. *Purity—Failure to maintain—Liability in damages.*]—CAMPBELL *v.* KINGSVILLE (Ont.), [1929] 4 D. L. R. 772.—**CAN.**

PART I. SECT. 2, SUB-SECT. 5.

sx. *Losses—How calculated.*]—A county council & a water board, in pursuance of their powers under local Acts & Orders, levied public water rates within limited areas in two counties. Prior to the operation of Local Govt. (Scotland) Act, 1929, these rates had been levied on gross annual value, whereas rates leviable under public general Acts had been levied on a value arrived at after giving effect to deductions specified in Sched. I. to Rating (Scotland) Act, 1926. Under sect. 59 (1) of 1929 Act the loss on account of the public water rate levied by the county council fell to be calculated in accordance with the rules already mentioned. Under sect. 70 (2) & relative Regulations the water board's loss also fell to be calculated in accordance with these Rules. The county council & the water board contended that, for the purpose of ascertaining their losses on account of the public water rates referred to, "unreduced rateable value" meant gross annual value :—*Held :* "unreduced rateable value" was the value arrived at after giving effect to the deductions specified in Sched. I. to 1926 Act.—LANARKSHIRE COUNTY COUNCIL *v.* LORD ADVOCATE, [1937] S. C. 155.—**SCOT.**

PART III. SECT. 1, SUB-SECT. 2.—C.

115 iv. ——.]—Resp., under statutory authority, laid & maintained water mains in the streets in Adelaide. At 11.15 p.m. on the night in question one of the water mains burst. At 12.30 a.m. it became dangerous to applts.' property, & it was reported to resps.' department a few minutes afterwards. Resps.' officer, without negligence as the trial judge found, did not commence to turn off the water until 1 a.m., & the water was not turned off until 1.10 a.m. Resp.'s department relied upon the police & members of the public to report leaks & maintained no inspection for the purpose of discovering them. The water which escaped damaged applts.' premises between 12.30 & 1.10 a.m. In an action by applts. against resp. claiming damages for the injury caused by the escape of water :—*Held :* resp. was not liable for the damage done without proof of negligence.—COX BROS. (AUSTRALIA), LTD. *v.* WATERWORKS COMR. (1934), 50 C. L. R. 108 ; 12 L. G. R. 21.—**AUS.**

161. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Buttle, [1929] 2 Ch. 390.

165. Add the following paragraph & citations :—
Under a local Act no person was entitled to require, nor was the corpn. bound to supply, any dwelling-house in the borough with water, otherwise than by meter or special agreement, where any part of such dwelling-house is used for any trade or business purposes :—*Held :* the residence of a dentist where he practised the profession of dentistry was a dwelling-house used in part for business purposes, & therefore the corpn. was entitled to demand & be paid an annual sum in addition to the ordinary domestic & public water rates charged in respect of dwelling-houses not so used, although the water supplied was used for domestic purposes within the meaning of another local Act.—MANCHESTER CORPN. *v.* BUTTLE, [1929] 2 Ch. 390 ; 98 L. J. Ch. 394 ; 142 L. T. 14 ; 94 J. P. 33 ; 45 T. L. R. 568 ; 27 L. G. R. 748.

176a. **Right to use fire-plugs for purposes other than extinction of fires.**]—Hydrants, fire-plugs, & other apparatus, provided by a metropolitan waterworks co., pursuant to the Metropolitan Fire Brigade Act, 1865 (c. 90), s. 32, & Metropolis Water Act, 1871 (c. 113), s. 34, for supply of water in case of fire, may be used by the waterworks co. for purposes other than the supply of water for extinguishing fires, cleansing sewers & drains, cleansing & watering streets, or supplying public pumps, baths, & washhouses, without the consent of the London County Council, & may, by permission of the co., be used by persons other than the co.—LONDON COUNTY COUNCIL *v.* EAST LONDON WATERWORKS CO., [1900] 1 Q. B. 330 ; 69 L. J. Q. B. 304 ; 82 L. T. 268 ; 48 W. R. 252 ; 16 T. L. R. 141 ; 44 Sol. Jo. 395, D. C.

199a. **Railway purposes—Wrongful user—Acquiescence.**]—A covenant to repair or renew a pipe is broken if in consequence of the pipe becoming furred by encrustation the flow of water is substantially diminished, although it is still sufficient for ordinary purposes. Where a railway co. has obtained a supply of water by meter to a railway station this does not authorise the use of part of the supply for another railway station. Knowledge of such wrongful user over a long period cannot be imputed to the principals supplying the water by reason of their agent having from time to time read a meter which happened to be side by side with the meter which measured the wrongful user of the supply.—GREAT NORTHERN RAILWAY *v.* BRADFORD CORPN. (1918), 88 L. J. Ch. 101 ; 120 L. T. 267 ; 83 J. P. 33 ; 63 Sol. Jo. 229 ; 17 L. G. R. 1.

243. *Add. Annotation :*—**Apld.** Runcorn Guardians *v.* Worrall (1930), 94 J. P. Jo. 205.

269. *Add. Annotation :*—*As to* (1) **Reld.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

269a. —— —— **Personal injury.**]—A road had been dedicated to & accepted by the public but not yet adopted by the local authority, so that the road was repairable by no one. The local authority was also the water authority & in this capacity in Sept. 1934, it laid in the pavement of the road certain stopcocks & levelled them with the pavement by ramming in earth. Owing to the action of rain & weather upon the earth one of the stopcocks protruded. In Sept. 1916, pltf. fell over the protruding stopcock & injured herself. In an action for damages the local authority relied upon Waterworks Clauses Act, 1847 (c. 17), s. 32 :—*Held :* it was not sufficient for the local authority, when it reinstated the road in accordance with its obligations under Waterworks Clauses Act, 1847 (c. 17), s. 32, to level up the pavement with earth or otherwise, in such a manner that the action of the weather would revive the inequality ; but the road ought to have been so reinstated that no inequalities would be produced except by the natural consequence of wear & tear. The local authority having failed in its statutory duty was therefore liable.—WITHINGTON *v.* BOLTON BOROUGH COUNCIL, [1937] 3 All E. R. 108.

270. *Add. Annotation :*—**Reld.** Grant *v.* Derwent, [1929] 1 Ch. 390.

275. *Add. Annotation :*—**Consd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

PART III. SECT. 2, SUB-SECT. 7.

sc. *Supply for irrigation.*]—A land co., which had bought land to which a water record was appurtenant, sold part of the land to the deft. & agreed to supply him with water for irrigation purposes at a rate not to exceed a certain amount per acre. The land co., & a water co. which it had caused to be formed & which had constructed an irrigation system for the purpose of supplying water to the land co.'s covenantees, sold all their rights in the water to the pltf. municipality which assumed the obligations of the land co. The municipality then obtained from the Water Board an order under the Water Act increasing the rates chargeable for water for irrigation purposes beyond those fixed by said agreement between deft. & the land co. :—*Held :* the municipality was entitled to recover the increased rates from deft.—PENTICTON CORPN. *v.* SUTHERLAND, [1928] 2 W. W. R. 145.—CAN.

PART III. SECT. 2, SUB-SECT. 9.—A. (a).

p. *revsd. sub nom.* HALIFAX CITY *v.* READ, [1928] 4 D. L. R. 461.—CAN.

PART III. SECT. 2, SUB-SECT. 9.—A. (c).

227 i. *Power to charge different rates.*]—*Held :* an assessment discriminating between those dwelling in the City & those dwelling outside was unfair & should be quashed.—R. *v.* WHITE, *Ex p.* MAXWELL (1931), 4 M. P. R. 220.—CAN.

PART III. SECT. 2, SUB-SECT. 9.—C. (a) i.

243 i. *Time for bringing action.*]—Stat. Limitations, R. S. N. S., 1923, applies to an action for meter rates, but not for water pipe rates for fire protection.—HALIFAX CITY *v.* KING, [1934] 2 D. L. R. 303.—CAN.

PART III. SECT. 2, SUB-SECT. 9.—C. (b).

249 i. *When permissible—Arrears due from previous occupier.*]—Where certain of pltf.'s mtgors. had made default & pltf., pursuant to the powers contained in its mtges., had leased or let the mortgaged premises & defts., in reliance on Municipal Corpns. Act, 1920, s. 86, had cut off the water supply from the said premises, & deft. had refused to supply water thereto unless arrears of rates, due in respect of water supplied to previous occupiers or mtgors. prior to the date of pltf.'s leasing or letting, had been paid :—*Held :* (1) the said sect. 86 gave defts. no power to refuse to supply water to the said premises until the said arrears had been paid ; (2) pltf. must pay a fair & reasonable charge for the water supplied, & the charge made to other persons was a test of what was fair & reasonable.—SUPERINTENDENT OF STATE ADVANCES DEPARTMENT *v.* AUCKLAND CORPN., [1932] N. Z. L. R. 1709 ; G. L. R. 706.—N.Z.

sk. *Validity of rate—Trustees facto but not de jure.*]—A bye-law levying a rate under Water Act, R. S. B. C., 1924, is not rendered invalid by the fact that some of the trustees who concurred in making it were trustees *de facto* but not *de jure*.—LOWE *v.* CAWSTON IRRIGATION DISTRICT, [1928] 3 W. W. R. 151 ; *affd.*, [1934] W. W. R. 508 ; 2 D. L. R. 464 ; 48 B. C. R. 83.—CAN.

276. *Add. Annotation :*—**Consd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

279. *Add. Annotation :*—**Refd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

283. *Add. Citation :—affg.*, S. C. *sub nom.* STRUTE *v.* SOUTHWARK & VAUXHALL WATER CO. (1889), 53 J. P. 424 ; 5 T. L. R. 451.

285. *Add. Annotation :—Generally*, **Consd.** Withington *v.* Bolton Borough Council, [1937] 3 All E. R. 108.

289a. —— **Escape of water—Frost—Car skidding.**] —When pltf.'s husband was stepping off a tramcar he was knocked down by a motor car & killed. At the place of the accident a pool of water had formed owing to a leakage from a service pipe through which deft. corpn., who were the statutory water authority, supplied water. Three days later frost supervened & the water froze. & the motor car skidded on the ice thus formed. Pltf. brought an action against the owner of the motor car & against the corpn. The trial judge freed the owner of the motor car from liability, but found that there was negligence on the part of the corpn. in that, though they did not know, they should have known that the pipe was leaking & took no steps to render the roadway safe, & he gave judgment for pltf. against the corpn. The corpn., in districts outside the city, had certain periodical examinations & tests made at the various stopcocks & hydrants involving a visit to any given spot about once in nine days, & they also relied on the probability of information from other local authorities or persons concerned with a district :—*Held :* on the material before him the trial judge was fully entitled to reach the conclusion which he did & his decision must be upheld.—MANCHESTER CORPN. *v.* MARKLAND, [1936] A. C. 360 ; 104 L. J. K. B. 480 ; 153 L. T. 302 ; 51 T. L. R. 527 ; 33 L. G. R. 341 ; *sub nom.* MARKLAND *v.* MANCHESTER CORPN., 99 J. P. 343, H. L.

290a. —— **Injury due to act of child—Allurement.**] —Pltf., while lawfully crossing the road one evening, accidentally kicked her foot against an open lid of a valve-box which had been placed in the road by deft. water board under their statutory powers & duties in respect of water supply. Pltf. fell & was injured. The lid had been lifted & left upright by a child. It was admitted in cross-examination by an engineer employed by the water board that it was well known that children were apt to tamper with the valve-box lids :—*Held :* as the act of the child in lifting the cover & leaving it standing upright was an act which might be expected from a child, & as it was known to the water board's servants that children were apt to & did tamper with valve-box lids, the water board were liable to pltf. & were not protected by their statutory powers.—WELLS *v.* METROPOLITAN WATER BOARD, [1937] 4 All E. R. 639 ; 54 T. L. R. 104 ; 81 Sol. Jo. 944.

Part V.—Metropolitan Water Supply.

309. *Add. Annotation :*—**Folld.** Mountford *v.* London County Council, [1935] 2 K. B. 243.

WATERS AND WATERCOURSES.

Part I.—Rights and Obligations in Respect of Water.

12. *Add. Annotation :—As to* (2) **Consd.** Keewatin Power Co. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

40. *Add. Annotation :—Generally,* **Reld.** Bleachers Assocn., Ltd. & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council, [1933] Ch. 356.

46a. —— —— ——.]—The right of a riparian owner on the banks of a tidal navigable river exists *jure naturæ*, but it is essential to its existence that his land should be in contact with the flow of the stream at least at the times of ordinary high tides.—DAWOOD HASHIM ESOOF *v.* TUCK SEIN (1931), 58 Ind. App. 80, P. C.

71. *Add. Annotation :—Generally,* **Reld.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

84a. **Action for deprivation between tenants in common.**]—JONES *v.* BENNETT (1935), 79 Sol. Jo. 777.

99. *Add. Annotation :—***Reld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

122. *Add. Annotation :—As to* (1) **Reld.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

174. *Add. Annotation :—As to* (2) **Reld.** Keewatin Power Co. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

193. *Add. Annotation :—***Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

252. *Add. Annotation :—***Reld.** Bleachers Assocn., Ltd. & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council, [1933] Ch. 356.

257. *Add. Annotation :—***Reld.** Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

262. *Add. Annotation :—***Expld.** (The headnote . . . is too wide, & does not accurately represent the effect of the judgment, *per* LUXMOORE, J.) Bleachers Assocn., Ltd. & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council, [1933] Ch. 356.

262a. —— —— ——.]—Pltfs., who were proprietors of bleaching works situated on a stream, sought an injunction to restrain defts., the local authority for the rural district through which the stream flowed, from interfering with the R. Spring so as seriously to diminish the supply of water in the stream. At the first hearing pltfs. suggested that certain excavations should be carried out close to the R. Spring's point of issue. These excavations were made. Pltfs. contended that the R. Spring flowed in a defined underground channel, & that the excavations which had been carried out established this fact which was known with reasonable certainty before the excavations were made. Defts. denied that the R. Spring flowed in a defined underground channel, & contended that even if any such defined underground channel existed, it was not possible to know of its existence unless & until the excavations had in fact been made :—*Held :* (1) pltfs. had failed to establish before any excavations were made that any such underground channel existed either before or as the result of the excavations, & also the excavations had not proved that any defined channel existed in the ground which had remained unexcavated ; (2) the excavations established that the water which emerged as the R. Spring was not flowing in any defined underground channel, but was water per-

PART I. SECT. 2, SUB-SECT. 1.

k (p. 7) i. —— —— *To change point of diversion.*]—BUONAPARTE RANCH *v.* SCHNEIDER, [1928] 2 D. L. R. 993 ; [1928] 2 W. W. R. 106.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

sb. *What is reasonable user.*]—Riparian owners must make a reasonable user of water flowing through their land. Restoring water to its natural channel in such a way that it freezes solid is not a natural use.—ELLIS *v.* CLEMENS (1893), 22 O. R. 216.—**CAN.**

sd. *Effect of Water Act, R. S. B. C., 1924.*]—Unless records or licences have been granted for all the water flowing by or through his land a riparian proprietor still has the right to use the water for domestic purposes, subject to any rights granted. The present Water Act, R. S. B. C., 1924, as amended does not abrogate such right to such an extent that he has no remedy against a wholly wrongful & unauthorised diversion which deprives him of the opportunity he would otherwise have to use the water for domestic purposes without committing any offence.—JOHNSON *v.* ANDERSON & ANDERSON, [1937] 1 W. W. R. 245 ; D. L. R. 762.—**CAN.**

SECT. 4, SUB-SECT. 3.—B. (b)

94 i

property in land bounded by a river, whether tidal & navigable or not, has inherent in it the riparian right to take water from the river for irrigating the land, & on a permanent settlement of the land that right is included, without special mention, in the property in respect of which the Zamindar enters into an engagement with the Government to pay the jama ; the right being a natural right, not an easement, is not lost by non-user.—SECRETARY OF STATE FOR INDIA *v.* SUBBARAYUDU, 59 L. R. Ind. App. 56.—**IND.**

d i. ——.]—Pltfs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly 32 or 35 years without interruption, every monsoon, through the land of the third person, by cutting the ridge (ail) of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the ail :—*Held :* defts. had acquired a prescriptive right to take water by cutting the ail.—BIPIN BEHARI GHATAK *v.* RAMNATH GHATAK (1929), I. L. R. 56 Calc. 151.—**IND.**

PART I. SECT. 4, SUB-SECT. 5.—A.

sg. *Authority of Governor in Council.*]—A construction on granted land between high & low water mark held illegal, since the authority of the Governor in Council had not been obtained, as required by Navigable Waters Protection Act, R. S. C., 1927. —ST. JOHN HARBOUR COMRS. *v.* EASTERN COAL DOCKS, LTD. (1935), 8 M. P. R. 499.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—B.

sx. *Erection of piers—To support building.*]—Defts., who was the owner of premises bounded by a natural river, erected on his own half of the bed & soil of the river, concrete piers & steel stanchions for the purpose of supporting a building. The erection of these piers caused an appreciable quantity of water which formerly flowed over deft.'s half of the bed of the river to be discharged & flow over pltf.'s half & along pltf.'s banks on the opposite side, but no actual damage was thus occasioned :—*Held :* the piers & stanchions constituted an unlawful obstruction & diversion of the waters of the river, & an injunction was accordingly granted compelling deft. to remove them.—MASSEREENE & FERRARD *v.* MURPHY (1931), N. I. 192.—**IR.**

sz. *Wharf.*]—Wharf in navigable water held an illegal structure & actionable nuisance.—LONDON *v.* VANCOUVER CITY (1934), 49 B. C. R. 328.—**CAN.**

colating through the soil & rock of the district, & pltfs. had therefore failed to establish any right to prevent the interference by defts. with the flow of underground water into the R. Spring.—BLEACHERS' ASSOCN., LTD., & BENNETT & JACKSON, LTD. *v.* CHAPEL-EN-LE-FRITH RURAL DISTRICT COUNCIL, [1933] Ch. 356; 102 L. J. Ch. 17; 148 L. T. 91; 96 J. P. 515; 49 T. L. R. 51; 76 Sol. Jo. 902; 31 L. G. R. 88.

268. *Add. Annotation :—Generally,* **Refd.** Bartlett Tottenham, [1932] 1 Ch. 114.

281. *Add. Annotations :*—**Expld.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138. **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

298. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

299. *Add. Annotation :*—**Consd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

302. *Add. Annotations :*—**Folld.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206. **Refd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

302a. —— ——.]—A person cannot set up a right either by prescription or under the doctrine of lost grant to cause sewage or trade refuse to fall or flow into a stream or watercourse & thereby to pollute it, where the right claimed would be in contravention of a statutory prohibition such as is contained in the Rivers Pollution Prevention Act, 1876 (c. 75).—GREEN *v.* MATTHEWS & CO. (1930), 46 T. L. R. 206.

Annotation :—**Refd.** Legge & Son, Ltd., *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

328. *Add. Annotation :*—**Consd.** Legge & Son Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

337a. ——.]—The pollution of a stream by sewage, if so serious as to cause a nuisance, will be restrained by injunction.—CHESHAM (LORD) *v.* CHESHAM URBAN DISTRICT COUNCIL (1935) 79 Sol. Jo. 453.

339. *Add. Annotation :—As to* (1) **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

363a. —— —— —— **Damage common to all King's subjects.**]—Under the Bristol Dock Act, 43 Geo. 3, c. 140, s. 107, which gives compensation where, by means of the dockworks, or in the progress or execution thereof, damage may be done to any hereditaments, houses, lands, & tenements, or the same may be rendered less valuable thereby, no compensation is due to the owners of a brewery for a loss arising to them in their business from the deterioration of the water of the public river Avon, from which the brewery had been before supplied by means of pipes laid under low water mark; the use of the water having been common to all the king's subjects, & not claimed as an easement to the particular tenement. The only remedy for such an injury is by indictment, which was taken away in this case by the act of parliament.—R. *v.* BRISTOL DOCK CO. (1810), 12 East, 429; 104 E. R. 167.

Annotations :—**Consd.** East & West India Docks & Birmingham Junction Ry. Co. *v.* Gattke (1851), 3 Mac. & G. 155. **Apld.** Caledonian Ry. Co. *v.* Ogilvy (1855), 25 L. T. O. S. 106. **Consd.** Chamberlain *v.* West End of London & Crystal Palace Ry. Co. (1862), 2 B. & S. 605; R. *v.* Metropolitan Board of Works (1869), L. R. 4 Q. B. 358. **Apld.** McCarthy *v.* Metropolitan Board of Works (1872), L. R. 8 C. P. 191. **Refd.** R. *v.* Thames & Isis Navigation Comrs. (1836), 5 Ad. & El. 804; R. *v.* London & North Western Ry. Co. (1854), 3 E. & B. 443; Ricket *v.* Metropolitan Ry. Co. (1865), 5 B. & S. 156; Rhodes *v.* Airedale Drainage Comr. (1876), 1 C. P. D. 380.

365. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

367. *Add. Annotation :—As to* (1) **Refd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 3 All E. R. 599.

388. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

PART I. SECT. 5, SUB-SECT. 2.

286 v. —— ——.]—Where by digging a ditch a proprietor of land causes surface water to flow therefrom on to lower-lying land he is liable for the damages caused thereby through the flooding of the lower land.—QUALLEY *v.* DAY, [1928] 3 D. L. R. 56; [1928] 1 W. W. R. 961; 22 Sask. L. R. 442; *on appeal,* [1929] 2 D. L. R. 928; 1 W. W. R. 20; 23 S. L. R. 425.—**CAN.**

p. Add para. :—

An upper proprietor has the right to appropriate all surface water coming from rains & melting snow & not merely diffused generally over the surface of the land, but flowing in a definite channel provided by natural gullies or ravines or depressions (but in which, when the water is not flowing, there is no distinct bed, nor at any time any cutting of the soil so as to mark the banks or edges of the channel), & also the right to require the next lower proprietor to receive it in its usual channel. Even if this statement of the law is not the law of England, it is the law in Alberta.—MAKOWECKI *v.* YACHIMYC, [1917] 1 W. W. R. 1279.—**CAN.**

t. *revsd.* [1928] 3 D. L. R. 725; [1928] S. C. R. 522.—**CAN.**

d i. ——.]—With respect to the right of a proprietor of land to prevent water flowing from higher land of his neighbour from coming on to his land, the weight of authority in the provinces of Canada where the English common law prevails is that the principles which apply to water flowing in a watercourse, *i.e.* in a defined channel, do not apply to water of a temporary & casual character which does not flow in any regular channel & has no certain course but which merely squanders itself over the surface of the ground. A right to have mere surface water drain from higher land on to lower land does not exist *jure naturæ,* & the proprietor of the lower land is entitled to erect an obstruction on his own land to prevent such water from overrunning his land, even if such obstruction has the effect of forcing the water back over the land of the upper proprietor. If on July 15, 1870, it was the common law of England that such was the right of the lower proprietor, that law, in the absence of legislation to the contrary, is the law of Saskatchewan. It does not appear to be sufficient to say that another law would be better or is to be preferred in view of the natural conditions existing here. If the civil law on the subject is preferable, the adoption of it is a matter for the Legislature.—EDWARDS *v.* SCOTT RURAL MUNICIPALITY, [1934] 1 W. W. R. 33; *affd.,* [1934] S. C. R. 332; 3 D. L. R. 798.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—A. (a).

8a. *Bye-law — Discharge through sewer.*]—A bye-law forbade the discharge into a river of liquid liable to putrefaction. Deft. permitted liquid of that nature to pass from his premises through a pipe into a street channel, down which it flowed for half a mile to the river :—*Held :* deft. had not violated the bye-law.—KING *v.* PENNELL, [1932] V. L. R. 418; Argus L. R. 366.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

—— —— —— *to overflow—No right to overflow on subsequent occasions.*]—POTTER *v.* SILVERWOOD, [1930] 1 D. L. R. 989.—**CAN.**

m i. —— *Water from higher land brought into ditch—Ditch unable to take plaintiff's flood water.*]—Pltf. (resp.) alleged that water from an area of higher land (A.'s land) was improperly brought by deft. (applt.) through a ditch constructed & extended by it in order to drain a public road adjoining his lands, causing the ditch to overflow & damage his property. The trial judge found that the water from the higher land would not reach pltf.'s land in the course of nature; & he gave damages against deft. for alleged wrong. Deft. appealed & the appeal was allowed.—

430. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

438. *Add. Annotation :*—**Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

Part II.—The Sea and the Seashore.

457. *Add. Annotations :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co., Ltd. (1934), 50 T. L. R. 241; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

471. *Add. Annotation :*—*As to* (1) **Refd.** Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

475a. **Part of beach "opposite to" land.**]—A municipal corpn. passed a resolution in Jan. 1860, agreeing to let to pltf. the flat part of the beach opposite to pltf.'s field, for 300 years, at a nominal rent. Pltf. claimed all the beach comprised between lines drawn in prolongation of the sides of his field, & he built a wall & terrace along the part so claimed. In 1864 the corpn. gave pltf. notice to quit, & after much negotiation, in 1869, brought an action of ejectment against pltf., who thereupon filed the bill in this suit for specific performance :—*Held :* the boundaries of the piece of land agreed to be demised were lines drawn from the extremities of pltf.'s field perpendicular to the coast-line.—CROOK *v.* SEAFORD CORPN. (1871), 6 Ch. App. 551; 25 L. T. 1; 35 J. P. 804; 19 W. R. 938, L. C.

477. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

479. Add the following paragraph & citation :—

The doctrine of accretion has no appln. to a non-tidal sheet of more or less stagnant water such as one of the Norfolk Broads. It is limited to the seashore & land abutting on rivers of running water & does not extend to canals, lakes or ponds.—TRAFFORD *v.* THROWER (1929), 45 T. L. R. 502.

485. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

489. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

491. *Add. Annotations :*—*As to* (1) **Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

492. *Add. Annotation :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

503. *Add. Annotation :*—*Generally*, **Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

568. *Add. Annotation :*—*As to* (2) **Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

568a. —— ——.]—The construction by the Canvey Island Comrs. of certain works, an embarkment, cartway & ditch, along a strip of land adjoining the Thames on the south of the island, for the purpose of coast preservation, did not operate to vest the soil of that strip in the Comrs. as owners, but the ownership remained in those persons whose lands bordered on the river, & who, provided they do no damage to the works of the Comrs., are entitled to free access thereto from the river. The fact that those owners, or their predecessors in title, were compensated at the time of the erection of the works to the extent of the full value of the lands affected does not imply that the fee simple of the lands was purchased by the Comrs., nor can such an inference be drawn from the terms of the Canvey Island Acts, 1792 & 1883. The ownership acquired by the Comrs. under those Acts is similar to that acquired by a local authority laying sewers in a street, namely, an ownership in the works themselves & just so much of the soil upon which the works are constructed as will enable them to be erected & maintained.—RICHMOND TOWNSHIP, [1932] 3 W.W.R. 318; 4 D. L. R. 796; 46 B. C. R. 249.—CAN.

aa (p. 60) i. —— ——.]—In an action against a municipality for faulty construction of ditches, whereby water was brought on to pltf.'s land, causing damage :—*Held :* pltf. must show that deft. brought water on to his land. Here the natural flow was in the same direction as the ditches, & the damage appeared to be due to abnormal rainfall.—ANGUS *v.* BURNABY CORPN. (1932), 46 B. C. R. 335.—CAN.

PART II. SECT. 3, SUB-SECT. 1.

sd. "*Coastline*" — *Construction of statute.*]—*Held :* in a grant to applt. co. by the Dominion Govt. of certain lands, together with the minerals thereunder, for the purpose of constructing a railway made under a British Columbia Act of 1883 the expression "coastline" used to describe the eastern boundary of the land in view of the context & circumstances of the case was meant to describe the eastern boundary of the land at high water mark & did not, as the applts. contended, include the foreshore & foreshore rights.—ESQUIMAULT & NANAIMO RY. CO. *v.* TREAT (1919), 121 L. T. 657.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—A.

476 ii. —— ——.]—It is an essential condition of the operation of the doctrine which adds to riparian lands the increment which is caused by accretion that the accretion should be natural, *i.e.* occasioned in the ordinary course of the operations of nature, & so gradual as to be in a practical sense imperceptible in its course & progress as it occurs.—CLARKE *v.* EDMONTON CITY, [1928] 2 D. L. R. 154; [1928] 1 W. W. R. 553; 23 Alta. L. R. 233; *on appeal*, [1929] 4 D. L. R. 1010.—**CAN.**

b. *Grant of licence of occupation—Identification of subject-matter of grant.*]—BARTLET *v.* DELANEY (1913), 29 O. L. R. 426; 5 O. W. N. 200.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—B. (a) i.

sp. *Proportion of accretion to which adjoining owners entitled.*]—In an action between proprietors of adjoining properties on the shore of a bay of the sea to determine the proportion of accretions to which they were entitled :—*Held :* it should be divided by taking a line representing the line of the shore drawn at such distance seawards as to clear the line of the shore & by letting fall a perpendicular from the end of the land boundary dividing the properties in dispute.—PAUL *v.* BATES (1934), 48 B. C. R. 473.—**CAN.**

PORT OF LONDON AUTHORITY *v.* CANVEY ISLAND COMRS. & CANVEY ISLAND URBAN COUNCIL, [1932] 1 Ch. 446; 101 L. J. Ch. 63; 146 L. T. 195; 96 J. P. 28; 30 L. G. R. 42, C. A.

580. *Add. Annotations :—As to* (1) **Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

584. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

591. *Add. Annotations :*—**Consd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

606. *Add. Annotations :* — **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. Symes & Jaywick Association Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548. **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

626a. No right to drain through sea wall on to land.]—No one can acquire a right to interfere with a sea wall so as to prevent it operating as intended by the Crown when it was built, & no grant from the Crown can be inferred from the existence of a drain letting sea water through the sea wall on to land behind the sea wall. If therefore a person makes a gap in or a hole under the sea wall for this purpose he commits an illegal act. The mere fact that by the action of the sea the land on the seaward side of a sea wall has become higher than the land on its landward side gives the owner of property on the seaward side no right to drain through the sea wall.

Per SCOTT, L.J. : In passing Land Drainage Act, 1930 (c. 44), Parliament must be presumed to have intended to deal with any residual prerogative rights & duties, to entrust them to the various authorities mentioned in the Act, & to maintain the general constitutional position originally built up at common law & then taken over & developed by various statutes. It is an express or implied principle of the Act of 1930 that it is the duty of the relevant Board constituted under the Act to look to the attainment of its two main objects : (*a*) to control the flow of inland waters, & (*b*) to keep out sea water from farm lands. Where these lands lie below the level of high water, the sea defences can ensure no effective legal protection unless the Act contains this implication.—SYMES & JAYWICK ASSOCIATED PROPERTIES, LTD. *v.* ESSEX RIVERS CATCHMENT BOARD, [1937] 1 K. B. 548; [1936] 3 All E. R. 908; 106 L. J. K. B. 279; 156 L. T. 116; 101 J. P. 179; 53 T. L. R. 180; 81 Sol. Jo. 33; 35 L. G. R. 163, C. A.

634. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

638. *Add. Annotation :*—**Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

640. *Add. Annotation :—As to* (1) **Apld. A.-G. & Public Trustee *v.* Metropolitan Borough of** Woolwich Council (1929), 93 J. P. 173. *Generally*, **Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 3 All E. R. 908.

642. *Add. Annotation :*—**Refd. Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.**

Part III.—Rivers, Lakes and Pools.

652. Bank erected & maintained under statute—Wall substituted by private owner—Liability for maintenance.]—A river bank made by comrs. appointed under a private statute was given into the care of elected surveyors whose duty it was to keep & repair the bank. A private landowner built a wall through the bank in such a way as to make the wall replace part of the bank as a protection against floods. On the occasion of a particularly high tide, though not the highest on record, the waters broke through the wall, but not the bank alongside, & flooded neighbouring land :—*Held :* (1) as the surveyors had no right to prevent the private landowner cutting through the bank, they were under no duty to maintain the substituted defence, & the action failed against them; (2) the owner of the wall owed a duty to the neighbouring landowners to keep the wall in good repair; (3) as the bank had withstood the tide which broke through the wall, & in any event the tide was not the highest on record, the owner of the wall could not rely upon the defence of act of God.—GREENWOOD TILERIES, LTD. *v.* CLAPSON, [1937] 1 All E. R. 765; 156 L. T. 386; 101 J. P. 215; 81 Sol. Jo. 278; 35 L. G. R. 200.

PART II. SECT. 3, SUB-SECT.

606 i. *When injunction granted—Destruction of natural barrier.*]—The owner of land abutting on the foreshore is entitled to all the natural advantages belonging to that land, & therefore to all things, such as deposits of shell & sand, which in the course of nature may be swept thereon. But such owner is not entitled to destroy a natural barrier against the sea, *e.g.*, by the removal of shingle, so as to cause an injury to a neighbouring landowner, even though the removal of shingle is a natural & ordinary use of the land; nor is he entitled to interfere with an adjoining landowner's right of support by causing a subsidence of such neighbour's land.—SMALE *v.* TAKAPUNA BOROUGH COUNCIL, [1932] N. Z. L. R. 35.—N.Z.

PART III. SECT. 2, SUB-SECT. 2.

673 vi. —— —— ——.]—It has been recognised by a series of decisions that in India the beds or channels of navigable waters are the the Government in the Crown. The public right can only be co-extensive with the property of the Government & accordingly does not extend beyond the limits of ordinary high tides, that is to say, the mean between spring & neap tides.—DAWOOD HASHIM ESOOF *v.* TUCK SEIN (1931), 58 L. R. Ind. App. 80.—IND.

The common law

696a. —— **Removal of shingle.**]—MALDON CORPN. *v.* LAURIE (1933), 97 J. P. Jo. 132; 175 L. T. Jo. 320.

745. *Add. Annotation :—As to* (1) **Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

747. *For citation substitute* " No. 479, *ante*."

Part IV.—Ports, Harbours, Docks, Piers and Wharves.

786. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 147 L. T. 313.

793. *Add. Annotation :—As to* (1) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

819a. —— —— ——.]—FRESH WHARF, LTD. *v.* NICHOLSON'S WHARVES, LTD. (1935), 79 Sol. Jo. 479.

820. *Add. Annotation :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 48 T. L. R. 491.

821a. —— **Removal of goods purchased—Licence.**]—Pltf. railway co. were the owners of two docks & the quays thereof at Kingston-upon-Hull. These docks were used extensively by fishing vessels. The catches were landed on the quays & there sold by "Dutch auction." The purchasers carted away their purchases to various points on the quay where they had offices rented from the railway co. Here the fish was sorted & packed for transport. The railway co. provided facilities for the transport of fish by rail, but the practice had grown up for the merchants to provide mechanical road transport. While the railway co. had no objection to road transport for reasonably short distances, they had serious objection to that form of transport for long distances; not only on account of the loss of revenue, but also on account of the serious congestion of the vehicles at the docks, which interfered also with the control of the railway-wagons on the quay sidings. They therefore sought to exclude the long-distance road transport by a system of licensing. Some merchants accepted the conditions; defts., among others, did not. Pltf. railway co. brought the present action against defts. to establish their position, & asked for a declaration that they were entitled to refuse admission of road transport to the docks except under licence & subject to conditions, & also asked for an injunction against the merchants, giving effect to the declaration. Defts. contested this right & claimed that they were entitled to bring their own vehicles & remove their fish irrespective of the destination; they based their contention mainly on their rights at common law & the provisions of the Hull Docks Act, 1861 :—*Held :* (1) the common law right of access to the docks & quays had gone except so far as preserved by the North-Eastern Railway (Hull Docks) Act, 1883, or subsequent statutes. The rights of the parties were, therefore, governed by the Act of 1883. Under the Act the railway co. were not bound to allow fish sales to take place on the quays in question, & had power to exclude defts. in the first instance. The railway co., however, had given a licence

filum has never been applied to international waters.—*Re* FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE CO., [1928] 1 D. L. R. 723; 61 O. L. R. 502.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

702 ii. —— —— —— ——.]—The right of a riparian owner on the banks of a tidal navigable river exists *jure naturæ*, but it is essential to its existence that his land should be in contact with the flow of the stream at least at the times of ordinary high tides.—DAWOOD HASHIM ESOOF *v.* C. TUCK SEIN (1931), I. L. R. 9 Ran. 122.—**IND.**

PART III. SECT. 3, SUB-SECT. 1.

sc. *Right to sever banks.*]—The owner of the banks & bed of a river (not a navigable one) may sever them & deal with them as with any other real estate. —ELLIOTT *v.* BAIRD, BAIRD *v.* ELLIOTT & SHEARD (1879), 26 Gr. 549.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

h i. —— *Special administrative area.*]—A portion of a parish was constituted a special drainage district for administrative purposes :—*Held :* the presumption that the description "bounded by" a non-navigable river included the alveus of the river up to the *medium filum* applied in the case of a special administrative area forming part of a larger area; & the fact that the boundary was described by reference to points on the river bank was insufficient to reargue that presumption. — HAMILTON MAGIS- —— —— *v.* BENT COLLIERY CO., LTD., S. C. 686.—**SCOT.**

PART III. SECT. 3, SUB-SECT. 2.—C.

p i. ——.]—The principle that gradual accretions to land by tidal action enure to the landowner applies in Burma under sect. 13 (3) of Burma Laws Act, 1898, as it is according to justice, equity, & good conscience. The principle applies even if the boundary on the water front of the land when granted is known or capable of being ascertained.—SECRETARY OF STATE FOR INDIA *v.* FOUCAR & CO. (1933), 61 L. R. Ind. App. 18; 50 T. L. R. 241.—**IND.**

PART III. SECT. 4.

756 vi. —— —— ——.]—*Held :* a grant from the Crown of land bounded on one side by the waters of an inland non-tidal & non-navigable lake carries with it the ownership of the land covered by water to the centre of the lake.—FARES *v.* R., [1929] Ex. C. R. 144; *revsd., on other grounds,* [1932] S. C. R. 78; 1 D. L. R. 421.—**CAN.**

g i. —— ——.]—Where a water lot is described by metes & bounds, with measurements & bearings from a fixed point, the boundaries of the lot are so ascertained notwithstanding that one boundary is said to be the water's edge & by a subsequent lowering of the water level part of the lot has become dry land.—*Re* MAILLE & TORONTO, [1932] O. R. 375; 3 D. L. R. 10.—**CAN.**

sc. *Shore as boundary of municipality—Extent.*]—Where the letters patent incorporating a British Columbia municipality describe one of its boundaries as the "shore" of a certain navigable lake, the limits of the municipality extend to low-water mark, although the lake in question is non-tidal water.—R. *v.* LAKESIDE ORCHARDS, LTD. (B. C.), [1929] 1 W. W. R. 870; 51 Can. Crim. Cas. 182.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

b i. —— ——.]—The Comrs. appointed under Hamilton Harbour Comrs. Act to manage the business of the harbour are entitled, under Trustee Act, R. S. O., 1927, s. 60, to reasonable compensation for their services.—*Re* HAMILTON HARBOUR COMRS., [1930] 2 D. L. R. 509; 65 O. L. R. 149.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sd. *Harbour Commissioners—Power to resume possession of land vested in them—Whether of land subject to lease.*]—FLETCHER W. & R., LTD. *v.* GEELONG HARBOUR TRUST COMRS., [1928] V. L. R. 12.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.

sf. *Expropriation of water lots for improvement of wharf—Basis of valuation.*]—The basis or starting point for the valuation of water lots, expropriated by the Crown for the purpose of wharf improvements, may be had from a municipal assessment of the property, taking into consideration the higher assessable value of the land owing to its location, & the advantage afforded to the owners as a result of the improvements.—R. *v.* ADVENTURERS OF ENGLAND, GOVERNOR & CO. (1916), 17 Exch. C. R. 441; 42 D. L. R. 181.—**CAN.**

to defts. to attend the fish sales & become owners of goods on the quay, & defts. thus acquired a statutory right to remove them, & by inevitable implication they also had the right to use such vehicle or vehicles as might be reasonably necessary for such removal. Defts. having a statutory right to remove goods of which they were owners, the railway co. had no power of directing the manner in which such goods should be removed; (2) the licence granted by the railway co. gave defts. a right *ex contractu* to carry on their business as fish merchants on the quay, & as long as this contract continued, defts. had the right of access to the quay & to do all acts necessary for the conduct of their business, provided, under the terms of the licence, the business, traffic & convenience of the railway co. were not interfered with.—LONDON & NORTH-EASTERN RY. CO. *v.* CHESTER (J. W.) & SON (1932), 147 L. T. 308; 48 T. L. R. 484.

Annotation:—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 48 T. L. R. 491.

821b. —— —— ——.]—Under & by virtue of various statutes, one of which incorporated the Harbours, Docks, & Piers Clauses Act, 1847 (c. 27), a railway co. became the owners of a harbour, docks, & quays, a statutory market for fish & a railway in connection therewith.

By Harbours, Docks, & Piers Clauses Act, 1847 (c. 27), s. 33: "Upon payment of the rates made payable by this & the special Act . . . the harbour, dock, & pier shall be open to all persons for the shipping & unshipping of goods." . . . By sect. 83 of the Act "The undertakers may from time to time make such bye-laws as they shall think fit . . . for regulating the shipping & unshipping . . . & removing of all goods within the limits of the . . . premises of the undertakers."

Formerly the co.'s railways answered all the requirements of fish merchants & owners of trawlers, but latterly the merchants brought to the market motor vehicles which carried fish to far distant places, formerly served by the railway, to the serious loss of the co.'s undertaking; to repair which the co. refused to admit to their dock premises any vehicle for the conveyance of fish without a licence which provided (among other things): (*a*) the vehicle should not be used for the transport of fish beyond the boundaries of the co.'s fish docks except for fish consigned for transit by railway or for sale & consumption within a radius of twelve miles from the docks; (*b*) no fish transported by the vehicle should be transferred directly or indirectly to or from any other road vehicle for conveyance to any other place beyond a radius of twelve miles from the fish docks:—*Held:* the co. were not entitled to impose those conditions upon the removal of fish from their premises without a valid bye-law enabling them in that behalf, supposing such a bye-law could be validly made; for that the marketing of fish when landed must be regarded as part of the process of shipping & unshipping within sect. 33 of the above-named Act, & access to the docks must include access with such a vehicle as the party seeking access deems necessary, subject to the power of the co. under sect. 83 to regulate such access by means of a valid & operative bye-law.—LONDON & NORTH EASTERN RY. CO. *v.* BRITISH TRAWLERS' FEDERATION, LTD., [1934] A. C. 279; 103 L. J. K. B. 311; 50 T. L. R. 275; *sub nom.* BRITISH TRAWLERS' FEDERATION *v.* LONDON & NORTH-EASTERN RY. CO., 150 L. T. 461, H. L.

Annotation:—**Refd.** London & North-Eastern Ry. Co. *v.* Chester & Son (1932), 147 L. T. 308.

821c. —— **To hold fish market.**]—LONDON & NORTH-EASTERN RY. CO. *v.* CHESTER (J. W.) & SON, No. 821a, *ante*.

821d. —— ——.]—LONDON & NORTH-EASTERN RY. CO. *v.* BRITISH TRAWLERS' FEDERATION, LTD., No. 821b, *ante*.

825. *Add. Annotation:*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

828. *Add. Annotations:*—**Consd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6. **Refd.** The Kate, [1935] P. 100; Lensen Shipping Co. *v.* Anglo-Soviet Shipping Co. (1935), 40 Com. Cas. 320.

831a. ——.]—This was a claim by the owners of the steamship A. against the Ford Motor Co., Ltd. & the Port of London Authority for damage sustained by the *A.* whilst lying moored at Ford's Jetty, Dagenham, on May 3, 1935. At low water she took the ground & sustained damage by sitting on an anchor which was out from a P. L. A. dredger dredging in the river abreast of the jetty & about 250 feet away from it. The *A.* was part laden when she arrived at the jetty at about 2 a.m. The berth was assigned to her by the first defts., & she moored head down river under the directions of their servants. Pltfs. claimed that the first defts. should have known & warned them that the berth was unsafe. They alleged that the second defts. placed the anchor upon which the *A.* sat without buoying it, without giving warning, & without removing it after the *A.* arrived & before the water ebbed. The first defts. did not admit that the ship was properly moored or moored in accordance with the orders of their servants, nor did they admit the damage. They denied that they ought to have known that the berth was unfit & said that, if it was, the second defts. were to blame for placing the anchor upon the berth. The second defts. denied that they had been negligent, contending that the moorings of the *A.* were not properly secured, & they further denied that the *A.* was damaged by an anchor of theirs. They further alleged that both pltfs. & the first defts. had had circular notification that the dredger would be working opposite Ford's Jetty & that the first defts. had also been notified to that effect by a letter sent to them after the circular:—*Held:* the presence of the dredger did not put the first defts. on inquiry as to where the dredger's anchors were; pltfs. had failed to establish that the first defts. ought to have ascertained that the berth was safe, &

PART IV. SECT. 2, SUB-SECT. 3.

826 iv. ——.]—One who invites another to moor a ship at a certain place undertakes with that other that there are no concealed dangers.—COAST CEMENT CO., LTD. *v.* NAVIGAZIONE LIBERA TRIESTINA S. A., MCKENZIE BARGE & DERRICK CO. NAVIGAZIONE LIBERA TRIESTINA S., [1930] 3 W. W. R. 69; 4 D. L. R. 81 —CAN.

that accordingly the first defts. were not liable; the second defts. were negligent in putting the anchor where they did without giving proper notice to the first defts. or pltfs., as to where the anchor actually was; those in charge of the dredging operations had not taken reasonable care to see the exact position where the anchor was dropped; if they had taken such reasonable care they would have realised that it was unsafe for the *A.* to berth where she did, & they ought to have warned pltfs. & the first defts. before the *A.* took the ground of the danger of her doing so. Judgment entered for the pltfs. with costs & for the first defts. with costs, pltfs. to recover from the second defts. the costs which they (pltfs.) would have to pay to the first defts.—ALBATROSS S.S. OWNERS *v.* FORD MOTOR CO., LTD. & PORT OF LONDON AUTHORITY (1936), 155 L. T. 326.

831b. Liability of consignee.]—A motor-barge belonging to pltfs. was chartered to take a cargo to C. as ordered or so near thereunto as she might safely get, & there deliver the cargo alongside any wharf as ordered where she could safely deliver. A bill of lading was issued by the master to defts. as consignees of the cargo; it incorporated the terms of the charterparty, & by it the cargo was to be delivered at C. to defts.' order. The barge arrived at C. & went to a wharf called P.'s wharf, & there delivered a small part of the cargo to defts. & she was then moved to a more suitable wharf, where discharge was continued. It was then found that the bottom of the barge had sustained serious damage, owing, apparently, to her having laid in a foul berth. Pltfs. brought this action to recover damages from defts. on the ground that the injury must have been sustained at P.'s wharf; defts. denied liability & brought in the corpn. of C. as third parties, contending that if they should be held liable to pltfs. they ought to be indemnified by the corpn. as the harbour authority:—*Held:* (1) even if the injury to the barge had occurred at P.'s wharf, which had not been proved, there was no evidence that defts. were either lessees or occupiers of that wharf, & they could not therefore be held liable under the principles laid down in *The Moorcock*, 14 P. D. 64; (2) even if defts. had ordered the barge to a particular berth which was in fact an unsafe berth for that particular vessel, which had not been proved, they would still not have been liable, for it was the duty of the master to make sure that the berth to which he was ordered was a safe berth for his vessel, & if he found that he could not safely deliver at the berth to which he was ordered he need not obey the order to go to it. Judgment was therefore given for defts. & the question of their right to be indemnified by the third parties did not arise.—WEST (SAMUEL), LTD. *v.* WRIGHT'S (COLCHESTER), LTD. (1935), 40 Com. Cas. 186.

Annotation:—**Refd.** Lensen Shipping Co. *v.* Anglo Soviet Shipping Co. (1935), 40 Com. Cas. 320.

Part V.—Navigation of Tidal and Natural Inland Watercourses.

833. *Add. Annotation*:—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

851. *Add. Annotation*:—*As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

856. *Add. Annotations*:—*As to* (1) **Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. *Generally*, **Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

867. *Add. Annotation*:—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

892. *Add. Annotation*:—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

906a. Superannuation—Effect of Land Drainage Act, 1930 (c. 44), s. 79 (8).]—ANDREWS *v.* RIVER THAMES CONSERVATORS (1937), 81 Sol. Jo. 734; 35 L. G. R. 557.

912. *Add. Annotation*:—*Generally*, **Refd.** Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935), 79 Sol. Jo. 479.

927a. Provision of buoys—Fitness for purpose—Extent of duty.]—Defts., as port authority for London, provided moorings in the Thames for the use of barges & other craft free of charge. Pltfs. were the owners of three barges which on the evening of Mar. 8, 1932, were moored for the night to a buoy provided

PART V. SECT. 1, SUB-SECT. 1.

o i. —— ——.]—*Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

853 ii. —— *Causing backwash—Nuisance.*]—A steamer co. taking up passengers, in course of plying their steamers, from boats & from places other than recognised jetties & thereby causing backwash involving danger to the public does not by these acts commit a public nuisance.—CALCUTTA STEAM NAVIGATION CO., LTD. *v.* EMPEROR (1930), I. L. R. 58 Calc. 854.—**IND.**

se. *Rights in St. Francis River.*]—R. *v.* SHERBROOKE, [1932] 4 D. L. R. 73.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

sg. *Works of navigation—Liability to maintain.*]—GAUSSEN *v.* LOWER BANN NAVIGATION TRUSTEES, [1929] N. I. 11.—**IR.**

PART V. SECT. 1, SUB-SECT. 3.—D.

sk. *No right to moor—On private ground—Loch Lomond.*]—A boat-hirer on Loch Lomond claimed the right, as a member of the public, to beach & moor boats on private ground on the shore of the loch. He averred that such a right was incidental to the public right of navigation in the loch, which admittedly existed. He further averred that the public had, by immemorial usage, a right of port & harbour at the place where he claimed the right to beach his boats, & that they had access thereto by a public road. It was admitted, for the purposes of the case, that Loch Lomond was to be assumed to be an extension of the navigable non-tidal River Leven which flowed out of it:—*Held:* a right of navigation on the part of the public did not include a right to beach or moor boats on private ground for the purpose of carrying on the business of a boat-hirer; & a right on the part of the public to embark & disembark on private ground could not be acquired by prescription.—LEITH-BUCHANAN *v.* HOGG, [1931] S. C. 204.—**SCOT.**

by defts. in the Thames at Battersea. During the night the chain by which the buoy was secured to the bed of the river broke & pltfs.' barges went adrift & caused injury to other craft. Pltfs. became liable for damages & incurred expense in having their barges salved ; & they brought this action to recover their loss from defts. :—*Held :* even assuming that pltfs. were invitees & not merely licensees the duty of defts. was not an absolute duty to keep the buoy fit for the purpose for which it was used, but was only a duty to take all reasonable steps to see that it was so fit ; & as the evidence showed that they had taken all such reasonable steps the action failed.—WILLIAMS (SAMUEL) & SONS, LTD. *v.* PORT OF LONDON AUTHORITY (1933), 39 Com. Cas. 77.

932. After cross-reference following this case

932a. Failure to repair swing-bridge—Injury to public—Whether liable.]—Pltf. was injured by tripping over a nail projecting from the footway of a swing-bridge which defts., the Port of London Authority, were under a statutory duty to maintain in repair, & which the public had a right to use only when it was not required to be swung open for dock traffic. The cause of the accident was the failure of the defts. to maintain the footway in good condition. In an action for damages :—*Held :* the swing-bridge was not a highway & defts. were not in the position of a surveyor of highways, & therefore defts. could not avoid liability on the ground of nonfeasance or on the ground that a surveyor of highways is not liable to pay damages to persons injured by his neglect of duty, & pltf. was entitled to recover.—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, [1932] 1 K. B. 336 ; 101 L. J. K. B. 91 ; 146 L. T. 91 ; 48 T. L. R. 55 ; 75 Sol. Jo. 763 ; 29 L. G. R. 659.

943. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

961a. —— Construction of local Act.]—By Milton Creek Conservancy Act, 1899, s. 7, "No person shall . . . make or form any recess dock . . . or other work or drive any piles . . . in or upon the bed or shores of Milton Creek below high-water mark so as to impede or interfere with the navigation of the creek . . . without in every case the licence of the Conservators." Defts., under a licence from the Conservators, erected in the creek, which was a navigable channel, a pumping plant which was concealed at high tide, & pltfs.' barge, without any negligence on the part of the master, collided with the plant & was damaged. In an action for a nuisance the ct. found that defts. had failed to give adequate warning of the existence of the obstruction :—*Held :* the sect. did not confer upon a licencee a right to create an obstruction causing damage to members of the public & the action succeeded.—BURLEY C., LTD. *v.* LLOYD EDW., LTD. (1929), 45 T. L. R. 626.

965. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons, [1933] Ch. 298.

979. *Add. Annotation :*—**Refd.** Seaton *v.* Slama (1932), 77 Sol. Jo. 11.

1000. *Add. Annotation :—As to* (1) **Refd.** Oceanic Steam Navigation Co. *v.* Evans (1934), 51 T. L. R. 67.

1016. *Add. Annotations :* — **Consd.** The Edison, [1932] P. 52. **Refd.** The West Wales, [1932] P. 165 ; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] C. A. 449.

PART V. SECT. 3, SUB-SECT. 1.

sm. *Line of navigation—May vary.*]—In a case where the channel dries up in particular seasons of the year, it is quite possible that what is within the line of navigation in one particular season is not so in another season.—GOBINDACHANDRA PODDAR *v.* CHANDPUR SUBDIVISIONAL OFFICER (1931), I. L. R. 58 Calc. 1288.—**IND.**

PART V. SECT. 3, SUB-SECT. 3.—B.

sp. *Erection over non-navigable stream.*]—Where a person is the owner of land in the province of British Columbia through which a non-navigable stream flows, he may legally build a bridge across the stream from one part of his property to the other without the necessity of obtaining the permission or authority of the Provincial Government. Such a bridge, though built with a pier in the centre of the stream, leaving a passage of 50 feet & over on each side thereof, is not an "obstruction" within Water Act of British Columbia. Anyone floating logs or poles down such a stream must take the necessary precautions to avoid causing damage to such a bridge by the flotation operations ; & the ct. in this case finding deft. negligent, condemned it to pay damages.—R. *v.* BELL LUMBER CO., [1932] Ex. C. R. 31.—**CAN.**

WEIGHTS AND MEASURES.

Part II.—Standards of Weights and Measures.

26. *Add. Annotation :*—**Apld.** Phillips *v.* Parnaby, [1934] 2 K. B. 299.
Add. Citation :—**28 Cox, C. C. 550.**

Part V.—Special Provisions.

110a. Application of Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 12 (6)—Conditions precedent to prosecution.]—Applt. was convicted by justices of delivering a quantity of coal which was less than that expressed in the weight ticket, contrary to Weights & Measures Act, 1889 (c. 21), s. 21 (2). No notice in writing of the date & nature of the alleged offence had been served on or sent by registered post to applt. in accordance with Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 12 (6). The coal was delivered under an antecedent contract covering a number of deliveries & was purchased for consumption in or by a steam roller belonging to the purchasers :—*Held :* (1) as sect. 15 (1) of 1926 Act provided that that Act was to be construed as one with the Weights & Measures Acts, 1878–1926 (which included the Weights & Measures Act, 1889 (c. 21)), & as there was no manifest discrepancy between the provisions of sect. 12 (6) of 1926 Act, & sect. 21 (2) of 1889 Act, the conviction was bad for failure to fulfil one of the conditions precedent to a prosecution laid down by sect. 12 (6) ; (2) as the coal was sold for consumption by the purchaser, applt. was a " retailer " within sect. 12 (6) of 1926 Act, his position in that respect not being affected by the fact that the coal was delivered under an antecedent contract.—PHILLIPS *v.* PARNABY, [1934] 2 K. B. 299 ; 103 L. J. K. B. 575 ; 151 L. T. 400 ; 98 J. P. 383 ; 50 T. L. R. 446 ; 32 L. G. R. 270 ; 30 Cox, C. C. 146, D. C.

110b. —— Meaning of " retailer."]—PHILLIPS *v.* PARNABY, No. 110a, *ante.*

119a. Food—Sale of Food (Weights & Measures) Act, 1926 (c. 63)—Validity of Regulations.]—By Sale of Food (Weights & Measures) Act. 1926 (c. 63), s. 3, a person in offering for sale an article of food is forbidden to make any misrepresentation as to its weight. Sect. 4 (1) provides that in the case of certain specified articles [which includes lentils] the weight of the wrapper may be included in the weight purported to be sold if its weight is not proportionally heavier than specified. By sect. 4 (2) (*b*), the wrapper, where the article is prepacked & the weight of the wrapper is permitted to be included in the weight sold, must bear a true statement of the " minimum weight " of the article with its wrapper. By Reg. 2, cl. 8, of the Sale of Food (Weights & Measures : Prepacked Articles) Regs., 1927, in this latter case the wrapper must bear the words " gross " or " gross weight " in addition to the indication of weight. Resps. offered for sale three packets of lentils bearing on the wrappers the words " 1 lb. net." the packets in fact containing less than one pound of lentils alone :—*Held :* (1) " minimum weight " in sect. 4 (2) (*b*) meant minimum gross weight, & consequently resps. had made a misrepresentation as to the weights of the packets under sect. 3 of the Act, & had also infringed the provisions of Reg. 2, cl. 8, of the regulations in omitting to add the words " gross " or " gross weight " ; (2) Reg. 2, cl. 8, was not *ultra vires.*—HUGGETT *v.* HELP YOURSELF STORES, LTD., [1934] 2 K. B. 230 ; 103 L. J. K. B. 394 ; 150 L. T. 416 ; 98 J. P. 76 ; 32 L. G. R. 33 ; 30 Cox, C. C. 74, D. C.

119b. —— —— Prepacked articles—Meaning of " minimum weight."]—HUGGETT *v.* HELP YOURSELF STORES, LTD., No. 119a, *ante.*

Part VIII.—Miscellaneous Terms of Measurement.

156a. ——.]—*Re* ECCLESIASTICAL COMRS. FOR ENGLAND'S CONVEYANCE, No. 158a, *post.*

158. *Add. Annotations :*—Consd. New Plymouth Borough Council *v.* Taranaki Electric Power Board, [1933] A. C. 680 ; *Re* Ecclesiastical Comrs. for England's Conveyance, [1936] Ch. 430.

158a. ——.]—When used in conjunction with the word " land," the word " adjoining " in its primary sense means that which lies near so as to touch in some part the land which it is said to adjoin. Of necessity it connotes contiquity. . . . The word " adjacent " when used in contradistinction to the word " adjoining " means, I think, that which lies near but is not in actual contact with land. The degree of proximity must depend on the circumstances of each case (LUXMOORE, J.).—*Re* ECCLESIASTICAL COMRS. FOR ENGLAND'S CONVEYANCE, [1936] Ch. 430 ; 105 L. J. Ch. 168 ; 155 L. T. 281.

WILLS.

Part I.—Nature of a Will.

19. *Add. Annotation :*—**Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

80. *Add. Annotation :*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

93. *Add. Annotation :*—**Dbtd. & Distd.** *Re* Duddell, Roundway *v.* Roundway, [1932] 1 Ch. 585.

98. *Add. Annotation :*—**Folld.** *Re* Hack (A.) (1930), 169 L. T. Jo. 284.

98a. ——— ——— ——— ———.]—*Re* HACK (A.) (1930), 169 L. T. Jo. 285.

PART I. SECT. 1, SUB-SECT. 1.

1 i. "*Release.*"] — *Re* DONNELL, [1930] 4 D. L. R. 1037.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

32 i. *Will distinguished from settlement.*]—If a document is "consummate" to create a trust *in præsenti* although one to be performed after the death of the donor, it is not dependent upon his death for its vigour & effect, &, therefore, is not testamentary.—CORLET *v.* ISLE OF MAN BANK, LTD., [1937] 2 W. W. R. 209.—**CAN.**

d i. *Document in form of will passing no property.*]—A woman procured a printed form of will & partly filled it in, so that it purported to "give devise & bequeath" to her husband, but did not contain any statement of the property to be disposed of or any appointment of an executor. The document was duly executed as required by law in the case of a will :—*Held :* as the document contained no disposition of property, it could not be regarded as a will & should not be admitted to probate.—*Re* FAIRCHILD, [1931] V. L. R. 289.—**AUS.**

sb. *Deed—Operative on death.*]—An instrument, even though in the form of a deed, which is not to become operative until the maker's death is testamentary in its character & its operation depends upon its execution complying with Manitoba Wills Act, R. S. M., 1913.—*Re* PFRIMMER ESTATE, [1936] 1 W. W. R. 609 ; 44 Man. L. R. 96.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A. (a).

36 i. *Tests for ascertainment.*]—Where a will is made subject to a clearly expressed condition that it is to be subject to the happening of a specified contingency, *e.g.*, the testator's death before a certain time or during a certain surgical operation, the will does not take effect unless the condition is fulfilled ; but, if the will is so expressed as to show that the contingency is only the motive for making the will, the will is not conditional but takes effect whether the event happens or not.—*Re* SWORDS ESTATE (Alta.), [1929] 3 D. L. R. 564 ; 2 W. W. R. 245.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

79 vi. ——.]—FOLSETTER *v.* YORKSHIRE & CANADIAN TRUST CO., [1932] 2 W. W. R. 382 ; 3 D. L. R. 190 ; 45 B. C. R. 315.—**CAN.**

79 vii. ——.]—Specific performance granted of an oral agreement to leave property by will in consideration of an executed agreement to take care of the promisor during illness.—BARNES *v.* CUNNINGHAM, [1933] 3 D. L. R. 653 ; 6 M. P. R. 521.—**CAN.**

79 viii. ——.]—*Re* SMITH ESTATE, [1934] 3 W. W. R. 351 ; 49 B. C. R. 79.—**CAN.**

79 ix. ——.]—S. offered to leave pltf. his house property, furniture & one half of his money left after paying his debts, if pltf. should keep house for him & look after him until his death, in a manner satisfactory to him. The letters containing the offer could not be produced. Pltf. accepted the offer & kept house for & attended to S. for 14 months. Then, on Sept. 26, 1934, S. made a will making said provision for her. The will also provided that the devises & bequests to her should be null & void if she "shall leave me & cease to care for me." On Feb. 5, 1935, pltf. & S. had a quarrel & she left his house. On that day he made a new will which made no mention of her. On the second day after she had left him S. asked pltf. to return. She did so & continued her duties as housekeeper & nurse until S.'s death. No wages were ever paid pltf. The second will was admitted to probate. Deft. was the exor. named therein. Pltf. knew nothing of that will until S.'s death. Pltf. sued for specific performance of the contract. ADAMSON, J., dismissed the action, & pltf. appealed :—*Held :* the appeal should be allowed.—BRIESE *v.* DUGARD (No. 2), [1936] 1 W. W. R. 193 ; 1 D. L. R. 723 ; 43 Man. L. R. 489.—**CAN.**

79 x. ——.]—A verbal promise to devise property which included real estate, in consideration of services rendered, is within Stat. Frauds & where not partly performed is unenforceable against the promisor.—STRATCHUK *v.* MONTREAL TRUST CO., [1936] 3 D. L. R. 310.—**CAN.**

sg. *Application of Statute of Frauds.*]—Pltf. sued defts., the personal representatives of C., for damages for breach of contract whereby C. had promised to make a will in pltf.'s favour leaving her his fortune consisting of 4/7th interest under his deceased father's will & his insurance policy. At the death of C., his deceased father's estate consisted of certain mtges. of land, accrued interest, & two blocks of vacant land. C. had become entitled to four 1/7th shares in this estate as next-of-kin of certain of his children. The alleged contract was oral, & at the trial of the action pltf. was non-suited on the ground that the contract related to land & there was no note or memorandum in writing of the contract as required by Statute of Frauds. Upon appeal :—*Held :* since the property included land, the interest of C. under his father's will derived through his children, was an interest in land, & pltf. was properly non-suited. *Semble :* a mtge. of land is an interest in land for the purposes both of sect. 4 of the Statute of Frauds & of sect. 54 (A) of Conveyancing Act, 1919-1930.—HORTON *v.* JONES (1934), 34 S. R. N. S. W. 359 ; 51 N. S. W. W. N. 126 ; *affd.*, 53 C. L. R. 475 ; 8 A. L. J. 470 ; 41 Argus L. R. 177 ; 35 S. R. N. S. W. 397 ; 52 N. S. W. W. N. 138.—**AUS.**

sk. *Death of intended donee in lifetime of testator.*]—E. transferred to her brother, W., her interest in a property in consideration of a written promise by W. to re-transfer the same to E. by leaving such interest to her in his will. E. died, & subsequently W. made a will, but omitted therein to perform his promise. In a suit praying in effect for specific performance of the contract as against the exors. of the will of W., an amended statement of claim alleged that from the date of making of the contract up to the date of his death W. was under a moral obligation to make a will in performance of his contract, & save as next hereinafter mentioned, W. recognised that he was under such moral obligation ; that shortly prior to the date of his will W. believed he was not under any such moral obligation as aforesaid & while holding such belief & on account of the same made his will ; but that subsequently thereto, W. again recognised his said moral obligation, & formed an intention to discharge the same, & continued to have such intention up to his death, which, however, occurred before he could carry out such intention & discharge such obligation. On demurrer to the statement of claim :—*Held :* the ct. was not justified in extending to the case of a notional gift or will the doctrine stated in *Stevens* v. *King*, [1904] 2 Ch. 30, at p. 33, as to the exception to the general rule that a gift by will lapses on the death of the donee in the lifetime of testator. Further, the principles stated in *Synge* v. *Synge*, [1894] 1 Q. B. 466, at pp. 470, 471, could not be extended or applied so as to entitle pltf. to a decree. As it was not contended that W. was bound by his contract, or was under any moral obligation, to provide against lapse in his will, the case was governed by the decision in *In re Brookman's Trust*, L. R. 5 Ch. 182 ; & in the events which had happened the breach of contract was merely an *injuria sine damno*.—MCDONALD *v.* MCDONALD (No. 2) (1935), 35 S. R. N. S. W. 463 ; 52 N. S. W. W. N. 145.—**AUS.**

sm. *Subject-matter must be certain.*]—Testator, an American citizen, was married in America in 1893, &, in 1896, while his wife was still living, he went through a form of marriage in Bermuda with another woman, C. M. H., whom he brought to New Zealand, where he lived with her until 1920, she bearing him eight children. He then obtained a decree of divorce against her. When he died, in 1920 his lawful wife was alive in America & C. M. H. was alive in New Zealand. In his will, testator used these words : "To C. M. H. divorced I wish my trustees to make such provision for her maintenance as the exigencies of the funds will permit & requiring the beneficiaries to contribute to her support." On originating summons asking what rights, if any, were conferred on C. M. H., & what duties, if any, were cast upon the administrator & the beneficiaries, & what powers, if any, conferred, upon the administrator by the will :—*Held :* the bequest under the clause of the will as above quoted

105. *Add. Annotation :*—**Refd.** *Re* Hagger, Freeman *v.* Arscott, [1930] 2 Ch. 190.

106. *Add. Annotation :*—**Apld.** *Re* Hagger, Freeman *v.* Arscott, [1930] 2 Ch. 190.

108a. —— —— ——.]—A husband & wife made a joint will, whereby they left certain property, which each possessed at the time of the death of the spouse first dying, to the survivor for life with certain absolute remainders over, & they agreed that the will should not be revoked without their mutual consent. The wife died first, & as from her death the husband received the income from the whole estate until his death :—*Held :* from the death of the wife the property of which the husband was then possessed was subject to a trust under which the legatees in absolute remainder took vested interests subject to the life interest of the husband ; & the death of such a legatee after the death of the wife but before the death of the husband did not occasion a lapse.—*Re* HAGGER, FREEMAN *v.* ARSCOTT, [1930] 2 Ch. 190 ; 99 L. J. Ch. 492 ; 143 L. T. 610.

112. After this case add :—
Exercise of power of appointment by joint will.]—*See* POWERS, No. 269a.

Part II.—Power of Disposition by Will.

131. *Add. Annotation :*—**Consd.** *Re* Franklin & Swathling's Arbn., [1929] 1 Ch. 238.

132. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

239. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

239a. **Creation of estate tail—Death after commencement of Law of Property Act, 1925 (c. 20)—Necessity for.**]—Under Law of Property Act, 1925 (c. 20), s. 130, the power to create an entailed interest in personal estate can be exercised by will only in the case of a testator who dies after the commencement of the Act. Therefore, where testator, who died in 1912, by his will settled certain chattels including three family portraits to be held upon trusts which should as nearly as the rules of law & equity permitted correspond with the limitations of real estate in tail, & set out such limitations at length, but settled no real estate upon the same limitations :—*Held :* testator had attempted to create an entailed interest in the chattels but had not succeeded, & therefore the trustees of his will had no power to sell them under sect. 130 (5). But the ct., deeming it in the circumstances expedient, would make an order authorising the sale of the portraits by the trustees under Trustee Act, 1925 (c. 19), s. 57.—*Re* HOPE'S WILL TRUST, HOPE *v.* THORP, [1929] 2 Ch. 136 ; 98 L. J. Ch. 249 ; 141 L. T. 509.

239b. —— **Necessity for use of statutory form.**]—A testator, whose will was executed before 1926, devised his residuary estate after the death of his wife upon trust to pay the income to the beneficiary in possession of the P. Estate under the will of his uncle. The wife died in 1933. The residuary estate was entirely personalty. By the will of the uncle the P. Estate was devised to the use of his son R. for life with remainder to his sons successively in tail with remainder to his son H. for life with remainder to his sons in tail with remainder over to testator's right heirs. R. had no issue & was in possession of the P. Estate as tenant for life. H. had one son, B., who was living & had an infant son. The question arose whether the law in force before 1926 applied, under which B. as the first tenant in tail would take the personalty absolutely subject to the prior life interests, or whether under Law of Property Act, 1925 (c. 20), s. 130 (3), an estate tail had been created in the personalty, so that the infant son of B. was entitled in tail until his father executed a disentailing assurance :—*Held :* the sub-sect. does not operate unless there is in the will to be construed a direction that the personalty shall be held upon trusts described in the exact words of the sub-sect. ; such words not being used in this will, the sub-sect. did not apply ; & after the death of the wife the property was to be held under the law in force before 1926.—*Re* JONES, PUBLIC TRUSTEE *v.* JONES, [1934] Ch. 315 ; 103 L. J. Ch. 102 ; 150 L. T. 400 ; 78 Sol. Jo. 82.

265. *Add. Annotations :*—**Distd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

299a. **Disclaimer by donee—Intestacy—Application of Administration of Estates Act, 1925 (c. 23), ss. 33 (5), 46, 49.**]—Testator who owned certain musical copyrights, & who died in 1928, by his will gave the residue of his estate, including the copyright royalties, on trust for his wife for life & afterwards for his children, & directed that the royalties should be treated as capital. Testator left a widow but no children :—*Held :* as there was a partial intestacy, namely, as to the capital of the residue, the

was void for uncertainty & conferred no rights on C. M. H., & no liability on the administrator or the beneficiaries. *Aliter :* if the clause had merely provided for the maintenance of C. M. H.—*Re* S. B. H., PUBLIC TRUSTEE B. F. H., [1936] N. Z. L. R. 756 ; L. R. 552 ; 12 N. Z. L. J. 250. N.Z.

PART I. SECT. 4, SUB-SECT. 1.

104 i. For "S. AF." read "CEYLON."

PART I. SECT. 4, SUB-SECT. 2.

106 viii. —— —— ——.]—The fact that a husband & wife have simultaneously made mutual wills, giving each to the other a life interest with similar provisions in remainder, is not in itself evidence of an agreement not to revoke the wills ; in the absence of a definite agreement to that effect there is no implied trust precluding the wife from making a fresh will inconsistent with her former will, even though her husband has died & she has taken the benefits conferred by his will.—GRAY *v.* PERPETUAL TRUSTEE CO., LTD., [1928] A. C. 391 ; 40 C. L. R. 558 ; [1928] Argus L. R. 238.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—C. (a).

265 i. *Necessity for conversion into permanent securities.*]—*Re* BINGHAM, [1931] 1 D. L. R. 248 ; 66 O. L. R 121.—CAN.

direction would not apply if the widow disclaimed her life interest under the will, & the result of the disclaimer would be that the widow would take a life interest in the residue, including the royalties.—*Re* SULLIVAN, DUNKLEY *v.* SULLIVAN, [1930] 1 Ch. 84; 99 L. J. Ch. 42; 142 L. T. 187; 45 T. L. R. 590.

Annotation:—**Consd.** *Re* Thornber, Crabtree *v.* Thornber, [1936] 2 All E. R. 1594.

299b. Death of remaindermen in lifetime of widow.]—By his will testator who died in 1928, after making certain bequests, devised & bequeathed all his real & personal estate not otherwise disposed of to his trustee upon trust for sale & conversion, & after paying his funeral & testamentary expenses, debts & legacies, to invest the net residue, & to stand possessed of the net residue & the investments thereof upon trust to pay the income to his wife for life, & after her death to divide the same between his surviving brothers & sisters. The last of the brothers & sisters died in 1930. The widow was still living. On the construction of the will surviving brothers & sisters was held to mean brothers & sisters surviving the widow, & there was therefore an intestacy as to the reversionary interest in the testator's residuary estate expectant on the widow's death:—*Held:* the reversionary interest ought not to be forthwith sold.—*Re* MCKEE, PUBLIC TRUSTEE *v.* MCKEE, [1931] 2 Ch. 145; 100 L. J. Ch. 325; 145 L. T. 605; 47 T. L. R. 424; 75 Sol. Jo. 442, C. A.

Annotation:—**Consd.** *Re* Thornber, Crabtree *v.* Thornber, [1936] 2 All E. R. 1594.

299c. Provision for accumulation for children—Death without issue.]—A testator, after bequeathing an annuity to his mother, directed his trustees out of the annual income of his residuary estate to pay an annuity to his wife, & he further directed that the surplus income of his residuary trust fund should be accumulated during the life of his wife or for twenty-one years from his death (whichever period was the shorter); & he directed that at the expiration of the period of accumulation his residuary trust fund should be held upon trust, as to both capital & income & the accumulations of such income, for his children. Testator died without issue, & his widow claimed that she was entitled to call on the trustees to stop the accumulation of any surplus income of the residuary estate & deal with any such surplus income as upon an intestacy. Testator's mother claimed that the accumulations ought to be continued:—*Held:* testator having died without issue there was no effective disposal by his will within sect. 49 of Administration Estates Act, 1925 (c. 23), of the residuary estate, & the direction to accumulate the income was not a direction to which the property not effectively disposed of by the will was subject. Therefore, subject to making provision in due course of administration for the annuity given to testator's mother, the trustees ought not to accumulate the surplus income, but that it ought to be dealt with as income from the residuary estate undisposed of by testator.—*Re* THORNBER, CRABTREE *v.* THORNBER, [1937] Ch. 29; [1936] 2 All E. R. 1594; 106 L. J. Ch. 7; 155 L. T. 223; 80 Sol. Jo. 689, C. A.

411. *Add. Annotation*:—**Folld.** *Re* Wavertree, Rutherford *v.* Walker, [1933] Ch. 837.

412. *Add. Annotation*:—**Folld.** *Re* Wavertree, Rutherford *v.* Walker, [1933] Ch. 837.

412a. —— ——.]—Testator bequeathed to his adopted daughter R. "such of the furniture & household effects which at the date of my death shall be in or about either of my residences H. or S. as she may select for the purpose of furnishing a residence for my said adopted daughter":—*Held:* (1) the legatee was entitled to select from both of the houses; (2) "household effects" included motor cars, consumable stores, garden implements & tools & movable plants; (3) there was no quantitative limit to the power of selection, but the legatee was entitled to the whole of the furniture & household effects in the two houses.—*Re* WAVERTREE OF DELAMERE (BARON), RUTHERFORD *v.* HALL-WALKER, [1933] Ch. 837; 102 L. J. Ch. 367; 149 L. T. 418; 49 T. L. R. 515; 77 Sol. Jo. 468.

Part IV.—Capacity to Benefit under Will.

454. *Add. Annotation*:—**Consd.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

479a. —— ——.]—Testator directed that the income of his residuary estate should be paid to his son for life, & after his death be held in trust for the son's "children or reputed children," as the son should by will or codicil appoint. The son had two legitimate children, one predeceasing him & the other being expressly excluded by testator's will from benefiting under the power of appointment, & three illegitimate children, to the second & third of whom, under the power, he appointed the income of testator's residuary estate in equal shares by his will, in which he described them by name & as his "children or reputed children." For many years payments of the income were made for the benefit of the children. On a summons to determine (*inter alia*) whether the trusts in favour of "children or reputed children" were void as contrary to public policy as regards reputed children of the son (*a*) living at or (*b*) born after the date of the will:—*Held:* the power of appointment was valid, & the son's appointment of the income to his "children or reputed children" named in his will was a proper exercise of the power.—*Re* HYDE, SMITH *v.* JACK, [1932] 1 Ch. 95; 101 L. J. Ch. 95; 146 L. T. 255; 75 Sol. Jo. 781.

PART III. SECT. 1.

p. *Add. Citation*:—*varied* (1925), 57 O. L. R. 673.

PART IV. SECT. 2, SUB-SECT. 2.—B.

452 iii. —— —— ——.]—Where a legatee who prepares a will obtains only a small share, suspicion only to that share.—*Re* M——— ESTATE (1935), 8 M. P. R. 526.—CAN.

487. *Add. Annotation :*—**Consd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

489. *Add. Annotation :*—**Reld.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

491. *Add. Annotation :*—**Reld.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

504. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Apld.** *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. **Reld.** *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126 ; Beresford *v.* Royal Insurance Co., Ltd., [1937] 2 K. B. 197 ; *Re* Clay's Policy of Assurance, Clay *v.* Earnshaw, [1937] 2 All E. R. 548.

506. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89.

506a. —— ——.]—A coroner's jury found a verdict against X. of wilful murder of his mother & of *felo de se.* X. was named as the sole beneficiary under his mother's will. On a summons taken out to determine the devolution of the mother's estate :—*Held :* the rule of public policy which prevented X. (or his estate) from benefiting under the mother's will also debarred his personal representative from participating as such in the intestacy from the death of the mother caused by the son's act.—*Re* SIGSWORTH, BEDFORD *v.* BEDFORD, [1935] Ch. 89 ; 104 L. J. Ch. 46 ; 152 L. T. 329 ; 51 T. L. R. 9 ; 78 Sol. Jo. 735.

Part V.—Formalities of Will or Codicil.

597. *Add. Annotations :*—**Reld.** Smith *v.* Thompson (1931), 146 L. T. 14 ; *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n. ; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

597a. —— —— **Execution prevented by death.**]—Instructions for a will containing the fixed, & final, intentions of the deceased are valid, if the formal execution is prevented by death ; &, if there is no evidence of insanity, at the time of giving the instructions, the commission of suicide, three days afterwards will not invalidate the paper by raising an inference of previous derangement.—BURROWS *v.* BURROWS (1827), 1 Hagg. Ecc. 109 ; 162 E. R. 524.

Annotation :—**Reld.** Godman *v.* Godman, [1920] P. 261.

633. *Add. Annotations :*—**Reld.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n. ; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

635. *Add. Annotations :*—**Reld.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n. ; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

651. *Add. Annotation :*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

653. *Add. Annotations :*—**Reld.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n. ; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

673. *Add. Annotation :*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

712a. Reference to deed—Deed inoperative.]—On Apr. 15, 1935, a testator executed a document in the form of a deed expressed to be made between testator, his brother, his sister & 7 named persons as trustees, which stated that each of the first three parties thereto covenanted with the others that he or she would execute a will whereby all his or her residuary estate should be given to the trustees upon the trusts therein mentioned, being charitable trusts for the establishment & endowment of a hospital. The instrument was also executed by testator's brother, but not by his sister or the trustees. On Apr. 25, 1935, testator by a codicil to his will revoked the gift of his residuary estate contained in his will & directed his exors. " to stand possessed thereof upon trust to pay & transfer the same to the persons (naming them) named in a deed dated Apr. 15, 1935, to be the trustees of such deed or the survivors of them or other the persons who are for the time being the trustees of such deed (hereinafter referred to as the ' charity trustees ') to be held by the charity trustees upon the trusts in the said deed declared." The testator died & the question arose whether his exors. ought to hand over his residuary estate to the persons named as trustees in the instrument of Apr. 15, 1935, to be held by them upon the trusts therein expressed :—*Held :* testator by his codicil intended to give his residuary estate to the trustees of an operative deed to be held by them upon the trusts of that deed, & as the instrument referred to never became an operative deed, the exors. ought not to hand over the testator's residuary estate to the persons named as trustees in that instrument.—*Re* HURDLE, BLAKENEY *v.* HURDLE, [1936] 3 All E. R. 810.

717a. —— **Codicil commencing " this is the last will & testament."**]—A testamentary paper headed " Codicil to be attached to my will," & proceeding " This is the last will & testament of A. B." did not expressly or by implication revoke an earlier will, although it effected a substantial difference in the destination of a large portion of the property

PART IV. SECT. 2, SUB-SECT. 9.

505 ll. —— —— *Suicide pact.*]—Husband & wife entered into a " suicide pact," & in pursuance thereof the wife drank arsenical poison & four hours later the husband drank the poison. The wife died but the husband survived :—*Held :* the husband was not entitled to any share in his deceased wife's estate either under her will or as on an intestacy.—WHITELAW *v.* WILSON, [1934] O. R. 415 ; 3 D. L. R. 554 ; 62 C. C. C. 172.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. 597

(Ont.), [1929] 1 D. L. R. 542.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.—B. (a).

629 i. *Whether document incorporated in will—Necessity for reference.*]—*Re* POOLE, STEWART *v.* POOLE (P. E. I.), [1929] 1 D. L. R. 418.—**CAN.**

passing. The same paper bore, in addition to the signature of the testator, the signatures of four persons, two of whom were beneficiaries under it; all four signatures had been placed on the paper at the time of attestation, & there was evidence that the two beneficiaries signed otherwise than as attesting:—*Held:* (1) the words "last will & testament" did not preclude the admission to probate of both papers; (2) probate of the codicil might go without including the names of the two beneficiaries as attesting witnesses.—KITCAT *v.* KING, [1930] P. 266; 99 L. J. P. 126; 143 L. T. 408; 46 T. L. R. 617; 74 Sol. Jo. 488.

727. *Add. Annotations:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615. **Refd.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n.; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

729. *Add. Annotation:*—**Apld.** Kitcat *v.* King, [1930] P. 266.

769a. Thumb-mark.]—Being unable to sign his will an illiterate testator pressed his thumb, which had been smeared with ink, at the foot of his will, & this form of signature was duly attested by two witnesses:—*Held:* the will was duly executed, though the method of making testator's mark did not commend itself to the ct.—*In the Estate of* FINN (1935), 105 L. J. P. 36; 154 L. T. 242; 52 T. L. R. 153; 80 Sol. Jo. 56.

801. *Add. Annotation:*—**Consd.** *In the Estate of* Roberts (W. E.), [1934] P. 102.

801a. ——.]—Testator filled the whole of a sheet of paper with the dispositions of a holograph will leaving no space at the foot of the sheet for his own signature or those of attesting witnesses. These were placed on the left-hand margin of the paper at right angles to the dispositions of the will, the names, descriptions & addresses of the witnesses occupying the lower & the signature of testator the upper margin:—*Held:* the will was duly executed.—*In the Estate of* ROBERTS, [1934] P. 102; 103 L. J. P. 61; 151 L. T. 79; 50 T. L. R. 321; 78 Sol. Jo. 319.

802a. Signature at top of sheet.]—A lady got some one to write on a single sheet of paper her wishes for the disposal of her property after her death. There was no room at the end of the writing for her signature, so she signed at the top of the sheet, & her signature there was duly witnessed:—*Held:* the document was not a valid will as it was directly within the prohibition in Wills Amendment Act, 1852 (c. 24), that no signature should be operative to give effect to any disposition or direction which was underneath or which followed it.—*Re* STALMAN, STALMAN *v.* JONES (1931), 145 L. T. 339, C. A.

Annotations:—**Consd.** *In the Goods of* Smith (M. M.), [1931] P. 225; *In the Estate of* Roberts (W. E.), [1934] P. 102.

820. *Add. Annotation:*—**Folld.** *In the Estate of* Roberts (W. E.), [1934] P. 102.

830. *Add. Annotations:*—**Distd.** *Re* Stalman, Stalman *v.* Jones (1931), 145 L. T. 339. **Apld.** *In the Goods of* Smith (M. M.), [1931] P. 225. **Consd.** *In the Estate of* Long, [1936] 1 All E. R. 435.

831. *Add. Annotations:*—**Consd.** *In the Goods of* Smith (1931), 47 T. L. R. 618; *In the Estate of* Long, [1936] 1 All E. R. 435.

831a. —— —— ——.]—Holograph testamentary dispositions so written as to stand after the executive clause, which was in a printed form:—*Held:* to be part of the will & entitled to probate, being written before execution, & the page executed not containing any disposition.—*In the Goods of*

PART V. SECT. 2.

so. *Will typed by testator—& signed.*]—A typewritten testamentary document was found in the repositories of a deceased bank agent, to which was appended his signature in writing. An addition, also typewritten, had been made to the original document, altering one of its provisions, & his written signature was also appended to it. The original document & the addition each contained a statement, also typewritten that they were "accepted as holograph." In a special case brought to determine the validity of the document as a testamentary writing, the parties were agreed in stating that both of the signatures were those of deceased, & further that, owing to a physical disability, he had for some time prior to his death invariably used a typewriter for his communications in writing, & that the whole of the document in question had been typewritten by him:—*Held:* as the document was a document admittedly typewritten in its entirety by testator, who had appended his written signature to it, it could competently be treated as holograph of testator, &, accordingly, it fell to receive effect as a valid testamentary writing.—M'BEATH'S TRUSTEES *v.* M'BEATH, [1935] S. C. 471.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.

s i. ——.]—Testator in his trust-disposition & settlement directed his trustees "to pay, implement & fulfil any legacies or bequests which I may leave or bequeath by any writing under my hand, however informally the same may be expressed or executed." Some time prior to his death he delivered to his law agents, who had custody of his trust-disposition & settlement, a sealed envelope bearing the following holograph endorsation: "To be placed with my Last Will & Testament—T. R." After his death the envelope was found to contain three documents of a testamentary character, all holograph of the testator. Only one was signed. One of the unsigned documents began in these terms: "I T. R. desire to make the following alterations & additions to my last Will & Testament namely." Certain directions followed, & the document concluded with these words: "Written by my own hand at L. A. the 17th day of October 1921":—*Held:* the trustees were bound to give effect to the directions contained in the unsigned document, on the ground that the facts connected with the document, taken in conjunction with the directions in the trust-disposition & settlement, showed that testator intended it to be read along with his formal settlement, of which he had effectually made it a part.—RONALDS' TRUSTEES *v.* LYLE, [1929] S. C. (Ct. of Sess.) 104.—**SCOT.**

sp. *Will typewritten & signed by testator.*]—A will wholly typewritten by testator & signed by him is a good holograph will under sect. 10 of Manitoba Wills Act, R. S. M., 1913.—*Re* NESBITT ESTATE, [1933] 3 W. W. R. 171.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.

780 l. *Signature in name of person requested to sign—Notary.*]—A testamentary document in Scotland specifically dealt with real estate in Ontario. The document was executed before C., a notary public, & was signed, in the presence of two witnesses, by C. & not in the name of testator, C. signing his own name & the witnesses signing a statement that they had heard authority given to C. & heard the document read over to B., who declared he could not write:—*Held:* a good compliance with Wills Act, R. S. O., 1927, s. 11.—*Re* DEELEY & GREEN, [1930] 1 D. L. R. 603; 64 O. L. R. 535.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—B.

p i. ——.]—*In the Will of* MORONEY (1928), 28 S. R. N. S. W. 553; 45 N. S. W. W. N. 147.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—C.

sl. *Execution invalid.*]—The whole of a will, except testator's signature, was written on one side of a single sheet of paper. The signature appeared in the middle of the back of the sheet:—*Held:* the will was invalid as it was not signed at the foot or end thereof, nor was the signature so placed that it was apparent on the face of the will that testator intended to give effect by such his signature to the writing signed as his will.—*Re* MORGAN, [1931] V. L. R. 191; Argus L. R. 150.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—D.

sa. *Signature appearing as endorsement.*]—*Re* DYTRYCH, [1928] V. L. R. 144; [1928] Argus L. R. 88.—**AUS.**

SMITH, [1931] P. 225; 100 L. J. P. 115; 146 L. T. 46; 47 T. L. R. 618; 75 Sol. Jo. 725.
ation :—**Consd.** *In the Estate of* Long, [1936] 1 All E. R. 435.

836. *Add. Annotations* :—**Consd.** *In the Goods of* Smith (1931), 47 T. L. R. 618; *Re* Stalman, Stalman *v.* Jones (1931), 145 L. T. 339; *In the Estate of* Long, [1936] 1 All E. R. 435.

838. *Add. Annotation* :—**Consd.** Palin *v.* Ponting, [1930] P. 185.

839. *Add. Annotation* :—**Consd.** Palin *v.* Ponting, [1930] P. 185.

839a. —— **"See other side for completion."**]—On the margin of the first page of a will on a printed form, duly executed & attested at the foot of the page, occurred the words, "See other side for completion." On the second page under the words, "Continuation from the other side," there were dispositions of property & a residuary gift without any further execution or attestation: —*Held*: the words, "See other side for completion," had the effect of joining in or interlining the writing on the second page, & that the executed writing should be included in the probate.—PALIN *v.* PONTING, [1930] P. 185; 99 L. J. P. 121; 46 T. L. R. 310; 74 Sol. Jo. 234; *sub nom.* PALING *v.* PONTING, 143 L. T. 23.

839b. —— **Evidence that signature written last—Holograph will.**]—A holograph will contained on one page a list of bequests; on another page appeared the heading of a will together with the appointment of an exor. Below this was an attestation clause with the signatures of testatrix & attesting witnesses. There was evidence that the whole will was written before the execution, but there was nothing on the face of the page containing bequests to show that the words of the final bequest were the concluding words of the will. On the question whether the whole of the will or only the page containing the appointment of the exor. received the protection of Wills Act Amendment Act, 1852 (c. 24), s. 1, & whether the bequests were disentitled to probate by reason of their being "underneath or following" the signature, within the meaning of the exception in the closing words of the sect.:—*Held*: distinguishing cases previously decided on those words, which were cases of the use of will forms, if the ct. is satisfied that the whole will was written before execution & that the dispositive part of it may fairly be read as leading up to the execution & in no sense as a mere annexe or schedule to the will, it would be transgressing the spirit of the statute to insist as a criterion of valid execution upon proof that the several parts of the will were actually written in any particular sequence.—*In the Estate of* LONG, [1936] P. 166; [1936] 1 All E. R. 435; 105 L. J. P. 44; 154 L. T. 469; 52 T. L. R. 323; 80 Sol. Jo. 248.

850. *Add. Annotation* :—**Refd.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

854. *Add. Annotation* :—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

888. *Add. Annotation* :—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

913. *Add. Annotation* :—**Expld. & Distd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

928. *Add. Annotation* :—**Refd.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

958. *Add. Annotation* :—**Refd.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

961. *Add. Annotation* :—**Refd.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

961a. —— —— **Knowledge of nature of document immaterial.**]—The signature of a testator to his will may be duly attested although an attesting witness does not know that the document in question is the testator's will. The intention of the witness is immaterial so long as he signs the paper in compliance with the requirements of the Wills Act.—*In the Estate of* BENJAMIN (1934), 150 L. T. 417.

967. *Add. Annotation* :—**Refd.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

1074. *Add. Annotation* :—*Generally*, **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

1075a. —— **Gift to abbess of convent—Attestation by member of community.**]—A testatrix, who was a nun in a convent, by her will gave all her property to the person who at the time of her death should be or should act as abbess of the convent. The will was attested by two nuns belonging to the convent, one of whom was subsequently elected abbess & held that office at the time of testatrix's death:—*Held*: the will did not create a beneficial legacy or gift to the abbess personally, but the gift was one in trust for, & as an addition to the funds of the community, & was not invalidated, under Wills Act, 1837 (c. 26), s. 15, by the attestation of the will by the witness who afterwards became abbess.—*Re* RAY'S WILL TRUSTS, *Re* RAY'S ESTATE, PUBLIC TRUSTEE *v.* BARRY, [1936] Ch. 520; [1936] 2 All E. R. 93; 105 L. J. Ch. 257; 155 L. T. 405; 52 T. L. R. 446; 80 Sol. Jo. 406.

PART V. SECT. 3, SUB-SECT. 6.—C.

871 iii. ——.]—In an action to establish a testamentary document as the last will of H. deceased, the only question for decision was, whether the will had been properly executed. The evidence was conflicting, but the trial judge found that one of the persons attesting the document signed before testator signed, that the other attesting witness signed after testator, & the first witness did not resubscribe the will:—*Held*: the document was not executed in the manner prescribed by Wills Act, s. 12 (1), & could not be admitted to probate. The signature of testator must be written or acknowledged by him in the actual presence of both witnesses together before either of them attests & subscribes the will.—CHESLINE *v.* HERMISTON, [1928] 4 D. L. R. 786; 62 O. L. R. 575.—**CAN.**

PART V. SECT. 4, SUB-SECT. 4.—B. (c).

1006 i. *Testator unable to turn in bed —Attestation visible by turning.*]—Where although the witnesses to a will were in the same room with testator at the time they attested it & so near him that he could have seen them sign if he had been looking at them, yet, if he had his face turned away from them & was unable to move without assistance so that it was out of his power to see them even if he so wished, the attestation is invalid.—*Re* WOZCIECHOWIECZ ESTATE, [1931] 3 W. W. R. 283; 4 D. L. R. 585; 26 Alta. L. R. 1.—**CAN.**

PART V. SECT. 4, SUB-SECT. 8.—A.

testator devised & bequeathed all his real & personal estate to his wife for life, & after her death to all his children at her wisdom & discretion. By her will his wife appointed the estate to all the children in equal shares, subject only that the share of a son F. should be retained by her trustees upon trust for him for life with remainder to his issue born before the lapse of twenty-one years from his death as he should appoint, & in default, etc. The husband of M., one of testator's children to whom the appointment was made, attested the execution of the testator's will:—*Held*: M. was not given any share or interest in testator's estate by his will, & therefore Wills Act, 1928, s. 13 did not apply.—*Re* KOCH, KOCH *v.* KOCH, [1931] V. L. R. 263; Argus L. R. 274.—**AUS.**

1097. *Add. Annotation :*—**Apld.** Kitcat *v.* King, [1930] P. 266.

1097a. ——— ———.]—KILCAT *v.* KING, No. 717a, *ante*.

1117. *Add. Annotation :*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

1126. *Add. Annotation :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

1141. *Add. Annotations :*—**Consd.** *In the Estate of* Benjamin (1934), 150 L. T. 417. **Reld.** Neal *v.* Denston (1932), 48 T. L. R. 637.

1155. *Add. Annotation :*—**Reld.** Neal *v.* Denston (1932), 48 T. L. R. 637.

1158a. ———.]—The ct. applied the presumption of law, *omnia præsumuntur rite esse acta*, in favour of the validity of a will where the evidence of the attesting witnesses as to the circumstances of the execution was found to be wholly unsatisfactory & not to be relied upon & the main fact alleged against undue execution, apart from declarations made by the attesting witnesses, was that it would have been a physical impossibility for testator & the attesting witnesses to have been present together in the confined space in which the execution of the will took place.—NEAL *v.* DENSTON (1932), 147 L. T. 460; 48 T. L. R. 637; 76 Sol. Jo. 691.

Annotation :—**Reld.** *In the Estate of* Benjamin (1934), 150 L. T. 417.

Part VI.—Executors and Administrators.

1278a. ——— ——— ——— ———.]—By his will dated Mar. 3, 1932, testator bequeathed to his niece the sum of £1,150 Five per Cent. War Loan 1929–1947 stock & gave his residuary estate to G. C. At the date of his will testator held £1,150 War Loan of that denomination & in pursuance of a notice given to him by H.M.'s Govt. in accordance with a Prospectus dated Jan. 11, 1917, of their intention to redeem the Five per Cent. War Loan 1929–1947, & of the Finance (No. 2) Act, 1931 (c. 49), Part III., s. 11 (1) (*b*), elected to make a "repayment application," & in Dec. 1932, was repaid in cash in respect of his said holding. On Apr. 23, 1933, testator died, not then being the holder of any War Loan of the description of the War Loan so bequeathed :—*Held :* (1) upon the construction of the will the bequest was a general bequest of £1,150 Five per Cent. War Loan 1929–1947; (2) the Three & a Half per Cent. War Loan in which testator's holding would have been "continued" if he had not elected to claim repayment of his holding of the Five per Cent. War Loan was, for the purpose of giving effect to the general legacy, the same War Loan as the Five per Cent. War Loan 1929–1947; (3) the legatee was entitled either to call upon the trustees of the will to purchase for her £1,150 Three & a Half per Cent. War Loan or to be paid such a sum as would purchase the same.—*Re* GAGE, CROZIER *v.* GUTHERIDGE, [1934] Ch. 536; 103 L. J. Ch. 241; 151 L. T. 240.

Part IX.—Alterations and Erasures.

1364. *Add. Annotation :*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

1387. *Add. Annotation :*—**Consd.** Palin *v.* Ponting [1930] P. 185.

PART V. SECT. 4, SUB-SECT.

8a. *Holograph will.*]—Sect. 10 of Manitoba Wills Act, R.S.M., 1913, provides as follows: "A holograph will, wholly written & signed by testator himself, shall be subject to no particular form, nor shall it require an attesting witness or witnesses :—*Held :* the fact that a will wholly written & signed by testator himself is also witnessed does not prevent it being a valid will under said sect.—*Re* EAMES ESTATE, [1934] 3 W. W. R. 364; 42 Man. L. R. 474.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

8c. *Necessity for compliance with statutory requirements at time of execution.*]—The validity of a testamentary document, in so far as its execution is concerned, depends entirely on the question whether it complied with the statutory requirements in that behalf in force at the time of its execution.—*Re* MCGIBBON, ROYAL TRUST CO. *v.* BAXTER, [1931] 2 W. W. R. 86; 2 D. L. R. 586; 25 Alta. L. R. 321.—**CAN.**

PART VII.

1 i. ——— ———.]—Sect. 14a of Wills Act Amendment Act, 1924, fixes a time as to when the validity of a will of the class referred to therein is determined, viz., when it was made. Therefore, if a British subject, when outside the province, makes a will which meets the requirements of said sect., its validity is not destroyed by the fact that testator afterwards ceases to be a British subject. Where a person while domiciled in British Columbia & owning realty therein makes a will valid as to realty in that province, & he acquires a foreign domicile & makes a holograph will, invalid as to realty in British Columbia, revoking all previous wills & disposing of both realty & personalty, & dies domiciled in said foreign country, the British Columbia will remains effective as to the British Columbia realty.—*Re* COLVILLE ESTATE, [1931] 3 W. W. R. 26; [1932] 1 D. L. R. 47; 44 B. C. R. 331.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—A.

1371 i. *Alterations made after execution of will.*]—After a testator had signed his will, & before the witnesses had signed it he instructed his solr. to increase a legacy in the will. The solr. immediately directed his clerk to make the alteration, but in the meantime both witnesses had signed the will. The alteration was then made & initialled in the margin of the will by testator & the witnesses :—*Held :* the alteration was not made after, but at, the execution of the will.—RAYMOND *v.* MASTER OF THE SUPREME COURT, *Re* KHAN'S ESTATE, [1933] N. L. R. 711.—**S. AF.**

Part X.—Revocation, Revival and Republication.

1513a. ——— ———.]—*In the Estate of* BIRKBY (1929), 73 Sol. Jo. 556.

B. Will Made in Contemplation of Marriage.
(Vol. XLIV., p. 319.)

1522a. Disappearance of wife—Bequest to woman with whom testator cohabiting—Subsequent marriage to legatee.]—Testator, being married to a woman who had left him some years before & had not been heard of, bequeathed the whole of his estate to a woman with whom he was living & whom he described as his wife. Shortly afterwards he married the woman in question, relying on the legal presumption of the death of his wife:—*Held:* the marriage was *primâ facie* valid & the will was expressed to be made in contemplation of it, & was accordingly within the protection of Law of Property Act, 1925 (c. 20), s. 177, & not revoked by the marriage.—PILOT *v.* GAINFORT, [1931] P. 103; 100 L. J. P. 60; 145 L. T. 22; 47 T. L. R. 376; 75 Sol. Jo. 490.

1522b. Reference to particular marriage—Necessity for.]—In order that a will may not be revoked by marriage, it must contain an express reference to that particular marriage. —SALLIS *v.* JONES, [1935] P. 43; 105 L. J. P. 17; 154 L. T. 112; 52 T. L. R. 113; 79 Sol. Jo. 880.

1544. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1546. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1549a. ——— ———.]—Where a testatrix commenced a will made two days before her death with the words, "This is my last will, the former one being *ungültig*," & then substituted for the German word "*ungültig*" the English word "cancelled," & this will made dispositions quite different from those in an earlier will, without, however, disposing of the residue, & where the residue had been disposed of by the earlier will, & the later will contained no operative appointment of exors., the ct. held that the later will revoked the earlier, &, testatrix being illegitimate & having died without issue, granted letters of administration to the Treasury Solr. with the later will annexed.—JONES *v.* TREASURY SOLICITOR (1932), 147 L. T. 340; 48 T. L. R. 615; 76 Sol. Jo. 690; *affd.*, 49 T. L. R. 75, C. A.

1555. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1556. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1558. *Add. Annotation:*—**Consd.** Lowthorpe-Lutwidge *v.* Lowthorpe-Lutwidge, [1935] P. 151.

1570. *Add. Annotation:*—**Consd.** Bickersteth *v.* Shanu, [1936] 1 All E. R. 227.

1610. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1611. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1613. *Add. Annotation:*—**Apld.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1613a. ——— ——— ———.]—*Re* HAWKSLEY'S SETTLEMENTS, BLACK *v.* TIDY, No. 3490a, *post.*

1622. *Add. Annotations:*—**Refd.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n.; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

1624. *Add. Annotation:*—**Apld.** Kitcat *v.* King [1930] P. 266.

1642a. ———.]—*Re* HAWKSLEY'S SETTLEMENTS, BLACK *v.* TIDY, No. 3490a, *post.*

1647. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1650. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1651a. ———.]—A will & codicil made by testatrix in 1893 were revoked by a will made in 1907. In 1911 testatrix made a codicil to the will of 1907 declaring that a share in her estate thereby given to a son should be held upon protective trusts. In 1921 testatrix executed a third codicil, which referred only to the will & codicil of 1893, altered some of the provisions of the will & otherwise confirmed it:—*Held:* the effect of the codicil of 1921 was to revoke both the will of 1907 & the codicil of 1911, & to revive the will & codicil of 1893. —*Re* BAKER, BAKER *v.* BAKER, [1929] 1 Ch. 668; 98 L. J. Ch. 174; 141 L. T. 29.

1655. *Add. Annotation:*—**N.F.** *Re* Robinson, Lamb *v.* Robinson, [1930] 2 Ch. 332.

PART X. SECT. 1, SUB-SECT. 2.

1496 v. ———.]—A will is the aggregate of a man's testamentary intentions, so far as they are manifested in a writing or writings duly executed according to the governing statute. A testamentary paper does not necessarily revoke one prior in date, even though the second instrument contains a general revocatory clause; the intention of testator is the sole guide & the intention to be discovered is that relating to the disposition of testator's property & not to the form of the will.—*Re* SNOW ESTATE, [1932] 1 W. W. R. 473.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

1507 v. ———.]—Where it was proved that a testator made a will which could not be found after his death & there was no evidence touching its whereabouts after it was made:—*Held:* it must be presumed, there being no evidence to rebut the presumption, that the will was destroyed by the testator with the intention of revoking it.—*Re* ROBINSON ESTATE, [1930] 2 W. W. R. 673.—**CAN.**

1507 vi. ———.]—The presumption that a will which was shown to have been in the custody of testator prior to his death, but which could not be found after he died, had been destroyed *animo revocandi* held not to have been rebutted.—*Re* SIGURDSON ESTATE, SIGURDSON *v.* SIGURDSON, [1935] 1 W. W. R. 265; 2 D. L. R. 445; *affd.*, [1935] 4 D. L. R. 529; 43 Man. L. R. 1.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.—B.

se. *Necessity for express declaration of contemplation of marriage.*]—*Re* SEDGWICK ESTATE, [1931] 1 W. W. R. 837.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.—A.

1532 iv. ———.]—A codicil revokes a will only if the intention to revoke clearly & unambiguously expressed. SMITH *v.* SMITH (1915), 19 D. L. R. 192, P. C.—**CAN.**

g i. ———.]—An invalid subsequent will does not revoke an earlier will.—*Re* GARDNER, [1935] 1 D. L. R. 308; O. R. 71.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.—B. (a).

Some property undisposed of ent will.]—A will made in ——— disposed of testator's entire estate. A later will, made in England, expressly revoked all prior wills & disposed of all the estate "with the exception of Canadian property in Calgary":—*Held:* the second will revoked the first will entirely, &, therefore, there was an intestacy as to the Calgary property.—*Re* ALLEN ESTATE, [1935] 1 W. W. R. 584; 5 F. L. J. (Can.) 51.—**CAN.**

1656. *Add. Annotation :*—**Consd.** *Re* Robinson. Lamb *v.* Robinson, [1930] 2 Ch. 332.

1657a. —— ——.]—The question whether a will has been revoked by a subsequent instrument depends entirely upon the intention of the testator as expressed in that instrument. The rule laid down in *Baker* v. *Story*, No. 1655, & earlier cases that a second will will revoke an earlier one though it is ineffective to confer any gift, if such failure is due to the incapacity of the devisee or legatee & not to any infirmity in the will itself, is no longer acceptable since the decision in *Ward* v. *Van der Loeff*, No. 1662.

Testatrix by a will made in 1914 gave her residuary estate upon trust to pay an annuity to her son H., & subject thereto for her grandchildren who should attain twenty-one. In 1921 she executed a document which she described as her last will, by which she gave the whole of her estate to H. absolutely, but it contained no clause revoking former wills. The later will was ineffective, though admitted to probate, owing to the wife of H. having attested it :—*Held :* the earlier will was restored, there being no intention shown by testatrix in the later one to revoke it.—*Re* ROBINSON, LAMB *v.* ROBINSON, [1930] 2 Ch. 332 ; 99 L. J. Ch. 431 ; 143 L. T. 593 ; 46 T. L. R. 542.

1662. *Add. Annotations :*—**Apld.** *Re* Robinson, Lamb *v.* Robinson, [1930] 2 Ch. 332. **Refd.** *Re* Hawksley's Settlement, Black *v.* Tidy, [1934] Ch. 384.

1664. *Add. Annotations :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615. **Refd.** *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n. ; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

1671. *Add. Annotation :*—**Consd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

1707a. ——.]—B., by his will, after appointing his sister W. & one S. exors. & trustees thereof, & after giving certain legacies & exercising certain powers of appointment therein more particularly referred to, appointed & devised his mansion house, lands, cottages & hereditaments known as Wick Episcopi unto & to the use of his trustees upon trust after payment thereout as therein mentioned to pay the residue of the rents & income thereof to his sister the said W. for her life, & after her death upon the trusts therein mentioned. After a further bequest of jewellery, plate & portraits so as to devolve as heirlooms with the said mansion house so far as the rules of law would permit by (*sic*) the person or persons for the time being entitled to the possession or receipt of the rents of the same mansion house, testator thereby further gave, appointed, devised & bequeathed all the rest & residue of his real & personal estate unto & to the use of his trustees to such uses, upon such trusts, & for such ends intents & purposes as the Wick estate might under the trusts of his will for the time being be held so far as the rules of law would permit. By a codicil dated August 4, 1927, after reciting that he was desirous of giving to his stepdaughter C. (pltf.) a residence in England, testator appointed, devised & bequeathed to her for her life his said house Wick Episcopi & all the furniture, books, linen, plate & effects therein or belonging thereto & also the land he occupied therewith. After testator's death in 1928 pltf. C. took out an originating summons to determine (*inter alia*) the question whether pltf. was entitled for her life to the whole or any & if so what part of the rents, profits & income arising out of the residuary real & personal estate of the testator or of the income of the proceeds of sale thereof, or whether deft. W. was entitled during her life to the said rents, profits & income or to some & what part thereof, or to whom the same were payable :—*Held :* testator intended by the codicil only to give certain defined property to pltf. for her life for the definite purpose, namely, the provision of a house in England, mentioned in the codicil & that the codicil could only be read as interpolating into the will an interest in favour of pltf. in respect of the property specifically mentioned in the codicil ; & therefore deft. W. was entitled during her life to the rents profits & income of testator's residuary real & personal estate, & the proceeds of sale thereof. Further, the jewellery, plate, etc., included in the gift of heirlooms contained in testator's mansion house at the date of his death, were in the events that had happened, to be enjoyed by deft. W. during her life ; & the excepted articles of plate were to be enjoyed by pltf. during her life.—*Re* BUND, CRUIKSHANK *v.* WILLIS, [1929] 2 Ch. 455 ; 99 L. J. Ch. 4 ; 142 L. T. 39.

1715. *Add. Annotations :*—**Refd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615 ; Smith *v.* Thompson (1931), 146 L. T. 14.

1801a. —— —— **Remainder stitched together.**]—Testatrix in 1921 had a will prepared by her solrs. in the usual way. In 1935, some two months before her death, she asked for the will & sent it to the solrs. She was then about 98 years old. It was noticed that the will had been cut & stitched, but as she was then ill, nothing was said about it. In fact two or three lines had been cut out of the will & the remainder stitched together again. There was no evidence when this had been done but there was evidence that the lines taken out were not of a dispositive character :—*Held :* the part cut out had been revoked & the remainder should be admitted to probate.—*In the Estate of* NUNN, [1936] 1 All E. R. 555 ; 105 L. J. P. 57 ; 154 L. T. 498 ; 52 T. L. R. 322 ; 80 Sol. Jo. 267.

PART X. SECT. 1, SUB-SECT. 7.—A. (a).

sa. *Will cut into two pieces.*]—Testator was a bachelor, & on his death there was found a duplicate original of his will with one paragraph cut out, the cutting severing the will into two pieces. There were no initials of testator on either portion, & there was no evidence that the will had been resigned, republished, or reattested :—*Held :* an entire revocation.—*Re* ANDERSON, [1933] O. R. 131 ; 1 D. L. R. 581.—CAN.

PART X. SECT. 1, SUB-SECT. 7.—B. (c) 1.

1859 viii. ——.]— LEFEBVRE *v.* MAJOR, [1930] S. C. R. 252 ; 2 D. L. R. 532 ; *revsg.*, [1929] 3 D. L. R. 248 ; 64 O. L. R. 43.—CAN.

1859 ix. ——.]—Upon a question whether the presumption of destruction *animo revocandi* had been overcome :—*Held :* the presumption was so attenuated by declarations made by testator, & by evidence of opportunity for removal of the will after testator's death, & by the circumstance that after his death money was stolen from his house, as to be negligible.—BODDY *v.* CARPENTER, [1931] [4 D. L. R. 927. O. R. 694.—CAN.

1915. *Add. Annotation :*—**Consd.** *In the Estate of* Birkby (1929), 73 Sol. Jo. 556.

1967. *Add. Annotation :*—*Generally*, **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

1967a. ——.]—*Re* HAWKSLEY'S SETTLEMENTS, BLACK *v.* TIDY, No. 3490a, *post.*

1978a. —— **Mistake as to legal rights of widower.**] —*In the Estate of* GREENSTREET (1930), 74 Sol. Jo. 188.

2008a. —— ——.]—*Re* BAKER. BAKER *v.* BAKER, No. 1651a, *ante.*

2068. *Add. Annotation :*—**Refd.** Goonewardene *v.* Goonewardene, [1931] A. C. 647.

2133. *Add. Annotation :*—**Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

2167. *Add. Annotation :*—**Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

Part XI.—Codicils.

2194. *Add. Annotation :*—**Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

2196a. ——.]—*Re* BUND, CRUIKSHANK *v.* WILLIS, No. 1707a, *ante.*

2246. *Add. Annotation :*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2248. *Add. Annotation :*—**Apld.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2249. *Add. Annotation :*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2249a. —— ——.]—By her will in 1920 testatrix, who died in the same year, gave the residue of her real & personal estate to her exors. upon trust to permit her husband to receive the rents & income thereof for his life, & directed that after his decease the trustees should sell & convert her residuary estate & should stand possessed of the net residue upon trust to pay & provide for thereout certain legacies. Then there was a direction that the surplus moneys remaining after payment of the legacies should be divided between seven named persons, the children of A., the children of W., & the two children of J., in certain proportions. By a codicil testatrix gave £1,000 upon trust to pay the income to E. for her life, & after her decease directed that the same should fall into her residuary estate & be divisible accordingly; she then revoked the gift by her will of the portion of her residuary estate to the two children of J., & directed that they should take no part of her residuary estate, &, in all other respects, she confirmed her will :—*Held :* in the absence of sufficient indication of intention to give the shares, the gift of which was so revoked, to the other residuary legatees, the effect of the revocation was that those shares were undisposed of.—*Re* FORREST, CARR *v.* FORREST, [1931] 1 Ch. 162; 100 L. J. Ch. 122; 144 L. T. 297.

2251. *Add. Annotation :*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2255. *Add. Annotation :*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

Part XII.—Legal Incidents of a Gift by Will.

2330a. —— —— ——.]—The legatee of a house, held by testator on a lease at a reserved rent higher than it could be let for after his death, cannot reject the gift of the lease & retain an annuity under the will, but must take the benefit *cum onere.*—TALBOT *v.* RADNOR (EARL) (1834), 3 My. & K. 252; 40 E. R. 96.

2339. *Add. Annotation :*—**Refd.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

2358. *Add. Annotation :*—**Refd.** *Re* Stillwell, Stillwell *v.* Stillwell, [1936] Ch. 637.

PART X. SECT. 3, SUB-SECT. 2.—C. (a).

2047 i. *General rule.*]—If a codicil framed to amount to a republication of a will is to have that effect, it is necessary that it should refer in its body to the will to which it is a codicil, & the fact that it appears in the same paper as the will itself to which it is sought to make it a codicil is not sufficient.—*In the Will of* ETESON (1927), 28 S. R. N. S. W. 119; 45 N. S. W. W. N. 6.—**AUS.**

PART X. SECT. 3, SUB-SECT. 3.—A.

2093 ii. ——.]—By sect. 5 of Ordinance No. 21 of 1844, of Ceylon, as by Wills Act, 1837 (c. 26), s. 34, the effect of confirming a will by a codicil of later date is to make a disposition in the will operate in the same way as it would have operated if the words of the will had been contained in the codicil.—GOONEWARDENE (M.) *v.* (E. M.), [1931] A. C. 647; 100 L. J. P. C. 145; 145 L. T. 7, P. C.—**CEYLON.**

PART X. SECT. 3, SUB-SECT. 3.—D.

2146 ii. ——.]—The codicil in question herein to the will of an insured held not to affect a prior declaration (made subsequently to the will) by which under sect. 102 of Insurance Act, 1925, a trust of the proceeds of the insurance policy was created in favour of the insured's wife. The republication of the will by the codicil did not necessarily make it operate for all purposes as if it had originally been made at the date of the republishing instrument; a contrary intention could be shown; &, in order to destroy the benefits which the insured's declaration had intended that the wife should acquire, a document clearly indicating his subsequent contrary intention must have been executed by him, & this the codicil did not do.—ROYAL TRUST CO. *v.* SHIMMIN, [1932] 3 W. W. R. 447; 46 B. C. R. 273; *affd.*, [1933] 3 D. L. R. 718; 47 B. C. R. 138.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

2189 iii. ——.]—A will & a codicil are invariably read together.—*Re* PARSONS, PARSONS *v.* PARSONS (1933), 7 M. P. R. 129.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.—A.

2356 vi. ——.]—A specific legacy of the proceeds of an agreement for sale of land is adeemed by the acceptance by the testator of a quit-claim deed from the purchaser.—*Re* CALVERT, [1928] 3 W. W. R. 42.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.—B. (a).

2373 ii. ——.]—By the devise of an estate, which testator has previously mortgaged in fee, nothing passes at law.—DE VEBER *v.* ANDREWS (1845), 4 N. B. R. (2 Kerr) 604.—**CAN.**

2378. *Add. Annotation :*—**Refd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

2395. *Add. Annotation :*—**Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409.

2438. *Add. Annotation :*—**Consd.** *Re* Warren, *v.* Warren, [1932] 1 Ch. 42.

2511a. —— ——.]—*Re* BACKHOUSE, WESTMINSTER BANK, LTD. *v.* SHAFTESBURY SOCIETY & RAGGED SCHOOL UNION, [1931] W. N. 168; 172 L. T. Jo. 10; 72 L. Jo. 79.

2541. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

2575. *Add. Annotations :*—*Generally*, **Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

Part XIII.—Conditions.

2636. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

2663. *Add. Annotation :*—**Apld.** *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67.

2665a. —— ——.]—Where testator makes a gift subject to a condition precedent, the fulfilment of which is rendered impossible by operation of law before the date of the will, the condition is void & the gift remains.—*Re* THOMAS'S WILL TRUSTS, POWELL *v.* THOMAS, [1930] 2 Ch. 67; 99 L. J. Ch. 286; 144 L. T. 64; 74 Sol. Jo. 201.

2666a. —— **Condition forbidding named person to come upon property.**]—A testator by his will devised the L. estate to his son upon condition that he made the same his home, & upon the further condition that he did not allow a named person to set foot upon the property: —*Held :* the conditions were not void for uncertainty or impossibility. There would be no difficulty in saying whether or not the named person had come upon the property; & the effect of his having come there in fulfilment of a duty would be a matter to be determined if & when it arose.—*Re* TALBOT-PONSONBY'S ESTATE, TALBOT-PONSONBY *v.* TALBOT-PONSONBY, [1937] 4 All E. R. 309; 54 T. L. R. 33; 81 Sol. Jo. 883.

2667. *Add. Annotations :*—**Consd.** *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254; *Re* Borwick, Borwick *v.* Borwick, [1933] Ch. 657; *Re* Tegg, Public Trustee *v.* Bryant, [1936] 2 All E. R. 878.

2686. *Add. Annotations :*—*As to* (2) **Consd.** *Re* May, Eggar *v.* May (1931), 47 T. L. R. 515; *Re* Borwick, Borwick *v.* Borwick, [1933] Ch. 657.

2689. *Add. Annotation :*—**Refd.** *Re* Knapp, Spreckley *v.* A. G., [1929] 1 Ch. 341.

2691. *Add. Annotation :*—**Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

2698. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2713. *Add. Annotation :*—**Apld.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2727. *Add. Annotation :*—**Distd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2730. *Add. Annotation :*—**Distd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2731. *Add. Annotation :*—**Apld.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2732a. —— ——.]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property :—*Held :* the condition being one in restraint of alienation except to a particular purchaser was void for repugnancy, & not binding upon the devisee. The death duties payable must therefore be borne entirely by P., the devisee.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198.

PART XII. SECT. 5, SUB-SECT. 2.—B. (d).

2c. *Direction to realise mortgage—Subsequent discharge of mortgage—Admption.*]—*Re* TODD, [1932] 4 M. P. R. 6.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 3.

2h. *Application to real & personal estate.*]—It is now settled that the doctrine of acceleration applies both to real & personal estate.—HARMAN *v.* ANDERSON, [1930] N. Z. L. R. 67.—**N.Z.**

PART XIII. SECT. 1. SUB-SECT. 2.

2611 v. ——.]—*Re* WRIGHT ESTATE. BURROWS *v.* HONEYSETTE, [1937] 3 W. W. R. 452.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—B

2708 li. ——.]—A devise to sons subject to a reservation that "no one of said sons shall have power to sell, etc., except to one or more of his brothers" is void for repugnancy.—*Re* DOHERTY, [1935] 3 D. L. R. 782; *affd. sub nom.* DOHERTY *v.* DOHERTY, [1936] 2 D. L. R. 180; 10 M. P. R. 286; 5 F. L. J. (Can.) 277.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 6.—A.

p i. —— *Condition as to amicable relations with wife.*]—Testator having provided for one of his sons, subsequently left a codicil revoking the provision, & substituting a sum of $70 a month until he was 35, when the original bequest was to be reinstated provided the son was then living amicably with his wife :—*Held :* not contrary to public policy.—*Re* JONES, ROYAL TRUST CO. *v.* JONES (No. 2) (1934), 49 B. C. R. 204.—**CAN.**

p ii. —— *Gift to mother of largest number of children.*]—A testator by his will made certain bequests & then directed his trustees to give the residue of his estate at the expiration of 10 years from his death "to the mother who has since my death given birth in Toronto to the greatest number of children as shown by the registrations under the Vital Statistics Act :—*Held :* not contrary to public policy & valid because (*a*) the word children in a will means legitimate children, & (*b*) there is no ground of public policy which recognises the undesirability of bearing children at too frequent intervals.—*Re* MILLAR, [1937] 1 D. L. R. 127; [1936] O. R. 554.—**CAN.**

2751. *Add. Annotation :—Generally,* **Reld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

2774. *Add. Annotation :—***Reld.** *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254.

2792. *Add. Annotation :—***Reld.** *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254.

2806. *Add. Annotations :—As to* (1) **Consd.** *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254 ; *Re* Borwick, Borwick *v.* Borwick, [1933] Ch. 657.

2810. *Add. Annotation :—***Reld.** *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254.

2825a. Condition against joining religious society requiring surrender of property—Effect of joining society requiring surrender of income only.]—Testator, who died in 1929, left his residue to his uncle's children as tenants in common, with the following proviso : " In case any child of my uncle shall at any time before becoming entitled to receive any share in my residuary estate have joined a religious body to which he or she shall have been or be under a religious obligation to give his or her own property, then I hereby direct & declare that unless such child shall quit & renounce such religious body within six calendar months after my death such child shall be deemed to have died in my lifetime." One of the children in 1927 joined a religious society which had a rule providing that the society should receive the income of the property of members, though every member retained a right to dispose of the capital. The child in question had not quitted or renounced the society within six months from the testator's death :—*Held :* the child's share of the residue was not forfeited.—*Re* Bell, Bell *v.* Agnew (1931), 47 T. L. R. 401.

2825b. Condition for conformity to Established Church.]—A testator left his property in England to his trustee upon trust for conversion & to pay out of the income an annuity of £2 per week to his daughter, or

PART XIII. SECT. 3, SUB-SECT. 6.—B.

2754 i. *Whether valid—Condition for divorce.*]—By her will testatrix directed her trustees to invest one-fourth share of her estate & to pay the net annual income to pltf., her daughter, E., during her life without power of anticipation, & after her death to hold such fourth share for the three other children of testatrix, & testatrix declared that if E. " shall survive her present husband or shall obtain a divorce " from her present husband " the trustees should hold such fourth share for E. absolutely. E. was committed to a mental hospital in 1921, & had continued to be a mentally defective person ever since. Her marriage with " the present husband " was dissolved in 1932 on the husband's petition :—*Held :* (1) on a general review of the dispositions of testatrix concerning E., the words " shall obtain a divorce " were not limited to proceedings in which pltf. should be the petitioner ; (2) provision made by a mother for her daughter upon the contingency of the latter either divorcing her husband or being divorced by him was not against public policy as being *contra bonos mores,* not being in itself likely to induce the mischief aimed at in *Lambert* v. *Dillon,* [1933] N. Z. L. R. 1059, & the cases therein cited.

Semble : there is a clear distinction between the encouragement of separation between the spouses, which is the voluntary act of one or both, & provision for the contingency of divorce, which in the final resort is the decree of the ct. made only upon proof of its legal justification.—Wacker *v.* Bullock, [1935] N. Z. L. R. 828.—**N.Z.**

PART XIII. SECT. 3, SUB-SECT. 6.—C. (a).

r i. —— *Condition subsequent—Annexed to gift of personalty.*]—A testamentary condition subsequent in general restraint of marriage, whether it forfeits or only reduces the gift, is, in the case of personalty, only *primâ facie* void ; &, if on the true construction of the will the intention is to benefit the object in whose favour the gift over is made & not to compel the celibacy of the first object of the gift, the condition takes effect.—*Re* Haythornthwaite Estate, [1930] 1 W. W. R. 58 ; 3 D. L. R. 235.—**CAN.**

r ii. ——.]—Under his will, C. devised all his immoveable property to his son " to be held & enjoyed by him for the term of his natural life . . . & after his death to my son's sons, namely . . . & my son's daughter, F., in equal shares absolutely, provided that, if the said F. should be married before the death of my son . . . , then & in such case she will not take any interest under my will " :—*Held :* the condition attached to the bequest to the son's daughter was not contrary to law or morality & therefore was valid.—Cohen *v.* Cohen (1931), I. L. R. 59 Calc. 102.—**IND.**

PART XIII. SECT. 3, SUB-SECT. 6.—C. (b).

2786 ix. —— ——.]—A settlement made by a Jewish mother contained trusts of real property in favour of her sons, who were of the Jewish faith, & of their widows, & of the children of her sons. It also contained a forfeiture clause in the following terms : " Provided nevertheless & notwithstanding anything herein contained if any person or persons entitled hereunder should marry out of their persuasion then any share or interest of him her or them shall go be applied, & be divided & distributed as if there had never been any such person " :—*Held :* the forfeiture clause was void for uncertainty.—Equity, Trustees, Executors & Agency Co., Ltd. *v.* Moss, [1931] Argus L. R. 281.—**AUS.**

2786 x. —— ——.]—Testator directed his trustees after payment of his debts, funeral & testamentary expenses to divide the whole of the assets of his estate into three equal parts, to pay two of them to his son for his own use absolutely & to pay the other part to his daughter for her own use absolutely. This direction was followed by a defeasance clause & gift over in the event of marriage with a member of the Roman Catholic Church :—*Held :* the interests taken by the children indefeasibly vested in them on the death of testator, &, accordingly, the defeasance clause was restricted in its operation to the period anterior to the vesting, that is to marriage in the lifetime of testator.—Saywell *v.* Saywell (1932), 32 S. R. N. S. W. 155 ; 49 N. S. W. W. N. 33.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 6.—D.

2803 i. *Whether valid—Condition not to live with or be under control of father.*]—A condition in a will having the effect of deterring a father from the performance of his parental duties, or constituting an attempt to interfere with the discretion of the ct. as to the custody & maintenance of its ward, is void as being opposed to public policy.—*Re* Ellis, Perpetual Trustee Co., Ltd. *v.* Ellis (1929), 29 S. R. N. S. W. 470 ; 46 N. S. W. W. N. 146.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 8.—D.

p i. —— *Or marrying Roman Catholic.*]—*Re* Jones, Jones *v.* Baxter (1929), 30 S. R. N. S. W. 26.—**AUS.**

sc. *Condition as to confirmation.*]—A will provided for the payment of certain legacies on the legatees becoming twenty-five years old, & also provided that the legacies should not be paid until the legatees had been confirmed as members of the Church of England, & that, should any of them attain the age of twenty-five years without having been so confirmed, then his legacy should be divided between the others who had been so confirmed & another legatee :—*Held :* the condition as to being confirmed was a condition precedent ; & that, if it was a condition subsequent, it was one which should not be disregarded as being against public policy, or, under the facts of the case, on the ground that its performance was impossible. Moreover, the fact that the legatee in question was so confirmed when thirty-one years old was not a substantial compliance with the condition.—*Re* Forbes, Harrison *v.* Commis, [1928] 3 D. L. R. 22 ; [1928] 1 W. W. R. 880 ; 22 Sask. L. R. 473.—**CAN.**

sd. *Condition against entering Roman Catholic convent.*]—On the construction of a forfeiture clause in a will :—*Held :* " in the event of her entering any Roman Catholic Convent or similar institution " meant a permanent assocn. with a convent as a member of the community, which assocn. could only be brought about by the taking of the final vows after periods spent first as a postulant & then as a novice. No forfeiture was incurred by children attending a Roman Catholic convent, school or institution as boarders.—*Re* Madore Estate (1936), N. L. R. 215. S. Af.

se. *Condition interfering with parental duties.*]—A testator, after devising property to his trustees for his son, John, for life, & thereafter for his son's children on their attaining the age of twenty-one years, or being females attaining that age or marrying, expressed the desire " that the children of my said son John shall be brought up in the Protestant faith & in the event of my wish not being complied with in this respect I hereby exclude

if she predeceased him the capital to be divided between her children in equal shares. The following condition was added: "I desire that my daughter & any children she may bear should at all times conform to & be members of the Established Church of England & at no time may any child of hers go to or be sent to any Roman Catholic school for education & if either my daughter or her children violate this my wish in any way then all the benefits accruing to her or them under this my will shall be considered as null & void," & there followed a gift over:—*Held:* (1) the first part of the condition requiring persons to conform to & be members of the Church of England was void for uncertainty, since it was open to grave doubt whether any particular act or omission in the future would bring about a forfeiture; (2) the second part of the condition requiring that "at no time may any child of hers go to or be sent to any Roman Catholic school for education" was void as a fetter upon the mother to do what she might think best for the welfare & education of her children. The condition was directed against sending the child to a Roman Catholic school & did not require that the child should not be brought up in or adopt the Roman Catholic faith; &, the mother having survived testator, the result would be to the detriment of the mother rather than the child.—*Re* TEGG, PUBLIC TRUSTEE *v.* BRYANT, [1936] 2 All E. R. 878; 80 Sol. Jo. 552.

2825c. Condition against sending child to Roman Catholic school.]—*Re* TEGG, PUBLIC TRUSTEE *v.* BRYANT, No. 2825b, *ante*.

2825d. Condition not to become or marry Roman Catholic.]—*Re* WRIGHT, PUBLIC TRUSTEE *v.* WRIGHT (1937), 54 T. L. R. 153.

2837a. Condition against association or marriage with named person.]—Testator devised & bequeathed one moiety of his residuary estate upon trust for conversion & investment & to pay the income to his wife during her life or widowhood, & subject thereto in trust for his two children named, a son & a daughter, in equal shares, but subject to a proviso in the case of the daughter that if she should intermarry with A. B. or live with him as his wife, or leave home with the intention of living with him or misconduct herself with him, or be delivered of a child or children of whom the said A. B. should be the father, then in any of those events any devise or bequest either residuary or otherwise under testator's will should be absolutely void & forfeited, & the daughter should be deemed to have died in his lifetime as a single woman. There was no gift over of the daughter's share upon any forfeiture for breach of the conditions:—*Held:* the conditions were not void for uncertainty, or as being *in terrorem*, for if a testator desires & expressly intends a gift to be revoked the absence of a gift over will not prevent the revocation from taking effect, & moreover the doctrine of *in terrorem* is only applicable to conditions in restraint of marriage & against disputing a will. Therefore, there was an intestacy as to the daughter's share, & the next-of-kin, being all *sui juris*, could agree so as to defeat the proviso.—*Re* HANLON, HEADS *v.* HANLON, [1933] Ch. 254; 102 L. J. Ch. 62; 148 L. T. 448; 76 Sol. Jo. 868.

2873. *Add. Annotation:*—**Refd.** R. *v.* Lamb (1934), 150 L. T. 519.

2898a. —— Effect of disentailing estates.]—*Re* WATSON, CULME-SEYMOUR *v.* BRAND, No. 7034a, *post*.

2961. *Add. Annotations:*—**Apld.** Patton *v.* Toronto General Trusts Corpn., [1930] A. C. 629. **Consd.** *Re* May, Eggar *v.* May, [1932] 1 Ch. 99.

2961a. —— ——.]—Testator, who died in 1919, bequeathed to his grandson, applt., an annuity, provided that he was & proved himself to be of the Lutheran religion; until he was twenty-five years of age the annuity was to be paid to his mother for his benefit. In 1917, when the will was made, applt. was only twelve years of age, & testator knew that applt.'s mother was a Roman Catholic, & that he was being brought up in that religion. According to the law of Germany, where applt. & his parents were domiciled, applt. could not effectively change his religion without their consent until he was twenty-one years of age. On reaching that age he proved that he had become of the Lutheran religion, & he had since remained so:—*Held:* the intention of testator was that applt. should have an opportunity of choosing his religion, & as he was entitled in law to postpone his choice until he was twenty-one, but not beyond, he was entitled to receive the annuity, also arrears from the date of testator's death, as until he reached twenty-one his enjoyment of the annuity was free from condition.—PATTON (W. R.) *v.* TORONTO GENERAL TRUSTS CORPN., [1930] A. C. 629; 143 L. T. 572; *sub nom. Ite* PATTON, PATTON *v.* TORONTO GENERAL TRUSTS CORPN., 99 L. J. P. C. 213, P. C.

Annotation:—**Refd.** *Re* May Eggar *v.* May, [1932] 1 Ch. 99.

2961b. —— ——.]—Testatrix, who died in 1915, bequeathed a sum of money to trustees to

all & every or any the children or child of my said son John from taking any benefit under the devise . . .":—*Held:* the condition was void, as it would operate to interfere with a parent in the exercise of his parental duty in the religious education of his children.—PERPETUAL TRUSTEE CO. *v.* HOGG (1936), 36 S. R. N. S. W. 61; 53 N. S. W. W. N. 67.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 8. —G.

3k. *Condition as to keeping testator out of lunatic asylum.*]—Testator's will contained the following residuary clause:—"I bequeath the remainder of my property to my brother ——, on condition that my friends keep me out of a lunatic asylum, but if they allow me to be put into a lunatic asylum, I do then bequeath to the British Home & Foreign Bible Society the sum of seven hundred pounds & to my brother ——, I bequeath the remainder of my property." About eighteen months after the execution of the will, & five years prior to his death, testator had been committed to a lunatic asylum on the information of a neighbour & had been detained for a period of one month:—*Held:* the condition imposed by testator was valid, & in the events which had happened the gift over to the British & Foreign Bible Society took effect.—*Re* ARCHBOLD, MCKEE *v.* ARCHBOLD, [1933] N. I. 47.—**IR.**

PART XIII. SECT. 4, SUB-SECT. 3.

2924 l. *Where period prescribed—Whether court will extend time.*]—Where testator's object in imposing conditions as to time was to provide for the distribution of his estate within a reasonable time & to relieve his trustee from responsibility in the event of a claim being made after distribution, a failure in strict performance of the condition due to circumstances beyond the control of the claimant will not disentitle such claimant to participate in the distribution of the estate if the parties can be put in substantially the same position as they would have been in had the conditions been performed within the proper time.—ELCOCK *v.* CAMPBELL, [1931] N. Z. L. R. 1060.—**N.Z.**

accumulate the income until her nephew should attain the age of 24 years & afterwards to pay him the income, provided that he should not be a Roman Catholic at her death, or, if he was, that he should cease to be one within 12 months thereafter, the payments to continue until he should become a Roman Catholic, with a gift over if the gift failed. At the death of testatrix the nephew was a child of about nine years of age. He was the son of a Roman Catholic & was being brought up in that faith. In 1917 NEVILLE, J., decided (No. 2961) that within the meaning of the will the child was not a Roman Catholic at the death of testatrix & that he was to have an opportunity of making a choice in the matter when he attained 21 years of age. In 1931, when the legatee was 24 years of age & had never wavered in his adherence to the Roman Catholic Church, the trustees applied for a decision of the question whether the gift over had taken effect:—*Held:* although the proviso as to the child's ceasing to be a Roman Catholic within 12 months was void, yet, as the will provided that even after the age of 24 years the legatee was to benefit only until he became a Roman Catholic, & as this provision included his being a Roman Catholic at that age, the gift over took effect.—*Re* MAY, EGGAR *v.* MAY, [1932] 1 Ch. 99; 101 L. J. Ch. 12; 146 L. T. 56; 48 T. L. R. 3; 75 Sol. Jo. 741, C. A.

3095. *Add. Annotation:*—**Refd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

Part XIV.—Lapse.

3117. *Add. Annotation:*—**Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

3120. *Add. Annotation:*—**Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

3131a. —— ——.]—By her will, after giving life interests to her parents, a testatrix devised & bequeathed her real & personal estate to her husband, but if he should have predeceased both her parents, then to her husband's children, whether by herself or his first wife. The husband survived both the parents, but predeceased testatrix. Testatrix left no issue of her own, but at her death there were six children of her husband's first marriage living:—*Held:* there was no implication of a gift over to those children on failure of the gift to the husband by lapse in any event, & therefore the residuary estate of testatrix was undisposed of & passed to her next of kin.—*Re* GRAHAM, GRAHAM *v.* GRAHAM, [1929] 2 Ch. 127; 98 L. J. Ch. 291; 141 L. T. 197.

3131b. —— —— **Trust in settlement for payment for legacies.**]—A settlement, without reciting any will, declared trusts for (*inter alia*) payment of the legacies bequeathed by the settlor's "said will," dated Sept. 24, 1904. A will so dated was then in existence. The ct., in certain proceedings, pronounced the trusts which were declared by the settlement to take effect after the settlor's death to be irrevocable whether the will should be revoked or not. The will was afterwards revoked. Two legatees predeceased the settlor:—*Held:* as the legatees had predeceased the settlor, the sums representing the legacies were not payable out of the funds then subject to the settlement to the legatees' personal representatives.—*Re* HALL'S SETTLEMENT TRUSTS, SAMUELL *v.* LAMONT, [1937] Ch. 227; [1937] 1 All E. R. 571; 106 L. J. Ch. 111; 156 L. T. 269; 53 T. L. R. 382; 81 Sol. Jo. 179.

3143a. —— ——.]—*Re* BAKER, STEADMAN *v.* DICKSEE (1934), 78 Sol. Jo. 336, C. A.

3215. *Add. Annotation:*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

3217a. ——.]—A testator by his will gave a half share of his residuary trust fund to the children of S. M. C. who should be living at his death, provided always that if any child of S. M. C. should die in the lifetime of testator, whether before or after the date of his will, leaving issue living at his death, the share which such child would have taken if he or she had survived testator should be held in trust for his or her personal representatives as part of his or her personal estate. No child of S. M. C. survived testator. One child, a daughter, C. S. C., married W. A. She died intestate in the lifetime of testator, leaving her husband, W. A., who became her personal representative & beneficially entitled to the whole of her estate, & a daughter, J. W. W. A., having made certain dispositions by his will in favour of J. W., also died in the lifetime of testator. J. W. survived testator:—*Held:* as W. A. died in the lifetime of testator there was a lapse & the half share of the residuary trust fund went back into testator's estate.—*Re* COUSEN'S WILL TRUSTS, WRIGHT *v.* KILLICK, [1937] Ch. 381; [1937] 2 All E. R. 276; 106 L. J. Ch. 261; 157 L. T. 32; 53 T. L. R. 490; 81 Sol. Jo. 317.

3226. In para. before "*Held*," add:—

"On a summons to determine the effect of the above-mentioned disposition with regard to testator's own marriage settlement fund & his residuary real & personal estate":—

Add. Annotation:—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

3244. *Add. Annotation:*—**Consd.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

3250. *Add. Annotation:*—**N.F.** *Re* Taylor, Taylor *v.* Taylor (1931), 75 Sol. Jo. 393.

3253a. —— —— ——.]—Testatrix by her will gave, devised & bequeathed all her residuary real & personal estate to a trustee upon trust for conversion, & to divide the net proceeds of such conversion equally between her four step-children named. The will contained a proviso directing that the share to which A., one of her step-daughters, "shall become entitled," should be retained by the trustee upon trust to invest the same, & to apply the income thereof or so much as he should in his

discretion think fit towards the maintenance or benefit of A. during her life. & to accumulate the residue of the income (if any), & after the death of A. the said share settled upon her & the investments & income thereof, & any unapplied accumulations were to be equally divided between the other three step-children. A. & another step-child named in the will predeceased testatrix:—*Held:* as A. did not live to become entitled to any share in the residue, the gift lapsed, the settlement failed, & there was an intestacy as to one-half of the residue.—*Re* TAYLOR, TAYLOR *v.* TAYLOR, [1931] 2 Ch. 237; 100 L. J. Ch. 309; 145 L. T. 443; 75 Sol. Jo. 393.

3261. *Add. Annotation:*—**Folld.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

3329. *Add. Annotation:*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

3330. *Add. Annotation:*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3332. *Add. Annotation:*—**Apld.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3334. *Add. Annotation:*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3336a. —— ——.]—Testatrix, who died in 1873, by her will made in 1866 gave her residuary estate in trust for her four daughters A., B., C. & D., or such of them as should be living at her death in equal shares. By a codicil the testatrix revoked her will so far as regarded the bequest to B., & substituted therefor a legacy of £100, & in other respects confirmed her will. Each of the four daughters, including B., survived testatrix: —*Held:* whether or not the bequest in trust for testatrix's four daughters was, in the technical sense of the phrase, a class gift, the share bequeathed in favour of B. did not lapse, but the whole of the residue went to the other three daughters.—*Re* WOODS, WOODS *v.* CREAGH, [1931] 2 Ch. 138; 100 L. J. Ch. 385; 145 L. T. 206.

3349. *Add. Annotation:*—**Expld. & Apld.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

3352. *Add. Annotations:*—**Folld.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440. **Refd.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

3354a. —— ——.]—*Re* MAYNARD, PEARCE *v.* PEARCE (1930), 69 L. Jo. 440; 169 L. T. Jo. 519; [1930] W. N. 127.

3357. *Add. Annotation:*—**Apld.** *Re* Taylor, Taylor *v.* Taylor (1931), 75 Sol. Jo. 393.

Part XV.—Powers.

3390. *Add. Annotation:*—*Generally*, **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

3448. *Add. Annotation:*—**Refd.** *Re* Hawksley's Settlement, Black *v.* Tidy, [1934] Ch. 384.

3452. *Add. Annotation:*—*As to* (2) **Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3453a. —— ——.]—Cheques written in 1833 by deceased upon his bankers, but not intended to have effect until after his death, pronounced for as part of the testamentary disposition of the deceased; he having in 1834 formally executed a will, disposing of the whole of his property, & containing a full clause of revocation.—GLADSTONE *v.* TEMPEST (1840), 2 Curt. 650.

Annotations:—**Consd.** Smith *v.* Thompson (1931), 146 L. T. 14. Lowthorpe-Lutwidge *v.* Lowthorpe-Lutwidge, [1935] P. 151.

3456. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3457. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3457a. —— ——.]—Although a general revocatory clause in a will does not necessarily revoke an earlier testamentary exercise of a power of appointment it requires cogent evidence to show that that effect is entirely unreasonable; otherwise a revocation of the appointment will result. Apart from cases in which strong evidence is forthcoming rebutting revocation, any doubt which may have previously existed of this effect of a general revocatory clause upon the previous exercise of a power by an earlier paper must be regarded as now set at rest by the decision in *Re Kingdom, Wilkins* v. *Pryer*, No. 3457.—LOWTHORPE-LUTWIDGE *v.* LOWTHORPE-LUTWIDGE, [1935] P. 151; 104 L. J. K. B. 71; 153 L. T. 103.

3459a. —— ——.]—Where there were two testamentary papers, of which the first, a duly executed will (*inter alia*), exercised a special power of appointment under an ante-nuptial settlement, & the second, also a duly executed will, purported to revoke all former wills without expressly dealing with the power of appointment:—*Held:* the ct. could take into account the surrounding circumstances & treat the exercise of the power of appointment as unrevoked.

The ct. made a grant of letters of administration, with the two papers annexed as the last will of testatrix, & declared that the revocatory clause did not in fact revoke the earlier appointment.—SMITH *v.* THOMPSON (1931), 146 L. T. 14; 47 T. L. R. 603; 75 Sol. Jo. 555.

Annotation:—**Distd.** Lowthorpe-Lutwidge *v.* Lowthorpe-Lutwidge, [1935] P. 151.

3469. *Add. Annotation:*—**Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

Part XVI.—Construction.

3483. *Add. Annotation :—Generally,* **Refd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

3490a. —— ——.]—(1) The ct. of Probate, in considering whether certain wills should be admitted to probate, expressed an opinion as to how the wills should be construed. In arriving at that opinion the ct. referred to matters which would have been inadmissible in a ct. of construction on a question of construction & the order for probate did not contain any finding on the question of construction. In view of the form of the order, there was no opportunity of appealing from it in the case of some of the parties who would be affected by the opinion expressed on construction if that opinion was binding on them :—*Held :* the opinion expressed by the ct. of Probate did not bind the Chancery Ct. before which the question of construction ultimately came.

(2) The testatrix, in a will executed by her in 1927, described the document as her " last will & testament " & referred in it to a will of 1922 as a " cancelled will." She also wrote " cancelled " on the will of 1922 :—*Held :* these words by themselves were not sufficient to effect a complete revocation of the 1922 will & a codicil to it of 1925, but the question whether there had been revocation must depend on the construction of the 1927 will as a whole.

(3) It being found, as a matter of construction, that the provisions of the 1927 will were either entirely inconsistent with the provisions of the 1922 will & the codicil or merely repeated the provisions therein contained :—*Held :* the 1972 will rendered ineffective the whole of the provisions of the 1922 will & the codicil.

(4) If an absolute gift or appointment is made by a testator in one testamentary document to one person & the subject of the gift or appointment is then given or appointed by a subsequent document to a second person & the second gift or appointment fails to take effect, the doctrine of dependent relative revocation does not apply in the absence of evidence that the testator intended that the person first benefited should take if the second person could not, & the first gift or appointment does not become operative.—*Re* HAWKSLEY'S SETTLEMENTS, BLACK *v.* TIDY, [1934] Ch. 384 ; 103 L. J. Ch. 259 ; 151 L. T. 299 ; 50 T. L. R. 231.

3502. *Add. Annotations :—As to* (4) **Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. *As to* (4) **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., [1933] A. C. 402 ; *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3515. *Add. Annotation :—***Refd.** *Re* Monro's Settlement, Monro *v.* Hill, [1933] Ch. 82.

3516. *Add. Annotations :—***Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551 ; Macleay *v.* Treadwell, [1937] A. C. 626.

3554. *Add. Annotation :—***Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

3571. *Add. Annotation :—Generally,* **Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

3590. *Add. Annotation :—***Refd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

3592. *Add. Annotation :—As to* (3) **Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3609. *Add. Annotations :—As to* (1) **Apld.** *Re* Gowenlock, Public Trustee *v.* Gowenlock (1934), 177 L. T. Jo. 95. *As to* (2) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112. *As to* (3) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112. *As to* (4) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

3624. *Add. Annotation :—***Refd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

3625. *Add. Annotation :—***Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

3650. *Add. Annotation :—Generally,* **Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

3672. *Add. Annotation :—As to* (3) **Refd.** British S.S. Owners' Association *v.* Chapman (R.) & Sons (1933), 50 T. L. R. 159.

3674. *Add. Annotation :—***Refd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

3684. *Add. Annotation :—As to* (3) **Refd.** *Re* Messenger's Estate, Chaplin *v.* Ruane, [1937] 1 All E. R. 355.

3707. *Add. Annotation :—***Refd.** Jagmohan Singh *v.* Pandit Sri Nath (1930), 46 T. L. R. 586.

3715. *Add. Annotation :—***Apld.** A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. **Consd.** *Re* Cohen's Will Trusts, Cullen *v.* Westminster Bank, Ltd., [1936] 1 All E. R. 103. **Apld.** *Re* Gatti's Voluntary Settlement Trusts, De Ville *v.* Gatti, [1936] 2 All E. R. 1489. **Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

3741. *Add. Annotation :—As to* (1) **Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

3743. *Add. Annotation :— As to* (1) **Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

3781. *Add. Annotation :—***Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3822a. ——.]—Testator devised & bequeathed the residue of his estate to the Public Trustee upon trust for sale & conversion & to pay one-half of the net income arising from the fund so created to R. & the other half to T., & " from & after their decease " to pay the principal as well as the income to a specified charity. R. predeceased testator. The question arose whether there was an in-

PART XVI. SECT. 3, SUB-SECT. 1.

1 i. —— *Condition relating to religion of donee.*]—*Re* PATTON, [1929] 3 D. L. R. 459 ; 63 O. L. R. 655.—**CAN.**

so. *Whether date of codicil.*]—A codicil does not in all cases operate to make the will read as if made at the date of the codicil. The intention of testator is an important element.—ROYAL TRUST CO. *v.* SHIMMIN, [1933] 3 D. L. R. 718 ; 47 B. C. R. 138.—**CAN.**

PART XVI. SECT. 4, SUB-SECT. 4.—A. (a).

3594 xiv. ——.]—*Re* RUMNEY'S ESTATE (1925), 21 Tas. L. R. 3.—**AUS.**

testacy as regards R.'s share, & if not, whether it was payable, both capital & income, to the charity or whether R.'s share of income was payable to T. for her life :—*Held :* there was no intestacy. The clear intention of testator was to benefit both R. & T. &, on the true construction of the will, the gift over to the charity did not take effect till the death of both the annuitants. The surviving annuitant was entitled therefore to the whole of the income from the fund.—*Re* RAGDALE, PUBLIC TRUSTEE *v.* TUFFILL, [1934] Ch. 352 ; 103 L. J. Ch. 181 ; 150 L. T. 459 ; 50 T. L. R. 159 ; 78 Sol. Jo. 48.

3876. *Add. Annotation :*—**Consd.** Lowthorpe-Lutwidge *v.* Lowthorpe-Lutwidge, [1935] P. 151.

3890. Add the following para. :—

Family repute admissible to show that a legatee was the godson of testator.

3910. *Add. Annotations :*—**Consd.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307; *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Refd.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preacher's Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

3976. *Add. Annotation :*—**Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4043. *Add. Annotation :*—**Refd.** Jagmohan Singh *v.* Pandit Sri Nath (1930), 46 T. L. R. 586.

4049. *Add. Annotations :*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420. **Refd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128 ; *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446.

4054. *Add. Annotations :*—**Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465. **Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

4074. *Add. Annotation :*—**Consd.** *Re* Thompson, Public Trustee *v.* Husband, [1936] 2 All E. R. 141.

4106. *Add. Annotation :*—**Consd.** Rooke, *Re*, Jeans *v.* Gatehouse, [1933] Ch. 970.

4110. *Add. Annotation :*—**Consd.** Price *v.* Gould (1930), 143 L. T. 333.

4141a. Word used inaccurately.]—*Re* RIDGE, HANCOCK *v.* DUTTON, No. 6754a, *post.*

4179. *Add. Annotation :*—**Refd.** *Re* Recknell, White *v.* Carter, [1936] 2 All E. R. 36.

4181. *Add. Annotation :*—**Refd.** *Re* Recknell, White *v.* Carter, [1936] 2 All E. R. 36.

4183. *Add. Annotation :*—**Refd.** *Re* Recknell, White *v.* Carter, [1936] 2 All E. R. 36.

4184. *Add. Annotation :*—**Refd. Blackwell *v.* Blackwell, [1929] A. C. 318.**

4185. *Add. Annotation :*—**Refd.** *Re* Recknell, White *v.* Carter, [1936] 2 All E. R. 36.

4186a. ——.]—A testatrix by her will made in 1902, when she was living in Isleworth, after giving certain specific & monetary legacies directed that " all other money invested or in the London & County Bank " should be divided among the persons therein named. Testatrix, who had not had an account with the London & County Bank for many years, died in 1934, at Bexhill, where she had been living for some years :—*Held :* upon a proper construction of the will & in the circumstances of the case the words " invested or in the London & County Bank " were mere words of enumeration & not qualifying words.—*Re* RECKNELL, WHITE *v.* CARTER, [1936] 2 All E. R. 36 ; 80 Sol. Jo. 406.

4229. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

4241a. ——.]—A testator directed his trustees to convert his property & invest the proceeds, & then went on : " & I declare that the said trustees or trustee may vary the said stocks, funds, shares & securities at their or his discretion, & shall pay the moneys & the investment for the time being representing the same to my said wife during her life upon trust for all my children or any child constituted a residuary

PART XVI. SECT. 9, SUB-SECT. 1.—A.

3823 i. *Will construed to avoid intestacy—Property not acquired at date of will.*]—*Re* GRAZEBROOK, CHASE *v.* LAYTON, [1928] V. L. R. 75.—**AUS.**

PART XVI. SECT. 9, SUB-SECT. 3.—B.

ss. *Gift to Hindu female.*]—In the case of a gift to a Hindu female, there is no presumption either that testator did not mean what he said, or that words are not to be given their ordinary meaning unless further words are added which, by tautology or emphasis, make it certain that they mean what they express.—PRAMATHANATH SARKAR *v.* SUPRAKASH GHOSH (1930), I. L. R. 58 Calc. 77.—**IND.**

PART XVI. SECT. 10, SUB-SECT. 2.—B. (a).

3946 vii. ——.]—Words of a will must be interpreted in their strict & primary sense when there is nothing in the context of the will to suggest that they were used in any other sense.—*Re* HOOPER, HOOPER *v.* TORONTO GENERAL TRUSTS CORPN., [1936] 3 D. L. R. 545 ; O. R. 533 ; *affd. sub nom. Re* HOOPER, HAMM *v.* HOOPER, [1937] 1 D. L. R. 803 ; S. C. R. 352.—**CAN.**

PART XVI. SECT. 10, SUB-SECT. 2.

ss. *Will of Indian testator.*]—Too rigid a construction of the English language should not be applied to the will of an Indian testator.—INDIRA RANI GHOSE *v.* AKHOY KUMAR GHOSE (1932), I. R. 59 Ind. App. 419, P. C.—**IND.**

PART XVI. SECT. 10, SUB-SECT. 2.—C.

4046 i. —— *Testator inops concilii.*]—*Re* SPLAN (Alta.), [1929] 4 D. L. R. 405.—**CAN.**

PART XVI. SECT. 10, SUB-SECT. 2.—E. (d).

4085 ii. —— *Effect of Maori customary marriage.*]—Where the will of a Maori created (*inter alia*) a trust to pay income to his wife " for her lifetime or so long as she shall remain unmarried " there is no cesser of the wife's interest upon her contracting a sexual relationship known as " Maori customary marriage." In any event, upon the facts the evidence did not disclose that testator had used the word " unmarried " other than in its ordinary sense.—*Re* TAMAHAU MAHUPUKU, THOMPSON *v.* MAHUPUKU, [1932] N. Z. L. R. 1397.—**N.Z.**

PART XVI. SECT. 10. SUB-SECT. 5.

sp. *When later words prevail.*]—Application of rule that where a testamentary gift has been modified by a subsequent clause in a will or is in conflict therewith, the latter cause controls.—DINSMORE *v.* DINSMORE (1936), 11 M. P. R. 196 ; 6 F. L. J. (Can.) 196.—**CAN.**

PART XVI. SECT. 10, SUB-SECT. 6.

f i. —— *Clerical error.*]—In construing a will the ct. goes far to discover the intention of the testator, & if it can be discovered from the will itself & the surrounding circumstances a clerical error will be treated as such & the apparent intention given effect to.—*Re* ZUROWSKI, [1928] 1 D. L. R. 357 ; 22 Sask. L. R. 249 ; [1928] 3 W. W. R. 745.—**CAN.**

f ii. —— *Omission of beneficiary.*]—In the residuary clause of a will which bore every evidence of having been prepared with great care & professional skill testator expressed his intention to dispose of all the residue of his estate by gifts which were expressed to be of " one-eighth " ; but the words " one-eighth " appeared only seven times :—*Held :* there was an intestacy as to the one-eighth share of the residue ; the omission of the name of the beneficiary of this share was clearly due to accident or mistake, & the ct. should not hazard a speculation as to the name.—*Re* MCKITTRICK ESTATE, [1933] 3 W. W. R. 536 ; 41 Man. L. R. 454 [1934] 1 D. L. R. 422.—**CAN.**

who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry & if more than one in equal shares." He then empowered the trustees, after the death of his wife or previously by her direction, to raise any sums not exceeding half the expectant share of any child for his or her advancement, & to apply the income of each child's expectant share for maintenance after the death of his wife; & if no child, being a son, should attain twenty-one, or, being a daughter, attain that age or marry, the fund was given over after the death of the widow: —*Held:* the widow took a beneficial interest for life in the fund.—GREENWOOD *v.* GREENWOOD (1877), 5 Ch. D. 954; 47 L. J. Ch. 298; 37 L. T. 305; 26 W. R. 5; 21 Sol. Jo. 630, C. A.

Annotation:—**Refd.** Smith *v.* Crabtree (1877), 6 Ch. D. 591.

4375a. Uncertain time of distribution.]—Testator by his will, devised his residuary real estate to his exors. upon trust to pay the income subject to a life interest in part for testator's widow: "To such of my children from time to time as to my exors. shall appear to be most in need the payments to be at the absolute discretion of my exors. If at any time it appears to my trustees that none of my children are in need of assistance but are all unembarrassed financially then after the death of my wife my trustees may divide the estate among my children then living in such proportions as to them shall seem fit." The wife & eleven children survived testator, & the wife & four children died subsequently. One of the children applied to have various questions of construction arising under the will determined by the ct., & in particular the question whether the trustees were not bound to make an immediate division & distribution of the corpus of the estate:—*Held:* the trustees were at liberty to distribute the estate among the children living at the time of such distribution, but only if & when it should appear to them that none of the children were in need of assistance, & all were unembarrassed financially; until the time for such distribution should have arrived the trustees should pay the income from the estate from time to time to such of the children of testator as to them appeared most in need.—MAGEE *v.* MAGEE, [1936] 3 All E. R. 15, P. C.

4385a. No subject of disposition mentioned.]—By his will, which was on a printed form, a testator appointed E. A. C. to be his exor. After providing for the payment of testator's debts, funeral & testamentary expenses, the will proceeded: "I give & bequeath to E. A. C.":—*Held:* upon a consideration of testator's intention expressed in the will, E. A. C. was beneficially entitled to the whole of testator's estate.—*Re* MESSENGER'S ESTATE, CHAPLIN *v.* RUANE, [1937] 1 All E. R. 355; 81 Sol. Jo. 138.

4392a. Gift to named person for distribution among political bodies to be selected.]—Testator by his will bequeathed 4 per cent. of his residuary estate to H. S. "to be by him distributed amongst such political federations or bodies in the United Kingdom having as their objects or one of their objects the promotion of Liberal principles in politics as he shall in his absolute discretion select & in such shares & proportions as he shall in the discretion think fit." H. S. stated that he was able to ascertain all the bodies in the United Kingdom that fell within the description of the bequest:—*Held:* no question of a charitable bequest arose; there was a class of beneficiaries capable of ascertainment in a specified area; the bequest was not void for uncertainty; there was no trust for the promotion of Liberal principles; & the bequest was valid.—*Re* OGDEN, BRYDON *v.* SAMUEL, [1933] Ch. 678; 102 L. J. Ch. 226; 149 L. T. 162; 49 T. L. R. 341; 77 Sol. Jo. 216.

Compare CHARITIES, Vol. VIII., pp. 293, 294.

4419. *Add. Annotation:*—**Refd.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440.

4432. *Add. Annotation:*—*As to* (3) **Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

4437. *Add. Annotation:*—**Refd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206.

4443. *Add. Annotation:*—**Refd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

4564. *Add. Annotations:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14; *In the Estate of* Musgrave, Tidy *v.* Musgrave, [1934] Ch. 402, n.; *Re* Hawksley's Settlement, Black *v.* Tidy (1934), 151 L. T. 299.

4607. *Add. Annotation:*—**Distd.** *Re* Jackson, Beattie *v.* Murphy, [1933] Ch. 237.

4619. *Add. Annotation:*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

PART XVI. SECT. 12, SUB-SECT. 1.

4385 xiii. ——.]—*Re* GIRVIN ESTATE (1932), 40 Man. L. R. 481.—**CAN.**

PART XVI. SECT. 14, SUB-SECT. 4.

o i. —— ——.]—On determining whether the devises & bequests in the will in question herein were to be paid free of probate & succession duties:—*Held:* the evidence of two legatees of their opinion of testatrix' intention was inadmissible, since it did not fall within the "equivocation rule."—*Re* DIXON ESTATE, [1935] 3 W. W. R. 118; *on appeal*, [1936] 1 W. W. R. 383; 1 D. L. R. 593; 50 B. C. R. 285.—**CAN.**

4534 i. —— *Words used in peculiar sense—Evidence of customary usage by testator.*]—Where the words of a devise or bequest in their primary sense, when applied to the circumstances of the family & the property, make the devise or bequest insensible, collateral facts may be resorted to in order to show that in some secondary sense of the words & one in which testator meant to use them, the devise or bequest may have a full effect.—*Re* CREAMER ESTATE, [1932] 3 W. W. R. 621.—**CAN.**

4537 i. —— *To translate words of will.*]—In determining the meaning of expressions in a will written in a language other than English, preponderating weight should be given to the evidence of persons who are not merely skilled in the use of that language, but have presumably a sounder judgment of the verbal nuances of that tongue under the conditions of life of the testator, with which they are familiar, than can be imputed to conclusions from the study of dictionaries.

Arrière neveux," as used in the will in question herein, held to mean both grand-nephews & grand-nieces, & not posterity or descendants generally.—*Re* BRULÉ, [1928] 1 W. W. R. 308.—**CAN.**

4537 ii. —— —— *Incorrect translation filed.*]—Where a will is in a foreign language the probate copy of which is an incorrect translation, the Ct. of Equity will not look at the correct translation in order to construe the will, the proper course being to apply to the Probate Ct. to have the translation corrected.—*Re* KLEINSANG (1928), 28 S. R. N. S. W. 455; 45 N. S. W. W. N. 123.—**AUS.**

PART XVI. SECT. 14, SUB-SECT. 8.—C. (a) i.

4629 iv. ——.]—Testator, who was ninety-one years of age & seriously ill, made his last will, & thereby made certain bequests to the children of his late sister Sarah Ann Baker. Testator had a sister Sarah Baker & a niece Sarah Ann Bacon (*née* Baker). In order to clear up the difficulty caused by the misdescription it was proposed to tender evidence of testator's verbal instructions for his will & of the corre-

4653a. ——.]—*Re* JACKSON, BEATTIE *v.* MURPHY, No. 6708*a*, *post*.

4684a. —— —— **"War Loan."**]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

4691. *Add. Annotation:—As to* (1) **Refd.** *Re* Gowenlock, Public Trustee *v.* Gowenlock (1934), 177 L. T. Jo. 95.

4708. *Add. Annotation:—***Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

4715a. ——.]—*Re* GOWENLOCK, PUBLIC TRUSTEE *v.* GOWENLOCK (1934), 177 L. T. Jo. 95.

4834a. —— ——.]—*Re* GOWENLOCK, PUBLIC TRUSTEE *v.* GOWENLOCK (1934), 177 L. T. Jo. 95.

4862. *Add. Annotation:—* **Refd.** British S.S. Owners' Association *v.* Chapman (R.) & Sons (1933), 50 T. L. R. 159.

4865. *Add. Annotation:—***Refd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

4895. *Add. Annotation:—As to* (1) **Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

4911. *Add. Annotation:—***Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4921a. Money invested in Swansea Harbour Trust—Statutory substitution of Great Western Railway Stock.]—The undertaking of the Swansea Harbour Trustees was vested in the Great Western Railway Co. by the Great Western Railway (Swansea Harbour Vesting) Act, 1923, which provided that stock of the Great Western Railway should be issued to holders of stock of the trustees in substitution therefor. Sect. 12 of the Act provides: "Stock of the co. substituted by virtue of this Act for any stock of the Trustees . . . shall be held upon & subject to the same trusts liens charges powers & other legal or equitable rights privileges & restrictions as affected the stock . . . for which by virtue of this Act the stock of the co. is substituted . . . & any reference in any Act of Parliament deed will codicil book document instrument or writing to any such stock . . . shall be deemed to be a reference to the stock of the co. . . . by virtue of this Act substituted therefor":—*Held:* the latter part of the sect. was not restricted in meaning by regard to the first part, & it applied to any reference to stock of the trustees in any "document instrument or writing" in existence when the Act of 1923 came into force, even though the "document instrument or writing" was not then effective to create trusts liens charges powers or other legal or equitable rights privileges or restrictions.

By his will made in 1913 testator bequeathed "the sums of £3,500 & all other moneys that I may at my death possess invested in the Swansea Harbour Trust" upon certain trusts. In 1923 testator received, pursuant to the Act of 1923, £2,800 5 per cent. consolidated preference stock of the Great Western Railway Company in substitution for his holding of £3,500 4 per cent. Swansea Harbour Stock, & continued to hold the Great Western Railway stock till his death:—*Held:* the reference in the will to the property bequeathed was a reference to stock of the Swansea Harbour trustees within the meaning of the Act; by virtue of the latter part of sect. 12 of the Act the bequest operated to pass the substituted Great Western Railway stock.—*Re* JENKINS, JENKINS *v.* DAVIES, [1931] 2 Ch. 218; 100 L. J. Ch. 265; 145 L. T. 184; 47 T. L. R. 379, C. A.

4944. *Add. Annotation:—***Refd.** *Re* Union of London & Smith's Bank, Ltd. Conveyance, Miles *v.* Easter, [1933] Ch. 611.

5194. *Add. Annotation:—***Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

5198. *Add. Annotation:—As to* (1) **Distd.** Joseph *v.* Phillips, [1934] A. C. 348.

5227. *Add. Annotation:—Generally,* **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

5239a. —— **Occupation prevented by insanity.**]—Testator bequeathed to his wife any house of which he might at the time of his death be the owner & occupier. At the date of his death his wife was in occupation of a house which he had bought & in which his furniture had been placed, but in which he had never resided, as, shortly after the purchase of the house, he became of unsound mind & was removed to a mental home:—*Held:* testator was the occupier of the house at the time of his death & his widow was entitled to the proceeds of sale of the house.—*Re* GARLAND, EVE *v.* GARLAND, [1934] Ch. 620; 103 L. J. Ch. 287; 151 L. T. 326; 78 Sol. Jo. 519.

spondence between testator & his niece & her children, & of a former will in which he had given a legacy "to the children of my late niece Sarah Ann Bacon (daughter of my "sister Sarah Baker)":—*Held:* the evidence was admissible, & that the children of Sarah Ann Bacon were entitled to the share given under the will to the children of Sarah Ann Baker.—*Re* TAYLOR, TAYLOR *v.* BAKER, [1931 N. Z. L. R. 352.—**N.Z.**

PART XVI. SECT. 15, SUB-SECT. 3.—A. (f).

sg. *All my worldly goods—Passes really.*]—Testatrix by her will gave unto her husband "all her worldly goods for life under these conditions he is not to sell 'Southcote' or any of my household furniture that goes to my nephew D. for his life afterwards to his sons in perpetuity my husband has only a life interest in it after his death my nephew D. is to inherit 'Southcote.' My husband can sell any & all my Northern Territory possessions at his will & live at 'Southcote' or let it as he chooses. . . ." The husband survived testatrix & was living; the nephew died before testatrix, leaving three sons, all of whom were born before the date of the will & were living:—*Held:* the words "all my worldly goods" included realty.—*Re* LAY, [1934] S. A. S. R. 196.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 4.—A. (b).

5066 ix. —— ——.]—Subject to his wife's right to carry on his farming business & take the net profits thereof, testator gave, devised, & bequeathed his residuary estate to trustees to sell & convert the same & stand possessed of the proceeds, to pay the income thereof to his wife during her life & after her death to pay such income equally "between such of my children as shall survive me & be alive at the death of my said wife":—*Held:* the gift after the widow's death to the children being of the income of the residuary estate without limit as to time, & there being no other disposition of capital, it amounted to a gift of the capital.—LYNDON *v.* LYNDON, [1930] N. Z. L. R. 76.—**N.Z.**

5066 x. —— ——.]—*Re* MACDONALD, [1931] 4 D. L. R. 920; O. R. 659.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 6.

sg. *Own occupation—Imperfect description.*]—A devise of "all my real estate consisting of the farm on which I now reside" was held to include a wood lot situated about fifty miles from the farm, the words "consisting of the farm on which I now reside" being an imperfect enumeration of the property included in the general gift.—LEWIS & SONS, LTD. *v.* DAWSON, [1934] 2 D. L. R. 396; 7 M. P. R. 255; *affd*, [1934] S. C. R. 676; 4 D. L. R. 753.—**CAN.**

5286. *Add. Annotation:*—**Consd.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265.

5286a. Securities "or investments representing the same" at date of testator.]—Testator appointed pltf. his sole executrix & trustee. He bequeathed certain securities "(or the investments representing the same at my death if they shall have been converted into other holdings)" to pltf. upon trust for the benefit of a cousin for life. One of the named securities was redeemed during testator's lifetime, & he placed the sum so received together with other money on deposit account with his bank & with the A. & N. Stores, Ltd.:—*Held:* on the true construction of the clause, there had been no ademption of the bequest. Money on deposit may be an investment.—*Re* LEWIS'S WILL TRUSTS, O'SULLIVAN *v.* ROBBINS, [1937] Ch. 118; [1937] 1 All E. R. 227; 106 L. J. Ch. 90; 156 L. T. 235; 53 T. L. R. 132; 80 Sol. Jo. 1035.

5330. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5331. *Add. Annotation:*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5332. *Add. Annotation:*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5332. After this case add:—

See, also, Nos. 5900, 5901, *post.*

5332a. Manuscript letters.]—(1) Testator by his will made a settlement of his two mansion houses & then bequeathed "all the pictures prints statues sculptures articles of vertu books furniture & plate in my mansion houses . . . unto my trustees upon trust to allow the same, hereinafter called 'the said heirlooms,' to be used & enjoyed" as in the will mentioned. Included in testator's estate were 155 original manuscripts of the series of letters & papers known as the Paston letters. All the originals of the series had belonged to Sir John Fenn, who, towards the end of the eighteenth century, had had these 155 letters inlaid into sheets of paper, which he had then had bound in three volumes. Testator had acquired them so bound, & they were still so bound at the date of his death. On a summons on behalf of the tenant for life under the settlement asking whether the 155 letters were included in the chattels settled by the will to devolve as heirlooms or formed part of testator's residuary estate, &, if the answer to the first part of the question was in the affirmative, that the tenant for life might be authorised to sell them:—*Held:* the three volumes containing the MSS. of the Paston letters passed under the will as heirlooms under the word "books."

(2) There must be many objects of antiquity or curiosity which are not, ordinarily speaking, articles of vertu. I have suggested two, a prehistoric axe-head & an Egyptian mummy. I do not think that anybody in ordinary parlance would describe either of those things as an article of vertu. For my part I think that an article of vertu must be in some sense a product of the fine arts; & the phrase connotes, if not artistic merit, a certain effort on the part of the person who originally produced it, in the direction of what he conceived to be the fine arts (MAUGHAM, J.).—*Re* TOMLINE'S WILL TRUSTS, PRETYMAN *v.* PRETYMAN, [1931] 1 Ch. 521, 526; 100 L. J. Ch. 156; 144 L. T. 592; 47 T. L. R. 274.

5356a. —— —— ——.]—*Re* FITZPATRICK, DEANE *v.* DE VALERA (1934), 78 Sol. Jo. 735.

5362a. —— **Desk & contents—Pass-book & promissory notes in drawer.**]—Testator bequeathed to his niece "my personal effects in my room, including pictures roll-top desk chiffonier complete with their contents." The desk had a drawer in which were three pass-books referring to deposit accounts for a total sum of over $30,500, & nine promissory notes payable to testator's order & not endorsed. Another part of the will provided for pecuniary legacies, including one to testator's niece:—*Held:* the bequest was only of such things as could properly be treated as personal effects, & did not extend to the choses in action represented by the pass-books & promissory notes.

These gifts depend for their validity on the physical delivery to the donee of something, the possession of which may confer a title to claim the real subject of the gift (LORD WARRINGTON).—JOSEPH *v.* PHILLIPS, [1934] A. C. 348; 103 L. J. P. C. 79; 151 L. T. 51; 50 T. L. R. 385; 78 Sol. Jo. 317, P. C.

5450. *Add. Annotation:*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

PART XVI. SECT. 15, SUB-SECT. 9.

8a. *Dominion War Bonds—Inscribed stock subsequently acquired.*]—Testatrix by her will gave "all Dominion war bonds which may form "part of my estate (other than a sum of £400 available for payment of death duties)" to a certain church. At the date of the will, apart from the sum of £400 which was held in New Zealand inscribed stock, she had £700 in war bonds issued under the War Purposes Loan Act, 1917, & £900 in New Zealand Government "Victory" war bonds issued under the Finance Act, 1918. Subsequent to the date of the will she invested in inscribed stock the sum of £1,500, received from discharged mtges.:—*Held:* the expression "Dominion war bonds" must be taken as meaning New Zealand Government war bonds; &, having regard to the will itself & the surrounding circumstances, testatrix had not beyond all (or beyond reasonable) doubt excluded the ordinary & well-known meaning of "war bonds," which did not include the inscribed stock subsequently purchased.—*Re* BANKS, LOUGHNAN *v.* HAMILTON; HAMILTON *v.* LOUGHNAN [1931] N. Z. L. R. 798.—N.Z.

8d. *Misdescription of company.*]—A testator bequeathed to his brother 87 shares of common stock "of the British Columbia Telephone Co., Ltd." There was no co. so named. A provincial co. had been incorporated in 1891 which changed its name to British Columbia Telephone Co., Ltd. & which in 1922 was amalgamated with a Dominion co., the name of the resulting co. being changed to British Columbia Telephone Co. All the shares in the provincial co. were surrendered for shares in the amalgamated co. & for all practical purposes the provincial co. ceased to exist & since then there had not existed anywhere any co. of the name of the British Columbia Telephone Co., Ltd., although that name was often applied by the public to the British Columbia Telephone Co. All but 15 shares of the existing co. were held by another telephone co. & the shares so held were not for sale. Neither at the date of his death nor at that of his will or codicil did deceased own any common shares in the British Columbia Telephone Co. or in the provincial co. but some years prior to any of said dates he had owned a greater number of common shares in the British Columbia Telephone Co. than 87 shares & at the time of the date of his death he owned, & for some years prior thereto had owned preference shares in the British Columbia Telephone Co.:—*Held:* the legatee was entitled under said bequest to 87 shares of common stock of the British Columbia Telephone Co.—*Re* BARNARD ESTATE, [1937] 1 W. W. R. 340; 51 B. C. R. 230.—CAN.

5453. *Add. Annotation :*—**Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

5458. *Add. Annotation :*—**Refd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206.

5466a. "Bristol Gas Company shares"—Stock passes.]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

5470. *Add. Annotation :*—**Refd.** *Re* Recknell, White *v.* Carter, [1936] 2 All E. R. 36.

5520. *Add. Citation :—affd. sub nom.* SHAW *v.* PUBLIC TRUSTEE (1929), 141 L. T. 465, H. L.

5532a. "War Loan"—Conversion Stock & Treasury Bonds.]—Testatrix by her will gave a legacy of "my £400 5 per cent. War Loan, 1929/1947." She had never had any War Loan, but some time before the date of her will acquired £400 National War Bonds. These were converted by her, £200 into £284 3½ per cent. Conversion Stock, & £200 into 5 per cent. Treasury Bonds, in each case before the date of the will. Testatrix possessed no other investments at the date of her death :—*Held :* the converted stocks passed under the description of "War Loan."—*Re* PRICE, TRUMPER *v.* PRICE, [1932] 2 Ch. 54 ; 101 L. J. Ch. 278 ; 147 L. T. 351 ; 48 T. L. R. 318 ; 76 Sol. Jo. 217.

5532b. "War Saving Certificates"—National Savings Certificates.]—*Re* LAMB, MARSTON *v.* CHAUVET (1933), 49 T. L. R. 541 ; 77 Sol. Jo. 503.

5560. *Add. Annotation :—As to* (1) **Follid.** *Re* Collings, Jones *v.* Collings, [1933] Ch. 920.

5568. *Add. Annotation :*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5598a. Garden implements & tools.]—*Re* WAVERTREE OF DELAMERE (BARON), RUTHERFORD *v.* HALL-WALKER, No. 412a, *ante*.

5598b. Movable plants.]—*Re* WAVERTREE OF DELAMERE (BARON), RUTHERFORD *v.* HALL-WALKER, No. 412a, *ante*.

5601a. ——.]—*Re* WAVERTREE OF DELAMERE (BARON), RUTHERFORD *v.* HALL-WALKER, No. 412a, *ante*.

5602. *Add. Annotation :—As to* (2) **Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5602a. Consumable stores.]—*Re* WAVERTREE OF DELAMERE (BARON), RUTHERFORD *v.* HALL-WALKER, No. 412a, *ante*.

5625a. "Furniture"—Wireless cabinet.]—The ct. held that a wireless set contained in an oak cabinet would pass under a bequest of "furniture."—*Re* WILLEY, GOULDING *v.* SHIRTCLIFFE (1929), 45 T. L. R. 327.

5696. *Add. Annotation :*—**Expld.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5696a. —— ——.]—In a will the word "money" has its strict legal meaning of cash, unless there is some context to enlarge the meaning so as to include things such as investments or other personal estate.—*Re* PUTNER, PUTNER *v.* BROOKE (1929), 45 T. L. R. 325.

5699. *Add. Annotation :*—**Apld.** *Re* Putner, Putner *v.* Brooke (1929), 45 T. L. R. 325.

5708a. —— **Direction to pay debts.**]—By a home-made will of 1928 testator, after expressly directing payment of his debts & giving (*inter alia*) a limited interest in his (freehold) residence to his housekeeper, gave "the remainder of any monies" to nine legatees including the housekeeper. There was no

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PART XVI. SECT. 15, SUB-SECT. 14.—G. (b.)

aa. "*Shares*"—*Investment certificates.*]—One of the bequests was of "All my shares in the British Mtge. Trust Corpn. of Ontario." Testatrix owned shares in said co. & also guaranteed investment certificates issued by the same co., & acquired after the making of the will :—*Held :* the bequest did not include the investment certificates.—*Re* KENNEDY ESTATE, KENNEDY ESTATE EXORS. *v.* JICKLING, [1936] 1 W. W. R. 204.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—G. (g).

ad. "*Promissory notes*"—*Debenture bonds.*]—By a codicil to his will testator gave to his four daughters & his son, in equal shares, "all mtges., promissory notes, money in bank . . . & cash in hand." The will contained a residuary gift to the son. At the time of his death testator had twe "debenture bonds" of a loan co. made payable to him "his exors., administrators or registered assigns" :—*Held :* these bonds did not pass by the codicil as "promissory notes," they did not come within the strict & primary meaning of those words, & there was nothing in the will or the circumstances to indicate that a secondary meaning should be given to them.—*Re* GEE, [1928] 3 D. L. R. 54 ; 62 O. L. R. 184.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—J. (e).

ae. "*Household goods & effects*"—*Motor car.*]—*Re* JOHNSON, [1931] 2 D. L. R. 987.—**CAN.**

af. "*Home*".]—Testator, R., by his will directed payment of his debts, & proceeded to dispose of his estate as follows: "I give devise & bequeath £100 to my brother A., £100 to my daughter M., the remainder of my money to my adopted J. : she can keep the home or sell it as she thinks best after paying all expenses." Testator's estate consisted of 5½ acres of orchard land, on which was erected a cottage, wherein he & his adopted daughter, J., dwelt at the date of his death. He owned, besides some household furniture, a small museum, a certain amount of money invested on mtge., & other small personal belongings :—*Held :* the expression "the home" meant the house of testator, & the whole of the 5½ acres of orchard land occupied therewith, together with the furniture, household goods, implements, & curios, as the same were enjoyed in the home of testator ; & J. took an estate in fee simple in the said orchard.—*In the Will of* RAYNER (1929), 23 Tas. L. R. 41.—**AUS.**

ak. *Furniture & effects in house in which I now reside—Motor car.*]—A testator bequeathed to his wife "the whole of the furniture & effects in the house at C. in which I now reside" :—*Held :* the bequest did not include a motor car used by testator & his wife & kept in a garage built in the yard of the house but separated from it by a distance of about thirty yards.—*Re* TORMEY, TORMEY *v.* TORMEY, [1935] V. L. R. 300 ; 41 Argus L. R. 420.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14.—L. (a).

5692 iii. —— ——.]—"Money" must be construed strictly when there are several terms of description showing it was not alone meant to pass the personal estate & also if there is an express gift of the residue.—*Re* SAINTHILL, [1933] 3 D. L. R. 231 ; 7 M. P. R. 49.—**CAN.**

5697 iv. —— ——.]—Testatrix made the following will : "This being my last will & testament, I bequeath the interest of all my money on trust to my second husband G. until my child becomes twenty-one years of age. When the child reaches the age of twenty-one the whole of my money is to be his. If G. dies before the child is twenty-one years old G.'s children are to have ten pounds each out of the estate & also all his funeral expenses are to be paid out of the estate" :—*Held :* the word "money" as used in the will comprised "the whole of the assets in the estate of testatrix, both real & personal."—PUBLIC TRUSTEE *v.* HORTON, [1929] N. Z. L. R. 83.—**N.Z.**

5697 v. —— ——.]—Testatrix made her will as follows : "I wish my granddaughter, B., to have the use of all my money for her lifetime. I now revoke all former wills." At the date of her death testatrix was possessed of cash on current account in her bank & cash on deposit account, money due to her for pension as the widow of an army officer, a sum of India 5½ per cent. stock, with dividends accrued thereon, a sum of War Stock, with dividends accrued thereon, an undivided interest in leasehold property, an apportioned part of rents of leasehold property in which she had a life interest, an apportioned part of dividends on stocks in which she also had a life interest, & an undivided interest in freehold property :—*Held :* the word "all" was introduced into the will to insure a wide interpretation being given to the expression "my money," &, accordingly, B. was entitled to a life interest in all the said property except the interest in the freehold.—*Re* JENNINGS, CALDBECK *v.* STAFFORD & LINDEMERE, [1930] I. R. 196.—**IR.**

other residuary gift:—*Held:* having regard to the express direction to pay debts the gift of "the remainder of any monies" could not be construed in the strict sense of the word "monies," but must include all property liable to the payment of debts. Therefore, the residuary property both real & personal passed by the gift either (*a*) on the ground that under Administration of Estates Act, 1925 (c. 23), real & personal estate were now *pari passu* liable to the payment of debts, or (*b*) because when once it was clear that the word "monies," was not used in its strict sense the ct. could give effect to testator's manifest intention to include the whole of his property in the gift.—*Re* MELLOR, PORTER *v.* HINDSLEY, [1929] 1 Ch. 446; 98 L. J. Ch. 209; 140 L. T. 469.

Annotations:—**Consd.** *Re* Shaw, Mountain *v.* Mountain (1929), 168 L. T. Jo. 371; Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5714. *Add. Annotations:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615. **Reld.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5720a. ——.]—Testator made his will in the following terms: "I leave all my money to A. B." His estate included cash in the house, in his solrs.' hands & on current account at his bankers, furniture, stocks & shares, & an equity of redemption in freehold property:—*Held:* in the absence of any context the word "money" must be construed in its strict sense, & that the will therefore only passed the cash in the house, in his solrs.' hands & on current account at his bank.—*Re* GATES, GATES *v.* CABELL, [1929] 2 Ch. 420; 98 L. J. Ch. 360; 141 L. T. 392; 45 T. L. R. 522; 73 Sol. Jo. 429, C. A.

Annotation:—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5724a. Real estate — Bequest of "balance of money."]—*Re* SHAW, MOUNTAIN *v.* MOUNTAIN (1929), 168 L. T. Jo. 371; 68 L. Jo. 334; [1929] W. N. 246.

5731. *Add. Annotation:*—**Consd.** *Re* Collings, Jones *v.* Collings, [1933] Ch. 920.

5731a. —— ——.]—A will contained the provision "All my money left to brother & sisters unused at their death is to go to a good lifeboat society," & the brother predeceased the testatrix:—*Held:* the word "money" meant money in the strict legal sense, but following *Manning* v. *Purcell*, the term included money on deposit account with the bank.—*Re* COLLINGS, JONES *v.* COLLINGS, [1933] Ch. 920; 102 L. J. Ch. 337; 150 L. T. 19.

5734a. ——.]—*Re* GATES, GATES *v.* CABELL, No. 5720a, *ante*.

5737. *Add. Annotations:*—**Consd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128. **Apld.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420; *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446. **Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615; *Re* Collings, Jones *v.* Collings, [1933] Ch. 920.

5764a. —— **National Savings Certificates.**]—A testatrix, by her will, bequeathed "my money" to two named persons "equally divided." At the date of her will & at the date of her death her estate amounted to about £1,438 3*s.* 11*d.*, & included National Savings Certificates of the value of £621 13*s.* 1*d.* & £31 11*s.* 6*d.* 3½ per cent. War Stock. The remainder of her estate consisted of cash:—*Held:* in the absence of any context to the contrary in the will the word "money" must be given its primary meaning, & it did not carry the National Savings Certificates or the War Stock.—*Re* HODGSON, NOWELL *v.* FLANNERY, [1936] Ch. 203; 105 L. J. Ch. 51; 154 L. T. 338; 52 T. L. R. 88; 79 Sol. Jo. 880.

5773. *Add. Annotation:*—**Consd.** *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446.

5783. *Add. Annotation:*—**Distd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5793. *Add. Annotation:*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5778. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5806. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5808. *Add. Annotation:*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5811a. ——.]—*Re* MELLOR, PORTER *v.* HINDSLEY, No. 5708a, *ante*.

5811b. ——.]—*Re* ALLAN, ROBERTS *v.* ROBINSON (1933), 77 Sol. Jo. 448.

5831. *Add. Annotations:*—**Consd.** *Re* Collings, Jones *v.* Collings, [1933] Ch. 920. **Distd.** *Re* Lewis's Will Trusts, O'Sullivan *v.* Robbins, [1937] Ch. 118.

5881a. "Property (not personal)" — Personal estate except personal belongings—Will made without legal advice.]—*Re* BANHAM, WESTMINSTER BANK, LTD. *v.* A.-G. (1931), 47 T. L. R. 376; 75 Sol. Jo. 311.

PART XVI. SECT. 15, SUB-SECT. 14.—L. (b) ii.

5728 v. ——.]—PUBLIC TRUSTEE *v.* LEITCH (1928), 28 S. R. N. S. W. 313: 45 N. S. W. W. N. 85.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14.—L. (c).

sg. *Money due under mortgage—Receipt of cheque prior to death.*]—Testator gave upon trust for certain nephews "all moneys due & payable to me under" a mtge. executed in his favour over certain property sold by him. That mtge. provided for the payment of a stated sum per annum in reduction of the principal sum, & the first of the annual payments fell due on Aug. 1, 1929. Testator died on Aug. 2, 1929. On the latter day, but prior to testator's death, a cheque in part payment of the first annual sum reached his solrs. On the same day, but after death, the cheque was presented for payment & cashed:—*Held:* until the cheque was presented for payment & met, the debt remained in existence, although the remedy was suspended; &, accordingly, that the portion of the mtge. debt represented by the amount of the cheque was, at the moment of testator's death, comprised within the words in the will "all moneys due & payable under."—ASHBY *v.* HAYDEN (1931), 31 S. R. N. S. W. 324; 48 N. S. W. W. N. 61.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14.—M.

5858 i. *All my personal property—Real estate.*]—The will was in the following words: "I—M. E. C. wish to leave all my personal property to my husband." Testatrix at the time of her death owned no personal property:—*Held:* evidence of extrinsic circumstances was properly admissible to show ambiguity as to what testatrix understood & meant by "all my personal property," & it was sufficient to show that the term "personal property" was not understood by her in its technical sense but as meaning "all property owned by me personally."—*Re* CREAMER ESTATE, [1932] 3 W. W. R. 621.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—P.

5871 v. ——.]—*Re* SPLAN (Alta.), [1929] 4 D. L. R. 405.—**CAN.**

sm. *Life interest in stock.*]—*Re* GAGE (1935), 5 F. L. J. (Can.) 69.—**CAN.**

PART XVI. SECT. 15. SUB-SECT. 14.—Q.

sp. *Rents.*]—By her will, which was home drawn, dated Aug. 17, 1934, W. provided, *inter alia*: "I leave all my real estate (money & property) to be equally divided after all my just debts

5897a. Articles of vertu—Rare books & manuscripts.]—*Re* ZOUCHE (BARONESS), DUGDALE *v.* ZOUCHE (BARONESS), No. 5568, *ante.*

5897b. ——.]—*Re* TOMLINE'S WILL TRUSTS, PRETYMAN *v.* PRETYMAN, No. 5332a, *ante.*

5899. *Add. Annotation :*—**Consd.** *Re* Mills' Will Trusts, Marriott *v.* Mills, [1937] 1 All E. R. 142.

5899a. —— ——.]—The will of a testatrix contained the following clause : " I give & bequeath unto my daughter . . . all my home & personal belongings except the piano . . . & all insurance to go to my daughter. . . ." :—*Held :* as the word " belongings " meant " property," the residuary estate, which included cash in the house & money at the bank, passed to the daughter under the bequest as well as the personal chattels & the benefit of the insurance policies.—*Re* MILLS' WILL TRUSTS, MARRIOTT *v.* MILLS, [1937] 1 All E. R. 142 ; 106 L. J. Ch. 159 ; 156 L. T. 190 ; 53 T. L. R. 139 ; 80 Sol. Jo. 975.

5901. After this case add :—

-.]—*See, also,* Nos. 5330–5332, *ante.*

5913. *Add. Annotation :*—**Consd.** Midland Bank Executor & Trustee Co. *v.* Yarner's Coffee, Ltd., [1937] 2 All E. R. 54.

5913a. " All sums owing to me."]—By his will a testator declared " I forgive & release to any person indebted to me all sums owing to me by them except such sums as shall be secured to me by mtges. or legal charges." In answer to a circular sent to the shareholders of a co. in which testator was a shareholder, he had lent to the co. £300 which had not been repaid at the time of his death :—*Held :* the words " forgive & release " did not restrict the operation of the clause to debts of a personal nature & the co. was released from payment of the £300 & all interest owing thereon. A sum of money on deposit at a bank & book-debts of testator's business were not released.—MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* YARNERS COFFEE, LTD., [1937] 2 All E. R. 54 ; 156 L. T. 274 ; 53 T. L. R. 403 ; 81 Sol. Jo. 237.

5935a. —— Autograph letters.] — *Re* NEILSON, CUMMING *v.* CLYDE (1929), 73 Sol. Jo. 765.

5951a. " Private papers "—Unpublished manuscript.]—C. D., who died in 1870, by his will bequeathed " all my private papers whatsoever " to G. H., who died in 1917, & the residue of his property to his children. Included in the property of testator was the manuscript of an unpublished work of testator which was sold & first published in 1934. On a summons taken out by pltf., who was by devolution the executrix both of the will of C. D. & the will of G. H. :—*Held :* the manuscript was a " private paper " & passed under the gift of " all my private papers " to G. H.—*Re* DICKENS, DICKENS *v.* HAWKSLEY, [1935] Ch. 267 ; 104 L. J. Ch. 174 ; 152 L. T. 375 ; 51 T. L. R. 181 ; 78 Sol. Jo. 898, C. A.

6006. *Add. Annotation :*—**Refd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128.

6036a. " Everything I die possessed of."]—A testator by his will gave " everything I die possessed of " to E. T.
bequeathed
estate to the testator. Testator died
& his father died in 1934, leaving surviving testator's two children, with the result that, by virtue of the Wills Act, s. 33, testator was to be presumed to have survived his father, so as to prevent the operation of the doctrine of lapse in respect of the half share of residue bequeathed to him by his father's will. Upon a summons to determine whether the words in the testator's will were sufficient to entitle E. T. to testator's share in expectancy in his father's residuary estate, or whether testator died intestate as far as that share was concerned :—*Held :* the words of the gift to E. T. were a general residuary devise & included the property which he would receive under his father's will.—*Re* HAYTER, HAYTER *v.* TRANTER, [1937] 2 All E. R. 110.

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are paid between my two (2) sisters " V. & O. " I bequeath all my personal property to my sister " O. " named above, should either of my said sisters predecease me then the surviving sister takes everything." At the date of her will W., who was living with her sister O., possessed real estate amounting to £1,500, consisting of vacant land & cottages, & personal estate amounting to £1,090, consisting of money in the Savings Bank & on fixed deposit. There was also an amount of £136 owing to her in respect of overdue rents. W. died in Mar. 1935. There were no debts owing either at the date of her will or at her death :—*Held :* the overdue rents passed under the gift of " all my real estate (money & property)," but that the £1,090 passed to O. under the gift of " all my personal property."—WALKER *v.* PETRIE (1936), 53 N. S. W. W. N. 155.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14. —S.

sq. *" Desk & contents "—Choses in action evidenced by documents.*]—Bequest of a desk & its contents :—*Held :* not to include choses in action evidenced by documents & bank books usually kept in the desk.—PHILLIPS *v.* JOSEPH, [1934] 2 D. L. R. 577 ; 2 W. W. R. 113, P. C.—**CAN.**

sv. *" Proceeds " — Income.*] — *Re* PROTER ESTATE (Alta.), [1929] 4 D. L. R. 358 ; 3 W. W. R. 78.—**CAN.**

PART XVI. SECT. 16, SUB-SECT. 1.

5977 ii. —— ——.]—Testator died survived by his wife, & by a son & daughter. By his trust-disposition & settlement, in which he stated that he had already by *inter vivos* deed made sufficient provision for his daughter, he directed his trustees, after payment of his debts, testamentary & funeral expenses, & certain legacies, to make over the " free residue " of his estate in equal shares to his wife & son. The son & daughter claimed & were paid their *legitim*, the son forfeiting, in terms of the will, its provisions in his favour. A question having arisen as to whether " free residue " fell to be ascertained before or after deduction of the *legitim* fund :—*Held :* " free residue " primarily meant residue after deduction *(inter alia)* of the *legitim* fund, & that there was nothing in the language of the trust-disposition & settlement to indicate that the testator had intended to give these words any other than their ordinary meaning.—SAMSON *v.* RAYNOR, [1928] S. C. (Ct. of Sess.) 899.—**SCOT.**

PART XVI. SECT. 16, SUB-SECT. 2.

o i. ——.]—*Held :* the word " balance " was equivalent to " residue."—*Re* ANDREW, ANDREW *v.* ANDREW, [1934] N. Z. L. R. 526 ; G. L. R. 529.—**N.Z.**

sg. *All other articles.*]—A will by which specific devises & bequests were made to others than the testator's wife concluded by " devising in bequest " to his wife a certain house " & all other articles [or things] which have not yet been above specified." The will was written in Ukrainian & it was proved that either the word " articles " or the word " things " was the proper translation of the word used by testator :—*Held :* the phrase quoted passed the residue of the estate to the wife.—*Re* MELNYK ESTATE, LAZARUK *v.* ZELENKO, [1936] 1 W. W. R. 666.—**CAN.**

PART XVI. SECT. 16, SUB-SECT. 3. —A.

sl. *Intention to dispose of residue—Aggregate of gifts not exhausting residue.*] —Where the whole residue of an estate was bequeathed in fractions which did not dispose of the whole, the remaining fraction was divided among all the beneficiaries, since testator intended to dispose of all.—*Re* WILSON'S WILL, WOOD *v.* WILSON (1935), 9 M. P. R. 572 ; 5 F. L. J. (Can.) 100.—**CAN.**

6212. *Add. Annotations :*—**Folld.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440. **Consd.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

6231. *Add. Annotation :* — **Expld. & Apld.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

6239. *Add. Annotation :*—**Apld.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

6239a. —— ——.]—Testator, who died in 1878, by his will directed his trustees to divide the income of his residuary estate until the death of his last-surviving child into five equal parts & to pay one of such parts unto each of his five children therein named during their lives & after the death of any of them to divide the income among such of them as should from time to time be living & the issue of such of them as should have previously died leaving issue *per stirpes*. & after the death of the last survivor of his said five children the trustees were to convert his estate & to hold the proceeds upon trust to pay one-fifth part thereof & to divide the same amongst the issue of such of his said children as should have died leaving lawful issue who might be then living, such issue to receive the share his or her respective parents would have been entitled to in case such fifth part had been divisible equally among such parents. Each of testator's children except the last survivor left lawful issue, some of whom were living at the date of distribution :—*Held :* (1) the word " issue " must be construed as extending to all descendants, & the division among them was to be a stirpital one ; (2) the contingency that there should be issue living at the date of distribution was not to be imported by implication into the constitution of the class of issue entitled, & therefore the personal representatives of four of testator's grandchildren all of whom predeceased the last survivor of testator's children without leaving issue living at her death were entitled to a share in the capital directed to be divided among the issue of testator's children.—*Re* SUTCLIFFE, ALISON *v* ALISON, [1934] Ch. 219 ; 103 L. J. Ch. 154 ; 150 L. T. 391.

6240. *Add. Annotation :*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

6266. *Add. Annotation :*—**Distd.** *Re* Watt's Will Trusts, Watt *v.* Watt, [1936] 2 All E. R. 1555.

6293. *Add. Annotation :*—**Reld.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6307. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6309. *Add. Annotation :*—**Folld.** *Re* Watt's Will Trusts, Watt *v.* Watt, [1936] 2 All E. R. 1555.

6362. *Add. Annotation :*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

6364. *Add. Annotation :*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

6525. *Add. Annotation :*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6526. *Add. Annotation :*—**Folld.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6527a. —— ——.] — The primary meaning of " shall die " in a will is " shall hereafter die." In the absence of some context to indicate a contrary intention it cannot be construed as equivalent to " shall have died " or " shall be dead," so as, in an original or substitutional gift to the issue of a child or other person who " shall die," to let in the issue of one who was already dead at the date of the will.

Testator by his will directed that after the death of his wife his trustees were to stand possessed of his residuary estate for all his children in equal shares " provided nevertheless in case any child of mine shall die in my lifetime leaving issue living at my death such issue shall stand in place of such deceased child, & shall take equally between them if more than one the share of my residuary estate which such deceased child of mine would have taken if he or she had survived me." One of testator's sons died three weeks before the date of the will, leaving one child, a daughter, surviving him, & these facts were known to testator when he made his will :—*Held :* there being no context in the

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PART XVI. SECT. 17, SUB-SECT. 3. —A.

sm. *Intention to benefit class—Shares dependent on exercise of power of appointment—Effect of non-exercise of power.*] —UNDERWOOD *v.* DAWSON (N. S.), [1929] 2 D. L. R. 278.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 3. —B.

6196 i. *General rule.*]—*Re* SLOAN ESTATE, BULL *v.* SLOAN, [1937] 3 W. W. R. 455.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 3.— C. (a).

6216 xv. ——.]—The term " children " in the will in question herein held not to include the children of a daughter who predeceased the testator. This conclusion held not affected by sect. 31 of Manitoba Wills Act, R.S.M., 1913, since it assumes that a devise has been made, & in this case there was no devise to the children of said daughter.—*Re* WOODMAN ESTATE, [1935] 2 W. W. R. 111 ; 43 Man. L. R 342.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 3.— C. (c).

6255 v. For " [1918] N. Z. L. R. 364 " read " [1928] N. Z. L. R. 364."

PART XVI. SECT. 17, SUB-SECT. 3.— C. (d) ii.

6304 i. *Provision for conversion & distribution when all attain age.*]—Testator devised & bequeathed his residuary estate upon trust to convert & to divide the same equally between such of his grandchildren as should attain the age of twenty-one years, excepting certain named grandchildren, & empowered the trustees to postpone conversion & distribution for such time as they in their absolute discretion might deem expedient & in the meantime to carry on testator's business. He then gave directions for the distribution of the income of the business during the period of its continuance. At the date of testator's death there were a number of grandchildren, of whom one had attained the age of twenty-one years. The trustees had postponed conversion for several years, & during that period other grandchildren were born :—*Held :* the " rule of convenience " laid down in *Andrews* v. *Partington*, No. 6266, had no application until conversion, inasmuch as (*a*) upon the true construction of the will there was no occasion for the operation of the rule until conversion had taken place, & (*b*) the will contained an expression of a contrary intention. Therefore, the class of grandchildren entitled to share in the residuary estate was not closed until the date of conversion.—PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD. *v.* R. (1929), 30 S. R. N. S. W. 318 ; 47 N. S. W. W. N. 116.—**AUS.**

PART XVI. SECT. 17, SUB-SECT. 5. —C. (a).

q i. ——.] —Testatrix devised real estate to a nephew & his wife for life, & then to the children of the nephew or such of them as should then be living, in equal proportions, & in case either of such children should be deceased leaving lawful issue then to such issue the same share which the parent would have had if living :—*Held :* the devise to the issue of the children was original & not substitutional.—*Re* BENTLEY'S TRUSTS (1935), 9 M. P. *R.* 271.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 5. —C. (c) i.

6502 xi. —— ——.]—The words " shall die " in a will must be given their primary meaning, " shall die hereafter," unless there be some context indicating that these words were not used in a strictly future sense.—*Re* KING, KING *v.* KING (1932), 32 S. R. N. S. W. 669 ; 49 N. S. W. W. N. 228.—**AUS.**

will, such as a gift to children who "shall attain the age of twenty-one years," the word "shall" must be strictly construed as referring to the future only, & therefore the daughter of the deceased son was not entitled to any share in the residuary estate. —*Re* WALKER, WALKER *v.* WALKER, [1930] 1 Ch. 469; 99 L. J. Ch. 225; 142 L. T. 472; 74 Sol. Jo. 106, C. A.

6528. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6537. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6538. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6540. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6669. *Add. Annotation:*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6683. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

6708. *Add. Annotation:*—*As to* (1) **Distd.** *Re* Jackson, Beattie *v.* Murphy, [1933] Ch. 237.

6708a. **Bequest to nephew—Legitimate preferred to illegitimate of same name—Unless extrinsic evidence admissible to prove the contrary.**]—Testatrix devised & bequeathed all her real & personal estate to her trustees upon trust for sale & conversion, & to hold the net proceeds upon trust for her two brothers, two sisters & "my nephew Arthur Murphy" in equal shares. Testatrix had three nephews named Arthur Murphy, two of whom were legitimate sons of two of her brothers & the other was an illegitimate son of a sister. One of the legitimate nephews was resident in Australia, but had visited testatrix on occasions. The other legitimate nephew was resident in England & known to testatrix, but he was the son of a brother who was given another share of the residuary estate. The illegitimate nephew had married a legitimate niece of testatrix & was well known to testatrix, whose affairs he had managed before her death for some time. Questions arose as to which person testatrix had intended by the words "my nephew Arthur Murphy":—*Held:* (1) if there had been only the two legitimate nephews it would have been impossible to tell which of them was intended, & the ambiguity would have caused an intestacy; (2) although as against one legitimate claimant evidence could not be admitted in favour of an illegitimate claimant, the ct. was entitled in the circumstances to look at evidence as to the family; (3) if from such evidence it appeared that testatrix did not intend to describe either of the legitimate nephews, but did intend to describe the illegitimate nephew, the ct. could not disregard such evidence; (4) in order to avoid ambiguity the ct. was entitled to consider the claim of the illegitimate nephew; (5) on the evidence the person who had married a niece of testatrix, & so was in a sense a nephew, was clearly intended by the words used in the will; & the illegitimate nephew took a share of the residuary estate.—*Re* JACKSON, BEATTIE *v.* MURPHY, [1933] Ch. 237; 102 L. J. Ch. 1; 148 L. T. 238; 49 T. L. R. 5; 76 Sol. Jo. 779.

6720. *Add. Annotation:*—**Consd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6725. *Add. Annotation:*—*As to* (1) **Folld.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

6726. *Add. Annotation:*—**Distd.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

6728a. **"Grandchildren of any degree"—All lawful descendants except children.**]—By his will testator disposed of two equal fourth parts of his residue, in the will called "the residuary trust fund," as therein mentioned, & directed his trustees, after the death of one of his daughters, whom he named, & her husband, & subject to or in default of any exercise of a general power of appointment by her, to hold another equal fourth part "in trust as to the capital & income for all my grandchildren who may be living at the time in equal shares." By the second of two codicils he directed that his trustees, at the death of the survivor of his son J. & J.'s wife, should divide the amount of the remaining fourth part "into as many parts as there may be grandchildren of any degree of mine then living, & give to each one a part, part & part alike." Testator had five children. One predeceased him without leaving issue her surviving. All of the remaining four married, three having issue of their marriages. J. predeceased his wife, there having been no issue of the marriage. At the date of the death of J.'s wife, there were living lawful grandchildren, great-grandchildren & great-great-grandchildren of testator. By this summons the trustee of the will & codicils asked (*inter alia*) whether, on the true construction thereof, the words "grandchildren of any degree of mine then living" included lawful grandchildren & remoter descendants of the testator living at the death of J.'s widow. There was evidence that a great-grandchild of testator was shown to him at a date before the execution of the codicils:—*Held:* the words "grandchildren of any degree" included all testator's lawful descendants, save his children, living at the date mentioned in the second codicil.—*Re* HALL, HALL *v.* HALL, [1932] 1 Ch. 262; 101 L. J. Ch. 129; 147 L. T. 33.

6729. *Add. Annotation:*—**Consd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

PART XVI. SECT. 17, SUB-SECT. 6.—A. (d).

6702 i. *Reference in will to illegitimate child—As "niece."*]—By his will testator, out of his residuary estate, gave a sum of money to "my niece J. M., daughter of my late sister Martha," & gave other sums to children of his other brothers & sisters including "my niece J. R., daughter of my late sister Margaret." He finally directed that the ultimate residue of his estate be held in trust for "the children of my brothers & sisters share & share alike." J. M. was the illegitimate & only daughter of the testator's sister Martha. J. R. was legitimate:—*Held:* J. M. was included in the trust for the children of the testator's brothers & sisters.—*Re* MITCHELL, BALLARAT TRUSTEES, EXORS. & AGENCY CO., LTD. *v.* NATIONAL TRUSTEES, EXORS. & AGENCY CO. OF AUSTRALASIA, LTD., [1929] V. L. R. 95; Argus L. R. 108.—AUS.

PART XVI. SECT. 17, SUB-SECT. 6.—B. (c) i.

6729 iv. ——.]—Testatrix, after a gift to her husband of an estate for life in all her real & personal estate, directed that her estate should be equally divided among "all the nieces then living after his death":—*Held:* the expression "all the nieces" was equivalent to "all my nieces," & there was no context in the will sufficient to displace its strict legal meaning, namely, nieces by blood, & to expand the word "nieces" so as to include nieces by affinity.—*Re* DAVIS, [illegible] LASS *v.* MCPHEE (1933), 33 S. R. N. 330; 50 N. S. W. W. N. 122.—AUS.

6736. *Add. Annotation :*—**Consd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6737. *Add. Annotation :*—**Refd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6739. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6740. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6741. *Add. Annotation :*—**Refd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6746. *Add. Annotation :*—**Refd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

6747. *Add. Annotation :*—**Distd.** *Re* Ridge, Hancock *v.* Dutton (1933), 149 L. T. 266.

-.]—Testatrix made her will on Oct. 28, 1925, & died on May 22, 1932. Her niece A. G. R. had a child born on Oct. 9, 1925. A. G. R. died in childbirth. The name at that time mentioned as one to be given to the child was Clifford, but he was baptized Kenneth Higham R. By clause 3 of the will testatrix gave free of duty "to my nephew Clifford Rich, the infant child of my late niece Annie Gertrude Rich, the sum of one thousand pounds." She bequeathed the residue of her estate equally between all or any my nephews & nieces living at my death who being male attain the age of twenty-one years or being female attain that age or marry. The greatnephews & greatnieces of testatrix claimed that having regard to clause 3 of the will testatrix intended her residuary estate to be divided equally between nephews, nieces & greatnephews & greatnieces. If the nephews & nieces only were entitled they would take one-eighth share each in the residue, but if greatnephews & greatnieces were entitled also each of the class would be entitled to one-twentieth of the residue :—*Held :* the present case was not governed by *James* v. *Smith*, No. 6747, as there were sufficient variations in the will there & the will in the present case to prevent its being authority to govern the words in the will in this case. There was no interpretation of the words "nephews & nieces" to be found in clause 3, but the use of the word "nephew" in that clause was rather a term of affection. The single use of a word inaccurately in one part of a will did not necessarily mean that that word was used equally inaccurately when it occurred again later on.—*Re* RIDGE, HANCOCK *v.* DUTTON (1933), 149 L. T. 266, C. A.

6822. *Add. Annotation :*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6827a. —— **"My uncle G. D. C."—Cousin G. D. C.**] —Where in a will legatees were described as the grandchildren of "my uncle George Dennis Curnock" though in fact he was a cousin of testatrix, & the will had been admitted to probate, but no copies of probate had been issued, the ct. granted an application for the exclusion of the words "my uncle" from probate.—*Re* CLARK (1932), 101 L. J. P. 27; 147 L. T. 240; 48 T. L. R. 544; 76 Sol. Jo. 461.

6840. *Add. Annotation :*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6867. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

6868. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

6872. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

6877. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6884. *Add. Annotation :*—**Overd.** Elliot *v.* Joicey, [1935] A. C. 209.

6886. *Add. Annotation :*—**Folld.** Elliot *v.* Joicey, [1935] A. C. 209.

6887. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

6887a. ——.]—Testatrix executed a power of appointing trust funds under her father's will by appointing the funds in favour of all her children surviving her in equal shares, & directed that each child's share should be retained by the trustees of her father's will upon trust during twenty-one years from her death to pay the income of such share to such child if he or she should so long live. If such child should die within the said period of twenty-one years then the trustees were to hold such share & the income thereof in trust, in default of appointment by the child, upon the trusts following : "In the event of such child of mine leaving any issue him or her surviving in trust for such child of mine absolutely but in the event of such child of mine not leaving any issue him or her surviving then such share & the income thereof shall go & accrue by way of addition to the share or shares in the appointed funds of my other child or children who shall survive me," etc. Testatrix died on Jan. 12, 1912, leaving her surviving three sons, of whom one married on Apr. 14, 1931, & died on May 11, 1932, intestate without having exercised the power of appointment under the will of testatrix. On June 12, 1932, a posthumous child was born to him :—*Held :* the said son did not "leave issue him surviving" within the meaning of the will, but in the events which happened, his share accrued by way of addition to one of the other sons of the testatrix.

The effect of *Villar* v. *Gilbey*, No. 6886, may be thus summarised :—

Subject to any special context in the document to be construed : (*a*) Words referring to children or issue "born" before or "living" at, or "surviving," a particular point of time or event will not in their ordinary or natural meaning include a child *en ventre sa mère* at the relevant date.

(*b*) The ordinary or natural meaning of the words may be departed from, & a fictional construction applied to them so as to include therein a child *en ventre sa mère* at the relevant date & subsequently born alive if, but only if, that fictional construction will secure to the

PART XVI. SECT. 17, SUB-SECT. 7. —A. (a).

6782 iii. ——.]—*Re* TREMBLAY, [1931] O. R. 781.—CAN.

PART XVI. SECT. 17, SUB-SECT. 9.

6857 vii. ——.]—A child *en ventre sa mère* is considered as a child in being. To include such unborn child in a class of "living" children, it must be shown that such inclusion, as here is for that child's benefit.—*Re* BROWN, BROWN *v.* BROWN, [1933] N. Z. L. R. 115.—N.Z.

child a benefit to which it would have been entitled if it had been actually born at the relevant date.

(*c*) The only reason & the only justification for applying such a fictional construction is that where a person makes a gift to a class of children or issue described as "born" before or "living" at or "surviving" a particular point of time or event, a child *en ventre sa mère* must necessarily be within the reason & motive of the gift.

(*d*) That being the only reason & the only justification for applying the fictional construction, it follows that, if the person who uses the words under consideration confers no gift on the children or issue described as above mentioned, but confers the gift on some one else, it is impossible (except in the light of subsequent events) to affirm either that the fictional construction will secure to the child *en ventre sa mère* a benefit to which if born it would be entitled, or that the child *en ventre sa mère* must necessarily be within the reason & motive of the gift made. In these circumstances the words used must bear their ordinary or natural meaning.—ELLIOT *v.* JOICEY, [1935] A. C. 209; 104 L. J. Ch. 111; 51 T. L. R. 261; 79 Sol. Jo. 144; *sub nom. Re* JOICEY, JOICEY *v.* ELLIOT, 152 L. T. 398, H. L.

6892. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6912. *Add. Annotation :*—**Refd.** *Re* Messenger's Estate, Chaplin *v.* Ruane, [1937] 1 All E. R. 355.

6957a. ——.]—After testator's birth, his mother, M. J., married E. J., a widower with one daughter. There were three children of the marriage of M. J. & E. J. By his will, testator gave to his trustees £10,000 "upon trust to invest the same & to pay the income thereof to E. J. & my mother M. J. . . . during their joint lives, & on the death of either of the said E. J. & M. J. upon trust . . . to divide the same in equal shares between the children of the said E. J. & M. J. on their respectively attaining the age of 21 years" :—*Held :* upon the true construction of the will, the legacy became, on the death of the survivor of E. J. & M. J., divisible in equal thirds between the three children of the marriage of E. J. & M. J. & the child of E. J. by his former marriage was not entitled to share in the legacy.—*Re* LEWIS'S WILL TRUSTS, PHILLIPS *v.* BOWKETT, [1937] 1 All E. R. 556; 81 Sol. Jo. 179.

6984. *Add. Annotations :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Refd.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307; *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

6985. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Apld.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

6986. *Add. Annotation :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

6989. *Add. Annotation :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

6994. *Add. Annotation :*—**Refd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

7032. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

7034a. **Son born "within due time after my death."**]—By a will devising estates in strict settlement the testator declared that if any son of W. or M. should be thereafter born "whether during my lifetime or within due time after my death" the estate in tail male therein devised to such son should not take effect, & in lieu thereof he devised the estates to the use of such son for his life, with remainder to the use of his first & other sons in tail male. The will also contained a name & arms clause requiring every person who became entitled to the possession of the estates as tenant for life or in tail to take & use the name & arms of X. upon pain of forfeiture to the next person entitled in remainder. Testator died in 1899. Pltf., the eldest son of M., was born in 1909, & on the death of W. without issue in 1925 became tenant in tail in possession subject to the effect, if any, of the above proviso cutting down estates tail to estates for life. Immediately after attaining the age of twenty-one years, in 1930, pltf. executed a deed disentailing the estates :—*Held :* the expression "within due time after my death" referred to the period of gestation. Pltf. not having been born in testator's lifetime or within nine months of his death did not come within the clause cutting down his estate tail to a life estate, & having duly disentailed the estates, was not bound to comply with the name & arms clause.—*Re* WATSON, CULME-SEYMOUR *v.* BRAND, [1930] 2 Ch. 344; 99 L. J. Ch. 452; 143 L. T. 764.

7086a. ——.]—*Re* SUTCLIFFE, ALISON *v.* ALISON, No. 6239a, *ante*.

7170. *Add. Annotation :*—**Apld.** *Re* Smith, Bull *v.* Smith, [1933] Ch. 847.

7171a. **"Right heirs"—Devise of copyholds—Common law & not customary heir entitled.**]—Testatrix by her will dated Mar. 31, 1873, in exercise of a general testamentary power

PART XVI. SECT. 17, SUB-SECT. 11.—B. (b) i.

b i. —— *Gift to "lawful children."*]—Testator had adopted a child under the laws of a foreign State where he was domiciled. By the laws of that State the child upon adoption became the child & legal heir of the son & entitled to all the rights & privileges & subject to all the obligations of a child begotten in lawful wedlock :—*Held :* the child was not, under the laws of Ontario applicable to the interpretation of the will, the son's "lawful child."—*Re* SKINNER, [1929] 4 D. L. R. 427; 64 O. L. R. 245.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—B. (b) iv.

6982 i. *Whether stepchildren included.*]—A bequest to "my children" does not include stepchildren.—*Re* CONNOLLY, [1935] 2 D. L. R. 465; 8 M. P. R. 448.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—F. (c) i.

7089 v. ——.]—While it is possible that a will may be so worded as to indicate that testator meant to include remoter descendants in the word "children," held, however, that there was nothing in the will in question herein to justify a departure from the ordinary meaning of the word. The will in question herein was held to indicate sufficiently that in using the word "issue" in the phrase, "without leaving issue," testator intended to confine its application to issue of the first degree, *i.e.* "children," notwithstanding the fact that the will contained both expressions.—FISHLEIGH *v.* LONDON & WESTERN TRUSTS CO., LTD., FIELD *v.* LONDON & WESTERN TRUSTS CO., LTD., [1930] 3 W. W. R. 150; 4 D. L. R. 609; *varg.*, S. C. *nom. Re* HOBBS, [1929] 4 D. L. R. 64 O. L. R. 370.—**CAN.**

of appointment, devised her copyhold lands upon trusts in favour of certain relatives & their respective issue in tail, all which trusts determined by their deaths without issue, with an ultimate trust for " my own right heirs (other than & except my nephew Robert John Smith & his issue)." On Oct. 2, 1875, by an award of the Copyhold Comrs., the copyhold lands so devised were enfranchised. Robert John Smith, who would have been testatrix's heir at common law had he survived her, died on May 12, 1879. Testatrix died on Sept. 11, 1883, leaving John Robert Smith, the eldest son of the said Robert John Smith, her heir at common law, a nephew Alfred William Smith, her heir at common law if Robert John Smith & his issue were excluded, & a brother George Smith, her heir according to the custom of the manor, which was borough-English:—*Held:* the words " my own right heirs " must be construed to mean her heirs at common law & not her customary heirs: & the limitation, not materially differing from the limitation in *Goodtitle* d. *Bailey* v. *Pugh* (1787), 3 Bro. P. C. 454, a decision of the House of Lords, was ineffectual, & accordingly the lands so devised were unappointed.—*Re* SMITH, BULL *v.* SMITH, [1933] Ch. 847; 102 L. J. Ch. 359; 149 L. T. 382.

7176a. ——.]—Testator by his will which he made in 1901 directed that his estate should be held, subject to a prior life interest therein for the benefit of his mother, upon trust for his wife & after her death " upon trust for such person or persons as at the decease of my said wife shall be my heir or heirs at law absolutely." Testator died in 1934, his mother having died in 1910 & his wife in 1924:—*Held:* applying the rule which inclines against intestacy, the word " heir " must be construed in its popular meaning of heir apparent or heir presumptive, & the estate passed to the person or persons who would have been testator's heir or heirs-at-law if he had died at the same time as his wife.—*Re* HOOPER, HOOPER *v.* CARPENTER. [1936] Ch. 442; [1936] 1 All E. R. 277; 105 L. J. Ch. 298; 154 L. T. 677; 80 Sol. Jo. 205, C. A.

7176a. ——.]—*Re* HOOPER, HOOPER *v.* CARPENTER, No. 7176a, *ante*.

7179b. Construed as gift to ancestor.]—Testator by his will bequeathed pecuniary legacies & continued: " The rest of my property of whatsoever kind I give to my wife & after her decease to be divided between the Local Preachers' Mutual Aid Society & the heirs of my brother & sisters." At the date of the will testator had two sisters living, each of whom had one child, also then living. He had had no sister who had predeceased him. He had no brother then living, but had had one brother who had predeceased him leaving a wife & one child, both alive at the date of the will. Testator's wife predeceased him:—*Held:* (1) the gift " to the heirs of my brother & sisters " was a gift to the sisters & the daughter of the deceased brother; (2) the gift for division between the charity & the three other donees was a gift in equal fourth shares.—*Re* COSSENTINE, PHILP *v.* WESLEYAN METHODIST LOCAL PREACHERS' MUTUAL AID ASSOCN. TRUSTEES, [1933] Ch. 119; 102 L. J. Ch. 78; 148 L. T. 261; 76 Sol. Jo. 512.

7189. *Add. Annotation:—As to* (1) **Refd.** *Re* Smith. Bull *v.* Smith, [1933] Ch. 847.

7201. *Add. Annotation:*—**Refd.** Macleay *v.* Treadwell, [1937] A. C. 626.

7231. *Add. Annotation:*—**Consd.** *Re* Boyer, Neathercoat *v.* Lawrence, [1935] Ch. 382.

7234. *Add. Annotation:*—**Refd.** *Re* Boyer, Neathercoat *v.* Lawrence, [1935] Ch. 382.

7249. *Add. Annotations:*—**Consd.** *Re* Hayden, Pask *v.* Perry (1931), 172 L. T. Jo. 97. **Distd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7250. *Add. Annotation:*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7252. *Add. Annotation:*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7255a. Gift to married woman or heirs—Whether husband included.]—With regard to *Re Walton's Trust*, I find the facts in that case to have been these: real estate & personal estate were given by will to trustees, upon trust for testator's wife, & after her decease to be sold, & the proceeds divided equally between testator's children (nominatim), " or their heirs or assigns." The Vce-Chancellor decided in favour of the children of a daughter who had died in the interval between the death of testator, &

PART XVI. SECT. 17, SUB-SECT. 11.—H. (a).

e i. —— *Effect of assimilation of descent of realty & personalty—New Zealand.*]—Testator, who at the date of his death, childless, in 1895, was resident & domiciled in New Zealand, by his will, made in 1891, devised all his real estate " whatsoever & wheresoever " to trustees for the benefit of a brother & the oldest son of that brother during their joint lives & the life of the survivor, & then directed it at the expiration of twenty-one years after the death of the survivor to be conveyed & transferred absolutely to " the heir-at-law of such survivor his heirs & assigns." The whole of testator's real estate consisted of a farm of 500 acres in New Zealand:—*Held:* (1) the heir-at-law named in the will was the heir-at-law constituted by the law of New Zealand, where the basic law of succession to real estate was the old common law of England as modified in 1833 by the Inheritance Act; (2) notwithstanding anything contained in the provisions of the three New Zealand statutes, the Real Estate Descent Act, 1874, the Administration Act, 1879, which repealed the Act of 1874, & the Administration Act, 1908, a consolidation statute, which introduced in New Zealand a new rule of succession to real estate by which in cases of intestacy realty was to be administered & was to devolve precisely like personalty, the common law heir-at-law had not been extinguished in New Zealand, but still survived there with definite rights & privileges appertaining to his status, & remained an heir capable of being ascertained & identified as easily as before the passing of the above legislation. Applt., the eldest son of testator's nephew who, in the events which happened, became the survivor named in the will, was therefore the " heir-at-law of such survivor " & as such entitled to the whole of the testator's real estate.—MACLEAY *v.* TREADWELL, [1937] A. C. 626; [1937] 2 All E. R. 38; 106 L. J. P. C. 91; 157 L. T. 1; 53 T. L. R. 434; 81 Sol. Jo. 356, P. C.—N.Z.

PART XVI. SECT. 17, SUB-SECT. 11.—H. (c) i.

c i. ——.]—*Re* BENJAMIN (1931), 3 M. P. R. 5.—CAN.

PART XVI. SECT. 17, SUB-SECT. 11.—H. (d).

7247 i. *Whether words substitutional—Bequest of personalty & realty.*]—By her will testatrix gave the whole of her estate to her husband W. for life, & after his decease to be equally divided amongst " my children or their heirs." W., who was still alive, & six of her children survived the testatrix. E., a son, died leaving him surviving a widow & child, & made a will by which he appointed W. his sole exor. & beneficiary. Testatrix's estate comprised both personalty & realty:—*Held:* the words " or their heirs " in testatrix's will were words of substitution & not of limitation.—*Re* ROBERTS' (C. J.) WILL (1929), 29 S. R. N. S. W. 562; 46 N. S. W. W. N. 188.—AUS.

that of the tenant for life, & against her husband, who claimed his wife's share as her administration (PAGE WOOD, V.-C.).—*Re* WALTON'S TRUST (1856), cited 2 K. & J. 738; *revsd. on other grounds, sub nom. Re* WALTON'S ESTATE (1856), 8 De G. M. & G. 173, L. JJ.

Annotation :—**Folld.** *Re* Boyer, Neathercoat *v.* Lawrence, [1935] Ch. 382.

7255b. —— ——.]—A testatrix by her will gave £600 upon trust for the benefit of E. & F. during their lives, & after the death of both of them she directed that the amount should be equally divided " among such & so many of my brothers & sisters or their heirs as shall be living at the time of my decease." N., a sister of testatrix, survived testatrix, but died in the lifetime of her husband :—*Held :* the husband of N. did not take as her heir.—*Re* BOYER, NEATHERCOAT *v.* LAWRENCE, [1935] Ch. 382; 104 L. J. Ch. 171; 152 L. T. 553; 51 T. L. R. 259.

7297. *Add. Annotations :*—**Apld.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361. **Refd.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

7304. *Add. Annotation :* — **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

7307a. ——.]—Testator by his will gave all his property to " my wife E. A. S." Testator left a lawful wife M. A. S. & children by her & contributed to their support, but about five years before his death had contracted a bigamous marriage with a widow E. A. M., who lived with him & was known as E. A. S., & believed she was, & was reputed to be, his wife. The will was produced by E. A. M. :—*Held :* the will, taken in connection with the surrounding circumstances, indicated that the testator intended to benefit E. A. M., she being in a secondary sense & by repute his " wife," & therefore she was entitled, although not his wife nor bearing his surname.—*Re* SMALLEY, SMALLEY *v.* SCOTTON, [1929] 2 Ch. 112; 98 L. J. Ch. 300; 141 L. T. 158; 45 T. L. R. 396; 73 Sol. Jo. 234, C. A.

7309. *Add. Annotation :*—**Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

7314. *Add. Annotations :*—**Distd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361. **Refd.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

7347. Add the following paragraph & citations :—

Testator, by his will, bequeathed a share of his residuary estate upon trust for G. for life, & after his death for his children in equal shares, & in case he died without children upon trust for the person or persons who under the statutes for the distribution of intestate estates would on his decease have been entitled as his next of kin, in case he had then died possessed thereof intestate. Testator died in 1875, & G. died without leaving children in Mar. 1927 :—*Held :* the share was divisible among the persons entitled under the Statutes of Distribution in force at the date of testator's death, there being no contrary intention expressed in the will to exclude the operation of those statutes, so as to introduce the rules of distribution contained in Administration of Estates Act, 1925 (c. 23).—*Re* SUTCLIFFE, SUTCLIFFE *v.* ROBERTSHAW, [1929] 1 Ch. 123; 98 L. J. Ch. 33; 140 L. T. 135; 72 Sol. Jo. 384.

Annotation :—**Consd.** *Re* Sutton, Evans *v.* Oliver, [1934] Ch. 209.

7347a. —— ——.]—Residuary bequest upon trust " for such person or persons who at the decease of my wife shall be of my blood & of kin to me & who under the statutes for the distribution of the personal estates of intestates would be entitled to my personal estate if I were to die immediately after the death of my wife intestate." Testator died on Oct. 9, 1923, & his widow died on June 6, 1933. Between these dates Administration of Estates Act, 1925 (c. 23), had come into operation, & by sect. 46 new rules of intestate succession had been prescribed. By sect. 50 (2), trusts declared by a will coming into operation before the commencement of the Act by reference to the Statutes of Distribution " shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act " :—*Held :* the persons to take the residue were to be ascertained according to the law of distribution in force before the commencement of Administration of Estates Act, 1925 (c. 23).—*Re* SUTTON, EVANS *v.* OLIVER, [1934] Ch. 209; 103 L. J. Ch. 127; 150 L. T. 453; 50 T. L. R. 189.

7347b. —— ——.]—By a settlement dated Mar. 19, 1924, W. gave certain property to the Public Trustee upon trust to divide a a part thereof among " such persons being next of kin of the settlor at the date of her death according to & in such manner &

PART XVI. SECT. 17, SUB-SECT. 11.—J. (a).

p 1. ——.]—*Re* YOUNG, [1928] 2 D. L. R. 966; 62 O. L. R. 275.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—J. (d.) 1

7365 v. *revsd. sub nom.* MCQUARRIE *v.* EASTERN TRUST CO., [1928] 1 D. L. R. 239; [1928] S. C. R. 13.—**CAN.**

7365 ix. ——.]—*Re* CAMPBELL, [1928] 4 D. L. R. 797; 63 O. L. R. 36.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—J. (d) iii.

7389 i. *Ascertainment at death of testator*]—By his will testator, after a certain bequest to his wife, gave her a life estate in the whole of his residuary real & personal estate, & then provided that, after the death of his wife, all his real & personal estate should be converted into money, & such money should be handed over " to my then living nearest of kin " :—*Held :* the persons who were entitled in remainder on the death of the life tenant were such of testator's nearest blood relations ascertained at his death as were living at the date of the expiration of the life estate.—*Re* MCRAE, MCDONALD *v.* CREER (1928), 28 S. R. N. S. W. 447; 45 N.S.W.W.N. 93.— **AUS.**

PART XVI. SECT. 17, SUB-SECT. 11.—K. (b).

7442 xi. ——.]—*Held :* " family " meant the children of testator.—*Re* ALLEN, [1933] S. A. S. R. 122.—**AUS.**

c 1. ——.]—Testator directed his trustees to pay the income of his estate to his daughter for life, & if she left no issue then to give to his half brother one-fourth of his estate " to be by him at his discretion & without account for the benefit of more needy members of his branch of my father's family." Testator's daughter died without issue in 1927. Testator's father was married twice & had children by both marriages. W. was a child by the second marriage, & he & three other children of the second marriage who were living at testator's death predeceased the daughter :—*Held :* the words " his branch of my father's family " were not intended by testator to apply to W.'s issue, but to benefit children of the second marriage who were living at his death, the word " family " being used in its primary meaning of children, & as no contrary intention appeared, the members composing it were to be ascertained as at testator's death.—*Re* HATHEWAY, WARDROPER *v.* WOOD (1929), 54 N. B. R. 347.—**CAN.**

proportions as are prescribed by the Statutes of Distribution as if the settlor died unmarried & intestate & as if the whole of the trust fund was personal estate." By her will made on the same day W. gave all her estate not disposed of by the settlement to the Public Trustee " upon the like trusts & to & for the like ends intents & purposes & with the like powers & provisions applicable thereto as are declared by & contained in the said indenture of settlement with regard to the trust premises settled thereby after my death shall have occurred." W. died in 1929 :—*Held :* the trust funds under both the settlement & the will must be administered according to the law of intestacy in force at the date of the settlement.—*Re* WALSH, PUBLIC TRUSTEE *v.* WALSH, [1936] 1 All E. R. 327 ; 80 Sol. Jo. 264, C. A.

7380. *Add. Annotation :*—**Refd.** *Re* Hooper, Hooper *v.* Carpenter, [1936] 1 All E. R. 277.

7435. *Add. Annotation :—As to* (1) **Consd.** Price *v.* Gould (1930), 143 L. T. 333.

7455. *Add. Annotation :*—**Consd.** Price *v.* Gould (1930), 143 L. T. 333.

7581. *Add. Annotations :*—**Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

7596. *Add. Annotation :*—**Folld.** *Re* Forbes, Public Trustee *v.* Hadlow (1934), 78 Sol. Jo. 336.

7496a. Persons within Administration of Estates Act, 1925 (c. 23), s. 43.]—Testatrix, a spinster, made her will in the following terms : " I wish E. & H. to take possession of all my possessions to be held in trust after my death & divided equally amongst all my relations " :—*Held :* (1) the gift was a general gift of all testatrix could bequeath or devise by her will ; (2) in the rule of convenience that construed a gift to " all my relations " as a gift equally to all those, other than a husband or wife, entitled under the Statutes of Distribution, there must now be substituted all those persons within the class of consanguinity indicated by the Administration of Estates Act, 1925 (c. 23), s. 46. The division between members of the class will still be in equal shares *per capita.*—*Re* BRIDGEN, CHAYTOR *v.* EDWIN, [1937] 4 All E. R. 342 ; 54 T. L. R. 110 ; 81 Sol. Jo. 922.

7599a. —— ——.]—*Re* FORBES, PUBLIC TRUSTEE *v.* HADLOW (1934), 78 Sol. Jo. 336.

7601a. Lady's maid.]—*Re* FORBES, PUBLIC TRUSTEE *v.* HADLOW (1934), 78 Sol. Jo. 336.

7620a. Change of ownership of business unknown to legatee.]—By his will, made in Oct. 1933, a testator gave " to every person who shall at the date of my death be in my service & shall have been in my service for not less than three years continuously immediately prior to that date " one year's wages. Testator had carried on the business of a sports ground proprietor. In May, 1931, testator had signed a declaration of trust whereby he admitted & acknowledged that he held the business of a sports ground proprietor carried on in his name in trust for the persons mentioned in the declaration in certain proportions. Testator continued until his death to manage the business exclusively. The question arose whether certain persons who had been employed in testator's business since before May, 1931, &, without any knowledge of any change in the ownership of the business, had remained in the employ of the business continuously until testator's death, were entitled to legacies under testator's will :—*Held :* the employees were in testator's service for a continuous period of three years immediately prior to his death within the terms of the will, & they were entitled to legacies.—*Re* HOWELL'S TRUSTS, BARCLAYS BANK, LTD. *v.* SIMMONS, [1937] 3 All E. R. 647.

7637a. —— **Confined to wages in cash.**]—The ct. held that a bequest to a servant of " one year's wages " was confined to wages in cash, & did not include various other benefits to which the servant was entitled.—*Re* PEACOCK, PUBLIC TRUSTEE *v.* BIRCHENOUGH (1929), 45 T. L. R. 301 ; 73 Sol. Jo. 220.

7673. *Add. Annotation :*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

7742a. ——.]—In this case an absolute term of ninety-nine years limited to J. C. amongst other limitations of a real estate under a will, was, with reference " to the true construction of the several parts of the will," considered not as an absolute term, but as determinable on the death of J. C.—CORYTON *v.* HELYAR (1745), 2 Cox, Eq. Cas. 340 ; 30 E. R. 156.

Annotations :—**Consd.** Clarke *v.* Hackwell (1788), 2 Bro. C. C. 304 ; Lytton *v.* Lytton (1793), 4 Bro. C. C. 441 ; Wykham *v.* Wykham (1811), 18 Ves. 395 ; Sherratt *v.* Bentley (1834), 2 My. & K. 149. **Refd.** Mansell (Lady)

PART XVI. SECT. 17, SUB-SECT. 11. —Q.

...iece " — Grandniece.] — *Re* ... ESTATE ; RANDOM *v.* ..., [1931] 3 W. W. R. 775.—CAN.

PART XVI. SECT. 18, SUB-SECT. 1.

... one child—Bequest of

...—Lands owned not farm sense.]—*Re* MCCAIG

...—In residuary clause ...erious charitable ...hile the words & " bequests " are in ... used in dispositions to mean gifts of personalty, yet a testator may use them to distinguish donations to different classes, & his intention to do so, if clear, will be given effect.—*Re* TYLDESLEY, SMITH *v.* CHATHAM TRUSTEES, HOME OF THE FRIENDLESS, [1932] S. C. R. 713 ; 4 D. L. R. 173.—CAN.

PART XVI. SECT. 19, SUB-SECT. 1.

d i. ——.]—ROCHE *v.* ROCHE, [1930] 4 D. L. R. 310.—CAN.

PART XVI. SECT. 19, SUB-SECT. 3. —A.

7704 xxvi. ——.]—Testator by his will directed his trustee to divide the residue of his estate among his children, the share of each child to be vested in & paid to that child at twenty-one years of age. By a codicil testator directed his daughters' shares of residue to be sold & invested, & restricted the gift to his daughters to a life estate, with remainder to their respective children :—*Held :* the gift to the daughter contained in the will was an absolute gift, from which interests were carved out by the codicil in favour of the daughter's children, & as the daughter never had children, the absolute gift remained unaffected.—*Re* BISHOP, PUBLIC TRUSTEE *v.* BISHOP [1928] S. A. S. R. 302.—AUS.

7704 xxvii. ——.]—By the first clause of the will in question herein the testatrix gave her " entire estate," with certain exceptions, to her brother. The will then went on to provide that on the death of her brother " the residue of my estate then remaining " should go to another named person, the testatrix' niece :—*Held :* the brother took an absolute estate, not merely a life interest, & the gift over to the niece was void.—*Re* ROBINSON ESTATE, [1930] 2 W. W. R. 609 ; [1931] 1 D. L. R. 289 ; 39 Man. L. R. 93 ; *revsg.*, [1930] 3 D. L. R. 820 ; 1 W. W. R. 935.—CAN.

v. Mansell (Sir) (1757), Wilm. 36; Northumberland (Earl) *v.* Egremont (Earl) (1759), 1 Eden. 435; Strong *v.* Teatt (1760), 1 Wm. Bl. 200; Evans d. Brooke *v.* Astley (1762), 1 Wm. Bl. 521; Frogmorton d. Bramstone *v.* Holyday (1765), 3 Burr. 1618; Venables *v.* Morris (1797), 7 Term Rep. 342; Wilkinson *v.* Adam (1812), 1 Ves. & B. 422; Hart *v.* Tulk (1852), 2 De G. M. & G. 300; Key *v.* Key (1853), 4 De G. M. & G. 73; Windus *v.* Windus (1856), 6 De G. M. & G. 549.

7781a. Absolute gift "subject to provisions & directions hereinafter contained."]—Testator by his will devised & bequeathed the residue of his real & personal estate equally among several named children "subject to the provisions & directions hereinafter contained." The provisions & directions settled the shares of daughters, but failed to dispose of the whole interest of a married daughter who died without children:—*Held:* a gift in these terms is not an absolute gift & the personal representatives of the daughter were not entitled to the interest undisposed of.—*Re* COHEN'S WILL TRUSTS, CULLEN *v.* WESTMINSTER BANK, LTD., [1936] 1 All E. R. 103.

7798. *Add. Annotation:*—**Refd.** *Re* Orlebar, Orlebar *v.* Orlebar, [1936] Ch. 147.

7911. *Add. Annotation:*—**Extd.** *Re* Sleeman, Cragoe *v.* Goodman (1929), 167 L. T. Jo. 116.

7911a. ——.]—*Re* SLEEMAN, CRAGOE *v.* GOODMAN, [1929] W. N. 16; 167 L. T. Jo. 116; 67 L. Jo. 163.

8001. *Add. Annotation:*—**Refd.** *Re* Duncombe, Wrixon-Becher *v.* Faversham, [1932] 1 Ch. 622.

8003. *Add. Annotations:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

8009. *Add. Annotations:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412; *Re* Jones, Public Trustee *v.* Jones, [1934] Ch. 315.

8010. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8017. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

[illegible] (1) & (2) **Overd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl), [1932] 1 Ch. 622.

8026. *Add. Annotation:*—**Refd.** Barton *v.* Moorhouse, [1935] A. C. 300.

8028. *Add. Annotation:*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8032. *Add. Annotation:*—**Refd.** *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208.

8032a. —— ——.]—By his will dated May 22, 1879, testator bequeathed certain chattels to his exors. upon trust to "permit the same to go along with & be used & enjoyed so far as the rules of law & equity will permit by person or persons who under or by virtue of this my will shall for the time being be in the actual possession or entitled to the receipt of the rents & profits of the mansion & demesne of W. included in & settled by" a resettlement dated Oct. 31, 1874, but so as not to vest absolutely in any tenant in tail by purchase until he attained twenty-one years of age. The will also contained a bequest of residuary personal estate. The W. estate was not settled by testator's will but by the resettlement, & the words "this my will" in the bequest of chattels were therefore construed as "the resettlement." In the events which had happened testator's daughter, E., was on July 6, 1917, tenant for life in possession under the resettlement, & his nephew A. tenant in tail in remainder expectant on the event which happened of testator's three daughters dying without sons. By a disentailing deed of that

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PART XVI. SECT. 19, SUB-SECT. 3.—B.

7763 iii. —— ——.]—A testator by his will bequeathed all his possessions to his wife for her absolute use or disposal. There were further provisions in the will that at her death, if she had made no will to the contrary & if testator survived her, the property after payment of debts should be divided among certain named beneficiaries:—*Held:* the wife took an absolute & not a life interest in all property real & personal of testator.—*Re* HERVEY, STEPHENS *v.* MARKS & HERVEY, [1936] Q. S. R. 217.—**AUS.**

sf. *Absolute gift followed by executory devise.*]—Where testator has made an absolute gift to a beneficiary, & in the succeeding sentence an executory devise beginning with the words "& at his death if he has no lawful issue" followed by a sentence beginning, "& if he leaves a widow," the clear inference of testator's intention is that the beneficiary takes a fee simple.—*Re* STARK & TRIM, [1932] O. R. 263; 2 D. L. R. 603.—**CAN.**

sk. *Absolute gift to wife—Provision for disposition of "any remaining at her death."*]—A wife takes an absolute interest by a gift of residue to her without restriction, subject to a proviso that any remaining at her death should be divided among the children.—NOVA SCOTIA TRUST CO. *v.* SMITH [1933] 2 D. L. R. 272.—**CAN.**

sm. *Gift of real & personal estate to wife—Subsequent "restrictions."*]—*Re* SCOTT ESTATE, [1937] 3 W. W. R. 272.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 3.—C.

d i. —— ——.]—A gift to "my wife & on her death to the Home Mission Fund of the Presbyterian Church" creates a life estate only with remainder to the fund.—CENTRAL TRUST CO. OF CANADA *v.* MACPHERSON (1936), 11 M. P. R. 118.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—A. (a).

a. *affd.* [1928] 3 D. L. R. 773; [1928] S. C. R. 329.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—A. (i) i.

q i. ——.]—*Re* BECKSTEAD, [1928] 4 D. L. R. 666; 62 O. L. R. 690.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—A. (l).

sg. *At his decease to his heir male absolutely.*]—A testator, who resided in England & died there in 1869, devised certain land in Victoria upon trust for his son for life, "& at his decease to his heir male absolutely or failing any lawful son to his eldest daughter absolutely":—*Held:* the rule in *Shelley's Case* did not apply, & the words "heir male" designated the eldest son of the life tenant.—*Re* RUDDUCK, EQUITY TRUSTEES EXECUTORS & AGENCY CO., LTD. *v.* RUDDUCK, [1935] V. L. R. 251; 41 Argus L. R. 351.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 6.—B. (a).

a i. —— *Remainder to "representatives."*]—*Re* MORAN, CLAY *v.* EASTERN TRUST CO. (N. S.), [1929] 1 D. L. R. 592.—**CAN.**

a ii. —— *Insurance policy payable to donee.*]—Testator devised all his property, including all life insurance in trust for his sister-in-law for life & then to her grandson absolutely. Three of his policies were payable to his sister-in-law:—*Held:* her interest in these was cut down to a life interest.—*Re* ROGERS WILL (1935), 9 M. P. R. 575.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—B. (b) iii.

7968 ii. ——.]—Testator made bequests of money to his three daughters, "these respective sums for my daughters & their heirs, the interest during their lives to be absolutely theirs & not subject to the control of their husbands; & after their decease, the principal shall be equally divided among their lawful issue as they shall severally attain the age of twenty-one years, & in case any of my daughters shall not marry or have any lawful issue, then at their decease such daughter's share shall be equally divided between her surviving sisters or their heirs":—*Held:* each daughter took not a life interest merely but an absolute interest.—*Re* LLOYD, POWELL *v.* RICHARDSON (1929), 54 N. B. R. 336.—**CAN.**

date A. disentailed the property comprised in the resettlement with the consent of E. as protector of the settlement, & A. & another daughter of testator joined in conveying the property to E. in fee simple. E. survived testator's other daughters & died in 1930. In the events which had then happened testator's great nephew B. would, but for the disentailing deed, have then become tenant in tail in possession. He died soon afterwards. On a summons raising the question who on the death of E. became entitled to the chattels, LUXMOORE, J., who would apart from authority have held that the chattels fell into residue, decided on the authority of *Hogg* v. *Jones*, No. 8022, that B. became entitled to the chattels absolutely on E.'s death. On appeal:—*Held:* reversing the decision of LUXMOORE, J., but without deciding whether the chattels belonged to E. absolutely or fell into residue, as B. had never been in the physical possession of the mansion house & demesne of W., he did not become entitled to the chattels on E.'s death.—*Re* DUNCOMBE, WRIXON-BECHER *v.* FAVERSHAM, [1932] 1 Ch. 622; 101 L. J. Ch. 280; 146 L. T. 412, C. A.

8217. *Add. Citation:*—140 L. T. 369.

Add. Annotation:—**Refd.** *Re* W. D. J., [1934] Ch. 174.

8344. *Add. Annotation:*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

PART XVI. SECT. 19, SUB-SECT. 7.—B.

h i. ——.]—*Re* BRADSHAW ESTATE, [1934] 3 W. W. It. 577; [1935] 1 D. L. R. 167; 42 Man. L. R. 525.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 8.—D.

q i. ——.]—Testator gave to his wife the whole of his estate "for her sole use as long as she may live," &, at her death, to nieces & nephews "what shall then remain over of my estate": —*Held:* no more than a life estate was given, but the description "what shall then remain over of my estate" adequately implied a power on the part of the widow to encroach on capital; & what remained after her encroachments passed at her death under the will to his nephews & nieces. —STADDER *v.* CAN. BANK COMMERCE, [1929] 3 D. L. R. 651; 64 O. L. R. 69. —**CAN.**

PART XVI. SECT. 19, SUB-SECT. 8.—E. (o).

8141 vii. ——.]—A testator gave all his real & personal estate to his wife "provided she remains my widow, she nevertheless thereout maintaining supporting & educating my infant children, but should she marry again": he gave his estate to his trustee for conversion & distribution equally among all his children:—*Held:* the widow took a determinable life interest in the estate only, & not an absolute interest subject to divesting on re-marriage. —*Re* HAMDORF, [1935] S. A. S. R. 396.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 8.—F. (b).

8164 i. *Whether first donee takes absolutely—"Residue of my estate that may be remaining over at her death."*]—A *mortis causa* settlement, by which testator conveyed his whole estate to his stepdaughter E., whom he also appointed his sole extrix., contained this provision: "In the event of T. surviving his sister, the said E., the revenue of the residue of my estate that may be remaining over at her death shall fall to the said T., but in liferent for his liferent use allenarly, & at his death to my own heirs whomsoever in fee." E. survived testator, & died leaving a general settlement by which she bequeathed her whole estate to her brother T., who survived her. At the date of her death she still retained in her possession, in their original forms, certain securities which had belonged to the testator, & a deposit receipt representing heritage belonging to him which she had sold. In a question between T., as his sister's universal legatee, & testator's heirs whomsoever regarding the right of these funds:—*Held:* the effect of the provision above quoted was to restrict the absolute gift originally made by testator to E. to a right of consumption of testator's estate during her lifetime; &, accordingly, as the funds in question were at her death still capable of dentification as part of testator's estate, they passed in terms of his settlement, as residue of his estate, in fee to his heirs whomsoever, subject to a right of liferent in favour of T.—HEAVYSIDE *v.* SMITH, [1929] S. C. (Ct. of Sess.) 68.—**SCOT.**

8164 ii. ——.]—*Re* WELLS, REILLY *v.* LEWIN (1935), 9 M. P. R. 580; 5 F. L. J. (Can.) 163.——**CAN.**

8b. *Whether first donee takes absolutely—Gift over of "what is left."*]—Testator gave to his wife certain properties, & at her death "what was left was to go over to" a granddaughter, & the will further directed that the wife was to have "the power to do what she likes with" the property, but what remained at the death of the wife was to go to the granddaughter:—*Held:* the wife did not take an absolute interest in the property, but took an interest for life with power to dispose of the whole or part of the corpus of the property, & that on the death of the wife the granddaughter took any part of the property undisposed of.—*Re* MCINTOSH, [1929] S. A. S. R. 21.—**AUS.**

8d. —— *"If there is any left."*]—A will read as follows: "I give, devise & bequeath all my real & personal estate of which I may die possessed in the following manner, that is to say: unto my wife N. K. & I nominate & appoint N. K. to be executrix of this my last Will & Testament. After the death of my wife, my estate is to go to my grandchildren equally, if there is any left":—*Held:* the will vested the testator's estate in the widow absolutely.—*Re* KANE ESTATE, [1934] 2 W. W. R. 202; 3 D. L. R. 637; 42 Man. L. R. 265.—**CAN.**

8f. —— *Gift of "whatever remains."*] —Testator devised his residue in these terms: "All the residue . . . I devise & bequeath to my wife provided, however, that whatever remains of said residue at her death shall be divided as follows . . .":—*Held:* the wife took an absolute estate in fee simple in the residue.—*Re* SMITH'S ESTATE, NOVA SCOTIA TRUST CO. *v* SMITH (1933), 6 M. P. R. 205.—**CAN.**

8k. —— *"Balance, if any."*]—A gift of residue of realty & personalty to a wife for her use & benefit with a direction that she should leave the balance if any to a mission fund is an absolute gift to the wife.—*Re* MOORE (1925), 57 O. L. R. 530.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 9.—A. (a).

8179 viii. —— ——.]—Testator by his will vested residuary property in his wife "to be used by her at discretion in educating & providing for my two sons":—*Held:* the wife took the beneficial interest in the residue, subject to a trust or charge to educate & provide for the sons as in her discretion seemed proper.—HOURIGAN *v.* TRUSTEES EXECUTORS & AGENCY CO., [1934] V. L. R. 279; 40 Argus L. R. 283; 8 A. L. J. 146.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 9.—A. (b).

8200 ii. ——.]—*Re* PEARCE, PEARCE *v.* PEARCE, [1927] S. A. S. R. 397.—**AUS.**

8202 ii. —— —— ——.]—PUBLIC TRUSTEE *v.* WEIR, [1928] N. Z. L. R. 800.—**N.Z.**

8d. *Trustee to have "control" of estate—Whether amounting to beneficial interest.*]—Testator by his will appointed his wife sole executrix, &, after a direction in usual form to pay debts, provided as follows: "I give devise & bequeath all my property to my wife Elizabeth Emma to be held in trust by her for the benefit of our children. The said Elizabeth Emma to have control of the estate during her lifetime." Upon an originating summons for the interpretation of the will: —*Held:* the widow took no beneficial interest under the will & that she held the property only as trustee for the children.—*Re* WALLACE, WALLACE *v.* WALLACE, [1932] N. Z. L. R. 479.—**N.Z.**

PART XVI. SECT. 19, SUB-SECT. 9.—B. (a).

8206 i. —— *Application in discretion of donee.*]—BAKER *v.* DUMARESQ, [1934] S. C. R. 665.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 10.—A. (a).

8256 x. ——.]—C. gave his real & personal estate to his wife, J. "for the use & benefit of herself & our dear daughter, E." & upon the death of his wife the whole of his estate was "to revert to my dear daughter, E. aforesaid for her sole use & benefit," & he appointed his wife sole executrix. Testator died in 1904 & E. died in 1911:—*Held:* the gift created a joint tenancy, & J. took the whole gift by survivorship.—*Re* CHAMBERS (1925), 21 Tas. L. R. 26.—**AUS.**

8256 xi. ——.] —A bequest to a number of persons without any accompanying explanatory words creates a joint tenancy.—*Re* BANCROFT, EASTERN TRUST CO. *v.* CALDER, [1936] 4 D. L. R. 571.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 10.—B. (a).

8l. *Trust for education & provision.*] —Testator left the residue of his property to his widow as trustee, to be used by her at her discretion in educating & providing for his two sons R. & P.:—*Held:* the sons took as tenants in common, & not as joint tenants.—HOURIGAN *v.* TRUSTEES EXECUTORS & AGENCY CO., LTD., [1933] V. L. R. 470; Argus L. R. 501.—**AUS.**

8375. *Add. Annotation :*—**Refd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

8385. *Add. Annotation :*—**Consd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8495. *Add. Annotations :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Apld.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8511. *Add. Annotation :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

8534a. ——.]—By his will testator gave all his residuary real & personal estate to his trustees upon trust to pay the rents, profits & income to his wife for life & after her death upon trusts for sale & to divide the proceeds into two equal portions, one to be paid to his son A. & the other on certain trusts for his daughter B. & her children as therein mentioned. By a codicil testator, after reciting that since the date of his will he had purchased a freehold house, devised the same on trust for his wife for life & on her death for E. for life. He then directed his trustees on these events happening to sell the house & "divide the proceeds thereof equally between the children of 'my son A. & my daughter B.'" A. was married, with one child, a son. B. was also married, & had six children. A.'s son having died, his legal personal representative was one of the defts. to the summons. One of B.'s children, a son, also died, & his legal personal representative was also a deft. :—*Held :* although on the authorities a gift to be equally divided between the children of A. & B. ought, in the absence of surrounding circumstances, to be construed as a gift in equal shares to the individual B. & the children of A., the construction must in each case depend on the particular context & all the surrounding circumstances ; the gift in the codicil included all testator's grandchildren, both A.'s & his daughter B.'s children, & accordingly the proceeds of sale were divisible in sevenths.—*Re* DALE, MAYER *v.* WOOD, [1931] 1 Ch. 357 ; 100 L. J. Ch. 237 ; 145 L. T. 632.

Annotation :—**Consd.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8538a. "**Divided between**"].—*Re* COSSENTINE, PHILP *v.* WESLEYAN METHODIST LOCAL PREACHERS' MUTUAL AID ASSOCN., No. 7179b, *ante*.

8552. *Add. Annotations :*—*As to* (2) **Folld.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307. **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357 ; *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8553a. ——.]—*Re* PROSSER, PROSSER *v.* GRIFFITH (1929), 167 L. T. Jo. 307 ; 67 L. Jo. 346 ; [1929] W. N. 85.

Annotation :—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

8625. *Add. Annotation :*—**Refd.** *Re* Forbes, Public Trustee *v.* Hadlow (1934), 78 Sol. Jo. 336.

8698a. ——.]—Testator executed a codicil to his will whereby he revoked the appointment of an executor & appointed another in his place, revoked a specific devise & bequest & declared certain other trusts of the property comprised therein, gave certain directions to his trustees, bequeathed pecuniary legacies additional to those in his will & declared that the power of appointing new trustees should be exercised by the surviving & continuing trustees, & in other respects confirmed his will. On the same day he executed another codicil in almost identical terms, the only material difference being that a blank left in the amount of a legacy in one codicil was filled in in the other. The two codicils were attested by the same witnesses & placed in one envelope, which was sent to a bank for custody. The testator at a later date executed another, which he described as a "third" codicil to his will, & referred therein to his will & codicils :—*Held :* the two codicils of even date were duplicates of one & the same instrument, & that the legacies thereby given were substitutional & not cumulative. — *Re* MICHELL, THOMAS *v.* HOSKINS, [1929] 1 Ch. 552 ; 98 L. J. Ch. 197 ; 140 L. T. 686 ; 45 T. L. R. 243.

8703. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

8712a. ——.]—Where a second codicil appears to be only a repetition of a former, with the addition of a simple legacy, the legacies are not doubled. Parol evidence read, to show they were intended as accumulative.—COOTE *v.* BOYD, COOTE *v.* COOTE (1789), 2 Bro. C. C. 521 ; 29 E. R. 286.

8836. *Add. Annotation :*—**Apld.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8840. *Add. Annotation :*—**Consd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8897a. ——.]—A testator by his will, drawn up in clauses in English form, appointed applts. to be his exors. & trustees, & by clause 6 devised to his son certain real property consisting of a number of plots of land & the buildings thereon situated at Lagos. A separate clause at the end of clause 6 stated that : "These devises shall take effect upon my said son attaining the age of twenty-five years." Testator died in 1918, & the son, on attaining the age of twenty-five years in 1930, brought an action against applts. claiming an account as from the date of testator's death of the rents of the properties devised to him by clause 6 of the will :—*Held :* (1) the established rule for construing devises of real estate is that they are to be held to be vested unless a condition precedent to the vesting is expressed with reasonable clearness ; (2) on

PART XVI. SECT. 19, SUB-SECT. 10.—C. (a) ii.

8515 iv. ——.]—Testator, by his will, gave one-fourth of a section of land upon trust for his son G. to use, occupy, & enjoy for life, & as to the remaining three-fourths, upon similar trust for three other children. On the death of the children respectively, the will directed the trustees to sell that portion of the section in which each had a life interest, & to stand possessed of the proceeds from any such sale on trust "for all my grandchildren being issue" of the four children "who shall live to attain the age of twenty-one years share & share alike." There was also a direction to use the whole or part of the income for the benefit, etc., of all or any of the children of the four children respectively, whether of full age or not. The residue of the estate was given to the four children or such as should be alive at the testator's death share & share alike. Certain grandchildren died in the lifetime of the life tenants :—*Held :* there was a gift of the proceeds of each of the four parts to the children of each life tenant.—*Re* BAULDERSTONE, [1928] S. A. S. R. 262.—AUS.

PART XVI. SECT. 19, SUB-SECT. 10.—C. (b)

CROSBY (1925), 21 Tas. L. R. 20.—AUS.

a consideration of the whole of the will & of the circumstances in which it was made, & applying the above-stated rule or principle, the words " shall take effect " related to the devise taking effect in possession, & were not intended to impose a condition precedent on the devise, which, therefore, was to be construed as vesting at the death of the testator, subject to divestment if the son should fail to attain the age of twenty-five years, & was not contingent on his attaining that age. The son was accordingly entitled to the rents claimed.—BICKERSTETH *v.* SHANU, [1936] A. C. 290; [1936] 1 All E. R. 227; 105 L. J. P. C. 53; 154 L. T. 360; 52 T. L. R. 290; 80 Sol. Jo. 164, P. C.

8902. *Add. Annotation :*—**Refd.** Bickersteth *v.* Shanu, [1936] 1 All E. R. 227.

8910. *Add. Annotation :*—**Refd.** Bickersteth *v.* Shanu, [1936] A. C. 290.

8913a. —— **" Shall take effect " on attaining specified age.**]—BICKERSTETH *v.* SHANU, No. 8897a, *ante*.

8919a. ——.]—A testator who died in 1914 domiciled in Scotland & was survived by his widow, two sons & three daughters, directed his trustees by his will (1) to settle certain capital sums on each of his five children; (2) to give the life-rent of the remainder of his estate to his widow; & (3) on her death, after increasing the amount of the children's provisions, (*a*) to convey the heritable or real estate in Scotland to his elder son, whom failing to his younger son, & (*b*) to divide the whole residue of the estate equally between the elder & the younger son; & in the event of the elder son dying before attaining the age of 26 & leaving lawful issue, such issue were to take his half, but failing such issue his half was to go to the younger son or his issue. There was a vesting clause in the will which declared that the bequests & provisions " shall vest at the dates when the same are due & payable & fall to be made over." The elder son, who died at the age of 41, predeceased the widow & left no issue. The questions raised in the appeal were (*a*) whether one half of the residue primarily destined to the elder son vested in him *a morte testatoris*, & (*b*) if it did not so vest whether it passed to the younger son & his issue, or was the subject of an intestacy & was thus available as a fund out of which testator's widow & children could benefit :—*Held :* the vesting clause could reasonably be construed to mean that the one half of the residue destined to the elder son vested in him *a morte testatoris*, at which date he had already attained the age of 26, regardless of whether the widow was then alive or not.

Per LORD MAUGHAM : In both Scotland & England, where a testator's intention could be gathered with reasonable certainty from the entire will, supplemented by extrinsic evidence if admissible, that intention was effective even against the literal meaning of the particular non-technical words used by testator in the will.—PARKES (OR KESWICK) *v.* PARKES (OR KESWICK), [1936] 3 All E. R. 653, H. L.

8950. *Add. Annotation :*—**Consd.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

8954. *Add. Annotation :*—**Consd.** Bickersteth *v.* Shanu, [1936] 1 All E. R. 227.

8969. *Add. Annotation :*—**Refd.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

8993. *Add. Annotation :*—**Apld.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

8998. *Add. Annotation :*—**Refd.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

9015. *Add. Annotation:*—**Refd.** *Re* Alston-Roberts-Wests' Settled Estates, [1928] W. N. 41.

9016. *Add. Annotation :*—**Consd.** Bickersteth *v.* Shanu, [1936] 1 All E. R. 227.

9037. *Add. Annotation :*—**Apld.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

9071a. ——.]—Testator bequeathed a sum of stock to trustees, upon trust, during sixty years from his death, if the law should allow, or, if not, then during the lives of his two sons, & of the survivor, & twenty-one years after his death, to lay out the dividends in repairing & insuring the houses, etc., on his farms, called H. & S., it being his desire, that, upon no account, should the timber of such farms be cut down during the said term of sixty years, on pain that the person so cutting such timber should lose all interest in the said estates, as if he were dead, & upon trust to pay the surplus, if any, of the said dividends, equally among the persons for the time being in possession of the estates under his will, during the continuance of the said trust; & immediately after the expiration thereof, to transfer one moiety of the said stock to the person then in possession of the H. farm, such person being one of his sons, or a descendant of a son; but if not, then to the descendants of testator's brothers & sisters, & to pay the other moiety in like manner to the person in possession of the S. farm. Testator devised the H. farm to the same trustees, in fee, upon trust for his son J., for ninety-nine years, if he should so long live, remainder to the use of his first & other sons in tail, with divers remainders over. Testator devised the S. farm in like manner for the benefit of his son H. & his issue. J. & H., & their eldest sons, barred the entail in remainder in the said farms & resettled the same, &, the stock having been transferred into ct. under Trustee Relief Act, petitioned for the payment out of the fund to them :—*Held :* the fund being intended for the benefit of the sons & their issue, the period for the enjoyment of the capital had been accelerated by barring the entail, which had determined the restriction against cutting down timber.—*Re* COLSON'S TRUSTS (1853), Kay, 133; 2 Eq. Rep. 257; 23 L. J. Ch. 155; 22 L. T. O. S. 183; 2 W. R. 111; 69 E. R. 57.

XVI. SECT. 20, SUB-SECT. 2.—B. (d).

9018 i. *Whether gift vests before age attained* :—*Re* BREWER'S WILL, 53 Bom. 724.—IND.

PART XVI. SECT. 20, SUB-SECT. 3.

9060 v ——.]—In case of a vested legacy payable at a future time, there is a complete severance of the legacy from the residue.—MANEKJI RUSTOMJI *v.* NANABHAI CURSETJI (1928), I. L. R.

PART XVI. SECT. 20, SUB-SECT. 3.—B. (b).

9101 v. ——.]—Bequests of a certain amount of stock in a co. to each of the nephews & nieces of testator " who

9205. *Add. Annotation :—Generally,* **Consd.** Browne *v.* Moody, [1936] 2 All E. R. 1695.

9210a. ——.]—Testatrix, by clause 5 of her will, set aside a fund of $100,000, & gave the income therefrom to her son for his life, & on his death she directed the fund to be divided as follows: one half to her grand-daughter E. & the other half equally between her daughters F., C. & H. By clause 6 she gave, devised & bequeathed the residue of the estate equally between the said grand-daughter & her three daughters share & share alike. By clause 7 she directed that, if the grand-daughter or any of the daughters predeceased her or her son leaving issue, the child or children of the person so dying should take the share to which their mother would have been entitled had she survived. All the beneficiaries mentioned survived testatrix. A special case was stated for the opinion of the Supreme Ct. of Canada, asking two questions: (*a*) whether the legacies given by clause 5 on the death of the son vested in the beneficiaries on the death of the testatrix; (*b*) if they became so vested whether they were liable to be divested under clause 7. The Supreme Ct. answered the first question in the negative, & the second question did not arise. On appeal to the Privy Council :—*Held :* the legacies given by clause 5 on the death of the son vested in the beneficiaries on the death of testatrix since the postponement of the division was solely for the purpose of interposing a life interest in favour of the son; in the case of a beneficiary dying in the lifetime of the son without issue the legacies would not be divested; in the case of a beneficiary dying in the lifetime of the son leaving issue, the legacies would be divested in favour of the child or children of the beneficiary so dying.—BROWNE *v.* MOODY, [1936] A. C. 635; [1936] 2 All E. R. 1695; 105 L. J. P. C. 140; 155 L. T. 469; 53 T. L. R. 5; 80 Sol. Jo. 814, P. C.

9241. *Add. Annotation :*—**Apld.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

9267. *Add. Annotation :*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

9294. *Add. Annotation :*—**Refd.** Browne *v.* Moody, [1936] 2 All E. R. 1695.

shall be alive at the time of my death & who shall attain the age of 21 years ": —*Held :* in view of other provisions of the will, to be vested subject only to being divested on death before attaining 21 years of age without leaving issue. Therefore, the nephews & nieces who were at the death of testator & still were under 21 years of age were entitled to the dividends on their shares paid between the date of the death of testator & the date of their attaining respectively the age of 21 years.—*Re* TEGLER ESTATE (Alta.), [1929] 1 D. L. R. 445; 1 W. W. R. 181.—**CAN.**

9101 vi. ——.]—SINGER *v.* SINGER, [1932] S. C. R. 44; 1 D. L. R. 284.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3. —D.

9173 ii. ——.]—Where testator gives funds upon certain events, namely, the death of a legatee, vesting is postponed until that event occurs.—HASZARD *v.* WINCHESTER, [1935] 4 D. L. R. 44; *affd. sub. nom. Re* ROBERSON, [1936] 4 D. L. R. 443; 6 F. L. J. (Can.) 133; *revsd. sub. nom. Re* ROBERSON, CAMERON *v.* HASZARD, [1937] S. C. R. 354.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.— E. (a).

9178 i. ——.]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

9178 ii. ——.]—Testator's will, after providing for collection & payment of debts & for certain specific legacies, provided for sale of certain property, comprising the residue of his estate, & investment of the proceeds & payment of the interest for the maintenance of his wife & daughter A. until A., who, however, predeceased testator, attained 21 years of age, &, on A. attaining 21 years of age or dying, for payment of $400 of interest to his wife annually during her life, & then provided that " any money remaining after the payment of said $400 shall be equally divided among my children, the issue of any deceased child to take parent's share. On the death of my wife the whole of my property shall be divided between my children (the issue of any deceased child shall be entitled to parent's share) said division to be in equal shares " :—*Held :* the estate of any deceased child of testator who died in the lifetime of testator's widow & left no issue him surviving was not entitled to share in the income from the said residue or in the corpus when divided on the widow's death.—BUSCH *v.* EASTERN TRUST CO., [1928] 3 D. L. R. 834; [1928] S. C. R. 479.—**CAN.**

9178 iii. ——.]—Testator " devised & bequeathed " his seat on the Winnipeg Grain Exchange to one of his sons, G., & an amount equal in value to that seat to his other son, S., & then gave & bequeathed " all the balance of my property of every kind both real & personal unto my trustees [also exors.] in trust to convert the same into money & invest the proceeds in any investments which they deem advisable with power to vary such investments at their discretion & pay the income of the proceeds to my wife during her life, & after her death to pay to my daughter, A. P., the sum of ten thousand dollars & to divide the balance of the corpus equally between my sons, S. A. H. & G. B. H." Power was given to the trustees to postpone the conversion of any part of the property for so long as they should think fit, & it was directed that the income of any unconverted property should be paid & applied in the same manner as if converted. The wife & the three children survived testator, but the two sons died in the mother's lifetime. A. P. is living. S. left a daughter him surviving, & G. left him surviving a widow, who is said to have remarried. Testator's widow died while the appeal in these proceedings, which were brought by the exors. on a motion for the construction of the will, was pending. The question for construction was whether by reason of the death of the sons in the lifetime of their mother there was an intestacy with respect to the residuary bequests to them upon the view that the bequests were not vested in their lifetime, but were conditional on their surviving her :—*Held :* the bequests to the children vested on testator's death.—*Re* HARGRAFT ESTATE, [1934] 1 W. W. R. 753; 2 D. L. R. 593; 42 Man. L. R. 47.—**CAN.**

9178 iii. ——.]—The Ct. of Appeal must yield implicit obedience to the decision of the Supreme Ct. of Canada in *Busch* v. *Eastern Trust Co.*, [1928] S. C. R. 479, which decided that if there is no gift in a will save in a direction to pay after the determination of a prior life estate, there is not a vested legacy & the right of the legatee is defeated if he predeceases the period of payment.—*Re* MCFARLANE, [1934] O. R. 383; 3 D. L. R. 457.—**CAN.**

9178 iv. ——.]—Devise to children on death or remarriage of wife confers a vested estate.—*Re* UNIACKE, [1934] 2 D. L. R. 413.—**CAN.**

9178 iv. ——.]—*Re* HAMMOND, [1934] 2 D. L. R. 580; S. C. R. 403.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.— E. (c).

9269 xix. ——.]—*Held :* the postponement of the gift until after the life interest was merely for the convenience of the estate, & the estates of the children were therefore vested at testator's death.—*Re* MOORE, [1931] 4 D. L. R. 668; O. R. 454.—**CAN.**

9269 xx. ——.]—Testator's will directed that his trustee should stand possessed of $10,000 in trust, as to one moiety thereof for the sole & separate use of a daughter A. & as to the other moiety for a daughter I., & after the decease of said daughters or either of them the trustee to stand possessed of the share of the daughter so dying in trust to be divided between all the children of said daughter in equal shares on their respectively attaining the age of twenty-one years. The moiety held in trust for I. was fully & finally distributed. A. died in Jan. 1931. She had four children, Isabella, Annie, John, & Flora. Of these Isabella only survived her mother. Flora died in infancy & by will John left all his estate to his sister Isabella, Annie was survived by two children, C. & P. :—*Held :* there were no words of present gift in favour of Annie's children to be found in the will, & no language to interpret which could, consistently with the will, be made effective to vest any portion of the trust fund in them. The granddaughter Isabella therefore was entitled to all the trust fund still awaiting distribution.—*Re* YALE (1931), 44 B. C. R. 196.—**CAN.**

9269 xxi. ——.]—Testator gave his property in trust for his wife, & " at her death to give the sum of $1,000 to each one of my children :—*Held :* the children took vested legacies on the death of testator.—*Re* MERSEREAU'S WILL (1936), 10 M. P. R. 177; *sub nom.* MERSEREAU *v.* SCOTT, 5 F. L. J. (Can.) 276.—**CAN.**

9328. *Add. Annotation :*—**Consd.** *Re* Sutcliffe, Alison *v.* Alison, [1934] Ch. 219.

9340. *Add. Annotation :*—**Distd.** Ganapathy Pillay *v.* Alamaloo, [1929] A. C. 462.

9406. *Add. Annotations :*—**Consd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626. **Refd.** *Re* Blake, Berry *v.* Geen, [1937] Ch. 325.

9530. *Add. Annotation :*—**Consd.** *Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259.

9535a. ——].—By his will testator gave £5,000 to E. L. H. if she should be living at the date of the death of the survivor of himself & his wife & should attain the age of 21 years or marry under that age, & proceeded : " In case the said E. L. H. predecease me or shall survive me but shall not attain the age of 21 years or marry under that age, then . . . I give the said legacy of £5,000 to L. K. B." E. L. H. survived testator & his wife, but was under the age of 21 years & unmarried :—*Held :* E. L. H. took a vested interest, subject to be divested in the event mentioned. The rule in *Phipps* v. *Ackers*, No. 8993, applied to a gift of pure personalty. —*Re* Heath, Public Trustee *v.* Heath, [1936] Ch. 259 ; 105 L. J. Ch. 29 ; 154 L. T. 536 ; 52 T. L. R. 54.

9571a. —— ——.]—A will provided that at the expiration of twenty-one years from the death of testator a trust fund should be divided into five shares, that one of such shares should be paid to each of testator's four sons, & that, in the event of any of the sons dying before the period expired leaving a child or children, such child or children should take the share to which such son would have been entitled if he had survived, & in default of issue of any son, the share of such son should be payable to the surviving sons equally :—*Held :* the child of a son who died before the expiration of the period was entitled only to the one-fifth share which his father would have taken, & was not entitled to participate in the share of a son who died before the expiration of the period without issue.—Ganapathy Pillay *v.* Alamaloo [1929] A. C. 462 ; 98 L. J. P. C. 109 ; 141 L. T. 43, P. C.

9615. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

9687. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

9748a. Leaving " issue surviving "—Child en ventre sa mère.]—Elliot *v.* Joicey, No. 6887a. *ante*.

9751. In line 9 of headnote, for " without leaving " read " without having " or " without having had." (See [1915] 1 Ch. 847, n.).

9839. *Add. Annotation :*—*Generally*, **Refd.** Browne *v.* Moody, [1936] 2 All E. R. 1695.

9849. *Add. Annotation :*—**Folld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

9978. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

9985. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

10,013. *Add. Annotation :*—*Generally*, **Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

PART XVI. SECT. 20, SUB-SECT. 3.—F. (a).

9335 v. ——.]—Testator, after devising a life estate to his wife in a certain property, directed that upon her death same should be sold, & the proceeds, along with those from the sale of another property, invested, & the principal & interest divided equally between named grandchildren " or the survivors of them in equal shares as soon as the youngest surviving one shall have attained the age of twenty-one years " :—*Held :* a grandchild dying before the youngest surviving grandchild attained the age of twenty-one years was not entitled to a share.—Public Trustee *v.* Bowyen, [1929] N. Z. L. R. 438.—**N.Z.**

PART XVI. SECT. 20, SUB-SECT. 3.—H. (c).

9473 iv. ——.]—Roach *v.* Roach, [1931] S. C. R. 512; 3 D. L. R. 374.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—J. (b).

9508 vi. ——.]—A will provided for a legacy to each of four children, " to be paid to such of the beneficiaries as they shall become of age," with a gift over to the surviving children in the event of one or more of the children dying before becoming of age, & with a direction that the legacies should be paid out of the proceeds of the crop grown on a certain quarter section of land, which was devised to one L., with the direction to the exors. that the conveyance to her should be made upon completion of the payment of said legacies :—*Held :* said legacies must be looked upon as a provision made for the benefit of each child upon such child attaining his or her majority, & there could be no vesting of the legacies until the children, or the survivor of the children, should have reached the age of 21. In the meantime the legacies were merely contingent, & if the four children should die in their minority, the legacies, or such portion of them as should have accumulated, would revert to the devisee of the land.—*Re* Baird Estate, [1931] 1 W. W. R. 263 ; 2 D. L. R. 1002.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—J. (c.)

9561 ii. —— ——.]—A bequest of income to A. for life & should she die without leaving children *then* to testator's next of kin means that the life interest should be distributed among the next of kin of testator as at time of distribution.—*Re* Pennock, [1936] 2 D. L. R. 192.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—J. (d).

sp. *Whether bequest vested or contingent—Gift over on death before receiving share.*]—Where a will contained a legacy, with a gift over if the legatee should die before receiving his share, & the legatee survived testator but died before receiving his share :—*Held :* the gift vested *a morte testatoris*.—Walsh *v.* Eastern Trust Co. (1936), 11 M. P. R. 126 ; 6 F. L. J. (Can.) 197.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—L.

e i. —— *Discretion in trustees to withhold distribution while children in need of assistance.*]—A will after devising certain lands & all testator's personal property to his wife, devised all the rest of his estate to trustees, who were empowered to retain, manage, lease, sell or otherwise dispose of the whole or any part thereof in their discretion & to invest the proceeds & to pay the income, after discharging all liabilities in respect of the estate, as follows : " One half thereof to my wife during her life in manner hereinafter described & the rest as follows : To such of my children including M. [one of the trustees] from time to time as to my exors., shall appear to be most in need, the payments to be at the absolute discretion of my exors. If at any time it appears to my trustees that none of my children are in need of assistance but are all unembarrassed financially then after the death of my wife my trustees may divide the estate among my children then living in such proportions as to them shall seem fit my desire being that as far as possible the division shall be made so as to give the larger share to those of my children who are not so well off as the others nevertheless this desire is not to affect the absolute discretion hereby vested in my trustees. . . ." The trustees acted on the view that all the income (less the share given the widow during her life) should be available for distribution among needy children without disposal of the corpus until the time arrived, if at all, when in their view, none of the children required assistance :—*Held :* the estate did not vest in the beneficiaries upon the death of the wife but would vest only when the time for distribution arrived ; that time would never arrive if it should appear to the trustees that the last surviving child was in need.—*Re* Magee Estate, [1935] 1 W. W. R. 487 ; 2 D. L. R. 377 ; 49 B. C. R. 481 ; *affd.*, [1936] 3 W. W. R. 355 P. C.—**CAN.**

f i. —— *Bequest to such daughters " as shall be spinsters."*]—*Re* Goodger (1925), 21. Tas. L.R. 17—**AUS.**

PART XVI. SECT. 23, SUB-SECT. 3.—B.

9752 xxv. ——.]—*Re* Maybelle, Fox *v.* Equity Trustees, Executors & Agency Co., Ltd., [1928] V. L. R. 86 ; [1928] Argus L. R. 65.—**AUS.**

10,020a. ——.]—In construing a devise of real estate to a class of persons " or their issue," the words " or their issue " must be read as words of limitation & not of substitution, the word " or " being construed to mean " &." Therefore a devise of real estate to be equally divided between the sisters of C. " or their issue " was held to confer upon each of the sisters of C., of whom there were three, an estate tail in one undivided third part.—*Re* HAYDEN, PASK *v.* PERRY, [1931] 2 Ch. 333; 100 L. J. Ch. 381; 146 L. T. 303.

10,157a. —— ——.]—*Re* FOX'S ESTATE, DAWES *v.* DRUITT, PHŒNIX ASSURANCE CO., LTD. *v.* FOX, [1937] 4 All E. R. 664, C. A.

10,165. *Add. Annotation :—As to* (1) **Distd.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,168. *Add. Annotation :*—**Refd.** Elliot *v.* Joicey, [1935] A. C. 209.

10,172. *Add. Annotation :*—**Consd.** *Re* Coleman, Public Trustee *v.* Coleman, [1936] Ch. 528.

10,175. *Add. Annotation :*—**Followed.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,177. *Add. Annotation :*—**Followed.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,202. *Add. Annotation :*—**Refd.** *Re* Canning's Will Trusts, Skues *v.* Lyon, [1936] Ch. 309.

10,205. *Add. Annotation :*—**Followed.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,263. *Add. Annotation :*—**Applied.** *Re* Crosse, Crosse *v.* Crosse (1933), 77 Sol. Jo. 116.

10,263a. —— ——.]—*Re* CROSSE, CROSSE *v.* CROSSE (1933), 77 Sol. Jo. 116.

10,405. *Add. Annotation :—Generally,* **Refd.** Browne *v.* Moody, [1936] 2 All E. R. 1695.

10,427. *Add. Annotation :*—**Followed.** Gilmour *v.* MacPhillamy, [1930] A. C. 712.

10,427a. —— ——.]—The word " survivors " in a will should be given its natural & ordinary meaning unless the context necessitates or justifies a departure therefrom; it is not enough for that purpose that the natural & ordinary meaning produces what might appear to be a capricious result, or one not in accordance with a logical scheme of disposition. Testator directed that the income of the residue of his estate should be paid to his nine children in equal shares for their respective lives, provided that if any of his children should die without leaving issue, or widow or widower, the share of the child so dying should be equally divided among the survivors upon the same trusts & conditions; & that after the death of any child his or her share in the residue should be held (subject to a provision for widows & widowers) for his or her children equally :—*Held :* upon the death of a child of testator unmarried the issue of a child who had died earlier were not entitled to participate.—GILMOUR *v.* MACPHILLAMY, [1930] A. C. 712; 143 L. T. 606; *sub nom. Re* MACPHILLAMY (CHARLES), GILMOUR *v.* MACPHILLAMY, 99 L. J. P. C. 199, P. C.

10,634. *Add. Annotation :*—**Refd.** Browne *v.* Moody, [1936] 2 All E. R. 1695.

10,674. *Add. Annotation :*—**Refd.** *Re* Pilkington's Will Trusts, Pilkington *v.* Harrison, [1937] 3 All E. R. 213.

PART XVI. SECT. 25, SUB-SECT. 2.—A. (c).

10,073 i. *Death in lifetime of tenant for life.*]—Testator dying in 1898 gave to his daughter-in-law the use of a property for life, with the right to the exors. to sell the property & to pay her during her life the interest on the proceeds of sale, & after her decease to divide the principal among the children born to her & his son," & in any event after the death to sell . . . such property . . . & to divide the proceeds among such children, the child or children of any such child or children of theirs deceased to receive in equal parts the portion of such deceased parents' share." The daughter-in-law, D., died in 1926, her husband having predeceased her. Five children were born of the marriage, three of whom survived D. Two sons predeceased her, each leaving a widow but no issue, & each dying intestate :—*Held :* at the death of testator in 1898 a vested estate was created in any child then born to his son & D. subject to be divested in part as other children were born; & the widows, or personal representatives of the sons who died before D. would take the husband's share unless there was issue, in which case the issue could be substituted for the father; the gift to the children of D. was determinable only in one event, their death leaving issue, an event which did not happen.—*Re* SMITH, [1928] 1 D. L. R. 179; 61 O. L. R. 412.—CAN.

10,073 ii. ——.]—*Re* MCDOWELL ESTATE, [1931] 2 W. W. R. 574.—CAN.

PART XVI. SECT. 25, SUB-SECT. 3.—E.

sm. *Failure to farm estate.*]—If real estate is devised, with a gift over if the devisee failed to farm the devised land, a long period of farming creates a presumption that the whole estate of testator has passed to the devisee. —CONROY *v.* ROGERS (1933), 5 M. P. R. 579.—CAN.

PART XVI. SECT. 27, SUB-SECT. 2.—A.

10,267 i. —— ——.]—*Re* GORDON, STOTHART *v.* WESTON (1931), 3 M. P. R. 156.—CAN.

10,267 ii. —— ——.]—If a gift is to take effect immediately the question of survivorship has reference to the death of testator; if the gift is not immediate & there is an intervening life estate, the question of survivorship is construed as intended to carry the gift to the objects who are living at the period of distribution.—COMMERCIAL TRUST CO. *v.* WHITE, [1937] 2 D. L. R. 115; 11 M. P. R. 349; 6 F. L. J. (Can.) 261.—CAN.

PART XVI. SECT. 27, SUB-SECT. 2.—C. (b).

10,355 i. *Contrary intention of testator.*]—*Re* WALKER, CROKER *v.* PENNY, [1928] S. R. Q. 163.—AUS.

PART XVI. SECT. 27, SUB-SECT. 2.—E. (b) i.

10,401 x. —— ——.]—Testator by his will directed his trustees to distribute the income of his residuary estate amongst his children in equal shares for the term of their respective lives provided that if any of his children should die without leaving lawful issue or widow or widower living at the date of death of such child the share of the income of the child so dying " shall be equally divided amongst the survivors upon the same trusts & conditions . . ." :—*Held :* the word " survivors " must be interpreted in its ordinary meaning & the share of a child so dying must be distributed only amongst the actual brothers & sisters then surviving such child.—MACPHILLAMY *v.* FOX (1 — S. R. N. S. W. 249; 46 N. S. W. W. N. 85.—AUS.

PART XVI. SECT. 28, SUB-SECT. 1.

sp. *Trust for " my other child "—Meaning of " other."*]—Testator, by his will, settled certain property upon his children, & further directed as follows : " & if any child of mine shall die without leaving a child, who being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then the share in the settled fund, whether original or accruing, of any such child of mine shall be held in trust for my other child in such shares as shall correspond with their respective original shares." One of testator's sons died childless; afterwards, another died, leaving one child, who attained twenty-one years of age; after, a third son died childless :—*Held :* the use of the word " other " in the accruer clause did not import that the child, or children, referred to therein should survive the point at which the accruer clause came into operation. Upon the death of the third son, the effect of the accruer clause upon his share was to require its division among all such children, or their representatives, of testator, as has not already died without leaving any child who attained twenty-one years of age, or who being a daughter, married.—MURPHY *v.* PAXTON (1930), L. R. 389; 4 A. L. J. 236.—AUS.

PART XVI. SECT. 31, SUB-SECT. 4.

10,720 i. *Whether release of personal liability.*]—Testator devised all his real & bequeathed all his residuary personal estate to his trustees in trust to sell the same & divide the proceeds into eleven parts, & pay one of such parts to his widow & each of his ten children. The will proceeded : " I declare that the share of any child of mine in my residuary estate shall be subject to deduction, therefrom of any sum or sums owing by her or him to me at my death or any sum or sums payable by me upon any guarantee made or to be made by me or my exors. on her or his behalf." Testator had

10,752. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,764. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,766. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,767. *Add. Annotation :*—**Folld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,767a. ——— ———.]—Testatrix by her will directed that her residuary estate should be held by her trustees upon trust in four equal shares for her four children for life with remainder over. By the third & fourth codicils to her will testatrix declared that two sums, amounting in all to £16,120, which she had advanced to her son, T. M., should be deducted from his share, & that his share should be less in amount than the shares of her other children by that sum. The value of the estate of the testatrix was easily ascertainable as at the date of her death :—*Held :* for the purpose of the division of the actual income of the residuary trust estate of testatrix, pending the appropriation thereof, the £16,120, ought to be added for computation to the capital of the estate, valued as at the death of the testatrix, & deducted from T. M.'s share in the aggregate amount of capital so arrived at, & that the annual income ought to be divided between her four children & their respective issue in the proportions of their respective shares *per stirpes* of capital so arrived at.—*Re* MANSEL, SMITH *v.* MANSEL, [1930] 1 Ch. 352 ; 99 L. J. Ch. 128 ; 142 L. T. 281.

10,768. *Add. Annotation :*—**Expld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,769. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,770. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,771. *Add. Annotation :*—**Expld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,772. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,943. *Add. Annotation :*—**Refd.** Ganapathy Pillay *v.* Alamaloo, [1929] A. C. 462.

10,983. *Add. Annotation :*—**Refd.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

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guaranteed the overdrawn bank account of R. one of his children, & at the time of testator's death this account was overdrawn to the extent of £1,396 0*s.* 10*d.* The exors. of testator paid off this sum to the bank in accordance with the said guarantee :—*Held :* the declaration operated as a gift to R. of the whole of his indebtedness to the estate.—*In the Will of* ANTHONY HEADLAM (1925), 21 Tas. L. R. 27.—**AUS.**

PART XVI. SECT. 31, SUB-SECT. 5. —A.

n i. —— *Payment by way of income.*] —*Held :* the quarterly payments having been made not as permanent provision for the daughter, but in lieu of the income which would have arisen from the settlement upon her of portion of the testator's capital estate, they did not fall within the hotchpot provisions of the will.—*Re* CLARKE ; CLARKE *v.* STURT, [1929] V. L. R. 249 ; [1929] Argus L. R. 219.—**AUS.**

n ii. ——.]—A will case devised & bequeathed "all my real & personal estate of which I may die possessed," &, after giving certain specific legacies, contained the following clause : "The balance of my property to be divided between my ten children (naming them), & so that the said Joseph P. Hauck shall receive one thousand dollars less than the shares coming to the other children named, in consideration of advances previously made to him by me, & with this exception no account shall be taken or had of advances heretofore made by me to any of my children." Four of the sons were indebted to the estate on promissory notes given by them individually to testator. Joseph P. had received $1,000 from his father in connection with some partnership transaction in land which they had entered into together. Other than the above-mentioned transactions with the five sons, the only advances were wedding presents of not over $100 each to the four daughters :—*Held :* the debts represented by the notes were discharged by reason of the words in the will "& with this exception no account shall be taken or had of advances heretofore made by me to any of my children." According to the intention of testator, ascertained by a fair construction of the will & under the circumstances of the case, the words being given their usual & ordinary meaning, the moneys covered by the notes ought to be treated as no longer owing.—*Re* HAUCK ESTATE, [1934] 3 W. W. R. 335 ; 4 D. L. R. 581 ; *revsd. sub nom.* HAUCK *v.* SCHMALTZ, [1935] S. C. R. 478.—**CAN.**

PART XVI. SECT. 32, SUB-SECT. 4. —B. (c).

11055 ii. ——.]—Gift of a farm to testator's son, with a gift over to the rest of the family living if the son die without leaving an heir creates an estate tail in the son with an executory devise in favour of his brothers & sisters living at his decease.—*Re* THOMPSON, [1936] 1 D. L. R. 39 ; O. R. 8.—**CAN.**

PART XVII.

b (p. 1289) i. —— —— *Real property situated outside State.*]—Testatrix died leaving real estate in New South Wales & also property in Queensland :—*Held :* the authority of the ct. to make an order did not, & could not, directly or indirectly be made to extend to the real property of the testatrix situated in New South Wales.—*Re* OSBORNE, [1928] S. R. Q. 129.—**AUS.**

b (p. 1289) ii. —— —— *Real property in New Zealand—Testator domiciled abroad.*]—Testator died domiciled in Scotland, leaving a wife & a daughter resident in New Zealand, & by his will gave all his estate, including land in New Zealand, to a niece. By the law of Scotland the wife became entitled to a sum of over £1,000 out of his estate & the daughter to a sum of £200. On an application by the wife & the daughter under Family Protection Act, 1908, s. 33, for further provision out of the land situated in New Zealand :—*Held :* (1) the validity of a will affecting an immovable, such as land, & the rights of succession thereto, including testator's capacity to deal with his whole estate so far as consisting of such land, is governed by the *lex situs* & not by the law of domicil ; consequently Family Protection Act, 1908, applies to a will so far as it affects land situated in New Zealand, whether testator be domiciled in New Zealand or elsewhere, & an order in respect of such land may be made under that Act in favour of those who are entitled to further provision out of testator's estate ; (2) testator, in failing to make any provision in his will additional to that which the widow (who died after testator but before the hearing of the application) became entitled to by Scottish law, had not failed to make adequate provision for his wife's maintenance & support ; & as to the daughter, who was in delicate health & able to do light work only, & who was possessed of resources received subsequent to the death of testator, such improved means should be taken into account in disposing of the application, & an order should be made providing a sum of £1,000 for her out of the immovable situate in New Zealand, additional to what she took by Scottish law.—*Re* BUTCHART, BUTCHART *v.* BUTCHART, [1932] N. Z. L. R. 125.—**N.Z.**

b (p. 1289) iii. —— —— *Real Property in British Columbia—Testator domiciled abroad.*]—Testator's Family Maintenance Act, R. S. B. C., 1924, applies to land in British Columbia belonging to a testator who was domiciled outside of the province but not to his movables.—*Re* RATTENBURY'S ESTATE, [1936] 2 W. W. R. 554 ; 51 B. C. R. 321.—**CAN.**

f i. —— —— *To redraw will.*]—On an application for relief under Testator's Family Maintenance Act, R. S. B. C. 1924, c. 256, the ct. has no power to redraw the will & dispose of the estate as it may think right & just.—*Re* ELWORTHY ESTATE, ELWORTHY & HALE, [1928] 2 D. L. R. 421 ; [1928] 1 W. W. R. 737 ; 39 B. C. R. 474.—**CAN.**

g i. ——.]—Testator's Family Maintenance Act, R. S. B. C., 1924, was not intended to authorise the ct. to make a new will for testator, but only to alter the will in so far as might be necessary for the proper maintenance of testator's wife, husband or children. It is always a question of fact in each case whether or not an order under the Act should be made ; & with respect to children the Act refers only to children for whose maintenance at the time of the testator's death no adequate means of support are available. If the children are at least as well established in life as testator was in his or her lifetime, the Act should not be applied where the surviving parent is the beneficiary under the will. The discretion which is given the ct. to apply the Act where it thinks it just & equitable in the circumstances to do so is not judicially exercised unless the object, intent & spirit of the Act are observed. If a higher ct. is convinced

that the judge of first instance did not take a proper view as to the scope of, & the application of the powers conferred by, the Act, it may & should interfere. If, too, a higher ct. is satisfied that the facts of the particular case are such that it was not intended that the powers conferred by the Act should be exercised, it may intervene. In such cases the order made would be based on a wrong principle. If, too, a higher ct. is convinced that on all the facts the judgment under appeal is clearly wrong, it should be set aside.—WALKER *v.* MCDERMOTT, [1930] 1 W. W. R. 332; *sub nom.* MCDERMOTT *v.* WALKER, [1930] 1 D. L. R. 945; 42 B. C. R. 184.—**CAN.**

g ii. —— *To consider change in conditions since will made.*]—G. left an estate of a net value of £26,000. After making certain provisions for members of his family, he bequeathed a farm property of a conservative value of £8,000 for charitable purposes, & a sum of £5,000 for the erection of an orphanage thereon. The farm was leased at the statutorily reduced annual rental of £512, & was charged with an allowance of £250 *per annum* for the lifetime support & maintenance of an imbecile son. G.'s widow, aged eighty years, had a life interest in the residue, & was thus provided with a house, furniture (her own), & an income of £612 *per annum*, subject to payment of outgoings amounting to £31 1*s.* 5*d.* each year. Her imbecile son & an unmarried daughter lived with her, the latter having £100 a year from the estate during the widow's lifetime, & on the widow's death receiving one-third (approximately £4,000) of the residue. A similar amount each would come to the married daughter & married son, who meanwhile received no benefit. A great part of the residue consisted of mtges. On an application by each of the widow & children for an increase of the amounts bequeathed to them:—*Held:* after consideration of the possible fluctuation of income & the doubtful position of mtges., however sound, the ct. is entitled to take into consideration the different conditions prevailing at the date of a testator's death from those when the will was made, whenever it appears that an estate consists largely of mtge. securities & both corpus & income of provisions made for a widow & children are likely thereby to be affected. —*Re* GIBSON, GIBSON *v.* PUBLIC TRUSTEES, [1933] N. Z. L. R. (S.) 13.— **N.Z.**

g iii. —— *Difficulty of realising estate.*]—It is not the proper course to postpone dealing with an application for maintenance under Testators' Family Maintenance Act because difficulty in realising the assets of the deceased exists. The ct. should exercise the power under the Act & leave it to the exor. to resort to another jurisdiction for directions if the order cannot immediately be carried out owing to difficulties in realising the assets. When the spouses have been living apart, the ct. may make an order for a further amount to the widow than that allowed by the husband to her as his wife during his life.—*Re* GERLOFF, [1933] S. A. S. R. 351.—**AUS.**

g iv. ——.]—The discretion reposed in the ct. by sect. 139 of Administration & Probate Act, 1928, to order provision out of testators' estates for the maintenance of widows & children left without sufficient means of support, is not limited to cases in which there has been a capricious or unreasonable testamentary disposition of property. A covenant by a wife with her husband that she will not, after his death make an application for such provision does not deprive the ct. of jurisdiction to entertain such an application, though the existence & terms of the covenant, & the circumstances under which it was entered into, may be extremely important & sometimes conclusive facts in relation to the exercise of the ct.'s discretion in a particular case.—*Re* PEARSON, [1936] V. L. R. 355; 42 Argus L. R. 480.— **AUS.**

h i. —— ——.]—Under Testator's Family Maintenance Act, R. S. B. C., 1924, the provision, which the ct. is authorised to make in the circumstances stated in sect. 3, is "such provision as the ct. thinks adequate, just & equitable." The conditions upon which this authority rests are that the person whose estate is in question has died leaving a will, & has not made, by that will, in the opinion of the judge, adequate provision for the proper "maintenance & support" of the wife, husband or children, as the case may be, on whose behalf the application is made. What constitutes "proper maintenance & support" is a question to be determined with reference to a variety of circumstances. It cannot be limited to the bare necessities of existence. For the purpose of arriving at a conclusion, the ct. on whom devolves the responsibility of giving effect to the statute, would naturally proceed from the point of view of the judicious father of a family seeking to discharge both his marital & his parental duty; & would of course consider the situation of the child, wife or husband, & the standard of living to which, having regard to this & the other circumstances, reference ought to be had. If the ct. comes to the decision that adequate provision has not been made, then the ct. must consider what provision would be not only adequate, but just & equitable also; & in exercising its judgment upon this, the pecuniary magnitude of the estate & the situation of others having claims upon testator, must be taken into account. Applying these principles to the circumstances of this case, where the only daughter of the deceased brought an application under the Act for an order directed against his second wife, sole beneficiary under the will:—*Held:* the judge was right in deciding that the widow should be called upon to forego part of her annual income in order to make some provision for the appct.—WALKER *v.* MCDERMOTT, [1931] S. C. R. 94; [1931] 1 D. L. R. 662.—**CAN.**

h ii. —— ——.]—*Re* HOFFMAN, [1931] 1 W. W. R. 293; 43 B. C. R. 463.—**CAN.**

h iii. —— ——.]—*Re* CLEGG ESTATE, [1933] 3 W. W. R. 407; 47 B. C. R. 447.—**CAN.**

h iv. —— ——.]—In applications under Testator's Family Maintenance Act, R.S.B.C., 1924, the ct., in exercising its discretion as to what is adequate provision for the widow of testator, should inquire into: (1) the station in life of the parties; (2) the age, health & general circumstances of the widow; (3) the means possessed by testator at the time of his death; (4) the property or means which the widow possesses in her own right. Further the claims of others upon testator must be taken into account.— *Re* MORTON ESTATE, [1934] 3 W. W. R. 719; 49 B. C. R. 172.—**CAN.**

h v. —— ——.]—In determining on an application under Testator's Family Maintenance Act, R.S.B.C., 1924, whether testator has made adequate, just & equitable provision for a child, the ct. will consider among other things the obligations & necessities of the child arising from the fact that said child has, & may have more, children of his or her own.—*Re* JONES ESTATE, [1934] 3 W. W. R. 726; 49 B. C. R. 216.—**CAN.**

h vi. —— ——.]—The ct. has no right to interfere under the Family Protection Act except in so far as it is satisfied that the testamentary dispositions of a testator fall short of making for the wife or for the children such provision as a wise & just testator would regard it his moral duty to make. Where, owing to a change in economic conditions, the provision made for wife & children became inadequate, & testator gave instructions for a further testamentary document making further provision for them, the execution of which was prevented by the state of his health, the ct., although it could not make for him the codicil that he contemplated, would be encouraged by testator's views to increase the provision.

Where a testator is able to leave the financial provision necessary for all his dependants to continue the style of living in which he had encouraged them & to which his generosity had accustomed them, it is his duty, so far as his widow, his dependent daughters, & young children are concerned, under the Statute, to leave that provision unless he considers on good grounds that a humbler style is desirable.—*Re* HAWKE, HAWKE *v.* PUBLIC TRUSTEE, [1935] N. Z. L. R. 157.— **N.Z.**

k i. —— ——.]—On an application under Family Protection Act:—*Held:* taking into consideration the value of testator's estate, & the facts that of the appcts. three were adult sons capable of maintaining themselves, & the fourth was a daughter who was being maintained by her husband, & that the daughter benefiting under the will had cared for testator through a long illness & was left with her invalid mother to care for, the claims of said daughter were paramount, & what was left to her was none too much, & the application should be refused.—*Re* CAVANAGH, [1930] N. Z. L. R. 376.—**N.Z.**

l i. —— ——.]—Where provision was made in a will for the maintenance of two of testator's children J. & M., &, further, special provision was made for the sharing of the estate by J. & M., & no provision was made for a third child, W., born after the date of the will:—*Held:* the power of the ct. was limited to ordinary "maintenance & support," &, on the facts, that one-third of the net income from the estate from the date of the marriage of the testator's widow was a reasonable allowance.—*In the Estate of* LADE (1925), 21 Tas. L. R. 13.—**AUS.**

l ii. —— —— *Power to rescind or alter order—Whether increase in benefit authorised.*]—The power conferred upon the ct. by Testator's Family Maintenance & Guardianship of Infants Act, 1916, s. 6 (4), to "rescind or alter" any order making provision under that Act, does not extend to authorising an increase to any benefit that has been awarded to an appct. upon an original application.—*Re* MOLLOY (1928), 28 S. R. N. S. W. 546; 45 N. S. W. W. N. 142.—**AUS.**

l iii. —— ——.]—On an application by a widow for relief under Testator's Family Maintenance Act the ct. should not attempt to make a new will or speculate as to how the estate might have been better divided, but should merely determine whether in view of the widow's needs & the property left by the testator he has made adequate provision for her proper maintenance & support. Its duty is to place itself, in all respects, as far as possible, in the position of the testator, & to consider whether or not, having regard to all existing facts & surrounding circumstances, the testator has been guilty of a breach of the moral duty which a just, not a loving, husband owes his wife, &, if it finds that he has been so guilty, to make such an order as appears to be sufficient, but no more than sufficient, to repair it.—*Re* FERGUSON ESTATE, *Re* TESTATOR'S

FAMILY MAINTENANCE ACT, [1929] 2 W.W. R. 372; 4 D. L. R. 208.—CAN.

l iv. —— —— *Power to give lump sum.*]—Lump sums should only be given when periodical payments will seriously embarrass the exors. & unduly prolong the distribution & winding up of the estate.—*Re* MCCAFFERY, [1931] 4 D. L. R. 930; O. R. 512.—CAN.

l v. —— ——.]—The claim under the Family Protection Act, 1908, is not for provision which testator ought to have made during his lifetime, but for provision "out of the estate"; & the right to relief may only arise if any person dies leaving a will without making therein adequate provision for the proper maintenance & support of (*inter alios*) his children.—*Re* THOMSON, THOMSON *v.* THOMSON, [1933] N. Z. L. R. (S.) 60.—N.Z.

l vi. —— ——.]—The ct. has no jurisdiction under the Family Protection Act, 1908, to vary a condition made by a testator that the benefits to his widow accruing under his will should terminate on her re-marriage. Hence, any order made during her widowhood giving her increased benefit must be deemed to be governed by the original restriction, & should be discharged on her remarriage.—*Re* COLLETT, COLLETT *v.* PUBLIC TRUSTEE, [1936] N. Z. L. R. 9.—N.Z.

l vii. —— ——.]—When a husband had kept his wife in comfortable circumstances during his life, but owing to monetary losses his estate had been thrown into bkpcy. after his death but had since proved solvent, there being no children of the marriage:—*Held:* the primary consideration, so far as the estate would allow, was that appct. should be able to live in her own home, free from worry, & should be able to live, not an extravagant life, but one of more than mere frugality & isolation without the amenities of life reasonable for a woman in her station. *Qu.*: whether under sect. 3 (4) of Testator's Family Maintenance Act, 1918, there is power to make an order for a lump sum payment & also for a periodic payment.—BENNETT *v.* ELDER'S TRUSTEE & EXOR. CO., LTD., [1935] S. A. S. R. 202.—AUS.

p i. —— —— ——.]—Petition under Testator's Family Maintenance Act granted, where adequate provision for maintenance of wife not made.—*Re* CLEGG'S ESTATE (1933), 47 B. C. R. 447.—CAN.

.]—A widow thereupon, the exors. applied for the rescission or variation by reduction of the ct.'s order:—*Held:* (1) the order was not unappealable merely because stated to be until the further order of the ct.; (2) not having been appealed against, the effect of the order was to preclude the ct. from considering whether it was beyond the power of the ct. to make provision for the maintenance of a testator's widow by a series of periodical payments extending until after her re-marriage; & (3) considering the matter as one of discretion only, the re-marriage of the widow did not of itself constitute sufficient reason for the rescission, variation, or suspension of the order.—*Re* ROBERT COLLIN (1929), 29 S. R. N. S. W. 548; 46 N. S. W. W. N. 169.—AUS.

r ii. —— —— —— *In receipt of maintenance under separation deed.*]—A wife who was compelled in 1912 by her husband's misconduct to leave him agreed to take from him £250 *per annum* for her maintenance. The husband died in 1927, leaving an estate of £30,000 & providing a legacy for his wife of £250 *per annum*:—*Held:* as the wife had agreed to accept & had accepted £250 *per annum* for her maintenance during 15 years she could not be said to have been left "without adequate provision" for her maintenance.—*Re* PHILLIPS (1929), 29 S. R. N. S. W. 191; 46 N. S. W. W. N. 22.—AUS.

r iii. —— —— ——.]—The doctrine expressed in the phrase "the paramount right of the widow" commonly used in connection with applications under Testator's Family Maintenance & Guardianship of Infants Act, 1916 for adequate provision for proper maintenance, education or advancement for life, cannot be placed higher than to say that, as a general rule & other things being equal, the right of the widow is paramount.—*Re* CROWE (1935), 35 S. R. N. S. W. 547; 52 N. S. W. W. N. 187.—AUS.

r iv. —— —— —— *Second wife.*]—A factor of importance, in cases where there has been a second marriage of testator, is the period during which his second wife had lived with him, as the moral claim of a second wife on his bounty & on his consideration is not so great as that of a widow who has lived with testator for the whole of his married life; & the children are entitled to regard themselves as successors not only to their father's rights, but, in a measure, to their mother's rights. The position of the second wife must correspondingly be less strong in her claim for consideration either as against the testator himself or under Family Protection Act, 1908, than the position of a first wife.—*Re* CUNNINGHAM, CUNNINGHAM *v.* CUNNINGHAM, [1936] N. Z. L. R. 69, G. L. R. 419; 12 N. Z. L. J. 199.—

Testator domiciled in British Columbia at death.]—On the death of a testator domiciled in British Columbia a child adopted by him under the law of a foreign jurisdiction where testator was then domiciled & under which law the child acquired the same standing & rights as if it were a natural-born child is entitled to the benefits of Testator's Family Maintenance Act, R.S.B.C., 1924.—*Re* RAMSEY ESTATE, [1935] 2 W. W. R. 506; 50 B. C. R. 83. —CAN.

t ii. —— —— *Children domiciled outside jurisdiction.*] — Benefits under Testator's Family Maintenance Act, 1916, are available to children domiciled outside the jurisdiction of the ct.—*Re* DONNELLY (1927), 28 S. R. N. S. W. 34; 45 N. S. W. W. N. 5.—AUS.

t iii. —— ——.]—*Re* PRIDMORE ESTATE, [1936] 1 W. W. R. 390; 50 B. C. R. 300.— CAN.

c (p. 1290) i. —— —— *Adult son—Incapacitated from following his trade by disease contracted in testator's employ.*]—*In the Will of* JOLLIFFE, [1929] S. R. (Q.) 189.—AUS.

c (p. 1290) ii. —— —— —— *Promise to bequeath land—Improvements made on faith of promise.*]—*In the Will of* HUGHES (1930), S. R. (Q.) 329.—AUS.

c (p. 1290) iii. —— —— *Child in want.*]—Where a wealthy man died, making no provision for a daughter, to whom advances had been made during his lifetime but who at his death was in actual want, & the assets of the estate were ample to provide for her maintenance & an order could be made in her favour without undue hardship to any necessitous recipient of testator's bounty, an order should be made for the maintenance of such daughter. —*Re* HOLMES, MCMASTER *v.* CUNNINGHAM, [1936] N. Z. L. R. s. 26; G. L. R. 263, 264; 12 N. Z. L. J. 133.—N.Z.

e (p. 1290) i. —— ——.]—FRENEY *v.* PERPETUAL TRUSTEES, EXECUTORS & AGENCY CO. OF TASMANIA, LTD. (1925), 21 Tas. L. R. 6.—AUS.

e (p. 1290) ii. —— ——.]—In the expression "the situation of others having claims upon testator must be taken into account," the word "others" is not to be understood as limited to only such others as would have had legal claims upon the estate either under Administration Act, R. S. B. C., 1924, or Testator's Family Maintenance Act. Under the circumstances of the present case:—*Held:* the sister of testator, & two children who had lived with testator & his wife as their daughters until they returned to their father, for which sister & children testator had made provision by his will, came within the word "others" in said expression. Having regard to all the circumstances, & the claims of said "others," the whole estate should not be given to the widow. However, she should be given a larger share than that given her by the will, &, as against her claim, there should be a reduction by one-half of the amounts which said sister & children claimed under the will.—*Re* PEDLAR ESTATE, [1933] 1 W. W. R. 267; 46 B. C. R. 481.—CAN.

e (p. 1290) iii. —— ——.]—Testator died possessed of a mtge. debt of £10,000 & income-bearing property producing about £80 a year. Shortly before his death he released the mtgors. from payment of all interest & agreed to accept repayment of the principal by instalments, the whole debt to be repaid in 1936. The widow had property of her own producing about £40 *per annum*; also a house & land, on which she resided, & kept a cow, poultry, etc. By his will testator left the widow the whole income from his estate, subject to her suitably maintaining the four children of the marriage, of whom the eldest was eighteen, & the youngest, seven. Up to very shortly before his death the deceased had had an income of between £600 & £700, & had lived just within his income:—*Held:* (1) the standard of living of deceased prior to his death could not be taken as the measure of the allowance to be now made to his wife for the support of herself & the children; (2) among the circumstances to be considered in granting the allowance were the depressed state at the time of & since testator's death, of business & of the property market & the financial stringency & also the doubt whether this position would improve; (3) having regard to the widow's income of £40 & the ownership of house & land an allowance of £310 *per annum* was sufficient; (4) the proper course was not to make a separate allowance for each child, but to fix a sum to be paid to the widow, she thereout maintaining the children. —*Re* LOCK, [1931] S. A. S. R. 418.—AUS.

e (p. 1290) iv. —— ——.]—In order to raise jurisdiction under sect. 3 of Testator's Family Maintenance Act, it must be found that a person has so disposed of his or her property by will that upon his or her death his widow or her widower or his or her children or any of them are left without "sufficient means for their maintenance & support." The jurisdiction conferred is to order such provision to be made out of the deceased person's estate in or towards the "maintenance & support" of the widow, widower, or children, or any of them "as to the ct. or judge seems proper having regard to all the circumstances of the case." The sect. must be read as a whole & the jurisdiction conferred by sect. 3 is co-extensive with the insufficiency predicated by the first part of the sect., & means that to the extent that the means are insufficient the ct. can make good the insufficiency. The language of the second part of sect. 3 leaves no doubt that the insufficiency which is predicated is not merely an insufficiency of the means of bare subsistence. The measure of the provision to be

made, is what is sufficient in the circumstances of the particular case to provide for the needs of the appct. as regards fit maintenance & support, & in no case can the ct. exceed that measure.—*Re* GREENE'S ESTATE (1932), 25 Tas. L. R. 15.—**AUS.**

● (p. 1290) v. —— ——.]—When it was found that on the evidence presented the probabilities were that a wife left her husband & that he had accepted the fact of her living apart before his decease & agreed through the State Children's Department to pay her a small allowance:—*Held:* the widow was not disentitled to family maintenance; the measure of such allowance should be the amount agreed to be paid to the widow by her husband; the wife being an inmate of a State hospital for the insane, the fact that the maintenance would go in relief of the cost of her support in a State hospital could not be taken into account.—*Re* WILLIAMS, [1933] S. A. S. R. 107.—**AUS.**

● (p. 1290) vi. —— —— *Application for increase—"Undue hardship."*]—An increase of an annual allowance made in pursuance of an order under Family Protection Act, 1908, will not be made where the hardship alleged is not "undue" in the sense of being excessive & confined to the appct.'s particular class or peculiar to the appct.'s case caused by the order itself, or is a common hardship due to the widespread fall in rents & interest—*i.e.* assuming the ct. has power in its discretion to make such an increase. A reduction of an annuity provided by an order of the ct. under the said Act for the benefit of testator's only surviving child, a daughter, will not be made for the exclusive benefit of a person who had no claim on testator's bounty unless the exercise of the ct.'s discretionary power is clearly called for by the altered circumstances of the case. No modification under sect. 42 of the National Expenditure Adjustment Act, 1932, will be made in an order under Part II. of Family Protection Act, 1908, where appct. has failed to prove that she has suffered undue hardship through the operation of the order, in that its terms cannot be complied with or could not be complied with without causing undue hardship to another annuitant under that order. *Qu.:* whether sect. 42 of the National Expenditure Adjustment Act, 1932, should enure for the benefit & sole advantage of an Englishwoman who chooses to live in a foreign country.—*Re* ROPER, PRESTON *v.* PUBLIC TRUSTEE, [1933] N. Z. L. R. 1237.—**N.Z.**

● (p. 1290) vii. —— *Upon what property allowance charged.*]—An order was made increasing a weekly sum bequeathed by testator to his widow. Testator's property consisted almost wholly of real estate. Testator, by his will, in addition to the weekly allowance to his widow, had bequeathed a weekly sum to a daughter & also to a stranger in blood. The balance of the income was given to a grandson of testator for life, & the real estate was directed to be held in trust after his death for his child or children then living, with gifts over if there were no such child:—*Held:* in fixing the burden of the provision made by the order the whole of testator's real estate was to be regarded as one property settled successively within sect. 5 (2) of the Act.—*Re* SMITH, [1928] S. A. S. R. 524.—**AUS.**

● (p. 1290) viii. —— *Evidence admissible against applicant.*]—Statements by testator having reference to particular terms of his will & testifying directly, & not merely by inference, to the state of his mind which prompted the making of his will in the form in which it is, are admissible against an applicant for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916.—*Re* HALL (1929), 30 S. R. N. S. W. 165; 47 N. S. W. W. N. 65.—**AUS.**

● (p. 1290) ix. —— *Time for making application — Extension of time.*]—Where there has been long & inexcusable delay an application under Family Protection Act, 1908, for extension in time will be refused unless it clearly appears that to refuse it would in the circumstances result in manifest injustice.—SHEEHAN *v.* PUBLIC TRUSTEE, [1930] N. Z. L. R. 1.—**N.Z.**

● (p. 1290 x. —— —— —— *Before distribution—Transfer of part of estate to beneficiary trustee.*]—*Held:* to amount to partial distribution within Family Protection Act, 1908, s. 33, & application for extension therefore refused.—PUBLIC TRUSTEE *v.* KIDD, [1931] N. Z. L. R. 1.—**N.Z.**

● (p. 1290) xi. —— —— —— *Effect of delay.*]—An application for an order that the time limited for making an application be extended was made some fifteen years after the death of testator. At the time of the death the estate was insolvent, but at the time of the application was worth some £4,000. By the will the widow took a life estate, & thereafter her two children took also life estates. At the date of the application the widow had assets of her own worth £3,700, her daughter was earning £103 *per annum* as a postmistress, & the son had saved £200:—*Held:* the delay had been great & had not been satisfactorily explained. Furthermore, the case was not one where, if an extension of time were granted, an order for further provision out of the estate could properly be made in favour of any of pltfs.—STEPHENS *v.* BARLTROP, [1931] N. Z. L. R. 7.—**N.Z.**

● (p. 1290) xii. —— ——.]—An application under sect. 3 of Testator's Family Maintenance Act, 1916, is not out of time if, within the time prescribed by sect. 5 of the Act, an appropriate notice of motion is in fact filed & the exor. of the will is informed by or on behalf of appct. of that fact; & accordingly it is not necessary that the application should be brought on for hearing before the expiration of twelve months from the grant of probate of testator's will, nor that the return date mentioned in the notice of motion should be within that twelve month period.—*Re* BUCKETT (J.) (1931), 48 N. S. W. W. N. 83.—**AUS.**

● (p. 1290) xiii. ——.]—Testator's Family Maintenance Act, R. S. B. C., 1924, s. 11, provides that an application by a party claiming the benefit of the Act shall be made within six months from "the date of the grant or resealing in the Province of probate of the will":—*Held:* the words buoted mean with respect to the grant the date when the grant or granting of the probate of the will is actually completed by the grant being sealed.—*Re* PEDLAR ESTATE, [1933] 1 W. W. R. 267.—**CAN.**

● (p. 1290) xiv. —— *Costs—Whether payable out of estate.*]—WALKER *v.* MCDERMOTT (No. 2), [1930] 1 W. W. R. 845; *sub nom.* MCDERMOTT *v.* WALKER, [1930] 2 D. L. R. 413; 42 B. C. R. 354.—**CAN.**

● (p. 1290) xv. —— ——.]—It is the duty of counsel appearing for trustees, particularly in the cases of applications under Testator's Family Maintenance Act, 1916, to assist the ct. In cases where counsel for trustees appears merely to submit, & there is no other resp. party represented in the matter before the ct., no costs in regard to the attendance of counsel for the trustees will be allowed, & the trustees will not necessarily be allowed their costs as between solr. & client.—*Re* NEWELL (1932), 49 N. S. W. W. N. 181.—**AUS.**

● (p. 1290) xvi. —— *Practice.*]—Although Testator's Family Maintenance Act, contemplates separate applications being made by each person seeking relief, the ct. will adhere to the practice, which had been adopted, of allowing two or more applications to be made on one motion. Any abuse of this practice, as by a person severing unreasonably or by a person, who has no real chance of success, joining with one who has, will be met by a suitable order as to costs. As soon as an appct. has filed his motion & before he has filed his evidence, he should inquire from the exor. whether any other applications are pending or threatened. If he does not so inquire it is the duty of the exor. to inform him of any other applications pending. Where there are more applications than one, either the appcts. or the exor. should at the earliest possible moment apply to the ct. for the consolidation of the proceedings.—*Re* WHITE (1932), 49 N. S. W. W. N. 178.—**AUS.**

● (p. 1290) xvii. —— *Agreement by wife not to apply.*]—An agreement between husband & wife whereby the former settles property on the latter which she declares she regards as sufficient maintenance for her after his death & agrees that she will not make any application under Testator's Family Maintenance Act, R.S.B.C., 1924, does not bar the jurisdiction of the ct. to make an order in her favour under said Act.—*Re* LEWIS ESTATE, [1935] 1 W. W. R. 747; 2 D. L. R. 45; 49 B. C. R. 386.—**CAN.**

● (p. 1290) xviii. —— *Death of applicant—Liability for maintenance before death.*]—The ct. has jurisdiction under sect. 3 of Testator's Family Maintenance Act, 1916, to make an order, after the death of an appct., for payment out of the estate of testator of liabilities incurred by appct. in respect to maintenance & remaining unpaid at the death of appct.—*Re* SHANNON (1935), 35 S. R. N. S. W. 516; 52 N. S. W. W. N. 171.—**AUS.**

● (p. 1290) xix. —— *Release of claim—What amounts to.*]—On an application under Testator's Family Maintenance & Guardianship of Infants Act, 1916, by a widow for an allowance out of the estate of her deceased husband, it appeared that in 1911 she had obtained a decree of judicial separation against her husband & had then instituted proceedings for permanent alimony. In the course of the latter proceedings by agreement between the parties the wife in consideration, *inter alia*, of the sum of £1,500 paid to her by her husband executed a deed of release from all claims (which were set out in detail in the deed) against him:—*Held:* upon its true construction the deed did not constitute a release of appct.'s claim under the Act.—*Re* PATRICK (1936), 36 S. R. N. S. W. 156; 53 N. S. W. W. N. 34.—**AUS.**

WORK AND LABOUR.

Part I.—Contracts for Work and Labour.

1. *Add. Annotation :*—**Refd.** Robinson *v.* Graves, [1935] 1 K. B. 579.

2. *Add. Annotation :*—**Refd.** Robinson *v.* Graves, [1935] 1 K. B. 579.

7. *Add. Annotations :*—**Apld.** Robinson *v.* Graves, [1935] 1 K. B. 579. **Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

29. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

30. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

39. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., (1930) 144 L. T. 480.

58. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh, H., & Son, Ltd., [1931] 1 Ch. 310.

Part II.—Statutory Determination of Minimum Rates of Wages.

63. *Add. Annotation :*—**Folld.** Pockney *v.* Atkinson (1929), 45 T. L. R. 639.

63a. ——.]—An employer engaged a worker in agriculture for a period from Dec. 4, 1927, to Nov. 23, 1928, & agreed to pay him on the completion of that term a lump sum which, with his board & lodging, was equivalent to the minimum rate of wages prescribed under the Agricultural Wages (Regulation) Act, 1924 (c. 37). Before the completion of the term, the worker refused to obey a lawful order of the employer & left the employment without notice :—*Held :* the Agricultural Wages (Regulation) Act, 1924 (c. 37), did not prevent the making of an agreement for employment for a fixed term with payment of a lump sum equivalent to the prescribed rate at the end of the term, & the Act did not entitle a worker who had broken his contract to demand any wages for the period during which he was in fact employed.—POCKNEY *v.* ATKINSON, [1930] 1 K. B. 197 ; 99 L. J. K. B. 42 ; 142 L. T. 135 ; 94 J. P. 15 ; 45 T. L. R. 639 ; 27 L. G. R. 645, D. C.

64. Add the following paragraph :—

By an order of the Agricultural Wages Board, embodying orders of a wages committee : " Where a whole-time male worker is employed by the week or any longer period & the hours of work agreed between the worker & the employer in any week (excluding hours of overtime employment) are less than 50 in summer & 48 in winter, the rate of wages applicable to that worker shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been 50 in summer or 48 in winter

PART I. SECT. 4, SUB-SECT. 1.

n i. —— *Work done at request of defendant.*]—An essential averment in a claim for work & labour is that the work was done at the request of deft.—MCDONALD *v.* WOLVERTON, [1932] 2 W. W. R. 354 ; 3 D. L. R. 317 ; 45 B. C. R. 385.—**CAN.**

ss. *Lease of land for term of years—Agreement for payment for summer-fallowing on cancellation of lease.*]—MANTEI *v.* HIMOUR, [1928] 3 W. W. R. 390.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

17 iv. —— *Contract completed imperfectly.*]—Where there was a contract to do certain work, *e.g.* the summer-fallowing of a certain number of acres, & the work has been done, the contract price cannot be reduced or abated on the ground that the work was done improperly unless there is evidence of specific damage.—WAGNER *v.* HEIDT, [1931] 1 W. W. R. 625 ; 2 D. L. R. 660.—**CAN.**

d i. —— *Evidence of value of services.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years. It was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200 :—*Held :* although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROS., LTD. (1928), 28 S. R. N. S. W. 425 ; 45 N. S. W. W. N. 130.—**AUS.**

d ii. ——.]—Where there is a contract to do specified work for a fixed sum, with a proviso for payment of proportionate amounts, equal to eighty per cent. of the fixed sum, as the work is done, & the balance of twenty per cent. in thirty days after completion & acceptance, completion is a condition precedent to the right to payment, & where the work is not completed there is no right to recover for the portion done as upon a *quantum meruit.*]—SHERLOCK *v.* POWELL (1899), 26 A. R. 407.—**CAN.**

d iii. ——.]—Where there is an entire contract for work & labour containing a provision for monthly payments not exceeding 75 per cent. of the work done, which is abandoned by the party performing the work & labour, he is nevertheless entitled to sue for 75 per cent. of the value of the work performed before abandonment.—MCLACHLAN *v.* NOURSE (1928), S. A. S. R. 230.—**AUS.**

d iv. ——.]—When a person has done work under an express contract he cannot sue on an implied contract for what has been done if the express contract is still subsisting.—TAYLOR *v.* GIFFORD, [1934] 3 D. L. R. 70 ; 7 M. P. R. 387.—**CAN.**

sb. *Contract for logging & cutting timber.*]—MIKKELSEN *v.* DUFF, [1930] 1 D. L. R. 760.—**CAN.**

sc. *Agreement to pay bonus on estimated saving in cost of production—Depreciation of plant.*]—A lumber co. agreed with the superintendent of its logging operations to pay him as a bonus to his salary such amount as he could save the co. in cutting & hauling poles on the net cost of production, taking as a basis the figures set out in the schedule of the agreement :—*Held :* depreciation of the plant & equipment used in the operations was a proper item to include in the cost of production.—AICKIN *v.* BAXTER & Co., [1928] 3 W. W. R. 142.—**CAN.**

sd. *Necessary repairs to automobile in excess of order.*]—An automobile, deft. co.'s property, was sent to pltf. to have certain repairs made. Pltf. at the same time made certain other repairs which he thought necessary & for which he claimed payment. Evidence was given to show that on previous occasions repairs of a similar character were ordered & other work done, & that the accounts rendered were paid without question :—*Held :* pltf. entitled to recover.—CALKIN *v.* WOLFVILLE FRUIT CO. (1927), 59 N. S. R. 499.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

56 iii. ——.]—SIMPLEX MACHINE CO. *v.* MCLELLAN, MCFEELY & Co., [1928] 3 W. W. R. 255.—**CAN.**

56 iv. ——.]—COOPER *v.* PENNINGTON, [1928] 2 D. L. R. 878.—**CAN.**

as the case may be." Applts. employed one T. as an agricultural labourer by the week of 50 hours at 30*s.* per week. On Good Friday, T., according to custom, was not required by the appellants to work, & in consequence they refused at the end of the week to pay him his full weekly wages, deducting the portion appropriate to that day, but gave him, according to their custom, a small bonus instead:—*Held:* the above order was *intra vires*, & that T. was entitled to be paid 30*s.* for the Good Friday week.—SEABROOK & SONS, LTD. *v.* JONES, [1929] 1 K. B. 335; 98 L. J. K. B. 169; 140 L. T. 497; 93 J. P. 47; 45 T. L. R. 139; 72 Sol. Jo. 874; 27 L. G. R. 47; 28 Cox, C. C. 586, D. C.

64a. **Breach of contract by worker—Whether entitled to wages for period employed.**]—POCKNEY *v.* ATKINSON, No. 63a, *ante*.

67. *Add. Annotation:*—*Generally*, **Refd.** Pockney *v.* Atkinson, [1930] 1 K. B. 197.

68. *Add. Citation:*—28 Cox, C. C. 518.
Add. Annotation:—**Consd.** Hughes *v.* Davies (1929), 94 J. P. 48.

68a. —— **Deduction in respect of washing & mending.**]—Resps. employed a worker in agriculture upon a yearly hiring under which the employers did his washing & mending for two shillings a week, which was reckoned as part of his wages. By the orders made for that county under Agricultural Wages (Regulation) Act, 1924 (c. 37), washing & mending were not benefits or advantages which might be reckoned as part payment of wages in lieu of payment in cash. The justices held that no offence had been committed, & alternatively that it was trivial. They did not convict, & made no order under sect. 7 (3) of the Act for payment of the arrears:—*Held:* (1) there was no material on which the justices could find that no offence was committed, that which was done being the very thing prohibited; (2) they were not entitled to find that the offence was trivial; the question was not the *quantum* of money involved, but the nature of what was done, which was something entirely subversive of the Act; (3) in any event sect. 7 (3) was imperative in its terms, & the justices were bound to make an order for payment of the arrears due.—HUGHES *v.* DAVIES (1929), 94 J. P. 48; 28 L. G. R. 11, D. C.

—— **Charge for board & lodging in excess of value fixed by order.**]—A worker in agriculture under his contract of service received his proper statutory wages in full. Under a separate agreement with his employer he paid back to his employer £1 each week for board & lodging with him, 15*s.* being the maximum amount fixed by statutory order under Agricultural Wages (Regulation) Act, 1924 (c. 37), s. 8 (1) (*a*), as the value of that benefit or advantage which could be reckoned as payment of wages instead of payment thereof in cash. The worker was free to lodge elsewhere, & the employer would have preferred him to do so:—*Held:* as the employer had allowed the worker to board & lodge with him he might not receive from him more than 15*s.* per week in respect thereof, although in form the contract to pay more was distinct from the contract of service.—WILLIAMS *v.* SMITH, [1934] 2 K. B. 158; 103 L. J. K. B. 421; 151 L. T. 112; 98 J. P. 231; 50 T. L. R. 336; 78 Sol. Jo. 318; 32 L. G. R. 171; 30 Cox, C. C. 110, D. C.

68c. —— **Value of lodgings supplied.**]—A farmer, in calculating the wages of one of his workers, deducted the value of certain lodgings which were available to the latter. The worker had not agreed to accept such accommodation & did not in fact avail himself of it, preferring to sleep at his own home, which was about half a mile distant:—*Held:* the value of the lodgings was not a benefit or advantage received by the worker within Agricultural Wages (Regulation) Act, 1924 (c. 37), s. 7 (11), & the deduction ought not to be made.—WILLIAMS *v.* HUGHES, [1936] 1 All E. R. 674; 80 Sol. Jo. 633.

70a. —— **Duty of justices—To make order for payment of arrears—Although amount trivial.**]—HUGHES *v.* DAVIES, No. 68a, *ante*.

Wages paid below statutory rate—Claim for balance—Limitation of action.]—*See* LIMITATION OF ACTION, No. 111b, *ante*.

71. *Add. Annotation:*—**Consd.** R. *v.* Minister of Labour, *Ex p.* National Trade Defence Assocn. (1931), 95 J. P. 105.

PART II. SECT. 3.

b i. —— *To occupations—Exclusion of professions — Pharmacy.*]—DAVENPORT *v.* MCNIVEN, [1930] 2 W. W. R. 263; 4 D. L. R. 386; 42 B. C. R. 468; *revsg.*, S. C. *sub nom. Re* MALE MINIMUM WAGE ACT (B. C.), [1929] 4 D. L. R. 1034.—**CAN.**

b ii. —— *Appeal from Board.*]—The Male Minimum Wage Board made an order for a minimum wage to be paid to licentiates of pharmacy. On an appeal for rescission or review the judge dismissed the application to rescind, but ordered that the appeal should be heard as a rehearing *de novo*:—*Held:* the whole appeal brought by petition to the ct. below must be disposed of before an appeal can be taken to the Ct. of Appeal.—MERRYFIELD & DACK *v.* MALE MINIMUM WAGE BOARD, [1931] 44 B. C. R. 380.—**CAN.**

b iii. —— *To trades—Restaurant.*]—R. *v.* BREARLEY, [1935] 3 W. W. R. 63.—**CAN.**

l i. —— *Who is "employee."*]—Resp. was convicted under Minimum Wage Act for women, R. S. B. C., 1924, for unlawfully employing complainant, a hair dresser, for less than the minimum wage fixed by a valid order of the Board at $14.25 per week. Resp. contended hat because of the special conditions under which the complainant worked she was not an "employee" & therefore not subject to the Act. He conducted a hairdressing parlour in Vancouver in which employees are engaged admittedly subject to the Act. In 1932 he divided the premises & constructed an annex with a separate entrance from the street. A superintendent was placed in charge of this annex & she, on resp.'s direction, gave employment to the complainant & others on a commission basis. They received 30 per cent. of the receipts for all work done by them, the resp. taking 70 per cent. He paid the rent & supplied materials including machines. Complainant, however, had her own machine & received an allowance for it:—*Held:* the arrangement between complainant & resp. brought the former within the definition of "employee" in sect. 2 of Minimum Wage Act & the latter within that of "employer" in the same sect., &, therefore, he was rightly convicted, under sect. 13 of that statute, for employing complainant at less than the minimum wage.—R. *v.* GAUTSCHI, [1934] 2 W. W. R. 196; 3 D. L. R. 583; 48 B. C. R. 287.—**CAN.**

l ii. ——*Who is employee in mercantile industry.*]—STEVENSON *v.* BRITISH COLUMBIA LEATHER CO., LTD., [1935] 3 W. W. R. 254; 4 D. L. R. 143; 50 B. C. R. 166.—**CAN.**

l iii. ——"*Construction industry.*"]—An order of the Board of Industrial Relations under the Male Minimum Wage Act relating to payments in "construction industry" does not apply to carpentry work & painting.—FENTON *v.* HASKAMP (1935), 50 B. C. R. 241.—**CAN.**

l iv. —— *Sales broker.*]—Contract between employer & sales broker held without the scope of Male Minimum Wage Act.—MCGREGOR *v.* HOOVER CO., LTD. (1934), 49 B. C. R. 312.—**CAN.**

l v. —— *Employee in beauty parlour.*]—The provisions of the order made by

72. *Add. Annotation :*—**Consd.** R. *v.* Minister of Labour, *Ex p.* National Trade Defence Assocn. (1931), 95 J. P. 105.

73. *Add. Citations :—affd.* [1929] A. C. 496 ; 98 L. J. K. B. 373 ; 140 L. T. 673 ; 45 T. L. R. 306 ; 27 L. G. R. 249, H. L.

73a. —— **Piece-worker—Fur trade.**]—A worker employed as nailer in the fur trade, who was paid on a piece-work basis, was, during a period between Nov. 1927, & Dec. 1930, not supplied by his employers with a sufficient quantity of work to enable him to earn the minimum piece-work basis rate of 1*s.* 8*d.* an hour to which he was entitled under Statutory Orders made in accordance with the provisions of the Trade Boards Acts of 1909 & 1918 :—*Held :* he was entitled to an account on the footing that in respect of each hour of his employment during the period in question he was to be paid a minimum wage of 1*s.* 8*d.*—NATHAN *v.* GULKOFF & LEVY, LTD., [1933] Ch. 809 ; 102 L. J. Ch. 286 ; 149 L. T. 424 ; 49 T. L. R. 426 ; 77 Sol. Jo. 355 ; 31 L. G. R. 211.

74a. **Power of Minister to define "trade"—Validity of Order.**]—By Trade Boards Act, 1918 (c. 32), s. 1, Parliament has given the power of defining or specifying a definite trade for which he may make a special order to the Minister of Labour, with this qualification, that there must be some subject-matter which can be reasonably described as a trade before its exact limits are defined. The Minister may define a trade by exclusion as well as by description. A special order does not exceed the scope of the very extensive powers given to the Minister & is not bad, on the grounds (1) that it defines a trade by reference to the place where it is carried on ; or (2) that it includes a number of occupations or vocations whose collocation is fortuitous except for the fact that all the work is done in or in connection with a trading establishment ; or (3) that an employee by its terms might be within or outside the scope of the Acts according to the particular part of the premises on which at a particular moment he might be.—R. *v.* MINISTER OF LABOUR, *Ex p.* NATIONAL TRADE DEFENCE ASSOCIATION, *Ex p.* INCORPORATED ASSOCIATION OF PURVEYORS OF LIGHT REFRESHMENTS, *Ex p.* STRAND HOTEL, LTD., [1932] 1 K. B. 1 ; 100 L. J. K. B. 540 ; 145 L. T. 341 ; 95 J. P. 105 ; 47 T. L. R. 364 ; 29 L. G. R. 363, C. A.

Part III.—Organisation of Labour.

78a. —— **London County Council (General Powers) Act, 1921—Whether contract made at licensed address.**]—The London County Council (General Powers) Act, 1921, provides for the licensing of employment agencies & requires that the business of the agency shall be carried on at the licensed address. The office of Collins Orchestras, Ltd., a theatrical employment agency, was in Dean Street. A contract between that firm & deft. was drawn at the licensed premises on stationery headed with an address in Shaftesbury Avenue (an old office of the co.) was discussed & developed at various places, & finally signed in an office of a director of the co. in Lisle Street. By the contract deft. agreed to pay "commission during the whole period of my present engagement & on every subsequent prolongation of the agreement." Deft.'s present engagement with a music hall was determined & another band engaged for a week. After that deft. was engaged again :—*Held :* (1) the real transaction took place at the licensed premises & the contract was not void as having been entered into at premises other than the licensed address ; (2) the re-engagement of deft. was a prolongation of the present engagement.—AIGRAM *v.* WALTERS, [1936] 2 All E. R. 959 ; 80 Sol. Jo. 793.

Part IV.—Unemployment Insurance.

94. *Add. Annotation :*—**Consd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

96. *Add. Annotation :*—**Consd.** *Re* National Health Insurance Act, 1924, *Re* Professional Players of Association Football, [1934] 2 K. B. 265.

108. *Add. Annotation :*—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

111. *Add. Annotation :*—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

Minimum Wage Board under Minimum Wage Act, R. S. S., 1930, fixing the minimum wages payable to females employed in "beauty parlours" apply exclusively to employees who comply with the terms of the order & cannot be added to or varied. Therefore where a female employee after taking a probationary course of three months had worked by & for herself for 12 months before she was employed by the accused :—*Held :* said period of independent operation could not be taken into consideration in determining the minimum wage she was entitled to.—R. *v.* MEYERS, [1936] 2 W. W. R. 454.—CAN.

sb. *Industrial Arbitration Act—Meaning of "industry."*]—PARKER & SON *v.* AMALGAMATED SOCIETY OF ENGINEERS (1926), 29 W. A. L. R. 90.—AUS.

sd. *Offence—Liability of employer—Necessity for knowledge.*]—The mere fact that an employee works for longer hours than those prescribed by the Minimum Wage Board does not constitute an offence by the employer in the absence of proof that he knowingly required or permitted the employee so to work.—R. *v.* BREARLEY (1936), 62 Can. C. C. 202 ; 48 B. C. R. 458.—CAN.

sf. *Constitution of Board.*]—R. *v.* HATSKIN, [1936] 2 W. W. R. 321 ; 3 D. L. R. 437 ; 66 Can. C. C. 142 ; 6 F. L. J. (Can.) 20.—CAN.

sk. *No agreement as to wage—Whether minimum wage implied.*]—SHIMOSKI *v.* CRONIN, [1937] 3 W. W. R. 570.—CAN.

PART IV. SECT. 1, SUB-SECT. 1.

sd. *Who is employed person.*]—G., a teacher of dancing, owned a number of tenement houses, & he also dealt in the materials of old buildings which he used to buy on the sites for removal & disposal by sale or for use in other buildings of his own. For many years he had work constantly in hand in connection with tenements & other enterprises. He engaged M. in connection with the work on the tenements, for repairs & reconstruction, & also for the demolition & removal of old buildings. M. employed other men for the carrying out of this work, but G. provided the money to pay them, & their insurance cards were stamped with money supplied by G. G. did not stamp any insurance cards for M. M. ordered the materials re-

112. *Add. Annotation :*—**Reld.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

117. *Add. Annotation :*—**Consd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

118a. —— **Employees of Eton College Stores.**]—*Re* ETON COLLEGE STORES (1931), 47 T. L. R. 306 ; *sub nom. Re* MINISTER OF LABOUR, *Re* ETON SCHOOL STORES & PARKER, *Re* ETON SCHOOL STORES & BRAMPTON, *Re* ETON SCHOOL STORES & MITCHELL, *Re* ETON SCHOOL STORES & ADDAWAY, *Re* LONDON COUNTY COUNCIL & EDWARDS, *Re* LONDON COUNTY COUNCIL & SATCHELL, 75 Sol. Jo. 247.

118b. —— **Employees of Poor Law Institution—Baker.**]—*Re* ETON COLLEGE STORES, No. 118a, *ante*.

118c. —— —— **Ironer.**] — *Re* ETON COLLEGE STORES, No. 118a, *ante*.

119. *Add. Annotation :*—**Consd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

123a. —— **Eton College Stores.**] — *Re* ETON COLLEGE STORES, No. 118a, *ante*.

123b. —— **Tramway undertaking—Depot cleaner & lavatory attendant.**]—In the first case B. was employed by the Blackpool Corpn. as a lavatory attendant & a depot cleaner at the corpn.'s tramway depot. In the second case J. was employed by the Liverpool Corpn. as a lavatory attendant. In both these cases the tramway undertakings were owned & worked by the corpn. & were carried on for purposes of gain. In the third case W. was employed as a waitress by the Manchester Corpn. in refreshment rooms at H. Park, Manchester, which was over three miles from the centre of the city. Refreshments were there served to the public at a price which would just cover the cost. In the fourth & fifth cases M. was a waitress & D. a waiter, the former being employed at a pier restaurant & the latter at the "Lucullus" room at the Pavilion, Bournemouth, both being carried on by the Bournemouth Corpn. as part of their pier undertaking. It was admitted in all these cases that the employed persons were in domestic service :—*Held :* the test for making these persons insurable persons within the Act being (1) whether a trade or business was being carried on for the purposes of gain, & (2) whether they were employed in that trade or business. B. & J. were both insurable persons, as the tramway undertakings constituted a trade or business which was being carried on for the purposes of gain. The same reasoning applied to the two Bournemouth cases, but in the case of W. the Manchester Corpn. did not carry on the refreshment catering for the purposes of gain. W. was therefore not an insurable person under the Act.—*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, *Re* LIVERPOOL CORPN. & JACKSON, *Re* MANCHESTER CORPN. & WELSBY, *Re* BOURNEMOUTH CORPN., MILLARD & DEREZ (1931), 95 J. P. 103 ; 75 Sol. Jo. 206 ; *sub nom. Re* BLACKPOOL CORPN., 47 T. L. R. 300.

123c. —— **Corporation refreshment room — Waitress.**]—*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, No. 123b, *ante*.

123d. —— **Pier undertaking—Waiter & waitress.**] —*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, No. 123b *ante*.

126. *Add. Annotation :*—**Consd.** *Re* Wroot (1935), 153 L. T. 73.

128a. —— **Workman employed by Drainage Board to clear drains.**]—Drainage comrs., charged under a local Act of Parliament with the duty of providing & maintaining drains in a wholly agricultural area, employed a workman to clean & repair the drains & to keep them clear of weeds :—*Held :* the workman was employed in agriculture & was therefore not a person insurable under Unemployment Insur-

quired for the work. M. was himself paid weekly by G. from £3 6*s*. to £4 a week, such payment being at a rate per working hour. When M. was not employed on work for G. he worked independently, describing himself as a "builder & contractor," & he had billheads so printed. M. also undertook to do all kinds of electric lighting work & shop & house repairs. On one occasion M. gave a certificate that a certain sum had been spent upon one of G.'s houses for the purpose of sustaining an increase of rent of the house by G., M. purporting to give the certificate as an independent contractor. G. considering that M. was not exercising proper supervision over certain work which G. had engaged him to carry out, & in annoyance at his repeated absence, put an end to his engagement. Two years after M. had ceased to work for G., M. claimed that he was, while in the employment of G., an "employed person" under "a contract of service" with G. within Unemployment Insurance Act, 1920 (c. 30). G. contended that M. was an independent contractor working upon a time & material basis :—*Held :* M. was not an "employed person" within the Act.—GRAHAM *v.* MINISTER FOR INDUSTRY & COMMERCE & MOLLOY, [1933] I. R. 156.—IR.

sg. "*Money payments*"—*What are.*] —M. became an apprentice to G., the proprietor of a motor garage, under a verbal contract of apprenticeship with a view to learning the trade of motor mechanic. No premium was paid to G., by or on behalf of the apprentice & the contract did not provide for any payment to the apprentice during the four years' period of apprenticeship. After the first year of the apprenticeship G. paid the apprentice a sum of three shillings & sixpence per week, the payments generally being made every fortnight in respect of each two weeks. The payments were made gratuitously to enable the apprentice to pay for his daily lunch & to purchase cigarettes, etc., but were entered in G.'s petty cash book, & were charged as one of the expenses of his business in his income tax returns :—*Held :* the payments were "money payments" within Sched. I., Part I. to Unemployment Insurance Act, 1920 (c. 30) ; the apprentice was an employed person & the employer was liable to pay unemployment insurance contributions in respect of the apprentice.—*Re* GIVEN, [1936] I. R. 20.—IR.

PART IV. SECT. 1, SUB-SECT. 2.—A.

sf. *Laundresses in army laundry.*]—An army laundry was established for the purpose of washing the clothing of the members of the forces in the Dublin area. The cleansing of army blankets, sheets, & the like was also carried on. A number of laundresses, including M., who was a "hand washer," & A., a "drier," were employed for this purpose. The laundry was within the precincts of the army barracks, but was situated in a separate building & quite distinct from the building where the soldiers resided. Although the laundry was not conducted with a view to profit, the facts did not exclude the possibility of a profit being made :—*Held :* M. & A. were not employed in domestic service, as they had all the characteristics of ordinary industrial workers ; their service was entirely impersonal ; & their work, in the circumstances in which it was carried on, was of a purely industrial character.—MINISTER FOR INDUSTRY & COMMERCE *v.* STEWART & LOWRY, [1930] I. R. 112.—IR.

PART IV. SECT. 1, SUB-SECT. 2.—C.

124 il. —— —— ——.]—H. was employed by a dairy farmer, who had a farm of about 200 acres in the County of Dublin, & who tilled about 50 acres & kept 100 cows, & sold the milk in the city & suburbs of Dublin. H. used to come to the farm about 5 o'clock in the morning, milk the cows, get ready a horse & cart, & then go into the city & distribute the milk. On his return he washed the cans, tended his horse, drove in the cows, again milked them & delivered the milk. When he returned the second time, after tending his horse & cleansing the cans, his duties were ended :—*Held :* H. was employed in agriculture & excepted from the provisions of the Act.—WARNER *v.* MINISTER FOR

—— Acts, 1920–1934.—*Re* WROOT (1935), 153 L. T. 73; 51 T. L. R. 397; 79 Sol. Jo. 242.

135. *Add. Annotation:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

139a. Master of barge—Whether independent contractor.]—The ct., in dealing with appeals by employers relating to the liability for insurance under Unemployment Insurance Acts, 1920–1932, held that the master of a barge owned by applts. was engaged under a contract of service with them, but that the mate of the barge, a son of the master, was engaged under a contract of service with his father.—*Re* BAILEY (1933), 49 T. L. R. 195; *sub nom. Re* W. H. COWBURN & COWPAR, LTD. APPEALS, *Re* BAILEY, 77 Sol. Jo. 64.

139b. Mate of barge — Whether employed by master.]—*Re* BAILEY, No. 139a, *ante*.

Part V.—National Health Insurance.

146a. —— —— **Acrobat.**]—A music-hall artist, employed as an acrobatic entertainer, & having no speaking part, is not employed by way of manual labour within National Health Insurance Act, 1924 (c. 38).—*Re* DODDS APPEAL, *Re* MCMANUS (1933), 148 L. T. 406; 49 T. L. R. 187; 77 Sol. Jo. 49.

Annotations:—**Consd.** *Re* National Health Insurance Act, 1924, *Re* Professional Players of Association Football, [1934] 2 K. B. 265; *Re* Graham, *Re* National Health Insurance Act, 1924, *Re* Professional Players of Association Football (1934), 103 L. J. K. B. 595.

146b. —— —— **Professional footballer.**]—Professional players of games who receive remuneration exceeding in value £250 a year are not insurable under the National Health Insurance Act. 1924. A professional player of Association football was employed to play

PART IV. SECT. 2.

sg. *Appeal—From Minister for Industry & Commerce to High Court—Right of appeal to Supreme Court.*]—WARNER *v.* MINISTRY FOR INDUSTRY & COMMERCE, [1929 I. R. 582.—**IR.**

PART V. SECT. 1.

1 i. —— *Ganger employed by local authority—Working in corporation quarry.*]—A ganger who was taken off the road & employed in a stone quarry owned by the local authority is still an employed person within the National Health Acts.—LIMERICK COUNTY COUNCIL *v.* IRISH INSURANCE COMRS. & CONDON, [1934] I. R. 364.—**IR.**

1 ii. —— *Credit bookmaker's clerk.*]—A bookmaker, who engaged in both credit & ready-money betting business, the latter in contravention of Betting Act, 1853, s. 1, employed his son to act as his clerk. Most of the son's duties related to the credit betting transactions, but it was the intention of both parties that he should also assist, & he did in fact assist, in the ready-money betting business. Contributions under the National Health Insurance Acts were paid in respect of the son. On the son's death, a claim by his widow to receive a widow's pension was rejected by the Department of Health for Scotland, on the ground that deceased was not employed under a lawful "contract of service," &, accordingly, was not an insured person within the 1925 Act:—*Held:* deceased was employed under a "contract of service," in respect that employment as a credit bookmakers' clerk was an ordinary legitimate contract of service, & that neither was the basis of the contract in question the carrying out of an illegal purpose, nor did the contract contain any express term which made it necessary that the clerk should act unlawfully; accordingly, he was an "insured" person within the Act.—FEGAN *v.* DEPARTMENT OF HEALTH, [1935] S. C. 823.—**SCOT.**

t i. —— —— ——.]—R., a salmon factor, was the owner of several boats used for salmon fishing. At the beginning of a fishing season R. let a boat to one B., who proceeded to select a crew of two others, one of whom was H., & proceeded to fish in the ordinary way. R. was not aware that H. was a member of the crew of the boat. All fish caught had to be handed over to R., who sold them, retaining one-fourth of the proceeds of the sale of the salmon, & handing over the remaining three-fourths & the proceeds of the sale of any other fish caught to B. B. then divided all he received with the crew in proportions arranged between themselves. R. had no part in the arrangement between B. & the crew as to payment, & was not concerned as to how the money was disposed of. In the event of no fish being caught, R. received nothing & made no payment to B. or to the crew, & if B. failed to take the boat out to fish, R. could take it away from him. All repairs to the boat, nets, & tackle were done by R. at his own expense, but B. had full control over its management, the part of the river to be fished, etc., & could dismiss any of the crew, who had to obey his orders:—*Held:* there was no contract of service between R. & H., & consequently R. was not liable for insurance contributions in respect of H.—GALVIN *v.* MINISTER FOR INDUSTRY & COMMERCE & HIGGINBOTHAM, [1932] I. R. 216.—**IR.**

a (p. 1310) **i.** —— *Employment under local authority in pensionable office.*]—By an order made under National Insurance Act, 1913 (c. 37), s. 6, "employment under any local or other public authority in any pensionable office in a permanent capacity" shall be deemed not to be employment within the meaning of Part I. of National Insurance Act, 1911, the Order providing that "the expression 'office' includes any office, situation, or employment, & the expression 'pensionable office' means an office coming within the provisions of any Act authorising the grant of a superannuation allowance." A rural district council employed H. in Sept. 1899, temporarily to take charge of the waterworks system which supplied water to the town of C. shortly after the waterworks had been constructed. In Nov. 1899, H. was permanently appointed as "a person to drive the engine & the pumps, & perform any other duties he might be called upon to perform." The town of C. became on Apr. 1, 1900, an urban sanitary district by virtue of two orders of the Local Govt. Board, & the urban district council, which was created thereby, took over the waterworks. This council was under no obligation to take over the employees or officials of the rural district council who were employed on the waterworks, but H. continued to carry on his duties as before. H.'s wages were increased from time to time, & such increases were passed by the auditor of the Local Govt. Board. He furnished reports from time to time to the urban district council & frequently attended their meetings. At a meeting of the council soon after they had taken over the waterworks the opinion of the Local Govt. Board was sought as to the payment of H.'s wages, & the Board was requested to make an immediate adjustment of the council's property & liabilities. The Board replied that H.'s wages were to be paid by the council pending an adjustment of the accounts. There was no evidence as to the making of any such adjustment. The Board was fully aware of everything done at the meetings of the council, as copies of the minutes had to be transmitted to the Board:—*Held:* having regard to the provisions as to the granting of superannuation allowances contained in Part IV. of Local Govt. Act, 1925, H. was engaged in employment under a local authority in "a pensionable office in a permanent capacity," & therefore not engaged in employment within Part I. of National Insurance Act, 1911.—HANRATTY *v.* MINISTER FOR INDUSTRY & COMMERCE & IRISH INSURANCE COMRS., [1931] I. R. 189.—**IR.**

a. *Employment partly in Free States & partly in Scotland—Whether "continuously insured."*]—The husband of appct. for a widow's pension had been employed in Scotland from 1912 till Aug. 1928; he had been employed in the Irish Free State from Oct. 1928 till Aug. 1930; he was employed in Scotland from Dec. 1930 till Aug. 1931, after which he was in ill-health until his death in June, 1932. He was insured under National Health Insurance Act, 1924, while in Scotland, & under the corresponding Irish Free State Insurance Act while in the Free State:—*Held:* in view of Irish Free State Reciprocal Arrangements Order, 1924, appct.'s husband must be treated as though he had been continuously insured under 1924 Act, & appct. was entitled to the pension claimed.—MELVILLE *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1934] S. C. 53.—**SCOT.**

for a club for a year at a salary of £6 a week during the "close" season & one of £7 a week during the playing season, with extra pay when playing in the first team & bonuses for playing in won & drawn matches:—*Held:* his employment was not "by way of manual labour" &, therefore, as his rate of remuneration exceeded in value £250 a year, he fell within the exception to liability to be insured contained in Part II. (*k*) of Sched. I. to the Act.—*Re* NATIONAL HEALTH INSURANCE ACT, 1924; *Re* PROFESSIONAL PLAYERS OF ASSOCIATION FOOTBALL, [1934] 2 K. B. 265; 103 L. J. K. B. 595; 151 L. T. 176; 50 T. L. R. 370; 78 Sol. Jo. 337, D. C.

149. *Add. Citation:*—93 J. P. 35.

149a. —— **Employment in military service—Territorial.**]—*Re* COUSENS' APPEAL (1937), 54 T. L. R. 237.

169a. Dental benefit—Who is "dentist."]—Pltf., a legally qualified & registered medical practitioner, whose name was not on the dentists' register, gave dental treatment to a member of deft. society, an approved society within the National Health Insurance Acts, 1924 to 1932. He then sent to deft. society an account of his charges, which the society refused to pay:—*Held:* (1) although pltf. was, under Dentists Act, 1921 (c. 21), entitled to practise dentistry, he was not a "dentist" within the Dental Benefit Regulations, 1930, from whom a member of an approved society was entitled to obtain dental treatment, & he was not, therefore, a person who could send in charges & obtain payment of them from the approved society; (2) the regulations, which confined the giving of dental treatment to those persons who were dentists as defined by the regulations, were not *ultra vires*.—BYNOE *v.* GENERAL FEDERATION OF TRADE UNIONS APPROVED SOCIETY (110), [1937] 4 All E. R. 184; 157 L. T. 508; 54 T. L. R. 61; 81 Sol. Jo. 901, C. A.

169b. —— **Validity of Regulations.**]—BYNOE *v.* GENERAL FEDERATION OF TRADES UNIONS APPROVED SOCIETY (110), No. 169a, *ante*.

Part VI.—Old Age Pensions.

179a. Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10)—Employment of husband in Irish Free State before 1922.]—Employment before 1922 in what is now called the Irish Free State under Irish Free State Constitution Act, 1922 (Session 2), is not employment entitling the employee's widow to a pension under Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10), s. 1 (1).—*Re* ECHLIN (1932), 147 L. T. 530; 48 T. L. R. 675.

PART V. SECT. 8.

8h. *Dispute between approved society & member—Refusal of referees to state a case—Application to court.*]—M'NAMARA *v.* SCOTTISH CATHOLIC INSURANCE SOCIETY, [1929] S. C. (Ct. of Sess.) 55.—**SCOT.**

PART VI.

179 i. *Widows', Orphans' & Old Age Contributory Pensions Acts—Meaning of "entry into insurance."*]—A workman engaged in employment which, after July 5, 1912, rendered him compulsorily insurable under National Insurance Act, 1911, became insured as at that date, & paid his weekly contributions in full until Dec. 1922, when he passed out of insurable employment. For the purposes of the Insurance Acts he ceased, in Dec. 1924, to be an insured person. On Jan. 4, 1926, he again became insured as a voluntary contributor, & thereafter, until his death in July, 1927, he paid his weekly contributions, numbering 81, in full. His widow applied for a pension, but her claim was rejected on the grounds that sect. 5 (*a*) of 1925 Act had not been complied with, since it had not been established that 104 weeks had elapsed & 104 contributions had been paid since the date of her husband's last entry into insurance. The Dept. contended that "entry into insurance" in sect. 5 (*a*) must be construed consistently with National Health Insurance Act, 1924, & particularly sect. 3 (4) thereof, which in effect gave to that expression the meaning "last entry":—*Held:* sect. 5 (*a*) had been complied with, in respect that the "date of his entry into insurance" was the date when appct.'s husband first became an insured person, not the date when he again became insured as a voluntary contributor; & the meaning was not controlled by sect. 3 (4) of 1924 Act, which was not applicable in the case of voluntary contributors.—KERR *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1930] S. C. 813.—**SCOT.**

179 ii. —— ——.]—An appct. for an old age contributory pension had been insured as an employed contributor from Mar. 6, 1922, till Dec. 31, 1925. On Jan. 4, 1926, he became insured as a voluntary contributor, & continued so insured until the expiry of five years, on Jan. 4, 1931. He had attained the age of sixty-five in Mar. 1930. The Dept. rejected his claim, on the ground that the date of his entry into insurance must be taken to be Mar. 6, 1922, & he had not been in continuous insurance since that date:—*Held:* on a construction of Widows', Orphans' & Old Age Contributory Pensions Act, 1925, s. 8 (*a*) & proviso (i), the phrase "entry into insurance" meant entry into the qualifying period; &, accordingly, the date of appct.'s entry must be taken to be Jan. 4, 1926, & he was entitled to a pension on the expiry of five years from that date.—WYLIE *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1932] S. C. 51.—**SCOT.**

179 iii. —— ——.]—An appct. for an old age contributory pension had been insured as an employed contributor from July 15, 1912, till Jan. 4, 1920. On Jan. 4, 1926, he became insured as a voluntary contributor, & continued so insured for five years. In accordance with the statutory provisions, no contributions were payable by him after the appointed day, Jan. 2, 1928. He attained the age of sixty-five in Oct. 1927. The Department having withdrawn a pension awarded to him, on the ground that the date of his "entry into insurance" for the purpose of sect. 8 of 1925 Act was Jan. 4, 1926, & that the number of contributions for the three contribution years immediately preceding the expiry of five years from that date, viz. July, 1927 to July, 1930, did not represent an average of thirty-nine for each year:—*Held:* the date of appct.'s entry into insurance in the sense of proviso (i.) of sect. 8 was not, as he contended, the date when he first entered into insurance as an employed contributor, viz. July 15, 1912, but was the date of his entry into the qualifying period, Jan. 4, 1916, & accordingly, he had not satisfied the condition required by sect. 8 (*c*) as modified by proviso (i.).—GILBERTSON *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1933] S. C. 707.—**SCOT.**

179 iv. —— ——.]—A woman who had reached the age of sixty-five claimed an old age pension at the full rate of 10*s.* per week. She had complied with the ordinary statutory conditions attached to the grant of such a pension. She had, however, obtained a certificate of exemption in 1924, which she had surrendered in Apr. 1926. At the latter date she was between fifty-nine & sixty. Contributions in respect of her insurance were paid by her employer during the period while she was exempt:—*Held:* the case was governed by Widows' Orphans' & Old Age Contributory Pensions Act, 1925, s. 14 (4), & the regulations made thereunder; "entry into insurance" in these regulations meant re-entry at the date when the certificate of exemption was surrendered, & accordingly claimant was entitled only to a pension at the rate applicable to the age at which she had surrendered her certificate of exemption.—MERSON *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1934] S. C. 47.—**SCOT.**

179 v. *Husband's employment within three years of death—Husband bedridden.*]—A widow, aged sixty, applied for a pension. Her husband, who died on Nov. 1, 1928, had been employed from boyhood until 1914, & periodically from 1914 until 1921, as a share-fisherman. He became paralysed in 1922, & from that date

until his death he was wholly incapacitated for work. For the last three & a half years of his life he was bedridden :—*Held :* appct. was not entitled to the pension claimed, in respect that it could not be held that her husband's normal occupation, at any time within three years before his death, was employment of the specified character.—MACDONALD *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1931] S. C. 354.—**SCOT.**

179 vi. —— *Nature of employment —Question for referee.*]—A widow having applied for a pension under sect. 1 (1) (*a*) (ii.) of Widows', Orphans', & Old Age Contributory Pensions Act, 1929, the Department refused the application, on the ground that her husband's normal occupation was not employment in respect of which contributions would have been payable under the 1925 Act. This question turned on whether the husband's occupation had been employment by way of manual labour. The widow having applied for a reference to a referee, the latter found that the husband's occupation had been employment by way of manual labour. The Dept. refused to accept the referee's finding, &, after inquiry, held that the husband's occupation had not been by way of manual labour, & refused the application for a pension :—*Held :* the question of the nature of the husband's employment was determinable by the referee & not by the Dept., any question which might thereafter arise as to whether such employment was employment in respect of which contributions would have been payable being reserved for the determination of the Dept.—GAMMIE *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1932] S. C. 644.—**SCOT.**

179 vii. —— *Decision of Department —Estoppel.*]—An appct. for an old age contributory pension was informed that he was not eligible. Subsequently, in view of a decision of the Ct. of Session in the case of another appct., the Department decided that the appct. was eligible, & awarded him a pension. As a result of a later decision the Department revised its decision & withdrew the pension. The appct. maintained that the Department had no power to withdraw the pension, on the ground that it had been awarded for the purpose of giving effect to a decision by a referee :—*Held :* the Department was not debarred from revising its original award, in respect that proviso (*c*) of sect. 18 (1) of 1929 Act applied only to an award giving effect to a decision pronounced with reference to the case in question, & not to an award made owing to a decision in another case.—GILBERTSON *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1933] S. C. 707.—**SCOT.**

179 viii. —— *Disqualification— Widow cohabiting with man as his wife.*] —A widow was charged with having, in a form of claim for a widow's pension, fraudulently represented that she was not disqualified from receiving such pension by reason of any of the disqualifications stated in the form, & thus induced the Dept. of Health for Scotland to award her a pension. One of the disqualifications in the form was that a widow was disqualified if she was "cohabiting with a man as his wife." Accused was cohabiting with a man & had three children by him, but she did not hold herself out as his wife, & it was well known in the neighbourhood that the man was married & living apart from his wife :—*Held :* accused had been cohabiting with the man as his wife in the sense of the statute so as to be disqualified from receiving a widow's pension ; but in the circumstances the Sheriff-Substitute was not bound to find that she had acted with fraudulent intent.—PATERSON *v.* RITCHIE, [1934] S. C. (J.) 42.—**SCOT.**

179 ix. —— *Who entitled.*]—An insured man, who had been divorced by his wife, did not remarry, & died survived by the wife & one child of the marriage. In a claim by the wife for a child's allowance under Widows', Orphans' & Old Age Contributory Pensions Act, 1925, s. 1 (1) (*a*), or alternatively for an orphan's pension under sect. 1 (1) (*b*) in respect of the child :—*Held :* (1) the term widow fell to be read in its ordinary signification, & accordingly appct., not being the wife of the insured at the date of his death & therefore not entitled to a widow's pension, was not entitled to an allowance in respect of the child under sect. 1 (1) (*a*) ; (2) the child, not being an orphan within sect. 44 (1) was not entitled to an orphan's pension under sects. 1 (1) (*b*), 4.—COLGAN *v.* DEPT. OF HEALTH FOR SCOTLAND, [1937] S. C. 16.—**SCOT.**

n i. —— *Residence—Material date— Date of application.*]—A claim for an old age pension under the Acts of 1925 & 1929, made on Mar. 4, 1930, was refused by the Department of Health for Scotland, on the ground that appct. had not satisfied the condition as to residence imposed by sect. 23 (1) (*b*) of the Act of 1925. Appct. had left Scotland in July, 1929, for the Falkland Islands, where he was still residing on Oct. 26, 1929, the date on which he attained the age of sixty-five :—*Held :* appct.'s right to a pension fell to be determined as at the date of his application ; at that date the condition as to residence imposed by sect. 23 (1) (*b*) of the 1925 Act had been effectively repealed by sects. 13 (3), 27 (5) of the 1929 Act ; &, accordingly, appct., who otherwise was duly qualified, was entitled to an old age pension.—ROSS *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1931] S. C. 346.—**SCOT.**

sk. *Recovery of pension payments by Crown — Priorities.*]—Pension payments recoverable against the estate of a deceased pensioner by virtue of Old Age Pensions Act, s. 9 (3) are Crown debts & take priority over all debts owing by the estate, except burial expenses, costs of administration, remuneration of representatives, & probate & succession duties.—DIXON *v.* WORKMEN'S COMPENSATION BOARD (1935), 49 B. C. R. 407.—**CAN.**

PLEADING.

Part III.—Setting out Party's Own Case.

212a. —— **Claim for return of insurance moneys—Allegation of arson.**]—In an action against an administrator to recover insurance moneys paid to deceased, it being alleged that the fire in respect of which the moneys were paid was caused by the deliberate act of deceased with intent to defraud :—*Held :* particulars of the act alleged must be given fourteen days before any application to fix the trial.—LONDON ASSURANCE *v.* KIDSON (1935), 79 Sol. Jo. 641, C. A.

Part IV.—Answering an Opponent's Case.

409a. —— —— **Precise point must be stated in order.**]—An order for the trial of a preliminary point of law should specify clearly & precisely what is the preliminary point of law which is going to be tried.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCN. *v.* SOUTHERN RY. CO. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

Part VI.—Objections to Pleadings.

662a. —— **Whether dependent proper party.**]—Pltf. sued for libel the author, printers & publishers of a novel, & also the printers of the advertising wrapper, which contained a striking picture & a reference to the contents of the book, though no directly defamatory matter. Against these defts. he pleaded that they had " assisted to publish " the libels in the book. The judge in chambers ordered this part of the statement of claim to be struck out & pltf. appealed :—*Held :* an allegation of assisting in publication is identical with an allegation of publication ; the question of whether these defts. were a party to the publication was one of fact to be decided on the evidence at the hearing & the claim in respect thereof should not have been struck out.—MARCHANT *v.* FORD, [1936] 2 All E. R. 1510 ; 80 Sol. Jo. 791, C. A.

687a. Nuisance—One decision contrary to claim.]—Pltf.'s statement of claim contained a claim for infringement of pltf.'s right to light from ancient windows & a further claim for nuisance alleging that the carrying up of deft.'s building to a greater height had interferred with the proper escape of smoke & fumes from pltf.'s chimneys & such interference had caused a nuisance to pltf. :—*Held :* having regard to the case of *Bryant* v. *Lefever*, 19 Digest 61, *349*, the claim for nuisance disclosed no cause of action & should be struck out. The ct. is entitled to deal with the law as it think it stands.—WILLOUGHBY *v.* ECKSTEIN, [1936] 1 All E. R. 650, C. A.

Part VII.—Amendment of Pleadings.

886. *Add. Citations :*—101 L. J. K. B. 245 ; 146 L. T. 336, C. A.

891a. —— **Breach of statutory duty.**]—A builder's labourer was engaged in digging a trench 6 ft. deep in connection with the erection of a block of flats. The sides of the trench were not secured by boards. Owing to the unsuspected existence of an old drain near one side of the trench, that side fell in, & the labourer was fatally injured. His widow commenced an action under the Employers' Liability Act, & Lord Campbell's Act. Shortly before the trial, it was discovered that deft. co. had, at the time of the accident, had certain hoisting apparatus & cement-mixers upon the site. At the beginning of the trial, pltf. sought leave to amend her statement of claim by alleging the presence of this machinery, & a breach, on the part of deft. co., of a statutory duty, imposed by the Building Regulations, 1926. Pltf., at the time of making this application, offered to give deft. co. an adjournment, & to pay any costs occasioned thereby. The judge refused to allow any amendment, & gave judgment in favour of deft. co. It was stated that pltf. had had an opportunity of asking for such an amendment when interrogatories relevant to the amended case were disallowed :—*Held :* (1) the amendment sought was one which was essential in order for the real issues in the case to be before the ct.,

& should have been allowed; it was, moreover, one which would not have caused deft. co. any injustice for which it could not have been compensated by way of costs; (2) (*per* SCOTT, L.J.): when a pltf. proposes to allege a breach of statutory duty, that is a strong additional reason for allowing an amendment. — *v.* RICE & SON, LTD. (No. 2), [1937] 3 All E. R. 715; 53 T. L. R. 931; 81 Sol. Jo. 648, C. A.

1067a. —— ——.]—*Held:* any amendment of their pleadings to enable pltfs. to raise a case of mutual mistake implying good faith on the part of defts. could not without injustice to them be allowed after an action based exclusively on fraud had failed, & that accordingly the issue was not open to pltfs. in this House.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98; H. L.; *revsg. sub nom.* LEVER BROS., LTD. *v.* BELL, [1931] 1 K. B. 557, C. A.

1095a. Amendment causing injustice.]—BELL *v.* LEVER BROS., LTD., No. 1067a, *ante*.

A. In General (p. 125).

R. S. C., Ord. XXVIII., r. 2. In Rule 2 of Order XXVIII. the words "or where defence is delivered but no order for reply is made within ten days from delivery of the defence or the last of the defences" shall be omitted. (*Amended by R. S. C. (No. 1), 1934.*)

Part VIII.—Statement of Claim.

SECT. 1.—IN GENERAL.

(p. 130.)

R. S. C., Ord. XX., r. 1. Rule 1 of Order XX. shall be revoked and the following Rule shall be substituted therefor:—

"1. The delivery of statements of claim shall be regulated as follows:—

(*a*) Where the writ is specially indorsed with or accompanied by a statement of claim under Order III., Rule 6, no further statement of claim shall be delivered, unless the Court or a Judge shall otherwise order.

(*b*) Subject to the provisions of Order XIII., Rule 12 as to filing a statement of claim when there is no appearance, the plaintiff shall (unless he has delivered a statement of claim under Order III., Rule 6, or the Court or a Judge otherwise orders) deliver a statement of claim either with the writ of summons or notice in lieu of writ of summons, or within ten days or in the Chancery Division twenty-one days after appearance, provided that the times prescribed by this paragraph may be enlarged by consent in writing or by the Court or Judge." (*Substituted by R. S. C. (No. 1), 1933; & R. S. C. (No. 2), 1936.*)

SUB-SECT. 4.—CLAIMS FOR MONEY LENT (p. 135).

R. S. C., Ord. III., r. 10. Rule 10 of Order III. shall be revoked and the following Rule shall be substituted therefor:—

"10. Where an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to any such money is brought by the lender or an assignee, the indorsement on the writ shall state, in addition to any other particulars, the fact that at the time of making the loan or contract the plaintiff or (in an action by an assignee) the original assignor was a licensed moneylender, and if the writ be specially indorsed under Rule 6 of this Order, shall also state—

(*a*) the date on which the loan was made;
(*b*) the amount actually lent to the borrower;
(*c*) the rate per cent. per annum of interest charged;
(*d*) the date when the contract for repayment was made;
(*e*) the fact that a note or memorandum of the contract was made, and was signed by the borrower;
(*f*) the date when a copy of the note or memorandum was delivered or sent to the borrower;
(*g*) the amount repaid;
(*h*) the amount due but unpaid;
(*i*) the date upon which such unpaid sum or sums became due;
(*j*) the amount of interest accrued due and unpaid on every such sum." (*Substituted by R. S. C. (No. 2), 1936.*)

1229a. Action by Indian moneylender.]—Pltfs. brought proceedings by specially endorsed writ to recover the amount which became due on a promissory note dated June 24, 1932, on default in payment of an instalment, with interest at 3 per cent. per month from the date of default. Pltfs. were moneylenders who were stated on the writ to reside at Bombay, & the figures of the promissory note were in rupees, but it did not appear where pltfs. carried on business. Deft. did not appear to the writ, but when pltfs. sought to sign judgment in default of appearance, judgment was not entered because the writ did not comply with R. S. C., Ord. III., r. 10:—*Held:* in the absence of evidence to exclude the application of the Moneylenders Acts, the claim to enter judgment in default of appearance was rightly refused.—NIHALCHAND NAVALCHAND *v.* MCMULLAN, [1934] 1 K. B. 171; 103 L. J. K. B. 234; 150 L. T. 170, C. A.

SECT. 4.—SPECIALLY INDORSED WRITS.

(p. 138.)

R. S. C., Ord. XX., r. 1. *See* new Rule 1, section 1, *ante*.

R. S. C., Ord. III., r. 6. The following provisions shall be inserted in Rule 6 of Order III.:—

(*a*) After the words "damages for its detention;" the words:—"and (4) in all other actions in the King's Bench Division (except actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, and actions in which fraud is alleged by the plaintiff").

(*b*) After the words "specially endorsed with," the words:—"or accompanied by."

(*c*) After the words "Appendix C., sec. IV.," the words:—"to VII. inclusive." (*Added by R. S. C. (No. 1), 1933.*)

In Rule 6 of Order III. after "detention" and before "and" in paragraph (3) there shall be inserted:—

(3A) Where the plaintiff claims possession of any property forming a security for the payment of money." (*Added by R. S. C. (No. 1), 1937.*)

SUB-SECT. 2.—ACTIONS FOR RECOVERY OF LAND.

(p. 143.)

R. S. C., Ord. XVIII., r. 2. In Rule 2 of Order XVIII. after the words "injury to the premises claimed," there shall be inserted the words "and except also claims for payment of principal money or interest secured by or for any other relief in respect of a mortgage or charge of such land." (*Added by R. S. C. (No. 1), 1937.*)

SUB-SECT. 3.—TIME FOR DELIVERY (p. 150).

R. S. C., Ord. XXI., r. 6. In Rule 6 of Order XXI. after the word "extended" the following words shall be inserted:—"by consent in writing or." (*Added by R. S. C. (No. 2), 1936.*)

B. Claims for Debt or Liquidated Demand (p. 152).

R. S. C., Ord. XXVII., r. 2. The following amendments shall be made in Order XXVII.:—

In Rule 2, after the words "deliver a defence, the ——" there shall be inserted the words "subject as provided by Rule 17 of this Order." (*Added by R. S. C. (No. 3), 1936.*)

R. S. C., Ord. XXVII., r. 3. In Rule 3, after the words "the proviso to Rule 2" there shall be inserted the words "and subject as provided by Rule 17 of this Order." (*Added by R. S. C. (No. 3), 1936.*)

K. Actions for Money Lent (p. 155).

R. S. C., Ord. XXVII., r. 17. After Rule 16 the following Rule shall be added and shall stand as Rule 17:—

"17. In any action in which the plaintiff is claiming any relief of the nature or kind specified in Order LV., Rule 5A—

(*a*) no judgment shall be entered in default of pleading without leave of the court or a judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under Order LV., Rule 5A and may require notice of such evidence to be given to the defendant;

(*b*) on any motion for judgment under Rule 11 of this Order the judge may require the motion to be supported by such evidence as might be required if relief were being sought on originating summons under Order LV., Rule 5A and may require notice of such evidence to be given to the defendant." (*Added by R. S. C. (No. 3) 1936.*)

L. Motion for Judgment in Default.

1372a. —— Motion to rectify register of patents—Delivery of points of claim & defence by consent.]—An application was made by originating motion to rectify entries in the register of patents relating to the patent above mentioned, & on the matter coming on for hearing LUXMOORE, J., by consent of the parties (*inter alia*), ordered points of claim & points of defence to be filed. Both resps. filed points of defence, but the first resp., R., failed to obey an order of the ct. & an order to strike out his points of defence was made; the second resp., P., applied for leave to withdraw its points of defence, leave was granted & the points of defence were withdrawn. The Comptroller-General had informed appct. that he did not wish to be represented at the hearing of the matter nor did he wish to have any documents served upon him. Appcts. then applied, by motion, for judgment in default of defence: —*Held:* the provisions of R. S. C., Ord. XXVII., r. 11, did not apply to a case in which points of claim & points of defence were delivered as a matter of convenience between the parties; also the motion to rectify should be set down in the witness list to be proved by oral evidence.—*Re* REPLOGLE'S LETTERS PATENT NO. 139,892 (1934), 51 R. P. C. 267.

Part IX.—Defence.

1424a. —— After grant of time in which to pay.]—Where a discretionary jurisdiction is given to the ct. or a judge, the judge in Chambers is in no way fettered by the previous exercise of discretion by the Master, although no doubt he will give the weight it deserves to that decision. A judgment debtor who asks for & obtains a stay of execution does not thereby approbate the judgment or elect to treat it as binding so as to preclude him from thereafter seeking to set it aside whether on appeal or otherwise. While the Ct. of Appeal will not normally interfere except on grounds of law with the exercise of the judge's discretion, if it is seen that on other grounds his decision would result in injustice being done, the Ct. of Appeal has both the power & the duty to remedy it.—EVANS *v.* BARTLAM, [1937] A. C. 473; [1937] 2 All E. R. 646; 106 L. J. K. B. 568; 53 T. L. R. 689; 81 Sol. Jo. 549; *sub nom.* BARTLAM *v.* EVANS, 157 L. T. 311, H. L.

1431a. —— —— Security for costs.]—On the construction of R. S. C., Ord. 27, r. 15, the discretion therein given is wide enough to allow the ct. or a judge to make an order for security for costs.—BURCHMORE *v.* HILLS (1934), 79 L. Jo. 30.

N. Proceedings for Foreclosure or Redemption.

R. S. C., Ord. XIII., r. 17. After Rule 16 the following Rule shall be added and shall stand as Rule 17:—

"17. In any action in which plff. is claiming any relief of the nature or kind specified in Order LV., Rule 5A no judgment shall be entered in default of appearance without leave of the court or a judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under Order LV., Rule 5A and may require notice of such evidence to be given to deft." (*Added by R. S. C. (No. 3), 1936.*)

1496a. Auction—Sales by Auction Act, 1867 (c. 48) —Effect of pleading wrong section.]—Deft. here relies on sect. 6 of Sale of Land by Auction Act, 1867 (c. 48). That sect. having failed him, he wishes to rely on sect. 5. I have already held that sect. 5 does not apply to this case, but if I am wrong in that, it would be improper to allow any amendment so that that sect. could be relied upon (LUXMOORE, J.).—HILLS & GRANT, LTD. *v.* HODSON, [1934] Ch. 53; 103 L. J. Ch. 17; 150 L. T. 16.

Part XII.—Plea of Possession.

R. S. C., Ord. XXI., r. 21. In Rule 21 of Order XXI. after the word "unless" the following words shall be inserted:—"he is in possession by virtue of a lease or tenancy granted by the plaintiff or his predecessor in title or". (*Added by R. S. C. (No. 2), 1936.*)

Part XIV.—Particulars.

SUB-SECT. 3.—ACCOUNT STATED OR SETTLED (p. 194).

1643a. Right to particulars.]—KLEINBERGER *v.* NORRIS (1937), 183 L. T. Jo. 107, C. A.

1733a. —— —— Up to or at trial.]—Pltf. complained that she was libelled by a newspaper article concerning certain aeroplane smuggling exploits of "an Englishwoman." Pltf. was not referred to by name or description, but alleged that the words "an Englishwoman" referred to her. Defts. applied for particulars of the facts from which it was to be inferred that pltf. was the person referred to:—*Held:* defts. were entitled to the particulars asked, & pltf. should have leave to supplement the particulars at any time up to 20 days before the trial or at such later time as may be ordered by the ct. or a judge or at the trial on such terms as may be deemed just.—BRUCE *v.* ODHAMS PRESS, LTD., [1936] 1 K. B. 697; [1936] 1 All E. R. 287; 105 L. J. K. B. 318; 154 L. T. 423; 52 T. L. R. 224; 80 Sol. Jo. 144, C. A.

Part XV.—Reply and Subsequent Proceedings.

SUB-SECT. 1.—DELIVERY OF REPLY (p. 208).

R. S. C., Ord. XXIII. Order XXIII. shall be revoked and the following Order shall be substituted therefor:—

1. Where the Plaintiff desires to deliver a reply, he shall deliver it within seven days from the delivery of the defence.

2. Where a counterclaim is pleaded, a reply thereto shall be subject to the Rules applicable to defences. (*Substituted by R. S. C.* (*No.* 1), 1933.)

SUB-SECT. 7.—DEFAULT IN DELIVERY (p. 211).

R. S. C., Ord. XXVII., r. 13. Rule 13 of Order XXVII. shall be revoked, and the following Rule shall be substituted therefor:-

13. Where a pleading subsequent to a reply is not ordered, then, at the expiration of seven days from the delivery of the defence or reply (if any), or, where a pleading subsequent to the reply is ordered, and the party who has been ordered or given leave to deliver the same fails to do so within the period limited for that purpose, then at the expiration of the period so limited, the pleadings shall be deemed to be closed and material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue; provided that this Rule shall not apply to a reply to a counterclaim, and that, unless the plaintiff delivers a reply to a counterclaim, the statements of fact contained in such counterclaim shall, at the expiration of fourteen days from the delivery thereof, or of such time (if any) as may by order be allowed for delivery of a reply thereto, be deemed to be admitted, but the Court or a Judge may at any subsequent time give leave to the plaintiff to deliver a reply." (*Substituted by R. S. C.* (*No.* 1), 1933.)

PRACTICE.

Part IV.—Indorsements of Claim.

SECT. 6.—SPECIAL INDORSEMENTS.

SUB-SECT. 1.—CLAIMS FOR DEBT OR LIQUIDATED DEMAND (p. 270).

R. S. C., Ord. III., r. 6. The following provisions shall be inserted in Rule 6 of Order III. :—

(*a*) After the words " damages for its detention ; " the words :—" and (4) in all other actions in the King's Bench Division (except actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, and actions in which fraud is alleged by the plaintiff ").

(*b*) After the words " specially endorsed with," the words :—" or accompanied by."

(*c*) After the words " Appendix C., sec. IV.," the words : —" to VII. inclusive." (*Added by R. S. C.* (*No.* 1), 1933.)

In Rule 6 of Order III. after " detention " and before " and " in paragraph (3) there shall be inserted :—

" or (3A) Where the plaintiff claims possession of any property forming a security for the payment of money " (*Added by R. S. C.* (*No.* 1), 1937.)

A. In General (p. 277).

R. S. C., Ord. XIV., r. 1. Paragraph (a) in Rule 1 of Order XIV. shall be revoked and the following paragraph shall be substituted therefor :—

" (*a*) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order III., Rule 6, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed, if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed." (*Substituted by R. S. C.* (*No.* 1), 1933.)

197a. —— ——.]—Pltf., a legal mtgee., brought an action to recover possession of the mtged. land, & applied for judgment under R. S. C., Ord XIV. Deft. alleged that the terms of the mtge. deed had been varied by a parol agreement to the effect that the mtgee. should not exercise his right of re-entry before the end of 1936. To this the pltf. objected that the mtge. being required to be in writing under the Statute of Frauds the alleged variation must be in writing. Deft. then alleged that he had entered upon the land & spent money upon the property, in effect, setting up a plea of part performance : —*Held :* it could not be said that the defence was unarguable & deft. ought to be given leave to defend, & the action should be transferred to the Chancery Div.—KNAPP-CRISP, [1936] 3 All E. R. 560, C. A.

218a. —— **Judgment not signed.**]—A firm of costumiers claimed against a husband & wife the price of various articles supplied to the wife. An order was made that pltfs., the costumiers, be at liberty to sign final judgment in the action against the wife, the summons under R. S. C., Order XIV., against the husband being adjourned. Judgment was never signed against the wife. The matter went on to trial against the husband who alleged that in the circumstances of the case he was not liable in respect of orders given by his wife, even for necessaries. The county ct. judge found that the husband had given authority to the wife to pledge his credit in respect of the goods supplied & that he had not revoked his authority in any way, & judgment was given for pltfs. against the husband. The husband appealed on the grounds that, as the liability of the husband & wife was alternative & pltfs. had obtained leave to sign judgment against the wife, pltfs. were barred from proceeding against the husband in respect of the same debt, & further that the obtaining of an order against the wife constituted an election which barred proceedings against the husband :—*Held :* liberty to sign judgment against the wife was not sufficient to bar the pltfs. from proceeding against the husband ; the obtaining of liberty to sign judgment against the wife did not amount to an election, & as in all the circumstances of the case there had been no election pltfs. were entitled to proceed against the husband.—CHRISTOPHER (HOVE), LTD. *v.* WILLIAMS, [1936] 3 All E. R. 68 ; 80 Sol. Jo. 853, C. A.

277a. ——.]—Pltfs., in a claim for goods sold & delivered, said, in their affidavit, under R. S. C., Ord. XIV., that deft. had complained that the goods were not up to sample, but also said that they believed that he had no defence. Deft. paid into ct. part of the sum claimed, in satisfaction of the whole claim, with admission of liability. Pltfs. took out a summons, under R. S. C., Ord. XIV., asking leave to sign final judgment for the whole amount. On the day of the hearing of the summons deft. filed a defence & counterclaim. The master dismissed the summons with costs & the judge in chambers upheld his order. On appeal :—*Held :* the master & judge should have allowed pltfs. to sign judgment under R. S. C., Ord. XIV., r. 4, for such part of their claim as was admitted, but pltfs. were not entitled to the costs of the application to the master, as they had applied for leave to sign judgment for the whole amount & knew that there was a defence as to the bulk of it.—SHAERF (RECENIA R.), LTD. *v.* SMYTH, [1936] 2 All E. R. 1622, C. A.

JA. Writ of Inquiry (p. 297).

R. S. C., Ord. XIV., r. 7A. The following Rule shall be inserted after Rule 7 of Order XIV. and shall stand as Rule 7A :—

" 7A. Where in the case of any claim for unliquidated damages the Court or a Judge has given leave to enter interlocutory judgment, a writ of inquiry shall issue to assess the value of the goods and the damages (or the damages only) to be awarded, provided that the Court or a Judge may order that instead of a writ of inquiry the value and amount of damages or either of them shall be ascertained in any way which the Court or Judge may direct." (*Added by R. S. C.* (*No.* 1), 1933.)

K. Directions as to Trial—Short Cause List. (p. 297).

R. S. C., Ord. XIV., r. 8. The following paragraph shall added at the end of Rule 8 of Order XIV., and shall stand paragraph (*d*) :—

" (*d*) Where the plaintiff has obtained leave to enter final judgment subject to a suspension of execution pending the trial of a counterclaim, the provisions of this Rule shall apply to the counterclaim as if it were an action." (*Added by R. S. C.* (*No.* 1), 1933.)

SECT. 10.—**ACTIONS FOR MONEY LENT.** (p. 300).

R. S. C., Ord. III., r. 10. Rule 10 of Order III. shall be revoked and the following Rule shall be substituted therefor :—

" 10. Where an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to any such money is brought by the lender or an assignee, the indorsement on the writ shall state, in addition to any other particulars, the fact that at the time of making the loan or contract the plaintiff or (in an action by an assignee) the original assignor was a licensed moneylender, and if the writ be specially indorsed under Rule 6 of this Order, shall also state—

(*a*) the date on which the loan was made ;
(*b*) the amount actually lent to the borrower ;
(*c*) the rate per cent. per annum of interest charged ;
(*d*) the date when the contract for repayment was made ;
(*e*) the fact that a note or memorandum of the contract was made, and was signed by the borrower ;
(*f*) the date when a copy of the note or memorandum was delivered or sent to the borrower ;
(*g*) the amount repaid ;
(*h*) the amount due but unpaid ;
(*i*) the date upon which such unpaid sum or sums became due ;
(*j*) the amount of interest accrued due and unpaid on every such sum." (*Substituted by R. S. C.* (*No.* 2), 1936.)

Part VI.—Issue of Writs of Summons.

SUB-SECT. 2A.—CLAIM ARISING OUT OF MORTGAGE OR CHARGE (p. 303).

R. S. C., Ord. V., r. 5A. In Order V. the following Rule shall be inserted after Rule 5 to stand as Rule 5A :—

" 5A. Every action in which there is a claim for payment of principal money or interest secured by any mortgage or charge or a claim for possession of any property forming a security for payment to the plaintiff of any principal money or interest shall be assigned to the Chancery Division :

Provided that this Rule shall not apply to an action assigned to the Probate Divorce and Admiralty Division by section 56 (3) of the Act." (*Added by R. S. C.* (*No.* 3), 1936.)

In Rule 5A of Order V. there shall be inserted :—

(*a*) after " mortgage or charge," the words " upon real or leasehold property " ; and

(*b*) after " possession of any," the word " such." (*Added by R. S. C.* (*No.* 1), 1937.)

B. Admiralty Actions in rem—Warrant of Arrest (p. ---)

R. S. C., Ord. V., r. 16. The following paragraph shall be inserted after paragraph (d) of Rule 16 of Order V., and shall stand as paragraph (*e*) of that Rule :—

" (*e*) The lodging of an undertaking in writing by the solicitor who applies for the issue of the warrant to pay the fees and expenses of the Marshal." (*Added by R. S. C.* (*No.* 1), 1934.)

Part IX.—Defence.

SUB-SECT. 3.—TIME FOR DELIVERY (p. 150).

R. S. C., Ord. XXI., r. 6. Rule 6 of Order XXI. shall be revoked and the following paragraph shall be substituted therefor :—

" 6. Where a defendant has entered an appearance, he shall deliver his defence within fourteen days from the time limited for appearance or from the delivery of the statement of claim, whichever shall be the later, unless such time is extended by the Court or a Judge, or, in actions in which the writ of summons has been specially indorsed with or accompanied by a statement of claim under Order III., Rule 6, the plaintiff in the meantime serves a summons for judgment under Order XIV." (*Substituted by R. S. C.* (*No.* 1), 1933.)

R. S. C., Ord. XXI., r. 8. Rule 8 of Order XXI. shall be revoked. (*Revoked by R. S. C.* (*No.* 1), 1933.)

Part XI.—Service of Writ of Summons.

443a. —— ——.]—Pltfs., the owners of a vessel damaged in collision with a vessel owned by defts., a foreign corpn., served a writ upon a member of an English firm, E. M. & Co., who acted as defts.' agents. The writ was served at E. M. & Co.'s London offices. The defts. moved to set aside the writ & service on the ground that they were not resident within the jurisdiction. It appeared that E. M. & Co. were one of defts.' agents in this country for the booking of freight, issue of passenger tickets, & the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, & they had no concern with the management of deft. corpn. The only name appearing on the door of E. M. & Co.'s offices was their own name, but upon the window of the ground floor their name was exhibited as agents for deft. corpn. together with the names of other foreign shipping cos. for whom E. M. & Co. acted :—*Held :* E. M. & Co. were a firm who " sold " & did not " make " contracts on behalf of defts., & that defts. did their business in this country " through " E. M. & Co. & not " by " them ; defts., accordingly, were not resident within the jurisdiction & that the writ & service must be set aside.—THE LALANDIA, [1933] P. 56 ; 102 L. J. P. 11 ; 148 L. T. 97 ; 49 T. L. R. 69 ; 18Asp. M. L. C. 351.

443b. —— ——.]—In a collision case where the procedure *in rem* was not available it was sought in an action brought *in personam* against a foreign shipping co. to effect service of the writ through London agents. The agents were general agents for shipping cos. & the foreign co. in question had no financial interest in the firm nor was any of their staff assigned exclusively to the business of the foreign co. The remuneration was wholly by commission :—*Held :* service on such general agents was bad.—THE HOLSTEIN, [1936] 2 All E. R. 1660 ; 155 L. T. 466.

448a. —— Share register in England.]—A Greek vessel & an Argentine vessel came into collision in the River Parana; the Argentine vessel sank, &, it was alleged, became a total loss. On Sept. 30, 1936, proceedings were instituted in the Argentine by the owners of the sunken ship, an Argentine corpn.; the owner of the Greek ship put in a counterclaim, but on Oct. 27 withdrew it. Meanwhile, on Sept. 30, he had issued the writ in the present proceedings in this country, & served it by leaving a copy at the London office of the Argentine Corpn. which had been established for the purpose of the transfer & registration of shares. The Argentine Corpn. moved to set aside the writ, or alternatively to stay the proceedings, on the grounds, amongst others, (*a*) that the corpn. only carried on business within the jurisdiction so far as claims connected with the share register were concerned; (*b*) that the proceedings were vexatious & oppressive as there was an action pending in Argentina, where all the corpn.'s witnesses as well as the chief witnesses for the Greek ship resided; & further that pltf. had no effective remedy, inasmuch as Argentine law must be applied in this country, under which, if a vessel was a total loss, liability being limited to the property available, her owners were under no liability at all. By s. 352 of Cos. Act, 1929 (c. 23), the expression "place of business" includes a share transfer office:—*Held:* (1) as the corpn. had a place of business within the jurisdiction it was amenable to the jurisdiction for all purposes & not merely to the limited jurisdiction suggested; (2) pltf.'s action could not be stayed merely because he was deft. elsewhere; it could not be said, as in *Dawkins* v. *Prince Edward of Saxe Weimar* (1876), 1 Q. B. D. 499, that on the facts of the declaration no cause of action was shown; & the question whether pltf.'s claim was groundless depended on facts which he was entitled to have tried, & that accordingly the motion failed.—THE MADRID, [1937] P. 40; [1937] 1 All E. R. 216; 106 L. J. P. 39; 53 T. L. R. 237.

459. *Add. Citations:*—[1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240; 49 T. L. R. 94, C. A.; *affd.*, [1933] A. C. 289, H. L.

Part XIII.—Service Out of the Jurisdiction.

SUB-SECT. 1.—IN GENERAL (p. 338).

R. S. C., Ord. XI., r. 1. The following paragraph shall be inserted at the end of Rule 1 of Order XI. and shall stand as paragraph (i.) in that Rule:—

"or (i.) The action is one brought under the Carriage by Air Act, 1932." (*Added by R. S. C.* (*No.* 2), 1933.)

606a. Charterparty made in England—Action on foreign award.]—On Nov. 19, 1929, a charterparty was made in London which provided that any dispute arising during the execution of the charterparty should be settled by arbn. in Hamburg. In 1931, disputes arose between the parties which were submitted to arbn. in Hamburg, & an award made against deft. for £20,913 13*s.* 7*d.*, payment to be made in English currency. On Nov. 29, 1932, pltfs., who were a German firm, obtained *ex parte* an order that they should be at liberty to issue a writ against deft., who was residing in France, claiming the amount due & payable under the award, & to serve notice of the writ on deft. in France. On Jan. 5, 1933, deft. applied to have that order set aside, but GODDARD, J. dismissed the application. On appeal:—*Held:* (1) the order for service out of the jurisdiction was properly made under R. S. C., Ord. XI., r. 1 (*e*), as the action based on the award was for the enforcement of a contract made within the jurisdiction, namely, the submission to arbn. contained in the charterparty; but (2) the order could not be supported on the ground that the breach of contract was committed within the jurisdiction, as the award had not required payment in England, & the ordinary rule therefore applied that the debtor must seek out his creditors, the German firm, at their place of business & pay them there.—BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, [1933] 1 K. B. 753; 102 L. J. K. B. 360; 148 L. T. 540, C. A.

613a. ——.]—A pltf. obtained leave to serve notice of a writ for breach of contract on deft. out of the jurisdiction. Deft. appealed, submitting that the statement of claim, affidavit, & letters attached did not show a contract between pltf. & deft., but only between pltf. & a co-director of deft. acting as agent for a co. of which deft. was chairman:—*Held:* as there was no reasonable evidence that a contract had been made with deft., leave for service out of the jurisdiction should not have been given.—CROMIE *v.* MOORE, [1936] 2 All E. R. 177, C. A.

622a. Action on foreign award—Award not requiring payment in England.]—BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, No. 606a, *ante*.

624a. —— ——.]—Pltf. & deft., both British subjects, being in Germany, became engaged to marry. Pltf. came to England, & there received a letter written & posted by deft. in Germany, in which she declined to carry out her engagement. Pltf. sued out a writ of summons under C. L. P. Act, 1852 (c. 76), s. 18:—*Held:* the words "cause of action," in the above sect., mean the whole cause of action, & do not apply where a contract has been made out of the jurisdiction & the breach has occurred in England; also, the breach of the contract to marry occurred in Germany, the receipt of the letter only furnishing evidence of the breach & not constituting the breach itself.—CHERRY *v.* THOMPSON (1872), L. R. 7 Q. B. 573; 41 L. J. Q. B. 243; 26 L. T. 791; 20 W. R. 1029.

626a. —— ——.]—Deft. made a promise of marriage to pltf. whilst both parties were residing abroad. Both afterwards came to England, where deft. wrote a letter to pltf.

renouncing the contract. He afterwards left the country. Pltf., under 15 & 16 Vict. c. 76 s. 18, issued a writ indorsed for service abroad. Deft., having been served with the writ abroad, moved to set it aside:—*Held:* the writ was rightly issued; cause of action in sect. 18 means the act or omission constituting the violation of duty complained of, & not the whole cause of action.—DURHAM *v.* SPENCE (1870), L. R. 6 Exch. 46; 40 L. J. Ex. 3; 23 L. T. 500.

626b. —— ——.]—Pltf., a German national of Jewish faith, was manager of the London branch of a German co. The co., not knowing pltf.'s London address, sent from Germany to their agents in London a blank piece of notepaper containing their address & signature, & instructed their agents to write thereon a letter dismissing pltf. from their employment & to post it in London to his address. Pltf. commenced an action for wrongful dismissal, & obtained leave to serve the writ out of the jurisdiction of the ct. The co. applied to have the service of the writ set aside on the grounds that the alleged breach of contract took place in Germany, & as both parties were of German nationality, & as the contract of employment was to be construed according to German law, Germany was the *forum conveniens.* Pltf. contended that, being of the Jewish faith, he might not be entitled to the services of an advocate in the German ct., & moreover, should he return to Germany to prosecute a lawsuit, he would be in grave peril of being deprived of his liberty. The application to set the writ aside was granted. Pltf. appealed to the Ct. of Appeal:—*Held:* (1) the alleged breach of contract was committed in London; (2) England was the *forum conveniens.*—OPPENHEIMER *v.* LOUIS ROSENTHAL & CO., A. G., [1937] 1 All E. R. 23, C. A.

667a. —— **No substantial wrong within jurisdiction.**]—Pltf. brought an action for libel in England against the respective publishers of a Belgian newspaper & a French newspaper. The evidence showed that the newspapers were published in Belgium & in France, respectively, & that they circulated almost entirely within those countries, only a very small number of each being brought to England & distributed there. Pltf., who was a foreigner, stated that he was a gentleman of no occupation, & there was no evidence that he had any reputation in or associations with England. Pltf. applied for an order under R. S. C., Ord. 11, r. 1 (*ee*), for service out of the jurisdiction upon defts. in each case:—*Held:* assuming that there was a tort committed within the jurisdiction & technically within the terms of R. S. C., Ord. 11, r 1 (*ee*), there was no question of substance in England, & as pltf.'s substantial complaint, if any, was one which ought to be investigated in the one case in Belgium & in the other case in France, an order for service out of the jurisdiction ought not to be made.—KROCH *v.* ROSSELL ET COMPAGNIE SOCIÉTÉ DES PERSONNES A RESPONSIBILITE, LTD., KROCH *v.* SOCIÉTÉ EN COMMANDITE PAR ACTIONS LE PETIT PARISIEN, [1937] 1 All E. R. 725; 156 L. T. 379; 81 Sol. Jo. 294, C. A.

668a. **Threat of action for infringement—No evidence of threats within jurisdiction.**]—Pltfs., an Australian co., instituted an action to restrain threats against two American cos. registered in New York, & obtained an order giving leave to serve notice of the writ upon defts. out of the jurisdiction. Upon application by defts. to discharge the order:—*Held:* there was no evidence that any threats had been made within the jurisdiction & the order must be discharged & all subsequent proceedings stayed. Defts. were given the costs of the motion together with the costs of a motion of pltfs. for interlocutory relief.—EGG FILLERS & CONTAINERS (AUST) PROPRIETARY, LTD. *v.* HOLED-TITE PACKING CORPN. & PACKING PRODUCTS CORPN. (1933), 51 R. P. C. 9.

SUB-SECT. 3.—ACTIONS UNDER CARRIAGE BY AIR ACT, 1932 (c. 36) (p. 375).

R. S. C., Ord. XI., r. 8A. The following Rule shall be inserted after Rule 8A of Order XI., and shall stand as Rule 8B of that Order:—

"8B.—(1) Where, for the purpose of an action under the Carriage by Air Act, 1932, and the Convention therein set out, leave is given to serve a notice of a writ of summons upon a High Contracting Party to the Convention other than His Majesty, the provisions of this Rule shall apply.

(2) The notice shall specify the time for entering an appearance as limited in pursuance of Rule 5 of this Order.

(3) The notice shall be sealed with the seal of the Supreme Court for service out of the jurisdiction, and shall be transmitted to His Majesty's Principal Secretary of State for Foreign Affairs, together with a copy thereof translated into the language of the country of the defendant, and with a request for the further transmission of the same to the Government of that country.

(4) The request shall be in Form 10AA in Appendix A, Part I., with such variations as circumstances may require.

(5) The party bespeaking a copy of a document for service under this Rule shall, at the time of bespeaking the same, file a præcipe in Form 10B in Appendix A, Part I.

(6) An official certificate transmitted by one of His Majesty's Principal Secretaries of State to the English Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(7) After entry of appearance by the defendant or, if no appearance is entered, after the expiry of the time limited for appearance, the action may proceed to judgment in all respects as if the defendant had for the purposes of the action waived all privilege and submitted to the jurisdiction of the Court.

(8) Where it is desired to serve or deliver a summons order or notice in the proceedings on the defendant out of the jurisdiction, the provisions of this Rule shall apply with such variations as circumstances may require." (*Added by R. S. C.* (*No.* 2), 1933.)

SECT. 13.—SERVICE OF FOREIGN PROCESS OR CITATION.

(p. 375).

R. S. C., Ord. XL, r. 9. In paragraph (4) of Rule 9 of Order XI. the words "verified by notarial certificate" shall be omitted. (*Amended by R. S. C.* (*No.* 1), 1934.)

Part XIV.—Appearance.

870a. Hearing of motion before appearance—Duty of solicitor to enter appearance immediately.]—It is the duty of a solr. who in exceptional circumstances instructs counsel to appear for a deft. on a motion before entry of appearance, to correct the irregularity without any delay.—PRACTICE NOTE, [1934] W. N. 228 ; 78 L. Jo. 381 ; 151 L. T. Jo. 443.

Part XV.—Default of Appearance.

A. In General (p. 385).

R. S. C., Ord. XIII., r. 3. The following amendments shall be made in Order XIII. :—

In Rule 3, after the words " the plaintiff may " there shall be inserted the words " subject as provided by Rule 17 of this Order." (*Amended by R. S. C.* (*No.* 3), 1936.)

SECT. 7A.—ACTIONS UNDER CARRIAGE BY AIR ACT, 1932 (c. 36).

(p. 390.)

R. S. C., Ord. XIII., r. 9A. The following Rule shall be inserted in Order XIII. after Rule 9 and shall stand as Rule 9A of that Order :—

" 9A. In any case to which Rules 3 to 8 of this Order do not apply, in which the defendant fails, or all the defendants, if more than one, fail, to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary for the plaintiff to proceed with the action, he may by leave of the Court or a Judge to be obtained on summons in Chambers enter judgment for costs.

Provided that such summons shall be filed and shall be served in the manner in which service of the writ has been effected or in such other manner as the Court or a Judge shall direct." (*Added by R. S. C.* (*No.* 2), 1933.)

SECT. 10.—ACTIONS BY MONEYLENDERS OR ASSIGNEES OF MONEYLENDERS.

(p. 390.)

947a. Action by Indian moneylender.]—Pltfs. brought proceedings by specially endorsed writ to recover the amount which became due on a promissory note dated June 24, 1932, on default in payment of an instalment, with interest at 3 per cent. per month from the date of default. Pltfs. were moneylenders who were stated on the writ to reside at Bombay, & the figures of the promissory note were in rupees, but it did not appear where pltfs. carried on business. Deft. did not appear to the writ, but when pltfs. sought to sign judgment in default of appearance, judgment was not entered because the writ did not comply with R. S. C., Ord. III., r. 10 :—*Held :* in the absence of evidence to exclude the application of the Moneylenders Acts, the claim to enter judgment in default of appearance was rightly refused.—NIHALCHAND NAVALCHAND *v.* MCMULLAN, [1934] 1 K. B. 171 103 L. J. K. B. 234 ; 150 L. T. 170, C. A.

964a. Request to abstain from execution—Effect of.]—Where a discretionary jurisdiction is given to the ct. or a judge, the judge in Chambers is in no way fettered by the previous exercise of discretion by the Master, although no doubt he will give the weight it deserves to that decision.

A judgment debtor who asks for & obtains a stay of execution does not thereby approbate the judgment or elect to treat it as binding so as to preclude him from thereafter seeking to set it aside whether on appeal or otherwise.

While the Ct. of Appeal will not normally interfere except on grounds of law with the exercise of the judge's discretion, if it is seen that on other grounds his decision would result in injustice being done, the Ct. of Appeal has both the power & the duty to remedy it.—EVANS *v.* BARTLAM, [1937] A. C. 473 ; [1937] 2 All E. R. 646 ; 106 L. J. K. B. 568 ; 53 T. L. R. 689 ; 81 Sol. Jo. 549 ; *sub nom.* BARTLAM *v.* EVANS, 157 L. T. 311, H. L.

SECT. 16.—PROCEEDINGS FOR FORECLOSURE OR REDEMPTION.

R. S. C., Ord. XIII., r. 17. After Rule 16 the following Rule shall be added and shall stand as Rule 17 :—

" 17. In any action in which the plaintiff is claiming any relief of the nature or kind specified in Order LV., Rule 5A no judgment shall be entered in default of appearance without leave of the court or a judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under Order LV., Rule 5A and may require notice of such evidence to be given to the defendant. ' (*Added by R. S. C.* (*No.* 3), 1936.)

Part XVII.—Summary Judgment for Specific Performance.

991a. Proceedings for interest on purchase-money—Allegation of wilful default against plaintiff.]—Pltf., as the vendor of freehold property, sought to charge deft., the purchaser, with interest on the purchase-money. This deft. refused to pay, alleging that pltf. had been guilty of wilful default. In an action for specific performance of the contract, pltf. sought to avail himself of the summary procedure under R. S. C., Ord. XIVA. :—*Held :* this was not a proper case for the summary jurisdiction, as there was an issue to be tried & the parties must proceed to trial.—UPJOHN *v.* SIMMONS, [1936] 1 All E. R. 615.

Part XIX.—Parties.

1010a. Absence of right to sue—Power of court to strike out action.]—As a rule objection to the right to bring an action should be taken not at the trial but by interlocutory motion or summons, & if that course is not followed the ct. should not entertain an application at the trial to dismiss the action, but where want of capacity or authority to sue plainly appears at any stage the ct. may order the action to be struck out (ROCHE, L.J.).—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

1019a. —— Of solicitors.]—Actions were commenced by E. & S. by separate writs issued by the same solrs. on the same date claiming damages against the same defts. in respect of personal injuries sustained in the same accident. After separate statements of claim & defences admitting liability had been delivered, the actions were consolidated. Defts. paid into ct. £225 in respect of E.'s claim, & £125 in respect of S.'s claim. S. recovered £185, £60 more than the payment into ct. & E. recovered £200, £25 less than the payment into ct.:—*Held:* (1) the question of suing on one writ or on separate writs was one for the discretion of pltfs.' solrs.; (2) the proper order as to costs was as follows: judgment for pltfs., S. for £185 & costs, including the costs of the consolidated action, except in so far as directly attributable to the claim of E. after the date of payment into ct. Order payment out to pltf. S. of the £125 in ct. in part satisfaction. Judgment for pltf. E. for £200 & costs up to the date of payment into ct. Pltf. E. to pay to defts. any costs of the consolidated action arising after the date of payment into ct. which are directly attributable to his being a party to the consolidated action. Order payment out to defts. of £25, part of the sum of £225 paid into ct. Order payment out to pltf. E. of £180, the remainder of the sum in ct. to be dealt with according to the taxing-master's certificate.—ENGLISH *v.* BLOOM & LONDON PASSENGER TRANSPORT BOARD, SIEGENBERG *v.* BLOOM & LONDON PASSENGER TRANSPORT BOARD, [1936] 2 K. B. 550; [1936] 2 All E. R. 1592; 105 L. J. K. B. 659; 155 L. T. 286; 52 T. L. R. 679; 80 Sol. Jo. 795.

1025a. —— Interference with light.]—Two pltfs. were interested in No. 4, B. Street, & two pltfs. in No. 6, B. Street. These buildings were not adjacent, there being an intermediate structure. Deft. was erecting new premises on the other side of B. Street & both pltfs. alleged an interference with ancient lights. Both sets of pltfs. joined in one action against deft. as pltfs. having a right to relief in respect of or arising out of the same transaction or series of transactions within the meaning of R. S. C., Order 16, r. 1:—*Held:* in the exercise of the discretion of the ct. pltfs. should elect within 14 days which of the two sets of pltfs. should be allowed to proceed in the action, & upon election being made, there should be struck out of the writ & statement of claim all parts thereof referring to the other set without prejudice to their issuing a new writ claiming relief pertinent to their premises, both actions to come into the list before the same judge on the same day to be dealt with as he thinks fit, the party issuing the new writ to stand in the same position as if that writ was issued on the date of the original writ.

Semble: without expressing any final opinion as to whether the joinder of these causes of action is permitted by R. S. C., Ord. XVI., r. 1, or on the meaning of the word "transaction" therein, that word would seem to mean an act the effect of which extends beyond the agent to other persons, & the building of the new premises is such an act in that its effect extends to other premises as an interference with an easement. The authorities support this view, & they have clearly extended its meaning from that of a mere contractual relationship.—BENDIR *v.* ANSON, [1936] 3 All E. R. 326; 80 Sol. Jo. 873, C. A.

1166a. —— All members not liable.]—In 1921, 89 out of 1093 members of a Lodge, which was a branch of the Durham Miners' Assocn., a registered trade union, received goods from pltf., such goods being supplied upon a form of voucher signed by the then secretaries of the Lodge & bearing the Lodge stamp. Between 1922 & 1930 pltf. received from the treasurer of the Lodge various payments on account. In Aug. 1936, he commenced an action against the chairman, treasurer, general secretary & financial secretary of the Lodge as representing the general body of members of the Lodge claiming a declaration that the balance of the price of the goods was due & owing to pltf. from the members of the Lodge & was payable to him out of the funds of the Lodge. Pltf. then applied for & obtained an order under R. S. C., Ord. XVI., r. 9, that defts. should defend the action on behalf of the Lodge. It appeared that the majority of the members of the Lodge in 1921 had now ceased to be members, & that the majority of the members of the Lodge at present time were not members in 1921, that members who were infants had no voting powers, & only 19 out of the 89 members to whom the goods were supplied were now members of the Lodge. The rules of the Assocn. did not provide for the supply of goods to members. The judge in Chambers set aside the writ & the representation order. On appeal:—*Held:* the representation order ought not to be made, as the various members of the Lodge had different interests & different defences in the cause or matter.—BARKER *v.* ALLANSON, [1937] 1 K. B. 463; [1937] 1 All E. R. 75; 106 L. J. K. B. 108; 156 L. T. 135; 53 T. L. R. 243; 81 Sol. Jo. 77, C. A.

1229a. —— —— Against trustee—Right of beneficiaries to proceed without joining trustee as plaintiff.]—Defts., the V. Press, Ltd., were the owners of five periodicals which dealt with philately, & deft. A. was helping in their production. In Nov. 1932, A. learnt that the co. desired to sell the papers, &, not being

able to purchase of his own resources, he negotiated with pltf. H., who authorised him to make an offer of £1,500, of which H. his co-pltf. K. would find four-fifths & A. was to supply the remainder. The offer was accepted, & an agreement under seal dated Dec. 15, 1932, was made between the V. Press, Ltd. & A., under the terms of which A. agreed to purchase from the co. the copyright & interest & all the goodwill of the co. in the five periodicals. When that had been done, A. asserted that he alone was interested in the purchase, & purported shortly afterwards, with the consent of the co., to put an end to the agreement. Pltfs. in their action asked for a declaration that deft. A. entered into & took the benefit of the agreement of Dec. 15, 1932, as agent & trustee for pltfs. & himself in the share of two-fifths for each of pltfs. & one-fifth for himself, & also for an order for specific performance of the agreement:—*Held:* (1) the cross-appeal must be dismissed, as the evidence was clear & sufficient to hold that A. was acting as agent & trustee for pltfs.; (2) the appeal by pltfs. should be allowed so far as they were refused an order for specific performance of the agreement. A. having acted as trustee for pltfs. & being before the ct., & further having been found to have committed a breach of trust, & pltfs. being *cestuis que trust* as beneficiaries upon the contract, pltfs., having regard to R. S. C., Ord. XVI., r. 11, which provided that no action should be defeated by reason of the misjoinder or non-joinder of parties, could obtain leave to sue the co. for specific performance in the name of A. That, however, involved circuity of action & expense, &, using R. S. C., Ord. XVI., r. 11, the ct. were prepared in the special circumstances—all the parties being before the ct.—to give the remedy to which ultimately pltfs. would have become entitled, namely, to order specific performance of the contract in this action by pltfs. The order for inquiry as to damages would be discharged. The principle of equity was to enforce the contract in the name of & for the benefit of the trust.—HARMER *v.* ARMSTRONG, [1934] Ch. 65; 103 L. J. Ch. 1; 149 L. T. 579, C. A.

SECT. 13A.—ACTIONS UNDER CARRIAGE BY AIR ACT, 1932 (c. 36).

(p. 433.)

R. S. C., Ord. XVI., r. 14. The following Rule shall be inserted after Rule 13A of Order XVI., and shall stand as Rule 14 of that Order:—

"14.—In any action under the Carriage by Air Act, 1932, and the Convention therein set out, a High Contracting Party to the Convention who, for the purposes of that action, and by virtue of that Act, is deemed to have submitted to the jurisdiction of the Court, may, subject to and in accordance with these Rules, be made a defendant." (*Added by R. S. C.* (*No.* 2), 1933.)

SECT. 15.—INFANTS.

(p. 433.)

R. S. C., Ord. XVI., r. 16. In Rule 16 of Order XVI. the following words shall be omitted:—"Married women may sue and be sued as provided by the Married Women's Property Act, 1882." (*Deleted by R. S. C.* (*No.* 2), 1936.)

SECT. 16.—MARRIED WOMEN.

(p. 434.)

R. S. C., Ord. XVI., r. 16. In Rule 16 of Order XVI. the following words shall be omitted:—"Married women may sue & be sued as provided by the Married Women's Property Act, 1882." (*Deleted by R. S. C.* (*No.* 2), 1936.)

SECT. 18.—POOR PERSONS.

(p. 435.)

Ord. XVI. The following amendments shall be made XVI.:—

(*a*) In paragraph (4) of Rule 23, the words "or Court of Appeal" shall be omitted.

(*b*) At the end of Rule 23 there shall be inserted the following words:

"The certificate shall bear the date on which the application is granted by the Committee."

(*c*) In Rule 25, the words "The certificate shall be filed by the conducting solicitor" shall be omitted, and the following words shall be substituted therefor:—

"Before taking any other steps in the proceedings, the conducting solicitor shall file the certificate . . ."

(*d*) In paragraph (5) of Rule 28, after the words "shall direct" there shall be inserted the words "a sum of money," and after the words "conducting solicitor" the words "any sum of money not exceeding in the first instance the sum of £5" shall be omitted.

(*e*) Paragraph (1) of Rule 30 shall be omitted, and the following paragraph shall be substituted therefor:—

"(1) After the date on which the certificate is granted, no poor person nor any solicitor nominated to conduct the proceedings for him shall enter into any settlement or compromise, whether before or after the commencement of the proceedings, nor discontinue the proceedings, without the leave of the Court or a Judge, or, where no Court order is required, of the Committee."

(*f*) Rule 31A shall be revoked, and the following Rule shall be substituted therefor:

"31A.—(1) In matrimonial causes every pleading shall be settled by counsel.

(2) Proofs of the witnesses shall be furnished to counsel with the instructions to settle the pleadings.

(3) This Rule shall not apply to petitions for alimony or maintenance or to answers to such petitions."

(*g*) The following Rules shall be substituted for Rule 31B, which is hereby revoked:—

"31B.—(1) The Court or a Judge may order the out-of-pocket expenses of a poor person to be paid by any other party. Where such an order is made it shall be deemed to include all out-of-pocket expenses properly incurred in the course of the proceedings, but not office expenses, or fees to counsel, or Court fees.

(2) Where it appears to the Court or a Judge that any other party has acted unreasonably in bringing or defending the proceedings or in his conduct of them, or that the special circumstances of the case require it, the Court or Judge may order the other party to pay the costs of the Poor Person, including profit costs, or a proportion of profit costs, or a sum of money in respect thereof, in addition to out-of-pocket expenses properly incurred in the course of the proceedings, but not fees to counsel or Court fees.

(3) Where it appears to the Court or a Judge that the proceedings are of such length or difficulty as to throw an unusual burden on the solicitor acting for the Poor Person, the Court or Judge may order the other party to pay, in addition to out-of-pocket expenses properly incurred in the course of the proceedings, such sum as the Court or Judge thinks fit in respect of such unusual burden.

(4) All out-of-pocket expenses and other costs ordered to be paid under this Rule shall be taxed.

(5) Where an order is made to pay costs under paragraphs (2) or (3) of this Rule, the order shall not be enforced without the leave of the Court or a Judge, and the Court or Judge may refuse leave if satisfied by the party ordered to pay the costs that he has not the means to pay them.

In this paragraph 'means' shall include insurance or other indemnity.

31BB.—Where it appears to the Court or a Judge that the certificate was obtained by fraud or misrepresentation the Court or Judge may order the Poor Person to pay the costs of the other party, and where such an order is made, the costs shall be taxed as if the party ordered to pay them were not a Poor Person."

(*h*) At the end of Rule 31C the following paragraph shall be added:—

"(2) In this Rule, money or property recovered includes money or property recovered by virtue of a settlement or compromise." (*Amended by R. S. C.* (*No.* 5), 1934.)

(*i*) In paragraph (2) of Rule 31DD the words "High Court without the leave of the judge of the County Court or of a Divisional Court of the High Court" shall be omitted, and the following words shall be substituted therefor:—

"Court of Appeal without the leave of the judge of the County Court or of the Court of Appeal."

(*j*) In paragraph (3) of Rule 31DD the words "High Court" shall be omitted and the words "Court of Appeal" shall be substituted therefor.

(*k*) The following paragraph shall be inserted after paragraph (3) of Rule 31DD, and shall stand as paragraph (4) of that Rule:—

"(4) This Rule shall apply *mutatis mutandis* to any proceedings in which an appeal lies from a County Court to the High Court." (*Amended by R. S. C.* (*No.* 2), 1935.)

(*l*) The following paragraph shall be added to Rule 31E:—

"(2) Where any such Poor Person is a party to an appeal to the Court of Appeal either as respondent, or, subject to the provisions of the preceding paragraph of this Rule, as appellant, the provisions of Rules 22 to 31D of this Order shall apply, so far as applicable." (*Amended by R. S. C.* (*No.* 5), 1934.)

1298a. Appeal as poor person—Application for leave—Prima facie case to be shown.]—PRACTICE NOTE, [1936] W. N. 54; 181 L. T. Jo. 148, C. A.

1303a. —— —— Bankruptcy proceedings—Security for costs.]—On an appeal by a poor person from the dismissal of a motion in bkpcy., the deposit pursuant to r. 131 of Bkpcy. Rules must be paid before the appeal is entered. The exception of bkpcy. proceedings in R. S. C., Ord. 16, r. 22, is imported into r. 31F.—*Re* DEBTOR (1932), 74 L. Jo. 291, C. A.

1314a. —— Right to appeal subject to—On discharge of certificate by Court of Appeal.]—A person who has not taken, defended or been a party to any proceedings as a poor person in the High Ct., but who has obtained under R. S. C., Ord. XVI., r. 31 F, a certificate from the Poor Persons' Committee of the Law Society admitting him to appeal to the Ct. of Appeal as a poor person, cannot appeal to the Ct. of Appeal as a poor person unless he has obtained the leave of the judge before whom the matter was heard, or the leave of the Ct. of Appeal, inasmuch as the concluding words of rule 31 F make the provisions of rule 31 E apply to such a case. In the circumstances of the case leave to appeal as a poor person to the Ct. of Appeal was refused & the certificate given to pltf. by the Poor Persons' Committee admitting him to appeal to the Ct. of Appeal as a poor person was discharged by the Ct. of Appeal of its own motion under rule 29 of R. S. C., Ord. XVI. Order for security of costs against the pltf. & his next friend as a condition of prosecuting the appeal.—RODRIQUES *v.* BAKEWELL & SALMON, [1934] 1 K. B. 668; 103 L. J. K. B. 522; 151 L. T. 81; 78 Sol. Jo. 317, C. A.

1321a. —— —— Necessity for—Party who has not previously sued or defended as poor person.]—RODRIQUES *v.* BAKEWELL & SALMON, No. 1314a, *ante*.

Part XX.—Third-Party Procedure.

1369a. —— ——.]—A passenger in a private motor car belonging to & driven by her husband sustained injuries as a result of a collision with a Glasgow Corpn. tramway car. She sued the corpn. for damages on the ground of negligence on the part of a servant of the corpn. In their pleadings the corpn. averred that the husband was solely to blame for the accident. After the close of the pleadings the corpn., in terms of the Rules of the Ct. of Session, 1934, proposed a counter-issue of negligence on the part of the husband & asked for an order for service of a third party notice upon him. The ct. held that the corpn. had not relevantly pleaded a right of contribution against the husband to bring the case within the rules, whereupon the corpn. asked for leave to amend their pleadings by adding averments of an alternative case alleging that, on the assumption that their servant was negligent, the collision was materially contributed to by the negligence of the husband, against whom the corpn. claimed a right of contribution, relief, or indemnity. There is a decision of the Second Division of the Ct. of Session against the right of the wife to recover from the husband in such a case & the addition of the husband as third party would probably necessitate the case being taken to the House of Lords:—*Held:* this was not a case in which the discretion of the ct. should be exercised in favour of allowing a third party notice to be served. Leave to amend the pleadings was, therefore, refused & applts.' proposed counter-issue was disallowed.—GLASGOW CORPN. *v.* ROBERTSON (OR CAMERON), [1936] 2 All E. R. 173, H. L.

1478. *Add. Citations:*—[1932] 2 Ch. 122; 101 L. J. Ch. 321; 147 L. T. 185, C. A.; *affd.*, 49 T. L. R. 94, H. L.

Part XXIV.—Amendment.

1549a. Erroneous award of interest.]—As it now stands, the motion raises the point whether interest is payable or ought to be ordered to be paid upon items of estimated repairs & estimated demurrage, in circumstances where *ex concessis* no expenditure of any kind has been incurred at the date of the report. . . .

I am inclined to think that I could have acted under this Order [R. S. C., Ord. 28, r. 11] although I have preferred to deal with the matter as a question of principle raised by special leave after the expiry of the time allowed for objection to the registrar's report (LANGTON, J.).—THE NAPIER STAR, [1932] P. 137, 142; 102 L. J. P. 57; 149 L. T. 359; 49 T. L. R. 342; 18 Asp. M. L. C. 400.

Add. Annotation :—**Consd.** The Vectis, [1929 P. 204.

5373. *Add. Annotation :*—**Refd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

5379a. —— —— **Harwich Harbour.**]—The *E.* was leaving & the *P.* was arriving at Harwich Harbour, both vessels being in charge of a pilot, when a collision occurred. It was necessary for the *P.* at the entrance to the harbour to round Beach End buoy :—*Held:* Harwich Harbour Conservancy Board (1929), Bye-laws No. 8 applied to the entrance to the harbour, & the *E.* which was navigating against the tide, should have eased her speed & allowed the *P.* to pass clear of her.—THE PRINSES JULIANA, ESBJERB OWNERS *v.* PRINSES JULIANA OWNERS, [1936] P. 139; [1936] 1 All E. R. 685; 105 L. J. P. 58; 155 L. T. 261; 52 T. L. R. 269; 18 Asp. M. L. C. 614.

5395. *Add. Annotation :*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

5400. *Add. Annotation :*—**Folld.** The Harkaway, [1928] P. 199.

5400a. —— ——.]—Defts.' sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. Pltfs.' motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—*Held :* having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & defts. were liable to pltfs. for the damage sustained.—THE HARKAWAY, [1928] P. 199; 97 L. J. P. 113; 139 L. T. 615 44 T. L. R. 649; 17 Asp. M. L. C. 503.

Annotation :—**Refd.** Burley C. *v.* Lloyd Edw. (1929), 45 T. L. R. 626.

5401a. —— **Portland Harbour—Vessel "about to enter"—Collision in one of the "channels between the breakwaters."**]—Rule 5 of a schedule to an Order in Council relating to the Port of Portland (1931, No. 176) provides that "When any vessel or vessels are about to enter from seaward any of the channels between the breakwaters, no vessel proceeding outward by the same channel shall enter this said channel until the before mentioned vessel, or vessels, shall have passed in."

A collision between the *R.*, an outward bound submarine in command of deft., & pltfs.' vessel *P.* inward bound, took place in the North Ship Channel entrance to Portland Harbour, slightly to the southward of mid-channel & about 200 to 300 feet outside of a line drawn between the breakwaters. It was argued for deft. that r. 5 did not apply, inasmuch as a vessel "about to enter from seaward" one of the channels meant a vessel going to enter the water which might reasonably be taken to be included in the word "channels"; & that the *P.* was never in a position of being "about to enter," which implied that she must so approach as to indicate clearly her intention to enter, whereas, instead of "shaping up" at a proper distance to enter the channel, she was cutting the corner & then had to make a turn of five or six points :—*Held :* (1) the collision took place in what might fairly be called one of "the channels between the breakwaters"; taking r. 5 as a whole, its purport was not to lay down how vessels should or should not approach the harbour, but to lay down in clear language that the outgoing vessel should be the give-way vessel; & accordingly the *R.* was to blame; (2) the vessel with the right of way was not in the position of a "keep course & speed" vessel under the crossing rule; the *P.* having a bad look-out, &, considering the fine angle at which she was approaching the breakwater, too high a rate of speed, was also to blame. Both vessels accordingly held to blame in the proportions of two-thirds to the *R.* & one-third to the *P.*—H.M. SUBMARINE RAINBOW, [1933] P. 68; 102 L. J. P. 61; 149 L. T. 357; 18 Asp. M. L. C. 368.

5403. *Add. Annotation :—Generally.* **Refd.** The Rockabill, [1937] P. 93.

5439. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

5446. *Add. Annotation :*—**Refd.** Kitano Maru S.S. *v.* Otranto, S.S., [1931] A. C. 194.

5488. *Add. Annotation :—As to* (1) **Refd.** The Kafiristan, [1937] P. 63.

Add. Annotation :—As to (1) **Consd.** The Champion, [1934] P. 1.

5490a. ——.]—THE EFFRA (1936), 182 L. T. Jo. 82.

5505. *Add. Annotation :*—**Refd.** The Aeneas, [1935] P. 128.

5516. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

5517a. —— —— ——.]—THE DAGMAR, No. 5608a, *post.*

5521. *Add. Annotation :*—**Apld.** The Palembang, [1929] P. 246.

5528. *Add. Annotation :—As to* (1) **Consd.** The Palembang, [1929] P. 246.

566a. —— **Steering definite course to definite destination.**]—A pilot vessel when not engaged on her station on pilotage duty but

her negligence; (2) the *R.* being attached to her tug, which was her servant, was not required by the rules of the road to ring her bell; & the ringing of the bell by the tug was sufficient compliance with the rules; moreover, the fact that the lights on the *R.* were not placed in accordance with the rules, having had no bearing on the accident; the *R.* in no way contributed to the collision.—BARGE LINE, LTD. *v.* POPLARBAY, & POPLARBAY STEAMSHIP CO., [1932] Ex. C. R. 209.—CAN.

PART XII. SECT. 2, SUB-SECT. 15.—F.

5403 iv. —— ——.]—The descending vessel coming with the current is entitled to consideration, & an upcoming vessel, in a narrow channel, where navigation is intricate, seeing another vessel coming down stream, must stop, & if necessary come to a position of safety below the point of danger & there remain until the channel is clear.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE, [1932] Ex. C. R. 230.—CAN.

PART XII. SECT. 3, SUB-SECT. 3.—E. (b).

5447 iv. —— ——.]—*Held :* when a danger of collision occurs, a vessel is not justified in arbitrarily & obstinately insisting on her right of way conferred under rule 25. If in obstinately following out the letter of the rules regulating the course, a collision thereby occurs, she becomes at fault under rule 37.—"ELFSTONE" *v.* CHICAGO TRIBUNE TRANSPORTATION CO., LTD., CRETE SHIPPING CO., LTD. *v.* "CHICAGO TRIBUNE," [1931] Ex. C. R. 132.—CAN.

steering a definite course to a definite destination, for example, returning to port to land a pilot, must not exhibit the pilot boat lights prescribed by Art. 8 of the Regulations for Preventing Collisions at Sea, 1910, but must exhibit the ordinary navigation lights for vessels of her tonnage prescribed by the regulations.—THE KINGSTOWN, (1929), 99 L. J. P. 19.

5573. *Add. Annotation:*—**Refd.** The Tovarisch, [1929] P. 293.

5576. *Add. Annotation:—As to* (2) **Apld.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564. **Refd.** Morgan *v.* Amalgamated Anthracite Collieries, Ltd., Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 2) (1934), 27 B. W. C. C. 313.

5592. *Add. Annotation:—As to* (1) **Refd.** The Tovarisch, [1929] P. 293.

5608a. ——— **Other vessel moored.**]—A dumb hopper made fast by forward moorings to a moored vessel, & swinging with the tide, is herself a moored vessel, & not a vessel under way within the Port of London River bye-laws. The *M.*, a dumb hopper loaded with spoil, had been moored alongside a dredger in Blackwall Reach, River Thames. Her after moorings were cast off, & she commenced to swing with the tide, being still made fast forward by her forward moorings. She was exhibiting one white riding light forward & one white riding light aft. In these circumstances the *D.*, a steamship bound up-river, came into collision with the *M.*:—*Held:* (1) the *M.* was not a vessel under way; (2) in any case the *M.* was probably a "lighter" within the meaning of the Port of London River bye-laws 1914–26, & was not required to carry side lights when under way, & no lights were laid down by the bye-laws for her to carry; (3) the *M.*, being moored to the dredger, which was moored to buoys, was herself moored & bound to exhibit two white riding lights in accordance with bye-law 14; (4) the *D.* was alone to blame for the collision.—THE DAGMAR (1929), 141 L. T. 271; 45 T. L. R. 303; 18 Asp. M. L. C. 41.

5608b. —— **Dumb barge.**]—Pltfs.' steamship *S.* was lying moored at a tier on the south side of the River Thames. Defts.' dumb barge *P.* was lying inside of the *S.* & attached to her by ropes fore & aft. When the work of receiving cargo from the *S.* ceased for the day the *P.* was left alongside the *S.* unlighted & unattended. The *S.* was exhibiting the usual anchor light. During the night some unknown craft came into collision with the *P.* & she filled & sank, &, as the tide ebbed, the *S.* rested on the submerged hull of the *P.* & both vessels were damaged. Under bye-law 14 of the Port of London River Bye-laws, a vessel under 150 feet in length "when at anchor or moored" by night must exhibit a riding light; but by proviso (*a*) to the bye-law: "Where masted vessels are lying made fast at the moorings in the tiers, only the outermost off shore of such vessels in each tier shall be required to exhibit the riding light"; & by proviso (*c*), ". . . Lighters made fast at wharves, piers or jetties or alongside vessels thereat, shall not be required to exhibit the riding light":—*Held:* (1) it was not negligent to leave the *P.* unattended; but (2) not being a masted vessel nor made fast to a vessel at a wharf, pier or jetty, the *P.* could not bring herself within either proviso (*a*) or (*c*); accordingly there was nothing to take her out of the obligation imposed upon her under the main part of the bye-law to exhibit a riding light; (3) as defts. could not prove that the absence of the light was not a cause of the collision with the unknown craft, they failed to discharge the *onus* upon them, & there must be judgment for pltfs.—THE PRINCESS, [1929] P. 287; 98 L. J. P. 158; 142 L. T. 94; 45 T. L. R. 627; 18 Asp. M. L. C. 56.

Annotation:—As to (3) **Refd.** The Mulbera, [1937] P. 82.

5617. *Add. Annotation:*—**Consd.** The Palembang, [1929] P. 246.

5630a. Coloured flare.]—A large four-masted barque, after seeing both lights of an approaching steamship about one & a half to two points on the starboard bow, saw only the green light at an estimated distance of about half a mile. Thereupon a green pyrotechnic flare was exhibited on the starboard side of the barque. Immediately afterwards the steamship ported her helm, &, in attempting to cross the bows of the barque, was struck on the port side by the bowsprit & stem of the barque & sank with all hands except one:—*Held:* the exhibition of the green flare by the barque was not a breach of Article 12; the green flare was intended simply to attract attention, & did not call upon the steamship to do anything except that which it was her duty to do when she saw a sailing vessel approaching with lights green to green; & the steamship, by improperly porting, was alone to blame for the collision.—ALCANTARA, S.S. OWNERS *v.* TOVARISCH, S.S. OWNERS, [1931] A. C. 121; *sub nom.* THE TOVARISCH, ALCANTARA S.S. OWNERS *v.* TOVARISCH S.S. OWNERS, 100 L. J. P. 46; 144 L. T. 230; 47 T. L. R. 89; 18 Asp. M. L. C. 182, H. L.

Annotation:—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65.

5648a. —— **Vessel under way—Meaning of "under way."**]—Under bye-law 28 (*e*) of the Port of London River Bye-laws, 1914–1926, in fog, "a steam vessel under way about to turn & whilst turning round shall sound at intervals of not more than two minutes four short blasts in rapid succession, followed, if turning with her head to . . . port, by two short blasts." Bye-law 5 provides that "in these bye-laws . . . unless there be something in the subject or context repugnant to such construction . . . the expression 'under way' when used in relation to a vessel means when she is not at anchor . . . & includes a vessel dropping up or down the river with her anchor on the ground." In order to come to anchor on account of fog pltfs.' vessel

PART XII. SECT. 3, SUB SECT. 5.—B. (I). ii.

5611 iii. ——.]—Collision caused by pltf. scow, which failed to show a riding light when anchored for the night.—FORBES *v.* BLAKENY & SON, [1935] 3 D. L. R. 428; 9 M. P. R. 280; 5 F. L. J. (Can.) 68.—CAN.

Pakeha, bound up-river on the flood tide, sounded the appropriate signal under bye-law 28 (*e*), hard-a-starboarded her helm, & put her engines full speed astern. When she had swung two or three points the anchor was let go with thirty fathoms of chain & was reported to be holding. Her navigation lights were then switched off, the anchor lights switched on & the bell commenced to be rung for fog. The engines had then to be worked half ahead & full speed ahead for about a minute & a half to avoid a small vessel at anchor, & were then put full speed astern for about a minute & then stopped. About ten minutes after the anchor had been let go, & when the *Pakeha* had nearly swung head to tide, she was run into by defts.' steamship. Defts. alleged (*inter alia*) that the *Pakeha* was a vessel under way & turning in the river, & required, therefore, to continue sounding the signal of four short blasts followed by two:—*Held:* following the criterion laid down in *The Esk*, *The Gitana*, No. 5521, as the *Pakeha* was holden by & under the control " of her anchor during all the time in question, she was not " under way," & was right in ringing her bell, the appropriate signal for a vessel at anchor in a fog.—THE PALEMBANG, [1929] P. 246; 98 L. J. P. 129; 141 L. T. 399; 45 T. L. R. 495; 18 Asp. M. L. C. 45.

5657. *Add. Annotation:*—**Distd.** The Palembang, [1929] P. 246.

5659. *Add. Annotation:—As to* (1) **Refd.** The Bremen (1931), 47 T. L. R. 505.

5660. *Add. Annotation:—Generally,* **Refd.** Canton Owners *v.* Rhesus Owners, [1928] W. N. 214.

5666a. Duty of ship hearing signals—Whether alteration of course justifiable.]—Two steam vessels, the *H.* & the *G.*, came into collision in a fog. Both had headway at the time of the collision & were to blame for excessive speed in fog & for not stopping when they first heard the fog signals of the other vessel forward of their beam. The *G.* had been sounding a succession of two prolonged blasts (the signal prescribed by Art. 15 (*b*) of the Regulations for Preventing Collisions at Sea to indicate that she was stopped in the water), when in fact she had substantial headway, & the case for the *H.*, which had meanwhile stopped her engines, was that this signal justified her in altering course &, although she still had headway, in putting her engines slow ahead again:—*Held:* before altering course in fog every precaution ought to be taken to ascertain that the vessel blowing the two blast signal, a signal which is frequently unreliable, is really stopped & not altering the bearing or getting nearer; from the sound of the blasts blown by the *G.* it should have been apparent that she was getting nearer & not really stopped; accordingly the *H.* was to blame for going on again & altering her course; & both vessels were to blame in equal degrees.—THE GASTELU, [1934] P. 86; 103 L. J. P. 97; 151 L. T. 260; 18 Asp. M. L. C. 480.

5681. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] P. 63.

5686a. —— Meaning of " existing circumstances & conditions "—Aircraft carrier with aircraft in the air.]—The words in Art. 16 of the Collision Regulations, " existing circumstances & conditions " & " circumstances of the case," refer to circumstances affecting the navigation of the ship & not to outside influences on the minds of persons on board the ship. The fact of the aircraft being in the air with only a limited supply of petrol was not a circumstance which justified the aircraft carrier for failure to comply with the regulations.—H.M.S. " GLORIOUS," [1932] W. N. 213; 74 L. Jo. 109; *affd.*, [1933] W. N. 10; 75 L. Jo. 9, C. A.

5720. *Add. Annotation:—As to* (1) **Refd.** The Bremen, [1931] P. 166.

5732. *Add. Annotation:—As to* (1) **Refd.** The Bremen, [1931] P. 166.

5748a. —— —— Meaning of " ascertained."]—In order that the position of a vessel whose fog-signal is heard by another vessel may be " ascertained " within Art. 16 of the Regulations for the Prevention of Collisions at Sea, the vessel must be known by the other vessel to be in such a position that both vessels can safely proceed without risk of collision. An inference as to the vessel's position, based upon the direction from which the fog-signal was heard, the probable course which she is taking, & the improbability of her crossing the fairway in a fog, is not an ascertainment justifying a disregard of the precautions enjoined by the above article. Implicit obedience to the Regulations, upon which navigators are entitled to rely, is of great importance.—NIPPON YUSEN KAISHA *v.* CHINA NAVIGATION CO., LTD., [1935] A. C. 177; 104 L. J. P. C. 34; 152 L. T. 313; 51 T. L. R. 203; 78 Sol. Jo. 897; 18 Asp. M. L. C. 533, P. C.

5748b. ——.]—*Held:* to comply with the direction to " stop " & then " navigate with caution " a vessel should run her way off & bring herself as nearly as possible to a standstill; & a vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines & then putting them slow ahead, & so continued alternately stopping & going slow ahead, was not complying with art. 16.—THE UNION, [1928] P. 175; 97 L. J. P. 126; 139 L. T. 448; 17 Asp. M. L. C. 483.

5748c. —— Unless clear that safe to continue course.]—Under Article 16, a steam vessel hearing the fog signals of a vessel, apparently forward of the beam, is required to stop her engines & then navigate with caution.

The *B.*, a large liner going down Channel in a dense fog at a speed of about 4 knots, heard, on the starboard side about abeam or a little abaft it, the fog whistle of the steamship *B. G.* After the whistle had been heard four or five times more, getting louder & nearer & apparently still on the same bearing, the master of the *B.* decided that he must act. He accordingly starboarded & increased his engine power to assist the helm. The *B. G.* then came into sight 100 to 150

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) i.

sl. Bare steerage way.]—EASTERN S.S. CO., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1928] Exch. C. R. 129.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) iv.

sg. Ten knots.]—OLSEN & CO. *v.* S.S. PRINCESS ADELAIDE, S.S. HAMP-

v. C. P. R. CO., [1930] Ex. C. R. 10; 4 D. L. R. 778; [illegible] D. L. R. 423; *varp.*, [1[illegible] 383; Ex. C. R. 199; 2 W. W. R. 41 B. C. R. 274.—CAN.

yards away on the starboard side, crossing the bows of the *B.* from starboard to port, & the two vessels came into collision :—*Held :* (1) the main cause of the collision was the bad navigation of the *B. G.* (*inter alia*) in altering her course in fog, proceeding at excessive speed, & failing to stop on hearing the whistle of the *B.* forward of her beam.

The conclusion on the authorities is that in fog, unless the vessel hearing a whistle is quite clear that to continue course & speed will not involve risk of collision, she should always stop her engines (*per* CUR.).

(2) The *B.* was also partly to blame, inasmuch as the fact that the fog signals of the *B. G.* were getting louder & nearer on the same bearing was a clear indication of danger, & that accordingly good seamanship required the *B.* to stop after hearing the second or third blast, when those on board would know for certain that the other ship was approaching & causing risk of collision. Both vessels accordingly held to blame, the *B. G.* to the extent of 80 per cent. & the *B.* 20 per cent.—THE BREMEN, [1931] P. 166 ; 100 L. J. P. 122 ; 145 L. T. 565 ; 47 T. L. R. 505 ; 18 Asp. M. L. C. 252, C. A.

5748d. —— **"So far as the circumstances of the case admit "—Aircraft carrier with aircraft in the air.**]—H.M.S. GLORIOUS, No. 5686a, *ante.*

5754. *Add. Annotation :*—**Consd.** The Bremen, [1931] P. 166.

5757. *Add. Annotations :—As to* (1) **Refd.** The Bremen, [1931] P. 166. *Generally,* **Refd.** The Young Sid, [1929] P. 190.

5775. *Add. Annotations :*—**Refd.** The Bremen (1931), 47 T. L. R. 505 ; Nippon Yusen Kaisha *v.* China Navigation Co., [1935] A. C. 177.

5779a. —— ——.]—The battleship *M.* came into collision with the steamship *K.* in foggy weather. The whistle of the *K.* was heard by those on the *M.* & was judged to be 10 deg. to 15 deg. on the port bow & a long way off. The engines of the *M.* were stopped for about four minutes, during which time two or three more fog signals were heard. The ship's head fell off to starboard & the engines were then put ahead again. A few minutes later, the whistle having been heard several times on an estimated bearing of 15 deg. to 20 deg. or possibly 25 deg., the captain of the *M.*, having come to the conclusion that the *K.* was on an opposite course & would pass port to port, made further substantial alterations to starboard, as the sound of the *K.'s* whistle was getting rather close & he wanted to give her more room. In fact, however, the *K.* was on the starboard bow of the *M.*, & the starboard wheel action on the *M.*, instead of terminating the risk of collision, brought it about. When the vessels came in sight of each other at a distance of about 500 yards the *M.* was on the starboard bow of the *K.* & the *K.* was on the port bow of the *M.* At that time the *K.*, which had not heard the *M.'s* fog syren until just as the *M.* came into view, was proceeding at about 11 knots & the *M.* at about 7 to 8 knots :—*Held :* (1) the look-out on the *K.* was inefficient, since the marked deterioration in visibility shortly before the collision was not noticed, & both vessels were to blame in respect of their speeds ; (2) the *M.* was also to blame for altering course, because, although there is no rule that when two vessels are approaching one another in fog the course should not be altered, a vessel is not justified in altering without reasonable grounds for concluding that the position of the other vessel is ascertained ; that the only data known to those on the *M.* were that the bearing of the whistle signals of the *K.* appeared to be one or two points on the port bow & broadening slightly, but that it was only a guess as to the direction of approaching whistle signals two to four miles away with a strong head wind blowing, & the guess was in fact erroneous.—MALAYA, H.M.S., [1937] P. 179 ; 106 L. J. P. 115 ; 53 T. L. R. 911.

5891a. ——.]—Two steam vessels, the *S.* & the *K.*, while on courses crossing one another at the fine angle of 8 degrees, sighted each other's lights at a distance of several miles. The *S.* first sighted the masthead light of the *K.* fine on the starboard bow, & afterwards, as the *K.* was yawing considerably, saw both her sidelights. The *K.* had the masthead & green lights of the *S.* open to her a little on the port bow, & the Elder Brethren were of opinion that there must have been times also when, although those on board the *K.* denied seeing it, the red light of the *S.* must also have been open. The *S.* crossed on to the starboard bow of the *K.*, & having got into a position of green light to green light altered her course to starboard, rendering a collision imminent. The *K.*, which up to that time had kept her course & speed, then went full speed astern & hard-a-ported her helm (old command). LANGTON, J., held that art. 18 applied, & that while the *S.* was to blame for porting & hard-a-porting when the vessels were green to green & for not sounding any whistle signals, the *K.* was also to blame for not at an earlier stage altering her course to starboard so as to pass port to port, & he accord-

PART XII. SECT. 3, SUB-SECT. 5.—C. (h).

5757 i. *When duty arises—Vessel approaching.*]—The question whether vessels approaching one another in a fog should not merely stop their engines but also their way, or reverse their engines, must be decided under the circumstances of each case. In the present case it was held that the *H.*, which did not reverse her engines immediately after hearing the second whistle of the *A.*, did not "navigate with caution," within the meaning of art. 16 of the Collision Regulations, after, at least, she heard that whistle & thereupon should have realised that as it showed no indication of broadening the danger was imminently increasing.—OLSEN & CO. (OWNERS OF THE "HAMPHOLM") *v.* "PRINCESS ADELAIDE," CANADIAN PACIFIC RY. CO. (OWNERS OF "PRINCESS ADELAIDE") *v.* "HAMPHOLM" (B. C. Adm.), [1929] 3 D. L. R. 383 ; Ex. C. R. 199 ; 2 W. W. R. 629 ; *varied,* [1930] 3 D. L. R. 423 ; *affd.,* [1930] 4 D. L. R. 778 ; Ex. C. R. 10.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—C. (i).

sh. *What amounts to.*]—A vessel in fog should run at such a speed that upon sighting an approaching vessel, she can pull up in the distance she can see. Art. 16 does not require a vessel running in fog to reverse her engine upon hearing of a fog signal apparently forward of her beam, but only to stop her engines & then navigate with caution, & as the *H.* could come to a stop in thirty feet & could see a vessel at three hundred feet, she was navigating with caution within Art. 16, & was not called upon to reverse before she did.—OLSEN & CO. *v.* S.S. PRINCESS ADELAIDE & S.S. HAMPHOLM *v.* CANADIAN PACIFIC RY. CO., [1930] Ex. C. R. 10 ; 4 D. L. R. 778 ; *affg.,* [1930] 3 D. L. R. 423 ; *varg.,* [1929] 3 D. L. R. 383 ; Ex. C. R. 199 ; 2 W. W. R. 629 ; 41 B. C. R. 274.—CAN.

ingly held the *S.* three-fourths to blame & the *K.* one-fourth. Both parties appealed. On appeal the assessors advised the ct. that while, owing to the yawing of the *K.*, the *S.* would "constantly" see both sidelights of the *K.*, the *K.*, although she might possibly (but not necessarily) see both sidelights of the *S.* "occasionally," would generally be seeing the green light only:—*Held:* as the substantially prevailing position was not that each vessel was generally seeing both sidelights of the other, the requirement of art. 18 were not complied with; accordingly the vessels came under art. 19, & the *S.* was alone to blame.—THE KAITUNA, [1933] P. 234; 103 L. J. P. 1; 150 L. T. 112; 18 Asp. M. L. C. 429, C. A.

5925. *Add. Annotations:*—**Refd.** The Tovarisch, [1930] P. 1; Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194; The Kaituna, [1933] P. 234.

5925a. Each vessel must see both sidelights of other.]—THE KAITUNA, No. 5891a, *ante*.

5933. *Add. Annotation:*—*As to* (1) **Consd.** The Otranto, [1930] P. 110.

5934. *Add. Annotations:*—**Apld.** The Treherbert, [1934] P. 31. **Refd.** The Otranto, [1930] P. 110; The Aeneas, [1935] P. 128.

5935. *Add. Annotations:*—**Consd.** The Treherbert, [1934] P. 31. *As to* (1) **Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5935a. —— ——.]—The first duty of a vessel keeping her course & speed under Art. 21 of the Sea Regulations, 1897, is to keep her course & speed as long as that will enable the other vessel to keep out of the way; after that point, her second duty is to take such action as will best aid to avert collision, but this second duty is not to be very severely pressed, & if the master of the vessel is found to have been watching the other vessel & doing his best to make up his mind when to act, he ought not to be held to blame for waiting a moment too long before acting.—THE RANZA (1898), 79 L. J. P. 21, n.

Annotations:—**Apprvd.** The Ornen (1900), 79 L. J. P. 23. **Consd.** The Otranto, [1930] P. 110; The Lady Belle [illegible] 49 T. L. R. 595. **Refd.** The Gulf of Sucz, [1921] P. 318.

5935b. —— ——.]—Two steamships were meeting almost end on, showing red light to red light, & defts.' vessel ported slightly. When still a long way off pltfs.' vessel wrongly starboarded & showed her green. Defts.' vessel then kept her course & speed, & the vessels approached close together, green to red. Not more than one minute before the collision, defts.' vessel sounded a short blast & hard a-ported, & afterwards before the collision stopped & reversed; pltfs.' vessel blew a short blast in reply, but by some mistake starboarded instead of porting, though, if she had ported, there would have been no collision:—*Held:* defts.' vessel was bound under Art. 21 of the Sea Regulations, 1897, to keep her course & speed until the other vessel could not by her own action alone avoid the collision.—THE ORNEN (1900), 79 L. J. P. 23, n.; 16 T. L. R. 149; 44 Sol. Jo. 195, C. A.; *revsd. on other grounds* (1901), 17 T. L. R. 359, H. L.

5935c. —— ——.]—Two steam vessels, the *K. M.* & the *O.*, were approaching each other on crossing courses of nearly a right angle at a joint speed of nearly 30 knots. The *O.*, the stand-on vessel, had the *K. M.* broad on the port bow at a distance of several miles. As the bearing of the *K. M.* did not alter, the *O.*, when the vessels were under three-quarters of a mile apart, hard-a-starboarded to pass under the stern of the *K. M.* & sounded two short blasts. Twenty or thirty seconds afterwards the *K. M.* hard-a-ported & sounded one short blast, & the two vessels came into collision less than three minutes after the alteration of course by the *O.* It being admitted that the *K. M.* was partly to blame for the collision, the question was whether the *O.* was also to blame:—*Held:* the master of the *O.* was justified in acting when he did, but not in starboarding & maintaining his speed. He ought, first of all, to have stopped & reversed his engines &, in addition, whatever action he took should have been under a port helm:—*Held:* both vessels were to blame.—KITANO MARU S.S. OWNERS *v.* OTRANTO S.S. OWNERS, THE OTRANTO, [1931] A. C. 194; 100 L. J. P. 11; 144 L. T. 251; 47 T. L. R. 163; 18 Asp. M. L. C. 193, H. L.

Annotation:—**Refd.** The Bremen (1931), 47 T. L. R. 505.

5938. *Add. Annotation:*—*As to* (3) **Consd.** The Otranto, [1930] P. 110.

5946a. Duty to avoid collision.]—THE TREHERBERT, No. 5958a, *post*.

5946b. ——.]—Under the note to art. 21 of Regulations for Preventing Collisions at Sea, 1910, when collision cannot be avoided by the action of the giving-way vessel alone, the vessel which has to keep her course & speed under the rules "shall take such action as will best aid to avert collision."

Two small steam vessels, the *M.* & the *L. B.*, on courses crossing so as to involve risk of collision, took no measures at all to keep clear of each other & came into collision. The *M.*, which had the *L. B.* on her own starboard side & consequently under art. 19 had to keep out of the way, admitted that she was partly to blame, but contended that the *L. B.*, on her own pleadings, was also to blame, as it was admitted that she merely kept her course & speed from first to last. The *L. B.* attempted to justify taking no measures under the note to art. 21 on the ground that up to the last moment the *M.* could have avoided the collision, & that in keeping her course & speed the *L. B.* was in

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) iii.

5933 i. *Duty to give appropriate signal.*]—The collision herein occurred in Halifax harbour, the bow of the *C.* striking the *K.* on her starboard quarter. The *C.* was heading for the Inner Automatic Buoy, & the *K.* was northward & westward of the buoy, each showing her red light to the other, until the *K.*, almost immediately after passing the buoy, altered her course suddenly, showing her green light on the port bow of the *C.* which would be about half to three-quarters of a mile S.S.E. of the buoy, & in attempting to cross the bow of the *C.* was struck as aforesaid. The *K.* gave no signal of her intention to change her course:—*Held:* as the vessels were travelling red to red, the *K.* by altering her course without justification, & especially without signalling the *C.* her intention to do so, & in attempting to cross the *C.'s* bow, thus creating a danger of collision, violated Arts. 19, 22, 23, 27 & 29 of the International Rules of the Road, & was guilty of mismanagement & bad seamanship, & was solely to blame for the collision which occurred. — THE CAVELIER *v.* LIVERPOOL [illegible] Co., [1931] Ex. C. R. 205,—CAN.

fact taking the action which would best aid to avert collision:—*Held:* although the exact moment when the stand-on vessel must act under the note must not be unduly pressed against her, it would render the note nugatory to say that she can be excused from taking any action at all; that at a very late stage the action of taking the way off the *L. B.* would have averted the collision, & that she also was to blame in the proportion of three-fourths to the *M.* & one-fourth to the *L. B.*

While it may be desirable in particular cases to sound a warning blast or blasts to attract the attention of a vessel which apparently is taking no steps to keep out of the way (& it would have been a wise precaution if the *L. B.* had done so), it is not the ordinary practice of seamen to sound whistle signals for which no provision is laid down in the Regns., & accordingly it is not negligent to omit to sound the whistle in such circumstances.—THE LADY BELLE, [1933] P. 275; 102 L. J. P. 134; 150 L. T. 117; 49 T. L. R. 595; 18 Asp. M. L. C. 451.

5958a. —— Channel between line of buoys & open sea.]—By the practice of pilots navigating in & out of the Thames estuary, steam vessels rounding the N.E. Spit buoy from the southward to proceed up river pass outside the buoy at a sufficient distance to the northward to enable an outward bound vessel to pass between them & the buoy port to port. Two steam vessels, the *A.*, inward bound, & the *T.*, outward bound, got into collision about 400 yards to the northward of the buoy. The *T.*, which had the *A.* on her own starboard side, &, therefore, under the crossing rule (Art. 19) had the duty to keep out of the way, alleged that the narrow channel rule (Art. 25) & not Art. 19 applied, & that the *A.* was to blame for being too close to the buoy & for not keeping to her own starboard side of the channel, the southern limit of which was the buoy. LANGTON, J., held that it was impossible to apply Art. 25 to waters which were defined only by one or more buoys & which had on the other side the whole of the North Sea; Art. 19 applied, & the *T.* was to blame for not keeping out of the way. He found, however, the *A.* also to blame, not for having been set down by wind & tide closer to the buoy than she had intended, but under the Note to Art. 21, which provides that when the vessel which has the duty of keeping course & speed under the crossing rules "finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision"; & in the result the *T.* was held three-fourths to blame & the *A.* one-fourth. On appeal:—*Held:* (1) the crossing rule & not the narrow channel rule applied; (2) the practice did not exclude the crossing rule, but was in fact the direct consequence of the group of rules of which Art. 19 was one; for, by Art. 22 the vessel which is to keep out of the way "shall . . . avoid crossing ahead of the other," &, if she does not cross ahead, she will ultimately pass port to port; (3) on the facts it appeared that with close navigation there was room for the *T.* to pass between the *A.* & the buoy, but (4) if there was not room, although a vessel ought not as a general rule to pass inside a channel buoy, the *T.*, whose draught enabled her to do so, should, to avoid immediate danger, have gone inside the buoy; (5) up to the time the *A.* acted the *T.* could easily have avoided the collision by her own unaided action, & the *T.* was alone to blame.—THE TREHERBERT, [1934] P. 31; 103 L. J. P. 65; 151 L. T. 69; 50 T. L. R. 120; 18 Asp. M. L. C. 458, C. A.

5960. *Add. Annotation:*—**Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5962. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

5964. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

5965. *Add. Annotation:*—**Refd.** The Otranto, [1930] P. 110.

5967. *Add. Annotation:*—**Consd.** The Bremen, [1931] P. 166.

5977. *Add. Annotation:*—**Refd.** The Vectis, [1929] P. 204.

6038. *Add. Annotation:*—**Refd.** The Otranto, [1930] P. 110.

6039. *Add. Annotation:*—**Consd.** The Otranto, [1930] P. 110.

6050a. Navigable channel divided into two fairways.]—THE ZILLAH, No. 6064a, *post.*

6063. *Add. Annotation:*—**Consd.** The Treherbert (1934), 151 L. T. 69.

6064a. ——.]—A collision occurred between pltfs.' & defts.' steamships in a part of Queenstown Harbour known as the inner man-of-war anchorage, where the navigable fairway is bisected by a line of Admiralty battleships' mooring buoys, thus forming a northern & a southern channel. The two vessels were navigating, pltfs.' steamship up & defts.' steamship down, the northern channel, & the collision was found by the ct. to have taken place on the south side of the said channel. By virtue of their powers under Dockyard Ports Regulation Act, 1865 (c. 125), the Lords Comrs. of the Admiralty exercise authority over Queenstown Harbour as a dockyard port, but by Order in Council of Aug. 10, 1903, it was provided that a fairway would be kept through the inner man-of-

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) v.

5961 i. *Vessel entering or leaving dock.*]—RINFRET *v.* CANADIAN S.S. LINES, LTD., [1928] Exch. C. R. 165.—CAN.

5961 ii. ——.]—Although a vessel emerging from a dock must be navigated with utmost care, yet other vessels should be manœuvred with consideration to the difficulties of the vessel that is emerging. The manœuvres & caution to be taken in such cases all depend on the distance at which the ships sight each other.—OCEANIC STEAMSHIP NAVIGATION CO., LTD. *v.* S.S. "LINGAN," LINGAN S.S. CO., LTD. *v.* S.S. "DORIC" (Que. Adm.), [1929] Ex. C. R. 71.—CAN.

PART XII. SECT. 3, SUB-SECT. 5.—E. (a).

aj. *Negligent navigation — What amounts to.*]—"WENCHITA" *v.* BEECHBAY," BEECHBAY S.S. CO. *v.* "WENCHITA," [1928] Exch. C. R. 178.—CAN.

ak. *Duties of masters.*]—*Held:* when two vessels are meeting in a narrow channel, careful watch must be kept by the masters of each vessel over the movement of the other vessel, & they must be prompt to signal in case of emergency resulting from their manœuvres. Carelessness or neglect to so act, if damage results therefrom, is negligence for which each vessel offending is liable.—EASTERN STEAMSHIP CO. *v.* "ALICE," J. P. PORTER & SONS, LTD. *v.* "WARREN," [1927] Exch. C. R. 228.—CAN.

war anchorage, & in 1909 the Cork Harbour Comrs., "in pursuance of the powers vested in them by the Cork Harbour Acts, 1820–1903," issued with the approval of the Board of Trade & the consent of the Admiralty, required by sect. 60 of the Cork Harbour Act, 1903, bye-laws for the regulation of navigation in Queenstown Harbour. By bye-law 41: "Any regulations for preventing collisions at sea for the time being in force, under the provisions of the Merchant Shipping Acts, shall be deemed to apply to the port, & shall be construed as if the following bye-laws, Nos. 42 to 52 (inclusive), were added thereto, & the entire fairway shall be deemed to be a narrow channel." By bye-law 53: "The foregoing bye-laws, where they refer to any part of the man-of-war anchorages or any other part of the dockyard port, shall apply to any merchant ships that may be temporarily using such parts of the port." The interpretation clause prefixed to the said bye-laws defined "fairway" as "the space within the port for the time being reserved as a highway for vessels in motion." In 1916 the Harbour Comrs. issued a "Description of Fairway," para. 6 of which was as follows: "From the eastern limit of the inner man-of-war anchorage to the White Point Buoy there are two fairways—the northern fairway & the southern fairway. The northern fairway is bounded on the north by an imaginary line from 20 fathoms south of Copper Point Buoy to the western end of Queenstown Deep-water Quay, & thence towards White Point House until Rushbrooke Church bears N.W. by W.½W., & thence to White Point Buoy showing a fixed white light, & on the south by the line of Admlty. battleships' mooring buoys. The southern fairway is bounded on the north by the line of Admlty. battleships' mooring buoys, & on the south by the line of Admlty. torpedo-boat & other mooring buoys along the north of Spit Bank & Haulbowline":—*Held:* subject to the general overriding jurisdiction of the Lords Comrs. of the Admiralty, the Harbour Comrs. have power to reserve space within the port as a highway for vessels in motion, & that the effect of the bye-laws, as explained by the reservation contained in the "Description of Fairway," was to constitute in the inner man-of-war anchorage two separate fairways, divided by the line of mooring buoys, in either of which vessels, whether proceeding up or down the harbour, were entitled to navigate, & pltfs.' vessel was alone in fault for the collision for failing to keep on her own starboard side of the northern fairway, in compliance with art. 25.—THE ZILLAH, [1929] P. 266; 98 L. J. P. 124; 141 L. T. 174; 45 T. L. R. 440; 17 Asp. M. L. C. 604.

6065. *Add. Annotations:*—**Consd.** H.M. Submarine Rainbow, [1933] P. 68. **Refd.** The Treherbert, [1934] P. 31.

6069a. River Plate.]—THE BUCCARI (1929), 35 Ll. L. Rep. 26.

Annotation:—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S. Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L.D. S.S. (1931), 101 L. J. P. C. 65.

6070a. ——.]—The *L.* was going down the river St. Lawrence outward bound, stemming the tide, following a course in mid-channel, a narrow channel within the meaning of Art. 25, & when about two miles apart sighted the *H.*, which was well over the southern side of the channel, her port side. The available fairway, which was limited by shoals on each side, was well lighted & about twelve hundred feet wide. The *H.* blew two port helm signals which were not heard, but when within 1,500 feet blew one short blast, put her helm hard-a-port & kept it there until collision. The *L.* only heard the last short blast. The Regulations of 1910 provided for no signal to warn an oncoming ship of an intended breach of rule by the approaching vessel:—*Held:* the two ships were jointly liable & equally to blame, & it ought to be inferred from the Regulations of 1910 that signals other than those specified & prescribed were given at the risk of the vessel which gave them; the *L.* ought to have sounded two short blasts as a signal to the *H.* of her intention to continue on her course so as to pass green to green.—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. Co.; LOUIS DREYFUS & Co. *v.* HOCHELAGA S.S.; HOCHELAGA S.S. *v.* LOUIS DREYFUS & Co.; HOCHELAGA S.S. Co. *v.* LEOPOLD L. D. S.S. (1932), 101 L. J. P. C. 65.

6104. *Add. Annotations:*—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65. **Refd.** The Otranto, [1930] P. 110.

6104a. —— Liability for.]—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. Co.; LOUIS DREYFUS & Co. *v.* HOCHELAGA S.S.; HOCHELAGA S.S. *v.* LOUIS DREYFUS & Co.; HOCHELAGA S.S. Co. *v.* LEOPOLD L. D. S.S., No. 6070a, *ante*.

6104b. Right to give signal—Vessel without steerage way.] — CLAN LINE STEAMERS, LTD. (OWNERS OF THE "CLAN STUART") *v.* USKSIDE STEAMSHIP CO., LTD. (OWNERS OF THE "USKHAVEN"), [1929] S. C. (H. L.) 69, H. L.

PART XII. SECT. 3, SUB-SECT. 5.—E. (d).

m 1. ——.]—A collision occurred between the *I.*, & the *McG.*, soon after midnight, in a narrow channel of the St. Lawrence River between buoys 23 & 24, south of the fairway, & close to buoy 23. The weather was fine & clear, somewhat overcast, but without haze, & visibility was good. Both ships were going at full speed. The *McG.* outbound, going with the stream & a tide of 3 knots an hour & the *I.* inbound. When the *McG.* was abreast of the buoy 24 she gave a one-blast signal which was answered by the *I.* when abreast of buoy 23, indicating that they would pass port to port. The *I.* always going at full speed, then directed her course to port instead of keeping to starboard, contrary to the [illegible]ven, & to Art. 25, shoving the *McG.* to the south; & the collision occurred, the *I.* striking the *McG.* on the port side just amidships, with her port bow:—*Held:* as the two vessels were travelling port to port after exchanging signals indicating they would keep their course, the speed of the *McG.* in no way contributed to the collision, but that the collision was entirely due to the fault of the *I.* in not keeping to starboard of the channel & neglecting to slow up or stop as good seamanship required.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE (Que. Adm.), [1929] Ex. C. R. 230.—CAN.

n 1. ——.]—UNITED STATES SHIPPING BOARD *v.* THE SHIP ST. ALBANS (1928), 28 S. R. N. S. W. 429; 45 N. S. W. W. N. 104.—AUS.

PART XII. SECT. 3, SUB-SECT. 5.—F. (a) 1.

a 1. —— *Failure to answer due to agony of collision.*]—C. P. R. *v.* S.S. ROSECASTLE, DOMINION SHIPPING CO. *v.* S.S. MONTROSE, [1931] 4 D. L. R. 141.—CAN.

6104c. Vessels crossing.]—THE BUCCINUM (1936), 181 L. T. Jo. 503, C. A.

6112a. Crossing vessels — Risk of collision — Whether sound signal the "ordinary practice of seamen."]—THE LADY BELLE, No. 5946b, *ante*.

6115. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

SUB-SECT. 3A.—HARWICH HARBOUR.

6144a. Waiting at bend.]—THE PRINSES JULIANA, ESBJERG OWNERS *v.* THE PRINSES JULIANA OWNERS, No. 5379a, *ante*.

SUB-SECT. 9A.—SCHELDT.

6163a. Vessel turning—Duties of other vessels—Both to blame.]—By Article 40, r. 3, of the Scheldt Bye-laws a vessel turning in the river must give the appropriate signal, & every vessel in the vicinity ("*proche*") proceeding against the tide must stop her way over the ground, & every vessel proceeding with the tide must slacken her speed, until the vessel turning no longer presents any obstacle "*au passage*."

Applts.' steamship *C.*, a collier, bound up the Scheldt with the tide, had ahead of her the steamship *A.*, which sounded the appropriate signal, that she was going to swing to get head on tide. Resps.' vessel *B.*, one of the Harwich & Antwerp mail boats, was coming down the river at her full speed of 14 knots. She saw the lights of the *C.* coming up astern of the *A.*, & when she got down towards the *A.*, which was blocking about half of the navigable waterway of some 1,000 feet, she saw the lights of the *C.* coming under the stern of the *A.* on the *B.*'s side of the waterway. The *B.* kept her speed until about one minute before the collision when she slowed, &, about half a minute afterwards, stopped & went full astern. The President absolved the *B.* from blame for the ensuing collision on the ground that Article 40, r. 3, did not apply to her under the circumstances, as there was ample waterway for her on her own proper side of the river under the stern of the *A.* He held that the *B.* was justified in keeping her speed "until her master saw that there was an element of risk in the turning movement of the *A.* combined with the oncoming of the *C.* but before that risk had developed." He held the *C.* alone to blame for over-starboarding into the water of the *B.* & for not sounding a signal that she was starboarding. The owners of the *C.* appealed :—*Held :* Article 40, r. 3, is directed, not to the moment when the approaching ships get up to the turning ship, but to the time when they are coming towards her & do not know where she may be when they get up to her ; the ship coming against the tide cannot excuse herself by saying that when she arrived in the vicinity of the turning ship there was in fact room for her to pass ; (*per* GREER, L.J.) r. 3 is a regulation for the purpose of ensuring the safety of vessels navigating the river at the time the turning movement is taking place quite as much as it is directed to the safety of the turning vessel herself, & that the rule has to be applied until the turning vessel no longer presents any obstacle "*au passage*" ; & (*per* CUR.) while the *C.* was to blame, the *B.* was also to blame for keeping her speed & not stopping & reversing her engines until the risk of collision was apparent. Decision of the President varied by holding both vessels to blame in equal degrees.—THE "CHATWOOD," [1930] P. 272 ; 100 L. J. P. 1 ; 143 L. T. 735 ; 18 Asp. M. L. C. 165, C. A.

6165a. Vessel tying-up.]—Defts.' vessel *A.*, while tying-up to the bank in the Suez Canal to allow pltfs.' vessel *B.* to pass, was exhibiting three clusters of lights which, under the Canal regulations, should only be exhibited when the operation of tying-up is completed. The *A.*, however, was still exhibiting an arc lamp which should not be extinguished until the tying-up is completed, & she was also exhibiting her masthead lights &, until a moment before the collision, her starboard side-light. Her lights, therefore, were more consistent with her not being finally tied up than with that operation being completed so as to enable the *B.* to pass in safety. In answer to pltfs.' allegation that they were misled by the lights, defts. contended that if the *B.* had kept a better lookout she would not have been misled :—*Held :* the mere fact that if the *B.* had been keeping a better lookout, she might have appreciated the situation sooner, was not sufficient to exonerate defts. ; the burden was on defts., who had broken, not indeed one of the International Regulations, but a rule of an accepted code laid down for Canal pilots, to prove not only that the breach ought not to have misled the *B.*, but that it did not in fact mislead her ; & the ct., being of opinion that the *B.* was to some extent misled, found the *A.* one-fifth to blame, & the *B.*, which was coming too fast & took drastic helm & engine action causing her to sheer into the *A.*, four-fifths to blame.—THE AENEAS, [1935] P. 128 ; 104 L. J. P. 74 ; 154 L. T. 246 ; 18 Asp. M. L. C. 571.

6166. *Add. Annotation :—Generally,* **Refd.** The Otranto, [1930] P. 110.

6174. *Add. Citation :*—17 Asp. M. L. C. 289.

6180a. —— ——.]—THE KAMENETZ PODOLSK (1937), 183 L. T. Jo. 151.

6186a. ——.]—THE UMTALI (1937), 184 L. T. Jo. 125.

6187a. —— **Duty of waiting vessel.**]—THE ROTORUA, No. 6455b., *post*.

6195. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

PART XII. SECT. 3, SUB-SECT. 5.—G. (a).

6121 iii. —— *In narrow channel —Check signal.*]—Where a vessel is overtaking another in a narrow channel such as the Welland Canal & signifies her desire to pass by blowing one blast, but receives no reply, she is bound to wait, & not attempt to go forward so as to affect the overtaken vessel until permission is obtained. Rule 29 of the Rules of the Road for the Great Lakes is imperative, & overrides the General Rules which deal with conditions not covered expressly by said Rule.

The "check" signal is not recognised by the Great Lakes Rules, & its meaning & effect can only be determined by the circumstances under which it is given & received.—SINCENNES-MCNAUGHTON LINES *v.* "STEEL CHEMIST," [1928] Exch. C. R. 182.—CAN.

Duty to give sound signal.]—By Art. 34 of Port of London River Bye-laws, 1914, steam vessels crossing the river "shall do so at a proper time having regard to vessels navigating up & down the river, & shall be navigated so as not to cause obstruction, injury, or damage to any other vessel."

Pltfs.' steamship *D.*, which had been at anchor head down on the north side of the river waiting to cross over to the south side to enter the Surrey Commercial Docks, was proceeding to work slowly across the river under port helm. In this position only her stern light was visible to defts.' steamship *B.*, which was coming down the river to the south of mid channel. The *B.* sounded a short blast to a tug coming up the river & the *D.* sounded two short blasts & starboarded her helm a little. As the *D.* got more athwart the river she opened her green light to the *B.*, which thereupon reversed her engines & dropped both anchors, but her stem came in contact with the starboard quarter of the *D.* :—*Held :* although a crossing vessel had not the duty, as she had under the old Thames Bye-laws of 1898, of keeping out of the way of vessels navigating up & down the river, Art. 34 did not give her the right of way, but specially put upon her the obligation of care both as to the time when she crossed & the way in which she crossed : the *D.* ought to have given ample warning either by means of a long warning blast or preferably a short blast to indicate that she was crossing the bows of the *B.*, or have taken timely action to allow the *B.* to pass if there was not room to cross ahead of her ; & the *D.* was alone to blame.—THE BORS, [1926] P. 5 ; 95 L. J. P. 166 ; 134 L. T. 448 ; 17 Asp. M. L. C. 22.

Annotation :—**Consd.** The Homefire (1937), 183 L. T. Jo. 172.

6200b. ——.]—THE HOMEFIRE (1937), 183 L. T. Jo. 172.

6212. After this case add :—

I. Vessel leaving Dock.

212a. St. Katherine's Docks—Sufficiency of signal.]—Bye-law 26 of the Port of London River Bye-Laws, 1914-21, provides that "A steam vessel coming out of dock or leaving a wharf or tier shall signify the same by a prolonged blast of the steam whistle, except in the case of a vessel coming out of the St. Katharine Docks requiring the bascules of the Tower Bridge to be raised in order to get into position in the river which shall signify the same by a prolonged blast of the steam whistle followed by three short blasts in rapid succession."

Defts.' steamship having, on the flood tide, come stern first out of the lock of the St. Katharine Docks into the Upper Pool of the Thames, was in collision with the pltfs.' steamship. When entering the lock defts.' steamship sounded a signal of one long blast followed by three short blasts, & this signal she twice repeated as she passed through the lock & into the river. It was contended for pltfs. that she ought in addition to have sounded the prolonged blast mentioned in the first part of bye-law 26 :—*Held :* the framers of the bye-laws must have had in mind that almost the only occasion when a vessel leaving St. Katharine Docks would require the bascules of the Tower Bridge to be raised was when she was coming out of the docks stern first on the flood tide & so would need all the room she could obtain in which to turn head down river ; the combination of one long blast & three short blasts conveyed a warning to those whom it might concern that a vessel was leaving the dock & in doing so coming astern ; if the bye-law required a vessel in those circumstances also to sound the general warning signal of a prolonged blast prescribed in the earlier part thereof, it followed that she must also, while going astern, sound three short blasts if & when any other vessel in the crowded reach came in sight ; & such a series of blasts would be wholly unnecessary & lead to confusion, & defts.' steamship was right in sounding only a signal of one long & three short blasts.—THE FALCON (1931), 47 T. L. R. 621.

J. Vessel at Anchor.

6212b. Barge dropping down river on anchor—Under-way lights shown.]—While defts.' sailing barge was dropping down the River Thames on the tide the anchor of the barge fouled the chain of a dredger lying just above Battersea Bridge. The barge continued to exhibit the regulation side lights & stern light for a sailing vessel under way. About half an hour afterwards, the master of pltfs.' tug, which was coming down the river with six barges in tow, saw the red light of the sailing barge & thought that she was under way & about to pass through the bridge. In attempting to avoid the sailing barge, when it was realised that she was foul of the dredger, the tug & one of her craft in tow struck the bridge & received damage. Bye-law 5 of the Port of London River Bye-laws, 1914-34, provides that "the expression 'under way,' when used in relation to a vessel, means when she is not at anchor, or moored, or made fast to the shore, or aground, & includes a vessel dropping up or down the river with her anchor on the ground." Bye-law 14 provides that "a vessel under one hundred & fifty feet in length when at anchor or moored shall, by night exhibit forward . . . a white light. . . ." :—*Held :* the sailing barge was "at anchor or moored" within the meaning of bye-law 14, & ought to have taken in her side lights & put up an anchor light, & she was alone to blame.—THE CURLEW, [1937] P. 30 ; 106 L. J. P. 17 ; 156 L. T. 50 ; *sub nom.* UNION LIGHTERAGE CO., LTD. *v.* CURLEW SAILING BARGE OWNERS, THE CURLEW, [1936] 3 All E. R. 676.

6212c. Lights not sufficiently visible.]—This was a claim by the owners of the Greek steamship *N.* against E. W.'s Line Limited, of Hull, owners of the steamship *T.*, for damages in respect of a collision which occurred about abreast of Shellhaven Point, Sea Reach, River Thames, on a clear but dark night, at about 2.30 a.m. on Dec. 12, 1936. The *N.*, with no pilot on board, was at anchor ; the *T.*, in charge of a fully-licensed Trinity House pilot, was proceeding down-river on a voyage from London to Hull. Pltfs.' case was that the *N.*, having failed to find a pilot off the Tongue Light Vessel, had proceeded up the river in the wake of another vessel, whose pilot had undertaken, by wireless, to lead the *N.* to a safe place of anchorage ; that when the *N.* was about abreast of Holehaven

Creek the pilot on board the other vessel had sent a wireless message to the *N.* telling her to drop anchor there & promising to return in a couple of hours to pilot the *N.* to London Docks; that the *N.* thereupon immediately dropped her starboard anchor, she being then about 300 yds. off Holehaven Creek & stemming the ebb tide, put out her navigation lights & posted her anchor lights, which thereafter burned brightly. About ten minutes before the collision those on board the *N.* observed the red light of a vessel which proved to be the *T.*, about a mile distant & bearing on the *N.'s* port bow. The *T.* came on, but instead of passing the *N.* portside to portside as she could & ought to have done, the *T.*, with her stem & port bow, struck the *N.'s* port bow, doing damage. Defts.' case was that the *T.* was proceeding down the river at full speed & doing about twelve knots over the ground. After passing West Blyth buoy on her starboard side at a distance of about 150 ft., the *T.* set a course of E. ½ S., which was maintained until just before the collision, & on that course she proceeded down Sea Reach well on the southern side of mid-channel. When about half a cable away, those on board the *T.* descried the loom of the *N.* about ahead, & very shortly afterwards a faint light was seen. Although the wheel of the *T.* was hard-a-starboarded & her engines were put full speed astern, the *T.'s* port bow struck the port bow of the *N.*, whereby the *T.* sustained considerable damage. As the *T.* then scraped along the port side of the *N.*, it was observed that some of the *N.'s* portholes appeared to be very dimly lit. Defts. denied liability & blamed pltfs. for the collision, alleging that the *N.* was improperly anchored in the fairway & was not exhibiting the anchor lights required by the Port of London River Bye-laws, 1914–1934. The learned judge having found as a fact that the *N.* was not lying where she said she was, but was anchored well in mid-channel about abreast of Shellhaven Point:—*Held:* even if the *N.'s* lights were visible at a cable's distance, as the evidence called on behalf of defts. appeared to establish, this was in flagrant breach of bye-law 14 of the Port of London River Bye-laws, 1914–1934, which required that anchor lights should be clear & visible all round the horizon at a distance of at least one mile; the failure of those on board the *T.* to descry such lights as the *N.* had before they did, did not amount to a bad look-out, & in the circumstances there was no negligence on the defts. for not having avoided the collision. Pltfs. were accordingly alone to blame.—THE TRENTINO (1937), 157 L. T. 70.

K. Vessel Grounded.

6212d. Failure to give signal—Damage not following "naturally & necessarily" from negligence.]—THE PEMBROKESHIRE (1936), 181 L. T. Jo. 470.

L. Drifting Barge.

6212e. Exhibition of light—Light waved by lighterman.]—THE SUD (1937), 183 L. T. Jo. 473.

6218. *Add. Annotations:*—**Consd.** H.M. Submarine Rainbow, [1933] P. 68. **Refd.** The Treherbert, [1934] P. 31.

6230. *Add. Annotation:*—**Consd.** The Minerva, [1933] P. 224.

6240a. —— ——.]—"BARON VERNON" S.S. *v.* S.S. "METAGAMA," [1928] S. C. (H. L.) 21, H. L.

6241. *Add. Annotations:*—**Consd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 4 All E. R. 798.

6248. *Add. Annotations:*—**Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

6253. *Add. Annotation:*—**Consd.** The Rehearo, [1933] P. 286.

6253a. Fire—Excessive wash causing stove to upset.]—WENDY II. MOTOR BOAT OWNER *v.* SOLACE MOTOR BOAT OWNER (1936), 181 L. T. Jo. 193.

6253b. Excessive speed on leaving lock—Abnormal wash causing damage.]—OLIVEGROVE S.S. OWNERS *v.* SCHUYLKILL OWNERS (1936), 182 L. T. Jo. 127.

6255. *Add. Annotations:—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. **Refd.** Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua, [1936] 2 All E. R. 798.

6256. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Kite (1933), 49 T. L. R. 525; The Stranna, [1937] P. 130.

6257a. ——.]—The *G.* having been damaged in collision was taken in tow to Dover & there beached. She was beached at a spot where the damaged parts were unsupported & the extent of the damage was thereby greatly aggravated. It was found that there was no failure of ordinary nautical skill in the beaching:—*Held:* in order to succeed on the question of consequential damage defts. must show that pltfs., were guilty of negligence in the beaching of the ship; the finding of the judge & the elder brethren that there had been no failure of ordinary nautical skill was a finding of no negligence; though there was no actual danger of the ship sinking immediately, the master had not unlimited time in which to decide upon the proper course to pursue, & it was necessary for defts. to show that he had been unduly ignorant or unduly careless.—GRAINTON S.S. OWNERS *v.* GENUA S.S. OWNERS, THE GENUA, [1936] 2 All E. R. 798; 155 L. T. 456.

6267. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6325. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6369. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6377a. —— ——.]—THE PRINCESS, No. 5608b, *ante*.

6414. *Add. Annotations :*—**Consd.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

6415. *Add. Annotation :*—**Refd.** Tidy *v.* Battman, [1934] 1 K. B. 319.

6417. *Add. Annotations :*—**Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; The Vectis, [1929] P. 204. **Refd.** The Chatwood, [1930] P. 272 ; The Otranto, [1930] P. 110 ; Service *v.* Sundell (1929), 99 L. J. K. B. 55 ; Swadling *v.* Cooper (1930), 46 T. L. R. 597.

6423a. Vessels failing to stop in fog.]—THE BREMEN, No. 5748c, *ante*.

6429. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

6430. *Add. Annotation :*—**Consd. & Expld.** The Vectis, [1929] P. 204.

433a. —— ——.]—Pltfs., as owners of the barge *H.*, brought an action in the Mayor's & City of London Ct. against the owners of the barge *V.* in respect of damage sustained by the *H.* in Milton Creek, River Swale, through coming in contact with the *V.*'s anchor, which was admittedly being carried in an improper position, with the stock projecting over the bows, in breach of one of the Milton Creek bye-laws. But for the position of the anchor, the use of fenders would have avoided damage to either vessel. The judge held that the master of the *H.* knew of the position of the anchor & took the risk of coming in contact with the *V.* when the rush of the flood tide swung the H., which was aground, athwart the creek & into contact with the *V.* lying moored on the opposite bank. He found that the master of the *H.* was negligent in not taking measures to avoid coming in contact with the *V.*, &, on the authority of *The Monte Rosa*, No. 6430, which he thought was in conflict with *The Dunstanborough*, No. 6429, gave judgment for defts. Pltfs. appealed :—*Held :* defts. had not established either knowledge of the position of the anchor or negligence on the part of the master of the *H.*, & the appeal succeeded.—THE VECTIS, [1929] P. 204 ; 98 L. J. P. 135 ; 140 L. T. 563 ; 45 T. L. R. 384 ; 17 Asp. M. L. C. 574.

6433b. —— ——.]—H.M. SUBMARINE RAINBOW, No. 5401a, *ante*.

6437a. ——.]—A steamer having stopped but not having, as she should have done, reversed immediately before a collision, though the ct. found as a fact that her not having done so did not affect the collision, & having thus infringed rule 14 of the Thames Rules :—*Held :* she was nevertheless not to blame, for the Thames Rules do not fall within the operation of Merchant Shipping Act, 1873 (c. 85), s. 17.—THE HARTON (1884), 9 P. D. 44 ; 53 L. J. P. 25 ; 50 L. T. 370 ; 5 Asp. M. L. C. 213 ; 32 W. R. 597.

6441. *Add. Annotations :*—*As to* (2) **Consd.** The Vectis, [1929] P. 204. *As to* (3) **Consd.** The Vectis, [1929] P. 204.

6448. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

6451. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

6453a. Collision with vessel at anchor.]—Pltfs.' vessel *C.* at anchor in London Reach, River Thames, was run into by defts.' vessel *E.* proceeding up the river. The *C.* had her anchor lights exhibited, but she was lying nearly athwart the river with her whole length to the north of mid-channel in such a position that she was obstructing a large part of the fairway. The practice in Long Reach, according to the evidence, was for vessels to anchor to the south of mid-channel, & for large vessels proceeding up & down to pass to the northward. Defts.' case was that the *C.'s* lights were defective, & that those on the *E.* only saw the dim forward anchor light, & immediately afterwards the hull, of the *C.* about 650 feet away. The ct. found, however, that the lights were effective & that they were, or should have been, seen at a considerably greater distance than 650 feet ; but that the failure of those in charge of the *E.* to identify the lights as anchor lights in time to avoid the collision was partly due to the *C.'s* improper & unexpected position in the river in a locality where bright lights on the north shore would probably make it more difficult to pick up her lights, & partly to the fact that those on the *E.*, which had a speed of at least 10 knots, were not sufficiently alert as to the possibility of danger ahead :—*Held :* (1) the *E.* was to blame, inasmuch as those in charge of her on seeing the lights should have realised the possibility that they were those of a ship or ships ahead the precise position of which was obscure, & should have reduced the speed of the *E.* immediately ; (2) the *C.'s* negligence in anchoring in an improper position contributed to the failure

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PART XII. SECT. 5, SUB-SECT. 5.—A.

6413 xviii. ——.]—SINCENNES-MCNAUGHTON LINE, LTD. *v.* "BRULIN" S.S., [1928] Exch. C. R. 45 ; *revsd.*, [1929] 3 D. L. R. 536.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—B.

q i. ——.]—*Held :* where vessels are meeting in narrow channels or areas & improper signals by whistle are exchanged, rules 22 & 23 being violated by both vessels, liability for negligence which causes a collision must be determined by the weight of evidence after consideration of the action of each vessel, having regard to rule 37.—"MANLEY" S.S. (OWNERS OF) *v.* "HECTOR" S.S. (OWNERS OF) & THE NORTHERN CONSTRUCTION CO., [1928] Exch. C. R. 42.—**CAN.**

q ii. ——.]—The collision herein occurred in the First Narrows, at the entrance to Vancouver Harbour. Both vessels were found to have been proceeding at excessive speed through a dense fog :—*Held :* since the collision was primarily caused by the joint negligence of both ships in failing to comply with the first part of Art. 16 of the International Rules of the Road, & in proceeding through a dense fog at a speed which was immoderate having regard to the existing conditions, they were equally at fault & the total damage occasioned by that joint fault should be borne equally by the parties.—THE PRINCESS ALICE S.S. *v.* WEST VANCOUVER CORPN., [1936] Ex. C. R. 115.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—C.

6426 v. ——.]—In a collision between vessels passing through a canal at night, responsibility lies upon the ship neglecting to observe the rules governing her course & speed.—SOWARDS *v.* THE "ELMBAY," [1936] 3 D. L. R. 246.—**CAN.**

6436 i. *Breach by both vessels—Rules for navigating Great Lakes.*]—"GLENROSS" *v.* CANADA S.S. LINES, LTD., SWAN, HUNTER & WIGHAM RICHARDSON, LTD. *v.* "GLENLEDI." [1929] 3 D. L. R. 282 ; S. C. R. 549.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (a).

6447 i. *Rules of Common Law & Admiralty distinguished.*]—Where the negligence of deft. is not the sole cause of the damage different principles for assessing liability are applicable at common law from those to be applied in Admiralty, for at common law the suit will fail, whereas in Admiralty where the damage is caused by the combined default of two or more vessels, the liability is to be apportioned.—"RABENFELS," THE (1929), I. L. R. 56 Calc. 763.—**IND.**

of those in charge of the *E.* to take appropriate action until it was too late, & the *C.'s* negligence was wrapped up with & part of the negligence of the *E.* Both vessels therefore were to blame & in equal degrees.—THE EURYMEDON, [1937] P. 167; 106 L. J. P. 126; 157 L. T. 457; 53 T. L. R. 863.

6455a. —— ——.]—THE BREMEN, No. 5748c, *ante.*

6455b. —— ——.]—This was a claim by the owners of the motor barge *C.*, which was towing their dumb barge *F.* up-river in the Thames, against the owners of the steamship *R.* for damage suffered by the *F.* in a collision with the *R.* which occurred on the night of Apr. 4, 1935, opposite the Royal Albert Dock, which the *R.* was waiting to enter. Pltfs. contended that as the *C.* was proceeding up-river with three barges in tow laden with cement, the *R.* which was waiting to enter the Royal Albert Dock but which was moving slowly down river & was angled across it, struck the *F.*, the port hand barge in tow of the *C.*, doing her so much damage that she had to be beached to avoid sinking in deep water. Defts. denied liability & said that the *R.* was not moving; she was stemming the tide & not altering her heading; they contended that the *C.* was alone to blame for the collision in that, instead of passing the *R.* on the starboard side, the *C.* tried to pass ahead of the *R.* from starboard to port, & although the starboard engine of the *R.* was immediately put full speed astern, the *C.* having got her craft across the tide was unable to regain control of the barges, with the result that the *F.* fell across the stem of the *R.* At a later stage in the hearing & after the conclusion of the evidence, defts. applied for leave to amend the defence by alleging that the *C.* failed to give any sound signal of her intention to alter course so as to pass the *R.* port to port. The amendment was allowed:—*Held:* in a reserved judgment, the governing fact of the collision was that the *R.* was moving down river & trailing across to the northward while her head was falling off to port; she was swinging from time to time & straddling across the water. The *R.* was to blame for bad look-out, for going across into the northern water when she ought to have been held steady in the channel if she were going to remain there at all, & for not taking timely steps to assist the C., which, owing to the action of the *R.*, had to go closer to the north shore than she originally intended; further, the *C.* was also to blame for not letting the *R.* know by sound signal what she was doing & for substantially contributing to the collision thereby. The blame was apportioned as to two-thirds on the *R.*, & as to one-third on the *C.*, the judge directing that the costs of the action should follow the event in the same proportion.—THE ROTORUA (1936), 155 L. T. 357.

6465. *Add. Annotation:*—**Refd.** The Young Sid, [1929] P. 109.

6480. *Add. Annotation:*—**Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

6484. *Add. Annotations:*—**Refd.** The Edison, [1932] P. 52; A.-G. *v.* Valle-Jones, [1935] 2 K. B. 209; Flint *v.* Lovell, [1935] 1 K. B. 354

6499. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6501. *Add. Annotation:*—**Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6504. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6546. *Add. Annotation:*—**Refd.** The Carlton, [1931] P. 186.

6562. *Add. Annotations:*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628; Service *v.* Sundell (1929), 45 T. L. R. 569.

6591. *Add. Annotation:*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

6594. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal, [1932] A. C. 452.

6594a. —— ——.]—"HARVEST HOME," THE, No. 5217, *ante.*

6601. *Add. Annotation:*—**Refd.** Jacobs *v.* London County Council, Shaw *v.* London County Council, [1935] 1 K. B. 67.

6618. *Add. Annotation:*—**Refd.** The Edison (1931), 47 T. L. R. 635.

6622. *Add. Annotation:*—**Refd.** The Baarn, [1933] P. 251.

6624. *Add. Annotations:*—**Consd.** Strathfillan S.S. Owners *v.* Ikala S.S. Owners, The Ikala, [1929] A. C. 196. **Refd.** The Edison (1932), 48 T. L. R. 224; The West Wales, [1932] P. 165; The Kafiristan, [1937] 3 All E. R. 747.

PART XII. SECT. 6, SUB-SECT. 1.—D.

q 1. ——.]—The master of the *T.*, which was at all relevant times compulsorily in charge of a pilot, was in as favourable a position as the pilot to determine whether any risk of navigation was being incurred, & was aware of all the circumstances immediately preceding & leading up to the collision, but stood by & gave no warning to the pilot as to the possibility of danger or as to the breach of regulations as to speed:—*Held:* in the circumstances the master was *particeps* in the negligence of the pilot & the defence of compulsory pilotage was not available to the owners of the *T.*—FERRIES (SYDNEY), LTD. *v.* TAHITI, THE SHIP (1929), 30 S. R. N. S. W. 360; 47 N. S. W. W. N. 130.—AUS.

PART XII. SECT. 6, SUB-SECT. 2.—A.

o 1. ——.]—Sect. 117 of Navigation Act, 1901, is a valid exercise of the power conferred on Colonial Legislatures by sect. 735 of Merchant Shipping Act, 1894, of repealing or altering the provisions of the latter Act relating to ships locally registered. Consequently, sect. 117 of Navigation Act, 1901, is not to be read as subject to sect. 419 (4) of Merchant Shipping Act, 1894. Therefore, the provisions of sect. 419 (4) of Merchant Shipping Act, 1894, are not applicable to ships registered in New South Wales, & the presumption of fault does not arise against any such vessel on proof merely that she has infringed any of the collision regulations, but only where it appears to the ct. that the collision was occasioned by such breach of regulation.—BUTLER *v.* MILLIMUMUL SHIP (1929), 30 S. R. N. S. W. 182; 47 N. S. W. W. N. 66.—AUS.

PART XII. SECT. 6, SUB-SECT. 4.

6605 l. *Discretion to extend time.*]—*Held:* as no sufficient excuse had been given for failure to bring suit for damages for collision within the proper time, extension under Maritime Conventions Act, 1911, .8, should not be granted.—NIPPON YUSEN KAISHA *v.* THE MARIENFELS (1933), I. L. R. 61 Cal. 22.—IND.

s1. *Effect of Maritime Conventions Act, 1914, s. 9.*]—The present action is one *in rem* against the tug *S.* for damages to pltf.'s canal boat, when in tow of the *S.*, as a result of a collision between the said canal boat, a dumb tow & the wall of the inner basin of the harbour of Quebec, which collision was alleged to be due to the negligent navigating of the *S.*: *Held:*—sect. 9 was not limited in its application solely to actions for damages due to collision between vessels, & the present action not having been commenced within two years from the date when the damages or loss or injury was caused should be dismissed.—"SPRAY" *v.* ST. CLAIR, [1928] Exch. C. R. 56.—CAN.

6627. *Add. Annotations:*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Consd.** The Edison (1932), 46 T. L. R. 224.

6628a. —— **Detention due to collision—Owner unable to use ship owing to contract during period of detention.**]—On Mar. 12, 1927, resps.' steamship suffered damage by a collision with applts.' steamship, for which the applts. admitted liability. The damage did not render resps.' vessel unseaworthy, & she continued trading without effecting repairs. While she was so trading her owners by a memorandum of agreement dated Dec. 21, 1927, contracted to sell her. The agreement set forth that the vessel was "due London on Dec. 24, thence H. & A., expected ready for delivery between, say, Jan. 10 & Jan. 31, & to be delivered to buyer at Antwerp or a U.K. port at seller's option, but not later than Feb. 25, 1928, subject to buyer's approval afloat & to bottom examination in dry dock, as specified in Clauses 4 & 5 of this contract . . . 4. The buyer shall commence the inspection of the steamer afloat within twenty-four hours of receiving notice of steamer's readiness for inspection, & if on superficial inspection the buyer is satisfied with the general condition of the steamer, seller shall at his own risk & expense open up the engines, boilers & tanks for the inspection of the steamer afloat by the buyer. . . . The buyer shall declare acceptance or refusal of the steamer in writing within twenty-four hours after completion of such inspection afloat . . . 5. For examination of bottom &/or other water parts &/or tailend shaft, seller agrees to put the vessel into dry dock. . . ." The steamship arrived at Antwerp on Jan. 10, 1928, & her owners gave notice to the buyer of her readiness. On Jan. 16 they proceeded to open up the vessel's engines, boilers & tanks for inspection, & while the vessel was in that condition & therefore unable to trade, they took the opportunity to effect the repair of the collision damage, which was of such a nature that it could be repaired while the ship was afloat. The repairs admittedly occupied four days, & were completed on Jan. 24. Subsequently the vessel was put into dry dock for bottom examination. On the reference to assess the damage caused by the collision resps. claimed (*inter alia*) loss & expenses in respect of four days' detention while their ship was undergoing repairs:—*Held:* inasmuch as resp. shipowners had entered into contractual obligations which prevented them from trading with the vessel & earning profits during the time when the repair of the collision damage was being executed, they had not suffered any loss by the detention of their vessel in consequence of the collision, & were therefore not entitled to recover from the wrongdoer.—THE YORK, [1929] P. 178; 98 L. J. P. 147; 141 L. T. 17 Asp. M. L. C. 600, C. A.

:—**Refd.** The London Corporation, [1935] P. 70.

6635. *Add. Annotation:*—**Refd.** The Edison (1932), 147 L. T. 141.

6640. *Add. Annotation:*—**Consd.** The Edison, [1932] P. 52.

Add. Annotation:—**Overd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] 449.

6653a. —— —— ——.]—**A British battleship damaged by collision was put into a naval dry dock for her repairs. The ship's effective life was estimated at twenty years & she was under four years old at the time of the collision. In assessing the damages the registrar allowed nothing in respect of the use of dock & cranes, on the ground that the Admiralty had suffered no pecuniary expenses or loss, & in respect of the loss of use of the ship for fifteen days, the time estimated for the collision repairs, he allowed interest at 2½ per cent., on half the initial costs of the ship for the fifteen days. The Admiralty appealed:—*Held:* that the case must go back to the registrar for re-assessment, for (i) the ship occupied the dock & used the cranes, etc., to the exclusion of other vessels & some allowance, therefore, must be made to the Admiralty in respect of these items, & (ii) having regard to the estimated life of the ship, her annual depreciation & cost of maintenance, the amount awarded for detention appeared to have been computed on a wrong basis.—THE WEST WALES, [1932] P. 165; 101 L. J. P. 92; 148 L. T. 80; 18 Asp. M. L. C. 349.

6656. *Add. Annotations:*—**Consd.** The York, [1929] P. 178; 101 L. J. P. 92. **Refd.** The London Corporation, [1935] P. 70.

6659. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

6663. *Add. Annotations:*—**Consd.** The West Wales, [1932] P. 165. **Refd.** The Ikala, [1928] P. 86; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6671. *Add. Annotations:*—**Apld.** The York, [1929] P. 178. **Refd.** The London Corporation, [1935] P. 70.

6671a. —— **Although ship sold.**]—Pltfs.' & defts.' vessels, while laid up, ranged against each other & each sustained slight damage. Before any action was brought both vessels were surveyed, but no estimate of the cost of repairs was made. Pltfs.' vessel was then sold to be broken up. Defts. afterwards agreed with pltfs. that the repairs, if executed, would cost £250, but no repairs were in fact done. Defts. contended that pltfs. had suffered no loss & were not entitled to any damages:—*Held:* (1) the mere facts that the vessel had been sold to shipbreakers, & that the repairs would never be carried out, did not discharge the onus, which was on defts., of proving that pltfs. had suffered no damage; (2) *primâ facie* the value of a vessel damaged in collision is less, by the cost of the repairs, than her value if undamaged, & the fact that a vessel has been sold to be broken up is an accidental circumstance not to be taken into account in the way of diminution of damages.—THE LONDON CORPORATION, [1935] P. 70; 104 L. J. P. 20; 152 L. T. 487; 51 T. L. R. 224; 79 Sol. Jo. 86; 18 Asp. M. L. C. 535, C. A.

6672. *Add. Annotation:*—**Refd.** The Corporation, [1935] P. 70.

6674. *Add. Annotations:*—**Apld.** The York, [1929] P. 178. **Refd.** The London Corporation, [1935] P. 70.

6677. *Add. Citations:*—*affd. sub nom.*

THE IKALA, [1929] A. C. 196; 98 L. J. P. 49; 140 L. T. 177; 17 Asp. M. L. C. 555, H. L. *Add. Annotation :*—**Consd.** The York, [1929] P. 178.

6678. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 190.

6689. *Add. Annotations :*—**Consd.** The West Wales, [1932] P. 165. **Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6690. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52; The West Wales, [1932] P. 165. **Refd.** The London Corporation, [1935] P. 70.

6694a. —— —— **On special contract.**]—While the dredger *L.* was lying moored alongside the breakwater at Patras Harbour in the Hellenic Republic the steamship *E.* fouled the dredger's moorings & carried her out to sea, where she sank & was lost. The owners of the *E.* admitted sole liability for the loss. In proceedings before the Admiralty Registrar & a Merchant between the owners of the *L.* & the owners of the *E.* to assess the damages it appeared that the *L.* had been bought in 1927 for £4,000 by her owners, who had spent a further £2,000 in bringing her to Patras. They were a syndicate of civil engineers. Under a contract with the Patras Harbour Comrs. they were engaged in constructive work in the harbour, for which a dredger was necessary & for which they were using the *L.* The contract provided for completion of the work within a specified time. Delay in completion involved payment of heavy penalties &, if prolonged, cancellation of the contract. The owners of the *L.* had staked their capital & credit on the successful result of the contract. The loss of the *L.* stopped the work &, being unable from want of funds to purchase any suitable dredger which was for sale, on May 4, 1929, they hired a dredger, the *A.*, which was lying in harbour at Carlo Forte, Sardinia, to take the place of the *L.* The *A.* was more expensive in working than the *L.*, & required the attendance of a tug & two hopper barges. The *L.* was sunk on Nov. 26, 1928. The *A.* got to work on the harbour on June 17, 1929. On June 30, 1930, Harbour Comrs. bought the *A.* from her Italian owners for £9,177, & on Sept. 5, 1930, they resold her to the owners of the *L.* for the same sum payable in instalments: —*Held :* the measure of damages was the value of the *L.* to her owners as a profit-earning dredger at the time & place of her loss; & that it should include :—

(1) A capital sum made up of (*a*) the market price on Nov. 26, 1928, of a dredger comparable to the *L.*; (*b*) the cost of adapting the new dredger & of transporting & insuring her from her moorings to Patras; & (*c*) compensation for disturbance & loss suffered by the owners of the *L.* in carrying out their contract during the period between Nov. 26, 1928, & the date on which the substituted dredger could reasonably have been available for use at Patras, including in that loss such items as overhead charges & expenses of staff & equipment & the like thrown away, but neglecting any special loss or extra expense due to the financial position of one or other of the parties.

(2) Interest upon that capital sum from Nov. 26, 1928.

The rule in *The Columbus* disapproved where a vessel was in profitable employment at the time of her loss.—LIESBOSCH, DREDGER *v.* EDISON S.S., [1933] A. C. 449; 102 L. J. P. 73; 77 Sol. Jo. 176; 38 Com. Cas. 267; 18 Asp. M. L. C. 380; *sub nom.* THE EDISON, 149 L. T. 49; 49 T. L. R. 289, H. L.

Annotations :—**Refd.** Buckland *v.* R., [1933] 1 K. B. 329; The Castor, [1932] P. 142; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; The Arpad (1934), 50 T. L. R. 505.

6694b —— **Expenses of hiring substitute—Whether expenses reasonably incurred.**] — THE EDISON, No. 6694a, *ante.*

6696. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

6699. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

6705. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

6706. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assoc. (1929), 34 Com. Cas. 308. **Consd.** The Castor (1932), 48 T. L. R. 604; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6707. *Add. Annotation :*—**Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6708. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6710. *Add. Annotations :*—**Consd.** The Castor (1932), 48 T. L. R. 604; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449. **Refd.** The Arpad (1934), 50 T. L. R. 505.

6733. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The West Wales, [1932] P. 165. **Refd.** The London Corporation, [1935] P. 70.

6736a. Allowance to charterer under cesser clause.] —THE ESSEX ENVOY, No. 2104a, *ante.*

6736b. Use of naval dock & cranes—Repairs to warship.]—THE WEST WALES, No. 6653a, *ante.*

PART XII. SECT. 6, SUB-SECT. 5.—J.

11 i. —— *No market for such ... of ship.*]—On Aug. 14, 1926, a hopper digger barge belonging to the ... of the Clyde Navigation was sunk in collision with the s.s. *Ronda*, admitted that those in charge of her were solely to blame for the accident. In an action at the instance of the trustees, brought on Jan. 24, 1928, to assess & recover damages for (*inter alia*), the loss of the barge, it was proved that there was no market for such a vessel, so that the test of market value was not available. The Lord Ordinary awarded the pursuers the cost of a reasonably efficient second-hand hopper barge, & the cost of adapting it for their special purpose :—*Held :* the Lord Ordinary's method of assessing the value of the barge was not erroneous.—CLYDE NAVIGATION TRUSTEES *v.* BOWRING S.S. CO., LTD., [1929] S. C. 715.—**SCOT.**

PART XII. SECT. 6, SUB-SECT. 5. —L.

6732 i. *Damages through deprivation of use of vessel.*]—Though pltf.'s vessel is a non-profit earning ship pltf. is entitled to recover from deft. damages based on maintenance, overhead & depreciation costs, for the time the ship was actually absent from her duties as a result of the collision, in addition to the actual cost of repairs. —R. *v.* JERRY PETITE, [1933] Ex. C. R. 186.—**CAN.**

6739. *Add. Annotation :*—**Refd.** The Napier Star, [1933] P. 136.

6740. *Add. Annotations :*—*As to* (2) **Consd.** The Napier Star, [1933] P. 136. **Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

6742. *Add. Annotations :*—*As to* (1) **Consd.** The Napier Star, [1933] P. 136. **Refd.** The Point Breeze, [1928] P. 135.

6751. *Add. Annotation :*—**Refd.** The London Corporation, [1935] P. 70.

6758. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

6763. *Add. Annotation :*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

Part XIV.—Wreck.

6794. *Add. Annotation :*—*As to* (2) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6796. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Oceanic Steam Navigation Co. *v.* Evans (1934), 51 T. L. R. 67.

6797. *Add. Annotations :*—**Apld.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** The Chr. Knudsen (1932), 48 T. L. R. 619.

6805. After this case add :—

—— —— **Negligent repair—Limitation of action.**]—*See* PUBLIC AUTHORITIES, No. 949a, *ante*.

6807. *Add. Annotations :*—*As to* (1) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

6809a. —— —— ——.]—A ketch belonging to defts. sank, owing to their negligence, in a river, of which first pltfs. were the conservators, & thereby obstructed the navigation of the river & second pltfs.' wharf & the approaches thereto. Immediately after the sinking of the ketch, & before any expenses were incurred in removing her, defts. abandoned her. Pltfs. jointly incurred expenses in removing the obstruction, & sued to recover the amount from defts. :—*Held :* (1) the ketch having sunk through the negligence of defts., they became liable at common law for the damage caused by the obstruction to the navigation of the river & the blocking of the approach to the wharf, & they could not escape liability for that damage by abandoning the wreck; (2) the damages recoverable were the reasonable cost of removing the obstruction.—DEE CONSERVANCY BOARD *v.* MCCONNELL, [1928] 2 K. B. 159; 97 L. J. K. B. 487; 138 L. T. 656; 92 J. P. 54; 26 L. G. R. 204; 17 Asp. M. L. C. 433, C. A.

6811a. —— —— ——.]—Defts.' steamship, a Norwegian vessel, while docking in Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred "in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ :—*Held :* the claim was for "damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, with Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1), (*a*), (iv.), & was properly commenced by a writ *in rem*.—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 148 L. T. 60; 48 T. L. R. 619; 18 Asp. M. L. C. 347.

Annotation :—**Consd.** The Minerva (1933), 49 T. L. R. 563.

Part XV.—Salvage.

6817. *Add. Annotation :*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

6821. *Add. Annotation :*—*As to* (1) **Consd.** The Castor (1932), 48 T. L. R. 604.

6849a. ——.]—THE TRES (1936), 181 L. T. Jo. 376.

6849b. Information as to course to clear ice-field.]—Defts.' steamship *T. B.*, while bound for St. John, New Brunswick, got into an extensive ice-field in which she sustained so much damage that she sent out an S.O.S. message, as it was thought that she was in danger of sinking. The S.O.S. message was heard & answered by pltfs.' steamship *N.*, which was some thirty miles away, & by other vessels, but none of these were within 200 miles of the *T. B.* The *N.* was also bound to St. John & had herself encountered the ice-

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PART XIII. SECT. 2.

h i. —— *Bridge.*]—A.-G. FOR BRITISH COLUMBIA *v.* "PACIFIC FOAM." [1928] 2 D. L. R. 877; [1928] 1 W. W. R. 965. —CAN.

h ii. —— ——.]—Action by pltfs. to recover damages suffered by them by reason of deft. ship coming into collision with a bridge being erected by pltfs. over the York River at Gaspe, P.Q. :—*Held :* the speed of the *D.* in passing through the bridge opening was, in the circumstances, excessive, & since the speed of the *D.* was excessive it could not be maintained that the ship was navigated with reasonable care & the accident was inevitable.—PHILIP T. DODGE S.S. *v.* DOMINION BRIDGE CO., LTD., DUFRESNE CONSTRUCTION CO., LTD., & LA COMPAGNIE DU PONT DE GASPE LIMITEE, [1934] EX. C. R. 181; *revsd.*, [1936] 1 W. W. R. 94; [1935] 4 D. L. R. 65; 5 F. L. J. (Can.) 131, P. C.—CAN.

aid doing. At that time the *T. B.* had been in the ice-field for some twenty-four hours, but on receipt of this information she altered course & followed the directions given to her by the *N.*, & so got clear of the ice. Pltfs. claimed salvage. Defts. denied that any salvage services were rendered, as the *N.* was under a statutory duty to go to the assistance of the *T. B.*; they alleged that the damage sustained was while she was performing that duty; that the only assistance requested—namely, to stand by, was not rendered; & that they already knew the course to steer to get out of the ice-field, but this last point was found against them. The value of the *N.*, her cargo & freight, was alleged to be over £225,000; the value of the *T. B.* was agreed at £10,000:—*Held:* each separate item of the proceedings could not be isolated & regarded by itself & the whole of the circumstances must be taken into account; without quantifying the moral support given to defts. by the knowledge that the *N.* was coming to their assistance, pltfs. rendered a very definite salvage service, in the course of which the *N.* sustained considerable damage, in giving information that the *T. B.* would find clear water within twelve miles by steering E.; & the proper award was the sum of £2,000, of which, having regard to the damage, £1,500 would go to the owners of the *N.*, £200 to the master & £300 to the crew.—THE TOWER BRIDGE, [1936] P. 30; 105 L. J. P. 33; 154 L. T. 565; 52 T. L. R. 153; 18 Asp. M. L. C. 594.

3851a. —— **Statutory duty.**]—THE TOWER BRIDGE, No.6849b, *ante.*

3927. *Add. Annotation:*—**Refd.** The Tower Bridge, [1936] P. 30.

3974. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

3990. *Add. Annotation:*—**Consd.** The Kafiristan, [1937] 3 All E. R. 747.

7035. *Add. Annotation:*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7056. *Add. Annotations:—As to* (2) **Consd.** The Kafiristan, [1937] 3 All E. R. 747. **Refd.** Akt.

7132. *Add. Annotation:—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

7133. *Add. Annotation:*—**Consd.** The Kafiristan, [1937] 3 All E. R. 747.

7222. *Add. Annotation:—As to* (3) **Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd. (1935), 40 Com. Cas. 288.

7276. *Add. Annotation:*—**Refd.** Carras *v.* London & Scottish Assurance Corpn., Ltd. (1935), 40 Com. Cas. 288.

7355. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7376. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7478. *Add. Annotation:*—**Consd.** The Castor (1932), 48 T. L. R. 604.

7474. *Add. Annotation:*—**Apld.** The Castor (1932), 48 T. L. R. 604.

7475. *Add. Annotation:—As to* (1) **Expld.** The Castor (1932), 48 T. L. R. 604.

7475a. —— **What should be considered—Earning power of ship—Existence of time charter.**]—In a salvage action pltfs. obtained an order for the appraisement of defts.' ship. The valuer appraised the ship on the footing that she was employed & likely to be employed, but the fact that she was under a profitable time charter which had nearly seven years unexpired was not disclosed to the valuer:—*Held:* an appraisement should be based on the value of a ship to her owners as a going concern; the earning power under the charterparty should be taken into account as one of the elements of value; accordingly the appraisement was not conclusive; &, on further evidence adduced in ct., the value should be raised from £72,820 to £85,000.—THE CASTOR, [1932] P. 142; 101 L. J. P. 88; 147 L. T. 359; 48 T. L. R. 604; 18 Asp. M. L. C. 312.

7476. This case should be No. 7477a.

7477b. ——.]—THE CASTOR, No. 7475a, *ante.*

7495. *Add. Annotation:*—**Consd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

PART XV. SECT. 3, SUB-SECT. 2.—A. 6862 vi. ——.]—The bringing of a vessel filled with fish, & submerged o the pilot house, from a situation of peril in the open sea to a place of safety:—*Held:* a substantial salvage service.—SMITH *v.* THE "RACE ROCK" (1932), 45 B. C. R. 522.—CAN.

PART XV. SECT. 9, SUB-SECT. 1.—G. (a).

o 1. —— —— ——.]—PACIFIC SALVAGE CO., LTD., & VANCOUVER DRYDOCK & SALVAGE CO., LTD. *v.* THE M.S. "TEX," HOME INSURANCE CO. OF NEW YORK *v.* THE M.S. "TEX," [1931] 1 W. W. R. 153; 2 D. L. R 657; 43 B. C. R. 434.—CAN.

7519. *Add. Annotation :—Generally,* **Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7564. *Add. Annotation :—Generally,* **Refd.** The Kafiristan, [1937] 3 All E. R. 747.

7621a. —— —— **No open market for ships—Restrictions on exchange.**]—The *E.*, a German ship, was salved & towed into Dover Harbour, & the salvors alleged that her sound value at the time the services ended was £45,000. This figure was arrived at by taking the sum of 550,000 marks which was the price at which the ship was subsequently sold, & converting it into sterling at the rate of 12·2 marks to the £. There was no reliable standard upon which such conversion into sterling could be made, & the usual method of assessing the value of a salved ship based upon sales of similar vessels, was not available, as the shortage in Germany of foreign exchange prevented such sales. Evidence having been given that the cost of building a similar ship in Germany would be approximately three times the sum of 550,000 marks for which the salved ship had been sold :—*Held :* the salved value of the ship was one-third of the cost in sterling of building a new & similar ship in England less the cost of repairs.—LADY DUNCANNON OWNERS *v.* EISENACH OWNERS, SIMSON & GOLIATH OWNERS *v.* EISENACH OWNERS, [1936] 1 All E. R. 855 ; *sub nom.* THE EISENACH, 155 L. T. 442.

(c) Other Cases.

7678a. Collision—Owners of salvor also owning vessel partly to blame—Circuity of action.]—The *E.* collided with the *K.*, blame being apportioned by agreement as to three-quarters to the *E.* & one-quarter to the *K.* The *K.* was badly damaged, & salvage assistance was rendered by the *B.* The owners of the *B.* were also the owners of the *E.* The owners of the *B.* claimed salvage :—*Held :* (1) the fact that the salving vessel belonged to the same owners as did the colliding ship did not in equity disentitle her from claiming the appropriate salvage remuneration. *Per* LORD WRIGHT : the owner of the salving ship is dissociated from himself as owner of the wrongdoing ship ; (2) in any event, the Lloyd's salvage agreement executed between the parties, which specifically provided for salvage remuneration in the event of success, removed any doubt that the owners of the salving ship were entitled to a salvage award.—BEAVERFORD S.S. OWNERS *v.* KAFIRISTAN S.S. OWNERS, THE KAFIRISTAN, [1937] 3 All E. R. 747 ; 106 L. J. P. 91 ; 157 L. T. 439 ; 53 T. L. R. 1010 ; 81 Sol. Jo. 844, H. L.

7727. *Add. Annotation :—As to* (1) **Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

7728. *Add. Annotation :* —**Refd.** Nestor S.S. Owners *v.* Mungana S.S. Owners, The Mungana, [1936] 3 All E. R. 670.

7739a. Dependent on circumstances.]—There is no general rule as to the proper apportionment of a salvage award as between owners, master & crew, but the apportionment must in each case depend upon the particular circumstances.—NESTOR S.S. OWNERS *v.* MUNGANA S.S. OWNERS, THE MUNGANA, [1936] 3 All E. R. 670.

7881. *Add. Annotation :*—**Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

7910. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

Part XVI.—Pilotage.

8002. *Add. Citation :*—17 Asp. M. L. C. 338.

8030. *Add. Annotation :*—**Distd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492.

8044a. ——— ———.]—A collision occurred off Flushing at the mouth of the river Scheldt, between a British & a Dutch steamship. In an action by the owners of the former, the owners of the latter pleaded (*inter alia*), that their vessel was at the time in charge of a Dutch pilot by compulsion of law, & that the negligence, if any, was solely that of the pilot. The ct. found that the collision was due to the negligent navigation of the Dutch vessel, &, after evidence had been given as to the Dutch law on the question of compulsory pilotage :—*Held :* though the employment of the pilot was compulsory, the pilot acted as the adviser of the master who remained in charge, &, therefore, the owners of the Dutch vessel were liable for the damages sustained by the owners of the British vessel.—THE PRINS HENDRIK, [1899] P. 177 ; 68 L. J. P. 86 ; 80 L. T. 838 ; 8 Asp. M. L. C. 548.

Part XVII.—Shipping Casualties.

8057. *Add. Annotation :*—**Refd.** The Royal Star (1927), 97 L. J. P. 49.

PART XVII. SECT. 2, SUB-SECT. 3.—B.

g i. ——— ———.]—R. was the master of a launch, plying in Port Jackson, which collided with a racing eight. An inquiry into the collision was held under sect. 27 of Navigation Act, 1901. The Ct. of Marine Inquiry held that there had been misconduct on R.'s part & called upon him to show cause why his certificate should not be suspended. R. thereupon obtained a rule *nisi* for a writ of prohibition to restrain any further proceedings. The rule *nisi* was discharged by STEPHEN, J., sitting in chambers, upon the ground that such certificate could be dealt with upon a finding of misconduct as distinguished from a finding of gross misconduct Upon appeal :—*Held :* the application for a writ of prohibition, if such writ would lie, was premature & the appeal must be dismissed. *Semble :* a certificate may only be suspended or cancelled under sect. 27 of Navigation Act, 1901, upon a finding of gross misconduct.—*Re* WILLIAMS, *Ex p.* ROSMAN

Part XVIII.—Limitation of Liability of Owners and Others.

8059. *Add. Annotation :—As to* (1) **Refd.** The Napier Star, [1933] P. 136.

8070. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

8071. *Add. Annotation :—As to* (1) **Consd.** The Champion, [1934] P. 1.

8080. *Add. Annotation :*—**Consd.** Cory & Son, Ltd. *v.* Dorman, Long & Co., [1936] 2 All E. R. 386.

8083. *Add. Citation :*—17 Asp. M. L. C. 270.

Add. Annotations :—**Consd.** The Ruapehu (No. 2), [1929] P. 305. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432.

8083a. —— Company managing barge under verbal agreement with lightermen.]—For the purposes of certain constructional work pltfs. supplied defts. with barges for the removal of soil. By the negligence of a bargee damage was done to a coffer dam, part of defts.' works, & in previous proceedings, pltfs. were held to be liable. The present action was brought under Merchant Shipping Act, 1894 (c. 60), s. 503, to limit their liability to £8 for each ton of the ship's tonnage. Pltfs. had in 1916 formed a subsidiary co., Cory Lighterage, Ltd. & all lighters were transferred to the new co. & the men employed on them became employees of the subsidiary co. From 1917 the management of the subsidiary co. was carried on by the principal co. & in 1927 a notice was sent out that trading in the name of the subsidiary co. was to cease. The co. itself, however, continued to exist, & although all agreements with third parties were made with the principal co., all profits were credited to the subsidiary co. & all expenses, wages & the like were debited against it. There was not at any time any document in writing transferring the property or any rights therein from the subsidiary co. to the principal co. In these circumstances the question arose whether pltfs. were the "owners" or the charterers by demise of the barge within Merchant Shipping Act, 1894 (c. 60), s. 503, as amended by Merchant Shipping (Liability of Shipowners & Others) Act, 1900 (c. 32), s. 1, Merchant Shipping Act 1906 (c. 48), s. 71, & Merchant Shipping Act, 1921 (c. 28), s. 1 (2) :—*Held :* pltfs. were neither the owners nor the charterers by demise of the barge & were not entitled to limit their liability under Merchant Shipping Act, 1894 (c. 60), s. 503.—Cory (William) & Son, Ltd. *v.* Dorman, Long & Co., Ltd., [1936] 2 All E. R. 386 ; 155 L. T. 53 ; 80 Sol. Jo. 509 ; 41 Com. Cas. 224, C. A.

8083b. "Charterers by demise."]—Cory (William) & Son, Ltd. *v.* Dorman, Long & Co., Ltd., No. 8083a, *ante*.

8088. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

8090a. —— ——.]—Robin Hood Mills, Ltd. *v.* Paterson S.S., Ltd. (1937), 81 Sol. Jo. 569, P. C.

8099. *Add. Annotation :—As to* (2) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

8103. *Add. Annotations :—As to* (1) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

(1935), 35 S. R. N. S. W. 541 ; 52 N. S. W. W. N. 210. **AUS.**

1 i. — *Reconstruction of collision—One party absent.*]—E., the master of a steam ferry which had been involved in a collision with a coastal steamer, was summoned to appear before a Ct. of Marine Inquiry appointed to investigate the circumstances of the collision. After evidence had been entered upon, the ct. attended a reconstruction of manœuvres of vessels concerned in the collision. The reconstruction took place in E.'s absence, & without his knowledge. E. became aware of what had taken place before termination of proceedings before the Ct. of Marine Inquiry, but there was no evidence that he had communicated with his legal advisers in regard thereto. The ct. found that the collision was due to the negligent navigation of E., & indicated that he would be called upon to show cause why his certificate should not be dealt with. E. thereupon obtained a rule *nisi* for a prohibition to restrain further proceedings :—*Held :* the rule *nisi* must be made absolute on the grounds : (1) the reconstruction & the order of the ct. subsequent thereto involved a denial of natural justice to E. ; (2) the reconstruction, not being a mere view, amounted to evidence adduced otherwise than in open ct. ; it was not open to appct. to waive his rights as the inquiry was one in which the public was interested.—*Re* Court of Marine Inquiry, *Ex p.* Evans (1935), 52 N. S. W. W. N. 1.—**AUS.**

PART XVIII. SECT. 1.

sm. *Whether limitation binding on Crown.*]—The Crown is not bound by Merchant Shipping Act, 1894 (c. 60), s. 503. Where therefore the South African Railways & Harbours sued resp. co. for damages arising out of the sinking of a ship owned by resp. in the approach to a harbour & the latter pleaded sect. 503 :—*Held :* an exception to this portion of the plea should have been allowed.—South African Railways & Harbours *v.* Smith's Coasters (Pty.), Ltd., [1931] App. D. 113.—**S. AF.**

s. ——.]—As the Crown was not expressly mentioned in Merchant Shipping Act, nor was the Act expressly made applicable to it, the responsibility to the Crown could not be limited by the ct.—Canada Steamship Lines, Ltd. *v.* Emile Charland, Ltd., [1933] Ex. C. R. 147.—**CAN.**

PART XVIII. SECT. 2.

sa. *Dumb barge.*]—A lighter was not registered, & although originally fitted with a rudder, at the time of the collision it had neither a rudder nor sidelights nor any means of propulsion. It was used by the owner to carry cargo from a deepwater port to a shallow water port :—*Held :* such a lighter was a "ship" within sect. 503 of Merchant Shipping Act, 1894.—Holyman (William) & Sons Pty., Ltd. *v.* Marine Board of Launceston (1931), 24 Tas. L. R. 64.—**AUS.**

PART XVIII. SECT. 4.

8087 i. *Manner of loss—Loss due to "improper navigation."*]—Pltf.'s vessel collided with the lock gates of the L. Canal permitting the water to rush through & damage property. Four actions were instituted against pltf. & it feared other actions. Pltf. sued for limitation of liability under Merchant Shipping Act, 1894 :—*Held :* the accident which occurred was due to the engineer misunderstanding a signal given from the bridge ; & the error of the engineer was a case of improper navigation, the owners could not provide for such an event & as the collision occurred without actual fault or privity of the owners they were entitled to judgment limiting their liability.—Canada Steamship Lines, Ltd. *v.* Emile Charland, Ltd., [1933] Ex. C. R. 147.—**CAN.**

8092 i. *Loss must be without fault or privity of owner—Onus of proof.*]—*Held :* where the owner of a ship, after having been condemned in a previous action to pay damages for loss & damage to a cargo, brings another action in which he claims a limitation of his liability, either under the provisions of sect. 503 of Merchant Shipping Act or of sect. 903 of the Canada Shipping Act, he must show affirmatively that the damage or loss happened without his actual fault or privity ; he must exculpate himself (as distinguished from his servants or employees) from the responsibility for the loss or damage in respect of which he claims the limitation & the onus is upon him to show that there was no default or privity of his own.—Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1935] S. C. R. 617 ; 4 D. L. R. 637.—**CAN.**

8103a. —— **Loss direct consequence of fire.**]—TEMPUS SHIPPING CO., LTD. *v.* DREYFUS (LOUIS) & CO., LTD., No. 3099a, *ante*.

8104a. Dock owner with controlling interest in second dock—Whether second dock included in "the area" for purpose of calculating liability.]—Pltfs., a limited co., owned docks at B., in one of which defts.' vessel *R.* received damage. The *R.* was the largest vessel which had been in those docks within the statutory period, but pltfs. also had a controlling interest in docks at F. owned by another limited co. in which a larger vessel than the *R.* had been docked:—*Held:* even assuming pltfs. exercised any power over the F. docks within 1900 Act, s. 2 (1), those docks were not within "the area" contemplated by the sect., namely, the area containing within it the particular dock in which the damage was caused; & pltfs. were entitled to a limitation decree based on the tonnage of the *R.*—THE RUAPEHU, No. 2, [1929] P. 305; 98 L. J. P. 167; 142 L. T. 96; 45 T. L. R. 657; 18 Asp. M. L. C. 64; *sub nom.* GREEN (R. & H.) & SILLEY WEIR, LTD. *v.* RUAPEHU S.S. OWNERS, 35 Com. Cas. 86.

8108. *Add. Annotation:*—*As to* (1) **Refd.** Great Western Ry. Co. *v.* Kassos Steam Navigation Co. (1930), 144 L. T. 121.

8121a. Whether Merchant Shipping Act, 1906 (c. 48), s. 69, retrospective.]—Above sect., with reference to the calculation of the tonnage of a steamship for the purposes of limitation of liability, is not retrospective so as to apply to a collision occurring before the Act came into operation, though the limitation of liability action was commenced after the Act came into operation.—LANGDALE (1907), 76 L. J. P. 154; 23 T. L. R. 683.

8132. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8134. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8135. *Add. Annotation:*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 48 T. L. R. 579.

Part XIX.—Liens on Ship, Freight and Cargo.

8168. *Add. Annotations:*—*As to* (1) **Refd.** The Beldis, [1936] P. 51.

8182. *Add. Annotation:*—*As to* (1) **Refd.** The Minerva (1933), 49 T. L. R. 563.

8189. *Add. Annotation:*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8193. *Add. Annotation:*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

8215. *Add. Annotation:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8216. *Add. Annotation:*—**Refd.** G.W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

8232. *Add. Annotation:*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8279. *Add. Annotation:*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

8298. *Add. Annotation:*—*Generally*, **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8310. *Add. Annotation:*—**Refd.** The Minerva (1933), 49 T. L. R. 563.

8333. *Add. Annotations:*—**Refd.** The Minerva (1933), 49 T. L. R. 563; The Beldis, [1936] P. 51.

8367. *Add. Annotation:*—**Refd.** The Rehearo (1933), 49 T. L. R. 559.

PART XVIII. SECT. 5, SUB-SECT. 4.

sc. *Onus of proof.*]—*Held:* the *onus* was on petitioners of showing that the damage did not arise on distinct occasions; they must therefore establish that the second collision was caused by the same mistake as caused the first.—THE "LUCULLITE" *v.* THE "R. MACKAY," [1929] S. C. (Ct. of Sess.) 401.—**SCOT.**

PART XVIII. SECT. 5, SUB-SECT. 5.

g i. —— —— ——.]—*Held:* the words "engine-room space deducted," as found in Canada Shipping Act, R. S. C., 1927, s. 904, & in the corresponding provision of the Merchant Shipping Act, 1894, refers to the deduction allowed for propelling power as appearing in the certificate of registry. In calculating the tonnage of a ship in limitation of liability proceedings, the tonnage allowed for the power propelling space must be added to the register tonnage.—EASTERN S.S. Co., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1929] EX. C. R. 103. —**CAN.**

" —— .]—*Held:* for the purposes of limitation of liability under Merchant Shipping Act, 1894, s. 503, as amended by Merchant Shipping Act, 1906, s. 69, the words "engine room space" in sects. 78, 503 of the Act of 1894, & in r. 3 in Sched. II. thereto, mean the whole of the space occupied by the propelling power of a steamship, including the engine room space, &, accordingly, the proper method of calculating the tonnage of a vessel for the above purpose is to add to the net register tonnage, as shown by the ship's certificate of registry, the tonnage therein deducted "on account of space required for propelling power."—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461; 47 N. S. W. W. N. 170, 191.—**AUS.**

PART XIX. SECT. 1, SUB-SECT. 1.

sc. *Whether assignable.*]—*Held:* in an action for damages by collision, the sale of one of the ships by the owner does not disentitle him from enforcing a maritime lien on the other ship. Such a lien is in general, & in such a case as this is unassignable.—DUFF *v.* THE "PROGRESS," [1928] Exch. C. R. 157.—**CAN.**

PART XIX. SECT. 1, SUB-SECT. 4.—B. (a).

b i. —— ——.]—Services performed by a man engaged to superintend the installation of machinery in a ship, to have charge of all the operations of fitting out, purchasing supplies, & finding occupation for the ship, etc., do not create in his favour a maritime lien. His subsequent assumption of the duties of master involving the navigation of the vessel would, if properly proven, create a maritime lien for his services during the period when he was engaged in carrying out his duties as master.—NICHOLSON & SHAW *v.* THE JOYLAND, [1931] EX. C. R. 70.—**CAN.**

PART XIX. SECT. 4, SUB-SECT. 1.

8370 i. *Determined by lex fori.*]—The *A.* was an American vessel on which H. & E. Holding Company Inc., of New York held a mtge. Messrs. B., C. & M., Inc., of Connecticut had furnished certain necessaries to the vessel, for which the laws of the United States gave a maritime lien. The vessel was subsequently libelled & sold in New Brunswick, Canada, & the proceeds of the sale were deposited in ct. for subsequent distribution. The mtgee. appeared & claimed that his mtge. should be preferred to the claim of materialmen:—*Held:* though by English law a maritime lien created by a foreign law, under circumstances which do not give rise to a maritime lien according to English law, is recognised; the priority which it will be given in the distribution of proceeds is treated as relating only to the remedy determined by the law of the *forum* at which the vessel is libelled & sold, the mtge. should be preferred to the claims of the materialman.—MARQUIS *v.* THE ASTORIA, [1931] EX. C. R. 195.—**CAN.**

8406a. Lien for wages & disbursements on same footing.]—In June, 1931, the steamship *M.* was supplied by a firm of necessaries men with bunker coal, for which the then master bound himself & the ship, & in Jan. 1932, another firm supplied the ship with coal, for which the succeeding master bound himself & the ship. In actions *in rem* in the names of the respective masters for disbursements :—*Held :* (1) the claims ranked *pari passu* & not in the inverse order of their attachment ; (2) the lien of the master for disbursements is the same as his lien for wages, & accordingly ranks on the same footing ; (3) the master's lien for wages is postponed to that of the crew.—THE MONS, [1932] P. 109 ; 101 L. J. P. 67 ; 147 L.T. 260 ; 48 T. L. R. 555 ; 18 Asp. M. L. C. 311.

8406b. Disbursements by successive masters.]—The Mons, No. 8406a, *ante.*

8409. *Add. Annotation :—As to* (2) **Follid.** The Mons, [1932] P. 109.

8437a. ——.]—The Mons, No. 8406a, *ante.*

8443. *Add. Annotation :—Generally,* **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8448. *Add. Annotation :*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8457. *Add. Annotation :*—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8498. *Add. Annotations :*—**Refd.** The London, [1931] P. 14 ; The Baarn (1932), 49 T. L. R. 132.

Part XX.—Lighthouses.

8508. *Add. Annotation :*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

8511a. Liability as foreign-going ship—Effect of loading & unloading cargo at home ports on outward voyage.]—Under Merchant Shipping (Mercantile Marine Fund) Act, 1898 (c. 44), a vessel which has, at a home port, loaded cargo for abroad & has paid light dues for a voyage as a foreign-going ship & then calls at other home ports & loads cargo at those home ports with a foreign destination, is not liable in addition to pay light dues as a home-trade ship merely because she also loads cargo at one of those home ports & discharges it at her last home port of loading.—TRINITY HOUSE CORPN. *v.* CEDAR BRANCH S.S. OWNERS (1930), 46 T. L. R. 541 ; 143 L. T. 352 ; 74 Sol. Jo. 438 ; 18 Asp. M. L. C. 151.

Part XXI.—Harbours, Docks and Piers.

8520. *Add. Annotation :*—**Refd.** West (Samuel), Ltd. *v.* Wright's (Colchester), Ltd. (1935), 40 Com. Cas. 186.

8534. *Add. Citation :*—26 L. G. R. 1.

8540. *Add. Annotation :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 147 L. T. 313.

8543. *Add. Annotation :—As to* (3) **Refd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co., [1933] 2 K. B. 14.

8546. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

8564a. Exemption—Abolition of.]—*Held :* the exemption claimed having been shown to be in existence for over one hundred years, the ct. would endeavour to find a legal origin for it, but, assuming the exemption to have been proved, it was abolished by Shipping Dues Exemption Act, 1867 (c. 15).—NEWPORT CORPN. *v.* ISLE OF WIGHT FARMERS' TRADING SOCIETY, LTD. (1928), 92 J. P. 109.

8569. *Add. Annotation :*—**Refd.** A.-G. *v.* Cornwall County Council (1933), 97 J. P. 281.

8594a. —— Construction of special Act against company.]—By the Liverpool Dock Acts of 8 Anne & 2 Geo. 3, certain tonnage duties are payable to the dock co. on all vessels sailing with cargoes outwards or inwards, so as no ship shall be liable to pay more than once for the same voyage out & home. This is one entire duty imposed upon one entire voyage out & home, if there be either an outward or an inward cargo in such voyage, but without making any advance if there should be both.

Must we not suppose that the legislature intended to use these words in the sense in which they are commonly understood ; that is, as descriptive of a voyage commencing from & terminating in the country to which the ship belongs, or, as here, in some particular port of such country ? If the words would fairly admit of different meanings, it would be right to adopt that which would be most favourable to the interest of the public, & most against that of the co. ; because the co. in bargaining with the public ought to take care to express

PART XXI. SECT. 1.

sp. *Lease of wharf—Ejectment.*]—Where a wharfside site in the B. Harbour E. London, had been leased to applt. by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Rys. & Harbours :—*Held :* as pltf. was the Governor-General in Council, who in railway & harbour matters sued in the name of the S. African Rys. & Harbours as directed by sect. 65 of Act 22 of 1916, & who owned the wharfside site, a contention that pltf. was not the owner of the site could not be sustained.—WINTER *v.* S. AFRICAN RYS. & HARBOURS, [1929] App. D. 100.—S. AF.

PART XXI. SECT. 4.

b i. —— —— *Ship sunk in harbour —Liability of owner for expenses of lighting, buoying & destruction.*]—Reg. 63 of the regs. under Railways & Harbours Regulation, Control & Management Act is *ultra vires* in so far as it purports to provide that the expenses reasonably incurred by the administration in the lighting, buoying, & destruction of a ship sunk in the harbour may be recovered from the owner or his agent.—SMITH'S COASTERS (PROPRIETARY), LTD. *v.* SOUTH AFRICAN RAILWAYS & HARBOURS, [1930] N. L. R. 103.—S. AF.

distinctly what payments they were to receive; & because the public ought not to be charged, unless it be clear that it was so intended (LORD ELLENBOROUGH, C.J.).—GILDART *v.* GLADSTONE (1809), 11 East, 675; 103 E. R. 1167.

Annotations:—**Consd.** Portsmouth Floating Bridge Co. *v.* Nance (1843), 6 Scott N. R. 823; Stockton & Darlington Ry. Co. *v.* Barrett (1844), 7 Man. & G. 870; Pryce *v.* Monmouth Canal & Ry. Co. (1879), 4 App. Cas. 197.

8618a. Lighter sinking after being moved—Onus of proof.]—While pltfs.' lighter *W.* was loading cargo from defts.' steamship in the Royal Albert Docks defts.' servants moved the *W.* to another position, & she was left for the night moored alongside the quay & a little inside the stem & port bow of the steamship. On the following morning the *W.* was found sunk through water having entered her hull from an unknown cause. Pltfs. failed to establish any positive evidence of negligence, but they alleged that the fact that defts. had moved & remoored the *W.*, & that she sank, raised a *primâ facie* case of negligence which defts. could only discharge by proof that the *W.* sank from a cause which they could not have avoided by the exercise of reasonable care:—*Held:* defts. were not insurers of the *W.'s* safety; they had no greater duty than to exercise reasonable care & skill in the handling & management of her; & having shown such care & skill they had discharged the burden upon them; further, assuming that the sinking of the *W.* afforded *primâ facie* evidence of negligence, defts.' suggestion that the leakage which caused her to sink was due to her condition as an old wooden barge was a reasonable suggestion; having shown a reasonable way consistent with the accident having happened without their negligence, they had shifted the burden of proof back to pltfs. to establish that it was the negligence of defts. which caused the *W.* to sink; & that accordingly the claim failed.—THE MULBERA, [1937] P. 82; 106 L. J. P. 57; 156 L. T. 348; 53 T. L. R. 314.

8620. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8624. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8629a. —— —— No duty to disclose condition of berth.]—Pltfs.' steamship was damaged by lying in an uneven berth at a wharf owned by defts., a railway co. Defts.' harbour master at the wharf acted as ship's agent for pltfs. for the limited purposes of reporting the ship at the Custom House, paying the pilot, & providing the master with funds to pay the labourers discharging the cargo. Before pltfs. arranged to send the vessel to the wharf the harbour master had in writing informed them that the berths were "perfectly safe for steamers to lie aground." Defts. alleged that the vessel came to the wharf subject to printed conditions, known to the harbour master, whereby the railway co. did not represent, warrant or guarantee that the berths alongside the wharf were safe or suitable for the accommodation of vessels, & all vessels brought alongside remained at the sole risk of their owners & on the terms that the co. should "in no event whatever be liable for any damage . . . however caused to or suffered by any such vessel." The harbour master did not in fact know that the berth was defective:—*Held:* (1) even if the harbour master ought to have known of the defective condition of the berth, which was doubtful, it was not his duty to impart to pltfs. information, acquired as harbour master, which would be against the interests of defts. & of the harbour master to disclose; (2) the notice did not form part of the contract between pltfs. & defts., & afforded defts. no defence; & accordingly pltfs. were entitled to judgment.—THE HAYLE, [1929] P. 275; 99 L. J. P. 145; 141 L. T. 429; 45 T. L. R. 560; 18 Asp. M. L. C. 50.

8632. *Add. Annotation:*—**Refd.** The Rockabill, [1937] P. 93.

8632a. —— —— Whether loss recoverable from Harbour Board under Maritime Conventions Act, 1911 (c. 57), s. 1.]—Pltfs., the owners of the *K. O.*, sued defts. the owners of the *R.*, for damages arising out of a collision between the *K. O.* & the *R.* near the entrance to the Princes Half Tide Dock in the River Mersey. The owners of the *R.* pleaded that the *R.* had been ordered to leave the dock as & when she did by the officials of the Mersey Docks & Harbour Board. Pltfs. thereupon added the Dock Board as defts. The *K. O.* was lying at Princes landing stage, River Mersey; the *R.* was in the Princes Half Tide Dock, which is a little lower down the river than the landing stage. BUCKNILL, J., found on the facts that the *K. O.* left the stage before the *R.* was directed by the harbour-master to come ahead into the entrance, & absolved the *K. O.* from blame, but held both the *R.* & the Dock Board to blame on the ground that the employees of the Dock Board were co-operating with the master of the *R.* in bringing the *R.* out of dock into the river & did so at a time when, if either of defts. had had a better look-out, they would have seen that the *K. O.* had started away from the stage. He accordingly gave judgment for the *K. O.* against both defts. & dismissed the counterclaim of the *R.* against the Dock Board on the ground that the common law rule as to contributory negligence, & not the maritime rule of division of loss, applied. On appeal:—*Held:* (1) the *K. O.* was to blame for a bad look-out & for leaving the stage as & when she did, which (*per* SCOTT, L.J.) was at or about the same time as the *R.* began to come ahead through the entrance; the *R.* was also to blame because, after the direction to come ahead had been given, if she had been keeping a good look-out she would have seen the approaching *K. O.* & ought to have stopped her way & remained in the entrance; & the proportion should be two-thirds to the *K. O.* & one-third to the *R.*; (2) (*per* SLESSER & SCOTT, L.JJ.) that the directions of the dock-master were orders within the meaning of sect. 49; but (3) (*per* GREER & SCOTT, L.JJ., SLESSER, L.J., *dubitante*) the employees of the Dock Board at the time the direction

was given were not negligent; (4) if, however, there was any negligence on the part of the Dock Board (*per* CUR.) the rule as to division of loss provided for in the Maritime Conventions Act, while applicable as between the *K. O.* & the *R.*, did not apply to the Dock Board, & that, both the *K. O.* & the *R.* being negligent, on the application of the common law rule, the Dock Board would be entitled to judgment.

Per SCOTT, L.J.: the ordinary rule unless there is reason to depart from it, should be that costs should be divided in the same proportion as the liability.—THE ROCKABILL, [1937] P. 93; 106 L. J. P. 107; 156 L. T. 296; *sub nom.* THE ROCKABILL, KING ORRY OWNERS *v.* ROCKABILL OWNERS & MERSEY DOCKS & HARBOUR BOARD, ROCKABILL OWNERS *v.* MERSEY DOCKS & HARBOUR BOARD, [1937] 1 All E. R. 191, C. A.

8643. *Add. Annotation:—Generally.* **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8645. *Add. Citations:*—92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367.

Add. Annotation:—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8661. *Add. Citations:—affd.* (1927), 138 L. T. 382; 26 L. G. R. 1; *sub nom.* BOSTON CORPN. *v.* WITHAM OUTFALL BOARD, 92 J. P. 1, H. L.

8665. *Add. Annotations:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401: Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

8670. *Add. Annotation:* **Refd.** The Rockabill, [1937] P. 93.

8680. *Citations:*—For "7 T. L. R. 5" read "8 T. L. R. 546." Add 65 L. T. 674.

8683a. —— **Responsibility of owners—Custom of port—Grimsby.**]—Pltfs.' steam trawler, having sustained injury which necessitated repairs, was placed in a graving dock at Grimsby belonging to the London & North Eastern Ry. Co. for the purpose of being repaired by defts. (a local firm of ship-repairers) under a contract, by the terms of which the first dock dues were payable by pltfs. & subsequent dues by defts. In carrying out the repairs defts. removed certain of the trawler's bow plates, exposing the vessel to the necessity, when in the normal course of business the dock was refilled with water, of floating on her forward watertight bulkhead. Unknown to all the parties the said bulkhead had in its face three small rivet holes, & through these holes the dock water entered the trawler & caused her to sink & suffer damage. There was on board her at the time only a watchman employed by her owners, pltfs. Pltfs. claimed damages on the ground that it was an implied term of the contract that the repairers should safely keep the trawler during the execution of the repairs:—*Held:* defts. were entitled to judgment, for in the circumstances of the case there was no surrender of the trawler to the repairers for the purpose of the repairs, such as would have put upon them a special duty to take care, &, moreover, as regards trawlers in the public dock in question there existed a local custom that some one acting on the owners' behalf should inspect an exposed bulkhead & if necessary keep watch over the ship during the repairs.—THE REHEARO, [1933] P. 286; 102 L. J. P. 108; 149 L. T. 570; 49 T. L. R. 559; 18 Asp. M. L. C. 422.

8684a. Failure to light wreck—Limitation of action.]—Defts.' sailing barge sank & became an obstruction to navigation in the channel of the River Orwell within the limits of the Port of Ipswich, of which pltfs. were the port & harbour authority. Defts. wrote to pltfs. saying that they presumed pltfs. would take steps to raise the barge & that they (defts.) would pay the reasonable expenses. Pltfs. replied that they hoped to raise the wreck of the barge on the next spring tides, & they did so & moved the barge nearer to the shore. They negligently omitted, however, to put a light on the barge, & she was run into by a passing vessel, dragged further into the channel again, & damaged. Defts. refused to pay the expenses of raising the barge a second time &, more than six months afterwards, counterclaimed in respect of the damage the barge had received. Pltfs. alleged that in raising the barge they were acting in the exercise of their statutory duty under sect. 56 of Harbours, Docks & Piers Clauses Act, 1847 (c. 27), &/or other public duties as the authority responsible for the conservation of the navigation of the river, & that the counterclaim, not having been brought within six months of the act complained of, was barred under sect. 1 of Public Authorities Protection Act, 1893 (c. 61):—*Held:* pltfs. were under no obligation to raise the barge, which they could have blown up or got some one else to raise; they raised her in pursuance of a contract made between the parties; the negligent act complained of was not done in the direct execution of any statutory or public duty; & the provisions of sect. 1 of Public Authorities Protection Act did not apply.—THE RONALD WEST, [1937] P. 212; 53 T. L. R. 988.

8688a. ——.]—THE HAYLE, No. 8629a, *ante.*

8692a. —— **Onus of proof.**]—THE SOUND FISHER (1937), 184 L. T. Jo. 44, C. A.

PART XXI. SECT. 12, SUB-SECT. 2.—B. (b).

8685 iii. ——.]—In an action of damages brought by a shipowner against harbour trustees for injuries sustained by his ship through being given a foul berth in their harbour, it was established that the berth in question was in a tidal river; that *débris* discharged into the berth from a sewer formed a mound on the bottom of the berth which was a danger to ships taking the ground at the ebb of the tide; that when dredging the berth defenders, in view of this tendency, made it their practice to dredge at the *locus* of the mound to a greater depth than at other parts of the berth, but that no regular system of examination existed; that the berth had in fact been dredged some three weeks before the ship arrived, but that no special precaution had been taken to ascertain its condition before assigning her to it:—*Held:* defenders had failed to establish that they had taken reasonable care to make sure that the berth should be in a safe condition for vessels using it; & accordingly, as the ship had been injured owing to the condition of the berth, defenders were liable for the damage occasioned by their negligence.—CORMACK (OWNER OF THE S.S. "COLINTON") *v.* DUNDEE HARBOUR TRUSTEES, [1930] S. C. 112.—SCOT.

8692b. Reasonable precautions taken—No warranty of safety.]—THE "PASS OF LENY," No. 1879j, *ante*.

8693a. Breach of covenant to maintain berth—Measure of damages.]—A corpn. which owned the bed of a river & the quays & berths alongside, leased one of the quays to a co. & undertook to keep (*inter alia*) the quay & river berths in good order & condition. While lying aground at the quay to which she had come to discharge a cargo for the co. pltfs.' vessel received damage owing to the defective state of the berth; &, in an action against the corpn. as first defts. & the co. as second defts., recovered judgment against both on the following grounds: (*a*) that the corpn.'s harbour-master knew that the ground alongside the quay was not safe & had taken no steps to put it right, & (*b*) that the co. were liable, because, although they did not know of the actual hard ridge which caused the damage, they knew that the berth was in a generally defective state, & took no steps to assure themselves that some repairs, which the corpn. had carried out, were satisfactory or to warn pltfs.' master that they had not done so. In a third party claim by the co. against the corpn. for an indemnity in respect of the damages & costs for which they had been rendered liable:—*Held:* the fact that the co. had not fulfilled their duty to pltfs. involved no breach of duty to the corpn.; the co. were entitled to rely on the covenant by the corpn. to keep the berth in good order; the resulting damage to the vessel for which the co. were liable flowed naturally from the breach of covenant; accordingly the damages were not too remote; & the indemnity claimed would include the solr. & client costs incurred by the co. in defending the action.—THE KATE, [1935] P. 100; 104 L. J. P. 36; 154 L. T. 432: 51 T. L. R. 410; 18 Asp. M. L. C. 562.

8697a. Damage "in connection with" towage—What amounts to.]—Pltfs.' steamship with two tugs in the employ of defts., the Port of London Authority, fast to her, was proceeding from the Albert Dock to the Victoria Dock. Defts.' lock foreman had signalled to her to enter the narrow Cutting, some 300 feet long, between the two docks, but at about the same time he had signalled to another tug that she could enter the Cutting from the opposite end. In order to avoid collision with that tug the steamship put her engines astern, with the result that she got out of position & struck the walls of the Cutting, doing herself damage. Defts. relied on the terms of the towage contract, which contained a clause that the owners of the ship being towed or transported would "indemnify & hold harmless the Port Authority" against claims in respect of damage of any kind "arising in the course of & in connection with the towage or transport," & whether caused or contributed to by any negligence on the part of the Port Authority's servants:—*Held:* (1) the clause was not an indemnity against party & party claims, but only against third party claims; (2) the damage did not arise "in connection with" the towage or transport; & accordingly the shipowners were entitled to recover the amount of the damage caused by the negligence of defts.' servant.—THE CARLTON, [1931] P. 186; 100 L. J. P. 100; 145 L. T. 423; 47 T. L. R. 517; 18 Asp. M. L. C. 240.

8698a. —— Whether applicable to party & party claims.]—THE CARLTON, No. 8697a, *ante*.

8700. *Add. Annotations:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Oliver *v.* Sadler & Co., [1929] A. C. 584; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Cunard *v.* Antifyre, Ltd., [1933] 1 K. B. 551; Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

8711a. —— ——.]—THE HAYLE, No. 8629a, *ante*.

8715. *Add. Citations:*—138 L. T. 286; 17 Asp. M. L. C. 347; 33 Com. Cas. 79.
Add. Annotations:—*As to* (1) **Follid.** Wickett *v.* Port of London Authority (1928), 138 L. T. 668. **Refd.** The Hayle, [1929] P. 275.

8715a. —— ——.]—Pltf., a lighterman, was in charge of a barge, which was being taken from a dock through a lock. The dock & lock were both the property of defts. While pltf. was navigating the barge under the orders & directions of defts., a rope attached to the barge broke & struck pltf., causing him personal injuries. Pltf. had no option to refuse to take the rope on board. Defts. relied on the terms of a notice, exhibited on the pierhead of the lock, to the effect that lightermen availing themselves of the facilities & assistance of defts.' servants must do so at their own risk, & upon the understanding that no liability whatsoever should attach to defts. or their servants for any injury from whatever cause arising to or by the craft or to or by any person on board thereof:—*Held:* the words of the above notice were *primâ facie* adequate to exempt defts. from liability for the negligence of their servants, & the fact that pltf. was compelled to regulate the barge according to the directions of the dockmaster was in no way inconsistent with the fact that he was in the circumstances "availing himself of the facilities & assistance" of defts., & did not deprive defts. of the exemption afforded by the notice.—WICKETT *v.* PORT OF LONDON AUTHORITY, [1929] 1 K. B. 216; 98 L. J. K. B. 222; 138 L. T. 668.

PART XXII. SECT. 3.

8731 i. *Superintendent of mercantile marine office — Jurisdiction — Claim under Merchant Shipping (International Labour Conventions) Act, 1925.*]—*Held:* a claim under Merchant Shipping (International Labour Conventions) Act, 1925, s. 1 (1), is to be regarded as a claim for wages & not as a claim for indemnity, & is, accordingly, within the jurisdiction conferred upon a superintendent of the Board of Trade by Merchant Shipping Act, 1894, s. 387 (1); further, it is not excluded from his jurisdiction by the fact that it involves the determination of the question whether a ship has become a wreck.—BRUCE *v.* NEISH, [1935] S. C. 500.—**SCOT.**

Part XXIII.—Pleasure Yachts.

8732a. Survey by Lloyd's Register—Liability of individual surveyor—Negligence.]—Pltf., who was the owner of a yacht, requested the society known as Lloyd's Register to make a special survey of the yacht for classification. The society stipulated for freedom from liability, & the survey was conducted by two of the society's surveyors. Deft., who was one of these two surveyors, was responsible for the mainmast. The society certified that the yacht had been reported to be in a good & efficient state & that she had been classed as A1. In fitting out the yacht for sea pltf. found that the mainmast was rotten in places & wholly unfit for use, & he claimed damages from deft. for negligence & breach of duty :—*Held :* there was no privity of contract between pltf. & deft., & that independently of contract deft. owed to pltf. no duty of care or skill with regard to the survey, & therefore the action failed.—HUMPHERY *v.* BOWERS (1929), 45 T. L. R. 297 ; 73 Sol. Jo. 191 ; 34 Com. Cas. 189.

Yacht broker—Business carried on by executor—Duty not to enter into competition.]—*See* EXECUTORS, No. 5977a, *ante*.

Part XXV.—Requisition of Ship by Government.

8733. *Add. Annotation :—As to* (2) **Distd.** Ensign Shipping Co. *v.* I. R. Comrs. (1928), 139 L. T. 111.

749. *Add. Annotation :*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

8750. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade (1928), 140 L. T. 33 ; The Clan Matheson, [1929] C. A. 514. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8751. *Add. Annotations :*—**Consd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. **Refd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8753. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514 ; Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8755. *Add. Annotations :—As to* (1) **Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. *As to* (2) **Apld.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. **Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8755a. —— —— ——.]—The *C. M.* was requisitioned on behalf of the Crown in 1917 by a charterparty, which provided that the Crown should not be liable for marine risks, but should be liable for "all consequences of hostilities or warlike operations." Whilst so requisitioned, the *C. M.* sailed from New York in convoy, destined for Nantes, then a war base, but also an ordinary commercial port, with a cargo, 84 per cent. of which in weight was for the civil commissariat, & 16 per cent. in weight was for war purposes. She was the third ship in the second column from the port hand in the convoy, another vessel, the *W. F.*, which admittedly was at all material times engaged upon & carrying out a warlike operation, being in the corresponding position on the port column. While the convoy was proceeding at night without lights the steering-gear of the *C. M.* suddenly broke down, she sheered seven points off her course & came across the bows of the *W. F.*, by which she was struck & sunk. There was no negligence on the part of those on board the *C. M.* :—*Held :* (1) the arbitrator was entitled to find that the *C. M.* was at no material time engaged, upon or carrying out a warlike operation, notwithstanding a portion of her cargo consisted of war material ; (2) the loss of the *C. M.* was not the consequence of a warlike operation, inasmuch as the dominant & direct cause of the loss was the break-down of her steering-gear & her sheering off her course.—CLAN LINE STEAMERS, LTD. *v.* BOARD OF TRADE, THE CLAN MATHESON, [1929] A. C. 514 ; 98 L. J. K. B. 408 ; 141 L. T. 275 ; 45 T. L. R. 408 ; 35 Com. Cas. 15 ; 18 Asp. M. L. C. 1, H. L.

Add. Annotations :—As to (2) **Distd.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. *Generally*, **Refd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

PART XXV. SECT. 2.

8746 i. *Amount of compensation—Interest.*]—The Crown, in Apr. 1918, pursuant to Order in Council passed under War Measures Act, 1914, requisitioned resps.' ship. The Exchequer Ct. of Canada fixed the compensation at $11,000 with interest thereon from date of requisition to date of judgment. The Crown appealed against the allowance of interest :—*Held :* the allowance for interest should be set aside. The right to interest does not depend on the income earning capacity of the property requisitioned. Where interest is allowed, it is on the ground of express or implied contract or by virtue of a statute ; & no such ground existed here. Interest was really asked for here as damages for detention of the compensation money pending the ascertainment of what was due ; & as such it could not be recovered.—R. *v.* MACKAY, [1930] S. C. R. 130 ; 1 D. L. R. 1005 ; *revsg. in part*, [1928] Ex. C. R. 149.—**CAN.**

h i. —— *Value at time of requisition.*]—The *S.* was requisitioned by the Canadian Government in 1918. In 1924 the claimant was notified of the release of the vessel. At that time she was lying partly submerged, at Kingston, a derelict hulk of no value, & claimant refused to take delivery thereof :—*Held :* on the facts, the question of hire disappeared, & that the controversy resumed itself into a question of compensation for the value of the vessel so appropriated, as at the date of the requisition thereof, & not for the profits that could have been made out of the vessel during the period of requisition.—MACKAY *v.* R., [1928] Exch. C. R. 149 ; *on appeal*, [1930] S. C. R. 130.—**CAN.**

8760. *Add. Citations:*—[1928] 2 K. B. 534; 139 L. T. 566; 34 Com. Cas. 1; 17 Asp. M. L. C. 520, C. A.; *affd. sub nom.* BOARD OF TRADE *v.* HAIN S.S. CO., [1929] A. C. 534; 98 L. J. K. B. 625; 141 L. T. 435; 45 T. L. R. 550; 35 Com. Cas. 29; 18 Asp. M. L. C. 15, H. L.

Add. Annotation:—As to (2) **Apld.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8763a. —— **Spontaneous combustion—Use as submarine tender.**]—The Admiralty requisitioned resps.' steamer on the terms of charterparty T.99, by which the Admiralty undertook the risk of damage from "all consequences of hostilities or warlike operations," & which provided that if the working of the steamer was suspended owing to deficiency of men & stores, breakdown of machinery, or any other cause, the hire should cease until the steamer was again ready for service. The vessel was loaded with steam coal at Cardiff & dispatched with it to Malta. The coal was not discharged at Malta, but petrol & other stores were put on board & the naval authorities sent the vessel to Tenedos & used her there as a submarine tender. After about four months at Tenedos the cargo took fire by spontaneous combustion, & the vessel was damaged & had to be sent back to Malta:—*Held:* the risk was a consequence of hostilities or warlike operations as the vessel had become part of a combatant fleet, & the cesser clause had no application to a case where the suspension of working was due to injury which was the result of compulsory orders.—HINDUSTAN S.S. CO. *v.* ADMIRALTY COMRS. (1921), 37 T. L. R. 856.

8764. *Add. Annotation:*—**Refd.** Dreyfus (Louis) & Co. *v.* National S.S. Co., [1935] 2 K. B. 313.

Part XXVI.—The Trinity Masters.

8788. *Add. Annotations:—As to* (1) **Refd.** The Otranto, [1930] P. 110; Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529. *As to* (2) **Apld.** The Tovarisch, [1930] P. 1.

SMALL HOLDINGS, SMALL DWELLINGS AND ALLOTMENTS.

Part III.—Allotments.

23. After this case add :—**Exemption from rates.**]—*See* Local Government Act, 1929 (c. 17), s. 67.

PART I. SECT. 5.

sa. *Agreement to quit before expiry of lease—Subsequent demand for renewal—Small Landholders (Scotland) Act*, 1911, *s.* 32.]—A statutory small tenant, under a lease terminating at Whit Sunday, 1929, entered into an agreement with his landlord to quit the holding at Martinmas 1926, the landlord undertaking to buy the straw produced at the threshing of that year's crop, & to pay certain compensations. On the faith of the agreement the landlord advertised the farm for sale with entry at Martinmas 1926, & the farm was sold. The tenant, who knew of these proceedings, refused to remove when the term arrived, & some days later took up the position that he was entitled to a renewal of his lease under above sect. (4) :—*Held :* above sect. did not apply to the circumstances of the case.—CHEYNE v. PATERSON, [1929] S. C. (Ct. of Sess.) 119.—SCOT.

SOLICITORS.

Note :—See, now, Solicitors Act, 1932 (c. 37); Solicitors Act, 1933 (c. 24).

Part II.—Admission and Registration.

6. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

9a. Company as solicitor—Whether permissible.]—LAW SOCIETY *v.* UNITED SERVICE BUREAU, LTD., No. 4725a, *post.*

Part III.—Rights and Privileges of Solicitors.

321a. County court—Exercising bankruptcy jurisdiction—Without signing court roll.]—A properly qualified solr. of the Supreme Ct. has a statutory right to practise in a county ct. in the exercise of its bkpcy. jurisdiction, & to recover his costs for so doing, although he has not signed the roll of solrs. in that county ct.—*Re* DEBTOR (No. 29 OF 1931), [1934] Ch. 280; 103 L. J. Ch. 130; 150 L. T. 126; 50 T. L. R. 38; [1933] B. & C. R. 138, C. A.

331. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

334. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

335. *Add. Annotation :*—**Refd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931) (1933), 102 L. J. Ch. 348.

Part IV.—Solicitor and Client.

414. *Add. Annotation :*—**Consd.** Warmingtons *v.* McMurray, [1937] 1 All E. R. 562.

415. *Add. Annotation :*—**Consd.** Warmingtons *v.* McMurray, [1936] 2 All E. R. 745.

PART I.

8a. *Jurisdiction of Benchers.*]—*Held :* pltf. was entitled to have his name restored to the rolls. The benchers' order striking it off was null & void. Under the Legal Profession Act, R. S. A., 1922, such an order could be made only after investigation & recommendation by the discipline committee, which never took place. The fact that the official discipline committee comprised all the benchers who eventually received & adopted the recommendation of the special committee, could not, even apart from the fact that those benchers adopting it had made no investigation of their own, overcome the statutory requirement of the acting by the discipline committee as a distinctive body.—HARRIS *v.* LAW SOCIETY OF ALBERTA, [1936] S. C. R. 88; 1 D. L. R. 401; 5 F. L. J. (Can.) 227.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

8x. *Effect of alteration of law—On right to admission.*]—Appct. on July 30, 1930, entered into written articles with an attorney who had not been in practice for seven years. On Aug. 1, 1930, R. S. C., Ord. 32, r. 53, was repealed & a new rule was substituted which provided that no attorney who had not practised in Natal for at least seven years should be entitled to take under articles any candidate attorney. Appct. applied for admission as a candidate attorney & the application was opposed by the Law Society :—*Held :* granting the application, by entering into the articles prior to the repeal of r. 53 appct. had acquired a right which was preserved to him by sect. 13 of Act 5, 1910.—*Ex p.* DE SOUZA (1930), 51 N. L. R. 221.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 5.

8m. *Absence during illness—Additional service.*]—The Rules of the Council of Legal Education provided that an articled clerk may serve under special provisions in the articles for such term as is necessary to complete the full term of service required by the rules, where he has been absent from the service for a period not exceeding thirty days in each year with the consent of the person to whom he is bound. An articled clerk, whose articles contained such special provisions & whose required term of service was four years, was absent from service during the fourth year for 114 days owing to illness. Under the special provisions in the articles he served for an additional period of thirty days, which ended on Apr. 16. He continued to serve the master, & on June 27 entered into supplementary articles for a further period of eighty-four days :—*Held :* the clerk's service did not comply with the requirements as to service under articles, & a special order that his service had been sufficient should be refused.—*Ex p.* AHERN, [1931] V. L. R. 292; Argus L. R. 246. —**AUS.**

PART II. SECT. 5.

179 i. *When application granted—Solicitor called to the Bar—Appointed to judicial office—Office abolished.*]—A solr., admitted in 1894, was struck off the roll at his own request in 1900 in order to be called to the Irish Bar. He was called to the Bar in the latter year. In 1918 he became a judge of the Chancery Div. of the then High Ct. in Ireland, & later in the same year a Lord Justice of the then Ct. of Appeal in Ireland. He held the latter office until 1924, when, following the change of government in Ireland, the office was abolished. Subsequently he was called to the English Bar, but, owing to illness, was compelled to abandon his practice. He was then disbarred both in Ireland & in England at his own request, with a view to his being readmitted a solr. in the Irish Free State. He now applied to be so re-admitted. The Incorporated Law Society did not oppose the application : —*Held :* the application be granted having regard to the special circumstances of the case, *viz.*, that appct. did not retire from his judicial office voluntary, but owing to its abolition; that as a solr. he would not be an officer of, or practise in, any ct. in which he sat as a judge; that upwards of five years had elapsed since he had ceased to hold judicial office, & during the greater part of that time he had lived out of Ireland; & that the reason for the application was the state of his health, which required active occupation, this motive displacing the idea of any improper or corrupt consideration behind the application. Appct. was, however, required to give an undertaking that he would not seek personal audience in any of the cts.—*Re* SOLICITORS ACT & SIR JAMES O'CONNOR, [1930] I. R. 623.—**IR.**

PART IV. SECT. 1, SUB-SECT. 1.

380 ii. ——.]—It is the duty of a solr. to obtain a written authority from his client before he commences a suit.—SALE & SALE *v.* MCMILLAN, [1931] 4 D. L. R. 203; O. R. 418; *revsd. on other grounds,* [1932] 2 D. L. R. 345; S. C. R. 543.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.

p i. —— *Denial by client.*]—Where on the taxation of a solr.'s bill of costs the retainer of the solr. is denied by the client the onus is on the solr. to prove the retainer.—BARKER *v.* SKRINE (No. 2), [1936] 1 W. W. R. 431; 1 D. L. R. 544; 50 B. C. R. 298.—**CAN.**

t i. —— —— ——.]—Where a solr. has undertaken legal business without a written retainer, & afterwards has a dispute with the client as to the authority conferred thereby, & there is nothing but assertion against assertion, the ct. must accept the client's denial as against the affirmation of the solr.—ECCLES *v.* RUSSELL, [1928] 3 W. W. R. 765; *affd.*, [1929] 3 D. L. R. 32; 2 W. W. R. 143.—**CAN.**

t ii. —— —— ——.]—A solr. may prove the fact of his retainer by a client without the production of a written retainer, but if the only evidence as to retainer is on affidavit, & consists merely of assertion & counter-assertion, the solr. fails to

449a. —— ——.]—Deft. had embarked upon a variety of investments & transactions which were likely to result in serious losses. She retained pltfs. generally to prosecute all such actions & proceedings as might be necessary to get her out of her difficulties. Having successfully prosecuted several matters pltfs. delivered a bill of costs. Deft., while offering to meet all disbursements in arbn. proceedings which were then being prosecuted on her behalf, intimated that she could not pay anything further. Pltfs. then discharged themselves from their retainer & delivered a second bill & brought this action upon both bills :—*Held :* this was not a case of a solr. retained to prosecute an action & no question of entire contract arose. The retainer here was one to prosecute a variety of matters & in such a case it was not reasonable that a solr. should engage himself for an indefinite time without payment. In this case the solr. could upon reasonable notice cease to act & sue for his costs.—WARMINGTONS *v.* MCMURRAY, [1937] 1 All E. R. 562 ; 53 T. L. R. 395 ; 81 Sol. Jo. 178, C. A.

483a. Change by Official Solicitor—Substitution of Official Solicitor for solicitor on record.]—The Official Solr., on appointment to defend an action in place of a deceased deft., gave notice of change of solrs. & substituted his name for that of the solrs. on the record as acting for the deceased deft., who were also the solrs. of deceased's insurance co. On summons for directions issued by pltf., counsel for the solrs. moved the learned judge to order that the Official Solr. should leave the control of the defence in the hands of the said solrs., & that they should remain on the record, & that the notice of change of solrs. should be removed from the file. The learned judge accordingly varied in this sense his original order appointing the Official Solr. to represent deceased deft. The Official Solr. appealed :—*Held :* as the Official Solr. had the same right as any other litigant to choose who should be his solr., & was entitled to act for himself, he was entitled to control the defence of himself as representative of deceased deft. & the change of solr. on the record was properly made, & the learned judge had no jurisdiction to make the variation complained of.—WATTS *v.* OFFICIAL SOLICITOR, [1936] 1 All E. R. 249 ; 80 Sol. Jo. 204, C. A.

Annotation :— **Expld.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

626a. Solicitor acting under court.]—The owner of land involved in litigation in Chancery, held not liable for the acts of a person acting as her attorney in the ct., & of his own motion, under, as he supposed, its authority, but not being her general attorney, & without her privity or actual authority in the particular matter.—OXENHAM *v.* COLLINS (1860), 2 F. & F. 172, N. P.

Annotation :—**Refd.** Oxenham *v.* Smythe (1860), 2 F. & F. 220.

699. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

700. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

701. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

711. Add the following paragraph :—

The ct. will allow a client to institute proceedings against a solr. within a reasonable number of years after the connection of solr. & client has ceased. A solr. took an assignment of some leasehold property from his client in 1810 ; their connection determined a few months afterwards. In 1828, the client filed a bill against the solr., insisting that the assignment was intended to be a mtge., & not a sale. The bill was dismissed by the Master of the Rolls in 1830 ; a petition of appeal was presented in 1840. The client has raised the question by some letters in 1811 :—*Held :* after so long a time had elapsed, the ct. would not assist him in such a claim.

prove the retainer.—MURPHY *v.* LIEBFIELD (1930), V. L. R. 142: Argus L. R. 94.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 4.—E.

sg. *All plaintiffs must concur.*]—K. B. rule 296 does not entitle one of two or more pltfs. to take out a *præcipe* order changing his solr., leaving the original solrs. on the record to represent the remaining pltf. or pltfs. Said rule can be made use of only where all pltfs. concur, & if there are any circumstances where one pltf. requires to have separate representation, be it temporary or permanent, then a special application should be made. If there develops any conflict of interest or division of opinion between co-pltfs., then one of them can apply to be given the sole conduct of the cause. The rules contemplate only one place or address where the papers shall be served on the solrs. who institute an action for two or more pltfs.—MCLEOD *v.* WINNIPEG SUPPLY & FUEL CO., LTD., [1934] 2 W. W. R. 385; 42 Man. L. R. 133.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.—F.

sy. *Joint retainer—Denial of liability—"Reasonably necessary services."*]—NORTHERN LIFE ASS'CE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512 ; *affg.* S. C. *sub nom. Re* SOLICITORS, 33 O. W. N. 175.—**CAN.**

sz. *Whether permissible — Separate defences—No conflict of interest.*]—Where there is no conflict of interest between co-defts. so far as the action is concerned, there is no reason why a solr. who had acted as solr. for one of them prior to the action & with respect to it should not act as the other's solr. & counsel in the action, even though they put in separate defences.—WADDELL *v.* GRAY-CAMPBELL, LTD. & SCARROW, [1929] 3 D. L. R. 488 ; 2 W. W. R. 113 ; 23 S. L. R. 527 ; *revsg.*, [1929] 2 D. L. R. 362 ; 1 W. W. R. 241.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (c).

t i. —— *Liability of solicitor.*]—MORAN *v.* SCHERMERHORN (1858), 2 P. R. 261.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (d).

sa. *Submission to judgment.*]—DUBUC *v.* MARSTON CORPN., [1928] 1 D. L. R. 225 ; [1927] S. C. R. 526.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

675 iii. ——.]—A transaction between solr. & client, in which the solr. takes a benefit, cannot be supported unless the solr. has taken care that his client is fully acquainted with the facts & properly advised upon them, & the onus of proving this is upon the solr.

Where the solr. for a loan co. had benefited from a loan made by the co. to B., by receiving out of the proceeds of the loan payment of certain mtges. from B. to the solr. & certain commissions & fees in connection with said mtges :—*Held :* under the circumstances of the case, the solr. must be held to have been guilty of a breach of duty to the co. & he was liable to it for loss suffered through the transaction.—BIGGS *v.* LONDON LOAN & SAVINGS CO. OF CANADA. LONDON LOAN & SAVINGS CO. OF CANADA *v.* BRICKENDEN, [1933] S. C. R. 257 ; 3 D. L. R. 161.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B.

r i. ——.]—The same considerations which apply to a purchase by a solr. from his client apply also to a sale by a solr. to his client ; & the obligations of a clerk in the service of a solr., to whom the solr. has delegated a matter, or to whom the solr.'s client goes direct, are no less in the matter upon which the clerk proceeds than are the obligations of the solr. himself. In such circumstances the solr.'s clerk will stand in a fiduciary relation to the client, although there be no privity of contract between himself & such client : & before selling his own property to the client he will be bound to make full disclosure to such client of his interest in such property.—BLAIR *v.* MARTIN, [1929] N. Z. L. R. 225.—**N.Z.**

784. *Add. Annotation :*—**Refd.** Davis *v.* Symons, [1934] Ch. 442.

813. *Add. Citation :—affd.* (1929), 45 T. L. R. 264, C. A.

904a. —— ——.]—LUCK *v.* MEYLER (1928), 72 Sol. Jo. 337.

962a. Exchange of lands.]—BARTTER *v.* GAMBRILL (1932), 76 Sol. Jo. 868.

962b. Failure to register club.]—Pltfs. were officers of the New Atlantic Club, which desired to move into premises formerly occupied by the Danesbury Club, which had been dissolved. Pltfs. retained deft. as their solr. (*inter alia*) to arrange for the transfer of the registration of the New Atlantic Club. Deft. sent the necessary documents to the justices' clerk who refused the registration on the ground that the Danesbury Club was on the register as of that address, but the papers were left at the clerk's office. It was found as a fact that deft. never notified pltfs. of this refusal, & the New Atlantic Club moved into their new premises. The police raided the club & pltfs. were prosecuted & fined for supplying drink at an unregistered club. In an action for damages for negligence, deft. denied negligence & contended that even if he was negligent the damage to pltfs. resulted not from his negligence, but from a decision of the magistrates which was wrong in law :—*Held :* deft. was negligent in not notifying pltfs. of the clerk's refusal to accept registration of the New Atlantic Club at their new premises ; notwithstanding that the clerk's duty was purely ministerial & that he could not decide whether the club should or should not be registered, the leaving of the registration papers was not sufficient to register the club, & the convictions were right ; in considering the damages recoverable no reduction should be made because the fines have been paid out of club funds.—ASHTON *v.* WAINWRIGHT, [1936] 1 All E. R. 805 ; 154 L. T. 399 ; 100 J. P. 195 ; 52 T. L. R. 372 ; 80 Sol. Jo. 346 ; 34 L. G. R. 193.

1035a. Liability of solicitor of insurance company to insured.]—Pltf. took out with an insurance co. a motor insurance policy containing a clause that pltf. would not incur any expense whether in respect of litigation or otherwise or make any payment, settlement, arrangement, or admission of liability for which the co. might be liable under the policy without the written authority of the co., & that the co. should have absolute conduct & control of all or any proceedings against pltf. Pltf.'s car was run into by a motor lorry, the collision being caused solely by the negligence of the lorry driver. A passenger in pltf.'s car was seriously injured, & issued a writ against the owners of the lorry & also, at their request, against pltf. The latter informed the insurance co., & left the matter in its hands, as he was bound to do under the policy. The co. sent the papers to its solrs., who entered an appearance to the writ & acted in the conduct of the defence. Neither the co. nor the solrs. ever at any time communicated with pltf. in any way & eventually the solrs. delivered a defence on behalf of pltf. admitting that the accident was caused solely by his negligence & write a letter to this effect to the solrs. opposing them. Having accidentally found out what was happening, pltf. protested to the local agent of the insurance co., to which agent the latter wrote. " If we had repudiated liability we ran a very serious risk of the ct. holding a different view." At the trial of the action, judgment was entered against pltf. for £1,124 12*s.* 10*d.*, damages & costs. The latter now claimed damages against the solrs. & the insurance co. for breach of duty, negligence & libel :—*Held :* (1) the question whether there was a breach of duty on the part of the insurance co. fell within the doctrine of *Scott* v. *Avery* & was a matter for arbn., the policy containing the usual clause making arbitration a condition precedent ; (2) the letter written by the insurance co. was not defamatory ; (3) the letter written by the solrs. was defamatory, the occasion on which it was written was privileged, but there was evidence of indirect motive ; (4) the solrs. were negligent ; (5) the damages for negligence were not nominal, as pltf. might have to pay an additional premium on future insurances. They must be taken at the figure assessed by the jury, £1,000 ; (6) pltf. was also entitled to recover the £1,124 awarded against him as damages in the previous action, but would hold the same as trustee for the insurance co. ; (7) deft. was entitled to a declaration that by reason of the negligence of the solrs. he was not liable to pay any part of their costs while acting for him in the action.—GROOM *v.* CROCKER, [1937] 3 All E. R. 844 ; 157 L. T. 308 ; 81 Sol. Jo. 630.

1062a. Fine & costs—Failure to register club.]—ASHTON *v.* WAINWRIGHT, No. 962b, *ante.*

1067a. Failure to issue writ—Action barred by Fatal Accidents Act—Defendant man of straw.]—CLAYTON *v.* KEARSEY (1935), 79 Sol. Jo. 180.

1096. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1103. *Add. Annotations :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

PART IV. SECT. 4, SUB-SECT. 2.—C. (b).

8d. *General rule.*]—It is not part of the ordinary duty of a solr. to act as valuer or adviser upon investments ; but, if consulted as to the wisdom of an investment, it is his duty to disclose any relevant facts within his knowledge, & to explain what inquiries should properly be made.—POLKINGHORNE *v.* HOLLAND, [1934] S. A. S. R. 475 ; 51 C. L. R. 143 ; 40 Argus L. R. 353 ; 8 A. L. J. 140.—**AUS.**

c i. —— ——.]—Where a solr. acting for both parties in the matter of a loan on mtge. did not disclose in either the application for the loan or the certificate of title the existence of two mtges. in which he was personally interested :—*Held :* he had been guilty of a breach of duty as solr. for the mtgee., & it would equally have been a breach of duty if he had been employed only in making the certificate of title. The damages to which the mtgee. was held to be entitled was the balance owing on the mtge. allowing credit for payments made by the mtgor. & for a bonus received by the mtgee., the solr. on payment of such balance to be given an assignment of the mtge., or, if the properties should be sold at the discretion of the mtgee., the latter to have judgment against the solr. for the deficiency. The claim of the mtgee. against the solr. was held not to be assignable.—LONDON LOAN & SAVINGS CO. OF CANADA *v.* BRICKENDEN, [1934] 2 W. W. R. 545 ; 3 D. L. R. 465.—**CAN.**

Part V.—Solicitor as Trustee, Receiver, or Executor.

1144. *Add. Annotation :*—**Consd.** *Re* Gertzenstein, Ltd., [1936] 3 All E. R. 341.

1146. *Add. Annotation :*—**Refd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913.

1148a. —— ——.]—In the absence of an express power in the instrument creating the trust for a solr.-trustee to charge, a solr.-trustee who employs the firm of solrs. of which he is himself a partner to act for him in the conduct of an action to administer the trust estate, is in no better position than a solr.-trustee who acts as his own solr., &, on taxation of his costs, will not be allowed profit costs, even though there be an agreement that the solr.-trustee shall have no share in profit costs.—*Re* GATES, ARNOLD *v.* GATES, [1933] Ch. 913 ; 102 L. J. Ch. 369 ; 149 L. T. 521.

Annotation :—**Apprvd.** *Re* Hill, Claremont *v.* Hill, [1934] Ch. 623.

1148b. —— ——.]—A solr. who was a trustee under an instrument which gave no power to a solr.-trustee to charge profit costs for work done in connection with the trust. took out an originating summons for the determination of certain questions in connection with the trust. The solr.-trustee was a partner in a firm of solrs., & had before this transaction arranged with his partners that he should do only a limited amount of work in connection with the partnership & should receive a salary of £600 a year out of the profits of the firm, that amount being only a small portion of their profits. The solr.-trustee employed his firm to do the legal work in connection with the trust, the work being done by a partner who was not a trustee. In taxing the solr.-trustee's bill of costs the taxing master disallowed all his profit costs & allowed only out-of-pocket disbursements, on the ground that he had employed his firm to do the work : —*Held :* inasmuch as the solr.-trustee derived some benefit from the profits of the partnership, although limited in amount, he was not entitled to employ the firm in which he was a partner to do work in connection with the trust for which profit costs could be charged. —*Re* HILL, CLAREMONT *v.* HILL, [1934] Ch. 623 ; 103 L. J. Ch. 289 ; 151 L. T. 416 ; 50 T. L. R. 487 ; 78 Sol. Jo. 446, C. A.

1151. *Add. Annotations :*—**Consd.** *Re* Gates, Arnold *v.* Gates, [1933] Ch. 913 ; *Re* Hill's Trusts, Claremont *v.* Hill, [1934] Ch. 623.

Part VI.—Remuneration of Solicitors—Costs.

1203. After this case add :—

Tender of debt without costs—Before action brought.]—*See* BANKERS, Vol. III., p. 200, No. 453 ; CONTRACT, Vol. XII., p. 327, Nos. 2720, 2721.

1207. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Debtor, [1929] 2 Ch. 146.

1228a. —— **Agreement to give security.**]—By Attorneys' & Solrs.' Act, 1870 (c. 28), s. 4, amended by Solrs. Remuneration Act, 1881 (c. 44), ss. 2, 8, a solr. may make an agreement in writing with his client respecting the amount & manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of contentious business done or to be done by the solr. either by a gross sum or by commission or percentage, or by salary or otherwise, & either at the same or at a greater or at a less rate as or than the rate at which

PART V. SECT. 1, SUB-SECT. 2.—A.

sp. *Under Trustee Act, R. S. S.*, 1930.]—In sect. 76 of Trustee Act, R.S.S., 1930, which provides that the allowance to a solicitor-trustee is to be increased by such amount as may be deemed fair & reasonable in respect to professional services rendered by him to the estate, the allowance referred to is the allowance to a trustee for his care, etc., & time, which is provided for by sects. 72-74 of the Act.—*Re* MACDONALD ESTATE, [1933] 1 W. W. R. 421 ; 41 Man. L. R. 417.—**CAN.**

PART VI. SECT. 1.

e i. ——.]—Where there is no tariff of costs which can be applied to charges for business done by a solr., & there is no specific contract between the solr. & his client, the general custom & practice of solrs. is to be the guide, if such custom or practice exists ; if there is no custom, the value of the services rendered is to be estimated on a *quantum meruit*.—*Re* ROYAL BANK OF CANADA *v.* MARS (No. 3), *Re* MCLEAN & COOK, [1931] 1 W. W. R. 138 ; 25 S. L. R. 225.—**CAN.**

—.]—MCLEAN *v.* COOK, [1931] 4 D. L. R. 904.—**CAN.**

h i. *Right to charge commission—Validity of Order.*]—Ord. 65, r. 29, of the Supreme Court Rules, which provides that, " In the absence of special agreement a solr. shall be entitled to charge his client a commission in lieu of costs on the collection of accounts or claims according to the following scale . . . " :—*Held :* valid & given effect to in the present action.—CORNWALL & ARCHIBALD *v.* DOYLE CONTRACTING CO., LTD., [1932] 1 W. W. R. 8 ; 45 B. C. R. 81.—**CAN.**

r i. —— —— ——.]—Where a collusive settlement between the parties to an action has the effect of depriving the solr. of one of them of his lien for costs, the opposite party will be made to pay them. The intent to defraud the solr. may be inferred from the actions of the parties.—OBIBER *v.* BIFROST RURAL MUNICIPALITY & COLEMAN (No. 2), [1931] 1 W. W. R. 359 ; 2 D. L. R. 476 ; 39 Man. L. R. 357.—**CAN.**

r ii. —— —— ——.]—The rule that a collusive settlement between the parties to an action will not be permitted to deprive a solr. of his lien for costs, is applicable to the case where the action was one for damages which had not ripened into judgment.—PONSER *v.* A. R. MCDIARMID CO., LTD., & FOSTER & MCQUARRIE, [1931] 1 W. W. R. 362 ; 2 D. L. R. 598 ; 39 Man. L. R. 360.—**CAN.**

ff i. —— *No contract to do work at sum named.*]—The solrs. rendered to a client a bill of costs amounting to $750 for services in drawing a will for the client. Upon taxation the taxing officer allowed the amount charged :—*Held :* there was no agreement as to the amount & no obligations upon the solrs. to state to the client during the course of preparation that their original rough estimate of the probable amount of their bill, before they had entered upon the work, which proved to take ninety hours of the time of one of the solrs. in consultations, drafting, revising, redrafting, etc., was inadequate ; & the amount of the bill was not excessive.—*Re* SOLICITORS, [1931] 1 D. L. R. 819 ; 66 O. L. R. 443.—**CAN.**

si. *Right of assignee to issue execution.*]—A firm of solrs. with a certificate of taxation of a bill of costs against applt. herein made, for valuable consideration, an absolute assignment of the costs to resp. herein. Resp. then obtained an order from a judge, giving him liberty to issue execution against applt. upon the certificate. On appeal :—*Held :* the appeal should be dismissed.—*Re* TAJA SINGH ; NUTTA SINGH, [1932] 2 W. W. R. 671 ; 4 D. L. R. 303 ; 45 B. C. R. 547.—**CAN.**

he would otherwise be entitled to be remunerated: Provided that the amount payable under the agreement shall not be received by the solr. until the agreement has been examined & allowed by a Taxing Master:—*Held:* this section does not apply to an agreement by a client to give his solr. security, whether by way of a charge upon or an assignment of part of a fund to be received by the solr. for the amount of costs to which upon taxation the solr. may be found to be entitled; but an agreement to that effect may be made orally & without any writing between solr. & client.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340; 101 L. J. K. B. 447; 147 L. T. 49, C. A.

1275. *Add. Annotation:*—**Refd.** Ward *v.* British Oak Insurance Co., [1931] 2 K. B. 637.

1374. *Add. Annotation:*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

1391a. To what court appeal lies—Divisional Court—Not "matter of practice & procedure" within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 31 (3).]—Resps., a firm of solrs., acted for applt. in defending him in criminal proceedings before magistrates & at the assizes. Applt. was found guilty & sentenced to imprisonment. In respect of those proceedings resps. delivered their bill of costs in summary form to applt.'s attorney, who paid it. A few years later applt. took out an originating summons under Solicitors Act, 1843 (c. 73), asking for delivery of a detailed bill of costs. The master made an order for its delivery. The judge at chambers set aside the master's order, but gave leave to appeal:—*Held:* the appeal did not relate to a matter of practice & procedure within above sub-sect., & therefore that the appeal lay not to the Ct. of Appeal but to the Div. Ct.—*Re* WITHERS & Co., [1930] 2 K. B. 192; 99 L. J. K. B. 565; 143 L. T. 347; 46 T. L. R. 540; 74 Sol. Jo. 464, C. A.

1483. *Add. Annotation:*—*As to* (1) **Consd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

1524. *Add. Annotation:*—**Refd.** Jonesco *v.* Evening Standard Co., *Re* Undertaking by Solicitors, [1932] 2 K. B. 340.

1530. *Add. Annotation:*—**Folld.** Bury (H. E. & W.) *v.* Greenwood, [1934] W. N. 119.

1531. *Add. Annotaion:*—**Refd.** *Re* C. B. & M. (Tailors), Ltd., [1932] 1 Ch. 17.

1531a. —— ——.]—BURY *v.* GREENWOOD, [1934] W. N. 119; 177 L. T. Jo. 399.

1545. *Add. Annotation:*—**Refd.** *Re* **Louch,** [1930] 2 Ch. 63.

1558. *Add. Annotations:*—**Consd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341. **Folld.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

1559. *Add. Annotation:*—**Consd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1563a. Effect of inherent jurisdiction of court.]—LIGHT & FULTON *v.* MCVITTIE (1935), 79 Sol. Jo. 341.

1563b. Taxation under Solicitors Act, 1932 (c. 37), ss. 65 (1), 81 (1)—Counsel's fees—Effect of R. S. C., Ord. 65, r. 27, reg. 29 (a).]—(1) For the purpose of taxation of a solr.'s bill under Solicitors Act, 1932 (c. 37), the phrase "costs due to a solr." in sect. 65 (1), must be deemed, having regard to the definition of "costs" in sect. 81, to include "disbursements" due from the client to the solr., which means actual payments before delivery of the bill, & any sums claimed in the bill as disbursements, *e.g.*, fees to counsel, which have not been paid before its delivery, must be disallowed. Solrs. Act, 1932 (c. 37), has not made any alteration in the law in this respect & R. S. C., Ord. 65, r. 27, reg. 29 (*a*), is still in force.

(2) Where items in a solr.'s bill are struck

PART VI. SECT. 3, SUB-SECT. 3.—A.

sb. *Absence of agreement as to scale of commission—Effect.*]—Where a solr. & client agree that the former's remuneration for collecting a claim shall be a commission, but they decide to leave the matter of the scale of the commission in abeyance, the solr., if he intends to exact payment according to the scale provided by Ord. 65, r. 27, reg. 29, should draw the client's attention to said rule & give the client to understand that, in the event of the scale of commission, not being otherwise agreed on, he will apply the rule in demanding payment. The failure to so inform the client was held to be good cause in the present case for depriving the solrs. of their costs.—CAMERON & CAMERON *v.* BOULTON, [1930] 3 W. W. R. 61; 4 D. L. R. 1021; 43 B. C. R. 39.—**CAN.**

sc. *"Fair & reasonable"—What is.*]—In deciding whether a contract between a solr. & client is "fair & reasonable to the client," within sect. 73, Law Society Act, R. S. M., 1913, the word "fair" is to be taken as relating to the means by which the contract was brought about, & "reasonable" as relating to the quantum of remuneration therefrom resulting to the solr. In deciding whether the amount is reasonable the actual work which the solr. was called on to do is a factor but not the sole factor to be considered; & where the contract is one on the contingency & percentage basis, the mere fact that under the percentage agreed on the amount payable to the solr. in the event of success has turned out to be in excess of the costs taxable on the ordinary solr. & client basis is not ground for holding the contract unreasonable. The reasonableness of such excess must depend on the reality & extent of the risk the solr. undertook & the amount of work anticipated at the time he assumed his obligation.—GALBRAITH *v.* MURRAY, ROBERTSON & THOMAS, [1930] 3 W. W. R. 120; 4 D. L. R. 1005.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B. (b).

sf. *Agreement as to counsel's fees—Incomplete statement by solicitor.*]—An agreement was made between a solr. & his client regarding the amount of fees to be paid to senior & junior counsel for the conduct of the hearing of an action. The client was adequately warned that the senior's fees were special & such as would not be recoverable from the other party on a party & party taxation. The client was informed that the junior counsel's fees were ordinarily two-thirds of senior counsel fees, & agreed in writing to pay fees amounting to about half those of senior counsel. These fees, as agreed, were reduced by the taxing master:—*Held:* although the statement as to the proportion of junior counsel's fees to senior counsel's fees was not inaccurate, it was in the circumstances of the case incomplete, & might be misleading &, accordingly, that the client was not bound thereby.—SYMON *v.* HAY, [1934] S. A. S. R. 66.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 5.

sk. *Special agreement to look to third party for payment.*]—Where a retainer or employment of a solr. or counsel is proved, coupled with services rendered, the burden of proof that some person other than the client was to pay for the services rests upon the party asserting that such mode of payment was agreed to.—MCGEER, MCGEER & WILSON *v.* FLETCHER, MCLELAN *v.* FLETCHER (B. C.), [1929] 4 D. L. R. 348; 2 W. W. R. 500.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.

so. *Application of English law in India.*]—The law & practice in England relating to solrs. & to taxation of bills of costs applies in the Bombay Presidency, except where that law & practice is inconsistent with the rules & practice of the ct. The English Solrs. Act does not apply to attorneys practising in Bombay. There is no rule which makes it obligatory on an attorney to deliver a bill to the client, though in practice the Taxing Master will see that a client has a proper opportunity of considering the bill before taxation. The English rule that a solr. must be bound by a bill once delivered to a client does not apply to Bombay. He is at liberty to substitute another & a revised bill for taxation.—REGE *v.* VASANTRAS GANPATRAS (1935), I. L. R. 59 Bom. 443.—**IND.**

out of it on taxation at the instance of the client, because the business to which the items relate was never included in any retainer given to the solr. by the client, those items cannot be taken into consideration for the purpose of estimating whether one-sixth of the amount of the bill has been taxed off under sect. 66 (5) of 1932 Act.—*Re* TAXATION OF COSTS, *Re* SOLICITOR, [1936] 1 K. B. 523; [1936] 1 All E. R. 491; 105 L. J. K. B. 376; 154 L. T. 621; 52 T. L. R. 306; 80 Sol. Jo. 224, C. A.

1572. *Add. Annotation:—Generally,* **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1582a. —— —— **Omission of permitted increase from bill.**]—A solr. who has omitted the 33⅓ per cent. increase allowed by R. S. C., Ord. 55, r. 10B, from his bill of costs can claim to have it allowed after his bill of costs has been taxed.—*Re* LOUCH, [1930] 2 Ch. 63; 99 L. J. Ch. 421; 143 L. T. 469; 74 Sol. Jo. 387.

1594. *Add. Annotation:—As to* (1) **Refd.** *Re* Louch, [1930] 2 Ch. 63.

1596. *Add. Annotation:*—**Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1609. *Add. Annotation:*—**Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1655. *Add. Annotation:—As to* (2) **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1710. *Add. Annotation:—As to* (1) **Refd.** Light & Fulton *v.* McVittie (1935), 79 Sol. Jo. 341.

1715a. Patent agent—Whether exclusive right to taxation in patent action.]—*Re* SOLICITORS. *Re* TAXATION OF COSTS (1935), 79 Sol. Jo. 49. D. C.

1823a. —— —— ——.]—*Re* FENTON, [1894] W. N. 128.

1849a. Recovery of damages by infant or person of unsound mind.]—The R. S. C. require that in all actions for damages brought on behalf of an infant or person of unsound mind, the costs of pltf., both as between party & party & as between solr. & client, shall be taxed & certified by the Taxing Master, & no costs other than those so certified are payable to the solr. for pltf. These provisions apply equally whether damages are recovered by a verdict & judgment after trial or by an order staying proceedings upon the terms of a settlement out of ct. In either case there is a direction by the ct. that the costs of pltf., both as between party & party & as between solr. & client, are to be taxed, & it is the duty of the solrs. on both sides to see that the direction is complied with. The Rules & the direction are made for the protection of infants & persons of unsound mind, & are imperative. It is important that it should be known that if they are deliberately disobeyed, the solrs. responsible are liable to be dealt with for contempt of ct.—PRACTICE NOTE, [1933] W. N. 190.

1863. *Add. Annotation:*—**Refd.** Warmingtons *v.* McMurray, [1937] 1 All E. R. 562.

1908. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

1909. *Add. Annotation:*—**Refd.** Pratt *v.* London Passenger Transport Board, Green *v.* Vandekar, [1937] 1 All E. R. 473.

1955. *Add. Annotation:*—**Refd.** *Re* Potts, *Ex p.* Etablissements Callot & De Schrijver *v.* Leonard Tubbs & Co. & Official Receiver, [1934] Ch. 356.

2016. *Add. Annotation:*—**Refd.** *Re* Solicitors (1934), 50 T. L. R. 327.

PART VI. SECT. 4, SUB-SECT. 6.

1582 i. *Whether solicitor bound by bill as delivered—Bonâ fide amendments—Before order for taxation obtained or taxation threatened by client.*]—In an action by a solr. to recover fees & disbursements:—*Held:* he was not bound by a bill previously rendered for a lesser amount than that sued for, there having been no express or implied acceptance of said account by deft. & no taxation or steps taken towards taxation.—MAULSON *v.* SHKLOV, [1935] 1 W. W. R. 568; 2 D. L. R. 476; 43 Man. L. R. 67.—CAN.

PART VI. SECT. 5, SUB-SECT. 1.—B.

se. *Arbitrators—Public Works Act, R. S. B. C.* 1924, *s.* 24.]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary. —*Re* GALT BROS. & BURNABY ARBITRATION, [1928] 1. W. W. R. 798: 39 B. C. R. 470.—CAN.

PART VI. SECT. 5, SUB-SECT. 1.—D. (b).

sf. *Whether solicitor entitled—On withdrawal of general retainer.*]—A solr. was retained by C. to conduct proceedings in an action against S. The retainer was not disputed. The solr. conducted the action until the judgment of the trial judge was given. C. decided to appeal & commenced proceedings for an appeal. From that time he took over from the solr. the conduct of & control of the proceedings & of the appeal, & thereafter the solr. merely performed such services as C. from time to time required of him. The solr. then delivered his bill of costs & in due time obtained o. *præcipe* an order for its taxation pursuant to Solicitors Act, s. 33 (c):—*Held:* C., by taking over the conduct & control of the proceedings put an end to the general retainer, as he had a right to do, & the solr. was thereupon entitled to claim payment of his costs, &, in the absence of "special circumstances," to have a *præcipe* order for taxation of his bill.—*Re* SAVIGNAC, [1928] 4 D. L. R. 433; 62 O. L. R. 589.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—B. (a).

sg. *Change of solicitor.*]—Where a solr.'s retainer to defend an action was terminated by the client by a change of solrs. before the trial & there had not been prior to the change such a break in the proceedings as to entitle the solr. to demand payment of his bill without terminating the retainer, held that the month within which, under sect. 56 of Legal Profession Act, bills of costs may be referred to taxation did not begin to run until the change of solrs.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—B. (c).

1853 i. *Right to order.*]—Although sect. 80 of Legal Professions Act, R.S.B.C., 1924, does not say that the person chargeable with a solr.'s bill may apply, after the expiration of one month, for a reference, yet from a reading thereof with sect. 81 it would appear that he has that right. An order under sect. 80 is not, however, an order of course.—*Re* MILLER, [1935] 3 W. W. R. 58; 49 B. C. R. 403.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—C. (c) i.

1996 ii. ——.]—A solr.'s bill of costs was adjusted & settled & paid in the life-time of the client, on Nov. 20, 1928. On Aug. 21, 1930, the widow & executrix of the client launched an application for taxation of the bill:—*Held:* the application, not being made within a year from the date of payment, as required by Solrs. Act, could not succeed.—*Re* SOLICITOR, [1931] 1 D. L. R. 315; 66 O. L. R. 201.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—D. (f).

2125 i. *Whether special circumstance.*] —The relationship of client & solr. is not of itself a "special circumstance," within Legal Profession Act, s. 58, for allowing the taxation of a bill of costs after the expiration of said month; but it is a circumstance that should always be considered on an application to allow such taxation.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—CAN.

2145. *Add. Annotation :*—**Consd.** *Re* Solicitors (1934), 50 T. L. R. 327.

2149. *Add. Annotation :*—**Consd.** *Re* Solicitors (1934), 50 T. L. R. 327.

2151a. —— ——.]—A solrs.' bill of costs having been paid with an express reservation of the right to ask for taxation :—*Held :* in the circumstances of the case, such a reservation amounted to a " special circumstance " within proviso to Solrs. Act, 1932 (c. 37), s. 66 (2), so as to justify the ct., in the exercise of its discretion, in making an order for taxation.—*Re* SOLICITORS (1934), 50 T. L. R. 327.

2301. *Add. Annotation :*—**Refd.** The Edison (No. 2), [1934] P. 115.

2313. The case is the same as that following, No. 2314.

2390. *Add. Annotations :*—**Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717.

2423. *Add. Annotations :*—**Consd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783. **Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138.

2430. *Add. Annotations :*—**Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138 ; British United Shoe Manufacturing Co. *v.* Holdfast Boots, Ltd., [1936] 3 All E. R. 717 ; Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

2466. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2467a. —— ——.]—*Re* TAXATION OF COSTS, *Re* SOLICITOR, No. 1563b, *ante.*

2468. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2498. *Add. Annotation :*—**Consd.** *Re* Taxation of Costs, *Re* Solicitor, [1936] 1 K. B. 523.

2647. *Add. Annotation :*—**Refd.** Davis *v.* Symons, [1934] Ch. 442.

Part VII.—Amount of Costs Recoverable.

2803. *Add. Annotation :*—*Generally,* **Refd.** Pelster *v.* Pelster & Samuel, [1936] 3 All E. R. 783.

2807a. Junior counsel.]—Pltf.'s solr. employed a Queen's Counsel & a junior to oppose a motion for further time to answer. The ct. held that he was justified in so doing ; & ordered the taxing master, who had disallowed the fees of the junior counsel, to review his taxation.—COOKE *v.* TURNER (1844), 12 Sim. 649 ; 59 E. R. 1282.

2813a. Counsel attending judge's chambers.]—The Supreme Ct. Rules, Special Allowances, r. 14, that " as to counsel attending at judge's chambers no costs thereof shall in any case be allowed unless the judge certifies it to be a proper case for counsel to attend " applies to taxation of costs between solr. & client as well as between party & party.—*Re* CHAPMAN (1882), 10 Q. B. D. 54 ; 52 L. J. Q. B. 75 ; 47 L. T. 426 ; 31 W. R. 266, C. A.

2902. *Add. Annotation :*—**Consd.** Jackson *v.* Jackson & Barwell, [1936] 2 All E. R. 1588.

2905. *Add. Annotation :*—**Refd.** Jackson *v.* Jackson & Barwell, [1936] 2 All E. R. 1588.

PART VI. SECT. 5, SUB-SECT. 9.—B. (c).

sk. *Denial of retainer not disclosed.*]—The fact that the client disputes the retainer *in toto* need not be disclosed when a solr. obtains an *ex parte* order for the taxation of his costs.—*Re* BARKER & SKRINE, [1935] 1 W. W. R. 751 ; 49 B. C. R. 479.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 10.—E. (a).

sl. *To ascertain " costs in the cause."*]—MCLEAN *v.* RATEKIN, [1928] 3 W. W. R. 592.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—A.

sj. *Effect of reference by court to costs as " taxed."*]—In the reasons for judgment herein, by which deft. was declared entitled to a solr.'s lien for costs, the ct., due to a misconception, referred to the bill of costs in question as " taxed." The bill of costs was not, however, finally allowed & certified by the taxing officer until two months after the delivery of said reasons, Pltf. within 15 days after the giving of the certificate gave notice under rule 693 of an application to have the taxation reviewed by a judge in chambers :—*Held :* said judgment of the ct. having not yet been entered, use of the term " taxed " did not prevent pltf. from having the review of taxation proceeded with.—ROYAL BANK OF CANADA *v.* MARS (No. 2), [1930] 2 W. W. R. 215 ; 3 D. L. R. 530 ; 1 W. W. R. 262 ; 24 S. L. R. 340, 433.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—B.

c i. —— —— *Jurisdiction of court to extend.*]—*Re* GENT ONE, *Ex p.* PRATT (1927), 27 S. R. N. S. W. 48.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (a).

2371 v. —— ——.]— A taxing officer's ruling as to whether any particular item should be allowed or excluded ought rarely to be interfered with on appeal, if it appears he understood the governing principle.—CANADIAN EDUCATIONAL FILMS, LTD. & GOODART PICTURES INCORPORATED *v.* HORAN & NICHOLS THEATRES, LTD. (1928), 39 B. C. R. 424.—**CAN.**

2371 vi. —— ——.]— NOBLE *v.* BROMILEY, [1928] 2 D. L. R. 605 ; [1928] 1 W. W. R. 899 ; 39 B. C. R. 518.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (b) ii.

2415 ii. *Whether order made.*]—Though the ct. will be desirous of giving the greatest weight to the opinion of the taxing master, on a question of the quantum of counsel's fees, upon an appeal it is the duty of the ct. to review that opinion, & if it think that the master has clearly made a mistake to rectify the mistake, & to give such decision as to it seems just.—*Re* MELBOURNE PARKING STATION, LTD. (IN LIQUIDATION) (1929), V. L. R. 5.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 12.

2433 ii. —— *To King's Bench judge—From Surrogate Court judge.*]—*Re* MCEACHEN ESTATE (No. 2), [1933] 3 W. W. R. 626.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

sl. *Solicitor to executor—" General counsel fee."*]—The practice which has been followed in Saskatchewan of allowing the solr. for an exor. a " general counsel fee " in addition to the amount of his specific charges is without legal justification.—*Re* ROEMER ESTATE, *Re* MOTT & ROEMER, [1928] 3 D. L. R. 860 ; [1928] 2 W. W. R. 566.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 4.—B. (c).

sm. *Investigation of title—Of assignee of equity of redemption—On extension of mortgage—Whether covered by scale fee.*]—It is a question whether acts are so sufficiently connected with the extension of the mtge. as to be comprised within the scale fee for effecting such extension. The investigation of the title of the assignee of an equity of redemption is not so connected, & the costs of such investigation are not covered by the scale fee.—*Re* RUSS (1927), 28 S. R. N. S. W. 7—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

so. *Attendances before registrar to settle judgment.*]—MAIR *v.* DUNCAN LUMBER CO., LTD. (No. 2), [1928] 1 W. W. R. 431 ; 39 B. C. R. 399.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

sa. *Personal attendance abroad at taking evidence on commission.*]—In a suit for dissolution of marriage in which W. acted as solr. for the petitioner, an order was made for the issue of a commission to take evidence in Java. W. warned petitioner that the costs of his personal attendance at Java might be disallowed on taxation, but he also wrongly advised her that it was necessary that he should attend personally :—*Held :* the costs of his attendance at Java were rightly disallowed on taxation between him & his client.—*Re* WINDEYER, FAWL & CO., *Ex p.* FOLEY (1931), 31 S. R. N. S. W. 145 ; 48 N. S. W. W. N. 71.—**AUS.**

Part VIII.—Solicitor's Lien.

3028. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

3087. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3195. *Add. Annotation :*—*As to* (1) **Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3213. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

3302a. —— Successful appeal against receiving order.]—A receiving order was made in a county ct., & upon appeal the Div. Ct. in Bkpcy. rescinded the receiving order, dismissed the petition & ordered the petitioning creditors to pay the taxed costs of the appeal to the debtor or to his solr. The solr., having taxed the costs at £41 5*s.* 7*d.*, & not being paid by the petitioning creditors, issued a writ of *fi. fa.* & the Sheriff of Middlesex levied execution. The execution was paid out, but the petitioning creditors obtained a garnishee order *nisi* on a judgment of the K. B. D. in respect of moneys due to them from the debtor. The solr. for the debtor thereupon applied to the ct. for a charging order for his costs :—*Held :* the question was one of discretion, & the ct. would exercise its discretion by directing that the solr. should have a charging order on the moneys in the hands of the sheriff & the costs of this application.—*Re* DEBTOR (No. 29 OF 1931), WILD *v.* PETITIONING CREDITORS & DEBTOR (1934), 103 L. J. Ch. 303 ; 78 Sol. Jo. 430 ; [1934] B. & C. R. 54.

3307a. Administration action—Interest of next-of-kin on intestacy.]—A party to a probate action propounded several wills of the deceased, being also interested as next-of-kin in the event of the intestacy of the deceased. The ct. pronounced for an intestacy & against the wills. On the application of solrs. who had conducted the litigation for the party propounding the wills, & had since been discharged, the ct. made an order declaring them entitled to a charge for their costs upon the interest of their client in the intestacy as upon "property recovered or preserved through their instrumentality."—HYDE *v.* WHITE, WHITE *v.* HYDE, [1933] P. 105 ; 149 L. T. 96 ; 77 Sol. Jo. 251 ; *sub nom. Re* WHITE, 102 L. J. P. 71 ; 49 T. L. R. 325.

PART VIII. SECT. 2, SUB-SECT. 3.—A.

sb. *Whether extending to costs incurred by English agent.*]—The law agent of a co. who also acted as its secretary, was instructed to expose for sale a property in England belonging to the co. For this purpose he employed English solrs., who in turn employed auctioneers. The co. went into liquidation, & a petition was presented by the liquidator craving that the law agent should be ordained to deliver to him the titles of certain heritable properties belonging to the co. The law agent maintained that he had a lien over the titles for his own account as law agent (which was admitted), & also for the accounts of the English solrs. & auctioneers, for which the English solrs. had intimated that they hold him personally liable : —*Held :* the lien of a law agent did not extend to accounts incurred on behalf of his client which he had not in fact paid & for which he was not personally liable ; accordingly, the law agent's claim to a lien in respect of the accounts of the English solrs. & auctioneers fell to be dismissed, in respect that there was no averment either that he had paid the accounts or that he was liable to pay them.

Opinion that the fact that the law agent, who was acting for a disclosed client, gave the instructions to the English solrs. did not necessarily involve him in any personal liability for their account or for the account of the auctioneers employed by them.—ROBERTS *v.* SNODGRASS, [1932] S. C. (H. L.) 73.—**SCOT.**

PART VIII. SECT. 2, SUB-SECT. 3.—B.

sc. *For work done by English solicitors & auctioneers employed by solicitor.*]—The law agent of a co., who also acted as its secretary, was instructed to expose for sale a property in England belonging to the co. For this purpose he employed English solrs., who in turn employed auctioneers. The co. went into liquidation, & a petition was brought by the liquidator against the law agent for delivery of the titles of certain heritable properties belonging to the co. The law agent maintained that he had a lien over the titles for his own account as law agent, which was admitted, & also for the accounts of the English solrs. & auctioneers, for which the English solr. had intimated that they held him personally liable :—*Held :* the accounts of the English solrs. & auctioneers, having been properly incurred by the resp. in the ordinary course of law agency, were covered by his lien.—ROBERTS (H. STAVELEY) *v.* SNODGRASS, [1931] S. C. 580.—**SCOT.**

PART VIII. SECT. 2, SUB-SECT. 5.—E.

sf. *Action settled.*]—Deft. settling an action with pltf. after notification by solr. for pltf. of a claim of lien for services, is liable to the solr. for his costs on a solr. & client basis.—QUEEN'S ROYAL HOTEL, LTD. *v.* WATTS, [1937] 1 D. L. R. 74.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

3070 iii. —— ——.]—A solr. has, apart from any order of the ct., or any statute, a lien over any property recovered or preserved, or the proceeds of any judgment, obtained for his client by the solr.'s exertions. The right of the solr. is, in essence, a claim to the equitable interference of the ct. for the protection of the solr. The question of the solr.'s lien is unaffected by the Civil Procedure Code, & is still governed by the relevant principles of English law.—PREMSUKHDAS SINGHANIA *v.* N. C. BURAL & PYNE (1934), I. L. R. 61 Calc. 1005.—**IND.**

sa. *Rule in India.*]—The rights of attorneys in India in regard to lien are the same as the rights of solrs. in England under the common law, except in so far as the latter have been modified by statute.—DAMODAR DAS *v.* MORGAN & CO. (1933), I. L. R. 60 Cal. 1442.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

sd. *Sum paid into court by defendant —Defendant successful in first action— Unsuccessful in second action—Solicitor entitled to retainer for costs of first action on sum paid in.*]—RAY *v.* HOU (1928), 40 B. C. R. 438.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.—B. (a).

3142 vii. ——.]—The ct. will exercise its equitable interference on behalf of a solr. to protect him from being deprived of his costs where he has given the opposite party or the latter's solr. notice of his claim or where it is clearly made out that there has been collusion between the parties to cheat the solr. of his costs.—TERRY *v.* MACDONALD, [1935] 1 W. W. R. 504 ; 2 D. L. R. 812.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—B.

3192 iii. ——.]—Deft. was given costs against the three pltfs. One of pltfs. had recovered a judgment against deft. for a much larger sum in a previous action to which the other two pltfs. were not parties. & claimed the right to set-off deft.'s costs against that judgment. Deft. argued that the set-off would defeat the lien of his solr. The ct. allowed the set-off, & an appeal from the order was dismissed.—INLAY HARDWOOD FLOOR CO., LTD. *v.* DIERSSEN, [1928] 2 D. L. R. 560 ; [1928] 1 W. W. R. 897 ; 39 B. C. R. 514.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.—B. (a).

p i. —— *Basis of right—Salvage.*]—The principle of salvage is the key to the construction of Legal Professions Act, R. S. B. C., 1924, s. 104, which gives a solr. a charge on & a right of payment out of property "recovered or preserved" through his services. Claims for costs due solr. for defending actions brought for personal services, goods sold, & on a promissory note were held, therefore, not to come within said section ; but a claim with respect to a mechanic's lien action in which the lien was reduced was held to be within it.—MILLER *v.* WOLLASTON, [1929] 3 D. L. R. 348 ; 2 W. W. R. 136 ; 41 B. C. R. 145.—**CAN.**

p ii. ——.]—*Re* MCCORMACK & BROCKEST METAL WARES, LTD., *Re* MCMILLAN, [1936] 2 W. W. R. 509 ; 4 D. L. R. 463.—**CAN.**

3315. *Add. Annotation :—As to* (2) **Refd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

3350a. Matrimonial suit—Wife's costs unpaid—Bankruptcy of wife.]—A declaration that a solr. is entitled to a charging order for his costs under Solrs. Act, 1932 (c. 37), s. 69, is discretionary on the part of the ct. & should not be made if the solr. has stood by while the fund sought to be charged has been dealt with under circumstances which render it unjust that the interest of other parties should be postponed to the lien of the solr. Solrs. for a petitioning wife in a matrimonial suit obtained an order for the costs payable by resp. husband without obtaining payment from him. Petitioner became a bkpt. & the solrs. proved in the bkpcy. as unsecured creditors of petitioner for the amount of the costs ; the solrs. subsequently applied for a charging order on the amount of a legacy bequeathed to the husband in respect of which the Official Receiver in the bkpcy. had already obtained a garnishee order :—*Held :* the discretion of the ct. to make the charging order should not be exercised (*a*) because the admission of the proof of the solrs., as unsecured creditors was inconsistent with the security which the charging order would afford ; (*b*) because the property involved in the legacy had not been recovered by the solrs., being still in the hands of the trustees of the will by which it was bequeathed ; & (*c*) because a charging order would create a new right of creditors in the bkpcy., which did not exist at the date of the bkpcy., contrary to Bkpcy. Act, 1914 (c. 59), s. 7.—HIGGS *v.* HIGGS, [1934] P. 95 ; 103 L. J. P. 44 ; 150 L. T. 516 ; 50 T. L. R. 313 ; 78 Sol. Jo. 279.

3361. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

3366. *Add. Annotation :*—**Consd.** Higgs *v.* Higgs, [1934] P. 95.

3375. *Add. Annotation :—As to* (2) **Refd.** Millensted *v.* Grosvenor House (Park Lane), Ltd., [1937] 1 K. B. 717.

Part IX.—Solicitor's Remedies for Costs.

3440a. Refusal of client to pay counsel—Payment by solicitor—Recovery from client.]—Where a solr. on his client's instructions briefs counsel in an action & the counsel duly appears but after the trial the client refuses to pay counsel's fee, the solr. is entitled, on paying the fee himself, to recover it from the client.—MEDLICOTT *v.* EMERY (1933), 149 L. T. 303 ; 49 T. L. R. 427 ; 77 Sol. Jo. 389.

3451a. ——.]—HORNER *v.* CREW (1928), 72 Sol. Jo. 103.

3544a. —— ——.]—HAMILTON *v.* CARTER & BELL (1932), 173 L. T. Jo. 452, H. L.

Part X.—Solicitors as Officers of the High Court.

3563a. —— ——.]—It was alleged that two of the solrs. in the main action had been guilty of misconduct, & application was made to the judge at the trial to order them to pay the costs personally. The judge directed that the matter should be brought before him on a later day. It was then contended that the judge had no jurisdiction, on the ground that, before judgment had been given, both solrs. had ceased to be solrs. on the record. Objection was also taken that the judge was not entitled to hear the application because no affidavits had been filed verifying the facts on which the application was based :—*Held :* (1) the ct.'s summary jurisdiction over a solr. does not cease merely because he ceases to be on the record ; (2) the summary jurisdiction has not been impaired by the Solrs. Act, 1932 (c. 37), s. 5 ; (3) the judge had jurisdiction to deal with the application ; (4) it was a matter of discretion for the judge whether affidavits were required, & what form of procedure should have been followed.—BRENDON *v.* SPIRO, [1937] 2 All E. R. 496 ; 157 L. T. 265 ; 53 T. L. R. 667 ; 81 Sol. Jo. 396, C. A.

3655a. What must be shown.]—The ct. will not summarily order a solr. to deliver up a deed to his client unless it be clearly shown not

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PART VIII. SECT. 4, SUB-SECT. 3.

af. *Retainer.*]—The solr. was held not to be entitled to a lien with respect to a claim for a certain sum which his client had agreed to pay him, as a retainer, over & above his taxed costs.—*Re* CRUX, ENFANTE *v.* ENFANTE, [1932] 1 W. W. R. 93.—CAN.

ak. *Costs of administration of estate of deceased—As solicitor for executor—Executor debtor to estate.*]—*Re* FRASER ESTATE, [1934] 3 W. W. R. 222.—CAN.

PART VIII. SECT. 4, SUB-SECT. 4.—D.

k 1. ——.]—*Semble :* it is not incumbent upon a solr. to show that he cannot recover his costs from his client in order to entitle him to a charging order upon the judgment which is for those particular costs.—DELTA FINANCE CO., LTD. *v.* BYERS, [1932] 1 W. W. R. 827 ; 3 D. L. R. 139 ; 26 Alta. L. R. 300.—CAN.

PART VIII. SECT. 4, SUB-SECT. 6.

aq. *Protection of lien by declaratory judgment—Jurisdiction of court.*]—CASSIDY *v.* STUART, [1928] 3 D. L. R. 879 ; 62 O. L. R. 374.—CAN.

PART IX. SECT. 1, SUB-SECT. 1.

f 1. —— *Collusion by defendants to deprive solicitor of costs.*]—ENFANTE *v.* ENFANTE, [1932] 1 D. L. R. 788 ; 44 B. C. R. 472.—CAN.

PART IX. SECT. 1, SUB-SECT. 4.—A.

at. *After one month from delivery of bill—Not applicable where amount agreed on.*]—Sect. 66 of Legal Profession Act, R. S. S., 1930 (which provides that a barrister or solr. shall not commence an action for the recovery of fees until one month after a bill has been delivered to the party to be charged) does not apply to the case where the amount of the bill has been agreed upon.—MACMILLEN *v.* TAYLOR, [1932] 3 W. W. R. 264.—CAN.

PART X. SECT. 2, SUB-SECT. 4.—B. (a).

3656 l. *Delivery up ordered.*]—Notwithstanding the provisions of Legal Profession Practice Act, 1915, s. 8, the ct. still has power, in a proper case, to order a solr. to deliver up to his client or former client the latter's documents & papers which the solr. has in his possession.—*Re* LONG, [1929] V. L. R. 318 ; [1929] Argus L. R. 271.—AUS.

only that his solr. has no lien upon it, but that he is holding it for appct. alone, & as his solr.—*Ex p.* COBELDICK (1883), 12 Q. B. D. 149; 49 L. T. 741; 32 W. R. 239, C. A.

3670. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

3677a. Solicitors nominated by insurer—Conducting action for insured person.]—Where an action for damages for negligence arising out of an accident is conducted on deft.'s behalf by his insurance co., & solrs. are nominated by the co. under a clause in the policy to that effect, the co. only act as deft.'s agents, & the solrs. are throughout solrs. for deft. The solrs. are therefore bound, if requested so to do, to produce to their client all documents relating to the action in their possession, custody or control, either during the course of the action or after its conclusion, & the insurance co. has no right to object to the production of the documents.

The ct. will, if necessary, make an order for production of the documents.—*Re* CROCKER, *Re* TAXATION OF COSTS, [1936] Ch. 696; [1936] 2 All E. R. 899; 105 L. J. Ch. 276: 155 L. T. 344; 52 T. L. R. 565; 80 Sol. Jo. 486.

Annotation :—**Refd.** Groom *v.* Crocker, [1937] 3 All E. R. 844.

3684. *Add. Annotation :*—**Refd. Clayton v. Clayton,** [1930] 2 Ch. 12.

3868. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

3874. *Add. Annotations :*—**Apld.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120. **Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496. **Refd.** Watts *v.* Official Solicitor, [1936] 1 All E. R. 249.

3970. *Add. Annotation :*—**Folld.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

3970a. ——.]—COOPER *v.* DUMMETT (1930), 70 L. Jo. 394; 170 L. T. Jo. 468; [1930] W. N. 248.

4056a. Solicitor not holding certificate.]—*Re* REES, [1933] W. N. 194; 176 L. T. Jo. 88.

4082. *Add. Annotation :*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

Part XI.—Solicitors and Third Persons.

4177a. ——.]—In trespass by A. against B. for false imprisonment, B. pleaded that J. recovered a judgment against A. in the sheriffs' ct., London, that A. was summoned, & appeared before the judge of that ct., who ordered the sum recovered to be paid by instalments, that the first instalment was demanded & not paid; that the judge duly, by warrant under his hand & seal according to 8 & 9 Vict. c. 127, ordered the officer of the ct. to take A., & convey him to prison for forty days; & that B. as the attorney of J. delivered the warrant to the officer, who took A. Replication, that, by this order, it was not directed that A. should be committed, *modo et forma :—Held :* deft., having acknowledged actual participation in the act of trespass, by pleading in confession & avoidance, could not protect himself, upon this issue, by showing that he had acted merely as the attorney of J.—KINNING *v.* BUCHANAN (1849), 8 C. B. 271; 7 Dow. & L. 169; 18 L. J. C. P. 332; 13 L. T. O. S. 546; 13 Jur. 812; 137 E. R. 513; *subsequent proceedings* (1850), 15 L. T. O. S. 305.

Annotation :—**Apld.** Abley *v.* Dael (1850), 10 C. B. 62.

Part XII.—Partnership between Solicitors.

4204. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4278. *Add. Annotation :*—**Apld.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

Part XIII.—London and other Legal Agents.

4354. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4408a. Payment of account by solicitor—Sum including counsel's fees—Fees unpaid by agent—Death of agent insolvent—Rights of solicitor.]—County solrs. paid their London agent a sum of £671 19*s.* 1*d.*, the balance of an account due to him. The account included a sum of £399 19*s.* in respect of counsels' fees.

PART X. SECT. 4, SUB-SECT. 3.—B.

3873 ii. ——.]—A solr. purporting to act for a non-existing party is personally liable to pay the costs of the other party to the suit.—DHANRAJGIRJI *v.* PAYNE & Co. (1933), I. L. R. 58 Bom. 1.—**IND.**

PART XI. SECT. 2, SUB-SECT. 3.—C.

4174 ii. ——.]—Commitment after a conviction subsequently quashed for error is illegal, but a solr. who drafts the warrant is not liable for false arrest.—ROCHE *v.* GRANT, [1935] 2 D. L. R. 553; 8 M. P. R. 461; 63 Can. C. C. 315.—**CAN.**

PART XII. SECT. 1.

sx. *Sale of partnership—Custody of documents.*]—Tenders were called for the sale of partnership assets including goodwill. No offer was received for the goodwill other than an offer of £15 by S., which was not accepted; but a solr. of standing intimated his willingness to make an offer therefor if the purchaser were entitled to the custody of deeds & documents (subject to the right of the clients) & to the possession of the books of account & record, papers, accounts, draft., copies of opinions, etc. The circumstances indicated that the goodwill was of little value. S. & S. moved for an order dissolving the injunction on the ground that no sale of the goodwill had taken place :—*Held :* (1) it is illegal to sell the right to the custody of documents of clients held by a firm of solrs.; (2) under the circumstances set out in the judgment, S. & S. were not entitled to use G.'s name.—GRAY *v.* SLADDEN & STEWART, [1935] N. Z. L. R. 35.—**N.Z.**

The London agent, who died insolvent, did not in fact pay the fees. The country solrs. issued a summons in the administration action relating to the estate of deceased, by which they claimed a declaration that they were entitled to recover the sum of £399 19*s.* from the estate, or in the alternative a declaration that they were entitled to claim against the estate as creditors:—*Held:* the country solrs. could not treat that sum as received by them on a trust to pay counsel, & therefore were not entitled to recover it in full from the estate of the deceased, but they were entitled to prove as creditors for it, less an admitted set-off, as money had & received.—*Re* SANDIFORD, ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1934] Ch. 707; 103 L. J. Ch. 301; 151 L. T. 559.

Part XIV.—Discipline and Removal from Roll.

4420. *Add. Annotation:*—*As to* (1) **Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4437a. Misconduct while practising abroad—Investigation by coroner & attorney of the court.]—*Re* SOLICITOR (1928), 72 Sol. Jo. 570, D. C.

4515. *Add. Annotation:*—**Refd.** Grahame *v.* A.-G. of Fiji, [1936] 2 All E. R. 992.

4430. *Add. Annotation:*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4519. *Add. Annotation:*—**Consd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

4567a. —— Borrowing trust funds.]—Applt. was suspended from practice as a barrister & solr. of the Supreme Ct. of Fiji for professional misconduct. The case against applt. was twofold:—

(1) On Aug. 25, 1923, the trustees of the estate of one C., deceased, leased a portion of the trust estate to one H. for a period of ten years from May 1, 1923, with an option to purchase the freehold for £4,000. Applt. was H.'s solr. at the date of the lease & for some time prior to it. On Jan. 1, 1926, applt. became a partner with another solr., E., who acted for the C. trustees, applt. continuing to act for H., but when either was absent from Fiji the partner remaining attended to the affairs of all the firm's clients. The property leased to H. improved considerably in value, & in 1932 H. consulted applt. about the exercise of the option. On Nov. 2, 1932, H. exercised the option by a written notice to E. On Nov. 4, 1932, E. left Fiji & did not return till Dec. 23, 1932. The terms of the purchase were that of the purchase price £4,000, £1,350 were to be paid in cash, & the balance was to be secured by a mtge. at 6½ per cent. H., being unable to provide the necessary funds, agreed to sell the property to applt. on Nov. 8, 1932, in the terms of the sale to him by the C. trustees, & applt. agreed to employ H. as his commission agent for the sub-division & sale thereof. Applt., who had advanced moneys to H. on previous occasions, disclosed to E. that he was going to finance H. to the extent of £1,350, but he did not disclose to E., the extent to which he was interested in the transaction. On Mar. 15, 1933, the estate was conveeyed to H. by the C. trustees & H. executed the mtge. for the balance. The sum of £1,350 was paid by a cheque of applt. on his own account:—*Held:* the intention to exercise the option originated with H. & he solicited the assistance of applt. to enable him to carry out his intention. In those circumstances, though it is most desirable that a solr. acting for a client in any transaction should not have a personal interest in that transaction without making full disclosure, there was no duty to the C. trustees on the part of applt., since he had not instigated H. to exercise the option, to abstain from assisting his client H. to complete the purchase.

(2) The Public Trustee, as custodian trustee of the estate of one, V., appointed applt. managing trustee of that estate on Dec. 22, 1931. On Sept. 6, 1933, applt., as solr. for H., had sent a written notice to E. that the amount outstanding on the mtge. by H. to the C. trustees would be paid off on Dec. 15, 1933, & on that day applt. advanced to H. the amount necessary to obtain the transfer of the mtge., using the funds of the V. estate to repay himself the amount advanced. It was established that when applt. gave notice on Sept. 6, 1933, he intended so to use the V. trust funds, & it was admitted that applt. did not at any time disclose to the Public Trustee his interest in the transaction. On Dec. 18, 1933, the mtge. was transferred to applt. as managing trustee for the V. estate, the interest being 6½ per cent. *per annum*, the mtgor. to give 3 months prior notice in writing to repay the principal or any part of it. On Jan. 8, 1934, as managing trustee of the V. estate, applt. made an agreement with H. altering the terms of the mtge., agreeing that the beneficiaries for whom he was trustee should be paid only 5½ per cent. interest, & that the mtgor. could pay off at any time without prior notice to the mtgee.:—*Held:* in using the V. funds applt. was in fact lending trust money to himself & thereby committed a serious breach of trust. This in itself was not necessarily sufficient to constitute professional miscon-

PART XIV. SECT. 1, SUB-SECT. 5.

sl. *Dispute as to terms of contract—Powers of Law Society.*]—It is not the proper function of the Benchers of the Law Society to assume the jurisdiction of the cts. in determining questions of contract where a solr. is interested as a party. When on the hearing of a complaint against a solr. for not paying over moneys alleged to belong to a client, the discipline committee becomes aware that a question of the terms of a contract is involved, as to which there is a dispute of fact, its proper course is to direct the complainant to take such action in the cts. as he may be advised.—*Re* A SOLICITOR, [1932] 2 W. W. R. 122.—CAN.

PART XIV. SECT. 2, SUB-SECT. 2.—A.

sm. *Gross negligence.*]—Negligence, even though gross, on the part of a solr. in conducting an action does not of itself amount to "professional misconduct or conduct unbecoming a barrister or solr." within sect. 46 of Legal Profession Act, R. S. S., 1930.—

duct, but in agreeing to the alteration of the terms of the mtge., applt. was considering his own interests in preference to, & to the detriment of, the interests of the beneficiaries & was guilty of professional misconduct.—GRAHAME *v.* A.-G. OF FIJI, [1936] 2 All E. R. 992, P. C.

4636a. Application to court—Necessity for appearance by counsel.]—An application for a rule requiring an attorney to answer the matters of an affidavit must be made by a gentleman at the bar.—*Ex p.* PITT (1834), 5 B. & Ad. 1077; 2 Dowl. 439; 110 E. R. 1091; *sub nom. Re* ——, 3 Nev. & M. K. B. 566.

4636b. —— ——.]—Solrs. Act, 1888 (c. 65), s. 13, by which an application to strike the name of a solr. off the rolls, or to require him to answer allegations contained in an affidavit, is to be heard by a committee of the Incorporated Law Society, who are to embody their findings in the form of a report to the High Ct. of Justice, provides that any person, who but for the Act would have been entitled to apply to the ct. to strike a solr. off the rolls, or to require him to answer allegations contained in an affidavit, shall still be entitled so to apply, & "shall be entitled to be heard, if the society brings the report of the committee before the ct." :—*Held:* such an appct. could not be heard in person, but must appear by counsel.—*Re* A SOLICITOR, [1903] 2 K. B. 205; 72 L. J. K. B. 643; 89 L. T. 118; 51 W. R. 561; 19 T. L. R. 553; 47 Sol. Jo. 603, C. A.

4651a. Right of applicant to appear in person.]—*Re* TWO SOLICITORS, [1937] 4 All E. R. 451; 54 T. L. R. 161, C. A.

4657a. —— **From "findings"—No order made.**]—A complaint was made on behalf of the Law Society to the disciplinary committee appointed under Solrs. Act, 1932 (c. 37), s. 4, asking that a solr. might be required to answer allegations contained in an affidavit. After hearing evidence the committee promulgated their "findings & order," setting out their findings of fact & ending with the words "while not finding any professional misconduct the committee make no order as to costs." The complainant, on behalf of the Law Society, appealed:—*Held:* on a preliminary objection by resp., no appeal lay except from an "order" of the committee. There was no appeal from the "findings" with which the order was required to be prefaced, & the committee had made no order. But even if the finding that there was no professional misconduct did amount (as the ct. held that it did not) to an order dismissing the complaint, the words of Solrs. Act, 1932 (c. 37), s. 8, giving a right of appeal to appct. were not so definite as to override the long-established principle that there could be no appeal against an acquittal. The right contemplated by the sect. must be limited to cases where an order, which appct. deemed inadequate, had been made against the solr.—*Re* A SOLICITOR, [1934] 2 K. B. 463; 152 L. T. 22; 50 T. L. R. 561; 78 Sol. Jo. 587; *sub nom. Re* A SOLICITOR, *Ex p.* LAW SOCIETY, 103 L. J. K. B. 719, D. C.

4657b. —— **From order amounting to acquittal.**]—*Re* A SOLICITOR, No. 4657a, *ante*.

4660a. Extension of time to appeal—Application under R. S. C., Ord. 59, r. 16—When granted.]—*Re* A SOLICITOR (1929), 73 Sol. Jo. 191, D. C.

Re SOLICITOR, [1935] 3 W. W. R. 428; 5 F. L. J. (Can.) 229; [1936] 1 D. L. R. 368.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 5.

sn. *Providing sham bail.*]—B., who was in custody upon a criminal charge, retained H. as his solr. Bail was fixed in one surety at fifty pounds. H. obtained fifty pounds from B., attended at the Central Police Ct. with one P., & paid in that amount in P.'s name. P. then went surety for B.:—*Held:* H. had been a party to providing sham bail, & he should be suspended from practice for a period of six months.—*Re* SOLICITOR, *Ex p.* INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES (1935), 52 N. S. W. W. N. 182.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 8.

so. *Assisting director to obtain undue preference.*]—A practitioner, while acting as a solr., was knowingly party to a scheme whereby L., a director, who was an unsecured creditor of a co., obtained an undue preference over the assets of the co. The scheme was carried through by B., a party to the scheme, purporting to lend money to the co. & securing a debenture to himself for the loan. The "loan" was arranged by L., the director, obtaining from the co.'s bank, a bank cheque drawn on the co.'s account, which cheque was paid to the credit of B.'s account at another Bank. The amount of the cheque thus paid in, except a negligible sum, was immediately withdrawn by B. by cheque, & this cheque was paid to the credit of the co.'s account. A document purporting to be a transfer of the debenture from B. to L. was prepared in anticipation of the debenture being given, which furnished evidence that the practitioner knew that the money lent to the co. was not B.'s but L.'s money. The co. went into liquidation within six months of the giving of this debenture. The practitioner did not disclose to the liquidators the circumstances under which the debenture had been given:—*Held:* guilty of unprofessional conduct.—*Re* PRACTITIONER OF THE SUPREME COURT, [1930] S. A. S. R. 142.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 9.

sr. *Issuing valueless cheques.*]—Where a practitioner had drawn & passed to persons not clients of his several valueless cheques without any reasonable expectation that they would be met on presentation, & had not paid the amounts for which they were drawn:—*Held:* he had been guilty of unprofessional conduct, & should be struck off the rolls.—*Re* R. (No. 2), [1927] S. A. S. R. 448.—**AUS.**

st. *Failing to have trust account audited.*]—M., a solr., was convicted & fined for failing to have his trust account audited as required by the regulations under Law Practitioners Amendment Act, 1913. A subsequent audit proved that the account was in order & correct:—*Held:* notwithstanding the conviction & fine & the fact that the solr.'s trust account was subsequently found to be correct, his neglect to have same audited amounted to professional misconduct quite irrespective of the offence against the regulations & of the punishment for that offence, & he should be ordered to pay the Law Society's costs of proceedings.—*Re* M., [1930] N. Z. L. R. 285.—**N.Z.**

PART XIV. SECT. 3, SUB-SECT. 4.—B.

a i. ——.]—The ct. cannot review a finding by the Benchers that a solr. is unworthy to practise.—*Re* LAW SOCIETY OF UPPER CANADA & WOODS, [1935] 2 D. L. R. 557; O. R. 234.—**CAN.**

PART XIV. SECT. 4.

4682 ii. —— ——.]—Where a solr. has been proved guilty of theft & his name has been removed from the rolls, the ct. will not, except in exceptional circumstances, permit him to have his name restored.—*Ex p.* MACAULAY (1929), 30 S. R. N. S. W. 193; 47 N. S. W. W. N. 82.—**AUS.**

sv. *Mandamus—When granted.*]—MARION *v.* CAMPBELL, [1932] S. C. R. 433; 3 D. L. R. 433.—**CAN.**

Part XV.—Unqualified Persons.

4725a. —— **Corporation.**]—A corporate body is not a "person" within Solicitors Act, 1932 (c. 37), s. 46.—LAW SOCIETY *v.* UNITED SERVICE BUREAU, LTD., [1934] 1 K. B. 343; 103 L. J. K. B. 81; 150 L. T. 159; 98 J. P. 33; 50 T. L. R. 77; 77 Sol. Jo. 815; 31 L. G. R. 436; 30 Cox, C. C. 37, D. C.

4737a. Acting under power of attorney.]—An unqualified clerk purporting to act under a power of attorney in the management of the practice of a solr. who was abroad was held to be guilty of a misdemeanour & contempt of ct., & was committed to prison for two months.—*Re* THORPE (J. W.) (1932), 76 Sol. Jo. 919.

4775. After this case add :—

Jurisdiction of county court.]—*See* COUNTY COURTS, Vol. XIII., p. 555, No. 1122.

PART XV. SECT. 1.

sw. *Quebec Bar Act*, 1925—*Offence by commercial association.*]—A commercial assocn., the manager of which procures appointment as inspector in bkpcies., questions debtor & lodges criminal informations, is guilty of an offence against Quebec Bar Act, 1925.—MONTREAL BAR *v.* BETTER BUSINESS BUREAU OF MONTREAL (1933), 60 C. C. C. 306.—CAN.

PART XV. SECT. 2, SUB-SECT. 1.

sy. *Legal Profession Act, R. S. A.*, 1922, *s.* 46—*Right of assignee of debt to sue.*]—*Held:* that a person not enrolled who is the assignee of a debt under an assignment which complies with the requirements of sect. 37 of Judicature Act, R. S. A., 1922, does not violate sect. 46 of above Act by bringing an action on the debt in his own name, without the intervention of a solr., even though he gave no consideration for the assignment & has no beneficial interest in the recovery of the debt & the sole motive for the assignment was to save the expense of solr.'s fees.—R. *v.* COOK, [1931] 3 W. W. R. 707; [1932] 1 D. L. R. 89; 26 Alta. L. R. 156; 57 C. C. C. 256.—CAN.

PART XV. SECT. 3, SUB-SECT. 2.

4767 iv. ——.]—*Held:* as resps. had done a thing which is usually done by a solr., & had done it in such a way as to lead to the reasonable inference that they were solrs., they had acted in contravention of s. 87 of the Imperial Acts Application Act, 1922, s. 87, & were therefore guilty of a contempt of the Supreme Ct. & punishable accordingly.—*Re* BERRY & GULLIVER, *Ex p.* LAW INSTITUTE OF VICTORIA, [1929] V. L. R. 224; [1929] Argus L. R. 192.—AUS.

SPECIFIC PERFORMANCE.

Part II.—Limits of Jurisdiction.

61. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

105. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

107. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

107a. —— **Acceptance by agent of purchaser subject to ratification—Withdrawal by vendor before ratification.**]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with the deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a *quorum* & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later "to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* (1) on the facts the members of the deputation did not warrant their authority to bind the board, & that their acceptance of the deft.'s offer was subject to ratification by the board; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455; 100 L. J. Ch. 87; 144 L. T. 545.

160. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

Part III.—Defences to Claim for Specific Performance.

198. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

257. *Add. Annotations :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510; *Re* Williams, Richards *v.*

PART I.

1 viii. ——.]—The remedy of specific performance is amongst those principles which are administered by cts. in India by way of justice, equity & good conscience.—GULAB RAY GHUTGHUTIA *v.* MAHENDRA NATH SREEMANY (1935), I. L. R. 14 Pat. 249.—**IND.**

PART II. SECT. 2.

24 i. *General rule—Partial relief not given.*]—A contract which includes a provision for personal services to be rendered by one of the parties thereto which is not separable from the other terms of the contract is not a contract for which specific performance can be decreed.—DEADY *v.* BRUNER & ADAMS, [1933] 1 W. W. R. 398.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

65 ii. —— ——.]—The contract of lease or hire of personal service, owing to the personal character of the obligations which it contains, is not susceptible of a condemnation for specific performance: applt. could not physically be forced to keep resp. in its employ, nor could resp. be physically constrained to remain in applt.'s service.—DUPRÉ QUARRIES, LTD. *v.* DUPRÉ, [1934] S. C. R. 528; 4 D. L. R. 618.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

77 i. *Employment as manager—Theatre.*]—In an action for damages for wrongful ouster from a theatre property :—*Held :* the agreement under which pltf. claimed the right of possession was merely one of hiring & service, the remuneration being measured by reference to the profits of the theatre business; & therefore pltf. was not entitled to specific performance of the agreement, & pltf.'s possession being only ancillary to the contract of service, any interest which he had in the property ended with the termination of the contract.—DOWSLEY *v.* BRITISH CANADIAN TRUST CO., [1932] 2 W. W. R. 601; 4 D. L. R. 97; 26 Alta. L. R. 393; *affd.*, [1933] S. C. R. 115; 1 D. L. R. 481.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

127 iv. —— ——.]—RAMJI *v.* RAO KISHORESINGH (1929), L. R. 56 Ind. App. 280.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.

191 iv. —— ——.]—Defts. were in business as land agents, & were the agents of G. for the sale of certain lots. Pltf. made an offer to defts. for the lots & paid them $100 as a deposit. There was nothing in writing, & the oral offer & deposit were accepted by defts. subject to confirmation by G. The offer was submitted to G., who notified defts. of his acceptance. Defts. then, without informing pltf., obtained from G. an agreement to sell to themselves, & paid him a portion of the purchase-money. They then refused to make the sale to pltf., & returned his $100 :—*Held :* there being, no contractual, fiduciary, or other relationship between pltf. & defts., pltf. was not entitled to any relief against them.—ARMSTRONG *v.* BASTEDO (Sask.) (1913), 24 W. L. R. 87; 4 W. W. R. 481; 11 D. L. R. 241.—**CAN.**

191 v. —— ——.]—CREAGHAN (J. D.) CO., LTD. *v.* DAVIDSON, [1929] 3 D. L. R. 146; *revsg.*, [1928] 3 D. L. R. 632.—**CAN.**

191 vi. —— ——.]—FAWCETT *v.* FAWCETT (1935), 5 F. L. J. (Can.) 99.—**CAN.**

sg. *Lease executed by one party.*]—A lease signed by the lessor & a guarantor, but not executed by the lessee, is incomplete, & incapable of specific performance.—FAWCETT *v.* TINGLEY, [1935] 4 D. L. R. 373; 10 M. P. R. 170.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

235 viii. —— ——.]—An option given the lessee of a hotel to purchase it within a year for $45,000, $15,000 cash & "the balance to be arranged": —*Held :* unenforceable because incomplete.—MCSORLEY *v.* MURPHY (B. C.), [1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589; *affd. sub nom.* MURPHY *v.* MCSORLEY & PRINCE EDWARD HOTELS, LTD.—**CAN.**

235 ix. —— ——.]—GEARY *v.* CLIFTON CO., [1928] 3 D. L. R. 64; 62 O. L. R. 257.—**CAN.**

235 x. —— ——.]—CUMMINS *v.* CUMMINS, [1934] 1 W. W. R. 305; 2 D. L. R. 228; 41 Man. L. R. 607.—**CAN.**

Williams, [1930] 2 Ch. 378; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] 1 Ch. 97.

282a. Agreement subject to "model form of conveyance specially prepared"—Absence of model form.]—Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part performance, & the ct. can grant neither specific performance nor damages.

Pltf. signed an agreement, in the form of a letter prepared on behalf of deft., to purchase certain premises subject to the conditions indorsed thereon, & to take the conveyance "in the model form of conveyance specially prepared" for use in relation to the same. The conditions stated (*inter alia*) that the property sold was subject to restrictions appearing in the model form, & that if the purchaser should not after notice withdraw any objection which the vendor could not or would not remove, the vendor might by notice in writing annul the agreement. The premises were part of property conveyed to deft. by three conveyances, among others, dated respectively 1908, 1910 & 1911. They were comprised in the 1908 conveyance, & were part of what was known in deft.'s agent's office as block 4, other parts of the property being there known as blocks with other numbers. Most of the property had come to deft. subject to restrictions against user for trade purposes. At the date of the agreement the restrictions were obsolete in regard to blocks 4, 7 & 9; but in all dealings with property comprised in those blocks deft. had imposed like restrictions. No model form had been prepared for use in dealings with block 4, & through a mistake of deft.'s agent, pltf. received one appropriate to block 8. Pltf. took possession before completion, & soon raised the question of turning the premises into a shop. After long negotiations, during which the question of restrictions was thoroughly discussed, deft. refused permission, maintaining that, despite his agent's mistake in sending the wrong model form, the restrictions against trade ought to stand; & a new draft conveyance, incorporating such restrictions, was prepared on his behalf. Pltf. refused to execute it, & sought by this action to enforce the original agreement subject only to restrictions in one of the schedules to the conveyance of 1908, & thus free from restrictions on trading:—*Held:* there was no enforceable contract, as by reason of the non-existence of the appropriate model form of conveyance there were missing from the original agreement material terms which the ct. could not supply, & also that damages could therefore not be assessed.—STIMSON *v.* GRAY, [1929] 1 Ch. 629; 98 L. J. Ch. 315; 141 L. T. 456.

285. *Add. Annotation:*—**Refd.** Stimson *v.* Gray, [1929] 1 Ch. 629.

285a. ——.]—STIMSON *v.* GRAY, No. 282a, *ante*.

314a. ——.]—LANSDOWN'S LORD CASE (*circa* 1786), cited in 16 Ves. at p. 310; 33 E. R. 1002.

Annotation:—**Consd.** Moody *v.* Walters (1809), 16 Ves. 283.

398. *Add. Annotation:*—**Refd.** Dixon (J. J.) *v.* Taylor & Cowells (trading as Pine-exx Liquid & Disinfectant Soap Co.) (1933), 50 R. P. C. 405.

399. *Add. Annotation:*—**Refd.** British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

548. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

556. *Add. Annotation:*—**Consd.** Cunningham *v.* Shackleton (1935), 79 Sol. Jo. 381.

624. *Add. Annotation:*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

639. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

703. *Add. Annotation:*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

707a. Property subject to old closing order.]—On July 11, 1929, the purchaser bought Lot 2 at a sale by auction & paid a deposit. The particulars of sale described Lot 2 as an unrestricted freehold, practically an island block, with four frontages to Little Orford Street & three other streets in Chelsea, the block forming an excellent building site, when the existing buildings came into hand. On examining the vendors' registered absolute title the purchaser found Entry 7 in the Charges Register stating in effect that on the transfer of Lot 2 & other property to the vendors on May 23, 1929, by mtgees. selling under their power of sale in a mtge. of Feb. 17, 1903, from Co. A., the former owners, the vendors by way of indemnity to the mtgees., but not further or otherwise covenanted to perform the obligations of Co. A. under a deed of Dec. 23, 1905, made between Co. A. & the Chelsea Borough

PART III. SECT. 2, SUB-SECT. 3.—B.

b i. ——.]—Specific performance will be decreed against a vendor, notwithstanding a dispute as to the quantity of land, especially where there has been part performance.—DAUPHINEE *v.* DAUPHINEE, [1936] 1 D. L. R. 647; 10 M. P. R. 94; 5 F. L. J. (Can.) 228.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

277 i. *Term omitted from written agreement—Terms contained in parol agreement.*]—In an action by a vendor for specific performance of an agreement for the sale of farm lands deft. contended that the whole agreement was based upon the understanding that the farming equipment would be included in the sale although no express mention of it was made in the written agreement. Deft. or his tenant remained in possession of the equipment during the winter following the making of the agreement, without any suggestion being made by pltf. that deft. was not entitled to the equipment. In Mar. pltf. retook possession of the equipment & testified that he did so because deft. had defaulted in paying certain instalments:—*Held:* if the omission of express reference in the written agreement to the equipment deprived deft. of any remedy at law, the case was a proper one in which to apply sect. 13 (*i*) of King's Bench Act, which authorises "the administration of justice in all cases in which there exists no adequate remedy at law," & justice could be done only by replacing the parties as nearly as possible in the same position in which they were before the agreement was reduced to writing.—MCLEOD *v.* KRYSKO, [1930] 3 W. W. R. 601; *revsd.*, [1931] 3 D. L. R. 282; 2 W. W. R. 27; 39 Man. L. R. 465.—**CAN.**

m i. ——.]—Specific performance refused of an agreement in writing for sale of a store where all the terms agreed upon were not included in the agreement.—MYERS *v.* COOK, [1932] 4 M. P. R. 198.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

287 viii. —— ——.]—Action for specific performance of an oral agreement to sell land dismissed, no act of part performance being established.—WARD *v.* O'LEARY (1935), 10 M. P. R. 63.—**CAN.**

Council & under a London County Council Order of Dec. 12, 1905. The deed of Dec. 23, 1905, made in pursuance of a large building scheme by Co. A. provided for the stopping up (*inter alia*) of Little Orford Street & for making certain new streets, including a new transverse street bisecting Lot. 2. The Borough Council were to obtain the necessary Closing Orders, & Co. A. were to lay out the new streets at their own expense. By their order of Dec. 12, 1905, the London County Council on the application of Co. A. sanctioned the new streets subject to certain conditions including a condition that Co. A. should covenant to lay them out, & on Dec. 21, 1905, Co. A. covenanted accordingly. On July 10, 1906, on the Borough Council's application the justices made a Closing Order for Little Orford Street. For financial & other reasons this part of Co. A.'s scheme had not yet been proceeded with. Little Orford Street was still open; it was in fact repaired by the Borough Council; & at the date of the contract neither the vendors nor the purchaser knew of the Closing Order's existence. On discovering Entry 7 the purchaser required the vendors to delete it from the Register & to obtain a release of the obligations, &, on their refusal, he issued a vendor & purchaser summons for a declaration that a good title was not shown. On subsequently discovering the Closing Order he discontinued the summons & brought this action claiming a declaration that he was entitled to repudiate the contract, damages for breach, & return of the deposit. The vendors denied any breach & counterclaimed for specific performance:—*Held:* (1) the twenty-four years' old Closing Order did not affect the title, but, if & so far as it was inconsistent with the particulars, merely raised a case of innocent misrepresentation, on which the purchaser could neither repudiate the contract nor recover damages, his only remedy being to resist specific performance. Therefore, the purchaser's action failed; (2) on the vendors' counterclaim for specific performance that there was in fact no misrepresentation in the particulars, as the word "street" even in London did not necessarily mean a public highway. There was therefore no ground for refusing specific performance.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479; 99 L. J. Ch. 274; 142 L. T. 626.

707b. Property represented as bounded by "street" —Whether confined to public highway.]—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., No. 707a, *ante.*

709. *Add. Annotation:*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

727. *Add. Annotation:*—**Refd.** Sennett *v.* Rendell (1934), 79 L. Jo. 98.

730. *Add. Annotation:*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

768. *Add. Annotations:*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell, [1931] 1 Ch. 35.

773. *Add. Annotation:*—**Consd.** Lock *v.* Bell, [1931] 1 Ch. 35.

801. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

812. *Add. Annotation:*—*Generally*, **Refd.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

829. *Add. Annotation:*—**Consd.** Grant *v.* Derwent (1928), 140 L. T. 330.

Part IV.—Particular Contracts.

951. *Add. Annotation:*—**Consd.** *Re* Franklin & Swathling's Arbn., [1929] 1 Ch. 238.

PART III. SECT. 13, SUB-SECT. 2.

p i. ——.]—*Resale by plaintiff under conditions inconsistent with completion of original contract.*]—NEW SOUTH WALES PUBLIC TRUSTEE *v.* GAVEL (1927), 40 C. L. R. 169.—AUS.

PART III. SECT. 15, SUB-SECT. 1.

q i. —— *Land of deceased intestate—Administratrix without power of sale.*]—B. died in 1920, leaving a widow & four children; letters of administration were granted to the widow. Pltf. made an offer for land which B. had owned. At this time the two younger children were infants. In 1927 the widow signed a document by which she agreed to sell certain marsh land "owned by & belonging to the estate of my late husband":—*Held:* in 1927 no marsh land belonged to the estate of B. for what had been his under Devolution of Estates Act vested in defts., & as administratrix the widow had no power of sale.—BROWN *v.* BARBER, [1929] 2 D. L. R. 391; 63 O. L. R. 512.—CAN.

PART III. SECT. 15, SUB-SECT. 3.

sd. *Agreement for sale of licensed premises—Subsequent loss of licence.*]—SUMMERS *v.* COCKS, [1928] A. L. R. 107; 40 C. L. R. 321.—AUS.

PART IV. SECT. 26.

sf. *Agreement for possession & devise or conveyance in return for services.*]—Under an oral agreement between pltf. & defts. the latter were to have exclusive possession of a parcel of pltf.'s land in return for personal services to be rendered by them to her during her lifetime or until she sold or disposed of her adjoining property, & she also agreed to leave them said parcel by her will or, in the event of the sale of the adjoining property & the removal of her residence therefrom, to convey it to them. Defts. took up their residence on the land & built a house & other improvements thereon referable only to said agreement. Pltf. brought an action to recover possession, & defts. counterclaimed for specific performance. The ct. dismissed the action & declared that defts. were entitled to specific performance on the death of pltf. or upon her removing from the neighbourhood:—*Held:* on appeal, the dismissal of the action ought to be sustained, but the decree of specific performance was premature.—LYELL *v.* CORMACK, [1928] 4 D. L. R. 902; [1928] 3 W. W. R. 284.—CAN.

sg. *Contract to take supply of gas.*]—Under a contract between deft. city & a co. to whose rights thereunder pltf. co. was held to have succeeded, the city agreed to permit the co. to connect gas wells, which the co. agreed to drill by a certain date, with the city's main & then to withdraw from the main for its own use a certain percentage of the gas thus added to the city's supply. The co. not having proceeded to drill, the city notified it that the city would not perform its part of the contract after a date specified, which was prior to that to the contract was found on the trial to have been extended by agreement of the parties. The co. then sued for a declaration that the contract was a good & subsisting contract extending to said later date, which should be specifically performed by deft., & for an extension of time in which to complete the well or wells, & for damages. Said later date had passed at the time of the trial:—*Held:* although the contract had been broken by the city, it was one with respect to which it was impossible to decree specific performance; moreover, it was beyond the power of the ct. to extend the time, &, since the question whether the co. had really sustained any damage depended upon a question which could not be answered, *viz.*, whether by said date the co. could or would have sunk the well or wells & have found sufficient gas to justify it in carrying it to the city's main, pltf. could recover nominal damages only.—MEDALTA POTTERIES, LTD. *v.* MEDICINE HAT CITY, [1931] 1 W. W. R. 217.—CAN.